
**Town of Nags Head
Planning Board
May 21, 2019**

The Planning Board of the Town of Nags Head met in regular session on Tuesday, May 21, 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, Megan Lambert, David Elder

Members Absent

Meade Gwinn

Others Present

Michael Zehner, Kelly Wyatt, Holly White, Lily Nieberding

Approval of Agenda

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

Public Comment/Audience Response

Nags Head property owner John Graham spoke in favor of accessory dwelling units. Mr. Graham is recently retired and is looking to relocate to the Outer Banks. He stated that he represents "Baby Boomers" and supports the proposed ADU ordinance. Accessory Dwelling Units would provide additional housing for workers, provide independent living for extended families, as well as the elderly and disabled who need caregivers close by. Mr. Graham noted that the ability to have an ADU would also provide supplemental income for people like him, which would greatly improve his quality of life and allow him to repair and improve his home.

Mr. Graham then discussed the pros and cons of Airbnb vs. a long-term rental, which he feels would be a more reliable source of income. In addition, Airbnbs are a lot more work. Mr. Graham would prefer to have an ADU which he could rent out to a seasonal or longer-term worker and then later, as he gets older or if he gets ill, have it available for a caregiver. Mr. Graham has a "Beach Box" and he could fairly easily convert his downstairs into an ADU with minimal impact to parking and septic.

Mr. Graham believes that making the ordinance too restrictive, especially when it comes to lot size, will push people towards Airbnb as you don't need to have an ADU in order to have an Airbnb.

Approval of Minutes

There being no changes, David Elder moved that the minutes from the April 16th meeting be approved as presented. Mark Ballog seconded the motion and it passed by unanimous vote.

Action Items

Consideration of a Conditional Use/Site Plan Amendment submitted by Brian Rubino of Quible & Associates, PC on behalf of Millers Waterfront Restaurant for the construction of a platform, finger piers and associated mooring pilings to accommodate four (4) transient boat slips. The property is zone C-2, General Commercial and is included within the Commercial Outdoor Recreation Overlay District and located 6916 S Croatan Hwy.

Deputy Planning Director Kelly Wyatt presented a Conditional Use/Site Plan Amendment submitted by Brian Rubino of Quible & Associates, P.C. on behalf of Millers Waterfront Restaurant, for the purpose of an addition to the existing pier, consisting of a platform, finger piers, and associated mooring pilings to accommodate four (4) transient boat slips.

The property is located at 6916 S. Croatan Highway, the existing Land Use is Restaurant and the property is zoned C-2, General Commercial District; Commercial Outdoor Recreation Overlay District. The Flood Hazard Zone of the property is AE 10; the pier structure associated with this application is not subject to flood protection regulations.

Ms. Wyatt presented a site plan of the property showing the existing linear pier which was constructed in 2017 and the addition that is being proposed by the applicant.

Ms. Wyatt reviewed the 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 provided certain conditions are met:
 - a. There shall not be more than one docking facility per lot. *There is only one docking facility proposed on this lot.*
 - b. Docking facilities may not provide any of the following services: permanent docking spaces, overnight mooring, dry storage, fueling facilities, haul-out facilities, repair services, or any other water dependent commercial-outdoor recreational use. *The applicant has not proposed any of the services delineated as prohibited.*
 - c. Boat slips shall not be utilized to satisfy the required parking for the principal use. *The applicant has not requested the four (4) slips be considered as required parking, nor is there any increase in customer service area being proposed to necessitate additional parking.*
 - d. Piers and slips shall be limited to 200 feet measured perpendicular to the shoreline for the normal water line. This distance is not inclusive of the platform at the end of the facility. *The total length of the pier is 187 feet and therefore compliant.*
 - e. There shall be 30-inches of water depth relative to the normal water level adjacent to all boat slips and boat access areas. *Compliant water depth determined with issuance of CAMA Major Permit 109-16.*
 - f. 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. 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.*

- Lot coverage and structural height are not affected by this request.
- No architectural design standards apply to this request.
- The five (5) foot accessory structure setback is not affected by the linear extension of the existing pier.
- The proposed four (4) boat slips are not proposed as, or intended to satisfy, the required parking for the restaurant use. Additionally, there is no increase in customer service area being proposed that would necessitate any additional parking.
- There is no buffering or landscaping required as part of this request.
- The applicant has indicated that low level security lighting will be placed on every other piling to match what is present on the existing pier. If a light audit is required, this will be conducted prior to the issuance of the Certificate of Occupancy.
- No signage beyond the "No Wake Zone" signage has been requested or approved at this time. A total of two (2) "No Wake Zone" signs on both ends of the platform facing westward are proposed to meet the requirements of Town Code Section 48-407(c)(14)(f).

