



**BOARD OF ADJUSTMENT
NOVEMBER 5, 2020
ASSEMBLY HALL
395 MAGNOLIA ROAD
PINEHURST, NORTH CAROLINA**

IMMEDIATELY FOLLOWING THE REGULAR PLANNING AND ZONING BOARD MEETING

- I. Call to Order
- II. Approval of Minutes
 - A. September 3, 2020 Regular Meeting Minutes
- III. General Business
 - A. Board Membership and Officers
- IV. Next Meeting Date
 - B. December 3, 2020 Regular Meeting (If there is business before the Board)
- V. 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.*



**IMMEDIATELY FOLLOWING THE REGULAR MEETING PLANNING
AND ZONING BOARD MEETING
ADDITIONAL AGENDA DETAILS:
IMMEDIATELY FOLLOWING THE REGULAR PLANNING AND ZONING BOARD
MEETING**



**SEPTEMBER 3, 2020 REGULAR MEETING MINUTES
ADDITIONAL AGENDA DETAILS:**

FROM:

Kelly Brown

CC:

Darryn Burich & Alex Cameron

DATE OF MEMO:

10/29/2020

MEMO DETAILS:

Attached are the draft minutes of the 09-03-2020 regular meeting of the BOA for your review. Given the nature of the meeting, the minutes are more detailed and are based on the transcript from the meeting video.

ATTACHMENTS:

Description

▣ 09-03-2020 Regular Meeting Minutes



**BOARD OF ADJUSTMENT
REGULAR MEETING
THURSDAY, SEPTEMBER 03, 2020
ASSEMBLY HALL
395 MAGNOLIA ROAD
PINEHURST, NORTH CAROLINA
4:00 PM**

Board Members Present:
Leo Santowasso, Vice Chair
Joel Shriberg
Cyndie Burnett
Jeramy Hooper
David Alzamora, Alternate

Board Members Absent:
Julia Latham, Chair

Staff Present:
Darryn Burich, Planning and
Inspections Director
Alex Cameron, Senior Planner
Kelly Brown, Clerk to the Board

Approximately eight people were in attendance.

I. Call to Order

Vice-Chair Mr. Santowasso called the meeting to order at 4:00 pm and confirmed a quorum was present.

Mr. Shriberg moved to seat David Alzamora as a sitting member of the Board of Adjustment. Seconded by Ms. Burnett. Motion carried by a vote of 4-0.

Ms. Burnett moved to approve the minutes of April 30, 2020 special meeting minutes as amended. Seconded by Mr. Hooper. Motion carried by a vote of 5-0.

Mr. Shriberg moved to approve the minutes of May 7, 2020 regular meeting minutes as amended. Seconded by Mr. Hooper. Motion carried by a vote of 5-0.

Mr. Shriberg moved to approve the minutes of May 27, 2020 special meeting minutes as amended. Seconded by Ms. Burnett. Motion carried by a vote of 5-0.

II. Public Hearing No. 1

Mr. Hooper moved to recess the regular meeting and move into Public Hearing No. 1. Seconded by Ms. Burnett. Motion carried by a vote of 5-0.

Mr. Santowasso stated the purpose of the public hearing was to receive evidence on an Appeal on the official determination of the Pinehurst Zoning Administrator to the Board of Adjustment, regarding an application made by Ben Stahl, owner of subject property. Specifically, the request was seeking a determination from the Board of Adjustment regarding the decision of the Pinehurst Zoning Administrator in applying the regulatory provisions of a condition associated with a Conditional District Rezoning regarding the location of a fence within a 10' undisturbed landscape easement at the property addressed as 822 Winston Pines Drive, Aberdeen NC. The property is also defined as Moore County PID# 20180553.

Representative for the Village of Pinehurst, Senior Planner Alex Cameron, and applicant/property owner Ben Stahl were sworn into the public hearing. Mr. Cameron provided background on the appeal from his staff report. He entered the following evidence into the record: staff report and exhibits A – Q, which are located in the meeting file for this hearing at Village Hall.

