



DRAFT AGENDA
Town of Nags Head Planning Board
Tuesday, May 19th, 2020; 9:00 a.m.

This Meeting will be held electronically/remotely utilizing the online ZOOM meeting platform. Members of the public will be able to attend the meeting using the ZOOM platform or app on their computer or smartphone, or by calling in using a phone.

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Please click the link below to join the webinar:

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A. Call To Order

B. Approval Of Agenda

C. Public Comment/Audience Response

D. Approval Of Minutes

April 21, 2020 Planning Board Meeting

Documents:

[APRIL 21 2020 DRAFT MINUTES.PDF](#)

E. Action Items

1. Reconsideration Of A Text Amendment To The Unified Development Ordinance submitted by a property owner to expand the principal sale items from outdoor stands to include reservations and tickets for events/activities.
2. Reconsideration Of A Text Amendment To The Unified Development Ordinance pertaining to temporary uses or temporary alteration of uses related to declared emergencies.

F. Report On Board Of Commissioners Actions

May 6, 2020 BOC Meeting

Documents:

[MAY 6 2020 BOC ACTIONS.PDF](#)

G. Town Updates - As Requested

H. Discussion Items

1. Continued Discussion Of Residential Stormwater Regulations
2. Continued Discussion Of FY20-21 Planning & Development Department and Septic Health FY2020-2021 Strategic Work Plan.

I. Planning Board Members' Agenda

J. Planning Board Chairman's Agenda

K. Adjournment

**Town of Nags Head
Planning Board
April 21, 2020**

The Planning Board of the Town of Nags Head met on Tuesday April 21, 2020. Due to Covid-19 restrictions, this meeting was held electronically/remotely utilizing the online ZOOM meeting platform. Members of the public were invited to attend the meeting using the ZOOM platform or app, or by calling in using a phone.

Planning Board Chair Megan Vaughan called the meeting to order at 9:00 a.m. as a quorum was present.

Members Present

Megan Vaughan, Kristi Wright, Molly Harrison, Meade Gwinn, Megan Lambert, Gary Ferguson, David Elder

Members Absent

None

Others Present

Via Zoom: Michael Zehner, Kelly Wyatt, Andy Garman, Holly White, Lily Nieberding

Approval of Agenda

Chair Vaughan asked for a motion to approve the agenda. David Elder moved to approve as presented, Meade Gwinn seconded, and the motion passed unanimously.

Public Comment/Audience Response

None

Approval of Minutes

Chair Vaughan asked for a motion to approve the minutes of the April 1, 2020 meeting. David Elder moved to approve as presented, Megan Lambert seconded, and the motion passed unanimously.

Action Items

Consideration of a Text Amendment to the Unified Development Ordinance submitted by Megan Dixon and Kim Cowen to add the use "Learning Center" as a permitted use within the C-2, General Commercial Zoning District.

Deputy Planning Director Kelly Wyatt presented a request for a text amendment to the Unified Development Ordinance, submitted by Megan Dixon and Kim Cowen, which, if adopted would permit "Tutoring Facility/Learning Center" as a permitted use within the C-2, General Commercial Zoning District.

The applicants have provided a detailed explanation of the nature and reason for their request. They would like to offer tutoring, both part- and full-time, to registered homeschooled children, ages 6 and up. Ms. Cowen has spoken both with Zoning Staff and the Senior Building Inspector about the proposed business use. In looking at the current UDO, similar uses include Child Care Facility and School, however, by definition, the proposed use would not meet either of these use classifications. Therefore, it was recommended to Ms. Cowen that a text amendment request to consider establishing this new use would be necessary.

Planning staff reviewed the request and found the proposed use is consistent with the 2017 Comprehensive Land Use Plan and the desire to encourage land uses that serve the needs of both year-round and seasonal residents in support of the town's overall vision for the community. Staff would recommend the use be listed under the *Service* category in the Table of Uses and Activities and be defined as follows:

Tutoring Facility/Learning Center means a private, for profit or non-profit, use for the instruction of students in subjects and materials commonly taught in primary and secondary schools, for test-preparation, or the teaching of music and visual arts.

Staff recommends approval of the proposed use as presented, with the changes noted. Ms. Wyatt stated that she as well as the applicants, Megan Dixon and Kim Cowen were available to answer any questions for the Board.

Mr. Gwinn noted that he thought it was a great idea. Ms. Harrison agreed.

