
**Town of Nags Head
Planning Board
May 16, 2023**

The Planning Board of the Town of Nags Head met on Tuesday, May 16, 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

None

Approval of Minutes

Chair Vaughan asked for a motion to approve the minutes of the April 18, 2023, meeting. David Elder moved to approve the minutes as presented; Meade Gwinn seconded, and the motion passed unanimously.

Action Items

Consideration Of Text Amendments to the Unified Development Ordinance as it pertains to including the use of "Restaurant, Drive Through" as a permissible use within Commercial Mixed-Use Developments, as well as amending the supplemental regulations associated with this use.

Planning Director Kelly Wyatt presented proposed text amendments to the Unified Development Ordinance submitted by Attorney Robert Hornik, Jr. on behalf of SRE Mustang, LLC (Outlets Nags Head) to include the use of "Restaurant, Drive Through" as a permissible use within Commercial Mixed-Use Developments and to amend the Supplemental Regulations associated with drive-through restaurants within the Town.

Ms. Wyatt explained that Section 7.32, General Provisions of the UDO, specifies the allowable uses to be included as part various types of Commercial Mixed-Use designations. That designation includes Commercial with Accessory Residential, Group Development, Mixed Use Development, Multiple Principal Uses, and Shopping Center. Presently, "Restaurant, Drive Through" (defined as "an establishment where drive lane facilities are provided for the serving of prepared food, frozen desserts, or beverages directly to a customer in a motor vehicle by mans which eliminates the need for the customer to exit their vehicle") is not included as one of the allowable uses within a Commercial Mixed-Use Development. Additionally, Section 7.29 of the Unified Development Ordinance includes supplemental regulations applicable to drive-through restaurants.

In addition to the applicant's request to amend Section 7.32 of the UDO to list the use "Restaurant, Drive-Through" as a permissible use within Commercial Mixed-Use designations, the applicant has also proposed to amend the supplemental regulations found within Section 7.29 of the UDO. Ms. Wyatt proceeded to review these regulations.

Ms. Wyatt noted that while text amendment requests are not site specific, it is helpful to understand that this request is being made in an effort to allow development of a drive-through restaurant (Starbucks) within an existing shopping center/group development (Outlets Nags Head). The applicant has chosen to move this text amendment request forward alongside the Sketch Plan and Special Use Permit/Site Plan Review for the proposed drive-through restaurant with the knowledge and understanding that any site-specific plan approval is contingent upon the adoption of this text amendment.

The 2017 Comprehensive Land Use sets forth various character areas throughout the Town. These are districts that have their own unique characteristics, have the potential to evolve into unique areas with intentional guidance of future development through planning and implementation, or require special attention due to unique development issues. These areas provide both the vision and policy direction for the desired use, design, infrastructure, and other elements that new development must consider. Within each Character Area the plan references a general list of appropriate land uses within the Character Area.

Ms. Wyatt pointed out that in each of these areas, the list of generally appropriate land uses specifically spells out that "drive-thru restaurants" are not desirable. Ms. Wyatt also noted some applicable Land Use Policies:

- o LU-1 – Ensure that the character of Nags Head is preserved as a single-family residential beach community with ties to its natural environment. This character is defined by:
 - Buildings with a residential scale and appearance with low heights and small footprints that are designed to reflect the heritage of Nags Head.
 - Commercial development that serves the needs of residents and visitors but respects the goals of the community related to design and appearance.
- o LU-23 – Require sufficient parking for commercial businesses with parking area design regulations that limit impacts on neighbors and surrounding land uses. Page 3-31 states, "as future ordinance revisions occur, the town should maintain consistency between permitted land uses and its parking tables and evaluate changes as necessary to correlate parking standards with actual parking demand based on best available data and information.

As referenced throughout the 2017 Comprehensive Land Use Plan, the Town of Nags Head generally has concerns with the development of drive-through restaurants to include their appropriateness within various character areas within the town, including the US Hwy 158 corridor. While a drive-through restaurant designed in conjunction with the development of a new mixed-use project would

have significant staff input from the onset, staff submits that numerous concerns may arise as a result of proposing a new drive-through restaurant as part of an existing mixed-use development. Those concerns include but are not limited to conflicts with internal traffic circulation, potential reduction of necessary parking spaces, potential vehicular backups and drive aisle conflicts, and public safety concerns such as obstruction of emergency vehicle and fire lane access.

