

Robert Muller, Mayor
Nags Head Board of Commissioners:
Anna Sadler, Commissioner
Brant Murray, Commissioner
Robert Oakes, Commissioner
Wayne Gray, Commissioner
Planning and Development Staff:
Tim Wilson, Director of Planning and Development

February 12, 2004

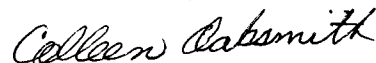
Re: Oaksmith/Kokdil Subdivision Application

Dear Mayor, Commissioners and Tim Wilson:

This matter of the proposed Oaksmith/Kokdil Subdivision is before you again.
At Tim Wilson's request, please find the following outline addressing each waiver and/or variance at issue. In preparation, I reviewed the December Board of Commissioner's meeting (videotape) and received guidance from Tim Wilson (thank-you!). Hopefully, I've successfully interpreted the positions of the Board and Town and have brought this issue a step closer to resolution.

I look forward to our meeting in March.

Until that time,

A handwritten signature in cursive script that reads "Colleen Oaksmith".

Colleen Oaksmith

Enclosure: Charles Evan's 12/3/03 waiver and variance letter

Section 18-9: Subdivisions are not permitted on land that does not have access to a public street improved to town standards.

I am requesting a waiver from this ordinance due to special, unique circumstances and that the improvements are inappropriate as it relates to the property, its physical limitations and condition. If strict compliance to the ordinance is imposed, it would create extraordinary and unnecessary hardships as well as result in the administration of substantial injustice. Further, the Town has allowed the street to exist in very much the same condition for over 38 years while allowing homes to exist that are served by it.

It is unrealistic to apply this ordinance to the property at issue. Special circumstances include the lack of accessibility to a public street at Town standard as well as this Soundfront community's historical significance. There are few places in Nags Head that predate the Town's incorporation and maintain the character and feel of this special area.

The nearest ***improved*** portion of Soundside Road is plus or minus 700 feet to the North and does not meet current Town street standards. The unpaved portion of Soundside Road, serving this property, currently serves nine developed and six undeveloped properties. The construction dates of eight of the developed properties predate the incorporation of the Town (1925-1950) with one exception: Mr. Adams home, constructed in 1979. This unpaved portion is as it was in 1961.

Varying Subdivision Ordinance requirements will result in substantial justice and will not nullify the intent and purpose of the official map, the master plan, other regulations and the zoning ordinance.

Soundside Road was once the town center of Nags Head. As I've mentioned, many homes built before the Town's incorporation still exist in this special, unique area. Because of physical limitations inherent in the properties and street, it is inappropriate to apply strict adherence to the ordinance. A variance will result in substantial justice, will not nullify the intent of the ordinance and will provide the same treatment to applicant that the Town has already provided to other similar properties on Soundside Road.

Section 18-93: Improvements required of the subdivider include street right of way and paved streets; water lines, fire hydrants and services; utility easements if needed.

I am requesting a variance from Section 18-93(1) *paving* due to special, unique circumstances and that the improvements are inappropriate as it relates to the property, its physical limitations and condition. If strict compliance to the ordinance is imposed, it would create extraordinary and unnecessary hardships as well as result in the administration of substantial injustice.

It would be an unnecessary hardship to require of applicant the acquisition of right of ways from homes that have existed for decades on both sections of Soundside Road. I have offered a cul-de-sac right-of-way meeting the Town's environmental street standards.

I am asking that you *vary* the above ordinance requirement regarding paving and instead ask that you keep the road (and proposed cul-de-sac) as it is-gravel. The unpaved portion of Soundside Road is a dead-end that has been allowed to remain unpaved for forty years and will only serve the lots that now abut it. Service vehicles have had no turnaround for the life of the street (45 years, give or take) and I have offered to dedicate an environmental cul-de-sac but ask that it conform to the gravel extension of the road.

