



**TOWN  
OF  
Edinburgh**

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**Building & Zoning Department Staff Report**

**To:** BOARD OF ZONING APPEALS MEMBERS  
**From:** Nick Valenzuela, Building Commissioner  
**Date:** October 27, 2017  
**Re:** Case No. ZB-2017-02-UV / Case No. ZB-2017-03-UV

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**GENERAL INFORMATION:**

**Applicant:** Commonwealth Development Corporation of America  
9 Sheboygan Street  
Fond du Lac, WI 54935  
<https://www.commonwealthco.net/>

**Owners:** Fletcher Investments  
P.O. Box 186  
Flat Rock, IN 47234-0186

Fletcher Investments, Inc.  
P.O. Box 186  
Flat Rock, IN 47234-0186

James S. Fletcher  
P.O. Box 186  
Flat Rock, IN 47234-0186

The Town of Edinburgh  
107 South Holland Street  
Edinburgh, IN 46124-1411

**Property Addresses:** 804 Toner Street  
Edinburgh, IN 46124

13 Bachelor Street  
Edinburgh, IN 46124

Harrell Drive [unaddressed]  
Edinburgh, IN 46124

East Main Cross Street [unaddressed]  
Edinburgh, IN 46124

Parcel Numbers: 41-12-34-011-054.000-002  
41-12-34-011-053.000-002  
41-12-34-014-066.001-002  
41-12-34-014-066.003-002

Legal Descriptions: NE S34 T11 R5  
E NE S34 T11 R5  
NW S34 T11 R5  
NE S34 T11 R5

Acreage: 0.9000 acres (39,204 square feet)  
2.2500 acres (98,010 square feet)  
0.2459 acres (10,711 square feet)  
2.2300 acres (97,139 square feet)

Zoning: R-4 "Medium Density" (residential)

Land Use: Vacant Land

(13 Bachelor Street: residential two-family designation with Johnson County)

FEMA Flood Plain: None of the subject properties exist in a Federal Emergency Management Agency designated Special Flood Hazard Area

SURROUNDING ZONING:

SURROUNDING LAND USE:

North:	R-4 (red)	Medium Density (single-family residential)
South:	R-4 (red)	Medium Density (single-family residential)
East:	R-4 (red)	Medium Density (public school)
West:	R-4 (red)	Medium Density (single-family residential)



## PETITIONER'S REQUEST

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**Commonwealth Development Corporation of America** (the "**Petitioner**") is requesting a Use Variance from certain requirements of the Zoning Ordinance of the Town of Edinburgh ("Zoning Ordinance") from the Town of Edinburgh ("Town") Board of Zoning Appeals ("BZA").

Specifically, the Petitioner asks for a Use Variance under §156.252 of the Zoning Ordinance to permit new construction of multifamily dwellings across four (4) parcels zoned R-4, or "Medium Density" [Residential]. R-4 zoning does not currently permit multifamily dwellings, only single-family and two-family dwellings.

The Petitioner has submitted a Preliminary Site Plan for development of twenty-six (26) townhouse-style rental units, including the incorporation of six (6) existing townhouse units at the site; and, twenty-six (26) apartment-style rental units, using all four (4) parcels. The Petitioner stated that it is applying for a grant to make the entire development a Low Income Housing Tax Credit ("LIHTC") property, including with plans for a lease-purchase option for the townhouse units.





ZB-2017-02-UV is for BZA determination on three (3) parcels with the same private ownership interest (Fletcher Investments, Fletcher Investments, Inc., & James S. Fletcher).

ZB-2017-03-UV is for BZA determination on one (1) Town of Edinburgh municipal-owned parcel.

## DOCUMENTATION REQUIREMENTS, LEGAL & PUBLIC NOTIFICATIONS

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The Petitioner has satisfied all documentation requirements, and legal and public notifications, specified in the Town's BZA *Application for Variance/Special Exception* adopted on January 4, 2017.

## PURPOSE OF STANDARDS

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According to the Zoning Ordinance, Division 2: District Regulations, §156.029: *Residential Districts*:

*"Districts designated for residential use . . . [including] 'R-4,' are limited to dwellings and public and semi-public uses which are normally associated with residential neighborhoods. The only uses permitted in the residential districts are those which would not detract from the residential character of the neighborhood. The purpose of these . . . districts is to create an attractive, stable, and orderly residential environment. However, the density standards, dwelling types and the lot and yard requirements are different in the each of the six districts to provide for the various housing needs and desires for citizens."*

According to the Zoning Ordinance, *Table 1: Permitted Uses & Special Exceptions* states that multifamily dwellings are permitted in zones R-5 ("Medium Density Residence") and R-6 ("High Density Single, Two, & Multi Family Dwelling Residence"); and, in zone LB ("Local Business"), the latter under Special Exception review by the BZA only.

