

Tuesday - August 23, 1988 - 4:00 P.M.

Regular Meeting

Present: Mayor W. Louis Bissette, Presiding; Vice-Mayor Kenneth

M. Michalove; Councilmen Mary Lloyd Frank, Norma T. Price, Wilhelmina Bratton, Russell Martin, and Walter Boland; Corporation Counsel William F. Slawter; City Manager Douglas O. Bean; and Associate City

Manager/City Clerk William F. Wolcott, Jr.

Absent:

INVOCATION

The invocation was given by Mayor Bissette.

APPROVAL OF MINUTES - AUGUST 16, 1988 MEETING

Mayor Bissette announced the approval of the minutes of the August 16, 1988 meeting.

APPROVAL OF MINUTES - JULY 26, 1988 MEETING

Councilman Bratton moved for the approval of the minutes of the July 26, 1988 meeting. This motion was seconded by Councilman Price and carried unanimously.

I. PROCLAMATIONS:

II. PUBLIC HEARINGS:

A. Public hearing relative to site plan of proposed addition to Appalachian Stove and Fabricators, Inc.

Mayor Bissette said th e Asheville Planning and Zoning Commission on August 3, 1988, reviewed and recommended approval subject to the following:

- 1) A building line setback variance of 10' being granted to front on Emma Road;
- 2) A parking lot paving variance being granted to apply to both existing and newly constructed parking lots;
- 3) An access easement being granted from the Eaven-Brice Partnership property to the west;
- 4) Approval of fire flows, water pressure and hydrant location by the Fire Department;
- 5) Approval of an erosion control plan by the City Engineering Department with special attention to Porshia property

line and stabilization of slope;

6) Approval of a drainage control plan for the site by the City Engineering Department;

7) The driveway being paved from Emma Road into the north parking lot;

8) That buffer plantings and parking lot trees comply with Sec. 30-3-14. of Zoning Ordinance; and

9) Compliance with N. C. State Building Code requirements relative to automatic fire protection for buildings of this size.

Mayor Bissette opened the public hearing at

4:14 p.m.

The City Clerk presented the notice to the public

setting the time and date for the public hearing and the affidavit of publication.

Tom Elmore, with the Land of Sky Regional Council,

working under a Technical Reviewing Agreement with the Planning Department, presented the site plan of the proposed addition to Appalachian Stove and Fabricators, Inc. He said the site in question is located across from the Hilton. He said Appalachian Stove and Fabricators, Inc. proposes to construct a 15,500 square foot addition to their existing business.

Members of Council questioned Mr. Elmore

extensively about the location of trees, buffering, and the grading procedure used for the proposed project.

Gary Eavenson, partner with the Appalachian Stove

and Fabricators, Inc., explained, in detail, the process used for grading of the project. He said grading permits were obtained and after the grading was finished it was determined that the project would have to go through the group development process due to the size of the proposed addition. He said the project was planned prior to the property becoming a part of the City of Asheville. Upon questioning, he said, there may have been one boundary tree on the adjacent property owner, Faron Porshia's property, that was disturbed during grading; there may or may not be a pick up truck load of dirt on the Porshia property; the steep back can be stabilized with a retaining wall; the two-hour fire wall will not require a sprinkler

system and there is no budget planned for the project to pave the parking areas. He said the front of the property is on the opposite side of the Porshia property which should reduce some of the noise from the business.

Faron Porshia, owner of Lot No. 48, said he and his

father owns property adjacent to the proposed addition. He spoke in opposition to the project and asked that Council assure that the conditions outlined by the Planning and Zoning Commission be adhered to. He also spoke in opposition to the granting of the 10' variance stating that in his opinion this would have an adverse effect on his property.

After discussion, Mayor Bissette closed the public

hearing at 5:06 p.m.

Vice-Mayor Michalove moved to table action on the

site plan for the proposed addition to Appalachian Stove and Fabricators, Inc. for one (1) week, giving members of

Council an opportunity to visit the site. This motion was seconded by Councilman Boland and carried unanimously.

Councilman Bratton left the meeting at 5:10 p.m.

unexcused.

III. OLD BUSINESS:

A. Ordinance No. 1705 - Third reading of an ordinance

relative to rezoning property from One Rotary Drive over to Caribou Road from R-3 Residential District to OI Office Institutional District.

