



The Hickory Board of Adjustment will hold its regular meeting on **Wednesday, October 28, 2020 at 6:00 p.m. in the City Council Chambers of City Hall.** The following will be the agenda for the Regular Meeting:

### **AGENDA**

- Parliamentary Call to Order
- Welcome
- Roll Call
- Items of Correspondence
- City Council Action
- Approval and Signing of Minutes from the June 24, 2020 Meeting

### **PRESENTATIONS AND PUBLIC HEARINGS**

1. **Appeal of Administrative Decision (AAD) 20-02.** Request by Senior Pastor Paul Deal, on behalf Winkler's Grove Baptist Church, to appeal the Planning Director's written interpretation of Land Development Code Section 10.8 in reference to property at 3320 9th Avenue Drive NW. The property is shown as PIN 2783958491 on the Burke County G.I.S. maps.
2. **Appeal of Administrative Decision (AAD) 20-03.** Request by Halbert McPherson, owner of Best Results Advertising, to appeal the Planning Director's decision of a violation of Land Development Code Section 10.2.1 at multiple locations throughout the Hickory zoning area.

### **OTHER BUSINESS**

1. None.

The Hickory Board of Adjustment does not discriminate on the basis of disability in the provision of its service as charged by the City Council of the City of Hickory. All meetings are held in accessible facilities. Any person with a disability needing special accommodations should contact the Planning Department at telephone number (828) 323-7422 at least 48 hours prior to the scheduled meeting.

**Hickory Regional Board of Adjustment**  
**Wednesday, June 24, 2020, 6:00 pm**

A meeting of the Hickory Regional Board of Adjustment (BOA) was held Wednesday, June 24, 2020, 6:00 pm, in Council Chambers of the Julian G. Whitener Municipal Bldg, Hickory NC.

**Members Present:** Randall Mays, Bill McBrayer, Bill Pekman, David Deal, Robert Weaver, Sam Hunt, Meg Locke, Wallace Johnson, Dan Shabeldeen, and Jeff Kerley

**Members Excused:** Junior Hedrick

**Members Absent:** none

**Others Present:** Director of Planning Brian Frazier, Senior City Planner Ross Zelenske, Deputy City Attorney Arnita Dula, and Minutes Clerk Anne Starnes

Prior to calling the meeting to order, Mr. Mays asked Deputy City Attorney Arnita Dula to explain the procedure, as some of the members may not have participated in a Board of Adjustment hearing before.

Ms. Dula advised members they would be sitting as the Board of Adjustment, and this would be in the nature of a quasi-judicial hearing. Therefore, the members would hear and take evidence from the gentleman who is appealing the administrative decision. When voting, each of the members will be required to state the reason for their vote, individually, based upon the evidence that is presented. She noted a super majority vote of four-fifths is required, either to grant the appeal, or to deny the appeal. She again reminded members that they were sitting as the Board of Adjustment, and not as the Planning Commission. She asked if there were any questions.

Mr. Shabeldeen asked if tonight's vote would be final, or would it go on to City Council. Mr. Mays said the decision made by members would be final, and it would not be forwarded to Council. Ms. Dula said their decision would not go to Council, but if the decision is to deny the appeal, then the applicant's next step would be an actual appeal to Superior Court. She said the decision here must be based on substantial evidence, and not on opinion, since again, this is quasi-judicial. She said all of the members had sat through a quasi-judicial procedure, as a Planning Commission member; this is basically the same, but they are acting in their role as Board of Adjustment members. She said if there are any other questions, please do not hesitate to ask.

**Parliamentary Call to Order & Welcome:** Randall Mays, Chair, called the meeting to order at 6:30 pm, following the regular meeting of the Hickory Regional Planning Commission.

**Roll Call:** Brian Frazier stated a quorum was present, and Mr. Hedrick was excused.

**Items of Correspondence:** none

**City Council Action:** none

Mr. Frazier said that, to follow up on Ms. Dula's earlier review, for a Board of Adjustment in North Carolina the members were basically looking at an area variance, or dimensional variance request, in terms of front yard, rear yard, side yard, interior side yard, or height, set-backs, or some reason that the applicant has. They have to meet four or five qualifying conditions as to why they deserve to be considered for that dimensional variance. In the 15-years he has been with the City, he believes there have been only a total of four or five of these. Regarding the one tonight, it is an appeal of an administrative decision. If he makes an administrative decision under certain criteria, and the applicant is not satisfied with it, or believes that Mr. Frazier is not following the Land

Development Code, which is a legal document in the City of Hickory, they can then appeal to him to set up a hearing for the Board of Adjustment.

Mr. Frazier added that the applicant, who is present tonight, has been extremely patient, as he was scheduled to be on the agenda back in March, then in April, and again in May. Because of the governor's executive order, prior to Phase 2 and a municipal exemption, the applicant was required to wait. Again, Mr. Frazier wanted to acknowledge that the applicant had been very patient with the required process.

**Approval and Signing of Minutes from the July 27, 2016 Meeting:** Minutes of the previous meeting on July 27, 2016 were distributed to members in advance. No additions, deletions or corrections to the minutes were stated. Bill McBrayer moved, seconded by David Deal, to approve the July 27, 2016 minutes as presented. By a show of hands, the motion carried unanimously.

### **PRESENTATIONS & PUBLIC HEARINGS**

Mr. Mays said one public hearing was on the agenda, and as Ms. Dula stated earlier, this is a quasi-judicial hearing. He reviewed the procedure they must follow, saying that anyone wishing to testify must be sworn in by the clerk. Also, any evidence or written materials must be submitted to the clerk. Staff will present their report first, followed by testimony from the applicant and time for rebuttal, if needed.

Mr. Mays opened the Public Hearing for the Appeal of Administrative Decision (AAD) 20-01.

All speakers were sworn in by the clerk.

**Brian Frazier** presented the Staff Report and referred to PowerPoint slides. He said, just to clarify one point, on page 39 of the Land Development Code, in Article 2, Section 2.8.4, The Board of Adjustment Review and Decision, that Ms. Dula was correct in saying that a four-fifths majority vote would be needed, not a simple majority; four-fifths of the total vote are needed to over-ride his decision. Mr. Mays asked to clarify, saying there were ten (10) members present, and so if a four-fifths majority is required, then eight (8) affirmative votes are required to over-ride Mr. Frazier's decision. Mr. Frazier said that was correct, and if it is over-ridden, this would affect the property, which he will discuss; if it is not over-ridden, then the applicant has 30 days to appeal to the Superior Court of North Carolina, which is in Newton NC. Further, if they do not find in favor of the applicant, he would then have the right to appeal to the NC Court of Appeals.

Mr. Frazier reviewed slide #2 (Appeal of Administrative Decision 20-01):

- **Property Owner:** Subhasys Estates HH70 LLC
- **Applicant:** Lutz Reissmann, owner of Aloha's Player Arcade
- **Property Location:** 2440 Highway 70 SE
- **Ward:** Ward 3
- **Property Zoning:** Regional Commercial (C-3)
- **Property Size:** ~1.09 acres
- **Request:** The applicant requests an appeal of an administrative decision (AAD) by the Planning Director, in accordance with Land Development Code Section 2.10.

Mr. Frazier said Aloha's Player Arcade is located on the right side of Highway 70 East, heading toward Conover, in the area directly across from Sam's Club.

Mr. Frazier review slide #3 (Area Map. 2440 Highway 70 SE). He said the map shows the parcel, hashed in red. He pointed out the property, located on the south side of Highway 70, and noted the road located between Sam's Club and Wal-Mart. He said this is one of the seven (7) that are in the current lawsuit and injunction. So right now, of course, all of these types of gaming businesses LLC are still shut down in Phase 2 under Governor Cooper's

Executive Order. Prior to that, this was one of those six (6) or seven (7) that were allowed to continue operation, where the other ones have been shut down.

Mr. Frazier reviewed slides #4 & 5 (Background).

**March 19, 2018** – Mr. Lutz Reissmann, applicant, filed permits to open a skill based gaming business at 2440 Highway 70 SE, known as Aloha’s Player Arcade.

**March 21, 2018** – Permits issued and a building safety inspection occurred, where past Zoning Enforcement Officer Tyler Nix was present and evaluated the zoning compliance of the tenant’s existing space, as well as, proposed changes.

**March 23, 2018** – The business was approved to open after re-inspection, which included City of Hickory’s Planning and Zoning, Mr. Frazier’s office, and Catawba County Building Services, City of Hickory Fire Department, and Life Safety Division.

**February 2020** – A question was posed to Planning Director Brian Frazier about the legality of strip lighting around the fenestrations of buildings in the Hickory zoning area. A determination was made by the Planning Director that these lights were in violation of the Land Development Code.

**February 18, 2020** – The new Zoning Enforcement Officer Jason Meier identified the subject property as having strip lighting and photographed the violation.

**March 3, 2020** – A Notice of Violation was mailed to both the property owner and business operator by the Zoning Enforcement Officer, informing them of the violation and that the violation needed to be corrected within 10 (calendar) days of the date of receipt of the letter.

**March 8, 2020** – Mr. Reissmann filed a written appeal of the Director’s decision.

Regarding the question posed to him in February 2020 about the legality of strip lighting around fenestration of buildings, specifically doors and windows, in the Hickory zoning area, Mr. Frazier said the City has had several complaints because of that type of strip lighting throughout the City, but not specifically about the applicant’s business. It was used on businesses such as bars, nightclubs, electronic gaming such as this, hair salons, nail salons, and others. And again, he had determined that these lights were in violation of the City’s Land Development Code.

Mr. Frazier said that, following a couple conversations between himself and Mr. Reissmann, on March 8, 2020, Mr. Reissmann filed a written appeal of Mr. Frazier’s decision to the City of Hickory. Mr. Frazier then notified his staff and Ms. Dula, as deputy legal counsel, and the Zoning Board of Appeal.

Mr. Frazier reviewed slide #6 (Evidence - Photo). He said this photo is evidence of the strip lighting in question, which was deemed to not be in accordance with the City’s existing Land Development Code.

Mr. Frazier reviewed slides #7 & 8 (Explanation).

