Town of Oak Ridge

Board of Adjustment
Enforcement Officer Appeal

Date Submitted: ________________ **Fee/Receipt # $100.00 /** _______ **Case Number** ________________

PROPERTY INFORMATION

Address ______________________________ City ________________ State ________

Zip Code ____________

Tax Parcel # ____ ____ ____ ____ ____ ____ ____ Zoning: ______________________

Plat Book & Page ________________ Deed Book & Page ________________

OWNER INFORMATION

Name ______________________________ Phone Number ____________________

Address ______________________________ City ________________ State ________

Zip Code ____________

Email ____

Owner Signature____

I certify that all information presented by me in this application is accurate to the best of my knowledge, information, and belief.

APPLICANT INFORMATION – *If not property owner, a notarized statement of permission is required from the property owner.*

Name ______________________________ Phone Number ____________________

Address ______________________________ City ________________ State ________

Zip Code ____________

Email ____

Applicant Signature_______ Lindsey Clark ____

I certify that all information presented by me in this application is accurate to the best of my knowledge, information, and belief.

TYPE	**SECTION NUMBER**
Decision of Enforcement Officer	______________________
Boundary Lines	______________________
Nonconforming Use Continuance	______________________
Address Assignment	______________________
Certificate of Appropriateness	______________________

Town of Oak Ridge

Board of Adjustment
Enforcement Officer Appeal

TO THE TOWN OF OAK RIDGE BOARD OF ADJUSTMENT:

I, ______________________________, hereby appeal to the Town of Oak Ridge Board of Adjustment from the following interpretation of the Guilford County Enforcement Officer:

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APPLICANT STATEMENT

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• 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.

(see included Attachments for more details)

BOARD OF ADJUSTMENT CHECKLIST
The following is a list of materials and information which you must submit in order to have your case presented at the Board of Adjustment meeting. Failure to comply with all of the following may result in the case being delayed. Refer to the Meeting Schedule below for submittal deadlines and meeting dates.

1. Completed application.
2. Required fee paid.
3. If applicable, Site/Plot Plan drawn to scale showing the property as it exists and with any proposed additions, structures, buildings, driveways, well, septic system, and abutting streets.
4. If applicable, provide a minimum of 4, maximum of 6 photographs showing the area affected by your appeal. Graphics or architectural sketches may be used to fill this requirement.
5. If applicable, approval from the Guilford County Environmental Health Division, contact them at 336-641-7613.
6. If this appeal concerns the issuance of a Certificate of Appropriateness, complete records are required.

2025 Town of Oak Ridge BOA Meeting Schedule

Application Submittal Deadline 12:00 pm	BOA Meeting 7:00 pm
December 26, 2024	January 23, 2025
January 30, 2025	February 27
February 27	March 27
March 27	April 24
April 24	May 22
May 29	June 26
June 26	July 24
July 31	August 28
August 28	September 25
September 25	October 23
October 23	November 20
November 20	December 18

Lindsey Clark
6816 Koala Drive
Oak Ridge, NC 27310
Lindsey.clark24@gmail.com

June 3, 2024

Sean Taylor
Town of Oak Ridge Planning Director/Enforcement Officer
P.O. Box 374
Oak Ridge, NC 27310
staylor@oakridgenc.com

Dear Mr. Taylor,

I am writing to formally bring to your attention significant concerns regarding the approval of the final plat for the Ashford subdivision in Oak Ridge. It has come to my attention that the approval process for this final plat was flawed due to the following reasons:

1. De facto denial of Ashford preliminary plat
2. Unauthorized administrative approval of a quasi-judicial decision

Oak Ridge ordinance Sec. 30-680 (c) Conditional Approval states that if the conditionally approved preliminary plat does not meet approval conditions within 60 days, it "shall be deemed denied." Based on the records request provided 5/29/24, the preliminary plat for Ashford was granted conditional approval by Planning and Zoning on 1/27/22 (ref: P&Z Minutes 1_27_22.pdf). The conditions of the conditional approval were defined in Ashford Staff Report SUB-22-01.pdf including approval of the Stormwater Review being in compliance with the town ordinances. File OAK18546- Ashford Subdivision Final Acceptance Letter.pdf notes that the revised stormwater plans were not submitted until 2/13/23 and were accepted on 2/14/23.

