



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

I. Call to Order

II. Approval of Minutes

A. July 6, 2017

III. Public Hearing

A. Public Hearing No. 1

The purpose of this public hearing is to receive evidence on the Appeal from an action and decision of the Pinehurst Code Enforcement Officer to the Board of Adjustment, regarding an application made by Stanley Jackson. Specifically, this request is seeking a determination from the Board of Adjustment regarding the decision of the Pinehurst Code Enforcement Officer in applying the regulatory provisions of section 92.01 (G) Nuisances of the Pinehurst Municipal Code regarding a tree at 190 Forest Lane, Pinehurst NC. This property is also defined as Moore County PID# 00016305.

B. Public Hearing No. 2

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.

C. Public Hearing No. 3

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.

IV. General Business

V. Next Meeting Date

A. September 7, 2017

VI. Comments from Attendees

VII. Motion to Adjourn

Vision: The Village of Pinehurst is a charming, vibrant community which reflects our rich history and traditions.

Mission: Promote, enhance, and sustain the quality of life for residents, businesses, and visitors.

Values: Service, Initiative, Teamwork, and Improvement.



JULY 6, 2017
ADDITIONAL AGENDA DETAILS:

ATTACHMENTS:

Description

 Minutes



**Board of Adjustment
July 6, 2017
Village Assembly Hall
5:00 p.m.**

MINUTES

Board Members:

Leo Santowasso, Chair
Fred Engelfried, Vice Chair
Cyndie Burnett, Alternate Board Member
Kevin Drum, Alternate Board Member
Cyndie Burnett, Alternate Board Member
Carol Henry, Board Member
Michael Marsh, Board Member

Board Members Absent:

Jeff Harlow, Alternate Board Member
David Kelley, Board Member
Myles Larsen, Alternate Board Member

Staff in Attendance:

Bruce Gould, Principal Planner
Gwendy Hutchinson, Planning and Administrative Assistant

I. Call to Order

Chair Leo Santowasso called the meeting to order.

II. Approval of Minutes: January 5, 2017

Fred Engelfried made a motion to approve the January 5, 2017 minutes as amended to show that Fred Engelfried seconded the motion to approve the Transcript and Order; Carol Henry seconded the motion, which was unanimously approved.

III. Rules of Procedure

After discussion, Fred Engelfried made a motion to approve the Rules of Procedure as amended as follows: 1) under V. C – A quorum shall consist of three Members of the Board at least one of which will be Chair or Vice-Chair, 2) V E. Change the time to 4:00 pm, 3) C 7 change V to VI and 4) VII. Change Chairman to Chair; Mike Marsh seconded the motion, which was unanimously approved. The Rules of Procedure will be signed at the next Board of Adjustment meeting, August 3, 2017.

IV. Next Meeting Date: August 3, 2017

V. Motion to Adjourn.

Carol Henry made a motion to adjourn the meeting. The motion was seconded by Fred Engelfried and carried unanimously. The meeting adjourned at 5:00 pm.



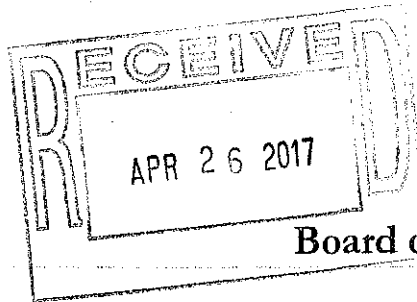
PUBLIC HEARING NO. 1
ADDITIONAL AGENDA DETAILS:

The purpose of this public hearing is to receive evidence on the Appeal from an action and decision of the Pinehurst Code Enforcement Officer to the Board of Adjustment, regarding an application made by Stanley Jackson. Specifically, this request is seeking a determination from the Board of Adjustment regarding the decision of the Pinehurst Code Enforcement Officer in applying the regulatory provisions of section 92.01 (G) Nuisances of the Pinehurst Municipal Code regarding a tree at 190 Forest Lane, Pinehurst NC. This property is also defined as Moore County PID# 00016305.

ATTACHMENTS:

Description

▣ Application



Application for
Board of Adjustment Appeal

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

To: The Village of Pinehurst Board of Adjustment:

I, Stanley Jackson, hereby appeal to the Board of Adjustment from the
following decision of the Zoning Administrator of the Planning and Inspections Department:

Applicant: <u>Stanley Jackson</u>	Owner: <u>TLB Holdings, LLC</u>
Address: _____	Address: <u>335 Fields Drive, Aberdeen</u>
Telephone Number: _____	Telephone Number: <u>910-944-0705</u>

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

Property description:

Property Location: 190 Forest Lane

Moore County LRK Number 00016305 PIN Number 00016305

Zoning District: R-210

Petition:

I hereby request an interpretation of:

_____ the Zoning Map

92.01(G) Section(s) Municipal Code of the text of the Pinehurst Development Ordinance
(insofar as the map and/or the ordinance relate to the zoning or use of the property.)



Application for Board of Adjustment Appeal

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

Please review the attached correspondence. Date of notice was extended by the Village to April 7th, 2017.

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


Signature of Applicant

4-26-17
Date

Telephone Number: 910-944-0705

Statement by Applicant

- Village staff is incorrectly interpreting 92.01(G)
- Village staff member added a word, not found in the ordinance, to 92.01(G) in the original notification.
- The tree in question is not dead, and in accordance with statements by Bruce Gould, may not be regulated by the Village without state permission.
- The tree in question is not a public nuisance.
- The Village has chosen sides in a civil matter.
- The Village is using completely subjective and undocumented criteria and unqualified opinions.
- The Village has not made any, much less an accurate determination of the property corners as claimed.
- The Village staff sent the notification prior to making reasonable efforts to determine the actual property lines.
- Village staff did not follow procedures to use a "friendly" contact prior to threatening punitive actions.
- Mr. Kevin Reed states that there is no appeal for the decision. We disagree, and believe there must be an approval for any rule and/ or regulation to be considered valid and enforceable.
- The Village prohibited removal of this tree when the home was under construction.



HISTORY, CHARM, AND SOUTHERN HOSPITALITY

March 22, 2017

TLB Holdings, LLC
Attn: Madison Hall
335 Fields Drive
Aberdeen NC 28315

Current Resident
190 Forest Lane
Pinehurst NC 28374

Dear Ms. Hall and Current Resident:

I am writing in regard to the property located at lot 279, 190 Forest Lane and further identified by the Moore County Tax Assessor by LRK number 16305. According to the Tax Assessor's records, you are the current owner of this property.

