

ORDINANCE #22-15

AN ORDINANCE AMENDING THE VILLAGE OF PINEHURST DEVELOPMENT ORDINANCE TO ADDRESS SHORT TERM RENTALS, HOMESTAYS AND PERMIT REVOCATION

WHEREAS, Section 160A-174 of the North Carolina General Statutes empowers local government to, by ordinance, define, prohibit, regulate, or abate acts, omissions, or conditions detrimental to health, safety or welfare of its citizens and the peace and dignity of community, and may define and abate nuisances; and

WHEREAS, Section 160D-701 of the North Carolina General Statutes provides: "Zoning regulation shall be made [by local governments] in accordance with a comprehensive plan and shall be designed to promote the public health, safety, and general welfare. To that end, the regulations may address, among other things, the following public purposes: to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to lessen congestion in the streets; to secure safety from fire, panic, and dangers; to facilitate the efficient and adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; and to promote the health, safety, morals, or general welfare of the community. The regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the local government's planning and development regulation jurisdiction; and

WHEREAS, the Village of Pinehurst finds that the growth of the tourism industry in North Carolina has led to a greatly expanded market of privately owned residences that are rented to tourists for vacations, leisure, and recreational purposes. Use of properties for short term rental located in single family neighborhoods is conducted by the owners of these residences or licensed real estate brokers acting on their behalf and presents unique situations not normally found in the rental of primary residences for long terms, and therefore make it necessary for the Village Council, through its grant of zoning authority by G.S. 160D-701 to encourage the most appropriate uses of land within the Village and to regulate the competing interests of owners of short term rentals and residents owning property or otherwise living long term and/or full-time in the Village's residential zoning districts; and

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

WHEREAS, Section 1.2 of the PDO states that the regulations contained in the PDO have been adopted in order to accomplish the following goals as related to this proposed Ordinance:

- a) Preserve and enhance Pinehurst's residential neighborhoods while addressing the housing needs of current and future residents; and
- b) Promote the health, wellness, and safety of Pinehurst's residents; and

WHEREAS, on October 22, 2019, the Village Council adopted the 2019 Comprehensive Plan that included seven (7) guiding principles to help preserve and enhance the high quality of life in the Village; and

WHEREAS, Implementation Strategy 3.9 of the 2019 Comprehensive Plan states that the Village should "continue to monitor the legislative authority of the Village to regulate short term rentals and evaluate options to address the impacts of short-term rentals on single-family neighborhoods."; and

WHEREAS, a "short term rental" (STR) is a transient lodging use of a residential dwelling unit whereby the dwelling unit is rented for a period of less than thirty (30) days for financial or other consideration and is not currently defined by the PDO as a separate land use; and

WHEREAS, an STR as an undefined land use does not currently have adopted regulatory development and use standards similar in nature to how other transient land uses are regulated within the Village, including into which zoning districts such land uses may be permitted through placement on the Table 8.51a Table of Permitted and Special Uses and Special Requirements and whether any Special Requirements apply to the land use; and

WHEREAS, the use of dwelling units for short term rental use has increased significantly within the Village in recent years; and

WHEREAS, the growth and concentration of short-term rental land uses within areas zoned for single family and multifamily use disrupt and adversely affect the residential fabric of the neighborhood by replacing more permanent residents with transient users that do not have the same sense of attachment and affiliation to the neighborhood and its residents as do longer term residents; and

WHEREAS, the results of a statistically valid survey conducted by the Village of Pinehurst demonstrate that residents who report having one or more short term rentals in close proximity to their homes report lower perceived quality of life, and that perceived quality of life shows an inverse relation to the number of short-term rentals reported in close proximity; and

WHEREAS, that same survey demonstrates that reported problems with several nuisance activities that contribute to a degradation in perceived quality of life increase as the number of reported short term rentals in close proximity increases; and

WHEREAS, continued unregulated growth of transient lodging short term rental uses within residential neighborhoods threatens to alter and diminish the long-term residential character of and quality of life in these neighborhoods; and

WHEREAS, restricting and regulating short term rentals in single family and multifamily zoning districts maintains and promotes more affordable housing opportunities for full-time residents, reduces nuisances to full-time residents, and preserves the overall neighborhood character of and quality of life in residential zoning districts; and

WHEREAS, short term rentals are more appropriate in the Hotel (H) Village Mixed Use (VMU) zoning districts that already allow other lodging uses, are closer to the Village's center that provide greater guest amenities to transitory tourists/visitors such as shopping and restaurants; and

WHEREAS, on September 1, 2022, the Pinehurst Planning and Zoning Board held a public hearing and received public comments on the proposed amendments; and

WHEREAS, on September 6, 2022, the Pinehurst Planning and Zoning Board recommended the Village Council amend Sections 4 and 10.2 of the Pinehurst Development Ordinance as drafted; and

