



**BOARD OF ADJUSTMENT  
MINUTES  
May 8, 2014**

Members Present

Nick Colson  
Tyler Sigmon  
Jack Ledford  
Robert Smith  
Rupert Little  
Ron Cox  
Larry Pannell

Others Present

Robert Winrow  
Robert Jolly  
Charlie Heritage  
Timothy Bullard  
Thomas  
Hockman  
DB Setzer  
Phil Myers  
Shelley Stevens  
Randy Isenhouer  
Gerald Southers  
Barry Hollar  
Brenda Kale  
Nicky Setzer  
Tim Lowrance  
Rick Fulbright  
Gene Monday  
Connie Monday  
Judy F Shook  
Tom Little  
Phyllis Little  
Diana Foster  
Anita Flower  
Erica Threet  
Michael Pannell  
Trent Moody

Staff Present

Laurie LoCicero, City Planner  
Doug Barrick, City Manager  
Tom Winkler, Public Works director  
Bart Travis, Fire Chief  
Melinda Bumgarner  
Lt. Allen Long  
Gary Bost, Police Chief  
Robert Grant, City Attorney

Chairman Robert Smith called the special meeting of the Board of Adjustment meeting to order at 7:03 pm. He welcomed everyone, swore in everyone that wished to present testimony and asked for people that want to speak to come to the podium. Chairman Smith relayed that tonight is a Board of Adjustment hearing and the membership would be acting in a quasi-judicial manner. City Attorney Bob Grant spoke

about the quasi-judicial nature of the night's proceedings. His belief and recommendation to the Board is that government works best when it is open and citizens have a fair chance to be heard, but the Board of Adjustment must base their decision on findings of fact. Findings of fact have to be based on competent evidence and unsworn evidence cannot be considered. Also, hearsay may not be the basis for the decision.

Then there will be a chance to ask questions of any speaker, those for and against the application, and their attorneys. The attorneys representing the applicant and the opposition will be able to cross-examine speakers but not everyone who speaks will be allowed to cross-examine. Questions for the speakers should be addressed through the attorneys. Everyone will have a chance to be heard but the Board should base their decision on the evidence presented. Mr. Grant also spoke about hearsay, which is something that you have heard as opposed to something of your own firsthand knowledge. The Board needs to create an accurate record in case the applicant or the opposition appeals the decision with Superior Court.

Mr. Grant stated there are criteria set out in the ordinance for granting conditional uses and if those criteria are met, there is an entitlement to the conditional use permit. If the Board feels that the criteria are not met, there is no entitlement. The applicant has a right to the review and those in opposition with standing have the right to appeal the decision. Once it goes to a superior court judge, he will determine if the Board based its decision on the findings of fact and determines if it was properly done by reviewing the records.

Mr. Grant also advised the Board that there may have been some outside contact concerning this project. If anyone is basing their decision on something other than the evidence, they should disclose it, such as a site visit or personal contact. Also, if any board member feels they need to recuse themselves, it should be done at the outset of the proceeding.

Chairman Smith asked the Board members to speak into the microphone for recording purposes. He asked for a motion to open the public hearing. Ron Cox made the motion to open the public hearing with a second by Rupert Little. The Board unanimously agreed to open the public hearing. Chairman Smith then asked if any member felt he should recuse himself due to a conflict in interest. Larry Pannell recused himself; he owns neighboring property. No other Board members recused themselves.

Mr. Rick Fulbright wanted Chairman Smith to recuse himself because Chairman Smith had said at the previous hearing that he would like to move into the complex. Mr. Fulbright felt the chairman's vote would be tainted. Mr. Grant recalled the procedure from the ordinance that if an objection is raised over a member's participation, the other members by majority vote shall rule on the objection. Mr. Grant also told Mr. Fulbright that he will have a chance to speak and he should give everyone a chance as well. Chairman Smith said that the reason he made that statement at the prior meeting was he felt personally insulted due to his income. Chairman Smith asked who on the Board thought he should recuse himself because of the comment he made at the April meeting. No Board members raised their hands. Mr. Grant said that, for the record, the Board should vote to **not** recuse Mr. Smith. The vote was unanimous to **not** recuse Chairman Smith.

Chairman Smith asked the Board if anyone had ex parte communication about the case. No members stated they had ex parte communication. Ms. LoCicero was sworn in

at that time because she was out of the room when others were sworn in. Planner LoCicero reviewed the case. The applicant was requesting an 88-unit multi-family development. The application submitted by Weaver-Kirkland and the site plan were exhibits A and B respectively. The current owner of the property is Charles P. Coulter and Elizabeth B. McCormick and the property is located at 3005 N. Oxford Street. It is zoned B-2 Community Business. It is a 14.1 acre tract and it is served by City water and sewer. The parcel is currently vacant and being used as an agriculture field. Exhibit C was the existing zoning map. To the north is B-2 Community Business and B-3 Highway Business, to the south is B-2 and R-1 Neighborhood Residential, to the east is B-2 and R-1, and to the west is R-1. She reviewed the land uses within 100 ft, Exhibit D; to the north is single family residential and the mini storage, to the south is single family residential, to the east are the dental office, salon and motel, to the west is single family residential.

The proposal is for an 88-unit multi-family development. The new site plan shows a deceleration lane along N. Oxford Street and the mixture of 2 and 3 bedroom units have changed. The proposal is now 36 two-bedroom, 36 three-bedroom, and 16 four-bedroom units. Ten units will be fully handicapped accessible. Nine residential buildings will make up the complex, along with a community building and rental office, a playground, gazebo and picnic shelter. Five buildings will be two-story, four buildings will be three-story and the community building is one story. The site plan also designates two outparcels fronting N. Oxford Street that will remain available for commercial development. The site plan shows a new street that will be built by the developer to the City's standards and turned over to the City after construction. The layout of the parcels and the drive may change due to input from NCDOT during the driveway application process. The interior parking areas will be privately owned and maintained.

