

**Town of Nags Head
Planning Board
November 17, 2015**

The Planning Board of the Town of Nags Head met in regular session on Tuesday, November 17, 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, Clyde Futrell, Kate Murray, Mike Siers, Jim Troutman, Pogie Worsley

Members Absent

None

Others Present

Andy Garman, Kelly Wyatt, Holly White, Lily Nieberding

Approval of Agenda

Chairman Cornwell asked that the Agenda be revised to move Item 1 under Discussion items (Landscape and Buffering ordinance) and place it under Action Items. Chairman Cornwell also stated that the original item under Action Items (Consideration of a major subdivision request) had been withdrawn by the Applicant. Deputy Town Manager Andy Garman noted that the Agenda should be renumbered as there are two Item C's. The revised agenda was approved by unanimous vote.

Election of Vice Chair for Remainder of Calendar Year 2015

Chairman Cornwell opened up the floor for nominations.

Pogie Worsley nominated Ben Reilly for Vice Chair, Jim Troutman seconded the motion.

There being no other nominations, a vote was taken and the motion passed unanimously.

Audience Response

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

Approval of Minutes

There being no changes, Clyde Futrell moved that the minutes be approved as presented; Jim Troutman seconded the motion and the motion passed by unanimous vote.

Report of Board of Commissioners Actions

Deputy Planning Director Kelly Wyatt stated that the Public Hearings for the conditional use requests for "Child Care Facility" and "Screen Printing" have been scheduled for the December 2, 2015 Board of Commissioners meeting.

Town Updates

Deputy Town Manager/Planning Director Andy Garman gave an update on Dowdy Park. The Town was awarded two of three grants that were applied for, for a total of a million dollars. Staff will be working on more detailed plans over the next few months and hope to begin construction by next summer. There is a press release that will be going out with regards to this. Mr. Garman, along with Principal Planner Holly White attended the Parks and Recreation Trust Fund Meeting in Raleigh; that process was very competitive with over 67 grant applications. The Town did not receive a grant this go around but were encouraged to re-apply for another PARTF grant in the spring.

Mr. Garman confirmed for Ms. Murray that the grant that the Town received from the Outer Banks Visitors Bureau was for \$250,000. The Town also received a \$750,000 grant from Trillium Health Resources.

Action Items

Continued discussion on landscape and buffering ordinance following Joint Workshop and Local Business Committee meeting.

Chairman Cornwell explained that they have been working on the ordinance for several months and he would like to see it move forward to the Commissioners while they continue to work on the manual.

Kelly Wyatt explained that this was a joint effort with Mr. Garman. The ordinance relies on a new, vegetation planting guidelines document which includes a recommended plant list broken down by appropriate planting zones. Ms. Wyatt has been working on the planting guidelines document with the help of Ms. Murray, while Mr. Garman has been working on the ordinance.

Ms. Wyatt stated that the revised draft ordinance is based on the following purposes:

- To buffer incompatible uses
- To soften the appearance of commercial parking lots and sites
- To provide natural/native and locally adaptive landscaping (non-invasive)
- To enhance community aesthetics
- To encourage/require landscaping that will grow well where it is proposed
- To provide flexibility for owners to design natural landscapes and less focus on specific spacing requirements. Planting plans will include a specific number of required plantings, a mixture of sizes, and must ensure that some of the vegetation is visible from the street and contributes to overall community appearance.

Ms. Wyatt then reviewed the ordinance for the Board:

Under Part I, section A has been replaced with new language establishing planting zones (beach, highway, sound side). Not all landscape plans would be the same. For example, a beach road plan would be different than a highway plan. Plant material required along the beach road may focus on shrubs and ornamental grasses and less on trees. Required species of plants and appropriate planting zones would be defined by the Town's Planting Guidelines.

Ms. Wyatt stated that these guidelines would be included in the manual which has not yet been completed. Ms. Wyatt noted that the Board could entertain adopting a portion of the ordinance knowing that the manual is a work in progress. The guidelines would include a plant list broken down by planting zones. The list would specify size categories for plant material and landscape plans must include a mixture of sizes. This list would also note evergreen species and a percentage of plants would need to be evergreen. The guidelines would also include plant cluster diagrams appropriate for each zone.

Also of note under Part I is the requirement that landscape plans must include specifications and a maintenance plan. Ms. Wyatt stated that incentives would be included for irrigated sites.

Part II, relates to the Commercial Design Standards and requirement of landscaping or preservation of vegetation for commercial sites. Ms. Wyatt noted that not too much had changed in this section. After some discussion, Mr. Garman did change the tree size requirement from eight inches to six.

Finally Part III discusses the emphasis on preserving existing vegetation and introduces the Town's Vegetative Planting Guidelines. Ms. Wyatt noted that Staff will still need to complete additional materials in the Guidelines including more detailed information on plant species as well as plant cluster diagrams that could be used by designers to develop landscape plans. Since the guidelines are not proposed to be part of the adopted town code, these items could continue to evolve beyond the adoption of the zoning amendment and plant list.

Ms. Wyatt confirmed for Mr. Troutman, that under Part I, sec. (a)(9) incentive for drip irrigation, the 10% reduction refers to the number of plants.

Mr. Troutman questioned if a 10% reduction in plantings was worth the cost of a drip irrigation system. Ms. Wyatt stated that for a smaller project it might be a wash but for some of the larger commercial projects it might be viable.

Ms. Wyatt confirmed for Mr. Worsley that the Town's Vegetative Planting Guidelines replaces the original table of suggested trees, plants and shrubs. The table was eliminated, not the plants themselves. The new chart shows preferred plants but they are suggestion, not a requirement.

