
**Town of Nags Head
Planning Board
February 21, 2023**

The Planning Board of the Town of Nags Head met on Tuesday, February 21, 2023, in the Board Room at the Nags Head Municipal Complex.

Planning Chair Megan Vaughan called the meeting to order at 9:05 a.m. as a quorum was present.

Members Present

Megan Vaughan, Megan Lambert, Molly Harrison, Meade Gwinn, Gary Ferguson, Kristi Wright, David Elder

Members Absent

None

Others Present

Kelly Wyatt, Kate Jones, Andy Garman, Lily Nieberding

Approval of Agenda

David Elder moved to approve the agenda. Meade Gwinn seconded, and the motion passed by unanimous vote.

Public Comment/Audience Response

Basil Belsches, Nags Head Property owner and resident spoke in praise of the recent rezoning that was recommended for approval by the Planning Board. This rezoning will help preserve the look, feel and integrity of the historic character area as provided for in the 2017 Land Use Plan. Mr. Belsches thanked the Board and Town Staff for their work in this effort.

Approval of Minutes

Chair Vaughan asked for a motion to approve the minutes of the January 17, 2023, meeting. David Elder moved to approve the minutes as presented; Molly Harrison seconded, and the motion passed unanimously.

Action Items

Initiation And Consideration of a Text Amendment to the Unified Development Ordinance as it pertains to the definition of "Habitable Building Area/Habitable Living Space".

Planning Director Kelly Wyatt explained that staff is requesting that the Planning Board both consider the initiation of, and make a recommendation on, a proposed text amendment to the Unified Development Ordinance (UDO) to clarify how the terms "Habitable Building Area" and "Habitable Living Space" are applied. These two terms are utilized somewhat interchangeably throughout the Unified Development Ordinance when regulating commercial design, large residential dwellings, and

delineating building area limitations within the Flood Damage Prevention Ordinance. The UDO currently has a definition for "Habitable Building Area", however, the word "finished space" is not currently defined and thus has been left open to interpretation. The town has historically considered any conditioned space to be habitable building area/habitable living space, including conditioned storage or utility areas. The proposed amendment would not only offer clarity but also ensure continued consistency in the application of the Unified Development Ordinance.

Ms. Wyatt gave as an example a permit for an approximately 6000 SF house that was issued in error. In that scenario approximately 1000 SF of that was storage and laundry but it was proposed to be finished and conditioned. Staff wants to ensure that this scenario does not happen again and that the proper definitions are in place to guide review and permitting.

The proposed amendment defines Habitable Building Area and Habitable Living Space as a finished and/or conditioned space in an enclosed portion of the building. The amendment further defines finished space as an area with enclosed walls, floors, or ceilings that are finished with materials generally accepted for interior residential or commercial construction. This shall include any of the following: drywall/sheet rock, insulated walls, carpet, wood or laminate flooring, or duct work. Additionally, any portion of a building that is conditioned shall be considered finished space.

Ms. Wyatt confirmed that the Building Code does define "habitable building area" and offers some exclusions for storage areas, elevators, closets and hallways, etc. Ms. Wyatt confirmed that this definition would be more stringent than the one found in the building code.

Ms. Wyatt confirmed for Chair Vaughan that both the terms (Habitable Living Area/Habitable Living Space) are already within the UDO; used in separate applications although they have the same meaning.

Mr. Elder stated that it seemed fairly straightforward and would eliminate a crack by putting a "patch" in the code.

David Elder moved to initiate and recommend approval of the proposed amendment as presented. Meade Gwinn seconded, and the motion passed by unanimous vote.

Report on Board of Commissioners Actions – February 1, 2023

Ms. Wyatt gave an update on the Board of Commissioner Actions, of note: Ms. Wyatt presented a monthly update on Planning and Development Department activities/projects which was well received and included the cleaned up version of the proposed C5 rezoning; the Board passed a motion to schedule a Public Hearing to consider UDO and Zoning Map amendment requests pertaining to the Historic Character Area and the moratorium adopted on October 19, 2022 - for their March 1st meeting; Kate Jones and the National Renewable Energy Laboratory (NREL) gave a presentation re: Energy Transitions Initiative Partnership Project (ETIPP), the presentation was well received; the Board passed a motion to adopt the final Estuarine Shoreline Management Plan as presented; lastly, the Board passed a motion to nominate all four of the applicants requesting to serve on the Septic Health Advisory Committee: Wayne Varilek, Tim Julian, Robert Edwards, and Dave Hermann.

Town Updates

None

Discussion Items

Update On Energy Transitions Initiative Partnership Project (ETIPP)

Deputy Planning Director Kate Jones gave a power point presentation updating the Planning Board on the status of the project as well as the modeling results, which include energy scenarios for each of the selected critical town facilities with a particular focus on four sites: 1) the Town's Municipal Complex which includes the administrative building and police department, 2) the water plant, 3) fire station 16, and 4) the public services complex. Ms. Jones also discussed the concept of micro-grids.

Ms. Jones explained that this presentation was created by the partners that Staff are working with at the National Renewable Energy Laboratory (NREL). The Board of Commissioners heard this presentation directly from the NREL at their February 1, 2023 meeting.

Ms. Jones proceeded to give a brief background on the initiative which started as a technical grant with the Department of Energy in support of resilience efforts in planning for 46-72 hours of backup for critical facilities.

Thus far, the following steps have been completed since the beginning of the project in late 2021.

