

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**

- Mr. Theodore Hunter Sr., Retired Master Sergeant of the U.S. Army led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Newman gave the invocation.

**I. PROCLAMATIONS:**

**A. RECOGNITION OF MARO SLAUGHTER, WINNER OF THE “N.C. BUILDING INSPECTOR OF THE YEAR AWARD”**

Mayor Worley read the recognized Maro Slaughter with the Building Safety Department as winning the N. C. Building Inspector of the Year Award. She also became the first female to win the award in the 48 years since the Inspector's Association was created.

**B. RECOGNITION OF JOHN MIALL BEING NAMED THE 2004 PUBLIC RISK MANAGER OF THE YEAR BY THE PUBLIC RISK MANAGEMENT ASSOCIATION**

Mayor Worley read the recognized John Miall, Director of Risk Management, as being named the 2004 Public Risk Manager of the Year by the Public Risk Management Association.

**C. RECOGNITION OF CITY OF ASHEVILLE EMPLOYEES IN 13<sup>th</sup> ANNUAL EXCELLENCE IN PUBLIC SERVICE AWARDS PROGRAM**

Mayor Worley read a proclamation recognizing several City of Asheville employees who were winners in their respective categories in the 14<sup>th</sup> Annual Excellence in Public Service Awards Program. Employees recognized were Tim E. Haynes, Scott T. Burnette, Deborah Bryant, Cheyenne Youell, Jamie Sullivan and Douglas (Mike) Quinones. He thanked each employee for their faithful and loyal dedication in their career of public service.

**II. CONSENT AGENDA:**

Councilwoman Bellamy asked that Consent Agenda Item F be removed from the Consent Agenda for discussion.

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 22, 2004, AND THE COMMUNITY MEETING HELD ON JUNE 29, 2004**

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**B. RESOLUTION NO. 04-144 - RESOLUTION OF INTENT TO CLOSE ROBERTS ROAD EXTENSION AND SETTING A PUBLIC HEARING ON AUGUST 10, 2004**

Summary: The consideration of a resolution of intent to close Roberts Road Extension and set a public hearing on August 10, 2004.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, the adjoining property owners have requested the City of Asheville permanently close to public use

as a public street Roberts Road Extension.

Closure of this section of right-of-way will not deny any of the abutting properties a reasonable means of ingress or egress. There are two lots that abut this section of right-of-way. They are identified by PIN Nos. 9657.10-35-4414 and 9657.10-35-6577. All abutting property owners have joined in the petition to close.

City staff recommends that City Council adopt the resolution setting a public hearing for August 10, 2004, to close Roberts Road Extension.

#### **RESOLUTION BOOK NO. 28 – PAGE 294**

##### **C. RESOLUTION NO. 04-145- RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY TO PROVIDE REGIONAL HAZARDOUS MATERIALS RESPONSE FOR REGION 6**

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the N.C. Dept. of Crime Control and Public Safety to provide regional hazardous materials emergency response for Region 6.

North Carolina is divided into seven geographical regions for the purpose of hazardous material emergency response. The N. C. Dept. of Crime Control and Public Safety contracts with municipalities across North Carolina to respond into the geographical regions and provide technician level hazardous materials emergency response. The region six area covers from Rutherford County west to the Tennessee Border. Twenty counties comprise the response region.

The City of Asheville has been a regional hazardous materials provider since Fiscal Year 1994-95. The State of North Carolina provides funding that fully supports the operational costs of the program.

**Pros:** The State of North Carolina provides the hazardous materials response truck, all response equipment and provides for administrative costs of operating the team. In addition, the state funds extensive training for members of the Asheville Fire and Rescue Department to enable us to competently handle hazardous materials emergencies.

The City of Asheville has full use of the truck and all specialty equipment within the City of Asheville. Without the state hazardous materials contract, Asheville taxpayers would need to provide much of resources necessary to properly respond to emergencies within Asheville. With the contract, we have the advantage of the equipment and resources being funded at the state level, rather than at the local level.

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**Cons:** During the ten years that we have provided regional hazardous materials response services, we have not experienced difficulties or disadvantages with the program. Losing this program and the associated benefits would be a negative for the citizens of Asheville.

This program is consistent with the City's Strategic Plan in forming partnerships with other governmental units to provide services.

City staff recommends City Council authorize the City Manager to renew the Regional Hazardous Materials Contract with the N. C. Dept. of Crime Control and Public Safety and Crime Control for Region 6.

