



# City of Burlington

## Board of Adjustment Meeting Minutes

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

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

### **City Members:**

Robert Giles, II, Chair  
Eric Grant  
John Glenn  
Charles Beasley (Alternate)  
Dean Rainey (Alternate)

### **Extraterritorial Members:**

Steven Heineman

### **Members Absent:**

H.E. Wilson, Vice Chair  
Mark Kennedy

### **Staff Present:**

Planning Manager, Conrad Olmedo, AICP, CZO  
Senior Administrative Assistant, Beverly Smith  
City Attorney, David Huffman  
Attorney for City of Burlington, Sherri Hamlett

## **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 six members present to establish a quorum.

### **ITEM NO. 3 | 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:** Approval of February 22, 2022, Board of Adjustment Findings of Fact, Conclusions of Law, and Decision.

Chair Giles called for any questions or discussion on the foregoing item. There were none given.

John Glenn made a motion, seconded by Mark Kennedy, to approve the following Findings of Fact, Conclusions of Law, and Decision. Approved unanimously.

614 Maple Avenue, Burlington  
Tax ID# 136390  
Appellant: Andrews Properties of the Triad, LLC

Appeal of Notice of Violation

**CITY OF BURLINGTON BOARD OF ADJUSTMENT  
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**

The Board of Adjustment (the “Board”) conducted an evidentiary hearing Tuesday, February 22, 2022, at 8:30 AM, in the matter of an appeal from an administrative decision of the City of Burlington (the “City”), in accordance with N.C.G.S 160D-405. From the final decision of the City that a violation of the City’s Unified Development Ordinance (the “UDO”) existed with respect to property located at 614 Maple Avenue, Burlington, North Carolina (and issuance of a Notice of Violation in accordance therewith), the property owner appealed. At the evidentiary hearing, the Appellant property owner was represented by counsel, Mr. James Pendergrass of Pendergrass Law Firm, PLLC. The City was represented by Mr. David Huffman, City Attorney, and Ms. Sherri Hamlett, Attorney at Law. Upon receiving testimonial and other evidence, the Board of Adjustment, by majority vote of its members, determined that the decision of the City that a zoning violation existed, should be Affirmed. This is the formal Notification of Decision by the Board of Adjustment, including Findings and Conclusions in support of its Decision, as follows:

**FINDINGS OF FACT:**

1. Andrews Properties of the Triad, LLC (“Andrews Properties”), is the owner (the “Owner”) of a parcel of real property located at 614 Maple Avenue, Burlington, in Alamance County, North Carolina (the “Subject Property”, or the “Property”).
2. Andrews Properties purchased the Property by way of Commissioner’s Deed, recorded in the Alamance County Registry in Deed Book 3715 at Page 859 on November 7, 2017 (City’s Exhibit J). The Property was the subject of a partition action filed in Alamance County, #17 SP 5.
3. Steven Andrews, who identified himself at the hearing as an agent for Andrews Properties of the Triad, LLC, testified for the Owner-appellant.
4. Testifying for the City of Burlington were the following individuals: Karl Cheek, Code Enforcement Officer; Chris Reynolds, Code Enforcement Officer; Russell Williams, Inspections Director; Greg Britt, Assistant Fire Chief/Fire Marshal; Chief Code Enforcement Officer Chris Marland; and, Conrad Olmedo, Planning Manager.
5. As testified to by Code Enforcement Officer Karl Cheek, he conducted an inspection of the Property on November 27, 2019 based on a complaint to the City regarding “.....a

single family residence, made into a boarding house...” The complaint related to fire protection and safety equipment, and the Property’s heating system. Mr. Cheek also testified that, in responding to a complaint regarding bedbug infestation at the Property, he inspected the Property on March 3, 2020 and verified that a pest exterminator had serviced the Property.

