

**REGULAR MEETING
ASHEBORO CITY COUNCIL
CITY COUNCIL CHAMBER, MUNICIPAL BUILDING
THURSDAY, FEBRUARY 7, 2013
7:00 p.m.**

This being the time and place for a regular meeting of the Asheboro City Council, a meeting was held with the following elected officials and staff members present:

David H. Smith) – Mayor Presiding

Talmadge S. Baker)
Clark R. Bell)
Edward J. Burks)
Linda H. Carter) – Council Members Present
Michael W. Hunter)
Walker B. Moffitt)
Charles A. Swiers)

John N. Ogburn, III, City Manager
Dumont Bunker, P.E., City Engineer
Timothy Edward Cockman, Acting Deputy Fire Chief
Holly H. Doerr, CMC, NCCMC, City Clerk
John L. Evans, Assistant Community Development Director
Trevor L. Nuttall, Community Development Director
Steven O. Paye, Safety Coordinator
Deborah P. Reaves, Finance Director
Jody P. Williams, Police Captain
Jeffrey C. Sugg, City Attorney

1. Call to order.

A quorum thus being present, Mayor Smith called the meeting to order for the transaction of business, and business was transacted as follows.

2. Silent prayer and pledge of allegiance.

After a moment of silence was observed in order to allow for prayer or meditation, Mayor Smith asked everyone to stand and repeat the pledge of allegiance.

3. Appearance and recognition of guests and citizens.

Mayor Smith welcomed everyone in attendance.

4. Mr. Steve Hackett, CPA, of Maxton McDowell, CPA: Presentation of the City's fiscal year-end audit report.

The City Council received from Mr. Steve Hackett, CPA the audit report for the fiscal year that ended June 30, 2012. During his presentation, Mr. Hackett reported that the city received what is commonly referred to as a "clean audit" that reflects an unqualified acceptance of the City's financial statements. A copy of the written report submitted by Mr. Hackett is on file in the City Clerk's office along with a copy of the City's comprehensive Annual Financial Report.

5. Ms. Elizabeth Mitchell, Chief Professional Officer for United Way of Randolph County: Presentation of *Spirit of North Carolina Award*.

Ms. Elizabeth Mitchell, Chief Professional Officer for United Way of Randolph County, announced that the City of Asheboro will receive the *Spirit of North Carolina Award* at an annual meeting in Pinehurst on Friday, February 15, 2013. This award provides statewide recognition for outstanding commitment and support to the community through local United Way involvement by recognizing companies and their employees that demonstrate campaign excellence and community commitment.

6. Consent agenda:

Upon motion by Mr. Baker and seconded by Mr. Burks, Council voted unanimously to approve the following consent agenda items:

- (a) **The minutes of the City Council's regular meeting on January 10, 2013.**
- (b) **The minutes of the City Council's special meeting on January 31, 2013.**
- (c) **The findings of fact, conclusions of law, and order pertaining to the Special Use Permit issued under Case No. SUP-13-01.**

Case No. SUP-13-01
City Council
City of Asheboro

IN THE MATTER OF THE APPLICATION FOR A SPECIAL USE PERMIT
AUTHORIZING A COMBINATION OF A NEW CONFORMING USE AND AN EXISTING LEGAL
NONCONFORMING USE AT 930 SOUTH FAYETTEVILLE STREET

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING
THE REQUESTED SPECIAL USE PERMIT

THIS MATTER came before the Asheboro City Council (hereinafter referred to as the "Council") for a properly advertised quasi-judicial hearing conducted during a regular meeting of the Council that was held on January 10, 2013. Having considered all competent evidence and argument, the Council, on the basis of competent, material, and substantial evidence, does hereby enter the following:

FINDINGS OF FACT

1. The Special Use Permit sought under this case number has been requested in order to allow the Christians United Outreach Center to use an existing structure at 930 South Fayetteville Street for a personal services land use, which conforms with the Asheboro Zoning Ordinance, without correcting certain other legal nonconforming situations present on the premises and while coexisting on the property with a legal nonconforming body shop (also known as a major motor vehicle repair land use) that will continue to operate in a separate existing structure on the property.

2. The real property in question is the Daniel Thomas property identified by Randolph County Parcel Identification Number 7750785663 and the On Deck Investments II, LLC property identified by the following Randolph County Parcel Identification Numbers: 7750786677, 7750786562, and 7750795093. These combined parcels encompass approximately 3.2 acres of land and shall be hereinafter referred to as the applicant's "Zoning Lot."

3. The applicant who initiated this request is the Christians United Outreach Center, and the said outreach center shall be hereinafter referred to as the "Applicant."

4. The Applicant is attempting to utilize an existing structure on the Zoning Lot in order to engage in a personal services land use.

5. The Zoning Lot is located in Tier 2 of the Center City Planning Area and is zoned B2 (General Commercial).

6. The personal services land use is permitted as a principal use in the B2 zoning district.

7. Furthermore, the Zoning Lot is located within an area shown on the growth strategy map as a primary growth area, and the proposed land development plan map designates the area as commercial.

8. Commercial land uses are located to the north, south, and east of the Zoning Lot, while a railroad and high density residential land uses are located to the west.

9. The main issue confronting the Applicant and its desired use of the Zoning Lot is that a legal nonconforming use exists as an additional principal use in a separate structure located on the Zoning Lot, and there are legal nonconforming situations present on the Zoning Lot that can be described as follows:

- a. Compliance problems with parking and loading in Tier 2 of the Center City Planning Area (Screening/fencing of parking areas as specified in Article 200A, Section (D)(5)(e) of the Asheboro Zoning Ordinance).
- b. Compliance problems with the landscaping standards for off-street parking (Section 409(B)(2) of the Asheboro Zoning Ordinance).
- c. Compliance problems with off-street parking and loading requirements.

