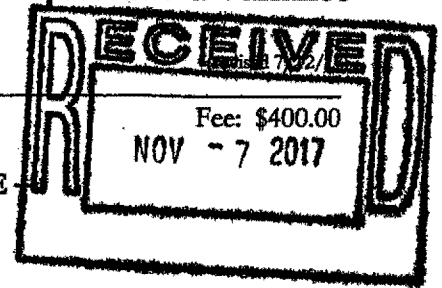




Application for
Board of Adjustment – Request for a Variance



BOARD OF ADJUSTMENT MEETING SCHEDULE

please check village website www.vopnc.org

REQUEST FOR VARIANCE PROCEDURES

- SUBMIT (12) sets of Plans and or Applications – (24"x 36") or (18"x 24")
- Plans and Applications must be submitted (4) four weeks prior to the next scheduled BOA meeting. Plans must be folded with the application attached.

Applicant: Elias Dalitsouris, Trustee Owner: Elias Dalitsouris & Helen Sawyer Dalitsouris
38 Chinquapin Road 38 Chinquapin Road
Applicant Address: Pinehurst, N.C. 28374 Owner Address: Pinehurst, N.C. 28374
Applicant Phone Number: (910) 295-0780 Owner Phone Number: (910) 295-0780
Applicant e-mail: theostaverna@gmail.com

ELIAS DALITSOURIS, Trustee

Legal Relationship of applicant to property owner: Trustee
(Attach to this application evidence of legal relationship of applicant to owner)

Request:

I, Elias Dalitsouris, Trustee, hereby petition the Board of Adjustment of the Village of Pinehurst for a variance from Section(s) 9.7.1.4 (B) & (D) of the Pinehurst Development Ordinance which states:

A single portable A-frame sign shall be placed within 12 feet of the business main entrance.

A variance is requested to allow placement of the A-frame sign approximately 68 feet from the front door of Theo's Taverna at its current location for the reasons set forth herein.

Portion of Lot No. 611, SE corner,
Old Village Section, Pinehurst, N.C. &

Property Description: Permanent sign easement Zoning District: Historic District

Property Location: (address) 38 Chinquapin Rd., Pinehurst, N.C. 28374

Moore County Parcel ID #: 00030476



Application for Board of Adjustment – Request for a Variance

(revised 7/12/17)

Petition:

A variance from the regulations of this section may be granted by the Board of Adjustment if it finds that strict enforcement of the regulations would result in practical difficulties or unnecessary hardships to the applicant for the variance, and that, by granting the variance, the intent of this section and the Pinehurst Development Ordinance will be observed, public safety and welfare secured, and substantial justice done. It may reach this conclusion if it finds: (Applicant must make a statement supporting each finding, attach additional pages in necessary.)

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;

Please see attached.

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;

Please see attached.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with the knowledge that circumstances exist that may justify the granting of the variance shall not be regarded as a self-created hardship

Please see attached.

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.

Please see attached.

1. An A-frame menu board sign that is visible to the public is critical to the economic success of Theo's Taverna. Of particular importance, it advises potential customers that the restaurant is open and entices patrons to come inside, based on the menu items being displayed. The front door of applicant's restaurant is recessed approximately 68 feet away from the sidewalk along Chinquapin Road through an arched breezeway entrance. Requiring the menu board to be placed within 12 feet of the front door, as strictly required by the Ordinance, would cause an unnecessary hardship, because it would not allow the menu board sign to be seen by potential patrons walking along the sidewalk adjacent to Chinquapin Road, and this would have a devastating economic effect on the applicant's business.
2. The location of Theo's Taverna and its front door is unique and peculiar, in that it is recessed approximately 68 feet away from the sidewalk along Chinquapin Road through an arched breezeway entrance and courtyard, unlike nearly all of the other businesses in the central historic district that are adjacent to the sidewalk and are easily visible to the public. As such, the display of an A-frame menu board sign at the entrance to the arched breezeway is crucial to allow Theo's Taverna to have the visibility and opportunity for success as do the other surrounding businesses.
3. When the applicant contemplated purchasing the Theo's Taverna building in 1992, the prior owner advised he had obtained permission from the Village of Pinehurst to display an A-frame menu board at the arched breezeway entrance at 38 Chinquapin Road, adjacent to where he has an easement for a permanent post & arm sign, and he was utilizing the A-frame sign for his business. The applicant was not willing to purchase the building without an assurance that they also could utilize the A-frame menu board in the same location. In good faith, the applicant also obtained approval from Village officials to use the same A-frame menu board sign at the same location, but records of the approval cannot be located; however, the applicants have been allowed to continue to display the sign in its current location without any objection for at least 25 years. Moreover, the owner of the building containing the arched breezeway entrance has installed a hook into the wall so the menu board sign can be secured thereto.
4. The requested variance is to allow the continued use of a single A-frame menu board sign by the applicants at the arched breezeway entrance to Theo's Taverna at 38 Chinquapin Road, in a small area where they have an easement for a post & arm sign (see attached photograph). The A-frame sign is located adjacent to their permanent sign and does not interfere with, or in any way, obstruct pedestrian traffic or present a safety issue. A-frame menu boards are recognized in the Ordinance as an effective means of communication in the Village to display menus, daily specials and sale announcements. The applicant's usage of their attractive A-frame menu board maintains and enhances the aesthetic environment of the central Village district, and is vital to and contributes to the success of Theo's Taverna, a long-standing business, which significantly contributes to the economic viability and growth in the Village.



