

**CITY OF ELIZABETH CITY  
BOARD OF ZONING ADJUSTMENT  
REGULAR MEETING  
TUESDAY, November 18, 2014  
5:30 PM**

**MEMBERS PRESENT**

Carlton Etheridge  
Joda Bollard  
Peggy Davenport  
Lee Gutman  
David Harris  
Lemuel Lamb  
Thomas Ward

Also present were June Brooks, Planning Director; Ben Gallop, Attorney and Dawn Harris, Secretary to the Board.

**Chairman Etheridge:** Elizabeth City Zoning Board will call to order. Roll call and determination of a quorum.

**Ms. Harris:** Lin Bennett. (Absent) Peggy Davenport.

**Ms. Davenport:** Here.

**Ms. Harris:** Lee Gutman.

**Mr. Gutman:** Here.

**Ms. Harris:** David Harris.

**Mr. Harris:** Here.

**Ms. Harris:** Lemuel Lamb.

**Mr. Lamb:** Here.

**Ms. Harris:** Thomas Ward.

**Mr. Ward:** Here.

**Ms. Harris:** Joda Bollard.

**Ms. Bollard:** Here.

**Chairman Etheridge:** We have a quorum?

**Ms. Harris:** We have a quorum.

**Chairman Etheridge:** Next will be election of officers.

**Ms. Brooks:** For those who do not know, Mr. Thorne has resigned his position. So, we need to elect a new vice-chair for the Commission tonight.

**Chairman Etheridge:** Ok, the floor is open for election of a new vice-chair.

**Ms. Davenport:** Mr. Harris. I nominate Mr. Harris.

**Ms. Bollard:** I second it.

**Chairman Etheridge:** Hearing the nominated and second we will vote. All in favor.

***ALL IN FAVOR: ETHERIDGE, BOLLARD, DAVENPORT, GUTMAN, LAMB and WARD.***

**Chairman Etheridge:** All opposed.

***NONE OPPOSED. MOTION CARRIED.***

**Chairman Etheridge:** Ayes carried. Adoption of agenda.

**Mr. Harris:** I make a motion that we adopt the agenda as presented, please.

**Mr. Lamb:** I second.

**Chairman Etheridge:** All in favor.

**ALL IN FAVOR: ETHERIDGE, BOLLARD, DAVENPORT, GUTMAN, HARRIS, LAMB and WARD.**

**Chairman Etheridge:** All opposed.

**NONE OPPOSED. MOTION CARRIED.**

**Chairman Etheridge:** Next thing is adoption of the minutes, July 15, 2014 meeting.

**Mr. Harris:** I make a motion that we approve the minutes. I didn't find anything. They looked good to me as presented.

**Chairman Etheridge:** Second.

**Ms. Davenport:** I second.

**Chairman Etheridge:** All in favor.

**ALL IN FAVOR: ETHERIDGE, BOLLARD, DAVENPORT, GUTMAN, HARRIS, LAMB and WARD.**

**Chairman Etheridge:** All opposed.

**NONE OPPOSED. MOTION CARRIED.**

**Chairman Etheridge:** Statement of Disclosure.

**Ms. Harris:** Elizabeth City Code of Ethics provides that public officials and employees be independent, impartial and responsible to the public; that governmental decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals and in keeping with the ethical standards of conduct for city public officials and its employees, disclosure of interest in legislative action must be stated for the public record, as per City of Elizabeth City Code of Ordinances Section 2-113. Any member of the Board of Adjustment who has an interest, as defined in Section 2-111 of the City of Elizabeth City Code of Ordinances, in any official act or action before the Board shall publicly disclose on the record of the Board the nature and extent of such interest, and shall withdraw from any consideration of the matter if excused by the Board pursuant to G.S. 160A-75.

**Ms. Brooks:** Mr. Chair, I need to make a disclosure. I have been advised by the City Attorney that...I live two houses down from the house at 908 Raleigh Street. I have no interest in 908 Raleigh Street, but I do live two houses down.

**Chairman Etheridge:** Okay, new business--Application A-01-14, Petition for Appeal, by Cynthia I. Williams from the administrative decision of the Zoning Administrator governing the interpretation of Unified Development Ordinance Article VI, sub-section 6-3.2(D) as applicable for property located at 908 Raleigh Street. All persons who wish to present evidence in this case should have signed up on the Special Sheet for the hearing. If you have not signed and wish to testify, rather than provide arguments only, please sign in now. All those wishing to speak please proceed to the podium

to be sworn in. Be mindful, any person who, while under oath during this proceeding willfully gives false testimony is guilty of a Class 1 Misdemeanor, subject to civil penalties.

[At this time M.s Harris swore in those signed up to give testimony: Cynthia Williams and June Brooks.]

**Chairman Etheridge:** Before opening the hearing, I'd like to give Board members a chance to reveal any possible conflicts and withdraw from these proceedings if necessary. [There were no conflicts.] Any Board members who have any information or special knowledge about the case that may not come out at the hearing tonight, please describe that information for the record so that interested persons will know and can respond. [There were no comments.] The order of business for this hearing will be as follows: First we will hear from the Planning Staff; then we will hear from the Applicant and their Witnesses; then we will hear from the Opponents to the request. Parties may cross-examine witnesses after the witness testifies when questions are called for. If you want the Board to see written evidence such as reports and maps or exhibits, the witness who is familiar with the evidence should ask that it be introduced during or at the end of his/her testimony. We cannot accept reports from persons who are not here to testify. Attorneys who speak should not give factual testimony but may summarize their client's case. Before you begin your testimony, please clearly identify yourself for the record. I now open the Public Hearing on Item # Appeal 01-14 and ask for testimony from the Planning Staff.

**Ms. Brooks:** Thank you Mr. Chair. The applicant Cindy Williams is appealing the Zoning administrators interpretation of the Unified Development Ordinance Article 6, section 6-3.2 D, which states "if any nonconforming use of land ceases for any reason for a continuous period of more than 180 days, any subsequent use of such land shall be in a permitted use in the district in which such land is located." The applicant's property is located at 908 Raleigh Street. The property is currently zoned Residential R-8 which requires a minimum of 8,000 square feet of lot area for a single family units. Conversions are allowed in this district to permit 2 units; however, a minimum of 12,000 square feet of land is required. Multi family dwelling are not permitted. The applicant's property is 6,659 square feet. Both the lot size and the multifamily use make this property nonconforming.

The Elizabeth City Land Use and Insurance Maps produced by the Sanborn Map Company dated 1931 shows the subject property as a 1 ½ story single family residential structure. Pasquotank Tax records indicate this is a 1638 square foot structure; the subject property was acquired by the applicant in 1989. Between 1958 and 1989 the property was owned by Frances Grant Wise and prior to 1958 it was owned by M.O. And Ruth G Hatcher.

Researching the previously adopted zoning ordinance dated 1973, which was in effect at the time when the Williams purchased the property, it is indicated this parcel was zoned Residential R-8 , conversions for two- family units required a minimum of 12, 000 square feet of property and multi-family units were not permitted. It can be concluded that this structure may have been a non-conforming use when the current owners purchased the property in 1989. The adoption of the City's current Unified Development Ordinance ,adopted in September 1999, follows the 1973 Zoning Ordinance language of conversions in an R-8 residential zoning district. The 3 unit multi-family dwelling is still classified as a non-conforming land use.

