
As a result of comments made at the Commission meeting, staff identified several possible additional conditions for Council consideration:

- The hours of parking lot operation shall be between 7:00 a.m. and 9:00 p.m., seven days a week (lights off during non-operating hours).
- Edging material to protect the landscaping and the driveway edge shall be specified by the applicant and, after approval by the City, shall be installed by the applicant.
- Preparation of the subgrade for the gravel parking lot shall be as substantial as that provided in City specifications and standards for paved lots.
- Maintenance of the gravel parking lot shall be consistent with a plan developed by the applicant and acceptable to the City Engineer.
- The applicant shall dedicate an easement over the northeast portion of the site to allow the installation of a gateway monument or other feature to be designed by the City with input from the applicant, the neighborhood and the Historic Resources Commission; the applicant shall not be responsible for the construction, installation or maintenance of the gateway feature except to the degree desired by the applicant in his/her sole discretion.
- If consistent with applicable traffic engineering standards, and if otherwise acceptable to the City (following the traffic study), a median shall be constructed on Edwin Place to eliminate left turning traffic exiting the parking lot; the median is to be constructed at the applicants' expense.
- A pedestrian walkway shall be constructed through the parking lot to provide an alternative access point to the sidewalk in addition to the paved driveway apron.

-11-

Based on information available to the Planning and Development Department in advance of this public hearing, staff recommends that the City Council issue the CUP for an ancillary use (parking lot) to be located at 246 Charlotte Street with the following conditions:

1. Submittal of grading and stormwater management plans (must be submitted prior to issuance of any grading or construction permits).
2. Driveway permit must be approved for each proposed driveway (to be obtained prior to construction of driveways).
3. The hours of parking lot operation shall be between 7:00 a.m. and 9:00 p.m., seven days a week (lights off during non-operating hours).
4. Edging material to protect the landscaping and the driveway edge shall be specified by the applicant and, after approval by the City, shall be installed by the applicant.
5. Preparation of the subgrade for the gravel parking lot shall be as substantial as that provided in City specifications and standards for paved lots.
6. Maintenance of the gravel parking lot shall be consistent with a plan developed by the applicant and acceptable to the City Engineer.
7. The applicant shall dedicate an easement over the northeast portion of the site to allow the installation of a gateway monument or other feature to be designed by the City with input from the applicant, the neighborhood and the Historic Resources Commission; the applicant shall not be responsible for the

- construction, installation or maintenance of the gateway feature except to the degree desired by the applicant in his/her sole discretion.
8. If consistent with applicable traffic engineering standards, and if otherwise acceptable to the City (following the traffic study), a median shall be constructed on Edwin Place to eliminate left turning traffic exiting the parking lot; the median is to be constructed at the applicants' expense.
 9. A pedestrian walkway shall be constructed through the parking lot to provide an alternative access point to the sidewalk in addition to the paved driveway apron.

Vice-Mayor Cloninger asked if the Charlotte Street traffic study would have the potential for coming up with alternative means of improving the parking situation for this building. Mr. Green said that even though the study was not originally designed to address this issue, City staff has asked the consultants to focus on this area and to study the parking lot and it's access points as part of the study. One of the items addressed in the plan will be a need to look at the traffic flow on Charlotte Street with an assessment on whether reducing the number of lanes, creating on-street parking, or other traffic calming measures would be appropriate.

Upon inquiry of Councilwoman Bellamy, Mr. Green explained where the current on-street parking (City Exhibit 7) exits around the building. In addition, Edwin Place allows on-street parking.

Councilwoman Bellamy asked how the parking lot would alleviate on-street parking. (City Exhibit 9) Mr. Green said that the most direct manner in which the parking lot would help the on-street parking problem is by providing alternative spaces for people loading and unloading children and instruments. Currently that is done on the street, but if the parking lot were constructed, they could park in the parking lot to load and unload.

Councilwoman Bellamy stated that from personal experience, she has witnessed people parking on Edwin Street all the way up to the stop sign on Charlotte Street. She asked how that would be addressed if the right-turn out exit was constructed on Edwin Street. Mr. Green said that the City would install a "No Parking Here to Corner" sign to eliminate people from parking in the area from the exit on Edwin Street up to Charlotte Street.

Upon inquiry of Councilwoman Bellamy, Mr. Green explained the sidewalk design on Edwin Street (City Exhibit 10) with the right-turn out exit design.

-12-

When Mayor Sitnick asked about a tree recently cut down on Edwin Street in the proximity vicinity of the proposed right- turn out exit, Mr. Green responded that the City's Arborist examined the tree, found it was not healthy and had the Public Works Department cut the tree down. He said that the tree was cut down before the applicants submitted their application for a CUP.

With regard to site distance with the current trees and new trees on Edwin Street, Mr. Green said that the two existing trees are mature trees and their crown is up high enough that it does not pose a site distance problem.

Councilman Hay noted that in the Charlotte Street Corridor Plan (Plan) (City Exhibit 6) this intersection is identified as a gateway. Mr. Green said that "gateway" is used in that Plan and several other small area plans to denote the entrance to neighborhood or the entrance to a certain commercial district. As an attempt to acknowledge that as an entrance to the Grove Park neighborhood, one of the conditions staff has recommended is that the applicant dedicate a corner for some appropriate gateway identification.

Councilman Hay said that the Plan states that the transition at Edwin Place and Charlotte Street "clearly transitions into a predominantly residential area. This transition should be articulated by creating landscaped

medians on Edwin Place and Charlotte Street. The creation of medians would also serve to better channelize traffic at this location." He wondered if it is a specific part of the Plan that there be landscaped medians on Edwin Place and Charlotte Street. Mr. Green said that will be studied more closely as part of the traffic study that has just been initiated to determine if those would increase safety, where they should be located, the size, etc. This new traffic study will have to confirm that the medians will not create a less safe environment by putting the medians in. If the study indicates that the medians will impede the traffic flow, the Plan would have to be amended.

City Attorney Oast reminded Council that they are required to make its decision on the basis of the information that they receive at this public hearing. If a Council member has any special knowledge outside the context of this public hearing, other than visiting the site, they should divulge that at this time. All Council members stated that they had visited the site, and have received numerous faxes, e-mails and letters. Mayor Sitnick noted that she has recently moved out of the area which she lived for 16 years and is very familiar with the property in question. Councilwoman Field said that she attended a social in which Mrs. Reiser was attending also, however, they were careful not to talk about the proposed CUP.

Councilwoman Bellamy said that she received several phone calls regarding the Commission vote. One of the Commission members said they would not vote because they had a conflict. However, that Commission member did end up voting and created the tie vote. Some residents in the community felt that was not fair. City Attorney Oast responded that he did not hear anyone mention that they would not vote because of a conflict. One Commission member did appear at the TRC meeting and expressed some concern, but in his opinion, that did not disqualify that Commission member from participating in the discussion at the Commission's meeting.

Mr. Clay Mooney, landscape architect with Design Associates in Asheville representing the Reisers on this project, said that they are requesting a CUP to allow an 11 space gravel surface parking lot on a residentially zoned lot at the corner of Charlotte Street and Edwin Place. The property is just outside the Charlotte Street Transition Overlay District, they feel that the proposed parking lot will address, in a positive way, some of the goals of the Charlotte Street Corridor Plan (Plan). Shared parking which would serve multiple uses and users is encouraged in the Plan. The parking lot would serve mixed use neighborhood businesses which is another goal in the Plan. The parking lot would also be made available to other adjacent users, such as

-13-

the church which has a severe parking shortage. The plans for the parking lot also incorporate bicycle parking and other pedestrian amenities, e.g. benches, etc. The parking lot also provides a handicapped parking space and access to the building, which presently doesn't exist. From an appearance standpoint, you only have to look at the level of quality and detail that the Reisers have put into the renovation of their building to see the degree of importance that they put on aesthetics. He presented a before and after photograph of the building. (Applicant Exhibit 1) The construction of the parking lot will be no different. The parking lot will be buffered from the adjacent property owner by a 20-foot wide buffer strip, as required by the UDO, and a 10-foot planting strip between the parking lot and Charlotte Street and Edwin Place also required by the UDO and recommended by the Plan. A minimum of 82 trees and shrubs will be installed to meet these buffering, screening and vehicular use area requirements. There are existing plant materials, trees and shrubs within the buffer area which will remain. He presented into evidence 14 site photographs which show the existing plant materials (Applicant Exhibit 2). The quantities of plant material shown for the buffer area were calculated as if no plants existed there. The UDO allows for a reduction in buffer planting if existing vegetation is preserved within the buffer area. To maximize the buffering and visual separation between the parking lot and the neighbors, they have chosen not to take advantage of this option. In effect the buffer plantings significantly exceeds the requirements of the UDO. The plant materials specified are in keeping with the quality and character of the neighborhood. The six large trees which will be removed for this project are black locust. Black locust trees are not listed in the existing City of Asheville Recommended Plant

