

**REGULAR MEETING
ASHEBORO CITY COUNCIL
THURSDAY, NOVEMBER 6, 2003
7:00 PM**

This being the time and place for a Regular Meeting of the Mayor and City Council, a meeting was held with the following officials and members present:

David Jarrell) –Mayor Presiding

Talmadge Baker)
Linda Carter)
Nancy Hunter) –Council Members Present
Archie Priest)
David Smith)
Paul Trollinger)

John McGlohon) –Council Member Absent

John N. Ogburn, City Manager
Carol J. Cole, CMC, City Clerk
Dumont Bunker, P. E., City Engineer
Debbie Juberg, Finance Director
Reynolds Neely, Planning Director
Lynn Priest, CD Director
Wendell Holland, Zoning Administrator
John Evans, Code Enforcement Officer
Jeff Sugg, City Attorney

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

1. Pledge of Allegiance and Invocation.

Mayor Jarrell asked everyone to stand and repeat the Pledge of Allegiance. Reverend Jim Purdy, pastor of West Bend United Methodist Church, gave the invocation.

2. Approval of Minutes of Previous Meeting.

The minutes of the regular meeting of October 9, 2003, were approved as presented.

3. Approval of Findings of Fact for CUP-03-39.

Upon motion by Mr. Smith and seconded by Mr. Baker, council voted unanimously to approve the following Findings of Fact for CUP-03-39:

Case No. CUP-03-39
City Council
City of Asheboro

IN THE MATTER OF THE APPLICATION OF CHARLES G. WILLARD FOR A
CONDITIONAL USE PERMIT ALLOWING A MIXED USE COMMERCIAL
DEVELOPMENT WITH MULTIPLE USES AND/OR STRUCTURES

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

THIS MATTER was commenced by the filing of an application by Mr. Charles G. Willard to have certain real property owned by him and located at 209 Summit Avenue in Asheboro, North Carolina rezoned to a B3 Commercial zoning district. Before this case was heard by the Asheboro City Council, Mr. Willard amended his application in accordance with the past practice of the city and requested that the real property at issue be rezoned to a Conditional Use B3 zoning district and that a Conditional Use Permit be issued so as to allow a mixed use commercial development with multiple uses and/or structures on the property. This matter came before the Asheboro City Council, hereinafter referred to as the "Council", for hearing during the Minutes

Council's regularly scheduled meeting on October 9, 2003. Having considered all competent evidence and argument, the Council, on the basis of competent, material, and substantial evidence, does hereby make the following:

FINDINGS OF FACT

1. The applicant, Charles G. Willard, hereinafter referred to as the "Applicant", has properly submitted an application to have certain real property owned by him in fee simple and located at 209 Summit Avenue in Asheboro, North Carolina rezoned to a Conditional Use B3 zoning district. The application further requested the issuance of a Conditional Use Permit that would allow a mixed-use commercial development with multiple uses and/or structures on the property.

2. The Applicant's property consists of approximately 2.74 acres of land, and the property is more specifically identified by Randolph County Parcel Identification Numbers 7751546141 and 7751547311.

3. Said property is currently located in an I2 zoning district, and the existing land use on the property is classified as vacant.

4. The land uses surrounding the Applicant's real property are classified as follows: (A) Residential land use is to the north; (B) A railroad right-of-way and an industrial use are to the south; (C) An industrial use is to the east; and (D) Industrial and commercial uses exist to the west.

5. The Growth Strategy Map designates the area in question as a "Primary Growth" area, and the Proposed Land Development Plan Map identifies the area in question as part of the central city "Activity Center".

6. Summit Avenue and Peachtree Street are local streets.

7. The site is served by all city services.

8. The area is characterized by a mix of industrial, commercial, and residential uses.

9. The site plan includes two (2) structures for an approximate total of thirty-three thousand four hundred (33,400) square feet.

10. Prior to addressing the question of the issuance of the requested Conditional Use Permit, the Council rezoned the Applicant's property from an I2 Industrial zoning district to a Conditional Use B3 Commercial zoning district. Such a rezoning complies and is in harmony with the Goals, Policies, and map of the Land Development Plan.

11. The Applicant has submitted a proper application, including without limitation a site plan, for a Conditional Use Permit and has worked with the Planning Department's staff to ensure the compliance of the Applicant's proposal with the regulations of the Asheboro Zoning Ordinance. Furthermore, the Applicant's representative, Mr. Jeff Passmore, testified during the hearing of this matter that the Applicant is prepared to accept any conditions from the Council that are designed to ensure in a reasonable manner the Applicant's continued compliance with all of the City's ordinances and regulations.

12. The Applicant proposes to utilize his property for medical offices and medical care providers such as, without limitation, physical therapists.

13. In order to attract tenants in the medical care field, the Applicant is compelled to build a high quality building that is designed, built, and operated in a manner conducive to the maintenance of good public health.

14. In light of the fact that the Applicant's representative has dealt for a significant period of time with the business of constructing facilities such as the one under review, the Council finds his testimony to be credible when he stated that he believes the proposed land use is a high quality use of the land that will increase the value of the surrounding properties.

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15. The Applicant has satisfactorily addressed any traffic flow concerns that might normally be associated with the proposed multi-tenant facility by designing the traffic to flow in a circular fashion and by planning, as reflected by the site plan, to provide one hundred sixty-seven (167) off-street parking spaces for tenants, their employees, and their patients.

16. During the hearing of this matter, no competent or material evidence was introduced to contradict the evidence submitted by the Applicant to establish that the proposed use meets and satisfies the criteria set forth in the zoning ordinance for the issuance of a Conditional Use Permit such as the one sought by the Applicant in this case.

Based on the foregoing findings of fact, the Council makes the following:

CONCLUSIONS OF LAW

1. The Council has concluded that the proposed use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved. The site plan and other documentation submitted by the Applicant have led the Council to conclude that the overall proposal is designed in a manner that poses no material danger to the public health and safety.

2. The evidence received during the public hearing established that the proposed use does meet all of the required conditions and specifications of the Asheboro Zoning Ordinance.

3. No evidence was presented during the course of the hearing of this matter to indicate that the proposed use will substantially injure the value of the adjoining or abutting property.

4. The location and character of the Applicant's proposed use if developed according to the plan as submitted and approved will be in harmony with the area in which it is to be located and in general conformity with the plan of development of Asheboro and its environs.

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

ORDER

The above-referenced application submitted by Charles G. Willard for a Conditional Use Permit that would allow a mixed-use commercial development with multiple uses and/or structures on the above-described property is hereby approved on the condition that the Applicant and his heirs, executors, administrators, successors and assigns meet and remain in compliance with the following conditions:

1. The use approved shall be a mixed-use commercial development with multiple uses and/or structures that shall be utilized exclusively by Health Practitioner's Offices and Health Services.

