



AGENDA

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

THURSDAY, MAY 8, 2025; 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. December 12, 2024 (Alexander Variance)

C. SWEARING IN OF WITNESSES

D. CASES

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

E. ADJOURNMENT

**Town of Nags Head
Board of Adjustment**

December 12, 2024 (DRAFT)

The Board of Adjustment of the Town of Nags Head met in regular session Thursday, December 12, 2024 in the Board Room, Nags Head Municipal Complex, Nags Head, North Carolina.

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

Others Present Kelly Wyatt, Tyler D. McKeithan, Lily Nieberding, Chris Trembly

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:

Variance request submitted by Tom and Molly Alexander from Section 8.6.3.4 of the Unified Development Ordinance as it pertains to Corner Lot Setback Requirements.

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

Approval of Minutes Chair Suppler called for the approval of the minutes.

Judy Burnette moved to approve the minutes from the October 15, 2021, meeting. Alice Coffey seconded, and the motion carried unanimously.

Judy Burnette moved to approve the minutes from the February 8, 2024, meeting. Bobby Gentry seconded, and the motion carried unanimously.

Evidence Presented by the Town Planning Director Kelly Wyatt explained that Tom and Molly Alexander, property owners of 3100 S. Virginia Dare Trail (corner of Bittern Street and S. Virginia Dare Trail), are requesting a variance from Section 8.6.3.4 of the Unified Development Ordinance (UDO) to install a 6' x 7' elevator on top of their driveway on the north side of their existing home. The property is zoned C-2, General Commercial.

Ms. Wyatt then proceeded to review 8.6.3. Yard Requirements, specifically 8.6.3.4. Corner Lots explaining that in the case of a corner lot abutting an improved right-of-way, to ensure adequate sight clearance, the minimum width of the side yard adjacent to the right-of-way shall be no less than fifteen (15) feet, except in the case of nonconforming lots of record that are less than 10,000 square feet in lot area and sixty (60) feet or less in lot width, in which case the minimum side yard shall be twelve (12) feet. Ms. Wyatt noted that Staff would be applying the 12 ft setback in this scenario. The

proposed elevator would encroach about 2.5 feet to that 12 ft. side yard.

As the applicant has stated in the variance application, the proposed elevator is necessary to address the mobility challenges faced by Mr. Alexander, who has been diagnosed with Parkinson's Disease, a progressive condition impacting his ability to navigate the home.

Currently, all bedrooms are located on the second floor, with the kitchen and living areas on the third floor. The elevator would allow Mr. Alexander to access these levels of the home safely and maintain day-to-day activities with his family. To avoid increasing lot coverage, which has already been maximized, the elevator is proposed to be constructed over the existing driveway therefore no new lot coverage is proposed.

If this property were not subject to the corner lot designation, the standard side yard setback in the C-2 district would be 8 feet, and no variance would be required. It is the corner lot setback requirement that necessitates this request.

Ms. Wyatt also noted that section 8.6.3.6 of the UDO provides certain exclusions from yard requirements, such as allowances for the outermost three feet of eaves, gutters, uncovered handicap ramps, or cargo lifts for single- and two-family dwellings. However, these exclusions do not apply to elevators, and therefore, this proposed structure cannot utilize this provision.

In 2021 local governments were required to amend their ordinances to comply with North Carolina General Statutes revisions to Chapter 160D, the enabling legislation allowing municipalities and counties to adopt and enforce land use development regulations.

Specifically, NCGS 160D-705 regulates Quasi-Judicial zoning decisions, which a Board of Adjustment Variance is. As part of these 160D revisions, Subsection (d)(2) now provides language that states, "A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability".

Ms. Wyatt stated that this section was provided as an attachment for the Board of Adjustments consideration as part of their meeting packet. This provision supports the applicants' request by recognizing the need for reasonable accommodation.

Ms. Wyatt reviewed the findings of fact and the standards for granting a variance, for the Board.

When unnecessary hardships would result from carrying out the strict letter of this UDO, the Board of Adjustment shall vary any of the provisions of the UDO upon a showing of all of the following:

3.10.1.1. Unnecessary hardship would result from the strict application of the UDO. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

Staff would submit that unnecessary hardship would result from the strict application of Section 8.6.3.4 of the Unified Development Ordinance. The applicant's home currently does not provide accessible access to essential living spaces. Without the proposed elevator, the applicant/owner may be unable to safely access these spaces as their mobility declines. If unable to install an elevator, it would effectively render the home inaccessible for the applicant/owner.

3.10.1.2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. However, Ms. Wyatt reminded the Board that per the new General Statute, a variance may be granted when necessary and appropriate to make reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

Staff would submit that the property is constrained by its corner lot designation and nonconforming dimensions. These characteristics do make compliance with the setback requirements challenging. The increased setback for corner lots is in place to ensure adequate sight clearance at intersections; however, staff would submit that the requested 2-foot 6-inch encroachment of the elevator as requested would not negatively impact or impair sightlines at this intersection of S. Virginia Dare Trail and Bittern Street.

The layout of the existing home limits options for elevator placement as well. The proposed location over the existing driveway was selected to avoid increasing lot coverage, which is already maximized. This approach minimizes impacts on the property while meeting the applicant's accessibility needs.

This is a four-bedroom home which requires two 10'x18' parking spaces. The parking pad/driveway for this home was nonconforming prior to the variance request. If approved, the variance would further limit the parking area available for vehicles. The applicant/owner are full-time, permanent residents of Nags Head and have noted in the application that they have been able and will continue to be able to park their two vehicles in this area without issue.

This variance request seeks to balance the applicant's need for reasonable accommodation with adherence to the Town's setback requirements. The proposed elevator addresses a significant mobility challenge without adding lot coverage or compromising public safety. Approval of this request would be consistent with federal and state

laws promoting accessibility for individuals with disabilities.

3.10.1.3. 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 finds that the hardship is not self-imposed. The need for an elevator is driven by the applicant's mobility issues stemming from a Parkinson's Disease diagnosis, a condition beyond the applicant/owner's control.

As noted above, without the corner lot designation, the side yard setback for this property would be 8 feet, and the elevator could be installed without the need for a variance.

3.10.1.4. 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 proposed elevator would encroach 2 feet 6 inches into the 12-foot setback, leaving over 9 feet to the property line. Staff does not believe that this encroachment would impair sightlines or public safety, and that it would preserve the intent of the ordinance's corner lot setback requirements.

Granting this variance is consistent with the ordinance's intent by allowing for reasonable accommodation while maintaining safety and neighborhood standards. It promotes substantial justice by enabling the applicant to access essential areas of their home, aligning with the Federal Fair Housing Act's goal of ensuring accessibility for people with disabilities.

Based upon the above analysis, Staff is of the opinion that the strict enforcement of the Unified Development Ordinance (UDO) as it pertains to the requested elevator encroachment into the corner lot setback does create practical difficulties or unnecessary hardship for the applicant/owner and for this particular site. Therefore, Staff recommends that the Board approve the requested variance.

Evidence Presented by the Applicant Ms. Wyatt confirmed that as far as the sightlines go, the only possible impact would be for people traveling North on Va Dare Trail. If they are traveling South on the beach road or on Bittern Street, the encroachment would not impede them from seeing the intersection. Furthermore, the elevator is proposed to be set back far enough in the home that it would not be visible by the time you get to the intersection.