**Application for
Board of Adjustment – Request for a Variance**

(revised 7/12/17)

Therefore, on the basis of all the foregoing, it is ordered that the application for a variance be (GRANTED ____
or DENIED ____), subject to the following conditions:

Ordered this _____ day of _____, 20_____.

(Chairman)

(Secretary)

Please attach proof of ownership, such as a copy of a deed.

RS

FOR REGISTRATION REGISTER OF DEEDS
 Judy D. Martin
 Moore County, NC
 June 03, 2014 10:53:51 AM
 Book 4359 Page 120-122
 FEE: \$26.00
 INSTRUMENT # 2014006320



INSTRUMENT # 2014006320

✓ Mail to: Bailey & Thomas PA
 PO Box 52
 Winston Salem NC 27102-0052

This instrument was prepared by: David W. Bailey, Jr., Bailey & Thomas, P.A.

Mail to: Grantee at: 38 Chinquapin Road, Pinehurst, North Carolina 28374

STATE OF NORTH CAROLINA

QUITCLAIM DEED

MOORE COUNTY

THIS DEED made and entered into this 29 day of May, 2014, by and between ELIAS DALITSOURIS and HELEN DALITSOURIS, husband and wife, of 38 Chinquapin Road, Pinehurst, North Carolina, hereinafter referred to as Grantors, and the ELIAS DALITSOURIS AND HELEN SAWYER DALITSOURIS REVOCABLE TRUST DATED THE 29th DAY OF May, 2014, 38 Chinquapin Road, Pinehurst, North Carolina, hereinafter referred to as Grantee.

WITNESSETH:

That said Grantors, for and in consideration of the sum of Ten Dollars (\$10.00) to them in hand paid, the receipt of which is hereby acknowledged, have remised and released and by these presents do remise, release, convey and forever quitclaim unto the Grantee, its successors and assigns, all right, title, claim and interest of the Grantors in and to that certain lot or parcel of land lying and being in Moore County, North Carolina, and more particularly described as follows:

A certain lot or parcel of land in Pinehurst, Mineral Springs Township, Moore County, North Carolina, lying about 20 yards south of Chinquapin Road and about 30 yards southeast of Magnolia Road, bounded on the southwest by Lot No. 610 and on the east by an alleyway, and BEGINNING at a concrete monument in a paved alley, said monument being the southeast common corner of Lots Nos. 610 and 611 of the Old Village section of the Town of Pinehurst, North Carolina, as recorded in the office of the Register of Deeds for Moore County, North Carolina, running thence from the beginning as the

common line of Lots Nos. 610 and 611, N 56°00" W 103.43 feet to an iron stake in the common line of said lots; thence as a new line N 42°38' E 39.48 feet to an iron pin; thence S 81°32' E 38.14 feet to an iron pins; thence S 79°28' E 5.42 feet to a nail in a brick walk; thence S 70°25' E 41.52 feet to a PK nail in the east line of Lot No. 611; thence as the east line of Lot NO. 611, S 19°14' W 70.29 feet to the BEGINNING, containing 5157 square feet, more or less, and being a portion of Lot No. 611, Old Village Section, Pinehurst, North Carolina. For further reference see Deed Book 800, at Page 555.

