
**Town of Nags Head
Planning Board
January 16, 2024**

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

Planning Director Kelly Wyatt called the meeting to order at 9:07 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

Election of Chair and Vice Chair for Calendar Year 2024

Planning Director Kelly Wyatt opened the meeting and requested nominations for the position of Planning Board Chair for the calendar year 2024. David Elder moved to nominate Megan Vaughan to serve as Chairperson. Kristi Wright seconded the motion. There being no other nominations, a vote was taken, and the motion passed unanimously.

Ms. Wyatt then turned the meeting over to newly re-elected Chair, Megan Vaughan.

Chair Vaughan then requested nominations for the position of Vice-Chair. David Elder moved to nominate Meade Gwinn for Vice Chair. David Thompson seconded, and the motion passed unanimously.

Approval of Agenda

David Elder moved to approve the agenda as presented. Meade Gwinn 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 December 19, 2023, meeting. David Elder moved to approve the minutes as presented; Kristi Wright 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 December 19, 2023, meeting the Planning Board discussed the requested amendments with Planning staff and the applicants, Mr. Leor Golasa and Mr. John Delucia. Taking into consideration the discussion items, staff has provided the points below for consideration in an effort to advance this request.

- While the proposed text amendment would establish a use of hotel units not of a transient nature, staff does not recommend amending the existing hotel regulations but rather considering a new use category to accommodate the request. Options may include: long-term stay units, extended stay units, residential suites, etc.
- The applicant's original request proposed the term "legacy hotel/motel" be established as a means to define and limit the number of existing hotel and motel structures that this new use category would be available to. The proposed definition stated a legacy hotel or motel would be one built before 1975 that is still functional to support both transient, and long-term occupancy by guests or tenants. In an effort to tie the date to a relevant time in Nags Head planning, staff would recommend that consideration be given to making the new use available to hotels and motels that were constructed prior to November 10, 1972. This date is the "pre-firm" date used in regulating structures built prior to the effective date of the initial Flood Insurance Rate Map (FEMA FIRM). Pre-firm structures are likely to be constructed on grade and non-conforming with regard to current FEMA requirements. Therefore, to enhance their preservation, it may be warranted to provide some additional flexibility with respect to the uses allowed given these additional nonconformities.
- Noting that this proposed new use is likely not economically viable in an oceanfront setting, staff would further recommend narrowing this proposed use to existing hotels and motels located within the C-2, General Commercial Zoning District. Except for the majority of South Nags Head which is R-2, and excluding the Village at Nags Head, the remainder of Nags Head oceanfront areas are zoned CR – Commercial Residential. Staff would also recommend that this use be considered via the Special Use permit process.

Ms. Wyatt noted that by applying these proposed regulations, the following hotels and motels would be eligible to utilize this proposed new use:

- o Roadway Inn/Seahorse Inn at 7218 SVDT (zoned C-2, constructed in 1970)
- o Owens Motor Court at 7122 SVDT (zoned C-2, constructed in 1960)
- o Tarheel at 7010 SVDT (zoned C-2, constructed in 1950)
- o First Colony at 6715 SCH (zoned C-2, constructed in 1932)
- o Nags Head Beach Inn at 303 Admiral (zoned C-2, constructed in 1960)

- Consider requiring any hotel operating under this new use category to lease/rent units on a long-term basis only and define long-term lease/rent as occupancy for a period of ninety (90) consecutive days or more. This would be consistent with the proposed definition of "Long Term Occupancy/Tenancy" in the draft multi-family development amendments.
- Consider requiring this new use be parked using the same parking standard as single-family, two-family, and multi-family dwelling units at the number of bedrooms minus two, with a minimum of two (2) spaces per dwelling unit.

