
**Town of Nags Head
Planning Board
August 16, 2016**

The Planning Board of the Town of Nags Head met in regular session on Tuesday, August 16, 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, Kate Murray, Mike Siers, Jim Troutman, Pogie Worsley

Members Absent

None

Others Present

Andy Garman, Kelly Wyatt, Lily Nieberding

Approval of Agenda

Chairman Cornwell stated that based on the applicant's request Item 2 under Action Items needed to be removed. 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 amendments to permit "Cottage Courts" as an allowable use within the Town.

Deputy Town Manager/Planning Director Andy Garman explained that last month the Planning Board reviewed a draft ordinance that would reinstate "cottage court" as an allowable use within the Town. The Planning Board discussed what needed to be addressed to make it a "complete ordinance". One of the items discussed was making sure it tied in with other sections (in the code) that deal with non-conforming cottage courts.

Mr. Garman explained that the proposed ordinance would allow new cottage courts in certain districts, C-2, R-2 and CR and primarily along the beach road on lots with frontage on South Virginia

Dare Trail or on South Old Oregon Inlet Road. Any existing cottage court properties that do not meet the requirements of the new ordinance would continue to be considered non-conforming and would be addressed by recent changes that allow staff and the Board to approve changes to non-conforming cottage courts. This section of the ordinance has not changed substantially. However, some wording changes have been included to clarify that cottage courts are no longer a non-conforming use. A property would either fall under the old ordinance or the new ordinance depending on the circumstances.

In addition, at the July meeting, the Planning Board requested that Staff draft language to extend the area for cottage court development to Wrightsville Avenue in the northern part of town. Staff agreed to provide an analysis of land uses in this area to determine the appropriateness of this recommendation.

Mr. Garman proceeded to review for the Board a copy of the zoning map noting that extending the area in the northern part of town would have to include the R-3 District which is currently not included in the proposed ordinance because it does not abut NC12. Mr. Garman explained that while there is some commercial development in the area between NC 12 and Wrightsville Avenue, the R-3 district is almost entirely residential in nature. Based on a review of the land uses in this area as well as the location of existing cottage courts, Staff would recommend keeping cottage court development to the beach road. Mr. Garman noted that another option would be to allow cottage courts from Memorial east instead of Wrightsville east.

Mr. Garman confirmed for Chair Cornwell that while there are several properties that have two cottages, most of them do not operate as true cottage courts and do not have names.

Mr. Garman also confirmed that this latest version of the ordinance focused on Sec. 48-128 – non-conforming cottage courts and that the underlined and strike-through items were revisions to the original ordinance in support of the new ordinance. The goal was to confirm that the use is no longer non-conforming. You can have a non-conforming cottage court that doesn't meet the site or structure requirements but it is no longer considered a non-conforming use.

Chairman Cornwell suggested that the Board discuss and vote on the optional language first.

Pogie Worsley moved to include the optional language to extend the allowable area for cottage courts to Wrightsville Avenue. Mike Siers seconded the motion.

Mr. Garman confirmed for Mr. Futrell that he did not foresee traffic on Wrightsville being affected if they allowed the use.

Mr. Garman asked if the motion included the entire R-3 zoning district.

Mr. Garman explained for Mr. Worsley that R-2 is medium density residential while R-3 is high density residential; in the zoning ordinance the R-3 has smaller setbacks and smaller lot requirements.

Mr. Worsley inquired about the ramifications of allowing cottage courts in the R-3. Mr. Garman stated that in the R-3 the expectation is that it's single family residential so it's about protecting those property owners in the R-3. Staff has only suggested cottage courts in the R-2 for lots directly abutting NC 12 which is consistent with current land use patterns.

Mr. Worsley stated that everything he's read so far has been very positive towards cottage courts.

Mr. Garman reminded the Board that the Town has not allowed cottage courts since 1985 so with this new ordinance every property along the beach road will now be available for them; this proposed ordinance will allow a significant expansion of cottage courts over the present ordinance.

Mr. Garman confirmed for Mr. Siers that on-site management is not a requirement of the ordinance.

Mr. Siers inquired what made a cottage court any more commercial than an eight bedroom rental house in that same location. Mr. Garman stated that the definition of cottage courts states that they shall be designed and intended for transient guests on a rental basis.

