

Tuesday - March 25, 1997 - 5:00 p.m.

Regular Meeting

Present: Mayor Russell Martin, Presiding; Vice-Mayor Barbara Field; Councilman M. Charles Cloninger; Councilman Edward C. Hay Jr.; Councilman Thomas G. Sellers; Councilman James J. Skalski; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Pastor Buddy Corbin from Calvery Baptist Church gave the invocation.

I. PROCLAMATIONS:

A. PRESENTATION BY THE ASHEVILLE AREA CHAMBER OF COMMERCE

Mr. Ray Bailey, Chair Elect for the Asheville Area Chamber of Commerce, and Ms. Angie Chandler, Vice President of Communications & Public Affairs, presented Mayor and Council members with a new coffee table book entitled A View from the Top.

B. PROCLAMATION PROCLAIMING THE WEEK OF APRIL 13-19, 1997, AS "NATIONAL VOLUNTEER WEEK"

Mayor Martin read a proclamation proclaiming the week of April 13-19, 1997, as "National Volunteer Week" in the City of Asheville. He presented the proclamation to Ms. Gail Baylor who briefed the Council on some activities taking place during the week.

II. CONSENT:

Mr. H. K. Edgerton asked that Item A. be removed from the Consent Agenda for discussion.

Mr. Johnny Lloyd asked that Item B. be removed from the Consent Agenda for discussion.

Resolutions & Motions:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 11, 1997, AND THE WORKSESSION HELD ON MARCH 18, 1997

This item was removed from the Consent Agenda for discussion.

B. RESOLUTION AUTHORIZING THE SALE OF DISPOSAL PARCELS 6B & 6C LOCATED ON MONTFORD AVENUE TO NEIGHBORHOOD HOUSING SERVICES

This item was removed from the Consent Agenda for discussion.

C. RESOLUTION NO. 97-38 - RESOLUTION DIRECTING THE CITY CLERK TO ADVERTISE AN OFFER OF PURCHASE FOR UPSET BIDS FOR DISPOSAL PARCEL 4B (NEAR INTERSECTION OF HILLIARD AND SOUTH FRENCH BROAD AVENUES) IN THE EAST RIVERSIDE REDEVELOPMENT PROJECT

Summary: The consideration of a bid from Carol Annette Tenant in the amount of

\$7,650.00 for the purchase of Disposal Parcel 4B in the East Riverside Redevelopment Project is not less than the established minimum price of \$7,650.00. -2-

Disposal Parcel 4B is a residential lot near the corner of Hilliard and South French Broad Avenues comprising of 12,730 square feet, as shown on the attached map. The bid from Carol Annette Tenant for Disposal Parcel 4B includes the proposal to construct a single-family home on the property. The home proposed will consist of 5 rooms comprising of 1,024 square feet plus basement. It will contain 3 bedrooms and 2 baths. The bidder if successful will be eligible for the Incentive Housing Program Lot Purchase Subsidy.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. G. S. 160A-269.

RESOLUTION BOOK NO. 24 - PAGE 35

D. RESOLUTION NO. 97-39 - RESOLUTION DIRECTING THE CITY CLERK TO ADVERTISE AN OFFER OF PURCHASE FOR UPSET BIDS FOR TRACT 3 (ON SHORT STREET) IN THE HEAD OF MONTFORD REDEVELOPMENT PROJECT

Summary: Consideration of a bid from J. C. and Shirley Dozier in the amount of \$3,300.01 for the purchase of Tract 3 in the Head of Montford Redevelopment Project is not less than the established minimum price of \$3,300.00.

Tract 3 is a residential lot on Short Street comprising 5,532 square feet. The bid from J. C. and Shirley Dozier for Tract 3 includes no plans to build on the lot but, Tract 3 is to be assembled with property currently by the Doziers.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. G. S. 160A-269.

RESOLUTION BOOK NO. 24 - PAGE 36

E. RESOLUTION NO. 97-40 - RESOLUTION THE CITY CLERK TO ADVERTISE A NOTICE OF INTENT TO AUTHORIZE THE EXCHANGE OF CITY OWNED LAND LOCATED ON EDGE HILL ROAD FOR LAND OWNED BY CHARLES MARTIN LOCATED ON CURVE STREET

Summary: An exchange of property has been negotiated with Mr. Charles Martin who purchased a lot from the City to build a house but has been unable to do so because the lot is the site of a stormwater detention basin.

The portion of PIN No. 9648.07-58-1294 is a residential lot owned by the City on Edge Hill Avenue comprising 16,727 square feet. It is located one block from PIN No. 9648.07-68-0603 at the corner of Curve Street and Alexander Drive, the lot previously purchased by Charles Martin on which he planned to build a house. After the purchase was made it was discovered that the lot is not buildable without the expenditure of a considerable amount of money because of the detention basin on the property. The Public Works Department recommends reacquiring PIN No. 9648.07-68-0603 in order to leave the detention basin in place to assist in the control of the storm drainage system. An exchange of property has been negotiated which will satisfy Mr. Martin's need for a buildable lot and the City's need to control storm drainage system in the area of Curve Street and Alexander Drive.

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Approval of the resolution will initiate the exchange of the properties through the process provided in N. C. G. S. 160A-271.

RESOLUTION BOOK NO. 24 - PAGE 37

Mayor Martin said that members of Council have been previously furnished with copies of the resolutions on the Resolutions & Motions Consent Agenda and they will not be read.

Councilman Sellers moved for the adoption of the Resolutions & Motions Consent Agenda. This motion was seconded by Councilman Worley and carried unanimously.

ORDINANCES:

A. ORDINANCE NO. 2348 - BUDGET AMENDMENT TO PROVIDE FUNDS FOR THE REPAIR OF TWO FIRE DEPARTMENT VEHICLES

Summary: This budget amendment, in the amount of \$35,301, is for the repair of two Fire Department vehicles.

ORDINANCE BOOK NO. 16 - PAGE 154

Mayor Martin said that members of Council have been previously furnished with a copy of the ordinance on the Ordinance Consent Agenda and it will not be read.

Councilman Worley moved for the adoption of the Ordinance Consent Agenda. This motion was seconded by Vice-Mayor Field.

On a roll call vote of 7-0, the Ordinance Consent Agenda was adopted on its first reading.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR DISCUSSION

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 11, 1997, AND THE WORKSESSION HELD ON MARCH 18, 1997

Upon inquiry of Mr. H. K. Edgerton, City Manager Westbrook said that there is \$100,000 allocated for the City's 1997 Summer Youth Program.

Councilman Worley moved to approve the minutes of the March 11, 1997, and March 18, 1997, City Council minutes. This motion was seconded by Vice-Mayor Field and carried unanimously.

B. RESOLUTION NO. 97-41 - RESOLUTION AUTHORIZING THE SALE OF DISPOSAL PARCELS 6B & 6C LOCATED ON MONTFORD AVENUE TO NEIGHBORHOOD HOUSING SERVICES

Summary: The consideration of adopting a resolution authorizing the sale of Disposal Parcels 6B & 6C to Neighborhood Housing Services of Asheville Inc. (NHS).

A bid has been received from Neighborhood Housing Services of Asheville, Inc., in the amount of \$248,900 for the purchase of Disposal Parcels 6B and 6C in the Head of Montford Redevelopment Project.

Disposal Parcels 6B & 6C are CG (Commercial General) zoned parcels located on Montford Avenue about 200 feet North of the -4-

Billy Graham Freeway comprising 1.2 acres. The combined Fair Reuse Value for both parcels is \$248,900. The proposed land use for the property in the Head of Montford Redevelopment Plan is for neighborhood commercial.

NHS has submitted a bid to purchase Disposal Parcels 6B and 6C in the amount of \$248,900. The proposal includes a plan to build: three two-story mixed use

buildings on Montford Avenue for neighborhood retail, office and residential space along with four residential structures on Short Street at an anticipated development cost of \$1,540,000.00.

