
**Town of Nags Head
Planning Board
April 16, 2019**

The Planning Board of the Town of Nags Head met in regular session on Tuesday, April 16, 2019 in the Board Room at the Nags Head Municipal Complex.

Chair Vaughan called the meeting to order at 9:00 a.m. as a quorum was present.

Members Present

Megan Vaughan, Kristi Wright, Mark Ballog, Mike Reilly, Meade Gwinn, Megan Lambert, David Elder

Members Absent

None

Others Present

Michael Zehner, Kelly Wyatt, Holly White, Lily Nieberding

Approval of Agenda

David Elder stated he may need to leave the meeting early and moved that the agenda be modified to switch items 1 and 3. Kristi Wright seconded the motion and it passed by unanimous vote.

Public Comment/Audience Response

Dorie Fuller, Nags Head Resident and business owner, was first to speak. Mrs. Fuller worked on the Focus Advisory Committee. One of the things that came out of the committee meetings as well as the public input meetings was Low Density being an important characteristic of the Town. The Committee did discuss allowing Accessory Dwelling Units but only in certain districts such as small Commercial areas along the beach road and also Gallery Row, not Town wide. Mrs. Fuller would not support ADUs in year-round neighborhoods.

Bob Muller, Nags Head resident, was next to speak. Mr. Muller referenced a memo he emailed to the Planning Board (a copy was provided to staff) voicing his concerns related to ADUs. Mr. Muller believes that the Board needs to ask some questions as they relate to ADUs including why (what is their objective?) and are there other alternatives? Also, how would they be enforced? Mr. Muller believes ADUs are inconsistent with the Town's Land Use Plan as they go against the idea of low-density development. Mr. Muller expressed concern about the Town's inability to regulate the sale of property and discussed the possibility of ADUs being turned into condominiums or timeshares. Mr. Muller also pointed out concerns he had with Staff's proposed ordinance including issues that could arise related to setbacks, parking and enforcing occupancy. Mr. Muller believes ADUs may have a role in the Town but not in residential neighborhoods.

Approval of Minutes

There being no changes, David Elder moved that the minutes from the March 19th meeting be approved as presented. Meade Gwinn seconded the motion and it passed by unanimous vote.

Action Items

Consideration of a proposed zoning ordinance text amendment pertaining to Accessory Dwelling Units (ADUs) within the Town.

Planning Director Michael Zehner presented the proposed zoning ordinance text amendment. Mr. Zehner explained that at the April 3, 2019 meeting of the Board of Commissioners, Staff presented the Board with draft provisions for Accessory Dwelling Units ("ADU's") as contained in the draft Unified Development Ordinance ("UDO"), as well as considerations informed by the Board of Commissioners, UDO Technical Review Committee, and Staff related to minimum lot size, maximum unit size, height limits, location of units on lots, adequacy of septic, utility service, parking requirements, allowable locations, length of stay, and density. The Commissioners discussed their perspectives on the draft provisions and considerations, ultimately voting 3-2 in favor of a motion directing Staff to prepare an Ordinance amending the Zoning Ordinance to allow ADUs, to be reviewed by the Planning Board at the April meeting and Commissioners at the May meeting.

Mr. Zehner noted that the proposed ordinance would allow ADUs in the R3, C2, C4 districts as a permitted use and by conditional use in the R1, R2, CR, C1, SPD20 and SED80 districts through a conditional use permit.

Before granting a conditional use permit for an accessory dwelling in districts where applicable, the Planning Board and Board of Commissioners would need to make the following affirmative findings, in addition to those findings required in Section 48-525:

- (1) The exterior design of the accessory dwelling is compatible with the existing single-family dwelling on the lot through architectural use of building forms, scale, and construction materials;
- (2) The accessory dwelling will maintain a compatible relationship to adjacent properties in terms of location and design, and will not significantly reduce the privacy of adjacent properties; and
- (3) The accessory dwelling will not result in excessive noise, traffic, or parking congestion.

Mr. Zehner noted that included in his Staff memo was a Town map showing current zoning and neighborhoods as well as a table reviewing how some neighboring communities regulate accessory dwelling units.

Mr. Zehner reviewed other aspects of the proposed ordinance, including regulations that would: keep the structures under common ownership (the accessory dwelling shall share the same electrical and water meter as the principal dwelling); ensure that the structure stayed subordinate to the principal dwelling by limiting the size and height of the structure; increase setback requirements; increase parking requirements and ensure adequacy of septic.

Mr. Zehner noted that while it is true that the number of housing units would increase, the draft Ordinance would not allow building mass to increase beyond what is currently allowed for a single-family dwelling, nor would it allow the number of bedrooms or occupants to increase beyond what is currently limited by onsite wastewater systems.

