

**Town of Nags Head
Board of Adjustment**

May 8, 2025

The Board of Adjustment of the Town of Nags Head met in regular session Thursday, May 8, 2025 in the Board Room, Nags Head Municipal Complex, Nags Head, North Carolina.

Members Present Margaret Suppler, Bobby Gentry, Alice Coffey, Tina Adderholdt, Judy Burnette

Others Present Kelly Wyatt, Lily Nieberding, Lauren Womble

Call to Order Chair Margaret Suppler called the meeting to order at 9:10 a.m. as a quorum was present.

Chair Suppler stated that there was one item being brought before the Board this morning:

Consideration of a variance request submitted by property owners Mark and Carla Schroeder from the provisions of Section 8.2.1 of the Unified Development Ordinance to allow an increase in lot coverage beyond the maximum permitted, for the purpose of installing an above-ground pool. The property is located at 109 E. Lakeside Street in the C-2, General Commercial Zoning District.

Chair Suppler provided an overview of the Board of Adjustment; Ms. Suppler then swore in all witnesses.

Evidence Presented by the Town Planning Director Kelly Wyatt presented the case, displaying a survey of the property showing the home, carport, garage, and the location of the proposed above-ground pool. She explained that Mark and Carla Schroeder, property owners of 109 E. Lakeside Street, are requesting a variance from Section 8.2.1 of the Unified Development Ordinance (UDO) to allow an increase in lot coverage beyond the maximum permitted in order to accommodate an above-ground pool and associated access stairs.

Ms. Wyatt noted that for residential development in the C-2 district, lot coverage is limited to either 33% of the lot area or 30% plus 300 square feet for lots less than 10,000 square feet. The Schroeder property, at 9,539 square feet, would normally be allowed 3,161 square feet of lot coverage. However, the property already had 3,492 square feet of coverage (35.9%), which is considered legally nonconforming. The proposed pool and access stairs would add approximately 250 square feet of additional coverage.

In February 2025, code enforcement observed the above-ground pool and stairs, which had been installed without a permit, and issued a notice of violation. The applicants promptly came to the Planning Department to address the issue. After exploring options to offset the additional coverage elsewhere on the property, it was determined that a variance would be the most appropriate solution.

Ms. Wyatt highlighted that the applicants included documentation from a physician indicating that daily pool use was recommended as a form of exercise to help manage a medical condition. The pool was intended to be temporary, with an anticipated need of up to 10 years.

Ms. Wyatt explained that under North Carolina General Statute 160D-705, the Board of Adjustment has the authority to grant reasonable accommodations for persons with disabilities as defined by the Federal Fair Housing Act and the Americans with Disabilities Act. She noted that the requested variance could be considered a reasonable accommodation if the Board found that the condition qualified as a disability.

Ms. Wyatt then reviewed the findings of fact:

With regards to the unnecessary hardship, Staff submits that the hardship does result from the strict application of section 8.20.1 of the UDO. The owner asserts that the above ground pool is medically necessary for daily exercise and intended to be temporary. Without approval of the variance the applicants would be required to remove the pool which again the property owner contends would interfere with the ability to manage a documented medical condition.

Ms. Wyatt also noted that the residence was constructed in 1960 prior to zoning regulations or lot coverage regulations as well.

As to the second finding is fact, that the hardship results from conditions that are peculiar to the property such as location, size, topography, Ms. Wyatt noted that this is where the language about the federal fair housing and ADA comes into play. A variance may be granted when necessary and appropriate to make reasonable accommodation under the federal fair housing act.

The board may find that the variance constitutes a reasonable accommodation necessary to afford a person with a disability an equal opportunity to use and enjoy their dwelling as required under the federal fair housing act. The applicant has submitted documentation from the physician and if the board finds that the condition qualifies as a disability the requested fold would be reasonable and a necessary accommodation. Ms. Wyatt also noted that the lot is under 10000

square feet, which limits its flexibility in terms of usable area for accessory structures.

The third criteria is that the hardship did not result from actions taken by the applicant or the property owner. Ms. Wyatt reiterated that while the pool was installed without a permit, the applicants engaged staff promptly following the NOV and sought to resolve the matter as soon as possible.

