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**Town of Nags Head  
Planning Board  
October 19, 2021**

The Planning Board of the Town of Nags Head met on Tuesday October 19, 2021, in the Board Room at the Nags Head Municipal Complex.

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, Meade Gwinn, David Elder, Gary Ferguson, Megan Lambert, Molly Harrison

***Members Absent***

None

***Others Present***

Kelly Wyatt, Holly White, Lily Nieberding, Kylie Shephard, Margaux Kerr, Kate Jones

***Approval of Agenda***

Chair Vaughan asked for a motion to approve the agenda. David Elder moved to approve, 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 September 21, 2021, meeting. Kristi Wright moved to approve the minutes as presented, David Elder seconded, and the motion passed unanimously.

***Action Items***

*Consideration of a Site Plan submitted by Tom and Donna Haddon for removal of trees with a caliper of 16-inches or greater as required within the SED-80, Special Environmental District. The property is located at 3620 S. Old Nags Head Woods Road, Nags Head.*

Deputy Planning Director Kelly Wyatt presented a SED-80 Site Plan Review submitted by Tom and Donna Haddon for the purpose of requesting approval of site plan required for the removal of sixteen (16) trees that exceed a 16-inch caliper within the SED-80, Special Environmental District. The property is a vacant lot located 3620 S. Old Nags Head Woods Road. The existing Zoning Classification is SED-80, Special Environmental District. The property is predominantly in an X Flood Zone and partly in an AE-5.

Ms. Wyatt noted that the 2017 Comprehensive Plan Future Land Use Map designates this property as a Conservation and Significant Natural Features area. A more detailed description of these areas were included the Staff report.

The lot in question is approximately 2.78 acres in area, with approximately 100' of frontage along the Roanoke Sound. Due to the location of the lot adjacent to the Sound and its unique natural features, which include rolling topography and a diverse variety of large trees, the property is subject to numerous regulatory requirements, including CAMA requirements, Army Corps of Engineers wetland regulations, local zoning regulations, erosion and sedimentation control regulations and Dare County Health Department requirements pertaining to the location and operation of the septic system.

Ms. Wyatt stated that the SED-80 zoning district provides for development requirements in addition to the standard development requirements, which the proposed site plan meets. Additionally, the District provides for additional standards in Section 8.4.3.4., Special Development Standards, including design standards contained in Section 8.4.3.4.2. The proposed site plan meets all site design standards, with the exception of the following:

***8.4.3.4.2.3. The removal of any tree with a caliper sixteen (16) inches or greater is prohibited, whether or not they fall within any building site, septic area, driveway, road or utility easement, except as provided in subsection 8.4.3.4.3.1.3 of this section.***

Ms. Wyatt explained that this is the section that states that the Board of Commissioners may review and approve the removal of any tree with a caliper of sixteen inches or greater as long as the applicant provides an "alternative design scheme which provides equal or better performance standards regarding the intent of this UDO and to protect the natural features of the SED-80 district protected under this section."

Ms. Wyatt noted that the Haddons have met with Staff, both on-site and in the office, several times and have made efforts to locate the home and any associated accessory structures in such a way to preserve the maximum of trees possible. There have been several iterations of the site plan based on Staff's comments and Staff feels that the applicants have made the best effort to situate this in such a way to preserve as many trees as possible.

Ms. Wyatt stated that the subject site is heavily wooded. While the applicant is proposing to remove these sixteen (16) trees, Staff is of the opinion that the siting of the principal structure is such that numerous other trees of similar size are being retained and preserved. Staff would submit that the proposed building site of the principal structure is the most suitable given the minimization for alterations to the site's various natural conditions and that there is generally no un-forested land on site that would be viable for development.

The proposed detached garage located on the east side of S. Old Nags Head Woods Road does have a significant improved parking area, however staff recognizes that parking is somewhat limited at the principal structure site due to the topography and the property owners desire to reduce the amount of required land disturbance necessary for the driveway and parking. Reorienting this improved parking area could possibly result in the retention of two (2) 16-inch caliper pines, however numerous other pines, oaks, and a large gum tree are being retained and preserved.

Based upon a review of the application and the inspection and analysis of the property, and the above, Staff recommends approval of the Site Plan as presented, allowing for the removal of the sixteen (16) subject trees. Ms. Wyatt stated that she, as well as the applicants Tom and Donna

Haddon and their engineer Brian Rubino were present and available to answer any questions for the Board.

Applicant Tom Haddon addressed the Board. He and his wife currently reside in Nags Head. They worked closely with Town Staff and Mr. Rubino to develop the site plan and made changes along the way. Mr. Haddon gave some examples of this and discussed the difficulties in situating the parking for the home. Mr. Haddon noted that they had initially proposed a double car garage but scaled it back to a one car garage to preserve some trees.

