



# 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: \_\_\_\_\_

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 \_\_\_\_\_ of the Unified Development Ordinance that states as follows:  
\_\_\_\_\_  
\_\_\_\_\_.
2. The property that is the subject of this application fails to meet the requirements in following way:  
\_\_\_\_\_  
\_\_\_\_\_.
3. A written narrative addressing **UDO §2.22.6 Criteria (A) through (D)** is attached to this application.

**SECTION B – APPEAL OF ORDER OR DETERMINATION**

1. The name and title of the administrative official who made the order or determination:  
Name: James Michel Title: Town Engineer/Asst. Public Works Director
2. The order or determination that is the subject of this appeal: \_\_\_\_\_  
A-02-23 Variance Request for Underground Utilities
3. Describe the manner in which you contend the order or determination was erroneous:  
See attached Addendum A  
\_\_\_\_\_.
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: 12/20/23

Steven K Brewer  
Applicant

**Addendum A.**

Mr. Michel cites the Town of Southern Pines UDO Section 4.15.5(A). This section of ordinance refers to a requirement to place facilities underground in "Subdivisions constructed after the effective date of the ordinance..." Brightspeed is merely overlying existing networks that have been deployed for years. In addition, where there are no existing utility poles, Brightspeed is deploying the fiber underground as intended by the ordinance.

His interpretation is incorrect in that he is applying the ordinance to the entire town when it should be limited to "Subdivisions constructed after the effective date of the ordinance..."

## **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.

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## **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](http://www.southernpinesudo.org)) for additional information.