

**Minutes
Meeting of the
Elon Board of Adjustment**

**October 8, 2018
6:00 p.m.**

**Elon Municipal Building
Elon, North Carolina**

Attendees: Jim Beasley, Monti Allison, Clark Bennett, Diane Gill, Ralph Harwood, Mark Podolle, Paul Holst, Town Attorney Joe Kalo.

Staff Present: Pamela Graham

Item A - Chairman Beasley called meeting to order at 6:00 pm. Mr. Beasley introduced Town Attorney Joe Kalo and requested that he speak to the process and procedures for the meeting. Mr. Kalo reminded the Board that the hearing is a quasi-judicial hearing and that the Board will be considering evidence. He added that anyone wishing to speak will be sworn in. Mr. Kalo recited the findings that must be considered for such a hearing. All parties wishing to speak were then sworn in by Notary Public Kathleen Patterson. Mr. Kalo then added that for Variances, the requirement for approval is a 4/5th vote.

Item B – Approval of Minutes of the April 17, 2018 Meeting. A motion to approve the minutes from the April 17, 2018 meeting was offered by Mr. Bennett and seconded by Mr. Harwood. The motion was approved by unanimous vote.

Item C-i – Request for Variance from the Provisions of the Elon Land Development Ordinance, Submitted by Paul Holst on Behalf of Point at Elon, LLC.

Chairman Beasley then introduced the item and opened the public hearing. Ms. Graham stated that she wished to present a summary of the request, and that Mr. Holst was present and also wished to address the Board and present his evidence. Following that, the Board may turn it over to public comment.

Ms. Graham then gave a summary of the project, as follows. The request involves a variance request, submitted by Mr. Paul Holst. She stated that staff had met with Mr. Holst for some time regarding the proposal, which is a development proposal for a 41.3 acre parcel that fronts on Shallowford Church Road, Elon Ossipee Road, and Cable Road. The property is split-zoned, with Neighborhood Residential (NR) on the western portion and Suburban Residential (SR) on the eastern portion, with the division following an existing stream on the property. Initially, a sketch plan was reviewed that included single-family and multi-family residential units, with multi-family development on the farthest west portion of the property located between Elon-Ossipee Road and Shallowford Church Road. Staff provided responses to Mr. Holst and pointed out several instances where the plan did not appropriately address our ordinance requirements, one of which was that multi-family uses were not permitted in either zoning district. Mr. Holst decided to delay any action on the multi-family portion of the plan and is now focused on the single-family development between Shallowford Church and Cable Roads. Ms. Graham then showed an aerial image of the property and identified the property and the roads in the vicinity. She mentioned that the parcel crosses Shallowford Church Road and includes the “V” section between Shallowford Church and Elon Ossipee Roads. She then showed a zoning map showing the property vicinity and pointed out

the split-zoned condition of the parcel, with yellow representing Suburban Residential (SR), which corresponds to other properties to the east and south, and orange being Neighborhood Residential (NR) which corresponds with other properties adjoining the subject property with the exception of the Village Center property to the south. She then pointed out the stream buffer that exists on the property. She returned to the aerial image and pointed out the power transmission lines that run along the southern portion of the parcel from Shallowford Church to Cable Road. Following the staff review comments Mr. Holst submitted a Variance application requesting relief from some of the ordinance requirements. Ms. Graham displayed a table that described each component of the variance request and compared those to the LDO requirement for each. The request includes a reduction in the lot size for the SR portion from 10,000 sf to 6,000 square feet, a reduction of the lot width requirement at the building line for SR from 75 feet to 60 feet, the maximum impervious surface requirement for SR to be increased from 40% to 67%, and a reduction of the minimum side setback requirement for SR from 10 feet to 5 feet. For the NR portion, the requests are for a reduction of the minimum lot size from 6,000 square feet to 5,000 square feet, for the NR lot width at the building line to be reduced from 60 feet to 50 feet, the maximum impervious surface requirement to be increased in the NR from 45% to 54%, and the NR minimum side setback to go from 8 feet to 5 feet. Additionally, relief from two general requirements in the ordinance, including that no more than 50% of the lots be the same width, with a 10 foot differential, and relief from a requirement that blocks be of a rectilinear shape, no more than 600 feet long, and of sufficient depth to allow for two tiers of lots. Ms. Graham asked if the Board members had any questions of what was just covered. Chairman Beasley asked about a "cut-off" area shown on an exhibit in the packet. Ms. Graham asked if we could delay that question until Mr. Holst could answer, as that exhibit was provided by him. Ms. Gill asked to return to the table, and asked about the minimum side setback for NR, how many feet between houses does the 8 foot side setback require. Ms. Graham responded that the houses could be no closer than 16 feet.

