

**Town of Nags Head
Planning Board
March 19, 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 February 20, 2024, meeting. Meade Gwinn moved to approve the minutes as presented; David Elder seconded, and the motion passed unanimously.

Action Items

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 February 20th meeting the Planning Board expressed support for the proposed ordinance that would allow the conversion of hotel units into long-term rental units. After discussing the proposal with Staff and considering concerns raised by the applicant, the following key points were agreed upon and have been incorporated into the draft ordinance amendments:

- The Planning Board unanimously agreed, following a presentation by the Deputy Fire Chief, that the converted units must adhere to the current NC Fire Prevention Code requirements,

including those related to smoke alarms. Ms. Wyatt noted that this might be different depending on location but would be reviewed during the Special Use process.

- In light of the focus on workforce housing and recent proposed amendments for multi-family developments, the Planning Board and the applicant concurred that at least 50% of the units designated for long-term rental should be lease-restricted for workforce housing.
- It was determined that, barring any changes, the reversion of units back to transient occupancy could be approved administratively.

With the revisions made, staff would submit that this proposal is likely consistent with the Town's adopted Comprehensive Plan and would recommend adoption of the ordinance as presented. Ms. Wyatt provided the policies in a separate document and briefly reviewed them for the Board, noting that she had found that the policies from the Land Use Plan were more consistent than inconsistent with the proposed text amendment.

Finally, Ms. Wyatt stated that the only outstanding issue from staff perspective is that this proposed amendment kind of results in an apartment building scenario and apartments are multifamily and right now, the Town does not allow multifamily. The Board can choose to view this as a type of multifamily development or something different and it will be up to them to decide how much they want to discuss this point.

Ms. Wyatt noted that she, as well as Mr. DeLucia on behalf of the applicant, were available for discussion and to answer any questions.

Ms. Wyatt confirmed for Chair Vaughan that the Land Use policies do discuss the Town's desire to preserve some hotels and motels.

Chair Vaughan inquired how often a hotel could switch back and forth between short-term stays and long-term rentals. Ms. Wyatt noted that the Board could discuss putting a number in. The Special Use process takes about three months. Administrative approval, if there have been no changes, is about two weeks.

Mr. Gwinn noted that it probably wouldn't happen that much and would likely be restricted to which facilities that can and want to make the change to begin with. Mr. Gwinn questioned why the Board would want to limit the number of times that a facility may want to go from one to the other, stating that he couldn't see it happening that often.

Mr. Thompson expressed concern, and Mr. Elder concurred, about the possibility of it becoming a seasonal long-term rental in the off-season and converting to short-term in season.

Chair Vaughan noted that it could easily become an enforcement issue, how would they know who is staying there long-term and who is there short-term.

Mr. Elder noted that as it becomes clear that if the change of use starts to develop a pattern, and it becomes normative, then it would fall outside of what was the original presumed intent.

Mr. Thompson noted that while he didn't believe that it was the applicant's intent (to switch back and forth) that it could be setting a precedent going forward.

Mr. Elder expressed concern about unforeseen consequences and how Staff planned to enforce the leases. Ms. Wyatt stated that staff would work with the owner or property managers to review copies

of the leases to ensure they meet the definition of long term and ensure that at least 50% of them speak to workforce.

Chair Vaughan reminded the Board that there are seasonal longer-term occupancies such as traveling nurses and lifeguards so they could get into a situation where they have people in the facility for less than a year.

Ms. Harrison noted that this is already happening in rental homes that are rented for longer periods in the off season and then back to weekly in the summer.

Ms. Wyatt confirmed for Mr. Gwinn that subleasing would not be allowed.

Applicant John DeLucia with Albemarle & Associates addressed the Board.

Gary Ferguson discussed the idea of a sunset clause. Mr. DeLucia stated that switching back and forth has never been discussed with his client. The initial intent was long-term housing and then being able to switch back to short-term if there was no longer a need or it didn't make sense for it to be used for long-term housing anymore. Mr. DeLucia noted that because this would be a Special Use process that takes 3 to 4 months it is unlikely that people would want to do it seasonally or on an annual basis because it would be an arduous process.

Mr. DeLucia noted that the applicant has great staff that keep meticulous records so he does not believe monitoring the leases will be a problem. Ms. Wyatt confirmed that an annual audit of the leases could be part of the ordinance.

Mr. Elder noted that it seems that the framework they have is workable and if someone decides that they want to deviate from that path, then it would be a compliance issue.

Ms. Wyatt confirmed for Mr. Ferguson that the Comp Plan speaks to the desire for Legacy type structures and non-conforming structures, to continue to thrive. The applicant assured Ms. Wyatt that they're thriving, and they don't need this proposed ordinance to keep thriving, but yes, there is an effort to acknowledge that it's an older legacy structure that the Town would certainly like to see maintained and allowing some flexibility in this case would be consistent with the land use plan.

