Case No. 25-01

OAK RIDGE BOARD OF ADJUSTMENT

****

IN THE MATTER OF:

APPEAL OF

LINDSEY CLARK

From

ENFORCEMENT OFFICER DECISION

****

APPELANT'S RESPONSE TO

TOWN OF OAK RIDGE'S OBJECTION AND MOTION TO DISMISS

****

NOW COMES Lindsey Clark, Appellant, pro se, and respectfully submits this Response to the Town of Oak Ridge's Objection and Motion to Dismiss, filed on March 19,2025, and requests that the Board of Adjustment deny the motion for the reasons set forth below:

INTRODUCTION

Appellant opposes Respondent's Motion to Dismiss based on alleged untimeliness. This appeal, filed February 25, 2025, challenges Planning Director Sean Taylor's refusal to perform his statutory duty under N.C. Gen. Stat. § 160D-403(f) to revoke the Ashford Subdivision plat approval for noncompliance with development regulations. Respondent's timeliness objection is baseless, as their own written notice on February 6, 2025, triggered the appeal period, and their arguments mischaracterize the appeal's scope and Appellant's rights.

STATEMENT OF FACTS

1. On June 3, 2024, Appellant requested Mr. Taylor revoke the Ashford Subdivision plat approval, citing noncompliance with local regulations, per N.C. Gen. Stat. § 160D-403(f). Mr. Taylor did not respond by Appellant's requested deadline of June 5, 2024.
2. Appellant filed a petition for writ of mandamus in Superior Court to compel this statutory duty.

3. On February 6, 2025, Respondent's counsel, Mr. Thomas, argued in a brief that Mr. Taylor's "negative act of not revoking approval" was an administrative decision appealable to this Board, asserting Appellant failed to exhaust remedies.
4. The Superior Court dismissed the petition without prejudice on February 10,2025, citing Appellant's failure to appeal to the Board under N.C. Gen. Stat. § 160D-405 and Oak Ridge Ordinance Sec. 30-194.
5. Appellant filed this appeal on February 25, 2025, within 30 days of Mr. Thomas's written notice.
6. The plat's noncompliance includes an illegitimate trail easement, as noted in prior filings.

LEGAL STANDARD

The Board has jurisdiction to hear appeals of administrative decisions under N.C. Gen. Stat. § 160D-405 and Oak Ridge Ordinance Sec. 30-194. A motion to dismiss for untimeliness must fail if the appeal was filed within 30 days of written notice, as required by law, viewing facts in Appellant's favor.

ARGUMENT

1. **This Appeal Targets Mr. Taylor's Refusal to Perform His Statutory Duty**
    - The appeal challenges Mr. Taylor's refusal to revoke the plat approval under N.C. Gen. Stat. § 160D-403(f), which mandates revocation for "failure to comply with the requirements of any applicable local development regulation." This is distinct from the initial approval and has no performance deadline.
    - Respondent cannot deny that this non-revocation is the appealable decision, as it was the basis of Appellant's mandamus petition and noted in Mr. Thomas's February 6th brief to the court.
2. **Mr. Taylor's Non-Response Became an Appealable Decision with Written Notice**
    - Midgette v. Pate, 94 N.C. App. 498, 380 S.E.2d 572 (1989), holds that prior non-response isn't an administrative decision. Here, Mr. Taylor's lack of response only became appealable when Mr. Thomas provided written notice on February 6, 2025, per Oak Ridge ordinance Sec. 30-194, which requires notice to the party who sought the decision (Appellant).
    - Mr. Thomas's February 6th brief stated: "the negative act of Respondent Taylor in not revoking approval of the final plat at Petitioner's request and by the

Petitioner's stated deadline of June 5, 2024, were administrative decisions that the petitioner could have appealed to the Oak Ridge Board of Adjustment." This notice triggered the appeal right.