I have agreed to limit the size of homes on my property to five bedrooms. In doing so, I have essentially requested three lots which ultimately will house 15 bedrooms as opposed to what I now have available with the existing two lots: 16 bedrooms. I believe this is a good faith effort to document my intent to minimize development and address the obvious concerns over density and its impact on the road.

Section 18-94: Subdivider offers the above improvements to Town:

I have reviewed the December BOC meeting video and note that there is dissent among Board members on the issue of a dedicated cul-de sac with a "T" turnaround within the circle. While I feel strongly that a cul-de-sac of this magnitude and size would disrupt the delicate environmental balance and character of the property, we nonetheless propose that the gravel, environmental cul-de-sac be dedicated to the town for service and

emergency turnaround (see plat).

We have requested a waiver from streetlights. To allow this waiver will provide substantial justice and conformity to existing practices in this neighborhood.

We have offered covenants that will restrict the size of the homes to five bedrooms (see attached covenants). We feel this limitation is proper as this will limit density and environmental impact as well as maintain the character of this area.

We will install water lines to the lots as necessary (see plat).

We will install a fire hydrant coming at the end of the existing six inch water main (see plat).

Section 18-95. Utility Easements

We have requested a waiver of 18-95 only as it pertains to connections off the subject property to existing utilities--we are providing utility easements on our property (see plat). Hardships include the inability to provide easements over other properties where utilities currently exist.

Section 18-111: Street Standards

As reflected in both the plat and the above paragraphs, we are requesting variances from section 18 of the ordinance. Hardships and special circumstances include the current condition of the property and the Town maintained gravel street leading to it, its historical significance, the site's physical limitations, the intent of the property owners to limit development and lessen the environmental impact on the property, the current right-of-way and the feasibility of strict adherence to the Ordinance. Again, because the subject area predates the incorporation of the Town and the roads and homes are not at town standard, it is substantially just to allow what we have offered and is reflected on the plat.



February 9, 2004

(Via Facsimile: 480-0571 & Mail)

Seaboard Surveying & Planning, Inc.
Attn: Mr. Bill Owen
P.O. Box 58
Nags Head, NC 27954

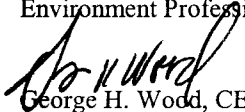
Dear Mr. Owen,

This letter is with reference to a soundfront parcel of land adjoining Old Nags Head Cove owned by Coleen P. Oaksmith and depicted on your plat of August 26, 2003. You asked that Environment Professionals, Inc. review Lots 1, 2, and 3 to determine if wetlands are present at the site.

On February 6, 2004, a Professional Wetland Scientist with Environment Professionals, Inc. reviewed the site utilizing the 1987 U.S. Army Corps of Engineers' Wetland Delineation Manual. After reviewing the entire site, we have determined that no wetlands subject to the U.S. Army Corps of Engineers' jurisdiction pursuant to Section 404 of the Clean Water Act exist at the site. We further inspected the soundfront to determine if wetlands that were subject to the State jurisdiction under the Coastal Area Management Act existed along the shorefront. It is our determination that no coastal wetlands exist at this site.

I hope that this information is helpful in your pursuit of the development of this site.

Sincerely,
Environment Professionals, Inc.


George H. Wood, CEP, PWS

GHW:kac

KELLOGG AND EVANS, P.A.

ATTORNEYS AT LAW

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December 3, 2003

Robert Muller, Mayor
Nags Head Board of Commissioners:
Anna Sadler, Commissioner
Brant Murray, Commissioner
Robert Oakes, Commissioner
Wayne Gray, Commissioner

Re: Oaksmith Subdivision Application

Dear Mayor and Commissioners:

The matter of the proposed Colleen Oaksmith and Sami Kokdil Subdivision is back before you today. I have previously provided and presented to the members of the Planning Board at two different meetings the history of the twenty foot (20') gravel road which has been called Soundside Road Extension and West Soundside Road at various times. This historical background information is very important and integral to the total picture which I believe is necessary to consider this matter.

