

**Town of Nags Head
Planning Board
August 18, 2020**

The Planning Board of the Town of Nags Head met in regular session on Tuesday August 18, 2020 in the Board Room at the Nags Head Municipal Complex.

Planning Board Chair Megan Vaughan called the meeting to order at 9:00 a.m. as a quorum was present.

Members Present

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

Members Absent

None

Others Present

Michael Zehner, Kelly Wyatt, Holly White, Lily Nieberding

Approval of Agenda

Chair Vaughan asked for a motion to approve the agenda. David Elder moved to approve as presented, Meade Gwinn seconded, and the motion passed unanimously.

Public Comment/Audience Response

None

Approval of Minutes

Chair Vaughan asked for a motion to approve the minutes of the July 21, 2020 meeting. David Elder moved to approve as presented, Kristi Wright seconded, and the motion passed unanimously.

Action Items

Consideration of text amendments to the UDO as it pertains to non-conforming hotels, and accessory uses in association with pre-existing fishing piers.

Planning Director Michael Zehner explained that this item was initially discussed at the Planning Board's meeting on February 18, 2020, with the Planning Board wishing to consider and discuss options further. The Planning Board discussed this item further at their meeting on May 19, where the Board requested that Staff explore options that did not require the creation of an overlay zoning district, and to present those options to the Board for consideration. Staff presented additional information to the Planning Board on June 16; at that time, the Board was supportive of the option presented by Staff that would make amendments to Article 5, Nonconformities, of the UDO, by providing nonconforming restaurants, hotels, or retail uses that commenced on or before December

31, 1980 with the option of seeking a conditional use permit to modify the use, including enlarging or altering the use, in a manner that would otherwise be precluded by the provisions of Sections 5.5. and/or 5.6. of the Article. At the meeting, the Board requested that Staff review and determine the specific instances where such a provision would be applicable.

Following the meeting, Staff conducted the review requested by the Board and came up with a list of hotels that were all nonconforming uses, all located with the CR, Commercial Residential Zoning District, and which may benefit from the provision under consideration.

Additionally, Staff determined that there were no restaurants or retail establishments that are considered to be a nonconforming use. However, related, Staff did determine that the presence of residential units in conjunction with the Nags Head Fishing Pier constituted a nonconforming use of the site, which may be something that the Board wished to address.

Staff presented the above information to the Board at their meeting on July 21. The Board agreed, given that the necessary scope of any treatment would only apply to nonconforming hotels, that it may be more appropriate to focus any amendments within Section 7.12, Hotels, of Article 7, Supplemental Regulations, similar to the treatment of nonconforming cottage courts.

Additionally, the Board requested that Staff also address the residential dwelling units accessory to the Nags Head Fishing Pier. Mr. Zehner also noted that upon further review they did remove from the list the second building of the Surfside Hotel which was found to be permitted as a multi-family dwelling.

It is helpful to consider that the general principle with respect to non-conformities is that, overtime, the non-conforming uses or conditions cease, evolving to conforming uses or conditions. Specifically, Sections 5.5, Nonconforming Use of Land, and 5.6, Nonconforming Use of a Structure, are limiting and jeopardize the preservation of these nonconforming uses. Mr. Zehner noted that his Staff memo details these limitations/impacts.

This effect, at least with respect to the identified nonconforming hotels and the Nags Head Fishing Pier, would therefore seem to be inconsistent with the intent of the goals, objectives, policies, and actions contained in the Comprehensive Plan which support the retention of legacy establishments and structures, especially in certain Character Areas along the beach road.

The impacts referenced above, specifically those contained in Sections 5.5 and 5.6, were the basis for the adoption of provisions in 2015 contained in Section 7.2.14 pertaining to nonconforming cottage courts. Similarly, the proposed text amendments, would add a Section 7.12.3. pertaining to existing nonconforming hotels, allowing a conditional use permit to be sought to modify the use and/or structure, including enlarging or altering the use and/or structure, in a manner that would otherwise be precluded by the provisions of Sections 5.5, Nonconforming Use of Land, or 5.6, Nonconforming Use of a Structure.

Additionally, and related, Section 7.50.1. pertaining to fishing piers is proposed to be amended to reference that dwelling units existing as of July 1, 2020 are an allowable use in conjunction with fishing piers, which would serve to remove the nonconforming use designation for the Nags Head Fishing Pier for this condition.

Staff would recommend that the amendments be adopted as proposed and Mr. Zehner noted he would be happy to answer any questions for the Board.

Mr. Zehner confirmed that as it relates to the Nags Head Fishing Pier the amendment only applies to the building with the two residential dwellings that are on the same parcel as the pier; it does not include the building to the north which is on a separate parcel. After some discussion, Mr. Zehner noted buildings tend to cross over property lines so it would make sense that they would view the two parcels as one site for zoning purposes.

Mr. Zehner responded to Mr. Ferguson that he was uncertain whether the Outer Banks Pier had a dwelling unit, but that if it does, the amendment would apply to that pier as well. Mr. Zehner noted that Staff would research further.

Mr. Ferguson stated that the Town has oceanfront hotels but no longer wants oceanfront hotels, yet they want to grandfather the existing oceanfront hotels. Mr. Ferguson noted that there is nothing in the ordinance that talks about historic preservation. Mr. Ferguson asked what is the Town doing to preserve these buildings that are important to the Town?

Mr. Zehner noted that they (the Town) do not have provisions like that town wide and thinks that it is a valid conversation to have but up to this point there hasn't been an interest in discussing a Landmark or Preservation ordinance that would dictate the design of any projects beyond current architecture controls that are in place.

