

ORDINANCE #99-4:

AN ORDINANCE AMENDING THE PINEHURST DEVELOPMENT ORDINANCE AS IT PERTAINS TO TEXT AMENDMENTS TO SECTIONS 8.3.4.D, 8.3.1.B AND 13.3.

THAT WHEREAS, the Village Council of the Village of Pinehurst adopted a new Pinehurst Development Ordinance and Map on the 23rd day of October, 1995, for the purpose of regulating planning and development in the Village of Pinehurst and the extraterritorial area over which it has jurisdiction; and

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

WHEREAS, a Public Hearing was held at 4:00 p.m. on January 25, 1999, in the Assembly Hall of the Pinehurst Village Hall, Pinehurst, North Carolina after due notice in The Pilot, a newspaper in Southern Pines, North Carolina, with general circulation in the Village of Pinehurst, and its extraterritorial jurisdiction, for the purpose of considering proposed zoning ordinance text changes, at which time all interested citizens, residents and property owners in the Village of Pinehurst and its extraterritorial jurisdiction were given an opportunity to be heard as to whether they favored or opposed the proposed text amendments; and

WHEREAS, the Planning and Zoning Board has recommended that the Village Council amend the Pinehurst Development Ordinance, Sections 8.3.4.d, 8.3.1.b and 13.3 of the Pinehurst Development Ordinance; and

WHEREAS, the Village Council, after considering all of the facts and circumstances surrounding the proposed amendments in the text of the Pinehurst Development Ordinance, have determined that it is in the best interest of the Village of Pinehurst and the extraterritorial jurisdiction that the Development Ordinance and Map be further amended, making the amendments as requested;

NOW, THEREFORE, BE IT ORDAINED AND ESTABLISHED by the Village Council of the Village of Pinehurst, North Carolina in regular session assembled on the 15th day of February 1999, as follows:

SECTION 1. That the Pinehurst Development Ordinance of the Village of Pinehurst and its extraterritorial zoning jurisdiction be and the same hereby is amended by the text amendments to Sections 8.3.4.d, 8.3.1.b and 13.3, attached hereto, and described in **Exhibit A**, and made a part hereof, the same as if included verbatim.

SECTION 2. That this Ordinance shall be and remain in full force and effect from and after the date of its adoption.

SECTION 3. Adopted this 15th day of February 1999.



(Seal)

VILLAGE OF PINEHURST
VILLAGE COUNCIL

By: Virginia F. Fallon
Virginia F. Fallon, Mayor

Attest:
Mary H. McGraw
Mary H. McGraw, Village Clerk

Approved as to form:

John B. Clayton
John B. Clayton, Village Attorney

**ZT0698: AMENDMENT TO THE PDO (TELECOMMUNICATION TOWERS)
REPORT TO THE VILLAGE COUNCIL
PUBLIC HEARING DATE: JANUARY 25, 1999**

Prepared by the Planning and Inspections Department.

Request

The request is to amend Sections 8.3.1.b, 8.3.4.d, and 13.3 of the Pinehurst Development Ordinance (PDO). In accordance with Section 7.1 of the PDO, the Village Council has the authority to amend the text. The Planning and Zoning Board makes recommendations to the Village Council on requests for text amendments.

Applicant: Planning and Zoning Board

Analysis

During October and November, 1998, the Planning and Zoning Board reviewed the Village's regulations regarding Telecommunication Towers. The goal of this review was to ensure that Village regulations were drafted to protect property values, safety, and appearance in the Village. After reviewing the regulations, the Board recommended the following amendment to the PDO.

Additional language proposed appears underlined. Language proposed for deletion appears with a strike through.

Section 8.3.4.d of the PDO to allow permanent telecommunication towers, subject to a Major Special Use permit, in the R-210 zoning district subject to the following proposed conditions. Temporary structures should use the requirements outlined in Section 13.3 of the PDO.

