

**REGULAR MEETING
ASHEBORO CITY COUNCIL
COUNCIL CHAMBER, MUNICIPAL BUILDING
MAY 6, 2010
7:00 p.m.**

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

David H. Smith) – Mayor Presiding

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

John N. Ogburn, III, City Manager
Dumont Bunker, P.E., City Engineer
Holly H. Doerr, City Clerk/Senior Legal Assistant
John L. Evans, Planner
Casandra M. Fletcher, Marketing Specialist
R. Wendell Holland, Jr., Zoning Administrator
Justin T. Luck, Community Planning and Development Department Intern
R. Reynolds Neely, Jr., Planning Director
Deborah P. Reaves, Finance Director
Jeffrey C. Sugg, City Attorney
Sanford A. Vuncannon, Jr., Police Captain
Kermit D. Williamson, Sanitation Superintendent

1. Call to order.

Mayor Smith called the meeting to order for the transaction of business, and business was transacted as follows.

2. Moment of silence and pledge of allegiance.

After a moment of silence was observed in order to allow council members, staff, and guests to collect their thoughts and private 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 and recognized Mr. William Moon, a Boy Scout who was in attendance as a requirement for a citizenship and community badge.

4. Consent Agenda:

Upon motion by Dr. Fountain and seconded by Ms. Carter, Council voted unanimously to approve the following consent agenda items:

- (a) The minutes of the regular meeting of the City Council that was held on April 8, 2010.**
- (b) The general account of the closed session that was conducted by the City Council on April 8, 2010.**
- (c) A resolution sealing the general account of the closed session conducted by the City Council on April 8, 2010.**

**A RESOLUTION TO SEAL THE GENERAL ACCOUNT OF A CLOSED SESSION CONDUCTED ON
APRIL 8, 2010 BY THE ASHEBORO CITY COUNCIL**

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)(4) of the North Carolina General Statutes, the City Council of the City of Asheboro properly conducted a closed session on April 8, 2010, during a regular meeting, in order to discuss matters relating to the location or expansion of industries or other businesses in the City of Asheboro; and

WHEREAS, the purpose for going into closed session on April 8, 2010, would be frustrated if the general account of this 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 by the City Council on April 8, 2010, is to be sealed so long as public inspection of the records would frustrate the purpose of the closed session; and

BE IT FURTHER RESOLVED that the City Manager is authorized to act as the Asheboro City 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 the said 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 6, 2010.

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

ATTEST:

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

(d) The findings of fact, conclusions of law, and order in the matter of CUP-10-03.

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

IN THE MATTER OF THE APPLICATION OF FRANSON, LLC FOR A CONDITIONAL USE PERMIT
AUTHORIZING A GAS STATION AND AN AUTOMATIC CAR WASH

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING THE REQUESTED
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 that was held on April 8, 2010. 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. Franson, LLC (hereinafter referred to as the "Applicant") has properly submitted an application for a gas station, which includes the sale of retail convenience goods, and an automatic car wash as an accessory use on a parcel of land (hereinafter referred to as the "Zoning Lot") that is owned by the Applicant and is more specifically identified by Randolph County Parcel Identification Number 7760385611.

2. The proposed land use on the Zoning Lot is the same use that was previously approved by this Council for Sheetz, Inc. under city planning department file number CUP-09-14 after a public hearing was conducted in December 2009.

3. Due to contractual relationships between the private parties involved in this transaction, the current Applicant is developing the lot upon which the land use approved under file number CUP-09-14 is to be located. The current application is not opposed by Sheetz, Inc.

4. Mr. Ben Morgan, Esq. testified on behalf of the Applicant that the only change sought under this application for a new Conditional Use Permit is the modification of a storm water runoff control condition that was attached to the permit issued under file number CUP-09-14.

5. With the exception of the storm water runoff control condition and certain variances that were approved for the Zoning Lot by the City of Asheboro Board of Adjustment in February 2010, no material changes have been made in the application and testimony presented during the hearing of Sheetz's request in December 2009 under file number CUP-09-14.

6. The findings, conclusions, and order adopted by this Council under file number CUP-09-14 are as follows:

1. *Sheetz, Inc. (hereinafter referred to as the "Applicant") has properly submitted an application for a Conditional Use Permit authorizing a gas station, which includes the sale of retail convenience goods, and an automatic car wash as an accessory use on a 2.239 acre parcel of land located at the western corner of East Dixie Drive and Dublin Road. This parcel of land (hereinafter referred to as the "Zoning Lot") is more specifically identified as Tract # 1 on a plat of survey recorded in Plat Book 123, Page 70, Randolph County Public Registry.*

2. *As of the date of the hearing of this matter, Franson, LLC and Double E Investment Group, LLC were listed as the owners of the Zoning Lot, and these owners presented no objection to the Applicant's request for a Conditional Use Permit.*

3. *The Zoning Lot is currently undeveloped, but a Conditional Use Permit, which was never acted upon by the original applicant, was previously issued by the Council under planning department file number CUP-06-23. This earlier permit, which authorized a retail shoppers' goods store, was issued after a hearing was conducted in October 2006.*

4. *The Zoning Lot is located in a CU-B2 zoning district.*

5. *Commercial land uses are located to the east and south of the Zoning Lot, single-family residential as well as commercial land uses are located to the west of the lot, and single-family residential land use is located to the north of the Zoning Lot.*

6. *A gas station, which includes the sale of retail convenience goods, and an automatic car wash as an accessory use are the land uses for which the Applicant is seeking a Conditional Use Permit, and these land uses are permitted in the underlying B2 zoning district.*

7. *The Zoning Lot is located in an area that is designated on the Growth Strategy Map as a Primary Growth area, and this area is identified on the Proposed Land Development Plan Map as Commercial/Neighborhood Residential.*

8. *The Zoning Lot is located within the corporate limits of the City of Asheboro, and all city services are available to the lot.*

9. *East Dixie Drive is a major thoroughfare with a 150-foot right-of-way. Primarily commercial land uses are located along East Dixie Drive.*

10. *Dublin Road is a state-maintained minor thoroughfare, and Dublin Road Extension is a city-maintained dead end street.*

11. *The proposed gas station use with 18 pumps and the sale of retail convenience goods is shown on the site plan as utilizing a structure that will be 4,997 square feet in size. The car wash that is proposed as an accessory use is shown as a single bay automatic car wash.*

12. *The Applicant proposes sharing the access along East Dixie Drive with a bank use that is proposed by a different applicant for an adjoining lot located to the west of the Zoning Lot. This type of arrangement is permitted under the Asheboro Zoning Ordinance so long as a reciprocal easement agreement is utilized.*

13. *The city's Comprehensive Pedestrian Transportation Plan recommends the construction of sidewalks along East Dixie Drive and Dublin Road as a priority to improve the city's sidewalk network. Sidewalks are proposed for the*

Zoning Lot in accordance with regulations prescribed by the Asheboro Zoning Ordinance.