There being no further testimony from Staff or the Applicant, Chair Supplier closed the public hearing and opened deliberations. The Board went through the findings of fact.

The Board voted unanimously that strict application of the ordinance would result in unnecessary hardship to the applicant. Chair Supplier noted that the applicant would have limited reasonable use of the home if they are unable to install the elevator.

The Board voted unanimously that the hardship results from conditions that are particular to the property with Chair Supplier noting that it is a corner lot. The Attorney reminded the Board that this is where the General Statute states that a variance may be granted when necessary and appropriate to make reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

The Board voted unanimously that the hardship did not result in actions taken by the applicant; the Board agreed that the Applicant has no control over the situation.

Finally, the Board voted unanimously that the variance request was consistent with the spirit, intent and purpose of the ordinance so that public safety is secured, and substantial justice is achieved. The Board agreed that the variance would not impair sightlines

Motion Bobby Gentry moved to approve variance as presented. Judy Burnette seconded, and the motion passed unanimously.

Order The Board of Adjustment of the Town of Nags Head (the "Board") held a public hearing on December 12, 2024, to consider a variance application submitted by Tom and Molly Alexander (the "Owners"), seeking relief from Section 8.6.3.4 (Corner Lot Setback Requirements) of the Unified Development Ordinance (the "UDO") for property located at 3100 S. Virginia Dare Trail, Nags Head, North Carolina (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 are the owners of the Property.
2. The Property is located in the C-2, General Commercial Zoning District.

3. The Property is a nonconforming corner lot with an area less than 10,000 square feet and a width of less than 60 feet.
4. Under Section 8.6.3.4 of the UDO, the required side yard setback for corner lots of this size is 12 feet.
5. The Owners are requesting a variance of 2 feet 6 inches from the 12-foot corner setback to install a 6' x 7' elevator on the north side of the existing structure.
6. The elevator is proposed to be constructed over an existing driveway and would not increase the lot coverage, which has already reached the allowable maximum.
7. The elevator is necessary to provide accessible access to the home's upper floors due to Mr. Alexander's diagnosis of Parkinson's Disease, a progressive condition that significantly impairs mobility.
8. The layout of the existing home limits potential locations for an elevator, and the proposed location minimizes additional encroachment or structural changes.
9. The existing driveway was already nonconforming with regard to parking area requirements, and while the elevator further limits parking, the Owners have testified that they are able to meet the required parking needs.
10. The variance request aligns with NCGS 160D-705(d)(2), which allows reasonable accommodation under the Federal Fair Housing Act for individuals with disabilities.
11. Staff recommended approval of the variance, citing the minimal impact on sight clearance or public safety.

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 jurisdiction to consider and render a decision on the requested variance.
2. Strict application of the ordinance results in unnecessary hardship to the Owners due to the limitations imposed by the corner lot designation and the need to accommodate a disability.
3. The hardship results from conditions that are peculiar to the Property, specifically the lot's configuration and the limitations it imposes on development.

4. The hardship does not result from actions taken by the Owners. The condition necessitating the elevator (Parkinson's Disease) is beyond their control.
5. The requested variance is consistent with the spirit, purpose, and intent of the ordinance in that it ensures safety, allows reasonable accommodation, and promotes substantial justice without impairing public interests or neighboring properties.

THEREFORE, based on all of the foregoing, the application for a variance to allow a 2-foot 6-inch encroachment into the required 12-foot corner lot setback for the purpose of constructing an elevator on the Property, as shown on the survey submitted with the application, is hereby **GRANTED** subject to the following conditions:

1. The elevator shall be constructed in substantial compliance with the plans submitted to and approved by the Board.
2. The Owners shall maintain compliance with required parking standards to the greatest extent possible given the constraints of the Property.
3. A copy of the executed decision on this approved variance shall be recorded with the Dare County Register of Deeds.

Adjourn

There being no further business to discuss, the meeting adjourned at 9:30 AM.

Respectfully Submitted,

Lily Campos Nieberding

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NAGS HEAD N.C.



Board of Adjustment

Thursday, May 8, 2025, 9:00 a.m.
Board Room, Nags Head Municipal Complex
5401 South Croatan Highway
Nags Head, North Carolina

AGENDA

CALL TO ORDER

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

APPROVAL OF MINUTES

1. December 12, 2024 (Alexander Variance)

SWEARING IN OF WITNESSES

CASES

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

ADJOURNMENT



Town of Nags Head

Planning and Development
Department

Post Office Box 99
Nags Head, North Carolina 27959
www.nagsheadnc.gov

Telephone 252-441-7016
FAX 252-441-4290

MEMORANDUM

TO: Board of Adjustment

FROM: Kelly Wyatt, Director of Planning and Development

DATE: May 8, 2025

SUBJECT: Variance request submitted by Mark and Carla Schroeder from Section 8.2.1 of the Unified Development Ordinance as it pertains to Lot Coverage.

OVERVIEW OF VARIANCE REQUEST

Mark and Carla Schroeder, property owners of 109 E. Lakeside Street, are requesting a variance from Section 8.2.1 of the Unified Development Ordinance (UDO) to allow an increase in lot coverage beyond the maximum permitted in order to accommodate an above ground pool and associated access stairs.

The subject property is located within the C-2, General Commercial Zoning District. Per Section 8.2, *Development Standards – Primary Zoning Districts*, the maximum allowable lot coverage for properties in this district is the greater of either 30% of the total lot area plus 300 square feet, or 33% of the total lot area. For lots smaller than 10,000 square feet, the 30% plus 300 square feet formula typically provides the higher allowance.

As shown on the attached survey (Attachment A), the subject parcel is 9,539 square feet in area, which results in a maximum allowable lot coverage of 3,161 square feet. However, the existing lot coverage on the property is already 3,429 square feet (35.9%), which exceeds the permitted maximum. This condition constitutes a legally nonconforming site situation.

Section 5.4 of the UDO states that nonconforming site conditions may continue but shall not be increased. While existing lot coverage may be removed, replaced, or relocated, the total cannot exceed the existing nonconforming amount of 3,429 square feet in this case. Section 5.4 of the UDO is attached for Board consideration (Attachment B).

On February 4, 2025, Code Enforcement Officer Jonathan Kirks observed the installation of an above ground pool and newly constructed stairs. Upon reviewing the Town's permit records and finding no corresponding permit for this work, he issued a Notice of Violation for unpermitted construction (Attachment C). The property owners promptly contacted staff and began working

toward compliance. During this process, Town Planner Chris Trembly determined that permits could not be issued because the additional pool and stairs would result in an increase of approximately 250 square feet of lot coverage, exceeding the current legally nonconforming threshold.

As noted in the applicant's variance request, the above ground pool and access stairs are intended to accommodate a medical condition. According to the doctor's letter provided as an attachment to the application, daily use of an on-site pool is a recommended form of exercise to help manage the property owner's condition. The applicant has further stated that the pool is intended to be temporary in nature, with an anticipated need of up to ten years.

