



AGENDA

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

THURSDAY, AUGUST 14, 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. May 8, 2025 (Schroeder Variance)

C. SWEARING IN OF WITNESSES

D. CASES

1. Consideration of a variance request submitted by Mark Martin of Sandmark Custom Homes, Inc. on behalf of property owners, Stephanie and Greg Sim from various sections of the Unified Development Ordinance, to facilitate the demolition of an existing nonconforming single-family dwelling and reconstruction of a new home. The property is located at 8725 S. Old Oregon Inlet Road in the R-2, Medium Density Residential Zoning District.

E. ADJOURNMENT

**Town of Nags Head
Board of Adjustment**

May 8, 2025 (DRAFT)

The Board of Adjustment of the Town of Nags Head met in regular session Thursday, May 8, 2025 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, Lily Nieberding, Lauren Womble

Call to Order Chair Margaret Suppler called the meeting to order at 9:10 a.m. as a quorum was present.

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

Consideration of a variance request submitted by 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.

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

Evidence Presented by the Town Planning Director Kelly Wyatt presented the case, displaying a survey of the property showing the home, carport, garage, and the location of the proposed above-ground pool. She explained that 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.

Ms. Wyatt noted that for residential development in the C-2 district, lot coverage is limited to either 33% of the lot area or 30% plus 300 square feet for lots less than 10,000 square feet. The Schroeder property, at 9,539 square feet, would normally be allowed 3,161 square feet of lot coverage. However, the property already had 3,492 square feet of coverage (35.9%), which is considered legally nonconforming. The proposed pool and access stairs would add approximately 250 square feet of additional coverage.

In February 2025, code enforcement observed the above-ground pool and stairs, which had been installed without a permit, and issued a notice of violation. The applicants promptly came to the Planning Department to address the issue. After exploring options to offset the additional coverage elsewhere on the property, it was determined that a variance would be the most appropriate solution.

Ms. Wyatt highlighted that the applicants included documentation from a physician indicating that daily pool use was recommended as a form of exercise to help manage a medical condition. The pool was intended to be temporary, with an anticipated need of up to 10 years.

Ms. Wyatt explained that under North Carolina General Statute 160D-705, the Board of Adjustment has the authority to grant reasonable accommodations for persons with disabilities as defined by the Federal Fair Housing Act and the Americans with Disabilities Act. She noted that the requested variance could be considered a reasonable accommodation if the Board found that the condition qualified as a disability.

Ms. Wyatt then reviewed the findings of fact:

With regards to the unnecessary hardship, Staff submits that the hardship does result from the strict application of section 8.20.1 of the UDO. The owner asserts that the above ground pool is medically necessary for daily exercise and intended to be temporary. Without approval of the variance the applicants would be required to remove the pool which again the property owner contends would interfere with the ability to manage a documented medical condition.

Ms. Wyatt also noted that the residence was constructed in 1960 prior to zoning regulations or lot coverage regulations as well.

As to the second finding is fact, that the hardship results from conditions that are peculiar to the property such as location, size, topography, Ms. Wyatt noted that this is where the language about the federal fair housing and ADA comes into play. A variance may be granted when necessary and appropriate to make reasonable accommodation under the federal fair housing act.

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 their dwelling as required under the federal fair housing act. The applicant has submitted documentation from the physician and if the board finds that the condition qualifies as a disability the requested fold would be reasonable and a necessary accommodation. Ms. Wyatt also noted that the lot is under 10000

square feet, which limits its flexibility in terms of usable area for accessory structures.

The third criteria is that the hardship did not result from actions taken by the applicant or the property owner. Ms. Wyatt reiterated that while the pool was installed without a permit, the applicants engaged staff promptly following the NOV and sought to resolve the matter as soon as possible.

Finally, as to whether the requested variance is consistent with spirit, purpose, and intent such that public safety is secured, and substantial justice is achieved. Ms. Wyatt noted that 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 being proposed.

Staff submits the granting of variance would be consistent with the UDO as it supports a reasonable accommodation while upholding public safety, neighborhood compatibility and promotes substantial justice by allowing property owner access to a resource that was noted through the physician's letter

Based on Staff's findings, Ms. Wyatt recommends approval of the variance subject to the following condition: the above-ground pool and associated stairs shall be removed from the property upon the occurrence of any of the following: (1) the pool is no longer needed as a medical accommodation, (2) the property is transferred or sold to a new owner, or (3) the property is placed into a short-term or long-term rental program.

The purpose of these conditions 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.

Board Attorney Jay Wheless suggested clarifying the conditions to specify that the property transfer would refer to "an unrelated owner" rather than simply a "new owner," to avoid issues if the property were transferred to an LLC owned by the current owners.

Ms. Wyatt confirmed for Ms. Burnette that the garage was built prior to 2010 but was unsure of the timeline.

Evidence Presented by
the Applicant

Property owner Mark Schroeder addressed the Board, noting that the house has been in his wife's family since 1960, when her grandfather built it. He explained that they do not rent the property and have no

intention of selling it. Mr. Schroeder stated that the pool helps with his wife's significant medical conditions, specifically hip and heart issues, and that he preferred not to publicly disclose detailed medical records.

Ms. Burnette asked about ensuring that the request met the conditions of the ADA. Mr. Schroeder confirmed that his wife's condition falls within the criteria of the Disabilities Act as he understands it.

Mr. Shroeder confirmed for Mr. Wheless that he had no objections to the conditions proposed by Staff.

Mr. Wheless reviewed all the documents including Staff's report, the Applicant's application and Physician's report on letterhead. Chair Supplier accepted them all into evidence.

Chair Supplier closed the public portion of the meeting, and the Board deliberated on the four criteria required for granting a variance:

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

Does the hardship result from conditions that are peculiar to the property, such as location, size, or topography? The Board unanimously agreed that it does, noting the nonconforming nature of the lot.

Does the hardship result from actions taken by the applicant or property owner? The Board unanimously agreed it did not, noting that the applicants promptly worked to remedy the situation after receiving the notice of violation.

Is the requested variance consistent with the spirit, purpose, and intent of the ordinance such that public safety is secured and substantial justice is achieved? The Board unanimously agreed that it was.

The Board then discussed the proposed conditions, with Attorney Wheless suggesting the following refined wording: "The above-ground pool and associated access stairs shall be removed from the property upon the earliest occurrence of any of the following: (1) the pool is no longer needed as a medical accommodation for the current property owner, (2) the property is transferred or sold to a new unrelated owner, or (3) the property is placed into short-term or long-term rental."

Motion

Based on their findings and together with Staff's findings, Judy Burnette moved to approve the variance as presented with the condition as amended. Bobby Gentry seconded, and the motion passed unanimously.

Order

The Board of Adjustment of the Town of Nags Head (the "Board") held a quasi-judicial hearing on May 8, 2025, to consider a variance application submitted by Mark and Carla Schroeder (the "Owners"), seeking to vary the requirements of Section 8.2.1 of the Unified Development Ordinance (the "UDO") to exceed the maximum allowable lot coverage to accommodate an above ground pool and associated access stairs at the property located at 109 E. Lakeside Street, 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 Owners own the Property.
2. The Property is located within the C-2, General Commercial Zoning District.
3. The Property contains 9,539 square feet in area.
4. Section 8.2.1 of the UDO limits maximum lot coverage to the greater of 30% of the lot area plus 300 square feet or 33% of the total lot area.
5. Based on the lot size, the maximum allowable lot coverage is 3,161 square feet.
6. The existing lot coverage is 3,429 square feet (35.9%), which exceeds the permitted maximum and constitutes a legally nonconforming site condition under Section 5.4 of the UDO.
7. Section 5.4 allows legally nonconforming site conditions to continue, but not to be increased.
8. On February 4, 2025, Town staff observed the unpermitted installation of an above ground pool and access stairs and issued a Notice of Violation.
9. The additional pool and stairs resulted in an increase of approximately 250 square feet over the existing nonconforming lot coverage, prompting the request for a variance.
10. The Owners assert that the above ground pool is medically necessary for the management of a diagnosed condition, as supported by a physician's statement included in the application.
11. The Owners have indicated the pool is temporary in nature and anticipate it being needed for no more than ten years.
12. The home is used as a second residence and is not rented nor intended to be rented.

13. The Property's lot area (under 10,000 square feet) and pre-existing overage in lot coverage limit the feasibility of removing or converting other impervious surfaces to offset the additional coverage.
14. Town staff explored the potential to convert the driveway to Turfstone or other semi-permeable surface but determined that even full conversion would not offset the 250 square feet needed.
15. The Owners have worked cooperatively with staff since the Notice of Violation and pursued a variance to resolve the issue appropriately.
16. NCGS 160D-705 allows a variance to be granted as a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

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

1. All parties are properly before the Board, and the Board has the jurisdiction to consider and render a decision on the requested variance.
2. Strict application of the ordinance does result in an unnecessary hardship to the Owners.
 - The existing lot coverage already exceeds UDO limits and predates current regulations.
 - The above ground pool is medically necessary and intended to be temporary in nature.
3. The hardship does result from conditions that are peculiar to the Property, such as location, size, or topography.
 - The Property is less than 10,000 square feet in area and legally nonconforming in terms of lot coverage, which limits flexibility for accommodating accessory structures.
 - The Board finds that the requested variance constitutes a reasonable accommodation necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling.
4. The hardship does not result from actions taken by the Applicant or the property owner.
 - While the pool was installed prior to permitting, the

Owners promptly engaged staff and sought to resolve the issue appropriately. The pre-existing nonconforming lot coverage predates the current Owners' actions.

5. 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.

- No evidence was presented that the pool poses a safety or drainage concern.
- The variance supports a reasonable accommodation while preserving the intent of the UDO.

THEREFORE, based upon all the foregoing, the application for a variance to exceed the maximum allowable lot coverage to permit the above ground pool and access stairs is **GRANTED**, subject to the following condition to which the Owners agreed:

1. The above ground pool and associated access stairs shall be removed from the property upon the earliest 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 and/or unrelated owner; or
 - The property is utilized as a short-term or long-term rental.
2. A copy of the executed decision on this approved variance shall be recorded with the Dare County Register of Deeds.

Approval of Minutes

Chair Suppler called for the approval of the minutes from the December 12, 2024 meeting concerning the Alexander Variance.

Motion to approve the minutes of December 12, 2024 was made by Judy Burnette, seconded by Bobby Gentry, and approved unanimously.

The Board also considered two additional sets of minutes:

Motion to approve the minutes of December 9, 2021 was made by Tina Adderholdt, seconded by Bobby Gentry, and approved unanimously.

Motion to approve the minutes of June 9, 2022 was made by Bobby Gentry, seconded by Tina Adderholdt, and approved unanimously.

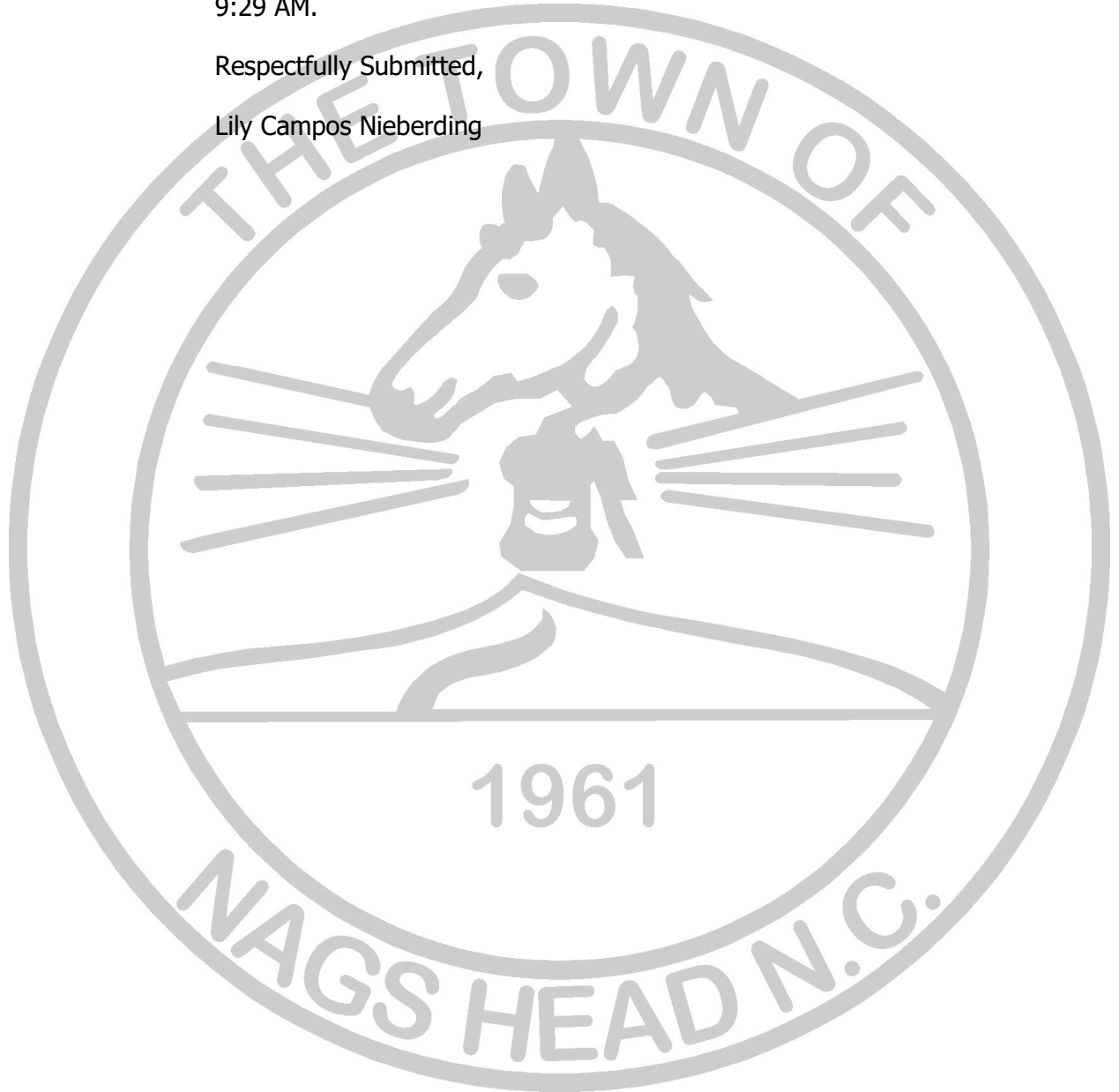
Adjourn

Before adjourning, Town Attorney Lauren Womble informed the Board that there has been an appeal filed on one of their prior decisions (the Harvey case) and that John Leidy would represent the Town in that matter. Staff will keep the Board updated as necessary.

