
**Town of Nags Head
Planning Board
December 8, 2015**

The Planning Board of the Town of Nags Head met in regular session on Tuesday, December 8, 2015 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, Kate Murray, Mike Siers, Pogie Worsley

Members Absent

Clyde Futrell, Jim Troutman

Others Present

Andy Garman, Kelly Wyatt, Holly White, Lily Nieberding

Approval of Agenda

There being no changes to the agenda, Ben Reilly moved to approve it as submitted, Pogie Worsley seconded the motion and it passed by unanimous vote.

Audience Response

There being no comments, Chairman Cornwell closed the Public Comment/Audience Response.

Approval of Minutes

There being no changes, Ben Reilly moved that the minutes be approved as presented; Kate Murray seconded the motion and the motion passed by unanimous vote.

Report of Board of Commissioners Actions

Deputy Planning Director Kelly Wyatt reported on recent Board actions:

The Conditional Use Application submitted by Susie Nixon of Beach Babies Preschool, to operate a Child Day Care Center within Plaza del Sol Shopping Center located at 2236 S. Croatan Highway, was approved with the condition that State Licensure be acquired and maintained.

The Conditional Use Application submitted by John DeLucia of Albemarle & Associates, Ltd. on behalf of Island X-PerTees, to locate a Screen Printing business within the existing warehouse structure located at 2234 Satterfield Landing Road, was approved with the condition that the dumpster be provided as requested by Public Works.

Town Updates

Update on Focus Nags Head

Principal Planner Holly White gave an update on FOCUS Nags Head which is underway and currently in Task 2 – Exploration and Task 3 – Drafting of the Comprehensive Plan.

Ms. White noted that the Town has received feedback from the consultant in the form of three memos:

Memo 1 summarizes the overall FOCUS Nags Head process to date and suggests next steps for Staff to undertake in moving forward. In addition, Code Wright outlines a suggested Comprehensive Plan Structure.

Memo 2 looks at the Town's current Vision statement and proposes a revised Vision Statement based on community input to this point.

Memo 3 outlines the input, issues, and concerns brought forward by stakeholders during the Stakeholders Interviews in September.

Ms. White proceeded to review Memo 1 in greater detail for the Board, which included the role of Staff and the advisory committee and the comp plan process. Ms. White also discussed the Guiding Principles and their role in the plan and reviewed the task schedule which includes a start and end date for each task. Ms. White noted that what was missing from the schedule was more public input and stated that she is hoping to schedule Public Meetings after every two Advisory Committee meetings. In addition there will be two Public Hearings associated with the plan, one at Planning Board and one at the BOC meeting.

Staff will be working in the coming months to carry out meetings with the Advisory Committee, Board of Commissioners, Planning Board and other Stakeholders to gain additional input on topic areas needed in order to draft the Comprehensive Plan.

Ms. White confirmed for Mr. Cornwell that Kate Murray is the Planning Board representative on the Advisory Committee.

Ms. White also explained that the Technical Committee will be more involved in the code drafting part which will not begin until July, but they are welcomed to sit in on the Advisory Committee meetings.

Update on NC Sea Grant Sea Level Rise Study

Ms. White explained that Sea Grant staff visited Nags Head in August and September to conduct stakeholder interviews about coastal resiliency and sea level rise.

On December 7 & 8, these stakeholders and the public were invited to attend a coastal resiliency workshop where participants learned more about how sea level rise impact Nags Head. Participants were then broken out into groups where they explored how the Town and its residents could reduce negative impacts. At the close of the two day workshop, Sea Grant staff presented a summary of findings from the workshop and potential next steps. Ms. White noted that there were 58 people in

attendance last night and 48 people in attendance today. Planning Board member Kate Murray was part of one group and Chairman Cornwell was part of the second group.

Ms. Murray confirmed that her group focused mainly on shoreline management, how to manage for erosion and septic health issues. What is being done now and what can be improved. Specifically discussed were estuarine erosion and the use of living shorelines, in which there is a lot of interest in.

Mr. Cornwell stated he had Mr. Garman and Town Engineer David Ryan in his group and that they had a lot of consensus. They had a lot of perspective on the Septic issue and how it is affected by rising ground water or Stormwater. What came out of their group was the need for a change in legislation because there are things that the Town could do but are unable to do because of existing Federal and State laws.

Ms. White stated that the workshop ended today with how we (the Town) are going to move forward. There is an interest in bringing back the (Focus Nags Head) Advisory Committee and other interest citizens to make sure that the final report (that will be done by NC Sea Grant) accurately reflects what was discussed during the workshops.

Action Items

Consideration of numerous zoning ordinance text amendments related to the Town's landscaping and buffering ordinances.

Deputy Planning Director Kelly Wyatt followed up on where the Board and Staff left off at the previous month's meeting. The ordinance related to commercial landscaping and buffering requirements had been revised based on a joint workshop held with between the Planning Board and the Local Business Committee. The revised ordinance relies on a new vegetation planting guidelines document which includes a recommended plant list broken down by appropriate planting zones.

