



**BOARD OF ADJUSTMENT
JUNE 1, 2023
ASSEMBLY HALL**

PINEHURST, NORTH CAROLINA

- I. Call to Order
- II. New Business
 - A. Board Organizational Items

The Board will need to discuss and consider appointing one of the alternate members as a regular member to fill the vacancy left by the expiration of Mr. David Alzamora's term.

The Board will, also, need to discuss and consider electing a new Chair for the Board.
- III. Approval of Minutes
 - A. 01-05-2023 Regular Meeting Minutes
- IV. Public Hearing
 - A. PLN-2023-00194 (185 Canter Ln.)

The purpose of the public hearing is to receive testimony for a variance request from Section 9.13 Fences, Walls and Columns as it relates to a retaining wall at the property addressed as 185 Canter Lane further identified as parcel ID# 00018577.
- V. Next Meeting Date
 - A. 07-06-2023 Regular Meeting (if the Board has business to conduct)
- VI. 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.*



BOARD ORGANIZATIONAL ITEMS
ADDITIONAL AGENDA DETAILS:

The Board will need to discuss and consider appointing one of the alternate members as a regular member to fill the vacancy left by the expiration of Mr. David Alzamora's term.

The Board will, also, need to discuss and consider electing a new Chair for the Board.



**01-05-2023 REGULAR MEETING MINUTES
ADDITIONAL AGENDA DETAILS:**

FROM:

Shannon Konstantinou

CC:

Alex Cameron; Pam Graham; Maria Carpenter

DATE OF MEMO:

5/19/2023

MEMO DETAILS:

Attached is a draft copy of the 01-05-2023 Regular Meeting minutes for your review.

ATTACHMENTS:

Description

📎 01-05-2023 Regular Meeting Minutes



**BOARD OF ADJUSTMENT
REGULAR MEETING
THURSDAY, JANUARY 05TH, 2023
ASSEMBLY HALL
395 MAGNOLIA ROAD
PINEHURST, NORTH CAROLINA**

04:30 PM or IMMEDIATELY FOLLOWING THE P&Z MEETING

Board Members Present:

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

Board Members Absent:

Staff Present:

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

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

I. Old Business

At 06:30 PM, Mr. Alzamora stated the continuation of the December 01st, 2022 meeting would be the first item on the agenda, asked the Board to introduce themselves, and introduced Staff. Mr. Cassidy stated there was no longer a need to hear the case from the December 01st, 2022 meeting. Given the statement made by Mr. Cassidy, Mr. Alzamora asked the Board for a motion to close the December 01st, 2022 meeting.

Mr. Hooper moved to close the December 01st, 2022 meeting. Seconded by Mr. Farrell. Approved by a vote of 5-0.

II. Call to Order

Mr. Alzamora called the January 05th, 2023 Regular Meeting to order at 06:32 PM.

III. Approval of Minutes

A. 12-01-2022 Regular Meeting Minutes

Mr. Farrell moved to approve the minutes of the December 01st, 2022 Regular Meeting. Seconded by Mr. Hooper. Approved by a vote of 5-0.

IV. Next Meeting Date

A. 02-02-2023 Regular Meeting (If Board Has Business to Conduct)

V. Motion to Adjourn

Mr. Jones moved to adjourn the Regular Meeting. Seconded by Mr. Hooper. Approved by a vote of 5-0 at 06:34 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.

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DRAFT



PLN-2023-00194 (185 CANTER LN.)

ADDITIONAL AGENDA DETAILS:

The purpose of the public hearing is to receive testimony for a variance request from Section 9.13 Fences, Walls and Columns as it relates to a retaining wall at the property addressed as 185 Canter Lane further identified as parcel ID# 00018577.

FROM:

Kelly Brown

CC:

Alex Cameron; Pam Graham; Maria Carpenter

DATE OF MEMO:

5/25/2023

MEMO DETAILS:

Please see attached materials relating to this item.

ATTACHMENTS:

Description

- ☐ Staff Exhibits S-0 to S-4
- ☐ Applicant Exhibits A-1 to A-6



PLANNING AND INSPECTIONS DEPARTMENT STAFF REPORT

To: Zoning Board of Adjustment
From: Kelly Brown, Planning and Zoning Specialist
CC: Alex Cameron, Planning and Inspections Director
 Pam Graham, Planning Supervisor
 Maria Carpenter, Planner
 Shannon Konstantinou, Administrative Specialist
Date: May 24, 2023
Subject: Variance Request for 185 Canter Lane, Pinehurst

Applicant:	Derek Simmons of Discover Homes LLC
Owner(s):	Discover Homes LLC
Property Location:	185 Canter Lane, Pinehurst
Parcel Size:	15,317 square feet or +/- 0.36 acres
PID#	00018577
Zoning:	R-10 (High Density Residential)
Setback:	Retaining Walls >3.5' in height = 30' Front Yard Setback
Proposed Setback:	12.26' at 9.25' – 12" (Maximum – Minimum Height)
Land Use:	Single Family Residential

Request and Background:

This request is to vary setback requirements for retaining walls under Section 9.13(F)(2) of the Pinehurst Development Ordinance (PDO), which states:

(2) Retaining walls located in the front yard setback shall not exceed three and half (3.5) feet in height.

Specifically, this request is to allow a cement retaining wall exceeding 3.5' in height to encroach 17.74' into the required 30' minimum front yard setback for the R-10 zoning district. The retaining wall, as shown on the survey revised May 23, 2023, is 12.26' from the front property line abutting Canter Lane (Exhibit A-4). The height of the wall is subject to change once site work and landscaping is completed, however the applicant intends the final height of the wall to range from approximately 111" (9.25') to less than 12". Per North Carolina State Building Code, railings are required for the

retaining walls for safety if they exceed 30” in height. The applicant intends to finish the concrete wall with finishing stone and to screen the wall with landscaping (Exhibit A-6).

