

**Town of Nags Head
Planning Board
February 20, 2024
- DRAFT -**

The Planning Board of the Town of Nags Head met on Tuesday, February 20, 2024, in the Board Room at the Nags Head Municipal Complex.

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

Members Present

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

Members Absent

None

Others Present

Kelly Wyatt, Andy Garman, Joe Costello, Lily Nieberding, Conner Twiddy, Randy Wells, Shane Hite

Approval of Agenda

David Elder moved to approve the agenda as presented. Molly Harrison seconded, and the motion passed by unanimous vote.

Public Comment/Audience Response

None

Approval of Minutes

Chair Vaughan asked for a motion to approve the minutes of the January 16, 2024, meeting. Meade Gwinn moved to approve the minutes as presented; David Elder seconded, and the motion passed unanimously.

Action Items

Discussion And Consideration of Text Amendments submitted by Albemarle & Associates, PE on behalf of Golasa Holdings, LLC to allow the long-term rental of units within existing hotels and motels.

Planning Director Kelly Wyatt explained that at their December 19th, 2023, and January 16th, 2024 meetings the Planning Board heard and discussed a text amendment request submitted by Albemarle & Associates, Ltd. on behalf of Golasa Holdings, LLC to allow the conversion of existing hotel and motel units to long-term rental units. Following these discussions, planning staff drafted ordinance language to regulate the conversion of existing hotel units into long-term rental units.

Staff has proposed that the conversion of existing hotel units, intended for transient occupancy, to long-term rental occupancy be subject to review through the Change of Use/Special Use Permit

process. This type of conversion essentially transforms hotel use into multi-family use. Therefore, staff believes that this type of conversion warrants additional review and scrutiny, justifying the special use review.

Ms. Wyatt noted that definitions of "*Long Term Tenancy/Occupancy*" and "*Workforce Housing*" have been proposed as staff is recommending a condition that all long-term rental units under this use category be subject to a lease restriction requiring that the unit be used exclusively for workforce housing.

As part of the Planning Board's recent effort to craft draft ordinance language for multi-family dwelling developments within the town, and consistent with the Board of Commissioners comments during their August 2, 2023 Joint Workshop, it was the consensus of both boards that any new multi-family dwelling developments within the town should be for the purpose of providing workforce housing, and not for the purpose of adding additional vacation rentals/short term rentals. Based upon this, staff believes the restriction that these units be for workforce housing only is warranted.

The draft ordinance contains a condition that "all" units within the development must be converted to long-term rental occupancy, that the development could not have both short- and long-term occupancies within the same development.

As has been previously noted, when applying the proposed regulations for this use, only five locations would be eligible to take advantage of this ordinance if adopted. Staff did send an email to these businesses to inquire about their average room size and, should this ordinance be adopted, if they would be interested in taking advantage of this option. Tarheel Motel responded and stated their rooms are approximately 264 square feet in area, including the bathroom and that they would be interested in long-term rentals, specifically for traveling nurses and other professionals for shoulder and winter months. First Colony Inn stated that they would not have any interest in offering their units for long-term rentals. This language would preclude Tarheel Motel from utilizing the ordinance as written, as their response indicates that they would prefer combined short- and long-term occupancy options, and only for the off-season. Staff have not yet heard back from Seahorse Inn and Nags Head Beach Inn.

Staff met with the applicant on February 2nd to discuss the proposed text amendments. Regarding staff's recommendation that each unit meet a minimum area, the applicant indicated that adhering to the minimum requirements of the North Carolina Building Code with regard to interior space dimensions for efficiency dwelling units would be achievable by his client. As such, staff has provided this language as a condition of the Change of Use/Special Use Permit approval.

Ms. Wyatt reviewed some of the other conditions, bringing special attention to the proposed condition in Section 7.12.3.7 of the draft ordinance. At a minimum, every unit shall be supplied with a minimum of one approved and listed smoke alarm. It is important to note that while a new hotel or multi-family development would be required to install a sprinkler system, the conversion of an existing non-sprinklered hotel/motel to a multi-family development would not necessitate the installation of a sprinkler system. Therefore, staff recommends that the Planning Board discuss whether it would be beneficial to require the installation of a commercial fire alarm system as part of the Change of Use/Special Use Permit approval, in the interest of public health, safety, and welfare.