Brian Rubino with Quible, the applicant's engineer, was next to speak. Mr. Rubino noted it was a "tricky" site with a steep ravine and then a plateau. They sited the house in the middle of the biggest, flattest area. Further back on the lot is the sound and the CAMA setbacks associated with that. Mr. Rubino noted that there is an existing driveway coming into the house. The majority of the trees they are taking down are pines; many are within the house footprint and others because they pose safety concerns.

Chair Vaughan discussed with Mr. Rubino the possibility of re-orienting the garage as Staff had recommended. Mr. Rubino stated that they would have still ended up having to remove some trees.

Mr. Elder noted that it seemed like they (the applicants) had done a good job in putting it together as it could best be. Mr. Gwinn agreed stating that he "was good with it."

Chair Vaughan stated that considering the challenges it seemed like they had worked hard on several versions to come up with the proposed plan.

Based on their discussion David Elder made a motion to recommend approval of the site plan as submitted. Meade Gwinn seconded the motion and it carried by unanimous vote.

*Consideration of a Text Amendment submitted by Jay Overton, PE, PLS of Albemarle & Associates to amend Section 8.5.4 as it pertains to alternative design standards within the Soundside Residential Overlay District.*

Ms. Wyatt presented a text amendment request to the Unified Development Ordinance submitted by Mr. Jay Overton, PE, PLS of Albemarle & Associates which, if adopted, would add alternative site design standards for properties located within the Soundside Residential Dwelling Overlay District that contain an existing on-site elevation differential of ten feet or greater.

Mr. Overton came before the Planning Board at their August 17th meeting to discuss the intent of the Overlay District and receive guidance on this forthcoming text amendment which would allow flexibility in the grading options available for properties that have existing elevation fluctuations. Following Mr. Overton's presentation, several Planning Board members expressed concern with the revisions, questioning if it was their role to consider lessening or varying the site design requirements within this unique overlay district, to accommodate a property owner's desired aesthetic. Planning Board member Gary Ferguson noted that he would like to receive input from the Town Engineer before considering further.

Ms. Wyatt noted that Town staff, including Town Engineer David Ryan, met with Mr. Overton on two separate occasions since the August 17th meeting. During these meetings Mr. Ryan acknowledged the difficulty in prohibiting land disturbance to only within vehicular accessways but did feel that with careful consideration being given to re-orienting the structure, the pool and pool surrounds on the

site, that the use of hardened structures, such as retaining walls, would likely not be entirely eliminated but could be minimized.

During the most recent meeting with staff, it was noted that Mr. Overton may want to consider an approach which would allow for land disturbance beyond the existing prescribed 10-foot perimeter but would also set forth a percentage area of the parcel to be preserved and maintained in its natural state. For instance, while land disturbance may be focused on the front and mid-point of the parcel, the rear would be preserved in its natural state. Mr. Overton has since explored several variations of this scenario on his client's lot and has submitted a text amendment request which he believes helps his client achieve his desired home and homesite as well as meets the overall intent of the district.

Ms. Wyatt explained that the proposed text amendment would set forth an alternative site design standard for properties containing an existing on-site elevation ten ft differential or greater. This amendment would allow land disturbing activities anywhere on up to 70% of the area of the subject property and 30% preservation.

In addition, the proposed amendment would exempt the subject property from various requirements of the Stormwater, Fill and Runoff Management requirements including compliance with the five-foot no fill setback and the maximum allowable depth or elevation of fill on properties west of NC 12 and SR 1243.

Ms. Wyatt noted that the applicant is looking at a multi-lot development where they would join elevations with their neighbor. In that case the five-foot no fill setback may not be as necessary in this scenario.

Lastly, the proposed amendment would exempt the subject property from compliance with the regulations limiting the use of bulkheads to vehicular accessways, decorative landscaping and estuarine bulkheads as found in Section 8.5.4.5.2. Ms. Wyatt also noted that in addition to amending section 8.5.4.5, the placement of fill in association with the land disturbing activities would be exempt from UDO Section: 11.5.2.10.

Staff is recommending denial of the proposed text amendment as presented and Ms. Wyatt stated that she as well as Mr. Overton and the property owner Mr. Martin were available to discuss and answer any questions for the Board.

Ms. Wyatt confirmed for Mr. Ferguson that there are probably two lots within the Soundside Overlay District that have a grade differential of ten feet or more, but she was not certain.

