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**Town of Nags Head  
Planning Board  
January 18, 2022**

The Planning Board of the Town of Nags Head met on Tuesday, January 18, 2022, in the Board Room at the Nags Head Municipal Complex.

Planning Director Kelly Wyatt called the meeting to order at 9:07 a.m. as a quorum was present.

***Members Present***

Megan Vaughan, Kristi Wright, Molly Harrison, Meade Gwinn, David Elder, Gary Ferguson, Megan Lambert

***Members Absent***

None

***Others Present***

Kelly Wyatt, Holly White, Kate Jones, Lily Nieberding, Andy Garman, Eric Claussen

***Election of Chair and Vice Chair for Calendar Year 2022***

Planning Director Kelly Wyatt opened the meeting and requested nominations for the position of Planning Board Chair for calendar year 2022. Meade Gwinn moved to nominate Megan Vaughan to serve as Chairperson. David Elder seconded the motion. There being no other nominations a vote was taken, and the motion passed unanimously.

Ms. Wyatt then turned the meeting over to newly re-elected Chair, Megan Vaughan.

Chair Vaughan then requested nominations for the position of Vice-Chair. Meade Gwinn moved to nominate Kristi Wright as Vice Chair. Megan Lambert seconded the motion. There being no other nominations a vote was taken, and the motion passed by unanimously.

***Approval of Agenda***

David Elder moved to approve the agenda. Kristi Wright seconded and the motion passed by unanimous vote.

***Public Comment/Audience Response***

None

***Approval of Minutes***

Chair Vaughan asked for a motion to approve the minutes of the December 14, 2021, meeting. David Elder moved to approve the minutes as presented; Meade Gwinn seconded and the motion passed unanimously.

**Action Items**

Site Plan Review submitted by Michael Robinson, P.E., P.L.S. on behalf of Blue Moon Five, LLC for the construction of an approximately 8,676 square foot, two-story restaurant. The property is zoned C-2, General Commercial and is located at 4329 S. Croatan Highway, Nags Head.

Ms. Wyatt reminded the Board that they had done a Sketch Plan Review of this site at their previous meeting. At that time there were a few comments received, the plan then went through Technical Review and the applicant is back with some revised plans.

Ms. Wyatt presented a Site Plan Review submitted by Michael Robinson, P.E., P.L.S. on behalf of Blue Moon Five, LLC for the construction of an approximately 8,676 square feet, two-story, 100-seat restaurant and all associated site improvements. The property is located at 4329 S. Croatan Highway, it is currently vacant and is zoned C-2, General Commercial Zoning District.

The majority of the surrounding properties also zoned C-2, however there are some properties along the backside that are developed residentially.

The property is located in an X Flood Zone, however per the Town's local ordinance, it is subject to an RFPE/LES of 9 ft. The proposed first floor elevation of the restaurant is 11.7 and is therefore compliant.

Land Use Plan Map/Policies: The 2017 Comprehensive Plan Future Land Use Map classifies this property as Neighborhood Commercial. This proposal is consistent with this land use classification and stated Land Use Policies.

Ms. Wyatt then proceeded to review the applicable Zoning Regulations:

- As far as the use, Ms. Wyatt noted that "Restaurant" is a Permitted Use within the C-2, General Commercial District, with some supplemental regulations set forth in Section 7.31. This section requires that a restaurant have a food prep area, that is at least 20 percent of the gross building square footage of the principal building, that at least 75 percent of all customer seats are designated for full-service, full menu dining and that no more than fifteen percent of the total building square footage is devoted to accessory entertainment uses. As proposed, the restaurant is compliant with these requirements.
- Total allowable lot coverage for this site is 55%. Proposed lot coverage is 54% and is therefore compliant.
- The maximum allowable building height within the Town is 35 feet; however, pursuant to Section 8.2.1, Dimensional requirements, total height may be increased to 42 feet with the use of an 8:12 roof pitch or greater. The applicant has proposed a structure with an overall height of 33.5 feet with the use of an 8:12 roof pitch therefore height is compliant.
- Architecture Design Standards: Section 10.82 of the UDO, Applicability, states that Commercial Design Standards shall apply to all building construction or remodeling projects requiring a conditional use permit or site plan review. This project must adhere to the Commercial Design Standards set forth within Part VI of the UDO. Section 10.83, Design Standards, of the UDO, states that projects adding a total habitable building area of 10,000 square feet or less may elect to comply with the building design requirements by achieving 150 points based on the criteria outlined in the Town of Nags Head Residential Design Guidelines. Projects that elect to comply in this manner shall, in

addition to the required 150 architectural design points, incorporate specific building standards into the design. The proposed architectural design satisfies the minimum standards required by Section 10.83 and additionally achieves 159 architectural design points with the use of a first-floor porch, dormers, 8:12 pitched roof, simulated wood shingles and other miscellaneous architectural details.