Ms. Harrison noted that she was hesitant to vote on the proposed ordinance because of the way it may affect the multi-family ordinance and what's coming down the road, but it is a very special circumstance because of the age of the buildings and them being legacy structures.

Chair Vaughan agreed, noting that it was also her concern as she sees it as a piece of the multi-family puzzle. Chair Vaughan stated that while she was not opposed to the idea and realizes that it's already going on in other places, even in oceanfront hotels which are currently not being considered as part of the proposal, there are other examples of things that go on in town that they're not going to ok just because they are happening. Chair Vaughan noted that while she feels like the proposal has a lot of merit, she's concerned about some of the issues they've discussed and once they agree to it, it would be difficult to go back. Chair Vaughan questioned if this has to happen right now, considering that there is not a multi-family ordinance in place.

Mr. Thompson stated that it was a commendable project and noted that the difference is that these structures are already multi-unit housing just rented short-term.

Mr. Gwinn noted that even if there is no urgency, there is consensus that they like the idea, that it does satisfy a need for some long-term housing that doesn't currently exist, and he thinks that at least they can let the Commissioners know their thoughts about it.

Mr. DeLucia spoke up and stated that there is some urgency, and he would like the proposed ordinance to be moved forward to the Commissioners.

The Board discussed the difference between development and re-development and long and short-term density.

Ms. Wyatt noted that she would add the language about an annual audit of leases but had not heard that the Board wanted a cap on the number of times a property could convert from long-term to short-term.

Ms. Wyatt and Mr. Ferguson discussed the idea of a sunset clause, with Ms. Wyatt noting that at any given time they can go back and revisit the ordinance to determine if that use is still compatible with in town. Ms. Wyatt reminded the Board that they will be doing that as part of the strategic plan anyway and eliminating the use would just make it nonconforming.

David Elder moved to recommend approval of the text amendment as submitted with addition of annual review of leases by Town Staff, Meade Gwinn seconded, and the motion passed 5 to 1 with Chair Vaughan casting the Nay vote.

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.

Ms. Wyatt explained that Jordan Harrell of Jernigan Oil Company, Inc. had submitted a request to amend the Unified Development Ordinance to allow digital, LED signage for displaying fuel prices at gas stations within the Town. Mr. Harrell has noted that the primary reason for this request is to enhance the safety of staff and customers. With advancements in technology and LED price signs, you can remotely change price signs, eliminating the need for employees to manually change fuel prices using a pole suction cup in the parking lot, which can be hazardous during busy times. In addition, the high winds in this area frequently damage signs and dislodge the plastic digit replacements.

Ms. Wyatt noted that currently Section 10.22.6.17 of the Unified Development Ordinance states that "*LED and digital signs are prohibited*".

Ms. Wyatt noted that she had included the definition of "digital sign" as part of the Board packet. The language of Section 10.22.6.17 and the definition of digital sign were adopted on January 4, 2012. At their November 15, 2011 meeting, the Planning Board reviewed various documents and put forward a recommended ordinance for a complete prohibition of all digital and LED signage.

The staff report and minutes associated with the 2011 meeting, as well as the Board of Commissioners meetings were included in the Board Packet.

Ms. Wyatt explained that at that meeting, fuel price displays were specifically mentioned, and not all members were opposed to digital signage for this purpose, provided it was regulated appropriately. The primary concern appeared to be a potential proliferation of signage, especially those that flash, rotate, move, or are animated. There were aesthetic concerns regarding whether this type of signage

maintains the Town's visual appeal and character, contributes to light pollution, affects night sky visibility, and potentially distracts drivers.

While the town has legitimate concerns regarding signage that employs rotating, flashing, moving, or alternating lighting, it may be beneficial to reconsider the allowance of digital signs for fuel price displays only. With appropriate regulations regarding the size, placement, and brightness, the proposed amendment is likely consistent with the Town's adopted Comprehensive Plan.

Ms. Wyatt then proceeded to review Staff's recommended amendments for the Board's consideration:

Amend Section 10.22.6.17, Prohibited Signs, to add the following: LED and digital signs are prohibited, except for digital fuel price displays as outlined in Section 10.24.2.3.1 of the UDO.

Amend Section 10.24.2.3, Signs Permitted in Commercial Districts and the Commercial/Residential District to add the following: For lots along five-lane roadway corridors, only one (1) freestanding sign shall be permitted to be located permanently on the property and shall not exceed sixty-four (64) square feet in area and shall not exceed twenty (20) feet in height above street grade.

For lots along two-lane roadway corridors, only one (1) freestanding sign shall be permitted to be located permanently on the property and shall not exceed thirty-two (32) square feet in area and shall not exceed twelve (12) feet in height above street grade.

