
**Town of Nags Head
Planning Board
June 21, 2016**

The Planning Board of the Town of Nags Head met in regular session on Tuesday, June 21, 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, David Ryan, Holly White, Lily Nieberding

Approval of Agenda

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

Public Comment/Audience Response

None

Approval of Minutes

There being no changes, Ben Reilly moved that the minutes be approved as presented. Mike Siers seconded the motion and it passed by unanimous vote.

Action Items

Consideration of a text amendment request submitted by Derek Hatchell on behalf of IG Holdings, LLC to amend Town Code Section 48-407 (c)(9) to remove the requirement for an attendant at car wash facilities.

Deputy Planning Director Kelly Wyatt stated that Mr. Derek Hatchell on behalf of I.G. Holdings, LLC, had submitted a zoning ordinance text amendment application, which, if adopted, would eliminate the need for an attendant to be present on-site during all hours of operation of a car wash.

This item was first presented at the Board's May Meeting. At that time, Ms. Wyatt noted that there was significant history with the allowance of an attended car wash as a use within the Town dating back to September 20, 1988 when the discussions first arose with the Planning Board through September 6, 1989 when parking standards for car washes was discussed and later adopted.

In the zoning text amendment application, the applicant cited the desire to no longer require an attendant be present onsite as it is not necessary given that the car wash would be fully automated. Based upon the history of discussion surrounding the previous Board's desires for any car wash to have an attendant on-site during all hours of operation, Planning Staff recommended denial of the proposed text amendment as presented.

After some discussion, the Board moved to table the item until the June meeting to give Staff a chance to research and incorporate the suggested conditions into a revised amendment. Based on this request, Planning Staff made numerous revisions to the proposed ordinance which Ms. Wyatt reviewed for the Board and include:

- A site attendant must visit the site a minimum of two times daily to ensure proper operation.
- Security cameras must be installed to record activity in vulnerable locations.
- Hours of operation have been established
- A minimum setback of 50 ft. has been applied to any freestanding vacuums and other service areas adjacent to a residential use or district.
- Clarification on what the word "enclosed" represents and the need to comply with Town Architectural Design criteria.
- Clarification on buffering requirements.

Ms. Wyatt noted that the applicant was provided a copy of the draft ordinance prior to the meeting. The applicant indicated that he was in agreement with the language except for the hours of operation. The applicant would request consideration for no specific limitation on the hours of operation and will speak more about it following Staff's presentation.

Ms. Wyatt also noted that Staff continues to recommend denial of the proposed ordinance as amended. Staff does not believe that the 50 foot setback adjacent to residential zoning districts or uses is adequate to mitigate noise concerns based on the proposed use. Ms. Wyatt stated that she, as well as John DeLucia and Derek Hatchell, were available to answer any questions for the Board.

Chairman Cornwell asked Ms. Wyatt to clarify the opaque buffering requirement. Ms. Wyatt explained that it would need to be a buffer yard that is linear and continual, as opposed to clustered, so that it will create a screening that you can't see through. The recently adopted clustered buffering would not work in this case. In the case of the go kart tracks the owner installed fencing as there was not enough vegetation to create appropriate screening.

John DeLucia with Albemarle & Associates introduced applicant Derek Hatchell. Mr. DeLucia stated they agree in concept with most of the proposed changes. Mr. DeLucia noted that typically these type of self-service businesses are open 24 hours and their desire is not to have any established hours of operation and do not support the proposed change. Mr. DeLucia also stated that they would prefer the cluster type of buffering rather than linear on sides of the property that are not adjacent to residential uses.

Mr. Hatchell confirmed for Mr. Worsley that he currently operates five car washes including one in Columbia which Mr. DeLucia noted is adjacent to a residential area. Mr. Hatchell noted that car wash is buffered by a six foot high fence and have not had issues related to noise levels.

Mr. Hatchell confirmed for Ms. Murray that they are all open 24 hours a day.

Mr. Hatchell noted that all use credit cards and that they would prefer to keep the lights on for safety reasons stating "If you shut them down and cut the lights off, you are asking for trouble; you are not visible." Mr. Hatchell also noted that the vacuum cleaners are well under the decibel readings for the noise ordinance and reiterated that they have never had an issue.