There being no further business to discuss, the meeting adjourned at 9:29 AM.

Respectfully Submitted,

Lily Campos Nieberding





Board of Adjustment

Thursday, August 14, 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

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1. May 8, 2025 (Schroeder Variance)

SWEARING IN OF WITNESSES

CASES

1. Consideration of a variance request submitted by Mark Martin of Sandmark Custom Homes, Inc. on behalf of property owners, Stephanie and Greg Sim from various sections of the Unified Development Ordinance, to facilitate the demolition of an existing nonconforming single-family dwelling and reconstruction of a new home. The property is located at 8725 S. Old Oregon Inlet Road in the R-2, Medium Density Residential Zoning District.

ADJOURNMENT



Town of Nags Head

Planning and Development
Department

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MEMORANDUM

TO: Board of Adjustment

FROM: Kelly Wyatt, Planning Director
Chris Trembly, Planner

DATE: August 14, 2025

SUBJECT: Variance request submitted by Mark Martin of Sandmark Custom Homes, Inc. on behalf of property owners, Stephanie and Greg Sim from various sections of the Unified Development Ordinance as it pertains to required setbacks, lot coverage allowances and parking stall dimensions.

OVERVIEW OF VARIANCE REQUEST

Mr. Mark Martin of Sandmark Custom Homes, Inc. has submitted the attached variance request on behalf of property owners, Stephanie and Greg Sim, from the requirements of numerous sections of the UDO, to facilitate the demolition of an existing nonconforming single-family dwelling and reconstruction of a new home. The applicant is requesting to retain the existing concrete pool and rebuild the associated deck, both of which are also nonconforming. This property is zoned R-2, Medium Density Residential and is located at 8725 S. Old Oregon Inlet Road.

The site is accessed by a shared concrete access easement serving five properties. Due to the placement of the easement and the current Unified Development Ordinance (UDO) requirements for yard setbacks and easement related restrictions, the buildable area is significantly reduced. The applicant is requesting variances to reduce the required side yard setbacks for the new principal structure and existing pool deck, in order to construct their desired home.

There are aspects of this request that are not often part of Board of Adjustment consideration and staff offers the following information to assist with navigating the request.

- The Unified Development Ordinance (UDO) only permits accessory uses/structures subordinate to and in conjunction with, associated with a principal use. The demolition of the existing single-family dwelling would leave a lot with nothing but an accessory structure on it. This is not permissible by the UDO. While the applicant is requesting flexibility be

provided for this scenario (accessory with no principal) occur briefly, while they reconstruct a new principal single-family dwelling, it does cause some concern for staff.

- Section 5.3 of the UDO, Nonconforming Structure with Conforming Use would be applicable as part of the request. See below:

Section 5.3 - Nonconforming Structure with Conforming Use.

A nonconforming structure may be continued, subject to the following provisions:

5.3.1. *A nonconforming structure may not be enlarged or altered in a way which increases the degree of nonconformity. Reconstruction and additions occurring within the existing building footprint, excluding enclosed space additions above or below open decks, shall be allowed and shall not constitute an increase in structural nonconformity.*

5.3.2. *A nonconforming structure occupied by a conforming principal use destroyed or otherwise modified by any means may be repaired, maintained, or replaced with an identical or similar structure regardless of value provided the repair, maintenance or replacement does not create any new structural nonconformities or increase the degree of existing structural nonconformities.*

5.3.3. *Should such structure be moved for any reason for any distance whatsoever, it shall thereafter conform to the regulations for the district in which it is located after it is moved, except as provided in subsection 5.3.4.*

5.3.4. *Any nonconforming structure located on a lot adjacent to the Atlantic Ocean or Roanoke Sound may be moved landward on the same lot, provided that such movement does not increase the degree of nonconformity of the structure in any way. However, when dimensional requirements can be met, they shall be met, except as provided for in [Article 8](#), Section 8.6.3.7, Reductions in Yard Setbacks.*

Upon review of Section 5.3.2 of the UDO, it appears that the applicant may have been able to proceed under this provision without seeking a variance, provided that the replacement structure did not increase the degree of nonconformity. Based on the location and extent of the existing side yard encroachments, the proposed setbacks do not appear to intensify those nonconformities (see Survey attached). However, staff has determined that, while the proposed design represents an overall improvement in code compliance, the substantial increase in gross floor area, from approximately 1,600 square feet to 2,700 square feet, goes beyond what could reasonably be considered an "identical or similar" structure as intended by Section 5.3 of the UDO.

To accommodate construction of this new single-family dwelling, variances would be required from Section 8.2.1 of the UDO, Dimensional Requirements for Primary Zoning Districts to permit the proposed dwelling to encroach 3.21 feet into the required 10 foot side yard setback on the northern property boundary and to allow the continuance of the pool deck to encroach 4-feet into the required 10-foot side yard setback from the southern property line.

Section 8.2 – Development Standards – Primary Zoning Districts.
Section 8.2.1. Dimensional Requirements.

District	Min Lot Area ¹	Min Lot Width	Min Front Yard Depth	Min Side Yard Depth	Minimum Rear Yard Depth	Maximum Building Height ²	Lot Coverage ³
R-2 Medium-Density Residential Single-Family Two-Family Large Residential ⁴ Lots using individual well/septic tanks	20,000 sq. ft. 30,000 sq. ft. 20,000 sq. ft. per dwelling unit	70 feet	30 feet	10 feet	20% of lot depth, not to exceed 30 feet ⁵	35 feet, 42 feet if utilizing 8/12 roof pitch	30% plus 300 sq. ft. or 33%, whichever is greater

For the purpose of determining where to measure the setback from along easements, we have included the definition of “Yard” for your review. Note that the setback would be taken from the edge of the easement. This language is also included in Section 8.6.3.2, Access Easements.

Appendix A – Definitions

Yard means a required open space, unoccupied and unobstructed by any structure or portion of a structure from 12 inches above the general ground level of the graded lot upward, provided that, fences, walls, poles, posts and other customary yard accessories, ornaments and furniture may be permitted in any yard subject to height limitations and requirements limiting obstruction of visibility or any other requirement of this UDO. Further, customary accessory buildings or structures, including pools and pool surrounds, may be located in any rear or side yard no closer than five feet to any property line and subject to other limitations of this UDO. **For lots of record which front on access easements, yard and lot depth measurements shall be made from the edge of the easement rather than from the lot line.**

8.6.3.2. Access Easements. *For lots of record which front on access easements, yard and lot depth measurements shall be made from the edge of the easement rather than from the lot line. In cases where there is no easement and the lot line is located at the centerline of the paved surface, the measurement shall be made from the edge of the street pavement.*

It is relevant to note that the zoning ordinance in effect at the time of this development, as well as the current Unified Development Ordinance, contains verbiage that would allow the lot coverage encumbered by the access easement to be excluded, see below:

8.6.6.7. Exclusion from Lot Coverage Calculation.

*8.6.6.7.1. When access easements are provided in accordance with [Section 10.47](#), Limiting Access to US 158, US 64/264, NC 12, and SR 1243, and Section 10.51, Requirements for and Contents of Preliminary Plat and Supporting Documents, a maximum of twenty (20) feet for two-way and fourteen (14) feet for one-way improved access surface areas shall be excluded from individual lot coverage calculations. ***This exemption shall also apply to existing legal lots of record meeting the lot frontage requirements of [Section 10.47](#) and further provided that the requirements of [Section](#)****

10.51 are met and where such access has been approved by the planning and development director and recorded on a subdivision plat in accordance with this UDO. This exception shall be applicable only for single-family and two-family uses for access only and shall not be used for the parking of vehicles and shall be noted in the covenants and deed restrictions required by Section 10.51.

Staff has confirmed with the Dare County Register of Deeds that the recorded Covenants and Deed Restrictions for the You-Lin Hills Subdivision do not satisfy the requirements of Section 8.6.6.7.1 of the UDO, as they do not expressly prohibit parking within the access easement. Accordingly, the access easement must be included in the overall lot coverage calculations. A copy of the recorded covenants is provided for your review.

With this in mind, lot coverage for this property must include the portion of the access easement that is impervious, approximately 8 feet wide by 196 feet in length, or 1,586 square feet. When added to the proposed site improvements, this would result in a lot coverage overage of approximately 1,388 square feet.

Regarding the existing pool, pools are considered a permitted accessory use. It is likely that the pool met all the applicable standards at the time of its construction, including a five-foot setback for accessory structures. However, subsequent revisions to the UDO now require that accessory structures located forward of the midpoint of the principal structure meet the same setbacks as the principal use. While the pool complies with the minimum front yard setback, it is located within the front half of the lot and therefore must also meet the 10-foot side yard setback. The existing pool encroaches approximately four feet into this side yard setback and, as such, is not compliant with the current standard.

As background and summary of the applicant's application:

- The existing principle single family dwelling was constructed in 1977 and is built on 6x6 wood pilings.
- The home is exhibiting structural degradation including significant rust of fasteners and is likely no longer structurally sound.
- The lot is approximately 49.98 feet wide, with a shared access easement that runs approximately 8 feet in width along the northern property boundary.
- The current single-family dwelling encroaches into both the northern and southern side yards.
- The existing concrete pool, constructed in 2002, is structurally sound, however the surrounding wooden deck is in disrepair.
- The proposed site plan shows a new single-family dwelling that would meet most of the current development standards, including compliance with the Regulatory Flood Protection Elevation (RFPE), height, minimum parking, and Nags Head style architecture. As proposed the site would continue to require relief from the minimum 10-foot side yard setback requirements due to the narrow buildable envelope created by the access easement and how the town measures setbacks based upon "Yard" definitions.

To summarize, the property owner is seeking the following variances:

- A variance from Section 5.3, Nonconforming Structures to retain a legally nonconforming accessory structure (the pool) on the lot during the demolition of the existing principal structure and construction of a new dwelling.
- A variance from Section 8.2.1 of the UDO to permit the proposed principal structure to encroach 3.2 feet into the required 10-foot side yard setback along the northern property boundary.
- A variance from Section 8.2.1 of the UDO to permit the existing pool and surrounding deck to encroach 4 feet into the required 10-foot side yard setback along the southern property boundary. Note: While accessory structures such as pools are generally required to meet only a five-foot setback, the location of this pool, forward of the midpoint of the principal structure requires it to comply with principal structure setbacks.
- A variance from Section 8.2.1 of the UDO to allow an increase in lot coverage of approximately 1,388 square feet beyond the maximum permitted, due to the requirement that impervious surface within the access easement be included in the lot coverage calculations.

The proposed 4-bedroom single-family dwelling requires a minimum of two (2) parking spaces; the proposed site plan provides four (4) parking spaces. While providing additional parking is permissible, however, staff recommends consideration be given to constructing spaces P3 & P4 in turfstone or another semi-permeable surface to help reduce the overall amount of lot coverage.

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 to 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 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 Analysis: The applicant has demonstrated that strict application of the current side yard setbacks and access easement-related requirements would reduce the buildable width of the lot to less than 20 feet, making it difficult to construct a home of practical size. The hardship is directly related to evolving UDO standards over time, particularly regarding how yards and setbacks are

measured from access easements. The requested variances would enable the construction of a new principal structure that is more code-compliant, structurally sound, and resilient.

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.