2. The development shall be as per the site plan approved in accordance with and subject to Section 1013 of the Asheboro Zoning Ordinance.

3. An engineering study of storm water runoff shall be made. If such study indicates that post development runoff will exceed pre-development conditions, runoff controls designed and certified by the engineer shall be installed so as to reduce the runoff to pre-development volumes and rates.

4. All requirements of the Performance Standards for Commercial Districts shall be met and maintained.

5. Buffering and screening shall be installed and maintained as required by Article 304A of the Asheboro Zoning Ordinance.

6. Off-street parking shall be provided as indicated on the approved site plan.

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7. Signage shall be as permitted in Article 500 of the Asheboro Zoning Ordinance.

Adopted this 6th day of November, 2003.

ATTEST:

S/ David H. Jarrell
David H. Jarrell, Mayor

S/ Carol J. Cole
Carol J. Cole, City Clerk

4. Approval of Findings of Fact for CUP-03-40.

Upon motion by Mrs. Carter and seconded by Mr. Priest, council voted unanimously to approve the following Findings of Fact for CUP-03-40:

Case No. CUP-03-40
City Council
City of Asheboro

IN THE MATTER OF THE APPLICATION OF RED DIRT, L.L.C. AND
VUNCANNON PROPERTIES LIMITED PARTNERSHIP FOR
AN AMENDMENT TO AN EXISTING CONDITIONAL
USE PERMIT TO ADD/RELOCATE A SIGN

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING THE
AMENDMENT TO THE EXISTING CONDITIONAL USE PERMIT

THIS MATTER came before the Asheboro City Council, hereinafter referred to as the "Council", for hearing during a regular meeting of the Council on October 9, 2003. Having considered all competent evidence and argument, the Council, on the basis of competent, material, and substantial evidence, does hereby make the following:

FINDINGS OF FACT

1. Red Dirt, L.L.C. and Vuncannon Properties Limited Partnership, hereinafter referred to as the "Applicants", applied by and through an authorized representative, Mr. Mike Vuncannon, to amend an existing Conditional Use Permit for the limited purpose of adding/relocating a sign for a business, K&W Cafeteria, that is located on the Applicants' property.

2. The Applicants and others own a large amount of land, approximately thirty-nine (39) acres in total, at 881 Curry Drive and off of Curry Drive in Asheboro.

3. Due to the fact that the Applicants' property is already located in a CU-B2 zoning district and that a Conditional Use Permit (file number CUP-00-12) has previously been issued, the Applicants are seeking only an amendment to the existing Conditional Use Permit.

4. The entirety of the approximately thirty-nine (39)-acre tract is more specifically identified by the following Randolph County Parcel Identification Numbers: 7750202308, 7750218632, 7750206537, 7750205951, and 7750202738.

5. This property was denied straight B2 zoning by the Council on June 10, 1999. However, Conditional Use-B2 zoning was approved by the Council for this property on September 28, 1999.

6. The Growth Strategy Map identifies this area as a "Primary Growth" area while the Proposed Land Development Plan Map designates this area as a "Commercial" area.

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7. The property at issue with this application is surrounded by the following land uses: (A) Residential use to the north; (B) Commercial, vacant, and residential uses to the south; (C) The United States Highway 220 By-Pass is located to the east of the property at issue; and (D) Residential use is to the west.

8. In terms of the Applicants' property, much of the property is currently vacant, but a commercial use of the property does exist at 881 Curry Drive in the form of the K&W Cafeteria.

9. The K&W Cafeteria is located on the portion of the Applicants' property that is more specifically identified by the single Randolph County Parcel Identification Number of 7750202308.

10. In essence, the Applicants are proposing the recombination of a portion of two (2) lots, Lots 11 and 12, found within the Applicants' approximately thirty-nine (39) acres of land

located off of Curry Drive for the sole purpose of creating a single lot that contains the K&W Cafeteria business and stretches far enough along the western boundary of the United States Highway 220 By-Pass South to enable the cafeteria to erect a sign in a location with more visibility to vehicles utilizing the by-pass.

11. In order to successfully complete this task, the Applicants must amend the site plan for the existing Conditional Use Permit (CUP-00-12) to reflect the new lot lines and the resulting location for a new sign that will be created by the planned recombination of portions of these two (2) lots.

12. An acceptable site plan and all of the other documentation required for a successful application for an amendment to an existing Conditional Use Permit have been properly submitted by the Applicant.

13. United States Highway 220 By-Pass South is a major thoroughfare. McDowell Road from the by-pass exit going east to Fayetteville Street is a major thoroughfare. McDowell Road is a local street from the by-pass exit going west to Mack Road.

14. Lambert Drive, East Mine Street, and Curry Drive are local streets.

15. Lambert Drive and East Mine Street are developed as residential.

16. McDowell Road, from Lambert going west, is developed as residential to the north. On the south side of McDowell Road, there is a large commercial establishment (Randolph Electric Membership Corp.) and two (2) large churches.

17. No evidence was presented at the hearing of this matter to indicate that any detrimental impact on the public safety or injury to the value of adjoining parcels of land would be experienced by the public in general or the surrounding property owners in particular as a consequence of the proposed placement of a single sign for an existing business operation near a future interstate highway such as the by-pass.

18. The previous conditions that were imposed upon the Applicants and that are still in full force and effect by virtue of the existing Conditional Use Permit (CUP-00-12) are as follows:

1. The uses approved shall be all B-2 uses EXCEPT agricultural uses; bus terminal; cemetery, human or pet; circus, carnival, fair; columbarium; correctional facilities; drive in theater; exterminator; flea markets, open; kennel; parking lots as principal use; recreational vehicle/travel park/camp; recycling center; stable, commercial; taxi stand; sludge application. However, for this approval to be valid, the first phase of development on this property shall be the proposed cafeteria. If the proposed cafeteria is not built, then this permit shall become null and void.

2. Final plans for development(s) shall be approved according to Section 1013.4.

3. An engineering study of storm water runoff shall be made. If such study indicates that post development runoff will exceed predevelopment conditions, plans for runoff control shall be designed and certified by a

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professional engineer. Such controls shall be designed to reduce the runoff during the occurrence of a 10-year storm to predevelopment volumes and rates. Prior to a Certificate of Occupancy, a professional engineer shall provide certification that the storm water controls were built according to the plans. Any open water retention or drainage areas shall be sprayed regularly for mosquito control. The continued maintenance of all runoff control measures shall be the responsibility of the property owner.