10. The Applicant is requesting to change uses from the zoning ordinance compliant rental/sales of domestic vehicles land use to the personal services land use that also conforms with the Asheboro Zoning Ordinance.

11. The Applicant proposes to utilize the structure that previously housed an auto dealership to operate the new personal services land use, and the submitted site plan does not indicate any material changes to the Zoning Lot in connection with this new land use beyond the work performed within the existing building to convert the internal areas of the structure into a personal services operation.

12. The lack of change outside the former car dealership structure is further evidenced by the continuation of the body shop (identified in the zoning ordinance as the major vehicle repair land use) without interruption in the Zoning Lot's other principal structure.

13. This body shop is a legal nonconforming use because, at one time, it was a conforming use as an accessory to a new automobile dealership. When the auto dealership stopped selling new vehicles as a franchisee for brands such as Pontiac and Isuzu, the body shop would no longer be permitted in the B2 zoning district as an accessory use to a new car dealership. When the car dealer began selling only used/pre-owned vehicles, the body shop became a legal nonconforming use on the Zoning Lot that was a stand alone operation existing in combination with the auto dealership on a Zoning Lot with two principal uses.

14. Section 804.3 of the Asheboro Zoning Ordinance provides as follows:

If a nonconforming use and a conforming use, or any combination of conforming and nonconforming uses, or any combination of nonconforming uses exist on one lot, the use made of the property may not be changed substantially (except to a conforming use), only in accordance with a Special Use Permit issued by the City Council. The Council shall issue such a permit if it finds that the proposed use will be more compatible with the surrounding neighborhood than the use or combination of uses in operation at the time the permit is applied for.

15. The uncontroverted testimony was that, with the issuance of the requested Special Use Permit, the Applicant's proposed use of the Zoning Lot as shown on the submitted site plan would be compliant with the Asheboro Zoning Ordinance.

16. On behalf of the Applicant, Mr. Ben Morgan, Esq. offered uncontroverted testimony the Applicant's proposed use of the Zoning Lot for a bustling personal services operation rather than allowing a vacant building that was formerly used for the sale of automobiles to just sit idle beside of a body shop will not cause any damage to adjoining properties and is more compatible with the surrounding neighborhood.

17. No testimony was offered in opposition to the requested Special Use Permit.

Based on the foregoing findings of fact, the Council hereby enters the following:

CONCLUSIONS OF LAW

1. When an applicant has produced competent, material, and substantial evidence tending to establish the existence of the facts and conditions that the ordinance requires for the issuance of a Special Use Permit, prima facie the applicant is entitled to the permit. A denial of the permit has to be based upon findings contra that are supported by competent, substantial, and material evidence appearing in the record.

2. In this case, the Applicant has properly submitted an application for a Special Use Permit authorizing the Applicant to undertake a personal services land use, which is compliant with the Asheboro Zoning Ordinance, in a building located on a Zoning Lot with another principal building that houses a legal nonconforming body shop. The only substantive change is the replacement of the conforming rental/sales of domestic vehicles with the equally conforming personal services land use.

3. The site plan submitted by the Applicant complies with the applicable requirements of the Asheboro Zoning Ordinance, and there is no evidence to suggest that the proposed new land use will have any negative impact on the Zoning Lot or the surrounding parcels of land. Furthermore, the Council has specifically concluded that the proposed combination of the personal services land use with the legal nonconforming body shop will be more compatible with the surrounding neighborhood than the use or combination of uses in operation at the time the permit application was submitted.

4. On the basis of the evidence presented during the hearing of this matter, the Council has concluded that the proposed use of the Zoning Lot satisfies the four (4) general standards for the granting of a Special Use Permit. More specifically, the proposed use will not materially endanger the public health or safety, meets all required conditions and specifications of the zoning ordinance, will not substantially injure the value of adjoining or abutting property, and will be in harmony with the area in which the Zoning Lot is located and is in general conformity with Asheboro's plan of development.

5. Given the conformance of the submitted site plan with the requirements of the Asheboro Zoning Ordinance, and the totality of the evidence submitted by the Applicant during the hearing of this

matter, the Applicant is to be issued a Special Use Permit authorizing the land use specified in the application for this Special Use Permit.

Based on the above-recited findings of fact and conclusions of law, the Council hereby enters the following:

ORDER

A Special Use Permit authorizing the above-described personal services land use on the Zoning Lot in combination with the legal nonconforming major motor vehicle repair land use (body shop) is hereby issued to the Applicant and the Applicant's successors and assigns. This Special Use Permit shall be valid so long as, and only so long as, the Applicant, and its successors and assigns, conduct the approved land use in compliance with this permit, the approved site plan, all applicable provisions of the Asheboro Zoning Ordinance, and the following supplementary conditions that are attached to this permit:

- (a) Consistent with Section 804.3 of the Asheboro Zoning Ordinance, this Special Use Permit authorizes the continuation of the legal nonconforming body shop (motor vehicle repair – major) land use in combination with the Applicant's new personal services land use. The Special Use Permit also recognizes that certain other legal nonconforming situations that currently exist on the Zoning Lot have not been expanded in any material or impermissible manner by virtue of the actions taken by the Applicant to bring a new land use to the Zoning Lot. Subject to the continuation of the combination of uses identified on the site plan and the continuing validity of this Special Use Permit, these other nonconforming situations do not have to be brought into compliance with the following provisions of the Asheboro Zoning Ordinance:
 - i. Parking and loading in Tier 2 of the Center City Planning Area (the screening/fencing of parking areas specified in Article 200A, Section (D)(5)(e) of the Asheboro Zoning Ordinance).
 - ii. Landscaping standards for off-street parking (Section 409(B)(2) of the Asheboro Zoning Ordinance).
 - iii. Subject to one exception, off-street parking and loading requirements. The noted exception is that the Applicant must provide a minimum of fifteen marked parking spaces, including two handicapped parking spaces, and these marked parking spaces must be provided in a manner that complies with the minimum dimensions established in Diagram 400-1 of the Asheboro Zoning Ordinance. The Applicant shall amend the site plan submitted to the Council during the hearing of this matter in order to explicitly show these required marked parking spaces. This amended site plan shall be submitted in a timely manner to the planning department for staff review, approval, and inclusion in the file without further review by the Council. This site plan amendment shall strictly relate to effectively implementing this condition, and not to revisions that would otherwise be defined as a permit modification.
- (b) If, in the future, a change of use to a conforming use(s) occurs on the Zoning Lot and the new use(s) can comply with all of the requirements of the Asheboro Zoning Ordinance, such uses and development activities shall be permitted and reviewed administratively by city staff without further review by the Council.
- (c) Prior to the issuance of a Zoning Compliance Permit for the proposed land use, the owner(s) of the Zoning Lot shall properly execute and deliver to the Zoning Administrator for recordation in the office of the Randolph County Register of Deeds, a Memorandum of Land Use Restrictions prepared by the City Attorney for the purpose of placing notice of the conditions attached to this Special Use Permit in the chain of title for the Zoning Lot.

