

BOARD OF ADJUSTMENT MEETING

HELD ON:

August 3, 2017

4:30 p.m.

HELD AT:

Assembly Hall

395 Magnolia Road

Pinehurst, North Carolina

Chairman: Fred Engelfried

Members: Leo Santowasso

Myles Larsen

Julia Latham

Kevin Drum

Reported by: Sandra DeGarmo Wise, CVR-M

1 CHAIRMAN ENGELFRIED: It is 4:30. This is
2 the regularly scheduled meeting of the Pinehurst Board
3 of Adjustment. Some disappointment perhaps for
4 somebody; there were four items on the agenda, there is
5 now only two. The first public item that was withdrawn
6 in the second publication had to do with an issue of a
7 tree, and that has been completely withdrawn. The
8 second issue had to do with an A-frame sign in the
9 Village, that will be heard at another date.

10 Some housekeeping things before we get
11 started, setting a quorum and we have five people which
12 will accomplish that purpose, but I need a couple of
13 motions to get us the rest of the way. Motion first
14 please, and this is not mandated but it is a tradition
15 at the Board of Adjustment that the ETJ member becomes
16 a permanent member the Board of Adjustment. If I could
17 have a motion please to nominate Julia to be a
18 permanent member of the Board of Adjustment.

19 MR. LARSEN: I nominate.

20 MR. SANTOWASSO: Second.

21 CHAIRMAN ENGELFRIED: Second from Leo, have
22 any discussion.

23 (No comment.)

24 CHAIRMAN ENGELFRIED: Let's vote. All in
25 favor, Aye.

1 (All respond Aye.)

2 CHAIRMAN ENGELFRIED: And Julia abstained.
3 Welcome Julia. We now have four permanent members
4 sitting at the table, and we need a fifth for the
5 purpose of this meeting. And of course the motion
6 would be, if someone would make it please, that Kevin
7 would serve as the permanent -- as the voting member
8 today.

9 MR. SANTOWASSO: So moved.

10 CHAIRMAN ENGELFRIED: A second please.

11 MS. LATHAM: I'll second.

12 CHAIRMAN ENGELFRIED: A motion from Leo,
13 second from Julia. All in favor?

14 (All respond Aye.)

15 CHAIRMAN ENGELFRIED: Okay, we're ready to do
16 some business. This procedure of course is being
17 videotaped and using the microphones is pretty
18 important as I'm constantly reminded.

19 The first item on the agenda before we get to
20 a hearing is to approve the minutes of the last
21 meeting. They've been distributed. Any comments? If
22 not, I'll take a motion to approve those.

23 MR. SANTOWASSO: I would move to approve the
24 minutes of the Board of Adjustment meeting of July 6,
25 2017.

1 CHAIRMAN ENGELFRIED: Second please?

2 MR. LARSEN: I'll second that.

3 CHAIRMAN ENGELFRIED: Thank you, Myles.

4 We'll just vote. All in favor?

5 (All respond Aye.)

6 CHAIRMAN ENGELFRIED: That's unanimous, thank
7 you. Now please a motion to move into the first public
8 hearing which had been known as Public Hearing No. 2.

9 MR. SANTOWASSO: So moved.

10 MR. DRUM: Before we start this, I asked for
11 some additional information.

12 CHAIRMAN ENGELFRIED: Not yet. We have to
13 open the public hearing.

14 MR. DRUM: Okay.

15 CHAIRMAN ENGELFRIED: Will you second the
16 opening of the public hearing?

17 MR. DRUM: Yes, I will second that.

18 CHAIRMAN ENGELFRIED: Thank you. All in
19 favor?

20 (All respond Aye.)

21 CHAIRMAN ENGELFRIED: Okay, we're in the
22 public hearing and I'll read that into the record, and
23 then Kevin, you can offer forth what you may want to
24 into it.

25 MR. DRUM: The purpose of this public hearing

1 is to receive testimony regarding the request from
2 section 9.13 Fences, Walls and Columns for property at
3 260 Lake Dornoch Dr. This property is located within
4 the R-30 Single Family Zoning District, further
5 identified by Moore County PID # 00019198.

6 Specifically, the applicant and owner, Peter Mattei --
7 pronounced right?

8 MR. MATTEI: Mattei.

9 CHAIRMAN ENGELFRIED: Mattei, I'm sorry.
10 Peter Mattei is requesting a variance from lakefront
11 rear fence setback requirement of 30 feet to a setback
12 of zero feet in order to construct a fence in the rear
13 yard.

14 Before we begin the presentations, we do need
15 to swear in -- attorneys are optional because they're
16 -- they operate under the court system, but anyone who
17 is going to give testimony should be sworn in. I think
18 Gwendy will do that. Mr. Mattei, that will be you and
19 anyone else that will speak for you.

20 (Mr. Mattei, Mr. Youngblood and Mr. Gould were
21 sworn by the court reporter to tell the truth.)

22 CHAIRMAN ENGELFRIED: If you have a seat at
23 the table with the mic, we can get started.

24 MR. MATTEI: So I'm requesting a variance for
25 my property to change the setback from 30 feet to zero

1 feet. I am making this request because I think that
2 changing the setback will create a fence that is more
3 aesthetically pleasing to the community, based on the
4 dimensions of the property and the location of some
5 shrubs and ground cover.

6 CHAIRMAN ENGELFRIED: Kevin Drum indicated
7 that he had a piece of information that he requested of
8 the Village and has a copy for all of us. I think it
9 has to do with property lines, but would you describe
10 it and give one to Mr. Mattei?

11 MR. DRUM: Sure. The picture -- all it is is
12 the picture didn't show the setback lines and we
13 estimated where the property line and the setback line
14 was. And I'm going to give you a copy. You know, this
15 is additional information I requested.

16 And sir, all it is is enhancing your
17 information. There's nothing

18 MR. GOULD: If I could elaborate on this.

19 CHAIRMAN ENGELFRIED: Please.

20 MR. GOULD: Kevin did come with me -- if you
21 noticed in the packet that you have, the survey
22 provided by the applicant didn't show the 30-foot
23 setback. So the rendering you have before you is a --
24 it's to scale, it is pretty much accurate, but it's a
25 representation of where the 30-foot setback line would

1 be from the property line, as well as the approximate
2 distance of the -- of also that 30-foot setback line
3 from the lake shore. So the _____ line of 60 foot
4 represents the distance from the lakeshore to the
5 30-foot setback line. And the 30-foot setback line
6 represents the distance from the property line.

7 MR. DRUM: So that was the question I asked
8 and I had to provide it to everyone since I asked it.

9 CHAIRMAN ENGELFRIED: Questions for Mr.
10 Mattei?

11 MR. SANTOWASSO: Well, let me start off.
12 What is the objection to the 30-foot setback, and why
13 can't that be done?

14 MR. MATTEI: So the objection to the 30-foot
15 setback is that it places the fence in an area of the
16 yard that is more visible to the rest of the community
17 and that detracts from the natural beauty of the
18 property. And putting it actually further toward the
19 lake provides more coverage from the natural vegetation
20 so that the fence is actually less noticeable.

21 So someone standing, you know, at the golf
22 course or at the bridge would probably notice the fence
23 a lot more if it was placed at the 30-foot setback and
24 it would not look as nice.

25 I believe the spirit and intent of the

1 ordinance is to maintain the beauty of Pinehurst golf
2 courses and lakes, and I think in this instance, it may
3 act contrary to that, depending on the Board's
4 assessment.

5 MS. LATHAM: I see that there is a neighbor
6 to the south, a single family home constructed in 1981.
7 Do you have any statements, do we have any statements
8 provided by that neighbor?

9 CHAIRMAN ENGELFRIED: We do not. It would
10 have to be life testimony. Is anyone here to speak for
11 CCNC?

12 MR. MATTEI: Yes, we do have someone that
13 represents (overspeak)

14 CHAIRMAN ENGELFRIED: There was a reason for
15 you to touch the Bible.

16 MR. YOUNGBLOOD: I'm sorry?

17 CHAIRMAN ENGELFRIED: There was a reason for
18 you to touch the Bible.

19 MR. YOUNGBLOOD: Right.

20 Could we have your name please again?

21 MR. YOUNGBLOOD: My name is Perry Youngblood.
22 I'm the chair of the architectural review committee at
23 CCNC.

24 CHAIRMAN ENGELFRIED: Speak into the mic
25 please. Thank you very much.

1 MR. YOUNGBLOOD: I'm chair of the
2 architectural review committee at CCNC. So we received
3 a request from Dr. Mattei for the installation of this
4 fence around his backyard at 260 Lake Dornoch Drive.
5 We carefully reviewed his request and found that it met
6 the requirements of our guidelines, so we approved the
7 request. And we then sent a letter to the Village from
8 the architectural review committee and the club general
9 manager, in support of Dr. Mattei's request.

10 I want to emphasize that we carefully review
11 any request for fences, and we do not approve them if
12 we feel the fence will detract either from one of our
13 lakes or golf course. We determined that Dr. Mattei's
14 proposed fence will not have either of these issues
15 relative to the lake or the golf course. While Dr.
16 Mattei's backyard is on the water, it is not a typical
17 lake-front property where a fence would detract from a
18 view across the lake. The water in this case is more a
19 creek that feeds into Lake Watson than it is a -- you
20 would consider a part of the lake. Also there is no
21 residential properties across the water from Dr. Mattei
22 who would have their views affected, and there is not
23 an impact on the view from a golf course.

24 So as we view it, Dr. Mattei wants to enclose
25 his backyard so his small children can make use of the

1 yard, and as Dr. Mattei said, we feel that if it is not
2 approved, if the variance is not approved, that the
3 result will be less attractive than if he can follow
4 the natural contours of his backyard with the fence.
5 So representing Dr. Mattei's neighbors, we urge that
6 you grant the variance.

7 CHAIRMAN ENGELFRIED: Thank you. You may
8 want to remain there in case someone has question of
9 you.

10 Folks, if and when we do vote on this today,
11 it will require four of five to approve, and the
12 question we will be asking ourselves now is: Does it
13 meet the four standards which had been presented in the
14 writeup. I don't know if any of you want to explore
15 those. That's the issue of hardship from strict
16 application of the ordinance; hardship from conditions
17 that are peculiar to the property and so on.

18 MR. SANTOWASSO: Yeah, I'd like to just go
19 through all four of them. The first one stipulates
20 that "unnecessary hardship would result from the strict
21 application of the ordinance, and it shall not be
22 necessary to demonstrate that in the absence of the
23 variance, no reasonable use can be made of the
24 property."

25 I don't believe this application can meet

1 that standard. The installation of the fence, no
2 matter where or without the variance is not an
3 unnecessary hardship, in my opinion. So in my opinion,
4 that standard can not be met, or has not been met. I
5 believe the fence can be constructed at the required
6 setback without creating a hardship.

7 The second standard indicates that "the
8 hardship results from conditions that are peculiar to
9 the property such as location, size, or topography.
10 Hardship resulting from personal circumstances, as well
11 as hardships resulting from conditions that are common
12 to the neighborhood or the general public may not be
13 the basis for granting the variance."

14 There are some peculiar conditions on the
15 property, but not to the extent that this standard can
16 be met. A fence located at the appropriate setback, 30
17 feet, again in my opinion, would not be a hardship that
18 would be peculiar to this property.

19 The third standard says "the hardship shall
20 not result from actions taken by the applicant or the
21 property owner." Well, I don't ... that is a fact, the
22 hardship, if there is any hardship, whether it is 30
23 feet or zero feet, the fence will still serve the
24 purpose without creating a hardship. It might provide
25 a little less area for a backyard, but I believe the

1 30-foot setback still provides enough room for the
2 purpose of a play area.

3 And the forth standard requires that "the
4 requested variance be consistent with the spirit,
5 purpose, and intent of the ordinance such that public
6 safely is secure and substantial justice is achieved."
7 Whether the fence is created at the 30-foot setback or
8 there is no setback, whether there is no fence, the
9 property has existed without a fence for many years,
10 predating the PDO, and I don't believe that the absence
11 of the fence created a safety hazard.