#### **RESOLUTION BOOK NO. 28 – PAGE 295**

##### **D. RESOLUTION NO. 04-146 - RESOLUTION ESTABLISHING MINIMUM PRICE AND DIRECTING THE CITY CLERK TO ADVERTISE AN OFFER OF PURCHASE FOR UPSET BIDS FOR TWO LOTS ON MCDOWELL STREET FROM LIVINGSTON STREET, LLC**

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids Disposal Parcels 75A and 75B located on McDowell Street.

Disposal Parcels 75A and 75B are zoned Institutional and comprise 0.21 acres total. Both lots are located on the west side of McDowell Street (PIN Nos. 9648.14-34-7353 and 6494). The two parcels were appraised by Joseph Moore on March 7, 2004, at total value of \$33,000. According to the appraisal, the highest and best use is for assemblage. The proposed land use for the subject property in the East Riverside Redevelopment Plan is for assemblage with adjoining property.

Livingston Street, LLC (LS) has submitted a bid to purchase both parcels for the sum of \$33,000. LS owns adjoining property improved with medical offices and parking and desires to assemble the subject parcels with the property it owns to provide access and parking for its employees.

Approval of the resolution will establish a minimum price of \$33,000 and initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Planning & Community Development staff recommend City Council adopt a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids Disposal Parcels 75A and 75B located on McDowell Street.

**RESOLUTION BOOK NO. 28 – PAGE 296**

**E. RESOLUTION NO. 04-147 - RESOLUTION ACCEPTING AN EXTENSION OF LANGWELL AVENUE IN WEST ASHEVILLE AS A CITY MAINTAINED STREET**

Summary: The consideration of a resolution to accept an extension of Langwell Avenue in West Asheville as a City maintained street.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

The City currently maintains Langwell Avenue in West Asheville. A developer has extended this street to provide affordable housing. The extension to Langwell Avenue is

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approximately 0.02 miles with an average paved width of 18 feet. The City will only maintain to the end of the curb. The remainder of the paved roadway will be a private driveway. Engineering Department staff inspected this street and finds it to be constructed in accordance with the approved standards.

Following City Council's approval of this resolution, the extension to Langwell Avenue will be added to the official Powell Bill list. A two-year warranty, from the time of Council acceptance, will be required by the developer to cover major failures in the roadway.

City staff recommends City Council accept the extension of Langwell Avenue in West Asheville as a City maintained street.

**RESOLUTION BOOK NO. 28 – PAGE 297**

**F. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE ASHEVILLE HUMANE SOCIETY FOR ANIMAL SHELTER SERVICES**

This item was removed from the Consent Agenda for discussion.

**G. RESOLUTION NO. 04-148 - RESOLUTION SETTING A PUBLIC HEARING FOR THE ADOPTION OF AN ORDINANCE TO CLOSE AND VACATE THE DWELLING LOCATED AT 1086 HENDERSONVILLE ROAD**

Summary: The consideration of a resolution setting a public hearing on July 27, 2004, for the adoption of an ordinance to close and vacate the dwelling located at 1086 Hendersonville Road.

The dwelling at 1086 Hendersonville Road (PIN 9656.05-08-6459) is a wooden structure containing nine dwelling units. Since December of 1998, following the first complaint, City staff has repeatedly worked with the property owners to bring the dwelling into compliance with the Housing Code, to no avail. To date, the dwelling remains in non-compliance with the Housing Code.

A hearing was held on November 19, 2003, and an Order issued to the owner to render all nine dwelling units compliant with the Housing Code by February 2, 2004. The owner failed to comply with the Order and to date has not completed the required electrical repairs. In addition, with clear notice that they were renting the dwelling units in violation of the Housing Code, the owners exacerbated their non-compliance by renting the unfinished and un-permitted basement.

Prior to the Housing Code Coordinator proceeding to enforce the Housing Code by causing the dwelling to become

vacated and closed, an Ordinance must be adopted by City Council ordering such.

Staff recommends adoption of a resolution setting a public hearing on July 27, 2004, to consider an ordinance ordering the dwelling located at 1086 Hendersonville Road vacated and closed until brought into compliance with the City's Housing Code.

Housing Code Enforcement Officer Jeff Baker responded to questions from Councilwoman Bellamy about the process to date and if every effort has been made to work with the owners of the property.

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

Vice-Mayor Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Dunn and carried unanimously.

**ITEM ON THE CONSENT AGENDA PULLED FOR DISCUSSION**

**RESOLUTION NO. 04-149 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE ASHEVILLE HUMANE SOCIETY FOR ANIMAL SHELTER SERVICES**

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement with the Asheville Humane Society for animal shelter services within the corporate limits of the City.

