



AGENDA

TOWN OF NAGS HEAD BOARD OF ADJUSTMENT
NAGS HEAD MUNICIPAL COMPLEX – BOARD ROOM

THURSDAY, JULY 9, 2026; 9:00 AM

REGULAR SESSION

A. CALL TO ORDER

1. Roll Call (Use of Alternates if Needed)
2. Verification of Quorum

B. APPROVAL OF MINUTES

1. August 14, 2025 (Sim Variance)

C. SWEARING IN OF WITNESSES

D. CASES

1. Consideration of an Appeal of an Administrative Decision submitted by Sebastian Ojanguren regarding the Planning Director's interpretation and application of Section 8.6.3.7.1 of the Unified Development Ordinance, which governs front yard setback reductions. The appeal pertains to property located at 10023 E. Pelican Street, Nags Head, North Carolina.

E. ADJOURNMENT

**Town of Nags Head
Board of Adjustment**

August 14, 2025 (DRAFT)

The Board of Adjustment of the Town of Nags Head met in regular session Thursday, August 14, 2025 in the Board Room, Nags Head Municipal Complex, Nags Head, North Carolina.

Members Present Margaret Suppler, Bobby Gentry, Alice Coffey, Tina Adderholdt, Rob Snyder

Others Present Kelly Wyatt, Chris Trembly, Johnny Hallow, Jay Wheless, Lily Nieberding

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 Mark Martin of Sandmark Custom Homes, Inc. on behalf of property owners, Stephanie and Greg Sim from various sections of the Unified Development Ordinance, to facilitate the demolition of an existing nonconforming single-family dwelling and reconstruction of a new home. The property is located at 8725 S. Old Oregon Inlet Road in the R-2, Medium Density Residential 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 staff report. She explained that the applicant is seeking variances from several sections of the Unified Development Ordinance (UDO) in connection with the proposed demolition of an existing nonconforming single-family dwelling, reconstruction of a new single-family home, and retention and rebuilding of a nonconforming pool deck.

The property is approximately 49.98 feet wide, located along South Old Oregon Inlet Road, and is accessed via a 20-foot shared private access easement, of which 10 feet falls within the property boundary. When the required 10-foot side yard setbacks on both sides are applied, the buildable width of the lot is reduced to less than 20 feet. The existing home was constructed in 1977 on 6-by-6 wood pilings, which do not meet current building code. The structure has experienced significant structural degradation over time, including rusting of fasteners, and may no longer be structurally sound. The existing pool was installed in 2002; while the concrete pool shell remains sound, the surrounding deck is in disrepair.

Ms. Wyatt then summarized the four variances the applicants are seeking:

1. Relief from UDO Section 5.3 – To allow the existing pool to remain on the lot as an accessory structure temporarily while the existing dwelling is demolished and the new principal structure is constructed. Under current UDO standards, accessory structures may not exist on a lot without a principal use.
2. Relief from UDO Section 8.2.1 – To allow the proposed new home to encroach 3.21 feet into the required northern side yard setback. This matches the encroachment of the existing home and does not increase the degree of nonconformity.
3. Relief from UDO Section 8.2.1 – To allow the existing pool and rebuilt deck to encroach 4 feet into the southern side yard setback. The pool is located forward of the midpoint of the proposed principal structure and therefore must meet principal structure setbacks under current UDO standards. The degree of nonconformity would not increase; the applicant is seeking only to maintain the existing pool footprint and replace the decking in place.
4. Relief from UDO Section 8.2.1 – To exceed the maximum lot coverage by approximately 88 square feet. This overage results from a UDO requirement that impervious surface within a shared access easement be included in the lot coverage calculation, unless the subdivision's recorded covenants specifically prohibit parking within the easement. A review of the recorded covenants for You-Lin Hills subdivision confirmed that no such prohibition exists. The easement area contributes approximately 1,586 square feet of additional impervious coverage to the calculation, pushing the total approximately 88 square feet over the permitted maximum of 30 percent plus 300 square feet.

Ms. Wyatt noted that this type of lot coverage issue is not uncommon in South Nags Head, where many older subdivisions were developed with private access easements whose covenants do not address parking. She also noted that the proposed new dwelling, at approximately 2,700 square feet of habitable area, represents a significant increase over the existing 1,600-square-foot home. While the R-2 district permits homes up to 3,500 square feet and the proposed size is within that limit, Ms. Wyatt raised this point to ensure the Board was aware of the increased scale, referencing a prior variance on Proteus Street where neighborhood reaction to a larger modern home created concern.

Ms. Wyatt also clarified that, while UDO Section 5.3 permits

replacement of a nonconforming structure with an identical or similar structure without a variance provided the degree of nonconformity is not increased, the increase in habitable area from 1,600 to 2,700 square feet caused staff to conclude that the proposal exceeded what would be considered "identical or similar," necessitating the variance process.

Ms. Wyatt then reviewed for the Board, Staff's Findings of Fact:

1. *Unnecessary hardship from strict application of the UDO:* Staff found this criterion met. The combination of the access easement encroachment and required side yard setbacks reduces the buildable width to under 20 feet. This hardship is partly attributable to evolving UDO language regarding how setbacks are measured from easements — language that did not exist in the 1972 or 1977 zoning ordinances in effect when the home was originally constructed.
2. *Hardship peculiar to the property:* Staff found this criterion substantially met. The narrow lot width, the presence and location of the shared access easement, and the layering of setback requirements over time combine to create a constrained building envelope unique in its combination of factors, even if individually such conditions exist elsewhere in South Nags Head.
3. *Hardship not self-created:* Staff found this criterion met. The home was built in 1977 under then-applicable zoning standards. The property owners did not create the site constraints or the subsequent changes in ordinance language that now limit their buildable area.
4. *Consistent with spirit, purpose, and intent of the ordinance:* Staff found this criterion met. Replacing the aging, structurally compromised home with a new structure elevated to meet FEMA floodplain regulations and compliant with current building codes represents a meaningful improvement in public safety and structural resilience. The reconstruction also reduces some existing nonconformities, most notably eliminating the existing southern side yard encroachment of the home.

Overall, Ms. Wyatt indicated that staff found more positives than negatives associated with the request and recommended that the Board consider approval, subject to conditions.

Ms. Wyatt then reviewed Staff's proposed conditions for the Board's consideration:

- The proposed structure must comply with all other applicable code requirements, including parking, height, stormwater management, and floodplain standards.
- The pool deck may be rebuilt to current structural standards but must not further encroach into setbacks beyond existing conditions.
- All construction shall comply with applicable building codes and shall not adversely impact the shared access easement or neighboring properties.
- The platted access easement must remain intact; no portion may be removed or modified to reduce the width of the existing paved drive aisle, currently approximately 8 feet.
- The two additional parking spaces labeled P3 and P4 on the site plan shall be constructed using a semi-permeable material (such as Turfstone or equivalent), rather than solid concrete, to partially offset the lot coverage overage.
- In the event the principal structure is demolished and not replaced within one year, the existing nonconforming pool and pool surround shall be removed and the site restored to prevent an accessory structure from remaining without a principal structure.

Ms. Wyatt confirmed for Chair Supplier that with regards to the pool, the condition would be satisfied if a building permit is issued and construction has commenced.

Mr. Gentry asked about the significance of the increased square footage. Ms. Wyatt explained that while the proposed 2,700-square-foot home is permitted by right in the R-2 district, the increase from 1,600 square feet is visually notable in the context of the existing neighborhood and was something she wanted the Board to be aware of.

Mr. Snyder asked about parking during construction given restricted parking on South Old Oregon Inlet Road and the shared nature of the driveway. Ms. Wyatt noted that, absent a life safety issue, the town generally does not regulate construction-related parking as long as contractors manage the site responsibly.

**Evidence Presented by
the Applicant**

Ben Gallop, attorney for the Applicants, introduced two exhibits into evidence: minutes from a July 11, 2019, Board of Adjustment hearing regarding a variance at 8400 South Oregon Road (the Calvin variance), and minutes referencing a 2017 variance granted to Rudy Meekins for property at 8801 South Old Oregon Inlet Road. Mr. Gallop noted that while the Board is not a precedent-setting body, consistency in similar factual situations is appropriate. He argued that in both prior cases the Board found hardship where buildable widths were similarly

constrained by setbacks and easements, and that the present case presented an even more constrained buildable width of approximately 19 feet.

Mr. Gallop then introduced his clients and Mark Martin of Sandmark Custom Homes, the applicant of record. He confirmed for the record that the Sims are in agreement with all conditions proposed by staff, including the use of semi-permeable paving material for parking spaces P3 and P4.

Mark Martin, contractor and principal of Sandmark Custom Homes, addressed the board and described the proposed project in more detail. He explained that the Sims originally approached him regarding a major renovation, but upon inspection it became clear that demolition and new construction was the more appropriate path. He described the effort to pull the new home off the southern property line to eliminate that encroachment, and the practical design constraints of planning a livable home on a building envelope of approximately 19 to 23 feet in width. He noted that the pool had been recently refinished prior to the Sims' purchase and that only the deteriorated deck surround required replacement. He also described the construction parking and staging plan, including limiting delivery sizes and timing early-morning deliveries to minimize impacts on the shared easement.

Property Owner Stephanie Sim was sworn in by Chair Suppler then addressed the Board. Mrs. Sim stated that her family's intent was simply to create a safe home. She described some of the safety issues she had observed during a visit and expressed her family's love of Nags Head and their desire for a home consistent with the character they observe in the community.

Board Attorney Jay Wheless reviewed all the exhibits including: Town's Exhibit 1 (the full board packet dated August 14, 2025, inclusive of the applicant's application materials) and Town's Exhibit 2 (the UDO code section regarding accessory structures forward of the midpoint of the principal structure, which was provided during the hearing). He also confirmed the Board's acceptance of Applicant's Exhibits 1 and 2 (the Calvin and Meekins variance minutes, respectively). Chair Suppler accepted them all into evidence.

Town Attorney Johnny Hallow stated briefly that he agreed with both staff's and the applicants' positions, that the case presented a right situation for a variance, and that he recommended the Board give careful attention to the proposed conditions.

There being no further testimony, Chair Suppler closed the public portion of the meeting and the Board deliberated on the criteria required for granting a variance:

Does the unnecessary hardship result from strict application of the UDO? The Board unanimously agreed that it does. The buildable width is severely constrained by the combination of the access easement and

side yard setback requirements. Evolving ordinance language regarding setback measurement from easements, language absent from the 1972 and 1977 ordinances, contributed to this hardship. The current home appeared to have complied with the ordinance in effect at the time it was constructed.

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 that the narrow lot width of under 50 feet, combined with the adjoining access easement, which is fully paved and the layering of setback requirements over time, creates a constrained building envelope. The proposed home, at approximately 2,700 square feet, remains approximately 1,000 square feet below the maximum permitted in the R-2 district.

Does the hardship result from actions taken by the applicant or property owner? The Board unanimously agreed it did not. The home was constructed in 1977 under then-applicable zoning standards. The applicants had no role in the ordinance changes that subsequently constrained the property.

Is the requested variance consistent with spirit, purpose, and intent of the ordinance? The Board unanimously agreed that it was. The existing structure is unsafe. Replacing it with a home elevated to meet current FEMA floodplain requirements and compliant with current building codes advances public safety and serves the spirit of the ordinance.

Motion

Based on their findings and together with Staff's findings, Bobby Gentry moved to approve the variance as presented with Staff's conditions. Tina Adderholdt 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 August 14, 2025, to consider a variance application submitted by Mark Martin of Sandmark Custom Homes, Inc. on behalf of Stephanie and Greg Sim (the "Owners"), seeking relief from Sections 5.3 and 8.2.1 of the Unified Development Ordinance (the "UDO") to facilitate the demolition of an existing nonconforming single-family dwelling and construction of a new dwelling on the property located at 8725 S. Old Oregon Inlet Road, Nags Head, NC 27959 (the "Property"). The Owners also requested to retain the existing concrete pool and rebuild the associated deck on 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 R-2, Medium Density

Residential Zoning District.

3. The Owners' lot is approximately 49.98 feet wide and is accessed by a shared 10-foot-wide concrete access easement serving five properties.
4. The existing single-family dwelling was constructed in 1977 and encroaches into both the northern and southern side yards.
5. The Owners' existing dwelling located on the Property is exhibiting structural degradation, including rust of fasteners, and is likely no longer structurally sound.
6. The existing concrete pool located on the Property was constructed in 2002 and remains structurally sound, though the surrounding wooden deck is in disrepair.
7. The Property's buildable area is significantly constrained in a unique manner due to the combination of narrow lot width, shared access easement, and current UDO requirements for measuring setbacks from the edge of the easement.
8. Section 5.3 of the UDO regulates the continuation of nonconforming structures with a conforming use. While this section allows for replacement of identical or similar structures, the Owners' proposed new dwelling, at approximately 2,700 square feet of habitable area, represents an increase over the existing 1,600 square foot home.
9. To construct the new dwelling and retain the pool on the Property and stay in compliance with the UDO, the Owners requested variances as follows:
 - To retain the existing pool as an accessory structure during demolition and reconstruction, contrary to Section 5.3.
 - To reduce the northern side yard setback by 3.2 feet, allowing the new dwelling to encroach into the required 10-foot setback.
 - To allow the existing pool and pool deck to encroach 4 feet into the required 10-foot southern side yard setback.
 - To allow an increase in lot coverage of approximately 1,388 square feet beyond the maximum permitted, due to the requirement that impervious surface within the access easement be included in lot coverage calculations.
10. The Owners' proposed site plan and development otherwise comply with the UDO's current development standards, including height, flood protection elevation, parking, and

stormwater management.

11. The existing site constraints on the Owners' Property which result in hardship were not caused by any actions of the Owners but instead are peculiar to the Property and are a result of the original subdivision design and impacts subsequent ordinance changes.
12. Retaining the pool and rebuilding the deck in the same footprint and in compliance with current safety standards would not represent an increase in the degree of nonconformity of the Property.
13. Staff recommended approval of the requested variances subject to certain conditions as set forth herein, noting that while the proposed dwelling represents a notable increase in habitable area, it would also improve overall code compliance and public safety.

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 jurisdiction to consider and render a decision on the requested variances.
2. Strict application of the UDO would result in unnecessary hardship to the Owners. The narrow lot width, shared access easement, and resulting limited building envelope make it impractical to construct a reasonably sized home on the Property while retaining existing improvements.
3. The hardship results from conditions that are peculiar to the Property, including the location of the access easement and the lot's narrow width.
4. The hardship does not result from actions taken by the Owners. The dwelling and pool were constructed under previous, less restrictive versions of the UDO; and the current site limitations were not created by the Owners.
5. The requested variances are consistent with the spirit, purpose, and intent of the UDO, as they allow for redevelopment of an aging and structurally compromised dwelling into a safer, more resilient home that improves compliance with current codes, while securing public safety and substantial justice.

WHEREFORE, based upon the foregoing FINDINGS OF FACT and CONCLUSIONS, it is hereby ordered that the Owners' application for variances from Sections 5.3 and 8.2.1 of the Unified Development

Ordinance is **GRANTED**, subject to the following conditions to which the Owners agreed:

1. The proposed structure must comply with all other applicable UDO requirements, including but not limited to current parking standards, height, stormwater management, and floodplain management.
2. The pool deck may be rebuilt to current standards but shall not further encroach into setbacks beyond existing conditions.
3. All construction shall comply with applicable building codes and shall not adversely impact the shared access easement or neighboring properties.
4. The platted access easement must remain intact; no portion may be removed or modified to reduce the width of the drive aisle.
5. If the existing principal structure (single-family dwelling) is demolished and construction of the replacement structure has not commenced within one (1) year, the existing nonconforming pool and associated pool surround shall be removed, and the site shall be properly restored and stabilized.

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 May 8, 2025 meeting concerning the Schroeder Variance.

Motion to approve the minutes of May 8th meeting was made by Bobby Gentry, seconded by Tina Adderholdt, and approved unanimously.

Adjourn

There being no further business to discuss, the meeting adjourned at 9:59 AM.

