

WEST & SMITH, L.L.P.
Attorneys at Law
140 West Vermont Avenue
Post Office Box 1140
Southern Pines, North Carolina 28388

Stanley W. West
S. Kent Smith*

Telephone: (910) 693-3411
Facsimile: (910) 693-7727
E-Mail: ws@westandsmith.com

*DRC Certified Superior Court & Family Financial Mediator

June 23, 2017

Via Hand Delivery
Mr. Kevin B. Reed
Director of Planning and Inspections
Village of Pinehurst
395 Magnolia Road
Pinehurst, North Carolina 28374

Re: Elias and Helen Dalitsouris
Notice o Violation Appeal

Dear Mr. Reed:

I represent Elias and Helen Dalitsouris in the above-referenced matter. My clients hereby give Notice of Appeal of your decision regarding placement of their A-Frame sign for Theo's restaurant, as set forth in your letter of May 25, 2017. I have enclosed the required appeal form, along with our firm check in the amount of \$400.00 for the fee.

Please let me know if you have any questions, or if any further information or documentation is needed in connection with their appeal.

Sincerely,

WEST & SMITH, LLP



S. Kent Smith

SKS:bp
Enclosure

cc: Mr. and Mrs. Elias Dalitouris

RECEIVED JUN 23 2017





Application for
Board of Adjustment Appeal
(revised 3/14/17)

APPEAL FROM AN ACTION OF THE ZONING ADMINISTRATOR
and/or
PETITION FOR AN INTERPRETATION OF THE PINEHURST DEVELOPMENT
ORDINANCE

To: The Village of Pinehurst Board of Adjustment:

I, S. Kent Smith, hereby appeal to the Board of Adjustment from the
following decision of the Zoning Administrator of the Planning and Inspections Department:

DECISION OF MAY 25, 2017 BY KEVIN B. REED, DIRECTOR OF PLANNING AND INSPECTIONS

Applicant: S. Kent Smith, Atty for Owners Owner: Elias & Helen Dalitsouris

Address: PO Box 1140, So. Pines, NC 28388 Address: 38 Chinquapin Rd, Pinehurst, NC 28374

Telephone Number: (910) 693-3411 Telephone Number: (910) 295-0780

This decision was made with respect to the property described below:

Property description: Theo's Taverna

Property Location: 38 Chinquapin Rd., Pinehurst, NC 28374

Moore County ~~XXX~~ Parcel Number 00030476 PIN Number 855212966210

Zoning District: VC

Petition:

I hereby request an interpretation of:

_____ the Zoning Map

X Section(s) 9.7.1.4(B) & (D) of the text of the Pinehurst Development Ordinance
(insofar as the map and/or the ordinance relate to the zoning or use of the property.)

STATEMENT BY APPELLANT: (In the space provided below, or on a separate sheet(s) attached to this form, present you interpretation of the ordinance section(s) in question and state what reasons you have for believing that your interpretation is the correct one.)



**Application for
Board of Adjustment Appeal**
(revised 3/14/17)

* See Attached.

I certify that all the information in this application is accurate to the best of my knowledge, information and belief.

Signature of Applicant

June 23, 2017

Date

Telephone Number: (910) 693-3411

Elias and Helen Dalitsouris, owners of Theo's Taverna (Theo's), by and through counsel, appeal the May 25, 2017 decision of Kevin B. Reed, Director of Planning and Inspections, regarding an alleged violation relating to the placement of an A-frame sign adjacent to my clients' main business entrance.

The main entrance to Theo's restaurant is through the arched brick breezeway located on Chinquapin Road. Although another business also can be accessed through the breezeway, more than one business may share a main entrance. My clients' A-frame menu sign has been utilized by them, and by the prior restaurant owner, for nearly thirty (30) years without objection by the Village of Pinehurst, which initially approved the signage. Such acquiescence by the Village of Pinehurst certainly reflects its approval of the sign and location, and by allowing it to exist for decades acknowledges that the sign is in compliance with applicable ordinances and regulations.