The applicants confirmed for Ms. Wright that they were looking at hours between Nine AM and Three PM. The applicants also confirmed that they specifically serve the home school community. Their service supplements and complements the home school program.

There being no further discussion, David Elder moved to approve the proposed amendment with the noted changes. Megan Lambert seconded the motion and the motion carried unanimously.

Due to technical difficulties, the Board agreed to move forward in the agenda to give the Applicant for the second Action Item time to log-off and rejoin the on-line meeting.

Report on Board of Commissioners Actions

Planning Director Michael Zehner gave a report on the Actions from the March 4, 2020 and April 15, 2020 Board of Commissioner Meetings. Of note were a presentation on Dowdy Park from Kelly Wyatt reviewing the 2019 season and plans for 2020 season; a presentation from Lee Nettles, OB Visitor's Bureau about the Soundside Event Site; Consent Agenda: Request for Public Hearings regarding Outdoor Stands and Correcting Errors on the UDO & Amendments to Floodplain Ordinance; a report from Mr. Zehner regarding permitting Status & trends; Adoption of an Electronic Meeting Policy; and a Grant Application for Improvements to the Huron Beach Access

Action Items (Continued)

Reconsideration of a Revised Preliminary Plat for a Major Subdivision, known as Coastal Villas, for an approximately 9.86 acre property, zoned R-2, Medium Density Residential, owned by Nags Head Construction (Applicant), located on the west side of US 158, approximately 300 feet south of the

intersection of W. Soundside Road and US 158 (Parcel # 006749004; PIN # 989108886987); the revised Preliminary Plat proposes to create 17 lots, along with an associated street and other required improvements.

Mr. Zehner explained that the (Planning) Board first reviewed this proposal in December and it was sent to the Board of Commissioners with a favorable recommendation. The BOC reviewed this at their January 8th meeting. At that meeting there were numerous public comments made by residents in the Southridge neighborhood with concerns about the access through the subdivision into the new subdivision, which consists of 17 lots.

The Commissioners tabled action until their March meeting, which has since been continued until their May meeting. The Commissioners asked Staff to facilitate a discussion between the developer and owners of the properties on Fourth Street a public paper street to the south of the proposed subdivision. Staff met with the parties several times and had a joint meeting with the parties to discuss reorienting the development. The result of those conversations is a revised plat which Mr. Zehner shared with the Board. Because of the nature of the revisions, Staff felt that it needed to come back to the (Planning) Board for review. The revised plat proposes a new street with access directly from US 158, eliminating the street/vehicular connection to Sea Bass Court) and extends the proposed street to allow for connectivity to the existing Fourth Street right-of-way. The developer is not proposing to make improvements to Fourth Street as part of this proposal however the plat does provide for a cul-de-sac to be developed where the proposed new street terminates, with allowances for the cul-de-sac to be removed if the existing Fourth Street right-of-way to the south is improved.

For additional consideration, Staff was contacted by a property owner along Sea Bass Court requesting that consideration be given to landscape screening of the proposed multi-use path extension through the Mariners Way paper right-of-way, if not also locating the path more central within the right-of-way. Staff believes this is reasonable, and would request consideration to this change, with details for this section of path and any landscaping to be provided in the required construction drawings.

Mr. Zehner noted that he had received a few questions from the Board. The first one had to do with NC DOT. The applicant indicated and provided documentation that they had provided the plat to the appropriate office for some preliminary comments, but they have not yet heard back. The applicant is fully aware of NC DOT permitting and approval requirements and would expect to submit for those approvals following the approval of the preliminary plat and prior to any land development activities.

They would not release construction drawings until they had those approvals from DOT. In concept, the proposed intersection and how it enters US158 would ultimately be subject to review by NC DOT. It is entirely possible that there would need to be some redesign of this that may or may not require this to come back in some form, prior to final approval.

There have been at least two landscape enhancement projects within the NC DOT right of way, one in the 90s and then again in 2000-2003. There was a question as to whether there were any proposed landscape improvements planned within the area along US 158 that would be disturbed by the project and there were none.

Finally, there was a question about the ability to require an undisturbed buffer that are in place in some areas of town where there are residential subdivisions that back up or front along US 158. Mr. Zehner noted that is a specific requirement in the R3 district however this property is zoned R2.

