

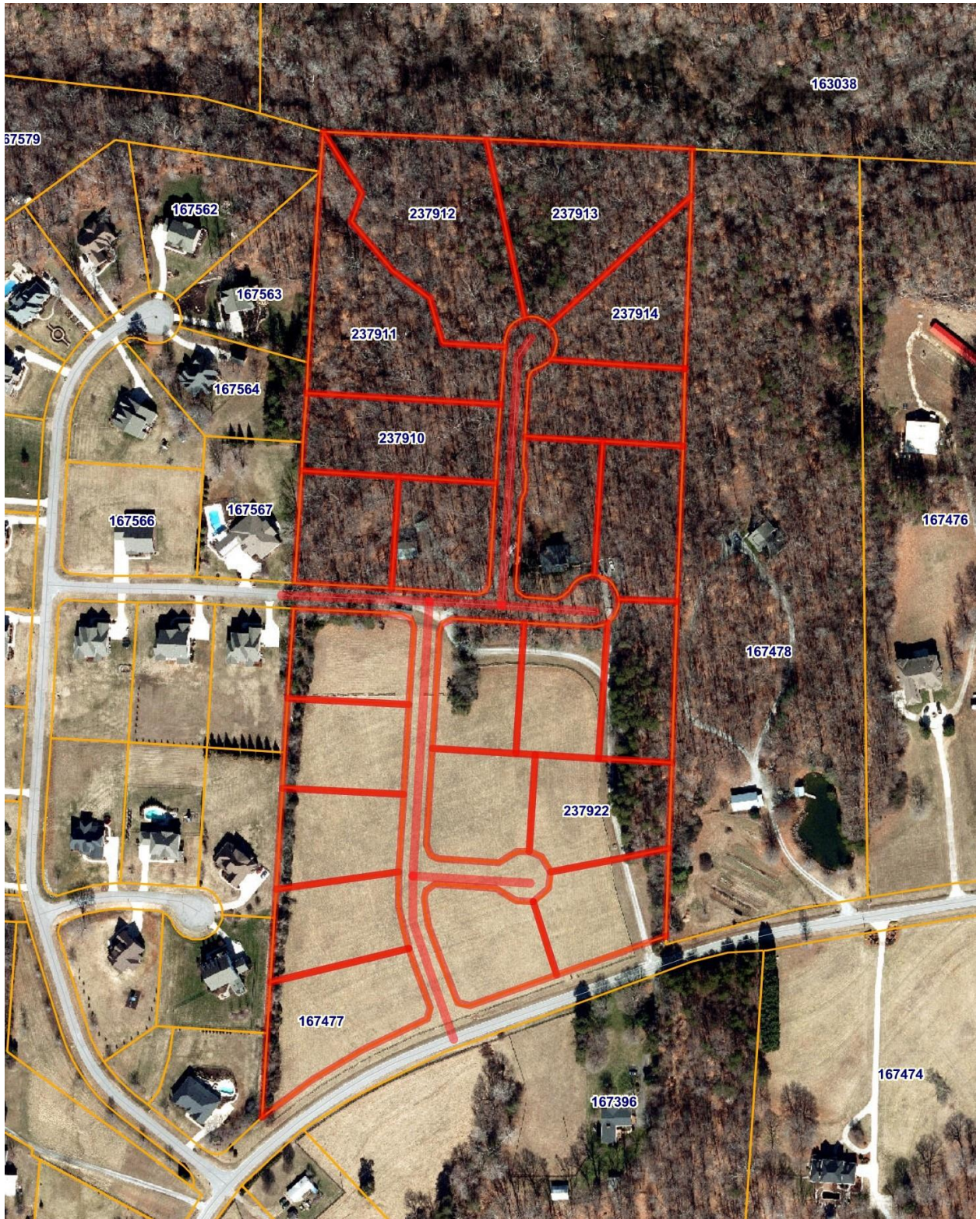
NOTICE OF BOARD OF ADJUSTMENT HEARING



Notice is hereby given that the Board of Adjustment for the Town of Oak Ridge will hold a hearing to consider the appeal the administrative decision made by Planning Director Sean Taylor concerning the non-revocation of the plat approval for the Ashford Subdivision

Date: March 27, 2025
Time: 7:00 PM
Place: Oak Ridge Town Hall
8315 Linville Road
Oak Ridge, NC

Case No. BOA-25-01: 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.



