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**Town of Nags Head  
Planning Board  
April 19, 2022**

The Planning Board of the Town of Nags Head met on Tuesday, April 19, 2022, in the Board Room at the Nags Head Municipal Complex.

Planning Director Kelly Wyatt explained that both the Chair and Vice Chair would not be present for the meeting and that the Board needed to nominate an interim Chair. David Elder moved to nominate Meade Gwinn as interim Chair; Megan Lambert seconded, and the motion passed by unanimous vote. Mr. Gwinn then called the meeting to order at 9:10 a.m. as a quorum was present

***Members Present***

Meade Gwinn, David Elder, Gary Ferguson, Megan Lambert

***Members Absent***

Megan Vaughan, Kristi Wright, Molly Harrison

***Others Present***

Kelly Wyatt, Holly White, Kate Jones, Lily Nieberding

***Approval of Agenda***

Chair Gwinn asked for a motion to approve the agenda. David Elder moved to approve the agenda. Megan Lambert seconded, and the motion passed by unanimous vote.

***Public Comment/Audience Response***

None

***Approval of Minutes***

Chair Gwinn asked for a motion to approve the minutes of the March 15, 2022, meeting. Gary Ferguson moved to approve the minutes as presented; Megan Lambert seconded, and the motion passed unanimously.

***Action Items***

*Consideration of a Text Amendment to the Unified Development Ordinance submitted by George E. Goodrich to vary/increase the maximum allowable gross floor area permitted within each dwelling unit located within a conforming Cottage Court*

Ms. Wyatt explained that Mr. Goodrich had submitted a text amendment request to the Unified Development Ordinance (UDO), which, if adopted would amend the maximum allowable gross floor area within each dwelling unit of a conforming Cottage Court.

In 1985 the Cottage Court use was eliminated from the then Zoning Ordinance, making those existing at that time nonconforming structures. In 2015 the Board of Commissioners adopted language allowing certain minor and major modifications to be permitted to individual dwelling units within a nonconforming cottage court. Shortly after, in November 2016, following Comprehensive Land Use Plan discussions by the FOCUS Nags Head Advisory Committee, the Board of Commissioners adopted an ordinance which would reestablish the "Cottage Court" use as a conforming use with supplemental regulations that must be adhered to for approval. At that time the maximum allowable gross floor area within each dwelling unit was capped at 2,000 square feet.

Ms. Wyatt proceeded to review the Cottage Courts developed since the 2016 adoption:

- Whalebone Cottages, located at 8201 S. Old Oregon Inlet Road, was approved via the Conditional Use Permit process in April of 2017. At that time the proposed cottages were compliant with the supplemental regulations and the largest unit has approximately 1,503 square feet of gross floor area.
- Haven on the Banks (Gandt) Cottages, located at 115 E. Dove Street, was approved via the Conditional Use Permit process in August of 2018. At that time the proposed cottages were compliant with the supplemental regulations and the largest structure has approximately 1,522 square feet of gross floor area.
- Outer Banx Hotel, LLC Cottages, was approved via the Conditional Use Permit process in March of 2018, to be constructed at 7222 S. Virginia Dare Trail. This cottage court was never constructed, and the site plan approval expired in March 2019. The proposed development was compliant with the supplemental regulations in place at that time and the largest dwelling unit was approximately 1,917 gross floor area. The applicant for this text amendment, Mr. Goodrich, was the applicant that sought the Site Plan approval for Outer Banx Hotel, LLC Cottage Court in March of 2018.

Ms. Wyatt then explained that during the drafting of the Unified Development Ordinance (UDO), and ultimately the adoption of it (effective October 7, 2019) it was consensus among the FOCUS Nags Head Advisory Committee that the maximum habitable area of 2,000 square feet was too high, resulting in what appeared more like a single-family dwelling and not a "cottage", in the spirit of what previously existed. At that time, and as a part of the UDO, staff proposed that the maximum allowable gross floor area permitted within each dwelling unit of a conforming cottage court be reduced from 2,000 square feet to 1,500 square feet.

No other cottage court developments had been reviewed by the Planning Board and Board of Commissioners since the adoption of the UDO and the reduction of the gross floor area for dwelling units until recently when the applicant expressed interest in having the site plan for the Outer Banx Hotel, LLC Cottage Court approved again. Upon submittal of the revised site plan and architectural renderings, the new proposed cottages were not compliant with the current supplemental regulations in that several of the dwelling units exceeded 2,000 square feet of gross floor area and were in excess of 1 1/2 stories.

A new, compliant design has not been submitted for review by the Planning and Development Department. Instead, Mr. Goodrich is proposing to amend the supplemental regulations for cottage courts as it relates to the maximum gross floor area within the dwelling units.

Based upon the above review and noting that the maximum allowable gross floor area for cottage court dwelling units was reduced from 2,000 square feet to 1,500 square feet as part of the considerations undertaken during the development of the Unified Development Ordinance, staff is recommending denial of the proposed text amendment as submitted.

