

**DRAFT**

**BOARD OF ADJUSTMENT**

**MINUTES**

**Thursday, January 24, 2019**

The Blowing Rock Board of Adjustment met on Thursday, January 24, 2019 at 5:30 p.m. Members present were Dr. Charles Davant, Buz Helms, Lance Campbell, EB Springs and Lee Rocamora. Staff present were Planning Director Kevin Rothrock and Town Clerk Hilari Hubner

Chairman Davant called the meeting to order at 5:30 p.m.

**APPROVE MINUTES:**

Chairman Davant asked if there any changes to the November 29, 2018 minutes. There were none. **All members were in favor of approving the minutes.**

**Administrative Appeal 2018-04 Frazier**

Mr. Crawford Cleveland, Mr. Ham Wilson, Mr. Chad Frazier, Mr. Jack Horner, Mrs. Morgan Horner, Mr. Kevin Rothrock and Ms. Tammy Bentley were sworn for testimony to the Board.

Mr. Rothrock gave the staff report. Mr. Chad Frazier has appealed a Final Notice of Violation issued to him regarding short-term rental of his property at 163 Wilmot Circle. Short-term rental is a period of rental less than 28 days. Mr. Frazier's property at 163 Wilmot Circle is zoned R-15, Single-family where short-term rental of property is not permitted. The property is further identified by Watauga County PIN# 2807-86-2953-000. The hearing was initially scheduled for Thursday, November 29, 2018. Mr. Frazier requested a continuance.

Mr. Rothrock gave the history of the zoning ordinance for the Town and the ordinance revisions related to short-term rentals. Short-term rentals are not allowed and not been allowed in the R-15 zoning district since 1984. In June, 2018 the Town Council adopted an ordinance further clarifying sections of the Land Use Ordinance dealing with short-term rentals. The ordinance also established a permitting process for legal short-term rentals.

The history included a letter dated August 7, 1998 from Town Manager Don Holycross to property owners and realtors in the area explaining short-term rentals not being allowed in the residential zoning districts, a letter dated February 25, 2003 from Planning Director Kevin Rothrock explaining to citizens and realtors that short-term rentals were not

permitted in the residential zoning districts of the Town and a memo dated February 22, 2006 from Planning Director Kevin Rothrock to the TDA with a list of regulations for short-term rentals.

The subject property was a six-unit multi-family building built in 1940, and a nonconforming use in the R-15 zoning district. There was no zoning prior to 1974, but the use was allowed to continue after the property was zoned R-15, as a non-conforming use. The units were rented long term from early 1992 to February 2004. In 2004, Dr. Dan Wilson owner of the property, applied for a zoning permit (May 2004) and building permit (Oct 2004) for interior renovations. Dr. Wilson reduced the number of dwelling units from six to three, thereby reducing the nonconformity. Since completion of the building improvements, as far as the Planning and Inspections office is aware, the property was used for long-term rental until a complaint of short-term rental was received in 2014.

Chairman Davant commented that the question is if the applicant's property is grandfathered.

Mr. Springs asked Mr. Rothrock how his office knows that the units were rented on a long-term basis from 1992 until 2004. Mr. Rothrock advised that Ms. Bentley managed the units during that time period when she was the property manager with Jenkins Rentals. Mr. Springs asked Ms. Bentley to tell the Board about her knowledge of the long-term rental of this property.

Ms. Tammy Bentley said that her background is real estate, specifically property management and that she managed this property from early 1992 until February 2004 when she was the Property Manager with Jenkins Rentals. Ms. Bentley said there were six apartments, five of which were rented on a long-term basis and one apartment which the owners, Dr. and Mrs. Dan Wilson, reserved for themselves. Ms. Bentley said that many tenants would stay for years and that the building had a laundry room with coin operated machines on the lower level, the proceeds of which were remitted to the owners. Mr. Springs asked the typical term of the leases. Ms. Bentley said the minimum lease term was probably six months, although a one year lease was preferred. Chairman Davant asked Ms. Bentley if any apartments were rented on a short-term basis then. Ms. Bentley said that to her knowledge there was no short-term rental, adding that Dr. and Mrs. Wilson would occasionally use their unit. She added that no other occupancy of the owners' unit was handled by Jenkins Rentals, that any such rental could have been handled by the owners.

