

Regular Meeting

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

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Worley led City Council in the Pledge of Allegiance.

**INVOCATION**

Vice-Mayor Mumpower gave the invocation.

**A. PROCLAMATION PROCLAIMING MAY, 2004, AS "MOTORCYCLE AWARENESS MONTH"**

Vice-Mayor Mumpower read the proclamation proclaiming May, 2004, as "Motorcycle Awareness Month" in the City of Asheville. He presented the proclamation to Mr. Eldon Moore, who briefed City Council on some activities taking place during the month.

**B. RECOGNITION OF THE ASHEVILLE ALTITUDE**

Mayor Worley read a Certificate of Recognition to the Asheville Altitude in winning the National Basketball Development League Delta Airlines Post-Season Classic Championship Game on Saturday, April 24, 2004. He presented the Certificate to Altitude Team President Alfred White and Asheville Altitude Coach Joey Meyer who thanked City Council for their support.

Councilwoman Bellamy thanked Mayor Worley and former Councilman Edward Hay for their work in bringing the Asheville Altitude to the Asheville Civic Center.

**II. CONSENT AGENDA:**

Councilwoman Bellamy asked that Consent Agenda Item H be removed from the Consent Agenda for an individual vote.

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 13, 2004, AND THE WORKSESSION HELD ON APRIL 20, 2004**

**B. RESOLUTION NO. 04-80 - RESOLUTION AUTHORIZING THE INSTALLMENT FINANCING OF THE PURCHASE OF ONE FIRE PUMPER, ONE SIDE-LOADER GARBAGE TRUCK AND 5,330 ASSOCIATED ROLL CARTS**

Summary: The consideration of a resolution authorizing the installment financing of the purchase of one fire pumper, one side-loader garbage truck and 5,330 associated roll carts.

The City of Asheville Capital Improvement Plan 2003/04 to 2008/09 includes authorization in Fiscal Year 2003/04 for the installment purchase of a fire pumper, one side-loader garbage truck and associated roll carts.

-2-

The Finance Department sought proposals from fourteen firms to finance the purchase of the above listed equipment. Proposals were received from ten firms, the best of which was submitted by RBC Centura Bank, - - 2.35% for four years eleven months.

The proposed resolution authorizes an installment purchase contract between the City of Asheville and RBC Centura Bank for the purchase of the fire pumper, side-loader garbage truck and 5,330 roll carts and authorizes the City Manager, City Attorney, Finance Director and City Clerk to execute and deliver any and all necessary documents.

- Pros: Provides funding of capital expenditures at very favorable interest rates.  
RFP solicitations for financing proposals fosters competition which results in lower rates for this and future financings by the City.  
Financing capital purchases spreads the cost of acquisition over several years of the useful life of the asset.  
Paying for capital purchases with the proceeds of a financing, as opposed to paying for the purchase by using the City's currently-available cash balances, slightly increases the currently available funds that could be used for other purposes.
- Cons: Financing the purchase slightly increases the lifetime cost of the acquisition due to the payment of interest on the amount financed.

City staff recommends City Council adopt the resolution authorizing the installment financing of the purchase of one fire pumper, one side-loader garbage truck and 5,330 associated roll carts.

## **RESOLUTION BOOK NO. 28 – PAGE 192**

### **C. RESOLUTION NO. 04-81 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A LEASE AGREEMENT FOR THE PACK PLACE EDUCATION, ARTS & SCIENCE CENTER**

Summary: The consideration of a resolution renewing the lease of Pack Place Education, Arts & Science Center.

In the early 1980's, the City acquired property on Pack Square formerly occupied by the Pack Memorial Library and the Plaza Theaters. In addition to the land, there are several easements and party wall agreements that are part of the package of real estate interests that comprise this property. In 1988, the City leased the property to the Pack Place Education, Arts & Science Center, Inc., a non-profit corporation (herein "Pack Place Inc."). Pursuant to that lease, and through a combination of public and private financing, Pack Place Inc. renovated the old library and constructed new facilities on the old theater property and adjacent land. The City and Pack Place Inc. are co-owners of the improvements made pursuant to the lease. The Pack Place Education, Arts & Science Center opened in late 1991, and has been in operation ever since.

The initial term of the lease was for 9 years, 364 days (one day less than the 10 year threshold that requires that the lease be treated as a sale). The City began negotiations with Pack Place Inc. for renewal of the lease in 1998, but these were not concluded, and personnel changes in the City and Pack Place Inc. organizations further delayed completion of them. Pack Place Inc. has continued to occupy and operate Pack Place Center, and we have negotiated a new/renewal lease that is presented for Council's consideration.

The essential terms and conditions of the renewal lease are summarized below.

Term. Recommended for 9 years 364 days so that it may be handled as a lease rather than a sale of the property. The law regarding disposition of City-owned property has

-3-

changed such that it may be possible to lease for a longer term to a qualified organization, subject to certain conditions. Council and Pack Place Inc. may wish to consider this for the future.

Rental. Lease payments are \$10.00 per year. However, Pack Place Inc. is responsible for all costs of operation and maintenance of the facility, and for paying the debt on its share of the cost of improvements. Pack Place Inc. is responsible for making and insuring any improvements, and for making any repairs.

Insurance. As noted, Pack Place Inc. is responsible for insuring Pack Place Center against property damage. Pack Place, Inc. also provides general liability insurance for the premises, and indemnifies the City.

Subletting. Pack Place Inc. sublets the Pack Place Center premises to several major tenants, including the Art Museum, Health Adventure, Pack Place Performing Arts, and the Colburn Mineral Museum. The lease permits subletting to major tenants (defined as one occupying 2000 or more square feet for 6 months or longer), subject to the City's written consent. However, no written consent is required for subleases to major tenants that already occupy a portion of the premises. This permits Pack Place Inc. to organize its internal space among existing tenants according to their needs without seeking the City's consent.

Historical interpretive display. Because the property is located in the City's National Register Historic district and federal

funds were used in this development / rehabilitation, there is a requirement that a display describing the history of Pack Square be maintained in a prominent location on the premises. Issues regarding the size, location and form of this display were the main reasons that negotiations were not concluded in 1998. We have now, however, decided upon language that will permit reconfiguration and relocation of the display, in a way that takes advantage of advance in technology, while still adding to the requirement to maintain the display. This has been discussed with and approved by the State Historic Preservation Office.

Considerations: The Pack Place Center has been and continues to be one of the centerpieces of Asheville's revitalizing downtown. The existence of Pack Place Center has been a catalyst for much of what has happened in this area, bringing people to downtown, and which supports the local businesses such as coffee shops or restaurants.

If The City decides not to enter into this new lease, it must pay for its share of the jointly-owned improvements, which could be a substantial cost, computed pursuant to a provision in the old lease. Additionally, alternate arrangements for the operation of the facility would have to be made.

If Council desires to continue the current arrangement for operation of Pack Place Center, adoption of the resolution is recommended.

#### **RESOLUTION BOOK NO. 28 – PAGE 194**

#### **D. RESOLUTION NO. 04-82 - RESOLUTION ENDORSING LEGISLATIVE REQUESTS FOR THE 2004 SESSION OF THE N.C. GENERAL ASSEMBLY**

Summary: The consideration of a resolution endorsing legislative requests for the 2004 session of N. C. General Assembly.

