



# City of Burlington

## Board of Adjustment Meeting Minutes

Mike Nunn, AICP, CZO | Director of Planning and Transportation

The Board of Adjustment met on February 22, 2022, at 8:30am in the Municipal Conference Room located at 425 S. Lexington Avenue, Burlington.

Meeting Video Link: <https://youtu.be/Zhn6wGc6Bfw>

### **City Members:**

Robert Giles, II, Chair  
Mark Kennedy  
Charles Beasley (Alternate)  
Dean Rainey (Alternate)

### **Extraterritorial Members:**

Steven Heineman

### **Members Absent:**

John Glenn  
H.E. Wilson, Vice Chair  
Eric Grant

### **Staff Present:**

Planning Manager, Conrad Olmedo, AICP, CZO  
City Attorney, David Huffman  
Senior Administrative Assistant, Beverly Smith  
Chief Code Enforcement Officer, Chris Marland  
Code Enforcement Officer, Karl Cheek  
Code Enforcement Officer, Chris Reynolds  
Assistant Chief, Fire Marshal, Greg Britt  
Director of Inspections, Russell Williams

### **Others Present:**

Attorney, Francis P. Rasberry, counsel to the Board of Adjustment  
Attorney, Sherri Hamlett, representing the City of Burlington  
Attorney, Amanda Hodiern, Isaacson Sheridan, representing Andrews Properties of the Triad, LLC, for Item No. 5 - **Case # Notice of Appeal-21-0001**  
Attorney, James K. Pendergrass, Jr., Pendergrass Law Firm, representing Andrews Properties of the Triad, LLC, for Item No. 6 - **Case # Subdivision Variance-21-0002**

### **Media Present:**

Alamance News, Tomas Murawski

### **Agenda**

### **ITEM NO. 1 – CALL TO ORDER:**

Chair Giles presided and called the meeting to order at 8:30am.

**ITEM NO. 2 - QUORUM:**

Chair Giles confirmed there were five members present to establish a quorum.

**ITEM NO. 3- APPROVAL OF MINUTES:**

Chair Giles called for the approval of the minutes of the January 11, 2022, Board of Adjustment Meeting.

Mr. Heinemen, made a motion, seconded by Mr. Kennedy to approve the foregoing minutes. Approved unanimously.

**ITEM NO. 5 | Case # Notice of Appeal-21-0001:**

**Applicant:** Isaacson Sheridan, Law Firm, representing Andrews Properties of the Triad LLC

**Location:** 504 W Webb Ave, Burlington, NC 27215

Alamance County parcel identification number 126749

**Details:** Isaacson Sheridan, Law Firm, representing Andrews Properties of the Triad LLC, filed an appeal to reverse the Code Enforcement Officer's directive and order to decrease the number of rented rooms from eight to five.

Chair Giles announced a change of order in the agenda items and addressed Item No. 5. He informed the Board that a representative from Isaacson Sheridan Law Firm was in attendance and announced it is understood there is going to be a formal request for a continuance.

Ms. Amanda Hodiern, Isaacson Sheridan, Law Firm, was present to formally request a continuance on behalf of the applicant.

Mr. Kennedy made a motion, seconded by Mr. Heinemen, for a continuance of Item No. 5 to the April 12, 2022, Board of Adjustment meeting.

**ITEM NO. 6 | Case # Subdivision Variance-21-0002:**

**Applicant:** BA Folk, Law Firm, representing Mr. Daniel Hernandez

**Location:** 478 Sapphire Rd., Burlington, NC 27215

Alamance County parcel identification number 175671

**Details:** Approval of June 8, 2021, Board of Adjustment Findings of Fact, Conclusions of Law, and Decision.

Chair Giles stated the above item is a consideration for the approval of the June 8, 2021, Board of Adjustment Findings of Fact, Conclusions of Law, and Decision and called for anyone from the public to speak to this matter.

There were no comments received.

Mr. Kennedy made a motion, seconded by Mr. Beasley, to approve the June 8, 2021, Board of Adjustment Findings of Fact, Conclusions of Law, and Decision for the foregoing Case # Subdivision Variance-21-0002.

Approved unanimously.

**ITEM NO. 4 | Case # Notice of Appeal-21-0002:**

**Applicant:** Pendergrass Law Firm representing Andrews Properties of the Triad LLC

**Location:** 614 Maple Ave, Burlington, NC 27215

Alamance County parcel identification number 136390

**Details:** Pendergrass Law Firm, attorney for property owner Andrews Properties of the Triad LLC, filed an appeal to reverse the Code Enforcement Officer's directive and order to cease operating the property as a boarding house.

Chair Giles announced the foregoing case and explained the order of business.

Attorney, Mr. Francis Rasberry, gave an introduction and informed the board he was in attendance as counsel to the Board of Adjustment during this hearing and not the counsel for the City of Burlington. He stated the case being heard is an appeal from an administrative determination by the City of Burlington under NCGS 160D-405. He explained procedural process of quasi-judicial process of administrative appeals and responsibility of the board.

