



Board of Adjustment Hearing Request

REQUIRED APPLICATION MATERIALS:

- ✓ **Application fee** in the amount of **\$500.00**.
- ✓ **Completed Application** requesting a **variance** or an **appeal of an order or determination made by an administrative official** signed by the applicant. Please do not leave anything blank and make sure all of the information provided is correct.
- N/A **List of Adjacent Property Owners:** Please list all properties that are that are within two hundred (200) feet of the outermost boundaries of the subject property (**not counting streets, railroads or other transportation corridors**). Attach additional pages if needed. No fewer than ten (10) property owners shall be notified by mail.
- N/A **Appointment of Agent**, if applicable, signed by the property owner and the agent.
- N/A **Deed** copy, if applicable, to provide proof of ownership and property boundaries.
- ✓ **Purpose of request:** Please provide additional text and/or maps to demonstrate consistency with the criteria listed in **UDO §2.22.6** for variance or in **§2.23.7** for an appeal. The list of criteria for each type of request is attached.
- ✓ **Electronic copy (PDF) of all application materials** submitted to plan@southernpines.net.

REVIEW AND APPROVAL:

1. **Staff review:** Planning staff will review the application and notify the applicant if additional materials are needed.
2. **Public hearing:** The Board of Adjustment shall conduct a public hearing and approve, conditionally approve or deny the application based on all applicable criteria. (Please refer to the **Application Processing Timeline** to determine the hearing date.) The applicant or a representative of the applicant is expected to attend all meetings and be prepared to answer questions concerning the request. The absence of the applicant or representative is sufficient grounds to warrant a deferral of action by the Board of Adjustment.
3. **Decision of the Board:** The applicant will be notified of the Board's decision in writing within thirty (30) days of the public hearing.

PLANNING DEPARTMENT
TOWN OF SOUTHERN PINES
801 SW SERVICE ROAD, SOUTHERN PINES, NC 28387
plan@southernpines.net (910) 692-4003 www.southernpines.net



Variance or Appeal Application

Fee: \$500.00 Date Received: _____ Case No.: A-____-_____

TO THE TOWN OF SOUTHERN PINES BOARD OF ADJUSTMENT:

I, the undersigned, do hereby make application for your consideration of the following request:

- Variance** (complete Section A below)
- Appeal of order or determination made by an administrative official** (complete Section B below)
- Zoning Map Interpretation**

Subject Property:

Street Address: Town of Southern Pines

PIN: _____ Parcel ID: _____

Site Size: _____ Lot Frontage: _____ Lot Depth: _____ Zoning District: _____

The property is located on the _____ side of _____ (Street/Avenue) between _____ (Street/Avenue) and _____ (Street/Avenue).

Project Information:

Street Address: Town of Southern Pines

PIN: _____ Parcel ID: _____

Site Size: _____ Zoning: _____

Applicant:

Name(s): Connect Holding II LLC dba Brightspeed - Attention: Steven Brewer

Email: steven.k.brewer@brightspeed.com Phone: 919-696-5700

Mailing Address: PO Box 2159, Fayetteville, NC 28301-2159

Authorized Agent, if different from Applicant:

Name(s): N/A

Email: _____ Phone: _____

Mailing Address: _____

Legal Property Owner(s), if different from Applicant:

Name(s): N/A

Email: _____ Phone: _____

Mailing Address: _____

SECTION A – VARIANCE

1. The requirement of the Town’s Unified Development Ordinance from which a variance is being sought is the provision of Section 4.15.5.(A) of the Unified Development Ordinance that states as follows:
See attached Addendum A
_____.
2. The property that is the subject of this application fails to meet the requirements in following way:
Brightspeed is seeking to upgrade its existing copper network to fiber and wishes to place these facilities on existing pole lines.
_____.
3. A written narrative addressing **UDO §2.22.6 Criteria (A) through (D)** is attached to this application.
See attached Addendum B

SECTION B – APPEAL OF ORDER OR DETERMINATION

1. The name and title of the administrative official who made the order or determination:
Name: N/A Title: _____
2. The order or determination that is the subject of this appeal: _____
_____.
3. Describe the manner in which you contend the order or determination was erroneous:

_____.
4. If you are not the owner of the property that was subject to the order or determination, describe the basis for concluding that you are financially harmed in a manner different from the harm suffered by the general public. _____
_____.