- Pursuant to Article 10, Table 10-2, Required Parking by Use, Sit Down Restaurant shall provide parking at one (1) parking space for every 55 square feet of indoor customer service area. The proposed structure contains 2,513 square feet of customer service area, requiring 46 parking spaces. A total of 54 spaces have been provided therefore parking is compliant.

In addition, Section 10.92.14.4 of the UDO, requires that a minimum of twenty (20) percent of the surface area of the parking area and drive aisles shall be constructed of permeable surface materials. Upwards of 40% of the parking area has been proposed in permeable surface materials therefore the proposal is compliant.

- Several sections of the Unified Development Ordinance speak to Buffering and Landscaping as it applies throughout this proposed site. Ms. Wyatt reviewed these for the Board noting that the applicant has provided the required calculations and notation on the landscape plan demonstrating that the vegetation planting requirements will be met.

- A lighting plan compliant with the requirements of Article 10, Part IV of the Unified Development Ordinance will be required prior to the issuance any development permits. In addition, a light audit will be required prior to issuance to occupancy permits.

- No additional signage is being proposed at this time.

Ms. Wyatt noted that the Dare County Health Department has reviewed and approved the proposal as presented.

Traffic circulation has been reviewed and approved by the Town Engineer as presented. Mr. Ryan also reviewed and approved the Stormwater Plan. An NCDEQ state Stormwater management permit will be required to be submitted and approved.

The project will be required to comply with all applicable NC Fire Prevention Code requirements as part of building permit application review and issuance.

The Public Works Director has also reviewed and approved the proposed site plan as presented.

Based on their findings, Staff finds that the proposal is consistent with the applicable use and development standards, as well as relevant land use policies and would recommend approval of the Site Plan request as presented.

Ms. Wyatt noted that she along with Architect Ben Cahoon and Engineer Michael Robinson were available to answer any questions for the Board.

Mr. Ferguson inquired about the height of the proposed retaining wall; Mr. Robinson confirmed it would be no greater than approximately 1.5' in height from grade.

David Elder moved to approve the site plan as presented. Molly Harrison seconded and the motion passed unanimously.

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Consideration Of Various Text Amendments to the Town's Residential Stormwater Regulations.

Sr. Environmental Planner Kate Jones presented several text amendments to the Town's Residential Stormwater Regulations.

Ms. Jones explained that last year planning staff drafted and presented the Planning Board and the Board of Commissioners with updates to the Town of Nags Head Low Impact Development and Stormwater Reference Manual. At their May 5, 2021, meeting, the Board of Commissioners unanimously passed a motion to continue consideration of these updates in order to review potential changes with several Nags Head homebuilders. Since that time, several meetings have taken place. (A summary of these meetings was provided in the Staff memorandum).

Staff drafted new non-volume-based ordinance language established through discussion at these meetings as well as practical experience applying Stormwater regulations throughout residential areas in the town.

Ms. Jones noted that some modifications to the ordinance were necessary outside of Section 11.5, General Standards for Residential Development on Individual Lots for consistency and clarity, therefore, Article 11, Part 1 was reviewed as a whole. For consistency, it was also necessary to update Article 11, Part III, Flood Damage Prevention, to reflect the changes to the fill requirements and consolidate to one location. In addition to this, changes have been drafted to UDO Appendix A. definitions which change the way onsite material may be used to achieve fill height, offer consistency with respect to fill terminology, as well as adds a relevant Stormwater definition that was previously discussed. Lastly, the Town of Nags Head Low Impact Development Manual draft document has been updated for consistency with the overall residential Stormwater ordinance changes.

