

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
23 CV004711-910

GEORGE C. VENTERS and wife)
NICKYE Y. VENTERS; GREG)
LINCOLN PIERCE and wife AMY J.)
PIERCE; JOHN SOLIC and wife)
SAMANTHA SOLIC;)

Plaintiffs,)

v.)

CITY OF RALEIGH, a body politic)
and corporate; 908 WILLIAMSON,)
LLC, a North Carolina limited)
liability company; RDU)
CONSULTING, PLLC, a North)
Carolina limited liability company;)
and CONCEPT 8, LLC, a North)
Carolina limited liability company;)

Defendants.)

**DEFENDANTS 908 WILLIAMSON,
LLC, RDU CONSULTING, PLLC
AND CONCEPT 8 HOLDINGS, LLC'S
MOTION TO DISMISS
(N.C.R. CIV. P. 12(b)(1) and 12(b)(6))
AND MOTION TO STRIKE
(N.C.R. CIV. P. 12(f))**

NOW COMES Defendants, 908 Williamson, LLC, RDU Consulting, PLLC, and Concept 8 Holdings, LLC¹ (collectively the "908 Williamson Defendants"), by and through their undersigned counsel, pursuant to North Carolina Rules of Civil Procedure 12(b)(1), 12(b)(6) and 12(f), and respectfully move this court to dismiss Plaintiffs' Complaint for Declaratory Judgment Relief and Mandatory Injunction (the "Complaint"), and strike the allegations in the Complaint as set forth below:

BACKGROUND

Plaintiffs are neighbors to Defendant 908 Williamson, LLC's property located at 908 Williamson Drive in the City of Raleigh (the "City"). See Complaint at ¶¶ 2-4 and 7. Plaintiffs

¹ Plaintiffs incorrectly named Concept 8 Holdings, LLC as Concept 8, LLC.

object to the 908 Williamson Defendants' intent to tear down a single existing residence and replace it with seventeen townhouses, which is permitted under current City zoning ordinances. See Complaint at ¶¶ 15-16 and 18.

On December 30, 2022, City Staff issued a preliminary subdivision approval (the "Townhouse Subdivision Approval"), which allowed the 908 Williamson Defendants to go forward with the townhouse project at 908 Williamson Drive (the "Project").² See Complaint at ¶ 11.

Neighbors that are opposed to the Project have undertaken a two-pronged strategy to overturn the Townhouse Subdivision Approval. Specifically, Plaintiffs John and Samantha Solic, as well as non-plaintiff neighbors Marvin and Rebecca Bennett and James and Angela Post, filed an administrative appeal to the City's Townhouse Subdivision Approval on January 27, 2023. See Appeal of Administrative Decision Application (without exhibits) attached hereto as Exhibit 1 (City Case # BOA-0011-2023). This appeal was made to the City's Board of Adjustment, as required under N.C. Gen. Stat. §160D-405 and City of Raleigh Unified Development Ordinance ("UDO") § 10.2.11. As of the date of this filing, the appeal is ongoing, and a hearing before the Board of Adjustment commenced, but did not conclude, on May 8, 2023.

Plaintiffs also filed this Complaint for Declaratory Relief and Mandatory Injunction on March 2, 2023, challenging three City zoning ordinances adopted by the Raleigh City Council as text amendments to the City's UDO, which the Complaint refers to as "Missing Middle 1.0," "Missing Middle 2.0" and the "Omnibus Ordinance" (collectively the "Missing Middle Ordinances"). The Missing Middle Ordinances allow for additional housing types, smaller homes

² Defendant 908 Williamson LLC owns the property at 908 Williamson Drive in the City (the "Property"). See Complaint at ¶ 7. Defendant Concept 8 Holdings, LLC applied for the subdivision approval as developer of the Project. Id. at ¶ 9. Defendant RDU Consulting PLLC is the civil engineering firm hired by Concept 8 Holdings, LLC to provide the subdivision drawings and plans used in the subdivision approval process. See id. at ¶ 8.

on smaller lots, and denser development near high-frequency transit to be constructed within the City's residential zoning districts in order to address affordable housing issues and to provide a wide variety of housing for people at different stages of life, different income levels, and with different neighborhood preferences. See Complaint at ¶¶ 29-32. The Missing Middle Ordinances apply to every property in the City's zoning jurisdiction that are zoned R-2, R-4, R-6 or R-10, including Plaintiffs' properties and the property at 908 Williamson Drive. Id. at 13 and 29-32.

