



AGENDA

Wednesday, February 14, 2024: 5:30 PM

Board of Adjustment

C. Michael Haney Community Room, Southern Pines Police Department, 450 W. Pennsylvania Avenue

1. CALL TO ORDER

2. APPROVAL OF MINUTES

a. December 13, 2023 Regular Meeting

3. PUBLIC HEARINGS

a. A-03-23 Appeal of an Administrative Decision; Applicant: Connect Holding II, LLC dba Brightspeed

Interpretation of UDO Sec. 4.15.5(A) Underground Utilities

b. A-01-24 Appeal of an Administrative Decision; Applicant: Tyler's Ridge Business Park LLC

James O'Malley, on behalf of Tyler's Ridge Business Park LLC, is appealing an administrative determination to the Town of Southern Pines Board of Adjustment per the appeal process set forth in §2.23 of the Unified Development Ordinance (UDO). The question at hand is an interpretation related to the allowable number of parking spaces for Lot 7 of Tyler's Ridge Business Park (200-270 Capital Drive).

4. UNFINISHED BUSINESS

5. NEW BUSINESS

6. PUBLIC COMMENTS

7. ADJOURNMENT

MINUTES
Town of Southern Pines Board of Adjustment
Regular Meeting
December 13, 2023 at 5:30 PM

The regular meeting of the Town of Southern Pines Board of Adjustment was held on Thursday, December 13, 2023, at 5:30 PM in the C. Michael Haney Room of the Southern Pines Police Department, 450 W. Pennsylvania Avenue, Southern Pines, North Carolina.

Robert Thompson, John McInerney, Mike Martin and Steve Kastner were present.

James Michel, Town Engineer and Assistant Public Works Director, B.J. Grieve, Planning Director, and Cindy Williams, Secretary to the Board, were also present.

Chair Thompson called the meeting to order at 5:30.

APPROVAL OF MINUTES

John McInerney made a motion, which was seconded by Steve Kastner, to approve the Minutes of the July 2023 regular meeting. The motion carried.

PUBLIC HEARING

A-02-23: Variance Request for Underground Utilities; Applicant; Connect Holding II LLC dba Brightspeed

Chair Thompson confirmed that there were no conflicts of interest among the members of the Board.

Mike Martin made a motion, which was seconded by Steve Kastner, to open the public hearing. The motion carried.

The oath of testimony was administered to those who planned to address the Board.

BJ Grieve cited UDO §4.5.14 and stated that the Town Attorney was unable to be present and therefore requested a continuance to the January 10, 2024 regular meeting.

Steve Kastner made a motion, which was seconded by Robert Thompson, to close the public hearing. The motion carried by a vote of 4-0.

Steve Kastner made a motion, which was seconded by Mike Kastner, to adjourn the meeting. The motion carried.

The meeting adjourned at 5:46 PM.

Respectfully submitted:

Cindy Williams
Secretary to the Board

DRAFT

Agenda Item

To: Board of Adjustment
From: BJ Grieve, Planning Director
Subject: A-03-23: Appeal of Administrative Determination.
Date: February 14th, 2024

I. SUMMARY OF APPEAL:

Brightspeed currently provides internet and phone service in the Southern Pines area following the acquisition of Centurylink's copper network. Brightspeed is interested in expanding high speed internet through the installation of new fiber optic cables throughout Southern Pines and within Town rights-of-ways (ROW). Brightspeed has been in contact with Town staff to obtain a Construction in Town ROW permit for the installation of the new lines, though no submittal for the permit has occurred to date. Through these discussions Town staff determined that Brightspeed intended to install the new facilities by two different methods depending on the state of the existing copper line installations. Brightspeed's desire is to install the new fiber optic underground where the existing facilities are already underground, and where the existing lines are aerial, or attached to poles, the new lines would be overlashed to the existing lines and continue to be aerial lines. They also requested that any new service to be installed for new customers be installed as aerial lines even though there was no existing aerial service.

On June 20, 2023, Staff has informed the applicant, pursuant to **UDO §4.15.5(A)**, that all new lines shall be installed underground. The applicant is requesting a variance from this provision so that they can move forward with their project as planned. Staff continued to discuss the project with Brightspeed, reviewing multiple project maps and/or concepts. On October 30, 2023, the Town Engineer reaffirmed his earlier interpretation that **UDO §4.15.5(A)** did apply to this project and that new lines would have to be installed underground.

