

**DECISION LETTER OF THE BOARD OF ADJUSTMENT
OF THE VILLAGE OF WESLEY CHAPEL,
UNION COUNTY, NORTH CAROLINA**

**APPEAL OF MARK BURNAM
CASE NO. A-08-02**

February __23__, 2009

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED
AND VIA U.S. FIRST CLASS MAIL**

Mark Burnam
519 Circle Trace Rd.
Monroe, NC 28110

**Re: Appeal of Mark Burnam relating to a Zoning Ordinance violation for
use of property for a mobile vending operation**

Dear Mr. Burnam

This letter serves as the written decision of the Board of Adjustment for the Village of Wesley Chapel (the "BOA") for the appeal referenced above (the "Appeal"). The application for the Appeal is dated November 12, 2008. The Appeal relates to a Notice of Violation dated November 12, 2008 issued by Joshua Langen, the Planning and Zoning Administrator for the Village of Wesley Chapel (the "Administrator"). The Notice of Violation provides that Mr. Burnam's use of property for a mobile vending operation violates the Village of Wesley Chapel's Zoning Ordinance (the "Zoning Ordinance"). The BOA held a public hearing on the Appeal on December 18, 2008 (the "Hearing"). Based upon the evidence presented at the Hearing, the members of the BOA voted four to one in favor of overruling the decision of the Administrator (the "Ruling").

The Ruling is based on the following Findings of Fact:

1. Mr. Burnam leases certain real property known as Tax Parcel #06045016E01 (the "Property"). The Property is located at the intersection of Weddington Road and Underwood Road.
2. The Property is classified as General Business District B-1 under the Zoning Ordinance.
3. Mr. Burnam operates a mobile vending operation on the Property (the "Business"). The mobile vending operating consists of a truck out of which Mr. Burnam serves food. Customers pick up food to carry out from the Property. Customers also have the option of dining at a picnic table near the vending truck.

4. Customers access the business by means of a driveway and small parking area located on the Property. The driveway is paved and runs across the Property between Weddington Road and Underwood Road.
5. Mr. Burnham has instructed customers to use the driveway as one-way access and to enter the Property from Weddington Road and exit onto Underwood Road.
6. A residential house is located on the Property, approximately thirty to forty feet from Weddington Road. The house has been on the property for approximately fifty-seven years.
7. The vending truck is located between the house and Weddington Road. If the setbacks required by the Zoning Ordinance apply, it is not possible for the vending truck to comply with the setback requirements.
8. The Notice of Violation alleges that Mr. Burnham's business does not comply "with a number of Village regulations, including Article 9 – Off-Street Parking & Loading, Section 5.5 – General Business District B-1 (setbacks), and Section 4.2 - Screening and Landscaping."
9. No competent evidence was presented that the Screening and Landscaping requirements of the Zoning Ordinance apply to Mr. Burnham's business.
10. No competent evidence was presented as to which, if any, parking requirements under the Zoning Ordinance apply to Mr. Burnham's business.
11. The driveway area is used more for drive through access than parking.

Based upon the foregoing Findings of Fact, the BOA makes the following Conclusions of Law.

1. The landscaping requirements of Section 4.2 of the Zoning Ordinance do not apply to Mr. Burnham's business.
2. The setback requirements of the Zoning Ordinance do not apply to Mr. Burnham's business.

3. Mr. Burnham's business complies with the requirements of Article 9 of the Zoning Ordinance regarding off-street parking and loading.

Based upon the foregoing Findings of Fact and Conclusions of Law, the BOA overrules the Administrator's decision.

The BOA's Ruling may be appealed to the Superior Court within thirty (30) days from the date set forth below, which is when the Ruling was filed with the Village of Wesley Chapel or thirty (30) days from the date a written copy of the Ruling is delivered to Mr. Burnham.

This the __23__ day of February, 2009.

Henry Byrum, Jr.
Chairman of the Board of Adjustment

Ruling filed with the Village of Wesley Chapel:

Date

Joshua Langen
Planning and Zoning Administrator