The Montford Neighborhood Advisory Committee has endorsed the NHS proposal.

The upset bid process was followed and no upset bids were received.

Upon inquiry of Mr. Johnny Lloyd, Councilman Hay said that NHS receives Community Development Block Grant money, which is federal money allocated by the City for a specific project.

Mayor Martin stated that the bid from NHS was \$248,900 and the only other "offer" was from Meals on Wheels who asked the parcels be conveyed to them at no cost or at a reduced cost.

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

Councilman Worley moved to adopt Resolution No. 97-41. This motion was seconded by Vice-Mayor Field and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 38

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO AMEND THE ZONING ORDINANCE RELATIVE TO THE LOCATION AND INSTALLATION STANDARDS OF TELECOMMUNICATIONS

TOWERS

Councilman Cloninger moved to continue the public hearing until April 22, 1997. This motion was seconded by Councilman Worley and carried unanimously.

B. PUBLIC HEARING TO CONSIDER THE SITE PLAN FOR UNIVERSITY PLACE TO BE LOCATED ON BARNARD AVENUE

Mayor Martin opened the public hearing at 5:21 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Mr. Mike Matteson, Urban Planner, said that this is a consideration of a proposed project consisting of 24 two- and three-bedroom apartments to be constructed on Barnard Avenue.

This proposal was before Council in November, 1996, at which time Council accepted the Planning & Zoning Commission's recommendation of -5-

denial for the group development. They have since revised their plans somewhat and attempted to address the reasons for denial. That's the reason it is back before Council today.

The proposal is for 24 apartments to be housed in two separate buildings on Barnard Avenue. The property total is approximately 2.75 acres and is zoned R-3. The original proposal called for all 24 units to be 4 bedroom units. The revised proposal is an equal mix of 2 and 3 bedroom units. The total number of bedrooms has been reduced from 96 to 60 and correspondingly the amount of parking has been reduced as well.

One of the reasons for the initial denial was that they did not indicate the required recreational areas on the site plan. The zoning ordinance requires 4,800 sq. ft. of recreational area for this project. Those plans have been revised to reflect that recreational area. Additionally traffic has been a major concern throughout this project and the developer has hired a traffic engineering consultant who has done a report regarding the impact of this development on the adjacent roadway system. The report has indicated that there would not be a significant impact on the adjacent roadways. Staff has received approval letters for water and sewer availability and for adequate water pressure for fire protection. The site plan does meet all of the zoning and group development requirements, and because of that, staff's recommendation is approval of the group development.

At the Planning & Zoning Commission ("Commission") meeting on March 5, 1997, the Commission voted 4-3 to recommend denial of the group development based on safety concerns. There is significant opposition to this project and many people did voice their concerns at the Commission's public hearing.

When Mayor Martin asked if the City's Traffic Engineer reviewed the independent traffic engineer's report, Mr. Matteson responded that the City's Traffic Engineer did review the study and concurs that there would not be a significant impact on the adjacent roadways.

Councilman Worley asked for clarification on the Commission's reason for denial on the grounds of safety. Mr. Matteson then read the Commission's minutes which motion reads "move for denial based on Section 30-6-1 of the Zoning Ordinance regarding safety concerns."

Upon inquiry of Mayor Martin, City Attorney Oast said that the Zoning Ordinance states that if the Commission recommends denial or if City Council, in fact, denies approval to a group development, the reasons for the denial must be stated. In his opinion, specific instances of nonconformity with the zoning ordinance or the applicable development standards must be identified and given as the reasons for denial of approval.

Vice-Mayor Field then asked if it was legal for this public hearing to be before City Council if the specific reasons for denial were not stated. City Attorney Oast stated that the group development was properly before City Council.

Councilman Hay thought City Council took action in November to postpone any reconsideration of this development for a year. He felt that was a good chance for the parties to work together and find some common ground. He questioned why this is before the Council again within a year.

Mr. Matteson responded that the zoning ordinance does indicate that if a group development is denied, it cannot come back for a year. -6-

However, it does allow that if the plans are significantly revised and address the reasons for denial then the Planning Director can make the determination to send it back through the process. He said that the plans were revised in an attempt to address the concerns and the Planning staff felt that they were changed enough to merit coming back through the process.

When Councilman Hay asked what the significant changes were, Mr. Matteson said that there was a reduction of the number of bedrooms. Originally the proposal called for all 24 units to be 4 bedroom units - that is now revised to be an equal combination of 2 and 3 bedroom units, so the number of bedrooms has been reduced from 96 to 60. And, correspondingly, the number of parking spaces has

been reduced. One of the very specific reasons for denial was the fact that the recreational areas required by the ordinance were not indicated on the plan. The plans were revised to show those areas.

Councilman Hay asked who makes the decisions on what constitutes significant changes. City Attorney Oast responded that the Zoning Ordinance does provide that the Planning Director makes that determination. If there is any disagreement with that determination, it can be appealed to the Board of Adjustment. If City Council disagreed with that determination, City Council can appeal that matter to the Board of Adjustment, as well. It was his understanding that the residents in the area may have appealed to the Board of Adjustment.

Councilman Sellers asked what the measurements are for the width of Barnard Avenue. Mr. Matteson said that if it was a new road, the requirement would be 20 feet. However, the average width in that stretch of Barnard Avenue is 18 feet.

Councilman Sellers asked if there were any plans for sidewalks along Barnard Avenue or provisions for curbing since on one side of Barnard there is a ravine with quite a bit of erosion. Public Works Director Mark Combs said that there are currently no sidewalks planned on Barnard. Sidewalks and curbing would depend on what the City's right-of-way is and whether the neighborhood would give right-of-way. There would also need to be input from the PACE Committee.

Councilman Sellers voiced concern for the safety of school children who get off the school at the intersection of Edgewood and Barnard. They have no place to walk on Barnard but the street.

Mayor Martin agreed with Councilman Sellers regarding the dangerous situation due to the lack of sidewalks, especially on the south side of Edgewood going up over the rise from Barnard. He asked the City Manager to investigate installing perhaps a 150 foot sidewalk in that particular area.

Councilman Skalski said that there are a lot of streets in the City that need widening and sidewalks. He asked if our Powell Bill funds are adequate to take care of the needs of our City. City Manager Westbrook explained that a good portion of the Powell Bill funds is used for debt service on existing bonds and they do not fund all of the Street Division.

Councilman Skalski pointed out that there are a lot of areas in the City where we do not have the money to put the proper infrastructure in for more high density development.

In response to an inquiry of Mr. Johnny Lloyd, Mayor Martin stated that the greenway on W. T. Weaver Boulevard is being constructed as it -7-

was a safety concern for the people who walk between UNC-A and Merrimon Avenue. He said that greenway is also a connection to the Broadway greenway as well. Mayor Martin did state that the City does have a sidewalk program.

Upon inquiry of Councilman Sellers, Mr. Matteson said the developer paid for the traffic study.

Councilman Worley asked if the City conducted it's own study or just reviewed the developer's independent traffic study. Mr. Combs responded that Mr. Cheeks, the City's Traffic Engineer who is out of town, did a lot of traffic studies on Edgewood prior to this particular development. Barnard was part of that study. Mr. Cheeks also reviewed the numbers of what the developer's engineer performed

and he concurred that the development will not significantly impact Barnard's ability to move traffic.

Councilman Hay asked what the traffic considerations are under the zoning ordinance. Mr. Matteson said that traffic itself is not addressed in the zoning ordinance. However, throughout the group development progress and the technical review of group developments, the City does review these types of projects for impacts on traffic among many other things. It is a combined effort between the Public Works Department, the Planning Department and various other City departments.