The outdoor lighting standards (Section 9.7) of the Land Development Code states the following:

**Sec. 9.7 Outdoor Lighting (TA 14-01) (TA 18-01)**

- 9.7.1 The purpose of this section is to ensure site lighting contributes to the character of the site and does not disturb adjacent development as light spillage.
- 9.7.2 General Guidelines:
  - A. The light source of outdoor lighting fixtures shall not be directly visible from property outside the zoning lot on which it is located. Additionally, the maximum illumination permitted at the

zoning lot line from any use, other than single-family residential, onto a lot line of any adjacent residentially zoned lot, shall be 0.20 foot-candles.

The decision of the Planning Director was rendered based upon the following administrative findings:

- The applicant installed strip lighting around two windows and the door on the front façade of the business, fronting Highway 70.
- The Land Development Code (Section 9.7) specifically states that the purpose of the regulations are to ensure site lighting does not distribute to adjacent development as light spillage, and that outdoor lighting fixtures shall not be directly visible from the property outside of the zoning lot on which it is located.
- Strip lighting is directly visible from the property lines and is not shielded to prevent light spillage.

Mr. Frazier reviewed slide #9 (Board Authority).

- Land Development Code Section 2.10 vests the Board of Adjustment with the responsibility of considering requests for appeals of administrative decisions rendered by the Planning Director in the administration or enforcement of the provisions of the Land Development Code.
- The Board of Adjustment may reverse administrative decisions upon finding of substantial, factual evidence in the official record that the administrative official erred.

Mr. Frazier reviewed slide #10 (Public Input).

- As of June 3, 2020, there have been no comments from the general public, only conversations with the applicant.

Mr. Frazier reviewed slide #11 (Recommendation).

- **Staff Recommendation**
  - Staff recommends the Board of Adjustment affirm the decision rendered by the Planning Director based upon the following findings:
    1. The property was issued a permit allowing a skill based gaming business, but no permits or approvals were given allowing such strip lighting; and
    2. The existing strip lighting does not comply with the regulations outlined in the Land Development Code, Article 9, Section 9.7.

Mr. Frazier asked for questions from members regarding this case and the appeal.

Dr. Pekman clarified that this was just for strip lighting, and asked what if they had a sign up that said “open.” Mr. Frazier said the City code, in his estimation and interpretation of the code, is that if they have a light, or a sign, and it is in the window or on the door, saying “open” for the specific hours, as an identifier, it is perfectly fine, as long as it is not bare bulbs, as long as it is neon tubing or cord, whatever the industry states, and as long as it is not flashing, moving, scrolling, or blinking. He said he did not believe the applicant had that, although several of the businesses they spoke to did have flashing, moving signage which they had corrected, but it was still in violation with code, based on what was said here.

Mr. Frazier said one thing he wanted to state was that City staff drove all over the city, including some locations based on complaints from citizens. They sent out 15 “notice of violation letters” so they are not just picking on this gentleman or that type of business. There were several businesses and 15 different people, and they gave them 10 days to comply. He said 14 of the 15, not including this gentleman, either removed their lights, or unplugged or disabled them. One person gave Mr. Frazier the (lighting) receipt, because they were not too happy, which showed they had put in \$8,100 worth of lighting at their business. Again, 14 of the 15 businesses complied. Technically, the applicant was in violation, but once he filed his appeal all fines or civil penalties were held back until the members here make their decision.

Dr. Pekman asked if there was anything unique about this business, and this lighting. Mr. Frazier said no, but they have had numerous complaints about light spillage. This applicant's business was not nearly as disturbing as others were, but it fell within the group of 15 businesses, along with the other gaming businesses, bars, hair salons, nail salons, and the like. He said the lights at this business were not particularly offensive, but it fell outside his interpretation of what the Land Development Code allows in terms of the bare bulb fixture being seen off the property.

Mr. Johnson asked how light spillage is defined. Mr. Frazier said the Land Development Code specifically talks about light foot-candles, brightness of the property, but only pertaining to residential. He said if the light spillage goes off the property, or causes a glare onto other properties or the highway, to cause a distraction, it is considered light spillage. That is one problem they had, with the flashing and blinking, like some of the city's large LED billboards that go out of control once in awhile and are strobing at people – that is considered light spillage that is coming off of the property. He said there are a few that he considered egregious offenders; this business was not one of them, but it is the business that appealed his administrative decision.

Mr. McBrayer asked if any of the other 14 businesses mentioned were similar to this one. Mr. Frazier said yes, quite similar; some looked like a UFO had landed there, and others were similar to Mr. Reissmann's.

Ms. Locke clarified that there were 15 businesses, and 14 of them said yes, but this gentleman said no. Mr. Frazier said correct, because he believed that Mr. Frazier erred in his decision. Since he had gotten his approval from that former zoning officer, he thought the situation was done, so he was likely very surprised by the City's decision and interpretation.

Ms. Locke said it is a fairly subjective decision, rather than objective. She asked if bare bulbs in downtown Hickory, in that area, are considered something similar. Mr. Frazier no, they did not consider it similar at all; they have other areas that have neon tubing, or signage or a strip that is illuminated on the inside, but there is not bare bulb. They do not consider Christmas lights or that type of décor to be in violation. Mr. Frazier said, is it subjective? He does not think so; he thinks it is objective because he has stated the specific Land Development Code statute for it. When they review the Land Development Code and make revisions to it, which will be brought to the Planning Commission, they will make it extremely more specific. Ms. Locke said it does seem subjective to her, in the way it is written now, and that it could be interpreted differently.

Dr. Pekman asked for clarification that Mr. Frazier had said earlier that the lighting was initially approved. Mr. Frazier said yes, the lighting at this business was initially said to be okay, from what he understands from the Zoning Officer at the time, but that he had erred. He said that just because the zoning officer erred does not mean a mulligan is given, or that it is grandfathered, not if the City can correct the error.

Mr. Deal asked if this lighting was in place at the time of the approval. Mr. Frazier said he believes it was, although many people put the lighting in after the inspections.

Mr. Hunt asked how long the business had been established. Mr. Frazier was uncertain, and advised him to ask Mr. Reissmann.

Ms. Dula stated that members were starting to ask questions that are better suited for the applicant.

Mr. Shabeldeen said the applicant had lights placed around the windows. Mr. Frazier said yes, and with a large amount of light spillage; with a lot of those neon tubes, the light is very self-contained.

Dr. Pekman said if the light spillage from the neon tubes exceeded the .2 foot-candles, it comes down. Mr. Frazier said if it is adjacent to a residential use, yes, or if the light tube in a commercial area was causing light spillage, such as onto Highway 70 or 321, yes. He said it is basically, in this case, the bare bulb, because he considers the applicant's lighting to be modest, as compared to many other businesses.

Dr. Pekman said he drove by and looked at this business, and asked if there was a gas station very nearby. Mr. Frazier said yes, at the corner of Startown Rd. and Hwy. 70, or in that general vicinity. Dr. Pekman asked if the gas station had too much spillage. Mr. Frazier said probably not, it is relatively self-contained and is not bare bulb, but again, the City is looking at reinforcing the Land Development Code with more specific language. He said staff did review their lighting standards. Basically, they had all of the gas stations give them a photometric plan – a lighting plan prepared by a professional engineer or lighting expert, and they have to comply with all regulations by not having bare bulb and not having light spillage. He does believe that if a new business comes into effect, or one changes from Joe’s Gas Station to Johnny’s Gas Station, they have to comply. However, there are several in the city that he would consider as having light spillage, but those were grandfathered in from before the Land Development Code (LDC) was written in its present form, with regard to that issue.

Mr. Hunt asked what if the lights were red ones. Mr. Frazier said it depends on the type, such as if they were bare bulb. There was one business with red lights that looked like a Christmas tree. He noted a few businesses with red lights, like Chick-fil-A, Golden Corral, Chili’s, and maybe Applebee’s, that have the other type of lighting the interpretation allows for, and it would be in compliance with the LDC. They have had numerous restaurants ask for something different, like something that would move all around or be much brighter, or their engineer or lighting expert said they would comply with the City’s code. Same thing with car dealerships; they can require a shadow box light so that bare bulb does not spill out onto any other properties, or cause glare on a major thoroughfare.

Mr. Mays said the spillage is caused more by bare bulb exposure, instead of having some kind of a cover; the spillage is occurring out of the bare bulb, whereas the much better lighting is contained by some type of fixture. Mr. Frazier said that was correct.

Rev. Johnson said this does seem very subjective, and that he did not quite comprehend it. Mr. Frazier said that appeared to be what Ms. Locke had also said, but he would respectfully disagree, because he has cited what he believes to be evidence of the LDC, which is his, for better or worse, to interpret in North Carolina, and here in the City of Hickory.

Ms. Locke said there are so many other buildings that are, in her opinion, light sources, and are very visible from outside their property; she could think of many where that is the case. She respectfully disagreed with Mr. Frazier, due to that type of illumination.

Ms. Dula encouraged members to go ahead and receive all of the evidence, including from the applicant. She said they were launching into a discussion and have not heard from the party who actually appealed this. So, she encouraged them, if they do not have any further questions for Mr. Frazier, to allow the applicant his opportunity to present evidence, and ask him questions. And then, based on the evidence they have heard from all parties, they will be better able to discuss that in its totality and render a decision, based on all evidence.

There were no additional questions for Mr. Frazier.

The Staff Report was entered into the record as Exhibit A.

**Lutz Reissmann** addressed Commission members.

Mr. Reissmann, the applicant and owner of Aloha’s Player Arcade, said his biggest question is just what members had been talking about, the spillage aspect of it, because every light spills. One thing he wanted to correct Mr. Frazier on is that these are the new LED lights, so they are not single bulb; to replace it, you cannot just replace the bulb, you have to replace the whole string. He said he thought the light spillage on those is actually very minimal, because they are LEDs; the only way you can actually see the light is to look at the light, it will not

catch your eye from the side. You can put your hand up to the light, within 6-inches away from the actual strip, and you will not even see the color of the light, but yet from a distance, you can. He just feels that the LED lighting system for commercial applications is appropriate.

