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**Town of Nags Head  
Planning Board  
November 19, 2019**

The Planning Board of the Town of Nags Head met in regular session on Tuesday, November 19, 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, Mike Reilly, Megan Lambert, Meade Gwinn

***Members Absent***

David Elder, Mark Ballog

***Others Present***

Michael Zehner, Kelly Wyatt, Holly White and Lily Nieberding

***Approval of Agenda***

Chair Vaughan suggested that the agenda be amended to move the discussion item with Eddie Goodrich to follow the first action item. Meade Gwinn moved to approve the agenda as amended. Kristi Wright seconded the motion and it passed by unanimous vote.

***Public Comment/Audience Response***

*None*

***Approval of Minutes***

There being no changes to the minutes, Kristi Wright moved that the minutes from the October 15th meeting be approved as presented. Mike Reilly seconded the motion and it passed by unanimous vote.

***Action Items***

*Consideration of a Sketch Plan for a Major Site Plan for the Christmas Mouse, 2401 S. Croatan Highway; the application involves the redevelopment of the site, including the construction of a 8,682 sq. ft. building for retail use.*

Deputy Planning Director Kelly Wyatt presented a Sketch Plan for a Major Site Plan Review submitted by House Engineering, P.C. on behalf of Rebecca Nags Head, LLC for the purpose of reconstructing a retail structure known as the Christmas Mouse, which was lost to a fire earlier this year. Parking and site conditions, with minor changes, are intended to remain as currently exist. The existing damaged structure has been demolished and the owners are now looking to rebuild, as such they must go through the sketch plan process prior to going to tech review in December.

The property is located at 2401 S. Croatan Highway, Nags Head. The existing Land Use is retail and cell tower facility. The property is zoned C-2, General Commercial Zoning District. The property is located within an AE Flood Zone; the four-corners of the proposed structure are shown at elevation 8.5 ft. MSL and the applicant intends to flood-proof the commercial structure.

Ms. Wyatt noted that the applicant provided revised architectural sheets following staff comments. This information was received on the afternoon of Friday, November 15<sup>th</sup> so Staff did not have an opportunity to completely review the revised plans. Ms. Wyatt stated she would discuss these revisions as part of this review.

Ms. Wyatt then began to review the applicable Zoning Regulations:

Total allowable lot coverage for this site is 55%, the proposed lot coverage is 54.52% and is therefore compliant.

Ms. Wyatt presented the originally submitted site plan along with the revised one for the Board to review. Ms. Wyatt noted that the maximum allowable building height within the Town is 35 feet but may be increased to 42 feet with the use of an 8:12 roof pitch or greater. The original proposed plan had the building at 27.5 feet but based on the revised information provided the applicant has proposed a structure with an overall height of 31.5 feet and is therefore compliant.

The UDO states that Commercial Design Standards shall apply to all building construction or remodeling projects requiring a conditional use permit or site plan review, therefore, reconstruction of the fire damaged commercial structure must adhere to these Commercial Design Standards.

Ms. Wyatt explained that prior to the revisions the architectural design renderings provided by the applicant did not meet the stated design regulations in that 150 architectural design points had not been obtained. Additionally, Staff had determined that the submitted plans did not comply with the alternative option of several standards and guidelines provided in Division II., Building Design standards.

After discussing this further with the applicant, the applicant submitted revised architectural elevations to demonstrate compliance by achieving the 150 architectural design points; some of these designs include a porch, cedar shake siding, dormers, gable brackets and column trim. While they are close to the 150 points required, they are unable to achieve those points with the windows they are currently proposing; they also do not have the necessary roof variations. Ms. Wyatt discussed with the Board a few options that the applicant has to achieve the necessary points.

The proposed structure contains 8,682 square feet of gross floor area, requiring 35 parking spaces. Four employees are proposed, necessitating four additional parking spaces. A total of 39 parking spaces are required; 47 spaces are provided and therefore parking is compliant. Ms. Wyatt noted the parking lot layout and design is unchanged except for the conversion of 11 asphalt parking spaces into Turfstone™. This conversion not only results in a decrease in impervious area but allows for Stormwater infiltration.

