

**Town of Nags Head
Planning Board
January 15, 2019**

The Planning Board of the Town of Nags Head met in regular session on Tuesday, January 15, 2019 in the Board Room at the Nags Head Municipal Complex.

Deputy Town Manager/Planning Director Andy Garman called the meeting to order at 9:05 a.m. as a quorum was present. Mr. Garman called for nominations for Chair for Calendar Year 2019.

Members Present

Kristi Wright, Megan Vaughan, Mark Ballog, Mike Reilly, Meade Gwinn, Megan Lambert, David Elder

Members Absent

None

Others Present

Andy Garman, Kelly Wyatt, Holly White, Lily Nieberding

Election of Chair and Vice Chair for Calendar Year 2019

Meade Gwinn moved to nominate Megan Vaughan to serve as Chairperson. Mike Reilly seconded the motion. There being no other nominations a vote was taken, and the motion passed by unanimous vote.

Mr. Garman turned the meeting over to newly appointed Chair Vaughan. Chair Vaughan asked for nominations for Vice-Chair.

Mike Reilly moved to nominate Kristi Wright as Vice Chair. Megan Lambert seconded the motion. There being no other nominations a vote was taken, and the motion passed by unanimous vote.

Approval of Agenda

There being no changes to the agenda, Mike Reilly moved that it be approved as submitted. Kristi Wright seconded the motion and it passed by unanimous vote

Public Comment/Audience Response

None

Approval of Minutes

There being no changes, David Elder moved that the minutes from the December meeting be approved as presented. Kristi Wright seconded the motion and it passed by unanimous vote.

Action Items

None

Establishment of Regular Meeting Dates for Calendar Year 2019

Chair Vaughan reviewed the proposed meeting dates with the Board. After some discussion David Elder moved to approve the Calendar as presented. Meade Gwinn seconded the motion and it passed by unanimous vote.

Report of Board of Commissioners Actions

Chair Vaughan reviewed recent Board Actions with Ms. Wyatt's assistance:

Public Hearing to consider a zoning ordinance text amendment submitted by Quible and Associates, P.C. on behalf of Miller's Waterfront Restaurant and Tale of the Whale Restaurant to allow a new use, docking facilities with transient boats slips, in the C-2, General Commercial Zoning District and in the Commercial-Outdoor Recreational Uses Overlay Zoning District. The Commissioners tabled the item to the Feb 6th, 2019 Board meeting and directed staff and the Town Attorney to render a definitive opinion at that time as to whether or not the proposal is consistent with the Town's Land Use Plan. Staff was also directed to address questions brought forward by the Board.

Consideration of a site plan amendment submitted by LKC Engineering, PLLC on behalf of Carolina Water Service Inc. of NC for numerous site improvements at the existing Village at Nags Head Waste Water Treatment Plant (WWTP). The Commissioners approved the Site Plan as presented.

Town Updates

None

Discussion Items

Discussion and presentation of FOCUS Nags Head Draft Unified Development Ordinance.

Principal Planner Holly White presented the FOCUS Nags Head Draft UDO.

Ms. White explained that a draft of the UDO was distributed to the Planning Board on December 20, 2018. According to the Town Manager, the Board of Commissioners will be discussing the draft UDO at its January retreat. In order to facilitate this meeting date, Staff have developed a schedule that will allow the Technical Committee and the Planning Board to provide any major comments to the Board in advance of its discussion. Ms. White noted that it is anticipated that the Board of Commissioners and the Planning Board will have a joint workshop in February 2019 to discuss the UDO.

Ms. White stated that the UDO (Unified Development Ordinance) represents a significant reorganization of the land use regulations within the Town Code.

The primary chapters that are included within this UDO are as follows:

Chapter 22 – Flood Damage Prevention

Chapter 28 – Soil Erosion and Sedimentation Control

Chapter 34 – Stormwater Management
Chapter 38 – Subdivisions
Chapter 48 – Zoning

The UDO is divided into 11 Articles and the main goals of the UDO were to:

- Reorganize and update the Town code into a user-friendly format
- Implement portions of the Comprehensive Plan with an emphasis on key themes (Appendix A)
- Provide consistency with NC State Statutes
- Address staff/board concerns as well as policy issues

Ms. White proceeded to summarize and lead a discussion of the draft UDO and major changes:

Article 1 contains the purpose and intent for the UDO along with a basis for the town's authority to adopt this type of document. Additionally, this article addresses conflicts with other regulations/laws, conformance with adopted plans, fees, and violations.

There were no major changes to this article as much of the language was carried from the existing code of ordinances.

