

## STAFF REPORT

**To:** Southern Shores Planning Board  
**Date:** October 21, 2024  
**Case:** VA-24-01  
**Prepared By:** Wes Haskett, Deputy Town Manager/Planning Director

### **GENERAL INFORMATION**

**Applicant:** Anthony S. Mina  
75 E. Dogwood Trl.  
Southern Shores, NC 27949

**Property Owners:** Anthony S. Mina  
75 E. Dogwood Trl.  
Southern Shores, NC 27949

Jennifer L. Franz  
75 E. Dogwood Trl.  
Southern Shores, NC 27949

**Requested Action:** Variance to seek relief from Town Code Section 30-96(f), Lots and Town Code Section 36-202(d), Dimensional Requirements to allow a subdivision of the property located at 75 E. Dogwood Trl.

**PIN #:** 986817213502  
**Location:** 75 E. Dogwood Trl.  
**Zoning:** RS-1 Single-Family Residential District  
**Existing Land Use:** “Residential”

**Surrounding Land Use & Zoning:**  
**North-** Residential; RS-1, Single-Family Residential District  
**South-** Canal  
**East-** Residential; RS-1, Single-Family Residential District  
**West-** Canal

**Physical Characteristics:** Developed (existing single-family dwelling)

**Applicable Regulations:** Chapter 30, Subdivision Ordinance: Section 30-6, Exceptions, Section 30-96(f), Lots and Section 30-97, Design Standards.  
Chapter 36, Zoning Ordinance: Section 36-57, Definition of Specific Terms and Words, Section 36-202(d), Dimensional Requirements, and Article XII, Board of Adjustment

### **ANALYSIS**

The Applicant is requesting a Variance to seek relief from Town Code Section 30-96(f) and 36-202(d) to allow a subdivision of 75 E. Dogwood Trl. On July 3, 2024, the Applicant submitted two applications to subdivide the subject property. The first application was denied because the proposed lots did not equal or exceed the standards in Town Code Section 30-97 of the Town’s Subdivision Ordinance because both lots did not front upon a public road. Town Code Section 30-96(f) states that all lots shall front upon a public road. The denial was not appealed.

The second application was also denied because the proposed lots did not equal or exceed the standards in Town Code Section 30-97 of the Town's Subdivision Ordinance because the proposed lots did not meet the zoning requirements for properties located in the Town's RS-1, Single-Family Residential zoning district as established in the Town's Zoning Ordinance and incorporated into the Town's Subdivision Ordinance via Section 30-97(2). Specifically, the proposed lots did not meet the zoning requirements for properties located in the Town's RS-1, Single-Family Residential zoning district and as a result did not equal or exceed the standards in Section 30-97 of the Town's Subdivision Ordinance because:

1. Town Code Section 36-202(d) of the Town's Zoning Ordinance requires a minimum lot width of 100 feet (measured from the front lot line at right angles to the rear lot line). Both of the proposed lots did not have a lot width of 100 feet measured from the front lot line at right angles to the rear lot line.

The denial was not appealed.

In accordance with N.C.G.S. 160D-705(d), Town Code Section 36-367 in the Town's Zoning Ordinance establishes that the Planning Board, when performing the duties of the Town Board of Adjustment, shall vary any of the provisions of the Zoning Ordinance upon a showing of all of the following:

- (1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the Variance, no reasonable use can be made of the property.
  - There is no unnecessary hardship. The property is zoned single-family residential. There is a single-family dwelling which exists on the property. The Applicant's desire to upgrade and improve the existing structure is not restricted by the ordinance sections sought to be varied. Additionally, the size of the lot could allow for an addition to the existing single-family dwelling and/or an accessory building with living space which could also increase the value of the property.
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
  - The alleged hardship by the Applicant is not peculiar to the property and rather is one of personal circumstances. The Applicant's application fails to demonstrate how the alleged hardship is peculiar to the property. The Applicant makes false allegations that Town Staff illegally adopted zoning requirements and was helping a real estate scam which are not related to the property's size, location, or topography.
- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
  - The Applicant claims that the unnecessary hardship is the result of Town Staff not meeting notification requirements for a Town Code Text Amendment that was adopted on August 3, 2021 and a Zoning Ordinance Text Amendment that was

adopted on June 6, 2023 and because Town Staff withheld material information prior to the Applicant's purchase of the property.

- All applicable notification requirements established in N.C.G.S 160D-601 and in the Town's Zoning Ordinance were satisfied prior to adoption of the August 3, 2021 Town Code Text Amendment and June 6, 2023 Zoning Ordinance Text Amendment. Neither amendment was appealed.
  - Town Staff reviewed several sketches showing the Applicant's ideas for a subdivision of the property between May 1, 2023 and June 1, 2023 and never confirmed that any of them met all applicable requirements (which would have been advisory and not subject to judicial review). The Applicant moved forward with the purchase of the property on July 7, 2023.
- (4) The requested Variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.
- The RS-1, Single-Family Residential zoning district is established to provide for the 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. The district 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. In order to meet this intent, the density of population in the district is managed by establishment of minimum lot sizes, building setback and height limits, parking regulations and maximum occupancy limits for single-family residences used as vacation cottages.
  - The Applicant claims that the spirit, purpose, and intent of the ordinance will be able to be utilized by granting a Variance from illegally adopted zoning code(s) and because Town Staff is involved with a false pre-tense real estate scam.
    - The Town Code Text Amendment that was adopted on August 3, 2021 removed the possibility of creating lots that only have frontage on an access easement. The intent of the Town Code Text Amendment was to eliminate the possibility of subdividing property that did not have frontage on a public street, as directed by the Town Council at the June 1, 2021 Town Council meeting, which was a result of a preliminary subdivision plat application that was considered by the Town Council on June 1, 2021.
    - The Zoning Ordinance Text Amendment that was adopted on June 6, 2023 established that lots created after June 6, 2023 in the RS-1, Single-Family Residential zoning district shall be 100 ft. wide measured from the front lot line at right angles to the rear lot line. The intent of the Zoning Ordinance Text Amendment was to clarify Town Staff's interpretation of the Town's lot width requirements by making them unambiguous, as directed by the Town Council at the March 21, 2023 Town Council meeting, which was a result of an appeal application that was considered by the Planning Board, performing the duties of the Board of Adjustment, on October 5, 2022.
    - Town Staff believes that granting the requested Variance would be inconsistent with the spirit, purpose, and intent of the ordinance.