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**Town of Nags Head  
Planning Board  
March 21, 2023**

The Planning Board of the Town of Nags Head met on Tuesday, March 21, 2023, in the Board Room at the Nags Head Municipal Complex.

Planning Chair Megan Vaughan called the meeting to order at 9:05 a.m. as a quorum was present.

***Members Present***

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

***Members Absent***

None

***Others Present***

Kelly Wyatt, Kate Jones, Andy Garman, Lily Nieberding

***Approval of Agenda***

David Elder moved to approve the agenda. Meade Gwinn seconded, and the motion passed by unanimous vote.

***Public Comment/Audience Response***

Basil Belsches, Nags Head Property owner and resident addressed the Board and spoke in favor of the proposed map amendment which includes re-designating the property at 100 E. Hollowell Avenue from the proposed R-3, Medium Density Zoning District to the C-5, Historic Character Commercial District. Mr. Belsches believes it to be a good compromise of residential and commercial and urged the Planning Board to recommend approval.

***Approval of Minutes***

Chair Vaughan asked for a motion to approve the minutes of the February 21, 2023, meeting. David Elder moved to approve the minutes as presented; Meade Gwinn seconded, and the motion passed unanimously.

***Action Items***

*Consideration of a Vested Right/Special Use/Site Plan Amendment submitted by Albemarle & Associates, Ltd. on behalf of Nags Head Church for the expansion of parking lot. The property is zoned R-2, Medium Density Residential and is located at 105 W. Soundside Road, Nags Head.*

Planning Director Kelly Wyatt explained that Mike Morway with Albemarle & Associates had submitted a Vested Right/Special Use Permit/Site Plan Review on behalf of Nags Head Church, Inc. for the purpose of expanding the Nags Head Church Parking Lot.

Ms. Wyatt presented a proposed site plan depicting the expansion of the parking lot to the rear of the church, towards Soundside Road. Ms. Wyatt noted that this proposal included relocating an existing shed on the property.

The property is located at 105 West Soundside Road. The existing Land Use is Religious Complex, and the property is zoned R-2, Medium Density Residential.

Ms. Wyatt noted that portions of this property are located within a Shaded X Flood Zone. Per the Town of Nags Head local ordinance, the property is subject to an RFPE/LES of 9 ft. The proposed first floor of the relocated storage shed will be required to be flood compliant as it is over the allowable 300 SF below base flood. Mr. Morway has been in touch with Chief Building Inspector Steve Szymanski to ensure flood compliance.

The 2017 Comprehensive Plan Future Land Use Map classifies this property as Residential and is within the Historic Character Area. Ms. Wyatt noted that part of this project will include some tree removal. This proposal is consistent with this land use classification and stated Land Use Policies, noting that preservation of natural vegetation, topography and maintaining open space and view sheds are key elements of preserving the Historic Character Area.

Ms. Wyatt reviewed the Applicable Zoning Regulations:

- Section 6.6, Table of Uses and Activities lists "Religious Complex" as a Special Use within the R-2, Medium Density Residential District, with supplemental regulations set forth in Section 7.45. The scope of work associated with this request requires it to be considered as a Major Site Plan review.
- Total allowable lot coverage for this site is 30% but may be increased to 45% with stormwater management facilities designed to retain and infiltrate the two-inch storm event. Proposed lot coverage is 22.8% and is therefore compliant.
- Height and Architectural Design: The proposed request for expansion of the parking lot and relocation of the storage shed does not necessitate any revisions to these elements.
- Parking: Pursuant to Article 10, Table 10-2, Required Parking by Use, Religious Complex shall provide one parking space for each 4 seats in the sanctuary. 97 parking spaces are required for this use and 97 parking spaces currently exist. There is no proposed expansion of seating in the sanctuary requiring this parking expansion. The applicant has noted in the application narrative that while the existing parking lot meets the minimum town zoning requirements, they have found there is a need to expand their parking capacity due to an overlap in parishioners in the facility between masses.