City Attorney Oast said that what the zoning ordinance does provide with regard to streets is that adequate safe and convenient vehicular and pedestrian circulation facilities shall be provided with off-street parking and loading spaces no less than the minimum requirements as set forth in Section 30-3-11. He assumed that the site plan was reviewed by our Public Works Department with those requirements in mind and they indicated no objection.

Ms. Gay Sprague, Registered Engineer from Greenville, S.C., who did the independent traffic study, said that in this case the purpose of her study was to look at the adjacent intersection and determine if the layout of the intersection was adequate to serve the traffic that would be generated by this development. She used certain methodologies, measures and criteria, established in the profession, that she would use anywhere, no matter who was paying her. Her study was about the capacity of the intersection, therefore she performed a capacity analysis. She described in detail how she did her study, starting with determining what the base traffic was at the intersection. The main thing she was looking for was which way people turned. Then the trip generation is estimated from the new development. In this case since it is so near the University she did an analysis using the assumption of student occupation and average occupation. She also did a count at a nearby student development to determine exactly how many trips students make per bedroom and then generated the traffic that way. She then added it to the current traffic and did another capacity analysis. She explained that a capacity analysis measures level of services that range from A, the best, to F, a parking lot. This operates now at a level of service A and it would operate at a level of service A with average occupancy and with student occupancy. She did not look at the capacity of the street, only the intersection. The number of cars on Barnard are based on an extrapolation of peak hour numbers. On Barnard currently there are, on the north side, about 320 vehicles per day.

Vice-Mayor Field said that it was her understanding that for an average two lane road, the capacity was something like 8-12,000 cars per day.

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Ms. Sprague said that there were questions if you can really use a capacity to describe how a road like this should operate, so she used some numbers which were much lower than that, which she calls appropriate volumes, and those numbers still fall well within of that level.

Upon inquiry of Vice-Mayor Field, Mr. Combs said that he has talked at length with Mr. Cheeks and he does concur with the study.

Vice-Mayor Field asked what capacity does a two lane road have taking into account the topography, in terms of curves and hills. Ms. Sprague said that they would be approximately 7-8,000, depending on the road. She did not do that kind of all day number for this, so she could not be specific, however, those are the kinds of numbers you would be talking about.

When Mayor Martin asked if there was a difference between the north side of that intersection and the traffic on the south side, Ms. Sprague said that there is some difference because of on-street parking. That's why her analysis was at the intersection. She stated that these numbers on an hourly basis are very small numbers. She noted that you really can't do a valid study much past the very intersection, or you start losing an accurate idea of where the traffic is going to go.

Councilman Worley said that the count on the north side of Barnard was around 320 per day and asked, just for comparison sake, what was the count on Edgewood? Ms. Sprague said that she obtained the Edgewood count from some information from City Traffic Engineering and an average number is approximately 2,500.

When Councilman Cloninger asked what dates Ms. Sprague did her study, she responded that her counts of student residences was on a Monday near the end of January and the other one was in February on a Friday when she actually counted the intersection.

Councilman Skalski asked how a study is done with regard to the volume on a five lane main road as opposed to a very small residential street that has a lot of contour to it. Ms. Sprague responded that that is exactly what a capacity analysis is for because it has as input the numbers of lanes, widths of lanes, the ability to pass, etc. in it. That's part of what you get in a capacity analysis. Those are the objective measures that you use. You also have to consider where that road is and where it leads. She did go an extra step in this study and used some numbers that she used in other communities as what is appropriate on this kind of street - not just what's the capacity.

Councilman Skalski wondered if it's really safe to have any kind of increase in traffic on Barnard because of the steepness of the road, the curves, the lack of sidewalks, the variation in grade and the narrowness of the road. He felt that it's really unsafe now with the current traffic level.

When Councilman Skalski asked if Barnard Avenue meets City specifications, Mr. Combs said that when the City takes over existing streets or streets that were built prior to a 20 foot specification, it's difficult for staff to say that it really doesn't meet the City's specifications. He said they deal with those streets as they exist. However, if they had to build Barnard Avenue from scratch, it would be more desirable to make it wider with a wider shoulder.

Vice-Mayor Field noted that the Walkable Communities Conference indicated Asheville needed narrower streets. -9-

Mr. Jim Efland, owner and designer of the project, passed out to Council a document in support of the University Place project. The topics addressed in the document are reduced density, parking, meets all City zoning requirements, minimal traffic impact, provides badly needed housing, unique design provides substantial recreation area, meets 2010 Plan, matches surrounding multi-family property usage and adds significant tax basis. He said the project is way under the zoning allowances and he has spent a lot of extra effort designing the property to preserve as much of the trees and natural area to basically isolate the project from the area. He said the project meets the UDO requirements, basically. He said the project matches surrounding multi-family usage of the property around it, which are predominately multi-family and renters. The latest census he looked at showed over 60% over rental properties in that entire area. He has met several times with the neighborhood association to try to address their concerns. He has looked at their proposal but their proposal would ideally like single-family homes or attached single-family homes, or something similar to that on the property. He has graded the property but he

wouldn't have had he known he was going to run into this opposition. He was under the zoning requirements and he didn't think it would be a problem. He previously was working with the University that needed housing but is not working with them now. He has tried to redesign the project to address some of the safety concerns and problems that the neighborhood has expressed. He is concerned that the usage they have in their proposal would virtually destroy every tree left on the property because it placed the housing around the outside perimeter of the property. Most importantly, the proposal would waste one of the few larger tracts in North Asheville that, if reasonably utilized, could help alleviate some of the current housing crunch. By use of a map, he showed Council the area in question.

Mr. Steve Barden, attorney representing Mr. Efland, said that this project meets all the criteria in R-3 for group developments and also was recommended for approval by the Planning staff. He said the number of units is almost one-half of that allowed in R-3 for this 2.75 acre tract of land and they are asking for no variances. The City Traffic Engineer has approved the project and a professional study has shown minimal traffic impact. He noted that at the Commission meeting, Mr. Haner stated safety concerns when he voted against the project. He said Mr. Haner further said that the neighborhood could not design Mr. Efland's project. He then read Mr. Swicegood's motion to approve the project noting that the project meets all the requirements that the Planning & Zoning Commission has to go by, that he has met the required density and density in the UDO when it is adopted, and he has strived to meet all the criteria by which the Commission can recommend approval or denial. Seventeen people spoke at the Commission's hearing against the project. They all talked about traffic, but not a single one presented facts that rebutted the traffic studies done by the City or Ms. Sprague. All those residents bought or rented property in that neighborhood with the full knowledge that it was zoned R-3 which can accommodate this kind of project. He said there was a recent North Carolina Supreme Court case that was handed down in February that involved the recordation of a subdivision plat which Harnett County refused to allow. Although everyone agreed that this particular subdivision did not fall within the restrictive regulations regarding subdivisions in that County, the County could still regulate it on the grounds that it would be a danger to the health, safety and welfare of the community. The North Carolina Supreme Court reversed ruling that a general statement of purpose in any statute regarding protection of the public health, safety and welfare of the community is not a valid legal basis to prohibit an otherwise legal development plan. There was an earlier North Carolina Supreme Court case that said that a municipal corporation by ordinance or resolution -10-

may not arbitrarily or capriciously restrict an owner's right to use his property for a lawful purpose. This project easily meets all criteria in our zoning ordinance. Mr. Efland's use of his property should not be dictated by a majority vote of the neighborhood.