Ms. Wyatt noted that both Fire Chief Wells and Deputy Fire Chief Hite were in attendance at the meeting in case the Board had any questions for them.

Ms. Wyatt then reviewed the parking requirements noting that required parking for this new use category is proposed at two parking spaces per long-term rental unit.

Additionally, as previously discussed, language has been included to require that units shall not have individual utility meters and the use shall be operated under a single-unified management operation. These provisions have been included with the intent of discouraging the circumvention of the subdivision ordinance and creating condominium ownership of the individual dwelling units.

In previous meetings, both the Planning Board and staff have expressed concern about the amount of space available for the storage of long-term tenants' belongings. To address this concern, a condition has been proposed that would require all storage to be located indoors or in an approved location that is not visible from public rights-of-way or neighboring properties.

Lastly, regarding the draft ordinance, staff has proposed language that would allow a hotel operator to transition back to the prior transient hotel use via the same Change of Use/Special Use Permit process, provided that no alternations had been made to the site or to the structure and units themselves that would result in an increase in the degree of nonconformity.

Based upon concerns noted in previous iterations of this staff report and the analysis above, staff does have some concerns with the proposed new use category. Most notably, the Town currently does not allow Multi-Family Dwelling as a use within any zoning designation and the proposed conversion of hotel units from transient occupancy to long-term occupancy is essentially changing the hotel use to a multi-family use. Other concerns relate to those noted in previous discussions of single-room occupancies (SRO's), the ability to gain access into these units for periodic fire inspections based on the schedule in the NC Fire Prevention Code. Given their age, these structures pre-date most of the modern fire and building code requirements, the ability to realistically enforce the 90-day long term occupancy requirements and workforce housing requirements, and the potential for parking, noise and behavior concerns.

Ms. Wyatt noted that she as well as the applicants, Mr. Leor Golasa and Mr. Joh DeLucia were available to answer any questions for the Board.

Ms. Wyatt confirmed for Mr. Ferguson that currently the "multi-family use" is not allowed anywhere in Town. The Planning Board had recommended approval of an ordinance and then it was presented to the Board of Commissioners. The Commissioners had concerns with the ordinance and tabled it.

John DeLucia with Albemarle & Associates addressed the Board. Mr. DeLucia confirmed that they had several meetings and discussions with Staff over the last month. He feels that they are close to agreement but that there are things in the proposed ordinance that they do not agree with. They would not want to be limited to workforce housing and would not want a lease restriction; however he feels that the majority of the people they'd be renting to are people that work locally. Mr. DeLucia also takes issue with the Special Use process to convert back to a "hotel use" in the future. Mr. DeLucia also noted that he still believes that 2 parking spaces per unit is too much but would be able to accommodate it. Mr. DeLucia noted that they will open as a hotel this season so if this ordinance goes through it won't happen until next year.

Ms. Harrison inquired why the workforce housing was a sticking point. Mr. DeLucia noted that they want it to be a place for older folks who need to downsize, someone who currently works but decides to stop working for whatever reason and not just those that are working full time; their intention is to give an option for those that are here now that need a place to live and certainly some of those are in the workforce.

Mr. DeLucia confirmed for Mr. Gwinn that the units are not set up for people to bring furniture and other items so those would have to be stored off-site.

Mr. DeLucia confirmed for Mr. Elder that the applicant does not want to be limited to who they can rent these units to.

Mr. DeLucia confirmed for Chair Vaughan that they have spent a considerable amount to update the building and the rooms for use as a hotel. In March it will re-open as a hotel and will be operating as a hotel like it has been for the last 40 years.

Mr. Ferguson noted that one the goals/reasons for the Board to consider this proposal was to address the need for workforce housing. Chair Vaughan agreed noting that she got that impression as well. Mr. DeLucia noted that this is the applicant's desire to rent the units to people that live and work here but they don't want to be pigeon-holed into workforce housing. Mr. DeLucia noted that there was consideration to tear the building down and redevelop it into something else, but it's a nice building that has been there a long time; it's heritage and it would be a cool place to live in.

Deputy Chief Shane Hite addressed the Board and gave an overview of Fire system requirements based on today's codes. Mr. Hite noted that at a minimum when looking at a conversion from hotel to multi-family a structure's fire system should be based off of the current Fire Code as the requirements change based on structure type.

