

STATE OF NORTH CAROLINA

CITY OF KANNAPOLIS

IN RE: BOHLER ENGINEERING NC, PLLC

ORDER GRANTING MODIFICATION  
TO WATERSHED PROTECTION  
OVERLAY DISTRICT

APPLICATION # BOA-2016-03

The Board of Adjustment (“BOA”) for the City of Kannapolis held a public hearing on April 12, 2016, to consider application number, BOA-2016-03 submitted by Bohler Engineering NC, PLLC as an appeal relating to the Lake Concord Watershed Critical Area boundary as identified on the Official Zoning Map of the City of Kannapolis and as defined in Article 4.16, Watershed Protection Overlay Districts, insofar as it affects the use of 4.09 acres of property (the “Property”) being part of applicant’s property located on Dale Earnhardt Blvd, Kannapolis, North Carolina (Cabarrus Parcel 5622-69-3764).

The Stormwater Permitting Program of the NC Division of Energy, Mineral, and Land Resources has reviewed the appeal request, materials and evidence presented by the Applicant and “preliminarily” approved the modification to the Watershed Protection Overlay District on April 6, 2016.

Final approval from the NC Division of Energy, Mineral, and Land Resources cannot take place until the Board of Adjustment renders a decision regarding this appeal followed by the Kannapolis Planning and Zoning Commission subsequent modification of the City of Kannapolis Official Zoning Map by way of a Zoning Map Amendment to remove the Property from the Lake Concord Watershed Protection Area.

Having heard all of the evidence and testimony presented at the public hearing, the BOA makes the following FINDINGS OF FACT:

1. Bohler Engineering NC, PLLC is the owner of the Property.
2. The Property is located within the land use planning jurisdiction of the City.
3. The Property is subject to the Watershed Protection Act (NCGS 243-5 et seq) and the Kannapolis Unified Development Ordinance (“UDO”) (Article 4.16 et seq.).
4. The proposed boundary change has received preliminary approval of the NC Division of Energy, Mineral and Land Resources.
5. Testimony was offered by the Project Engineer Ben Lanzillotta who reviewed the attached survey (the “Survey”) and substantiated that the survey was based upon field and topographical conditions.
6. Project Engineer Ben Lanzillotta concurred with the accuracy of the survey and concluded that the drainage from the Property was to Coddle Creek an unprotected stream.
7. Further testimony offered by the Project Engineer Ben Lanzillotta was competent evidence identifying the current location of the Property boundaries and the actual boundaries of the watershed protected area.

The Board adopts the following CONCLUSIONS OF LAW:

1. Article 4.16.5 of the UDO provides as follows:

“The Board of Adjustment shall have the power to make adjustments to the exterior boundary of Watershed Overlay Districts by removing all or part of a piece of property from a Watershed Overlay District where it finds that all or part of such property actually lies outside the drainage area of such Watershed. In any case where there is a dispute as to whether a property or any part of a property that is shown on the Official Zoning Map as being in a Watershed Overlay District actually drains to that Watershed, the Board of Adjustment shall, upon appeal by the owner, make a determination as to the facts of the matter as it affects the subject property.”
2. The preliminary approval for modification of the Overlay District of the Stormwater Permitting Program of the North Carolina Division of Energy, Mineral and Land Resources was correct.
  3. The Property is not located within the Coddle Creek Watershed Protection area.
  4. The Property should be removed from the Coddle Creek Watershed Protection Area.
  5. The Added Area should be added to the Coddle Creek Watershed Protection Area.
6. The official zoning map of the City should be amended to show the boundary of the Coddle Creek Watershed Protection Area consistent with the survey entered into the record of this proceeding a copy of which is attached hereto.

Based upon the foregoing Findings of Fact and Conclusions of Law, the BOA affirms the determination of the North Carolina Division of Energy, Minerals and Land Resources and hereby Orders:

- (1) That the Property shall be graded as to create the additional and removal of the Property from the Watershed Protection Area and that such be certified to the City by a survey by proper engineering methods.
- (2) That the Removed Property be removed from the Coddle Creek Watershed Protection Area boundary of the official zoning map of the City of Kannapolis.
- (3) That the Added Area be added to the Coddle Creek Watershed Protection Area boundary of the official zoning map of the City of Kannapolis.
- (4) That the official zoning map be amended to show the boundary of the Coddle Creek Watershed Protection Area consistent with the survey entered into the record of the proceeding.
- (4) The Order of this Board shall be submitted to the Kannapolis Planning and Zoning Commission for appropriate action to amend the City’s official zoning map.