Christmas Mouse was originally approved by the Board of Commissioners on March 5, 1987. The code that was in effect at that time did not require buffering or landscaping on this site. The UDO states that the design standards contained within this Section shall apply to all building construction or remodeling projects requiring a conditional use permit or site plan review as such the applicant is required to provide a Buffer Yard C when there is parking adjacent to the right of way. In this instance, due to the orientation of the driveway and the need to preserve the sight triangle, the

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applicant will need to provide a minimal number of shrubs and ornamental grasses/herbaceous plants in those areas where the existing parking lot abuts U.S. Highway 158.

In addition, the UDO outlines the requirements for providing interior parking lot landscaping. The parking lot, aside from the conversation of asphalt parking into Turfstone™ parking, is to remain unchanged. Staff would note that this is an existing site nonconformity; the proposed scope of work would not increase the degree of nonconformity and therefore it can remain as is. The UDO also outlines the Vegetation Preservation/Planting Requirements. Again, staff would note that this is an existing site nonconformity that is not being increased and therefore can remain as is.

No additional signage or lighting is proposed at this time; existing parking lot lighting remains unchanged. Should additional lighting be desired in the future the required photometrics and fixture information will be required for review and approval prior to permit issuance.

As far as wastewater, the applicant has received approval from the Dare County Health Department.

Stormwater management measures and traffic flow are unchanged from previous approvals. At this time the applicants have not proposed any additional impervious coverages or deviations to the existing traffic pattern for this site.

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 Director has indicated that the current dumpster location may be acceptable if turned to accommodate a front load dumpster loading. This will be discussed in more detail at the upcoming Technical Review meeting.

Overall Staff finds that the proposal is consistent with the applicable use and development standards, as well as relevant land use policies, the architectural piece being the only outstanding item. Ms. Wyatt stated that Bryan Seawell with House Engineering was present and could discuss this further.

Ms. Wyatt confirmed for Chair Vaughan and the Board that the Residential Design Manual states that the windows must single or double hung not multi-paned as the applicant is proposing.

Ms. Wyatt confirmed for Ms. Lambert that the applicants are currently 20 points under the necessary number.

Applicant Bryan Seawell with House Engineering addressed the Board. Mr. Seawell thanked Staff for guiding them through this new review process.

Mr. Seawell discussed the design of the building noting that it's a commercial property; they sell Christmas trees and want them visible from the road. They are also looking at safety issues and wanted something energy efficient. Mr. Seawell stated that they have two very viable design options which he will be discussing with the property owners; either changing the windows or the roof pitch. He does not believe it is a deal breaker either way.

Mr. Seawell, Staff and the Board discussed options for roof variations, including possibly adding shed dorms, and noted that they will have the necessary changes ready for Tech Review in early December.

The Board were in agreement that they liked the overall proposal and that the applicant had made some positive changes including the addition of the Turfstone™.

### ***Discussion Items***

#### *Request from Eddie Goodrich to discuss residential cluster development.*

Planning Director Michael Zehner explained that Mr. Eddie Goodrich recently meet with Staff to discuss the concept of residential cluster development. While some form of cluster housing was formerly allowed in the SED-80 zoning district, and a type of cluster housing is allowed for shoreline endangered housing, the concept discussed with Mr. Goodrich is different than these other tools.

Mr. Goodrich requested to be included on the Board's agenda and shared some information for the Board's review and consideration.

Generally, the concept raised by Mr. Goodrich would involve an alternative option to conventional subdivision development, where dwellings/lots could be clustered based on a reduction of minimum lot size and other dimensional reductions, in exchange for a minimum percentage of open space (commonly 40% or greater) that is permanently protected and would have otherwise been incorporated as part of lots. In some cases, density bonuses are allowed to incentivize this type of development over conventional development; in other applications, cluster development becomes the requirement for subdivisions of a certain size/area or yielding a certain number of lots. The Board should consider that this concept is not significantly different than the concept on which the Village at Nags Head is based, although perhaps on a smaller scale.

Staff believes this concept has merit but recognizes that the opportunity for application may be limited given the amount of available and undeveloped land. Conversely, the lack of remaining undeveloped land may be justification for considering such a tool. There are other related applications based on this concept, some which allow clustering on a smaller scale and associated with the redevelopment of properties; this type of application may also be worth consideration.