Mr. Siers noted that they are intermingling commercial (rental) properties with single family residential homes in the entire township and did not understand what the difference was between those and cottage courts.

Chairman Cornwell stated that he was opposed to approving the additional language (to allow cottage courts to extend to South Wrightsville Avenue); the character and culture of the area (R-3) is residential and residential for a reason. Chairman Cornwell believes allowing cottage courts there would change significantly the character of the area and that residents of the R-3 would vote it down.

There being no further discussion Chairman Cornwell called for a vote on the motion to include the optional language and it failed with a vote of 5 to 2 with Pogie Worsley and Mike Siers casting the Aye votes.

Pogie Worsley moved to recommend approval of the ordinance as originally submitted (allowing cottage courts only on NC 12 or SR 1243), Clyde Futrell seconded the motion. There being no further discussion; the Motion passed by unanimous vote.

Report on Board of Commissioners Actions

Deputy Planning Director Kelly Wyatt:

The Board of Commissioners requested that the Planning Board review further the Zoning ordinance text amendment to revise conditions of Car Wash as a Conditional Use within the C-2 District.

Chairman Cornwell asked Ms. Wyatt to have the applicant come prepared to address the Commissioners' comments when they come in front of the Planning Board at their September meeting (car washes were originally on the August Planning Board agenda however the applicant requested that the item be removed as they were not able to have representation at the meeting).

Consideration of Preliminary Plat for Elliott Estates, Phase III, Lot 25 with request for subdivision waiver regarding access was tabled until the September 7, 2016 BOC meeting to give the Commissioners time to review the additional information that was submitted just prior to the meeting.

Town Updates

Focus Nags Head

Principal Planner Holly White updated the Board on the FOCUS Nags Head which was initiated almost a year ago - July 20, 2015 with a visit by the project consultants.

At the last BOC meeting Staff updated the Commissioners on where they were in the process and presented a revised schedule which Ms. White will share with the Planning Board to demonstrate how they will be engaged in the review of the comprehensive plan elements that are coming forward.

Ms. White noted that in the Staff Report she outlined a summary of project milestones over the past year. FOCUS is a two part project with the first portion being focused on update of the Land Use Plan and incorporation of other long range planning documents into a single comprehensive document. This past year has been dedicated to seeking community input and drafting of the comprehensive plan. The second part of the project will be the code rewrite portion and Ms. White noted that there will be a point in time where there will be some overlap between the two parts.

The primary role of the Advisory Committee has been to provide guidance to staff on policy issues related to the strategic direction and vision of character areas covered in Part 2: Community Character Areas. These Character Areas represent unique areas of the Town for which distinct land use policies and zoning standards will be developed. However, the Community Character Areas represent only a portion of the plan. Part 3: Comprehensive Plan Elements & Policies covers a large portion of other necessary policy. Since the Town has already established policy guidance on many of these elements from other planning efforts, Staff felt it a better use of resources and time to work on drafting those portions of policy internally.

Ms. White reviewed a revised schedule that breaks down the Comp Plan Drafting referenced on the Gantt chart. This has been done to provide the Board of Commissioners with a defined schedule to help the Comp Plan stay on track. Part 3: Comprehensive Plan Elements & Policies will be brought forward first. This portion of the plan discusses policy that applies town wide and is more general in nature. An Advisory Committee meeting will be held the week of September 9th to review this section. Part 1 & 2: Setting & Context/Community Character Areas will be brought forward next. This section covers the vision and character area summaries. An Advisory Committee meeting will be held the week of September 30th to review this portion of the plan. The last portion of the plan to move forward will be Part 4: Implementation. This will also include a complete draft of the Comprehensive Plan. The Implementation section includes an action matrix and sections on updates and amendments to the plan. An Advisory Committee meeting will be held the week of November 11th to discuss this portion of the plan. Each portion of the plan will be presented to both the Planning Board and Board of Commissioners following presentation to the Advisory Committee.

Ms. White noted that Staff hopes to have a final community wide meeting on December 16th with a public hearing being held by the Board of Commissioners the week of January 20th.

Ms. White confirmed for Chair Cornwell that the Advisory Committee will meet September 9th to review Part 3, and then the Planning Board would review it at their September 23rd meeting.