This BOA decision may be appealed to the Superior Court within 30 days from the date set forth below which is when the decision of the BOA was filed at the City of Kannapolis or within 30 days after a written copy is delivered to any party who has filed a written request for such a copy with the BOA at the

time of its hearing of this case, whichever is later.

Order effective this the \_\_\_\_\_ day of May, 2016.

---

Chairman

---

Secretary

**STATE OF NORTH CAROLINA**

**CITY OF KANNAPOLIS**

**IN RE: GANAPATI, INC.**

**APPLICATION # 2016-04 BOA**

**:  
: ORDER FOR CERTIFICATE  
: OF NON-CONFORMITY  
: ADJUSTMENT**

**THE BOARD OF ADJUSTMENT** for the City of Kannapolis, North Carolina having held a public hearing on April 19, 2016 to consider Application Number 2016-04 BOA submitted by Ganapati, Inc., a request for an Order for Certificate of Non-Conformity Adjustment for property located at 2500 South Main Street, Kannapolis, North Carolina.

The following were accepted into evidence to constitute a part of the record in this matter:

1. Application
2. Aerial Map
3. Zoning Map
4. Future Land Use Map
5. Site Layout
6. Letter to abutting property owners
7. Posted Zoning Sign

Having heard and reviewed all of the evidence and arguments presented at the hearing, makes the following **FINDINGS OF FACT**:

1. Does the nonconformity create noise above and beyond levels considered normal to the area?

(a) The applicant has been operating the truck rental business since August 2015. According to aerial imagery, the gas station on site has been constructed since the early 1970's. While there has been an expansion of the gas station business, due to the addition of the truck rental use, staff does not believe that an increase of noise beyond levels considered normal for the area has been generated.

2. Does the nonconformity generate or have the potential to generate a significantly higher volume of traffic than surrounding land use?

(a) The subject site, while zoned "RM-2", is located along the South Main Street corridor which is a mixture of residential and commercial uses. A truck rental business is not anticipated to generate a significant increase in traffic over the existing gas station use.

3. Does the nonconformity generate any other negative effects including but not limited to dust, air pollution, foul smell, etc.?

(a) The truck rental use does have the potential to generate negative effects with dust and mud if the trucks are not parked on a paved surface. Section 5.6.3.3 of the UDO requires that all outdoor vehicle display areas shall be paved.

4. Does the nonconformity detract from the prevailing property values?
  - (a) A review of the County Tax Assessor records does not appear to indicate a decline in property value for properties adjacent to the subject site, when compared to other properties in the area.
  
5. Does the nonconformity compliment or detract from the overall aesthetic character of the area?
  - (a) The addition of moving trucks and trailers being stored adjacent to a residential neighborhood as well as a main thoroughfare may detract from the overall aesthetic character of the area. Furthermore, the least intensive zoning district that this use would be allowed by right is the "C-2" district. Typically, this use is a "C-2" district would include a Type 3 buffer yard (ranging from 15 to 30 feet wide, depending on the amount of plantings) adjacent to single-family residential.

Based on the above Findings of Fact the Board CONCLUDES the Certificate of Nonconformity Adjustment should be approved, subject to the following conditions:

1. There be no further expansion of the applicant's truck rental business without the necessary approvals;
2. The parking/storage area for the truck rental is paved in accordance with the requirements of the UDO, and that no trucks are to be stored on the grass or gravel area;
3. A Type 3 buffer yard is installed along the western property line of the site adjacent to the single-family residential; and
4. The perimeter of the parking/storage area for the truck rental is landscaped in accordance with the parking lot yard and street yard standards as referenced in Article 7 of the UDO.

Therefore, the Certificate of Non-Conformity Adjustment is so Ordered with conditions as stated.

This the \_\_\_\_\_ day of May, 2016.