Mr. Crawford Cleveland, attorney for Mr. Frazier, asked Ms. Bentley if she knew of anyone renting the Wilsons' unit from 1992 to 2004. Ms. Bentley said not to her knowledge, but the Wilsons' could have rented the unit directly. Mr. Cleveland asked Ms. Bentley if the unit was handled by the owners and they rented for a weekend for a profit, would that be a short-term rental. Ms. Bentley said yes that any occupancy less than 28 days is considered a short-term rental.

Mr. Springs asked Mr. Rothrock how long the 2004 renovations took. Mr. Rothrock said he did not recall, but the zoning permit was applied for in May, 2004 and the building permit in October, 2004. Mr. Rothrock said that they requested changing the exterior siding and also converting the building from six to three units.

Chairman Davant asked if they would have to be given an occupancy permit before they could use the building. Mr. Rothrock said it would have to be finalized, but not necessarily issued an occupancy permit. Chairman Davant asked how long we keep records. Mr. Rothrock said we keep building and zoning files for six years. Chairman Davant asked if from May through October of 2004 it would be safe to assume that the building was not being rented. Mr. Rothrock said that he did not know if it was being rented during that period.

Mr. Springs asked Mr. Rothrock what the Town's position is in this situation, which is different from what the Board has seen in the past in that this is multiple units. Mr. Springs asked if this was an all or nothing situation. Mr. Springs noted that the burden is on Mr. Frazier and asked if he must show that all the units were grandfathered prior to 1984 for short-term rental use and must he also show that there was no 180 day lapse in this use from 1984 until now. Mr. Springs noted that there is no question that the building is grandfathered as a three unit apartment building. Mr. Rothrock confirmed. Mr. Rothrock said that he believes that the non-conformity of short-term rental use would have to be the majority use of the building, adding that if there were six units, then four units would have been used for short-term rentals; if there were three units, then two would have to have been used for short-term rentals. Mr. Rothrock said he could verify that in the ordinance, but he thinks to establish and continue that non-conformity it must be the majority.

Chairman Davant asked if the owners were reserving one unit for themselves and renting the other two short-term would that be in compliance. Mr. Rothrock said that would not be in compliance, that if they were renting their unit short-term (and this is an assumption) then that does not allow them to have a vested right by establishing that they had been renting one unit on a short-term basis.

Mr. Cleveland read Chapter 16, under Section 8 Non-conforming Situations, 16.8.3.1. Mr. Cleveland asked Mr. Rothrock if he was familiar with that section of the code. Mr. Rothrock confirmed. Mr. Cleveland asked if this section mentions majority use or predominant use. Mr. Rothrock said that that section doesn't; that section is talking about extending a nonconforming use to new areas of the property or to expand the building to allow an increase in nonconformity. Mr. Cleveland responded if you have a nonconforming use it can be extended throughout any completed portion of the building. Mr. Rothrock said that this building was already completed. Mr. Cleveland said if you had a nonconforming use in one apartment and you wanted to expand it within the building, not increase the footprint of the building or add additional parking, but expand the use within the building, you could increase it from one unit to six units, or one unit to three units, but it doesn't actually mention anything about majority use for the two out of three units that you mentioned earlier. Mr. Cleveland asked if he was being fair in how this is written. Mr. Rothrock said yes,

if the nonconformity was established legally. Mr. Cleveland said they had not presented their evidence for that. Chairman Davant said that's really not what's at issue here, it's a nonconforming use but it is allowed. Chairman Davant added that if you wanted to build another addition or something you may not be able to because of extending the nonconformity. Mr. Rothrock confirmed. Mr. Cleveland added that this is going to Mr. Spring's earlier question about how the units would be construed and if the Town had interest in that.

Chairman Davant asked if anyone else wished to comment.