For the past few years, Buncombe County has required the City to pay for animal shelter services through the Asheville Humane Society who has contracted with the County to run the animal shelter. On June 29, 2004, the City approved the budget for Fiscal Year 2004-2005 and in that budget approved \$121,000.00 to pay for shelter services. The City and the Humane Society need to enter into an agreement for shelter services for the term of July 1, 2004, through June 30, 2005.

Advantages to the contract: The City of Asheville will continue to partner with Buncombe County, taking the opportunity to continue utilization and support of one consolidated animal shelter serving all citizens of Buncombe County. In addition, the City is not forced to own and operate its own animal shelter facility due to this arrangement.

Disadvantages to the contract: The City is continuing to subsidize Buncombe County's Animal Shelter program, by paying for animals taken to the shelter facility by Asheville City residents. Buncombe County government currently pays for this service for citizens in unincorporated areas of the county, which to some, may be viewed as an inequitable level of service.

City staff recommends the adoption of the resolution for animal shelter services for the term of July 1, 2004 through June 30, 2005.

Assistant City Attorney Curt Euler responded to various questions from Councilwoman Bellamy, some being, but are not limited to what are the service hours on the weekends for the shelter, how long have we had an agreement with the Humane Society and how is the City's relationship with the Humane Society.

Discussion surrounded the City of Asheville residents (who are also County residents) paying a fee to take animals to the shelter, while Buncombe County government pays for this service for Buncombe County residents.

Vice-Mayor Mumpower and Councilwoman Bellamy felt that the City should only enter into the agreement for a 30-day period in order to give the "political powers" to meet and discuss this inequitable issue with the County. They felt that if we enter into a year contract, there would be no incentive or negotiation tool for Buncombe County to discuss this issue.

City Attorney Oast explained that the agreement does have a 30-day termination notice.

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Mayor Worley explained that our disagreement over the fee is with Buncombe County and the agreement is with the Asheville Humane Society. Therefore, he felt it would be appropriate to enter into the contract with the Humane Society and

discuss the fee with Buncombe County

City Manager Westbrook said that he would get Council information on how many animals the City of Asheville takes to the shelter.

Councilman Davis moved to adopt Resolution No. 04-149, with the understanding that the Mayor will discuss this issue (and other issues already pending) with Buncombe County. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilwoman Bellamy voting "no."

**RESOLUTION BOOK NO. 28 – PAGE 301**

**III. PUBLIC HEARINGS:**

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

Mayor Worley announced that 86 Crayton Road has been demolished and the public hearing will not be held.

**B. PUBLIC HEARING TO CONSIDER THE CLOSING OF NELSON STREET**

**RESOLUTION NO. 04-150 - RESOLUTION PERMANENTLY CLOSING NELSON STREET**

Mayor Worley opened the public hearing at 5:46 p.m.

Assistant Public Works Director David Cole said that this is the consideration of permanently closing Nelson Street. The public hearing was advertised on June 18, 25, July 2 and 9, 2004.

N. C. Gen. Stat. sec. 160A-299, grants cities the authority to permanently close streets and alleys without regard to whether they are public, private or have actually been opened.

Pursuant to said statute, the property owners adjoining Nelson Street have requested the City to permanently close Nelson Street to public use. The property owner would like the street closed for better access to his building.

Closure of Nelson Street will have no impact on the ingress and egress for any of the abutting properties. There are six lots that abut this section of right-of-way. There is an easement reservation for BellSouth. They are identified as PIN Nos. 9648.09-05-4512; 9648.09-05-3847; 9648.09-06-3004; 9648.09-06-3216; 9648.09-06-4488 and 9648.09-05-7718.

City staff recommends City Council adopt a resolution permanently closing Nelson Street.

Mayor Worley closed the public hearing at 5:48 p.m.

Upon inquiry of Councilman Newman, Mr. Cole said he didn't feel there would be any access problems to the adjoining City of Asheville property if they decided to develop it.

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

Councilwoman Bellamy moved for the adoption of Resolution No. 04-150. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Councilman Newman voting "no."

**RESOLUTION BOOK NO. 28 – PAGE 302**

**C. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 27 CATAWBA STREET FOR THE CONSTRUCTION OF A QUADRAPLEX RESIDENTIAL BUILDING IN AN RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT**

**ORDINANCE NO. 3136 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 27 CATAWBA STREET FOR THE CONSTRUCTION OF A QUADRAPLEX RESIDENTIAL BUILDING IN AN**

## RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

Councilman Davis moved to excuse Mayor Worley from participating in this matter due to a conflict of interest. This motion was seconded by Councilwoman Bellamy and carried unanimously.

