

**Town of Nags Head
Board of Adjustment**

December 9, 2021

The Board of Adjustment of the Town of Nags Head met in regular session Thursday, December 9, 2021, in the Board Room, Nags Head Municipal Complex, Nags Head, North Carolina.

Members Present Margaret Suppler, Bobby Gentry, John Mascaro, Tina Adderholdt, Judy Burnette

Others Present Kelly Wyatt, 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:

Variance request submitted by property owners Steven and Deborah Jones from the requirements of Section 11.44, Provisions for Flood Hazard Reduction, of the Unified Development Ordinance. The property is zoned SPD-C, Village at Nags Head, Single-Family 3 and is located at 100 E. Sandcastle Court, Nags Head, NC.

Judy Burnette moved to re-open the hearing which was tabled from the September 9, 2021 meeting. Bobby Gentry seconded, and the motion passed unanimously.

Chair Suppler then opened the public hearing and swore in all witnesses.

Evidence presented by Town Planning Director Kelly Wyatt provided an overview of the variance request, explaining that any new construction or substantial improvement must comply with the Regulatory Flood Protection Elevation (RFPE). In Nags Head, the RFPE is determined by the Local Elevation Standard (LES), which is set at 12 for properties located east of the Beach Road.

At the previous meeting, the Board requested additional information to assist in reviewing the variance. The applicants, Mr. and Mrs. Jones, have since provided the requested materials, including:

- A list of materials to be used for the ground floor enclosure.
- A narrative on the placement of electrical and plumbing systems.
- Documentation on the use of flood damage-resistant materials.
- A statement explaining that granting the variance represents the minimum necessary for reasonable accommodation under the Federal Fair Housing Act for a person with disabilities.
- A completed technical evaluation of Section 11.43.7.4 of the Unified Development Ordinance.

Ms. Wyatt also addressed the potential impact of granting the variance

on the Town's Community Rating System (CRS) score, which affects flood insurance rates under the National Flood Insurance Program (NFIP). Typically, variances can impact the town's rating; however, Planner Holly White consulted the Town's CRS coordinator, who confirmed that because FEMA does not classify this property as being within a flood zone, granting a variance to the Town's higher standard would not affect its CRS rating. While Ms. White was unable to obtain direct confirmation from the NFIP, she believes the outcome would be the same.

Ms. Wyatt then presented an aerial image of the property, highlighting its location where South Virginia Dare Trail curves west. She explained that if the property were further north—where the road does not curve—it would fall west of the road and be subject to a lower elevation standard.

Evidence presented by
Applicant

Mr. Steven Jones addressed the Board, stating that he had provided various reports and materials to support his variance request. He acknowledged that Mike Robinson had done a thorough job of professionally analyzing the reports he had prepared as a layman.

Mr. Jones noted that he had not previously considered the fact that Highway 12 had been relocated in 1990, which was the year he purchased the lot. He emphasized that, in the years since, the property has never experienced flooding. When the subdivision was developed, excess sand was left in place and spread out to form a building pad, raising the property above the surrounding area. As a result, his lot remains at a higher elevation than neighboring properties.

Regarding the Board's prior request for a list of materials, Mr. Jones explained that it was difficult to specify every detail down to minor components such as stainless steel nails. However, he had provided Planning Director Kelly Wyatt with FEMA guidelines, including a reference to Table 2, which outlines acceptable materials for use in a flood zone. He assured the Board that he would adhere to those recommendations to the greatest extent possible while allowing for equivalent alternatives when necessary.

Mr. Jones concluded by stating that he believed he had addressed all of the Board's requests and expressed appreciation for their consideration of his variance request.

Mr. Jones confirmed for Board Attorney Jay Wheless that his condition is progressive and will deteriorate over time. He explained that while he is currently able to use a scooter and assist with his own transfers using a transfer board, there will come a point when he will require full assistance for mobility and daily activities. He acknowledged the unfortunate nature of the situation but emphasized the necessity of planning for future accessibility needs.

There being no further question from the Board, Mr. Wheless reviewed all of the evidence presented including the new town memorandum, the technical evaluation by Mike Robinson, the material list and

additional documents. Chair Supplier accepted all documents into evidence.

The Chair then closed the public hearing and opened up deliberations.

Mr. Wheless outlined the three key aspects of the variance review: The flood zone analysis, the variance request itself. And any conditions that may be applied.

Mr. Wheless noted that at the previous meeting, they were unable to fully assess the variance request within the context of the flood zone review under UDO Section 11.43.7, which led to the request for an expert evaluation.

Mike Robinson, a professional engineer, conducted an analysis and provided a memorandum summarizing his findings:

- The property is located in an **X Zone**, indicating minimal flood risk. It is **not** within a **VE Zone**, which is subject to high-velocity wave action.
- The risk of materials being swept away is minimal.
- The likelihood of erosion is low due to the presence of a substantial, well-vegetated frontal dune system in front of the home.
- The variance request is consistent with the Town's Comprehensive Plan.
- Granting the variance **will not** affect emergency vehicle access to flooded properties.
- The existing or proposed structure will **not** impact floodwaters in the event of a flood.