Mr. Tom Byers, Special Assistant to the Chancellor at the University of UNC-A, said that UNC-A has a major interest of housing issues. "We wish to express first on behalf of students, faculty and staff, and second on behalf of all in our community who benefit from having a thriving public university, how important it is that there be a diverse range of private-sector housing options in areas near the campus. . . . For many UNC-A students, their primary housing option is to live in a residence hall on the campus. This is what they think of first, and it's what we want them to think of first. Given UNC-A's undergraduate liberal arts focus, we think that living on campus can be an important means for taking full advantage of the university learning environment. . . . No matter how much we plan and work to attract students to the campus, the university will always generate a diverse range of housing demand. . . . But allowing for a diverse range of affordable housing options near

the campus does not benefit solely the residents who will occupy these units. If multi-family housing is appropriately encouraged to develop, the wider community can benefit in a number of ways. Neighborhoods can benefit by having commuter traffic reduced. The environment will benefit as more people travel by foot, bicycle or public transportation. And the economy and quality of life of our whole City will benefit as its public university is allowed to thrive and grow. For the long-range good of our total community, UNC-A strongly urges the City to continue to allow the development of multi-family housing units in the area surrounding the campus."

Mr. Byers said that it is very difficult for the University to fund even a small capital project without an appropriation specific for the purpose. However, if funding for sidewalks is deemed to be a critical issue in opening the area in question to an expansion of multi-family housing options, and if there could be equitable cost sharing including the City and other parties who would benefit from the improvements, then the University will try very hard to find a way to do its fair share in assisting with the cost of construction of the needed sidewalk.

Councilman Hay was pleased to hear that UNC-A's is taking a more active role for the livability in the community.

Councilman Skalski hoped that UNC-A will join with the City the next time we lobby our state legislature for public transportation money.

Mr. Keith Thompson, 1 Bridle Path Road, refuted Mr. Efland's statement in the paper that most of the people who live around universities are students. He then read a statement from his wife, Nancy Patterson, who also resides at 1 Bridle Path Road. She wrote that 100 feet away from her house Mr. Efland plans to build a dormitory in the guise of apartments. She was concerned that the noise from heavy metal, rap, shouting, and loud vehicles will keep her children from sleeping. She wrote, among other things, that the University Place apartments will rob their community from peace and security.

Mr. Ron Dame, 171 Edgewood Road, noted that Council has worked with the neighborhood to help reduce the traffic on Edgewood Road. He felt there were errors made during the Technical Review Committee review, especially on the traffic and the traffic safety. He felt that the traffic consultant Mr. Efland hired and paid was biased. He noted -11-

that an engineer was hired for a traffic study for the Clemson University area which engineer said there would be no traffic problem. The area, however, is a bottleneck of traffic. He said that he has tried in the past to get information on the traffic studies. He provided Council with a letter he wrote to Mr. James Cheeks dated June 28, 1995, requesting a copy of traffic studies. He said that Mr. Cheeks said that he "would not provide that because it could be used to embarrass the City or the police department" and he wouldn't provide it. He felt that Mr. Cheeks has not properly looked at the traffic and pedestrian problems in the neighborhood. He felt that the community didn't want to deny Mr. Efland a chance to make money, but they don't want him to make money at the unbridled expense of the neighborhood.

Mr. David Gould, Neighborhood Association member, said that individual residents have researched the specifics on sewer, water, safety, traffic, fire, pedestrian safety, emergency vehicle access, and drainage for the project. They found a pattern in the criteria - "does it meet the very minimum standards?" In each case, it may meet the minimum according to whose figures you used - it's clearly arguably. He said that when you sum up the specifics, this is an inadequate project for the area. There is nothing like it in density or size in the neighborhood. He felt that Code secs. 30-5-4 and 30-6-1 attempt to

guard against this. He read a portion of Code that states when a requirement like density is met "that these regulations are not to be construed as intended to be detrimental to the residential environment." It doesn't state that if you meet the very minimum requirements you have some inherent right to get a permit. He said that when this was voted down in November the neighborhood thought that they would have a year to negotiate. He didn't feel that Mr. Efland has made substantial changes which would give him the right to bring this back before City Council within the year. He implored Council to rule that the Code is intended to prevent this minimum substandard acceptance if everything comes in substandard. By use of a map, he gave a specific example of the minimum standard regarding water runoff. He said that the project does not fit with the neighborhood. He then challenged the statistics of the rentals in the area noting that there is currently 50 vacant units in the Edgewood Knoll Apartments. He felt that this process, although on the surface looks like it has met the standards, has not met the standards, and certainly not met the standards of Code secs. 30-5-4 and 30-6-1 state. He urged Council to interpret the Code in a way that the neighborhood can look for some quality development and that the review process will expect more than just a minimum.

Vice-Mayor Field was concerned that Mr. Gould was stating that City staff was not doing their job asked for specific instances where that has occurred. Mr. Gould responded that the project does not meet the requirements of the UDO of 8 units per acre but it does meet the standards of R-3 which is 16 units per acre. Mr. Gould said that even though the project does meet the standards in density, the Code says that density alone is not to be construed as a criteria. He said that the TRC Committee review okayed the project before they had the traffic study, the drainage was not going to work, and the water flow pressure just meets the minimum. He said that the staff looked at minimum standards only.

Mr. Matteson said that the Planning Department's purview is not to review drainage. The TRC is the proper body to look at these issues. The Planning staff rely on TRC's expertise in doing their review. Planning staff has received every indication that drainage and every other issue that is looked at by that Committee has been satisfactorily met.

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Mayor Martin said that the technical aspects of this project has been reviewed as all projects are reviewed in this City which are applicable. He was confident that the professionals on the TRC Committee were capable of reviewing each project.

Mr. Beth Maczka, resident of 7 Garden Terrace and Director of the Affordable Housing Coalition, spoke to the need for affordable housing. Housing is a critical need and from the City's most recent study reports Asheville needs 708 units per year to meet the existing need for affordable housing in our community. The vacancy rate in this City is 1%. In terms of Edgewood Knoll Apartments, they have raised their rents in the last year as much as 16%. She pointed out that renters who need this housing aren't property owners but they are still citizens of Asheville. She felt that sidewalks and drainage are important concerns that can be addressed and rather than denying projects, she felt we needed to think creatively about how to solve these obstacles.

In response to Councilman Skalski, Ms. Maczka said that people need to be able to rent before they move onto home ownership and multi-family doesn't necessarily mean rental versus home ownership because it could also be turned into a condominium. Home ownership should be a goal, but she didn't feel that should be a reason to deny a multi-family project.

When Councilman Skalski asked if the present infrastructure was adequate if density was increased, Ms. Maczka doubted that transportation was adequate, but if there is something specific like sidewalks then our attention should be put to addressing those legitimate concerns and work on transportation. She noted to support transportation you have to have density.

Mr. Jim Siemens stated that he submitted earlier today to the City Clerk and Council members a brief on behalf of the Jackson/Woolsey Neighborhood Assn. Inc. He said the dynamics this City Council is going to face again and again is an antiquated infrastructure and a need for affordable housing, which results in this University Place Project. The City is trying to shoe-horn this multi-unit complex in an area which is clearly unsafe for the density proposed. He then reviewed the brief and each exhibit attached. He noted that Exhibit 1 (minutes of the Planning & Zoning Commission) in which they unanimously denied the project on November 6, 1996, was incomplete and asked that he be allowed to supplement it the next day. Exhibit 2 is a portion of the City Council minutes in which City Council accepted the Planning & Zoning Commission's report, thus denying the group development. Exhibit 3 is a portion of the Planning & Zoning Commission minutes in which the Commission denied the project on a 4-3 vote. He pointed out that Mr. Haner said that "this project would further destabilize the neighborhood. He understood the need for student housing, however, he was concerned about the vacancies at Edgewood Knoll. He did not feel Mr. Efland had addressed the safety concerns regarding pedestrian traffic, therefore, he was not in favor of the motion." Exhibit 4 is a letter from Chancellor Patsy B. Reed dated August 3, 1995, which reads in part "We share your concern about traffic problems on your street, which is having to serve a volume of traffic larger than it was designed for." He felt that Ms. Sprague should consider this if she is to render an opinion as to the relative safety of the roads. Exhibit 5 is a memo from S. Douglas Spell, Assistant City Manager, which summarizes the result of meetings between City staff and neighborhoods concerning traffic issues. This memo shows that by staff recommending such things as one way roads and three way stop signs they understand that the neighborhood's concerns are credible. Exhibit 6 is a portion of the City Council minutes on June 25, 1996, in which City Council adopted -13-

