

Burch Appeal-On-Site Sign

REQUEST FOR COMMITTEE ACTION

HENDERSON COUNTY

Zoning Board of Adjustment

MEETING: November 29, 2017

SUBJECT: Burch Appeal

PRESENTER: Toby Linville

ATTACHMENTS: Staff Report

SUMMARY OF REQUEST: Appeal to on-site sign requirements of Henderson County Land Development Code §42-221

Suggested Motion: I move to uphold (overturn) the decision of the Zoning Administrator to allow an on-site sign larger than the requirements of the Land Development Code



Henderson County, North Carolina Code Enforcement Services

1. Committee Request

- 1.1. **Applicant:** William A Burch
- 1.2. **Request:** Appeal sign requirements of Land Development Code
- 1.3. **PIN:** 0623158226
- 1.4. **Size:** 1.57 acres +/-
- 1.5. **Location:** 89 Lake Lure Highway
- 1.6. **Requirements:**

§42-221. Office, Institutional, and Commercial Zoning Districts

The following *sign* regulations shall apply in office institutional, commercial and industrial districts:

A. Freestanding Signs.

(1) Sign Type. *Ground signs* only are permitted when the *sign height* is 18 feet or less. *Pole* and *ground signs* are permitted when the *sign height* is greater than 18 feet.

(2) Maximum Number by Sign Type.

a. Single-Tenant Development Sign. One (1) freestanding *sign* is permitted per lot. One (1) additional freestanding *sign* is allowed for corner or *double-fronted lots*.

b. Multi-Tenant Development Sign. One (1) *double-faced* or two (2) single-faced *signs* is/are permitted per development entrance (but shall be placed at to no more than two (2) entrances).

c. Office Institutional and Commercial Subdivision Sign. One (1) *double-faced* or two (2) single-faced *signs* is/are permitted per *subdivision* entrance (but shall be placed at to no more than two (2) entrances).

(3) Maximum Area. Seventy-two (72) square feet per face. Where a *sign* is located within 500 feet of the *right-of-way* line of Interstate 26 the maximum area shall be 200 square feet per face.

(4) Maximum Faces. Two (2) faces per *sign*.

(5) Maximum Height. Eighteen (18) feet. Where a *sign* is located within 500 feet of the *right-of-way* line of Interstate 26 the maximum height shall be 75 feet (as measured from the *road* grade of the interstate).

TIMELINE

- 3/29/16 Complaint about off-site sign, e-mailed NCDOT who said sign was approved.
- Required Building and Zoning permits and inspections. Permits issued 4/1/16, final inspections 8/1/16.
- Received another complaint 9/5/17 that the sign was a violation of NCDOT's off-site regulations because it is a scenic byway. Off-site sign permit revoked by NCDOT
- Contact NCDOT and on 9/11/17 told that the sign was no longer in violation because it is an on-site sign advertising the Hip Hen at 93 Lake Lure Highway
- Sign violation of Land Development Code-Notice of Violation given to bring sign into compliance maximum size 72 square feet and maximum height 18'.
- Appeal Letter received 10/31/17

Map A: Aerial Photo/Pictometry
(Former)



(Current)