The subject property (Lot 293) was created as part of Phase I, Unit 8 subdivision for Pinehurst, Incorporated in October 1972 as indicated on Book 10, Page 29 on file with the Moore County Register of Deeds (Exhibit S-1). Records from the Moore County Tax Department and Register of Deeds indicate that the property was purchased by the current owner in May 2021 (Exhibit S-2).

The subject property is approximately 15,317 square feet in area or .36 acres, which exceeds the minimum lot size requirement of 10,000 square feet for the R-10 Zoning District. Adjacent properties are also zoned as R-10 and are vacant or contain single-family dwellings built between 1990 to most recently in 2020.

Prior to construction, the vacant lot had approximately 20 feet of elevation change decreasing in height from the front of the lot abutting Canter Lane to the rear (Exhibit A-2). Physical conditions of the property include a “blue-line” stream located within the 25’ rear setback and a wetlands boundary delineation within the building envelope (Exhibit A-4). According to the National Wetlands Inventory maintained by the US Fish and Wildlife Service, the wetlands present on the subject property are classified at PFO4B, which is described as nontidal wetlands forested with needle-leaved evergreen and seasonally saturated. The survey revised on May 23, 2023 does not show structures located within the wetlands boundary delineation (Exhibit A-4).

Current PDO regulations require a 30’ undisturbed buffer along streams, wetlands, and water bodies for all development other than development of existing single family lots, per Section 9.5.2.11. The subject property was platted in 1972, prior to municipal incorporation of the Village of Pinehurst in 1980 and subsequent adoption of zoning and subdivision regulations. Therefore, the subject property is not required to maintain a 30’ wetlands buffer and has no additional restraints for single-family development.

Information relevant to the variance request is provided in the following timeline:

- January 24, 2022: After review by Planning and Inspections staff, a permit for a new single family home was issued to the applicant.
- July 20, 2022: During a rough-in inspection, a Village Building Inspector observed retaining walls were constructed and would require an engineer’s letter on the footings and engineered design for the walls, in addition to a zoning permit.
- July 27, 2022: Planning and Inspections staff met with the applicant to discuss the retaining walls, ordinance and permit requirements, and a variance request.
- July 29, 2022: The applicant provided a foundation survey which showed the retaining wall encroaching the front yard setback (Exhibit A-3).
- August 8-10, 2022: A retaining wall permit application was submitted by the applicant. A Village Building Inspector requested an engineer’s stamped design for the retaining walls.

- March 28, 2023: Village Council approved Ordinance #23-09 amending Section 9.13 of the PDO regulating retaining walls (Exhibit S-3).
- April 19, 2023: The applicant provided an engineering report and stamped design plans for the retaining wall (Exhibit A-5).
- May 1, 2023: Variance request was submitted by the applicant (Exhibit A-1).
- May 10, 2023: The retaining wall passed a footing inspection by a Village Building Inspector.

Because the application for the retaining wall was submitted *prior* to the amendment of the retaining wall ordinance, but *before* a final permit decision was made, the applicant can choose which version of the ordinance applies. This is a legal concept known as permit choice, which is pursuant to North Carolina General Statutes 160D-108. Planning and Inspection Staff has made the applicant aware that the amended ordinance may be more favorable as it allows a retaining wall no taller than 3.5' in the front yard setback (previously limited to a 3').

Along with this report, Staff has included the following exhibits for review and consideration of the Board:

- Exhibit S-1: Original Subdivision Plat
- Exhibit S-2: Deed of Ownership
- Exhibit S-3: Village of Pinehurst Ordinance #23-09
- Exhibit S-4: Photo of Retaining Wall (Dated 5/25/2023)

The applicant has submitted the following labeled exhibits for review and consideration by the Zoning Board of Adjustment:

- Exhibit A-1: Variance Application
- Exhibit A-2: Topographic Survey
- Exhibit A-3: Foundation Survey
- Exhibit A-4: Retaining Wall and Wetland Delineation Survey
- Exhibit A-5: Engineering Report and Design Plans
- Exhibit A-6: Rendering of Finished Retaining Wall

Variance and Evidentiary Hearing Process:

The Variance Process is intended to provide relief from the zoning requirements of the Pinehurst Development Ordinance (PDO) only 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, unreasonable or impossible to use because of some unique attribute or aspect of the property itself, or some other factor unique to the property for which the variance is requested.

Requests for variances are quasi-judicial decisions of the Board, and therefore, require an evidentiary hearing. These decisions are quasi-judicial due to the fact the Board exercises judgement and discretion in applying the standards for review. The purpose of evidentiary hearings is to gather competent, relevant, factual evidence on the application and not solicit broad public opinion. The Chair is responsible for calling witnesses, swearing in all wishing to provide testimony, following established procedures, ensuring that witnesses present relevant evidence only, and limiting repetitious testimony. Typically, staff acts as the initial witness and, after being sworn in, will present basic information and background on the request as well as enter staff exhibits into the record. Staff does not make a case or argument for or against the application. The applicant and other witnesses will be sworn in and can provide factual testimony on the application to the Board. Board Members listen and ask relevant questions, assess the credibility of all testimony, remain impartial, and vote on the case. At the conclusion of the hearing, the Board shall make its decision based on the competent, material, and substantial evidence while adopting findings of fact with all standards of review.

Standards of Review

North Carolina General Statute 160D-705 and Section 5.1.5 of the PDO set forth the standards of review the Boards of Adjustment's must use when considering applications for variances. These are the only standards the Board shall consider when making a decision on variance requests. The Board shall not grant a variance unless and until it makes findings on if all of the following standards have been met:

- (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;
- (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. 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;
- (3) 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;
- (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.

Action by the Zoning Board of Adjustment:

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) Grant the requested variance;
- (4) Deny the requested variance;

- (5) Grant the requested variance with conditions. The 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 made by motion, accompanied by findings of fact that the variance meets or does not meet each of the Standards of Review, 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.