Respectfully Submitted,

Lily Campos Nieberding

Nags Head Board of Adjustment



July 9, 2026 Meeting Ojanguren Appeal

Staff Record

Staff Report....pages S1-S5

Staff Exhibits

Exhibit A – Application Ordinances...S6

Exhibit B&C – Email Correspondence...S7 – S21

Exhibit D – Pelican Park Subd Plat...S22

Exhibit E – Pelican Street Aerial Mark-up...S23

Exhibit F – Enlarged Aerial from Email...S24

Exhibit G – 10023 Pelican Street Survey...S25

Exhibit H – Example of Front Yd Reduction...S26

Exhibit I – Photo of Properties from Pelican St...S27-29



MEMORANDUM

Town of Nags Head

Planning & Development Department

To: Board of Adjustment

From: Kelly Wyatt, Planning Director

Date: July 2, 2026

Subject: Appeal of an Administrative Decision submitted by Sebastian Ojanguren regarding the Planning Director's interpretation and application of Section 8.6.3.7.1 of the Unified Development Ordinance, which regulates front yard setback reductions. The appeal pertains to the property located at 10023 E. Pelican Street, Nags Head, North Carolina.

Request

The Board of Adjustment is requested to consider an appeal submitted by Sebastian Ojanguren regarding an administrative decision issued by the Planning Director on May 26, 2026, concerning the application of Section 8.6.3.7.1 of the Unified Development Ordinance (UDO), Reduction in Front Yard Setback (Exhibit A).

The appeal requests that the Board overturn the Planning Director's decision regarding the application of Section 8.6.3.7.1. Although the administrative decision was made in response to the applicant's request concerning the inclusion of 10021 E. Pelican Street in the setback reduction calculation, the appeal asserts that the residences located at 10023A and 10023B E. Pelican Street should instead be considered qualifying comparison properties. Staff's interpretation of Section 8.6.3.7.1 remains unchanged regardless of which surrounding properties are proposed.

Background

The subject property is located at 10023 E. Pelican Street (Lot 16, Pelican Park Subdivision) and is zoned R-2 Medium Density Residential.

Beginning in March 2026, the applicant contacted Town staff regarding the application of the Town's front yard setback reduction provisions contained in Section 8.6.3.7.1 of the Unified Development Ordinance. Through subsequent correspondence, the applicant requested that the Town determine whether the residence located at 10021 E. Pelican Street qualified for inclusion in the front yard setback reduction calculation (Exhibit B & C).

Following review of the applicable ordinance, recorded subdivision plat, available surveys, aerial photography, and the physical layout of the subdivision, the Planning Director issued a written administrative decision on May 26, 2026.

The decision concluded that although the property in question at that time (10021 E. Pelican Street) satisfied the distance requirement contained within Section 8.6.3.7.1, the property was not fronting on the same side of the same street as the subject property and therefore did not qualify for inclusion in the setback reduction calculation.

The applicant subsequently filed this appeal.

In his appeal application, Mr. Ojanguren requests that the Board of Adjustment consider the residences located at 10023A E. Pelican Street (Lot 17) and 10023B E. Pelican Street (Lot 18) as qualifying comparison properties under Section 8.6.3.7.1. Although these properties were not specifically identified in the applicant's original request, the methodology used by staff to identify qualifying comparison properties under Section 8.6.3.7.1 is the same regardless of which surrounding properties are proposed for inclusion. Accordingly, staff's interpretation and application of the ordinance remain unchanged.

Applicable Ordinances

Appendix A – Definitions

Yard means a required open space, unoccupied and unobstructed by any structure or portion of a structure from 12 inches above the general ground level of the graded lot upward, provided that, fences, walls, poles, posts and other customary yard accessories, ornaments and furniture may be permitted in any yard subject to height limitations and requirements limiting obstruction of visibility or any other requirement of this UDO. Further, customary accessory buildings or structures, including pools and pool surrounds, may be located in any rear or side yard no closer than five feet to any property line and subject to other limitations of this UDO. For lots of record which front on access easements, yard and lot depth measurements shall be made from the edge of the easement rather than from the lot line.

Note: Based upon the definition of “yard”, for lots of record which front on access easements, yard and lot depth measurements shall be made from the edge of the easement rather than the lot line.

8.6.3.7. Reductions in Yard Setbacks.

8.6.3.7.1. Front Yard Setback.

8.6.3.7.1.1. In any residential district where the average setback distance for existing buildings on all lots located wholly or partly within two hundred (200) feet of any lot, and within the same zoning district and fronting on the same side of the same street as such lot is less than the minimum setback required in such zoning district, the setback on such lot may be less than the required setback. However, the reduced setback shall be no less than the existing average setback distance for all lots within the two hundred (200) feet, and in no instance shall the setback be reduced to less than fifteen (15) feet.

8.6.3.7.1.2. When lots within the two hundred (200) feet are vacant, such vacant lots shall be considered as having the minimum required setback for the purpose of computing an average setback distance.

8.6.3.7.1.3. When lots within the two hundred (200) feet contain structures which have been relocated with a reduced setback in accordance with [Section 8.7](#), the lot shall be considered as having the minimum required setback distance.

Findings Supporting the Administrative Decision

Finding 1

The subject property's front yard is established along the eastern property boundary adjacent to the north-south leg of the Pelican Street access easement.

Before applying the front yard setback reduction provisions contained in Section 8.6.3.7.1, staff first identified the location of the subject property's front yard in accordance with the Unified Development Ordinance.

The UDO defines a "Yard" as a required open space and further provides that, for lots of record fronting on access easements, yard and lot depth measurements shall be made from the *edge of the access easement* rather than the property line. The subject property is bounded by access easements along both its eastern and southern property boundaries. Therefore, staff first determined which access easement functions as the property's frontage before applying the setback averaging provisions.

Based upon the property's established development pattern, physical orientation, and historic use, staff determined that the eastern property boundary adjacent to the north-south leg of the Pelican Street access easement functions as the front yard. This determination is supported by the location of the principal driveway access, the orientation of the dwelling's primary entrance, the established relationship of the residence to the access easement, the placement of fencing consistent with front and rear yard treatment, and the manner in which the property has historically been developed and permitted. To illustrate the yard orientation of properties along the primary west-to-east segment of Pelican Street, representative photographs are provided in Exhibit I.

Accordingly, the subject property's required front yard setback is measured from the edge of the north-south Pelican Street access easement (Exhibit G). This establishes the frontage from which qualifying comparison properties must be identified under Section 8.6.3.7.1.

Finding 2

Section 8.6.3.7.1 has been consistently administered by Town staff.

Section 8.6.3.7.1 has been applied by Town staff on numerous occasions and is generally straightforward in its administration. Once the subject property's front yard has been established, staff identifies those developed lots located wholly or partly within two hundred (200) feet of the subject property, within the same zoning district, and fronting on the same side of the same street. Staff then measure the existing front yard setbacks of the qualifying properties, calculates the average setback, and applies that average in accordance with the ordinance.

The averaging calculation itself is objective and has been consistently administered by the Town. Staff have routinely applied this methodology to residential properties throughout the Town, including lots served by access easements, without the need for additional interpretation beyond identifying the qualifying comparison properties. The issue presented in this appeal is not how the setback averaging calculation is performed but rather whether the residences identified by the appellant satisfy the ordinance's requirement that qualifying comparison properties front on the same side of the same street as the subject property.

An example of a previous front yard setback reduction determination is included as Exhibit H to illustrate the Town's consistent administration of Section 8.6.3.7.1.

Finding 3

Having established the subject property's front yard and applied the Town's longstanding methodology for front yard setback reduction, staff next evaluated whether the residences identified by the appellant qualified as comparison properties under Section 8.6.3.7.1. The residences identified by the appellant are not qualifying comparison properties because they do not front on the same side of the same street.

Pelican Park differs from a traditional subdivision served by a single continuous public street. Although all properties are addressed from Pelican Street, access is provided by a network of private access easements that change direction throughout the subdivision. As illustrated on the recorded subdivision plat (Exhibit D) and aerial photography, these easements create separate groups of residences with distinct street frontages.

The subject property fronts on the north-south leg of the Pelican Street access easement. The residences identified by the appellant front on the east-west leg of the easement system (Exhibit E).

Although the identified residences are located within 200 feet of the subject property, staff determined they do not share a common street frontage or common streetscape with the subject property and therefore do not satisfy the ordinance's requirement that comparison properties front on the same side of the same street.

The applicant's March 27, 2026 correspondence included an aerial exhibit depicting setback measurements of surrounding residences. The complete exhibit has been included as Exhibit F, with an enlarged image for clarity. The exhibit further illustrates that the applicant measures the comparison properties from the east-west leg of the Pelican Street access easement while the subject property's front yard is measured from the north-south leg. Staff believes this exhibit further supports the conclusion that these residences do not constitute qualifying comparison properties under Section 8.6.3.7.1.

Finding 4

Staff's administrative determination applied the ordinance and did not establish new ordinance requirements.

The appeal characterizes several explanatory statements contained within the Planning Director's email correspondence and administrative decision as additional qualifying criteria imposed by staff. Staff respectfully disagrees with that characterization. Those statements were included solely to explain the factual basis supporting the administrative decision and were not intended to establish independent ordinance requirements or additional standards beyond those contained in Section 8.6.3.7.1. Rather, they were descriptive observations used to explain why staff concluded that the properties identified by the appellant did not satisfy the ordinance's express requirement that qualifying comparison properties front on the same side of the same street.

References to "common street frontage", "alignment", "development pattern", and "relationship to the access easement" were simply included to help illustrate and explain staff's application of the ordinance to the unique physical layout of Pelican Park. They were explanatory in nature and were not intended to establish separate or independent criteria for determining eligibility under Section 8.6.3.7.1.

Finding 5

Because the residences identified by the appellant do not qualify under Section 8.6.3.7.1, the front yard setback averaging provisions are not applicable to the subject property. Accordingly, the required front yard setback remains thirty (30) feet measured from the edge of the Pelican Street access easement.

Staff Recommendation

Based upon the applicable ordinance, the facts presented, the administrative record, and the findings contained herein, staff recommends that the Board affirm the Planning Director's administrative decision dated May 26, 2026.

Specifically, staff finds that:

1. The subject property's front yard is located along the north-south leg of the Pelican Street access easement.
2. Section 8.6.3.7.1 requires comparison properties to front on the same side of the same street as the subject property.
3. The residences identified by the appellant front on a separate leg of the Pelican Street access easement and therefore do not share common street frontage with the subject property.
4. Because those properties are not qualifying comparison properties under Section 8.6.3.7.1, the front yard setback averaging provisions do not apply.
5. The applicable front yard setback therefore remains thirty (30) feet measured from the edge of the access easement.

Appendix A. - Definitions

Section A.4 - Definitions.

Easement, access means an easement created for the purpose of providing vehicular or pedestrian access to property.

Yard means a required open space, unoccupied and unobstructed by any structure or portion of a structure from 12 inches above the general ground level of the graded lot upward, provided that, fences, walls, poles, posts and other customary yard accessories, ornaments and furniture may be permitted in any yard subject to height limitations and requirements limiting obstruction of visibility or any other requirement of this UDO. Further, customary accessory buildings or structures, including pools and pool surrounds, may be located in any rear or side yard no closer than five feet to any property line and subject to other limitations of this UDO. For lots of record which front on access easements, yard and lot depth measurements shall be made from the edge of the easement rather than from the lot line.

Section 8.6 - Standards/Application of Dimensional Requirements.

8.6.3. Yard Requirements.

8.6.3.7. Reductions in Yard Setbacks.

8.6.3.7.1. Front Yard Setback.

8.6.3.7.1.1. In any residential district where the average setback distance for existing buildings on all lots located wholly or partly within two hundred (200) feet of any lot, and within the same zoning district and fronting on the same side of the same street as such lot is less than the minimum setback required in such zoning district, the setback on such lot may be less than the required setback. However, the reduced setback shall be no less than the existing average setback distance for all lots within the two hundred (200) feet, and in no instance shall the setback be reduced to less than fifteen (15) feet.

8.6.3.7.1.2. When lots within the two hundred (200) feet are vacant, such vacant lots shall be considered as having the minimum required setback for the purpose of computing an average setback distance.

8.6.3.7.1.3. When lots within the two hundred (200) feet contain structures which have been relocated with a reduced setback in accordance with [Section 8.7](#), the lot shall be considered as having the minimum required setback distance.

Kelly Wyatt

From: Kelly Wyatt
Sent: Tuesday, May 26, 2026 9:53 AM
To: Sebastian Ojanguren
Cc: Chris Trembly; Andy Garman
Subject: RE: Front Setback Determination Request – 10023 E Pelican St

Mr. Ojanguren,

Thank you for your additional correspondence and supporting materials regarding your request for a front yard setback determination pursuant to Section 8.6.3.7.1.1 of the Town of Nags Head Unified Development Ordinance.

After further review of the materials submitted, it remains the Town's interpretation that the setback averaging provisions of Section 8.6.3.7.1.1 do not apply in the manner proposed.

As previously noted, Section 8.6.3.7.1.1 requires that qualifying properties be located on the "same side of the same street" as the subject property. In applying this provision, the Town interprets this requirement to apply to properties located along the same section of roadway/street, with similar alignment and a similar relationship to the street.

The Town acknowledges that lots within Pelican Park front on access easements and that, pursuant to UDO definitions and Section 8.6.3.2, yard and setback measurements for such lots are measured from the edge of the access easement rather than the lot line. However, that measurement methodology does not alter or expand the separate qualifying requirement within Section 8.6.3.7.1.1 that properties be located on the "same side of the same street" as the subject property for purposes of setback averaging.

The subject property fronts a north-south leg/extension of Pelican Street. The row of properties extending generally east-west along the horizontal portion of Pelican Street do not share the same alignment or relationship to the street as the subject property. Additionally, the access configuration and the way those properties relate to the easement system differs from the subject property and the lots immediately associated with the north-south portion of Pelican Street.

While the Pelican Street access easement system is interconnected, the Town does not interpret shared easements, common addressing, or GIS mapping alone as determinative for purposes of setback averaging under Section 8.6.3.7.1.1.

The Town's interpretation of this section has historically focused on maintaining consistent setback relationships among similarly situated lots sharing a common street alignment and development pattern, rather than combining setback conditions from differently oriented or functionally distinct portions of an access network.

Accordingly, it remains the Town's determination that the properties identified in your submission do not qualify for inclusion in the setback averaging calculation applicable to the subject property. Based on the Town's interpretation of Section 8.6.3.7.1.1, the applicable front yard setback for the subject property remains 30 feet from the edge of the access easement.

I understand your desire to avoid preparing and submitting a full development application, including the associated expense of engineering and related materials, prior to obtaining a final determination from the Nags Head Board of Adjustment regarding this interpretation. As such, this correspondence, together with previous related email correspondence, shall serve as the Town's written administrative determination should you wish to file an appeal.

An appeal of an administrative determination is a quasi-judicial public hearing before the Board of Adjustment and must be submitted in compliance with Section 3.9 of the UDO, Appeals of Administrative Decisions, located at this link:

https://library.municode.com/nc/nags_head/codes/code_of_ordinances?nodeId=PTIIUNDEOR_ART3LEQUDIPR_PTIIQUDIPR_S3.9APADDE

Additionally, the Board of Adjustment Appeal Application may be accessed at the link below. It is the first item under the heading of Zoning/Planning: <https://www.nagsheadnc.gov/431/Forms-Permit-Applications>

Thank you,

Kelly

Kelly Wyatt
Director of Planning & Development
Office: 252-449-6042
Email: Kelly.wyatt@nagsheadnc.gov



From: Sebastian Ojanguren <ojanguren@gmail.com>
Sent: Tuesday, May 19, 2026 3:44 PM
To: Kelly Wyatt <Kelly.Wyatt@nagsheadnc.gov>
Cc: Chris Trembly <Chris.Trembly@nagsheadnc.gov>
Subject: Re: Front Setback Determination Request – 10023 E Pelican St

Ms. Wyatt,

As a follow up to my emails below, I am formally submitting a Request for Written Zoning Determination under N.C. Gen. Stat. § 160D-403 regarding the applicable front yard setback for 10023 E. Pelican Street under UDO § 8.6.3.7.1.1 (Front Yard Setback Averaging).

On May 15, 2026, I requested clarification regarding the procedural path for obtaining this type of determination, specifically whether the Town would issue a written code interpretation under § 160D-403(c) based on submitted documentation or require a complete zoning application. Because I have not yet received clarification on that question and in the interest of moving the matter forward, I am submitting the enclosed materials for consideration under the Town's preferred process.

My intent is to obtain a clear written determination regarding the applicable setback prior to incurring engineering, survey, and permit preparation costs.

To the extent appropriate under the Town's procedures and N.C. Gen. Stat. § 160D-403, I request that the Town issue its response as a written determination.

