STATE OF NORTH CAROLINA

COUNTY OF HAYWOOD

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 18 CVS 757

STONE HAVEN FARMS ESTATE, LLC; and RUTH B. PLOTT by and through her joint attorneys-in-fact PATRICIA GAIL EDWARDS and WILLIAM GEORGE PLOTT;

Plaintiffs,

vs.

TOWN OF WAYNESVILLE, a North Carolina municipal corporation; and TRIANGLE REAL ESTATE OF GASTONIA, INC., a North Carolina corporation

Defendants.

COMPLAINT FOR DECLARATORY RELIEF

NOW COME Stone Haven Farms Estate, LLC, and Ruth B. Plott by and through her joint attorneys-in-fact Patricia Gail Edwards and William George Plott (hereinafter collectively "Plaintiffs"), complaining of the above-named Defendants, and allege and say as follows:

THE PARTIES

1. The Plaintiff Stone Haven Farms Estate, LLC is a North Carolina limited liability company with its principal place of business in Haywood County, North Carolina and registered office at 416 Stone Haven Drive, Waynesville, NC 28786. Stone Haven Farms Estate, LLC owns multiple contiguous parcels with PIN Nos. 8605-32-7213, 8605-31-5715 and 8605-30-3933 by various deeds recording in the Haywood County Registry ("Stone Haven Farm"). The Stone Haven Farm is used for single-family residential purposes and the operations of a cattle farm.

2. The Plaintiff Ruth B. Plott, by and through her joint attorneys-in-fact Patricia Gail Edwards and William George Plott, is a citizen and resident of Haywood County, North Carolina and is the owner of 47 acres on Plott Creek Road as described in a deed recorded in Book RB 803, Pages 939-940, Haywood County Registry ("Plott Family Property"). The instrument granting the power of attorney to the attorneys-in-fact is recorded in Book RB 798, Page 198, Haywood County Registry. The Plott Family Property is used for single-family residential purposes.

3. The Defendant Town of Waynesville (hereinafter "Town" or "Defendant") is a corporate entity organized and existing under the laws of North Carolina and located in Haywood County, North Carolina.

4. The Defendant Triangle Real Estate of Gastonia, Inc. (hereinafter "Triangle" or "Defendant") is a North Carolina corporation with its principal place of business in Gaston County, North Carolina and registered office at 420 E. Long Avenue, Gastonia, NC 28054.

THE BUILT AND REGULATORY ENVIRONMENT PRIOR TO TRIANGLE TEXT AMENDMENT REQUEST

5. Upon information and belief, as of May 22, 2018, Triangle had a contract to purchase a 41.15-acre parcel located in the Town limits described in Deed recorded in Deed Book 693, Page 1825 (hereinafter "Property"). The Stone Haven Farm and Plott Family Property adjoin the Property.

6. Upon information and belief, Triangle was not an owner of land within the Town limits as of May 22, 2018.

7. In 1986, the Property was annexed into the Town as shown on the Town's annexation map attached hereto as Exhibit "1A", the Town's annexation ordinance attached hereto as Exhibit "1B" and the Town's zoning change attached hereto as Exhibit "1C". At that time, the Property was zoned R-2.

8. The Town's R-2 zoning district was a district designed for single-family residential uses only, and not multi-family uses such as apartments. The document attached hereto as Exhibit "2A" shows allowances for "residential planned unit developments" and multi-family residential units *except* in the R-2 district "*which only allows single family units*." Documents of the Town attached hereto as Exhibits "2B" and "2C" show that even duplexes were eliminated from R-2 in 1996, and only allowed as a conditional use in R-3 and R-4 districts.

9. Around April, 2003, with a comprehensive zoning rewrite, the Plott Creek area, including the Site, was initially zoned Eagles Nest Rural District, as shown on the Town's Ordinance No. 14-03 attached hereto as Exhibit "3A".

10. The Town's Planning Board minutes of March 26, 2003, an earlier draft of the zoning development standards allowed for multi-family uses in all districts. Said minutes are attached hereto as Exhibit "3B". The minutes reflect that this action of including multi-family in all districts received negative feedback. There is mention at

the meeting of the Land Use Steering Committee's consensus to create a Plott Creek District due to its uniqueness.