Deputy Town Manager Andy Garman confirmed for Chair Cornwell that he had spoken with the Kill Devil Hills Assistant Planning Director about the car wash that is located in that town and she confirmed that they have never had any problems as far as complaints or concerns.

Mr. Troutman asked if the applicant had a specific site in mind. Mr. Hatchell noted that they are looking at a parcel by the Shell Station south of the Links Golf Course property near Lakeside Drive.

Mr. Hatchell confirmed for Ms. Murray that the car washes are used at all hours of the day or night by early travelers, people coming off the beach late, cab drivers, etc.

Mr. Troutman noted that the Shell Station leaves their light on all night so that people with credit cards can fill up at any time.

Mr. Futrell noted that vandalism is more likely to occur if it's shut down and dark than if it's lit up and being used.

Mr. Hatchell confirmed for Mr. Worsley that all his locations have security cameras. Mr. Hatchell also noted that his location in Kill Devil Hills is open 24 hours and that the businesses on either side are also lit up 24/7.

Mr. Reilly noted that the reason the Board had discussed setting hours of operation was due to concerns about noise pollution especially late at night, if open after hours, and especially if the site is close to a residential area.

Mr. Worsley stated that he did not think noise will be that much of an issue and felt that it was better for safety reasons to keep it lit up 24/7.

Mr. Troutman agreed stating that the Shell station is currently open 24/7 and cars could blast radios and be loud there as well.

Ms. Murray expressed concern about buffering and asked if a 50 ft. buffer was sufficient. Ms. Murray suggested they consider a minimum 75 ft. buffer.

Clyde Futrell moved to amend the proposed text amendment to omit the hours of operation and allow it to be open 24 hrs. Jim Troutman seconded the motion and it carried 5 to 2 with Ben Reilly and Kate Murray casting the Nay votes.

Mr. Reilly stated he was for keeping the hours of operation between 9 AM and 9 PM; keeping the hours limited decreases noise concerns around residential areas.

Chairman Cornwell disagreed stating he did not think the noise concerns outweighed the security benefits of keeping it open 24 hrs.

Ms. Murray moved to further amend the proposed text amendment to have minimum 75 foot buffer adjacent to residential areas. The motion died for lack of second.

Pogie Worsley moved to recommend approval of the amended text amendment omitting the hours of operation. Clyde Futrell seconded the motion and the motion carried 5 to 2 with Ben Reilly and Kate Murray casting the Nay votes.

Consideration of a major subdivision request submitted by Ray Meekins of Seaboard Surveying on behalf of the property owner under contract, Bradford Alexander for creation of a two-lot subdivision with associated subdivision variance requests. The property is zoned Village at Nags Head SPD-C, Commercial-2 District and is the vacant lot located just east of Cotton Gin, Lot 25 Elliott Estates and Parcel Number 027839079.

Ms. Wyatt presented a Preliminary Subdivision Plat submitted by applicants Ray Meekins, Surveyor, and Mike Robinson, Engineer, on behalf of the current property owner, Forrest Bartlett, and the contract purchaser, Bradford and Sharon Alexander, for the creation of two (2) single family residential lots. The lots would be created from a 20,823 square foot lot located on the east side of US Highway 158, the west side of NC 12 and directly east of Cotton Gin retail store.

Ms. Wyatt noted that although they are only proposing two (2) lots, the proposal is being considered a "Major Subdivision" by definition since it does not have a compliant street access.

The lot widths and setbacks shown for each lot comply with the dimensional standards set forth in the Village SF-2, Detached Single Family Residential District. Proposed Lot 25-A is 11,968 square feet in area, proposed Lot 25-B is 8,855 square feet in area. Each proposed lot substantially exceeds the minimum lot requirements for single family in this district, which is 3,000 square feet.

Ms. Wyatt explained that in terms of access, the subdivision ordinance requires that any subdivision must have access to a public street or highway improved to the standards of the Town or the NC Department of Transportation, whichever is applicable, and in which the right-of-way width is in accordance with Town Code Section 38-151, Streets. This development is located on an un-named access road which serves multiple properties facing US 158 along the block south of Mall Drive including The Cotton Gin and Vitamin Sea.