Staff Analysis: The subject property is accessed via a shared access easement that limits usable lot width and constrains development potential. While these conditions do create design challenges, they are not unique in South Nags Head; numerous older subdivisions in this area were developed with shared access easements serving multiple lots, and similar dimensional constraints exist elsewhere.

That said, the combination of the narrow lot width, the proximity of the access easement, and the layering of current setback requirements do create a constrained building envelope that complicates compliance with current UDO standards. These factors, in the context of reconstructing an older, nonconforming structure to current code, may present a case for relief.

It is important to note, however, that the proposed new structure is significantly larger in overall habitable area than the existing structure, despite improvements in compliance with FEMA and building code standards. While the new construction would reduce some nonconformities, the scale of the proposed development introduces a new level of intensity on the lot that may not be entirely attributable to the physical constraints of the site. The size, shape, and topography of the lot are not substantially different from many other properties in South Nags Head, and this should be weighed alongside the benefits of improved code compliance and public safety.

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. 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 existing home was constructed in 1977 under different zoning and regulatory requirements, and the pool was added in 2002. The applicants did not create the current site constraints or the changes in ordinance language over time that now limit the buildable area. In that regard, the hardship is not self-created.

However, while the applicants are seeking to replace the aging structure with a new, safer, and more code-compliant home, the proposed structure significantly increases the overall habitable area. It is the applicant's decision to pursue a larger footprint and expanded living space with the existing site limitations. Although this does not disqualify the request, it does represent an intensification of development that goes beyond simply replacing a nonconforming structure in-

kind.

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 replacement of the existing home represents a notable improvement in terms of structural integrity, life-safety, and compliance with current building, floodplain, and parking standards. The reconstruction also presents an opportunity to reduce certain existing nonconformities, such as encroachments into the southern side yard and the location of parking. Retaining the existing pool, while rebuilding the associated deck to meet current safety and code standards, preserves the existing accessory use without further intensifying that nonconformity.

While the proposal aligns with the general intent of the ordinance to promote safety, resilience, and neighborhood character, it also proposes a significantly larger habitable structure. This increased intensity may not be inconsistent with what is allowed in the R-2 Zoning District, but it does go beyond a one-for-one replacement. Staff believe the variance may still be found to be consistent with the spirit and intent of the ordinance, provided the Board is comfortable with the balance between improved compliance and increased scale.

STAFF RECOMMENDATION

Based on the above analysis, staff is of the opinion that the strict enforcement of the Unified Development Ordinance (UDO) with respect to the requested setbacks **does** create practical difficulties and unnecessary hardship for the applicant, given the narrow building envelope. Staff recommends **approval** of the requested variances to allow construction of a new principal single-family dwelling and the retention and improvement of the existing pool and pool deck, subject to the following conditions:

1. The proposed structure must comply with all other code requirements including current parking standards, height, stormwater management and floodplain management requirements.
2. The pool deck may be rebuilt to current structural standards but must not further encroach into setbacks beyond existing conditions.
3. All construction shall comply with applicable building codes and shall not adversely impact the shared access easement or neighboring properties.
4. The platted access easement must remain intact; no portion may be removed or modified to reduce the width of the drive aisle, as shown on the proposed survey.
5. Prior to demolition of the existing principal structure, a valid development permit (including zoning and building permits) for construction of a new principal structure shall be issued. In the event the principal structure is demolished and not replaced within one year, the existing nonconforming pool and pool surround shall be removed, and the site restored and stabilized, to prevent the accessory structure from remaining without a principal structure in a noncompliant condition.

Applicant Attachments: Variance Application, Response to Findings, Existing Conditions Survey, Proposed Survey dated 7-7-25, Preliminary elevations, renderings and floor plan of proposed dwelling, Photos of existing site improvements, Development Permit Application.

Staff Attachments: Staff Report, Aerial View, Recorded Covenants



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

Application No. _____ Date _____
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 Martin / Sandmark Custom Homes Inc.
Mailing Address 191 Wax Myrtle Trail
City Southern Shores State NC Zip Code 27949
Telephone 252-202-3808 cell
2. Property Owner Name (If different from Applicant) Stephanie & Greg Sim
Mailing Address 39017 90th Street
City Burlington State WI Zip Code 53105
Telephone 262-441-3507 Greg
3. Property for which variance is requested:
Street Address 8725 S. Old Oregon Inlet Road
Tax Parcel Identification Number 007997004
Subdivision Name You-Lin Hills Section# _____ Lot# 1
Zoning District Classification Medium Density Residential
4. List specific Unified Development Ordinance Section(s) and subsections(s) from which a variance is requested.
See Attached Document
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.

See Attached Document

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.

See Attached Document

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

See Attached Document

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

See Attached Document

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

See Attached Document

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

See Attached Document

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.

See Attached Document

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

See Attached Document

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

See Attached Document

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.

See Attached Document

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

See Attached Document

FILING OF APPLICATION

Variance applications are filed with the Nags Head Department of Planning & Development located at the Town of Nags 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.

Sylvia Jim
Property Owner Signature

5/27/2025
Date

STATE OF WI, COUNTY OF Kenosha
On this 27 day of May, 20 25

Sylvia Jim 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 Audra Marusich
My Commission expires 9/10/28, 20 28

CERTIFICATION BY APPLICANT OTHER THAN PROPERTY OWNER

I Mark Martin (your name) file this application on the behalf of Stephane + Greg Sue (property owner name).

I am the contractor (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.

Mark W. Martin
Signature

6/13/25
Date

STATE OF North Carolina, COUNTY OF Dare
On this 13th day of June, 20 25

Mark W. Martin 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 Victoria M. Holmes
My Commission expires November 13th, 20 28



Nags Head Board of Adjustment Application

Answer to Questions on the Application: Note: The picture on the Dare County Tax Records is not the correct picture for this house.

4: In order to allow for the construction of a single-family residential home on the parcel, the Applicants are requesting that the Board vary the current UDO requirements such that the parcel can be built upon consistent with the site plan attached to and incorporated by reference in the application and the building envelope shown on the site plan. Based on discussions with the Town's Staff, the UDO sections which may need to be varied in order to meet the Applicants' request included, but are not limited to, the following:

1. UDO Sec. 8.2.1;
2. UDO Sec. 8.6.3.1.;
3. UDO Sec. 8.6.3.2.;
4. UDO Sec. 8.6.3.7.1.1.;
5. UDO Sec. 8.6.3.5.1.; and
6. UDO Sec. 8.6.3.5.3.

5. The current house was purchased by Stephanie and Greg Sim in 2020 with the intent of renovating and making repairs to the house. The house was built in 1977 with a 6 by 6 treated wood piling foundation. The foundation has settled over time and has required other pilings to be installed to shore up the house which have been added over the years by the previous owner. Given the proximity to the ocean and the salt air, the bolts and joist hangers and fasteners have significant rust and are failing. Due to the homes age and outdated construction practices, the house needs to be razed and a new one built in its place. When the house was originally built the side yard setbacks were different than today's UDO.

The property is unique in that it has a shared concrete driveway with five other homes. This shared concrete driveway runs 8 feet onto the northern side of the property line for its entire length. Small areas of parallel parking between the house pool and shared driveway.

The current house is 28 feet wide with the South side of the house 4.5 feet into the current 10-foot setback and the North side of the house is 3.3 feet into the current 20-foot side yard setback.

The pool deck is a wooden pool deck surrounding a concrete pool. It is elevated slightly to accommodate the slight change in grade on the lot. The South side of the pool deck is 6 feet wide and extends 4 feet into the current 10-foot side yard setback. The condition of the pool built in 2002 is structurally sound, however the deck needs to be rebuilt.

It is our understanding that if we were to remove the house the new house would have to be brought into compliance with the current UDO which includes following current setbacks, height, floodplain ordinances, parking, lot coverage, and width to length ratios. We are seeking relief from the side yard setbacks as it relates to the northern proposed house line and to the side yard setback as it relates to the southern side of the pool deck. In addition, the swimming pool being an accessory structure, is non-conforming and not allowed once the house is torn down.

6. This is NOT the result of a notice of violation issued by the town of Nags Head Department of Planning and Development.

7. A. Strict compliance with the UDO requires construction of an unnecessarily narrow structure for the allowed use of a single-family residence primarily due to recent UDO requirements which reduce the usable width of the parcel due to the existence of a shared access easement. The unnecessary hardship was created on this lot due to changing ordinance language over time. When the house was built in 1977, this subdivision was designed in the similar fashion of the cottage courts in Nags Head in that there is a shared driveway accessing 5 homes. The driveways and parking areas came right up against the house in some locations. Zoning restrictions were minimal and side yard setbacks were small if there were any at all. The current UDO ordinance language requires that since the shared driveway runs along the property line and there is a 10-foot easement on the property that abuts shared driveway, there is also another 10-foot setback that is required to be maintained. Essentially this 49.98-foot-wide lot with a southern setback of 10 foot and a northern setback of 20 feet only allows for a home that is less than 20 feet wide to be built in compliance with the current side yard setbacks. By its nature, losing over 25% of the width if we were to build a new home on this property is not in keeping with the spirit's purpose or intent of the Town's unified development ordinance. In addition, it seems unreasonable to remove a swimming pool just because the house will be torn down and rebuilt. All the electrical and plumbing components will be redone on the existing pool. We will maintain a pool barrier around the pool during construction.

7 B. If the variance is not granted, the existing house can continue to be used for a period of time at an increased risk from floods, wind events, and hurricanes. The existing structure is non-conforming in multiple ways that the proposed structure will not be. There is a lower-level enclosure that is below the current base flood elevation. This creates not only increase risk to the current home but increases the risk of damage to the neighboring homes as well. The current house has a 6x6 wooden pile foundation which does not meet the current flood ordinance and further increases the risk of damage to this house and to the neighbors. This non-compliance with current flood restrictions as well as major issues with the electrical and heating and air systems are also major concerns when evaluating the life expectancy of the home.

7 C. If the variance is granted, we can create a home in keeping with the Nags Head exterior style with proper architectural, dimensioning, and aesthetics as well as creating an interior

space that feels more like a home as opposed to a tiny house. The new house will be substantially stronger, compliant with current building and flood ordinances, more resilient, and more aesthetically pleasing to the neighborhood and the town as a whole. The proposed new structure will also be less non-conforming from the perspective of setbacks than the current structure. Current parking requirements can be met and brought into compliance and be located in a much safer manor under the house and near the end of the pool instead of parallel to the shared driveway. Tearing down the new existing house will allow us to shift the new house to the current 10 foot setback and be further away from the neighbor's house to the south and the driveway.

7 D. The unnecessary hardship is not the result of the owner's actions. It is the result of minimal zoning requirements, increasing restrictions on development within the Town, and a cottage court philosophy as it pertained to development at the time the subdivision was approved.

7 E. The conditions peculiar to this property which causes the hardship are the shared concrete driveway and the change in side-yard setbacks from when the original house was built and as it relates to the width of the buildable area on the lot. The shared driveway and the odd easement create a significant hardship to this property. Traffic from four homes have to pass the Sim home via the shared driveway. There is less impact to the other homes along the driveway as you get closer to the ocean. The driveway varies from 7 to 8 feet onto this property. This requires 2-3 feet of space off the driveway before the setback begins for the house. The proposed new house would be 10 feet off the shared driveway.

7 F. We believe, that if granted, "the requested variance is consistent with the spirit, purpose, and the intent of the Town's Unified Development Ordinance such that public safety is secured, and substantial justice is achieved."

We are proposing the following:

1. Removing the existing house and building a new house is in the interest of public safety for several reasons.
 - A. The adjacent property to the south has a driveway close to the property line. Our new home will meet the current southern 10-foot side yard setback, thus keeping the new house further from the driveway with vehicles.
 - B. The proposed new house and site configuration will allow for safer and more parking areas under and on our property alleviating car doors from being opened into the shared driveway.
 - C. The proposed new house will be brought up to current flood ordinance standards and we'll minimize damage to other homes, residents, or vehicles should ocean over wash or other natural events occur.
 - D. While reducing the width of the buildable area on the lot is not ideal, as long as we can get approximately a 23-foot-wide house from the current southern side yard setback to the current placement of the existing northern wall of the current house we feel substantial justice is achieved.

7 G. There is no nonconforming use of the property currently because single-family residences are allowed in the R-2 zoning district. While the lot is non-conforming with current UDO standards, single-family dwellings and customary accessory buildings may be erected on the parcel. If the variance is granted, the provisions making the current structure non-conforming will be varied making the new proposed structure conforming. From a practical perspective, construction of the new proposed structure will reduce the existing setback encroachment on the southern side of the property and will increase the existing setback encroachment on the north side of the property by less than two feet and only for a portion of the parcel.

7 H. If the variance is granted, it will not allow a use otherwise prohibited in the zoning district containing the property.

8. Here is the list of names and addresses of all the budding property owners and the owners of the property immediately across the street from the property affected.