Multi-family homes are allowed in the B-2 Community Business district with a Conditional Use Permit as part of a Planned Unit Development. Planner LoCicero reviewed the Ordinance requirements and how the project adheres to those requirements.

1. All of the land has to be under one ownership or the applicant has the right to acquire ownership under valid option. *The applicant does have the option to purchase the entire 14 acre parcel.*
2. All Planned Unit Development shall be on at least 2 acres. *The large tract that is going to be left for the multi-family development after creating the two out parcels is 12.14 acres.*
3. The project shall comply with density and lot coverage limitations, density cannot exceed 12 units per acre. *The project is proposing 88 dwelling units, or just under 7.5 dwelling units per acre and pervious area is at 23.997% and within Watershed impervious limitation in the curving gutter environment. Exhibit F is verification from the Wooten Company, the City's contract engineer.*
4. Ten percent of land should be dedicated as open space/recreation space. *On the site plan all of this wooded area to the rear of the property is to remain, this area*

- was verified by staff at the Wooten Company, with a total of 154,000 square feet, or 3.5 acres, exceeding 1.2 acre requirement.*
5. All Planned Unit Developments shall provide concrete sidewalks along existing and proposed streets. *The site plan shows a new sidewalk installed along North Oxford Street fronting there and along the new city street accessing the development. There are sidewalks from the parking areas to the residential dwelling units.*
  6. The Board of Adjustment may require buffering around this project. *The site plan shows new landscaping near the existing single family home neighbors, on the north and south property lines, with buffering along the boundary for the two out parcels and a large existing wooded buffer on the western (rear) property line which will require no extra buffering.*
  7. The PUD should be compatible with the Land Development Plan – We have some strategies from the Land Development Plan include: encouraging infill development, redevelopments, open space and increased opportunities for affordable housing, and new developments should encourage a safe, pedestrian friendly development. *The applicant is proposing multi-family housing with sidewalks throughout the project with a location within walking distance to the interstate commercial center (Lowe's Foods). With the two out parcels marketed for commercial uses, this will keep N. Oxford Street as a commercial corridor.*
  8. Building placement, building facades parallel to the street, building shall front onto a public street and parking in the rear of the buildings. *The site plan shows a more traditional apartment complex with 88 dwelling units with buildings at different angles as you can see, some are set straight with Oxford Street and some are a little bit tilted. Due to the number of buildings, the limiting topography, I hope everyone got to visit the site, there is significant downslope to the topography, down to the creek with that limit and the two out parcels fronting North Oxford Street, and they are very limited on their space and configuration. So all of the interior parking areas are going to be privately maintained and privately held. The City street is right here and it will end right here at this parcel line and everything else will be interior but I think that is manageable with this site.*
  9. Trash containers located in the rear parking area. *The site plan shows trash bins one right here and another one up here located behind the majority of the buildings.*
  10. Mechanical equipment at ground level shall be placed to the rear of the building and away from buildings on adjacent sites. *The site plan show mechanical*

- equipment in both the front and rear of the buildings, but away from buildings on other sites and they are going to be properly screened.*
11. Porches, balconies, awnings are allowed to encroach into the setback. *The site plan shows no encroachment.*
  12. Apartment Buildings shall have a maximum height of 35'. *Height does not exceed the 35' limitation and the taller buildings are going to be located on the downslope side of the property. There to the rear of the property, the three story buildings will be here.*
  13. Architectural standards with "heavier" material (brick or stone façade) on bottom. *The building design is sympathetic to the surrounding properties, with brick and vinyl facades, all of the buildings are of similar scale and rooflines over the project, porches and open stairwells (designed like a porch) make up over 15% of the front façade.*
  14. ADA Standards met. *Ten units will be fully handicapped accessible.*
  15. Parking requirement we require, ordinances require two spaces for each dwelling unit. *The site plan proposes 180 parking spaces, only 176 spaces are required.*
  16. Landscaping of the Parking area. *Before the final sign off on this project before the Certificate of Occupancy is issued we will have to be sure all of the landscaping meets our standards."*

Ms. LoCicero spoke about the City and County infrastructure around this project. There is ample water capacity and lines to serve this project. Along N. Oxford Street, there is a 6-inch line that can adequately serve this development. The City is investigating an upgrade to the water lines in this quadrant of the City through grant funding. This improvement will benefit the entire water system from US 70 to I-40 along N. Oxford St. If the City does not receive the grant, this development can still be adequately served with existing water lines.

The City sewer system in this area is served by the North Waste Water Treatment Plant. The Plant is permitted to operate at 100,000 gallons per day. Currently the plant operates at an average flow of 78,000 gallons per day. This project is forecasted to generate 15,000 gallons per day. This would place the North Plant at 93,000 gallons per day. Knowing that the North Plant is operating close to capacity the City has invested into engineering for the replacement of the plant. The North Plant will transition to a pump station and the new pump station is designed to operate at 300,000 gallons per day. The City released the engineering for this upgrade in March. The engineering is expected to be completed by August of 2014. Once the engineering is completed construction is expected to begin in October or November of 2014 with the new plant coming online in April or May of 2015. This sewer improvement project will occur regardless of the apartment complex. The residential nature of the project greatly assists the City in this major capital project. The project will cost an estimated \$550,000. This development will generate \$145,200 in tap and capacity fees. These fees will greatly offset this major sewer improvement that needs to occur regardless of this new apartment complex. The complex

will also generate 88 new customers with monthly bills to help pay the long term debt needed to fund the long planned sewer improvement project.