6. Mr. Cheek testified that his inspections of the Property on November 27, 2019 and March 3, 2020 were not for purposes of determining compliance with the City’s zoning ordinance. Mr. Cheek further testified that, as a code enforcement officer, he does not have the authority to determine zoning compliance or to authorize the operation of a boarding house in a zoning district in which boarding houses are not permitted.
7. On September 13, 2021, another complaint was filed with the City regarding roach and bed bug infestation at the Property. This complaint was assigned to Code Enforcement Officer Chris Reynolds. On September 14, 2021, Mr. Reynolds physically visited the property located at 614 Maple Avenue, Burlington. There were three vehicles parked in the driveway, yet no one came to the door.
8. Following Mr. Reynold’s unsuccessful attempt to inspect the property, Mr. Grant Andrews requested a fire inspection for the Property. As testified to by Steven Andrews, Mr. Grant Andrews is an officer or manager of Andrews Properties. As testified to by Assistant Fire Chief Greg Britt, this represented the first request for a fire inspection of the Property during the period Andrews Properties owned the Property.
9. On September 23, 2021, Captain/Fire Prevention Specialist Tyson Teague conducted a fire inspection of the Property. Three violations were noted from the inspection. (Appellant’s Exhibit 7). As testified to by Mr. Britt, when Mr. Teague returned to his office and entered the relevant information about the inspection, he learned that the property was not properly designated as a boarding house with the Burlington Fire Department. On obtaining this information, Mr. Teague contacted Assistant Fire Chief Britt.
10. Assistant Chief Britt then checked the zoning on the property. In consultation with Chief Code Enforcement Officer Marland, it was determined that the Property was not zoned so as to permit use as a boarding house.
11. On September 27, 2021, Chief Code Enforcement Officer Marland, Assistant Fire Chief Britt, and Inspections Director Williams attempted to inspect the Property. On arriving at the property, Steven Andrews was contacted via telephone, and the call was placed on speaker so all three City officials could hear the conversation. Steven Andrews stated that the property owners would not give voluntary consent for the inspection of the property, and the City would have to obtain an administrative search warrant for access to the property.

12. As testified to by Chief Code Enforcement Officer Marland, he applied on September 27, 2021 to the Alamance County Clerk of Court for an administrative search warrant to gain access to the Property, and the administrative search warrant was issued that day.
13. On September 28, 2021, the warrant was served on the property owner. The physical inspection of the property was performed by Chief Code Enforcement Officer Marland, Code Enforcement Officer Reynolds, Assistant Fire Chief Britt, and Inspections Director Williams. These individuals were assisted by an officer of the City of Burlington Police Department. Also present at the Property were representatives of the Owner, Grant Andrews, and his two sons, Steven Andrews and Billy Andrews.
14. As the September 28 inspection commenced, officials of the City asked a tenant, who was leaving the premises, if they could inspect his room. The tenant replied that they could, and he further indicated that the property owners had the keys. The property owners would not allow access to the individual's room even though the individual had given permission.
15. As testified to by Code Enforcement Officer Reynolds, the City's inspection found and noted that eight rooms were being rented. Each rented unit was labeled on each door with their respective room letters, HG, CG, DR, SA, SG, BS, BR, FR. Otherwise, the physical inspection consisted only of the common areas, being the kitchen, bathroom, and hallway. The property owner objected to inspection of the individual rooming units and insisted that further warrants would be required to inspect the individual guest rooms.
16. According to the City's Unified Development Code (UDO 3.2. Official Zoning Map) the Property is zoned Medium Density Residential (MDR).
17. Pursuant to the City's Unified Development Code, Table of Permitted Uses (UDO Table 4.2.C) effective 2019 to present, boarding/rooming houses are not permitted in MDR zoning.
18. Prior to the City's adoption of the current UDO effective November 1, 2019, the subject Property was zoned R-12.
19. Pursuant to the City's Unified Development Code, Table of Permitted Uses, effective from 2004 to the date of adoption of the UDO in November of 2019, boarding/rooming houses were similarly not permitted in R-12 zoning.
20. The City of Burlington ordinance as it pertains to boarding homes was modified in March of 2004. Pursuant to the 2004 ordinance, a Boarding/Rooming House is defined as: "a facility containing five or less guest rooms that are separately rented to occupants..."