12 CHAIRMAN ENGELFRIED: I would make a couple
13 of comments and then let's invite the others on the
14 board to speak. In the third one, which I refer to it
15 as "C" in the writeup, to me it is very clear that
16 buying the property knowing that it might need a
17 variance to accomplish something is acceptable in this
18 appeal. And with regard to the word "hardship" that
19 was tested by me in my first meeting almost six years
20 ago when I asked someone what it meant, and of course
21 it says it's in the eyes of the beholder. There is
22 nothing in North Carolina law that specifically defines
23 the word "hardship".

24 The last item, I also would take the opposite
25 view of you, that with -- particularly with regard to

1 public safety and substantial justice. I don't quite
2 know what that means, but I would find that the test
3 for the last one had been met as well as the third one,
4 and I would likely argue the definition of hardship for
5 the first two. But I think we should hear from the
6 other people on the Board.

7 MR. LARSEN: I have question. Mr.
8 Youngblood, the decision from the architectural review
9 committee, was it unanimous?

10 MR. YOUNGBLOOD: Yes, it was.

11 MR. LARSEN: Have there been any objections
12 from any of the residents?

13 MR. YOUNGBLOOD: I'm not aware of any.

14 MR. LARSEN: Mr. Mattei, have you heard any
15 objections to what you'd like to have accomplished?

16 CHAIRMAN ENGELFRIED: I think that that would
17 end up being -- that is not evidence. Sorry, but it
18 would be good to have that information, but it is not
19 evidence that we can consider, unless it's here and
20 someone is testifying to it.

21 MR. DRUM: As the backup guy, I want to ask a
22 point of order, and I don't know if it is proper so
23 you're going to tell me in a minute. Can I find out
24 the exact attempt from staff on setback requirements on
25 golf courses and lakes, is that question worth asking?

1 I would like to know the intend of that.

2 MR. GOULD: The basis from my understanding
3 is, that really the golf courses and lakes become kind
4 of a secondary public realm, just as there are judicial
5 regulations for fences in front yards, given that
6 there's courses of play, there is view sheds, there is
7 those sorts of things, it's really to protect that
8 secondary public realm of the lake and the golf course.

9 In some instances it could be -- particularly
10 golf courses, the course of play that could be viewed,
11 aesthetic, numerous other things come into play in
12 order to deal with that public realm or the production
13 thereof.

14 MR. DRUM: And it could be egress to the
15 shoreline maybe, you know, like a boat or something, I
16 don't know.

17 MR. GOULD: Well, in many instances, you have
18 sewer lines and those sorts of things that would run
19 along the lakeshore, but I don't think that's the
20 intent from the zoning perspective. It's only a
21 secondary provision.

22 MR. DRUM: Okay, I just wanted to ask that.

23 CHAIRMAN ENGELFRIED: Any other questions you
24 want to raise?

25 MS. LATHAM: Do you know, Mr. Youngblood, the

1 property offset on the opposite shore, is that -- I
2 see, at least in our chart, it looks like it's set off
3 into lots. Has that been slated for development; do
4 you have any idea?

5 MR. YOUNGBLOOD: I stood in the backyard and
6 looked across the water and didn't see any homes. Is
7 that correct, Peter?

8 So I think there must be woodlands between
9 his lot and any lots that would be across the water.
10 There is some land that is a little to the left of
11 there across the water, but that's really adjacent to a
12 golf course, so there are no homes there that would
13 have a view that would be affected.

14 MS. LATHAM: Um-hum, and it sounds like from
15 testimony you gave before, your feeling was that when
16 we're thinking about view claims, the view claim from
17 the lake isn't one that really comes into play with
18 this particular property because of where it's situated
19 on the creek as you indicated?

20 MR. YOUNGBLOOD: That's correct. It's really
21 not what you would typically be concerned about as a
22 lake-front location. At CCNC if there is a lake-front
23 lot, we strongly discourage or prohibited fences
24 because we don't want them to affect the view across
25 the lake. But that just doesn't come into play here.

1 MS. LATHAM: And from your testimony it
2 sounded like the feeling from the architectural review
3 board, the CCNC, was that the view from Lake Dornoch
4 Drive was enhanced by having the fence at the zero
5 setback rather than the 30?

6 MR. YOUNGBLOOD: Yes, that's correct, because
7 it would be more near the plant life serving the back
8 of the -- back of the lot rather than if the setback is
9 applied, it would pretty much cut his backyard in half,
10 and would be more visible.

11 MS. LATHAM: Okay, thank you.

12 MR. SANTOWASSO: More visible to what?

13 MR. YOUNGBLOOD: More visible from the street
14 which is what she was asking about.

15 MR. SANTOWASSO: More visible from the
16 street?

17 MR. YOUNGBLOOD: It would be closer to the
18 street and probably more visible from the street. If
19 it was farther back it would be more integrated with
20 the plant life that's closer to the lake.

21 MR. SANTOWASSO: I don't believe it would
22 even be visible from the street with all of the
23 existing vegetation plus the house that's located on
24 the property. There are fencings on the property or on
25 the adjacent property. Is that not correct, Dr.

1 Mattei, there is a fence on the property to the south
2 of you?

3 MR. MATTEI: Yes, there is a kind of a fence
4 in the -- in one of the neighbor's across the lake,
5 yeah.

6 MR. SANTOWASSO: But that's not on your
7 property, directly adjacent to you on the south side of
8 your property?

9 MS. LATHAM: 207 Lake Dornoch is the property
10 he's talking about.

11 MR. MATTEI: There is a -- I don't know that
12 I would call it a fence. It is more like a -- one of
13 those green wire structures that are more temporary, I
14 think. Is that what he is talking about?

15 MR. YOUNGBLOOD: Yeah, I'm really not aware
16 of what is next door.

17 MR. SANTOWASSO: Okay. I was on the property
18 yesterday and I saw a fence essentially black chicken
19 wire I would call that.

20 MR. MATTEI: That -- I think that was -- that
21 was not on -- that is not something that was
22 constructed on my property. I think that --

23 MR. SANTOWASSO: Right, that existed for some
24 time.

25 MR. MATTEI: I think they may have put that

1 there to prevent like leaves from moving -- I am not
2 sure how that got there, but I can't really speak to
3 that.

4 MR. SANTOWASSO: Now, on the north side of
5 your property, side of the property that's closest to
6 the garden, are you aware of a fence there?

7 MR. MATTEI: On my property?

8 MR. SANTOWASSO: Yes, sir.

9 MR. MATTEI: There is a -- I think maybe a
10 fence that's kind of up along where the creek is where
11 somebody could fall in there.

12 MR. SANTOWASSO: Does that go all of the way
13 to the lake?

14 MR. MATTEI: No, it does not. It is just --
15 it kind of follows where that stream feeds in.

16 MR. SANTOWASSO: It is just a post and beam
17 fence with chicken wire on it.

18 MR. MATTEI: Yeah, and I'm -- no, that's -- I
19 think it's like a split rail fence.

20 MR. SANTOWASSO: Split rail, I call it a post
21 and beam. It does have some screening or fence
22 material on it.

23 MR. MATTEI: Yeah, I -- that fence, I am not
24 sure if it was constructed at the same time of the
25 property, or if that was there prior to the property

1 being there to prevent people from falling where that
2 dam is. So I can't speak to it other than that.

3 MR. SANTOWASSO: Thank you.

4 CHAIRMAN ENGELFRIED: Any other Board member
5 have additional questions?

6 MR. DRUM: No, I just wanted to note I was
7 there this morning, beautiful property. I asked to go
8 in the backyard and I guess your wife allowed me to go
9 back there. I noticed that the fence was there and it
10 went all of the way to the lake, all of the way into
11 the lake. It was like -- I don't know what it is,
12 chain link maybe, I don't know. But it goes all of the
13 way in and it's on the neighbor's property. So it goes
14 all of the way down. I just thought it was an
15 interesting point.

16 And as far as just to get to where -- you
17 know, where I am. I agree with two, three and four on
18 that. I am just talking to myself about one, and
19 trying to find, you know, the unnecessary hardship, and
20 how it is in the eye of the beholder. That's where I'm
21 at right now.

22 CHAIRMAN ENGELFRIED: Folks, we can leave the
23 hearing open and in case you want to continue to
24 discuss and think you might have more questions, or we
25 can close the hearing. If we close the hearing,

1 doubtful that we would reopen it, and we can consider a
2 decision right now, or we can hear the next case, if
3 you will, and get back to this one. Does anyone have
4 any reason why we should keep this open for additional
5 questions?

6 MR. GOULD: Fred, you may want to make sure
7 there is no one in the audience that may have anything
8 else to offer.

9 CHAIRMAN ENGELFRIED: That's a good question.
10 Anyone else like to speak on this matter?

11 MR. YOUNGBLOOD: I would like to follow-up
12 with the question that Mr. Drum addressed about what is
13 the purpose of the setback provisions, and that is the
14 way we were thinking about this from the standard point
15 of the architectural review committee. If a fence --
16 if this fence would have affected the view from a golf
17 course or a view across the lake, we would have not
18 allowed it, we would not approved it. In this case we
19 didn't think either of those was a problem and so we
20 did approve it.

21 MR. SANTOWASSO: Well, there are several
22 houses directly across this, what do you want to call
23 it, the lake in view of this rear lot. There are no
24 fences on those lots across the lake, and consequently
25 I guess from looking at this property from the other

1 side of the lake, this would be the only fence that
2 would be seen.

3 MR. YOUNGBLOOD: I guess your -- you've been
4 there since I was, but my recollection from visiting
5 the property was, that standing in the backyard here,
6 there were not houses in view across the water. It was
7 just a area next to the golf course, so we didn't see
8 any that -- properties across the lake that would be
9 affected by this.

10 CHAIRMAN ENGELFRIED: Anyone else like to
11 speak that is sitting here?

12 (No response.)

13 CHAIRMAN ENGELFRIED: Board, are you ready to
14 close this hearing then?

15 MR. SANTOWASSO: I guess so.

16 CHAIRMAN ENGELFRIED: Okay, I'll take a
17 motion to close the hearing and reenter our regular
18 meeting, please?

19 MR. SANTOWASSO: So moved.

20 CHAIRMAN ENGELFRIED: Leo, and second?

21 MR. LARSEN: Second?

22 CHAIRMAN ENGELFRIED: From Myles. All in
23 favor?

24 (All respond Aye)

25 CHAIRMAN ENGELFRIED: Unanimous. We now have

1 a choice. Would you like to discuss this further;
2 would you like to vote; or would you like to move on to
3 the next issue and get back to this?

4 MR. SANTOWASSO: I would like to have some
5 more discussion with the Board, amongst the Board and
6 deal with the question and vote.

7 CHAIRMAN ENGELFRIED: Okay, why don't you
8 lead the discussion if you would like to have that?

9 MR. SANTOWASSO: Well, as I specified with
10 regard to the standards, I don't think any of them
11 apply to this application. And so if there was a
12 motion made in the affirmative, I would be opposed.

13 MR. DRUM: I feel it meets two, three, and
14 four and I want to discuss with my team members, number
15 one, because I think it could be argued there is an
16 unnecessary hardship on everything from the HOA to the
17 homeowner.

18 MS. LATHAM: I read number one as first being
19 a threshold issue. If you don't find one, you don't
20 reach two, three and four. So that is the current --

21 MR. DRUM: Right, so it's about one. It is
22 about one, and the definition of unnecessary hardship.
23 That is where I am at. You know, I think it could be
24 argued -- they are arguing they have unnecessary
25 hardship. And I think that I am just trying to define

1 it, and I was hoping my team members could help me.

