



**ORDER APPROVING A SUBDIVISION VARIANCE
BY THE BOARD OF COMMISSIONERS
TOWN OF NAGS HEAD, NORTH CAROLINA**

The Board of Commissioners for the Town of Nags Head, North Carolina, having held a quasi-judicial public hearing on Wednesday, October 5, 2011, to consider a subdivision variance request pursuant to Section 38-8(a) of the Town Subdivision Ordinance, submitted by Thomas P. Nash, IV, attorney for R&R Enterprises, owner of the property located at 2803 S. Virginia Dare Trail, Nags Head, North Carolina [PIN# 989206496059] and having heard all of the arguments presented at the hearing, makes the following FINDINGS OF FACT:

1. The applicant owns property located at 2803 S. Virginia Dare Trail, Nags Head, North Carolina.
2. The property is located in zoning district R-3, High Density Residential (the "District").
3. The applicant requests consideration to allow the recombination of one 58' wide lot that includes an 8' Town easement, one 50' wide lot, and one 25' wide lot (a total of three lots), into two lots.
4. The first proposed lot (Lot 8-R) would encompass the existing 8' easement and the existing house and total be 83' in width (or 75' of usable width). The second proposed lot (Lot 7-R) would be 50' in width which would be noncompliant with the District's 60' minimum width requirement as required under Section 38-5(a)(3) of the Town Subdivision Ordinance (the "required lot width" in that section is determined by Section 48-404(d)(3) of the Town Zoning Ordinance).
5. The proposed recombination will also create a 3.7 foot encroachment of the existing house into the minimum side yard setback of proposed Lot 8-R along the interior boundary with proposed Lot 7-R.
6. The proposed recombination could not be handled by Town Planning staff administratively. Doing so requires the proposed recombination to comply with both Town Subdivision and Zoning Ordinances under Section 38-42 of the Town Subdivision Ordinance. While the administrative approval procedure in Section 38-42 does not consider lot

width, the resulting 3.7 foot minimum side yard setback encroachment within proposed Lot 8-R would be a zoning violation and therefore prevented administrative approval of this application.

7. According to Sec. 38-8 of the Town Subdivision Ordinance, "where the planning board finds that extraordinary and unnecessary hardships may result from strict compliance with this chapter, it may vary the regulations," so that "substantial justice may be done and the public interest secured," as long as the variations requested will not nullify "the intent and purpose of the official" zoning map or text, the Board of Commissioners may then grant a variance.
8. The Planning Board heard the variance request on September 20, 2011 and recommended denial of the applicant's request to grant the variance required for the subdivision by 3 votes for and 4 votes against. The Planning Board then voted 4 to 3 to approve a motion saying that there was not an unnecessary hardship and that it was important to maintain district regulations.
9. The sole issue to be decided by the Board of Commissioners is whether the Board will grant a variance of Section 38-5(a)(3) of the Town Subdivision Ordinance to permit proposed Lot 7-R resulting from the proposed recombination to be 50 feet in width instead of 60 feet in width as required by the Town Subdivision Ordinance.
10. Even if the Board of Commissioners grants the requested subdivision variance, the applicant may be required to seek variances from the Board of Adjustment in order to remedy any Town Zoning Ordinance violations created by this subdivision variance.

Based on the foregoing FINDINGS OF FACT, the Board makes the following CONCLUSIONS:

- A. It is the Board's CONCLUSION that enforcement of the strict letter of the subdivision ordinance creates an unnecessary hardship for the applicant. In reaching this conclusion, the Board of Commissioners further concludes as follows:
 1. If the applicant complies with the provisions of this chapter, s/he can secure no reasonable return from, or make no reasonable use of, subject property.

In complying with lot width and setback, the applicant could continue the current use of the property as a single family dwelling, and that same use could remain even if this variance

request is denied. However, denial of the request would limit *additional use* of the property for future conveyance or construction.

2. The practical difficulty or unnecessary hardship results from the application of the chapter to this property.

Without a subdivision variance, the subdivision ordinance would prohibit the recombination of this property as proposed. With a variance, the applicant would be permitted to recombine three nonconforming lots into one conforming lot with a 3.7' setback encroachment caused by the location of an existing historic structure, and one nonconforming lot which does not meet lot width standards but could still be built upon as long as setbacks are met.

