
**Town of Nags Head
Planning Board
August 16, 2022**

The Planning Board of the Town of Nags Head met on Tuesday, August 16, 2022, 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, Molly Harrison, Meade Gwinn, Megan Lambert, David Elder, Gary Ferguson

Members Absent

None

Others Present

Kelly Wyatt, Kate Jones, Andy Garman, Lily Nieberding

Approval of Agenda

Chair Vaughan asked for a motion. Meade Gwinn moved to approve the agenda as presented. Molly Harrison seconded, and the motion passed by unanimous vote.

Public Comment/Audience Response

None

Approval of Minutes

Chair Vaughan asked for a motion to approve the minutes of the July 19, 2022, meeting. Kristi Wright moved to approve the minutes as presented; Meade Gwinn seconded, and the motion passed unanimously.

Action Items

Site Plan Review submitted by House Engineering, P.C. for construction of a four-story, 90-unit Hotel (Inn at Whalebone).

Planning Director Kelly Wyatt presented a Site Plan Review submitted by House Engineering, P.C., for the purpose of constructing of a four-story, 90-unit Hotel along with all necessary site improvements.

Ms. Wyatt displayed the proposed site plan and explained that the property is located at 6632 W. Pheasant Avenue, just north of Lakeside Drive; the existing land use is vacant. The property is zoned SPD-C, Village at Nags Head Hotel District and is also in the Hotel Overlay District.

Ms. Wyatt included the zoning classification of the surrounding properties in her staff memorandum. Ms. Wyatt did not that the properties to the west of this parcel were developed residentially.

The property is located in an X Flood Zone, but per the Town of Nags Head local ordinance, the property is subject to an RFPE/LES of 9 ft. The proposed first floor elevation of the hotel is proposed to be at an elevation of 9.1' and is therefore compliant.

Ms. Wyatt proceeded to review the applicable Zoning Regulations:

- Section 9.36, Table of Uses and Activities for the SPD-C District lists "Hotel" as a Permitted Use within the Village Hotel District, with supplemental regulations set forth in Section 9.37.1. This section requires that Hotels be permitted in accordance with Section 9.36 provided that hotel suites comprise no more than thirty-three (33) percent of the total units in the building.

Section 9.24.5, Development Standards within the Hotel District states that in cases where the standards of this section conflict with standards contained in Article 10, Part VI, Commercial Design Standards, the more restrictive standard shall apply.

- Section 9.24.5.1 of the UDO, Coverage for Hotels states that for buildings with a height between 49 – 60 feet, the maximum building coverage shall not exceed 35%, maximum parking coverage shall not exceed 45% and must have a minimum landscaped area of 20%. Proposed building coverage is 12.94%, proposed parking coverage is 36.8% and there is a proposed landscaped area of 24.2%. Proposed coverage is compliant.
- Section 9.24.5.5 of the UDO states that the maximum height for hotel developments is 60 feet. The initial proposal had the hotel at a height of 61.10 feet, which was noncompliant. The applicant has provided a compliant set of drawings and the hotel is compliant at 59.1 ft.
- Section 10.82 of the UDO, Applicability, states that Commercial Design Standards shall apply to all building construction or remodeling projects requiring a conditional use permit or site plan review. This project must adhere to the Commercial Design Standards set forth within Part VI of the UDO, Division II – Building Design. Staff has reviewed the submittal and finds the proposal to be compliant with the standards required in Building Design, Building Size/Dimensions, Building Height, Architectural Design/Elements, Site Design and Building Footprint Orientation.

The following are a few examples lending to the compliance of the proposed structure: incorporation of dormers and other roof articulations, covered porch area, screened typical rooftop installations such as mechanical equipment, exhaust vents, residential style double-hung windows, use of gable brackets, workable shutters, and column trim.

- Pursuant to Article 10, Table 10-2, Required Parking by Use, Hotels shall provide parking at one parking space for each hotel unit without kitchen facilities. The proposed hotel units will not have kitchen facilities and there are no other uses proposed. With 90 hotel units proposed, 90 parking spaces are required. A total of 93 parking spaces have been proposed therefore parking is compliant.