- A. Paula and David Treherne
8723 S. Old Oregon Inlet Rd,
Nags Head, NC 27959
North of Affected Property
- B. Kurt and Denise Yantz
8723 A S. Old Oregon Inlet Rd,
Nags Head, NC 27959
North of Affected Property
- C. Roc Sansotta PM TTEE
8723 B S. Old Oregon Inlet Rd,
Nags Head, NC 27959
North of Affected Property
- D. Rush Little
8725 C S. Old Oregon Inlet Rd,
Nags Head, NC 27959
East of Affected Property
- E. Carol A Kearney TTEE
8725 B S. Old Oregon Inlet Rd,
Nags Head, NC 27959
East of Affected Property
- F. Randy and Darlene Bolette

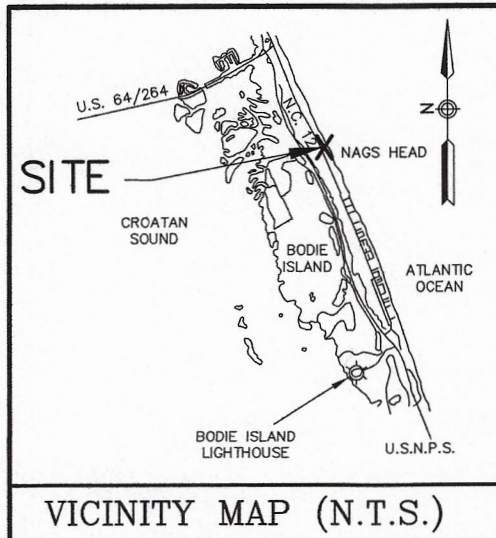
8727 S. Old Oregon Inlet Rd,
Nags Head, NC 27959
East of Affected Property

G. HD Resorts LLC
8724 S. Old Oregon Inlet Rd,
Nags Head, NC 27959
Across S. Old Oregon Inlet Rd and north

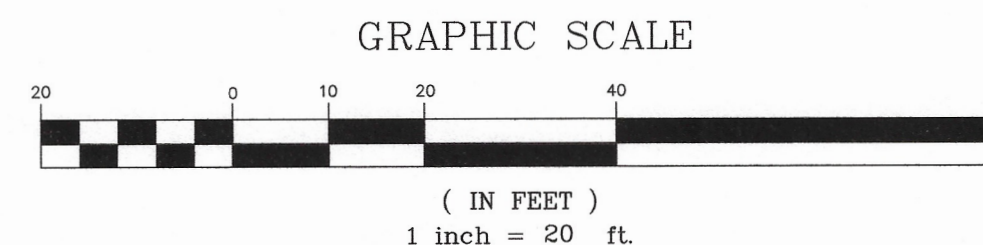
H. Linda Byrum
8722 S. Old Oregon Inlet Rd,
Nags Head, NC 27959
Across S. Old Oregon Inlet Rd and south

9. Attached to this application are 3 documents:

- A. Proposed Site Plan
- B. Exterior elevations and floor plans of the proposed house.
- C. Five current pictures of the existing house.

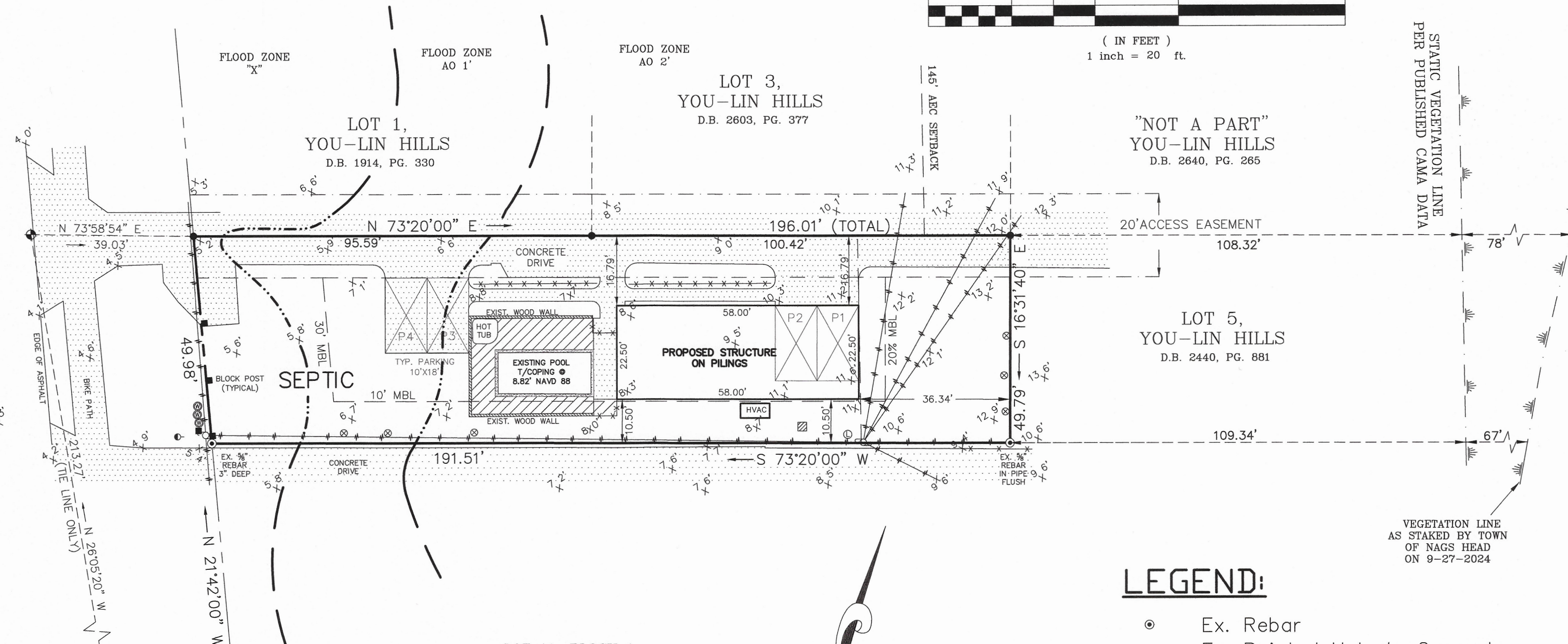


PROPOSED IMPROVEMENTS SURVEY



OLD OREGON INLET ROAD
S.R. 1243
(100' R/W)

NCGS CONTROL MONUMENT
"NINTH" 1974
N 795,156.0868'
E 3,011,374.2233'
NAD 83



LOT 11, BLOCK 1,
HOLLYWOOD BEACH AMENDED,
SECTION 5
M.B. 2, PG. 194
D.B. 2118, PG. 288

NOTES:

Current Owners: Greg Sim, Trustee
and Stephanie Sim, Trustee

Address: 8725 S. Old Oregon Inlet Road

Lot Area = 9,647.4 Sq. Ft. (BY CORDINATES)

This survey was based on the existing
property corners found in conjunction
with the recorded reference given.

Certifier hereon is not responsible
for utilities and/or features that are
not visible at the time of the survey.

I, M. DOUGLAS STYONS, JR., P.L.S., certify that this plat was drawn from an actual field land survey
that the error of closure as calculated by latitudes and departures is at least 1:10,000; this map
meets The Standards Of Practice For Land Surveying in N.C. (21NCAC 56,1600);

Witness my hand and seal this 7th day of July A.D. 2025

P.L.S. L-3227



PROP. COVERAGE INFO:

Structures : 1329.50
Pool Area : 695.28
Concrete outside of Easement : 970.92
Total = 2,995.70 Sq. Ft. (31.05%)
Max. Allowed = 30%+300= 3,194.2

LEGEND:

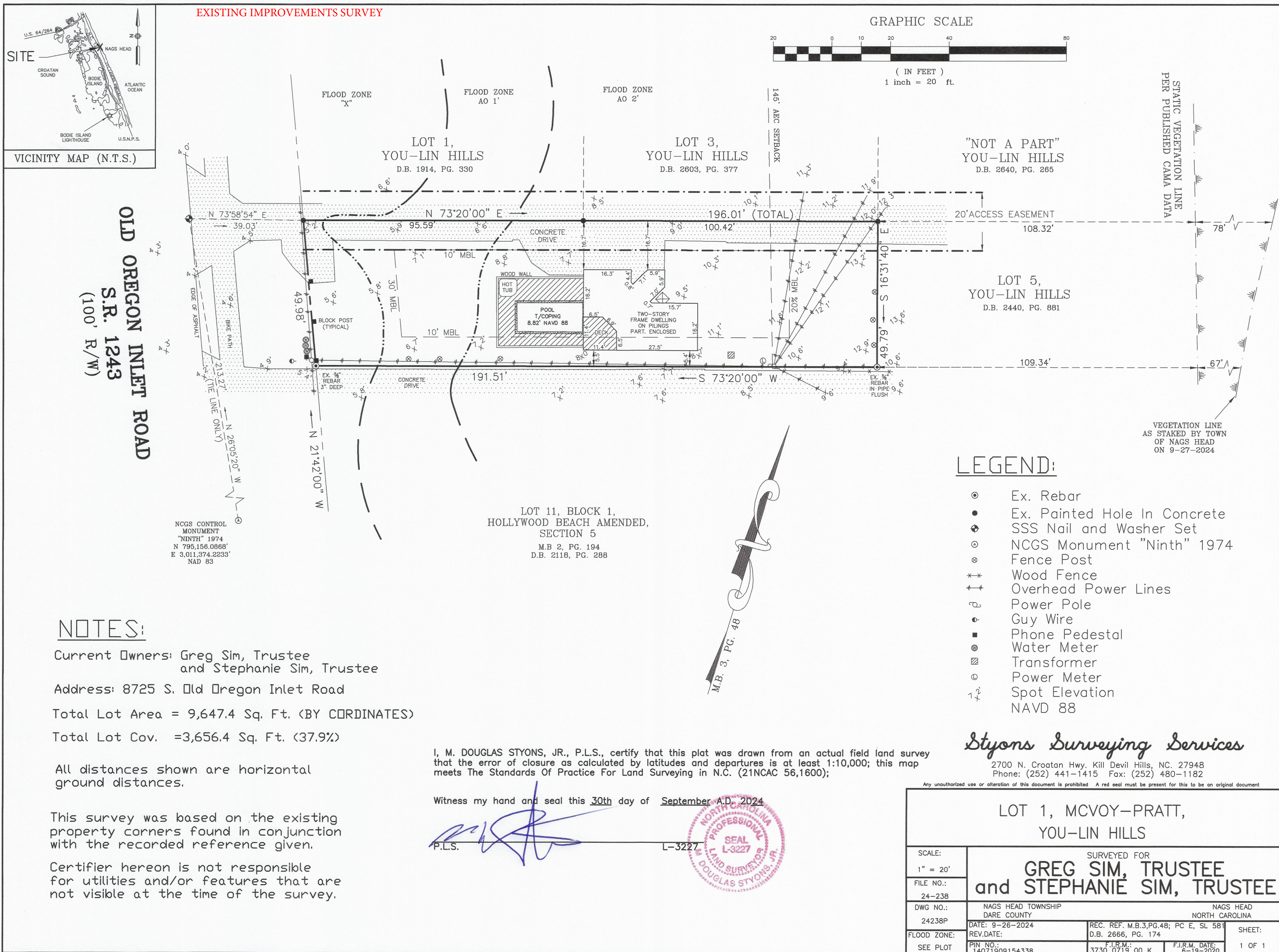
- Ex. Rebar
- Ex. Painted Hole In Concrete
- SSS Nail and Washer Set
- NCGS Monument "Ninth" 1974
- Fence Post
- Wood Fence
- Overhead Power Lines
- Power Pole
- Guy Wire
- Phone Pedestal
- Water Meter
- Transformer
- Power Meter
- Spot Elevation
NAVD 88