These findings, conclusions, and order were adopted by the Asheboro City Council in open session during a regular meeting of the Council that was held on February 7, 2013.

/s/David H. Smith
David H. Smith, Mayor

ATTEST:

/s/Holly H. Doerr
Holly H. Doerr, CMC, NCCMC, City Clerk

- (d) An ordinance to amend the general fund (#10) for FY 2012-2013 (Sunset Place Apartments).

02 ORD 2-13

ORDINANCE TO AMEND GENERAL FUND (#10) FY 2012-2013

WHEREAS, the City Council has shown interest in maintaining and developing the downtown area as exemplified in its support of the City of Asheboro's investment in a variety of historical projects such as the downtown streetscape project, Bicentennial park, downtown farmer's market installation of new special directional signage and the current project of renovation of the Sunset Theatre Project, and;

WHEREAS, the City Council has consistently planned and invested in community revitalization using founded urban design and strategic planning methods, and;

WHEREAS, the Asheboro Housing Authority reports that they have over 2000 families on their waiting list to find affordable and safe housing, and;

WHEREAS, the City Council adopted a central city / Downtown community revitalization Plan on December 9, 2012, which proposes a block of Sunset Avenue, Cherry Street, Hoover Street and Memorial Street to be revitalized as this block was blighted, riddled with abandoned structures, and was a hub for criminal activity, and

WHEREAS, the Asheboro City Council has an opportunity to support the development of Sunset Place Apartments by appropriating funds equating Five Hundred Sixty-Seven Thousand One Hundred and 00/100 dollars (\$567,100) (rate of \$10,502 per unit – 54 units) which will be loaned to the project at a term of 20 years and at an interest rate equal to 2.0% as per Promissory Note dated April 12, 2012 and Deed of Trust recorded April 16, 2012, and;

WHEREAS, this support from the local government is necessary to make the project competitive for LIHTC housing tax credits through the North Carolina Housing Finance Agency, and;

WHEREAS, the City Council of the City of Asheboro wish appropriate these funds from the General Fund for housing development to support this worthy project, and;

WHEREAS, the City Council of the City of Asheboro desires to be in compliance with all generally accepted accounting principles.

THEREFORE, BE IT ORDAINED by the City Council of the City of Asheboro, North Carolina that the following revenue and expense line items are changed as follows:

Section 1: Revenues:

<u>Account #</u>	<u>Revenue Description</u>	<u>Increase</u>	<u>Amended Line Item Budget</u>
10-399-0000	Fund Balance Allocation (GF)	567,100	567,100

Section 2: Expenses

<u>Account #</u>	<u>Revenue Description</u>	<u>Increase</u>	<u>Amended line Item Budget</u>
10-490-5100	Loan to Sunset Place Apartments	567,100	567,100

Adopted this the 7th day of February 2013.

/s/David H. Smith
David H. Smith, Mayor

ATTEST:

/s/Holly H. Doerr
Holly H. Doerr, CMC, NCCMC, City Clerk

- (e) **A supplemental municipal agreement with the North Carolina Department of Transportation for the purchase of deicing salt.**

07 RES 2-13

RESOLUTION APPROVING A REIMBURSEMENT AGREEMENT WITH THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION FOR HIGHWAY DEICING SALT

WHEREAS, the North Carolina Department of Transportation (hereinafter referred to as the "NCDOT") and the City of Asheboro (hereinafter referred to as the "City"), on October 11, 2010, entered into a Locally Administered Project Agreement for purchasing and loading one hundred tons of highway deicing salt at the state price of \$85.22 per ton; and

WHEREAS, on January 12, 2012, the NCDOT and the City mutually agreed to extend the Agreement for an additional year; and

WHEREAS, the NCDOT and the City have now mutually agreed to once again extend the Agreement for an additional year; and

WHEREAS, in order to properly extend the Agreement for highway deicing salt, the City must receive governing board approval of the "2nd SUPPLEMENTAL AGREEMENT" that is attached hereto as EXHIBIT 1 and is hereby incorporated into this Resolution by reference as if copied fully herein;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro that the 2nd SUPPLEMENTAL AGREEMENT attached hereto as EXHIBIT 1 is hereby approved; and

BE IT FURTHER RESOLVED that the Mayor, City Clerk, and any other City official needed to comply with the form agreements generated by NCDOT are hereby authorized to execute, consistent with the City's standard contracting practices, the said 2nd SUPPLEMENTAL AGREEMENT so that the City's public works division can purchase the desired highway deicing salt.

This Resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 7th day of February, 2013.

