



- DRAFT AGENDA -

**Town of Nags Head Planning Board  
Nags Head Municipal Complex Board Room  
Tuesday, September 15th, 2020; 9:00 a.m.**

This meeting will be open to the public; however, the Zoom meeting platform will be used to broadcast the meeting live and members of the public will be able to view the meeting remotely using the Zoom platform or app on a computer or smartphone, or by calling in using a phone. Remote participation in the meeting, including Public Comment/Audience Response will not be permitted; those wishing to make comments at the meeting will need to attend the meeting in person to do so, or email comments to [planning@nagsheadnc.gov](mailto:planning@nagsheadnc.gov)

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A. Call To Order

B. Approval Of Agenda

C. Public Comment/Audience Response

D. Approval Of Minutes

August 18, 2020 Planning Board Meeting

Documents:

[AUGUST 18 2020 DRAFT MINUTES.PDF](#)

E. Action Items

1. Consideration Of Site Plan Review For

Islington Street Beach Access Improvements

F. Report On Board Of Commissioners Actions

September 2, 2020 BOC Meeting

Documents:

[SEP 2 2020 BOC ACTIONS.PDF](#)

- G. Town Updates - As Requested
- H. Discussion Items
  - I. Planning Board Members' Agenda
  - J. Planning Board Chairman's Agenda
- K. Adjournment

**Town of Nags Head  
Planning Board  
August 18, 2020**

The Planning Board of the Town of Nags Head met in regular session on Tuesday August 18, 2020 in the Board Room at the Nags Head Municipal Complex.

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, Meade Gwinn, Gary Ferguson, David Elder, Molly Harrison, Megan Lambert

***Members Absent***

None

***Others Present***

Michael Zehner, Kelly Wyatt, 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 July 21, 2020 meeting. David Elder moved to approve as presented, Kristi Wright seconded, and the motion passed unanimously.

***Action Items***

*Consideration of text amendments to the UDO as it pertains to non-conforming hotels, and accessory uses in association with pre-existing fishing piers.*

Planning Director Michael Zehner explained that this item was initially discussed at the Planning Board's meeting on February 18, 2020, with the Planning Board wishing to consider and discuss options further. The Planning Board discussed this item further at their meeting on May 19, where the Board requested that Staff explore options that did not require the creation of an overlay zoning district, and to present those options to the Board for consideration. Staff presented additional information to the Planning Board on June 16; at that time, the Board was supportive of the option presented by Staff that would make amendments to Article 5, Nonconformities, of the UDO, by providing nonconforming restaurants, hotels, or retail uses that commenced on or before December

31, 1980 with the option of seeking a conditional use permit to modify the use, including enlarging or altering the use, in a manner that would otherwise be precluded by the provisions of Sections 5.5. and/or 5.6. of the Article. At the meeting, the Board requested that Staff review and determine the specific instances where such a provision would be applicable.

Following the meeting, Staff conducted the review requested by the Board and came up with a list of hotels that were all nonconforming uses, all located with the CR, Commercial Residential Zoning District, and which may benefit from the provision under consideration.

Additionally, Staff determined that there were no restaurants or retail establishments that are considered to be a nonconforming use. However, related, Staff did determine that the presence of residential units in conjunction with the Nags Head Fishing Pier constituted a nonconforming use of the site, which may be something that the Board wished to address.

Staff presented the above information to the Board at their meeting on July 21. The Board agreed, given that the necessary scope of any treatment would only apply to nonconforming hotels, that it may be more appropriate to focus any amendments within Section 7.12, Hotels, of Article 7, Supplemental Regulations, similar to the treatment of nonconforming cottage courts.

Additionally, the Board requested that Staff also address the residential dwelling units accessory to the Nags Head Fishing Pier. Mr. Zehner also noted that upon further review they did remove from the list the second building of the Surfside Hotel which was found to be permitted as a multi-family dwelling.

It is helpful to consider that the general principle with respect to non-conformities is that, overtime, the non-conforming uses or conditions cease, evolving to conforming uses or conditions. Specifically, Sections 5.5, Nonconforming Use of Land, and 5.6, Nonconforming Use of a Structure, are limiting and jeopardize the preservation of these nonconforming uses. Mr. Zehner noted that his Staff memo details these limitations/impacts.

