Buncombe County Board of Adjustment
Meeting Minutes
Special Meeting – April 28, 2025 – 9:00 A.M.
Commissioners' Chambers – 200 College St, Asheville, NC

Members Present

- **Andy Ball**, Regular Member – Chair
- **Craig Allen**, Regular Member
- **Greg Phillips**, Regular Member
- **Joel Mazelis**, Regular Member
- **Carla Barnard**, Alternate Member
- **Carol McCrory**, Alternate Member
- **Jeff Giltenboth,** Alternate Member

Staff Present

- **Savannah Glance**, Principal Planner
- **Curt Euler**, Staff Attorney
- **Griffin Kearns**, Clerk to Board

A. Call to Order & Welcome – Chair

- The meeting was called to order at 9:09 A.M.

B. Announcements

- **John Noor**, counsel for Poder Emma, Jacqueline Sullivan, and Sarah McMullen — parties with standing in case ZPH2024-00026 Emma Road Townhomes SUP — announced that his clients and the applicant had agreed to stipulations on certain findings of fact relevant to the special use permit. A copy of the stipulations, signed by Mr. Noor and the applicant's counsel, Craig Justus, was provided to the Board.

C. Roll Call of Board Members

1. **Joel Mazelis** – Present
2. **Craig Allen** – Present
3. **Carla Barnard –** Present
4. **Andy Ball** – Present
5. **Carol McCrory** – Present
6. **Greg Phillips** – Present
7. **Jeff Giltenboth** – Present

D. Disclosure of Ex-Parte Communications/Conflicts of Interest

- None

E. Public Hearings

1. ZPH2024-00026 Emma Road Townhomes SUP (Continued from 3/12/25)

Description:

Warren Sugg, P.E., of Civil Design Concepts, P.A.; on behalf of Justin Coulter of Gordon Road Capital, LLC, applicant; and the estate of Bridget Conroy Hanner, the Richard Hanner Family Trust and the Leila Hanner Family Trust, owners; has applied for a Special Use Permit pursuant to the Zoning Ordinance of Buncombe County; Sec. 78-641(a), Sec. 78-677, and Sec. 78-678(b)(6); to establish a Planned Unit Development (Level 1) for a 107-unit townhome development on tax lot PINs 9629-83-7092, 9629-93-0353, 9629-93-1087, and 9629-82-6851 (815 Emma Road, two unaddressed parcels just east of PIN 9629-83-7092, and an unaddressed parcel across Emma Road from PIN 9629-83-7092). Planner coordinating review: Savannah Glance.

Summary of Exhibits:

Ex #	Description	Submitted by	Record
	Application (Including 2/25/25 Amendment)	Applicant	**Admitted**
	Site Plans (Updated 2/5/25)	Applicant	**Admitted**
	Transportation Impact Analysis (with DOT Approval Letter and Corrected Figure A)	Applicant	**Admitted**

	Supplemental Documents:
	• Property Deeds:
	  • Book 4664, pp. 1503-1505
	  • Book 5150, pp. 1693-1696
	  • Book 5267, pp. 1823-1825
	• MSD Sewer Allocation Approval (dated 6/17/24)
	• City of Asheville Water Letter of Commitment
	• Wetland and Stream Delineation Map
		Applicant	**Admitted**

	Staff GIS Maps	Staff	**Admitted**
	Staff Report	Staff	**Admitted**
OPP 1 (Standing)	Amended Request to Participate as a Party with Standing (2/11/25)	Sarah McMullen	**Admitted**
OPP 2 (Standing)	Amended Request to Participate as a Party with Standing (2/11/25)	Jacqueline Sullivan	**Admitted**
OPP 3 (Standing)	Request to Participate as a Party with Standing	Poder Emma	**Admitted**
Applicant 1	Affidavit of Warren Sugg with attached résumé and statement	Applicant	**Admitted**
Applicant 2	GIS map with zoning and land use information (titled “Emma Road”)	Applicant	**Admitted**
Applicant 3	815 Emma Road Site Concept	Applicant	**Admitted**
Applicant 4	815 Emma Road Property Line Buffer	Applicant	**Admitted**

Applicant 5	815 Emma Road Site Concept (with modifications to building locations, retaining walls, sidewalks, and fences added)	Applicant	**Admitted**
Applicant 6	Site Plan Sheet C201 (with modifications)	Applicant	**Admitted**
Applicant 7	Affidavit of Erin Govea with attached résumé, Traffic Impact Analysis (TIA) scoping checklist, TIA final decision letter, and TIA	Applicant	**Admitted**
Applicant 8	Affidavit of Lynn Carmichael with attached Market Impact Study	Applicant	**Admitted**
Applicant 9	GIS Pictures of Sales with Retaining Walls	Applicant	**Admitted**
OPP 1	Appraisal Consulting Report	Sarah McMullen, Jacqueline Sullivan, Poder Emma	**Admitted**
OPP 2	Report on the impacts of a 107-unit townhome development in the Emma neighborhood, North Carolina	Sarah McMullen, Jacqueline Sullivan, Poder Emma	**Admitted**

Staff Presentation:

- **Savannah Glance** presented a brief review the staff analysis of the application.