In addition, Section 10.92.14.4 of the UDO, Surface Materials, requires that a minimum of twenty (20) percent of the surface area of the parking area and drive aisles shall be constructed of permeable surface materials. Exactly 20% has been proposed in permeable surface materials therefore the proposal is compliant.

• Several sections of the Unified Development Ordinance speak to Buffering and Landscaping as it applies throughout this proposed site:

- Section 10.92.6.2 of the UDO, Parking and Drive Aisle Setbacks, requires that where off-street parking is provided between the building and the street right-of-way line, a parking lot buffer of at least ten (10) feet in width shall be provided between the parking lot and the street right-of-way. A compliant buffer has been proposed along the Forrest Street, Lakeside Street and US 158 rights-of-way.
- Section 10.93.3.2 of the UDO, Commercial Transitional Protective Yards, requires increased landscaping to be provided and maintained when non-residential land uses are adjacent to a residential use or residential zoning district. Specifically, Section 10.93.3.2.2 states that where a high impact use abuts a residential district, a buffer strip of at least twenty-five (25) feet in width along the entire length of the lot shall be provided. The buffer yard shall consist of three rows of plant material. Hotel is a listed High Impact Use. The western property boundary abuts residential subdivision, Roanoke Shores and a compliant 25-foot-wide commercial transitional protective yard has been proposed along the entirety of the western property boundary.
- Section 9.24.5.3.2.3 of the UDO, Building Setback Requirements for Hotels over three stories in height states that for hotels west of NC 12, a minimum 25-foot natural or landscaped buffer shall be provided along the northern and southern boundaries. This is a Village Hotel standard that is more stringent than the Hotel Overlay standard. As noted in Section 9.24.5, the more stringent standard applies. The applicant has shown a compliant 25-foot-wide landscaped buffer along both the northern and southern property boundaries and therefore the proposal is compliant.
- Section 10.93.3.7 of the UDO, Interior Parking Lot Landscaping, requires parking lot landscaping be provided at a minimum rate equal to ten percent of the total area of the parking spaces. The minimum area necessary for compliance is 1,643 square feet of vegetation. The applicant has proposed 1,937 square feet of vegetation (approx. 12%) therefore interior parking lot landscaping is compliant.
- Section 10.93.3.8 of the UDO, Vegetation Preservation/Planting Requirements, requires that new development projects either preserve a minimum of ten (10) percent of the lot's total area with existing natural vegetation and/or dune elevations or plant new vegetation in lieu of preservation. When existing vegetation cannot be preserved, the planting of a minimum of fifteen (15) percent of the lot's total area shall be required. Existing vegetation on this site is sparse and cannot be preserved to meet the intent of this section therefore, the applicant has proposed to plant 18% of the lot's total area in new vegetation, so they are compliant in that regard.

- A lighting plan compliant with the requirements of Article 10, Part IV of the Unified Development Ordinance will be required prior to the issuance any development permits. In addition, a light audit will be required prior to issuance to occupancy permits.

- No additional signage is being proposed at this time.

The applicant is proposing the installation of an onsite, engineered EZ Treat system to serve this development. This system will require review and authorization through the State. Ms. Wyatt noted that the existing sewer service area map for the Village at Nags Head does not include the subject parcel. Therefore, there is no obligation to serve this property. No specific request has been made to amend the sewer service district map or add the additional flow into the system. This would require North Carolina Utilities Commission approval to be able to serve this property. The applicant is not requesting that this property be served by Carolina Water Service, rather, they are proposing onsite treatment of wastewater.

Traffic circulation has been reviewed by the Town Engineer with the following comments:

- Two points of ingress and egress are depicted along Lakeside Street. Section 10.92.2.2.7.4 of the UDO indicates curb cuts in excess of one, on streets other than US 158, NC12/US64/264 or SR1243, are allowed if the Board of Commissioners determines that more than one curb cut is necessary or desirable to facilitate traffic flow. Staff feels two separate access points from Lakeside St. is appropriate to facilitate traffic flow in conjunction with emergency vehicle access and sanitation truck access.
- Section 10.92 of the UDO outlines street access, parking lot design, and pavement standards for commercial development. All provisions of Section 10.92 are compliant.
- A loading zone has been provided in compliance with UDO Section 10.17.2.

