



**BOARD OF ADJUSTMENT  
SEPTEMBER 6, 2018  
ASSEMBLY HALL  
395 MAGNOLIA RD.  
PINEHURST, NORTH CAROLINA  
4:30 PM**

- I. Call to Order
- II. Approval of Minutes
- III. Public Hearing

A. Public Hearing No. 1

The purpose of the public hearing is to receive testimony for a variance request from section 9.2a Table of Dimensional Requirements: Lakefront/Golf Course setback from property line for the property at 95 Oak Hills Rd., Pinehurst NC. This property is also defined as Moore County PID# 00023786. This property is located within the R-10 (High Density Residential) Zoning District. Specifically, the applicant Kent Smith, attorney for James P. Flanagan is requesting a variance from the 30' Lakefront/Golf Course Setback from the Property Line to allow a constructed patio that currently encroaches +/- 2.8 feet.

- IV. General Business
- V. Comments from Attendees
- VI. 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.*



**PUBLIC HEARING NO. 1**  
**ADDITIONAL AGENDA DETAILS:**

The purpose of the public hearing is to receive testimony for a variance request from section 9.2a Table of Dimensional Requirements: Lakefront/Golf Course setback from property line for the property at 95 Oak Hills Rd., Pinehurst NC. This property is also defined as Moore County PID# 00023786. This property is located within the R-10 (High Density Residential) Zoning District. Specifically, the applicant Kent Smith, attorney for James P. Flanagan is requesting a variance from the 30' Lakefront/Golf Course Setback from the Property Line to allow a constructed patio that currently encroaches +/- 2.8 feet.

**ATTACHMENTS:**

Description

- ☐ Application
- ☐ Staff Memo

**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\*

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

\*DRC Certified Superior Court & Family Financial Mediator

July 6, 2018

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

Re: James P. Flanagan  
Application for Variance

Dear Board of Adjustment:

I represent James P. Flanagan in the above-referenced matter. Enclosed please find my client's Application for Variance with supporting exhibits, 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 application for variance. Also, please insure that as counsel for the Applicant, I am copied on all correspondence regarding this matter.

Respectfully,

WEST & SMITH, LLP

S. Kent Smith

SKS:bp

Enclosures

cc: Mr. James P. Flanagan



Application for  
Board of Adjustment – Request for a Variance

(revised 7/12/17)

Fee: \$400.00

BOARD OF ADJUSTMENT MEETING SCHEDULE –  
please check village website [www.vopnc.org](http://www.vopnc.org)

REQUEST FOR VARIANCE PROCEDURES

- SUBMIT (12) sets of Plans and or Applications – (24" x 36") or (18" x 24")
- Plans and Applications must be submitted (4) four weeks prior to the next scheduled BOA meeting. Plans must be folded with the application attached.

Applicant: James P. Flanagan Owner: James P. Flanagan  
95 Oak Hills Rd., 95 Oak Hills Rd.,  
Applicant Address: Pinehurst, N.C. 28374 Owner Address: Pinehurst, N.C. 28374  
Attorney Address: P.O. Box 1140, Southern Pines, N.C. 28388  
Applicant Phone Number: (910) 261-7998 Owner Phone Number: (910) 261-7998  
Attorney Phone Number: (910) 693-3411  
Applicant e-mail: JFlanagan@capefearortho.com  
Attorney e-mail: kent@westandsmith.com

Legal Relationship of applicant to property owner: \_\_\_\_\_  
(Attach to this application evidence of legal relationship of applicant to owner)

Request:

I, James P. Flanagan, by S. Kent Smith, attorney, hereby petition the Village of Pinehurst for a variance from Section(s) 9.2a & 9.1(E)(2)(h) of the Pinehurst Development Ordinance which states:

9.2a Table of Dimensional requirements: Lakefront/Golf Course Setback from Property Line; R10; 30'

9.1(E)(2)(h): Patios (on grade), decks and off grade patios attached to principal structures may encroach up to five (5) feet into the side and rear setback of a given property. This requirement shall not exclude any property from having to meet all other landscaping requirements separately.

Property Description: Stone patio at residence Zoning District: R10

Property Location: (address) 95 Oak Hills Rd., Pinehurst, N.C. 28374

Moore County Parcel ID #: 0023786

Planning and Inspections Department  
395 Magnolia Rd - Pinehurst, North Carolina 28374  
(910) 295-2581 - Fax (910) 295-1396 – [www.vopnc.org](http://www.vopnc.org)  
Page 1 of 3







## Application for Board of Adjustment – Request for a Variance

(revised 7/12/17)

### Petition:

A variance from the regulations of this section may be granted by the Board of Adjustment if it finds that strict enforcement of the regulations would result in practical difficulties or unnecessary hardships to the applicant for the variance, and that, by granting the variance, the intent of this section and the Pinehurst Development Ordinance will be observed, public safety and welfare secured, and substantial justice done. It may reach this conclusion if it finds: (Applicant must make a statement supporting each finding, attach additional pages in necessary.)