When calculating the 180-day cessation period so as to declare a nonconforming situation ceased, the Zoning Administrator shall find evidence of one or more of the following for substantiating the cessation: Inactive public utility service, specifically electricity; inactive or expired building permit(s); expired Certificate of Appropriateness; and/or expired site specific plan with vested rights, conditional use, special use, zoning or sign permit. Expiration of permits and site plans shall be in accordance with Section 4-10(D) of the Ordinance.

Review of City's Utility records, Apartment "A" utilities in Samaria Cole's name were disconnected August 4, 2011 and reconnected in Cynthia Williams name as agent (landlord turn on) on February 1, 2012. Since that time kilowatt usage has ranged from 3 kilowatts per month to 91 per month and no water usage. Apartment "B" utilities in Josh Reagon's name was disconnected December 20, 2010 and reconnected in Timothy Williams name as agent (landlord turn on) on March 11, 2011. Kilowatt usage has ranged from 0 to 129 per month. There have been twenty (20) months with no kilowatt or water usage. Apartment "C" electric meter was disconnected and removed on January 4, 2011. No reconnection has occurred since that date. The City has a policy when there is a "Landlord Turn on" and the water usage is less than 1000 gallons per month, there is no charge for water service nor trash pickup. In this case, the property owners have not been charged for water service nor trash service since the tenants vacated the apartments. The City's "Landlord Turn On" policy was created for the convenience of landlords to allow them to transfer the electric account into their names to make repairs to the units, obtain permits and not pay a security deposit. The policy was designed to meet short term needs (30 days) in order to get the unit rented. Having a "Landlord Turn On" does not constitute occupancy.

Staff checked the Pasquotank County tax records and found that the owners have been paying for solid waste disposal for the three apartment units. According to Patrice Stewart, Pasquotank County Tax Administrator, property owners may file for solid waste fee exemptions when properties are vacant for more than 6 months. The Williams have not made application to the County for exemptions.

Review of the Department of Inspection do not indicate that any building permits were issued between December 2010 through September 2014. A building permit was issued September 23, 2014 to repair the front porch only. On February 27, 2013 the owners were cited by Minimum Housing Inspectors for building code violations on their structure, i.e. removal of dilapidated shed, roof shingles, reinstalling railing, rotten wood on front porch. It is noted in the minimum housing inspectors report ( July 13, 2012 and letter to owners on February 27, 2013) that the triplex is nonconforming in use. In August 2012 and May of 2013 the owners were cited by Code Enforcement for violations of Weeds, Grass and Debris.

Planning Staff had a telephone conversation on two occasions with Tim Williams, one in 2013 and one in the spring 2014 concerning the non-conformity. The cessation of the multifamily land use, in whole or in part, for a period longer than 180 days rendered the "grandfathered" status null and void (i.e. the nonconforming use cannot be reinstated). A letter dated September 26, 2014 was sent to the Williams after Cynthia Williams contacted the Planning Staff by phone on September 22, 2014.

The Zoning Administrator relies on the public utility record for substantiation along with other factual evidence including active construction permits, unexpired Certificates of Appropriateness, and site-specific plans with vested rights. File records indicate that none of the additional items of consideration were active or obtained for the subject property prior to September 2014.

In consideration of the following Findings of Fact (i.e. crucial findings):

1. At construction, circa 1923, the property was developed for single-family residential dwelling;
2. At the time of purchase in 1989, the City of Elizabeth City Zoning ordinance adopted in 1973 was in effect which identified 908 Raleigh Street, as R-8 Residential whereby a minimum of 8,000 square feet of land for a single family, 65 foot lot width and 12,000 square feet for a 2 family conversion. Multi-family dwellings were not permitted;
3. The City adopted the current Unified Development Ordinance and made effective September 13, 1999;
4. The current zoning classification of the subject property, 908 Raleigh Street, is R-8 Residential, whereby a minimum of 8,000 square feet of land for a single family, 65-foot lot width, and 12,000

square feet for a 2 family dwelling with a 100 foot lot width. Multi-family dwelling are not permitted;

5. According to file records, the existing structure and lot size does not satisfy the minimum lot size, for Single Family Dwelling land use within the R-8 Residential zoning classification, having a lot area of 6,659 square feet (0.152-acre);

6. The CAMA Land Use Plan land use designation of the subject property is Medium/High Density Residential (MHDR) which is a high-density single-family residential classification;

7. Division of Customer Service (public utility) records provide evidence of Landlord turn on utility service to the subject property, specifically Apartment "A", between February 2012 and October 2014;

8. Division of Customer Service (public utility) records provide evidence of Landlord turn on utility service to the subject property, specifically Apartment "B" between March, 2011 to October 2014;

9. Division of Customer Service (public utility) records provide evidence of electric meter being disconnected and removed for Apartment "C" in January 2011 to October 2014;

10. Division of Customer Service (public utility) records provide evidence that little to no electric usage has occurred in Apartment "A" since August 2011, Apartment "B" since December, 2010, and Apartment "C" since January 2011;

11. Division of Customer Service (public utility) records provide evidence that no water nor refuse fee has been paid since the landlord turn on and removal of meter in apartment "C".

12. The Department of Inspections records provide evidence of minimum housing code violations of the residential dwelling dating July, 2012 and February, 2013;

13. The Department of Inspections records of July, 2012 and February, 2013 provide evidence of notification to the property owner that the 3 units are a non-conforming use;

14. The Department of Inspections records provide evidence of one (1) building permit being issued September 2014 for repair of front porch;

15. Department of Code Enforcement provide evidence of code violations of Weed, Grass and Debris in August 2012 and May 2013;

16. File records indicate that at no time prior to being cited in 2013 has the property owner inquired with the Building Inspector regarding the continuation of the nonconforming multifamily residential land use;

17. Article I, Section 1-7.1 of the Ordinance states clearly that no building, premises, or structure shall be modified, converted, occupied, and no land use may commence (i.e. Multifamily Dwelling) except as authorized by said Ordinance; and whereas, the existing property and structure do not comply with the zoning regulations for conversions and Multifamily Dwelling;

18. The commencement of the cessation of the nonconforming situation/use marked by the termination of public utility service to apartment "C" on January, 2011 and by the lack of utility consumption on Apartment "A" and "B" between March 2011 to October 2014 exceeds 180 days, as per Article VI, Section 6-3.2(D);

Staff asks the Board of Adjustment to uphold the administrative decision made by the Zoning Administrator in her interpretation of the Ordinance regarding the cessation of the nonconforming use.

**Chairman Etheridge:** Now we will hear from the applicant and their witnesses.

**Mr. Gallop:** Mr. Chair, if I can step in for just a second and introduce myself to the rest of the Board briefly. I'm Ben Gallop. I've been hired by the City to represent the Board tonight. So I am your attorney. I am not Ms. Brooks' attorney or the City's attorney and I'm not Ms. Williams' attorney. I am here to help guide you in making the procedural steps correctly so that whatever decision you make gets upheld or turns down by the court if it is appealed later for some other reason not because of the steps you take tonight. That's why I'm here and I spoke with the Chair earlier today and one

thing I mentioned to him was that sometimes I get asked to answer the final question of "What should the answer be, you're the attorney." And that's not really my job. I may guide you into narrowing where the question lies, but it's your job as the Board to come up with that answer. I won't be available to answer what I think the answer to the question should be, but I will try and guide you into the area to make sure that you are answering the right question. But why I stepped in at this point is that I think you do want to give the applicant a chance to question Ms. Brooks before you move on to their presentation Mr. Chair.

