



STAFF REPORT

Town of Nags Head

Planning & Development Department

To: Board of Commissioners
From: Kelly Wyatt, Deputy Planning Director
Date: June 25, 2019
Subject: Millers Waterfront Restaurant, CUP/Site Plan Amendment

GENERAL INFORMATION

Applicant: Brian Rubino of Quible & Associates, P.C. on behalf of Millers Waterfront Restaurant.

Application Request: Conditional Use/Site Plan Amendment.

Purpose: Addition to the existing pier, consisting of a platform, finger piers, and associated mooring pilings to accommodate four (4) transient boat slips.

Property Location: 6916 S. Croatan Highway, Nags Head.

Existing Land Use: Restaurant.

Zoning Classification of Property: C-2, General Commercial District; Commercial Outdoor Recreation Overlay District.

Zoning Classification of Surrounding Properties: Properties to the north and south of this site are zoned C-2, General Commercial, and are also located within the Commercial Outdoor Recreation Overlay District (Harvey Tract Sound Access and Kitty Hawk Water Sports). Properties east of this site and directly across US 158 are zoned C-2, General Commercial (Island Limousine and vacant). The property adjoins the Roanoke Sound to the west.

Flood Hazard Zone of Property: AE 10; the pier structure associated with this application is not subject to flood protection regulations.

Land Use Plan Map/Policies: The 2017 Comprehensive Plan Future Land Use Map classifies this property as Waterfront Commercial Recreation. It is also within the Waterfront Recreation Activity Node. Below is the description of this classification:

The Waterfront Commercial Recreational designation recognizes and capitalizes on the unique natural resources and viewsheds in this area. This designation is intended to accommodate high quality development with a focus on small, low scale hotel type development and regional point of community gatherings and events. Other appropriate uses include multi-family, commercial, retail, restaurant (walk-up/sit down), personal service establishments, indoor entertainment, indoor/outdoor recreation, water dependent uses, gallery/museum, institutional uses, and gymnasium/fitness studio. Planned, mixed use development with an emphasis on pedestrian connectivity is highly desirable. Development should be oriented not only to the road but the water as well. Additionally, access to the water and protection of viewsheds is important.

The Waterfront Recreational Commercial Recreational Activity Node is a focal point of activity and higher intensity development in the town. Areas in this designation are anticipated to have future concentration of uses that serve as destinations or hubs of activity for the town. This designation is intended for a higher intensity of commercial mixed use, hotel, and recreation, shopping, and dining. Compatibility among the mix of uses with the areas natural resources and scenic views should be maintained through development patterns that preserve open space, natural resources, and scenic viewsheds.

When determining if the proposal is consistent with the Land Use designation staff considered the following excerpts and policies as being relevant:

- Page 3-16, LU-7 reads, "Review regulations in the Ocean and Sound Waters Overlay District and the Commercial Outdoor Recreation Overlay District to ensure proper use of the ocean and sound waters, including islands that adjoin the town, to ensure the continued scenic, conservation and recreational value that these waters provide to the town, its residents, visitors and the surrounding area."

LU-7a: "Review regulations for commercial boating and personal watercraft to maintain compatibility with adjacent uses and the estuarine environment."

- Also, on page 3-16, LU-8 reads "Ensure proposals for future commercial uses in the sound are not detrimental to the marsh, sound bottom, and submerged aquatic vegetation. Compatible sound uses will not increase turbidity in the water and will maintain overall water quality. The town will not support upland excavations for the development of canals or uses that will destroy significant areas of wetlands or marsh."
- Page 3-45 "Just beyond the marshes, submerged aquatic vegetation, which thrives on the sound bottom, provides important habitat and spawning areas for fish, crabs, and other marine life."
- Page 3-47 "The goal of the town is to maintain and improve estuarine water quality and natural estuarine functions while providing water-based recreation opportunities that do not compromise water quality goals."
- Page 3-48 Natural Resources and Resiliency Policies NR-1, NR-2 and NR-4 speak to the protection of estuarine shorelines.

Staff finds this proposal to be consistent with land use policies, placing reliance on the findings of the issued CAMA Major Permit with respect to water depths of approximately 3'-5" at the pier, no observable SAV's, and no designation of primary nursery habitat in this area. Related, Staff finds that the proposal is consistent with policies supporting access to the water and water-based recreation opportunities.

SPECIFIC INFORMATION

Applicable Zoning Regulations:

- Use 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, as follows, with staff comments in italics:

- 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. Note that this CAMA Major Permit expires on December 31, 2019.*
 - 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: Lot coverage will be unaffected by this request.
 - Height: Structural height will be unaffected by this request.
 - Architecture Design Standards: No architectural design standards apply to this request.
 - Setbacks: The five (5) foot accessory structure setback is not affected by the linear extension of the existing pier.
 - Parking: Pursuant to Town Code Section 48-407(c)(14)(c) 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.
 - Buffering/Landscaping: There is no buffering or landscaping required as part of this request.
 - Lighting: 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 (photos attached). If a light audit is required, this will be conducted prior to the issuance of the Certificate of Occupancy.
 - Signage: 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).

Water and Sewage Disposal: No review or approval required by the Dare County Health Department for this request.

Stormwater Management and Traffic Circulation: The proposed scope of work does not necessitate additional stormwater management measures or traffic circulation considerations.

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

Public Works: The Public Works Department has reviewed and approved proposed plan.

CAMA: A CAMA Major Permit is required for this proposed use. CAMA Major Permit 109-16 has been issued and is attached for review. Please note that 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.

ANALYSIS

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 109-16, as well as relevant land use policies supporting access to the water and water-based recreation opportunities.

With regard to the affirmative findings of fact for conditional use permits, pursuant to Section 48-525, Staff is of the opinion that:

1. The applicant has met the requirements of the Town of Nags Head Zoning Ordinance, Subdivision Ordinance and other applicable ordinances.
2. The use will not materially endanger the public health and safety if located where proposed and developed according to the plan as submitted.
3. The use as proposed will not overburden the firefighting capabilities and the municipal water supply capacity of the Town.

STAFF RECOMMENDATION

Staff recommends approval of the Conditional Use/Site Plan Amendment application as presented, with a condition requiring compliance of the use and site with those materials and plans submitted as part of the application.

PLANNING BOARD RECOMMENDATION

At their May 21, 2019 meeting the Planning Board voted unanimously to recommend approval of the Conditional Use/Site Plan Amendment as presented.

Attachments: *Conditional Use/Site Plan Amendment Application, CAMA Major Permit 109-16, Construction drawings.*