The Complaint alleges, in relevant part, that the City improperly classified the Missing Middle Ordinances as "text amendments" to the UDO when they should have been classified as "zoning map amendments" or "rezonings" (First Claim for Relief); the City provided members of the public with incorrect notice of the public hearings on these Ordinances due to this improper classification (Second Claim for Relief); and therefore, the City's adoption of the Missing Middle Ordinances was invalid and void and the Ordinances must be removed from the books (Fourth Claim for Relief).

The Complaint further appears to challenge the Townhouse Subdivision Approval, by alleging that because the Approval relies on the Missing Middle Ordinances, which according to Plaintiffs are invalid and void, then the Approval itself must also be invalid and void. See Complaint at ¶¶ 18 and 55. However, it must be noted that the Complaint fails to request any claim for relief or specific remedy against the 908 Williamson Defendants or the Townhouse Subdivision Approval, except for an apparent claim of attorney's fees against the 908 Williamson Defendants. It further must be noted that despite Plaintiffs' allegations, the Project at 908 Williamson Drive only relies on Missing Middle 1.0.

The Complaint's Claims for Relief are all unfounded and unsupported by existing North Carolina law and should be dismissed. The 908 Williamson Defendants further move to strike all

allegations which refer to and/or challenge the Townhouse Subdivision Approval. The 908 Williamson Defendants' specific Motions and the bases for each are as follows:

FIRST MOTION TO DISMISS
(Lack of Subject Matter Jurisdiction - N.C.R. Civ. P. 12(b)(1))

Plaintiffs' Complaint should be dismissed pursuant to N.C.R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction for the following reasons:

- a. Plaintiffs do not have standing to maintain this action or any of the Claims for Relief set forth therein; and
- b. Plaintiffs have failed to exhaust their administrative remedies and cannot challenge the Townhouse Subdivision Approval through this civil action given that the Approval is the subject of an ongoing administrative appeal.

SECOND MOTION TO DISMISS
(Failure to State a Claim Upon Which Relief Can Be Granted - N.C. R. Civ. P. 12(b)(6))

Plaintiffs' Complaint should be dismissed for failure to state a claim upon which relief can be granted pursuant to N.C.R. Civ. P. 12(b)(6) for the following reasons:

- a. Assuming arguendo that Missing Middle 1.0 was a zoning map amendment, which the 908 Williamson Defendants dispute, the First and Second Claims for Relief as they pertain to that Ordinance must be dismissed because they are barred by the statute of limitations applicable to zoning map amendments. N.C. Gen. Stat. § 160D-1405(a) provides: "A cause of action as to the validity of any regulation adopting or amending a zoning map adopted under this Chapter or other applicable law...accrues upon adoption of the ordinance and shall be brought within 60 days as provided in G.S. 1-54.1." The statute does not give Plaintiffs extra time to file due to delayed discovery of the ordinance adoption, or because of alleged defects in the adoption process. Despite only having 60

days, Plaintiffs filed their Complaint on March 2, 2023, which was more than a year after Missing Middle 1.0 was adopted on July 6, 2021. Plaintiffs have not alleged what statute makes their claims timely, and no law in the State of North Carolina would support such an argument.

The proper vehicle for Plaintiffs to challenge the Townhouse Subdivision Approval was through the administrative appeal filed with the City's Board of Adjustment, as required by N.C. Gen. Stat. § 160D-405 and UDO § 10.2.11. The fact that some of the Plaintiffs failed to join in that appeal within the statutory time frames does not give them the right to collaterally attack the Townhouse Subdivision Approval through this litigation.

b. The Fourth Claim for Relief requests only a remedy for permanent injunctive relief, but contains no substantive claim. Moreover, because the First and Second Claims should be dismissed, this claim fails as well.

c. Plaintiffs name the 908 Williamson Defendants in their Complaint, and allege that they, as Plaintiffs, have standing to challenge the City's Missing Middle Ordinances based on the subsequently-issued Townhouse Subdivision Approval. However, Plaintiffs have failed to allege any substantive claim for relief or specific remedy against the 908 Williamson Defendants or the Townhouse Subdivision Approval, except for an apparent claim of attorney's fees against the 908 Williamson Defendants. Plaintiffs admit the 908 Williamson Defendants had no role in the adoption of the Missing Middle Ordinances as those were all adopted by the City Council. See Complaint at ¶¶ 28, 30 and 53. Therefore, the proper party to defend those Ordinances is the City. For this reason, the 908 Williamson Defendants, and any claim of fees against the 908 Williamson Defendants should be dismissed as well.