Mayor Bisette said the Asheville Planning and Zoning

Commission on June 29, 1988, reviewed and recommended approval of rezoning Ward 7, Sheet 15, Lots 81, 82, and 231, and Ward 7, Sheet 11, Lot 20, from R-3 Residential District to OI- Office Institutional District. (Property

extends from One Rotary Drive over to Caribou Road)

Mayor Bisette said this ordinance was previously

read on first and second reading and will not be reread in its entirety.

On a roll call vote of 7-0, Ordinance No. 1705

passed on third and final reading.

Ordinance Book No. 11 Page No. 303

B. Ordinance No. 1704 - Third reading of an ordinance

relative to a proposed wording amendment to Asheville Zoning Ordinance, Section 30-9-4, District Sign

Regulations.

Mayor Bisette said the Asheville Planning and

Zoning Commission on June 29, 1988, reviewed and recommended approval of amending the Asheville Zoning Ordinance, Section 30-9-4. District Sign Regulations, Subparagraph (D)(1) by adding a new item (b) as follows: "(b) Off-premise advertising signs three hundred (300) square feet per display face or less shall be allowed only in the CH Commercial Highway District, CS Commercial Service District, LI Light Industrial District and HI Heavy Industrial District. He said CG Commercial General District was added as an amendment during the second reading of the ordinance.

On a roll call vote of 7-0, Ordinance No. 1704

passed on third and final reading.

Ordinance Book No. 11 Page No. 302

IV. NEW BUSINESS:

A. Ordinance No. 1706 - Ordinance revising the Motor

Vehicle Registration Tax - City Stickers.

Mayor Bisette said the Buncombe County Tax

Department has agreed to bill and collect the motor vehicle registration tax for the City. The current ordinance needs to be revised in order to more accurately state the process; references to vehicle weight, prorated fees, and decals should be deleted.

Upon inquiry, the City Attorney said it would be

difficult to collect dog tax through the Buncombe County Tax Department system.

Councilman Frank moved for the adoption of Ordinance

No. 1706. This motion was seconded by Councilman Boland.

On a roll call vote of 7-0, Ordinance No. 1706

passed on first reading.

B. Ordinance No. 1707 - Ordinance amending Section 28-81.5

and Section 28-81.6 of Article IV, Speed Regulations, of Chapter 28 of the Code of Ordinances of the City of Asheville (portion of Riceville Road to be 35 m.p.h. as

requested by N. C. Department of Transportation).

Mayor Bisette said this action will revise the

current ordinance to declare a 35 mph speed limit on that portion of Riceville Road (SR 2002) within the corporate limits of the City of Asheville. The

N. C. Department of Transportation has requested that the City Council approve this speed limit change.

Councilman Martin moved for the adoption of

Ordinance No. 1707. This motion was seconded by Councilman Frank.

On a roll call vote of 7-0, Ordinance No. 1707

passed on first reading.

C. Resolution No. 88-136 - Resolution authorizing the City

Manager to execute an agreement with the Housing Authority to continue Hillcrest Enrichment Program through June 30, 1989.

Mayor Bisette said this is a continuation of

funding in the amount of \$15,000 per year for the Hillcrest Enrichment Program.

Upon motion of Councilman Frank, seconded by Vice-

Mayor Michalove, Resolution No. 88-136 was unanimously adopted.

Resolution Book No. 17 Page No. 228**V. CONSENT:****VI. OTHER BUSINESS:****CLAIMS - EILEEN NORTHCUTT (INSPECTIONS) - KATHY FLETCHER (SANITATION) - ROSE MARY JONES (PARKS) - HENRIETTA CUNNINGHAM (WATER) - JOSEPH CRAIN (STREETS) - SYBIL LABAR (WATER) - AGNES HUNTSINGER (SANITATION) - BRIAN JOHNSON (DOWNTOWN DEVELOPMENT)**

The City Manager presented claims received from Eileen Northcutt, Kathy Fletcher, Rose Mary Jones, Henrietta Cunningham, Joseph Crain, Sybil Labar, Agnes Huntsinger, and Brian Johnson.

Mayor Bissette referred the claims to the Corporation Counsel for investigation and recommendation.

