

**Town of Nags Head
Board of Adjustments**

January 14, 2016

The Board of Adjustments of the Town of Nags Head met in regular session Thursday, January 14, 2016, in the Board Room at the Nags Head Municipal Complex in Nags Head, North Carolina.

Members Present Jack Cooper, Margaret Suppler, John Mascaro, Angelina Lowe, Judy Burnette

Others Present Kelly Wyatt, Andy Garman, Lily Nieberding, Jay Wheless, Ben Gallop

Call to Order Chairman Jack Cooper called the meeting to order at 9:00 a.m. as a quorum was present.

Chairman Cooper stated that there was one item being brought before the Board this morning:

Variance request submitted by Marcia Parrott of Village Realty on behalf of property owner, Rudy Meekins from the requirements of Town Code Section 48-403(d)(5), Dimensional Requirements within the R-2 Zoning District, Side Yard Setbacks. The request is to reduce the side yard setback along the northern property boundary, adjacent to Ida Street, from 15 feet to 10 feet. The property in question is zoned R-2, Medium Density Residential and is located at 8801 S. Old Oregon Inlet Road, Nags Head, NC.

Chairman Cooper provided a brief overview of the Board of Adjustment and how it functions. Mr. Cooper then swore in all witnesses.

Evidence presented by Town Deputy Planning Director Kelly Wyatt presented a variance request, submitted by Marcia Parrott, Broker with Village Realty, on behalf of Rudy Meekins, owner of the property located at 8801 S. Old Oregon Inlet Road, from the following section of the zoning ordinance:

Town Code Section 48-403 (d)(5) Dimensional Requirements, Side Yard Setback: *The minimum width of the side yard shall be ten feet. In the case of a corner lot, to ensure adequate sight clearance, the minimum width of the side yard adjacent to the right-of-way shall be no less than 15 feet, except in the case of pre-existing nonconforming lots of record, that are less than 10,000 square feet in lot area and 60 feet or less in lot width, in which case the minimum setback shall be 12 feet. For large residential dwellings, the minimum width of the side yard shall be regulated in accordance with subsection 48-370(d).*

When Planning Staff was contacted about the required side yard setbacks on this specific lot, it was deduced that Ida Street, which serves as a beach access, was a Town street and therefore the more

stringent setback of 15' was appropriate.

Upon reviewing the history of Ida Street, Staff learned that the property owner of 108 Ida Street improved Ida Street in order to construct a house on the lot in 1997. As such, the street was constructed to Town standards, dedicated to and accepted by the Town in the street system. Ida Street has since been placed on the Powell Bill Map.

Ida Street is demarcated as a CAMA Beach Access however there are no marked parking spaces, only a gravel area of varying widths on either side of the paved portion that lends itself to parallel parking. Being that no parking spaces have been marked as a vehicular beach access it seems to serve primarily as a pedestrian access.

Ms. Wyatt explained that the side yard reduction from 15 feet to 12 feet noted in Section 48-403(d)(5), Side Yard Setbacks, does not apply in this scenario in that it is the intent of the property owner to combine the two lots into one 15,000 sq. ft. parcel. The property owner has not yet recombined the lots into one; he is waiting to see the outcome of this variance request.

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 recommendations of Staff 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 48-403(d)(5) as it imposes a more restrictive side yard setback for lots adjacent to a town street. As the applicant has noted, this property is 50 feet in width and when the southern and northern side yard setbacks are applied the building envelope for a new dwelling becomes 25 feet wide.

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

The hardship is not the result of actions taken by the applicant or the property owner. The imposition of a more stringent side yard setback was put in place to ensure adequate site clearance where a lot abuts a town street. The existing home was constructed prior to this rule and the parcel was subdivided prior to current minimum lot area regulations. The proposal that the applicant has set forth to create one oceanfront lot with one principal structure would eliminate current setback

nonconformities and allow for retreat of the structure if that becomes a concern in the future.

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

Staff submits that the hardship does not result from conditions that are peculiar to this particular property. There are numerous properties throughout the Town that are adjacent to streets and must adhere to these same restrictions imposed by the zoning ordinance. This ordinance was recently applied to the lot adjacent to Baltic Street (Beacon Motel) where CAMA Permits were issued for construction of a single family dwelling on a 50 ft. wide lot with a 15 foot side yard setback imposed adjacent to Baltic however, the other side yard setback was 8 ft. leaving a building envelope width of 27 feet.

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. Town Code Section 48-403(d)(5) specifically requires an increased side yard setback to address adequate sight clearance adjacent to a public street, a public safety concern.

Based upon the above answers for determination of hardship, Ms. Wyatt stated that Staff found that the strict enforcement of the zoning ordinance as it pertains to reduction of side yard setbacks adjacent to Town Streets, **does not** create practical difficulties or unnecessary hardship for the applicant and for this particular site. However, Ms. Wyatt went on to state that if the Board was inclined to grant the variance, Staff would recommend that consideration be given to the 12 foot side yard setback reduction.