For the foregoing reasons, Plaintiffs' Complaint should be dismissed in its entirety under controlling law.

MOTION TO STRIKE
(N.C. R. Civ. P. 12(f))

The 908 Williamson Defendants request that the Court strike Paragraphs 7 through 14, 16, 18 through 20, 50, and 55 of the Complaint, to the extent they refer to and/or challenge the Project or the Townhouse Subdivision Approval. These allegations are irrelevant and immaterial because the Townhouse Subdivision Approval for the Project is the subject of a separate administrative appeal before the City's Board of Adjustment and cannot be collaterally attacked through this civil lawsuit.

For the foregoing reasons, the 908 Williams Defendants' Motion to Strike should be granted in its entirety under controlling law.

WHEREFORE, the 908 Williamson Defendants pray this Court for the following:


1. That the 908 Williamson Defendants' Motion to Dismiss and Motion to Strike be granted in their entirety;
2. That this Court instruct the 908 Williamson Defendants to submit an affidavit of their costs and attorney's fees incurred in this matter;
3. That the Court award the 908 Williamson Defendants their attorney's fees and costs pursuant to applicable law;
4. That the 908 Williamson Defendants be awarded such other and further relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED this the 10th day of May, 2023.

LONGLEAF LAW PARTNERS

By: 

Jennifer G. Ashton
N.C. Bar No. 55053
4509 Creedmoor Road, STE 302
Raleigh, NC 27612
(919) 780-5433
jashton@longleaflp.com

By: 

Benjamin L. Worley
N.C. Bar No. 29527
4509 Creedmoor Road, STE 302
Raleigh, NC 27612
(919) 645-4302
bworley@longleaflp.com

*Attorneys for Defendants
908 Williamson, LLC, RDU
Consulting, PLLC, and Concept 8
Holdings, LLC*

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing *Defendants 908 Williamson, LLC, RDU Consulting, PLLC, and Concept 8 Holdings, LLC's Motion to Dismiss and to Strike Plaintiffs' Complaint* has been duly served by depositing a copy of the same in the United States mail, first-class, postage prepaid, addressed to the following:

Craig D. Justus
Van Winkle, Buck, Wall, Starnes & Davis, P.A.
11 North Market Street
Asheville, NC 28801

Francis J. Gordon
Millberg Gordon Stewart PLLC
1101 Haynes Street, Suite 104
Raleigh, NC 27604

Dorothy V. Kibler and
Catherine Hill
City of Raleigh
P.O. Box 1949
Raleigh, NC 27602

Robin Tatum
Fox Rothschild LLP
434 Fayetteville Street
Suite 2800
Raleigh, NC 27601-2943

This the 10th day of May, 2023.


Jennifer G. Ashton

Appeal of Administrative Decision Application



Department of City Planning | Exchange Plaza, Suite 300 | Raleigh, NC 27601 | 919-996-2682

Nature of appeal (If more space is needed, submit addendum on separate sheet): See attached	OFFICE USE ONLY
	Transaction Number
Provide all previous transaction numbers for Coordinated Team Reviews, Due Diligence Sessions or Pre-Submittal Conferences in the spaces below. If this property was the subject of a previous Board action, provide the case number.	
SUB-0045-2022	