**Chairman Etheridge:** Is there any questions from the applicant to the Planning Board.

**Ms. Williams:** Excuse me.

**Chairman Etheridge:** I said, do you have any questions for the Planning Board.

**Ms. Brooks:** To me.

**Ms. Williams:** Yes, ma'am. You stated that you spoke to Tim...

**Ms. Brooks:** Yes.

**Ms. Williams:** ...previously? Did you leave the conversation with him that you were going to get back with him. Yes or no.

**Ms. Brooks:** I don't recall what...I answered the questions he asked me on the phone.

**Ms. Williams:** Ok, so, you are telling me that he was not waiting for a return phone call conversation from you about our next course of action?

**Ms. Brooks:** Not that I am aware of.

**Ms. Williams:** Okay.

**Ms. Brooks:** I thought he was clear my conversation with him.

**Ms. Williams:** Okay. Am I to make comments?

**Mr. Gallop:** What you're doing right now is asking her questions...

**Ms. Williams:** Right.

**Mr. Gallop:** ...and then it will be your opportunity...her time to testify will pass and it will be your opportunity to testify and the Board or Ms. Brooks may ask you questions.

**Ms. Williams:** However, when I did call you I put you on the spot and asked you to take action. You did not take any action when you made the conversation with Tim previously during his conversation.

**Ms. Brooks:** I did not put anything in writing. No, you are correct.

**Ms. Williams:** So, we would still be in the same situation we were a year or two years ago if I had not called and said, what do we do, where do we go. And, your comment was you needed to send us a notice so that we could then go through this process.

**Ms. Brooks:** That is correct.

**Ms. Williams:** One of the things that we have; and I don't know how much to say because I have a lot to say. In your list of items you did not list that we had pulled permits for the electrically service in that.

**Ms. Brooks:** No, because that was back in 2006; your electrical.

**Ms. Williams:** So you are only looking for current from 2011.

**Ms. Brooks:** From the date 2011 when your tenants vacated your building through the current.

**Ms. Williams:** I don't know at this point if I have any other questions.

[At this point Mr. Williams started to speak but was informed he could not unless he signed in and was sworn in.]

**Ms. Harris:** Can he sign up?

**Mr. Gallop:** If he would like to testify, he can be sworn in and testify. I don't think it would be...if someone wants to testify I don't think it would be prudent to disallow them to testify. I think it is fine for him to be sworn. Right now is not the time to testify. She is questioning Ms. Brooks. In a moment...you don't have to walk anywhere to change anything, but it will be the time to testify and

then if someone else wants to testify on your behalf as to facts regarding the situation then we will need to have them sworn and then they could testify as well. So you are done with questioning?

**Ms. Williams:** Yes, at this point.

**Mr. Gallop:** The only thing left with Ms. Brooks would be if anybody from the Board has any questions for Ms. Brooks. and if not, you ask the applicant to give their presentation.

**Mr. Lamb:** I would like to ask the date the of the conversation you are referring to. The approximate date of the conversation.

**Ms. Brooks:** For whom.

**Mr. Lamb:** When you talked with Mr. Williams.

**Ms. Brooks:** In the spring of this year, maybe March/April time frame.

[Mr. Williams stated at this time that it was the week after we go that letter.]

**Ms. Brooks:** I did not write you a letter until September of this year.

[Mr. Williams stated that he had called Ms. Brooks and asked her about the letter he had received from the City. Ms. Williams interjected that it was around March. The letter was from Don Edwards, but it stated that Ms. Brooks had indicated it was a nonconforming property.]

**Mr. Gallop:** It's best if you are going to explain, wait--one problem is you are not on the microphone so we can't record you. But you may ask Mr. Williams that question when he testifies as well.

**Mr. Lamb:** Both pretty much believes somewhere around March, 2013. That's all I have.

**Chairman Etheridge:** Now we will hear from the opponents to the request. Parties may cross exam witnesses. Okay, now we will hear from the applicant and their witnesses.

**Ms. Williams:** So I get to free talk. Ya'll have to listen to me talk for a few minutes. Sorry. I guess for us I just want to share just a little bit. We've owned this house since 1989. Ms. Frances, who lived in this house...I actually lived on Raleigh Street as a child. Time grew up on Agawam/Jones Street. Riverside area is home for us. Our first apartment was on Raleigh Street down towards Carolina Avenue. I grew up on the corner there. We are very familiar with this area. Ms. Frances lived there. Her son converted it into three apartments so that she could live in that house, maintain her independence so to speak and have rental income from the other two apartments. It has been three apartments since I was 11 years old and that was in '73 not that I'm telling my age. In '73 I delivered papers over there and believe it or not Ms. Frances was an invalid in a hospital bed. I carried her paper inside that house to her into what we think of as the big apartment in the house. It was the nicer apartment with the bigger kitchen. So, it has been a multi-family home for a long time. It was that through my childhood, but of course Tim and I ended up living in Edgewood. His grandmother still lived on Agawam Street. We traveled Raleigh Street a lot and when Ms. Frances' house came up for sale we were in our mid-twenties, both had stable jobs, a young child and thought this would be a good investment for us. It took a lot for us to buy that house at 27 years old, living in Elizabeth City, but we did it. We thought it was a good investment for our future, for our daughter's future. We haven't regretted that. Through the years we have done improvements. When we bought the house it had oil space heaters. For those of us who have lived in Elizabeth City know what those are and know that we tried to upgrade apartment you know with flooring, with new appliances as they needed. It is something that we have invested in because it is an investment for us. We just felt like it was a good deal. During the years we've had good renters and bad renters. Ask anybody who's in the investment business they understand. Two thousand ten, eleven and twelve were not good rental years for us. You talk about A, B and C and names. They're people to me. Josh was a young Coast Guard gentleman who was going through a divorce; had a child he was sharing joint custody with. His ex-wife lived in Williams Circle. He needed a place to live. We rented to him. He was later, later, later, later, later. Finally, we went to collect rent one day; he had moved out. Called his Commander. He's going through a hard time Cindy I'll try to pay you. Did we ever get all our money. No. Would we do it again? Yes. He needed a place. It was ideal housing. I mean it's just

