

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, **Heather Rayburn** hereby appeal to the Board of Adjustment from the following adverse decision of the City of Asheville:

Who rendered the decision?: 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 structure and signage as it is built, the Planning staff has rendered variances beyond their jurisdiction and allowed for changes to drawings without the proper procedural review.

Date of the decision: Unknown

Date that you received the decision: January 11, 2006 & January 20, 2006

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

- 1) Signage exceeds legal limits:
 - a) All of the signs exceed the allowable sign height of 25'-0".
 - i) In the 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 25'-0" measured from its base. 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.
 - b) The red metal backing that the "Staples" lettering is attached was not calculated into the signage area yet it is an integral part of the store's identity and logo. If it were calculated into the overall area, the sign area would exceed the allowable square footage for all of the signs.
- 2) Pedestrian amenities to allow for setback elimination on Merrimon Avenue are inadequate.:
 - a) The awning and windows placed on the façade are not nearly enough to qualify for allowing this building to move closer to the street. In addition to their minor impact on this tremendously large façade, they are nowhere

- near the pedestrian zone. They are so high up on the façade, that they have no benefit to a pedestrian on the street.
- b) A pedestrian is unable to enter the building from the Merrimon façade, which received the reduction of setback. The main entrance is required to fulfill the requirements of meeting “pedestrian oriented design”. In addition to not being able to enter the building from the Merrimon facade, if one were to walk from Merrimon to the main entry located in the parking lot, behind the building, the pedestrian is forced into the vehicle travel lanes of the parking lot before they could reach the door. This conflict with vehicular traffic is not beneficial to the pedestrian’s access to the property.
 - 3) Drawings approved by the City do not match what was built and therefore changes were not reviewed by the Downtown Commission which is the review authority for designs for new structures for this parcel.
 - a) The approved plans on file show a stone-faced base story with large rectangular fenestrations on the wall facing Merrimon.
 - b) The antique stone wall along Merrimon Street, that was to be maintained according to the plans is not on the site.
 - 4) Side street setback requirements were varied at Orange Street in excess from that which is required by the UDO without proper administrative procedure.
 - a) Orange Street is a side street and as such, the structure should be set back 15’-0” from the property line. The structure is not set back the required 15’-0”.
 - 5) The building at the corner of Merrimon and Orange is in the visibility triangle. A visibility triangle is required at the intersection of all streets to ensure safe visibility from vehicular traffic in the street. At the intersection of Orange and Merrimon, a triangle of area (10’ x 50’) is supposed to be clear of any structure. The Staples building has been built within this triangle, which obstructs cross-visibility and is in violation of the standards for the visibility triangle.

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

- 1) Signage exceeds legal limits:
 - a) Per Section 7-2-5, “height” for sign regulations is the vertical distance measured from the top of the sign at its highest point to the base at grade. That section goes on to define a “wall sign” as that which is attached to a wall or structure, therefore the base of the wall at grade shall be the measuring point at which the height is determined. There exists no “traditional interpretation” that eliminates wall signs from the limitations of height as defined in Section 7-13-4(b)2. In that section, wall signs are allowed in CB-II, but they may only be 25’-0” tall. The height of all signs measured from grade under the signs exceed the allowable maximum height. The sign facing Merrimon Avenue is 200% taller than the legal limit.
 - b) Per Section 7-2-5 “Definitions” a background that represents part of the trademark or logo is considered part of the signage. Per Section 7-13-4(a)1; if the background is integral to the sign “and designed as an integral

part of and related to the sign” it shall be measured as the sign area. Because the red metal siding is not part of the architecture and only part of the area near the text and because the red rectangular shape is part of the Staples logo, it should be considered an integral part of the sign area. Per Section 7-13-4 (b)2; the maximum allowable square footage for any type of on-premise signage per façade in CBII zoning is 125 sq.ft.

- i) The sign area for the sign facing Merrimon is approximately 468 sq.ft., an increase of 370% of the allowable square footage.
- ii) The sign area for the sign facing I-240 is approximately 562 sq. ft.; an increase of 450% from the allowable square footage.
- iii) The sign area for the signs facing the parking lot and Orange Street are approximately 300 sq.ft. each; which represents an increase of 240% of the allowable per sign.

