BOARD OF ADJUSTMENT
JANUARY 6, 2022
ASSEMBLY HALL

PINEHURST, NORTH CAROLINA

I. Call to Order

II. Approval of Minutes

  A. 12-02-2021 Regular Meeting Minutes

III. Next Meeting Date

  A. 02-03-2022 Regular Meeting (If Board Has Business To Conduct)

IV. 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.

12-02-2021 REGULAR MEETING MINUTES
ADDITIONAL AGENDA DETAILS:

FROM:
Shannon Konstantinou

CC:
Alex Cameron; Darryn Burich

DATE OF MEMO:
12/28/2021

MEMO DETAILS:
Attached is a draft copy of the 12-02-2021 Regular Meeting Minutes for your review.

ATTACHMENTS:

	Description
🗋	12-02-2021 Regular Meeting Minutes

BOARD OF ADJUSTMENT
REGULAR MEETING
THURSDAY, DECEMBER 02ND, 2021
ASSEMBLY HALL
395 MAGNOLIA ROAD
PINEHURST, NORTH CAROLINA
IMMEDIATELY FOLLOWING THE 12-02-2021 PLANNING AND ZONING MEETING

Board Members Present:	**Board Members Absent:**	**Staff Present:**
David Alzamora, Chair	Phillip Shumaker	Alex Cameron, Planning Supervisor
Jeramy Hooper		Shannon Konstantinou, Clerk to the Board
Julia Latham		
Jack Farrell		
Matt Jones, Alternate		

Approximately 5 member(s) of the public in attendance.

I. Call to Order

Mr. Alzamora called the meeting to order at 04:35 PM, confirmed a quorum was present, introduced the Board, and explained the purpose of this meeting.

II. Approval of Minutes

A. 11-04-2021 Regular Meeting Minutes

Mr. Hooper moved to approve the minutes of the November 04th, 2021 Regular Meeting. Seconded by Ms. Latham. Approved by a vote of 4-0.

Mr. Alzamora stated agenda item IV. General Business would be moved up to agenda item III pushing the Public Hearing to Item IV.

III. General Business

A. Board Organizational Matters

Mr. Alzamora asked the Board to make a motion to seat Mr. Jones, alternate member, in the absence of Mr. Shumaker in order to meet voting member requirements.

Mr. Farrell moved to seat Mr. Jones as a voting member of the Board of Adjustment for the Regular Meeting of the December 02nd, 2021 meeting.

Mr. Alzamora stated voting for a Vice Chair of the Board of Adjustment was postponed from the previous Regular Meeting and asked for a motion nominating a Board of Adjustment member to the position.

Mr. Hooper moved to seat Mr. Jack Farrell as the Vice Chair of the Board of Adjustment. Seconded by Ms. Latham. Approved by a vote of 5-0.

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

IV. Public Hearing No. 1: 160 Thunderbird Lane Variance Request

Mr. Alzamora stated the purpose of the public hearing is to receive testimony for a variance request from Section 9.2a Tables of Dimensional Requirements for the property addressed as 160 Thunderbird Lane, further identified by Moore County PID # 00023301. This property is located within the R-10 (High Density Residential) Zoning District. Specifically, the owners, Norman and Julie Bennett, are requesting a variance from the 30' Minimum Golf Course Setback to allow for approximately a 14.5' setback.

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

Mr. Cameron discussed the proposed work and submitted into evidence the Staff Report, the Staff Presentation, Application, Applicant's Material, Photos / Site Plans, and Draft Findings of Fact. Mr. Alzamora accepted the material submitted by Mr. Cameron into evidence.

Mr. Alzamora asked the Board if any member had partiality, which would prohibit the member from participating in the Public Hearing. No Board members had partiality. Mr. Alzamora asked if any Board member had ex parte communication. No Board members had ex parte communication. Mr. Farrell stated he did visit the site but did not have any ex parte communication with anyone at that time.

Mr. Alzamora outlined the rules and procedures for witness testimony.