LAWSUIT - CARL E. WILEY V. CITY OF ASHEVILLE (CIVIL SERVICE APPEAL)

The City Manager said the City was served with a lawsuit involving Carl E. Wiley v. City of Asheville regarding a Civil Service Appeal.

Mayor Bissette referred the lawsuit to the Corporation Counsel for investigation and recommendation.

DISCUSSION RELATIVE TO ASHEVILLE MALL EXPANSION

Mr. Rendell A. Davis, President of the Kenilworth Forest Community Association read the following statement:

"My name is Rendell Davis and I live at 285 White Pine Drive. Just one week ago, I became the President of the Kenilworth Forest Residents Association, and have been trying to catch up on the history of our community's struggle to protect our properties from the worst effects of the Asheville Mall development.

To this end, I have been reading a rather large collection of newspaper accounts, mainly covering the period from 1969 to 1972, just prior to the Mall's opening. And what I have found in the reading is that throughout that period of several City Councils, City Councilmen and Councilwomen, despite mistakes along the way, continually took strenuous action to force the developer to provide a buffer zone, sometimes described as a "planting strip," a "green belt of plantings," and at other times as a "curtain" to "shield" the residential property from such objectionable features as parking lot illumination, car headlights, fumes, heat, blowing paper, dust and noise. These efforts continued steadily despite the various changes back and forth in the legal width of the buffer zone. In fact, they made it quite clear that the objectives of the buffer zone must be met regardless of how many feet it took the developer to achieve them. This was and is an issue of critical importance, and it contains essentially the primary argument that I want to make here today.

Following the residents' suit in Buncombe County Superior Court, in which the court ordered a 50 foot buffer zone, the developer, in September 1969 appealed to the North Carolina Court of Appeals. This court overturned the requirement and reduced the zone to 15 feet. At this point the City Council was outraged! They decided by a vote of 5-1 to move to rezone Mr. Coleman's property back to RA-6 so that he would have to start all over again from the beginning and would be forced to provide the original intent of previous city councils for an adequate buffer zone. Councilman Dr. Robert Crouch commented, "I personally object to the way Coleman has handled the matter," referring to the 50 foot zone.

W. Neal Hanks, Executive Director of the Planning and Zoning Commission, and Phin Horton, City Manager, argued that "the council already has effective weapons to stop the mall by not granting an occupancy permit if the buffer is not adequate." Nevertheless, Council prepared notices for hearings to rezone the land.

One can only wonder just what happened during the following week; however just seven days later, Council reversed itself and cancelled the hearings. Nevertheless, all Council members repeatedly assured the Kenilworth residents that

their interests would be protected, and that the new site plan would not be approved unless it contained adequate buffering between the shopping center and the residential property behind it. The article in the Citizen (11-21-69) added, "Before both the zoning agency and City Council, Coleman's attorney, G. Ward Hendon, gave assurances that the developer would present a new site plan satisfactory to nearby homeowners and city officials.

Two weeks later, the Planning and Zoning Commission proposed a new definition of the "buffer zone" as 15 feet, but again specified that it should be a "green belt to shield residential districts from objectionable features such as parking lot illumination, headlights, fumes, heat, blowing paper, and dust." It is important to note that City Council, following this ordinance, understood that this gave them adequate power to insist that the developer of the Mall would effectively shield the mall property and activity from the adjoining residential areas.

All of this came to a head some six months later, as work began in mid-1970 and disputes arose over the bulldozing of trees in a "triangular area" that had been designated as part of the buffer zone and was not to be disturbed. Unfortunately the minutes of the earlier meeting did not include the developer's promise not to disturb the area, nor was this noted in the revised city plan.

In fact, the tape of the meeting later confirmed that promise, and a note to that effect was attached to the minutes. But even before that discovery, City Council was adamant! Vice-Mayor Anderson said "Coleman has been warned that Council will not stand for violations of any agreements made with the city's governing body." Councilman Luke Atkinson said, "Coleman is either being careless or doing something he knows he shouldn't do." Councilwoman Barbara Keleher spoke most clearly to the point when she said, "City Council has a moral obligation to see that Coleman sticks by his promises, and that he should not be allowed to continue construction unless he abides by his plans." And Atkinson added, "Things are not turning out like I understood. I rode all over that site with Coleman last year, and he is not doing what he told me he would do. He'd better clean up his skirts, or somebody ought to take some action."

