



**BOARD OF ADJUSTMENT  
REGULAR MEETING  
THURSDAY, AUGUST 01<sup>st</sup>, 2024  
ASSEMBLY HALL  
395 MAGNOLIA ROAD  
PINEHURST, NORTH CAROLINA  
04:00 PM or IMMEDIATELY FOLLOWING THE P&Z MEETING**

<b>Board Members Present:</b>	<b>Board Members Absent:</b>	<b>Staff Present:</b>
Thomas Schroeder, Chair	Matt Jones, Vice-Chair	Alex Cameron, Planning Director
Jeremy Hooper	Bruce Hironimus, Alt.	Michael Mandeville, Senior Planner
Sonja Rothstein	Jimmy Duncan, Alt.	Maria Carpenter, Planner
Paul Roberts		Shelby Grow, Clerk to the Board
Louise Mercurio, Alt.		Paul Connors, IT Systems Specialist

Approximately 2 member(s) of the public were in attendance.

**I. Call to Order**

Mr. Schroeder called the August 01<sup>st</sup>, 2024 Regular Meeting to order at 04:39 PM.

Mr. Hooper moved to seat Ms. Mercurio as a voting member of the Board of Adjustment for the Regular Meeting of August 01<sup>st</sup>, 2024. Seconded by Ms. Rothstein. Approved by a vote of 5-0.

Mr. Schroeder introduced Staff. The Board members introduced themselves and verified they had no ex parte communication regarding the case.

**II. Approval of Minutes**

**a. 04-04-2024 Regular Meeting Minutes**

Mr. Hooper moved to approve the minutes of the April 04<sup>th</sup>, 2024 Regular Meeting. Seconded by Mr. Roberts. Approved by a vote of 5-0.

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

Mr. Schroeder gave a brief introduction to the procedures and requirements of a quasi-judicial hearing.

**III. Public Hearing**

**a. PLN-2024-00103 (2140 Midland Rd Variance Request)**

*The purpose of the public hearing is to receive testimony for a variance request from Pinehurst Development Ordinance Section 9.13 Fences, Walls and Columns,*

*Subsection (B)(6), for the property addressed as 2140 Midland Road, further identified by Moore County PID # 00032900. This property is located within the R-30 Zoning District. Specifically, the applicant is requesting a variance to allow a fence that exceeds the four (4) foot maximum height when abutting a defined front yard of an adjacent property.*

Mr. Alex Cameron and Mr. Michael Mandeville were sworn into the public hearing.

Mr. Mandeville discussed the proposed work and submitted into evidence the Staff Report with attachments / exhibits, Presentation, Application and Applicant's materials / exhibits. Mr. Mandeville submitted an additional document; Exhibit A-4, not included in the Staff presentation, into evidence.

Mr. Schroeder read the authorization letter; Exhibit A-4, aloud to the Board.

Mr. Hooper asked for clarification on the process for a Minor Subdivision approval. Mr. Cameron gave an overview of the process which includes a review by Staff and if needed, the Technical Review Committee to determine what improvements need to be met in order for the division of land to take place; this particular case needing improvements to utilities, the location of a fire hydrant, and the installation of a fire suppression system, adding there are a list of requirements in Appendix E that need to be included on the Subdivision Plat, along with the necessary improvements that need to be met before a building permit can be issued. Mr. Hooper confirmed with Mr. Cameron that the setbacks, front, rear, and side of the property are determined during this process, along with entry points and roads. Staff pulled up a site plan showing the buildings with setbacks of the subdivision. Mr. Cameron addressed the Board regarding how setbacks are determined during the approval process and confirmed that the homes on these lots all face Midland Road. Mr. Cameron confirmed with Mr. Hooper that a fence permit was not submitted and the fence in question was discovered during an inspection of the property for a renovation at 2140 Midland Road. The Board members discussed and confirmed that the fence was not discovered until well after the subdivision was approved and construction started. Mr. Hooper and Staff discussed the process for a fence permit application, with requirements being explained to the applicant during the review process. Ms. Mercurio asked for clarification on whether the Pinehurst Development Ordinance (PDO) addresses flag shaped lots. Mr. Cameron stated there are subdivision standards relating to flag lots, however there is no definition for a flag lot.

Mr. Roberts asked for clarification on the applicant's address being 2144 Midland Road, the owner of 2140 Midland Road being okay with the 6-foot fence masking the view of her home, said owner providing a signed letter to Staff confirming this, and if it could be taken into consideration when deciding on this matter. Mr. Cameron stated the applicant will have a chance to present testimony and provide information on the relationship between the lots and the owners; subjectivity and discretion limited to Standards A through D, based on what evidence is given, and

the evidence that may apply to a particular standard, and taking into account what the intent of the ordinance language is, should help in making a decision on this case. Mr. Hooper confirmed with Mr. Mandeville that the fence is located on the property at 2140 Midland Road, which was previously owned by the applicant, Mr. Riddle, and sold to the new owner this past spring. Mr. Cameron added that this was around the time when the fence was discovered on the project at Lot 1 - 2140 Midland Road. Mr. Schroeder noted that this is a quasi-judicial hearing, and they are being asked to deviate and authorize the deviation which must be based on the evidence presented today. Ms. Rothstein confirmed with Staff that a fence permit application was submitted after the fence was installed, and proper procedure was not followed by the applicant.