-4-

Following discussion on March 16, 2004, Council directed the preparation of two items of legislation affecting the City

1. Increase in ABC board membership from 3 to 5. The City of Asheville, pursuant to special legislation adopted in 1947, administers alcoholic beverage control through a local board of three persons, appointed by the Mayor and Council. Council desires to increase the board membership to 5. The proposed legislation provides for the appointment of 2 additional members. These appointments are to be made by the Mayor and Council, as the current 3 appointments are. Initial terms will be 1 year for one appointment, and 2 years for the other, with subsequent terms to be three years. The current board members will continue to serve their appointed terms, and are not affected by this change. The requested legislation also makes a clarifying change regarding the filling of vacancies on the board, to conform to Council's practice.
2. Establishing two year terms for Civil Service Board members. The terms of the Civil Service Board members has always been two years. However, during the course of extensive amendments to the law in 1999, the provision for two year terms was inadvertently deleted. This proposed amendment puts it back in.
3. Statement of Support for Film Industry Incentives. The resolution contains a general statement of support for legislative action to create or expand financial and other incentives for the film industry. As we become aware of specific legislation on this subject, we will bring it to Council's attention.

Considerations: Because this is a short session for the legislature, bills introduced must be certified as "non-controversial."

The Civil Service Board term limit has been discussed with representatives of affected employees, and should not be a problem. The City Attorney has made no such inquiry with respect to the ABC board membership. There are other issues currently affecting the ABC board and its operations, and those issues may affect whether this bill can be certified non-controversial.

If Council approves of submitted these requests to our local legislative delegation, adoption of the resolution is recommended.

#### **RESOLUTION BOOK NO. 28 – PAGE 196**

#### **E. RESOLUTION NO. 04-83 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LICENSE**

**AGREEMENT WITH TRITON PCS PROPERTY COMPANY, LLC, FOR A CONCEALED WIRELESS COMMUNICATION FACILITY LOCATED AT 50 OREGON AVENUE**

Summary: The consideration of a resolution authorizing the City Manager to execute a License Agreement with Triton PCS Property Company, LLC (Triton) for a concealed wireless communication facility at 50 Oregon Avenue.

On April 13, 2004, the City Council directed the City Clerk to advertise for upset bids regarding a proposal from Triton for a concealed wireless communication facility at 50 Oregon Avenue. The advertisement ran in the Asheville Citizen-Times on April 16, 2004, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the proposal from Triton was not upset.

-5-

Triton proposes to construct a cell phone tower designed as a flagpole which will be lighted and the United States Flag will fly 24 hours per day. Antennas will be concealed within the flagpole. Ground equipment will be housed in a small building of a design and materials to match the fire station building. Triton will own, maintain and insure the tower. The tower will have space for two additional antennas and Triton will sublicense the tower spaces to other carriers. An additional building for each carrier of the same character as the first will be added within the license area at such time as the spaces are sublicensed. The proposal from Triton includes the following fee schedule:

<b>Year</b>	<b>Amount</b>
<b>1</b>	<b>\$18,000</b>
<b>2</b>	<b>\$22,500</b>
<b>3</b>	<b>\$25,960</b>
<b>4</b>	<b>\$27,000</b>
<b>5</b>	<b>\$28,000</b>

The license fee during each renewal term will be increased by four percent (4%) per year compounded annually. Triton will post a cash security deposit in the amount of \$5,000 to be held by the City for the duration of the License Agreement.

In addition to the above, Triton will construct a storage room addition for the exclusive use of the City (Asheville Fire Department) on the East side of the Fire Station; replace the City's existing 20 KW generator with a 40KW generator; and construct 3 additional parking spaces for the City's use.

Triton must obtain a Conditional Use Permit in accordance with the Unified Development Ordinance (UDO). Approval of this resolution will not affect consideration of the Conditional Use Permit.

The positive aspects of the proposed license agreement include:

1. Generates revenue for the City that is long term and increases annually.
2. Provides public benefit through better cell phone coverage for the Patton Avenue area.
3. Tower will be located on City owned property as encouraged by the UDO.
4. Promotes co-location of carriers as encouraged by the UDO.
5. Utilizes stealth technology and integrated design; antennas will be concealed within a flagpole tower to present a more esthetic appearance and the ground buildings will appear to be part of the fire station.
6. Licensee (Triton) will own the tower and be responsible for maintaining and insuring it.
7. Puts unused space to productive use.
8. Fire Department will get desired improvements at Fire Station #3.

The negative aspects of the proposed license agreement are:

1. Encumbers the property for up to 25 years, which could impact the disposition of the property should the City no longer need it for a fire station.
2. Would prevent expansion of the station into the licensed area should the need arise to expand.
3. Flagpole tower will be 100' tall and will extend above tree line.

Approval of the resolution will authorize the City Manager to execute the License Agreement.

-6-

Planning & Development staff, Fire Department staff and Information Services staff recommend adoption of the resolution authorizing the City Manager to execute a License Agreement with Triton PCS Property Company, LLC (Triton) for a concealed wireless communication facility at 50 Oregon Avenue.

**RESOLUTION BOOK NO. 28 – PAGE 201**

- F. RESOLUTION NO. 04-84 - RESOLUTION SETTING A PUBLIC HEARING ON MAY 25, 2004, TO CONSIDER THE CLOSING OF A PORTION OF UNOPENED SECTION OF APPALACHIAN WAY**

**RESOLUTION BOOK NO. 28 – PAGE 202**

- G. RESOLUTION NO. 04-85 - RESOLUTION CANCELING THE MAY 4, 2004, WORKSESSION**

**RESOLUTION BOOK NO. 28 – PAGE 203**

- H. RESOLUTIONS ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE**

This item was removed from the Consent Agenda to be voted on separately.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilwoman Jones moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Bellamy and carried unanimously.

**ITEM REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES**

**RESOLUTION NO. 04-86 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE SUNSET STAMPEDE**

**RESOLUTION NO. 04-87 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE MOUNTAIN SPORTS FESTIVAL**

**RESOLUTION NO. 04-88 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE INDEPENDENT RESTAURANTS' TASTE OF ASHEVILLE**

**RESOLUTION NO. 04-89 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 4<sup>TH</sup> OF JULY CELEBRATION AND FIREWORKS**

**RESOLUTION NO. 04-90 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BELE CHERE FESTIVAL**

**RESOLUTION NO. 04-91 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GOOMBAY FESTIVAL**

**-7-**

**RESOLUTION NO. 04-92 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE SISTERS ON STAGE EVENT**

**RESOLUTION NO. 04-93 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BREWGRASS FESTIVAL**

**RESOLUTION NO. 04-94 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GREEK FESTIVAL**

**RESOLUTION NO. 04-95 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND**

**CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE WORLD OF ICE EVENT**

**RESOLUTION NO. 04-96 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE GROVE ARCADE'S HARVEST FESTIVAL**

**RESOLUTION NO. 04-97 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE HARDLOX CAFÉ JEWISH FOOD FESTIVAL**

**RESOLUTION NO. 04-98 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE DOWNTOWN ASSOCIATION EVENTS**

**RESOLUTION NO. 04-99 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE ASSAULT HOME GAMES**

**RESOLUTION NO. 04-100 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE SPLASH HOME GAMES**

**RESOLUTION NO. 04-101 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GRIZZLIES HOME GAMES**

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the following events: Sunset Stampede, Mountain Sports Festival, The Asheville Independent Restaurants' Taste of Asheville, Asheville's 4<sup>th</sup> of July Celebration, Bele Chere 2004, Asheville Goombay Festival, Sisters on Stage, Annual Brewgrass Festival, Asheville Greek Festival, World of Ice Festival, October Harvest Festival, Hardlox Café Jewish Food Festival, Asheville Downtown Association events, The Asheville Assault Home Games, Asheville Splash Home Games, and Asheville Grizzlies Home Games.

