

**Town of Nags Head
Planning Board
July 21, 2020**

The Planning Board of the Town of Nags Head met in regular session on Tuesday July 21, 2020 in the Board Room at the Nags Head Municipal Complex. Due to Covid-19 restrictions, this meeting was also held electronically/remotely utilizing the online ZOOM meeting platform. Members of the public were invited to attend the meeting using the ZOOM platform or app, or by calling in using a phone and the meeting were conducted with the members participating by simultaneous communication.

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

Members Present

Megan Vaughan, Kristi Wright, Molly Harrison, Meade Gwinn, Megan Lambert, Gary Ferguson, David Elder, Gary Ferguson (via Zoom)

Members Absent

None

Others Present

Michael Zehner, Kelly Wyatt, Holly White, Lily Nieberding (via Zoom)

Approval of Agenda

Chair Vaughan asked for a motion to approve the agenda. David Elder moved to approve as presented, Meade Gwinn seconded, and the motion passed unanimously.

Public Comment/Audience Response

None

Approval of Minutes

Chair Vaughan asked for a motion to approve the minutes of the June 16, 2020 meeting. David Elder moved to approve as presented, Meade Gwinn seconded, and the motion passed unanimously.

Action Items

Consideration of Numerous Text Amendments to the Unified Development Ordinance for clarification and to correct errors.

Deputy Planning Director Kelly Wyatt explained that since the Planning Board's February 18, 2020 meeting where the Board reviewed and made a recommendation on the first iteration of post-UDO adoption typographical errors, Staff has identified several additional areas for correction or improvement of the UDO.

Ms. Wyatt proceeded to the review the corrections for the Board:

Correction to the Post-Firm Definition

The Flood Damage Prevention Ordinance, adopted by the Board of Commissioners on June 3, 2020 contained an error within the definition of "Post-FIRM". The Post-FIRM date is cited as being December 31, 1974. The Pre-FIRM date is cited as being November 10, 1972. Both dates should be November 10, 1972. The December 31, 1974 date had previously been provided to the town as the correct Post-FIRM date from FEMA, however we have since been directed to utilize the November 10, 1972 date. We have received direction that the November 10, 1972 is relevant for floodplain purposes; the December 31, 1974 date is relevant for insurance purposes.

Correction to Section 3.5.3.3, Action by Planning Board, to correct a typographical error "matter".

The sentence should read, "Members of the Planning Board shall not vote on recommendations regarding any UDO text amendment or zoning map amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member."

Correction to Section 4.12.2.1, Specific Site Plan Requirements Based on the Proposed Activity, Stormwater Management.

This section of the UDO had not yet been revised with the updated information from the December 5, 2018 approval of various Stormwater management amendments.

Correction to Section 6.2.4.1, Zoning Districts, Commercial Districts, to correct a typographical error, "as".

The second to last sentence should read, "It is also the intent of this C-1 district to encourage the development of unique, locally owned businesses that are designed to be reflective of the community's heritage and lifestyle both in scale and massing as well as site layout".

Correction of strike-through typos in Section 6.6, Table of Uses and Activities as well as to clarify no supplemental standards listed for Government Administrative Office use.

Two (2) uses within Section 6.6 Table of Uses and Activities contain strikethrough of unnecessary text, this was unintentional and simply a carryover from a "markup" version. Additionally, the use of "Government Administrative Office" contains a notation that supplemental standards are required and located within Section 7.42 of the UDO. This is in error, this use does not have supplemental standards associated with it and as such we are recommending the Table of Uses and Activities be amended to reflect that.

Correction to Section 8.3.1.5, Special Development Standards, C-3 Commercial Services District, to correct a typographical error, "pollution as".

The first sentence should read, "No outside storage of processed materials, which may be a possible source of pollution as determined by the NC Department of Environmental Quality, shall be allowed".

Correction to Section 10.24.2, Signs Permitted in Commercial Districts and the Commercial/Residential District, to include flag (non-advertising, non-informational) regulations that were inadvertently deleted during the adoption of the UDO.

Prior to the adoption of the Unified Development Ordinance, Chapter 48, *Zoning*, of the Code of Ordinances, contained various use regulations within the definition of the use. Listing use regulations within the definition of the use is not considered to be an ideal regulatory practice, and as such, during the drafting of the UDO, Staff attempted to move those regulations into the Supplemental Standards for the appropriate use. In the process, the spacing requirement for "Flag (non-advertising, non-informational)" which had previously been part of the definition, did not make it into the

appropriate section of the UDO. This was inadvertently lost during the drafting process; this amendment would simply add the spacing requirement back into the use requirements.

