

**MINUTES OF
VILLAGE COUNCIL REGULAR MEETING
FEBRUARY 26, 2013**

**395 MAGNOLIA ROAD
ASSEMBLY HALL
PINEHURST, NORTH CAROLINA
1:00 P.M.**

The Village Council of the Village of Pinehurst held a Regular Meeting on Tuesday, February 26, 2013, at 1:00 p.m. in the Assembly Hall of the Pinehurst Village Hall, 395 Magnolia Road, Pinehurst, North Carolina with the following in attendance:

Ms. Nancy Roy Fiorillo, Mayor
Mr. Douglas A. Lapins, Mayor Pro-Tem
Mr. John R. Cashion, Councilmember
Mr. Mark W. Parson, Councilmember
Mr. John C. Strickland, Councilmember
Mr. Andrew M. Wilkison, Village Manager and Village Clerk
And approximately 46 attendees, including 2 staff and 2 press

1. CALL TO ORDER.

Mayor Nancy Roy Fiorillo called the meeting to order.

2. INVOCATION AND PLEDGE OF ALLEGIANCE.

Village Manager Andy Wilkison offered the invocation and led everyone in the Pledge of Allegiance.

3. MOTION TO APPROVE CONSENT AGENDA.

All items listed below are considered routine or have been discussed at length in previous meetings and will be enacted by one motion. No separate discussion will be held unless requested by a member of the Village Council.

- A. Approval of Draft Minutes:
 - Special Meeting of January 8, 2013
 - Work Session of January 8, 2013
 - Closed Session of January 8, 2013
 - Work Session of January 22, 2013
 - Closed Session of January 22, 2013
 - Regular Meeting of January 22, 2013
- B. Public Safety Reports:
 - Police Department
 - Fire Department
- C. Scheduling of Regular Meeting for Tuesday, March 26, 2013 at 1:00 p.m.

End of Consent Agenda.

Councilmember Cashion moved to approve the Consent Agenda. The motion was seconded by Councilmember Lapins and passed unanimously with a vote of 5-0.

4. BUDGET AMENDMENTS REPORT TO COUNCIL FOR THE PERIOD JANUARY 16, 2013 to FEBRUARY 15, 2013.

Councilmember Strickland moved to approve the Budget Amendments Report as presented. The motion was seconded by Councilmember Parson and passed unanimously with a vote of 5-0.

**MINUTES OF
VILLAGE COUNCIL REGULAR MEETING
FEBRUARY 26, 2013**

5. RECESS REGULAR MEETING AND ENTER INTO A PUBLIC HEARING.

Councilmember Cashion moved that the Village Council close the regular meeting and enter into a Public Hearing. The motion was seconded by Councilmember Strickland and passed unanimously with a vote of 5-0.

6. PUBLIC HEARING #1: Official Text Amendment to the Pinehurst Development Ordinance to amend Section 10.2.2.2 (b) Table of Dimensional Requirements R-MF Residential, Multi-Family District. The purpose of this amendment is to add a note that allows the reduction of the Lakefront Setback from 60' to 30' in the R-MF Zoning District with a required "view angle" provision. The applicant for this amendment is Marcel Goneau.

Comments:

Planning & Inspections Director Andrea Correll provided an overview of the public hearing item and indicated there are six multi-family developments around Lake Pinehurst that are non-conforming to the current lakefront setback requirements of 60 ft. She indicated staff has evaluated the subject of lakefront setbacks comprehensively and recommends Council approve the text amendment. She indicated if there was a natural disaster, these structures could not be built back to today's standards. Ms. Correll then presented the aerial views of the six developments and their current setbacks from the lake. She indicated these developments were built in the late 1980's, but the 60 ft. setback was put into place by the Village in the 1990's.

Mr. Marcel Goneau respectfully requested the Council approve the text amendment proposed to reduce the lakefront setback from 60 ft. to 30 ft., which is the current requirement for single family lakefront development. The proposal also includes a requirement to ensure a 60 degree "view line" in order to protect the view shed of current lakefront property owners.

Councilmember Lapins inquired of Ms. Correll of the view line requirement and she indicated the applicant submitted the view shed as part of their text amendment request and no such requirement exists today.

