

**Town of Nags Head  
Board of Adjustments**

**December 10, 2015**

The Board of Adjustments of the Town of Nags Head met in regular session Thursday, December 10, 2015, in the Board Room at the Nags Head Municipal Complex in Nags Head, North Carolina.

Members Present            Margaret Suppler, John Mascaro, Bobby Gentry, Judy Burnette, Webb Fuller

Others Present             Kelly Wyatt, Andy Garman, Lily Nieberding, Kim Allen, Jay Wheless, John Leidy

Call to Order                Vice Chair Margaret Suppler called the meeting to order at 9:00 a.m. as a quorum was present.

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

*Variance request submitted by Ocean Carolina, LLC from the requirements of Town Code Section 48-325(e), Outdoor Lighting, General Provisions. The request involves the installation on an illuminated sign on the western façade of the existing structure at approximately 50' in height. Current code requirements restrict the height at which an illuminated sign may be placed at 35feet. The property in question is zoned CR, Commercial Residential and is located at 4701 S. Virginia Dare Trail, Nags Head, NC (Nags Head Inn).*

Vice Chair Suppler provided a brief overview of the Board of Adjustment and how it functions. Ms. Suppler then swore in all witnesses.

Approval of Minutes        Webb Fuller moved to approve the minutes of the November 13, 2014 Meeting as submitted. John Mascaro seconded the motion. The motion carried by unanimous vote. Webb Fuller moved to approve the minutes of the March 12, 2015 Meeting as submitted. Bobby Gentry seconded the motion. The motion carried by unanimous vote.

Recess                        The Board took a brief recess to wait for Town Attorney John Leidy. The Board reconvened at 9:16 AM upon his arrival.

Evidence presented by Town        Deputy Planning Director Kelly Wyatt presented a variance request submitted by Ocean Carolina, LLC on behalf of the Nags Head Inn for the property located at 4701 S. Virginia Dare Trail, Nags Head from the following section of the zoning ordinance:

***Town Code Section 48-325(e), General Provisions: No light fixture, including signs, shall exceed 35 feet in height except as specified in sections 48-325(f) or 48-328(e)(6).***

Ms. Wyatt explained that in late September, several staff members met

with the Applicant to discuss numerous potential interior and exterior renovations to this property in conjunction with acquisition of this property by Ocean Carolina, LLC and conversion from Nags Head Inn to a Holiday Inn Express. It was at this time that the placement of the illuminated sign at approximately 50 ft. in height was discussed and the need for a variance was determined.

Ms. Wyatt presented an image of the Nags Head Inn elevation and explained that in 2013 the Nags Head Inn received some storm damage to their signs. They requested and received a variance in order to repair the signs but the signs are currently non-conforming. Ms. Wyatt stated that minutes from that previous meeting were included in the Board packet. The Applicants are requesting to remove the non-conforming signs and replace them with a new Holiday Inn Express sign.

Ms. Wyatt noted that in order to grant a variance the Board must make certain affirmative findings. Ms. Wyatt proceeded to review the findings of fact and Staff's recommendations in review of this variance case:

***Enforcement of the strict letter of this chapter creates an unnecessary hardship for the applicant. In order for the Board of Adjustment to find that practical difficulties or unnecessary hardships exist, the applicant for a variance must show that:***

*The unnecessary hardship results from the strict application of the ordinance to this property.*

The unnecessary hardship is a result of the application of Town Code Section 48-325(e), as it limits the height of light fixtures, including signs, to 35 feet. While the applicant has noted that current signs located at 50-55 feet in height on the north and south walls are nonconforming and will be removed, thereby reducing nonconformity, it is important to note that the request being made is for new illuminated signage along a wall façade that has not previously had illuminated signage.

*The hardship is not the result of actions taken by the applicant or the property owner.*

The hardship as noted by the applicant likely is the result of his/her own actions in that it is the applicants desire to install a new illuminated sign above the allowable 35 ft. height limitation for branding purposes.

*The hardship results from conditions that are peculiar to the property.*

While the difficulty may not be peculiar in terms of the size, shape and topography of the applicant's property it is peculiar in the size and height of the hotel structure and use. At 55 feet in height, it is understandable that for visibility purposes signage

above 35 would be desired. To staff's knowledge, this is the only one of two properties within the Town affected by this code section.

If the Board is inclined to grant this variance it may be appropriate to give consideration to the type of lighting. With an internally illuminated/backlit sign the light of the sign itself may spill over onto adjoining properties. If the signage were to be illuminated by a light fixture designed, located, aimed, and shielded so that the light is directed only onto the sign area may be more visually and aesthetically appropriate.