2 MS. LATHAM: For me the thing that makes the
3 difference is Mr. Youngblood's testimony, because what
4 is the hardship here is in a sense property value and
5 hardship to the community. And an argument could be
6 made that if the fence is going to be put at that
7 30-foot setback, it is going to harm the community
8 through the site plane from Lake Dornoch Road -- Lake
9 Dornoch Drive, but it seems that there is no harm to
10 the community as far as the lake view goes. And then
11 argument could be made that putting that fence at the
12 30-foot setback in some ways could diminish, perhaps
13 insignificant, but could diminish the property value.
14 So in my mind, I think you could reach unnecessary
15 hardship. Once again, how much of a hardship is it,
16 that is really --

17 MR. DRUM: Right, I'd agree.

18 CHAIRMAN ENGELFRIED: I am not sure we are
19 dealing with degrees on something that is not defined
20 by law.

21 MR. DRUM: I would say that the third thing
22 too that it is going to be seen, whether it's done on
23 the 30 foot or not on the 30 foot. So it's a matter
24 of, you know, which provides less of a -- I guess what
25 I am saying, there could be a fence there at the 30

1 foot line that could be seen, so I think it's not --
2 there can be a fence there, it's a matter of where it
3 is going to be. I don't know why I thought that was
4 worth saying, but I did.

5 MR. LARSEN: I feel like we have significant
6 testimony from Mr. Youngblood as a representative of
7 the architectural review committee, that they've
8 outlined that there are no objections. We are talking
9 about at the 30 foot, it could potentially be a
10 hardship, whereas further back sounds like it might be
11 less sightly -- or less unsightly, correct?

12 CHAIRMAN ENGELFRIED: The hearing is closed.
13 Good point.

14 MR. DRUM: And I have to say, my additional
15 documentation makes me do some flood plane, the water
16 could come up, but you don't know, but there is
17 significant room from the property line to the lake,
18 and that was way I did this follow-up document. There
19 is significant room, some areas it's up to 30 feet from
20 the property to the lake. That is weighing on me too.

21 CHAIRMAN ENGELFRIED: If there are no other
22 comments or discussion between us as a Board, I would
23 suggest this: someone make a motion to approve,
24 someone put up a second, then we can have further
25 discussion or vote. We don't need the language that we

1 had in planning and zoning order, we say it's
2 consistent. It's simply a motion to approve as
3 request, or denied.

4 MR. LARSEN: Then I make a motion to approve
5 as requested.

6 CHAIRMAN ENGELFRIED: Is there a second to
7 that?

8 MR. DRUM: I will second that motion.

9 CHAIRMAN ENGELFRIED: Second from Kevin Drum.
10 Thank you. Any further discussion? Otherwise we'll
11 vote through a roll call vote then.

12 Leo, you're on the record, you want to say it
13 again?

14 MR. SANTOWASSO: I would vote against
15 approval.

16 CHAIRMAN ENGELFRIED: Okay, Julia?

17 MS. LATHAM: I'll vote for approval.

18 CHAIRMAN ENGELFRIED: Myles?

19 MR. LARSEN: For approval.

20 CHAIRMAN ENGELFRIED: Kevin?

21 MR. DRUM: For approval.

22 CHAIRMAN ENGELFRIED: And a lot of synonyms I
23 guess, I'm four for. So it's approved four to one.
24 Thank you very much.

25 Okay, we have one other case to deal with

1 today. Is it referred to as Public Hearing No. 3. I
2 think that's going to be you, Mr. Buck Adams, and do we
3 need to swear in anyone else that hasn't been sworn in
4 this matter?

5 (Mr. Buck Adams and Ms. McAllister were
6 sworn by the court reporter to tell the truth.)

7 CHAIRMAN ENGELFRIED: Thank you, if you want
8 to make yourself comfortable. I'll poll the Board, I
9 didn't do it on the last one and that's my error. Does
10 anyone have any financial interest in the outcome of
11 this, or have they had any ex parte communications
12 regarding it?

13 (All respond negatively.)

14 MR. SANTOWASSO: We did close Public Hearing
15 No. 2, right?

16 CHAIRMAN ENGELFRIED: Yes. You're testing me
17 after last ...

18 That being the case, could I have a motion to
19 open the second public hearing please, and then I'll
20 read the case into the record?

21 MR. LARSEN: So moved.

22 MR. SANTOWASSO: second.

23 CHAIRMAN ENGELFRIED: Myles, motion; second,
24 Leo. All in favor?

25 (All respond Aye.)

1 CHAIRMAN ENGELFRIED: Thank you. We are now
2 in Public Hearing No. 2 and I will read it into the
3 record. The purpose of this public hearing is to
4 receive testimony for a variance request from Sector
5 9.2A, table of dimensional requirements for property at
6 1144 Chicken Plant Road. This property is located
7 within the R210 single family zoning district, further
8 identified by Moore County PID # 00029912.

9 Specifically the applicant and owner, Carolyn
10 McAllister is requesting a variance from R210
11 dimensional requirements and asking that the R30 single
12 family dimensional requirements apply.

13 And I'll turn it over to you.

14 MR. ADAMS: Good afternoon. My name is Buck
15 Adams and I'm a lawyer here in Pinehurst and I'm
16 accompanied by my client, Carolyn McAllister. You
17 have seen our request. This is an unusual piece of
18 property in that it's roughly an acre size and it's
19 been that size, I might add, by deeds dated all of the
20 way back to 1981 which predates of course the
21 ordinance. It's unusual again in that it's surrounded
22 by properties that are more appropriately zoned R210.
23 In this case, one-acre zoning, as you might have seen
24 from the survey, makes the property basically unusable
25 for residential purposes. If you apply those at the

1 applicable R210 setbacks to it, you end up with just a
2 very, very, narrow rectangular area within which
3 construction can take place, far too small for anything
4 even remotely resembling a residential dwelling.

5 We believe that because of the size of this
6 property, that R30 zoning is much more appropriate for
7 it. And I would also add that there are some
8 properties in the vicinity out there, there is one
9 across the street -- actually two across the street.
10 One directly across and one farther down Chicken Plant
11 Road, back toward Linden Road that are residential,
12 that are roughly the size of this property, and they
13 are again being used at this time as residential
14 properties.

15 So the lot as we would develop it under R10
16 or our client would, would be consistent with those
17 other two uses. Again, this just seems to me to be an
18 outlier, a property that really, I think, it might be
19 unfortunately, was caught up in R210 zoning which
20 really it's just not applicable to it.

21 CHAIRMAN ENGELFRIED: Would the Board like to
22 ask any questions?

23 MR. SANTOWASSO: Yes, does anyone know what
24 the net acreage is when the road area is deducted?

25 MR. ADAMS: Give me a moment. Let me see if

1 I have that information with me. Minus the road, the
2 county calculates it as .639 acres.

3 MR. SANTOWASSO: I'm sorry?

4 MR. ADAMS: The county -- minus the road, the
5 county calculates it in its tax billing -- for tax
6 billing purposes as .639 acres.

7 MR. SANTOWASSO: Thank you. You indicated
8 that a residence could not be built on this property?

9 MR. ADAMS: Under R --

10 MR. SANTOWASSO: Under the R210 regulation?

11 MR. ADAMS: Yes, sir. There is a -- if you
12 look at the survey, you will see that surveyor has
13 depicted, like I say, a small sort of a rectangular
14 area within which the construction could take place.

15 MR. SANTOWASSO: That calculates roughly to
16 about 2700 square feet. The dimensions are roughly
17 about, I'm averaging the lines parallel to the road and
18 taking the depth as scaled from the drawing, of
19 approximately 28 feet, that results in the 27020 square
20 foot approximate area for a building, honoring the
21 setbacks of the 210 zoning.

22 MR. ADAMS: Is that -- are you looking at the
23 -- which area are you looking -- you're looking at the
24 shaded area or are you looking at the area behind that?

25 MR. SANTOWASSO: I am looking at the area

1 behind it, sort of an irregular area, it's not a
2 rectangle, it's square on three sides, but then there's
3 the angle and the radius of the curve that are
4 incorporated, so it's an average I'm taking of the
5 dimensions of the lot. The dimensions of the shaded
6 area where the house would be proposed to be located
7 under the R30 results in about a 2400 square foot
8 footprint. So I don't understand the contention that a
9 house could not be built on the property.

10 MR. ADAMS: That's -- I don't know what --
11 can I take a look at -- the survey that you all are
12 looking at? Can one of you provide me a copy of that?

13 (Document handed to Mr. Adams.)

14 MR. ADAMS: Okay, so yes, in terms of the
15 square footage, absolutely, there is -- I don't deny
16 that, but if you look at the configuration of that,
17 again, it is more narrow, it's more -- again, you've
18 got the irregularity there, and the -- it's -- when you
19 look at the -- what could actually fall within that
20 area, I just -- I have trouble -- I have difficulty
21 thinking that anything that could be reasonably
22 constructed would fit in there. Now of course if you
23 look at the lines, of course you're looking at the
24 exterior of the house itself, so if you consider the
25 living space within that house, you know, of course it

1 is going to be much smaller than that.

2 MR. SANTOWASSO: Well, it's not too much
3 different from the area that's shaded where the house
4 would be proposed to be located if you got the variance
5 approved, so what's the difference?

6 MR. ADAMS: It's -- I would argue that the
7 difference is, one thing, it is more -- again, it's
8 more narrow. I mean, if you say -- if you're
9 measuring at 28 feet, I don't have that measurement on
10 here --

11 MR. SANTOWASSO: Okay, I don't want to beat a
12 dead horse, but I think your statement that a house
13 could not be built on the property is not germane to
14 this application.

15 MR. ADAMS: Well --

16 MR. SANTOWASSO: I don't know the answer to
17 that because these lines are not marked, so I don't
18 know the dimensions of them. It appears to me to be
19 very small. I will say that.

20 CHAIRMAN ENGELFRIED: Are there any --

21 MR. ADAMS: And I don't know -- I would add
22 that I don't know that a house, if you look at the --
23 give me just one more moment. (pause.)

24 Okay, I apologize. I just wanted to look at
25 one thing. I have nothing further to add in that

1 regard.

2 MR. SANTOWASSO: Are there public utilities
3 available to serve the property?

4 MR. ADAMS: I believe that there are. The
5 surrounding properties are being served by utilities so
6 it would lead me to believe that they are available for
7 this property.

8 MR. SANTOWASSO: Bruce, do you know if there
9 is public utilities there?

10 MR. GOULD: There is not public water and
11 sewer, but there would be I'd say power, cable, and
12 other public utilities. I mean if the question
13 references, when you speak of public utilities, which
14 utilities are you speaking of?

15 MR. SANTOWASSO: Water and sewer.

16 MR. GOULD: To my knowledge they are not
17 available.

18 MR. SANTOWASSO: So there would have to be a
19 private well and septic system?

20 MS. LATHAM: Am I correct in understanding,
21 Bruce, that this lot is already nonconforming?

22 MR. GOULD: It is nonconforming relative to
23 size.

24 MR. SANTOWASSO: Pre-existing nonconforming
25 lot.

1 MR. GOULD: Pre-existing nonconforming lot.
2 Zoning was not placed in that area to the EEA was
3 expanded and extended, which was after the lot was
4 created in 1981.

5 MS. LATHAM: Thank you.

6 MR. SANTOWASSO: There are two driveway pipes
7 in the swale across the front of that property. Do you
8 know if both of those driveway pipes are within your
9 property lines?

10 MR. ADAMS: I don't know the answer to that,
11 no, sir.

12 CHAIRMAN ENGELFRIED: Are you tapped?

13 MR. SANTOWASSO: I will shut up for a while.

14 CHAIRMAN ENGELFRIED: If you have more keep
15 going. Myles, Kevin, anything you want to chime in on?

16 MR. DRUM: No, not at this time. I just want
17 to -- I would like to hear him go through the rest of
18 them on the application for request for variance.

19 MR. ADAMS: If you'd like for me to do that
20 --

21 MR. DRUM: I would like you to do that. Just
22 go through that.

23 MR. ADAMS: Sure. Starting with the first,
24 so unnecessary hardship would result from the strict
25 application of the ordinance. Again, what we are

1 looking at, if in the -- with R210 zoning, you know,
2 even conceding that that house could be built in that
3 location, what that means of course is that house can
4 only be built in that location. So to me, that seems
5 to be an unnecessary hardship. It really gives the
6 property owner no leeway whatsoever in being able to
7 situate the home to his or her desired location within
8 that property. I'll stop right there if you'd like for
9 me to discuss -- if you all want to discuss that
10 further, or if you want me to move on to point two,
11 I'll do whatever you'd like for me to.