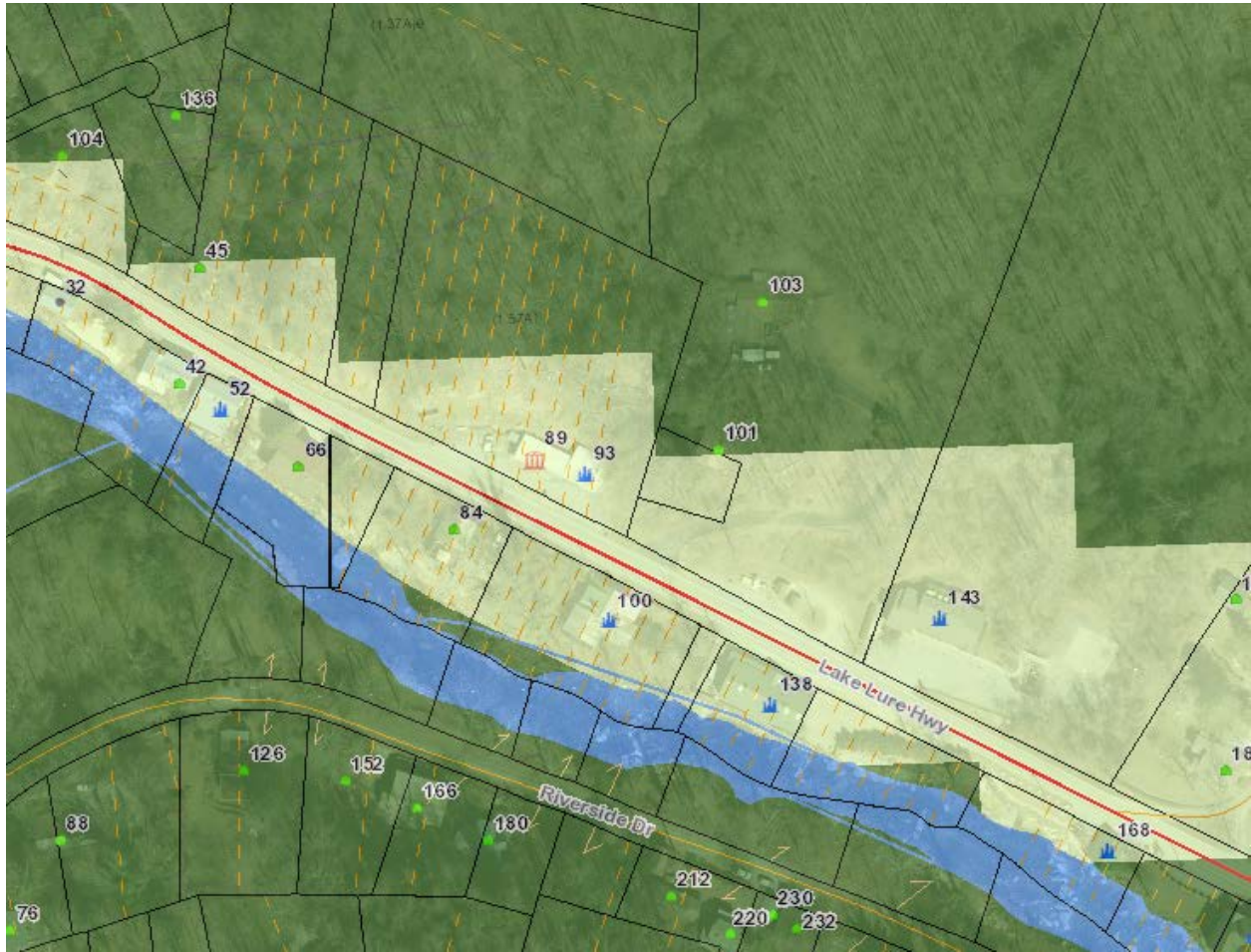


2.1 Current Use: This parcel is currently in commercial use.

2.3 Zoning: The subject property is Local Commercial (LC) with adjoining property zoned Residential Three (R-3).

- 4

Map C: CCP Future Land Use Map



5. Staff Comments

The 2020 CCP: The CCP Future Land Use Map places the Subject Area in the Rural/Agricultural Area. The text and map of the 2020 CCP suggest that the Subject Area would be more suitable for the following:

1. The RAA covers those portions of the county that are predominantly rural and are characterized by low-density residential development with substantial land areas devoted to agriculture and undeveloped lands. Land use policies will seek to retain that character.
2. Slopes are typically steep, often exceeding 10%, with significant areas greater than 20%.
3. Most sections of the RAA are so far from sewer services as to make their extension largely impossible. Land development regulations should recognize this by not permitting densities that would require sewer services or introduce traffic capacity problems and by encouraging densities that are consistent with steep slopes, poor septic capacities, and sensitive topography.

