

**Town of Nags Head
Board of Adjustment**

August 14, 2025

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