Ms. Wyatt confirmed for Mr. Gwinn that the adjacent lot is currently vacant, and the original intent was to develop them together. Ms. Wyatt noted that whatever the Board decides today will affect the other lot as well.

Mr. Jay Overton, engineer with Albemarle & Associates addressed the Board. They are proposing a text amendment that would be for the entire Soundside Overlay District but more specifically if approved would provide alternative design criteria for grading for two currently undeveloped lots that are on the extreme Southeastern end of Soundside Road. There is a third lot which is already developed that also has this 10 ft. differential.

Mr. Overton thanked the Board for their previous input and clarified that in developing a site plan with the existing topography, the parameters that were set forth did not get them to the best proposal that would meet the intent of the Overlay District and the Land Use Plan. Mr. Overton stated that the

lots are very unique with large elevation ranges that vary greatly side to side rather than front to back. Mr. Overton found that in order to grade they were going to end up with a lot of hard structures on the lot which they ordinance would allow for, but they felt there was a better way of achieving their goal.

Mr. Overton noted that he was surprised that Staff was recommending denial as he had met several times with Staff and he thought they were closer to reaching a compromise. Those meetings included the Town Engineer who acknowledged there were challenges the way the text (ordinance) was written. It was Mr. Ryan who suggested basing land disturbance on the entire lot rather than using setbacks and also recommended the 10 ft. differential.

Mr. Overton stated that they researched the existing development that is there on and around the Overlay District and presented some aerial diagrams for the Board. The diagrams show the delineation between the District and the R-2 District which surrounds it. The diagram also denotes the existing lot coverage and the amount of lot disturbance that would be allowed (Mr. Overton found the average lot disturbance to be 69%). Mr. Overton pointed out that the R-2 District allows 100% lot disturbance. Mr. Overton reminded the Board that they are not asking for an allowable lot disturbance of 70% for every lot, just those that have a grade differential of 10 feet or greater. This would help facilitate less severe slopes, drainage and less hardened structures due to this elevation difference.

Mr. Overton noted that when the original ordinance was adopted 2004/2005 there were other things that didn't exist then; for instance, the five ft. no fill setback did not exist and there was no limitation of fill. At that time, re-grading a lot was not considered fill as it is today.

There are many purposes for the Overlay District such as historical preservation and maintaining natural topography and vegetation; Mr. Overton stated that what they are proposing would meet this intent and purpose of the original ordinance.

Mr. Gwinn inquired as to the downside of the recommendation. Mr. Overton explained that if the proposal is not approved, they would need to construct numerous hardened structures (bulkheads) because of the elevations of that lot. Mr. Overton stated these wouldn't preserve informal landscaping or the dune and would not preserve the topography. If approved they would be able to, if not eliminate, at least greatly minimize those structures, and have a more natural look. Mr. Overton noted that he would not be promoting the request if he thought there was a downside.

Ms. Harrison questioned how many homes on the lots in this District are currently non-conforming. Ms. Wyatt stated she was unsure but noted that most were constructed prior to the enactment of the ordinance and explained that if any homes were to be demolished and redeveloped, they would need to meet the current standards. Mr. Overton confirmed that a third of the lots are over on lot coverage

Mr. Ferguson questioned if there was a way to limit the approval/minimize the impact so it would only apply to the two lots. Mr. Overton agreed with Mr. Ferguson and stated that's why they came up with a lot-elevation differential of 10 feet or greater.

Mr. Overton confirmed for Ms. Harrison that it doesn't have to be a particular house design, but they don't want to design a house that would look better on the side of a mountain.

Mr. Overton confirmed for Mr. Gwinn that the "soil" on the lot is sand; they would be building on a sand dune.

Mr. Overton confirmed for Mr. Gwinn that he is trying to get the two lots closer to the intent of what the ordinance called for in 2005. If they build the way it is today, he would end up with way more hardened structures.

Mr. Overton confirmed for Ms. Lambert that there are currently 12 undeveloped lots in the district. Ms. Lambert asked if the sand could shift over time on the other vacant lots. Mr. Overton explained that the prevailing shift of sand is from the Northwest to the Southeast; once a lot is developed there is less potential for sand shifting.

Ms. Wyatt confirmed for Ms. Lambert that Staff's recommendation for denial was based on the 2017 Comprehensive Land Use Plan and the emphasis on maintaining existing topography.

Ms. Wyatt stated that the Town Engineer, David Ryan had been unable to attend today's meeting but had run some calculations, similar to what Mr. Overton described, and come up with a lot disturbance area of 60-62% vs. Mr. Overton's 69-70%. Ms. Wyatt also noted that there may be a better mechanism to approve a request of this nature, through a Special Exception or Special Use Permit process. This process does not yet exist within the Code so staff would need to draft proposed language for consideration. Staff does agree that some concession may be necessary on lots with extreme topography.

