

TO: Zoning Commission (acting as the Board of Adjustment)

FROM: La-Deidre Matthews, City Counsel, Fox Rothschild LLP

DATE: July 31, 2026

RE: City's Response to Appeal NOA26-02

The factual and procedural background of this appeal is set out in the accompanying Staff Report and is not repeated here. This Response addresses the Appellant's specific legal arguments and explains why the Zoning Commission should affirm the revocation of the building, electrical, mechanical, and plumbing permits associated with Project No. 1887777. The Commission may modify or reverse the City's decision only upon a finding of clear and demonstrable error, abuse of discretion, or denial of procedural due process; the Appellant has not made that showing.

The Use Is Prohibited Under Current Zoning

1. The Appellant's own Notice of Appeal confirms that the City's sole stated justification for revoking the Original Permits and the June 1, 2026 permits is that the underlying Adult Establishment use is prohibited within the Community Commercial Zoning District under UDO Table 30-4.A.2.
2. The City's underlying substantive basis for revocation is supported by the record, and the grounds for revocation were consistent throughout the permitting history described below.

No Valid Nonconforming Use Exists

3. The Appellant bears the burden of establishing that the property's Adult Establishment use has been lawfully and continuously maintained as a nonconforming use under UDO Article 30-7, and that showing has not been made.
4. The City's Housing and Code Enforcement records document repeated periods in which the property stood vacant, boarded, or otherwise not in active commercial operation, including a 2022 case describing the property as "unoccupied" and overgrown, and a boarded-building case opened in February 2024 that remained open as of the most recent record, with window and door openings still boarded as late as March 2024.
5. City staff anticipates that Jason Everage, the City's Chief Building Official within the Permitting and Inspections Division and the official who made the permit revocation decision under

N.C.G.S. § 160D-405(e), will testify regarding the basis for revocation, including the determination that the property does not retain a protected nonconforming use under UDO Article 30-7.

6. Mr. Everage's testimony will be corroborated by Derek Planter, the City's Code Enforcement Supervisor and the staff member responsible for the property's compliance file, who will testify to the enforcement history of the site firsthand, including his direct involvement in the 2024 boarded-building case and the 2025 code enforcement case documenting work performed at the property without the required permits. Together, their testimony is expected to confirm that these matters reflect a pattern of vacancy, disrepair, and unpermitted activity inconsistent with the continuous, active Adult Establishment operation the Appellant must show to preserve nonconforming-use status.

7. Absent competent evidence of continuous, active nonconforming use, the Commission should not disturb the City's determination that the underlying use is not entitled to protection under Article 30-7.

8. The dangerous-building order provides further relevant evidence on this point. The property has been subject to a dangerous-building order since February 13, 2026, which found that conditions existed constituting a fire, health, and/or safety hazard rendering the building dangerous to life, health, and other property, with defects identified in windows, platforms/steps, roof covering, stairs, walls and floors, and protective coatings. That order is not itself the decision under appeal, but it is relevant evidence that the property was not operating as an uninterrupted, active lawful Adult Establishment during the relevant period, further undermining the claimed nonconforming-use status.

Permits Issued in Error May Be Revoked

9. North Carolina law expressly authorizes revocation of permits issued in violation of applicable law. Pursuant to N.C.G.S. § 160D-1115, "[a]ny building permit mistakenly issued in violation of an applicable State or local law may . . . be revoked." This statutory authority exists precisely to allow municipalities to correct permitting errors when, as here, a permit is issued for a use that the governing land development regulations prohibit.

10. That is what occurred here. The Original Permits were issued on April 8, 2026, in apparent error—without identification of the zoning conflict that rendered the proposed Adult Establishment use impermissible. Upon discovery of the conflict, the City acted promptly: the permits were revoked the following day, April 9, 2026.

11. Because the underlying Adult Establishment use is prohibited under UDO Table 30-4.A.2, as set out above, permits authorizing trade work in furtherance of that use were properly subject to

revocation under § 160D-1115 notwithstanding their initial issuance. The City’s prompt corrective action was not only authorized by statute but consistent with its duty to ensure that permits conform to the applicable land development regulations.

The City Is Not Estopped by the Dangerous Building Order

12. The administrative record establishes that the applications for the Original Permits were submitted in October 2025 — nearly four months before the City issued the February 13, 2026 dangerous-building order. Thus, the Appellant’s estoppel argument fails on its facts.

13. Because the permit applications predate the order by a substantial margin, the Appellant’s assertion that the trade work authorized by the permits was “initiated directly to comply with” the dangerous-building order cannot be correct. An owner cannot have applied for permits in order to satisfy an administrative mandate that did not yet exist.

14. The order is, and has always been, use-neutral: it directed structural remediation for public-safety reasons and left undisturbed the City’s separate authority — exercised through a different division — to determine whether any resulting use complies with the UDO.

The June 1 Permit Re-Issuance Was a Lawful Correction, Not Bad-Faith “Phantom Permits”

15. The Appellant characterizes the June 1, 2026 permit entries (BLDG-2026-00526, ELEC-2026-00933, MECH-2026-07673, and PLMB-2026-00549)—issued and revoked within minutes of one another—as “Phantom Permits” created in bad faith to moot the original permits and strip the Appellant of the statutory stay secured by the April 16 appeal. The record does not support that characterization.

16. The City vacated and re-issued the April 9 revocation notices solely to cure statutory notice deficiencies identified in the prior notices; the grounds for revocation remained unchanged, and the portal entries for the June 1 permits reference the original permits as source/copy.

17. City staff anticipates that Mr. Everage will testify regarding the operation of the permitting portal and confirm that the June 1 entries were system-generated corrective entries tied to the original permit records, not a new or independent development approval, and that the Appellant neither applied for, paid for, nor was charged any fee in connection with those entries.

18. City counsel expressly acknowledged the Appellant’s omnibus appeal, agreed that it superseded the prior appeal, waived the appeal fee, and confirmed the statutory stay under N.C.G.S. § 160D-405(f) applies. These are not the actions of a party attempting to manufacture an administrative fiction to avoid review.

19. The relevant question for the Commission is not whether the permitting portal generated new numerical identifiers when the City corrected a notice defect, but whether the substantive basis for revocation set out in Section 1 above is supported by the record.

20. Because the grounds for revocation were consistent throughout and the City has not disputed the effectiveness of the Appellant's appeal, the Commission should evaluate the revocation on its merits and should not reverse it based on the Appellant's "Phantom Permits" characterization of the June 1 corrective notices.

Conclusion

21. For the reasons stated above, the Appellant has not shown a clear and demonstrable error, abuse of discretion, or denial of procedural due process in the City's revocation decision.

22. The City respectfully requests that the Zoning Commission deny the appeal and affirm the revocation of permits BLDG-2026-00350, ELEC-2026-00552, MECH-2026-07334, and PLMB-2026-00378, together with the June 1, 2026 corrective re-issuance of those revocations.