Mr. Reissmann brought photos of a local Checkers, McDonalds, and Wendy's to share, saying he did not realize the hearing would be so formal. He apologized for only bringing a single photocopy of his photos. He said the lights at Checkers are actually neon lights, which are glass with a gas enclosed in it, and noted that neon lights could break. The McDonalds has an LED lighting system, created from many, many strips put together, to give such a high impact. He said Wendy's on Highway 127 also has the same LED lights. These lights cost probably \$25,000; if he could afford to put a sign like that up in his window he would do it, but unfortunately he cannot spend \$25,000.

Mr. Reissman feels like the law, or the ordinance, is outdated. He thinks it is very vague. His lights were very expensive, and he feels the whole question of light spillage, or light pollution, is a very vague topic to even try and adjust. How are you going to grapple with that, even in the future? He built his own business in the last four years, and the way they have made commercial lighting, you can have a Wal-Mart sign that can be seen from everywhere, and to him that is light spillage, kind of like light pollution. By just having strip lighting around the window, none of his neighbors, and he did check with them, were against it at all, they actually liked it because they thought it was getting people to notice the building as they drive up and down the highway.

Ms. Dula asked Mr. Reissman to share his photos with Board of Adjustment members, and then submit them to the clerk as evidence.

**Mr. Reissmann** asked if there were any questions from the members.

Mr. Mays asked if Mr. Reissmann had LED bulbs at his business. Mr. Reissmann said no, and they are not an open bulb, it is an LED strip. Mr. Mays said he did not have actual exposed bulbs, and these LEDs are actually very small optics. Mr. Mays asked if his lights would strobe. Mr. Reissman said no, and the lights are blue to match the color of his roof. He said he is an easy-going guy and is not trying to break any laws, or anything, and that Hickory has been great to work with from the very beginning when he got his permits. The City had no issues with him or his business plans, so that is why he was kind of surprised when he got the notice. He has been there almost 2½ years now, but they have been closed for the last 4-months, due to the virus pandemic.

Mr. Deal asked how long Mr. Reissman had been in business at this location, and prior to receiving this citing. Mr. Reissmann said for 2-years. He had to do a lot of electrical upgrades to the property, to host the computer terminals, which was a huge investment, to comply and so that he could have extension cords. He said there are a lot of unscrupulous operators out there, and he tries not to be one. That is why he is here, because he wants to present what he has, and who knows where this will go. But literally, you can take a piece of white paper and go to the side of his lights, and it does not spill out – it is only visible because you are looking at it. He said it is hard to explain unless you actually went up to the light and held a piece of paper 12-inches away from it; you would not even see the color of the light, but yet you can see it. He said that is why it has been so adopted for commercial use. Mr. Reissmann said the McDonalds and Wendy's lights could be seen from a half or full mile away, when coming down the street, but his cannot even be seen unless someone actually looks over at them.

Mr. Shabeldeen asked if these lights had been turned on since his business opened, and Mr. Reissmann said yes.

Mr. Mays studied the photos Mr. Reissmann had provided, and asked if all the bulbs were the same color. Mr. Reissmann said yes, adding that all types of lights are available, such as flashing, chasing, and others, which are distracting. He said his lights just stay on, in a steady mode – they do not flash or strobe, and again, he believes that in the future, the ordinance should be written to address that. He understands what everyone is saying about light pollution and spillage, all that, but he just felt that these are not doing that. There are a lot of worse lights out there, even today; it just depends who you ask. He said the McDonalds could be seen as offensive, too. There

could be subliminal advertising there, making you want to pull over and buy a Big Mac instead of driving home. He noted that he had studied subliminal advertising and its effects while in college, a long time ago.

Mr. Hunt asked if the lights remain on for 24-hours. Mr. Reissmann said no, they turn them off at night when they leave. They are not open 24-hours, like a lot of places, but they do not do that. They close at 12:00 midnight, and turn them back on when they open at 10:00 am. If someone forgets to turn them off they might stay on, but that is not normal. The lights are not on a timer to go on and off.

There were no additional questions for Mr. Reissmann.

Mr. Mays advised him that members could have further questions for him later in the hearing.

Mr. Reissman submitted his photos as evidence, which were entered into the record as Exhibit B.

No others were present to speak in favor of the application.

Ms. Dula suggested Mr. Frazier and the applicant now present rebuttal to the testimony, if they choose to do so.

## **REBUTTAL**

**Mr. Frazier** thanked Ms. Dula for the opportunity. He said that, basically, he was given a task in interpreting the Land Development Code, based upon numerous complaints his department had with those types of lighting. It was not based on anything against Mr. Reissmann, his specific location or his specific business; it was based on his interpretation of the code.

Mr. Hunt asked if there was any type of lighting the applicant could use to draw attention to his business that the City would accept. Mr. Frazier said that was a very good question, because some of the businesses that removed their lighting then came to him and asked what the City would accept. Staff did some further research, such as talking with other municipalities and the NC Chapter of the American Planning Association, and the City then offered several alternatives to a few of the businesses, saying they were fine with those. He said some people still complained, saying they (the lights) were still the same, but Mr. Frazier advised them that no, they had been changed out, and by his interpretation they comply with City code.

Mr. Hunt asked if the applicant had been informed of the acceptable lights. Mr. Frazier was not sure if the applicant ever asked about alternative lights, and he did not believe it was relevant until such time that a decision is made on his appeal. If the applicant is allowed to have that lighting, then it will remain; if he is not allowed to have that lighting, Mr. Frazier will work with him to formulate some type of compromise that would be acceptable with the City's Land Development Code. However, it has not reached that point yet.

Dr. Pekman clarified that Mr. Frazier had said the lighting situation at this business is not unique. Mr. Frazier said correct. Dr. Pekman asked if the members find that they should allow the lighting at this business, would the other 14 businesses then appeal. Mr. Frazier said he was not an attorney, but he would say no, because only one of the businesses has appealed, and most of the other businesses had totally removed their lighting. Some did turn the lighting off, or disable it, but the vast majority removed the lighting they had. And again, two or three businesses came to him and asked what he would accept.

Ms. Dula noted the time for the other businesses to appeal had likely expired. Mr. Frazier said correct, because they had 30 days from the date of his letter in March to appeal. That period of time has long since expired now.

Dr. Pekman said he understands the applicant's position, and thinks he understands Mr. Frazier's position, and it seems that most people are doing what they are supposed to do, although the code seems somewhat ambiguous. He said there are 14 other people, and one of them spent \$7,200 for lights. Mr. Frazier said it was actually \$8,100 and the receipt was shown to him. Mr. Frazier said the two gentlemen with a business in Hickory who removed the lights that cost \$8,100 were quite upset. They came in and talked with him, asking what they could do, and Mr. Frazier advised that they could certainly appeal. He received one request for an interpretation of an appeal from a lawyer, and they said they would think about it; they called him back and said they were not appealing. Staff talked to the property owner, and they said they did not want to be in any trouble with the City and they were going to comply, remove their lighting, and work with the planning office. Mr. Frazier said no one had acted outrageous or crazy, and Mr. Reissmann certainly did not. Dr. Pekman said he just believes everyone wants to be as fair as they can possibly be. Mr. Frazier said certainly, that he did, too. Dr. Pekman said he wondered if the members overturn the decision and accept it here, then what about the other 14 businesses, especially the one that spent \$8,100.

Ms. Dula reminded members that they are focusing on this one case tonight, not the other 14; the others are not here, and this appeal is not about what happened to those 14 businesses. She said members should consider the evidence in relationship to Mr. Reissmann's appeal. She said the members' purpose here is not to re-write the ordinance; she understands the desire to want to be fair, but the members need to be fair in the context of this case, not the other 14, because they are not here appealing. She said the decision they would make here is specifically for Mr. Reissmann, and it will not have a bearing on the others.

Mr. Kerley said he understands, but either you allow these lights or you do not, and he does not believe there is a gray area in between. He said if it is part of the code and the City does not allow these lights in the city, and they do not meet the code – even though he went by and looked at Mr. Reissmann's business at night and does not believe his lights are offensive at all – but, at the same time, on his side of town, there have been some lights that have been very offensive to him. They are the same type of lights, but they move around and have a lot of motion. Even though Mr. Reissmann's (lights) are not this type, and not offensive, he believes that either the City allows the lights or they do not. Mr. Kerley said he did not see how that could be put in Mr. Frazier's court, to say this one is okay and that one is not; the City either allows them, or they do not. He asked if this was not what the members were here for. Mr. Mays said it is an interpretation of what the code is, and Ms. Dula stated that was Mr. Frazier's job.

Mr. Frazier said he and his staff try to be extremely consistent in their determinations; they cannot treat one person better or worse than any other. He gave credit to his staff and the City as a whole, that during his 15-years here, besides this appeal, which he totally respects, they have had just five (5) appeals of his administrative decisions. So again, he believes this shows that they go out of their way to be fair and the vast majority of their appellants have been respectful to their staff, and no one has gotten upset. He said it is a difficult thing, to make an interpretation. Can the code be improved? In this case, certainly. Can it be improved in other cases? Certainly. When he first came here, the code was almost 500-pages. They have tried to do everything they can to make it as objective as possible, and will continue to do so. This will be taken care of, and the next update will be coming this fall.

Mr. Mays said he believed Mr. Kerley brings up the point of what members are here for tonight. The code is what it is written down as, in black and white. Regarding interpreting the code, he said Mr. Frazier knows a lot more than anyone else about the lighting situation than he would, and the members' decision tonight is whether Mr. Frazier was correct in presenting the violation of code to Mr. Reissmann.

Mr. McBrayer said he had some comments to make that are similar to what Mr. Mays said, but he would yield to Mr. Frazier's rebuttal and wait until members hold their discussion.

Mr. Shabeldeen asked how the lighting that Mr. Reissmann has around his windows is different from the ones around the Checkers building; it is not signage, it is continuous lighting. Mr. Frazier said they look at spillage, and

check that the photometric plan given them by the engineer or lighting expert does comply. He makes a determination on each one, and does his best to be consistent. Fenestration is what the code is discussing, and specifically, fenestration is doors and windows.