Mr. Cleveland addressed the Board. He said this is an apartment building built in 1940 as a sixplex. Throughout its history it's had both short-term and long-term rental uses. Specifically, Dr. and Mrs. Wilson purchased the property in 1981. At that time, which pre-dates the 1984 code, they reserved a unit to use for themselves and others, for short-term stays, or they would rent it to family and friends for profit for short-term periods, not one-year periods, and that was continuous the entire time they owned the property. Through the 2004 renovation, they kept one of the three units as a short-term rental up until the time they sold it to Mr. Frazier in 2016. Mr. Cleveland said that Mr. Frazier has reached out to Dr. Wilson's adult sons who said he kept one of these units for himself and he used it as a short-term rental, continuously without any breaks, from 1981 forward. Mr. Cleveland said he thinks this gets them into the grandfather status and nonconforming use; that they have established that. Mr. Cleveland offered to produce the affidavits. Chairman Davant asked if there was any evidence that the Wilsons used the unit for six months adding that the evidence was lax, and that the question is not whether it was a short-term, but if it went 180 days without being used for short-term rental, and he would like to see evidence of that. Mr. Cleveland said that Dr. Wilson's sons stated in their affidavits that they did not recall that and added that he did not think Dr. Wilson is alive to be here today.

Mr. Springs said he thinks they can see the affidavits, but they have to do this as a quasi-judicial body and the Board is instructed to use the North Carolina rules of evidence which includes hearsay. Mr. Springs said there are so many questions that the Board would have for the Wilsons. Mr. Cleveland said he thinks the straight forward question is whether or not they reserved a unit and kept it for short-term rental use going back to '81. Mr. Cleveland said that he does not think this is a terribly complex issue and noted that the affidavits are one page. Chairman Davant said there was just sworn testimony that they were not used for short-term rental. Mr. Cleveland thinks the sworn testimony shows that five of the six units were long-term rentals and one unit was reserved for the owner. Chairman Davant asked Ms. Bentley if any of the units were used for short-term rental. Ms. Bentley said not to her knowledge. Mr. Cleveland apologized and said he had missed that.

Mr. Springs asked Mr. Cleveland if they are seeking grandfather status for one unit. Mr. Cleveland said they are ultimately seeking to have all three units be allowed to continue the nonconforming use. Chairman Davant said if they are short-term rentals, they are a nonconforming use. Mr. Cleveland said that they understand that the property has been used as short-term rental use at least the last decade and when Mr. Frazier purchased the

property it was majority short-term rental use and the MLS listing listed short-term rental use. Mr. Cleveland gave the Board copies of the affidavits from Dr. Wilson's sons. The Board reviewed the affidavits.

Chairman Davant said he had asked Mr. Rothrock to check with the Town attorney and ask if the Board can accept affidavits and unsworn testimony. Chairman Davant said he knew they could consider it, but he did not think they could use it as a basis for a decision. Mr. Rothrock said there is no way to cross-examine someone who is not here, so it is not sworn testimony. He added that affidavits are signed, but the witnesses are not here to give testimony and it does not carry a lot of weight.

Mr. Rocamora asked Mr. Rothrock if he knew if occupancy tax had been paid on the short-term rentals, and would that document whether they were short-term rentals. Mr. Rothrock said he had checked today and it appeared that none had been received. Chairman Davant asked how long occupancy tax has been required. Mr. Rothrock said when the TDA was established, the occupancy tax increased to six percent from three percent. He said that he did not know, prior to establishing the TDA, who received the tax-the county or the Town. Chairman Davant asked when it increased. Mr. Rothrock said either 2003 or 2004. Mr. Rothrock advised that occupancy tax covers short-term rental up to 90 day rental.