In 2021 local governments were required to amend their ordinances to comply with North Carolina General Statutes revisions to Chapter 160D, the enabling legislation allowing municipalities and counties to adopt and enforce land use development regulations. Specifically, NCGS 160D-705 regulates Quasi-Judicial zoning decisions, including variance requests reviewed by the Board of Adjustment. As part of these 160D revisions, Subsection (d)(2) now provides language that states, "A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability". This section has been provided as an attachment for the Board of Adjustments consideration (Attachment D).

In accordance with NCGS 160D-705(c), the Board of Adjustment has the authority to grant reasonable accommodations for persons with disabilities as defined by the federal Fair Housing Act and Americans with Disabilities Act. While the applicant has not disclosed the specific medical condition, the documentation submitted includes a physician's statement indicating that daily exercise in a pool is medically necessary. Should the Board find that the condition qualifies as a disability and that the requested variance is a reasonable and necessary accommodation to afford the applicant full use and enjoyment of the property, the Board may consider granting relief on this basis, independent of traditional variance criteria.

Staff notes that prior to preparing this report, we confirmed with the property owner that the home is used as a second residence. It is not rented on any platform, nor is there an intention to do so. Staff also discussed the possibility of offsetting lot coverage to accommodate the proposed pool and access stairs by removing or reducing other impervious areas on the site. However, the property has little to no excess coverage available. While converting the existing concrete driveway to a semi-permeable surface such as turfstone was explored, the calculations showed that even a full conversion would not offset the additional 250 square feet needed for the pool and stairs. Given these site constraints and the temporary nature of the pool, the applicant concluded that pursuing a variance was the most appropriate course of action.

STANDARDS FOR REVIEW; STAFF ANALYSIS

Section 3.10.1, *Standards for Granting a Variance*, of the Unified Development Ordinance, sets forth the standards by which the Board of Adjustment must review and decide upon variance cases. A variance shall be authorized only when affirmative findings on all the requirements set out in the section are made by the Board. Included below are the findings and recommendations of staff in review of this variance request:

3.10.1. Standards for Granting a Variance.
When unnecessary hardship would result from carrying out the strict letter of this UDO,

the Board of Adjustment shall vary any of the provisions of the UDO upon a showing of all of the following:

3.10.1.1. Unnecessary hardship would result from the strict application of the UDO. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

Staff Analysis: Staff submits that unnecessary hardship would result from the strict application of Section 8.2.1 of the Unified Development Ordinance. The owner asserts that the above- ground pool is medically necessary for daily exercise and is intended to be temporary in nature. Without approval of the variance, the applicants would be required to remove the pool, which the property owner contends would interfere with the ability manage a documented medical condition as described in the physician's letter.

It is also relevant to note that the residence was constructed in 1960, prior to the implementation of zoning regulations, including lot coverage limitations.

3.10.1.2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

Staff Analysis: The subject lot is under 10,000 square feet in size, which limits flexibility in terms of usable area for accessory structures. The existing lot coverage already exceeds the allowable maximum, limiting further development opportunities.

The Board may find that the variance constitutes a reasonable accommodation necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling, as required under the federal Fair Housing Act. The applicant has submitted documentation from a physician stating that regular pool exercise is medically necessary. If the Board finds that the medical condition qualifies as a disability and the requested pool is a reasonable and necessary accommodation, the Board may grant the variance independent of the traditional hardship findings.

3.10.1.3. 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 Analysis: While the pool was installed without a permit, the applicants have engaged staff promptly following the Notice of Violation and have sought to resolve the matter through appropriate channels. The existing overage in lot coverage predated the pool installation.

3.10.1.4. 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 Analysis: The proposed increase in lot coverage is limited to a single accessory structure intended to meet a personal medical need, and no additional principal development is proposed. No evidence has been presented that the pool poses a safety or drainage concern. Upon

Staff submits that granting the variance, subject to the proposed conditions below, is consistent with the intent of the UDO. It supports a reasonable accommodation while upholding public safety and neighborhood compatibility. It also promotes substantial justice by allowing the property owner access to a physician recommended resource that helps manage a medical condition.

STAFF RECOMMENDATION

Based upon the above analysis, staff recommends approval of the variance request, subject to the following condition to ensure the pool remains a personal medical accommodation and does not create a long-term increase in lot coverage that may conflict with the intent of the ordinance

Recommended Condition:

The above ground pool and associated access stairs shall be removed from the property upon the occurrence of any of the following:

- The pool is no longer needed as a medical accommodation for the current property owner;
- The property is transferred or sold to a new owner; or
- The property is placed into a short-term or long-term rental program.

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

Applicant Attachments: Variance Application, survey w/ proposed pool and access, Physician Letter
Staff Attachments: Scaled Survey, Excerpt of UDO, Notice of Violation, NCGS 160D-705, Aerial



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

Application No. 202500531 Date 3/26/25
Application Fee \$500.00 Receipt No. _____

VARIANCES APPROVED BY THE BOARD OF ADJUSTMENT RUN WITH THE PROPERTY. THEREFORE, APPLICANTS MUST BE THE PROPERTY OWNER, OR A DESIGNATED REPRESENTATIVE OF THE PROPERTY OWNER. REFERENCE TO YOU, YOUR OR THE APPLICANT IN THIS APPLICATION INCLUDE THE PROPERTY OWNER IF THE APPLICANT IS NOT THE PROPERTY OWNER. NOTARIZED SIGNATURES OF ALL APPLICANTS ARE REQUIRED ON THE LAST PAGE. ADDITIONAL PAGES MAY BE ATTACHED TO ANSWER ANY QUESTIONS IN THIS APPLICATION OR TO PROVIDE ANY SUPPLEMENTAL INFORMATION.

1. Applicant Name Mark Schroeder
Mailing Address 1510 Meta Ct
City High Point State NC Zip Code 27265
Telephone 336-247-4971
2. Property Owner Name (If different from Applicant) _____
Mailing Address _____
City _____ State _____ Zip Code _____
Telephone _____
3. Property for which variance is requested:
Street Address 109 E. Lakeside St
Tax Parcel Identification Number 006929000
Subdivision Name Roanoke Shores Section# _____ Lot# 87
Zoning District Classification C-2 General Commercial
4. List specific Unified Development Ordinance Section(s) and subsection(s) from which a variance is requested.
Section 8.2
5. For each Section/subsection listed above, describe with specificity how it applies to the property without the requested variance and how you propose it should be

varied by providing the type, dimension, amount and location of the variance requested. Attach a scale drawing using a current survey of the proposed placement of the structure for which the variance is being requested.

- 18x12 above ground pool + steps
- See attached

6. Is this variance request the result of a Notice of Violation issued by the Nags Head Department of Planning & Development? Yes ☒ No ☐ If yes, attach copy of Notice.
7. Explain how the variance request meets the approval criteria for the granting of a variance as set forth by the Town of Nags Head Code of Ordinances and Unified Development Ordinance by answering the following questions. Note that personal inconvenience or financial burden standing alone will not be considered as evidence in determining unnecessary hardship. Unnecessary hardship must be attributable to a unique or peculiar physical condition of the property that is not shared by other properties and has not been created by the actions of the applicant.

Describe the unnecessary hardship created on the property by the strict enforcement of the Unified Development Ordinance.