Mr. Hite confirmed for Mr. Elder that the Fire Code requires a 20 ft fire lane that needs to be maintained. Mr. Hite believes that the (Owens) property is currently in compliance and would need to stay in compliance if they reconfigured the lot to add new parking spaces.

Mr. Hite discussed sprinkler system protection requirements with the Board.

The Board discussed their thoughts about the ordinance with Mr. Ferguson expressing concern about making sure that it is used for workforce housing. Mr. Ferguson stated that he be fine with reducing the time for a hotel operator to transition back to the prior transient hotel use, rather than going through the lengthier Special Use process. Mr. Gwinn noted that he was generally in favor of the proposed ordinance and agreed with Mr. Ferguson's concern about workforce housing noting that the conversion could end up housing 50 to 60% of people that are working in Dare County, so it would end up opening up opportunities for workers in the area.

After some further discussion there was consensus from the Board that there is a desire for the proposed ordinance to move forward, to include the fire code language proposed by staff, include a condition that at least a certain percentage must be used for workforce housing and allow for an administrative process to revert back to short-term occupancy use.

Ms. Wyatt noted that this item will be on the Commissioner's consent agenda at their March meeting and Public Hearing in April. Staff can bring back the revised ordinance for Planning Board review at their March meeting.

Consideration Of Text Amendments to prohibit driving over and/or parking on septic systems, when adjacent to driveway, drive aisles, and parking areas.

Deputy Planning Director Joe Costello explained that at their October 24, 2023, meeting the Septic Health Advisory Committee (SHAC) discussed the importance of prohibiting, or at a minimum

discouraging, driving over and/or parking on top of active septic and drain field areas on residential properties.

While providing the Planning Board with an update on the Septic Health Committee at their November 2023 regularly scheduled meeting, it was the consensus of the Planning Board to initiate the text amendment process for this item. Currently, vacationers and property owners alike may be unaware that their property has a septic system. Many others are unsure what is required to properly maintain their septic systems. Parking or driving on septic systems can compromise the proper function of a septic system by rupturing pipes, cracking the tank, or compacting or damaging soil, depending on the soil type. Damage to septic systems can lead to costly repairs and environmental hazards to include the potential pollution of water sources and the proliferation of bacteria which can be dangerous to human and wildlife health.

As part of a discussion on the impacts of over-occupancy, the Septic Health Advisory Committee recommended that the Town consider requiring a physical barrier to prevent driving over and/or parking on the septic system area. Staff has defined this area as the area containing the septic tank, disposal field/drainfield and other components of a working septic system as approved on a recorded plat or an approved, stamped site plan by the Dare County Environmental Health Department. Property owners will have different options on how to achieve this result to include placement of post and rope, landscaping, planters, raised landscape beds and fencing. Other landscaping, barrier and deterrence measures and solutions may be used if determined to be acceptable by the Unified Development Ordinance (UDO) Administrator.

Mr. Costello noted that this ordinance applies specifically to residential properties. Commercial properties are required to go through a site plan approval process where there are mechanisms to ensure parking is not to occur on a septic system area. In addition, this would only apply to systems that are adjacent to driveways and not those systems that are in the back of the property.

If adopted, compliance with this ordinance would be required for any new residential construction and substantial improvement of any existing residential development as it relates to any increase in habitable area, increase in the number of allowable bedrooms, and driveway and parking improvements. In the event of new residential construction and substantial improvement of existing residential structures, a development permit will be required. Compliance with this ordinance will be a condition of final zoning approval in advance of receiving a certificate of occupancy/compliance. If a property owner wishes to provide this barrier outside of a larger scope of work, this will be handled similarly to a fence permit (non-pool barrier) as a no cost permit.

Mr. Costello explained that outreach and education will be necessary to provide property owners, design professionals, and contractors with information on what methods are acceptable to prevent driving over and/or parking on septic system areas. In addition, in order to enforce this ordinance, staff will first provide an informal warning to those found to be in noncompliance. This will include contacting the property owner and occupant of the home if not the same, as well as the rental company if the home is within a rental program to explain the issue. If continued violations occur at a property, a formal Notice of Violation would then be issued.

Mr. Costello noted that he as well as Environmental Planner Conner Twiddy were available to answer any questions for the Board.

Ms. Wyatt confirmed for Mr. Ferguson that there is a 5' setback from the property line to septic components.

