



# Spartanburg County

## Planning and Development Department

### Board of Zoning Appeals

### MINUTES

April 25, 2023

**Members**

**Present:**

Jack Gowan, Chairman  
Glenda Brady  
Thomas Davies  
Kae Fleming  
Angela Geter, Vice-Chair  
James Langford  
Michael Padgett  
Jason Patrick  
Stephen Wunder

**Members**

**Absent:**

**Staff Present:**

Joan Holliday, Director of Planning & Development  
Leigh MacDonald, Current Planning Manager  
Laurie Oakman, Senior Planner  
Jeff DeWitt, Senior Planner  
John Harris, County Attorney

*NOTICE: Pursuant to Section 30-4-80 of the S.C. Code of Laws, written notice of its regular meeting schedule was provided at the beginning of this calendar year via the County website. In addition, the Agenda for this Meeting was posted on the bulletin board at the entrance to the Administration Building as well as on the County's website and was emailed to all persons, organizations, and news media requesting notice.*

**1. Call to Order**

Chairman Jack Gowan called the meeting to order at 4:30 PM.

**2. Approval of Minutes – March 28, 2023 Meeting**

Jason Patrick moved to approve the minutes of the March 28, 2023 BZA meeting. Kae Fleming seconded the motion. The motion carried with a vote of 8 to 0.

**Unfinished Business**

Concerning the matter of CHI-Boiling Springs LLC, Chairman Gowan asked County Attorney John Harris to confirm the order of appearance for the parties involved in the appeal. After reviewing the BZA Rules of Procedure, Mr. Harris stated that the order of appearance was not specified in the rules.

**3.**

- A. CHI-Boiling Springs LLC – 4402 Highway 9, Inman, SC  
Tax Map Number: 2-36-00-121.05  
Appeal of denial of an individual business sign for out parcel.

Laurie Oakman was sworn in and presented the following staff reports:

APPEAL of STAFF DECISION (1 of 2)  
Staff Report

Meeting Date: March 28, 2023			
Address	4402 Highway 9, Inman	Ordinance	ULMO /PZO
Factual Dates	Appeal Application Received	01/30/2023	
	Deadline for Appeal	02/28/2023	
	Public Notice	03/12/2023	
Applicant	CHI Boiling Springs, LLC		
Applicant Status	Property Owner/Developer		
Map Number	2-36-00-121.05		
Acreage	0.87 acres		
Staff	Laurie Oakman		

**Request:**

The property owner/developer is appealing the decision by Planning Staff to deny a sign permit for a Freestanding Sign to be installed on an outparcel as a part of a commercial center development.

**Background Information:**

On January 23, 2023 the sign company submitted a permit application on behalf of the property owner/developer to install a Freestanding business sign on the subject site. The new sign is proposed to be placed approximately 220 feet from a commercial center sign permitted June 14, 2022. Individual businesses, commercial centers, and educational campuses may have one freestanding business sign per 500 feet of street frontage or portion thereof.

**Staff Position:**

PZO Section 9.2.10 “Powers of the Board” states in part,  
*“The Board is hereby vested with the following powers:*

- a. *To hear and decide appeals where it is alleged in writing that there is an error in any order, requirement, decision, or determination made by the Zoning Administrator in carrying out the administration of this Ordinance.*”

The Applicant has not applied for a variance but is appealing a decision by Planning staff to deny a sign permit. The question before the Board of Zoning Appeals is whether Planning staff correctly interpreted and applied the ordinance. Upon review of the permit application, Planning staff denied issuance of the permit, based upon Spartanburg County Performance Zoning Ordinance (PZO) Section 7.7.30 “Maximum Display Area, Height, and Number of Sign”:

“Individual businesses, commercial centers, and educational campuses may have one freestanding business sign per 500 feet of street frontage or portion thereof. Wall Signs installed in accordance with *Section 7.7.20 Specialty Signs* are the only type of Business Signs that may be located on the Interstate frontage of a parcel” (underline added for emphasis). Commercial Center. A commercial complex consisting of more than one retail, commercial, or office establishment grouped together, usually developed under one ownership or management, and generally sharing parking areas and vehicular entrances and exits. Freestanding Signs are defined in PZO Section 7.2.00 as, “Signs that are permanently secured in the ground and which are not attached to, supported by, or erected on a building or other structure having a principal function other than the support of such signs.”