On October 3, 2023, Brightspeed began the process of submitting either a variance or appeal to the Town Engineer's determination via a request to confirm the appropriate form. In the October 3 email, Brightspeed was unsure as to which process would need to be followed, and the Town Engineer responded on October 6, 2023 that if Brightspeed disagreed with the Town Engineer's interpretation of **UDO §4.15.5(A)**, then they would need to file for an appeal.

On November 1, 2023, Brightspeed filed an application for a variance from **UDO §4.15.5(A)** indicating that they did not disagree with the Town Engineer's determination, but that they were seeking relief from the requirement. An attorney from Brightspeed and the Town Attorney discussed the procedure and requirements for a variance and

determined that this request would not meet the requirements. Brightspeed chose to withdraw their application for a variance.

On December 21, 2023 Planning staff received application for a Board of Adjustment Hearing request appealing the Administrative Determination made by the Town Engineer in the email of October 30, 2023. The appeal packet is attached to this report.

Planning staff reviewed the appeal request for completeness, and determined the application to be complete on January 5, 2024. A Board of Adjustment hearing was scheduled for February 14, 2024. Planning staff prepared a written legal notice of the Board of Adjustment hearing and provided mailed, posted and internet notice as required.

The Board of Adjustment shall now hold an evidentiary hearing and may reverse or affirm, wholly or partly, or modify the determination being appealed. The procedures for conducting an evidentiary hearing are found in UDO §2.14.

The Board of Adjustment shall determine whether the action by the Town Engineer:

- (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.

II. ATTACHMENTS:

The following materials are provided as attachments to this staff report:

1. Town Engineers' June 20, 2023 original Administrative Determination sent via email to Steven Brewer and Jim Horn.
2. Email chain ending October 6, 2023 about appropriate process to follow
3. Town Engineer's October 30, 2023 Administrative Determination sent via email to Steven Brewer
4. Email from Assistant Public Works Director Cory Albers, former Street Superintendent, on history of overhead line requirements
5. Connect Holder II, LLC appeal packet.
6. Unified Development Ordinance (UDO) §4.15.5

Additional documents related to this application are on file in the Town of Southern Pines Planning Office and available for public inspections during normal business hours.

James Michel

From: James Michel
Sent: Tuesday, June 20, 2023 11:04 AM
To: 'James.horn@brightspeed.com'; 'Steven.K.Brewer@Brightspeed.com';
'Alonza.Mitchell@Brightspeed.com'; 'Anthony.Melilli1@brightspeed.com'
Cc: Marco Mondragon; David Byrd; Reagan Parsons; Beth Robertson
Subject: RE: Southern Pines Brightspeed Work Requirements for Upgrade to fiber from the existing CenturyLink Exchange on existing aerial cables.

Jim,

It is the Town's policy to have all new utilities installed underground. I have been with the Town for about 4 years so I can't relay the entire history, but this has been the Town's policy since about 2013 when the Unified Development Ordinance (UDO) was adopted. It may well have been before this, but I don't have immediate access to the older versions of the Town codes. I am also not sure about the expired Franchise Agreements, that the General Assembly did away with some years back, but which may have provided relief from this requirement in past years. In the past several years they have been numerous instances of telecommunication lines being struck (trucks, trees, storms, etc.) which led to the Town having to close a road while repairs were made. This often times can take days or even weeks to be resolved, which is an unacceptable impairment to the traveling public and the primary purpose of the road. We also have ongoing issues with abandoned telecom facilities and subsequent poles that no entity will take responsibility for which only adds to the time and aggravation of getting roadways opened and/or are detrimental to the maintenance of Town infrastructure.

The specific ordinance from the UDO is as follows:

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.

Enforcement of this ordinance will help to alleviate the issues discussed above along with getting permits for encroachments so that we start building a good record of the installations. Please note that the UDO does provide the Town Engineer some leeway, when issuing permits, to make exceptions where warranted. I understand that going completely underground may not be feasible in all situations. I am willing to work with Brightspeed to look at specific instances and find solutions that work for both parties.

I have added specific answers to your questions below in red.

Thanks

FYI, Reagan and Beth's email are incorrect on your original email. I have them copied on this one so you will have the correct email moving forward.