Mr. Elder noted that he appreciated the different options given for use as a physical barrier and noted that a significant portion of this will be the necessary educational component.

Mr. Costello confirmed for Mr. Ferguson that the Septic Health Committee did not feel a need to have added regulations for the septic repair area.

Ms. Harrison suggested the use of small signs and Mr. Costello noted that Staff had discussed having small signs to hand to people building new homes.

Mr. Costello also confirmed for Ms. Harrison that this proposal was original to Nags Head; staff couldn't find other Towns that have something similar.

Chair Vaughan asked about Staff's suggestion that the Planning Board consider and discuss whether this ordinance should apply to all residential properties within the Town or to a subset of properties. Ms. Wyatt explained that most of offenders are those along NC 12 and those homes that are in a rental program.

After some discussion the Board was in consensus that they would want the ordinance to apply to all properties in Town.

David Elder moved to recommend approval of the proposed ordinance as submitted. Molly Harrison seconded the motion and it passed unanimously.

Report on Board of Commissioners Actions – February 7, 2024

Ms. Wyatt gave an update on the Board of Commissioner Actions, of note: the Board approved the consent agenda which included a Request for Public Hearing to consider text amendments to the UDO re: prohibiting drive-thru restaurants as well as a Budget Amendment #8 to FY 23/24 Budget; Ms. Wyatt noted that with this Budget Amendment Staff now has the funds to contract with Low Wire Technologies for the purchase and installation of EV chargers at Town Hall. A Public Hearing was held to consider Special Use/Site Plan review for the construction of a Trade Center on the vacant lot directly behind TW's Bait and Tackle; the Board approved the Special Use/Site Plan as presented. A Public Hearing was held to consider various text amendments to the Unified Development Ordinance as it relates to multi-family development; the Board passed a motion to table this item and to receive recommendations from staff, with Board input, for a small task force working group for appointment.

The Board discussed the tabling of the multi-family ordinance and expressed concern about the need for the formation of a taskforce which had not taken place in many years. The Board had concerns about their communication both with the Commissioners and the public noting that they have had several meetings over several months discussing this issue and there has been an opportunity for public comment at each one.

Continuing with Board Actions, Ms. Wyatt noted that the Board reappointed Megan Vaughan to another term on the Planning Board. Finally, Town Manager Garman summarized an updated Strategic Plan and discussed how it echoed the results of the recent Community Survey.

Town Updates

None

Discussion Items

Update On Status of Recent Multi-Family Development Draft Amendments.

The Board discussed appointments to the Work Group – Molly Harrison and Meade Gwinn were appointed to the work group. David Elder volunteered to be an alternate if needed.

Presentation Of Map Delineating Areas of Protected Vegetated Buffers

At the request of the Planning Board, staff has created a map delineating the areas within the Town where there are protected landscape buffer areas.

Mr. Costello presented the web-based map showing where these vegetated buffers are located within the Town.

Areas shown in peach are part of the Town's 2003 North Carolina Department of Transportation Enhancement Planting project. As part of this project, NCDOT developed plans and worked with the Town of Nags Head to install landscape plantings in the following locations: 1) on the east side of US 158 extending south from the northern town limits at Eighth Street to Driftwood Street; and, the west side of US 158 extending south from the northern town limits at Eighth Street to approximately Nags Head Realty, and, 2) the east side of US 158 directly across from the Outer Banks Hospital south to South Seachase Drive; and, the west side of US 158 from the Outer Banks Hospital south the South Seachase Drive, excluding the area in front of the Outer Banks Mall. NCDOT was responsible for designing the planting areas, preparing the sites, installing the plant material, and maintaining these areas for a period of three (3) calendar years. At the end of the three-year established period, the town assumes the responsibility for maintenance and replacement of the landscape areas.

The other areas of protected vegetation are those that were required as part of subdivision plat approval and noted on the recorded plat; these areas have variable widths.

Mr. Costello noted that he had provided hard copies of the map as part of the agenda packet.

December 29th, 2023, Director's Report

Ms. Wyatt briefly discussed her Director's Report with the Board which included updates on two Board of Adjustment meetings.

Planning Board Members' Agenda

None

Planning Board Chairman's Agenda

None

Adjournment

A motion to adjourn was made by David Elder. The time was 11:04 AM.

Respectfully submitted,
Lily Campos Nieberding