Application of the Performance Zoning Ordinance

*Application of Article 1 – GENERAL PROVISIONS*

Although the subject site is located within the Partial Restriction District and is currently subject to the Unified Land Management Ordinance (ULMO), the sign regulations and Appeals process from the PZO are in effect County-wide (PZO Section 1.1.40).

Furthermore, PZO Section 1.1.50 “Incorporation of Maps” states:

*The boundaries of districts and road classifications established by this Ordinance are shown on the Zoning Maps, which are hereby incorporated into the provisions of the Ordinance. The location and boundaries of the special overlay districts are shown on the Zoning Maps by special overlays or maps. These maps and their overlays in their entirety, including all map amendments, shall be as much a part of this Ordinance as if fully set forth and described herein.*”

*Application of Article 7 - SIGNS*

Staff denied the sign application based upon a sign located within 500’ of the proposed sign. The developer submitted an application to develop the site on August 24, 2021 for a shopping center and outparcels (Grocery at Boiling Springs), all to share vehicular entrances and exits. Therefore, staff interprets all parcels as a part of this development to be included in the commercial center and would be subject to the commercial center sign regulations. Staff’s position is that the commercial center is permitted only one freestanding sign per 500’ and each business may be permitted one wall sign.

#### *SUMMARY*

The text of the Performance Zoning Ordinance (PZO) states that individual businesses, commercial centers, and educational campuses may have one freestanding business sign per 500 feet of street frontage or portion thereof. The sign permit application requested permission for a freestanding sign to be installed. Under these specific provisions of the PZO, staff denied issuance of the permit.

*UPDATE*

Staff met with Britt Goodson, a representative for the developer, on Tuesday, April 11<sup>th</sup> to discuss alternative sign proposals. Staff made the developer aware of the option to have an additional commercial center sign on Highway 9 if the new sign is 500' away from the previously permitted sign. The commercial center also has enough frontage to have two commercial center signs 500' apart on Bible Church Road for a total of 4 commercial center signs, in addition to the wall signage available for each individual business. Staff also researched and located deed restrictions for all the outparcels. The deed restrictions were placed over the Publix site and all outparcels at Market at Boiling Springs by CHI-Boiling Springs, LLC. Staff maintains the position that the site was developed under one ownership with shared access, stormwater, and deed restrictions. Therefore, this site including all outparcels falls under the definition of a commercial center and signage should be regulated as such.

*TIMELINE*

- 05-24-2022: Original sign permit application for 2 monument signs was submitted. One on Bible Church Road and one on Highway 9.
- 10-03-2022: Bobby James with the sign company reached out to Laurie Oakman regarding moving the sign off of the corner lot to a different location on the other side of the drive due to the pending Spinx purchase.
- 10-21-2022: Laurie Oakman met with Bobby James and Dale Waldrop with the developer. The applicant was advised that the site would be reviewed as a commercial center as it relates to sign regulations. Staff explained how 2 commercial center signs could be located on Bible Church Road 500' apart and 2 commercial center signs could be located on Highway 9 500' apart.
- 11-14-2022: Spinx purchased the corner lot on Highway 9 and Bible Church Road.
- 12-07-2022: Founders Federal Credit Union purchased two lots along Bible Church Road.
- 01-11-2023: Joan Holliday, Leigh MacDonald, and Laurie Oakman met with Dale Waldrop, Bobby James, Britt Goodson, and David Winburg to further discuss the commercial center sign options.
- 01-23-2023: Sign permit applications submitted for both monument signs on Highway 9.
- 01-30-2023: Appeal filed to have outparcels considered not a part of commercial center.
- 02-27-2023: Staff denied above permit applications as they did not meet the commercial center sign proposals as discussed.
- 03-02-2023: Appeal processed following denial by staff.