According to the Town's *Comprehensive Plan*, adopted in 2011 and amended in 2016 by the Town Council,

*"Community Outreach Summary of Issues & Opportunities: Top Community Issues*

*Additional Residential Development: Participants desire residential growth. In particular, affordable and 'middle-class' housing was mentioned.*

*"Goals & Objectives: Residential Areas*

*Goal: Enhance the Town's desirability as a place to live by improving the quality, character, safety and appeal of existing neighborhoods, and by providing high quality, diverse housing stock through the approval of new residential development and preservation and rehabilitation of existing affordable housing.*

*Objective 10: Support the use of Rental Housing Tax Credits to preserve and rehabilitate the Town's existing affordable housing developments, such as Edinburgh Country Place Apartments.*

"Land Use Policies & Recommendations: Residential

*The Town should support efforts to rehabilitate and preserve existing affordable housing rental stock, including Country Place Apartments. The Town should support efforts by owners and developers to utilize private equity, financial institution loans, state and federal government grants and loans, state and federal rental subsidies, the Rental Housing Tax Credit Program, and other available resources at the earliest available opportunity to ensure long-term affordability and up-to-date design and sustainability of these properties, with a goal of having the affordable housing stock maintained and regularly improved, redeveloped, and renovated. To this end, a housing preservation target area [is] included in Appendix B of the Comprehensive Plan [the current Country Place Apartments] to facilitate the rehabilitation of the targeted property by 2019.*

"Appendix A: Housing Market Implications

*Although owner-occupied, multi-family housing is not typical within Edinburgh, growth among both young professional and empty nester households with higher incomes indicate support for this type of product in the future. Condominiums, rowhomes and townhomes are attractive housing options to first-time home buyers looking for a more affordable means of building equity, empty nester households looking to downsize and those individuals who want to own their own home without the maintenance responsibilities."*

## **CASE HISTORY**

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The Petitioner submitted signed Affidavit & Consent of Property Owner for use of the four (4) subject property parcels as part of the BZA Application in October 2017. The Petitioner has stated that it plans to apply for a LIHTC grant from the Indiana Housing & Community Development Authority ("IHCD"). The Petitioner has stated that in order to develop the site as indicated in the Preliminary Site Plan, such grant would need to be awarded by IHCD to the Petitioner. The Petitioner has indicated that it will apply for a LIHTC grant under the next IHCD round, which has a deadline of July 2018.

On October 23, 2017, the Town Council voted to approve Resolution 2017-8 conveying real property 41-12-34-014-066.003-002 [unaddressed East Main Cross Street] to the Town Redevelopment Commission in order for the Commission to develop economic gain for the Town.

## **CONSIDERATIONS**

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The Low-Income Housing Tax Credit (LIHTC) is the federal government's primary program for encouraging the investment of private equity in the development of affordable rental housing for low-income households. The LIHTC program provides tax incentives to encourage individual and corporate investors to invest in the development, acquisition, and rehabilitation of affordable rental housing. The LIHTC is an indirect federal subsidy that finances low-income housing. This allows investors to claim tax credits on their federal income

tax returns. The tax credit is calculated as a percentage of costs incurred in developing the affordable housing property, and is claimed annually over a 10-year period.

The Indiana Housing & Community Development Authority ("IHCDA"), the state government housing finance agency, is the contract administrator for LIHTC properties in Indiana. The Petitioner has stated that IHCDA would conduct regular audits for compliance with United States Department of the Treasury statutes and structural site inspections of the premises.

If a Use Variance is approved by the BZA, the Town's Redevelopment Commission, the Town's Plan Commission, the Town's Building & Zoning Department, and the Johnson County Drainage Board will be required to review site development plans for consistency with the Zoning Ordinance and other applicable statutes.

Town staff has not had a similar Use Variance request within the past several years. The last multifamily dwelling development within the Town of a substantially-equivalent size was Newbury Pointe, which had a Use Variance granted by the BZA for senior housing only.

The Zoning Ordinance, in Division 9: Board of Zoning Appeals, §156.252: *Variances*, states that in approving variances, the BZA may attach such conditions to the variances as it deems necessary to assure compliance with the purpose of the Zoning Ordinance. An application for Use Variance is required to demonstrate that:

- 1) *The approval will not be injurious to the public health, safety, and general welfare of the community;*
- 2) *The use and value of the area adjacent to the property included in the variance shall not be affected in a substantially adverse manner;*
- 3) *The need for the variance arises from some condition peculiar to the property involved.*
- 4) *The strict application of the terms of the zoning code will constitute an unnecessary hardship if applied to the property for which the variance is sought;*

*and,*

- 5) *The approval does not interfere substantially with the master plan.*

In addition, the Zoning Ordinance states that the BZA shall make written findings of the fact that all of the requirements of Division have been met by the applicant for a variance. The Board shall make a written finding of fact that the granting of the variance will be "in harmony with the general spirit, purpose, and intent" of the above chapter, and in the interest of determining "that substantial justice is done."