Material List, nor are they listed on the draft copy of the new expanded Recommended Plant Material List. The proposed hours of operation are from 7:00 a.m. to 9:00 p.m. Lighting for the parking lot will be approximately four feet in height. This is in an effort to minimize lighting on the adjacent property owners and to provide a more pedestrian and residential feel in character. Surfacing for the parking lot is gravel with a handicapped parking space and asphalt aprons at the entrance and exit. This is being done, as called for in the Plan, to minimize both large areas of asphalt and storm runoff volume. The asphalt aprons were requested by the City Traffic Engineer to minimize travel from the parking lot, migrating to the sidewalks and to the street. With regard to traffic and parking issues, they feel that a parking lot itself does not generate traffic – they accommodate traffic from the businesses that occupy the building. In this case, the existing building dates back to the late 1920's. Of the businesses within the building, one has been there since 1975. The Music School, which utilizes the most square footage, has been there since 1996. The other three tenants are relatively new dating back to June and September of 2000. The building totals 7,900 square feet has 8 off-street parking spaces behind the building. There are 8 on-street public parallel parking spaces in front and beside the building on Charlotte and Lennox Street. There exists no handicapped parking. Across Charlotte Street is an unstriped, on-street parking area which is actually private property and intended for use by the adjacent businesses in the Manor office complex. However, it is used by everyone, including patrons to the Reisers' building and the Jewish Community Center. If a new building were to be constructed of the same square footage as the Reisers' building, within this same zoning district, it would be required by UDO standards, to have a minimum number of 19 off-street parking spaces. This figure includes a 25% reduction in the number of required spaces when the project is located within the CB-1 zoning district. No further provision is allowed within the UDO to reduce the required number of spaces, whether or not on-street parking exists. The proposed 11 parking spaces, plus the existing 8 parking spaces behind the building total 19 spaces – precisely the minimum number of spaces the UDO requires for a building this size. This proposed parking lot is intended to alleviate some of the existing need for parking along Charlotte Street and also provide a safer means to access the Reisers' building, instead of parallel parking or having to cross Charlotte Street. Pedestrian safety was an important issue and goal in the Plan and we feel that this parking lot will help that situation. The Reisers' have been accused of not compromising with opponents of this project. The compromises they have been offered were the purchase of the lot and free legal services for the dedication of the lot as a conservation easement. Neither compromise offer addressed the Reisers' need for additional parking spaces to support the businesses within the building. To the

-14-

contrary, the offered compromises were no parking area at all. Another discussed compromise was the installation of additional buffer plantings beside and behind the Van Buskirk residence, however, no further discussions regarding a specific request or amount was ever received from the Van Buskirks. During the preliminary design phase of the project, there were several compromises that the Reisers chose prior to the plans ever being submitted. The original number of parking spaces was 13, which was reduced to 11 in order to provide reduced impact to the site as well as provide better circulation. Gravel surfacing was chosen over asphalt to minimize visual and stormwater impacts to the area and available buffer credits were not utilized as they could have been. Another area of criticism for the project, particularly during the Planning & Zoning Commission meeting, was that the parking lot was designed to maximize this site and therefore out of scale with the surrounding area. The parking areas and sidewalks, as designed and submitted, utilized 32.2% of the 0.32 acre lot. In contrast, the amount of area required by the UDO for the 20-foot buffer and 10-foot wide planting strips along Charlotte Street and Edwin Place is 38.9% of the lot. Even portions of the remaining 17% of the lot received plantings to comply with requirements of the UDO. It is clear by these figures that the criticism regarding maximizing the site and the project being out of scale are unfounded. In summary, the key issues regarding the development of this parking lot are the zoning of this property will not change with the construction of this lot, it will remain an RS-4 zoned lot. In fact, the owners are willing to record a deed restriction that will limit the use of the property to residential use and/or the parking lot in perpetuity. The proposed parking spaces are needed to support the continued viability of mixed neighborhood-serving

businesses that will also be available for shared parking, both of which are important components of smart growth and the Plan. The parking lot would serve as an appropriate transition use between commercial and residential uses. The lot is designed to be as unobtrusive as possible, particularly with respect to paving, runoff, lighting and landscaping. The lot will have a minimal impact with respect to increased traffic. The traffic flow pattern for the lot, as well as the entrance and exit configurations, were determined by two consultation meetings with the City Traffic Engineer. The parking lot area will afford increase safety to patrons of these neighborhood businesses who will be able to park there and not have to parallel park or to cross Charlotte Street. This is particularly important to patrons of the Music School, many of which have to cross Charlotte Street with their children to access the building. The landscaping, particularly the buffer, exceeds the minimum requirements of the UDO. The area required for UDO buffer and landscape strips exceeds the area of the parking lot and the sidewalk for the project. They comply and meet all of the City of Asheville's conditional use standards. There is no building on Charlotte Street that compares with the Reisers' building from a construction quality and detailing standpoint. In fact, this is the first building renovation or new construction project on Charlotte Street since the adoption of the Plan. This is an opportunity to provide a small parking area which will be attractively landscaped, sensitively lit, be pedestrian and amenity friendly, and minimizes it's impact from paving and runoff. Most importantly, we feel it addresses and exemplifies many of the goals of the Plan to the degree that it can be looked upon as the benchmark for future development and renovation projects on Charlotte Street. They request that they concur with the findings of the TRC and the recommendation of Planning & Development staff for approval of this CUP request.

Upon inquiry of Councilman Worley, Mr. Mooney said that the heaviest times of day that would generate the highest use of the parking lot would be approximately 3:30 p.m. to 7:00 p.m.

When Councilwoman Field asked about the dirt compaction on the lot, Mr. Mooney said that there will be very little water seeping through it so that you don't really get the penetration for a pervious surface. Mr. Mooney said that a concern was raised that the parking lot would become a mud hole. He felt that issue is more addressed with maintenance than with construction. However, the quickest way to assure that it would not become a mud hole, aside from maintenance, would be to compact it, as we would if it was a paved lot. He said that he would be happy to design the parking lot to be as previous as it can be as an effort to alleviate that concern.

-15-

Councilman Peterson asked if the gully adjacent to the building could be filled in for access. Mr. Mooney said that was looked at briefly, however, there is a 48-inch culvert with flowing water at all times. There would be substantial cost and issues regarding the piping of that. There is also an existing 12-inch sanitary sewer line that runs adjacent to that which could be potentially impacted. He said the grade change between those two will facilitate the extent of grading to such a degree that the potential would exist for construction of retaining walls and it was felt that that would be a more obtrusive eyesore than the design as submitted.

The following individuals spoke in favor of the proposed parking lot for several reasons, some being, but are not limited to: the high quality of the Reisers' building they have renovated ensures that the design quality of the parking lot will also be of high quality; the proposed area now is a ditch and with landscaping the area, it will almost look like a park; this area, after designed, will be a beautiful landscaped parking lot; over the years this lot has collected trash; dog-owners let their dogs defecate on the lot; parents with children trying to cross Charlotte Street need a safe place to load and unload; the parking lot complies with all seven conditional use standards; the owners should be praised in their willingness to take an eyesore lot and make it a beautiful improvement to the neighborhood; the apartment parking lots in the area have not hurt any of the property values in the area as evidenced by the fact that tax values constantly go up; the development of this lot will not have a negative impact on property values; this is an ideal use of this property since there needs to be development of mixed uses; property has been scrutinized at least 6 times by the professional

City staff and it continues to be favorably approved by them; with no less than 15 parking lots on 4 streets within the area and none of them meeting the UDO standards, there has been no ill effect on property values because of those lots; people are concerned about the aesthetic value of the parking lot should realize that between 5 p.m. and 8:00 a.m. there is no less than 120 cars that are parked in the area on the streets and in front yards; the UDO standards are so good that the lot will be 250% better than the Manor across the street and at least 5 times better than all five parking lots surrounding this lot in the neighborhood; this will be the garden spot of the neighborhood; this parking lot will provide safety to children, elderly, handicapped and citizens of the community every day of the week; the Reisers have provided a sensitive solution without cost to anyone; parking is needed for that area; Reisers have been good custodians and caretakers of all their property; parking lot will be a beautiful gateway to the neighborhood; the parking lot will not create more traffic or contribute to it – but it will do the opposite; tenants and clientele of the Reisers' building need safe and accessible parking; the parking lot will take 11 cars off the street and will be safer for the students in the Music School; tenants of the Reisers' building have had to relocate due to parking problems; there is currently no handicapped parking; retail tenants in the Reiser building especially need to have adequate parking for their customers; some employees in the Reiser building currently have to park at the Jewish Community Center; this kind of renovation is something this community should support; the Neighborhood Association has not taken action to increase safety in the area by opposing the Grove Park Inn expansions or pursuing sidewalks, crosswalks, traffic signals, buried power lines, speed bumps, better law enforcement, meaningful traffic reduction, or any other improvement to the quality of life; and the Reisers could sell the property and who knows what could be built on that corner:

Mr. Chris Peterson, resident on Edwin Place

Ms. Dotty Stickney, area resident

Mr. Bob Long Jr., resident on Kimberly Avenue

Mr. Crawford Murphy, resident on Macon Avenue

Ms. Sherry Davis, speaking on behalf of elderly mother who lives in neighborhood

Mr. Bruce McTaggart, teacher at the Asheville Music School (Applicant Exhibit 3)

Ms. Anne Coombs, owner of the Asheville Music School

Dr. Thomas Burger, area resident

Ms. Norma Jean Snyder, owner Manor Gate Salon

Ms. Bee Seaburg, resident on Club Knoll Road and owner of The Gardeners Corner

-16-

Mr. Thurmond Williams, owner of an executive search firm that is a tenant of the Reisers
and area resident

City Attorney Oast reminded City Council that some of the information Council has heard is hearsay, is not competent evidence. He cautioned City Council to base their decision on information that is not hearsay evidence. Also, any consideration of who the owners are of the property should not be taken into account because the property can change hands and the fact that the Reisers currently own it will be irrelevant.

Ms. Wanda Adams, President of the Grove Park-Sunset Association (Neighborhood Exhibits 1 and 2),

requested a little more time than 10 minutes to address Council. Mayor Sitnick granted her request. Ms. Adams noted that the UDO states that City Council shall not approve a conditional use application unless all of the seven conditional use standards are met. If just one of the standards is not met, then City Council should not approve the conditional use application. This proposed parking lot does not meet six of the seven standards, therefore, City Council should not approve this request. The developer's plan does not meet Condition Nos. 1 or 7.

Ms. Adams said that with regard to Standard No. 7, the intersection of Charlotte Street and Edwin Place is already a congested corner where traffic backs up. The City's Traffic Engineer, Mr. Moule, provided her with a traffic count performed in 1999 at 105 Edwin Place (just down the street from the proposed curb-cut) noting that the peak traffic count was close to 10,000 cars per day. At this meeting she realized another traffic count has been performed showing 13,000 vehicles per day. This problem has not gotten better in the last two years. The parking lot plan has a one-way entrance from Charlotte Street and a one-way exit onto Edwin Place which would only add to this congestion and create a serious safety problem. The one-way exit onto Edwin Place is too close to the intersection not to cause safety problems. As noted in the minutes of the April 4, 2001, Planning & Zoning Commission (Commission) minutes, the City regulations require a distance of 40 feet from the tangent line of the intersection to the tangent line of the exit. However, the Planning staff has approved this plan with only 27.5 feet between those lines. After measuring these distances, the curb-cut is barely more than a car's length from the stop sign. Mr. Moule stated at the Commission meeting that he can grant variances to the City's traffic standards, however, Section 3.02 of the Asheville Standard Specification and Details Manual states "Driveways close to street intersections shall be at least 40 feet from the point of tangency of the radius curvature of the intersection street" and does not give the Traffic Engineer the right to vary this requirement. She questioned why this plan was approved by City staff if it did not meet City standards. She asked how can they feel assured that City staff has not disregarded other City regulations in approving this conditional use application. Also, if City staff did not require the developers to meet City requirements in this situation, how can they rely on them to enforce City regulations regarding the construction and future upkeep of this parking lot. To minimize the traffic hazard caused by the Edwin Place exit, the Engineering Department wants to limit use of this curb-cut for exit only and right-turn only. She feels that once the curb-cut is in place there is no guarantee that drivers will not disregard the sign and enter and exit as they please. The Police Department rarely enforces the existing signs posted along Edwin Place and Charlotte Street, such as the speed limit signs on Edwin Place or the "No Parking" and "No Thru Trucks" signs on Charlotte Street. She didn't feel they would enforce a right-turn only sign at this exit. Drivers will likely turn onto Edwin Place, spot the one-way exit from the parking lot and simply turn across traffic to enter the lot. She felt this curb-cut on Edwin will create a significant traffic hazard. For years residents along Kimberly Avenue and Edwin Place have asked the City to take steps to decrease the heavy traffic flow on these streets for the safety of their children and families. The current safety problems are not going to be corrected by putting 11 parking spaces on this residential lot. She felt that these safety problems could be corrected if Kimberly Avenue and Edwin Place were included in the City's traffic calming project, however, they were not.

-17-

Ms. Adams said that with regard to Standard No. 2, the developer's plan does not meet this standard as well. Additional parking is not needed because adequate parking already exists in this area. She drives the area frequently and has witnessed cars parked illegally on the vacant lot while there is plenty of available parking on Edwin Place. The developer and parents that are patrons of the music studio argue that it is dangerous for children to cross the street and that it is necessary to have the parking lot for their safety. It is not necessary for a child to cross a street at this location. All the parents have to do is to parallel park on Edwin Place, on the same side of the street as the commercial building, let the child get out of the car onto the sidewalk and simply walk a short distance to the music studio. The developers of this property overfilled the building with the apparent thought that the City would be sympathetic to this application and not force the use of the

available on-street parking. Their use of children's safety as an issue is pretty transparent. The developers are the only ones that have a vested interest in this property being developed as a commercial parking lot.

With regard to Condition No. 3, Ms. Adams stated that this condition has not been met. She felt that if a person is looking to buy a residential home in the Grove Park area, they are not going to buy a house that is next door to a commercial parking lot, unless they are able to get it at a lower price than other available homes in the area. If this conditional use is approved and the property is used as a commercial parking lot for several years, it will be much more likely that a future city council will be pressured to rezone this lot as commercial property. The neighborhood residents are very opposed to this potential commercial creep into the neighborhood. When the Reisers purchased this property and while they were doing renovations on their building and leasing spaces to businesses, they knew it was a split use property with the corner lot zoned residential. The use of the commercial building should have been limited to businesses that could be accommodated by the existing parking spaces. After talking with Ms. Reiser and asking her what use she had planned for the residential lot when she purchased it, Ms. Reiser stated "a parking lot" and that she never had any plans to use the lot as it was zoned at the time of purchase. Developers should not be allowed to buy, build and then plead to change the zoning because they want additional parking to increase the value of their property while decreasing the property value of the adjacent property owner.

Ms. Adams stated that the developer's plan does not meet Standard No. 4. The corner of Charlotte Street and Edwin Place is an entrance to the Grove Park residential neighborhood and Association members are concerned about commercial encroachment and the erosion of the character of the Grove Park area which is listed in the National Registry of Historic Property. The Van Buskirks (adjoining property owners at 2 Edwin Place) have done a wonderful job in restoring and maintaining the William James Jr. House which is listed in the United States Department of Interior's National Register of Historic Places. Not only will there be increased traffic congestion, noise and outdoor lighting next door to their home, but the impervious surface to be created by the gravel and hard surface parking area will likely create stormwater drainage on their property, which is downhill to the proposed parking lot. There are also concerns about increased water drainage into the existing tributary of Reed Creek which flows through a culvert prior to surfacing behind homes on Murdock Avenue. Since the developer of this property is a real estate broker and owner of Appalachian Realty, after improvements are made to the property, it can be sold at a nice profit. Who knows what the next owner would want to do with the property. This also opens the door for a future owner of 2 Edwin Place, who is not neighborhood friendly, to request that the lot be rezoned commercial because it is next to a commercial parking lot. The line that marks where commercial development ends and where the residential neighborhood begins in this area is the edge of this commercial lot. Once this line is breached, where will this commercial encroachment end?

Standard No. 5 has not been met, Ms. Adams stated. Nearly a year has passed since the Charlotte Street Overlay District was adopted by City Council. At that time, Mayor Sitnick had requested that the speed limit reduction and the traffic analysis be performed on Charlotte Street

-18-

as soon as possible. When Mr. Moule was asked about the progress on this, he stated that it would take at least another 60 days.

Ms. Adams summarized by stating that Council vote to protect the integrity of the neighborhood. More importantly, she requested Council vote for the safety of the children, senior citizens, residents of and visitors to their neighborhood as well as the thousands of people who walk and drive through this intersection on a daily basis by voting "no" to this application.

