

**REGULAR MEETING
ASHEBORO CITY COUNCIL
CITY COUNCIL CHAMBER, ASHEBORO CITY HALL
THURSDAY, MAY 7, 2020
7:00 PM**

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 city management team members present:

David H. Smith)	–	Mayor Presiding
Clark R. Bell)		
Edward J. Burks)	–	Council Members Physically Present in the
Walker B. Moffitt)		Council Chamber
Jane H. Redding)		
Linda H. Carter)	–	Council Member Present by Conference
			Telephone
Katie L. Snuggs)	–	Council Members Present by Conference
Charles A. Swiers)		Video/Other Electronic Means

John N. Ogburn, III, City Manager
Holly H. Doerr, CMC, NCCMC, City Clerk/Paralegal
Trevor L. Nuttall, Community Development Director
A. Todd Stout, Information Systems Director
Jeffrey C. Sugg, City Attorney

1. Call to order.

A quorum thus being physically present, Mayor Smith called the meeting to order for the transaction of business, and business was transacted as follows. The number of elected officials, city employees, and private citizens physically present in the council chamber at any point in time was limited to a maximum of ten individuals in order to comply with the applicable executive orders, specifically including physical distancing guidance, during the current public health emergency.

Roll call votes were conducted to ensure that council members participating by conference call or conference video/other electronic means were on the line and casting their votes.

2. Moment of silent prayer and pledge of allegiance.

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

3. Public comment period.

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

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

4. Consent agenda.

Upon motion by Council Member Burks and seconded by Council Member Redding, the Council voted unanimously to approve/adopt the following consent agenda items. Council Members Bell, Burks, Carter, Moffitt, Redding, Snuggs, and Swiers voted in favor of the motion. There were no dissenting votes.

- (a) **The meeting minutes for the city council's special meeting held on March 25, 2020.**

The approved meeting minutes are on file in the city clerk's office, and an electronic copy of the approved minutes is posted on the city's website.

- (b) **The minutes and general account of a closed session held during the special city council meeting on March 25, 2020.**

The approved minutes and general account of the above-referenced closed session are on file in the city clerk's office. However, in compliance with the resolution approved as the next consent agenda item, the general account of the closed session is not currently available for inspection because such an inspection would frustrate the purpose of the closed session.

- (c) **A resolution sealing the general account of the closed session on March 25, 2020.**

RESOLUTION NUMBER 07 RES 5-20

CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA

**Resolution Sealing the General Account of a Closed Session
Conducted during a Special Joint Meeting with the
Randolph County Board of Commissioners on March 25, 2020**

WHEREAS, Section 143-318.10(e) of the North Carolina General Statutes provides, in pertinent part, that the "minutes or an account of a closed session conducted in compliance with G.S. 143-318.11 may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session;" and

WHEREAS, pursuant to Section 143-318.11(a)(1) and Section 131E-97.3 of the North Carolina General Statutes, the city council, upon unanimous adoption of a properly made and seconded motion, went into closed session on March 25, 2020, during a joint special meeting with the Randolph County Board of Commissioners, in order to discuss privileged and confidential information pertaining to competitive healthcare activities by or on behalf of Randolph Health; and

WHEREAS, the purpose for going into closed session on March 25, 2020, would be frustrated if the general account of the closed session were to be made available for public inspection at this time.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro that the general account of the closed session conducted on March 25, 2020, is hereby sealed and will remain sealed so long as public inspection of the records would frustrate the purpose of the closed session; and

BE IT FURTHER RESOLVED by the City Council of the City of Asheboro that the city manager is hereby authorized to act as the council's agent with the authority to unseal these records when the purpose of the closed session would no longer be frustrated by making the records available for public inspection or when the unsealing of this general account is otherwise required by law.

This Resolution was adopted by the Asheboro City Council in open session during a regular meeting held on May 7, 2020.

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

ATTEST:

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

- (d) The meeting minutes for the city council's regular meeting held on April 9, 2020.**

The approved meeting minutes are on file in the city clerk's office, and an electronic copy of the approved minutes is posted on the city's website.

