



**BOARD OF ADJUSTMENT
APRIL 5, 2018
ASSEMBLY HALL
395 MAGNOLIA ROAD
PINEHURST, NORTH CAROLINA
4:30 PM**

I. Call to Order

II. Approval of Minutes

A. October 5, 2017

III. Public Hearing

A. Public Hearing No. 1

The purpose of this hearing is to receive evidence on the Appeal from an action and decision of the Pinehurst Zoning Administrator to the Board of Adjustment, regarding an application made by Kent Smith, attorney for James P. Flanagan. Specifically, this request is seeking a determination from the Board of Adjustment regarding the decision of the Pinehurst Zoning Administrator in applying the regulatory provisions of section 9.1(E)(2) "Required Setbacks: Allowable Encroachments into Required Yards" of the Pinehurst Development Ordinance regarding a patio at 95 Oak Hills Rd., Pinehurst NC. This property is also defined as Moore County PID# 00023786.

IV. General Business

V. Next Meeting Date

A. May 3, 2018

VI. Comments from Attendees

VII. 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.



**PLANNING AND ZONING BOARD
OCTOBER 5, 2017
COUNCIL CONFERENCE ROOM
395 MAGNOLIA ROAD
PINEHURST, NORTH CAROLINA
4:00 PM**

Board Members in Attendance:

Leo Santowasso, Chair
David Kelley, Vice-Chair
Mike Marsh, Vice-Chair
Cyndie Burnett, Board Member
Kevin Drum, Board Member
Fred Engelfried, Board Member
Jeff Haarlow, Board Member
Myles Larsen, Board Member
Julia Latham, Board Member

Staff in Attendance:

Stephen Wensman, Planning and Inspections Director
Bruce Gould, Principal Planner
Alex Cameron, Planner
Gwendy Hutchinson, Planning and Administrative Assistant

I. Call to Order

Leo Santowasso, Chair confirmed that there was a quorum present and called the meeting to order.

II. Approval of Minutes

A. September 7 & 21, 2017

Cyndie Burnett made a motion to approve the September 7, 2017 as submitted and September 21, 2017 minutes as amended; Jeff Haarlow seconded the motion, which was unanimously approved.

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.

III. New Business

Work Items for Discussion

A. Rules of Procedure

Leo Santowasso, Chair stated that the Rules of Procedure for the Planning and Zoning Board, states under Section II. Officers and Duties A. Chairperson ("Chair") The Chair may make no motions or second motions made by others and will only vote when required to break a tie. Chair Santowasso indicated that he would like to change this as he would like to vote. David Kelley said "that as acting Chair, it was easier conducting the meetings without voting." Leo Santowasso, Chair asked staff to send the Rules of Procedures to the Board members for their review and stated that perhaps the Board should seek legal counsel in regards to making the change. No action was taken by the Board.

B. Small Cell Wireless

The Board and staff discussed House Bill 310, an act to reform collocation of small wireless communications infrastructure to aid in deployment of new technologies and reviewed the ordinance amending the Town of Carthage Development Ordinance regarding telecommunication facilities and right of ways. After discussion, Leo Santowasso, Chair asked for a sub-committee to be formed. Julia Latham, David Kelley and Jeff Haarlow will assist Bruce Gould, Principal Planner. Bruce Gould asked for a Commission member from the Historic Preservation Commission to join the sub-committee as well as some technical assistance from our IT Department. No action was taken by the Board.

C. Retail/Office

The Board and staff reviewed materials and survey that was provided for Village Center Ground Floor Uses. After discussion, Leo Santowasso, Chair asked the Board for a sub-committee to be formed. Myles Larsen, Cyndie Burnett, Kevin Drum and Fred Engelfried agreed to serve on the sub-committee. Kevin Drum suggested that the sub-committee also get in-put from business owners and building landowners. No action was taken by the Board.

D. Signage

Staff provided materials from the School of Government Coates' Canons Blog; Sign Litigation: A Brief Analysis of Reed v. Town of Gilbert and current Pinehurst Development Sign regulations for review. After discussions, Leo Santowasso asked for a sub-committee to be formed. Fred Engelfried, Mike Marsh, Leo Santowasso and Julia Latham agreed to serve on the sub-committee. No action was taken by the Board.

IV. Next Meeting Date

A. November 2, 2017

V. Motion to Adjourn

Jeff Haarlow made a motion to adjourn; Cyndie Burnett seconded the motion, which was unanimously approved.

Respectfully submitted,

*Gwendy Hutchinson
Planning and Administrative Assistant*

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.



PUBLIC HEARING NO. 1
ADDITIONAL AGENDA DETAILS:

The purpose of this hearing is to receive evidence on the Appeal from an action and decision of the Pinehurst Zoning Administrator to the Board of Adjustment, regarding an application made by Kent Smith, attorney for James P. Flanagan. Specifically, this request is seeking a determination from the Board of Adjustment regarding the decision of the Pinehurst Zoning Administrator in applying the regulatory provisions of section 9.1(E)(2) "Required Setbacks: Allowable Encroachments into Required Yards" of the Pinehurst Development Ordinance regarding a patio at 95 Oak Hills Rd., Pinehurst NC. This property is also defined as Moore County PID# 00023786.