Respectfully,

Sebastian Ojanguren
10023 E. Pelican Street
Nags Head, NC 27959
(301) 704-8775

On Fri, May 15, 2026 at 12:56 PM Sebastian Ojanguren <ojanguren@gmail.com> wrote:

Ms. Wyatt,

Thank you for the information you have provided to date and my apologies for the short sequence of emails, but I want to make absolutely sure I understand the procedural path before incurring engineering and survey costs.

Under N.C. Gen. Stat. § 160D-403(c), code interpretations are recognized as a distinct category of "determination," separate from decisions on permit applications. My understanding is that the Town may issue a written code interpretation of how UDO § 8.6.3.7.1.1 applies to my property without requiring a complete permit application, based on the recorded plat, the Town's GIS data, the relevant Appendix A definitions, and a written request supported by documentation.

To make sure I follow the right process, could you please confirm:

1. Whether the Town will issue a written code interpretation under § 160D-403(c) regarding the application of UDO § 8.6.3.7.1.1 to 10023 E. Pelican Street based on submitted documentation, without requiring a complete permit application; and
2. If a "complete zoning application" is required even for an interpretation under § 160D-403(c), what specific documents the Town requires (e.g., recorded plat, conceptual site sketch, survey, engineered plans). Knowing this in advance will help me prepare the appropriate submission without unnecessary cost.

I have prepared a comprehensive written request with supporting exhibits that I am ready to submit. I simply want to confirm the correct procedural channel before doing so.

Thank you for your patience as I work through this process.

Best regards,

S9

Sebastian Ojanguren
10023 E. Pelican Street
Nags Head, NC
(301) 704-8775

cc: Chris Tremblay

On Fri, May 15, 2026 at 9:33 AM Sebastian Ojanguren <ojanguren@gmail.com> wrote:

Ms. Wyatt,

Thank you for your response.

Before proceeding with any engineering or permit preparation, I would like to clarify the process for obtaining a formal zoning determination under Section 8.6.3.7.1.1.

At this stage, I am not seeking building permit approval. I am seeking a formal zoning interpretation of the applicable front setback based on the averaging provision.

Given that, please confirm whether a zoning determination can be issued based on a conceptual site sketch and supporting documentation, without requiring full engineered plans.

My goal is to obtain a clear determination of the applicable setback before incurring the cost of engineering and survey work.

Thank you,
Sebastian Ojanguren

On Fri, May 15, 2026 at 9:14 AM Kelly Wyatt <Kelly.Wyatt@nagsheadnc.gov> wrote:

Good Morning Mr. Ojanguren,

My position remains unchanged. The provisions of Section 8.6.3.7.1 would not apply in the manner you have requested.

This section of the ordinance is clearly intended to promote uniformity in development patterns along the same side of the same street. Where there is an established row of homes located forward of the required front yard setback, the ordinance provides limited flexibility so that a new home/new construction may align in a manner generally consistent with the existing development pattern.

S10

In this case, the property to the north that you reference is not similarly situated to your lot. In addition to my position and concern regarding whether access to 10021 is via the 20-foot-wide Pelican Street access easement or a separate 15-foot-wide access easement, the home is also not aligned in conformity with your property. The adjoining front setback line is located more than 20 feet west of your front lot line orientation.

Based on both the intent and purpose of this ordinance section, as well as the physical configuration of the lots and access easements, I do not find that this provision is applicable to your property.

If you wish to pursue the matter further, you may submit a complete zoning application outlining your request and supporting reasoning. Upon review, I would issue a formal zoning determination, which could then be appealed to the Nags Head Board of Adjustment.

Thank you,

Kelly

Kelly Wyatt

Director of Planning & Development

Office: 252-449-6042

Email: Kelly.wyatt@nagsheadnc.gov



From: Sebastian Ojanguren <ojanguren@gmail.com>
Sent: Thursday, May 14, 2026 10:40 AM
To: Kelly Wyatt <Kelly.Wyatt@nagsheadnc.gov>
Cc: Chris Trembly <Chris.Trembly@nagsheadnc.gov>
Subject: Re: Front Setback Determination Request – 10023 E Pelican St

S11

Ms. Wyatt,

I have reviewed the surveys you provided along with the recorded subdivision plat and the Town GIS data. The controlling document for easement location and extent is the recorded subdivision plat. Individual property surveys are derivative of that plat and cannot redefine or limit a platted access easement. The recorded plat clearly shows the access easement extending beyond my property and continuing across 10021 and adjacent lots. I have attached an annotated version of the plat and GIS image highlighting the extent of the easement.

Based on the recorded plat:

- The access easement does not terminate at my property
- The easement continues onto and serves 10021 and adjacent parcels
- 10021 shares the same platted frontage and access easement as my property

Accordingly, 10021 E. Pelican Street fronts the same access easement and is located within 200 feet.

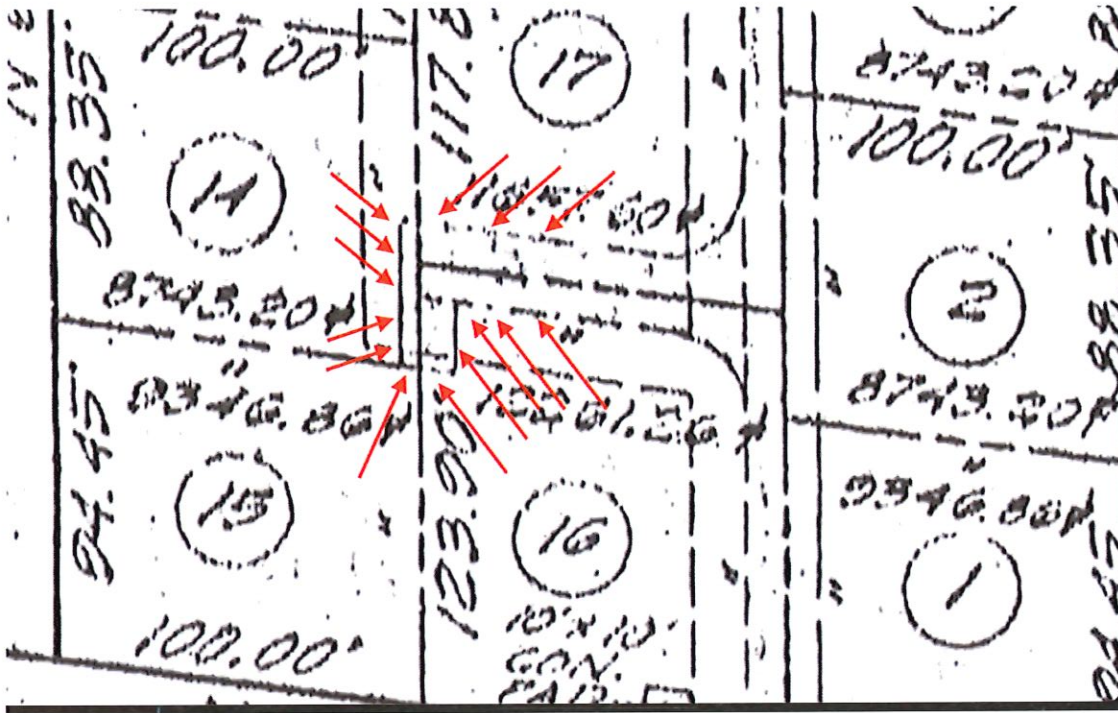
Under Section 8.6.3.7.1.1, 10021 E. Pelican Street must be included in the setback averaging calculation.

Please confirm the applicable front setback for my property based on inclusion of 10021 in the averaging calculation.

If the Town's position is that 10021 is excluded, please provide the legal basis for disregarding the recorded subdivision plat in favor of individual survey interpretation.

Sebastian Ojanguren

S12



On Thu, May 14, 2026 at 10:28 AM Kelly Wyatt <Kelly.Wyatt@nagsheadnc.gov> wrote:

Good Morning Mr. Ojanguren –

Note that the recorded plat for Pelican Park appears to show the 20' wide access easement (Pelican Street) terminating at the northeast corner of your property. What then picks up is a separate, smaller easement running east to west. I have attached surveys for 10021B and 10021D that indicate a 15' wide easement/apparent easement.

It is this 15' wide easement that runs along the southernmost property line of Lot 14. This 15' wide easement appears to end at Lot 15, at which point the properties driveway picks up to continue access. Note the survey for Lot 15 depicts an asphalt drive, merging into the concrete driveway within the 15' wide easement.

Based upon the recorded platting and survey information available, it is my interpretation that the lots north and northeast of your property front on a separate 15' easement arrangement rather than on the same 20' Pelican Street access easement fronting your property. As such, these lots are not considered to be "fronting on the same side of the same street" for purposes of Section 8.6.3.7.1.1 regarding front yard setback averaging.

S13

8.6.3.7. Reductions in Yard Setbacks.

8.6.3.7.1. Front Yard Setback.

8.6.3.7.1.1. *In any residential district where the average setback distance for existing buildings on all lots located wholly or partly within two hundred (200) feet of any lot, and within the same zoning district and fronting on the same side of the same street as such lot is less than the minimum setback required in such zoning district, the setback on such lot may be less than the required setback. However, the reduced setback shall be no less than the existing average setback distance for all lots within the two hundred (200) feet, and in no instance shall the setback be reduced to less than fifteen (15) feet.*

Please let me know if you have questions.

Thank you,

Kelly

Kelly Wyatt

Director of Planning & Development

Office: 252-449-6042

Email: Kelly.wyatt@nagsheadnc.gov



From: Sebastian Ojanguren <ojanguren@gmail.com>
Sent: Wednesday, May 13, 2026 4:23 PM
To: Kelly Wyatt <Kelly.Wyatt@nagsheadnc.gov>
Cc: Chris Trembly <Chris.Trembly@nagsheadnc.gov>
Subject: Re: Front Setback Determination Request – 10023 E Pelican St

S14

Good afternoon Ms. Wyatt,

Thank you for your response. I would like to clarify one specific point regarding the applicability of 10021 E. Pelican Street.

Based on the recorded plat and the Town GIS data (attached), the access corridor serving these lots is clearly identified as a **platted access easement**. The recorded covenants and plat do not identify any portion of this corridor as a private driveway, nor do they indicate a termination of the easement at 10021. Rather, it is shown as a continuous access easement serving multiple properties.

This same easement is being used to establish the front lot line for setback purposes for these lots. Accordingly, **10021 E. Pelican Street:**

- is located on the same side of Pelican Street
- fronts the same platted access easement
- and is within 200 feet of my property

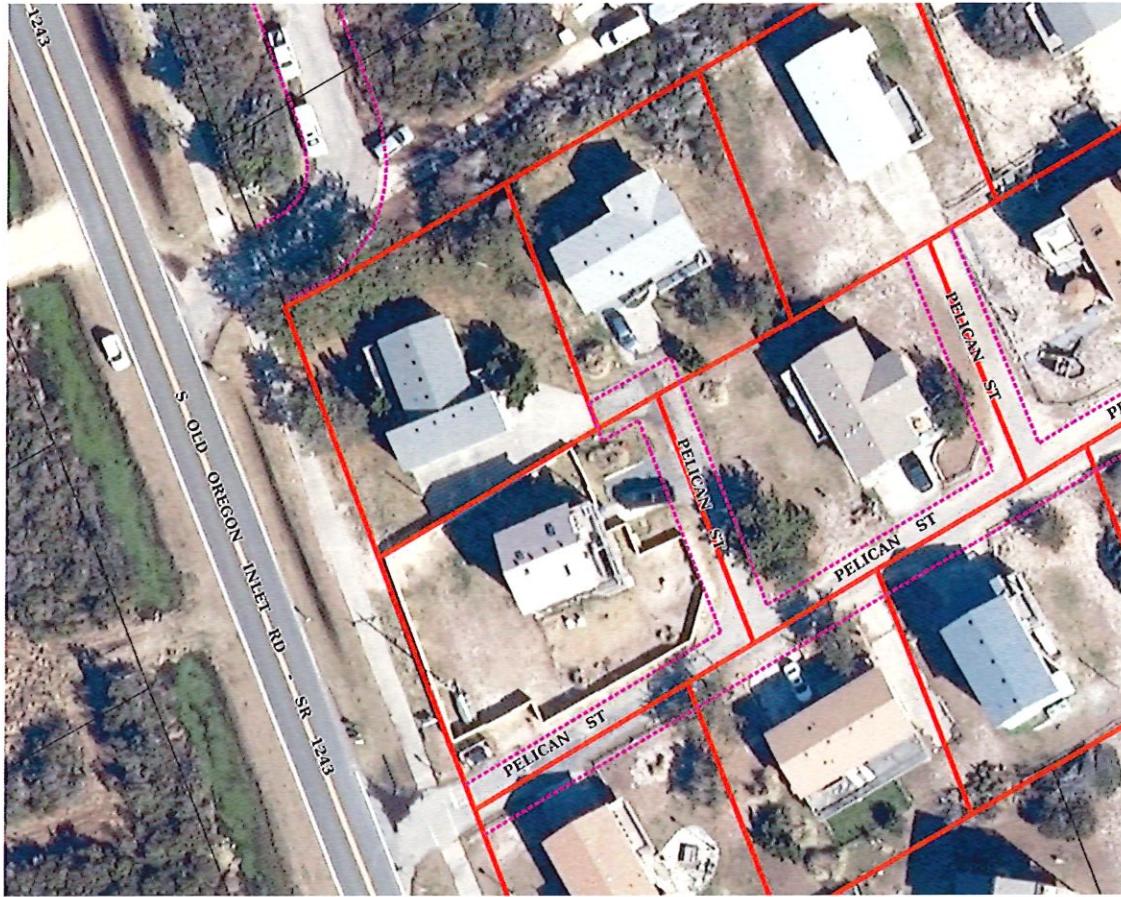
Based on these facts, **10021 E. Pelican Street should be included** as a qualifying property under Section 8.6.3.7.1.1 and included in the setback averaging calculation.

Please confirm that **10021 E. Pelican Street** is included in the averaging calculation. If it is not being included, please provide the legal basis for:

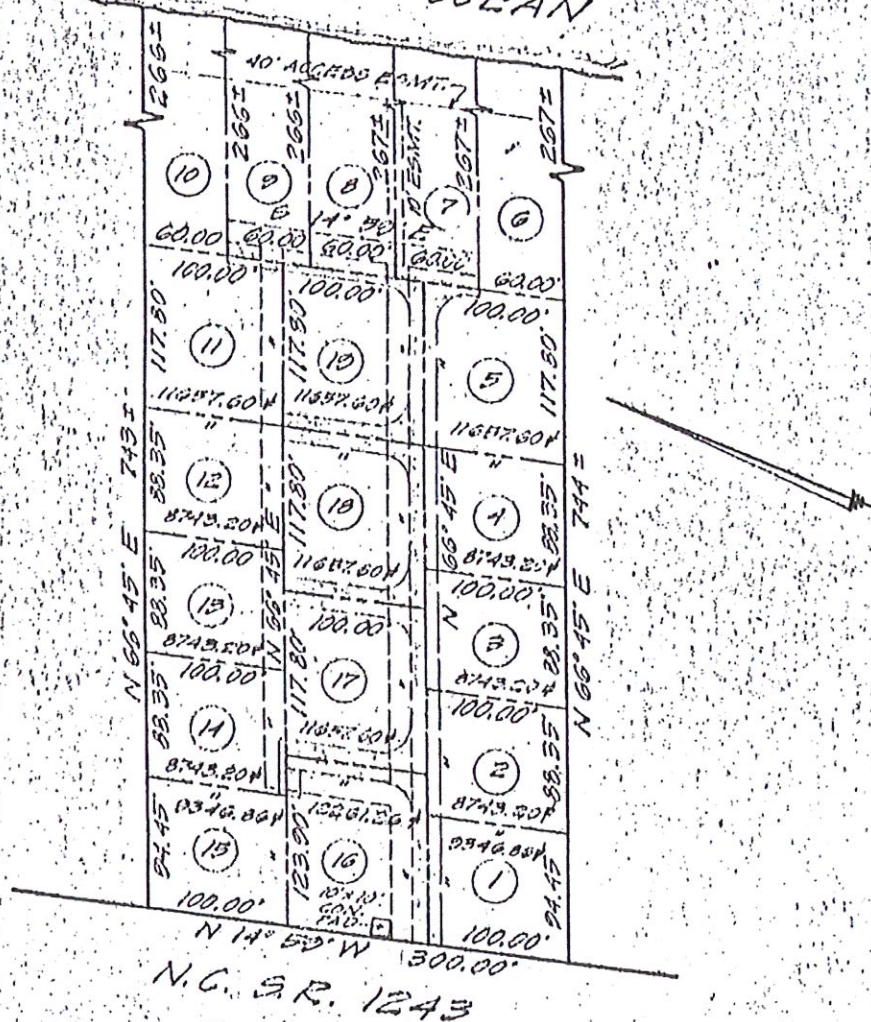
1. Treating any portion of the platted access easement as a “driveway,” and
2. Excluding 10021 E. Pelican Street despite it sharing the same recorded frontage and access easement

Thank you,
Sebastian Ojanguren
301-704-8775

S15



S16



Good Afternoon Mr. Ojanguren –

I hope you are doing well today. I apologize for the delay in getting back to you. It has been an unusually busy period.