Eddie Goodrich, Nags Head resident, addressed the Board. He is in the real estate business as well as land development. He developed portions of the Village at Nags Head, Seawatch, Oceanwatch, Seven Sisters, the hospital property as well as different projects in Kill Devil Hills

Mr. Goodrich stated that historically, most of Nags Head was developed before there was an official Town. Whalebone Beaches for example, with its 40-foot wide lots, was subdivided prior to there being a Town of Nags Head and a Planning Board. There are 40-foot wide lots everywhere.

Mr. Goodrich noted that the advantages (to cluster housing) are that there is no increase in density, no increase in height; it's just a different way to group the same number of people in the same area. Mr. Goodrich explained that if you group the houses in one part and leave 30 or 40 percent open space there is less infrastructure for the town to maintain, better Stormwater management, a community septic system which is more practical and a home owner's association for management of the open space. Mr. Goodrich likened it to the Cottage Court concept that was approved by the Town but with more open space.

Mr. Goodrich stated that if the Board thinks it's a good idea, he will bring a formal proposal for a text amendment.

Mr. Gwinn expressed concern about ensuring that the open space would remain in perpetuity and noted there would have to be iron clad guarantees that the open space would always remain open space.

Mr. Goodrich confirmed that this would be taken care of by deed restrictions which are more powerful than a covenant. A deed restriction in a recorded plat that references it would ensure that the open space will remain.

Mr. Goodrich confirmed for Ms. Wright that he does not have a particular location in mind, he just believes it to be a good idea for the future.

Ms. Lambert asked if there could be a deed restriction to ensure these were for year-round housing rather than vacation rentals.

Mr. Goodrich noted that the only way to have affordable housing in Dare County is either to reduce the cost of the land or to reduce height restrictions or allow for central sewage. Property values drive affordable housing; high value property does not call for affordable housing.

Mr. Zehner agreed that the variables that Mr. Goodrich discussed would affect affordability however he has seen ordinances that allowed for density bonuses if the development offered affordable units as part of the development.

Mr. Zehner suggested that Mr. Goodrich may want to bring a couple of concept drawings to give the Board a better idea of what he is proposing.

Mr. Goodrich confirmed for Chair Vaughan that with the lack of vacant lots in the Outer Banks this would be mostly geared towards redevelopment.

Mr. Zehner confirmed for Chair Vaughan that when it comes to "open space" it could be truly open space or there can be community amenities such as pools or playgrounds. Mr. Zehner has seen examples of both, depending on the size of the development.

Mr. Zehner discussed with Ms. Lambert and the Board the difference between this concept and the Cottage Court that was recently permitted between the highways.

Mr. Goodrich confirmed for Chair Vaughan that this would require community septic and explained that the Homeowners Association would be responsible for sewage, stormwater and open space maintenance.

Ms. Vaughan expressed concern that there might be a brand new HOA responsible for some pretty important aspects of this type of development.

Mr. Zehner agreed however he noted that they have to start thinking "out of the box" and looking at different options and ways of managing things, especially if they are concerned about the current state of development.

After some further discussion the Board agreed that the idea has merit and that they would be willing to consider and discuss it further. Chair Vaughan stated that it would be helpful for them to get a feel of the currently available open spaces where cluster housing could be located as well as some possible redevelopment spots.

**Action Items (continued)**

From the October 15, 2019 meeting, continued consideration of text amendments to the Unified Development Ordinance pertaining to off-street parking requirements associated with alternative and reduced parking, including bicycle parking.

Mr. Zehner explained that at their October 15, 2019 meeting, the Planning Board discussed possible amendments to Off-street Parking Ordinance regarding bicycle parking and Conditional Use Permits. This discussion was based on direction that Staff received from the Board of Commissioners' Retreat on September 12, 2019.

The Board and Staff discussed perspectives with regard to the reduction of required parking. The discussion focused on the reduction of parking based on the provision of bicycle parking, as well as the reduction of parking by Conditional Use Permit; also discussed was whether, in certain circumstances, bicycle parking should be a requirement. The Commissioners directed Staff to work with the Planning Board to consider amendments to the Unified Development Ordinance ("UDO") that 1) made the reduction of parking based on the provision of bicycle parking a Conditional Use Permit and took into consideration whether sites had access to bike-friendly routes, 2) standardized findings for all parking-related Conditional Use Permits, and 3) established minimum standards for required bicycle parking.

