

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

**INVOCATION**

Councilman Dunn gave the invocation.

**I. PROCLAMATIONS:**

**A. RECOGNITION OF BUTCH KISIAH IN RECEIVING THE DISTINGUISHED SOCIETY FELLOW AWARD FROM THE NORTH CAROLINA RECREATION AND PARK SOCIETY**

Mr. Tom Wells, former Deputy Director of the North Carolina Recreation and Park Society, and Chair of the Citations and Awards Committee, presented Mr. Butch Kisiah with the Society Fellow Award. The Fellow Award is the highest award the Society can bestow to one of its members for outstanding service and leadership.

On behalf of City Council, Mayor Worley congratulated Mr. Kisiah on receiving this very prestigious award.

**B. PROCLAMATION PROCLAIMING DECEMBER 15, 2002, AS "BILL OF RIGHTS DAY"**

Mayor Worley read the proclamation proclaiming December 15, 2002, as "Bill of Rights Day" in the City of Asheville.

**II. CONSENT:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 26, 2002, AND THE WORKSESSION HELD ON DECEMBER 3, 2002**

**B. RESOLUTION NO. 02-186 - RESOLUTION ADOPTING THE 2003 SCHEDULED CITY COUNCIL MEETINGS  
RESOLUTION BOOK NO. 27 – PAGE 285**

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

Councilman Ellis moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Mumpower and carried unanimously.

**III. PUBLIC HEARINGS:**

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**A. PUBLIC HEARING TO CONSIDER REZONING PROPERTIES IDENTIFIED ON THE BROADWAY CORRIDOR**

Mayor Worley announced that the public hearing to consider rezoning properties identified on the Broadway Corridor would be rescheduled until January 14, 2003, due to failure of properly posting the properties.

**B. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 26 FENNER AVENUE TO ALLOW THE CONSTRUCTION OF A DUPLEX IN AN RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT**

**ORDINANCE NO. 2984 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 26 FENNER AVENUE TO ALLOW THE CONSTRUCTION OF A DUPLEX IN AN RS-8 RESIDENTIAL**

## SINGLE FAMILY HIGH DENSITY DISTRICT

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:17 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Mr. Alan Glines, Urban Designer, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Glines said that this is the consideration of a conditional use permit for property located at 26 Fenner Avenue to allow for the construction of a duplex in an RS-8 Residential Single-Family High Density District.

On October 23, 2002, Bruce MacPhail of Hamilton-Cameron, LLC., submitted an application for a conditional use permit to allow a duplex conversion of an existing house in a single family zoning district in the north area of the City

The property is located at 26 Fenner Avenue (PIN No. 9640.18-30-5137) (City Exhibit 3 – Location Map). The property has an existing circa 1920 home that has been converted for use as a duplex (City Exhibit 3 – Site Plan and Photographs). This property and the surrounding area is zoned RS-8. The RS-8 single family residential district allows up to 8 single family units an acre.

As part of the conditional use permit requirements, the project must meet several conditions for duplexes found in section 7-16-2 (d) (5) of the Unified Development Ordinance (UDO):

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- Duplexes must be located a minimum of 300 feet from all other multifamily uses (excluding dwellings with accessory apartments) on the same street in the single family district. **The property is located over 300 feet from other duplexes on the same street.**
- Minimum lot area shall be 125 percent of that required for a single family residential unit in the respective district. **The parcel is .26 acre and is well above the parcel requirement.**
- Parking shall be located in the rear and screened with vegetation from adjacent single-family uses. **The existing house has two driveway points and parking is located in front of the house. Parking will be required to be located at the rear of the structure.**
- The structure shall have a single front entrance and other entrances as required. **The parcel has a single front entrance and a secondary entrance at the side.**
- Requirements of the N.C. State Building Code shall be met. **The project has met building code requirements.**

City Council must take formal action as set forth in section 7-9-9 (c) (4) of the UDO and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2 (c)). Staff's preliminary review, absent the benefit of public input, indicates that all seven standards are met provided certain impacts are mitigated through site design modifications and off site road improvements.

- 1) That the proposed use or development of the land will not materially endanger the public health or safety.

The proposal was reviewed by the Technical Review Committee for compliance with technical standards of the City of Asheville.

- 2) That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation

techniques or measures proposed by the applicant.

The site has an existing house that will be used as a duplex. The proposed use is compatible with the site and surrounding neighborhood.

- 3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

The duplex will blend into the neighborhood fabric. Values of neighboring properties are not expected to be injured.