Finally, as to whether the requested variance is consistent with spirit, purpose, and intent such that public safety is secured, and substantial justice is achieved. Ms. Wyatt noted that the proposed increase in lot coverage is limited to a single accessory structure intended to meet a personal medical need and no additional principal development is being proposed.

Staff submits the granting of variance would be consistent with the UDO as it supports a reasonable accommodation while upholding public safety, neighborhood compatibility and promotes substantial justice by allowing property owner access to a resource that was noted through the physician's letter

Based on Staff's findings, Ms. Wyatt recommends approval of the variance subject to the following condition: the above-ground pool and associated stairs shall be removed from the property upon the occurrence of any of the following: (1) the pool is no longer needed as a medical accommodation, (2) the property is transferred or sold to a new owner, or (3) the property is placed into a short-term or long-term rental program.

The purpose of these conditions is to ensure the variance remains a reasonable and limited accommodation tied to the applicant's specific medical need, and not a permanent deviation from established lot coverage standards.

Board Attorney Jay Wheless suggested clarifying the conditions to specify that the property transfer would refer to "an unrelated owner" rather than simply a "new owner," to avoid issues if the property were transferred to an LLC owned by the current owners.

Ms. Wyatt confirmed for Ms. Burnette that the garage was built prior to 2010 but was unsure of the timeline.

Evidence Presented by
the Applicant

Property owner Mark Schroeder addressed the Board, noting that the house has been in his wife's family since 1960, when her grandfather built it. He explained that they do not rent the property and have no

intention of selling it. Mr. Schroeder stated that the pool helps with his wife's significant medical conditions, specifically hip and heart issues, and that he preferred not to publicly disclose detailed medical records.

Ms. Burnette asked about ensuring that the request met the conditions of the ADA. Mr. Schroeder confirmed that his wife's condition falls within the criteria of the Disabilities Act as he understands it.

Mr. Shroeder confirmed for Mr. Wheless that he had no objections to the conditions proposed by Staff.

Mr. Wheless reviewed all the documents including Staff's report, the Applicant's application and Physician's report on letterhead. Chair Supplier accepted them all into evidence.

Chair Supplier closed the public portion of the meeting, and the Board deliberated on the four criteria required for granting a variance:

Does the strict application of the ordinance result in unnecessary hardship to the applicant? The Board unanimously agreed that it does.

Does the hardship result from conditions that are peculiar to the property, such as location, size, or topography? The Board unanimously agreed that it does, noting the nonconforming nature of the lot.

Does the hardship result from actions taken by the applicant or property owner? The Board unanimously agreed it did not, noting that the applicants promptly worked to remedy the situation after receiving the notice of violation.

Is the requested variance consistent with the spirit, purpose, and intent of the ordinance such that public safety is secured and substantial justice is achieved? The Board unanimously agreed that it was.

The Board then discussed the proposed conditions, with Attorney Wheless suggesting the following refined wording: "The above-ground pool and associated access stairs shall be removed from the property upon the earliest occurrence of any of the following: (1) the pool is no longer needed as a medical accommodation for the current property owner, (2) the property is transferred or sold to a new unrelated owner, or (3) the property is placed into short-term or long-term rental."

Motion

Based on their findings and together with Staff's findings, Judy Burnette moved to approve the variance as presented with the condition as amended. Bobby Gentry seconded, and the motion passed unanimously.

Order

The Board of Adjustment of the Town of Nags Head (the "Board") held a quasi-judicial hearing on May 8, 2025, to consider a variance application submitted by Mark and Carla Schroeder (the "Owners"), seeking to vary the requirements of Section 8.2.1 of the Unified Development Ordinance (the "UDO") to exceed the maximum allowable lot coverage to accommodate an above ground pool and associated access stairs at the property located at 109 E. Lakeside Street, Nags Head, NC 27959 (the "Property"). The Board, having heard all of the evidence and arguments presented at the hearing, makes the following **FINDINGS OF FACT**:

1. The Owners own the Property.
2. The Property is located within the C-2, General Commercial Zoning District.
3. The Property contains 9,539 square feet in area.
4. Section 8.2.1 of the UDO limits maximum lot coverage to the greater of 30% of the lot area plus 300 square feet or 33% of the total lot area.
5. Based on the lot size, the maximum allowable lot coverage is 3,161 square feet.
6. The existing lot coverage is 3,429 square feet (35.9%), which exceeds the permitted maximum and constitutes a legally nonconforming site condition under Section 5.4 of the UDO.
7. Section 5.4 allows legally nonconforming site conditions to continue, but not to be increased.
8. On February 4, 2025, Town staff observed the unpermitted installation of an above ground pool and access stairs and issued a Notice of Violation.
9. The additional pool and stairs resulted in an increase of approximately 250 square feet over the existing nonconforming lot coverage, prompting the request for a variance.
10. The Owners assert that the above ground pool is medically necessary for the management of a diagnosed condition, as supported by a physician's statement included in the application.
11. The Owners have indicated the pool is temporary in nature and anticipate it being needed for no more than ten years.
12. The home is used as a second residence and is not rented nor intended to be rented.

13. The Property's lot area (under 10,000 square feet) and pre-existing overage in lot coverage limit the feasibility of removing or converting other impervious surfaces to offset the additional coverage.
14. Town staff explored the potential to convert the driveway to Turfstone or other semi-permeable surface but determined that even full conversion would not offset the 250 square feet needed.
15. The Owners have worked cooperatively with staff since the Notice of Violation and pursued a variance to resolve the issue appropriately.
16. NCGS 160D-705 allows a variance to be granted as a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

Based on the above Findings of Fact, and considering the burdens of proof and persuasion being on the Owners, the Board makes the following **CONCLUSIONS**:

1. All parties are properly before the Board, and the Board has the jurisdiction to consider and render a decision on the requested variance.
2. Strict application of the ordinance does result in an unnecessary hardship to the Owners.
 - The existing lot coverage already exceeds UDO limits and predates current regulations.
 - The above ground pool is medically necessary and intended to be temporary in nature.
3. The hardship does result from conditions that are peculiar to the Property, such as location, size, or topography.
 - The Property is less than 10,000 square feet in area and legally nonconforming in terms of lot coverage, which limits flexibility for accommodating accessory structures.
 - The Board finds that the requested variance constitutes a reasonable accommodation necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling.
4. The hardship does not result from actions taken by the Applicant or the property owner.
 - While the pool was installed prior to permitting, the

Owners promptly engaged staff and sought to resolve the issue appropriately. The pre-existing nonconforming lot coverage predates the current Owners' actions.

5. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

- No evidence was presented that the pool poses a safety or drainage concern.
- The variance supports a reasonable accommodation while preserving the intent of the UDO.

THEREFORE, based upon all the foregoing, the application for a variance to exceed the maximum allowable lot coverage to permit the above ground pool and access stairs is **GRANTED**, subject to the following condition to which the Owners agreed:

1. The above ground pool and associated access stairs shall be removed from the property upon the earliest occurrence of any of the following:
 - The pool is no longer needed as a medical accommodation for the current property owner;
 - The property is transferred or sold to a new and/or unrelated owner; or
 - The property is utilized as a short-term or long-term rental.
2. A copy of the executed decision on this approved variance shall be recorded with the Dare County Register of Deeds.

Approval of Minutes

Chair Suppler called for the approval of the minutes from the December 12, 2024 meeting concerning the Alexander Variance.

Motion to approve the minutes of December 12, 2024 was made by Judy Burnette, seconded by Bobby Gentry, and approved unanimously.

The Board also considered two additional sets of minutes:

Motion to approve the minutes of December 9, 2021 was made by Tina Adderholdt, seconded by Bobby Gentry, and approved unanimously.

Motion to approve the minutes of June 9, 2022 was made by Bobby Gentry, seconded by Tina Adderholdt, and approved unanimously.

Adjourn

Before adjourning, Town Attorney Lauren Womble informed the Board that there has been an appeal filed on one of their prior decisions (the Harvey case) and that John Leidy would represent the Town in that matter. Staff will keep the Board updated as necessary.

There being no further business to discuss, the meeting adjourned at 9:29 AM.

Respectfully Submitted,

Lily Campos Nieberding