6. Staff Recommendations

Staff's Position at this time, under the guidelines of current plans, policies and studies, is to overrule the appeal and uphold Henderson County's decision to enforce the Land Development Code and require the sign to be reduced in size.

7. Photographs

Burch Appeal-On-Site Sign





Henderson County (Planning) – Zoning Permit

100 N. King Street, Hendersonville, N.C. 28792

Phone : (828) 697-4857

Project No: 16010104191**Permit No:** 16020104192**Status:** ISSUED**Appl. Dt.:** 4/1/2016**Status Dt.:** 4/1/2016**Exp. Dt.:** 10/1/2016

Owner Information

Name : William Burch
Address : 1200 Bearwallow Rd
 Hendersonville NC 28792-8665
Phone(W) :
Phone(H) : 828 6853556
Phone(M) : 828 2432930

Property Information

PIN # : 0623158226
Address : 89 Lake Lure Hwy
 Hendersonville NC 28792
Subdivision : Bat Cave
Lot # :
Acreage : 1.57
Directions : 89 LAKE LURE HWY: 64E, R HWY
 74/Lake Lure Hwy, 89 (post office)
 on left
Zoning Districts : L-LC

Applicant Information

Name : William Burch
Address : 1200 Bearwallow Rd
 Hendersonville NC 28792-8665
Phone(W) :
Phone(H) : 828 6853556
Phone(M) : 828 2432930

Occupant Information

Name : William Burch

Permit Information

Type & Use : Signs
Permission : Permitted by Right, zoning permit
 required
Purpose : Not Applicable
Year of Manuf. Home :
Condition : Minimum setback of 15' from
 edge of pavement & out of ROW
 (& per DOT approval and site
 plan)
Work Desc. : 12' X 16' SIGN REPLACING
 ROTTED 10' X 20' SIGN

Other Information

Site Plan : Yes

Notes : mcw

Inspections Conducted

Inspections	Signed Off/User ID	Date	Status	Reason
Zoning Inspection				

Payment Information

Permit	Receipt No.	Fee	Ref#1	Amount	Status	Ref#2	Amount	Status	Ref#3	Amount	Status
MAINPERMIT	16020102833	50.00	2028 CHECK	50.00	PAID						
Total			50.00								

READ CAREFULLY AND SIGN BELOW

An address will be assigned in the next few days based on the site plan you are submitting today with you permit application. If in the future you deviate from the submitted plan, the address could change. If you have to make any major changes to your site, please notify Henderson County Property Addressing at (828)-694-6517. This will ensure the address isn't changed in the future after occupancy.

The information shown herein and on any other application materials and plans submitted is, to the best of my knowledge, true and accurate, and is in compliance with the terms, requirements, standards and conditions of the Henderson County Zoning Ordinance for a zoning compliance permit. By my signature below, I agree to conform to all applicable ordinances of Henderson County, North Carolina, and the laws of the State of North Carolina related to the use of land and/or structure(s) indicated herein.

BY LAW ALL IMPROVEMENTS MUST BE LISTED WITH THE ASSESSOR'S OFFICE DURING THE MONTH OF JANUARY. FAILURE TO DO SO WILL RESULT IN A PENALTY OF 10% OF THE VALUE OF THE IMPROVEMENT.

Signature: _____

Date: _____

From: [Cannon, Steven L](#)
To: [Toby Linville](#)
Subject: FW: Bat Cave Billboard
Date: Wednesday, October 11, 2017 7:25:08 PM
Attachments: [image002.png](#)
[image002.png](#)

FYI

Sincerely,
Steve Cannon, PE
District Engineer
NC Department of Transportation
Division 14: District I – Henderson, Polk, & Transylvania County

828 891 7911 office
slcannon@ncdot.gov

4142 Haywood Rd
Mills River, NC 28759+4



Email correspondence to and from this address is subject to the North Carolina Public Records Law and may be disclosed to third parties.