Planner LoCicero spoke of the street and sidewalk infrastructure impact. This project will increase traffic on N. Oxford Street as would any residential or commercial development. The current capacity of this area of N. Oxford Street is 10,800 cars per day. The most recent NCDOT traffic counts conducted in 2011 show 8,700 cars per day in this section of N. Oxford St, as shown on Exhibit H. The City's contracted traffic engineer, J. Mark Teague, estimates that 657 new car trips per day will be on N. Oxford St., with a 47 new trips in the peak morning hour and 66 new trips in the peak evening hour. In a report from Mr. Teague, he stated that the site generated traffic will not operational Both NCDOT and City staff would like to take a holistic approach to address traffic and potential safety issues on N. Oxford St.

The modified site plan with the deceleration lane has been submitted to NCDOT Division 12 and will have to meet their standards. The City and NCDOT are working to establish a crosswalk at Keisler Drive (street just north of the motel). The City Manager has contacted the intervening property owner to connect the sidewalk from the new parcels to the intersection of N. Oxford St. and Keisler Drive. This will link the new development to the existing sidewalk along the eastern side of N. Oxford St. The long term goal is to have sidewalks on both sides of N. Oxford St. from Main Street to I-40.

Staff discussed the impact the project would have on the school district. She had included an analysis from WPCOG Data Analyst Taylor Dellinger. Mr. Dellinger conducts the Catawba County School Growth Estimate Model. This model is used to allocate resources to schools based on residential growth predictions. All three schools, Claremont Elementary, Riverbend Middle and Bunker Hill High, are currently under capacity with their student enrollment. Using the model, Mr. Dellinger estimates that the Oxford Crossing project will add 39 new students to the elementary school, 6 new students to the middle school and 11 new students to the high school. With these additional students, all three schools are estimated to still be under capacity. Staff also spoke with Steve Deminter, Assistant Superintendent of Catawba County Schools. He conveyed to her that this model has been very accurate in the past and anticipates this model will continue to be accurate over the next few years.

Staff had included an email from the County Tax assessor concerning the value of residential areas located near the 13 other work-force based housing developments in Catawba County. The tax appraisers have not noted any sales indicating an adverse impact on neighboring properties.

Mr. Grant asked Mrs. LoCicero some clarifying questions. The letter from the school district was not in the packet as an exhibit because it was not received until earlier that day. Mr. Grant requested it be offered as an exhibit and a copy given to each attorney. The tract was 14.01 acres and is currently vacant, used for agriculture during the growing season. The proposed project has 7.5 dwelling units per acre and the applicant will voluntarily annex into the City limits prior to issuance of Certificate of Occupancy. Another condition will be the construction sidewalk on the northern property at the intersection of Keisler Street using the City's design plan. The applicant must complete the purchase of the property before the permit becomes valid and that a transportation impact study be conducted and NC DOT driveway permit be obtained prior to issuance of Certificate of Occupancy. Each dwelling unit will have an individual

water meter that meets City standards. There will be 26 feet of clear span between the parking spaces for emergency vehicles and about the fire hydrants. All signage will meet City standards and the applicant will construct a school bus shelter in the new street right-of-way. All dumpsters will be fenced and properly landscaped to City standards and the parking lot landscaping will meet standards before CO is issued. Mr. Grant asked staff if the conditions are not met or are failed to be maintained the City could revoke the CUP; she confirmed the statement about the revocation of the CUP.

Mr. Randy Isenhour, attorney representing Mr. Rick Fulbright and Ms. Judy Shook, cross-examined planning staff. The current capacity of Claremont Elementary School is 496 students and in 2019-20 it is projected to be 18 students under capacity. Mr. Taylor Dellinger of the Western Piedmont Council of Governments uses this model to create his Growth Estimate report for the Catawba County School Board. This model incorporates population projections for the entire school district not just this development project. Staff did not know the margin of error for the model, which Mr. Isenhour brought up as the Claremont Elementary school will be at 96.4% capacity.

Mr. Isenhour asked about the changes for the site plan from the last hearing. Staff said a deceleration lane was added, the mixture of bedrooms had changed, and the school bus stop was added. Mr. Isenhour asked about the capacity and traffic issues on N. Oxford St. Staff replied that the most recent NCDOT traffic counts for N. Oxford St. was 8,700 cars per day near the project area and the traffic engineer predicted this residential complex would add 657 trips per day. This total was still less than the current capacity of 10,800. Staff noted that one drive through pharmacy would generate 440 trips per day. This commercial use would be allowed by right would typically be developed on less than one acre of property. The 14 acre tract had the potential to be commercially developed and it would create much more traffic than a residential property. The traffic count was done in 2011 when the motel was still open.

Mr. Isenhour asked about the increase in students at Riverbend Middle school, staff replied that current capacity is 664 with a projection of 567 students in 2019-20, so it would be 97 students under capacity or 85.4% capacity. Staff said this model is run for each high school district in the County school system. It is based on infrastructure expansion, birth data, building permit data, undeveloped land, current projects and other data for the entire County school system. When specific project numbers are know, such as an 88-unit complex, then that is incorporated into the model.

Mr. Jimmy Haynes was next question staff. He asked about the traffic impact by the project versus a retail store, such as a drive thru pharmacy. Staff said, using the same model as the NCDOT SPOT office in Raleigh utilizes, that a 1500-2000 square-foot drive thru pharmacy would generate 440 daily trips. She surmised that with this 14-acre tract there was great potential for commercial development that would generate more traffic than a residential development. Most commercial developments would be permitted uses in the B-2 district and would not require a public hearing for a Conditional Use Permit.

Mr. Colson if the two outparcels would still be zoned B-2 and have to adhere to the B-2 regulations. Staff said they would be zoned B-2 and all the requirements for the B-2 district would be applicable to those parcels. This would keep the commercial corridor along N. Oxford Street and both parcels are just under one acre. Jack Ledford asked if the studies considered additional foot traffic to cross North Oxford. Staff replied that it was not specifically taken into account, but the City is working with NCDOT to

establish a crosswalk at Keisler St, which would be at the end of the block. The northern property owner had been asked about constructing a sidewalk on her property. The City Manager has spoken with Jackie Devlin about the construction of the sidewalk on her property and she was agreeable to the idea.