- (e) The acknowledgement of the receipt from the Asheboro ABC Board of its meeting minutes for March 2, 2020.**

The minutes of the meeting held by the Asheboro ABC Board on March 2, 2020, have been received by the city clerk, distributed to Mayor Smith and the Council Members for review, and have been filed in the city clerk's office.

- (f) The community development division's request to schedule and advertise hearings to be conducted on June 4, 2020, for the following land use cases:**

- (i) Legislative Hearing: An Application to rezone property (Randolph County Parcel Identification Number 7762068222) located on the south side of East Bailey Street, east of 1644 North Fayetteville Street, from RA6 (High-Density Residential) to O&I (Office & Institutional).**
- (ii) Quasi-Judicial Hearing: A combined hearing to consider an application to rezone a portion of the property at 801 Sunset Avenue (Randolph County Parcel Identification Number 7751426889) from OA6 (Office-Apartment) to CU-M (Conditional Use Mercantile) and to obtain a conditional use permit authorizing a banquet facility.**

The hearings concerning the applications for the above-referenced land use approvals will be scheduled and advertised in accordance with the applicable statutes/ordinances and then heard by the Asheboro City Council during its regular meeting on June 4, 2020.

- (g) An extension of the time allowed between preliminary plat and final plat approval for West Pointe Townhomes (SUB-19-01).**

A copy of the written request from the applicant for an extension of the time allowed between preliminary plat and final plat approval for West Pointe Townhomes is on file in the city clerk's office.

- (h) Acknowledgement of the closeout of the 2018 Urgent Repair Program (URP 1801).**

A copy of the above-referenced closeout of the 2018 Urgent Repair Program is on file in the city clerk's office.

- (i) Acknowledgement of the annual report concerning the Asheboro Planning Board's activities, expenditures, and budget estimates.**

A copy of the approved annual report concerning the Asheboro Planning Board is on file in the Community Development Division and the city clerk's office.

- (j) The soil testing contract from S&ME for compaction testing of the Zoo City Sportsplex Grading Project.**

A copy of the approved contract is on file in the city clerk's office.

- (k) The audit contract for fiscal year 2019-2020.**

A copy of the approved audit contract for fiscal year 2019-2020 is on file in the finance department and in the city clerk's office.

- (1) A budget ordinance amendment pertaining to the General Fund for fiscal year 2019-2020.

14 ORD 5-20

**ORDINANCE TO AMEND
THE GENERAL FUND
FY 2019-2020**

WHEREAS, The City Council of the City of Asheboro desires to amend the budget as required by law to adjust for changes in expenditures in comparison to the current fiscal year adopted budget, and;

WHEREAS, the City Council of the City of Asheboro wants to be in compliance with all generally accepted accounting principles, and;

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA:

Section 1: That the following revenue line item be increased:

<u>Account #</u>	<u>Revenue Description</u>	<u>Increase</u>
10-399-0000	Fund Balance Appropriation	562,000

Section 2: That the following expense line item be increased:

<u>Account #</u>	<u>Expense Description</u>	<u>Increase</u>
10-620-0400	Professional Services	12,000
10-620-0200	Salaries & Wages FT	113,000
10-620-0210	Salaries & Wages PT	37,000
10-620-0702	Fringe- FICA	9,000
10-620-0705	Fringe- Retirement	9,000
10-620-1305	Utilities- McCrary Gym	17,000
10-620-1504	Maint. & Repair- Mem Pool	\$100,000
10-620-1509	Maint. & Repair- McCrary Gym	\$250,000
10-620-3401	Other Supplies- Gym	\$15,000

Adopted this 7th day of May, 2020.

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

ATTEST:

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

5. Community Development Items:

- (a) **RZ-20-01 (Public Hearing Continued from April 9, 2020):** An application to rezone property at 137 North Randolph Avenue (Randolph County Parcel Identification Number 7761027972) from R7.5 (Medium-Density Residential) to B2 (General Commercial).