4. A 75-foot wide natural buffer shall be maintained along the western and northern property boundaries to the side and rear of the residential development along Lambert and East Mine Streets. (In areas where existing vegetation does not form a dense opaque buffer, additional plantings shall be installed that meet Article 304A Buffer "D" 30 feet wide.) Located along the developer's side of the 75-foot natural buffer, a 6-foot high chain link fence shall be installed. The fence shall begin at and extend from ground level and the finished face shall be oriented towards the adjoining property owners. The fence shall be installed prior to the issuance of a Certificate of Occupancy for the cafeteria. The continued maintenance of fences, buffers, and landscaping shall be the responsibility of the property owner.

5. Parking lot sweeping operations are restricted to the hours of 7:00 AM to 10:00 PM, Mondays through Saturdays. On Sundays, the hours shall be restricted to the hours of 9:00 AM to 10:00 PM.

6. Trash collection will be restricted to the hours of 8:00 AM to 5:00 PM.

7. Trucks loading or unloading or waiting to load or unload shall not be allowed to idle.

8. Ingress and egress shall be located into Lambert Drive with the possibility that the Council may require a no right turn from the development into Lambert Drive. Such access shall be designed and installed to NC DOT specifications.

9. All requirements of Article 400 Offstreet Parking shall be met and maintained.

10. Signage shall be as per Article 500.

11. All requirements of Section 317A Performance Standards for Commercial Districts shall be met and maintained. Specifically, lighting and noise requirements (sic).

12. The City of Asheboro requires that the owner of commercial developments petition for annexation prior to receiving water and sewer service.

13. A subdivision plat shall be submitted according to the Asheboro Subdivision Ordinance.

14. This property is located within the US 220 Bypass Overlay District. Final plans for development shall include provisions to comply with these regulations. Site Plan approval by the Planning Board is required.

15. The 60-foot right of way at the north end of the property as shown on the plat drawn by Marziano and Minier dated May 1999 shall not be used for ingress or egress.

19. No testimony was provided in opposition to the Applicants' requested amendment of the existing Conditional Use Permit.

Based on the foregoing findings of fact, the Council makes the following:

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CONCLUSIONS OF LAW

1. The proposed use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved.

2. The evidence received during the public hearing established that the proposed use does meet all of the required conditions and specifications of the Asheboro Zoning Ordinance.

3. The proposed use will not substantially injure the value of the adjoining or abutting property.

4. The location and character of the Applicants' proposed use if developed according to the plan as submitted and approved will be in harmony with the area in which it is to be located and in general conformity with the plan of development of Asheboro and its environs.

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

ORDER

The above-referenced application submitted by Red Dirt, L.L.C. and Vuncannon Properties Limited Partnership for an amendment to the existing Conditional Use Permit allowing the addition/relocation of a sign is hereby approved on the condition that the Applicants and their successors and assigns meet and remain in compliance with the following conditions:

1. All conditions of CUP-00-12 shall remain in effect for the entire property, except that for the property identified by Randolph County Parcel Identification Number 7750202308 condition number 1 shall read as follows:

1. The uses approved shall be Eating Establishments –Sit Down.
2. An amended site plan is approved.

Adopted this the 6th day of November, 2003.

ATTEST:

S/ David H. Jarrell
David H. Jarrell, Mayor

S/ Carol J. Cole
Carol J. Cole, City Clerk

5. Approval of Findings of Fact for CUP-03-41.

Upon motion by Mr. Smith and seconded by Mr. Baker, council voted unanimously to approve the following Findings of Fact for CUP-03-41:

Case No. CUP-03-41
City Council
City of Asheboro

IN THE MATTER OF THE APPLICATION OF BISHOP BARNEY L. TROGDON, JR.
FOR A CONDITIONAL USE PERMIT ALLOWING AN EATING
ESTABLISHMENT, WALK-IN / CARRY-OUT

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

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THIS MATTER was commenced by the filing of an application by Bishop Barney L. Trogdon, Jr. for a Conditional Use Permit that would allow him to establish an Eating Establishment, Walk-in / Carry-out on certain real property owned by him and located within the corporate limits of the City of Asheboro at the intersection of Loach Street and Cross Street. This matter came before the Asheboro City Council, hereinafter referred to as the "Council", for hearing during the Council's regularly scheduled meeting on October 9, 2003. Having considered all competent evidence and argument, the Council, on the basis of competent, material, and substantial evidence, does hereby make the following:

FINDINGS OF FACT

1. The applicant, Bishop Barney L. Trogdon, Jr., hereinafter referred to as the "Applicant", has properly submitted an application for a Conditional Use Permit that would allow him to open what he describes in his application as a walk-up hot dog and ice cream stand, which is categorized by the Asheboro Zoning Ordinance as an Eating Establishment, Walk-in / Carry-out, on certain real property that is owned by the Applicant in fee simple and is located at the intersection of Loach Street and Cross Street.

2. The property for which the Applicant is seeking a Conditional Use Permit consists of approximately twelve thousand three hundred seventy-one (12,371) square feet of land, and the property is more specifically identified by Randolph County Parcel Identification Number 7761258757.

3. Said property is currently located in a Conditional Use B1 zoning district, and the existing land use on the property is classified as vacant.

4. The land uses surrounding the property for which a Conditional Use Permit is sought are all residential.

5. The Growth Strategy Map designates the area in question as a "Primary Growth" area, and the Proposed Land Development Plan Map identifies the area in question as "Neighborhood Residential".

6. Loach Street and Cross Street are local streets.

7. The site is within the corporate limits of the City of Asheboro and is served by all city services.

8. The character of the area in question is residential.

9. The property at issue was placed in a Conditional Use B1 zoning district on October 7, 1982. At the same time, a Conditional Use Permit was issued for any B1 use on the property.

10. The previous Conditional Use Permit referenced in the immediately preceding paragraph was issued to the same Applicant in 1982 so as to allow him to develop a business on the property. However, the Applicant was called away by his ministry to serve as a Bishop of his church for certain states located in the northeastern portion of the United States of America. Consequently, no business was developed on the property, and the original Conditional Use Permit expired.

11. As evidenced by his local ministry and his address at 522 Cross Street, the Applicant is now residing in Asheboro and is once more interested in developing a business on the property at issue with this application for a Conditional Use Permit.

11. The Applicant has submitted a proper application, including without limitation a site plan, for a Conditional Use Permit that, if approved, will authorize the Applicant to open and operate a business that is classified as an Eating Establishment, Walk-in / Carry-out. Furthermore, the available evidence indicates that the Applicant has worked with the Planning Department's staff to ensure the compliance of his proposal with the provisions and regulations of the Asheboro Zoning Ordinance.

12. During the time since the originally issued Conditional Use Permit expired, the Applicant has gained experience in the operation of day care centers. This experience is pertinent to the Applicant's current request for a Conditional Use Permit because his experience

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with running a day care center has given the Applicant an appreciation for and insight into the steps that must be taken in order to successfully manage the environmental health issues that are associated with running a kitchen that supplies food to large groups of people on a regular basis.