3. The practical difficulty or unnecessary hardship of which applicant complains is suffered by the subject property directly, and not others.

Section 38-5(a)(3) of the Subdivision Ordinance, which includes the lot width minimum requirement for a recombination of lots, applies uniformly to all lots in the Town located between the Atlantic Ocean and N.C. Highway 12. The applicant has ownership of three nonconforming lots, platted prior to current subdivision regulations. According to the applicant, there is enough property to construct a new home, but not enough property for full compliance with the Subdivision Ordinance's minimum lot width requirement for lots located between the Atlantic Ocean and N.C. Highway 12. Taken together, all three lots have 125 feet total, usable width which could normally accommodate two 60' wide lots for two homes, which is consistent with the subdivision requirements. The interest of the applicant in preserving the existing historic structure prevents the proposed Lot 7-R to have the required minimum 60 feet in width. This hardship is suffered by the subject property directly, and not others.

4. The practical difficulty or unnecessary hardship is not the result of his own actions.

~~At that time the lots were originally platted, the owner could have built two houses on the lots. The existing house was built legally on one lot and encroaching onto another lot in the same ownership. However, when current subdivision requirements were~~

adopted, all of these lots became nonconforming with regard to the minimum lot width, not as a result of anything the property owner did.

5. The practical difficulty or unnecessary hardship is peculiar to the applicant's property.

The existing lots have more than enough width to meet the existing lot width requirements of the Town, but due to the location of the existing historic structure which the applicant desires to preserve in its existing location, the remainder of the property cannot be utilized without a variance to the subdivision ordinance. Section 38-42 of the Town Ordinances would allow administrative approval of the requested recombination of the lots were it not for the resulting minor side setback violation of the porch of the existing historic structure which the applicant wants to preserve in its existing location.

B. It is the Board's CONCLUSION that granting of the requested variance will not nullify the intent and purpose of the Town Official Map, the Master Plan, the Subdivision Ordinance or the Zoning Chapter, and the variance **will** be in harmony with the general purpose and intent of the Subdivision Ordinance and **will** preserve the spirit of the Subdivision Ordinance. In reaching this conclusion, the Board of Commissioners further concludes that the total linear frontage of the proposed two lots combined (133' minus an 8' easement dedicated to the Town for a total of 125' usable lot width) exceeds the minimum linear footage for two lots compliant with the 60' minimum width requirement. The variance is not inconsistent with any fundamental policy indicated by the Subdivision Ordinance.

C. It is the Board's CONCLUSION that, if the variance is granted, public safety and welfare **will** be secured and ensured, and substantial justice **will** be done. In reaching this conclusion, the Board of Commissioners further concludes as follows:

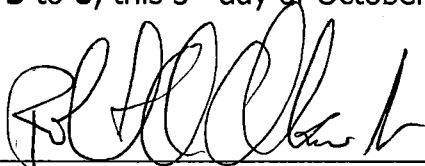
1. The variance will not threaten the public safety and welfare and will preserve the interests of the neighborhood and the community as a whole.
2. Substantial justice will be done since no special monopoly or privilege is granted to the applicant that would not be available to others in like circumstances, and the variance will not alter the essential character of the neighborhood, given that 125 lots in the

District, or 47%, are 50' wide or less similar to the applicant's lots, according to the Town Staff Report.

THEREFORE, based upon all the foregoing, IT IS ORDERED that Board of Commissioners of the Town of Nags Head, North Carolina will grant a variance of Section 38-5(a)(3) of the Town Subdivision Ordinance to permit proposed Lot 7-R resulting from the proposed recombination to be 50 feet in width instead of 60 feet in width.

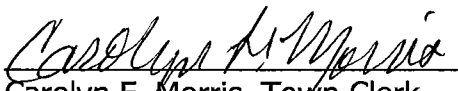
Read, approved and ordered by a vote of **5** to **0**, this 5th day of October, 2011.





Robert O. Oakes, Jr., Mayor

ATTEST:



Carolyn F. Morris, Town Clerk

Cliff Ogburn, Town Manager