Board of Planning & Adjustment
Regular Meeting Agenda
June 21, 2016
5:30 PM – Town Hall

- Call to Order
- Approval of Minutes
  *April 19, 2016 Minutes*
- Public Comment
  *Public may address the Board about any policy matter*
- Consider Zoning Code Text Amendment 160630.01
- Consider Policy on Public Comment
- Identify Training Topics
- Adjourn

# Board of Planning & Adjustment

Meeting Minutes
April 19, 2016

**Board Present**
Lynn Sarratt, Jim Blalock, Josh Beason, John Cannon, Ellen Humphries, J.T. Scruggs, Cliff Wilson, Buster Bryson, and J.T. Scruggs.

**Staff Present**
Town Manager Tom Hart, Town Clerk Kim Greene, Sgt. Tommy Sheehan, and Officer Austin Reulecke. Town Attorney John Schweppe, III was also present.

**Others Present**
Meeting Roster: Jimmy and Sandy Beason, Wade Wallace, Jim Beason, Dawn Beason, Anna Ware, David Teddy, Jaime Beason, Rick & Cecelia Hudson, Tyler Pearson, Hannah Clark, Dolores Abdow, Amanda Clark, Marybeth Abdow, Andrew Abdow, Brandon Couch, Lisa Houser, Dan Houser

**Call to Order**
Chairman Lynn Sarratt called the meeting to order at 5:34 p.m.

**Approval of Minutes**
Jim Blalock made a motion to approve the minutes of the February 16, 2016 meeting. John Cannon seconded the motion and all were in favor.

The Board of Adjustment is holding a public hearing to consider an appeal of an Administrative Official's determination that the landscaping business activities at 212 Wall Avenue predate the provisions forbidding them and therefore constitute a legal non-conforming use and may continue.

Board of Adjustment members: Lynn Sarratt, Ellen Humphries, Josh Beason, John Cannon, and Cliff Wilson. All other members of the Board of Planning and Adjustment serve as alternate members. Josh Beason requested to be recused from the Board of Adjusment under the rules of conduct. He is an employee of Piedmont LLC and the brother of Jim Beason. Cliff Wilson agreed to approve his request to be recused. Ellen Humphries seconded the motion and all were in favor. J.T. Scruggs agreed to replace Josh Beason on the Board of Adjustment.

**Public Comment**
**Public may address the Board about any policy matter.**
Chairman Lynn Sarratt opened public comment at 5:40 p.m.

Wade Wallace, Pastor of Green Bethel Baptist Church, addressed the Board. Pastor Wallace stated they want the property to be zoned residential and would appreciate it if no business could be located on that property. He stated a business like that should not be located across from the church. He stated they do not think it is the right site for that type of business. They are concerned about safety and health hazards, the movement of trucks, and the potential for what can be placed there, and for that kind of business to be in that residential setting.

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Attorney David Teddy stated he was present on behalf of Jim Beason, his business, and his family. He is an attorney in Shelby, lived here his whole life and has known the Beason family for a long time. He stated Mr. Jim Beason is sensitive to the concerns that have been raised in this appeal. However, after taking a look at the regulations, they believe the zoning decision of the Town Manager should be upheld. They believe it is a legal non-conforming use. Mr. Teddy stated if there are issues about toxic waste, which was mentioned by the ones that brought the appeal to the Board, the EPA visited Mr. Beason's property that morning at 9:00 a.m. The EPA received a complaint that Mr. Beason had toxic waste on the property. After staying most the day, the EPA gave Mr. Beason a clean bill and closed the file. Attorney David Teddy said there will be a letter forthcoming from the EPA.

Sherrie Beason Starnes, Wall Avenue, said she lives across the street from the business. Ms. Starnes stated she is afraid that it is destroying her property value. She said she is concerned the expansion taking place in that residential area is just going too far. She stated there are too many big trucks going down the road and that this is where people walk and jog and where people push their babies in strollers. Ms. Starnes said it has always been a residential area and that she understands growth happens but not there.