- Staff developed a list of critical facilities by surveying key town staff, including Police and Fire.
- Potential locations and use of microgrids was discussed and identified.
- Energy use data was acquired for the critical facilities from Dominion power. Limitations on energy use data sharing only permits the Town access to Town-owned facilities.
- Energy use scenario modelling was completed by NREL and partners which Ms. Jones discussed as part of the presentation.
- Ongoing discussions with Dominion Energy are further supporting the project and were also discussed during the presentation.

Ms. Jones noted that at their February meeting, the Board of Commissioners recommended that Staff contact the Town of Kill Devil Hills to gauge interest in participating, considering the proximity of their public facilities and water plant to that of Nags Head's.

Ms. Jones' presentation was well received by the Planning Board.

January 26th, 2023, Director's Report

Ms. Wyatt briefly discussed her Director's Report to the Board. Ms. Wyatt stated that as part of the redevelopment, the new Public Services facilities will include some solar infrastructure. Ms. Wyatt then updated the Board on several items, including: Board of Adjustment, Septic Health Advisory Committee, NC Resilient Coastal Communities Program, Dune Management Cost Share Program and the Nags Head Dog Park. Ms. Wyatt also discussed the Electronic Vehicle Action Plan and gave an update which was not included in her report. Ms. Wyatt noted that Paige Griffin researched and located a tremendous amount of information which Ms. Wyatt shared with Mr. Gwinn, including information on the VW Settlement as it relates to Level 2 Chargers. Ms. Jones is currently completing the application for a grant to see if a phase 2 charger could be installed at Town Hall. Finally, Ms. Wyatt noted that on March 1st, the Art and Culture Committee will be providing the Board of Commissioners with an update on the Dowdy Park 2022 Season and ideas for the discussion regarding the upcoming 2023 Season. Ms. Wyatt also noted that Event Coordinator Paige Griffin has already filled up the summer music schedule with over 10 bands.

Discussion and acceptance of 2023 Submittal Calendar

Ms. Wyatt presented the Draft 2023 Submittal Calendar. The Board agreed that the meeting on December 19th worked as far as holiday travel plans, etc. The Board reached consensus to approve the Submittal Calendar as presented.

Discussion of Potential Text Amendments related to the definition of dwelling unit, what constitutes a dwelling unit and to clarify language related to accessory structures and uses.

At their January meeting, the Planning Board reached consensus to initiate the text amendment process as it pertains to the definition of dwelling unit, what constitutes a dwelling unit and to clarify language related to accessory structures and uses.

Ms. Wyatt gave a PowerPoint presentation and proceeded to lead the Board through a discussion of the current terms and definitions that are found in the Unified Development Ordinance. Ms. Wyatt reviewed the important definitions of Dwelling, Dwelling-Single-Family, Dwelling Unit, Family and Housekeeping Unit.

Ms. Harrison noted that a Housekeeping Unit could describe a house owned by a business for use by its employees.

Ms. Wyatt confirmed for Mr. Ferguson that the term "related" was previously removed from the definition of family as what constitutes a family has changed over time.

Ms. Wyatt then reviewed the current definitions for Accessory Dwellings, Structure and Uses, noting that the Town does not currently allow Accessory Dwelling Units (ADUs) however, Accessory Structures and Accessory Uses are permitted. Ms. Wyatt then reviewed the definition of Accessory Uses in more detail explaining the criteria that must be met in order to be considered Accessory Use.

The Board spent some time discussing Criteria #4 which states that the Accessory Use "contributes to the comfort, convenience or needs of occupants, or business in the principal building or the principal use served".

Ms. Wyatt then reviewed trends and concerns, noting that historically, staff has advised applicants that if an accessory structure does not have all four elements of a dwelling unit, then it wouldn't rise to the level of being a "dwelling". The four elements of a "dwelling" are permanent provisions for living, sleeping, eating/cooking and sanitation. Staff has not considered a space as a permanent cooking facility or kitchen if it did not have electrical for a 220 hookup for a stove, however many plans indicate a "wet bar" and supply appliances such as electric hot plates, microwaves, toaster ovens, air fryer, etc. As such these "accessory structures and accessory uses" often function as an "accessory dwelling".

As part of her presentation Ms. Wyatt showed as an example, a survey and aerial photograph of an Accessory Structure which was permitted several years ago as well as the permit conditions which stated: "Accessory Structure not permitted to have a stove for cooking to become a single-family dwelling unit".

Ms. Wyatt then reviewed potential revisions for consideration that would clarify and strengthen the existing UDO language.

Finally, Ms. Wyatt discussed Two-Family Dwellings (Duplex) as well as Ground Floor Enclosures and how they affect short-term and long-term rentals. Staff often receive permit applications for ground floor enclosures where the first floor is above the RFPE, but because as the part of the design/floorplan they are not including one of the four elements of a "dwelling unit", they are not required to comply with the requirements for a two-family dwelling. Under our current UDO requirements, it is acceptable for these ground floor enclosures to be rented (less than 30 days) as a partial home short-term rental (STR).

Ms. Wyatt noted that while these ground floor enclosures can compliantly be rented as a short-term rental, they cannot be rented for greater than 30 days (long-term), as that would create the two-family or duplex use which is only permitted on lots with an area of 22,500 sf –30,000 sf depending on the zoning district.

The Board agreed that this will warrant further discussion to decide if this was the desired outcome of the current regulations or an unintended consequence and what changes may be necessary.

Planning Board Members' Agenda

None

Planning Board Chairman's Agenda

None

Adjournment

A motion to adjourn was made by David Elder. The time was 10:40 AM.

Respectfully submitted,
Lily Campos Nieberding