The Village has observed a dead tree near the driveway of this property (see red 'x' on enclosed map). The tree is violation of Section 92.01(G) of the Pinehurst Municipal Code (PMC), which states that "any accumulation of combustible items such as ...brush...damaged trees, dead, downed or leaning trees, or any other combustible materials or objects of a like nature" shall constitute a public nuisance.

Therefore, it is the Village's request that the tree be removed from the property by April 23, 2017. If the tree remains on the lot after this time, the Village will have it removed and you will be billed for this. You will have 30 (thirty) days to pay the bill or such charges will become a lien upon the real estate and shall be collected as unpaid taxes, according to Section 92.04 of the PMC. I am enclosing a list of local landscaping services and tree removal companies for your convenience. This notice is being mailed certified delivery.

If you have any questions, please do not hesitate to give me a call at (910) 295-8665. Thank you for your prompt attention to this matter.

Sincerely,

Angel B. Smith
Zoning Code Enforcement Officer



TLB Holdings, LLC

April 12th, 2017

Mr. Kevin Reed
395 Magnolia Road
Pinehurst, NC 28374

Dear Mr. Reed:

I manage over 100 rental properties in Moore County, a significant portion of which are located in Pinehurst. As part of my job I find myself interacting with various town departments and personnel quite often.

One of the folks I've had numerous interactions with over the years is Ms. Angel Smith, Zoning Code Enforcement Officer. The latest correspondence received from Ms. Smith is attached.

I was notified by the tenant at 190 Forest Lane on April 3rd that they had received a letter from the town requesting a tree be removed. (The letter actually states "it is the Village's *request* that the tree be removed" I think you would agree that requests are not typically followed by severe penalties. Perhaps the word "demand" or even "orders" would have been more appropriate, given the penalty involved for noncompliance.) I met with the tenant and reviewed the situation that morning.

At 11:56 am the same morning, I called the number on the letter and left a voice mail message. I stated that I had two concerns: 1: The tree is not dead. There are green needles at the top. 2: I'm not certain that the tree is on our property.

The next day, April 4th, at 10:53 I called again and spoke to Ms. Smith, reiterating the points I had made on the voicemail. She stated that she remembered me from past issues and that I was always argumentative. She told me I would have to get a survey to prove that the tree was not on our property. I said no. Why should I have to get a survey? She then said she would send some town employees out to find the corner markers, and would call me. She also disputed my contention that the tree was not dead. I did agree that the tree was not healthy, but it is not yet dead. I also pointed out to her that the neighbor had requested we remove the tree and our response was that we were not certain the tree was even ours. (That discussion was relayed through the tenant.)

I'd like to express a few concerns to you about this interaction specifically, and these types of letters in general:

1. There is a dispute between two neighbors and the town has taken sides. Why? It is simply a civil matter perfect for the small claims system, or better yet, an amicable agreement between two adjoining property owners.
2. There is no fence or other construction that would lend itself to identifying where the property line is relative to the two homes. How does Ms. Smith know that the tree is ours? In fact, she is guessing. Though it is entirely possible she is correct, I think it is wrong to threaten tax liens and possible foreclosure based upon a guess. The tree is 18 feet from the house, not next to it as shown by the "X" on the drawing included with the letter.
3. When the home was built, the town would not allow the builder to remove the tree.
4. How is the determination made that the tree is indeed dead? Just a few years ago the town required a property owner to pay an arborist to certify that a tree was dead or dying before it could be taken down. Please note the hypocrisy of requiring a property owner to "certify" the death when they want the tree down, but a "drive by visual" is fine when the town wants it down.
5. From the town website link to the code referenced by Ms. Smith: Section 92.01(G) *Combustible items. Any accumulation of combustible items such as mattresses, boxes, paper, automobile tires and tubes, garbage, trash, refuse, brush, old clothes, rags, damaged trees, downed or leaning trees or any other combustible materials or objects of a like nature;* - Note that the word "dead" appears in Ms. Smith's letter, but not in the version of the code I copied here. Adding words to the ordinance to support a specific position is at the very least unethical. In addition, I would dispute that this code reference applies to this particular case. Standing trees are not considered an "accumulation of combustible items".

Those are my specific concerns. I'd like to tell you about something that happened a few years back to illustrate my general concerns.

A tenant got a letter about their lawn not being mowed, and I also received a copy. The letter referenced some draconian fine, my memory may be incorrect but I recall it to be something on the order of \$500 per day! I went to the property and noted that though it was true that the lawn needed mowing, I couldn't see how anyone could call it a hazardous situation as stated in the ordinance. I did not measure the height. What I did, and what I believe the town should be doing prior to these nasty letters, is I knocked on the door. When the tenant answered, it was obvious to me she was in distress. She stated that the letter had scared her and that she was having health problems, her infant child was having health problems, and her husband was away serving his country. I presume he was in some horrible place where they were actively trying to kill him. And our town sends this nasty letter. Why is it so difficult to knock on the door, or make a phone call? Why does the town start with fines and penalties prior to having any knowledge of the situation? It turned out that the woman has Lupus. I asked her if she wanted me to mow her lawn for her. (I bet you

April 12, 2017

Page 3

would offer to mow your neighbor's lawn if they were ill, wouldn't you?) She said no, since she had called her family and a brother was coming from out of state to help take care of her. The next day the lawn was mowed.

I've heard other, similar stories.

Why does the town wish to involve itself in civil disputes?

Why doesn't the town attempt to make friendly contact with a party prior to issuing demands and threatening penalties?

As a Pinehurst resident, I have noted some improvements and appreciate the town's progress in becoming a friendlier place to live and do business. I hope to see more of that, and fewer nasty letters.

Sincerely,

Stan Jackson
Property Manager
910-944-0705

TLB Holdings, LLC

April 13th, 2017

Mr. Kevin Reed
395 Magnolia Road
Pinehurst, NC 28374

RE: 190 Forrest Lane Tree removal request

Dear Mr. Reed:

Yesterday, 4/12/2017, I received a call from Ms. Angel Smith, and a message left on my voicemail stated that the property corners had been marked and that I had until the 7th of May to remove the tree.

- The property corners have not been marked as of 7:00 am on the 13th of April.
- The ordinance referenced in Ms. Smith's original letter has no relevance to this situation.

If the town would like to remove the tree at its own expense, please provide me with a written request and I will certainly give it consideration.