From: bob wald [mailto:rjwald1@bellsouth.net]
Sent: Friday, September 29, 2017 8:49 PM
To: Cannon, Steven L <slcannon@ncdot.gov>
Cc: Grasse, Roy T <rgrasse@ncdot.gov>; Peter O'Leary <bubbaolearys@bellsouth.net>; Barbara Meliski <barmel@bellsouth.net>; Mary Jaeger-Gale <maryjg@chimneyrockpark.com>; Amy Wald <barkandtwig@bellsouth.net>; Robin Proctor <rh177@bellsouth.net>; Jim Proctor <lakelure2@aol.com>; Diana Richards <wolfeyes20201@bellsouth.net>; Sara Jackson <batcavedesign@gmail.com>; David Ebird <turtle309@bellsouth.net>; Shannon Baldwin <cdd@townoflakelure.com>; Bill McAninch <jerryandbill@gmail.com>; Sara Bentley <sarasaxbybentley@yahoo.com>; Maureen Bay <lakelurebay@gmail.com>; Lee Armstrong <leearmstrong16@gmail.com>; Susie Ellis <susieellis59@gmail.com>; Beth Heer <bethheer@gmail.com>; Clint Calhoun <eco@townoflakelure.com>; John Crotts <jcrotts@kinglawoffices.com>; Valerie Hoffman <writerworks@att.net>; April's Boutique <aprilboutique371@gmail.com>; Debbie Shetterly <dshett37@gmail.com>; Charlie Ellis <cellis@collettre.com>; Kenneth Tanner <ktanner3@gmail.com>; Kathy Tanner <kathyt3@gmail.com>; George <george@lakelure.com>; Lake Lure Town Manager <townmgr@townoflakelure.com>
Subject: Re: Bat Cave Billboard

STEVE: Thank you for your reply. From several of us with some background in law, there is

a bit of disagreement with the reasoning offered for why this billboard should remain. I'll get back with you after the weekend as to the specifics.

Over the past eleven months the communications I have had with you and Roy Grasse have confirmed that the permit issued for the billboard was in error and/or the conditions of the permit were violated, and/or the construction of same was non-conforming as per NC law. In addition, the permit for the billboard was revoked by your department and the billboard with or without advertizing was still considered a "sign" in violation of applicable statute. You, after consultation with Roy, agreed to this. You also agreed, as per your emails to me, that the billboard must be removed or brought into compliance by the property owner. The billboard was not brought into compliance, and it was not removed. It has simply been "recycled" into further advertizing by a business which does not own the property.

A new advertiser, without ownership of the property upon which the billboard stands, has placed huge advertising signage where the previous advertizing stood. This is not a different scenario from that which existed in mid 2016 when I first brought the illegal sign placement on a Scenic Byway to Roy Grasse's attention.

Steve, I have no desire, nor does Friends of Hickory Nut Gorge, to bring lawyers into this mix. Several have suggested we do so. I disagree. With that in mind, I urge you, Roy, and your staff people to reconsider your most recent opinion.

The spirit and intent of the Scenic Byway legislation is at issue here. To allow one billboard to be illegally placed on such a magnificent roadway is to invite many. Such a precedent should not, and cannot be, sent.

Thanks again for your efforts.