Dr. Pekman said if the applicant had presented a photometric analysis in 2018, did Mr. Frazier believe this group would be here today. Mr. Frazier said probably not, but honestly, in his defense, the City does not require it for every single business; some businesses will come in and say they know they are complying with the City's lighting code, because of "x", or they ask, will this comply. He said many municipalities across the state are totally different, and what Hickory allows, vs. what Sawmills or Hudson allows, is totally different.

Dr. Pekman said he knew City Counsel had said that members were not to think about the other 14 people in this situation, but when he looks at this set of lights and then looks at the lights on Checkers, he is having difficulty understanding how they are different. He said the reason he brought up the issue of photometric analysis, is that Checkers is a large business, and as a franchisee, they are going to have all of that available to them. So if members are to view all of this evenly and fairly, he feels uncomfortable with what is being done here.

Mr. Mays said members are moving into discussion here, and Ms. Dula agreed.

Dr. Pekman said his question was answered, that Mr. Reissmann did not have a photometric analysis.

Mr. Shabeldeen said 9.7.1 states, "The purpose of this section is to ensure lighting contributes to the character of the site ..." He asked Mr. Frazier to speak to that, whether it contributes in any way to the character of the site, or degrades the character of the site. Mr. Frazier said something he has thought for over 34-years of working in planning is that "the character of the site" can be quite subjective; he has met more characters in planning than he has dealt with character of site. He said the City's Hickory by Choice Comprehensive Plan, which again is their blueprint for growth and development, and not the legal ordinance which is the Land Development Code, does not address it. It talks about the character, and how it has to be consistent. If this type of lighting were in a historic district, Mr. Zelenske's hair would turn gray, so no, that would not be consistent with the character. But on a highway, the character of the area is something that is in the code, but was something he totally did not consider in this case, since he did not think there was any real applicability to it. He said it is what one person maybe finds offensive, and that would not be subjective, in terms of character in the area. He could certainly tell what was out of character in an area, such as a historic district, but this is not such an area.

Mr. Hunt asked how the businesses adjacent to Mr. Reissmann's business felt about his lights. Mr. Frazier said staff did not receive any complaints from the adjacent businesses regarding Mr. Reissmann's business, but they certainly did from other businesses like his. But no, they did not hear from the neighbors at his location.

Mr. Johnson said he was having a problem with 9.7.1 and read aloud, "The purpose of this section is to ensure site lighting contributes to the character of the site and does not disturb adjacent development as light spillage." He said that makes no sense. Mr. Frazier said he respects his opinion, as he was the second member to say this.

There were no further questions for Mr. Frazier.

Mr. Mays advised Mr. Reissmann that he now had rebuttal time, if he would like to use it.

**Mr. Reissmann** said he was listening to everything being discussed. As he heard the members talking, he believes the real key thing is that the code is vague. Also, prior to installing his lights, he had approvals to do it. He was told not to put out any feather flags or banners, saying "grand opening", and that he did want to put those out in front, but he was totally caught off guard about the lights. He does believe that no one wants to drive through a city and find it looks like the circus just hit town, but at the same time, when the circus does hit town and the fair comes out to the mall, then there are neon lights and such, because that's the attraction. He agreed that

these lights are very expensive, they are not cheap. His lights did not cost \$8,100 because he did not have that kind of money, but they did cost close to \$3,000. None of his neighbors have complained about the lights, in fact the nail salon directly next to him has an “open” sign, and also a nail sign that chases, located inside the store window.

Mr. Reissmann said he believes the code is a little outdated and needs to be revised, and not allow the chasing lights or flashing lights. He said you do not want to look like a strip club, at least he does not want to, and that is why he did not choose those lights.

Mr. Shabeldeen asked if he had any other businesses similar to this one in the area. Mr. Reissmann said not here, but he has a store in Lexington. Mr. Shabeldeen asked if it has similar lights. Mr. Reissmann said no, it does not have any lighting at the moment. The Lexington business has been in operation for nearly 13-years. His business there is doing good, and the City has been great, just like Hickory has. They work with the City of Lexington and police, and do a lot of things with them. Mr. Shabeldeen said so the lights do not necessarily draw in more business. Mr. Reissmann said that was true in the case of Lexington, but he has been there for 13 years and has only been in Hickory for 2-years. The only reason he put up lights on this particular building was because he felt like he was the last one arriving in town, and everyone else had them. He felt like he needed to be competitive and get more attention; it has helped, it definitely has helped. But again, if he had \$22,000 and could put a LED sign on top of his building, like McDonalds, then he would have done that. But unfortunately, he is not in that league.

There were no additional questions for, or further comments from, Mr. Reissmann.

Mr. Mays declared the Public Hearing was closed.

Mr. Mays said members would hold their discussion now, and then make a decision.

Mr. McBrayer said in his business and profession, two words that were talked about tonight are repeatedly discussed – consistency and fairness. He said the last thing he is going to do is squelch an up and coming business in town. He said members had said, in a round about way that this is kind of vague, but the fact is, just as Mr. Kerley said, it is what it is. Mr. McBrayer tells people in his business all the time, those who don't follow the rules or guidelines set forth, that they can argue with it, and that's fine, they can argue with it, but this is the rule. If you do not go by the rules, you might as well just tear that paper up and not follow it at all. So he is thinking that this code is the rule; it is the law. It is his understanding that Hickory by Choice 2030 is the guidelines, and the LDC is the law. He said that moving forward, maybe this needs to be studied, redefined and tweaked, possibly somewhat or quite a bit, that he was not sure because he is not an expert on the subject. But as it stands today in his opinion, this is what members are looking at on this particular statute. He said maybe the applicant could unplug the lights and lobby to get this adjusted. And again, he considers himself a rule follower, because that is what he does for a living. So again, you have to be consistent, and consistently fair.

Mr. McBrayer said that because there were 15 site visits and 15 citations, for lack of a better term, and that 14 complied and one did not, it does not mean that the one who did not comply is right. And again, he did not want to squelch anyone's chances of having a successful business in town. However, he thinks the City has to look at the guidelines already established, as the statues and laws of the City, and follow it. He said it was kind of like the issue of special use permit for bars and drinking establishments that the Planning Commission had discussed recently. Everyone voted on it, and many hated it, but they voted. He actually got pushback from some people in town, due to how he had voted. He believes since that hearing was held, the City had gone back and changed the law on special use permits for bars and drinking establishments. He would put this situation in that same category, because these are the current guidelines and laws. To be consistently fair, he thinks members have to go with what they have, and if they do not like what they have here – and obviously if they took a straw poll, it would probably show they need to tweak it – then what they need to do in moving forward is to look at this guideline and then tweak it.

Mr. Mays said it comes down to the point that your interpretation and Mr. Frazier's interpretation of the same thing could be different. Mr. Frazier is the Planning Director, and is the one who administers the code, and the members are not here to interpret it; what they are here for is to determine if he was correct in his decision to cite these 15 businesses, not just Mr. Reissmann's, of which 14 complied, and one did not comply and appealed. Mr. Mays said you would think that Mr. Frazier knows what his own City code is and how to apply it. He said the members' decision here is whether Mr. Frazier is right, or Mr. Reissmann is right.

Ms. Locke said she disagreed, that she believes it is about due process, it is an appeals process. Mr. Mays said the members are here to make a decision, based on Mr. Frazier's evidence and findings, and Mr. Reissmann's evidence and findings. The BOA bases their decision on which of them is correct, according to how the ordinance reads. Ms. Locke said she understood it was part of the process, that Mr. Reissmann had the right to appeal the decision, correct? Mr. Mays said yes, and that he did. Ms. Locke said members get to decide, based on the evidence presented by both, the subjectivity of that evidence, correct? Mr. Mays said it is based on whether the code is correct in saying that Mr. Reissmann is in violation, or not. Ms. Locke said okay.

Mr. Johnson asked Mr. Mays how the members should deal with the subjective quality of this, that there was no question in his mind that this is a subjective decision and he was not sure what facts he could lay out if he wanted to oppose this decision. He asked how to interpret subjectivity.

Ms. Locke added that the lights had been approved for 2-years, that Mr. Reissmann had done exactly what he was told to do. He is now appealing a decision that he thought he was in compliance with for 2-years, because of the vagueness of this and the interpretation by Mr. Frazier.

Mr. Deal asked if he was correct in saying that this is supposed to say, was there any substantial evidence that was presented by the applicant that changed anything, meaning did he present any evidence to show that he met the code. Mr. Mays said that was correct, has the lighting met the code set by the City of Hickory.

Dr. Pekman asked if the applicant has any recourse, because he opened this business with his lights in place. He spent \$3,100 and the City told him that was okay to do, but then they came back to him 2-years later and told him no, it is not okay. He asked what Mr. Reissmann's recourse is to recoup his \$3,100.

Ms. Dula said that is not in this body's purview. Mr. Frazier presented to members that a zoning officer made a mistake, or an error. A mistake made by a zoning official, or a planner, does not protect the applicant from the need to follow to the code.

Dr. Pekman said that he could build a \$150,000 home which he was told was in code, and then 2-years later the City could come back and tell him it was not in code, and that he needed to make the following corrections. Yes, that could happen. Ms. Locke said he could bring it to the Board of Adjustment and they could overrule the decision.

Mr. Deal asked when the code would be re-evaluated. Mr. Mays said there is a review once a year, and anything that has presented a problem or is identified as possibly presenting a future problem, is out of date, needs adjusting, or was overlooked in prior years, these are all likely to be revised. Mr. Deal said, so if the applicant is told to unplug his lights now, and then the code is re-evaluated and his lights are within code, he could then plug his lights back in. Mr. Mays said yes, if the code changes to allow for the lights.

Meg Locke moved, seconded by Sam Hunt, to grant the applicant's appeal.

Mr. Mays stated this is a quasi-judicial hearing and there would be a roll call vote, with members voting individually and stating the reasons for their vote.