21. Upon the inspection on September 28, 2021, this 1300 +/- square foot residential structure was discovered to have eight guest rooms. The owner confirmed this.
22. In the written Notice of Appeal, the property owner admits to using the subject property as a boarding house.
23. Pursuant to the North Carolina Fire Code, boarding homes are required to be inspected by the fire inspector once every year. The Appellant-property owner did not request a fire inspection of the Property during its 4 years of ownership.
24. In the course of his testimony as witness for the Appellant, Steven Andrews presented Appellant's Exhibits 3 and 4, which he tendered as Office and Institutional (OI) zoning certifications for the subject Property (Exhibit 3) and also for property located at 512 Maple Avenue (Exhibit 4). These purported zoning certifications were dated January 28, 1998. Under the City's UDO, and as distinguished from the R-12 and MDR zoning classifications, a rooming house is a permitted use in the OI zoning district.
25. On cross-examination by Ms. Hamlett for the City, Mr. Andrews identified a third document bearing the same date of January 28, 1998, and purporting to be an Office-Institutional zoning certification, pertaining to property located at 504 Webb Avenue in Burlington.
26. When placing the three purported zoning certifications side by side, that being Applicant's Exhibit 3, Applicant's Exhibit 4, and City's Exhibit M, there is a great similarity between the three. All three were issued on the same date, January 28, 1998. All three had identical spacing between the word "Office & Institutional" typed on the page and the line underneath the type. The notary stamp is in the exact same place on each certificate. The authenticity and reliability of Appellant's Exhibit 3 and 4, relating to the Subject Property, and also the property at 512 Maple Avenue, are questionable, at best.
27. As testified to by Chief Code Enforcement Officer Marland and Planning Manager Conrad Olmedo, the City does not have either of these zoning certificates (Appellant's Exhibit 3 and Appellant's Exhibit 4) on file in City records. When questioned, Chief Code Enforcement Officer Marland and Planning Manager Olmedo had never seen either of these certificates until they were presented by Steven Andrews at the hearing. The GIS layers do not indicate that this property was ever zoned as OI.
28. As testified to by Planning Manager Olmedo, he understood that a past City practice had been to provide, on request, certifications regarding zoning classifications of property, and allowed uses under the zoning classification. He testified that these were provided for informational purposes, and typically were requested by attorneys or real estate agents in connection with real estate closings. He further testified that, since the zoning classification of properties were frequently changed, he would think information from

the City regarding the zoning of property in 1998 is not something that would or should be considered valid, or relied upon, many years later.

29. The Property at 614 Maple Avenue was never zoned OI. This Property was, prior to the City's adoption of its UDO in 2019, zoned R-12. The Property is now, and was at the date of the notice of zoning violation, zoned MDR. Neither of these zoning districts permit the property to be used as a boarding house.

Based upon the foregoing Findings of Facts, the Board of Adjustment concludes as a matter of law:

#### CONCLUSIONS OF LAW

1. The subject Property was at the date of the issuance of the City's NOV, and is now, zoned Medium Density Residential, ("MDR").
2. The subject real property was, prior to the adoption of the City's UDO, zoned R-12.
3. It is not disputed that the Appellant's use of the Property on the date of the City's Notice of Zoning Violation was as a boarding house. Neither R-12 nor MDR zoning permit a boarding/rooming house.
4. The City's inspections of the Property on November 27, 2019 and March 3, 2020 were not related to the issue of conformance with the City's zoning regulations, and were not given substantial weight in the Board's decision.
5. The purported zoning certification dated January 28, 1998 was not given substantial weight in the Board's decision because of its questionable credibility; furthermore, the Board concludes that the purported zoning certification could not be, and should not have been, reasonably relied upon in making a decision to purchase the Property, or in making substantial expenditures on the Property, being dated and purportedly issued by the City under old City practices, and nearly twenty years prior to the Appellant's purchase of the property.
6. The Appellant-Property owner has failed to produce competent, substantial, and material evidence to support a reversal or modification of the City's Decision that a Zoning Violation has occurred. The City has produced substantial, competent, and material evidence to demonstrate that its decision should be Affirmed.

Based upon the foregoing Findings of Facts and Conclusions of Law, the Board of Adjustment Rules that:

## **DECISION**

1. The decision of the City that Andrews Properties of the Triad, LLC is in violation of 4.4.A(2), Boarding/Rooming House and 23.24 Hotels, Motels, and similar establishments general requirements, in the Burlington Unified Development Ordinance and Code of Ordinances, including remedial provisions contained in the City's decision, is Affirmed.
2. This decision is effective as provided by law and applicable City Ordinance provisions.

### **ITEM NO. 4 – NEW BUSINESS**

Planning Manager, Conrad Olmedo announced the next Board of Adjustment meeting will be held on April 12, 2022, at 8:30am.

### **ITEM NO. 5 - ADJOURNMENT:**

Mark Kennedy made a motion, seconded by Charles Beasley to adjourn the meeting at 8:32am. Approved unanimously.

*Chair, Robert Giles, II*

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