As the stormwater documentation was not even submitted until 2/13/23, the Ashford preliminary plat failed to meet the conditional approval conditions within the prescribed time frame and was therefore de facto denied on 3/28/22, 60 days following 1/27/22, per ordinance. Without an approved Ashford preliminary plat, the final plat for Ashford was ineligible for approval and shall therefore be considered illegitimate.

Furthermore, pursuant to Oak Ridge ordinances Appendix B, table A-2 Required Information on Minor and Major Subdivisions, Exclusions, Annexations, Plot Plans, and Site Plans/Group Developments, the submission of a preliminary plat is required to depict any public trail easement according to any/all of the following:

- "Areas to be dedicated or reserved for the public or a local jurisdiction"
- "Area in newly dedicated right-of-way"
- "Existing and proposed rights-of-way lines within and adjacent to property"
- "Location, dimension and type of all easements"

Regrettably, it has transpired that the preliminary plat of the Ashford Subdivision failed to incorporate the requisite public trail easement, as mandated by ordinance. Including a public trail easement on a final plat for approval, when it was not included on the preliminary plat as

required by ordinance, is considered a variance which requires a quasi-judicial hearing instead of administrative approval.

As outlined in cases County of Lancaster v. Mecklenburg County, 334 N.C. 496, 434 S.E.2d 604 (1993) and Butterworth v. City of Asheville, 247 N.C. App. 508, 786 S.E.2d 101 (2016), courts have established that if a decision requires judgment and leaves substantial discretion to the decision-maker, it is quasi-judicial and must follow elements of a fair trial including an evidentiary hearing. If a decision is routine and nondiscretionary, then the decision is administrative or ministerial and there is no need for a quasi-judicial hearing. The court did clarify that some modifications may be allowed as administrative decisions, but such modifications must be based on “specific, neutral, and objective criteria.” For development approvals generally, N.C. Gen. Stat 160D-403(d) states “A local government may define by ordinance minor modifications to development approvals that can be exempted or administratively approved.”

Given the ordinances have not defined what constitutes acceptable minor changes, and given the absence of the public easement on the preliminary plat is in conflict with clearly defined ordinance standards, the inclusion of the easement on the final plat is a variance from ordinance subject to board of adjustment hearing, not administrative approval. As the final plat administrative approval was unauthorized, this underscores the illegitimacy of the final Ashford plat.

In light of these serious violations that directly contravene the stipulated development regulations, I formally request you to exercise your statutory duty and revoke the approval of this final plat. According to N.C. Gen. Stat. § 160D-403. Administrative development approvals and determinations, subsection F, "Revocation of Development Approvals", it is your responsibility to take corrective action to ensure compliance with all applicable laws and regulations: “Development approvals shall be revoked … for refusal or failure to comply with the requirements of any applicable local development regulation or any State law delegated to the local government for enforcement purposes in lieu of the State…”. It is my understanding that the developer has already submitted a revised plat, absent the public trail easement, which would then be eligible for review and approval following the revocation of the approval of the illegitimate final plat.

If no corrective action is taken within two business days from the date of this letter, I will consider your inaction as a prompt to file a petition for a writ of mandamus, as is my right per ordinance Sec. 30-260 Action by others, as an adjacent property owner to land used in violation of the land development ordinances. As you may be aware, this legal action would compel the enforcement of your statutory duties to revoke the illegitimate approval of the final plat.

I trust that you will address this matter with the urgency it requires to uphold the integrity of our town’s planning and approval processes. Should you require any further clarification or documentation, please do not hesitate to contact me. Thank you for your attention to this matter, and I anticipate a judicious and expeditious resolution.