14. *The site plan and building elevations submitted during the hearing of this matter are in compliance with the provisions of the Asheboro Zoning Ordinance.*

15. *Mr. Lee Roberts, who is a certified residential real estate appraiser, testified that he has visited the Zoning Lot and is familiar with the development along East Dixie Drive. Mr. Roberts has formed the professional opinion that no substantial injury to the value of adjoining properties will occur if the proposed land use is developed on the Zoning Lot.*

16. *Mr. Jim Bell, who is an environmental engineer, has studied the impact in terms of traffic, noise, and light on the area around the Zoning Lot if the proposed land use is in fact developed. The impact from added traffic would be minimal in light of the fact that his study revealed the Applicant, at its peak, would only add 140 vehicles to a 3,000 vehicle daily traffic count already accommodated by East Dixie Drive. Furthermore, the impact on East Dixie Drive will be mitigated by the fact that a right in, right out access point will be utilized for this major thoroughfare. The noise from the car wash will not have a noticeable impact because, according to Mr. Bell's study, the noise from the dryer in the automatic car wash will be around 66 decibels and that is not much higher than the level measured for conversations in a room. In comparison, the traffic noise on Dixie Drive is measured at approximately 59 decibels. With regard to the lighting associated with the Applicant's land use, Mr. Bell testified that the lighting specifications prescribed by the Asheboro Zoning Ordinance will be met with or without the benefit of a variance from the Board of Adjustment.*

17. *The Applicant's attorney, Mr. Alan V. Pugh, Esq., offered uncontroverted testimony that the underground storage tanks utilized by the Applicant are double hulled, state of the art, regulated by the state, and are newer than other underground storage tanks already located along Dixie Drive.*

18. *No testimony was offered in opposition to the Applicant's request for a Conditional Use Permit.*

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

CONCLUSIONS OF LAW

1. *The Council has concluded that the requested Conditional Use Permit will not materially endanger the public health or safety if the proposed land uses are 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 land uses do meet all of the required conditions and specifications of the Asheboro Zoning Ordinance.*

3. *The evidence presented during the course of the hearing of this matter established that the proposed land uses would not substantially injure the value of the adjoining or abutting property.*

4. *The location and character of the Applicant's proposed land uses if developed according to the plan as submitted and approved will be in harmony with the area in which they are 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

Sheetz, Inc. is hereby issued a Conditional Use Permit authorizing a gas station with retail convenience goods sales and an automatic car wash as an accessory use to be constructed and operated on the Zoning Lot. The site plan reviewed by the Council on December 10, 2009, is hereby approved and adopted as part of this permit. The issuance of this permit and its continuing validity is hereby made expressly contingent upon the Applicant, and its successors and assigns, complying at all times with the applicable provisions of the Asheboro Zoning Ordinance, including without limitation the site plan approved by this Order, and

accepting and remaining in strict compliance with the following supplementary conditions:

1. *Consistent with Article 400 (Sections 404 and 405) of the Asheboro Zoning Ordinance, a reciprocal easement agreement shall be executed with the adjoining property owner to the west for access to and maneuvering within the parking area.*
2. *A 20-foot wide sanitary sewer easement shall be provided to the City of Asheboro along all 8" sanitary sewer lines that are not located within the public right-of-way.*
3. *All concrete curb and gutter within public rights-of-way must be 2'6" per the latest revision of North Carolina Department of Transportation (NCDOT) Standard 846.01 or as approved by the NCDOT.*
4. *Construction shall not begin until all regulatory approvals have been received.*
5. *Prior to the issuance of a Zoning Compliance Permit, 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 the issuance of 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.*
6. *If the location of the sidewalk along the right-of-way for Dublin Road changes due to topography and/or utility locations, such change shall not be considered a modification of the Conditional Use Permit as long as compliance with the regulations and specifications of the Asheboro Zoning Ordinance is maintained. If the location of the sidewalk changes as described in the immediately preceding sentence, the Applicant shall submit a revised site plan for review by the city's planning department staff and inclusion in the file without further review by the Council.*
7. *If the City of Asheboro Board of Adjustment grants a variance concerning (i) the required 4" vertical separation of sidewalk(s) between the building(s) and parking area(s); (ii) a variance concerning the foot candle readings of outdoor lighting along the western property boundary; and/or (iii) the location and/or screening of vent pipes, none of these potential variances shall be considered a modification of the Conditional Use Permit. In the event the Board of Adjustment grants a variance or multiple variances, the Applicant shall submit a revised site plan for planning department staff review and inclusion in the file without further review by the Council.*

These findings, conclusions, and order were adopted by the Asheboro City Council in open session during a special meeting held on the 21st day of January, 2010.

7. The variances approved by the Board of Adjustment subsequent to the issuance of the initial Conditional Use Permit addressed the following issues:
 - a. The location and screening of vent pipes for underground storage tanks, which are classified in the zoning ordinance under the heading of mechanical equipment and accessory structures;
 - b. Lighting requirements pertaining to the foot candle measurement at the property line; and
 - c. Vertical grade separation requirements that mandate a 4-inch vertical separation between the building and the parking area.
8. With the exception of a clerical error in a note on the submitted site plan, the Applicant's revised site plan for the proposed land use complies with the specifications mandated by the Asheboro Zoning Ordinance.
9. Mr. Jim Bell, P.E. offered uncontroverted testimony concerning the impact of the storm water runoff control condition (condition no. 5) that was attached to the Conditional Use Permit issued under file number CUP-09-14. According to this testimony, the original condition no. 5 had the effect of imposing storm water runoff control requirements for runoff from a 10-year storm that exceeded the regulatory requirements enforced by the North Carolina Department of Environment and Natural Resources' Division of Water Quality.