Mr. Zehner also explained that Staff removed some language based on conversations with the Town Attorney and his concern about the Town's ability to dictate rental vs. owner occupied, which the Town can't do; however Mr. Zehner noted that the Town can limit length of occupancy.

Mr. Zehner confirmed for Mr. Elder that not all ADUs would end up subject to the Vacation Rental Act. If the Town discovered a violation of item K of the ordinance it would be enforced at the local level. If the intent of ADUs is to provide additional workforce and affordable long term housing the goal would be to avoid allowing those units to be rented for less than 30 days.

Mr. Zehner discussed lot size for Ms. Vaughan noting that their had been some discussion at the BOC meeting about limiting ADUs to lot size but given the number of non-conforming lots that exist in the Town it would self-limit the number of lots that could have ADUs.

Mr. Zehner confirmed for Mr. Gwinn that the ability to construct an ADU would not allow for an increase in lot coverage, someone would still need to meet lot coverage requirements. Mr. Zehner also confirmed that a certain increase in lot coverage might also trigger stormwater requirements.

Mr. Gwinn expressed concern about enforcement and asked how the Town would regulate length of stay and number of occupants. Mr. Gwinn noted that there is already an issue with rental homes exceeding the number of allowed occupants and the issues this creates with septic and parking.

Mr. Zehner stated that enforcing length of stay would be easier than enforcing number of occupants but noted that if they were to allow ADUs via the conditional use permit process it would makes it a more robust way to track them and enforce them.

Mr. Zehner further stated that having a process like this in place, allowing ADUs in this way and placing reasonable restrictions on them would ensure that property owners have an avenue to legally and safely do this, getting the necessary building permits and building structures to code. ADUs exist today but currently there is no process to allow people to make them legal and safe dwelling unit.

Mr. Zehner noted that in communities that have allowed ADUs there has not been a rush to build many of them, it can be expensive to build another dwelling unit on a property. People have found that from a density perspective this is an innocuous way to provide more affordable long-term housing. It is important that they are placed in areas where they will fit it and not be disruptive. Permitting them through the conditional use process allows for a more conservative approach.

Mr. Zehner confirmed for Mr. Elder that someone can still build a (state regulated) granny pod without this Ordinance but having an ADU ordinance might make it easier to have something that meets Town standards.

Mr. Gwinn expressed concern about change of ownership once an ADU was built. Mr. Zehner confirmed that while the property itself could not be subdivided and would stay under one owner, it is possible that the structures themselves could be condo'd out.

Mr. Gwinn asked if Staff had come across any enforcement issues when looking at other municipalities and Dare county where ADUs are currently allowed. Mr. Zehner stated that they had not researched this aspect, but Staff could verify with other communities to see if there are enforcement problems; Mr. Zehner will also try to get an idea on numbers.

Ms. Vaughan noted that some communities address driveways but did not see that in the proposed ordinance. Mr. Zehner confirmed that the proposed ordinance does not restrict the number of driveways, but they would be subject to stormwater restrictions.

Ms. Vaughan inquired as to how many lots there are in town where this would be feasible. Mr. Zehner stated he did not have a number but that because of all the variables involved (setbacks, lot

coverage, septic requirements, etc.) he did not think there was a significant number of lots that would allow for it without significant investment.

Ms. Vaughan noted that from a redevelopment standpoint there is unlimited potential so that is something that needs to be considered. However, Ms. Vaughan further stated that this must be weighed with the potential of someone just building the biggest single-family dwelling that they can. Can two smaller structures, one subordinate to the other be less impactful than one large structure?

Mr. Elder agreed noting that this would be one of several options for an owner who is looking to expand their property.

Mr. Elder suggested tabling the issue until the outstanding questions have been answered. Mr. Zehner explained that the item will be brought forward to the BOC at their May meeting regardless of a recommendation from the Planning Board. Staff's goal is to incorporate the direction that they receive from the Planning Board and BOC into the Draft UDO which would be presented at the Planning Board's May meeting.

Mr. Reilly what is issue? What is this trying to solve? Mr. Zehner explained that based on the Comprehensive Plan there was an interest in allowing for more housing opportunities in town: more affordable housing, housing for seasonal employees, etc. Mr. Zehner agreed with Mr. Reilly that while this was just one option to consider, other communities have moved forward with this as the quickest and easiest way to address the housing shortage.

Mr. Zehner reminded the Board that this was before them initiated by an Action taken by the Board of Commissioners.

Mr. Zehner confirmed for Mr. Elder that the Board could give a recommendation but put conditions on it (limiting it to certain areas; only allowing them as a conditional use, etc.)

After some discussion the Board agreed that they were not ready to make a recommendation one way or the other.

Mr. Elder suggested reducing the allowable square footage limit and maybe limiting it to certain areas.