The Board and Mr. Cameron discussed whether Pinehurst Resorts had provided feedback. Mr. Cameron stated Pinehurst Resorts had provided feedback, which indicated Pinehurst Resorts would not object to the variance should it be approved, and would be able to submit into evidence the email correspondence between Mr. Cameron and the Pinehurst Resorts representative, Mr. Bob Farren, should the Board request. The Board agreed Mr. Cameron's sworn testimony was sufficient evidence regarding the feedback of Pinehurst Resort.

Mr. Farrell asked Mr. Cameron to clarify the existing property lines and proposed property lines as shown in Staff exhibits, which demonstrate the current encroachment and proposed encroachment into the required setback. Mr. Farrell asked for verification of the required majority vote for approval of the variance.

The Board and Mr. Cameron discussed the total area of the proposed variance, the possibility for the development of the second story or further additions to the dwelling into the proposed new encroachment area, the location of the AC units, and whether there was any additional information in support of the question of hardship.

Ms. Julie Bennett, of 160 Thunderbird Lane, and Mr. Randy Hunt (Randy Hunt Construction), of 155 Vincent Way in Aberdeen, were sworn into the Public Hearing.

Mr. Hooper disclosed a 10-plus year relationship with Mr. Randy Hunt but stated no discussion regarding the variance request had been had between Mr. Hooper and Mr. Hunt.

Ms. Bennett read a prepared statement outlining the intention behind seeking the proposed variance and reviewed exhibits submitted as evidence supporting the proposed variance. Ms. Bennett thanked the Board for their consideration.

The Board, Ms. Bennett, and Mr. Hunt reviewed the proposed plans, verified the room of the proposed expansion is the kitchen, discussed the safety issue of golf balls breaking windows being a catalyst for relocating the kitchen from the current location to the proposed location, the current design of the kitchen being unusable, and structural issues, which require relocating the kitchen to the proposed expansion.

The Board, Ms. Bennett, and Mr. Hunt discussed the location and ownership of the vegetation on the property being on the Pinehurst Resorts property, which means the vegetation cannot be relied upon as a block or screen from errant golf balls as golf courses have been redone numerous times throughout the years, the fact that many golf front properties throughout Pinehurst have similar characteristics, and the restrictions listed on Exhibit D, which are part of the deed for the property, that list a 30’ setback requirement.

Mr. Alzamora asked Mr. Cameron if there was data available on how many properties in Pinehurst are golf front and subject to the 30’ setback. Mr. Cameron stated there wasn’t data available.

The Board, Ms. Bennet, and Mr. Hunt discussed the need for the variance being primarily based on making the dwelling livable and functional for today’s lifestyle, the possibility of expanding the property on another side of the property, the structural and utilities issues prohibiting expanding the dwelling in other ways, the proposed encroachment area placing the dwelling within 14’ of an active golf course, and reviewed slides showing the proposed encroachment in relation to the golf course.

The Board, Ms. Bennet, Mr. Hunt, and Mr. Cameron discussed the proposed dimensions being approximate, the fact that a current survey of the property showing iron markers is not available, the possibility of the golf course changing but the Pinehurst Resort is not objecting to the variance, the history of changes made to course No. 5 where the property in question is located, and further reviewed the location and ownership of vegetation surrounding the property in question.

The Board discussed the particular characteristics and stated structural issues of the property in questions and debated whether those characteristics and stated structural issues justify hardship.

The Board, Ms. Bennett, and Mr. Hunt discussed whether any tree removal would be required for the proposed expansion, the lack of steps being taken to move or protect the dwelling from golf balls, the relocation of the AC units to a point further away from the golf course setback, the dimensions of the proposed expansion, the intended uses for the proposed expansion area of the dwelling, and the roofline being extended on the opposite side of the dwelling to remedy structural issues being caused by the flat rubber roof currently in that area without creating additional second story living space.

Mr. Hooper asked Ms. Bennett how long she had occupied the dwelling and to outline what elements of the dwelling are not livable. Ms. Bennett stated the dwelling was built in 1980, many of the rooms are compartmentalized, the floorplan is outdated and choppy, and is not livable to today's open living standards.

