



**BOARD OF ADJUSTMENT
JULY 11, 2019
ASSEMBLY HALL
395 MAGNOLIA RD.
PINEHURST, NORTH CAROLINA
5:00 PM**

The Board of Adjustment held a Meeting at 5:00 p.m., Thursday, July 11, 2019, in the Assembly Hall, at 395 Magnolia Road, Pinehurst, North Carolina.

Board Members in Attendance:

Julia Latham, BOA Chair
Leo Santowasso, BOA Member
Joel Shriberg, BOA Member
Sonja Rothstein, BOA Alternate
Charles Russell, BOA Alternate

BOA Member Absent:

David Kelley, BOA Member
Cyndie Burnett, BOA Member
Jeramy Hooper, BOA Alternate
Paul Roberts, BOA Alternate

Staff in Attendance:

Darryn Burich, Planning and Inspections Director
Alex Cameron, Senior Planner
Beth Dunn, Village Clerk
Kelly Brown, Planning Administrative Assistant

I. Call to Order

Chair Julia Latham confirmed that a quorum was present and called the meeting to order.

Upon motion by Mr. Santowasso, the Board unanimously approved to seat Charles Russell as a voting member of the Board by a vote of 3-0.

Upon motion by Board Member Leo Santowasso and seconded by Board Member Charles Russell, the Board unanimously approved to seat Sonja Rothstein as a voting member of the Board by a vote of 4-0.

II. Approval of Minutes

- a. June 6, 2019 Regular Meeting Minutes

Upon a motion by Mr. Santowasso and seconded by Ms. Rothstein, the Board unanimously approved the June 6, 2019 regular meeting minutes as amended by a vote of 5-0.

III. Motion to Enter a Public Hearing

Upon a motion by Mr. Santowasso and seconded by Ms. Rothstein, the Board unanimously voted to recess the regular meeting and to enter into Public Hearing #1 by a vote of 5-0.

IV. Public Hearing #1

Senior Planner Alex Cameron and agents of the applicant Wayne Haddock and Mark Dean of Pinehurst Homes were sworn into the public meeting by Ms. Latham.

Mr. Cameron stated that the purpose of the public hearing is to receive testimony for a variance request from section 9.2a Tables of Dimensional Requirements for the property at 65 Cherokee Road, further identified by Moore County PID # 00014110. This property is located within the R-10 (High Density Residential) Zoning District and within the Historic Preservation Overlay District. Specifically, the applicant and owners, Michael and Moriah Brown are requesting a variance for 4 feet from the front setback and 2 foot 6 inch variance from one right side setback from the property line.

Mr. Cameron entered into the record the following documents included in the request: application with description, letter of authorization from the owner, existing photo, proposed elevation, existing survey with the current R-10 setbacks shown and surveyed site plan with proposed additions and encroachments, and staff report.

Mr. Cameron explained that the front of the home is currently nonconforming to the minimum front yard setback and encroaches approximately 4' into the setback. He stated the house was built before the Village of Pinehurst was incorporated.

Mr. Haddock read a letter on behalf of the homeowners. Mr. Haddock stated the intent is to change the front porch to be architecturally and historically correct and look like it did when the house was constructed about 120 years ago. Mr. Haddock stated the hardship results from the current setbacks being imposed on the house which was constructed prior to the incorporation of the Village.

Mr. Haddock explained that the front elevation currently encroaches 3.9 feet into the setback. He stated the front porch was constructed by a previous owner. Mr. Haddock stated the house does not currently have a front entry.

Mr. Haddock stated the home is currently 1520 square feet and does not meet the square footage requirement for R-10 zoning, which is 1800 square feet. He stated if they get approval to extend the front, it would allow them to do interior work within current setbacks so that the house will meet the 1800 square foot heated area requirement. Mr. Haddock stated that impervious surface was not an issue.

Mr. Cameron stated that the Pinehurst Development Ordinance allows for steps to encroach into the setback, so they would not need to be part of the applicant's variance request.

Upon question by Mr. Santowasso, Mr. Haddock explained that the new brick patio was in the current setback area and would be the same size as the existing wood deck it was replacing. He stated it would be 308 square feet.

Mr. Santowasso questioned the dimensions of the master bedroom and closet addition. Mr. Haddock stated the area would 108 square feet, but could not recall the dimensions.

Mr. Santowasso stated that the applicant had the total hard surface listed as 2600 feet, which did not include existing gravel walk or driveway. He stated that even if those were added in, they would still be below the hard surface standards. Mr. Dean that they calculated it would be 17% impervious surface. Mr. Cameron stated that is it 40% in the R-10 zoning district.