Chairman Cornwell asked that the Planning Board receive the document at the same time the Advisory Committee gets it so they can start reviewing it, with the knowledge that it will be revised once the Advisory Committee comments are inserted. Ms. White also invited the Board members to sit in on the Advisory Committee meeting if they were interested.

Sea Level Rise

Ms. White explained that over past several weeks Staff has been working with NC Sea Grant Staff to merge the three diagrams developed at the meetings in December into one diagram. Staff participated in several webinars with Jessica Whitehead and Lisa Schiavinato to finalize the merging of diagrams.

The Sea Level Rise Committee met on in August to review the merged diagram and prioritize actions outlined in the diagram. Valuable feedback was gained at the meetings and the committee was able to participate and complete the exercise to prioritize the actions.

The actions identified how the Town could potentially adapt in the future and can be broken out into five main categories: ocean management, estuarine shoreline management, Stormwater management, water (ground/surface) management, and an all issues category in which the issues were identified in all three groups.

Town staff will be working with Sea Grant staff over the next six weeks to:

1. Revise the actions based on the voting.
2. Provide a prioritized list of action for each area as well as the top six priorities overall.
3. Update the report to incorporate the combined diagrams and action lists.
4. Set up a final committee meeting to view the final draft plan.

Ms. White confirmed for Ms. Murray that Staff foresees incorporating the final draft plan into the comprehensive plan.

Ms. White confirmed that the Commissioners will be presented with the report and prioritized list of actions. Mr. Garman stated that two of the Commissioners were in attendance at the meetings.

Mr. Garman noted that this list is just the tip of the iceberg; the Town is just starting to think about Sea Level Rise as part of the Planning Process.

Ms. White agreed stating that that the report lays out direction on how to move forward.

Dowdy Park

Mr. Garman stated that Phase I construction is underway; all the contracts for the project have been written and it is moving along. Mr. Garman noted that it is all happening fast with a deadline of January 15th for construction of the pavilion and playground, then the landscaping to be done through March. The contractors are Hatchell Concrete, Rick Godfrey – Godfrey Construction, Carolina Parks and Play and Alpha Advantage Landscaping.

Mr. Garman stated that there will be some impact to pedestrian traffic to the school and confirmed for Mr. Reilly that there will still be a cut-through for students until October or November and that any disruptions will be communicated to the Principal.

Discussion Item

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

Ms. Wyatt explained that this was an update and continued discussion from last month of a recent North Carolina Supreme Court ruling which found that a zoning ordinance may not regulate unlisted land uses by providing a statement such as "the ordinance prohibits all land uses that are not expressly permitted".

In moving forward the courts have not said that every use must be allowed somewhere within the community's zoning districts but that any prohibitions of land uses need to be clearly stated. If there is a use the Town specifically wishes to prohibit it needs to be clearly defined as such.

Based on what other communities who have done to address the recent NC Supreme Court decision, Staff crafted a table with uses listed in the column on the right-hand side and zoning districts across the top. Existing uses currently in the ordinance are listed by zoning district and the table specifies where the use is both permitted and prohibited. Staff has also added other uses to the table as an attempt to define the uses prohibited by the town.

Ms. Wyatt noted that this table is not a finished document; this will be a work in progress and updates will be provided to the Board as they are available.

Ms. Wyatt asked the Board that as they think of them (prohibited uses) to please send an e-mail and she will add them to the list so they can be discussed at a future meeting.

Ms. Wyatt confirmed for Chair Cornwell that anything on the list that is prohibited could be permitted later by a text amendment.

Ms. Wyatt confirmed for Ms. Murray that it would be useful to keep a running list of uses that the Town may want to permit, for further discussion.

Planning Board Members' Agenda

Ms. Murray inquired about the possibility of adding recycling containers on the beach. Mr. Garman stated that he would look into it.

Mr. Futrell inquired about the Dune South fire damaged property. Ms. Wyatt stated that permits have been issued to repair it.

Mr. Futrell also suggested looking into revising the new trash pickup schedule for south Nags Head. Mr. Garman noted that this has been a topic of discussion with the Town Manager and the Commissioners and will be discussed further at the Board retreat.

Planning Board Chairman's Agenda

None

Adjournment

There being no further business to discuss, the meeting was adjourned at 3:53 PM.

Respectfully submitted,

Lily Campos Nieberding