- 4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The proposed duplex is an existing building built around 1920. The house is in keeping with the character of the neighborhood.

- 5) That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

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This proposed development supports the smart growth policies of affordable in-fill housing and a mix of housing types within a given neighborhood.

- 6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

The proposed duplex is located in an established neighborhood just off of Merrimon Avenue. The property has adequate infrastructure in place.

- 7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The proposed duplex will not generate traffic problems.

The Technical Review Committee reviewed this project at their November 18, 2002, meeting and recommended that the project be forwarded to the City Council with a recommendation of approval with conditions, all of which have been met except for the parking location. Review by the Planning and Zoning Commission is not required for this use.

Mr. Bruce MacPhail, petitioner, said that if they had to put a driveway in the back of the property, it will cause more damage to the fabric of the neighborhood since the surrounding neighborhood has parking located in the front. The property has been a duplex before and he feels that there is adequate parking located on the property now, without having to relocate it in the rear of the lot. In addition, the parking slab (which would have to be extended to the back of the property) is very narrow and there is a steep grade to the back of the property, which will cause water run-off to the adjacent lot. He will lose the entire backyard and to build the parking at the rear will be a tremendous cost, thus driving the cost of the affordable apartments (\$500 and \$600) higher.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 5:34 p.m.

Discussion surrounding the parking in the rear of the property with Council realizing that a UDO text amendment would be the only way they could allow parking to be located elsewhere than in the rear of the property.

Mayor Worley said that the Planning staff has already been instructed to look at amending the UDO regarding duplexes and triplexes in residential districts and this is a good opportunity to look at a possible amendment to this standard as well.

Vice-Mayor Bellamy moved to adopt Ordinance No. 2984 to issue the conditional use permit for a duplex on property located at 26 Fenner Avenue. This motion was seconded by Councilman Dunn.

Planning & Development Director Scott Shuford generalized his comments (as he was not sworn in) by suggesting to Council that they could approve the conditional use permit subject to the parking being brought into compliance within 120 days. He explained that his department will be bringing back to Council an amendment to the UDO regarding duplexes and triplexes in residential districts within that 120 time period and Council then can then choose to amend the specific requirement regarding

parking, thus relieving the applicant from that requirement.

Vice-Mayor Bellamy wished to amend her motion to issues the conditional use permit subject to the parking being brought into compliance within 120 days. Councilman Dunn did not agree with the amendment and withdrew his second. The amended motion by Vice-Mayor Bellamy was seconded by Councilman Mumpower.

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Councilwoman Jones wanted to be sure that the Planning staff would not be crafting the ordinance amendment for one specific instance. Mr. Shuford agreed that they would be looking at the amendment from a reasonable standpoint.

The amended motion made by Vice-Mayor Bellamy and seconded by Councilman Mumpower carried on a 6-1 vote, with Councilman Dunn voting "no."

## **ORDINANCE BOOK NO. 20 – PAGE**

### **IV. UNFINISHED BUSINESS:**

### **V. NEW BUSINESS:**

#### **Unified Development Ordinance Text Amendment**

As a result of discussion at the December 3, 2002, City Council worksession regarding the Asheville-Buncombe Community Christian's Ministries' (ABCCM) soup kitchen being in violation of the Unified Development Ordinance (UDO) and pursuant to Section 7-2-2 of the Code of Ordinances, Councilman Peterson moved to direct the Planning & Development staff to begin as soon as possible the process for a text amendment to Chapter 7 of the Code of Ordinances to allow greater flexibility in locating social service establishments that dispense dietary essentials to the needy in office/commercial districts. This motion was seconded by Vice-Mayor Bellamy.

Upon inquiry of Vice-Mayor Bellamy and Councilwoman Jones, Councilman Peterson explained this proposed amendment is not identifying a particular district, but identifying generic office/commercial districts and it's not just for this particular case, but also for similar circumstances throughout the City.

Councilman Peterson explained that there isn't anything listed in the UDO called soup kitchens. Staff assumes that a soup kitchen is an accessory use to a shelter, so they are only permitted where shelters are permitted, which is now in the Central Business District, Highway Business District, etc. He suggested we ask staff to get public comment and maybe have soup kitchens clarified or maybe clarify that it's not an accessory use. In the Office and Office II districts a permitted use includes civic, social service and fraternal facilities, so those are already permitted in pretty much all of the office/commercial districts and also restaurants are permitted as a use by right subject to special requirements. He felt we need to add a little flexibility to allow soup kitchens probably not as a blanket permit, but as a use by right subject to special requirements so there would be certain conditions that might have to be met, like kitchen facilities, or a certain size of the property, or parking. Staff should probably get public input about what some of those special requirements should be and meet with neighborhood leaders in various neighborhoods in the City.