WHEREAS, on September 6, 2022, the Pinehurst Planning and Zoning Board recommended the Village Council amend Sections 8.5 and 8.6 of the Pinehurst Development Ordinance with the following revisions:

Section 8.5 Table of Permitted and Special Uses and Special Requirements

- Add all residential districts, NC, OP, VCP, and VR as permitted by right with "SR"

Section 8.6 Special Requirements (SR) to the Table of Permitted and Special Uses and Special Requirements

- Item 4: Add "and one fully operational fire extinguisher."
- Item 12: Capitalize "Special Events" and remove "large gatherings"
- Item 13 E: Modify first sentence to "verified violation is a determination made by a code enforcement officer or a judge. Following such determination, notice of violation shall be issued by the Village."
- Item 16: To read "Contact information and these special requirements shall be conspicuously posted or otherwise made available to tenants."

WHEREAS, the Pinehurst Planning and Zoning Board adopted a statement that the proposed amendments, as recommended by the Planning and Zoning Board, are consistent with the 2019 Comprehensive Plan; and

WHEREAS, a public hearing was held on September 27, 2022, in the Assembly Hall of the Pinehurst Village Hall, Pinehurst, North Carolina, for the purpose of considering proposed amendments to the Pinehurst Development Ordinance and the recommendations made by the advisory Pinehurst Planning and Zoning Board, 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 the contents of any proposed text amendments to be made by the Village Council; and

WHEREAS, during the September 27, 2022, public hearing, the President of the Pinehurst Resort and Country Club, Moore County's largest tourism related employer, expressed significant concerns over the amount and rapid proliferation of short-term rentals in the Village of Pinehurst and their impact on historical ambience and quality of life within the Village; and

WHEREAS, upon further deliberation, the Village Council determined that changes to Chapter 2 of the Pinehurst Development Ordinance that regulate all types of existing nonconforming uses also should be contemplated in conjunction with the original application; and

WHEREAS, these proposed changes to Chapter 2 of the Pinehurst Development Ordinance were not significant enough to require an additional public hearing; and

WHEREAS, the Village Council desired to have a second public hearing to allow the public an opportunity to comment on proposed changes to Chapter 2 anyway; and

WHEREAS, a public hearing was conducted on October 26, 2022 in the Assembly Hall of the Village of Pinehurst for the purpose of considering proposed changes to Chapter 2 of the Pinehurst Development Ordinance, at which time all interested citizens, residents and property owners in the Village of Pinehurst and its extraterritorial jurisdiction were given an opportunity to be heard as to the contents of proposed text amendments within Chapter 2 of the Pinehurst Development Ordinance to be made by the Village Council; and

WHEREAS, Section 6 of the PDO and Article 6 of North Carolina General Statute Chapter 160D, zoning ordinances or development regulations may be adopted, amended, or repealed. The purpose of initiating changes to the text of the zoning ordinances are to make adjustments to the text of the development regulations that are necessary in light of changed conditions, adopted plans or changes in public policy, or that are necessary to advance the general welfare of the Village and are in furtherance of Section 1.2 of the PDO; and

WHEREAS, the use of properties for short term rentals located in residential neighborhoods present situations detrimental to neighborhood quality of life not normally found in the rental of primary residences for long terms, and therefore makes it necessary for the Village Council to amend the PDO to regulate short term rental use of land within the Village and its extraterritorial jurisdiction; and

WHEREAS, the Village Council, deliberated for more than seven months on how to best balance the competing interests of property rights and resident quality of life within neighborhoods; during which the Village Council heard hundreds of instances of public comments, reviewed relevant portions of the North Carolina General Statutes and case law, considered many examples of how other communities across North Carolina and across the United States are dealing with these competing interests, and considered all relevant data made available to them by all interested parties; and

WHEREAS, based on these extensive deliberations, the Pinehurst Village Council has determined that it is reasonable and is in the best interest of the Village of Pinehurst and its extraterritorial jurisdiction, and that it is consistent with the 2019 Comprehensive Plan, and that the Pinehurst Development Ordinance be further amended, making the amendments set forth in this Ordinance; and

NOW, THEREFORE, BE IT ORDAINED AND ESTABLISHED, by the Village Council of the Village of Pinehurst, North Carolina in the regular meeting assembled on the 26th day of October 2022, make the following amendments to the Pinehurst Development Ordinance:

SECTION 1. The Village of Pinehurst Development Ordinance Chapters and Sections is amended as follows.

2.3.2 Nonconforming Uses

(A) Within the Village there are some uses which may be nonconforming, the use was allowed when it was constructed and first used but does not meet the current zoning regulations. These nonconforming uses may have a right to remain and continue to be used as they were originally constructed and/or used, provided the original use has not been discontinued for longer than the periods set forth in subsection (G) as to particular types of nonconforming uses.