12 CHAIRMAN ENGELFRIED: Does anyone want to have
13 that expanded or discussed further?

14 MR. DRUM: No, keep on going.

15 MR. ADAMS: Number two, the conditions
16 peculiar to the property, we've really already
17 discussed this. Again it's a lot that is much smaller
18 in size than the surrounding properties, the condition
19 is not common to the neighborhood. So again, I would
20 say that the size of the lot speaks for itself as to
21 conditions that are peculiar to this property, because
22 size of course is indicated as an example of that. And
23 I'll stop there for any discussion.

24 The third, the hardship did not result from
25 actions taken by the applicant or property owner.

1 Again, as I mentioned at the outset, and I've got
2 copies of these deeds if you would like for me to
3 provide them to you now or at some future time, but I
4 am a real estate attorney. I did the title search on
5 this property. And the property is unchanged in size
6 or configuration as far as back as 1981. So we're
7 looking at 36 years ago. So for 36 years it has been
8 in this configuration and size. Again, I'll stop there
9 if there is any discussion.

10 And finally, regarding the spirit, purpose
11 and intent of the ordinance, you know, again I would
12 just state that substantial justice, again, I think
13 that it makes the property -- it makes the property
14 much more desirable for a residential property
15 dwelling, and again, there is a property right across
16 the street from it that's residential of a similar
17 size, and again on down the street. So this property
18 seems to me to be more consistent with those two other
19 properties, which again happen to have existing homes
20 on them and are being used for residential purposes.

21 It is hard for me to -- I just don't
22 know that under the present zoning, this property would
23 continue to be desirable as a residential property.
24 Again, as I mentioned in my request, it's a property
25 that would primarily have value to adjoining property

1 owners who were seeking to increase the size of their
2 existing properties.

3 MR. SANTOWASSO: How do you know that?

4 MR. ADAMS: Well, it just seems to me that if
5 you -- if I go out and try to sell someone a lot and I
6 say okay, now here's where you're going to put the
7 house. And they say well, why is that? And I say,
8 well, that's because that is the only place you can put
9 the house. Again that's -- I think that is going to
10 limit the audience.

11 MR. SANTOWASSO: What does that have to do
12 with this variance request?

13 MR. ADAMS: I just add it as a point of, is
14 it substantial justice? I mean, I think you can put it
15 into that category.

16 CHAIRMAN ENGELFRIED: We might be drifting
17 away from competent evidence in this discussion. Let's
18 refocus on the hardship issues. Any other comments or
19 questions on either one, two, three or four? Kevin?

20 MR. DRUM: No, I am just trying to figure out
21 same thing as the previous one, number one, the
22 hardship. The hardship is -- how is the hardship
23 defined. You're defining the hardship as the placement
24 of the house, where it would be placed is unusual
25 because of the zoning designation.

1 MR. ADAMS: I think unusual and also
2 constraining.

3 MR. DRUM: Constraining, okay.

4 CHAIRMAN ENGELFRIED: Julia, how are you
5 doing?

6 MS. LATHAM: I'm fine.

7 CHAIRMAN ENGELFRIED: Myles?

8 MR. LARSEN: I'm fine.

9 CHAIRMAN ENGELFRIED: Leo?

10 MR. SANTOWASSO: I'm fine.

11 CHAIRMAN ENGELFRIED: We know. I would think
12 also about the first item in hardship, and it strikes
13 me that -- and I won't refer to it as Leo's argument,
14 but Leo's presentation, you were looking for consent
15 that a house could be built there in a different
16 location. There seems to be some agreement on that. I
17 don't necessarily think that because that can be done,
18 it should be mandated that way. And that this would be
19 a denial, that is the only place you can put the house.
20 A single family home is a single family home. If it is
21 architecturally appropriate and the Village determines
22 that through the building code and the standards that
23 they apply. That would be my opinion on number one.

24 We have a choice as we did the last time. We
25 can leave the hearing open in case we want to talk to

1 Mr. Adams or Ms. McAllister again, or we can have a
2 motion to close the public hearing, and re-enter our
3 regular scheduled meeting and have any further
4 discussion that might be required.

5 MR. DRUM: I make a motion to close the
6 public hearing unless someone has a public comment.

7 CHAIRMAN ENGELFRIED: Oh, good, thank you for
8 bringing that up. It looks like the answer is no.
9 That is a motion from Kevin to close the public hearing
10 and reenter our regular meeting. Second please?

11 MS. LATHAM: I'll second.

12 CHAIRMAN ENGELFRIED: Julia. All in favor?

13 (All respond Aye)

14 CHAIRMAN ENGELFRIED: It's unanimous. Our
15 choices now are we could postpone this and talk about
16 it at the next meeting, we could talk about it some
17 more here, we could do as we did in the last case and
18 make a motion, draw a second, have a little more
19 discussion if any, and then go to vote.

20 MR. DRUM: I am going to make an attempt at
21 making a motion.

22 CHAIRMAN ENGELFRIED: Okay.

23 MR. DRUM: Make a motion not to accept it as
24 presented, but accept it as adjusted, item one adjusted
25 by the attorney in positioning the hardship; in other

1 words, that application, the definition, the way he
2 further defined hardship, because I think Leo had some
3 good points there. But as the hardship was redefined,
4 so really accepting the motion -- the accepting it as
5 read, make a motion to accept the variance as written.

6 CHAIRMAN ENGELFRIED: Your motion is to
7 approve the application?

8 MR. DRUM: Yes.

9 CHAIRMAN ENGELFRIED: And you're notating the
10 amended definition.

11 MR. DRUM: The amended definition of item
12 one, hardship. That's important for me to do that,
13 because without that I wouldn't be making the motion.

14 CHAIRMAN ENGELFRIED: Does anyone want Kevin
15 to discuss that further so that you're understanding
16 that?

17 MR. LARSEN: Understand.

18 MR. SANTOWASSO: But you accept -- well,
19 forget it. You're going to have to comply with all of
20 the requirements of the R3 -- R30 zoning.

21 MR. DRUM: Of course, that's beyond us,
22 that's in the Planning and Zoning Board -- I mean the
23 Planning Department's hands.

24 CHAIRMAN ENGELFRIED: Do we have a second to
25 the motion?

1 MR. LARSEN: I second it.

2 CHAIRMAN ENGELFRIED: Thank you, Myles. Any
3 further discussion? Okay, we'll go roll call again.
4 Start with you, Myles?

5 MR. LARSEN: Yes.

6 CHAIRMAN ENGELFRIED: Julia?

7 MS. LATHAM: Yeah.

8 CHAIRMAN ENGELFRIED: Leo?

9 MR. SANTOWASSO: No.

10 CHAIRMAN ENGELFRIED: Kevin?

11 MR. DRUM: Yes.

12 CHAIRMAN ENGELFRIED: I'm four for again.
13 Four for, thank you very much. You'll get a written
14 decision within 30 days.

15 MR. ADAMS: Okay, thank you all very much.

16 CHAIRMAN ENGELFRIED: We have a couple other
17 items folks, small potatoes but relative to the Board
18 of Adjustment agenda. One, general business, we do
19 need distribution -- Gwendy's gone. We need
20 distribution on the policy procedures that we moved the
21 last time.

22 MR. GOULD: We may have to get that to you at
23 another time, Fred.

24 CHAIRMAN ENGELFRIED: We need electronic
25 copy.

1 MR. GOULD: We can do that.

2 CHAIRMAN ENGELFRIED: That's all we need.
3 Because we approved it with a couple of subtle changes.
4 Our next meeting is September 7th. And the question
5 is, does anyone have any other business they would like
6 to conduct?

7 MR. LARSEN: None.

8 MR. DRUM: Just one, welcome Julia.

9 CHAIRMAN ENGELFRIED: I would say the best
10 decisions are ones that are contested, and thank you,
11 Leo. And Julia, thanks for diving right in. It's a
12 pleasure having you at the table.

13 MS. LATHAM: Thanks.

14 CHAIRMAN ENGELFRIED: Motion to adjourn
15 please?

16 MR. DRUM: I'll make a motion to adjourn.

17 MR. SANTOWASSO: Second.

18 CHAIRMAN ENGELFRIED: All in favor.

19 (All respond Aye.)

20 (The meeting was adjourned at 5:28 p.m.)

21

22

23

24

25

**VILLAGE OF PINEHURST ZONING BOARD OF ADJUSTMENT
FINDINGS OF FACT
DOCKET # X-17**

Variance Request for 1144 Chicken Plan 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 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

I, Lauren Craig, Village Clerk a Notary Public for said Moore County and North Carolina do hereby certify that A.C. Engelfried, Chairperson of the Board of Adjustment, Village of Pinehurst, personally appeared before me this day and acknowledged the foregoing document. Witness my hand and official seal this the ____ day of _____.

Lauren Craig, Village Clerk
Notary Public
My Commission expires: _____

SEAL

A. C. Engelfried, Chairperson

Gwendy Hutchinson, Secretary



**BOARD OF ADJUSTMENT
AUGUST 3, 2017
ASSEMBLYHALL
395 MAGNOLIA ROAD
PINEHURST, NORTH CAROLINA
4:30 PM**

MINUTES

Board Members in Attendance:

Fred Engelfried, Chair
Kevin Drum, BOA Alternate
Leo Santowasso, BOA
Julia Latham, BOA ETJ
Myles Larsen, BOA Alternate

Board Members Absent:

Cyndie Burnett, BOA Alternate
Jeff Haarlow, BOA Alternate
David Kelley, BOA
Mike Marsh, BOA

Staff in Attendance:

Bruce Gould, Principal Planner
Alex Cameron, Planner
Gwendy Hutchinson, Planning and Administrative Assistant
Sandra DeGarmo Wise, President
Starkings Court Reporting & Video Services

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, businesses, and visitors. Values: Service, Initiative, Teamwork, and Improvement.

I. Call to Order

Chairman Engelfried confirmed there was a quorum present and called the meeting to Order. Chairman Engelfried stated that there were four items on the agenda and now there are only two. The first public item that was withdrawn had to do with an issue of a tree and the second issue had to do with an A-frame sign in the Village that will be heard at another time.

Chairman Engelfried asked for a motion to appoint ETJ member, Julia Latham as a permanent member of the Board of Adjustment. The motion was made by Myles Larsen; Leo Santowasso seconded the motion, which was approved by 4-0 with Julia Latham abstaining from voting.

Chairman Engelfried asked for another motion to appoint Kevin Drum BOA Alternate as a voting member of the Board for this meeting. The motion was made by Leo Santowasso to appoint Kevin Drum, BOA Alternate as a voting member of the Board for this meeting to reflect that there are 5 votes on the Board; Julia Latham seconded the motion which as approved by a 4-0 vote with Kevin Drum abstaining from voting.

II. Approval of Minutes A. July 6, 2017

Leo Santowasso made a motion to approve the July 6, 2017 Minutes; Myles Larsen seconded the motion, which was unanimously approved.

III. Sworn in:

The following were sworn in by Sandra DeGarmo Wise, Court Reporter: Peter Mattei, Applicant and Property Owner; Perry Youngblood, Chairman of the Architectural Review Committee at CCNC; and Bruce Gould, Principal Planner.

Leo Santowasso made a motion to recess its regular meeting and to open Public Hearing #1; Kevin Drum seconded the motion, which was unanimously approved.

IV. Public Hearing

A. Public Hearing No. 1

The purpose of this public hearing is to receive testimony for a variance request from section 9.13 Fences, Walls and Columns for property at 260 Lake Dornoch Dr. This property is located within the R-30 (Single Family) Zoning District, further identified by Moore County PID # 00019198.

Specifically, the applicant and owner Peter L. Mattei is requesting a variance from lake front rear fence setback requirement of 30' to a setback of 0' in order to construct a fence in the rear yard.

Chairman Engelfried read portions of the staff report into the record.

Peter Mattei, Applicant and Property Owner and Perry Youngblood, Chairman of the Architectural Review Committee at CCNC were present to answer any questions or address any concerns of the Board.

Leo Santowasso discussed each of the four (4) standards as presented.