Based upon the staff analysis above, staff would recommend denial of the proposed text amendment to the Unified Development Ordinance as presented.

Ms. Wyatt confirmed for Ms. Harrison that the standalone restaurant – KFC/Taco Bell at Whalebone as well as the Dunkin Donuts Drive-Thru predate the creation of the UDO.

Ms. Wyatt confirmed for Mr. Gwinn that the recommendation for denial would apply to a drive-through restaurant in any Commercial Mixed-Use development.

Attorney Bob Hornik, with the Brough Law Group addressed the Board on behalf of the applicant. Mr. Hornik spoke briefly about their proposal and noted that the site had been developed to meet all of the current parking standards so parking would not be a concern. Mr. Hornik noted that if approved, "Drive-Through Restaurant" would be permitted through the Special Use process and any issues could be worked out during that time. Mr. Hornik explained that they had recently opened a Starbucks in Kill Devil Hills and would like to bring one to the southern end of the beach. Mr. Hornik asked the Board to consider recommending approval of the text amendment.

Ms. Wyatt confirmed for Ms. Wright that the definition of coffee shop excludes drive-through so whether they were classified as a restaurant or a coffee shop they would still need a text amendment in order to have a drive-through. The Town as well as the applicants agreed that they fit better under the definition of "restaurant".

Ms. Harrison stated that a lot of thought and work went into the development of the UDO, and she was not inclined to change it to accommodate one business. This proposal would open the door to other businesses wanting to have the same thing.

Chair Vaughan and Mr. Elder agreed, with Mr. Elder noting that they all understand the scale and scope of what could be if they were to recommend approval; especially if they are brought into existing developments rather than to a new site as Chair Vaughan noted.

Mr. Gwinn agreed as well noting that with more activity at the Event Site and the congestion there, as well as the congestion he's seen from the Drive-Through at the KDH Starbucks and the Dunkin Donuts Drive-Throughs, allowing this text amendment would only add more fuel to the fire.

Mr. Ferguson inquired if they had to have a drive-through as he's been to Starbucks that did not have them. Jared Wright with Starbucks confirmed for Mr. Ferguson that the company is closing a lot of the café type stores because they are not profitable and no longer meeting the customer demands/needs especially since COVID.

David Elder moved to recommend denial of the proposed text amendment. Megan Lambert seconded, and the motion passed unanimously.

Consideration of a Sketch Plan Review submitted by Timmons Group on behalf of Outlets Nags Head, for the construction of a Starbucks Restaurant/Café at 7100 S. Croatan Highway, Nags Head.

Ms. Wyatt presented a Sketch Plan Review application submitted by SRE Mustang, LLC (Outlets Nags Head) and the Timmons Group on behalf of Starbucks Restaurant. The project would consist of the construction of a 2,460 square foot Starbucks Restaurant/Café with a drive through located within the existing parking lot for Outlets Nags Head.

Ms. Wyatt noted that while the Planning Board had previously recommended denial of the text amendment that would allow Drive-Through Restaurant (via the Special Use Permit process) within Commercial Mixed-Use Developments, it was important that they continue the review process because the Board of Commissioners might still approve it.

Ms. Wyatt presented the site plan to the Board noting that this property is zoned C-2, General Commercial and is developed as a "Shopping Center"/"Group Development".

While Section 4.3, Pre-Application Meeting and Sketch Plan makes sketch plan review mandatory for new development with a total habitable building area greater than 5,000 square feet, it is recommended that any new development take advantage the sketch plan process to obtain feedback as early on possible and as such, Starbucks has chosen to do so.

The purpose of the sketch plan is to review projects at a conceptual level for consistency with the requirements of the commercial design standards and the UDO in general. This review should be done at the early stages of project development in order to allow for meaningful input and substantive changes to the design, if necessary

At this time, the Planning Department, Town Engineer, Public Works, Fire Department and Police Department have provided comments on the sketch plan package. Ms. Wyatt then proceeded to review these comments for the Board:

Zoning

- While the parking calculations provided by the applicant are accurate to today's parking standards, this proposal would result in an overall loss of 88 parking spaces. Town staff has expressed extreme concern with this significant reduction of parking given the use of the property generating high amounts of traffic at various times throughout the year.
- The overall number of parking spaces required for the two buildings developed south of the main entrance (the parking area where the proposed Starbucks is to be located) would be under parked.

