

**Town of Nags Head  
Board of Adjustments**

**July 11, 2019**

The Board of Adjustments of the Town of Nags Head met in regular session Thursday, July 11, 2019, in the Board Room at the Nags Head Municipal Complex in Nags Head, North Carolina.

Members Present Jack Cooper, Margaret Suppler, John Mascaro, Judy Burnette, Bobby Gentry

Others Present Kelly Wyatt, Michael Zahner, Margaux Kerr, 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 Mr. John Calvin from the requirements of Town Code Section 48-403(d)(5), Dimensional Requirements within the R-2, Medium Density Residential Zoning District, Side Yard Setbacks, as it pertains to reducing the side yard setback on corner lots from 15 feet to 10 feet. The property for which the variance is being requested is zoned R-2, Medium Density Residential and is located at 8400 S. Old Oregon Inlet Road, Nags Head, NC.*

Chairman Cooper provided an overview of the Board of Adjustment and how it functions. Mr. Cooper then swore in all witnesses related to the first variance.

Evidence presented by Town Deputy Planning Director Kelly Wyatt presented a variance request submitted by John and Cindy Calvin for the property located at 8400 S. Old Oregon Inlet Road, located just south of the Hargrove Beach Access. Ms. Wyatt displayed a site plan of the property for the Board to review.

Ms. Wyatt explained that Town Code Section 48-403 (d)(5) Dimensional Requirements, Side Yard Setback states that 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 preexisting nonconforming lots 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.

When Zoning Administrator Margaux Kerr was consulted about the required side yard setbacks on this specific lot, she confirmed that Hargrove Street, which serves as a beach access and parking, is a Town street and as such, the Calvin's lot is considered a corner lot and therefore the more stringent setback of 15 feet would be required

along the northern property boundary.

In speaking with Public Works Director, Ralph Barile, on the history of Hargrove Street, it was noted that the street is right-of-way constructed to Town standards and has been dedicated to and accepted by the Town into the street system. Hargrove Street has since been placed on the Powell Bill Map.

Hargrove Street is demarcated as a CAMA Beach Access with delineated parking spaces to serve as pedestrian beach access, with parking located on both east and west sides of the street. On the west side of Hargrove Street, adjacent to the Calvin Property, the street is a dead end with a row of perpendicular parking spaces. In this case, the corner lot cannot be accessed from the side street.

Ms. Wyatt explained that the applicant is requesting that the side yard setback along the northern property boundary be reduced from 15 feet to 10 feet, which would be consistent with minimum side yard setback requirement for lots within the R-2 District when not adjacent to a right-of-way.

The side yard setback reduction from 15 feet to 12 feet as noted in Section 48-403(d)(5), Side Yard Setbacks, would not be applicable to this property as it is not less than 10,000 square feet in area, it is 14,057 square feet.

Ms. Wyatt proceeded to review for the Board Staff's findings and 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 48-403(d)(5) as it imposes a more restrictive side yard setback for lots adjacent to a town street. The property is being treated as a corner lot, however access from Hargrove Street (side street) is not available due to parking spaces. 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/ property owner. The imposition of a more stringent side yard setback

was put in place to ensure adequate sight clearance where a lot abuts a town street. The existing home was constructed in 1967, prior to this rule and prior to current minimum lot area regulations and is considered non-conforming. The applicants are proposing to demo the existing structure and redevelop the lot. As a result of re-development, adherence to the new standard would be required.

Ms. Wyatt noted that the existing home encroaches on the 30 ft. front yard setback and also on the 15 ft. side yard setback. When the existing home is demolished, and a new home is built it will result in less nonconformities on the site in totality.

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

Staff submits that the hardship does not necessarily result from conditions that are peculiar to this particular property. There are numerous properties throughout the Town of Nags Head that are adjacent to streets and must adhere to these same restrictions imposed by the zoning ordinance. This ordinance has been applied and adhered to by the lot adjacent to Baltic Street (Beacon Motel lots) where 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 Street however, these lots are held to the dimensional requirements of the R-3, High Density Residential Zoning District where the opposite side yard setback was 8 ft. leaving a building envelope width of 27 feet.