- Consider a requirement that would prohibit utility meters of any type for individual units and require that this proposed new use operates under a single, unified rental management operation. Similar language is found within the supplemental regulations for cottage courts and is intended to discourage circumventing the subdivision ordinance and creating condominium ownership of the individual dwelling units.
- The current hotel use requires 24-hour onsite management. Staff would suggest that the Planning Board consider the merits of this requirement if hotel units were now allowed to be rented on a long-term basis. Ms. Wyatt noted that this is something Staff and the Board will want to discuss further.
- Consider placing a requirement that any hotel operating under this new use category only offer lease/rent units that are a minimum of 350 square feet in area.

We want to ensure that any unit being rented on a long-term basis meets the basic requirements of NCGS, Chapter 160D Article 12, Minimum Housing Code. While this statute does not have a minimum area requirement for dwelling units, staff has researched minimum housing codes for numerous North Carolina municipalities and the most common regulation provides the following, "No dwelling or dwelling unit shall be occupied by more occupants than permitted by the minimum area requirements. Every dwelling unit shall contain at least 150 square feet of floor space for the first occupant thereof and at least 100 additional square feet of floor area per additional occupant". Based on this, staff would recommend that the Planning Board consider setting a minimum area requirement for each dwelling unit. Noting that the Town of Nags Head does not have minimum housing codes, staff would submit that a 350 square foot minimum dwelling size would be consistent with the applicant's request as well as the current Unified Development Ordinance's requirements for hotel units, hotel suites, hotel efficiencies and minimum area requirements for dormitory uses.

- Require that every dwelling unit be provided with adequate means of egress as required by the NC State Building Code and that there shall be no obstruction in any manner of any means of ingress and egress from any portion of the dwelling. Likewise, require that every dwelling unit complies with all applicable provisions of the NC State Fire Prevention Code.

While this would obviously be a requirement at the review and permitting phase, given the potential retrofit of units, perhaps it is useful to have the language included specific to the requested use amendment.

- Other common requirements found within minimum housing codes throughout North Carolina, that the Planning Board may want to consider include the following:
 - Each dwelling unit shall be supplied with a kitchen sink, lavatory, tub or shower, and a toilet, all in good working condition.
 - Each dwelling unit shall have connected to the kitchen sink, lavatory, tub or shower an adequate supply of both cold and hot water.
 - Every dwelling unit shall be supplied with facilities providing heat. Portable kerosene heaters are not acceptable as a permanent source of heat.
 - Every dwelling unit shall have supplied and installed a minimum of one approved and listed smoke detector.
 - Each dwelling unit shall have a kitchen supplied with a minimum of the following facilities:

- o Food preparation surfaces impervious to water and free of defects which could trap food or liquid.
- o Shelves, cabinets, or drawers maintained in good repair for the storage of food and cooking and eating utensils.
- o A freestanding permanently installed cook stove. Portable electric cooking equipment shall not fulfill this requirement. Portable cooking equipment employing flame shall be prohibited from the kitchen area.
- o Mechanical refrigeration equipment for the storage of perishable foodstuffs.

Note that planning staff has not made a recommendation on whether long- and short-term rentals can or should exist within the same structure or upon the same property at the same time. While the applicant stated that they did not envision mixing the two occupancies, it should be discussed. For sites that contain multiple structures, such as Tarheel and Rodeway Inn, could one structure be utilized for long-term occupancy while the others short-term? What are the benefits and drawbacks of each scenario?

Staff acknowledges that, if approved, an amendment of this nature would be in conflict with various aspects of the recently drafted amendments for multi-family development. The primary differences are briefly outlined below:

- Occupancy of one of these dwelling units would not be deed restricted to require that at least one “qualified person”, meaning a person working in Dare County, reside in the unit and as such considered “workforce housing” as defined in the draft multi-family amendments.
- Minimum site requirements and dimensional standards such as lot width, lot area, setbacks, open space requirements, lot coverage and architectural design may not be met.
- Density allowances would be affected. For instance, Owens Motor Court at 7122 S. Virginia Dare Trail is 68,000 square feet in area. Under the Large Multi-Family standards, this site would accommodate approximately 12 units. The applicant noted that 29 units exist.
- The proposed minimum unit size in the draft multi-family amendments is 800 square feet, we are discussing a minimum 350 square feet for this proposed new use.
- While we are proposing the new requested use be managed by one rental management company, the new multi-family amendments require the establishment of a homeowner’s association with recorded declarations.