Walraven Signature Homes LLC
Po Box 130
Oak Ridge, NC 27310

Walraven Signature Homes, LLC
Po Box 130
Oak Ridge, NC 27310

Rk Custom Homes
Po Box 909
Summerfield, NC 27358

Building Dimensions Inc
6809 Brennan Way
Oak Ridge, NC 27310

Culbertson, Jeffrey S;culbertson,
Bethany Ann
8504 Case Ridge Dr
Oak Ridge, NC 27310

Green Horse LLC
1500 Cedar Ridge Farm Rd
Summerfield, NC 27358

Green Horse LLC
1500 Cedar Ridge Farm Rd
Summerfield, NC 27358

Green Horse LLC
1500 Cedar Ridge Farm Rd
Summerfield, NC 27358

Eubanks, Gary;eubanks, Tammy
5426 Ggo Dr
Greensboro, NC 27406

Davis, Mark Andrew;davis, Chelsea
Marie
3425 Gloucester Ln
Greensboro, NC 27410

Shifflett, Forrest D Jr;shifflett,
Martha L
7686 Kyran Ct
Oak Ridge, NC 27310

Gingerich Homes Inc
6352 Poplar Forest Dr
Summerfield, NC 27909

Gingerich Homes Inc
6352 Poplar Forest Dr
Summerfield, NC 27358

Gingerich Homes Inc
6352 Poplar Forest Dr
Summerfield, NC 27358

Building Dimensions Inc
4903 Robdot Dr
Oak Ridge, NC 27310

Building Dimensions Inc
4903 Robdot Dr
Oak Ridge, NC 27310

Building Dimensions Inc
4903 Robdot Dr
Oak Ridge, NC 27310

Building Dimensions Inc
4903 Robdot Dr
Oak Ridge, NC 27310

Building Dimensions Inc
4903 Robdot Dr
Oak Ridge, NC 27310

Friddle and Company Inc
7489 Summerhill Dr
Summerfield, NC 27358

Sreeram, Narendranath;veludandi,
Prashanthi
1201 Tripozi Terrace Dr Apt 1b
Greensboro, NC 27409

Lake, Pamela D;gray, Charles R
6907 Tully Ct
Oak Ridge, NC 27310

Walraven Signature Homes LLC
PO Box 130
Oak Ridge, NC 27310

RK Custom Homes
PO Box 909
Summerfield, NC 27358

Westmoreland, Michael A
6712 Brookbank Rd
Oak Ridge, NC 27310

Westmoreland, Richard M Jr;
Westmoreland, Beverly
6724 Brookbank Rd
Summerfield, NC 27358

Morris, Joseph E
6727 Brookbank Rd
Summerfield, NC 27358

Green Horse LLC
1500 Cedar Ridge Farm Rd
Summerfield, NC 27358

Eubanks, Gary; Eubanks, Tammy
5426 GGO Dr
Greensboro, NC 27406

Davis, Mark Andrew;
Davis, Chelsea Marie
3425 Gloucester Ln
Greensboro, NC 27410

Martin, Steven;
Martin, Angelina
6814 Koala Dr
Oak Ridge, NC 27310

Clark, Jeffrey II;
Clark, Lindsey
6816 Koala Dr
Oak Ridge, NC 27310

Gresham, Chesley J;
Gresham, Frederick V II
6823 Koala Dr
Oak Ridge, NC 27310

Bear Creek of Guilford Homeowners
Association Inc
1123 NC Highway 68 N Oak Ridge,
NC 27310

Harrington, William David; Harrington,
Cheryl Lynn
205 Nighthawk Pl
Greensboro, NC 27409

Vess, Kristopher D;
Vess, Sarah F
7794 Panda Ct
Oak Ridge, NC 27310

Raman, Anand;
Raman, Rajeshwari
7797 Panda Ct
Oak Ridge, NC 27310

Xiao, Zhi Xian;
Yang, Wenli
7795 Polar Dr
Oak Ridge, NC 27310

Deline, Deborah A;
Deline, Jonathan
7796 Polar Dr
Oak Ridge, NC 27310

Gingerich Homes Inc
6352 Polar Forest Dr
Summerfield, NC 27909

Building Dimensions
4903 Robdot Dr.
Oak Ridge, NC 27310

Friddle and Company Inc
7489 Summerfill Dr
Summerfield, NC 27358

Sreeram, Narendranath;
Veludandi, Prashanthi
1201 Tripozi Terrace Dr Apt 1b
Greensboro, NC 27409

Lake, Pamela D;
Gray, Charles R
6907 Tully Ct
Oak Ridge, NC 27310

The Preserve At Carriage Cove
Homeowners Association Inc.
3608 W. Friendly Ave. Ste. 202
Greensboro, NC 27410



**CERTIFICATION OF BOARD OF ADJUSTMENT NOTIFICATION
CASE # BOA-25-01**

This is to certify to the Town Council of Oak Ridge that the owner(s) of the parcels of land comprising Ashford Subdivision in Board of Adjustment Case BOA-25-01 as shown on the County Tax Map for the affected parcels and the owners of all the parcels of land abutting Ashford Subdivision as shown on the County Tax Map were mailed a notice of the Board of Adjustment Hearing by First Class Mail at the last address listed for such owners on the County Tax Abstracts.