Section 10.92.14.4 of the UDO, Surface Materials, requires a minimum of twenty (20) percent of the surface area of the parking area and drive aisles to be constructed of permeable surface material. The parking lot expansion is resulting in an additional 21,880 square feet of coverage. Of that area, 23.4% is proposed to be in a permeable surface material.

- Buffering/Landscaping: Several sections of the Unified Development Ordinance speak to Buffering and Landscaping as it applies throughout this proposed site:
  - Section 10.92.6.2 of the UDO, Parking and Drive Aisle Setbacks, requires that where off-street parking is provided between the building and the street right-of-way line, a parking lot buffer of at least ten (10) feet in width shall be provided between the parking lot and the street right-of-way. A

compliant 10-foot-wide buffer has been shown between proposed new parking areas in the northwest corner, adjacent to Soundside Road.

➤ Section 10.93.3.2 of the UDO, Commercial Transitional Protective Yards, requires increased landscaping to be provided and maintained when non-residential land uses are adjacent to a residential use or residential zoning district. This protective landscape buffer is required to be ten (10) feet in width with two rows of acceptable plant material. The property to the west is developed residentially as well as properties to the north and south alongside the area containing the paved access to the stormwater infiltration basin and the relocated shed. These areas shall either plant new or preserve existing mature vegetation consistent with the requirements for the commercial transitional protective yard. A note stating such has been shown on the proposed landscape plan.

➤ Section 10.93.3.7 of the UDO, Interior Parking Lot Landscaping, requires parking lot landscaping be provided at a minimum rate equal to ten percent of the total area of the parking spaces. The minimum area necessary for compliance is 2,611 square feet of vegetation, they are proposing 2,961 square feet of vegetation, approximately 11.3%, therefore interior parking lot landscaping is compliant.

➤ Section 10.93.3.8 of the UDO, Vegetation Preservation/Planting Requirements, requires that new development projects either preserve a minimum of ten (10) percent of the lot's total area with existing natural vegetation and/or dune elevations or plant new vegetation in lieu of preservation. When existing vegetation cannot be preserved, the planting of a minimum of fifteen (15) percent of the lot's total area shall be required. Over 48% of the total lot area will remain undisturbed and all existing, mature vegetation will remain onsite.

- The proposed lighting plan has been reviewed and found to be in compliance with the requirements of Article 10, Part IV of the Unified Development Ordinance. In addition, a light audit will be required prior to issuance of occupancy permits.

- No additional signage is being proposed at this time.

The Dare County Health Department has reviewed and approved the proposal as presented.

Traffic circulation and Stormwater Management has been reviewed and approved by the Town Engineer as proposed.

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 Services Director has reviewed and approved the proposed site plan as presented.

Staff finds that the proposal is consistent with the applicable use and development standards, as well as relevant land use policies. Based upon Staff's review of the proposal staff recommends approval of the Vested Right/Special Use Permit/Major Site Plan Review as presented. Staff would note that efforts shall be made to preserve as much existing, mature vegetation as possible, especially Live Oaks, the Town Tree.

Chair Vaughan asked about setback requirements for the storage shed. Ms. Wyatt explained that a structure used for storage only with no habitable space has a setback of five feet from the rear or side yard.

Mr. Gwinn asked for more information about proposed lighting and how it might affect the adjoining residential lots.

Mike Morway with Albemarle & Associates addressed the Board. Mr. Morway stated that as far as lighting, they currently have the colonial style poles which were installed as part of the redevelopment of the property in 2005. The poles have not held up very well and require a lot of maintenance. They are proposing to replace them with the decorative shoe box light which are on the Dominion Plan. They do throw light over a wider area so the light is better distributed and are cutoff fixtures.

Mr. Morway confirmed for Mr. Gwinn that the poles are 30 feet so below the Town's 35 ft limitation.