Staff does not formulate a recommendation of a variance request as decisions are to be based solely on the testimony and evidence submitted at the quasi-judicial hearing. This report along with its attachments and material submitted by the applicant shall also be included as submitted evidence and made part of the record.

HISTORY, CHARM, AND SOUTHERN HOSPITALITY

**NOTICE OF PUBLIC HEARING
VILLAGE OF PINEHURST****Dear Property Owner:**

The Village of Pinehurst Board of Adjustment (BOA) will hold a Public Hearing on Thursday, June 01, 2023 at 4:00 PM in Village Assembly Hall 395 Magnolia Road, Pinehurst, NC. The meeting will be streamed in real-time on the Village's website, at <https://www.vopnc.org/our-government/live-stream>, for public viewing/listening and video-recorded for future reference.

The purpose of the public hearing is to receive testimony for a variance request from Section 9.13 Fences, Walls and Columns as it relates to a retaining wall at the property addressed as 185 Canter Lane further identified as parcel ID# 00018577.

As the owner of said property, an adjacent property owner, or as the applicant; you are receiving formal notification of this Public Hearing. Information on this request is available for public review at the Planning and Inspections Department, Village Hall, 395 Magnolia Road, Pinehurst, North Carolina, Monday through Friday from 8:30 AM to 5:00 PM with the exception of holidays. Information on this request will also be made available the week of the meeting on the Village of Pinehurst's Novus Agenda website at <https://pinehurst.novusagenda.com/agendapublic/>.

The applicant, the local government, and any person who would have standing to appeal the decision under PDO Section 4.1.3 shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board. All persons wishing to participate will be required to provide sworn testimony during the public hearing limited to presenting factual evidence on the request and testimony be made a matter of record.

For more information, please call (910) 295- 2581.

Exhibit S-0

BLAND IRIS W
75 SURRY CIR N
PINEHURST NC 28374

WEAVER AUSTIN J
175 CANTER LANE
PINEHURST NC 28374

VAINIO BARBARA E
180 CANTER LN
PINEHURST NC 28374-8667

HILL ROBERT C JULIE A VAN EVERY
777 SOUR SPRINGS ROAD HAGERSVILLE
ONTARIO NOAIHO

MILLIGAN ROBERT H
150 CANTER LN
PINEHURST NC 28374

MCDERMOTT ANN F
190 CANTER LN
PINEHURST NC 28374-8667

DISCOVER HOMES LLC
PO BOX 695
WEST END NC 27376

ROBINSON SHERYL S
195 CANTER LANE
PINEHURST NC 28374

CENTERLINE CURVE DATA				
NO.	DELTA	TANGENT	RADIUS	LENGTH
C-1	22-28-31	250.00	1258.25	493.57
C-2	25-09-33	130.00	592.56	255.81
C-3	22-23-35	200.00	1010.40	394.90
C-4	58-16-00	100.00	179.42	182.46
C-5	80-26-03	110.00	130.09	182.62
C-6	35-04-10	99.37	314.49	192.49
C-7	44-21-32	120.00	294.35	227.89
C-8	82-59-05	140.00	158.28	229.25
C-9	29-08-05	94.34	363.02	184.60
C-10	15-37-24	130.00	952.74	250.40
C-11	78-24-42	110.00	134.85	184.54
C-12	84-35-51	304.28	334.41	493.76

The undersigned, beneficiary of that certain deed of trust given by Diamondhead Corporation to the undersigned as the beneficiary dated the 11th day of June, 1972, recorded in the Deed of Trust Book 239 at page 149, in the records of the Register of Deeds, Moore County, North Carolina, hereby consents to the subdivision of the land shown hereon and joins with Diamondhead Corporation in the execution and filing hereof and in all the dedications and reservations herein contained, for the uses and purposes herein indicated.

Witness the signatures of said corporation by its duly authorized officers this 11th day of October, 1972.

Attest: By Malcolm J. Hood Individual Trustee
By James E. Logan By Malcolm J. Hood
United States Trust Company President United States Trust Company of New York

STATE OF NEW YORK
COUNTY OF NEW YORK

Personally appeared before me the undersigned authority in and for the aforesaid county and state, Malcolm J. Hood, individually and as assistant Vice President of United States Trust Company, a corporation, who acknowledged that he signed and delivered the foregoing instrument on the date therein mentioned for an on behalf of said corporation.

Given under my hand and seal of office the 11th day of October, 1972.

JAMES E. LOGAN
Notary Public, State of New York
No. 27-359236
Filed in New York City
Commission Expires March 28, 1975

