

# MINUTES

**Town of Southern Pines Board of Zoning Adjustment Meeting  
C. Michael Haney Community Room  
450 W. Pennsylvania Avenue  
June 15, 2016 at 5:30 p.m.**

The Town of Southern Pines Board of Zoning Adjustment met on Wednesday, June 15, 2016 at 5:30 p.m. in the C. Michael Haney Community Room, Southern Pines Police Department, 450 W. Pennsylvania Avenue, Southern Pines, North Carolina.

Board of Adjustment members Robert Thompson, Chairman, Melton Bridgeman, Steve Kastner, Thomas Marsh and John McInerney were present.

Town staff members Bart Nuckols, Planning Director, Chris Kennedy, Senior Planner, Doug Gill, Town Attorney, and Cindy Williams, Secretary to the Board, were also present.

Chairman Robert Thompson called the meeting to order at 5:30 p.m.

## **OATH OF OFFICE:**

Chairman Thompson administered the Oath of Office to new member Steve Kastner.

## **ROLL CALL:**

The roll was called and Chairman Thompson confirmed that a quorum was present.

## **APPROVAL OF MINUTES:**

Thomas Marsh, seconded by Melton Bridgeman, made a **motion** to approve the minutes of the July 8, 2015 Board of Adjustment meeting as written.

## **Voice Call Vote:**

Thomas Marsh	yea
Steve Kastner	yea
Robert Thompson	yea
Melton Bridgeman	yea
John McInerney	yea

The **motion carried.**

**OATH OF TESTIMONY:**

Chairman Thompson administered the Oath of Testimony to Chris Davis, who would be speaking on behalf of the petitioner, and Town staff members Bart Nuckols and Chris Kennedy.

Mr. Davis stated that he would not be represented by legal counsel.

Chairman Thompson explained the quasi-judicial hearing procedure.

**PUBLIC HEARING:**

**A-01-16 Request for Variance from Signage Standards; 160 Pinehurst Avenue; Petitioner, Olive Branch Properties, LLC**

On behalf of the petitioner Olive Branch Properties, LLC, owner/manager Mr. Chris Davis has submitted an application requesting a variance from the Unified Development Ordinance sign ordinance for the following sections: UDO Section 4.6.7, UDO Section 4.6.10 (A), UDO Section 4.6.10 (B), and UDO Section 4.6.7 (K) to allow the sign as proposed (see attachments) to be permitted. The property is zoned GB (General Business). The property is identified by the following: PIN: 857115539055 (PARID: 00048571). Per the Moore County Tax records, the property owner is listed as Olive Branch Properties, LLC.

**STAFF REPORT – Planning Director Bart Nuckols:**

Mr. Nuckols provided an overview of the petition, stating that Chris Davis, on behalf of the petitioner, Olive Branch Properties, LLC, has submitted an application for a variance from the UDO sign ordinance to allow the sign shown in the petition to remain in place. The establishment is currently in noncompliance as the petitioner installed the sign without obtaining proper approval from the Town. The sign is currently installed and the petitioner is seeking a variance to allow the sign to remain in place.

The petitioner is seeking a variance due to the proximity of the establishment to the adjacent properties, claiming that the setback of the adjoining apartment building and the required vegetation creates a hardship to his business with respect to visibility.

The petitioner is seeking a variance from UDO Section 4.6.17 (K) which states:

*Awning signs shall not be located on the awning valance and shall not exceed twelve (12) square feet in area or cover more than twenty (20) percent of the awning area.*

The sign currently extends above the valance and therefore does not comply with this regulation. The document provided by the petitioner lists the square footage of the sign as being 9.06 square feet. The business frontage is listed as being ten (10) feet.

The petitioner is also requesting a variance from UDO Section 4.6.10 (B) which states:

*No wall sign may project more than twelve (12) inches from the building wall.*

The documentation provided by the petitioner lists the projection of the sign to be eighteen (18) inches.

The final variance request is also from UDO Section 4.6.10 (B) which states:

*The bottom edge of a projecting sign must be located at least eight (8) feet above the sidewalk.*

The documentation provided by the petitioner lists the height as being seven feet three inches (7'3") above the sidewalk.