Staff is of the opinion that the submitted and now revised Preliminary Plat complies with all applicable requirements and that the applicant has addressed all issued comments. The applicant would like to name the new right of way Coastal Breeze Way. Given that 4th Street is an unimproved paper public street, Staff may need to coordinate with those property owners it it's improved in the future.

Mr. Zehner stated that he, as well as Cathleen Saunders, on behalf of the applicants, was available to answer questions for the Board.

Cathleen Saunders, Professional Engineer with Quible and Associates, addressed the Board. Ms. Saunders noted that the water is very similar to what the Board had seen before. They still have a loop system and will be modeling all of that for public water supply and will be submitting for a permit. On-site septic will be used for the individual lots and they have done a preliminary evaluation for all of the on-site septic systems throughout the subdivision. Ms. Saunders also noted that Stormwater had previously been discussed, and they have accounted for the Town's and the State's Stormwater Requirement which is an inch and a half; they actually have two and half inches of storage throughout the site.

Mr. Saunders confirmed for Chair Vaughan that what was originally presented a tech review had a connection to the bypass but what was submitted and approved by the Board in December did not have the cut into the bypass. During the TRC meeting there was a recommendation to connect through Mariner's Way so that future residents would have access to go out to a stoplight rather than taking a left onto Croatan Highway. That is what they submitted and got approved by the Planning Board. However, when they went in front of the Commissioners, several Southridge residents expressed concerns so that is what brought them back to this original plan.

Mr. Zehner confirmed that Staff raised questions during TRC about whether having the access on US 158 was an ideal condition and how NC DOT would ultimately view that. They also discussed the possibility of a thru connection from US 158 to unimproved Mariner's Way but that was ultimately not pursued perhaps because it would have resulted in a reduction of the number of available lots. Mr. Zehner noted that the current proposal complies, and staff cannot dictate an alternative, provided that NC DOT gives final approval.

Mr. Ferguson noted that Southridge subdivision had a myriad of pre-platted lots that were platted back in the 30's, 40's and 50's. Mr. Ferguson asked if there were any platted lots underlying this subdivision? Mr. Zehner stated that he was unaware of any and if there were at some point they may have been recombined.

Ms. Saunders confirmed that based on their rough research for the boundary survey they don't have any documentation of previously platted lots. Ms. Saunders stated she was not familiar with the history of the parcel other than at one point it was being looked at to be rezoned commercial, but it stayed residential.

Mr. Zehner confirmed for Ms. Wright that the proposal does comply with the Subdivision Ordinance. There are multiple ways to do this and Staff is appreciative of all the parties working together to come up with a solution that seems to be consistent with the expectations and direction that they heard from the Board of Commissioners. It allows for those lots along Fourth Street to have a future connection and perhaps allows for a thru street looping back to 158 so it's a good outcome.

Ms. Lambert noted that when this was presented a lot of residents were really unhappy then at the Board of Commissioners meeting the applicants were really encouraged to work with the affected parties and it is encouraging to see that they did just that; they made it work.

Mr. Zehner confirmed for Chair Vaughan that there is no formal agreement between the parties. They discussed some initial designs and it was Staff's opinion that the new road had to extend all the way to the common property line to meet the subdivision requirements.

Mr. Zehner confirmed for Chair Vaughan that it was possible that they may end up with two curb cuts between Soundside Road and the Post Office. It will depend on what the Town allows, if and when Fourth Street is improved and also what NC DOT will allow.

Chair Vaughan expressed concern over the proposed curb cut onto the bypass for Coastal Villas and believes it to be a safety issue especially when there is a possibility that the Town might end up with two curb cuts so close to each other. There are already safety issues with cars coming out from Soundside Road. Chair Vaughn feels that what was presented to them in December was the safer option and stated there were minimal concerns since it is a small subdivision with only 17 lots.

Mr. Zehner stated that he did not feel that this was enough basis for denial of the proposed plat as it does comply with the ordinance requirements.

Mr. Zehner confirmed for Ms. Harrison that ultimately it would be up to NC DOT to issue any approvals or permits for those curb cuts and what type of restrictions they impose.

Mr. Zehner explained for Ms. Wright and the Board that the fact that the parties have not come to an agreement yet has no bearing on the application approval process.

Mr. Ferguson stated that he was still concerned about the history of this parcel and how it came about, especially since it is less than 10 acres. Mr. Zehner stated that he does not know that it would ultimately have any bearing on the subdivision, but Staff can certainly investigate.

