
**Town of Nags Head
Planning Board
December 19, 2023
- DRAFT -**

The Planning Board of the Town of Nags Head met on Tuesday, December 19th, 2023, 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, Molly Harrison, Meade Gwinn, David Thompson, Gary Ferguson, Kristi Wright, David Elder

Members Absent

None

Others Present

Kelly Wyatt, Joe Costello, Andy Garman, Lily Nieberding,

Election Of Vice Chair for Calendar Year 2023

Chair Vaughan called for nominations for Vice Chair. Molly Harrison moved to nominate Meade Gwinn. David Elder seconded the motion and the motion passed unanimously.

Approval of Agenda

Molly Harrison moved to approve the agenda. David Elder 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 November 21, 2023, meeting. David Elder moved to approve the minutes as presented; Meade Gwinn seconded, and the motion passed unanimously.

Action Items

Special Use/Site Plan Review submitted by Quible & Associates, P.C. and Beacon Architecture and Design PLLC, for the construction of a Trade Center. The property is zoned C-3, Commercial Services and is located on Lot 2a of the Charles L. Sineath Subdivision (PIN #989317113533), vacant lot directly behind TW's Bait and Tackle. (Expired – seeking re-approval)

Planning Director Kelly Wyatt explained that the Special Use/Site Plan review for the Trade Center was reviewed and approved by the Nags Head Board of Commissioners on November 2nd, 2022. This 2022 approval was not a vested right, so the site plan approval expired one (1) year from the date of approval, meaning the site plan approval expired on November 2nd, 2023.

Section 4.15, Time Limits for Site Plan, Zoning Permits, & Building Permits, of the Unified Development Ordinance, sets forth the timeline for permitting. Ms. Wyatt reviewed this section for the Board noting that following site plan approval by the Board of Commissioners a building permit must be issued within twelve (12) months from the date of approval, or the site plan approval expires, and the applicant must then submit a new site plan review conforming with the current provisions of the Unified Development Ordinance.

Given that a development permit application has not been submitted and a building permit issued, the applicant is requesting re-consideration of the initial approved submittal. As such, the applicant has resubmitted their previously reviewed and approved Special Use/Site Plan Review application for the Planning Boards consideration. Ms. Wyatt noted that a copy of the staff report from the Board of Commissioners November 2nd, 2022 meeting was included in the Agenda packet for the Planning Board's consideration.

The Planning, Fire, Police, and Public Services Department as well as the Town Engineer have reviewed the submittal and find it to be consistent, and still in compliance with the November 2, 2022 approved submittal. There have been no changes in the applicable codes for each respective department over the past year that would affect this submittal, therefore staff recommends approval of the Special Use/Site Plan Review application as submitted.

Ms. Wyatt confirmed for Mr. Elder that the applicant did pull a Land Disturbance permit and cleared the lot. The expectation is that a building permit will be coming soon if this is approved.

Meade Gwinn moved to recommend approval of the site plan as presented. Molly Harrison seconded and the motion passed unanimously.

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.

Ms. Wyatt explained that Albemarle & Associates, on behalf of Golasa Holdings, LLC had submitted a text amendment request to the Unified Development Ordinance (UDO), which, if adopted would permit the long-term rental of existing hotel units within older hotels and motels. As part of this request the applicant has proposed definitions of the terms "Long Term Occupancy", "Hotel/Studio Unit", and "Legacy Hotel/Motel."

While this type of conversion may not be new in more urban areas, this is not something that has been contemplated previously in the existing UDO. Ms. Wyatt noted that there appears to be a good amount of information and articles available on this type of use and Staff shared links to a few articles that they found interesting and informative in their Staff Report.

The current definition of hotel states that units are intended to be for used for transient guests on a rental basis. The Unified Development Ordinance then goes on to define transient occupancy as occupancy no longer than 30 combined days.

Staff would submit that this proposal, if adopted, could have significant impacts, and should be discussed at length, in an effort to understand the benefits and impacts thoroughly.