Mr. Stahl presented his argument to the Board. His presentation is included as part the record and located in the meeting file in Village Hall:

- 8/20/2019: Mr. Stahl's home purchase criteria included a "large backyard for our dogs and children" and it "must be able to be fenced in."
- 8/21/2019: Mr. Stahl identified 822 Winston Pines Drive as a home meeting their criteria.
- 8/26/2019: Mr. Stahl's realtor received a quote from the listing agent for a fence, as a condition of the sale.
- 8/26/2019: The listing agent provided conditions, covenants and restrictions (CCR's)
- 8/29/2019: Mr. Stahl made an offer to purchase the house with the addendum, "Backyard Fenced to include one double gate and one single gate. \$7,700."
- 9/5/2019: Contract for home purchase was executed.
- 9/26/2019: Developers of 822 Winston Pines Drive submitted an application for a fence permit prior to closing date. Mr. Stahl stated he "specifically asked about whether the fence would be located on the property lines, to ensure we lost no real estate with the installation of the fence." It was approved by the Pinehurst Zoning Administrator to be built on the rear property line. It was approved "per the HOA guidelines."
- 10/11/2019: Mr. Stahl closed on the house and fence was completed.
- 2/14/2020: Mr. Stahl was contacted by Caviness and Cates stating the fence must be moved. Mr. Stahl talked to Planning Director Darryn Burich about the issue.
- 3/13/2020: Mr. Stahl received first letter requesting compliance.
- 4/1/2020: Mr. Stahl received final determination letter sent on 3/20/2020, which was delayed due to addressing issues.
- 4/27/2020: Mr. Stahl submitted an appeal application.
- Mr. Stahl stated in January 2019 the developer declared and published the Winston Pines Homeowners Association and CCR's which "did not mention the location of fences within the landscape easement." He stated the CCR's were amended in June 2019 to require "fencing to extend to the rear lot line so long as no trees are felled." Mr. Stahl also stated, "Staff was no included or involved in or made party to any of the language of fence location in the easement area at the time of drafting of recording of the covenants and restrictions."
- 2/14/2020: Mr. Burich emailed Mr. Stahl the original and amended CCR's.
- Mr. Stahl stated he requested a definition and restriction of an undisturbed landscape easement and that the Village "responded they had no such clarifications."
- Mr. Stahl stated he "complied with the ordinance by purchasing a home with fencing that was approved by VOP" and complied with CCR's. He stated it was unreasonable for a homeowner "to comply with an ordinance for which no written explanation or restrictions exists."
- Mr. Stahl stated fences are not permanent structures or development.
- Mr. Stahl showed the Board photos of his property, testifying that they show the 10' foot easement area prior to closing was already cleared by the contractor to allow for the installation of septic drain field lines. He presented the sketch plan of the septic system, which was submitted by the contractor to Moore County Health Department for issuance of a septic permit. He stated the drain lines are 12' from the rear property line. Mr. Stahl stated relocating the fence 10' from the rear property line would compromise the septic drain fields and interfere with maintenance and repair. He referred to an email sent to Mr. Cameron by Moore County Health Department which stated the fence would need to be an additional five feet off the drain line.

- Mr. Stahl stated relocating the rear fence 10' feet would result in the loss of 1,130 square feet of property. He stated that had he known that he would not have full use of the property, he may have reconsidered the purchase, and that reduction in the lot size will affect future resale of the home.
- Mr. Stahl discussed the legal terms 'rule of law' and 'void for vagueness doctrine.' He stated it is a doctrine requiring laws be drafted in language that is clear enough for the average person to comprehend. He referenced emails between the Village Clerk, Planning Director, and staff discussing the existence of the landscape buffer and definition of the undisturbed easement.

Mr. Santowasso asked if the fence was offset or right on the property line. Mr. Stahl responded it was probably inches off the property line.

Mr. Santowasso asked what do covenants and restrictions of HOAs have to do with any ordinances. Mr. Cameron responded HOA covenants and restrictions can go above and beyond any development regulations or restrictions that are in place for zoning and land development; however, they cannot rule against or contrary to.

Mr. Cameron stated Village staff have been in constant communication with Mr. Stahl and that this appeal has taken time and they were not in any way stalling. Mr. Stahl affirmed this.

Mr. Santowasso asked Mr. Stahl if he had anything to do with clearing the lot. He responded that he had no idea who did and it was an existing condition when they went to see the house.

Mr. Hooper asked if there are any NC laws or governances that define what steps the Village would be required to take to rescind the permit. Mr. Cameron responded they are governed under General Statutes Chapters 168 or 160D, and it would fall under revocation of permit if Village staff determined a permit was issued in error. He stated if the Village revokes the permit, then the property owner would be in violation of the development ordinance and Village would start enforcement. Mr. Cameron stated if an appeal application is made, the Board is to consider the language of the condition in order to come to clearer interpretation, and define this condition not only for this property, but the entire subdivision. He stated staff has the ability to revoke a permit if issued in error and any action, whether it be issuance of a permit, the revocation of such, or an official determination, can be appealed and go before the Board to adjudicate the decision.