Mr. Schroeder asked if the Board members had any more questions for Staff, and accepted the materials submitted by Mr. Mandeville into evidence. Mr. Cameron confirmed with Mr. Schroeder that all Exhibits included in the original agenda packet as well as new Exhibit A-4, will be entered into the record.

The Applicant Mr. F. Calvin Riddle Jr., 3380 Youngs Road, Southern Pines, was sworn into the public hearing.

Mr. Riddle thanked the Board and stated that he did not intentionally build the fence without permission; when the Certificate of Occupancy (CO) inspection was done the fence was noticed by Staff who then advised him that a permit was needed for the new fence and that fences cannot exceed 4 feet in height when abutting a defined front yard of an adjacent property.

Mr. Riddle gave a PowerPoint presentation, including a Site Map of the property explaining the orientation of the dwellings and fences, adding that the subdivision was originally zoned for six dwelling units, and they elected to only build three homes, which have all been connected to Moore County water and sewer, Duke Power and Piedmont Natural Gas. Mr. Riddle gave a Summary of the Variance Request, and addressed the Board regarding unnecessary hardship stating the fence provides a buffer, privacy, and noise barrier between the properties, gave an overview of improvements he has made to the properties and pond including irrigation and provided photos showing the view of the fence from different locations on the property, reiterating that fact that this fence provides privacy for the backyard at 2140 Midland Road. Mr. Riddle discussed reasons the hardship results from conditions peculiar to the property being the uniqueness of this property, choosing not to build to maximum density due to the property being pristine and special, with the three lot sizes being 0.9, 2.07 and 1.61 acres respectively; keeping a natural vegetative barrier between each property and at the front entrance, with proposed 3'6" brick columns to be installed eventually, and also noted the driveway locations for each property. Mr. Riddle addressed the Board with reasons the hardship did not result from actions taken by the applicant

or property owner first being the location of the home at 2144 Midland Road; forcing the front yard to be congruent with the rear yard of 2140 Midland Road, choosing to do a front yard setback of 140 feet from the fence on 2144, to mitigate the configuration, along with leaving a natural vegetative buffer around each property to provide as much privacy as possible. Mr. Riddle noted that the property and fence at 2140 cannot be seen from Midland, Palmer or Knoll Roads. Mr. Riddle discussed reasons the variance is consistent with the intent of the ordinance stating the fence is not in the front viewshed of the property at 2144 and feels that the ordinance is more applicable to densely populated areas unlike the configuration of these three properties, reiterating that the fence and home at 2140 cannot be seen from 2144. Mr. Riddle noted the fence at 129 Williams Road is six feet in height beyond the front line of his home, but it provides needed privacy between the lots, adding that he feels the ordinance is very black and white and this case is a gray area due to the way the properties are situated and the space between them. Mr. Riddle showed a diagram with a front yard fence location and height from Section 9.13 (6) of the PDO, stating this is for a typical lot in a neighborhood, and reiterated he feels the intent should not apply to larger lots. Mr. Riddle thanked the Board and offered to answer any questions they may have.

Mr. Schroeder thanked Mr. Riddle for his presentation. Mr. Cameron asked that the Board formally accept Mr. Riddle's presentation into evidence. Mr. Schroeder asked that the Exhibits be properly numbered by Staff to which Mr. Cameron confirmed.

Mr. Hooper moved to accept Mr. Riddle's presentation as given tonight with the additional information into the record and accept it as evidence by the Board. Seconded by Ms. Rothstein. Approved by a vote of 5-0.

Mr. Hooper confirmed with Mr. Riddle that lot clearing at 2144 Midland Road began in 2022 after proper permitting and requirements had been met, and construction began in July 2023. Mr. Hooper asked for clarification on the timeline for the whole project. Mr. Riddle responded with a timeline beginning with renovations at 2140 until the sale of the property, confirming that the fence was installed before the property was sold. Mr. Riddle added that he would eventually like to install fences on the properties at 2144 and 2148 Midland Roads. Mr. Schroeder and Mr. Riddle discussed the 140-foot setback between the rear fence at 2140 and the front of the home at 2144 adding that a vegetative buffer will also be left between the fence and his property at 2144. Mr. Riddle gave a brief history on the previous owner, along with the landscaping and plant life on the property which he hopes to restore. Mr. Hooper asked for clarification on what Mr. Riddle felt defines the hardship for this case. Mr. Riddle stated a four-foot fence height would not provide a sufficient buffer for separation, noise

barrier and privacy between the two properties, adding that a 6-foot fence would also afford both homes added privacy from the driveway, and well house.