Applicant Presentation:

- **Warren Sugg,** who had previously been admitted by Chairperson Ball as an expert in civil engineering at the April 2, 2025 special meeting of the Board, was recalled by the applicant's counsel, Craig Justus. Were admitted as *Applicant Exhibit 5* and *Applicant Exhibit 6*. Mr. Sugg testified that these exhibits incorporated modifications to the application and site development plan that were made on or around April 14, including the removal of a retaining wall, relocation of a townhome unit, the addition of wooden fences at the end of each street dead end, and sidewalks along the outsides of units within the southern portion of the project site. In response to questions from Mr. Noor, Mr. Sugg confirmed that sidewalks were added, but no crosswalk on Emma Road due to it being a public road under the jurisdiction of the North Carolina Department of Transportation (DOT). Mr. Sugg expressed a willingness for one to be added with the consent and participation of the DOT.
- **Erin Govea** was tendered by Mr. Justus and admitted by Chairperson Ball as an expert in traffic engineering. An affidavit of Ms. Govea; including her resume, a Traffic Impact Analysis scoping checklist, and a copy of her Transportation Impact Analysis (TIA) with an attached final decision letter from the DOT; was admitted as *Applicant Exhibit 7*. Ms. Govea delivered testimony in support of the application, explaining the requirements, methodology, and findings of the TIA that she prepared for the development, and the conditions required by DOT for approval of a driveway permit. In response to questions from Mr. Noor, Ms. Govea stated that DOT had a process for determining the suitability of crosswalk installation, and that she would not expect DOT to want to install one, but that it should be reasonably expected that pedestrians would be able to see traffic and that any children crossing the street should be accompanied. In response

to questions from the Board, Ms. Govea mentioned that it may be possible to install signs on the property warning of children at play, that the Emma Road speed limit was 35 miles per hour, that that traffic counts for the TIA were taken when schools were in session to account for school traffic, and that specific analysis of school bus traffic was not included in the TIA process. Ms. Govea confirmed that the issues with topography limiting sight distance mentioned in the TIA were conditions that would need to be addressed for approval of the driveway permit, and that for school bus drop-off, parents would be expected to walk to the bus stop to pick up their children or children could walk home.

- **Lynn Carmichael** was tendered by Mr. Justus and admitted by Chairperson Ball as an expert in market impact study. An affidavit of Ms. Carmichael, including a Market Impact Study, was admitted as *Applicant Exhibit 8*. Ms. Carmichael delivered testimony in support of the application, explaining the methodology, and findings of the market impact study that she prepared. Ms. Carmichael stated that despite a decrease in sales volume within a one-mile radius of three out of five comparable developments, that the mean difference resulted in an overall sales increase of +3% within a one-mile radius and +0.4% in a five-mile radius. She also stated that even when total sales volume decreased, the percentages increased relative to the market conditions in the surrounding area, and that overall decreases could not be attributed specifically to the developments. She stated that her numbers showed there was no likelihood of an injurious impact on property values and that this conclusion was based on her opinion.

A recess was called at 10:32 a.m.

The meeting was called back to order at 10:42 a.m.

- **Lynn Carmichael**, in response to questions from Mr. Justus, stated that she had used a percentage method in all her market impact studies, and that while USPAP standards existed for appraisals, there were no specific standards for market impact studies. She explained that use of the percent-difference method was necessary to account for market trends such as a spike in sales during the Covid pandemic. In response to questions from the Board, Ms. Carmichael acknowledged that while the “theory” paragraph within her scope of work did not mention percentages, that percentages were the appropriate way to analyze volume. She also stated that it was more important to look at values relative to the general area than sales volume.
- **Justin Coulter**, of applicant Gordon Road Capital, LLC, provided an overview of his professional background and of Gordon Road Capital’s past and current projects. He stated that based on studies, he interpreted a housing supply gap on the national, state, and local levels, and believed that the Planned Unit Development provisions in the zoning ordinance could deliver a mixture of housing types with communal open space. Mr. Coulter expressed a willingness to agree to reasonable conditions and stated he had already agreed to certain changes to the application intended to address the concerns of neighboring residents. Mr. Coulter explained the necessity of the requested PUD deviations for additional unit options, parking, and open space. In response to questions from Mr. Noor, Mr. Coulter confirmed that all 107 units in the development would be offered at market rates and that he was not aware of the specific composition of uses in the surrounding area. In response to questions from the Board, Mr. Coulter brought attention to the concrete sidewalk landing areas proposed per *Applicant Exhibit 5* that could be used for a crosswalk if DOT were to permit one, along with agreed-upon changes