Ms. Wyatt confirmed for Ms. Lambert that she was unaware of any variances that had been requested for any lots in the Overlay District.

Mr. Ferguson noted that it seemed the issue boiled down to bulk heading vs. re-grading (cutting into the dune) noting that they could do the bulkheads but aesthetically it wouldn't look good. Mr. Ferguson also pointed out that the proposed amendment didn't put a limit on the number of bulkheads allowed.

Ms. Wyatt noted that this (text amendment process) might not be the best avenue for what the applicants are seeking.

Mr. Ferguson questioned whether the cul-de-sac was an easement or whether it was a true public right-of-way as he thought that Town rules state that you can't build a house on a lot unless it fronts on a public right-of-way.

Mr. Elder stated that he believed this to be the wrong tool to make this adjustment and stated that the applicant should look at other options. Mr. Elder then moved to recommend denial of the text amendment as presented. Chair Vaughan seconded the motion and it passed by unanimous vote.

The Board agreed that they would like to discuss this topic and other options further at a future meeting and have the Town Engineer present.

#### Consideration of Various Text Amendments to the Town's Residential Stormwater Regulations

Senior Environmental Planner Kate Jones explained that earlier this year Planning Staff drafted and presented updates to the Town of Nags Head Low Impact Development and Stormwater Reference Manual for consideration by the Planning Board and Board of Commissioners.

At their May 5, 2021, meeting, the Board of Commissioners unanimously passed a motion to continue consideration of these updates to the first meeting in July, in order to review potential changes with

several Nags Head homebuilders. The Board also instructed staff at a later meeting to review the ordinance with the Outer Banks Homebuilders Association. The Board had been receiving feedback from homeowners and contractors related to the complexity and cost associated with complying with the Stormwater ordinance. The Board's goal is to simplify the process/standards, in order to accomplish the town's goals without overburdening property owners.

Staff participated in several meetings with the homebuilders. Specific opportunities to simplify the ordinance were discussed, and the Town of Southern Shores ordinance was suggested as an example.

On September 22<sup>nd</sup>, Town staff held a conference call with the Town of Southern Shores to discuss their Stormwater regulations in further detail and this information was summarized as part of the Staff memorandum.

At their October 6 meeting the Board of Commissioners reiterated their desire for the residential Stormwater ordinance to be simple and easier to understand and implement. It was noted that the process needs to be based on a standard that can be consistently applied.

On October 7<sup>th</sup>, Town staff met with representatives of the Outer Banks Homebuilders Association and reviewed two ordinance options: a volume-based and non-volume-based approach. Staff received feedback in support of a nonvolume-based approach.

Ms. Jones explained that Staff has now drafted new ordinance language based on these discussions. The proposed ordinance attempts to simplify the process by applying practical approaches to managing stormwater utilizing existing site features. The language that has been drafted allows the Planning Board to recommend either a volume or non-volume approach. Additionally, there are several other suggested changes to fill requirements, which were also discussed at the meetings and are part of the Stormwater ordinance. Several modifications to the ordinance were necessary for consistency and clarity outside of Section 11.5 (standards for residential construction). Therefore, staff reviewed the stormwater ordinance as a whole.

Ms. Jones noted that in Attachment B is a list of related ordinance definitions from Appendix A of the Unified Development Ordinance. It is important to also note that the definitions of BMP and Stormwater Control Measure in Appendix A of the UDO are linked to North Carolina statutory and administrative code requirements. Therefore, if a non-volume-based approach is recommended, staff recommends using the term "stormwater improvement" in lieu of these terms. This new term is defined on page 1 of Attachment B, which can later be added to Appendix A within the UDO as necessary.

Ms. Jones presented some slides to facilitate the discussion and better illustrate a move from a volume-based approach to a more common-sense approach using some real-life examples. Ms. Jones then reviewed the proposed ordinance changes in further detail.

Chair Vaughan asked Ms. Jones to speak further about the implementation of the proposed changes. Ms. Jones explained that currently there is an expectation of the information that is required up front, including significant lot elevation information. A non-volume-based approach would reduce the time it takes with the applicant because of the added flexibility. Ms. Jones stated it may require a few more on-site visits which would be a good thing.

Town Manager Andy Garman discussed the current volume-based approach in more detail including some of the downsides and difficulties in implementation. What they are now talking about is using

simple measures to disrupt or slow down the water flow, noting that someone submitting a site plan would need to show where the water is discharging. Appendix A would have simple cut sheets to use in designing these measures not unlike the design standards for driveways. Mr. Garman stated that these standards could be used objectively to make determinations on discharge.