Mr. Frazier addressed the Board. Mr. Frazier said since he has owned the property that the occupancy tax has been paid and he has this information from the property manager and Airbnb. He added in 2017 just shy of \$5,000 was collected and in 2018 just shy of \$12,000 was collected. Chairman Davant asked if this was paid to the Town. Mr. Frazier said yes, that to his knowledge Airbnb writes one check for all properties. Mr. Frazier said that Blowing Rock Resort Rentals had also collected occupancy tax when they managed the property. Mr. Rocamora said, per Mr. Rothrock, that payment of occupancy tax does not necessarily establish legal short-term rental use. Mr. Frazier said he understands that and is letting the Board know that he has complied with every ordinance and rule, including the recently passed ordinance regarding parking, trash bins, smoke/carbon monoxide detectors and reflective 911 numbers on the units. He added that he has done everything he can to make it as safe as any other dwelling in the Town.

Mr. Springs confirmed that Mr. Frazier bought the property in 2016. Mr. Springs asked if any units were occupied when he closed. Mr. Fraizer said no, all were short-term rentals. Mr. Springs asked if there were people in the units the day he closed. Mr. Frazier said no. Mr. Springs asked if all 3 units were vacant on that day. Mr. Frazier confirmed. Mr. Springs asked Mr. Frazier to detail the rental activity since the day he closed. Mr. Frazier gave the rental history to the Board. He added that this is an investment property and he wanted to rent the units as much as possible. Mr. Frazier said that he uses the basement unit for himself occasionally, and the other units, as well. Mr. Springs asked for the rental history by unit. Mr. Frazier gave the history for each unit. Mr. Springs asked if the short-term rentals were consistent for each unit, since he had purchased the property, without a 180 lapse. Mr. Frazier said yes, but that the basement unit may have had a lapse. Chairman Davant said he thinks we can concede that the units are being rented short-term right now, but the issue is

that short-term rental is not allowed. Chairman Davant asked Mr. Frazier if he has any other evidence of short-term rental use. Mr. Frazier said he has no other evidence, other than the affidavits. Mr. Frazier added that he had tried to rent the units long-term, but was unsuccessful. Mr. Frazier added that the only complaint that he is aware of about the building is short-term rental use where it is not allowed. Mr. Frazier said his is the only property that uses Wilmot Circle. He added that he does not allow pets, has plenty of parking, the trash is maintained, and that he personally checks the property frequently.

Mr. Frazier said that he hoped the Board could find it sufficient to determine that one of the units was a short-term rental. Chairman Davant asked how close to the property is short-term rental allowed. Mr. Frazier said one parcel away. Mr. Rothrock said the property is not contiguous to a zoning district where short-term rental is allowed.

Mr. Cleveland asked Mr. Frazier how the property was marketed to him. Mr. Frazier said it was marketed as investment property, as well as short-term rental.

Ms. Morgan Horner told the Board that she is the closest property and the most affected by short-term rental. Ms. Horner asked about the 12 parking spaces. Mr. Frazier said there are 12. Ms. Horner asked to see a diagram of the spaces. Mr. Frazier said there are 8 above and 4 in tandem down below the building. Mr. Frazier said if only 10 spaces are available, that exceeds the requirement. Ms. Horner asked Mr. Frazier to explain where the spaces are, adding that she does not understand the tandem spaces. Mr. Frazier said this area is probably 40 feet long and can accommodate 4 cars. Ms. Morgan said she knows there are cars and trucks parked all along her property line and they block one side of the road. Mr. Frazier asked where the cars are parked. Ms. Horner responded all along Wilmot Court, and that she only sees 6 spaces at the top and 2 at the bottom. Mr. Frazier reiterated that he needs 6 spaces, 2 per each unit. Ms. Horner said there is a considerable amount of traffic and that her driveway exits onto Wilmot. Ms. Horner said there are traffic issues, that there have been up to a dozen cars on the road. Mr. Frazier asked if they were blocking the road. Ms. Horner confirmed. Ms. Horner said that in the event of fire the fire truck could not get to her house. Ms. Horner said there have been pets and they have also had a problem with small children trespassing on their property. Ms. Horner said they did not know who to complain to since a local company was not handling the rentals. Mr. Frazier said he was not aware of any of this. Ms. Horner said this was because they did not know who to call. Ms. Horner said that this is an issue and it does affect their quality of life. Mr. Frazier and Ms. Morgan discussed the issues she had surfaced. Mr. Frazier and Ms. Horner discussed the road, who is responsible for its maintenance and who uses it. Mr. Frazier offered his phone number to Ms. Horner so she could contact him.