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 submits that the requested variance as presented is not consistent with the spirit, purpose and intent of the ordinance such that public safety is secured and substantial justice is achieved. Section 48-321, Intent of Article, states that lighting standards are established to provide safe lighting levels at proper intensities to serve their intended uses and not unreasonably interfere with the use and enjoyment of neighboring properties. The Town's lighting regulations are intended to preserve the visual integrity of the nighttime environment by reducing glare, discouraging unnecessary illumination and prohibiting the use of structure highlighting without decreasing safety, utility and security.

Based upon the above answers for determination of hardship, staff finds that the strict enforcement of the zoning ordinance as it pertains to light fixture height, including signs, **does not** create practical difficulties or unnecessary hardship for the applicant and for this particular site.

Ms. Wyatt noted that she as well as Phil Milbourne, Ocean Carolina/Holiday Inn Express, Michael Strader, Quible & Associates and Sue Hogan, General Manager of the Nags Head Inn were all present and available to answer any questions for the Board.

Ms. Wyatt confirmed for Mr. Fuller that the Applicant would not be allowed to put a 35 height free standing sign as there is a 20 foot height maximum.

Ms. Wyatt confirmed for Ms. Suppler that what is being proposed as far as square footage would be reduced from what is there now; 42 SF is what currently exists; 26 SF is what is being proposed.

Ms. Wyatt confirmed for Mr. Mascaro that there are other signs proposed for the building.

Mr. Gentry inquired if the light intensity would be reduced with new proposed lighted sign. Ms. Wyatt stated she was unsure if this would be

the case. What is being proposed would need to meet the Town Code and there is a maximum foot candle regulation.

Ms. Wyatt confirmed for Ms. Suppler that what is being proposed is an internally illuminated sign similar to what is there now.

Ms. Wyatt confirmed for Mr. Fuller that none of the exceptions noted in the code were applicable in this case.

Town Attorney John Leidy asked that the Staff memo and accompanying documents be accepted into evidence.

Evidence presented by Applicant

Mrs. Sue Hogan was first to address the Board. Mrs. Hogan has been with the Nags Head Inn for 27 years and will be continuing on as General Manager for the Holiday Inn Express. The new owners purchased the hotel on December 1<sup>st</sup> and are already working on extensive renovations and upgrades to the property. This renovation will achieve goals that are consistent with the community and are trying to be done the "Nags Head" way. The renovations will also improve and promote public safety at the property.

Mrs. Hogan explained that in order to justify the investment necessary to align with a first class brand with a national presence, the new owners must comply with the requirements and polices of that brand, including identification.

In order for the hotel to meet certain requirements they are asking for a slight deviation in a limited area as it pertains to signage. The difficulty rises from the fact that the sign requirements for the Holiday Inn brand do not align with the Town's requirements. The slightly higher sign placement offers less impact on the surrounding neighbors. Mrs. Hogan noted that the proposed signage will eliminate three illuminated signs, the one on the north elevation, the on the south and the small one on the front (west elevation). These would be replaced by a larger illuminated sign at 55' feet on the front as well as a smaller non-illuminated sign by the entrance.

Mr. Fuller reiterated that placing the sign at 55' would be less disruptive to the community than at 35' and inquired if this was an opinion or a fact. Mrs. Hogan stated that it was an opinion but noted that the lower a sign is placed, the higher the chance that light will go into a house through the windows.

Mrs. Hogan confirmed for Mr. Leidy that the new owners closed on the property on December 1st.

Michael Strader, an engineer with Quible & Associates was next to address the Board. Mr. Strader is currently working on other components of the project and was asked to provide some technical expertise.

Mr. Strader spoke to Staff's findings and recommendations in review of the variance request. First Mr. Strader noted that sometimes there is

particular property that is unfairly burdened by the rules thereby creating an unnecessary hardship for the owner. In this case, strict application of the ordinance results in an unnecessary hardship. The structure is existing and there are no other location options for the signage. If they were to go by the ordinance a sign placed on the west elevation would end up on the porches or within the architectural sun shades to the west of the building. The only suitable location on the west facing wall is where they are proposing to place the sign.

Secondly, Mr. Strader stated that the hardship is not a result of the applicant's actions. The current illuminated signs above the 35' height limitation are only visible to the adjacent neighbors but are not visible from the west side such as from the bypass or the beach road. The applicant did not construct the building with no accommodation for a sign located near the 35', it has existed like that for some time now.

Third, Mr. Strader noted that the size and the height of the hotel create the difficulty or hardship; at over 58' to the parapet, signage above 35' is understandable.

Mr. Strader noted that the signs would be LED lighting with only 100 to 150 illuminators per foot. Typically a sign casts about 200 illuminators per foot but the brand sign coloring will reduce this amount.