Ms. Wyatt noted that Staff would recommend that the amendments be adopted as proposed and she would be happy to answer any questions for the Board.

David Elder moved to recommend approval of the text amendments as presented. Meade Gwinn seconded the motion and the motion passed unanimously.

Consideration of a text amendment to allow "Real Estate Rental Management Facility" as a Conditional Use within the C-2, General Commercial Zoning District.

Ms. Wyatt stated that Cahoon and Kasten Architects, PC had resubmitted the proposed text amendment application on behalf of Sumit Gupta of Legacy Home Services Inc.

Ms. Wyatt explained that following discussion and the recommendation issued at the June 16, 2020 Planning Board meeting, the applicant elected to withdraw the proposed text amendment, and subsequently submit a slightly revised version. If adopted, this text amendment would amend the Unified Development Ordinance ("UDO") to permit the use "Real Estate Rental Management Facility" as a conditional use within the C-2, General Commercial Zoning District.

Ms. Wyatt stated that while it is important to remember that text amendments are not site specific, this text amendment has been proposed with the intent to seek a conditional use permit for this use to be conducted in an existing structure located at 205 East Baltic Street (formerly His Dream Center) and situated within the C-2, Commercial Services Zoning District.

Ms. Wyatt noted that the "Real Estate Rental Management Facility" use was first established as a use permitted by-right within the C-3, Commercial Services Zoning District, in December 2006. At that time, a definition was established along with parking standard and buffering requirements.

Additionally, when originally adopted into the code, the use of Real Estate Rental Management Facility was determined to be a "High Impact Use". High impact uses are particular uses of land, which considered as a whole because of their peculiar or operational and physical characteristics are expected to have an adverse effect on adjoining or adjacent properties.

The intent of the C-3, Commercial Services Zoning District, is to provide standards for higher intensity land uses that are not compatible in other areas of the Town. The commercial services district accommodates utilities, light industrial uses, warehousing, bulk storage, municipal facilities, studios (dance, martial arts, etc.), and commercial service buildings (20,000 square feet or less). It is also the intent of the C-3 District to regulate and buffer such uses so that their location will not be detrimental to adjacent uses, the environment, and sources of potable water. For this reason, in 2006, this use was approved as a permitted use within the C-3 Commercial Services District.

Staff was not certain that this use was fitting for the intent of the C-2, General Commercial Zoning District, which is to foster a thriving commercial business community with a variety of uses, activities and scales. This District represents areas that are anticipated to have future concentrations of uses that serve as destinations or hubs of activity for the Town and are appropriate for shopping centers or larger footprint retail stores.

The applicant, recognizing the different intents of the two districts, as well as their locations within the Town, has suggested that this amendment be taken under consideration as a conditional use

versus a permitted use, so as to provide the Planning Board and Board of Commissioners an opportunity to consider the placement of appropriate standards upon the use.

The applicant has also provided a detailed outline of the requested text amendment with their application, including what is considered to be similar land uses currently permitted within the C-2, Zoning District, as well as possible site and design standards to ensure compatibility with the C-2 District and adjoining land uses.

These site and design standards include that the Real Estate Rental Management Facility use:

- Shall not be located upon a lot having frontage on NC 12/Virginia Dare Trail or US Highway 158.
- Shall be located upon a lot having a minimum area of one (1) acre.
- Whether as a new use or a change of use, Real Estate Rental Management Facility must adhere to the buffering requirements of 10.93, Landscaping, Buffering, and Vegetation Preservation and specifically Section 10.93.3.2, Commercial Transitional Protective Yards and 10.93.3.3, High Impact Uses.
- Shall adhere to hours of operation consistent with Article III of the Town Code, Noise Ordinance such that no activity shall occur between the hours of 11:00pm and 7:00am.
- Shall be prohibited from the outdoor storage of materials or equipment.
- Shall have freestanding signage limited to 16 square feet and there shall be no allowance for wall signage.
- There shall be no linen storage or cleaner check-in associated with this use in the C-2, General Commercial Zoning District.
- The use shall adhere to low-level of activity lighting.