Ms. Graham then provided the Board with the applicant's responses to the items requested in the Variance application, so that the applicant's statements can be entered into the record. Those responses are as follows.

Regarding the reason(s) for the variance request: *The subject property is comprised of 41.3 acres. It has an inordinate amount of lost usable area resulting from a variety of site-specific factors. The dedication of public rights-of-way (Elon-Ossipee Rd, Shallowford Church Rd, and Cable Rd) and the expected sale of the area of a neighbor's encroachment reduce the gross usable area to 38.13 acres ("Adjusted Gross Area"). Of that, utility easements (gas, communication, power, and sanitary sewer) and preservation of environmentally sensitive areas (regulated wetlands and stream buffers) further reduce the usable area to 24.09 acres, a loss of almost 37% of the "Adjusted Gross Area". A recent survey of the property highlighting the various constraints is attached ... Strict adherence to the minimum lot widths and minimum lot size required under the subdivision ordinance results in a significant loss of lots. The configuration of the remaining usable area makes conformance with the subdivision ordinance rectilinear block shape and maximum block length (600') difficult without losing additional lots.* Chairman Beasley asked about the acreage of 41.3 acres and 24.09 acres and if it excludes what is in the "V" between the roads. Mr. Holst asked if he might respond and clarified that the 41.3 acres includes the triangular piece. Chairman Beasley asked if the 24.09 acres results from taking into consideration the unusable portions of the total area. Mr. Holst affirmed and added that it includes the portion in the "V".

Ms. Graham described the Variance procedures as follows: The Board of Adjustment has the power to vary or modify any of the provisions of the ordinance when special conditions or unnecessary hardships would result from carrying out the strict letter of the ordinance. The Board may prescribe appropriate conditions and safeguards in conformity of the ordinance, provided that the conditions are reasonably related to the variance. The motions will include options for approving with conditions. The Board of Adjustment may only grant a variance after having made the findings of fact listed on the pages to follow in the presentation. The applicant's justification for each of the findings will be provided in italics.

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.

The subject property has a number of significant constraints inhibiting normal development under the existing zoning and subdivision ordinances without a major loss of lots. Of the Adjusted Gross Area of 38+ acres, over one-third (14 acres) of the property is rendered unusable with the remainder in odd (non-rectangular) configurations creating a significant hardship.

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 subject property is crossed by Shallowford Church Road and a perennial stream, both running generally south to northeast, effectively dividing the property into 3 irregular shaped, disparate pieces (refer to Exhibit A) The property is currently zoned SR and NR (see Exhibit B).

The perennial stream will require undisturbed buffers on both sides (just under 3 acres) that cannot be disturbed except for a single street crossing. Delineated wetlands associated with the stream and outside the required buffers amount to approximately 1 acre. There is a second perennial stream at the northern boundary of usable area requiring buffers that renders another significant area unusable.

In addition, the property is traversed west to east along the property's southern boundary by a power line communication and natural gas line easements (almost 5 acres). A sanitary sewer easement roughly parallels the stream but falls largely outside the required stream buffers. The area occupied and cut off by these easements (excluding stream buffers and wetlands previously accounted for) totals over 8 acres.

The irregular configuration of the remaining usable area makes it difficult to implement a rectilinear design or limit block length to 600' without the loss of additional lots.

With the requested reduction in minimum lot size and in order to maintain impervious area limits within the SR zoning district (40% of 10,000 sf = 4,000 sf) expressed as a percentage of the requested 6,000 sf lot minimum (4,000/6,000 = 67%). Within the NR zoning district (45% of 6,000 sf = 2,700 sf) expressed as a percentage of the requested 5,000 sf lot minimum (2,700/5,000 = 54%). Maintaining almost all the unusable space as non-impervious will ensure that the intent of the impervious area limits is more than satisfied.

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 granting a variance shall not be regarded as a self-created hardship.

The areas rendered unusable are not a result of any action taken by the current property owner, but are the result of naturally occurring, regulated environmental features, dedication of roads for public use and a sanitary sewer easement granted in 2002 in order to extend sewer service to peripheral portions of the town. The power, communication and gas utility easements were granted between the years 1919 and 1955.

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.