Article 2 consolidates all the administrative and quasi-judicial authority into one article. Previously, these were contained in separate chapters. Portions of this article that address Planning Board and Board of Adjustment composition, terms, powers and duties etc. were carried forward from the existing code of ordinances. This article also addresses conflicts of interest.

Article 3 consolidates and clarifies the processes for all legislative and quasi-judicial procedures. The majority of the updates in this section are needed to address changes in state law. Previously, these were scattered throughout the code of ordinances in separate sections/chapters. This allows ease of use for both staff and public to find these requirements in one article.

Legislative procedures include UDO text and zoning map amendments. Quasi-judicial procedures include appeals, variances, conditional use permits, and subdivision waivers. Newly created tables help to consolidate and visualize all of these processes in a simple table.

This article also standardizes the notification requirements and the reviewing bodies for many of these procedures with the use of tables. For example, stormwater variances were considered by the Board of Commissioners. In the draft UDO, stormwater variances are suggested to be heard by the Board of Adjustment in order to standardize notices and procedures.

Article 4 establishes a clear and comprehensive process for development within the town. Previously these processes were scattered throughout the code of ordinances. The draft UDO makes it clearer what is reviewed by Staff, Planning Board, and the Board of Commissioners. The use of tables and flowcharts also helps to orient both staff and the public to the review process needed for specific development proposals.

Ms. White confirmed for Mr. Gwinn that the UDO Administrator is the Planning Director or their designee.

Ms. White stated that at their last meeting, the Technical Committee requested an additional flowchart to clarify the decision-making model. Chair Vaughan noted that the flowcharts and tables were helpful.

Ms. Garman noted that the draft UDO proposes an increase in the time major site plans and major subdivision preliminary plats have to be submitted in advance of Planning Board meetings. Previously, plans were required to be submitted 30 days in advance of a Planning Board meeting. The draft language proposes an additional 45 days. This allows more time between submittal of the site plan and technical review, as well as between technical review and the deadline when an applicant returns corrections on the site plan before planning board. This results in more complete site plans as a result of more time both for staff review and needed corrections.

Mr. Garman noted that if this is approved as part of the UDO later this year, Staff will be bringing the revised Submittal Calendar (approved earlier today) back to the Planning Board for their consideration.

In addition, Mr. Garman explained that the draft UDO adds language making a pre-application meeting and sketch plan necessary for certain types of development.

Article 5 - Nonconforming Situations - regulates lots, structures, sites and uses of land which were conforming at the time of their creation or construction but no longer adhere to the requirements of this UDO.

There were no major changes to Article 5; a section was removed that addressed mobile homes. This was no longer needed because this use is no longer allowed.

Article 6 establishes zoning districts, provides a description of the district, and outlines the uses allowed by right or conditional use (as contained in the Table of Permitted Uses). Article 6 outlines all the zoning districts located within the town. These include primary zoning districts, overlay districts, and special districts.

The C-1 district was previously in the town code. In the draft UDO the C-1 district is envisioned to address development on NC 12. This idea is addressed through policy by the Comprehensive Plan where the plan identifies the need to differentiate the Bypass (US 158) from the Beach Road (NC 12). The current zoning along US 158 and NC 12 is the same, C-2. Additional uses were added to the C-1 district in the Permitted Uses table to achieve the desired vision for Beach Road development. The C-1 is currently not mapped. In addition to the addition of new uses in this district, the Commercial Design standards would also work to achieve the overall vision for Beach Road.

The draft UDO contains a consolidated table of permitted uses. While the existing town code had a table of permitted uses, uses were also listed in a separate section for each zoning district. In the draft UDO, uses will only be listed in the table of permitted uses. Additionally, a list of prohibited uses has been developed and included in Article 6 in order to meet new state law requirements. The table of permitted uses is organized by zoning district, use category (i.e. residential, retail, service, accessory), and use type. Uses are shown as permitted by right (P), permitted with supplemental regulations (PS), conditional (C), or conditional with supplemental regulations (CS). Uses that have supplemental standards would reference Article 7. Supplemental Standards.

In addition to the organizational changes of the table of permitted uses, several new uses were added and expanded to or deleted from districts.

Article 7- Supplemental Regulations - For any use which requires the issuance of a conditional use permit, supplemental use regulations may be added in addition to any other conditions placed on the

use by the Board of Commissioners. The conditions may impose greater restrictions on a particular use than those documented in the Supplemental Regulations section. All uses included in these supplemental regulations must also comply with all other requirements of this UDO. Where the requirements of these supplemental regulations may conflict with other provisions of the UDO, the requirements contained within the supplemental regulations shall prevail.