James Michel, PE, MBA
Town Engineer/Asst. Public Works Director
801 SE Service Road
Southern Pines, NC 28387
(910)692-1983



From: Marco Mondragon <mmondragon@southernpines.net>
Sent: Monday, June 19, 2023 2:58 PM
To: James Michel <JMichel@southernpines.net>; David Byrd <DByrd@southernpines.net>
Subject: FW: Southern Pines Brightspeed Work Requirements for Upgrade to fiber from the existing CenturyLink Exchange on existing aerial cables.

Marco Antonio Hernandez Mondragon

Town of Southern Pines

Construction Inspector

Work Cell: (910)-992-6390

Email: mmondragon@southernpines.net



“Don’t train til you get it right, train til you cant get it wrong!”

From: Horn, Jim <James.Horn@brightspeed.com>
Sent: Monday, June 19, 2023 2:50 PM
To: Marco Mondragon <mmondragon@southernpines.net>
Cc: reagan.parsons@southernpines.net; beth.robertson@southernpines.net; Brewer, Steve <Steven.K.Brewer@Brightspeed.com>; Mitchell, Alonza <Alonza.Mitchell@Brightspeed.com>; Melilli, Anthony <Anthony.Melilli1@brightspeed.com>
Subject: Southern Pines Brightspeed Work Requirements for Upgrade to fiber from the existing CenturyLink Exchange on existing aerial cables.

Hi Marco,

Thanks for meeting with Brightspeed on Friday. I just need written confirmation of a few things so we can move forward.

1. All new facilities will be underground which is contained in a town ordinance. **Yes, but with exceptions as noted above.**
2. We will not be allowed to upgrade our (CenturyLink’s) existing aerial copper cables by over lashing single cables containing fiber optics, instead, the ordinance will require us to put it underground as well. **Yes, but with exceptions as noted above.**
3. No equipment or materials will be left on the ROW waiting on ***permits. (*NCDOT, City or Railroad) The Town has no desire to have materials just sitting on ROWs. We prefer that all permits be in hand prior to starting any particular phase or project to prevent this.**
4. Permits will be required for all new facilities in Southern Pines. **Yes, all installations in Town ROW’s require a Construction on Town ROW permit.**

My initial conversation with our Government and regulatory official that no ordinance was mentioned at our meeting with town manager, Reagan Parsons. **He may not have specifically mentioned an ordinance, but the topic of new installations being underground was discussed at this meeting.**

Given our history as the primary phone and internet provider, we hope to find some resolution that works for us all.

I will need a copy of the ordinance and written confirmation of the items above. Thanks.

JH

James (Jim) Horn

Senior Engineer - OSP

Cell: 303-1279

James.horn@brightspeed.com

brightspeed.com |   



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James Michel

From: Horn, Jim <James.Horn@brightspeed.com>
Sent: Friday, October 6, 2023 8:44 AM
To: James Michel
Cc: Thompson, Tyler; Brewer, Steve; Melilli, Anthony; Blum, Zac; Reagan Parsons; BJ Grieve
Subject: Re: [External] RE: Appeals Process and Paperwork

Good morning James.

Thank you for sending the information. I was pretty sure that was correct, but just wanted to confirm it with you. We will take the steps and get the form completed and back to you.

Thanks for your help on this. Hope you have a great weekend.

Get [Outlook for iOS](#)

From: James Michel <JMichel@southernpines.net>
Sent: Friday, October 6, 2023 8:40:42 AM
To: Horn, Jim <James.Horn@brightspeed.com>
Cc: Thompson, Tyler <Tyler.Thompson@brightspeed.com>; Brewer, Steve <Steven.K.Brewer@Brightspeed.com>; Melilli, Anthony <Anthony.Melilli1@brightspeed.com>; Blum, Zac <Zachary.Blum@brightspeed.com>; Reagan Parsons <Parsons@southernpines.net>; BJ Grieve <BJGrieve@southernpines.net>
Subject: [External] RE: Appeals Process and Paperwork

Good morning Jim,

This is the correct paperwork that needs to be submitted. Please keep in mind that relief (appeal in UDO language) and variance are two different things and you will need to fill out the application accordingly. As I understand it, Brightspeed is disagreeing with my interpretation of the ordinance, so this would follow the appeals process.

Let me know if you have any questions.