sort of one of those decisions. Samantha was an ECSU student. She grew up and lived here in Elizabeth City, but she wanted to live alone while she was going to the university. So, her father helped her. She found out about seven months into it that she really couldn't afford to live alone. But of course, she had a year's lease. Ms. Cindy will you let me out of my lease? Yes Samantha, we'll do whatever we need to. You're struggling paying your rent. Here we go again. The young lady whose living in the apartment upstairs. A young lady with a young daughter has Fibromyalgia. She's sick, she can't keep a job. Her mother in Arizona is sending us the rent. I can go on and on. Previously, keep in mind we've rented this house for 25 years. Rentals have been good. It is a good multi-family home for us to rent. These situations just sort of -- one went on top of the other. Our final gift was the young lady who lived upstairs, whether or not intentionally or unintentionally, we had turned Josh's electricity over to our name. We are doing some painting and repairs in there. Had it just about ready to rent. We went over there and the ceiling in the bedroom is lying in the middle of the floor. The young lady upstairs when we told her that, because she wasn't living there, the City had pulled the power. She still paid us a little bit of rent; all her stuff is still there but she's living with her son somewhere else. We tell her you need to get your stuff and you need to get out. We're trying to upgrade the apartment and get it right. It's a never ending cycle. The ceiling--the tub is filled with water. The bathroom's flooded and the bedroom ceiling is lying in the middle of the floor. Two weeks later, we have a rental house on the Outer Banks; two weeks later Sandy came along and we had three foot of water in our rental house at the beach. For us, our decision is do we spend our time and money on a rental house that rents for \$1,500 a week that we already have rental commitments or do we...what do we do. That's a choice we made. We in no way ever intended, or as you can look at the apartment, intended for the apartments never to be three apartments. They have according to your UDO, the land use has not changed. They have three bathrooms; they have three kitchens; they have three bedrooms; three living rooms. We haven't changed the apartment itself. Yes, I will not deny we did not keep the power on in all three apartments. There was no need for me to cut the power on in apartment C when we were not going to be working in that apartment. We were working at our beach cottage and gonna be trying to get what we needed to get fixed in apartment B. So for us, when we then go back and hear from Planning after some conversations and phone calls, that it's because we didn't have the power on in my mind I'm like, what does the power have to do with the use of this house? No where do I see in the UDO does it say that I have to have the power on. Nor, does it say it has to be occupied. It says the use does not need to change. I would understand if we went in and converted that apartment to a single-family and then I came back to you and said I want to make it a multi. I could understand you going; no you sort of went past that hurdle. Or, even if we converted into two apartments. At this point when we got that notice, keep in mind, we made the decision when we had rental problems that we were going to upgrade and fix the house. We were going to do some above and beyond. We put new windows in; we fixed the roof and replaced the roof; we fixed the flat roof; we fixed the railing. The porch; if anybody lives in Elizabeth City and has a wooden porch they know it's a continually endeavor to keep that wood and the paint and everything on a nice front porch. It's a wonderful thing to be able to sit out there. We "hemmed and hawed" and couldn't decide and we finally decided, let's go ahead and fix it one time. A concrete porch the size on Raleigh Street costs about \$3,000. Windows cost about \$300 a piece. For us it's dollars, it's an investment. It's an investment in our future as rental property in Elizabeth City. Tim and I run a business here. Elizabeth City is home for us. We're not looking to move anywhere else. We are looking to hopefully have a good piece of investment property here in Elizabeth City that can support us and our daughter through the years coming down the road. The hindsight, if all I had to do was pay a twelve dollar electric bill, and I still don't understand that nor do I necessarily--I just don't understand what the power bill has to do--in one portion in the letter it says "electric service where landlord is not occupancy." But, on the other it said you only have two of the three in. That's what



Ms. Brooks told me on the phone; well, you only have two of the three powers on and I'm like...what does that have to do with the house being three apartments. So, we've started renovations. We've been gradually spending some of our money, which being self-employed...last year we did not have a dime to spend on Raleigh Street. It was all we could do to keep the beach cottage because we had another hurricane, if ya'll don't remember, but anyway. It was just a revolving piece for us. So, this year we decided we're going to spend some money even if we have to borrow some money and fix the apartment up so that we can get it rented; and I called June this time and said evidently you calling Tim back, whether she understood she was supposed to do that or not, when you call code enforcement and you get that letter...have ya'll ever gotten a letter with a list of things on it and the last item is etc. Have you ever tried to fix "etc.?" It lists these items and we talk about them and the last item is etc. And, the item before that is nonconforming. If you call up there to speak to the gentleman in code enforcement they tell you I can't talk to you about nonconforming. You need to talk to Ms. Brooks. Well, in order for us to talk to Ms. Brooks in March when Tim called Ms. Brooks. He called Planning three times in one day. We never got an answer. We called the City Clerk and said we need to talk with June. We are going to resolve this and she patched us through and we ended up speaking to Ms. Brooks. Did we get a return phone call? No. Did we have the dollars at that point to move forward? No, but we were trying to get a plan. Well, as you can tell I am a little bit of a forceful...I wouldn't say forceful, but I want to get things done. I'm a banker by trade and for me it's columns and rows and we're not going to do anything that's going to jeopardize our livelihood or our future, but we're going to try to do what's right. That's what we've always done. So, I called June and said, ok, what is the deal? Either we do or we don't. I need an answer. She said well I need to serve you and I went, ok so, when are you going to serve us? A year from now, two years from now, five years from now? When? She said, well I can serve you. I said if that's what I need to do to start the ball rolling to resolve this problem then that's what we need to do. So then I got served. Had the pleasure of spending my \$500 to come to speak to all you wonderful people. So, hopefully we can resolve what our next step is going to be for Raleigh Street. Needless to say, our request is to keep it as a triplex. It's got three water meters, it's got three electric services, everything is divided. It is set up for three; what we think of as single or couples. It's not set up for five people and we would like to keep it as such. It has been that, I know for 25 years--35 years maybe. It's not--do you see our neighbors here? Our neighbors, cause we sent them letters; we've known them. I know most of them because I delivered papers to them 30 years ago. Said, Cindy they sure are giving you heck. They even put that sign in your front yard. It's like, we are doing what we have to do to get the process over and done with. And that's what we're looking for, for you...I still don't understand what the light bill has to do with it. I pulled the UDO. I'm a research, instruction, manual person and I'm like we haven't changed the land, we haven't changed that house. It is the same thing is always was. And, it has been a multiplex for at least since '72 that I know of. Ms. Wise's son actually stopped by the house a week or two ago. He can't get out of the car now. He said it's looking nice. When you get done give me a call and I want to come inside see what it looks like with new carpet and vinyl on the floor and I said I sure will. Because for him it's his home house. It's where his mom lived until she died. I guess what I'm asking you is, we would love to keep it as a triplex. If you come back to us and say Cindy it's going to be a duplex, that's your only choice. I don't know what our direction is, but I know for us it is a heck of a lot more money to have to convert; change power, change water, reconfigure the layout of the house, take kitchens out. What do you do? Are we going to have the dollars to do that? I don't know that answer. I know that I would love to get it fixed and ready and rented, but I need your decision in order to do that. Have I talked enough? I'm sorry. I guess at this point...let me look through my notes to make sure I didn't miss anything, cause I made myself notes. Have you seen me read any of it? No. But any questions you have for me or Tim...this is home for us and this is an investment for us and we are hoping that it

will continue to be a viable investment for us. We are downtowners. We are Riverside people. We live on Main Street in a big old house. We have a business downtown. This is where we want to be and hopefully something that will continue to work as an investment for us. Any questions. Is this the appropriate time for questions?

**Mr. Gallop:** If you are done speaking, yes.

**Ms. Williams:** I am done speaking.

**Ms. Brooks:** You say that the use has not changed, but has the building been occupied since your tenants moved out.

**Ms. Williams:** It has not, but I don't see in the UDO that it says it has to be occupied for...to change use.

**Ms. Brooks:** Ok, let me read you this. It says, 2-4.13 and the Commission has this in their Staff Report. It says Use--the purpose or activity for which land or structures is designed, designated or arranged or for which land or structures are occupied.