Fire Chief Bart Travis spoke to the Board. The fire department is in favor of the project. They have the equipment to protect this property. There were no questions for Chief Travis.

Public Works Director Tom Winkler spoke to the Board. He does not have any issues with the project. The City has adequate sewer and adequate water to serve the project. It would be beneficial to have that many users to keep the water moving in the system because the more velocity you have in the line, the better the system performs. There were not questions for Mr. Winkler.

Police Chief Gary Bost spoke to the Board. He called three different towns where the applicant had developed property in Tennessee. All three towns had minimal calls at the complexes. Most calls were related to loud noise or domestics. Two of the three towns said these were the better looking apartments in town. Mr. Isenhour asked Chief Bost several questions about his statements. Two towns Chief Bost contacted were about the size of Hickory and the other town was about three times as big. The numbers of calls the other towns were giving Chief Bost were in relation to a large town. Chief Bost did not know what the loud noises were from that instigated the call.

Chairman Smith asked Chief Bost if the towns had an increase in the percentage of calls compared to the rest of the city. Chief Bost replied that one property had only one call when he checked, and that was in late fall of last year. Chairman Smith asked the amount of the starting salary for a police officer. Chief Bost replied it was \$27,500. Phillip Myers asked how long the projects have been in place where Chief Bost contacted. Two properties were built in 2008 and the other was built in 2009.

City Manager Doug Barrick asked Chief Bost about other properties in Catawba County with similar guidelines. Chief Bost visited three workforce housing properties. All three properties were well maintained, no junk cars visible in the parking lot. Mr. Barrick then asked Chief Bost, if due to his involvement with the Task Force on Violence, his interaction with other law enforcement officers in Catawba County, his tenure in law enforcement, if there was discussion about offenders living in the complexes he visited. Chief Bost replied that he did not know if there were any offenders.

Mr. Isenhour asked Chief Bost if people living in closer contact with each other, had more potential for conflict areas. Chief Bost replied that it depends on the individuals. Domestics involve individuals in a residence that may not impact the rest of the residents. He did not know statistics about people living in close proximity to one another and instances of crime.

Mr. Barrick spoke to the Board. He noted that Catawba County School system is responsible for the schools that serve the Claremont area and are not under the authority of the City. The school system does have capacity to accommodate the project. He also noted that North Oxford Street is maintained and owned by NCDOT. They are responsible for managing the traffic on the street and they will issue the driveway permit for the project. He emphasized that these two issues are not under the jurisdiction of the City but significant time was allowed to address those two issues. He relayed to the

Board the sewer improvements have been in discussion since he began as City Manager. The City now has engineering contract in place to upgrade the North Waster Water Plant. The cost estimate for the upgrade is \$550,000 and the upgrade will occur with or without the residential complex. The new project will generate \$145,000 in tap and capacity fees. The 88 new users will help pay the long term debt of the upgrade expenses. The applicant has made all the changes requested by the City and has agreed to the all the conditions staff has recommended for the project. Mr. Barrick also spoke with staff from other towns where the applicant has developed property and received positive feedback about the quality of their projects. Mr. Barrick read a letter from Mayor Brown in support of the project. He noted that Mr. Randy Isenhour, lawyer for neighbors in opposition to the project, was a County Commissioner.

Mr. Isenhour asked Mr. Barrick about the water and sewer monetary calculations he had for this project. Mr. Barrick said that each residential unit will be required to have an individual water meter. For each water meter the City requires a water tap fee, a water capacity fee, a sewer tap fee and a sewer capacity fee. These fees will be required prior to issuance of a CO, regardless of tenants being in the units.

Mr Fulbright questioned the traffic analysis that was presented earlier, stating that several different numbers for capacity had been presented. Mr. Barrick referred back to the report submitted by JM Teague Traffic Engineering. The Average Annual Daily Trip count is 8,700 vehicles per day for that portion of N. Oxford Street. The additional site-generated traffic of 66 vehicles per day during the p.m. peak is not anticipated to degrade the operation or safety of N. Oxford St. Mr. Fulbright wanted to know what the other residents will be doing that are not calculated in the peak a.m. and p.m. traffic counts. Mr. Barrick read the entire report from JM Teague Traffic Engineering. He went on to say in his conversations with Mr. Teague, the engineer noted that he did not think a project of this size would require a deceleration line by NCDOT standards. The City was requiring a deceleration lane regardless of the findings of the Traffic Impact Study that will be required of the applicant.

Mr. Barrick read the correspondence from the County Tax administrator Mark Logan about how the appraisers value projects of a similar nature. The appraisers use the rent rolls provided by the property owner. Mr. Fulbright inquired about the algorithms used in calculations and how recently they have been updated. Mr. Barrick noted the date on the letter was May 1, 2014. Mr. Fulbright voiced his concerns that the traffic analysis did not take into account traffic in the morning or at lunch. There were no more questions for Mr. Barrick.

Jimmy Haynes, lawyer for the applicant spoke next. He introduced Trent Moody, traffic engineer, Charlie Heritage, with WKZ Housing, Thomas Hockman, co-counsel at Schell Bray, Robert Jolly, executive vice-president of construction for Weaver-Cook and Tab Bullard. Mr. Haynes reviewed the City's Zoning Ordinance as it pertained to apartment homes, planned unit developments and conditional uses. He reviewed the procedures the Board of Adjustment needs to follow for a Conditional Use Permit and findings of fact. He spoke of the Land Development Plan goals and objectives to encourage infill development and opportunities for affordable housing. He noted that in 2003 only 1% of the City's jurisdiction consisted of multi-family developments.