13. The Applicant personally owns a substantial amount of property in the vicinity of the proposed use, and he testified as to his opinion that the proposed use will only strengthen the surrounding community and certainly will not injure in any material or substantial sense the value of the adjoining / abutting properties.

14. In terms of buffering / screening the proposed use from the surrounding residential properties, the Applicant has already consulted with certain nurseries about his potential obligation in this regard, and the Applicant is ready and able to comply with the entirety of the buffering / screening requirements imposed by the Asheboro Zoning Ordinance.

15. Aside from the previously addressed environmental health issues associated with the running of a kitchen and concerns about the impact of the operation of an eating establishment on the surrounding residential properties during certain hours of the day, a review of the available evidence, including the site plan, building elevations, and testimony presented at the hearing of this matter, reveals that there is a complete absence of any evidence to indicate that the proposed use, so long as it is developed as proposed and adheres to the applicable provisions of the zoning ordinance, fails in any way to meet the standards set out in the Asheboro Zoning Ordinance for the issuance of the requested Conditional Use Permit.

16. No testimony was presented in opposition to the Applicant's request for a Conditional Use Permit.

Based on the foregoing findings of fact, the Council makes the following:

CONCLUSIONS OF LAW

1. The Council has concluded that the proposed use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved. The site plan and other documentation submitted by the Applicant have

led the Council to conclude that the overall proposal is designed in a manner that poses no material danger to the public health and safety.

2. The evidence received during the public hearing established that the proposed use does meet all of the required conditions and specifications of the Asheboro Zoning Ordinance.

3. No evidence was presented during the course of the hearing of this matter to indicate that the proposed use will substantially injure the value of the adjoining or abutting property.

4. The location and character of the Applicant's proposed use if developed according to the plan as submitted and approved will be in harmony with the area in which it is to be located and in general conformity with the plan of development of Asheboro and its environs.

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

ORDER

The above-referenced application submitted by Bishop Barney L. Trogon, Jr. for a Conditional Use Permit allowing an Eating Establishment, Walk-in / Carry-out on the above-described property is hereby approved on the condition that the Applicant and his heirs, executors, administrators, successors and assigns meet and remain in compliance with the following conditions:

1. The use approved shall be an Eating Establishment, Walk-in / Carry-out.
2. The development shall be as per the site plan approved in accordance with and subject to Section 1013 of the Asheboro Zoning Ordinance.

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3. All requirements of the Performance Standards for Commercial Districts shall be met and maintained.

4. Buffering and screening shall be installed and maintained as required by Article 304A of the Asheboro Zoning Ordinance.

5. Off-street parking shall be provided as required by Article 400 of the Asheboro Zoning Ordinance.

6. Signage shall be as provided in Article 500 of the Asheboro Zoning Ordinance.

7. Any use or business established on the site shall be permitted to conduct operations only during the hours of 6:00 o'clock a.m. to 11:00 o'clock p.m. each day of the week.

Adopted this 6th day of November, 2003.

ATTEST:

S/ David H. Jarrell
David H. Jarrell, Mayor

S/ Carol J. Cole
Carol J. Cole, City Clerk

6. Approval of Findings of Fact for SUP-03-10.

Upon motion by Mr. Trollinger and seconded by Mr. Smith, council voted unanimously to approve the following Findings of Fact for SUP-03-10:

Case No. SUP-03-10
City Council
City of Asheboro

IN THE MATTER OF THE APPLICATION OF KENNETH SHAWN RACE FOR A

SPECIAL USE PERMIT ALLOWING A HOME OCCUPATION

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER ALLOWING THE
APPLICANT TO WITHDRAW HIS APPLICATION WITHOUT PREJUDICE

THIS MATTER was commenced by the filing of an application by Kenneth Shawn Race for a Special Use Permit allowing a home occupation. This matter came before the Asheboro City Council, hereinafter referred to as the "Council", for hearing during the Council's regularly scheduled meeting on October 9, 2003. Having considered all competent evidence and argument, the Council, on the basis of competent, material, and substantial evidence, does hereby make the following:

FINDINGS OF FACT

1. Kenneth Shawn Race, hereinafter referred to as the "Applicant", properly filed an application with the City of Asheboro Planning Department for a Special Use Permit that would allow him to conduct, along with his wife, a Home Occupation at their joint residence, which is located at 1028 Snowden Court.

2. The Applicant's residence is located within the extraterritorial jurisdiction of the City of Asheboro, and Randolph County Parcel Identification Number 7762511815 more specifically identifies the property.

3. The Applicant's property is zoned R15 and consists of approximately 1.2 acres.

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4. The Growth Strategy Map designates the area in which the Applicant's property is located as "Adjacent Developed", and the Proposed Land Development Plan Map indicates that this property is located in an area designated as "Neighborhood Residential."

5. The land uses to the north, south, east, and west of said property are residential.

6. Snowden Court is a local street.

7. While the site is outside the corporate limits of the City of Asheboro, city water and sewer service is available.

8. The area in question is characterized as neighborhood residential.

9. The Applicant is pursuing this application for the principal purpose of utilizing the residence at 1028 Snowden Court as the office for Race and Race Medical Equipment.

10. Race and Race Medical Equipment supplies medical equipment on a prescription only basis to disabled individuals at the home of the disabled individual needing the equipment.

11. In order for such a business to succeed, the business must comply with the requirements of Medicare. One of these requirements is that a business must have a business sign that is visible from the street in order to conduct business with Medicare.

12. A business sign mounted on the mailbox and the delivery to the residence of supplies by means of tractor-trailer trucks led to complaints by neighbors to the city's Code Enforcement Officer about the business being conducted at 1028 Snowden Court.

13. An investigation of the matter did lead to the confirmation by the Code Enforcement Officer of a violation by Mr. and Ms. Race of the Asheboro Zoning Ordinance's regulations dealing with Home Occupations.

14. In order to resolve this matter, Mr. Race filed an application for a Special Use Permit allowing a Home Occupation in the form of the use of the Race residence for a home office for Race and Race Medical Supplies.

15. The Special Use Permit process had to be invoked because, under Note 20 of the Notes to Table 200 found in Article 200 of the Asheboro Zoning Ordinance, the use proposed by Mr. and Mrs. Race is neither expressly prohibited nor expressly permitted under the ordinance and must be brought to the Council as a request for a Special Use Permit.

16. During the hearing of this matter, testimony was introduced indicating that a majority of the Applicant's neighbors on Snowden Court were opposed to the Applicant's request

for a Special Use Permit, and the Applicant, on his own volition and without encouragement from any city official, formally requested that the Council allow him to withdraw his application so as to bring peace and harmony back to his neighborhood. This request to withdraw the application was made before the public hearing had been closed.