At my request, the Planning Staff has included in your packets a copy of my presentation made to them at their November 18, 2003 meeting with exhibits attached. We do not want to take more time than is necessary today, but I do want you to fully understand and appreciate the history and the background of this area of the Town, particularly in relation to the Town's involvement over the last forty years; therefore, I would like to highlight portions of my November 18, 2003 letter to the Planning Board and also present to you my additional remarks for your consideration which are contained in my letter today. You have already been provided a letter from Colleen Oaksmith personally.

{Comment and highlight presentation to Planning Board.}

Section 18-10 of the Subdivision Ordinance of the Town of Nags Head states that an applicant may seek a waiver and variance from Subdivision Ordinance requirements. The Planning Board may recommend waiver from the subdivision requirements upon finding that:

1. Due to special circumstances of a particular plat the provision of certain required improvements is not requisite in the interest of public health, safety and welfare; or
2. The provision of certain required improvements is inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed subdivision.

The special circumstances are that:

1. Soundside Road Extension is not paved and has been allowed by the Town to remain unpaved for approximately forty years. The Town has shown this gravel road on the Town's Powell Bill map and has collected State Highway monies for its maintenance and repair over an extensive period of these years.
2. Soundside Road Extension is a dead-end road and presumably will never serve any more than the lots which now abut it.
3. It is inappropriate to require the Applicant to pave the existing gravel road because the property is quite a distance from connecting pavement at the end of Soundside Road. The Staff has told the Applicant that she must pay for paving the road all the way back to the existing paved portion of Soundside Road and acquire the necessary right of way to meet the Town's standards but with no indication or agreement on what amount of right of way is appropriate under these circumstances.

Subject to appropriate conditions, the Board of Commissioners may then waive requirements. I submit to you that the above reasons are adequate and appropriate conditions for the Board and under these circumstances that the Board should waive any requirement to acquire additional right of way and/or to pave a road.

The Planning Board and/or the Board of Commissioners may vary subdivision ordinance requirements upon finding that:

1. Extraordinary and unnecessary hardships may result from strict compliance with Subdivision Ordinance; AND
2. Varying Subdivision Ordinance requirements will result in substantial justice and the public interest is secured provided that the variations will not have the effect of nullifying the intent and purpose of the official map, the master plan, other regulations and the zoning ordinance.

Extraordinary and unnecessary hardships will result if the Town requires the Applicant to acquire right of way and/or pave a new road or the existing gravel road over properties other than her own to connect to the Soundside Road pavement. It is important to note that what the Staff wants to require of the Applicant is to provide a forty foot (40') right of way we believe with pavement to connect to a paved twenty foot (20') wide road lying on a twenty foot (20') wide right of way which is the portion of Soundside Road that runs along the Sound leading up to the unpaved portion of the road we are discussing today. This portion of the paved

Soundside Road is itself a substandard road that has been in existence in the Town since the Town was incorporated or shortly thereafter. Many building permits have been issued on lots fronting on this portion of Soundside Road with no requirements that the Applicants provide additional right of way or pavement. It would be an extraordinary and unnecessary hardship to impose these requirements on Colleen Oaksmith when this has not been required on existing Soundside Road lots. Arguably it would also be unequal treatment under the law of this Applicant unless these requirements have been or are placed upon other similar Applicants.

Substantial justice will not be carried out unless you allow this Applicant the same privileges you have allowed other similar Applicants. The only difference here it seems would be that the existing substandard paved Soundside Road is in fact paved where the other portion is a gravel road. Appropriate consideration should be given to the fact that both are approximately the same width of pavement and right of way.

