

**These minutes are a summary of the discussion. The audible recording is available at the following website: <http://bit.ly/T3S7CB>**

Planning & Zoning Commission Meeting  
Minutes of November 5, 2014  
1st Floor North Conference Room - City Hall

**Present:** Chairman Jeremy Goldstein, Vice-Chair Holly P. Shriner, Kristy Carter, Jim Edmonds, Laura Berner Hudson, Karl Koon and Joe Minicozzi

**Absent:** None

**Pre-Meeting - 4:30 p.m.**

The Commission began the pre-meeting by reviewing the agenda, including reviewing information about the River Mill Lofts proposal since the project has been evolving slightly because of continued meetings with the developer, staff and the River District Design Review Subcommittee. Commission members also reviewed the agenda to discuss the process required for each review. Vice-Chair Shriner wondered if she should recuse herself from the discussion of the conditional zoning request at 10 Madison Avenue and 202 E. Chestnut Street since there is a limited business relationship between the law office of Mr. Siemens and Vice-Chair Shriner's husband. In the end Commissioners felt there was not sufficient cause for recusal.

**Regular Meeting - 5:00 p.m.**

Chairman Goldstein called the meeting to order at 5:00 p.m. and informed the audience of the public hearing process.

**Administrative**

- At the City Council meeting on October 28, 2014, City Council reappointed Chairman Goldstein and Ms. Carter to each serve an additional three-year term. City Council also appointed Ms. Laura Berner Hudson to serve a three year term. Chairman Goldstein welcomed Ms. Hudson to the Commission, and thanked Ms. Jane Mathews for her service on the Commission.
- Mr. Koon nominated Mr. Goldstein as Chairman and Mr. Edmonds seconded the nomination. As there were no other nominations for Chairman, Mr. Goldstein was reappointed as Chairman.
- Chairman Goldstein nominated Ms. Shriner as Vice-Chair and Mr. Edmonds seconded the nomination. As there were no other nominations for Vice-Chair, Ms. Shriner was reappointed as Vice-Chair.
- Mr. Minicozzi moved to approve the minutes of the October 16, 2014, mid-month meeting with minor amendments. This motion was seconded by Mr. Koon and carried unanimously on a 6-0 vote (Mr. Edmonds abstained from voting due to his absence at the October 16 meeting).

**Agenda Items**

- (1) **Request for a Level II review of a revised plan for the construction of two new buildings containing 24 units and surface parking at Givens Estates. The subject property is 0.9 acres at 25 and 26 Wesley Drive, PIN 9655-57-2108. The project contact is Bill Lapsley. Planner coordinating review - Julia Fields**

Urban Planner Julia Fields oriented the Commission to the site location and said that the applicant is requesting review of an amendment to the site plan for a Level II review of property located at and across from 25 and 26 Wesley Drive on the campus of Givens Estates to allow for the addition of a 39-space parking lot in addition to the previously approved construction of two buildings containing 24 dwelling units.

The project site is an approximately 1.95 acre portion of PIN 9655.57-2108 which is 134.3 acres in size. This parcel is the largest of four parcels that make up the Givens Estate campus which is 205.6 acres in size. The project site is located at 25 and 26 Wesley Drive (Creekside Apartments) and on vacant property (.57 acre) directly across Wesley Drive from 25 and 26 Wesley. The property is currently zoned RM-16 (Residential Multi-Family High Density District). Wesley Drive is accessed off of Sweeten Creek Road.

Much of the Givens Estates campus is subject to the City's steep slope standards (zoned RS-2, RM-16, RM-16CZ, and RS-2). The applicant has provided an analysis of the entire campus showing compliance with both density and grading requirements. 1,362 dwelling units would be allowed campus wide under current regulations. The actual units located on the campus properties total 669 (not counting the additional 10 proposed). The actual graded area of 53.87 acres is well below the allowed 91.8 acre total for the campus. The parking area amendment would add an additional .57 acres of grading.

The applicant previously received approval (Level II) for a site plan proposing to replace the two existing residential buildings containing fourteen (14) units with two new buildings containing twenty-four (24) units (increase of 10 units). This is the second phase of a multi-phase project to replace the structures in the Creekside Home section of Givens Estates. This amendment proposes a parking lot of 39-spaces accessed across Wesley Drive from the approved apartment buildings.

Access to the parking area and the apartments is from the existing drive, Wesley Drive. The parking area would access Wesley Drive at two points.

Twenty-four (24) underground parking spaces were approved (twelve per building) as part of the initial Level II approval. The addition of a 39 space parking lot across from these buildings would still be within the allowable parking for the Givens Estates campus. A complete campus parking analysis has been provided and is compliant.

The addition of the parking spaces does not impact open space standards. A landscape plan showing compliance with parking lot landscaping has been provided.

Phase I of the Givens Estates-Creekside project was approved as a Level II project in 2012 with permits issued in 2013. Phase II was approved by the Planning and Zoning Commission on June 4, 2014.

This project amendment was reviewed at the October 20, 2014, meeting of the Technical Review Committee and approved with conditions. Most of the comments contained in the staff report have been addressed. As this is a Level II review, it will not be reviewed by the Asheville City Council. No public comment has been received regarding this proposal as of the writing of this report.

Staff recommends approval of this amendment subject to the conditions listed in the TRC report and the following standard conditions: (1) All site lighting must comply with the City's lighting ordinance, Section 7-11-10, of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with the ordinance will be required upon submittal of final development plans; and (2) The design, construction, and orientation of improvements on site must comply with the conceptual site plan presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards.

Mr. Bill Lapsley, consultant, said that primarily they are adding a 39-space parking lot across the street, and asked for the Commission's approval.

Chairman Goldstein opened the public hearing at 5:15 p.m. and when no one spoke, he closed the public hearing at 5:15 p.m.

Based on the above findings and the analysis provided in the report, Mr. Koon moved to recommend approval of the amendment to the Level II site plan for Givens Estates Creekside Homes - Phase II and 39-space parking area, subject to the following conditions: (1) All conditions listed in the Technical Review Committee report; (2) All site lighting must comply with the City's lighting ordinance, Section 7-11-10, of the

Unified Development Ordinance. A detailed lighting plan illustrating compliance with the ordinance will be required upon submittal of final development plans; and (3) The design, construction, and orientation of improvements on site must comply with the conceptual site plan presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards. This motion was seconded by Ms. Carter and carried unanimously by a 7-0 vote.

- (2) **Request for a Level III review to allow construction of a 254 unit multi-family development with modifications to setback requirements. In addition, variances to design and operational standards found in Section 7-8-26 of the UDO are requested for this project. The subject property is 9.52 acres located off of Thompson Street, PIN 9648-81-9209. The project contact is Clay Mooney. Planner coordinating review - Alan Glines**

Assistant City Attorney Jannice Ashley explained the voting process and said that the Level III project needs to be considered first and if that it approved, the Commission can then consider the variance.

### **Level III Review**

Urban Planner Alan Glines oriented the Commission to the site location and said the applicant is requesting approval of a Level III conditional use permit for the development of 254 residential units and 4,000 square feet of commercial space on a single parcel zoned Urban Place in accordance with Section 7-5-5 of the UDO. This request includes a variance to design and operational standards as found in Section 7-8-26 of the UDO as well as modifications to setback standards in the same section.

