
**Town of Nags Head
Planning Board
July 19, 2016**

The Planning Board of the Town of Nags Head met in regular session on Tuesday, July 19, 2016 in the Board Room at the Nags Head Municipal Complex.

Chairman Mark Cornwell called the meeting to order at 2:30 p.m. as a quorum was present.

Members Present

Mark Cornwell, Ben Reilly, Clyde Futrell, Kate Murray, Mike Siers, Jim Troutman, Pogie Worsley

Members Absent

None

Others Present

Andy Garman, Kelly Wyatt, Lily Nieberding

Approval of Agenda

There being no changes to the agenda, Ben Reilly moved that it be approved as submitted. Jim Troutman seconded the motion and it passed by unanimous vote.

Public Comment/Audience Response

None

Approval of Minutes

Chair Cornwell asked for one revision: in page 8, paragraph 5, change the word "concerns" to "design and development features". Ben Reilly moved that the minutes be approved as revised. Jim Troutman seconded the motion and it passed by unanimous vote.

Action Items

Consideration of zoning ordinance text amendments to permit "Cottage Courts" as an allowable use within the Town.

Deputy Town Manager/Planning Director Andy Garman explained that at the last meeting, the Planning Board reviewed a draft ordinance that would reinstate cottage courts as an allowable use within the Town.

The ordinance was drafted to address the following objectives/concerns:

- Location
- Size and arrangement

- Architectural design and orientation
- Density
- Building separation and setbacks
- Minimum lot size
- Lot coverage
- Driveway access
- Off-street parking and loading facilities
- Refuse and recycling
- Cottage court properties with existing nonconformities

At their June meeting, the Board discussed the pros and cons of each of the ordinance criteria and suggested modifications to the ordinance. Additionally, staff agreed to provide an analysis of a cottage court property to determine the potential development yield based on the ordinance criteria. Mr. Garman stated that the Sea Spray cottage court was used to conduct this analysis and presented a street view photo and an aerial from Google Maps which depicts the units on this property as well as an estimate of total lot coverage. The map also included a breakdown of the number of bedrooms in each unit. Staff concluded that this development could be replicated based on the criteria in the ordinance. Mr. Garman stated that the Sea Spray property has four separate units with a total of nine bedrooms and noted they might have room for some additional units if they were substituted for some of the current site features (i.e. the rear patio and garage).

In addition, Staff tried to address some of the previous concerns and provided modified language with the following changes:

- Based on the Planning Board's suggestion that cottage courts should be designed as traditional dwelling units and not as one room units or cabins, a provision has been added that units must have separate sleeping, living and bathing quarters.
- Based on Staff's review of the square footage of existing properties, the minimum size has been reduced to five hundred square feet to allow for smaller units. Staff also discussed the possibility of reducing required parking for smaller units.
- In order to encourage unique design for individual units as well as to control the overall intensity of the site, a provision has been added that at least 1/3 of the units must not exceed a single story.
- A community pool would be allowed but individual cottages cannot have pools.
- To accommodate owner occupancy of the site or on-site management, a garage may be allowed to serve the owner or manager's place of residence.
- To limit overall paved areas, the 20 foot accessway may be reduced to 12 feet wide once the accessway is within 150' of all sides of all structures on the property. This is consistent with fire code requirements.

Mr. Garman confirmed for Chairman Cornwell that the accessway needs to be within 150' of all sides of a structure so that a fire apparatus is able to get the hose all the way around the structure.

Mr. Garman confirmed for Mr. Futrell that on that particular property (Sea Spray) there might be some non-conforming setbacks but if they wanted they could raise the structure (to put parking underneath) and maintain the non-conformity as long as they weren't increasing it.

Mr. Garman confirmed for Chairman Cornwell that Sec. 48-378 was all new language and proceeded to review the sub sections for the Board. Some of the items discussed were enlarging the location to include the area between the highways (Wrightsville East); size of units, architectural points and roof pitch (porches will not count towards size but will count towards lot coverage); allowing some type of storage for pool equipment, etc.; density – setting a minimum of three structures, keeping the maximum of 10.

Mr. Garman also led a discussion on existing cottage courts and how to treat current non-conformities. Staff will need to review the language related to non-conformities as it relates to existing cottage courts and how they would be affected by the new language.

Ms. Wyatt confirmed for Mr. Reilly that the new language will most likely make the existing cottage courts less non-conforming than they were previously.

Mr. Futrell noted that if the point is to encourage new cottage courts they also don't want to discourage the existing ones.

Mr. Garman stated that Staff will look at tying the two together as well as review the whole zoning ordinance to make sure the language is consistent throughout.

Ben Reilly moved to table the proposed ordinance to allow time for Staff to revise as discussed. Clyde Futrell seconded and the motion passed by unanimous vote.

