

**Town of Nags Head
Planning Board
April 16, 2024
- DRAFT -**

The Planning Board of the Town of Nags Head met on Tuesday, April 16 2024, in the Board Room at the Nags Head Municipal Complex.

Vice Chair Meade Gwinn called the meeting to order at 9:00 a.m. as a quorum was present.

Members Present

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

Members Absent

Megan Vaughan

Others Present

Kelly Wyatt, Joe Costello, Lily Nieberding

Approval of Agenda

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

Public Comment/Audience Response

None

Approval of Minutes

Vice Chair Gwinn asked for a motion to approve the minutes of the March 19, 2024, meeting with some editing corrections. David Elder moved to approve the minutes as corrected; Molly Harrison seconded, and the motion passed unanimously.

Action Items

Consideration of Text Amendment submitted by Jordan Harrell of Jernigan Oil Company, Inc. to allow the use of digital LED price signage at gas stations.

Planning Director Kelly Wyatt explained that at their meeting on March 19, 2024, the Planning Board reviewed and recommended the adoption of proposed text amendments to the Unified Development Ordinance. These amendments would permit the use of LED digital signage exclusively for displaying fuel prices, provided certain supplemental regulations are met.

Following the meeting, the Town's attorney expressed concerns after reviewing the amendments, particularly in light of the Supreme Court decision in Reed v. Town of Gilbert, 576 U.S. 155 (2015).

This ruling has affected how local governments regulate signage, emphasizing the need for content-neutral sign codes that do not favor one type of speech over another. In response to this decision, the Town previously undertook a comprehensive revision of its sign regulations. An article from the North Carolina School of Government has been included in your packet for further information on this case.

Attorney Leidy noted that the Town's current prohibition on LED and digital signs is a valid content neutral regulation of speech, as it does not differentiate based on the content of the speech. However, creating an exemption specifically for fuel price displays would likely introduce content-based discrimination, as it would allow certain messages while continuing to restrict others conveyed through LED and digital signs. Such an amendment could lead to First Amendment challenges from those still restricted by the ordinance, with the exemption for fuel price signs potentially serving as evidence of content-based regulation.

In light of these concerns, staff, in consultation with the attorney and the applicant, has proposed an alternative approach. The revised ordinance language would incorporate the LED digital display standards into the use regulations for fueling stations within Section 7.20 of the UDO. These standards would govern the maximum dimensions of the display, the number of character panels, and the frequency of rotation.

Ms. Wyatt proceeded to review the proposed ordinance for the Board noting that the proposed ordinance allows for a maximum of two elements of the approved freestanding sign to be digital display and the total digital display of all elements combined cannot exceed 11 square feet. Based upon information provided by the applicant, the minimum display area needed for the use of 16-inch digits is approximately 42-inches x 19-inches. This allows for three characters/digits and a panel for the fraction which is commonly used. In applying this restriction, staff believes that it meets the needs of the applicant while maintaining content neutrality. Additionally, the proposed amendment would restrict the display within this designated area from changing more than once in a 24-hour period.

Ms. Wyatt noted that this provision would technically allow a gas station to display a word within the four panels blocks, or an image however Staff believe this is unlikely.

As previously mentioned by staff, the town has valid concerns about signs with rotating, flashing, moving, or alternating lights. However, it may be worth revisiting the possibility of allowing digital signs exclusively for fuel price displays. Although the Town cannot specify that the display area is solely for gas price digits, Staff have proposed a set of narrow restrictions, expecting that they will primarily be used for fuel pricing. With the recommended supplemental standards, staff believes the proposal is generally consistent with the Town's adopted Comprehensive Plan, however Policy LU-19 does state that the Town will not permit signs that are digital.

Ms. Wyatt noted that Mr. Harrell could not attend but had sent a representative from Jernigan Oil in case the Board had any questions.

Mr. Ferguson inquired about the content neutral legislation and what it means for the Town with regards to off-site advertising. Ms. Wyatt confirmed that if a commercial property owner were to advertise an off-site business the Town would not be able to cite them without being challenged in court. Ms. Wyatt noted that is has happened occasionally and the Town has been able to address it via communication with the property owner.

Ms. Harrison inquired if they could put something in the ordinance that speaks to the ability of the Town to request that the lights be dimmed if they are too bright. Ms. Wyatt noted that they could but was concerned about creating a set standard and making sure that staff has the correct equipment to measure it.

The Board briefly discussed commercial and residential lighting, with Mr. Thompson stating that he felt that the Gas Station sign itself puts out more light than the price sign will. Ms. Wyatt noted that she can bring back additional lighting information for the Board's review at their May meeting.

David Thompson moved to recommend approval of the text amendment as presented. David Elder seconded, and the motion passed 5 to 1 with Gary Ferguson casting the Nay vote.

Consideration of a Text Amendment to prohibit driving or parking on residential septic systems.

Ms. Wyatt explained that at their meeting on February 20, 2024, the Planning Board reviewed and recommended the adoption of a proposed amendment to the Unified Development Ordinance (UDO) that would stipulate when a physical barrier must be installed to prohibit driving over and parking on residential septic system areas.

After further discussion, both staff and the Planning Board recognized that the original proposal might have imposed unnecessary burdens on many property owners who would not/do not have issues with parking on their septic areas. In light of this, staff has developed a revised amendment that aligns with the septic protection goals discussed by the Septic Health Advisory Committee (SHAC), while only mandating physical barriers for properties if found to be in violation of the ordinance.

Ms. Wyatt reviewed the revised amendment noting that it expressly prohibits parking on designated septic system areas. Should staff become aware of any violations, either through complaints or proactive monitoring by town staff, a Notice of Violation will be issued to the property owner and, if applicable, provided to the rental agency managing the property. This notice will require the installation of a physical barrier to prevent future infractions.