In the matter of land use case file number RZ-20-01, Mayor Smith opened the public hearing on the application by Brandon Allen (the "Applicant") to rezone approximately 0.31 of an acre from R7.5 (Medium-Density Residential) to B2 (General Commercial). The parcel of land for which B2 zoning is requested (the "Zoning Lot") is owned by the Applicant and is more specifically identified by Randolph County Parcel Identification Number 7761027972.

Community Development Director Trevor Nuttall stated that, in addition to publishing the required notice of this hearing, legal notices were mailed to adjoining property owners. These notices were mailed on March 19, 2020.

Mr. Nuttall utilized a slide show to summarize the planning staff's analysis of the rezoning application. This analysis was summarized as follows:

1. The property is located inside the city limits.
2. East Salisbury Street is a State-Maintained Major Thoroughfare.
3. The most recent 2014 Comprehensive Transportation Plan identifies this segment of East Salisbury Street/NC Highway 42 as overcapacity based on 2012 volumes measuring average annual daily vehicles/day (11,600 capacity vs. 13,000 AADT 2012 volume).
4. In order to relieve the congestion that currently exists on NC Highway 42 North, the current NCDOT Transportation Improvement Program has proposed road improvements (Project No. U-5743) along NC Highway 42 extending between the East Salisbury Street intersection and US Highway 64 (East Dixie Drive). Proposed improvements include the addition of a center turn lane, sidewalks, and curbing and guttering. The project's timetable anticipates a let date of late 2021.
5. The city has submitted a request for consideration to the North Carolina Department of Transportation for a future widening of East Salisbury Street from Elm Street to the funded Project No. U-5743 as mentioned above. Draft 2023-2032 STIP release date tentatively scheduled for February 2022.
6. The requested B2 General Zoning district is intended to serve the convenience goods, shoppers' goods retail, and service needs of the motoring public, both local and transient. This district should always be located with access directly to minor thoroughfares or higher classification streets, but never local residential streets.
7. Approval of the request would allow any use permitted by right in the B2 district.

In considering the goals and policies of the Land Development Plan, the planning staff's report noted that the Proposed Land Use Map designation is commercial, the Central Small Area Plan is applicable to the Zoning Lot, and the Growth Strategy Map designation is primary growth.

When the City of Asheboro Planning Board considered Mr. Allen's application, the recommendation from the planning board was to approve the requested rezoning. This recommendation was based on the Planning Board's concurrence with the following planning staff analysis that evaluated the consistency of the requested rezoning with the adopted comprehensive plans as well as the reasonableness of the request and whether the requested rezoning is in the public interest:

A commercial rezoning request is supported by the Land Development Plan's Proposed Land Use Map which calls for commercial development of this property as well as property immediately to the south and east, likely due to adjacent development and the continued growth in traffic volumes. A commercial designation for the property also is supported by current zoning to the north and west of the property, which is B1 Neighborhood Commercial and B2 General Commercial respectively. The property's proximity to the Center-City Activity Center tends to support the request; there are only six residentially zoned properties between the subject parcel and this Activity Center.

While ideally there is some transition between commercial and residential zoning districts and uses, any non-residential development of the property will be requested to install a landscape buffer or screen along the southern property line for the benefit of the adjacent residential property. Furthermore, front yard landscaping along East Salisbury Street and North Randolph Avenue also must be installed as part of any future commercial project. Moreover, design standards also will apply to any building constructed or located on the property, helping to advance the LDP's goal of encouraging commercial development to be visually appealing; the use of metal or vinyl on the front façade of any building will be restricted.

Considering all these factors, staff believes the request to be consistent with the Land Development, reasonable and in the public interest.

The Applicant, Brandon Allen, presented comments in support of the request.

Mr. Owen George presented comments and concerns in opposition to the requested rezoning. Additionally, Mr. George presented a signed petition from individuals who identified themselves as "Asheboro Property Owners and Residents of East Salisbury Street." The stated purpose of the petition was to express the petition signatories' "concern regarding a proposed rezone of property at 137 North Randolph Avenue from R7.5 Medium Density Residential to B2 (General Commercial) without requiring a conditional use permit."