No review or approval required by the Dare County Health Department for this request.

The proposed scope of work does not necessitate additional stormwater management measures or traffic circulation considerations.

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

The Public Works Department has reviewed and approved proposed plan.

A CAMA Major Permit is required for this proposed use. CAMA Major Permit 109-16 has been issued. Ms. Wyatt noted that while the CAMA Major Permit cites the approval of 9 boat slips, this Conditional Use/Site Plan Amendment would permit a maximum of four (4) boat slips.

Staff finds that the proposal is consistent with the applicable use and development standards, based in part on the findings associated with the issued CAMA Major Permit as well as relevant land use policies supporting access to the water and water-based recreation opportunities. As such, Staff would recommend approval of the Conditional Use/Site Plan Amendment application as presented.

Ms. Wyatt stated that she, as well as Mr. Rubino from Quible and Brian Wilson, owner of Miller's Restaurant, was present and available to answer any questions for the Board.

Ms. Vaughan stated that she appreciated the No Wake signs and felt that they were important to have.

Ms. Wyatt confirmed for Ms. Lambert that while there may be some overlap, the No Wake signage would not affect the jet ski rental place as it only applies to the boats coming to use the restaurant. Mr. Wilson noted that for safety reasons the jet ski rental place does not want jet skiers coming back

in too fast. They actively put up barriers to keep people from "flying back in" so the restaurant having a No Wake zone might actually help them even though it technically does not apply to them.

Mark Ballog moved to approve the Conditional Use/Site Plan amendment as presented. David Elder seconded, and the motion passed by unanimous vote.

Consideration of various amendments to the Town Code as it pertains to the adoption of the Unified Development Ordinance ("UDO")

Principal Planner Holly White stated that Staff produced a draft version of the Unified Development Ordinance (UDO) and delivered it to the Technical Committee, Planning Board, and Board of Commissioners on December 18th, 2018.

The December 18th version of the UDO was reviewed by the all entities as well as the Town Attorney. Comments from each entity were provided to staff. Comments and concerns were vetted and incorporated into a revised final draft that was provided to the Board of Commissioners, Planning Board, and Technical Committee on Friday, May 3rd.

Staff is continuing to review the May 3rd version of the draft to find any outstanding grammatical errors, typos, or other corrections. A "track-changed" version of the May 3rd draft UDO is available on the website. Ms. White previewed the site for the Board and noted that she had provided a link to the site in her Staff Memo. Ms. White stated that minor changes are noted with a "strike-through" and the replacement or additional language is shown with an "underline". Additional changes suggested by the Town attorney are shown with a yellow highlighting.

Ms. White stated that Staff plans to bring the UDO to the Planning Board at their meeting on June 18th for their review and recommendation. This will be followed up by a workshop with the Board of Commissioners on June 19th.

Staff would ask that the Planning Board email any grammar, punctuation, or editorial type corrections directly to staff, to be addressed prior to adoption. Additionally, if any larger policy level issues or questions specific to a provision in the UDO arise, Ms. White asked that those be emailed as a separate list to staff.

Ms. White confirmed for Ms. Vaughan that the workshop on the 19th is a BOC workshop but the Planning Board is welcomed to listen in.

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

Planning Director Michael Zehner explained that at the April 3, 2019 meeting of the Board of Commissioners (in response to a request at their March 2019 meeting), Staff presented the Board with draft provisions for Accessory Dwelling Units ("ADUs") 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.

Planning Staff presented a draft Ordinance to the Planning Board for review at the meeting on April 16, 2019. The Planning Board unanimously voted to defer issuance of a recommendation pending further consideration. At the meeting the Board noted that there were too many associated questions to proceed to a recommendation.

Staff provided the Board of Commissioners with an update at the meeting on May 1, 2019, informing the Commissioners that the Planning Board deferred issuing a recommendation and their basis for doing so. Following discussion, the Board of Commissioners unanimously voted to send the ordinance back to the Planning Board for consideration, requesting that the Board report back or provide a recommendation within 60 days (June 30, 2019).

As previously voted by the Planning Board and directed by the Board of Commissioners, Staff is presenting this Ordinance back to the Planning Board for consideration.