Ms. Wyatt noted that since the last meeting Staff had revised the following portions of the proposed zoning ordinance amendment:

- Section 48-483(a)(4) was revised to remove the 25 percent shrub planting requirement in the Beach Planting Zone in lieu of planting ornamental grasses.
- Section 48-483(a)(9) was revised to clarify that the number of plantings shall be reduced by 10 percent when drip irrigation is utilized.
- Section 48-371(g) was revised to reduce the tree caliper from 8-inches to 6-inches to provide consistency with our tree removal ordinance.
- Section 48-485(b)(1) has been eliminated in its entirety and replaced with the new planting chart.

Ms. Wyatt also pointed out the vegetative planting guidelines, which is an evolving document; the ordinance is complete but the cluster diagrams will be brought back at a later date. Ms. Wyatt reminded the Board that the purpose of the plant list is to act as a guide; it is a recommended list which provides examples of plants that may be suitable on sites where landscaping is required by the ordinance.

Ms. Wyatt stated that she would be happy to answer any questions for the Board and noted that Jim Connors, a landscape architect, was present and available as well.

Mr. Jim Connors addressed the Board. Mr. Connors stated he had not had time to fully review the revised ordinance but noted that often times during the design phase or out in the field he runs into conflicts when trying to meet buffering and storm water retention requirements. Mr. Connors stated that he really liked the use of incentives and the use of clustering. Mr. Connors stated that business owners especially will be happy with the ability to cluster as current requirements such as the planting of evergreens every five feet on center sometimes tend to hide businesses.

Mr. Connors noted that currently if someone wants to develop a commercial site, surveyors and engineers get involved, but engineers are trying to get final approval of the site development plan (and are not focused on the landscape portion). Mr. Connors stated that if they were to unlink the landscape design from what the engineer is proposing the Town would go a long way towards getting better landscape designs where they are required by the ordinance. Mr. Connors suggested having the approval of the landscape design tied to issuance of the CO.

Mr. Connors also spoke about the section of the ordinance that notes the required plants for each 100 feet of Buffer area. The heading Ornamental Grasses/Herbaceous Plants concerns him because a site could end up with an "ocean of pampas grass".

Mr. Connors offered to add more plants to the plant list but stated that it would be difficult to come up with a comprehensive list. Chair Cornwell asked him to forward any suggested additions to Ms. Wyatt.

Ms. Wyatt agreed to amend the ordinance under Part I Section (a)(2) by changing the field name on the table from Ornamental Grasses/Herbaceous Plants to Herbaceous Plants/Ground Cover.

Ms. Murray suggested that Staff indicate which plants are native on the recommended plant list.

Mr. Connors stated that he would like to see the Town incentivize the use of native plants but cautioned the Town to be careful about what incentives to offer because it might result in a reduction of plants.

Ms. Murray suggested that they drop the Japanese/European Privet and Pampas Grass from the recommended list stating that Pampas grass can grow large and unruly. Mr. Connors concurred stating that they can also be a fire hazard.

After some discussion, Mr. Garman suggested further amending the ordinance under Part I Section (a)(9) to read that "Properties that provide for drip irrigation of landscape materials or use all native plants may reduce the overall buffering requirement, number of plantings by 10 percent".

Ben Reilly moved to recommend approval of the ordinance as amended. Pogie Worsley seconded the motion and the motion passed by unanimous vote.

Chair Cornwell suggested that Staff keep the Vegetative Planting Guidelines on the agenda as Staff continues to revise it. Mr. Garman agreed and also led a discussion on the possibility of having the landscape plan reviewed separately and not as part of engineered site plan; have it approved by staff prior to CO and not by the Commissioners.

Mr. Worsley suggested combining design/review of the landscape plan with the Stormwater Management plan.

Consideration of an ordinance amendment to Chapter 22 of the Town Code, Flood Damage Prevention, to define "free and clear of obstruction" for the purpose of regulating foundations in VE zones in accordance with minimum requirements of the National Flood Insurance Program.

Principal Planner Holly White presented. She has been working with Chief Building Inspector David Morton on this issue.

Free of Obstruction is a terminology that is currently used in Chapter 22 Floods in Coastal High Hazard Areas and V zones to require elevated buildings to be "free and clear" below the lowest floor. However, free of obstruction is not defined to explicitly state what that means or how it should be applied.

After discussion with the Planning Board at their November 17th meeting, Staff proposed that Chapter 22 Floods be amended to reflect greater clarification in the proposed text amendment. These proposed changes would formally adopt the internal policy currently utilized by staff.

In order to make the necessary changes, the following sections of the code needed to be modified:

1. Chapter 22 Floods, Sec. 22-32. – Definitions: Added definitions for "Free of Obstruction" and "Lowest Horizontal Structural Member".

2. Chapter 22 Floods, Sec. 22-35. - Provisions for flood hazard reduction. (c) Coastal high hazard areas (zones VE) (a) Items 3 and 4- Added clarifications on the application of free of obstruction.

FEMA's rules require that structures in a VE flood zone (generally oceanfront) must be elevated on an open foundation (i.e., pilings); this allows floodwaters and waves to pass underneath the structure without resistance from the foundation or structural walls. Staff has been requiring that homes in the V zone be elevated a minimum of one (1) foot above finished grade and free and clear- even in cases where the existing grade is above regulatory base flood elevation. The proposed changes would essentially codify a standard that is currently being defined administratively.