Resolution No. 96-105 which requested the Public Works Department to install additional traffic control devices and measures along Edgewood Road between Merrimon Avenue and the UNC-A campus. Again clearly Council has recognized that traffic, absent this project, is a significant concern. Exhibit 7 is the traffic assessment summary performed by Ms. Sprague. He felt that this information is incomprehensible and it clearly does not consider Exhibits 4-7. The City's staff and Council has acknowledged that traffic is a very significant problem in the Jackson/Woolsey neighborhood, yet there is no mention of that in Exhibit 7. He feel that the staff has overlooked some significant issues in their technical review. Exhibit 8 is a document from the National Climatic Data Center which provides weather reports on specific days. He said it was his understanding that a pedestrian study was conducted by City staff on March 19-20, 1996. On those dates the report shows pea size hail, snow, snow showers and the next day light snow and snow showers all day. These are the days City staff elected to conduct a pedestrian study. He didn't think that study would provide Council with a representative sample of pedestrian traffic on Edgewood Road. He felt that study should be done again or thrown out entirely. These are the inadequacies of the technical review that Council must consider in making findings to deny this project. Exhibit 9 is a copy of a letter to the editor dated March 3, 1997, from Edward Shuping from Fort Collins, Colorado, who states that he's never seen a neighborhood with a more serious problem posed for pedestrians than Edgewood Road. Exhibit 10 is a portion of the Planning & Zoning Commission minutes in which "Mr. Haner asked what would be done if the fire trucks had difficulties responding to

emergencies because of the width of the street. Mr. Cheeks said that on-street parking would be removed." He said that if emergency vehicles have a difficult time navigating on these inadequate roads, there's a chance of someone being hurt or someone's house being burnt down and then the City will remove off-street parking. That's not the way to approve a project - you have to consider all of these contingencies. He hoped that he has provided Council with some information regarding the inadequacy of technical review. He urged City Council to deny the project and give the Neighborhood Association the relief they are entitled to.

Upon inquiry of Councilman Cloninger, City Attorney Oast said that for any documents or photographs to be included as part of the record, they would need to furnish the City Clerk with those copies. City Clerk Burleson said that she has received Mr. Siemen's brief with exhibits.

Mr. Efland explained his stormwater drainage plan. He noted that his buildings would be sprinkled. He said they did reduce the parking because the neighbors had expressed concern about having it. After the complexion and direction of the apartments were changed, that amount of parking was not necessary. They can put that parking back in and still meet the recreational requirements. He noted that he did write a letter last year trying to withdraw this project until after he met with the neighbors and worked out some of their concerns. However, there were some technicalities in the way his letter was worded so it did need to go before City Council.

Mr. Robert Hall, 3 Bridle Path Road which property adjoins the subject property, read a resolution by the Asheville Democratic Precinct #4. Said resolution reads "Be it resolved, that Asheville Democratic Precinct #4, meeting in the North Asheville Community Center this 17th day of March 1997, upon discussion of safety, health and welfare concerns resulting from the proposed construction of a group development on Barnard Avenue in our precinct, recommend to officials and appointees of city and state government that they consider the impact of traffic and density in making their decisions to approve or deny permits for -14-

construction of said project." This motion was made by Keith Thompson, seconded by Ron Moore and unanimously approved.

Mr. C. D. Williams, resident in the Jackson Park/Woolsey neighborhood, said that they tried to find the amount of fire water flow for this project and they got three different readings - one from the Fire Marshall, one from the City of Asheville, and one from the City Engineer. He was concerned that if both buildings were on fire at the same time, there would not be adequate water. He noted that the University plan to have adequate housing within their grounds so what will happen to this multi-family apartment building when the University moves out. The apartments are not family apartments.

Upon inquiry of Mayor Martin, City Attorney Oast said that this particular project is a group development as described in the City's ordinance. In his opinion, Council may only deny approval to group developments if it can find specific instances of noncompliance with the specified development standards. The development standards are specified in Section 30-6-1 (c). Any motion to deny would have to be supported by findings of fact and evidence related to that section and specific instances of noncompliance. That opinion was recently strengthened by the Supreme Court decision in Three Guys Real Estate v. Harnett County, which has been referred to earlier. That particular case said that where you have a specific development standard and that the developer or applicant could demonstrate compliance with it, the governing body or approving authority could not, on the basis of nonspecific concerns related to the public health, safety and welfare, deny it's approval of the project. If there is a

motion to deny approval of this project, it would be his recommendation that specific findings be made in conjunction with that motion.

Upon inquiry of Mayor Martin, Planning & Development Director Julia Cogburn said that it is the feeling of the Planning & Development Department that this project meets all of the requirements of the zoning ordinance.

Councilman Hay asked Ms. Cogburn if the project makes adequate provisions for safe pedestrian and vehicular traffic. Ms. Cogburn responded that to the extent that those are required by our zoning ordinance, yes.

Councilman Skalski was concerned with the amount of severe damage caused by stormwater runoff over the past three-five years. Ms. Cogburn

said that our stormwater ordinance was adopted approximately two years ago and that was the first time that the City addressed stormwater requirements for new developments. This development would be subject to those requirements. In effect, this project and those since that ordinance was adopted, really are in better stead for handling stormwater issues than those that preceded the adoption of the stormwater ordinance.

Councilman Skalski felt the residents in this area have a legitimate concern regarding stormwater runoff damage because there has been considerable amount of reports of damage to property contents caused by stormwater runoff since the adoption of the stormwater ordinance. He feels this is a threat to the health, safety and welfare of any community that has new development.

Ms. Cogburn said that if there is a problem with our stormwater ordinance, then we need to address those concerns in the stormwater ordinance.

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When Councilman Worley asked if this project meets the requirements of the stormwater ordinance, Ms. Cogburn said that Planning staff was not reviewing it at the site plan phase. What Council is considering today is not whether or not it meets the stormwater ordinance, it's whether it meets the zoning ordinance and the group development review. The developer is required, as a matter of course, to meet the stormwater ordinance. If you wanted to make them a condition of approval, Council could do that, but it would be redundant.

Ms. Lisa Gould said it is obvious that although the area is zoned now to support this project, that area is not properly zoned. That's evidenced by the condition of the roads, the size of the roads, the lack of sidewalks, the slope and the fact that most of the housing are single or double family homes. She asked what the community can do to get the area zoned properly.

Mayor Martin said that City Council has to base their decision on how the area is zoned now.

Councilman Worley asked if Council determines that the zoning is inappropriate, could they take that into consideration in passing upon this project? City Attorney Oast said not with passing this particular project. The applicant has submitted his application and he has done everything procedurally that he has to do to bring this matter before Council. In his opinion, it would be inappropriate to deny the project on the basis that it may not be appropriate under the current zoning for that area.

City Attorney Oast said that Section 30-6-2 provides City Council with the following options: City Council may approve the application and group development plan as submitted, approve the application and plan with

modifications or conditions, deny approval of the application and plan, table action on the application and plan until more information or a revised plan can be submitted, or remand the application and plan to the Planning & Zoning Commission for further consideration and recommendation. It goes on to provide that in the event approval is denied, the City Council shall state the reasons for denial in its records.

Mr. Siemens asked if they could get agreement at this time under the North Carolina General Statutes that he does not have a vested right to build. City Attorney Oast said that he does not have sufficient information at this time to make that determination.