Date: 11/1/2023

Steven K Brewer
Applicant

UDO §2.22. Variance

§2.22.1. Purpose and Applicability

The Board of Adjustment shall have the power to vary the certain UDO regulations when the Applicant demonstrates that the criteria in this section justify relief from the strict application of the regulations in this UDO. No change in permitted uses may be authorized by variance.

§2.22.6. Criteria

A variance may be granted by the Board of Adjustment if it finds that:

- (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 granting 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.

UDO §2.23. Appeals

§2.23.1 Purpose and Applicability

Any person, including any officer or agency of the Town, aggrieved by a final Development Approval relating to an application for Development approval by the Planning Director or other member of the Town's administration, may appeal such Development Approval to the Board of Adjustment in the manner provided in this section. Should any person be aggrieved by any decision of the Board of Adjustment, they shall have the right to appeal same to the Circuit Court of Moore County, North Carolina, in the manner prescribed by law.

§2.23.7. Criteria

In evaluating an Appeal, the Board of Adjustment shall determine whether the action being appealed:

- (A) Was made based on correct interpretation of the UDO and other applicable regulations; and
- (B) Reflected the correct response to the application that was approved, denied or conditionally approved.

Please reference UDO §2.22 and §2.23 (www.southernpinesudo.org) for additional information.

Addendum A.

4.15.5. Underground Utilities (A) All new electric power lines (not to include transformers or enclosures containing electrical equipment including, but not limited to, switches, meters or capacitors which may be pad mounted), telephone, gas distribution and cable television lines in Subdivisions constructed after the effective date of this ordinance shall be placed underground in accordance with the specifications and policies of the respective utility service providers and located in accordance with Appendix B

Addendum B.

Brightspeed Application for Variance to UDO 4.14.5 (A)

UDO 2.22.6 Criteria

- (A) **Unnecessary Hardships** – Brightspeed is currently seeking to upgrade its existing copper network to a fiber optic network. Doing so will allow Brightspeed to deliver state of the art broadband connectivity to the citizens of Southern Pines. The upgrade will deliver fiber to the premises by the same means that the existing copper network is deployed, i.e., aerial on existing poles lines and underground in locations where a pole line does not currently exist. Current plans have approximately 53% of the upgrade being aerial and 47% being underground. Furthermore, failure to grant the variance will place Brightspeed at a distinct disadvantage when competing against the incumbent Cable Television provider who also provisions broadband services in the community and utilizes existing utility poles.
- (B) **Hardship Conditions** – Brightspeed acquired local assets to include the existing copper network from Lumen (which did business in Southern Pines as CenturyLink) on October 2, 2022. The existing Southern Pines copper network is not capable of provisioning broadband services which meet the FCC’s definition of broadband at 100/20 meg. Brightspeed desires to upgrade the copper network with a fiber optic network that will initially bring broadband services to the citizens of Southern Pines at speeds up to 1-gig symmetrical. In the future, Brightspeed plans to increase those speeds to 2-gig symmetrical. Ultimately, Brightspeed believes that it can provision speeds of up to 10-gig symmetrical on the planned upgrade.
- (C) **Hardship Did Not Result from Brightspeed Actions** – Brightspeed understands that the ordinance to which it is seeking variance was enacted due to an ice storm in the community a few years ago. The community further experienced situations where lines were down across the road for an extended period and therefore enacted this ordinance to prevent this situation in the future. Since acquiring these assets, Brightspeed has hired four additional employees specific to the Southern Pines community. Currently Brightspeed has an impressive mean time to repair of 1 day. Brightspeed is also willing to upgrade facilities by placing the fiber network parallel to streets and will agree to go underground when needing to cross streets. The willingness to go underground when needing to cross streets should alleviate concerns that were the primary driver of enacting the ordinance to which Brightspeed is appealing. Furthermore, Brightspeed is willing to provide community officials with contact information so that any concerns can be escalated and resolved in a timely manner.
- (D) **Variance is Consistent with Spirit of Ordinance-** As stated (C) just above, *“Brightspeed is also willing to upgrade facilities by placing the fiber network parallel to streets and will agree to go underground when needing to cross streets. The willingness to go underground when needing to cross streets should alleviate concerns that were the primary driver of enacting the ordinance to which Brightspeed is appealing.”* Brightspeed is also willing to provide community officials with a means to address any such concerns as quickly as possible. Brightspeed has hired additional personnel that were simply not in place during the aforementioned ice storm when the assets were owned by a different provider. It should also be noted, that Brightspeed is not seeking to deploy any new utility poles. It mere seeks to upgrade services utilizing the existing utility pole infrastructure.