11. At the Planning Board's April 2003 meeting, the Planning Board made a conscious decision to create five districts that would only allow single family developments, being Francis Cove Rural, Country Club Neighborhood, Eagles Nest Rural, Sulphur Springs Neighborhood, and Howell Mill Neighborhood. The minutes of the April 2003 meeting is attached hereto as Exhibit "3C". Again, it was mentioned that the Plott Creek area would be part of and initially zoned Eagles Nest Rural.

12. In June, 2003, the Plott Creek Neighborhood District ("PC-ND") was officially created. A true and accurate copy of the Town's Ordinance No. 13-03 is attached hereto as Exhibit "4" and incorporated herein by reference. Multi-family is listed as a permitted use in PC-ND subject to special requirements.

13. In 2011, with another comprehensive zoning rewrite, the Plott Creek area, including the Property, was rezoned to Plott Creek Neighborhood District ("PC-NR"), where multi-family uses were again excluded. As of May 22, 2018, the Plott Creek area subject to the PC-NR zoning, including the Property and the Plott Family Property, comprised of more than 153 acres and approximately 46 individual parcels.

14. Out of thirty-two years (32) of zoning by the Town related to the Property and surrounding area, twenty-four (24) of them allowed single-family residential use only.

TRIANGLE'S TEXT AMENDMENT APPLICATION

15. Upon information and belief, in 2017, prior to or contemporaneous with entering into a contract to purchase the Property, Triangle representatives requested from Town staff member Elizabeth Teague what uses were allowed on the Property and were told in error that multi-family was a permitted use.

16. Upon information and belief, in reliance, in part, on the Town's error in zoning information, Triangle entered into a like-kind exchange program that caused financial hardship if the Property was not acquired with the zoning corrected to reflect multi-family as an allowable use.

17. Upon information and belief, in part, in an effort to accommodate Triangle's needs, the Town expedited a process to have the zoning changed for the Property and the surrounding properties zoned PC-NR.

18. On April 24, 2018, Triangle applied to the Town for a text change requesting to add "Dwelling-Multifamily" as a Permitted Use in table 2.5.3 the Plott

Creek zoning district. A true and accurate copy of the application is attached hereto as Exhibit "5" and incorporated herein by reference.

19. Section 15.14.1B of the Town's zoning ordinance states that the following persons or groups provides an exclusive list of those who can apply for a text amendment:

- The Board of Alderman
- The Planning Board
- The Board of Adjustment
- The Planning Department
- Any owner of property within the land use jurisdiction of the town.

20. At all times relevant hereto, Triangle did not fall within any of the five (5) eligible applicants noted in paragraph 19 above.

21. Prior to the text application, Triangle had submitted a site plan to the Town for its consideration related to a proposed 200 unit apartment complex on the Property ("Apartment Complex").

22. The predominate use of the Plott Creek area, including the Plaintiffs' properties, is low density single family use and/or agriculture.

23. At a specially called meeting of the Town's Planning Board on May 21, 2018, that body recommended the zoning text change requested by Triangle ("Planning Board Action").

24. At a specially called public hearing of the Town's Board of Aldermen on May 22, 2018 ("May 22nd Public Hearing"), the Town's governing body approved Triangle's rezoning request to add multi-family as a permitted use within PC-NR ("May 22nd Rezoning")

25. At the May 22nd Public Hearing, dozens of persons spoke in opposition to the zoning change requested by Triangle. Only persons related to Triangle by business or development interest (such as civil or traffic engineers) spoke in favor of the zoning change.

26. The changes to the Property related to the Apartment Complex and purportedly authorized by the May 22nd Rezoning will cause substantial and detrimental impacts to the Plaintiffs' properties that are unique to the Plaintiffs due, in part, to their immediate proximity to the Property, including: (i) Ingress and egress to the Plaintiffs' properties will be blocked or unreasonably interfered with; (ii) Noise levels from the Apartment Complex will have a material and negative effect on the use

and enjoyment of Plaintiffs' properties; (iii) will greatly increase the bulk and scale of the built environment on the Property in a way disharmonious to the Plaintiffs' properties; (iv) will negatively impact the water quality of Plott Creek, a stream classified by the State of North Carolina as trout water, which will be a detriment to Stone Haven Farms' cattle or farming use; and (v) will cause flooding due to the development of the floodplain on the Property along Plott Creek. As alleged above, the May 22nd Rezoning was illegal and the enabling of multi-family uses associated with the Apartment Complex will result in a diminution in Plaintiffs' property values unique to said properties and unreasonably interfere with the single family and farming uses historically located there.