Thereafter, from July through December 1970, almost on a weekly basis, City Council struggled to see that trees were planted, fences built, a dirt berm (8 feet by 2 feet high) constructed to stop runaway cars, and steep slopes graded down to 1:1 (or 45 degrees), all to protect the residents property. Over and over Council reminded the developer that no certificate

of occupancy would be issued until all deviations from the site plan were corrected.

At one point the developer refused to build a fence. Once he announced that he understood there was no need for a buffer zone. At another time he excused the steep slopes by arguing that rocks made it necessary. But again and again, Council insisted that before occupancy there must be compliance.

A year later, in early 1971, as time came to open the Sears store, City Council continued to take a firm stand, insisting that no certificate of occupancy would be issued if the deviations were not corrected. The manager of Sears, Mr. Hackney, stated that he understood the conditions, but asked for a temporary permit, to be contingent on meeting the requirements before the opening in February. Councilman Henry Colton was probably more prophetic than the others when he stated, "I doubt that Council will withhold the permit to open if it does not have the courage to withhold the temporary certificate at this time." Nevertheless, by February 4 the trees were planted, the fence was erected, some slopes were graded, and the permanent permit was granted.

Clearly, this history shows that only as City Council has been very firm in forcing the Mall developer to conform to its requirements have the citizens been protected. There were times when Council was not firm enough, and times when they did not follow through on the strength of their convictions. Nevertheless, by legislation, Council did insist on the protection of the residential area, and this intent is not repealed by any subsequent permit to expand the mall.

The newest ordinance, in section 30-3-14-A, includes some very important words, "The purpose is to improve the appearance, quality, and quantity of landscaped areas that are visible from the roadways and to protect an abutting property from less desirable characteristics of the property for which buffering is required due to dissimilar district use... Such characteristics may include but are not limited to visually incompatible structures and land uses, overhead lighting, wind and dust and increased land uses... In addition the requirements will encourage the preservation of

existing trees and the planting and maintenance of others." I would suggest to you that an elevated parking garage is a visually incompatible structure, and that the importance of existing trees and vegetation in the ordinance would imply that any such destruction would be done only with permission.

As we speak here today, the buffer has been violated. Trees have been wiped out by bulldozers, the banks have been wiped free of vegetation as dirt has been bulldozed down to the very line of the residents' property. Essentially, there is no longer a shield, no longer a curtain, no longer a fence in many places, or green plantings. There is nothing to protect us from

the mall lights or fumes or dust or blowing trash or noise or heat. Our only hope is that the city authorities will take prompt steps to stop the destruction and demand a new and effective buffer zone immediately.

We the residents appeal to the City Council to fulfill their responsibilities to protect the residents and their property in the City of Asheville in 1988 as former councils did some 16 to 19 years ago."

Kevin Clark, 294 White Pine Drive, commented on the following dates and events affecting Kenilworth Forest:

* 12 August 1965 - Asheville City Council adopted Ordinance No.

525, which amended Ordinance #322, known as An Ordinance Providing for the Zoning of the City of Asheville. The intent of Ordinance No. 525 was to insure that the Asheville Mall Developer would not destroy the surrounding Kenilworth neighborhood. It was to accomplish this by requiring the Mall Developer to maintain a fifty- (50) foot buffer zone between

the commercial and residential property.

* August 1968 - ## ---- Decker, Middleton, (et al) v. Richard L.

Coleman and wife, Betty B. Coleman. Buncombe County Superior Court upholds temporary restraining order and permanent injunction restricting the Mall Developer from altering the "inviolable" fifty-foot buffer zone provided for in Ordinance

No. 525.

* Fall, 1969 - The North Carolina Court of Appeals reversed the

trial court's decision on the grounds that the Ordinance violated the defendant's rights to equal protection of the laws.

* July 1970 - Mall Developer bulldozes buffer zone separating commercial and residential property. (Asheville Citizen-Times)

* March 1985 - Asheville City Council approves Site Plan for

Expansion of the Asheville Mall. While contended by many that during the course of the City Council Meeting which approved the site plan, explicit prohibitions against altering the existing buffer zone were placed on the Asheville Mall Developer. However, these prohibitions were not recorded in the official minutes. No provision to alter the existing buffer zone was included in the approved site plan.

