



**BOARD OF ADJUSTMENT
REGULAR MEETING
THURSDAY, JUNE 02ND, 2022
ASSEMBLY HALL
395 MAGNOLIA ROAD
PINEHURST, NORTH CAROLINA
IMMEDIATELY FOLLOWING P&Z 04:00 PM MEETING**

Board Members Present:

David Alzamora, Chair
Jack Farrell
Jeremy Hooper
Matt Jones, Alternate
Paul Roberts, Alternate
Sonja Rothstein, Alternate

Board Members Absent:

Phillip Shumaker
Julia Latham

Staff Present:

Darryn Burich, Planning Director
Alex Cameron, Planning Supervisor
Alfred Cassidy, Senior Planner
Maria Carpenter, Planner
Shannon Konstantinou, Clerk to the Board

Approximately 4 member(s) of the public in attendance.

I. Call to Order

Mr. Alzamora called the meeting to order at 04:30 PM, introduced the Board, noted the absences of Mr. Shumaker and Ms. Latham, and explained the purpose of this meeting.

II. Approval of Minutes

A. 01-06-2022 Regular Meeting Minutes

Mr. Hooper moved to approve the minutes of the January 06th, 2022 Regular Meeting. Seconded by Mr. Farrell. Approved by a vote of 3-0.

Mr. Alzamora stated in order to proceed with the business of the Public Hearing a quorum must be present and asked the Board for a motion to seat alternate Board members.

Mr. Farrell moved to seat Mr. Paul Roberts and Mr. Matt Jones to the Board of Adjustment as alternate members for the June 02nd, 2022 meeting. Seconded by Mr. Hooper. Approved by a vote of 3-0.

Mr. Alzamora stated Mr. Hooper previously disclosed a personal relationship with the Owners / Applicants of the Public Hearing subject property (4 Blair Ct.) and Mr. Hooper wished to relinquish his seat on the Board for the Public Hearing portion of the meeting.

Mr. Farrell moved to relinquish Mr. Hooper's seat on the Board and to seat Ms. Sonja Rothstein to the Board of Adjustment as an alternate member for the June 02nd, 2022 meeting. Seconded by Mr. Jones. Approved by a vote of 4-0.

Mr. Alzamora asked for a motion to enter the Public Hearing portion of the meeting.

Mr. Farrell moved to recess the Regular Meeting and enter the Public Hearing. Seconded by Mr. Jones. Approved by a vote of 5-0.

III. Public Hearing

A. PLN-2022-00089 (4 Blair Ct. Variance)

The purpose of the public hearing is to receive testimony for a variance request from Section 9.2a Table of Dimensional Requirements for the property addressed as 4 Blair Court, further identified by Moore County PID # 00014492. This property is located within the R-10 (High Density Residential) Zoning District. Specifically, the owners Anthony and Mary Wildt, are requesting a variance from the 30' Minimum Golf Course Setback.

Mr. Cameron was sworn into the Public Hearing and testified as follows.

Mr. Larry Postlewaite, Ms. Mary Wildt, and Mr. Anthony Wildt were sworn into the Public Hearing and testified as follows.

Mr. Cameron discussed the procedures of a quasi-judicial hearing; the proposed work; and submitted into evidence the Staff Report with attachments / exhibits, Presentation, and Application and Applicant's materials / exhibits. Mr. Alzamora accepted the materials submitted by Mr. Cameron into evidence.

Mr. Alzamora stated the rules of procedure the Board must follow and asked the Board if any partiality existed (none) or if any ex parte communication took place (none).

Mr. and Ms. Wildt stated they were not aware of the downward slope from the golf course towards their property. There is a significant problem with water runoff in the Doral Woods neighborhood.

In support of Item A: Unnecessary hardship would result from the strict application of the ordinance, Mr. and Ms. Wildt stated strict application will cause truly unnecessary hardship due to the storm water running toward the property, which is exacerbated by the patio sloping towards the house causing the storm water to pool against the foundation of the house in this area. The Wildts have taken steps to try to alleviate the water issues (new gutters, drains, additional downspouts, etc.) with no result. The only area in the full basement where water is present is directly under the patio. They had a home inspection done and were aware of a small water problem in the basement, which has grown into a bigger problem over the years. In the absence of the variance, they are concerned what will happen to the foundation of the property. The Wildts reviewed pictures of their property and the water damage submitted in support of the variance request.