Chair Vaughan reiterated her concerns related to the curb cut being so close to Soundside Road where there are already existing safety issues, noting she would have preferred access from Mariner's Way. Ms. Wright suggested, and Mr. Elder agreed, that the safety concerns be included with any Planning Board recommendation.

After some further discussion, Chair Vaughan moved to recommend approval of the Preliminary Plat to include the Board's concerns related to safety due to the potential for possibly two curb cuts on 158 and noting that they preferred the plat they approved in December. Molly Harrison seconded and the motion carried unanimously.

Adjournment

Due to ongoing technical difficulties with the online platform, a motion to table the remaining items and adjourn the meeting was made by David Elder. The time was 10:39 AM.

Respectfully submitted,

Lily Campos Nieberding



BOC ACTIONS WEDNESDAY, MAY 6, 2020

- 1.** Call to order – Mayor Cahoon called the meeting to order at 9 am.
- 2.** Agenda – the May 6th agenda was approved as presented.
- 3.** Public Comment – Dan Hudson, property owner since 2003 – he feels that too much attention has been paid to COVID-19 projections and models which have been inaccurate; people should shelter in place if they don't feel safe; it is time to get the economy on track and open everything up.
- 4.** Public Comment – Clint Sorrell – he would like Dare County opened as soon as possible; those that utilize the beach know it is not difficult to maintain six foot distance from other people; with all of the additional measures in place at retail stores he does not know why Dare County is preventing visitors.
- 5.** Public Comment – David Bragg, Village at Nags Head resident – he feels that unless the town's recycling program will result in a net zero cost or a net gain for the town then its contract with the recycling company should be terminated and the town should focus on providing essential services to residents/visitors during these financially difficult times; a final vote on this matter should be taken today.
- 6.** Proclamation – The Board adopted the proclamation declaring May 10-16 as Police Week as presented; Comr. Brinkley asked everyone to keep the Murray family in their thoughts and prayers (Nags Head Sgt. Earl Murray died in the line of duty in 2009) as they usually attend the ceremony held in Washington DC but is cancelled this year due to the pandemic.
- 7.** Consent agenda – The Board approved the Consent Agenda as presented which consisted of the following:

Consideration of Tax Adjustment Report

Approval of minutes

Request for Public Hearing - citizen comment on the Town Manager's proposed budget for FY 20/21

Request for Public Hearing - to allow "Tutoring Facility/Learning Center" as a permitted use in C-2 District

- 8.** Public Hearing to consider a text amendment to the Unified Development Ordinance submitted by a property owner to expand the principal sale items from outdoor stands to include reservations and tickets for events/activities - Applicant Kate Creef spoke on behalf of Outlets Nags Head.

The Board tabled the text amendment discussion concerning outdoor stands and referred the proposal, along with issues expressed by Board members [re: visual impact, signage, and parking] back to the Planning Board for review and recommendation.

- 9.** Public Hearing to consider a text amendment to the Unified Development Ordinance to correct identified errors – The Board adopted the ordinance amending the Unified Development Ordinance to correct identified errors as presented.

- 10.** Public Hearing to consider numerous text amendments to the Unified Development Ordinance as it pertains to updated Flood Maps and update of the Flood Damage Prevention Ordinance

The Board unanimously passed two motions – one to table the Flood Map and the Flood Damage Prevention ordinance discussions to the June 3rd Board of Commissioners meeting. The other motion was that the motion made at the June 3rd Board of Commissioners meeting concerning Flood Maps be a standalone motion and not tied to the Flood Damage Prevention ordinance.

11. Update from Planning Director - Planning Director Michael Zehner summarized his monthly Planning Dept update for the Board.

12. Continuance to the June 3rd Board meeting: Consideration of a Major Site Plan for Gone Coastal Shopping Center, 7531 S Virginia Dare Trail, submitted by Jim and Stephanie Selckmann.

13. Continuance to the June 3rd Board meeting: Consideration of a Preliminary Plat for a Major Subdivision, known as Coastal Villas, for an approximately 9.86 acre property, zoned R-2, Medium Density Residential, owned by Nags Head Construction (Applicant), located on the west side of US 158, approximately 300 feet south of the intersection of W. Soundside Road and US 158 (Parcel # 006749004; PIN # 989108886987); the revised Preliminary Plat proposes to create 17 lots, along with an associated street and other required improvements.

