

NORTH CAROLINA
BUNCOMBE COUNTY
CITY OF ASHEVILLE

BEFORE THE
BOARD OF ADJUSTMENT
APPEAL APPLICATION FORM

[X] Zoning Interpretation Appeal

TO THE CITY OF ASHEVILLE BOARD OF ADJUSTMENT

I, **Kimberly Hodges** hereby appeal to the Board of Adjustment from the following adverse decision of the City of Asheville:

Who rendered the decision?: Joe Heard, AICP & Scott Shuford, AICP

Briefly describe what the decision prevents you from doing?:

The decision rendered does not meet the spirit of the UDO and exceeds the allowable requirements set in the UDO. By approving the signage as it is built, the Planning staff has rendered variances beyond their jurisdiction. Additionally, Staff refers to "tradition" decision-making rules, which are unpublished and contrary to the allowable limits, set forth in the UDO.

Date of the decision: May 27, 2005

Date that you received the decision: January 11, 2006

How do you think that the ordinance or guidelines should be interpreted?:

- 1) Signage exceeds legal limits:
 - a) The allowable sign area is 50 square feet per façade. The approved signs are each 64 square feet in area. This represents a 128% variance from the allowable.
 - b) All of the signs exceed the allowable sign height of 20'-0".
 - i) Mr. Heard wrote in an email on 1/11/06 that the requirements of 7-13-4 were not applicable without citing code that explicitly states such. The code is clear; a wall-mounted sign can be no taller than 20' to the top of the sign and its supporting structure. Because this sign is mounted in the roof, the requirement for "roof signs" kicks in and to apply because, it refers the applicant back to the requirements per the zoning classification in 7-13-4. Mr. Heard's interpretation was appealed to Mr. Shuford and in a meeting of 1/11/06, Mr. Shuford stated that Staff does not apply the rules of sign height for wall mounted signs as a matter of "tradition". There exists no documentation of said "tradition" and this was the first notification of such regulatory procedure. The UDO clearly states that the height for all signs, including wall mounted, is a maximum of 20'-0" measured from the top of the sign or attached structure to the base of that

structure. In this case, these wall-mounted signs should have been measured from the base of the wall in which they are mounted to the tops of the signs, as the wall is the “supporting structure”.

- c) The approved single panel plastic, box-styled cabinet signs do not meet the recommendations of the Downtown Design Guidelines. The Guidelines specify that:
 - i) Large plastic surfaces are inappropriate,
 - ii) Back-lit plastic may be used if letters are cut out individually,
 - iii) Indirect lighting for signs are preferred
 - iv) Internal illumination may be used only to light individual letters.

What section(s) of the ordinance or guidelines supports your interpretation?:

The signs on the Prudential building are clearly “roof signs” as stated in :

Section 7-2-5

Roof sign means any sign erected, constructed or maintained on, upon or over the roof of any building structure and which is wholly or partially dependent upon the roof for support.

A variance for height and area was given to the sign and the sign design doesn't even meet the requirements of the Downtown Guidelines.

Roof signs are prohibited unless they meet the following requirements:

Section 7-13-3(4)

*Roof signs. Roof signs are prohibited; provided, however, signs on the surfaces of a mansard roof and on parapets shall not be hereby prohibited **provided the signs do not extend higher than the height restriction for on-premises freestanding signs in the zoning district in which the sign is located** and provided that the signs do not extend above the mansard roof or parapet to which they are attached.*

To measure height, you measure it under the following:

Section 7-2-5

Height means, for the sign regulations found in article XIII of this chapter, the vertical distance between the highest part of the sign or its supporting structure, whichever is highest, and the base of the sign at grade.

By the above logic, whatever the sign is attached to, be it wall, pole, frame, etc.; where that vehicle touches the 'ground' becomes the base at grade and the top of the sign becomes the 'height' of the sign. So for an on premise sign the following is allowed:

Section 7-13-4(b) On-premises signs:

(2) Signage for all nonresidential zoning districts

a. Signs allowed in nonresidential zoning districts may be either:

TABLE INSET:

<i>Freestanding:</i>	
	<i>Pole; Ground; Changeable copy, Marquee; Menu board</i>
Attached:	
	Wall

b. The sign(s) shall meet the following requirements based on the zoning district in which it is located.

TABLE INSET:

<i>Zoning District</i>	<i>Max. Hgt. Allowed</i>	<i>Max. Sq. Footage per face</i>
<i>CBD,</i>	<i>20 ft.</i>	<i>50 sq. ft.</i>

Therefore, the proper interpretation would be that if one could only build a freestanding sign no greater than 20'-0" and 50 sq.ft. of face, then one could only mount a sign on the wall no taller than what would be allowed for that freestanding sign. Additionally, that would apply for the roof signs in this case.

Why do you think that your interpretation is correct?:

The citations enumerated in this submittal are written down in the UDO and the City's Design Guidelines for the Downtown, while Staff's interpretation has been an anecdotal reference to an applied "tradition" of interpretation that is not part of any public record or published in any fashion that is accessible to the public to ensure predictable development and cogent application of planning law. An individual practicing planning and development, in addition to a citizen of Asheville, can only understand the impact of future development and the application of future plans through the use of published rule and order. The only development laws are those, which are published in the UDO. Staff does not have the authority to create new interpretations of methodology of practice that is contrary to the published requirements of the UDO.

Why do you think that the City's interpretation is wrong?:

The City's interpretation does not meet the requirements specified in the UDO and their methodology of sign review is not published policy.

Other Comments/information that you would like to have considered:

If one were to accept the Staff's claim that they could use "traditions" to make up new rules of interpreting the UDO that were contrary to specific requirements of the UDO, the Staff has the ability and ethical responsibility to utilize the public ordinance process to modify the UDO if such "traditions" were indeed better applications of city planning. Lacking publishing findings or rulings breaches sound practice to create orderly development. How would one know of such rules (if they do in fact exist somewhere) without having direct access to a human being in the planning department that happens to know of such rules?

Additionally, new rules cannot be created at a staff level without the ratification of the public body that creates the original law, in this case Council. Has Staff's "tradition" come from Council direction? If so, why has that not made its way into the zoning code or a published document?

Even if one were to assume that Staff had the authority to negotiate a sign that met their best professional judgment of sound planning and design, why didn't they get a sign that met the minimum suggestions of the Downtown Design Guidelines? In addition to being oversized and exceeding the maximum allowable dimensions for a sign in the CBD, this sign represents nothing more than playing the part of a billboard for I-240. Billboards are not only discouraged in our city, but they no longer can be created.

I certify that all the information presented in this application and attachments is accurate to the best of my knowledge, information, and belief.

DATE

PETITIONER'S NAME (Please Print)

PETITIONER'S SIGNATURE