Sincerely,

Stan Jackson
Property Manager
910-944-0705

Attachments - via email

Cc: nfiorillo, jcashion, jbouldry, cberggren, ccampbell – via email

Nancy R. Fiorillo <nfiorillo@vopnc.org> Apr 13 (13 days ago)

to me, Kevin, jcashion, John, Claire, Clark

I cannot open the attachment. Can you please re-send in a different format?

Nancy

Sent from my iPad

> On Apr 13, 2017, at 9:34 AM, Moore Quality Rentals <qualityrents@gmail.com> wrote:

>

> <190 Forest tree letter reply.pdf>

Nancy R. Fiorillo <nfiorillo@vopnc.org> Apr 13 (13 days ago)

to me, Kevin, Jeff

Perhaps the owner of the property has a survey. Nancy

Sent from my iPad

> <190 Forest tree letter reply.pdf>

Jeff Sanborn <jsanborn@vopnc.org> Apr 13 (13 days ago)

to Nancy, me, Kevin

Nancy,

If I understand the situation correctly, the question of whose property the tree lies on has been resolved. We have a copy of a previous survey on hand in the planning department that shows a greater distance from the edge of the house to the property line than there is between the house and the tree.

Nancy R. Fiorillo <nfiorillo@vopnc.org> Apr 13 (13 days ago)

to Jeff, me, Kevin

Thanks.

Sent from my iPad

April 24th, 2017

Mr. Kevin Reed

395 Magnolia Road

Pinehurst, NC 28374

RE: 190 Forrest Lane Tree removal request

Dear Mr. Reed:

It was my understanding that you were going to review the situation with the tree by inspecting it personally, and also have the town's attorney review the ordinance. As I have not heard from you, I'd like to reiterate and clarify my position on this issue:

- The ordinance referenced in Ms. Smith's original letter has no relevance to this situation. The tree is not downed or leaning.
- Ms. Smith inserted the word "dead" into her reference of the ordinance. This word is not found in the ordinance itself. I'd like an explanation of why that was done.
- Though I've acknowledged that the tree is most likely on our property, the notice was sent without any confirmation of this by the town, and the corners were never marked.

The Village of Pinehurst is well known for its regulations, and their vigorous and often enthusiastic enforcement. If the Village wants to regulate standing trees, they can develop a fair and reasonable ordinance which is clearly worded with specific requirements. What is occurring here is purely subjective, with a need to twist language to achieve a desired outcome.

Please note that it is the intention of TLB Holdings, LLC to appeal this matter to the extent allowed by law.

Sincerely,

Stan Jackson

Property Manager, TLB Holdings, LLC

Kevin B. Reed <kreed@vopnc.org> Apr 25 (1 day ago)

to me, Nancy, jcashion, John, Claire, Clark

Mr Jackson,

I apologize for my delay in responding to you after our meeting. I did visit the site and I believe the tree does meet the standard as a nuisance under the Pinehurst Municipal Code. Additionally after reviewing the PMC with the Village Attorney, he confirmed that the Village has been correctly applying this standard in regards situations such as those found on Forrest Lane. I hope this clarifies and reaffirms the Village's position.

Thanks,

Kevin Reed

Sent from my iPad

Kevin B. Reed, Planning and Inspection Director

Moore Quality Rentals <qualityrents@gmail.com> Apr 25 (1 day ago)

to Kevin, Nancy, jcashion, John, Claire, Clark

Can you please provide me with the Village's appeal procedure/process?

Thanks,

Stan Jackson

Kevin B. Reed <kreed@vopnc.org> 8:22 AM (1 hour ago)

to Jeff, Angel, me, Nancy, jcashion, John, Claire, Clark

Mr. Jackson,

The section of the Pinehurst Municipal Code (PMC) that pertains to Nuisances does not have an appeal process. As per Section 92.03, if someone is ordered to abate a nuisance and fails to comply, then the Village has the authority to abate the nuisance and bill the owner for the costs associated with the work. Please let me know if you have further questions.

Thanks,

Kevin Reed



PUBLIC HEARING NO. 2

ADDITIONAL AGENDA DETAILS:

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.

ATTACHMENTS:

Description

- ☐ Staff Report
- ☐ Application
- ☐ Exhibit A
- ☐ Exhibit B
- ☐ Exhibit C
- ☐ Exhibit D
- ☐ Exhibit E



PLANNING AND INSPECTIONS DEPARTMENT STAFF REPORT

To: Board of Adjustment
From: Bruce Gould, Principal Planner
Date: July 26, 2017
Subject: Variance Request 260 Lake Dornoch Dr./CCNC

Applicant:	Peter Mattei
Owners:	Peter Mattei
Property Location:	260 Lake Dornoch Dr./CCNC
Zoning:	R-30 (Single Family Residential, 30,000 sq. ft. minimum lot size)
Lake Fence Setback:	30'
Current Land Use:	Single Family Home
PID#	00019198

Request and Background:

This request is to encroach thirty (30) feet into the required thirty (30) foot lake setback for the purpose of constructing a new fence in the rear yard. The lot was created via a plat map on October 25, 1963. Peter L. Mattei and Margie T. Ejercito acquired the property in March of 2017 from Betty J. Grissinger.

This property contains a single family home that was constructed in 1995.

The property is bounded to the west by Lake Watson (zoned Recreational District), to the North by a Lake Dornoch Dr. and a vacant single family lot which are both zoned R-30, to the South by a single family home constructed in 1981 and zoned R-30.

The Country Club of North Carolina was annexed into the Village of Pinehurst via legislation passed by the North Carolina General Assembly in 1985 at which time the neighborhood would have been zoned by the Village of Pinehurst.

In addition to the zoning provisions of the R-30 District this lot also contains FEMA regulated floodplain. Fences are not regulated by the Village's Flood Damage Prevention Ordinance.

Variance Process:

THE VARIANCE PROCESS is intended to provide relief from the zoning requirements of the Pinehurst Development Ordinance (PDO) in those cases where strict application of a particular zoning requirement will create a practical difficulty or unnecessary hardship prohibiting the use of land in a manner otherwise allowed under the PDO. It is not intended that variances be granted merely to remove inconveniences or financial burdens that the zoning requirements of the PDO may impose on property owners in general. Rather, it is intended to provide relief where the zoning requirements of the PDO render the land difficult or impossible to use because of some unique physical attribute of the property itself, or some other factor unique to the property for which the variance is requested.