* July, 1988 - Mall Developer violates city ordinance by

bulldozing existing buffer zone without authority to do so from site plan approved by city council.

* July, 1988 - North Carolina Supreme Court overturns precedent

set in earlier zoning cases - the court held that conditional use zoning gives local governments flexibility in land use

planning and is gaining acceptance across the nation.

Harold Payne, former Chairman of the Kenilworth Forest Homeowners Association, spoke to Council relative to impact the Asheville Mall is having on Bracketown Road. He asked why the "T" intersection from Bracketown Road to White Pine Drive has not been installed as required by Council in approving the project. He said he would also be opposed to a stop sign on White Pine Drive and that a stop sign should remain and be enforced on Bracketown Road. He also commented on the request of the North Carolina Department of Transportation for a left leading green into White Pine Drive and signalization in the area.

After discussion, Mayor Bissette said the City staff would check with the North Carolina Department of Transportation on the status of these requests.

Harold Payne also questioned whether or not the landscaping and lighting plan has been submitted to the Planning Staff for approval as outlined in the motion for approval of the expansion project.

After discussion, Mayor Bissette requested that the City staff check on the lighting and landscaping plans of the project immediately.

Verl Emrick, with the Planning Department, presented and commented on the following letters relative to the Mall Expansion:

May 25, 1988

Mr. Verl R. Emrick, Jr.

Director of Planning

City of Asheville

PO Box 7148

Asheville, NC 28807

Re: Proposed Expansion

The Asheville Mall

Dear Mr. Emrick:

The attached print shows an area of proposed work along the southwest perimeter of our site, northwest of the theater, which conflicts with the existing planted buffer along the R-2 zoned property. This discrepancy was discovered when actual field layout work was performed. It should be noted that the affected parking is a contract obligation (as shown on the attached Sheet P-1) between the Mall and the various anchor stores.

The Owner is requesting permission to install the affected curb

line as shown which will require removal of the existing buffer, extending the fill bank on the Mall property, and installing a new planting buffer in accordance with the current ordinance.

As an option to the above, the parking count might be maintained by the curb line behind the first row of trees in the buffer and installing infill hemlock planting where the existing buffer is disturbed. This would provide "compact" spaces in the affected area.

With your concurrence, the Owner requests that he be allowed to execute this change within the scope of the current

approval.

Sincerely,

Danie A. Johnson, AIA

Architect

DAJ/ss

cc: R.L. Coleman, Jr.

88/150May25.LTA

May 27, 1988

Mr. Danie A. Johnson, AIA, Architect

39 Patton Avenue

Asheville, North Carolina 28801

Re: Asheville Mall - Your letter of May 25, 1988

Dear Danie:

As you requested I have reviewed our files and drawings relative to the changes being proposed and offer the following opinions:

1. Our drawings do show some additional parking in the area you

described; however, there seems to be some inconsistency in at least two sets we have on file (those being approved by the Asheville Planning and Zoning Commission and City Council).

2. None of the drawings indicate that there is (was) any

anticipated changes in the existing buffering/landscaping except for replanting as needed.

3. It is my opinion that based on the drawings submitted for

approval that Council has an understanding that no change in

the existing buffering is to take place.

Therefore, I would recommend that if the changes you have described are anticipated or need to be implemented, your clients

should request that City Council schedule a review of the changes.

Should you have any questions, please advise.

Sincerely,

Verl R. Emrick, Jr.

Planning Director

VREJr/nr

July 2, 1988

Mrs. Julie Cogburn

Acting Director of Planning

City of Asheville

Asheville, North Carolina

Re: The Asheville Mall

Dear Mrs. Cogburn:

Enclosed please find three copies of "Partial Site Plan", Sheet R3A2R, dated 7-2-88, describing the requested modification of the Group Development Approval for the referenced project to be heard before the Asheville Planning and Zoning Commission on August 3, 1988.

As previously discussed with Mr. Emrick, this request is made in order to enable the Owner to fulfill his contractual obligations to J. C. Company relating to truck circulation space as described on the enclosed Sheet P1, and is necessitated by inaccurate topographical information available at the time of the original group development approval.