Ms. Wyatt noted that in review of this text amendment application Staff would submit that while this use is compatible with the intent outlined for the C-3 Commercial Services, it is likely not compatible with the intent of the C-2, Commercial Services District. Additionally, Staff is of the opinion that the allowance of this use within the C-2 zoning district would be inconsistent with several policies contained in the Comprehensive Plan. Therefore, Staff recommends denial of the text amendment. Ms. Wyatt stated that if the Planning Board is inclined to recommend adoption of the text amendment, Staff would recommend consideration be given to incorporating the standards and criteria set forth by the applicant for the use within the C-2 zoning district.

Mr. Gwinn inquired what had changed other than the changing of the square footage. Ms. Wyatt confirmed that while the applicant could address this further, the other major change was the adding of the condition that there be no linen storage or cleaner check-in associated with the use.

Mr. Elder noted that historically there have been many uses associated with that particular site. Ms. Wyatt agreed but stated that the majority of these uses have been some type of community gathering space/indoor assembly which are allowed in the C-2 District. Planning Director Michael Zehner reminded the Board that this request was not site-specific but rather town-wide.

Mr. Ferguson inquired how many one acre lots are in the C-2 District. Ms. Wyatt noted that while she did not have an actual number there were probably only a handful of lots that meet this criteria. The concern would be the potential of multiple lots combining to create one.

Ms. Wyatt confirmed for Ms. Wright that Staff's concern was that the use was not consistent with the intent of the C-2 District, it is not what the Town envisioned for that district.

Ms. Harrison inquired what kinds of uses are generally allowed in the C-2 District.

The Board had to take a brief break due to technical difficulties with the Zoom Platform.

Ms. Wyatt confirmed that some of the permitted uses include convenience stores, food stores, furniture stores and other retail such as clothing and toy stores, pet shops, pharmacies, banking institutions, etc.

Mr. Gwinn noted that all those uses mentioned are uses that involve the public, people go into shops, banks, etc. The proposed use is not a draw for tourists or citizens; it's just for warehousing and storage.

Applicant Ben Cahoon addressed the Board. Mr. Cahoon noted that when they were working on the UDO and the Comprehensive Plan, one of the concerns that came up was the conversion of commercial property to residential. Mr. Cahoon noted that while the applicants understand that the proposed amendment is not site-specific the site they are looking at is an unusual building which has had a number of different uses. They are trying to find a use that is suitable for the current property that can allow the building to continue until a better use comes along. The applicants acknowledge that perhaps Real Estate Rental Management Facility may not be the best use but they would argue that it is not disruptive to the neighborhood and would help preserve the building for the future.

Mr. Cahoon stated that there are currently uses allowed today that are of equal or higher intensity than the use they are proposing; these uses include multi-family dwellings, hotels, dormitories, convenience stores, auto repair shops and car washes.

What the applicants tried to do with the resubmission was to reduce the level of intensity; to "tone down" some of aspects that relegate the use to the C-3 District. They took into consideration that this amendment would apply district-wide, and because they would not want a facility like this on NC 12 or US 158, they imposed this as a condition; they also increased the lot size requirement significantly, imposed the buffering standards, hours of operation, eliminated outside storage of materials, limited the signage, eliminated the linen storage and cleaner check-in/check-out so that they wouldn't have that traffic on the weekends and proposed low-level lighting standards. Mr. Cahoon noted that while it may not be providing retail services or other similar types of activities, with these added conditions the use would not be disruptive to the neighborhood.

Ms. Harrison noted that while it sounded like what the applicants are proposing would be less impact than some of the other uses that could go in that building, since the amendment would be town wide, Ms. Harrison questioned if someone else could build a Real Estate Management Facility on a one acre lot from the ground up, that was a big warehouse type structure. Ms. Wyatt confirmed that there would be opportunities for that if the amendment were to be approved.

Mr. Gwinn agreed with Ms. Harrison noting that approving this use opens the door for other uses to be expanded into the C-2 that really belong in the C-3. As someone living near there, he does not think it is the type of operation he would want in his neighborhood. Mr. Gwinn noted that even with the added conditions, someone could combine some smaller parcels and redevelop it like Ms. Harrison indicated and put up a warehouse. Even if it less intensity, it is still a warehouse.

Ms. Harrison noted that while she does not have a problem with that particular site, it is the potential for town-wide use that is the issue.

Mr. Elder stated that it's almost like they are looking for a "unicorn solution" in order to preserve the longevity of a building but noted they can't mandate that the building remain there, they can't guarantee that a bulldozer won't be visiting the property eventually.