Mr. Hooper asked what the timelines are to appeal. Mr. Cameron stated the definition is within a reasonable time period for the Board to hear an appeal. He stated a person with standing would have a 30-day window to appeal a decision made by the Village. He stated he is not aware if there is a clear timeline when an application is submitted then issued for a permit before the Village can then revoke it.

Mr. Hooper asked if Village staff feels they are within that reasonable timeframe given the circumstances. Mr. Cameron stated with the fence permit being issued in late September/October and the final determination made in February, staff was within their bounds.

Mr. Hooper asked when HOA CCR's are filed with Moore County, is there a process for municipalities to review and approve them. Mr. Cameron responded there is not. He stated typically they are made party when they are in draft form, especially when there is infrastructure or some other condition of approval that the Village needs to ensure is maintained and safeguarded. Mr. Cameron stated the Village cannot enforce or dictate what is declared in covenants and restrictions.

Mr. Hooper asked if there was a way to find conflicts before an issue arises. Mr. Cameron responded no. Mr. Hooper commented that CCR's are public record.

Mr. Shriberg commented that it appears everyone here has tried to do the right thing. Mr. Cameron responded that Village staff tries to go above and beyond to ensure that our customers are satisfied with the level of service we provide. He stated he wished the actions could have been handled more swiftly and concisely, however at the end of the day this appeal has implications on not just one property, but 27 others.

Mr. Shriberg commented that it seemed Mr. Stahl did everything he could have done to comply with the rules and regulations. He commented if there had not been a complaint, we would not be here. Mr. Cameron could not confirm this. He referred to the exhibits and stated about three months after the fence permit was approved, he reviewed another fence permit application for a lot south of Mr. Stahl's property and noticed where the proposed fence was located. He stated this was within the same timeframe a complaint was made. Mr. Cameron stated he felt like staff would have discussed the fence permit internally. He stated even if Mr. Stahl's fence application was within 10-feet of the rear property line, therefore not impacting the 10-foot landscape easement, staff would have still had a discussion.

Mr. Shriberg asked when Mr. Stahl purchased the home, did it already have a certificate of occupancy. Mr. Stahl responded no, it was still under construction. He stated by the time they closed, the fence was done and the screened-in porch was added weeks before closing. Mr. Shriberg asked if the Village came out and issued a certificate of occupancy when the fence was there. Mr. Stahl nodded yes. Mr. Cameron asked Mr. Stahl what the timeframe was on that. Mr. Stahl stated he thought they closed October 11th, so the fence would have been completed. He stated he did not recall the date.

Property owner Christy Stahl of 822 Winston Pines Drive was sworn into the public hearing. She stated they could have not closed and moved into the house if a certificate of occupancy had not been issued. She stated the fence was completed before they moved in. Mr. Stahl stated it was new construction and no one had been living there previously.

Mr. Shriberg stated he was trying to determine that someone from the Village came out, the fence was there, the house was completed, and they issued a CO to move into the house. Mr. Stahl stated right, and that was kind of my point about the arbitrary enforcement. He stated the land had been cleared, septic tank installed, a septic permit inspected, so there have been a lot of officials looking at this the entire time. Mr. Stahl stated this goes back to the vague writing of this particular ordinance in that nobody understands it, including the people that are required to enforce it up until a complaint.

Mr. Shriberg stated looking at the plat, it shows this 10-foot buffer. Mr. Stahl stated yes, it is on the plat. Mr. Shriberg stated it would be hard for folks to overlook this. Mr. Stahl stated no, it was not overlooked, but we are also provided with a legal documents filed with Moore County that states how specifically a fence is to be constructed. He stated in most places you do not go through every single ordinance within a city, you go by CCR's which generally reflect and are more restrictive than the city or county ordinances.

Neighbor Lindsey Schofield of 818 Winston Pines Drive was sworn into the public hearing. She stated Mr. Stahl's fence was in place by October 5th and they had not closed on their home yet.