Sean Taylor
Planning Director

March 12, 2025
Date



OAK RIDGE PLANNING & ZONING BOARD MEETING
JANUARY 27, 2022 - 7:00 P.M.
(The meeting was held electronically via the Zoom platform)

This meeting was conducted remotely under N. C. Gen. Stat. § 166A-19.24 by use of simultaneous communication using the Zoom online platform and in which Planning & Zoning Board members participated by simultaneous communication. Planning & Zoning Board members were joined and participated in the entire meeting, unless otherwise noted.

MINUTES

Board Members Present

Nancy Stoudemire, Chair
Jason Streck, Vice Chair
Ron Simpson
Patti Paslaru
Larry Stafford
Rick Schlaginhaufen, Alternate (Sitting)

Staff Present

Sandra Smith, Town Clerk
Sean Taylor, Planning Director

Board Members Absent

Tammy Gardner
Patrick Fiorentino
Maureena Shepherd, Alternate
Megan Dyson, Alternate

1. CALL TO ORDER

The meeting was called to order by Chair Nancy Stoudemire at 7:04 p.m.

2. APPROVE AGENDA

Jason Streck moved to approve the agenda, and Ron Simpson seconded. The motion was passed unanimously (6-0).

3. APPROVE MINUTES

Patti Paslaru motioned to approve the minutes of the December 15, 2021 meeting, and Jason Streck seconded. The motion was passed unanimously (6-0).

4. ANNUAL ELECTION OF CHAIR AND VICE CHAIR

Patti Paslaru nominated Jason Streck for chair, and Ron Simpson nominated Nancy Stoudemire. With 5 votes in favor, Jason Streck was elected chair for the upcoming year.

Jason Streck nominated Patti Paslaru for vice chair, and Larry Stafford nominated Nancy Stoudemire. With 4 votes in favor, Nancy Stoudemire was elected vice chair for the upcoming year.

5. PUBLIC HEARINGS

- A. CASE # RZ-22-01:** RS-30 (Residential, minimum 30,000-square-foot lots) to CZ-LO (Conditional Zoning–Limited Office). The property is at 2201 Oak Ridge Road and is located on the north side of Oak Ridge Road, approximately 940 feet west of the intersection of Oak Ridge Road and NC 68 North in Oak Ridge Township. It is Guilford County Tax Parcel #165097 (approximately 1.55 acres), owned by Nelson G. Kerley and Ruth K. Kerley. The property is located in the Oak Ridge Historic District Overlay Zone.

Planning Director Sean Taylor read the property description into the record and presented the staff report, which is hereby incorporated by reference and made a part of the minutes. He read the list of uses that were submitted and that would be permitted on the property, and asked that the staff report be accepted as presented.

Stoudemire corrected a statement on the staff report that said the vegetation was mostly wooded with approximately 3 acres of open meadow, saying that the entire tract is 1.55 acres.

Stoudemire opened the public hearing.

Proponents:

Bill Greco of Land Solutions, P.O. Box 347, Oak Ridge, the applicant's representative, spoke in favor of the rezoning, and said that property owners Ruth and Glenn Kerley were also present. He said the rezoning aligns with the Land Use Plan and that the specific uses to be allowed had been crafted to match the parcel. He said the Kerleys intend to keep the structure and use it for a professional office, and that the driveway will be in roughly the same location as it is currently. He said they had met with the property owner to the west, and the spray field for Oak Ridge Commons' septic system is located on the other side of the property. He said no high volume or high impact uses would be allowed, and he thought the conditions for use would lend themselves well to the location.

Opponents:

None

With no need for rebuttal, Stoudemire closed the public hearing.

Jason Streck moved to recommend approval to the Town Council for Case # RZ-22-01. Ron Simpson seconded the motion, and it was passed unanimously (6-0).

- B. TEXT AMENDMENTS.** Amendments to Section 30-254 and 30-1300 of the Town of Oak Ridge Code of Ordinances to ensure compliance with NC General Assembly Session Law 2021-138, specifically to clarify that violations of a city ordinance may be a misdemeanor or infraction only if the city specifies such in the ordinance.

Stoudemire said even though a lot of information was in the packet, the Board was only considering the two Chapter 30 items.

Simpson asked how the language being proposed differed with the current language, particularly as it related to fines and penalties. He said he understood the Town Attorney had recommended a \$500 maximum fine for illicit and illegal discharges of pollutants into water, but he said he did not understand where the \$500 figure had come from and that it seems arbitrary. Taylor responded that that applies only to criminal penalties, and that offenders could also face jail time. He said zoning violations are enforced by civil action and that those offenders could face fines of \$500 per day, and that the fines would go with the property. He said the difference was that one enforcement action was against the owner and the other was against the property.

Simpson asked how the Town has typically levied fines historically, recalling an instance several years ago where a property owner clearcut his property and there was a fairly substantial fine. Taylor pointed out that the instance Simpson referred to was a civil action, not a criminal one. Simpson said in the case of a criminal enforcement action, a \$500 maximum fine did not seem like much. Taylor noted that the offender could also face being charged with a misdemeanor.