Stormwater management has been reviewed and approved by the Town Engineer with the following comments:

- This proposal is being reviewed under Section 11.4 General Standards for Commercial, Mixed Use, and All Non-Single Family or Non-Duplex Residential Development, Including Multi-Family Development which requires development of a property to provide stormwater control measures to retain runoff from a 4.3 in. design storm.
- The applicant has demonstrated the ability to accommodate the volume of runoff generated by a 4.3 in. design storm.
- A NCDEQ High-Density stormwater permit shall be acquired, and copies shall be submitted to the Town in advance of the issuance of a building permit. Copies of the executed operation and maintenance agreement of the stormwater control measures shall be submitted in conjunction with the approved state permit.
- An engineer's certification shall be submitted to the Town in association with construction record drawings prior to the issuance of a certificate of occupancy.
- Questions have arisen as to how this application should be reviewed regarding Stormwater management and whether this proposal would be considered as part of the Village at Nags Head Stormwater master plan approval. NC Department of Environmental Quality, Division of Energy, Mineral and Land Resources staff was contacted to discuss the matter. First and foremost, this application would not be viewed as a common plan of development. A common plan of development means a site where multiple and distinct development activities may be taking place at different times on different schedules but governed by a single development plan. Since this Village at Nags Head Stormwater plan did not account for the subject property, it should not be considered as part of the system, and it is appropriate to review under the current state and local Stormwater regulations.

The project will be required to comply with all applicable NC Fire Prevention Code requirements as part of building permit application review and issuance. Comments from the Deputy Fire Chief Hite were provided in a separate attachment as part of the Staff Memorandum. These are basic code requirements; no permit will be issued until such time that these comments are addressed.

The Public Works Director has reviewed and approved the proposed site plan as presented.

Ms. Wyatt noted that based on their review and the updated proposed compliance with the height regulation Staff would recommend approval of the site plan review. Ms. Wyatt reviewed for the Board the renderings and elevations of the proposed hotel.

Mr. Gwinn expressed concern about traffic on Lakeside Drive coming out on to US 158 as well as pedestrians wanting to cross the bypass to walk to the beach. Ms. Wyatt noted that the applicant had removed the originally proposed access from US 158.

Ms. Wright agreed with Mr. Gwinn stating that traffic in that neighborhood is already a problem without a hotel being there.

Ms. Wyatt confirmed for Mr. Ferguson that the applicant had not requested a Vested Right status. If approved, they would have one year from BOC approval to begin work. Ms. Wyatt confirmed that this is a permitted use.

Ms. Wyatt confirmed for Mr. Ferguson that Staff does not believe that Village Architectural Committee approval is required but has reached out to the Village for their comments.

Ms. Wyatt confirmed for Mr. Ferguson that there had been no request to be rezoned back to C-2 and reminded the Board that by keeping it in the SPD-C the buffering requirements are stricter.

Ms. Wyatt confirmed for Ms. Harrison that the lighting standards are different because it abuts a residential area. Ms. Wyatt confirmed for Mr. Gwinn that any lighting would be directed away from the residences.

Mr. Elder expressed concerns about drainage and Stormwater in that area. Ms. Wyatt reminded the Board that the Town Engineer had reviewed the proposal and they are meeting the town requirements from a 4.3 in design storm on-site.

Ms. Wyatt confirmed for Ms. Harrison that the plan does not involve or touch any of the Village's Stormwater Plan or measures.

David Neff with House Engineering addressed the Board. They are proposing to store all Stormwater on site; the plan involves the use of monitoring wells. Mr. Neff also confirmed that all the lighting that they are proposing point towards the hotel to keep from the residential area.

Mr. Neff confirmed for Ms. Harrison that they removed the entrance on Croatan Hwy based on previous comments from Staff and the Planning Board during Sketch Plan Review.