Ms. Burnett asked if Ken Bass (owner of Bass Design and Development and developer/previous property owner of 822 Winston Pines Drive) was still involved. Ken Bass of 120 Chesterfield Drive, Pinehurst was sworn into the public hearing. He stated this was his first development and we agreed to the buffer around the perimeter basically to try to appease as many people as you can. Mr. Bass stated we tried to keep from just clear cutting or keep whoever was going to buy the lots from just clear cutting the lots, hence the buffer in the back. He stated we figured if there were no trees already there, we did not want to take property away from people because that is what this development was – larger lots out in the

country. Mr. Bass stated if you read our covenants, which were written by Clark Campbell, a previous Council member. He stated he engaged him after the subdivision was approved to write the covenants, so he was very familiar with this subdivision and the way it was approved. He the stated the way it was written as far as moving, cutting, going around the trees, he crafted all of that language. He stated that was our intent to keep from clear-cutting right up to somebody else's property, even though there is only two houses within hundreds of feet of the subdivision. He stated you asked who cleared the lots; I do not do any of the building, nor do I do any of the clearing. Mr. Bass stated he sells lots.

Mr. Santowasso asked if Mr. Bass was involved in the revision to the declaration, conditions, and restrictions that removed the 10-foot landscape buffer. Mr. Bass stated no, that was not removed. He stated the revision was to clarify that it was only one type of fence. He stated the original covenants had fences go to the property line from day one. Mr. Bass stated the revision was to specify there could be only one type of fence, the height, and there could be no double fencing, but the 10-foot buffer did not change as it was never in there.

Mr. Santowasso asked who cleared the lot line all the way to the rear lot line. Mr. Bass responded the builder, but I do not do any construction out there. He stated there is no governance over the buffer, no tree surveys required before a house is approved, so other than an aerial photo, it is kind of hard to say it has been disturbed or not. Mr. Santowasso commented that it is clear from aerial photography on Google Maps that the lot is pretty well treed all the way back to the back property line.

Ms. Burnett referenced common areas in Section I, Page 8, Item T of the homeowners' agreement (Exhibit I) and asked how the association is going to maintain the back 10-feet of Mr. Stahl's property when there is a fence prohibiting that. Mr. Bass responded those open spaces are in the front of the subdivision; these are not the 10-foot on each lot and stated they are not common spaces. Ms. Burnett stated that Item 1 is a 10-foot undisturbed landscape easement which is labeled on the plat drawing as the perimeter. Mr. Bass stated it might be deemed undeveloped property, but the HOA does not own that 10-foot, each individual homeowner owns that. Ms. Burnett responded that it says these areas are common areas and are to be maintained only by the association. Mr. Bass stated it is not how the neighborhood is platted.

Ms. Burnett asked when you went before Council, why did you agree to this and why did you not argue that the homeowners could have full use of their lots if you felt that they should be able to put a fence on that back property line. She further stated putting up a fence to me is disturbing – undisturbed would mean nothing goes in there. Mr. Bass stated he does not determine disturbing as removing scrub oaks and weeds. He stated his goal was to keep from clear cutting lots, that is why we agreed to the 10-foot easement. He stated it was something the Village wanted, I did not want it, but we had to do it to make it happen. Ms. Burnett asked if the builders are allowed to cut the trees. Mr. Bass stated he has no idea, that is between the Village of Pinehurst and the builder.

Mr. Alzamora stated it is in the covenants and restrictions pretty clearly and explicitly that it is common areas, it is listed in the same bullet points and under the same section of the covenants. He stated the covenants govern less than what the ordinance does, which is not allowed. He stated a reasonable interpretation of undisturbed is what it is in the dictionary. Mr. Alzamora referenced the conditions of the Ordinance #17-12 (Exhibit C) stating if condition five were to have specific inclusions in there, we are led to believe that it also would have included fences, septic, whatever else. He stated because it is undisturbed, it is interpreted most broadly as undisturbed. He asked are the ordinances intended to be read together or separate provisions. Mr. Cameron responded that he would read them as separate requirements in separate conditions.

Mr. Hooper stated when you went in front of Council for your final approval, you brought in your general concept plan and these lots were platted as such with the 10-foot buffer inside of the lots, so Council then approved it. He asked Mr. Bass where the amendment to the covenant came from and the verbiage in there that states, "walls and fences shall extend to the rear lot boundary line despite buffer reservations" (Exhibit J). Mr. Bass stated he cannot explain the word 'despite,' a word that Clark Campbell used. He stated we did not want one fence that was 10' from the property line, one that was 6', one that was 15'. He stated the only way to have a consistent line is if they go to one particular place that everybody knows where that is and that is the property line. Mr. Bass stated so that is why we wanted them to go to the property line, unless there was a tree in the way, then they were to go around that tree.