Mr. Morway confirmed for Chair Vaughan that they are not adding any new driveways; the existing entrance/exit will remain. Per the Town Engineer's suggestion, they were able to accommodate a wider radius to allow more accessibility.

Mr. Morway discussed the need for increase parking noting that in addition to having two services in the morning, the church is active in promoting community events. The church lobby is conducive to gathering so they have quite a bit of overlap between services; currently people sometimes even park on Soundside Road so they are trying to accommodate the crowds they're seeing.

The Board had significant discussion traffic circulation and traffic safety issues including the impact on traffic as well as illegal parking on Soundside Road. The Board also raised concerns about preserving vegetation in that area and Stormwater retention.

Mr. Elder noted that with this change in parking there might be more activities planned.

Mr. Gwinn noted that increasing the parking capacity might get people parked faster and possibly unclog the entrance into the church parking lot. Mr. Ferguson agreed noting it looks like they are trying to get the vehicles off Soundside Road right-of-way and put them on their property so he was in favor of the proposal.

Ms. Wyatt stated that she would include the Board's discussion about traffic circulation concerns in her report to the Board of Commissioners and also noted that the Town Engineer might be able to have a discussion with NC DOT about a possible traffic study in that area.

Ms. Wyatt confirmed that other than religious complex there's no other significant commercial uses allowed in the R-2 zoning district, so it is very unlikely that a commercial use would come in and repurpose the area in the event that the church was to leave.

After some further discussion Meade Gwinn moved to recommend approval of the site plan amendment as presented. Gary Ferguson seconded and the motion passed unanimously.

*Consideration of a Zoning Map Amendment as it pertains to the Historic Character Area and the moratorium adopted on October 19, 2022.*

Ms. Wyatt explained that at their March 1, 2023 meeting, after having heard the presentation from planning staff and receiving valuable public comment from numerous property owners, the Board of Commissioners tabled action on the proposed Historic Character Area amendments and requested that planning staff return at their March 15th mid-month meeting with the requested text amendment updates incorporated into ordinance form. The Board of Commissioners also delayed acting on the proposed map amendments. They requested that the proposed map amendments be recirculated to the Planning Board for additional review of the zoning designations and district boundaries to include

consideration of redesignating the property at 100 E. Hollowell Avenue from the proposed R-3, Medium Density Zoning District to the C-5, Historic Character Commercial District.

Planning staff did present the requested revisions to the proposed text amendments to the Board of Commissioners at their March 15th mid-month meeting. These amendments were adopted unanimously.

Ms. Wyatt reviewed these changes for the Board noting that they included: new language that was adopted into the nonconforming use section just to ensure that a nonconforming use could be rebuilt to the same degree, same non-conformities that it had when it was destroyed. There was also some deletion of language that was pertaining to the 50% rule, so if you have a nonconforming use you're going to be able to repair it and put it back regardless of cost or time. Some uses were also added back to into the C5: shopping center, group development, mixed use, gas station and convenience store.

These changes will be helpful in consideration of the zoning designations and district boundaries in light of the types and intensity of uses approved in both the R-3, Medium Density Zoning District and the C-5, Historic Character Commercial Zoning District.

Ms. Wyatt noted that re-designating the Hollowell parcel from the originally proposed R-3 to C-5 would open up development opportunities for the property to have some limited commercial development there.

Staff has received several email communications from property owners east of 100 E. Hollowell Street, fronting on NC 12, requesting that if the Planning Board and Board of Commissioners are inclined to redesignate the Hollowell parcel fronting US 158 to C-5, to give consideration to leaving their properties within the proposed R-3 District as it creates a level of consistency with how the properties have been developed.

There was concern that leaving the other properties as R-3 and changing that one parcel to C-5 might be considered spot zoning but staff spoke with the Town Attorney and his opinion is that it does not rise to the level of spot zoning and would actually be a continuation of the C-5.