Ms. Adams entered into the record Neighborhood Exhibit 3, which is an e-mail regarding several inaccuracies in the minutes of the Planning & Zoning Commission meeting of April 4, 2001. She said the

minutes are not an accurate representation of the comments from the Commission meeting. Chief Planner Gerald Green responded that the Commission was aware and agreed to having the draft minutes forwarded to City Council for information for this meeting. City Attorney Oast stated that the timeframe of the Commission meeting and this meeting did not permit the Commission to approve the minutes prior to being forwarded to City Council. He also noted that only the Planning & Zoning Commission has the right to correct the minutes.

Mr. Roger James Jr., resident of Albemarle Park said that he was speaking on behalf of Albemarle Park/Manor Grounds neighborhood. Sixty people in his neighborhood have registered their strong opposition to this parking lot and four people were in favor of it. (Neighborhood Exhibit 4) They requested City Council to revisit the ancillary use process as a whole. When Mr. Shuford was asked if the conditional use process was a success, he responded that there have been several recorded success stories for the CUP, however, he indicated that there have been negative results from the ancillary use process. We have a serious question about a person's ability to buy a residential lot and use it for a commercial purpose. He said that six of the seven conditional use standards have not been met. Even if one of the standards have not been met, the City Council must deny the application. The burden rests upon the applicant to show that the application is in compliance with all seven standards. (Neighborhood Exhibit 5).

With regard to Condition No. 1, Mr. James said the parking lot will materially endanger public health and safety by way of increased traffic congestion and accidents, as well as materially endangering a highly traveled pedestrian area.

With regard to Condition No. 7, Mr. James said that the proposed lot will cause undue traffic congestion and create further traffic hazards in a location which already has such congestion and traffic hazards. (Neighborhood Exhibit 6) He explained how this parking lot is a traffic congestion issue (1) lining up of cars at three immediate points; (2) circling affect of cars going through the lot to find, or not find a place to park; (3) addition of two more arteries into an already congested area of 13,000 cars that has three bus stops in the immediate area; and (4) significant number of traffic accidents at this location.

With regard to Condition No. 2, Mr. James stated that Ms. Reiser has stated to him that the parking lot is for the tenants of her building, not for the community. With 38 people working in the Reisers' building, is it not reasonable to assume that the 11 spaces will be filled at the beginning of the day by tenants and employees, leaving no available spaces for customers or clients of the building? This is a temporary business decision on the part of the Reisers but a permanent decision for the neighborhoods.

With regard to Condition No. 3, Mr. James entered into the record Neighborhood Exhibit 7, which is a letter from Randy Guess, State Certified General Real Estate Appraiser, which in part read "I have made an inspection of the site, as well as the plans for the proposed parking lot should the variance be allowed. In my professional opinion, the development of a parking lot such as the proposed lot would have a negative impact on the market value of 2 Edwin Place. ... as to whether the damage to the market value of the property would be 'substantial' ... my

-19-

experience indicates that the very nature of the purchase of real estate dictates that any negative change in the market value of a property is substantial." There will be increased traffic, increased congestion, lights shining into the homes, and a number of other issues. Who will monitor the parking lot after 9:00 p.m.

With regard to Condition No. 4, Mr. James said there are no other parking lots on Edwin Place, therefore, it is not in keeping with the character, density or scale of the neighborhood.

With regard to Condition No. 5, Mr. James noted the City does have a comprehensive plan for this area – the

Charlotte Street Corridor Plan. Neighbors and business owners have spent years coming up with that Plan. The Plan (City Exhibit 6) called for no additional curb cuts; encouraged less dominance by the automobile; promoted pedestrian activity/circulation and alternative means of transportation; and preserving green space.

Mr. James said that two alternative solutions is the 24 spaces of available parking on Edwin Place and the alternative of a turn out for parents to drop off children in front of the building. With regard to the Reisers compromising, the neighborhood has met with the Reisers on three separate occasions. The neighborhood has proposed changing the direction of the lot, reducing the number of spaces, buying the lot under the agreement that the neighborhood would turn it over to the City to be preserved as a greenspace, and placing a conservation easement on the property which the neighborhood would pay for and maintain. Every suggestion made, the Reisers did not acknowledge.

In summary, Mr. James urged City Council to deny the CUP, to revisit the ancillary use process, and to vote in keeping with the Planning & Zoning Commission to deny the permit (Neighborhood Exhibit 8).

The following individuals spoke in opposition of the proposed parking lot for several reasons, some being, but are not limited to: in 1998 there were two accidents, in 1999 there were seven accidents and in 2000 there were five accidents at this intersection – national average at any one intersection on a residential street in the United States is .026 per year and the intersection of Charlotte Street and Edwin Place in 2000 had an accident rate over 192 times higher than the national average; the designated handicapped space will require the driver to back into the entrance way of the lot in order to turn and exit; there are two bus stops in the immediate area which will affect the flow of traffic and hinder visibility; ingress and egress create traffic congestion; the parking lot will constitute a threat to the integrity of the National Register Grove Park Historic District through commercial encroachment; the parking lot or any other commercial use of this site will not be in harmony with the historic or residential character of the Grove Park neighborhood as defined in the original plan, the City of Asheville and the U.S. Dept. of Interior, the parking lot does not conform with the Charlotte Street Corridor Plan in that the Plan calls for open space and encourages green areas or 'pocket parks' to be created in areas with limited development potential; the lot will destroy the only open space from Edwin Place to Charlotte Street which would eliminate a variable from the balance of uses called for in the Charlotte Street Corridor Plan; the Planning & Zoning Commission did not recommend approval of this CUP; parking lot would decrease residential and historical values; residents are still dealing with problems caused by the issuance of a CUP granted in August of 1999 in another area of the city; the Reisers' building resides already in an island of ample, safe and unrestricted parking; pedestrians and vehicular safety are enhanced because this green space is zoned residential and because commercial parking does not exist on this site; there are already 9 marked spaces behind the Reisers' building on Lennox Street, 3 spaces next to the building and 5 cut-out spaces in front of the building for a total of 17 spaces; on Edwin Place there is plenty of unused parking all week long; there is a total of 37 parking spaces within a 3 minute walk to the Reisers' building, without crossing a street; pedestrians could face the possible hazard of a vehicle suddenly existing from a heavily landscaped curb-cut or a vehicle blocking the walkway

-20-

during peak hours when traffic is backed up at the nearby stop sign; City should mark spaces on Edwin Place to show that ample parking is available; proposal conflicts with Charlotte Street Corridor Plan on many points and endangers public safety; curb-cuts are hazards and the curb-cuts from Charlotte Street to Edwin Place represent 30% of the distance from those two streets; the parking lot does not comply with the Charlotte Street Corridor Plan in that the Plan calls for the improvement of safety for all modes of transportation to less dominance of the automobile and promote pedestrian activity and circulation; if the CUP is granted, the corner will be permanently changed; a parking lot with all its negative effects for does not improve the appearance of Charlotte Street as another parking lot is not unique; once a parking lot is established and the use of the land is clearly commercial, the likelihood that the land will become residential again is remote; the gateway transition called for in the Plan will be destroyed by the encroachment of the

clear commercial use of the property; this parking lot conflicts with City's adopted Smart Growth Policy which outlines taking a sustainable approach to development; there will be a loss of 4 on-street parking spaces on Edwin Street; there will be a loss of open space, trees, safe pedestrian pathway, as well as more attractive potential for in-fill housing development compatible to the surrounding neighborhood; the commercial parking lot is inconsistent with the goals of the City's Smart Growth Policy, the 2010 Plan, and the Consolidated Housing Plan; the exit and entrances on the proposed lot will be potentially blocked by on-street parked cars; graphic of trees circulated by the applicant on the parking lot misrepresents the true height at installation; there is a true value to mature trees; loss of trees will increase pollution, increase noise, potentially create a heat island in this area until the canopy of trees can reestablish itself to the maturity at that site; there is no active enforcement of zoning in the City of Asheville so there is an undue hardship on taxpayers to have the ordinance enforced; the area church is currently accommodated by on-street parking and the addition of 11 spaces will not substantially alter that need; since Charlotte Street is a major thoroughfare, if you put left-turn traffic against on-coming traffic then there will be more traffic congestion; need for cross-walks at that intersection; Reisers knew when they purchased the lot that it was zoned residential; the left turn into the Manor entrance from Charlotte Street and the left hand turn into the proposed parking lot from Charlotte Street would be too close to each other, if not directly at the same spot, causing a dangerous traffic bottleneck in both directions; there will be a loss of 4 spaces to gain 11 spaces; traffic study needs to be done before this issue is voted on by Council; who will enforce the non-use of the parking lot after 9:00 p.m.; the parking lot's 11 spaces will create confusion; one of the conditions suggested by staff for a deed restriction is unenforceable by the City; look to the Charlotte Street Corridor Plan and the Smart Growth Policies for other possible solutions to the Reisers' parking problems; reduce the four lanes on Charlotte Street to three lanes and put in a turning lane to allow more parking on Charlotte Street or a bicycle lane; need to cultivate residential uses in the City; traditional neighborhood development patterns should be recognized and encouraged as outlined in the City's Smart Growth Policies; we must recognize alternatives to development that protect private property rights as stated in the City's Smart Growth Policies; the adjoining property owner may not be able to obtain adequate home equity financing due to decreased valuation of home; parking lot will increase dirt, dust, noise, car lights and parking lot trash; there will be water run-off problems and erosion of gravel onto adjacent property; as gravel sinks into the ground the parking lot may turn into a mud hole; constant flow of traffic from parking lot onto Edwin Place will make those exiting rely on the kindness of other motorists to let them onto Edwin Place; Ms. Reiser stated that the proposed lot would be for the use of her tenants so how would that benefit the music students and other clients of the Reisers' building; possibility of turning the parking in front of the building to a 5-minute loading zone for dropping off students; the lot should be left alone until a more fitting use can be found for it; tenants chose to lease in the Reisers' building despite the parking situation; tenants of the Reisers' building have chosen not to share the parking behind the building with their customers, there is no place for parents to unload or load their children behind the building, nor is there a handicapped parking space behind that building; and Section 7.2.5 states that the parking lot can only be used for staff and customers – not for the church parking:

-21-

Ms. Eileen Warshaw, former construction manager for a City who administered a multi-million dollar project for street calming, traffic study and directional traffic flow (Neighborhood Exhibits 9 and 10) - noted she was not given ample opportunity to present information other than reading it in Neighborhood Exhibit 10.

Ms. Barbara Hodgson, area resident (Neighborhood Exhibits 11 and 12)

Ms. Jeanne' H. Warner, resident of Albemarle Park (Neighborhood Exhibit 13) – also

read letter from Ms. Claire Payne (Neighborhood Exhibit 14)

Mr. Scott Riviere, area resident (Neighborhood Exhibits 15 and 16)

Mr. Mike Ward, Albemarle Park resident (Neighborhood Exhibits 17 and 18)

Ms. Juanita Landolfi, area resident (Neighborhood Exhibit 19)

Ms. Jane Mathews, Albemarle Park resident (Neighborhood Exhibit 20) – also presented letter from Esther and Leonard Pardue (Neighborhood Exhibit 21)

Mr. Mike Lewis, resident on Gracelyn Road

Mr. Phil Freeman, area resident (Neighborhood Exhibit 22)

Ms. Laurel Eide, South Asheville resident

Mr. Doug Michaels, area resident

Ms. Maggie Rotman, area resident

Mr. Bill Wescott, area resident

Ms. Mary Lois Kirby, Macon Avenue resident

Mr. Henry Kirby, Macon Avenue resident (Neighborhood Exhibit 23)

Mr. Charles Van Buskirk, adjacent property owner to proposed parking lot on Edwin Place (Neighborhood Exhibit 24)

Ms. Barbara Van Buskirk, adjacent property owner to proposed parking lot on Edwin Place

Mr. Joe Adams, resident on Lawrence Place – Objected to time limitations (Neighborhood Exhibit 25)

City Attorney Oast then explained the rebuttal process.

Mr. Clay Mooney responded to the following issues: (1) curb-cut issue on Edwin Place and the distance from the tangent point from the radius. Originally that design was 40 feet. Following the TRC meeting and a meeting with the City's Traffic Engineer, it was determined that to improve the desired circulation path and pattern and working of that exit, that by increasing that interior radius, that a right-turn only movement would be reinforced by decreasing that 40 foot distance; (2) regarding the overfilled building, they do not qualify under the City's current parking requirements as being overfilled; (3) regarding how the parking lot will detract from the historic area, he used the example of the New Morning Gallery in historic Biltmore Village as a shining example of how a parking lot can designed in an historic district; (4) regarding the parking spaces being used by tenants, it's common to have tenants be required to park elsewhere; (5) with regard to a change in direction for the parking lot, that was discussed several times with the City's Traffic Engineer and was examined in both directions. Frankly they didn't care which direction was used, and only through discussions with the City's Traffic Engineer was the present direction was decided upon; (6) regarding lack

of compromise on the reduction of parking spaces, he noted that they were already reduced from 13 to 11 spaces. The landscaping strips and buffer areas take up more area than what the parking does. If a new building of this size were constructed in that zone, they would require to have 19 off-street parking spaces; (7) no matter how the lot is developed, it will require a curb-cut. There is no curb-cut from Edwin Place to Lennox Street and there will be only one curb-cut which is not uncommon between two streets; (8) the City of Asheville requires that an erosion and stormwater control plan be submitted and approved prior to the beginning of any work on this site. They meet and exceed all the requirements of the UDO without requesting any variances; (9) they wish to share the spaces with the church because that was one of the goals of the Charlotte Street Corridor Plan – to provide shared parking that would support mixed use neighborhood businesses with is what occupies the Reisers' building; (10) regarding the loss of any on-street parking spaces, they lose

-22-

no parallel parking spaces on Charlotte Street nor Lennox Street; and (11) to provide a drop-off zone, they would lose all five parking spaces in front of the building. Also a drop-off zone is not a benefit to all of the users for the Reisers' building.

Mr. Joe Adams said the driveway has to be 20 feet wide and the plan shows it is only 16 feet wide. If Mr. Mooney had actually put the driveway down 40 feet, with 20 feet, he would not have enough for his additional 20 feet of buffer.

Ms. Wanda Adams stated that Mr. Mooney said a compromise had been reached and that they had made a change in the plans. She didn't know who the compromise was with – it was not with neighborhood representatives or with the adjoining property owner. No attempt was made by the developer applying for this CUP to meet with neighborhood representatives. Prior to the TRC meeting on November 20, 2000, she contacted the developer and asked her to meet with neighborhood representatives prior to the TRC meeting. Despite the UDO's recommendation that the developer meet in a pre-application stage, the developer responded that she was unable to arrange a time to meet with neighborhood representatives prior to the meeting. She did agree, however, to meet after the meeting (twice) but the opinion from the developer was that TRC has passed it, affixed conditions and felt they could get it passed with just the TRC conditions and it was not necessary to negotiate with neighborhood representative/ They would simply negotiate with the City's Traffic Engineer.

Mr. Roger James noted that the parking lot in Biltmore Village for New Morning Gallery is not zoned residential. He said that there was a residential driveway there, we would not expect 11 cars to be turning over periodically throughout the day. He asked for clarification on how many spots will actually be lost on Edwin Place and on Charlotte Street.

Ms. Jane Mathews clarified that the lot was grandfathered without the required off-street parking because of it's current zoning and lot's boundaries. She did not believe this was adequately advertised because the two "Z" signs are still out there on the property which were for the March meeting of City Council. She also asked for an exact date on when the tree on the property on Edwin Street was cut down because it was her recollection that it was after the TRC meeting. She said that the tree was not dead.

Mr. Green responded that there will be no parking spaces on Charlotte Street removed for the construction of the parking lot. He did not know the exact date on when the tree was cut down, but he thought it was sometime in November. The City's Arborist did examine the tree and it was slated for removal. Typically those issues are taken to the Tree Commission prior to removal and he will check with the Public Works Department to have them review the Tree Commission's minutes to find when that was discussed. With regard to the "Z" signs, since this meeting was continued from the City Council meeting in March, no new "Z" signs were put up. With regard to the comments made about not being able to trust City staff, he did not feel

that was an appropriate statement in that staff does the utmost to assure that all plans that are brought before City Council meet all the standards of the ordinance. Staff will continue to work with the post-construction process to assure that everything shown on the site plan are in fact part of the project when it is constructed. In cases where the staff has the power to modify a requirement, it is only done in cases when it improves the safety of the situation.

Mr. Michael Moule, City's Traffic Engineer, said that approximately 3-5 spaces will need to be removed from the intersection on Edwin Place. In fact, it would be prudent to remove those spaces anyway since they are only used on a regular basis on Sundays.

Upon inquiry of Councilwoman Bellamy about the 3-5 spaces near the intersection of Edwin Place, Mr. Moule said that if the area is not signed for "No Parking" then it is legal to park there, except there are some other restrictions, e.g., fire hydrants, etc.

-23-

Upon inquiry of Vice-Mayor Cloninger, Ms. Coombs said that she has renewed her lease in the Reisers' building within the last five years.