Streck said the statute also talked about abatement, and he asked if Simpson was looking for a figure more than \$500. Simpson said he was looking for a punishment that fits the crime.

Paslaru said the Town had a history of charging fines and then forgiving them, and asked if the Town was now considering criminal penalties when it did not even enforce the fines it had levied in the past. Taylor reiterated that civil penalties could still be assessed in the amount of \$500 per day, and that the ordinance change referred to criminal penalties. He said the ordinance changes were required by state statute and the Town just needed to adjust its ordinance to comply.

Stoudemire asked who decided if criminal or civil penalties would be assessed, and Taylor said criminal charges would be handled by law enforcement.

After additional conversation and questions, Taylor said that the state was requiring that the Town be more specific in its ordinance if it were to try to enforce something criminally. He said the Town Attorney had selected the ordinances that needed to be changed, and that the fines had not changed.

More conversation ensued, and Streck asked if it would be unreasonable for the Board to continue the item and ask for additional clarification, perhaps from the Town Attorney. Streck said it was difficult for the Board to make a recommendation to Council on something Board members did not fully understand. Taylor said yes, although the Town Council had the option of moving forward and approving the ordinance at its next meeting.

Ron Simpson made a motion to continue the item to the February 24 meeting in order to get additional clarification. Patti Paslaru seconded the motion, and it was passed by a 5-1 vote (Stoudemire voting in opposition).

6. NEW BUSINESS

- A. SITE PLAN CASE # SP-22-01:** The Town of Kernersville Police Department (Mathew O'Brian, Representative) has submitted a site plan for approval of a 2,400-square-foot police training facility. The property is located on Goodwill Church Road, 4,900 feet north of the intersection of Haw River Road and Goodwill Church Road, and is addressed as 7385-7399 Goodwill Church Road. It is Guilford County Tax Parcel 164919, consisting of approximately 30.36 acres, zoned AG (Agricultural), Greensboro (GW-III) Overlay, Scenic Corridor Overlay. It is owned by the Town of Kernersville.

Stoudemire pointed out that this was a site plan review, not a public hearing.

Taylor read the property description into the record and presented the staff report, which is hereby incorporated by reference and made a part of the minutes.

Matt O'Brien, the architect for the project, said that he had done work with the Town of Kernersville in the past and introduced his partner, Kam Dozier and Captain Jason Tilly from the Kernersville Police Department. O'Brien said that they were looking at building a 3,000 square foot office/warehouse space that would include a pre-engineered metal building with the entrance to the parking area to be improved.

Paslaru said that she lived next to Haw River Road. She asked if this was still going to be a police facility, or would there be changes to that, and Captain Tilley replied that the facility would only be for the Kernersville Police Department.

Simpson asked if they would be doing any re-orientation for the firing range, and Dozier replied that her understanding was that the firing range would be completely the same other than the changes in the parking lot layout due to the increased building size.

Stoudemire said that it would be a little unnerving to be in the Cascades and to hear gunfire, and O'Brian replied that Taylor had recommended approval of the site plan.

Patti Paslaru made a motion to approve Site Plan Case #SP-22-01 for the Town of Kernersville Police Department. Ron Simpson seconded the motion, and it was approved unanimously (6-0).

- B. SUBDIVISION CASE # SUB-22-01: Ashford:** The property is located on the north Side of Brookbank Road, approximately 790 feet northeast of the intersection with Bunch Road in Oak Ridge Township. consisting of approximately 29.32 acres. This proposed subdivision consists of 22 lots, zoned RS-40. It is located in the Greensboro (GW-III) Watershed, and is owned by Green Horse LLC (Joe Brady).

Taylor read the property description into the record and presented the staff report, which is hereby incorporated by reference and made a part of the minutes.

Taylor said that staff recommended conditional approval of the subdivision after the technical requirements. He said that he had spoken with Mr. Brady this morning regarding the possibility of creating trail easements to possibly connect to Carriage Cove trails to the north.

Joe Brady, PO Box 153, Oak Ridge, said that he was currently developing the Wolf Ridge Subdivision and thought that Ashford would be another attractive neighborhood to develop. He said that the lots would be RS-40 with a tree preservation area as required to keep the rural feel of the area intact.

Paslaru asked if there would be well and septic on site, and Brady replied that was the plan.

Taylor said that he had seen the percolation report and it was one of the better percolating properties in the Town.

Brady said that he had already had the soil evaluated and that the soil was very good for the area.

Stoudemire said that she went to see the property today and it looked like someone was living in a residence that would be removed near where the outbuildings were located. Brady responded that the owners needed to move due to medical reasons, so he agreed to let them stay for six months beyond the closing of the property. He said that they would be moving within the current month and then the house and the outbuilding would be taken down. Brady said that he was looking into whether the barn could be removed because it was not historic structure.