- The below listed groups have requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their events and allow for consumption at these events.

-8-

- The Sunset Stampede, scheduled for May 1, is a run and event that will raise funds for Big Brothers/Big Sisters.
- The Mountain Sports Festival, scheduled for May 7-9, is an event to draw attention to the vast opportunity for Asheville as a destination for adventure sports.
- The Asheville Independent Restaurants' Taste of Asheville, scheduled May 22, is an event to promote the many independently owned restaurants in the Asheville area.
- Asheville Parks and Recreation produces the 4<sup>th</sup> of July Celebration and Fireworks spectacular as a community celebration and to attract visitors to the downtown area.
- For many years, the Bele Chere Board in cooperation with the Asheville Parks and Recreation Department has produced Bele Chere to bring both the public and visitors to the downtown area. This year the request is being made for July 23-24, 2004. The Bele Chere Board and Asheville Parks and Recreation has requested permission to allow possession and consumption of beer and wine during this event as they have been allowed in the past.
- The Asheville Goombay Festival is a unique celebration of African heritage and traditions. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held August 27-29. The 2004 Goombay Festival has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.
- Sisters on Stage is an event to raise funds for Helpmate, an organization committed to assisting battered women. This year's event is scheduled on September 4.

- For several years, the Annual Brewgrass Festival has served as a unique celebration of the art of brewing beer in the spirit of Oktoberfest with a Smokey Mountain twist. This year's event is scheduled for September 18.
- The Asheville Greek Festival is a unique celebration of Greek heritage and traditions at City/County Plaza. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held September 24-26. The 2004 Greek Festival has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.
- The World of Ice, scheduled for October 10, is an event showcasing the regions best Ice Carvers and restaurants in downtown Asheville.
- The Grove Arcade's Harvest Festival, scheduled for October 16, is an event to promote downtown as a shopping destination.
- The Hardlox Café Jewish Food Festival, scheduled for October 17, is a celebration of Jewish cuisine and heritage.
- For many years, the Asheville Downtown Association has co-sponsored with the City of Asheville events to bring both the public and visitors to the downtown area. These events include: *Moonlight Over Downtown* and four *Downtown After Five activities*. The Asheville Downtown Association has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.

-9-

- The Asheville Assault, Splash, and Grizzlies are all semi-professional sports teams that seek to serve alcohol at their home games throughout the summer.

The Asheville Parks and Recreation Department recommends approval of the resolutions to authorize the possession of malt beverages and/or unfortified wine for the above-mentioned events at specific locations and times noted in the resolutions.

Councilwoman Jones moved for the adoption of the resolutions. This motion was seconded by Councilman Dunn and carried on a 6-1 vote with Vice-Mayor Bellamy voting "no."

Resolution No. 04-86 - **RESOLUTION BOOK NO. 28 – PAGE 204**  
 Resolution No. 04-87 - **RESOLUTION BOOK NO. 28 – PAGE 206**  
 Resolution No. 04-88 - **RESOLUTION BOOK NO. 28 – PAGE 208**  
 Resolution No. 04-89 - **RESOLUTION BOOK NO. 28 – PAGE 210**  
 Resolution No. 04-90 - **RESOLUTION BOOK NO. 28 – PAGE 212**  
 Resolution No. 04-91 - **RESOLUTION BOOK NO. 28 – PAGE 217**  
 Resolution No. 04-92 - **RESOLUTION BOOK NO. 28 – PAGE 219**  
 Resolution No. 04-93 - **RESOLUTION BOOK NO. 28 – PAGE 222**  
 Resolution No. 04-94 - **RESOLUTION BOOK NO. 28 – PAGE 224**  
 Resolution No. 04-95 - **RESOLUTION BOOK NO. 28 – PAGE 226**  
 Resolution No. 04-96 - **RESOLUTION BOOK NO. 28 – PAGE 228**  
 Resolution No. 04-97 - **RESOLUTION BOOK NO. 28 – PAGE 230**  
 Resolution No. 04-98 - **RESOLUTION BOOK NO. 28 – PAGE 232**  
 Resolution No. 04-99 - **RESOLUTION BOOK NO. 28 – PAGE 234**  
 Resolution No. 04-100 - **RESOLUTION BOOK NO. 28 – PAGE 237**  
 Resolution No. 04-101 - **RESOLUTION BOOK NO. 28 – PAGE 240**

### **III. PUBLIC HEARINGS:**

#### **A. PUBLIC HEARING TO CONSIDER ADOPTION OF AN ORDINANCE DIRECTING THE DWELLING LOCATED AT 86 CRAYTON ROAD BE DEMOLISHED**

Mayor Worley said that this public hearing was scheduled for April 13, 2004, and at the owner's request, was postponed until this date.

On April 27, 2004, a letter was received from Mr. Craig Justus, attorney for the owner, D.P.S. Properties, requesting the public hearing be continued until July 13, 2004 because the property is under contract to be sold with a closing date of June 22, 2004.

Councilman Dunn moved to continue this public hearing until July 13, 2004, without further advertisement. This motion was seconded by Councilman Davis and carried unanimously.

**B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF PROPERTY LOCATED AT 59 ARLINGTON STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE/CONDITIONAL USE, AND THE ISSUANCE OF A CONDITIONAL USE PERMIT TO CONVERT A RESIDENTIAL USE TO OFFICE USE**

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the

-10-

issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

City Attorney Oast said that a valid protest petition has been filed, thus requiring a three-fourths vote of City Council to approve the rezoning of the property. If the rezoning passes by the three-fourths vote, then the conditional use permit is subject to a simple majority vote.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:22 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.

Urban Planner Shannon Tuch 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).

Ms. Tuch said that this is the consideration of a request to rezone property located at 59 Arlington Street from RS-8 Residential Single-Family High Density District to Office District/Conditional Use and a request to issue a conditional use permit to convert a residential use to office use.

