

**Town of Nags Head
Board of Adjustment**

April 8, 2021

The Board of Adjustment of the Town of Nags Head met in regular session Thursday, April 8, 2021, in the South Wing of Nags Head Fire Station #16 in Nags Head, North Carolina.

Members Present Margaret Suppler, Bobby Gentry, John Mascaro, Angelina Lowe, Tina Adderholdt

Others Present Kelly Wyatt, Michael Zehner, Ben Gallop, Jay Wheless, Margaux Kerr, Lily Nieberding

Call to Order Chair Margaret Suppler called the meeting to order at 9:00 a.m. as a quorum was present.

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

1. Variance request submitted by Dare Hospitality, LLC on behalf of Comfort Inn South by the Ocean Hotel from the requirements of Section 10.34.6, General Provisions for Lighting and Section 5.7, Nonconforming Sign and Sign Structure. The property for which the variance is being requested is zoned CR, Commercial Residential and is located at 8031 S Old Oregon Inlet Rd.

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

Evidence presented by Town Deputy Planning Director Kelly Wyatt presented a variance request from Dare Hospitality, LLC on behalf of Comfort Inn South on the Ocean, for the property located at 8031 S. Old Oregon Inlet Road, Nags Head.

The applicant is seeking a variance from the requirements of two sections of the Unified Development Ordinance (UDO): Section 10.34 – General Provisions for Lighting and Section 5.7 – Nonconforming Sign and Sign Structure.

Section 10.34.6. states that no light fixture, including signs, shall exceed thirty-five (35) feet in height, except as specified in subsections 10.34.7 or 10.37.5.6. Where existing nonconforming light fixtures exist, including signs, such light fixtures and sign may be replaced provided there is no increase in the degree of nonconformity.

Section 5.7 states that if a sign and/or sign structure exists that was legal at the time of its erection that would not be allowed under the terms of this UDO, the sign may continue, subject to the following provisions:

5.7.1. A nonconforming sign shall not be moved or replaced except to bring the sign into conformity. No additional signage shall be added to a site which has a nonconforming sign.

5.7.2. If a sign and structure become physically unsafe, damaged, destroyed or unlawful due to storm-related damage or damage incurred at no fault of the owner where such damage exceeds 50 percent of the replacement cost, the sign shall be declared destroyed by the building inspector and shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of this UDO.

Ms. Wyatt explained that in early February of this year, Mr. Vince Krause of Landmark Hotel Group, LLC provided to Town Staff for their initial review a sign package for updated signage at this location. Upon review, staff noted that the proposed internally illuminated wall sign located on the elevator shaft, at an elevation of approximately 75 feet from grade, would conflict with Section 10.34.6.

As Mr. Krause indicated in his variance application, an internally illuminated wall sign previously existed in this location and at this height, however, the wall sign incurred damage in 2016 during a storm and had to be removed; however, electricity still remains in this location.

Ms. Wyatt explained that existing signage above the maximum 35-foot height limitation is considered to be nonconforming as it does not comply with the current standard. Since the wall sign came down in 2016 and was not replaced, it lost its legally nonconforming status thus requiring a variance for it to be re-installed as requested.

Ms. Wyatt reminded the Board that a variance shall be authorized only when affirmative findings for all the requirements set out in the section are made by the Board.

Ms. Wyatt reminded the Board that a variance shall be authorized only when affirmative findings for all the requirements set out in the section are made by the Board.

Ms. Wyatt then proceeded to review Staff's findings of fact for the Board:

Unnecessary hardship would result from the strict application of the UDO.

Staff submits that given the existence of electrical service for the sign and the preexisting location, and the lack of such service in a compliant location, that unnecessary hardship exists as a result of the application of Section 10.34.6 of the UDO, as it limits the height of light fixtures, including signs, to 35 feet. This variance request seeks to replace a wall sign that previously existed at this height and in this location.

The hardship results from conditions that are peculiar to the property, such as location, size, or topography.

Staff believes that while the difficulty may not be peculiar in terms of the size, shape and topography of the applicant's property, it is peculiar in the size and height of the hotel structure and use, as well as the existence of electrical service. At approximately 85 feet in total height, it is understandable that for visibility purposes signage above the 35 feet would be desired. To staff's knowledge, this is the only one of two properties within the Town affected by this Section.

Ms. Wyatt noted that the other property is the Holiday Inn Express and a few years ago the Board heard a similar request.