This effect, at least with respect to the identified nonconforming hotels and the Nags Head Fishing Pier, would therefore seem to be inconsistent with the intent of the goals, objectives, policies, and actions contained in the Comprehensive Plan which support the retention of legacy establishments and structures, especially in certain Character Areas along the beach road.

The impacts referenced above, specifically those contained in Sections 5.5 and 5.6, were the basis for the adoption of provisions in 2015 contained in Section 7.2.14 pertaining to nonconforming cottage courts. Similarly, the proposed text amendments, would add a Section 7.12.3. pertaining to existing nonconforming hotels, allowing a conditional use permit to be sought to modify the use and/or structure, including enlarging or altering the use and/or structure, in a manner that would otherwise be precluded by the provisions of Sections 5.5, Nonconforming Use of Land, or 5.6, Nonconforming Use of a Structure.

Additionally, and related, Section 7.50.1. pertaining to fishing piers is proposed to be amended to reference that dwelling units existing as of July 1, 2020 are an allowable use in conjunction with fishing piers, which would serve to remove the nonconforming use designation for the Nags Head Fishing Pier for this condition.

Staff would recommend that the amendments be adopted as proposed and Mr. Zehner noted he would be happy to answer any questions for the Board.

Mr. Zehner confirmed that as it relates to the Nags Head Fishing Pier the amendment only applies to the building with the two residential dwellings that are on the same parcel as the pier; it does not include the building to the north which is on a separate parcel. After some discussion, Mr. Zehner noted buildings tend to cross over property lines so it would make sense that they would view the two parcels as one site for zoning purposes.

Mr. Zehner responded to Mr. Ferguson that he was uncertain whether the Outer Banks Pier had a dwelling unit, but that if it does, the amendment would apply to that pier as well. Mr. Zehner noted that Staff would research further.

Mr. Ferguson stated that the Town has oceanfront hotels but no longer wants oceanfront hotels, yet they want to grandfather the existing oceanfront hotels. Mr. Ferguson noted that there is nothing in the ordinance that talks about historic preservation. Mr. Ferguson asked what is the Town doing to preserve these buildings that are important to the Town?

Mr. Zehner noted that they (the Town) do not have provisions like that town wide and thinks that it is a valid conversation to have but up to this point there hasn't been an interest in discussing a Landmark or Preservation ordinance that would dictate the design of any projects beyond current architecture controls that are in place.

Mr. Zehner explained that there have been businesses/structures demolished and single-family dwellings put in their place perhaps because of limitations imposed by the ordinance. The proposed ordinance would give the property owners flexibility and options to keep the business viable

Mr. Zehner reminded the Board that they previously discussed the difference between legacy businesses vs. legacy structures, how they are two separate things and how they could have one and not the other.

The Board discussed what preservation might look like but agreed that not all property owners might be interested in regulations that would require structures to be preserved, it would most likely be a voluntary process. Ms. Lambert also noted that in some cases the structures are so dilapidated they are impossible to preserve. This was the case of Restaurant by George, which was eventually demolished, and the property later redeveloped as single-family dwellings.

Mr. Ferguson also brought up the issue of fairness, not allowing any new oceanfront hotels yet allowing existing oceanfront hotels to stay and possibly evolve. Mr. Ferguson noted that zoning wise "there was something that was just not right about that". Mr. Ferguson suggested that the Town should simply develop rigorous standards to allow hotels in these areas.

Ms. Lambert disagreed noting that there are businesses and buildings all around town, not just on the ocean front that wouldn't be allowed now but that add to the charm of the town; the proposed ordinance helps protect what is currently there. Ms. Lambert noted that property owners doing appropriate due diligence should be aware of what zoning would and would not allow them to do with their property.

The Board discussed what would happen if the property was sold and if they would be allowed to rebuild in case of a hurricane. Mr. Zehner confirmed that the ordinance goes with the property. Mr. Zehner also noted, reiterated by Holly White, Principal Planner, that as far as rebuilding, CAMA and the Flood Ordinance would also come into play.