In support of Item B: The hardship results from conditions that are peculiar to the property, Mr. and Ms. Wildt stated hardship results from the sandy topography of the property, which is lower than the golf course and storm water tends to flow towards the structure instead of being absorbed by the surrounding soil.

In support of Item C: The hardship did not result from actions taken by the applicant or the property owner, Mr. and Ms. Wildt stated they purchased the property in 2009 and have not made changes to the grading of the property.

In support of Item 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, Mr. and Ms. Wildt stated, in an effort to remedy the damage, the plan is to cover the patio and divert water an additional 13 feet away from the house. They are not expanding the footprint and the existing brick walls have significant enough footings to support a roof and walls. Mr. Wildt gave an overview of the gutter, downspout, and drainage plan for the property. Water issues can potentially cause health issues, such as mold. They hope enclosing the patio will achieve the look and aesthetics of the Pinehurst community. The water issues have caused settlement of the house, which will only get worse unless the water issues are corrected.

Mr. Alzamora verified the property has a full basement and the areas within the basement where water seepage / damage is observed. Mr. and Ms. Wildt stated the basement is a full basement and covers the entire footprint of the dwelling (at least 2,000 square feet), and the only area water seepage / damage is observed is the area directly under the patio. Mr. and Ms. Wildt gave a brief history of how the basement was used by the previous owner.

Mr. Farrell stated it is unusual to have a full basement in this area. Mr. and Ms. Wildt agreed and stated they know of only 1 other property in the Doral Woods neighborhood with a full basement. The stains seen on the walls of the basement were not visible at the time they purchased the property.

Mr. Farrell stated no plans of the proposed patio addition were submitted with the application. Mr. Farrell asked for clarification on whether the proposed addition would be conditioned space, if the existing patio would be demolished and rebuilt correctly for the proposed addition, and the type of roof structure proposed for the proposed addition. Mr. and Ms. Wildts stated the proposed addition would be conditioned space, the patio would not be demolished (the existing patio structure would be used to build the proposed addition), and the roof would be a standard roof structure tied into the current roof structure.

Mr. Farrell verified with Staff that, if more than 50% of the existing patio were to be demolished during the proposed addition construction, a new variance request would be required. Mr. Cameron stated the patio is “grandfathered” in as is but, should construction result in the demolition of more than 50% of the existing patio structure, a new variance request and approval would be required to continue with construction or the construction would have to comply with current regulation requirements.

Mr. Farrell verified with Staff that there are other non-conformities present on the lot, which are not relevant to the current variance request. Mr. Cameron confirmed both the

left and right sides of the existing structure are non-conforming to the side 15 foot setback.

Mr. Farrell asked for clarification on whether there will be any additional hardscape outside of the existing outer perimeter of the patio footprint. Mr. Wildt stated there will not be any additional hardscape outside of the existing outer perimeter of the patio footprint and gave a brief overview of the construction of the addition.

Mr. Alzamora asked for additional iteration of the measures taken to help alleviate the water issues. Mr. and Ms. Wildt gave an overview of the work that has been done to the gutter / downspout / drainage systems, etc. on the property in an attempt to alleviate the water issues in the basement / foundation.

Mr. Postlewaite, owner of HomeRX, LLC and contractor for Mr. and Ms. Wildt, reviewed the details of the lot / property disposition, gave an overview of design aspects for the proposed addition, and stated the only viable option to remedy the water issues is to enclose the patio portion of the property.

Mr. Alzamora asked for clarification on whether the gutter system on the proposed addition will tie into the existing gutter system. Mr. Postlewaite stated the gutter system for the proposed new addition will tie into the existing gutter system and act to draw water further away from the dwelling.

Ms. Rothstein reviewed photos of the existing patio and stated, even with the proposed new addition, the property will still have water issues in the area of the existing patio that will have to be addressed with additional water control systems, such as French drains. Mr. Wildt stated there is a dry well in the area around the existing patio that will remain after construction of the proposed addition.

Mr. Farrell stated with access on both sides of the existing patio, given the slope of the existing patio, water tends to run through the openings and towards the dwelling. Mr. Wildt reviewed photos with the Board that show the direction of the slope of the existing patio, and stated the intention is to close the opening on the left side of the existing patio (as looking at the dwelling from the rear) during the construction of the proposed addition. The only access to the proposed addition will be on the right side of the existing patio (as looking at the dwelling from the rear).