and conditions regarding signage, sight lines, landscaping, and limits on the hours of use of the proposed pickleball court.

A recess was called at 11:20 a.m.

The meeting was called back to order at 12:07 p.m.

Opposing Parties with Standing Presentation:

- **Sarah McMullen** stated that she moved to the Emma neighborhood in 2023 and was attracted to the neighborhood by its character and affordability. She stated that she lives alone and had concerns about retaining walls and building heights within the proposed townhome development, and that this type of development was out-of-character for the area and could displace residents and make the area unaffordable. She stated that she is a member of Poder Emma and joined out of respect for their work. In response to questions from Mr. Justus, Ms. McMullen confirmed that she had relocated to Emma after living in different areas of Asheville to be able to own a home. She confirmed that she had paid more than $500,000 for her home and that this was more than what she wanted to pay but was willing to agree to it. Ms. McMullen stated she had not studied the county's retaining wall regulations and that she did not recall when she became aware of the area being in the R-3 zoning district.
- **Jackie Sullivan** stated that her property was located adjacent to the easternmost corner of the development site and that she purchased it in 2020 after having lived elsewhere in West Asheville. Ms. Sullivan stated that she appreciated its proximity to her job and the community and its affordability. She stated that she chose to join Poder Emma out of appreciation for their work and to become more involved in the community. She expressed concerns about retaining walls, grading, and elevation changes that were part of the development's site plan and that the development would be considerably taller than her house, which was 16 feet tall. In response to questions from Mr. Justus, Ms. Sullivan acknowledged Mr. Sugg's prior testimony about removing one of the proposed walls from near her residence but that her concerns were not fully resolved and there was still one other retaining wall proposed nearby. She confirmed that she paid roughly $270,000 for the home, that she wasn't sure how old it was but estimated it was from the 1950s, that she was unsure of the difference in grade or elevation between her property and the subject property, and that she didn't investigate the area's zoning when she purchased the property.
- **Andrea Golden** testified regarding the history and mission of Poder Emma to protect existing affordable housing in the community and facilitate development without displacement. She mentioned the organization's participation in the county Comprehensive Plan process, the neighborhood's selection as a candidate for a Small Area Plan, and the organization's efforts to purchase manufactured home parks and establish them as resident-owned cooperatives. She stated that members of the organization learned of the development immediately after Hurricane Helene and had engaged in meetings with the applicant prior to retaining legal counsel. She stated that during the meetings, the developer was not able to provide information about the affordability of the units, and that the community consensus was that the development did not align with the community's needs. She specified that the income characteristics of the neighborhood would make living in this type of housing prohibitive for existing residents. In response to questions from Mr. Justus, Ms. Golden stated that the Small

Area Plan for Emma had not yet been completed, that she was aware of the R-3 zoning of the property and its surroundings, and that she had lived in the area for 19 years even though no Small Area Plan had been adopted. She explained that new residents moving into the neighborhood, such as Ms. McMullen and Ms. Sullivan, were not the primary focus of the organization and that it focused mainly on low-income residents. Ms. Golden stated that she did not know whether Buncombe County had a formal legal definition of public welfare and confirmed that Poder Emma was involved in the development of affordable housing. In response to questions from the Board, Ms. Golden stated that if the same development plan as proposed by the applicant was presented with a commitment from the developer that the units be affordable, the organization would have supported it upon conversing with members. Ms. Golden acknowledged that as a nonprofit developer, the Poder Emma organization would at some point be selling a product under a cooperative ownership model and conceivably in competition with other developers. She stated that there were no definitive boundaries to the Emma community, although the Emma Elementary School district was commonly used, that she did not know the total population of the Emma community, and that about 300 households were members of Poder Emma. She discussed the risk of displacement arising from families in manufactured home parks owning their homes while renting lots, leaving residents vulnerable to the impacts of redevelopment, and claiming that this had happened elsewhere in Buncombe County.