Mr. Heritage spoke about the submitted application and the project. He remarked on the growth in the industrial park and how the peopled employed there need a place to

live. His company is WKZ Housing, a joint venture between Zimmerman Properties, and Weaver Kirkland Development. They have different divisions to design projects, build projects and manage the properties once complete. He reviewed the design of Oxford Crossing, nine residential buildings, one office/community building, the playground, picnic shelter and gazebo. The site plan showed the two outparcels that will remain open for commercial development and the wooded area that will remain in the western side of the property. Mr. Heritage emphasized the statistic that the nighttime population of Claremont is just under 1,400 but the daytime workforce exceeds 5,000 people and the need for over 1000 units in this area of Catawba County.

He went over misconceptions of multifamily developments impact on neighboring single family residences. If a multi-family property is managed well, it can have a positive impact on property values; his company has a division that manages the properties. Mr. Heritage noted that lack of public or private investment in an area will decrease property values over time. He showed several pictures of other complexes that his company has completed. One project was 20 years old and was well maintained.

Mr. Tab Bullard spoke next about the management of the property once construction is completed. Mr. Bullard said his company follows federal standards of fair housing laws and they have one leasing policy for all their properties, regardless of the state. They verify employment history, income (which has to be three times the rent), and rental history. The potential tenants must submit to background and credit checks. They cannot have open liens or judgments against them.

Mr. Haynes spoke about the condition for a traffic impact study to be conducted prior to a CO being issued and that his client recently completed a study. He introduced Trent Moody as his client's traffic engineer. Mr. Moody noted that he was a former NCDOT employee for Division 12 and covered Lincoln and Catawba Counties. The study area was N. Oxford St and US 70/Main St. For traffic studies, 7 to 9 am peak and 4 to 6 pm peak are the two periods that will have the greatest impact from the project. 2011 was the most recent traffic count from NCDOT. To get more updated data, his company had personnel count the cars the week before the hearing. Using that data, they assumed a 2% increase in traffic from other development in the City, and the projected number of trips generated by the complex, he concluded that the development would not have an excessive traffic load on local streets and future conditions.

Charles Connor asked if there was going to be a right turn lane and further expressed his concerns there would be significant traffic northbound in the evening and have to make a left turn into the complex. Mr. Moody said it was an "engineering judgment" that it would be a 50/50 split, traffic for the complex going/coming from US 70 and Interstate 40 but he found it was more a 60/40 split with more traffic coming from the north. He noted that he did recommend a deceleration be installed to improve safety out of the development and facilitate movement into the development although it would not be required by NCDOT standards.

Mr. Haynes spoke again. He reviewed relevant NC general statutes that pertain to Board of Adjustment and emphasized that the Board's decision should be based on competent evidence. Competent evidence is not clearly defined but examples are given of what is not competent evidence, such as a lay person's opinion about traffic impact or impact on property values. Mr. Haynes cited case law that has helped define competent evidence. From this case law, petitioners must meet a burden of proof. Mr. Haynes also

presented his own findings of fact for the Board to consider: 1. the project is consistent with the Land Development Plan and meets all the requirements in conditions of the Ordinance; 2. The proposed development will not adversely affect the health or safety of people residing or working in the neighborhood; 3. The project will not be detrimental to the public welfare or injurious to property or public improvements in the area; all three of these findings are based on the competent evidence presented.

Mr. Isenhour asked Mr. Moody several questions about the traffic study. There are no driveways along N. Oxford St. that have restrictions on turning in or out. His company did not count the driveway cuts along N. Oxford and that information is not typically part of a study. Mr. Isenhour concluded that more cars on a road with unlimited access with more potential congestions, the greater the potential is for accidents and Mr. Moody agreed. Mr. Moody noted that NCDOT has a driveway permit process to regulate those access points.

Next, Mr. Isenhour asked Mr. Bullard several questions. The total number of occupants that can reside on the property will be 432. The anticipated occupancy rate is 97%. In response to questions by Mr. Isenhour, Mr. Bullard said if a tenant had a voucher for government assistance to pay rent, they would be required to adhere to the federal fair housing laws. His company uses a national rental procedure that includes background checks. Their procedure follows federal housing laws. The company does criminal background checks that would not typically include misdemeanors. Mr. Isenhour noted that Mr. Bullard would not tell the Board what type of applicants will be in the complex.

Mr. Barrick spoke again. He asked that the condition #23 regarding a buffer between the northern property owner and the project area be changed to include a white, vinyl privacy fence. The applicant agreed to the change. Mr. Barrick went on to say that the project meets the setbacks requirements in the City Zoning Ordinance. Mr. Heritage responded to a question from Mr. Barrick that his company will hold that property in excess of 15 years. The complex in King is their oldest holding which they've owned for 15 years. The company manages over 10,000 properties, 5,500 are complexes they have developed. There will be on site supervisors who will manage the development. The on-site person will have a regional supervisor and a national supervisor. Multiple families are not allowed to live in one unit and tenants are required to a job to live in the complex.

Mr. Barrick then directed his questions to Mr. Moody, the traffic engineer. N. Oxford Street is under NCDOT's jurisdiction. Mr. Moody was previously the assistant district engineer in Catawba County's division. NCDOT has the authority to deny a driveway permit on a road under their control. The site plan does have a deceleration lane based on staff recommendation which is above and beyond what NCDOT would require.

Next, Mr. Barrick asked Mr. Haynes questions about the Land Development Plan. The Plan was adopted in 2003, with 5 current members on that Plan's Steering Committee. A new zoning ordinance was adopted in April of 2005 to coincide with the new goals and visions of the LDP. In Mr. Haynes experience, staff typically follows the direction set by the Board in the LDP and Zoning Ordinance.