Chair Vaughan noted that what the applicants are proposing makes it sound more like a warehouse than an actual Real Estate Rental Management Facility and she wasn't sure if that description even fits what they want to do.

Mr. Ferguson inquired about building contractor's offices and if they were actually allowed in the C-2 District as that use seemed similar to what was being proposed. Mr. Cahoon noted that contractor's offices in the C-2 District are not allowed outside storage.

Ms. Harrison inquired if another type of business could build a warehouse type building in the C-2? Ms. Wyatt noted that as part of the development of the UDO they went through the entire building design process to try to address that concern. The warehouse use is not permitted in the C-2 so something that looks like a warehouse would likely not make it through that building design process.

After some further discussion Meade Gwinn moved to recommend denial of the proposed text amendment. Chair Vaughan seconded the motion and the motion passed by unanimous vote.

Consideration of A Text Amendment to the Unified Development Ordinance to allow Furniture Stores as an allowable use as part of commercial mixed-use uses.

Ms. Wyatt explained that Cahoon and Kasten Architects, PC had submitted a text amendment application on behalf of Sumit Gupta of Legacy Home Services Inc. to amend Section 7.32 of the UDO, and specifically Section 7.32.2., to add the Furniture Store use as an allowable use for all Commercial Mixed-Use designations.

This would include the following use types: Commercial with Accessory Residential, Group Development, Mixed Use Development, Multiple Principal Uses, and Shopping Centers. Currently, and without this amendment, a Furniture Store Use would not be allowed to be incorporated as part of one of the aforementioned mixed-use uses.

Ms. Wyatt noted that generally, the various mixed-use uses contemplate and allow for multiple independent entities and/or uses to occupy a single building or property. It is also important to note that furniture stores are an allowed use only within the C-2 zoning district. Therefore, it would be within that district only that a furniture store could be incorporated as part of a mixed-use use. With the exception of the Commercial with Accessory Residential use, all other mixed-use use designations require a conditional use permit within the C-2 district.

Ms. Wyatt proceeded to review for the Board the uses that can currently go into a mixed-use development.

Ms. Wyatt noted that while staff had not identified policies within the Town's Comprehensive Plan specific to "Furniture Stores" in association with mixed-use uses, in their Staff memo they did note some policies which are generally relevant and should be taken into consideration.

In review of this text amendment application, Staff generally has no concern with listing the use of "Furniture Store" as an allowable use for all Commercial Mixed-Use designations and believes it is consistent with applicable policies. As noted, this would only be applicable within the C-2 zoning district, and, with the exception of the Commercial with Accessory Residential use, would require a conditional use permit. Therefore, Staff recommends adoption of the proposed text amendment.

Ms. Wyatt explained for Mr. Gwinn that while there is a definition for furniture showroom, it is not identified as an allowed use within any district in the UDO.

Applicant Ben Cahoon addressed the Board stating that they were not aware of any logic as to why a furniture store wouldn't be permitted in combination in any of those uses when a furniture store is already permitted in the district.

While acknowledging that this amendment would apply throughout the district, allowing this would open up a little bit of flexibility for what this owner can do, and it's a route to using the building in a way that is compliant with the district.

Mr. Cahoon further noted that currently a furniture store would not be allowed in a Shopping Center such as the Shoppes at 10.5 and others, which just doesn't make any sense so it is a reasonable thing to fix just on its own merit without consideration of any property.

Chair Vaughan stated that it made perfect sense and sounded logical. Mr. Gwinn and Ms. Harrison both agreed.

Molly Harrison then moved to recommend approval of the text amendment as presented. Mr. Gwinn seconded the motion and it passed unanimously.

Report on Board of Commissioners Actions

Planning Director Michael Zehner gave a report on the Actions from the Board of Commissioner's July 1st Meeting. Of note, Mr. Zehner introduce new employee Environmental Planner Kylie Shepard; the approved consent agenda included the request for a Public Hearing for the Coastal Villas revised preliminary plat for a major subdivision; the public hearing to consider text amendments to the UDO to allow outdoor stands to include reservations and ticket sales, passed with a 4 to 1 vote; Mr. Zehner gave his Planning Director Report which included updates on Regulation of Large Occupancy Homes, Residential Stormwater Regulations and Dowdy Park Farmers Market.

Town Updates

Chair Vaughan asked about inviting the interim Town Manager to stop by during their next meeting so that the Board can meet him.