- **Richard Robson** was tendered by Mr. Noor and admitted by Chairperson Ball as an expert in appraisal. Mr. Robson delivered testimony against the application based on the findings in his appraisal consulting report, which was admitted as *Opposition Exhibit 1* and found that decreases in the values of properties could be directly attributed to the presence of retaining walls on adjacent properties, and that he could find no case of a retaining wall having a positive impact on adjacent property values. Mr. Robson gave an overview of the methodology of his appraisal and shared example properties that he used. In response to questions from Mr. Justus, Mr. Robson stated that he had attempted for a week to find example properties in Western North Carolina that had retaining walls but could not find any with sales data that would be suitable for his study. He confirmed that the examples he used were from Charlotte and had retaining walls either on or adjacent to the affected property. Commenting on *Applicant Exhibit 9*, consisting of GIS images of the retaining wall properties included in Mr. Robson's report, Mr. Robson stated that he was not certain of the heights of some of the walls shown but that the retaining walls could offend buyers regardless of the length or height. Mr. Robson confirmed that there were no differences in condition or functional issues among the examples and that the primary difference in each set was the presence of a retaining wall. In response to questions from the Board, Mr. Robson acknowledged that there were differences in topography between Buncombe County and Charlotte, but no suitable comparable properties could be found in Buncombe County. He mentioned that he did not consider the specific type of unit on the example property or the adjoining lot and focused specifically on the retaining walls. At the request of Mr. Justus, and overruling the objection of Mr. Noor, *Applicant Exhibit 9* was admitted by Chairperson Ball.
- **Andre Comandon** was tendered by Mr. Noor as an expert in urban planning, land use, and zoning; and overruling the objection of Mr. Justus, was admitted by Chairperson Ball. Dr. Comandon delivered testimony against the application based on the findings in his report, which

was admitted as *Opposition Exhibit 2*. He explained his review of the project application and materials, the sources of his data, and his methodology. Dr. Comandon stated findings that there were no other developments like the proposed project within the Emma census-designated place, and that Emma was uniquely vulnerable and unlike other areas of the county due to its income, social, and demographic characteristics. He mentioned that the community's proximity to highly active housing markets in downtown and West Asheville could increase the risk of displacement and cited examples of other developments in the Emma area that did not pose the same risk due to their similarity with existing development in the neighborhood. In response to questions from Mr. Justus, Dr. Comandon acknowledged that he had never previously testified before a board of adjustment, but that he had experience appearing before elected governing units. Dr. Comandon cited an example of a project in Kentucky where he provided a governing body with a tool for execution of an ordinance without telling them what to do or dictating policy. He stated that he had reviewed the county standards and that he did not intend to mandate affordable housing but instead provide the Board with information on their application of the Planned Unit Development standards and the appropriateness of granting deviations. Dr. Comandon confirmed that properties in the City of Asheville limits were not included in the Emma neighborhood boundary used in his study, but that the impacts described would not necessarily follow those boundaries. Dr. Comandon acknowledged that other market pressures unrelated to the specific development could serve as signals for displacement, but that these were larger county-wide trends, and that he did not have evidence of large-scale systematic displacement unrelated to this development. In response to questions from the Board, Dr. Comandon stated that in his understanding of public welfare, displacement could have impacts on health, childhood growth, stability, and education; and that cultural, commercial, and social displacement could affect the community.

Non-Party Witness Testimony:

- **Daniela Rodriguez Borras** stated that she was a student at Buncombe County Early College and lived in a cooperative with her family. She expressed concern that the development would affect her and her peers due to high expenses and potentially having to move away. She expressed hope that the Board would not approve the application.
- **Rocio Alviter Cruz** stated that she lived in Emma close to the development site and disagreed with the application due to its effects on the risk of displacement. She mentioned that Emma is a working-class community with affordable rent and economic accessibility and that the development did not consider her physical health or that of her community with the uncertainty raised by an increased cost of living. She asked the Board to consider those concerns for all residents of the community.
- **Patti Guera** stated that in 2014 she was evicted from a manufactured home park on New Leicester Highway when it was sold by its owner. She explained that she had to move to Swannanoa, far from her workplace, her son's school, and her community. She stated that the development did not align with the community's needs and asked the Board to consider and protect the home of the residents.