Ms. Wright stated that they need to look at lower lots that have no standing water to ensure that any measures that are constructed don't actually contribute to standing water.

Ms. Jones agreed explaining that this is where having the correct lot elevations and making an on-site visit becomes really important.

Ms. Jones confirmed for Chair Vaughan that the Homebuilders Association were in favor of a non-volume-based approach because of the flexibility.

Ms. Jones discussed the importance of ensuring that any implemented measures keep water away from the septic field.

Mr. Elder discussed the use of vegetation and how it can be a good measure until it is changed or removed (such as a tree being cut down). Ms. Jones noted that removal of vegetation could result in a violation of the Stormwater plan and enforceable through a Notice of Violation.

Mr. Ferguson inquired if there were any exemptions for single-family development on lots of certain sizes for example small development footprints on large lots where an exemption could be made. Mr. Garman and Ms. Jones state that there was language in there at one point and agreed that they may want to add it back in.

Mr. Ferguson agreed with the Commissioners that it was important to keep the process simple and maybe make the application simpler as well.

Ms. Harrison questioned if the Town would be backsliding on any standards by getting away from volume-based approach. Ms. Jones noted that while the current volume-based approach is functioning, she worries about the condition of the installed measures in the future; they look good when they are first built but will they be functioning as they were intended three years from now and can you hold them to that 1.5" standard?

Ms. Jones stated this new approach gives them the ability to tie it in with the overall development of the site.

Chair Vaughan noted that if it's more user-friendly it will have more buy-in and people will make more of an effort to maintain them.

Mr. Gwinn noted that when the ditches are cleaned out and maintained regularly the water flows, but maintenance is an issue, so when thinking of different measures it's necessary to keep in mind what will be easier to maintain with minimal expense and effort.

In general, the Board liked the added flexibility and seemed in favor of the non-volume-based approach but will wait to take a formal vote once they've had a chance to review the cut sheets. The Board also discussed the options related to fill in Section 11.5.2.8 and leaned towards the approach that offered some flexibility.

The Board took a brief recess to allow Chair Vaughan to depart and Ms. Wright to take over as Chair. The time was 11:25 AM

### ***Report on Board of Commissioners Actions – October 6, 2021***

Ms. Wyatt gave an update on the Board of Commissioner Actions; of note: the Consent Agenda had three Planning items including a Request for Public Hearing to add "Beach Recreation Equipment Rentals & Sales" as permitted use; a Request for Public Hearing to allow temporary accommodations for outdoor dining and a Resolution in support of the adopted CAMA Land Use Plan. Senior Environmental Planner Kate Jones presented an update on the Stormwater Ordinance; this will be on their November Consent Agenda and a Public Hearing will take place in December. Staff will be bringing the ordinance back to the Planning Board so they can review the cut sheets and take a formal vote. The Board passed a motion authorizing execution of the contract for the Estuarine Shoreline Plan in the amount of \$139,500 as presented. The Board passed a motion to adopt the resolution accepting maintenance of the Thomas B. Alexander Subdivision Plat Soundside Road waterline extension as presented. The Board passed a motion to reappoint Megan Lambert to another term when her current term expires in November 2021. Town Manager Garman summarized results from the working group that convened a few weeks ago to discuss a joint Harvey site/Soundside Event Site that would create a wind/water/recreational area for a number of non-motorized activities.

### ***Town Updates***

None

### ***Discussion Items***

#### *Electrical Vehicle Action Plan*

Principal Planner Holly White provided a brief update on the draft Action Plan submitted by students. Ms. White stated that the students will be present at next month's Planning Board meeting to discuss the project and receive feedback from the Board or alternatively they could follow up with a small working group of Planning Board members at a separate meeting.

The Board agreed that they would rather do it as a whole while they are already gathered and requested to get something in writing ahead of time to anticipate questions.

#### *September 28, 2021, Director's Report*

As most of the items were also part of the BOC actions, Ms. Wyatt did not give a formal presentation.

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

Mr. Elder discussed the importance of preserving vegetation and trees in particular and what can be done to further protect trees from being cut down including looking at possible consequences if a tree is cut down without a permit.

Mr. Ferguson discussed the adoption of the Local Elevation Standard and inquired if the ordinance was changed so as not to penalize the height standard. Ms. Wyatt confirmed the ordinance had been amended so that height would be measured from the RFPE/LES, not the BFE.

**Planning Board Chairman's Agenda**

None

**Adjournment**

A motion to adjourn was made by David Elder. The time was 11:46 AM.

Respectfully submitted,  
Lily Campos Nieberding