**Ms. Williams:** It says, "or." It was designed, arranged or intended as a multiplex. It was not "and" occupied or ...that's how I look at it. Through our 25 years has it been rented solidly every month. Can I guarantee that? No. Can any landlord in town guarantee that they're going to have every apartment full for six months at a period. I have never...I was never aware and keep in mind that we have had this house for long time, that we had to have it occupied for it to continue to be a multiplex. To have three apartments in it.

**Ms. Brooks:** Can I make a statement.

**Chairman Etheridge:** Yes.

**Ms. Brooks:** Is it my understanding...you purchased the property in 1989.

**Ms. Williams:** Yes, ma'am.

**Ms. Brooks:** And it was a triplex then.

**Ms. Williams:** Yes, ma'am.

**Ms. Brooks:** The zoning ordinance adopted in 1972 identifies this as a nonconforming lot area and a nonconforming use, which means that three-family units were not permitted in 1972 and it is unfortunate that you purchased a nonconforming structure in 1989.

**Ms. Williams:** In '72 I delivered papers to Ms. Wise, Ms. Frances in this house. It was not a new triplex in '72. Now, Mr. Grant, her son who is an attorney here in town, he could probably tell you because he told me in his car the other day, which I did not know, that him and his wife are the ones who converted it. They spent six month converting the house to a triplex so mama could stay there. But, in '72 I carried a paper into one of these apartments to a elderly lady in a hospital bed for an extra 30 cents a week. Let me tell ya, big money, but it was a triplex then and that was in '72 or '73 because I moved here when I was 11. So, it had to be before then.

**Ms. Brooks:** Ok, but the ordinance that was in effect when the previous owners owned it...

**Ms. Williams:** So before '72 was it not appropriate to have.

**Ms. Brooks:** I could not find any documentation prior to that, but when you purchased it, it was a nonconforming use under the current ordinance the City had.

**Ms. Williams:** Ok and we have not discontinued the use. It has always been a triplex.

**Ms. Brooks:** But you have not occupied it for more...

**Ms. Williams:** But I don't see where occupancy...and I guess we just want agree with that. To me I don't see in the code where it says it has to be occupied. I'm not disagreeing. There has not been anybody living in that apartment. We go over there once every month, once every two months. Spend four, five or six hundred dollars; whatever we can afford. Patch a wall, patch a ceiling, patch a roof, put in a window; whatever we can do to try to get the apartment where it needs to be. And for us, if you had somebody who was renovating and beating on a house would you want me to rent an apartment? One of the apartments is ready for someone to move into. We could have rented it two

years ago, but would I put somebody in that apartment knowing that we work every day, 10 to 12 hours a day? We are over there weekends and nights. I wouldn't want to live next door. It is an apartment in a house. We made that decision not to rent it. Not because it's not ready to rent, but because we just didn't think it was right to rent it to somebody knowing that we were going to rip off the front porch and replace it; that we were going to tear out windows and put new windows in. So, that was a decision we made. Maybe that was the wrong decision to think that we were doing the right thing. Does it have to have one person in it? Does it have to have all three rented? I guess I just don't see anything that says it has to be occupied. And, honestly, that's why I spent the \$500 because I said I just don't understand. I need somebody to show me where it says the power has to be on and people have to be in it. Because if so, there's a lot of land lords in Elizabeth City who need to know that. And, keep in mind for us, June lives down the street. So, it's not like she not riding by every day.

**Chairman Etheridge:** Appreciate your comments.

**Mr. Gallop:** You may want to see if anybody on the Board has any questions.

**Chairman Etheridge:** Any questions from any of the Board members?

**Mr. Gutman:** I have one.

**Ms. Williams:** Yes, sir.

**Mr. Gutman:** Nothing...this proposal or order by the Zoning Board does not prohibit you from renting two of the three, does it?

**Ms. Williams:** Well, I ask if I could have the power cut on because, keep in mind, it's a story and a half and the upstairs apartment is a separate entrance and it's the power that's not cut on now currently. So, downstairs is two separate apartments and those are the two that have the power cut on. And the question for us, and this is one reason why we wanted to have this is, if we were forced to go back to two apartments, what would we do? And I asked if I could have the power cut on the upstairs and it was eluded that that would not happen because we could only have two apartments in the house. Well, so here I am going, Ok, what do rent, what do I turn on, what do I do? I need an answer, I need to know what direction to go in because if... we need to make a decision. Tim and I need to make a business decision as to what do we do. But, I don't know that answer.

**Mr. Gutman:** I appreciate that. I am not clear on whether you could rent two of the apartments.

**Ms. Williams:** I don't know that answer. I do not, keep in mind this is me, an opinion. If I went to code enforcement and said I want...I'm renting this apartment, I need the power switched over. I would almost bet you money that they would come over and go, you can't rent it because you can't have three apartments in here and there's still three apartments. I don't know that, but I would bet you money that they would not cut on utilities for one apartment if the house still had three in it. I don't know that for a fact, but that would be...cause that would be the first thing that would happen. We would have to provide a lease agreement. They would come up here, get their power switched over and code enforcement would come out and inspect the house.

**Mr. Gutman:** So it's an open question in your mind.

**Ms. Williams:** Yes, Sir.

**Ms. Williams:** Yes, ma'am. [directed to Ms. Bollard.]

**Ms. Bollard:** You bought this in 1972.

**Ms. Williams:** No.

**Mr. Gutman:** '89.

**Ms. Williams:** I bought it--we bought it '89.

**Ms. Bollard:** Ok, but in 1972 it was a triplex.

**Ms. Williams:** I delivered papers--it was a triplex. Yes, ma'am.

**Ms. Bollard:** And when you bought it?

**Ms. Williams:** It was a triplex.

**Ms. Bollard:** It was a triplex?

**Ms. Williams:** Yes, ma'am.

**Ms. Bollard:** Now, the realtor sold it to you as a triplex.

**Ms. Williams:** Yes, ma'am. Because...

**Ms. Bollard:** And, one of the things they ask as a realtor, did you have all of the permits to make any changes or anything. There has to be a record of when it was made a triplex. There has to be. So, it sounds to me that someone sold her something that was not meant to be.

**Ms. Williams:** It has been...we actually bought it from Ms. Frances' daughter. She must have inherited the lot or inherited the house. It's all I know, because I really had never met her son but when we bought the house I did meet her daughter. And all I know, because of living in that area who actually lived at that house and that it was a triplex. If I hadn't delivered papers and known that there was three separate people living in there and she was one of them. I could not tell you what year that was. I just know I moved here when I was 11 my father came to work at TCOM. He was one of the first people here and it was 1972. So, you know... And it was not a new... I mean it had pink cabinets/counter tops, you follow. It was not new in '72 and I don't know how long Ms. Frances was living there by herself in that apartment before she was in a hospital bed. I mean she could have been there for 10 years and they could have done it in the '50 or '60's. I don't have that answer.

**Ms. Bollard:** But there has to be some permit somewhere that was pulled.

**Ms. Williams:** It was a triplex in '72 and when we bought it in '89 I knew it was a triplex. We're riding by it, see the for sale signs; Tim's parents were sort of in the property management in Raleigh and they were like, that's probably a good deal. Ya'll might be able to make the payment off your rent. Wouldn't that be nice. We're like...hum. And that's what we did.