Sincerely,

Lindsey Clark

No. 888SC1006
North Carolina Court of Appeals

Midgette v. Pate

94 N.C. App. 498 (N.C. Ct. App. 1989) · 380 S.E.2d 572
Decided Jul 1, 1989

No. 888SC1006

Filed 5 July 1989

1. Municipal Corporations 31 — swimming pool and bathhouse — special use permit — 12(b)(6) dismissal — correct The trial court correctly granted a dismissal under N.C.G.S. 1A-1. Rule 12 (b)(6) as to special use permits in plaintiff's action against town officials connected to the issuance of permits for a swimming pool and bathhouse in a subdivision. Plaintiff's complaints specifically concerning defendants' special use, or building permits, may only be remedied by first appealing to the Board of Zoning Adjustment, which she failed to do. Plaintiff's complaints connected to the issuance of the permits are limited to the procedures outlined in N.C.G.S. 160A-388.

2. Municipal Corporations 31 — swimming pool and bathhouse — mandamus alleging that zoning administrator failed to enforce ordinance — 12(b)(6) dismissal improper The trial court improperly granted defendants' motion for a dismissal under N.C.G.S. 1A-1, Rule 12 (b)(6) of plaintiff's action against the town for mandamus alleging that the zoning administrator failed to enforce a zoning ordinance related to defendants' construction of a swimming pool. Plaintiff's request that the alleged violations he corrected, the fact that she is an adjacent property owner subject to the same zoning restrictions as defendants Pate, and the fact that she alleged special damages is sufficient to assert her legal right to enforcement of the ordinance, and plaintiff has set forth adequate *499 facts to state a claim that there had been violations of the zoning ordinance.

3. Deeds 20.7 — subdivision restrictive covenants — enforcement — 12(b)(6) dismissal improper The trial court improperly granted defendants' motion for dismissal under N.C.G.S. 1A-1, Rule 12 (b)(6), of plaintiff's action against the defendant Pates for violation of subdivision protective covenants regarding the construction of a swimming pool and bathhouse. N.C.G.S. 1A-1, Rule 8 (a)(1) and (2).

APPEAL by plaintiff from Preston, Judge. Judgment entered 18 April 1988 in Superior Court, GREENE County. Heard in the Court of Appeals 13 April 1989.

H. Jack Edwards for plaintiff appellant.

James R. Fitzner for defendant appellees.

George Lee Jenkins for defendant appellees Larry Ed Pate and wife, Rebecca Pate. *501

In this civil action plaintiff seeks a writ of mandamus and an injunction to compel town officials to enforce the local zoning ordinance. Defendants moved to dismiss the complaint pursuant to N.C.R. Civ. P. 12 (b)(6) for failure to state a claim upon which relief may be granted. After hearing the motions the trial court entered an order dismissing the complaint against the defendants, from which plaintiff appeals. The following facts are alleged in plaintiff's complaint:

Plaintiff's home, which she owns, is located on Lot 17, Block A of the Indian Head Estates Subdivision in Greene County. The defendants, Larry Ed and Rebecca Pate, own a home and

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property located on two adjoining lots in the Indian Head subdivision. Both plaintiff's and defendants Pate's properties are located within the zoning jurisdiction of the Town of Snow Hill, and are also subject to the Protective Covenants for the Indian Head Estates Subdivision.

At the time this action was initiated defendant Oliver was the Mayor of the Town of Snow Hill; defendants Rayford, Miller, Moore, Lewis and Foreman served as Commissioners of the Town of Snow Hill; defendant Manning was employed as Zoning Administrator for the Town of Snow Hill.

On 10 July 1985 a building permit was issued by defendant Manning, as the Snow Hill Building Inspector, to defendant Pate to allow construction of a swimming pool and bathhouse on the Pate lots in the Indian Head subdivision. On 15 July 1988, the Snow Hill Board of Zoning Adjustment approved a special use permit for a swimming pool on the Pate lots in the Indian Head subdivision. *500

The swimming pool and bathhouse were subsequently built. It is alleged that the swimming pool is less than twenty feet from the right-of-way known as Arrow Head Circle; that the pool and bathhouse were enclosed by a wooden fence which is at least seven feet high; that the fence is located less than three feet from Arrow Head Circle, a right-of-way, and approximately eighteen feet from Indian Head Drive, another right-of-way. Plaintiff alleges that the pool, bathhouse and fence violate the zoning ordinances of the Town of Snow Hill and the Protective Covenants of the Indian Head subdivision.