Mr. Ballog noted that as a business owner he is well aware that the lack of affordable housing for staff is an urgent issue. Mr. Ballog stated that they can't wait too long to come up with a solution because soon businesses including his own will not be able to support tourists because they won't have the staff because that staff has no place to live. However, Mr. Ballog pointed out that the community as a whole needs to figure out how to address it because lack of housing is a county-wide issue.

Ms. Wright expressed the concern that ADUs will be used for short-term rentals rather than long term housing and that it will be difficult to enforce. Mr. Elder agreed stating that they need to explore further what enforcement would look like.

Mr. Reilly reiterated that they need to assess why the Town is wanting to do this, what issues they are trying to solve and what other options exist.

Mr. Gwinn stated that he didn't want the Board to rush into something that they think might solve one problem but end up creating more. Mr. Gwinn would like to look deeper into how this is working

in communities where ADUs are allowed, what issues if any have come up and how they are being dealt with. Mr. Gwinn also expressed concern about the possibility of change of ownership for the ADU and any legal ramifications that may go along with that.

Mr. Elder moved to table the proposed amendment. Kristi Wright seconded, and the motion passed by unanimous vote.

Consideration of a Site Plan Amendment submitted by Gemcap Development for consideration of a major change to the approved site plan to include the addition of concrete bulkhead along the northern side of the parking area.

Mr. Zehner explained that Gemcap Development is seeking approval for the installation of a two (2) foot concrete bulkhead/retaining wall on the north side of the parking area at the property located at 6813 S. Croatan Highway. The existing Land Use is Retail Store (Sherwin Williams & vacant space), the property is zoned C2, General Commercial District.

The site has been under a temporary CO since December and now they are seeking a Final CO. On April 1, 2019, while various departments were conducting final inspections, it was noted that a significant deviation from the approved plan had occurred in that a two (2) foot tall concrete bulkhead/retaining wall had been constructed along the north side of the parking lot. This concrete bulkhead/retaining wall was not shown on the site plan which was reviewed by the Planning Board and approved by the Board of Commissioners on April 4, 2018. Furthermore, the need for the change was not brought to staff's attention for review and approval prior to the installation. Once aware of the change, Mr. Zehner determined the addition of the wall to be a major change, requiring approval by the Planning Board and Board of Commissioners.

Mr. Zehner noted that while there are some additional minor items that need to be addressed onsite prior to the issuance of the Certificate of Occupancy, there are no other deviations that necessitate board review.

Staff recommended that the developer have their site engineer, Coastal Engineering & Surveying, Inc., provide a seal for the bulkhead installation. This has been submitted and accepted by the Town Engineer.

Staff would recommend approval of the Site Plan Amendment to address the major change/deviation from the April 4, 2018 Board of Commissioners approved plan with regard to the installation of a two (2) foot tall concrete bulkhead/retaining wall the north side of the parking area.

It is important to note that the use of bulkheads/retaining walls on commercial property are not regulated within Chapter 34, Stormwater, Fill and Runoff Management. Town Code Section 34-6(b)(10) provides that the construction and use of bulkheads, walls and other structural controls to retain the placement of fill on property shall be permitted where a wall is necessary to achieve a 5-foot setback of fill and cannot retain more than two (2) feet of fill and shall not exceed two (2) feet in maximum height from the final grade for residential and duplex development. This provision is not listed in Town Code Section 34-7, General standards for commercial development, therefore there is no regulation of the use of bulkheads/retaining walls for this development.

Daniel Hearne, with IB Builders, contractors for the job, confirmed for Mr. Gwinn that the purpose of the wall was to provide stability for the parking lot. Mr. Hearne explained that the initial elevation of the upper parking lot had to be raised due to flood issues, so they added the wall in order to keep the slope and provide stability for that upper parking lot and keep it from collapsing.

Ms. Vaughan expressed concern that the issue wasn't noted or addressed sooner in the process. Mr. Zehner explained that there had been some miscommunication between the property owner and the contractor and with the Town but agreed that there are lessons to be learned and stated that there are things that can be put in place to prevent something like this from happening in the future.

Ms. Vaughan also expressed surprise at the lack of regulations for walls and bulkheads for commercial properties and noted that it's something they may want to take a look at. Mr. Zehner agreed and stated that they can look to bring something to the Board after the UDO has been approved. Mr. Zehner confirmed that there are regulations for residential properties.

Mr. Zehner confirmed for Ms. Vaughan that the wall has been engineered. To remove it now would be complicated so keeping the wall is the best option and Staff would recommend approval.

Meade Gwinn moved to recommend approval of the Site Plan Amendment as presented. Mike Reilly seconded, and the motion passed by unanimous vote.

Consideration of a Conditional Use/Site Plan Amendment submitted by Tale of the Whale Restaurant for the extension of the existing pier to accommodate four (4) transient boat slips.