At the Planning Board’s December 19, 2023 meeting questions were brought up concerning lighting, dormitory use and single resident occupancies (SRO’s).

Ms. Wyatt noted that she had included some information on lighting standards in her staff report noting that hotels are considered to have a medium level of activity, multifamily is considered to have a low level of activity. Keeping in mind that this new use category would be applicable to a handful of existing hotel properties, would the Planning Board like staff to propose that any hotel property taking advantage of this proposed new use provide compliant low-level activity parking lot lighting as part of the approval process? How would they handle if a property can operate both long-term and short-term rentals/occupancies at the same time?

With regard to the question that was asked about the ability of a hotel to host long-term stays for their staff. Ms. Wyatt noted that Section 7.12 of the UDO, Hotels, states that dormitory use for

employee housing is allowed in the C-1 and C-2 Zoning District as well as within the Hotel Overlay District. Section 7.12.2 of the UDO describes the supplemental regulations for employee housing and was included in the staff report.

Ms. Wyatt then proceeded to discuss Single Resident Occupancies (SROs) explaining that they are a type of housing arrangement where each individual or household occupies a single room within a larger building. These rooms typically serve as both living and sleeping spaces and may include a private or shared bathroom and kitchen facilities. In review of SRO's, they are often utilized in urban areas to provide affordable housing options, especially for individuals with limited incomes. SRO's are a subject of discussion in urban planning and housing policy debates as they play a role in addressing housing needs of vulnerable populations, but they also raise concerns about living conditions and tenant rights. Staff would submit there are aspects of this proposed new use that resemble the characteristics of SRO's such as individual compact rooms or small living spaces, providing basic amenities designed to meet essential housing needs in a more affordable and space-efficient manner. Ensuring that this proposed housing arrangement, or any housing arrangement for that matter, maintains quality living conditions is of utmost importance. Potential ways to address this is to provide clear zoning regulations to ensure that it meets the needs of families and individuals by providing adequate living spaces, bedrooms, common areas and amenities to promote family friendly environments and to closely monitor and enforce any established use regulations.

Staff has reached out to other local municipalities to see if they have an awareness of this or similar uses in their jurisdiction, and if so, what their experiences have been. Ms. Wyatt noted that so far, no information has been received. Ms. Wyatt noted that she, as well as Mr. John DeLucia with Albemarle & Associates, and Mr. Leor Golasa were available to answer any questions for the Board.

Ms. Harrison questioned how tenant rights are protected without a minimum housing ordinance. Ms. Wyatt noted that the applicant might be able to better answer that question.

Mr. DeLucia addressed the Board and spoke to some of the staff's concerns saying that they agree with some and disagree with others. Mr. DeLucia stated that they would be fine with the 1972 date for legacy hotels. They would also be fine with the 90-day minimum as their preference would be year-round rental. They are in agreement with having a single electrical meter as that is what they currently have and have no interest in turning them into condos.

Mr. DeLucia expressed concern that some of the units in the hotel are less than 350, so that requirement would only work on half of the units in the hotel. Mr. DeLucia thinks that they would limit the smaller units to a single occupancy, and this would be part of the lease agreement. Mr. DeLucia asked that the Board consider not placing a minimum square footage requirement or consider 150 for one occupant and 100 more for each additional occupant. Mr. DeLucia was also not in agreement with the two parking spaces per unit and requested that the Board consider 1.5 spaces per unit instead.

Mr. DeLucia noted that the rooms would meet the NC Building and Fire Code and that each unit would meet minimum housing requirements (sink, lavatory, tub or shower and toilet), noting that all units are heated. Mr. DeLucia would ask that Staff strike the word freestanding with regards to cook stove. They plan on having cooking facilities, but the stove would most likely be built-in and not freestanding.