/s/David H. Smith
David H. Smith, Mayor

ATTEST:

/s/Holly H. Doerr
Holly H. Doerr, CMC, NCCMC, City Clerk

- (f) **A resolution retiring a police canine.**

08 RES 2-13

RESOLUTION RETIRING A POLICE CANINE

WHEREAS, police canine Dan has faithfully served the Asheboro Police Department since he was purchased by the city in September 2004; and

WHEREAS, over the course of his career, Dan and his handler, Lt. R.L. Brown, Jr., have maintained certification by the North American Police Work Dog Association in the following areas: obedience, narcotic detection (marijuana, cocaine, methamphetamine, and heroin), tracking, area search, building search, article search, and apprehension; and

WHEREAS, from September 2004 to November 2012, Dan and Lt. Brown have conducted 748 narcotic sniffs, and Dan alerted to the following narcotics:

- 36,596.2 grams of marijuana having a value of \$365,962;
- 14,493.3 grams of cocaine having a value of \$1,449,330;
- 136.02 grams of crack cocaine having a value of \$13,602;
- 455 grams of methamphetamine having a value of \$45,500; and

WHEREAS, additional highlights of Dan's career with the Asheboro Police Department are as follows:

- Dan alerted to \$840,322 in United States currency and \$19,880 in counterfeit United States currency that was contaminated with a narcotics odor Dan was trained to detect;
- Dan was utilized in 32 tracking operations that resulted in the seizure of 5 individuals;
- The police department has credited Dan for 47 felony arrests and 31 misdemeanor arrests; and

WHEREAS, Dan is now approximately 10 years old and is beginning to experience significant health issues that have resulted in a veterinarian advising Lt. Brown to restrict some of Dan's physical activities; and

WHEREAS, when the city began to contemplate the need to retire Dan from his work as a police canine, Lt. Brown offered to take ownership of the canine and to care for him; and

WHEREAS, in light of Dan's training and his extended service as a police canine that renders him unsuitable for adoption as a pet to anyone other than a trained police canine handler, the City Council concurs with the professional staff's opinion as to the danger posed by Dan to the public if he were to be transferred to an individual who has not been trained to handle a police canine; and

WHEREAS, Section 160A-266(d) of the North Carolina General Statutes provides, in pertinent part, that a "city may discard any personal property that . . . poses a potential threat to the public health or safety;"

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro as follows:

Section 1. Police canine Dan is hereby retired from service, declared to be surplus property, and deemed to pose a potential threat to the public health and safety if not provided with proper care and management subsequent to the transfer of the city's ownership interest in Dan.

Section 2. The city's ownership interest in Dan and all of the equipment associated with him (i.e. lead, harnesses, water bowls, and training equipment) is hereby transferred to Asheboro Police Lieutenant R.L. Brown, Jr., free and clear of any purchase price or transfer fee of any kind, in consideration of and on the condition that Lt. Brown assume full responsibility for providing adequate shelter, care, and supervision of Dan for the remainder of Dan's life without any funding or other assistance from the city.

Section 3. As an additional condition to this transfer of ownership, if Lt. Brown should become unable to provide proper shelter, care, and supervision for Dan, the officer shall use his best efforts to secure another trained handler who can properly care for and manage a former police canine. If a qualified individual cannot be found to properly care for and manage Dan, the canine shall be returned to the city so that, in the interest of the public health and safety, the canine can be humanely euthanized.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 7th day of February, 2013.

/s/David H. Smith
David H. Smith, Mayor

ATTEST:

/s/Holly H. Doerr
Holly H. Doerr, CMC, NCCMC, City Clerk

(g) Acknowledgement of the receipt of the semi-annual report on the disposal of surplus city-owned personal property.

The above-referenced semi-annual report was received by the Mayor and Council Members, and a copy of the said report is on file in the City Clerk's office.

(h) Acknowledgement of the receipt of a copy of the oath of office taken by Mr. Murray S. Marsh, Jr. on January 11, 2013, as a member of the Asheboro Airport Authority.

A copy of the oath of office form signed by Mr. Marsh was received by the Mayor and Council Members, and the said oath form is on file in the City Clerk's office.

(i) Acknowledgement of the receipt of the Asheboro ABC Board's minutes of its meeting on December 3, 2012.

A copy of the minutes of the Asheboro ABC Board's meeting on December 3, 2012 was received by the Mayor and Council Members, and a copy of the minutes is on file in the City Clerk's office.

7. Community Development Division Items

(a) Legislative Hearing on Zoning Case RZ-13-02: Text amendments to the zoning ordinance concerning review procedures for Conditional/Special Use Permits.

Mayor Smith opened the public hearing on the following request.

Mr. Nuttall presented the Community Development Division staff's analysis of the request by Mr. Andy Archibald to amend provisions of the Asheboro Zoning Ordinance pertaining to the review process utilized when development activities are proposed for property subject to an existing Conditional Use Permit. In essence, the Applicant has requested that the Zoning Ordinance be amended to grant, within defined parameters, enhanced flexibility for staff to approve certain development activities administratively rather than requiring a new quasi-judicial hearing in front of the City Council.

The Applicant's specific focus is on obtaining a text amendment that would allow a limited increase in usable floor area without triggering the need for a quasi-judicial hearing in front of the City Council. The current text of the Ordinance specifies that any increase in usable floor area is deemed to be a "modification" that triggers the need for a quasi-judicial hearing.

The city staff's review of the application led to the conclusion that the concept was meritorious. However, the staff felt that any amendment should be drafted with a broader range of issues in mind and should also include the review process for proposed development activities that would impact an existing Special Use Permit.

The actual proposed text amendments are as follows:

Article 1000 (Administrative and Legal Provisions), Section 1013.5

Minor Changes to be Approved by Zoning Administrator / Modifications Require Action by City Council.

The Zoning Administrator is authorized to approve minor changes in the approved plans of Conditional Uses, as long as they are in harmony with action of the approving body, but shall not have the power to approve changes that constitute a modification of the approval. A modification shall require approval of the City Council and shall be handled as a new application.