--Bob

From: "Cannon, Steven L" <slcannon@ncdot.gov>
To: bob wald <rjwald1@bellsouth.net>
Cc: "Grasse, Roy T" <rgrasse@ncdot.gov>; Peter O'Leary <bubbaolearys@bellsouth.net>; Barbara Meliski <barmel@bellsouth.net>; Mary Jaeger-Gale <maryjg@chimneyrockpark.com>; Amy Wald <barkandtwig@bellsouth.net>; Robin Proctor <rhp177@bellsouth.net>; Jim Proctor <lakelure2@aol.com>; Diana Richards <wolfeyes20201@bellsouth.net>; Sara Jackson <batcavedesign@gmail.com>; David Efird <turtle309@bellsouth.net>; Shannon Baldwin <cdd@townoflakelure.com>; Bill McAninch <jerryandbill@gmail.com>; Sara Bentley <sarasaxbybentley@yahoo.com>; Maureen Bay <lakelurebay@gmail.com>; Lee Armstrong <leearmstrong16@gmail.com>; Susie Ellis <susieellis59@gmail.com>; Beth Heer <bethheer@gmail.com>; Clint Calhoun <eco@townoflakelure.com>; John Crotts <jcrotts@kinglawoffices.com>; Valerie Hoffman <writerworks@att.net>; April's Boutique <aprilsboutique371@gmail.com>; Debbie Shetterly <dshett37@gmail.com>; Charlie Ellis <cellis@collettre.com>; Kenneth Tanner <kstanner3@gmail.com>; Kathy Tanner <kathyt3@gmail.com>; George <george@lakelure.com>; Lake Lure Town Manager <townmgr@townoflakelure.com>
Sent: Friday, September 29, 2017 5:58 PM
Subject: RE: Bat Cave Billboard

Mr. Wald,

I have reviewed your email and the photos. According to GIS records "HipHen Antiques" is located on this property. Therefore making the new sign an on premise sign. As such, it is exempt from the Outdoor Advertising Policy and is permitted by Scenic Byways laws.

Please see the following;

- Administrative Code 19A NCAC 02E.0224 - attached
- NCGS 136-129(3) - attached

NCDOT cannot require removal of this sign.

Sincerely,
Steve Cannon, PE
 District Engineer
 NC Department of Transportation
 Division 14: District I – Henderson, Polk, & Transylvania County

828 891 7911 office
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 Mills River, NC 28759+4



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From: bob wald [<mailto:rjwald1@bellsouth.net>]
Sent: Friday, September 29, 2017 11:58 AM
To: Cannon, Steven L <slcannon@ncdot.gov>
Cc: Grasse, Roy T <rgrasse@ncdot.gov>; Peter O'Leary <bubbaolearys@bellsouth.net>; Barbara Meliski <barmel@bellsouth.net>; Mary Jaeger-Gale <maryjg@chimneyrockpark.com>; Amy Wald <barkandtwig@bellsouth.net>; Robin Proctor <rhp177@bellsouth.net>; Jim Proctor <lakelure2@aol.com>; Diana Richards <wolfeyes20201@bellsouth.net>; Sara Jackson <batcavedesign@gmail.com>; David Efird <turtle309@bellsouth.net>; Shannon Baldwin <cdd@townoflakelure.com>; Bill McAninch <jerryandbill@gmail.com>; Sara Bentley <sarasaxbybentley@yahoo.com>; Maureen Bay <lakelurebay@gmail.com>; Lee Armstrong <leearmstrong16@gmail.com>; Susie Ellis <susieellis59@gmail.com>; Beth Heer <bethheer@gmail.com>; Clint Calhoun <eco@townoflakelure.com>; John Crotts <jcrotts@kinglawoffices.com>; Valerie Hoffman <writerworks@att.net>; April's Boutique <aprilsboutique371@gmail.com>; Debbie Shetterly <dshett37@gmail.com>; Charlie Ellis <cellis@collettre.com>; Kenneth Tanner <kstanner3@gmail.com>; Kathy Tanner <kathyt3@gmail.com>; George <george@lakelure.com>; Lake Lure Town Manager <townmgr@townoflakelure.com>
Subject: Bat Cave Billboard

STEVE: It's currently 11:43 AM on 9/29/2017 and, as I write this email, large new signage is going up on the billboard in Bat Cave. It is for HipHen Antiques. I learned of the work in progress via a phone call from an outraged Bat Cave citizen who witnessed the work crew erecting the new signage and described it as "hideous". Please see images attached.