Mr. Hooper stated the Board's responsibility is to determine hardship and asked Ms. Bennett to speak to the reality of the hardship of occupying the dwelling. Ms. Bennett stated the dwelling appears to have undergone renovations or additions in the past that were not well thought out, and trying to do renovations while taking into consideration the structural / load bearing walls and utilities creates difficulties.

Mr. Hooper, Ms. Bennett, and Mr. Hunt discussed the difficulties of doing the desired renovations without impacting load bearing walls and running plumbing under the existing concrete slabs. Mr. Hunt stated Enrique, a designer that Mr. Hunt works with, had been to the site and verified the structural issues and difficulties which require the variance in order to complete the renovations.

The Board, Ms. Bennett, Mr. Hunt, and Mr. Cameron clarified the new proposed setback of 14.5' was an estimate as there is no current survey and discussed the additional dimension of 6' being required to provide room for a laundry room, mud room, and kitchen in order to avoid the current electrical box location and to avoid having to remove old, established trees at the front of the property to expand the dwelling. Mr. Hooper questioned whether it would be feasible to perform renovations / alterations to the property within the current 20.5' setback. Mr. Hunt stated it would be possible with alterations to the proposed plan. Mr. Jones asked for clarification on the existing square footage compared to the proposed square footage of the dwelling. Ms. Bennett stated the current square footage is approximately 2,745. Mr. Hunt stated the proposed addition would add approximately 180 square feet, bringing the approximate square footage of the dwelling to 2,925.

The Board, Ms. Bennett, and Mr. Hunt discussed the proposed plans being the third attempt at redesigning the property to make it livable and reviewed the locations of existing electrical panels, utilities, and walls to remain or be removed.

The Board and Mr. Cameron discussed how, should the variance be approved, a foundation and final survey required during the permitting process would verify compliance with the required setback without a current survey being available and limiting the variance to only the area required for the expansion of the dwelling (not the entire length of the property) being a reasonable, relatable condition for the request.

The Board debated what qualifies a hardship, whether the points made by the applicant justify a hardship existing on the property as it is currently situated, and examined the four standards of review required for establishing hardship.

Mr. Hooper asked for clarification on the qualifications of Enrique Artiga, the designer Mr. Hunt worked with to determine load bearing walls and structural issues at the property. Mr. Hunt stated Mr. Artiga is not a licensed architect. Mr. Hunt stated Mr. Artiga works with an engineer out of Seven Lakes but Mr. Hunt could not provide the name of the engineer. Mr. Cameron stated the firm Mr. Hunt worked with is Seven Lakes Engineering. Ms. Bennett verified an engineer did come out to site while plans were being generated.

Mr. Farrell asked if a tree survey has been done. Ms. Bennett said a tree expert had been to site. Mr. Alzamora stated due to the tree expert not being present, any information relayed as a result of that site visit could not be considered.

The Board and Ms. Bennett discussed the percentage of the property limited in use by development restrictions. Ms. Bennett stated this limited use of the property and golf course frontage on three sides creates a hardship.

The Board and Mr. Hunt discussed the feasibility of renovating or expanding the dwelling without acquiring the variance.

Mr. Alzamora asked whether any member of the public wished to present evidence whether in support of or in opposition to the Application. None wished to speak.

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

The Board began deliberation of the testimony given and evidence submitted.

Ms. Latham stated clarification on the location of the AC units and the possibility of placing conditions on the approval was appreciated.

Mr. Farrell stated the hardship seems to be self-imposed in that renovations / alterations would be difficult but not impossible if done within the existing setbacks and the conditions of the property are not unique within the Village of Pinehurst.

Mr. Alzamora stated consideration must be given to the uniqueness of the positioning of the existing dwelling on the property and the difficulties this positioning poses. The Applicant did not do anything to increase the hardships posed by the dwelling positioning, and, had the current restrictions been in place at the time the dwelling was built, it is highly likely the dwelling would have been positioned differently.