Some items for consideration and discussion:

- Accommodations/improvements for a long-term rental may require renovations to ensure the comfort of occupant such as providing permanent cooking equipment. These improvements may be required to secure permits and meet current zoning, building, flood, and CAMA regulations.
- Do long-term renters have different expectations and needs compared to hotel guests? Could lack of amenities and services impact tenant satisfaction?
- Would a mixture of short and long-term stays alter the atmosphere/ambiance of the hotel, impacting the experience of the transient hotel guest?
- Should there be a minimum habitable area for a long-term rental unit?
 - o Current UDO has a minimum hotel unit size of 300 sf. and 400 sf minimum for hotel efficiency and hotel suite.
 - o Current UDO requirements for a dormitory style development require approximately 300 square feet for the first occupant.
 - o The draft multi-family dwelling ordinance recommends a minimum unit size of 800 square feet.
 - o On average hotel rooms in the U.S. are approximately 330 sf, while the average apartment size is 880 square feet.
- Does converting hotel units to long-term rental reduce the overall supply of needed hotel rooms to the extent that it affects visitation/tourism?
- Does the management of long-term leases require different skills and resources compared to managing short-term hotel bookings. Long-term tenants may pose challenges in terms of eviction, non-payment, or property damage, requiring legal involvement that may be more complex than dealing with transient guests.
- Does this conversion lead to parking concerns? If this conversion is allowed should consideration be given to a new parking standard? The current parking standard for multifamily is a minimum of two spaces for each dwelling unit. The current parking standard for hotel is one space per unit if it does not have kitchen facilities and 1.2 spaces if it does have kitchen facilities. When considering the older hotels/motels it may be that existing parking is nonconforming.
- If the older (as proposed "legacy") hotels/motels are experiencing hardships, long-term rentals may provide a steady and predictable income stream for property owners, reducing the impact of seasonal fluctuations. In addition, long term rentals may have lower operational costs compared to a hotel, such as reduced cleaning, laundry, and maintenance expenses.

Ms. Wyatt noted that Planning Staff was not ready to make a recommendation but was available to answer any questions for the Board. Mr. Golasa as well as John DeLucia with Albemarle & Associates were also available to discuss this proposed text amendment further.

Ms. Wyatt confirmed for Chair Vaughan that she was not sure how many legacy hotels this proposed amendment would impact however Mr. DeLucia might have this information.

Mr. Elder inquired why this proposal was only for legacy hotels and questioned if they would be creating a disparity between older and newer hotels. Ms. Wyatt noted that this could be part of the discussion, but this is what the applicant had proposed.

Mr. Thompson noted that he had done a quick drive-by of the area and found maybe only three hotels (non-oceanfront) that this might apply to.

Mr. Elder noted that it seemed that due to the season being longer, there are less hotels closing in the off-season.

Ms. Wyatt confirmed for Mr. Ferguson that Planning Staff do not regulate length of stay at a hotel nor is she aware of any complaints or been given any reason to investigate further.

Applicant John DeLucia addressed the Board and discussed his proposal further. Mr. DeLucia introduced Leor Golasa, who is the son of property owner Israel Golasa. Mr. DeLucia noted that they had purchased the Owens properties including the restaurant and motels. Mr. DeLucia noted that the Owens motels (Motor-court and oceanfront hotel) are considered Legacy hotels. The Town has lost several legacy hotels in the past years due to maintenance costs and the fact that building a large house on a lot is more profitable.

Mr. DeLucia listed the hotels that would qualify under the proposed ordinance: Comfort Inn South, The Dolphin Motel, Cahoon Cottages, The Rodeway Inn, Sea Foam Hotel, Tar Heel Motel, Islander Hotel, First Colony Inn, Sandspur, Oceanside Court and the Colonial Inn.