Ms. Dula said members would be voting whether to grant Mr. Reissmann's appeal. Specifically, it is an appeal of an administrative decision (AAD) by the Planning Director, in accordance with Land Development Code Section 2.10. She said Ms. Locke had moved to grant Mr. Reissman's appeal, which has been properly seconded, and each member must vote to grant it, yea or nay. Again, she said the motion before members is to grant Mr. Reissmann's appeal.

Mr. Mays again reminded members they would vote individually, stating the reasons for their vote, based on the evidence presented. He called the motion to a vote.

**Mr. Kerley** voted **to deny** the appeal. He said that, with what the members have before them and with what he has seen in this city regarding lighting, he visited the applicant's business last night when it was dark and did not find it to be offensive at all; it is okay. Hickory has an ordinance for a reason, and you cannot say this one can do it, but this one cannot. He said he disagrees with the motion.

**Mr. Deal** voted **to deny** the appeal. He said he believes the applicant is probably doing the best he can with what he has, but he did not present any substantial evidence to contradict the decision.

**Mr. Shabeldeen** voted **to deny** the appeal, saying he did not hear enough evidence to contradict the original decision.

**Dr. Pekman** voted **to deny** the appeal. He said he was deeply troubled to vote against this appeal, as he believes the applicant legitimately tried very hard to comply with City code. However, he also believes in being consistent.

**Mr. McBrayer** voted **to deny** the appeal, for the simple fact that the City has codes; they are there for a reason, and businesses must comply with them. He charged the members to revisit the codes and ordinances very soon, and make any adjustments that are needed.

**Mr. Hunt** voted **to grant** the appeal, based on the fact the applicant had initially received approval to have the lights, that he has been in business there for 2-years, and it is his hope that this will bring about a change for other businesses with similar lighting situations in the future.

**Mr. Johnson** voted **to grant** the appeal, based on his interpretation of Section 9.7.1 in the Land Development Code, and also based on the General Guidelines.

**Mr. Weaver** voted **to grant** the appeal, based on the General Guidelines in the Land Development Code, which he believes are a little vague.

**Ms. Locke** voted **to grant** the appeal, based on 9.7.2, the General Guidelines in the Land Development Code, which are very subjective and should be revised.

**Mr. Mays** voted **to deny** the appeal, saying there was not substantial evidence to override Mr. Frazier's decision that the applicant's lights were not in compliance with the code set forth for businesses.

**Voting to approve** the Appeal of Administrative Decision (AAD) 20-01 were Ms. Locke, Mr. Johnson, Mr. Weaver, and Mr. Hunt. **Voting to deny** the Appeal of Administrative Decision (AAD) 20-01 were Mr. Kerley, Mr. Deal, Mr. Shabeldeen, Dr. Pekman, Mr. McBrayer, and Mr. Mays.

Mr. Mays said the Appeal of Administrative Decision (AAD) 20-01 by Mr. Reissmann had been denied by the Hickory Regional Board of Adjustment, on a majority vote of 6-4. A total of eight (8) votes were needed to approve the appeal. Ms. Locke's motion failed and the administrative decision by Mr. Frazier was not overturned.

**Other Business:** Mr. Mays asked Mr. Frazier if there was any other business for the Board of Adjustment, and there was none.

**Next Meeting:** Members will be notified of the next scheduled Board of Adjustment meeting.

**Adjourn:** Mr. Mays thanked everyone for attending. Sam Hunt moved, seconded by Bill Pekman, to adjourn. There being no further business, the meeting adjourned at 7:40 pm.

---

Randall Mays, Chairman  
Hickory Regional Board of Adjustment

---

Anne Starnes, Minutes Clerk  
City of Hickory

## APPEAL OF ADMINISTRATIVE DECISION ANALYSIS

**PETITION:** AAD 20-02

**APPLICANT:** Senior Pastor Paul Deal on behalf of Winkler's Grove Baptist Church

**PROPERTY LOCATION:** 3320 9<sup>th</sup> Avenue Drive NW

**PIN:** 2783958491 (Burke County)

**ACREAGE:** ~4.4 acres

**WARD:** The property is located in the Hickory ETJ

**ZONING:** Low Density Residential (R-1)

**REQUESTED ACTION:** The applicant requests an appeal of an administrative decision (AAD) rendered by the Planning Director, in accordance with Land Development Code Section 2.10.

**BACKGROUND:** On September 10, 2020, Sign Systems, a Hickory based sign contractor retained by Winkler's Grove Baptist Church, contacted Planning Director Bran Frazier to discuss obtaining permits for an electronic message board (EMB) sign for the church's property at 3320 9<sup>th</sup> Avenue Drive NW. At that time, Director Frazier informed Sign Systems that the property was zoned R-1 and that the Land Development Code, specifically under Section 10.8.1 Subsection B, does not permit EMBs to be installed on residentially zoned properties, like the subject property. Sign Systems informed Winkler's Grove Baptist Church of this information. Paul Deal, Senior Pastor for the church, contacted Director Frazier on September 11, 2020 to explain that the church had been fundraising for a number of years to obtain an EMB for the property. Director Frazier explained to Pastor Deal that the Land Development Code had been amended by City Council on July 17, 2018 (through Text Amendment 18-01) to prohibit EMBs in residential zones, and that although fundraising activities had started prior to the text amendment, a sign application was never submitted prior to the code change and therefore, an EMB on the property could not be legally permitted. Director Frazier provided this determination in writing on a letter dated September 16, 2020 and emailed September 17, 2020 to the applicant. On September 17, 2020, the applicant confirmed his request for an appeal of the Director's decision.

**EXPLANATION:** Electronic Message Board regulations (Section 10.8) of the Land Development Code (LDC) state the following:

*Sec. 10.8 Electronic Message Boards (TA 18-01)*

*The following regulations shall apply to all electronic message boards.*

### 10.8.1 General Standards:

- A. *Sign Area. No more than fifty percent (50) of the area of any proposed sign shall be devoted to electronic message boards.*
- B. *Where prohibited. Electronic message boards shall not be permitted within residential zoning districts.*
- C. *Message Hold and Transition*
  - a. *Signs containing electronic message boards located within non-residential zoning districts shall maintain static messages for at least eight (8) seconds. The message transition shall take no more than two (2) seconds, with no flashing, scrolling, spinning, or similar movements.*
- D. *Sign Intensity (Brightness)*
  - a. *All signs must be equipped with a dimmer control and photocell that automatically adjusts the display's intensity according to natural ambient light conditions. No electronic message board shall be brighter than is necessary for clear and adequate visibility, and shall not exceed a maximum of 5,000 Nits during daytime hours (sunrise to sunset) and 500 Nits during nighttime hours (sunset to sunrise).*

The decision of the Planning Director was rendered based upon the following administrative findings:

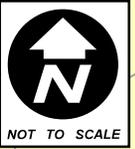
- The subject property is zoned Low Density Residential (R-1) and has held this zoning since at least 2011.
- The applicant requested to install a sign that is an electronic message board on the subject property.
- The Land Development Code (Section 10.8.1) specifically states that electronic message boards are prohibited in residential zoning districts.
- No sign application (for the church's EMB) was received prior to the changes associated with Text Amendment 18-01 becoming effective.

**BOARD OF ADJUSTMENT AUTHORITY:** Land Development Code Section 2.10 vests the Board of Adjustment with the responsibility of considering requests for appeals of administrative decisions rendered by the Planning Director in the administration or enforcement of the provisions of the Land Development Code.

The Board of Adjustment may reverse administrative decisions upon finding of substantial, factual evidence in the official record that the administrative official erred.

**RECOMMENDED ACTION:** Staff recommends the Board of Adjustment affirm the decision rendered by the Planning Director based upon the following findings:

1. The subject property is zoned Low Density Residential (R-1).
2. The applicant requested to install a sign that is an electronic message board.
3. The Land Development Code (Section 10.8.1) specifically states that electronic message boards are prohibited in residential zoning districts.
4. No sign application (for the church's EMB) was received prior to the changes associated with Text Amendment 18-01 becoming effective.



*Low Density Residential*

*Industrial*

HICKORY AIRPORT RD

GOAT FARM ST

9TH AVE DR NW

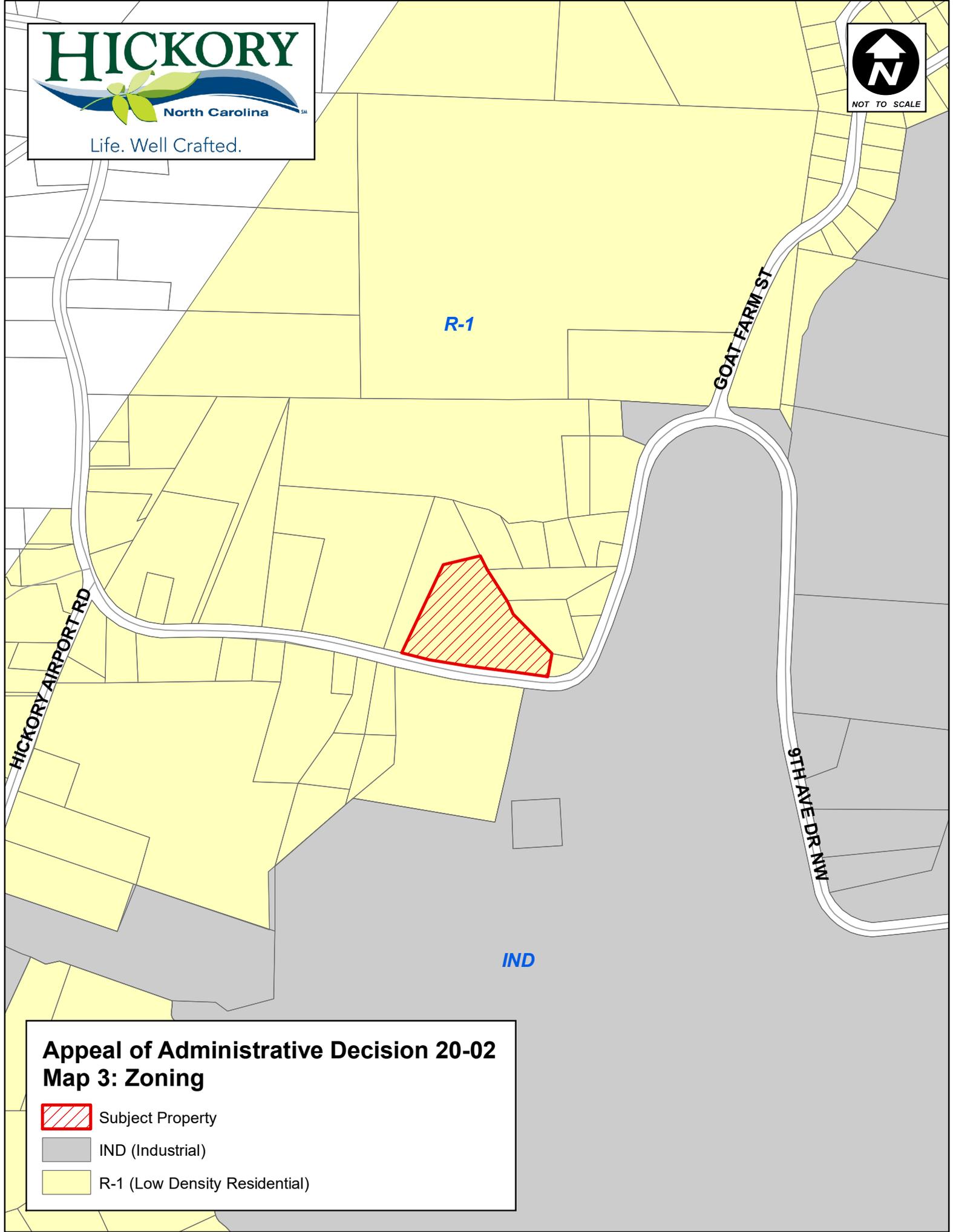
**Appeal of Administrative Decision 20-02**  
**Map 1: Future Land Use**