Vicinity Map:



Aerial View



Action by the Zoning Board of Adjustment:

In considering the application, the Zoning Board of Adjustment shall review the application materials, the general purpose and standards set forth in this Section for the granting of variances, and all testimony and evidence received by the Zoning Board of Adjustment at the public hearing;

After conducting the public hearing, the Zoning Board of Adjustment may:

- (1) Have the authority to subpoena witnesses and may request additional information;
- (2) Continue the public hearing on the requested variance;
- (3) Conduct an additional public hearing on the application;
- (4) Grant the requested variance;
- (5) Deny the requested variance;
- (6) Grant the requested variance with conditions. In granting any variance, the Zoning Board of Adjustment may attach appropriate conditions, provided that the conditions are reasonably related to the request.

Any approval or denial of the request shall be by resolution, accompanied by written findings of fact that the variance meets or does not meet each of the standards set forth in Standards of Review below, stating the reasons for such findings;

The Zoning Board of Adjustment shall not grant any variance unless there is a concurring vote of at least 4 of its 5 members;

Standards of Review

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

- (a) 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;
- (b) 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;
- (c) 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;
- (d) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Staff does not formulate a recommendation of variance request as decisions are to be based solely on the testimony and evidence submitted at the quasi-judicial hearing.



Application for
Board of Adjustment – Request for a Variance

Fee: \$400.00

BOARD OF ADJUSTMENT MEETING SCHEDULE –
please check village website www.vopnc.org

REQUEST FOR VARIANCE PROCEDURES

- SUBMIT (12) sets of Plans and or Applications – (24”x 36”) or (18”x 24”)
- Plans and Applications must be submitted (4) four weeks prior to the next scheduled BOA meeting. Plans must be folded with the application attached.

Applicant: Peter L. Mattei Owner: Peter L. Mattei

Address: 260 Lake Dornoch DR Pinehurst, NC Address: 260 Lake Dornoch DR Pinehurst, NC

Telephone Number: 6093302168 Telephone Number: 6093302168

Legal Relationship of applicant to property owner: Same

(Attach to this application evidence of legal relationship of applicant to owner)

Request:

I, Peter L. Mattei, hereby petition the Board of Adjustment of the Village of Pinehurst for a variance from Section(s) 9.13 of the Pinehurst Development Ordinance which states:

Fences, walls, and similar structures not over six (6) feet in height may project into the rear or side setback provided the lot does not abut a golf course or a lake. Fences, walls, and similar structures are prohibited in the rear setback if the lot abuts a golf course or a lake. If the side yard does not abut a golf course or a lake, fences, walls, and similar structures may be erected to a maximum height of six (6) feet. Such fence or wall shall not be built in or through a required buffer unless the fence or wall has been designed as an integral part of the buffer and approved as such

Property Description: Lot Number: 7 Unit Number: _____ Zoning District: R30

Property Location: (address) 260 Lake Dornoch DR Pinehurst, NC

Moore County Parcel ID #: 00019198 Moore County PIN Number 857105175756



Application for Board of Adjustment – Request for a Variance

Petition:

A variance from the regulations of this section may be granted by the Board of Adjustment if it finds that strict enforcement of the regulations would result in practical difficulties or unnecessary hardships to the applicant for the variance, and that, by granting the variance, the intent of this section and the Pinehurst Development Ordinance will be observed, public safety and welfare secured, and substantial justice done. It may reach this conclusion if it finds: (Applicant must make a statement supporting each finding, attach additional pages in necessary.)

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;

Unnecessary hardship would result from the strict application of section 9.13 of the Pinehurst Development Ordinance. Strict application of this ordinance would create a fence that is more visible to the community. (See Exhibits A-D)

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 hardship results from conditions that are peculiar to the shape of the property at 260 Lake Dornoch Drive. This 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. (See Exhibits A-D)

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with the knowledge that circumstances exist that may justify the granting of the variance shall not be regarded as a self-created hardship

The hardship is not a self-created hardship as it results from the shape of the property and location of natural vegetation. (See Exhibits A-D)

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

The spirit and intent of this ordinance is to maintain the natural beauty of Pinehurst and promote the utility of its golf courses. I believe granting this variance will be consistent with this spirit and intent as it will result in a fence that is better camouflaged by natural vegetation and a fence that is more aesthetically 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. (See Exhibits A-E)



Application for
Board of Adjustment – Request for a Variance

Therefore, on the basis of all the foregoing, it is ordered that the application for a variance be (GRANTED ____ or DENIED ____), subject to the following conditions:

Ordered this _____ day of _____, 20_____.

(Chairman)

(Secretary)

Please attach proof of ownership, such as a copy of a deed.

STATE OF NORTH CAROLINA

ENCROACHMENT AGREEMENT

COUNTY OF MOORE

THIS ENCROACHMENT AGREEMENT (this "Agreement") is entered into the 18th day of May, 2017, between the County of Moore, a political subdivision of the State of North Carolina (the "County"), and Peter L. Mattei and wife, Margie T. Ejercito, owners of certain real property located at 260 Lake Dornoch Dr. in Pinehurst, North Carolina (the "Owner").

WITNESSETH

WHEREAS, the Owner owns real property located at 260 Lake Dornoch Dr. in Pinehurst, North Carolina; and

WHEREAS, the property is a waterfront lot and the Owner desires to install or modify a fence on the property; and

WHEREAS, the Owner desires to encroach upon the County's utility easements for the purposes of constructing or modifying the fence; and

WHEREAS, the County is willing to permit encroachment if the Owner agrees to be solely responsible for the construction or modification, any damage caused to the County's utilities as a result of the construction, and/or any costs resulting from the County's need to access its utilities.

NOW, THEREFORE, in consideration of permitting construction within the easement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and Owner agree as follows:

1. Property. The Owner owns real property located at 260 Lake Dornoch Dr., Pinehurst, NC 28374, which is recorded in the Moore County Registry at Deed Book 4791, Page 201, and has Parcel ID/LRK #00019198 (the "Property").
2. Utility Easement. The County owns a utility easement through the property, which is identified within a plat recorded with the Moore County Register of Deeds at Plat Cabinet 2, Slide 210 (the "Utility Easement").
3. Project. The Owner intends to have a fence constructed along an existing tree line along the northwestern side of the Property (the "Project"), as the tree line exists as of the date of this Agreement. As a result of the Utility Easement and the location of the Project, the Project will encroach upon the Utility Easement.
4. Encroachment. The Owner, by complying with all terms and conditions contained within this Agreement, may construct the Project within the Utility Easement. Final construction of the Project will not come any closer than one and a half feet on either side of the center line of any utility line owned by the County and no closer than one foot from any appurtenance owned by the County.
5. Liability. The Owner understands and agrees that:
 - a. The Owner assumes full liability for the Project and for all costs related to the Project.