She said that the subject property is located within the City limits on the corner of Arlington Street and Furman Avenue, exactly one block east of Charlotte Street near the I-240 Interchange and Central Business District zoning district (City Exhibit 3 – Location Map). Surrounding land uses are all zoned RS-8 with a non-conforming grandfathered Office use to the west, a non-conforming duplex to the north, a 'Use by Right Subject to Special Requirements' daycare use and single family use to the east, along with some additional single family use to the south. The applicant wishes to rezone the property in order to renovate and convert the existing vacant single family home into limited office use. The conditional use component of this project will be a site Master Plan showing the proposed off-street parking, currently accessed off of Furman Avenue which connects to the off-street parking for the grandfathered office use on the west side of the subject property. It is the applicant's intention to demolish the existing detached garage and improve the off-street parking provided including handicap accessibility and a potential shared parking arrangement with the adjacent office use. In addition, sidewalks, street trees, landscaping and other site improvements are proposed to bring the site into compliance while maintaining the appearance of a single family home. This application is being presented in conjunction with the rezoning requests for 51 and 53 Arlington Street to result in a continuous strip of office use from Charlotte Street to Furman Avenue on the north side of the street.

The blocks that include Arlington, Furman, Reed, Broad, and Chestnut Streets were zoned R-4 prior to the wide scale zoning changes that occurred in 1997. At that time, the R-4 zoning designation allowed limited office use and multi-family. This, combined with the streets close proximity to downtown, residential neighborhoods, and major vehicular corridors, encouraged the renovation of many of the larger homes into higher density or non-residential uses, changing the face of the once predominantly single family neighborhood. More recent



development is incorporating some of the characteristics of older, more traditional urban development characterized by interconnected street systems, sidewalks, single family and small scale multi-family residential uses, small commercial and office uses easily accessible to residential areas, and less parking that relies upon the accessibility of different uses to reduce the dependence upon the automobile for making all trips. There are no specific land use goals for this area but Charlotte Street is targeted for future mixed-use development.

The purpose of the RS-8 zoning district is to establish a high density single family district in areas where public infrastructure is sufficient to support such densities. The purpose of the Office zoning district is to provide small scale office uses (or a mixture of office and residential use) adjacent to residential uses and to serve as a transition as residential areas convert to other uses or between residential and commercial areas (City Exhibit 3 – Land Uses & Zoning Map).

At their February 16, 2004, meeting, the City of Asheville Technical Review Committee (TRC) reviewed the conditional use rezoning request and made a positive recommendation with conditions that the project be forwarded to the Planning and Zoning Commission.

At their March 3, 2004, meeting the Asheville Planning & Zoning Commission reviewed the request and on a 4-3 vote, voted not to recommend the approval of the conditional use rezoning citing concerns over traffic, encroachment, and potential loss of residential character. The applicant has chosen to appeal this decision to the City Council.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (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 review indicates that all seven standards have not been met as proposed in the site plan.

- 1) That the proposed use or development of the land will not materially endanger the public health or safety.  
***The project must meet the technical standards set forth in the UDO and there appear to be some significant challenges to meeting the off-street requirements resulting in parking encroachments and necessitating on-street parking (City Exhibit 3 – Site Plan). In addition, the limited site area will make meeting the landscape buffers difficult resulting in Alternative Compliance that could result in a reduced benefit to the public (City Exhibit 3 – Site Photos).***
- 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 proposed parking area must be increased to accommodate the off-street parking requirement and will result in significant land disturbing activity relative to the lot size. Due to site limitations, landscape buffers will have to be reduced through Alternative Compliance.***
- 3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.  
***The existing single family home's appearance will only be altered in relation to the renovation and improvements, however, the parking improvements will result in the loss of a "backyard" which will be difficult to buffer against due to site limitations. In addition, the increase in activity associated with an office use could be perceived as a nuisance and the value of adjacent properties could be negatively affected.***

- 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 single family home will not be removed and will continue to be in scale, bulk, coverage, density and character with the neighborhood. However, the parking area is not typical of the neighborhood and will not be in coverage or scale. In addition, The change of use could affect the harmony of the adjacent residential uses.***
- 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.

***The proposed application is difficult to support through official plans adopted by the City when the Asheville City Development Plan 2025 specifically calls for an initiative to strengthen and enhance neighborhood viability through the encouragement of compatible development that preserves architectural diversity and protects neighborhoods from inappropriate non-residential encroachment.***

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

***This proposed development is within close proximity to transportation facilities and other utilities appear adequate. The project area is located near major road facilities, interstate connections and other service centers. The proposed project will not require a change in water or sewer service and preliminary review by other service providers has not revealed any problems for future service to the development.***

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

***The proposed Master Plan shows off-street parking that does not comply and will require the balance of parking to be made up on-street. This combined with off-street parking being accessed off the more residential Furman Avenue has the potential for increasing traffic congestion and hazards. In addition, the office use has the potential for increasing traffic in an already heavily trafficked neighborhood.***

After a period of stagnation and deterioration that began in the 1960's, older neighborhoods close to urban areas began to experience a rejuvenation as people recognized the value of living in walkable neighborhoods close to services and a mix of activities. On both sides of Charlotte Street are residential areas with a mix of single family and multifamily uses. Office uses complement the retail and service uses located in close proximity to the residential uses but should not be allowed to encroach into the residential areas when the result is the loss of valuable residential properties and loss of community character. 59 Arlington has been historically a single family home and contains no unusual features that would prohibit easy, cost-effective residential renovation.

Approval of this conditional use rezoning request would allow for the further deterioration of the viable single family neighborhood and would perpetuate the problems initiated by the severing of some of Asheville's oldest and most viable neighborhoods by the construction of I-240. Despite some positive aspects to a change of use, in consideration of the above seven standards and the adjacent zoning and land uses in the area surrounding site, the proposed zoning change does not appear to be consistent with the intent and purpose of the UDO and other official plans and policies adopted by the City.

Pros:

1. Allows for the redevelopment of a vacant piece of property.

-13-

2. Provides for office use in an area easily accessible to residential and commercial services.
3. Provides for office use that is easily served by alternative transportation that lessens the need for vehicular traffic.
4. Conditional use component preserves the character and integrity of the single family home.
5. Office use can serve as a transition between single family uses and higher intensity commercial use.
6. Improves pedestrian amenities by installation of sidewalk and handicap ramps on Furman Avenue

Cons:

1. Allows for increased encroachment of the Office zoning district and further deterioration of a viable residential neighborhood.
2. Reduced potential for residential use (Office zoning does not preclude residential use but a residential component is not part of this application).
3. Project will require some site work to include additional off-street parking, handicap accessibility, and required landscaping that will significantly alter the appearance of the rear of the property.
4. Project could potentially increase traffic (pedestrian and vehicular) to the neighborhood during the day, and leave an unoccupied zone during the night reducing the viability of the residential community.

City staff, along with the Planning & Zoning Commission, do not recommend approval of the conditional use rezoning request to rezone property from RS-8 to Office/Conditional Use.

Mr. Bob Deutsch, attorney for the applicant, presented City Council with responses to the seven conditional use standards (Applicant Exhibit 1). Using a map (Applicant Exhibit 2), Mr. Deutsch felt that the City staff used an arbitrary zoning line to draw the zoning district lines and this property should have been zoned Office District. He pointed out the existing office uses in the

surrounding area, including the house next door at 53 Arlington Street and the day care center immediately across the street from this property. He said the block almost has no single-family homes. He said that an agreement has been reached with Ms. Stephanie Citron (owner of 53 Arlington Street) for a joint turn-around easement where their properties meet so the vehicles would not have to back out onto Arlington Street. The City's Traffic Engineer has approved the traffic pattern and felt there is no problem with congested on-street parking and in fact, this will be a traffic-calming measure. He said that surrounding and adjacent property owners support this conditional use rezoning and they do not think it will reduce their property values. He felt this type of mixed use development is exactly what the official City Plans call for (Applicant Exhibit 1). He felt this is a buffer/transition area and urged City Council to support the conditional use zoning request.