Based upon the Sketch Plan, approximately 124 spaces would remain south of the main entrance. These numbers do not take into consideration the parking required for the 2,460 square foot proposed Starbucks Restaurant. This reveals that parking for the shops on the southern side of the main entrance would be inadequate as a result of this development and the reduction of parking spaces.

Ms. Wyatt confirmed for the Board that employee parking standards for restaurants are also an issue, and the Board will be discussing this further later on in today's agenda.

Ms. Wyatt confirmed for Mr. Ferguson that in 2013 there was a comprehensive rewrite of the parking standards as it relates to residential and commercial uses and at that time the parking standard went from 1 space per 200 SF of gross floor area to 1 per 250 SF of gross floor area.

Building Design Standards

Section 10.83 of the UDO, Design Standards, states that buildings and structures are subject to the Commercial Design Standard contained within Article 10, Part VI of the Unified Development Ordinance. Projects shall be reviewed according to the building design standards outlined in Division II of the Commercial Design Standards. Alternatively, projects adding a total habitable building area of less than 10,000 square feet may elect to comply with the building design requirements by achieving 150 points based on the criteria outlined in the Town of Nags Head

The conceptual elevations provided in the packet are very preliminary and represent the owner's/architect's initial design. Prior to the next Technical Review Committee Meeting and formal Planning Board Special Use Permit/Site Plan Review submittal, compliance with Article 10, Part VI, Commercial Design Standards must be demonstrated.

Town Engineer

Utilities:

- There is an 8" water main that runs from north to south internally through the site. The applicant's engineer has indicated the building footprint has been positioned outside of the existing underground water main.

Internal Traffic Circulation:

- There is concern regarding the parking lot layout and potential vehicular conflicts internal to the site. The number of internal access points and minimal length provided for driveway stems may increase the potential for vehicles entering the site to conflict with those vehicles exiting the parking stalls.
- A vehicular pathing exhibit is requested to demonstrate adequacy for turning radius for sanitation vehicles and fire trucks.
- Published or documented data is requested for parking generation through a combination of Institute of Transportation published data for parking generation for this type of use in addition to Starbucks locations within a tourist-based region that is similar in application to this proposal. The data should separate the parking for in-store customers and drive-thru customers. This data will be critical in determining impacts both internal and external to the shopping center.
- Currently, the shopping center parking during peak periods is at or near 100% occupancy. The significant loss of parking stalls within the shopping center complex associated with this application will increase the potential for vehicles stacking up through to S. Croatan Hwy. during peak periods.

Stormwater Management:

- Built upon area calculations shall be provided to determine if additional stormwater management requirements will apply. If the amount of built-upon area is less than what currently exists, no additional stormwater management requirements shall apply. If the amount of proposed built upon area exceeds what currently exists, the runoff for the additional coverage from a 4.3" rainfall event shall be accommodated on-site.
- It is recommended the applicant consider the use of permeable pavement or pervious pavers.

Public Works/Water

- Ensure that the front load sanitation truck can easily turn into and back out of the entry from the south for dumpster pick up. Pathing exhibit required to ensure turn radius can be met.

Building Inspections

- Review is limited until receipt of full of set of plans, including 2018 Appendix B with Plumbing, Mechanical and Electrical.

Fire

- Substantial pavement markings and signage regarding the Fire Lane.
- Shares staff concerns regarding access to the current structures and proposed structure with any back-up of traffic preventing/obstructing emergency vehicles from moving through the parking lot drive aisles.

Police

- Shares staff concerns regarding traffic circulation and the loss of a substantial number of parking spaces, congestion in the travel lanes for the Outlets with drive-through design, and the possibility of traffic backflowing into the bypass.

Ms. Wyatt confirmed for Ms. Harrison that the Outlets have their own package septic treatment plant, and she is under the impression that the applicants are working with the Dare County Health Department to make sure there is capacity. They will need to have formal approval when this comes back to the Board.

Mr. Hornik addressed the Board and reiterated that both the Outlet Mall as well as the proposed Starbucks site meet the UDO's current requirement when it comes to parking.

