

Tuesday – June 26, 2001 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burlison

Absent: None

INVOCATION

Councilwoman Bellamy gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF CITY OF ASHEVILLE EMPLOYEES IN PUBLIC SERVICE RECOGNITION PROGRAM

Mayor Sitnick read a proclamation recognizing several City of Asheville employees who participated in the Public Service Recognition Program. Employees recognized included Cathy Ball, Richard Bass, Jeff Trantham, Quentin Miller, Gladys McDaniel, John Kutscher, Keith Whittington, Gary Stamey, Tim Haynes, Mark Case, Joe Chennault, Harry Taylor and Tom Eggers. Mayor Sitnick noted that Gladys McDaniel, Jeff Trantham and Quentin Miller won awards for their respective category and Quentin Miller won the overall award for 2001.

II. CONSENT:

Vice-Mayor Cloninger asked to remove Consent Agenda "C" from the Consent Agenda, due to a conflict of interest.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 12, 2001, AND THE WORKSESSION HELD ON JUNE 19, 2001

B. RESOLUTION NO. 01-92 - RESOLUTION AUTHORIZING THE SALE OF A VACANT LOT AT 125 IRIS DRIVE TO BRIAN K. PERRY

Summary: The consideration of a resolution authorizing the Mayor to convey 125 Iris Drive to Brian K. Perry in the amount of \$12,200.

On June 12, 2001, the City Council directed the City Clerk to advertise for upset bids on 125 Iris Drive. The advertisement ran in the Asheville Citizen-Times on June 15, 2001, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from Brian K. Perry in the amount of \$12,200 was not upset and the sale to Brian K. Perry should be approved.

Approval of the resolution will authorize the sale of the property to Brian K. Perry for the amount of \$12,200.

Planning Department staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 391

C. RESOLUTION AUTHORIZING THE SALE OF A PORTION OF 36 GROVE STREET TO BOC ENTERPRISES

This item was removed from the Consent Agenda due to a conflict of interest by Vice-Mayor Cloninger.

D. RESOLUTION NO. 01-93 - RESOLUTION SETTING A PUBLIC HEARING ON JULY 10, 2001, TO CONSIDER THE DEMOLITION OF 191 SULPHUR SPRINGS ROAD

RESOLUTION BOOK NO. 26 – PAGE 392

E. RESOLUTION NO. 01-94 - RESOLUTION MODIFYING THE CITY COUNCIL MEETING SCHEDULE FOR A COMMUNITY MEETING ON TUESDAY, JULY 31, 2001, BEGINNING AT 7:00 P.M. IN THE WEST ASHEVILLE COMMUNITY CENTER LOCATED AT 970 HAYWOOD ROAD, ASHEVILLE, NORTH CAROLINA

RESOLUTION BOOK NO. 26 – PAGE 394

F. ORDINANCE NO. 2822 - BUDGET AMENDMENT FOR PRITCHARD PARK

Summary: The consideration of a budget amendment, in the amount of \$4,000, for donations from the French Broad River Garden Club and the Asheville Downtown Association for Pritchard Park.

The City of Asheville staff met with several members of the French Broad River Garden Club about their interest in supporting the renovation of Pritchard Park. The Garden Club is able to make a donation in the amount of \$3,000 for the beautification of the park space.

At a later date, the City of Asheville will place a plaque paid for by the French Broad River Garden Club in an area of the park to acknowledge their contribution.

City staff was also approached by the Asheville Downtown Association who expressed interest in the project and committed \$1,000 towards the renovation.

The Parks and Recreation Department recommends City Council approve the budget amendment to increase the budget for the Pritchard Park.