Mayor Worley relinquished the meeting to Vice-Mayor Mumpower.

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, Vice-Mayor Mumpower opened the public hearing at 5:55 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. Joe Heard, Director of Development Services with the Planning & Development Department, 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. Heard said that this is the consideration of the issuance of a conditional use permit for property located at 27 Catawba Street for the construction of a quadraplex residential building in an RS-8 Residential Single-Family High Density District.

The property owner (W-G Ventures, LLC) has requested a conditional use permit for property at 27 Catawba Street. The property is located within the City limits on the south side of Catawba Street west of Broadway Street (City Exhibit 3 – Location Map). Surrounding land uses

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and zoning include the City's mulch pile to the north and vacant property to the east zoned RS 8, residential and vacant property zoned RS 8 and RM 6 respectively to the south, and residential property zoned RS 8 to the west. Access to the property is from Catawba Street near its intersection with Broadway Street (City Exhibit 3 – Aerial Photo).

There is currently one single-family residence located on the western edge of the property (City Exhibit 4 – Site Plan; and City Exhibit 3 – Elevation Drawing).

The Technical Review Committee (TRC) reviewed the proposed site plan and recommended approval with conditions. The applicant has revised the site plan to address a number of the conditions, but some conditions are still outstanding.

The Asheville City Council shall not approve the conditional use application and site plan unless and until it makes the following findings, based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case:

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

The project received conditional technical approval from the Water Resources Department, the Fire Department, MSD, Engineering, and other City Departments. The project must meet the technical standards set forth in the Unified Development Ordinance (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 must comply with all City standards in regards to maximum clearing and grading and erosion control.

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

The UDO requirements and the physical design of the structure help to assure that the building fits within the single-family neighborhood surrounding it. Staff has also determined that the additional traffic generated will not adversely impact the existing road conditions or capacity.

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:

Within the surrounding neighborhood there is a range of different building footprint sizes. The footprint of the proposed building falls within this range. The proposed building is two stories in height as are some of the homes in the area. The building also contains only one entrance on its front elevation, as required by the UDO and parking for the building is also located to the rear and will be screened by a mix of trees, shrubs, and fencing. These components help mask the multi-family nature of the structure.

5. That the proposed use or development of the land will generally conform with the Comprehensive Plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City:

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The proposed development will comply with all applicable UDO and Standards and Specifications requirements, as well as any of the City's other plans and policies. The project will also help meet one of the City's Smart Growth policies, providing higher density residential infill development.

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 project received technical approval from the TRC, which includes representatives of the Water Resources Department, MSD, Engineering, the Fire Department, and Public Works.

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

The project was reviewed by the Engineering Department during the TRC process and it was determined that the existing roadway conditions and capacity were sufficient to handle any sort of increase generated by the proposed use.

Advantages (Pros) of the proposed development:

- The proposed quadraplex provides a higher density residential use in close proximity to the Reed Creek Greenway and Broadway Corridor.
- The building is designed to resemble a large, single-family residence, rather than a quadraplex.

Disadvantages (Cons):

- Due to the location of the stream on the property, parking for the proposed quadraplex must be located closer to the road and is more visible to passers-by.

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

Staff recommends approval and issuance of a conditional use permit with the following conditions (1) All outstanding TRC conditions are addressed and detailed plans are reviewed by TRC after approval by City Council; and (2) Parking areas do not encroach into setbacks.

Mr. Gerald Green, representing the developer, spoke in support of the project and that they have tried to design the unit to fit in Montford Historic District even though it is outside the district. They are not sure at this time what the rental rate will be; however, they do hope to keep them in an affordable range.

Ms. Katia Seminole, area resident, spoke in opposition of the quadraplex. She felt the property was too small for a quadraplex. She pointed out that Catawba is a narrow street, with no sidewalks. She said Catawba Street is used frequently by residents in the north part of Montford to get to Merrimon Avenue. She felt that there will be probably 12 people in the entire unit

and there are only 7 parking spaces on the property with no room for on-street parking. She also felt the sign posted on the property advertising this meeting was too small and that she had to get out of her car to read the notice.

Ms. Susan Jones, resident on Catawba Street, said that she was not notified by the City of Asheville of this meeting. She agreed there is a lot of traffic on Catawba and no place for on-street parking.

After rebuttal, Vice-Mayor Mumpower closed the public hearing at 6:10 p.m.

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Upon inquiry of Councilman Dunn, Mr. Green said that there is no room for on-street parking, however, he was willing to add another parking space on the property, however, it will require some landscaping to be deleted. He pointed out that they wanted to preserve some green space at the beginning of Montford and not have a parking lot as an introduction into historic Montford.