27. The Plaintiffs, as owners of properties adjoining the Property are persons who have specific personal and legal interest in the matters complained of herein, unique and distinct from the rest of the Town's residents or property owners within or outside the Town. Plaintiffs are interested parties pursuant to N.C. Gen. Stat. §1-254 whose rights, status, or other legal relations are directly and adversely affected by the Town Board of Aldermen's adoption of the May 22nd Rezoning.

FIRST CAUSE OF ACTION
(Procedural Defects)

28. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 27 above.

29. In North Carolina, the power to zone is subject to the limitations of the enabling act, being in this case Article 19 of Chapter 160A of the North Carolina General Statutes. In addition, the procedural rules of a local government related to rezoning are binding on said government based on common law and N.C. Gen. Stat. §160A-384 ("city council shall provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts shall be determined, ... amended . . . in accordance with" Article 19).

30. The Town's adoption of the May 22nd Rezoning failed to comply with the procedural requirements set forth in Article 19, Chapter 160A and the Town's zoning ordinance in several ways:

a. No owner of property within the Town's limits submitted the application related to the May 22nd Rezoning as required by Section 15.14.1B. Plaintiffs' counsel submitted to the Town Board of Aldermen at the May 22nd Hearing written objections to the rezoning change, a true and accurate copy of which is attached hereto as Exhibit "6" and incorporated herein by reference.

b. Upon information and belief, there was no review by the Town's planning board that included the provision of any statements of reasonableness and consistency with the Town's comprehensive land use plan for May 22nd Rezoning as required by Section 15.14.5 of the Town's zoning ordinance and N.C. Gen. Stat. §§§160A-382, 160A-383 and 160A-387;

c. Upon information and belief, there were no statements by the Town Board of Aldermen of reasonableness and consistency with the Town's comprehensive land use plan for the May 22nd Rezoning as required by Section 15.14.5 of the Town's zoning ordinance and N.C. Gen. Stat. §§160A-382 and 160A-383; and

d. If such statements of reasonableness and consistency were in fact provided by Town Board of Aldermen and the Town's planning board, they fail to adequately explain why the amendments are reasonable and in the public interest, and consistent with the applicable land use plan, as held by *Atkinson v. City of Charlotte*, 760 S.E.2d 395 (2014).

31. As a result of the numerous procedural violations of Town rules and State law, the Plaintiffs have been injured and they are entitled to an Order declaring the May 22nd Rezoning to be void and invalid, reverting the zoning and classifications and regulations to that existing prior to such amendments and granting injunctive relief to enforce said Order.

SECOND CAUSE OF ACTION

(*Ultra Vires* Action; Arbitrary, Capricious and Unreasonable; Violates Fundamental Zoning Concepts)

32. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 31 above.

33. N.C. Gen. Stat. §160A-381 provides the grant of zoning power to the Town, which power must be exercised for the purposes of promoting the health, safety, morals, or the general welfare of the community.

34. In N.C. Gen. Stat. §160A-383, the North Carolina General Assembly further requires that "zoning regulations" be made "in accordance with a comprehensive plan" and that such regulations be designed to "promote the public health, safety, and general welfare." Said statute delineates the meaning of the phrase "public health, safety and general welfare" by stating that zoning regulations may address the following public purposes:

> To provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to lessen congestion in the streets; to secure safety from fire, panic, and dangers; and to facilitate the

efficient and adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. The regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city.

35. Without any determining or guiding principles and in complete disregard to the negative impacts, ill effects and harm likely to result to the Plaintiffs' properties, the Town essentially made special arrangements with Triangle to allow for a substantial abdication of the rules of law formerly in place in the Town related to single-family limitations in the Plott Creek area.

36. In its actions related to the adoption of the May 22nd Rezoning, the Town acted illegally and was *ultra vires*, and acted in an unreasonable, discriminatory, arbitrary and capricious manner by:

a. Disregarding the fundamental concepts of zoning set forth in N.C. Gen. Stat. §§160A-381 and 160A-383 where there is no competent evidence that (i) the Property and surrounding properties were not useable for purposes consistent with the single family residential uses formerly allowed prior to the rezoning or (ii) that the Town's governing body considered the character of the land (including the Property and all other parcels included in the district), the suitability of the land for the uses permitted or the existence of changed circumstances justifying the rezoning application. *See Hall v. City of Durham*, 323 N.C. 293, 372 S.E.2d 564 (1988).

b. By abdicating zoning power to Triangle as developer, as evidenced by the rush to accommodate its wishes without a proper zoning analysis consistent with G.S. 160A-383.