17. The Council had no objection to simply allowing the Applicant to withdraw his request once the Applicant formally and openly acknowledged that, in the absence of the granting of the requested Special Use Permit, his current Home Occupation use of his residential premises would have to cease.

18. Subsection E of Section 603 of the Asheboro Zoning Ordinance provides that, "After completion of the public hearing, the City Council shall take action upon the application. This action shall be one of the following:

- (1) Approval;
- (2) Approval with conditions attached;
- (3) Denial."

19. Section 609 of the Asheboro Zoning Ordinance provides, "An applicant may withdraw his or her application at any time by written notice to the City Manager."

Based on the foregoing findings of fact, the Council makes the following:

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CONCLUSIONS OF LAW

1. The Applicant could have withdrawn his application at any time by submitting written notice to the City Manager. However, this provision is not the exclusive means by which an application can be withdrawn where a public hearing is already under way.

2. Due to the fact that the public hearing had not been closed when the Applicant requested permission to withdraw his application for a Special Use Permit, the Council was authorized to allow the Applicant to withdraw his application and did in fact allow such a withdrawal.

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

ORDER

Kenneth Shawn Race is hereby allowed to withdraw without prejudice the above-described application for a Special Use Permit which would have allowed a Home Occupation in the form of a home office for Race and Race Medical Supplies.

Adopted this the 6th day of November, 2003.

ATTEST:

S/ David H. Jarrell
David H. Jarrell, Mayor

S/ Carol J. Cole
Carol J. Cole, City Clerk

7. Approval of Findings of Fact for SUP-03-11.

Upon motion by Mrs. Carter and seconded by Mr. Smith, council voted unanimously to approve the following Findings of Fact for SUP-03-11:

Case No. SUP-03-11
City Council
City of Asheboro

IN THE MATTER OF THE APPLICATION OF THE EPISCOPAL CHURCH OF THE GOOD
SHEPHERD FOR A SPECIAL USE PERMIT ALLOWING A CHURCH IN A
RESIDENTIAL DISTRICT

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

THIS MATTER was commenced by the filing of an application by an authorized representative of the Episcopal Church of the Good Shepherd for a Special Use Permit allowing a church in a residential district. This matter came before the Asheboro City Council, hereinafter referred to as the "Council", for hearing during the Council's regularly scheduled meeting on October 9, 2003. Having considered all competent evidence and argument, the Council, on the basis of competent, material, and substantial evidence, does hereby make the following:

FINDINGS OF FACT

1. An authorized representative of the Episcopal Church of the Good Shepherd, hereinafter referred to as the "Applicant", properly filed an application with the City of Asheboro Planning Department for a Special Use Permit that would allow a church in a residential zoning district.

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2. The Applicant's facilities are located at 505 Mountain Road in Asheboro, and Randolph County Parcel Identification Number 7751267022 more specifically identifies the property.

3. The Applicant currently utilizes the property located at 505 Mountain Road for a church, and the documentation, specifically including without limitation the site plan, and testimony submitted by the Applicant as part of its application for this Special Use Permit indicates that the Applicant has immediate plans to construct a thirty-foot (30') by thirty-four-foot (34') addition to the church facilities for use as a choir room in addition to paving a back parking lot area.

4. The property in question consists of approximately 3.220 acres of land.

5. The Growth Strategy Map designates the area in which the property at issue is located as "Primary Growth," and the Proposed Land Development Plan Map indicates that this property is located in an area designated as "Neighborhood Residential."

6. The land uses to the north, south, east, and west of said property are all residential.

7. The Applicant's property is located in a R15 zoning district.

8. Mountain Road is a local street.

9. The site is within the corporate limits of the City of Asheboro and is served by all city services.

10. The area surrounding said property is residential in character.

11. A Special Use Permit is required in this case because the existing church is in a residential district where a Special Use Permit must be obtained in order to construct additions to the church facilities.

12. The Applicant has properly submitted a site plan and building elevations that have been reviewed by Planning Department staff members and found to comply with the regulations of the Asheboro Zoning Ordinance.

13. The plans submitted by the Applicant for this project do not indicate the existence of any materials or design characteristics that pose an inherent or abnormal risk to the public health and safety.

14. The Applicant has existed for a significant number of years at its current location. The land upon which the church facilities sit today was donated in 1935. The donor of the land hoped that the church would, in part, enhance the developing neighborhood that surrounded the church. Accordingly, a church building was constructed in 1937 while offices and a parish hall were added in 1951. In 1976, the main sanctuary and some Sunday school rooms were addressed.

15. The events leading to the need for a Special Use Permit were set in motion about one (1) year ago when the existing choir room was turned into a Sunday school room. Now, the Applicant is ready to expand by building the previously referenced new choir room and paving an additional parking area.

16. Given the size of the church, the Applicant is required to have a minimum of eighty (80) parking spaces. The church currently only has sixty-three (63) parking spaces. However, if this application for a Special Use Permit is approved, the paving of a rear parking area will be undertaken along with the addition of the proposed choir room. The new parking spaces created by the proposed paving of the rear parking area will create twenty-eight (28) additional parking spaces and will give the Applicant a total of ninety-one (91) parking spaces.

17. In addition to seeking a Special Use Permit to permit the addition of a choir room, the Applicant also included in its site plan a footprint of its long-range plans for the church facilities as money and other resources become available over the years.

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18. The Applicant's representative testified as to his opinion that the proposed project would not adversely impact the value of surrounding parcels of land and would, in fact, add value to the adjoining property.

19. No testimony was presented in opposition to the Applicant's request.

Based on the foregoing findings of fact, the Council makes the following:

CONCLUSIONS OF LAW

1. During the hearing of this matter, the evidence submitted to the Council indicated that no unreasonable/dangerous amount of vehicular traffic or any other form of unreasonable endangerment would be produced as a consequence of the Applicant's proposed use of the property.

2. The proposed use meets all of the required conditions and specifications of the Asheboro Zoning Ordinance.

3. The Applicant's proposed use, which is an augmentation of the long existing use of the property for church facilities, will not substantially injure the value of adjoining or abutting property.

4. The location and character of the use if developed according to the plan as submitted and approved will be in harmony with the area in which it is to be located and in general conformity with the plan of development of Asheboro and its environs.

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

ORDER

The above-referenced application submitted by the Episcopal Church of the Good Shepherd for a Special Use Permit allowing a church in a residential district is hereby approved on the express condition that the Applicant, and its successors and assigns, meet and remain in compliance with the following conditions:

1. The use approved shall be a church and related activities.

2. The development shall be as per the site plan approved.

3. All of the applicable requirements of the Asheboro Zoning Ordinance shall be met and maintained.

4. Final building design and construction shall be according to the elevation designs as submitted and approved.

Adopted this the 6th day of November, 2003.