These are buildings that the Town does not want to see torn down, that are non-conforming, don't meet the standards that people today expect of hotel rooms... they are smaller, don't have good views of the oceanfront. In addition there is a great need for housing in the area, especially for workforce housing. The property owners are in the process of renovating the units... some had cooking facilities some just have microwaves and refrigerators. They have health department approval to upgrade the cooking facilities in the rooms. Mr. DeLucia noted that the motor-court is being renovated to continue to function the way it's always functioned but the property owners see a need for longer-term affordable housing. If they can find a way to rent them as studio apartments they would rather do that instead of renting them out for short-term stays.

Mr. DeLucia noted that this is happening in other areas around town where owners are renting out some units to their employees and other workers.

Mr. DeLucia confirmed that the motor-court has about 29 units that are approximately 350 SF.

Mr. Leor Golasa, with Golasa Holdings, LLC was next to address the Board. Mr. Golasa noted that for them it is not about the money, it is about providing homes for people that need housing. They company owns 50 properties and the majority of those are rented long-term. He works as property manager for those properties. Mr. Golasa noted that this is not something they advertise so few are aware. Mr. Golasa stated that renting out rooms long-term does not make sense financially and does not believe that many hotels will want to do this. Mr. Golasa then proceeded to address the questions that Staff brought up in their report.

Mr. Golasa confirmed for Mr. Gwinn that he would prefer to rent out the units for a one year minimum rather than shorter terms (ex. 90 days). He has a waiting list both for individuals and business owners of 100 people each looking for year-round housing. There is a higher demand for longer-term housing than there is for shorter stays.

Mr. Golasa addressed questions related to storage and bedroom size. Noting that they would probably rent for between \$1400 and \$1700 including utilities. Mr. Golasa also spoke in more detail about the cooking facilities which would include a stove, microwave, sink, refrigerator and cabinets. Mr. Golasa then discussed his plans for an on-site laundry facility. Mr. Golasa noted that he would be making about 50% less on these units than if he were to keep it as a motel and promised that he would charge fair market value for rent.

Chairman Vaughan reminded the Board that this is a text amendment throughout the town and not site specific.

Mr. Golasa and Mr. DeLucia discussed the impacts of long-term vs. short-term rentals with Mr. Golasa reiterating that he sees only benefits from providing much needed long-term housing. Mr. DeLucia noted that short-term rentals (hotel stays especially in season) have a more negative impact on a neighborhood than year-round rentals.

Ms. Wyatt confirmed for Mr. Ferguson that she had sent the proposed text amendment to TRC for their review but had received little feedback or concerns.

Mr. Elder expressed concern about possible disparity between retrofitting something existing vs. different requirements for something being built new, such as size requirements. Mr. Elder noted that this could turn into a density issue.

Chair Vaughan agreed also noting that parking could be a concern.

Mr. Golasa confirmed for Ms. Harrison and the Board that parking would not be an issue for his property but noted if need be he could keep occupancy to one person per unit, however it would be difficult to enforce.

Mr. Gwinn stated that he likes the concept and noted it addresses a problem. They will need to further discuss things such as parking, but they need to give it some serious consideration. Chair Vaughan and Mr. Elder agreed.

Ms. Wyatt noted that she had enough information from the discussion to draft a preliminary ordinance to bring back to the Board for further discussion next month.

Consideration Of Various Text Amendments to the Unified Development Ordinance as it relates to multi-family development.

Ms. Wyatt presented a copy of the updated proposed text amendments for the Board to review noting that the Board has been discussing this item for several months now.