10. Since the date of the issuance of the initial Conditional Use Permit, a storm water runoff study has been completed for the proposed land use, and the difference in impact between the existing state-mandated regulatory requirements and the mandate imposed by condition no. 5 is negligible. However, the cost of implementing the measures prescribed by the existing condition no. 5 is substantial (approximately \$250,000 to \$300,000).

11. A written summary, which was prepared by Mr. Bell's firm, reached two (2) conclusions that were not challenged by any other witness. These conclusions were as follows:

- a. The proposed site design is currently permitted by NCDENR – DWQ (North Carolina Department of Environment and Natural Resources – Division of Water Quality) for storm water quality and quantity, as required by State regulations.
- b. Increased storm water flow based on proposed development will have negligible impact on downstream areas.

12. During the hearing of this matter, the Applicant proposed an alternative condition to replace the original condition no. 5. The Applicant's proposal for an alternative condition states that "(p)rior to the issuance of a Certificate of Occupancy, a professional engineer shall provide certification that storm water control measures on the site were designed and constructed in accordance with North Carolina Department of Environment and Natural Resources, Division of Water Quality (NCDENR – DWQ).

13. The only witness to raise concerns about the appropriateness of the requested Conditional Use Permit was an adjoining property owner, Mr. Randy McDowell. Mr. McDowell expressed concerns about traffic flow and his family's ability to access public streets from his driveway after the proposed gas station is constructed and begins operation. However, Mr. McDowell's comments were generalized and speculative in nature. No expert testimony was offered to undermine the credibility of the analysis offered by the Applicant's engineer during the public hearings held in December 2009 and April 2010.

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

CONCLUSIONS OF LAW

1. The Council has concluded that the requested Conditional Use Permit will not materially endanger the public health or safety if the proposed land uses are 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 land uses do meet all of the required conditions and specifications of the Asheboro Zoning Ordinance.
3. The evidence presented during the course of the hearing of this matter established that the proposed land uses would not substantially injure the value of the adjoining or abutting property.
4. The location and character of the Applicant's proposed land uses if developed according to the plan as submitted and approved will be in harmony with the area in which they are 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 Applicant, and its successors and assigns, is hereby issued a Conditional Use Permit authorizing a gas station with retail convenience goods sales and an automatic car wash as an accessory use to be constructed and operated on the Zoning Lot. The site plan reviewed by the Council on April 8, 2010, is hereby approved and adopted as part of this permit. The issuance of this permit and its continuing validity are hereby made expressly contingent upon the Applicant, and its successors and assigns, complying at all times with the applicable provisions of the Asheboro Zoning Ordinance, including without limitation the site plan approved by this Order, and accepting and remaining in strict compliance with the following supplementary conditions:

1. Consistent with Article 400 (Sections 404 and 405) of the Asheboro Zoning Ordinance, a reciprocal easement agreement shall be executed with the adjoining property owner to the west for access to and maneuvering within the parking area.
2. A 20-foot wide sanitary sewer easement shall be provided to the City of Asheboro along all 8" sanitary sewer lines that are not located within the public right-of-way.

originally approved under City of Asheboro Planning Department file number CUP-09-15. The Applicant's current request is not opposed by any of the previously identified parties to the above-referenced land development project.

4. Mr. Ben Morgan, Esq. testified on behalf of the Applicant that the only change sought under this application is the modification of a storm water runoff control condition that was attached to the permit issued under file number CUP-09-15.

5. With the exception of the storm water runoff control condition, no material changes have been made in the application and testimony presented during the hearing of Frank Edmondson's request under planning department file number CUP-09-15 in December 2009.

6. The findings, conclusions, and order adopted by this Council under file number CUP-09-15 are as follows:

FINDINGS OF FACT

1. *Frank Edmondson (hereinafter referred to as the "Applicant") has properly submitted an application for a Conditional Use Permit authorizing the development of a bank on a 1.281 acre parcel of land located on the north side of East Dixie Drive, approximately 300 feet west of Dublin Road. This parcel of land (hereinafter referred to as the "Zoning Lot") is more specifically identified as Tract # 2 on a plat of survey recorded in Plat Book 123, Page 70, Randolph County Public Registry.*

2. *As of the date of the hearing of this matter, Franson, LLC and Double E Investment Group, LLC were listed as the owners of the Zoning Lot, and these owners presented no objection to the Applicant's request for a Conditional Use Permit.*

3. *The Zoning Lot is currently undeveloped, but a Conditional Use Permit, which was never acted upon by the original applicant, was previously issued by the Council under planning department file number CUP-06-23. This earlier permit, which authorized a retail shoppers' goods store, was issued after a hearing was conducted in October 2006.*

4. *The Zoning Lot is located in a CU-B2 zoning district.*

5. *Commercial land uses are located to the east and south of the Zoning Lot, single-family residential as well as commercial land uses are located to the west of the lot, and single-family residential land use is located to the north of the Zoning Lot.*

6. *A bank is a permitted land use in the underlying B2 zoning district.*

7. *The Zoning Lot is located in an area that is designated on the Growth Strategy Map as a Primary Growth area, and this area is identified on the Proposed Land Development Plan Map as Commercial/Neighborhood Residential.*

8. *The Zoning Lot is located within the corporate limits of the City of Asheboro, and all city services are available to the lot.*

9. *East Dixie Drive is a major thoroughfare with a 150-foot right-of-way. Primarily commercial land uses are located along East Dixie Drive.*

10. *Dublin Road is a state-maintained minor thoroughfare, and Dublin Road Extension is a city-maintained dead end street.*

11. *The bank is shown on the site plan as utilizing a structure that will be approximately 4,000 square feet in size with a three bay drive through window.*

12. *The Applicant proposes sharing the access along East Dixie Drive with a previously approved gas station that includes retail convenience goods sales and an automatic car wash that is to be located on an adjoining lot situated to the east of the Zoning Lot. This type of arrangement is permitted under the Asheboro Zoning Ordinance so long as a reciprocal easement agreement is utilized.*

13. *The city's Comprehensive Pedestrian Transportation Plan recommends the construction of sidewalks along East Dixie Drive as a priority to improve the city's sidewalk network. Sidewalks are proposed for the Zoning Lot in accordance with regulations prescribed by the Asheboro Zoning Ordinance.*

14. The site plan and building elevations submitted during the hearing of this matter are in compliance with the provisions of the Asheboro Zoning Ordinance.