With this and with previous requests, Staff has had guidance from the Town Attorney, and completed research on the easement. Ms. Wyatt noted that Ray Meekins had provided a narrative which provides further detail on how these lots and the easement were created including the original plan for maintenance. Mr. Meekins will be available to speak to this in more detail.

In conjunction with the subdivision approval, the applicant is requesting consideration of two subdivision variances:

Town Code Section 38-153(c) Lots. (c) Minimum amount of frontage.

All lots shall be designed so that they shall front on a public street for a distance of not less than 50 feet which shall be measured along the right-of-way of such street; provided, further, that in the case of lots fronting on a cul-de-sac or street curve, the frontage may be reduced to not less than 30 feet upon approval of the planning board.

Ms. Wyatt noted that Lots 25-A and 25-B do not front on a public street, rather they front on an "access easement"; therefore, a waiver from this requirement is being requested.

Town Code Section Sec. 38-7. Access to Public Street or highway required.

There shall be no subdivision of any tract of land which does not have access to a public street or highway which is improved to the standards of the town or the state department of transportation,

whichever is applicable, which access is of a right-of-way width and is improved in accordance with section 38-151.

Ms. Wyatt noted that Lots 25-A and 25-B do not have access to a public street which meets the standards of the Town or NC DOT, in accordance with Town Code Section 18-151; therefore, a waiver from this requirement is being requested.

Ms. Wyatt also noted Town Code Section 48-77, Lot access requirements, which states that no building permit shall be granted for any lot which does not abut either an improved public right-of-way as shown on the most recent Powell Bill Map or an access approved by the Board of Commissioners. By virtue of granting the requested variances to Town Code Section 38-7 and 38-153(c), this requirement would be met.

Ms. Wyatt stated that the criterion for granting the variances was included in the agenda packet and specifies what findings are necessary in order to consider granting a subdivision variance/waiver.

For Stormwater drainage and utilities, Ms. Wyatt referred the Board to an updated memo from Town Engineer and Project Manager, David Ryan dated June 16, 2016.

The Fire Department has reviewed and approved the proposed Preliminary Plat. These lots would be served by the Village wastewater system and will require Carolina Water approval for connection prior to issuance of building permits. All construction plans will have to be reviewed by the Village Architectural Committee prior to permitting.

Ms. Wyatt explained that approval of this plan will convert commercially zoned property to residential use. According to the 2010 Land Use Plan, once a property is residential, it cannot be rezoned to a commercial use. The property in question is a transitional area between the commercial lots along US 158 and the residential properties in existence along NC 12 as part of Elliot Estates. As such, the proposed development area could lend itself to either a commercial or residential use, but has remained empty for many years. Ms. Wyatt stated that Staff feels that this area is unlikely to be developed commercially.

Ms. Wyatt reviewed Staff's suggested findings for the Board and stated that based on their review Staff would recommend approval of the Preliminary Plat as long as the variance and waivers are granted and compliance with the recommendations of the Town Engineer is demonstrated.

Per Chairman Cornwell's request, Ms. Wyatt clarified the difference between a variance and a waiver. Ms. Wyatt confirmed that in this case the applicants are requesting a waiver from the requirements of access to a public street.

Ray Meekins with Seaboard Surveying spoke on behalf of the applicants. Mr. Meekins reminded the Board that while the request is being called a Major Subdivision it is only one lot. Mr. Meekins noted that the waivers that are being requested are the same ones that were granted to a previous developer when Lot 25 was originally created therefore there is no precedent being set should the Board grant the waivers. Mr. Meekins stated that the 24 foot access easement that abuts the west side of the lot is not part of the development; there is Stormwater curbing along that side and it's not proposed to be used as an access. Mr. Meekins reiterated that it is very unlikely that the property would ever be used commercially. Finally Mr. Meekins referenced an email received today from David Ryan who, after speaking with the project engineer Mike Robinson, revised conditions to the Stormwater requirements.

Mr. Meekins reviewed Mr. Ryan's email for the Board and stated that once the Stormwater infrastructure has been built it will meet the Town's standards and the Town Engineer agrees.