The project site consists of a single parcel with a combined area of approximately 9.52 acres (according to submitted plans) and frontage on Thompson Street and Stoner Road to the east of Biltmore Village on the northern edge of the Oakley neighborhood. The site is zoned Urban Place which was rezoned in 2013 at the request of the owner. Adjacent parcels are zoned Commercial Industrial (CI) to the south, River to the east and west and Urban Place to the west. The Swannanoa River is adjacent on the north side of this parcel and the Norfolk Southern rail line is on the south side.

The project area is currently vacant and was graded and filled several years ago as part of an approved development plan. Surrounding uses include commercial operations, the rail line and storage.

The project site is in the 100-year flood hazard area and is also affected by the more restrictive floodway. The finished floor of occupied buildings are required to be two feet above the base flood elevation which places the floor level approximately 10 feet above the level of Thompson Street.

The applicant is proposing the construction of a primarily residential project with a limited amount of non-residential space. Plans indicate a total of 254 residential units made up of 248 two-bedroom and 6 three-bedroom units in two large 'L-shaped' structures. Within the larger structures will be two small non-residential spaces: one in the corner of Building A located at Stoner Road and one in the corner of Building B at the entrance drive. These two structures are 4-stories tall. The site also includes a one-story club house structure located interior to the site.

The height of the large structures (Building A and B) is 41 feet to the ceiling height of the residential units and 67 feet to the top of the gabled roof.

The project proposes two access points; the main entrance is from Thompson Street and a second on Stoner Road towards the rear of the property, both are two-way driveways. Inside the site, the parking is located at the rear or to the sides of the buildings A and B. There are a total of 333 parking spaces proposed, including required accessible spaces and 18 bike parking spaces.

New 10 foot wide compliant sidewalks are shown on Thompson Street and Stoner Road. The developer would like to request a modification for sidewalk width along Stoner Road because he feels the surrounding context does not warrant the need for the wider sidewalk and that the impervious pavement in the floodplain could be reduced. There are internal walkways throughout the site across the parking lot and into key

locations in the building. Because of the grade required to elevate the site above the level of the floodplain, the site is surrounded by retaining walls where the building interacts with the street and natural slopes above the level of the streets. The pedestrian access into the development is provided along the building frontage along Building A and for Building B, along the front of the building adjacent to the driveway and sidewalk connections.

Landscaping is required for this project and includes street trees, parking lot landscaping building impact, parking lot landscaping and dumpster screening. With minor amendments to the plan, the project will comply with all landscape requirements.

Open space is required in an amount equal to five percent of the lot area, which is 20,735 square feet (or 0.47 acre). This is provided in the area around the clubhouse, and in the area along the Swannanoa River.

Setbacks: The site is located in the 100-year flood hazard area and is also affected by the more strictly regulated *floodway*. The setbacks in the Urban Place district are a maximum of 15 feet unless the site is affected by flood hazard area and other topographic challenges, in which case the setback can be expanded through modification. The survey for the project identifies the approximate boundaries of the floodway and the project has been setback from Thompson Street to accommodate this zone. Staff is supportive of this modification. The Stoner Road side has fewer challenges with the flood hazard zone but the need for the sidewalk and the topographic grade difference also requires additional setback area. The retaining wall proposed for Building A is about 10 feet above the surrounding street. Along Stoner Road especially, the retaining wall is split with a ramp to reduce the scale/ mass of the retaining wall. This same treatment along Thompson Street, (with the retaining wall split by a ramp and stairs) would create a better relationship between the Building A and the street.

*Variance Request:*

Entrances - All buildings shall include a well-defined operable entrance at regular intervals not exceeding 60' on each primary facade. Buildings A and B are both seeking relief from this standard which requires that a variance be granted by the Planning & Zoning Commission.

While variances to design and operational standards are approved by the Planning & Zoning Commission, the following modifications are granted by City Council with a recommendation from the Commission:

*Modifications*

1. Setback - The maximum setback in this district is 15 feet, unless a greater setback is approved by the Planning Director. Building B has a setback of approximately 30 feet from Thompson Street due primarily to the location of the floodway. Building A is setback as much as 35 feet from Thompson Street and as much as 45 feet from Stoner Road and this is a factor primarily of the topographic challenges required by the flood zone. Secondary factors affecting the building placement include placement of sidewalk and steps, proposed street tree swale and variations in the façade of the building (which are recommended in the Urban Place District)
2. Sidewalk width - The developer is requesting that the sidewalk along Stoner Road be approved to a more narrow 5 foot width and not be required to install the Urban Place standard of ten feet. He cites the existing context of the area and an additional goal of reducing the amount of impervious surfaces in the floodplain.

The proposal was approved with conditions by the Technical Review Committee at their meeting on October 20, 2014. The plans were adjusted and the building layout amended based on comments from the TRC review. This project is subject to the review by the Asheville Area Riverfront Redevelopment Commission (AARRC). Their meeting is scheduled for November 13. After the review by the AARRC who will provide a recommendation, the project will proceed to City Council. Approval by City Council and Final TRC review is required prior to issuance of a zoning permit.

The site was zoned Urban Place in 2013 at the request of the property owner because he felt that Urban Place District provided greater options for commercial uses and because the residential density is higher in Urban Place than is allowed in the River District. Urban Place (UP) allows 64 residential units per acre and is intended to foster “higher-density, mixed-use development that is economically viable, pedestrian oriented, visually attractive and contributing to the place making character of the city...in the form of mixed-use structures that relate to the street, enhance the streetscape and offer a wide range of complementary land uses and employment opportunities.”

The district is suitable for areas affected by blight or neglect and for areas where the design and appearance of the built environment is important to the vitality of the area.

The proposal offers a residential density of almost 27 units per acre and includes two small non-commercial spaces located in the prominent corners of Buildings A and B (totaling about 4,000 square feet). The site is in a good location for a multi-family residential use because of the long term plans for the area which include greenway and recreation improvements along the Swannanoa River and because the site is walkable to Biltmore Village and beyond. However, the proposal is not a definite match or a strong fit with the stated purpose of the Urban Place District of relating to the streetscape and pedestrian orientation due to focus of the proposal on residential uses and the topographic challenges in response to the flood hazard area. The proposed mix of uses is heavily residential and residential design as a ground-floor use is not an easy fit in the design and operational standards of UP since the ground-level residential spaces have little need or desire to connect directly to the street and sidewalk. If the ground level of the buildings were non-residential in nature, then the streetscape could be more activated with entrances to separate businesses. This development proposal would benefit from an extended terrace connection along the Thompson Street facades of both buildings in a similar way that Stoner Road has been engaged. All-in-all though, the district as a whole becomes more mixed-use as additional projects come on-line on adjacent site and further along Thompson Street. The Urban Place zoning allows density that is high enough to make the project viable and the influx of new residences will support businesses throughout the area.

Staff recommends that the developer provide a level of affordable housing because this site is a good location for such units by being close to employment centers, shopping and recreation amenities. The developer’s agent has expressed some interest in discussing this proposal with City Council. Staff usually recommends that 10% of the units be maintained at rates affordable to families making 60 to 80% of area median income.

The rezoning of this property from River to Urban Place took place in 2013. Across the railroad tracks along Stoner Road, there have been a number of rezoning efforts including the recent Biltmore Apartments CZ.

Zoning and uses adjacent to this site include CI to the south, UP to the west and River to the west and east. Along the south boundary of the site is a 100 foot railroad easement. This location is well suited for a higher-density residential project, with some non-residential uses given the proximity and access to employment, shopping and future and current recreational amenities.