Based on the above timeline, current staff alerted the developer and sign company in October of 2022 of the commercial center sign requirements. More than two months later, the developer submitted applications for sign permits in contradiction with advice from staff in multiple meetings in late 2022 and early 2023.

Attachments:

1. Site Plan
2. View of the Sign

3. Approved Grocery at Boiling Springs Site Plan
4. Copy of Appeal Application
5. Alternate Proposal
6. Deed Restrictions

[END OF STAFF REPORT #1]

B. CHI-Boiling Springs LLC – 4408 Highway 9, Inman, SC  
 Tax Map Number: 2-36-00-121.04  
 Appeal of denial of an individual business sign for out parcel

APPEAL of STAFF DECISION (2 of 2)  
Staff Report

Meeting Date: April 25, 2023			
Address	4408 Highway 9, Inman	Ordinance	ULMO /PZO
Factual Dates	Appeal Application Received	01/30/2023	
	Deadline for Appeal	02/28/2023	
	Public Notice	03/12/2023	
Applicant	CHI Boiling Springs, LLC		
Applicant Status	Property Owner/Developer		
Map Number	2-36-00-121.04		
Acreage	0.932 acres		
Staff	Laurie Oakman		

**Request:**

The property owner/developer is appealing the decision by Planning Staff to deny a sign permit for a Freestanding Sign to be installed on an outparcel as a part of a commercial center development.

**Background Information:**

On January 23, 2023 the sign company submitted a permit application on behalf of the property owner/developer to install a Freestanding business sign on the subject site. The new sign is proposed to be placed approximately 438 feet from a commercial center sign permitted June 14, 2022. Individual businesses, commercial centers, and educational campuses may have one freestanding business sign per 500 feet of street frontage or portion thereof.

**Staff Position:**

PZO Section 9.2.10 “Powers of the Board” states in part,

*“The Board is hereby vested with the following powers:*

- a. *To hear and decide appeals where it is alleged in writing that there is an error in any order, requirement, decision, or determination made by the Zoning Administrator in carrying out the administration of this Ordinance.”*

The sign company has not applied for a variance but is appealing a decision by Planning staff to deny a sign permit. The question before the Board of Zoning Appeals is whether Planning staff correctly interpreted and applied the ordinance. Upon review of the permit application, Planning staff denied issuance of the permit, based upon Spartanburg County Performance Zoning Ordinance (PZO) Section 7.7.30 “Maximum Display Area, Height, and Number of Sign”:

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Commercial Center. A commercial complex consisting of more than one retail, commercial, or office establishment grouped together, usually developed under one ownership or management, and generally sharing parking areas and vehicular entrances and exits.

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Staff denied the sign application based upon a sign located within 500’ of the proposed sign. The developer submitted an application to develop the site on August 24, 2021 for a shopping center and outparcels (Grocery at Boiling Springs), all to share vehicular entrances and exits. Therefore, staff interprets all parcels as a part of this development to be included in the commercial center and would be subject to the commercial center sign regulations. Staff’s position is that the commercial center is permitted only one freestanding sign per 500’ and each business may be permitted one wall sign.

#### *SUMMARY*

The text of the Performance Zoning Ordinance (PZO) states that individual businesses, commercial centers, and educational campuses may have one freestanding business sign per 500 feet of street frontage or portion thereof. The sign permit application requested permission for an additional freestanding sign to be installed. Under these specific provisions of the PZO, staff denied issuance of the permit.