We are aware that the permit for this sign has been revoked, the owner has been given days to remove it, and DOT stands ready to do so if needed (as per your communication of 9/28).

Apparently the owner, or perhaps new owner, of the sign and property failed to get your directive, or chose to ignore it.

In any case, it is hoped that you and your office can intervene immediately to halt the work presently being done, remove the new signage, and remove this billboard which is now being used in direct violation of NC statutes.

I am placing a call to you in addition to sending this email. I trust that your continued help and cooperation in this matter are forthcoming and thank you, once again for your efforts on behalf of our multiple communities and Scenic Byway.

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[Phish/Fraud](#)
[Not spam](#)
[Forget previous vote](#)

19A NCAC 02E .0224 SCENIC BYWAYS

(a) Outdoor advertising is prohibited adjacent to any highway designated as a scenic byway by the Board of Transportation after the date of the designation as scenic, regardless of the highway classification, except for outdoor advertising permitted in G.S. 136-129 (1), (2), (2a) or (3).

(b) All lawfully erected outdoor advertising signs adjacent to a Scenic Byway that is on a controlled route for outdoor advertising shall become nonconforming signs and shall be subject to all applicable outdoor advertising regulations provided in 19A NCAC 02E.0200. Any sign erected on a controlled route adjacent to a Scenic Byway after the date of official designation shall be an illegal sign as defined in G.S. 136-128 and G.S. 136-134.

(c) Permits shall not be required for signs adjacent to scenic byways which were not on a controlled route for outdoor advertising. The department shall maintain an inventory of signs that were in existence at the time the route was designated a Scenic byway. Any sign erected after its designation as a Scenic Byway, except for outdoor advertising permitted in G.S. 136-129(1), (2), or (3), shall be an illegal sign as defined by G.S. 136-128 and G.S. 136-134.

