
**Town of Nags Head
Planning Board
September 20, 2016**

The Planning Board of the Town of Nags Head met in regular session on Tuesday, August 16, 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, Kate Murray, Mike Siers, Jim Troutman, Pogie Worsley

Members Absent

Clyde Futrell

Others Present

Andy Garman, Kelly Wyatt, Lily Nieberding

Approval of Agenda

Ben Reilly moved to approve the agenda as presented. Jim Troutman seconded the motion and it passed by unanimous vote.

Public Comment/Audience Response

None

Approval of Minutes

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

Action Items

Request by The Outer Banks Hospital to amend the Town Code to establish requirements for the development of buildings for outpatient services as an accessory use to the principal use of "Hospital" within the Village at Nags Head SF-4 Zoning District.

Deputy Planning Director Kelly Wyatt presented a zoning ordinance text amendment submitted by Mr. Craig Leonard, architect with the East Group, on behalf of Outer Banks Hospital. If adopted, this amendment would create a new use of "detached medical office" as an accessory use and structure on a site with a principal use of Hospital.

The Outer Banks Hospital approached the Town in early September for a pre-application meeting to discuss the construction of a potential detached structure on the hospital site for the primary purpose of offering outpatient services such as physical therapy. It was during the staff review leading up to

this pre-application meeting where it was noted that the Town Code sets forth a 100 foot setback for hospital buildings adjacent to any residential use. As originally designed by the East Group, this proposed building would be setback approximately 50 feet from a residential use (Old Nags Cove to the North).

Based upon this finding, the East Group, after conferring with planning staff, felt it best to submit a zoning ordinance text amendment request to reduce this setback given that the nature and intensity of the proposed building and use is much less than that of a hospital and would have no greater impacts than any other medical office within the Town. As noted in the text amendment application, the applicant states that this medical office would only provide outpatient services during normal daytime business hours to clients visiting for set periods of time for scheduled treatments.

As information and for the purpose of this text amendment the definition of medical office is as follows:

Medical office means a building or structure or portion thereof where persons receive outpatient medical examinations, treatments, and procedures from licensed practitioners. This definition shall include doctors and dentists offices, and the offices of any other licensed and/or certified health care providers.

Staff would submit that this is a reasonable request given that the setbacks for the original "hospital" use were likely established without consideration for smaller, detached accessory buildings such as this. Staff submits that the proposed use in relation to the hospital use does meet the criteria of an "accessory use" and, as such, a lessening of the setback is appropriate. Stand-alone medical offices are currently allowed as a permitted principal use in the C-2, General Commercial Zoning District, the SED-80 Special Environmental District, and within the Village at Nags Head Commercial-1 District. While the setbacks for a medical office in the SED-80 District are significant due to the environmental sensitivity of the area, medical offices in the C-2, General Commercial District and Village Commercial-1 District are less than the proposed 50 foot setback. Noting that this proposal for a detached medical office operating as an accessory use to a hospital is likely no different than that of a medical office operating in the general commercial district, staff would recommend approval of the proposed zoning ordinance text amendment as presented.

Mr. Reilly inquired if there were any concerns with parking and also questioned height limitations. Ms. Wyatt explained that at some point in time the parking standard for hospitals was reduced. When Staff reviewed the surgical addition, based on the number of beds, there was excess parking on site. The applicants have used the parking standard for medical office and it appears to be compliant. With regards to the height, Ms. Wyatt noted that the height for medical office would be 30 feet or 35 feet with a pitched roof. Any detached structure could not be as tall as the hospital.

Ms. Wyatt also reminded the board that if the request is approved it would come back as a conditional use and would have to meet all architectural requirements.

Ms. Wyatt explained for Chair Cornwell that the 40 ft. setback from US 158 right-of-way was not a new recommendation, it is what currently exists for hospitals.

Applicant Craig Leonard addressed the Board. Chair Cornwell inquired if there was anything being proposed as part of the structure that would create noise out of the ordinary such as a back-up generator or an oversized A/C unit. Mr. Leonard confirmed that the proposed building would be relatively small, similar to a house in size with no emergency generator and just a standard heat pump.

Ms. Murray inquired if there was any extraneous lighting proposed? Mr. Leonard noted that there will actually be a reduction in light spill; what they are proposing is a one-story building with a gabled roof and any site lighting will be less than 12 feet of the ground.

Chairman Cornwell moved to recommend approval of the proposed amendment as submitted. Pogie Worsley seconded the motion and it carried unanimously.

Chair Cornwell asked Mr. Leonard to be thinking of parking and stormwater management as they move forward.

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.

In April of this year, Mr. Derek Hatchell on behalf of I.G. Holdings, LLC, submitted a zoning ordinance text amendment application, which, if adopted, would eliminate the need for an attendant to be present on-site during all hours of operation of a car wash. In the zoning text amendment application, the applicant cited the desire to no longer require an attendant be present onsite as it is not necessary given that the car wash would be fully automated.