- b. The Owner will install and maintain the Project in a safe and proper manner so that the Project will not interfere with or endanger the County's operation and maintenance of its utilities.
 - c. The Owner assumes full liability for any damage that may be caused to the County's utilities as a result of the Project, whether due to the Project's construction or its existence afterwards.
 - d. The Owner assumes full liability for all costs related to any damage to the County's utilities as a result of the Project.
 - e. If the County's access to its utilities is ever interfered with due to the Project, then the County may remove any portion of the Project that the County deems interfering and the cost of the removal will be the sole responsibility of the Owner.
 - f. If the Owner at any time removes, replaces, or makes changes to the Project, the Owner will notify the County in writing, as required under Section 13.
6. Project Design Approval. The Owner, prior to construction of the Project, will provide the design specifications for the Project to the County for the County's approval. This approval is solely for the purpose of establishing where the Project will be located with regards to the County's utilities, which is to help ensure that no permanent construction will occur within one and a half feet on either side of the center line of any utility line owned by the County and no closer than one foot from any appurtenance owned by the County.
7. Pre-Construction Notification. Prior to initiating construction of the Project, the Owner will provide the County with 48 hours' notice.
8. Construction. If the County sends a representative to the Project during construction and the representative has reason to believe that the completed Project will be within one and a half feet on either side of the centerline of any utility line owned by the County or within one foot of any appurtenance owned by the County, the County may stop construction and require the Owner to verify that the completed Project will not be within those areas. If the Project is within those areas, the Owner will be required to move the Project so that it complies with this Agreement. Construction may not resume until the verification is completed and, if necessary, the Project corrected.

If during construction of the Project the County's utilities are damaged, the Owner will immediately cease construction and notify the County by contacting Randy Gould, Director of Public Works at (910) 947-4300 or (910) 947-6315. Once the County has had a chance to visually inspect its utilities, it will make one of the following determinations:

- a. Repairs are necessary. If after the visual inspection the County deems repairs necessary, then the County will be given the opportunity to make the necessary repairs prior to construction resuming. Once repairs have been completed, the County will provide the Owner with authorization to resume the Project.
- b. Repairs are not necessary. If after the visual inspection the County deems repairs unnecessary, then the County will provide the Owner with authorization to resume the Project.

In no way will any action performed by the County under this Section be deemed a waiver of the Owner's liability for the Project, for all costs related to the Project, for any damage to the County's utilities that occur as a result of the Project, and for all costs related to any damage to the County's utilities as a result of the Project.

9. Post-Construction Notification and Inspection. To ensure timely inspection of the County's utilities, the Owner will provide the County with notice of completion of the Project within 48 hours of completion. The Owner agrees to assume the actual cost of any inspection of the work considered necessary by the County, which includes in-line video inspection.
10. Compliance with Laws and Regulations. The Owner represents that the Project will comply with all Federal, State, and local laws, regulations or orders, as amended or supplemented. Furthermore, the Owner will comply with all ordinances, policies, standards, and specifications prescribed by the County applicable to the Project, which include, but are not limited to, the Moore County Public Works "Standards and Specifications" manual and the requirements of the North Carolina Department of Environment and Natural Resources.

11. Insurance. During the construction phase of the Project, the Owner will comply with the following insurance requirements:

- a. Automobile Liability. Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combined single limit each occurrence/aggregate.
- b. Commercial General Liability. Bodily injury and property damage liability as shall protect the contractor and any subcontractor performing work under this Agreement from claims of bodily injury or property damage which arise from operation of this Agreement whether such operations are performed by contractor, any subcontractor or any one directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate

This insurance shall include coverage for products/completed operation, personal injury liability and contractual liability assumed under the indemnity provision of this Agreement.

- c. Workers' Compensation Insurance. Meeting the statutory requirements of the State of North Carolina and Employers Liability of \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit, providing coverage for employees and owners.
12. Indemnification. To the fullest extent permitted by law, the Owner, its successors and assigns, will indemnify and hold harmless the County, its officials, agents, and employees from and against all claims, damages, losses, and expenses, direct, indirect, or consequential (including but not limited to fees and charges of engineers or architects, attorneys, and other professionals and costs related to court action or arbitration) arising out of or resulting from the Project or the actions of the Owner, its officials, employees, or contractors. This indemnification will survive the termination of this Agreement.

13. Notice. All notices which may be required by this Agreement or any rule of law will be effective when received by certified mail sent to the following addresses:

COUNTY: MOORE COUNTY PUBLIC WORKS
ATTN: DIRECTOR
P.O. BOX 1927
CARTHAGE, NC 28327

OWNER: PETER L. MATTEI AND MARGIE T. EJERCITO
260 LAKE DORNOCH DR.
PINEHURST, NC 28374

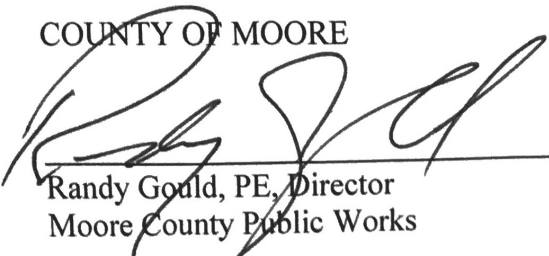
For the purposes of Sections 7 and 9, the Owner may provide notice via telephone to Leonard McBryde III, P.E., County Engineer, at (910) 947-4308.

14. Waiver. No action or failure to act by the County shall constitute a waiver of any of its rights or remedies that arise out of this Agreement, or constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.
15. Choice of Law and Forum. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, are governed by the laws of the State of North Carolina. All actions relating to this Agreement in any way will be brought in the General Court of Justice in the County of Moore and the State of North Carolina.
16. Amendments. This Agreement may only be amended by the written mutual agreement of the parties.
17. Entire Agreement. This Agreement contains the entire agreement between the parties pertaining to the subject matter of this Agreement. With respect to the subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this Agreement.