GENERAL INFORMATION			
Property Address	1527 Iredell Drive	Date	
Property PIN	1704365241	Current Zoning	R-4
Nearest Intersection	Williamson Drive / Iredell Drive	Property size (in acres)	.84
Property Owner Information			
Property Owner	James R. Post and Angela M. Post	Phone	919.601.5861 Fax —
Owner's Mailing Address	1527 Iredell Dr Raleigh, NC 27608	Email	Handsktvo@bellsouth.net
Contact Person Information			
Project Contact Person	Craig D. Justus, Esq.	Phone	828-258-2991 Fax
Contact's Mailing Address	11 North Market Street, Asheville, NC 28801	Email	cjustus@vwlawfirm.com
Property Owner Signature	<i>Angela Post</i>	Email	Handsktvo@bellsouth.net
Notary	Sworn and subscribed before me this <u>26</u> day of <u>January</u> , 20 <u>23</u>	Notary Signature and Seal <i>Terry A. Henderson</i> 	

dd
RECEIVED
 CITY CLERKS OFFICE
 1/27/23 @ 1:20 pm
 REVISION 10.29.19

Appeal of Administrative Decision Application



Department of City Planning | Exchange Plaza, Suite 300 | Raleigh, NC 27601 | 919-996-2682

Nature of appeal (If more space is needed, submit addendum on separate sheet):

See attached

OFFICE USE ONLY

Transaction Number

Provide all previous transaction numbers for Coordinated Team Reviews, Due Diligence Sessions or Pre-Submittal Conferences in the spaces below. If this property was the subject of a previous Board action, provide the case number.

SUB-0045-2022

GENERAL INFORMATION

Property Address 1527 Iredell Drive

Date

Property PIN 1704365241

Current Zoning R-4

Nearest Intersection Williamson Drive / Iredell Drive

Property size (in acres) .84

Property Owner Information

Property Owner James R. Post and Angela M. Post

Phone (919) 349-8025 Fax

Owner's Mailing Address

1527 Iredell Dr. Raleigh, NC 27608 jpost1214@bellsouth.net

Contact Person Information

Project Contact Person Craig D. Justus, Esq.

Phone 828-258-2991 Fax

Contact's Mailing Address 11 North Market Street, Asheville, NC 28801

Email cjustus@vwlawfirm.com

Property Owner Signature

J. Post

Email

jpost1214@bellsouth.net

Notary

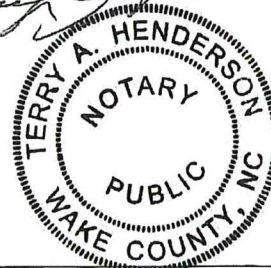
Sworn and subscribed before me this

26 day of

January, 2023

Notary Signature and Seal

Terry A. Henderson



Appeal of Administrative Decision Application



RALEIGH
DEPARTMENT OF
CITY PLANNING



Department of City Planning | 1 Exchange Plaza, Suite 300 | Raleigh, NC 27601 | 919-996-2682

Nature of appeal (If more space is needed, submit addendum on separate sheet): See attached	OFFICE USE ONLY
	Transaction Number
Provide all previous transaction numbers for Coordinated Team Reviews, Due Diligence Sessions or Pre-Submittal Conferences in the spaces below. If this property was the subject of a previous Board action, provide the case number.	
SUB-0045-2022	

GENERAL INFORMATION		
Property Address 1517 Iredell Drive	Date	
Property PIN 1704366165	Current Zoning R-4	
Nearest Intersection Williamson Drive / Iredell Drive	Property size (in acres) .31	
Property Owner Information		
Property Owner Marvin Butler Bennett, III and Rebecca Garrison Bennett	Phone 919.349.2681	Fax
Owner's Mailing Address 1517 Iredell Dr Raleigh NC 27608	Email bobennet95@gmail.com	
Contact Person Information		
Project Contact Person Craig D. Justus, Esq.	Phone 828-258-2991	Fax
Contact's Mailing Address 11 North Market Street, Asheville, NC 28801	Email cjustus@vwlawfirm.com	
Property Owner Signature	Email bobennet95@gmail.com	
Notary Sworn and subscribed before me this <u>25th</u> day of <u>January</u> , 20 <u>23</u>	Notary Signature and Seal 	

Appeal of Administrative Decision Application



Department of City Planning | 1 Exchange Plaza, Suite 300 | Raleigh, NC 27601 | 919-996-2682

Nature of appeal (If more space is needed, submit addendum on separate sheet): See attached	OFFICE USE ONLY	
	Transaction Number	
Provide all previous transaction numbers for Coordinated Team Reviews, Due Diligence Sessions or Pre-Submittal Conferences in the spaces below. If this property was the subject of a previous Board action, provide the case number.		
SUB-0045-2022		