Thanks

James Michel, PE, MBA
Town Engineer/Asst. Public Works Director
801 SE Service Road
Southern Pines, NC 28387
(910)692-1983



From: Horn, Jim <James.Horn@brightspeed.com>
Sent: Tuesday, October 3, 2023 9:04 AM
To: James Michel <JMichel@southernpines.net>

Cc: Thompson, Tyler <Tyler.Thompson@brightspeed.com>; Brewer, Steve <Steven.K.Brewer@Brightspeed.com>; Melilli, Anthony <Anthony.Melilli1@brightspeed.com>; Blum, Zac <Zachary.Blum@brightspeed.com>

Subject: Appeals Process and Paperwork

Good Morning James.

Is the attached form the one you would like us to use to begin the appeals process on our former Century Link / CTT Exchange upgrade to seek relief or a variance from the underground mandate described in the town ordinance for "new utilities?"

If not, can you let us know what paperwork you would need and how the process would flow.

Thanks.

JH

James (Jim) Horn

Senior Engineer - OSP

Cell: 303-1279

James.horn@brightspeed.com

brightspeed.com |   



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James Michel

From: James Michel
Sent: Monday, October 30, 2023 7:59 AM
To: Dillon, Chris; Reagan Parsons
Subject: Re: [External] RE: Chris Dillon- 919-264-3597

Chris,

It is my understanding that Brightspeed is proposing the installation of new fiber optic lines throughout the Town of Southern Pines. Based on this understanding, I have interpreted UDO Section 4.15.5. Underground Utilities (A) as it applies to this proposal to require the installation of the new lines underground (see text below).

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

Thanks

James Michel, PE, MBA
Town Engineer/Asst. Public Works Director
801 SE Service Road
Southern Pines, NC 28387
(910)692-1983



From: Dillon, Chris <christopher.dillon@brightspeed.com>
Sent: Thursday, October 26, 2023 2:36 PM
To: Reagan Parsons <Parsons@southernpines.net>; James Michel <JMichel@southernpines.net>
Subject: RE: [External] RE: Chris Dillon- 919-264-3597

Thanks Reagan, and I understand and agree with that.

I am asking if your determination was an administrative decision that the improvements are new service or was it a determination that the installation was required to be buried due to the ordinance.

I feel it is the Town's call on whether our improvements are required to be buried due to the ordinance, or if you are indicating the Town Management has determined the improvements are not improvements, but new service.

We do not want to get in a technicality argument of if we are appealing an administrative decision or requesting a variance.

I appreciate any assistance.

Thanks!

From: Reagan Parsons <Parsons@southernpines.net>
Sent: Thursday, October 26, 2023 2:32 PM
To: Dillon, Chris <christopher.dillon@brightspeed.com>; James Michel <JMichel@southernpines.net>
Subject: RE: [External] RE: Chris Dillon- 919-264-3597

Chris,

Just heard your voicemail. Whether you are appealing an Administrative decision/interpretation or seeking a variance under the standards set forth by NC General Statute really isn't a question I can answer for you. You will want your legal counsel to advise relative to the chosen path forward based upon the respective factors that our Board of Adjustment will be weighing in rendering a decision.

Thanks

Reagan

Reagan D. Parsons, ICMA-CM
Town Manager



125 SE Broad Street
Southern Pines, NC 28387
910-692-7021
parsons@southernpines.net

Pursuant to North Carolina General Statutes Chapter 132, Public Records, this electronic mail message and any attachments hereto, as well as any electronic mail message(s) that may be sent in response to it may be considered public record and as such are subject to request and review by anyone at any time.

From: Dillon, Chris <christopher.dillon@brightspeed.com>
Sent: Wednesday, October 25, 2023 10:34 AM
To: James Michel <JMichel@southernpines.net>
Cc: Reagan Parsons <Parsons@southernpines.net>
Subject: RE: [External] RE: Chris Dillon- 919-264-3597

James:
Thanks!

One last question in filling out the form.

We are seeking a variance to the ordinance, correct?

Thanks again – Chris

From: James Michel <JMichel@southernpines.net>
Sent: Wednesday, October 25, 2023 8:55 AM
To: Dillon, Chris <christopher.dillon@brightspeed.com>
Cc: Reagan Parsons <Parsons@southernpines.net>
Subject: RE: [External] RE: Chris Dillon- 919-264-3597

Chris,

See below in red.