It is further alleged that during the summers of 1985 and 1986 the Pates sold memberships to individuals and families for use of the pool and bathhouse facilities. Plaintiff alleges that the sale of memberships to the Pate pool and associated activities are in violation of the zoning ordinances of Snow Hill and the Protective Covenants of the Indian Head subdivision.

It is admitted in defendants Pate's answer to plaintiff's complaint that a letter was written to Larry Ed Pate by defendant Manning as Zoning Administrator for the Town of Snow Hill which mentioned certain violations of the zoning ordinance. Plaintiff alleges that following this letter the Pates took no action to change the pool, its facilities, or use of the pool by paid membership. Plaintiff states that despite her requests the Town of Snow Hill and the Zoning Administrator have refused to enforce the zoning ordinance and take action against the Pates for the alleged violations.

Defendants Pate admit in their answer that the protective covenants were established for the mutual benefit of all lots in Indian Head estates and the owners and purchasers of lots therein. The Pates further admit in their answer that they had notice and knowledge of the covenants. Plaintiff alleges that the construction of the pool, bathhouse and fence violated the protective covenants in five specific respects.

Plaintiff asked that a writ of mandamus issue to direct the town officials to enforce the zoning ordinance; that a permanent injunction issue to force compliance with the protective covenants; or, in the alternative, that plaintiff be allowed to recover damages.

ARNOLD, Judge.

Plaintiff appeals the trial court's dismissing her complaint for failure to state a claim on which relief can be granted pursuant to N.C.R. Civ. P. 12 (b)(6), N.C.G.S. 1A-1.

A plaintiff's complaint setting forth a claim for relief must include:

(1) A short and plain statement of the claim sufficiently particular to give the court and the parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved showing that the pleader is entitled to relief, and

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(2) A demand for judgment for the relief to which he deems himself entitled.

N.C.G.S. 1A-1, Rule 8 (a)(1)(2); see generally Sutton v. Duke, 277 N.C. 94, 176 S.E.2d 161 (1970).

As the defendants each made their motions pursuant to N.C.R. Civ. P. 12 (b)(6) for failure to state a claim on which relief can be granted, the factual allegations of the complaint set forth above must be taken as true for purposes of this appeal. Smith v. Ford Motor Co., 289 N.C. 71, 80, 221 S.E.2d 282, 288 (1976). "A claim should not be dismissed under Rule 12 (b)(6) unless it appears that the plaintiff is entitled to no relief under any statement of facts which could be proved in support of the claim." W. Shuford, N.C. Civil Practice and Procedure 12-10 (1988).

Plaintiff's complaints can be sorted into three subgroups: those which arise as result of the permits which were granted to the Pates; those which would be the result of a refusal by town officials to enforce the ordinance; and those which are connected to the alleged violations of the protective covenants.

The defendant Town officials correctly contend that the plaintiff may only proceed against them as set out in N.C.G.S. 160A-388. Therefore, plaintiff's complaints connected to the issuance of the permits are limited to the procedures outlined in N.C.G.S. 160A-388:

(b) The board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of any ordinance adopted pursuant to this Part.

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An appeal may be taken by any person aggrieved or by an officer, department, board, or bureau of the city.

* * * *

(e) The concurring vote of four-fifths of the members of the board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official charged with the enforcement of an ordinance adopted pursuant to this Part, or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance, or to grant a variance from the provisions of the ordinance. Every decision of the board shall be subject to review by the superior court by proceedings in the nature of certiorari.