Section 7-16-2(c) of the Unified Development Ordinance (UDO) states that Asheville City Council shall not approve the conditional use application and site plan unless and until it makes the following findings, based on the evidence and the testimony received at the public hearing or otherwise appearing in the record of the case:

1. *That the proposed use or development of the land will not materially endanger the public health or safety.*

The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. *That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.*  
There are flood hazard requirements that affect this site and buildings must be elevated above the base flood elevation. The proposal is also setback from the floodway which affects the front setback of the property along Thompson Street. With these mitigation measures the proposal is compatible with the natural and topographic features that affect this site.
3. *That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.*  
The proposed development of the land for residential use is not expected to injure the value of adjoining or abutting property; higher-density residential uses have been anticipated in this area with the number of rezonings to Urban Place. The proposed development with its investment and influx of new residents which should help the businesses in the area.
4. *That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.*  
This area along Thompson Street has been anticipated for higher-density development for a number of years. Given the proximity to employment centers, shopping, existing and future roadway infrastructure and future greenways this is an appropriate location for the use. While the scale, bulk, coverage and density are all greater than the adjacent uses in the vicinity at this time, the overall planning picture for the area is for higher density mixed-use development.
5. *That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.*  
As enumerated below, elements of the project are directly aligned with the City's plans and objectives as a mixed-use, infill project including multi-modal transportation elements in an area that will with time have improved pedestrian facilities. If the project includes affordable housing then this will also meet a stated city goal and need. Although the site must meet flood hazard requirements that require that the site be elevated and makes a direct connection to the street more challenging, the proposal would be more successful with a stronger connection by terrace spaces and sidewalk connections that provide additional direct connections to Thompson Street.
6. *That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.*  
The proposal has been determined by the TRC to have adequate water supply, police protection, waste disposal and similar facilities. The site is approximately half a mile or so to transit routes that connect through Biltmore Village or the bus stop at Stoner and Fairview Roads. Although the distance is about a half-mile, Biltmore Village is a crossing point for three transit routes.
7. *That the proposed use will not cause undue traffic congestion or create a traffic hazard.*  
The project is not expected to create a hazard or undue congestion based on the proposed plans, and the review and consideration provided by staff.

This proposal is aligned with the *Asheville City Development Plan 2025* in several areas. Smart Growth policies encourage mixed-use developments and higher-density residential infill with an emphasis on locating projects in an area walkable to amenities and proximate to bike paths. Infill development along transit corridors is also highlighted but this site is a little over 2,000 feet to three routes that cross in Biltmore Village. The plan also supports projects that design landscapes to absorb stormwater using grass swales and natural stormwater filters.

Affordable housing options are highlighted throughout the Plan as a strong community need; and no dedicated affordable or workforce rents are proposed specifically for the project at this time but the agent for the project mentioned that the developer is willing to discuss the need with City Council.

The area is included in the planning for the Wilma Dykeman Riverway Master Plan and infill development, recreation amenities and roadway improvements are a part of that proposal. Planning for roadways has occurred in the River Arts District area but has not proceeded to this section of the river at this time. The proposed development though seems to fit in with the intent of the Dykeman plan with the inclusion of the river yard and the wide sidewalk along Thompson Street.

City Council's adopted goals for 2014-2015 stress expanding Asheville supply of affordable housing and maintaining a high quality of life for residents. If the affordable units can be agreed upon, then this important strategy will be met. Additionally, Council has a goal of expanding the supply of housing and this proposal provides about 27 units per acre which given this unique location with a number of environmental constraints and other development requirements does provide a useful residential density.

Based on the above findings and the analysis provided in the report and as stated in the recommendation below, staff finds this request to be reasonable or within the public interest.

Considerations:

- City-adopted plans and policies support mixed-use development, especially providing residential uses in a walkable location with pedestrian amenities
- The location is close to employment areas and shopping amenities and recreation opportunities are provided along the Swannanoa River.
- Affordable units are a goal for higher density residential projects but none are dedicated at this time.
- Due to topographic challenges, the finished floor of the Building A and B is required to be elevated above the surrounding streets but with some design improvements such as terraces and steps, the connection between the buildings and sidewalk could be strengthened.
- The site is not currently served by transit but three routes cross at Biltmore Village.

The proposal is for a higher-density residential project (with a small commercial component) in a unique infill location along a major river. Staff feels this is a good use for the site and the area would benefit from new investment; however, some of the specific elements of the proposal do not match completely with the all of the goals and design requirements of the Urban Place zoning district. This is due in part to the building elevation requirements required by the flood hazard area as well as the particular focus on residential uses along the ground floor of the buildings so the variance request for entrances is needed. Based on strategic plan policies, staff recommends the inclusion of affordable units as a part of this project, the expense of which may be offset by additional density available to the project or by making a request that City Council extend the land use incentive grant policy to this site (LUIG). The project is requesting additional setbacks for Building A and Building B due to location of the floodway and the site elevations required by the flood hazard provisions and staff is supportive of this request as shown on the site plans. In spite of these potential areas of improvement, staff recommends approval of the plan with the addition of affordable units.

Ms. Carter noted that there is only a token amount of commercial space to achieve the residential density in this project. She wondered if there shouldn't be a threshold of at least a certain amount of commercial space in the Urban Place District. Mr. Glines responded that not every project is a complete mixed-use project. When you think of a collection of properties that would become Urban Place, not every property is doing everything for the district - some are more commercial and some are more residential. He felt that could change over time as there are only a couple of hundred units to support the business there now. He understands the first project in has a hard time getting retail to work due to limited traffic. The design is there and over time some of the units can be converted over to other commercial activity. Those actions happen incrementally.

Mr. Glines responded to Mr. Minicozzi when he asked if the developer pursued knock-out walls for spaces that are essentially floodable, but also leasable, as outlined in the Wilma Dykeman Plan.

In response to Mr. Minicozzi, Mr. Glines provided the Commission with the recommendations and votes (4-0) from the River District Design Review Subcommittee on this project, which was reviewed earlier in the day. The Subcommittee supported the variance and modifications. As a general guideline, they also supported affordable/workforce units.

Ms. Hudson was concerned that pushing the building forward so that it engages with the street will create a fortress-like wall for pedestrians standing next to the wall. Mr. Glines explained that the modification is to provide additional setback, which will at the highest point on the front corner will be 35 feet back so there is room for a 10-foot sidewalk, a 10-foot planting strip, and the rest will be for terrace wall steps, etc. to soften up the front corner.

Ms. Carter questioned if there would be sidewalk connectivity along Stoner Road with the Fairview Road project that will be coming back to the Commission later in the month. Mr. Glines said that there is no current linkage on Stoner Road. He recalled that the Fairview Road developer was asking for a modification to the sidewalk on Stoner Road due to the 15-foot grade change. Even though there are limited pedestrian amenities in this area, big developments might help with the Pedestrian Plan in term of needed linkages.

In response to Vice-Chair Shriner, Mr. Glines said that the site is approximately half a mile or so to transit routes that connect through Biltmore Village or the bus stop at Stoner and Fairview Roads. Although the distance is about a half-mile, Biltmore Village is a crossing point for three transit routes.

Mr. Clay Mooney, landscape architect with Design Associates, said that the site has a tremendous amount of issues and constraints, but it is an exciting project with close proximity to the Swannanoa River. This will be a challenging project since they are the first developer on this corridor. The purpose of the setback modifications is to minimize the impact of the 10-foot wall. They can apply some grading and add some limited plantings in the area to soften the wall, and he hoped the Commission would allow them to use their creativity given the physical constraints. The developer also has the interest in looking at the affordable/workforce housing component.