Discussion Items

Continued Discussion of Legacy Establishments/Structures

Mr. Zehner noted that it's been good that they've had a lot of conversations about this because it has helped to narrow down their focus.

Mr. Zehner explained that during continued discussion of this item at their last meeting, the Board was generally supportive of the option presented by Staff that would make amendments to Article 5, *Nonconformities*, of the UDO, by providing nonconforming restaurants, hotels, or retail uses that commenced on or before December 31, 1980 with the option of seeking a conditional use permit to modify the use, including enlarging or altering the use, in a manner that would otherwise be precluded by the provisions of Sections 5.5. and/or 5.6. of the Article. At that meeting, the Board requested that Staff review and determine the specific instances where such a provision would be applicable.

Following the meeting, Staff conducted the requested review and determined that the following hotels were all nonconforming uses, all located with the CR, Commercial Residential Zoning District, and which may benefit from the provision being considered:

1. Comfort Inn South, 8031 S. Old Oregon Inlet Road, constructed in 1974
2. Dolphin Motel, 8017 S. Old Oregon Inlet Road, constructed in 1960
3. Owens Motel, 7115 S. Virginia Dare Trail, constructed in 1966
4. Seafoam Hotel, 7111 S. Virginia Dare Trail, constructed in 1961
5. Islander Motel, 7011 S. Virginia Dare Trail, constructed in 1973
6. Blue Heron Motel, 6811 S. Virginia Dare Trail, constructed in 1975
7. Surf Side Hotel, 6711 & 6701 S. Virginia Dare Trail, constructed in 1984 & 1989
8. Holiday Inn Express (former Nags Head Inn), 4701 S. Virginia Dare Trail, constructed in 1987
9. Colonial Inn, 3329 S. Virginia Dare Trail, constructed in 1947

Mr. Zehner noted that based on their review Staff determined that the year constructed was not necessarily that important.

Additionally, Staff determined that there were no restaurants or retail establishments that were considered to be a nonconforming use. However, related, Staff did determine that the presence of residential units in conjunction with the Nags Head Fishing Pier constituted a nonconforming use of the site, which may be something that the Board wished to address.

Based upon the above, Staff felt that hotels are what they should focus on and as such they may be more appropriate to address within Section 7.12, *Hotels*, of Article 7, *Supplemental Regulations*, similar to the treatment of nonconforming cottage courts.

Under this option, the following treatment may be sufficient:

7.12.3. Nonconforming Hotels.

Where an existing hotel is considered to be a legally nonconforming use of land and/or legally nonconforming use of a structure, pursuant to Sections 5.5 and/or 5.6 of the UDO, a conditional use permit may be sought in accordance with Section 3.8, Conditional Use Permits, to modify the use and/or structure, including enlarging or altering the use and/or structure, in a manner that would otherwise be precluded by the provisions of Sections 5.5 or 5.6, or subsections thereof.

Generally, Staff is of the opinion that it would be appropriate to address within Section 7.12 or within Sections 5.5 and 5.6. Addressing within Section 7.12, again, would be consistent with the similar provision addressing nonconforming cottage courts; however, addressing within Sections 5.5 and 5.6 would seem most germane. Ultimately, the best option may be the one that would be most apparent to those that would need to make use of the provision.

Mr. Zehner stated that if this works for the Board, staff could bring a text amendment to the next meeting.

Mr. Elder noted that it would make sense to roll Nags Head Pier into it as well, just to clean things up. Chair Vaughan agreed.

Mr. Ferguson raised a question about the Surfside Hotel noting that the second piece of the hotel was actually permitted as a condominium when that parcel was developed. Mr. Ferguson noted that in the late 80's the Town developed some severe restriction on hotels on the oceanfront and in order to

circumvent those restrictions, the developer decided to go ahead and classify it as a condominium instead of a hotel. Mr. Ferguson inquired if the Town was now looking at it as a hotel?

Mr. Zehner stated that Staff can get further clarification on this particular property but noted that the provision that Staff drafted would only apply to the hotel use.

Planning Board Members' Agenda

None

Planning Board Chairman's Agenda

Chair Vaughan checked in with the members to see if everyone was comfortable with the new way of meeting (in person but socially distanced, in conjunction with the Zoom platform) and asked if anyone had comments or concerns about the way the Board met today. The Board was in general agreement that the meeting had gone well.

Adjournment

A motion to adjourn was made by David Elder. The time was 10:29 PM.

Respectfully submitted,

Lily Campos Nieberding