Mr. Nuckols reiterated the quasi-judicial hearing process and the criteria for granting a variance, and asked the Board to review the findings of fact as they move forward with the proceedings.

Chairman Thompson asked if the Board had any questions for Town staff.

Mr. McInerney asked, with regard to the number of signs permitted, if the wall sign that is attached to the building is considered a logo emblem sign.

Mr. Nuckols responded that the wall sign Mr. McInerney was referring to is for Comfort Studio, which is a separate facility, and therefore does not impact the number of signs allowed for this establishment.

Mr. Kennedy provided clarification of the definition of a *logo emblem sign*, stating that a logo emblem sign cannot contain any text, only a logo. The Comfort Studio sign would be considered an awning sign as Town staff applies the Code. A sign could be on a valance or mounted on the wall.

Chairman Thompson asked Mr. Nuckols if a permit had been requested.

Mr. Nuckols responded that a permit is required. He said he understood that someone from the company designing the sign had indicated in an email to Town staff that he would be forwarding an application showing the proposed sign to go on the wall to see if the sign was in compliance. The Town never received an application following that communication so there is not an application for a sign permit.

Mr. Thompson asked if the normal process for requesting a variance is that an applicant applies for something, gets denied, and then applies for a variance.

Mr. Nuckols responded saying that would be the normal operating procedure for a variance in Southern Pines; that there would be an active permit application in place and the staff would

make a determination to either approve or deny the application. An approval would be an authorization to proceed with the project. A denial would be communicated in writing by Town staff by letter or email stating that the application had been denied and the findings for that denial.

In this case, Town staff met with the petitioner, discussed the issue with the petitioner, advised him of his options, and the petitioner elected to proceed with the option to request a variance. Town staff would be receptive to moving forward with the variance request so the petitioner can receive an answer without the submission of a sign permit application.

Melton Bridgeman inquired about the awning classification. He stated that he understands an awning to consist of a fabric covering on a metal frame and this appears to be a metal roof.

Mr. Nuckols responded that Town staff interprets the definition of awnings to be structures also, and made of many types of materials, including fabric. There are many awnings in the downtown area that are covered with metal and other materials.

Mr. Davis addressed the Board and stated that the process of the sign being put up was an error; that he was out of town at the time, and apologized for that having been done. He said it should not have been put up without approval or a variance. The sign is up now and that is why he went in to see Town staff to ask what he should do, and he still is not sure what he should do about the sign.

Mr. Davis continued by stating that the major thing that he has trouble with, being in construction, is that, in his opinion, a roof line and an awning are two different things. The green metal roof that is on the whole structure goes up to a ridge and slopes down and then there is what he calls a fascia. He said these are terms that he understands the Town can interpret one way and as a builder he can interpret another way. The pitch of the roof – the actual metal roof - is at eighteen (18) feet at the very top and the top of his sign is at fifteen (15) feet, so he is not exceeding the height of what he perceives to be the roof. In this case, the green roof is considered an awning and he considers an awning to be something that attaches to the face of a building. Mr. Davis said he understands that he and the Town have a difference of opinion regarding this issue.

Mr. Davis stated that, as it relates to the signage that is there, it is his attempt as a business owner to draw more than five hundred (500) tenants with over 72,000 square feet of storage space to a concentrated spot to pay their fees. There is a designated office there and he went to the expense of putting a kiosk in the office that allows people to come in 24 hours a day, 7 days a week to pay their mini storage fees. He said this sign is a way for him to show where the office is located.

Mr. Davis stated that the size of the sign is 9.06 square feet and they have ten (10) feet of office frontage. He said when you look at the ratio of what they are allowed, as he understands it, they are allowed a square foot of signage for every foot of frontage. The sign is not eight (8) feet high. It is seven feet three inches (7'3") off of the sidewalk. The doorway into the office is six

feet eight inches (6'8") high. If a tenant wants to come into the office they have to enter through a six foot eight inch (6'8") door without hitting their head on a sign. The ordinance says eight (8) feet and that is why he is asking for consideration in this case.