Mr. Farrell stated the act of wanting to expand the square footage is a voluntary act, not something thrust upon the Applicant.

Mr. Hooper asked Mr. Alzamora to clarify for the Board what his position is on the hardship. Mr. Alzamora stated what was written in the application and what was presented during the Public Hearing are one and the same. The hardship lies in the fact that the owners would not be able to use the property as they intend without the addition.

Ms. Latham stated hardship is such a subjective term and having to apply objective criteria to a subjective term is difficult. While it is a choice to renovate / alter a property, having a 42 year old out of date kitchen could be perceived as a hardship to many people, especially when taking into consideration the quality of life expected by residents of Pinehurst.

Mr. Farrell stated the other aspect of the application is safety. Having a structure 14' away from an active golf course poses a safety issue. Ms. Latham referred to the Pinehurst Resorts lack of objection to the proposed variance and deferred to the Pinehurst Resorts as experts regarding golf course use and safety.

Mr. Hooper stated while the interior floor plan of the home could ultimately be considered a hardship, the issue comes with substantiating the approval of the variance with the evidence submitted and testimony given. Without taking into consideration the safety of moving the dwelling closer to the golf course, if the variance is not approved, would renovations / alterations of the property become completely prohibitive is the main question.

Mr. Jones stated there are issues at this property which are not typical to standard renovations / alterations, when taken together as a whole, constitute a hardship.

Mr. Alzamora posed the question to the Board of imposing conditions on the variance limiting the encroachment to a specific linear footage. The Board and Mr. Cameron discussed the fact that any variances approved carry with the property from owner to owner and the possible language of any reasonable conditions the Board could place on approval of the variance.

The Board debated re-opening and continuing the Public Hearing to a later date in order for the Applicant to provide more detailed evidence. It was decided to continue forward with a decision at the time of the current meeting and not to re-open / continue the Public Hearing.

Mr. Alzamora asked if any member of the Board wished to make a motion. Mr. Cameron asked that the member making the motion outline the reasons behind the decision according to each of the four standards of review.

Mr. Alzamora examined the four standards of review based on his view of the case before the Board. The Board debated application of any conditions imposed, the time restrictions should the Board decide to re-open the Public Hearing, the lack of "as built" plans or the effect of knowing specific numbers on determining hardship, and the reasonable requirements for determining hardship.

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

A. Unnecessary hardship would **result** from the strict application of the ordinance. [It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property]:

   In order to reasonably update the existing home as it exists with structural and plumbing issues as well as the layout of the home on the lot, the variance would be needed.

B. The hardship **results** from conditions that are peculiar to the property. [Such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance]:

   A condition that is peculiar to this property is how the existing home is oriented on the lot in addition to being surrounded by golf course property on three sides.

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]:

   The home was built circa 1980 not by the current owner with the existing layout.

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:

   The proposed variance, allowing the proposed addition and additional encroachment are not objected to by the adjacent golf course property owner representative and does not adversely affect either of the properties.

Conditions:

The setback variance be granted to allow for the proposed addition not to exceed 14.55 feet on the applicable lot line up to a total of 50 square feet consistent with the applicant's Exhibit H.

Seconded by Ms. Latham.

Roll Call Vote
Mr. Farrell – Nay
Mr. Hooper – Nay
Ms. Latham – Aye
Mr. Jones – Aye
Mr. Alzamora – Aye

Vote of 3 - 2 in favor. Vote of 4 - 1 in favor needed for motion to carry was not received. Therefore, motion did not carry and the Variance was not granted.

V. Next Meeting Date

A. 01-06-2022 Regular Meeting (If Board Has Business to Conduct)

Mr. Alzamora asked if the Board had any issues with the next meeting date. None were stated.

Mr. Alzamora asked Mr. Cameron if Staff had any updates or information. Mr. Cameron stated there was nothing at this time but the Board would be contacted with information at a later time.

VI. Motion to Adjourn

Mr. Hooper moved to adjourn the Regular Meeting. Seconded by Mr. Jones. Approved by a vote of 5-0 at 06:49 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.

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