Town of Indian Trail

P.O. Box 2430
Indian Trail, North Carolina 28079
Telephone 704-821-5401
Fax 704-821-9045

PLANNING AND DEVELOPMENT DEPARTMENT
BOARD OF ADJUSTMENT MINUTES
August 25, 2016
6:30 P.M.

Call to Order- Meeting was called to order by Acting Chair Chris Chopelas.

Roll Call
The following members of the governing body were present:

Board Members:	Christopher Chopelas, Shirley Howe, Patrick O'Connor, Kat Miller, and John Eigenbrode
Members Present but not Voting:	Chris Duggan- Interim Town Attorney
Absent:	Daniel Takah
Staff Members:	Rox Burhans-Planning Director, Julia Zweifel-Planner, Pam Good-Board Secretary

Approval of Minutes - July 28, 2016
Motion to approve minutes as written by Member Howe, seconded by Member Eigenbrode. Vote to approve was unanimous.

Public Hearings-
VAR2016-001 Workout Anytime Signage Variance. The request is to sever this property from the existing master sign program originally approved under VAR 1999-005 that limits the size of signage to less than currently allowed under the Unified Development Ordinance. The subject property is located at 5850 Highway 74 Suite 100. Parcel number 07-066-013D.

Motion to open by Member Howe, seconded by Member Eigenbrode. Vote was unanimous in favor.

Acting Chair Chopelas read the fairness issues to the board and proceeded to swear in staff and the applicant.

Staff Planner Julia Zweifel presented the case. She began her presentation with a site summary. The subject property is located at the intersection of Faith Church Road and US Hwy 74. The shopping center is zoned Regional Business District and is comprised of one lot of approximately 15.02 acres. The suite in question is 7,460 square feet.

VAR 1999-005 was approved on August 26, 1999 and was the result of a request for relief from 750 square feet total maximum signage and relief from the requirement of one freestanding sign per lot. At the time this property was zoning Highway Corridor and the zoning ordinance in 1999 did not adequately address signage for shopping center developments of this type. The board found that due to the property being located adjacent to Highway 74 the property was peculiar and should be granted additional signage because of the rate of speed

traveled on the road. The applicant's request for relief was approved in the form of a variance which allowed 4,000 total square feet of signage for the entire shopping center, which at the time was greater than allowed under the UDO.

UDO Section 9140.040(E) specifies maximum sign area, sign number, and sign height for properties in business, commercial, overlay, and industrial districts. This variance request specifically relates to the square footage allowed for wall signs for this business in question. It does not ask for relief from the master sign program in terms of freestanding signage. For the Regional Business District, applicants are allowed a maximum sign area per business of 10% of the front building or suite façade for each business. This amount is not to exceed 250 square feet. There is an unlimited limit to the number of signs as long as the square footage does not exceed 10% of wall area for any given wall.

Under VAR 1999-005, which currently governs this property, Suite 100 would be allowed a maximum of 120 square feet per wall, which is more restrictive than today's Unified Development Ordinance that would allow this business to have a maximum of 250 square feet of wall signage per wall.

This public hearing for the subject variance was noticed in compliance with NC State Statutes and the UDO. Adjacent property owners were notified by first class mail and the lot was properly posted.

Plan Consistency – Staff Zweifel read the following into the record.
The subject property is located within the US 74 Corridor East of the Comprehensive Plan. This project is consistent with Comprehensive Plan goal 2.3.2 Land Use and Housing.

> ***Economic Development No.1****: Create a more balanced tax base by promoting the development of office parks, businesses, retail centers, and industrial parks. Promote a diverse local economy that will support varied employment opportunities.*

The current master sign plan that governs this business is out-of-date and is more restrictive than the current Unified Development Ordinance. By allowing the applicant to remove itself from the master sign plan put in place by a variance from seventeen years ago, the applicant will be able to have signage on par with other properties located along US Highway 74.

Required Findings
Under UDO Chapter 380, the Board of Adjustment, when considering whether to approve an application for a variance request, shall review and evaluate the following:

1. **Whether the permit is in the Town's Jurisdiction according to the table of permissible uses:**
   The subject property is within the Town's jurisdiction to regulate commercial uses and appropriate signage size.

2. **Whether the application is complete.**
   Staff is of the opinion that the application for VAR2016-001 is complete.

3. **The Board will consider whether the application complies with all of the applicable requirements of this ordinance.**
   The facts show that VAR 2016-001 would not be consistent with the governing variance from 1999 but would be compliant with the Unified Development Ordinance. If approved, the proposal will comply will all applicable sections of the Unified Development Ordinance.

Under UDO Section 380.020, the Board of Adjustment must make these required considerations of public health, safety, and welfare. The Board of Adjustment's authority in the review of this variance application is

Member Howe asked Staff Zweifel to explain what happens if an applicant moves and another tenant wants signage. Staff Zweifel explained that they would be severed from the master sign plan and just follow the current UDO guidelines.