In 2017 the Board of Adjustment heard a similar variance request from Mr. Rudy Meekins for 8801 S. Old Oregon Inlet Road, the lot south of the Ida Street beach access. In this variance the applicant was requesting a reduction of the corner lot setback from 15 feet to 10 feet. The Board of Adjustment voted to grant a variance to this property to allow the reduction of the corner lot setback from 15 feet to 12 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 entirely inconsistent with the spirit, purpose and intent of the ordinance such that public safety is secured and substantial justice is achieved. While Town Code Section 48-403(d)(5) specifically requires an increased side yard setback, it specifically notes that the intent is to address adequate sight clearance adjacent to a public street. Staff does not perceive that an increased setback in this instance improves sight clearance, nor that a reduced setback would impede or obstruct sight clearance.

Based upon the above answers for determination of hardship, Staff finds that the strict enforcement of the zoning ordinance as it pertains to a 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. In short, the imposition of an additional 5' setback does not result in a lot that is less viable for development. However, if the Board of Adjustment is inclined to grant this variance, Staff would recommend consideration be given to the 12-foot side yard setback reduction. While it is necessary to meet two criteria (lot width & lot area) to take advantage of the reduction noted in 48-403(d)(5) this lot does meet the lot width.

Ms. Wyatt noted that she, as well as Zoning Administrator Margaux Kerr and the applicants, John and Cindy Calvin were available to answer any questions.

Ms. Suppler inquired as to what year Hargrove Street was officially mapped.

Ms. Wyatt was unsure of the date but noted that Hargrove Street was constructed before 1970s, before the Town ordinances went into effect. Ms. Wyatt confirmed that it was a paper street for some time.

Ms. Wyatt confirmed for Ms. Burnette that it was a street first then turned into a beach access. Ms. Wyatt confirmed that there are several town streets (15 plus), including Ida Street that also act as beach accesses.

Ms. Suppler questioned how it could be considered a street when it does not allow for thru traffic.

Ms. Wyatt confirmed for Ms. Burnette that the 10000 square ft lot area does not take into consideration any wetland areas. It is simply the total lot area.

Ms. Wyatt confirmed that the small structure on the property is an old shed.

Ms. Wyatt confirmed for Mr. Gentry that the setback on the north side of Hargrove is also fifteen (15) feet.

Ms. Wyatt confirmed for Ms. Burnette, that in the case of the Ida Street variance (which was granted by the Board) that property was also in the R2 Zoning District. The Beacon lots were in the R3.

Ms. Wyatt noted that she, as well as Zoning Administrator Margaux Kerr and the applicants, John and Cindy Calvin were all available to answer any questions.

Evidence presented by Applicant

Applicant, John Calvin, thanked the Board for considering their request and staff for their due diligence. Mr. Calvin has lived and owned house since the late 80s, early 90s. They have always envisioned it as their future retirement home. When they moved in, Hargrove street was unimproved, just yaupon and scrub. They have been in the process of saving their money in order to demo the existing house and re-build.

They have endured some hardship due to Hurricane Irene and other storms. Hargrove Street actually slopes into their property due the grade, so the property is prone to flooding every storm. Their neighbor to the South built their house up and brought in fill. The property to their north (the cottage court) also added fill to their property. As a result, their property becomes a river during storms. Mr. Calvin stated that they have to do something about their 1967 house.

The Calvins would like to build a house on the footprint, with ten ft. setbacks on both sides of the property. They would like to be able to access the back of property (where the shed is) through a driveway off of Hargrove Street. Mr. Calvin noted that the parking lot spaces stop short of the end of the street. That area is not demarked as parking so it would make sense to have a driveway there. Mr. Calvin further stated that it's difficult to call Hargrove a street since it's mostly used for parking; there is no thru traffic and it dead ends into wetlands and power lines.