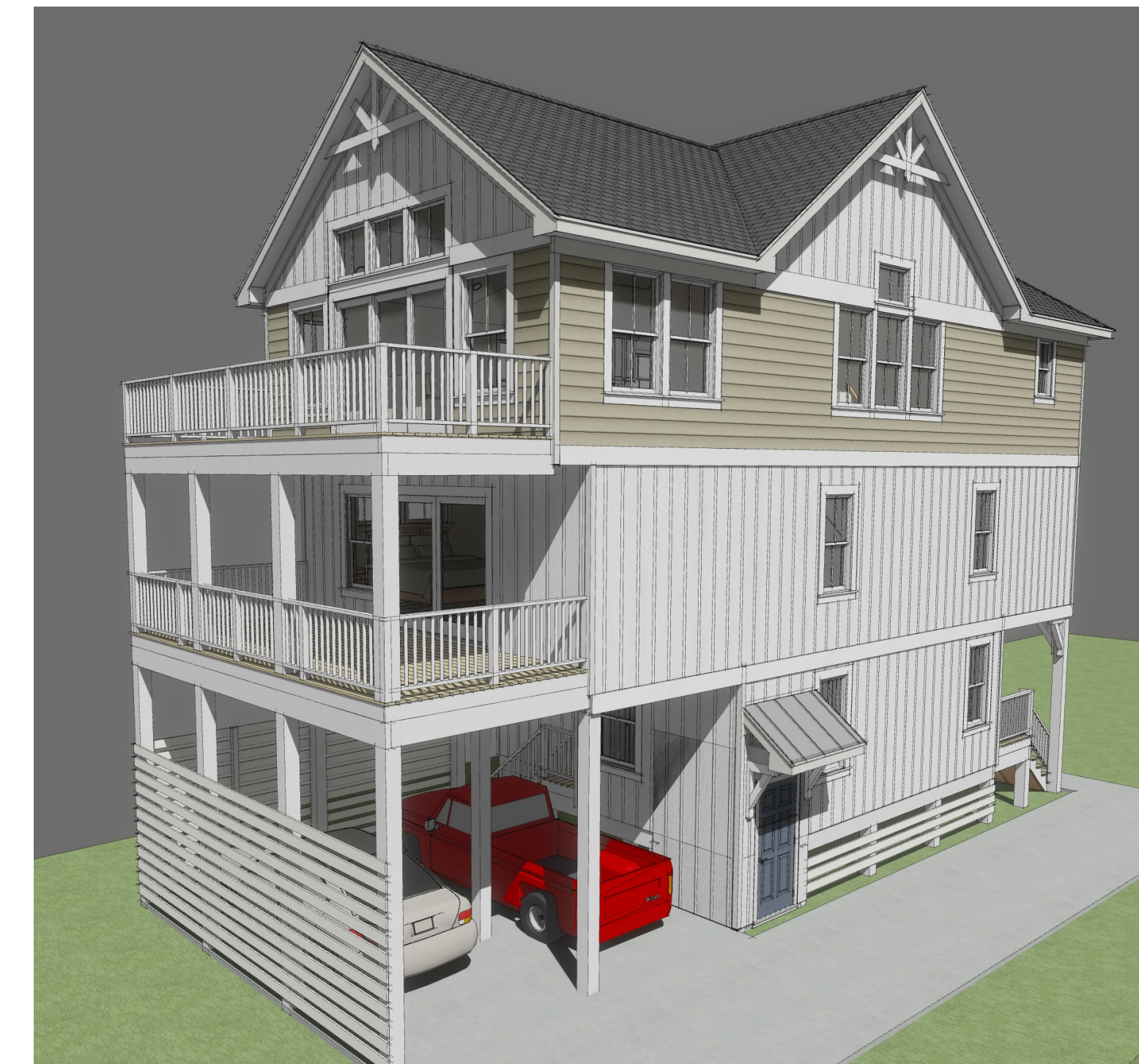
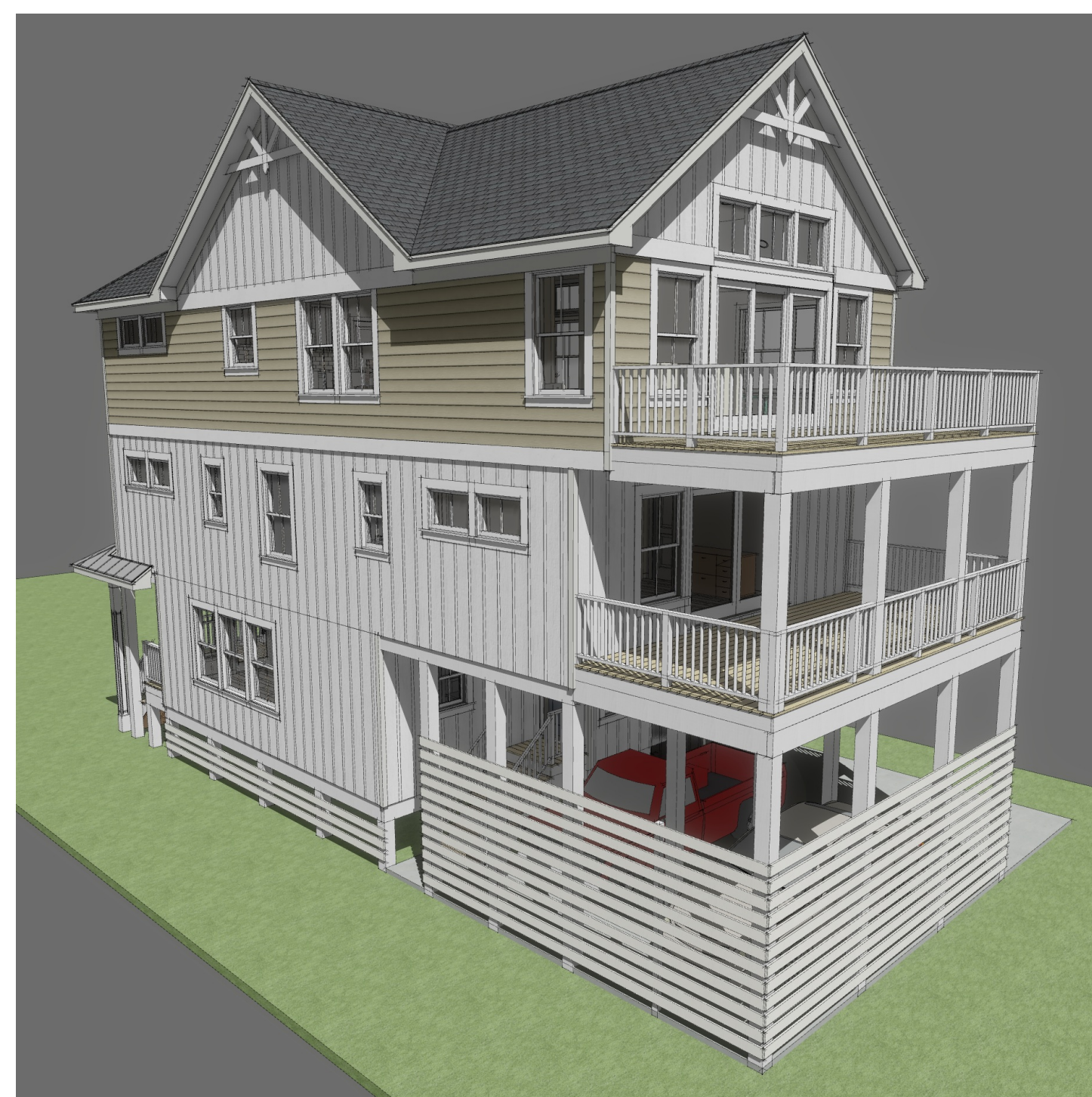
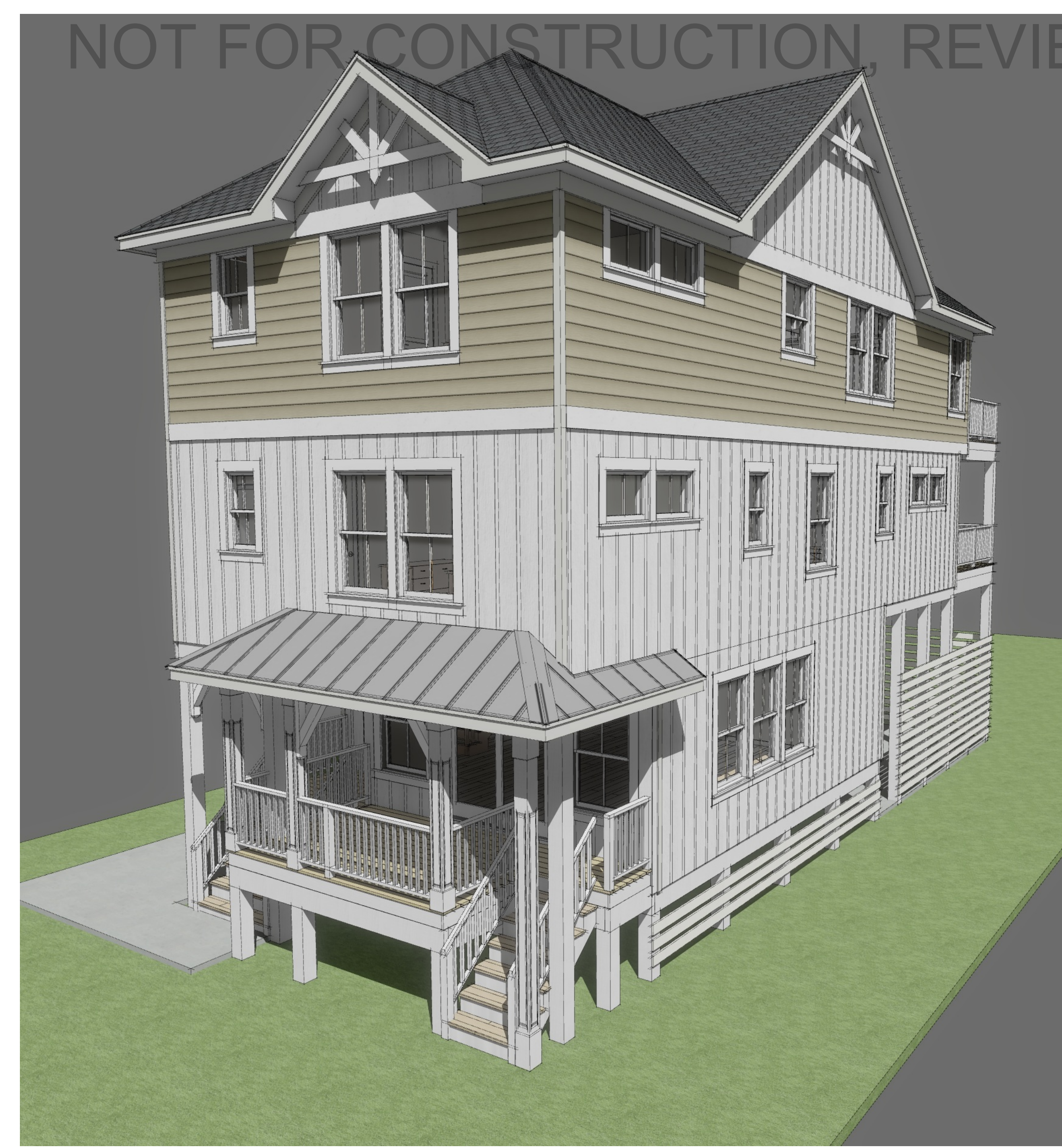
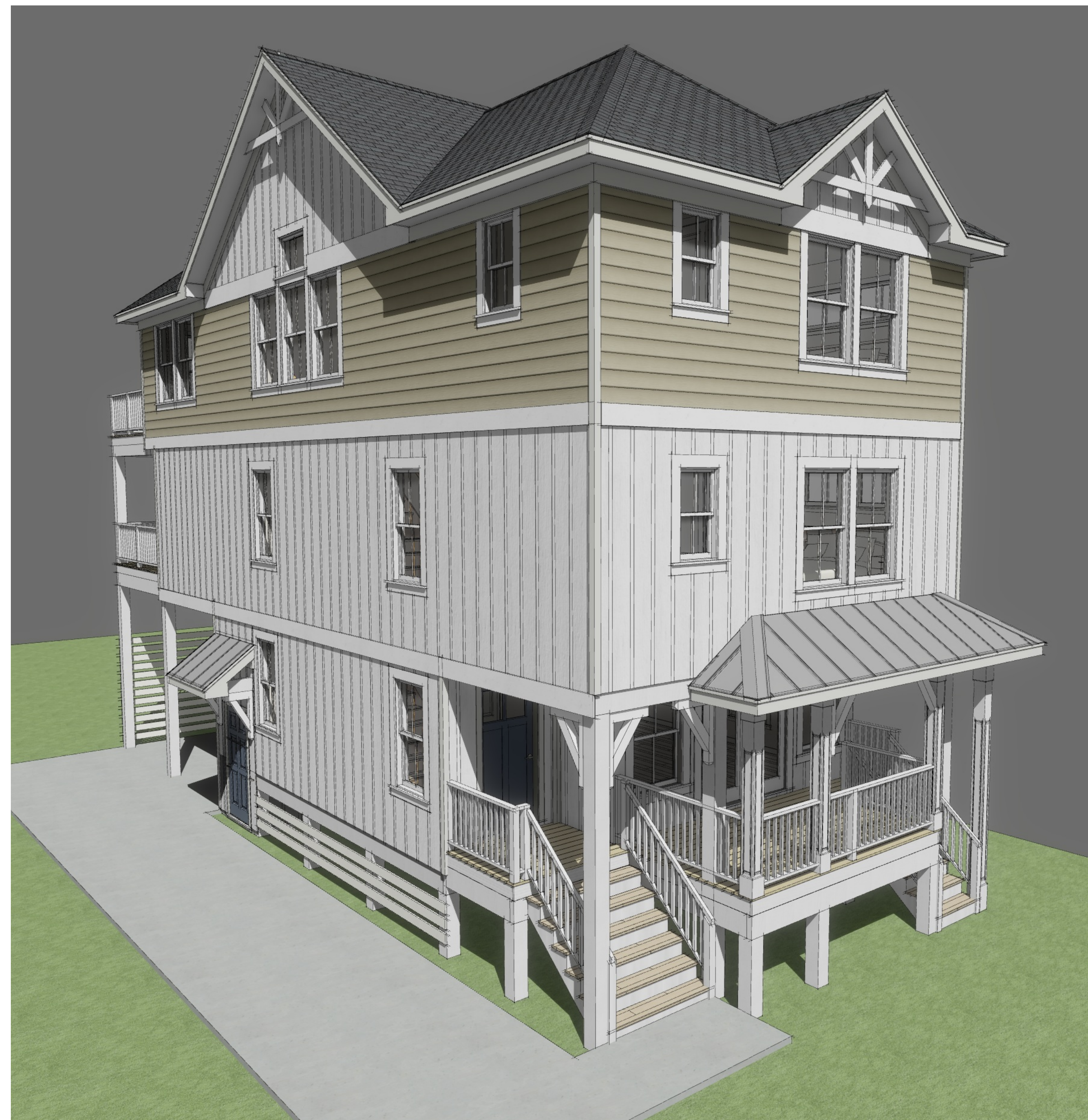
Styons Surveying Services

2700 N. Croatan Hwy. Kill Devil Hills, NC. 27948
Phone: (252) 441-1415 Fax: (252) 480-1182

Any unauthorized use or alteration of this document is prohibited. A red seal must be present for this to be an original document.