Mr. DeLucia then discussed mixed occupancy noting that they agree that it would not be a good idea to mix short and long-term occupancy. However, they would like to have the ability to easily convert it back to a hotel if there comes a time that long-term housing is no longer needed. Mr. DeLucia noted that they do not consider themselves an SRO, dormitory or multi-family housing and instead

would be more like studio apartments. For the most part the units would be single occupancy, one person at most two, and the lease agreement would not allow for storage of items such as trailers, etc.

Mr. DeLucia confirmed for Mr. Gwinn that they do not anticipate any septic impacts.

Mr. DeLucia explained to Mr. Gwinn that they are concerned about having the ability to revert back to a hotel use because of their non-conforming status.

Mr. DeLucia and Mr. Golasa confirmed for Mr. Gwinn that there are potentially two rooms that meet the minimum ADA requirements.

Ms. Harrison asked how the applicants would enforce the single-occupancy requirement if the Town were to allow or remove the minimum square footage. Mr. DeLucia noted that this would be part of their lease agreement and if a second person were to move in they would be breaking their lease.

The applicants confirmed that the hotel was inspected by the Dare County Health Department when it transferred ownership and would typically be inspected once a year. If they were to be converted to long-term rentals it would eliminate the need for annual inspections.

Mr. DeLucia confirmed for Mr. Thompson that the units would be rented furnished but might allow a renter to bring in their own furniture.

Mr. DeLucia confirmed for Mr. Ferguson that they would only have one water and one electrical meter for the building. Mr. DeLucia also confirmed that they have no plans to knock down walls and combine units.

Mr. Golasa confirmed for Ms. Harrison that they have two sets of rooms that interconnect; 10-12 rooms are about 245 SF, another 10 or so are between 285-300, 5 rooms are about 350 SF and 1 room is about 700 SF.

Mr. DeLucia confirmed for Ms. Harrison that while they have enough space to park 2 spaces for one unit, he believes the two spaces to be overkill and would mean more lot coverage and more runoff for their particular site. Mr. DeLucia also noted that he doesn't know how much parking other legacy hotels have but they would probably have less people in the studio apartments than they would have as a hotel.

Mr. DeLucia confirmed for Chair Vaughan that they would not mix short and long-term occupancy at the same time.

Mr. Golasa confirmed for Mr. Gwinn that rent would be based on market trends, fair but not below the average.

Mr. Elder noted that he does not have an issue with the size of the units, but questioned what size is too small?

Mr. Golasa confirmed for Chair Vaughan that he has many rental properties, and his tenants are all employed in Dare County; 90% are young singles or couples. Mr. DeLucia noted that while their intent is for workforce housing, he would not want it in the ordinance as it would be hard to enforce.

Mr. Golasa confirmed for Mr. Thompson that the lease would prohibit subletting.

Mr. Gwinn noted that he supports where the text amendment is going because he believes it meets a need.

Mr. Elder agreed with Mr. Gwinn noting that he only had two concerns: 1) if it were to revert back to a hotel in the future would there be any conflicts and 2) The concern that these units might be rented out as a weekend home for someone instead of providing needed long-term housing.

Mr. Ferguson asked if the use could be approved as a temporary use. Ms. Wyatt and the Board discussed the idea of a sunset clause.

Mr. DeLucia confirmed for Mr. Thompson that there are three main points of contention: 1) Parking 2) Size of the units 3) Ability to convert easily back to a hotel at some point in the future.

Ms. Wyatt discussed correlating the size of the room to occupancy would need to be looked at further as enforcement could become an issue if it's not in the ordinance.

After some further discussion the Board agreed that they would like to see this move forward, but they will need to get further clarification from staff on the three points of contention discussed above.

Consideration Of Text Amendment to remove the use of "Restaurant, Drive-Through" from all zoning districts within the town.

Deputy Planning Director Joe Costello explained that at their January 3rd meeting, the Board of Commissioners voted unanimously to direct staff to initiate the text amendment process to eliminate the use of "Restaurant, Drive Through" as a permissible use within the Unified Development Ordinance (UDO) to create consistency between the UDO and the 2017 Comprehensive Land Use Plan's guidance.