15. Ms. Jillian West, who is a certified general real estate appraiser, testified that she is familiar with the development, both residential and commercial, along Dixie Drive. As part of her evaluation of the impact of the proposed land use, she examined seven comparable sites and found no negative impacts. Ms. West has formed the professional opinion that no substantial injury to the value of adjoining properties will occur if the proposed land use is developed on the Zoning Lot.

16. Mr. Jim Bell, who is an environmental engineer, testified that he reviewed the Applicant's site plan and examined the potential impact of traffic, noise, and light on the area around the Zoning Lot if the proposed land use is in fact developed. In his professional opinion, the proposed use will meet the lighting requirements prescribed by the Asheboro Zoning Ordinance and the impact from traffic and noise associated with the proposed bank will be minimal.

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

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

CONCLUSIONS OF LAW

1. The Council has concluded that the requested Conditional Use Permit will not materially endanger the public health or safety if the proposed land use is 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 land use does meet all of the required conditions and specifications of the Asheboro Zoning Ordinance.

3. The evidence presented during the course of the hearing of this matter established that the proposed land use would not substantially injure the value of the adjoining or abutting property.

4. The location and character of the Applicant's proposed land 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

Frank Edmondson, who filed this application as a representative of the owners of the Zoning Lot, is hereby issued a Conditional Use Permit authorizing a bank to be developed on the Zoning Lot. The site plan reviewed by the Council on December 10, 2009, is hereby approved and adopted as part of this permit. The issuance of this permit and its continuing validity is hereby made expressly contingent upon the Applicant, and his heirs, successors, and assigns, complying at all times with the applicable provisions of the Asheboro Zoning Ordinance, including without limitation the site plan approved by this Order, and accepting and remaining in strict compliance with the following supplementary conditions:

1. Consistent with Article 400 (Sections 404 and 405) of the Asheboro Zoning Ordinance, a reciprocal easement agreement shall be executed with the adjoining property owner to the east for access to and maneuvering within the parking area.

2. A 20-foot wide sanitary sewer easement shall be provided to the City of Asheboro along all 8" sanitary sewer lines that are not located within the public right-of-way.

3. A 25-foot wide water line easement shall be provided to the City of Asheboro along all water lines connecting the City of Asheboro Water System to the fire hydrants and meters that are not located within the public right-of-way.

4. Construction shall not begin until all regulatory approvals have been received.

5. *Prior to the issuance of a Zoning Compliance Permit, 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 the issuance of 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.*

These findings, conclusions, and order were adopted by the Asheboro City Council in open session during a special meeting held on the 21st day of January, 2010.

7. With the exception of a clerical error in labeling the right-of-way on the submitted site plan, the Applicant's revised site plan for the proposed land use complies with the specifications mandated by the Asheboro Zoning Ordinance.

8. Mr. Jim Bell, P.E. offered uncontroverted testimony concerning the impact of the storm water runoff control condition (condition no. 5) that was attached to the Conditional Use Permit issued under file number CUP-09-15. According to this testimony, the original condition no. 5 had the effect of imposing storm water runoff control requirements for runoff from a 10-year storm that exceeded the regulatory requirements enforced by the North Carolina Department of Environment and Natural Resources' Division of Water Quality.

9. Since the date of the issuance of the initial Conditional Use Permit, a storm water runoff study has been completed for the proposed land use, and the difference in impact between the existing state-mandated regulatory requirements and the mandate imposed by condition no. 5 is negligible. However, the cost of implementing the measures prescribed for this project by the existing condition no. 5 is substantial (approximately \$250,000 to \$300,000).

10. A written summary, which was prepared by Mr. Bell's firm, reached two (2) conclusions that were not challenged by any other witness. These conclusions were as follows:

a. The proposed site design is currently permitted by NCDENR – DWQ (North Carolina Department of Environment and Natural Resources – Division of Water Quality) for storm water quality and quantity, as required by State regulations.

b. Increased storm water flow based on proposed development will have negligible impact on downstream areas.

11. During the hearing of this matter, the Applicant proposed an alternative condition to replace the original condition no. 5. The Applicant's proposal for an alternative condition states that "(p)rior to the issuance of a Certificate of Occupancy, a professional engineer shall provide certification that storm water control measures on the site were designed and constructed in accordance with North Carolina Department of Environment and Natural Resources, Division of Water Quality (NCDENR – DWQ).

12. The only witness to raise concerns about this application during the public hearing was an adjoining property owner, Mr. Randy McDowell. Mr. McDowell expressed concerns about traffic flow and his family's ability to access public streets from his driveway after a gas station land use proposed for an adjoining lot as part of the overall development project is constructed and begins operation. A Conditional Use Permit authorizing the proposed gas station was previously approved by the Council under planning department file number CUP-10-03. However, Mr. McDowell's comments were generalized and speculative in nature. No expert testimony was offered to undermine the credibility of the analysis offered by the Applicant's engineer during the combined public hearings held in December 2009 and April 2010.

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

CONCLUSIONS OF LAW

1. The Council has concluded that the requested Conditional Use Permit will not materially endanger the public health or safety if the proposed land use is 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 land use does meet all of the required conditions and specifications of the Asheboro Zoning Ordinance.

3. The evidence presented during the course of the hearing of this matter established that the proposed land use would not substantially injure the value of the adjoining or abutting property.

4. The location and character of the Applicant's proposed land 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 Applicant, and its successors and assigns, is hereby issued a Conditional Use Permit authorizing a bank to be developed on the Zoning Lot. The site plan reviewed by the Council on April 8, 2010, is hereby approved and adopted as part of this permit. The issuance of this permit and its continuing validity is hereby made expressly contingent upon the Applicant, and its successors and assigns, complying at all times with the applicable provisions of the Asheboro Zoning Ordinance, including without limitation the site plan approved by this Order, and accepting and remaining in strict compliance with the following supplementary conditions:

1. Consistent with Article 400 (Sections 404 and 405) of the Asheboro Zoning Ordinance, a reciprocal easement agreement shall be executed with the adjoining property owner to the east for access to and maneuvering within the parking area.
2. A 20-foot wide sanitary sewer easement shall be provided to the City of Asheboro along all 8" sanitary sewer lines that are not located within the public right-of-way.
3. A 25-foot wide water line easement shall be provided to the City of Asheboro along all water lines connecting the City of Asheboro Water System to the fire hydrants and meters that are not located within the public right-of-way.
4. Construction shall not begin until all regulatory approvals have been received.
5. Prior to the issuance of a Certificate of Occupancy, a professional engineer shall provide certification that storm water control measures on the site were designed and constructed in accordance with the requirements of the North Carolina Department of Environment and Natural Resources, Division of Water Quality (NCDENR – DWQ).
6. The revised site plan that was submitted to the Council during the hearing of this matter on April 8, 2010, contains a clerical error in the labeling of right-of-way on the site plan. The clerical error shall be corrected to the satisfaction of the City of Asheboro Planning Department staff on a revised site plan that shall be submitted to the planning department staff for review and inclusion in the planning department's file without further action by the Council.