Following the most recent discussion at the Planning Boards November 21st meeting, Planning Staff has provided updates/revisions which Ms. Wyatt proceeded to review for the Board:

- The proposed definition of Dwelling, Multiple Family (Multi-Family) has been revised from "means a *structure* under one roof" to "means *dwelling units* under one roof" to clarify the distinction based on the attorney's recommendation.
- The proposed definition of Townhouse was changed to clarify between dwelling structure and dwelling units based on the Town Attorney's recommendation.
- The definition of Principal Place of Residence has been added to further clarify workforce housing requirements based on the Planning Board's discussion.
- The definition of Qualified Person has been added to ensure only those working/employed in Dare County are qualified to live in multi-family housing based on the Planning Board's discussion.
- Language has been added to the Workforce Housing definition to clarify requirements of the deed restriction based on the attorney's recommendation.
- Section 7.5, Dwelling, Multi-Family Table heading has been revised to clarify between dwelling structure and dwelling units based on the attorney's recommendation.
- The buffer requirements for Large Multi-family developments have been amended to include the higher standard of buffer requirements for high impact uses based on the Planning Board's discussion.

- The Architectural Design Requirements for Large and Small Multi-family developments were updated to include 'Option B' outlined under Article 10, Part VI of the Commercial Design Standards as an allowable option to meet design requirements. The Planning Board should discuss which option is most desirable. A requirement was added for multi-family dwelling buildings to incorporate building design variations; these changes were made based on the Planning Board's discussion.

The Board agreed that any proposed multi-family development, whether large or small, should go through the sketch plan process.

- Additional Accessory Uses were added as allowed uses under Large and Small Multi-Family Developments to include sheds, pool (one per development), walls and fences, private parks, and playgrounds.

The Board agreed that they would like to see Stormwater Management review for any type of Land Disturbance, and/or size of accessory structure.

- Section 7.5, Dwelling, Multi-family was amended to include a requirement for a homeowners' association to be formed for all multi-family development with one of their required duties being to certify that the deed restriction and workforce housing requirements are being met.

Ms. Wyatt confirmed for Mr. Thompson that this would be a requirement for both small and large developments.

- The Commercial Site Design standards for High Impact Uses was amended to include Large Multi-Family Dwelling Development based on Planning Board discussion.

At the previous meeting, Planning Board members expressed concern about potential lighting conflicts arising when multi-family development abuts single-family development. Excerpts of the UDO related to lighting standards were provided as part of the Staff Report.

Ms. Wyatt confirmed for Mr. Ferguson that the Town does have non-conforming tri-plexes but they were not permitted as multi-family and did not meet the requirements of the previous multi-family ordinance.

The Board agreed to have Staff make the necessary revisions, send it to the attorney for final review as well as place it in the Commissioner's Consent Agenda at their January meeting.

Molly Harrison moved to recommend approval of the proposed text amendments with the stated revisions. David Elder seconded, and the motion passed unanimously.

Discussion And Consideration of Text Amendments related to drive-through restaurants.

Deputy Planning Director Joe Costello explained that SRE Mustang, LLC (Outlets Nags Head) submitted a text amendment application to include the use of "Restaurant, Drive Through" as a permissible use within Commercial Mixed-Use Developments and to amend the Supplemental Regulations associated with drive-through restaurants within the Town.

Mr. Costello explained that currently, drive-through restaurants are only allowed in the C-2, General Commercial Zoning District as a special use and with supplemental regulations that are described in Section 7.29 of the Unified Development Ordinance.

In addition to the applicant's request to list the use "Restaurant, Drive-Through" as a permissible use within Commercial Mixed-Use designations, the applicant has also proposed to amend the supplemental regulations found within Section 7.29 of the UDO. The proposed revised language was provided in the staff memo and includes: Additional buffering requirements, a requirement that the drive-through restaurant must be situated in a retail shopping center development which (a) consists of at least twenty (20) acres of land with frontage on the US 158 right-of-way, (b) has signalized access to and from US 158, and (c) the structure with a drive-through is less than 3,000 square feet.

The Planning Board heard this request at their October 17, 2023 meeting and voted unanimously to recommend denial to of the text amendment as proposed.