Kristy Tilley stated her grandparents live at 219 Wall Avenue. She stated she was sure the Beason Landscaping business started out with a pickup truck and trailer, a lawnmower, a blower, and a weed eater. It has become a booming business and she is very proud of them. She said her problem is the house her mother is living in now is only thing she has to give her kids. She discussed her concerns that this will affect the value of homes in the area, the trucks going down the road where kids are waiting for the bus, and their employees.

There being no further comments, Chairman Lynn Sarratt closed the public comment period.

**Board of Adjustment**
The Board of Adjustment convened to conduct a quasi-judicial public hearing to gather evidence and make a decision on the administrative appeal of the zoning decision issued in Case CZ160318.

The Board of Adjustment is a quasi-judicial board and all testimony before it must be "sworn' testimony. All persons wishing to speak on the matter must be sworn in. The Board of Adjustment must consider only the evidence presented during the public hearing.

(An audio recording of this public hearing was made by the Town Clerk.)

**Public Hearing Case 160318**
Owner – Jim Beason
Location – 212 Wall Avenue or Parcel 717

The Board convened as the Board of Adjusment and the public hearing opened at 5:50 p.m.

Chairman Lynn Sarratt recognized Town Manager Tom Hart. Mr. Hart (sworn) stated he was first approached about some concerns regarding the activities that were going on at 212 Wall Avenue or Parcel 717 in late October 2015 or early November 2015. He issued a formal zoning decision on March 18, 2016 **(Evidence Item 2)** after discussing it with both parties. There is a 30 day window to appeal the decision to the Board of Adjustment.

Mr. Hart reviewed the following evidence for Case ZC160318:
**Evidence Item 1:** Notice of Hearing

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**Evidence Item 2:** Zoning Decision (2 pages)
Mr. Hart reviewed **Evidence Item 2** - the Notice of Zoning Decision for Parcel No. 717 or 212 Wall Avenue Case No. ZC160318.
**Exert from Evidence Item 2:**
The property owner indicates that the horticultural use of the property predates the 2001 changes to the Zoning Code that made them non-forming in the R-15 district and such activities have continued un-interrupted.
In consideration of the information available I have determined that the use of the Parcel No. 717 for landscaping services is a legal non-conforming use as defined in the Zoning Code. While the use cannot be expanded, the Zoning Code clearly allows for an increase in volume, intensity, and frequency of the use. No further investigative or corrective enforcement action is deemed necessary at this time.
**Evidence Item 3:** Abdow Appeal
**Evidence Item 3a:** Zoning Code 151.001 (referenced in Appeal)
**Evidence Item 3b:** Zoning Code 151.062 (referenced in Appeal)
**Evidence Item 3c:** Ordinance 94.01 (referenced in Appeal)
**Evidence Item 4a through 4e:** Satellite or Aerial Photos
Satellite photos from 1993 show various accessory structures historically existed on the property and that no new structures appear to have been added. The satellite photos depict the same area being utilized.
**Evidence Item 5a:** Table of Permitted Uses
**Evidence Item 5b:** Zoning Code 151.151 & 151.153
**Evidence Item 6a:** 1991 Section 151.031
**Exert from Evidence Item 6a**
Permitted Uses. The following uses are permitted:
(5) Any form of agriculture or horticulture, including the sale of products at a retail stand on the property where produced.
**Evidence Item 6b:** 1989 Section 151.035
**Evidence Item 6c:** 1988 Chapters 50 & 51
A copy of **Evidence Items 1 – 6c** is hereby incorporated into and made a part of the minutes of the meeting.

**Speaking in Opposition**
Andew Abdow (sworn) reviewed a prepared statement (**Evidence Item 7**) and shared photos of 212 Wall Avenue.
**Exert from Evidence Item 7:**
(3) Accumulation in an open place of hazardous or toxic materials and chemicals.
Parcel 717 or 212 Wall Avenue exhibits and has exhibited large containers of liquid fertilizers. This also raises a question as to whether or not the Fire Marshall is aware of these toxic substances and their amounts for controlling safety of the surrounding residents.
At this point in time, I would also like to make mention of the heavy industrial vehicles, weighing in excess of the 6,000 lb. restriction on residential roads. These vehicles travel within this SFR neighborhood on a daily basis as well as park and/or block these roadways.
A copy of **Evidence Item 7** is hereby incorporated into and made a part of the minutes of the meeting.