Mr. Siemens reminded Council that the last time they addressed the traffic issues on Edgewood Road, the Police Department reported five accidents in the last two years. He encouraged Council to consider all alternatives available to them, but urged them to deny the project.

When Councilman Skalski referred to the Planning & Zoning Commission minutes where the word "dormitory" was discussed, Mr. Siemens felt that a dormitory is what Council is dealing with, not a multi-family apartment.

Mayor Martin closed the public hearing at 7:21 p.m.

Councilman Skalski moved to deny the approval of the application and plan. This motion was seconded by Councilman Sellers.

Councilman Hay said that he would vote in favor of the motion because he believes that due to the congested nature of the neighborhood in which the development is proposed, including the narrowness of the -16-

roads and lack of off-street parking on the roads, that adequate provision for safe vehicular and pedestrian traffic has not been met.

Upon inquiry of Vice-Mayor Field, City Attorney Oast said that the police power is the general authority that Council has to act in the public health, safety and welfare. He said that since the zoning ordinance and development standards arise from the Council's general police power, a particular project or development that meets those more particular standards then is presumed by the Courts to satisfy the broader standard of the public health, safety and welfare.

To further clarify Vice-Mayor Field's question, City Attorney Oast said that if Council's concern about the pedestrian problem is something that is addressed specifically in the ordinance, then it may be a basis for denial. However, there is no specific standard that deals with pedestrian accessibility or safety to pedestrians. The issue of pedestrian accessibility and sidewalks is not specifically addressed in the development standards.

Vice-Mayor Field then said that for in order for her to vote to deny the project she would have to come up with some specific standard that had to be addressed in the zoning ordinance or the development standards that are contained in the ordinance. However, staff has said that the project meets the development standards.

Councilman Worley said that he intends to vote against the motion and would support a motion to approve if the motion to deny fails. He does so, knowing he has a number of friends who live in this area. When he was elected to City Council he took an oath to support and defend the Constitution and laws of the United States and the Constitution and laws of North Carolina. He has carefully reviewed a memorandum prepared by the City Attorney that tells City Council

what they can and cannot do. He has carefully listened to all of the comments and evidence presented at this hearing in the light of the standards set forth in the memorandum. He has listened to staff explain how they believe the project complies with the ordinance. When he applies the standards that our legal counsel tells us we have to apply, he believes that he has no choice but to go ahead and vote in favor of the project if such a motion is offered. It is a very tough decision.

Councilman Skalski has served on two prior UDO Committees for five years and he didn't understand why there is a big debate over a new zoning ordinance. The reason is that there are loopholes in it all over the place and it's caused a lot of harm, damage and a lot wasted time. He can't understand how we can say that this meets all the requirements under our current ordinance when we've been saying for the last five years there are loopholes in the current ordinance. Based on that alone you can't guarantee protection for even the developer because we don't have adequate regulations. The roads that surround this development are totally under standard. They are not designed to even the minimal standards. They are dangerous. Even though it doesn't fit some national average, it's dangerous now and if we add more we make it more dangerous. On the issue of the current stormwater ordinance, he knows of many instances in the City where businesses and residences have received thousands of dollars worth of damage in the last three years. Our stormwater ordinance is not adequate to protect us in this hilly terrain. No one has presented a comprehensive stormwater runoff plan for this area. There has been no evidence given to this Council that shows where the stormwater runoff will adequately protect this property. He said the City of Asheville does not have adequate funding from our state revenue source to adequately maintain the roads of this City. We -17-

don't have the money to do sidewalks or stormwater work. After reading the Planning & Zoning Commission documents, he couldn't determine what the criteria is for a dormitory. If you are going to have 3-4 students in a bedroom, you can end up with the same number of students in this building as you did on the original design which was modified to get the permit. In that respect, there is no way we can enforce the number of students that go into each one of these apartments. With respect to the overall area, we have an existing traffic problem on Edgewood Road. The traffic from this development is going to have to go somewhere. No where has he seen data presented that will show that this already exacerbated situation with the traffic coming from the University can handle that. No one has come forward with a comprehensive plan to show that it's safe for both vehicular and pedestrian traffic on this road.

Councilman Cloninger said that he intended to vote in favor of the motion. He very much respects the advice and opinion that has been given by the City Attorney and very much respect the opinions of those members of Council who are going to essentially follow that advice and vote against this motion. He disagree with the decision of the Supreme Court in the Harnett County case and agree with what the Court of Appeals ruled. History has shown that some of the best law and the most important law has been made when citizens or governments have been willing to challenge existing case law. He thinks we should be prepared and willing to challenge it when we think it's not appropriate. While he respects the opinions on what the current case law is, he thinks we should vote in favor of this motion and should be prepared to defend it all the way to the Supreme Court, if necessary.

Mayor Martin said the neighborhoods has asked a lot of Council in the past two years. Council has tried in every instance to listen to the neighborhoods and they have tried to listen to the business and commercial interests as well to maintain a balance. Property owners have rights and zoning ordinances are enacted to tell people what they can do in a specific instance with their

property. This is part of why we have zoning laws and they can be changed. But to take away someone's right under existing ordinances and laws is not the right way. He feels Council is here to look at the laws. Staff has indicated that all the standards and procedures have been met.

Vice-Mayor Field noted in the Haw Creek decision we went with the recommendations our legal staff because she too believed that she would uphold the statutes and ordinances of the City of Asheville and the State of North Carolina and the laws of the United States of America. She voted in that instance and there were many people who were not happy with her decision. She believe just as Mayor Martin and Councilman Worley said that Mr. Efland meets the requirements of our ordinances and deserves to be able to build the project. She strongly supports affordable housing and those housing units can be used for families, students and anybody that needs housing in this community. We need more affordable housing. She is convinced that this project is not unsafe, will meet the requirements of the building code and will meet the requirements of our ordinances. She is, however, disappointed that people call other people names in order to get their ideas across. She's heard fairly negative things about Mr. Efland, about our staff and about other people. She was very disappointed that by and was sorry that we have to use those kinds of tactics in order to have a dialog about issues.

At this time, Mayor Martin asked for a show of hands in favor of the motion to deny the application and plan. Councilmen Cloninger, Hay, Sellers and Skalski raised their hands. Mayor Martin then asked for a show of hands opposed to the motion to deny the application and plan. -18-

Mayor Martin, Vice-Mayor Field and Councilman Worley raised their hands. The motion to deny the group development carried on a 4-3 vote.

At 7:47 p.m., Mayor Martin announced a 10 minute break.

C. PUBLIC HEARING TO AMEND THE ZONING ORDINANCE TO ADD A NEW OFFICE DISTRICT
ORDINANCE NO. 2349 - ORDINANCE TO AMEND THE ZONING ORDINANCE TO ADD A NEW
OFFICE DISTRICT

Mayor Martin opened the public hearing at 7:55 p.m.

City Clerk Burlson presented the notice to the public setting the time and date of the public hearing.

Ms. Erin McLoughlin, Urban Planner, said that this is consideration of adding a zoning district to the Zoning Ordinance for "Office District."

At their March 5, 1997, meeting, the Asheville Planning and Zoning Commission voted unanimously to recommend approval of an amendment to the Asheville Zoning Ordinance which would add an office district to the current ordinance.

The Planning & Zoning Commission felt that a smaller office district would be helpful as an additional zoning tool when office uses were next to residential areas. This office district is established to reserve areas for the development of small scale office uses adjacent to residential uses. The maximum residential density per acre shall be 8 units. The maximum height shall be 40 feet.