When Councilwoman Jones asked if the developer might be willing to reduce the number of units from 4 to 3 to accommodate parking, Mr. Green said that given the choice, from a financial standpoint, they would prefer to add additional parking on the property. He felt that some of the residents will chose to use alternative uses of transportation, like bikes and walking to their destinations, due to the location of the property.

Councilwoman Jones asked what the traffic plan will be on Catawba once the Health Adventure is built across the street from this property. Mr. Heard said that since they have had no formal submittal from the Health Adventure it would be premature to make any assumptions and that the City's Traffic Engineer will have to review the project.

Regarding parking, Councilwoman Bellamy questioned the topography of the area across the street where the City's mulch pile is located.

Mr. Heard clarified the parking space allowance by saying that 8 parking spaces would be the maximum allowed under the UDO on the site. The developer could go above that if the parking provided was of a pervious material.

Councilwoman Jones supported this project and hoped that in the future there would be more research done regarding traffic and parking. She also challenged developers to build well-built multi-family units in all neighborhoods throughout the City.

Councilwoman Bellamy moved for the adoption of Ordinance No. 3136, granting a conditional use permit for property located at 27 Catawba Street for the construction of a quadraplex residential building in an RS-8 Residential Single-Family High Density District, subject to the following conditions: (1) All outstanding TRC conditions are addressed and detailed plans are reviewed by TRC after approval by City Council; (2) Parking areas do not encroach into setbacks; and (3) There be at least 7 off-street parking spaces, with allowance of an additional one without further Council approval. This motion was seconded by Councilman Davis and carried unanimously.

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

At 6:30 p.m., Mayor Worley formally took over the meeting from Vice-Mayor Mumpower.

#### **D. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF TWO LOTS LOCATED ON FORSYTHE STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/ CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT TO ALLOW FOR THE CONVERSION OF AN EXISTING CHURCH TO A FOUR UNIT APARTMENT BUILDING**

**ORDINANCE NO. 3137 - ORDINANCE REZONING TWO LOTS LOCATED ON FORSYTHE STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/ CONDITIONAL USE**

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**ORDINANCE NO. 3138 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR TWO LOTS LOCATED ON FORSYTHE STREET TO ALLOW FOR THE CONVERSION OF AN EXISTING CHURCH TO A FOUR UNIT APARTMENT BUILDING**



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 6:31 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 Designer Alan Glines 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 request from the owners of the property (Jason Eller and Vanessa Cram) to rezone two lots located on Forsythe Street from RS-8 Residential Single-Family High Density District to RM-16 Residential Multi-Family High Density District/Conditional Use; and the issuance of a conditional use permit to allow for the conversion of an existing church to a four unit apartment building (City Exhibit 3 – Location Map and Aerial Photo).

The 2025 Asheville City Development Plan recommends for the Broadway area north of the Central Business District to become a mixed-use higher density neighborhood corridor. In addition within walking distance to the project site along the Merrimon Avenue corridor, is noted as a likely site for an urban village type of development. Little change is noted for the neighborhoods off of these primary corridors except that the 2025 Plan notes the need to provide a mixture of housing types to serve varied residential needs of the community. Finally, the 2025 Plan recommends the adaptive re-use of older structures as a tool for preservation and renewal in neighborhoods.

In 2002, properties along Broadway Street one block from this project were zoned to the newly created Neighborhood Corridor District. The property is located within the City limits in the central area of the City. The site is the former site of the Johnson Memorial Church, which has replaced this structure with a new one across the street from the subject properties.

The area surrounding the subject properties in all directions are zoned RS-8, residential single-family high density. This area includes single-family uses save the church use on Forsythe Street.

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The project proposes the conversion of the former church sanctuary and classrooms to four residential units. The plans do not illustrate the expansion of the existing buildings (City Exhibit 3 – Site Plan). In addition the plans portray retaining the existing steps and ramp into the building for access. As proposed under RM-16 zoning, the size of the lot would only need to be .25 acre. At .33 acre, the 2 parcels provide additional space on the plan for open space. The plan as proposed includes 7 parking spaces but a handicapped accessible space may be required so the parking area could be rearranged. The planting plan illustrates some parking area landscaping, some street trees and required bufferyards. Staff is proposing to work with the developers to come up with a landscaping proposal while acknowledging the somewhat restricted space for the project. Outstanding issues identified during the Technical Review Committee (TRC) review are also proposed to be conditions of the approval. No other environmental or safety concerns were noted for the project (City Exhibit 3 – Elevation Photos).