The pool is necessary for owner's medical condition
Please reference attached doctor's letter attesting
to appropriate medical condition and necessary
accommodation

Explain how the property can be used if the variance **is not** granted.

Not applicable

Explain how the property can be used if the variance **is** granted.

Property can have a temporary above ground pool
with steps necessary for above stated medical
condition

Explain how the unnecessary hardship is not the result of your own actions.

Home was constructed in 1960 with minimal zoning restrictions. It is a small single story 1,500 sqft home with a garage built by our grandparents. Coverage restrictions were not contemplated.

Describe the conditions that are peculiar to the property, such as location, size, or topography which causes the unnecessary hardship.

Lot sizes for this subdivision in 1960 were relatively small at approximately 7,500 sq ft.

Explain how the requested variance is consistent with the spirit, purpose, and intent of the Town's Unified Development Ordinance such that public safety is secured, and substantial justice is achieved.

The proposed above ground pool is a medical accommodation. The structure is temporary in nature and could have a limited variance of up to 10 years to account for its non-permanent nature.

Will the variance, if granted, allow an increase or extension of an existing nonconforming use on the property?

It will allow for a temporary increase

Will the variance, if granted, allow a use otherwise prohibited in the zoning district containing the property?

It will not

8. 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.

006929001 - Dillard & Judy Horton
006874000 - Scott & Natalie Keithley
026190000 - Wyndham & Christine White
026190001 - Robert & Becky Bowling
022914000 - Dale & Anne Tidaback

9. Are any attachments being submitted with this application? Yes X No ____ If yes, please identify attachments and number of pages. _____

1) Survey (1)

2) Notice of Violation (1)

3) Doctor's Note (1)

FILING OF APPLICATION

Variance applications are filed with the Nags Head Department of Planning & Development located at the Town of Nags Head 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. 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 governed by the North Carolina General Statutes, Article 2 and Article 3 of the Unified Development Ordinance and the Board's own rules and procedures. The Board's regular meeting date is the second Thursday of each month at 9:00 a.m. The 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

The concurring vote of a four-fifths majority of the board shall be necessary to grant a variance. The Board's decision will be made, reduced to writing, filed, served and subject to appeal in the manner provided by Section 3 of the Unified Development Ordinance. Decisions of the Board may be appealed by any aggrieved party to Superior Court within 30 days from the effective date of the Board's decision.

ADDITIONAL INFORMATION

Persons seeking additional information or assistance concerning variance 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.

Mark M. Schroder
Property Owner Signature

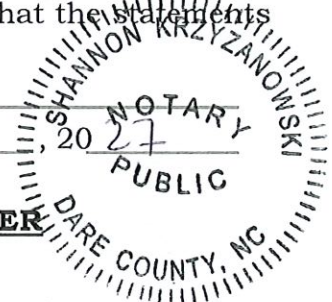
3/26/25
Date

STATE OF NC, COUNTY OF Dare
On this March day of 26, 20 25

Mark Schroder 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 Shannon Krzyzanowski

My Commission expires 4-17



CERTIFICATION BY APPLICANT OTHER THAN PROPERTY OWNER

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

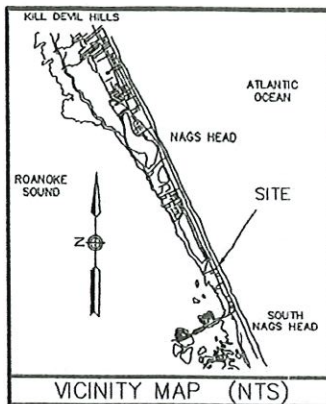
Date

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 _____



LEGEND

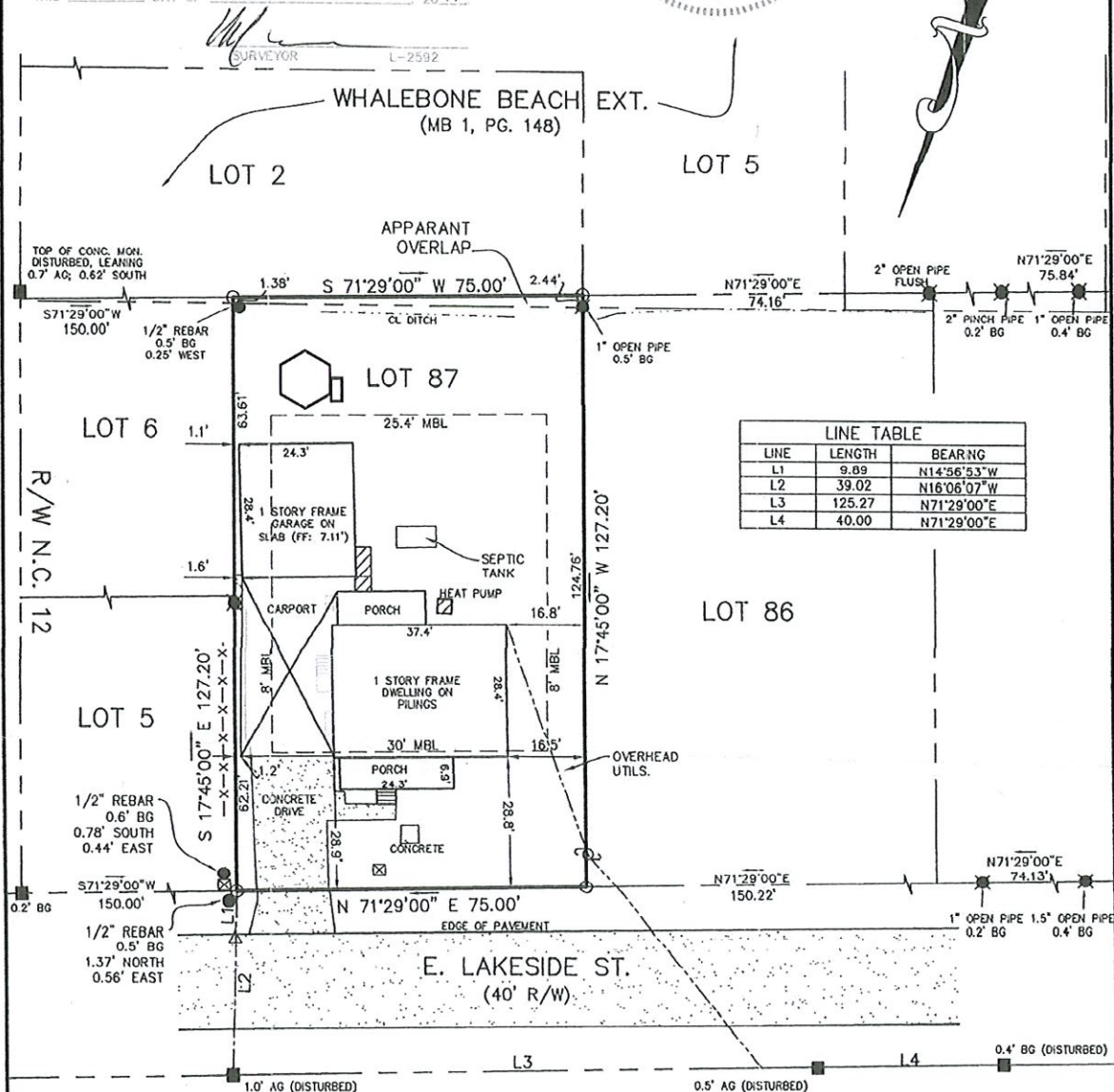
- EX. PIPE
- EX. REBAR
- 1/2" REBAR SET FLUSH
- EX. 4" SQUARE CONC. MON.
- CONC. MON. SET
- EX. P/K NAIL
- P/K NAIL SET
- SEWER SERVICE
- WATER METER
- PHONE PEDESTAL
- C.A.T.V.
- UTILITY POLE
- GUY WIRE
- FIRE HYDRANT
- ELECT. TRANS.
- AG — ABOVE GRADE
- BG — BELOW GRADE