-  Subject Property
-  Low Density Residential
-  Industrial



**Appeal of Administrative Decision 20-02  
Map 2: Aerial (2018)**

 Subject Property



R-1

IND

HICKORY AIRPORT RD

GOAT FARM ST

9TH AVE DR NW

**Appeal of Administrative Decision 20-02  
Map 3: Zoning**

-  Subject Property
-  IND (Industrial)
-  R-1 (Low Density Residential)



## Planning Department

City of Hickory  
Post Office Box 398  
Hickory, NC 28603-0398  
Telephone (828) 323-7422  
Fax (828) 323-7476  
bfrazier@hickorync.gov

September 16, 2020

Pastor Paul Deal  
Winkler's Grove Baptist Church  
3320 9<sup>th</sup> Avenue Drive, NW  
Hickory, NC 28601

Dear Pastor:

It was a pleasure speaking to you earlier this week, regarding the electronic message board that your church wishes to erect.

I am in receipt of your letter, dated September 11, 2020. As I had indicated to you on the phone, Council amended the Land Development Code on July 17, 2018. Such text amendment (TA) prohibited electronic message boards within all residential zoning districts. This amendment is identified as (TA-18-01). Your church is situated in an R-1 zoning district and is thus ineligible to have an electronic message board.

You have the right to appeal my interpretation of the LDC under Article 2, Section 2.9 and Section 2.10. I will consider the letter from you referenced above, as the official request of a written interpretation from my office.

I will file your request of appeal to the City of Hickory Board of Adjustment (BOA). A Public Hearing will be scheduled for 6:00 PM, on Wednesday, October 28, 2020. Such hearing will be held in the City Council Chambers. Notification of said public hearing shall be provided in accordance with Article 2, Section 2.1.7. Such notice will be mailed to you ahead of said hearing.

The BOA will, following the close of the public hearing, take final action, after determining the evidence presented by both the applicant and the City.

An affirmative vote of a majority of the total membership of the BOA, excluding vacant seats and disqualified members, shall be required to reverse, in whole or in part, any order, requirement, decision or determination of this office, per ordinance.

The Board may reverse the decision of this office, after issuing Findings of Fact. Any person who is directly affected by the decision of the BOA (if affirming this office's decision) may appeal to the Superior Court of the County where they property is located. Such appeal must be made within 30 days of the BOA decision.

Please feel free to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "B. M. Frazier", is written over the typed name.

Brian M. Frazier  
Planning and Development Services Director

2.8.8 Findings of Fact

All decisions on zoning variances shall be supported by an affirmative finding of fact on each of the approval criteria of Sec. 2.8.5. Each such finding shall be supported by substantial evidence in the record of proceedings.

2.8.9 Notice of Decision (*TA 14-01*)

Within 30 days after a final zoning variance decision is made by Board of Adjustment, copies of the written decision shall be sent to the applicant and filed in the office of the Planning Director, where it shall be available for public inspection during regular office hours.

2.8.10 Appeals

Any person aggrieved by a zoning variance decision of the Board of Adjustment, may appeal the decision to the Superior Court of the county where the property is located. Such an appeal must be filed within 30 days of the filing by the Secretary of the Board of Adjustment of the decision in the office of the Planning Director or the delivery of a copy of the decision to every aggrieved party who has filed a written request for such copy with the Secretary or Chairman of the Board of Adjustment at the time of the hearing of the variance request, whichever is later.

---

**Sec. 2.9 Written Interpretations**

2.9.1 Application Filing

Applications for written interpretations of this Land Development Code shall be submitted to the Planning Director on forms available in the Planning Department.

2.9.2 Planning Director's Review and Decision

Within 30 days of receipt of a complete application for a written interpretation, the Planning Director shall: (1) review and evaluate the application in light of this Land Development Code, the Hickory by Choice 2030 Comprehensive Plan and any other relevant documents; (2) consult with other staff, including the City Attorney, as necessary; and (3) render a written interpretation.

2.9.3 Form

The interpretation shall be provided to the applicant in writing and shall be filed in the official record of interpretations.

2.9.4 Official Record of Interpretations

An official record of interpretations shall be kept on file in the office of the Planning Department. The record of interpretations shall be available for public inspection in the Planning Department during normal business hours.

2.9.5 Appeals

Appeals of written interpretations of the Planning Director may be taken to the Board of Adjustment in accordance with procedures of Sec. 2.10. If the appeal results in a change of interpretation, the new interpretation shall be filed in the official record of interpretations.

---

**Sec. 2.10 Appeals of Administrative Decisions**

2.10.1 Authority and Applicability

The Board of Adjustment shall be authorized to hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the administration or enforcement of the provisions of this Land Development Code.

2.10.2 Application Filing (*TA 14-01*)

Appeals of administrative decisions in the form of a written request shall be submitted to the Planning Director and City Clerk. Appeals must include the reason the appeal is being sought. Appeals of administrative decisions shall be filed within 30 days of the date that the administrative official's decision is given to the applicant.

2.10.3 Effect of Filing (*TA 14-01*)

The filing of a complete application for appeal stays all proceedings in furtherance of the action appealed, unless the official whose decision is being appealed certifies to the Board of Adjustment, after the appeal is filed, that, because of facts stated in the certification, (a) that a stay would cause immediate peril to life or property or (b) that the situation appealed from is transitory in nature, and therefore, an appeal would seriously interfere with enforcement of this Land Development Code. In each instance, the official whose decision is being appealed shall place in the certificate facts to support the conclusion. In such case, proceedings shall not be stayed other than by a restraining order, or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. Should enforcement action not be stayed, the appellant may file a request for an expedited hearing with the Board of Adjustment per NCGS §160A-388(b1)(6).

2.10.4 Record of Administrative Decision (*TA 14-01*)

The official whose decision is being appealed shall transmit to the Board of Adjustment all papers constituting the record upon which the action appealed is taken. The official shall also provide copies of the record to the appellant and to the owner(s) of the property that is subject of the appeal if the appellant is not the owner.

2.10.5 Public Hearing Notice (*14-01*)

Newspaper, mail, and posted notice of the Board of Adjustment's hearing shall be provided in accordance with Sec 2.1.7. Written notice of the hearing shall be mailed to the applicant.

2.10.6 Board of Adjustment Review and Decision (*TA 14-01*)

- A. The Board of Adjustment shall hold a public hearing on the appeal and, following the close of the public hearing, take final action based on the procedures and requirements of this section.
- B. The zoning official who made the final determination shall be a witness at the hearing.
- C. In exercising the appeal power, the Board of Adjustment shall have all the powers of the official from whom the appeal is taken, and the Board of Adjustment may reverse or affirm wholly or partly or may modify the decision being appealed.
- D. If the Board of Adjustment determines that it is necessary to obtain additional evidence in order to resolve the matter, it shall remand the appeal to the official from whom the appeal is taken, with directions to obtain such evidence and to reconsider the decision in light of such evidence.
- E. An affirmative vote of a majority of the total membership of the Board of Adjustment, excluding vacant seats and disqualified members, shall be required to reverse, in whole or in part, any order, requirement, decision, or determination of any administrative official. Notwithstanding the foregoing and in accordance with G.S. § 63-33(c), the concurring vote of a majority of the members of the Board of Adjustment shall be sufficient to reverse any order,

requirement, decision, or determination of any administrative official pertaining to the requirements of Sec. 4.6, "Airport Overlay District."

**2.10.7 Approval Criteria; Findings of Fact**

The Board of Adjustment may reverse an order, requirement, decision, or determination of any administrative official only when the Board of Adjustment finds substantial, factual evidence in the official record of the application that the administrative official erred. The decision of the Board of Adjustment shall be supported by written findings of fact.

**2.10.8 Notice of Decision (TA 14-01)**

Within thirty (30) days after a final decision on an administrative appeal is made by the Board of Adjustment, copies of the written decision shall be sent to the applicant and filed in the office of the Planning Director, where it shall be available for public inspection during regular office hours.

**2.10.9 Appeals**

Any person who is directly affected by a decision of the Board of Adjustment may appeal the decision to the Superior Court of the county where the property is located. An appeal to Superior Court must be filed within 30 days of the filing by the Secretary of the Board of Adjustment of the decision in the office of the Planning Director or the delivery of a copy of the decision to every aggrieved party who has filed a written request for such copy with the Secretary or Chairman of the Board of Adjustment at the time of the hearing of the appeal request, whichever is later.