Councilman Mumpower felt it might be more appropriate to informally explore the issues surrounding this matter and then make a determination on how Council should proceed.

City Manager Westbrook said that Council could instruct staff to investigate the issue further and bring back a report on what they feel is the best course of action.

Mayor Worley said that he felt all of Council was sympathetic with ABCCM and the mission that they serve. He felt that soup kitchens essentially prepare and serve food and should be on the same footing as restaurants, which are allowed, if they meet certain requirements, in several of the office business districts. He was not inclined to amend our ordinance for a special case for the situation that has arisen. He expected everyone to do their best to comply with our ordinances and meet the requirements of the ordinances. If we make such a change, we are

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making a change that would affect all similarly situated districts and we have the ordinance as it is for a reason.

Planning & Development Director Scott Shuford handed Council a memo dated December 10, 2002, which updated them on the current status of their investigation into the ABCCM soup kitchen. The following is his interpretation on how such a use (soup kitchen) should be permitted: Soup kitchens are ancillary uses associated with "shelters" as defined in the UDO. The UDO defines "shelter" as "a nonprofit, charitable, or religious organization providing boarding and/or lodging and ancillary services on its premises to primarily indigent, needy, homeless, or transient persons. He understood Councilman Peterson's motion to direct staff to do some basic research on that issue and expand that research broader than the case at hand, seek public input, develop an ordinance and take that ordinance through the public hearing process.

Councilman Dunn and Councilmen Ellis both would prefer more staff research on this matter before they would be prepared to vote on this motion.

Mr. Shuford said that this is an issue fairly complicated and it needs a more complex study of it. It is an issue that has some potential side effects that need to be addressed. There are ways to do that and we will bring those ideas forward for Council's consideration and then get further direction.

The following individuals spoke in support of an amendment to the UDO to allow the flexibility to allow soup kitchens in special districts:

Brother Christopher  
Ms. Rachel Pope  
Rev. Scott Rogers  
Ms. Sharon Martin

In response to Councilwoman Jones, Rev. Rogers said that they have been operating the ABCCM soup kitchen at 24 Cumberland since October 11, 1985. Their primary mission is to give food to people.

The motion made by Councilman Peterson and seconded by Vice-Mayor Bellamy failed on a 3-4 vote, with Vice-Mayor Bellamy, Councilwoman Jones and Councilman Peterson voting "yes" and Mayor Worley, Councilman Dunn, Councilman Ellis and Councilman Mumpower voting "no."

It was the consensus of City Council to instruct the Planning staff to gather more information about the existing situation and in light of that, and in light of the overall needs of the City, to come back to Council with anything further that is recommended or needed in the way of a change. Said report should come back to Council at its January 21, 2003, worksession.

City Attorney Oast noted that just because Councilman Peterson's motion failed does not preclude Council from ultimately adopting the same language at a later date if appropriate.

## **VI. OTHER BUSINESS:**

### **Mutual Aid Assistance**

City Manager Westbrook advised City Council that, through the mutual aid assistance agreement, the Town of Hillsborough has requested, and the City of Asheville has sent, a

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kunkleboom truck and one operator from the City of Asheville to assist them in the cleaning up the effects of the December 5, 2002, ice storm.

### **Claims**

The following claims were received by the City of Asheville during the period of November 22 – December 5, 2002: Ray Imhoff Ent. (Water), BellSouth (Water), Max Haner (Sanitation), Nancy Alenier (Water), N. C. Dept. of Transportation (Police) and Zambra (Water).

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

## **VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Mr. Cecil Bothwell thanked the Mayor and Council for proclaiming December 15, 2002, as "Bill of Rights Day" in the City of

Asheville.

Mr. Cliff Turner, owner of the Exxon Station by the Biltmore House, asked for Council's assistance in getting on the City's wrecker rotation list.

Brother Christopher urged Council not to discriminate against the poor.

Mr. Rachel Pope felt the poor should be respected too and was interested in the Downtown Social Issues Task Force.

**VIII. ADJOURNMENT:**

Mayor Worley adjourned the meeting at 6:56 p.m.

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CITY CLERK

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MAYOR