Mr. Costello noted that following discussion at the Board of Commissioners meeting on December 3, 2023, the Board noted that there was conflict in the appropriateness and permitting of the Restaurant, Drive-Through use between the Comprehensive Land Use Plan and the Unified Development Ordinance. The UDO currently allows the Restaurant, Drive-Through use as a special use within the C-2, General Commercial zoning district with supplemental regulations. However, the Comprehensive Land Use Plan excludes Restaurant, Drive-Through as a compatible use in all the identified character areas within the town, and notably the Corridors Character Area and Whalebone Character Area. The Board of Commissioners voted to table this item and send it back to the Planning Board to resolve the apparent conflict between the Comprehensive Land Use Plan and the Unified Development Ordinance.

To resolve the conflict between the Unified Development Ordinance and Comprehensive Land Use Plan, the Planning Board may wish to consider one of the following two options:

- Consider amending the UDO as necessary to remove the use of Restaurant, Drive Through as an allowable use in the town. This action would represent implementation of the recommendation of appropriate uses within the Corridors and Whalebone Character Areas.
- Consider amending the Comprehensive Land Use Plan to include the Restaurant, Drive-Through use as an appropriate use in one or more-character areas.

Mr. Costello noted that the Comprehensive Land Use Plan is an official policy document adopted to strategically plan for and enhance the quality of life and physical character of the community. The Comprehensive Land Use Plan was developed over the course of two years, was overseen by a Board of Commissioners appointed Advisory Committee consisting of nine members of the community. These committee members met more than 15 times to discuss and provide guidance on the plan development. In addition, the process of developing the plan included four community and public engagement opportunities and approximately 70 stakeholder interviews/meetings.

Staff has reviewed the agendas, notes, and minutes of the advisory committee meetings and found two instances where drive-through restaurants were discussed. The first is from a set of notes that states: "*Don't want more fast food or drive thru type restaurants*".

The second is a formal minute's document from the advisory committee's December 8, 2016 which says that along the US 158 corridor, uses should reflect only sit down or walk-up restaurants.

The 2017 Comprehensive Land Use Plan sets forth various character areas throughout the Town. These are districts that have their own unique characteristics. These areas provide both the vision and policy direction for the desired use, design, infrastructure, and other elements that new development must consider. The allowable uses and appropriate scales of these uses are

comprehensively described for each of the unique districts to ensure future development and redevelopment preserves the quality and uniqueness of each district.

The list of generally appropriate land uses specifically spells out that “drive-thru restaurants” are not desirable in any of the character areas.

Mr. Costello noted that there are currently three (3) establishments that meet the definition of “Restaurant, Drive Through” within the town: Dunkin Donuts, The KFC/Taco Bell and Sonic. Should the Planning Board be inclined to recommend removal of the Restaurant, Drive Through use from the UDO completely it would have a limited effect on existing drive-through development, creating only one legal non-conforming use in Town (Sonic, within the Village at Nags Head Commercial-2 District) explaining that the other two are nonconforming for other reasons.

On the other hand, amending the Comprehensive Land Use Plan to include Restaurant, Drive Through as an appropriate use in the Corridors Character Area and Whalebone Character Area, has the potential to lead to proliferation of drive-through restaurants on C2, General Commercial zoned property in the area. A total of approximately 231 acres within 250 unique parcels in the Whalebone Character Area would be directly impacted by the change to the Comprehensive Plan. Significantly more properties are zoned C-2 within the Corridors Character Area. Although the special use permit process would still require review and approval from the Planning Board and Board of Commissioners respectively, the justification would exist in the Comprehensive Plan to support future Restaurant, Drive Through development applications.

Based upon the staff analysis above, staff would continue to recommend denial of the proposed text amendment to allow drive-through restaurants as an acceptable use within commercial mixed-use developments, including shopping centers.

Crouse Gray, attorney for the applicant addressed the Board stating that the applicant’s property is the one place where drive-throughs should be allowed. Pretty much all shopping centers have drive-through restaurants in some type of out parcel. The applicant’s property has the parking and septic capacity that would allow this type of development. Mr. Gray reiterated that he feels this proposal would be good for the Town.