Senior Planner, Bruce Gould indicated the setback and the view angle would both need to be complied with to ensure the view shed of current property owners would not be impacted by the development.

Councilmember Strickland inquired if the view shed applied to the street side as well as the lake side. Mr. Goneau indicated the text amendment applied only to the lake side.

Mr. Goneau asked that he be allowed to respond to any questions of the Council or the public.

Councilmember Strickland indicated it was the piece of property in question was a sizeable lot and inquired if it were suitable for a single family home. Mr. Goneau indicated their conditional use request to use the property is for multifamily, but the lot is suitable for a single family home.

Mr. Jess Dishner read a letter from John and Linda Mercer, the property owners, requesting the Council consider their request and approve this conditional zoning.

Mr. Dale Skinner, President of the Lake Pinehurst Villas Homeowners Association, indicated he is concerned about reducing the setbacks because the change would block a significant portion of the view of the Pinehurst Marina beach club for Units 1-18. He also stated that a reduced setback would limit the access of the public utilities equipment needed to repair the sewer line at the lake. He also expressed a concern about the traffic on Burning Tree road and diminished safety because of entering and exiting driveways on a curvy and hilly road.

**MINUTES OF
VILLAGE COUNCIL REGULAR MEETING
FEBRUARY 26, 2013**

Ms. Mary Enroth, who lives in a single family home two lots away from the property, expressed concern about the traffic and accidents that occur due to the dangerous intersection. She also provided the Council with a map indicating where the utilities are located.

Mr. Pat Henry inquired where the setback is measured from in this amendment. Mr. Gould responded that the measurement may occur from the lake shore line or the property line, whichever is more restrictive. The text amendment being proposed is from the lake's edge (or shore) in this instance.

Ms. Mary Bartley inquired where the original building envelope was located on the property being discussed. Ms. Correll indicated the lot is currently zoned R-10, so the setback on the property is 30 ft. right now and the structure can be up to 35 ft. high.

Mr. Goneau confirmed the 30 ft. setback and 35 ft. height limitation are applicable to the property now. The 60 degree view shed requirement does not exist now, but is being proposed to protect the views of the current property owners.

Ms. Cathy Miles inquired if the proposed changes would apply to other properties. Mayor Fiorillo indicated the changes would.

Mr. Brian Deaton indicated the Council should understand why the 60 ft. setback for multi-family development was originally put in place before making any changes to the zoning.

Councilmember Strickland inquired of the sewer easements and how much access the utility company has to the sewer line. Mr. Gould indicated the property owner has the right to build on the areas that are not restricted by the easements.

Mr. Russell Schafer who lives on Lake Pinehurst inquired why property owners couldn't be grandfathered in so they could rebuild if there were a natural disaster.

7. **PUBLIC HEARING #2: Official Text Amendment to the Pinehurst Development Ordinance to amend Section 12.4 Watershed Protection Overlay District. The purpose of this amendment is to allow for the granting of Special Intensity Allocation to multi-family developments. The applicant for this amendment is Marcel Goneau.**

Comments:

Senior Planner, Bruce Gould, referred to his staff report providing an overview of the proposed text amendment related to the special intensity allocation to multi-family developments. He indicated the watershed regulations did not apply to the current existing developments because they were constructed prior to the establishment of the Watershed Protection Overlay District in 1993. He then provided a general overview of the rationale for the allocation and proposed changes.

Mr. Marcel Goneau respectfully requested the Council approve the proposed text amendment to the watershed protection overlay district.

Mr. Jack Ferrell indicted he thinks this amendment is the right thing to do for the Village.

Mr. Frank Maser commented that the future reward for the Village if approving this text amendment is better designed and better planned development due to the flexibility it then allows a developer. He indicated the amendment is a positive change to the text. At the request of Councilmember Strickland, Mr. Maser provided his background in commercial real estate. Mayor Fiorillo indicated Mr. Maser also previously served on the Moore County Planning Board.

Mr. Hal Theiste inquired of what is the ETJ? Staff provided an explanation of the Extraterritorial Jurisdiction (ETJ).