~~The Zoning Administrator shall use the following criteria in determining whether a proposed action is a minor change or a modification. When evaluating whether a request constitutes a minor change or a modification, the base line for the analysis, specifically including without limitation any calculation pertaining to floor area, is the site plan reviewed and approved by the City Council. No prior administrative approval of a minor change made subsequent to the issuance of the Conditional Use Permit is relevant to the analysis of whether a pending request is deemed to be a minor change or a modification.~~

~~The following actions shall constitute a modification, unless expressly authorized by the permit:~~

- ~~A. (Reserved for future amendments)~~
- ~~B. Any increase in intensity of use shall constitute a modification. An increase in intensity of use shall be considered to be an increase in usable floor area, an increase in number of dwelling or lodging units, and/or an increase in outside land area devoted to sales, displays, or demonstrations.~~
- B. The erection of a new structure or the addition to an existing structure that violates any of the following criteria:
 - 1. exceeds 1000 square feet in area;
 - 2. exceeds 10% of the useable floor area; or
 - 3. results in any portion of a structure being located closer than thirty (30) feet to an adjoining property developed with a single-family or two-family dwelling.
- C. An increase in number of dwelling or lodging units, and/or
- D. An increase in outside land area devoted to sales, displays, or demonstrations.
- E. Any change in parking areas resulting in an increase or reduction of 5% or more in the number of spaces approved by the City Council. shall constitute a modification. In no case shall the number of spaces be reduced below the minimum required by the ordinance.
- ~~F. Structural alterations significantly affecting the basic size, form, style, ornamentation and the like of the building as shown on the approved plan shall be considered a modification.~~

G. Substantial change in the amount and/or location of open space, recreation facilities or landscape buffers/screens shall constitute a modification.

H. A change in use ~~shall constitute a modification.~~

I. Substantial changes in pedestrian or vehicular access or circulation ~~shall constitute a modification.~~

Notwithstanding any other provision within this Section, the Zoning Administrator is expressly prohibited from approving any changes that would be in conflict with the requirements of the Zoning Ordinance or contrary to the testimony or any other form of evidence cited within the adopted findings, conclusions, and order as an important basis for the City Council's decision to approve the Conditional Use Permit.

The Zoning Administrator shall, before making a determination as to whether a proposed action is a minor change or a modification, review the record of the proceedings on the original application for the approval of the Conditional Use.

The Zoning Administrator shall, if he determines that the proposed action is a modification, require the applicant to file a request for approval of the modification, which shall be submitted to the City Council. The Council may approve or disapprove the application for approval of a modification. (6/02)

Article 600 (Special Uses), Section 606

Minor Changes to be Approved by Zoning Administrator / Modifications Require Action by City Council.

The Zoning Administrator is authorized to approve minor changes in the approved plans of Special Uses, as long as they are in harmony with action of the approving body, but shall not have the power to approve changes that constitute a modification of the approval. A modification shall require approval of the City Council and shall be handled as a new application.

~~The Zoning Administrator shall use the following criteria in determining whether a proposed action is a minor change or a modification. When evaluating whether a request constitutes a minor change or a modification, the base line for the analysis, specifically including without limitation any calculation pertaining to floor area, is the site plan reviewed and approved by the City Council. No prior administrative approval of a minor change made subsequent to the issuance of the Special Use Permit is relevant to the analysis of whether a pending request is deemed to be a minor change or a modification.~~

The following actions shall constitute a modification, unless expressly authorized by the permit:

A. (Reserved for future amendments)

~~B. Any increase in intensity of use shall constitute a modification. An increase in intensity of use shall be considered to be an increase in usable floor area, an increase in number of dwelling or lodging units, and/or an increase in outside land area devoted to sales, displays, or demonstrations.~~

B. The erection of a new structure or the addition to an existing structure that violates any of the following criteria:

1. exceeds 1000 square feet in area;

2. exceeds 10% of the useable floor area; or

3. results in any portion of a structure being located closer than thirty (30) feet to an adjoining property developed with a single-family or two-family dwelling.

C. An increase in number of dwelling or lodging units, and/or

D. An increase in outside land area devoted to sales, displays, or demonstrations.

E. Any change in parking areas resulting in an increase or reduction of 5% or more in the number of spaces approved by the City Council. shall constitute a modification. In no case shall the number of spaces be reduced below the minimum required by the ordinance.

F. Structural alterations significantly affecting the basic size, form, style, ornamentation and the like of the building as shown on the approved plan shall be considered a modification.

G. Substantial change in the amount and/or location of open space, recreation facilities or landscape buffers/screens shall constitute a modification.

H. A change in use ~~shall constitute a modification.~~

I. Substantial changes in pedestrian or vehicular access or circulation ~~shall constitute a modification.~~

Notwithstanding any other provision within this Section, the Zoning Administrator is expressly prohibited from approving any changes that would be in conflict with the requirements of the Zoning Ordinance or contrary to the testimony or any other form of evidence cited within the adopted findings, conclusions, and order as an important basis for the City Council's decision to approve the Special Use Permit.

The Zoning Administrator shall, before making a determination as to whether a proposed action is a minor change or a modification, review the record of the proceedings on the original application for the approval of the Special Use.

The Zoning Administrator shall, if he determines that the proposed action is a modification, require the applicant to file a request for approval of the modification, which shall be submitted to the City Council. The Council may approve or disapprove the application for approval of a modification.
(6/02)

The Planning Board concurred with the following Community Development Division staff's analysis:

"Staff believes that allowing limited additions to properties subject to Conditional/Special Use Permits will result in more flexibility to applicants while ensuring protection to adjoining property owners. Staff also believes allowing limited additions is similar to provisions that allow minor changes to a development (i.e. small variation in number of parking spaces, minor changes to site layout, etc.) subject to a Conditional/Special Use permit which do not affect adjoining properties or the character of the City as a whole to any significant degree. Additionally, enhanced setback requirements will help ensure that these small additions are compatible with the character of adjoining properties."