I've attached a survey where I've marked the approximate 30-foot front yard setback line for reference. In reviewing Section 8.6.3.7.1, Front Yard Setback, the ordinance specifically references lots "fronting on the same side of the same street" as the subject property. Because the front lot line for your property is oriented toward the north-south leg/extension of Pelican Street, the comparable properties for setback averaging purposes would only be those properties fronting along that same

side of that same street segment. Based upon my review, the only comparable property appears to be 10021 E. Pelican Street directly north of the subject property. However, it appears the platted access easement may actually terminate near that property, with what is visible on aerial photography functioning more as a driveway extension rather than a continued roadway easement.

The row of homes running west-east along the horizontal portion of Pelican Street would not qualify for averaging purposes because they are not located on the same side of the same street relative to the subject frontage; and they are oriented toward a different street segment and frontage condition.

While the adjoining roadway segments carry the same street name, the ordinance does not reference lots located on the same named street. Rather, the ordinance requires the lots to be "fronting on the same side of the same street as such lot." In this case, your property fronts on the north-south segment/extension of Pelican Street, whereas the lots you identified front on the east-west segment of Pelican Street. Therefore, those lots are not considered to be fronting on the same side of the same street for purposes of Section 8.6.3.7.1.

Please let me know if you have any questions or if you would like to discuss further.

Thanks,
Kelly

Kelly Wyatt

Director of Planning & Development

Office: 252-449-6042

Email: Kelly.wyatt@nagsheadnc.gov



From: Sebastian Ojanguren <ojanguren@gmail.com>

Sent: Wednesday, May 13, 2026 9:55 AM

S18

To: Kelly Wyatt <Kelly.Wyatt@nagsheadnc.gov>

Subject: Re: Front Setback Determination Request – 10023 E Pelican St

Good morning Ms. Wyatt,

I am following up again on my March 27 request regarding the front setback determination for my property at 10023 E Pelican Street, as well as my prior follow-up.

I understand the Town has been handling several time-sensitive matters, but I have been holding off on moving forward with engineering drawings and permit preparation pending confirmation of the applicable setback under UDO Section 8.6.3.7.1.1.

At this point, I would greatly appreciate a response so I can proceed appropriately.

Specifically, I am requesting confirmation of:

- The applicable front setback for this lot based on the averaging provision
- Whether the proposed deck and stair extension, maintaining that setback, would be compliant

If this request is better handled by another member of staff, please let me know or feel free to forward it accordingly.

Thank you for your time and assistance.

Best regards,
Sebastian Ojanguren
301-704-8775

On Thu, Apr 30, 2026 at 3:32 PM Sebastian Ojanguren <ojanguren@gmail.com> wrote:

Good afternoon Ms. Wyatt,

I wanted to follow up on my prior email regarding the front setback determination for my property at 10023 E Pelican Street. I know there have been several more time-sensitive matters over the past few weeks, but I wanted to make sure this request did not get lost in the shuffle.

As noted previously, I am seeking confirmation of the applicable front setback under UDO Section 8.6.3.7.1.1 before proceeding with engineering drawings and permit preparation. I have been holding off on moving forward until I receive guidance from the Town.

When you have a moment, I would appreciate confirmation of:

S19

- The applicable front setback for this lot based on the averaging provision
- Whether the proposed deck and stair extension, maintaining that setback, would be compliant

If this request would be better handled by another member of the planning staff, please feel free to forward it along or let me know who I should contact directly.

Thank you for your time, I appreciate your help with this.

Best regards,
Sebastian Ojanguren
301-704-8775

On Fri, Mar 27, 2026 at 9:40 AM Sebastian Ojanguren <ojanguren@gmail.com> wrote:

Good afternoon Ms. Wyatt,

I hope you are doing well. I am reaching out with a zoning question related to my property at 10023 E Pelican Street. If this is better directed to another member of your team, I would appreciate it if you could please forward it to the appropriate contact.

I am planning improvements to the existing deck at my property located at 10023 E Pelican Street and would like to confirm the applicable front yard setback under the Town's Unified Development Ordinance before proceeding further.

I am reaching out at this stage specifically to confirm zoning interpretation prior to incurring costs for engineering drawings or permit preparation.

The proposed work includes:

- Extending the existing deck eastward by approximately 2–3 feet via cantilever to increase usable deck space
- Relocating the deck stairs from the interior to the exterior (east side), which would extend an additional ~4 feet
- Total forward/eastward extension of approximately 6–7 feet from the current deck edge

The existing structure is currently set back approximately 40 feet from the front lot line (measured from the edge of the access easement as applied to this lot).

Based on my review of UDO Section 8.6.3.7.1.1 (Reduction in Yard Setbacks), I understand that where the average setback of existing buildings on lots within 200 feet, on the same side of the same street, is less than the required setback, the required setback may be reduced to that average.

Using the Town's GIS system, I measured the front setbacks of the surrounding properties on the same side of E Pelican Street within 200 feet. These appear to range approximately from 23 to 32

Based on this, I would appreciate confirmation of the following:

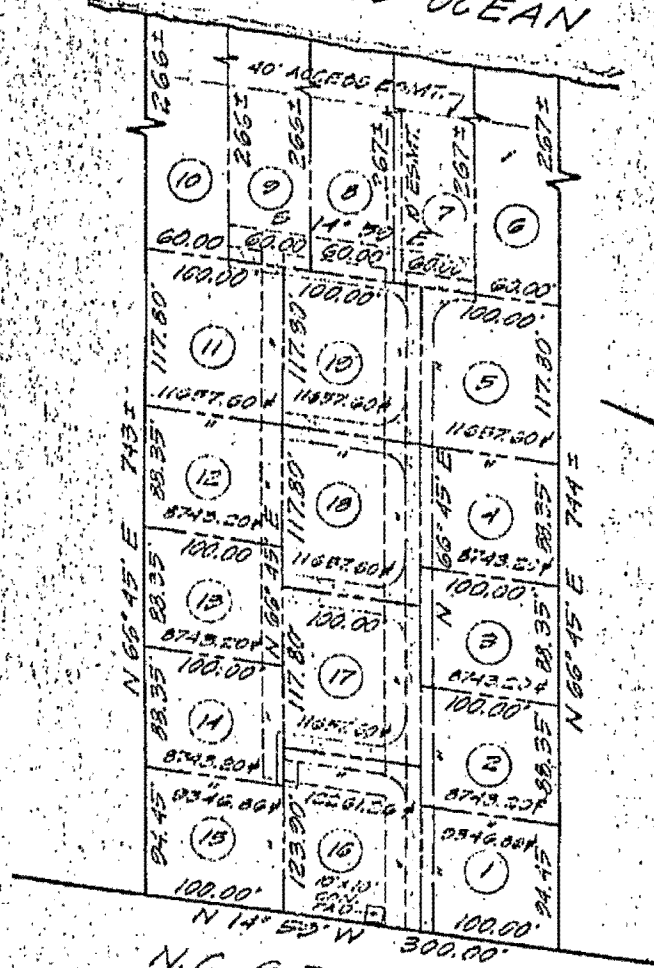
- If helpful, I am happy to provide a simple sketch or site plan showing the proposed extension relative to the setback line.

— —

Sebastian Ojanguren
ojanguren@gmail.com
 301-704-8775

Page 33 of 74

ATLANTIC OCEAN



N.C. S.R. 1243

NOTE: SURVEY DATA FROM MAP BY WILLIAM F. CLARK R.L.S. DATED OCT. 23, 1970, ENTITLED PELICAN PARK.

STATE OF NORTH CAROLINA, COUNTY OF DARE

I, D.J. NEAL, CERTIFY THAT THIS MAP WAS DRAWN FROM AN ACTUAL SURVEY MADE BY ME (DEED DESCRIPTION RECORDED IN BOOK 225, PAGE 273, THAT THE ERROR OF CLOSURE AS CALCULATED BY LATITUDES AND DEPARTURES IS 0.000 FEET, THAT THE BOUNDARIES NOT SURVEYED AS SHOWN AS BROKEN LINES PLOTTED FROM INFORMATION FOUND IN BOOK 225, PAGE 273, THAT THIS MAP WAS PREPARED IN ACCORDANCE WITH G.S. 47, ART. 2A, AS AMENDED, WITH MY HAND (AND SEAL) THIS DAY OF AUGUST, A.D., 19 75, [Signature] (REGISTERED SURVEYOR).
 SWORN TO AND SUBSCRIBED BEFORE ME THIS 21 DAY OF AUGUST, 19 75, [Signature] (NOTARY PUBLIC).
 BY COMMISSION EXPIRES July 14, 1980

LAND SUBDIVISION MODIFICATIONS FOR PELICAN PARK

TOWN: <u>NAGS HEAD</u>	TOWNSHIP: <u>NAGS HEAD</u>
COUNTY: <u>DARE</u>	<u>NORTH CAROLINA</u>
SCALE: <u>1" = 100'</u> DATE: <u>AUGUST</u>	ROSE AND PURCELL INC. SURVEYORS ENGINEERS PLANNERS
SUBDIVISION: <u>PELICAN PARK</u> MAP <u>4</u> BOOK <u>225</u> PAGE <u>273</u>	



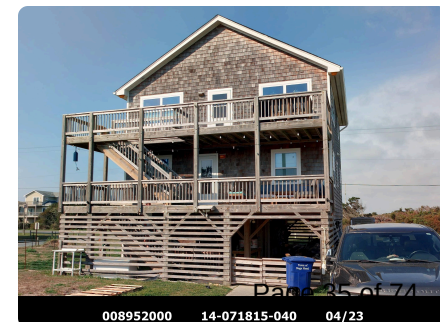
This map is prepared from data used for the inventory of the real property for tax purposes. Primary information sources such as recorded deeds, plats, wills, and other primary public records should be consulted for verification of the information contained in this map.

10023 E Pelican ST
Nags Head NC, 27959
Parcel: 008952000
Pin: 071815640956

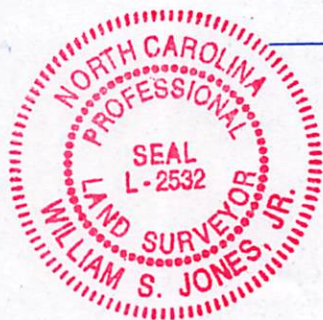
Owners: Ojanguren, Sebastian -
Primary Owner
Ojanguren, Ida -Primary Owner
Building Value: \$225,600
Land Value: \$523,400
Misc Value: \$0
Total Value: \$749,000

S23

Tax District: Nags Head
Subdivision: Pelican Park - Db 225 Pg 273
Lot BLK-Sec: Lot: 16 Blk: Sec:
Property Use: Residential
Building Type: Beach Box
Year Built: 1991



I, WILLIAM S. JONES JR., P.L.S., CERTIFY THAT UNDER MY DIRECTION AND SUPERVISION THIS PLAT WAS DRAWN FROM AN ACTUAL FIELD LAND SURVEY MADE BY ME FROM INFORMATION AS REFERENCED HEREON, AND THAT THE RATIO OF PRECISION IS 1:10,000+. WITNESS MY HAND AND SEAL THIS 14th DAY OF June 2014.

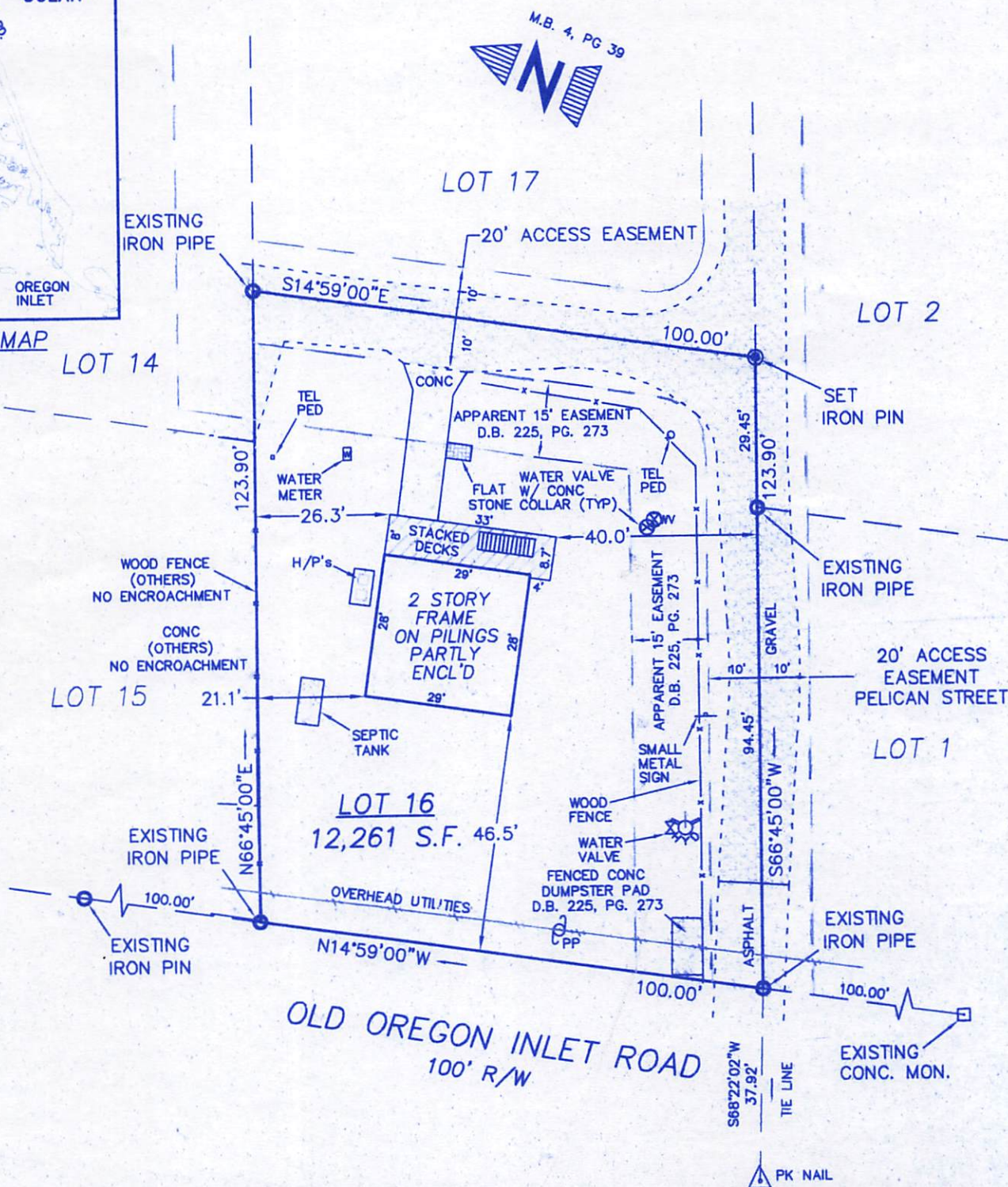


[Signature]
WILLIAM S. JONES JR., P.L.S. L-2532

Exhibit G



VICINITY MAP
N.T.S.