ATTEST:

S/ David H. Jarrell
David H. Jarrell, Mayor

S/ Carol J. Cole
Carol J. Cole, City Clerk

8. **Appearance and Recognition of Guests and Citizens.**

Mayor Jarrell welcomed everyone in attendance.

Mayor Jarrell asked for a motion to formally excuse Mr. John McGlohon from this meeting, as Mr. McGlohon recently underwent heart surgery.

Upon motion by Mr. Baker and seconded by Mrs. Carter, council voted unanimously to excuse Mr. McGlohon from this meeting.

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9. Consent Agenda.

Upon motion by Mrs. Carter and seconded by Mr. Baker, council voted unanimously to approve the following Consent Agenda items:

- (a) Resolution to waive the bid procedure as allowed by NCGS Sec. 143-129(g) to purchase an automated garbage truck with specified options from Carolina Environmental Systems, Inc. for the amount of \$158,000 without use tax for the sanitation department, based on a bid from a public, formal bid process previously completed within the past 12 months.

83 RES 11-03

RESOLUTION APPROVING THE WAIVER OF THE BID PROCEDURES
SPECIFIED BY SECTION 143-129 OF THE NORTH CAROLINA
GENERAL STATUTES AND APPROVING THE PURCHASE
OF AN AUTOMATED GARBAGE TRUCK FOR
USE BY THE SANITATION DEPARTMENT

WHEREAS, the Director of Public Works and the City Manager of the City of Asheboro have recommended to the City Council that the city purchase for use by the City of Asheboro Sanitation Department a certain type of automated garbage truck that is substantially and materially similar to a truck that was bought by the Town of Kernersville, North Carolina by and through a formal bid procedure on September 9, 2003; and

WHEREAS, pursuant to Section 143-129(g) of the North Carolina General Statutes, the City Council may waive, if the City Council determines that such an action is in the best interest of the City of Asheboro, the bid procedures specified for the purchase of equipment when the equipment is to be purchased from an entity that can satisfy the following criteria: (i) the entity has, within the previous twelve (12) months, completed a public, formal bid process substantially similar to the process prescribed by Article 8, Chapter 143 of the North Carolina General Statutes, (ii) the entity has contracted, as a result of this public bid process, to furnish equipment comparable to that sought by the City of Asheboro to another political subdivision of the State of North Carolina, and (iii) the entity is willing to furnish said equipment to the City of Asheboro at the same or more favorable prices, terms, and conditions as those provided to the other political subdivision of the State of North Carolina; and

WHEREAS, a vendor, Carolina Environmental Systems, Inc. of Kernersville, North Carolina, can supply in a timely manner an automated garbage truck that meets the specifications desired by the City of Asheboro for such a truck; and

WHEREAS, Carolina Environmental Systems, Inc. participated in August through September 2003 in a public, formal bid process conducted by the Town of Kernersville, North Carolina, and said public, formal bid process was substantially similar to and in substantial compliance with the bid process prescribed by Article 8 of Chapter 143 of the North Carolina General Statutes; and

WHEREAS, as a consequence of the bid process referenced in the preceding paragraph, Carolina Environmental Systems, Inc. was awarded in September 2003 a contract to supply the Town of Kernersville with an automated garbage truck comparable in all material aspects to the type of automated garbage truck sought by the City of Asheboro for its Sanitation Department; and

WHEREAS, Carolina Environmental Systems, Inc. is willing to furnish the City of Asheboro with a comparable automated garbage truck at the same or more favorable prices, terms, and conditions as those provided to the Town of Kernersville; and

WHEREAS, on October 22, 2003, notice was advertised in the *Courier Tribune*, a newspaper of general circulation in the Asheboro area, that the City Council would consider, during its regularly scheduled meeting on November 6, 2003, approving a waiver of the bid procedures specified in Section 143-129 of the North Carolina General Statutes in order to

contract with Carolina Environmental Systems, Inc. for the purchase of an automated garbage truck of the type described in the preceding paragraphs:

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NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro, this 6th day of November, 2003, as follows:

Section 1. Pursuant to Section 143-129(g) of the North Carolina General Statutes, the City Council of the City of Asheboro does hereby waive the bid procedures prescribed by Section 143-129 of the North Carolina General Statutes in order to contract with a qualified supplier, Carolina Environmental Systems, Inc., for the purchase of an automated garbage truck at the same or more favorable prices, terms, and conditions as those provided to the Town of Kernersville during a public, formal bid process held during the months of August through September 2003.

Section 2. The purchase from Carolina Environmental Systems, Inc. of an automated garbage truck at a cost of one hundred fifty-eight thousand dollars (\$158,000.00), without use tax, is hereby approved.

S/ David H. Jarrell
David H. Jarrell, Mayor

ATTEST:

S/ Carol J. Cole
Carol J. Cole, City Clerk

- (b) Request by Frank Rose of the Randolph County Veteran's Council to Temporarily close streets for a Veteran's Day parade at 4:50 PM to 5:30 PM on November 11, 2003 beginning at the Sunset Avenue and Church Street intersection and ending at the Worth Street and Cox Street intersection.
- (c) Request from Chamber of Commerce to block off the streets: Kivett, South Church, Sunset Avenue, and South Fayetteville for the Christmas parade on Friday, December 5, 2003.

10. Consideration of an Offer by Celeste Montague, Representing Habitat for Humanity of Randolph County, to Purchase 3.59 Acres of City-Owned Property at the South End of Dennis Street for \$15,000.

The City received an offer of \$15,000 to purchase 3.59 acres of city-owned property at the south end of Dennis Street from Celeste Montague, chairman of the site selection committee for the Habitat for Humanity of Randolph County.

Mr. Jim Cofer, president of Habitat for Humanity, stated that Habitat has completed eleven homes and three homes are under construction. The greatest challenge for Habitat is acquiring property to build these homes.

The current tax value of the 3.59 acres on Dennis Street is \$15,080. The land was appraised at \$43,000 on June 20, 2000 by Mr. Ben Ramsay.

Mayor Jarrell stated that if council desires to proceed with the sale of this property, it shall first declare the property as surplus and may establish a minimum price if desired. The offer received, if it meets an applicable minimum price, may then be advertised for increased offers upon receipt of a 5 % deposit. The council may at any time reject any and all offers.

Upon motion by Mr. Trollinger and seconded by Mr. Priest, council voted unanimously to declare said property as surplus.

The council's finance and public safety committee will meet to discuss the minimum price for this property.