Mr. Alzamora asked could the same not be accomplished by going up to the edge of the 10-foot easement though, as far as consistency is concerned. Mr. Bass responded not necessarily with septic; all these lots are septic, Mr. Stahl's fence may have been a different dimension from that 10-foot based on where his septic tank lines were or his tank. Mr. Stahl stated his septic lines run parallel to the back of the fence, where moving the fence 10-feet puts it on top of the actual physical chambers or pipes.

Ms. Burnett stated if your property line had been 10-feet in from where your fence is now, they could have located the septic field within your property square footage. Mr. Stahl stated the 10-foot easement is still within our property because we actually paid for that. Mr. Santowasso stated if the fence was already there, they would have known that and moved the septic system. Ms. Burnett stated if the 10-foot easement was identified as common space and the septic lines could not breach that line, they would have adjusted where they located it in your yard. Mr. Stahl responded I would assume if it was advertised as common space, but the way this was advertised and purchased was that it was part of our property. He stated they were never told that the 10-foot buffer was maintained by the HOA; we were told that the intent was to preserve trees and substantial vegetation.

Mr. Hooper asked if the septic lines are dictated by the area where perk test is done, or do they have a little more leeway. Mr. Bass responded that he is unsure what the county would say. He stated they had 28 septic permits before we ever did the development. He stated what we had approved way back when – location, certain linear feet of drain, lines where the tank was going to go – has been changed drastically based on the number of bedrooms or where they placed the house. He stated that could affect where a fence could go or if you could even have a fence. Mr. Bass stated I think the septic lines are required to be a certain distance off the property line, and they would not go into that 10-foot no matter what.

Mr. Shriberg asked if the 10-foot buffer was to be common area. Mr. Bass stated it was not his understanding. Mr. Santowasso stated that was not his understanding when it went through Planning and Zoning Board. Mr. Stahl stated it is included in our plat in the total square feet and what we paid for. He stated they paid taxes on and purchased that 1130 square foot strip of land. He stated what he understood to be common area to be maintained by the HOA, and after it is developed turned over to the homeowners, is that front large triangular lot parallel to Foxfire Road and a retention pond area. He stated that is what we understood to be common areas, not the 10-foot easement.

Mr. Shriberg asked if the builder built the fence 10-feet closer to your home, who would have maintained the buffer. Mr. Stahl stated it is a landscape buffer and it is not maintained except for trees that are dying or in the event of damage or injury. He stated you could add additional shrubs, bushes, or trees. He stated you can't say I don't like pine trees and decide to cut them all down, so it would be left alone in essence, which is really what we have done.

Mr. Alzamora asked if the easement was for the neighbors or for preservation of land view lines, or if there any information regarding the origin of the easement. Mr. Santowasso stated no.

Colette Kolinsky of 25 Queens Court was sworn into the public hearing. She provided public comment stating they put the 10-foot buffer in because the common area up front was not enough to get that many lots in.

Ms. Burnett asked if there was open space requirements. Mr. Cameron stated there was an open space requirement. He stated if you have open space, you get reduction in setbacks and lot size. He stated this subdivision is located in a public water supply watershed, so the density there is limited to one unit per acre. He stated the open space provided met the PDO.

Adjacent property owner Margaret Lovette of 224 Foxfire Road was sworn into the public hearing. She stated she was the complainant. She stated she did not call when Mr. Stahl put his fence up because it was just one fence on her property line. Ms. Lovette stated the fence board that are up and down are to the outside of the fence. She commented how do you nail those boards to that fence if it is on the property line. She stated when the other lady started putting her fence up, that is when I called. She stated they need an area where they can walk around their fence without walking on my property, without nailing nails on my property, without driving a truck to the back of the fence. Ms. Lovette stated we were zoned that you had to have five acres to put a house on and Mr. Bass managed to get the zoning changed. She stated she sympathized with Mr. Stahl, but again they have to see the necessity to be able to get on the backside of their fence without walking on my property. She stated someone would have to do that to put up every one of those fences all the way around my property.

Ms. Schofield provided public comment stating the homeowners had nothing to do with putting the fences up, it is the builders. She stated when they purchased the home, they were asked if they want a fence.