Ms. Wyatt noted that the majority of the property owners that they heard from preferred to stay zoned residential.

Ms. Lambert stated that she wanted to make sure that they are being consistent.

Ms. Wyatt confirmed that this will go back for public hearing in May and consent agenda in April. All the affected properties (approx. 450) will need be re-notified via letter and public hearing signs will be re-posted. Ms. Wyatt also reminded the Board that any Nags Head property owner can submit a request to rezone their property so if down the road someone wants to rezone they can apply with the Town to do that.

Gary Ferguson moved to recommend approval of the map amendment as presented. Meade Gwinn seconded and the motion passed unanimously.

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Consideration Of Text Amendments to the Unified Development Ordinance as it pertains to the Town's short-term rental registration rules.

In April 2019 the Board of Commissioners adopted amendments to the Town Code and Zoning Ordinance (now the Unified Development Ordinance) defining short term rentals (STRs) and establishing regulatory requirements for short term rentals within the Town.

The goal of this short-term rental registration program was to understand the location of STRs within the Town, to establish a point of contact with the operator to ensure they can be contacted in case of an emergency, to provide information regarding specific insurance and tax obligations of those conducting rental activities within single-family dwellings and to inform operators of the safety requirements and other relevant provisions of the North Carolina Vacation Rental Act. To date this has been a voluntary registration program.

Ms. Wyatt explained that recently, the North Carolina Court of Appeals ruled in *Schroeder v. City of Wilmington* that state law prohibits a registration requirement for short-term rentals. At the same time, the court ruled that state law allows for general zoning and development standards for short term rentals.

Per advice from the Town Attorney, staff is proposing to rescind the town's current Short-Term Rental (STR) Registration program while staff continues to explore mechanisms to regulate STRs within the Town in order to still achieve the original stated goals.

Ms. Wyatt presented a draft ordinance amendment proposing to eliminate language within the Town Code and the UDO related to the registration requirements for short-term rentals within the town.

Ms. Wyatt confirmed for Mr. Ferguson that staff will need to start that process to find a possible replacement for regulating STRs such as a zoning permit.

Meade Gwinn moved to recommend approval of the proposed amendment. Megan Lambert seconded and the motion passed unanimously.

***Report on Board of Commissioners Actions – March 1, 2023 & March 15, 2023***

Ms. Wyatt gave an update on the Board of Commissioner Actions, of note: Events Coordinator Paige Griffin gave a presentation from the Arts & Culture Committee which included a summary of the past year events at Dowdy Park - her report was well received by the Board; the Board heard a Public Hearing to consider the adoption of Unified Development Ordinance (UDO) and Zoning Map amendments as it pertains to the Historic Character Area; The Board adopted the Capital Project Ordinance authorizing additional funds for the Dune Management Program; the Board adopted the beach concierge ordinance changes as presented; the Board passed a motion to approve the MOU with the Town of Kill Devil Hills for building inspection services as presented – this is good news as the Town currently only has one Building Inspector; Mayor Cahoon and Deputy Planning Director Kate Jones attended the RISE conference in Greenville and Ms. Jones will speak more about it later on in the agenda.

***Town Updates***

None

***Discussion Items***

January 26th, 2023, Director's Report

Ms. Wyatt briefly discussed her Director's Report with the Board.

Update On Electric Vehicle Grant Opportunity

Deputy Planning Director Kate Jones stated that staff had applied for a grant with the state noting that all the states in the in the country received money from the VW settlement so it's kind of federal money piped through the state. Staff applied for funding for a two-port public level 2 charger here at the municipal complex and the maximum amount you can receive per port is \$5000 so if the Town received the grant they would receive \$10,000.

Ms. Jones stated that she had spoken with Chargepoint, who's a vendor/manufacturer of a very reputable one for charging infrastructure and received a quote for \$16,000 so the remaining balance is currently an CIP item in the Town's proposed budget for next fiscal year.