Upon inquiry of Councilwoman Bellamy, Mr. James explained why he felt it was safer to have a right turn lane into the parking lot on Edwin Place and then have a right-turn lane out of the parking lot onto Charlotte Street, even though cut-through traffic is a valid point.

Mayor Sitnick asked if Mr. James was implying that if the Reisers agreed to the directional change of ingress and egress that the Albemarle Park Neighborhood Association would have voted in favor of this. Mr. James said that he could not speak for the Association, however, if there had been at least any dialogue from the Reisers, that would have shown the neighborhood a good faith effort but there was no good faith effort shown.

Councilwoman Field asked Ms. Warshaw if, when she talked to Urban Land Institute for the statistics she quoted, she told them that this is a major thoroughfare and not a neighborhood street. Mr. Warshaw said she told them it is not a major four-lane thoroughfare in a municipality, but it is used as a four-lane auxiliary street to avoid a major thoroughfare, i.e. Merrimon Avenue. Councilwoman Field noted that that Charlotte Street has been designated as a major thoroughfare.

Councilman Peterson questioned the 40 feet requirement from the tangent line of the intersection to the tangent line of the exit and the actual 27.5 foot distance. Mr. Moule said that the original plan was for 40 feet. In order to try to encourage the right-turn only out of that driveway and discourage the turn-in, he worked with the developer to reconfigure that driveway to encourage that movement. It did decrease the distance radius on Edwin Place for the driveway. With regard to City staff being able to vary the standards, he referred to Chapter 3 of the Asheville Standard Specifications and Details Manual (Manual), in which it says that the City Engineer must approve standards which vary from this section or standards which are not contained herein. The City Engineer, Cathy Ball, has delegated issues having to deal with traffic and driveways to him as he has more expertise in those matter. Therefore, he can approve variations from the Manual. With that said, there are some things that they can do with the driveway to bring it a little further back as far as the actual radius. It's a fact that people exiting that driveway are going to have to rely on the courtesy of drivers to let them out.

When Councilman Peterson asked what the reason was for the 40 feet from the intersection, Mr. Moule said that conflicts are created when vehicles are turning from driveways near intersections. Since the exit is only right-turn only onto Edwin Place, that is one of the reasons why he felt he could reconfigure the driveway to get it further from the intersection.

Councilman Worley asked Mr. Moule what he felt an average turn-over rate in a parking lot of this nature would be on a per hour basis during the heaviest part of the day. Mr. Moule said this was very difficult to estimate based on the fact that the uses in the Reiser building are not common land uses in their manuals. He estimated that on the order of between 6 –15 entering vehicles during the peak p.m. hour and between 9-18 exiting vehicles in that p.m. peak hour. Anytime you add a curb-cut to a street, you increase a conflict point.

Upon inquiry of Councilman Worley, Mr. Moule said that there is always the possibility of the circling effect in the parking lot. It certainly would be hard to know before entering the lot whether there are empty spaces in the lot.

Upon inquiry of Mayor Sitnick, Mr. Moule said the only parking space that someone backing up could block the entrance to the lot would be the handicapped space (City Exhibits 12 and 13). Even though that is a possibility, the probability is low.

-24-

Mr. Moule then responded to questions regarding crash data.

Councilman Worley asked Mr. Moule if he thought that the traffic study that is underway on Charlotte Street would yield any useful information in connection with this particular project. Mr. Moule responded that he didn't think there would be any significant changes as to how this parking lot might more safely operate. He said the study should be completed in about 2-3 months.

Upon inquiry of Councilwoman Field, Mr. Green explained the issue of the mature trees vs. the buffering that the City requires.

Councilman Worley asked about the comment that the church could not share the parking lot. Mr. Green said that the definition for ancillary non-residential use states that "ancillary non-residential use means employee or customer parking ... associated with the principle non-residential use." The principle use will be those mixed-used businesses and offices in the Reiser building. The Unitarian Church parking would be a secondary use, only on Sunday mornings. Allowing it to be used a few hours a week for a secondary use does not limit it to the strict definition here.

Upon inquiry of Councilman Field, Mr. Green said that he has not heard anything from the testimony at this hearing to change staff's recommendation to City Council.

Upon inquiry of Mayor Sitnick regarding the definition of "value", City Attorney Oast said that if the value being referred to is in Condition No. 3, then he felt the term "value" means monetary value. All of the cases he has looked at suggests that it does mean that and he would strongly recommend City Council use that term to mean monetary value in the context of conditional use standards.

Mayor Sitnick closed the public hearing at 10:25 p.m.

Councilman Peterson said that based on the information provided by staff and evidence and testimony received at this public hearing, he was not convinced that the application meets the seven standards. He felt the proposed use would injure the value of the adjoining and abutting property. It's clear that even an 11 space parking lot that close to a residential home of that character and quality would decrease its value. Also looking at the Charlotte Street Corridor Plan and other plans that the City has adopted, it appears that it was clearly contemplated that this property would not be used for a commercial use – that it be used as residential. He didn't think it has been shown that this use conforms with the Comprehensive Plan or other official plans adopted by the City. He also had concerns that the proposed use potentially could endanger

public health and safety or could create a traffic hazard, especially if the City's own standards require 40 feet from the driveway to the intersection. He said there are clearly reasons for those standards (to protect public safety and traffic prevent hazards).

Councilman Peterson moved to deny the application for a conditional use permit for ancillary use (parking lot) in a residential district at the corner of Charlotte Street and Edwin Place, based upon the evidence and testimony received at the public hearing. This motion was seconded by Vice-Mayor Cloninger.

Vice-Mayor Cloninger said that this was a very difficult decision for him. He thanked the Reisers for doing such an excellent job in developing their property. The concern that he has is in Condition No. 4. He is concerned that the parking lot will not be in harmony with the scale, bulk, density, and character of the area or neighborhood in which it is located. He knows it's not feasible, but if there were some way to put the parking lot up against the building and have access only from Charlotte Street, then he could support that. However, he understands that

-25-

may not be possible. But given this is a gateway for the Edwin, Kimberly and Grove Park area, even with a conscientious attempt to landscape that parking lot, he was concerned the parking lot would not be the right kind of gateway for that area. A related concern he has with that is while he has no doubt that the Reisers would be very conscientious in maintaining the landscape in the parking lot, that property could change hands at anytime and there is no guarantee that subsequent owners would be as diligent as the Reisers would be in trying to keep that attractive. That corner could become deteriorated quickly. The Reisers did know at the time they purchased the property there was a parking problem. Similarly, the Music School has been in that building for five years and they have renewed the lease during that period of time. He did not question any concerns they have about traffic, they must feel that the situation is not so bad that they don't want to have their business there. Nevertheless, some genuine legitimate concerns were raised about safety. If this CUP is denied, he hoped that our traffic study would look that very carefully and try to come up with some alternative solutions in that area to make it safer.

Councilman Hay said that his expectation coming into this, based on what the Reisers did to their building, was that it would be a thoughtful project and that it would fit in the neighborhood in an appropriate way. It is well-designed and exactly the kind of thing we want people to be doing. Unfortunately, he cannot vote for the conditional use permit. His primary reason for voting against it was how it fits into the Charlotte Street Corridor Plan. An integral part of that plan is the traffic study. A lot of energy and intensive planning went into the Plan and we have an obligation to stick with the Plan. The Plan calls for medians at Charlotte Street and Edwin Place. If we are to preempt some of the Plan provisions by putting in a driveway and therefore having to build around decisions we make now, we are in effect not complying with the Plan. This would have been an easier project to review after the traffic study was done and after the recommendations about medians were decided upon. Whether we build the medians right away or not, at least driveway entrances could take into account what the Plan says. He did not feel the parking lot conforms with City plans.

Councilman Worley agreed this has been a difficult decision. He felt the parking lot will enhance the successful operation of the surrounding area. With regard to Condition No. 3 when the condition reads the proposed use ... will not substantially injure the value of adjoining property, he felt the only real adjoining property in question is the Van Buskirk property. He sees a graveled, well-buffered parking lot and particularly given the description of the buffering, he felt the buffering will very substantially hide this property from the adjoining properties so that the appearance of a parking lot next door will be minimal. He felt the parking lot does conform with the Comprehensive Plan in that the Plan encourages shared parking, encourages pedestrian safety and walkability. This certainly does not create undue traffic congestion. It doesn't even create congestion – the traffic is already there. He didn't think it creates a traffic hazard, particularly with regard to the one-way in/one-way out. The only thing that does concern him is the possibility

of medians being recommended by the traffic study currently underway. He regrets Council is having to deal with this now as opposed to after the results of those traffic studies. But, Council is dealing with this now and we have to deal with this on the basis of what we have now and what we know now. Based on his findings, he will vote against the motion.