Stoudemire asked Brady about his thoughts on putting a trail easement on the property. She said that it would go a long way to promoting walkability and trail conductivity if we could link Carriage Cove and Bandara Farms.

Brady said that Taylor had mentioned the trail easement to him but that he had not looked at that as a possibility. He said that he was made aware today for plans for trails in the Residential Planned Unit Development District in Carriage Cove. Brady said that it might be difficult in RS-40, but that he had not looked into it yet. He said that he would be happy to meet with Taylor to discuss it but said that the back of the property falls off pretty severely to the creek. Brady said that the property gives the feeling of being in the mountains of North Carolina so he was not sure how practical it would be to add a trail easement.

Stoudemire said that it would be ideal if the trail easement could be dedicated to the Town so that any citizen would have access to it. She said that the easement would not be near the house but down near the creek. Stoudemire offered to meet with Brady and Taylor to discuss further.

Strech said that he was happy to see that the stub road goes somewhere.

Jason Streck made a motion to conditionally approve SUB-22-01-Ashford upon staff receiving the technical requirements as mentioned.

Joe Morris requested to speak.

Stoudemire said that there was a motion on the floor, and this was not a public hearing. She said that the Board might be able to allow Mr. Morris to speak later in the meeting.

Streck that he would hold back on the motion until Mr. Morris had a chance to speak.

Joe Morris, 6727 Brookbank Road, Summerfield, said that his concern was the boundary between his property and the new Ashford development. He said that the corridor for present residents was a concern too. Morris said that the corridor was for wildlife and that the 30-foot easement along the property would be insufficient for wildlife to cross Brookbank Road. He asked when the lots were sold by Mr. Brady how enforceable would the 30-foot restriction on this corridor be and would it pass to the homeowners.

Taylor replied that the enforcement would pass to homeowners and that the trees could not be removed within a certain caliper within the tree preservation area. He said that additional trees could be planted but that trees would not be able to be removed above a certain caliber.

Mr. Morris asked if that was the 3.5" or 4.5"-inch trees, and Taylor replied the 8-inch trees.

Mr. Morris said that his career had been in horticulture and that the best buffer trees would be Beech trees. He said that their leaves were persistent and provided a good buffer. Mr. Morris said that he would like to work with Mr. Brady on being able to identify these trees.

Stoudemire said that there were a lot of Beech trees in that area and that they hold onto leaves until green ones come out in the spring.

Jason Streck made a motion to conditionally approve SUB-22-01-Ashford upon staff receiving and approving the technical requirements as mentioned. Ron Simpson seconded the motion, and it was passed unanimously (6-0).


7. PUBLIC COMMENTS

None


8. ADJOURNMENT

Patti Paslaru moved to adjourn the meeting at 8:36 p.m. Jason Streck seconded, and the motion was passed unanimously (6-0).

Respectfully Submitted:



Sandra B. Smith, NCCMC, CMC
Town Clerk



Nancy Stoudemire
Chair

OAK RIDGE BOARD OF ADJUSTMENT

IN THE MATTER OF:

APPEAL OF
LINDSEY CLARK
from
ENFORCEMENT OFFICER DECISION

OBJECTION AND MOTION TO DISMISS

NOW COMES the Town of Oak Ridge and its code enforcement officer Sean Taylor, by and through the undersigned counsel, and hereby OBJECTS to the hearing of this appeal by the appellant Lindsey Clark, and MOVES the Board of Adjustment to DISMISS this appeal, as untimely under applicable statutory law and the Oak Ridge Development Ordinance.

In support whereof, the Town shows the Board the following.

1. N.C. Gen. Stat. § 160D-405, “Appeals of administrative decisions, in subsection (d) provides in pertinent part: “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.”

2. Town of Oak Ridge Code of Ordinances Chapter 30 (Oak Ridge Development Ordinance), Section 30-194, subsection (3) tracks the general statutory appeal deadline, stating “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.”

3. Based upon the record herein, the Appellant Lindsey Clark had actual notice of the administrative decision appealed, namely, the code enforcement officer’s approval of the Ashford Subdivision final plat, as early as 7 September 2023 and no later than 3 June 2024, but in either case failed to make this appeal within the mandatory 30-day appeal period.

4. N.C. Gen. Stat. § 160D-406(d) and Town of Oak Ridge Code of Ordinances Section 30-192(d) each provide the following procedure for ruling on such objection and motion: “Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board. The board chair shall rule on any objections, and the chair's rulings may be appealed to the full board.”

WHEREFORE, the Town of Oak Ridge respectfully requests that the Chair of the Board of Adjustment rule to sustain the foregoing Objection and allow the foregoing Motion to Dismiss, and, if such ruling be appealed by the Appellant Lindsey Clark to the full Board, that the Board of Adjustment likewise sustain the foregoing Objection and allow the foregoing Motion to Dismiss, and that this appeal be dismissed.