After some further discussion, Meade Gwinn moved to recommend approval of the text amendments as submitted. Molly Harrison seconded the motion and it passed with a vote of 6 to 1 with Gary Ferguson casting the nay vote.

Consideration of text amendments to the UDO as it pertains to fill regulations for properties west of NC 12 and/or 1243 subject to a Base Flood Elevation.

Deputy Planning Director Kelly Wyatt explained that following the adoption of the Flood Damage Prevention Ordinance by the Board of Commissioners on June 3, 2020, Staff identified two necessary amendments to the text related to fill regulations applicable to properties west of NC12 and SR 1243 and subject to a Base Flood Elevation.

Ms. Wyatt explained that the first is a simple re-numbering to correct a typographical error. The second however, is a more substantive change to the regulations to address an unintended consequence associated with significant reduction of the Base Flood Elevation, whereby fill is currently limited to not exceed the Base Flood Elevation but it may be necessary for the Dare County Health Department to require fill in excess of the Base Flood Elevation.

Section 11.5.3 of the Unified Development Ordinance addresses limitations on the utilization of fill based upon a property's location being either east or west of NC 12 and SR 1243. For properties west of NC 12 and SR 1243 for which the Flood Insurance Rate Map (FIRM) provides a Base Flood Elevation, fill shall not be permitted to exceed the Base Flood Elevation.

It was recently brought to Staff's attention for one property currently under development (and which will likely affect other west-side properties) that the Dare County Health Department requirements for fill placement for the wastewater facilities requires fill to exceed the newly established Base Flood Elevation.

The situation that Staff is aware of is as follows:

- The parcel was in an AE-11 (Base Flood Elevation of 11') flood zone and is now in an AE-4.
- The average ground elevation on this lot is approximately 2.5'.
- The ordinance allows fill to be placed to the Base Flood Elevation, therefore, pursuant to current regulations, fill could not exceed 4'.
- The Dare County Health Department evaluation for wastewater improvement requires the septic field to be elevated 30 inches, bringing the lot elevation up to 5 feet, 1 foot greater than what the UDO would permit.

As written, this section of the Unified Development Ordinance does not adequately address the scenario where fill required for the wastewater permit would exceed the established Base Flood Elevation. Generally, this is the result of the significant change in the Base Flood Elevation and did not present issues previously. The proposed amendment would remedy this situation by specifically allowing lots to fill to the Base Flood Elevation or the minimum amount of fill required by the Dare County Health Department, whichever is greater. Additionally, this will be consistent with fill requirements in areas where the FIRM provides no Base Flood Elevation.

Staff recommends that the amendments be adopted as proposed.

After a brief discussion, David Elder moved to recommend approval of the text amendments as presented. Meade Gwinn seconded the motion and it passed by unanimous vote.

### ***Report on Board of Commissioners Actions***

Planning Director Michael Zehner gave a report on the Actions from the Board of Commissioner's August 5th Meeting. Of note, the Board approved the waivers for the proposed Coastal Villas Subdivision and also approved the Coastal Villas Subdivision Plat as presented; it was Board consensus to pursue the National Endowment for the Arts – Our Town grant for the Town's skate park located at the YMCA; Mr. Zehner discussed with the BOC the possibility of a joint workshop between the Commissioners and the Planning Board regarding stormwater, but it was the consensus of the Commissioners discuss further at their upcoming retreat; Mr. Zehner updated the Board with the latest census numbers; the Board extended the Dowdy Park part-time manager position through the last scheduled Farmers Market plus two weeks.

### ***Town Updates***

None

### ***Discussion Items***

#### *July 24, 2020 Director's Report*

Mr. Zehner presented his Director's Report to the Board. This report was shared with the Commissioners at the August 5<sup>th</sup> Meeting. The report provides an overview of selected Planning and Development Department activities, projects, and initiatives. In addition to permitting, inspections, code enforcement, and Todd D. Krafft Septic Health Initiative activities, the report also covers meetings and other activities of note that Planning Staff were involved with during the previous month. Along with permitting numbers and permit turnaround times, Mr. Zehner also discussed the impact of the Coronavirus on Permitting numbers.