Bryan Seawell, also with House Engineering, noted that upon further review they decided that the originally proposed entrance was too close to the gas station entrance and Lakeside Drive. NC DOT reviewed the updated proposal and did not see any issue with the additional traffic on Lakeside.

Ms. Harrison noted that she lives on Lakeside and has some serious concerns about the additional traffic on Lakeside. Mr. Elder agreed noting it's not just the additional amount of traffic but the type of traffic (pedestrian) that is the problem; there will be more congestion approaching the bypass.

Mr. Seawell confirmed for Mr. Ferguson that they are not proposing any accessory buildings. Mr. Seawell confirmed for Ms. Harrison that laundry will be done off-site. Mr. Seawell also confirmed that there will not be a kitchen or any type of restaurant.

Mr. Ferguson noted that they have to look at what is before them today and what is being proposed meets all the requirements. Mr. Elder agreed with Mr. Ferguson noting that things such as traffic and Stormwater were outside their zoning purview.

M. Gwinn agreed as well stating that the proposal meets all the requirements, is consistent with the vision and focus of Nags Head and will be a complement to the Soundside event site. Mr. Gwinn is concerned about traffic and believes action should be taken to focus on pedestrian and vehicular access safety.

Meade Gwinn moved to recommend approval of the Site Plan as presented; Gary Ferguson seconded, and the motion passed with a vote of four to two with Molly Harrison and David Elder casting the Nay votes.

Sketch Plan Review submitted by Michael Strader, P.E. of Quible & Associates, P.C. for the construction of a Trade Center. The property is zoned C-3, Commercial Services and is located on Lot 2a of the Charles L. Sineath Subdivision (PIN# 989317113533), vacant lot directly behind TW's Bait and Tackle.

Ms. Wyatt presented a Sketch Plan Review package submitted by Quible & Associates, PC on behalf of Mazzi, LLC. The project consists of the construction of an 11,200 square foot building that includes 8 units operating as a "Trade Center", along with all necessary site improvements. This property is zoned C-3, Commercial Services and Trade Center is permitted via the Special Use Permit process and subject to the supplemental regulations required by Section 7.72, Supplemental Regulations of the Unified Development Ordinance.

This section states that Trade Centers are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

- Each individual unit may contain an office/sales area; however, this area shall not exceed twenty-five (25) percent of the gross floor area of the unit.
- Each individual unit shall at a minimum contain a commode, shower facility and lavatory.
- All work conducted on-site shall be entirely within the enclosed structure.

Ms. Wyatt noted that the UDO defines Trade Center as a structure containing two or more individual units primarily devoted to service and wholesale operations and the storage of materials for off-site work. An example would be a pool contractor who would have their items stored at the center as well as a work truck stored there but do work throughout the town.

Ms. Wyatt reminded the Board that pursuant to Section 4.3, Pre-Application Meeting and Sketch Plan, of the Unified Development Ordinance, a sketch plan review is mandatory for all new development other than one- and two-family dwellings, in cases where new construction and/or additions have a total habitable building area that is 5,000 square feet or greater.

The purpose of the sketch plan is to review projects at a conceptual level for consistency with the requirements of the commercial design standards and the UDO in general. This review should be done at the early stages of project development in order to allow for meaningful input and substantive changes to the design, if necessary.

At this time, the Planning Department, Town Engineer and Public Works, Fire, and Police Department have provided comments on the sketch plan package to the applicant.

Ms. Wyatt reviewed the list of the relevant comments received thus far for the Board:

Zoning

- Use, lot coverage, setbacks all appear to be compliant.
- Account for the location of mechanical equipment in the site plan.
- First floor elevation of structure must adhere to the Town's Regulatory Flood Protection Elevation/Local Elevation Standard of 9 ft. msl.

- Section 10.82, Applicability of Commercial Design Standards, states that the design standards shall not apply to projects located within the C-3, Commercial Services Zoning District.
- A lighting plan consistent with Section 10.37.1 of the UDO will be required prior to issuance of building permits for the proposed use.

