

NORTH CAROLINA

BOARD OF ADJUSTMENT

TOWN OF SOUTHERN SHORES

Case: VA-24-01

In Re: Application for a Variance by Anthony S.
Mina for 75 East Dogwood Trail
(Pin # 986817213502)

ORDER

THIS MATTER was heard before the Town of Southern Shores Board of Adjustment (the “Board”) on October 21, 2024, after due notice as required by law was provided. At issue was the application for a variance (the “Application”) by Anthony S. Mina for 75 East Dogwood Trail, Pin # 86817213502. Present were W. Jay Wheless, Board Attorney; Lauren Arizaga-Womble, Town Attorney; Wes Haskett, Deputy Town Manager/Planning Director; and the Applicant, Anthony S. Mina, appearing pro se. Jennifer L. Franz was sent notice of the hearing, but did not appear.

On October 15, 2024, Mr. Mina submitted a motion to preclude variance hearing scheduled for October 21, 2024 due to Southern Shores’ alleged conspiracy to falsify material information to the public and Planning Board, grant applicant’s variance from section 30-96(f) and section 36-202(d) and refund applicant’s \$350 variance application fee. (“motion to preclude”).

Prior to the commencement of proceedings, the Board Attorney, Mr. Wheless, made a conflict inquiry of the Board. There were no conflicts noted. It was documented Chairman Ward previously made a complaint to Town Staff regarding potential sign posting violations at or near the subject property after Chairman Ward was notified of the same by community members. Chairman Ward did not participate in enforcement or have any other involvement regarding the Applicant or subject property following the written complaint. Chairman Ward confirmed he could be fair and impartial and had no preconceived opinions regarding the variance requests before the Board. There was no objection by any party regarding the impartiality of any member of Board.

At the time this matter was called for hearing, Mr. Mina requested the Board first consider his motion to preclude. The Board considered this request and then tabled ruling on the motion to preclude until the end of the hearing, following the full presentation of evidence. All parties consented to this procedure.

Based on a review of the record proper and the evidence and arguments presented, the Board of Adjustment makes the following:

FINDINGS OF FACT

1. Anthony S. Mina and Jennifer L. Franz are the owners of record for 75 East Dogwood Trail. The property was purchased on July 7, 2023.

2. The subject property is a 47,000 square foot lot with an existing single-family residence thereon. The property is zoned RS-1, single-family residential.

3. Mr. Mina testified that prior to executing a contract for the subject property, he communicated with Town Staff and realtors about his desire to subdivide the property. Both Town Staff and the realtors reported to Mr. Mina it may be possible, but he must submit a proposed plan at the time of the formal subdivision application.

4. On June 1, 2023, Mr. Mina became aware of the proposed Town Code text amendment to establish a minimum lot width of 100 feet in Town Code Section 36-202(d). The Amendment was adopted by Town Council on June 6, 2023, and Mr. Mina was notified of the change on June 7, 2023.

5. On July 6, 2023, the seller of the subject property offered Mr. Mina an option by the seller of the subject property an option to terminate the contract with a full refund of due diligence money due to the change in the Town Code and the impact it could have on a potential

subdivision of the property. On July 7, 2023, Mr. Mina declined the offer and proceeded with the closing.

6. On July 3, 2024, Mr. Mina submitted two applications to subdivide the subject property.

7. On July 16, 2024, the Town denied both applications. The first application was denied because the proposed lots did not equal or exceed the standards in Town Code Section 30-96(f), which requires both lots front a public road. The second application was denied because the proposed lots did not equal or exceed the standards in Town Code Section 30-97, which requires lot width of 100 feet in the RS-1 Single-Family Residential zoning district. The denials were not appealed by Mr. Mina.

8. On August 30, 2024, Mr. Mina, filed a variance application seeking relief from Town Code Section 30-96(f), Lots, or Town Code Section 36-202(d), Dimensional Requirements, to facilitate the subdivision of the subject property.

9. The current standards in Town Code Section 30-96(f) and Town Code Section 36-202(d) were adopted on August 3, 2021, and June 6, 2023, respectively. The aforesaid Town Code sections remain in full force and effect.

10. Mr. Mina desires to subdivide the property, sell the new lot and use the proceeds to upgrade his residence. Mr. Mina has experience in home renovations and has engaged in substantial home makeover projects in Pennsylvania. Mr. Mina testified that he is familiar with complying with local code standards. Mr. Mina contends the inability to subdivide his property creates a personal financial hardship.

11. Mr. Mina contends his variance should be summarily granted in his motion to preclude in that:

- a. He was told by Outer Banks Realty that a subdivision was possible;
- b. Wes Haskett did not tell him about the Town Code Text Amendment to Section 36-202(d) until June 1, 2023;
- c. Southern Shores did not comply with notice requirements for Town Code Section 30-96(f) and Town Code Section 36-202(d) in that Wes Haskett did not give notice to the U.S. Army's Duck Facility and he did not post notice pursuant to Town Code Section 36-414(b);
- d. Wes Haskett has made false reports to law enforcement agencies;
- e. Wes Haskett, Cliff Ogburn and Town Attorney, Phil Hornthal, are violating federal law, state law and the Southern Shores Town Code and Ethics Policy;
- f. Wes Haskett's staff report is false; and
- g. Southern Shores lacks jurisdiction and forcing Applicant to pay \$350 for a variance hearing substantiates a criminal conspiracy to steal \$350 from Applicant and harass applicant with unenforceable codes.

12. There has been no competent evidence presented to support Applicant's motion to preclude. There is no evidence of fraud, criminal conspiracy or misconduct by Town Staff.

13. There is no legal authority upon which the Board can grant Applicant's motion to preclude to avoid Town Code and state law requirements to consider and grant a variance.