These findings, conclusions, and order were adopted by the Asheboro City Council in open session during a regular meeting held on the 6th day of May, 2010.

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

ATTEST:

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

(f) A corporate authorization resolution and agreement for BB&T.

[A copy of the above-referenced resolution is on file in the City Clerk's office.]

(g) An ordinance updating Chapter 91 (Animals) of the Code of Asheboro to conform with changes in state law.

27 ORD 5-10

AN ORDINANCE AMENDING CHAPTER 91 OF THE CODE OF ASHEBORO

WHEREAS, Chapter 91 of the Code of Asheboro prescribes certain animal control measures within the city's jurisdiction, specifically including without limitation rabies control measures; and

WHEREAS, legislative enactments by the North Carolina General Assembly have necessitated an updating of the rabies control provisions found in Chapter 91 of the Code of Asheboro.

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

Section 1. Section 91.55 of the Code of Asheboro is hereby rewritten to provide as follows:

§ 91.55 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ANIMAL CONTROL OFFICER. ~~A city or county employee whose responsibility includes animal control. The city Animal Control Officer, whose responsibility includes animal control.~~

CAT. A domestic feline of the genus and species Felis catus.

CERTIFIED RABIES VACCINATOR. A person appointed and certified to administer rabies vaccine to animals in accordance with this subchapter.

DOG. A domestic canine of the genus, species, and subspecies Canis lupus familiaris.

FERAL. An animal that is not socialized.

FERRET. A domestic mammal of the genus, species, and subspecies Mustela putorius furo.

RABIES VACCINE. An animal rabies vaccine licensed by the United States Department of Agriculture and approved for use in this state by the State Commission for Health Services.

STATE PUBLIC HEALTH VETERINARIAN. A person appointed by the secretary to direct the state public health veterinary program.

VACCINATION. The administration of rabies vaccine by a person authorized to administer it under G.S. § 130A-185 licensed veterinarian or by a certified rabies vaccinator.

Section 2. Section 91.56 of the Code of Asheboro is hereby rewritten to provide as follows:

§ 91.56 VACCINATION REQUIRED OF ALL DOGS AND CATS.

(A) Vaccination required. The owner of an animal listed in this subsection ~~every dog and cat~~ over four months of age shall have the animal vaccinated against rabies:

(1) Cat.

(2) Dog.

(3) Ferret.

(B) Vaccination. Only animal rabies vaccine licensed by the United States Department of Agriculture and approved by the Commission shall be used on animals in this state. A rabies vaccine may only be administered by one or more of the following:

(1) A licensed veterinarian.

(2) A registered veterinary technician under the direct supervision of a licensed veterinarian.

(3) A certified rabies vaccinator. ~~The time or times of vaccination shall be established by the State Commission for Health Services. Rabies vaccine shall be administered only by a license veterinarian or by a county certificated rabies vaccinator (as established under G.S. §§ 130A-186 through 130A-188).~~

~~(B) Only animal rabies vaccine licensed by the United States Department of Agriculture and approved by the State Commission for Health Services shall be used on animals in this state.~~

Section 3. Section 91.57 of the Code of Asheboro is hereby rewritten to provide as follows:

§ 91.57 RABIES VACCINATION CERTIFICATES AND TAGS.

(A) ~~A person licensed veterinarian or a certified rabies vaccinator~~ who administers a rabies vaccine ~~to a dog or cat~~ shall complete a ~~three-copy~~ rabies vaccination certificate. The Commission shall adopt rules specifying the information that must be included on the certificate. An ~~The~~ original rabies vaccination certificate shall be given to the owner of the animal ~~each dog or cat~~ that receives the rabies

vaccine. ~~A One~~ copy of the rabies vaccination certificate shall be retained by the licensed veterinarian or the certified rabies vaccinator. ~~A The other~~ copy shall also be given to the county agency responsible for animal control.

(B) A licensed veterinarian or a certified rabies vaccinator who administers rabies vaccine to a dog or cat shall issue a rabies vaccination tag to the owner of the animal. The rabies vaccination tag shall show the year issued, a vaccination number, the words "North Carolina" or the initials "N.C." and the words "rabies vaccine." Dogs and cats shall wear rabies vaccination tags at all times. However, cats may be exempted from wearing the tags by the city, if the city so decides by ordinance.

Section 4. Section 91.58 of the Code of Asheboro is hereby rewritten to provide as follows:

§ 91.58 ANIMALS DOGS AND CATS NOT WEARING REQUIRED RABIES VACCINATION TAGS.

The Animal Control Officer shall canvass the city to determine if there are any animals dogs or cats not wearing the required rabies vaccination tag. If an animal required to wear a tag a dog or cat is found not wearing one the required tag, the Animal Control Officer shall check to see if the owner's identification can be found on the animal. If the animal is wearing an owner identification tag, or if the Animal Control Officer otherwise knows who the owner is, the Animal Control Officer shall notify the owner in writing to have the animal vaccinated against rabies and to produce the required rabies vaccination certificate to the Animal Control Officer within three days of the notification. If the animal is not wearing an owner identification tag and the Animal Control Officer does not otherwise know who the owner is, the Animal Control Officer may impound the animal. The duration of the impoundment of these animals shall be established by the city, but the duration shall not be less than 72 hours. During the impoundment period, the Animal Control Officer shall make a reasonable effort to locate the owner of the animal. If the animal is not reclaimed by its owner during the impoundment period, the animal shall be disposed of in one of the following manners: returned to the owner; adopted as a pet by a new owner; sold to institutions within this state registered by the United States Department of Agriculture pursuant to the Federal Animal Welfare Act, as amended; or put to death by a procedure approved by the American Veterinary Medical Association, the Humane Society of the United States or of the American Humane Association. The Animal Control Officer shall maintain a record of all animals impounded under this section which shall include the date of impoundment, the length of impoundment, the method of disposal of the animal and the name of the person or institution to whom any animal has been released.