Town Engineer

- Facilities appear to be designed to accommodate runoff from all built upon areas to manage runoff generated from a 4.3 in. design storm event.
- A NCDEQ High-Density stormwater permit shall be acquired, and copies shall be submitted to the Town in advance of the issuance of a building permit. Copies of the executed operation and maintenance agreement of the stormwater control measures shall be submitted in conjunction with the approved state permit.
- An engineer's certification shall be submitted to the Town in association with construction record drawings prior to the issuance of a certificate of occupancy.
- The building permit submission for land disturbing activities shall include the ground stabilization and material handling and inspection, recordkeeping and reporting detail sheets as required by the NCG01 NPDES Construction Program.
- The applicant shall apply for a Certificate of Coverage through the NPDES Construction Program and prior to land disturbing activities occurring.
- A pre-construction conference shall be coordinated by the applicant to include the design engineer, contractor, and Town representative prior to land disturbing activities.
- The driveway shall be designed in accordance with Typical Commercial Driveway Detail, Small Parking Lot Layout Detail 200. This detail requires concrete curb and gutter for the radius.
- The street access, parking lot design and pavement standards shall be designed in accordance with Section 10.92 of the UDO. The submitted site plan appears to be designed in accordance with these standards.

Public Works/Water

- RPZ will be required on the fire line.
- Dumpster shall be made accessible for front load sanitation pick up.

Fire

- No concerns at this time, development must comply with all provisions of NC Fire Prevention Code.

Police

- No concerns at this time.

Ms. Wyatt confirmed for Chair Vaughan that there is an opportunity to have a reduced loading zone based upon the types of vehicles access the facility.

Mr. Elder expressed concern about the quantity of parking on the site. Ms. Wyatt noted that every business that goes in the Trade Center would have to be permitted within the C-3 district and will need to file a change of tenant/change of use form which in turn will trigger the need for permits and review of the use.

Mr. Elder inquired if auto detailing would be a possibility because that would mean the need for employee parking and people dropping off and picking up vehicles. Ms. Wyatt noted she will need to check to see if that would be a permitted use. Ms. Wyatt envisions plumbing contractors as well as other trades would be the primary tenants.

Ms. Wyatt confirmed for Chair Vaughan that this would fall under commercial signage regulations which states that 20 percent of the wall area can be dedicated to signage; this would require a calculation of the front façade likely divided among the eight units.

Ms. Wyatt confirmed for Mr. Ferguson that there are currently no Trade Centers in Nags Head.

Mr. Elder expressed concern about Stormwater noting that there are already drainage issues in that area.

Mr. Gwinn noted that the lot currently has a lot of greenery and inquired if they were proposing to remove any trees. Ms. Wyatt noted that as always, any Live Oaks would be protected, but if they are within the footprint of the proposed structure and the structure cannot be shifted then the trees could be removed. This parcel is in the C-3 so it's not a special environmental district.

Chair Vaughan inquired if the units could be condo'd out and sold as individually owned units?

Michael Strader, Engineer with Quible and Associates addressed the Board. Mr. Strader introduced Christiana Tambone, Engineering Specialist also with Quible. Mr. Strader is the engineer of record on this project; he reminded the Board that they are seeing the project at a very early stage. He noted that a Trade Center is not customer driven, there will not be outside public driving up to drop off their car for repair or detailing; instead, it is intended for the contractor/trades. Mr. Strader also noted that there is one single owner; a landlord that will have lease agreements for each of the units. Parking will be determined by the type of uses allowed and the uses will be regulated by the Town. The owner intends to Fire Sprinkle the building so there won't be a limitation of the type of commercial vehicles allowed inside. Finally, Mr. Strader explained that their intent is to store 100% of Stormwater on site beyond the 4.3%; they are not proposing to connect to existing street culverts/drainage.

Mr. Strader confirmed for Mr. Gwinn that while the Fire Sprinkling helps, there will be limitations on what can be stored and also the height that it can be stacked.

Mr. Strader confirmed for Chair Vaughan that knowing the types of vehicles that they intend to have other than the Town refuse – Vending Trucks, UPS, FedEx; those would all qualify for a smaller loading zone; they do not foresee 18-wheel trucks coming to the facility.