**Ms. Bollard:** Thank you.

**Chairman Etheridge:** Any more questions from any of the Board members?

**Ms. Davenport:** Yes, I have a question.

**Ms. Williams:** Yes, ma'am.

**Ms. Davenport:** About apartment C.

**Ms. Williams:** Yes, ma'am.

**Ms. Davenport:** It looks like this entire matter came as a result of apartment C not having power.

**Ms. Williams:** Which doesn't make sense to me, but I'm inclined to agree with you.

**Ms. Davenport:** Now, the City pulled the electrical box on January 4, 2011.

**Ms. Williams:** And, the young lady was still paying rent and they pulled her electrical box with the food in the her refrigerator and the food in her kitchen. Would you like to know what that looks like a year and a half later? No ma'am.

**Ms. Davenport:** So when were you aware of the fact that the electrical box had been removed?

**Ms. Williams:** The spring...I can't tell you exactly...but the spring of that year we knew she was struggling and we knew she was staying with her son. And of course, her intent was to get back in the apartment, have her on place. She was not doing well. She had a 12/13 year old daughter. And...

**Ms. Davenport:** But again, when were you aware?

**Ms. Williams:** In the spring of '11. But she was still paying her rent. So for...

**Ms. Davenport:** You were aware at that time?

**Ms. Williams:** Yes, ma'am.

**Ms. Davenport:** That the City had pulled the box?

**Ms. Williams:** Yes, ma'am. She was paying her rent. Not living in the home.

**Ms. Davenport:** I have another question.

**Ms. Williams:** Yes, ma'am.

**Ms. Davenport:** Why didn't you get the box back and setup electrical service again? Because your refrigerator will run hot when it doesn't have electricity and that will cost you a lot of money.

**Ms. Williams:** Keep in mind, she's still paying the rent. Her stuff is still in the apartment. So what at point do we turn the power on for a tenant. The City does not favor upon that, because they think that then that the power's in our name and we're renting it to somebody underneath the cuff and you just don't do that. She discontinued paying, I am assuming, her utilities because the City actually came and took the meter. Didn't just cut it off, took the meter out of the hole. And, we at that point said, what are you going to do. She said I'm going to get myself straight, I'm going to get better. Mama's going to help me out with the rent, I'm going to get back into my apartment. We're like...okay.

**Ms. Davenport:** But, you are saying that the City would not have allowed you to get the box back and continue service in your name?

**Ms. Williams:** Not with a tenant living in it. No ma'am. In other words, I can't...I mean I could go right now...I've got apartments in my name. I would be in deep trouble if I were renting those to people and paying the utilities myself. The City frowns upon that.

**Ms. Davenport:** Yes? [stated to Ms. Brooks.]

**Ms. Brooks:** Can I just clarify that she is referring to landlord turn-on. Now if the tenant is using electricity, water and sewer even though the account is in her name; she would be paying for a full service. Not as a landlord turn on.

**Ms. Williams:** But my understanding is from a City standpoint, the City does not want you as a landlord to have power in your name and then sub rent it. We've never...does that make sense?

**Ms. Davenport:** No it doesn't. Because sometimes landlords give people a package deal. They will pay electric, water, etc. etc. and they will include that in with rent.

**Ms. Williams:** We very seldom see that in Elizabeth City because what happens is then you don't pay deposits. I mean, because like Tim and I, we have power in Elizabeth City. If we bought another house and went to turn any power on, we would probably would not pay a deposit in the City of Elizabeth City. We've had power here for 30 years...36 years and she was already late on her rent. I would not agree to pay her power. I mean...and did a hole deeper for myself. So, when we had the issue with Josh, we pretty much said, it's not working. You're not back in the house. We need to fix the flat roof. You need to get your stuff. We're sorry, but we just can't continue on. And that's pretty much where we were at no spring; summer/fall 2011 with her. I talked with her mother and said we've done everything we can. I don't know what else to do for her, but she needs to move on. You don't need to keep paying us \$200/300 to buy her more time. She either needs to fly home to Arizona, she needs to do something to move on with her life and get it straight. And at that point, if ya'll ever watched the hoarder show, that's what that apartment looked like. We rented a roll up dumpster to clean out that apartment once she left that apartment. So, we end up with one problem, two problems, three...it just, like I said '11, '12 and '13 were not wonderful rental years in our rental experience. Luckily, we had 25 plus years or we'd been really on the depressed side. But, I could have had the power cut on once she'd left. But, did I know that power has anything to do with it staying a multiplex. I would have done that. I'm paying light bill on the other two. Another \$18 or \$20 dollars to not have gone through this headache would have well been worth it, but we didn't know. And I still don't know where it says power bill other than in your information. I haven't been able to find it any code in/or online with the City.

**Ms. Davenport:** I have no more questions.

**Ms. Williams:** Yes, sir. [directed to Mr. Lamb.]

**Mr. Lamb:** I was curious, I was looking at the inspection report from February 27, 2013.

**Ms. Williams:** Yes, sir?

**Mr. Lamb:** How many of these violations have you corrected.

**Ms. Williams:** You want to read me off what they are? I probably should know them by heart. The first one...

**Mr. Lamb:** Immediate removal of dilapidated shed.

**Ms. Williams:** It's gone. It was gone before we got that letter in 2013.

**Mr. Lamb:** Ok, number two; roof shingles on front of house need replacing.

**Ms. Williams:** Been complete.

**Mr. Lamb:** Been completed? And, that in the back also--rotted wood replaced with new shingles.

**Ms. Williams:** Yes, sir.

**Mr. Lamb:** Let's see...number three; reinstall railing that were removed to install new rubber roof.

**Ms. Williams:** We're about 3/4 done with that. We ran out of daylight Sunday night.

**Mr. Lamb:** So, you just started that Sunday?

**Ms. Williams:** Yes, sir. We had to have a permit for that and we needed to do the downstairs porch first. We were more concerned with that. With people being on a ground level. And that of course was a larger dollar amount for us and we had to pay a concrete contractor to do that. So, it was sort of high on our list for us and we opted to do it first.

**Mr. Lamb:** Ok, number 4; obtain a building permit to replace all rotten wood on front deck including any support posts and framing.

**Ms. Williams:** That's what we did. We did a new concrete front porch. Cecil did that for us.

**Mr. Lamb:** What about number five; scrape and repaint all deteriorated painted surface.

**Ms. Williams:** We've gotten quotes for that. We're sort of trying to get the railing up and sort of get the outside. We've got seven more windows that are supposed to go in in the next week and a half. And, once they're in, then painting the exterior is going to be the next thing on our list. It's only a mere \$2,630 to paint the trim on a story and a half house in Elizabeth City.

**Mr. Lamb:** And that "etc." number 8.

**Ms. Williams:** Yes, what is that?

**Mr. Lamb:** Well, I am assuming this is what is written in the etc. Joist hangers and 5/8 bolts on stair landing.

**Ms. Williams:** Yes. They told us about three years ago that we needed 3/8 bolts and joist hangers on it and we did that per their letter about three years ago and then they decided when we called them and talked to them about this they would like 5/8 bolts. So we said that would not be a problem.