**MINUTES OF
VILLAGE COUNCIL REGULAR MEETING
FEBRUARY 26, 2013**

8. **PUBLIC HEARING #3: Official Zoning Map Amendment to rezone one parcel of land consisting of approximately .68 acres. This property is addressed as 1400 Burning Tree Rd. This property is currently zoned R-10 (Residential). The proposed map amendment would change the zoning of the property to Conditional Use R-MF (Residential Multi-Family). The applicant and owner of the property is John & Linda Mercer. The owners' agent in this request is Marcel Goneau. This property is further defined as being Moore County LRK # 56028.**

Comments:

Planning & Inspections Director Andrea Correll entered the Comprehensive Plan Consistency Statements for the three (3) public hearings. She indicated this is a conditional use rezoning request for the property and reviewed the characteristics of the adjacent properties. She also provided some background on the R-MF zoning district and conditional use zoning.

Mr. Marcel Goneau indicated this is a request for transitional zoning that buffers adjacent property by transitioning uses. He indicated a neighborhood meeting was offered and held with no attendees on December 21st and there were no responses to the letters they mailed to nearby property owners. Mr. Goneau indicated the property has always been privately held property, but has been used by local property owners as "public" property. He said the property could be subdivided into two lots and two single family homes could be constructed on the lots with a 35 ft. height requirement and with an 1,800 minimum sq. ft. requirement for each dwelling unit. Rezoning would allow 3 townhomes to be constructed on the property. The site could have 4 units under the rezoning, but there is a turnaround driveway designed to address the public safety of the curve in Burning Tree Rd. He then read a statement that the Planning Staff recommends the Village approve the zoning request and the 3-unit townhome development.

Councilmember Strickland inquired if the current property owner's intent is to occupy one of the three townhomes on a full-time basis in the future? Mr. Dishner responded that the owner's intent was to occupy one of the three units.

Ms. Miles asked what the units may look like? Mayor Fiorillo indicated site plans have not yet been prepared and it would be premature to do so without the zoning in place first.

Ms. Correll indicated the Council may put conditions on the zoning and that the applicant would need to concur with those conditions or their request would be denied.

Mr. Jack Farrell, indicated his concern with the request to rezone the parcel, which he considers "Spot Zoning". The zoning was R-10 when purchased by the property owner and the parcel has no features that would prevent it from being developed under the current zoning. A larger residence would positively impact nearby property values more than 3 townhomes. He indicated he does not agree with the Comp Plan Consistency statement and referred to several pages of the Comprehensive Plan that would indicate the rezoning request should not be approved. He indicated the property owner is the only one who benefits from this and urged the Council to not approve the request, just as the Planning & Zoning Board did not approve it.

Mr. Tom Reedy, president of the Lake Pinehurst Homeowners Association, indicated he emailed their membership information about the rezoning and he received 80 responses from the membership asking the Homeowner's Association to oppose the rezoning. He indicated he is concerned that these townhomes will be used by short term renters and lake residents are currently having issues with short term renters.

Councilmember Lapins asked staff to determine how much lakefront property (and the size of the lots) remains undeveloped that could be developed in the future under these amended requirements.

Mr. Brian Deaton indicated he participated in the deliberations of the development of the PDO. One objective was to prevent "Spot-Zoning". He commented that if the Village Council approves these amendments, it will set a negative precedent. While adjacent to multi-family development, the property is

**MINUTES OF
VILLAGE COUNCIL REGULAR MEETING
FEBRUARY 26, 2013**

essentially sitting in a residential development area. He commented that granting variances to zoning cannot be done to simply financially benefit the owner of the property and surrounding owners should be considered.

Councilmember Parson asked staff to explain spot zoning. Ms. Correll and Mayor Fiorillo indicated this is not "Spot Zoning" under NC law.

Ms. Mary Enroth indicated all of the neighbors are opposed to the proposed project.

Ms. Mary Walsh indicated she lives immediately adjacent to the property and cannot imagine putting 3 units on that lot. She asked the Council to not approve the request.