Ms. White confirmed for Mr. Worsley that elevators and entry/access are considered exempt.

3. Chapter 48- Zoning, Article 1- In General, Section 48-7. - Definitions of specific words and terms: Amend definition of height to not penalize applicants for meeting free of obstruction.

Changes are being considered to the building height regulations in order to not penalize the height of structures for meeting the free and clear requirement. The height measurement would rely on the line established for free of obstruction for structures in a VE zone, rather than finished grade. Because height is measured from finished grade, the current application of free of obstruction requirement is potentially reducing the height of certain houses.

Ms. White explained that also addressed in the proposed text amendment is a minor change to Chapter 22 Floods, Sec. 22-35. - Provisions for flood hazard reduction. (b) Specific standards, (5) Elevated Buildings and (7) Accessory Structure. Staff proposes to change the limit of enclosed space below an elevated building in an AE flood zones to 299 square feet from 300 square feet. Staff is requesting this change because it affords the Town the opportunity to gain additional CRS points that we are currently not receiving. There is approximately 100 points available if the Town limits the enclosed areas beneath a structure to no more than 299 square feet. Currently, the ordinance states that enclosed areas cannot exceed 300 square feet.

Ms. White confirmed for Chair Cornwell that CRS would track the 299 SF requirement by reviewing Final Construction elevation certificates.

Ms. White confirmed for Mr. Siers that the definition of height was changed to account for any discrepancies.

Pogie Worsley moved to recommend approval of the ordinance as presented. Ben Reilly seconded the motion and the motion passed by unanimous vote.

Discussion Items

Draft revisions to the Town's sign ordinance to ensure content neutral language.

Deputy Town Manager/Planning Director Andy Garman presented to the Board a draft of comprehensive revisions to the sign ordinance to incorporate content neutral language. Mr. Garman noted that the revisions were extensive.

Mr. Garman proceeded to review the proposed changes for the Board:

The ordinance includes a lot of definitions, so Staff removed the definition for any sign that is defined by the content; this includes construction signs, directional signs, identification signs, outdoor advertising sign and structure and time and temperature display.

The next change was a revision to Section 48-281 – Intent of Article, including adding the intent to ensure that the constitutionally guaranteed right of free speech is protected.

Under Sec. 48-282 – General requirements, the primary changes involve revised standards for temporary signs in residential districts which are further discussed under Sec. 48-283, Signs Permitted in Residential Districts.

Sec. 48-283 (1) Temporary signs - includes new language for the regulation of construction signs, for sale signs, as well as other signs associated with limited duration activities which may occur on residential properties. Mr. Garman noted that modifications to previous language, pertaining to "for rent" signs has also been incorporated into the ordinance. Mr. Garman also added language regarding signs associated with special events permits.

Sec. 48-283 (2) Permanent signs – includes new language for the regulation of real estate rental signs and identification signs.

Mr. Garman and the Board discussed permanent signs for rental houses and whether they should be parallel or perpendicular to the street. It was Board's preference to have the signs be parallel to the street. Mr. Garman noted that this is something that they will want to discuss when they meet with Property Managers next month.

Mr. Worsley suggested adding house numbers to signs as a concession to having a larger sign but Mr. Garman stated he liked the idea but felt that this might be considered content based.

Mr. Garman suggested that something else the Board may want to discuss with Property Managers is the creation of non-conformities and how long they will have, to bring existing signs into compliance.

Mr. Siers suggested adding the word "non-commercial" to Permanent Identification signs under Sec. (2)(d).

Mr. Garman noted there were not too many changes under Sec. 48-284 – Signs permitted in commercial districts - as it mostly talks about sign types, not content based (wall signs, banners, free-standing signs, roof signs, etc.)

Chair Cornwell asked Mr. Garman to add the words "parallel to the street" under number three in that section to keep it consistent.

Mr. Garman noted that a severability clause was added under Sec. 48-287, to ensure that the ordinance remains enforceable should a court strike down an individual provision within the ordinance.

Finally, a substitution clause has been added, as Sec. 48-288, which allows a non-commercial message to be substituted anywhere the Town allows business or commercial signage. Since non-commercial speech is generally afforded a higher level of protection by the courts, this provides a level playing field between non-commercial and commercial speech within our ordinance.

It was Board consensus to invite property managers to their January meeting to further discuss the proposed changes. Chair Cornwell asked that Staff make this the first item in the agenda.

Mr. Worsley asked about mobile billboards and how they would be affected by the proposed changes. Mr. Garman will look into that and will update the Board next month.

Planning Board Members' Agenda

Mr. Worsley inquired what had happened with the amusement rides at the go-kart site. Ms. Wyatt stated that the owner of the property told her that the amusements had not been profitable.

Planning Board Chairman's Agenda

None

Adjournment

There being no further business to discuss, a motion to adjourn was made by Pogie Worsley. Ben Reilly seconded the motion and the motion passed unanimously. The time was 4:31 PM.

Respectfully submitted,

Lily Campos Nieberding