NOTES:

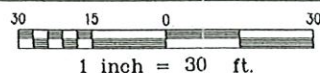
1. THIS SURVEY IS SUBJECT TO ANY FACTS THAT MAY BE DISCLOSED BY A FULL AND ACCURATE TITLE SEARCH.
2. AREA BY COORDINATE COMPUTATION = 9,539 S.F.
3. F.I.R.M. ZONE: AE; B.F.E.: 9.0' (PER F.I.R.M.) + 1.0' FREEBOARD
4. PIN NO.: 14 080006 47 9653 (LOTS 86 & 87)
5. RECORDED REFERENCE: MB 1, PG. 81; DB 229, PG. 228.
6. MINIMUM BUILDING LINES (MBL), IF SHOWN HEREON, ARE PER THE CURRENT LOCAL ZONING REGULATIONS. OTHER SETBACKS AND/OR RESTRICTIONS MAY APPLY AND MUST BE VERIFIED PRIOR TO CONSTRUCTION.
7. ELEVATIONS (NAVD 1988):
HIGH GROUND @ BUILDING = 7.2'
LOW GROUND @ BUILDING = 7.0'
FIRST FLOOR = 8.70' (FRONT ENCL. PORCH).
UTILITY/STORAGE ROOM = N/A
8. EXISTING LOT COVERAGE: 3,429 S.F. (35.9%)



I, MANSON RAY MEEKINS, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN BOOK 229 PAGE 228); THAT THE BOUNDARIES NOT SURVEYED ARE INDICATED AS DRAWN FROM (DEED DESCRIPTION RECORDED IN BOOK 229 PAGE 228); THAT THE RATIO OF PRECISION AS CALCULATED IS 1/10,000; THAT THIS PLAT MEETS THE REQUIREMENTS OF THE STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA (21 NCAC 56.1600); THIS 31ST DAY OF JULY 2014.



PHYSICAL SURVEY FOR
MARK & CARLA SCHROEDER
 LOT 87 - ROANOKE SHORE - NAGS HEAD
 NAGS HEAD TOWNSHIP - DARE COUNTY - NORTH CAROLINA



SEABOARD SURVEYING & PLANNING, INC. C-1536
 103F W. WOOD HILL DR., P.O. BOX 58, NAGS HEAD, NC 27959
 OFFICE: (252) 480-9998 FAX: (252) 480-0571

FILE: 1406475 SURVEYED: 7/16/14 MRV PLATTED: 7/31/14 MRM

From: Chris Trembly Chris.Trembly@nagsheadnc.gov
Subject: 109 E Lakeside Application 202500314 Denial and NOV



Date: February 27, 2025 at 10:48 AM

To: Mark Schroeder schroederobx@gmail.com

Cc: Jonathan Kirks jonathan.kirks@nagsheadnc.gov, Lily Nieberding Lily.Nieberding@nagsheadnc.gov, Kelly Wyatt Kelly.Wyatt@nagsheadnc.gov

Dear Mr. Schroeder,

After reviewing your application, it is my determination that a permit **cannot** be granted. This decision is based on my findings that new development would violate the maximum lot coverage for the property per the Town's Unified Development Ordinance (UDO) Section 8.2 - Development Standards - Primary Zoning Districts. The maximum allowable lot coverage for this property per the UDO is 30% plus 300 sf (3,161 square feet). Per the provided survey, this lot is at a non-conforming lot coverage of 35.9% (3,429 square feet). It should also be noted that this proposed development would require Dare County Septic approval for the proposed location (Not submitted).

I have attached Section 3.9 - Appeals of Administrative Decisions for your review. Please feel free to contact me with any questions you may have. Please follow up with Code Enforcement with a timeline for the removal of the unpermitted development.

District ⁴	Minimum Lot Area ¹	Minimum Lot Width	Minimum Front Yard Depth	Minimum Side Yard Depth	Minimum Rear Yard Depth	Maximum Building Height ²	Lot Coverage ³
C-2 General Commercial							
Commercial ⁶	15,000 sq. ft.		See footnote 6	15 feet ⁷	25 feet	35 feet, 42 feet if utilizing 8/12 roof pitch	55%
Single-Family	15,000 sq. ft.		30 feet	8 feet	20% of lot depth, not to exceed		30% plus 300 sq. ft.
Two-Family	22,500 sq. ft.		30 feet	8 feet	30 ft.		33%, whichever is greater
Large Residential ⁴							
Lots using individual wells/septic tanks	20,000 sq. ft. per dwelling unit						

Sincerely,

Christopher Trembly, CZO
Town of Nags Head
Planner and CAMA LPO
Direct: 252-449-6045
www.nagsheadnc.gov
chris.trembly@nagsheadnc.gov



March 17, 2025

Re: Reasonable Accommodation/Modification for Carla Schroeder 109 E Lakeside Street,
Nags Head, NC

To Whom It May Concern:

Carla Schroeder is a patient in my care. I am writing because my patient is an individual with a medical condition(s). Due to her medical condition, she require(s) the following accommodation or modification: Permission to have the ability to access an on premises pool for daily exercise which helps minimize her condition(s).

The request presented above is necessary in connection with her condition.

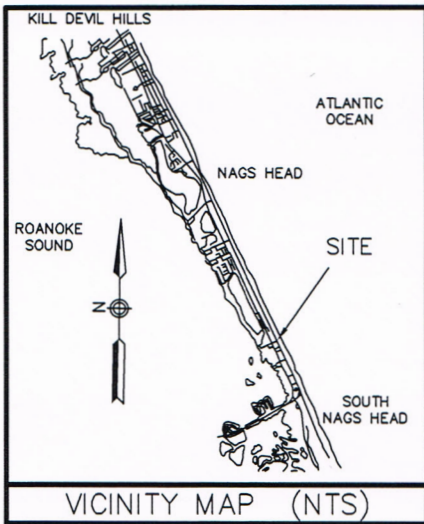
Warmly,

A handwritten signature in black ink, appearing to read "A. Wolfe" followed by a stylized flourish.

Dr. Allison Wolfe, M.D.