Mr. Zehner presented a Conditional Use/Site Plan Amendment submitted by Tale of the Whale Restaurant for the purpose of extending their existing pier approximately 72 feet and construction of four (4) transient boat slips. The property is located at 7575 S. Virginia Dare Trail. The existing Land Use is Restaurant and it is zoned C-2, General Commercial District; Commercial Outdoor Recreation Overlay District.

Based on their submitted plans and CAMA approval Staff found that this proposal is consistent and complies with the applicable policies of the 2017 Comprehensive Plan and allows for an opportunity for people to access a natural resource.

The proposal is also consistent with applicable Zoning Regulations:

A docking facility as an accessory use to a restaurant is allowed as a Conditional Use within the C-2, General Commercial, Zoning District.

The docking facility shall include a designated No Wake Zone that shall be extended 600 feet measured perpendicular to the shoreline for the normal water line. There shall be a No Wake Zone sign conspicuously posted on the facility. The applicant has provided an attachment showing the extent of the 600 foot No Wake Zone and areas upon the facility where No Wake signage will be provided.

No signage beyond the "No Wake Zone" signage has been requested or approved at this time. A total of four (4) "No Wake Zone" signs are proposed, two on either side of the existing gazebo and two on either side of the extended pier facility. Staff finds the proposed locations to be in compliance with the requirements of Town Code. The applicant has not provided information on the appearance or

dimensions of the proposed signs but has noted that the signs will be custom made to include language specifying that users of the facility must maintain No Wake Speed for 600 ft.

Staff would recommend approval of the Conditional Use/Site Plan Amendment application as presented, with a condition requiring compliance of the use and site with those materials and plans submitted as part of the application. Mr. Zehner stated that he, as well as a representative for the applicant, was available to answer any questions for the Board.

Mr. Hal Goodman, Construction Engineering Services, addressed the Board on behalf of the applicants. The Board did not have any questions for Mr. Goodman.

Mr. Zehner confirmed for Ms. Vaughan that they could not put up any commercial signage facing the Public Trust; the only signs allowed are warning type signage.

Mark Ballog moved to recommend approval of the Conditional Use Permit/Site Plan Amendment. Megan Lambert seconded, and the motion passed by unanimous vote.

Report of Board of Commissioners Actions

Planning Director Michael Zehner reviewed recent Board Actions:

Consideration of regulating short-term rentals within the Town via a registration process – Adopted as presented.

Discussion of No-Wake Zone 600 ft. from the shoreline in the Commercial Outdoor Recreation Overlay District – the Board voted 4 – 1 to take no action at this time.

Town Updates

None

Discussion Items

Principal Planner Holly White updated the Board on the FOCUS Nags Head Draft Unified Development Ordinance adoption timeframe

The Technical Committee met on Thursday, March 7, 2019 to discuss comments made by the Technical Committee, Planning Board, and Board of Commissioners that required further discussion. Committee members provided Planning Staff with direction on specific comments where additional feedback was needed. Ms. White provided a comprehensive list of comments as part of her memorandum.

The Technical Committee has reviewed all of the comments and provided additional recommendations or actions where necessary. The comments are shown in black text, Planning Staff responses or suggestions are shown in green text, and Committee recommendations, feedback, or actions are shown in red text.

Staff is working to make all suggested changes, including the development of diagrams, for the final draft. Additionally, the Town Attorney is reviewing specific sections of the draft and providing staff with any suggested modifications.

The Town conducted a Community Meeting on April 11, 2019 to share and present the draft UDO to the public for further discussion and feedback. There were no additional comments made at that meeting. The presentation from that meeting is available on the Town website and the Town will continue to receive public comment until May 3, 2019.

Ms. White also shared an updated schedule focusing on the remaining tasks and adoption and noted that one option for the Board of Commissioners to consider is establishing an effective date for the UDO beyond the adoption date.

Planning Staff believes that establishing an effective date may be preferred, thereby allowing applicants and property owners to appropriately plan for a transition into new processes (namely the Sketch Plan process for Site Plan Review) and allow staff the opportunity to finalize the Development Manual and checklists, as well as conduct educational outreach to specific stakeholder groups.

Ms. Vaughan noted that this would be a good idea and might help avoid confusion. Ms. White stated that Staff has discussed a period of 60 days between the adoption date and the effective date. The Board concurred but agreed it shouldn't be any longer than that.

Planning Board Members' Agenda

None

Planning Board Chair's Agenda

Continued discussion of affordable housing. The Board discussed creating incentives and doing a comprehensive study. The Board agreed that they need to make it a priority. Ms. Lambert suggested that they put a timeframe on it noting that businesses are closing a few days a week to give owners a break because there is not enough staff due to the housing shortage.

Adjournment

There being no further business to discuss, a motion to adjourn was made by Meade Gwinn. The time was 10:56 AM.

Respectfully submitted,

Lily Campos Nieberding