The board of adjustment is an administrative body with quasijudicial power whose function is to review and decide appeals which arise from the decisions, orders, requirements or determinations of administrative officials, such as building inspectors and zoning administrators. Id. See In re Pine Hill Cemeteries, Inc., 219 N.C. 735, 15 S.E.2d 1 (1941); see generally M. Brough, The Zoning Board of Adjustment in North Carolina 7-9 (1984). It is the job of the board of zoning adjustment to interpret the ordinance and to apply that interpretation when reviewing acts of administrators. See Harden v. Raleigh, 192 N.C. 395, 135 S.E. 151 (1926); Brough at 5. The enabling statute which grants power to local

governments to enact zoning ordinances states that a board of zoning adjustment may be authorized to:

> issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified [in the local ordinance] and may impose reasonable and appropriate conditions and safeguards upon these permits. . . .

N.C.G.S. 160A-381. A special use permit, like the one issued to the defendants Pate in this case, is allowed "to permit certain exceptional uses that the ordinance authorizes under stated conditions. Brough at 9 (emphasis in original).

N.C.G.S. 160A-388(b) confers on the board appellate jurisdiction to review the acts of those charged with enforcing the zoning ordinance. Tate v. Board of Adjustment of the City of Asheville, 83 N.C. App. 512, 513, 350 S.E.2d 873, 874 (1986). Once the municipal official has acted, for example by granting or refusing a permit, *503 "any person aggrieved" may appeal to the board of adjustment. N.C.G.S. 160A-388 (b).

Plaintiff has alleged the special damages required to assert standing under N.C.G.S. 160A-388 (b) as an aggrieved person. Heery v. Town of Highlands Zoning Board of Adjustment, 61 N.C. App. 612, 300 S.E.2d 869 (1983). Thus, she could have contested the permits had she timely filed with the board of adjustment. N.C.G.S. 160A-388 (b). Plaintiff's complaints specifically concerning defendants' special use, or building permits, may only be remedied by first appealing to the board of zoning adjustment. She failed to do so and therefore she cannot now attack these permits.

However, plaintiff has stated a proper claim against the Town for mandamus by alleging that the zoning administrator failed to enforce the ordinance. Insofar as the complaint attacks the sale of memberships for use of the pool, the building of structures not covered by the permits, and parking, plaintiff has alleged that her requests to town officials have been ignored. Further, as there has been no decision by a zoning administrator from which she may appeal, she may not go forward under N.C.G.S. 160A-388 (b) to contest the use the Pates made of the pool after they were permitted to build it. Tate at 515, 350 S.E.2d at 874.

In North Carolina the rule has been stated that "Mandamus will lie to compel the performance of a durely ministerial duty imposed by law." Bryan v. City of Sanford, 244 N.C. 30, 35, 92 S.E.2d 420, 423 (1956); see Lee v. Walker, 234 N.C. 687, 68 S.E.2d 664 (1952) (mandamus appropriate to compel officials to issue zoning permit when plaintiff showed he had met all requirements for permit); Rebholz v. Floyd, 327 So.2d 806, 808 (Fla.App. 1976); see generally A. Rathkopf, 3 The Law of Zoning and Planning 44.01 et eq.

"Where the law prescribes and defines a duty with such certainty as to leave nothing to the exercise of judgment or discretion the act is ministerial . . . ." Harden at 397, 135 S.E. at 152. The legislature has prescribed the duties of local zoning inspectors including: "the issuance of orders to correct violations, the bringing of judicial actions against actual or threatened violations." N.C.G.S. 160A-412(4); see generally P. Green, Legal Responsibilities of the Local Zoning Administrator in North Carolina, Institute of Government (1987). Though the zoning administrator may exercise discretion in assessing the alleged violations, this does not lessen *504 the duty to investigate the charges of a plaintiff who has legal right to have the duty enforced:

> Where a duty to make a decision is imposed upon a body or officer, even though discretion is involved in the determination, mandamus will lie to compel the body or officer to make the decision, since there is no discretion involved in whether action is to be taken. 3 Rathkopf 44.03[2].