RS-8 Zoning District is developed to provide areas for high density single-family residential uses where the infrastructure is in place to support this type of development. A limited number of other non-residential uses are allowed to support a residential neighborhood.

RM-16 Zoning District is developed to set aside areas for high density multi-family uses with a broad range of housing types. RM-16 also allows other non-residential uses including limited institutional, public and commercial uses appropriate within high density residential areas.

Because this is a conditional use rezoning, if approved, the only use of the site that would be allowed would be the four residential uses as proposed in this plan. Deviating from the plan would require a modification of the conditional use permit following an approval process similar to what we are undertaking now.

City Council must take formal action as set forth in section 7-9-9(c) 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)).

- 1) **That the proposed use or development of the land will not materially endanger the public health or safety.** The project has been reviewed by the Technical Review Committee (TRC). The project will have to meet State Building Code requirements before the building can be occupied for apartment use. No other safety concerns were noted.
  - 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.** Since the project is using an existing site there will be minimum changes to the natural or topographic features of the site.
  - 3) **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** The project is not expected to injure the value of adjoining or abutting properties. In fact, the conversion of the existing, vacant church building to apartments would likely improve the appearance and maintenance of the site, which should have a positive impact on the surrounding neighborhood
  - 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 project is proposing to adaptively re-use existing structures with no building expansion. The project is in harmony with the scale, bulk, coverage, density and character of the area or neighborhood.
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- 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 project will provide housing that is needed in the community and matches goals from the City Plan 2025 to provide a variety of housing types at a variety of prices in neighborhoods throughout the City. In addition adaptive re-use of existing structures is also encouraged in the plan.
  - 6) **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** Requirements of utility providers will be met for this project. An Asheville Transit route travels within a block of this site.
  - 7) **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** This project was considered at the TRC and it was felt that traffic would not be negatively impacted by this small project.

PROS:

- Provides a mixture of housing types in the community.
- Provides for the adaptive re-use of an existing structure to a use that complements the neighborhood.
- The proposed project requires a minimal visual change in the neighborhood.

CONS:

- Adds a multifamily project to a single family neighborhood (a potential plus)

Staff recommends approval of the rezoning request. The Planning and Zoning Commission, at its June 2, 2004, meeting voted to recommend approval of the request with outstanding TRC being addressed.

Mr. Gerald Green, representing the developer, spoke in support of the project. He said the developers want the property to retain the character of the church that was built in the 1920's. He explained the parking and that they are talking with the church across the street for shared parking.

Ms. Jan Howard, Kenilworth resident, spoke in support of the project in that the developers have done an excellent

renovation on her street.

Mr. Fred English, East Asheville resident, questioned if the units will be affordable housing.

After rebuttal, Mayor Worley closed the public hearing at 6:48 p.m.

Upon inquiry of Vice-Mayor Mumpower, Mr. Green explained what they have done to address the concern of a neighbor regarding car lights exiting the off-parking parking.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3137, to rezone two lots located on Forsythe Street from RS-8 Residential Single-Family High Density District to RM-16 Residential Multi-Family High Density District/Conditional Use. This motion was seconded by Councilwoman Bellamy and carried unanimously.

#### **ORDINANCE BOOK NO. 21 – PAGE**

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Councilman Newman moved for the adoption of Ordinance No. 3138, granting a conditional use permit on two lots located on Forsythe Street in order to allow for the conversion of an existing church to a four unit apartment building, subject to the following conditions: (1) All outstanding TRC conditions being met. This motion was seconded by Councilman Dunn and carried unanimously.

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

At 6:55 p.m., Mayor Worley announced a short break.

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

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

##### **A. RESOLUTION NO. 04-151 - RESOLUTION AUTHORIZING AMENDMENTS TO THE ARENA LICENSE AGREEMENT WITH THE NATIONAL BASKETBALL DEVELOPMENTAL LEAGUE**

Civic Center Director David Pisha said that this is the consideration of a resolution authorizing the City Manager to enter into an agreement with the National Basketball Developmental League (NBDL). The previous NBDL contract provided that the NBDL could extend the agreement for an additional seven years. They chose not to exercise that option but instead requested some revisions to the agreement.

As the City entered into contract renegotiations with the NBDL, the overriding philosophy employed was that any changes made would not detrimentally affect the City regarding the financial bottom line of the contract.

The NBDL requested that the rental of the arena be lowered from \$5,260 per game to \$4,500, representing a reduction of \$760 per game. All other NBDL cities were requested to lower per game rent. The rent for the upcoming season has been set at \$4,500 per game versus last season's per game rent of \$5,260, resulting in an annual revenue loss of \$17,480.