Mr. Horner asked if he understands that there has to be a history of nothing but short-term rentals for 30 years, uninterrupted. Chairman Davant said that to have grandfather use, they would have to have evidence of short-term rental use continuously without a 180 day break. Mr. Horner said they are here May through October and said there have been many instances of long-term rentals, some year after year. Mr. Horner said the issue with short-term rentals is that the tenants do not know about their house and zoom in and out of the

road. Mr. Springs asked Mr. Horner what year they moved into their house. He said they bought the property in 1998, but had it renovated over several months. Mr. Springs asked him his address. Mr. Horner said 131 Laurel Drive. Mr. Springs asked Mr. Horner if, in the past years, he knows of someone renting one of these apartments for a year. Mr. Horner said he had no idea. Mr. Horner said that his wife is here more than he is. Mr. Springs said his wife mentioned Joe Delaney's brother renting there. Ms. Horner said that Mr. Delaney's brother and his wife, for years rented one of the units and they were always here for July and sometimes longer, especially when BRAHM was being built. Mr. Frazier said he had rented to them.

Mr. Frazier said if there is an issue with the parking that is made known to him that he can easily find the person and take of it. Mr. Frazier said that not knowing about issues prevents him from addressing them. Mr. Horner thanked Mr. Frazier for giving them his contact information.

Mr. Springs asked Mr. Rothrock the Town's position if there is some evidence that one unit is grandfathered but not the others, does that disqualify the entire building. Mr. Rothrock said the section mentioned, 16-8.3.1, is subject to Section 16-8.3.3 which references single-family residences. Mr. Rothrock read 'Subject to Section 16-8.3.3 a nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this chapter, was manifestly designed or arranged to accommodate such use. However, subject to Section 16-8.7 (authorizing the completion of nonconforming projects in certain circumstances), a nonconforming use may not be extended to additional buildings or to land outside the original building.' Mr. Rothrock said they had an option to extend a non-conforming use, but they did not. Mr. Rothrock said when Dr. Wilson applied in 2004 for the renovation permit for the exterior siding and to change from six units to three, he never said I'm renting short-term and I know that is a non-conforming use and I want to continue that after these improvements. Mr. Rothrock said he knows Dr. Wilson was renting long-term and continued renting long-term.

Mr. Rothrock clarified that he checked for occupancy tax payments in Mr. Frazier's name only. He said he did not check Airbnb, but they do group the payments together. Ms. Hubner confirmed that Airbnb groups all occupancy tax due into one payment. Mr. Rocamora asked if any occupancy tax was paid prior to Mr. Frazier taking over. Mr. Rothrock said he did not look for that.

Mr. Frazier asked if, regarding Section 16.8.3.1, is this something that you have to apply for if you have been doing short-term rentals for years (per the affidavits). He asked why anyone would feel compelled to mention this, if they have already been doing that and if they are just going to extend that to other units in the building. Mr. Frazier asked what permit or authorization would be needed from the Town to establish that grandfather. Mr. Rothrock said you would need to establish it through a permit. Mr. Rothrock said a record stating that 'I have a legal non-conforming use which has been this use since before the ordinance was adopted in 1984, that the use was never stopped for more than 180 days, and to establish that I want to extend the non-conforming use to the rest of my building,'

would be required. Mr. Frazier asked where this is in this section. Mr. Rothrock said it doesn't say that there, but to establish a right to use something there must be a permit, in which a vesting is established. Mr. Frazier asked if the building being built before 1984 establishes vesting. Mr. Rothrock said no, they would have to come to the Town. Mr. Frazier asked if an ordinance changes the use of something, must maintaining the use be requested immediately from the Town. Mr. Rothrock said no, unless it is common knowledge that the property was being rented short-term and that has been established in plain sight. Mr. Frazier said that according to the neighbors that has been the case. Mr. Rothrock said it sounds like they haven't been renting short-term.