Mr. Costello explained that currently the use is allowed in the following instances: 1) Within the C-2, General Commercial Zoning District via the conditional use process with supplemental regulations that are described in Section 7.29 of the Unified Development Ordinance. And 2) Within the Village at Nags Head Special Planned Development District, Commercial-1 and Commercial-2 Zoning District via the conditional use process with supplemental regulations that are described in Section 9.37.5 of the Unified Development Ordinance. Mr. Costello noted that staff has reached out to The Village for their thoughts and will forward any comments they receive to the Board.

Detailed policy considerations and analysis were provided to the Planning Board and Board of Commissioners during the ongoing review of a text amendment application submittal made by the Outlets Nags Head to expand the use of "Restaurant, Drive Through," to be included within Commercial Mixed-Use developments. The most recent staff report was provided to the Board of Commissioners at their January 3, 2024, meeting and was included as part of the Planning Board meeting packet. This report provides context as to why the Board of Commissioners initiated a text amendment process to remove the use of "Restaurant, Drive Through" from the UDO.

Staff has provided a draft text amendment for the Planning Board's consideration which they believe reflects the Board of Commissioner's guidance.

Mr. Costello confirmed for Ms. Harrison that this item would have to go through the Public Hearing process.

Ms. Wyatt confirmed that this would not apply to ice cream shops as they are typically considered retail not restaurants.

There being no further discussion, David Elder moved to recommend approval of the proposed text amendment. Meade Gwinn seconded, and the motion passed unanimously.

Report on Board of Commissioners Actions – January 4, 2023

Ms. Wyatt gave an update on the Board of Commissioner Actions, of note: Recognition of Former Commissioner Renee Cahoon. Consent Agenda - Public Hearings were scheduled for the construction of a Trade Center for lot behind TW's Bait and Tackle and to consider UDO text amendments re: multi-family development. A public hearing was held to consider text amendments to the Unified Development Ordinance as it pertains to 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 deny the proposed text amendment. It was Board consensus to ask the Planning Board to begin the process to amend the Unified Development Ordinance to better reflect the Land Use Plan and to review other items of concern/conflict. The Commissioners appointed Gary Ferguson to the Septic Health Advisory Committee.

Town Updates

None

Discussion Items

Update On Status of Recent Multi-Family Development Draft Amendments.

Ms. Wyatt noted that they had made edits pertaining to Stormwater and included language that both small and large developments would need to go through the sketch plan process. Staff forwarded these revisions to the Town Attorney and are waiting to hear comments back. Once they receive comments, Staff will forward them to the Planning Board for their review.

Planning & Development Department 2024 Work Plan

Ms. Wyatt reviewed a draft of the Department's 2024 Work Plan. Staff will present the finalized plan at the Board's February meeting. Mr. Gwinn asked, and Ms. Wyatt agreed to add EVs to the plan. Mr. Costello took the opportunity to give an update on the EV Action Plan.

Discussion And Acceptance of The Planning Board's 2024 Submittal Calendar.

Ms. Wyatt presented the Draft Submittal Calendar. The Board approved it as presented.

December 29th, 2023, Director's Report

Ms. Wyatt briefly discussed her Director's Report with the Board which included an update on the Dowdy Park Winter Markets.

Planning Board Members' Agenda

Mr. Elder expressed concern about the possible removal of Jockey's Ridge from the AEC. Ms. Wyatt noted that Town Manager Andy Garman is looking into this issue further.

Mr. Ferguson inquired about Facility Fees for hotels/multi-family dwellings. Mr. Ferguson also reminded staff about wanting a map of areas in Town where vegetation is protected. Ms. Wyatt noted that Mr. Costello is well versed in GIS and will be able to work on this.

Ms. Wyatt updated the Board on the status of the Coastal Villas subdivision and the land disturbance project at Nags Head Church.

Planning Board Chairman's Agenda

None

Adjournment

A motion to adjourn was made by David Elder. The time was 11:33 AM.

Respectfully submitted,
Lily Campos Nieberding