Ms. Wyatt also noted that the lot has not yet been recombined; it is still two lots. Ms. Wyatt reminded the Board that on a previous similar variance the Board chose to table the item until the lots were recombined. Ms. Wyatt suggested that if the Board was inclined to grant the variance rather than table it that it be thoroughly conditioned so it could only be granted if the lots are recombined and the existing structure is demolished.

Ms. Wyatt noted that Ms. Parrott as well as Mr. and Mrs. Meekins were present and available to answer any questions for the Board.

Ms. Wyatt confirmed for Ms. Supler that Ida street is currently maintained by the Town. Ms. Wyatt also confirmed that most beach accesses are between 50 and 75 feet in width and that the Town could decide at some point to improve the Ida access at some point, i.e. paving the gravel and adding parking spots.

Ms. Wyatt confirmed for Ms. Suppler that currently the street-front lot which is 50' X 175' would be able to take advantage of 12 foot setback if the properties are not recombined. Ms. Wyatt noted that the oceanfront lot would not qualify because it is over 10,000 SF in lot area.

Ms. Wyatt noted that when calculating lot area the entire lot is counted including the area beyond the CAMA static line.

Ms. Wyatt confirmed for Mr. Mascaro that the existing structure could be moved westward; including picking up the structure and moving it to the street-front lot as Mr. Meekins currently owns both lots.

Town Attorney Jay Wheless noted that the Town did not believe that the variance request was in keeping with the spirit, purpose and intent of the ordinance such that public safety is secured and inquired if the Town's objection was to losing the 5 feet (of setback). Ms. Wyatt explained that it was an issue of consistency; it is a standard that is applied town wide and could cause a reduction of the sight triangle.

Ms. Burnette asked for the definition of a corner lot. Ms. Wyatt stated that it means a lot of which two adjoining sides abut with their full lengths on a street provided that the interior angle at the intersection of two such sides is less than 135 degrees.

Evidence presented by Applicant

Mr. Rudy Meekins, property owner of 8801 South Old Oregon Inlet Road addressed the Board. Mr. Meekins stated that he bought the lots and built the house forty years ago. Mr. Meekins noted that he had lost 75 feet due to the dune moving westward and CAMA regulations.

Mr. Meekins stated that if the concern is related to sight distance he does not understand the need for a 15 foot setback beyond the beginning of the structure. It would make sense to have a 15 foot setback for the front of the lot but not past the building all the way to the ocean. Mr. Meekins feels that the back of the lot is already being penalized (due to the dune movement) and now it's also being penalized in the front.

Mr. Meekins confirmed for Mr. Mascaro that (due to his age) he has no plans to demo the current house and build new (if the variance is not granted). Mr. Meekins further explained that the Town installed sand fence and after several Nor'easters, his lot continues to build up with sand. Because of this, it does not make sense to leave the house there, but his intent is to sell the property, he does not want to continue to dig out the sand.

Mr. Meekins confirmed for Ms. Suppler that his house was built and completed house prior to the Town obtaining and installing the street. Mr. Meekins stated that once it became an access people would use his driveway to turn around. Now the Ida access is so built up with sand that does not happen and Mr. Meekins only uses South Old Oregon

Inlet to access the house.

Ms. Wyatt confirmed for Town Attorney Ben Gallop that the Town regulation when it comes to sight triangles is 10' X 70'. Ms. Wyatt noted that should the variance be granted, one of the conditions should be to preserve the 10 X 70 sight triangle.

Mr. Gallop expressed concern that the variance request was slightly premature; a variance should be granted on what is currently on the ground today which is two lots. If the Board decides to grant the variance they need to make certain to put certain conditions: the recombination has to occur, the current house must be demolished or moved so setbacks are met, the sight triangle must be preserved and the driveway must come from South Old Oregon Inlet and not Ida Street.

Mr. Meekins reiterated that while he has no intent to demo house, whoever purchases the lot would probably do just that. Mr. Meekins stated that the house is still a valuable asset, even though you have to dig sand to get to it. Mr. Meekins stated that recombining the lots as a condition of the variance was a reasonable request. Mr. Meekins asked that the Board grant his variance request and also consider changing the setback for all properties that abut paper streets, after you pass the building line.

Chairman Cooper closed the public hearing and opened up deliberations.

Ms. Suppler stated that she was not sure if they could grant a variance on a lot that doesn't exist. Ms. Suppler suggested having a discussion but tabling the decision until the lots are recombined.

Chairman Cooper agreed stating that was their position on a previous case involving the Robinsons; can't rule on something that hasn't happened.

Ms. Lowe also agreed noting that as it stands, the applicants could get a variance on the one lot that is closest to the ocean and leave the other one alone. It would be to the owner's advantage to recombine first and then try for a variance.

Ms. Burnette stated that the applicants probably want to get the Board's thoughts about granting a variance prior to the recombination. They probably don't want to recombine if it's something the Board would not even consider.

Town Attorney Jay Wheless reminded the Board that in the Robinson case, the Board went through the findings of fact and voted on each one, but then tabled the item prior to making a decision.

John Mascaro moved to table the variance request until the lots are recombined. Margaret Suppler seconded the motion and it passed by unanimous vote.

The applicants requested that the Board reconsider the request and make a decision based on what currently exists today but conditioned heavily.

