

NORTH CAROLINA

BOARD OF ADJUSTMENT

TOWN OF SOUTHERN SHORES

Case: APA-25-01

In Re: Subdivision Application by Anthony S. :  
Mina for 75 East Dogwood Trail :  
(Pin #986817213502) :  
\_\_\_\_\_ :

**MOTION TO DISMISS**

NOW COMES the Town of Southern Shores (the “Town”), by and through the undersigned counsel, and hereby moves the Board to dismiss Anthony Mina’s subdivision application for 75 East Dogwood Trail on the grounds that the same is barred by the doctrine of *res judicata*. In support thereof, the Town shows unto the Board as follows:

**STATEMENT OF FACTS AND PROCEDURAL HISTORY**

1. Anthony S. Mina and Jennifer L. Franz are the owners of record for 75 East Dogwood Trail. They purchased the property 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. On July 3, 2024, Mr. Mina submitted two applications to subdivide the subject property.
4. On July 16, 2024, the Town denied both applications. The Town denied the first application because the proposed lots did satisfy the standards established in Town Code Section 30-96(f), which requires both lots to front a public road. The Town denied the second application because the proposed lots did not equal or exceed the standards in Town Code Section 30-97, which requires lot widths of 100 feet in the RS-1 Single-Family Residential zoning district. Mr. Mina did not appeal the Town’s denials of his subdivision applications.

5. On January 6, 2025, Mr. Mina submitted a third subdivision application, which was identical to the first and second subdivision applications and violated Town Code Sections 30-96(f) and 30-97.

6. On January 21, 2025, the Town denied Mr. Mina's third subdivision application on the grounds of *res judicata*, finding that Mr. Mina's third subdivision application "d[id] not present any material change such that the concerns warranting denial of the July 3, 2024, application remain[ed] unresolved."

7. Mr. Mina appealed the Town's denial of his third subdivision application to this Board on February 13, 2025, stating "*Res Judicata* does not prohibit approval of the January 6, 2025 subdivision application due to new material facts and evidence that must be considered (evidence obtained after July 16, 2024)."

### **LEGAL ARGUMENT**

8. Preliminarily, Mr. Mina did not appeal the Town's initial decisions to deny his first and second subdivision applications within thirty (30) days of his receipt of written notice of the Town's determination. Therefore, any such appeal therefrom is barred under the statute of limitations. *See* N.C. Gen. Stat. § 160D-405(d) (granting a property owner thirty (30) days from "receipt of the written notice of the determination within which to file an appeal" from an administrative decision).

9. The doctrine of *res judicata* applies to "protect[ ] litigants from the burden of relitigating previously decided matters and promot[es] judicial economy by preventing needless litigation." *Little v. Hamel*, 134 N.C. 485, 487, 517 S.E.2d 901, 902 (1999) (internal quotation omitted).

10. North Carolina's appellate courts have held that the doctrine of *res judicata* applies to local zoning decisions. *Mount Ulla Hist. Pres. Soc., Inc. v. Rowan Cnty.*, 232 N.C. App. 436, 754 S.E.2d 237 (2014).

11. To overcome the applicability of *res judicata* in a local zoning matter, the applicant bears the burden of showing that the "facts and circumstances which actuated an order or decision are alleged and shown to have so changed as to vitiate or materially affect the reasons which produced and supported it" such that the application "can no longer be characterized as the same claim." *Mount Ulla*, 232 N.C. App. at 441, 754 S.E.2d at 241 (quoting *St. Patrick's Church Corp. v. Daniels*, 113 Conn. 132, 154 A. 343, 345 (1931)); 83 Am. Jur. 2d, *Zoning and Planning* § 700.

12. Mr. Mina alleged no facts in his third subdivision application or his appeal therefrom which would permit this Board to infer that the character and nature of 75 East Dogwood Trail, or the Town's Code of Ordinances, have materially changed such to vitiate the Town's previous denials of Mr. Mina's subdivision applications in July 2024.

13. Rather, Mr. Mina's third subdivision application would still render 75 East Dogwood Trail nonconforming with the street frontage and lot size requirements of Town Code Sections 30-96(f) and 30-97, respectively.

14. Mr. Mina has shown no facts, and the Town contends none exist, which would render Mr. Mina's third subdivision application materially different from Mr. Mina's first two subdivision applications such to vitiate the Town's concerns under the Code Sections described above in Paragraph 12.

15. Thus, because Mr. Mina's third subdivision application is substantially similar to this first two subdivision applications in July 2024, which the Town denied, the doctrine of *res judicata* operates as an affirmative bar to Mr. Mina's third subdivision application.

WHEREFORE, for the reasons shown herein, the Town respectfully requests this Board dismiss Mr. Mina's appeal of the Town's denial of his third subdivision application under the applicable statute of limitations and the doctrine of *res judicata*.

This the 5 day of March, 2025.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she has this day served a copy of the foregoing Motion to Dismiss on the other party to this case, on the persons and in the manner set forth below.

SERVED ON:

*(Via Regular U.S. Mail & E-Mail)*

Anthony S. Mina

Jennifer L. Franz

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This the 5 day of March, 2025.

  
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*Attorney for Town of Southern Shores*