**Mr. Lamb:** And all of this has been done then?

**Ms. Williams:** Yes, sir. Like I said, the decking we are...I mean...not the decking but the railing we got one side it was quarter after five and a little dark to be up there finishing up that railing. And, it also has a permit on it and when it is completed the City truly inspectors will have to come out and inspect that railing. Just as they did on the porch railing and the stoops. Those were the only two things. I know at some point Ms. Brooks mentioned or somebody wrote that we didn't have a permit for something. When we got that letter we called down there and they told us the only thing we needed a permit for was that front deck. And, of course when we got ready to have that concrete poured Cecil--we went up and got a permit and they inspected every footer and every column that he poured. And then they said, well and oh by the way that railing upstairs? We won't you to pull a permit for that. If we'd told you that before it would have saved you \$50 but, you'll just need to pull another permit. So, we paid another \$50 and pulled a permit for the railing on that upstairs, flat roof also. So, we're getting close is what I'm saying. But, the other option on there is this UDO issue and that's pretty much where I called Ms. Brooks and said evidently there's not a rapport going on here and if I got to come spend money to do what I gotta do then that's what I gotta do.

**Chairman Etheridge:** Any more questions of Staff or anybody. We'll move on. Any opponents need to testify.

**Mr. Gallop:** You may want to ask the applicant if they...Mr. Williams had mentioned testifying before. There may be additional applicant testimony.

[Mr. Williams did not wish to testify]

**Chairman Etheridge:** Now we'll have the Planning Staff comments.

**Mr. Gutman:** We can ask each other questions now? I can ask Ms. Brooks a question? [I sign was given that Mr. Gutman could ask Ms. Brooks questions.]

**Mr. Gutman:** Assuming that there are other nonconforming properties such as this one. Does the City do anything or what does the City do to make the landlords aware of their responsibilities in this. Are they made to know that they have to keep water and electricity on or they will lose their grandfather situation.

**Ms. Brooks:** The City does not have a formal policy of notifying every nonconforming land use in the City. We do comply with State code. We do advertisements when we do code amendments, etc. We do follow State code for nonconforming, but no we do not have a separate policy where we notify every utility customer or property owner of a nonconforming status.

**Mr. Gutman:** Do you think that a reasonable landlord would know about these pitfalls.

**Ms. Brooks:** Most do.

**Mr. Gutman:** No more questions.

**Mr. Harris:** I would like to ask the attorney a question about the fact the power being off, not being it but the lack of occupancy was what I was looking at as the determining factor for not being in compliance. Can you address that in the ordinance or wherever.

**Mr. Gallop:** What the ordinance says is that you can't cease operation of a use. In this situation, the use that's been designated and appealed from is multi-family, three apartment use. What it says is, you can't cease that for more than 180 days. And, it list a number of things that the Planning Staff can look at to make that determination of whether or not ceasing has actually occurred. In this case the facts are a little more interesting that they seem at first glance. I was going to address this later on, but I'll come to it now. The way case law deals with ceasing is it essentially says that lack of occupying or lack of utilities alone is not going to satisfy ceasing use of a multi-family dwelling. So, what you have to look at is whether or not there are additional facts that show or imply a cessation or discontinuance of use. And, there may be other facts in this case that show you that. But, I think that the case law would say that purely a lack of occupation and lack of utilities would not support that; however, the cases that have dealt with that were dealing with one: shorter timeframes and people hitting on either side of a three-month timeframe. And, in this case you have a longer timeframe where there was a lack of occupancy. You have a longer timeframe where there was a lack of utilities. The other things that those cases turn on is what attempts the owners have made in the process to try an obtain renters. So the case that primarily dealt with this, the people couldn't get renters for three months and the city tried to take away their ability to rent their property after that as a nonconforming multi-use. We can all see how someone is actively trying to get renters and unable to get renters. Something beyond their control. So, that's beyond the owners control; the landlords control is kind of the determining. So, you are looking are there facts that made it beyond the owners control to be able to lease or not lease the property during that time period. And, I think there are facts that you can consider that may go either way on that. But that's really what this to me comes down to is the question before you based on the case law that exists is whether or not the extended time period and/or other factors show was it beyond their control to obtain people to occupy the place as a multi-family residence or not. That's what it comes down to. Now, to back track a little bit. To provide a little bit more understanding of just nonconformings in general and who has the burden producing what evidence; which is relatively important in this case. The City has the burden of establishing the current violation of the code. To say that under current ordinances what they are asking for does not meet the code. The party who is the owner has the burden then to defend that by says we are a legal nonconforming use. There is a difference between a legal nonconforming use and a non-legal nonconforming use. Nonconforming use means you don't comply with current code, whatever use it is. A legal nonconforming use means that whatever you are doing was legal at some

point that the ordinance was changed and made you nonconforming. And, in this case you got to show first that you're legal nonconforming use, not a unlawful nonconforming use; which you would be unlawful nonconforming use if you essentially had a use that continued forever, but had never been lawful. Then you also after meeting the burden of showing that they were a legal nonconforming use they have to meet the burden of showing that they met the cessation of 180 days provision. So, the initial question that we were discussing is the last question in the process.

**Mr. Harris:** Well, the way I was viewing it is that...is what's been past experience I have had on another board was that if it ceases to be used for what it was forever whatever period the ordinance states, then it immediately becomes noncompliant and subject being the new--whatever the new rules or whatever the new classification for zoning is. I viewed the electrical side as only a tool to help measure whether or not there is occupancy, because you could keep power on and still not have occupancy and be out of compliance in my mind. Unless I'm looking at it incorrectly.

**Mr. Gallop:** I wouldn't disagree. What I think I was getting at was the case that actual dealt with it. The power was turned off and they didn't have tenants. The courts said that wasn't solely enough, but again, that one was lined up with a three-month time period and 92 days into they went after them with a Notice of Violation and it wasn't...so I think you have some room to think about it and make a decision about whether or not it implies a lack of use or not. It may or may not. But, that's your decision.

**Mr. Harris:** I have a question to Ms. Brooks. The electrical, if you know, I don't know but I assume you probably would, that the electrical [inaudible] the meter was probably pulled for cutoff of **nonpayment**.

**Ms. Brooks:** I'm not sure whether it was nonpayment or not.

**Mr. Harris:** Thank you. I didn't know if you knew that for sure. That's all the questions I have.

**Chairman Etheridge:** Does the Board or other parties have any further questions of Staff? [There were no further questions.] Ok, at this time public participation in the hearing is closed; no additional testimony and evidence may be received. The Board will now deliberate and discuss the case. All parties involved in the case are entitled to hear the Board members' discussion, but if they willfully interrupt, disturb or disrupt the discussion, I, as Chairperson, can order the person to leave the room. Failure to comply can result in civil penalties.

**Mr. Gallop:** And one more point of procedure that help with your discussion: essentially what is before you is a motion to either affirm the decision that was made on September 26th, modify the decision that was made on September 26th or reverse the decision that was made on September 26th. And in that regard, this Board sits just as if you are Ms. Brooks making the decision. You don't have to necessarily rely on precisely what she did or what she didn't do, but you are essentially a seven-headed planning staff member that gets to decide whether to go along with exactly what she did or reverse it completely or make some form of modification to it.