Mr. Ferguson stated that he thinks this is a great thing for the Town because it takes it out of the residential area and puts it where it belongs.

Other questions/concerns for Mr. Strader included the ability of tenants to have machinery (such as ice making equipment) in their units; the possibility of using the units for warehousing; the ability to park vehicles outside overnight and whether the units would be accessible 24/7.

Ms. Wyatt confirmed for the Board that projects in the C-3 District are exempt from the Commercial Design Standards, so metal siding would be allowed in the C-3 District.

Sketch Plan review submitted by the Town of Nags Head for the redesign and construction of various Public Works facilities as a result of the Public Works Facilities Master Plan. The properties involved are zoned C-3, Commercial Services and located at 2110 S. Pond Avenue and 2200 S. Lark Avenue.

Town Engineer David Ryan presented a Sketch Plan Review package submitted by consultants, Oakley Collier on behalf of the Town of Nags Head. The project consists of the redesign and construction of the town's public works facilities. These properties are being developed under a

common design scheme. All involved properties are zoned C-3, Commercial Services and "Public Works Facilities" are permitted via the Special Use Permit process and subject to the supplemental regulations required by Section 7.39.2 Supplemental Regulations of the Unified Development Ordinance.

The supplemental regulations of Section 7.39.2 that apply to the use, "Public Works Facilities" were noted in the Staff memorandum.

Consultants Oakley Collier have worked closely with the Planning Department, Town Engineer, Public Works Department, Police and Fire Department and Building Inspections during the design process. There are no significant concerns identified by any of these departments at this time. Deputy Fire Chief Hite has provided feedback in an attached correspondence that pertains to basic requirements of the NC Fire Prevention Code.

Mr. Ryan reviewed the proposal through a Power Point presentation. This same presentation was given to the Board of Commissioners at their August 3, 2022 meeting.

Mr. Ryan presented the proposed site plan and explained that the site in total is about 11 acres; starting from the north where they have the existing water operations building, they are looking at adding a new building immediately south of that for water distribution which would consist of offices as well as a bay for operations and parking of vehicles. Then going from north to south down Pond Avenue a Fleet and Facilities Maintenance Building which will house sanitation as well; a fuel pump island and car wash area, a new vehicle storage building and a small storage building located on the very western portion of the site. Across the street on the east side of Lark Avenue they have the proposed administration building; there will be new public parking and employee parking then a service ramp that goes up where residents can drop off their debris or recyclables into bins then there will be a circulation that goes around that site back out to Lark Avenue.

Mr. Ryan stated that in addition to the buildings there will also be infrastructure improvements that will coincide with the development plan. They have been able to repurpose the existing septic systems and there will also be a new one on the main site that will primarily service the car wash station. The administration building will also be serviced by its own individual on-site septic system as well as its own separate containment for on-site Stormwater which will meet the Town standard for a 4.3 inch designed storm event. They will be using some of the existing facilities in order to manage runoff including the use of perimeter swales to capture runoff as well as an existing man-made constructed ditch that runs along the west side of the site in addition to a wet detention basin that is located on the east side of Lark Avenue with connectivity between the two.

Mr. Ryan went over for Mr. Gwinn, the redevelopment of the drop off/brush yard area which will now also house the administration building and employee and public parking.

Mr. Ryan confirmed for Mr. Elder that both the east and west sides will be gated off so when the brush yard is not in operation it will be closed off to the public.

Mr. Ryan confirmed for Mr. Gwinn that typically hazardous material has not been accepted at the yard and is normally routed to Dare County.

Mr. Ryan confirmed for Mr. Ferguson that all of the Town's existing infrastructure, drainfield and all is within the Town property line. Mr. Ryan also confirmed that with this plan the site is compliant with C-3 Lot Coverage. When the adjacent parcel was recently rezoned to C-3 it gave them more flexibility for lot coverage on the parcel.

Mr. Ryan stated that they are looking to increase from 30 to 50 parking spaces. Mr. Ryan also noted that they were focused on tree preservation throughout the planning process. There are trees that they have identified that they've tried to retain including some live oaks on the brush yard site that will be retained. They also plan to maintain as much of the existing vegetation as possible on the west side.