Consistent with the methodology employed above showing that over one third of the acreage is rendered unusable, if the property were developable under the existing ordinances without the unique combination of constraints, it is reasonable to expect it could yield a total of 137 lots (3.6 lots per acre of the Adjusted Gross Area) as explained below. With approval of this variance request, a total of approximately 87 lots (2.3 lots per acre of the Adjusted Gross Area) is expected or 37% fewer than if the property were able to be developed under normal conditions.

On this basis, the applicant believes the requirement that the requested variance be consistent with the spirit, purpose and intent of the Ordinance to limit development to low-density detached residential is full satisfied.

Approximately 15 acres of the total property area is within the SR zoning district (refer to Exhibit B) Under the SR zoning and assuming average lot sizes of 12,500 sf (plus 10% open space) it is reasonable to expect that a density of up to 3.0 lots per acre or 45 lots could be achieved.

The remaining area of the property excluding the Shallowford Church Road right-of-way zoned NR is approximately 23 acres (refer to Exhibit B.) Assuming an average lot size of 8,000 sf (plus 10% open space), it is reasonable to expect a density of up to 4.0 lots per acre or 92 lots could be achieved. Combined with the 45 lots within the SR area, a total of 137 lots.

Ms. Graham then briefly displayed an “Exhibit A” and an “Exhibit B” that had been provided by the applicant and stated that she would defer to Mr. Holst to provide explanations to the Board. Ms. Graham displayed a slide that outlined the Board’s options as follows:

1. The Board of Adjustment may:
 - a. Approve the variance request in whole, with or without conditions;
 - b. Approve the variance request in part, with or without conditions;
 - c. Deny the variance request.
2. If any of the findings are decided in a manner that does not support the variance request, the request may not be approved.
3. A four-fifths majority is required to approve a variance request.
4. The Board may consider applying conditions to any approval decision limiting the variances to the specific requests, or any other additional conditions they deem to be appropriate.

Ms. Graham then offered to turn the podium over to Mr. Holst. Mr. Holst introduced himself as Paul Holst and was present on behalf of his partners, and that they own the property that was being discussed. Mr. Holst stated that the application was complicated in some ways, and that they were essentially trying to regain some of the density of the property which they purchased last year. He stated that they knew at the time of the limitations and that they had engaged in some conversations

with the previous Planning Director, Sean Tencer, about the feasibility of rezoning the property, and as they embarked on that strategy to gain more density on the property, it became apparent that the variance process might be a more appropriate one given all of the unique constraints on the property. He referred to his exhibits and, in response to Mr. Beasley's earlier questions regarding the "cut-off" area, that is the area identified in yellow on Exhibit A and lays beyond other unusable areas, and is rendered unusable because of its configuration there is no way to get any lots there. It is not practical to extend streets there. He also referred to page 5 of the Board's packet, and stated that they believed that as many as 137 lots could be realized under the existing zoning, were it not for the considerations of the property. They have produced a sketch plan that is not part of the packet, that was provided to the Town early on that assumes some of the variance requests in regard to lot size, lot width, setbacks and so forth, and would achieve 87 lots instead of the 137. He added that in some jurisdictions, though not in Elon, there is a cluster option, which he thinks this is very close to, where you compress the development into a smaller area with more open space, and you don't exceed the density in terms of lots. He stated that is basically what they are asking for. As far as impervious area, they are asking for the same amount of impervious but on a smaller lot, which increases the percentage. Chairman Beasley stated that Elon does have a Traditional Neighborhood Overlay, and was that considered as an option. Ms. Graham responded that this was discussed early on, but that the TND Overlay is a mixed-use overlay that requires a range of uses and there are specific percentages that must be achieved for each type, and it includes a requirement for a civic use. She asked if Mr. Holst wished to elaborate, and he stated that they did not believe that some of the elements that were required in the overlay were appropriate for the development and that they intended to develop strictly as residential in keeping with Cable Square and the folks in Spanish Oaks. Chairman Beasley asked about the "cut-off" area again, and Mr. Holst responded that Mr. Cable, who owns the property to the extreme north on Segment B of Exhibit A, has some outbuildings on the subject property and he had requested that he be allowed to purchase that portion of the property from the development. He added that he believed it was about an acre. Chairman Beasley asked about the cost of crossing the stream, and Mr. Holst replied that they have not yet done the engineering on it but believed the cost to be in the mid to high five figures based on previous experience. Mr. Holst also added that he had an opportunity to meet with the neighbors after the meeting that was cancelled and they were able to exchange some ideas, and they had a secondary meeting. He stated that for the folks who would be most impacted, regardless of the variance, they offered to do their best to preserve a natural buffer and even supplement that to lessen the impact of the development. He stated that this would apply to the lots that would back up to Mrs. Smith's property and one lot that would have side exposure to Cable Road and the person directly across from that. He stated that they would be willing to add a condition to the approval regarding this if that was appropriate. Chairman Beasley directed Mr. Holst to the portion of the application relating to the peculiarities of the property and asked about the acreages involved in easements and buffers were mutually exclusive. Mr. Holst responded that he was not double-counting; that the stream buffers and wetland areas are in a different calculation and were an additional amount. Chairman Beasley clarified that the eight acres was in addition to the five, and Mr. Holst replied that this was correct. Chairman Beasley asked if Mr. Holst had anything more to add. Mr. Harwood stated that he did not see the total number without the variance. Mr. Holst replied that by granting the variance, they may gain about twenty lots. If they put the existing ordinance on the property without any variance, they found a loss of seven lots on the "C" portion, and another 15 to 20 on "A" and "B". So, the yield without the variance would be on the order of 50-55 lots as opposed to the 87 that they believed they could get with the variance. Chairman Beasley asked Board members if they had any questions of Mr. Holst. Ms. Graham displayed the Exhibit B that was offered by Mr. Holst. Ms. Gill asked if the property would be