Mr. Zehner proceeded to review what he shared in the Meeting packet including the definition of an Accessory Dwelling Unit (ADU) as interpreted by the American Planning Association and AARP. Mr. Zehner also shared photos of what different types of ADUs might look like and the experiences of peer communities. Mr. Zehner then discussed the difference between a single-family dwelling unit with an ADU and a duplex. A duplex would have two separate households that live independently from one another. Mr. Zehner discussed the ability of property owners to create a condominium out of the ADU or principal dwelling and noted that while it was legally possible, it would most likely create a zoning violation as the ADU would not longer be considered an accessory use.

Mr. Zehner confirmed for Ms. Vaughan that in the case of a duplex, the units function independently. If the ADU was to be condo'd out, the new ownership would likely result in a zoning violation. The ordinance defines ADUs as an accessory unit in conjunction and clearly subordinate to the principal dwelling unit. Mr. Zehner noted that this is where enforcement would come into play.

Mr. Zehner also confirmed for Ms. Vaughan that while the ordinance does not prohibit short term rentals it does defines ADUs being for long-term occupancy beyond 30 days. The town can and does regulate length of stay/length of occupancy. Mr. Zehner also noted that if someone wanted to have an Airbnb they could do it without having an ADU.

Mr. Zehner then discussed limitations on unit sizes. The Planning Board suggested reducing the size from 800 to 600 SF. Mr. Zehner noted that the UDO started at 875 SF but after reviewing peer communities such as the Town of Manteo, the Technical Committee and Board of Commissioners discussed reducing the size to 600 SF. Mr. Zehner reminded the Board that the size is still tied to 50 percent of the principal dwelling unit. The Board may want to discuss this further.

Ms. Vaughan and Mr. Zehner discussed the possibility of treating/regulating attached ADUs differently from detached ADUs. Mr. Zehner noted that it might be possible that someone incorporating an ADU into an existing dwelling could be subject to different size limitations than someone expanding their dwelling or creating a detached structure.

Ms. Vaughan noted that there are a lot of existing ones and that might help bring them into compliance.

Mr. Zehner also discussed lot size and the possibility of prohibiting ADUs on lots less than 16,000 SF but noted that based on the number of non-conforming lots vs. conforming lots per Zoning District, Staff found that restricting to either conforming lots or lots of a certain size may be overly limiting on the potential development of ADUs. Mr. Zehner also discussed the idea of limiting ADUs to certain Zoning Districts noting that this limitation might prevent addressing some of the issues this ordinance is trying to address. Planning practice says that you want to integrate ADUs into neighborhoods because it is a way to bring additional affordable housing in a way that does not overtly increase density and is preserving the character of the neighborhood. In addition, only allowing them East of the bypass or between the highways might encourage turning them into short-term rentals. Mr. Zehner also noted that in reviewing the experiences of peer communities, those communities that do allow them, have not seen that many; it is costly and timely to create an ADU.

Ms. Lambert noted that while the Town of Duck may be more comparable to Nags Head, just because there haven't been that many in Wanchese or Manteo does not mean that Nags Head will have that same experience.

Mr. Zehner noted that while a new construction might consider an ADU, for an existing house, the decision to add an ADU is more difficult because of the time and financial investment involved. Currently short-term rentals are allowed in the Town without the need to have an ADU. It is more affordable for people to have Airbnbs. Mr. Zehner believes that this is the reason other communities have not seen too many ADUs.

Mr. Elder noted that this (ADUs) is what Nags Head was like when he first moved to the area, maid's quarters, mother-in-law suites, etc. Since that time, regulations changed and now there are properties that may or may not meet building code but do not meet zoning code. The ADU ordinance would help bring existing properties into compliance. Mr. Elder noted that ADUs "already exist and have existed for years."

Mr. Zehner agreed, stating that by bringing them into compliance they will also be safer.

Mr. Elder stated that while this was not a silver bullet to solve the workforce housing issue it could be one of several options. After some further discussion, Ms. Vaughan and the Board agreed that they should treat ADUs and affordable housing as two separate issues, they do not have to be tied together. The Board also discussed limiting ADUs to lots that are 16000 SF or greater and agreed that they would be open to allowing them in smaller lots. The Board also agreed that they would be open to allowing ADUs greater than 600 SF.

Ms. Lambert stated that originally her concern was that ADUs might be used for short-term rentals but after hearing what Mr. Graham had to say she is now more concerned that making the ADU ordinance too restrictive might actually encourage more short-term rentals.