(B) **Nonconforming Use Certificate:** A Nonconforming Use Certificate is an official declaration issued by the Village confirming the legal nonconforming use status that is attached to the property for the benefit of current and future property owners to be assured that the current and/or original use may lawfully continue and are afforded the benefits identified in this subsection. The Certificate shall describe the nature and extent of the nonconformity and is an acknowledgement by the Village that the use was legal at the time of construction and original lawful use and was lawful prior to the adoption of the new zoning ordinance and is therefore allowed to lawfully remain so long as it is not

discontinued under the provisions of subsection (G), or enlarged, extended, or intensified as proscribed by subsection (C).

(1) Issuance: Within 365 days of any use being made a nonconforming use as defined by Section 10.2 of this Ordinance, or within 365 after adoption of this Ordinance, whichever is later, such nonconforming uses may apply for a Nonconforming Use Certificate that shall be issued by the Village Planner upon the property owner providing documentation acceptable to the Village establishing the legal existence, nature, and extent of the original nonconforming use, and documentation that the original use has not been discontinued for the applicable periods set forth in subsection (G). As to requests for Nonconforming Use Certificates from owners of short term rental dwelling units in existence and operated prior to effective date of this Ordinance, proof sufficient to establish the lawful nonconforming status may include, among other forms of documentation, Moore County tax records, rental agreements and/or leases, occupancy tax records, and other similar types of documentation confirming and establishing the pre-existence of the nonconforming use for short term rental purposes. In all cases, the burden of establishing the nonconforming use lawfully exists shall be the responsibility of the property owner of the claimed nonconforming use and not upon the Village.

(C) Extension of Use: (formerly subsection 2.3.2 (A), recodify existing language)

(D) Continuation, Maintenance, and Minor Repair: (formerly subsection 2.3.2 (B), recodify existing language)

(E) Damage or Destruction: (formerly subsection 2.3.2 (C), recodify existing language)

(F) Change of Use: (formerly subsection 2.3.2 (D), recodify existing language)

(G) Cessation of Use: (formerly subsection 2.3.2 (E), recodify existing language and add new 4th sentence at the end of subsection) If a nonconforming use is discontinued for one hundred twenty (120) consecutive days or more, then the property shall thereafter be occupied and used only for a conforming use. If a nonconforming use of property is discontinued but reestablished within one hundred twenty (120) days, then the nonconforming use may continue, provided that the nature and degree of the nonconformity will not be changed or increased from that which existed before the nonconforming use was discontinued. Nonconforming Banks, Credit Unions, Financial Services and Professional Services located within the VC (Village Commercial) Zoning District shall not be afforded the same one hundred twenty (120) days but rather a thirty (30) days cessation in use shall result in the discontinuation of that use and the space may only be re-occupied by a conforming use. If a nonconforming short term rental dwelling unit is not used for three hundred sixty-five (365) days or more, the use shall be deemed to have been discontinued and shall thereafter be used only for a conforming use.

(H) Signs for Nonconforming Uses: (formerly subsection 2.3.2 (F), recodify existing language)

4.2.12 Revocation of Development Permit

A development permit may be revoked by the Village Planner after notifying the permit holder in writing and stating the reason for the revocation. The permit revocation shall follow the same process required for issuance of the development permit, including any required notice or hearing, in the review and approval of any revocation of that approval.

Terms under which a development permit may be revoked include:

- (A) Any substantial departure from the approved application, plans, or specifications;
or
- (B) Refusal or failure to comply with the requirements of this ordinance or any applicable local development regulation or any State law delegated to the Village for enforcement purposes in lieu of the State; or
- (C) False statements or misrepresentations made in securing the approval; or
- (D) Any development approval mistakenly issued in violation of an applicable State or local law.

Revocation of a development permit by the Village Planner may be appealed as provided in Chapter 5 and pursuant to G.S. 160D-405.

8.5.1a Table of Permitted and Special Uses and Special Requirements

LODGING	PC	RD	R-210	R-30	R-20	R-15	R-10	R-8	R-5	R-MF	NC	H	HD	OP	VCP	VR	VMU	VC	SR
<u>Short Term Rental</u>			<u>SR</u>	<u>SR</u>	<u>SR</u>	<u>SR</u>	<u>SR</u>	<u>SR</u>	<u>SR</u>	<u>SR</u>	<u>SR</u>	<u>X</u> , <u>SR</u>	<u>SR</u>	<u>SR</u>	<u>SR</u>	<u>SR</u>	<u>X</u> , <u>SR</u>	<u>SR</u>	<u>9</u>