Triad Direct Primary Care

336-398-3841



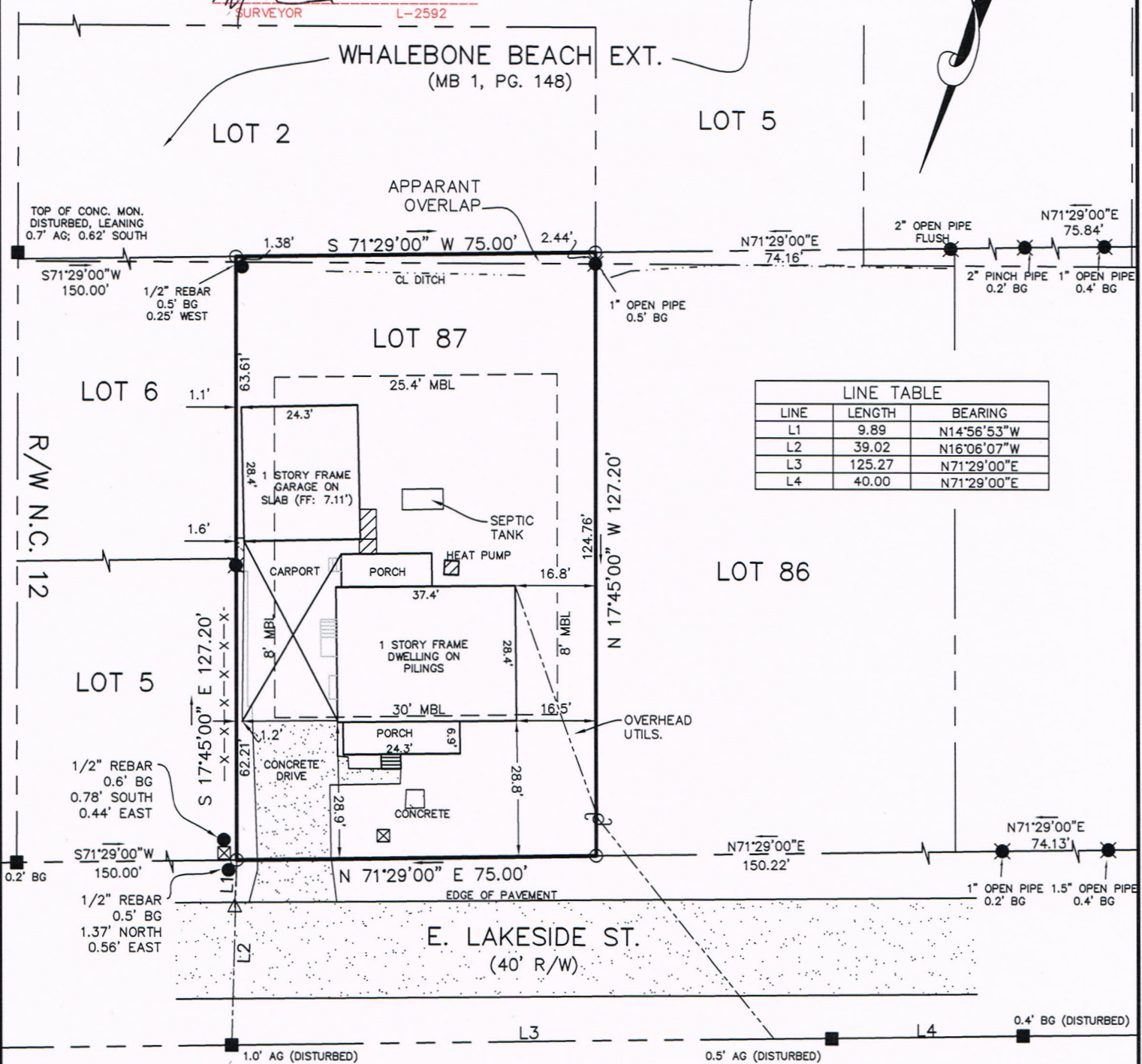
LEGEND

- - EX. PIPE
- - EX. REBAR
- - 1/2" REBAR SET FLUSH
- - EX. 4" SQUARE CONC. MON.
- - CONC. MON. SET
- ▲ - EX. P/K NAIL
- △ - P/K NAIL SET
- ⊗ - SEWER SERVICE
- ⊕ - WATER METER
- ⊙ - PHONE PEDESTAL
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THIS 31ST DAY OF JULY, 2014

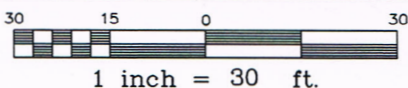


PHYSICAL SURVEY FOR

MARK & CARLA SCHROEDER

LOT 87 - ROANOKE SHORE - NAGS HEAD

NAGS HEAD TOWNSHIP - DARE COUNTY - NORTH CAROLINA



SEABOARD SURVEYING & PLANNING, INC. C-1536

103F W. WOOD HILL DR., P.O. BOX 58, NAGS HEAD, NC 27959

OFFICE: (252) 480-9998 FAX: (252) 480-0571

FILE: 1406475 SURVEYED: 7/16/14 MRM PLATTED: 7/31/14 MRM

Section 5.4 Nonconforming Site and Parking Areas.

Where a nonconforming site exists that was legal at the time of its creation but which would not be permitted by the regulations imposed by this UDO, the nonconforming site may continue, subject to the following provisions:

5.4.1. No structure on a nonconforming site may be enlarged or altered in a way which increases the nonconformity of the site.

5.4.2. No use on a nonconforming site may be expanded, enlarged, or increased in a way which increases the nonconformity of the site.

5.4.3. Any changes to a nonconforming site or parking area must comply with all of the requirements of this UDO.

5.4.4. The change of use of a structure on a nonconforming site from one permitted use to another permitted use shall be allowed, provided that there is no increase in the degree of nonconformity of the site. Where the site is nonconforming due to an insufficient number of parking spaces for the proposed new use, the Board of Commissioners may approve a change of use without requiring additional parking spaces in accordance with the procedures set forth in section 10.15.2.6.

(Ord. No. 20-01-002, Art. III, Pt. IV, 1-8-2020)



ATTACHMENT C

Town of Nags Head

Planning and Development
Department

Post Office Box 99
Nags Head, North Carolina 27959
www.nagsheadnc.gov

Telephone 252-441-7016
FAX 252-441-4290

NOTICE OF VIOLATION – WARNING CITATION

Notice of Violation No: 2706

SCHROEDER, CARLA H
SCHROEDER, MARK R
1510 META CT
HIGH POINT, NC 27265

Dear Property Owner,

Based on available information, and inspection of the property located at 109 EAST LAKESIDE ST, it was determined that construction without a permit has occurred which is in violation of Sec. 10-71 specifically:

Sec. 10-71. - Required.

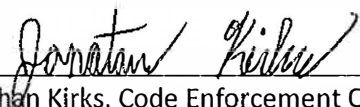
In accordance with G.S. 160A-417, it shall be unlawful for any person to erect, construct or build, or cause or authorize the same, on any lot or parcel of land within the corporate limits, any building or structure of any kind or description, until such person first submits to the building inspector a duly signed and completed application for a building permit. Until such person obtains such a permit to erect, build or construct such a building or structure as described in the application for permit, it shall be unlawful for such person to proceed with the erection, building or construction of such a building or structure as provided in this chapter.

Failure to correct the violation within 15 days may result in the issuance of civil penalties of a minimum of fifty dollars (\$50.00) per day to a maximum five hundred dollars (\$500.00) a day. Citations shall be issued each day the offense continues until the violation is corrected.