Ms. Wyatt referred to an attachment included in the Board's agenda packet labeled "Cottage Court Footprints", in which Staff determined the floor area of several cottage courts throughout the Town. The average sizes of multiple older Cottage Court developments were as follows:

- 2 Fish Cay Cottages are approximately 954 square feet.
- Cahoon's Cottages are approximately 1,185 square feet.
- Oceanside Court Cottages are approximately 998 square feet.
- Sandspur Cottages are approximately 1,611 square feet, including larger unit for office and management facilities.
- Sea Spray Cottages are approximately 1,135 square feet.

Staff would submit that keeping the maximum allowable gross floor area for individual cottage court units limited to 1,500 square feet and limited to 1 ½ stories is consistent with the desired design and appearance expressed by the FOCUS Nags Head Advisory Committee as well as with the aesthetic of the existing cottage courts which this ordinance was designed to emulate. Staff would submit that a maximum gross floor area of 2,000 square feet is in more in line with the gross floor area of a single-family dwelling, and not that of a "cottage". Further, staff does have a concern that increasing the allowable gross floor area to be more characteristic of a single-family dwelling, would lend itself to a desire to "condo-out" the structures and offer them for sale thus circumventing the Town's subdivision ordinance.

Ms. Wyatt noted that she as well as Mr. Goodrich were available to answer any questions for the Board.

Mr. Gwinn asked Ms. Wyatt to elaborate on the reduction from the 2000 square feet to 1500 square feet. Ms. Wyatt stated that Staff had initially recommended 2000 but once they saw it developed – Whalebone Cottages were the first under the 2016 Ordinance, they noted that 1500 seemed to be the right size that resembled the older cottage courts. They wanted to keep the smaller scale and have them be more consistent with what already existed.

Ms. Wyatt further explained that one of the unknowns with newer cottage courts was having them conform to flood regulations as the older ones were all built on-grade. The new ones must be elevated, with parking below.

Ms. Wyatt confirmed that they wanted smaller dwelling units under one ownership with shared utilities, and under one management entity. The hope was to expand the options available for other types of rental units other than single-family dwellings or hotels.

Ms. Wyatt confirmed for Mr. Ferguson that aesthetically they wanted the newer cottages to be in keeping with those already in existence so no more than 1 ½ stories as well as smaller footprints. Ms. Wyatt noted that the 2016 ordinance was modeled with the Sea Spray cottages in mind.

Mr. Goodrich addressed the Board and explained that he was unaware that the Focus Group had changed the maximum square footage from 2000 to 1500 until he came to reapply for the cottage court. Mr. Goodrich noted that no matter what the size limits, a developer is going to build the biggest house that they can. What he is proposing is having three different sizes, 1/3 of the units to be one story, 1/3 to be 1.5 stories and 1/3 to be 2 stories in keeping with the Town's desire of having diversity in the size of dwelling units. Mr. Goodrich noted that the majority of the existing cottage courts were built in the 1950s and 60s and that times have changed some since then. He believes that a 2000 SF cottage is basically four bedrooms, just enough for a family going on vacation. If the Town wants diversity, then different sizes and heights are necessary; Mr. Goodrich feels that what he is asking for is reasonable.

Mr. Goodrich explained to Mr. Ferguson that the approval expired while he and his partner were busy doing other things.

Mr. Goodrich confirmed for Mr. Gwinn that he was proposing six units and spoke to the septic requirements for a cottage court.

Mr. Goodrich confirmed for Mr. Gwinn that he was not aware of the changes resulting from the Focus Group. Mr. Elder explained that he was part of Nags Head Focus and that there were several changes that came out from that group and included a long public comment period.

Ms. Wyatt confirmed for Ms. Lambert that the ordinance has always limited the cottages to 1.5 stories. Ms. Lambert stated that for her, part of keeping the cottage court feel, is having that height limitation which is more in keeping with the aesthetics of Nags Head.

Mr. Elder agreed noting that while building to the line might be the pursuit of developers a 2000 SF house is larger than average for what the Town was intending with the ordinance change; Mr. Elder does not see the reduction as being restrictive.

Mr. Ferguson agreed with Mr. Elder noting that the newest cottage court on US 158 look more like houses than cottages, especially with cars parked underneath. Mr. Ferguson also agreed with staff's assessment that increasing the allowable gross floor area to be more characteristic of a single-family dwelling, would lend itself circumventing the Town's subdivision ordinance.

Mr. Goodrich discussed the challenges of lot coverage as well as meeting flood and stormwater standards when building on slab.

Ms. Wyatt confirmed for Mr. Goodrich that the UDO was adopted in August of 2019 but was given an effective date of October in order to have time for public outreach and education. Ms. Wyatt also confirmed that the only application that has been received since then is for the re-approval for Outer Banx Hotel, LLC.

Ms. Wyatt noted for the record that for the cottage courts the parking requirement two spaces per cottage.

Ms. Wyatt confirmed for Mr. Ferguson that under the new requirements for cottage courts, the lot coverage allowance would be 55%.