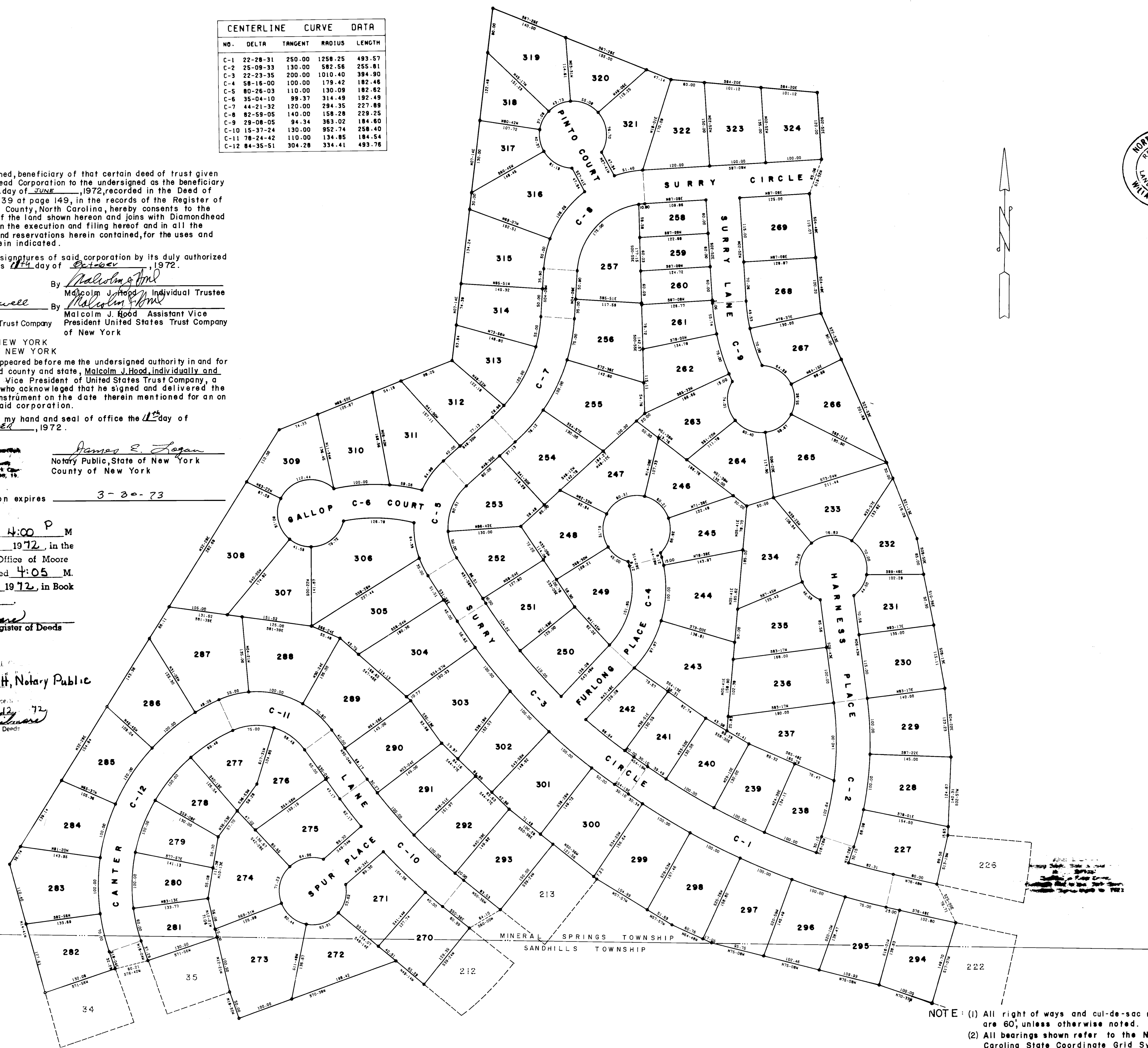
Notary Public, State of New York
County of New York

My commission expires 3-28-73

Filed for registration 4:00 P
October 12, 1972, in the
Register of Deeds Office of Moore
County and Registered 4:05 M.
October 12, 1972, in Book
10 Page 29

Spaul Silvers
Register of Deeds

NORTH CAROLINA
The foregoing is a true and correct copy of the original as the same appears in the records of the Register of Deeds of Moore County, North Carolina.
Charles C. Dorsett, Notary Public
STATE OF N.C.
correct. This October 12, 1972
Charles C. Dorsett
Register of Deeds



NORTH CAROLINA MOORE COUNTY

I, Willard C. Lewis, certify that under my direction and supervision this map was drawn from an actual field land survey; that the error of closure on all lots shown is no less than 1:5000; that this map was prepared in accordance with G.S. 47-30 as amended.

WITNESS my hand and Seal, this 5th day of October, A.D., 1972



Willard C. Lewis
Land Surveyor
Registration Number L 744

Sworn to and subscribed before me, this 5th day of October, A.D., 1972

Charles C. Dorsett
Notary Public
My commission expires _____

NORTH CAROLINA MOORE COUNTY

The foregoing certificate(s) of _____

is/are certified to be correct. This instrument was presented for registration and recorded in this office at Map Book _____, Page _____, this _____ day of _____, 19____, at _____ o'clock _____ M.

Register of Deeds

Pinehurst, Incorporated reserves unto itself, its successors and assigns, all right, title and interest in and to the streets, roads, alleys, parks, open spaces and all other areas shown on this plat, it being the express intention of Pinehurst, Incorporated not to dedicate the same to the public, or for public purposes, or to the owners of property shown on this plat, except that the said owners of property and their guests shall have a perpetual right of use and ingress and egress on and across the said private streets, roads and alleys. The said streets, roads, alleys, parks, open spaces and all other areas shown on this plat shall remain the sole and exclusive property of Pinehurst, Incorporated, its successors and assigns, to be controlled, maintained and regulated as Pinehurst, Incorporated shall, in its sole discretion, determine.

LEGEND

- Denotes Iron Pipe
- Denotes Concrete Monument
- Control Corner

PINEHURST, INCORPORATED

MOORE COUNTY, NORTH CAROLINA
MINERAL SPRINGS & SANDHILLS TOWNSHIPS

PHASE I, UNIT 8
PAGE 3 OF 4 PAGES

SCALE: 1" = 100' - OCT. 1972

MOORE, GARDNER AND ASSOCIATES, INC.
CONSULTING ENGINEERS
ASHEBORO, NORTH CAROLINA

NOTE: (1) All right of ways and cul-de-sac radii are 60', unless otherwise noted.
(2) All bearings shown refer to the North Carolina State Coordinate Grid System.