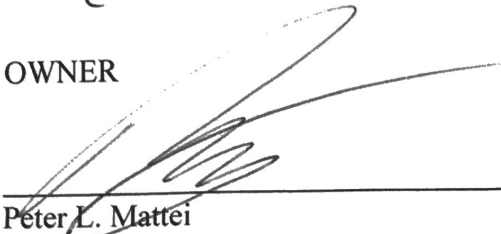
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

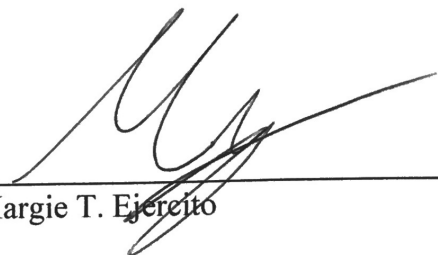
[SIGNATURES ON THE FOLLOWING PAGE.]

COUNTY OF MOORE


Randy Gould, PE, Director
Moore County Public Works

OWNER


Peter L. Mattei

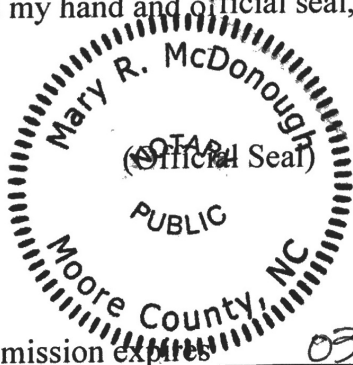

Margie T. Ejercito

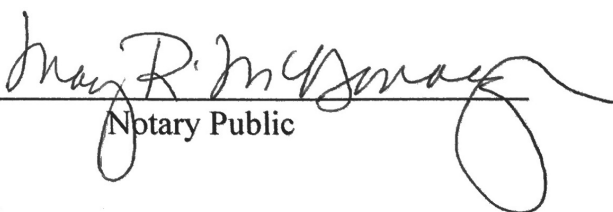
STATE OF North Carolina

COUNTY OF Moore

I, Mary R. McDonough, a Notary Public for said County and State, do hereby certify that Peter L. Mattei and Margie T. Ejercito personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the 19th day of May, 2017.



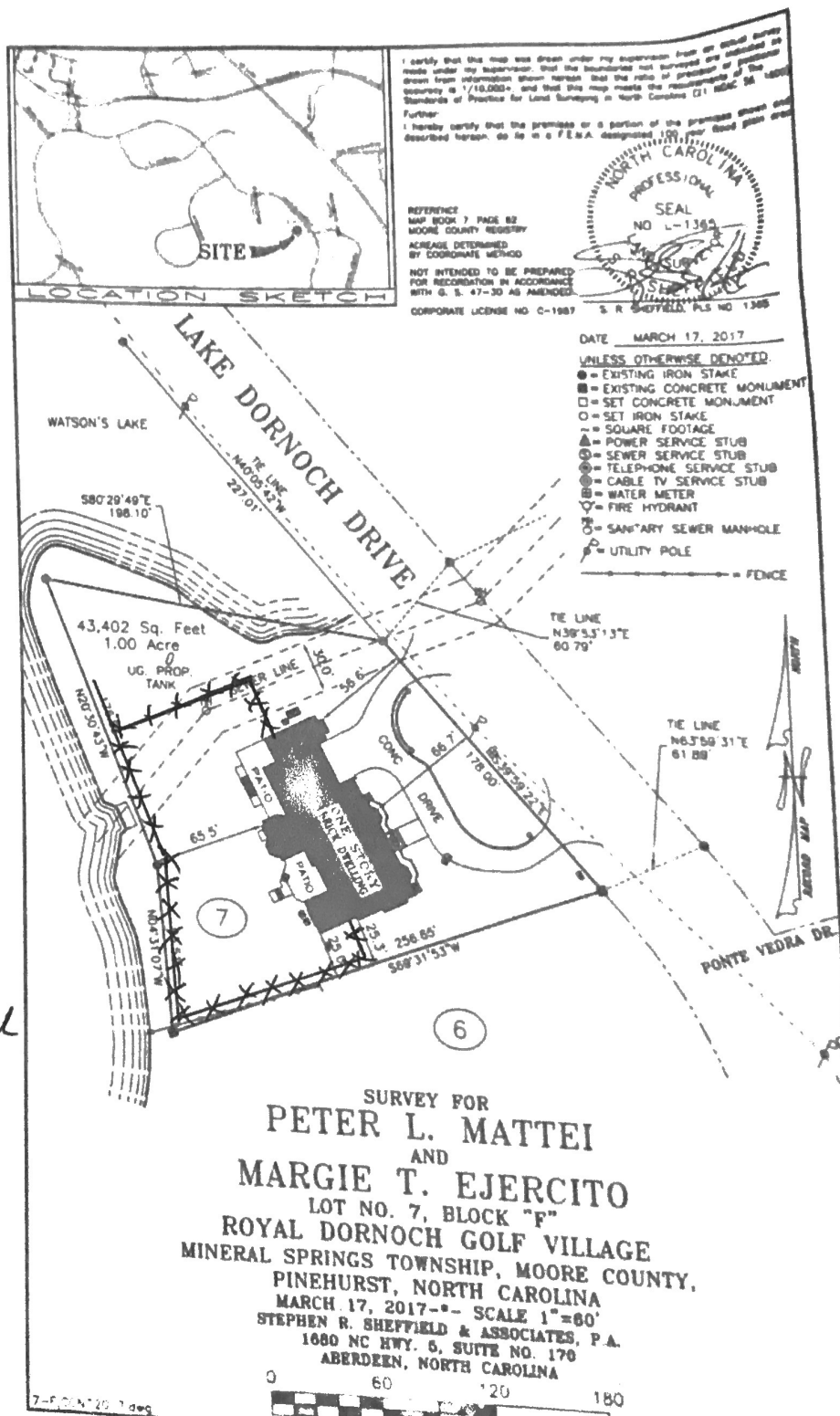

Notary Public

My commission expires

03/2/2022, 20 22

360' of Black
Aluminum Fence
4' tall. The Fence
Will have a

4' gate.













PUBLIC HEARING NO. 3
ADDITIONAL AGENDA DETAILS:

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.

ATTACHMENTS:

Description

- ☐ Staff Report
- ☐ Application
- ☐ Plat Map



PLANNING AND INSPECTIONS DEPARTMENT STAFF REPORT

To: Board of Adjustment
From: Bruce Gould, Principal Planner
Date: July 27, 2017
Subject: Variance Request 1144 Chicken Plant Rd.