Mr. Andrew Steidinger discussed the difficulties that lake homeowners have had with short term rentals around the lake and his concern that if allowed to be developed as proposed, the Village should expect additional issues because these units will become short term rentals. He indicated his concern about Council setting a precedent and voiced his opposition. He asked the Council to not approve the request, just as the Planning Board did not approve. Mayor Fiorillo indicated the proposals were voted down 3-2 by the advisory Planning Board.

Mayor Fiorillo asked Ms. Walsh if she was impacted by the Lake Pinehurst Villas property? She indicated she was not. Ms. Enroth indicated that the Lake Pinehurst Villas are well-screened.

Mayor Fiorillo indicated some potential conditions could include screenings and maybe a requirement of a homeowner's association. Bruce indicated the requirement of a homeowner's association may not be allowed, but would require some research.

Mr. Robert Wilson indicated he opposes the zoning because it's not fair to the existing surround property owners whose property values will be diminished. He commented the development would result in additional noise issues, traffic issues, and screenings would block the views of current property owners. He inquired if the development could be constructed in the flood plain?

Mr. John Root, indicated if the property owner wants a smaller house, then they should subdivide the property into two lots and build a smaller house.

Mr. Hal Theiste indicated the driveway for this property is in the curve of Burning Tree Rd. and would be very unsafe. He inquired about the ability to subdivide his personal lot and what approvals would be required. Mr. Gould indicated when a subdivision would require Council approval and when staff could approve a subdivision of property.

Mr. Henry Vest, who owns 18 Pinehurst Lake Villas, does not support the changes and asked that the required setback be at a minimum 38 ft. so it is consistent with the current setback of 38 ft. at Lake Pinehurst Villas. Staff pointed out that the property could currently be developed with single family home at a 30 ft. setback.

Mr. Pat Henry indicated Lake Pinehurst Villas Units 18 and 17 may both be in the flood plain currently. Flood insurance would be needed if any part of the structure is below FEMA's 415ft requirement.

Mr. Frank Maser indicated that flood insurance is not needed unless there is a mortgage on the property.

Councilmember Cashion inquired if this development would require flood insurance. Mr. Gould indicated that in some cases fill could be brought in and the foundation elevated so that the structure is no longer in the flood plain. Councilmember Cashion asked if the current property owner is aware of the floodplain and insurance requirements. Mr. Goneau indicated he is unsure if the current property owner is aware of the floodplain requirements.

Mr. Dale Skinner indicated virtually all property around the lake is in the floodplain.

**MINUTES OF
VILLAGE COUNCIL REGULAR MEETING
FEBRUARY 26, 2013**

Ms. Cathy Miles indicated the post office considers the curve in Burning Tree the most dangerous curve in the Village.

Ms. Ann Steidinger asked Mr. Goneau how this development would benefit anyone other than the property owners?

Mayor Fiorillo indicated it was not Mr. Goneau's responsibility to show how the community would benefit from the project. Mayor Fiorillo then indicated she would like the staff to review all of the vacant lakefront property that may be impacted by these text amendments.

Mr. Robert Wilson indicated he does not want the Village to negatively affect the character of our Village by approving these requests.

Mr. Anthony Feronetta inquired when the Village will make a decision? Mayor Fiorillo indicated she would like the results of the staff study to be completed prior to deliberating on this issue, which is likely to be March 12, 2013.

9. ADJOURN PUBLIC HEARING AND RE-ENTER THE REGULAR MEETING.

Councilmember Strickland moved that the Village Council close the public hearing and re-enter the regular meeting. The motion was seconded by Councilmember Lapins and passed unanimously with a vote of 5-0.

10. OTHER BUSINESS.

- There was no other business.

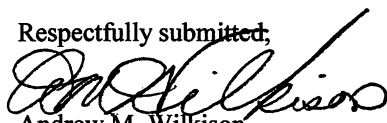
11. COMMENTS FROM ATTENDEES.

- There were no comments from attendees.

12. MOTION TO ADJOURN.

At approximately 3:28 p.m. Councilmember Strickland moved to adjourn the meeting. The motion was seconded by Councilmember Cashion and passed unanimously with a vote of 5-0.

Respectfully submitted,



Andrew M. Wilkison
Village Clerk