

**Town of Nags Head
Planning Board
October 18, 2016**

The Planning Board of the Town of Nags Head met in regular session on Tuesday, October 18, 2016 in the 2nd Floor Conference 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, Kate Murray, Mike Siers, Jim Troutman, Pogie Worsley

Members Absent

None

Others Present

Andy Garman, Kelly Wyatt, Lily Nieberding, Holly White

Approval of Agenda

Chairman Cornwell asked that the order of Action Items 1 and 2 be reversed. Ben Reilly moved to approve the agenda as amended. 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 ground floor heated area that is 15,000 square feet or greater to obtain site plan approval via the Conditional Use process.

Deputy Planning Director Kelly Wyatt explained that at their 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. Also, the site plan review process does not require affirmative findings of fact to demonstrate that the proposed development is consistent with the Town's ordinances, land use plan, and overall community development goals. These findings of fact often include:

1. The applicant has met the requirements of the Town of Nags Head Zoning Ordinance, Subdivision Ordinance and other applicable ordinances.
2. The use will not materially endanger the public health and safety if located where proposed and developed according to the plan as submitted.
3. The use as proposed will not overburden the firefighting capabilities and the municipal water supply capacity of the Town.

Ms. Wyatt noted that larger buildings 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 purpose of this amendment is to provide the Planning Board and Board of Commissioners flexibility and discretion when reviewing large commercial projects to mitigate the intensity of the proposed development and any associated negative community impacts.

Ms. Wyatt gave the Board some examples including the recently approved text amendment regarding Car Washes and hours of operation, Shoppes @ 10.5 - had that been a conditional use there might have been consideration given to the sidewalk, TW's which had issues with some of the vegetation that was removed. PetSmart was a site plan review but there are some issues that might have been mitigated if it had been a conditional use instead.

Deputy Town Manager Andy Garman asked Ms. Wyatt to state what other types of uses are conditional; Ms. Wyatt listed automobile service stations, fishing piers, animal boarding and vet clinics, retail shopping centers, hotels, churches, drive in/drive through restaurants, child care centers as examples.

Mr. Garman noted that often, impacts from a large development are the same or even greater than some of these uses that are conditional. With a site plan/permitted use there are certain requirements that the applicant must meet and if they meet those requirements they are issued a permit. The conditional use process provides Boards with some more discretion to address issues. For example a use may not be the most appropriate for a certain area but with careful planning the Board and Staff can make the use fit; there are things that the Town may want to do to make a use more feasible.

Mr. Worsley inquired where the 15000 SF had come from. Ms. Wyatt explained that under the commercial architectural standards, buildings under 15K SF must meet the residential design standards but buildings that are 15K SF and greater have the option to meet the residential design or the alternative design standards. Mr. Garman confirmed that the 15K would apply to the lowest habitable floor.

Ms. Wyatt confirmed for Ms. Murray that the wording was intentionally left vague to allow the Board to impose the conditions site specific; it gives the Board more discretion.

Chairman Cornwell asked about the Wings buildings and how they fit into the proposed change. Ms. Wyatt explained that some of the Wings buildings have been greater than 15K SF and all were approved by the site plan process, not conditional use. Ms. Wyatt noted that they almost always use the alternative design guidelines.

Mr. Reilly inquired about the vacant lot adjacent to the YMCA and how development might impact traffic patterns.

Mr. Siers inquired about the new 7-11. Ms. Wyatt confirmed that it was approved as a conditional use. Mr. Garman noted that because of this the Town was able to get them to move the proposed driveways.

Property/restaurant owner Mike Kelly addressed the Board. Mr. Kelly has a piece of property that he has for sale that may be impacted by this ordinance change. Mr. Kelly expressed concern that the review process could become subjective because it's very vague. Mr. Kelly feels that many of the issues brought up by this ordinance are already being addressed and can be discussed during the pre-review process. Mr. Kelly noted that developments fair better when the developer knows what the rules are ahead of time rather than to be halfway through a projects and then there are new speed bumps.

Mr. Garman confirmed for Mr. Kelly and the Board that once a site plan has been approved by the BOC, Staff does not put in any more conditions or make any changes.

Mr. Kelly confirmed for Mr. Siers the current Kelly's Restaurant building is between 12 and 15,000 SF.

Chairman Cornwell explained for Mr. Kelly that the conditional use process is a way to address and take care of speed bumps ahead of time so that when a site plan goes through to the BOC it is done. Chair Cornwell gave the new ABC store as an example where the Planning Board used the process to ensure that it met the Town's design guidelines.

Chair Cornwell questioned how they (the Board) can ensure that the applicants will build to Nags Head's vision and not just build a big box that doesn't meet the Town's requirements. The conditional use process helps address these issues.

Mr. Garman stated that Staff tries to address issues at Tech review but can't always predict what the Planning Board and Board of Commissioners will request. One of the suggestions that have come up during the Focus process is a pre-application conference with the Boards to address Staff and Board concerns.

Ms. Murray agreed noting that the hope is that it would end up saving the applicant time and money.

Ms. Wyatt noted that in a site plan approval process Staff can ask the applicant to make changes but there is no mechanism in place to make approval conditional on certain requirements.

Mr. Kelly confirmed for Chairman Cornwell that he saw the proposed change not as an impediment but more as a concern, especially as it relates to subjectivity.

Mr. Garman agreed with Mr. Kelly that the approval process involves discretion, noting that different people have different opinions; seven people on the Planning Board have to agree on standards, then five more people on the BOC before a plan is approved. This is why discretionary approvals such as conditional use permits are decided by boards and not by individuals.