PHYSICAL SURVEY FOR
SEBASTIAN OJANGUREN

LOT 16, MODIFIED PELICAN PARK
MAP BOOK 225, PAGE 273
TOWN OF NAGS HEAD
DARE COUNTY, NORTH CAROLINA
SURVEYED: 6-12-14

NOTES:

- 1) THIS SURVEY IS SUBJECT TO ANY FACTS THAT MAY BE REVEALED BY A FULL AND ACCURATE TITLE SEARCH. SURVEYOR MAKES NO CERTIFICATION AS TO BUILDING SETBACK LINES. THEY SHOULD BE VERIFIED PRIOR TO CONSTRUCTION.
- 2) FIRM ZONE VE (EL 11)
3730071800J - 9-20-06
- 3) 10023 E. PELICAN STREET
- 4) ZONING SETBACKS:
FRONT - 30'
SIDE - 10'
REAR - 20% LOT DEPTH
SIDE STREET - 12'



GRAPHIC SCALE: 1" = 30'

S25

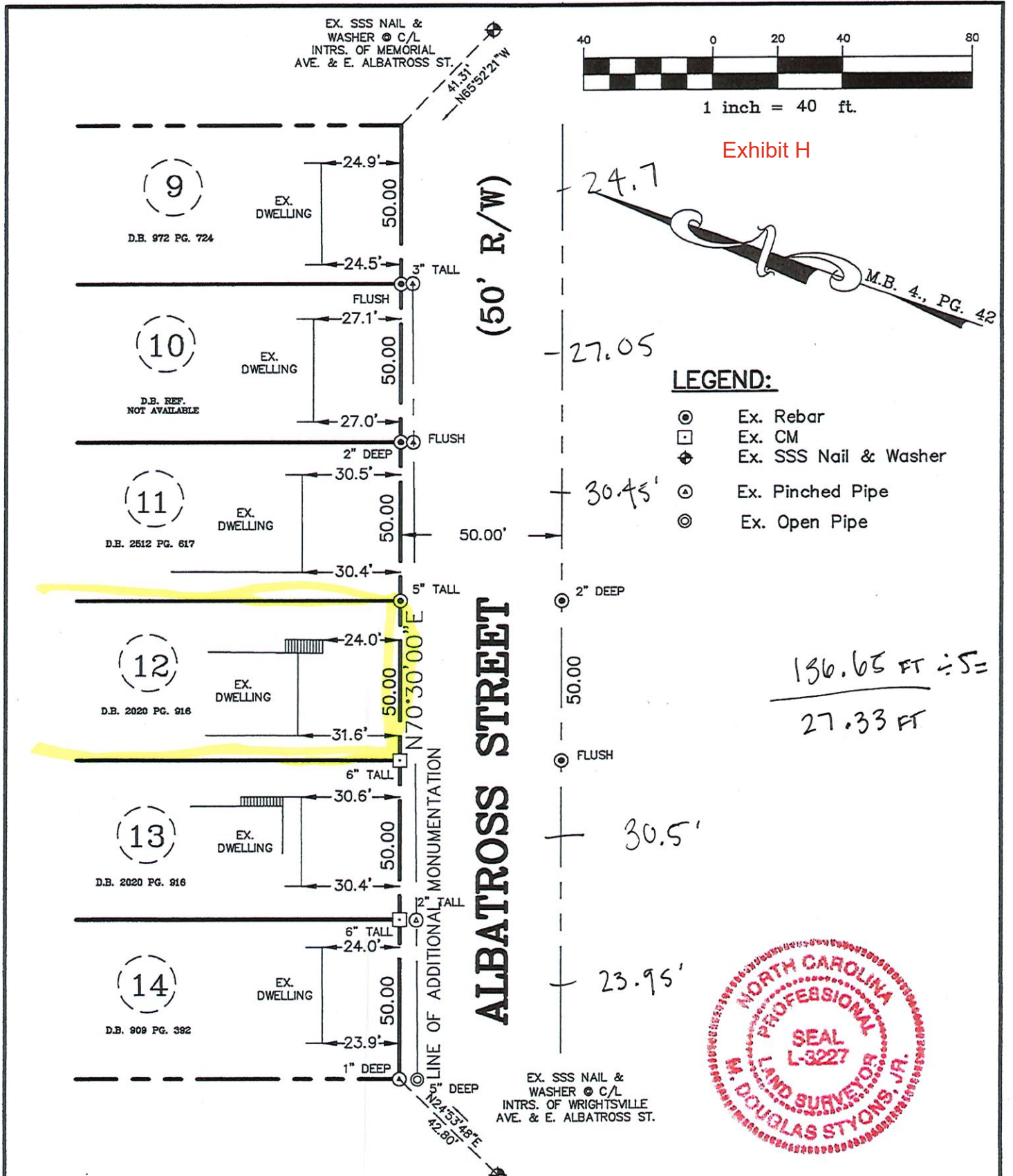
FILE NO: 14178

WILLIAM S. JONES JR., R.L.S., P.A. C-1301
303 WEST ARCHDALE STREET
KILL DEVIL HILLS, N.C. 27948
P: (252) 441-3673 F: (252) 441-0925

DATE: 6/13/14

SCALE: 1" = 30'

DRAWN BY: KO

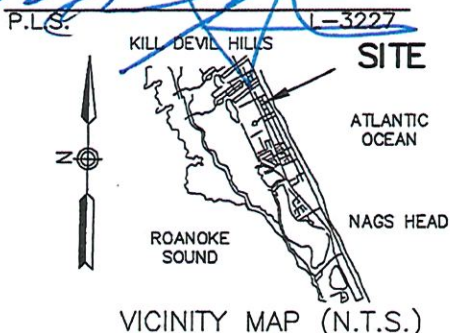


I, M. DOUGLAS STYONS, JR., P.L.S., certify that this plat was drawn from an actual field land survey that the error of closure as calculated by latitudes and departures is at least 1:10,000;

This is not a boundary survey but for information purposes only.

Witness my hand and seal this 2nd day of June A.D. 2022

"LINE OF HOUSES"



LOTS 9-14, MOSIER SHORES, BLOCK 9

SURVEYED FOR

KEVIN E. HOUSE
and KIMBERLEE S. HOUSE

NAGS HEAD TOWNSHIP
DARE COUNTY

NAGS HEAD
NORTH CAROLINA

DATE SURVEYED:
05-31-2022

REV.:

SCALE: 1" = 40'

FILE NO.: 22-078

DWG NO.: 22078ADJ

F.I.R.M.: 3720 9893 00 K
F.I.R.M. DATE: 6-19-20

FLOOD ZONE: "X"

REC. REF. M.B. 4, PG. 42

PIN NO.: MULTIPLE

C-1697
Styons Surveying Services P.A.
2700 N. Croatan Hwy. Kill Devil Hills, NC. 27948
Phone: (252) 441-1415 Fax: (252) 480-1182

Any unauthorized use or alteration of this document is prohibited
A red seal must be present for this to be an original document







Appellant Record

Appellant Application
Appellant Attachements

Pages A1 – A32

Sebastian Ojanguren
10023 E. Pelican Street
Nags Head, NC 27959
(301) 704-8775
ojanguren@gmail.com

June 4, 2026

By Hand Delivery — Date-Stamped Receipt Requested

Town of Nags Head
Department of Planning & Development
5401 South Croatan Highway
Nags Head, NC 27959

Re: Appeal of Administrative Determination — 10023 E. Pelican Street
Determination of May 26, 2026 by Kelly Wyatt, Director of Planning & Development
UDO § 8.6.3.7.1.1 (Front Yard Setback Averaging)

To the Town of Nags Head Board of Adjustment, and to Kelly Wyatt, Director of Planning & Development:

Enclosed for filing under UDO § 3.9 and N.C. Gen. Stat. § 160D-405 are the following materials in support of my appeal:

1. Notarized Zoning Appeal Application
2. Brief in Support of Appeal, with Exhibits A ~~and B~~
3. Check in the amount of \$300.00 payable to the Town of Nags Head (application fee)

Pursuant to the Town's Zoning Appeal Application instructions, this filing is made with both the Board (via the Department of Planning & Development) and the administrative official from whom the appeal is taken (Kelly Wyatt). I am hand-delivering identical packets to both today and respectfully request a date-stamped receipt for each.
t for each.

The determination being appealed was received by email on May 26, 2026, and this appeal is therefore filed within the 30-day period prescribed by UDO § 3.9.2.3.

I kindly request confirmation of the monthly filing deadline for the next available Board of Adjustment agenda, as well as the scheduled hearing date. In accordance with UDO § 3.9.2.4, I also request that the administrative official transmit the complete record of decision to the Board no less than one week prior to the hearing and provide me with a copy at the address above.

Thank you for your consideration of this appeal.

Sincerely,

Sebastian Ojanguren



**ZONING APPEAL APPLICATION
BOARD OF ADJUSTMENT
TOWN OF NAGS HEAD, NORTH CAROLINA**

Application No. _____ Date _____
Application Fee \$300.00 Receipt No. _____

THE BOARD OF ADJUSTMENT MAY HEAR AND DECIDE APPEALS WHERE IT IS ALLEGED THERE IS AN ERROR IN ANY ORDER, REQUIREMENT, DECISION OR DETERMINATION MADE BY AN ADMINISTRATIVE OFFICIAL IN THE ENFORCEMENT OF THE UNIFIED DEVELOPMENT ORDINANCE. THE BOARD ALSO HAS THE AUTHORITY TO INTERPRET THE ZONING MAP AND DECIDE QUESTIONS ON LOT LINES AND DISTRICT BOUNDARY LINES. ADDITIONAL PAGES MAY BE ATTACHED TO ANSWER ANY QUESTIONS IN THE APPLICATION OR TO PROVIDE ANY SUPPLEMENTAL INFORMATION.

Application Request: Appeal of Administrative Decision ____
Interpretation of Zoning Map ____

1. Applicant Name Sebastian Ojanguren
Mailing Address 10023 S. Old Oregon Inlet Rd.
City Nags Head State NC Zip Code 27959
Telephone 301-704-8775
2. Property Owner Name (If different from Applicant) _____
Mailing Address _____
City _____ State _____ Zip Code _____
Telephone _____
3. Property (If decision being appealed is specific to a particular property):
Street Address 10023 E. Pelican Street.
Tax Parcel Identification Number 008952000
Subdivision Name Pelican Park - Db 225 Pg 273 Section# _____ Lot# 16
Zoning District Classification R-2 Medium Density Residential
Current Use of Property Single-family residence (Primary Residence)

4. Date of decision being appealed May 26, 2026
5. Attach a copy of the administrative order, requirement, decision or determination being appealed.
6. Describe the specific provisions or portions of the decision being appealed.

The owner appeals the Town's administrative determination that the residential structures within 200 feet of the subject property do not qualify for inclusion in the front yard setback averaging calculation under UDO § 8.6.3.7.1.1, and the Town's conclusion that the applicable front yard setback for the subject property remains 30 feet from the edge of the access easement. The owner specifically appeals the Town's interpretation of the phrase "same side of the same street" in UDO § 8.6.3.7.1.1 as importing qualifying criteria — including "same section of roadway/street," "similar alignment," "similar relationship to the street," "access configuration," "similarly situated lots," and "common street alignment and development pattern" — that do not appear in the express text of § 8.6.3.7.1.1 or in any other provision of the UDO.

7. Specify the grounds for your appeal. Fully explain how the administrative official inaccurately interpreted and/or applied the terms of the zoning ordinance. What do you believe to be the correct answer, and why?

The Town's administrative determination of May 26, 2026 cannot be sustained. The Town denies application of UDO § 8.6.3.7.1.1 to the subject property by invoking six restrictive concepts — "same section of roadway/street," "similar alignment," "similar relationship to the street," "access configuration / easement system relationship," "similarly situated lots," and "common street alignment and development pattern" — none of which appears in the text of § 8.6.3.7.1.1, in the Appendix A definitions of "Street" or "Lot line, front," or in any other provision of the UDO that the Town has identified.

Under *Yancey v. Heafner*, 268 N.C. 263 (1966), and *Dellinger v. Lincoln County*, 248 N.C. App. 317 (2016), zoning regulations "cannot be construed to include or exclude by implication that which is not clearly [in] their express terms." A qualifying criterion that does not appear in the ordinance text cannot be imposed by interpretation.

Applied as enacted, UDO § 8.6.3.7.1.1 contains five qualifying criteria, every one of which the subject property and the existing residences at 10023A E. Pelican Street (Lot 17) and 10023B E. Pelican Street (Lot 18) plainly satisfy. The calculated average front yard setback for those two reference properties, measured from the edge of the access easement per UDO § 8.6.3.2, is approximately 20 feet, which is less than the 30-foot R-2 minimum and more than the 15-foot floor set by § 8.6.3.7.1.1. The averaging provision is triggered, and the applicable front yard setback for the subject property is approximately 20 feet from the edge of the access easement.

Additional support is provided by UDO § 5.3.4, which expressly cross-references § 8.6.3.7 as available to nonconforming structures, and by the rule that ambiguous zoning provisions must be construed in favor of the free use of real property. *Morris Communications Corp. v. City of Bessemer City Zoning Bd. of Adjustment*, 365 N.C. 152 (2011); *Schooldev East, LLC v. Town of Wake Forest*, 386 N.C. 775 (2024).

The grounds for appeal are set forth in detail in the attached Brief in Support of Appeal, which is incorporated by reference.

8. If you are not the property owner, or if the decision was not issued to you, explain how you are a person aggrieved by the decision.

9. If appeal is property specific list the names and addresses of all abutting property owners and the owners of property immediately across the street from the property affected. The list shall be current according to the most recent tax listing abstract as filed in the office of the Dare County Tax Supervisor.

—	Sherrod, Carl Bradley — 10021 E. Pelican Street (Lot 15) — Mailing: 3208 Old Brookewood Ct,	—
—	Richmond, VA 23233 — Parcel 008951000	—
—	Morris, Jeffrey A — 10021A E. Pelican Street (Lot 14) — Mailing: 6917 Harvey Ave NW, Canton, OH	—
—	44720 — Parcel 008950000	—
—	Makris, Dean G — 10023A E. Pelican Street (Lot 17) — Mailing: 1409 N Hudson St, Arlington, VA	—
—	22201 — Parcel 008953000	—
—	Shayner, Robert H and Shayner, Joanne M — 10025A E. Pelican Street (Lot 2) — Mailing: 10025 E	—
—	Pelican St Unit A, Nags Head, NC 27959 — Parcel 008938000	—
—	Sancilio, Christina and Cross, Brian — 10025 E. Pelican Street (Lot 1) — Mailing: 1224 Paramore Dr,	—
—	Virginia Beach, VA 23454 — Parcel 008937000	—

10. Are any attachments being submitted with this application? Yes X No

If yes, please identify attachments and number of pages.

1. Brief in Support of Appeal	—
2. Exhibit A to the Brief: Email from Kelly Wyatt to Sebastian Ojanguren dated May 26,	—
2026 (the administrative determination being appealed).	—
	—
	—
	—
	—

FILING OF APPLICATION

Variance and appeal applications are filed with the Nags Head Department of Planning & Development located at the Town of Nags Municipal Complex, 5401 South Croatan Highway, Nags Head, NC. Applications may be filed in person at the Department Monday through Friday during normal office hours or may be mailed to the Department at PO Box 99, Nags Head, NC 27959. Appeal applications must be filed with both the Board **and** the administrative officer from whom the appeal is taken within **30 days** of the date of the decision being appealed. Appeal applications not in the physical possession of the Board and the administrative officer at their offices at the Department of Planning & Development within the prescribed 30 day deadline, for any reason, will be deemed late. In order for an application to be considered complete all questions and information requested in the application must be answered and provided. Applications must have original notarized signatures of the applicant and must be accompanied by the required application fee. Applications found to be incomplete will not be accepted and will be returned to the applicant.

SCHEDULING OF APPLICATION

Applications submitted by the monthly filing deadline will be placed on the following month's Board agenda. The monthly filing deadline and Board meeting dates for the year are listed in the "Planning and Development Submittal Dates" published annually. You may view these dates on-line at www.nagsheadnc.gov or receive a copy by contacting the Department at (252) 441-7016.

HEARING OF APPLICATION

The Board of Adjustment is a quasi-judicial body consisting of five members. The Board's regular meeting date is the second Thursday of each month at 9:00 a.m. Their meeting is held in the Board Room located at the Town of Nags Head Municipal Complex. At the meeting the Board will hear testimony and receive evidence from the applicant, town staff and other interested parties. Board members cannot discuss any case with any interested parties or persons prior to the public hearing of the case. Any person who testifies at the hearing must be sworn in and any written or physical evidence presented to the Board will be retained by the Board.

BOARD DECISION

An affirmative 4/5 majority vote of the Board is required to grant a variance or appeal. Shortly after the meeting an Order will be prepared and signed by the Board Chairman stating the Board's decision and findings. This Order will be filed with the Town Clerk and delivered to the applicant by registered mail. Decisions of the Board may be appealed by any aggrieved party to Superior Court within 30 days from the filing of the Board's Order.