There being no further questions about this Judy Burnette moved to affirm that the variance would be consistent with the flood zone review. John Mascaro seconded, and the motion passed unanimously.

The Board then proceeded to review the findings of fact:

The Board agreed unanimously that strict application of the ordinance would result in an Unnecessary Hardship. Mr. Wheless noted that they had heard testimony from Mr. Jones that his condition will worsen over time.

The Board agreed unanimously that the hardship resulted from conditions that were peculiar to the property with Chair Supplier noting the bend in the road is certainly one of the large considerations.

The Board voted unanimously that the hardship was not a result of actions taken by the property owner.

Finally, the Board voted unanimously that the requested variance was consistent with the spirit, purpose and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Motion

There being no further discussion and based on the findings of fact above, Bobby Gentry moved to approve the variance request. Alice Coffey seconded, and the motion passed by a unanimous vote.

Order

The Board of Adjustment of the Town of Nags Head (the "Board") held a public hearing on December 9, 2021, to consider a variance application submitted by Steven and Deborah Jones (the "Owners"), seeking to vary the requirements of Section 11.44, Provisions for Flood Hazard Reductions of the Unified Development Ordinance (the "UDO") as to the property located at 100 E. Sandcastle Court, Nags Head, NC 27959 (the "Property"). The Board, having heard all of the evidence and arguments presented at the hearing, makes the following **FINDINGS OF FACT:**

1. The Board of Adjustment held duly noticed quasi-judicial public hearings on September 9, 2021, and December 9, 2021, to consider a variance request submitted by Steven and Deborah Jones, property owners of 100 E. Sandcastle Court, Nags Head, North Carolina.
2. The subject property is zoned SPD-C (Village at Nags Head, Single-Family 3) and is located within a designated Coastal High Hazard Area as defined in Section 11.44 of the Town's Unified Development Ordinance (UDO), with a Regulatory Flood Protection Elevation (RFPE) of 12 feet NAVD 1988 per the Town's Local Elevation Standard.
3. The applicants requested a variance from the following sections of the UDO:
 - **Section 11.44.2.1** – requiring residential structures to have the reference level elevated no lower than the RFPE.
 - **Section 11.44.3.3** – requiring space below the lowest horizontal structural member to be free of obstruction or constructed with breakaway lattice or screening.
4. The applicants seek relief to construct a 503-square-foot ground floor enclosure to accommodate an ADA-accessible bedroom and bathroom for Mr. Jones, who has a progressive disability, and an additional bedroom and bathroom for his wife/caretaker. The improvements would occur below the RFPE and extend existing noncompliance.
5. Mr. Jones provided testimony and documentation, including:
 - A list of proposed flood-resistant building materials;

- A narrative on plumbing and electrical placement;
 - A statement asserting the necessity of the variance as a reasonable accommodation under the Federal Fair Housing Act;
 - A technical evaluation by Michael Robinson, P.E., addressing criteria in UDO Section 11.43.7.4.
6. The Board found, based on testimony and written evidence, that:
- The hardship is unique due to both the physical location of the property, situated east of NC 12 only due to a curve in the road, and the applicant's disability.
 - The property lies in a FEMA X Flood Zone with a reduced flood risk; expert testimony confirmed minimal risk of material displacement, erosion, or adverse impacts to emergency access or floodwaters.
 - Strict application of the ordinance would result in an unnecessary hardship due to lack of reasonable, accessible living space within the home.
7. Planning staff and the Town Attorney advised that granting the variance would not affect the Town's CRS rating given the site's location outside a FEMA-regulated flood zone.
8. The Board further found that the variance request met the standards for granting a variance under UDO Section 3.10.1, and Section 11.43.7.9 regarding flood damage prevention variances, including:
- The variance is the minimum necessary to afford relief.
 - The variance will not violate other laws, increase flood hazards, or create a nuisance.

NOW, THEREFORE, based on the foregoing findings and pursuant to Sections 3.10 and 11.43 of the Unified Development Ordinance, the Town of Nags Head Board of Adjustment hereby ORDERS:

1. The requested variance is GRANTED to allow the construction of a 503-square-foot ground floor enclosure as depicted in the submitted plans.
2. The enclosure must be constructed using FEMA-compliant flood damage-resistant materials to the greatest extent feasible, as referenced in FEMA's Technical Bulletin 2 and submitted documentation.
3. The space shall be used exclusively as described (bedroom and

bathroom for applicant and caretaker) and shall not be converted to a rental or other use without further approval by the Town.

4. The variance is granted as a **reasonable accommodation under the Federal Fair Housing Act**, recognizing the applicant's disability and the necessity of accessible living space.
5. Upon transfer of the property or if the space is no longer needed as a reasonable accommodation, the Town reserves the right to require that the enclosed area be decommissioned or reverted to compliant storage or open space.
6. All other applicable development approvals (including Carolina Water Services and Village at Nags Head ACC) must be obtained prior to construction.

Approval of Minutes

Judy Burnette moved to approve the minutes from the May 13, 2021 and June 10, 2021 meetings. John Mascaro seconded, and the motion carried unanimously.

Adjourn

There being no further business to discuss, the meeting adjourned at 9:34 AM.

Respectfully Submitted,
Lily Campos Nieberding