Ms. Burnett asked if all homeowners are given the option of building a fence on the property line when they purchase a lot. Mr. Bass stated he has no interaction with the people who are building the house, he only interacts with the construction company when they buy a lot. Ms. Burnett asked if there is any guidelines or stipulations to the construction company concerning the easement. Mr. Bass stated they have the same guidelines, same plat, Village ordinances, that I have.

Mr. Stahl discussed issues with having an Aberdeen mailing address.

Mr. Hooper asked if homeowners could request a variance for specific cases. Mr. Cameron stated if it was relative to a condition placed on a conditional district approval, then no, a variance is not an avenue they can take.

Ms. Burnett asked if this property was annexed. Mr. Cameron stated the property was annexed in and was part of the conditional district request.

Mr. Shriberg stated the discussion on whether Mr. Stahl's address is in Pinehurst or Aberdeen or ETJ has no bearing on this case whatsoever. Mr. Santowasso agreed.

Mr. Shriberg moved to close Public Hearing No. 1 and re-enter the regular meeting. Seconded by Ms. Burnett. Motion carried by a vote of 5-0.

Mr. Santowasso stated we are not here to change an ordinance; we are here to deliberate action taken by an administrative official.

Mr. Shriberg referenced the PDO and stated: "The zoning board of adjustment shall not reverse or modify the contested action unless it finds that the administrative officer erred in the application or interpretation of the terms of the ordinance or related policies adopted by the Village." He asked what that meant.

Mr. Cameron stated based on the evidence presented, testimony given to this Board by those who are in attendance, and with the exhibits provided within your packet material, if you feel that the zoning administrator of the Village staff erred in making the decisions that was then appealed and brought before you, you can reverse or modify it. He stated if you did not think staff erred in making their determination, then you would affirm it. He stated it is also how the regulatory provision was applied. He stated whatever is ruled by the Board would then be the interpretation going forward. Mr. Cameron stated it would not be just for the fence and what can be located in the undisturbed area for 822 Winston Pines Drive, it would be for the regulatory provision for condition number 5 of Ordinance #17-12.

Mr. Shriberg asked if this ruling would change the conditions of the buffer zone. Mr. Cameron stated it does not change the condition, it changes how it is interpreted and then ruled. Mr. Cameron read Section 5.3.6 of the PDO which states: "In the event that the Zoning Board of Adjustment reverses or modifies the contested action, all subsequent actions taken by administrative officers with regard to the subject matter shall be in accordance with the reversal or modification granted by the Zoning Board of Adjustment."

Mr. Hooper stated he is trying to find where Mr. Burich erred in the decision he made, relevant to the PDO. He stated Mr. Stahl made a very compelling case, however in trying to make the decision on whether or not Mr. Burich's decision was wrong or right, we come to the term 'undisturbed.' He stated how we define that as a Board will be relevant going forward. Mr. Hooper stated he would argue that 'undisturbed' is a very well defined term. He stated given that broad definition and given what the PDO gave staff, and given the terminology, I am trying to find error in their decision.

Mr. Shriberg asked if staff was going to find a compromised solution and the Village would pay Mr. Stahl to move the fence. Mr. Cameron stated that is correct. Mr. Shriberg read Section 5.3.5(D) of the PDO "The Zoning Board of Adjustment shall not reverse or modify the contested action unless it finds that the administrative officer erred in the application or interpretation of the terms of this Ordinance or related policies adopted by the Village." He stated the Village admitted that they erred, otherwise it would not be paying to move the fence. He stated if the builder told Mr. Stahl his fence had to be 10 feet from the property line, we probably would not be here as Mr. Stahl stated he would not have bought the property.

Mr. Alzamora stated that is not the action being appealed, it is Mr. Burich's action saying comply with the ordinance that is being appealed. Mr. Cameron stated they are two separate items; initially a fence permit was issued for Mr. Stahl's property within the 10-foot easement and staff later determined it was issued in error, thus we had to make an official determination and that action is what is being appealed. He stated the fence permit itself is not the action being appealed and the 30-day window has passed.

Mr. Alzamora stated the Board is being asked to look at the plain language of the ordinance as it was applied and it is tough for me to say it was interpreted incorrectly. He stated the fence permit should not have been issued in the first place and that is why the Village is offering to pay to relocate it. He stated as far as misapplying the ordinance, I do not think there is error.

Mr. Shriberg stated he does not see punishing people when they did not create the problem.