Section 5. Section 91.59 of the Code of Asheboro is hereby rewritten to provide as follows:

§ 91.59 VACCINATION AND CONFINEMENT OF ANIMALS DOGS AND CATS BROUGHT INTO THIS CITY.

(A) Vaccination required. An animal ~~A dog or cat~~ brought into this city that is required to be vaccinated under this subchapter shall immediately be securely confined and shall be vaccinated against rabies within one week after entry. The animal shall remain confined for two weeks after vaccination.

(B) Exceptions. The provisions of division (A) shall not apply to:

(1) An animal A dog or cat brought into this city for exhibition purposes if the animal is confined and not permitted to run at large. ~~;~~ ~~or~~

(2) An animal A dog or cat brought into this city accompanied by a certificate issued by a licensed veterinarian showing that the animal dog or cat is apparently free from and has not been exposed to rabies and that the animal is currently vaccinated against rabies dog or cat has received rabies vaccine within the past year.

Section 6. Section 91.60 of the Code of Asheboro is hereby rewritten to provide as follows:

§ 91.60 QUARANTINE OF AREAS INFECTED WITH RABIES; DESTROYING STRAYS.

(A) An area may be declared under quarantine against rabies by the city when the disease exists to the extent that the lives of persons are endangered. When quarantine is declared, each animal dog and cat in the area that is required to be vaccinated under this subchapter shall be confined on the premises of the owner or in a veterinary hospital unless the animal is. ~~However, dogs or cats on a leash or under the control and in the sight of a responsible adult may be permitted to leave the premises of the owner or the veterinary hospital.~~

(B) When quarantine has been declared and stray or feral animals dogs and cats continue to run uncontrolled in the area, any peace officer or Animal Control Officer shall have the right, after reasonable effort has been made to apprehend the animals, to destroy the stray or feral animals and uncontrolled dogs and cats as properly dispose of their bodies.

Section 7. Section 91.61 of the Code of Asheboro is hereby rewritten to provide as follows:

§ 91.61 NOTICE AND CONFINEMENT OF ANIMALS CONFINEMENT OF ALL BITING DOGS AND CATS; NOTICE TO HEALTH DIRECTOR; REPORTS BY PHYSICIANS; CERTAIN DOGS EXEMPT.

(A) Notice. When a person has been bitten by an animal required to be vaccinated under this subchapter ~~a dog or cat~~, the person or parent, guardian or person standing in loco parentis of the person, and the person owning the animal or in control or possession of the animal shall notify the County Health Director immediately and give the name and address of the person bitten and the owner of the animal. If the animal that bites a person is a stray or feral animal, the local agency responsible for animal control shall make a reasonable attempt to locate the owner of the animal. If the owner cannot be identified within 72 hours of the event, the local health director may authorize the animal to be euthanized, and the head of the animal shall be immediately sent to the State Laboratory of Public Health for rabies diagnosis. If the event occurs on a weekend or state holiday the time period for owner identification shall be extended 24 hours. A physician who attends a person bitten by an animal known to be a potential carrier of rabies shall report the incident within 24 hours to the local health director. The report must include the name, age and sex of the person.

(B) Confinement. When an animal required to be vaccinated under this subchapter bites a person, ~~the animal~~ All dogs and cats that bite a person shall be immediately confined for ten days in a place designated by the County Health Director. ~~The~~ However, the County Health Director may authorize a dog trained and used by the city Police Department to be released from confinement to perform official duties upon submission of proof that the dog has been vaccinated for rabies in compliance with this subchapter. After reviewing the circumstances of the particular case, the County Health Director may allow the owner to confine the animal on the owner's property. An owner who fails to confine an ~~his~~ animal in accordance with the instructions of the County Health Director shall be prosecuted by the state under G.S. § 130A-196. If the owner or the person who controls or possesses ~~a dog or cat~~ the animal that has bitten a person refuses to confine the animal as required by this section, the County Health Director may order seizure of the animal and its confinement for ten days at the expense of the owner. ~~A physician who attends a person bitten by an animal known to be a potential carrier of rabies shall report within 24 hours to the County Health Director the name, age and sex of that person.~~

Section 8. Section 91.62 of the Code of Asheboro is hereby rewritten to provide as follows:

§ 91.62 INFECTED ANIMALS DOGS AND CATS TO BE DESTROYED; PROTECTION OF VACCINATED ANIMALS DOGS AND CATS.

When the local Health Director reasonably suspects that an animal required to be vaccinated under this subchapter ~~a dog or cat~~ has been exposed to the saliva or nervous tissue of a proven rabid animal or animal suspected of having rabies that is not available for laboratory diagnosis, the animal ~~dog or cat~~ shall be considered to have been exposed to rabies. An animal ~~A dog or cat~~ exposed to rabies shall be destroyed immediately by its owner, the County Animal Control Officer or a peace officer unless the animal ~~dog or cat~~ has been vaccinated against rabies in accordance with G.S. §§ 130A-184 et seq. (Part 6 of Article 6 of Chapter 130A), and the rules of the State's Commission for Health Services more than 28 days ~~three weeks~~ prior to being exposed, and is given a booster dose of rabies vaccine within five ~~three~~ days of the exposure. As an alternative to destruction, the animal ~~dog or cat~~ may be quarantined at a facility approved by the County Health Director for a period up to six months, and under reasonable conditions imposed by the County Health Director.

Section 9. Section 91.63 of the Code of Asheboro is hereby rewritten to provide as follows:

§ 91.63 CONFINEMENT.

A person who owns or has possession of an animal which is suspected of having rabies shall immediately notify the City Animal Control Officer and shall securely confine the animal in a place designated by the Animal Control Officer. The animal ~~Dogs and cats~~ shall be confined for a period of ten days. Other animals may be destroyed at the discretion of the State Public Health Veterinarian.

Section 10. Section 91.64 of the Code of Asheboro is hereby rewritten to provide as follows:

§ 91.64 RABID ANIMALS TO BE DESTROYED; HEADS TO BE SENT TO STATE LABORATORY OF PUBLIC HEALTH.

An animal diagnosed as having rabies by a licensed veterinarian shall be destroyed and its head sent to the State Laboratory of Public Health. The heads of all animals ~~dogs and cats~~ that die during a ~~the ten-day~~ confinement period required by this subchapter ~~§ 91.64~~ shall be immediately sent to the State Laboratory of Public Health for rabies diagnosis.