The Applicant, Mr. Andy Archibald, was available to answer questions.

There being no comments and no opposition from the public, Mayor Smith closed the public hearing.

Upon motion by Mr. Bell and seconded by Mr. Swiers, Council accepted the recommendations of the Planning Board and the Community Development Staff and unanimously approved the proposed text amendments to the Asheboro Zoning Ordinance along with adopting, as its own, the following consistency statement:

After considering the above factors, the Council believes the zoning text amendments will ensure consistency with the Land Development Plan. The Council therefore believes the request is reasonable and in the public interest.

(b) Consideration of a resolution needed to obtain pre-approved grant funding from the North Carolina Rural Economic Development Center for the Stay Well Senior Care Project.

Mr. Nuttall presented and recommended adoption, by reference, of the aforementioned resolution.

Upon motion by Mr. Hunter and seconded by Mr. Swiers, Council voted unanimously to adopt the following resolution by reference.

09 RES 2-13

AUTHORIZING RESOLUTION BY GOVERNING BODY OF THE APPLICANT
Economic Infrastructure Grants Program

WHEREAS, the North Carolina Rural Economic Development Center, Inc. (Rural Center) has authorized the awarding of grants from appropriated funds to aid eligible units of government in financing the cost of infrastructure activities needed to create jobs; and

WHEREAS, the City of Asheboro needs assistance in financing an infrastructure project that may qualify for Rural Center funding; and

WHEREAS, the City of Asheboro intends to request grant assistance for the StayWell Senior Care Infrastructure Project from the Economic Infrastructure Grants Program;

NOW THEREFORE BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF ASHEBORO:

That the City of Asheboro will arrange financing for all remaining costs of the project, if approved for a grant.

That John Ogburn, City Manager and successors so titled, is hereby authorized to execute and file an application on behalf of the City of Asheboro with the Rural Center for a grant to assist in the above-named infrastructure project.

That John Ogburn, City Manager and successors so titled, is hereby authorized to execute and file an application on behalf of the City of Asheboro with the NCREDC (Rural Center) for a grant to assist in the above named infrastructure project.

That John Ogburn, City Manager and successors so titled, is hereby authorized and directed to furnish such information as the Rural Center may request in connection with an application or with the project proposed; to make assurances as contained in the application; and to execute such other documents as may be required in connection with the application.

That the City of Asheboro has substantially complied or will substantially comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to the project and to the grants pertaining thereto.

Adopted this the 7th day of February, 2013 at Asheboro, North Carolina.

/s/David H. Smith
David H. Smith, Mayor

ATTEST:

/s/Holly H. Doerr
Holly H. Doerr, CMC, NCCMC, City Clerk

8. Public comment period.

Mayor Smith opened the floor for comments from the public, and none were offered.

There being no comments from the public, Mayor Smith closed the public comment period.

9. Consideration of a resolution of intent to permanently close a portion of the public right-of-way on the north side of West Academy Street as part of the relocation of the intersection of West Academy Street with South Church Street.

Mr. Bunker presented and recommended adoption, by reference, of the aforementioned resolution.

Upon motion by Mr. Burks and seconded by Mr. Baker, Council voted unanimously to adopt the following resolution by reference.

10 RES 2-13

**RESOLUTION OF INTENT TO PERMANENTLY CLOSE A PORTION OF
THE PUBLIC RIGHT-OF-WAY FOR WEST ACADEMY STREET**

WHEREAS, Section 160A-299 of the North Carolina General Statutes prescribes the procedure to be followed by a city in order to permanently close a street or alley; and

WHEREAS, Academy Street is a street located within the corporate limits of the City of Asheboro and over which the city has general authority and control; and

WHEREAS, the city manager, in consultation with the city's engineering department and public works division, has advised the Asheboro City Council that the intersection of West Academy Street with South Church Street (North Carolina Secondary Road 1707) can be improved by relocating the point of intersection to the south of its current location; and

WHEREAS, the Asheboro City Council has concluded that the proposed relocation of West Academy Street should be implemented in order to improve the said intersection; and

WHEREAS, in furtherance of the relocation of West Academy Street, a northern portion of the current public right-of-way for West Academy Street that is encroached upon by an existing structure should be permanently closed; and

WHEREAS, in order for a municipality to lawfully permanently close a street or any portion thereof, Section 160A-299 of the North Carolina General Statutes requires that a city council first adopt a resolution declaring its intent to permanently close the street in question and then call a public hearing on the question.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro as follows:

Section 1. It is the intent of the City Council of the City of Asheboro to permanently close approximately two hundred fifty-three (253) square feet of the northern portion of the current public right-of-way for West Academy Street. The public right-of-way proposed for permanent closure is located within the corporate limits of the City of Asheboro and is more particularly described as follows:

City of Asheboro, Asheboro Township, Randolph County, North Carolina:

BEGINNING at a nail that is flush with the ground and is set at the intersection of the current northern margin of the public right-of-way for West Academy Street with the eastern margin of the public right-of-way for South Church Street (North Carolina Secondary Road 1707), the said nail is located by means of the North Carolina Coordinate System at the coordinates of North 711,988.02 feet and East 1,757,428.70 feet (NAD 83); thence from the said Beginning point proceeding along the current northern margin of the public right-of-way for West Academy Street, which is encroached upon by an existing building, the following course and distance: South 86 degrees 55 minutes 13 seconds East 76.81 feet to a computed point; thence departing from the current northern margin of the public right-of-way for West Academy Street and proceeding to the proposed new northern margin of the public right-of-way for West Academy Street the following course and distance: South 02 degrees 47 minutes 30 seconds West 2.52 feet to a computed point; thence North 88 degrees 03 minutes 33 seconds West 76.94 feet along the proposed new northern margin of the public right-of-way for West Academy Street to a new nail set in the eastern margin of the public right-of-way for South Church Street; thence along the eastern margin of the public right-of-way for South Church Street the following course and distance: North 04 degrees 32 minutes 42 seconds East 4.05 feet to the point and place of the BEGINNING, and being all of that certain 253 square feet of land, more or less, encompassed by the preceding metes and bounds description.