Ms. Burnett stated I think it is pretty clear the condition says 'shall remain undisturbed' and I believe that the Village made the correct interpretation. She stated moving forward for the other lots, I think it is very clear that it should be undisturbed, especially for the neighbor Ms. Lovette. Ms. Burnett stated we have to buffer to protect the other landowners around this subdivision.

Mr. Santowasso stated if the decision we make is that we are going to support the decision that was made by the administrative officer, and whether that is going to satisfy anybody, I believe that is all we can do under the powers that we have as the Board in this matter.

Mr. Shriberg read the draft findings of fact into the record:

1. Mr. Stahl owns the property at 822 Winston Pines Drive also identified as Moore County PID# 20180553. The property is zoned R-30 CD (Conditional District) under the Pinehurst Development Ordinance as shown on the latest "Official Zoning Map" and further described in Ordinance #17-12.

2. A contractor submitted an application for and was issued a permit from the VOP Planning and Inspections Department on October 1, 2019 to construct a fence in the rear yard of the property and within the labeled 10' undisturbed landscape easement.

3. On December 27, 2019, the VOP Planning and Inspections Department received a complaint that a fence was being constructed within the 10' undisturbed landscape easement. After an inspection confirmed the complaint, VOP staff noticed the issued permit was not compliant.

4. On February 11, 2020, VOP staff contacted the contractor to inform them that the fence would need to be located outside of the 10' easement.

5. On February 14, 2020, the contractor stated that the property owner was requesting VOP staff to communicate directly with them regarding the fence placement therefore turning the matter directly over to the property owner.

6. On March 13, 2020, Darryn Burich, VOP Planning and Inspections Director sent communication via email to the property owner stating the options to comply with the conditions and the placement of the fence.

7. On March 20, 2020, Darryn Burich, VOP Planning and Inspections Director also acting as the Zoning Administrator, issued a signed final determination letter of how to comply with the necessary conditions of the fence location. This letter was sent to the Appellant (Ben Stahl, property owner), Ken Bass, Bass Design and Development, LLC (developer of the Winston Pines Subdivision) and Caviness & Cates Building Development Company (current home builder and lot owners within the said subdivision).

8. Due to mailing and addressing issues, the property owner received the signed determination letter from the VOP on April 1, 2020.

9. On April 27, 2020 the Planning and Inspections Department received an application to appeal the decision of the Zoning Administrator.

Mr. Shriberg moved that based on the foregoing findings of fact, the Board make the following conclusions of law:

1. The fence at the property addressed as 822 Winston Pines Dr., PID# 20180553 **does** comply with condition #5 on Ordinance #17-12 for the Conditional District Rezoning.
 2. Fencing **can** be allowed within the 10' undisturbed landscape easement.
- Therefore, based upon the foregoing Findings of Fact and Conclusion of Law, the Board **reverses** the decision of the Zoning Administrator.

The motion died due to lack of second.

Ms. Burnett referenced the draft findings of fact for the record.

Mr. Burnett moved that based on the foregoing findings of fact, the Board make the following conclusions of law:

1. The fence at the property addressed as 822 Winston Pines Dr., PID# 20180553 **does not** comply with condition #5 on Ordinance #17-12 for the Conditional District Rezoning.
 2. Fencing **cannot** be allowed within the 10' undisturbed landscape easement.
- Therefore, based upon the foregoing Findings of Fact and Conclusion of Law, the Board **affirms** the decision of the Zoning Administrator.

Seconded by Mr. Alzamora. Motion carried by a vote of 4-1.

Roll Call

Hooper	Yes
Shriberg	No
Burnett	Yes
Alzamora	Yes
Santowasso	Yes

A. Next Meeting Date

- a. **Regular Meeting on October 1, 2020** (If the Board has business to conduct)

B. Motion to Adjourn

Ms. Burnett moved to adjourn the meeting. Seconded by Mr. Shriberg. Motion carried by a vote of 5-0 at 6:11 pm.

Respectfully Submitted,

Kelly Brown
Administrative Specialist
Village of Pinehurst

A recording and videotape of this meeting are located on the Village website: 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.



**BOARD MEMBERSHIP AND OFFICERS
ADDITIONAL AGENDA DETAILS:**

FROM:

Alex Cameron

CC:

Darryn Burich & Kelly Brown

DATE OF MEMO:

10/23/2020

MEMO DETAILS:

Vice Chairman Santowasso's seat on the Board will be vacated as his term will expire on November 17, 2020. The Board will need to discuss and consider appointing one of the alternate members as a permanent member to fill the vacancy as well as elect a new Vice Chair.