For Registration Register of Deeds

Judy D. Martin

Moore County, NC

Electronically Recorded

May 14, 2021 11:54:16 AM

Book: 5615 Page: 204 - 206 #Pages: 3

Fee: \$26.00 NC Rev Stamp: \$70.00

Instrument# 2021011317

Brief description for the Index:

Stamps: \$70.00

Lot 293, Unit 8, Phase 1 – Parcel Id. 00018577This instrument was prepared by: **Sandhills Law Group** NO TITLE SEARCH COMPLETED BY PREPARER**NORTH CAROLINA GENERAL WARRANTY DEED**THIS DEED made this 29th day of April 2021, by and between,

GRANTOR	GRANTEE
Iris W. Bland, widow, not remarried	Discover Homes LLC, a North Carolina Limited Liability Company
<u>Mailing Address:</u> 75 Surry Circle Dr N Pinehurst, NC 28374	<u>Mailing Address:</u> P O Box 695 West End, NC 27376 <u>Property Address:</u> 185 Canter Ln Pinehurst, NC, 28374

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, have bargained and sold, and by these presents do grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot, tract, or parcel of land situated in **Mineral Springs Township, Moore County, North Carolina**, and more particularly described as follows:

Lot No. 293, Unit 8, Phase 1, of the property of Pinehurst, Incorporated, as shown on plat thereof recorded in the Office of the Register of Deeds of Moore County, North Carolina in map Book 10, pages 27-30.

185 Canter Ln, Pinehurst, NC, 28374
Property Identification Number -- 00018577

The property hereinabove described was acquired by Grantor by instrument recorded in Book 839, Page 360, Moore County Registry. Iris W. Bland is the surviving tenant by the entirety of Wilbur B. Bland who died on or about August 16, 2009 as a resident of Moore County, North Carolina.

All or a portion of the property herein conveyed does not include the primary residence of a Grantor.

TO HAVE AND TO HOLD the aforesaid lot, tract, or parcel of land, and all privileges and appurtenances thereto belonging to the said Grantee in fee simple; subject, however, to the exceptions, reservations and conditions herein above referred to.

And the Grantor covenants with the Grantee, that Grantor is seized of said premises in fee simple and has the right to convey in fee simple; that the title is marketable and free and clear of all encumbrances; and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever except: ad valorem taxes for the current year (prorated to the date of closing); utility easements; unviolated covenants, conditions and restrictions that do not materially affect the value of the property being conveyed herein; and such other encumbrances as may be assumed or specifically approved by Grantee as referenced herein.

The designation Grantor or Grantee as used herein shall include the singular as well as the plural and the masculine, feminine or neuter gender may be read in either the masculine, feminine or neuter gender or a combination thereof as the context may require in order to accurately refer to the person or persons first named hereinabove as Grantor and Grantee.

***** THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK *****

Exhibit S-2

IN WITNESS WHEREOF, the said Grantor has hereunto set his hand and seal, or if Corporate, has caused this instrument to be signed in its Corporate name in the ordinary course of business by its duly authorized officer, pursuant to authorization from the Board of Directors, or if Limited Liability Company (Company), in its Company name in the ordinary course of business by its duly authorized manager, pursuant to authorization from its members, the day and year first above written.

Iris W. Bland (SEAL)
Iris W. Bland

STATE OF North Carolina ,

COUNTY OF Moore , to wit:

I certify that the following person(s) personally appeared before me this day, and each acknowledging to me that he or she signed the foregoing document in the capacity indicated: Iris W. Bland.

Witness my hand and notarial seal this 29 day of April 2021.

PLACE NOTARY SEAL INSIDE THIS BOX ONLY!

CLARK H. CAMPBELL
Notary Public
North Carolina
Moore County



Notary Public

Clark H. Campbell II
(Printed Name of Notary)

My Commission Expires: 8/27/2022

ORDINANCE #23-09:

AN ORDINANCE AMENDING SECTION 9.13 OF THE PINEHURST DEVELOPMENT ORDINANCE TO REGULATE RETAINING WALLS

WHEREAS, the Village Council of the Village of Pinehurst adopted a new Pinehurst Development Ordinance on the 8th day of October, 2014, for the purpose of regulating planning and development in the Village of Pinehurst and the extraterritorial area over which it has jurisdiction; and

WHEREAS, said Ordinance may be amended from time to time as circumstances and the best interests of the community have required; and

WHEREAS, a public hearing was held at 4:30 p.m. on March 28, 2023, in the Assembly Hall of the Pinehurst Village Hall, Pinehurst, North Carolina after due notice in the Pilot, a newspaper in Southern Pines, North Carolina, with general circulation in the Village of Pinehurst, and its extraterritorial jurisdiction, for the purpose of considering proposed amendments to the Pinehurst Development Ordinance, at which time all interested citizens, residents and property owners in the Village of Pinehurst and its extraterritorial jurisdiction were given an opportunity to be heard as to whether they favored or opposed the proposed text amendments; and

WHEREAS, the Planning and Zoning Board recommended, on March 2, 2023, the Village Council approve these amendments to the Pinehurst Development Ordinance; and

WHEREAS, the Village of Pinehurst adopted the 2019 Comprehensive Plan which identified 10 Strategic Opportunities with Strategic Opportunity 4 identifying the Village to Promote high quality development and design through an update to the Pinehurst Development Ordinance that includes character-based zoning concepts and the use of pattern books. Pinehurst's small-town charm and appeal is due in large part to the scale and architectural design of its buildings as well as its lush landscaping throughout the community. Updating and modernizing the Pinehurst Development Ordinance could help ensure that future development is of the desired scale and character favored by Pinehurst residents; and

WHEREAS, the intent of Section 9.13 Fences, Walls and Columns of the Pinehurst Development Ordinance is to allow architecturally compatible fences and walls while still providing flexibility; and

WHEREAS, the Village Council, after considering all of the facts and circumstances surrounding the proposed amendments to the text of the Pinehurst Development Ordinance, have determined that it is considered reasonable and in the best interest of the Village of Pinehurst and the extraterritorial jurisdiction and that it is consistent with the 2019 Comprehensive Long Range Plan for the reasons stated herein that the Pinehurst Development Ordinance be further amended, making the amendments as requested.