This matter needs your immediate attention. If you have any questions, you may contact me at 252.449.6043 between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, or via email at jonathan.kirks@nagsheadnc.gov.

To apply for a building permit please contact our office at 252-441-7016. Please tell them about the pool and stairs installed.

Issued by:


Jonathan Kirks, Code Enforcement Officer
Nags Head Planning Department

Date: February 4, 2025

c: Kelly Wyatt, Planning Director
Andy Garman, Town Manager







§ 160D-705. Quasi-judicial zoning decisions.

(a) Provisions of Ordinance. – The zoning or unified development ordinance may provide that the board of adjustment, planning board, or governing board hear and decide quasi-judicial zoning decisions. The board shall follow quasi-judicial procedures as specified in G.S. 160D-406 when making any quasi-judicial decision.

(b) Appeals. – Except as otherwise provided by this Chapter, the board of adjustment shall hear and decide appeals from administrative decisions regarding administration and enforcement of the zoning regulation or unified development ordinance and may hear appeals arising out of any other ordinance that regulates land use or development. The provisions of G.S. 160D-405 and G.S. 160D-406 are applicable to these appeals.

(c) Special Use Permits. – The regulations may provide that the board of adjustment, planning board, or governing board hear and decide special use permits in accordance with principles, conditions, safeguards, and procedures specified in the regulations. Reasonable and appropriate conditions and safeguards may be imposed upon these permits. Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made for recreational space and facilities. Conditions and safeguards imposed under this subsection shall not include requirements for which the local government does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by the local government, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160D-702(b), driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land.

The regulations may provide that defined minor modifications to special use permits that do not involve a change in uses permitted or the density of overall development permitted may be reviewed and approved administratively. Any other modification or revocation of a special use permit shall follow the same process for approval as is applicable to the approval of a special use permit. If multiple parcels of land are subject to a special use permit, the owners of individual parcels may apply for permit modification so long as the modification would not result in other properties failing to meet the terms of the special use permit or regulations. Any modifications approved apply only to those properties whose owners apply for the modification. The regulation may require that special use permits be recorded with the register of deeds.

(d) Variances. – When unnecessary hardships would result from carrying out the strict letter of a zoning regulation, the board of adjustment shall vary any of the provisions of the zoning regulation upon a showing of all of the following:

- (1) Unnecessary hardship would result from the strict application of the regulation. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
- (3) 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 is not a self-created hardship.
- (4) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other development regulation that regulates land use or development may provide for variances from the provisions of those ordinances consistent with the provisions of this subsection. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 17, 50(b), 51(a), (b), (d).)



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.

109 E Lakeside ST
Nags Head NC, 27959
Parcel: 006929000
Pin: 080006479695

Owners: Schroeder, Carla H -Primary Owner
Schroeder, Mark R -Primary Owner
Building Value: \$236,600
Land Value: \$322,600
Misc Value: \$14,200
Total Value: \$573,400

Tax District: Nags Head
Subdivision: Roanoke Shore
Lot BLK-Sec: Lot: 87 Blk: Sec:
Property Use: Residential
Building Type: Ranch
Year Built: 1960



The following pages contain minutes from previous Board of Adjustment meetings. These minutes are provided for the Board's review and approval and are not related to the Schroeder Property Variance case.

**Town of Nags Head
Board of Adjustment**

December 12, 2024 (DRAFT)

The Board of Adjustment of the Town of Nags Head met in regular session Thursday, December 12, 2024 in the Board Room, Nags Head Municipal Complex, Nags Head, North Carolina.

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

Others Present Kelly Wyatt, Tyler D. McKeithan, Lily Nieberding, Chris Trembly

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:

Variance request submitted by Tom and Molly Alexander from Section 8.6.3.4 of the Unified Development Ordinance as it pertains to Corner Lot Setback Requirements.

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

Approval of Minutes Chair Suppler called for the approval of the minutes.

Judy Burnette moved to approve the minutes from the October 15, 2021, meeting. Alice Coffey seconded, and the motion carried unanimously.

Judy Burnette moved to approve the minutes from the February 8, 2024, meeting. Bobby Gentry seconded, and the motion carried unanimously.

Evidence Presented by the Town Planning Director Kelly Wyatt explained that Tom and Molly Alexander, property owners of 3100 S. Virginia Dare Trail (corner of Bittern Street and S. Virginia Dare Trail), are requesting a variance from Section 8.6.3.4 of the Unified Development Ordinance (UDO) to install a 6' x 7' elevator on top of their driveway on the north side of their existing home. The property is zoned C-2, General Commercial.

Ms. Wyatt then proceeded to review 8.6.3. Yard Requirements, specifically 8.6.3.4. Corner Lots explaining that in the case of a corner lot abutting an improved right-of-way, to ensure adequate sight clearance, the minimum width of the side yard adjacent to the right-of-way shall be no less than fifteen (15) feet, except in the case of nonconforming lots of record that are less than 10,000 square feet in lot area and sixty (60) feet or less in lot width, in which case the minimum side yard shall be twelve (12) feet. Ms. Wyatt noted that Staff would be applying the 12 ft setback in this scenario. The

proposed elevator would encroach about 2.5 feet to that 12 ft. side yard.

As the applicant has stated in the variance application, the proposed elevator is necessary to address the mobility challenges faced by Mr. Alexander, who has been diagnosed with Parkinson's Disease, a progressive condition impacting his ability to navigate the home.

Currently, all bedrooms are located on the second floor, with the kitchen and living areas on the third floor. The elevator would allow Mr. Alexander to access these levels of the home safely and maintain day-to-day activities with his family. To avoid increasing lot coverage, which has already been maximized, the elevator is proposed to be constructed over the existing driveway therefore no new lot coverage is proposed.

If this property were not subject to the corner lot designation, the standard side yard setback in the C-2 district would be 8 feet, and no variance would be required. It is the corner lot setback requirement that necessitates this request.

Ms. Wyatt also noted that section 8.6.3.6 of the UDO provides certain exclusions from yard requirements, such as allowances for the outermost three feet of eaves, gutters, uncovered handicap ramps, or cargo lifts for single- and two-family dwellings. However, these exclusions do not apply to elevators, and therefore, this proposed structure cannot utilize this provision.

In 2021 local governments were required to amend their ordinances to comply with North Carolina General Statutes revisions to Chapter 160D, the enabling legislation allowing municipalities and counties to adopt and enforce land use development regulations.

Specifically, NCGS 160D-705 regulates Quasi-Judicial zoning decisions, which a Board of Adjustment Variance is. As part of these 160D revisions, Subsection (d)(2) now provides language that states, "A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability".

Ms. Wyatt stated that this section was provided as an attachment for the Board of Adjustments consideration as part of their meeting packet. This provision supports the applicants' request by recognizing the need for reasonable accommodation.

Ms. Wyatt reviewed the findings of fact and the standards for granting a variance, for the Board.