served be septic and well. Mr. Holst stated that sewer is available and water is about 1,000 feet away. Mr. Bennett asked if there would be only one entrance into the development. Mr. Holst responded that there would be one entrance from Shallowford Church Road and a second one from Cable Road. Mr. Allison asked about the properties that would be about Cable Road, they would not be facing Cable Road, and Mr. Holst affirmed. Chairman Beasley stated that he would think that there would need to be a tie-in into Spanish Oaks for fire protection. Mr. Holst stated that this was his understanding, though he recognized that the neighbors in Spanish Oaks were not happy with that connection. Mr. Bennett stated that he had one additional concern about reducing the setbacks to five feet, and that is that five feet does not allow a ladder to reach the houses for fire protection. He asked if there had been any thought to not reducing to five feet; Mr. Holst stated that he had not thought about that aspect. Mr. Harwood asked about the tie-in into Cable Road and if that was a state-maintained road. Ms. Graham replied that it was state-maintained. Chairman Beasley then asked if members of the public wished to speak. Rachel Dimont introduced herself and that she lives on Elon-Ossipee Road and her in-laws also have homes there. She asked to address the four matters that the Board has to consider and she believed that the applicant fails to meet at least two of these. She stated that they have a problem with the development in accordance with the existing ordinance and while she appreciates the rights to develop and believes that done correctly, the development could increase everyone's property values, but she does not believe that is what we have here. This is mainly because of the density and the character of the lots. The first matter is that he must prove an unnecessary hardship and she believes that is the hardest hurdle he has to overcome. As a quasi-judicial matter, this Board must apply the existing standards of hardship. She provided copies of a document to the Board members and stated that the application states that the undue hardship is the loss of lots. The Supreme Court has talked about what is undue hardship and offered a standard, and this Board is required to apply that standard. She added that an undue hardship is not a pecuniary loss; simply because he wants to make more money by having more lots, is not an undue hardship. She then read a quote from a case from 1946 supporting her claim. She reiterated that the only undue hardship stated by the applicant is that he would be unable to develop more lots to the detriment of neighboring property owners. She restated that this is not considered an undue hardship by the courts and read from a 2002 case further supporting this. She stated that the standard that this Board has to consider is whether or not he is able to have 55 lots or 87 lots, is that an arbitrary and capricious interference with the basic right of private ownership. bottom line, and she would say that it is not, it is just an impact to his bottom line. She added that frankly, that is not an undue hardship, that is a poor investment. She moved on to the second and third standards, whether or not the unique property conditions are unique to this parcel, she would agree that this property has real challenges, but that she doesn't think there is anything for the Board to consider there, and the question of whether the hardship was self-inflicted, she thinks that it has been established in the record that many of these easements were pre-existing and that the streams are naturally occurring and there is nothing there for the Board to consider. She followed that he has to satisfy all four elements and she does not believe that he can get past the first element that this creates an undue hardship. She stated that he is also not going to be able to establish that this is within the spirit of the Land Development Ordinance, because, when the ordinance was passed there was an opportunity to put in some type of cluster zoning. The Town did not do that. They had the option to say that if you have a parcel, we would allow the option of packing the lots in together and consider the open space, but that is not in there and is not within the spirit of the ordinance. That is because the ordinance is designed to create development that is compatible with the existing development. These houses that are packed in so close together that you can barely get a ladder between them is not compatible with the existing development and will not fit in. She then provided a copy of the Goals and Policies from the Land Development Ordinance and Goal