**Speaking in Opposition**
Marybeth Abdow (sworn) also reviewed **Evidence Item 7**.
**Exert from Evidence Item 7:**
This "landscaping business" as the town manager describes the commercial business located at 212 Wall Avenue does NOT predate 2001 Y (when the Table of Permitted and Conditional Uses was adopted). The owner of Parcel 717 or 212 Wall Avenue, at this point in time, is James L. III and Dawn Patrick Beason.

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They purchased this parcel on 05/02/2012. The prior owners, from 06/09/1998 to 05/02/2012 were Rodrick and Anne Bolick. To further strengthen this "predate issue," Beason Landscape Management, LLC was not created until 01/17/2008 which is evidenced by NC Department of the Secretary of State. This creation filing also states the principle office is 212 Wall Avenue. James L. Beason III also started another business, Piedmont Utility Group, LLC with creation filing articles of organization limited liability on 02/11/2011. This business is also operating out of Parcel 717 or 212 Wall Avenue.
Case Law Cite as Petitti v. Plain Twp. Bd. Of Zoning Appeals 2003-0hio. This is a similar case where the Board found the appellant operating illegally. Mr. Petitti formed a corporation to perform landscaping of residential and commercial real estate, landscape design, lawn maintenance.
Based upon the review of record, the Fifth Appellate District Court found the appellant's landscaping business is NOT an agricultural use. Furthermore, two additional court cases, Fox V. Orwig (1995Y) and Gabanic v. Apanius also concluded the business of landscaping does NOT constitute an agricultural use and landscaping operation activities are prohibited in residential areas.

**Speaking in Opposition**
Lisa Houser (sworn) reviewed her presentation and shared photos of 212 Wall Avenue (**Evidence Item 8**).
**Evidence Item 8**
**Point 1: 151.152** Non-conforming lots of record (Lot 717)
All properties owned and and used by James Beason III were purchased after 2001 and purchased at a time when all properties were coded R15 not R20 which negates the non-conforming clause of 2001.
**Point 2: 151.153 (C)**
**Exert from Evidence Item 8 Point 2**
A non-conforming use may not be extended to cover more land than was occupied, he has purchased 5 properties in a span of three years and is currently in the process of purchasing 3 more.
**Point 3: 151.153** Extension or Enlargement of Nonconforming Situations
**Point 4: 151.153 (D)**
**Point 5: Two Businesses**
Beason Landscape Management: Articles of Incorporation filed on 1/17/2008. Piedmont LLC: Articles of Incorporation filed on 08/27/2013 (formed with Mr. Ware).
**Point 6:** Continues to expand and use residential zoned R15 land. Currently Storing Piedmont LLC industrial trucks across from Green Bethel Church (2995).
A copy of **Evidence Item 8** is hereby incorporated into and made a part of the minutes of the meeting.

**Speaking in Support**
Jimmy Beason, 209 Wall Avenue (sworn), father of property and business owner Jim Beason. Mr. Beason read a prepared statement. He stated his previous address was 212 Wall Avenue. Jim grew up at that property. Beason Landscaping started at 212 Wall Avenue. Beason Landscaping has grown into Piedmont Landscaping LLC. Jim's business had a growth spurt when his friend and fellow landscaper Josh Guffey got out of the lawncare business. He offered Jim a chance at all of his customers. Those new customers required some over the road travel. This is when his mother started providing transportation to job sites because he was still not of legal age to have a driver's license. He turned 16 in the year 2000. Jim put himself through collge in Hickory to earn his Horticulture Technology Degree. This allowed Jim to commute each school day allowing himself to maintain his business through very long days and full weeks. Jim has had without any interruption unlimited use of the property areas now being used. Jim earned this use through mutual agreement. One of the ways was full time lawn care at no cost for these properties. Mr. Beason stated that before 2001 he didn't believe we had anything that came closer to lawn care than horticulture. Jim's business clearly pre-dates November 2001. Jim has

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clearly operated his business with no interruption since its beginning. Jim has clearly maintained intentional use of the current 212 Wall Avenue properties with no lapse in time.