Mr. Meekins confirmed that each lot will have a driveway and would have access from the 30 foot easement along the right edge which leads to Epstein Drive.

Mr. Meekins confirmed for Ms. Murray that all the property owners that are along that easement are responsible for its maintenance through covenants recorded with their deeds; maintenance is based upon their footage along the easement.

Mr. Worsley noted that all the businesses along that area were encouraged to use the access easements rather than be allowed curb cuts on US 158. The commercial area was part of the Village Master Plan but Mr. Worsley noted that commercial building in that area has come to a standstill.

Mr. Meekins confirmed for Mr. Troutman that the 8" sewer line originally ran through the middle of the property but has now been rerouted to the proposed 15 foot utility easement along the east and north side of the property. Mr. Meekins reminded the Board that the proposed lots will be part of the Village central sewer system.

Mr. Reilly inquired as to who would be responsible for buffering between commercial and residential. Ms. Wyatt said typically it would be the responsibility of the commercial property but since it is already existing commercial she would need to research it further. Ms. Wyatt later noted that she was unable to find any buffering requirements as it was a re-designation to a lower intensity use, they are not changing the District.

Ms. Murray noted the importance of getting Stormwater right from the get-go especially since that area has a high water table.

Mr. Worsley noted that he rode through the site and could see that it is a challenge to develop. It would be difficult to develop commercially because it is "locked"; it has no curb appeal and can't be seen from the street.

Chairman Cornwell agreed stating that although they haven't been developed, the two lots to the north are now residential.

Mr. Reilly expressed his concern about the continuous loss of commercial property in the Town. Mr. Reilly is worried that eventually the Town will be 100% residential and they need to hold on to whatever commercial property that exists. He realizes that nothing commercial has been developed there but residential has not been developed there either.

Ms. Murray agreed with Mr. Reilly but acknowledged that the property is not the best place for commercial because it lacks frontage to a main road; this case warrants transition into a residential use.

Pogie Worsley moved to recommend approval of the Preliminary Plat and granting of the requested waivers with Staff recommendations as they relate to Stormwater. Clyde Futrell seconded the motion and the motion carried 5 to 2 with Ben Reilly and Jim Troutman casting the Nay votes.

Report on Board of Commissioners Actions

Ms. Wyatt reported on recent Board Actions:

The Site Plan for Phase I improvements to Dowdy (Town) Park located at 3005 S. Croatan Highway was approved as presented.

The Vested Right/Conditional Use/Site Plan Amendment submitted by VHB Engineering on behalf of the Dare County Tourism Board for modifications to the previously approved site plan for the Outer Banks Event Site was approved with modification to parking requirements and contingent upon compliance with conditions cited by the Town Engineer and Deputy Fire Chief.

The Board held a Public Hearing to consider amendments to the Town's sign ordinance to ensure content neutral language and regulations pertaining to residential freestanding signage; the Commissioners tabled consideration until their July 6, 2016 meeting so that Staff can address language for outdoor advertising and yard sale signs.

Town Updates

Focus Nags Head

Town Planner Holly White stated that at the last Board meeting the Commissioners reviewed the Vision Statement and asked for modifications. Staff continues to work with the Consultant on drafting policy. They are taking all the public input, the Advisory Committee feedback and moving everything from existing plan documents forward as appropriate. Discussing how best to move it forward in sections; Staff is hoping to get the first Draft sections over to the advisory committee for review later in the summer.

Ms. White confirmed for Chairman Cornwell that the Commissioners will approve the Vision statement once it is revised and will formally approve it once the plan is adopted. Ms. White stated that the Planning Board will also get a chance to review it.

Sea Level Rise

Ms. White gave a brief update stating that Staff had a follow up meeting with the small group who attended the initial meeting back in December. They were given a chance to review the draft report and the diagrams that were produced. At that meeting they also discussed how best to move forward when thinking about climate change and adaptation. Based on feedback they were given they decided to combine the diagrams into one and there will be another meeting with this group to prioritize actions that were discussed and another meeting with NC Sea Grant.

Discussion Items

Continued Discussion of Cottage Courts as permissible uses within the Town.