ORDINANCE BOOK NO. 19 – PAGE 185

G. MOTION SETTING A PUBLIC HEARING ON JULY 10, 2001, TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR AN ANCILLARY USE (PARKING LOT AND GRAVEL ACCESS DRIVE) IN AN RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT FOR THE HOT SPOT AT 103 NEW LEICESTER HIGHWAY

H. MOTION SETTING A PUBLIC HEARING ON JULY 10, 2001, TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR A DUPLEX ON PROPERTY ZONED RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT AT 15 BROWDALE ROAD IN THE OTEEN AREA

I. RESOLUTION NO. 01-95 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH THE HAW CREEK VOLUNTEER FIRE DEPARTMENT, THE RICEVILLE VOLUNTEER FIRE DEPARTMENT, THE WEST BUNCOMBE VOLUNTEER FIRE DEPARTMENT AND THE ENKA-

CANDLER VOLUNTEER FIRE DEPARTMENT FOR FIRE PROTECTION SERVICES FOR ANNEXED AREAS

Summary: The consideration of a resolution authorizing the City Manager to enter into agreements with the Haw Creek Volunteer Fire Department, the Riceville Volunteer Fire Department, the West Buncombe Volunteer Fire Department and the Enka-Candler Volunteer Fire Departments for fire protection services for annexed areas.

With the annexations effective July 1, 2001, for the City of Asheville, there are four areas that the City is required to contract with volunteer fire departments for service under North Carolina General Statutes. The same standard fire protection contract applies to all four of the affected volunteer fire departments.

The four areas that are effective July 1, 2001, and their associated volunteer fire departments are as follows:

01A Piney Mountain Road area Haw Creek VFD

01B Riceville Road area Riceville VFD

01E New Leicester Highway area West Buncombe VFD

01F Wedgefield Drive area Enka-Candler VFD

Contracts have been provided to and accepted by the above listed volunteer fire departments. The contracts are consistent with requirements set forth in N.C. Gen. Stat. sec. 160A-49.1. The Statute require a five-year contractual period. The contract documents have been written to allow for year-to-year continuance after the mandatory period, if both parties are agreeable to continue the contract.

City staff recommends City Council authorize the City Manager to contract with the necessary agencies for fire protection services as required by N. C. Gen. Statutes for annexed areas.

RESOLUTION BOOK NO. 26 – PAGE 395

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

Vice-Mayor Cloninger moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ITEM REMOVED FROM THE CONSENT AGENDA DUE TO CONFLICT OF INTEREST

RESOLUTION NO. 01-96 - RESOLUTION AUTHORIZING THE SALE OF A PORTION OF 36 GROVE STREET TO BOC ENTERPRISES

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

Summary: The consideration of a resolution authorizing the Mayor to convey a portion of 36 Grove Street to BOC Enterprises in the amount of \$111,000.

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On June 12, 2001, the City Council directed the City Clerk to advertise for upset bids on 36 Grove Street. The advertisement ran in the Asheville Citizen-Times on June 14, 2001, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from BOC Enterprises in the amount

of \$111,000 was not upset and the sale to BOC Enterprises should be approved.

Approval of the resolution will authorize the sale of the property to BOC Enterprises for the amount of \$111,000.

Finance Department and Parks & Recreation staff recommends adoption of the resolution.

Councilman Hay moved for the adoption of Resolution No. 01-96. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 296

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING REVISIONS TO THE SOIL AND EROSION CONTROL ORDINANCE

At the request of City staff, Councilman Worley moved to postpone this public hearing indefinitely. This motion was seconded by Councilwoman Field and carried unanimously. City Attorney Oast stated that when this matter is brought before City Council in the future, it will be re-advertised.

B. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH STANDARDS FOR NON-RESIDENTIAL ACCESS ONTO RESIDENTIAL STREETS

ORDINANCE NO. 2823 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH STANDARDS FOR NON-RESIDENTIAL ACCESS ONTO RESIDENTIAL STREETS

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

Chief Planner Gerald Green said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to limit access by non-residential uses onto residential streets.