**Sec. 2.11 Review and Decision Making Bodies**

---

**2.11.1 City Council**

**A. Powers and Duties**

The City Council shall have the following powers and duties under this Land Development Code.

**(1) Land Development Code Text and Zoning Map Amendments**

The City Council shall review applications for amendments to the text or zoning map of this Land Development Code and make a decision in accordance with Sec. 2.2.

**B. Conflicts of Interest**

A City Council member shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have direct, substantial, and readily identifiable financial impact on the member.

**2.11.2 Planning Commission**

**A. Powers and Duties**

The Planning Commission shall have the following powers and duties under this Land Development Code:

**(1) Land Development Code Text and Zoning Map Amendments**

The Planning Commission shall review applications for amendments to the text zoning map of this Land Development Code and make recommendations on such amendments to the City Council in accordance with Sec. 2.2.

**(2) Special Use Permits**

## Winkler's Grove Baptist Church

3320 9th Avenue Drive NW  
Hickory, NC 28601  
Email: [wgbc@winklersgrove.org](mailto:wgbc@winklersgrove.org)  
Church: (828) 324-7267  
Fax: (828) 324-1557



Winkler's Grove  
Baptist Church

September 11, 2020

To the Attention of Brian Frazier,

My name is Paul Deal and I'm the Senior Pastor of Winkler's Grove Baptist Church at 3320 9th Ave Dr NW, Hickory, North Carolina 28601. Our church resides in the ETJ of the City of Hickory, however we are in Burke county in a residential area. We have been advised that we cannot have a messaging sign in front of our church to communicate with the community, special up coming events or to minister to them through Bible verses, because of the city counsels decision approximately a year ago.

I am requesting a letter of interpretation of the land development code set forth by the city of Hickory council members. It is my desire and hope that the city of Hickory council members will work with us so that we can go forward and having the sign that would allow us to continue to minister in greater ways to our surrounding community. Where are church resides, we own the property on both sides of the road for approximately a quarter mile so this should not be a hazard or interference with anyone living in the area. While it is our desire to follow and obey the laws of the land, we also feel that the laws of the land should not impede against our constitutional rights federally or state constitutions to worship or be able to minister to those around us that are in need.

You are welcome to contact me at 828-302-4415 and my email address is: [paul@winklersgrove.org](mailto:paul@winklersgrove.org). Please help us resolve this matter so that we can go forward in Jesus's name.

Thanks so much,

A handwritten signature in blue ink that reads "Paul Deal".

Pastor Paul Deal

## APPEAL OF ADMINISTRATIVE DECISION ANALYSIS

**PETITION:** AAD 20-03

**APPLICANT:** Halbert “Hal” McPherson, owner of Best Results Advertising

**PROPERTY LOCATION:** Multiple locations

**PIN:** Multiple locations

**ACREAGE:** Multiple locations

**WARD:** Multiple locations

**ZONING:** Multiple locations

**REQUESTED ACTION:** The applicant requests an appeal of an administrative decision (AAD) rendered by the Planning Director, in accordance with Land Development Code Section 2.10.

### **BACKGROUND:**

*Around June 2020, several separate citizen complaints were received regarding benches with advertising on them being placed throughout Hickory. Zoning Enforcement Officer Jason Meier was assigned to investigate the complaints by Planning Director Brian Frazier. Specifically, to begin inventorying the number, location, and contact information for these benches. Over the course of the following weeks, Zoning Enforcement Officer Meier was able to locate 189 benches with advertising on them around the Hickory zoning area. Planning staff were unable to locate any approvals or permits for the benches in question, although benches generally do not require permits. During the investigation, Director Frazier reviewed the Land Development Code, specifically Section 10.2 (prohibited signs) and Article 14 (definitions of “sign” and “off premises”), and determined that because the benches contained advertising of businesses not on the subject properties and the benches were being used in an explicit manner to attract the attention of persons not already at the property of the benches (placement along property street frontages with advertising facing the street; occasional occurrence of multiple benches being placed in the same vicinity with little to no pedestrian activity) that the benches should be classified as off premises signs. Because the Land Development Code does not permit off premise signs, a Notice of Violation was mailed to one of the bench companies on July 16, 2020. Upon receipt, the violator informed Planning staff that only some of the benches were theirs and that the other benches belonged to other companies. In response, Planning staff identified that one of those other companies was Best Results Advertising. A Notice of Violation was mailed to Best Results on August 10, 2020. Upon receipt of the notice, Hal McPherson, owner of Best Results, contacted*

various Planning staff members (Director Frazier, Zoning Enforcement Officer Meier, and Assistant Planning Manager Cal Overby) to discuss the notice and his options moving forward. A meeting was held with Mr. McPherson on September 14, 2020. After initially agreeing to remove all bench signs from the Hickory zoning area by December 1, 2020, Mr. McPherson then requested a written determination and decided to appeal the decision on September 23, 2020. He noted to Director Frazier that the majority of his benches had been placed in Hickory a number of years ago, although no permits were obtained at the time of installation per available city records and Mr. McPherson's own admission to Director Frazier. A letter from Director Frazier dated September 25, 2020 was provided to Mr. McPherson providing a written determination confirming that the benches were considered illegal signage and acknowledging his appeal request. Enforcement action was halted upon receipt.

**EXPLANATION:** Sign regulations (Article 10) of the Land Development Code (LDC) state the following:

Sec. 10.2 Prohibited Signs

10.2.1. The following signs and attention-getting devices shall be prohibited:

A. Any sign erected or placed without a proper permit or otherwise not in compliance with these regulations;

T. Off-premise signs.

Article 14 Definitions

*Off-Premise – Not located on the same lot with the principal use or structure.*

*Sign – Any structure or device designed to inform or attract the attention of persons not on the premises on which the device is located.*

The decision of the Planning Director was rendered based upon the following administrative findings:

- An investigation was started after citizens voiced concerns about the proliferation of benches with advertising being installed around the city. At least 189 benches (owned by the applicant and others) were identified throughout the Hickory zoning area upon investigation by staff.
- After reviewing the definitions of “sign” and “off premise” located in Article 14 of the Land Development Code and considering the design and manner in which these benches were being used, the benches in question should be treated as signs. Because the bench signs contained advertisements for uses not found on the subject properties, said bench signs were considered

to be off premise signs, which are not permitted by the Land Development Code (Section 10.2.1).

- No permits or formal approvals from the City of Hickory were provided to the applicant prior to the installation of the bench signs. The applicant verbally confirmed to staff that he did not obtain nor request any approvals prior to installation. As such, the bench signs must be removed.

**BOARD OF ADJUSTMENT AUTHORITY:** Land Development Code Section 2.10 vests the Board of Adjustment with the responsibility of considering requests for appeals of administrative decisions rendered by the Planning Director in the administration or enforcement of the provisions of the Land Development Code.

The Board of Adjustment may reverse administrative decisions upon finding of substantial, factual evidence in the official record that the administrative official erred.

**RECOMMENDED ACTION:** Staff recommends the Board of Adjustment affirm the decision rendered by the Planning Director based upon the following findings:

1. The benches in question are located within the Hickory zoning area.
2. The benches in question are considered off premise signage given the design and use of the benches, as well as, the definitions of “off premise” and “sign” in the Land Development Code.
3. Off premise signage is not permitted under the Land Development Code, unless previously legally permitted.
4. The applicant did not obtain city approvals or permits for the bench signs and the bench signs cannot not be “grandfathered” (considered legal, non-conforming) as they were installed illegally.

Examples of Best Results Advertising benches around Hickory



SPRINGS CORNERS SHOPPING CENTER – BENCH 1

Examples of Best Results Advertising benches around Hickory



SPRINGS CORNERS SHOPPING CENTER – BENCH 2

Examples of Best Results Advertising benches around Hickory



SPRINGS CORNERS SHOPPING CENTER – BENCH 3

Examples of Best Results Advertising benches around Hickory



SPRINGS CORNERS SHOPPING CENTER – BENCH 4

Examples of Best Results Advertising benches around Hickory



SPRINGS CORNERS SHOPPING CENTER – BENCH 5

Examples of Best Results Advertising benches around Hickory



CHECKERS RESTAURANT BENCHES (5)

Examples of Best Results Advertising benches around Hickory



CHECKERS RESTAURANT BENCHES (5)

Examples of Best Results Advertising benches around Hickory



TINT127 BENCHES (2)

Examples of Best Results Advertising benches around Hickory



WOOD RESTAURANT BENCHES (2)



## Planning Department

City of Hickory  
Post Office Box 398  
Hickory, NC 28603-0398  
Telephone (828) 323-7422  
Fax (828) 323-7476  
bfrazier@hickorync.gov

September 25, 2020

Mr. Hal McPherson  
Best Results Advertising  
3945 22<sup>nd</sup> Street, NE  
Hickory, NC 28601-7447

Dear Mr. McPherson:

I am in receipt of your letter, dated September 23, 2020, requesting a written interpretation of the Land Development Code (LDC). As I had indicated to you on the phone and at our recent meeting, the placement of advertising signage without a permit is illegal and the use of off-premise signage is not permitted within the City of Hickory's Land Development Code. Such actions are referenced in the LDC, Section 10.1.3, 10.2.1 A and 10.2.1 T.

You have the right to appeal my interpretation of the LDC under Article 2, Section 2.9 and Section 2.10. I will consider the letter from you, dated referenced above, as the official request of a written interpretation from my office.

I will file your request of appeal to the City of Hickory Board of Adjustment (BOA). A Public Hearing will be scheduled for 6:00 PM, on Wednesday, October 28, 2020. Such hearing will be held in the City Council Chambers. Notification of said public hearing shall be provided in accordance with Article 2, Section 2.1.7. Such notice will be mailed to you ahead of said hearing. There is no cost to you.

The BOA will, following the close of the public hearing, take final action, after determining the evidence presented by both the applicant and the City.

An affirmative vote of a majority of the total membership of the BOA, excluding vacant seats and disqualified members, shall be required to reverse, in whole or in part, any order, requirement, decision or determination of this office, per ordinance.