Ms. Jones explained that there were updated Fill definitions, and reviewed these briefly for the Board:

"Fill" is the depositing of soil, rock, or other earthen materials by artificial means, but not including poured slab, asphalt, porous pavement, Turfstone TM , or other manmade materials or surfaces designed in association with construction. Excavated material moved or relocated onsite is not considered fill for the purposes of determining fill height.

"Fill depth height" is the difference between the post-development surface elevation and the predevelopment surface elevation.

Additionally, Ms. Jones explained that a definition related to Stormwater was updated:

"Stormwater improvement" is a change or addition made on or to the land, excluding buildings, that improve infiltration into the ground and the retention of Stormwater runoff.

Ms. Jones then proceeded to review the ordinance changes in more detail explaining that a lot the changes were to Section 11.5 General Standards for Residential Development on Individual Lots.

Ms. Jones confirmed for Mr. Ferguson, that in certain circumstances the contractor might be required to make an improvement to the swale in the Right of Way. Ms. Jones noted that in fact there are situations currently where they are asked to do that during the construction process; that is already in the Ordinance. In the case of 11.5.2.2.3 specifically they would need to work with the Public Works Director.

Ms. Jones noted that in addition to the changes to the Stormwater Ordinance they made an adjustment to the Flood Ordinance. They wanted to consolidate and clarify the fill rules, so they struck that language from the Flood Ordinance and moved it verbatim over to the Stormwater Ordinance.

Ms. Jones then discussed the LID (Low Impact Development Manual) and how it can be used as reference tool.

Ms. Jones confirmed for Chair Vaughan that there is still a plan to have an educational component. Staff has prioritized getting the information out to those that need it. Mr. Gwinn suggested that Staff communicate these changes to the Landscaping companies and nurseries.

Ms. Jones confirmed for Mr. Ferguson that with this change if someone moves existing material within their own lot (balancing or redistribution) it will no longer be considered fill; however, there are still limitations in place such as setback and bulkheading rules.

After some brief discussion related to septic fill, David Elder moved to recommend approval of the amendments as presented. Meade Gwinn seconded, and the motion passed unanimously.

*Consideration of a Text Amendment to the Flood Damage Prevention Ordinance to address an inconsistency in the application of the Regulatory Flood Protection Elevation (RFPE) based upon a property's location east or west of NC 12 in the vicinity south of the Nags Head Village Beach Club where NC 12 shifts westward.*

Ms. Wyatt presented an aerial photograph showing the area in question and explained that at their December 9, 2021, meeting, the Board of Adjustment heard and granted a variance for the Jones property located at 100 E. Sandcastle Court, Nags Head. The Board of Adjustment found that the property, as well as the current property owner who is living with a disability, does suffer unnecessary hardships based upon application of the current Flood Damage Prevention Ordinance, specifically the requirements of *Section 11.44.2. Residential Construction* and *Section 11.44.3, Coastal High Hazard Areas (Zones VE) and Properties East of NC 12 and SR 1243* which delineates the Coastal High Hazard Areas/VE Zones as being those properties east of NC 12. Ms. Wyatt noted that the RFPE for properties located east of NC 12 and SR 1243 is 12' msl.

While the Board of Adjustment identified numerous hardships as part of their findings of fact, one notable finding pertained specifically to the location of this, and similarly situated properties, where NC 12 does not parallel the beach. As part of the road relocation many years ago, NC 12 is now substantially further west than the alignment of the remainder of the roadway in the vicinity of Sandcastle Court, Sea Spray Court, Sand Fiddler Court, Sea Holly Court, and Sun Dancer Court. If the roadway was in its original location, many of these properties would be located west of NC 12, having an RFPE of 9' msl instead of 12'.

Ms. Wyatt noted that included in the December 2021 Directors Report were images outlining this area of Town as regulated by the 2006 flood maps and the same area as regulated by the current flood maps.

After discussing several options, Staff is proposing a draft text amendment to the Unified Development Ordinance, Appendix A – Definitions, Regulatory Flood Protection Elevation which would apply only to those properties located within the Village at Nags Head SPD-C District:

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"Within the Village of Nags Head, only parcels with direct frontage on the Atlantic Ocean/ocean beach shall be considered a Coastal High Hazard Area with an RFPE of 12.

Staff is of the opinion that the proposed amendment is consistent with the Town's adopted Comprehensive Plan and is reasonable and in the public interest and recommends adoption of the amendment as requested.