In the town code, each zoning district listed every use permitted, permitted with supplemental standards, allowed by conditional use, and conditional use with supplemental standards. For every use in the district, all the supplemental standards were listed and if the use was repeated in different zoning districts the supplemental standards were listed each time. In the draft UDO, the supplemental standards are consolidated in Article 7.

Supplemental standards that are new or modified are outlined below:

- Section 7.1 Cluster housing- In current town code, there are three types of cluster housing. Two of the three types of cluster housing were deleted from C-2 and SED-80.
- Section 7.3 Accessory Dwelling- new use. Implemented to be consistent with the Comprehensive Plan.
- Section 7.5 Multi-Family Dwellings/Townhouses- Adjusted setbacks in C-2, Added provision for affordable housing density (needs to be further discussed), added buffers adjacent to residential in C-2 and SPD-20, and reduced the unit size in C-2.
- Section 7.7 Home Occupations- new use, added Class 2 & 3. Class 1 home occupations are permitted in any single-family residential dwelling unit. The regulations for Class 1 Home Occupations are consistent with the regulations currently in the town code. The Class 2 Home Occupation is allowed in both a principal or accessory structure. The services are limited to real estate sales, law practice, accounting services, handmade goods (including baked goods as long as they are sold off-site), and other similar professional occupations. Class 3 Home Occupations is allowed in both a principal or accessory structure. The services are limited to the creation, display, or sale of artistic wares, crafts, pieces of art, sculptures, or other creations, and handmade goods (including baked goods). All home occupation uses must be secondary and incidental to the primary residential use.
- Section 7.4 Food Trucks- new use. Food Trucks generally will be allowed either along with a permitted event or on the same lot as a restaurant as long as either (1) when the principal restaurant is closed or (2) when the principal restaurant is open, provided the site contains a minimum of three (3) parking spaces in excess of the minimum parking required by this UDO.
- Section 7.12 Hotels- Generally consolidated standards for the C-1, C-2, and HO to be consistent. Removed consistent references to fire code requirements and other performance standards that applied to other commercial uses and placed in Article 10 Performance Standards. Lowered the height in the Hotel Overlay (HO) to 47 feet (consistent with the height for multifamily) from 60 feet in the current town code of ordinances.
- Section 7.21 Massage and Bodywork Therapy- Previously, when the original ordinance was written, massage therapy was not regulated by the state. Since that time a state licensure program has been developed and there are extensive state laws to cover many of the concerns previously addressed by the ordinance. Nearly the same information, along with a copy of their state license, will be presented to staff and as long as the applicant can meet the specific supplemental requirements, a permit can be granted. This will allow applicants to more quickly move through the approval process.
- Section 7.33 Mixed Use Development
 - Defined mixed use development- means a single building containing more than one type of land use or single development of more than one building, and use, under common

ownership, where the different types of land uses are in close proximity, planned as a unified complementary whole, and functionally integrated to the use of shared vehicular and pedestrian access and parking areas. Mixed use is defined by a combination of professional offices, personal services, indoor recreation facilities, retail, and/or restaurant uses in combination with residential development.

- Allows mixed use but limits the residential component. In cases of buildings containing one or two habitable floors the residential component is limited to 50%.

- In cases of a buildings containing three or more habitable floors, the residential component is limited to 66% of the total gross floor area.

- Artisans Workshop- new use. This use was developed to create flexibility for and to encourage development of art and artists in the Gallery Row-Community Center Character Area, as envisioned in the Comprehensive Plan.

The Planning Board discussed in further detail the definitions as well as what is currently allowed/not allowed when it comes to Accessory Dwellings, Granny Pods and Food Trucks.

Ms. White clarified for Mr. Ballog that Food Trucks would be permitted in two ways – as part of a permitted special event and on-site at the parent restaurant as long as there is sufficient parking. The Board and Staff also discussed the difference between a Food Truck and Concession Trailer and whether the UDO differentiates between the two. Ms. White will revise the UDO to clarify this point.

8. Article 8. Zoning District Development Standards

For each of the Town's zoning districts, the Town has established development standards including minimum lot area and width, minimum required yards (setbacks), maximum building height, and maximum lot coverage. These standards have been established to create the overall development pattern and intensity desired by the Town for certain areas consistent with the Town's goals for the built environment. Within each district, the standards for each of these items may differ depending on the type of use (i.e., commercial or residential).

In the current code of ordinances every separate zoning district lists the minimum lot area, minimum lot width, minimum front yard depth, minimum side yard depth, minimum rear yard depth, maximum building height, and lot coverage. In the draft UDO, these have been consolidated into one table for every zoning district.

