

**Board of Adjustment
January 5, 2017
Council Conference Room
4:30 p.m.**



MINUTES

Committee Members in Attendance:

Leo Santowasso, Chairman
Cyndie Burnett, Alternate Board Member
Kevin Drum, Alternate Board Member
Fred Engelfried, Board Member
David Kelley, Board Member
Myles Larsen, Alternate Board Member
Joel Shriberg, Board Member

Committee Member Absent:

Carol Henry, ETJ Board Member
Michael Marsh, Board Member

Staff in Attendance:

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

I. Call to Order

Chairman Santowasso called the meeting to order.

II. Approval of Minutes: December 1, 2016

Joel Shriberg made a motion to approve the December 1, 2016 Minutes; David Kelley seconded the motion, which was unanimously approved.

III. Review of Transcripts and action on the Order from the December 1, 2016 meeting

The purpose of the public hearing is to receive evidence on the Appeal from an action and decision of the Zoning Administrator to the Board of Adjustment, regarding an application made by Mary Catherine Sayers, Samuel L. Sayers, Helen Brissette, Pamela C. Cochran, Brian J. Deaton, John C. Strickland and Robert A. Nuzman. Specifically, this request is seeking a determination from the Board of Adjustment regarding the decision of the Zoning Administrator's enforcement of condition number 4 of the Village Council adopted Ordinance #16-10 and if the minimum allowable square footage per multi-family unit is 900 or 748 square feet. The address of the property in question is 205 McCaskill Rd. E and is also defined as Moore County LRK#'s 00025962 and 00025798. The ordinance and development in question relate to the development known as the Greens at the Arboretum.

David Kelley made a motion to approve the Transcript and the Order; Cyndie Burnett seconded the motion, which was unanimously approved.

Chairman Santowasso signed the Order and submitted for distribution to the parties in accordance with the law.

IV. Discussion regarding Draft Rules of Procedure

Discussions continued regarding the Draft Rules of Procedures. Chairman Santowasso asked Board members to review them and to let staff know if they have any comments.

V. Next Meeting Date: February 2, 2017

VI. Motion to Adjourn.

Fred Engelfried made a motion to adjourn. Joel Shriberg seconded the motion, which was unanimously approved.

RULES OF PROCEDURE
BOARD OF ADJUSTMENT
VILLAGE OF PINEHURST, NORTH CAROLINA

I. General Rules

- A. **General Authority.** Under authority of the General Statutes of North Carolina, §160A-388, and the Pinehurst Development Ordinance (hereinafter “PDO”) of the Village of Pinehurst, North Carolina, the Village of Pinehurst Board of Adjustment (hereinafter “Board”) hereby adopts these general rules for the hearing of matters coming before it.
- B. **Specific Authority.** The Board’s specific approval authority is established in Chapter 5 of the PDO, and the Board shall neither have power to vary requirements of any other section of the PDO, nor other local laws or the General Statutes of North Carolina.

II. Officers and Duties

- A. **Chairperson** (hereinafter “Chair”). The Chair shall be appointed by the Village of Pinehurst Village Council (hereinafter “Village Council”). The Chair shall decide on all points of order and procedure, subject to the rules herein, unless directed otherwise by a majority of the Board in session at the time. The term of office for the Chair shall be as set by Village Council or until a new Chairperson is named by Village Council.
- B. **Vice Chairperson** (hereinafter “Vice Chair”). A Vice Chairperson shall be elected by the Board from among its members. The term of office for the Vice Chair shall be the same as that of the Chair. The Vice Chair shall serve as Acting Chair in the Chairperson’s absence and at such times shall have the same powers and duties as the Chair.
- C. **Secretary.** The Secretary shall be appointed by the Village Planner or his/her designee. The Secretary shall keep the minutes of every Board meeting in a permanent volume. The minutes shall show the record of all important facts pertaining to each meeting and hearing, every action taken by the Board, and all votes of members of the Board on any action on the final determination of any question. Such minutes shall indicate the names of members present and the names of members who are absent or who fail to vote. The Secretary does not act in the capacity of a Board member.

III. Board Powers and Duties

- A. **Powers.** The presiding officer (Chair or Vice Chair) shall have the following powers and duties:

1. With the Board's informal consent, to append the meeting's agenda;
2. To rule motions in or out of order, including any motion patently offered for obstructive or dilatory purposes;
3. To determine whether a speaker has gone beyond reasonable standards of courtesy in his or her remarks and to entertain and rule on objections from other members on this ground;
4. To entertain and answer questions of parliamentary law or procedure;
5. To call a brief recess at any time;
6. To continue a meeting to a future date and;
7. To adjourn in an emergency.

