

**Town of Nags Head
Board of Adjustment**

December 12, 2024

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.