#### *Planning Board Members' Agenda*

None

#### *Planning Board Chairman's Agenda*

None

### ***Adjournment***

A motion to adjourn was made by David Elder. The time was 9:58 AM.

Respectfully submitted,

Lily Campos Nieberding



**TOWN OF NAGS HEAD  
BOC ACTIONS  
SEPTEMBER 2, 2020**

1. Call to order - Mayor Cahoon called the meeting to order at 9:00 a.m.
2. Agenda - The Board passed a motion that agenda item E-6 entitled: *Request for Public Hearing to consider text amendments to the UDO pertaining to nonconforming hotels and accessory uses in association with preexisting fishing piers* be removed from the agenda and the September 2<sup>nd</sup> agenda was approved as amended.
3. Recognition - Facilities Maintenance Supervisor Mike Norris introduced Stormwater & Streets Technician Bobby Hooper who was congratulated for five years of service.
4. Public Comment - The following spoke in favor of extending the Dowdy Park Farmers Markets and in continuing to fund the Dowdy Park Event Coordinator part-time position: Kerry Oaksmith-Sanders, Peggy Saporito, Chris Carrol, Samantha Lock, Ginny Flowers, Chris Sawin, Valerie Netsch, David Elder, Karen Brown (spoke on behalf of Denise Turner).
5. Consent Agenda - The Consent Agenda was approved as amended (with removal of the agenda item re: Request for Public Hearing to consider nonconforming hotels and accessory uses in association with preexisting fishing piers) and consisted of the following items:  
  
Consideration of Budget Adjustment #3 to FY 20/21 Budget  
Consideration of Tax Adjustment Reports (New Year and Monthly)  
Approval of minutes  
Consideration of request from Fraternal Order of Eagles to conduct 2020 bonafide fishing tournament  
Consideration of Health Reimbursement Arrangement Plan Maintenance Agreement for Town Mgr  
Consideration of Business Associate Agreement for Town Mgr  
Request to modify Consolidated Fee Schedule for Post-Season Per Farmers Market Vendor fee
6. Dominion Energy presentation - Rob Richardson of Dominion Energy presented a powerpoint report which included information on the installation of electric transmission lines on US 158 and included an update on pole replacement on the Nags Head/Manteo Causeway. Some highlights include:  
  
a) Dominion Energy staff are in the early stages of researching a Feasibility Study of installation of electric transmission lines on US 158; the purpose is to establish alternative electric transmission lines to be used in case of outages due to storms, etc.; b) Causeway pole replacement project is missing easements from Oceans East and Kitty Hawk Kites; c) Comr. Renée Cahoon would like to see the US 158 poles installed underground. She also asked for a map clarifying exactly where the lines from the Colington tap will be located; d) Feasibility Study is to include studying underground poles on US 158 as well as underwater installation.
7. Public Hearing - The Board passed a motion to adopt the ordinance amending the UDO that would allow for lots west of NC12 and SR1243 which have a Base Flood Elevation (located in an AE

zone) to have fill added up to a height required by the Dare County Health Department for onsite wastewater, as presented.

Planning staff is to review the email forwarded last night to Board members from Jay Overton of Albemarle & Associates concerning this item - and to forward their analysis to Board members.

**8.** Public Hearing - The Board passed a motion to adopt the ordinance providing clarification changes and correcting errors in the Unified Development Ordinance, as presented.

**9.** Public Hearing - The Board recused Mayor Cahoon from the discussion re: a Unified Development Ordinance text amendment to allow furniture stores as an allowable use as part of Commercial Mixed Use uses as he represented the applicant in his position with Cahoon & Kasten, Architects. The Board passed a motion to adopt the ordinance amendment as presented.