Ask yourselves this question: How will allowing the requested waiver and variance by Colleen Oaksmith and her husband nullify the interest and purpose of the official map, master plan, other regulations and the zoning ordinance? In my opinion the requested subdivision of three lots from what the Town says is now two lots will not nullify the intent and purpose of the official map, master plan, and zoning ordinance—keeping in mind that the Town itself has agreed to the existence of and approved recording plats showing three lots and a cul-de-sac which were part of the Town maps for more than fifteen years (Dartt property) and further has agreed that the existing twenty foot (20') gravel road created two separate building lots because of its passage through one larger previously platted lot (Adams property purchased from Ethel Fisher). Allowing this three lot subdivision with the requested waiver and variance will not nullify the intent and purpose of the official map, master plan, and zoning ordinance of the Town. With the Applicant's addition of the fire hydrant coming off a six inch water main and the proposed environmental standards cul-de-sac and environmental standards right of way dedication and with the offer of the Applicant to limit each lot to a maximum of a five bedroom house, everything that the Applicant has proposed to do I believe will meet the requirements of the Town's ordinances except the issue of paving the twenty foot (20') gravel road. None of the property owners of the five lots fronting on the North-South twenty foot (20') gravel road want it paved. They would like to leave it in its present gravel state. I think the Town has heard this directly from Chesson and Adams, the other near-by property owners.

The Town began attempts thirty years ago to deal with the issue of Soundside Road Extension. At that time, all the property owners agreed to cooperate except one and the effort eventually lost its momentum although the Town ended up with a dedication of a fifty foot (50') cul-de-sac and a forty foot (40') recorded right of way on portions of the twenty foot (20') gravel road. With the current ownership of the affected properties and the proposal before you, this is the time for the Town to take advantage of an opportunity to responsibly deal with these issues and to resolve them for the benefit of the Town in a way that is fair and equitable to all the affected property owners and taxpayers.

We are asking you to do what is fair and equitable under the circumstances that have been presented to you and what several of you already know of your own knowledge and experience from being here and having been involved in Town affairs.

I would like to present to you another scenario for your consideration of this matter. N.C.G.S. 160A-376 of the North Carolina General Statutes defines what constitutes a "subdivision" and what activities shall not be included and shall not be subject to the subdivision regulations authorized in Chapter 160A upon which Nags Head Subdivision laws are based. Subsection 3 thereof states that one of the excluded activities not subject to subdivision regulation is "The public acquisition by purchase of strips of land for the widening or opening of streets". It seems to me that the Town could exempt this matter altogether from the Town's subdivision regulations which it did in April of 1979 when the Town accepted the dedication of the street and fifty foot (50') cul-de-sac offer by William H. Dartt and his wife and which appears on the plat accepted by the Town and recorded and filed in Plat Cabinet A, Slide 152 of the Dare County Registry. The Town Board of Commissioners could make such a declaration thereby exempting this matter from the Subdivision Regulations and proceed with consideration and impose those conditions as deems necessary and advisable and hopefully fair and equitable to all those property owners and taxpayers involved. As you may recall as part of the acceptance of the street and fifty foot (50') cul-de-sac offered by Mr. and Mrs. Dartt in 1979, the Town acknowledged and agreed that two separate lots were in fact created by the recordation and dedication of the cul-de-sac that divided the property into two parcels. The acceptance of an appropriate cul-de-sac by the Town for this purpose at the present time could in fact do the same thing with exemption from the subdivision regulations.

It seems to me that there are several options available to you as the governing body of the Town of Nags Head. Now is the time to resolve this issue of the status Soundside Road Extension and to stop playing games with the property owners in that area. On behalf of Colleen Oaksmith and her husband Sami Kokdil, who could not be present today due to unavoidable obligations, I thank you for your time and consideration of this matter. It is in your hands to do what is right, fair and equitable.

Very truly yours,

A handwritten signature in black ink, appearing to read "Charles D. Evans". The signature is fluid and cursive, with the first name "Charles" being more prominent and the last name "Evans" following in a similar style.

Charles D. Evans

CDE: jdu