**Owner**

Jim Beason, 212 Wall Avenue (sworn), stated he started doing landscaping well before 2001 and the LLC. He was young and had to be driven to jobs because he didn't have a license. It has grown and expanded. He stated he has maintained uninterrupted use of Parcel 717. His father built it in 1979. He sold it to the Haley's before buying it back. During that time period he maintained their property for them in use of the shop and the area there for his business. Mr. Beason stated he had an email **(Evidence Item 9)** from the previous owner Mr. Richard Haley stating this.

Mr. Beason read Mr. Haley's email dated 04-15-16 to the Board:
Jim Beason began his AG/landscape business at a very early age. For related purposes he continued uninterrupted use of the property located at 212 Wall Ave. He even went as far as to maintain the property's landscape needs during this time free of charge in return for use of the property.

J.T. Scruggs asked Mr. Beason for clarification. Your Dad (Jimmy Beason) owned the property, it was sold to someone else (Richard Haley) and then you bought it back. During the time is was owned by someone else you were running the business out of that building? Mr. Beason answered yes.

Cliff Wilson asked Mr. Beason what year he bought the property back. Mr. Beason stated he was not sure. Lisa Houser said 2012. Mr. Beason stated that was probably right.

Cliff Wilson asked Mr. Beason for clarification. If the business he is running now, Piedmont, is the same business that he was running with his lawn care service or is it a different business. Mr. Beason stated it is the same the same customers the same everything.

Chairman Lynn Sarratt asked Mr. Beason if he has two different businesses. Mr. Beason stated he has multiple businesses. The other businesses are being operated somewhere else. Mr. Beason stated only the landscaping business is being operated from Parcel 717.

J.T. Scruggs asked Mr. Hart when he made his decision was it based on Parcel 717 only. Mr. Hart stated 717 is the one we are formally and technically discussing tonight. The same set of rules would apply so if he was on this piece of property no he could not come over and then start to use this other one. But if there was a pre-existing use on all three pieces of property then he could continue to use all three. It is about whether it is being used for landscape services.

A Board discussion ensued with comments from the audience.

Attorney John Schweppe addressed the Board. He stated the Board can compel further evidence if you feel there is not sufficient competent evidence to base your opinion on. You can subpoena further evidence from both parties if you need it. Once you are satisfied with the evidence presented you will be charged with adopting the findings-of-fact. If you are comfortable with what you have you can close the public hearing and make your findings.

The public hearing closed at 7:28 p.m.

**Motion**

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Cliff Wilson made the motion that the appeal of the Administrative Official's determination that the landscaping business activities at 212 Wall Avenue pre-dates the provision forbidding them and therefore constitutes a legal non-conforming use. J.T. Scruggs seconded and the vote carried 4-1 in favor of the motion.

Attorney John Schweppe stated the decision of the Board of Adjustment would be in the form of an order that will include a summary of the evidence and the findings of fact made by the Board. Mr. Hart stated the order will be prepared based on the evidence presented and mailed to all parties.

**Other Business**

**Adjourn**

There being no further business, the meeting adjourned at 7:30 p.m.