1.9 says that the goal is to continue to value, preserve and enhance existing development, and encourage compatible development that fits with and adds value to existing neighborhoods. She added that she does not object to the development of the property, she just wants it to be compatible with what is already there. That is what the ordinance was designed to do, and you all are required to determine whether or not this variance request fits in with the spirit of the ordinance, and quite frankly she has articulated that it doesn't. She went on to say that since he cannot establish all four of the elements that she asks that the Board deny the request. She finished by offering to answer questions. Chairman Beasley thanked her and stated that we do have a cluster development option in the ordinance that is included in the Traditional Neighborhood Development category, and while that option may not be conducive to this development, the Land Development Ordinance does allow the clustering concept, for the record. He asked if anyone else wished to make a statement. Jim Sykes approached the podium and introduced himself as a resident of Spanish Oaks. He stated that he has some concerns about two issues. One, is that the development will have streets built by today's standards and that Cable Road has a minimum inch and a half cap on top. So we have a development that is going to develop with curb and gutter and that sort of stuff and they want to ingress into a street that is fifty years old with no curb and gutter, and that is going to lead you to Power Line Road, which is not the easiest road for ingress and egress. The other issue is how many times do we hear that they want to change the ordinance, change the size of the lot, etc. How do I get a fire ladder on lots with only five foot on the side of each other? How do I develop housing that only has front entryways, with the garage facing the street? The proposal as I first understand was 70 foot lots, now he hears about twenty exceptions to how it should look. You do not have before you tonight the engineering of the streets. One of the issues in A, B, and C, is that A is off the charts right now and only B and C are in place. You have a perennial stream running through there and the setbacks on that he recalls are 50' back. So, if he wants to bring these two together he is going to have to put a culvert in there and that is not inexpensive at all. The other part is, if he does C only, then he would not have to put in the culvert. He has seen a street design that he does not know if the Board has. Ms. Graham interjected that a preliminary sketch-level layout exists but has not been engineered. Mr. Sykes stated that what he looked at showed a fifty foot street and, that Alley, Carmen and King produced a street design and as you come down to C, the street design connects B and C. It shows a street coming through and there is an abutment shown by Alley, Carmen and King, and will be built to today's standards and will connect to a fifty year old street. When school busses come through and there is a car there, they have to back up and turn around, because it is an 18 foot street, so that is another issue. So he thinks that the density is going to create more crime, closer, denser neighborhoods, the ability to fight fire, police protection, and this sort of thing. When you start looking at exceptions to subdivisions that utilize traditional neighborhoods, I think the Board needs to consider the traditional neighborhood. You also have the neighborhoods that adjoin this, Cable Square, and off of Walker Road, those streets and houses are by today's standards with lot widths at 60 or 70 feet, setbacks at 20 foot, so you have a tradition in the neighborhoods that you want to adhere to. He doesn't know if it is appropriate for this Board to consider, but when you look at Shallowford, you have a mess transportation-wise. On Walker Road you are building a new school. It makes sense to me to take create an upgraded road from Walker Road to Shallowford. And there is a new kid on the block that he calls turnarounds, or roundabouts, he would go to the front of the school and put a roundabout in. When you have a neighborhood with streets that are fifty years old, with some concern about a fire apparatus in and out, the fire code of North Carolina allows you to have a key set which is simply a gate with a key in it, and that option is provided. Mr. Sykes concluded and Chairman Beasley asked if there were questions or anyone else with a comment. Mr. Douglas Bradshaw of 615 Cable Road introduced himself and stated that first of all he would like for the Board to consider what was asked and not