REVISED SITE PLAN LOT 1, MCVOY-PRATT, YOU-LIN HILLS			
SCALE: 1" = 20'	SURVEYED FOR GREG SIM, TRUSTEE and STEPHANIE SIM, TRUSTEE		
FILE NO.: 24-238	NAGS HEAD TOWNSHIP DARE COUNTY NORTH CAROLINA		
DWG NO.: 24238SPR	DATE: SURVEYED 9-26-2024 REV. DATE: 7-7-25	REC. REF. M.B.3, PG. 48; PC E, SL 58 D.B. 2666, PG. 174	F.I.R.M. DATE: 6-19-2020
FLOOD ZONE: SEE PLOT	PIN NO.: 14071909154338	F.I.R.M.: 3730 0719 00 K	SHEET: 1 OF 1





PRELIMINARY DRAWINGS FOR THE RESIDENCE OF:
STEPHANIE & GREG SIM



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DRAWINGS FOR THE RESIDENCE OF:
STEPHANIE & GREG SIM
LOT #1, MCVOY-PRATT, YOU-LIN HILLS, NAGS HEAD, N.C.
BUILT BY SANDMARK CUSTOM HOMES, INC.

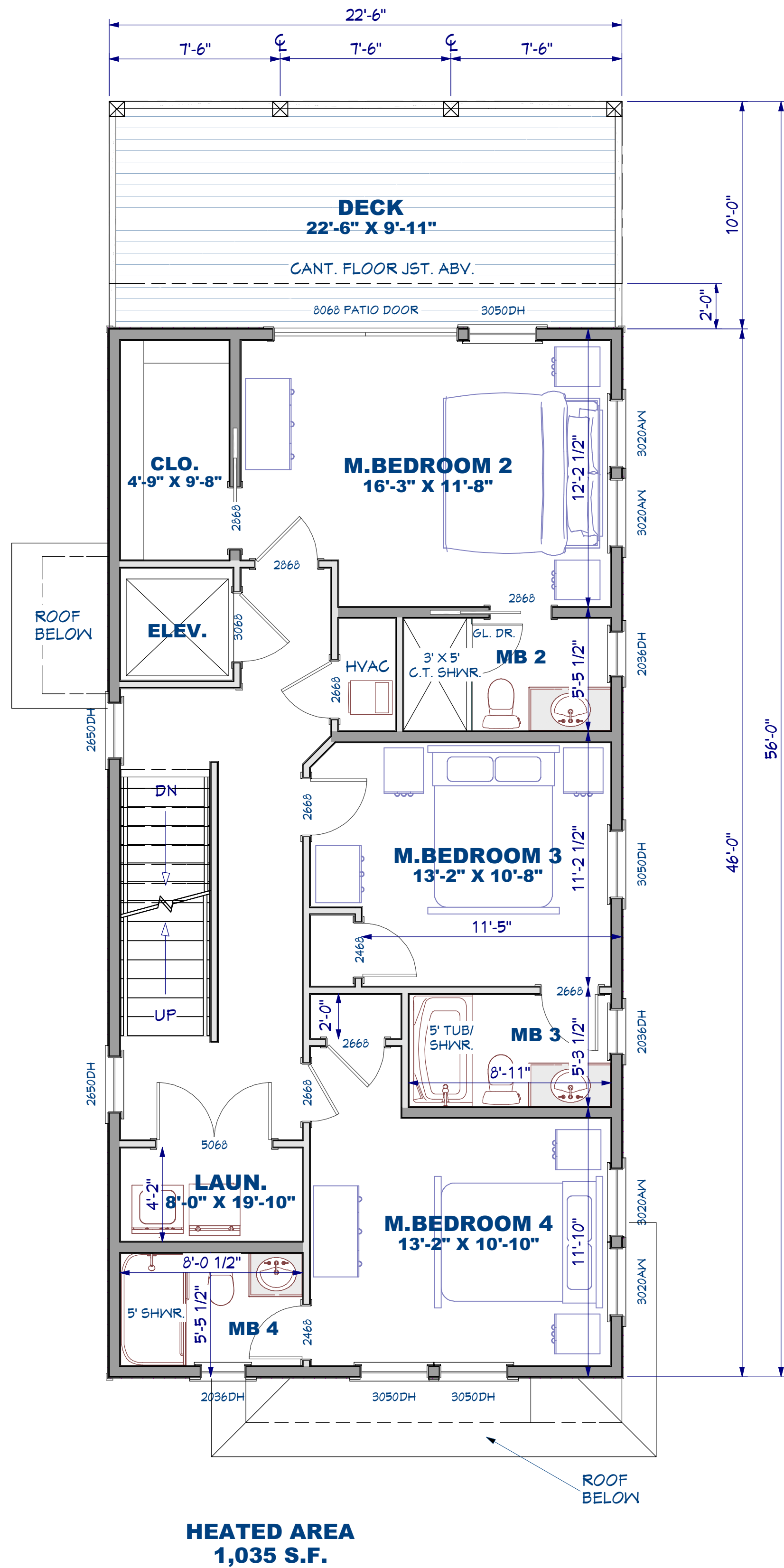
DRAWINGS PROVIDED BY:
Sea Swept Design
JEFF SAWYER
P.O. BOX 2032
KITTY HAWK, N.C. 27949
252-261-5798

DATE:

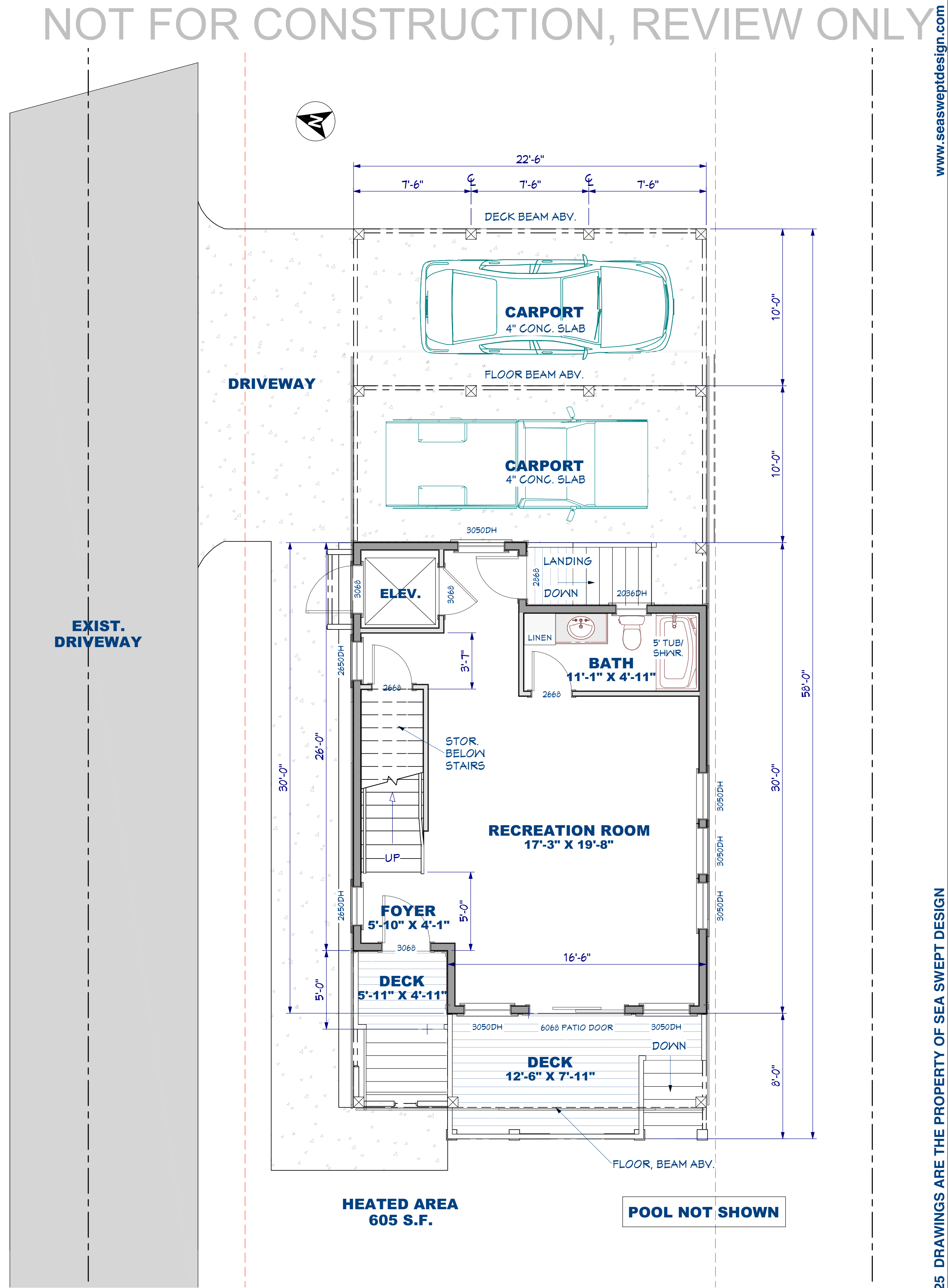
7/2/25

SHEET:

A-1



PROPOSED FIRST FLOOR PLAN
SCALE: 1/4" = 1' 0"



PROPOSED GROUND FLOOR PLAN
SCALE: 1/4" = 1' 0"

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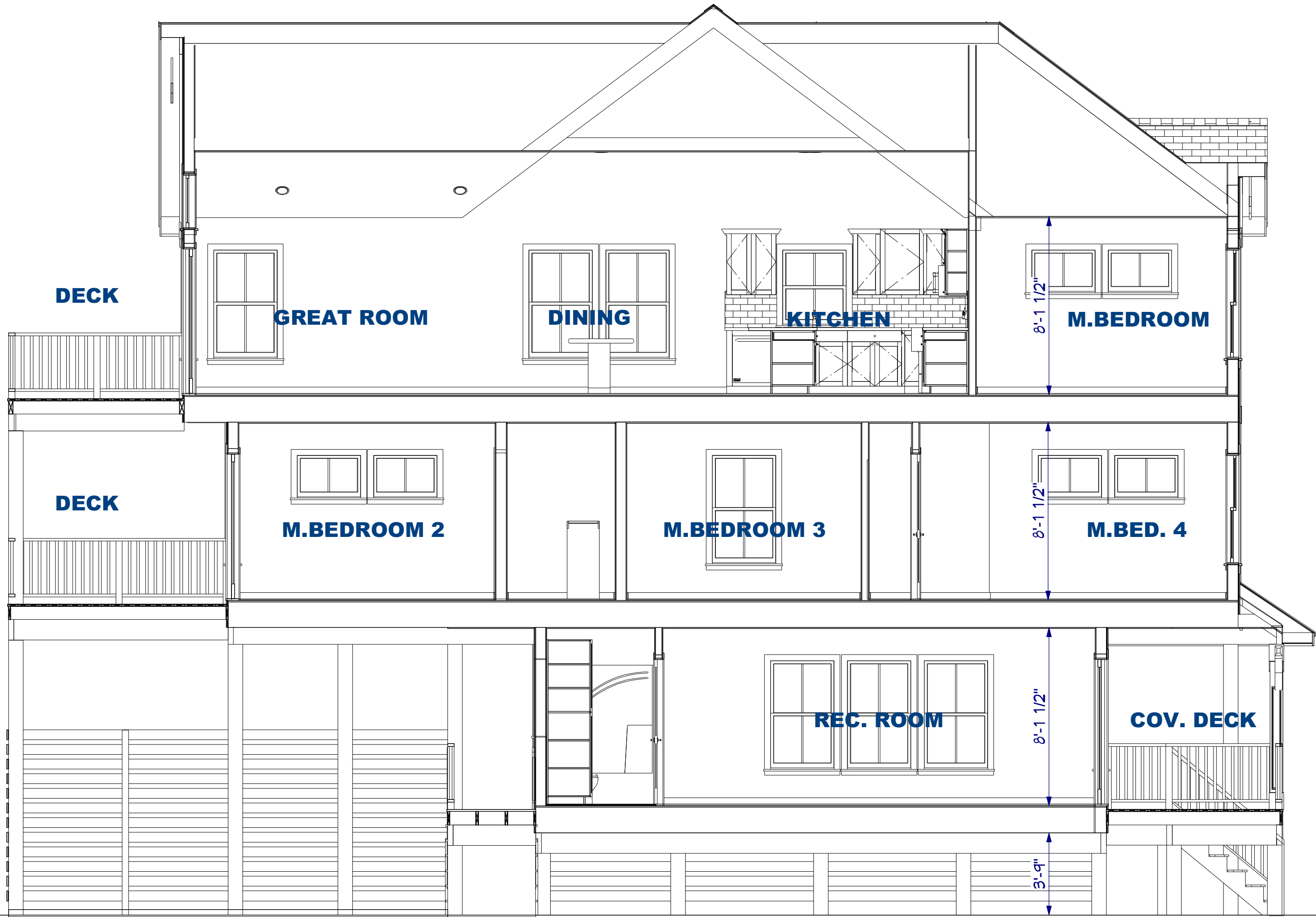
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252-261-5796