Chairman Engelfried asked for a motion to close Public Hearing #1

Leo Santowasso made a motion to close Public Hearing #1 and to reenter into its regular meeting; Myles Larsen seconded the motion, which was unanimously approved.

After discussion, Myles Larsen made a motion to approve the request for a variance from the lake front rear fence setback requirement of 30' to a setback of 0' in order to construct a fence in the rear yard; Kevin Drum seconded the motion.

Poll the Board:

Myles Larsen Yes

Leo Santowasso No

Julia Latham Yes

Kevin Drum Yes

Fred Engelfried Yes

The vote was 4-1 to approve the request for a variance.

Copies of the transcript are available at the Planning Department.

V. Sworn in:

The following were sworn in by the Sandra DeGarmo Wise, Court Reporter; Buck Adams, Attorney; Carolyn McAllister, Applicant and Property Owner.

Myles Larsen made a motion to recess the regular meeting and to open Public Hearing #2; Leo Santowasso seconded the motion, which was unanimously approved.

B. Public Hearing No. 2

The purpose of this public hearing is to receive testimony for a variance request from section 9.2a Table of Dimensional Requirements for property at 1144 Chicken Plant Rd. This property is located within the R-210 (Single Family) Zoning District, further identified by Moore County PID # 00029912. Specifically, the applicant and owner Carolyn McAllister is requesting a variance from R- 210 Dimensional Requirements and asking that the R-30 (Single Family) Dimensional Requirements apply.

Chairman Engelfried read portions of the staff report into the record.

Buck Adams, Attorney and Caroline McAllister, Applicant and Property Owner were present to answer any questions or address any concerns of the Board.

Buck Adams discussed each of the (4) four standards as presented.

There were no public comments.

Kevin Drum made a motion to close the public hearing #2 and reenter into the regular meeting; Julia Latham seconded the motion, which was unanimously approved.

After discussion, Kevin Drum made a motion to accept the variance as written; Myles Larsen seconded the motion, which was voted 4-1 in favor of the variance.

Poll the Board:

Myles Larsen Yes

Julia Latham Yes

Leo Santowasso No

Kevin Drum Yes

Fred Engelfried Yes

The vote was 4-1 to approve the request for a variance.

Copies of the transcript are available at the Planning Department.

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, businesses, and visitors. Values: Service, Initiative, Teamwork, and Improvement.

VI. General Business

Chairman Engelfried asked staff for electronic copies of the Rules of Procedure; Bruce Gould, Principal Planner responded that they would get them to the Board. Kevin Drum welcomed new member Julia Latham and Chairman Engelfried thanked Julia for stepping in and participating in the meetings.

VII. Next Meeting Date A. September 7, 2017

VIII. Motion to Adjourn

With no further discussion, Keven Drum made a motion to adjourn. Leo Santowasso seconded the motion, which was carried unanimously. The meeting adjourned at 5:28 pm.

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, businesses, and visitors. Values: Service, Initiative, Teamwork, and Improvement.

BOARD OF ADJUSTMENT MEETING

HELD ON:

August 3, 2017

4:30 p.m.

HELD AT:

Assembly Hall

395 Magnolia Road

Pinehurst, North Carolina

Chairman: Fred Engelfried

Members: Leo Santowasso

Myles Larsen

Julia Latham

Kevin Drum

Reported by: Sandra DeGarmo Wise, CVR-M

1 CHAIRMAN ENGELFRIED: It is 4:30. This is
2 the regularly scheduled meeting of the Pinehurst Board
3 of Adjustment. Some disappointment perhaps for
4 somebody; there were four items on the agenda, there is
5 now only two. The first public item that was withdrawn
6 in the second publication had to do with an issue of a
7 tree, and that has been completely withdrawn. The
8 second issue had to do with an A-frame sign in the
9 Village, that will be heard at another date.

10 Some housekeeping things before we get
11 started, setting a quorum and we have five people which
12 will accomplish that purpose, but I need a couple of
13 motions to get us the rest of the way. Motion first
14 please, and this is not mandated but it is a tradition
15 at the Board of Adjustment that the ETJ member becomes
16 a permanent member the Board of Adjustment. If I could
17 have a motion please to nominate Julia to be a
18 permanent member of the Board of Adjustment.

19 MR. LARSEN: I nominate.

20 MR. SANTOWASSO: Second.

21 CHAIRMAN ENGELFRIED: Second from Leo, have
22 any discussion.

23 (No comment.)

24 CHAIRMAN ENGELFRIED: Let's vote. All in
25 favor, Aye.

1 (All respond Aye.)

2 CHAIRMAN ENGELFRIED: And Julia abstained.
3 Welcome Julia. We now have four permanent members
4 sitting at the table, and we need a fifth for the
5 purpose of this meeting. And of course the motion
6 would be, if someone would make it please, that Kevin
7 would serve as the permanent -- as the voting member
8 today.

9 MR. SANTOWASSO: So moved.

10 CHAIRMAN ENGELFRIED: A second please.

11 MS. LATHAM: I'll second.

12 CHAIRMAN ENGELFRIED: A motion from Leo,
13 second from Julia. All in favor?

14 (All respond Aye.)

15 CHAIRMAN ENGELFRIED: Okay, we're ready to do
16 some business. This procedure of course is being
17 videotaped and using the microphones is pretty
18 important as I'm constantly reminded.

19 The first item on the agenda before we get to
20 a hearing is to approve the minutes of the last
21 meeting. They've been distributed. Any comments? If
22 not, I'll take a motion to approve those.

23 MR. SANTOWASSO: I would move to approve the
24 minutes of the Board of Adjustment meeting of July 6,
25 2017.

1 CHAIRMAN ENGELFRIED: Second please?

2 MR. LARSEN: I'll second that.

3 CHAIRMAN ENGELFRIED: Thank you, Myles.

4 We'll just vote. All in favor?

5 (All respond Aye.)

6 CHAIRMAN ENGELFRIED: That's unanimous, thank
7 you. Now please a motion to move into the first public
8 hearing which had been known as Public Hearing No. 2.

9 MR. SANTOWASSO: So moved.

10 MR. DRUM: Before we start this, I asked for
11 some additional information.

12 CHAIRMAN ENGELFRIED: Not yet. We have to
13 open the public hearing.

14 MR. DRUM: Okay.

15 CHAIRMAN ENGELFRIED: Will you second the
16 opening of the public hearing?

17 MR. DRUM: Yes, I will second that.

18 CHAIRMAN ENGELFRIED: Thank you. All in
19 favor?

20 (All respond Aye.)

21 CHAIRMAN ENGELFRIED: Okay, we're in the
22 public hearing and I'll read that into the record, and
23 then Kevin, you can offer forth what you may want to
24 into it.

25 MR. DRUM: The purpose of this public hearing

1 is to receive testimony regarding the request from
2 section 9.13 Fences, Walls and Columns for property at
3 260 Lake Dornoch Dr. This property is located within
4 the R-30 Single Family Zoning District, further
5 identified by Moore County PID # 00019198.

6 Specifically, the applicant and owner, Peter Mattei --
7 pronounced right?

8 MR. MATTEI: Mattei.

9 CHAIRMAN ENGELFRIED: Mattei, I'm sorry.
10 Peter Mattei is requesting a variance from lakefront
11 rear fence setback requirement of 30 feet to a setback
12 of zero feet in order to construct a fence in the rear
13 yard.

14 Before we begin the presentations, we do need
15 to swear in -- attorneys are optional because they're
16 -- they operate under the court system, but anyone who
17 is going to give testimony should be sworn in. I think
18 Gwendy will do that. Mr. Mattei, that will be you and
19 anyone else that will speak for you.

20 (Mr. Mattei, Mr. Youngblood and Mr. Gould were
21 sworn by the court reporter to tell the truth.)

22 CHAIRMAN ENGELFRIED: If you have a seat at
23 the table with the mic, we can get started.

24 MR. MATTEI: So I'm requesting a variance for
25 my property to change the setback from 30 feet to zero

1 feet. I am making this request because I think that
2 changing the setback will create a fence that is more
3 aesthetically pleasing to the community, based on the
4 dimensions of the property and the location of some
5 shrubs and ground cover.

6 CHAIRMAN ENGELFRIED: Kevin Drum indicated
7 that he had a piece of information that he requested of
8 the Village and has a copy for all of us. I think it
9 has to do with property lines, but would you describe
10 it and give one to Mr. Mattei?

11 MR. DRUM: Sure. The picture -- all it is is
12 the picture didn't show the setback lines and we
13 estimated where the property line and the setback line
14 was. And I'm going to give you a copy. You know, this
15 is additional information I requested.

16 And sir, all it is is enhancing your
17 information. There's nothing

18 MR. GOULD: If I could elaborate on this.

19 CHAIRMAN ENGELFRIED: Please.

20 MR. GOULD: Kevin did come with me -- if you
21 noticed in the packet that you have, the survey
22 provided by the applicant didn't show the 30-foot
23 setback. So the rendering you have before you is a --
24 it's to scale, it is pretty much accurate, but it's a
25 representation of where the 30-foot setback line would

1 be from the property line, as well as the approximate
2 distance of the -- of also that 30-foot setback line
3 from the lake shore. So the _____ line of 60 foot
4 represents the distance from the lakeshore to the
5 30-foot setback line. And the 30-foot setback line
6 represents the distance from the property line.

7 MR. DRUM: So that was the question I asked
8 and I had to provide it to everyone since I asked it.

9 CHAIRMAN ENGELFRIED: Questions for Mr.
10 Mattei?

11 MR. SANTOWASSO: Well, let me start off.
12 What is the objection to the 30-foot setback, and why
13 can't that be done?

14 MR. MATTEI: So the objection to the 30-foot
15 setback is that it places the fence in an area of the
16 yard that is more visible to the rest of the community
17 and that detracts from the natural beauty of the
18 property. And putting it actually further toward the
19 lake provides more coverage from the natural vegetation
20 so that the fence is actually less noticeable.

21 So someone standing, you know, at the golf
22 course or at the bridge would probably notice the fence
23 a lot more if it was placed at the 30-foot setback and
24 it would not look as nice.

25 I believe the spirit and intent of the

1 ordinance is to maintain the beauty of Pinehurst golf
2 courses and lakes, and I think in this instance, it may
3 act contrary to that, depending on the Board's
4 assessment.

5 MS. LATHAM: I see that there is a neighbor
6 to the south, a single family home constructed in 1981.
7 Do you have any statements, do we have any statements
8 provided by that neighbor?

9 CHAIRMAN ENGELFRIED: We do not. It would
10 have to be life testimony. Is anyone here to speak for
11 CCNC?

12 MR. MATTEI: Yes, we do have someone that
13 represents (overspeak)

14 CHAIRMAN ENGELFRIED: There was a reason for
15 you to touch the Bible.

16 MR. YOUNGBLOOD: I'm sorry?

17 CHAIRMAN ENGELFRIED: There was a reason for
18 you to touch the Bible.

19 MR. YOUNGBLOOD: Right.

20 Could we have your name please again?

21 MR. YOUNGBLOOD: My name is Perry Youngblood.
22 I'm the chair of the architectural review committee at
23 CCNC.

24 CHAIRMAN ENGELFRIED: Speak into the mic
25 please. Thank you very much.

1 MR. YOUNGBLOOD: I'm chair of the
2 architectural review committee at CCNC. So we received
3 a request from Dr. Mattei for the installation of this
4 fence around his backyard at 260 Lake Dornoch Drive.
5 We carefully reviewed his request and found that it met
6 the requirements of our guidelines, so we approved the
7 request. And we then sent a letter to the Village from
8 the architectural review committee and the club general
9 manager, in support of Dr. Mattei's request.

10 I want to emphasize that we carefully review
11 any request for fences, and we do not approve them if
12 we feel the fence will detract either from one of our
13 lakes or golf course. We determined that Dr. Mattei's
14 proposed fence will not have either of these issues
15 relative to the lake or the golf course. While Dr.
16 Mattei's backyard is on the water, it is not a typical
17 lake-front property where a fence would detract from a
18 view across the lake. The water in this case is more a
19 creek that feeds into Lake Watson than it is a -- you
20 would consider a part of the lake. Also there is no
21 residential properties across the water from Dr. Mattei
22 who would have their views affected, and there is not
23 an impact on the view from a golf course.