Being the same property as shown on a map entitled "Survey for Courtyard Investments" dated July 18, 1986, prepared by C.H. Blue & Associates and appearing of record in Deed Book 550, at Page 134.

SUBJECT TO and together with a non-exclusive easement for access over the area denoted "concrete walkway" on said map from the paved alley to the interior of Lot 611 shown as the "courtyard" on said map.

EASEMENT: Together with a non-exclusive access easement from Chinquapin Road to the denoted courtyard over the area denoted "covered walkway" on said map.

EASEMENT: Together with an easement for the maintenance of a sign facing Chinquapin Road on the building located on Lot 611 said sign to be no larger than 3 feet by 4 feet and located in the same location as the currently existing sign.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges thereunto belonging to them, the Grantee, its successors and assigns, free and discharged from all right, title, claim or interest of the Grantors of anyone claiming by, through or under them.

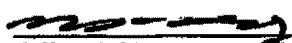
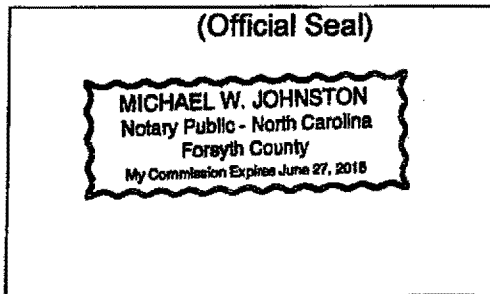
IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal, the day and year first above written.

 (SEAL)
Elias Dalitsouris

 (SEAL)
Helen Sawyer Dalitsouris

STATE OF NORTH CAROLINA - COUNTY OF FORSYTH

I certify that the following person personally appeared before me this day, acknowledging to me that she voluntarily signed the foregoing document for the purpose stated herein and in the capacity indicated: Elias Dalitsouris and Helen Sawyer Dalitsouris

Date: 5-29-14
Official Signature of NotaryMy comm. expires: June 27, 2015Michael W. Johnston
Notary's printed or typed name

WEST & SMITH, L.L.P.
Attorneys at Law
140 West Vermont Avenue
Post Office Box 1140
Southern Pines, North Carolina 28388

RECEIVED
FEB 23 2018

Telephone: (910) 693-3411
Facsimile: (910) 693-7727
E-Mail: kent@westandsmith.com

Stanley W. West
S. Kent Smith*
Marc S. Subin ♦

*DRC Certified Superior Court & Family Financial Mediator
♦Also admitted in NY

February 23, 2018

Via Hand Delivery
Board of Adjustment
Village of Pinehurst
395 Magnolia Road
Pinehurst, North Carolina 28374

Re: James P. Flanagan
Notice of Appeal

Dear Board of Adjustment:

I represent James P. Flanagan in the above-referenced matter. My client hereby timely appeals the notice of violation issued by Angel B. Smith, Zoning Code Enforcement Officer, dated January 19, 2018. I have enclosed the required appeal form, along with our firm check in the amount of \$400.00 for the fee.

Please let me know if you have any questions, or if any further information or documentation is needed in connection with this appeal. Also, please insure that as counsel for the Appellant, I am copied on all correspondence regarding this matter.

Respectfully,

WEST & SMITH, LLP

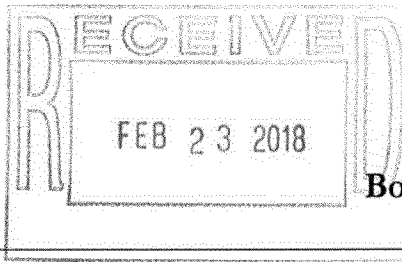


S. Kent Smith

SKS:bp

Enclosures

cc: Mr. James P. Flanagan



Application for
Board of Adjustment Appeal
(revised 3/14/17)

APPEAL FROM AN ACTION OF THE ZONING ADMINISTRATOR
and/or
PETITION FOR AN INTERPRETATION OF THE PINEHURST DEVELOPMENT
ORDINANCE

To: The Village of Pinehurst Board of Adjustment:

I, S. Kent Smith, hereby appeal to the Board of Adjustment from the
following decision of the Zoning Administrator of the Planning and Inspections Department:

Applicant: <u>S. Kent Smith</u> <u>Attorney for Owner</u> <u>P.O. Box 1140</u>	Owner: <u>James P. Flanagan</u> <u>95 Oak Hills Rd.</u>
Address: <u>Southern Pines, NC 28388</u>	Address: <u>Pinehurst, NC 28374</u>
Telephone Number: <u>(910) 693-3411</u>	Telephone Number: <u>(910) 261-7998</u>

This decision was made with respect to the property described below:

Property description: Stone patio at residence

Property Location: 95 Oak Hills Rd., Pinehurst, NC 28374

Moore County LRK Number 23786 **PIN Number** 855200516784

Zoning District: R10

Petition:

I hereby request an interpretation of:

 the Zoning Map

 X Section(s) 4.2.1 of the text of the Pinehurst Development Ordinance
(insofar as the map and/or the ordinance relate to the zoning or use of the property.)

STATEMENT BY APPELLANT: (In the space provided below, or on a separate sheet(s) attached to this form, present your interpretation of the ordinance section(s) in question and state what reasons you have for believing that your interpretation is the correct one.)



Application for
Board of Adjustment Appeal
(revised 3/14/17)

I certify that all the information in this application is accurate to the best of my knowledge, information and belief.

SA Jink, Attorney for James P. Plangon, Owner
Signature of Applicant

02/23/18
Date

Telephone Number: (910) 693-3411

Statement of Appellant James P. Flanagan:

Appellant contracted with a landscaping contractor for the construction of a stone patio that is attached to the east side his residence located at 95 Oak Hills Road in Pinehurst, North Carolina. The landscape contractor came highly recommended from the stone company, and Appellant was advised by the landscaping contractor that his company had built many similar patios over a multi-county region in and around Moore County. Appellant relied upon the landscaping contractor's reputation and expertise that his company would do everything that was necessary and required for the turn-key project.

Upon completion of the patio, the landscaping contractor was notified by the Village of Pinehurst Zoning Department that a building permit was required for the patio. The landscaping contractor then advised Appellant, who had no knowledge of any requirement for a permit, and had reasonably relied upon the landscaping contractor's knowledge and experience to do whatever was necessary to complete the project correctly. The landscaping contractor informed the Appellant that he had not been required to obtain a building permit for such a structure in any other counties where he had constructed similar stone patios.

Unfortunately, the contractor did not take the necessary follow-up action to obtain a building permit as requested by the Zoning Department, so the Appellant obtained a survey and made application for the permit. The Appellant was informed by the Zoning Department that a building permit could not be issued because a small corner portion of the stone patio was within the 30 foot side yard setback requirement. According to the survey, the northeast corner of the patio is 27.2' from the side set-back of the adjacent golf course. Visually, however, the out of bounds stake that reasonably appears to mark the side boundary of the golf course is at least 30' from the northeast corner of the patio.

According to Section 9.1(E)(2)(h) of the Pinehurst Development Ordinance (PDO): *Patios (on-grade), decks and off grade patios attached to principal structures, similar structures may encroach up to five (5) feet into the side and rear setback of a given property.* As the small portion of the corner of Appellant's patio only encroaches 2.7 feet into the side setback (which occurred without Appellant's knowledge), Appellant's structure is in compliance with the PDO. Consequently, a building permit should be issued to the Appellant and he should not be required to remove the corner of his patio.



PLANNING AND INSPECTIONS DEPARTMENT STAFF REPORT

To: Board of Adjustment
From: Alex Cameron, Senior Planner
Date: April 25, 2018
Subject: Variance Request 38 Chinquapin Rd./Theo's Taverna

Applicant:	Elias Dalitsouris, Trustee
Owners:	Elias & Helen Sawyer Dalitsouris Revocable Trust
Property Location:	38 Chinquapin Rd.
Zoning:	VC (Village Commercial) & Local Historic Overlay District
Portable Sign Setback:	Within 12' from business main entrance
Current Land Use:	Restaurant
PID#	00030476

Request and Background:

This request is to allow a portable A-frame sign to be placed beyond the allowed location of 12' from the business main entrance and be placed approximately 68' from the main entrance near an existing ground sign at the end of a breezeway.