#### *UPDATE*

Staff met with Britt Goodson, a representative for the developer, on Tuesday, April 11<sup>th</sup> to discuss alternative sign proposals. Staff made the developer aware of the option to have an additional commercial center sign on Highway 9 if the new sign is 500' away from the previously permitted sign. The commercial center also has enough frontage to have two commercial center signs 500' apart on Bible Church Road for a total of 4 commercial center signs, in addition to the wall signage available for each individual business. Staff also researched and located deed restrictions for all the outparcels. The deed restrictions were placed over the Publix site and all outparcels at Market at Boiling Springs by CHI-Boiling Springs, LLC. Staff maintains the position that the site was developed under one ownership with shared access, stormwater, and deed restrictions. Therefore, this site including all outparcels falls under the definition of a commercial center and signage should be regulated as such.

#### *TIMELINE*

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- 01-30-2023: Appeal filed to have outparcels considered not a part of commercial center.
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Based on the above timeline, current staff alerted the developer and sign company in October of 2022 of the commercial center sign requirements. More than two months later, the developer submitted applications for sign permits in contradiction with advice from staff in multiple meetings in late 2022 and early 2023.

#### Attachments:

1. Site Plan
2. View of the Sign
3. Approved Grocery at Boiling Springs Site Plan

4. Copy of Appeal Application
5. Alternate Proposal
6. Deed Restrictions

[END OF STAFF REPORT #2]

Laurie Oakman presented the Board with aerial images, street views, images of the site structures, and a copy of the plans for the proposed development on the subject site. She explained that the site is located in the area of the County governed by the Unified Land Management Ordinance (ULMO). She summarized the Staff Report for the site.

Laurie Oakman was sworn in. She presented a staff report summarizing what had happened since the March 28th meeting.

Board Vice-Chair Angela Geter arrived at the meeting at 4:43 PM.

The Board then asked general questions about the dates of adoption of the Performance Zoning Ordinance (PZO) and former sign regulation in the Unified Land Management Ordinance (ULMO). John Harris stated that the PZO was adopted by County Council in September 2019, and became effective January 1, 2020. Ms. Oakman stated that prior to adoption of the PZO, Spartanburg County did not have an ordinance regulating on-premise signs.

Mr. Robert Martin was then sworn as a representative of the Appellant. He reiterated the position from the March 28th meeting that Appellant had relied on the guidance provided by a former staff member of the Planning Department. He also reiterated that Appellant does not currently own the outparcels affected by Staff's permitting decision.

Mr. Britt Goodson was then sworn as a representative of the Appellant. He reviewed the development of the site and asked that Appellant be allowed to rely upon the guidance provided by the former Planning Staff member. Glenda Brady asked if the former staff member had provided any written records of the guidance. Mr. Goodson replied that the only written record is the letter provided by the former staff member immediately prior to the March 28th BZA meeting. Laurie Oakman then interjected that the Board was asked not to consider the letter at the March 28th meeting since the author of the letter was no longer employed by Spartanburg County at the time the letter was written.

Vice-Chair Geter asked about the differences between the former interpretation of the sign ordinance versus the current interpretation. Ms. Oakman explained that she was not present at the meeting between the Appellant and the former staff member and could not comment on the differences. Ms. Geter then asked if the total development was covered in one deed. Ms. Oakman explained that it had formerly been under one deed, but that Appellant subdivided the tract and



extended the Development's Restrictive Covenants to the outparcels.

There was general discussion among Board members with questions directed to staff and the Appellant concerning the effects of the Restrictive Covenants, and then general discussion about the sign ordinance and definitions of Commercial Center in the PZO.

Jason Patrick asked the Appellant if he has engaged an architect, engineer, or other design professional to design any projects for the out-parcels. Appellant responded that preliminary work was done in-house, but no outside firm has been engaged for such purposes. Mr. Patrick then clarified by stating that any design work would be done at the expense of the owner of each outparcel, and the Appellant stated that this was correct. Mr. Patrick asked if there would be shared parking between the Publix shopping center and the outparcels. Appellant stated that parking would not be shared.

Vice-Chair Geter asked for clarification of what the appeal dealt with, and Ms. Oakman explained that the appeal deals with whether or not staff erred in its decision to deny the sign permit in the form that was requested.

Chairman Gowan called for a motion, but no motion was offered.

Jason Patrick then asked staff how the Ordinance defines an individual business. Laurie Oakman confirmed that there is no definition of an individual business.