In order for the City to capture this loss revenue in per game rent, the following changes were negotiated, so that when added back cumulatively, more than make up for the reduction in per game rent.

In the previous agreement, the City collected certain ancillary revenues. These included concession profits, facility fees and suite and signage commissions. However, a provision in that prior agreement allowed the NBDL to receive any of the City's ancillary revenues until the City's share of those revenues exceeded \$75,000. That provision no longer applies in the new agreement. As result, based on last season's numbers, projections suggest approximately \$13,500 in additional revenue to the Civic Center from concessions, facility fees and suite and signage commissions.

Finally, in the new agreement, the NBDL also agreed to begin paying for certain concession labor charges, saving the City at least \$2,000 per year. They have also agreed to pay for any equipment charges that may result in a cash payment by the City to a third party supplier, thus saving the City further monies that when added cumulatively, should insure the City retains equivalent revenue earnings as reflected in the prior contract.

Advantages to approving NBDL contract:

- The City is now able to share in the first dollar of any ancillary revenues, thus, when combined with other minor revisions noted above, will make up the differential in per game rent reduction, thus ensuring revenues equal to those in the previous contract.
- If the NBDL sees any improvement in either attendance or ancillary revenues in the upcoming season, the City stands to benefit more financially than under the previous contract.
- The City now has the ability to sever the contact on a yearly basis, just as the NBDL. Under the previous contract, only the NBDL could sever the contact during the three (3) year period.

Disadvantages: None noted.

City staff recommends City Council authorize the City Manager to sign the new NBDL agreement.

Vice-Mayor Mumpower asked if the Civic Center Commission had reviewed the contract. Mr. Pisha replied that they had not reviewed the final agreement, however, they were apprised that negotiations were on-going with the NBDL and there was a timing problem. Vice-Mayor Mumpower said that he would vote in favor of this good agreement, however, in the future he will not vote in favor of any action if the Civic Center Commission did not participate in the decision-making process. He felt that we have this advisory Commission and we need to use them, along with their liaison Councilman Davis.

Councilwoman Bellamy publicly thanked Alfred White, Altitude Team President, for his outstanding service to the Asheville community and the tremendous commitment to the community and the NBDL.

On behalf of City Council, Mayor Worley also thanked Mr. White and welcomed Mr. Rudy Bourg who will be replacing Mr. White.

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

Councilwoman Bellamy moved for the adoption of Resolution No. 04-151. This motion was seconded by Councilman Dunn and carried unanimously.

#### **RESOLUTION BOOK NO. 28 – PAGE 304**

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

#### **A. I-26 CONNECTOR**

Councilman Newman asked Council to allow a short presentation by Mr. Michael Moule and Dr. Joseph Passonneau, technical experts, regarding the I-26 Connector. He said that in 2002, the Metropolitan Planning Organization (MPO) Transportation Advisory Committee (TAC), who had Council representation by former-Councilman Brian Peterson and Councilwoman Jones (now Vice-Mayor Mumpower and Councilwoman Jones), made a decision to approve the traffic predictions available at that time, which predicted traffic volumes on the Connector of around 140,000 a day, but the N.C. Dept. of Transportation (NC DOT) was working on a new traffic model which was completed in 2003 which predicted significantly lower traffic volumes. The TIA made a recommendation in 2002 to support an 8-lane alignment based on the information they had at the time. But the staff's recommendation, which was approved by the TAC, was to re-visit

the issue if the new traffic model showed significantly different numbers. Since the numbers have come back at a much lower level than original predictions, the NC DOT will be holding a public hearing on July 14, 2004, to get community input and give the community an opportunity to ask questions about the project. On July 15, 2004, the MPO will be holding their monthly meeting, but their agenda does not include any action on this issue at this time. He felt this presentation may have some information that could be helpful to City Council in understanding what the new traffic model means for the future of the Connector and what may be the best way to move the project forward.

It was Mayor Worley's understanding that Mr. Moule, who works in Tampa, Florida, will not be in town next week, so

Council wouldn't have the opportunity to hear his presentation.

Vice-Mayor Mumpower objected to the presentations on the basis of timing. He said Council is being placed under tremendous political and personal preference pressures to address what is a technical decision. He would have a hard time hearing presentations from one side during a televised meeting over an issue that is not on our agenda. He felt to have these presentations at Council's next worksession, like we normally would and should do, would be great. But to adapt our agenda to hear from one side, he would argue procedurally is not appropriate.