Mr. Strader believes that the requested variance is consistent with the spirit and intent of the ordinance. As he was driving up and down the beach road looking for other similar cases he found none and he accidentally drove right past the hotel. Guests coming to the hotel will do the same thing and in the busy season with all the traffic this might result in a public safety concern.

Mr. Strader also noted that the current illuminated signs on the north and south sides of the building have the potential to cast light on the beach. The Applicant is proposing to remove these signs and replace them with a single 26 SF sign on the west side, which is almost a 40% reduction in the non-conformity.

Mr. Strader confirmed for Mr. Fuller that it was his opinion that the proposed sign at 55 feet would have less of an impact on the community than the current signs.

Mr. Strader confirmed for Mr. Mascaro that he drove past the hotel because the illuminated signs had been turned off.

Mr. Mascaro noted that when the illuminated signs are off you may not be able to see them, but when they are on, you can see them coming from any direction, including the side streets.

Mr. Mascaro also noted that the reason for 35' height limit is for public safety purposes; the higher the sign the more prone it is to wind damage during storms. Mr. Mascaro expressed concern that a sign placed at 55' could pose a safety concern during a hurricane.

Mr. Strader explained for Mr. Fuller that what makes the hardship peculiar to the property is that there is no other suitable area on the west facing wall to place the sign that would meet the requirements.

Mr. Strader confirmed for Mr. Leidy that technically a sign could be fastened to the lower element and then erected to the 35' height but this could pose a safety hazard and it would be much safer to affix the sign to the building.

Phil Milbourne, VP of Construction, Ocean Carolina, LLC was next to address the Board. Mr. Milbourne thanked the Board for taking the time to hear their request. On behalf of the new owners they are very excited to be in Nags Head and begin this new partnership.

Mr. Milbourne spoke about the north and south signs that are currently on the property. When they were assessing the property, they looked at the existing signs and found them to be impacting residents in a negative way. The current north and south facing signs can be seen for miles by residents and beach goers. They decided that removing the signs and replacing them with one on the west side would be less impactful on the community and provide better identification for guests of the hotel.

Mr. Milbourne stated that if they were to mount the sign on the sunscreens it would pose a safety concern because there is glass behind those sunscreens. Thinking of the effects of inclement weather, Mr. Milbourne noted that a sign installed higher up at 55 feet could be more safely affixed and secured to the building.

With regards to the proposed 55' height vs. the 35' height limit, Mr. Milbourne noted that the adjacent homes are approximately 25 feet in height. If the sign is lowered, that light throw would be more intrusive into that home than if it was placed higher.

Mr. Milbourne then discussed the Holiday Inn Brand which requires certain elements such as flood lighting and music. They asked for and received a waiver to not have flood lights because they felt that would impact residents. The only exterior light would be the one sign; the lower sign will not be illuminated. Mr. Milbourne noted that per brand standards, a 26 SF sign is the smallest sign that they can put on the building. Signage would be illuminated starting about 5 PM, they have even considered putting the sign on a timer.

Mr. Milbourne confirmed for Ms. Suppler that the hotel will be open year round.

Ms. Burnette asked if the brand could deny operation of the Holiday Inn Express without having the sign. Mr. Milbourne stated that it could be a potential problem; the brand wants an identity and they have signed franchise agreements which already include a waiver from having the floodlights.

Mr. Milbourne confirmed for Mr. Fuller that it is his professional opinion

that a sign placed at 55 feet would be less impactful on the adjoining neighbors than if the sign was placed at a lower height.

Mr. Mascaro asked if they had looked into replacing the north and south facing signs instead of putting a west facing sign. Mr. Milbourne stated that they are trying to find common ground between Holiday Inn brand requirements and the Town's requirements. They also felt that removing the north and south facing signs would reduce the impact on the neighbors.

Mr. Milbourne confirmed that there was no official study done on the impact of the light on neighboring properties, his opinion is based on the site visits that they conducted.

Mr. Wheless asked that the Applicant's documents which include their Variance Application be accepted into the record.

Chair Suppler asked if there were members of the public that wished to speak. Karen Bacon, property owner of 4606 S. Virginia Dare Trail addressed the Board. Ms. Bacon stated that she was also there representing her neighbor Holly Edgecomb, who owns 4612 S. Virginia Dare Trail. Ms. Bacon stated that she was happy to hear that the plan is to remove the north and south facing signs would be removed. Ms. Bacon proceeded to read a letter written by Ms. Edgecomb.

Chair Suppler stated that they cannot consider the letter as evidence as it would be hearsay. Ms. Bacon reiterated that Lighting is a huge concern for her but it seemed based on the testimony that she heard that lighting would be reduced if the variance is granted.

Following Ms. Bacon's comments, Chair Suppler closed the public hearing and opened up deliberations of the Board.