Mr. Calvin explained that upon conferring with Public Works they were told they would not be able to put driveway access off Hargrove. In addition, they learned that because they were considered a corner lot they would be restricted to a 15 ft. setback. Mr. Calvin stated that this creates a very narrow footprint. They would be forced to build a long skinny house which would not be in keeping with the Nags Head design style and would also be uncomfortable living space and decrease the value of the property.

Mr. Calvin asked the Board to consider that Hargrove offsets to the North as it exits on to Old Oregon Inlet Road so that gives further sight clearance to vehicles exiting out of the beach access. Mr. Calvin does not feel that a 10 ft. setback is an unreasonable request considering the fact that they can't put in a driveway off of Hargrove.

Mr. Calvin then spoke about the 12 ft. setback consideration for lots under 10,000 SF. Mr. Calvin noted that while their lot is technically 14,500 SF, about 5,400 SF of that is wetlands so if the wetlands were taken into consideration, they would be below the 10,000 SF requirement and in keeping with spirit of the ordinance.

Mr. Calvin discussed the proposed site plan with the Board showing the difference between the current location of the house and the proposed location noting that their deck currently encroaches into their neighbor's property and explaining that approval would improve the setback characteristics.

Mr. Calvin confirmed for Mr. Mascaro that they do share the driveway with the neighbor to the South however it is not deeded as such. They are proposing to remove the current driveway and move it North. They are friends with their neighbor but are concerned that if she were to ever sell the property it might create difficulties for them in the future.

Mr. Calvin confirmed for Chair Cooper that while he is unable to have a driveway from Hargrove, the Twain property (Cottage Court on the

north side) does have access from Hargrove. Ms. Wyatt explained that before Hargrove was developed, the Twain property had a gravel driveway off of Hargrove. At the time the street was developed, the owners of the Twain property made an agreement with the Town to keep the driveways off Hargrove.

Ms. Wyatt confirmed for Ms. Suppler that all though the houses around Hargrove street were built in different time periods, they were all built prior to the street being improved.

Ms. Wyatt explained for Ms. Burnette and the Board how visibility is measured as it relates to setbacks. Ms. Wyatt noted that the existing house is within the 10 ft. sight triangle the proposed house would not be.

Mr. Gallop requested that if the Board were inclined to grant the variance that they consider putting in a condition of approval that no structures or large plantings be placed within the sight triangle.

Mr. Wheless reviewed all exhibits from Staff and the Applicant (including the Staff report and variance application) and asked that all the documents be accepted into evidence.

Chairman Cooper admitted the evidence and then closed the Public Hearing and asked for discussion.

Ms. Suppler believes that when the framers of the ordinance came up with the standards (related to corner lots), the intent was for streets with thru traffic; the ordinance did not envision streets used as beach accesses.

Ms. Suppler also noted that the proposed new structure would be less of a nonconformity than the existing structure.

Ms. Burnette agreed and pointed out that because of the wetlands that exist on the property, they already have a tight amount of space to work with; they are limited to where they can place the house.

Mr. Mascaro and Chair Cooper both agreed that what was presented was more for the better than it is for the worse.

The Board then proceeded to review the findings of fact:

Does strict application of the ordinance result in an unnecessary hardship? The Board agreed unanimously that it did and agree to adopt staff's findings of fact.

Does the hardship result in conditions that are peculiar to the property? The Board agreed unanimously that it does, noting that not only does the property have wetlands, the street in question is a right of way in legal terms however it is not used as a right of way, instead it is used as public beach parking.

Does the hardship result from actions taken by the applicant or

property owners? The Board agreed unanimously that it did not.

Is the requested variance in keeping with the spirit, purpose and intent of the ordinance, such that public safety is secure and substantial justice is achieved? The Board agreed unanimously that it was, noting that public safety would actually be improved.

Motion

Based on their findings and together with Staff's findings, Margaret Suppler moved to approve the variance request for a 10 ft. setback with the condition that the sight triangle will never be obstructed by large vegetation or structures. Judy Burnette seconded the motion and the motion passed unanimously.