James Michel, PE, MBA
Town Engineer/Asst. Public Works Director
801 SE Service Road
Southern Pines, NC 28387
(910)692-1983



From: Reagan Parsons <Parsons@southernpines.net>
Sent: Monday, October 23, 2023 1:23 PM
To: James Michel <JMichel@southernpines.net>
Subject: Fwd: [External] RE: Chris Dillon- 919-264-3597

See inquiries below

Sent from my iPhone

Begin forwarded message:

From: "Dillon, Chris" <christopher.dillon@brightspeed.com>
Date: October 23, 2023 at 12:42:51 PM EDT
To: Reagan Parsons <Parsons@southernpines.net>
Subject: RE: [External] RE: Chris Dillon- 919-264-3597

Hey Reagan. Thanks for sending this.

I hope you enjoyed Austin! I didn't see you at the 5K?

I had a couple of follow ups if you can help.

Is there a possibility we can pay the application fee by credit card? **Yes. The application can be submitted to Cindy Williams in the planning department, and she can assist with taking a credit card payment.**

If we are working in NCDOT right of way, does the town burial ordinance still apply? **No, it is my interpretation that the ordinance only applies to Town ROW.**

We have run into this in one other municipality and it did not apply outside of town dedicated R/W.

Thanks!

From: Reagan Parsons <Parsons@southernpines.net>
Sent: Thursday, October 5, 2023 5:25 PM
To: Dillon, Chris <christopher.dillon@brightspeed.com>
Subject: RE: [External] RE: Chris Dillon- 919-264-3597

Chris,

I have attached the BOA Hearing request paperwork necessary to appeal the interpretation of the Town Engineer. If this is filed with Planning prior to November 6th it can be scheduled for a meeting with the BOA on December 13th.

Have a good evening,

Reagan

Reagan D. Parsons, ICMA-CM
Town Manager



125 SE Broad Street
Southern Pines, NC 28387
910-692-7021
parsons@southernpines.net

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From: Dillon, Chris <christopher.dillon@brightspeed.com>
Sent: Thursday, October 5, 2023 9:23 AM
To: Reagan Parsons <Parsons@southernpines.net>
Subject: RE: [External] RE: Chris Dillon- 919-264-3597

Good morning Reagan. Do you have time to chat for a couple of minutes about next steps?

Specifically:

1. Does Brightspeed need, in writing, a determination from the Manager that we must bury our upgrade?

2. Who does Brightspeed appeal that decision to within the Town?
 1. Is there a specific form?
3. When is the first available opportunity to get before the appropriate Board/Commission

Thanks!

From: Reagan Parsons <Parsons@southernpines.net>
Sent: Wednesday, September 27, 2023 1:52 PM
To: Dillon, Chris <christopher.dillon@brightspeed.com>
Subject: [External] RE: Chris Dillon- 919-264-3597

Chris,

Good afternoon. Wanted to pass along that I received word back from legal that the proper course for appeal would be through our Board of Zoning Adjustment. You may wish to review General Statute § **160D-405. Appeals of administrative decisions** should you determine to go this route.

Thank you and safe travels to Austin!

Reagan

Reagan D. Parsons, ICMA-CM
Town Manager



125 SE Broad Street
Southern Pines, NC 28387
910-692-7021
parsons@southernpines.net

Pursuant to North Carolina General Statutes Chapter 132, Public Records, this electronic mail message and any attachments hereto, as well as any electronic mail message(s) that may be sent in response to it may be considered public record and as such are subject to request and review by anyone at any time.

From: Dillon, Chris <christopher.dillon@brightspeed.com>
Sent: Friday, September 22, 2023 3:01 PM
To: Reagan Parsons <Parsons@southernpines.net>
Subject: Chris Dillon- 919-264-3597

Thanks for the phone call today. Let us know if you need any additional information.

Chris Dillon

Government Affairs and Public Policy Director

christopher.dillon@brightspeed.com

Cell: 919-264-3597

Raleigh, NC

brightspeed.com |   



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From: [Cory Albers](#)
To: [James Michel](#)
Subject: TOSP Policy on Underground lines
Date: Tuesday, January 30, 2024 11:10:45 AM

James,

Per our conversation this morning.

During my tenure as the Towns Street Superintendent from May of 2010 to June of 2019, I did not approve any new utility lines to be installed overhead. When I was approached by a vendor or utility to install utility lines in Town. My stance and answer on any new utility lines coming in was that there were to be under ground and not overhead. This was the direction that was given to me by my managers during that time frame. Which have been David White from 2010-2013, Adam Lindsay from 2013-2016, Chris Kennedy from 2016-2019. I did not allow nor approve any permits during this time frame for any utility lines to be installed overhead. I still hold the same stance now as the Assistant Public Works Director, that the Towns policy is any new utility lines being installed shall be underground.