14. Applicant's motion to preclude should be denied.

15. There is no unnecessary hardship that results from the strict application of the ordinance in that:

- a. The property is zoning single-family residential and there exists a single-family residence on the property;

- b. Mr. Mina's desire to upgrade and improve the existing structure is not restricted by the ordinance sections from which he is requesting a variance;
- c. The size of Mr. Mina's parcel could allow for an accessory building with living space in addition to the single-family dwelling, which could also increase the value of his property;
- d. There are other expansions in use or site improvements which could be made to Mr. Mina's property without a variance; and
- e. Other than his unsubstantiated allegations of fraud and conspiracy, the only hardship alleged by Mr. Mina is financial in that he cannot subdivide his property, sell the new lot, and use the proceeds to upgrade his home.

16. Mr. Mina's alleged hardship does not result from conditions that are peculiar to the property, such as location, size or topography in that:

- a. The subject property is approximately 47,000 square feet with approximately 150 foot of road frontage;
- b. The subject property is similar to other properties in the neighborhood, including but not limited to being located near/on the canal and lagoon and zoned single-family residential;
- c. Mr. Mina's alleged hardship is financial and one of personal circumstances;
- d. The ordinance sections Mr. Mina seeks to vary are applicable to all residential parcels in the Town, whereby the conditions which prevent the subdivision are common to the neighborhood and general public; and

- e. Mr. Mina alleges Town Staff is engaged in a real estate scam, multiple conspiracies and fraud. These allegations are not relevant to the standards for a variance and there is no evidence of the same.

17. The alleged hardship is a result of actions taken by the applicant or property owner in that:

- a. Mr. Mina contends the alleged hardship was created by the Town through illegally adopting the Town Code sections he seeks to vary. The current standards in Town Code Section 30-96(f) and Town Code Section 36-202(d) were lawfully adopted on August 3, 2021, and June 6, 2023, respectively;
- b. Town Staff conducted preliminary reviews of several sketches from Mr. Mina for a subdivision of the subject property between May 1, 2023 and June 1, 2023. Town Staff provided advisory comments to Mr. Mina and advised a formal application would be required to determine if his proposed subdivision was allowable;
- c. On June 1, 2023, Town Staff notified Mr. Mina of the proposed Town Code text amendment to establish a minimum lot width of 100 feet in Town Code Section 36-202(d). The Amendment was adopted by Town Council on June 6, 2023, and Mr. Mina was notified of the adopted change on June 7, 2023;
- d. On July 6, 2023, Mr. Mina was given an opportunity to rescind the offer to purchase the subject property with a full refund of his due diligence funds prior to closing on the subject property and declined to do so; and
- e. On July 7, 2023, Mr. Mina proceeded with the purchase of the subject property with specific knowledge of town regulations, and did not make his purchase contingent on subdivision approval.

18. The requested variance is inconsistent with the spirit, purpose, and intent of the ordinance in that:

- a. RS-1, single-family residential zoning district is established to provide for low-density development of single-family detached dwellings in an environment which preserves sand dunes, coastal forests, wetlands, and other unique natural features of the coastal area;
- b. RS-1 is intended to promote stable, permanent neighborhoods characterized by low vehicular traffic flows, abundant open space, and low impact of development on the natural environment and adjacent land uses;
- c. The Town Code meets the intent of the RS-1, the density of population in the district is managed by establishment of minimum lot sizes, building set back and height limits, parking regulations and maximum occupancy limits for single-family residences used as vacation cottages;
- d. Town Code Section 30-96(f) was adopted on August 3, 2021, removing the possibility of creating lots that only have frontage on an access easement. The intent of the Town Code amendment was to eliminate subdivisions where new lots did not have frontage on a public street; and
- e. Town Code Section 36-202(d) was adopted on June 6, 2023, to clarify the definition of lot width to be 100-foot wide measured from the front lot lines at right angles to the rear lot line. The intent of the Town Code amendment was to clarify the Town Code lot width requirements which was prompted by an appeal of a formal staff determination in October 2022.

Based on the foregoing Findings of Fact and the additional findings of fact incorporated with the following Conclusions of Law, the Board makes the following:


CONCLUSIONS OF LAW

1. The Board has jurisdiction to hear and consider the Application.
2. Notifications of the hearing on the Application were appropriately provided as required by law.
3. The parties consented to the individual members of the Board hearing the application after inquiries regarding members conflicts of interest.
4. There is no legal authority upon which the Board can grant Applicant's motion to preclude to avoid Town Code and state law requirements to consider and grant a variance.
5. Applicant's motion to preclude should be denied.
6. Unnecessary hardship would not result from the strict application of the Town Code.
7. The alleged hardship is not a result of conditions that are peculiar to the property, such as location, size, or topography.
8. The alleged hardship is a result of actions taken by the applicant or the property owner.
9. The requested variance is inconsistent with the spirit, purpose, and intent of the regulation, such that public safety is secured, and substantial justice would not be achieved if a variance was granted.
10. The requested variance will not authorize the initiation of a nonconforming use of land.

11. The Board acknowledges that there are or may be numerous conclusions of law set forth in the section of this Order denominated "Findings of Fact," and the Board hereby ratifies and accepts any such conclusions of law contained in the same.

Based on the foregoing Findings of Fact and Conclusions of Law, it is, therefore, **ORDERED, ADJUDGED, and DECREED**, by a unanimous vote, the Applicants' Motion to Preclude and Application for Variance request are **DENIED**.

Entered in open session the 21st day of October 2024 and signed this 19th day of November 2024.



ANDY WARD, Chairman
Town of Southern Shores
Board of Adjustment