37. As a result of the Town's illegal, ultra vires, arbitrary and capricious actions, the Plaintiffs have been injured and they are entitled to an Order declaring the May 22nd Rezoning to be void and invalid, reverting the zoning and classifications and regulations to that existing prior to such amendment and granting injunctive relief to enforce said Order.

THIRD CAUSE OF ACTION
(Illegal Contract Zoning)

38. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 37 above.

39. Upon information and belief, the actions of the Town complained of above in adopting the May 22nd Rezoning constitute illegal contract zoning in that Triangle as developer and the Town undertook reciprocal obligations in the context of a bilateral contract where there was a meeting of the minds and mutual assurances were exchanged related to the Apartment Complex development and the rezoning that purportedly enabled its permitted use status.

40. The Town's actions constitute an unlawful abdication of zoning authority to the developer, and abandonment of its independent zoning decision-making, contrary to Article 19, Chapter 160A of the North Carolina Statutes and the North Carolina Constitution's separation of powers provisions.

41. As a result of the Town's actions constituting illegal contract zoning, the Plaintiffs have been injured and they are entitled to an Order declaring the May 22nd Rezoning to be void and invalid, reverting the zoning and classifications and regulations to that existing prior to such amendment, and granting injunctive relief to enforce said Order.

WHEREFORE, the Plaintiffs pray Judgment of the Court as follows:

1. For declaratory and injunctive relief as described above, including the invalidation of the May 22nd Rezoning;

2. For reasonable attorney's fees as allowed by law, including N.C. Gen. Stat. §6-21.7;

3. That the costs of this action be taxed to the Defendants; and

4. For such other and further relief as the Court deems just and proper.

This the 30th day of July, 2018.

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

By: _____

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May 22, 2018

Via email and hand delivery

Mayor Gavin A. Brown
Alderman, Julia Boyd Freeman
Alderman, Jon Feichter
Alderman, LeRoy S. Roberson
P.O. Box 100
Waynesville, NC 28786
BoA@waynesvillenc.gov

RE: Text Amendment to Allow Multi-Family in Plott Creek Neighborhood

Dear Mayor Brown, Alderman Freeman, Alderman Feichter and Alderman Roberson:

My firm represents Chuck Dickson and Thom Morgan, two property owners along Plott Creek Road. They, along with many others, are opposed to the text amendment to add multi-family/apartments as an allowable use within the Plott Creek Neighborhood District. As leaders of the community, your job is never easy. Please accept my comments in the light that they are intended, to wit: To respectfully challenge the notion that multi-family/apartments is an appropriate use for the Plott Creek valley.

While economic growth is something that we all can aspire to, the whole point of zoning is to separate incompatible uses and to follow a comprehensive plan in doing so. Our North Carolina Supreme Court has stated: "The whole concept of zoning implies a restriction upon the owner's right to use a specific tract for a use profitable to him but detrimental to the value of other properties in the area, thus promoting the most appropriate use of land throughout the municipality, considered as a whole." *Blades v. City of Raleigh*, 280 N.C. 531, 546, 187 S.E.2d 35, 43 (1972). Zoning is not in place to maximize a developer's business model or insure profits.

N.C. Gen. Stat. 160A-383 provides that "zoning regulations shall be made in accordance with a comprehensive plan." The requirement of a "plan" is to ensure that the "character of the community is preserved although devoting land to its most appropriate uses." *Allred v. City of Raleigh*, 7 N.C. App. 602, 173 S.E.2d 533 (1970). A comprehensive plan is intended to ensure that zoning officials act rationally rather than arbitrarily. One important fact missing from the discussions that I have seen is the

EXHIBIT
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historical vision for the Plott Creek area, especially the subject property proposed for the 200-unit apartment complex ("Property").

The following is information gleaned from my recent visit to the Town Clerk's office: In 1986, the Property was annexed into the Town. *See* Exhibits 1A (annexation map), 1B (annexation ordinance) and 1C (zoning change). At that time, the Property was zoned R-2. Although the Clerk's office did not have copies of the historical zoning ordinance text, it is easy to see from several ordinances amending the Zoning Ordinance, that R-2 was a district designed for single-family residential uses only, and not apartments. *See* Exhibits 2A, 2B and 2C. Exhibit 2A shows allowances for "residential planned unit developments" and multi-family residential units *except* in the R-2 district "*which only allows single family units*." Even duplexes were eliminated from R-2 in 1996, and only allowed as a conditional use in R-3 and R-4 districts. *See* Exhibits 2B and 2C.