A copy of the petition submitted to the city council is on file in the city clerk's office.

There being no further comments from the public, Mayor Smith transitioned to the deliberative phase of the public hearing.

Initially, Council Member Bell moved to deny the requested rezoning and to adopt a consistency statement that rejected the requested zoning map amendment as inconsistent with the applicable plans. In concluding that the requested rezoning is inconsistent with the comprehensive plan, Council Member Bell applied greater weight than the planning staff to the incompatibility of the request with the applicable Small Area Plan, and he also applied greater weight than the planning staff to the concern that the requested rezoning would not promote the type of development described in the Design Principles. This motion did not receive a second from another member of the council.

After a substantive discussion about the above-stated concerns and the petition that referenced the conditional use permit process, the Applicant requested to continue the consideration of his application to the next regular council meeting. Council Member Bell then formally withdrew his initial motion to deny the request and moved to continue this land use case, including the public hearing, to the next regular council meeting on June 4, 2020. Council Member Carter seconded the motion to continue the case to the June meeting.

Council Members Bell, Burks, Carter, Moffitt, Redding, Snuggs, and Swiers voted aye. There were no dissenting votes.

A copy of the slide show utilized by Mr. Nuttall is on file in the city clerk's office.

- (b) **RZ-CUP-20-03 (Quasi-Judicial Hearing):** A combined hearing on an application to rezone property at 1420 East Salisbury Street and 358 Patton Avenue (Randolph County Parcel Identification Number 7761513992) from R10 (Medium-Density Residential) to CU-I2 (Conditional Use General Industrial) and to obtain a conditional use permit authorizing land uses identified as Motor Vehicle Repair, Major and Rental/Sales of Domestic Vehicles.

Mayor Smith opened the combined hearing on this application for a Conditional Use Permit. Mr. Nuttall presented a written request by the Applicant to continue the above-referenced land use case to the Council's regular meeting on June 4, 2020. A hard copy of the email that served as the written request for a continuance is on file in the city clerk's office.

Upon motion by Council Member Moffitt and seconded by Council Member Swiers, the Council voted unanimously to continue the above-referenced public hearing to the Council's regular meeting on June 4, 2020. Council Members Bell, Burks, Carter, Moffitt, Redding, Snuggs, and Swiers voted aye. There were no dissenting votes.

- (c) **CUP-20-04 (Quasi-Judicial Hearing):** An application for a conditional use permit authorizing a land use identified as a Multi-Use Commercial Development on the property located at 1226 East Dixie Drive (Randolph County Parcel Identification Number 7760584122).

Mayor Smith opened the quasi-judicial hearing on this request by Tricor International LLC (the "Applicant") for a Conditional Use Permit authorizing a commercial development with multiple uses and/or structures.

The proposed land use is to be located on a single parcel of land at 1226 East Dixie Drive that is more specifically identified by Randolph County Parcel Identification Number 7760584122. This parcel of land (the "Zoning Lot") is approximately 22.11 acres in size, is currently owned by Middleton Income Investors Asheboro, LLC, and is located in a CU-B2 zoning district.

Community Development Director Trevor Nuttall was placed under oath and, as a preliminary matter, testified that legal notices of this hearing were published and mailed as required by law. The required notices were mailed to adjoining property owners on April 20, 2020.

During his presentation, Mr. Nuttall presented the planning staff's analysis of the Conditional Use Permit application, which included a properly submitted site plan. During his testimony, Mr. Nuttall utilized a slide show that included the following uncontested information:

1. The Zoning Lot is located inside the city's corporate limits.
2. East Dixie Drive (US Highway 64) is a state-maintained boulevard.
3. The property is subject to a Conditional Use Permit that was issued when the property was developed in 1998. The permit was for a retail/commercial use, synonymous with the current zoning ordinance classification "commercial development with multiple uses and/or structures." This use allows all uses permitted by right in the B2 zoning district in accordance with the Conditional Use Permit.