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11. **Public Hearings on Zoning Matters.**

Rezoning

Mayor Jarrell opened the public hearing on the following request:

- (a) From R-7.5 Residential to B-2 Commercial (RZ-03-43): The property of Christopher C. Lassiter & Michael C. Carpenter located on McMasters Street and Clover Street, totaling approximately 1.292 acres, more specifically identified by Randolph County Parcel ID Numbers 7751983510, 7751982446, 7751981495 and 7751982314.

Mr. Neely described the aforementioned property and stated that McMasters and Clover streets are local streets. The site is served by all city services. The area is characterized by commercial uses along North Fayetteville Street and residential uses to the north and west of the site. Properly developed, this site could serve as a transitional area between the commercial on Fayetteville Street and the residential to the west.

The planning board recommended approval, as the request complies with the goals and policies and map of the Land Development Plan.

Mr. Ben Morgan, attorney representing the applicants, stated that the adjoining property owners were notified of this request. Said property is a wooded lot, and the LDP specifies primary growth and commercial land use.

There being no further comments nor opposition, Mayor Jarrell closed the public hearing.

Upon motion by Mr. Baker and seconded by Mrs. Carter, council unanimously ordained to accept the recommendation from the planning board for approval.

Mayor Jarrell opened the public hearing on the following request:

- (b) From CU-RA-6 Residential to R-10 Residential (RZ-03-45): The property of Douglas Todd Smith & wife, Tracy L. Smith, and Hilda S. Smith located at the intersection of Central Avenue and Willow Road totaling approximately 0.93 acre, more specifically identified by Randolph County Parcel ID Number 7762297740.

Mr. Neely described the aforementioned property and stated that Central Avenue is a major thoroughfare, and Willow Road is a local street. The site is served by all city services. A CU permit and site plan for apartment development on this property has expired. The CU district exists without any approved use. Prior to the 1979 rezoning, the site was within the R-10 district. The LDP designates the property as a primary growth area and neighborhood residential.

The planning board recommended approval, as the request complies with the goals and policies and map of the LDP.

There being no comments nor opposition from the public, Mayor Jarrell closed the public hearing.

Upon motion by Mr. Trollinger and seconded by Mrs. Hunter, council unanimously ordained to accept the recommendation from the planning board for approval.

Conditional Use Permits

Mayor Jarrell opened the public hearing on the following request:

- (a) CU Permit to Allow Health Services (CUP-03-42): The property of American National Red Cross located on Brewer Street, totaling approximately 1.75 acres, and more specifically identified by Randolph County Parcel ID Number 7761041866. The applicants are Merce Clinic and Dr. Jack Atwater.

Mr. Neely was sworn in and submitted the site plan. He stated that Brewer Street is a local street, and the site is served by all city services. The area is characterized by a mix of uses—residential, commercial and institutional. The request is for a Conditional Use permit to allow Health Services. The Conditional Use permit issued for the Red Cross in March of 1999 has expired.

Mr. Neely stated the staff's suggested conditions if council finds in favor of the request.

Dr. Jack Atwater, representative for Merce Clinic, was sworn in and stated that the dental

clinic had outgrown its office at Merce Clinic located on North Fayetteville Street. They want to build a separate dentist's office on the vacant lot located on Brewer Street. Doctor Atwater addressed the four standard tests that are required to be met before a CU permit can be granted. (1) The use will not endanger the public health or safety, as the lot will be cleared off and lighting will be added. (2) The use will meet all required conditions and specifications of the Asheboro Zoning Ordinance. (3) The use will not injure the value of adjoining or abutting property, and the use is a public necessity. The dental office is definitely needed, and it will enhance the surrounding property. (4) The use will be in harmony with the area, as the neighborhood is a mix of homes, businesses, a nursing home and a funeral home.

Mr. Reuben Cheek was sworn in and asked Doctor Atwater if he would be interested in buying a sliver of land he owns next to the subject property. Mayor Jarrell told Mr. Cheek that he could discuss this matter with Doctor Atwater at another time.

Mayor Jarrell asked Doctor Atwater if he accepted the conditions as stated by Mr. Neely. Doctor Atwater accepted the conditions.

There being no further comments nor opposition, Mayor Jarrell closed the public hearing.

Upon motion by Mr. Baker and seconded by Mrs. Hunter, council voted unanimously to approve the Conditional Use Permit with the conditions as stated by Mr. Neely, based on the four standard tests being met per testimony by Doctor Atwater.

The conditions will be detailed in the city attorney's Findings of Fact, Conclusions of Law, and Order Granting the Requested Conditional Use Permit to be approved by council at its December meeting.

Mayor Jarrell opened the public hearing on the following request:

- (b) Amend Existing Conditional Use Permit to Delete a Condition: The property of Lexington Commons Home Owners' Association of Asheboro, Inc. and Mid-Atlantic Townhomes, LLC, and Others located on Old Lexington Road, totaling approximately 16.68 acres, more specifically identified by Randolph County Parcel ID Numbers 7751345213, 7751340780, 7751341481, 7751341422, 7751340421, 7751249378, 7751248584, 7751248559, 7751248618, 7751247784, 7751247841, 7751247806, 7751246958, 7751256083, 7751248976, 7751248991, 7751249832, 7751249766, 7751249698, 7751340612, 7751341620, 7751341690, 7751333942, 7751333969, 7751344101, 7751343166, 7751343206, 7751342372, 7751342585, 7751343542, 7751344405, 7751344440, 7751345312, 7751345366, 7751346394, 7751347229, 7751346189, 7751346154, 7751346007, and 7751345062.

Mr. Neely was sworn in and described the aforementioned property. He stated that a Conditional Use Permit for a Planned Unit Development was granted by council in February of 2001. The PUD is near completion. However, CU Permit Condition No. 6 cannot be met as development has proceeded without design for Condition No. 6. This condition states "An engineering study of storm water runoff shall be made. If such study indicates that post development runoff will exceed predevelopment conditions, plans for runoff control shall be designed and certified by a professional engineer. Such controls shall be designed to reduce the runoff during the occurrence of a 10-year storm to predevelopment volumes and rates. Prior to a Certificate of Occupancy, a professional engineer shall provide certification that the storm water controls were built according to the plans. Any open water retention or drainage area shall be sprayed regularly for mosquito control. The continued maintenance of all runoff control measures shall be the responsibility of the property owner." Mr. Neely stated that when inspections were made on Phase I of the project, the staff realized that the storm water runoff study had not been provided by the engineer. Mr. Neely further stated that after the heavy rains Asheboro had recently, he did not find any detrimental effects from the rain.

Both Mark and Todd Schwarz were affirmed to provide evidence concerning Condition No. 6. Todd Schwarz stated that removal of Condition No. 6 would not change the other requirements such as turn lanes, large cul-de-sac, lighted streets, sidewalks, etc. The

project is 80 percent complete, and water runoff has not caused any problems. There are storm drains on the property, and they have complied with erosion control. He reviewed the four standard tests again and feels that they are still met.