Mr. Farrell verified the design of the proposed addition is done in such a way as to alleviate the water issue, which is the primary reason for the proposed addition. Mr. Wildt confirmed the proposed addition design will alleviate the water issue and this is the main reason for seeking the variance. Mr. Farrell stated, in general, he is reluctant to approve variances that increase the non-conformity of a property, however, in this case a significant hardship exists and no other option to alleviate that hardship can be found without requiring a variance approval.

Mr. Roberts verified the proposed addition will not expand beyond the existing wall, the ownership of the property located behind Mr. and Ms. Wildt and their approval of the proposed addition construction, and discussed the lack of disclosure at closing regarding the setback requirements. Mr. and Ms. Wildt confirmed and reviewed the proposed addition footprint remaining within the existing footprint of the patio wall, confirmed The Pinehurst Resort's ownership of the property located behind theirs and the consent given by The Pinehurst Resort for the proposed addition construction, and confirmed their lack of knowledge regarding the setback requirements for their property at the time of closing.

Mr. Alzamora stated, based on his experience as a closing attorney, specifics about setbacks and encroachments are not information a closing attorney would be aware of at the time of closing. Mr. and Ms. Wildt discussed the location of their property in relation to the golf course.

Mr. Farrell verified there will not be any construction beyond the existing patio footprint. Mr. Wildt confirmed there will not be any construction beyond the existing patio footprint.

Mr. Jones agreed with previous statements regarding hardship and reviewed the evidence in support of the need for a variance.

Ms. Rothstein asked for clarification regarding treatment of the existing water issues prior to construction of the proposed addition. Mr. Postlewaite stated the door will have a threshold to alleviate any water from running against the side. Mr. Wildt stated the wall of the proposed addition abutting the existing dwelling will be a finished wall and all walls in the area have been water treated.

Mr. Alzamora asked for clarification on the settlement issues, which have created the water issues, and any actions that can be taken to address the settlement issues during construction of the proposed addition. Mr. Postlewaite stated the existing footings of the patio wall have been dug out and appear to be up to code, and reviewed the design of the proposed addition.

Mr. Alzamora stated no further questions were needed and spoke in support of the variance request approval.

Mr. Cameron reviewed the requirements needed and options available to the Board in order to make a motion on the case. Mr. Cameron stated the setback is measured from the furthest protrusion, which would include any eaves or overhangs, and it would be prudent to include an allowance for a standard eave or overhang projection (3' allowance as stated in the PDO) beyond the patio footprint as part of the motion for the case to prevent non-compliance with the variance approval. Mr. Wildt stated the eave or overhang would be standard or 12".

Mr. Cameron reviewed the process for moving the hearing forward to a motion.

Mr. Alzamora asked whether there was any member of the audience wishing to present testimony either in favor or against the proposed Major Work. None came forward.

Mr. Alzamora asked whether the Board had any further questions. Hearing none, Mr. Alzamora asked for a motion to close the Public Hearing.

Mr. Farrell moved to close the Public Hearing and re-enter the Regular Meeting. Seconded by Ms. Rothstein. Approved by a vote of 5-0.

Mr. Farrell moved the Board of Adjustment approve with conditions the variance AND adopt the following Findings of Fact:

- (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;
Continued damage to the property may occur without addressing the water damage issues on the parcel.***
- (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. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability;
The topography and as built structure is in a unique situation relative to water intrusion not common to other parcels in the neighborhood.***
- (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;
(No further comment provided by the Board.)***
- (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.
(No further comment provided by the Board.)***

Conditions (If imposed by the Board):

All construction and improvements related to this variance is limited to the area currently occupied by the existing patio foot print as shown on Exhibit A-4, the dimensions from the outside of the brick sitting wall on the existing patio being approximately 13 by 17 feet with the exception of normal roof overhang and / or eaves and gutter system.

Seconded by Mr. Jones. Approved by a vote of 5-0.

IV. Next Meeting Date

A. 07-07-2022 Regular Meeting (If Board Has Business to Conduct)

Mr. Cameron stated the Board should meet to approve the minutes of the current meeting (06-02-2022) as a final step to formalizing the Findings of Fact for the variance case at 4 Blair Court (PLN-2022-00089).

V. Motion to Adjourn

Ms. Rothstein moved to adjourn the Regular Meeting. Seconded by Mr. Jones. Approved by a vote of 5-0 at 05:45 PM.

Respectfully Submitted,

Shannon Konstantinou
Clerk to the Board &
Planning Administrative Specialist
Village of Pinehurst

A videotape of this meeting is 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.