**10.** Planning Director - the Planning Director's update was presented to the Board; some highlights: a) It was Board consensus to agree with Planning Director Zehner that he ask for volunteers for an advisory group/steering committee to assist in guiding the Town's Decentralized Wastewater Management Plan update to be brought to the Board for consideration of appointment at an upcoming meeting; b) In response to Mayor Cahoon, Director Zehner said that he would check with Code Compliance Officer Ed Snyder and work with Public Information Officer Roberta Thuman to issue a press release re: campaign/voting signage.

**11.** Committee Reports

Comr. Brinkley – Jennette's Pier Advisory Group – Director of the Pier, Mike Remige, reported to Comr. Brinkley that 18,000 visitors visited the Pier during the month of June 2020. Direct access to the Pier is being allowed with social distancing for fishing.

Comr. Fuller – Dare County Tourism Board (DCTB) – the Grants Committee meets on September 9<sup>th</sup>; Visitation to the Wright Brothers Memorial visitation is very low but the Hatteras campgrounds are full.

**12.** Police Dept - Presentation of Police Dept Progress Report - Police Chief Phil Webster presented a powerpoint presentation which was well received.

**13.** Town Manager - The Board approved the Town Organizational Chart as presented.

**14.** Town Manager - The Board approved the proposed modification to the Personnel Policy re: approval of job descriptions/pay class plan as presented.

**15.** Town Manager - The Board passed a motion to authorize staff to apply for Dare County Tourism Board - Tourism Impact Grants (Sidewalk from US 158 to Wrightsville Avenue at Admiral Street and Skate Park renovations) as requested.

**16.** Comr. Renée Cahoon - The Board adopted the resolution in support of the J-1 Visa Exchange Visitor program with the following modification: Revise paragraph "1." to read as follows:

"Petitions the White House and Trump Administration to issue a National Interest Exemption for Economic Recovery during the next 60-Day Review, concluding on September 22, 2020, as provided by Section 3(b)(iv) and 4(a)(i) of the Presidential Proclamation of June 22, 2020;"

Board members directed staff to forward the executed resolution to the Resort Towns and Cities organization and Dare County/municipalities recommending it be adopted – in addition to forwarding it to the legislature listed in the resolution.

**17.** Comr. Brinkley - Comr. Brinkley thanked Dep Town Clerk Michelle Gray for forwarding the change in voting location for Nags Head residents to Board members and employees noting that he had also recently received a notice in the mail. He asked Public Information Officer Roberta Thuman to issue a press release to this effect.

**18.** Comr. Brinkley - Comr. Brinkley thanked all those that spoke today during Public Comment in favor of the Dowdy Park Farmers Market.

**19.** Comr. Fuller - Comr. Fuller clarified with staff that Dewberry Surveying is surveying on US 158 on behalf of Dominion Energy.

**20.** Comr. Fuller - He emphasized that while several departments may maintain the Town's parks/facilities/skateboard park, responsibility for everything related to each individual site should be with just one person.

**21.** Mayor Pro Tem Siers - he spoke in support of the comments made by other Board members.

**22.** Comr. Renée Cahoon - she asked the Board to consider how to address trash pick-up services on the west side of US 158 so that they have a consistent level of service.

**23.** Comr. Renée Cahoon - she noted that there may be some mis-information concerning the Dowdy Park Farmers Market as no one wants to stop the Farmers Market and the entire budget to include the part-time position will be re-addressed. Staff was directed to prepare a two-paragraph email from Board members responding to those that spoke today with information concerning the Farmers Market to include that it will be continuing through this month.

**24.** Mayor Cahoon - Mayor Cahoon asked the Town Clerk to locate an email he prepared after the January 2020 Board Retreat where he shared some thoughts concerning community values/vision to be forwarded to Board members and Interim Town Manager Sparks.

**25.** Closed Session - The Board entered Closed Session to discuss various legal matters within attorney/client privilege to include Beach Nourishment Project Condemnations and to discuss confidential personnel matters. The time was 11:58 a.m.

**26.** Open Session - The Board re-entered Open Session at 12:38 p.m.

**27.** Adjournment - The Board recessed to the Board Retreat at the Villas Clubhouse on Wednesday, September 23<sup>rd</sup> at 9:00 a.m. The time was 12:41 p.m.