Following requests made by the Planning Board at its May 17, 2016 meeting, numerous revisions were made to the proposed ordinance to include:

- A site attendant must visit the site a minimum of two times daily to ensure proper operation.
- Security cameras must be installed to record activity in vulnerable locations.
- Hours of operation must be established (this is what the Board of Commissioners recommended in the initial amendment from October, 1988).
- A minimum setback of 50 ft. was applied to any freestanding vacuums and other service areas adjacent to a residential use or district.
- Clarification on what the word "enclosed" represents and the need to comply with Town Architectural Design criteria.
- Clarification that the required buffer must be continual and opaque. The buffer requirement on this site would not be subject to the clustering and grouping of plantings afforded in other scenarios.

Based upon the history of discussion surrounding the previous Board's desires for any car wash to have an attendant on-site during all hours of operation, Planning Staff recommended denial of the proposed text amendment as presented. In addition Staff did not believe that the 50 foot setback adjacent to residential zoning districts or uses was adequate to mitigate noise concerns based on the proposed use.

At their June 21, 2016 meeting, the Planning Board voted 5-2 to recommend adoption of the proposed zoning ordinance text amendment omitting the condition that the car wash maintains hours of operation.

Chair Cornwell noted that at the Board of Commissioners August 3, 2016 meeting the Board held the Public Hearing and, after much discussion with both the applicant and concerned citizens, asked that this item be brought back to the Planning Board for additional discussion/clarification on several items. Chair Cornwell asked that they review them one by one.

- Setbacks and buffering in consideration of nearby and adjoining residential communities.

(Is 50 ft. setback adequate? Is opaque buffering best for public safety purposes, especially along front property boundary? Can fencing be used in conjunction with landscaping to achieve opaqueness?)

Ms. Wyatt confirmed that they do not have any other 100 ft. setback requirements other than for hospitals. Automobile service stations and repair garages have a 50 ft. setback requirement as do animal clinics with outdoor runs, drive- thru restaurants and skate parks. Shopping centers must have a 75 ft. setback.

John DeLucia, speaking for the applicants, stated that they did not feel that it was any different from a gas station or service station, which has a 50 ft. setback from residential areas. From a land use perspective they would not like to see it go any more than 50 ft. Mr. DeLucia confirmed that none of the people who spoke up at the public hearing had issues with 50 ft. setback. Mr. DeLucia also confirmed that there will be a six foot privacy fence on the side yard in addition to vegetation.

Ms. Murray noted that in hearing the comments made by the residents, even another 10 feet might make a difference.

Mr. Reilly agreed stating that every business creates noise, but the reason for the larger setback in this case is because the business would run 24 hours a day; Mr. Reilly stated that mechanic shops are not open 24/7.

Mr. Worsley disagreed stating that the gas station was there first, before the houses were built. With buffering and a fence there will be no noise or very little; it will be probably be quieter than it is now. Mr. Worsley stated that a 75 ft. setback would be too much and that he was fine with a 50 foot setback.

Mr. DeLucia confirmed for Chair Cornwell that a 75 ft. setback would restrict their ability to put something on that site.

The Board voted 4 to 2 to leave the 50 ft. setback as is, with Ben Reilly and Kate Murray casting the nay votes.

- Review of the placement of the building(s) on the site. *(Desire to have the structure built to the minimum front yard setback; eliminate potential to have structure set back on a deep lot?)*

Ms. Wyatt stated that the town does specify the orientation for any building within the code; it is just required to meet the setback. There are no other uses where this is regulated and they have not done this anywhere else.

Mr. DeLucia noted that the Town had already established greater setbacks for commercial properties that back up to residential areas; Mr. DeLucia does not feel that this use should be treated different from any other use that is allowed.

Chair Cornwell stated that it was very difficult to be business friendly and then place a lot of restrictions that can't be met.

The Board voted unanimously in favor of removing the alignment requirement.

- **Review of traffic flow/access only from US 158.** (*Does the Town wish to require access to any such use to be from US 158, not accessed from any side street it may be adjacent to?*)

Mr. DeLucia stated that they did not agree with this point; access from 158 is neither practical nor safe. Mr. DeLucia stated that for years the town has have spoken about access from side streets. Mr. DeLucia is not sure if NC DOT would allow them access from US 158.

Ms. Wyatt confirmed that Town tries to encourage side street access for corner lots to minimize curb cuts on the bypass. Ms. Wyatt also stated that NCDOT might not allow it and it would be up to NCDOT.

Mr. DeLucia confirmed for Chair Cornwell that they would prefer no access from the bypass at all, they would be better off without it. If they must have a driveway to US 158 it would need to be right in and right out – no left turns allowed.

Ms. Wyatt confirmed that removing the access requirement gave the applicant more flexibility. They could have access from Lakeside and US 158 if they received NC DOT approval.

Mr. Troutman was in favor of removing the requirement stating that it would be similar to the intersection where the post office is. You can access the Lutheran Church from Deering Street or a right from 158 but you can only exit to the right.

The Board voted 4 to 2 to remove the access requirement from US 158, with Kate Murray and Ben Reilly casting the Nay votes.