Regarding Appeal #1 for the sign on Boiling Springs Road, Vice-Chair Geter moved to uphold the staff decision and deny the appeal and Tom Davies offered a second. The motion failed on a vote of 6-3; Geter, Davies, and Langford voted in favor of the motion and Padgett, Wunder, Fleming, Gowan, Brady, and Patrick voted against.

Stephen Wunder then moved to overturn the staff decision for the sign on Boiling Springs Road and grant the appeal and Jason Patrick offered a second. The motion carried on a vote of 6-3; Padgett, Wunder, Fleming, Gowan, Brady, and Patrick voted in favor of the motion, and Geter, Davies, and Langford voted against.

Regarding Appeal #2 for the sign on Bible Church Road, Tom Davies moved to uphold the staff decision and deny the appeal and Angela Geter offered a second. The motion failed on a vote of 6-3; Geter, Davies, and Langford voted in favor of the motion and Padgett, Wunder, Fleming, Gowan, Brady, and Patrick voted against.

Stephen Wunder then moved to overturn the staff decision for the sign on Boiling Springs Road and grant the appeal and Kae Fleming offered a second. The motion carried on a vote of 6-3;

Padgett, Wunder, Fleming, Gowan, Brady, and Patrick voted in favor of the motion, and Geter, Davies, and Langford voted against.

**4. New Business**

**A. Variance Request:**

Art Building Supplies – 380 Whitney Road, Spartanburg, SC  
 Tax Map Number: 7-08-06-085.00

Variance to reduce the rear lot line required Bufferyard from a Bufferyard 6 to a Bufferyard 5C.

Variance Request  
Staff Report

Meeting Date: April 25, 2023			
Address	380 Whitney Road, Spartanburg, SC 29303	Ordinance	ULMO
Factual Dates	Variance Application Received	03/23/2023	
	Deadline for Variance	03/28/2023	
	Public Notice	04/09/2023	
	Adjoining Property Owner Notification	04/11/2023	
	Variance Signs Posted on Property	04/11/2023	
Applicant	Andrew DeSimone (Stability Construction, LLC)		
Applicant Status	General Contractor		
Map Number	7-08-06-085.00		
Acreage	1.09 acres		
Staff	Laurie Oakman		

Request:

The applicant is requesting to reduce the Rear Bufferyard, as per Unified Land Management Ordinance (ULMO) Section 2.02-2 Table 4 “Side and Rear Bufferyard Requirements”

Type	Required Rear Bufferyard	Proposed Rear Bufferyard	Variance
Rear Bufferyard	Bufferyard 6	Bufferyard 5C	Bufferyard Reduction

Background Information:

The applicant is the general contractor for the property owner, Dumanska Oksana. The applicant wishes to utilize the existing building for retail and warehousing for a flooring business, which is classified as light industry in the Unified Land Management Ordinance. The structure was previously permitted in 2002 as American Coliseum, a high

intensity commercial business. Light industry is considered more intense than high intensity commercial. An increase in intensity must observe development regulations and can no longer be considered existing nonconforming. The location of the existing structure provides limited space for the required buffer.

This property previously received five variances from the Land Management Board of Appeals on February 26, 2019.