GENERAL INFORMATION		
Property Address 1517 Iredell Drive	Date 1-25-23	
Property PIN 1704366165	Current Zoning R-4	
Nearest Intersection Williamson Drive / Iredell Drive	Property size (in acres) .31	
Property Owner Information		
Property Owner Marvin Butler Bennett, III and Rebecca Garrison Bennett	Phone 919.523.2817	Fax
Owner's Mailing Address 1517 Iredell Dr Raleigh 27608	Email Rebeccabennett95@icloud.com	
Contact Person Information		
Project Contact Person Craig D. Justus, Esq.	Phone 828-258-2991	Fax
Contact's Mailing Address 11 North Market Street, Asheville, NC 28801	Email cjustus@vwlawfirm.com	
Property Owner Signature <i>Rebecca Garrison Bennett</i>	Email Rebeccabennett95@icloud.com	
Notary Sworn and subscribed before me this <u>25th</u> day of <u>January</u> , 20 <u>23</u>	Notary Signature and Seal <i>Kerri M. Elliott</i> 	

Appeal of Administrative Decision Application



Department of City Planning | 1 Exchange Plaza, Suite 300 | Raleigh, NC 27601 | 919-996-2682

Nature of appeal (If more space is needed, submit addendum on separate sheet):
See attached

OFFICE USE ONLY

Transaction Number

Provide all previous transaction numbers for Coordinated Team Reviews, Due Diligence Sessions or Pre-Submittal Conferences in the spaces below. If this property was the subject of a previous Board action, provide the case number.

SUB-0045-2022

GENERAL INFORMATION

Property Address **912 Williamson Drive**

Date

Property PIN **1704352995**

Current Zoning **R-4**

Nearest Intersection **Williamson Drive / Iredell Drive**

Property size (in acres) **1.09**

Property Owner Information

Property Owner **John Solic and Samantha Solic**

Phone **919-451-2533** Fax

Owner's Mailing Address **912 Williamson Dr. Raleigh, NC 27601**

Email **samsolic@gmail.com**

Contact Person Information

Project Contact Person **Craig D. Justus, Esq.**

Phone **828-258-2991** Fax

Contact's Mailing Address **11 North Market Street, Asheville, NC 28801**

Email **cjustus@vwlawfirm.com**

Property Owner Signature

Email **samsolic@gmail.com**

Notary

Sworn and subscribed before me this 26th day of January, 2023

Notary Signature and Seal

Kerri M. Elliott



Appeal of Administrative Decision Application



Department of City Planning | Exchange Plaza, Suite 300 | Raleigh, NC 27601 | 919-996-2682

Nature of appeal (If more space is needed, submit addendum on separate sheet):

See attached

OFFICE USE ONLY

Transaction Number

Provide all previous transaction numbers for Coordinated Team Reviews, Due Diligence Sessions or Pre-Submittal Conferences in the spaces below. If this property was the subject of a previous Board action, provide the case number.

SUB-0045-2022

GENERAL INFORMATION

Property Address **912 Williamson Drive** Date

Property PIN **1704352995** Current Zoning **R-4**

Nearest Intersection **Williamson Drive / Iredell Drive** Property size (in acres) **1.09**

Property Owner Information

Property Owner **John Solic and Samantha Solic** Phone **919 323 6055** Fax

Owner's Mailing Address **912 Williamson Drive** Email **johnsolice@nc.rr.com**
Raleigh, NC 27608

Contact Person Information

Project Contact Person **Craig D. Justus, Esq.** Phone **828-258-2991** Fax

Contact's Mailing Address **11 North Market Street, Asheville, NC 28801** Email **cjustus@vwlawfirm.com**

Property Owner Signature *[Signature]* Email **johnsolice@nc.rr.com**

Notary
Sworn and subscribed before me this 25th day of January, 2023

Notary Signature and Seal
Kerri M. Elliott

It is improper to contact any member of the Board of Adjustment prior to the disposition of a case to discuss the request. An application will not be considered complete until all required submittal components listed on the Appeal of Decision Checklist have been received and approved.