Please let me know if you need anything further.

Thanks

Cory Albers
Assistant Public Works Director - Operations
801 SE Service RD
Southern Pines, NC 28387
(910)-692-1983
Calbers@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: _____

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: _____

1/12/22

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.

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.

4.15. UTILITIES

4.15.1. Utility Ownership and Easement Rights

In any case in which a Developer installs or causes the installation of water, sewer, electrical power, telephone, natural gas or cable television facilities and intends that such facilities shall be owned, operated or maintained by a public utility or any entity other than the Developer, the Developer shall transfer to such utility or entity the necessary ownership or easement rights to enable the utility or entity to operate and maintain such facilities. In addition, the Developer, in accordance with section 4.15.6, shall dedicate sufficient easement rights to accommodate the extension of utility facilities which will serve adjacent or nearby Developments. Easement rights transferred to the Town under this section shall include provisions for the optional use of hiking, bicycling and pedestrian activities within the easement.

4.15.2. Public Lighting Requirements

See section 4.8.7.

4.15.3. Electric Power

Every Principal Use and every Lot within a Subdivision shall have available to it a source of electric power adequate to accommodate the reasonable needs of such use and every Lot within such Subdivision. Compliance with this requirement shall be determined as follows:

- (A) If the use is not a Subdivision and is located on a Lot that is served by an existing power line and the use can be served by a simple connection to such power line (as opposed to a more complex distribution system, such as would be required in an apartment complex or Shopping Center), then no further certification is needed.
- (B) If the use is a Subdivision or is not located on a Lot served by an existing power line or a substantial internal distribution system will be necessary, then the electric utility service provider must review the proposed plans and certify to the Town that it can provide service that

is adequate to meet the needs of the proposed use and every Lot within the proposed Subdivision.

4.15.4. Telecommunications Service

Every Principal Use and every Lot within a Subdivision must have available to it a telecommunications service cable adequate to accommodate the reasonable needs of such use and every Lot within such Subdivision. For purposes of this section, telecommunications services include telephone and cable services for telephone, television and internet access. Compliance with this requirement shall be determined as follows:

- (A) If the use is not a Subdivision and is located on a Lot that is served by an existing telecommunications line and the use can be served by a simple connection to such telecommunications lines (as opposed to a more complex distribution system, such as would be required in an apartment complex or Shopping Center), then no further certification is necessary.
- (B) If the use is a Subdivision or is not located on a Lot served by an existing telecommunications lines or a substantial internal distribution system will be necessary, then the applicable telecommunications utility providers must review the proposed plans and certify to the Town that it can provide service that is adequate to meet the needs of the proposed use and every Lot within the proposed Subdivision.

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.

(Ord. #1871, 8-24-20; Ord. #1890, 1-6-21)

- (B) Whenever an un-subdivided Development is hereafter constructed on a Lot that is undeveloped on the effective date of this chapter, then all electric power, telephone, gas distribution and cable television lines installed to serve the Development that are located on the Development site outside of a previously existing public street Right-of-Way shall be placed underground in accordance with the specifications and policies of the respective utility companies.

4.15.6. Utilities to Be Consistent with Internal and External Development

- (A) Whenever it can reasonably be anticipated that utility facilities constructed in one Development will be extended to serve other adjacent or nearby Developments, such utility facilities (e.g., water or sewer lines) shall be located and constructed so that extensions can be made conveniently and without undue burden or expense or unnecessary duplication of service as determined by the Town of Southern Pines. The dedication of requisite utility easements and/or the construction of utility facilities may be required, as determined necessary by the Town of Southern Pines, to accommodate utility service to adjacent or nearby properties.
- (B) All utility facilities shall be constructed in such a manner as to minimize interference with pedestrian or vehicular traffic and to facilitate maintenance without undue damage to improvements or facilities located within the Development.

4.15.7. As-Built Drawings Required

Whenever a Developer installs or causes to be installed any utility line in any public right of way, the Developer shall, as soon as practicable after installation is complete and before acceptance of any water or sewer line, furnish the Town with a mylar reproducible copy and one print copy of a drawing that shows the exact location of such utility lines. Such drawings must be verified as accurate by the utility service provider. Manholes, valves and other utility system features shall be located using GPS and the

data shall be provided in digital form pursuant to the requirements for Engineering Plan applications. Compliance with this requirement shall be a condition of the continued validity of the permit authorizing such Development.