Mr. Haddock explained that the side encroachment is currently a porch with a side entry. They are proposing to enclose an addition on the side for a laundry utility room.

Mr. Santowasso questioned the garage addition encroaching into the side setback. Mr. Cameron explained that the dashed setback line on the survey applies to principal structures, not accessory structures. He stated that even if garage addition is non-conforming to the accessory structure setbacks, the proposed addition would keep same general footprint, therefore would not encroach any further.

Mr. Russell questioned if the only part of the project that is being done to meet a historical standard was the front porch and if everything else was being done as a modernization. Mr. Haddock stated that all proposed changes will match existing structures and materials.

Mr. Shriberg noted that if the house was built today, there would be plenty of room to the rear and left side to build without encroaching on setbacks. He stated that when the home was built, no one knew the Village was going to exist or restrictions would be imposed.

Upon question by Mr. Santowasso, Mr. Haddock stated that the applicants understood that Historic Preservation Commission approval was required.

V. Discuss and Consider a Variance for a Setback at 65 Cherokee Road

Ms. Latham stated that the Board would remain in public hearing during discussion and voting.

Ms. Latham stated the hardship is that their home needs to be returned to a useful and historically accurate state, and that it results from conditons having to do with the zoning prior to Village incorporation.

Mr. Shriberg stated that Board is being asked to alleviate a hardship created by the Village.

Ms. Latham stated she was concerned about the laundry room addition, as there was no floor plan to see if it could be added somewhere else in the house and it is not of historical value.

Ms. Rothstein stated she agreed with the proposed changes.

Mr. Russell stated the if the Board accepts the logic that the ordinance created the hardship on the front of the house, then it must be accepted that the ordinance created a hardship on the side of the house.

Mr. Santowasso stated the request is asking to add a utility room that is desperately needed.

Upon a motion by Mr. Shriberg, seconded by Ms. Rothstein, the Board moved to approve the variance request for the property at 65 Cherokee Road, requesting a variance for 4 feet from the front setback and 2 foot 6 inch variance from one side setback from the property line and to enter the following into the record:

- 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.

Ms. Latham and Mr. Russell stated they would like to continue to discuss the request before voting. Mr. Cameron advised that the Mr. Shriberg discuss the findings of fact as it related to the motion.

Mr. Shriberg stated that the hardship comes from the setbacks being imposed on a home built before there was a development ordinance, based on the evidence that has been provided at the public hearing.

The Board voted to deny the request for a variance at 65 Cherokee Road by a vote of 3-2.

Roll Call Vote:

Mr. Shriberg	Approve
Mr. Russell	Deny
Mr. Santowasso	Approve
Ms. Rothstein	Approve
Ms. Latham	Deny

Ms. Latham stated she had an issue with the laundry room. She stated she sees hardship in owning a historical home that you cannot bring back to its former glory and sees hardship due to the work done by previous owners and how the house is sited on the lot. Ms. Latham stated she sees where a washer and dryer could go else where in the house and had not had the applicant satisfy why a laundry room variance is needed based on material evidence in front of the Board.

Mr. Russell stated concern that if the applicant wants to appeal, the Board will be faulted because of the logic that if the front setback variance is accepted, then the side setback variance should be accepted.

Upon a motion by Ms. Latham, seconded by Mr. Santowasso, the Board moved to approve the variance request for the property at 65 Cherokee Road for a variance for 4 feet from the front setback with the condition that the side yard setback variance not be granted, and enter the following into the record:

- A. The applicant provided testimony that unnecessary hardship would result from the strict application of the ordinance. The applicant provided testimony to provide a historic front entry to a historic home in Pinehurst, one of the first seven homes in the area;
- B. The applicant provided testimony that the hardship results from conditions that are peculiar to the property, such as the location within the Historic Preservation Overlay District and that the home was originally built and added on to in a manner that is non-conforming with current setback regulations;
- C. The applicant provided testimony that the hardship did not result from actions taken by the applicant or the property owner. The actions were taken by previous owners who had added on to the home in a manner that is non-conforming with current regulations;
- D. The applicant provided testimony that 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 home can now be restored to resemble the original front entry of the home from the 1895 era.

The Board unanimously approved the motion by a vote of 5-0.

Roll Call Vote:

Mr. Shriberg	Approve
Mr. Russell	Approve
Mr. Santowasso	Approve
Ms. Rothstein	Approve
Ms. Latham	Approve

VI. Public Hearing #2

Owner and applicant Donald Zeilstra was sworn into the public hearing by Ms. Latham.