Ms. Jaan Ferree, owner of 59 Arlington Street, said that she is asking for a conditional use rezoning in order for her to build her office in the house. She showed Council photographs of the general neighborhood, her front and back yard; the adjoining house (which has an office use in it) at 53 Arlington Street; and other offices located on Arlington Street and on the other side of Furman Avenue (Applicant Exhibit 3). Offices have not hurt the quality of the neighborhood in this area. She felt that paving her backyard will not injure the way the area looks as seen in her photos in Applicant Exhibit 3). She reviewed with Council where the turn-around easement would be with her neighbor (Applicant Exhibit 4). She said that the City's Traffic Engineer, Mr. Anthony Butzek, has no problem with the parking and feels that the parking is adequate (Applicant Exhibit 5). To further address the parking concerns, she presented Council with a report she accumulated from March 24-April 24, 2004, which showed the parking patterns at various times of day on Arlington Street and Furman Avenue (Applicant Exhibit 6). She said the report shows

-14-

that there is very little parking now so she could get three parking spaces in her backyard and three parking spaces in the front or side. She presented Council with letters from Town & Country Realty of Asheville Inc. (Applicant Exhibit 7) and Appalachian Realty Associates (Applicant Exhibit 8), which stated that they don't think the rezoning would decrease property values. She then presented Council with a letter from Nancy Kern (Applicant Exhibit 9), who owns the property behind the subject property and who is also a realtor, that shows support of her rezoning. She said that Mr. Sylvester, who testified at the Planning & Zoning Commission but could not be at this meeting, who supported her rezoning and didn't feel the property values would be decreased. She felt the area has a wonderful balance of office and residential. She said we would like to have a light office on that property and according to the zoning she could put a quadraplex on that site. She wants to keep the way it is but if she has to turn it into apartments, it would have to be torn up. With apartments it would require more parking and have a larger impact on the community. She felt the neighbors are emotional about this request because of erroneous information originally sent out by City staff (Applicant Exhibit 10), which stated she was going to construct 12 additional apartments on the property. The erroneous information has since been corrected (Applicant Exhibit 11) but she feels that many of the neighbors still feel she is constructing the 12 apartments. She also presented City Council with a letter from Drew C. Nichols, a neighbor who had signed the protest petition, asking that his name be withdrawn from the petition after understanding what she was proposing (Applicant Exhibit 12). When she first approached the Planning & Development Department about her rezoning request, they suggested she contact the people adjacent to her and the next office zoning go in together because her rezoning alone could be considered spot zoning. They suggested she make application for a conditional use rezoning/permit and the other property owners make application for only a rezoning, because they do not intend to change the use of their properties. The owner at 53 Arlington Street is grandfathered in as an office use and the owners at 51 Arlington Street will keep their property as a single-family residence. She urged Council to grant her request to use her property for light office.

Upon inquiry of Councilman Dunn, Ms. Ferree said that she is a consultant and most of what she does she goes on site. She presently has an office in her home but to do circumstances, she would now like to move it out of her home and onto this property.

The following individuals spoke in favor of issuing the conditional use zoning for various reasons, some being, but are not limited to: the change of zoning to Office will not harm the value of adjoining property owners; support for an office than apartments; there are numerous apartments in the area and this property would be better suited for a small office; there is no parking problem on Arlington Street; property will be well maintained as an office use; if apartments were built, that would add parking on the street; there are 4 offices at 53 Arlington Street in which the psychologists park in the back and the clients in the front with no problem; easement for turnaround will benefit both properties; and there is a good mix of residential and office in the area:

Ms. Betsy Reiser, owner of Appalachian Realty and 23 and 35 Arlington Street

Mr. Larry Williamson, owner of 51 Arlington Street

Ms. Dale Smith, owner of the Lots of Love Child Care across the street from 59 Arlington Street

Ms. Stephanie Citron, owner of 53 Arlington Street

Mr. Langdon Ammon, owner of apartment building on Furman Avenue  
Mr. Dennis Ponder, co-owner of 17 Arlington Street

Mr. Deutsch felt it would be appropriate to zone the remaining properties on the north side of Arlington Street to Office District. As presented earlier (Applicant Exhibit 1), Mr. Deutsch said that the conditional use zoning complies with the Smart Growth Plan, Economic

-15-

Development Plan, Smart Growth Initiatives Notes, Smart Growth Land and Transportation Notes, and 2025 Plan. He urged Council to vote in favor of the conditional use zoning.

The following individuals spoke against issuing the conditional use zoning for various reasons, some being, but are not limited to: the neighborhood is not reacting to misinformation; the use does not provide an essential service to the area; encroachment into the neighborhood will injure the value of the neighborhood's character and quality of life; change in use is not in harmony with the rest of the neighborhood; in order to meeting the parking requirements, the backyard will have to be paved which will create an eyesore along Furman Avenue; this property is 112 feet from an Office District; Furman Avenue is a residential street; rezoning is not compatible with the 2025 Plan; possible demolition of structures and construct of large office building; project will increase traffic to neighborhood and will endanger children loading and unloading at the day care center across the street; possibility of more than one office on property; dangerous intersection at Arlington Street and Furman Avenue; parking vehicles make up a congested area; property values in the area will be decreased; remaining residential on other side of Arlington Street might be forced to ask for rezoning to business in the future; precedent might be set if we allow people to pave their backyards and reduce the amount of porous surface; more business encroachment in the area will mean fewer people and possibly an increase in crime because people do not live in the homes; parking congestion currently exists on Furman Avenue and Arlington Street; need to keep remaining housing stock; and the balance of the neighborhood will be disrupted by office zoning:

Mr. Mark Allison, owner of 127 Furman Avenue (Neighborhood Exhibit 1)  
Ms. Joan Morris, resident of 70 Arlington Street (Neighborhood Exhibit 2)  
Mr. John Holland, resident at 3 Oak Park Road  
Mr. Dean Nanney, resident at 79 Furman Avenue (Neighborhood Exhibit 3 – CD disc)  
Ms. Janet Hart, resident at the corner of Furman Avenue and Baird Street (Neighborhood Exhibit 4)  
Resident at 65 Furman Avenue  
Ms. Abby Holland, resident at 3 Oak Park Road

Ms. Ferree said that she doesn't want to change the house and that is why she is asking for a conditional use zoning and permit in order for her to have a light office use. She doesn't want to have to convert the house into apartments, but if she is not rezoned, she will have to build apartments, which will result in more parking and traffic congestion on that corner.

Upon inquiry of Mayor Worley, Ms. Ferree said that she will only have one office in the house.

After hearing no further rebuttal, Mayor Worley closed the public hearing at 6:45 p.m.

Upon inquiry of Councilwoman Bellamy, Ms. Tuch was not able to respond regarding the reasons for the no parking signs but said the parking in the area was typical for residential streets in Asheville.