Chris Aebel, a civil engineer with Timmins Group, addressed the Board. Mr. Abel presented his design to the Board and described the features. They worked out almost a dozen different options before deciding on this one. Mr. Aebel spoke about some of staff's concerns noting that they have shown that they can stack up to 16 cars and they also added a parallel bypass so that if it were to get backed up to that their customers could exit the drive-through line. Mr. Aebel also stated that they had addressed some of the concerns brought up at the TRC meeting related to access points. Mr. Aebel then addressed some Stormwater and Sewer concerns noting that with this development they are substantially increasing the amount of green space that's going to be there. Mr. Aebel noted that this is the most efficient layout they've been able to come up with.

Mr. Aebel discussed the proposed green spaces in further detail with Ms. Harrison and the Board. Mr. Abel stated that they are proposing a welcoming area with outdoor seating as they believe they will be getting a fair amount of walk-up traffic from the mall patrons.

Mr. Wright (Starbucks) discussed anticipated staffing levels and hours of operation and noted that they could have up to 10 employees during peak hours. Mr. Wright reiterated that since COVID they have had less customers sitting inside the café and an increase in their drive-through service or customers coming in and getting their order to go. Mr. Wright also noted that their food is prepackaged and not prepared in house.

Ms. Lambert expressed concern that although they meet the requirements of the UDO they do not have enough parking to accommodate their employees let alone their customers.

Mr. Elder agreed and noted that there is already a lot of congestion in that area and this proposal "has the potential to become a real safety issue".

Mr. Ferguson suggested that Staff review the original development plans for that property to "glean out anything that might be a hindrance to development".

Consideration of Initiation and Recommendation of text amendments to Section 11.10 of the UDO as it pertains to de-watering activities associated with the installation of in-ground pools.

Ms. Wyatt discussed a recent development project within the Town, involving the need to de-water/pump ground water out and away from the area being excavated for the installation of an in-ground pool. In this particular case the pool was 8 or 9 feet deep, which is unusual but the property (near Lakeside Drive) also happens to be within an area of consistently elevated ground water.

Ms. Wyatt noted that the UDO allows for dewatering and discharge of Stormwater, pool water and hot tub water with permission from the Town Manager, Town Engineer, or Public Services Director and with a plan for where they're putting it. In this case, when de-watering occurred, the contractor was given permission from a nearby commercial property owner to pump the ground water into the approved Stormwater basin designed to manage the Stormwater generated from the commercial development during a rainfall event. When this basin filled up, the contractor began pumping the ground water onto an adjoining vacant property which very quickly became saturated and began running onto adjoining properties where property owners had not given express permission for this activity to occur. When given the option of a stop work order or maintaining the dewatered groundwater entirely onsite, the contractor then had to bring in large pump trucks to accept the groundwater and haul it to offsite location in order to complete the installation of the pool.

This scenario has highlighted the need for staff to revisit the existing ordinance language to determine if any revisions are necessary to ensure the intent of this section of the UDO is being met.

Ms. Wyatt stated that Section 11.10 of the UDO was provided in its entirety in the Agenda Packet for the Planning Board's review and explained that this section is most often used after a storm event to help alleviate flooding and standing water on private properties.

However, Ms. Wyatt noted that Planning Staff have seen an uptick in the need to reference this section of the code in two scenarios:

- Draining and refilling of existing pools and hot tubs. Often times Staff will get a complaint from a neighboring property owner when the draining water crosses property lines and causes saturation or ponding offsite.
- Recently, as part of excavation for the installation of in-ground pools in areas with elevated ground water. In low areas with elevated ground water, Staff have noticed more often that property owners/contractors need to de-water/pump the ground water that is filling in the excavated area away from the work site.

Ms. Wyatt noted that Deputy Planning Director Kate Jones had been a great help with this issue as she was very involved with the Decentralized Wastewater Management Plan (DWMP) and just her history and knowledge has been beneficial. If the Board has specific questions Ms. Jones can probably address those.

The DWMP suggests that groundwater levels in Dare County are rising at a similar or faster rate than sea level rise (0.433 inches/year). There are multiple factors affecting this, including water use, seasonal dynamics of precipitation inputs, evapotranspiration, and ocean and estuary water levels.

Groundwater levels tend to be highest during the winter months, due to lower plant water use and cooler temperatures that result in less evapotranspiration. During summer months when evapotranspiration is at a maximum the groundwater levels tend to be the lowest. However, shorter term fluctuations of groundwater levels can occur due to wet weather periods, or extreme storm

events which can cause the groundwater levels to rise several feet. Groundwater may take weeks to months to recede, depending on the elevation, type of soil and the size and intensity of the event.