Mr. Ledford asked Mr. Moody about the traffic on N. Oxford Street. Mr. Moody reported that most of the traffic would be traveling north toward the Interstate in the evening but the new development would not require a left turn lane at this time. Mr.

Moody noted that making the left from the new access street would be the greatest delay in that intersection.

Mr. Ledford asked Mr. Heritage if the on-site supervisor would be there 5 days a week or seven days a week, 24 hours a day. Mr. Bullard answered that there would be a property manager on staff 5 days a week and an emergency number for off hours issues. Mr. Heritage noted that in some developments, the manager lives in a unit, but that is up to the manager.

Gene Monday spoke to the Board. He owns adjoining property and he is not opposed to the project. Phillip Myers expressed his concern to the Board about the applicants and who would be allowed to live in the complex. It was clarified that WKZ owns 100 properties with 6,000 units, with the oldest ones built in 2001. Mr. Myers said it is kind of dangerous on N. Oxford Street, between Boxcar Grill and 7-11, getting in and out of both of those places. Mr. Myers was also concerned about not having someone on the property at night and on the weekends to address problems. Eventually, Mr. Grant clarified that maintenance issues will be addressed by the property owner and behavioral issues would be directed toward the police department. It was also explained to Mr. Myers that this would be an apartment complex of tenants and not condominiums.

Mr. Fulbright spoke to the Board. He thought the apartments looked great on the outside but he was very concerned about the people living inside the apartments. He also was concerned about the traffic along N. Oxford Street because he lives south of the project area and walks that street often. It takes several minutes to cross N. Oxford Street and it is dangerous in low light times, such as early morning or dusk. He listed all the businesses and properties along N. Oxford Street. After a lengthy soliloquy, Mr. Fulbright told the Board that he made a survey of the neighborhood and created a petition. The petition had 150 signatures of people that did not want the apartment project. The petition was submitted to the Board but the members could not base findings of fact on the petition.

Mr. Barrick read a letter from neighboring property owner Jackie Devlin. Mr. Grant advised the Board that, similar to the petition, they could not base the findings of fact on this letter. The letter noted that "someday something will go on this property, and it could be worse." Mr. Barrick relayed to the Board that the petition that Mr. Fulbright circulated were signed by citizens who later came by City Hall to say they did not know what they were signing.

Mr. Isenhour gave his closing argument. He noted that he was a County Commissioner and severed on the School Board in the past. His day job is being a small town lawyer to help people through legal issues. The Board needed to use common sense in this decision making process, and they already did that by denying this the first time. Small changes have been made but in the real legal world, the case would not be able to be heard again. The Board has to find that the project will not adversely affect the health and safety of people living and residing in the neighborhood and that it will not be detrimental to public welfare, injurious to property and public improvements. He asked the Board to use their common sense on a project of this type impacting property values. Mr. Isenhour found it disturbing that one gentleman did not answer a question about the questions that are asked to qualify people to live in the units. Because of not knowing how tenants are qualified to live there and it could be affect the health and safety of people in the neighborhood, he asked the Board to deny the permit.

Mr. Haynes gave his closing arguments. He does not envy the job the Board is tasked with tonight. He noted that the Board had to make their decision based on evidence and there is a test for competent evidence that he discussed earlier. To deny the permit must also be based on competent evidence. He cited NC General Statutes and case law.

Mr. Barry Hollar asked if they were going to check to see if the applicants were citizens of the United States. Mr. Hockman said they can't testify as to what applications there were going to get. Mr. Bullard said they would comply with federal fair housing laws. Mr. Hollar emphasized that they don't know who they'll accept. Mr. Haynes rebuked the comment by stating their procedure will be in line with the law. Fair housing regulations are clear that you cannot discriminate against housing, in land use decisions, in rental and leasing agreements and purchase contracts. Mr. Hollar was frustrated that the housing law opened it up for everyone.

Staff noted that the City Manager amended proposed condition #23, which is reflected in finding of fact #28, and that language needed to be revised. In #23, a white, vinyl, privacy fence will be erected in addition to the landscaping. Mr. Grant revised the language. Staff made her recommendation to approve this permit because it will not adversely affect the health, safety or welfare of persons residing or working in the neighborhood or injurious to property or public improvements in the neighborhood. A project of this type is needed in Claremont because the rental stock is aging and is typically limited to two- and three- bedroom units. This would offer a wider variety of housing options in town.

Mr. Little moved to close the public hearing, Mr. Cox seconded the motion and the Board unanimously closed the public hearing. Mr. Grant advised the Board to consider the findings of fact. The Board will need to vote on each fact.

Proposed facts:

1. On April 21, 2014, the applicant submitted an application for an 88-unit Multi-Family development for property located at 3005 N. Oxford Street, also identified with PIN 3752-16-93-8165. This property is zoned B-2 Community Business and Multi-family homes are allowed with a Conditional Use Permit as part of a Planned Unit Development.
2. The 14.01 acre property is vacant;
3. City water and sewer are adjacent to the site;
4. Two small out parcels will be created to front N. Oxford Street and remain B-2 Community Business; the remaining 12.14 acres will be for the site of the multi-family complex and exceeds the minimum of 2 acres for a Planned Unit Development.
5. The proposed project has a density of 7.5 dwelling units per acre and is less than the maximum density of 12 dwelling units per acre;
6. The Applicant must complete purchase of property before CUP becomes valid, a condition of the CUP;
7. A Transportation Impact Study (TIS) shall be conducted and NCDOT Driveway Permit obtained prior to issuance of Certificate of Occupancy a condition of the CUP;