Upon inquiry of Vice-Mayor Mumpower, Ms. Tuch said that 15 people signed the protest petition and reviewed her analysis of said petition (City Exhibit 4). City Attorney Oast explained the law regarding protest petitions and said that it's not the number of people that sign the petition but the amount of the area of the property they own.

Councilwoman Jones asked if staff had a sense of the breakdown of office space and RS-8 space available in the City. Ms. Tuch said that she did try to make a determination, but all she could surmise was that available office space downtown is self-sustaining.

-16-

Mr. Deutsch pointed out that the City's Economic Development Plan notes the lack of office space as a weakness and there is an increased demand for smaller office spaces. In addition, the Plan calls for commercial rehabilitation.

Councilman Dunn felt that small office spaces are important and he did feel that there is a shortage of that in the City.

Councilwoman Bellamy was concerned if Council makes their determination solely on the request for 59 Arlington Street and not the other two rezoning applications, it might be considered spot zoning. City Attorney Oast said that only a court of law can determine whether something is spot zoning or not. However, given the uses that are directly adjacent to the property, he was not sure that rezoning this property to permit an office use by condition would be spot zoning.

Councilman Davis explained his concern about the parking situation, especially if the office use next door is working at maximum capacity with only one maneuvering space in the back.

Upon inquiry of Councilman Dunn about Ms. Ferree turning the house into apartments, Ms. Tuch said that the property is zoned RS-8 Single-Family and does not allow apartments. There are conditional use permits for duplexes, triplexes and quadraplexes, but the size of the lot also prohibits a certain density and the size of that lot will only support one unit.

Mr. Deutsch presented Council with a photo (Applicant Exhibit 13), which showed that the backyard of 59 Arlington Street adjoins parking lots.

Upon inquiry of Councilman Newman, Ms. Tuch explained what the alternative compliance might look like if the permit were approved.

In response to Councilman Newman, Ms. Tuch said that one of the conditions in the permit, if approved, would be that that home could not be altered.

Upon inquiry of Councilwoman Bellamy, City Attorney Oast said that Council can limit the number of offices that exist within the structure.

Vice-Mayor Mumpower moved to deny the conditional use rezoning for property located at 59 Arlington Street from RS-8 Residential Single-Family High Density District to Office District/Conditional Use. This motion was seconded by Councilwoman Bellamy.

Vice-Mayor Mumpower felt the applicant failed to meet condition no. 5 in respect to encroachment into the neighborhood, and condition no. 7 regarding the traffic and parking impact.

Councilman Dunn felt the parking concern is not valid because in Asheville people park everywhere. He felt this was no bigger safety issue than other streets. If the house was converted into a duplex, that would result in more traffic and additional parking. He did not think the office use would decrease property values and did feel the zoning line was arbitrarily drawn.

The motion to deny carried on a 4-3 vote, with Mayor Worley, Vice-Mayor Mumpower, Councilwoman Bellamy and Councilwoman Jones voting "yes" and Councilman Davis, Councilman Dunn and Councilman Newman voting "no."

**C. PUBLIC HEARING TO CONSIDER THE REZONING OF 53 ARLINGTON STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE DISTRICT**

-17-

At the request of Mr. Bob Deutsch, Vice-Mayor Mumpower moved to continue the public hearings to consider the rezonings of 53 Arlington Street and 51 Arlington Street to June 8, 2004, without further advertisement. This motion was seconded by Councilwoman Jones and carried unanimously.

**D. PUBLIC HEARING TO CONSIDER THE REZONING OF 51 ARLINGTON STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE DISTRICT**

At the request of Mr. Bob Deutsch, Vice-Mayor Mumpower moved to continue the public hearings to consider the rezonings of 53 Arlington Street and 51 Arlington Street to June 8, 2004, without further advertisement. This motion was seconded by Councilwoman Jones and carried unanimously.

**E. PUBLIC HEARING TO CONSIDER A MODIFICATION OF THE CONDITIONAL USE PERMIT CONDITION REQUIRING A TRAFFIC CALMING/ INTERSECTION IMPROVEMENT MITIGATION FEE OF \$500 PER UNIT FOR APPELDOORN CONDOMINIUMS LOCATED AT 200 BROOKLYN ROAD**

Mayor Worley said that earlier today a letter was received from Mr. Rod Hubbard requesting the public hearing be

continued until May 11, 2004, due to a family emergency.

Vice-Mayor Mumpower moved to continue this public hearing until May 11, 2004, without further advertisement. This motion was seconded by Councilman Dunn and carried unanimously.

**F. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF PROPERTY LOCATED AT 19 DORCHESTER AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT/CONDITIONAL USE, AND THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE CONSTRUCTION OF A PARKING LOT**

**ORDINANCE NO. 3112 - ORDINANCE REZONING PROPERTY AT 19 DORCHESTER AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT/CONDITIONAL USE**

**ORDINANCE NO. 3113 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED 19 DORCHESTER AVENUE FOR THE CONSTRUCTION OF A PARKING LOT**

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 7:15 p.m.

-18-

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.

Mayor Worley said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Kim Hamel 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).

Ms. Hamel said that this is the consideration of a request to rezone property located at 19 Dorchester Avenue from RM-8 Residential Multi-Family Medium Density District to Community Business II District/Conditional Use and a request to issue a conditional use permit for the construction of a parking lot (City Exhibit 3 – Location Map).

She said that the applicant (Trinity United Methodist Church) has requested a rezoning of .47 acres of RM-8 property to be rezoned to Community Business II/Conditional Use in order to construct a 25-space parking lot to be utilized by Trinity United Methodist Church. The proposed development is located at 19 Dorchester Avenue. The lot also has frontage on Balm Grove Avenue directly across the street from the church.

Trinity United Methodist Church is located on the corner of Haywood Road and Balm Grove Avenue, directly across the street from the subject parcel. The property is split zoned CB-II and RM-8. Places of Worship are permitted in an RM-8 district as a Use By Right Subject to Special Requirements. However, because the proposed parking lot is on a remote parcel other than on the lot where the main facility exists and because commercial parking lots are not permitted uses in an RM-8 zoning district, the applicant has no other option than to pursue a rezoning request to a district that would permit the use. The proposed zoning to CB II-CUZ would permit a stand-alone parking lot provided the plan meets the design and landscape standards set forth in the Unified Development Ordinance (UDO).

The parking lot will be constructed to allow one-way traffic with ingress from Balm Grove Avenue and egress onto Dorchester Avenue. Based on the number of seats in the sanctuary the church is permitted a minimum of 50 parking spaces up to a maximum of 134 parking spaces. The church currently has 82 parking spaces on its primary parcel. If this request is approved

the church would be well within the amount of spaces permitted by the ordinance.

A 20-foot landscape buffer will be installed along the north property line where adjacent to residential uses. In addition to several existing large deciduous trees, street trees and buffer shrubs will be provided along the east and west sides of the property (City Exhibit 3 – Site Plan). Along the southern property line where adjacent to an existing commercial parking lot, a five-foot landscape strip will be installed. In addition, parking lot landscaping will be provided throughout the site to provide a mature tree canopy that will assist in reducing heat generated by the paved surface.