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;

Please see attached statement.

2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance;

Please see attached statement.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with the knowledge that circumstances exist that may justify the granting of the variance shall not be regarded as a self-created hardship

Please see attached statement.

4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Please see attached statement.

1. Requiring the removal of the applicant's stone patio, or even the single corner that only encroaches 2.8 feet into the alleged side yard set-back, would cause an unnecessary hardship, particularly financially. The attractive and well-designed stone patio was constructed for the applicant at a cost of \$27,000.00. To perform any alteration of the existing structure, the foundation, or a portion thereof, would have to be excavated, and removal of just one corner of the rectangular structure would not only be costly, but also would render the patio aesthetically and architecturally out of proportion and would cause it to have a "chopped off" appearance at the corner. This would result in a significant adverse effect on the overall value of the applicant's patio and his adjoining home.
2. The location and design of the stone patio was constructed based upon the peculiar condition and topography of the applicant's property. Storm water drainage from Oak Hills Road, and also from a culvert underneath Oak Hills Road, rushes down and along the border between the appellant's property and the golf course, which was causing significant erosion to the side and rear of applicant's property. The slope of the property upon which the stone patio is constructed and the location of the patio walls (and particularly the alleged encroaching corner) were designed so as to provide a barrier to protect the applicant's property from further erosion. The applicant obviously cannot build any structures on the adjacent golf course to otherwise divert the flow of water.

In addition, the property lines along the front, the rear, and the west side of the applicant's property are straight and perpendicular to each other, whereas the property line on the east side of applicant's residence and patio is angular, such that it slightly narrows the distance from the east side boundary to the residence and patio, but this angle in the boundary line is not visually apparent. This slight narrowing due to the irregular property line has caused the small portion of the patio on the northeast corner to very slightly encroach into the alleged side set back by only 2.8 feet. The exact golf course boundary is not specifically marked, but 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.

3. The applicant 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 the applicant was advised by the landscaping contractor that his company had built many similar patios over a multi-county region around Moore County. The applicant is a physician whose practice is in Fayetteville and he has no construction or landscaping experience or expertise. He relied completely 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 applicant that a building permit was needed, which is the first time the applicant became aware of this requirement. The applicant had no knowledge of any requirement for a building permit or of any setback requirements for structures, and had reasonably relied upon the landscaping contractor's knowledge and experience to do whatever was necessary to complete the project correctly. Upon being informed of the requirement for a building permit, the landscaping contractor informed the applicant 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, and he had assumed that a building permit would not be necessary, yet he never explained this to the applicant beforehand.

Unfortunately, the contractor did not take the necessary follow-up action to obtain a building permit as requested by the Zoning Department, so the applicant obtained a survey and made application for the building permit as instructed by the Village Zoning Department. The applicant then 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 alleged 30 foot side back requirement. The applicant, who is a physician who practices in Fayetteville, reasonably relied upon a highly recommended and experienced landscaping contractor to take all necessary measures for proper construction of the stone patio, and was not in any way attempting to ignore the building permit and set back requirements, of which he was completely unaware.

4. The requested variance is to allow the applicant's stone patio to remain in its current location without having to be removed in whole or in part, which not only would be at a significant expense, but also would cause permanent damage to the value of the patio and the attached residence. The requested variance will allow only a small portion of one corner of the patio to be located only 2.8 feet into the alleged 30 foot side set back from the adjoining golf course. Under the particular circumstances of this case, the requested variance is consistent with the spirit, purpose and intent of the ordinance as it relates to set backs, such that public safety is secured, and substantial justice is achieved for all parties.