If the Board is inclined to grant this variance it may be appropriate to give consideration to the type of lighting. With an internally illuminated/backlit sign the light of the sign itself may spill over onto adjoining properties. If the signage were to be illuminated by a light fixture designed, located, aimed, and shielded so that the light is directed only onto the sign area that may be more visually and aesthetically appropriate.

The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

Staff is unaware of any actions taken by the applicant/property owner that resulted in conditions associated with the variance request. The hardship as noted by the applicant is not the result of the property owners' actions. The hardship has occurred as a result of removing the previously existing wall sign due to storm damage. The damage incurred to the wall sign structure was not the result of the owner's actions, but rather the storm event.

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

Staff would submit that the requested variance is consistent with the spirit, purpose and intent of the ordinance, such that public safety is secured, and substantial justice is achieved. This requested variance would allow the continuation of wall signage at a height and location previously occupied in a legal nonconforming manner.

Based on their review, Staff is of the opinion that the strict enforcement of the UDO as it pertains to the requested lighting of signage greater than 35 feet in height from grade does create practical difficulties or unnecessary hardship for the applicant and for this particular site. Therefore, Staff would recommend that the Board grant the requested variance with consideration given to the type of lighting for the sign. Ms. Wyatt noted that she, as well as the applicant, Vince Krause, were available to answer any questions for the Board.

Ms. Wyatt confirmed that the current sign is internally illuminated and the new sign would need to meet the Town's lighting requirements.

Ms. Wyatt confirmed for Mr. Mascaro that where the existing sign is now is considered legally non-conforming.

Ms. Wyatt confirmed that 35 feet would put the sign around the 3rd or 4th story of the building. Ms. Wyatt confirmed that the proposed sign is at 75 feet.

Ms. Wyatt confirmed for Mr. Gentry that she had not received any objections or complaints from the adjoining neighbors.

Board Attorney Jay Wheless inquired about Staff's recommendation with regards to the Town's lighting ordinance. Ms. Wyatt confirmed that it does not need to be a condition as Staff can manage that issue. Ms. Wyatt confirmed that what has been proposed meets the Town's current ordinance.

Ms. Wyatt did note that the Board of Commissioners recently adopted an ordinance with regards to illuminated signs but that this request was vested as it was made prior to the adoption of the new ordinance.

Ms. Wyatt confirmed for Ms. Adderholdt that the applicant stated that if they were to bring the sign down to 35 feet in order to be compliant with the ordinance, the light would affect the units around that area.

Evidence presented by
Applicant

Vincent Krause, representative for the property owner (Dare Hospitality), addressed the Board. Mr. Krause explained that where the sign is being proposed is where the elevator equipment room is located which is where the electrical is located. The proposed sign would pull power from that location. Mr. Krause stated that the building has cinder block floors with cables going through it so the sign and electrical are above the roofline.

After the storm they wanted to put the sign back but the sign was beyond repair. They elected to try to live without it but it was not meeting their Brand's standards. The (Comfort Inn) brand requires them to have the logo on the building.

Mr. Krause noted that if they were to bring the sign down to the 35 feet not only would it be very difficult to wire it, but it would also not be aesthetically pleasing, and the light would affect not only their units but the house next door as well.

Mr. Krause confirmed for Chair Supplier that if the storm had not happened, the previous sign would most likely still be there as it was aging very well. The body of the sign remained intact however the storm destroyed the lenses and the internal electrical component as well as the cabling to the existing sign. The storm also damaged the roof and had to be replaced.

Mr. Krause confirmed for Ms. Lowe that the visibility of the sign is

better higher up. You can see the sign much better. They want people to have a good way finder to know where they are located.

Mr. Krause confirmed for Mr. Mascaro that the font of the letter C for Comfort had recently changed. The C has been around forever but was redesigned.

Mr. Wheless reviewed all exhibits from Staff and the Applicant (including the Staff report and variance application) and asked that all the documents be accepted into evidence.

Chair Suppler admitted the evidence and then closed the Public Hearing and asked for discussion.

Ms. Suppler noted that she drives by that property at least once a day and there has always been a sign up there except for after the storm. Ms. Suppler also stated that to her knowledge there have never been any complaints about the sign. Ms. Wyatt confirmed that the Town has not received any complaints either.

Mr. Gentry stated that aesthetically it is a nice looking sign and building and he did not believe the proposed sign would look right anywhere else.

Ms. Suppler agreed stating that where they want to locate the new sign is the site of the original sign and the electrical is still there. Ms. Suppler pointed out that there are buildings on that road that have still not been repaired from that storm.