NOW, THEREFORE, BE IT ORDAINED AND ESTABLISHED by the Village Council of the Village of Pinehurst, North Carolina in the regular meeting assembled on the 28th day of March, 2023, as follows:

SECTION 1. That the Pinehurst Development Ordinance of the Village of Pinehurst and its extraterritorial zoning jurisdiction be and the same hereby is amended as shown in the attached "Exhibit A"

SECTION 2. That all ordinances or sections thereof in conflict herewith are hereby repealed and declared null and void from and after the date of adoption of this ordinance.

SECTION 3. That this Ordinance shall become effective March 28, 2023 and remain in full force and effect from and after the date of its adoption.

THIS ORDINANCE passed and adopted this 28th day of March, 2023.



VILLAGE OF PINEHURST
VILLAGE COUNCIL

By: *John C. Strickland*
John C. Strickland, Mayor

Attest:

Kelly Chance
Kelly Chance, Village Clerk

Approved as to Form.

[Signature]
Michael J. Newman, Village Attorney

ATTACHMENT - EXHIBIT A

An Amendment to the Pinehurst Development Ordinance to Regulate Retaining Walls

Proposed Amendments

CHAPTER 9. Design and Development Standards and Processes

• Section 9.13 Fences, Walls and Columns

(F) Retaining Walls

(1) ~~Retaining walls higher than thirty-six (36) inches shall not encroach the front setback for primary structures or the rear and side setbacks for accessory structures. A development permit is required for a retaining wall eighteen (18) inches or taller in height.~~

~~(2) Retaining walls located in the front yard setback shall not exceed three and a half (3.5) feet in height.~~

~~(3) Retaining walls up to six (6) feet in height may project into the side and rear setbacks, excluding golf course/lake front and side street setbacks.~~

~~(4) Retaining walls located in the golf course or lakefront accessory building setback shall not exceed eighteen (18) inches in height.~~

~~(2)(5) No~~ Retaining walls eighteen (18) inches or taller height shall not be closer than five (5) feet to a property line or right of way line.

~~(3)(6)~~ Retaining wall height shall be measured from the lowest ground elevation to the top of the wall.

~~(4)(7)~~ Retaining walls constructed in a series of two (2) or more shall provide a minimum of twelve (12) inches of horizontal separation planted in grass or other vegetation.

~~(8) Retaining walls shall be solid cement, masonry, or wood and constructed to the standards of the North Carolina State Building Code where required.~~

~~(9) A finished side of a retaining wall shall face outwards towards the street or adjacent property.~~

(G) Fences in Rights of Ways

No fences, ~~or~~ walls, columns or retaining walls shall be located within any public or private right-of-way unless approved by the Village and only for purposes of preserving specimen trees or desirable vegetation as determined by the Village Planner or when required for public purposes, i.e. retaining walls for sidewalk construction, storm water management, etc. In such cases, for structures proposed within the public right-of-way, the Village reserves the right to require submittal of an application for a Right-of-Way Encroachment permit by the applicant, and approval by the Village prior to the encroaching structure being constructed. All structures are limited to a maximum height of thirty (30) inches above grade. These structures do not require a development permit.



Dated 5/25/2023



Variance Information

The variance process administered by the Zoning Board of Adjustment 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 an unnecessary hardship prohibiting the use of land in a manner otherwise allowed. It is not intended that variances be granted merely to remove inconveniences or financial burdens that zoning requirements may impose on property owners in general. Rather, it is intended to provide relief where the zoning requirements 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. Please refer to Section 5.1 of the PDO for the requirements of a variance.

When unnecessary hardships would result from carrying out the strict letter of this ordinance, the Board of Adjustment shall vary any of the provisions of this ordinance upon a showing of all of the following:

- (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.

An application for a variance may be filed only by the owner of the land affected by the variance; an agent or contract purchaser specifically authorized by the owner to file such application; or any unit of government which is not the owner of the lot but proposes to acquire the lot by purchase, gift, or condemnation. Where an agent, or contract purchaser files the application, the agent, or contract purchaser shall provide the Village with written documentation that the owner of the property has authorized the filing of the application.

This application must be completed in full and submitted with the associated fee listed in the Village's Fees and Charges Schedule, which can be accessed at www.vopnc.org/Home/ShowDocument?id=10100.

Property Address	
Street Address	185 Canter Ln
City, State, Zip Code	Pinehurst, NC 28374
Parcel ID #	00018577



Variance

Fee: \$500

(Revised 09/2019)

Owner Information

Name	Discover Homes LLC	Home Phone #	
Street Address	PO Box 695	Mobile Phone #	910-690-4568
City, State, Zip Code	West End, NC 27376	Business Phone #	
Email	discoverhomesllc@gmail.com		

Applicant

Name	Same as Above	Other Phone #	
Email		Street Address	
Mobile Phone #		City, State, Zip Code	

General Information

Legal Basis for Application	☐ Agent or Contract Purchaser Authorized by the Property Owner ☐ Government Agency Proposing to Acquire Land Affected by the Variance ☒ Owner of the Land Affected by the Variance
General Description of Variance Request	To leave existing retaining walls in place as required by the characteristics of the lot
Ordinance Section Reference	9.13 (F) (2)
Ordinance Text (Verbatim)	Retaining walls located in the front yard setback shall not exceed three (3.5) and one half feet in height.

Planning and Inspections Department



Description of unnecessary hardship that would result from the strict application of the ordinance	Lower level garage, and driveway, would not be accessible without the proper retaining wall.
Description of how the hardship results from conditions that are peculiar to the property, such as location, size, or topography	The topography of the lot requires the use of retaining walls.
Description of how the hardship did not result from actions taken by the applicant or the property owner	Properties natural topography results in additional work with walls
Explanation of how 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	Public safety will not be an issue as the retaining walls are engineered, with a stone facade on all exposed areas. Additional landscaping will also be added to ensure a pleasant appearance.