Mr. Zehner explained that there have been businesses/structures demolished and single-family dwellings put in their place perhaps because of limitations imposed by the ordinance. The proposed ordinance would give the property owners flexibility and options to keep the business viable

Mr. Zehner reminded the Board that they previously discussed the difference between legacy businesses vs. legacy structures, how they are two separate things and how they could have one and not the other.

The Board discussed what preservation might look like but agreed that not all property owners might be interested in regulations that would require structures to be preserved, it would most likely be a voluntary process. Ms. Lambert also noted that in some cases the structures are so dilapidated they are impossible to preserve. This was the case of Restaurant by George, which was eventually demolished, and the property later redeveloped as single-family dwellings.

Mr. Ferguson also brought up the issue of fairness, not allowing any new oceanfront hotels yet allowing existing oceanfront hotels to stay and possibly evolve. Mr. Ferguson noted that zoning wise "there was something that was just not right about that". Mr. Ferguson suggested that the Town should simply develop rigorous standards to allow hotels in these areas.

Ms. Lambert disagreed noting that there are businesses and buildings all around town, not just on the ocean front that wouldn't be allowed now but that add to the charm of the town; the proposed ordinance helps protect what is currently there. Ms. Lambert noted that property owners doing appropriate due diligence should be aware of what zoning would and would not allow them to do with their property.

The Board discussed what would happen if the property was sold and if they would be allowed to rebuild in case of a hurricane. Mr. Zehner confirmed that the ordinance goes with the property. Mr. Zehner also noted, reiterated by Holly White, Principal Planner, that as far as rebuilding, CAMA and the Flood Ordinance would also come into play.

After some further discussion, Meade Gwinn moved to recommend approval of the text amendments as submitted. Molly Harrison seconded the motion and it passed with a vote of 6 to 1 with Gary Ferguson casting the nay vote.

Consideration of text amendments to the UDO as it pertains to fill regulations for properties west of NC 12 and/or 1243 subject to a Base Flood Elevation.

Deputy Planning Director Kelly Wyatt explained that following the adoption of the Flood Damage Prevention Ordinance by the Board of Commissioners on June 3, 2020, Staff identified two necessary amendments to the text related to fill regulations applicable to properties west of NC12 and SR 1243 and subject to a Base Flood Elevation.

Ms. Wyatt explained that the first is a simple re-numbering to correct a typographical error. The second however, is a more substantive change to the regulations to address an unintended consequence associated with significant reduction of the Base Flood Elevation, whereby fill is currently limited to not exceed the Base Flood Elevation but it may be necessary for the Dare County Health Department to require fill in excess of the Base Flood Elevation.

Section 11.5.3 of the Unified Development Ordinance addresses limitations on the utilization of fill based upon a property's location being either east or west of NC 12 and SR 1243. For properties west of NC 12 and SR 1243 for which the Flood Insurance Rate Map (FIRM) provides a Base Flood Elevation, fill shall not be permitted to exceed the Base Flood Elevation.

It was recently brought to Staff's attention for one property currently under development (and which will likely affect other west-side properties) that the Dare County Health Department requirements for fill placement for the wastewater facilities requires fill to exceed the newly established Base Flood Elevation.

The situation that Staff is aware of is as follows:

- The parcel was in an AE-11 (Base Flood Elevation of 11') flood zone and is now in an AE-4.
- The average ground elevation on this lot is approximately 2.5'.
- The ordinance allows fill to be placed to the Base Flood Elevation, therefore, pursuant to current regulations, fill could not exceed 4'.
- The Dare County Health Department evaluation for wastewater improvement requires the septic field to be elevated 30 inches, bringing the lot elevation up to 5 feet, 1 foot greater than what the UDO would permit.

As written, this section of the Unified Development Ordinance does not adequately address the scenario where fill required for the wastewater permit would exceed the established Base Flood Elevation. Generally, this is the result of the significant change in the Base Flood Elevation and did not present issues previously. The proposed amendment would remedy this situation by specifically allowing lots to fill to the Base Flood Elevation or the minimum amount of fill required by the Dare County Health Department, whichever is greater. Additionally, this will be consistent with fill requirements in areas where the FIRM provides no Base Flood Elevation.

Staff recommends that the amendments be adopted as proposed.

After a brief discussion, David Elder moved to recommend approval of the text amendments as presented. Meade Gwinn seconded the motion and it passed by unanimous vote.

Report on Board of Commissioners Actions

Planning Director Michael Zehner gave a report on the Actions from the Board of Commissioner's August 5th Meeting. Of note, the Board approved the waivers for the proposed Coastal Villas Subdivision and also approved the Coastal Villas Subdivision Plat as presented; it was Board consensus to pursue the National Endowment for the Arts – Our Town grant for the Town's skate park located at the YMCA; Mr. Zehner discussed with the BOC the possibility of a joint workshop between the Commissioners and the Planning Board regarding stormwater, but it was the consensus of the Commissioners discuss further at their upcoming retreat; Mr. Zehner updated the Board with the latest census numbers; the Board extended the Dowdy Park part-time manager position through the last scheduled Farmers Market plus two weeks.

Town Updates

None

Discussion Items

July 24, 2020 Director's Report

Mr. Zehner presented his Director's Report to the Board. This report was shared with the Commissioners at the August 5th Meeting. The report provides an overview of selected Planning and Development Department activities, projects, and initiatives. In addition to permitting, inspections, code enforcement, and Todd D. Krafft Septic Health Initiative activities, the report also covers meetings and other activities of note that Planning Staff were involved with during the previous month. Along with permitting numbers and permit turnaround times, Mr. Zehner also discussed the impact of the Coronavirus on Permitting numbers.

Planning Board Members' Agenda

None

Planning Board Chairman's Agenda

None

Adjournment

A motion to adjourn was made by David Elder. The time was 9:58 AM.

Respectfully submitted,

Lily Campos Nieberding