X Permitted by Right

SU Special Use Permit

SR Special Requirement

Section 8.6 Special Requirements (SR) to the Table of Permitted and Special Uses and Special Requirements

Principal Uses

SR-9 Banks, Credit Unions, Financial Services, Professional Services (to be recodified to SR-21 below)

SR-21 Banks, Credit Unions, Financial Services, Professional Services

SR-9 Short Term Rental

- 1) After the effective date of this Ordinance, all applicants seeking to establish any new short-term rentals shall be required to obtain a Development Permit from the Village. All nonconforming short term rental dwelling units operated prior to the effective date of this Ordinance are not required to obtain any Development Permit or any other type of permit or permission as a condition to rent and are not required to register their short-term rental with the Village but may request issuance of a Nonconforming Use Certificate as set forth in subsection 2.3.2 of this Ordinance. All short-term rentals, whether lawful nonconforming uses or new short-term rentals established after the effective date of this Ordinance, shall comply with the following standards:
 - a. A minimum of one (1) operable smoke detector shall be provided per bedroom (North Carolina State Building Code and 42-A-31(6) Vacation Rental Act);
 - b. A minimum one (1) operable carbon monoxide detector shall be provided per level or floor of the dwelling unit. (42-A-31(6) Vacation Rental Act)
 - c. Bedrooms and other habitable rooms shall meet the minimum light and ventilation requirements of Section 153.18 of the Pinehurst Municipal Code.
 - d. Bedrooms shall meet the minimum size requirements of Section 153.19 of the Pinehurst Municipal Code.
 - e. Ceiling Height. At least one-half of the floor area of every bedroom shall have a ceiling height of not less than seven feet and six inches (Section 153.19 (B) Pinehurst Municipal Code).
 - f. Egress. Every dwelling unit shall be provided with adequate means of egress as required by the applicable provisions of the North Carolina State Building Code.
 - g. To lessen congestion in the streets and to prevent the overcrowding of land as authorized by G.S 160D-701. A minimum of one (1) parking space per bedroom shall be provided on code-approved surfaces and locations.
 - h. Cooking facilities are not permitted in any bedroom. For the purposes of this regulation, cooking facilities include any refrigerator in excess of seven (7) cubic feet; any stovetop range that operates on 220-volt electric service, any appliance that operates on natural gas; or any cooktop, whether integrated into a countertop or a separate appliance which contains more than two cooking surfaces or burners. This regulation shall

not apply to single dwelling unit room rentals with a sleeping area, living area, and kitchen/eating area consolidated into one room.

- i. To ensure that the owners of short-term rentals provide fit and habitable housing as required by G.S. 42A-17(b), and to prevent the overcrowding of land, the avoidance of undue concentrations of population, to lessen congestion in the streets, and to prevent overcrowding of the lodging premises, and as authorized by G.S. 160D-701, the maximum occupancy per unit shall be based on two (2) adult guests per bedroom.
- j. Accessory Dwelling Units may be permitted for short term rental where Accessory Dwelling Units and Short Term Rentals are both permitted by right in Table 8.5.1a Table of Permitted and Special Uses and Special Requirements.
- k. Rental rules, including the maximum number of guests per stay, trash disposal procedures and sanitation schedules, noise ordinance hours, parking, and other listed SR-9 requirements shall be conspicuously posted at the main entrance along with the owner or property manager and emergency contact information.

Section 10.2 Definitions

Short Term Rental: a use of a Dwelling Unit for transient lodging occupancy under a short-term lease or for other financial consideration for a time period, lease term or sublease term of less than 30 consecutive days for a cumulative total of more than 14 days in any calendar year. Short Term Rental does not include other defined lodging uses identified on Table 8.5.1a of the Table of Permitted and Special Uses and Special Requirements.

Homestay is a rental of a habitable room or rooms within a dwelling unit or attached accessory dwelling unit made available by short-term lease or other financial consideration for a period of less than 30 consecutive days while the full-time resident resides on-site during the duration of the rental period.

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

SECTION 3. Severability: Should any section or provision of this ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of any ordinance as a whole or any part thereof which is not specifically declared to be invalid. If any court of competent jurisdiction invalidates the application of any provision of this ordinance, then such judgement shall not affect the remaining portions not specifically included in that judgment.

SECTION 4. That this Ordinance shall be and remain in full force and effect from and after the date of its adoption.

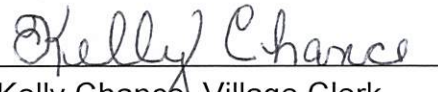


(Municipal Seal)


VILLAGE OF PINEHURST
VILLAGE COUNCIL

By: 
John C. Strickland, Mayor

Attest:


Kelly Chance, Village Clerk

Approved as to Form:


Michael J. Newman, Village Attorney