The Community Business II zoning designation was intended to establish areas of medium- to high-density business and service uses along minor and major thoroughfare streets that would serve the surrounding residential neighborhoods. Community Business II districts should be designed in a manner that is sensitive to a significant pedestrian population while providing safe and adequate vehicular access. To encourage the use of shared and remote parking and other methods of transportation, a 20% reduction in parking is permitted. In this district, buildings may be constructed up to 45,000 s.f. and may be one or several stories tall. Parking is to be placed at the side or rear of the structure.

-19-

At their March 15, 2004, meeting, the City of Asheville Technical Review Committee (TRC) reviewed the conditional use rezoning request and made a positive recommendation that the project be forwarded to the Planning and Zoning Commission subject to the conditions outlined in the TRC Staff Report and the following condition: The design of required buffering and removal of the existing retaining wall is to be determined after redesigning the parking area and consultation with neighboring property owners.

At their April 7, 2004, meeting, the Planning and Zoning Commission reviewed this request and made a favorable recommendation to approve it subject to the conditions outlined in the staff report and with one additional condition that the concrete retaining wall shall be removed and no similar wall shall be erected to replace it.

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)).

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

The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

- 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 project area is relatively flat. Grading of the site will be necessary to comply with stormwater and erosion control requirements. In complying with these standards the unattractive retaining wall structure, which is along portions of the northern property line, will be removed. In addition to the 20-foot landscape buffer requirement, earth berming and/or screening may be utilized to assist in mitigating any negative impacts the parking lot may have on adjoining residential uses. Parking lot landscaping will also be provided to provide a mature tree canopy and assist in reducing heat that radiates from paved surfaces.

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

The parking lot will be restricted for church use only, with activity occurring only 2-3 days a week. Landscaped berms and/or screening will serve to mitigate the impacts of the proposed development to adjoining residential uses. In addition, the adjoining residential properties to the north of the site will have improved conditions with the removal of an unattractive retaining wall that borders the property line.

- 
- 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.

Places of Worship are permitted in an RM-8 district as a Use by Right Subject to Special Requirements. Had this lot been

contiguous with the church it would have been a

-20-

permitted use. Additionally, the use of the property will not involve the construction of any building or result in significant grading of the site. Landscape buffers and parking lot landscaping will be installed along with the preservation of several existing large trees at the entrance and exit of the site.

- 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.

The City's 2025 plan does not address Places of Worship or the expansion of such facilities when located in a residential district. The Unified Development Ordinance, however, permits Places of Worship as a Use By Subject to Special Requirements in residential districts provided they meet the required design standards. The City's 2025 plan places emphasis on encouraging the use of other modes of transportation, (i.e. transit bus service, carpooling, vanpooling, etc.), rather than promoting full dependency on the automobile. Shared and remote parking is also encouraged by utilizing existing infrastructure, which reduces the need for non-residential encroachments into neighborhoods and reduces the need for additional impervious surfaces.

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

Transit Service is available at multiple locations along Haywood Road. In addition, the proposed development was reviewed by the City's Technical Review Committee that includes representatives of the Water Resources Department, Fire Department, Engineering Department, Public Works Department, and Public Works Department.

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

No increase in traffic is expected on Balm Grove Avenue. Due to egress from the proposed parking lot, a slight increase in traffic may be noticed on Dorchester Avenue. However, with the installation of recent traffic-calming measures on Dorchester Avenue and because the road is serviced by a traffic signal, impacts should be minimal to none. In addition to the required sidewalks on Dorchester Avenue and Balm Grove Avenue, the applicant will be required to improve pedestrian connections by tying into delineated crosswalks leading to the church.

Pros:

1. The development will improve conditions on a vacant lot by providing stormwater management to control run-off on the site.
2. An unattractive retaining wall, adjacent to residential properties, will be removed.
3. The installation of landscaping will improve the appearance of the lot and provide a mature tree canopy to assist in reducing heat generated by the proposed parking lot and abutting commercial lot.
4. Any potential increase in traffic on Dorchester Avenue will be limited to 2-3 days a week since the parking lot will be restricted for church use only.

Cons:

1. The proposed project does not appear to support the goals of smart growth or compatible infill development.
2. The development will result in the loss of valuable multi-family residential property.
3. The development could set a precedent for the encroachment of other non-residential uses into the neighborhood.

-21-

4. Underutilized parking lots from neighboring businesses could provide shared and remote parking opportunities reducing the need for additional parking.

Staff feels that a careful balance is necessary in cases where non-residential uses are permitted in neighborhoods to ensure that the integrity of the neighborhood remains, yet allows for the growth of essential non-residential elements that contribute to the neighborhood. Since Places of Worship are permitted as a Use By Right Subject to Special Requirements in the RM-8 district and because the church does not exceed its maximum number of parking spaces permitted we believe that balance can be achieved with the approval of this request. We have found that all seven standards have been met, and that any potential impact by the proposed development will be mitigated by appropriate measures required by the Unified Development Ordinance.

Staff recommends approval with the following conditions: (1) All conditions by the Technical Review Committee be met; (2)



Site lighting is to be provided meeting the Use by Right Subject to Special Requirements for Places of Worship standards; additionally, any such lighting shall be equipped with 90-degree cutoff fixtures and be directed away from residential areas; (3) Developer shall meet with neighboring property owners in developing the design of required landscape buffers; (4) The applicant shall pursue shared and/or remote parking with neighboring businesses; and (5) The concrete retaining wall shall be removed and no similar wall shall be erected to replace it.

Mr. Dennis Ponder, representing Trinity United Methodist Church, said that they have met with the community and as a result there have been 3-4 design changes that resulted in a better design. He explained the site plan design and felt the parking lot will be a positive addition to the neighborhood. He urged City Council to support the conditional use rezoning and permit.

Hearing no further rebuttal, Mayor Worley closed the public hearing at 7:29 p.m.

Upon inquiry of Vice-Mayor Mumpower, Mr. Ponder said that the property was acquired by the Church approximately two years ago.

Councilman Dunn moved for the adoption of Ordinance No. 3112 to rezone property located at 19 Dorchester Avenue from RM-8 Residential Multi-Family Medium Density District to Community Business II District/Conditional Use. This motion was seconded by Vice-Mayor Mumpower.

Councilman Newman felt this is a good parking lot design, however, he felt Asheville has very little multi-family land available for development and therefore, he could not support the conditional use zoning.

Councilman Davis also felt this is a good parking lot design and it meets the desires of the Haywood Road Corridor Plan.

The original motion to approve the conditional use zoning carried on a 6-1 vote, Councilman Newman voting "no."