Plaintiff asserts a legal right to enforce the ministerial duties of a zoning administrator if she has standing to assert the right and has performed any acts required to evoke action on the part of the officer. Id. at 44.02; see also Heery at 614, 300 S.E.2d at 870. Plaintiff's request that the alleged violations be corrected, the fact that she is an adjacent property owner subject to the same zoning restrictions as the defendants Pate, and the fact that she alleged special damages is sufficient to assert her legal right to enforcement of the ordinance. See id. Plaintiff has set forth adequate facts to state a claim that there have been violations of the zoning ordinance related to the use of the pool, parking, and fence, and that the zoning inspector has failed to make a determination concerning the violations and to pursue correction of the violations.

Finally, as against the Pates, we hold that plaintiff has sufficiently stated a claim that the Protective Covenants have been violated. Though plaintiff has neglected to include a complete copy of the covenants in the record, she does state the following violations of the covenant in her complaint:

> a) They erected a building on the property not permitted by the covenants.

> b) They failed to submit the construction plans and specifications and a plan showing the location of the structures to the architectural control committee.

> c) They failed to meet the minimum setback requirements for the location of buildings, structures and fences on their property.

d) They use the property for other than residential purposes.

> e) They are allowing a use of their property which has become an annoyance or nuisance to the neighborhood.

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This portion of the complaint put the defendants on notice of the claim concerning violation of the covenants. N.C.G.S. 1A-1, N.C.R. Civ. P. 8 (a)(1)(2). In our view plaintiff's complaint states a claim on the issue of whether there has been a violation of the covenants.

Our holding is that plaintiff has stated a claim for mandamus to compel the Town and its zoning administrator to scrutinize alleged violations of the zoning ordinance relating to the use of the pool, the fence, and parking, and to enforce the ordinance. Plaintiff has stated a claim against the Pates for alleged violations of protective covenants. Only that portion of the trial Court's order dismissing these two claims is reversed.

Affirmed in part and reversed in part.

Judges GREENE and LEWIS concur.

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§ 160D-405. Appeals of administrative decisions.

(a) Appeals. - Except as provided in G.S. 160D-1403.1, appeals of administrative decisions made by the staff under this Chapter shall be made to the board of adjustment unless a different board is provided or authorized otherwise by statute or an ordinance adopted pursuant to this Chapter. If this function of the board of adjustment is assigned to any other board pursuant to G.S. 160D-302(b), that board shall comply with all of the procedures and processes applicable to a board of adjustment hearing appeals. Appeal of a decision made pursuant to an erosion and sedimentation control regulation, a stormwater control regulation, or a provision of the housing code shall not be made to the board of adjustment unless required by a local government ordinance or code provision. Appeals of administrative decisions on subdivision plats shall be made as provided in G.S. 160D-1403.

(b) Standing. - Any person who has standing under G.S. 160D-1402(c) or the local government may appeal an administrative decision to the board. An appeal is taken by filing a notice of appeal with the local government clerk or a local government official designated by ordinance. The notice of appeal shall state the grounds for the appeal.

(c) Repealed by Session Laws 2020-25, s. 10, effective June 19, 2020.

(d) Time to Appeal. - The owner or other party has 30 days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal has 30 days from receipt from any source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice given pursuant to G.S. 160D-403(b) by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.

(e) Record of Decision. - The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the decision appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(f) Stays. - An appeal of a notice of violation or other enforcement order to the board of adjustment and any subsequent appeal in accordance with G.S. 160D-1402 stays enforcement of the action appealed from and accrual of any fines assessed during the pendency of the appeal or during the pendency of any civil proceeding authorized by law or related appeal. If, however, the official who made the decision certifies to the board after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the development regulation, then enforcement proceedings are not stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after the request is filed.

Notwithstanding any other provision of this section, appeals of decisions granting a development approval or otherwise affirming that a proposed use of property is consistent with the development regulation does not stay the further review of an application for development approvals to use the property; in these situations, the appellant or local government may request and the board may grant a stay of a final decision of development approval applications, including building permits affected by the issue being appealed.