4. The modification to this permit includes the proposed addition of an 8,400 square foot structure for additional uses and reconfiguration of parking. The proposed structure is located within the interior of the property between the existing commercial development and East Dixie Drive.
5. Other than the modification described in (4) above, the remaining conditions/restrictions related to the previously approved Conditional Use Permit that are not already addressed by the zoning ordinance are proposed to remain in place.
6. As required by the Zoning Ordinance, additional plantings will be required within the newly reconfigured parking area serving this addition. Other buffering and screening required by the zoning ordinance and requirements of the previous Conditional Use Permit will be required to be maintained on the property.

On behalf of the Applicant, Mr. Thomas E. Terrell, Jr., Esq. was placed under oath and offered testimony in support of the request. Additionally, Mr. James M. Stocks, PE and Ms. Molly Chisolm were placed under oath and offered testimony in support of the request. This testimony focused on addressing the four standards for the issuance of a Conditional Use Permit.

As part of his testimony, Mr. Terrell expressed that the Applicant is in agreement with the following conditions and joined with the planning staff in offering the following conditions for attachment to the requested Conditional Use Permit:

1. The uses approved shall be a commercial development with multiple uses and/or structures.
2. The continued maintenance of all required berms, fences, buffers, and landscaping, as required by the previous Conditional Use Permit CUP-98-21 shall be the responsibility of the property owner.
3. Parking lot sweeping operations are restricted to the hours of 7:00 a.m. to 10:00 p.m., Mondays through Saturdays. On Sundays, the hours shall be restricted to the hours of 9:00 a.m. to 10:00 p.m.
4. Trash collection will be restricted to the hours of 8:00 a.m. to 5:00 p.m.
5. Access to Inwood Road or Brower's Chapel Road shall not be permitted.
6. All requirements of Section 317A Performance Standards for Commercial Districts shall be met and maintained.
7. The property owner shall provide the standard 20' easement to the City of Asheboro for maintenance purposes from the existing city-maintained water line up to and including the new fire hydrant and meter. Surveying and construction drawings for DEQ permitting/easement drafting will be developer's responsibility.
8. Trucks loading or unloading or waiting to load or unload shall not be allowed to idle.
9. At site plan review, the City may require blanket easements for trash pickup, electrical infrastructure, parking, sewer, and other utilities that were approved as part of the original 1998 conditional use permit.

10. The rear walls of the existing Wal-Mart Supercenter located on the zoning lot will continue to be finished in earth tone colors encompassing all shades of white, gray, or light or dark colors that do not call visual attention to it. High intensity colors, metallic colors, or fluorescent colors shall be prohibited.
11. Prior to the issuance of a zoning compliance permit, documentation that the proposal is acceptable to NCDOT shall be provided.
12. 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 Conditional Use Permit in the chain of title for the Zoning Lot.

The planning staff report submitted as part of this hearing specifically noted that the conditions on the property included in Conditional Use Permit 98-21 that are not part of this request remain in full effect.

No witnesses testified in opposition to the Conditional Use Permit application. Mayor Smith then transitioned to the deliberative phase of the public hearing.

Upon motion by Council Member Bell and seconded by Council Member Moffitt, the Council voted unanimously to approve, with the staff and Applicant recommended conditions, the requested Conditional Use Permit. Council Members Bell, Burks, Carter, Moffitt, Redding, Snuggs, and Swiers voted aye. There were no dissenting votes.

A final decision document will be entered by the Council during regular session on June 4, 2020. This order will reflect the conditions imposed upon this permit as a consequence of the testimony received during the public hearing.

A copy of the slide show utilized by Mr. Nuttall is on file in the city clerk's office.

6. Upcoming events.

Mayor Smith led a brief discussion of upcoming events occurring within the city government and the community in general. No action was taken by the city council during this portion of the meeting.

There being no further business, the meeting was adjourned at 8:40 p.m.

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

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