8. As shown on the revised site plan, applicant shall install a deceleration lane that meets NCDOT standards regardless of TIS findings, a condition of the CUP;
9. Applicant shall voluntarily annex into the City prior to issuance of Certificate of Occupancy, a condition of the CUP;
10. As shown on the site plan, the access street shall meet City standards, be constructed by the applicant at the applicant's cost and be dedicated to the City prior Certificate of Occupancy issuance, a condition of the CUP;
11. As shown on the site plan, applicant shall construct sidewalks along both sides of access street, the out parcels along N. Oxford Street, and along interior parking areas as shown on the site plan, a condition of the CUP;
12. Applicant shall construct sidewalk on northern property to intersect with Keisler St using the City's design plans, a condition of the CUP;
13. Applicant shall grant City necessary water and sewer easements to serve the property, a condition of the CUP, a condition of the CUP;
14. Water and sewer designs shall meet City standards and be approved by Public Works Director and City Engineer prior to installation, a condition of the CUP;
15. All on-site water and sewer infrastructure will be installed by the applicant at the applicant's cost, a condition of the CUP;
16. As-builts for the water and sewer infrastructure shall be completed by the applicant and submitted to the City, a condition of the CUP;.
17. Each dwelling unit shall have an individual water meter that meets City standards, a condition of the CUP;
18. As shown on the site plan, there shall be 26' of clear span between parking spaces for emergency vehicle access, a condition of the CUP;
19. As shown on the site plan, every fire hydrant shall have 26' of clear area for emergency access, a condition of the CUP;
20. The maximum impervious surface shall be 24% or less and there will be a minimum of 100' buffer along the creek at the rear of the property in accordance with the Watershed Protection Ordinance, a condition of the CUP. The impervious area on the current site plan is calculated at 23.9%.
21. As shown on the site plan, at least 10% of property shall be open space as required by Planned Unit Development regulations; this shall be dedicated to remain undeveloped on final, recordable plat, a condition of the CUP;
22. All signage for development shall meet City standards, a condition of the CUP;
23. Applicant shall construct a bus stop shelter on the City's right-of-way of the new access street, a condition of the CUP;

24. As shown on the site plan, all dumpsters shall be fenced and properly landscaped in compliance with City standards, a condition of the CUP;
25. As shown on the site plan, all ground mounted mechanical equipment shall be properly screened with landscaping, a condition of the CUP;
26. As shown on the site plan, applicant shall provide 180 parking spaces which meet City standards of 2 spaces per dwelling unit, or 176 spaces, a condition of the CUP;
27. Landscaping for parking lot shall meet City standards prior to Certificate of Occupancy issuance, a condition of the CUP;.
28. As shown on the site plan, landscaping buffer between the property and adjacent properties along the northern and southern property lines shall meet City standards, along with a white vinyl privacy fence to be erected on the western and southern boundaries of the adjacent property owned by Jackie Devlin, a condition of the CUP;
29. The project is compatible with the City's Land Development Plan, in that it encourages in-fill development along N. Oxford Street, it is pedestrian friendly development with the sidewalks and the walk-able location to grocery and retail store; and it does create more affordable housing opportunities within the City.
30. The proposed development will be compatible with comprehensive land use and neighborhood plans, will place an excessive traffic load on local streets, the site can be developed according to a site plat that will be compatible with existing development and the site can be provided with adequate utility services.

Mr. Isenhour added several facts:

1. that N. Oxford Street is a two-lane road with unlimited access;
2. that along N. Oxford Street there are numerous entry points and driveway entrances,
3. that the impact study shows that the projected project would place traffic of at least 87% of the traffic capacity;
4. the applicant testified this project would add to congestion which could increase the likelihood of possible accidents.

Mr. Hockman objected and Mr. Grant noted the objection.

Mr. Isehnour continued:

5. N. Oxford St. is the main artery to and from the town of Claremont
6. Other like projects in larger cities have generated calls, although minimal, to the volume of call in those larger cities of domestic violence and noise

Mr Hockman objected and Mr. Grant noted the objection.

7. that the applicant refused to inform the Board of its criteria for accepting applicants to this project;

Mr. Haynes objected, Mr. Isenhour continued:

8. that the applicant may accept as tenants those with criminal backgrounds; Mr. Haynes objected again. Mr. Grant said he would advise the Board as to whether or not he thinks these facts are proper to be considered.

9. The applicant has failed to prove that the proposed development will not adversely affect the health, safety and welfare of persons residing or working in the neighborhood of the proposed use;

10. The applicant failed to prove that this project will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood.

Mr. Isnehour wrote out his additional findings and submitted them to Mr. Grant. After a brief recess, Mr. Grant asked the Board to approve the findings of fact by roll call vote.

As Mr. Grant read the facts, a vote was taken as follows:

1. On April 21, 2014, the applicant submitted an application for an 88-unit Multi-Family development for property located at 3005 N. Oxford Street, also identified with PIN 3752-16-93-8165. This property is zoned B-2 Community Business and Multi-family homes are allowed with a Conditional Use Permit as part of a Planned Unit Development; Vote 6-0 in favor.
2. The 14.01 acre property is vacant; Vote 6-0 in favor.
3. City water and sewer are adjacent to the site; Vote 6-0 in favor
4. Two small out parcels will be created to front N. Oxford Street and remain B-2 Community Business; the remaining 12.14 acres will be for the site of the multi-family complex and exceeds the minimum of 2 acres for a Planned Unit Development; Vote 6-0 in favor.
5. The proposed project has a density of 7.5 dwelling units per acre and is less than the maximum density of 12 dwelling units per acre; Vote 6-0 in favor
6. The Applicant must complete purchase of property before CUP becomes valid, a condition of the CUP; Vote 6-0 in favor
7. A Transportation Impact Study (TIS) shall be conducted and NCDOT Driveway Permit obtained prior to issuance of Certificate of Occupancy a condition of the CUP; Vote 6-0 in favor
8. As shown on the revised site plan, applicant shall install a deceleration lane that meets NCDOT standards regardless of TIS findings, a condition of the CUP; Vote 6-0 in favor
9. Applicant shall voluntarily annex into the City prior to issuance of Certificate of Occupancy, a condition of the CUP; Vote 6-0 in favor
10. As shown on the site plan, the access street shall meet City standards, be constructed by the applicant at the applicant's cost and be dedicated to the City prior Certificate of Occupancy issuance, a condition of the CUP; Vote 6-0 in favor
11. As shown on the site plan, applicant shall construct sidewalks along both sides of access street, the out parcels along N. Oxford Street, and along interior