IV. Members

- A. **Source of Board Members.** Members of the Board shall be drawn from the Village of Pinehurst's Planning and Zoning Board. Membership shall include five named permanent members; the remaining Planning and Zoning members shall serve as alternates.
- B. **Board Member Responsibilities.** Members of the Board shall have the following duties and responsibilities:
 1. Those duties and responsibilities outlined in the General Statutes of North Carolina, §160A-388;
 2. Other such duties as assigned by the Chair.
- C. **Board Member Conduct.**
 1. Members of the Board may be removed for cause, which shall be defined as dishonorable conduct that has compromised the integrity of the Board.
 2. No Board member shall take part in the hearing, consideration, or determination of any case in which he/she is personally or financially interested.
 3. No Board member shall vote on any matter deciding an application or appeal unless he/she shall have attended the public hearing on that application or appeal. If a matter is continued to a subsequent date following a public hearing, a Board member who was not present at the public hearing may vote on the matter only if the member has reviewed the minutes of the proceeding/hearing.

4. Members of the Board will not express individual opinions on the proper judgment of any case with any parties thereto prior to its determination of that case. Violation of this rule shall be cause for dismissal from the Board.

V. Meetings

- A. **Organization Meeting.** The regularly scheduled December meeting of the Planning and Zoning Board will serve as the annual organization meeting for the Board of Adjustment. At such meeting a Vice Chair shall be nominated and elected by the Members. In addition, any other governance/protocol matters will be reviewed and decided upon by the Members.
- B. **Special Meetings.** Special meetings of the Board may be called at any time by the Chairperson. At least 48 hours notice of the time and place of special meetings shall be given by either the Secretary or the Chair to each member of the Board and to anyone who is required to receive notice.
- C. **Quorum.** A quorum shall consist of three Members of the Board. All matters or appeals shall be decided by majority vote of the Members. A concurring vote of four Members of the Board present at the hearing of a particular case shall be necessary to grant a variance.
- D. **Conduct of Meetings.** All meetings shall be open to the public, subject to the provisions of North Carolina General Statutes, § 143-318.11 pertaining to closed sessions of public bodies. The order of business at regular meetings shall be as follows: (a) consideration and approval of Board minutes (b) hearing of cases, beginning first with any unfinished business before moving to new business; and (c) any other matters properly brought before the Board.
- E. **Time and Place.** Regular meetings will be held on the first Thursday of each month at 4:30PM or following the Planning and Zoning Board meeting. Meeting location will be in the VOP Assembly Hall.

VI. Appeals and Applications

A. **Procedure for Filing Applications.**

1. All applications for hearing shall be filed with the Planning and Inspections Department, which shall act as Secretary for the Board in receiving this notice. All applications shall be made upon the form furnished for that purpose, and all required information shall be provided thereon before an appeal or any application shall be considered as having been filed.
2. Any person with standing may appeal any order or act of the Zoning Administrator or an administrative official pertaining to enforcement of the PDO. Any such appeal of an administrative decision shall be filed with the Village Clerk.

3. No appeal shall be heard by the Board unless notice thereof is filed within 30 days after the interested party or parties receive notice of the order, requirement, decision or determination by an administrative official.
4. No application shall be considered by the Board unless a completed application is received in accordance with Chapter 5 of the PDO.

B. **Fees.** No application or notice of appeal shall be considered as having been completed until there has been paid to the Village of Pinehurst a filing fee to cover the cost of providing notice and such further investigation or verification of the application as is necessary.

C. **Hearings.**

1. **Time.** After receipt by the appropriate Village official of the completed notice of appeal or application, the Clerk to the Board shall schedule the time for a hearing, which shall be either at the next regularly scheduled meeting or at a special meeting.
2. **Notice.** The Board shall give public notice of the hearings by all of the following means:
 - a) By publishing or advertising notice to the parties of the action at least 10 days but no more than 25 days prior to the hearing.
 - b) By making an attempt to notify by mail all property owners of parcels of land abutting the parcel of land that is the subject of the hearing and to any other persons entitled to receive notice under the PDO.
 - c) By posting notice of the hearing at a prominent place or places on the property which is the subject of the action at least 10 days prior to the hearing.