---

Chairman

---

Secretary

**STATE OF NORTH CAROLINA**

**CITY OF KANNAPOLIS**

**IN RE: CASCO SIGNS  
(FOOD LION STORE)**

**:  
:  
: ORDER FOR CERTIFICATE  
: OF NON-CONFORMITY  
: ADJUSTMENT  
:**

**APPLICATION # 2016-05**

**THE BOARD OF ADJUSTMENT** for the City of Kannapolis, North Carolina having held a public hearing on April 19, 2016 to consider Application Number 2016-05 BOA submitted by Casco Signs, a request for an Order for Certificate of Non-Conformity Adjustment for property located at 1746 South Cannon Blvd, Kannapolis, North Carolina.

The following were accepted into evidence to constitute a part of the record in this matter:

1. Application
2. Sign Rendering (Existing & Proposed)
3. Aerial Map
4. Zoning Map
5. Future Land Use Map
6. Letter to abutting property owners
7. Posted Zoning Sign

Having heard and reviewed all of the evidence and arguments presented at the hearing, makes the following **FINDINGS OF FACT**:

1. Does the nonconformity create noise above and beyond levels considered normal to the area?
  - (a) There are no anticipated noise impacts associated with the proposed sign.
2. Does the nonconformity generate or have the potential to generate a significantly higher volume of traffic than surrounding land use?
  - (a) The proposed sign will have no impact on the volume of traffic to and from the site.
3. Does the nonconformity generate any other negative effects including but not limited to dust, air pollution, foul smell, etc.?
  - (a) No negative effects are anticipated to result from the proposed sign.
4. Does the nonconformity detract from the prevailing property values?
  - (a) The proposed sign should not detract from (and perhaps enhance) adjoining property

values.

5. Does the nonconformity compliment or detract from the overall aesthetic character of the area?

(a) The proposed sign should complement the overall aesthetic character of the area.

Based on the above Findings of Fact the Board CONCLUDES the Certificate of Nonconformity Adjustment should be approved and therefore is so Ordered.

This the \_\_\_\_\_ day of May, 2016.

---

Chairman

---

Secretary

**STATE OF NORTH CAROLINA**

**CITY OF KANNAPOLIS**

**IN RE: CASCO SIGNS  
(FOOD LION STORE)**

**:  
:  
: ORDER FOR CERTIFICATE  
: OF NON-CONFORMITY  
: ADJUSTMENT  
:  
:**

**APPLICATION # 2016-07**

**THE BOARD OF ADJUSTMENT** for the City of Kannapolis, North Carolina having held a public hearing on April 19, 2016 to consider Application Number 2016-07 BOA submitted by Casco Signs, a request for an Order for Certificate of Non-Conformity Adjustment for property located at 2825 North Cannon Blvd, Kannapolis, North Carolina.

The following were accepted into evidence to constitute a part of the record in this matter:

1. Application
2. Sign Rendering (Existing & Proposed)
3. Aerial Map
4. Zoning Map
5. Future Land Use Map
6. Letter to abutting property owners
7. Posted Zoning Sign

Having heard and reviewed all of the evidence and arguments presented at the hearing, makes the following **FINDINGS OF FACT**:

1. Does the nonconformity create noise above and beyond levels considered normal to the area?
  - (a) There are no anticipated noise impacts associated with the proposed sign.
2. Does the nonconformity generate or have the potential to generate a significantly higher volume of traffic than surrounding land use?
  - (a) The proposed sign will have no impact on the volume of traffic to and from the site.
3. Does the nonconformity generate any other negative effects including but not limited to dust, air pollution, foul smell, etc.?
  - (a) No negative effects are anticipated to result from the proposed sign.
4. Does the nonconformity detract from the prevailing property values?
  - (a) The proposed sign should not detract from (and perhaps enhance) adjoining property

values.

5. Does the nonconformity compliment or detract from the overall aesthetic character of the area?

(a) The proposed sign should complement the overall aesthetic character of the area.

Based on the above Findings of Fact the Board CONCLUDES the Certificate of Nonconformity Adjustment should be approved and therefore is so Ordered.

This the \_\_\_\_\_ day of May, 2016.

---

Chairman

---

Secretary