



**MEMORANDUM**  
**Town of Nags Head**  
**Planning & Development Department**

---

To: Board of Commissioners  
From: Kelly Wyatt, Deputy Planning Director  
Date: May 28, 2019  
Subject: Tale of the Whale Restaurant, Conditional Use/Site Plan Amendment

---

**GENERAL INFORMATION**

Applicant: Tale of the Whale Restaurant.

Application Request: Conditional Use/Site Plan Amendment.

Purpose: Extension of the existing pier approximately 72 feet and construction of four (4) transient boat slips.

Property Location: 7575 S. Virginia Dare Trail, Nags Head.

Existing Land Use: Restaurant.

Zoning Classification of Property: C-2, General Commercial District; Commercial Outdoor Recreation Overlay District.

Zoning Classification of Surrounding Properties: Properties to the east and west of this site are zoned C-2, General Commercial, and are also located within the Commercial Outdoor Recreation Overlay District (Sunoco Gas Station and Vacant). Properties north of this site and directly across S. Virginia Dare Trail/US 64 are zoned C-2, General Commercial, and R-1, Low Density Residential; these properties are also within the Commercial Outdoor Recreation Overlay District and are developed residentially (Lone Cedar Subdivision). The property adjoins the Roanoke Sound to the south.

Flood Hazard Zone of Property: VE 11; the pier structure associated with this application is not subject to flood protection regulations.

Land Use Plan Map/Policies: The 2017 Comprehensive Plan Future Land Use Map classifies this property as Waterfront Commercial Recreation. Below is the description of this classification:

*The Waterfront Commercial Recreational designation recognizes and capitalizes on the unique natural resources and viewsheds in this area. This designation is intended to accommodate high quality development with a focus on small, low scale hotel type development and regional point of community gatherings and events. Other appropriate uses include multi-family, commercial, retail, restaurant (walk-up/sit down), personal service establishments, indoor entertainment, indoor/outdoor recreation, water dependent uses, gallery/museum, institutional uses, and*

*gymnasium/fitness studio. Planned, mixed use development with an emphasis on pedestrian connectivity is highly desirable. Development should be oriented not only to the road but the water as well. Additionally, access to the water and protection of viewsheds is important.*

When determining if the proposal is consistent with the Land Use designation staff considered the following excerpts and policies as being relevant:

- Page 3-16, LU-7 reads, "Review regulations in the Ocean and Sound Waters Overlay District and the Commercial Outdoor Recreation Overlay District to ensure proper use of the ocean and sound waters, including islands that adjoin the town, to ensure the continued scenic, conservation and recreational value that these waters provide to the town, its residents, visitors and the surrounding area."

LU-7a: "Review regulations for commercial boating and personal watercraft to maintain compatibility with adjacent uses and the estuarine environment."

- Also, on page 3-16, LU-8 reads "Ensure proposals for future commercial uses in the sound are not detrimental to the marsh, sound bottom, and submerged aquatic vegetation. Compatible sound uses will not increase turbidity in the water and will maintain overall water quality. The town will not support upland excavations for the development of canals or uses that will destroy significant areas of wetlands or marsh."
- Page 3-45 "Just beyond the marshes, submerged aquatic vegetation, which thrives on the sound bottom, provides important habitat and spawning areas for fish, crabs, and other marine life."
- Page 3-47 "The goal of the town is to maintain and improve estuarine water quality and natural estuarine functions while providing water-based recreation opportunities that do not compromise water quality goals."
- Page 3-48 Natural Resources and Resiliency Policies NR-1, NR-2 and NR-4 speak to the protection of estuarine shorelines.

Staff finds this proposal to be consistent with land use policies, placing reliance on the findings of the issued CAMA Major Permit with respect to water depth of 3'-2" to 4'-1" at the pier, no observable SAV's, and no designation of primary nursery habitat in this area. Related, Staff finds that the proposal is consistent with policies supporting access to the water and water-based recreation opportunities.