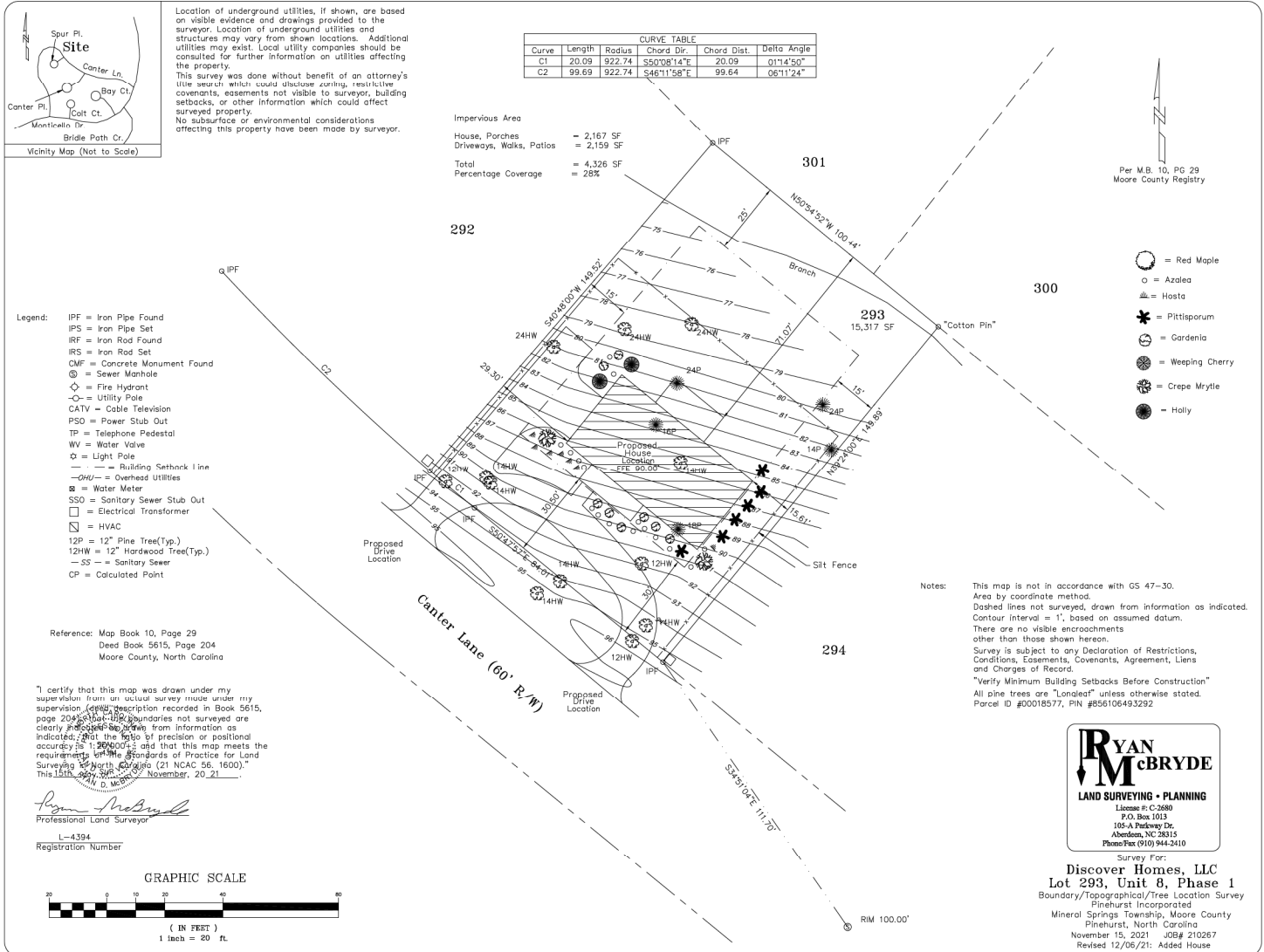
Required Documents

☐ Written authorization of the property owner (If not filed by owner)

Certification

I hereby certify that the information contained in this application is accurate and complete. I also confirm that I have read and understand the criteria that must be met in order to receive approval for a variance.

Applicant Signature: Derek Simmons Date: 5/1/2023





April 13, 2023

Derek Simmons
185 Canter Lane
Pinehurst, NC 28374

Telephone: 910-690-4568
Email: discoverhomesllc@gmail.com

Subject: **Structural Inspection**
185 Canter Lane
Pinehurst, North Carolina
NSE Project #2300512

Dear Mr. Simmons:

On February 25, 2023, Neal Smith Engineering, Inc. (NSE) performed a structural inspection at the above subject location. The purpose of the inspection was to evaluate a block wall that is slightly leaning.

This report summarizes the findings and recommendations based upon the site visit and subsequent engineering evaluation.

Scope of Investigation

The scope of the investigation included the following:

- Observation of the property by a Professional Engineer
- Visual structural investigation with minimal destructive testing
- Determine the cause of any damage and make repair recommendations
- Preparation of report and findings

Description

The contractor installed a retaining wall that was over height by code and needed to be engineered. The footing was exposed to determine if it was wide enough to support the cantilevered wall.