Applicant representative Ms. Stephanie Sturgeon of Casco Signs at 199 Wilshire Ave. Concord, NC answered Question #6 from the Variance Application:

#6 ***The variance will neither result in the extension of a nonconforming situation in violation of Division 1400 of the UDO nor authorize the initiation of a nonconforming use of land.***
The variance would allow Workout Anytime to adhere to the current sign ordinance in place and be conforming.

Closed public hearing:

Findings of Fact worksheets were passed to the board members.

1. **Is the property in the Town's jurisdiction.**
   Motion that it was by Member Eigenbrode, seconded by Member Howe. Vote was unanimous in favor.
2. **Is the application complete.**
   Motion that it was complete by Member O'Connor, seconded by Member Eigenbrode. Vote was unanimous in favor.
3. **Does the application comply with all the applicable requirements of this ordinance.**
   Motion that it does comply by Member O'Connor, seconded by Member Eigenbrode. Vote was unanimous in favor.

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1. **Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;**
   The applicant's hardship is that VAR1999-005 places limitations on the applicant that are in excess of the current Unified Development Ordinance.
   Motion by Member Eigenbrode, seconded by Member O'Connor. Vote was unanimous in favor.

2. **The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as wells as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.**
   Due to the fact that VAR1999-005 specifically governs this property and places limitations on this property that no other properties are subject to, then the hardship results from conditions that are peculiar to the property.
   Motion by Member Eigenbrode, seconded by Member Miller. Vote was unanimous in favor.

3. **The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as self-created hardship.**
   The hardship was not a result of any actions taken by the property owner because the current variance governing the property was issued by the Town of Indian Trail Board of Adjustment.
   Motion by Member Miller, seconded by Member Howe. Vote was unanimous in favor.

4. **The requested variance is consistent with the spirit, purpose and intent of the ordinance; such that public safety is secured and substantial justice is achieved.**

broad and the Board may approve with conditions if it concludes, based upon the information submitted at the hearing, that the proposed request finds that:

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property; *and*

2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as wells as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance; *and*

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as self-created hardship; *and*

4. The requested variance is consistent with the spirit, purpose and intent of the ordinance, such that public safety is secured and substantial justice is achieved; *and*

5. The variance will neither result in the extension of a nonconforming situation in violation of DIVISION 1400, Nonconformities nor authorize the initiation of a nonconforming use of land.

Staff did not have any recommended conditions of approval. Staff Zweifel stated that all property owners were notified within 450 ft. No responses were received.

Member Howe clarified that variance approval would require at least four of the five board members in favor. Staff Zweifel answered in the affirmative.

Board Questions

Acting Chair Chopelas asked if the variances affect whole property or just one suite. Staff Zweifel answered that the variance is for only one suite.

Member Miller asked if another future tenant would rent the suite, what would happen with the variance. Staff Zweifel answered that it stays with the land.

Member Howe asked if each of the buildings are under one ownership/management company? Staff Zweifel answered in the affirmative. She also stated that the tenant is leasing two suites (one used to be a sports shop and the sign for such will be removed).

Staff Zweifel stated that the primary façade is in compliance with the current master sign plan. The variance signage request is for the secondary façade. She showed the board a picture of the sign that they would request if this is approved.

Acting Chair Chopelas asked for clarification that the tenant can put a sign on the front and side of the building. Staff Zweifel answered that they are allowed, as long as they don't exceed 168.33 square feet of wall signs. They have used the total on the front signage, thus, the reason for the variance request.

Member Howe asked if the applicant received permission for additional signage. Staff Zweifel stated that the applicant has a letter from the property owner stating permission. Staff Zweifel entered the letter into the record.

Member Miller asked if the board of adjustment approves this, will other businesses in town make similar requests. Staff Zweifel answered that they are not requesting anything above what the UDO currently allows.

The request to allow Suite 100 to be subject to the Unified Development Ordinance rather than the Master Sign Program from VAR1999-005 is consistent with the spirit, purpose and intent of the ordinance because the UDO properly addresses properties of this type and allows the property to be treated equally to other similar properties.

Motion by Acting Chair Chopelas, seconded by Member O'Connor. Vote was unanimous in favor.

5. **The variance will neither result in the extension of a nonconforming situation in violation of DIVISION 1400, Nonconformities nor authorize the initiation of a nonconforming use of land.**
   The variance will not result in the extension of a nonconforming situation since the property would be in compliance with the UDO.

   Motion by Acting Chair Chopelas, seconded by Member Eigenbrode. Vote was unanimous in favor.

Motion to approve **VAR2016-001** with no conditions by Member O'Connor, seconded by Member Eigenbrode. Vote was unanimous in favor.

Other Business-none.

Adjournment-
Motion to adjourn by Member Eigenbrode, seconded by Member Miller. Vote to adjourn was unanimous. Board adjourned at 7:10pm

Chairman: _____

Date: 10-27-2016

Secretary: _____