In general, in Dare County, there is an inverse relationship between land surface elevation and groundwater levels; higher elevation sites tend to have deeper water tables and lower elevation sites tend to have shallower water tables. As the DWMP points out, conventional septic systems can be compromised if the soil beneath the drain lines does not contain adequate dry "separation space" to treat effluent and therefore keep harmful nutrients and bacteria out of our waterways.

As such, and at the direction of the Septic Health Advisory Committee, Staff wants to take a proactive approach to address any future potential issues associated with dewatering for the purpose of development, which is most often seen in the installation of in-ground pools. Ms. Wyatt noted that Board Member Megan Lambert is part of that Committee and invited her to share her thoughts.

Ms. Wyatt explained that this section of the code has generally served the Town's needs well with regards to discharging Stormwater after a rain events, however, staff believes additional amendments are necessary with regards to the discharge of pool and hot tub water as well as de-watering activities. Draft amendments to this section would eliminate the ability to discharge or dewater of any kind onto an adjoining property, including any approved residential or commercial Stormwater management measure. Ms. Wyatt briefly reviewed these for the Board.

In addition to the proposed amendments, Ms. Wyatt noted that staff has drafted a set of internal protocols for future permitting of in-ground pools or any development requiring excavation in areas of elevated ground water levels. Ms. Wyatt reviewed these as well, noting that failure to follow these protocols could result in a Stop Work Order and Civil Penalties.

Ms. Wyatt confirmed for Chair Vaughan that Civil Penalties can range from \$50 to \$500 per day.

Ms. Harrison noted that this might still be less expensive than getting a truck to haul the water away. Ms. Wyatt stated that Staff can research what that cost would be and start the penalties at a comparable price.

Ms. Wyatt confirmed for Ms. Wright that the internal protocols do not need to be reviewed and approved by the Board, the changes to the text amendment would. The internal procedures can be implemented immediately. Ms. Wyatt noted that a lot of these they should have been doing already.

Ms. Wyatt confirmed for Mr. Gwinn that the Town Engineer's direction would depend on the elevation of the groundwater and the depth that they are going to be digging to. Ms. Wyatt confirmed for Mr. Elder that weather would definitely be a consideration and was actually a factor in this most recent dewatering scenario.

Ms. Wyatt confirmed for Mr. Ferguson that they have not seen any negative impacts from washing in pilings but if they begin to they would need to revisit. Mr. Elder noted that sometimes the installation of septic systems requires dewatering. Ms. Jones noted that the County would have a lot of prerequisites before you have a problem like that and has not heard of any issues or seen negative impacts. Ms. Jones and Ms. Wyatt stated they would look into this further.

Ms. Wyatt confirmed for Ms. Harrison that most of the ordinances need more education and outreach but in this case, this is something Staff could easily provide to pool companies and/or have readily available for pool contractors.

Ms. Lambert confirmed that the Septic Health Committee is trying to do a lot of outreach and education, but they are aware that the water table is staying high and a lot of people are experiencing issues with their drain fields.

Ms. Wyatt noted that should the Planning Board desire additional amendments to this language, Staff can move this item forward as a discussion item and place it on the Planning Board's June 20th agenda for action.

Ms. Wyatt also noted that the amendments are not specific to pool or hot tub water so it would encompass any dewatering activity.

David Elder moved to initiate and recommend approval of the proposed amendments; Meade Gwinn seconded, and the motion carried unanimously.

Report on Board of Commissioners Actions – May 3rd, 2023

Ms. Wyatt gave an update on the Board of Commissioner Actions, of note: the Consent Agenda which included a Request for Public Hearing to consider text amendments to the UDO re: "Fueling Stations" was approved and this item will be heard in June. A Public Hearing was held to consider Official Zoning Map amendment re: the new zoning district – C-5 Historic Character Commercial Zoning District - The Board adopted the zoning map amendment with one change – to include the Nags Head Beachcomber Museum, located at 4008 S Virginia Dare Trail, in the new C-5 District. A Public Hearing was heard to consider a Vested Right/Special Use/Site Plan Amendment submitted on behalf of Nags Head Church for the expansion of its parking lot; the Board approved the Vested Right/Special Use/Site Plan amendment as presented. A Public Hearing was heard to consider text amendments to the UDO re: the short-term rental registration rule; the Board adopted the ordinance re: removal of short-term rental registration rules as presented. Consideration of a Major Site Plan Review/Site Plan Amendment submitted on behalf of The Outer Banks Hospital; the Board approved the Major Site Plan Review/Site Plan as presented. The Board asked for staff to review the Town's commercial parking ordinance and possibly other parking ordinances due to issues currently being seen; the Planning Board will be discussing this later on today's agenda.