The City Attorney has requested a small clarification in the language under paragraph E. 2. "Development Standards" which reads as follows: "New structures in the Office District shall not exceed 8,000 square feet in gross floor area, provided that the gross floor area of any floor shall not exceed 4,000 square

feet. Existing structures of less than 8,000 square feet gross floor area may be expanded up to a gross floor area of 8,000 square feet, provided that where any floor of an existing structure exceeds 4,000 square feet, that floor may not be expanded." Only those uses listed as permitted shall be allowed.

Staff has received no comments in opposition to this Group Development.

When Vice-Mayor Field asked why are we considering this change when we are so close to adopting the UDO, Ms. McLoughlin said that there have been a request from the public for a larger office business district which we have already ushered through. At that time members of the Planning & Zoning Commission and Councilman Skalski requested another tool.

Upon inquiry of Councilman Worley, Ms. McLoughlin said that this district is also in the UDO.

The Planning and Zoning Commission recommended unanimously the approval of the ordinance amendment. The Planning and Development Department staff recommends approval of this amendment.

Mayor Martin closed the public hearing at 7:58 p.m. -19-

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

Councilman Worley moved for the adoption of Ordinance No. 2349, as amended and read by Ms. McLoughlin. This motion was seconded by Councilman Sellers.

On a roll call vote of 7-0, Ordinance No. 2349 passed on its first and final reading.

ORDINANCE BOOK NO. 16 - PAGE 156

D. PUBLIC HEARING RELATIVE TO REZONING A PORTION OF 1899 HENDERSONVILLE ROAD FROM R-2 MEDIUM DENSITY RESIDENTIAL TO OB OFFICE BUSINESS

ORDINANCE NO. 2350 - ORDINANCE TO REZONE A PORTION OF 1899 HENDERSONVILLE ROAD FROM R-2 MEDIUM DENSITY RESIDENTIAL TO OB OFFICE BUSINESS

Mayor Martin opened the public hearing at 8:01 p.m.

City Clerk Burlison presented the notice to the public setting the time and date of the public hearing.

Ms. Erin McLoughlin, Urban Planner, said that the petitioner seeks to rezone a portion of 1899 Hendersonville Road, PIN No. 9655-13-14-3658, from R-2 Low Density Residential to OB Office Business.

The request is to rezone the middle portion of the parcel approximately 2.61 acres to office business. There is no conflict with the 2010 Plan which shows this area as a transition area. An office business use would be compatible with existing development in this area. It would serve as a transition between the commercial highway zoning to the east and the R-2 residential zoning to the west. The subject property has been cleared of most of its trees. It is vacant and rolling terrain.

Staff has received no comments in opposition to this rezoning.

At the Planning & Zoning Commission meeting on March 5, 1997, the Commission voted unanimously to recommend approval of the rezoning request. The Planning

and Development Department staff recommends approval of the rezoning request.

City Attorney Oast asked that the ordinance be amended to include a metes and bounds description of the portion that is being requested to be rezoned. He passed out the metes and bounds description to all Council members and advised that the description was consistent with the drawing in the agenda package.

Ms. Laurel Eide commended this rezoning request. Mr. Pulliam has helped pull a community together by offering a non-threatening development to the surrounding neighborhoods already in place which are Blake Mountain and Oak Forest. We originally tried to get office district but somehow Mr. Pulliam's building was too large to fit into the capacity of office only so it had to go in the category of office business. Her only regret is that it did not meet the office only criteria. Mr. Pulliam is giving her a portion of his property behind so we can have it as a buffer. He will be deed restricting the property to her and her neighbor. She said that her real estate agent and her -20-

attorney, as well as the Blake Mountain Homeowners Association, has requested that once he deeds the property over to them, that it becomes the same zoning as what she now has so she can sell her home. She asked for an initiation of a zoning study on that particular piece or another alternative to make her property all the same zoning - RS-2.

Mayor Martin directed Ms. Eide that she would need to talk with the Planning staff about her rezoning request.

Ms. Leni Sitnick was pleased that the neighborhood and developer worked together on this issue.

Mayor Martin closed the public hearing at 8:09 p.m.

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

At the request of Vice-Mayor Field, Councilman Cloninger moved to excuse Vice-Mayor Field from voting because her office is the architect for Mr. Pulliam's project. This motion was seconded by Councilman Sellers and carried unanimously.

Councilman Skalski moved for the adoption of Ordinance No. 2350, as amended with the metes and bounds description. This motion was seconded by Councilman Sellers.

On a roll call vote of 6-0, Ordinance No. 2350 passed on its first and final reading.

ORDINANCE BOOK NO. 16 - PAGE 160

E. PUBLIC HEARING TO CONSIDER THE SITE PLAN FOR THE PROPOSED EXPANSION OF THE INGLES GROCERY STORE AT THE SOUTH FOREST SHOPPING CENTER, LOCATED AT 780 HENDERSONVILLE ROAD; VARIANCE TO REDUCE THE NUMBER OF REQUIRED PARKING SPACES; AND VARIANCE IN THE LOCATION AND PLANTING REQUIREMENTS FOR PARKING LOT TREES

Mayor Martin opened the public hearing at 8:11 p.m.

City Clerk Burlison presented the notice to the public setting the time and date of the public hearing.

Mr. Bruce Black, Urban Planner, said that this is a proposal to enlarge the Ingles grocery store at South Forest Shopping Center from 37,760 square feet to

62,800 square feet.

The South Forest Shopping Center was built in 1979. The proposed site plan meets all site review requirements except those of parking space provision and parking lot landscaping.

The applicant is showing provisions for 478 parking spaces. The pre-expansion size of the center, approximately 93,880 square feet of retail space, currently requires 470 parking spaces. The current City Code requires 563 spaces in order for the center to be brought into conformance for the total sales area after expansion. The applicant is asking for a variance.

The existing parking lot has no islands for parking lot tree planting. The Asheville City Code requires that with any expansion, the -21-

entire project be brought in to compliance, thus requiring for this project that a minimum of 19 trees be planted in islands in the parking lot, and that 19 more be planted around the perimeter of the parking area. The applicant proposes to plant the trees that would otherwise be planted in parking lot islands around the perimeter of the parking lot. The applicant is asking for a variance to this requirement.

The applicant is also required by the City Ordinance to install a buffer along the northern property line of the residential use on the southern boundary of the property. The buffer requirement is either a 20 foot vegetated buffer or a 5 foot visual buffer with a 6 foot visual screen.

The Planning and Zoning Commission has recommended approval of the parking lot variance. They recommended denial of the parking lot landscaping variance as presented, but rather changed the language to "that the parking lot tree variance be changed to a request for landscaping islands."

They have also recommended requiring the buffer (either the 20 feet vegetated buffer or a 5 foot visual buffer with a 6 foot visual screen) at the northern edge of the residential use on the southern boundary of the property, and that the striped areas at the southern entrance be raised concrete medians rather than the stripped areas shown on the plan as recommended by the Traffic Engineer.

Mr. Black corrected a statement he made on March 11, 1997, when he was asked if the ordinance was in conflict with itself because the requirement of providing internal parking lot islands would diminish the number of parking spaces that the applicant had provided. After thinking about that question, he now does not believe that is the case. The parking spaces are 9-1/2 feet wide. The ordinance requires 8-1/2 foot wide parking spaces. By shrinking them 6" they could create enough room of each of these rows to place the landscaped islands without diminishing the number of parking spaces. That does not even include the stripped areas which they have provided at the end of the parking areas.

Mr. Gordon Myers, representing Ingles, said that Ingles has obvious restraints on our land in this area. Two facilities on the property have been torn down and we think that the parking spaces provided now will be ample. Therefore they are asking for a variance on the parking. Regarding the other variance, they have a site plan that shows the raised islands as requested by the City Traffic Engineer and they have also shown 9 landscaped islands in the shopping center area. Their variance request is to put the required number of trees in a different location as a buffer along the property lines separating Ingles from a new commercial facility that is being constructed. They are not asking for a variance on the islands.