This description is in accordance with a plat of survey entitled "Plat for City of Asheboro Proposed WEST ACADEMY STREET RELOCATION AT THE INTERSECTION OF SOUTH CHURCH STREET" that was drawn under the supervision of Thomas Scaramastra, a Professional Land Surveyor with license number L-4421. This plat of survey, which is identified by Job # 11-044 and dated June 29, 2012, is hereby incorporated into this resolution by reference as if copied fully herein.

Section 2. A public hearing on the matter of the proposed permanent closure of the above-described portion of the public right-of-way for West Academy Street is hereby called and is to be held during a regular meeting of the City Council of the City of Asheboro that is to begin at 7:00 p.m. on April 4, 2013, in the Council Chamber of Asheboro City Hall, 146 North Church Street, Asheboro, North Carolina 27203. At this public hearing, any person may be heard on the question of whether or not the intended closing of the above-described portion of West Academy Street would be detrimental to the public interest or the property rights of any individual.

Section 3. The City Clerk is hereby directed to cause the publication of this Resolution of Intent once a week for four (4) successive weeks prior to the above-referenced public hearing in *The Courier Tribune*, a newspaper of general circulation in the City of Asheboro.

Section 4. The City Clerk is further directed to transmit a copy of this Resolution of Intent by registered or certified mail to each owner of property adjoining the section of West Academy Street described in Section 1 of this Resolution. The identity of said property owners is to be determined on the basis of the Randolph County Tax Department's records.

Section 5. The City Clerk is further directed to cause the prominent posting of this Resolution of Intent in a minimum of two (2) locations along the section of West Academy Street described in Section 1 of this Resolution.

This Resolution of Intent was adopted by the Asheboro City Council in open session during a regular meeting held on the 7th day of February, 2013.

/s/David H. Smith
David H. Smith, Mayor

ATTEST:

/s/Holly H. Doerr
Holly H. Doerr, CMC, NCCMC, City Clerk

10. Receive bids and award purchase contract for a truck to be used by the Facilities Maintenance Department.

Ms. Reaves presented the following summary of the bid process utilized for the purchase of a service 3/4-ton pick-up truck for the Facilities Maintenance Department.

- Asheboro Ford Lincoln Mercury \$24,422.52
- Strider Buick, GMC, Subaru \$27,109.54
- Asheboro Chrysler/Dodge \$31,800.04
- State Contract \$24,423.00

Ms. Reaves recommended that a purchase contract be awarded to Asheboro Ford Lincoln Mercury in the amount of \$24,422.52 for the purchase of the truck specified during the bid process conducted on behalf of the Facilities Maintenance Department.

Upon motion by Mr. Hunter and seconded by Mr. Burks, Council voted unanimously to award the purchase contract to Asheboro Ford Lincoln Mercury for the said truck in the amount of \$24,422.52.

11. Boards, Commissions, and Authority Appointments:

(a) Consideration of filling one (1) vacancy on the Asheboro Airport Authority for a three (3) year term until February 2016.

Mr. Ogburn reported that Mr. Keith Crisco, Mr. Bobby James Crumley, and Mr. Keith G. Hodgin, Jr. have submitted applications/interest forms for service on the Asheboro Airport Authority.

Upon motion by Mr. Bell and seconded by Ms. Carter, Council voted unanimously to send the above-listed names to the Asheboro Airport Authority for review. Once the Airport Authority has reviewed these names, the board will recommend at least two (2) names to the Council for final action.

(b) Consideration of appointing a city resident to the Asheboro Planning Board to complete a term of office that expires in January 2015.

Mr. Ogburn reported that at its meeting on February 4, 2013, the Asheboro Planning Board reviewed information packages for individuals interested in serving on the Asheboro Planning Board. The individuals who formally expressed an interest in serving on the Board were: Ritchie A. Buffkin, Michael S. Moore, Kenneth L. Powell, Ronald D. Powell, and Phillip Skeen.

The Board selected the following two individuals for equal and further consideration by the city council for appointment to the Asheboro Planning Board Board: Ritchie A. Buffkin and Phillip Skeen.

Upon motion by Mr. Bell and seconded by Ms. Carter, Council voted unanimously to appoint Mr. Ritchie A. Buffkin to the Asheboro Planning Board to fill the term that expires on January 1, 2015.

(c) Announcement of the Retirement of Charlie Robbins.

Mr. Ogburn announced that Mr. Charlie Robbins has retired from the Redevelopment Commission. With the general consent of the Council, city staff will post the notice of this Redevelopment Commission vacancy on Channel 8 and the city's website.

12. Receive report of NC League of Municipalities Advocacy Goals Conference held on January 24, 2013.

Mr. Ogburn utilized a visual presentation in order to summarize certain items that were discussed at the NC League of Municipalities Advocacy Goals Conference that was held on January 24, 2013. A copy of the visual presentation is on file in the City Clerk's office.

13. Council discussion of proposed City of Asheboro Charter Amendments:

(a) Residency requirements for Police and Fire Chief and (b) Proposal to change from a non-partisan primary and general election method to a non-partisan plurality method.

Due to questions that have informally arisen over time as to whether the City Charter should be amended to modify certain residency requirements and election procedures prescribed by the City Charter, the city staff has prepared a resolution calling for a public hearing on the question of the residency requirements for the police and fire chiefs in addition to the question of whether the method of election for the Mayor and the Council Members should be changed. If after a public hearing on March 7, 2013, the Council decides to request modification(s) of the City Charter, a formal request will be made of the local legislative delegation to the North Carolina General Assembly for the introduction and support of a local act to amend the Charter of the City of Asheboro.