the tax dollars that you will gain. Two, with everybody who lives here on Cable Road or Spanish Oaks, you have to be careful coming out of Cable Road onto Power Line, because that is a blind curve. He believes there were one or two wrecks last year. As far as the Fire Department, it is going to take one fire truck to set up a fire hose to protect the adjacent house, so one fire truck and 3 or 4 people that you are going to tie up. Next, water and sewer connection. The water and sewer that comes there is it going to dead end, or are you are going to run it, because a dead end line does not have good water quality. They have had some wells already collapse. Within five years or less some of the septic tanks are going to go bad and some of the wells will go bad. He would like to see the Town run a water line up to Spanish Oaks and Cable Road. He would be willing to tap on to water and sewer if we did that. The road has to be salted and scraped because ice accumulates there because there is not much sunlight. Now we are talking about 87 houses with two or three cars, there will be about 200 cars. If they have trouble getting out on Shallowford Church Road they are going to go out through Spanish Oaks. So, he has a problem with him developing this land. He doesn't think that you need to put four houses on an acre, there will be no privacy and they will have to put up fences. There is a lot to consider. But he would like for us to consider what Mr. Bennett talked about with the Fire Department. That road is not designed for trucks. He would also like for Mr. Holst to stipulate that no construction trucks come in off of Spanish Oaks or Cable Road. Concrete trucks will tear up Cable Road. He doesn't know if they are planning to widen Cable Road or not. Elena Kennedy at 654 Spanish Oak Road introduced herself. She and her husband purchased the home approximately two years ago and did so because of the quiet street and the lot size that we have and that their neighbors have. It was the aesthetic that they wanted and she and her neighbors walk that loop regularly. She believes a twenty home reduction is quite significant, and allowing the variance will cause hardship to her own experience, assuming that those families will be accessing Power Line Road as opposed to Shallowford Church Road. That is a concern that she has. The site plan that a neighbor shared with her indicated that there is a road that dead ends in the C area, which indicates future development. Her concern is that if we allow a variance now, in a few years or months from now there is going to be a new variance request that will cite this variance as a precedent. Her assumption was that the variance would be only for the Suburban Residential area. She is surprised to find that he is requesting variances for all of the lots. If it were a small portion of the lots she would be less concerned about making changes. If you look at the neighborhood it is abutting into and the site plan, those houses are probably on a quarter of the size of lot that the existing houses are on. These two neighborhoods are not going to align and this violates the cohesiveness. This leads to concerns that this will create hardships for the existing homeowners more so than the developer who purchased the property approximately ten months ago and was aware of the existing zoning, stream, power line. If you had looked at a good survey it would have been very clear that a good portion of the land was not usable. That was factored into the purchase price most likely. Now to create a variance for a developer hurts them as existing land owners. Creating capricious variances only benefits the one party. If we are happy to do it for this neighborhood then we should just allow it across the town. If we don't want to see it, then we shouldn't do it for this neighborhood. Chairman Beasley commented regarding the stub, he has no knowledge of planned development there, but prudent planning for development provides future access to other parcels, so that is not abnormal to have a stub-out drawn in future planning for development. He is not aware of any further development to the north. Ms. Graham offered Mr. Holst an opportunity to respond to any of the comments that had been made. Mr. Holst had none. Ms. Graham stated that she would like to point out some things for the Board. One is that the variance process is built into the ordinance to address specific circumstances and of course it is their task to determine whether this particular circumstance is what this was designed for. She also stated that the Board has the power to vary or modify any regulations of the ordinance when

special conditions or extraordinary hardships would result from the carrying out the strict letter of the ordinance related to the building or alteration of structures or the use of land. She also stated that she wished to clarify a couple of items, one being that there was a mention of an engineered plan that has Alley, Williams, Carmen, and King's input on it, and that she has not seen that. This is the Town's engineering firm, and she has not seen any input that they have had on the part of the developer or the town on this. She added that tonight's purpose is to address the specific variances being requested and that we will reach a point later on where we will see sketch plans, and they will come before this Board during a public meeting and before the Board of Aldermen at a public hearing, and before the Technical Review Committee that is made up of the Town's engineer and other staff persons to review the plans, as well as NCDOT. The question regarding the condition of the existing roads in that area would likely come up at that time. She added that we would rely on the NCDOT engineer's expertise on that matter. She stated that the use of single-family residential development is not in question here as this is a use by right under the existing zoning, and in fact, when we look at the layout, the LDO requirement for the minimum lot size for the Suburban Residential District is 10,000 square feet, which is slightly under a quarter acre lot. So, we have four dwelling units per acre in that district, and the minimum lot size for the Neighborhood Residential District is 6,000 square feet, which obviously allows for a higher density. Lastly, she stated that for quasi-judicial hearings, this Board is tasked with considering expert testimony. While obviously we appreciate hearing from everyone and there are a lot of people in this room who feel that they will be impacted by the development, and particularly where we are talking about the specific requests of reduction of lot sizes and widths, but we would look for expert testimony to be considered in your deliberations and in your decision. She also mentioned that she did hear some suggestions for conditions, and the Board may choose to give approval in whole or in part, meaning that you could pull out specific requests and determine that they meet the standards, or all of them or none of them. The two conditions that were mentioned that they could consider are regarding a buffer between any of the lots developed in the subdivision and any of the existing lots to the east, and also the concern about construction vehicles traveling through the Spanish Oaks and Cable Road neighborhood. Regarding the question about making a connection with Cable Road, she stated that she didn't believe we were prepared to determine whether that is going to happen or not, and it is not part of the decision tonight. This will be taken up in later processes and thoroughly vetted during those processes. She added that she has provided a recommended motion format for use and that she hoped that was helpful to the Board. She finished by stating that she was happy to take any questions. Chairman Beasley stated that he had one question regarding the relief from lot width, shape, and depth. As he reads the ordinance, exceptions may be made where topography or environmental issues, unique lot configurations, etc. leave no practicable alternatives. He added that he believed that you could look at this and say that topography is certainly a factor, so why did this require a variance request. It seems to him that, because of the unusual nature of this property, and the environmental protection of the natural gas, streams, power lines, already gives you the right to make an exception. In his opinion, he does not believe that a variance request is needed for that item. He stated that this language is on page 3 under Facts and Issues. He stated that he believes that an exception already exists to this Board does not need to consider it as a variance request as it may be approved by the Technical Review Committee. Ms. Graham stated that once we see the proposed layout, that she agrees that we could likely apply it at that time. Chairman Beasley then asked Mr. Holst about the requested relief from lot width variation and what was he proposing. Mr. Holst responded that there are slight variations but that he thinks that the criteria requires that there be substantial differences in the lot sizes, with a ten foot differential, which becomes inefficient. Chairman Beasley asked about other specs in the ordinance such as minimum street frontage, front setback, does he not have issues with those.