Section 11. All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

Section 12. This ordinance shall be in full force and effect upon and after the 6th day of May, 2010.

This ordinance was adopted by the City Council of the City of Asheboro in open session during a regular meeting held on the 6th day of May, 2010.

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

ATTEST:

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

(h) A resolution authorizing the disposal of a damaged police vehicle.

15 RES 5-10

RESOLUTION AUTHORIZING THE DISPOSAL OF A DAMAGED POLICE VEHICLE

WHEREAS, Article IX, Section 9.3 of the Charter of the City of Asheboro provides that the City Council shall have the power granted by Chapter 160A, Article 12 of the General Statutes of North Carolina to sell any personal property belonging to the City of Asheboro; and

WHEREAS, Section 160A-265 of the North Carolina General Statutes authorizes the City of Asheboro (hereinafter referred to as the City), in the discretion of the City Council, to dispose of personal property belonging to the City regardless of the method utilized by the City to acquire the property; and

WHEREAS, Section 160A-266 of the North Carolina General Statutes authorizes the utilization of private negotiation and sale for the disposal of an item of personal property belonging to the City where the item of personal property is valued at less than thirty thousand and no/100 dollars (\$30,000.00); and

WHEREAS, Section 160A-267 provides that if the City Council proposes to dispose of property by private sale, a resolution must be adopted authorizing a city official to dispose of the personal property by private sale at a negotiated price and notice of the contents of the resolution authorizing the private sale shall be published once after the adoption of the resolution; and

WHEREAS, a city-owned 2003 Ford Crown Victoria (VIN 2FAHP71W33X175199) assigned to the municipal police department was damaged when it collided with another vehicle on March 25, 2010; and

WHEREAS, after an appraisal was performed by representatives of the Interlocal Risk Financing Fund of North Carolina, which is the risk pool through which the city obtained collision insurance coverage for the damaged vehicle, city staff members were informed that the damaged vehicle was deemed to be a total loss; and

WHEREAS, in settlement of the city's claim for damages under its collision insurance coverage, and after accounting for the city's deductible of five hundred dollars (\$500.00), the risk pool has offered to pay to the city the sum of six thousand five hundred fifty-six and 28/100 dollars (\$6,556.28), on the condition that the city assign title to the vehicle to the North Carolina League of Municipalities so that the said vehicle can be sold for salvage; and

WHEREAS, the Asheboro City Council has concluded that the proposed settlement of the city's claim is reasonable.

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

Section 1. The city-owned 2003 Ford Crown Victoria (VIN 2FAHP71W33X175199), which has been appraised as a total loss as a consequence of a collision with another vehicle on March 25, 2010, is hereby declared to be surplus property.

Section 2. The Asheboro City Manager is hereby authorized to assign the title to this surplus vehicle to the North Carolina League of Municipalities for salvage in consideration of the payment to the City of six thousand five hundred fifty-six and 28/100 dollars (\$6,556.28) in order to settle the City's claim for damages under the automobile collision coverage provided through the Interlocal Risk Financing Fund of North Carolina.

Section 3. In accordance with Section 160A-267 of the North Carolina General Statutes, a summary of the contents of this resolution shall be published once in *The Courier-Tribune*, a newspaper having general circulation in the City of Asheboro, and the sale of this surplus vehicle shall not be consummated until ten (10) days have elapsed since the date of publication of the said notice.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on May 6, 2010.

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

ATTEST:

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

OLD BUSINESS:

5. Text Amendments to the Asheboro Zoning Ordinance (RZ-10-01) and Chapter 113 (Dealers in Sexually Explicit Material) of the Code of Asheboro:

- (a) **Text amendments to the Asheboro Zoning Ordinance.** An application filed by the City of Asheboro to amend Article 200, Article 300A, Article 400, Article 500, Article 600, and Article 1100 of the Asheboro Zoning Ordinance.

Mr. Neely summarized the procedural history for the above-referenced text amendments to the Asheboro Zoning Ordinance. At the Council's regular April meeting, a public hearing was held on the proposed text amendments, and this hearing was closed once all of the interested parties had a chance to be heard. After expressing some concerns about the manner in which the staff proposed to measure and enforce the ordinance's separation requirements, the Council voted to table the matter in order to give the council members an opportunity to evaluate the research that was presented and to look at the mapping information assembled by the staff in greater detail in order to consider the concerns about the impact of adhering to the staff's proposed separation requirements.

Mr. Neely summarized the staff's research pertaining to the separation distances. If adopted, these amendments to the zoning ordinance would be effective as of June 1, 2010.

Dr. Fountain reiterated his concerns about the separation requirements and moved to adopt the planning department staff's analysis of the consistency of the proposed zoning ordinance text amendments with the city's Land Development Plan and to follow the planning board's recommendation to adopt the zoning ordinance amendment proposed by the staff with the following exceptions:

1. Subsection A.6 of Section 325A of the staff's proposed text is deleted; and
2. Section 636.6 is rewritten to delete the staff proposed text and insert the phrase "Reserved for Future Use."

Mr. Baker seconded the motion. Council Members Baker, Bell, Burks, Carter, Fountain, Hunter, and Moffitt voted in favor of the motion and the following ordinance was adopted.

29 ORD 5-10

AN ORDINANCE AMENDING THE TEXT OF THE ASHEBORO ZONING ORDINANCE

WHEREAS, during a public hearing held on April 8, 2010, the Asheboro City Council received testimony from an experienced appraiser, the city's assistant chief of police, and planning department staff that reviewed various studies and anecdotal evidence of the impacts of sexually oriented businesses on neighborhoods where such businesses are located; and

WHEREAS, the Asheboro City Council has concluded that the studies referenced by the city staff members and expert witnesses are relevant to Asheboro and have identified adverse secondary impacts associated with sexually oriented businesses that pose potential threats to the health, safety, and welfare of the patrons of such businesses as well as, more generally, to the citizens of the City of Asheboro; and

WHEREAS, the City Council expressly finds that, in the absence of careful and constitutionally mindful regulation of sexually oriented businesses through the Asheboro Zoning Ordinance and the city's general police power, these businesses (sometimes referred to as "adult businesses") have negative secondary impacts in the form of decreased adjoining property values and increased incidents of crime, which may or may not be formally reported to law enforcement authorities due to the nature of some of the crimes as so called "victimless crimes" and due to the fact that a significant number of patrons of sexually oriented businesses may want to preserve their anonymity to the maximum degree possible; and

WHEREAS, the City Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve property values for businesses and residential properties alike; protect the character of surrounding neighborhoods; and deter the spread of urban blight; and

WHEREAS, the City Council has determined that locational and other traditional land use regulations under the Asheboro Zoning Ordinance in combination with a regulatory framework involving

the licensing of sexually oriented or adult businesses under the city's general police power provides the best option for the City Council in its efforts to balance the protection of the public health, safety, and general welfare with the constitutional rights afforded to individuals; and

WHEREAS, it is not the intent of this Ordinance to suppress any speech activities protected by the First Amendment, but to enact a content-neutral ordinance which addresses the negative secondary effects of sexually oriented businesses.