Councilwoman Jones supported Councilman Newman because valiant efforts were made to have to the NC DOT representatives at this meeting and she was truly disappointed they were not here to respond to Council. City Council is working hard to obtain data and to not hear from the intelligence we have is not doing a service to Asheville.

Mayor Worley did say that the City did not ask the NC DOT representatives to attend this meeting until the middle of last week and since they have several people involved in their presentation that are essential to their public presentation tomorrow, they could not be here due to scheduling conflicts. He did say that the NC DOT was prepared to have someone at this meeting to answer questions but not to give the presentation. After talking with them yesterday, it was decided that that really wasn't in the best interest to not be able to receive the presentation and yet give the appearance of getting information from them.

Vice-Mayor Mumpower did say all of Council wants to make the most informed decision we can. The idea of learning from as many people as we can makes sense. He just has concern with the procedure by which we are doing that. There is a danger of further politicizing this decision, which just clouds the issue further. He did state that some of the pressures to get to this tonight have changed, in that the TAC is not likely to vote on this matter for another month, so we have plenty of time to learn and deliberate and try to find the best way to move forward.

Mr. Michael Moule, Principal Transportation Engineer from Tampa, Florida, and former City of Asheville Traffic Engineer, gave a brief presentation based on traffic analysis to City Council supporting why he feels that 6 lanes is adequate for the I-26 Connector. He reviewed different charts containing information about level of service A-F and 6 vs. 8 lane capacities. He then showed Council samples of large cities with no freeways greater than 6 lanes, including Portland, Oregon, and Santa Barbara, California. In addition, he stated five cities that have or are removing majority highways.

Dr. Joseph Passonneau, professional in highway engineering, briefed Council on his achievements to date stating that he designs roads and the important point is that automobile traffic damages the corridors it goes through. Secondly, if citizens are not involved from the beginning to the end, projects will not be successful.

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Mr. Moule and Dr. Passonneau then responded to various questions from Council, some being, but are not limited to: what is the loss of travel time between a 6 lane vs. an 8 lane; how much land will be needed for 6 lanes vs. 8 lanes; has the NC DOT prepared an analysis of the impact of the residential properties which would have to be displaced; are bike lanes factored into Mr. Moule's analysis; and is the character and beauty of an area factors to consider when transportation planners design projects.

Upon inquiry of Vice-Mayor Mumpower, Mr. Moule said that he would be happy to make his presentation to the TAC if allowed.

At Councilman Newman's request and City Council's consensus, the Mayor asked the City Manager to place this item on the next Council worksession agenda.

## **B. RECOGNITION**

Vice-Mayor Mumpower thanked several people for their work with the Hillcrest community midnight basketball activity, which is a project associated with the overall For Our Kids Program, which he and Councilwoman Bellamy share responsibilities in.

## **C. CLAIMS**

The following claims were received by the City of Asheville during the period of June 11-24, 2004: Sammy Smith (Water), Guillermo M. Ortiz (Streets), Marc Micek (Streets), Casey Holfolter (Fire) and Terry Roegge (Civic Center).

The following claims were received during the period of June 25-July 8, 2004: Gregg Matia (Sanitation), Malvern Hills Park (Parks & Recreation), Robert W. Oast (Sanitation), Marie McDonald (Streets), Civic Center (Civic Center) and Dicie L. Hart (Water).

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

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

The following residents encouraged City Council to take a strong role in representing their concerns about the proposed 8 lanes and not to underestimate what the I-26 Connector would mean for the City and the region: Brian Peterson, Andy Euston, Louis Langford (President of the West Asheville Business Association), Bill Boeheim, Lula Heetderks (President of the West End/Clingman Avenue Neighborhood), and Ms. Kathleen Riddle.

Ms. Sharon Tabor and another resident of the St. Dunstan's neighborhood, shared with Council pictures and asked City Council to reverse their decision to not perform a zoning study the St. Dunstan's Road area in May 2004. and to authorize the Planning Department to proceed with the study to reduce the current zoning of St. Dunstan's Circle, St. Dunstan's Road and Grindstaff Road from the current zoning of RS-8 to RS-4. This request is based on several reasons, including the safety of neighborhood children which has increased +500 in three years; traffic and safety hazard for residents; mentally handicapped residents in group homes who wander away; current lot sizes; and the topography of the area. She said that 68% of the residents are in favor of the RS-4 designation.

Mr. Mike Fryar said that all businesses have to have a permit to do business in Asheville, all except for drug-dealers.

Ms. Leslie Kulba thanked City Council for paving and replacing sidewalks.

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**VIII. ADJOURNMENT:**

Mayor Worley adjourned the meeting at 8:31 p.m.

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CITY CLERK

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MAYOR