Respectfully submitted, this 19th day of March, 2025.



J. MICHAEL THOMAS
Attorney For Town of Oak Ridge and
Code Enforcement Officer Sean Taylor
N.C. State Bar No. 12574
301 S. Elm Street, No. 301
Greensboro, NC 27401
Telephone: 336-5580-7055
Facsimile: 336-360-3111
Email: mthomas@jmtlawgso.com

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Objection and Motion to Dismiss was served upon the Appellant in this appeal by electronic mail to the person(s) and email address(es) shown below:

Lindsey A. Clark
6816 Koala Drive
Oak Ridge, NC 27310
Email: Lindsey.clark24@gmail.com
Appellant

Served, this the 19th day of March, 2025.



J. MICHAEL THOMAS
Attorney For Town of Oak Ridge and
Code Enforcement Officer Sean Taylor

Case No. 25-01

OAK RIDGE BOARD OF ADJUSTMENT

IN THE MATTER OF:

APPEAL OF
LINDSEY CLARK
from
ENFORCEMENT OFFICER DECISION

TOWN OF OAK RIDGE’S BRIEF
IN SUPPORT OF ITS
OBJECTION AND MOTION TO DISMISS

NOW COMES the Town of Oak Ridge and its code enforcement officer, Sean Taylor, through the undersigned counsel for the Town of Oak Ridge, and respectfully submits the following brief in support of its Objection and Motion to Dismiss herein.

STATEMENT OF THE CASE

Petitioner Lindsey A. Clark (Appellant) filed her “Board of Adjustment Enforcement Officer Appeal” herein on 24 February 2025, alleging failure by the Oak Ridge Code Enforcement Officer Sean Taylor to revoke a prior subdivision approval which revocation the Appellant asserts is required under N. C. Gen. Stat. § 160D-403(f). The Appellant’s appeal followed dismissal on 17 February 2025 of the Appellant’s Petition of Writ of Mandamus based in part on the same ground by the Guilford County Superior Court.

Notice of this appeal to the Board of Adjustment together with the code enforcement officer’s transmission of the record in this matter (“BOA Record”) was transmitted and served in accordance with N.C. Gen. Stat. § 160D-405(e) on 14 March 2025. The matter now comes on for hearing as preliminary matter of the Town of Oak Ridge’s Objection and Motion to Dismiss

directed under N.C. Gen. Stat. § 160D-406(d) directed to the Chair of the Board of adjustment, subject to appeal to the full Board.

STATEMENT OF THE FACTS

Petitioner premises her claim of entitlement to a writ of mandamus upon the allegation that Respondent Taylor, as Planning Director of the Town of Oak Ridge, and enforcement officer of the Oak Ridge Development Ordinance (Chapter 30 of the Oak Ridge Code of Ordinances), failed to perform a specific action: namely, Petitioner alleges that Respondent Taylor failed to revoke his administrative approval of a final subdivision plat based on the alleged improper inclusion of a trail easement that did not appear on the subdivision's preliminary plat.

The facts relevant to this objection and motion relate not to the substantive allegations of the Appellant but rather to the timeliness of this appeal. Those relevant facts are as follows:

- The subdivision approval in question, namely, Mr. Taylor's administrative approval ("the Approval") of the Ashford Subdivision (Green Horse, LLC, owner; managing member Mr. Joseph D. Brady), occurred on 24 August 2023, as it appears in Mr. Taylor's certification on the face of the recorded subdivision plat recorded on 25 August 2023 in Plat Book 213, Page 42, Guilford County Registry. (BOA Record, p. 1)
- The Appellant had actual knowledge of the Approval no later than 7 September 2023, as appears in the Appellant's email to Mr. Taylor on that date. (BOA Record, p. 2)
- The Appellant had actual or constructive notice of Mr Taylor's refusal to revoke the Approval no later than the day after 5 June 2024, which is the deadline date the Appellant herself set in her letter to Mr. Taylor of 3 June 2024 demanding such revocation and in the absence of which she would pursue a writ of mandamus in court. (BOA Record, p. 31-32)¹

¹ The Appellant in her appeal application to the Board of Adjustment appears to misconstrue if not misrepresent the Town of Oak Ridge's position in its brief to the Superior Court supporting its motion to dismiss the petition for writ of mandamus, which motion was allowed. The Town's position was that Ms. Clark received a refusal as of June 5 or 6 at the latest, when Mr. Taylor having been importuned for a revocation refused by his non-response to a stated deadline to give it. The Town did not as Ms. Clark seems

- Between 22 September 2023 and 28 February 2025, 19 of the 22 lots constituting the Ashford Subdivision have been conveyed to third parties, in complete reliance on the legal descriptions based on the Approved subdivision plat. (Judicial Notice requested, of Indexed Record of Out Conveyances by Green Horse, LLC, Guilford County Registry – Exhibit A attached hereto.)