Mr. Davis said the bigger issue to him is being able to get tenants whose storage units are on the north side of Pinehurst Avenue – about half of the units are on the opposite side of the street and the other half of the units are behind the green metal roofed building - to come to one spot. Several tenants see the storage facility and do not know where to go to pay their bill because they cannot see it. There are several people who walk into neighboring businesses asking where to pay their bill and that is what generated the signage. There is no excuse for the sign being put up without it going through a process and that was a mistake.

Mr. Davis continued that the real hardship for him is the setback that was required when his building was built. There is a set of residential apartments that sit twenty-five (25) feet forward of his building, not to mention the foliage he was required to plant, which prevents anyone from being able to see the sign if they are driving down Pinehurst Avenue from US Highway 1 toward his office. You are way past the office before even being able to see the sign. He said the apartment building is an example of spot zoning and a hardship for his business.

Mr. Davis stated that if you come to his office by way of US Highway 15-501 you can certainly see the sign because it is vertical and it is not installed flat on what he considers the fascia of the building; he is pleading for the variance because the office cannot be seen. They have storage units on both sides of the street and he wants all of their customers to be able to find them. He cannot think of any other reason for being at the meeting other than to make sure their clients can find where they are located.

Attorney Gill asked Mr. Davis to explain the variances that he is requesting, including how having the sign at eight (8) feet creates a hardship, and if Mr. Davis can correct the sign by taking it down, changing the design and mounting it eight (8) feet above the sidewalk.

Mr. Davis responded stating that there is not a reason why he cannot change the design. He said he can pull the sign down and change it but the other problem he has is not regarding the lettering but the width of the sign – even though the sign does not exceed the square footage that he is allowed - instead of being twelve (12) inches off of the face of what is considered the mansard it is eighteen (18) inches. The sign comes down and points so customers know to come into that spot. By design, he is trying to get them to see where to go. The sign was put up before he had a permit – no question. The sign at this point is seven-feet three-inches (7'3") from the sidewalk and it is eighteen (18) inches off of the building and that is why he is asking for a variance. He said he could change the sign or pull it down and make it another way but he is asking to keep the sign where it is as a variance.

Mr. Gill asked Mr. Davis if he was saying that the hardship that has been created is one of his own making because he could have put up a sign that conformed, but instead he put up a sign that did not conform and now he wants people to say it is okay.

Mr. Davis responded saying that is true, more or less. The sign sits out six (6) inches too far and is nine (9) inches too low.

Mr. Gill asked Mr. Davis if he would have found that out if he had applied for a permit.

Mr. Davis responded that he was not privy to the emails between J Signs & Graphics, who developed the sign, and Joy Richards, the Town's Code Enforcement Officer and permit issuer of signage, whom he understands is the person who issues sign permits.

Mr. Gill asked Mr. Davis if he knew he needed a sign permit. Mr. Davis responded yes.

Mr. Gill confirmed with Mr. Davis that he said one problem is that his building is set back farther than the building to the northeast.

Mr. Davis responded that he was saying that the apartments sit forward twenty-five (25) feet in front of the face of his building. He said the apartments were there before his building was built.

Mr. Gill asked Mr. Davis if he knew that he could have positioned his building at the same depth.

Mr. Davis responded that he could not at the time he was permitted to build. He said he had to have so many parking spaces and so much foliage in front of the building in order to get a building permit.

Mr. Gill asked Mr. Davis if he knew that the location of the apartment building is entirely within the regulations of the ordinance.

Mr. Davis stated that he has always looked at the apartments as spot zoning because he cannot understand how any apartments were ever approved right there in a business district.

Mr. Gill asked Mr. Davis if, as you come down Pinehurst Avenue, is it not the foliage that sticks out blocking the view and not the apartment building itself that has any impact at all on seeing his building.

Mr. Davis responded that the building sticks out twenty-five (25) feet in front of his and there is foliage that had to be planted along the border.

Mr. Gill asked Mr. Davis if it is correct that only the foliage obscures any vision of his building.