APPEAL OF ADMINISTRATIVE DECISION CHECKLIST (to be completed by applicant)		
	YES	N/A
PRE-SUBMITTAL REQUIREMENTS		
1. A Notice of Appeal shall be submitted to the City Clerk simultaneously with submittal of an Appeal application	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Appeal of Administrative Decision applications shall be submitted to the City Clerk, 2 nd Floor Raleigh Municipal Building	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Completed Appeal of Administrative Decision Intake Requirements sheet	<input checked="" type="checkbox"/>	<input type="checkbox"/>
APPEAL OF ADMINISTRATIVE DECISION REQUIREMENTS		
1. A signed, notarized application and submittal fee are required.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. If the appeal involves a specific property, the applicant must submit stamped envelopes addressed to the property owners within 100 feet of the subject property. City staff will mail the public hearing notices.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. The Board of Adjustment conducts a quasi-judicial hearing. You may not contact the Board members once the application has been filed.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. If the appeal involves a specific property, City Staff will place a public hearing sign on the subject property. The sign must be prominently displayed on the property for at least ten days before the hearing. The property owner is responsible for maintaining the sign during this ten-day period. The owner must return the sign to city staff within three days of the hearing. The owner will be charged \$45 for any sign not returned.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. If the appeal involves an interpretation made by the City, a copy of the written interpretation shall be included.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
APPEAL OF ADMINISTRATIVE DECISION CONSIDERATIONS		
The Board of Adjustment will review the showings and regulations that were applicable to the original decision.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

APPEAL OF ADMINISTRATIVE DECISION INTAKE REQUIREMENTS (to be completed by applicant)					
GENERAL REQUIREMENTS	YES	N/A	TO BE COMPLETED BY CITY STAFF		
			YES	NO	N/A
1. I have referenced the Appeal of Administrative Decision Checklist and by using this as a guide, it will ensure that I receive a complete and thorough first review by the City of Raleigh	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
2. Appeal of Administrative Decision application review fee (see Development Fee Schedule for rate)	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
3. Completed, notarized application	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
4. One set of stamped envelopes addressed to all property owners within 100 feet of the subject property (if appeal is related to specific property)	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
5. List of all adjacent property owners	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
6. Twelve copies of site plan or plot plan subject to the appeal	<input checked="" type="checkbox"/>	<input type="checkbox"/>			

Ten days prior to submitting an application to appeal an administrative decision, a notice to appeal must be submitted to the City Clerk and copied to the administrative officer who rendered the original decision.



THE
VAN WINKLE
LAW FIRM

Writer's Extension: 2404
Writer's Facsimile: 828-257-2767
Writer's E-mail: cjustus@vwlawfirm.com

January 27, 2023

Via hand delivery

Gail G. Smith, City Clerk
City of Raleigh
2nd Floor Raleigh Municipal Building

Daniel L. Stegall, Development Services
Director/Designee
City of Raleigh

**RE: Administrative Appeal Action – 908 Williamson Drive Townhome
Project- Grounds for Appeal (Non-Exclusive)**

Dear Ms. Smith and Mr. Stegall:

My firm, together with the below listed firm, represent John and Samantha Solic, Marvin and Rebecca Bennett, and James and Angela Post. They are owners of properties adjoining the above parcel ("Site") and Project. This letter is to serve as notice of their appeal or appeal application concerning the Administrative Development Approval for the above project dated December 30, 2022, and executed by Mr. Stegall, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference ("Administrative Decision").

By ordinance and by statute, the grounds for an appeal are to be stated in the notice of appeal. We don't, however, believe that such procedural step means that the grounds are exhaustive for purposes of presentation to the zoning board. Without waiving any additional grounds, the following constitutes errors in the Administrative Decision (using the development standards in place at the time of application)¹:

1. The Site is zoned Residential-4 (R-4). Per Table, Sec. 1.4.2 (Building Types Allowed By District), a townhouse project in R-4 is allowed within a TOD overlay and the Site does not fall within such an overlay. Therefore, townhouse use/building type is not permitted in R-4 on the Site.
2. Alternatively, the Project does not meet the standards for a Compact Development as outlined below, and, therefore, the townhouse use/building type is not permitted in R-4.
3. Alternatively, if the Project takes advantage of the Frequent Transit Area standards as set forth in the Missing Housing 2.0 Ordinance (TC-20-21, adopted May 10, 2022, and effective August 8, 2022), the Site does not

¹ All citations are to the City's Unified Development Ordinance.