Where the property has frontage on both US 158 and NC 12 public rights-of-way, one (1) freestanding sign shall be allowed to be located adjacent to each public right-of-way, in accordance with the standards listed above.

Where the property is a corner lot with frontage on more than one public right-of-way, a maximum of two (2) freestanding signs shall be permitted in accordance with the standards listed above. The freestanding sign permitted in the side yard shall be located no closer than seventy (70) feet to the designated front yard public right-of-way boundary and installed so that the sign face is perpendicular to the side yard public right-of-way boundary.

10.24.2.3.1. Fuel Price Signage/Displays. Businesses engaged in the retail sale of gasoline may use manual changeable copy fuel price displays or digital, electronic fuel price displays on their freestanding sign.

If utilizing digital, electronic fuel price displays the following conditions shall apply:

10.24.2.3.1.1 The digital fuel price display shall not exceed 50% of the permitted sign area.

10.24.2.3.1.2 The digital fuel price display shall be two-color LED technology only (Ms. Wyatt noted that the applicants have requested a red display for regular fuel; green display for diesel fuel).

10.24.2.3.1.3 The digital fuel price display shall have automatic dimming capabilities and shall automatically dim in response to ambient light. In no instance shall the digital fuel display cause light trespass onto adjacent residential districts or uses.

10.24.2.3.1.4 The digital fuel price display shall display numbers only; there shall be no display of text, words, images, or animations.

10.24.2.3.1.5 The numbers displayed for fuel pricing shall not exceed 16-inches in block digits.

Ms. Wyatt stated that there were a lot of things that the applicant had put in their application realizing and understanding that there was a history of concern with regards to digital signs. Ms. Wyatt noted that as part of the Board packet she had attached the applicant's narrative, specifications

for the types of digits that would be utilized. Ms. Wyatt presented an image of the applicant's existing sign and a sample image of what they are requesting. The area of the signage wouldn't necessarily change, it would still be a max of 50%, it would just be digital and LED. Ms. Wyatt stated that there would be no other type of digital or electronic display, it would just be numbers.

Mr. Elder inquired about the dimming capabilities of the lights and what percentage of dimming takes place.

Ms. Harrison inquired what other types of businesses are asking for LED and digital lighting. Ms. Wyatt stated that they have not had other businesses except for gas stations request this, noting that there are some banks that have time and temperature displays which are already covered in the UDO.

Mr. Ferguson discussed the lighting standards and stated that he wanted to make sure that the Town was being consistent in terms of both the sign regulations and the lighting standards. Ms. Wyatt confirmed for Mr. Ferguson that the Town currently does not allow Neon or flashing signage and noted that the Town has an extensive list of prohibited signs.

Applicant Jordan Harrell of Jernigan Oil Company addressed the Board and confirmed that the digital sign is dimmable to a certain extent. He stated that they are dimmed via a controller and believes that it may be 22% between daylight and nighttime hours but that they would be willing to work with Town with regards to that percentage. Mr. Harrell confirmed that they want to comply with the Town's lighting standards.

Mr. Harrell confirmed for Ms. Harrison that they have 56 locations and currently Nags Head is the only town where they don't have digital price signs that they can change remotely.

Mr. Harrell confirmed for Mr. Thompson that the dimming percentages come set to a certain industry standard. They have never increased them or been requested to decrease them.

Mr. Harrell confirmed for Chair Vaughan that sometimes the prices change daily even 3 to 4 times per day, and they don't always have the Staff to go out and change them manually. They can change the prices on the digital display and the pumps right from their office. Mr. Harrell reiterated that their biggest issue is safety, they want to get their people out of the parking lot.

Mr. Ferguson expressed concern that if they allow Gas Stations to have a digital sign other businesses will follow requesting similar.

Molly Harrison moved to approve as submitted. Meade Gwinn seconded, and the motion passed 5 to 1 with Gary Ferguson casting the Nay vote.

Discuss And Request Initiation of Text Amendments 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 the Town has occasionally received communications from property owners within the Village at Nags Head SPD-C District or those adjacent to Nags Head Golf Links regarding stray golf balls impacting their private property. Recently, Staff has had extensive communication with Michael Muller, the property owner of 6316 Bob White Avenue, Nags Head. Mr. Muller reached out to the town seeking advice on how to address the repeated damage to his property caused by stray golf balls. Ms. Wyatt noted that Mr. Muller's property is adjacent to the Golf Links but is not part of the Villages at Nags Head, the SPDC.

Upon contacting the General Manager of Nags Head Golf Links to relay the homeowner's concerns, Staff was informed that it is typically the golfer's responsibility to address any damage to private property and they recommended that the property owner explore landscaping, netting, etc.