Town Updates

None

Discussion Items

Discussion Of Revised Text Amendments to the Unified Development Ordinance as it pertains to the definition of "Habitable Building Area".

Ms. Wyatt continued to lead the discussion on the definition of "Habitable Building Area".

At their April 5th, 2023 meeting Staff presented a proposed text amendment to the Board of Commissioners for their consideration. Hearing concerns with the proposed draft language, it was suggested by Staff, and was the consensus of the Commissioners that Staff revisit this item with the Planning Board and give additional consideration to potential negative impacts this language may have to existing, conforming developments within the town, as well as any potential unintended consequences that may result if adopted.

Ms. Wyatt reminded the Board that the UDO places a maximum area of habitable living space for dwellings based upon total lot area. Dwellings constructed on parcels that are 16,000 square feet in area or greater shall not exceed 5,000 square feet of habitable living space. However, dwellings constructed on a parcel less than 16,000 square feet in total lot area shall not exceed 3,500 square feet of habitable living space. There are also maximum habitable building area criteria applied to commercial buildings.

Some of the questions that came up at the BOC meeting and were discussed at last month's Planning Board meeting include:

- How does this language affect garage spaces within the town, as many garages may have both insulation and drywall, but not conditioned.
- Should an exemption for a maximum two-car garage be proposed so this finished space does not count as habitable building area (maximum 3,500 square feet or 5,000 square feet depending on lot size).
- How would such an exemption affect the application of the Flood Damage Prevention Ordinance in AE and VE Flood Zones?
- How should the Town view and regulate enclosed spaces/rooms within an existing structure labeled "storage" if these areas are finished and/or conditioned?
- How to regulate enclosed spaces/rooms that are labeled storage? Whether they're finished but not conditioned or finished and conditioned.
- To what extent should we offer other exclusions?
- If they impose maximum habitable area limitations (maximum 3,500 square feet or 5,000 square feet depending on lot size)? Is it a function of volume and appearance? Or do they just regulate more on volume than appearance?

At their last meeting, Staff and the Planning Board acknowledged that there's a lot off difficulty in creating a set of regulations that address every scenario for finished space and the Planning Board expressed an interest in exploring the idea that it just be regulated by gross floor area and perhaps there's some exemption that gets factored into that.

One of the exemptions they discussed was an exemption for a two-car garage. Dwellings constructed on a parcel less than 16,000 SF shall not exceed 3500 SF of habitable living space but if they were to shift to a gross floor area then the primary structure could not exceed 3500 SF of gross floor area; but then, if they are given an exemption of a 400 SF garage how do they confirm that it won't be habitable. Ms. Wyatt also discussed roof pitch and not wanting to penalize people for unused attic space.

Ms. Wyatt asked that the Board be thinking about these issues as she presented some examples of homes that have been developed in the past few years to give them an idea of volume and scale.

Chair Vaughan believes that simpler is better if it can be done; all this finished and unfinished; future use, etc. is changing the intent of what the Town wants which is pure volume. Mr. Ferguson agreed noting that the 300 SF was exempted as storage based on the FEMA rules but in non-flood areas it comes down to total volume.

Ms. Wyatt noted that it would make things easier for staff, however going that route will already put some structures in a non-conforming status. Ms. Wyatt added that there is language in the UDO that states that if you are non-conforming you can exist as is, you can't become more nonconforming but if something were to happen you can put it back in the exact same location.

Discussion Of Multi-Family Development Within the Unified Development Ordinance

In January of 2023, the Board of Commissioners adopted an ordinance removing multi-family as a permitted use within the C-2 General Commercial zoning district. At the time, the Board was in the process of evaluating appropriate standards for the C-5 Historic Character Commercial zoning district and determined that multi-family was not an appropriate use for that district.

Ms. Wyatt explained that in reviewing the standards for multi-family as part of the review of the C-5 District, Staff noted several inconsistencies with the existing ordinance, many of which existed prior to the UDO. The Board requested that Staff propose adequate corrections/clarifications as well as a comprehensive review of multi-family standards.