Mr. Mascaro agreed noting that Staff was ok with what they were proposing and that they had heard testimony that the proposed sign would be in compliance with the Town's Lighting Ordinance.

The Board then proceeded to review the findings of fact:

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

Does the hardship result from conditions that are peculiar to the property? The Board agreed unanimously that Yes it does.

Does hardship result from actions taken by the applicant? The Board agreed unanimously that No it did not.

Is the requested variance in keeping with the spirit and intent of the Ordinance? The Board agreed unanimously that Yes it was.

Motion

Based on their findings and together with Staff's findings, John Mascaro moved to approve the variance request. Tina Adderholdt seconded the motion, and the motion passed unanimously.

Order

The Board of Adjustment of the Town of Nags Head (the "Board") held a public hearing on April 8, 2021, to consider a variance application submitted by Dare Hospitality, LLC, on behalf of Comfort Inn South by the Ocean (the "Owner") seeking to vary the requirements of Section 10.34.6, General Provisions for Lighting, and Section 5.7, Nonconforming Sign and Sign Structure, of the Unified Development Ordinance (the "UDO") as to the property located at 8031 S. Old Oregon Inlet Road, Nags Head. The Board, having heard all of the evidence and arguments presented at the hearing, makes the following **FINDINGS OF FACT:**

1. The Owner owns the Property.
2. The property is located within the CR, Commercial Residential Zoning District.
3. Section 10.34.6 of the UDO states that no light fixture, including signs, shall exceed thirty-five (35) feet in height, except as specified in subsections 10.34.7 or 10.37.5.6. Where existing nonconforming light fixtures exist, including signs, such fixtures and signs may be replaced provided there is no increase in the degree of nonconformity.
4. Section 5.7 of the UDO states that if a sign and/or sign structure exists that was legal at the time of its erection but would not be allowed under the terms of the UDO, the sign may continue subject to specific provisions, including that such a sign shall not be moved or replaced except to bring it into conformity.
5. In February 2021, the Owner submitted a proposal to replace an internally illuminated wall sign previously located on the elevator shaft at an elevation of approximately 75 feet from grade. The previous sign was damaged during a storm in 2016 and removed.
6. The proposed wall sign conflicts with the current 35-foot height limit for light fixtures and the nonconformity provisions, as the previous sign's removal caused it to lose its legally nonconforming status.
7. The proposed sign's location aligns with existing electrical infrastructure on the elevator equipment room at the 75-foot height. Lowering the sign to comply with the 35-foot limit would require significant structural and electrical modifications and would diminish the sign's visibility and aesthetic appeal.
8. The Owner provided testimony that the requested variance is necessary to meet brand standards and provide effective wayfinding for visitors.

9. Town Staff received no objections or complaints from adjoining property owners regarding the proposed sign.
10. Town Staff recommended granting the variance, with consideration given to ensuring compliance with the Town's lighting ordinance.

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

1. All parties are properly before the Board, and the Board has the jurisdiction to consider and render a decision on the Requested Variance.
2. Conclusions Regarding Specific Variance Criteria established by Section 3.10.1, Standards for Granting a Variance, of the Unified Development Ordinance:
 - (a) A strict application of the ordinance **does** result in an unnecessary hardship to the Applicant/Owner.
 - The existing electrical infrastructure and the preexisting sign location create a hardship, as relocating the sign to comply with the 35-foot limit would require significant modifications and diminish functionality and aesthetic value.
 - (b) The hardship **does** result from conditions that are peculiar to the property, such as location, size, or topography.
 - The height and design of the hotel structure, along with the location of electrical infrastructure, present unique conditions that impact compliance with the UDO.
 - (c) The hardship **does not** result from actions taken by the Applicant or the property owner.
 - The hardship arises from storm-related damage that necessitated the removal of the previous sign, not from any action taken by the Owner.
 - (d) The Requested Variance **is** consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.
 - The requested variance allows for the replacement of a sign in a preexisting location, aligning with branding needs while maintaining compliance with lighting standards.

THEREFORE, based upon all of the foregoing, the application for a variance to allow a wall sign at a height of 75 feet from grade, exceeding the 35-foot height limit for light fixtures, is GRANTED with the following conditions:

1. The proposed sign must comply with all applicable Town lighting requirements.
2. A copy of the executed decision on this approved variance shall be recorded at the Dare County Register of Deeds.

Adjourn

There being no further business to discuss, the meeting adjourned at 9:35 AM.

Respectfully Submitted,
Lily Campos Nieberding