(g) Alternative Dispute Resolution. - The parties to an appeal that has been made under this section may agree to mediation or other forms of alternative dispute resolution. The development regulation may set standards and procedures to facilitate and manage voluntary alternative dispute resolution.

(h) No Estoppel. - G.S. 160D-1403.2, limiting a local government's use of the defense of estoppel, applies to proceedings under this section. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 10, 50(b), 51(a), (b), (d); 2022-62, s. 59(a).)

NOTICE OF APPEAL TO THE BOARD OF ADJUSTMENT

TO THE TOWN CLERK OF THE TOWN OF OAK RIDGE:

NOTICE IS HEREBY GIVEN that I, Lindsey Clark, pursuant to N.C. Gen. Stat. § 160D-405 and the Oak Ridge Ordinance Sec. 30-194, appeal the administrative decision made by Planning Director Sean Taylor concerning the non-revocation of the plat approval for the Ashford Subdivision, to the Oak Ridge Board of Adjustment.

Grounds for Appeal:

1. **Statutory Duty Unperformed:**
   - Under N.C. Gen. Stat. § 160D-403(f), there exists a clear statutory duty for the Planning Director to revoke development approvals when there is a "failure to comply with the requirements of any applicable local development regulation..." The Ashford Subdivision has demonstrably failed to comply with these requirements, yet the plat approval has not been revoked.
2. **Administrative Decision:**
   - On June 3, 2024, I submitted a letter to Mr. Taylor, highlighting his obligations under the law and requesting action. According to a written statement made by the town's lawyer, served to me on February 6, 2025, in relation to a hearing on his Motion to Dismiss my Petition for Writ of Mandamus case, the town has, as of that date, pursuant to Oak Ridge Ordinance Sec. 30-194, provided me written notice of Mr. Taylor's administrative decision to deny my request that he uphold the aforementioned statutory duty. As supported by Midgette v. Pate, 94 N.C. App. 498, 380 S.E.2d 572 (N.C. Ct. App. 1989), prior non-response is not considered an administrative decision eligible for appeal.
3. **Standing to Appeal:**
   - I assert my standing to appeal this decision based on the explicit recognition by Oak Ridge Ordinance Sec. 30-260, which grants adjacent or neighboring property owners the right to institute "injunction, mandamus, or other appropriate action or proceeding to prevent the occupancy… or the continuance of any construction whatsoever, in violation of this chapter." This ordinance supports the notion that my appeal to the Board of Adjustment is indeed an "appropriate action or proceeding" to address violations of development regulations.
   - Furthermore, the Superior Court's order granting a Motion to Dismiss on the basis that I must exhaust administrative remedies before proceeding with mandamus implicitly acknowledges my standing in this matter. The court's decision to direct me to appeal to the Board of Adjustment logically extends my standing from mandamus proceedings to this appeal, ensuring that the administrative process is utilized as an "appropriate action" to enforce compliance with local ordinances before judicial intervention.

Request for Review:

I request that the Oak Ridge Board of Adjustment:

- Provide written notice to the owners of the property that is the subject of the determination, as well as adjacent property owners, pursuant to Oak Ridge Ordinance Sec. 30-194 (12) and N.C. Gen. Stat. § 160D-403(b), of the aforementioned administrative decision and pending appeal to the Board of Adjustment.
- Review submitted materials related to the claims of failure to comply with local development regulations.
- Determine if Planning Director Sean Taylor has a statutory duty under N.C. Gen. Stat. § 160D-403(f) to revoke the plat approval of the Ashford Subdivision in this scenario.
- 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.

Attachments:

- N.C. Gen. Stat. § 160D-405 – Appeals of administrative decisions
- Oak Ridge Ordinance Sec. 30-194 – Appeals to the board
- N.C. Gen. Stat. § 160D-403 – Administrative development approvals and determinations
- Letter dated June 3, 2024, to Planning Director Sean Taylor
- Respondent Sean Taylor's Brief in Support of His Motion to Dismiss
- Midgette v. Pate, 94 N.C. App. 498, 380 S.E.2d 572 (N.C. Ct. App. 1989)
- Oak Ridge Ordinance Sec. 30-260 – Action by others
- Copy of the proposed Superior Court Order Granting Motion to Dismiss my petition for writ of mandamus, prepared by town attorney J. Michael Thomas
- Latest revision of the Petition for Writ of Mandamus summarizing the relevant claims

Respectfully submitted this 15th day of February, 2025.