24 So as we view it, Dr. Mattei wants to enclose
25 his backyard so his small children can make use of the

1 yard, and as Dr. Mattei said, we feel that if it is not
2 approved, if the variance is not approved, that the
3 result will be less attractive than if he can follow
4 the natural contours of his backyard with the fence.
5 So representing Dr. Mattei's neighbors, we urge that
6 you grant the variance.

7 CHAIRMAN ENGELFRIED: Thank you. You may
8 want to remain there in case someone has question of
9 you.

10 Folks, if and when we do vote on this today,
11 it will require four of five to approve, and the
12 question we will be asking ourselves now is: Does it
13 meet the four standards which had been presented in the
14 writeup. I don't know if any of you want to explore
15 those. That's the issue of hardship from strict
16 application of the ordinance; hardship from conditions
17 that are peculiar to the property and so on.

18 MR. SANTOWASSO: Yeah, I'd like to just go
19 through all four of them. The first one stipulates
20 that "unnecessary hardship would result from the strict
21 application of the ordinance, and it shall not be
22 necessary to demonstrate that in the absence of the
23 variance, no reasonable use can be made of the
24 property."

25 I don't believe this application can meet

1 that standard. The installation of the fence, no
2 matter where or without the variance is not an
3 unnecessary hardship, in my opinion. So in my opinion,
4 that standard can not be met, or has not been met. I
5 believe the fence can be constructed at the required
6 setback without creating a hardship.

7 The second standard indicates that "the
8 hardship results from conditions that are peculiar to
9 the property such as location, size, or topography.
10 Hardship resulting from personal circumstances, as well
11 as hardships resulting from conditions that are common
12 to the neighborhood or the general public may not be
13 the basis for granting the variance."

14 There are some peculiar conditions on the
15 property, but not to the extent that this standard can
16 be met. A fence located at the appropriate setback, 30
17 feet, again in my opinion, would not be a hardship that
18 would be peculiar to this property.

19 The third standard says "the hardship shall
20 not result from actions taken by the applicant or the
21 property owner." Well, I don't ... that is a fact, the
22 hardship, if there is any hardship, whether it is 30
23 feet or zero feet, the fence will still serve the
24 purpose without creating a hardship. It might provide
25 a little less area for a backyard, but I believe the

1 30-foot setback still provides enough room for the
2 purpose of a play area.

3 And the forth standard requires that "the
4 requested variance be consistent with the spirit,
5 purpose, and intent of the ordinance such that public
6 safely is secure and substantial justice is achieved."
7 Whether the fence is created at the 30-foot setback or
8 there is no setback, whether there is no fence, the
9 property has existed without a fence for many years,
10 predating the PDO, and I don't believe that the absence
11 of the fence created a safety hazard.

12 CHAIRMAN ENGELFRIED: I would make a couple
13 of comments and then let's invite the others on the
14 board to speak. In the third one, which I refer to it
15 as "C" in the writeup, to me it is very clear that
16 buying the property knowing that it might need a
17 variance to accomplish something is acceptable in this
18 appeal. And with regard to the word "hardship" that
19 was tested by me in my first meeting almost six years
20 ago when I asked someone what it meant, and of course
21 it says it's in the eyes of the beholder. There is
22 nothing in North Carolina law that specifically defines
23 the word "hardship".

24 The last item, I also would take the opposite
25 view of you, that with -- particularly with regard to

1 public safety and substantial justice. I don't quite
2 know what that means, but I would find that the test
3 for the last one had been met as well as the third one,
4 and I would likely argue the definition of hardship for
5 the first two. But I think we should hear from the
6 other people on the Board.

7 MR. LARSEN: I have question. Mr.
8 Youngblood, the decision from the architectural review
9 committee, was it unanimous?

10 MR. YOUNGBLOOD: Yes, it was.

11 MR. LARSEN: Have there been any objections
12 from any of the residents?

13 MR. YOUNGBLOOD: I'm not aware of any.

14 MR. LARSEN: Mr. Mattei, have you heard any
15 objections to what you'd like to have accomplished?

16 CHAIRMAN ENGELFRIED: I think that that would
17 end up being -- that is not evidence. Sorry, but it
18 would be good to have that information, but it is not
19 evidence that we can consider, unless it's here and
20 someone is testifying to it.

21 MR. DRUM: As the backup guy, I want to ask a
22 point of order, and I don't know if it is proper so
23 you're going to tell me in a minute. Can I find out
24 the exact attempt from staff on setback requirements on
25 golf courses and lakes, is that question worth asking?

1 I would like to know the intend of that.

2 MR. GOULD: The basis from my understanding
3 is, that really the golf courses and lakes become kind
4 of a secondary public realm, just as there are judicial
5 regulations for fences in front yards, given that
6 there's courses of play, there is view sheds, there is
7 those sorts of things, it's really to protect that
8 secondary public realm of the lake and the golf course.

9 In some instances it could be -- particularly
10 golf courses, the course of play that could be viewed,
11 aesthetic, numerous other things come into play in
12 order to deal with that public realm or the production
13 thereof.

14 MR. DRUM: And it could be egress to the
15 shoreline maybe, you know, like a boat or something, I
16 don't know.

17 MR. GOULD: Well, in many instances, you have
18 sewer lines and those sorts of things that would run
19 along the lakeshore, but I don't think that's the
20 intent from the zoning perspective. It's only a
21 secondary provision.

22 MR. DRUM: Okay, I just wanted to ask that.

23 CHAIRMAN ENGELFRIED: Any other questions you
24 want to raise?

25 MS. LATHAM: Do you know, Mr. Youngblood, the

1 property offset on the opposite shore, is that -- I
2 see, at least in our chart, it looks like it's set off
3 into lots. Has that been slated for development; do
4 you have any idea?

5 MR. YOUNGBLOOD: I stood in the backyard and
6 looked across the water and didn't see any homes. Is
7 that correct, Peter?

8 So I think there must be woodlands between
9 his lot and any lots that would be across the water.
10 There is some land that is a little to the left of
11 there across the water, but that's really adjacent to a
12 golf course, so there are no homes there that would
13 have a view that would be affected.

14 MS. LATHAM: Um-hum, and it sounds like from
15 testimony you gave before, your feeling was that when
16 we're thinking about view claims, the view claim from
17 the lake isn't one that really comes into play with
18 this particular property because of where it's situated
19 on the creek as you indicated?

20 MR. YOUNGBLOOD: That's correct. It's really
21 not what you would typically be concerned about as a
22 lake-front location. At CCNC if there is a lake-front
23 lot, we strongly discourage or prohibited fences
24 because we don't want them to affect the view across
25 the lake. But that just doesn't come into play here.

1 MS. LATHAM: And from your testimony it
2 sounded like the feeling from the architectural review
3 board, the CCNC, was that the view from Lake Dornoch
4 Drive was enhanced by having the fence at the zero
5 setback rather than the 30?

6 MR. YOUNGBLOOD: Yes, that's correct, because
7 it would be more near the plant life serving the back
8 of the -- back of the lot rather than if the setback is
9 applied, it would pretty much cut his backyard in half,
10 and would be more visible.

11 MS. LATHAM: Okay, thank you.

12 MR. SANTOWASSO: More visible to what?

13 MR. YOUNGBLOOD: More visible from the street
14 which is what she was asking about.

15 MR. SANTOWASSO: More visible from the
16 street?

17 MR. YOUNGBLOOD: It would be closer to the
18 street and probably more visible from the street. If
19 it was farther back it would be more integrated with
20 the plant life that's closer to the lake.

21 MR. SANTOWASSO: I don't believe it would
22 even be visible from the street with all of the
23 existing vegetation plus the house that's located on
24 the property. There are fencings on the property or on
25 the adjacent property. Is that not correct, Dr.

1 Mattei, there is a fence on the property to the south
2 of you?

3 MR. MATTEI: Yes, there is a kind of a fence
4 in the -- in one of the neighbor's across the lake,
5 yeah.

6 MR. SANTOWASSO: But that's not on your
7 property, directly adjacent to you on the south side of
8 your property?

9 MS. LATHAM: 207 Lake Dornoch is the property
10 he's talking about.

11 MR. MATTEI: There is a -- I don't know that
12 I would call it a fence. It is more like a -- one of
13 those green wire structures that are more temporary, I
14 think. Is that what he is talking about?

15 MR. YOUNGBLOOD: Yeah, I'm really not aware
16 of what is next door.

17 MR. SANTOWASSO: Okay. I was on the property
18 yesterday and I saw a fence essentially black chicken
19 wire I would call that.

20 MR. MATTEI: That -- I think that was -- that
21 was not on -- that is not something that was
22 constructed on my property. I think that --

23 MR. SANTOWASSO: Right, that existed for some
24 time.

25 MR. MATTEI: I think they may have put that

1 there to prevent like leaves from moving -- I am not
2 sure how that got there, but I can't really speak to
3 that.

4 MR. SANTOWASSO: Now, on the north side of
5 your property, side of the property that's closest to
6 the garden, are you aware of a fence there?

7 MR. MATTEI: On my property?

8 MR. SANTOWASSO: Yes, sir.

9 MR. MATTEI: There is a -- I think maybe a
10 fence that's kind of up along where the creek is where
11 somebody could fall in there.

12 MR. SANTOWASSO: Does that go all of the way
13 to the lake?

14 MR. MATTEI: No, it does not. It is just --
15 it kind of follows where that stream feeds in.

16 MR. SANTOWASSO: It is just a post and beam
17 fence with chicken wire on it.

18 MR. MATTEI: Yeah, and I'm -- no, that's -- I
19 think it's like a split rail fence.

20 MR. SANTOWASSO: Split rail, I call it a post
21 and beam. It does have some screening or fence
22 material on it.

23 MR. MATTEI: Yeah, I -- that fence, I am not
24 sure if it was constructed at the same time of the
25 property, or if that was there prior to the property

1 being there to prevent people from falling where that
2 dam is. So I can't speak to it other than that.

3 MR. SANTOWASSO: Thank you.

4 CHAIRMAN ENGELFRIED: Any other Board member
5 have additional questions?

6 MR. DRUM: No, I just wanted to note I was
7 there this morning, beautiful property. I asked to go
8 in the backyard and I guess your wife allowed me to go
9 back there. I noticed that the fence was there and it
10 went all of the way to the lake, all of the way into
11 the lake. It was like -- I don't know what it is,
12 chain link maybe, I don't know. But it goes all of the
13 way in and it's on the neighbor's property. So it goes
14 all of the way down. I just thought it was an
15 interesting point.

16 And as far as just to get to where -- you
17 know, where I am. I agree with two, three and four on
18 that. I am just talking to myself about one, and
19 trying to find, you know, the unnecessary hardship, and
20 how it is in the eye of the beholder. That's where I'm
21 at right now.

22 CHAIRMAN ENGELFRIED: Folks, we can leave the
23 hearing open and in case you want to continue to
24 discuss and think you might have more questions, or we
25 can close the hearing. If we close the hearing,

1 doubtful that we would reopen it, and we can consider a
2 decision right now, or we can hear the next case, if
3 you will, and get back to this one. Does anyone have
4 any reason why we should keep this open for additional
5 questions?

6 MR. GOULD: Fred, you may want to make sure
7 there is no one in the audience that may have anything
8 else to offer.

9 CHAIRMAN ENGELFRIED: That's a good question.
10 Anyone else like to speak on this matter?

11 MR. YOUNGBLOOD: I would like to follow-up
12 with the question that Mr. Drum addressed about what is
13 the purpose of the setback provisions, and that is the
14 way we were thinking about this from the standard point
15 of the architectural review committee. If a fence --
16 if this fence would have affected the view from a golf
17 course or a view across the lake, we would have not
18 allowed it, we would not approved it. In this case we
19 didn't think either of those was a problem and so we
20 did approve it.