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## Staff Notes

**Consider Zoning Code Text Amendment 160630.01**

State law indicates the representation of ETJ residents on the Board of Planning and Adjustment be based on population. Population densities have shifted considerably since the last time the composition was set in the late 1960's. The Board currently has 5 inside members and 4 ETJ members. Population estimates calculated by the County based on the 2010 Census indicate the Town's population is 4662 and the ETJ has a population of 1391 or .29% of the Town's population. Applied to the 9 members of the Board of Planning and Adjustment this indicates 2.61 members of the Planning Board should be ETJ members. Statute indicates that full fractions be used meaning 2 members of the Board of Planning and Adjustment should be ETJ residents. Two ETJ seats and one inside seat expire June 30, 2016. Pat Hamrick and Cliff Wilson's ETJ seats both expire on June 30. Cliff Wilson had arranged to serve the remainder of the term on his seat after a resignation and does not wish to continue on the Board. Pat Hamrick has expressed an interest to continuing to serve. On July 1, 2016 the Board will have 3 ETJ members, John Cannon, Buster Bryson, and Pat Hamrick. To come into agreement with the new population estimate, staff is asking that one ETJ member consider voluntarily resigning from the Board. It is also possible to create a text amendment indicating that at the expiration of a current ETJ seat's term, that seat become an inside seat.

**Consider Policy on Public Comment**

The Town Council includes the following language on their meeting Agenda's. Staff recommend the Board of Planning and Adjustment adopt a similar policy to facilitate meetings.

*The Town Council desires all citizens have an opportunity to address the Council in an open and productive manner. Individuals not on the agenda but wishing to speak should register with the Clerk prior to the start of the meeting. During the Public Comment portion of the meeting speakers have three (3) minutes unless otherwise approved by the Council. Groups are urged to appoint a spokesperson. If you require additional time, we ask you be placed on the agenda for the next regularly scheduled meeting of the Council. This policy allows the Council members adequate time to familiarize themselves with an issue.*

**Identify Training Topics**

Staff ask that the Board of Planning and Adjustment identify topics on which they would like to receive training.

*"The Crossroads of Opportunity"*

# TOWN OF BOILING SPRINGS

**ORDINANCE AMENDING CHAPTER 151 BOARD OF PLANNING AND ADJUSTMENT OF THE TOWN OF BOILING SPRINGS CODE OF ORDINANCES**
**ORDINANCE NO. 160630.01**

**BE IT ORDAINED** by the Boiling Springs Town Council assembled this the 30th day of June, 2016.

**Part 1.** General Statute § 160A-362 provides for the proportional representation based on population for residents of the Town's Extra Territorial Jurisdiction. Based on the most recent Census information, the Board of Planning and Adjustment Chapter 151.170 and 151.171 of the Zoning Ordinance is accordingly amended to read as follows:

**§ 151.170 ESTABLISHMENT OF BOARD OF PLANNING AND ADJUSTMENT.**

(A) A Board of Planning and Adjustment is hereby established. The Board shall consist of nine members. ~~Five~~Seven members shall be residents of the town and shall be appointed by the Town ~~Board of Commissioners~~Council and ~~four~~two members, who shall be residents of the Area of Extraterritorial Jurisdiction, shall be appointed by the Cleveland County Board of Commissioners upon recommendation by the Town ~~Board of Commissioners~~Council. All members shall serve terms of three years, except for the initial appointments where three members shall be appointed for one year terms, three members shall be appointed for two year terms and three members shall be appointed for three year terms. Vacancies shall be filled for the unexpired portions of the terms in the same manner as the initial appointment. The term for each appointed member shall begin on the effective date of the adoption of this chapter. Members may be appointed for any number of successive terms. All members shall vote on all matters except as otherwise provided for in this subchapter.

**§ 151.171 BOARD OF ADJUSTMENT; COMPOSITION.**

When acting as a Board of Adjustment the Board shall consist of five regular members and four alternate members. The Chair and Vice-Chair of the Board of Planning and Adjustment shall serve as regular members of the Board of Adjustment and serve as Chair and Vice-Chair respectively, of the Board of Adjustment. The Chair shall appoint three additional members from the remaining seven members of the Board of Planning and Adjustment to serve as regular members and the remaining four members shall serve as alternate members. At all times, however, at least ~~two~~ one Area of Extraterritorial Jurisdiction members shall serve as regular members of the Board of Adjustment.

**Part 2.** This Ordinance shall become effective upon its adoption by the Boiling Springs Town Council.

Adopted this the 30th day of June 2016.

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Max Hamrick | Mayor

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Kim Greene | Town Clerk