3. **The Appeal Was Timely Filed Within 30 Days**
    - N.C. Gen. Stat. § 160D-405(d) and Oak Ridge Ordinance Sec. 30-194(3) allow 30 days from receipt of written notice to appeal. Mr. Thomas's February 6, 2025, brief served as that notice, and Appellant filed on February 25, 2025—within 30 days.
    - Respondent cannot reject this statutory timeline due to inconvenience or claim an earlier trigger (e.g., June 2024), as no prior written decision existed until February 6, 2025.
4. **Respondent's Actions Led to Court Dismissal and This Appeal**
    - The Superior Court dismissed the mandamus petition based on Respondent's argument that an appeal to the Board was available, for "failing to make appeal to the Oak Ridge Board of Adjustment pursuant to and as mandated by N.C. Gen. Stat. § 160D-405 and the Oak Ridge Development Ordinance". Sutton v. Figgatt, 280 N.C. 89, 185 S.E.2d 97 (1971), supports that mandamus yields when alternate remedies exist and the defendant shows willingness to act (here, by recording the decision via Mr. Thomas's February 6th brief).
    - Respondent's motion now contradicts their prior position, undermining their timeliness claim.
5. **Other Facts Cited by Respondent Are Irrelevant**
    - Mr. Thomas may reference the sale of lots or prior approvals, but these are irrelevant. This appeal targets the refusal to revoke, not the initial approval. Cases cited regarding other persons with standing getting constructive notice apply to third parties, not Appellant as the direct requester owed a written decision under Oak Ridge ordinance Sec. 30-194.
6. **Board's Authority to Act**
    - Once the Board determines Mr. Taylor erred as supported by previously submitted documentation, Ordinance Sec. 30-194 grants it authority to reverse his non-action and order revocation, as Mr. Thomas acknowledges plat approval errors are subject to revocation in his March 15th brief submitted to the Board of Adjustment.

- Revocation of approval would allow subsequent administrative approval of an eligible plat, as previously prepared and submitted by Mr. Joseph Brady to the Town.

7. **Lot Sales Do Not Justify a Variance to Avoid Revocation**

   - Respondent may argue that revoking the plat approval creates hardship for the developer and homeowners, due to lot sales, potentially implying a variance under Ordinance Sec. 30-195(f) is warranted to preserve the plat and protect those sales. However, this ordinance requires that a variance meet four criteria: (1) unnecessary hardship from strict application, (2) hardship from unique property conditions, (3) hardship not self-created by the applicant, and (4) consistency with the ordinance's intent. The developer's inclusion of the illegitimate trail easement—a nonconforming use violating development regulations—is a self-created hardship, failing this test.

   - Respondent may assert that homeowners' purchases justify a variance, citing Sec. 30-195(f)(3)'s proviso: "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." This suggests buyers aren't at fault for buying lots, potentially framing revocation as unfair to them after sales.

   - However, Ordinance Sec. 30-195 Delimitations (3) decisively refutes this: "Neither the nonconforming use of lands, buildings, or structures in the same zoning district, nor the permitted use of lands, buildings, or structures in other zoning districts, shall be considered a ground for the issuance of a variance. Furthermore, mere financial hardship does not constitute grounds for the granting of a variance, and a showing that the subject property may be utilized for greater profit if the variance applied for is granted will not be considered adequate to justify the granting of a variance." The trail easement's nonconforming status—added in violation of regulations—cannot be excused by its use in sold lots or surrounding zoning patterns; this clause explicitly bars such use as a variance basis. Additionally, financial hardship from lot sales (e.g., developer losses or homeowner value drops) or profit motives (e.g., avoiding reapproval costs) are equally invalid grounds.

   - Furthermore, Mr. Joseph Brady previously submitted to the Town a compliant plat without the trail easement, eligible for immediate approval post-revocation, which negates any lasting hardship claim. This remedy ensures lot use and

property rights remain intact, undermining Respondent's timeliness objection that revocation is impractical after sales.

CONCLUSION

Respondent's timeliness objection is baseless. The appeal was filed within 30 days of their own written notice, aligns with the statutory duty at issue, and falls within the Board's authority. Appellant requests that the Board deny the motion and proceed to address Mr. Taylor's duty and the plat's revocation.

PRAYER FOR RELIEF

WHEREFORE, Appellant prays that the Board:

1. Deny Respondent's Objection and Motion to Dismiss;
2. Hear the appeal and determine if Mr. Taylor has a duty under N.C. Gen. Stat. § 160D-403(f) to revoke the Ashford Subdivision plat approval;
3. If such a duty exists, exercise its authority to reverse the decision of non-revocation by the Planning Director and order the revocation of the plat approval, allowing for subsequent administrative approval of an eligible final plat, as previously prepared and submitted by Mr. Joseph Brady;
4. Grant such other relief as deemed just and proper.

Respectfully submitted this 23rd day of March, 2025.

Lindsey Clark
6816 Koala Drive
Oak Ridge, NC 27310
703-431-9276
Lindsey.clark24@gmail.com

CERTIFICATE OF SERVICE

I certify that a copy of this Response was served on Mr. Thomas, attorney for the Town of Oak Ridge and Code Enforcement Officer Sean Taylor, by electronic mail to the address shown below:

J. Michael Thomas
Attorney the Town of Oak Ridge and Code Enforcement Officer Sean Taylor
301 S. Elm Street, No. 301
Greensboro, NC 27401
Email: mthomas@jmtlawgso.com

This the 23rd day of March, 2025.

Lindsey Clark
Appellant, Pro Se