Other important changes to this Article include:

- Updated language to address accessory structures with habitable space (i.e. garage with habitable space above).
8.6.3.5.3. Accessory structures located forward of the midpoint of the principal structure shall meet the principal structure setbacks. The midpoint is defined as the halfway point of the principal structure including decks measured from front to rear on the lot.
8.6.3.5.4. Accessory structures with habitable space shall meet the setbacks of the principal structure regardless of location on the lot.
- Simplified definition for height- Current definition in code of ordinances has regulations in the definition. These were removed from the definition and placed in the text of Article 8.
8.6.4.1. Measurement of height. Height means the vertical distance measured from the tallest part of a building to the ground at the base of the building. Typically, height is measured from the tallest portion of the roof to the top of the concrete slab. In cases where a concrete slab is

not present, height is measured from the tallest part of the roof to the average finished grade using the corners at the base of the building.

- Height: Flood Zone- Currently, height is measured in an AE flood zone from Regulatory Flood Protection Elevation (RFPE) or grade, whichever is greater. In the draft UDO, height for a structure in an AE flood zone with an enclosure below the RFPE shall be measured from finished grade.

8.6.4.1.1. In any AE special flood hazard area, height will be measured from the regulatory flood protection elevation or finished grade, whichever is higher. In cases where there is a ground floor enclosure below the regulatory flood protection elevation, height shall be measured from finished grade.

- Modified the language to allow a minimal floor area for coastal watch towers that is not considered as part of your three maximum habitable floors.

8.6.4.6.2.4. Coastal Watch Tower - provided it meets the regulations of Section 8.6.5, Habitable Floors, the dimensional requirements of the zoning district in which it is proposed, and the design criteria as noted in the Town of Nags Head Residential Design Guidelines.

8.6.5.4. Coastal watch towers meeting the criteria described in the Town of Nags Head Residential Design Guidelines, to include the maximum square floor area of 196 square feet, shall not be counted towards the maximum number of allowable habitable floors as prescribed in this section.

Article 9 regulates development in the Village at Nags Head. No changes were made to this article. The language was carried forward from the current code of ordinances.

Ms. White confirmed with Mr. Gwinn that Staff will be meeting with the Village this coming week to review the proposed UDO and see if there are any changes they would like added. Ms. White noted this might be an on-going process and will keep the Board updated as needed.

Article 10 includes performance standards that generally apply to development such as buffering, parking, and lighting. Additionally, Article 10 contains subdivision regulations and Commercial Design Standards:

Part I. Buffering and Vegetation Preservation General Requirements, Part II. Off-Street Parking and Loading Requirements, Part II. Sign Regulations, and Part IV. Outdoor Lighting have been revised and all relevant portions related to commercial development have been moved to Part VI. Commercial Design Standards. The portions of regulations remaining in these sections apply generally to all development.

Part II. Off-Street Parking and Loading Requirements have not been altered for residential uses. The parking table has been updated in the draft UDO to be consistent with the Table of Permitted Uses.

Part III. Sign Regulations has not been modified except to add back in the provisions for off-site advertising.

Part IV. Outdoor Lighting has not been greatly changed except to add a provision for full cut off lighting for residential.

Part IV. Commercial Design Standards include the language recently adopted by the Board of Commissioners in December but further includes provisions for both site design and site layout. This includes parking lot and driveway requirements and revised buffering requirements.

Article 11 - Environmental Regulation includes standards for Stormwater, Fill, and Runoff Management, Soil Erosion, and Sedimentation Control, and Flood Damage Prevention. No changes were made to this article, except to include the recently adopted changes to the Stormwater Requirements by the Board of Commissioners in December.

Ms. White asked the Planning Board members that as they continue to review the changes to feel free to email her with any questions/comments.

Chair Vaughan thanked Ms. White for this helpful summary as this is a very large and intricate document.

Discussion of proposed registration requirements for short-term vacation rentals within the Town.

Deputy Planning Director Kelly Wyatt explained that the Planning Board has been examining the topic of short-term vacation rentals (i.e. Airbnb and VRBO) for several months, beginning in May of 2018. Last month the Planning Board discussed its preferred management approach and requested that staff provide a draft outline/ordinance for review. Prior to bringing it back in ordinance form for the Board to vote on, Staff felt it might be good to provide some background to assist newer members with the discussion.