- **Define/re-word "Areas of Vulnerability".** (*The Town does not define what an "area of vulnerability" is and it would be difficult to regulate. Consider having all areas of the site monitored?*)

Staff is proposing that security cameras shall be installed and positioned to provide visibility of the entire site. Chair Cornwell suggested changing the word visibility to video surveillance. Mr. DeLucia agreed and stated he would like to add the words "and operations" after the word "site". The applicant's intent is to have cameras in every bay.

The Board agreed unanimously with these changes.

- **Pros and Cons of operating 24/7 versus 9am to 9pm.**

Staff has recommended hours of operation from 9 am to 9 pm. The applicant would like to keep it 24/7.

Ms. Murray noted that the concerns expressed by the neighboring residents, related to buffering and setbacks, were mostly related to noise in the hours between evening and sunrise. She would personally prefer something like 7 am to 9 pm rather than 24 hours a day. She would even be ok extending it to 10/10:30 pm.

Mr. Reilly agreed with staff's recommendation of 9 am to 9 pm. He would maybe be ok with a little earlier but would not want it open much later than 9 in the evenings as it is quiet time and even bedtime for many folks.

Mr. DeLucia stated that as far as his clients are concerned this needs to be a 24 hour operation for a variety of reasons: security, not having a place where the lights go down and kids hang out, etc. The applicants know that there is a need for car washing during the night, police use it and cab drivers use it

for example. Mr. DeLucia stated that other businesses are not limited to operating hours, 7-11, fast food places; Food Lion stays open 24 hours and this business should be no different. Mr. DeLucia noted that it is not a noisy operation. Mr. DeLucia also noted that there is a noise ordinance and if they exceed the allowable levels the police can come out and enforce those.

Mr. Troutman agreed noting that service stations stay open 24/7 and customers can vacuum cars at all hours.

The Board voted 4-2 in favor of keeping the 24/7 with Ben Reilly and Kate Murray casting the nay votes.

- Review of decibel levels of vacuum cleaners.

Chair Cornwell asked about the possibility of Staff checking the noise decibel at other sites. Mr. DeLucia stated he would check the noise decibels and have the for the BOC meeting.

-Buffering of site

Staff added the language "This buffer yard, when adjacent to residential uses and districts, shall be continuous and opaque. Fencing may be incorporated into the buffer to ensure opaqueness when necessary."

Mr. DeLucia confirmed for Chair Cornwell that they were in agreement with this language.

The Board voted unanimously to leave in this language.

Chair Cornwell suggested that in Part I (9)(a) the language related to security cameras should be a separate item.

Based on their discussion, Chairman Cornwell moved to recommend approval of the motion as amended, Pogie Worsley seconded the motion and it passed by unanimous vote.

(The Planning Board chair requested staff to draft the final ordinance moving forward to the Board of Commissioners with the language reflecting the votes that were recorded specific to each ordinance condition).

Report on Board of Commissioners Actions

Deputy Planning Director Kelly Wyatt:

Consideration of Preliminary Plat for Elliott Estates, Phase III, Lot 25 with request for subdivision waiver regarding access – the waiver request and preliminary plat were denied with a vote of 4-1. Ms. Wyatt noted that the predominant concerns were loss of commercial property and some drainage issues.

Town Updates

Focus Nags Head

Holly White updated Board. Advisory Committee met on Sept 9th to review the packet, the Planning Board was copied on the packet at that time. The Committee met again on the 16th and is scheduled

to meet again on the 27th. There has been a lot of great discussion and Lily has been taking notes at each meeting which Holly will forward to the Board members.

Ms. Murray agreed noting that they've had a good cross-section of community members. It is a slow process because there is a lot to digest and discuss but she felt they had made good progress. Ms. Murray noted that it will be interesting to see what happens when it gets to the technical committee because that is where the detail will come into play.

Ms. White noted that Staff is working on a schedule with the consultant but they need to have more of the policy in place and get BOC feedback before they move forward with the technical committee. This will probably not happen until after November.

Dowdy Park

Deputy Town Manager Andy Garman stated that work is continuing on the park. They are making good progress, and are currently about 30 days ahead of schedule according to Town Engineer David Ryan. The area will be ready for the playground equipment sometime during the second week in October. The pavilion will be the last thing to go in, starting some time in December. Mr. Garman stated that they hope to have the work completed in January, with landscaping to be done in March.

The town has received another grant for Phase II in the form of \$250,000 from the NC Parks and Recreation Trust Fund and they will be applying from a matching grant from the Outer Banks Visitors Bureau. Mr. Garman hopes to start working on Phase II in fall of 2017.

Mr. Garman also noted that the town is trying to get the arts community involved and Staff is working with the Dare County Arts Council to do an art event next year.

Discussion Item

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

Ms. Wyatt stated that no one has sent her any items that they want to prohibit. She is continuing to work on formatting of document and asked the Board to please send her any items that they would like to see added to the list of prohibited items.

Planning Board Members' Agenda

None

Planning Board Chairman's Agenda

None

Adjournment

There being no further business to discuss, the meeting was adjourned at 3:56 PM.

Respectfully submitted,

Lily Campos Nieberding