Mr. Cameron explained the purpose of this public hearing is to receive testimony for a variance request from section 9.2a Tables of Dimensional Requirements for the property at 5 York Place, further identified by Moore County PID # 00017008. This property is located within the R-10 (High Density Residential) Zoning District. Specifically, the applicant and owners, Don and Betty Zeilstra are requesting a 5 foot variance on the 25' rear yard setback.

Mr. Cameron entered into the record the following documents included in the request: application, supplemental material, property survey, plat from 1974, staff report, written decision.

Mr. Zeilstra explained that he wanted to build a home on the lot.

Mr. Haddock explained that the property was originally recorded by Pinehurst Enterprises Diamondhead in the 1970's. He stated that when the Village of Pinehurst adopted the Pinehurst Development Ordinance (PDO), the setbacks changed and affected Mr. Zeilstra's property.

Mr. Haddock stated the hardship is designing and building a house that is suitable for the lot; he consulted with three architectural designers who were unable to design a suitable home.

Mr. Haddock provided a statement of his expert testimony as a civil engineer and builder.

Mr. Haddock explained that he provided the Board with the floor plans of two specs homes that are often built in the neighborhood, the Brownstone and the Driftwood. He provided a site plan showing both homes sited on the lot with setback lines. Mr. Haddock stated Brownstone could only be built on the property with a 5' foot setback.

Mr. Haddock stated when the lot was recorded by Diamondhead, the front and rear setbacks were 20 feet and the side setbacks were 10 feet. When Village adopted its PDO, the setbacks at the rear changed to 25 feet, the front setback changed to 30 feet, and the side setbacks changed to 15 feet. He stated the cul-de-sac affects this lot as it encroaches back into the lot.

Mr. Haddock explained that Mr. Zeilstra owns a home on the property next to the lot requesting a variance. He stated that Mr. Zeilstra's existing house is currently 10 feet over the current setback line as it was built before the PDO was adopted. He stated that 5 out of 8 houses on the same street are outside of the current setback lines.

Mr. Shriberg asked how the other houses in the neighborhood got a variance. Mr. Haddock stated that they did not receive a variance as they were built before the PDO was adopted in 1996. Mr. Cameron stated many homes on York Place were built between 1983-1994.

Mr. Santowasso noted that the property is covered with longleaf pines, especially around perimeter, and that they would likely be cut down. He asked if the applicant thought it necessary to add buffers to the side rear yard. Mr. Zeilstra stated he did not think it was necessary to provide more buffering. Mr. Haddock stated that you could not see the neighboring house from the back of the property.

Mr. Santowasso asked who drew the houses on the site plan. Mr. Haddock answered that surveyor Stephen Sheffield created the survey and placed the houses on the site plan.

Mr. Russell confirmed with Mr. Haddock that the Brownstone floor plan is what was being proposed to be built. Mr. Haddock stated the home would be 1900 square feet when the bonus room is completed.

VII. Discuss and Consider Variance for a Setback at 5 York Place.

Ms. Latham stated the Board received expert testimony that without this variance it would be impossible to build a home that meets 1800 square footage requirement in R-10 zoning district on this lot.

Mr. Santowasso stated there had been houses constructed on the street within the 25 foot setback; however, the properties were created in 1973 that predated any official ordinance in the Village of Pinehurst.

Upon a motion by Mr. Santowasso, seconded by Ms. Rothstein, the Board moved to approve the variance request for the property at 5 York Place requesting a variance for a 5 foot variance on the 25' rear yard setback, further identified by Moore County PID # 00017008, located within the R-10 (High Density Residential) Zoning District with the following findings of fact and conclusions:

- A. Unnecessary hardship would result from the strict application of the ordinance.

- 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.
- 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.

The Board unanimously approved the request for a variance at 5 York Place by a vote of 5-0.

Roll call vote:

Ms. Latham	Yes
Ms. Rothstein	Yes
Mr. Shriberg	Yes
Mr. Russell	Yes
Mr. Santowasso	Yes

Upon motion by Mr. Santowasso, seconded by Ms. Rothstein, the Board unanimously moved to close the public hearing and enter into regular meeting by a vote of 5-0.

VIII. Review and Consider New Rules of Procedure.

The Board agreed to review and consider the Rules of Procedure at their next regular meeting.

IX. Next Meeting Date

August 1, 2019 at 4:30 pm (If the Board has business to conduct)

X. Motion to Adjourn

Upon a motion by Mr. Santowasso, the Board unanimously approved to adjourn the regular meeting at 6:27 pm by a vote of 5-0.

Respectfully Submitted,



Kelly Brown
Planning Administrative Assistant
Village of Pinehurst

A recording and videotape of this meeting are located on the Village website: www.vopnc.org.

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.