A fair and reasonable reading and interpretation of the ordinance is to allow this type of signage for the purpose of displaying restaurant menus and other information for pedestrians who are walking along the sidewalk. This allows potential patrons/customers to obtain information about the business so they can decide if it is a business they may wish to enter and further explore. As such, the intent of the ordinance is to allow businesses this opportunity to advertise to potential customers/patrons, and the ordinance must be interpreted reasonably in this context.

The Village of Pinehurst is unique, and part of its charm is the varied types of buildings within the central area where Theo's is located. The buildings which house these businesses fortunately are not of the same style with look-alike entrances for each. The arched brick breezeway main entrance to Theo's adds to the ambiance of the Village, and by its unique design, the front door to the restaurant is recessed within the breezeway. Nevertheless, customers/patrons can only access Theo's Taverna through the arched breezeway, which naturally and clearly appears to everyone to be the main entrance to Theo's. To rigidly and unreasonably interpret the ordinance's definition of "main entrance" as only a door, is contrary to the meaning and intent of the ordinance, which unfairly restricts Theo's from being able to attract customers/patrons as other businesses are allowed with the use of such signs. If Theo's A-frame sign must be moved to within twelve (12) feet of the door, then most potential customers walking along the sidewalk adjacent to the main breezeway entrance on Chinquapin Road, would not have a reasonable and convenient opportunity to view Theo's sign.

Moreover, there are other businesses within the central area where Theo's is located, who are utilizing A-frame signs that are not within twelve feet of their front doors, but which signs nevertheless are being allowed to remain. An interpretation of the ordinance, as it is being applied to Theo's signage, would prevent any business that shares an entrance with another business, in which its door is recessed more than twelve feet from the main entrance, from being able to use an A-frame sign to advertise outside the main entrance.

Accordingly, my clients respectfully request that they be allowed to continue to place their A-frame sign at the arched breezeway main entrance to their restaurant, as has been permitted for nearly thirty (30) years.

**Board of Adjustment
September 7, 2017
Assembly Hall
5:00 p.m.**



MINUTES

Committee Members in Attendance:

Fred Engelfried, Chair
David Kelley, Board Member
Cyndie Burnett, Board Member
Kevin Drum, Board Member
Jeff Haarlow, Board Member
Myles Larsen, Board Member
Julia Latham, ETJ Board Member
Mike Marsh, Board Member
Leo Santowasso, Board Member

Staff in Attendance:

Stephen Wensman, Planning and Inspections Director
Bruce Gould, Principal Planner
Gwendy Hutchinson, Planning and Administrative Assistant

I. Call to Order.

Fred Engelfried, Chair confirmed that there was a quorum present and called the meeting to order.

II. Approval of Minutes:

A. August 3, 2017

Leo Santowasso made a motion to approve the August 3, 2017 Minutes as amended; Mike Marsh seconded the motion, which was unanimously approved.

III. Old Business:

A. Findings of Fact for Variance at 260 Lake Dornoch Drive

**FINDINGS OF FACT
DOCKET #01-17**

Variance Request for 260 Lake Dornoch Dr. /PID #00019198

This request is to encroach thirty (30) feet into the required thirty (30) feet lake fence setback for the purpose of constructing a fence in the rear yard. The Zoning Board of Adjustment shall not grant a variance unless and until it makes the following findings:

Vision: The Village of Pinehurst is a charming, vibrant community which reflects our rich history and traditions. Mission: Promote, enhance, and sustain the quality of life for residents, business.

The Findings of Facts and Conclusions of Law are to be based on the Official Record in the proceeding that is made up of the official transcripts and any documentary evidence submitted within the course of the proceeding. Such Findings of Fact are to be based upon substantial, competent, and material evidence as found in the record of the proceeding.

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 applicant submitted evidence that indicated it was their intent to install a fence in the rear yard of the home which is adjacent to a lake. They desire to fence in the rear yard for containment purposes and the yard is not visible from adjacent properties or properties across the lake and adherence to the regulations would create a more visible fence. The property line also stops short of the lake shore line by approximately 20 feet.

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 applicant submitted evidence that they are asking for the variance from conditions that are peculiar to the shape of the property at 260 Lake Dornoch Drive. The particular property is situated such that strict application of the ordinance would create a fence that is more visible and less aesthetically pleasing to the community.