21 MR. SANTOWASSO: Well, there are several
22 houses directly across this, what do you want to call
23 it, the lake in view of this rear lot. There are no
24 fences on those lots across the lake, and consequently
25 I guess from looking at this property from the other

1 side of the lake, this would be the only fence that
2 would be seen.

3 MR. YOUNGBLOOD: I guess your -- you've been
4 there since I was, but my recollection from visiting
5 the property was, that standing in the backyard here,
6 there were not houses in view across the water. It was
7 just a area next to the golf course, so we didn't see
8 any that -- properties across the lake that would be
9 affected by this.

10 CHAIRMAN ENGELFRIED: Anyone else like to
11 speak that is sitting here?

12 (No response.)

13 CHAIRMAN ENGELFRIED: Board, are you ready to
14 close this hearing then?

15 MR. SANTOWASSO: I guess so.

16 CHAIRMAN ENGELFRIED: Okay, I'll take a
17 motion to close the hearing and reenter our regular
18 meeting, please?

19 MR. SANTOWASSO: So moved.

20 CHAIRMAN ENGELFRIED: Leo, and second?

21 MR. LARSEN: Second?

22 CHAIRMAN ENGELFRIED: From Myles. All in
23 favor?

24 (All respond Aye)

25 CHAIRMAN ENGELFRIED: Unanimous. We now have

1 a choice. Would you like to discuss this further;
2 would you like to vote; or would you like to move on to
3 the next issue and get back to this?

4 MR. SANTOWASSO: I would like to have some
5 more discussion with the Board, amongst the Board and
6 deal with the question and vote.

7 CHAIRMAN ENGELFRIED: Okay, why don't you
8 lead the discussion if you would like to have that?

9 MR. SANTOWASSO: Well, as I specified with
10 regard to the standards, I don't think any of them
11 apply to this application. And so if there was a
12 motion made in the affirmative, I would be opposed.

13 MR. DRUM: I feel it meets two, three, and
14 four and I want to discuss with my team members, number
15 one, because I think it could be argued there is an
16 unnecessary hardship on everything from the HOA to the
17 homeowner.

18 MS. LATHAM: I read number one as first being
19 a threshold issue. If you don't find one, you don't
20 reach two, three and four. So that is the current --

21 MR. DRUM: Right, so it's about one. It is
22 about one, and the definition of unnecessary hardship.
23 That is where I am at. You know, I think it could be
24 argued -- they are arguing they have unnecessary
25 hardship. And I think that I am just trying to define

1 it, and I was hoping my team members could help me.

2 MS. LATHAM: For me the thing that makes the
3 difference is Mr. Youngblood's testimony, because what
4 is the hardship here is in a sense property value and
5 hardship to the community. And an argument could be
6 made that if the fence is going to be put at that
7 30-foot setback, it is going to harm the community
8 through the site plane from Lake Dornoch Road -- Lake
9 Dornoch Drive, but it seems that there is no harm to
10 the community as far as the lake view goes. And then
11 argument could be made that putting that fence at the
12 30-foot setback in some ways could diminish, perhaps
13 insignificant, but could diminish the property value.
14 So in my mind, I think you could reach unnecessary
15 hardship. Once again, how much of a hardship is it,
16 that is really --

17 MR. DRUM: Right, I'd agree.

18 CHAIRMAN ENGELFRIED: I am not sure we are
19 dealing with degrees on something that is not defined
20 by law.

21 MR. DRUM: I would say that the third thing
22 too that it is going to be seen, whether it's done on
23 the 30 foot or not on the 30 foot. So it's a matter
24 of, you know, which provides less of a -- I guess what
25 I am saying, there could be a fence there at the 30

1 foot line that could be seen, so I think it's not --
2 there can be a fence there, it's a matter of where it
3 is going to be. I don't know why I thought that was
4 worth saying, but I did.

5 MR. LARSEN: I feel like we have significant
6 testimony from Mr. Youngblood as a representative of
7 the architectural review committee, that they've
8 outlined that there are no objections. We are talking
9 about at the 30 foot, it could potentially be a
10 hardship, whereas further back sounds like it might be
11 less sightly -- or less unsightly, correct?

12 CHAIRMAN ENGELFRIED: The hearing is closed.
13 Good point.

14 MR. DRUM: And I have to say, my additional
15 documentation makes me do some flood plane, the water
16 could come up, but you don't know, but there is
17 significant room from the property line to the lake,
18 and that was way I did this follow-up document. There
19 is significant room, some areas it's up to 30 feet from
20 the property to the lake. That is weighing on me too.

21 CHAIRMAN ENGELFRIED: If there are no other
22 comments or discussion between us as a Board, I would
23 suggest this: someone make a motion to approve,
24 someone put up a second, then we can have further
25 discussion or vote. We don't need the language that we

1 had in planning and zoning order, we say it's
2 consistent. It's simply a motion to approve as
3 request, or denied.

4 MR. LARSEN: Then I make a motion to approve
5 as requested.

6 CHAIRMAN ENGELFRIED: Is there a second to
7 that?

8 MR. DRUM: I will second that motion.

9 CHAIRMAN ENGELFRIED: Second from Kevin Drum.
10 Thank you. Any further discussion? Otherwise we'll
11 vote through a roll call vote then.

12 Leo, you're on the record, you want to say it
13 again?

14 MR. SANTOWASSO: I would vote against
15 approval.

16 CHAIRMAN ENGELFRIED: Okay, Julia?

17 MS. LATHAM: I'll vote for approval.

18 CHAIRMAN ENGELFRIED: Myles?

19 MR. LARSEN: For approval.

20 CHAIRMAN ENGELFRIED: Kevin?

21 MR. DRUM: For approval.

22 CHAIRMAN ENGELFRIED: And a lot of synonyms I
23 guess, I'm four for. So it's approved four to one.
24 Thank you very much.

25 Okay, we have one other case to deal with

1 today. Is it referred to as Public Hearing No. 3. I
2 think that's going to be you, Mr. Buck Adams, and do we
3 need to swear in anyone else that hasn't been sworn in
4 this matter?

5 (Mr. Buck Adams and Ms. McAllister were
6 sworn by the court reporter to tell the truth.)

7 CHAIRMAN ENGELFRIED: Thank you, if you want
8 to make yourself comfortable. I'll poll the Board, I
9 didn't do it on the last one and that's my error. Does
10 anyone have any financial interest in the outcome of
11 this, or have they had any ex parte communications
12 regarding it?

13 (All respond negatively.)

14 MR. SANTOWASSO: We did close Public Hearing
15 No. 2, right?

16 CHAIRMAN ENGELFRIED: Yes. You're testing me
17 after last ...

18 That being the case, could I have a motion to
19 open the second public hearing please, and then I'll
20 read the case into the record?

21 MR. LARSEN: So moved.

22 MR. SANTOWASSO: second.

23 CHAIRMAN ENGELFRIED: Myles, motion; second,
24 Leo. All in favor?

25 (All respond Aye.)

1 CHAIRMAN ENGELFRIED: Thank you. We are now
2 in Public Hearing No. 2 and I will read it into the
3 record. The purpose of this public hearing is to
4 receive testimony for a variance request from Sector
5 9.2A, table of dimensional requirements for property at
6 1144 Chicken Plant Road. This property is located
7 within the R210 single family zoning district, further
8 identified by Moore County PID # 00029912.

9 Specifically the applicant and owner, Carolyn
10 McAllister is requesting a variance from R210
11 dimensional requirements and asking that the R30 single
12 family dimensional requirements apply.

13 And I'll turn it over to you.

14 MR. ADAMS: Good afternoon. My name is Buck
15 Adams and I'm a lawyer here in Pinehurst and I'm
16 accompanied by my client, Carolyn McAllister. You
17 have seen our request. This is an unusual piece of
18 property in that it's roughly an acre size and it's
19 been that size, I might add, by deeds dated all of the
20 way back to 1981 which predates of course the
21 ordinance. It's unusual again in that it's surrounded
22 by properties that are more appropriately zoned R210.
23 In this case, one-acre zoning, as you might have seen
24 from the survey, makes the property basically unusable
25 for residential purposes. If you apply those at the

1 applicable R210 setbacks to it, you end up with just a
2 very, very, narrow rectangular area within which
3 construction can take place, far too small for anything
4 even remotely resembling a residential dwelling.

5 We believe that because of the size of this
6 property, that R30 zoning is much more appropriate for
7 it. And I would also add that there are some
8 properties in the vicinity out there, there is one
9 across the street -- actually two across the street.
10 One directly across and one farther down Chicken Plant
11 Road, back toward Linden Road that are residential,
12 that are roughly the size of this property, and they
13 are again being used at this time as residential
14 properties.

15 So the lot as we would develop it under R10
16 or our client would, would be consistent with those
17 other two uses. Again, this just seems to me to be an
18 outlier, a property that really, I think, it might be
19 unfortunately, was caught up in R210 zoning which
20 really it's just not applicable to it.

21 CHAIRMAN ENGELFRIED: Would the Board like to
22 ask any questions?

23 MR. SANTOWASSO: Yes, does anyone know what
24 the net acreage is when the road area is deducted?

25 MR. ADAMS: Give me a moment. Let me see if

1 I have that information with me. Minus the road, the
2 county calculates it as .639 acres.

3 MR. SANTOWASSO: I'm sorry?

4 MR. ADAMS: The county -- minus the road, the
5 county calculates it in its tax billing -- for tax
6 billing purposes as .639 acres.

7 MR. SANTOWASSO: Thank you. You indicated
8 that a residence could not be built on this property?

9 MR. ADAMS: Under R --

10 MR. SANTOWASSO: Under the R210 regulation?

11 MR. ADAMS: Yes, sir. There is a -- if you
12 look at the survey, you will see that surveyor has
13 depicted, like I say, a small sort of a rectangular
14 area within which the construction could take place.

15 MR. SANTOWASSO: That calculates roughly to
16 about 2700 square feet. The dimensions are roughly
17 about, I'm averaging the lines parallel to the road and
18 taking the depth as scaled from the drawing, of
19 approximately 28 feet, that results in the 27020 square
20 foot approximate area for a building, honoring the
21 setbacks of the 210 zoning.

22 MR. ADAMS: Is that -- are you looking at the
23 -- which area are you looking -- you're looking at the
24 shaded area or are you looking at the area behind that?

25 MR. SANTOWASSO: I am looking at the area

1 behind it, sort of an irregular area, it's not a
2 rectangle, it's square on three sides, but then there's
3 the angle and the radius of the curve that are
4 incorporated, so it's an average I'm taking of the
5 dimensions of the lot. The dimensions of the shaded
6 area where the house would be proposed to be located
7 under the R30 results in about a 2400 square foot
8 footprint. So I don't understand the contention that a
9 house could not be built on the property.

10 MR. ADAMS: That's -- I don't know what --
11 can I take a look at -- the survey that you all are
12 looking at? Can one of you provide me a copy of that?

13 (Document handed to Mr. Adams.)

14 MR. ADAMS: Okay, so yes, in terms of the
15 square footage, absolutely, there is -- I don't deny
16 that, but if you look at the configuration of that,
17 again, it is more narrow, it's more -- again, you've
18 got the irregularity there, and the -- it's -- when you
19 look at the -- what could actually fall within that
20 area, I just -- I have trouble -- I have difficulty
21 thinking that anything that could be reasonably
22 constructed would fit in there. Now of course if you
23 look at the lines, of course you're looking at the
24 exterior of the house itself, so if you consider the
25 living space within that house, you know, of course it

1 is going to be much smaller than that.

2 MR. SANTOWASSO: Well, it's not too much
3 different from the area that's shaded where the house
4 would be proposed to be located if you got the variance
5 approved, so what's the difference?

6 MR. ADAMS: It's -- I would argue that the
7 difference is, one thing, it is more -- again, it's
8 more narrow. I mean, if you say -- if you're
9 measuring at 28 feet, I don't have that measurement on
10 here --

11 MR. SANTOWASSO: Okay, I don't want to beat a
12 dead horse, but I think your statement that a house
13 could not be built on the property is not germane to
14 this application.