Mr. Schroeder asked if anyone would like to come forward to provide additional testimony. No one came forward.

Mr. Roberts moved to close the public hearing and re-enter the regular meeting. Seconded by Ms. Rothstein. Approved by a vote of 5-0.

The Board began deliberation. Mr. Roberts stated his recommendation would be to approve the variance; the property owners affected are both in agreeance with the 6-foot fence height, it's not road front, and not sitting directly in the front yard of 2144 Midland. Mr. Hooper stated he feels there is a possible hardship for the current owner of 2140 Midland, but since a permit for the fence was not pulled the opportunity for Staff reviewal was missed where this issue would have surfaced.

Ms. Mercurio stated she believes the hardship did result in actions taken by applicant, and it was self-created; she is not sure that it's consistent with the purpose and intent of the ordinance, it does not meet the specific requirements the Village has for fences, and it was built without a permit. Ms. Rothstein agreed stating the hardship was self-created and feels the builder should have known that a permit was needed. Ms. Mercurio added the developer has built in this community for a long time and should know the procedure for getting a fence permit. Mr. Roberts stated in this case he feels the fence is doing no harm since it is screened by a wooded area, not visible from Midland Road and is located a good distance from each dwelling. Mr. Hooper and Mr. Roberts discussed this being a subjective decision. Mr. Schroeder reminded the Board that all four standards must be agreed upon for this variance to pass. Mr. Cameron added for the record each one of the standards with that motion, what the finding is and what it is based on by any evidence or testimony provided by the Applicant or Staff must be made clear. The Board and Mr. Cameron discussed taking a roll call for each standard to determine where they stand and move the process along.

Mr. Riddle asked if a rebuttal could be made to address a few issues the Board members had. Mr. Cameron stated a rebuttal could be made for other evidence or testimony that would be presented. Mr. Schoeder stated the hearing could be re-opened if new testimony needed to be addressed.

Mr. Schroeder read each standard and the Board members gave their response.

- A. All Board members agreed that a hardship does not result from the strict application of the ordinance.
- B. Mr. Roberts, Ms. Rothstein, and Ms. Mercurio felt the hardship does not result from conditions peculiar to the property. Mr. Hooper felt that it does.

- C. All Board members felt that the hardship did result from actions taken by the applicant.
- D. Mr. Roberts stated the requested variance is consistent with the spirit, purpose and intent of the ordinance, due to the existing vegetation, drain and density of the structures on the property, adding this enhances the quality of life for both property owners who have mutual support with keeping the 6-foot fence height. Ms. Rothstein stated it is not consistent. Mr. Hooper feels the ordinance was not written for this type of application and is not consistent, but he sees both sides. Ms. Rothstein added that the ordinance is there for a reason and feels the Board should not deviate from that. Ms. Mercurio stated it is not consistent and the problem lies in the way the subdivision was platted.

Mr. Schroeder asked the Board if they were ready to make a motion or re-open the public hearing to ask further questions.

The Board deliberated on making a motion.

Mr. Riddle stated the new owner of 2140 Midland is the one who is ultimately impacted by this decision. Mr. Cameron stated Mr. Riddle has been authorized by the owner to be the applicant, and it is up to Board to determine who might have the hardship in this matter.

***Mr. Hooper moved the Board of Adjustment deny the variance request for 2140 Midland Road AND adopt the following Findings of Fact:***

- A. Unnecessary hardship would result from the strict application of the ordinance because the property owner of 2140 Midland Road would not enjoy similar visual and noise buffers of surrounding developments.***
- B. The hardship does result from conditions that are peculiar to the property because two new construction lots are being developed, one behind the other, directly behind 2140 Midland Road.***
- C. The hardship did result from actions taken by the applicant or the property owner because the applicant was the developer of two lots directly behind 2140 Midland Road and did not follow proper permitting for the fence before construction.***
- D. The requested variance is not consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved because the ordinance was not purposed to be applied in retrospect after fence construction and new construction of the lots began.***

***Seconded by Ms. Rothstein.***

Mr. Schroeder asked if there was any further discussion on the motion and called for a roll call vote.

**Mr. Roberts:** No  
**Ms. Rothstein:** Yes  
**Mr. Hooper:** Yes  
**Ms. Mercuro:** Yes  
**Mr. Schroeder:** Yes

*The motion to deny the variance request passed by a vote of 4-1.*

**IV. Next Meeting Date**

**a. 09-05-2024 Regular Meeting (If the Board has business to conduct)**

Mr. Cameron stated Staff is working on the next Board of Adjustment agenda and will be in touch with the Board regarding attendance for that meeting.

**V. Motion to Adjourn**

Mr. Roberts moved to adjourn the Regular Meeting. Seconded by Ms. Rothstein. Approved by a vote of 5-0 at 06:10 PM.

Respectfully Submitted,

Jeanann Dawson  
Clerk to the Board &  
Planning Administrative Specialist  
Village of Pinehurst

*A videotape of this meeting is located on the Village website: [www.vopnc.org](http://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.