#### **ORDINANCE BOOK NO. 21 - PAGE**

Councilman Dunn moved for the adoption of Ordinance No. 3113 to issue a conditional use permit for the construction of a parking lot, subject to the following conditions: (1) All conditions by the Technical Review Committee be met; (2) Site lighting is to be provided meeting the Use by Right Subject to Special Requirements for Places of Worship standards; additionally, any such lighting shall be equipped with 90-degree cutoff fixtures and be directed away from residential areas; (3) Developer shall meet with neighboring property owners in developing the

-22-

design of required landscape buffers; (4) The applicant shall pursue shared and/or remote parking with neighboring businesses; and (5) The concrete retaining wall shall be removed and no similar wall shall be erected to replace it. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

#### **ORDINANCE BOOK NO. 21 – PAGE**

#### **G. PUBLIC HEARING TO CONSIDER THE REZONING OF TWO LOTS LOCATED ON HAWKINS LANE FROM COMMUNITY BUSINESS II DISTRICT TO INSTITUTIONAL DISTRICT**

#### **ORDINANCE NO. 3114 - ORDINANCE REZONING TWO LOTS LOCATED ON HAWKINS LANE FROM COMMUNITY BUSINESS II DISTRICT TO INSTITUTIONAL DISTRICT**

Mayor Worley opened the public hearing at 7:32 p.m.

Urban Planner Carter Pettibone said that this is the consideration of rezoning two lots located on Hawkins Lane from Community Business II District to Institutional District. This public hearing was advertised on April 16 and 23, 2004

The property is located within the City limits on the west side of Hawkins Lane south of Hazel Mill Road. Surrounding land uses and zoning include residential to the north zoned RM8, commercial uses zoned Highway Business (HB) to the east and south and vacant property zoned Community Business II to the west.

The applicant, Temple Baptist Church, wishes to rezone the properties in order to utilize them for uses permitted in the Institutional District. The purpose of the Institutional District is to address the needs of major institutional uses and minimize conflict with adjacent uses.

Currently, the property is used for recreational purposes and includes a number of ball fields. The owner, Temple Baptist Church whose main facility is located approximately 400 feet to south along Hawkins Lane, plans to expand the recreational facilities on the site. The Church believes it is not able to develop the property according to the requirements of the Community Business II District, especially as they relate to the requirements for buildings to be located along the street and parking to be located behind and/or to the side of the building.

Rezoning the properties would allow the Church the opportunity to further develop the property for uses permitted in the Institutional District. It would provide the property a zoning district that is similar in intensity to what it is currently. As such, it would maintain a transition between the high intensity commercial uses to the south and east and the residential properties to the north.

In terms of building location and parking, a rezoning would allow the applicant more flexibility in where to locate them on the site. A rezoning to Institutional District would also eliminate a great number of potentially adverse and high traffic generating uses from locating on the site and accessing Hawkins Lane.

**Advantages (Pros)**

- More flexibility for building and parking location on site.
- A number of potentially adverse and traffic generating uses eliminated from consideration.
- Transition between neighboring commercial and residential zoning districts to remain.

-23-

**Disadvantages (Cons)**

- An "island" of Community Business II zoning remains where its properties do not have direct access onto a public street.

In consideration of the above and the adjoining zoning and land uses, the proposed zoning change appears to be consistent with the intent and purpose of the UDO.

The Planning and Zoning Commission, at its April 7, 2004, meeting, voted 5-0 to recommend approval. Staff recommends approval of the rezoning request as well.

Mr. Gary Davis, engineer for Temple Baptist Church on this project, briefly reviewed with Council this history of the project and asked for City Council's support in the rezoning change.

Mayor Worley closed the public hearing at 7:38 p.m.

Upon inquiry of Vice-Mayor Mumpower, Mr. Pettibone said that he only received one phone call from a neighbor regarding the buffering requirement, which he explained.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Bellamy moved for the adoption of Ordinance No. 3114. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

**ORDINANCE BOOK NO. 21 - PAGE**

**H. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE CERTAIN DIMENSIONAL REQUIREMENTS IN THE URBAN VILLAGE DISTRICT**

**ORDINANCE NO. 3115 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES TO REVISE CERTAIN DIMENSIONAL REQUIREMENTS IN THE URBAN VILLAGE DISTRICT**

Mayor Worley opened the public hearing at 7:40 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) for certain revisions of the dimensional requirements in the Urban Village District. This public hearing was advertised on April 16 and 23, 2004.

This code amendment is a general "housekeeping" type amendment intended to revise certain dimensional requirements

for the urban village zoning district. With the adoption of the 2025 Plan, it became apparent that several areas identified for urban village locations did not meet the 10-acre minimum acreage requirement. This amendment would reduce the minimum acreage requirement to five acres. Additionally, there are several areas of site design inconsistency between the Neighborhood Corridor District and the Urban Village District; this amendment would resolve those inconsistencies.

The amendment has been routed to the Coalition of Asheville Neighborhoods, CREIA, and Council of Independent Business Owners for review and comment.

Pros –

- The 2025 Plan and the UDO will be in greater compliance.

-24-

- The Urban Village District would be able to be applied to a larger number of properties (a potential con), allowing it to be used in a greater variety of circumstances.
- There would be greater design consistency between the Neighborhood Corridor District and the Urban Village District.

Con –

- The Urban Village district would be able to be applied to a larger number of properties (a potential pro).

The Planning and Zoning Commission recommended approval of this code amendment on April 7, 2004, by a vote of 5-0. City staff recommends approval of the proposed code amendment as well.

Mayor Worley closed the public hearing at 7:41 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3115. This motion was seconded by Councilwoman Jones and carried unanimously.

#### **ORDINANCE BOOK NO. 21 - PAGE**

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

##### **A. RESOLUTION REGARDING ANNEXATION SERVICES PLAN FOR THE LONG SHOALS ANNEXATION AREA**

Mayor Worley announced that this item will not be considered at this meeting.

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

#### **VI. OTHER BUSINESS:**

##### **Board/Commission Vacancies**

Vice-Mayor Mumpower announced vacancies on the Civil Service Board and the Downtown Commission. He encouraged interested residents to apply by calling the City Clerk's Office.

##### **For Our Kids**

Vice-Mayor Mumpower thanked Ms. Daisha Merritt and Mars Hill College; Chris Young and the staff from Office Environments; and the residents from Lee Walker Heights for their participation in the For Our Kids Program.

##### **Claims**

The following claims were received by the City of Asheville during the period of April 2-22, 2004: Leda Neale (Police), Brian Blackwell (Streets), Tommy Hill (Streets), Jane Williams (Water) and David Lee Welch (Police).

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

-25-

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

Mr. Fred English spoke in opposition of public access television. He did not feel that the City is proceeding in the right direction, especially if they consider rail service. He suggested the City rename Amboy Road to Bob Pressley Boulevard, in memory of Mr. Pressley who gave so much to the Asheville community.

Mr. Randy Bray was concerned that City Council would allow the consumption of malt beverages and/or unfortified wine at events, especially since Asheville has so much to offer.

Brother Christopher Schemata spoke about the homeless problems in Asheville.

Mr. Joseph Smith hoped City Council will continue to investigate the problems associated with the Alcoholic Beverage Control Board.

Councilwoman Bellamy praised Mountain Housing Opportunities for receiving the highest score in the State on their Griffin project. This project will bring 50 units in downtown Asheville of which 15 are specifically for people who were homeless.

Councilwoman Jones commended the Asheville Police Department on how they handled the unwelcomed visit by people preaching hate and desecrating the flag. She also commended the communities of faith and how they responded with love and not judgment.

**VIII. ADJOURNMENT:**

Mayor Worley adjourned the meeting at 7:58 p.m.

---

CITY CLERK

---

MAYOR