ADDITIONAL INFORMATION

Persons seeking additional information or assistance concerning variances or appeal applications should contact the Zoning Administrator at the Nags Head Department of Planning & Development at (252)441-7016.

CERTIFICATION

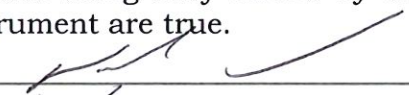
I certify that the information filed by me in this application is accurate to the best of my knowledge, information, and belief.


Signature of Property Owner/Aggrieved Party

6/4/2026
Date

STATE OF NC, COUNTY OF DADE
On this 4 day of JUNE, 2026

SEBASTIAN OJAGOREN personally appeared before me and is known to me to be the person who signed the foregoing instrument and he/she acknowledged that he/she signed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true.

Signature of Notary Public 
My Commission expires 7/06, 2030

CERTIFICATION BY APPLICANT OTHER THAN PROPERTY OWNER OR AGGRIEVED PARTY

I _____ (your name) file this application on the behalf of _____ (property owner name).

I am the _____ (attorney, contractor, etc.) for the property owner in this matter and file this application with the full knowledge and consent of the property owner. I certify that the information filed by me in this application is accurate to the best of my knowledge, information, and belief.

Signature

Date

STATE OF _____, COUNTY OF _____
On this _____ day of _____, 20____

_____ personally appeared before me and is known to me to be the person who signed the foregoing instrument and he/she acknowledged that he/she signed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true.

Signature of Notary Public _____
My Commission expires _____, 20____

APPELLANT’S BRIEF IN SUPPORT OF APPEAL

Town of Nags Head Board of Adjustment

Appellant:	Sebastian Ojanguren
Property:	10023 E. Pelican Street, Nags Head, NC
Determination Appealed:	Administrative determination of Kelly Wyatt, Director of Planning & Development, issued by email dated May 26, 2026
UDO provision at issue:	§ 8.6.3.7.1.1 (Front Yard Setback Averaging)
Statutory basis:	UDO § 3.9; N.C. Gen. Stat. §§ 160D-405, 160D-406

I. Statement of the Case

On May 19, 2026, the owner of 10023 E. Pelican Street asked the Town in writing, under N.C. Gen. Stat. § 160D-403, to determine the front yard setback that applies to his property under UDO § 8.6.3.7.1.1 (Front Yard Setback Averaging). The request laid out the wording of the ordinance, the recorded plat and deeds showing how the Pelican Park easement system is arranged, setback measurements for every home within 200 feet of the property, the resulting averages, and the North Carolina rules that govern disputes like this one between property owners and zoning staff.

By email dated May 26, 2026, Kelly Wyatt, Director of Planning & Development, issued the Town’s written determination denying the request. Her email states that it, “together with previous related email correspondence, shall serve as the Town’s written administrative determination should you wish to file an appeal.” That is the determination on appeal here.

The owner files this appeal within 30 days of receiving the determination, as required by UDO § 3.9.2.3 and N.C. Gen. Stat. § 160D-405(d).

II. The Question for the Board

Do the two existing homes at 10023A E. Pelican Street (Lot 17) and 10023B E. Pelican Street (Lot 18) count toward the front yard setback average for the subject property at 10023 E. Pelican Street under UDO § 8.6.3.7.1.1 — and if so, what front yard setback applies to the subject property?

III. Standard of Review

This case does not turn on a hard question of interpretation. The words of UDO § 8.6.3.7.1.1 are plain. The definitions in Appendix A are plain. And the facts are not in dispute — where

the property sits, how it is zoned, where the neighboring homes sit, how they are zoned, the setback measurements, and the addresses the Town itself assigned. The only question is whether the ordinance, read as written and applied to these undisputed facts, supports the Town's denial. It does not.

The staff did not interpret § 8.6.3.7.1.1. It added to it. The May 26 determination relies on six requirements that appear nowhere in the ordinance. North Carolina law does not allow new zoning restrictions to be added this way, and the Board's job is not to pick between competing readings of the text. The Board's job is to apply the ordinance the Town actually adopted.

Under UDO § 3.9.2.9, "The Board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all the powers of the official who made the decision." The Board may therefore decide the correct front yard setback itself.

IV. Statement of Facts

The facts below come from the materials the owner submitted with his May 19, 2026 request. Those materials are part of the record the staff sends to the Board under UDO § 3.9.2.4.

The subject property. 10023 E. Pelican Street (Lot 16, Pelican Park Modified) is a single-family residential lot in the R-2 Medium-Density Residential zoning district. The lot area is 12,238 square feet. The existing home (including the eastern deck) sits 30 feet back from the edge of the platted 20-foot access easement on the eastern boundary of the property — which is the same as 40 feet from the lot line, because the lot line runs down the centerline of the easement.

The Pelican Park subdivision. Pelican Park was platted in 1975 by Rose and Purcell, Inc., recorded at Book 225, Page 273, Public Registry of Dare County, as "Land Subdivision Modifications, Pelican Park." Every lot in the subdivision is served by one continuous, connected 20-foot access easement, labeled "Pelican Street" or "E. Pelican Street" on the recorded plat. The easement system starts at N.C. State Highway 1243 (S. Old Oregon Inlet Road) and runs throughout the subdivision. There are no separately named streets inside Pelican Park. Every part of the system is labeled "PELICAN ST" in the Town's own GIS.

The 10023 row. The Town has administratively assigned the addresses 10023, 10023A, and 10023B E. Pelican Street to Lots 16, 17, and 18 respectively. All three lots have property lines along the same north-south branch of the Pelican Street access easement system, and the Town addresses all three on Pelican Street as a single 10023 group. The 10023 row consists of three properties: the subject (Lot 16) and two other existing residences (Lots 17 and 18).

The 10021 row. Just north of the 10023 row, four more lots — Lots 12, 13, 14, and 15 — are addressed 10021C, 10021B, 10021A, and 10021 E. Pelican Street.

The setback measurements. Ten homes sit within 200 feet of the subject property. Six are north of the main east-west run of Pelican Street (Lots 12–15 in the 10021 row; Lots 17 and 18 in the 10023 row), and all six are in the same R-2 district as the subject. Measured from the edge of the access easement under UDO § 8.6.3.2, the two homes in the 10023 row sit 20.00 feet (Lot 17) and 20.22 feet (Lot 18) back. The four homes in the 10021 row sit 32.04 feet (Lot 12), 30.00 feet (Lot 13), 19.62 feet (Lot 14), and 30.02 feet (Lot 15) back. At 30 feet, the subject property is set back farther than any other home in the 200-foot group, by a wide margin.

The determination. On May 26, 2026, the Town issued an administrative determination denying the owner's request. The determination is reproduced in full as Exhibit A to this brief. In substance, the determination concludes that the residential structures on Pelican Park do not qualify for inclusion in the setback averaging calculation under UDO § 8.6.3.7.1.1, and that the applicable front yard setback for the subject property remains 30 feet from the edge of the access easement.

V. Summary of Argument

The Town's determination cannot stand. UDO § 8.6.3.7.1.1 sets out five requirements a property must meet to use setback averaging, and the subject property and the two existing homes in the 10023 row clearly meet every one of them. The Town denied the property the benefit of the section by relying on six NEW restrictions — “same section of roadway/street,” “similar alignment,” “similar relationship to the street,” “access configuration / easement system relationship,” “similarly situated lots,” and “common street alignment and development pattern” — and not one of those phrases appears in § 8.6.3.7.1.1, in the Appendix A definitions of “Street” or “Lot line, front,” or anywhere else in the UDO the Town has pointed to.

A zoning rule that can be enforced using requirements found nowhere in its text **is not really a rule; it is whatever the staff decides in a given case on any given date.** For nearly sixty years, the North Carolina Supreme Court has held that “[z]oning regulations are in derogation of common law rights and they cannot be construed to include or exclude by implication that which is not clearly [in] their express terms.” *Yancey v. Heafner*, 268 N.C. 263, 266 (1966). That rule, reaffirmed in *Dellinger v. Lincoln County*, 248 N.C. App. 317 (2016), rules out each of the requirements the Town added. If the Town wants the averaging provision to carry those limits, the answer is to amend the ordinance through the public process — not to read the limits into the existing text, in one owner's case, after he relied on the words as written.

Separately, the UDO's own cross-references show that § 8.6.3.7 is meant to apply broadly, including to existing homes on undersized lots. UDO § 5.3.4 names § 8.6.3.7 as an available exception to the setback rules for nonconforming structures. That reference would mean nothing if § 8.6.3.7.1.1 applied only to brand-new construction or only to full-sized lots.

The Board should reverse the determination and hold that the front yard setback for the subject property under § 8.6.3.7.1.1 is the average of the two qualifying homes in the 10023 row — about 20 feet from the edge of the access easement.

VI. Argument

A. The Determination Identifies No Ordinance Text Supporting Its Qualifying Criteria

The most striking thing about the Town's determination is what it leaves out. **The determination contains not a single reference to any part of the Unified Development Ordinance supporting any of the requirements it relies on.** The determination uses six **NEW** restrictions, and not one of these phrases appears in § 8.6.3.7.1.1, in the Appendix A definitions of "Street" or "Lot line, front," or anywhere else in the UDO the Town has pointed to:

- "same section of roadway/street"
- "similar alignment"
- "similar relationship to the street"
- shared "access configuration" and similar relationship to "the easement system"
- "similarly situated lots"
- "common street alignment and development pattern"

A zoning rule that can be enforced using requirements found nowhere in its text **is not really a rule; it is whatever the staff decides case by case on any given date.** North Carolina law does not let a town add zoning restrictions by interpretation instead of by enactment. The *Yancey* rule — that zoning regulations "cannot be construed to include or exclude by implication that which is not clearly [in] [their] express terms" — exists to protect property owners from exactly this. *Yancey v. Heafner*, 268 N.C. 263, 266 (1966). It has been reaffirmed for nearly sixty years, most recently in *Dellinger v. Lincoln County*, 248 N.C. App. 317 (2016). A restriction that is not in the text is not a restriction. A requirement that is not in the text is not a requirement.

On de novo review, the Board's job is to apply § 8.6.3.7.1.1 the way the Town wrote it, not the way the staff now applies it. As written, the section has five requirements, and only five:

1. The lot is in a residential district;
2. The comparison buildings are existing buildings on lots within 200 feet of the lot;
3. The comparison lots are in the same zoning district as the lot;
4. The comparison lots front on the same side of the same street as the lot; and
5. The resulting setback is not less than 15 feet.

The subject property and the two existing homes in the 10023 row meet every one. The Town's denial, built on six requirements the ordinance does not contain, cannot stand.

B. Section 8.6.3.7.1.1 Applies As Enacted

1. The five qualifying criteria

UDO § 8.6.3.7.1.1 provides in full:

"In any residential district where the average setback distance for existing buildings on all lots located wholly or partly within two hundred (200) feet of any lot, and within the same zoning district and fronting on the same side of the same street as such lot is less than the minimum setback required in such zoning district, the setback on such lot may be less than the required setback. However, the reduced setback shall be no less than the existing average setback distance for all lots within the two hundred (200) feet, and in no instance shall the setback be reduced to less than fifteen (15) feet."

The five requirements are specific and complete. The section says nothing about any of these: "section of roadway/street," "alignment," "relationship to the street," "access configuration," "similarly situated," "common street alignment," "development pattern," "block face," "street segment," "frontage orientation," or anything about easement shape or geometry. There is no requirement based on which direction a street runs, how the underlying easement is laid out, or how the comparison lots compare geometrically to the subject.

2. The subject property and the 10023 row meet each requirement

The subject property is in the R-2 district. The existing homes on Lot 17 (10023A) and Lot 18 (10023B) are also in R-2. Both lots are within 200 feet of the subject property. Both front on Pelican Street — the same street the subject property fronts on. The Town has effectively already said so: it grouped the three properties under one address root (10023, 10023A, 10023B), and that grouping only makes sense if the three share frontage on the same street.

3. The "same side of the same street" criterion is satisfied as a matter of the Town's own administrative practice

Section 8.6.3.7.1.1 requires that the reference lots front on "the same side of the same street" as the subject lot. The 10023 row satisfies this criterion as a matter of the Town's own administrative practice.

Same street. The Appendix A definition of "Street" is broad: "Street includes any public way, road, highway, street, avenue, boulevard, parkway, alley, lane, viaduct, bridge, and *the approaches thereto* within the Town and shall mean the entire width of the right-of-way between abutting property lines." It lists every kind of way and specifically includes "the approaches thereto." Nothing in it splits a single named street into separate pieces based on direction, branch, or shape. The other "Street" definitions in Appendix A ("Street, collector," "Street, environmental," "Street, local access," "Street, major," "Street, marginal access," "Street, subcollector") do not allow splitting one named street into several streets based on direction or geometry either.

The Town's own GIS labels every part of the Pelican Park system "PELICAN ST." Where the Town wanted a different street, it gave it a different name — "ALTOONA NORTH ST" (parallel, to the south) and "S OLD OREGON INLET RD - SR 1243" (the state highway, to the west). Inside Pelican Park, the GIS shows no separately named street. The Town's naming practice nearby proves the point: E Limulus Drive runs east-west off S Old Oregon Inlet Road, and its north-running leg has a different name, S Sandy Court — not "Limulus Drive." E Altoona Street S runs east-west off the same highway, and its north-running leg is named E Pioneer Street — not "Altoona Street." In Pelican Park, by contrast, every leg of the system carries the one name "Pelican Street." When the Town wants a separate street, it names one. It did not do so here.

Same side. The Town assigned the addresses 10023, 10023A, and 10023B to Lots 16, 17, and 18 — one shared address root that ties all three properties to Pelican Street as a single addressed group. All three lots have property lines along the same north-south leg of Pelican Street, which is labeled "PELICAN ST" in the Town's GIS. By addressing the three properties as a set, the Town has already treated them as fronting on the same side of the same street. The Town cannot say these properties share an address group because they share Pelican Street frontage, and at the same time say they do not share Pelican Street frontage when it comes to § 8.6.3.7.1.1.

4. The calculation under § 8.6.3.7.1.1

The qualifying reference buildings are the existing residences on Lot 17 (10023A) and Lot 18 (10023B). Measured from the edge of the access easement under UDO § 8.6.3.2, the setbacks are:

Address	Lot	Setback (per § 8.6.3.2)
10023A E. Pelican St.	Lot 17	20.00 ft
10023B E. Pelican St.	Lot 18	20.22 ft
Sum		40.22 ft
Average (÷ 2)		20.11 ft

The calculated average of 20.11 feet is less than the otherwise-applicable R-2 front setback of 30 feet. The averaging provision of § 8.6.3.7.1.1 is therefore triggered. The applicable front yard setback for the subject property under § 8.6.3.7.1.1 is approximately 20 feet from the edge of the access easement. This is comfortably above the 15-foot floor set by the section.

Section 8.6.3.7.1.1 does not require any minimum number of comparison lots. It refers to "existing buildings on all lots" within 200 feet, and an average of two lots is a perfectly good average. There is no minimum-count requirement in the text, and — for the reasons below — one cannot be added by interpretation.

5. The 10021 Row Is a Separate Town-Administered Group

The four residences just north of the 10023 row are addressed by the Town as 10021, 10021A, 10021B, and 10021C E. Pelican Street — a different address root. The same

principle that places Lots 17 and 18 within the qualifying pool with the subject — the Town’s own administrative grouping by address — places the 10021 row in a separate group. Under § 8.6.3.7.1.1, applied consistently with the Town’s own grouping practice, the qualifying pool is the 10023 row.

C. Each of the Town’s Six Added Requirements Fails

The Town’s determination uses six ideas to deny the property the benefit of § 8.6.3.7.1.1. Under the *Yancey* and *Dellinger* rule, each one has to be tied to actual ordinance language. None can be.

1. “Same section of roadway/street”

The determination states that § 8.6.3.7.1.1 “requires that qualifying properties be located on the ‘same side of the same street’ as the subject property” and that “[i]n applying this provision, the Town interprets this requirement to apply to properties located along the same section of roadway/street.” The phrase “section of roadway/street” does not appear in § 8.6.3.7.1.1. It does not appear in the Appendix A definition of “Street.” It does not appear in any UDO definition. The Town has identified no ordinance text supporting the substitution of “section of roadway/street” for the ordinance’s actual phrase “same street.”