To address the above, Mr. Zehner provided the Planning Board with a copy of Article 10, Part II., Off-Street Parking and Loading Requirements, with markups consistent with the direction of the Board of Commissioners and the follow-up discussion held with the Planning Board.

The draft addresses the following:

1. A reduction of parking based on bicycle parking has been allowed without a conditional use permit, but only where the "the subject property has frontage along a two-lane roadway, or a sidewalk or similar path crosses the property or is located along the frontage of the property." A reduction for bike parking is not otherwise allowed with a conditional use permit. It is an option and it would be reasonable to allow this reduction, with limitations as drafted, only with a conditional use permit.
2. Only two parking reduction methods have been allowed by-right (bike parking reduction and shared parking where the total required parking is provided across two sites); the remaining four reduction (or modification) methods have been clarified and findings standardized.

While a markup has not been provided, Staff would suggest that a minimum requirement for bicycle parking be added under Section 10.92.15, Pedestrian Access/Facilities, of the Commercial Design Standards included in the UDO (and the Section be retitled accordingly) to require accommodations for the "parking of at least five (5) bicycles for commercial sites with ten (10) or more vehicle parking spaces and located on the east side of US 158 with frontage on a two-lane roadway." Additionally, it will be necessary to update a reference to Section 10.15.6. in Section 5.4.4. (to Section 10.15.2.6.), update the title of Section 10.15 as included in Section 7.35.2., and update the reference to Section 10.15.5 in Section 8.6.6.7.4. (to Section 10.15.1.2.).

Staff and the Board discuss the proposed amendments, with a focus on whether parking reductions associated with bike parking should be allowed by-right versus with a Conditional Use Permit. Mr. Zehner explained for Mr. Reilly and the Board the difference between By-Right and Conditional Use.

Mr. Reilly believes that the conditional use process would be the safer way to go.

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The Board agreed on the mandatory bike parking requirement and decided that a parking reduction for bike parking should be allowed by-right along the Beach Road, but only be a Conditional Use Permit elsewhere, and only then with frontage along a two-lane roadway, or a sidewalk or similar path crosses the property or is located along the frontage of the property. Chair Vaughan moved to recommend approval of the amendment as noted. Megan Lambert seconded, and the motion passed by unanimous vote.

### ***Report of Board of Commissioners Actions***

Planning Director Michael Zehner provided a brief update from the November 6<sup>th</sup> BOC meeting:

- The Board removed the Large Residential Dwelling public hearing from the agenda and the Board indicated they will not be taking any further action on that item.
- The Board passed a motion to approve the Conditional Use Site Plan for substantial site improvements to Kitty Hawk Sports with the required three findings of fact and subject to conditions.
- The Board adopted the resolution accepting Dove Street into the Town street system as presented.
- Town Workforce Housing study/plan - Board members confirmed the housing was for seasonal employees; Staff reported that Phase 1 completion is expected beginning of January 2020 and Phase 2 completion is expected beginning of March 2020.
- At the December 4th Board meeting the Board will consider appointments/reappointments for three Planning Board members whose terms expire December 2019.
- The Commissioners discussed Cottage Courts and some concerns/items to think about and be aware of when approving future developments.
- The Short-Term Rental Registration process was discussed, and it was confirmed that the deadline for short-term rentals to sign up/register with the Town is December 31, 2019. To date, Staff has registered 18 Short-term rentals. The registration is good for one calendar year.

### ***Town Updates***

None

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

Ms. Lambert discussed ADUs and Deed of restrictions inquiring if it would be possible to re-introduce that item with deed of restrictions. Mr. Zehner confirmed that both property owners and/or the Planning Board can initiate text amendments

Staff updated Mr. Gwinn on information related to electric vehicle charging stations.

***Planning Board Chair's Agenda***

None

***Adjournment***

There being no further business to discuss, a motion to adjourn was made by Megan Lambert. The time was 10:53 AM.

Respectfully submitted,

Lily Campos Nieberding