Mr. Ferguson noted that while the Comprehensive Plan was not a regulatory document a lot of community input went into the development of it and it depicts what the Town aspires to be.

Mr. Elder stated that for him it goes back to a density and a safety issue.

Mr. Gwinn noted that this proposal does not comply with the vision and the look of Nags Head. While Mr. Gwinn understands the applicant’s point of view, he believes it does not fit the comprehensive plan which was developed with input from a lot of very dedicated people. For this reason, Mr. Gwinn believes that drive-through restaurants should be eliminated from the UDO to remove the conflict.

After some further discussion David Elder moved to recommend denial of the proposed amendments. David Thompson seconded, and the motion passed unanimously.

Report on Board of Commissioners Actions – December 6th, 2023

Ms. Wyatt gave an update on the Board of Commissioner Actions, of note: Recognition of Dep Town Clerk Michelle Gray for on her upcoming retirement after over 27 years of service to the Town. Reorganization of the Board after the November election - Megan Lambert and Kevin Brinkley were

sworn in as Commissioners; the Board elected Mike Siers as Mayor Pro Tem. The Commissioners held three Public Hearings: 1) to consider the Mikita Subdivision Waiver; the Board approved the waiver for one proposed two-lot Minor Subdivision as presented, to include staff's two conditions. 2) to consider text amendments to the UDO as it pertains to including the use of "Restaurant, Drive Through" as a permissible use within Commercial Mixed-Use Developments, as well as amending the supplemental regulations associated with this use; the Board passed a motion to table this item and to return it to the Planning Board for additional review. 3) to consider text amendments as it pertains to the appraisal and purchase of precious metals and antiques and collectibles as an acceptable temporary and accessory use to retail jewelry shops; the Board adopted the ordinance as presented with the exception that the 90 days be reduced to 14 days. Comr. Sanders reported on the Shoreline Management project which was recently turned down on a grant application request. The Board appointed David Thompson to the vacant position on the Planning Board. It was Board consensus to agree with the proposal presented by Town Manager Garman with the goal to identify desired future needs and determine how they could most efficiently be accommodated in the Town Hall/Fire Station Properties Master Plan. Town Manager Garman reported that he and staff recently met with Dare County Environmental Health personnel to learn about new changes to regulations that govern the construction and repair of on-site wastewater (septic) systems. There are some fairly significant changes coming forward that staff feels may impact a lot of residents. He pointed out that Dare County has also expressed their opposition to the regulations. Chair Vaughan noted that the Board needed to appoint a new member to the Septic Health Advisory Committee; after a brief discussion Gary Ferguson was appointed to the Committee.

Town Updates

None

Discussion Items

November 30th, 2023, Director's Report

Ms. Wyatt briefly discussed her Director's Report with the Board which included: Septic Health Advisory Committee, Electric Vehicle Action Plan, Sand Relocation and Dune Management Cost Share Program; Permitting Turnaround; and Dowdy Park Events/Farmers Market/Holiday Markets/Art & Culture Committee.

Planning Board Members' Agenda

Mr. Elder discussed non-conformities and the ability to rebuild non-conformities, especially when it comes to commercial properties. Mr. Elder would also like to revisit parking requirements for commercial development.

Mr. Ferguson discussed the redevelopment of the Epstein Beach Access. Ms. Wyatt will forward a copy of the approved site plan.

Mr. Thompson thanked the Commissioners for appointing him to the Board and is excited to be a member and contribute.

Mr. Gwinn reminded the Board that at the BOC's January meeting there will be a special recognition of former Commissioner Renee Cahoon.

Planning Board Chairman's Agenda

Chair Vaughan thanked everyone for their involvement this past year and wished everyone a Happy Holiday.

Adjournment

A motion to adjourn was made by David Elder. The time was 11:47 AM.

Respectfully submitted,
Lily Campos Nieberding

DRAFT