The applicant currently owns and operates a restaurant for which the sign would serve and the request would allow the sign to be placed on an adjacent property at the end of a breezeway roughly addressed as 40 Chinquapin Rd. The owner of the adjacent property is JWS Property Holdings, LLC. The adjacent owner is aware of the variance request and agrees to allow the placement of the sign on his property.

The property is bounded to the north, east and west by other commercial and office uses that are zoned VC (Village Commercial) and within the Local Historic Overlay District, to the south by a single family homes zoned R-10 (Residential High Density) and within the Local Historic Overlay District.

Variance Process:

THE VARIANCE PROCESS 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 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 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.

Vicinity Map:



Aerial View



Action by the Zoning Board of Adjustment:

In considering the application, the Zoning Board of Adjustment shall review the application materials, the general purpose and standards set forth in this Section for the granting of variances, and all testimony and evidence received by the Zoning Board of Adjustment at the public hearing;

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) Conduct an additional public hearing on the application;
- (4) Grant the requested variance;
- (5) Deny the requested variance;

- (6) Grant the requested variance with conditions. In granting any variance, the Zoning 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 by resolution, accompanied by written findings of fact that the variance meets or does not meet each of the standards set forth in Standards of Review below, 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;

Standards of Review

The Zoning Board of Adjustment shall not grant a variance unless and until it makes the following findings:

- (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.

Staff does not formulate a recommendation of variance request as decisions are to be based solely on the testimony and evidence submitted at the quasi-judicial hearing.



**BOARD OF ADJUSTMENT
APRIL 5, 2018
ASSEMBLY HALL
395 MAGNOLIA ROAD
PINEHURST, NORTH CAROLINA
4:30 PM**

MINUTES

Board Members in Attendance:

Fred Engelfried, Chair
Leo Santowasso, Member
Mike Marsh, Member
Julia Latham, Member
David Kelley, Member

Board Member Absent:
Myles Larsen, Member

John M. Silverstein, BOA Attorney

Staff in Attendance:

Will Deaton, Planning and Inspections Director
Alex Cameron, Senior Planner
Gwendy Hutchinson, Planning and Administrative Assistant
Angel Smith, Code Enforcement Officer
Jamie Reed, Planning Technician
Sandra DeGarmo Wise, Court Reporter

I. Call to Order

Chair Fred Engelfried confirmed that there was a quorum present and called the Public Hearing to order.

II. Approval of Minutes

A. October 5, 2017

Leo Santowasso made a motion to approve the October 5, 2017 Minutes; Mike Marsh seconded the motion, which was unanimously approved.

III. Public Hearing

A. Public Hearing No. 1

The purpose of this hearing is to receive evidence on the Appeal from an action and decision of the Pinehurst Zoning Administrator to the Board of Adjustment, regarding an application made by Kent Smith, attorney for James P. Flanagan. Specifically, this request is seeking a determination from the Board of Adjustment regarding the decision of the Pinehurst Zoning Administrator in applying the regulatory provisions of section 9.1(E)(2) "Required Setbacks: Allowable Encroachments into Required Yards" of the Pinehurst Development Ordinance regarding a patio at 95 Oak Hills Rd., Pinehurst NC. This property is also defined as Moore County PID# 00023786.

Attorney John M. Silverstein addressed the Board and stated that via email correspondence with Kent Smith, the Applicant's Attorney, Mr. Smith has asked that this matter be continued. As an Attorney, Mr. Smith has been assigned to mediate a superior court matter in Richmond County today. He requested that this case be continued.

Chairman Engelfried thanked Mr. Silverstein and asked the Board for discussion. Chair Engelfried stated that the next BOA meeting would be scheduled for May 3, 2018 and polled the permanent members on their availability on that date. The permanent members replied that they would be available. Chair Engelfried confirmed with Mr. Silverstein that the meeting on May 3, 2018 could be continued if necessary.

Chair Engelfried asked for a motion to continue this case until our next regularly scheduled meeting on May 3, 2018. David Kelley made a motion to continue this until the next regularly scheduled meeting on May 3, 2018 at 4:30 pm. Leo Santowasso seconded the motion, which was unanimously approved.

Chair Engelfried moved to our regular agenda.

IV. General Business

There was no discussion.