I found no zoning changes in the Plott Creek area up to 2003. Around April, 2003, with a comprehensive rewrite, the Plott Creek area, including the Property, was initially zoned Eagles Nest Rural District. *See* Exhibit 3A. From the Planning Board minutes of March 26, 2003, an earlier draft of the zoning development standards allowed for multi-family uses in all districts. *See* Exhibit 3B. The minutes reflect that this action of including multi-family in all districts received negative feedback. There is mention at the meeting of the Land Use Steering Committee's consensus to create a Plott Creek District due to its uniqueness. Unfortunately, I could find no minutes of such group at the Clerk's office or online. At the Planning Board's April 2003 meeting, the Planning Board made a conscious decision to create five districts that would only allow single family developments, being Francis Cove Rural, Country Club Neighborhood, Eagles Nest Rural, Sulphur Springs Neighborhood, and Howell Mill Neighborhood. *See* Exhibit 3C. Again, it was mentioned that the Plott Creek area would be part of and initially zoned Eagles Nest Rural.

In June, 2003, the Plott Creek Neighborhood District ("PC-ND") was officially created. *See* Exhibit 4. Multi-family is listed as a permitted use subject to special requirements. There are no meeting minutes that I found explaining the rationale behind the particular development standards for this district.

In 2011, with another comprehensive rewrite, the Plott Creek area was rezoned to Plott Creek Neighborhood District ("PC-NR"), where multi-family uses were again excluded.

Summarizing the zoning history for the Plott Creek area, including the Property, out of thirty-two (32) years of zoning by the Town (1986-2018), twenty-four (24) of them allowed single-family residential use only.

There is a critical distinction between single-family use and multi-family. It is a fundamental example of the proper employment of zoning to separate single-family from multi-family as incompatible land uses. Long ago, the United States Supreme Court originally legalized zoning as a proper exercise of a community's general police powers where the facts presented the prohibition of apartment houses where single family dwellings were permitted. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S. Ct. 114 (1926). In that case, the U.S. Supreme Court stated:

> With particular reference to apartment houses, it is pointed out that the development of detached house sections is greatly retarded by the coming of apartment houses, which as sometimes resulted in destroying the entire section for private house purposes . . . Moreover, the coming of one apartment house is followed by others, . . . bringing, as their necessary accompaniments, the disturbing noises incident to increased traffic and business, and the occupation, by means of moving and parked automobiles, of larger portions of the streets, those detracting from their safety and depriving children of the privilege of quiet and open spaces for play, enjoyed by those in more favored localities -until, finally, the residential character of the neighborhood and its desirability as a place of detached residences are utterly destroyed.

Speaking to preserving an area for traditional single-family uses, the United States Supreme Court has stated: "A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs. . . It is ample to lay out zones where family values, youth values and the blessings of quiet seclusion and clean air make the area a sanctuary for people." *Village of Belle Terre v. Boraas*, 416 U.S. 1, 94 S. Ct. 1536 (1974).

Don't get me wrong: apartments and varied housing choices are necessary parts of any community such as Waynesville. But that begs the question of where are they most suited in terms of a reasonable and appropriate use of land? History of Plott Creek valley, 24 out of 32 years, should not be readily ignored and dismissed.

Usually changed circumstances, like a major new road or the encroachment of dissimilar uses, drive re-zonings. What are the changed circumstances presented here?

It appears to be simply the desire of one developer for one piece of property. Without changed circumstances, it seems like the "tail is wagging the dog" in this case. Case in point is the fact that currently a committee has been organized to steer Waynesville in the right direction and to recommend changes to the "plan" that underlies zoning. According to your website,

> The Town of Waynesville is updating the 2002 Waynesville: Our Heritage, Our Future 2020 Land Development Plan. The project presents an opportunity for residents, business owners, and other stakeholders to have a say in the Town's future growth, development and quality of life. An effective Land Development Plan and Future Land Use Map will implement a vision for growth and conservation for the community and will reflect Waynesville's unique identity and goals as a community. The Plan will analyze community demographics and existing conditions, establish goals, and create strategies relevant to land use, economic development, housing, transportation, utilities, natural resources, recreation, and more.