____

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

Sec. 30-194. - Appeals to the board.

The board of adjustment shall hear and decide appeals decisions of administrative officials charged with enforcement of this chapter and shall hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:

(1) Any person who has standing under G.S. 160D-1402 or the town may appeal a decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the city clerk. The notice of appeal shall state the grounds for the appeal, which grounds shall specifically set out any ordinance, statute, common law, or constitutional provision which the appealing party alleges to have been wrongly interpreted or violated. Failure to specifically set forth the grounds of appeal as herein required shall not invalidate a timely appeal, but the board of adjustment may continue hearing of such appeal until the filed appeal is amended with a more specific statement of grounds.

(2) The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.

(3) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.

(4) Posting of signs on the property that is the subject of the decision is not required. Provided, it shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least ten days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision.

(5) The official who made the decision shall transmit to the board of adjustment all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(6) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies, in an affidavit to the board of adjustment after notice of appeal has been filed, that because of the facts stated in the affidavit a stay would cause imminent peril to life or property, or because the violation is transitory in nature a stay would seriously interfere with enforcement of the ordinance. In

that case, enforcement proceedings shall not be stayed except by a restraining order granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board of adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

(7) Subject to the provisions of subsection (6) of this section, the board of adjustment shall hear and decide an appeal within a reasonable time.

(8) The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board of adjustment shall continue the hearing. The board of adjustment may reverse or affirm, wholly or partly, or may modify, the decision appealed from, and shall make any order, requirement. decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision.

(9) When hearing an appeal pursuant to G.S. 160D-947 or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. 160D-1402.

(10) The parties to an appeal that has been made under this section may agree to mediation of the matter which is the subject of the appeal, provided that: (a) all parties to the appeal agree to a continuance of hearing of the appeal by the board of adjustment until conclusion of such mediation; (b) such mediation is conducted in accordance with the Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions; and (c) such mediation is concluded within six months of the date the appeal was filed.

(11) The board of adjustment, planning board, or town council may hear and decide special use permits in accordance with the principles, conditions, safeguards, and procedures specified in the regulations in this chapter. Reasonable and appropriate conditions and safeguards may be imposed upon these permits. Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made for recreational space and facilities. Conditions and safeguards imposed under this subsection shall not include requirements for which the town does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by the local government, including, without limitation,

taxes, impact fees, building design elements within the scope of G.S. 160D-702(b), driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land.

(12) The owner or other party has 30 days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal has 30 days from receipt from any source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice given pursuant to G.S. 160D-403(b) by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.

(13) *Rehearing.* The board may rehear an appeal or application previously denied only if it finds facts supporting a conclusion that there has been a substantial change in conditions or circumstances bearing on the appeal or application.

(Ord. No. O-2013-10, § 5, 9-5-2013; Ord. No. O-2021-13, § 1, 7-1-2021)

Sec. 30-260. - Action by others.

(a) *Adjacent or neighboring property.* In addition to the remedies of the local government hereunder, if any building or structure is erected, constructed, reconstructed, repaired, converted or maintained, or any building, structure or land is used in violation of this chapter, any other appropriate authority or any adjacent property owner or landowner who would for any reason suffer special damages as a result of such violation may institute injunction, mandamus, or other appropriate action or proceeding to prevent the occupancy of such building, structure, or land, or the continuance of any construction whatsoever, in violation of this chapter.

(b) *Land purchaser.* In the event that a purchaser buys land for which there is a surety to secure performance of improvements, after a period of two years has passed since the date of final plat recordation, the purchaser may bring action to enforce completion of the improvements. In such a case, the purchaser may seek specific performance.

(Ord. of 11-10-2016)