Mr. Cleveland asked Mr. Rothrock if he had any knowledge if the Wilsons reserved the bottom unit for themselves. Mr. Rothrock said no, just based on Ms. Bentley's testimony. Mr. Cleveland said that Ms. Bentley's testimony did not cover after the renovation. Mr. Ham Wilson, attorney for Mr. Frazier, asked Mr. Rothrock if he knew whether the bottom unit was being rented short-term by the Wilsons. Mr. Rothrock said he did not have any knowledge of whether they rented it long-term or short-term. Mr. Wilson said that your position is if they wanted to rent the others short-term, they would have to come get a permit. Mr. Rothrock confirmed. Mr. Wilson asked under which ordinance. Mr. Rothrock responded under this Land Use Ordinance. Mr. Wilson said the one you just read. Mr. Rothrock said no, that to establish a vested right to continue a non-conformity and to extend to other areas into that building they will have to establish some vesting through a zoning permit. Mr. Wilson asked under what ordinance they would have to apply for that. Mr. Rothrock asked the Land Use Ordinance or specific section. Mr. Wilson said if they were grandfathered in with this ordinance we've been reading from, the non-conforming use could expand to anywhere in that building, correct. Mr. Wilson referred to Section 16-8.3.1, extending the use to the entire building, and asked are you saying that in order to comply with this statute they would have to apply for another permit to expand it under this ordinance. Mr. Rothrock confirmed. Mr. Wilson asked what ordinance ties in with that. Mr. Rothrock said Section 16-4.1 Zoning and Conditional Use Permits, which requires a Zoning Permit issued by the Administrator, or Conditional Use Permit issued by the Board of Commissioners, prior to starting work on a site, or substantially changing the use. Mr. Rothrock clarified that he thought Mr. Wilson's question was how they can expand the non-conforming use into the rest of the building and referred to Section 16-4.1. Mr. Wilson asked again, what ordinance ties that to 16-8.3.1. Mr. Rothrock explained that Chapter 16 and all the articles are applicable to each other, and to start that work or establish a use, the use made of the property may not be substantially changed. Mr. Rothrock said that this requires a Zoning Permit. Mr. Rothrock said to expand the non-conforming use throughout the building would have to be established through a Zoning Permit.

Mr. Cleveland said that Mr. Rothrock said the use would not be substantially changed and ask what the change would be if they were already using it for short-term rental use. Mr. Rothrock said that from a conforming use of long-term rental, of 5 of the units, to a non-conforming use of short-term rentals, conforming use to a non-conforming use, is a change in use of the property. Mr. Cleveland said it was non-conforming use from the beginning and there was nothing about predominant use or majority use. Chairman Davant said Mr.



Cleveland is assuming that it is non-conforming. Chairman Davant said that long-term rental is conforming and that he would like to see some proof that it was used for short-term rental from 1984 on. Chairman Davant said that he is not really concerned about the last three or four years, but he is concerned about the period of time that this property has to be shown as non-conforming short-term rental. Mr. Frazier said he does not have that information and that if the Town has to go back just six year, how is he supposed to go back 30 years. Mr. Cleveland said the Town is asking each property owner who wants to bring an appeal to produce everyone in a chain of title going back pre-1984 to make a personal appearance to give testimony. Mr. Cleveland said they have gone to some length to produce affidavits to ascertain the facts of the property. Mr. Cleveland said that this puts the burden on the each applicant or appellant and would to be too much to meet. Chairman Davant said there is sworn testimony that the units were long-term rentals for several years. Mr. Cleveland said for five of the units, but not the sixth unit.

Mr. Helms asked if the reserved unit was also rented for income. Mr. Cleveland confirmed.

Chairman Davant suggested discussing the finding of facts.