Shifting Plott Creek valley from single-family area to multi-family is a major change. Why do that based on one (1) Planning Board meeting and one (1) Board of Aldermen meeting where individuals are allowed 3 minutes to speak? Why not let the plan committee process run its course? Is this very controversy not a strategy to be deciphered relevant to land use? Is the promotion of single-family housing not important? Is conserving Plott Creek, a State designated trout waters (Class C), not significant enough? What about farmland preservation and scenic vistas?

The point is this: there are approximately fifty (50) property owners in the Plott Creek zoning district. Twenty-seven (27) have formally responded with objections to the text amendment before you. In light of that, and in the absence of changed circumstances, why would you not press the brake and allow the strategic vision for Plott Creek run its course with neighborhood citizen surveys and a much longer period for citizen participation?[1]

[1] It is disturbing that the plan committee's comprehensive land use draft already shows "200 unit multi family project *recently permitted*" on the Property. Isn't that the cart before the horse? How does that engender trust in the planning process which should leave open the vision of keeping Plott Creek valley an area for promoting single-family uses like the 24 years out of the 32 that such area has been zoned? *See* Exhibit 5.

As for the staff report recommending the zoning change, there are a number of inconsistencies.

One, townhomes are built for a single-family to occupy one building, whether attached by a party wall or not. Multi-family is designed for multiple families to live in one building. Such differences focus on the use of a building. One glaring example of this reality is the fact that townhomes are allowed in every residential district, even the ones touting single-family use only. Density and use are two different concepts. The staff conflates the two. If the staff's argument is correct, then apartments should be allowed in Eagles Nest or the Country Club area since townhomes are also allowed there. The Section 5.3 chart of "permitted building types" is also a non-starter since, as the staff report notes, it is an apparent error that applies to all residential districts, including Eagles Nest and the Country Club area. If such error is considered significant enough to rezone Plott Creek, why not those areas as well?

Staff argues that the "planned growth area" for Waynesville justifies the zoning change. How is that so where the Property is at the very fringe of the Town's limits and does not have all the necessary infrastructure such as sewer? Map 12 of the 2020 Land Development Plan shows an "urban services boundary" that pretty much swallows up most of the current boundaries of Waynesville, including the areas shown as "low density residential".

The staff report touts the need for rental housing. But as it points out, most of the zoning districts currently allow for multi-family housing. One of the tasks of the plan committee is to examine "underutilized" or "vacant" property in the Town. Who says that there are not adequate areas in the Town already zoned for apartments? Simply because one developer has struck a deal with one property owner for a multi-family housing complex that is not zoned to allow such use cannot be the controlling factor that decides whether or not alternative sites really exist. The project in question does not even meet the criteria of affordability.

A prime example of the "tail wagging the dog" in this case are the very rules in place in the Town to minimize such a scenario. Section 15.14.1B of the Town's Zoning Ordinance clearly states that the following persons or groups may apply for a map or text amendment:

- The Board of Aldermen
- The Planning Board
- The Board of Adjustment

- The Planning Department
- Any owner of property within the land use jurisdiction of the town.

In this case, the developer Triangle Real Estate of Gastonia/Southwood Realty applied for the text change in question. *See* Exhibits 6-7. That entity does not fall within any of the five (5) eligible applicants noted above. A local government must follow its own rules or procedures established for amending ordinances. *Robins v. Town of Hillsborough*, 361 N.C. 193, 198, 639 S.E.2d 421, 424 (2007). Failure to follow the required procedures for amending zoning ordinances is fatal to such amendment. *Lee v. Simpson*, 44 N.C. App. 611, 612, 261 S.E.2d 295, 296 (1980). Such procedures must be strictly followed, even in the absence of prejudice to a property owner. *George v. Town of Edenton*, 31 N.C. App. 648, 230 S.E.2d 695 (1976).

My clients hope that the Town will follow the rules and not approve the text amendment in question. Moreover, my clients hope that this attempt will not force a rush to judgment to serve the interests of one developer. There is currently in place a "plan" review that will provide citizens and the residents of Plott Creek with hope that their vision for their neighborhood will matter and that single-family residential areas are not a by-gone thing of the past.

Thank you for your attention to this crucial matter.

Sincerely,
VAN WINKLE, BUCK, WALL, STARNES AND DAVIS, P.A.
Craig D. Justus
(Signed Electronically)
Craig D. Justus

CDJ/ca
Enclosures
cc: William E. Cannon, Esq. - via email
Client - via email

4832-2817-2902, v. 1