The Board may reverse the decision of this office, after issuing Findings of Fact. Any person who is directly affected by the decision of the BOA (if affirming this office's decision) may appeal to the Superior Court of the County where they property is located. Such appeal must be made within 30 days of the BOA decision.

Please feel free to contact me with any questions.

Sincerely,

A handwritten signature in black ink that reads "Brian M. Frazier".

Brian M. Frazier  
Planning and Development Services Director

2.8.8 Findings of Fact

All decisions on zoning variances shall be supported by an affirmative finding of fact on each of the approval criteria of Sec. 2.8.5. Each such finding shall be supported by substantial evidence in the record of proceedings.

2.8.9 Notice of Decision *(TA 14-01)*

Within 30 days after a final zoning variance decision is made by Board of Adjustment, copies of the written decision shall be sent to the applicant and filed in the office of the Planning Director, where it shall be available for public inspection during regular office hours.

2.8.10 Appeals

Any person aggrieved by a zoning variance decision of the Board of Adjustment, may appeal the decision to the Superior Court of the county where the property is located. Such an appeal must be filed within 30 days of the filing by the Secretary of the Board of Adjustment of the decision in the office of the Planning Director or the delivery of a copy of the decision to every aggrieved party who has filed a written request for such copy with the Secretary or Chairman of the Board of Adjustment at the time of the hearing of the variance request, whichever is later.

---

**Sec. 2.9 Written Interpretations**

---

2.9.1 Application Filing

Applications for written interpretations of this Land Development Code shall be submitted to the Planning Director on forms available in the Planning Department.

2.9.2 Planning Director's Review and Decision

Within 30 days of receipt of a complete application for a written interpretation, the Planning Director shall: (1) review and evaluate the application in light of this Land Development Code, the Hickory by Choice 2030 Comprehensive Plan and any other relevant documents; (2) consult with other staff, including the City Attorney, as necessary; and (3) render a written interpretation.

2.9.3 Form

The interpretation shall be provided to the applicant in writing and shall be filed in the official record of interpretations.

2.9.4 Official Record of Interpretations

An official record of interpretations shall be kept on file in the office of the Planning Department. The record of interpretations shall be available for public inspection in the Planning Department during normal business hours.

2.9.5 Appeals

Appeals of written interpretations of the Planning Director may be taken to the Board of Adjustment in accordance with procedures of Sec. 2.10. If the appeal results in a change of interpretation, the new interpretation shall be filed in the official record of interpretations.

---

**Sec. 2.10 Appeals of Administrative Decisions**

---

2.10.1 Authority and Applicability

The Board of Adjustment shall be authorized to hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the administration or enforcement of the provisions of this Land Development Code.

#### 2.10.2 Application Filing *(TA 14-01)*

Appeals of administrative decisions in the form of a written request shall be submitted to the Planning Director and City Clerk. Appeals must include the reason the appeal is being sought. Appeals of administrative decisions shall be filed within 30 days of the date that the administrative official's decision is given to the applicant.

#### 2.10.3 Effect of Filing *(TA 14-01)*

The filing of a complete application for appeal stays all proceedings in furtherance of the action appealed, unless the official whose decision is being appealed certifies to the Board of Adjustment, after the appeal is filed, that, because of facts stated in the certification, (a) that a stay would cause immediate peril to life or property or (b) that the situation appealed from is transitory in nature, and therefore, an appeal would seriously interfere with enforcement of this Land Development Code. In each instance, the official whose decision is being appealed shall place in the certificate facts to support the conclusion. In such case, proceedings shall not be stayed other than by a restraining order, or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. Should enforcement action not be stayed, the appellant may file a request for an expedited hearing with the Board of Adjustment per NCGS §160A-388(b1)(6).

#### 2.10.4 Record of Administrative Decision *(TA 14-01)*

The official whose decision is being appealed shall transmit to the Board of Adjustment all papers constituting the record upon which the action appealed is taken. The official shall also provide copies of the record to the appellant and to the owner(s) of the property that is subject of the appeal if the appellant is not the owner.

#### 2.10.5 Public Hearing Notice *(14-01)*

Newspaper, mail, and posted notice of the Board of Adjustment's hearing shall be provided in accordance with Sec 2.1.7. Written notice of the hearing shall be mailed to the applicant.

#### 2.10.6 Board of Adjustment Review and Decision *(TA 14-01)*

- A. The Board of Adjustment shall hold a public hearing on the appeal and, following the close of the public hearing, take final action based on the procedures and requirements of this section.
- B. The zoning official who made the final determination shall be a witness at the hearing.
- C. In exercising the appeal power, the Board of Adjustment shall have all the powers of the official from whom the appeal is taken, and the Board of Adjustment may reverse or affirm wholly or partly or may modify the decision being appealed.
- D. If the Board of Adjustment determines that it is necessary to obtain additional evidence in order to resolve the matter, it shall remand the appeal to the official from whom the appeal is taken, with directions to obtain such evidence and to reconsider the decision in light of such evidence.
- E. An affirmative vote of a majority of the total membership of the Board of Adjustment, excluding vacant seats and disqualified members, shall be required to reverse, in whole or in part, any order, requirement, decision, or determination of any administrative official. Notwithstanding the foregoing and in accordance with G.S. § 63-33(c), the concurring vote of a majority of the members of the Board of Adjustment shall be sufficient to reverse any order,

requirement, decision, or determination of any administrative official pertaining to the requirements of Sec. 4.6, "Airport Overlay District."

**2.10.7 Approval Criteria; Findings of Fact**

The Board of Adjustment may reverse an order, requirement, decision, or determination of any administrative official only when the Board of Adjustment finds substantial, factual evidence in the official record of the application that the administrative official erred. The decision of the Board of Adjustment shall be supported by written findings of fact.

**2.10.8 Notice of Decision (TA 14-01)**

Within thirty (30) days after a final decision on an administrative appeal is made by the Board of Adjustment, copies of the written decision shall be sent to the applicant and filed in the office of the Planning Director, where it shall be available for public inspection during regular office hours.

**2.10.9 Appeals**

Any person who is directly affected by a decision of the Board of Adjustment may appeal the decision to the Superior Court of the county where the property is located. An appeal to Superior Court must be filed within 30 days of the filing by the Secretary of the Board of Adjustment of the decision in the office of the Planning Director or the delivery of a copy of the decision to every aggrieved party who has filed a written request for such copy with the Secretary or Chairman of the Board of Adjustment at the time of the hearing of the appeal request, whichever is later.

**Sec. 2.11 Review and Decision Making Bodies**

---

**2.11.1 City Council**

**A. Powers and Duties**

The City Council shall have the following powers and duties under this Land Development Code.

**(1) Land Development Code Text and Zoning Map Amendments**

The City Council shall review applications for amendments to the text or zoning map of this Land Development Code and make a decision in accordance with Sec. 2.2.

**B. Conflicts of Interest**

A City Council member shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have direct, substantial, and readily identifiable financial impact on the member.

**2.11.2 Planning Commission**

**A. Powers and Duties**

The Planning Commission shall have the following powers and duties under this Land Development Code:

**(1) Land Development Code Text and Zoning Map Amendments**

The Planning Commission shall review applications for amendments to the text zoning map of this Land Development Code and make recommendations on such amendments to the City Council in accordance with Sec. 2.2.

**(2) Special Use Permits**

## Ross Zelenske

---

**From:** Brian Frazier  
**Sent:** Monday, October 19, 2020 9:46 AM  
**To:** Ross Zelenske  
**Subject:** FW: Appeal of administrative decision

---

**From:** Hal McPherson <bestresultsadvertising@gmail.com>  
**Sent:** Wednesday, September 23, 2020 12:11 PM  
**To:** Brian Frazier <bfrazier@hickorync.gov>  
**Subject:** Appeal of administrative decision

**CAUTION:** This email originated from outside of the organization.

Brian,

I would like a written interpretation of the land development code regarding the advertising benches. (some of which have been in Hickory city limits for 15 years) I would also like to appeal the city's decision to the board of adjustment.

Please feel free to contact me at 828-446-8454.

Sincerely,  
Hal McPherson  
Best Result Advertising  
[bestresultsadvertising@gmail.com](mailto:bestresultsadvertising@gmail.com)



Office of Business Development

City of Hickory  
PO Box 398  
Hickory, NC 28603  
Phone: (828) 323-7422  
Email: [jmeier@hickorync.gov](mailto:jmeier@hickorync.gov)

### **Notice of Violation**

August 10, 2020

TO: Best Results Advertising  
Attn: Hal McPherson  
3945 22nd Street NE  
Hickory, NC 28601-7447

In a recent inspection of the City and after receiving numerous citizen complaints, we have identified your signs in multiple locations. Your signs are in violation of the City of Hickory's Land Development Code (10.2.1 A & T).

10.2.1 The following signs and attention-getting devices shall be prohibited:

- A. Any sign erected or placed without proper permits or otherwise not in compliance with these regulations;
- T. Off-Premise signs.

In order to remedy this violation, please remove all signs you have placed in the City from display (see attached photographs). Off-Premise signs are not permitted in the City. **You must come into compliance within thirty (30) days of the date of this letter.** If you fail to abate this violation after this deadline, you will be subject to civil citations in the amount of **\$100.00 per sign, per day.** As noted, until the violation is corrected and in accordance to Land Development Code Section 13.5.9.

#### **13.5.9 Civil Penalties:**

*Any act constituting a violation of the provisions of this Land Development Code or a failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with the issuance of variances or special use permits shall also subject the offender to a civil penalty of One Hundred 00/100 Dollars (\$100.00) per day that the offense continues. If the offender does not pay the civil penalty within 10 days after he or she has been cited for a violation of this Land Development Code, the civil penalty may be recovered in an action in the nature of debt.*

If you have questions regarding these violations, you may reach me directly at (828) 323-7482 or via email at [jmeier@hickorync.gov](mailto:jmeier@hickorync.gov).

Regards,

Jason Meier  
Zoning Enforcement Officer

cc: Brian Frazier, Planning Director