The Planning and Zoning Commission has recommended adoption of an amendment to the UDO limiting access by non-residential access onto residential streets. Access onto residential streets by non-residential uses located on corner and through lots can impact the residential character of the residential streets. Currently, the City Council often reserves a strip of residentially zoned property along the residential street frontage to limit access onto the residential street by non-residential uses. This results in a cumbersome zoning pattern and restricts the use of the residentially zoned property for buffering and other appropriate uses. The proposed standards would not apply to non-residential uses permitted in residential zones, such as churches, schools, and libraries, or to non-residential uses located in non-residential or mixed use zoning districts that have their only access onto residential streets. Non-residential uses located on corner lots, through lots, and other lots with frontage on more than one street would be

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required to have their access from the street that is abutted by similar uses. Access onto residential streets by non-residential uses located on corner lots would be permitted if certain conditions are met and the City's Traffic Engineer approves the proposed access. As proposed, the standards would preserve the residential character of streets that function primarily to provide access to residences. The proposed ordinance amendment identifies clear standards for access, making it easier for staff, developers, and citizens to understand and adhere to them.

The Planning and Zoning Commission voted unanimously to recommend approval of the wording

amendment limiting access by non-residential uses onto residential streets. The Planning and Development staff recommends approval of the wording amendment.

Mr. Green responded to a question from Councilman Hay regarding the definition of a residential street. He said that City staff will develop a definition and bring it back for City Council consideration in the near future.

Mayor Sitnick closed the public hearing at 5:32 p.m.

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

Councilman Hay moved for the adoption of Ordinance No. 2823. This motion was seconded by Councilman Peterson and carried unanimously.

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C. PUBLIC HEARING TO CONSIDER AMENDING A PREVIOUSLY GRANTED CONDITIONAL USE PERMIT FOR THE CLINGMAN AVENUE CONDOMINIUMS

ORDINANCE NO. 2824 - ORDINANCE AMENDING A PREVIOUSLY GRANTED CONDITIONAL USE PERMIT FOR THE CLINGMAN AVENUE CONDOMINIUMS

At the request of Councilwoman Bellamy, Councilman Hay moved to excuse Councilwoman Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilwoman Field and carried unanimously.

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

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

After hearing no questions about the procedure, Mayor Sitnick opened the public hearing at 5:35 p.m.

Ms. Stacy Merten, Urban Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners), City Exhibit 3 (Staff Report dated 6/12/01) and City Exhibit 4 (Staff Report dated 6/26/01). This public hearing was advertised on June 15 and 22, 2001.

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Ms. Merten said that this is the consideration of a motion to amend the conditional use permit to allow offices as part of the previously approved Conditional Use Zoning request for the Clingman Avenue Condominiums (Merritt Park).

The property is located at the intersection of Merritt Street and Clingman Avenue (City Exhibit 5) and was rezoned Central Business District – Conditional Use Zoning district. The original conditional use permit was to allow the construction of a three story condominium complex with 16 units and a community room.

Mountain Housing Opportunities has requested an amendment to the conditional use permit for the Clingman Avenue Condominiums, now referred to as Merritt Park, to increase the mix of uses and allow the former community space to be utilized for 3,200 sq. feet of office space. The design of the office space will incorporate a large conference room that will still be available for use by the community. The total number of units in the project will remain unchanged at 16.

There have also been some minor changes to the building façade (City Exhibit 6) that were approved by the Planning & Development Director per the original conditional use permit.

Findings

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

The City of Asheville Technical Review Committee reviewed the proposed use and found no health or safety concerns. The Project is required to meet the technical standards set forth in the UDO, the Asheville Standards and Specifications Manual, the North Carolina Building Code, and other applicable laws and standards which protect the public health and safety.

2. That the Project is reasonably necessary for the health and general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or region.
3. That the Project will not substantially injure the value of the adjoining or abutting property.
4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density and character of the area or neighborhood in which it is located.

The proposed use will create an appropriate transition from the commercial, urban land use pattern above to the historic, single family development below. And will be of similar scale and building materials as the surrounding development.