Mark Schwarz stated that there is less water runoff now than before the project was developed.

After discussion by council, Mr. Trollinger asked Mark and Todd Schwarz to get a

professional engineer to submit to the council a certified letter detailing the post development water runoff volumes and rates compared to predevelopment water runoff. Council concurred.

No one in attendance stated opposition to the request.

Upon motion by Mr. Smith and seconded by Mr. Priest, council voted unanimously to defer action on this matter until the December meeting. Mayor Jarrell recessed the public hearing until next month.

Special Use Permit

Mayor Jarrell opened the public hearing on the following request:

- (a) Special Use Permit for Repairs to Non-Conforming Property (SUP-03-12): The property of Jimmy Wayne Brown located at 1431 S. Fayetteville Street, totaling approximately .29 acre, more specifically identified by Randolph County Parcel ID Number 7750756951.

Mr. Neely was sworn in and described the aforementioned property. He stated that South Fayetteville Street is a major thoroughfare, and Atlantic Avenue is a local street. The site is served by all city services. The character of the area is mixed use. The request is for a Special Use Permit to allow the reconstruction of a nonconforming structure under Section 637.2. Mr. Neely stated the requirements under Section 637.2 and 803.6 of the zoning ordinance. He also stated the staff's suggested conditions for council's consideration if it finds in favor of the request.

Mr. Jimmy Wayne Brown, applicant, was sworn in and presented photos of his house. He stated that his house was infested with termites, which caused a lot of damage, and he wants to rebuild his house and garage. Mr. Brown said that his neighbors were not opposed to the reconstruction. Mr. Brown addressed the four standard tests. (1) The use will not endanger the public health or safety, as the reconstruction of the structure will make it safer. (2) The use will meet all required conditions and specifications of the Asheboro Zoning Ordinance. (3) The use will not injure the value of adjoining or abutting property, as the renovations will enhance the value of the property. (4) The use will be in harmony with the area. The use will still be a residential structure.

There being no comments nor opposition from the public, Mayor Jarrell closed the public hearing.

Upon motion by Mr. Trollinger and seconded by Mr. Smith, council voted unanimously to approve the request, with the conditions as stated by Mr. Neely, based on the four standard tests being met per testimony by Mr. Brown.

The conditions will be detailed in the city attorney's Findings of Fact, Conclusions of Law, and Order Granting the Special Use Permit to be approved by council at its December meeting.

12. Resolution Accepting the Offer Submitted by AT&T Wireless to Lease Space for an Antenna Installation on the City-Owned Water Tower at 903 NC Highway 49 South.

City Attorney Jeff Sugg reported that no upset bids have been received on the offer submitted by AT&T Wireless. Mr. Sugg presented the aforementioned resolution and recommended its adoption by reference.

Upon motion by Mrs. Carter and seconded by Mr. Priest, council voted unanimously to adopt the following resolution by reference:

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84 RES 11-03

RESOLUTION ACCEPTING A NEGOTIATED OFFER FROM AT&T PERTAINING TO AN OPTION AND LEASE AGREEMENT FOR A CERTAIN AMOUNT OF LEASED SPACE ON A CITY-OWNED WATER TOWER

WHEREAS, the City of Asheboro (hereinafter referred to as the "City") owns in fee certain real property that is located at 903 North Carolina Highway 49 in Randolph County and is identified by Randolph County Parcel Identification Number 7740732225, said real property is more particularly described in Deed Book 1531, Page 101, Randolph County Registry; and

WHEREAS, a water tower that is owned and operated by the City is located upon the premises described in the preceding paragraph (said premises shall be hereinafter referred to as the "Water Tower Premises"); and

WHEREAS, AT&T Wireless PCS, LLC, a Delaware limited liability company, d/b/a AT&T Wireless, acting by and through its member, AT&T Wireless Services, Inc., a Delaware corporation, (hereinafter referred to as "AT&T") has expressed its desire to the City to lease a portion of the Water Tower Premises for use in connection with AT&T's federally licensed communications business; and

WHEREAS, Section 160A-272 of the North Carolina General Statutes provides that property owned by the City may be leased to a tenant if the desired property will not be needed by the City for the term of the lease; and

WHEREAS, public notice was given by the City Council of the City of Asheboro in accordance with Section 160A-272 of the North Carolina General Statutes that said council intended to consider a resolution authorizing the lease of the property desired by AT&T during the council's regularly scheduled meeting on July 10, 2003; and

WHEREAS, on the basis of the recommendation from the City's professional staff, the City Council of the City of Asheboro has determined that the portion of the Water Tower Premises that AT&T wishes to lease will not be needed by the City during the term of the lease; and

WHEREAS, pursuant to a resolution (73 RES 7-03) adopted by the City Council of the City of Asheboro on July 10, 2003, the City Manager, City Clerk, and City Attorney were directed to negotiate with AT&T in an effort to reach agreement on a proposed option and lease agreement with terms and conditions substantially and materially similar to certain terms and conditions specified in Resolution Number 73 RES 7-03; and

WHEREAS, a negotiated agreement has been reached by authorized members of the city's professional staff with authorized officials of AT&T for an option and lease agreement that complies with the provisions of Resolution Number 73 RES 7-03; and

WHEREAS, said negotiated offer is attached to this resolution as "EXHIBIT 1" and is incorporated into this resolution by reference as if copied fully herein; and

WHEREAS, said negotiated offer has been advertised for upset bids in substantive accordance with Section 160A-269 of the North Carolina General Statutes by means of a legal notice that was run in The Courier-Tribune one time on October 26, 2003; and

WHEREAS, no such upset bids have been received:

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro, during a regular meeting of the council, as follows:

Section 1. The negotiated offer from AT&T that is attached to this resolution as "EXHIBIT 1" and incorporated herein by reference is hereby accepted by the City of Asheboro.

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Section 2. The Mayor and City Clerk of the City of Asheboro are hereby authorized and directed to execute any and all documents and instruments necessary to carry into full force and effect the offer that has been formally accepted by means of this resolution.

Adopted this the 6th day of November, 2003.

S/ David H. Jarrell
David H. Jarrell, Mayor

ATTEST:

S/ Carol J. Cole
Carol J. Cole, City Clerk

"EXHIBIT 1," as referred to in this resolution, is attached to the original resolution on file in the city clerk's office.

13. Finance and Public Safety & Public Works Matters.

No official meetings were held.

There being no further business, the meeting was adjourned at 8:30 PM.

Carol J. Cole, CMC, City Clerk

David H. Jarrell, Mayor

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