Deputy Town Manager Andy led a continued discussion of Cottage Courts.

Last month the Planning Board held its initial discussion regarding the expansion of cottage court uses within the Town. For the past 30 years, cottage courts have been considered a nonconforming

use by the Town's ordinance; therefore, no expansions to these properties have been allowed except for general maintenance and repairs. The Planning Board is now reviewing ordinances that would reinstate cottage courts as an allowable use based on recent discussions regarding diversity of accommodations within the town.

At last month's meeting Staff provided the Planning Board with some background information on developing a cottage court ordinance. This included a map and photographs of existing cottage courts, sample ordinances from other communities, and the town's ordinance for residential group developments.

After some discussion, Staff suggested selecting five cottage court properties within the town and analyzing the existing development features and characteristics to develop standards for an ordinance. The five properties included for the analysis were: 2 Fish Cay, Sea Spray Cottages, Sandspur Cottages, Oceanside Court, and Cahoon's Cottages.

Mr. Garman stated that these were picked because they reflect the older character of cottage courts in the Town and are used as traditional cottage courts – they function as rentals for transient guests and are managed similar to hotel uses. Mr. Garman noted that photos of these five properties were included in the agenda packet as well as a table showing the building square footages of the individual cottages at each property. In addition Staff included the map from last month since this depicts the location of each cottage court and the total lot size of each property.

Mr. Garman explained that Staff took all this information and developed a framework for an ordinance. A draft ordinance has been provided for the Planning Board's review which includes regulations to address the following design and development features:

- Location
- Size and arrangement
- Architectural design and orientation
- Density
- Building separation and setbacks
- Minimum lot size
- Lot coverage
- Driveway access
- Off-street parking and loading facilities
- Refuse and recycling
- Cottage court properties with existing nonconformities

In addition to examining the characteristics of the five cottage court sites, Staff also utilized some of the standards from the residential group development ordinance as well as other existing ordinances to develop the draft ordinance.

Mr. Garman proceeded to review the draft ordinance in more detail for the Board. Some of the items discussed included requiring frontage on the beach road and at least 75 architectural design points, individual cottages should be no more than one and half stories with no enclosed or detached garages; a minimum lot size of 20,000 square feet and allowing heated living area of each cottage between 800 and 2000 square feet. Mr. Garman did note that the Board may want to look at revising the minimum size of the cottages as there are several that are between 500 and 700 square feet. Tiny houses are becoming increasingly popular so it's something they maybe want to think more about.

Mr. Garman confirmed for Chairman Cornwell that the one and a half story cottage with no garage seems to fit with the more traditional lower to the ground cottage courts of the past. The five properties analyzed all provide a great example of the look they may want to achieve. Staff did discuss allowing parking underneath the cottage because in some cases the cottages will need to be elevated on pilings due to FEMA requirements.

Mr. Futrell inquired how pools fit in to the ordinance. Mr. Garman stated he did not address pools in the ordinance but that it was certainly something they can discuss. They would probably allow them to have pools. Mr. Garman asked the board if pools for each unit should be allowed or only a community pool.

Ms. Murray suggested looking into removing the minimum square footage requirement in case someone does want to build tiny houses; in that case the Board may also want look at the density requirements, if someone is building tiny houses is the 10 unit maximum a reasonable requirement?

Mr. Garman stated that Staff will take a look at reducing square footage, look at cabins, cabanas, tiny houses, etc.

Mr. Worsley noted that cabanas are basically motel rooms on pilings and stated they might lose the Sea Spray appeal of the traditional cottage court.

Chairman Cornwell asked how they would be able to keep the traditional feel if they lower or remove the minimum square footage requirement.

Mr. Garman stated that he will try to do a rough rendering of a 20,000 SF lot to see what could be placed on the lot and bring this back for the July meeting.

Planning Board Members' Agenda

Ben Reilly stated that Dare County is starting an initiative/campaign to get people to know where they are staying, what the address is of their rental house – "Know Where You Are".

Planning Board Chairman's Agenda

Chairman Cornwell asked Staff to take a look at the voting requirements for a Subdivision Variance/Waiver.

Adjournment

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

Respectfully submitted,

Lily Campos Nieberding