15 MR. ADAMS: Well --

16 MR. SANTOWASSO: I don't know the answer to
17 that because these lines are not marked, so I don't
18 know the dimensions of them. It appears to me to be
19 very small. I will say that.

20 CHAIRMAN ENGELFRIED: Are there any --

21 MR. ADAMS: And I don't know -- I would add
22 that I don't know that a house, if you look at the --
23 give me just one more moment. (pause.)

24 Okay, I apologize. I just wanted to look at
25 one thing. I have nothing further to add in that

1 regard.

2 MR. SANTOWASSO: Are there public utilities
3 available to serve the property?

4 MR. ADAMS: I believe that there are. The
5 surrounding properties are being served by utilities so
6 it would lead me to believe that they are available for
7 this property.

8 MR. SANTOWASSO: Bruce, do you know if there
9 is public utilities there?

10 MR. GOULD: There is not public water and
11 sewer, but there would be I'd say power, cable, and
12 other public utilities. I mean if the question
13 references, when you speak of public utilities, which
14 utilities are you speaking of?

15 MR. SANTOWASSO: Water and sewer.

16 MR. GOULD: To my knowledge they are not
17 available.

18 MR. SANTOWASSO: So there would have to be a
19 private well and septic system?

20 MS. LATHAM: Am I correct in understanding,
21 Bruce, that this lot is already nonconforming?

22 MR. GOULD: It is nonconforming relative to
23 size.

24 MR. SANTOWASSO: Pre-existing nonconforming
25 lot.

1 MR. GOULD: Pre-existing nonconforming lot.
2 Zoning was not placed in that area to the EEA was
3 expanded and extended, which was after the lot was
4 created in 1981.

5 MS. LATHAM: Thank you.

6 MR. SANTOWASSO: There are two driveway pipes
7 in the swale across the front of that property. Do you
8 know if both of those driveway pipes are within your
9 property lines?

10 MR. ADAMS: I don't know the answer to that,
11 no, sir.

12 CHAIRMAN ENGELFRIED: Are you tapped?

13 MR. SANTOWASSO: I will shutup for a while.

14 CHAIRMAN ENGELFRIED: If you have more keep
15 going. Myles, Kevin, anything you want to chime in on?

16 MR. DRUM: No, not at this time. I just want
17 to -- I would like to hear him go through the rest of
18 them on the application for request for variance.

19 MR. ADAMS: If you'd like for me to do that
20 --

21 MR. DRUM: I would like you to do that. Just
22 go through that.

23 MR. ADAMS: Sure. Starting with the first,
24 so unnecessary hardship would result from the strict
25 application of the ordinance. Again, what we are

1 looking at, if in the -- with R210 zoning, you know,
2 even conceding that that house could be built in that
3 location, what that means of course is that house can
4 only be built in that location. So to me, that seems
5 to be an unnecessary hardship. It really gives the
6 property owner no leeway whatsoever in being able to
7 situate the home to his or her desired location within
8 that property. I'll stop right there if you'd like for
9 me to discuss -- if you all want to discuss that
10 further, or if you want me to move on to point two,
11 I'll do whatever you'd like for me to.

12 CHAIRMAN ENGELFRIED: Does anyone want to have
13 that expanded or discussed further?

14 MR. DRUM: No, keep on going.

15 MR. ADAMS: Number two, the conditions
16 peculiar to the property, we've really already
17 discussed this. Again it's a lot that is much smaller
18 in size than the surrounding properties, the condition
19 is not common to the neighborhood. So again, I would
20 say that the size of the lot speaks for itself as to
21 conditions that are peculiar to this property, because
22 size of course is indicated as an example of that. And
23 I'll stop there for any discussion.

24 The third, the hardship did not result from
25 actions taken by the applicant or property owner.

1 Again, as I mentioned at the outset, and I've got
2 copies of these deeds if you would like for me to
3 provide them to you now or at some future time, but I
4 am a real estate attorney. I did the title search on
5 this property. And the property is unchanged in size
6 or configuration as far as back as 1981. So we're
7 looking at 36 years ago. So for 36 years it has been
8 in this configuration and size. Again, I'll stop there
9 if there is any discussion.

10 And finally, regarding the spirit, purpose
11 and intent of the ordinance, you know, again I would
12 just state that substantial justice, again, I think
13 that it makes the property -- it makes the property
14 much more desirable for a residential property
15 dwelling, and again, there is a property right across
16 the street from it that's residential of a similar
17 size, and again on down the street. So this property
18 seems to me to be more consistent with those two other
19 properties, which again happen to have existing homes
20 on them and are being used for residential purposes.

21 It is hard for me to -- I just don't
22 know that under the present zoning, this property would
23 continue to be desirable as a residential property.
24 Again, as I mentioned in my request, it's a property
25 that would primarily have value to adjoining property

1 owners who were seeking to increase the size of their
2 existing properties.

3 MR. SANTOWASSO: How do you know that?

4 MR. ADAMS: Well, it just seems to me that if
5 you -- if I go out and try to sell someone a lot and I
6 say okay, now here's where you're going to put the
7 house. And they say well, why is that? And I say,
8 well, that's because that is the only place you can put
9 the house. Again that's -- I think that is going to
10 limit the audience.

11 MR. SANTOWASSO: What does that have to do
12 with this variance request?

13 MR. ADAMS: I just add it as a point of, is
14 it substantial justice? I mean, I think you can put it
15 into that category.

16 CHAIRMAN ENGELFRIED: We might be drifting
17 away from competent evidence in this discussion. Let's
18 refocus on the hardship issues. Any other comments or
19 questions on either one, two, three or four? Kevin?

20 MR. DRUM: No, I am just trying to figure out
21 same thing as the previous one, number one, the
22 hardship. The hardship is -- how is the hardship
23 defined. You're defining the hardship as the placement
24 of the house, where it would be placed is unusual
25 because of the zoning designation.

1 MR. ADAMS: I think unusual and also
2 constraining.

3 MR. DRUM: Constraining, okay.

4 CHAIRMAN ENGELFRIED: Julia, how are you
5 doing?

6 MS. LATHAM: I'm fine.

7 CHAIRMAN ENGELFRIED: Myles?

8 MR. LARSEN: I'm fine.

9 CHAIRMAN ENGELFRIED: Leo?

10 MR. SANTOWASSO: I'm fine.

11 CHAIRMAN ENGELFRIED: We know. I would think
12 also about the first item in hardship, and it strikes
13 me that -- and I won't refer to it as Leo's argument,
14 but Leo's presentation, you were looking for consent
15 that a house could be built there in a different
16 location. There seems to be some agreement on that. I
17 don't necessarily think that because that can be done,
18 it should be mandated that way. And that this would be
19 a denial, that is the only place you can put the house.
20 A single family home is a single family home. If it is
21 architecturally appropriate and the Village determines
22 that through the building code and the standards that
23 they apply. That would be my opinion on number one.

24 We have a choice as we did the last time. We
25 can leave the hearing open in case we want to talk to

1 Mr. Adams or Ms. McAllister again, or we can have a
2 motion to close the public hearing, and re-enter our
3 regular scheduled meeting and have any further
4 discussion that might be required.

5 MR. DRUM: I make a motion to close the
6 public hearing unless someone has a public comment.

7 CHAIRMAN ENGELFRIED: Oh, good, thank you for
8 bringing that up. It looks like the answer is no.
9 That is a motion from Kevin to close the public hearing
10 and reenter our regular meeting. Second please?

11 MS. LATHAM: I'll second.

12 CHAIRMAN ENGELFRIED: Julia. All in favor?

13 (All respond Aye)

14 CHAIRMAN ENGELFRIED: It's unanimous. Our
15 choices now are we could postpone this and talk about
16 it at the next meeting, we could talk about it some
17 more here, we could do as we did in the last case and
18 make a motion, draw a second, have a little more
19 discussion if any, and then go to vote.

20 MR. DRUM: I am going to make an attempt at
21 making a motion.

22 CHAIRMAN ENGELFRIED: Okay.

23 MR. DRUM: Make a motion not to accept it as
24 presented, but accept it as adjusted, item one adjusted
25 by the attorney in positioning the hardship; in other

1 words, that application, the definition, the way he
2 further defined hardship, because I think Leo had some
3 good points there. But as the hardship was redefined,
4 so really accepting the motion -- the accepting it as
5 read, make a motion to accept the variance as written.

6 CHAIRMAN ENGELFRIED: Your motion is to
7 approve the application?

8 MR. DRUM: Yes.

9 CHAIRMAN ENGELFRIED: And you're notating the
10 amended definition.

11 MR. DRUM: The amended definition of item
12 one, hardship. That's important for me to do that,
13 because without that I wouldn't be making the motion.

14 CHAIRMAN ENGELFRIED: Does anyone want Kevin
15 to discuss that further so that you're understanding
16 that?

17 MR. LARSEN: Understand.

18 MR. SANTOWASSO: But you accept -- well,
19 forget it. You're going to have to comply with all of
20 the requirements of the R3 -- R30 zoning.

21 MR. DRUM: Of course, that's beyond us,
22 that's in the Planning and Zoning Board -- I mean the
23 Planning Department's hands.

24 CHAIRMAN ENGELFRIED: Do we have a second to
25 the motion?

1 MR. LARSEN: I second it.

2 CHAIRMAN ENGELFRIED: Thank you, Myles. Any
3 further discussion? Okay, we'll go roll call again.
4 Start with you, Myles?

5 MR. LARSEN: Yes.

6 CHAIRMAN ENGELFRIED: Julia?

7 MS. LATHAM: Yeah.

8 CHAIRMAN ENGELFRIED: Leo?

9 MR. SANTOWASSO: No.

10 CHAIRMAN ENGELFRIED: Kevin?

11 MR. DRUM: Yes.

12 CHAIRMAN ENGELFRIED: I'm four for again.
13 Four for, thank you very much. You'll get a written
14 decision within 30 days.

15 MR. ADAMS: Okay, thank you all very much.

16 CHAIRMAN ENGELFRIED: We have a couple other
17 items folks, small potatoes but relative to the Board
18 of Adjustment agenda. One, general business, we do
19 need distribution -- Gwendy's gone. We need
20 distribution on the policy procedures that we moved the
21 last time.

22 MR. GOULD: We may have to get that to you at
23 another time, Fred.

24 CHAIRMAN ENGELFRIED: We need electronic
25 copy.

1 MR. GOULD: We can do that.

2 CHAIRMAN ENGELFRIED: That's all we need.
3 Because we approved it with a couple of subtle changes.
4 Our next meeting is September 7th. And the question
5 is, does anyone have any other business they would like
6 to conduct?

7 MR. LARSEN: None.

8 MR. DRUM: Just one, welcome Julia.

9 CHAIRMAN ENGELFRIED: I would say the best
10 decisions are ones that are contested, and thank you,
11 Leo. And Julia, thanks for diving right in. It's a
12 pleasure having you at the table.

13 MS. LATHAM: Thanks.

14 CHAIRMAN ENGELFRIED: Motion to adjourn
15 please?

16 MR. DRUM: I'll make a motion to adjourn.

17 MR. SANTOWASSO: Second.

18 CHAIRMAN ENGELFRIED: All in favor.

19 (All respond Aye.)

20 (The meeting was adjourned at 5:28 p.m.)

21

22

23

24

25

**VILLAGE OF PINEHURST ZONING BOARD OF ADJUSTMENT
FINDINGS OF FACT
DOCKET # X-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:

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 his intent to install a fence in the rear yard of his home which is adjacent to a lake. He desires to fence in the rear yard for containment purposes and the yard is not visible from adjacent properties or properties across the lake. 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 he is 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 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. Granting this variance 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 astatically pleasing to the community. 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

I, Lauren Craig, Village Clerk a Notary Public for said Moore County and North Carolina do hereby certify that A.C. Engelfried, Chairperson of the Board of Adjustment, Village of Pinehurst, personally appeared before me this day and acknowledged the foregoing document. Witness my hand and official seal this the ____ day of _____.

Lauren Craig, Village Clerk
Notary Public
My Commission expires: _____

SEAL

A. C. Engelfried, Chairperson

Gwendy Hutchinson, Secretary