To mitigate the issue of stray golf balls, Mr. Muller has inquired about the necessary steps to install netting as a barrier adjacent to his home. Based on the examples he provided, this netting would be 20 feet high and 30 feet wide, supported by telescoping flag poles.

Ms. Wyatt presented examples of the proposed netting and telescoping flagpole which she stated would only be erected during the times the property owner was there in order to protect his vehicles (it is a second home for Mr. Muller).

Mr. Gwinn noted that he lives in the Villages and volunteered and played at the golf course for several years and was familiar with the situation. He said that some homes in The Village that face the golf course use netting attached to the decks to protect the homes from stray golf balls. Mr. Gwinn is familiar with the damage that golf balls can cause, and his own house has been hit but it's expected because he bought a home in a golf community.

Chair Vaughan noted that in the case of Mr. Muller, that house predates the golf course.

Mr. Thompson stated that he was familiar with the course and that the spot where the house is situated is the T-Shot which is a particularly difficult golf shot.

Ms. Wyatt noted that the current Unified Development Ordinance (UDO) does not address this type of structure. While the intended purpose of the structure is similar to that of a fence, the maximum fence height allowed is 6 feet, which Mr. Muller has noted would not provide the level of protection he seeks.

Given Mr. Muller's proposed solution, staff recognizes that such a measure could benefit more properties than just Mr. Muller's. Therefore, Staff are requesting that the Planning Board initiate the text amendment process. This would allow Staff to begin researching and seeking additional guidance on future amendments to accommodate Mr. Muller's request and similar situations.

The Board discussed alternatives to the netting including planting trees that grow quickly and expressed concern as to the impact the netting might have on birds and other wildlife.

After some further discussion the Board reached consensus to initiate the text amendment.

Report on Board of Commissioners Actions – March 6, 2024

Ms. Wyatt gave an update on the Board of Commissioner Actions, of note: Events Coordinator Paige Griffin presented an update on Dowdy Park on behalf of the Arts & Culture Committee which was well received; the Board approved the Consent Agenda which included two Requests for Public Hearing - one for text amendments to allow long-term rental of units in existing hotels as well as one for text amendments to prohibit driving over septic systems adjacent to driveways; the Board held a Public Hearing and unanimously adopted the ordinance amending the Unified Development Ordinance prohibiting drive-through restaurants as presented; the Board appointed the Multi-Family Ordinance Working Group which include: BOC members Mayor Pro Tem Siers and Comr. Lambert, Planning Board members Meade Gwinn and Molly Harrison, Resident Basil Belsches, Business owner of TW's Bait & Tackle Chris Greening; Outer Banks Homebuilders Association representatives Duke Geraghty

and Donna Creef; the Board appointed Deputy Planning Director Joe Costello to represent the Town as part of the Albemarle Regional Planning Organization – Rural Transportation Coordination Committee.

Town Updates

None

Discussion Items

Discussion of Text Amendment to prohibit driving over and/or parking on septic systems adjacent to driveways, drive aisles, and parking areas.

Ms. Wyatt explained that at their last meeting, Staff had drafted and presented to the Planning Board ordinance language that would require the placement of a physical barrier to be put in place when a dwellings septic system area is adjacent to any portion of a parking space, turnaround area, driveway, drive-aisle. This was proposed by the Septic Health Advisory Committee to prevent people from driving over and/or parking on septic systems, potentially damaging them.

At that meeting the Planning Board voted unanimously to recommend adoption of the proposed text amendment believing this was a step in a positive direction but noted that additional consideration should be given to limiting the impact of this ordinance, if possible, to those properties to seem to have the most issues with parking on septic areas.

Recognizing the potential impact of this amendment on property owners who would not/do not currently have issues with parking on their septic areas and noting that such parking often occurs due to excess, or overflow parking associated with the over-occupancy of rental homes, staff is actively exploring alternative options to ensure septic area safety. One approach under consideration is the inclusion of language expressly prohibiting parking on septic areas. In cases where a violation is noted, a Notice of Violation would be issued, at which time the placement of a physical barrier to preclude any future violations could be required. This approach would address parking on septic on systems via a formal violation of the Unified Development Ordinance with a specified remedy, as opposed to the language currently drafted which is a more proactive approach but may unnecessarily impact property owners in some instances.

After some discussion, the Board was in consensus that this option was a better way to go, and the enforcement piece will force people to take some action.

February 29th, 2024, Director's Report

Ms. Wyatt briefly discussed her Director's Report with the Board which included an update on the EV plan and the installation of chargers at Town Hall.

Planning Board Members' Agenda

None

Planning Board Chairman's Agenda

Chair Vaughan expressed sympathy on the passing of previous Planning Board Member Michael Reilly.

Adjournment

A motion to adjourn was made by David Elder. The time was 10:51 AM.

Respectfully submitted,
Lily Campos Nieberding

DRAFT