**Ms. Brooks:** Ben, don't they have to have Findings of Fact if they reverse it.

**Mr. Gallop:** They need to have Findings of Fact in regard to all of it and we can deal with that when the time comes. Findings of Fact are a little bit tricky in terms of addressing them. The theoretical dream way of how that works is that whoever makes the motion will layout 20 to 30 potential Findings of Fact that will support their decision. If the motion goes with it, that's a little bit easier said than done in a setting like this. The Staff has provided you with a number of Findings of Fact that might support their decision...if you the direction that Staff has proposed, their Findings of Fact may support your decision. I may ask you to add some additional ones to that. My typical recommendation is that at the end you ask that the attorney or someone else prepare an Order, as you have to do--you have to have a written Order, that somebody prepare a written Order that includes Findings of Fact that are supported by the evidence that were presented that support the decision that's made. Including any specific findings that you may bring into the motion when you make it.



That was a little bit long winded, but essentially you can make a motion to do what you want and explain why you want to do it and ask that someone prepare an Order that does it as well as you can to meet that decision.

**Mr. Gutman:** Are we open for discussion.

**Mr. Harris:** Yes a discussion or motion, either one.

**Mr. Gutman:** I'm feeling somewhat strongly both ways. I can well understand the position of the petitioners. I can put myself in their place quite easily. I can see that if the property were non-complied and non-used for the time period and it was sold. There wouldn't be any question that it shouldn't be allowed to be used. But, if in truth, they were caught in a situation in trying to make the units more usable, it just doesn't seem fair to penalized them in this way. At the same time, it is the regulation; it's the law. And, what's paining me a little bit is it would seem that there ought to be some kind of a warning system that would say, you know, "Hey folks you haven't been using your power for some period of time. Your grandfather situation could be in jeopardy." For me personally, I am kind of teetering at that point.

**Ms. Davenport:** I rather agree. What I see here are two upstanding citizens who are law abiding, respectable and do the right thing, but yet they got caught in a bind. The property on the beach had to be fixed because it could yield more income. It was fixed first. This property had to be fixed second and they forgot the details. Not that they ever actually knew them or understood them, but I am looking at a situation I believe where someone simply could not get the properties rented because they were not available. They weren't fixed, so they couldn't get them rented. But yet, they could not actually take the money needed to rent them because of another property was much more valuable and that's where the money went.

**Mr. Lamb:** Looking at the other side; the minimum lot size would be 8,000 square feet for a single-family residence. Twelve thousand for two. The lot itself is, according to this 6,836 which would make it too small for a single home to be there--single unit. So, that throws some into it also. The fact that there's been three years approximately since someone has lived there has to be factored in also. I understand, from the heart, I can feel what they are going through. But, we have someone from--I forget exactly who it was, but the workshop we had. We were told we can't just go by the heart, unfortunately, from a legal point of view. We have to look at the actual law. So, I don't know if it's within our right if we could make maybe consider a compromise because technically it's too small for one unit. Now, I think there would be no problem having one single-family unit grandfathered in--two units, we maybe could do that. That's something we could think of. Three, looking at everything, I think two would be a compromise, three with looking at the way the UDO is and everything, I don't know--the UDO would never be--you know if we always went with the heart the UDO would be thrown out, really. Because when would it ever be applied?

**Mr. Ward:** This house was built back in 1923, I believe. At that time, we didn't have any codes, I don't imagine. But it doesn't meet any of the codes for today. Because it's too small. For one family, let alone three. Of course, I feel for them because the people they rent it to is not a full family. Their usually couples or maybe single people, which is fine. It's a buck. The only thing I think they let it run down. They didn't repair it, they let it run down and they got violations for not cutting the grass and taking away the old building out back. That's not good. But, they are working on the house now from their testimony. And, in the future they will probably have it up to where they can rent it. But, it still doesn't meet the code--today's code. Now back in '72 or something like they probably did meet their code. The only way they could do is to get grandfathered in now because the 180 days was signaling that nobody was in the house even though they got electricity in their names, but that's supposed to be for 30 days to work on the house. But it's for now, too. I feel for them. Like he says, go by your heart.

**Mr. Harris:** Yeah, I think I share exactly what you said, just about what everybody has said. I have a genuine feel for the position they are in. It is unfortunate. I guess I'm a "follow the code" type person when it comes down to making decisions. I've always, when I have served on boards in the pass, try to go with whatever is provided for. When you open the door, you open the door so to speak. And, I would love to open the door here but I'm concerned once we do that and we get other similar situations to follow it [inaudible] difficult and you set a precedence. The attorney answered my question on where does it fall concerning occupancy. Which, I think cleared that up for me. It wasn't occupied. Even if the power had been on it still wouldn't have been occupied. It'd been noncompliant to my way of thinking anyway.

**Ms. Davenport:** Yes, we do have a situation where not a single unit has been occupied in it in three years. So, from that standpoint the nonconforming status has ceased. From that standpoint. No occupancy and no power in unit C. No occupancy in any of the apartments and no power in unit C. So we have both conditions. The nonconforming status has ceased.

**Chairman Etheridge:** Does anybody else have anything to say. [No other comments were made.] It's time for us to take a vote.

**Mr. Harris:** I'm going to make motion then to just break thing. At least you can get a vote that way and get some on the floor. Otherwise, you don't do anything. I would make a motion that we **UPHOLD** the decision of City Staff and it was by fact of lack of occupancy for a long period of time, not in compliance so it no longer meets the current ordinances of the UDO--conforming with the ordinance with the current zoning. Because of that fact it is no longer grandfather to serve as nonconforming.

**Mr. Gallop:** With your motion would you be willing to include a Finding of Fact that it was not out of their control to have rented the property, but they chose to work on the Outer banks property rather than this property.

**Mr. Harris:** Yes, I so include that the decision was made by the applicant to not repair this property for whatever reasons.

**Mr. Gallop:** And to adopt the other Findings as presented by Staff.

**Mr. Harris:** And to adopt the other Findings as presented by Staff.

**Mr. Lamb:** I second the motion.

**Chairman Etheridge:** It's been seconded. I guess we'll vote. Anybody else have comment on it before we vote. Nobody want to disagree or add anything?

**Mr. Gutman:** I'll have a comment after the vote.

**Chairman Etheridge:** All in favor.

[A show of hands was requested.]

**ALL IN FAVOR: ETHERIDGE, BOLLARD, DAVENPORT, GUTMAN, LAMB, HARRIS and WARD.**

**Chairman Etheridge:** All against?

**NONE OPPOSED. MOTION CARRIED.**

**Mr. Gutman:** I just want to suggest that since this decision is causing these folks a hardship to some extent to no fault of their own, that the City would ease the way by allowing them to have power in the third apartment if that is necessary to be able to rent the other two. They seem to feel that by not having power in that area would be a problem with renting the properties downstairs.

**Chairman Etheridge:** Anybody else.

**Ms. Bollard:** What I kind of got was there was a failure to communicate on both sides. Or, as a layperson they may not have understood exactly what you wanted. If I owned a piece of property, I would just make assumptions that are not necessarily right. If you were to give---you need to do this, this, this and this prior to this coming to where they would be in violation. Now someone that owns a lot of property probably should know that but someone that has a couple of pieces of property probably wouldn't. Is that a possibility?

**Ms. Brooks:** I will take that up with the City Manager.

**Ms. Bollard:** I know, it's more work. But, is it a possibility?

**Ms. Brooks:** Could be.

**Chairman Etheridge:** Any more questions or suggestions? [No further comments.] There being no further business of this Board, I declare this meeting adjourned.

*Respectfully Submitted,  
Dawn Harris, Secretary to the Board*

*Minutes were approved at the December 16, 2014 BOA meeting.*