- parking areas as shown on the site plan, a condition of the CUP; Vote 6-0 in favor
12. Applicant shall construct sidewalk on northern property to intersect with Keisler St using the City's design plans, a condition of the CUP; Vote 6-0 in favor
  13. Applicant shall grant City necessary water and sewer easements to serve the property, a condition of the CUP, a condition of the CUP; Vote 6-0 in favor
  14. Water and sewer designs shall meet City standards and be approved by Public Works Director and City Engineer prior to installation, a condition of the CUP; Vote 6-0 in favor
  15. All on-site water and sewer infrastructure will be installed by the applicant at the applicant's cost, a condition of the CUP; Vote 6-0 in favor
  16. As-builts for the water and sewer infrastructure shall be completed by the applicant and submitted to the City, a condition of the CUP; Vote 6-0 in favor
  17. Each dwelling unit shall have an individual water meter that meets City standards, a condition of the CUP; Vote 6-0 in favor
  18. As shown on the site plan, there shall be 26' of clear span between parking spaces for emergency vehicle access, a condition of the CUP; Vote 6-0 in favor
  19. As shown on the site plan, every fire hydrant shall have 26' of clear area for emergency access, a condition of the CUP; Vote 6-0 in favor
  20. The maximum impervious surface shall be 24% or less and there will be a minimum of 100' buffer along the creek at the rear of the property in accordance with the Watershed Protection Ordinance, a condition of the CUP. The impervious area on the current site plan is calculated at 23.9%; Vote 6-0 in favor.
  21. As shown on the site plan, at least 10% of property shall be open space as required by Planned Unit Development regulations; this shall be dedicated to remain undeveloped on final, recordable plat, a condition of the CUP; Vote 6-0 in favor
  22. All signage for development shall meet City standards, a condition of the CUP; Vote 6-0 in favor
  23. Applicant shall construct a bus stop shelter on the City's right-of-way of the new access street, a condition of the CUP; Vote 6-0 in favor
  24. As shown on the site plan, all dumpsters shall be fenced and properly landscaped in compliance with City standards, a condition of the CUP; Vote 6-0 in favor
  25. As shown on the site plan, all ground mounted mechanical equipment shall be properly screened with landscaping, a condition of the CUP; Vote 6-0 in favor

26. As shown on the site plan, applicant shall provide 180 parking spaces which meet City standards of 2 spaces per dwelling unit, or 176 spaces, a condition of the CUP; Vote 6-0 in favor
27. Landscaping for parking lot shall meet City standards prior to Certificate of Occupancy issuance, a condition of the CUP; Vote 6-0 in favor
28. As shown on the site plan, landscaping buffer between the property and adjacent properties along the northern and southern property lines shall meet City standards, along with a white vinyl privacy fence to be erected on the western and southern boundaries of the adjacent property owned by Jackie Devlin, a condition of the CUP; Vote 6-0 in favor
29. N. Oxford Street is a two-lane road with unlimited access – a discussion followed – Chairman Smith noted that NCDOT limits the number of driveway within a given distance. The vote was 2-4 in favor, so the Board did not make agree with that fact.
30. Along N. Oxford Street there are numerous entry points and driveway entrances, vote 5-1 in favor
31. The impact study shows that the projected project would place traffic of at least 87% of the traffic capacity; Vote 6-0 in favor

The Board discussed #32 and broke it down into A and B.

32. A. The project would add to congestion along N. Oxford St. Vote 6-0 in favor  
 B. Increased congestion would increase the likelihood of accidents; Vote 5-1 against, not a fact
33. Other like projects in larger cities have generated call, although minimal, to the volume of call in those larger cities of domestic violence and noise; voted 6-0 against, the Board found it was not a fact.
34. The applicant has refused to inform this Board of its criteria for accepting tenants; Voted 6-0 against, the Board found it was not a fact since the applicant adheres to federal fair housing laws
35. The applicant may accept as tenants those with criminal backgrounds – a discussion followed and Mr. Grant noted that the applicant’s attorney objected to this proposed finding of fact. The Board voted 6-0 to strike the fact from the list of proposed findings of fact.
36. The Proposed development will be compatible with the comprehensive land use and neighborhood plans, will not place an excessive traffic load on local streets, the site can be developed according to a site plan that will be compatible with existing neighborhood development and the site can be provided with adequate utility service; Vote 6-0 in favor;
37. The project is compatible with the city’s LDP in that it encourages infill development along N. Oxford St, it is pedestrian friendly development with

sidewalks and walkable location to the grocery and retail stores, and it creates affordable housing opportunities within the City, Vote 6-0 in favor

38. With the above listed conditions, this project will not adversely affect the health or safety of the person residing or working in the neighborhood of the proposed use and will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood, Vote 6-0 in favor.

Mr. Grant advised the Board that based upon the findings of fact, the Board is required to approve a motion for a CUP. Mr. Little moved to approve the Conditional Use Permit, Mr. Colson seconded the motion. The motion was unanimously approved by the Board, 6-0. Chairman Smith stated the CUP 14-3 was approved 6-0. He thanked everyone that spoke during the evening.

***Other Business***

Staff asked that the May 12<sup>th</sup> meeting be canceled. The Board by consensus agreed. She will have everyone on updated Ordinance at the June meeting. There being no further business, the meeting was adjourned.

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Robert Smith, Chairman

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Shelley Stevens, City Planner