5. That the proposed use or development of the land will generally conform with the Comprehensive Plan and other official plans adopted by the City.

The Asheville City Plan 2010 and the West End Clingman Small Area plan indicate residential uses for this area.

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

The project was reviewed for compliance with technical standards by the City of Asheville Technical Review Committee, which includes representatives of the Water Resources

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Department, the Fire Department, MSD, the Engineering Department, and the Public Works Department.

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

The City's traffic engineer has determined that the adjacent roads have more than adequate capacity to carry the traffic expected to be generated from this site.

Based on information available to the Planning & Development Department in advance of the public hearing, staff recommends approval of the amendment to the conditional use permit to allow office use as part of the development.

Councilwoman Field and Councilmen Hay, Peterson and Worley disclosed that they did talk to someone from Mountain Housing Opportunities about this issue (they were unaware that this amendment would be a quasi-judicial hearing), however, their discussions will not influence their decisions in any way.

Mr. Scott Dedman, Executive Director of Mountain Housing Opportunities, spoke about how this will benefit the neighborhood and how the neighborhood association has endorsed this request.

There being no request from the applicant for rebuttal, Mayor Sitnick closed the public hearing at 5:45 p.m.

After discussion about the possibility of expanding the uses for the development, City Attorney Oast reviewed the legal notice and recommended to Council to confine their motion to only permit office use as part of the development.

Councilwoman Field moved to adopt Ordinance No. 2824 to amend the conditional use permit to allow office use as part of the development; and, to instruct the City Attorney to prepare the Order for the Mayor's signature. This motion was seconded by Councilman Worley and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 189

D. PUBLIC HEARING TO CONSIDER AN APPLICATION TO THE U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT FOR A COMMUNITY DEVELOPMENT BLOCK GRANT SECTION 108 GUARANTEED LOAN AND AN ECONOMIC DEVELOPMENT INCENTIVE GRANT FOR THE REHABILITATION OF BUILDINGS IN SOUTH PACK SQUARE

RESOLUTION NO. 01-97 - RESOLUTION AUTHORIZING SUBMISSION TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OF APPLICATIONS FOR A SECTION 108 GUARANTEED LOAN AND AN ECONOMIC DEVELOPMENT INITIATIVE GRANT

At the request of Councilwoman Bellamy, Councilman Hay moved to excuse Councilwoman Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilwoman Field and carried unanimously.

Mayor Sitnick opened the public hearing at 5:50 p.m.

Ms. Charlotte Caplan, Community Development Director, said that this is a public hearing on the consideration of an application to the U.S. Dept. of Housing and Urban Development

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(HUD) for a Community Development Block Grant (CDBG) Section 108 Guaranteed Loan of \$800,000 and an Economic Development Initiative (EDI) Grant of \$340,000 for the rehabilitation of buildings in South Pack Square. This public hearing was advertised on June 21, 2001.

Eagle/Market Streets Development Corporation (EMSDC) has requested that the City apply to HUD for a total of \$1,140,000 in linked grant and loan funding to assist in a \$2.4 million project that will acquire and rehabilitate three substandard buildings in the South Pack Square area and construct a fourth on a vacant site between the existing buildings. The completed buildings will be leased as a mixture of retail, office, affordable housing, and market rate housing units.

Location

The buildings are:

25 South Market Street (PIN # 9648-06-49-6888) – also known as the Del Cardo Building;

19 Eagle Street (PIN # 9648-06-49-6834) – the row of stores on the south side of Eagle Street;

3 Wilson Alley (PIN # 9648-06-49-5793) – a small building, formerly used as a crack house.

The land for the infill construction is part of the 19 Eagle Street parcel, but fronts on S. Market Street.

EMSDC has already acquired 25 South Market Street and 3 Wilson Alley, using CDBG funds, and is in negotiation with the owner of 19 Eagle Street.
