

**Town of Nags Head
Planning Board
November 15, 2016**

The Planning Board of the Town of Nags Head met in regular session on Tuesday, November 15, 2016 in the Board Room at the Nags Head Municipal Complex.

Chairman Mark Cornwell called the meeting to order at 2:30 p.m. as a quorum was present.

Members Present

Mark Cornwell, Ben Reilly, Clyde Futrell, Jim Troutman, Pogie Worsley

Members Absent

Kate Murray, Mike Siers

Others Present

Andy Garman, Kelly Wyatt, Lily Nieberding

Approval of Agenda

Ben Reilly moved to approve the agenda as presented. Jim Troutman seconded the motion and it passed by unanimous vote.

Public Comment/Audience Response

None

Approval of Minutes

There being no changes to the minutes, Ben Reilly moved that the minutes be approved as submitted. Jim Troutman seconded the motion and it passed by unanimous vote.

Action Items

Consideration of zoning ordinance text amendment to require any commercial structure within the C-2, General Commercial Zoning District with a total habitable area that is 15,000 square feet or greater to obtain site plan approval, via the Conditional Use process.

At its September 29, 2016 retreat, the Board of Commissioners requested that the Planning Board and Planning Staff review a zoning ordinance amendment which would require new commercial structures with an area of 15,000 square feet or greater within the Town's C-2 General Commercial Zoning District be approved via the Conditional Use review process.

Currently, there are various commercial uses allowed in the C-2, General Commercial Zoning District that are permitted by right, and therefore approved simply through the site plan review process. The site plan review process does not provide a mechanism for the Planning Board and governing body to

place site specific conditions upon a development based on the circumstances of the property and surrounding land uses.

Larger buildings, by their nature, tend to generate more intense uses of property which can create land use and neighborhood compatibility issues as well as greater community impacts if not carefully planned. The conditional use permit process is designed to allow the community to consider a broad range of land use issues and place conditions on development projects to ensure they meet community goals. The proposed amendment would provide the Planning Board and Board of Commissioners flexibility and discretion when reviewing large commercial projects.

Staff introduced the proposed amendment to the Planning Board at their October 2016 meeting. At that time the Planning Board expressed concern that some of the language might be too subjective and asked Staff to make several changes.

Deputy Planning Director Kelly Wyatt presented the revised amendment and reviewed the changes with the Board. Based on comments heard from the Planning Board, Staff's revisions include: changing total ground floor area to total habitable area; replacing the word conditions with findings; and removing some of the vague or subjective language from each of the findings.

Mr. Reilly asked for clarification related to finding a: compatibility of proposed use with the existing land uses; what would happen if one commercial use replaced another.

Ms. Wyatt confirmed that it is not about changing a use from commercial to residential but rather giving consideration to the surrounding uses when reviewing a proposed site plan to make sure it meets design and site criteria.

Mr. Garman further explained that if a commercial use is being proposed where there is substantial residential uses, the applicant may need to create additional buffer areas or review decisions on where to place dumpsters/loading areas, etc. in order to create additional separation and mitigate noise. The language speaks not just to the use but the arrangement of the site.

Chairman Cornwell agreed noting that this issue came up when the Board was discussing the car wash amendment and stated that Mr. Reilly and Ms. Murray had expressed concern that, because the car wash would be so close to a residential area, a larger buffer area was needed.

Chairman Cornwell reminded the Board that when the Board of Commissioners requests action by the Planning Board on an issue, the Planning Board has 30 days to respond. If after the 30 days the Planning Board has not responded, the BOC does not need a recommendation from the Planning Board to proceed. In this case the 30 days are up so the Board would need to vote on the proposed text amendment today. Chairman invited members of the audience to speak on the issue but asked that they confine their remarks as to why the Planning Board should vote For or Against recommending approval of the text amendment.

First to speak was property/restaurant owner Mike Kelly. Mr. Kelly does not feel that the subjectivity had been removed from the language and believes that going from total ground floor area to total habitable area makes the ordinance more restrictive, not less. Mr. Kelly noted that there are commercial properties that have been around for longer than residential areas and that the Town has done a good job in regulating commercial development without the need for this ordinance. Mr. Kelly would like examples of commercial properties that were not developed to Town standards. Mr. Kelly is concerned because he has a commercial property for sale that may be affected by this proposed change.

Next to speak was Bob Oakes, Nags Head property/business owner. Mr. Oakes does not believe the proposed ordinance is needed; it is duplication as there are other Town ordinances in place that address these same issues. Mr. Oakes urged the Board to vote against the proposed ordinance as it makes things more difficult. When someone is trying to develop something they want an objective set of rules. While he understands the Board wants some discretion, Mr. Oakes felt that this ordinance gives the Commissioners the ability to add extraneous conditions.