## **SPECIFIC INFORMATION**

---

### Applicable Zoning Regulations:

- Use Regulations: A docking facility as an accessory use to a restaurant is allowed as a Conditional Use within the C-2, General Commercial, Zoning District provided certain conditions are met, as follows with staff comments in italics:
  - a. There shall not be more than one docking facility per lot. *There is only one docking facility proposed on this lot.*

- b. Docking facilities may not provide any of the following services: permanent docking spaces, overnight mooring, dry storage, fueling facilities, haul-out facilities, repair services, or any other water dependent commercial-outdoor recreational use. *The applicant has not proposed any of the services delineated as prohibited.*
- c. Boat slips shall not be utilized to satisfy the required parking for the principal use. *The applicant has not requested the four (4) slips be considered as required parking, nor is there any increase in customer service area being proposed to necessitate additional parking.*
- d. Piers and slips shall be limited to 200 feet measured perpendicular to the shoreline for the normal water line. This distance is not inclusive of the platform at the end of the facility. *The total length of the pier is 167 feet and therefore compliant.*
- e. There shall be 30-inches of water depth relative to the normal water level adjacent to all boat slips and boat access areas. *Compliant water depth determined with issuance of CAMA Major Permit 10-19.*
- f. The docking facility shall include a designated No Wake Zone that shall be extended 600 feet measured perpendicular to the shoreline for the normal water line. There shall be a No Wake Zone sign conspicuously posted on the facility. *The applicant has provided an attachment showing the extent of the 600 foot No Wake Zone and areas upon the facility where No Wake signage will be provided. The applicant has not provided information on the appearance or dimensions of the proposed signs but has noted that the signs will be custom made to include language specifying that users of the facility must maintain No Wake Speed for 600 ft.*

- Lot Coverage: Lot coverage will be unaffected by this request.
- Height: Structural height will be unaffected by this request.
- Architecture Design Standards: No architectural design standards apply to this request.
- Setbacks: The five (5) foot accessory structure setback is not affected by the linear extension of the existing pier.
- Parking: Pursuant to Town Code Section 48-407(c)(14)(c) the proposed four (4) boat slips are not proposed as, or intended to satisfy, the required parking for the restaurant use. Additionally, there is no increase in customer service area being proposed that would necessitate any additional parking.
- Buffering/Landscaping: There is no buffering or landscaping required as part of this request.
- Lighting: The applicant has indicated that low level security lighting, like what currently exists, will be continued along the pier, including lights beneath the benches to light the walkway and lights on the back of the benches to light the mooring areas (photos attached). If a light audit is required, this will be conducted prior to the issuance of the Certificate of Occupancy.
- Signage: No signage beyond the "No Wake Zone" signage has been requested or approved at this time. A total of four (4) "No Wake Zone" signs are proposed, two on either side of the existing gazebo and two on either side of the extended pier facility. Staff finds the proposed locations to be in compliance with the requirements of Town Code Section 48-407(c)(14)(f).

Water and Sewage Disposal: No review or approval required by the Dare County Health Department for this request.

Stormwater Management and Traffic Circulation: The proposed scope of work does not necessitate additional stormwater management measures or traffic circulation considerations.

Fire: Project will be required to comply with all applicable NC Fire Prevention Code requirements as part of building permit application review and issuance.

Public Works: The Public Works Department has reviewed and approved proposed plan.

CAMA: A CAMA Major Permit is required for this proposed use. CAMA Major Permit 10-19 has been issued and is attached for your review. Please note that the CAMA Major Permit cites the approval of "6 wet slips;" however, this Conditional Use/Site Plan Amendment would only permit four (4) boat slips.

## **ANALYSIS**

---

Staff finds the proposal to be consistent with the applicable use and development standards, as well as relevant land use policies, based in part on the findings associated with the issued CAMA Major Permit 10-19. With regard to land use policies, Staff finds that the proposal is consistent with policies supporting access to the water and water-based recreation opportunities.

With regard to the affirmative findings of fact for conditional use permits, pursuant to Section 48-525, Staff is of the opinion that:

1. The applicant has met the requirements of the Town of Nags Head Zoning Ordinance, Subdivision Ordinance and other applicable ordinances.
2. The use will not materially endanger the public health and safety if located where proposed and developed according to the plan as submitted.
3. The use as proposed will not overburden the firefighting capabilities and the municipal water supply capacity of the Town.

## **STAFF RECOMMENDATION**

---

Staff recommends approval of the Conditional Use/Site Plan Amendment application as presented, with a condition requiring compliance of the use and site with those materials and plans submitted as part of the application.

## **PLANNING BOARD RECOMMENDATION**

---

At their April 16, 2019 meeting the Planning Board voted unanimously to recommend approval of the proposed Conditional Use/Site Plan Amendment as presented.

**Attachments:** *Conditional Use/Site Plan Amendment Application, CAMA Major Permit 10-19, Construction drawings.*