Ms. Jones further explained that in the meantime they were also made aware of another grant- a federal grant called "Charging and Fueling Infrastructure Discretionary Grant Program" so this may be another pot of money that the Town can apply for to cover that balance. Ms. Jones noted that with rising costs by the time they actually go to install it may be more so they may submit an application for this other part of funding to make up the difference. There's also the opportunity to sync in with the Public Works Complex redevelopment because there's some EV charging proposed there.

Ms. Jones explained that the charger at Town Hall would be available to the public so anyone can use it when they sign up for an account. Some communities have actually set up a rate so they can make back some of that money lost due to a higher electric bill. All of this is set up through Chargepoint - a cloud-based system, and they install the software and the online system that the Town would use. The company also offers a warranty and would perform any necessary maintenance.

Ms. Jones confirmed for Mr. Gwinn that if all goes well and they receive the money they could potentially install the charger this calendar year.

Ms. Jones explained for Mr. Ferguson that the company not only installs chargers, but they also have an app that can be downloaded on your phone which takes payments and includes an interactive map that shows nearby chargers.

Ms. Jones also spoke about her attendance at the North Carolina Resilient Communities Funding Forum – a program put on by state agencies such as the Department of Public safety, the Department of Coastal Management among others for the purpose of bringing together communities and explaining about all the funding that's available from the State as well as the federal government.

Continued Discussion of Potential Text Amendments related to the definition of dwelling unit, what constitutes a dwelling unit and to clarify language related to accessory structures and uses.

Ms. Wyatt explained that at the Planning Boards February 21st, 2023 meeting, planning staff provided a brief presentation on some evolving concerns with the definitions and application of the UDO regulations pertaining to the use of single-family dwellings, accessory structures and accessory uses for two-family and/or accessory dwelling unit purposes.

The town intends to conduct a customized community-wide survey this coming summer in an

effort to assess citizen satisfaction of town services, identify opportunities for improvement and gauge sentiment on various issues facing the Town. Staff feels it would be helpful and valuable to include a few questions regarding housing concerns, single and two-family uses, accessory structures, and accessory dwelling units in this survey so as to have community input in identifying the concerns, potential solutions and desired outcomes.

At this time, staff would like to work with the Planning Board to consider initial steps towards clarifying UDO language and terminology to ensure that the existing language is clear and applied consistently.

Ms. Wyatt reviewed some proposed draft text amendments for discussion purposes only:

***Dwelling, single-family*** means a dwelling containing one dwelling unit, designed for or occupied exclusively by one family or housekeeping unit.

***Dwelling, two-family***, also referred to as a duplex, means a dwelling containing two dwelling units, designed for or occupied by two families or two housekeeping units, each of which has direct access to the outside.

***Dwelling unit*** means a single unit providing complete, independent living facilities for one or more persons, including provisions for living, sleeping, eating, cooking/food preparation and sanitation.

***Use, accessory*** means a building, structure or use which meets all of the following criteria:

- (1) It is clearly incidental to and customarily found in connection with a principal building or use;
- (2) It is subordinate to and serves a principal building or a principal use;
- (3) It is subordinate in area, extent or purpose to the principal building or principal use served;
- (4) It contributes to the comfort, convenience or needs of occupants, or business in the principal building or the principal use served;
- (5) It is located on the same lot as the principal building or use served; and
- (6) Is not a sexually oriented business or a sexually oriented business activity, and
- (7) It is not an accessory dwelling unit (ADU) and is used only by the members of the housekeeping unit occupying the principal building or principal use.

Staff wanted the Board to think about tidying up the definitions but plan on getting citizen feedback through the Community survey before tackling the bigger issue.

### ***Planning Board Members' Agenda***

None

### ***Planning Board Chairman's Agenda***

None

### ***Adjournment***

A motion to adjourn was made by Megan Lambert. The time was 11:07 AM.

Respectfully submitted,  
Lily Campos Nieberding