1. To reduce the front setback on Whitney Road to 4.02' from 50' as required in Section 2.02-1 Dimensional Standards, Table 3b – Commercial & All Other Uses – Setbacks & Other Requirements.
2. To reduce the front setback on Mulligan Street to 4.53' from 30' as required in Section 2.02-1 Dimensional Standards, Table 3b – Commercial & All Other Uses – Setbacks & Other Requirements.
3. To reduce the front setback on Old Whitney Road to 5.45' from 30' as required in Section 2.02-1 Dimensional Standards, Table 3b – Commercial & All Other Uses – Setbacks & Other Requirements.
4. To reduce the rear setback to 1' from 20' as required in Section 2.02-1 Dimensional Standards, Table 3b – Commercial & All Other Uses – Setbacks & Other Requirements.
5. To reduce or eliminate the rear buffer from a Bufferyard 6A as required in Section 2.02-2 Bufferyards, Table 4 – Side and Rear Bufferyard Requirements.  
At the time of approval in 2019, the proposal was for a woodworking business, also considered light industrial. This business never received final approval and the property has since been purchased by Dumanska Oksana, who intends instead to open a flooring business. During construction, the contractor determined that the proposed buffer as approved by the Land Management Board of Appeals was incompatible with the location of the building and topography at the rear property line. Since the previous reduced buffer was never constructed, the new owner is now proposing to construct an 8' masonry wall along the rear property line to meet a Class 5C Bufferyard in place of the previously approved landscaping as shown on the site plan.

**Staff Position:**

If the rear Bufferyard variance is granted, the applicant will be able to meet all other requirements of the Ordinance with the previously granted setback variances.

**Four Criteria for granting a variance:**

The Board may grant a variance for an unnecessary hardship if it makes and explains in writing all of the following findings. The fact that property may be utilized more profitably, if a variance is granted, may not be considered grounds for a variance.

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property.

The existing structure was constructed in 1950 prior to the adoption of the ULMO and provides for limited space between the building and property line to accommodate the required buffer distance.

Staff Analysis:

2. These conditions do not generally apply to other property in the vicinity.

Staff Analysis:

This area largely developed in the 1950s when Spartanburg County did not have land use ordinances.

3. Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.

Staff Analysis:

Due to the existing nonconforming building, the applicant is unable to operate this type of business without approval of the variance.

4. The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the area will not be harmed by the granting of the variance.

Staff Analysis:

The structure already exists and the encroachment in the rear will remain the same. The neighboring properties to the rear will likely benefit from the addition of a buffer.

Attachments:

1. Aerial Maps from GIS
2. Variance Application
3. Site plans
4. Street views of Subject Site
5. Wall Design

[END OF STAFF REPORT]

Laurie Oakman presented the Board with aerial images, street views, images of the site structures, and a copy of the plans for the proposed development on the subject site. She explained that the site is located in the area of the County governed by the Unified Land Management Ordinance (ULMO). She summarized the Staff Report for the site.

Chairman Gowan then opened the public hearing and asked if anyone present wished to speak in support of the variance. Mr. Jamie DeSimone, acting as the licensed professional engineer and general contractor for the subject site, was sworn in to speak on behalf of the development. Mr. DeSimone made general comments on the benefits of a masonry wall versus other types of

bufferyards.

Chairman Gowan then asked if anyone present wished to speak in opposition to the variance. Hearing none, he closed the public hearing. The Board members discussed the case among themselves.

Tom Davies stated that the variance request appeared to meet the four requirements listed in the state statute and will benefit the neighbors to the rear of the site. He moved to approve the request to reduce the requirement from a Bufferyard 6 to a Bufferyard 5C. Vice-Chair Angela Geter offered the second, and the motion carried unanimously (9-0).

#### **4. Other Business**

Mike Padgett announced that he will be tendering his resignation from the BZA within the week, and stated that he has enjoyed his time of service, but that it was time to move on.

Chairman Gowan asked what happened to the recordings of the meeting and how long they are kept. Leigh MacDonald explained that a CD is burned from the original recording, and that CDs are stored in the Planning Department in perpetuity.

Chairman Gowan then asked how changes are made to the county's zoning ordinances. Planning & Development Director Joan Holliday explained that changes to the ordinance require three readings by County Council with recommendation from the Planning Commission. County Attorney John Harris explained the process is per the state statute.

Ms. Holliday then explained that a training schedule is being developed to orient newer Board members and to update other members to changes in the PZO. She also explained that amendments to the Ordinances are posted to the online version of the respective documents.

#### **5. Adjourn**

There being no other business, Thomas Davies moved to adjourn. Jason Patrick seconded the motion. Motion carried with a vote of 9 to 0. Meeting adjourned at 6:19 PM.