



STAFF REPORT

Town of Nags Head

Planning & Development Department

To: Board of Commissioners
From: Kelly Wyatt, Deputy Planning Director
Date: May 28, 2019
Subject: Consideration of amendment to the site plan by Gemcap Development to include the addition of a concrete bulkhead along the northern side of the parking area of the Sherwin-Williams 6,000 square foot retail structure located at 6813 S Croatan Highway (Attachment H-1)

GENERAL INFORMATION

Applicant: Gemcap Development.

Application Request: Site Plan Amendment.

Purpose: Reconsideration of site plan following a major change, installation of a two (2) foot concrete bulkhead/retaining wall on the north side of the parking area.

Property Location: 6813 S. Croatan Highway, Nags Head.

Existing Land Use: Retail Store (Sherwin Williams & vacant space).

Zoning Classification of Property: C-2, General Commercial District.

Zoning Classification of Surrounding Properties: All properties surrounding the site are zoned C-2, General Commercial; however, the properties to the east are developed residentially.

Flood Hazard Zone of Property: AE 9, lowest horizontal structural member of lowest floor shall be no lower than 10 ft. msl. First floor elevation proposed at 10.2 ft. msl.

Land Use Plan Map/Policies: The 2017 Comprehensive Plan Future Land Use Map classifies this property as General Commercial. This property is located within the Whalebone Character Area. The proposal is consistent with land use policies.

SPECIFIC INFORMATION

Gemcap Development is seeking approval of a major change to the April 4, 2018 Board of Commissioners approved Site Plan for construction of a 6,000 square foot retail structure (Sherwin Williams). On April 1, 2019, while various departments were conducting final inspections, it was noted that a significant deviation from the approved plan had occurred in that a two (2) foot tall concrete bulkhead/retaining wall had been constructed along the north side of the parking lot. This concrete bulkhead/retaining wall was not shown on the Planning Board reviewed, and Board of Commissioners approved site plan. Furthermore, the need for the change was not brought to staff's attention for review and approval prior to the installation.

Once aware of the change, the Director of Planning & Development determined the addition of the wall to be a major change, requiring approval by the Planning Board and Board of Commissioners.

It is important to note that the use of bulkheads/retaining walls on commercial property are not regulated within Chapter 34, Stormwater, Fill and Runoff Management. Town Code Section 34-6(b)(10) provides that the construction and use of bulkheads, walls and other structural controls to retain the placement of fill on property shall be permitted where a wall is necessary to achieve a 5-foot setback of fill and cannot retain more than two (2) feet of fill and shall not exceed two (2) feet in maximum height from the final grade for residential and duplex development. This provision is not listed in Town Code Section 34-7, General standards for commercial development, therefore there is no regulation of the use of bulkheads/retaining walls for this development.

Below is a brief timeline of events related to the approval and development of the property.

- April 4, 2018 - Board of Commissioners reviewed and approved the Site Plan request.
- June 21, 2018 - Building and Zoning Permits were issued.
- December 28, 2018 - Temporary Certificate of Compliance was issued for 30 days.
- January 17, 2019 - Temporary Certificate of Compliance was extended for 30 days.
- February 28, 2019 - Temporary Certificate of Compliance was extended for 30 days.
- March 1, 2019 - BJ DiPietro of IB Builders, Inc. the licensed contractor for this project met with the Deputy Town Manager, Director of Planning & Development, Chief Building Inspector, and Town Engineer to discuss outstanding items requiring completion prior to March 31, 2019.
- April 1, 2019 - Final inspections were conducted, and the deviation was discovered.
- April 3, 2019 - The Director of Planning & Development and Chief Building Inspector provided a letter to the developer, Gemcap Development, outlining the outstanding items to be addressed prior the issuance of Certificate of Compliance (attached).

It was the Director of Planning & Development's determination, based upon Town Code Section 48-524(b)(5), that the deviation from the approved plan with the addition of the concrete bulkhead constituted a major change to the originally approved plans. Upon being notified of this, Mr. Brian Moore with Gemcap Development, submitted his request to pursue the site plan amendment as is being presented for your review and consideration. Based upon conversations between the Town Engineer and the General Contractor, Staff understands that the General Contractor determined that it was necessary to install the wall due to an underground utility conflict necessitating the relocation of the storm drainpipe and resulting in its exposure above grade without adjustment of the slope in this area and installation of the wall.

Staff recommended that the developer have their site engineer, Coastal Engineering & Surveying, Inc., provide a seal for the bulkhead installation. That has been submitted and accepted by the Town Engineer (attached).