Mr. Rasberry advised the board of conflicts of interest pursuant to NCGS 106D-109. He asked if any member feels there may be a conflict of interest to disclose that fact should they need to be recused.

Mr. Kennedy referenced the agenda packet materials for Item No. 4 and Item No. 5 that indicate Andrews Properties at one time prior to this hearing used the Vernon Law Firm in Burlington and he disclosed the homeowner's association that he works with uses the Vernon Law Firm.

Mr. Rasberry addressed the disclosure and informed the board Chair to ask if there were any objections to Mr. Kennedy participating in this case.

Chair Giles inquired if there were any objections to Mr. Kennedy participating in this case.

There were no objections.

Chair Giles called for opening statements.

Alamance County, Attorney, Ms. Sherri Hamlett, representing the City of Burlington, provided the following opening statements. She stated this is an appeal of a Notice of Violation issued by the Code Enforcement Officer for the property located at 614 Maple Avenue, Burlington, North Carolina. This property is zoned MDR, medium density residential. Pursuant to the UDO, Table 4.2.C., a Boarding House is not a permitted use within a MDR zoning district. She stated prior to the enactment of the City's UDO, this property was zoned R-12. Pursuant to the Table of Permitted Uses effective at that time, a Boarding House was not a permitted use within an R-12 zoning district. She shared the following timeline:

- On November 7, 2019, a complaint was submitted through the City's B-Connected tip card complaining of various violations regarding the heating system and fire escapes.
- On November 27, 2019, code enforcement officer Karl Cheek inspected the home, addressing the complaints on the tip card and those involving life and safety.
- On February 24, 2020, a second complaint was submitted by a resident of the house located at 614 Maple Avenue regarding a bed bug infestation and other violations.
- On March 3, 2020, code enforcement officer Karl Cheek inspected the home for a bed bug infestation. Officer Cheek was never able to communicate with the individual that filed the complaint in order to assess the other violations as she stated in her complaint.

Ms. Hamlett stated a Code Enforcement Officer does not have the authority to approve the continued use of a property that is located in a zoning district in which the activity is not a permitted use. She stated in September of 2021, Mr. Grant Andrews contacted the fire department for an inspection of a boarding house. At that time, it was determined by City Staff that the property was not zoned for a permitted use of a boarding house and the owner had made no efforts whatsoever to even attempt to have zoning changed. She stated operating a boarding house at this location is in violation of the Burlington Unified Development Ordinance and the Burlington Code of Ordinances. She concluded, that is why we are here today, and turned over the floor to Mr. Pendergrass.

Attorney, Mr. James K. Pendergrass, Pendergrass Law Firm, representing Andrews Properties of the Triad, LLC, took the floor and called Mr. Steven Andrews to testify.

Chair Giles asked the witness to state his name.

Mr. Steven Andrews responded, Steven Andrews.

Chair Giles asked the Mr. Andrews to affirm or swear that the testimony he is about to give is the truth, the whole truth, and nothing but the truth.

Mr. Andrews responded, yes.

Mr. Pendergrass stated he is an attorney from Raleigh here on behalf of Andrews Properties of the Triad, LLC, and provided the following opening statement:

We are here today to address an appeal by the Andrews of the determination that was made on October 21, 2021, by inspector Reynolds. He asked the board to read the exhibits he provided carefully as they hear testimony and as this case is considered because nowhere in that document, did he read, does it say what the violation is. He stated it concludes there is a violation, but it doesn't say what the violation is. He stated he believes basic due process requires the City to put a property owner on notice on what they need to do to comply, it just says, you're in violation. It's got several code sections cited in there, but it doesn't say anything about what the violation is as I read it. They haven't noted anything, says any responsible

person who violates any provision shall be subject to assessment, but it doesn't say what the violation is, so I believe you should look strongly and carefully as, quote, this alleged violation letter says, it simply doesn't say what the violation is.

**Testimony of Applicant, Mr. Steven Andrews, Agent, Andrews Properties of the Triad, LLC:**

Mr. Pendergrass asked Mr. Andrews to state his name and address for the record.

Mr. Steven Andrews responded 3293 Alex Faye Drive, Burlington, North Carolina.

Mr. Pendergrass entertained questions of Mr. Andrews relevant to the properties owned by Andrews Properties of the Triad, LLC, documents relevant to the case, inspections by city staff in Code Enforcement, Fire Department and Inspections Department, and addressed other properties owned by the company with similar operations.

Ms. Hamlett cross examined Mr. Andrews and entertained questions relevant to purchase of the properties owned by Andrews Properties of the Triad, LLC, history of the purchases, documents relevant to the case, city staff involvement in Planning and Zoning, Inspections, Fire Department, and Code Enforcement, and documents related to the notices received by the City of Burlington.

The testimony of Mr. Andrews concluded at 9:40am.

Chair Giles called for any other witnesses at this time. There were no more witnesses.