Councilwoman Bellamy felt this does conform with City plans. When we look at the Smart Growth Policies, this piece of property conforms. The definition of smart growth reads in part that "it is a proposed City of Asheville development pattern that makes efficient use of our limited land, fully utilizing our urban services and infrastructure." She felt the developer has taken a good piece of property and presented a good plan. They went above and beyond what staff has requested as far as landscaping. City Council has to rely on City staff and their expertise in making the best decisions to vary from policies. She felt staff did take into consideration statistical information, policies, procedures and plans and also emotions, and they are recommending what they feel is conducive to that neighborhood. She felt the developer is invested in the neighborhood. The parking lot is not the disease of the neighborhood and may

-26-

actually may help some of the diseased intersection. She said that she will trust the Traffic Engineer's findings in that he has the best interests for all the citizens in that area. This is a designated major thoroughfare, so it may require a little more than a purely neighborhood lot. She felt she could not support the motion because she felt they presented a very good case for a very good project.

Councilwoman Field said that she has tried for 10 years to support smart growth. She strongly believes that any use can be buffered appropriately from any other use. She said we must have transition districts and areas that are walkable. This kind of development is exactly what we need. She feels it is very appropriate in this area. She thoroughly understands protecting neighborhoods and she felt the neighborhoods are protected. But every neighborhood has a border and those borders require transitions. She felt this was an appropriate transition. This will leave an open space better designed than it is now.

Mayor Sitnick thanked the Reisers for their commitment to excellence in the renovation of their building. Regardless of how the vote is, she asked that (1) Edwin Place be marked and made more user friendly for parking; (2) one or two handicapped spaces be marked on Charlotte Street in front of the Reisers' building; and (3) the traffic study be completed as soon as possible. She felt that the lot could be improved with landscaping and a footpath could be created. Recognizing the difficulty of this area, especially in the summer when the Jewish Community Center is in full swing, and recognizing that this is already a major thoroughfare with a well-used intersection, and giving consideration from corners and intersections and curb-cuts and buffers, she has no doubt that if anyone can create a magnificent parking lot, it would be the Reisers. But, she would have to vote against the conditional use permit application. Condition No. 1 has not been met. The public health and safety is the most important issue. She also has concerns about Condition No. 3. She felt there is a great subjectivity to the defining of the word "value" to the Van Buskirks. With regard to Condition No. 5, she didn't know if the mixed use and sharing of lots in the Charlotte Street Corridor Plan was really what was intended. She felt there are enough parking lots in that area and there are enough curb-cuts in that area. With regard to Condition No. 7, she was not convinced that the traffic congestion caused by going in and out is the best solution for the parking needs of the Reisers' building and she would like to see those needs met. She said we already have a major thoroughfare that runs parallel to Charlotte Street and she doesn't want to create another Merrimon Avenue. We are already working on solutions to deal with the curb-cuts and the ins and outs on Merrimon Avenue. She does want to create an opportunity for the Reisers, the tenants and the users of the building to have safe, adequate, convenient, user-friendly parking but she doesn't feel that a parking lot on that corner is going to create it any better than the other possible solutions. She would support the motion denying the conditional use permit.

The motion made by Councilman Peterson and seconded by Vice-Mayor Cloninger to deny the application

for a conditional use permit for ancillary use (parking lot) in a residential district at the corner of Charlotte Street and Edwin Place carried on a 4-3 vote, with Mayor Sitnick, Vice-Mayor Cloninger, Councilman Hay and Councilman Peterson voting "yes" and Councilwoman Bellamy, Councilwoman Field and Councilman Worley voting "no".

City Attorney Oast said that he would bring back an ordinance denying the conditional use permit with the conditions outlined above for City Council consideration at their next formal meeting on April 24, 2001.

At 11:01 p.m., Mayor Sitnick announced a 15 minute break.

IV. UNFINISHED BUSINESS:

-27-

A. RESOLUTION NO. 01-50 - RESOLUTION INSTRUCTING CITY STAFF TO WORK WITH THE N.D. DEPT. OF TRANSPORTATION AND THE HAW CREEK COMMUNITY ASSOCIATION TO DEVELOP PEDESTRIAN CONNECTIVITY IN THE HAW CREEK COMMUNITY

City Engineer Cathy Ball said that on February 27, 2001, the Haw Creek Homeowners Association presented a resolution to City Council asking the City to request that the N. C. Dept. of Transportation (NC DOT) install a 3-foot paved shoulder as a "demonstration pedestrian safety initiative." City staff requested the opportunity to work with the neighborhood association to reach a more feasible pedestrian improvement in the Haw Creek Valley.

City staff met with members of the Haw Creek Homeowners Association to discuss options. Staff recommends that a resolution supporting an effort for the City to work with NC DOT and the Haw Creek Homeowners Association to develop a pedestrian connection in the Haw Creek community be presented to City Council for their approval. The members of the Haw Creek Homeowners Association were agreeable to a resolution with that intent.

Staff recommends that Council adopt a resolution requesting that a team be formed composed of City staff, NC DOT staff and the Haw Creek community officials. Said team will meet regularly to develop and implement short and long term goals to increase safety in the Haw Creek Valley and will review the progress of implementation of this overall plan until such time that sufficient pedestrian issues are addressed. The team will make an annual report to City Council.

Mr. Chris Pelly, member of the Haw Creek Community Association, said that the Association welcomes the partnership with the City.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Worley moved for the adoption of Resolution No. 01-50. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 330

B. ORDINANCE NO. 2803 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR A PARKING LOT IN A RESIDENTIAL DISTRICT AT 2 GRANDVIEW PLACE

Mayor Sitnick said that this public hearing was held on March 27, 2001.

City Attorney Oast said that City Council asked City staff to develop some conditions to address some of the

concerns that were expressed at the public hearing.

Chief Planner Gerald Green passed out some photographs of the area. He said that this is the consideration of a motion to issue a Conditional Use Permit (CUP) for an ancillary parking lot in an RS-8 Residential Single-Family Medium Density District for property located at 2 Grandview Place off Tunnel Road.

The applicants are requesting a conditional use permit for a 17 space parking lot to be located on a vacant lot located at 2 Grandview Place. The customers of the adjacent restaurant (East Village Grill) located on Tunnel Road will use parking spaces in the proposed lot. The project site is located behind the commercial strip development located on Tunnel Road. The subject property contains approximately 0.3 acres. The site meets all the location requirements

-28-

for ancillary uses in residential districts. Grading and paving of the site has occurred in violation of the regulations and standards of the City of Asheville. The owner is seeking a conditional use permit to correct the violation. More than 10,000 square feet of the site has been graded for the construction of the parking area. Measures will be taken to minimize stormwater impact onto adjacent property. A number of trees will be planted to serve as street trees and buffer trees for the parking area.

He said that as a result of comments made at the City Council public hearing, staff recommends the following conditions be added to approval of the conditional use permit (CUP) for this project:

- The dumpsters must be moved south on the property to the edge of the lot for which the ancillary use is proposed so as not to block the view from the adjacent business. They must be screened as indicated on the site plan;
- A fence (chain link acceptable) must be installed from a point parallel to the northwest corner of the adjacent residential structure, located on property owned by C.L. Henderson, Inc., northward along the property line for a distance of 40 feet; and
- Extended operating hours, to coincide with hours of operation for the restaurant, must be approved for the parking lot. Parking lot lighting must be turned off when the parking lot is not in operation.

Based on information available to the Planning and Development Department in advance of the public hearing, staff recommended that the City Council issue the CUP for an ancillary use (parking lot) to be located at 2 Grandview Place with the following conditions:

1. Remove existing asphalt as required to install required landscaping;
2. The existing parking lot lighting must be shielded and/or directed away from adjacent residential uses;
3. Pedestrian access from upper lot to the restaurant must be provided in a location other than the driveway;
4. The west side of the lot must be curbed to direct stormwater into the stormwater drain;
5. Remove the chain link fence currently located at the rear of the property;
6. The existing water meter on the lot must be abandoned;
7. The dumpsters must be moved south on the property to the edge of the lot for which the ancillary use is proposed so as not to block the view from the adjacent business. They must be screened as indicated on the site plan;
8. A fence (chain link acceptable) must be installed from a point parallel to the northwest corner of the

adjacent residential structure, located on property owned by C.L. Henderson, Inc., northward along the property line for a distance of 40 feet;

9. Extended operating hours, to coincide with hours of operation for the restaurant, must be approved for the parking lot. Parking lot lighting must be turned off when the parking lot is not in operation; and

10. The required improvements to the parking lot, as shown on the site plans and identified in the conditions attached to the Conditional Use Permit, must be completed within 60 days. If not completed within this time period, the CUP will be revoked and the site shall never be used for parking for commercial uses.