4.15.8. Fire Hydrants

- (A) Every Development (subdivided or un-subdivided) that is served by a public water system shall include a system of fire hydrants sufficient to provide adequate fire protection for the Buildings located or intended to be located within such Development.
- (B) The presumption established by this ordinance is that to satisfy the standard set forth in Subsection (a), fire hydrants must be located so that all parts of every Building within the Development may be served by a hydrant by laying not more than five-hundred (500) feet of hose connected to such hydrant. However, the fire chief may authorize or require a deviation from this standard if, in his professional opinion, another arrangement more satisfactorily complies with the standard set forth in paragraph (A).
- (C) The fire chief shall determine the color and precise location of all fire hydrants, subject to the other provisions of this section. In general, fire hydrants shall be placed six (6) feet behind the curb line of publicly dedicated streets that have curb and gutter.
- (D) The fire chief shall determine the design standards of all hydrants based on fire flow needs. Unless otherwise specified by the fire chief, all hydrants shall have two 2-½ inch hose connections and one 4-½ inch hose connection. The 2-½ inch hose connections shall be located at least 21-½ inches from the ground level. All hydrant threads shall be national standard threads.
- (E) Clear Space around Hydrants. A 3-foot (914 mm) clear space shall be maintained around the circumference of fire hydrants except as otherwise required or approved.

Agenda Item

To: Board of Adjustment
From: BJ Grieve, Planning Director
Subject: A-01-24: Appeal of Administrative Determination.
Date: February 14th, 2024

I. SUMMARY OF APPEAL:

Tyler’s Ridge Business Park, LLC has filed an appeal of an Administrative Determination (Determination) by the Town of Southern Pines Planning Director. The Determination was regarding allowable parking on Lot 7 of the Tyler’s Ridge at Sandhills development. The development was approved in 2011 as a Conditional Use Permit (file #CU-01-11).

The Determination was made on Friday, December 15, 2023. An appeal was filed with the Planning Department by Tyler’s Ridge Business Park, LLC, on January 12, 2024. The next available Board of Adjustment meeting at which a hearing could be held was February 14th, 2024 so the appeal was added to that agenda and legal notice was provided.

On February 6, 2024 the applicants requested a continuance of the hearing to the April 10, 2024 Board of Adjustment regular meeting. Since the continuance request was made less than seven (7) days prior to the scheduled hearing, per UDO §2.5.14 the Planning Director may not grant the continuance administratively. Therefore, the hearing must be opened at the February 14th meeting and the Board of Adjustment must decide on the request for a continuance.

The Town Attorney Mac McCarley and the planning staff both support the request for a continuance and request that the Board of Adjustment grant the continuance to allow additional time for both parties to work on resolving the matter.

II. ATTACHMENTS:

The following materials are provided as attachments to this staff memo:

1. A-01-24 Continuance Request, February 6, 2024

Additional documents related to this appeal are on file in the Town of Southern Pines Planning Office and available for public inspections during normal business hours.

BJ Grieve

From: Mac McCarley
Sent: Tuesday, February 6, 2024 5:02 PM
To: Bill Brian
Cc: Mac McCarley; BJ Grieve; Nil Ghosh; bkoontz@koontzjones.com
Subject: Re: Request for Continuance - Board of Adjustment Case A-01-24: Appeal of an Administrative Decision; Applicant: Tyler's Ridge Business Park LLC

BJ,

I support this request for a continuance.

Mac
Sent from my iPhone

On Feb 6, 2024, at 2:28 PM, Bill Brian <bbrian@morningstarlawgroup.com> wrote:

Mac

As you know we represent the applicant in the above-reference matter. For the reasons we discussed today, we respectfully request that this matter be continued from the upcoming February 14 Southern Pines Board of Adjustment agenda to a later date. We are working with you and the Town staff to resolve this matter, and it will not be possible for our client to be present at the hearing on the 14th in any event.

Also, due to some planned overseas travel, it will not be possible for us to be present at the Board's March meeting.

For these reasons, we request that this matter be set on the Board's agenda in April of 2024.

If you have any questions, or if there is anything else we need to do to address this matter in the short term, please let us know. In the meantime, we will be in touch with the other information that you request we provide to you as soon as we can.

Thanks.

Bill

WILLIAM J. BRIAN, JR.
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morningstarlawgroup.com

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