Order

The Board of Adjustment of the Town of Nags Head (the "Board") held a public hearing on July 11, 2019, to consider a variance application submitted by John and Cindy Calvin (the "Owners") seeking to vary Town Code Section 48-403(d)(5) as to the property located at 8400 S. Old Oregon Inlet Road (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 R-2, Medium Density Residential Zoning District.
3. Town Code Section 48-403(d)(5), Dimensional Requirements within the R-2 Zoning District, Side Yard Setback, states: "*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 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)*".
4. The Calvin's lot is adjacent to Hargrove Street; Hargrove Street is currently improved as a CAMA Beach Access with parking.
5. Public Works Director, Ralph Barile noted that Hargrove Street is a town right-of-way, constructed to Town standards and has been dedicated to and accepted by the Town into the street system. Hargrove Street is included on the Town's Powell Bill Map.
6. Planning staff deduced that Hargrove Street was a town street and the lot was considered a corner lot, and therefore, the more stringent setback of 15 feet was required along the northern property boundary.
7. The applicant and property owners, John and Cindy Calvin,

have requested a variance from Town Code Section 48-403(d)(5) (the "Requested Variance") to allow the side yard setback along the northern property boundary to be reduced from 15 feet to 10 feet, which would be consistent with minimum side yard setback requirements for lots within the R-2 District when not adjacent to a right-of-way.

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

1. All parties are properly before the Board, and the Board has the jurisdiction to consider and render a decision on the Requested Variance.

2. Conclusions Regarding Specific Variance Criteria established by Town Code Section 48-598(a):

(a) A strict application of the ordinance **does** result in an unnecessary hardship to the Applicant/Owners.

- 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. The property is being treated as a corner lot, however access from Hargrove Street (side street) is not available due to parking spaces being provided in conjunction with a CAMA Beach Access.
- The property has a width of 50 ft., and when the southern and northern side yard setbacks are applied the building envelope for a new dwelling becomes 25 ft. wide guiding the construction a long, skinny home, not in keeping with the desired Nags Head Architectural style.

(b) The hardship **does** result from conditions that are peculiar to the property, such as location, size, or topography.

- While the total area of the property is 14,057 square feet, resulting in it being unable to take advantage of the side yard setback reduction for lots less than 10,000 square feet and a lot width less than 60 ft., it is noted that the lot does contain 5,488 square feet of wetlands, leaving 8,569 square feet of developable uplands. The area of wetlands and the location of the wetlands on the property make it peculiar to other similarly situated properties.
- While Hargrove Street was developed to Town standards and is legally considered a town right-of-way, it does not function as a street with "thru traffic," and furthermore, it is developed with public beach access parking.

(c) The hardship **does 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.

- The imposition of a more stringent side yard setback was put in place to ensure adequate sight clearance where a lot abuts a town street. The existing home was constructed in 1967, prior to this rule and prior to current minimum dimensional regulations and is considered legally non-conforming. The applicants are proposing to demolish the existing, nonconforming structure and re-develop the property with significantly less nonconformities.

(d) 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.

- With the intent of the increased side yard setback for corner lots being cited as to improve sight visibility/clearance adjacent to a public street, the proposed single-family dwelling meets the minimum 30-foot front yard setback which improves sight visibility and thus improves public safety.
- With a compliant front yard setback, a side yard reduction would not obstruct or impede sight clearance at the intersection of this property and Hargrove Street.
- The proposed home would eliminate and/or reduce several site nonconformities consistent with the spirit, purpose, and intent of the ordinance.

THEREFORE, based upon all of the foregoing, the application for a variance to vary the side yard setback from 15 feet to 10 feet is **GRANTED**.

Approval of Minutes

Judy Burnette moved to approve the minutes of the October 2018 meeting. Margaret Suppler seconded the motion and the motion passed unanimously.

Adjourn

There being no further business to discuss, the meeting adjourned at 9:50 AM.

Respectfully Submitted,  
Lily Campos Nieberding