1. The exterior appearance of all buildings located in a residential district look like a residential dwelling, including without limitation, pitched roof (s) and frame or brick veneer construction. Towers shall be required to be of the latest technology and utilize "stealth" technology to blend into the surrounding environment. For example, a tower located in a wooded area should be designed to have the appearance of a pine tree.; and
2. Output power levels from the tower and/or associated antennae shall not exceed the current federally approved levels for exposure to electromagnetic radiation; and
3. There shall be no leakage or interference that will affect surrounding properties. Radio, television or other electro-magnetic transmission(s) or reception on other properties will not be disturbed or diminished; and
4. Associated buildings located in any residential district may not be used as an employment center for any worker. This provision does not prohibit the periodic maintenance or periodic monitoring of equipment and instruments; and
5. ~~Applicants seeking a Major Special Use permit for tower(s) which are greater than seventy five (75) feet in height and proposed to be located within three thousand (3000) feet of any communication tower greater than seventy five (75) feet in height and constructed after October 24, 1995 of this Ordinance shall provide evidence that reasonable efforts have been made to lease space on an existing, planned or constructed tower (s) or than no existing tower(s) will technically satisfy the applicant's needs; and~~
6. No advertising sign or logo is permitted on any tower or antenna; and
7. Upon cessation of use, the tower has to be taken down within six (6) months by the permit holder.
8. The applicant must demonstrate that it is licensed by the FCC to provide fixed or mobile wireless communication services or, if the applicant is not such an FCC licensee, must demonstrate that it has binding commitments from one or more FCC licensees to utilize the proposed wireless

telecommunication facility. Written evidence of licensing by the FCC is required to be submitted to the Planning Director annually. Failure to provide such evidence shall cause the Major Special Use Permit to be revoked.

9. Prior to the issuance of a special use permit, the applicant shall be required to provide certificates of insurance demonstrating it has a minimum of \$1,000,000 in general liability insurance covering any liability arising out of its construction or operation of the telecommunication tower. The applicant shall be required to maintain such coverage in full force and effect until such time as all above-ground portions of the tower (not including any part of the foundation) have been removed.
10. A special use permit shall not be granted unless it is found that the proposed tower cannot be accommodated on existing or approved towers or alternative structures within a 1/2 mile radius of the proposed location due to one or more of the following reasons:
 - A. The planned equipment would exceed the structural capacity of the existing or approved towers, buildings or other structures, as documented by a qualified and licensed North Carolina professional engineer, and the existing or approved structure cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment at a reasonable cost.
 - B. The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the tower or building as documented by a qualified and licensed professional engineer and the interference cannot be prevented at a reasonable cost.
 - C. Existing or approved towers, buildings or other structures within the search radius, or combinations thereof, cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified and licensed North Carolina professional engineer.
 - D. Other unforeseen reasons that make it infeasible to locate the planned telecommunication equipment upon an existing or approved tower, building or other structure.
11. All proposed telecommunication towers shall be no more less than one hundred ninety-nine (100) (199) feet in height and shall be designed structurally, electrically, mechanically and in all respects to accommodate both the applicant's antennas and comparable antennas for at least two additional users. ~~All proposed wireless telecommunication towers two hundred (200) feet or more in height shall be designed structurally, electrically, mechanically and in all respects to accommodate both the applicant's antennas and comparable antennas for at least three additional users.~~ Towers must be designed to allow for future rearrangements of antennas upon the tower and to accept antennas mounted at varying heights. All towers shall be designed to allow co-location of public safety service equipment at usual and customary commercial rates, and these spaces shall be in addition to the antenna sites required for additional users as mentioned in this section. The exact design of public safety service equipment will be determined upon receipt of an application after consultation with the Police Chief and Fire Chief.
12. The applicant must supply a letter of intent agreeing to make all of its telecommunication facilities available to providers of functionally equivalent services at usual and customary commercial rates for the duration of time that the facility is in operation. Verification shall be provided demonstrating that the applicant has an executed lease for the property that allows the land owner and / or the applicant to enter into leases or subleases with other wireless service providers.
13. The lighting on the proposed tower shall be no more than is required by applicable Federal and State regulations.
14. An annual report must be submitted to the Planning Director which includes but is not limited to documentation of current FCC licensing, the names of users of the tower, and how many additional users can be accommodated on the tower.
15. In accordance with Chapter 17 of the PDO, Village officials may at times enter onto the premises in order to ensure compliance with all applicable Village regulations. Violations will be subject to the penalties as outlined in Chapter 17.

The Planning and Zoning Board also recommends specific language for temporary towers be inserted into the PDO. Temporary towers would be allowed as part of a temporary use permit (13.3). The subcommittee recommends that such facilities not be erected more than two days prior to the event and

removed the day after the event. The subcommittee also recommends that the temporary tower be hidden as much as possible and approval be by the Planning Director.

The subcommittee also recommends that Section 8.3.1.b be amended to state that commercial and industrial uses of land are "discouraged" in R-210 rather than "prohibited."

Planning and Zoning Board Recommendation

The Planning and Zoning Board conducted a public hearing on the proposed amendments at their meeting of October 8, 1998. At their meeting of December 10, 1998, the Board voted to recommend that the PDO be amended as proposed.