Ms. Vaughan agreed but also stated that the idea short-term rentals is cyclical and if the Town wants to be "forward thinking" they may want to have something in place that would allow these spaces to be converted into something that could be of better use (such as addressing workforce housing) while still benefitting the property owner. Ms. Vaughan also noted that due to the time and financial investment, ADUs will be self-restrictive. Ms. Vaughan and the Board also discussed the possibility of using some kind of incentive to encourage ADUs for long-term housing. Ms. Vaughan noted and Mr. Ballog agreed that there aren't that many affordable smaller homes in town.

Report of Board of Commissioners Actions

Planning Director Michael Zehner reviewed recent Board Actions:

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. The property is zoned C-2, General Commercial and is located at 6813 S. Croatan Highway, Nags Head

As noted in the agenda, the Board passed a motion to table action on this item until the meeting on June 5, 2019 to allow Staff the opportunity to verify compliance and proper installation of erosion, sedimentation, and stormwater control measures, and the mitigation of negative impacts on abutting properties.

Request for Public Hearing to consider a Conditional Use/Site Plan Amendment submitted by Tale of Whale Restaurant for the construction of four (4) transient boat slips

As part of the consent agenda, the Board of Commissioners scheduled a public hearing on this item for the meeting on June 5, 2019.

Board of Commissioner direction to create town e-mail accounts for all Planning Board and Board of Adjustment members. Town information received on personal email accounts should be forwarded to Town as public records.

As the Board is aware, email accounts have been created for all members of the Planning Board and Board of Adjustment. Additionally, a PlanningBoard@nagsheadnc.gov email account has been created for use by the general public; emails sent to this address will be automatically forwarded to all members, as well as to Michael Zehner and Kelly Wyatt. Mr. Zehner briefly discussed email practices and protocol with the Board.

Town Updates

None

Discussion Items

Discussion of Affordable/Workforce Housing Study

Mr. Zehner explained that at the Planning Board's meeting on April 16, 2019, the Board discussed an interest in studying affordable and workforce housing within the Town and developing solutions to identify needs.

While Mr. Zehner noted that funds had been requested in the FY19-20 budget for such an initiative, the requested funding is intended to be used in a more focused manner, to study the feasibility of developing housing solutions for the Town's seasonal workforce, generally lifeguard staff. There would likely be a need to consider broader housing issues as part of this study, but perhaps only with respect to how these issues impact the housing needs of the Town's seasonal employees. Staff will continue to update the Board on the progress of this effort.

Mr. Zehner noted that despite the focus of this immediate effort, the Board should consider and discuss a future study.

Mr. Zehner then discussed the Local Business Committee - *Workforce Housing Report* (June 2018) which came up with some conclusions and recommendations, including looking at allowing ADUs among other suggestions. The Report and attachments (which were shared as part of the Staff memo) provide an overview of recent local initiatives and perspectives, with information on best practices within the State and nationally.

Other organizations such as Dare County and the Outer Banks Chamber of Commerce have been looking at the issue of affordable and workforce housing needs as well, but Mr. Zehner is not aware if there are any solutions that are being actively discussed at this time.

Mr. Zehner noted that the Board might want discuss housing issues generally, any feedback on recent initiatives, and any perspective or recommendations to Staff and the Board of Commissioners with respect to further advancing housing goals and objectives.

Mr. Zehner stated that he was familiar with the consultants that prepared the *Town of Nantucket - Chapter 40B Housing Production Plan* (included in the Local Business Committee Report) and reviewed that Plan for the Board. The Town may want to consider doing something similar however any consideration needs to be based on what (real estate) market conditions are. Mr. Zehner believes there are opportunities out there but because it's a function of property rights and property values it's going to take funding (whether it's Town supported, State supported or privately supported) to create more affordable housing.

Mr. Zehner stated that some of the things the Board may want to look into are incentives and subsidies and noted that the issue will take a lot of community participation.

Mr. Zehner also discussed land trusts in further detail for Ms. Vaughan.

Ms. Vaughan and the Board agreed to discuss the issue again in July or August once they have resolved the issue of Accessory Dwelling Units, noting that by then they might have a better feel for how ADUs tie to the bigger housing issue. Mr. Elder noted that educating the public of the need will be a key component.

Planning Board Members' Agenda

None

Planning Board Chair's Agenda

None

Adjournment

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

Respectfully submitted,

Lily Campos Nieberding