Mr. Davis replied that he has not thought of it in the way that Mr. Gill is explaining it, but the whole thing is sitting way forward of his business.

Mr. Gill questioned Mr. Davis regarding the relevance of the apartment building's location.

Mr. Davis responded that he thinks it is very relevant because you cannot see it but if you come from the other direction you can see it.

Mr. Gill asked Mr. Davis if the apartment building has anything to do with not being able to see his building.

Mr. Davis said yes, because it sits twenty-five (25) feet forward.

Mr. Gill stated that does not mean it obscures the view of his building, and questioned Mr. Davis relative to the line of sight.

Mr. Davis responded that if all of the foliage were taken down that would make it better but the building still sits twenty-five (25) feet forward of his signage.

Mr. Gill questioned the relevance of it sitting twenty-five (25) feet forward.

Mr. Davis responded that he sees it as being very relevant by people not seeing the sign.

Mr. Gill asked Mr. Davis if he could demonstrate by a drawing or something showing the respective locations if you are coming up Pinehurst Avenue.

Mr. Davis said he was sure that he could do that.

Mr. Gill asked Mr. Davis if he had the materials to do so.

Mr. Davis responded that he was not prepared to do that so he did not have the necessary materials with him.

Mr. Gill asked Mr. Davis what variances he was requesting in addition to the sign being less than eight (8) feet from the sidewalk.

Mr. Davis responded that the height of the building and his interpretation of the roofline is where they got hung up on this in the beginning. He said he sees the roofline as being the ridge, which is at eighteen (18) feet.

Mr. Gill asked Mr. Davis if it is his view that the sign can go as high into the air as he wants it to go.

Mr. Davis responded that it cannot exceed the roofline.

Mr. Gill asked Mr. Davis if the top of the roof is the ridgeline.

Mr. Davis stated that is correct.

Mr. Gill asked Mr. Davis if it his interpretation that you can go downtown to any of the three story buildings on Broad Street and put a sign up to the roofline.

Mr. Davis said he is not implying that – he is not in a three story building. He said he is trying to explain how the apartments, the foliage, and the roofline all play into the signage and his reason for wanting to do the sign.

Mr. Gill asked Mr. Davis why the roofline plays into this.

Mr. Davis responded that because initially, in trying to get a permit for this sign, they were told that they were exceeding the ridge or the roofline.

Mr. Gill asked Mr. Davis who told him that.

Mr. Davis responded that it was stated in some of the email correspondence.

Mr. Gill asked Mr. Davis if he could find that correspondence.

Mr. Davis said perhaps he needs to have the person from the sign company present. He said the main reason he did not get a permit to begin with was because they were told they were exceeding the roofline. That was that sticking point to begin with - that they were not exceeding the roofline. The ridge is at eighteen (18) feet.

Mr. Gill asked Mr. Davis if it is his view that you can have a sign that goes up as high as the ridgeline or whatever the surface of the roof is.

Mr. Davis responded that he was not saying that it can exceed that. He would not want to go up that high and that is not necessary.

Mr. Gill said that Mr. Davis' interpretation seems to be that you can go up to the ridgeline.

Mr. Davis said he could understand Mr. Gill's point and that is why he is asking for a variance for this sign. It is not being interpreted and approved because of where it is and what it is. Mr. Davis stated that the sign does not exceed the one (1) square foot per foot of frontage that is allowed.

Mr. Gill told Mr. Davis that no one is disputing that you can have a sign on the front of the building.

Mr. Davis responded saying except that you cannot see it.

Mr. Gill asked Mr. Davis to look at the drawing showing *Storage 24/7*.

Mr. Davis said he had given that drawing to the Town. The problem with that is you can't see it. It is totally blocked. You can't see it until you have passed the building. It doesn't sit up high enough to see it. He said all he is trying to do is get visibility for the business.

Mr. Gill said that right next to the storage facility's office is the *Comfort Studio*. He asked Mr. Davis if it has a sign that is on the valance or the awning or on the wall, or whatever Mr. Davis chooses to call it.

Mr. Davis replied that it is on the fascia of the building.

Mr. Gill asked if you can see that sign.