- completely fall within the Frequent Transit Area designated in the City's Comprehensive Plan.²
4. The Project does not comply with the Landscaping and Screening Standards in Article 7.2 nor the Transitional Protective Yard standards in Sec. 2.3.1C. in that neither a B1 or B2 yard (See Sec. 7.2.4) is provided for the Project nor is there a perimeter lot (or lots) which meets the dimensional standards of Article 2.2 (Conventional Development Option). Townhouse lots are not allowed within R-4 per Article 2.2 (Sec. 2.2.3). There is simply no qualifying perimeter lot shown on the approved plans. For example, for purposes of "perimeter lot" calculations, a conventional "open lot" in Sec. 2.2.6 (if it was proposed to be used) must be a min. of 10,000 square feet and a min. of 65 feet in width. Along its entire perimeter, the Project does not comply with the above standard, nor does it otherwise comply with Sec. 7.2.4, including subsections A, C, and D. The Project does not have a compliant transitional protective yard along the entire perimeter boundary of the development, and, therefore, it does not qualify as a Compact Development.
 5. The Project does not comply with the 50' min. open space requirements of Sec. 2.3.1B2. The secondary tree conservation area widths in Sec. 9.1.4B are also not satisfied.
 6. The Project does not comply with the residential infill requirements set forth in Sec. 2.3.4C7 and Sec. 2.2.7. Based on a proper reading of Sec. 1.5.4C, the primary street designation of Williamson Street is in error. There is no predominant block of existing townhouse development in the vicinity of the Project. As a corner lot with proposed attached housing, Sec. 1.5.4C3 should be applicable for the Site. The Site abuts the rear yard of an adjoining lot and Iredell Drive is opposite that. As a result, Iredell Drive is the proper primary street.
 7. Alternatively, Iredell Drive is the higher classification of a street since it has on-street parking without limitation, and, therefore, should have been the primary street under Sec. 1.5.4C1.
 8. Along Iredell Street running from the Site, there are three (3) comparative samples of principal buildings on the same block, within three hundred (300) feet and oriented to Iredell. The proposed townhouse lots within the Project do not comply with the comparative setbacks set forth in Sec. 2.2.7(C).

We believe the development approval was given in error and is, therefore, illegal. Our clients are aggrieved by that decision in multiple ways and will suffer special damages, distinct from the community at large. Special damages include (1) Substantially increased noise and visual impact due to the lack of the required

² Missing Housing 2.0 Ordinance appears to limit within R-4 a townhouse development to a max. of 2 units unless the project site falls within a TOD Overlay or Frequent Transit Area.

Gail G. Smith, City Clerk
Daniel L. Stegall, Development Services Director/Designee
January 27, 2023
Page 3

transitional protective yard, buffers or open space; (2) Loss of character historically attributable to their adjoining properties and diminution in property values as a result of the disparate differences in building type and use, density, and lack of required screening, buffers, open space and setbacks; (3) Unique proximity of their driveways to the Project's ingress and egress; and (4) Overflow parking on Iredell Drive adjoining their lots.

We have provided a copy of this appeal to the Project developer, Site owner and permit applicant. At this point, further development efforts by these folks, including any construction, would be at their risk. *Letendre v. Currituck Cty.*, 259 N.C. App. 512, 564, 817 S.E.2d 73, 106 (2018).

If there is anything deficient concerning our clients' appeal, please let us know immediately so that it can be addressed right away and, hopefully, corrected. As stated in the pre-appeal notice given last week, please contact me or have a city attorney reach out should there be any questions or if we need to schedule a call, conference or meeting.

Sincerely,

**VAN WINKLE, BUCK, WALL,
STARNES AND DAVIS, P.A.**

Craig D. Justus
(Electronically Signed)
Craig D. Justus

MILLBERG GORDON STEWART PLLC

Francis J. Gordon
(Electronically Signed)
Francis J. Gordon

CDJ/ca
Enclosures

Cc: 908 Williamson, LLC (via USPS)
RDU Consulting, PLLC (via USPS)
Concept 8, LLC (via USPS)
Clients