Ms. Wyatt proceeded to review a summary of issues with the ordinance:

- The definition of "Multi-family" includes townhouse (see below). However, there is also a separate definition for "Townhouse". The definition of townhouse states that a townhouse is a single-family dwelling. This is contradictory.
- Section 6.6, Table of Uses and Activities, lists townhouse and multi-family separately and allows each use in different zoning districts. Staff believes that townhouses are a form of multi-family. This should be clarified.
- There are separate standards for townhouses in the SPD-20 district. Some of the standards are contradictory to the existing definition of townhouse.
- If someone were to propose townhouses in the C-2, General Commercial District, the ordinance is unclear on which standards would apply.
- There is a density bonus applicable to "affordable" multi-family projects. However, the ordinance does not define this criterion.

Beyond the problems identified with the existing ordinance, Staff would like the Planning Board to begin to think about and review this issue comprehensively. Some questions to think about:

- What areas of the town are appropriate for multi-family? Which zoning districts? Are there portions of town where this use should not be allowed, however the boundaries of the existing zoning districts don't allow for appropriate distinctions?
- Do we need to consider different density/intensity criteria for multi-family in different geographic areas? For instance, does a multi-family project on NC 12 look differently than it would on US 158?
- What multi-family development currently exists in the town and how would it be affected by any proposed changes? What existing multi-family developments are nonconforming?
- How would multi-family be allowed as part of a Mixed-Use Development?
- Are the current commercial design standards in Article 10 adequate for multi-family development?
- Do we want to incentivize multi-family in cases where it will accommodate our local workforce?

Chair Vaughan suggested maybe having a joint workshop with the Commissioners to get a feel for which way BOC is leaning. Ms. Lambert agreed that it is a big discussion, and it might give them a better direction. The Board agreed that prior to a workshop they would like copies of the zoning map.

Ms. Wyatt confirmed for Ms. Harrison that the existing multi-family dwellings like the condos on the oceanfront were developed under a different set of standards.

Ms. Wyatt will discuss this topic with Town Manager Andy Garman in order to coordinate a workshop with the Commissioners.

Discussion Of Text Amendments to Section 10.16 of the Unified Development Ordinance, Required Parking by Use, as it pertains to restaurant parking.

Ms. Wyatt explained that at their May 3, 2023, meeting, the Board of Commissioners requested that planning staff review the Town's commercial parking ordinances in light of issues currently being seen with inadequate parking at areas throughout the town.

As part of the discussion, it was noted that the current parking standard for "Restaurant, Sit Down" does not have a requirement specific to employee parking:

Section 10.16 - Required Parking by Use. Food Service – Restaurant, Sit Down requires one parking space for every 55 square feet of indoor customer service area. Ms. Wyatt noted that she included the definition of "customer service area" in her Staff memorandum. In reviewing historical parking standards Ms. Wyatt found that this has been the parking standard for Sit Down Restaurants for quite some time and there have never been requirements specific to employee parking.

Staff thought it would be helpful to understand how other nearby municipalities regulate sit down, eat in, restaurant parking. Ms. Wyatt reviewed Staff's findings for the Board:

Town of Manteo: Eat-in, carry out or delivery service; no drive-through service - One space for every three customer seats, with a minimum of eight spaces total.

Kill Devil Hills: Restaurants, bars, nightclubs (no substantial carry-out or delivery service, no drive-in service, no service or consumption outside fully enclosed building) - One parking space per 100 square feet of gross floor area.

Kitty Hawk: Restaurants, cafes, or public eating places – One space per 55 sq. ft. of customer service area; or 1 per 100 sq. ft. of gross floor area, whichever is greater.

Town of Southern Shores: Restaurant - One parking space for each three customer seats, plus one additional space for each employee.

Town of Duck: Restaurant, café or eating place - One parking space for every 3 customer seats, plus 1 additional parking space for each 3 employees; seasonal outdoor dining areas that are appurtenant to restaurants located in contiguous portions of the Village Commercial District shall require no parking in addition to the existing restaurant parking provided that the outdoor dining area shall not increase the seating capacity of the restaurant by more than 25%, or seat more than 18 persons, whichever is less, without providing the requisite parking for all of the additional patrons as specified in this subchapter, and further provided that the total seating capacity of the restaurant including the outdoor seating area is appropriately authorized for wastewater management.