When unnecessary hardships would result from carrying out the strict letter of this UDO, the Board of Adjustment shall vary any of the provisions of the UDO upon a showing of all of the following:

3.10.1.1. Unnecessary hardship would result from the strict application of the UDO. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

Staff would submit that unnecessary hardship would result from the strict application of Section 8.6.3.4 of the Unified Development Ordinance. The applicant's home currently does not provide accessible access to essential living spaces. Without the proposed elevator, the applicant/owner may be unable to safely access these spaces as their mobility declines. If unable to install an elevator, it would effectively render the home inaccessible for the applicant/owner.

3.10.1.2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. However, Ms. Wyatt reminded the Board that per the new General Statute, a variance may be granted when necessary and appropriate to make reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

Staff would submit that the property is constrained by its corner lot designation and nonconforming dimensions. These characteristics do make compliance with the setback requirements challenging. The increased setback for corner lots is in place to ensure adequate sight clearance at intersections; however, staff would submit that the requested 2-foot 6-inch encroachment of the elevator as requested would not negatively impact or impair sightlines at this intersection of S. Virginia Dare Trail and Bittern Street.

The layout of the existing home limits options for elevator placement as well. The proposed location over the existing driveway was selected to avoid increasing lot coverage, which is already maximized. This approach minimizes impacts on the property while meeting the applicant's accessibility needs.

This is a four-bedroom home which requires two 10'x18' parking spaces. The parking pad/driveway for this home was nonconforming prior to the variance request. If approved, the variance would further limit the parking area available for vehicles. The applicant/owner are full-time, permanent residents of Nags Head and have noted in the application that they have been able and will continue to be able to park their two vehicles in this area without issue.

This variance request seeks to balance the applicant's need for reasonable accommodation with adherence to the Town's setback requirements. The proposed elevator addresses a significant mobility challenge without adding lot coverage or compromising public safety. Approval of this request would be consistent with federal and state

laws promoting accessibility for individuals with disabilities.

3.10.1.3. 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 finds that the hardship is not self-imposed. The need for an elevator is driven by the applicant's mobility issues stemming from a Parkinson's Disease diagnosis, a condition beyond the applicant/owner's control.

As noted above, without the corner lot designation, the side yard setback for this property would be 8 feet, and the elevator could be installed without the need for a variance.

3.10.1.4. 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 proposed elevator would encroach 2 feet 6 inches into the 12-foot setback, leaving over 9 feet to the property line. Staff does not believe that this encroachment would impair sightlines or public safety, and that it would preserve the intent of the ordinance's corner lot setback requirements.

Granting this variance is consistent with the ordinance's intent by allowing for reasonable accommodation while maintaining safety and neighborhood standards. It promotes substantial justice by enabling the applicant to access essential areas of their home, aligning with the Federal Fair Housing Act's goal of ensuring accessibility for people with disabilities.

Based upon the above analysis, Staff is of the opinion that the strict enforcement of the Unified Development Ordinance (UDO) as it pertains to the requested elevator encroachment into the corner lot setback does create practical difficulties or unnecessary hardship for the applicant/owner and for this particular site. Therefore, Staff recommends that the Board approve the requested variance.

Evidence Presented by the Applicant Ms. Wyatt confirmed that as far as the sightlines go, the only possible impact would be for people traveling North on Va Dare Trail. If they are traveling South on the beach road or on Bittern Street, the encroachment would not impede them from seeing the intersection. Furthermore, the elevator is proposed to be set back far enough in the home that it would not be visible by the time you get to the intersection.

There being no further testimony from Staff or the Applicant, Chair Supplier closed the public hearing and opened deliberations. The Board went through the findings of fact.

The Board voted unanimously that strict application of the ordinance would result in unnecessary hardship to the applicant. Chair Supplier noted that the applicant would have limited reasonable use of the home if they are unable to install the elevator.

The Board voted unanimously that the hardship results from conditions that are particular to the property with Chair Supplier noting that it is a corner lot. The Attorney reminded the Board that this is where the General Statute states that a variance may be granted when necessary and appropriate to make reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

The Board voted unanimously that the hardship did not result in actions taken by the applicant; the Board agreed that the Applicant has no control over the situation.

Finally, the Board voted unanimously that the variance request was consistent with the spirit, intent and purpose of the ordinance so that public safety is secured, and substantial justice is achieved. The Board agreed that the variance would not impair sightlines

Motion Bobby Gentry moved to approve variance as presented. Judy Burnette seconded, and the motion passed unanimously.

Order The Board of Adjustment of the Town of Nags Head (the "Board") held a public hearing on December 12, 2024, to consider a variance application submitted by Tom and Molly Alexander (the "Owners"), seeking relief from Section 8.6.3.4 (Corner Lot Setback Requirements) of the Unified Development Ordinance (the "UDO") for property located at 3100 S. Virginia Dare Trail, Nags Head, North Carolina (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 are the owners of the Property.
2. The Property is located in the C-2, General Commercial Zoning District.

3. The Property is a nonconforming corner lot with an area less than 10,000 square feet and a width of less than 60 feet.
4. Under Section 8.6.3.4 of the UDO, the required side yard setback for corner lots of this size is 12 feet.
5. The Owners are requesting a variance of 2 feet 6 inches from the 12-foot corner setback to install a 6' x 7' elevator on the north side of the existing structure.
6. The elevator is proposed to be constructed over an existing driveway and would not increase the lot coverage, which has already reached the allowable maximum.
7. The elevator is necessary to provide accessible access to the home's upper floors due to Mr. Alexander's diagnosis of Parkinson's Disease, a progressive condition that significantly impairs mobility.
8. The layout of the existing home limits potential locations for an elevator, and the proposed location minimizes additional encroachment or structural changes.
9. The existing driveway was already nonconforming with regard to parking area requirements, and while the elevator further limits parking, the Owners have testified that they are able to meet the required parking needs.
10. The variance request aligns with NCGS 160D-705(d)(2), which allows reasonable accommodation under the Federal Fair Housing Act for individuals with disabilities.
11. Staff recommended approval of the variance, citing the minimal impact on sight clearance or public safety.

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 jurisdiction to consider and render a decision on the requested variance.
2. Strict application of the ordinance results in unnecessary hardship to the Owners due to the limitations imposed by the corner lot designation and the need to accommodate a disability.
3. The hardship results from conditions that are peculiar to the Property, specifically the lot's configuration and the limitations it imposes on development.

4. The hardship does not result from actions taken by the Owners. The condition necessitating the elevator (Parkinson's Disease) is beyond their control.
5. The requested variance is consistent with the spirit, purpose, and intent of the ordinance in that it ensures safety, allows reasonable accommodation, and promotes substantial justice without impairing public interests or neighboring properties.

THEREFORE, based on all of the foregoing, the application for a variance to allow a 2-foot 6-inch encroachment into the required 12-foot corner lot setback for the purpose of constructing an elevator on the Property, as shown on the survey submitted with the application, is hereby **GRANTED** subject to the following conditions:

1. The elevator shall be constructed in substantial compliance with the plans submitted to and approved by the Board.
2. The Owners shall maintain compliance with required parking standards to the greatest extent possible given the constraints of the Property.
3. A copy of the executed decision on this approved variance shall be recorded with the Dare County Register of Deeds.

Adjourn

There being no further business to discuss, the meeting adjourned at 9:30 AM.

Respectfully Submitted,

Lily Campos Nieberding

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NAGS HEAD N.C.