While there are some additional minor items that need to be addressed onsite prior to the issuance of the Certificate of Compliance and then Certificate of Occupancy, there are no other deviations from lot coverage, height, architectural design, parking, buffering, stormwater management or traffic circulation that necessitate board review.

UPDATED INFORMATION FOR THE JUNE 5, 2019 COMMISSIONERS MEETING

At their May 1, 2019 meeting the Board of Commissioners tabled consideration of this site plan amendment until the June 5, 2019 meeting to afford staff an opportunity to verify compliance

and proper installation of erosion, sedimentation, and stormwater control measures, and the mitigation of negative impacts on abutting properties. Following the meeting, on May 7 Staff met internally and subsequently provided direction to the contractor and property owner; Staff identified the following issues with respect to stormwater and erosion:

1. Landscaping installed pursuant to the approved site plan had comprised the functionality of the originally installed swale along the northern property line, resulting in the inability of the swale to receive some stormwater from the adjacent property at 6807 S. Croatan Highway, and thereby resulting in ponding on the driveway of the adjacent property due to it being at a lower grade than the area along the northern property line of the Sherwin-Williams site. Staff has requested that the contractor work to reconstitute the swale in this area, working around required landscaping. Generally, this swale was not intended or designed to capture runoff associated with the building (as such runoff is guttered and piped to an infiltration system).
2. Staff identified erosion and undermining of the slope and rock along the northern property line. Staff suggested several options for consideration by the property owner, including the use of larger stones and/or the installation of geotextile fabric.

In addition to the completion of all punchlist items identified in the letter from Michael Zehner and Cory Tate, dated April 3, 2019, Staff requested resolution of the aforementioned items and submission of certification from the project engineer that the swale and slope have been installed per the designed plan, thereby attesting to their functionality (recognizing the installed wall and major change request).

Staff indicated that the site, and the owner's progress in addressing these issues and those identified in the April 3 letter, would be evaluated no later than end-of-day May 28, 2019. At that time Staff would determine whether satisfactory progress (or completion of tasks) had been made, warranting the extension of the Temporary Certificate of Compliance until the end-of-day June 5, 2019 (i.e. the date of the next Board of Commissioners meeting at which the request for a major change to the Site Plan would be considered).

On May 14, 2019, Staff met at the property with the owner, contractor, and design engineer to inspect progress and address any questions regarding resolution of any identified issues; as noted below, discussions included the potential need for alternative landscape plantings to properly accommodate the originally designed swale. The Deputy Planning Director and Town Engineer performed subsequent inspections of the property and completed work. As of the date of this Report, Staff has made the following determinations:

- A shallow grass swale has been properly installed along the northern property line; this measure will capture stormwater runoff from the rip rap stone embankment and perimeter landscaping;
- The area of rip rap stone embankment, previously undermined in areas, has been repaired and properly installed;
- Landscaping has been properly installed to accommodate the designed swale and achieve compliance with Section 48-371(f) of the Zoning Ordinance. The approved landscape plan indicated plantings in this area to include two to three rows of Wax Leaf Privet, Pfitzer Juniper, and/or Daylilies. Given the condition of this area and the importance of providing for functionality of the swale (not to mention the improved buffer and aesthetic value with the planting of evergreen shrubs and trees species versus small shrubs, ground cover, and perennials), the Planning Director approved a

modification of the original plan resulting in a reduction in plantings of daylilies and pfitzer juniper, and the installation of 3-4' tall Hollywood Juniper and Nellie Stevens Holly. These plantings and the total installed landscape plan meet the minimum 15% of the total site area required by the Ordinance;

- An updated as-built has been submitted by Coastal Engineering depicting the additional swale work and providing appropriate certifications; and
- All other site improvements and/or deficiencies previously identified by Staff have been installed in substantial compliance with the approved plans.

Based upon the above, as of the date of this Report, Staff anticipates extension of the Temporary Certificate of Compliance until the end-of-day June 5, 2019 to allow occupancy to continue until the Commissioners are able to further consider the amendment of the site plan to allow the installed concrete bulkhead/retaining wall.

STAFF RECOMMENDATION

Based upon the above and the progress to date, Staff recommends approval of the Site Plan Amendment to address the major change/deviation from the April 4, 2018 Board of Commissioners approved plan with regard to the installation of a two (2) foot tall concrete bulkhead/retaining wall the north side of the parking area.

PLANNING BOARD RECOMMENDATION

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

Attachments: Communications noted herein, sealed design for bulkhead/retaining wall, various photo's during construction.