Willo Kelly with the Outer Banks Homebuilders Association/Association of Realtors was last to speak. Mrs. Kelly stated that at a recent meeting, the Association had discussed the proposed ordinance change with Deputy Town Manager Andy Garman prior to a Floodplain Map Discussion. The surveyors and engineers in the group expressed concern with the conditional use permit process, noting that they could invest money and time on a project only to be told maybe. With the permitted use process they know what is expected and what they need to do. Mrs. Kelly stated that the proposed ordinance is subjective, for example with finding e: "intense activity" means different things to different people. Mrs. Kelly stated that the Homebuilders feel that zoning is political, do not agree with the proposed ordinance and asked the Board to recommend denial.

Mr. Worsley inquired if the Town had any uses that were not conditional use. Ms. Wyatt stated that under Office, Retail and Services for example there are upward of 20 uses that are permitted rather than conditional.

Mr. Worsley stated that he understands the need for a conditional use process for certain things but as a builder he likes having everything spelled out on paper and knowing what is and what is not allowed before spending thousands of dollars.

For the purpose of Board discussion, Chairman Cornwell moved to recommend approval of the proposed ordinance as presented. The motion failed for lack of second.

Chairman Cornwell then moved to recommend denial of the proposed ordinance as presented. Jim Troutman seconded the motion.

Chairman Cornwell asked the Board to reflect on what the conditional use process provides the Planning Board, Board of Commissioners and the community via the public hearing process. Chair Cornwell used the carwash as an example, and noted how many changes the Planning Board was able to make because of the conditional use process. Another example is the ABC Store which is the first visible sign that someone has entered Nags Head. The Planning Board was able to make sure that it reflected the proper image.

Chair Cornwell noted that he and probably the other members joined the Board so that they could have a voice in the future of Nags Head. The Conditional Use process gives them that capability. They are not a rubber stamp board. They may not always be in sync with the Commissioners, but without the conditional use process they would have less influence. The findings may be subjective but they give the Board flexibility. Chair Cornwell reminded his fellow Board members that they are only making a recommendation to the BOC. The Commissioners have the final say as to whether the ordinance is adopted or not.

There being no further discussion, Chairman Cornwell called for a vote and the motion passed 4 to 1 to recommend denial of the proposed ordinance with Chair Cornwell casting the Nay vote.

Report on Board of Commissioners Actions

Deputy Planning Director Kelly Wyatt:

The text amendments to permit "cottage courts" as an allowable use was adopted as presented with one modification to subsection (m): Cottage courts shall operate under a single, unified management operation which arranges for reservations and attends to guest needs".

The zoning ordinance text amendment from the Outer Banks Hospital to establishment requirements for accessory detached medical office on the same grounds as the principal hospital use was adopted as presented.

Town Updates

Focus Nags Head

Principal Planner Holly White updated Board. Focus is still progressing forward and currently they are reviewing Section 2 – Character Areas with the Advisory Committee. Ms. White stated she had forwarded Section 3 to the Planning Board for their review and asked that they send her any questions or comments. Ms. White will try to do a presentation/overview at the Planning Board's December meeting prior to the joint workshop with Planning Board, Board of Commissioners and Advisory Committee which is scheduled for January 12th, 2017 at 9am. Ms. White reminded the Board that the policy that is being created through Focus Nags Head, the second half is a UDO project. The Board's participation gives them a chance to have influence on code changes ahead of any specific case or site plan or permit.

Dowdy Park

Deputy Town Manager Andy Garman stated that Phase I is close to being finished, it will be done within a month. The construction of the Pavilion is almost completed and the playground equipment has been mostly installed, Mr. Garman stated that things are moving quickly and that they are looking at a large grand opening event on May 13th in partnership with the Dare County Arts Council.

Discussion Item

Continued discussion of zoning ordinance text amendments establishing a table listing of permitted and prohibited uses within the Town.

Continuing the conversation on the prohibited uses chart Ms. Wyatt noted that Staff had made several revisions to the previously viewed document including a framework for how the chart is going to work, the addition of numerous new use categories and providing an introduction to how the chart is intended to be read and administered. Ms. Wyatt reminded the Board that this is a work in progress and updates will continue to be provided.

Ms. Wyatt confirmed for Mr. Reilly that there are currently two smoke and vapor shops in the Town and the use will certainly be discussed once the chart is complete. Ms. Wyatt also explained that the reason that there are two alcohol & drug treatment service categories is that one is outpatient and the other would be in-patient.

Planning Board Members' Agenda

None

Planning Board Chairman's Agenda

Chairman Cornwell reminded the Board that all five BOC members read the minutes. If a Planning Board member is opposed to something they need to state the reasons for their vote; they owe it to the public and the Commissioners to state why they voted a certain way.

Adjournment

There being no further business to discuss, the meeting was adjourned at 3:24 PM.

Respectfully submitted,

Lily Campos Nieberding