Margaret Suppler moved to reconsider the request. Judy Burnett seconded the motion and it passed unanimously.

The Board proceeded to review the findings of fact.

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

The Board voted unanimously that the hardship did result from strict application of the ordinance. Mr. Wheless stated that the Town concedes that as well and that the Board could use the Town's finding noted in the Staff memo.

The hardship results from actions taken by the applicant

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

Ms. Suppler noted that the existing house was constructed prior to the rule and the parcel was subdivided prior to current minimum lot regulations.

The requested variance is consistent with the spirit and intent of the ordinance, such that public safety is secured and substantial justice is achieved.

The Board voted unanimously that it was as long as the conditions previously noted by the Town Attorney are met. Mr. Wheless reminded the Board that Staff agreed that as long as the sight triangles are preserved then public safety would be secured.

The hardship results from conditions that are peculiar to the property

The Board voted 5 to 1 that the hardship did result from conditions that are peculiar to the property. While the Board agreed that there are numerous properties throughout the Town that are adjacent to streets and must adhere to these same restrictions, the Board conceded that this property was peculiar in that the house was constructed prior to the street. The adjacent property changed from private to public use years after the house was built. If the adjacent lot had stayed residential, the setback would be 10 feet. The Board also noted that while Ida is technically considered a street, in actuality it is used more as a pedestrian beach access.

Ms. Suppler moved to approve the variance with the conditions that the two lots be recombined; that the existing residence be demolished, moved or brought into compliance; that the front yard shall be Highway 12 and that access to the lot will be from Highway 12 on the south side

of the property away from Ida street; and finally that the 10' x 70' sight triangle be preserved.

Ms. Suppler amended her motion to include Staff's recommendation that the setback be 12 feet rather than 10. Mr. Mascaro seconded the amended motion and the motion passed unanimously.

Mr. Mascaro requested follow up from Staff related to variance requests from the Outer Banks Pier and the Keyes request related to lot coverage.

Ms. Wyatt stated that she will include an item in the meeting agenda to update the Board on previous cases; the Board agreed to have Ms. Wyatt add this item to future agendas.

Ms. Wyatt stated that she will need to follow up related to the Outer Banks Pier and update the Board at a later time. As far as the Keyes Variance, Mr. Keyes was issued a zoning permit to remove the necessary concrete and replace with pavers. He has the pavers but the work has not yet been completed.

Motion

Based on their findings, Ms. Suppler moved to grant the variance with the conditions outlined above. John Mascaro seconded the motion and the motion passed unanimously.

Order

The Board of Adjustment for the Town of Nags Head, North Carolina, having held a public hearing on Thursday, January 14, 2016 to consider a variance request submitted by Marcia Parrott of Village Realty on behalf of property owner, Rudy Meekins, property located at 8801 A S. Old Oregon Inlet Road, Nags Head [PIN# 071909157250] 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 48-403(d)(5), Dimensional Requirements within the R-2 Zoning District, Side Yard Setbacks **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 the building envelope on this parcel is significantly reduced to 25 ft. in width when the 10 ft. side yard setback on the southern boundary in addition to the required 15 ft. corner lot setback on the northern boundary is applied. The Board considered a reduction of the northern side yard setback from 15 feet to 12 feet.
- B. The Board found that the hardship was not the result of actions taken by the applicant or the owner in that the parcels were created and the existing home was constructed prior to adoption of the current minimum lot area requirements and the imposition of a greater side yard setback for corner lots adjoining a public street right-of-way.
- C. The Board found that, while the lots are not currently combined,

as proposed (one lot, one principal structure) there would be a decrease in the degree of site nonconformity and any existing or proposed structure would be granted the ability to retreat west should it become necessary.

D. The Board found that the hardship does result from conditions that are peculiar to the property in that Ida Street, while built to Town Standards, serves the primary function of a pedestrian beach access. To that, vehicular egress is not as common at Ida Street as other side streets.

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 that the purpose and intent of the ordinance would be met and public safety would be secured if the variance were granted conditional upon the strict adherence to the 30 foot front yard setback off of S. Old Oregon Inlet Road to ensure adequate sight clearance for vehicles exiting the Ida Street Beach Access.

THEREFORE, based upon all the foregoing, IT IS ORDERED that the requested variance to reduce the northern side yard setback at 8801 S. Old Oregon Inlet Road from 15 feet to 12 feet, be **GRANTED** conditional upon the following criteria being met:

- In order for the varied setbacks to apply, the existing cottage must be demolished or moved from the site.
- Prior to issuance of zoning or building permits for any new construction, Lots 8801A and 8801B S. Old Oregon Inlet Road must be recombined to create one conforming lot.
- For any new development S. Old Oregon Inlet Road must be considered the *front yard* with the application of the 30 foot front yard setback.
- Any residential driveway to the newly created lot must be located as southerly as possible and must connect from S. Old Oregon Inlet Road to ensure that the 10' x 70' sight triangle is preserved to the greatest extent possible.

So ordered this 26th day of June, 2016.

Adjourn

There being no further business to discuss, the meeting adjourned at 10:27 AM.

Respectfully Submitted,
Lily Campos Nieberding