Ms. Tara Hile, architect for the project, showed a plan (not in the Commissioner's materials) of the typical first floor plan of Building A. There is a separate entrance leading from the terrace area into the residential portion of the building. The commercial entry is separate. That is the same as well for Building B. She said they are in agreement with the Commission that they don't want to see a 10-foot wall either. She explained that the 10-foot wall is the foundation wall. They would like to have different levels and some grading change with landscaping and varied materials, with different textures in the block wall. They would also like to make the stairs that access down to the corner of Stoner and Thompson a sculptural element that would engage that street. If granted the setback, they will work with the River District Design Review Subcommittee to fine-tune the wall design, noting they would like to engage the corner of the street and over to the River.

Chairman Goldstein opened the public hearing at 6:11 p.m.

Mr. Timothy Sadler suggested the developer provide an annual bus pass to each unit in the development.

Chairman Goldstein closed the public hearing at 6:13 p.m.

Mr. Minicozzi felt this process was awkward in that they didn't provide some drawings, the Commission has not seen the comments from the River District Design Review Subcommittee, and the Urban Place District talks about offering a wide range of complimentary land uses but in this project we are getting 1.4% of the total area. He said this is a tremendously large site and to design it for today's uses as residential is fine, but at least allow the architectural ability to convert to commercial in the future. The Commission is to be looking at the longer view.

Mr. Pace Burk, owner and developer, understands the concern of the 10-foot wall. A couple of reasons why they have asked for setbacks include graffiti and safety. He said there are always options in the future for commercial space.

In response to Mr. Minicozzi, Mr. Glines said a possible condition would be to encourage architectural design at the ground level so that future conversions would be possible without major change to the structure of the building. Ms. Hile said that the units on the ground floor are 44 feet deep which is good for commercial space, but their challenge is access from the street to the commercial units because of the height. They must

have Americans with Disabilities Act accessibility so that is why they focused the commercial spaces where they did - easiest places to gain access to those spaces.

Vice-Chair Shriner moved to approve the conditional use permit for River Mill Lofts development on Thompson Street and Stone Roads, subject to the site plans and elevations and recommended approval of the setback modifications requested for Building A for a setback of between 35 and 45 feet from the Thompson Street right-of-way and between 45 and 55 feet from the property line along Stone Road for the purpose of softening the streetscape and visual impact of the scale of the 10-foot wall, through the use of smaller wall sections, stepbacks, landscaping, change of materials, vegetation, stairs, and terraces; and for Building B for a setback of between 55 and 95 feet from the Thompson Street right-of-way because of the height of the floodplain and the location of the flood way; and recommend approval of the reduction of the sidewalk along Stoner Road to 5 feet south of the terrace area; find that the proposal meets the seven conditional use permit standards; and also recommend that affordable and workforce units be created as a part of this project subject to approval of the Land Use Incentive Grant Program by City Council. This motion was seconded by Mr. Koon and carried on a 6-1 vote, with Mr. Minicozzi voting "no."

Ms. Carter asked that another item to add to our discussion with City Council in December is the use of Urban Place to get to high residential density is a mis-match.

**Variations Requested**

Assistant City Attorney Jannice Ashley explained the procedures for this item which requires the Commission to act as a Board of Adjustment (5 members) and all testimony needs to be sworn. At this time, Mr. Koon and Mr. Edmonds left the dais.

City Clerk Magdalen Burleson administered the oath of office to anyone who anticipated speaking on this matter.

Ms. Ashley said that the Commissioners must base their decision on this variance on what is presented in this public hearing. Mr. Glines may refer to parts of the previous presentation as staff has made certain findings and conclusions. The Commissioners are free to disregard those and make their own findings and conclusions. She asked that any Commissioner who has any special knowledge of this variance disclose that at this time.

Ms. Ashley also said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

Ms. Ashley also noted that the Commissioners are not bound by their vote on the previous project.

Mr. Glines said that the petitioner, M Realty, LLC through his agent Clay Mooney, is requesting a variance to the entrance standards of Section 7-8-26(f)(12)b. to permit greater spacing along the facades of the proposed buildings for the project known as River Mill Lofts.

Variance Request:

	<b>UDO Requirement</b>	<b>Applicant Request</b>	<b>Variance</b>
Distance between entrances	Well defined operable entrances required at intervals not exceeding 60 feet apart	Entrances be required for non-residential uses not exceeding 275 feet	Public entrance spacing not to exceed 275 feet apart

The project site consists of a single parcel with a combined area of approximately 9.52 acres (according to submitted plans) and frontage on Thompson Street and Stoner Road to the east of Biltmore Village on the northern edge of the Oakley neighborhood. The site is zoned Urban Place which was rezoned in 2013 at the request of the owner. This area is included in the Wilma Dykeman Riverway Master Plan in the section called Swannanoa West. The plan emphasizes protection of the natural environment and multi-modal roadway improvements.

The applicant is proposing the construction of a primarily residential project with a limited amount of non-residential space. Plans indicate a total of 254 residential units made up of 248 two-bedroom and 6 three-bedroom units in two large 'L-shaped' structures. Within the larger structures will be two small non-residential spaces: one in the corner of Building A located at Stoner Road and one in the corner of Building B at the entrance drive. These two structures are 4-stories tall. The site also includes a one-story club house structure located interior to the site.

In the purpose statement of the *Urban Place District* includes this intention, "to provide new development and redevelopment opportunities in the form of mixed-use structures that relate to the street, enhance the streetscape...". The section goes on to say that "Urban Place District has special application to properties located in or near the flood plain" and that "these regulations are intended to complement the Wilma Dykeman Riverway Master Plan and river related plans and ordinances including but not limited to local, state and federal floodplain... ordinances".

While the intent for the district is to relate to and enhance the street, this must be balanced with requirements to elevate the structures out of the flood plain. The finished grade of the buildings is required to be approximately 10 feet above the level of Thompson Street. Also, while the district is expecting mixed-use structures there is not a provision in the ordinance for a specific amount or percentage of non-residential uses as a component of a project. The developer is proposing public entrances where the two non-residential spaces will be located: at the west corners of both Building A and B. The residential component is proposed along the ground floor of the buildings on the street-side of the building among other areas. This particular design with private patios at the ground floor level is less appropriate for public access compared to, for example, non-residential commercial space.

#### **FINDINGS:**

- **Unnecessary hardship would result from the strict application of the ordinance.**  
The strict application of the provisions of Section 7-8-26(f)(12)b. may present an unnecessary hardship because the flood plain requires the finished grade of the structures to be placed about 10 feet above the surrounding streets. Providing access entrances at multiple entry points becomes more difficult because of the elevation change. The proposed residential use does not normally require a regular entrance interval of 60 feet and so the entrances which are intended to be public in nature would be not as appropriate. The ground level of the building is articulated with windows and doors onto private patio spaces at regular intervals so the relationship of the building to the street is minimally affected by the variance request.
- **The hardship results from the conditions that are peculiar to the property, such as location, size, or topography.**  
The property is located in the flood hazard area and while the Urban Place District anticipates being located in this environmentally challenged environment the intention is that accommodations will be made to urban standards where required.
- **The hardship did not result from actions taken by the applicant or the property owner.**  
The applicant is designing a specific project which generally meets the standards of the ordinance that requires the elevation of structures out of the 100-year flood plain.