Prior to this current BZA hearing and by the date of this Staff Report, the Town's Building & Zoning Department received one (1) written public comment in support of a LIHTC and/or low-income housing for Johnson County in the Town. Eight (8) separate parties made telephonic/in-person inquiries to the Building & Zoning Department about the nature of the Use Variance requested by the Petitioner prior to the hearing.

## CRITERIA FOR DECISIONS:

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**(\*\*The petitioner should address the Criteria for Decisions in their presentation\*\*)** In taking action on all variance requests, the BZA shall use the following decision criteria, consistent with the requirements of the Indiana Code. The BZA may impose reasonable conditions as a part of its approval. The BZA may grant a Use Variance from the Zoning Ordinance if, after a public hearing, it makes findings of facts in writing (consistent with IC 36-7-4-918.4) that:

1. **General Welfare: *The approval will not be injurious to the public health, safety, morals, and general welfare of the community.***

### **STAFF FINDINGS:**

There is substantial evidence that BZA approval of this Use Variance **will not** be injurious to the public health, safety, morals, or general welfare. There is no evidence that the Petitioner has a record of significant development or property management troubles with any of its similar communities. There is also evidence that LIHTC communities are audited by local, state, and federal regulators to ensure compliance with programmatic requirements which include health, safety, morals, and welfare for a community's residents, visitors, and public at large.

2. **Adjacent Property: *The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.***

### **STAFF FINDINGS:**

There is evidence that adjacent properties to the subject properties **will not** be affected in a substantially-adverse manner. Some major studies have verified the likelihood that neighboring property values are not negatively impacted by multifamily dwelling and/or LIHTC communities, and can enhance a neighboring property's value with professional development and a reduction of taxes for all through increased tax base (for more residents in the area, for more minor children entering the school system, etc.).

3. **Peculiar Condition: *The need for the variance arises from some condition peculiar to the property involved.***

### **STAFF FINDINGS:**

Collectively, the parcels could host a multifamily dwelling community of a size proposed by the Petitioner in the Preliminary Site Plan. Such a development would utilize the unfinished multifamily dwelling site development that currently exists at 13 Bachelor Street (i.e., Brown Street / parcel no. 41-12-34-011-053.000-002) and has been left incomplete for approximately ten (10) years, to date.

4. **Strict Application: *The strict application of the terms of the zoning code will constitute an unnecessary hardship if applied to the property for which the variance is sought.***

### **STAFF FINDINGS:**

A strict application of the ordinance **will** result in an unnecessary hardship if applied to the property for which the variance is sought. (The petitioner should explain how the strict application of these ordinances results in a practical difficulty in the use of the property.)



5. **Comprehensive Plan:** *The approval does not interfere substantially with the comprehensive plan.*

**STAFF FINDINGS:**

A Use Variance approval would be significantly-consistent with the Town's Comprehensive Plan, based on community input and Town regulatory board approval, for the development of affordable housing. There has been no large-scale, non-senior affordable housing development within the Town for several years.

**STAFF RECOMMENDATIONS**

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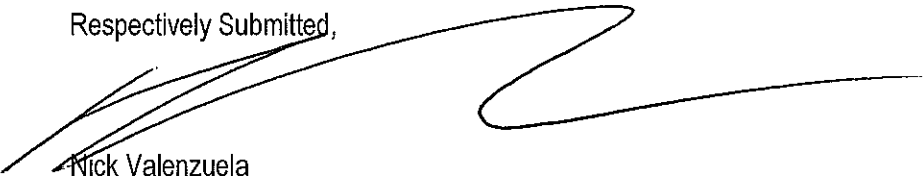
Based on the Petitioner's Request; and, the Purpose of Standards, Case History, Considerations, and Town staff analysis incorporated herein, Building & Zoning Department staff recommends **APPROVAL** of the petition in ZB-2017-02-UV.

Based on the Petitioner's Request; and, the Purpose of Standards, Case History, Considerations, and Town staff analysis herein, Building & Zoning Department staff recommends **APPROVAL** of the petition in ZB-2017-03-UV.

Building & Zoning Department staff recommends that the BZA impose the following conditions on the Petitioner specific to approval of the Use Variance:

1. That this decision is only granted to the Petitioner and its affiliates, and the Use Variance not transferable to any other property owner, association, or company not directly associated with the Petitioner;
2. That this decision is null and void should the Petitioner fail to acquire ownership of the subject parcels within two (2) years of the date of the BZA Findings of Fact; and,
3. That this decision is null and void should the Petitioner fail to receive applicable approvals from all appropriate local, county, and state authorities related to site development for the subject project.

Respectively Submitted,



Nick Valenzuela  
Building Commissioner  
Building & Zoning Department

Notes

*If a Board of Zoning Appeals member has received any relevant information to this proceeding outside of the meeting, they should consider disclosure of such at the beginning of the hearing: i.e. potential ex parte contact (required under Indiana law for BZA members)*