Chair Vaughan and the Board agreed that the amendment made sense in general.

David Elder moved to recommend approval of the amendment as presented. Megan Lambert seconded, and the motion passed unanimously.

*Request The Planning Board initiate consideration of rezoning the property located at 2110 S. Pond Avenue (Nags Head Water Plant) from SED-80, Special Environmental District, to C-3, Commercial Services in advance of the design process for the Public Works Master Plan.*

Ms. Wyatt explained that the Town of Nags Head is in the process of developing a facilities master plan for the Public Works Department. This is a long-term planning exercise to conduct a facility needs assessment for the department, review the existing buildings and facilities, and develop a capital planning tool for the department for future budgeting purposes. This would consider physical improvements that would better serve existing and future staff needs, allow for improved services to the public, and provide acceptable facilities for the storage and maintenance of equipment assets.

The Public Works department uses several sites located along Lark Avenue, Pond Avenue, as well as other sites throughout the town.

The consultant selected for this project, Oakley Collier, is now beginning to work on the schematic plan design for the proposed Public Works Facility redevelopment project. In review of the various properties to be encompassed in this design process, it was noted that the Water Department, located at 2110 S. Pond Avenue is zoned SED-80, Special Environmental District, while the remaining Public Works facilities are located within the C-3, Commercial Services District.

Section 6.2.4.3 of the UDO, Zoning Districts, notes that the intent of the C-3, Commercial Services District is to provide for higher intensity land uses that are not compatible with other areas of the Town. The C-3 District accommodates utilities, light industrial uses, warehousing, bulk storage, municipal facilities, etc. It is noted that due to the proximity of this district to Fresh Pond, allowed uses shall not be detrimental to adjacent uses and the environment.

The historical and current use of Water Department facility is consistent and compatible with the C-3, Commercial Services District. As such, staff would request that the Planning Board initiate the process to rezone 2110 S. Pond Avenue from SED-80 to C-3 as an extension of the existing municipal facilities currently located within the C-3, Commercial Services District.

Ms. Wyatt confirmed for Mr. Gwinn that the property adjoins Fresh Pond and that it is likely that it was a consideration as to why the property was considered SED-80. Ms. Wyatt noted that Fresh Pond is no longer serving as a potable water supply.

Ms. Wyatt noted that the property has functioned as the Town's Water Plant for a very long time, even when Fresh Pond was considered a potable water supply.

Public Works Director Eric Claussen confirmed for Mr. Gwinn that the function of the water plant is distribution and monitoring of water levels. They chlorinate the water but there's no longer a treatment process. Mr. Claussen confirmed that the water that is chlorinated is purchased from Dare County.

Mr. Claussen noted that having the property rezoned gives them more flexibility in redeveloping the facility.

Town Manager Andy Garman addressed the Board and explained that there are lot coverage issues with SED-80; more lot coverage allowed in C-3 gives them more room to build. Mr. Garman also explained that there is a CAMA AEC which they are not proposing to remove because they don't want to jeopardize the ability to make Fresh Pond potable again someday. Mr. Garman noted that the Town will need a CAMA major permit and they want to build in a way that they maintain Fresh Pond as a possible water source.

Mr. Garman confirmed for Mr. Gwinn that the Town does not want to jeopardize the ability to bring that system (Fresh Pond) back on-line if they need to. Mr. Garman believes that they can develop the facility while still protecting the water source.

David Elder moved to initiate the process to rezone the property as requested. Meade Gwinn seconded and the motion passed by unanimous vote.

### ***Recess***

The Board took a brief recess to prepare for a Zoom presentation. The time was 10:20 AM. The Board reconvened at 10:31 AM

### ***Conduct the Stakeholder Interview of the Planning Board for the Electric Vehicle Action Plan***

The Planning Board initiated discussion of electric vehicle charging stations in June 2019. These initial discussions led to the inclusion of an Electric Vehicle Action Plan as part of the Planning & Development Department and Septic Health FY2020-2021 Strategic Work Plan, with the general goal being to support the increasing prevalence of electric vehicles.

Staff has met several times with Dr. Timothy Johnson and Masters of Environmental Management (MEM) Program students Camila Ospina, Narissa Petchumrus, and Will Price to discuss the scope of work. The students have provided a project proposal outlining a detailed scope of work for the project.