Mr. Holst stated that this was correct, that they had gone through the requirements with a fine-tooth comb and only brought forward those items that were onerous to the development. Chairman Beasley clarified that they would adhere to all of the other setbacks and requirements and Mr. Holst affirmed. Ms. Gill asked about the request to increase the impervious surface from 40% to 67% in the SR District and to 54% in the NR District and wasn't this already addressed by the cluster arrangement. Mr. Holst answered that it is his understanding that the impervious requirements are on a lot by lot basis. They are taking the amount of impervious that would be allowed on the lots under the current standard and applying that to the reduced-size lots so it only changes the percentage, but not the amount of impervious. Ms. Gill stated that the streams and wetlands and impervious is a very significant feature of this portion of Elon. Mr. Holt stated that they intend to create stormwater ponds to be able to protect people downstream. Chairman Beasley asked if Mr. Holst could walk him through the math again. He referred to Mr. Holst's statement that if there was no change to the current ordinance, we get 137 lots. Mr. Holst replied that this was if he takes the total area and don't consider the areas that are unusable due to easements and so forth, they believe that they could achieve 137 lots on the 41 acres. They applied math to the two different zoning areas, and they assumed with 10% open space they would be able to achieve 45 lots in one area and 92 in the other area. Then they contrasted that with what they would be able to achieve, given that they have a 37% loss of land due to unusable areas, bringing it to 87 lots over the total 41 acres. Without any relief, they lose approximately 20-25 lots below the 87. Ms. Gill asked why the 137 number is even pertinent to the discussion since all of these things existed prior. By comparing the two, in a perfect world we would have this, but now we have to have that. Mr. Holst replied that this was his interpretation of the hardship was that there were characteristics unique to this property. Ms. Gill stated that 137 was not a valid statistic in the first place because it is not a real statistic. Mr. Holst stated that it was theoretical. Mr. Allison agreed that it was irrelevant because he knew that all of the property was not usable. Mr. Holst stated that that was not his intention. Mr. Allison replied that the real question is with the current ordinance and requirements, 87 lots is what you think can be built. Chairman Beasley corrected that it was more like 60. Mr. Allison clarified that he was trying to increase it to 87, so that he could recoup his investment and make it a profitable decision. Mr. Holst replied that this is one way of putting it. Chairman Beasley multiplied the 24 acres of usable area by 43,560 square feet of an acre, and divide by 87 lots, those lots are almost 12,000 square feet. Ms. Graham reminded that some portion of the property, roughly 15% is taken up by street rights-of-way, and there is an open space requirement. Mr. Harwood stated that the intent of the ordinance was to be a progression from a larger to a smaller, with buffer zones, and he thinks that violates what we are trying to do because we are going to see more of this with the topography and all of the issues involved. So, we are jumping from a 10,000 square foot or 6,000 square foot minimum and going down to 6,000 and 5,000. And on the other side we go back to the ordinance unless we create another variance. So he believes we are creating a problem. At this point Town Attorney Kalo advised Chairman Beasley that if they were done taking testimony and wanted to deliberate then he could take a motion to close the public hearing if he believed that was appropriate. Jim Sykes asked the Chairman, at what point in time does the Board see a preliminary subdivision plan full blown. Ms. Graham stated that it is up to the developer to submit for staff review, and as a major development plan it would come to the Planning Board for a recommendation and then to the Board of Aldermen for approval during a public hearing. She added that either prior to or concurrent with that it makes its way through the Technical Review Committee for review. Mr. Sykes asked who was on that committee and Ms. Graham replied that it includes the Town's consulting engineer, the fire chief, the county fire inspector, NCDOT engineer, the public works director and assistant director, she was also on the committee as planning director, police chief, the county chief building inspector