Mr. Davis responded that you can barely see the sign. He continued by saying that if he wants to get "into the weeds" about signage, on Saturdays and Sundays, he is faced with people, with no supervision by the Town, jumping up and down in mattresses on the street corners who are direct competitors. He stated that while he is trying to comply as a conservative businessperson, there is no one addressing that issue. In his opinion, that is disgraceful to the Town of Southern Pines. Mr. Davis said he understands it may be a freedom of speech issue. He apologized for even being in this situation because the sign was put up prior to approval, but he said he still contends – and it is the reason he is asking for the variance – that the sign that is there does not exceed the square footage allowed for this business. Mr. Davis said there are so many tenants that are there and he just wants his people to know where to go to pay their bill.

Mr. Gill stated to Mr. Davis that he did not follow through on the sign he proposed but instead erected this one without a permit.

Mr. Davis responded saying you cannot see his *Comfort Studio* sign. He said they have people come into our store every day who say they could not find our *Comfort Studio* store because they could not see the sign and the same with the self-storage business.

Mr. Gill asked Mr. Davis if, in his view, the storage facility sign (pointing to the *Comfort Studio* sign) with letters at least as large stretching across the fascia, if that is what you want to call it, is less visible than the storage business sign.

Mr. Davis responded yes, when it is vertical you can see it. If you put it flat on the fascia like the *Comfort Studio* sign you cannot. From being there since 1994, people still say they cannot find them because they cannot see where they are located.

Mr. Gill said so now you have changed and are worried about people coming from the other direction.

Mr. Davis responded no, he is worried about people being able to see them from both directions. He does not have any obstructions from the Highway 15-501 side unless you are driving by there at 25 or 30 MPH. Then you cannot see the sign.

Mr. Bridgeman said there is a lot of foliage and he agrees with Mr. Davis that it is difficult to see.

Mr. Davis responded saying that is his point. There are apartments buildings that sit forward of his building and foliage that goes to the street on both sides.

Mr. Gill asked Mr. Davis if he thinks he should be able to just go ahead and do what he wants and then come in and explain why he did it.

Mr. Davis responded saying that is not what he wants; he does not think that way. He said he was not asked before the sign was installed. It was put up by J Signs & Graphics when he was not there.

Mr. Gill asked how long the sign was in place before he discovered it.

Mr. Davis responded that he discovered the sign within four (4) or five (5) days.

Mr. Gill asked if he told the sign company that he did not have a permit and ask them to take the sign down until he obtained a permit.

Mr. Davis said that there was a problem with the roofline. He said they were being told that the sign exceeded the roofline.

Mr. Gill asked Mr. Davis if he asked the sign company to take the sign down once he saw that it was up without having a permit.

Mr. Davis responded that Mr. Kennedy brought it to his attention that the sign was not in compliance, so he went into the Town office to request a variance to keep the same sign.

Mr. Gill asked Mr. Davis if it was correct that there was never an application for a permit.

Mr. Davis replied that he was told by J Signs & Graphics that there was a permit.

John McInerney asked if the Town's opinion is that the sign is above the fascia.

Mr. Kennedy said that is correct.

Mr. McInerney asked Mr. Kennedy if the other issues are that the sign is too low and sticks out too far.

Mr. Kennedy said that is correct.

Mr. McInerney stated that he thought something similar to the sign Mr. Gill had shown as an alternative might work. He said it appeared from the notes that Joy Richards thought there might

be some issues with that design. Mr. McInerney asked Mr. Kennedy if he had any idea what those issues may have been.

Mr. Kennedy responded that it would be difficult to say what the issues might have been without a sign permit.

Chairman Thompson called for a brief recess.

The meeting was called back to order a short time later.

Mr. Kennedy stated that Joy Richards' email was sent at 8:29 a.m. on February 19, 2016. Jeremy White's email was sent on February 19, 2016 at 12:09 p.m. providing an alternative design and asking for Joy Richards' comments.

Mr. McInerney asked if it was correct that Joy Richards could not have given a definitive answer without a permit or specifications.

Mr. Kennedy responded stating that is correct.