ISSUE

WHETHER THE APPEAL HEREIN IS PROPERLY OBJECTED TO AND SUBJECT TO DISMISSAL FOR UNTIMELINESS, BASED UPON THE APPELLANT’S FAILURE TO APPEAL THE SUBDIVISION APPROVAL TO THE BOARD OF ADJUSTMENT WITHIN THIRTY (30) DAYS AS REQUIRED BY N.C. GEN. STAT. § 160D-405(d) AND OAK RIDGE CODE OF ORDINANCES SEC. 30-194(3)?

ARGUMENT

The petitioner failed to appeal the Approval of the Ashford Subdivision final plat to the Oak Ridge Board of Adjustment as mandated by state law and local ordinance within thirty (30) days of actual or constructive notice thereof, and therefore the Town’s objection to this appeal as untimely should be sustained and the appeal should be dismissed.

to imply provide such refusal only as of 6 February 2025 when it served its brief in superior court and thereby according to her provided her this information in written form. Ms. Clark cites Oak Ridge Code of Ordinance Sec. 30-194 to support this apparent assertion that she was entitled to written notice of the refusal in order for the refusal to have legal effect. Subsection (3) of that ordinance if fact provides in pertinent part: “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.” (Emphasis added.) This language tracks the authorizing quasi-judicial procedures statute verbatim. N.C. Gen. Stat. § 160D-405(d). The Appellant is a person arguably with standing herein but is certainly not the owner of the subject property subject to the Approval, and there were no other “parties” thereto. The Appellant’s citation of *Midgette v. Pate*, 94 N.C. App. 498, 380 S.E.2d 572 (1989) in support of her allegation of a non-response in this case is inapposite, because in *Midgette* there was no basis for interpreting the complete non-response of the code enforcement officer therein as other than a non-response, whereas here and after the two-day deadline there was no doubt based on the Appellant’s own terms that the response was refused.

N.C. Gen. Stat. § 160D-405, “Appeals of administrative decisions, in subsection (d) provides in pertinent part: “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.”

Specifically, as to “Appeals of decisions on subdivision plats,” where such decisions “[is]made by the staff or a staff committee, the decision is subject to appeal as provided in [N.C. Gen. Stat.] 160D 405.”

Town of Oak Ridge Code of Ordinances Chapter 30 (Oak Ridge Development Ordinance), Section 30-194, subsection (3) tracks the general statutory appeal deadline, stating “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.”

N.C. Gen. Stat. § 160D-406, “Quasi-judicial procedure,” in subsection (d) provides in pertinent part: “Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board. The board chair shall rule on any objections, and the chair’s rulings may be appealed to the full board.”

The Appellant asserts that she is appealing from a non-event – that is, from Code Enforcement Officer Sean Taylor’s failure to respond to her demand by letter dated 3 June 2024 to revoke the Ashford Subdivision approval that Mr. Taylor certified on 24 August 2023 (and as it appears on the subdivision plat recorded on 25 August 2025 in Book 213, Page 42, Guilford County Registry). The Appellant’s appeal presupposes that said approval was improvidently given, based on the alleged ground of inclusion in the subdivision plat of a trail easement the Appellant maintains was included outside the Town’s subdivision approval ordinance. The Town denies that the alleged “failure to revoke” was in fact the appealable administrative decision here: that decision is the administrative decision to approve the final plat of the Ashford Subdivision. The reason the Appellant seeks to make the “failure to revoke” the issue is because of her untimeliness in

appealing the actual administrative decision, which, until proven erroneous, is not subject to revocation.

Nevertheless: either the positive act of the Respondent Taylor, in approving the final plat on August 24, 2023, or – theoretically -- the negative act of Respondent Taylor in not revoking approval of the final plat upon Petitioner’s demand and by the Petitioner’s stated deadline of June 5, 2024, was an “administrative decision” that the petitioner could have appealed to the Oak Ridge Board of Adjustment for a quasi-judicial review of such action or failure to act. Such an appeal, timely made, would have provided the means of obtaining review by the Board of Adjustment of the Ashford Subdivision final plat approval – but depending on when the Appellant is deemed to have had notice of the decision.

By her own correspondence in her email of 7 September 2023 to Mr. Taylor and to Town Manager Bill Bruce, the Appellant clearly shows actual knowledge of the Approval. Therein, she states “I have some follow up questions after our earlier conversations about the trail easement through Ashford. . . .[] In order to move the trail easement, who would need to sign off to approve this? [] How long do we still have to continue negotiations with the affected parties, trying to modify the easement location?” (BOA Record P. 2) While there is not here a direct reference to the recorded plat, it is reasonable to infer the Appellant’s knowledge of a recorded permanent easement dedication, else she would not be speaking of “the trail easement” and asking about time for negotiations to move the easement.