Principal Planner Holly White explained that the students would be joining the Planning Board via zoom to make a brief presentation on the project status and have a general discussion with the Planning Board on their perspectives on Electric Vehicles.

Ms. White handed the presentation over to Narissa Petchumrus who introduced herself as well as the other two student team members. Ms. Petchumrus facilitated a Power Point slide presentation updating the Board on what they've been working on. Ms. White then led the Board through Question and Answer period where topics included: general perspectives on EVs, what businesses owners would need to be willing to host an EV charger in their lot, having available space and funding necessary to install chargers, possibility of (town) incentives; how weather and climate conditions may affect chargers; any restrictions on funding sources- private vs. public use; possible installation of chargers at the Nature Conservancy and Jeanette's Pier; ability to maintain and repair chargers as

well as vehicles; the need for the establishment of a corridor for those traveling to Nags Head on EVs; identifying important stakeholders including checking with neighboring municipalities to see if they are doing anything related to EVs.

### ***Report on Board of Commissioners Actions – January 5, 2022***

Ms. Wyatt gave an update on the Board of Commissioner Actions, of note: a Request for Public Hearing to consider Residential Stormwater Ordinance; Ms. Wyatt presented her Director's Report which was well received; the Board approved the Fuller's application requesting removal of trees with a caliper of 16 inches or greater within the SED-80 Zoning District and Meade Gwinn was reappointed to a 3-year term on the Planning Board.

### ***Town Updates***

None

### ***Discussion Items***

#### *Update From Public Services Director, Eric Claussen*

Public Works Director Eric Claussen introduced himself and gave a brief presentation to the Board. Mr. Claussen is an engineer as well as a professional Traffic Operations Engineer. Mr. Claussen reviewed some topics that had recently come up from the Board of Commissioners and from the public for different areas around the community. Topics discussed included: proposed improvements to the intersection of Whalebone and NC 12; proposed improvements to the pedestrian access and Seachase and South Virginia Dare Trail; safety issues at the Satterfield Landing intersection; combating pedestrian safety issues in general and a signalization plan/determining appropriate locations for traffic signals.

#### *December 28th, 2021, Director's Report*

Ms. Wyatt briefly discussed her Director's Report to the Board. Of note: the addition of section with updates related to recent Board of Adjustment cases and an update of the Decentralized Wastewater Management Plan and the Estuarine Shoreline Management Plan.

#### *Update On Short Term Rental Registration*

At the Planning Board's December 14, 2021, meeting, it was requested that staff provide a brief update on the status of the 2021 Short Term Rental Registration season.

Ms. Wyatt noted that for the 2021 calendar year the Town received, reviewed, and approved 189 short term rental registrations. This is slightly down from the 233 registrations received in 2020. While staff is unsure of the reason for the decline in registrations, it could perhaps be due to the newness of the program and/or the confusion in registration requirements and deadlines.

As of January 14, 2022, the Town had received 10 new registrations for the 2022-2023 Season. Staff will plan on sending out a notification to all the short-term rentals included in their database in early June 2022 as a reminder for renewal if necessary. Ms. Wyatt also noted that Staff plans on doing more education to ensure that the public is aware of the requirements related to having a short-term rental.



Continued Discussion of the use of shipping containers as dwellings.

Ms. Wyatt noted that at their previous meeting Mr. Ferguson inquired about requirements related to length to width ratio when it comes to principal structures. Ms. Wyatt confirmed that this requirement is still in the ordinance and will be very beneficial when it comes to discussing the use of shipping containers as dwellings. The UDO states that the minimum width of enclosed habitable space of a principal building shall be 18 feet and most shipping containers are 8 or 10 feet wide, and 20 to 40 feet deep. Ms. Wyatt stated that just meeting this requirement alone is going to take some effort.

Staff will continue to discuss and research this topic but does not think there is urgency at this point.

Update On Resilient Coastal Communities Program Re: Goal Setting.

Ms. White gave a brief overview of this topic, and the Board will hear a more detailed presentation from the Town's consultant at their next meeting.

**Planning Board Members' Agenda**

None

**Planning Board Chairman's Agenda**

None

**Adjournment**

A motion to adjourn was made by David Elder. The time was 12:19 PM.

Respectfully submitted,  
Lily Campos Nieberding