Closing Statements

- **Mr. Noor** argued that the Board's decision was not a matter of making policy, but following the law as written. Mr. Noor cited standards from the zoning ordinance and argued that the applicant failed to present substantial, material, and credible evidence. He argued that Lynn Carmichael's testimony was inconsistent with her data, while Richard Robson's incorporated retaining walls as specific features of this proposed project and showed a reduction in surrounding property values. Mr. Noor stated that the issue of "public welfare" applied in this case due to the existing neighborhood conditions, including housing stock and income, creating a tipping point for affordability and displacement. He argued that the affidavits of the applicant's witnesses commented on public welfare and that his side should be afforded the opportunity to do the same. He called on the Board to execute what was called for by the County Commissioners to determine whether the proposed use was injurious to public welfare or property.
- **Mr. Justus** argued that the definition of "public welfare" was an impossible question for this board to decide, that the General Assembly had set policy on the topic of affordability, and that testimony offered by the opposing parties indicated that their only issue was the amount of rent to be charged. Mr. Justus cited case law to argue that only the Board of Commissioners could decide on a definition of public welfare and that they were nevertheless preempted from doing so under state law. He defended the expertise of Lynn Carmichael, stating that her methodologies were accepted by her peers, and stated that Richard Robson's testimony did not address Ms. Carmichael's testimony directly and did not include an analysis of townhomes. He expressed an objection to the Board intervening in matters of land prices and rent and stated that Dr. Comandon's testimony was based on hypotheticals. Mr. Justus closed by reiterating his client's willingness to agree to conditions on signage and engaging DOT in attempting to obtain a crosswalk.

Board Discussion, Deliberation, and Motions

- **Mr. Mazelis** expressed concerns over the data and analysis presented in the appraisal testimony.
- **Mr. Giltenboth** expressed that the evidence against the SUP was insufficient to warrant a denial.
- **Mr. Allen** stated that he was sympathetic to the concerns raised by the residents but that he had concerns over conflicting testimony from the opposing parties' experts and that ultimately, he did not believe a residential use would endanger public welfare in a residential area.
- **Ms. Barnard** expressed gratitude to all participants in the hearing, while praising certain design features of the proposed development, including the preservation of pervious surface, and expressing hesitation for the Board to make decisions outside of its limited authority.
- **Chairperson Ball** stated that he believed many of the concerns raised by the opposing parties, including retaining walls and glare, could possibly have been alleviated through a lower-density development plan.
- **Ms. McCrory** stated that she appreciated the efforts of the parties, but that much of the opposing testimony and evidence were based on hypotheticals and that no direct displacement would occur from this project, as the subject property was currently vacant.

- **Mr. Phillips** expressed appreciation for Poder Emma's mission and initiatives, while expressing concerns about denying the special use permit on a private property and its implications for the owner and the value of the property.

Motion to adopt the following Findings of Fact:

1. *That this matter was properly advertised, is within this Board's jurisdiction and is ripe for its consideration.*
2. *That this application, together with the conditions proposed by staff and/or this Board and agreed to by the Applicant, if any, DOES meet the requirements for granting a Special Use Permit contained in Buncombe County Code of Ordinances Sec. 78-621(3).*

Made by: **Carla Barnard**
Seconded by: **Craig Allen**
Result: **PASS** (7-0)

1. **Joel Mazelis** – Yes
2. **Craig Allen** – Yes
3. **Carla Barnard –** Yes
4. **Andy Ball** – Yes
5. **Carol McCrory** – Yes
6. **Greg Phillips** – Yes
7. **Jeff Giltenboth** – Yes

Motion to approve the Special Use Permit and that the order approving the permit be adopted and executed as presented and as modified in this meeting:
Made by: **Carla Barnard**
Seconded by: **Greg Phillips**
Result: **PASS** (6-1)

1. **Joel Mazelis** – No
2. **Craig Allen** – Yes
3. **Carla Barnard –** Yes
4. **Andy Ball** – Yes
5. **Carol McCrory** – Yes
6. **Greg Phillips** – Yes
7. **Jeff Giltenboth** – Yes

Presentation of Order:

- **Curt Euler** presented a draft order.

  Motion to approve the order:
  Made by: **Carla Barnard**
  Seconded by: **Joel Mazelis**
  Result: **PASS** (6-1)

  1. **Joel Mazelis** – No
  2. **Craig Allen** – Yes
  3. **Carla Barnard –** Yes
  4. **Andy Ball** – Yes
  5. **Carol McCrory** – Yes

6. **Greg Phillips** – Yes
7. **Jeff Giltenboth** – Yes

F. Adjourn

- The meeting was adjourned at 4:38 P.M.