Mr. Worsley asked what was driving the proposed change and noted that the timing seemed a little convenient.

Mr. Reilly inquired if the Town has rules for buildings under 15 K why can't they add more design guidelines on a graduated plan, add these conditions from 15K to 20K, add these conditions if it's 20 to 30 K, etc.

Mr. Garman thought that this might be possible and they may be look at that during the code rewrite process, but that is going to take more time.

Mr. Garman reiterated that there are already uses that must go through the conditional use process and the thinking is that currently there are permitted uses that, due their size, might impact the community more than some of the current conditional uses.

Mr. Garman suggested that if there are specific things that are too subjective or vague, Staff could remove them from the conditions.

Chairman Cornwell asked Staff to rework the conditions to make them less vague. Chair Cornwell suggested maybe referencing other specific Town ordinances where applicable and also noted that what Mr. Reilly proposed might be worth looking into, a phased or scaled approach.

Chair Cornwell stated that he was unsure if anyone on the Planning Board was comfortable with the proposed ordinance moving forward as is.

The Board agreed that Staff should especially look at and rework conditions a, e and f.

Mr. Futrell noted that just by removing certain words that seem arbitrary can make a difference.

Mr. Troutman agreed stating that Staff needs to remove some of the subjectivity.

Mr. Siers asked that Staff remove the words ground floor and change it to total habitable area.

Ben Reilly moved to table the item to give time for Staff to make revisions and bring back at their November meeting. Jim Troutman seconded the motion and the motion passed unanimously.

Mr. Kelly requested that Staff email him the revisions and the agenda once it was finalized.

Consideration of zoning ordinance text amendments to permit "Cottage Courts" as an allowable use within the Town.

Mr. Garman explained that at their October regular meeting, the Board of Commissioners held a public hearing on the proposed ordinance. Based on their discussions and some issues brought up by the Town Attorney, the Commissioners requested that the Planning Board review the ordinance again to address the following items:

- Consider additional language to ensure that cottage courts operate commercially similar to hotels under a unified management scheme.

- Create a maximum size for structures in section 48-378 (b). As the Planning Board will recall, the ordinance establishes a maximum size for cottage court units. It allows one structure to be larger than the maximum size if combined with another use. The ordinance did not include a specific size limitation for this structure.

- Clarify that pools are not allowed as accessory uses to individual cottage court units.

Mr. Garman stated that Staff had drafted language to address the aforementioned concerns and presented the changes to the Board.

Mr. Garman noted that some of the issues are fairly simple to address while one thing in particular is a more complex.

With regards to creating a maximum size limit for one of the structures, Staff reviewed the table which had the square footage of existing cottage court buildings and came up with a 5000 SF maximum.

Mr. Garman confirmed for Mr. Troutman that Cahoon's market is part of same property as the cottage court. The same goes for the larger structure at the Sandspur.

Mr. Garman stated they also tightened up the language relating to swimming pools to make it clear that individual units may not have pools.

Finally with regards to the last item – considering additional language to ensure that cottage courts operate commercially similar to hotels – the Town attorney is doing some additional research and reviewing whether Town can prohibit the ability of the units to be turned into condos.

There is some language to try ensure cottage courts don't become individual condominiums but they did not add language as it relates to 24/7 onsite management because this might be problematic as there are existing cottage courts that do not have this in place.

Mr. Garman requested that the Planning Board allow Staff to add that language if given the ok by the attorney without having to come back to them prior to sending the ordinance back to the BOC.

Finally, Mr. Garman noted that the attorney advised that the R2 be removed from consideration all together – the attorney stated that they could not allow cottage courts in the R2 in South Nags Head but prohibit them in the R2 in other parts of town. Mr. Garman requested that the Board strike the language with regards to the R2.

Chairman Cornwell moved to recommend approval of the ordinance with Staff's recommended changes. Ben Reilly seconded the motion and it passed by unanimous vote.

Report on Board of Commissioners Actions

Deputy Planning Director Kelly Wyatt stated that the request to amend conditions associated with "Car Wash as a conditional use within the C-2 General Commercial Zoning District was adopted as presented

with Planning Board revisions and additional language stating: "Car washes may have specified hours of operation as necessary to minimize the impacts on any adjacent residential uses".

Town Updates

Focus Nags Head

Principal Planner Holly White gave a brief update on Focus Nags Head stating that at their last meeting the BOC had scheduled a joint workshop with the Planning Board, Board of Commissioners and Advisory Committee; the tentative date is Thursday January 12th, 2017 at 9am.

Ms. White asked the Planning Board to submit comments and questions to her as soon as they are able to.

Mr. Garman suggested doing a more in-depth presentation to the Board at their December meeting in advance of the workshop.

After some further discussion Pogie Worsley moved to change the meeting from the third Tuesday to the second Tuesday in December. Mike Siers seconded the motion and it passed by unanimous vote.

Dowdy Park

Mr. Garman noted that they have delivered all the playground equipment. There is a lot of interesting equipment, for example, the age 5-12 structure has a tree with realistic animals. The contractor will do the playground installation in the next few weeks. Mr. Garman stated that the site held up well during storm and that a lot of the concrete work and stepping pylons have been completed.

Discussion Item

Planning Board Members' Agenda

None

Planning Board Chairman's Agenda

None

Adjournment

There being no further business to discuss, the meeting was adjourned at 4:20 PM.

Respectfully submitted,

Lily Campos Nieberding