Applicant:	Carolyn McAllister
Owners:	Carolyn McAllister
Property Location:	1144 Chicken Plant Rd
Zoning:	R-210 (Residential District)
Setback:	Front 100', Side 40', Rear 50'
Current Land Use:	Vacant
PID#	00029912

Request and Background:

This request is to have the R-30 dimensional requirements be applied to the property. The R-30 setbacks are as follow; Front-40', Side, 20', Rear-30'. The lot was created via a plat map on October 25, 1963. Carolyn McAllister acquired the property in April of 2017 from Nicholas Watson, Sueanne Jones and Corrine Lea Watson.

This property is currently vacant and contains +/- 0.641 acres.

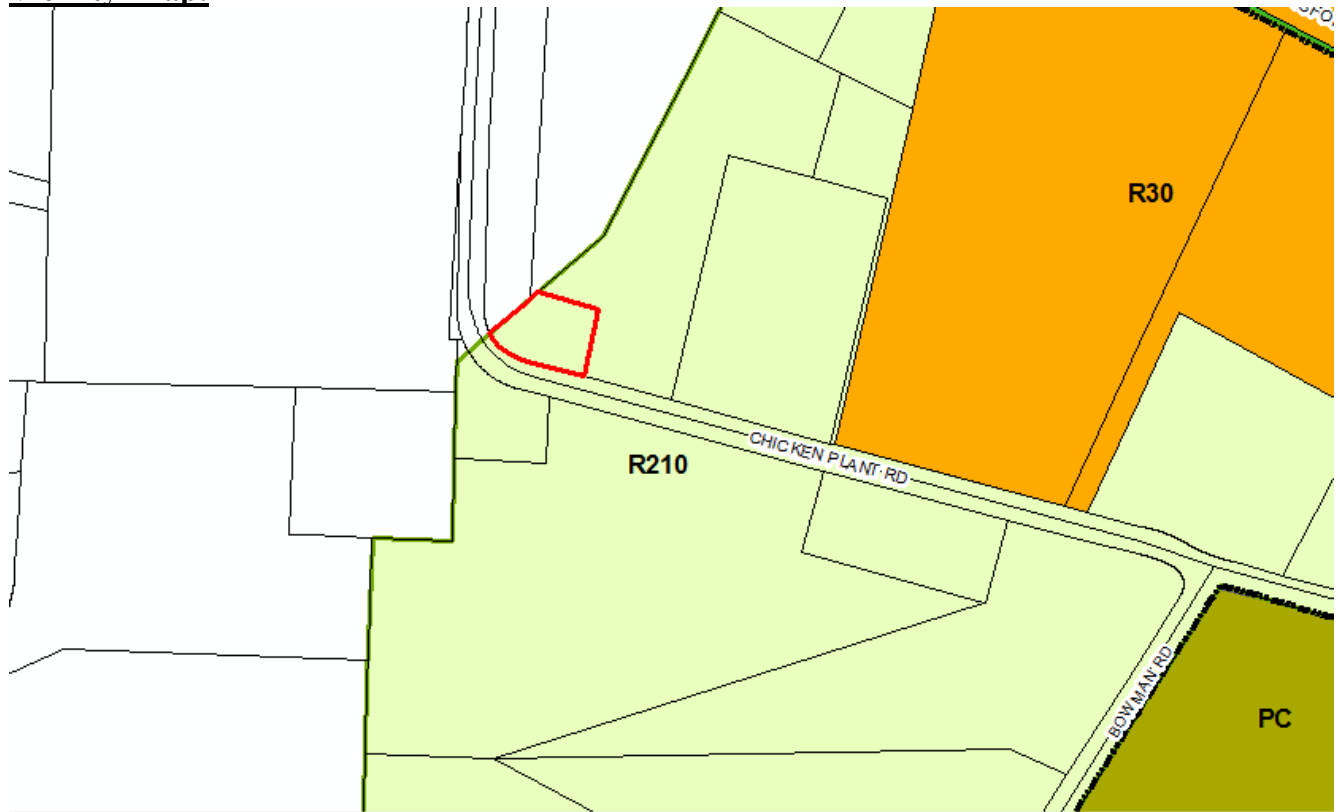
The property is within Pinehurst ETJ and bounded to the east by a vacant lot, to the south across Chicken Plant Rd. by a single family home (both currently zoned R-210), the north and west by lots outside of Pinehurst's ETJ.

Variance Process:

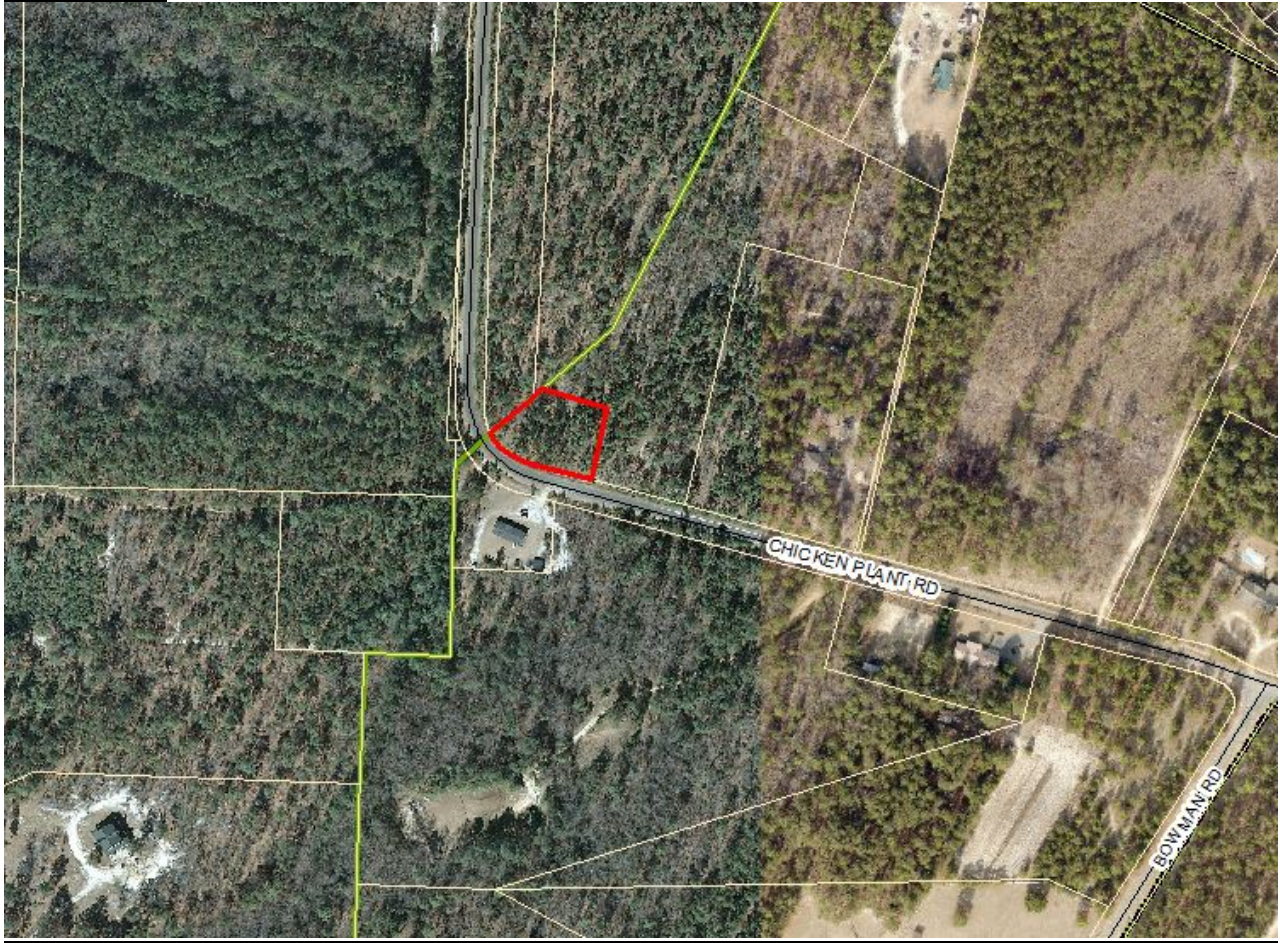
THE VARIANCE PROCESS is intended to provide relief from the zoning requirements of the Pinehurst Development Ordinance (PDO) in those cases where strict application of a particular zoning requirement will create a practical difficulty or unnecessary hardship prohibiting the use of land in a manner otherwise allowed under the PDO. It is not intended that variances be granted merely to remove inconveniences or financial burdens that the zoning requirements of the PDO may impose on property owners in general. Rather, it is intended to provide relief where the zoning requirements of