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 submitted evidence that that the hardship is not self-created as it results from the shape of the property and location of natural vegetation.

4. **The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice achieved.**

The applicant submitted evidence that the spirit and intent of this ordinance is to maintain the natural beauty of Pinehurst and promote the utility of its golf courses. In granting this variance it will be consistent with the spirit and intent as it will result in a fence that is better screened by natural vegetation and a fence that is more aesthetically pleasing to the community.

Vision: The Village of Pinehurst is a charming, vibrant community which reflects our rich history and traditions. Mission: Promote, enhance, and sustain the quality of life for residents, business

The fence will increase public safety as it will lower the risk to children on the property by providing a barrier to a potential drowning hazard. This will achieve substantial justice and be consistent with similar properties in the community.

Therefore, on the basis of all the foregoing, it is ordered that the application for a variance be **GRANTED** subject to the following conditions:

Granted w/ conditions:

None

B. Findings of Fact for Variance at 1144 Chicken Plant Road

**FINDINGS OF FACT
DOCKET # 02-17**

Variance Request for 1144 Chicken Plant Rd./PID #00029912

This request is to apply the R-30 Dimensional Requirements as listed in Table 9.2a of the PDO rather than the R-210 Dimensional Requirements of the zoned property.

The Zoning Board of Adjustment shall not grant a variance unless and until it makes the following findings:

The Findings of Facts and Conclusions of Law are to be based on the Official Record in the proceeding that is made up of the official transcripts and any documentary evidence submitted within the course of the proceeding.

Such Findings of Fact are to be based upon substantial, competent, and material evidence as found in the record of the proceeding.

- 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 applicant submitted evidence that indicated that no reasonable residential use of the property can be made of the property if the R-210 zoning is applied.

- 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 applicant submitted evidence that this property, which is approximately one acre in size, is peculiar in that it is a one acre lot surrounded by properties that conform to the R-210 minimum lot size requirements. Therefore, its condition is not common in the

Vision: The Village of Pinehurst is a charming, vibrant community which reflects our rich history and traditions. Mission: Promote, enhance, and sustain the quality of life for residents, business.

neighborhood. A change to the R-30 zoning requirements would be suitable to the property and give a building envelope more in common with the other properties in the neighborhood.

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 submitted evidence that the hardship is not self-created. This property has been approximately one acre in size, as evidenced by deeds dating back to 1981, before the village zoning requirements were put in place for the vicinity in which this lot is situated. Those subsequently-enacted requirements do not allow reasonable use of the property due to the limited amount of building envelope.

4. **The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice achieved.**

The applicant submitted evidence if the variance is granted it would be consistent with the spirit, purpose and intent of the ordinance. Without the variance, this property would have a very limited building envelope and would be less valuable to any adjoining properties. Applicant has stated that this request is fair and reasonable as it would provide similar opportunities for development as is common on other properties in the neighborhood. There are similar properties in the immediate vicinity, one across Chicken Plant Rd, and another across and down Chicken Plant Rd., which are of similar size as this property, and are being used for residential purposes with existing homes thereon. Both of these tracts are also zoned R-210. The granting of this variance will achieve substantial justice and be consistent with similar properties in the neighborhood.

Therefore, on the basis of all the foregoing, it is ordered that the application for a variance be **GRANTED** subject to the following conditions:

Granted w/ conditions:

None

The Chair noted that it was not a requirement that the Board approve the Findings of Fact for signature and asked if any of the Board members felt that that practice should be changed. There were no objections noted and after asking for any editorial changes or corrections of which there were none, the Chair advised that he would sign the Orders within a few days, to be notarized by the Village Clerk.

IV. Motion to Adjourn

Julia Latham made a motion to adjourn the meeting. The motion was seconded by Mike Marsh and carried unanimously. The meeting adjourned at 6:00 p.m.

Vision: The Village of Pinehurst is a charming, vibrant community which reflects our rich history and traditions. Mission: Promote, enhance, and sustain the quality of life for residents, business.