**Application for  
Board of Adjustment – Request for a Variance**

(revised 7/12/17)

Therefore, on the basis of all the foregoing, it is ordered that the application for a variance be (GRANTED \_\_\_\_ or DENIED \_\_\_\_), subject to the following conditions:

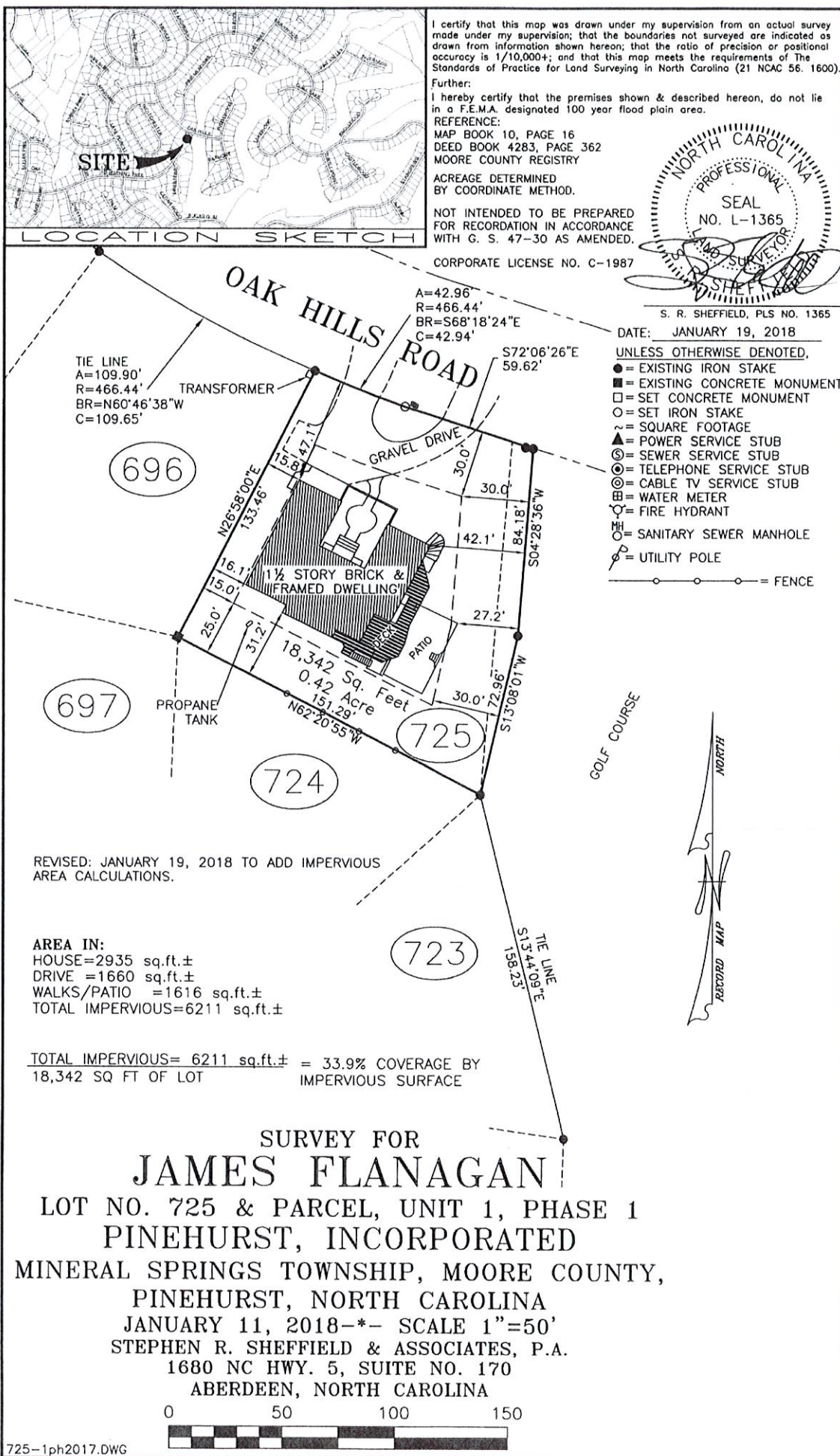
Ordered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(Chairman)

\_\_\_\_\_  
(Secretary)

Please attach proof of ownership, such as a copy of a deed.







# Proposal

PROPOSAL NO.	DATE 7-17-17
BID NO.	ARCHITECT

TO Jim FLANAGAN	WORK TO BE PERFORMED AT: SAME.
ADDRESS 95 OAK HILLS RD	ADDRESS
CITY, STATE Pinehurst	CITY, STATE
PHONE NO. 910-261-7998	DATE OF PLANS

We hereby propose to furnish the materials and perform the labor necessary for the completion of EXCAVATE A 35'x20' AREA FOR A RAISED PATIO. Build A Raised PATIO 35'x20' w/ 11 STEPS  
COLUMNS, SEATING WALLS, CAPS AND A 6' FIREPIT.

Area below for additional description and/or drawings:

PAVERS - Eagle Bay CHATUM NATURAL 3 PC  
 Jefferson

RETAINING WALL BLOCK - Allen Block - Blue Mountain.