Mr. Ryan then briefly went over some of the layouts of the different buildings on site.

Mr. Ryan confirmed for Chair Vaughan that from commencement of construction to completion they are looking at about 18 months; however, it may be broken up into phases depending on financing for the project. The site will house the same staff that is currently there, and they have to look at how to sequence the construction in order to maintain the current level of operation.

Chair Vaughan asked that the agenda be slightly modified to move up the discussion on tree removal/preservation.

Discussion Items

Continued discussion of tree removal/preservation within the Town.

Deputy Planning Director Kate Jones led a continued discussion on tree preservation explaining that members of the Planning Board have expressed an interest in better understanding and considering potential changes to the Unified Development Ordinance (UDO) to clarify and enhance the Town's language as relates to tree protection and preservation standards as well as remedies for unauthorized tree removal.

At the May and July 2022 Planning Board meetings, informal discussions on tree protection and mitigation were held. Staff received direction to continue exploring ideas. Ms. Jones noted that the goal today was to recommend generalized changes to each section that relates to tree protection and removal, in order to bring back text amendments at the next meeting.

UDO Section 4.9, Development Permitting Requirements, Purpose, and Intent states that when developing one- and two- family dwellings removal of trees greater than 6-inches in caliper shall require a permit. This language was adopted as a means to address the clear cutting of lots that did not yet have site plan approval. Staff does want to revise this language to ensure there is no ambiguity with the original intent.

The following clarifications would strengthen this section:

- Clarify that the removal of trees greater than six inches diameter at breast height (DBH) is not allowed on vacant lots until an approved site plan with associated permit is in place.
- Define what activities can be accomplished on a vacant lot without a permit in place: for example, removing vines, hand trimming shrubs, hauling out debris by hand.
- Further define land disturbing activity to include the importation of fill material, and the balancing of existing material on a site.

UDO Section 26-9, Official Town Tree defines the Live oak (*Quercus virginiana*) as the official town tree. Staff suggests further clarifying the following as relates to this section:

- Define in what circumstances a live oak is allowed to be removed for both new construction projects and existing sites.

- Update the minimum size of a live oak that triggers retention to four inches diameter at breast height (DBH) for consistency with other sections.
- Institute and determine a monetary fine for the illegal removal of a live oak tree.
- Define tree replanting expectations and guidelines.
- Clarify what work on an existing live oak tree is allowable and what is not allowable (pruning versus topping).
- Define best practices for protecting Live oak trees during construction.

UDO Section 8.4 Development Standards for Special Districts. The SED-80, Special Environmental District. Section 8.4.3.4, Special Development Standards, regulates the removal of any tree greater than 4-inches in caliper measured at one foot above the ground. The removal of any tree with caliper of 16-inches or greater is prohibited without special approval from the Board of Commissioners.

Staff recommends the following clarifications to be added to this section:

- Change the tree measurement to four-inch diameter at breast height (DBH).
- Under the enforcement section, determine a monetary fine for the removal and/or destruction of unauthorized tree or trees.
- Clarify the process and requirements for documenting that a tree is diseased and/or posing a hazard to public safety or property.

Ms. Jones confirmed for Mr. Gwinn that an arborist would most likely not be required for tree removal related to vacant lots/new construction, only for trees on developed lots. Ms. Jones confirmed that there are few arborists in the area.

Mr. Elder suggested that destruction of a tree should be clarified; purposefully trimming or drilling holes in a tree in a manner that would ultimately damage/destroy it.

Ms. Jones and Mr. Ferguson discussed the issue of utility companies "topping" trees. Mr. Ferguson would also like to see a map of locations that have protected vegetation; vegetation that needs to be preserved because of grants or zoning rules.

Mr. Elder suggested mapping these on the recently developed GIS program.