The Appendix A definition of “Street” directly rules this out. It is broad — “[s]treet includes any public way, road, highway ... and the approaches thereto” — and defines the street as “the entire width of the right-of-way between abutting property lines.” Under that definition a single named street is one thing, not a collection of “sections.” If the Town wanted to let a single named street be split into separate sections for averaging, it had to say so in the ordinance. It did not.

2. “Similar alignment”

The determination states that the qualifying properties must have “similar alignment” and that “[t]he row of properties extending generally east-west along the horizontal portion of Pelican Street do not share the same alignment ... as the subject property.” The word “alignment” does not appear in § 8.6.3.7.1.1. It does not appear in the Appendix A definition of “Street.” The Town has identified no ordinance text supporting an “alignment” requirement.

The argument also has no application to Lots 17 and 18. Both lots have property lines along the same north-south leg of Pelican Street that the subject property does, and all three are addressed by the Town on Pelican Street as part of the 10023 group. The “alignment” criterion, if it existed in the ordinance — which it does not — would still not disqualify Lots 17 and 18.

3. “Similar relationship to the street”

The determination states that the qualifying properties must have “a similar relationship to the street.” This phrase, like “alignment,” does not appear in § 8.6.3.7.1.1 or in any UDO definition. “Relationship to the street” is undefined, unstandardized, and unanchored to any ordinance text. The Town has identified no ordinance text supporting it.

4. “Access configuration” and “the way those properties relate to the easement system”

The determination states that “the access configuration and the way those properties relate to the easement system differs from the subject property and the lots immediately associated with the north-south portion of Pelican Street.” Section 8.6.3.7.1.1 says nothing about easement shape, easement geometry, easement width, or how a property “relates to the easement system.” The Town has pointed to no ordinance language making any of these a requirement.

The Appendix A definition of “Lot line, front” directly rules out any easement-shape disqualification. It says: “Lot line, front means the line separating a lot from the right-of-way of the street which is designated by the owner as the front street, except that where there is an access easement, *that easement line shall be the front lot line, rather than the street itself.*” The UDO treats the access easement as the very thing that front yards are measured from, for every lot it serves. Treating differences in easement shape as a reason to disqualify a lot adds a requirement that the controlling definition rejects.

5. “Similarly situated lots”

The determination concludes that the Town’s interpretation “has historically focused on maintaining consistent setback relationships among similarly situated lots.” The phrase “similarly situated” appears nowhere in § 8.6.3.7.1.1, nowhere in the Appendix A definitions, and nowhere else in the UDO that the Town has identified.

The drafters of § 8.6.3.7.1.1 already said what makes properties comparable: they listed five specific requirements. Those five are the test. Adding a separate “similarly situated” requirement on top would replace those specific requirements with case-by-case discretion and would make the written requirements little more than a suggestion.

The North Carolina Court of Appeals made the point in *Schooldev East, LLC v. Town of Wake Forest*, 386 N.C. 775 (2024): “[i]f local governments adopt ordinances that interfere with property rights, they owe it to property owners to use plain language,” and “[p]roperty owners should not need law degrees to figure out what local governments allow them to do with their land.” “Similarly situated” is the opposite of plain language. It is a phrase built for case-by-case discretion, not for telling property owners in advance what they can do.

6. “Common street alignment and development pattern”

The determination invokes a Town interpretive practice “focused on maintaining consistent setback relationships among similarly situated lots sharing a common street alignment and development pattern.” Neither “common street alignment” nor “development pattern” appears in § 8.6.3.7.1.1. The terms appear nowhere in the Appendix A definitions. No ordinance text has been identified supporting either as a qualifying criterion.

In any event, the “development pattern” rationale undermines itself on the facts of this case. The subject property at 30 feet from the edge of the access easement is the deepest setback within the 200-foot pool by a substantial margin. Every other existing residence within 200 feet — six on the north side of the east-west corridor, four on the south side —

is set back less than the subject. Permitting the subject property to move forward to the calculated average would bring the property substantially *closer* to, not further from, the prevailing pattern of development on Pelican Street. Denying the averaging provision perpetuates the subject property's status as the single deepest outlier inconsistent with the established neighborhood pattern.

D. The UDO's Internal Cross-References Confirm § 8.6.3.7 Applies Here

Two other parts of the UDO confirm that § 8.6.3.7 is meant to apply broadly, including to existing homes on undersized lots.

1. UDO § 5.3.4 expressly cross-references § 8.6.3.7 as available for nonconforming structures

UDO § 5.3.4, governing nonconforming structures on lots abutting the Atlantic Ocean or Roanoke Sound, provides:

"However, when dimensional requirements can be met, they shall be met, except as provided for in Article 8, Section 8.6.3.7, Reductions in Yard Setbacks."

This reference settles the question. The Town's own ordinance treats § 8.6.3.7 — which includes § 8.6.3.7.1.1, the averaging provision here — as available to relax the setback rules even for *existing nonconforming structures*. If § 8.6.3.7.1.1 applied only to brand-new homes, or only to full-sized lots, this reference would have no meaning. It rules out reading § 8.6.3.7.1.1 as limited to new construction or to conforming lots.

2. UDO § 5.2.2.1 does not bar application to nonconforming lots

The subject property is a nonconforming lot of record (12,238 sq ft against the R-2 minimum of 20,000 sq ft). UDO § 5.2.2.1 provides that a single-family dwelling may be erected on such a lot "subject to ... all dimensional requirements applying to that district, other than lot area and lot width, [being] met."

Section 5.2.2.1 does not block § 8.6.3.7.1.1. The averaging provision *sets* what the setback requirement is on a lot that qualifies for it. It does not carve out an exception to a fixed number; it changes what the required front setback is in the first place. Section 5.2.2.1 says all dimensional requirements "applying to that district" must be met. On a lot that qualifies for averaging, the requirement that applies is the averaged setback — so meeting the averaged setback satisfies § 5.2.2.1.

On top of that, the § 5.3.4 reference shows § 8.6.3.7 is available even where the normal setback could not otherwise be met. Reading § 5.2.2.1 to deny an undersized-lot owner the same averaging the UDO gives a nonconforming-structure owner under § 5.3.4 would make no sense: it would give less relief to undersized lots than to nonconforming structures, even though both provisions sit in the same Article and deal with the same kind of nonconformity.

E. The “Public Street” Language in the Yard, Front Definition Cannot Be Read Literally

The Appendix A definition of “Yard, front” describes “a yard extending between side lot lines across the front of a lot adjoining the public street.” Pelican Street is a private access easement, not a public street. If the Town’s position rests on reading “public street” literally — so that lots fronting on private easements have no front yard at all — that reading fails for three reasons.

First, that reading would make UDO § 8.6.3.2 pointless. Section 8.6.3.2 specifically tells you how to measure setbacks on “lots of record which front on access easements.” If lots fronting on access easements had no front yard at all, § 8.6.3.2 would have nothing to do.

Second, the Appendix A definition of “Lot line, front” expressly contemplates access easements: “Lot line, front means the line separating a lot from the right-of-way of the street which is designated by the owner as the front street, except that where there is an access easement, that easement line shall be the front lot line, rather than the street itself.” The “Yard, front” and “Lot line, front” definitions must be read together; reading “public street” in the Yard, front definition literally would directly contradict the access-easement clause in the Lot line, front definition.

Third, the Town’s longstanding administrative practice has been to treat every lot in Pelican Park as having a front yard, to measure that front yard from the edge of the access easement under § 8.6.3.2, and to issue permits accordingly for nearly fifty years. The Town’s May 26 determination expressly confirms this practice: “lots within Pelican Park front on access easements and ... pursuant to UDO definitions and Section 8.6.3.2, yard and setback measurements for such lots are measured from the edge of the access easement rather than the lot line.” The Town cannot maintain that the subject property has a front yard for measurement purposes but lacks a front yard for averaging purposes.

VII. Two Principles That Govern the Board’s Decision

The two principles below are not merely arguments against the Town’s particular reading. They are governing rules of North Carolina zoning law that apply to any reading of any ordinance. Whichever way the Board resolves the specific arguments in Section VI, these two principles must guide that resolution.

A. If the Section Is Unclear, the Doubt Goes to the Owner

If the Board thinks § 8.6.3.7.1.1 can reasonably be read more than one way, North Carolina law has long settled which way the doubt breaks: unclear zoning language must be “construed in favor of the free use of real property.” *Morris Communications*, 365 N.C. at 157.

The Supreme Court repeated this in *Schooldev East, LLC v. Town of Wake Forest*, 386 N.C. 775 (2024): “[T]his Court will resolve any well-founded doubts about a provision’s meaning in favor of ‘the free use of land.’” The Court added that “[i]f local governments

adopt ordinances that interfere with property rights, they owe it to property owners to use plain language” and that “[p]roperty owners should not need law degrees to figure out what local governments allow them to do with their land.”

The Court of Appeals has applied this rule directly to disputes between owners and local zoning staff. *Visible Properties, LLC v. Village of Clemmons*, 284 N.C. App. 743 (2022): “[W]hen there are two or more reasonable interpretations of a law, the law is ambiguous,” and unclear zoning provisions must be “construed in favor of the free use of property.” *Frazier v. Town of Blowing Rock*, 2022-NCCOA-782 (N.C. Ct. App. Dec. 6, 2022): unclear zoning language must be read in favor of the free use of real property.

The Town’s reading, which adds six restrictions the ordinance does not contain, is not really an “interpretation” at all; it is an addition. But even if the Board thinks both the Town’s reading and the owner’s reading are reasonable, the doubt has to be resolved for the owner.

B. If the Ordinance Is Unclear, the Fix Is to Amend It and Not to Read New Limits Into It Against the Owner

An adopted ordinance is law. It binds the Town just as much as it binds the property owner. The staff’s job is to apply § 8.6.3.7.1.1 the way the Board of Commissioners wrote it and not to add new requirements, case by case, that the Commissioners never adopted. When a staff member denies an application using standards that appear nowhere in the ordinance, that is not applying the law; it is writing new law. Under North Carolina law, only the Board of Commissioners can do that, and only by amending the ordinance through a public process with notice and a hearing. See N.C. Gen. Stat. § 160D-601 (governing the adoption and amendment of zoning regulations).

This matters to every property owner, not just this one. An owner is entitled to read the ordinance and know what he can and cannot do with his land. An owner who reads § 8.6.3.7.1.1 finds five requirements. He does not find “similar alignment,” “similar relationship to the street,” “access configuration,” “similarly situated lots,” or “common street alignment and development pattern,” because the Commissioners never put them there. A rule the owner cannot find in the text in advance — one that surfaces only after he asks — is a rule he cannot plan around, invest around, or build around. As the Supreme Court put it in *Schooldev East*, “[i]f local governments adopt ordinances that interfere with property rights, they owe it to property owners to use plain language,” and “[p]roperty owners should not need law degrees to figure out what local governments allow them to do with their land.” 386 N.C. 775 (2024).

The rule that unclear zoning language is read in favor of the free use of property is not just a tiebreaker. It puts the cost of unclear wording on the side that wrote the wording — the Town. If the Town wants “the same side of the same street” to carry the limits its determination describes, the right move is to amend § 8.6.3.7.1.1 — going forward, with public notice, in words every owner can read. The wrong move is to read those limits into the existing text, in one owner’s case, after he has relied on the words as written. Reading

the doubt in the Town's favor would reward unclear drafting and excuse the Town from the plain-language duty the Supreme Court has placed on it.

If the Board upholds this determination, it blesses a system where § 8.6.3.7.1.1 means not what it says, but whatever the staff says it means in each new case. In that system the written ordinance stops being the rule and becomes just a starting point for staff discretion. A rule that means whatever the person enforcing it says it means is not really a rule. The Board should not endorse that, and should apply § 8.6.3.7.1.1 the way the Commissioners wrote it.

VIII. Requested Relief

The owner respectfully requests that the Board:

1. **Reverse** the Town's May 26, 2026 administrative determination;
2. **Hold** that the residential structures at 10023A E. Pelican Street (Lot 17) and 10023B E. Pelican Street (Lot 18) qualify for inclusion in the setback averaging calculation under UDO § 8.6.3.7.1.1 as existing buildings on lots within 200 feet of the subject property, within the same R-2 zoning district, fronting on the same side of the same street as the subject property; and
3. **Determine** that the applicable front yard setback for 10023 E. Pelican Street under UDO § 8.6.3.7.1.1, measured from the edge of the access easement per UDO § 8.6.3.2, is the calculated average of the residences on Lots 17 and 18: approximately 20 feet.

IX. Conclusion

The Town's determination cannot stand. It rests on six restrictions that appear nowhere in the ordinance the Town is supposed to be enforcing. North Carolina law does not let the Town add by interpretation what it never put in the ordinance. If the Town wants to narrow the averaging provision in § 8.6.3.7.1.1, the right way is to amend the ordinance through the public process — not to read unwritten limits into the existing text against an owner who relied on its plain words.

The five requirements of § 8.6.3.7.1.1 are written on the face of the ordinance. The subject property meets all five. This appeal should not have been necessary.

The Board should reverse the determination and apply § 8.6.3.7.1.1 as written.

Respectfully submitted,

Sebastian Ojanguren

10023 E. Pelican Street Nags Head, NC (301) 704-8775 ojanguren@gmail.com

Exhibits

Exhibit A: Town of Nags Head administrative determination, email from Kelly Wyatt to Sebastian Ojanguren dated May 26, 2026.

The materials in Exhibit A are part of the record of decision transmitted to the Board by the administrative official under UDO § 3.9.2.4.

A19



Sebastian Ojanguren <ojanguren@gmail.com>

RE: Front Setback Determination Request – 10023 E Pelican St

1 message

Kelly Wyatt <Kelly.Wyatt@nagsheadnc.gov>

Tue, May 26, 2026 at 9:53 AM

To: Sebastian Ojanguren <ojanguren@gmail.com>

Cc: Chris Trembly <Chris.Trembly@nagsheadnc.gov>, Andy Garman <Andy.Garman@nagsheadnc.gov>

Mr. Ojanguren,

Thank you for your additional correspondence and supporting materials regarding your request for a front yard setback determination pursuant to Section 8.6.3.7.1.1 of the Town of Nags Head Unified Development Ordinance.

After further review of the materials submitted, it remains the Town's interpretation that the setback averaging provisions of Section 8.6.3.7.1.1 do not apply in the manner proposed.

As previously noted, Section 8.6.3.7.1.1 requires that qualifying properties be located on the "same side of the same street" as the subject property. In applying this provision, the Town interprets this requirement to apply to properties located along the same section of roadway/street, with similar alignment and a similar relationship to the street.

The Town acknowledges that lots within Pelican Park front on access easements and that, pursuant to UDO definitions and Section 8.6.3.2, yard and setback measurements for such lots are measured from the edge of the access easement rather than the lot line. However, that measurement methodology does not alter or expand the separate qualifying requirement within Section 8.6.3.7.1.1 that properties be located on the "same side of the same street" as the subject property for purposes of setback averaging.

The subject property fronts a north-south leg/extension of Pelican Street. The row of properties extending generally east-west along the horizontal portion of Pelican Street do not share the same alignment or relationship to the street as the subject property. Additionally, the access configuration and the way those properties relate to the easement system differs from the subject property and the lots immediately associated with the north-south portion of Pelican Street.

While the Pelican Street access easement system is interconnected, the Town does not interpret shared easements, common addressing, or GIS mapping alone as determinative for purposes of setback averaging under Section 8.6.3.7.1.1.

The Town's interpretation of this section has historically focused on maintaining consistent setback relationships among similarly situated lots sharing a common street alignment and development pattern, rather than combining setback conditions from differently oriented or functionally distinct portions of an access network.

Accordingly, it remains the Town's determination that the properties identified in your submission do not qualify for inclusion in the setback averaging calculation applicable to the subject property. Based on the Town's interpretation of Section 8.6.3.7.1.1, the applicable front yard setback for the subject property remains 30 feet from the edge of the access easement.

A20

I understand your desire to avoid preparing and submitting a full development application, including the associated expense of engineering and related materials, prior to obtaining a final determination from the Nags Head Board of Adjustment regarding this interpretation. As such, this correspondence, together with previous related email correspondence, shall serve as the Town's written administrative determination should you wish to file an appeal.