Ms. Wyatt proceeded to review a brief history of deliberations on this topic prepared by Staff:

- May 11, 2018, Planning Board Meeting Report and Update. On April 18, 2018 staff, members of the Planning Board and members of the Board of Commissioners attended a workshop hosted by the North Carolina Association of Resort Towns and Convention Cities to discuss regulating short-term rentals. The workshop focused on how these uses have evolved, regulatory best practices, tax collection, how to find and track host sites, legislative authority, and regulatory approaches that have been implemented or drafted in North Carolina communities to date. Following this workshop, Planning staff met with representatives from Host Compliance, a company that assists local governments with drafting enforcing regulations pertaining to short-term rentals.
- June 19, 2018, Planning Board Meeting. Following discussion, it was the consensus of the Planning Board to work towards establishing a registration requirement for short-term rentals. This would provide the town with an opportunity to begin tracking the location of short-term rentals, establishing a point of contact with operators, secure proof of insurance, and disseminate information within the North Carolina Vacation Rental Act regarding life safety measures and the remittance of occupancy tax.
- July 17, 2018, Planning Board Meeting. Staff summarized for Planning Board members a webinar hosted by the UNC School of Government regarding short term rentals and noted that we would begin working towards inventorying short-term rentals with the help of the Dare County Tax Department. Town Attorney Ben Gallop then addressed the Planning Board and led a discussion/question and answer session to discuss exemptions covered by the North Carolina Vacation Rental Act. Mr. Gallop noted that he would need to do further research to determine if the Town had the authority to require proof of insurance. Mr. Gallop cautioned the Planning Board against limiting these types of rentals only to certain areas of the Town as the entire Town is considered a resort area. Mr. Gallop also discussed the difference between renting a room in a house versus whole house rentals and how enforcement might differ. The Planning Board consensus was to develop a registration program and require the contact information of the local operator be included on the registration.
- August 17, 2018, Planning Board Meeting. Staff provided a draft ordinance that would require the registration of short-term rentals. The ordinance defines short-term vacation rentals according the North Carolina Vacation Rental Act. However, the number of days to be considered a short-term vacation rental in the Town is fewer than 30 days rather than 90 days as prescribed in the Act. Mark Cornwell, the Planning Board Chairman at the time, posed a question of how this registration process would work given that we currently only allow "Bed and Breakfast" use in the C-2, General

Commercial Zoning District. Specifically, if an operator of a short-term vacation rental comes forward to register a property located in a district other than the C-2, General Commercial District, does the town now take enforcement action to require the use to cease. The Planning Board asked staff to consider this scenario when preparing the registration process. It was also determined that staff would create a public engagement survey to solicit information from residents of the Town of Nags Head on how they felt about short-term vacation rentals and their potential concerns and impacts.

- October 16, 2018, Planning Board Meeting. Planning Staff presented a draft of the Community Engagement Survey and received input on recommended revisions and changes.
- November 20, 2018, Planning Board Meeting. Planning Staff provided members with an analysis of the survey results and requested additional time to receive additional community input.
- December 18, 2018, Planning Board Meeting. Planning Staff provided members with a breakdown and analysis of survey responses. Based upon the research and discussions that have occurred to date including the survey results, the Planning Board made the following recommendations: 1) to allow short-term rentals town-wide via a registration process, 2) to consider some type of mechanism to seek Homeowner Association approval of the rental, and 3) to require a local host operator to be registered with the Town that can be readily accessible to address any concerns. The Planning Board also asked staff to consider how the registration process would be enforced.

Based upon the recommendations from the Planning Board, Staff has drafted an ordinance which will set forth a registration requirement for short-term rentals within the Town. Short term vacation rentals, both whole house and partial home, will be permissible in all zoning districts. As part of the registration, the property owner will be requested to verify that a host operator is located within a 20-mile radius of the property to be available in a timely manner to address any concerns that may arise.

Some variations in the proposed ordinance to note:

- Whole house rentals will not be required to provide any additional parking beyond what is required for single-family dwellings.
- Partial house rentals will be required to have one (1) additional parking space beyond what is required for single-family dwellings.
- Whole house short-term vacation rentals managed by a real estate broker will not be required to register.

Ms. Wyatt anticipates that the Planning Board will consider a final draft of this ordinance at its February 19, 2019 meeting.

Ms. Wyatt confirmed for Mr. Elder that they are waiting to hear from the Town Attorney regarding HOAs and their requirements, but she believes that any issues would need to be settled between the property owners and the HOA. Mr. Garman confirmed that Staff typically is not able to enforce HOA covenants.

Chair Vaughan noted that not everyone is here for vacation and that not every short-term rental is for vacation purposes. Chair Vaughan asked that staff consider removing the word vacation from the name. Ms. Wyatt will make this revision.

Planning Board Members' Agenda

None

Planning Board Chairman's Agenda

None

Adjournment

There being no further business to discuss, a motion to adjourn was made by David Elder. The time was 11:09 AM.

Respectfully submitted,

Lily Campos Nieberding