Report on Board of Commissioners Actions

Deputy Planning Director Kelly Wyatt:

The Zoning ordinance text amendments to ensure content neutral language/regulations pertaining to signage were adopted as presented.

The Zoning ordinance text amendment to exclude municipally owned boardwalks, walkways, sidewalks and multi-use paths from lot coverage and minimum yard requirements was adopted as presented.

Public Hearings were scheduled for August 3, 2016 for the following text amendments:

- Request by Derek Hatchell on behalf of I.G. Holdings to amend the conditions associated with "Car Wash" as a Conditional Use within the C-2, General Commercial Zoning District.
- Consideration of Preliminary Plat for Elliott Estates, Phase III, Lot 25 with request for subdivision waiver regarding access.

Town Updates

Focus Nags Head

Mr. Garman noted that Staff is currently drafting language for the comprehensive plan; this will be ongoing for at least a few more weeks. Staff's goal is to take the draft back to the Advisory Committee once it is done.

Flood Map Presentation – Review and Adoption Process

Mr. Garman presented an update on the new flood map review and adoption process. Mr. Garman stated it was the same presentation he gave to the BOC at their July meeting. Preliminary flood maps were released on June 30th. The information is now on the Town website. The maps were last updated in 2006. There will be a 90 day appeal/comment period followed by a compliance period which will include Map adoption and updating of the Flood Ordinance. Mr. Garman stated that the time frame for adoption is 18 to 24 months and also noted that the current flood maps will continue to be used until the new flood maps are adopted.

Discussion Items

Discussion of zoning ordinance text amendments establishing a table listing of permitted and prohibited uses within the Town.

Ms. Wyatt stated that in the next several months the Planning Board will be asked to review and approve text amendments that address a recent decision of the North Carolina Supreme Court case, *Byrd vs. Franklin County*, in which the courts found that a zoning ordinance may not regulate unlisted land uses by providing a statement such as “the ordinance prohibits all land uses that are not expressly permitted”.

Ms. Wyatt explained that Franklin County, NC was approached by an applicant (Byrd) interested in opening a shooting range. The Franklin County unified development ordinance (UDO) did not specifically address shooting ranges as a permitted, special or conditional use or as a prohibited use, however, the UDO did provide a statement indicating that uses not specifically listed are prohibited. Ms. Wyatt noted that Nags Head’s ordinance, as well as many others in North Carolina, has similar statements.

Franklin County staff originally advised the applicant (Byrd) to seek a zoning ordinance text amendment to allow this new use category. County staff later concluded that a shooting range could be considered under a use category already listed within the UDO, “Facility for open air games” which was allowed as a Special Use. When the applicants applied for the Special Use Permit, the County Board of Commissioners denied the request at which time the applicants filed an appeal.

The court of appeals found that the statement of ‘uses not listed as permitted are prohibited’ was ambiguous, however, as it was not listed as a permitted use it was deemed prohibited. On November 6, 2015 the North Carolina Supreme Court reversed the court of appeals decision “rejecting the notion that a zoning ordinance may prohibit uses not explicitly allowed” and continued on to “make it clear that the law favors uninhibited free use of private property over government restrictions”.

In moving forward the courts have not said that every use must be allowed somewhere within the community’s zoning districts but that any prohibitions of land uses need to be clearly stated. It is believed that the Town is still allowed to outright prohibit certain uses as well as permit a variety of uses either as a permitted use or a conditional use. However, if there is a use the Town specifically wishes to prohibit it needs to be clearly defined as such.

The Town’s current zoning code is inconsistent with the NC Supreme Court decision so Planning Staff is requesting that the Planning Board initiate the text amendment process to allow staff to begin working with both the Planning Board and the Town Attorney to draft the amendments necessary to

comply with North Carolina Supreme Court decision while preserving the Town's current land use standards.

While this is a project that seems fitting to be incorporated into the FOCUS Nags Head comprehensive land use code re-write, the Town's attorney feels as though this effort should be undertaken swiftly. Staff will communicate with the consultants of Code Wright throughout the process to ensure efficiency and no duplication of work.

Ms. Wyatt presented the Board with a chart (included in the agenda packet) which represents a preliminary assessment of the Town's current zoning districts and uses and asked that they begin to review the chart to determine what uses the Town may not wish to allow in any district or only in certain districts.

Planning Board Members' Agenda

Mr. Worsley noted that at one time the Dairy Queen wanted to increase the height of their American flag pole but the request was denied; Mr. Worsley would like Staff and the Board to revisit the idea of raising the allowable height of flag poles.

Planning Board Chairman's Agenda

None

Adjournment

There being no further business to discuss, the meeting was adjourned at 4:09 PM.

Respectfully submitted,

Lily Campos Nieberding