

Village of Pinehurst
Board of Adjustment
December 1, 2016
MINUTES

**Board of Adjustment
December 1, 2016
Assembly Hall
Village of Pinehurst
5:00 p.m.**



MINUTES

Committee Members in Attendance:

Leo Santowasso, Chairman
Cyndie Burnett, Alternate Board Member
Kevin Drum, Alternate Board Member
Fred Engelfried, Board Member
David Kelley, Board Member
Michael Marsh, Board Member
Joel Shriberg, Board Member

Committee Members Absent:

Carol Henry, ETJ Board Member
Myles Larsen, Alternate Board Member

Staff in Attendance:

Kevin Reed, Planning and Inspections Director
Bruce Gould, Principal Planner
Gwendy Hutchinson, Planning and Administrative Assistant
Alex Cameron, Planner

Attorneys in Attendance:

Michael Newman, Village of Pinehurst Attorney
John Silverstein, Board of Adjustment Attorney
Andrew Petesch, Attorney for Appellants

Court Reporter in Attendance:

Sandra DeGarmo Wise, President
Starkings Court Reporting & Video Services

Village of Pinehurst Audio & Recording

Barbara Thompson, IT Technician

I. Call to Order.

Chairman Leo Santowasso, called the meeting to order and introduced the Board Members.

II. Approval of Minutes: March 5, 2015

Fred Engelfried made a motion to approve the March 5, 2015 Minutes; Joel Shriberg seconded the motion, which was unanimously approved.

III. Reorganization of Member Appointments

Chairman Santowasso stated that the Board needs to add two regular members and suggested it be David Kelley and Mike Marsh.

Fred Engelfried made a motion to appoint David Kelley as a regular member; Joel Shriberg seconded the motion, which was unanimously approved.

Fred Engelfried made a motion to appoint Mike Marsh as a regular member; Joel Shriberg seconded the motion, which was unanimously approved.

Chairman Santowasso also stated that he would like to form a sub-committee to review and develop the Rules of Procedure. David Kelley and Fred Engelfried volunteered to work with staff.

IV. Public Hearing

The purpose of the public hearing is to receive evidence on the Appeal from an action and decision of the Zoning Administrator to the Board of Adjustment, regarding an application made by Mary Catherine Sayers, Samuel L. Sayers, Helen Brissette, Pamela C. Cochran, Brian J. Deaton, John C. Strickland and Robert A. Nuzman. Specifically, this request is seeking a determination from the Board of Adjustment regarding the decision of the Zoning Administrator's enforcement of condition number 4 of the Village Council adopted Ordinance #16-10 and if the minimum allowable square footage per multi-family unit is 900 or 748 square feet. The address of the property in question is 205 McCaskill Rd. E and is also defined as Moore County LRK#'s 00025962 and 00025798. The ordinance and development in question relate to the development known as the Greens at the Arboretum.

Attorney Michael Newman read into the record from his Motion to Dismiss Appeal of Petitioners in which he asks the Board of Adjustment to dismiss Petitioners' appeal based upon (1) the expiration of the applicable statute of limitations; (2) this Board's lack of subject matter jurisdiction over the "appeal"; and (3) Petitioners' lack of legal standing to pursue this appeal.

Village Council of the Village of Pinehurst unanimously adopted Ordinance #16-10 on June 14, 2016. That ordinance served to rezone a certain parcel located at 205 McCaskill Road East (Moore County Parcel #'s 00025962 and 00025798.) The ordinance and project in question relate to the development known as the Greens at the Arboretum. The applicant who sought and received the rezoning via this ordinance was John Allen of Kuester Companies.

Michael Newman, Attorney also read into the record; §160 A-364.1(a), which provides:

(a) A cause of action as to the validity of any ordinance adopting or amending a zoning map or approving a special use, conditional use, or conditional zoning district request adopted under this Article or other applicable law shall accrue upon adoption of such ordinance and shall be brought within two months as provided in G.S. 1-54.1.

Andrew Petesch, Attorney stated that he was present "in a limited capacity" to represent the Appellants, and urged the Board to first hear their arguments "to understand why they believe the true ordinance that was adopted, when the motion was made and they voted unanimously, was 900 square feet." Andrew Petesch went on to state that what resulted in a "clerical error" and 748 square feet was recorded, "but what was adopted was 900 square feet."

Michael Newman, Attorney said that the Board of Adjustment does not have the authority under state law to "overrule" the Council or change a duly enacted ordinance. Only a Superior Court Judge can do that, and opponents missed the deadline to file an appeal in Court. State Law requires that an appeal be filed within 60 days of the adoption of an ordinance, which would have been August 14, 2016 in this case.

After continued deliberations; Fred Engelfried made a motion to dismiss this case; Chairman Santowasso seconded the motion.

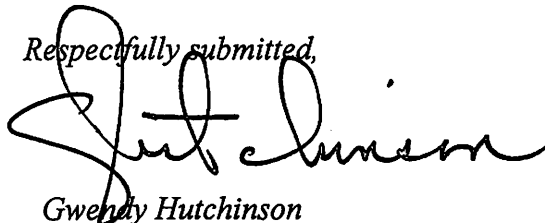
<i>Poll the Board:</i>	<i>Vote</i>
<i>Chairman Leo Santowasso</i>	<i>Yes</i>
<i>Fred Engelfried</i>	<i>Yes</i>
<i>David Kelley</i>	<i>Yes</i>
<i>Mike Marsh</i>	<i>Yes</i>
<i>Joel Shriberg</i>	<i>Yes</i>

The Board voted 5-0 to dismiss this case.

V. Next Meeting Date: January 5, 2017

VI. Motion to Adjourn - *With no further discussion, Chairman Santowasso adjourned the meeting at 6:15 pm.*

Respectfully submitted,



*Gwendy Hutchinson
Planning and Administrative Assistant
Village of Pinehurst*