Mr. Worsley also expressed concern about the availability of some of the suggested plants. Ms. Wyatt stated that Staff is still working on the manual and has not yet researched the local availability of all the plants. Ms. Wyatt hopes to have more information by the next meeting.

Ms. Murray noted that the guide is meant to educate people; some of the suggested vegetation may be harder to find but much easier to maintain; hopefully down the road people will see the value of using local, adaptive plants.

After some discussion related to the planting of ornamental grasses vs. shrubs on the beach side, the language was changed for Part I, sec. (a)(4) to remove the 25 percent shrub requirement in the Beach planting zone.

Ms. Wyatt confirmed for Chair Cornwell that there are several commercial applications that require a ten foot buffer width. Ms. Wyatt gave as an example the recent application for a child day care center at Plaza del Sol which backs to a residential use where a ten foot buffer would be required. Ms. Wyatt also stated that (in this ordinance) the five foot buffer primarily pertains to buffering parking from a right of way.

After some further discussion related to the planting guidelines, the Board agreed to hold off in sending the ordinance on to the Commissioners. Pogie Worsley moved to table approval of the ordinance until the next meeting. Jim Troutman seconded the motion and the motion passed by unanimous vote.

Discussion Items

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

Mr. Garman stated that there has not been significant progress on this since the last meeting. Staff is continuing to research other sign ordinances but is finding little in the way of complete content neutral ordinances for reference purposes. Staff is hoping to bring a draft ordinance for the Planning Board's review and comment at their December meeting and possibly have a workshop with the Property Managers the following month.

Request to initiate an 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 the minimum requirements of the National Flood Insurance Program.

Mr. Garman introduced the Town's Chief Building Inspector, David Morton, and explained that at his request, Staff is asking the Planning Board to initiate an amendment to the Town's Flood Damage Prevention Ordinance related to "free and clear of obstruction" requirements. Mr. Garman stated that Staff has had a lot of building permit applications recently where they have had to deal with this issue.

Mr. Garman stated that because the Town participates in the National Flood Insurance Program, it must meet certain requirements. FEMA's rules for the NFIP state that structures in a high velocity (VE) flood zone must be "free and clear of obstruction" that is to say constructed using an open piling foundation elevated above grade to allow floodwaters and waves to pass beneath the structure. The intent is so that the structure does not become an obstruction that will cause it to collapse or breakaway under the force of wave action or floodwaters. Although FEMA has technical documentation related to requirements for free and clear of obstruction, the specific ways in which it is interpreted and administered is largely left up to local communities. For example, they don't tell you what the separation requirement is between the ground and the bottom of the girder; it's left up to local inspectors to determine what they are comfortable with.

The Town of Nags Head has always enforced the language a certain way, however, Staff would like to include specific language in the ordinance defining what this means, to remove any ambiguity that may occur when administering regulations. Many communities define free and clear of obstruction in their local the ordinance and specify the minimum vertical distance that is required between the ground and the lowest horizontal structural member of a building to meet the definition.

Chief Building Inspector/Floodplain Manager David Morton addressed the Board. Mr. Morton stated that he has had to deny a number of permits lately because of the free of obstruction rule. Previous

Chief Building Inspectors have generally used the one to two foot separation suggested by FEMA but what he is trying to get the Board to do is create an actual definition of "free and clear of obstruction" and a definitive height so people coming to pull permits in a V zone will understand what that rule is.

Mr. Worsley asked if it was free and clear off the ground or above base flood. Mr. Morton explained that it was free and clear from wherever the ground is to the bottom of the lowest horizontal structural member which is typically the girder. Mr. Morton further explained that the freeboard ordinance requires the lowest horizontal member to be above base flood; the problem however is that the one foot above base flood may be on the ground and the structure must still meet the free and clear of obstruction rule.

Mr. Morton confirmed for Mr. Worsley that the "free and clear" height would need to be at least a foot and that FEMA recommends between one and two feet.

Mr. Worsley suggested that depending on the number they come up with that there be some adjustments for the height of a structure. Mr. Worsley also asked if this affected egress such as houses that have elevators.

Mr. Morton confirmed that elevators are an exception to the free and clear rule in that they can come right to the ground. Mr. Morton also stated that generally, height is not measured from the ground level it is measure from base flood plus one foot but agreed that there might be some cases where this could be an issue.

Mr. Worsley stated that he would not want to see someone "punished" as it relates to structure height, for meeting the free and clear of obstruction requirement.

Mr. Worsley also explained that the free and clear height needs to be at least a foot but then the construction question becomes how do you get underneath the floor to insulate it, you almost need two feet.

Mr. Morton confirmed that building code requires a minimum of one foot from the bottom of the girder and eighteen inches to bottom of the joist.

Mr. Worsley stated he likes the idea of the eighteen inches because it goes with the building code and makes it easier as far as construction and inspections. Mr. Futrell stated he was also in agreement with the eighteen inches.

After some further discussion, Chairman Cornwell asked for and received Board consensus to initiate an ordinance, defining the free and clear of obstruction requirement as eighteen inches and asking Staff to make some allowable adjustments for height.

Planning Board Members' Agenda

Mr. Garman confirmed for Mr. Troutman that the demo permit for the Shell station is ready to issue but has not been picked up. Mr. Garman explained that one of the issues is that the applicants are trying to figure out how to install the underground storage tanks and they need to conduct a dewatering activity in order to put the tanks in below grade and they have to figure out where they can discharge the water. The applicants are working with the State to figure out how they can do that.

Planning Board Chairman's Agenda

None

Adjournment

There being no further business to discuss, a motion to adjourn was made by Ben Reilly. Kate Murray seconded the motion and the motion passed unanimously. The time was 3:49 PM.

Respectfully submitted,

Lily Campos Nieberding