V. Next Meeting Date

A. May 3, 2018

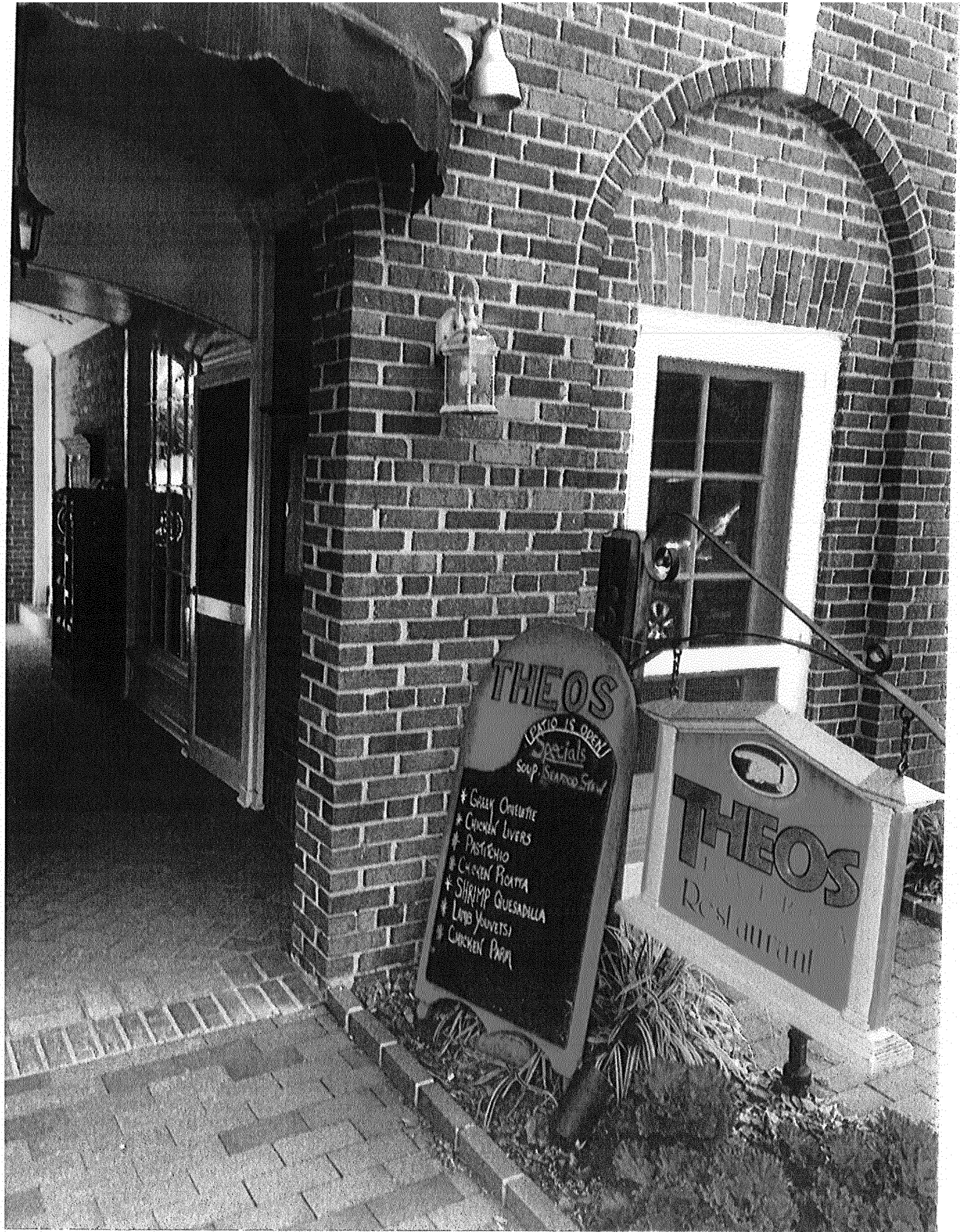
VI. Comments from Attendees

There were none.

VII. Motion to Adjourn

Leo Santowasso made a motion to adjourn. Mike Marsh seconded the motion, which was unanimously approved. The meeting was adjourned at 5:00 pm.





THEOS
PATIO IS OPEN!
Specials
Soup, Seafood, Steak

- * Grilled Omelette
- * Chicken Livers
- * Pistachio
- * Chicken Picatta
- * SHRIMP QUESADILLA
- * Lamb Yauvers
- * Chicken Piri

THEOS
Restaurant