An appeal of an administrative determination is a quasi-judicial public hearing before the Board of Adjustment and must be submitted in compliance with Section 3.9 of the UDO, Appeals of Administrative Decisions, located at this link: https://library.municode.com/nc/nags_head/codes/code_of_ordinances?nodeId=PTIUNDEOR_ART3LEQUDIPR_PTIIQUDIPR_S3.9APADDE

Additionally, the Board of Adjustment Appeal Application may be accessed at the link below. It is the first item under the heading of Zoning/Planning: <https://www.nagsheadnc.gov/431/Forms-Permit-Applications>

Thank you,

Kelly

Kelly Wyatt

Director of Planning & Development

Office: 252-449-6042

Email: Kelly.wyatt@nagsheadnc.gov



From: Sebastian Ojanguren <ojanguren@gmail.com>
Sent: Tuesday, May 19, 2026 3:44 PM
To: Kelly Wyatt <Kelly.Wyatt@nagsheadnc.gov>
Cc: Chris Trembly <Chris.Trembly@nagsheadnc.gov>
Subject: Re: Front Setback Determination Request – 10023 E Pelican St

Ms. Wyatt,

As a follow up to my emails below, I am formally submitting a Request for Written Zoning Determination under N.C. Gen. Stat. § 160D-403 regarding the applicable front yard setback for 10023 E. Pelican Street under UDO § 8.6.3.7.1.1 (Front Yard Setback Averaging).

On May 15, 2026, I requested clarification regarding the procedural path for obtaining this type of determination, specifically whether the Town would issue a written code interpretation under § 160D-403(c) based on submitted documentation or require a complete zoning application. Because I have not yet received clarification on that question and in the interest of moving the matter forward, I am submitting the enclosed materials for consideration under the Town's preferred process.

My intent is to obtain a clear written determination regarding the applicable setback prior to incurring engineering, survey, and permit preparation costs.

A21

To the extent appropriate under the Town's procedures and N.C. Gen. Stat. § 160D-403, I request that the Town issue its response as a written determination.

Respectfully,

Sebastian Ojanguren
10023 E. Pelican Street
Nags Head, NC 27959
(301) 704-8775

On Fri, May 15, 2026 at 12:56 PM Sebastian Ojanguren <ojanguren@gmail.com> wrote:

Ms. Wyatt,

Thank you for the information you have provided to date and my apologies for the short sequence of emails, but I want to make absolutely sure I understand the procedural path before incurring engineering and survey costs.

Under N.C. Gen. Stat. § 160D-403(c), code interpretations are recognized as a distinct category of "determination," separate from decisions on permit applications. My understanding is that the Town may issue a written code interpretation of how UDO § 8.6.3.7.1.1 applies to my property without requiring a complete permit application, based on the recorded plat, the Town's GIS data, the relevant Appendix A definitions, and a written request supported by documentation.

To make sure I follow the right process, could you please confirm:

1. Whether the Town will issue a written code interpretation under § 160D-403(c) regarding the application of UDO § 8.6.3.7.1.1 to 10023 E. Pelican Street based on submitted documentation, without requiring a complete permit application; and
2. If a "complete zoning application" is required even for an interpretation under § 160D-403(c), what specific documents the Town requires (e.g., recorded plat, conceptual site sketch, survey, engineered plans). Knowing this in advance will help me prepare the appropriate submission without unnecessary cost.

I have prepared a comprehensive written request with supporting exhibits that I am ready to submit. I simply want to confirm the correct procedural channel before doing so.

Thank you for your patience as I work through this process.

Best regards,

Sebastian Ojanguren
10023 E. Pelican Street
Nags Head, NC
(301) 704-8775

cc: Chris Tremblay

On Fri, May 15, 2026 at 9:33 AM Sebastian Ojanguren <ojanguren@gmail.com> wrote:

Ms. Wyatt,

Thank you for your response.

Before proceeding with any engineering or permit preparation, I would like to clarify the process for obtaining a formal zoning determination under Section 8.6.3.7.1.1.

At this stage, I am not seeking building permit approval. I am seeking a formal zoning interpretation of the applicable front setback based on the averaging provision.

Given that, please confirm whether a zoning determination can be issued based on a conceptual site sketch and supporting documentation, without requiring full engineered plans.

My goal is to obtain a clear determination of the applicable setback before incurring the cost of engineering and survey work.

Thank you,
Sebastian Ojanguren

On Fri, May 15, 2026 at 9:14 AM Kelly Wyatt <Kelly.Wyatt@nagsheadnc.gov> wrote:

Good Morning Mr. Ojanguren,

My position remains unchanged. The provisions of Section 8.6.3.7.1 would not apply in the manner you have requested.

This section of the ordinance is clearly intended to promote uniformity in development patterns along the same side of the same street. Where there is an established row of homes located forward of the required front yard setback, the ordinance provides limited flexibility so that a new home/new construction may align in a manner generally consistent with the existing development pattern.

In this case, the property to the north that you reference is not similarly situated to your lot. In addition to my position and concern regarding whether access to 10021 is via the 20-foot-wide Pelican Street access easement or a separate 15-foot-wide access easement, the home is also not aligned in conformity with your property. The adjoining front setback line is located more than 20 feet west of your front lot line orientation.

Based on both the intent and purpose of this ordinance section, as well as the physical configuration of the lots and access easements, I do not find that this provision is applicable to your property.

If you wish to pursue the matter further, you may submit a complete zoning application outlining your request and supporting reasoning. Upon review, I would issue a formal zoning determination, which could then be appealed to the Nags Head Board of Adjustment.

Thank you,

Kelly

Kelly Wyatt

Director of Planning & Development

Office: 252-449-6042

Email: Kelly.wyatt@nagsheadnc.gov



On Thu, May 14, 2026 at 10:28 AM Kelly Wyatt <Kelly.Wyatt@nagsheadnc.gov> wrote:

Good Morning Mr. Ojanguren –

Note that the recorded plat for Pelican Park appears to show the 20' wide access easement (Pelican Street) terminating at the northeast corner of your property. What then picks up is a separate, smaller easement running east to west. I have attached surveys for 10021B and 10021D that indicate a 15' wide easement/apparent easement.

It is this 15' wide easement that runs along the southernmost property line of Lot 14. This 15' wide easement appears to end at Lot 15, at which point the properties driveway picks up to continue access. Note the survey for Lot 15 depicts an asphalt drive, merging into the concrete driveway within the 15' wide easement.

Based upon the recorded platting and survey information available, it is my interpretation that the lots north and northeast of your property front on a separate 15' easement arrangement rather than on the same 20' Pelican Street access easement fronting your property. As such, these lots are not considered to be "fronting on the same side of the same street" for purposes of Section 8.6.3.7.1.1 regarding front yard setback averaging.

8.6.3.7. Reductions in Yard Setbacks.

8.6.3.7.1. Front Yard Setback.

8.6.3.7.1.1. *In any residential district where the average setback distance for existing buildings on all lots located wholly or partly within two hundred (200) feet of any lot, and within the same zoning district and fronting on the same side of the same street as such lot is less than the minimum setback required in such zoning district, the setback on such lot may be less than the required setback. However, the reduced setback shall be no less than the existing average setback distance for all lots within the two hundred (200) feet, and in no instance shall the setback be reduced to less than fifteen (15) feet.*

Please let me know if you have questions.

Thank you,

Kelly

Kelly Wyatt

Director of Planning & Development

Office: 252-449-6042

Email: Kelly.wyatt@nagsheadnc.gov



A25

From: Sebastian Ojanguren <ojanguren@gmail.com>
Sent: Wednesday, May 13, 2026 4:23 PM
To: Kelly Wyatt <Kelly.Wyatt@nagsheadnc.gov>
Cc: Chris Trembly <Chris.Trembly@nagsheadnc.gov>
Subject: Re: Front Setback Determination Request – 10023 E Pelican St

Good afternoon Ms. Wyatt,

Thank you for your response. I would like to clarify one specific point regarding the applicability of 10021 E. Pelican Street.

Based on the recorded plat and the Town GIS data (attached), the access corridor serving these lots is clearly identified as a **platted access easement**. The recorded covenants and plat do not identify any portion of this corridor as a private driveway, nor do they indicate a termination of the easement at 10021. Rather, it is shown as a continuous access easement serving multiple properties.

This same easement is being used to establish the front lot line for setback purposes for these lots. Accordingly, 10021 E. Pelican Street:

- is located on the same side of Pelican Street
- fronts the same platted access easement
- and is within 200 feet of my property

Based on these facts, 10021 E. Pelican Street should be included as a qualifying property under Section 8.6.3.7.1.1 and included in the setback averaging calculation.

Please confirm that 10021 E. Pelican Street is included in the averaging calculation. If it is not being included, please provide the legal basis for:

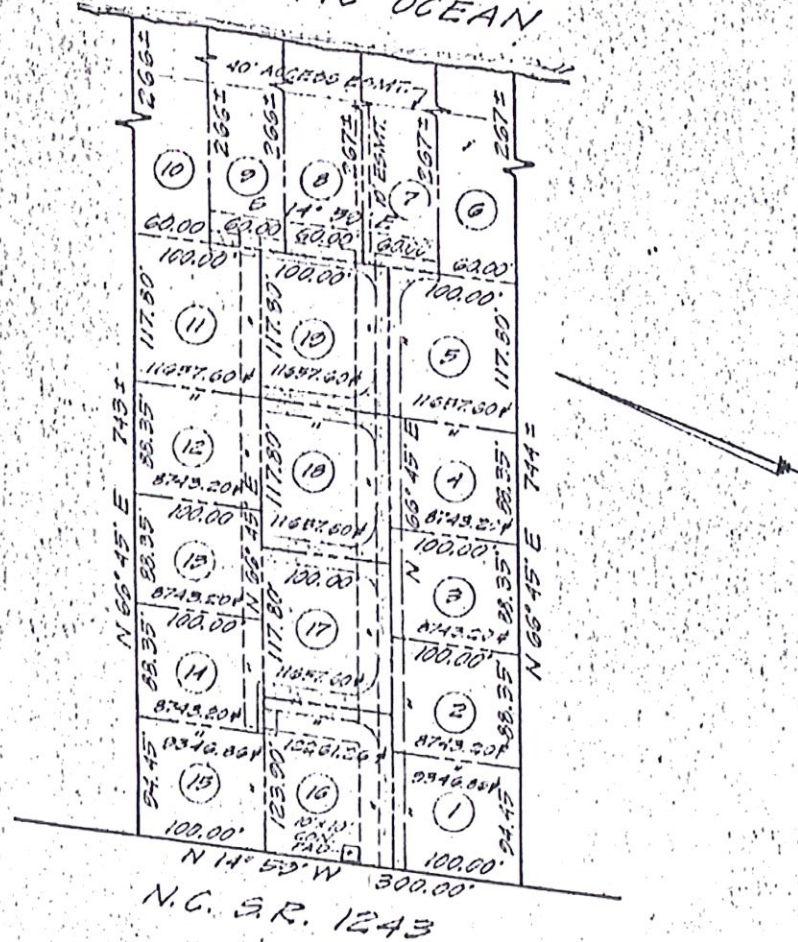
1. Treating any portion of the platted access easement as a "driveway," and
2. Excluding 10021 E. Pelican Street despite it sharing the same recorded frontage and access easement

Thank you,
Sebastian Ojanguren
301-704-8775

A26



A27



On Wed, May 13, 2026 at 3:19 PM Kelly Wyatt <Kelly.Wyatt@nagsheadnc.gov> wrote:

Good Afternoon Mr. Ojanguren –

I hope you are doing well today. I apologize for the delay in getting back to you. It has been an unusually busy period.

I've attached a survey where I've marked the approximate 30-foot front yard setback line for reference. In reviewing Section 8.6.3.7.1, Front Yard Setback, the ordinance specifically references lots "fronting on the same side of the same street" as the subject property. Because the front lot line for your property is oriented toward the north-south leg/extension of Pelican Street, the comparable properties for setback averaging purposes would only be those properties fronting along that same side of that same street segment. Based upon my review, the only comparable property appears to be 10021 E. Pelican Street directly north of the subject property. However, it appears the platted access easement may actually terminate near that property, with what is visible on aerial photography functioning more as a driveway extension rather than a continued roadway easement.

The row of homes running west-east along the horizontal portion of Pelican Street would not qualify for averaging purposes because they are not located on the same side of the same street relative to the subject frontage; and they are oriented toward a different street segment and frontage condition.

While the adjoining roadway segments carry the same street name, the ordinance does not reference lots located on the same named street. Rather, the ordinance requires the lots to be "fronting on the same side of the same street as such lot." In this case, your property fronts on the north-south segment/extension of Pelican Street, whereas the lots you identified front on the east-west segment of Pelican Street. Therefore, those lots are not considered to be fronting on the same side of the same street for purposes of Section 8.6.3.7.1.

Please let me know if you have any questions or if you would like to discuss further.

Thanks,
Kelly

Kelly Wyatt

Director of Planning & Development

Office: 252-449-6042

Email: Kelly.wyatt@nagsheadnc.gov



From: Sebastian Ojanguren <ojanguren@gmail.com>
Sent: Wednesday, May 13, 2026 9:55 AM
To: Kelly Wyatt <Kelly.Wyatt@nagsheadnc.gov>
Subject: Re: Front Setback Determination Request – [10023 E Pelican St](#)

Good morning Ms. Wyatt,

I am following up again on my March 27 request regarding the front setback determination for my property at [10023 E Pelican Street](#), as well as my prior follow-up.

I understand the Town has been handling several time-sensitive matters, but I have been holding off on moving forward with engineering drawings and permit preparation pending confirmation of the applicable setback under UDO Section 8.6.3.7.1.1.

At this point, I would greatly appreciate a response so I can proceed appropriately.

Specifically, I am requesting confirmation of:

- The applicable front setback for this lot based on the averaging provision
- Whether the proposed deck and stair extension, maintaining that setback, would be compliant

If this request is better handled by another member of staff, please let me know or feel free to forward it accordingly.

Thank you for your time and assistance.

Best regards,
Sebastian Ojanguren

301-704-8775

On Thu, Apr 30, 2026 at 3:32 PM Sebastian Ojanguren <ojanguren@gmail.com> wrote:

Good afternoon Ms. Wyatt,

I wanted to follow up on my prior email regarding the front setback determination for my property at 10023 E Pelican Street. I know there have been several more time-sensitive matters over the past few weeks, but I wanted to make sure this request did not get lost in the shuffle.

As noted previously, I am seeking confirmation of the applicable front setback under UDO Section 8.6.3.7.1.1 before proceeding with engineering drawings and permit preparation. I have been holding off on moving forward until I receive guidance from the Town.

When you have a moment, I would appreciate confirmation of:

- The applicable front setback for this lot based on the averaging provision
- Whether the proposed deck and stair extension, maintaining that setback, would be compliant

If this request would be better handled by another member of the planning staff, please feel free to forward it along or let me know who I should contact directly.

Thank you for your time, I appreciate your help with this.

Best regards,
Sebastian Ojanguren
301-704-8775

On Fri, Mar 27, 2026 at 9:40 AM Sebastian Ojanguren <ojanguren@gmail.com> wrote:

Good afternoon Ms. Wyatt,

I hope you are doing well. I am reaching out with a zoning question related to my property at 10023 E Pelican Street. If this is better directed to another member of your team, I would appreciate it if you could please forward it to the appropriate contact.

I am planning improvements to the existing deck at my property located at 10023 E Pelican Street and would like to confirm the applicable front yard setback under the Town's Unified Development Ordinance before proceeding further.

I am reaching out at this stage specifically to confirm zoning interpretation prior to incurring costs for engineering drawings or permit preparation.

The proposed work includes:

- Extending the existing deck eastward by approximately 2–3 feet via cantilever to increase usable deck space
- Relocating the deck stairs from the interior to the exterior (east side), which would extend an additional ~4 feet
- Total forward/eastward extension of approximately 6–7 feet from the current deck edge

The existing structure is currently set back approximately 40 feet from the front lot line (measured from the edge of the access easement as applied to this lot).

Based on my review of UDO Section 8.6.3.7.1.1 (Reduction in Yard Setbacks), I understand that where the average setback of existing buildings on lots within 200 feet, on the same side of the same street, is less than the required setback, the required setback may be reduced to that average.

Using the Town's GIS system, I measured the front setbacks of the surrounding properties on the same side of E Pelican Street within 200 feet. These appear to range approximately from 23 to 32 feet, with an average near 30 feet. I have attached an annotated image showing the lots considered and the measurements used.

Thank you,

Sebastian Ojanguren
ojanguren@gmail.com

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Thank you,

Sebastian Ojanguren
ojanguren@gmail.com

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Thank you,

Sebastian Ojanguren
ojanguren@gmail.com

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Sebastian Ojanguren
ojanguren@gmail.com

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Thank you,

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ojanguren@gmail.com