Ms. Wyatt noted that the existing definition of "customer service area" states that it is the area designated for the purchase and/or consumption of food, drink, or other similar items. The definition further goes on to exclude outdoor seating areas not designated for the purchase of food, drink, or similar items and instead are used primarily as waiting areas for customers who are waiting to be seated in indoor customer service areas. Staff submits that these outdoor areas, while initially were primarily used for waiting, have gradually transitioned into areas which may very well need to be included in a parking standard (drinks served while waiting, in some instances appetizers being provided while "waiting", etc.).

Ms. Lambert agreed, noting that since COVID people have been encouraged to keep utilizing those outdoor areas and because it's the beach vibe.

Ms. Wyatt noted that if they were to "park" all of these outdoor areas the level of non-conformity that they would bring to these restaurants might be problematic.

Mr. Gwinn noted that even if they are not eating or drinking, the people utilizing those waiting areas still have to park somewhere.

Ms. Lambert noted that if food is actually being served outside then it definitely should be factored in to the parking calculations. Ms. Lambert inquired about the newly constructed Blue Moon Restaurant. Mr. Ferguson noted that Blue Moon is always packed and he's seen people parking in the drive aisle. Ms. Wright also heard that people are utilizing the side street as well as the adjoining properties to park there as well and that is a problem.

Ms. Lambert suggested that maybe those types of areas could also have a parking standard but maybe to a lesser extent than the indoor areas.

Ms. Wyatt noted that another thing to consider is that regulating restaurant parking by customer service area can become problematic if that area changes unbeknownst to staff. If a restaurant changes hands, the new tenant may wish to increase the amount of customer service area, thus making the existing parking count inadequate. In this scenario, a parking standard based upon gross floor may be more appropriate.

Ms. Lambert pointed out the earlier Starbucks proposal as a good reason to review and maybe include a parking requirement for employees/staff.

Ms. Wyatt agreed and stated that if they know employee parking is going to be an issue they may be able to tackle this issue separately from the rest of it as the other discussion might take awhile.

This item is intended to be a discussion item only at this month's meeting. Staff will seek direction regarding the issues and questions cited above in order to develop a framework for discussion at future meetings.

Ms. Wyatt noted that Staff can research and see if there is an industry standard (as far as number of employees) that gets used more often than not. Mr. Ferguson suggested surveying local restaurants to figure out how many employees it takes to service their customers at peak season times.

Ms. Wyatt stated, and the Board agreed that perhaps they need to discuss one standard for occupancy, one for employees and one for waiting areas.

Ms. Wyatt confirmed for Ms. Harrison that the parking standard for retail is one parking space per 250 SF of gross floor area plus one parking space per employee with a minimum of two spaces per establishment.

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.

Planning staff had previously provided a brief PowerPoint presentation on some evolving concerns with the definitions and application of the UDO regulations pertaining to the use of single-family

dwelling, accessory structures and accessory uses for two-family and/or accessory dwelling unit purposes.

At their March 21st meeting Staff noted that the town intends to conduct a customized community-wide survey this coming summer in an effort to assess citizen satisfaction. Staff felt 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 that meeting Staff presented some possible amendments for the Board's review.

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 trends and concerns that Staff have been seeing. Ms. Wyatt also reviewed the current definition of "Dwelling Unit" which is defined as a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking/food preparation and sanitation.

Ms. Wyatt then discussed ground floor enclosures and noted that staff have seen an influx of permits for this type of development. Ms. Wyatt presented a recent scenario of a ground floor enclosure that met the flood requirements, but does not operate as a single-family dwelling, it functions as a two-family dwelling however, it does not have adequate lot size to be a compliant two-family/duplex dwelling.

Finally, Ms. Wyatt reviewed the proposed draft text amendments which include updated definitions for Dwelling, Single-Family; Dwelling, Two-Family; and Dwelling unit. Ms. Wyatt also discussed potential results if these were to be updated, noting that it might also have some consequences that the Town is not ready/prepared to tackle.

Ms. Wyatt confirmed for Ms. Harrison and the Board that this discussion is now more geared towards ground floor enclosures than accessory dwelling units.

April 26th, 2023, Director's Report

Ms. Wyatt briefly discussed her report.

Planning Board Members' Agenda

None

Planning Board Chairman's Agenda

None

Adjournment

A motion to adjourn was made by Megan Lambert. The time was 12:09 PM.

Respectfully submitted,
Lily Campos Nieberding