and GIS specialist, and the town manager. Chairman Beasley offered that this development is a major development, but there are other levels of development that the planning director handles by herself, that do not have to come before the Boards; it depends on the size and complexity of the development proposal. Mr. Sykes directed a question to Mr. Bennett, that since the Spanish Oak community is in the County, is the fire marshal involved. Mr. Bennett replied that the fire chief and the fire marshal are involved. Ms. Kennedy then asked if some sort of speed of speed controls could be placed in their neighborhood to help with the increased traffic and negate some of the impact. Chairman Beasley stated that he didn't believe NCDOT allows them. Mr. Bradshaw stated that the speed limit in that neighborhood is 30, and he would like for us to ask DOT to drop it to 20; and since they are in the extra-territorial district, the police department could go through that area more than they do. He then thanked Ms. Graham for sending the letters to the neighbors. Another gentleman offered to speak and Mr. Kalo asked that he be sworn in. This was done by Ms. Patterson while Mr. Bradshaw asked if the developer would consider not putting cluster mailboxes up in the neighborhood and let them have individual mailboxes. Mr. Holst stated that unfortunately, the post office now requires this. Ms. Graham confirmed this and added that it is at his discretion where it is located. Mr. Bradshaw asked if it could be put near the bridge. Mark Luck from 612 Cable Road, after being sworn in, then thanked the neighbors for expressing their ideas such as speed bumps and speed limits. He added that this is an old neighborhood and the residents have a habit of walking the neighborhood freely and safely, and now we are going to bring in all kinds of traffic on 50 year old roads. Please consider sidewalks for them and their children. It is a quiet neighborhood and he would like to see it stay that way. Ms. Graham then stated that she had received a letter from Bernie and Linda Bryant from 691 Cable Road that she would like entered into the record, and she read it aloud. Mr. Kalo advised the Board that this letter was not submitted under oath and that should be kept in mind. Chairman Beasley then closed the hearing and asked for motions.

Motion #1 – A motion was offered by Mr. Bennett that unnecessary hardship would result from the strict application of the ordinance. The motion was seconded by Mr. Podolle and received a vote in favor by a margin of 4 to 2.

Motion #2 – A motion was offered by Mr. Beasley that the hardship related to the requested variance does result from conditions that are peculiar to the property, such as location, size, or topography. The motion was seconded by Mr. Harwood and received a vote of 3 to 3. The Board decided to continue through the motions to see if it would be necessary to address the tied vote for this motion.

Motion #3 – A motion was offered by Ms. Gill that the hardship related to the requested variance does not result from actions taken by the applicant or property owner. The motion was seconded by Mr. Allison and received a vote of 6 to 0.

Motion #4 – A motion was offered by Mr. Harwood that the requested variance is not consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is received. The motion received a unanimous vote in favor.

Motion #5 – Mr. Bennett offered a motion that, based on the findings of fact and the evidence presented, the Elon Board of Adjustment issue denial of the requested variance due to its failure to meet Findings #1, 2, and 4. The motion was seconded by Mr. Podolle and received a unanimous vote in favor.

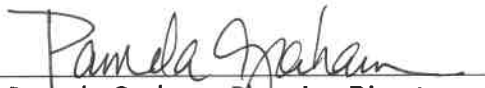
Item C – Items from Board Members


There were no items from Board members.

Item E – Motion to Adjourn

A motion to adjourn was offered by Mr. Allison and seconded by Mr. Bennett. The motion was approved by unanimous vote.

Meeting was adjourned at 7:50 p.m.


Pamela Graham, Planning Director
Minutes were completed in
Draft form on November 21, 2019


Jim Beasley, Board of Adjustment Chair
Minutes were approved on
July 21, 2020