the PDO render the land difficult or impossible to use because of some unique physical attribute of the property itself, or some other factor unique to the property for which the variance is requested.

Vicinity Map:



Aerial View



Action by the Zoning Board of Adjustment:

In considering the application, the Zoning Board of Adjustment shall review the application materials, the general purpose and standards set forth in this Section for the granting of variances, and all testimony and evidence received by the Zoning Board of Adjustment at the public hearing;

After conducting the public hearing, the Zoning Board of Adjustment may:

- (1) Have the authority to subpoena witnesses and may request additional information;
- (2) Continue the public hearing on the requested variance;
- (3) Conduct an additional public hearing on the application;
- (4) Grant the requested variance;
- (5) Deny the requested variance;
- (6) Grant the requested variance with conditions. In granting any variance, the Zoning Board of Adjustment may attach appropriate conditions, provided that the conditions are reasonably related to the request.

Any approval or denial of the request shall be by resolution, accompanied by written findings of fact that the variance meets or does not meet each of the standards set forth in Standards of Review below, stating the reasons for such findings;

The Zoning Board of Adjustment shall not grant any variance unless there is a concurring vote of at least 4 of its 5 members;

Standards of Review

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

- (a) 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;
- (b) 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;
- (c) 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;
- (d) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Staff does not formulate a recommendation of variance request as decisions are to be based solely on the testimony and evidence submitted at the quasi-judicial hearing.

Fee \$400.00

BOARD OF ADJUSTMENT SCHEDULE
REQUEST FOR VARIANCE PROCEDURES

- ◆ Cost of application - \$400.00
- ◆ SUBMIT (12) sets of Plans and or Applications – (24"x 36") or (18"x 24")
- ◆ Plans and Applications must be submitted (4) four weeks prior to the next scheduled BOA meeting. Plans must be folded with the application attached.

Application for a Variance

Applicant: <u>Carolyn McAllister</u>	Owner: <u>Carolyn McAllister</u>
Address: <u>1310 Monticello Rd., Pinehurst</u>	Address: <u>1310 Monticello Rd., Pinehurst</u>
Telephone Number: <u>910-603-0158</u>	Telephone Number: <u>910-603-0158</u>

Legal Relationship of applicant to property owner: same
(Attach to this application evidence of legal relationship of applicant to owner)

Request:

I, Carolyn McAllister, hereby petition the Board of Adjustment of the Village of Pinehurst for a variance from Section(s) 8.2.3(c) and 9.2 of the Pinehurst Development Ordinance which states: dimensional requirements of R-210 zoning, which presently apply to this property. It is my request that R-30 dimensional requirements be applied to this property.

Property Description: Lot Number: n/a ^{Deep Creek} Unit Number: _____ Zoning District: R-210
Property Location: (address) none established
Moore County LRK Number 00029912 Moore County PIN Number 854209162819

Application for
Board of Adjustment – Request for a Variance

Petition:

A variance from the regulations of this section may be granted by the Board of Adjustment if it finds that strict enforcement of the regulations would result in practical difficulties or unnecessary hardships to the applicant for the variance, and that, by granting the variance, the intent of this section and the Pinehurst Development Ordinance will be observed, public safety and welfare secured, and substantial justice done. It may reach this conclusion if it finds: (Applicant must make a statement supporting each finding, attach additional pages in necessary.)

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;

As the attached survey shows, no residential use can be made of the property if R-210 zoning is applied to it.

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;

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 to the neighborhood. A change to R-30 zoning requirements would be suitable to this property.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with the knowledge that circumstances exist that may justify the granting of the variance shall not be regarded as a self-created hardship

This property has been approximately one acre in size, as evidenced by deeds dating back to 1981, before the Village zoning requirements were put into place for the vicinity in which this lot is situated. Those subsequently-enacted requirements do not allow reasonable use of this property.

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

Application for

Board of Adjustment – Request for a Variance

Without this variance, this property would be unbuildable and would only be marketable, if at all, to any adjoining property owners who wished to enlarge their property. I believe this request to be fair and reasonable. I would add that there are other properties in this zoning district, one across Chicken Plant Road, and another across and down Chicken Plant Road, that are of similar size as this property, and are being used for residential purposes with existing homes thereon.

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

Ordered this _____ day of _____, 20_____.

(Chairman)

(Secretary)

Please attach proof of ownership, such as a copy of a deed.