Please feel free to contact me should you have any questions or require additional information.

Sincerely,

Danie A. Johnson, AID

Architect

cc: R. L. Coleman, Jr.

87/660JUL2.LTA

Upon inquiry of Vice-Mayor Michalove, the City Attorney outlined

several options the City would have if the developer violates the contingencies associated with the group development approval.

The City Manager said the city staff would discuss and review the comments made during the Council meeting in relationship to the approval of the Mall Expansion Project and would take the necessary legal actions to see that the contingencies associated with the group development approval is adhered to.

Councilman Boland said the city staff should consider lighting, landscaping, grading, buffering, the slope of the grades, noise, and the control of litter. He asked how the developer was going to correct violations already made.

Mayor Bisette said the Council wants the developer to comply with the letter of whatever the site plan approval is, and in a timely fashion and the Council wants the city staff to enforce the development plans and ordinances to the

letter.

Upon inquiry of Harold Payne, the City Attorney said nothing has been presented to him to show him that the developer is in violation of the group development approval.

Harold Payne said in his opinion the City should review the procedure for group development approvals. He said the overall impact of the group development projects need to be looked at closely.

Roger Watson, resident in the area, said since the grading has been done the new lighting has been installed and shines in their living rooms.

After discussion, Mayor Bisette said the City staff would have a report on the Asheville Mall Expansion project at next week's meeting.

REQUEST TO APPROVE RESOLUTION SUPPORTING THE INCORPORATION OF THE TOWN OF FLETCHER

Pat Richie, 49 Wildwood, Chairperson for the Fletcher Community Improvement Committee, in Henderson County, spoke to members of Council requesting approval of a resolution supporting the incorporation of the Town of Fletcher since state statutes require that one of the requirements of becoming incorporated is a resolution from a neighboring city if it is within 5 miles and has a population of over 50,000. She presented several documents, including a boundary description, correspondence, and copies of state statutes relative to her request and made the following presentation:

The Honorable Louis Bisette, Mayor

Members of the City Council

This presentation is in regards to the proposed incorporation of the Town of Fletcher developed by the Fletcher Community Improvement Committee.

This committee is seeing overwhelming support for incorporating our community as evidenced by our first town meeting with 300 people in attendance and the circulation of simple petitions to business firms and residents.

In incorporating our community, we would continue our small town atmosphere and maintain our heritage. Although growth is inevitable, we feel with incorporation our chances of controlling and guiding this growth is good.

Because of the present pressures of past industrial and residential growth there are needs of the community which have to be addressed. Local police protection, road maintenance, garbage service (to name a few) and a local governing body to address these needs is evident at the present.

The Fletcher Community is blessed at this time with having one of the best equipped and manned fire and rescue departments in the state. The men and the governing board of the fire department see the need of incorporating the area and have passed a resolution supporting this endeavor.

In letters circulated between Mr. William T. Drake, Chairman of the Henderson County Commissioners, the Honorable Louis Bisette, Mayor, through the City Manager Douglas Bean, it appears that the City of Asheville has no plans to annex any portion of Henderson County. Since the City of Asheville has no plans to annex into Henderson County then there should be no problem to adopting a resolution to this effect. There are needs now that have to be met and this can only be accomplished by incorporating and having a local governing body.

One of the requirements that a community must meet in the incorporation process is to have a resolution supporting the incorporation endeavor from the neighboring city. The committee feels that working together before and after the fact would be beneficial to all parties concerned. We most respectfully request this resolution from the City of Asheville be adopted.

Thank you.

Fletcher Community Improvement Committee

Several Council members commented on the reasoning behind the General Assembly establishing such a requirement and said they could not support adoption of a resolution at this time.

Mayor Bissette said although the City of Asheville does not have plans, at the present time, to annex the Fletcher community, he

would like to consider their request for awhile and would also like to receive city staff input on the request.

Pat Richie thanked members of Council for their time and said she would be happy to furnish any information they needed and would come back to Council until they make a decision on the resolution.

ADJOURNMENT:

Mayor Bissette adjourned the meeting at 7:00 p.m.

MAYOR CITY CLERK