2) Pedestrian amenities

- a) Per Section 7-8-13(f)5, the front setback shall be “15 feet, except that the minimum setback may be reduced to zero feet in pedestrian-oriented areas where road widening is not anticipated provided that all parking is located to the side or rear and not closer to the street than the facade of the principal structure, and **where pedestrian-oriented design features are incorporated in building and site design.**” (bold italic for emphasis) For “pedestrian-oriented design” features per section 7-2-5 “**buildings are generally placed close to the street and the main entrances are oriented to the street sidewalk; additionally, there are generally windows or display cases along building facades that face the street.**” In the case of Staples, the façade does not have the main entrance on Merrimon and the entrance is not oriented to the street, it is in the parking lot. Additionally, it could hardly be argued that a pedestrian could look in windows that are in excess of 15’-0” off the ground, as they are on the Merrimon. The affect of what little fenestration is on the facades facing the street, they are outside the effective pedestrian realm, generally practiced as those items should not be higher than 8’-0” above the sidewalk or provide for comfort in the form of shelter to a pedestrian. Additionally, there is less fenestration on the built structure than what was approved as the drawings per the Planning Department. At some point, Staples removed windows, thus degrading even further the poor conditions for the pedestrian experience along Merrimon. What few awnings that are on the building are placed so high above the sidewalk that they have almost no impact on providing shade or shelter for the pedestrians on the sidewalk, they are little more than decoration. In essence, Staples was granted a variance from the required 15’-0” setback without providing any of the amenities on the building that would enliven the façade and qualify for pedestrian oriented features.
- b) Per Section 7-2-5, for “pedestrian oriented design” the main entrance is to be oriented to the street sidewalk. In the case of Staples, the main entrance is oriented to the parking lot and there is a railing blocking pedestrian access from the sidewalk on Orange Street to the front door.

The pedestrian cannot access the doors on a pedestrian path, but has to circulate into the parking lot in order to get to the door.

- 3) Drawings don't match what was built and therefore changes were not reviewed by the Downtown Commission which is the review authority for designs for new structures for this parcel.
 - a) The approved plans on file show a stone-faced base story with large rectangular fenestrations on the wall facing Merrimon. Per Section 7-5-10, the Downtown Commission is to review the documents and designs that affect the CBD and certain corridors near the CBD such as the Merrimon area in which Staples is located. The plans the Downtown Commission reviewed significantly differ from what is built. The building that the Downtown Commission reviewed had much more fenestration on the Merrimon façade in addition to having an entire base with stonework. This change was not part of the public review procedure and, we were unaware of the stone facing until we received copies of the drawings from the City on 1/20/06. To remove a material that is close to 1/3 of a façade composition should constitute a major change to an elevation and should have gone back before the Downtown Commission.
 - b) The approved plans on file show the developer retaining a large section of the antique stone garden wall along Merrimon Avenue. Per Section 7-5-10, the Downtown Commission is to review the documents and designs that affect the CBD and certain corridors near the CBD such as the Merrimon area in which Staples is located. The antique stone wall that was to be maintained on the plans is not on the site and would have helped to maintain some scale along the sidewalk as well as retain some feature of the character that is consistent throughout the neighborhood. The removal of the wall is significant because there is very little left of any character along the sidewalk. To remove that little bit constitutes a significant change.
- 4) Side street setback requirements at Orange Street.
 - a) Per Section 7-8-13(f)5, the street side setback shall be 15'-0". The structure is not set back the required 15'-0" from the property line on Orange Street, and therefore represents a variance from the standards from the section.
- 5) The building corner at Merrimon and Orange is in the visibility triangle Per Section 7-11-1g(2)(h)3, a sight visibility triangle should be a minimum of 10' on the Orange Street right-of-way, and extending 50' in the Merrimon frontage. Within a triangle created from those two points, there is to be no structure, planting, or object placed to obstruct cross-visibility per Section 7-11-1g(2)(h)5.

Why do you think that your interpretation is correct?:

The responses as prepared for this submittal are written down in the UDO 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 published findings or rulings breaches sound planning practice, which strives to create orderly and predictable 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?

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