Ms. Lambert reiterated her thought that allowing an increase would not be consistent and would not be in keeping with what makes Nags Head different and she would not want to be responsible for making that change.

Mr. Ferguson agreed noting that 1500 SF is more than adequate especially for having six cottages in one lot.

Gary Ferguson moved to recommend denial of the text amendment. David Elder seconded, and the motion passed unanimously.

## ***Report on Board of Commissioners Actions – April 6, 2022***

Planning Director Kelly Wyatt gave an update on recent Board of Commissioner Actions, of note: there was a Public Hearing for the rezoning of property located at 2110 Pond Avenue – Nags Head Water Plant – the Board approved the rezoning as presented; Sr. Environmental Planner Kate Jones presented the Whalebone Park redevelopment plan - Staff is to provide an estimated cost to the Board comparing the use of potable water vs treated water in the Spray Play option in order to provide a better cost analysis for water use; Decentralized Wastewater Management Plan - The Plan will be finalized within the next couple of weeks and will be provided to the Board for consideration at their May 2022 meeting.

### ***Town Updates***

None

### ***Discussion Items***

#### *Update on Resilient Coastal Communities Program*

Candice Andre, Senior Project Manager with VHB, gave an update on the RCCP project via a Zoom presentation. Ms. Andre's presentation centered around Community Engagement, the Interactive Map of Critical Assets and Next Steps.

- 1) Community Engagement - A community engagement survey was conducted and approximately 157 people participated in the online survey. The most concerning hazards to participants were hurricanes and tropical storms followed by beach erosion and flooding. Participants further indicated that the Town should focus on infrastructure and nature-based measures such as stormwater improvements, living shorelines, rain gardens, and beach nourishment to be more resilient.
- 2) Interactive Map - The team developed and presented the interactive map of critical assets and natural infrastructure in the Town at the last Planning Board meeting. Town staff have reviewed the viewer and provided feedback to the consultant in addition to the feedback provided by the Planning Board at their last meeting. The team continues to update the viewer based on feedback.
- 3) Next Steps – Ms. Andre presented a potential solutions project list developed from existing plans for the Planning Board to review. The list best reflects the priorities pulled from the Community survey. The Board agreed that it looked like a comprehensive list. Ms. Andre noted that they are now working on prioritizing the projects based on things such as cost-benefit and capacity to implement; they hope to have this done by the end of the month. The team also hopes to complete the application for Phase 3 by June; this application will include one priority project from Phase 2.

#### *Update On EV Action Plan*

Principal Planner Holly White gave an update on the EV Action Plan. The MEM Program students provided staff with a draft EV Action Plan on March 23, 2022. The draft Plan was forwarded to Planning Board Members for their review and feedback. A final draft of the plan is anticipated to be

received April 22nd. Once received, Staff will forward the final version of the plan to the Planning Board for review. Ms. White asked the Board Members if there were any additional comments or suggestions on the draft prior to plan finalization.

Mr. Ferguson requested the creation of an Executive Summary to go with the Plan. Ms. White will ensure that this is included in the final plan.

Mr. Gwinn inquired about grants and funding of different components that were referenced in the plan and asked if the Town is still within the timeline to take advantage of those opportunities. Ms. White confirmed that the Town has partnered with a team that will work to apply for these funding opportunities on behalf of the Town.

### March 30th, 2022, Director's Report

Ms. Wyatt briefly discussed her Director's Report to the Board. Of note: a listing of meetings that Planning Staff have participated in; an update on Planning Board items (which the Board is aware of) and Board of Adjustment (the BOA did not meet in March); updates on the Decentralized Wastewater Management Plan and Estuarine Shoreline Management Plan; certification of the CAMA Land Use Plan; update on SolSmart – thanks to Ms. White's efforts the Town received a Bronze designation from the program which recognizes Nags Head for taking bold steps to encourage solar energy growth and remove obstacles to solar development; updates on the EV Plan, ETIPP & AIA; an update on Whalebone Park redevelopment plan; LID Stormwater Demonstration Project – Ms. Jones has been working with staff to install this at Town Hall, she is currently waiting on additional plants and some additional material to complete the install; Dominion LED Amber Streetlight Pilot Project - Dominion Energy has requested feedback on which fixtures and light displays that are the most desirable for the Town. Ms. Wyatt confirmed for Mr. Gwinn that Staff is still looking for community feedback on the lights and the request was posted on the website. Mr. Elder suggested putting the request on social media as well.

Ms. Wyatt took the opportunity to let the Board know that Staff will be bringing back the tree preservation and Accessory Dwelling Unit items for Board discussion at their May meeting.

Ms. Wyatt also took the time to recognize and acknowledge Principal Planner Holly White whose last day with the Town is today. Mr. Ferguson and the Board thanked Ms. White for all her efforts noting that she will be missed.

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

Mr. Elder briefly discussed tree preservation and having a policy in place to deal with non-compliance.

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

None

### ***Adjournment***

A motion to adjourn was made by David Elder. The time was 10:24 AM.

Respectfully submitted,  
Lily Campos Nieberding