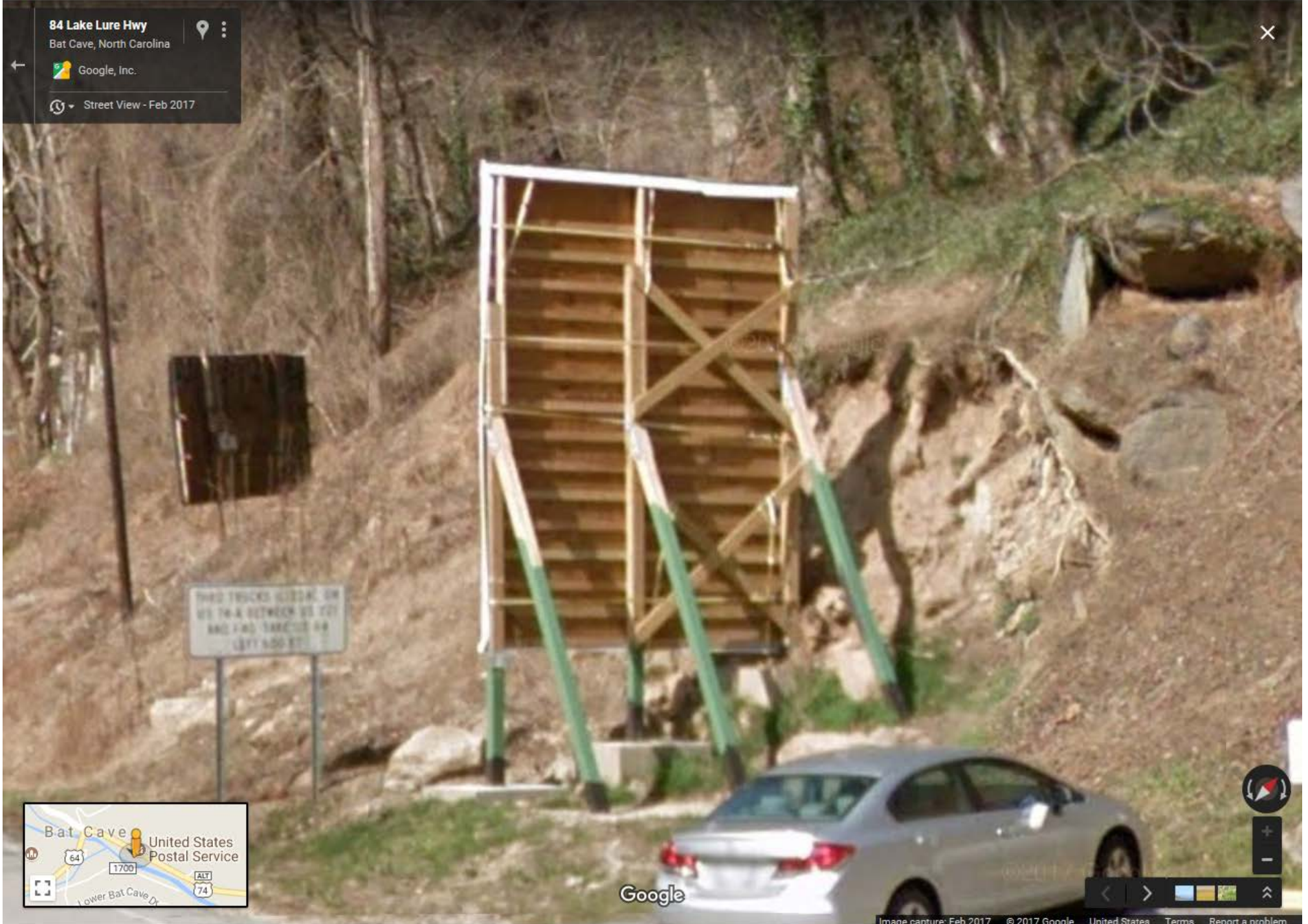
(d) Outdoor advertising signs adjacent to Scenic Byways that are not required to obtain permits are nonetheless governed by the rules in this section.

History Note: Authority G.S. 136-129.2;
Eff. August 1, 2000.

§ 136-129. Limitations of outdoor advertising devices.

No outdoor advertising shall be erected or maintained within 660 feet of the nearest edge of the right-of-way of the interstate or primary highway systems in this State so as to be visible from the main-traveled way thereof after the effective date of this Article as determined by G.S. 136-140, except the following:

- (1) Directional and other official signs and notices, which signs and notices shall include those authorized and permitted by Chapter 136 of the General Statutes, which include but are not limited to official signs and notices pertaining to natural wonders, scenic and historic attractions and signs erected and maintained by a public utility, electric or telephone membership corporation, or municipality for the purpose of giving warning of or information as to the location of an underground cable, pipeline or other installation.
- (2) Outdoor advertising which advertises the sale or lease of property upon which it is located.
- (2a) Outdoor advertising which advertises the sale of any fruit or vegetable crop by the grower at a roadside stand or by having the purchaser pick the crop on the property on which the crop is grown provided: (i) the sign is no more than two feet long on any side; (ii) the sign is located on property owned or leased by the grower where the crop is grown; (iii) the grower is also the seller; and (iv) the sign is kept in place by the grower for no more than 30 days.
- (3) Outdoor advertising which advertises activities conducted on the property upon which it is located.
- (4) Outdoor advertising, in conformity with the rules and regulations promulgated by the Department of Transportation, located in areas which are zoned industrial or commercial under authority of State law.
- (5) Outdoor advertising, in conformity with the rules and regulations promulgated by the Department of Transportation, located in unzoned commercial or industrial areas. (1967, c. 1248, s. 4; 1972, c. 507, s. 5; 1975, c. 568, s. 5; 1977, c. 464, s. 7.1; 1991 (Reg. Sess., 1992), c. 946, s. 1; 1999-404, s. 8.)



Google