**Testimony of Mr. Karl Cheek, City of Burlington Code Enforcement Officer:**

Ms. Hamlett called on Code Enforcement, Karl Cheek for testimony.

Mr. Cheek affirmed to tell the truth, the whole truth, and nothing but the truth.

Mr. Cheek responded to questions relevant to the case.

Mr. Pendergrass cross examined Mr. Cheek.

The testimony of Mr. Karl Cheek concluded at 9:54am.

**Testimony of Mr. Chris Reynolds, City of Burlington Code Enforcement Officer:**

Ms. Hamlett called on Code Enforcement Officer, Chris Reynolds for testimony.

Mr. Chris Reynolds affirmed to tell the truth, the whole truth, and nothing but the truth.

Mr. Reynolds responded to questions relevant to the case.

Mr. Pendergrass cross examined Mr. Reynolds.

The testimony of Mr. Reynolds concluded at 10:29am.

Chair Giles called for a ten-minute recess at 10:29am. The meeting resumed at 10:40am.

**Testimony of Mr. Russell Williams, City of Burlington Inspections Director:**

Ms. Hamlett called on Inspections Director Russell Williams for testimony.

Mr. Williams affirmed to tell the truth, the whole truth, and nothing but the truth.

Mr. Williams responded to questions relevant to the case.

Mr. Pendergrass cross examined Mr. Williams.

The testimony of Mr. Williams concluded at 10:54am.

**Testimony of Mr. Greg Britt, City of Burlington Assistant Fire Chief, Fire Marshal:**

Ms. Hamlett called on Assistant Fire Chief, Fire Marshal, Greg Britt for testimony.

Mr. Britt affirmed to tell the truth, the whole truth, and nothing but the truth.

Mr. Britt responded to questions relevant to the case.

Mr. Pendergrass cross examined Mr. Britt.

The testimony of Mr. Britt concluded at 11:04am.

**Testimony of Mr. Chris Marland, City of Burlington Chief Code Enforcement Officer:**

Ms. Hamlett called for Chief Code Enforcement Officer, Chris Marland for testimony.

Mr. Marland affirmed to tell the truth, the whole truth, and nothing but the truth.

Mr. Marland responded to questions relevant to the case.

Mr. Pendergrass cross examined Mr. Marland.

The testimony of Mr. Marland concluded at 11:24am.

**Testimony of Mr. Conrad Olmedo, City of Burlington Planning Manager:**

Ms. Hamlet called on Planning Manager, Conrad Olmedo, for testimony.

Planning Manager, Conrad Olmedo affirmed to tell the truth, the whole truth, and nothing but the truth.

Mr. Olmedo responded to questions relevant to the case.

Mr. Pendergrass cross examined Mr. Olmedo.

The testimony of Mr. Olmedo concluded at 11:38am.

**Testimony of Mr. Steven Andrews, Agent of Andrews Properties of the Triad, LLC:**

Mr. Pendergrass called on Mr. Steven Andrews for additional testimony relevant to the case.

Mr. Pendergrass reminded Mr. Andrews he was still under oath.

Mr. Andrews responded to questions relevant to the case.

Ms. Hamlett cross examined Mr. Andrews.

Mr. Andrews testimony concluded at 11:55am.

There were no further questions from either party.

**Deliberation began at 11:55am**

Chair Giles closed the floor for testimony to begin deliberation.

Mr. Rasberry advised the board of the process of the Burden of Proof as it relates to the evidence received.

Chair Giles called for comments or thoughts from the Board of Adjustment.

Mr. Heinemen commented on the questionable similarities of the zoning certification documents.

Mr. Kennedy commented on the history of the zoning, whether the property was ever permitted to be a rooming/boarding house, questionable documents submitted that indicate it may be used but did not indicate that it was to be used for a boarding house.

Mr. Beasley commented on the validity of the zoning certificates and inquired if zoning changes shift when changes of ownership do or does that need to be reapplied for each change of ownership to make those documents valid.

Mr. Rasberry responded to the legal issues involved in this matter, determination of reasonable reliance, and legal principles involved for this consideration.

Mr. Kennedy commented on business transactions related to property purchases, potential of zoning changes, documents of age, and normal business prudence in seeking legal counsel review when making purchases of properties before.

Mr. Giles concurred that acceptance of these documents and grandfathering process that there would be burden of proof that there was continuous use as a boarding house or rooming house since 1998 in order for this appeal to be approved and did not see evidence or representation of that today.

**Vote:** (4 to 1) Appeal Denied

Mr. Kennedy made a motion, seconded by Mr. Heinemen, to deny the appeal.

Approved by: (Mr. Kennedy, Mr. Heinemen, Mr. Giles, and Mr. Rainey)

Opposed by Mr. Beasley.

**ITEM NO. 7:**

New Business. There was no new business reported.

**ITEM NO. 8:**

Mr. Kennedy made a motion, seconded by Mr. Rainey, to adjourn the meeting at 12:10pm.

Approved unanimously.

*Chair, Robert Giles, II*

*Approved by the Board of Adjustment on April 12, 2022.*