Mr. Gill asked if, although it would not be an official approval, the Town would have most likely approved a permit for the picture that is pictured.

Mr. Kennedy responded yes but that Town staff would have to review the square footage and sign placement. It is difficult to make a decision without the actual application wherein the applicant specifies in writing the linear footage and type of sign being requested. One of the key concepts to permitting a sign is the application itself wherein the applicant states the exact specifications.

Chairman Thompson stated that Mr. Davis is free to cross-examine anyone if he would like.

Mr. Davis stated that the sign was put up without a permit and that was a mistake. He went to Town staff to find out where to go from there. He said he understands and respects the Town's position, but he hopes that he and the Town can find common ground.

Thomas Marsh asked if there is a marquee sign anywhere on his property.

Mr. Davis responded that they can have a marquee sign that is four (4) feet x eight (8) ft. That is what is there and that is part of the problem with the compliance in his opinion - it is very difficult for people to find their businesses and he wants to continue to operate the business.

Chairman Thompson asked if the other businesses on that street have the same problem.

Mr. Davis stated yes. He said when he applied for the variance he went to see the adjacent business owners. No one even knew the sign was there and none of them had a problem with his

sign. He said he understands that the Town is doing what it is supposed to do, but he is requesting a variance for the reasons he has given.

Chairman Thompson cautioned the Board that what the neighbors think about the sign is inadmissible unless they are present to give facts that the Board can use in its deliberation.

Mr. Bridgeman asked Mr. Davis if it would give him more exposure if the sign was turned to face straight on.

Mr. Davis responded that it would not, based on the people who have come to the office in the last thirty (30) to forty-five (45) days. His customers are now finding where to go. He understands that the sign complies with regard to square footage but not with regard to its location.

Chairman Thompson asked Mr. Davis if he had another sign previously as a test to see if an equal number of people would have found the location.

Mr. Davis replied that no previous sign was installed for the storage facility but that he knows from customers coming into his *Comfort Studio* store saying they could not find his business.

Chairman Thompson asked if Mr. Davis or anyone else had any other questions.

There being none, Chairman Thompson closed the public hearing.

Mr. Gill suggested that Mr. Davis and the Town submit their findings to the Board for consideration and reconvene at a later date.

Chairman Thompson asked the Board if there was any objection.

**ACTION OF THE BOARD:**

Chairman Thompson asked for a motion to close the public hearing and continue the meeting to the July 13, 2016 meeting of the Board of Adjustment to allow both sides to submit sample findings of fact for the Board's consideration. Steve Kastner made the **motion**, which was seconded by Melton Bridgeman.

**Voice vote:**

Thomas Marsh	yea
Steve Kastner	yea
Robert Thompson	yea
Melton Bridgeman	yea
John McInerney	nea

**The motion carried.**

Mr. Davis asked if he is stayed with the sign the way it is until we get to that point.

Mr. Gill replied that the sign is stayed.

Mr. Nuckols told Mr. Davis that he will not be fined during this period.

**OTHER BUSINESS:**

**Board Elections:**

Thomas Marsh made a **motion** to nominate Robert Thompson as Chairman of the Board, which was seconded by Melton Bridgeman.

Voice vote:

Thomas Marsh        yea  
Steve Kastner        yea  
Melton Bridgeman    yea  
John McInerney      yea

**The motion carried.**

Thomas Marsh made a **motion** to nominate John McInerney as Vice Chairman of the Board, which was seconded by Steve Kastner.

Voice vote:

Thomas Marsh        yea  
Steve Kastner        yea  
Robert Thompson     yea  
Melton Bridgeman    yea

**The motion carried.**

Chairman Thompson entertained a motion to close the June 15, 2016 meeting of the Board of Adjustment. Thomas Marsh made the motion, which was seconded by John McInerney.

Voice vote:

Thomas Marsh        yea  
Steve Kastner        yea  
Robert Thompson     yea  
Melton Bridgeman    yea  
John McInerney      yea

**The motion carried.**

The meeting adjourned at 6:35 p.m.

Respectfully submitted:

Cindy Williams  
Secretary to the Board