DATE:
7/2/25

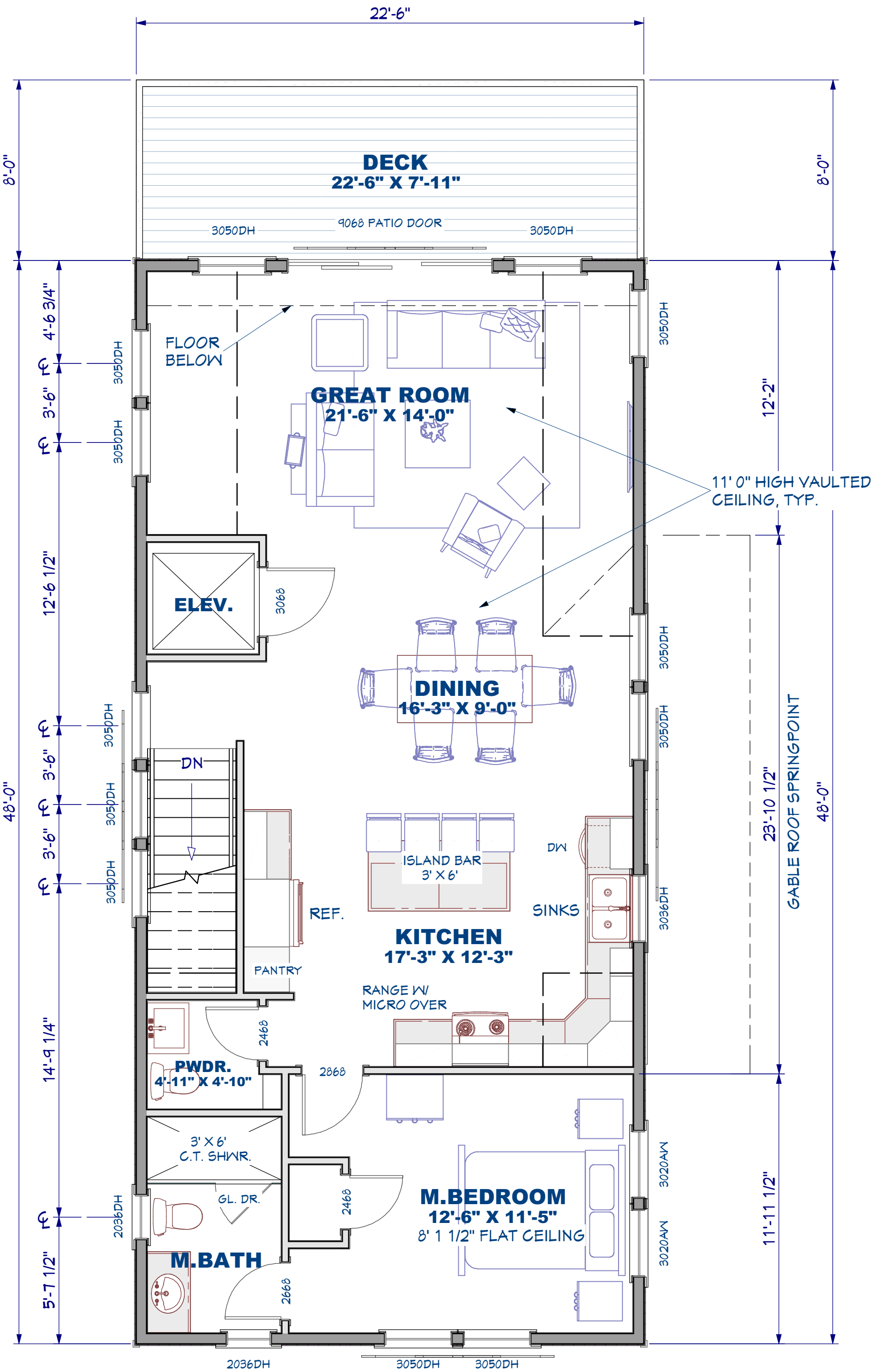
SHEET:
A-2



GREAT ROOM TO KITCHEN VIEW



BUILDING SECTION
SCALE: 1/4"= 1' 0"



PROPOSED SECOND FLOOR PLAN
SCALE: 1/4"= 1' 0"

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P.O. BOX 2002
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252-261-5796

DATE:
7/2/25
SHEET:
A-3

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REVISION TABLE	
NUMBER	DATE



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DATE:
7/2/25

SHEET:
A-4

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LEFTSIDE ELEVATION, NORTH
SCALE: 1/4"= 1' 0"



PROPOSED FRONT ELEVATION, WEST
SCALE: 1/4"= 1' 0"



REAR ELEVATION, EAST
SCALE: 1/4"= 1' 0"



RIGHTSIDE ELEVATION, SOUTH
SCALE: 1/4"= 1' 0"



Town of Nags Head

Development Permit Application

Submittal Date: _____

Planning and Development Department
5401 S. Croatan Highway
PO Box 99
Nags Head, NC 27959
252-441-7016 : www.nagsheadnc.gov

Project Site Information	
Street Address: 8525 S.Old Oregon Inlet Road	Subdivision: You-Lin Hills
PIN #: 14071909154338	☒ Rental Property ☐ Primary Residence
Parcel #: 007997004	☐ Second Home ☐ Other

Property Owner Information	Applicant Information
Name: Greg Sim, Trustee & Stephanie Sim, Trustee	Name: Sandmark Custom Homes, Inc
Mailing Address: 39017 90th St. Burlington, WI 53105	Mailing Address: 191 Wax Myrtle Trail, Southern Shores, NC 27949
Phone: 262-441-3507	Phone: 252-202-3808
Email: Greg@3sims.com	Email: mark@outerbanksbuilders.com

Type of Development (Check All That Apply)	
Classification of Work:	☒ New Construction ☐ Addition ☐ Remodel ☒ Demolition ☐ Repair ☐ Relocation ☒ Accessory Structure
Residential:	☒ Single-Family ☐ Shed/Garage ☒ Swimming Pool/Hot Tub ☒ Elevator ☒ Deck ☐ Pergola/Cabana ☒ Ground Level Enclosure ☐ Other: _____
Commercial:	☐ Assembly ☐ Business ☐ Multi-Family ☐ Motel/Hotel ☐ Educational ☐ Factory/Industrial ☐ Institutional ☐ Hazardous ☐ Mercantile ☐ Storage ☐ Utility/Miscellaneous ☐ Other: _____
Other:	☐ Excavation ☐ Fill ☒ Grading ☒ Erosion Control Measures ☒ Driveway ☒ Septic ☒ Irrigation ☐ Pier/Bulkhead ☐ Dune Walk-Over ☐ Sign

Description of Work (Include # of Fixtures, Outlets, Units, Appliance, Etc. for Trade Work)
Tear down existing house and build new house, install new septic system.
replace the existing deck around the pool and keep the existing swimming pool. Install new pool fence
Total Project Cost: \$925,000

Contractor Information	
General Contractor: Sandmark Custom Homes, Inc	License #/Class: 75383
License Expiration Date: 12/31/25	License Limitation: Unlimited
Electrical Contractor: BRS Electrical Services	License #: 23077-U
Plumbing Contractor: Ballard Plumbing	License #: 15174
Mechanical Contractor: North Beach Services	License #: 33023
Gas Contractor:	License #:
Non-licensed Contractor:	

Building Areas (sq. ft. / #)							
	Existing	Proposed	Total		Existing	Proposed	Total
Primary Structure Heated		2722	2722	Accessory Structure Heated		0	
Primary Structure Unheated		565	565	Accessory Structure Unheated		0	
# Bedrooms		4 sleep 10	4 sleep 10	# Bathrooms		5 1/2	5 1/2

Floodplain Development Information (If Applicable)			
Flood Zone: ☐ VE ☐ AE ☐ AO ☐ X		BFE: 12	RFE:
Vertical Datum:	Horizontal Datum:	Enclosed Area Below BFE? ☐ Yes ☒ No If Yes, sq. ft.	
Proposed # Flood Vents: 0	Net Free Area Per Flood Vent:	sq. in.	Value of Structure: \$

Zoning Information (If Applicable)				
		Permeable (sq. ft. x 0.67)	Non-Permeable	Total
Lot Area:	9647.40	Existing Lot Coverage:		
Allowable Lot Coverage*:	3194.20	Proposed Lot Coverage:	2955.79	
Existing Parking Spaces:	Proposed Parking Spaces: 4	Driveway Width at Property Line:	20	Shared Driveway? ☒ Yes ☐ No
Setbacks	Front: 30	Side: 10	Corner:	Rear: 20%
Height:	41-2 1/2	Roof Pitch: 9 :12	Fence Height: Front: 6	Rear: 4

Completed Residential Design Guidelines Point Tabulation Form (If Applicable)

Applicants for the construction of a Large Residential Dwelling (3,500 SF or > of enclosed habitable living area) should indicate whether they elect to follow the Town of Nags Head Residential Design Guidelines. This excludes properties located within The Village at Nags Head or in the SED-80 zoning district.

I, _____, owner of the property at the address listed on this form, elect / do not elect (circle one) to follow the Town of Nags Head Residential Design Guidelines for the construction of a large residential dwelling per the Towns Unified Development Ordinance 7.4 Dwelling, Large Residential.

☐ Architectural Point Tabulation	Total Points Required:	Total Points Calculated:
☐ Landscape Plan – to be turned in prior to framing inspection		

Erosion and Sedimentation Control (If Applicable)	
Area of Disturbance:	Sediment Control Plan ☐ Yes ☒ No Financial Responsibility Form ☐ Yes ☒ No

Lot Fill (If Applicable)		
Surveys should include pre-disturbance elevation points at the corners of each proposed site element. Where fill is proposed, please complete the information below. See diagram for minimum required survey information for site development plans.		
Site Elements	Current Elevation (lowest corner)	Proposed Elevation
House:	8.3	9 under house
Pool:	8.82	same
Driveway:	11-8 to 8.3	same
Parking:	10.2 east park/ 8.8 west park	same
Other:		

Stormwater Management (If Applicable)	
☒ Non-Engineered Plan Must retain 15 cu/ft. volume per 100 ft. BUA	☐ Engineered Plan 3% increase in lot coverage; Must retain 3.5" rainfall event
☐ N/A	

CAMA Permit #:	DCHD Wastewater Permit #: not obtained
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See Permit Submittal Checklist for required attachments and application information.

Application will not be accepted until all required information is provided.

Please contact the Planning and Development Department to confirm requirements for your particular project.