- **The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.**

The variance request has been found to be consistent with the spirit, purpose and intent of the ordinance as previous findings (above) illustrate and that the limited locations for access by the public is justified. Public safety is secured through the City's regulations and substantial justice is ensured through due process and a fair hearing before the Board of Adjustment.

Staff recommends approval of the variance request as submitted.

Mr. Clay Mooney, applicant, asked for the Commission to vote in favor of the variance request given the particular constraints, all elevation based, with respect to the floodplain and flood way.

Chairman Goldstein opened the public hearing at 6:44 p.m., and when no one spoke, he closed the public hearing at 6:44 p.m.

Vice-Chair Shriner moved grant the variance based on the competent materials and substantial evidence presented at this hearing and in the staff report and a showing by the applicant that all the required findings have been met. This motion was seconded by Chairman Goldstein and carried unanimously on a 5-0 vote.

At this time, Mr. Edmonds and Mr. Koon took their seats again at the dais.

Chairman Goldstein announced a short recess at 6:46 p.m.

- (3) **Review of a request for conditional zoning from RM-8 Residential Multi-Family High Density District and Office District to Office District/Conditional Zoning with modifications to landscape and setback requirements to allow the use of an existing single-family residence as a law office. The subject property consists of 2 parcels with a combined area of 7,170 square feet at 10 Madison Avenue and 202 East Chestnut Street, PINs 9649-53-2484 and 9649-53-2385. The project contact is George Stowe. Planner coordinating review - Jessica Bernstein**

Urban Planner Jessica Bernstein oriented the Commission to the site location and said that the applicant is requesting a Conditional Zoning for two parcels located at the corner of East Chestnut Street and Madison Avenue from Residential Multi-family Medium Density (RM-8) and Office to Office - Conditional Zone (O-CZ), in accordance with Section 7-7-8 of the UDO, to convert an existing residential structure for office use and to create shared parking. The request includes modifications to landscaping and setback standards.

The project area consists of two parcels that are proposed to be combined (total area 7,170 square feet or 0.164 acres according to plans), located in the National Register Chestnut Hills Historic District. The parcel currently zoned Office is located at the northeast corner of East Chestnut Street and Madison Avenue (202 East Chestnut Street). The parcel to the north is currently zoned RM-8 (10 Madison Avenue). Adjacent zoning includes Office to the west, south and east and RM-8 to the north. East Chestnut Street has primarily non-residential uses in this vicinity but starting with the property at 10 Madison Avenue, the use becomes residential in nature.

On each parcel sits a residential-style structure; however the 2-story building at 202 East Chestnut is already used as an office whereas 10 Madison is currently a residential dwelling. The proposal is to convert the 1-story, 961 square foot house at 10 Madison into office use and to expand an existing parking lot to create a shared parking area between the two buildings.

Access and parking will remain in the same general location as the present configuration, between the two structures, with a looped driveway off of Madison Avenue to the parking in the rear of the 202 East Chestnut property. This parking lot is proposed to be enlarged to provide five parking spaces (one HC accessible) and includes modifications to standards in the City's *Standards and Specifications Manual*, which have been approved by the City Traffic Engineer. The modifications are to provide a more narrow drive aisle (14 feet rather than 24 feet) as well as lessen the distance between driveways on the blockface (25 feet rather than 150 feet)

and is justified based on the low intensity of use expected.

Per the UDO, between nine and twelve spaces are required for the increased office area and per the applicant, there is an existing shared parking agreement with the office use across Madison Avenue to accommodate three spaces, which will be revised to accommodate four total. The existing gravel driveway into the residential property at 10 Madison would be removed.

There are no sidewalks existing along this side of Madison Avenue, nor are sidewalks proposed (but will be handled through a fee-in-lieu). A bike rack has been included on site plans.

Landscaping is required for this project and includes a property line buffer, street trees and parking lot landscaping. There is existing mature landscaping onsite that will be retained and used for credits. The applicant is requesting a modification to the property line buffer due to the proximity of the existing structure to the northern property line adjacent to RM-8.

Open space is not required for this project because the size of the property is less than an acre.

The following modifications are granted by City Council with a recommendation from the Commission:

1. Setback - Side setbacks in the Office zoning district are 10 feet (on the east side – interior lot line) and 7.5 feet for the corner side (west side, along Madison Avenue). The existing structures are within one foot of the east property line and within 6 feet of the west side.
2. Landscaping - A 20 foot Type A property line buffer is required between the proposed Office-CZ parcels and the RM-8 zoning to the north. The existing structure is within 3 feet of the property line, leaving insufficient room for landscaping. The applicant is requesting to eliminate the buffer.

The applicant is proposing to conditionally rezone the site from RM-8 and Office to convert the residential dwelling into an office use, otherwise not permitted in a residential zone. The Planning Department has consistently responded to requests to convert residential uses to non-residential when they are at the edge of a residential neighborhood with a statement that this is generally not supportable due to City goals regarding protection of existing neighborhoods.

The proposal was approved with conditions by the Technical Review Committee at their meeting on October 20, 2014. Approval by City Council and Final TRC review is required prior to issuance of a zoning permit. Upon writing of this report, no public comment has been received by staff.

Recent zoning activity in the general vicinity includes several projects that were ultimately withdrawn: Charlotte Street Canine Rehab CZ (2014); 291 East Chestnut CZ (2013) and the Hunter Apartments CZ on Washington Road that was denied by City Council (2012).

The East Chestnut Street corridor (from Merrimon Avenue to Charlotte Street) contains a mix of uses (office, medical, lodging facilities, religious institutions, retail, limited residential) and is zoned Office, Community Business I & II. To the north of this corridor is a residential neighborhood zoned RM-8 and RM-16. This proximity is not considered to be incompatible from a zoning perspective, although it would be preferable to see more of a mix of residential and non-residential within the structures themselves to create a more consistent 24-hour presence within the area for the residential neighbors. Staff has talked with the neighbors and they support keeping the house as a residential use.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. *That the proposed use or development of the land will not materially endanger the public health or safety.*

The proposed project has been reviewed by City staff and appears to meet or have the ability to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* (with modification granted as identified previously in this report) and other applicable laws and standards that protect the public health and safety.

2. *That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.*

The proposal is to retain the existing structures (which are contributing structures in the Chestnut Hills National Register Historic District) and to expand an existing parking area. Plans have been developed in a way to preserve as much existing mature vegetation as possible.

3. *That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.*

The properties to the east, west and south are similarly zoned for office uses and should not be negatively impacted. The proposed development of the land may impact the value of adjoining property to the north. The historic development pattern of the Chestnut Hill neighborhood has a series of single-story bungalows in close proximity on this block, which is expected in a circa 1920 residential area. However, the UDO places protections in the form of required landscape buffers between dissimilar zoning districts and because of this development pattern, there is insufficient room to adequately buffer between the office use and the residential dwelling to the north.

Additionally, with respect to the proposed use, the City has recognized a shortage of “affordable” housing stock especially close to downtown and while this is not currently a dedicated affordable unit, it is operating as a small-sized residential rental unit in a walkable neighborhood close to business and transit – something the City is trying to create and preserve whenever possible. Expansion of the non-residential uses into the residential neighborhoods may be said to pose a negative impact on the existing neighborhood.

4. *That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.*

As stated above, the proposed physical development on the site is primarily the expansion of the existing parking area, which is not considered out of character with the layouts seen all along the East Chestnut Street corridor where historic structures face the street and parking for the uses is located to the rear. There is a long history of adaptive reuse of the structures in this National Register historic district for office use and this has been recognized as a positive tool for historic preservation.