Attached for your reference are the BOA Rules of Procedure adopted by the board on November 7, 2019.

ATTACHMENTS:

Description

☐ BOA Rules of Procedure

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

I. General Rules

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

II. Officers and Duties

- A. **Chairperson** (hereinafter “Chair”). The Chair shall be appointed by the Village of Pinehurst Village Council (hereinafter “Village Council”). The Chair shall decide on all points of order and procedure, subject to the rules herein, unless directed otherwise by a majority of the Board in session at the time. The term of office for the Chair shall be as set by Village Council or until a new Chairperson is named by Village Council.
- B. **Vice Chairperson** (hereinafter “Vice Chair”). A Vice Chairperson shall be elected by the Board from among its members. The term of office for the Vice Chair shall be the same as that of the Chair. The Vice Chair shall serve as Acting Chair in the Chairperson’s absence and at such times shall have the same powers and duties as the Chair.

III. Board Powers and Duties

- A. **Powers.** The presiding officer (Chair or Vice Chair) shall have the following powers and duties:
1. With the Board’s informal consent, to append the meeting’s agenda;
 2. To rule motions in or out of order, including any motion patently offered for obstructive or dilatory purposes;
 3. To determine whether a speaker has gone beyond reasonable standards of courtesy in his or her remarks and to entertain and rule on objections from other members on this ground;

4. To entertain and answer questions of parliamentary law or procedure;
5. To call a brief recess at any time;
6. To continue a meeting to a future date and;
7. To adjourn in an emergency.

IV. Members

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

V. Meetings

- A. **Organization Meeting.** The regularly scheduled December meeting will serve as the annual organization meeting for the Board of Adjustment. At such meeting a Vice

Chair shall be nominated and elected by the Members. In addition, any other governance/protocol matters will be reviewed and decided upon by the Members.

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

VI. Appeals and Applications

A. Procedure for Filing Applications.

- 1. All applications for hearing shall be filed with the Planning and Inspections Department, which shall act as Clerk for the Board in receiving this notice. All applications shall be made upon the form furnished for that purpose, and all required information shall be provided thereon before an appeal or any application shall be considered as having been filed.
- 2. Any person with standing may appeal any order or act of the Zoning Administrator or an administrative official pertaining to enforcement of the PDO. Any such appeal of an administrative decision shall be filed with the Village Clerk.
- 3. No appeal shall be heard by the Board unless notice thereof is filed within 30 days after the interested party or parties receive notice of the order, requirement, decision or determination by an administrative official.
- 4. No application shall be considered by the Board unless a completed application is received in accordance with Chapter 5 of the PDO.

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

C. **Hearings.**

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

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

3. **Conduct of Hearing.** Any party with standing may appear in person or by attorney at the hearing. The order of business for each hearing shall be as follows:
 - a) The Chair shall direct and shall call the case as advertised on the official agenda.
 - b) A member of the Village of Pinehurst Planning and Inspections Department shall make a statement regarding the manner in which the application relates to the PDO.
 - c) Either the applicant or the applicant's attorney shall present the arguments in support of his/her case or application.
 - d) Either persons with standing opposed to granting the application or their attorneys shall present the argument against the application.
 - e) Both sides will be permitted to present rebuttals to opposing testimony, at the discretion of the Chair.

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

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

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

7. Refiling. Except as provided in Section VI.C.6 herein, once the Board has made its decision in a case, any applicant shall be prohibited from

submitting the same request for the subject property for a period of one year from the date of the previous application.

8. Review. A review proceeding will be scheduled when a review proceeding is made a condition of the issuance of a variance.
9. Appeals. An appeal from a decision by the Board of Adjustment must be made to the Superior Court of Moore County within 30 days of the decision, and in accordance with the General Statutes of North Carolina, §160A-388.

D. Decisions.

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

VII. AMENDMENTS

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

ADOPTED this the 7 day of November, 2019

...the ... of the ...

...the ... of the ...

...the ... of the ...

()

...the ... of the ...

...the ... of the ...

...the ... of the ...

...the ... of the ...

...

...the ... of the ...

PI Nov 1964

...

VILLAGE OF PINEHURST BOARD OF ADJUSTMENT



, Chairman



, Director, Planning and Inspections