ATTACHMENTS:

Description

- ☐ Appeal Application

WEST & SMITH, L.L.P.
Attorneys at Law
140 West Vermont Avenue
Post Office Box 1140
Southern Pines, North Carolina 28388



Stanley W. West
S. Kent Smith*
Marc S. Subin ♦

Telephone: (910) 693-3411
Facsimile: (910) 693-7727
E-Mail: kent@westandsmith.com

*DRC Certified Superior Court & Family Financial Mediator
♦Also admitted in NY

February 23, 2018

Via Hand Delivery
Board of Adjustment
Village of Pinehurst
395 Magnolia Road
Pinehurst, North Carolina 28374

Re: James P. Flanagan
Notice of Appeal

Dear Board of Adjustment:

I represent James P. Flanagan in the above-referenced matter. My client hereby timely appeals the notice of violation issued by Angel B. Smith, Zoning Code Enforcement Officer, dated January 19, 2018. I have enclosed the required appeal form, along with our firm check in the amount of \$400.00 for the fee.

Please let me know if you have any questions, or if any further information or documentation is needed in connection with this appeal. Also, please insure that as counsel for the Appellant, I am copied on all correspondence regarding this matter.

Respectfully,

WEST & SMITH, LLP

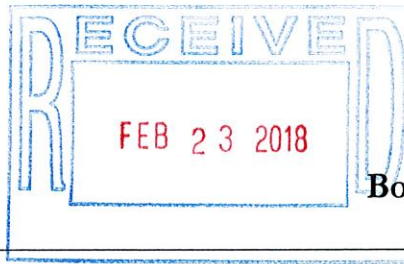
A handwritten signature in black ink, appearing to read "S. Kent Smith".

S. Kent Smith

SKS:bp

Enclosures

cc: Mr. James P. Flanagan



Application for
Board of Adjustment Appeal
(revised 3/14/17)

APPEAL FROM AN ACTION OF THE ZONING ADMINISTRATOR
and/or
PETITION FOR AN INTERPRETATION OF THE PINEHURST DEVELOPMENT
ORDINANCE

To: The Village of Pinehurst Board of Adjustment:

I, S. Kent Smith, hereby appeal to the Board of Adjustment from the following decision of the Zoning Administrator of the Planning and Inspections Department:

Applicant:	<u>S. Kent Smith</u> <u>Attorney for Owner</u> <u>P.O. Box 1140</u> <u>Southern Pines, NC 28388</u>	Owner:	<u>James P. Flanagan</u> <u>95 Oak Hills Rd.</u> <u>Pinehurst, NC 28374</u>
Address:		Address:	
Telephone Number:	<u>(910) 693-3411</u>	Telephone Number:	<u>(910) 261-7998</u>

This decision was made with respect to the property described below:

Property description: Stone patio at residence

Property Location: 95 Oak Hills Rd., Pinehurst, NC 28374

Moore County LRK Number 23786 **PIN Number** 855200516784

Zoning District: R10

Petition:

I hereby request an interpretation of:

 the Zoning Map

 X Section(s) 4.2.1 of the text of the Pinehurst Development Ordinance
(insofar as the map and/or the ordinance relate to the zoning or use of the property.)

STATEMENT BY APPELLANT: (In the space provided below, or on a separate sheet(s) attached to this form, present your interpretation of the ordinance section(s) in question and state what reasons you have for believing that your interpretation is the correct one.)



**Application for
Board of Adjustment Appeal**
(revised 3/14/17)

I certify that all the information in this application is accurate to the best of my knowledge, information and belief.

SA Smith, Attorney for James P. Flanagan, Owner
Signature of Applicant

02/23/18
Date

Telephone Number: (910) 693-3411

Statement of Appellant James P. Flanagan:

Appellant contracted with a landscaping contractor for the construction of a stone patio that is attached to the east side his residence located at 95 Oak Hills Road in Pinehurst, North Carolina. The landscape contractor came highly recommended from the stone company, and Appellant was advised by the landscaping contractor that his company had built many similar patios over a multi-county region in and around Moore County. Appellant relied upon the landscaping contractor's reputation and expertise that his company would do everything that was necessary and required for the turn-key project.

Upon completion of the patio, the landscaping contractor was notified by the Village of Pinehurst Zoning Department that a building permit was required for the patio. The landscaping contractor then advised Appellant, who had no knowledge of any requirement for a permit, and had reasonably relied upon the landscaping contractor's knowledge and experience to do whatever was necessary to complete the project correctly. The landscaping contractor informed the Appellant that he had not been required to obtain a building permit for such a structure in any other counties where he had constructed similar stone patios.

Unfortunately, the contractor did not take the necessary follow-up action to obtain a building permit as requested by the Zoning Department, so the Appellant obtained a survey and made application for the permit. The Appellant was informed by the Zoning Department that a building permit could not be issued because a small corner portion of the stone patio was within the 30 foot side yard setback requirement. According to the survey, the northeast corner of the patio is 27.2' from the side set-back of the adjacent golf course. Visually, however, the out of bounds stake that reasonably appears to mark the side boundary of the golf course is at least 30' from the northeast corner of the patio.

According to Section 9.1(E)(2)(h) of the Pinehurst Development Ordinance (PDO): *Patios (on-grade), decks and off grade patios attached to principal structures, similar structures may encroach up to five (5) feet into the side and rear setback of a given property.* As the small portion of the corner of Appellant's patio only encroaches 2.7 feet into the side setback (which occurred without Appellant's knowledge), Appellant's structure is in compliance with the PDO. Consequently, a building permit should be issued to the Appellant and he should not be required to remove the corner of his patio.