Upon inquiry of Councilman Cloninger, Mr. Myers said at instead of putting the trees on the islands, they propose to plant low growing flowering shrubs.

When Councilman Hay asked why Ingles didn't want to put trees in the islands, Mr. Myers said that little trees become big trees and then they have to go in and cut the large grown tree and replace it with a smaller tree. Ingles has had incidents in the past where customers have fallen on the slippery leaves and then file suit against Ingles. It's just a multitude of on-going problems that they have experienced in the past and they find that it's much easier for maintenance if they keep -22-

the trees on the outside areas of the shopping center and maintain the shrubbery in the islands.

Vice-Mayor Field questioned the piece of property that is south of Ingles shown as residential but no house on it. Mr. Myers said that Ingles is in the process of obtaining a contract to purchase that property and that should be completed within the next week.

When Councilman Hay asked why the Code requires trees on the islands, Ms. Julia Cogburn said that basically the reason that the City's required trees on the islands is to provide a canopy for the pavement. Ms. Cogburn said that the Code provision is a very common standard in zoning ordinances throughout the state.

Vice-Mayor Field felt that one of the reasons for putting the islands in the parking lots, whether they are landscaped with low foliage or trees, is that it breaks the parking lot up. She felt there needed to be some greenery in the parking lot.

Ms. Jane Mathews, Planning & Zoning Commission member, said that at the Commission meeting there was a long discussion about how to meet the spirit of the ordinance with the issue, being at the time, signage not visible to the street. She stated that there are alternatives to big trees within our ordinance. Many shopping centers opt for that. We see many plans that come through that opt for dogwoods, redbuds, Bradford Pears - smaller trees that would allow visibility. It was Mr. Torpey's understanding that he was making the motion in light of the discussion of smaller trees that there are options for the owner to have visibility. It was their understanding that it was signage. There was still opportunity there to meet the ordinance with 1-1/2 caliper trees that were a low growing type of tree within our recommended list of plantings. When she voted in favor of the motion, that was her understanding as well. There are options there to plant trees, not to move the trees to the outside perimeter. She felt we should strive to have parking lots with some trees.

Mayor Martin closed the public hearing at 8:26 p.m.

Vice-Mayor Field moved to approve the variance to reduce the number of parking spaces from 563 to 478. This motion was seconded Councilman Skalski and carried unanimously.

Councilman Worley moved to approve the variance in the location of the parking lot trees. Said approval is conditioned that the islands shown on the site plan remain. This motion was seconded by Councilman Sellers.

Councilman Hay said he didn't hear a compelling reason not to enforce our ordinance in this instance so he will vote against the variance in the location of the parking lot trees.

Councilman Cloninger would support the motion to grant the variance to the

parking lot trees provided that indeed the islands do appear as proposed on the site plan in the parking lot.

Councilman Skalski saw no reason why small trees could not be planted in the parking lot islands.

Mayor Martin called for a vote on the motion to approve the variance to the parking lot trees. Said motion carried on a 5-2 vote, with Councilmen Hay and Skalski voting "no".

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Councilman Skalski moved to approve the group development with the condition that the piece of property on the southeast corner be purchased by Ingles. This motion was seconded by Councilman Worley and carried unanimously.

F. PUBLIC HEARING RELATIVE TO THE DEMOLITION OF 14 MICHIGAN AVENUE

ORDINANCE NO. 2351 - ORDINANCE DIRECTING THE DIRECTOR OF BUILDING INSPECTIONS TO DEMOLISH 14 MICHIGAN AVENUE

Mayor Martin opened the public hearing at 8:32 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Ms. Natalie Berry, Code Enforcement Officer, said that 14 Michigan Avenue is a dilapidated structure. The owners Fethi A. and Vicki P. Korkmaz have not responded to the Order of the Director Designee of the Building Safety Department to repair or demolish this structure. Inspector Ray Pruitt found the following conditions, which have been documented by still photographs and videotape:

- Structure has been severely damaged by fire;
- The Walls, floors, and roof are structurally unsound;
- The heating, electrical and plumbing systems are damaged beyond repair.

Inspector Ray Pruitt sent a correction order to the property taxpayer of record on January 18, 1995. There was no response. A formal hearing was then scheduled and held on March 22, 1995, and the only respondent was Bill Clark of First Citizens Bank who holds the first mortgage on the property. His comments reflected ours. The cost to repair or replace greatly exceeded 50% of the current value. First Citizens had no plans to repair or replace the structure. Based on the evidence presented at that hearing the Building Safety Department hearing officer issued a "Findings of Fact and Order" to the owners Fethi A. and Vicki P. Korkmaz to repair or demolish 14 Michigan Avenue within 30 days on February 26, 1996. As of this date, no action has been taken by the owner of legal record.

N.C.G.S. 160A-443(5) authorizes the City Council to direct by ordinance the demolition of a dilapidated structure such as 14 Michigan Avenue subsequent to failure of the owners Fethi A. and Vicki P. Korkmaz to demolish or repair as described above, N.C.G.S. 160A-443(6) authorizes placement of a lien on the property to recover the cost of a demolition so ordered by City Council.

The following is an overview of some general information regarding this property:

- Fair market value of structure is \$27,600.
- Estimated value to rebuild the structure only is \$116,760.
- Land value without the structure is \$9,000.
- Estimated cost to demolish the structure is \$13,600.

The date for demolition is April 7, 1997.

Mayor Martin closed the public hearing at 8:35 p.m. -24-

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

Councilman Sellers moved for the adoption of Ordinance No. 2351. This motion was seconded by Councilman Worley.

On a roll call vote of 7-0, Ordinance No. 2351 passed on its first and final reading.

ORDINANCE BOOK NO. 16 - PAGE 163

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 97-42 - APPOINTING MEMBERS TO THE ASHEVILLE SCHOOL BOARD

The terms of Carol Matthews, Susan Fisher and Hazel Turner, as members on the Asheville School Board, expire on April 1 1997.

Each Council member voiced praise about all candidates for the School Board. After each Council member voiced their nominations, they each spoke in support of their choices.

Councilman Cloninger nominated Susan Fisher, Lewis Isaac and Hugh McCollum.

Councilman Sellers nominated Susan Fisher, John Legerton and Lewis Isaac.

Councilman Worley nominated Susan Fisher, John Legerton and Lewis Isaac.

Vice-Mayor Field nominated Lewis Isaac, John Legerton and Susan Fisher.

Councilman Hay nominated Lewis Isaac, Susan Fisher and John Legerton.

Councilman Skalski nominated Lewis Isaac, John Legerton and Susan Paterson.

Mayor Martin nominated Lewis Isaac, Susan Fisher and Susan Paterson.

Lewis Isaac received 7 nominations, Susan Fisher received 6 nominations, John Legerton received 5 nominations, Susan Paterson received 2 nominations and Hugh McCollum received 1 nomination. Therefore, Councilman Hay moved to reappoint Susan Fisher to serve an additional four year term, term to expire April 1, 2001, and to appoint Lewis Isaac and John Legerton to each serve a four year term respectively, terms to expire April 1, 2001. This motion was seconded by Councilman Cloninger and carried unanimously.

RESOLUTION BOOK NO. 23 - PAGE

VI. OTHER BUSINESS:

-25-

A. STENCILING PROGRAM

Mr. Tom Heck, speaking on behalf of the children he works with at the YMCA, asked City Council to approve a storm drain stenciling program.

It was the consensus of Council to have this item at the April 15, 1997, worksession.

B. CLAIMS

The following claims were received by the City of Asheville during the week of Clayton Mobile Homes (Water), Mary Parker (Water) and Coleen Hazelton (Streets).

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

VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 9:03 p.m.

CITY CLERK MAYOR