This approach ensures that the enforcement of septic system protection is tied to a formal violation of the UDO, with a clear remedy outlined. Additionally, when evaluating and issuing permits for residential development where there is a potential for excessive or overflow parking, staff will recommend installation of a physical barrier at the outset.

Mr. Elder questioned if required Stormwater measures such as French Drains should be protected as well. Ms. Wyatt confirmed that measures that are part of an approved Stormwater plan are required to be installed prior to CO and must be noted on the site plan. If a physical barrier becomes necessary, Staff will revisit the approved site plan and the installed measures would be taken into consideration as part of the installation process.

Ms. Harrison inquired if there would be an educational component. Ms. Wyatt confirmed that outreach and education on the importance of protecting and maintaining septic systems will continue to be a priority of the Planning Department.

Molly Harrison moved to approve the proposed Text Amendment as presented. David Elder seconded, and the motion passed unanimously.

Report on Board of Commissioners Actions – April 3, 2024

Ms. Wyatt gave an update on the Board of Commissioner Actions, of note:

The Board approved an increase in the Dune Management Cost Share Program; The Mayor announced that the Public Hearing advertised with regards to parking on septic systems would not be held and would be rescheduled after additional Planning Board review; The Board held a Public Hearing to consider text amendments submitted by Golasa Holdings, LLC to allow the long-term rental of units within existing hotels and motels – the Board adopted the ordinance with the additional verbiage providing for an audit to take place not less than annually and which can also be requested by the Town at any time for cause; Ms. Wyatt summarized her monthly report and confirmed for Comr. Brinkley that no additional costs are required for the EV charging stations, just relocation of two parking spaces not near the Town's geothermal system; Staff gave a presentation on Accessory Dwelling Units (ADUs), after discussion, it was Board consensus that they want to move forward but requested that additional research be done by staff; The Board appointed Comr. Megan Lambert and Planning Board member David Thompson to the Regional Hazard Mitigation Plan Update Committee; It was Board consensus that the Mayor send a letter to the NC Rules Commission on behalf of the Board re: Jockey's Ridge and the rules concerning the area of environmental concern (AEC). Mayor Cahoon also encouraged comments from the public to be forwarded to the Commission prior to their meeting on Monday, April 8th. The next CRC meeting is in Dare County on April 24-25 for anyone interested in attending. The Planning Board discussed this topic further expressing concern over what is happening; Town Manager Garman provided an update on the meeting of the Dare County Housing Task Force, the Task Force meets the third Tuesday of each month.

Town Updates

Per Mr. Gwinn's request, Ms. Wyatt gave an update on the Multi-family Working Group and the Board briefly discussed this topic.

Discussion Items

Update on Initiation of Text Amendment related to the installation of netting as a barrier to prevent golf balls from leaving the boundaries of the golf course and causing damage to private property.

Ms. Wyatt explained that at their last meeting the Board agreed to initiate a text amendment related to the installation of netting as a barrier to prevent golf balls from damaging private property. At that time Ms. Wyatt discussed a concern raised by a property owner whose home sits behind the golf course but is not part of the Village at Nags Head. The property owner was concerned about golf balls causing damage to his home and vehicles and had discussed the possibility of installing netting which might protect his property.

While the Board agreed to initiate the text amendment there was discussion about allowing netting at this height and what negative impacts it could have on birds, waterfowl and other wildlife. Ms. Wyatt started out by contacting the North Carolina Wildlife Commission who referred her to US Fish and Wildlife. Ms. Wyatt discussed the issue with a local conservation biologist. Using computer software, they were able to determine that up to 36 different species of wildlife inhabit that area and could be impacted but noted that if the netting was of a certain thickness, it might not be a problem. Ms. Wyatt also discussed the issue with the Nature Conservancy, noting that there's a general concern but nothing prohibiting the netting.

While Ms. Wyatt understands the property owner's concerns, she believes that rather than taking this through the text amendment process it would probably be better to just try to work one on one with the property owner and come up with other solutions.

The Board agreed that this was the better way to go.

March 27th, 2024, Director's Report

Ms. Wyatt briefly discussed her Director's Report with the Board which included an update on the DWMP/Septic Health Advisory Committee and the proposed ordinance the Board voted on earlier in the meeting; Staff are continuing to search for and seek funding to initiate programs related to the Estuarine Shoreline Management Plan; update on installing EV chargers at Town Hall, additional funding for sand relocation; Deputy Planning Director Joe Costello is working on the pre-application for this Public Beach and Waterfront Access Grant through the Division of Coastal Management (DCM) for renovations to the June Street Beach Access; status on Permit Turnaround which is holding strong; and an updated on Dowdy Park events.

Planning Board Members' Agenda

Mr. Elder discussed the possibility of having more ADA access at Public Beach Accesses. Many accesses considered ADA accessible are actually only accessible to a certain point of view of the beach but not accessible to the beach itself. Mr. Elder inquired if there might be grants available for this type of work. Mr. Elder also suggested posting photos of the beach accesses to allow people to see what they look like ahead of time. Mr. Costello stated that he would look into this issue further.

Ms. Wyatt updated Ms. Harrison and the Board on the status of the proposed Hotel on Lakeside. The applicant is working with a consultant to try and meet the conditions placed by the Board of Commissioners to make Lakeside Drive a three-lane roadway or will be requesting consideration by the Boards to have the condition amended or removed.

Planning Board Chairman's Agenda

None

Adjournment

A motion to adjourn was made by David Elder. The time was 10:24 AM.

Respectfully submitted,
Lily Campos Nieberding