SPD-20, Special Planning Development District. Section 8.4.2.2, Site Design Standards, regulates the removal of any tree greater than 4-inches in caliper measured at one foot above the ground. Trees greater than 4-inches in caliper shall only be removed if within the proposed building footprint, including decks and a 10-foot perimeter around the principal building and its accessory buildings, within vehicular accessways, within the septic drain field, and in areas where land disturbing has created slopes in excess of 3:1 in an effort to minimize erosion.

Staff recommends the following clarifications to be added to this section:

New Construction:

- For tree removal, consider changing the allowable area around a principal building to twenty feet to match the SED-80 district.
- For tree removal, consider changing the allowable area around other site elements such as driveway and accessory buildings to five feet to match the SED-80.
- Define the tree size for retention as four inches in diameter at breast height (DBH) for consistency with other sections.
- Clarify the requirements for protecting trees during construction.

- Clarify the process and requirements for documenting that a tree is diseased and/or posing a hazard to public safety or property.

Existing Lots with Structures:

- Define the perimeter around existing dwellings for tree removal.
- Clarify what work on an existing tree is allowable and what is not allowable (pruning versus topping).
- Clarify the process and requirements for documenting that a tree is diseased and/or posing a hazard to public safety or property.
- Determine a monetary fine for the removal and/or destruction of unauthorized tree or trees.

Tree Mitigation Payments for Offsite Planting

When off-site planting is more practical, many jurisdictions allow the applicant to pay fees to the local government in lieu of completing the actual off-site planting. In most towns and counties in-lieu fees are deposited into a dedicated account which is used for tree planting and maintenance and/or the acquisition of undeveloped land through direct purchase or the purchase of conservation easements. Such accounts are sometimes referred to as "tree banks." Fines accrued for the unapproved removal of trees, as well as monies received from a preapproved amount in lieu of tree preservation could be used for replanting efforts on town property.

Mr. Gwinn noted that this is where having areas mapped on GIS would come in handy. Mr. Elder suggested a graduated scale for removal of trees.

Report on Board of Commissioners Actions – August 3, 2022

Ms. Wyatt gave an update on recent Board of Commissioner Actions, of note: the Site Plan Review for Special Use Permit submitted by Albemarle & Associates, Ltd. on behalf of BK Associates, for the construction of a three-story mixed-use structure (office and residential) at 4413 S. Croatan Hwy was approved as presented; the text amendment submitted by Eddie Goodrich to modify the maximum allowable gross floor area within each unit of a conforming Cottage Court and increase the allowable stories was approved as amended and which incorporates a new chart; Ms. Wyatt presented her Planning Director's monthly report which was well received; Expansion of the Dune Mgmt Program - it was Board consensus to authorize adding sand relocation as a cost-share option, require planting of dune vegetation for sand relocation reimbursement, increase the maximum amount of reimbursement to \$3,500; and authorize \$15,000 for OBX Better Beaches to continue its program. Community Water Corps Program - "There's No Place Like a Sustainable Home." Val Gould from East Carolina University (ECU) Water Resources Center and several students gave a PowerPoint presentation with details of the program and how it specifically focuses on water flow and water quality; this was followed by a presentation of the Residential Water and Energy Conservation Guide; the document was well received by Board members. Kate Jones will work to get the Guide/information out to the community. The Board approved the Dowdy Park Event Sponsorship policy as presented; The Board passed a motion to appoint members of the Pedestrian Project Advisory Committee which include Mr. Gwinn; Estuarine Shoreline Management Plan - Comr. Sanders gave an update and invited those interested to attend a public meeting on Wednesday, August 10th which was fairly well attended.

Town Updates

None

Discussion Items – Cont’d

July 28, 2022, Director’s Report

Ms. Wyatt briefly discussed her Director’s Report to the Board which included updates on several projects and meetings of note. There was some discussion related to upcoming events at Dowdy Park with Board members suggesting having weekend dates for the Farmer’s Market and the possibility of hosting a swap meet.

Planning Board Members’ Agenda

Ms. Wyatt confirmed for Mr. Ferguson that the Town has several CAMA LPOs on staff.

Planning Board Chairman’s Agenda

None

Adjournment

A motion to adjourn was made by David Elder. The time was 12:13 PM.

Respectfully submitted,
Lily Campos Nieberding