The Board proceeded to review the findings of fact.

*Does a strict application of the ordinance result an unnecessary hardship?*

The Board voted 5 to 1 that Yes, strict application of the ordinance did result in an unnecessary hardship. Mr. Mascaro cast the No vote.

Ms. Suppler believes that the unnecessary hardship is the height limit; there is limited space to put a sign at the 35' limit. She also stated that 35' limit is impractical for a building that height and not the intent of the ordinance.

Mr. Fuller agreed, stating that he intuitively believes that the request would reduce both the light impact and the non-conformity. Mr. Fuller also noted that the Town wants hotels and has been encouraging hotels. What the applicants are proposing is a big reduction in lighting.

*Does the hardship result from conditions that are peculiar to the property?*

The Board voted unanimously that Yes, the hardship does result from conditions that are peculiar to the property.

Ms. Suppler stated that conditions are peculiar to the property because of the size of the hotel.

Mr. Wheless reminded the Board that the hotel is one of only two structures in the Town, of this size. In addition the style and architecture of the building only lends itself to one safe location for the sign.

*Does the hardship result from actions taken by applicant?*

The Board voted unanimously that No, it did not.

Ms. Burnette stated that the Applicants had not constructed the building.

Mr. Wheless reminded the Board that under the new variance law, buying a building knowing that it might need a variance shall not be regarded as a self-created hardship.

*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 voted unanimously that yes, it was consistent with the spirit and intent of the ordinance.

Mr. Fuller reminded the Board that they heard testimony related to the proposed placement of the sign which would secure public safety.

Mr. Wheless also reminded the Board that the last witness provided evidence with regards to the intent of the Ordinance which is to not only provide safe lighting levels but also preserve the visual integrity of the nighttime environment by discouraging unnecessary illumination.

Mr. Fuller agreed stating that they had heard testimony related to reduction of light impact and that lowering the sign to meet the 35' height restriction would throw more light instead of less.

The Board discussed Staff's suggestion to condition the variance with regards to the type of lighting but decided against adding any conditions.

Motion

Based on their findings, Judy Burnette moved to approve the variance request. Bobby Gentry seconded the motion and the motion carried by unanimous vote.

## Order

The Board of Adjustment for the Town of Nags Head, North Carolina, having held a public hearing on Thursday, December 10, 2015 to consider a variance request submitted by Ocean Carolina, LLC, property located at 4701 S. Virginia Dare Trail, Nags Head, [PIN# 080109154910] and having heard all of the arguments presented at the hearing, makes the following FINDINGS OF FACT and draws the following CONCLUSIONS:

1. It is the Board's CONCLUSION that enforcement of the strict letter of the ordinance, specifically Town Code Section 48-325(e), Outdoor Lighting, General Provisions, **does** create unnecessary hardship for the applicant.

This CONCLUSION is based on the following FINDINGS OF FACT:

- A. In consideration of all the facts the Board of Adjustment determined that there is limited space below 35 ft. in height for the illuminated wall sign to be affixed in a safe location. A sign mounted to a glass surface or shutters is unsafe.
  - B. The Board determined that requiring the proposed wall signage to adhere to the 35 ft. height limit is impractical for a structure of this height.
  - C. The Board found that the request, locating the illuminated sign at approximately 50 ft. in height, would reduce both the light impacts to adjoining properties and reduce the overall degree of sign nonconformity, both in terms of a reduction of number of nonconforming signs as well as a reduction in the overall area of nonconforming signage.
  - D. The Board found that the hardship is not the result of actions taken by the applicant or the property owner but rather a result of the design and architecture of the building, constructed in 1987.
  - E. The Board found that the hardship does result from conditions that are peculiar to this particular property due to the size and height of this structure; the Board noted that this hotel is only one of two structures in the Town of this height.
2. The Board's CONCLUSION that, if granted, the variance **will** be consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved.

This CONCLUSION is based on the FINDINGS OF FACT cited above and below.

2. The Board found public safety would be secured as the sign could be attached more safely and securely at the proposed height and location as opposed to below the 35 foot height restriction.
3. The Board found that the spirit and intent of the ordinance would be met in that proposed signage would reduce light impacts to adjoining properties, lowering the sign to meet the 35' limit would throw more light into adjoining properties than less.

Additionally, the proposal is one that will preserve the visual integrity of the nighttime environment.

THEREFORE, based upon all the foregoing, IT IS ORDERED that the requested variance to allow an illuminated wall sign on the western façade of the hotel structure at approximately 50 feet in height for the property located at 4701 S. Virginia Dare Trail, Nags Head, be **GRANTED.**

Adjourn

There being no further business to discuss, the meeting adjourned at 10:35 AM.

Respectfully Submitted,  
Lily Campos Nieberding