Upon inquiry of Vice-Mayor Cloninger, Mr. Green explained why landscaping islands are not required in this parking lot.

Councilman Worley moved to adopt Ordinance No. 2803, with the ten conditions outlined above as recommended by City staff, in addition to the following three conditions: (2) The dumpsters must be moved south on the property to the edge of the lot for which the ancillary use is proposed so as not to block the view from the adjacent business. They must be screened as

-29-

indicated on the site plan; (2) A fence (chain link acceptable) must be installed from a point parallel to the northwest corner of the adjacent residential structure, located on property owned by C.L. Henderson, Inc., northward along the property line for a distance of 40 feet; and (3) Operating hours may be extended to coincide with hours of operation for the restaurant, but in no case past Midnight. Parking lot lighting must be turned off when the parking lot is not in operation. This motion was seconded by Councilwoman Bellamy.

Vice-Mayor Cloninger said that he would have to vote against this CUP. He would have no trouble voting in favor of it if the owner had followed the required steps in getting the appropriate permits. The fact is that the owner did not submit an erosion control plan or get an issuance of a grading permit, prior to the grading being done. Also, paving requires a conditional use permit that was not applied for prior to the initiation of the paving. He was concerned about the precedent this will set in that he fears that if other people find out that this has been approved, they may get impatient or won't feel like applying for a permit. Then they might decide to go ahead and do it and then go back to City Council and get approval for it after the fact. He just doesn't want to send that signal out. Sooner or later someone may do the paving in a manner that does not meet City standards and Council would not want to approve it. Because of the precedent this will send, he will vote against it.

Councilman Hay appreciates Vice-Mayor Cloninger's concerns, but based on staff's recommendations, it is otherwise a good idea.

Councilman Worley also noted that City staff is looking at some penalties for moving forward in a situation like this without all the permits being approved.

Councilman Peterson felt that if this came before City Council prior to the work being done, Council may have approved some parking, but maybe not approved as much parking as the applicant has paved. He agreed with Vice-Mayor Cloninger that if City Council approves this, then we are sending a clear message that it's okay to develop your property and then once it's done City Council will give permission. He has a problem in that this looks to be clearly commercial intrusion into a residential area. He felt that City Council is sending the wrong message in approving the CUP with no limitations or penalties for violation of the ordinance.

Mr. Green said that the penalty that City staff is looking at for starting work without a zoning permit is doubling of the application fee (in this case it's \$250 or \$300).

The motion made by Councilman Worley and seconded by Councilwoman Bellamy to approve Ordinance No. 2803, granting the conditional use permit for ancillary use (parking lot) in a residential district at 2 Grandview Place with the 13 conditions listed above, was carried on a 4-3 vote, with Councilwoman Bellamy, Councilwoman Field, Councilman Hay and Councilwoman Worley voting "yes" and Mayor Sitnick, Vice-Mayor Cloninger and Councilman Peterson voting "no".

ORDINANCE BOOK NO. 19 - PAGE

V. NEW BUSINESS:

A. ORDINANCE NO. 2804 - ORDINANCE WAIVING THE UNIFIED DEVELOPMENT ORDINANCE REQUIREMENT FOR A SIDEWALK AT 655 BREVARD ROAD

Pedestrian and Bicycle Coordinator Oliver Gajda said that this is the consideration of a request to allow a partial fee waiver for the new commercial project located at 655 Brevard Road.

-30-

Section 7-11-6 of the Unified Development Ordinance (UDO) requires that new construction place sidewalks as specified in the Asheville Standard Specifications along street rights-of-way or pay a fee in lieu of constructing a sidewalk.

The developer for a new commercial project located at 655 Brevard Road is requesting consideration of an ordinance waiving the amount of the fee specified within Section 7-11-6 of the Unified Development Ordinance (UDO).

This development meets the requirements for paying a fee in lieu of construction per the UDO Section 7-11-6(c)(2) based upon the condition that sidewalks are scheduled to be installed as part State project which has been funded for construction. The State plans to widen this portion of Brevard Road within the next four years as outlined in the Transportation Improvement Plan (TIP). However, the developer is requesting a waiver of Section 7-11-6 of the UDO and that only 40% of the required fee in lieu of construction be paid. Per the NCDOT's Pedestrian Policy Guidelines, the City would be required to pay 40% of the costs of sidewalks to the State's matching contribution of 60%.

City staff recommends that City Council allow a partial fee waiver of 60% requiring the developer to pay the remaining 40% of the fee in lieu of construction for the new commercial project located at 655 Brevard Road.

Mr. Gajda said that City staff is looking to amend the Fees and Charges Manual to include this type of ruling where there is some sort of measure (like on the State's TIP) that City staff wouldn't need to bring these issues to City Council for approval.

Councilman Peterson said that City Council needs to be pretty certain at this stage that projects will be completed by NC DOT, so the City doesn't set a precedent of waiving the fees and the sidewalks don't get built.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2804. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 19 - PAGE

VI. OTHER BUSINESS:

Amendment to N. C. State Building Code

Councilwoman Field said that in 1996 City Council approved an amendment to Volume 5 of the N. C. State Building Code which is called the Asheville Amendment. That amendment was adopted by the Building Code Council. We are now in the process of adopting a new International Building Code and our amendment is no longer in compliance. The easiest way for us to amend it is to withdraw the amendment and that can be done by an administrative action.

It was the consensus of City Council to instruct the City Manager and City Attorney to draft a letter to the Building Code Council, for City Council approval at their April 24, 2001, meeting, asking them to withdraw the amendment.

-31-

Legislative Requests

Councilman Peterson stated that the cross-over deadline is April 26, 2001, and as yet there have been no bills introduced about additional funding sources for the Civic Center. There are a number of blank bills from our delegation that they have introduced. In addition, the City of Monroe has introduced a bill for a prepared food tax. Given the deadline is April 26, he suggested we ask one or more of our delegates to fill in one of their blank bills with similar sort of legislation or ask Senator Carter or Senator Metcalf if they might be able to amend the City of Monroe's prepared food tax bill to include Asheville. He was concerned that in two weeks from now we will not be able to get any kind of funding for the next two years. He also noted that the City of Charlotte advisory referendum bill was filed March 13, passed the House about 15 days later, and then passed the Senate about 2 days after that. His preference would be to do what the City of Monroe has done. They have asked that the City be given the authority to levy a prepared meals tax. If our legislators do not want to support giving Asheville the authority directly, then we should ask them to do something that the City of Charlotte did – with the advisory referendum for this fall.

He would like to formally ask our legislative delegation to take one of their blank bills and insert a straight prepared meals tax. And since they have indicated they want to see public support, we should ask them to include in that bill something similar to what Charlotte had regarding an advisory referendum.

Councilwoman Bellamy said her choice would be to have an advisory referendum.

Councilman Worley said that we have already formally asked them to introduce the bill and we have been following up and will continue to follow-up. He has no problem with that follow-up including a referendum if they won't introduce just a straight up bill.

Councilman Hay felt that a referendum sounds like a good way to get it done, but we want to make sure we do it at the right time. If we ask the question the wrong way, or the wrong time or without the proper development of the idea, we may not get the answer we want. He wanted to make sure we had a clearly articulated plan for what we were asking people to do, how we were going to spend the money, and what they are going to get for their money. He thinks we're well on the way to being at that point, but would hate to get the ball rolling towards a referendum and then find that we're not ready to present it,

Upon inquiry of Vice-Mayor Cloninger, City Attorney Oast said that one of the proposals that is in the legislature now, but he didn't think it's been introduced, is the County requested introduction of a bill that the City would benefit from which would be a local option sales tax.

It was the consensus of City Council to have staff report back to City Council at the April 17, 2001, worksession as to what the status of our legislative requests are with regard to the additional funding sources for the Civic Center.

Film Board Funding Request

At the request of Film Board Chairman David Quinn, Mayor Sitnick moved to appropriate up to \$2,000 from the Contingency account to assist with the development of the Film Board website. The costs include the purchase of software needed to keep the site updated, a training program for the Board member who is voluntarily maintaining the site, and an "as needed" consulting service to provide back-up assistance as needed. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

-32-

Claims

The following claims were received by the City of Asheville during the period of March 23 – April 5, 2001: Wendy Dayton (Streets), Marilyn Briggs (Water), Stanley Combs (Water), BellSouth (Water), Marcus Robinson (Police), Brenda Graham (Parks & Recreation), Jeanine Helms (Fire), Ryan Lander (Asheville Transit) and Maximino Marales (Police).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 12:07 a.m.

CITY CLERK MAYOR