However, staff believes that to support and strengthen Asheville’s residential neighborhoods existing housing stock should generally be preserved for residential uses. Also, the incursion of non-residential uses into a neighborhood can erode the character and quality of a typical residential community where there is expected to be a more regular “24/7” presence rather than typical business hours where there is no presence or activity during nights and weekends.

5. *That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.*

While the proposed adaptive reuse of the residential structure at 10 Madison Avenue is supported by City policies and plans regarding historic preservation and smart growth; staff feels that the potential impact to the residential neighborhood and loss of an ideally-situated residential unit when housing availability is a priority for the City is concerning.

6. *That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.*

The proposal has been determined by the TRC to have adequate water supply, police protection, waste disposal and similar facilities. The site is approximately three-tenths of a mile from the nearest transit stops (N, N1 & N2).

7. *That the proposed use will not cause undue traffic congestion or create a traffic hazard.*

The project is not expected to create a hazard or undue congestion based on the proposed plans. Modifications to standards for parking isle width and distance between driveways have been approved by the City Traffic Engineer.

Adaptive reuse of historic structures is noted in the *Asheville City Development Plan 2025* as an effective smart growth tool as it does not consume new land. Also, preservation of historic structures is generally identified as a goal in the *Plan* (not that staff is aware of any impending threat to the structure at 10 Madison Avenue if this application is not supported or otherwise).

However, the *2025 Plan* notes the lack of affordable housing as the “number one economic development problem for the community” and as stated earlier in this report, this unit is not currently a dedicated affordable unit, however it is a 961-square foot dwelling that is ideally sized and located for an affordable or workforce rental.

City Council’s adopted goals for 2014-2015 stress expanding Asheville supply of affordable housing and maintaining a high quality of life for residents. This project results in the loss of an ideally situated residential unit close to downtown and there is concern about the further incursion of non-residential uses into the neighborhood.

Based on the above findings and the analysis provided in the report and as stated in the recommendation below, staff does not find this request to be reasonable or within the best public interest.

Considerations:

- Adaptive reuse of historic structures is supported by City plans.
- Mature landscaping on the site will be maintained and preserved.
- The change of use to office use is a loss of an ideally-situated, small-sized residential unit and housing supply is a noted concern for the City.
- Non-residential incursion into an established neighborhood can erode the residential quality.

While the proposal does preserve a contributing resource in a National Register Historic District through adaptive reuse, the change of use is a loss to the supply of housing close to downtown and impacts the residential quality of the neighborhood. Staff does not support the change of use to office and believes the residential structure should remain residential in use.

In response to Chairman Goldstein, Ms. Bernstein said that by combining the two lots, they would be increasing the square footage to have more parking on the site. Since it is the same owner using his office in both structures, having shared parking between the two lots makes sense.

When Vice-Chair Shriner noted that the house is not now an established, affordable or workforce housing, Ms. Bernstein said that taking that out of the discussion, the house is walkable to multiple grocery stores, multiple transit lines, downtown, places to work, schools, parks, etc. With City Council’s goal of maintaining and increasing the existing housing stock, staff feels preserving this house would meet that goal. In this situation, this house is at the edge of the neighborhood and we are protective about not allowing commercial intrusion to creep into an established residential neighborhood.

Mr. Edmonds wondered if the property is zoned to office, would office standards, i.e., lighting, affect the residential neighborhood to the north. Ms. Bernstein didn’t believe that would be a concern; however, that is why there is a property line buffer requirement. The neighbors to the north would like to have lights on and activity since it is a residential neighborhood. When we allow uses that are not 24/7 to encroach into a neighborhood, which is 24/7, you are eroding that quality of life.

In response to Mr. Minicozzi, Ms. Bernstein said there has been no discussion about converting the house back, once converted into office space.

Mr. Jim Siemens, applicant, said that he lives one block from this project and he loves his neighborhood. He said that the purpose of this request is to relieve pressure in his law office now. His firm employs 6 people full-time and 1 part-time person and it would be great to utilize the space for office so that he has more conference room space in his main building. In 2005 when he began renovating his law office, the neighbors were concerned; however, since then he has proven to be a good neighbor. He plans to treat 10 Madison Avenue the same way and protect the neighborhood. The best way to do that is for him to occupy the space. He understands the importance of affordable housing; however, this is a house in a prime location and if he can't use the house for his business, he will ask for premium rent. Regarding parking, Mr. Siemens said that he has two shared parking agreements. If additional parking is necessary, Fuddrucker's also leases spaces. He said that one reason why they have a shared parking agreement is to preserve the dogwood tree that the neighbors love so much.

There was considerable discussion, initiated by Chairman Goldstein, regarding the shared parking agreement. Ms. Bernstein said that the shared parking agreement would be for the use in perpetuity. The agreement is in place now for three spaces, but to expand the use would require one more space. Staff will have to evaluate those parking agreements.

Mr. George Stowe, architect, said that on the north side of the house (against a residential structure) their design will take down the stairs and take out the door and window. Even though there is not a buffer, they will make a separation between the office and adjacent residential structure. Using drawings, he showed the rehabilitated structure, noting that they will maintain the current look and scale of the existing home as much as possible.

Chairman Goldstein opened the public hearing at 7:18 p.m.

Ms. Kate Fisher, area resident, said that Mr. Siemens is a good neighbor, but it is distressing to see the house converted to office. Madison Avenue is a small block with 5-6 houses and the house in question is a part of their neighborhood and they want it to stay that way.

In response to Mr. Edmonds, Mr. Siemens said that he will clean the house up (roof issues and structural issue), but otherwise the house will remain the same. He was considering painting the house with some kind of compatible color to his current law office.

In response to Ms. Hudson, Mr. Siemens said that the entrance will change facing Madison Avenue. The door will remain, but the front porch will be closed and the entrance will come from the side.

Chairman Goldstein said that when you look at the property on paper, it looks as though this small part could easily be changed to office; however, after walking in the neighborhood, it feels like the neighborhood begins with that little house.

Mr. Edmonds said that a law office is so low impact that it would not interfere with the neighborhood, especially since there will only be a couple of changes to the exterior of the home.

Ms. Carter was concerned that once this is zoned, any use allowed in the Office District can be built on that property. It may be a law office now, but in the future, that can change.

Mr. Koon felt that the renovation of the building will ultimately create a buffer for the neighborhood.

Vice-Chair Shriener said that Mr. Siemens lives in the neighborhood and has proven to be a good neighbor. She agreed with Mr. Koon that the house will serve as a buffer.

When Ms. Hudson suggested that the building be reoriented so the front of the building is not on Madison Avenue. She suggested creating an entrance facing the existing law office to be more cohesive

between the two structures. Mr. Siemens was open to that but said that there are some practical limitations, especially noting the Americans with Disabilities Act handicapped ramp. Ms. Fisher was opposed to this suggestion noting that at least how Mr. Siemens is proposing to renovate the structure makes it still look like a house with someone living in it.

Vice-Chair Shriner felt the Commission approves large apartment buildings with no affordable housing at all and this would be one house less than 1,000 square feet. In addition, Mr. Siemens said that this house would not be in the affordable/workforce housing range.

Mr. Minicozzi said that the Commissioners voted recently to convert a house to office and that property had the ability of close to 260 units of housing. The Commission voted to allow that residential property to slip away. This is just one house. If this Commission is to remain consistent, then the Commission should be voting along those same lines.