Observations and Findings

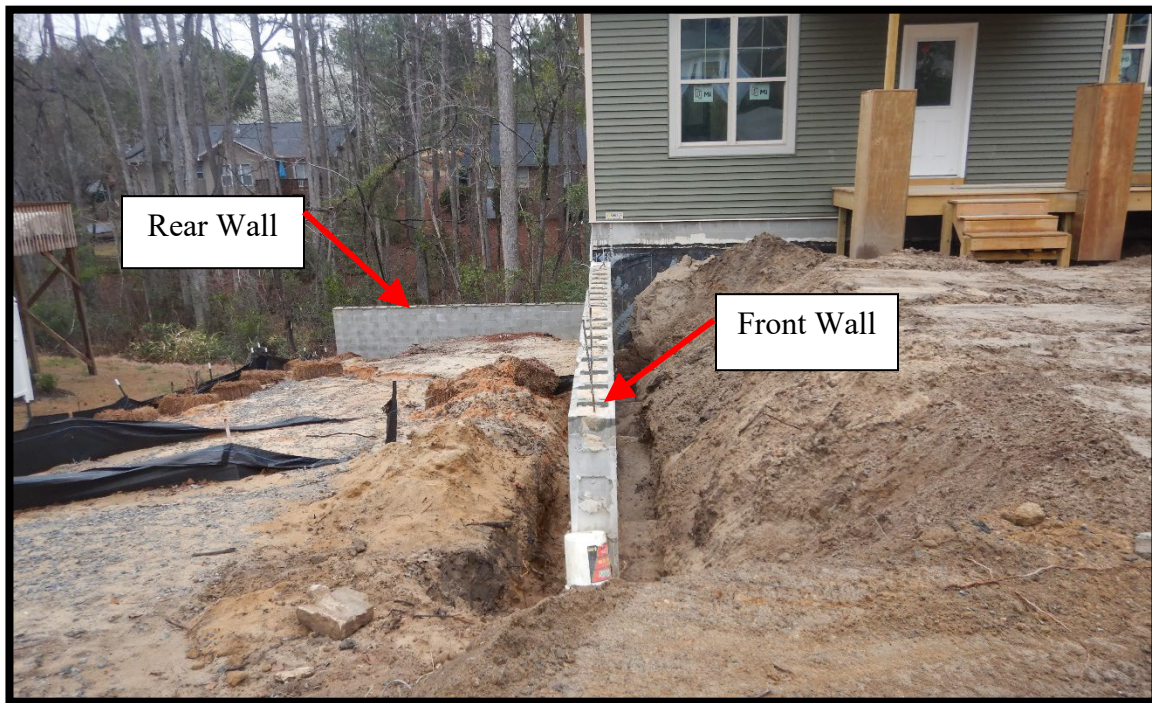


Photo #1 – The footing under the front wall was 3 feet wide. The wall had approximately 7'-4" of unbalanced fill. The rear wall had about 5 feet of unbalanced fill.

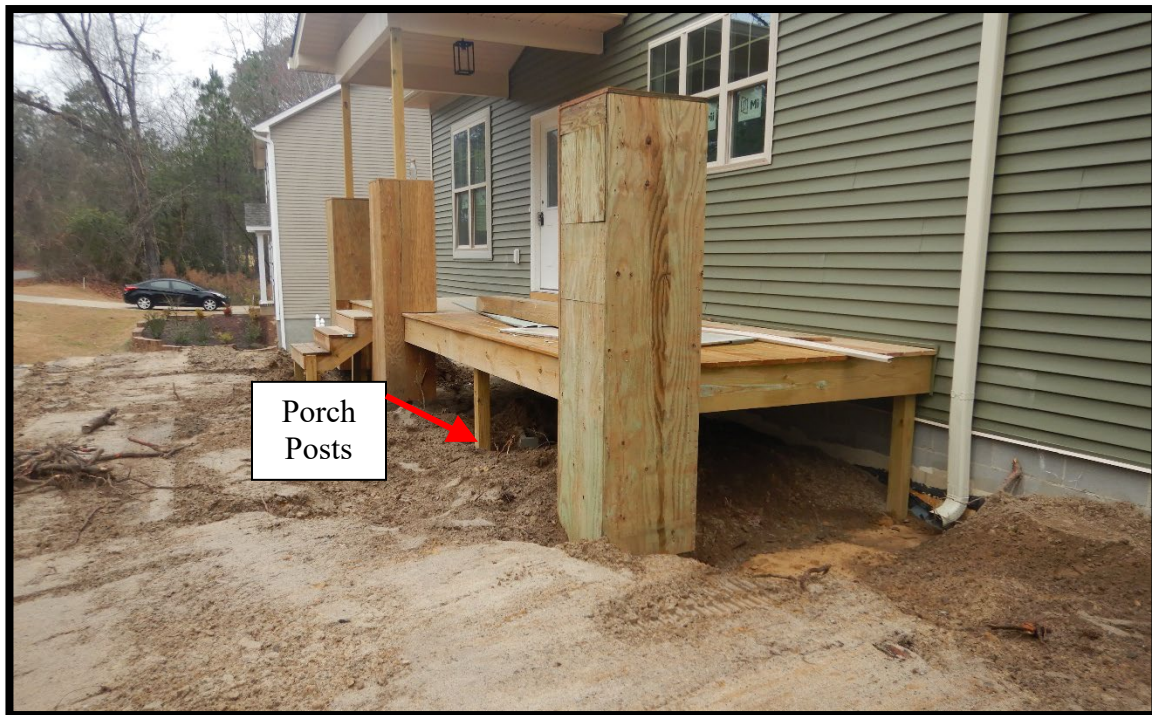


Photo #2 – The building inspector was concerned that the porch posts were embedded into fill material.

Derek Simmons.
Pinehurst, North Carolina
NSE Project #2300512

Page 3

Conclusions and Recommendations

NSE designed checked the retailing wall and determined that the footing was not wide enough. The best solution is to add tiebacks to help support the wall. A drawing is attached.

The rear wall could either have fill removed to reduce the unbalanced fill or could have tiebacks installed as well. The same detail can be used.

NSE probed the soil at the post locations and found them to be adequate. No porch repairs are required.

Neal Smith Engineering, Inc., uses the generally accepted practices and principles used within the profession, and expresses its opinion based on visual observation of the current condition of the structure relative to its condition as generally constructed. NSE does not assume any legal responsibilities of the original designers, developers, architects, engineers, or contractors for the property. If other conditions than those assumed by this report are discovered during repairs, recommendations contained in this report will not be considered valid unless the changes are reviewed, and conclusions modified or verified in writing.

If you have any questions or if we can be of additional assistance, please, contact us.

Sincerely,
NEAL SMITH ENGINEERING, INC.

Neal Smith, PE
President



Exhibit A-6