Upon motion by Mr. Swiers and seconded by Ms. Carter, Council voted unanimously to adopt the following resolution by reference.

11 RES 2-13

**A RESOLUTION REQUESTING AMENDMENTS TO THE CHARTER OF
THE CITY OF ASHEBORO BY LOCAL ACT OF THE
NORTH CAROLINA GENERAL ASSEMBLY**

WHEREAS, the Asheboro City Council and the municipal corporation's staff are engaged in an on-going process of reviewing city operations and processes in an effort to identify and implement actions that can reduce the expenditure of public funds while maintaining the quality of the local government services expected by the municipality's citizens; and

WHEREAS, this on-going review process includes scrutinizing the provisions in the city's charter that may need to be updated; and

WHEREAS, the city charter currently prescribes the following election procedure:

Sec. 4.11 Filing of candidates. Each qualified person who would offer himself as a candidate for nomination for the office of mayor or council member shall file with the Randolph County board of elections a statement giving notice of his candidacy for such nomination. Such statement shall be filed not earlier than 12:00 noon on the first Friday in July and no later than 12:00 noon on the first Friday in August preceding the election, shall be accompanied by payment of a nonrefundable filing fee as determined by the city council, which shall not be less than five dollars (\$5.00) nor more than one percent (1%) of the annual salary of the office sought, and shall be in the form as provided for under G.S. 163-294.2(a).

Sec. 4.12 Posting and publication of list of candidates; notice of primary. The board of elections shall exercise its powers and duties as provided for under G.S. 163-33(8).

Sec. 4.13 When primary required. If more than two candidates file for nomination for the office of mayor, then a primary election shall be held to nominate two candidates for the office of mayor in the regular municipal election. If more than 14 candidates file for nomination for the office of Council Member, then a primary election shall be held to nominate 14 of such candidates for the office of council member in the regular municipal election. If a primary is held for any office, then the names of the candidates nominated for such office in such primary, and the name of no other candidates for such office, shall appear on the official ballots at the regular municipal election.

Sec. 4.14 Time of primary if required. If a primary election shall be required for any office, then the same shall be held on the fourth Tuesday before the regular municipal election, under the same laws, rules and regulations applicable to the regular municipal election.

Sec. 4.15 Primary ballots. If a primary election is required, the board of elections shall cause primary ballots to be printed and authenticated with the signature of the chairman of the board of elections or a facsimile thereof. The ballots shall be printed as provided for under G.S. 163-299.

Sec. 4.16 Results of primary. The board of elections shall follow the procedures as provided for under G.S. 163-294.

Sec. 4.17 Regular municipal election ballots. The board of elections shall follow the procedures as provided for under G.S. 163-299.

Sec. 4.18 Regular municipal elections. Regular municipal elections shall be held on Tuesday after the first Monday in November of the year 1993 and on such day every four years thereafter. In each election, there shall be elected by the qualified voters of the city a mayor and seven council members.

Sec. 4.19 Regulation of elections. All municipal elections shall be conducted in accordance with Chapter 163 of the General Statutes of North Carolina relating to municipal elections; and

WHEREAS, a review of the above-listed election procedures leads to the conclusion that the expenditure of public funds on the delivery of municipal services as opposed to paying for primary elections would be a prudent public policy decision; and

WHEREAS, a review of the city charter has also led to the conclusion that certain sections of the charter pertaining to the city's chief of police and fire chief unnecessarily restrict the ability of the city manager, when a vacancy occurs, to effectively recruit the widest range of qualified candidates to lead these vital departments of the city government; and

WHEREAS, the section of the charter that has the potential to unnecessarily narrow the field of candidates during any future search for a chief of police is as follows:

Sec. 10.3 Chief of Police. At the time of his appointment, any Chief of Police need not be a resident of the city, but shall reside therein or within the extraterritorial jurisdiction of the city during his tenure of office; and

WHEREAS, the section of the charter that has the potential to unnecessarily narrow the field of candidates during any future search for a fire chief is as follows:

Sec. 16.1 Chief of Fire Department. At the time of his appointment, the Chief of the Fire Department need not be a resident of the city but shall reside therein or within the extraterritorial jurisdiction of the city during tenure of office; and

WHEREAS, the Asheboro City Council could undertake the process of amending the city charter for the limited purpose of changing the method of election by following the statutorily prescribed process for adopting an ordinance to make such a change; and

WHEREAS, the above-listed residency requirements that impact the police and fire departments cannot be amended by the adoption of an ordinance as evidenced by Section 160A-60 of the North Carolina General Statutes, which provides as follows:

Residence within a city shall not be a qualification for or prerequisite to appointment to any city office not filled by election of the people, unless the charter or an ordinance provide otherwise. City councils shall have authority to fix qualifications for appointive offices, but shall have no authority to waive qualifications for appointive offices fixed by charters or general laws; and

WHEREAS, in light of the preceding recitals, the City Council has determined that the most appropriate action is to address all of the above-listed proposed changes in the city charter as a comprehensive package of amendments to be implemented by action of the North Carolina General Assembly;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Asheboro hereby calls for a public hearing to be held during the Council's next regular meeting, which is scheduled to begin at 7:00 p.m. on March 7, 2013, on the question of whether it is advisable to proceed with a formal request to the local legislative delegation to the North Carolina General Assembly for the introduction and support of a local act implementing the following changes to the Charter of the City of Asheboro:

1. The repeal of Sections 14.11, 14.12, 14.13, 14.14, 14.15, 14.16, 14.17, 14.18, and 14.19 of the charter and the addition of a new Section 14.1 to provide as follows:

Regular municipal elections shall be held in each odd-numbered year in accordance with the uniform municipal election laws of North Carolina. Elections are conducted on a nonpartisan