Ms. Carter moved to deny the conditional zoning request for Siemens Law Offices at 202 East Chestnut Street and 10 Madison Avenue from Office and RM-8 to Office-CZ and find that the request is not reasonable, in the public interest and is not consistent with the Comprehensive Plan and other adopted plans in the following ways: (1) The proposed change of use would be a loss of a residential unit when maintaining and preserving the available housing supply is a goal of City Council; and (2) non-residential incursion into an established neighborhood can erode the residential quality. This motion was seconded by Chairman Goldstein and failed on a 2-5 vote, with Chairman Goldstein and Ms. Carter voting "yes."

In response to Ms. Carter's concern about the allowable uses in the Office District, Mr. Glines said that the Commission can condition the property for office use only and not any allowable use in the Office District.

Mr. Edmonds moved to approve the conditional zoning request for Siemens Law Offices at 202 East Chestnut Street and 10 Madison Avenue from Office and RM-8 to Office-CZ and find that the request is reasonable, in the public interest and is consistent with the Comprehensive Plans as adopted by the City of Asheville, and that further based upon the condition that the property be used for office and residential use only and not any allowable use in the Office District, and that the request is consistent in the following ways (1) adaptive reuse of an historic structure; and (2) it's compatible with the existing Chestnut Street development and adjacent zoning. This motion was seconded by Mr. Koon and carried on a 6-1 vote, with Chairman Goldstein voting "no."

**(4) Ordinance amending Chapter 7 of the Code of Ordinances regarding changes to the conditional zoning general requirements to clarify that conditions imposed may be more or less restrictive than the general use standards of the underlying district. Planner coordinating review - Alan Glines**

Urban Planner Alan Glines said that this is the consideration of an ordinance amending Chapter 7 of the Code of Ordinance regarding changes to the conditional zoning general requirements to clarify that conditions imposed may be more or less restrictive than the general use standards of the underlying district.

He said that this report proposes to amend Sec. 7-7-8 (c)(3) of the UDO regarding conditional zoning to clarify that conditions imposed may be more *or less* restrictive than the general use standards of the underlying district as long as such condition is in conformance with the City's comprehensive plan or other adopted plans.

Currently, Section 7-7-8(c)(3) of the UDO provides that: "*All standards and requirements of the corresponding general use zoning district shall be met, except to the extent that the conditions imposed by the conditional zoning are more restrictive (emphasis added) than the general use standards, and/or where the requirements are modified in accordance with subsection 7-7-8(c)(6).*"

The North Carolina General Statutes and North Carolina case law allow greater flexibility in terms of conditions imposed and do not limit local governments to conditions which are "more restrictive" than the general use standards. NC General Statute Sec. 160A-382(b), Zoning Districts, states that "*conditions and site-specific standards imposed in a conditional district shall be limited to those that address the conformance of the*

*development and use of the site to city ordinances and officially adopted comprehensive or other plan and those that address the impacts reasonably expected to be generated by the development of use of the site.”* The statute does not dictate whether the conditions imposed be more or less restrictive than the general use standards of the underlying district, only that whatever conditions are imposed be in compliance with the city’s ordinances and officially adopted plans. In the NC Appeals Court case of *Rakestraw v. Town of Knightdale* (2008), the court upheld the Town’s decision to approve a conditional zoning with conditions that had decreased standards from the general district requirements. The Court disagreed with the Plaintiff’s position that NCGS sec. 160A-382 did not permit exceptions or decreased standards and noted that the Town’s ordinance specifically provided that *“when a Conditional District is required...petitioners may also ask that certain standards identified be decreased.”*

While Planning staff has interpreted the UDO to allow conditions in accordance with the general statutes, we also believe an amendment is needed to make this clear.

Therefore, an amendment stating that conditions imposed may be more or less restrictive than the standards of the underlying district is recommended in order to clarify that the UDO allows the same level of flexibility allowed in this regard under the NCGS 160A-382 and to ensure that the UDO language in section 7-7-8(c)(3) clearly reflects the Planning Staff’s interpretation of the intent of this provision.

The proposed amendment complies with the Asheville City Development Plan 2025 in that it allows for increased flexibility in the application of zoning regulations in the case of conditional zoning (formerly known as conditional use zoning) and allows a rezoning request to be tied to a specific development plan while ensuring the project is compatible with the neighborhood. The plan also encourages adaptive reuse of underutilized and vacant sites and recognizes the need to have some flexibility in the implementation of zoning and building codes by maintaining a redevelopment ‘toolbox’. The plan also recognizes the need for compatible infill development with opportunities provided on a case-by-case basis to encourage redevelopment using the conditional zoning tool. In this way this amendment is reasonable and in the public interest because it allows for projects which are more compatible with the surrounding area and which further comprehensive plan goals.

The proposed amendment complies with the City Council’s Strategic Plan in that it allows for flexibility thus encouraging in-fill, mixed-use and redevelopment projects.

Staff recommends approval of this proposed change as it clarifies that the UDO allows the same level of flexibility allowed in this regard under the NCGS 160A-382 and ensures that the UDO language in section 7-7-8(c)(3) clearly reflects the Planning Staff’s interpretation of the intent of this provision.

Chairman Goldstein opened the public hearing at 8:17 p.m. and when no one spoke, he then closed it at 8:17 p.m.

When Mr. Minicozzi asked what other municipalities have adopted similar language since the case, Mr. Glines believed Charlotte has similar language. He said that other states have been working this in, but did not recall what they are.

Chairman Goldstein moved to approve the proposed amendment to Section 7-7-8(c)(3)-3 as outlined in this report and find that the request is reasonable and is consistent with the Comprehensive Plan and other adopted plans, because it allows for greater flexibility in granting conditions which in turn, allows for projects that are more compatible with their surrounding area. This motion was seconded by Ms. Carter and carried unanimously on a 7-0 vote.

**(5) Ordinance amending Chapter 7 of the Code of Ordinances regarding residential development density standards in certain commercial zoning districts. Planner coordinating review - Blake Esselstyn**

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance amending Chapter 7 of the Code of Ordinance regarding residential development density standards in certain commercial zoning districts. He said that staff has modified this proposed wording amendment since commissioners last reviewed

it in May; the density maximums have mostly been increased, with particular attention to incentivizing affordable housing.

Staff originally brought forward the wording amendment in question, proposing changes to residential density limits in commercial zoning districts, primarily as an effort to better realize the goal of increased residential infill density along commercial corridors. However, with Asheville’s affordable housing shortage also in place as one of Council’s focus areas, Council and staff recognized that the amendment could serve as an instrument to encourage the construction of more new affordable units.

In winter and spring of 2014, when the wording amendment was first being drafted, staff developed the proposed maximum densities based on a methodology assuming that residential building volumes would not exceed the theoretical largest building that could be developed as a wholly *commercial* development. The figures were also affected by suppositions about site design: landscape buffers, parking, building height, multiple buildings on a site, etc.

In June of this year, Council was scheduled to hear the wording amendment. The item was continued in order that staff might further discuss the figures with the Housing and Community Development (HCD) Committee, reconsider the numbers associated with those limits and whether they needed to be adjusted to better meet the aforementioned Council goals.

The conversation with HCD ensued at that committee’s July meeting. The committee asked staff to reconsider, and do more analysis of, the proportion of units that would be required to be affordable in order to maximize density. Further, staff was asked to consult with the Affordable Housing Advisory Committee, and to examine whether the maximums were sufficiently high as to fully support the goal of encouraging infill density while still ensuring compatibility with surrounding areas.