SEATING WALL - Allen Block - Blue Mountain - COLOR  
 w/ CAPS for RETAINING WALL ONLY Blue Mountain

SEATING WALL CAPS AND STEPS - Eagle Bay  
 Coping Stone CAPS - Jefferson Color

COLUMN BLOCK - Allen Block Blue Mountain - color

FIREPIT - Eagle Bay - Jefferson.

THE LEVEL OF THE PAVERS WILL BE THE SAME AS THE EXISTING CONCRETE.

A LAYOUT OF THE JOB WILL BE DONE PRIOR TO STARTING.

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner for the sum of TWENTY SIX THOUSAND

Dollars (\$ 26,000.00 ) with payments to be made as follows: \$13,000.00 DOWN  
\$13,000.00 WHEN THE JOB IS COMPLETE.

Any alteration or deviation from above specifications involving extra costs will be executed only upon written order, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control.

Respectfully submitted, Scott C. M.

Per KBT LANDSCAPING

Note - This proposal may be withdrawn by us if not accepted within 30 days.

## ACCEPTANCE OF PROPOSAL

The above prices, specifications, and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.

Signature X

Date 7-17-17

Signature X

## Kent Smith

---

**From:** Bob Buchar <kbtlnd@gmail.com>  
**Sent:** Thursday, April 26, 2018 11:31 AM  
**To:** Kent Smith  
**Subject:** Jim Flanagan Patio

Kent,

We have done several patios of this type in Harnett and Cumberland County. They did not require a permit so we figured Moore County was the same.

Thanks,  
Bob

Bob Buchar  
KBT Custom Masonry & Landscape Design  
910-436-0712  
[www.kbtlandscaping.com](http://www.kbtlandscaping.com)

--

**Bob Buchar**  
**KBT Custom Masonry & Landscape Design**  
**910-436-0712**  
**[www.kbtlandscaping.com](http://www.kbtlandscaping.com)**