Property Owner Signature 	Applicant Signature 
The owner hereby authorizes the applicant and/or contractor listed on this form to act on his/her behalf to obtain a permit and complete project activities as described herein.	
Staff Use:	

Review Fees Paid \$	Acceptance: Y N By:
---------------------	---------------------











STATE OF NORTH CAROLINA
COUNTY OF DARE



6042404
Page: 1 of 2
08/31/2001 03:03PM

Prepared by and return to:
Linda H. McCown
McCown & McCown
300 Sir Walter Raleigh Street
Manteo, NC 27954

DECLARATION

THIS DECLARATION made and entered into this the 31st day of August, 2001, by Helen B. Harper, unmarried, Declarant;

WITNESSETH:

THAT WHEREAS, Declarant is the owner of Lots 1 through 6, You-Lin Hills Subdivision as shown in Map Book 3, Page 48, Dare County Public Registry, and the leftover portion of Lots 9 & 10, Sec. 5, Hollywood Beach, marked "Not a Part";

AND WHEREAS, there currently exists a twenty (20) foot easement through the middle of the subdivision which provides access to all of the lots and to the leftover portion of Lots 9 & 10, Sec. 5, Hollywood Beach, marked "Not a Part", said properties being shown on map or plat by K. R. Sinclair, dated the 8th day of November, 1967, are recorded in Map Book 3, Page 48, Dare County Public Registry;

AND WHEREAS, said twenty (20) foot easement is a joint driveway for the benefit and use, ingress, egress and regress of all the aforescribed property;

NOW THEREFORE, it is hereby declared and agreed that the twenty (20) foot easement or joint driveway is established for the common use of the lots bordering thereon; said easement extending from Highway 12, also known as Old Oregon Inlet Road to the Atlantic Ocean;

And in consideration of the mutual rights and advantages above set out, Declarant hereby gives, grants, and conveys unto each of the lots and to the leftover portion of Lots 9 & 10, Sec. 5, Hollywood Beach, the perpetual right and easement of egress, ingress, and regress over and upon said joint driveway as above described;

It shall be the responsibility of all Lot owners and the owner of the leftover portion of Lots 9 & 10, Sec. 5, Hollywood Beach, to pay their prorated share of the maintenance and repair of said joint driveway;

Should any Lot owner fail to pay as required, the amount owed shall constitute a lien on said property and said lien may be placed on file with the Clerk of Superior Court of Dare County;

To have and to hold the rights and easements hereby granted to the respective grantees and their successors in title forever; and being declared and agreed that the rights and easement hereby granted are for the common use of, are appurtenant to and run with the lots of You-Lin Hills Subdivision and the leftover portion of Lots 9 & 10, Sec. 5, Hollywood Beach referred to above;



IN WITNESS WHEREOF, said Declarant has hereunto set her hand and seal the day and year first above written.

Helen B. Harper (SEAL)
Helen B. Harper

STATE OF NORTH CAROLINA
COUNTY OF TYRRELL

I, a Notary Public of the County and State aforesaid, do hereby certify that Helen B. Harper, unmarried, Declarant, personally appeared before me and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 31st day of August, 2001.

(SEAL-STAMP)

PENNY C. BEASLEY
NOTARY PUBLIC
TYRRELL COUNTY, N.C.

Penny C. Beasley
Notary Public
My commission expires: 12-10-04

The foregoing certificate of Penny C. Beasley
a Notary Public of Tyrrell Co. NC
is certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

Barbara M. Gray REGISTER OF DEEDS FOR DARE COUNTY
Andruan Y. Lelott Deputy/Assistant Register of Deeds





INLET RD - SR 1243

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 Sim Property Variance case.

**Town of Nags Head
Board of Adjustment**

May 8, 2025 (DRAFT)

The Board of Adjustment of the Town of Nags Head met in regular session Thursday, May 8, 2025 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, Lily Nieberding, Lauren Womble

Call to Order Chair Margaret Suppler called the meeting to order at 9:10 a.m. as a quorum was present.

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

Consideration of a variance request submitted by 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.

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

Evidence Presented by the Town Planning Director Kelly Wyatt presented the case, displaying a survey of the property showing the home, carport, garage, and the location of the proposed above-ground pool. She explained that 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.

Ms. Wyatt noted that for residential development in the C-2 district, lot coverage is limited to either 33% of the lot area or 30% plus 300 square feet for lots less than 10,000 square feet. The Schroeder property, at 9,539 square feet, would normally be allowed 3,161 square feet of lot coverage. However, the property already had 3,492 square feet of coverage (35.9%), which is considered legally nonconforming. The proposed pool and access stairs would add approximately 250 square feet of additional coverage.

In February 2025, code enforcement observed the above-ground pool and stairs, which had been installed without a permit, and issued a notice of violation. The applicants promptly came to the Planning Department to address the issue. After exploring options to offset the additional coverage elsewhere on the property, it was determined that a variance would be the most appropriate solution.

Ms. Wyatt highlighted that the applicants included documentation from a physician indicating that daily pool use was recommended as a form of exercise to help manage a medical condition. The pool was intended to be temporary, with an anticipated need of up to 10 years.

Ms. Wyatt explained that under North Carolina General Statute 160D-705, the Board of Adjustment has the authority to grant reasonable accommodations for persons with disabilities as defined by the Federal Fair Housing Act and the Americans with Disabilities Act. She noted that the requested variance could be considered a reasonable accommodation if the Board found that the condition qualified as a disability.

Ms. Wyatt then reviewed the findings of fact:

With regards to the unnecessary hardship, Staff submits that the hardship does result from the strict application of section 8.20.1 of the UDO. The owner asserts that the above ground pool is medically necessary for daily exercise and intended to be temporary. Without approval of the variance the applicants would be required to remove the pool which again the property owner contends would interfere with the ability to manage a documented medical condition.

Ms. Wyatt also noted that the residence was constructed in 1960 prior to zoning regulations or lot coverage regulations as well.

As to the second finding is fact, that the hardship results from conditions that are peculiar to the property such as location, size, topography, Ms. Wyatt noted that this is where the language about the federal fair housing and ADA comes into play. A variance may be granted when necessary and appropriate to make reasonable accommodation under the federal fair housing act.

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 their dwelling as required under the federal fair housing act. The applicant has submitted documentation from the physician and if the board finds that the condition qualifies as a disability the requested fold would be reasonable and a necessary accommodation. Ms. Wyatt also noted that the lot is under 10000

square feet, which limits its flexibility in terms of usable area for accessory structures.

The third criteria is that the hardship did not result from actions taken by the applicant or the property owner. Ms. Wyatt reiterated that while the pool was installed without a permit, the applicants engaged staff promptly following the NOV and sought to resolve the matter as soon as possible.

Finally, as to whether the requested variance is consistent with spirit, purpose, and intent such that public safety is secured, and substantial justice is achieved. Ms. Wyatt noted that 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 being proposed.

Staff submits the granting of variance would be consistent with the UDO as it supports a reasonable accommodation while upholding public safety, neighborhood compatibility and promotes substantial justice by allowing property owner access to a resource that was noted through the physician's letter

Based on Staff's findings, Ms. Wyatt recommends approval of the variance subject to the following condition: the above-ground pool and associated stairs shall be removed from the property upon the occurrence of any of the following: (1) the pool is no longer needed as a medical accommodation, (2) the property is transferred or sold to a new owner, or (3) the property is placed into a short-term or long-term rental program.

The purpose of these conditions 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.

Board Attorney Jay Wheless suggested clarifying the conditions to specify that the property transfer would refer to "an unrelated owner" rather than simply a "new owner," to avoid issues if the property were transferred to an LLC owned by the current owners.

Ms. Wyatt confirmed for Ms. Burnette that the garage was built prior to 2010 but was unsure of the timeline.

Evidence Presented by
the Applicant

Property owner Mark Schroeder addressed the Board, noting that the house has been in his wife's family since 1960, when her grandfather built it. He explained that they do not rent the property and have no

intention of selling it. Mr. Schroeder stated that the pool helps with his wife's significant medical conditions, specifically hip and heart issues, and that he preferred not to publicly disclose detailed medical records.

Ms. Burnette asked about ensuring that the request met the conditions of the ADA. Mr. Schroeder confirmed that his wife's condition falls within the criteria of the Disabilities Act as he understands it.

Mr. Shroeder confirmed for Mr. Wheless that he had no objections to the conditions proposed by Staff.

Mr. Wheless reviewed all the documents including Staff's report, the Applicant's application and Physician's report on letterhead. Chair Supplier accepted them all into evidence.

Chair Supplier closed the public portion of the meeting, and the Board deliberated on the four criteria required for granting a variance:

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

Does the hardship result from conditions that are peculiar to the property, such as location, size, or topography? The Board unanimously agreed that it does, noting the nonconforming nature of the lot.

Does the hardship result from actions taken by the applicant or property owner? The Board unanimously agreed it did not, noting that the applicants promptly worked to remedy the situation after receiving the notice of violation.

Is the requested variance consistent with the spirit, purpose, and intent of the ordinance such that public safety is secured and substantial justice is achieved? The Board unanimously agreed that it was.

The Board then discussed the proposed conditions, with Attorney Wheless suggesting the following refined wording: "The above-ground pool and associated access stairs shall be removed from the property upon the earliest occurrence of any of the following: (1) the pool is no longer needed as a medical accommodation for the current property owner, (2) the property is transferred or sold to a new unrelated owner, or (3) the property is placed into short-term or long-term rental."

Motion

Based on their findings and together with Staff's findings, Judy Burnette moved to approve the variance as presented with the condition as amended. Bobby Gentry seconded, and the motion passed unanimously.

Order

The Board of Adjustment of the Town of Nags Head (the "Board") held a quasi-judicial hearing on May 8, 2025, to consider a variance application submitted by Mark and Carla Schroeder (the "Owners"), seeking to vary the requirements of Section 8.2.1 of the Unified Development Ordinance (the "UDO") to exceed the maximum allowable lot coverage to accommodate an above ground pool and associated access stairs at the property located at 109 E. Lakeside Street, 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 Owners own the Property.
2. The Property is located within the C-2, General Commercial Zoning District.
3. The Property contains 9,539 square feet in area.
4. Section 8.2.1 of the UDO limits maximum lot coverage to the greater of 30% of the lot area plus 300 square feet or 33% of the total lot area.
5. Based on the lot size, the maximum allowable lot coverage is 3,161 square feet.
6. The existing lot coverage is 3,429 square feet (35.9%), which exceeds the permitted maximum and constitutes a legally nonconforming site condition under Section 5.4 of the UDO.
7. Section 5.4 allows legally nonconforming site conditions to continue, but not to be increased.
8. On February 4, 2025, Town staff observed the unpermitted installation of an above ground pool and access stairs and issued a Notice of Violation.
9. The additional pool and stairs resulted in an increase of approximately 250 square feet over the existing nonconforming lot coverage, prompting the request for a variance.
10. The Owners assert that the above ground pool is medically necessary for the management of a diagnosed condition, as supported by a physician's statement included in the application.
11. The Owners have indicated the pool is temporary in nature and anticipate it being needed for no more than ten years.
12. The home is used as a second residence and is not rented nor intended to be rented.

13. The Property's lot area (under 10,000 square feet) and pre-existing overage in lot coverage limit the feasibility of removing or converting other impervious surfaces to offset the additional coverage.
14. Town staff explored the potential to convert the driveway to Turfstone or other semi-permeable surface but determined that even full conversion would not offset the 250 square feet needed.
15. The Owners have worked cooperatively with staff since the Notice of Violation and pursued a variance to resolve the issue appropriately.
16. NCGS 160D-705 allows a variance to be granted as a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

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

1. All parties are properly before the Board, and the Board has the jurisdiction to consider and render a decision on the requested variance.
2. Strict application of the ordinance does result in an unnecessary hardship to the Owners.
 - The existing lot coverage already exceeds UDO limits and predates current regulations.
 - The above ground pool is medically necessary and intended to be temporary in nature.
3. The hardship does result from conditions that are peculiar to the Property, such as location, size, or topography.
 - The Property is less than 10,000 square feet in area and legally nonconforming in terms of lot coverage, which limits flexibility for accommodating accessory structures.
 - The Board finds that the requested variance constitutes a reasonable accommodation necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling.
4. The hardship does not result from actions taken by the Applicant or the property owner.
 - While the pool was installed prior to permitting, the

Owners promptly engaged staff and sought to resolve the issue appropriately. The pre-existing nonconforming lot coverage predates the current Owners' actions.

5. 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.

- No evidence was presented that the pool poses a safety or drainage concern.
- The variance supports a reasonable accommodation while preserving the intent of the UDO.

THEREFORE, based upon all the foregoing, the application for a variance to exceed the maximum allowable lot coverage to permit the above ground pool and access stairs is **GRANTED**, subject to the following condition to which the Owners agreed:

1. The above ground pool and associated access stairs shall be removed from the property upon the earliest 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 and/or unrelated owner; or
 - The property is utilized as a short-term or long-term rental.
2. A copy of the executed decision on this approved variance shall be recorded with the Dare County Register of Deeds.

Approval of Minutes

Chair Suppler called for the approval of the minutes from the December 12, 2024 meeting concerning the Alexander Variance.

Motion to approve the minutes of December 12, 2024 was made by Judy Burnette, seconded by Bobby Gentry, and approved unanimously.

The Board also considered two additional sets of minutes:

Motion to approve the minutes of December 9, 2021 was made by Tina Adderholdt, seconded by Bobby Gentry, and approved unanimously.

Motion to approve the minutes of June 9, 2022 was made by Bobby Gentry, seconded by Tina Adderholdt, and approved unanimously.

Adjourn

Before adjourning, Town Attorney Lauren Womble informed the Board that there has been an appeal filed on one of their prior decisions (the Harvey case) and that John Leidy would represent the Town in that matter. Staff will keep the Board updated as necessary.

There being no further business to discuss, the meeting adjourned at 9:29 AM.

Respectfully Submitted,

Lily Campos Nieberding