14. From Mar 4th Board meeting - Beach Nourishment Coastal Engineering and Design Services presentation from Moffatt & Nichol – the remote presentation by Johnny Martin and Brian Joyner of Moffatt & Nichol was well received.

15. From Apr 15th Board meeting – The Board passed a motion to notify the Town’s fireworks vendor to cancel this year’s Fourth of July fireworks display – with a return to fireworks in 2021. Mayor Cahoon cast the NO vote.

16. From Apr 15th Board meeting - The Board unanimously passed a motion to suspend the recycling program to be revisited at a future date. It was confirmed with the Board that this is a suspension of the program and not an elimination of the program. Trash schedule was also discussed and Town Manager Ogburn is to make sure everyone is aware of the two sites (Town Hall and Public Works) available for people to take their recycling; property managers are to be notified of these changes.

17. Committee Reports – Comr. Fuller - Dare County Tourism Board (DCTB) – Grants Committee – the Tourism Board sent the grants back to the Grants Committee to be reduced; a lot of people won’t get the grants they thought they were going to receive due to the COVID-19 impacts. Comr. Fuller said that he would like to tell the Grants Committee to take the fireworks funds that the town won’t be using to more fully fund other grants.

Mayor Cahoon – Dare County Bulletin – Mayor Cahoon reported on a just-received email with the latest Bulletin announcing that visitors would be allowed entry into Dare County on 12:01 a.m. on Sat, May 16th.

Comr. Brinkley – Jennette’s Pier Advisory Committee – Comr. Brinkley stated that he would be following up on an upcoming meeting via Zoom with the Jennette’s Pier Advisory Committee.

Comr. Renée Cahoon – She thanked Mayor Cahoon for providing information concerning the COVID-19 updates from the Dare County Control Group in a very timely manner to Board members.

18. Board/Board/Committee appointments – The Board unanimously passed the following motions:
- To reappoint David Elder to another three-year term on the Planning Board.
- To reappoint Don Milbrath to another three-year term as an Alternate on the Board of Adjustment.
- To reappoint Jean Flanigan to another three-year term as an Alternate on the Personnel Grievance Panel.

- To reappoint Annette Ratzenberger and Rose Lay to additional terms on the Firemen's Relief Fund Board.

19. Attorney Leidy – New legislation re: regulation of remote participation in open meetings – during State of Emergencies – House Bill 1043/Senate Bill 704 – The legislation, signed by Governor Cooper on May 4th, becomes effective immediately; is only effective during statements of emergency declared by the Governor or Legislature; requires all votes to be by roll call vote; and requires the meeting notice to include that comments on public hearings will be allowed to be submitted up to 24 hours AFTER the public hearing.

20. Town Manger Ogburn – He summarized plans for summer 2020 for tents on the beach, lifeguards, and the enforcement of social distancing on the beach which he has coordinated with appropriate staff – he also noted that lifeguards will have some responsibility to communicate social distancing; in addition, emphasis will be placed on making sure lifeguards stay healthy.

21. Town Manager Ogburn – He requested a Closed Session to discuss personnel matters.

22. Comr. Renée Cahoon – She noted that since more people are now starting to come back to the area that it would be smart to continue to encourage everyone to wear their face masks. The Town should encourage this via its social media pages as should others such as the Chamber of Commerce.

23. Comr. Renée Cahoon – She thanked the community for their response in opposition to the letter that was being placed on out of town vehicle windshields, posted on Facebook, etc. with rude comments re: out of town property owners. She appreciated that people realized that the letter does not define the character of those living on the Outer Banks.

24. Mayor Pro Tem Siers – He stated that he has not received any emergency alerts from the County – his cellular phone company is Verizon - Mayor Cahoon said that he would follow up on this with the County.

25. Mayor Cahoon – The potential in the near future may be for restaurants to be allowed to re-open with minimal indoor dining and the ability to establish outdoor dining. It was Board consensus to agree to have Planning staff provide some information concerning flexibility in accommodating outdoor dining for restaurants to include food trucks at the June 3rd Board meeting.

26. Closed Session - The Board passed a motion to enter Closed Session to discuss personnel issues in accordance with GS 143-318.11(a)(6). The time was 12:43 p.m.

27. Open Session – The Board re-entered Open Session at 1:00 p.m.

28. Adjournment - The Board recessed to the May 20th mid-month meeting. The time was 1:03 p.m.