All such notices shall state the location of the building or lot, the general nature of the question involved, and the time and place of the hearing.

3. **Conduct of Hearing.** Any party with standing may appear in person or by attorney at the hearing. The order of business for each hearing shall be as follows:
 - a) The Chair shall direct and shall call the case as advertised on the official agenda.
 - b) A member of the Village of Pinehurst Planning and Inspections Department shall make a statement regarding the manner in which the application relates to the PDO.

- c) Either the applicant or the applicant's attorney shall present the arguments in support of his/her case or application.
 - d) Either persons with standing opposed to granting the application or their attorneys shall present the argument against the application.
 - e) Both sides will be permitted to present rebuttals to opposing testimony, at the discretion of the Chair.
 - f) Witnesses may be called and competent evidence may be submitted.
 - g) Any presentation on behalf of either an applicant or a party with standing who are not natural persons must be made by an attorney.
4. Postponement. Requests for postponing or continuing the hearing for good cause on a particular appeal or application may be made either to the Chair or to the Board.
5. Withdrawal. An application or appeal will be considered to have been withdrawn under the following circumstances: (a) The applicant submits a written request to withdraw the application or appeal; (b) The property owner, if different than the applicant, submits a notarized request to withdraw the application or appeal; (c) The Board requests the applicant to furnish additional information within a specified period of time, and such information is not furnished by the applicant within the time period allowed; (d) Without prior notification to the Chair, applicant does not appear at the scheduled hearing to testify regarding the merits of the application; or (e) The applicant appears at the scheduled hearing and requests that the application be withdrawn. The Chairperson has authority to determine whether an application or appeal has been withdrawn or may be considered withdrawn.
6. Rehearing. A Motion for a Rehearing may be made by the applicant or any party with standing by filing the appropriate application form with the Planning and Inspections Department within 10 days after the Board votes on the Application and announces its decision in the original case. Only one Motion for Rehearing may be filed for any case.

Upon receipt of a Motion for a Rehearing in proper form, the Secretary will schedule the Motion for consideration by the Board at its next regularly scheduled meeting after proper advertising in accordance with these rules and the PDO. Evidence presented on a Motion for Rehearing shall be limited to only new evidence that was not submitted to the Board during the hearing of the original application. Such evidence may include evidence of changes in circumstances or conditions since the hearing on the original application.

At the conclusion of the presentation of the evidence, the Board will determine whether to grant the rehearing. If the rehearing is granted, the rehearing will ordinarily be held at the same meeting at which the Motion is considered, although the Board may set the rehearing at a later scheduled meeting.

7. Refiling. Except as provided in Section V.C.6 herein, once the Board has made its decision in a case, any applicant shall be prohibited from submitting the same request for the subject property for a period of one year from the date of the previous application.
8. Review. A review proceeding will be scheduled when a review proceeding is made a condition of the issuance of a variance.
9. Appeals. An appeal from a decision by the Board of Adjustment must be made to the Superior Court of Moore County within 30 days of the decision, and in accordance with the General Statutes of North Carolina, §160A-388.

D. Decisions.

1. Time. Decisions by the Board shall be made as soon as practicable after the hearing. The Board will ordinarily vote on the application and announce its decision at the same meeting at which the hearing takes place. The final decision of the Board is made when the decision is entered in the minutes of the Board and such minutes are approved.
2. Form. Written notice of the decision in a case shall be given to the applicant in accordance with the notification requirements in section Chapter 5 of the PDO after the minutes setting out the Board's final decision are approved. The record shall show the reasons for the decision with a summary of the evidence introduced in the findings of facts made by the Board.
 - a) Variances. Where a variance is granted, the record shall state any unnecessary hardship upon which the variance request was based and which the Board finds to exist. The record shall state what, if any, conditions and safeguards are imposed by the Board in connection with a granting of a variance.
 - b) Interpretations. The decision may reverse or affirm wholly or partly or modify the order, requirements, decision, or determination being appealed.

VII. AMENDMENTS

These rules may, within the limits allowed by law, be amended at any time by an affirmative vote of not less than a simple majority of the Board, provided that such amendment be presented in writing at a regular or special meeting before the meeting at which the vote is taken. All such amendments must be reviewed by the Attorney of the Village of Pinehurst prior to their taking effect.

ADOPTED this the _____ day of _____, 20__

VILLAGE OF PINEHURST BOARD OF ADJUSTMENT

, Chairman

, Director, Planning and Inspections