Mr. Ham Wilson gave the Board copies of a 2011 Supreme Court case. Mr. Wilson said that that restrictions on the use of the property are construed in favor of the free use of the real property. Mr. Wilson read "Zoning regulations are in derogation of common law rights and it cannot be construed to include or exclude by implication that which is not clearly their express terms." And "Zoning ordinances are in derogation of the right of private property, and where exemptions appear in favor of the property owner, they should be liberally construed in favor of such owner." Mr. Wilson said that in this case, this ordinance is not as clear as it should be, that it does not say that a majority of the units have to be used for long-term rentals or that just one unit cannot expand the use. Mr. Wilson said that Section 16-8.3.1 can imply that if one unit is a non-conforming use, that the use can be expanded to the other units. Mr. Wilson submitted to the Board that since the ordinance was not as clear as it should be, that they would need to construe this Statute and ordinance in favor of the free use of the property and that Mr. Frazier's use not be restricted by this ordinance which is not as clear as it should be. Chairman Davant said that this might be more helpful if the Board was assessing the relocation of a sign.

Mr. Campbell, in referring to Mr. Keith Wilson's affidavit, asked about the definition of vested right and said if the property was a short-term rental from the beginning was that vested right established. Mr. Wilson said that is their position.

Mr. Springs said he would like to talk with the other Board members in private and asked if they can do that. Chairman Davant said they could not go into closed session during a public hearing. Mr. Rothrock confirmed.

Mr. Springs said the Board is required to determine facts. The Board discussed the finding of facts.

The Board discussed the finding of facts.

*Mr. Springs made a motion to determine the following facts:*

1. The property was built as a six unit apartment house in the 1940s and would be grandfathered as a non-conforming use.
2. It was owned by the Wilson family until 2016.
3. The building was changed from six to three units in 2004.
4. Mr. Frazier purchased the property in 2016.
5. The building is currently a non-conforming use in the R-15 zoning district.
6. There is reliable evidence that all but one of the units was rented long-term from 1992 until 2004.
7. There is evidence, but it does not rise to the level of reliable evidence, that there has never been a 180 day lapse in the non-conforming short-term use from March 13, 1984 to the present.

*Mr. Springs' motion was seconded by Mr. Rocamora. All were in favor of the motion.*

Mr. Rothrock advised the Board that they can accept, disagree with, or modify his decision.

The Board concluded that Mr. Frazier has the burden of showing the property was established as a non-conforming use since 1984 and did not lapse for 180 days, and that Mr. Frazier did not show that. Therefore, the Board agrees with the decision of the Zoning Administrator. Mr. Springs suggested that the Board affirm Mr. Rothrock's decision.

*Mr. Springs made a motion to conclude that Mr. Rothrock is correct and to affirm his decision. Motion seconded by Mr. Campbell. All were in favor of the motion.*

Chairman Davant thanked Commissioners Sue Sweeting and Albert Yount for attending the meeting. The Board discussed the short-term rental ordinance, adoption and implementation thereof. The Board also discussed the discovery, investigation and enforcement of illegal short-term rentals and monitoring compliance in properties that have been issued short-term rental notices of violation. The Board also discussed ways to inform the public and real estate companies of the short-term rental ordinance.

Mr. Yount said that some larger jurisdictions, specifically Hickory, Newton and Conover, are training their police officers to recognize code violations and they can testify regarding violations, if necessary.

Ms. Sue Sweeting said there is a five county commission and if anyone knows of someone renting short-term in an area where it is not allowed, she can give them the name. Ms. Sweeting said this commission said they can do more than Raleigh. Ms. Horner asked if this is the local realtors' association. Ms. Sweeting said yes, but it covers five counties. Ms. Sweeting said she would be happy to do contact the association with any realtor who is

advertising short-term rental incorrectly. She added that they do not look favorably on listings being advertised incorrectly.

Ms. Sweeting and Mr. Rothrock detailed the evolution of this process which began with the purchase of Short Term Rental Helper to determine if occupancy tax was being paid and to assist in discovering illegal short-term rentals. Ms. Sweeting commended the Planning staff on their hard work on this.

With no further business, the Board adjourned at 7:30 p.m.

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Dr. Charles Davant, Chairman

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Hilari Hubner, Town Clerk