Based upon this actual knowledge of the Approval as of 7 September 2023, the Appellant had 30 days or until 9 October 2023 (the first business day after the expiration of the 30-day period on Saturday 7 October 2023) in which to appeal the Approval to the Board of Adjustment. This was not done until 24 February 2025, which is 504 days after this 30-day period expired.

Alternatively, and assuming for argument’s sake (however unlikely) that the Appellant was ignorant of the Approval until she expressly referenced it in her letter to Mr. Taylor of 3 June 2024, in that letter she clearly shows actual knowledge of the Approval as follows:

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 for the following reasons
...

In light of these serious violations . . . I formally request you to exercise your statutory duty and revoke the approval of this 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 . . .

(BOA Record pp. 31-32)

Based upon this actual knowledge of the Approval as of 3 June 2024, the Appellant had 30 days starting 6 June 2024, or until Friday 5 July 2024 in which to appeal the Approval to the Board of Adjustment. This was not done until 24 February 2025, which is 233 days after this 30-day period expired.

Compliance with the statutory appeal deadline applicable to quasi-judicial proceedings under N.C. Gen. Stat. § 160D-405(d) and as tracked locally in Oak Ridge Code of Ordinances Sec. 30-194(3), is mandatory and jurisdictional, and the failure to appeal an administrative decision within the prescribed 30-day time-limit bars review by a board of adjustment. *See, e.g., Meier v. City of Charlotte*, 206 N.C. App. 471, 698 S.E.2d 704 (2010) (zoning official's evaluative letter concerning zoning standard had binding force and effect and the failure to appeal to the board of adjustment within 30 days of actual or constructive notice rendered the appeal untimely and barred); *accord, Fairway Outdoor Adver. v. Town of Cary*, 225 N.C. App. 676, 739 S.E.2d 579 (2013) (appeal of administrative decision to board of adjustment finding outdoor sign non-conforming under zoning ordinance 348 days after expiration of the 30-day appeal period was untimely and barred appeal). The 30-day appeal period of a board of adjustment must be applied literally and, in the instance of an administrative decision made known actually or constructively to an aggrieved person, the board is without jurisdiction to hear the appeal. *See Town & Country Civic Org. v. Winston-Salem Bd. of Adjustment*, 83 N.C. App. 516, 350 S.E.2d 893 (1986) (appeal by aggrieved neighbors of issuance of permit for construction of radio towers filed 100 days after permit was issued was barred under the 30-day local appeal deadline, and evidence suggesting lack of notice of the administrative decision was refuted by notice derived from towers delivered to subject property more than 30 days before filing of appeal).

“A board of adjustment has no authority to waive a mandatory time period within which appeals must be filed.” OWENS, DAVID W., LAND USE LAW IN NORTH CAROLINA 237 (4th ed. 2023), citing *Water Tower Office Associates v. Town of Cary Bd. of Adjustment*, 131 N.C. App. 696, 507 S.E.2d 589 (1998) (appeal by landowner to board of adjustment of zoning enforcement officer’s administrative use interpretation, not taken until 129 days after notice of the decision, held time-barred by 30-day appeal deadline under local ordinance).

There is no assertion in the Appellant’s appeal application that she was delayed in any way by the Town or any other party or entity in bringing this appeal, nor that her resort to the superior court – including perhaps an argument that she was preparing to go into superior court from September 2023 forward -- rather than to the Board of Adjustment, was anything other than her own choice. That was an incorrect choice, if in fact the Appellant desired to challenge the administrative approval of the Ashford Subdivision final plat. The consequence of that choice, of which the Appellant apparently was ignorant, was a loss of her right to appeal this matter to the Board of Adjustment. Ignorance of the law, in matters of local development law as well as in other matters, is no excuse. *See Cherry v. Weisner*, 245 N.C. App. 339, 781 S.E.2d 871, *rev. denied*, -- N.C. --, 792 S.E.2d 779, 2016 LEXIS 674 (2016) (aggrieved party’s appeal to board of adjustment, of historic commission’s certificate of appropriateness, which failed to allege standing by reference to special damages distinct from the rest of the community, was attributable to appellant and board’s finding of standing was reversed by the superior court).

Where, as here, the record shows that no appeal was taken within 30 days of demonstrable knowledge on the part of the Appellant, as early as in September 2023 and as late as June 2024, the Board of adjustment is without jurisdiction to hear this appeal, and the same should be dismissed without an evidentiary hearing.

CONCLUSION

The Appellant failed to make her appeal to the Board of Adjustment, of the code enforcement officer’s administrative decision approving the Ashford Subdivision final plat, within thirty (30) days of actual or constructive notice thereof, and therefore the Town of Oak Ridge’s objection to the appeal as untimely should be sustained and the appeal should be dismissed.

Respectfully submitted, this 19th day of March 2025.



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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Brief was served upon the Appellant in this appeal by electronic mail to the person(s) and email address(es) shown below:

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Appellant

Served, this the 19th day of March, 2025.



J. MICHAEL THOMAS
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