Staff has devoted considerable time to refining the numbers, and has used interactive spreadsheets, as well as other tools, to investigate how the density numbers are affected when certain assumptions (e.g., number of parking spaces provided per unit) are adjusted. Staff also has given attention to the matter of the percentage of affordable units required to maximize density, and how that maximum density relates to the density allowed for purely market-rate housing. Staff also determined that the existing density limit in the Neighborhood Corridor District was unsuitable and added that to the list of districts proposed for changes.

Recognizing that such incentives will appeal to developers only if the math truly represents an encouraging option, staff has sought conversations with multiple developers to examine the key ratios and factors that would enable the amendment to have the desired impact.

The table below is meant to demonstrate how differing approaches and assumptions affect the numbers, not only of maximum density, but also of affordable housing units provided, and additional market units provided. Of the ten affected districts, three representative districts are shown here for the sake of simplicity. The middle group of columns (gray header) represents numbers similar to what was offered back in June; the right-hand grouping provides the staff’s modified proposal to encourage more density, as well as more affordable units.

Zoning District	Status Quo	Moderate Increase in Density (and bonus provided with 10% affordable housing)		Maximum Buildout Approach (and bonus provided with 20% affordable housing)	
	Maximum density (units/ac)	Maximum density (units/ac)	Additional units yielded by bonus	Maximum density (units/ac)	Additional units yielded by bonus

		Market-rate	With affordable	Market-rate	Affordable	Market-rate	With affordable	Market-rate	Affordable
Office Business	12	16	20	2	2	20	40	12	8
River	16	32	40	4	4	30	60	18	12
Regional Business	32	40	50	5	5	35	70	21	14

The next table shows the existing densities for all of the affected districts, the previously proposed changes, as well as the current proposal. The last columns illustrate that staff’s analysis determined that a more ambitious maximum density could be supported by these districts. And while in most cases the market rate limits don’t differ substantially from the earlier proposal, the levels allowed by the inclusion of affordable housing (now at 20% instead of 10%) are twice as high, in order to meet the goal of a strong incentive.

<b>Proposed for Increased Residential Density</b>					
<b>District Name</b>	<b>Current Density (units per acre)</b>	<b>Previously Proposed Density (units per acre)</b>		<b>New Proposed Density (units per acre)</b>	
		<b>Market / 10% Affordable</b>		<b>Market Rate</b>	<b>20% Affordable</b>
Office	8	12 / 12		20	40
Office II	12	15 / 18		20	40
Office Business	12	15 / 18		20	40
CB I	16	20 / 24		20	40
CB II	16	24 / 28		25	50
Institutional	16	24 / 28		30	60
River	16	32 / 40		30	60
Highway Business	32	48/56 (with structured parking)		35	70
Regional Business	32	48/56 (with structured parking)		35	70
Neighborhood Corridor	32	n/a		35	70

It’s worth noting that the maximal density levels were determined for a “best case” scenario parcel without the irregular shapes, topographic constraints, utility conflicts, flood hazards and other obstacles common to Asheville parcels. Staff recognizes that many parcels will not be able to be developed to these densities, but nonetheless concluded that the option should be available for the parcels that can support such levels.

The map provided shows the affected zoning districts, as well as the households in each census tract as of 2010. If just 10% of the vacant land area in these districts – to say nothing of the underdeveloped land – were developed at the maximum density, more than 2,300 multifamily units would be built (more than 460 affordable) or if developed all at market rate more than 1,150,.

The ordinance indicates that the term of affordability, or the number of years during which the rent level or sale price must be limited, is currently shown as 10 years, but this figure is still being discussed with stakeholders. If this number subsequently gets modified, staff would bring the proposed ordinance amendment back before the Commission before it is heard by City Council.

Another element of the proposed amendment involves reducing the allowed density for one district: Commercial Industrial. The reduction proposed in May (aimed to temporarily curtail residential development of land with industrial potential) had been from 16 units per acre to two units per acre. Staff is now proposing a change to eight units per acre to reduce the degree of nonconformity created for existing residences in the CI zoning, while still achieving the goal of preventing large multifamily projects.

At the Planning and Zoning Commission's meeting on May 15, 2014, the Commission voted unanimously (4-0) to recommend approval of the previous wording amendment. No citizens spoke during the public hearing period, nor at subsequent Council committee hearings, and staff has received virtually no communication from the public about this amendment.

In the Asheville City Development Plan 2025, references to encouragement of mixed-use development, higher residential densities in appropriate locations, and multi-family housing along corridors abound. Such instances are almost too numerous to list—multiple examples exist on page 155 alone.

The City Council 2014-2015 Strategic Plan (Focus Area 2) Goal 1 is to “Expand Asheville’s supply of quality, affordable homes for current and future residents.” Action Items under that goal speak directly to revisiting the UDO to encourage affordable housing close jobs and transportation; and providing financial assistance and development incentives. Focus Area, Goal 2 says the City should act to “Research, develop and propose incentives for in-fill and redevelopment.”  
Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Considerations:

- Amendments could encourage infill development in areas where current density limits may have inhibited desirable high-impact projects.
- Amendment is hoped to stimulate construction of mixed-income housing (including affordable) on location-efficient corridors.
- Stricter limits will prevent residential development of land with industrial potential while study of industrial land is conducted.

Staff recommends approval of the wording amendment.

When Mr. Minicozzi asked about how long the affordable component will be in place, Mr. Esselstyn said that beyond ten years, the developer often is trying to transfer the property and if it has encumbrances, it might deter them from proceeding with affordable housing. Mr. Glines also noted that City Council's Land Use Incentive Policy grant is for ten years.

Mr. Esselstyn responded to Mr. Minicozzi when he asked why we just don't do map amendments and change the zoning to allow housing on corridors.

Ms. Carter felt, and the Commission agreed, that this is not the ultimate step, but a step in the right direction.

Chairman Goldstein opened the public hearing at 8:39 p.m. and when no one spoke, he then closed it at 8:39 p.m.

Based on the above findings and the analysis provided in the report, Ms. Carter moved to approve the wording amendment modifying residential density in selected districts, and find that the request is reasonable, is in the public interest, and is consistent with the Comprehensive Plan and other adopted plans in the following ways: (1) References to the benefits of higher-density residential development in commercial corridors closer to jobs are widespread in the 2025 Plan; (2) Encouraging more density on transit routes is also a stated objective in the Comp. Plan; (3) Affordable housing, a goal of both the Comp. Plan, City Council Strategic Plan, and multiple other adopted plans, would be furthered, and (4) The aim to promote more mixed-use infill development figures prominently in the Comp. Plan, as well as the City Council Strategic Plan. This motion was seconded by Vice-Chair Shriner and carried unanimously on a 7-0 vote.

### **Other Business**

Chairman Goldstein announced (1) a mid-month meeting on November 20, 2014, at 4:00 p.m. in the First Floor North Conference Room in the City Hall Building (no pre-meeting); (2) the next formal meeting on December 3, 2015, at 5:00 p.m. in the First Floor North Conference Room; and (3) a joint City Council/Planning & Zoning Commission meeting on December 16, 2014, from 2-3:30 p.m. in a location to be determined.

### **Adjournment**

At 8:44 p.m., Mr. Koon moved to adjourn the meeting. This motion as seconded by Ms. Carter and carried unanimously.