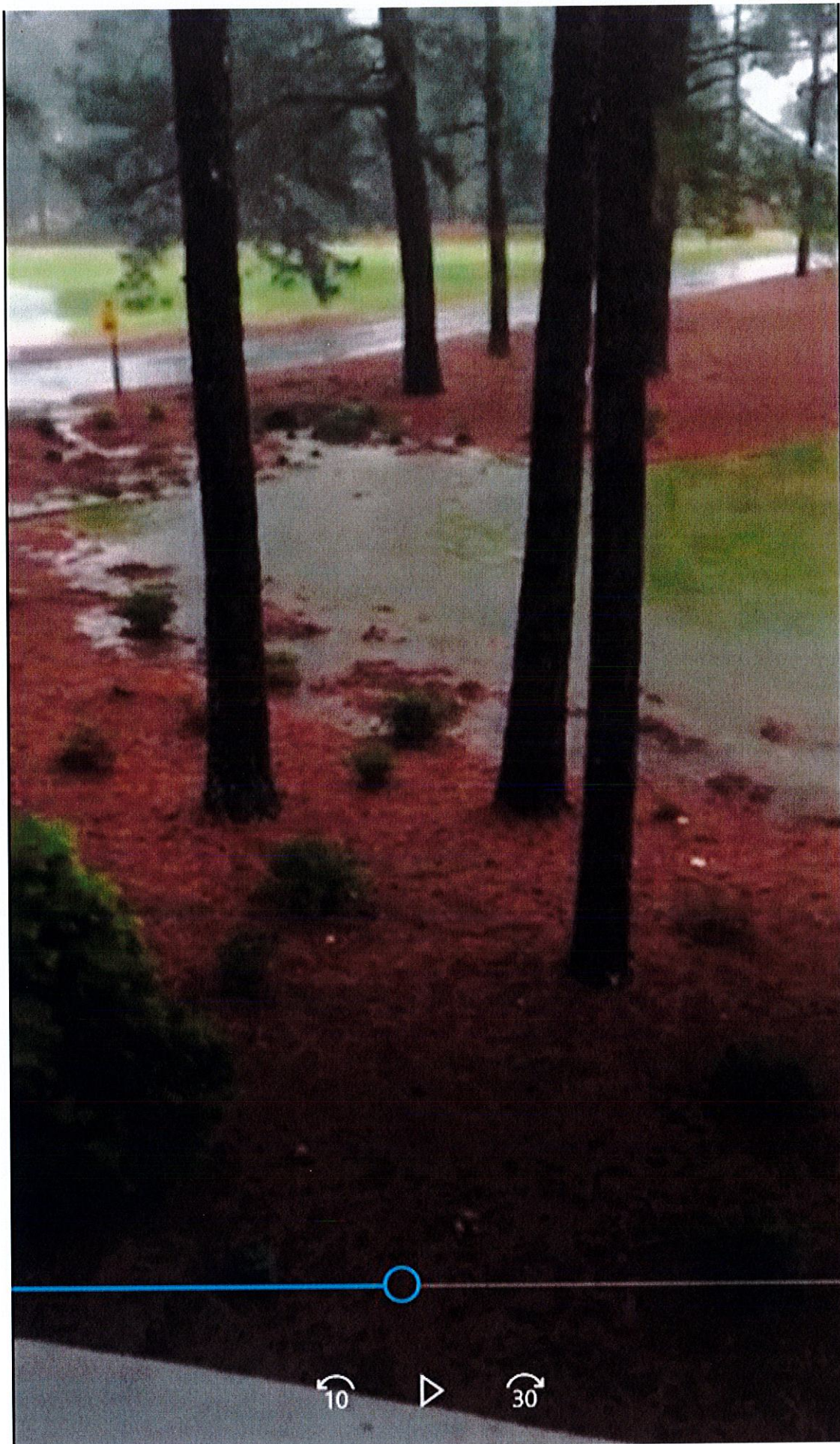






























---

## PLANNING AND INSPECTIONS DEPARTMENT STAFF REPORT

---

**To:** Board of Adjustment  
**From:** Alex Cameron, Senior Planner  
**CC:** Will Deaton, Planning and Inspections Director  
**Date:** August 22, 2018  
**Subject:** **Variance Request 95 Oak Hills Rd.**

<b>Applicant:</b>	S. Kent Smith
<b>Owners:</b>	James P. Flanagan
<b>Property Location:</b>	95 Oak Hills Rd.
<b>Zoning:</b>	R-10 (High Density Residential)
<b>Lakefront/Golf Course Setback:</b>	30'
<b>Current Land Use:</b>	Single Family Residence
<b>PID#</b>	00023786

### **Request and Background:**

This request is to encroach approximately 2.8 feet into the required thirty (30) foot Lakefront/Golf Course setback for a patio.

The property is bound to the north, west and south by single family residences and bound to the east by Pinehurst Resort Golf Course #3.

This property contains a single family home that was built in 1984 as well as the patio which was constructed in 2017. After discovering that the patio had been built without a permit, Planning and Inspections staff contacted the contractor and eventually the property owner to discuss the processes to permit the patio. Staff received an application in January of 2018 along with a survey that indicated the patio encroachment into the golf course setback. The application was denied by staff and a Notice of Violation was sent.

### **Variance Process:**

**THE VARIANCE PROCESS** is intended to provide relief from the zoning requirements of the Pinehurst Development Ordinance (PDO) in those cases where strict application of a particular zoning requirement will create a practical difficulty or unnecessary hardship prohibiting the use of land in a

---



manner otherwise allowed under the PDO. It is not intended that variances be granted merely to remove inconveniences or financial burdens that the zoning requirements of the PDO may impose on property owners in general. Rather, it is intended to provide relief where the zoning requirements of the PDO render the land difficult or impossible to use because of some unique physical attribute of the property itself, or some other factor unique to the property for which the variance is requested.

**Vicinity Map:**





Aerial View





**Action by the Zoning Board of Adjustment:**

In considering the application, the Zoning Board of Adjustment shall review the application materials, the general purpose and standards set forth in this Section for the granting of variances, and all testimony and evidence received by the Zoning Board of Adjustment at the public hearing;

After conducting the public hearing, the Zoning Board of Adjustment may:

- (1) Have the authority to subpoena witnesses and may request additional information;
- (2) Continue the public hearing on the requested variance;
- (3) Conduct an additional public hearing on the application;
- (4) Grant the requested variance;
- (5) Deny the requested variance;
- (6) Grant the requested variance with conditions. In granting any variance, the Zoning Board of Adjustment may attach appropriate conditions, provided that the conditions are reasonably related to the request.

Any approval or denial of the request shall be by resolution, accompanied by written findings of fact that the variance meets or does not meet each of the standards set forth in Standards of Review below, stating the reasons for such findings;

The Zoning Board of Adjustment shall not grant any variance unless there is a concurring vote of at least 4 of its 5 members;

**Standards of Review**

The Zoning Board of Adjustment shall not grant a variance unless and until it makes the following findings:

- (a) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;
- (b) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance;
- (c) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship;
- (d) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Staff does not formulate a recommendation of variance request as decisions are to be based solely on the testimony and evidence submitted at the quasi-judicial hearing.