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

Section 1. The proposed amendments of the Asheboro Zoning Ordinance text are consistent with the city's adopted comprehensive plans and promote the public health, safety, and welfare through content neutral time, place, and manner regulation of sexually oriented businesses. Consequently, the Asheboro Zoning Ordinance is rewritten to reflect the text amendments that are hereby approved and attached hereto as Exhibit 1. The said Exhibit 1 is incorporated into this ordinance by reference as if copied fully herein.

Section 2. All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

Section 3. This ordinance shall be in full force and effect upon and after the 1st day of June, 2010.

This ordinance was adopted by the Asheboro City Council in open session during a regular meeting that was held on the 6th day of May, 2010.

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

ATTEST:

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

EXHIBIT 1

Provisions in Table Effective until June 1, 2010

Article 200, Table 200-2

	Buffer Group	B2	B3	TH	See Note
Adult Establishment (Includes Adult Eating Establishment, Cabaret, Lounge, Bar, Nightclub, Carwash, Massagist)	3	S		S	52
Business Primarily Dealing in Sexually Explicit Materials (Adult Bookstore and Motion Picture Theatre)	2	S	S	S	52
Massagist SEE Business Primarily Dealing in Sexual Explicit Materials					

Notes to Table 200.2

~~Note # 52 These uses shall provide a screening yard width equivalent to or greater than the respective required buffer width in that district. Planting materials (i.e. trees, shrubs, ground cover) shall be equivalent to or greater than the required screen plantings in that district. For example, a nightclub abutting a single family residential use or zoning shall be required to provide a Type D buffer width (30 feet) with Type D screen plantings.~~

Provisions in Table Effective on and after June 1, 2010

Article 200, Table 200-2

	Buffer Group	I1	I2	I3
Adult Establishment General	See Section 325A.E.1	P	P	P
Adult Establishment with Live Entertainment and On Premise Consumption of Alcoholic Beverages	See Article 600, Section 636.13 and Section 636.14	S	S	S

325A Adult Establishments General

A. Distance Requirements

1. No Adult Establishment General shall be located within 500 feet of any residentially zoned property. The distance shall be measured in a straight line from the zoning lot line of the proposed establishment to the nearest point of the residentially zoned lot line or property, whether such district or use is located within the City of Asheboro jurisdiction or not.

2. No Adult Establishment General shall be located within 500 feet of any church, synagogue, mosque, and/or any other place of worship. The distance shall be measured in a straight line from the zoning lot line of the proposed establishment to the nearest point of the lot line for the church, synagogue, mosque, and/or any other place of worship, whether such use is located within the City of Asheboro jurisdiction or not.

3. No Adult Establishment General shall be located within 500 feet of any school (public or private), park, or child daycare use. The distance shall be measured in a straight line from the zoning lot line of the proposed establishment to the nearest point of the lot line for the school (public or private), park, or child daycare use, whether such use is located within the City of Asheboro jurisdiction or not.

4. No Adult Establishment General shall be located within 1,000 feet of any other such use or any Adult Establishment with Live Entertainment and On Premise Consumption of Alcoholic Beverages. The distance shall be measured in a straight line from the zoning lot line of the proposed establishment to the nearest point of the lot line for the existing Adult Establishment General or an Adult Establishment with Live Entertainment and On Premise Consumption of Alcoholic Beverages.

5. No Adult Establishment General shall be located on the same zoning lot as any other such use or Adult Establishment with Live Entertainment and On Premise Consumption of Alcoholic Beverages.

B. Signs

1. Ground Signs: All lots (both corner and interior) on which an Adult Establishment General is located upon shall be limited to one (1) Free-Standing (Monument) sign not to exceed six (6) feet in height. In no case shall the size of the sign exceed seventy-five (75) square feet.

2. Wall Signs: A one square foot sign may be placed on the door to state hours of operation and admittance to adults only. Otherwise, no wall signs shall be permitted on buildings within which an adult establishment is located.

3. No nude images or depictions of obscenity (defined by North Carolina statutory and case law) shall be displayed in any area including window areas, where they can be viewed from any sidewalk or street.

4. No sign shall be colored or treated in high intensity colors (for example, pink, blue, green, purple, yellow, red, orange, etc.) florescent, or metallic colors. Earth color tones shall be considered acceptable.

5. The exterior signage permitted for an Adult Establishment General is strictly limited to the ground sign and wall sign described above.

C. Building Design

1. Building design requirements apply to principal and accessory structures. In addition to the provisions of this section, all other design and performance standards applicable to the zoning district in which the use is located shall apply.
2. All windows, doors, openings, entrances, etc., shall be located, covered, screened, or otherwise treated so the views into the interior of the establishment are not possible from any street, public right-of-way, or public vehicular area. Windows shall not be covered with any of the following:
 - i. Unfinished wood, concrete block (except split-faced block), vinyl siding, metal panels, metal painted panels and any metal panel with "rib" or "u" configuration.
 - ii. Laminated, composite or press board wood type materials (composed of layers of firmly united wood materials - made by bonding or impregnating superposed layers with resin and compressed under heat).
 - iii. Metal panels with galvanized, aluminum, or aluminum zinc finishes (except metal laminated architectural materials (such as Alucobond®) are a permitted material).
3. Fences: No fence, except where required for buffer or screening, shall be permitted any closer to the public right-of-way than the front of the principal structure.

D. Change of Use

1. Notwithstanding any other provision of this ordinance, a land use application for any adult establishment general shall constitute a change of use. This provision shall apply to a single use and/or structure and multi-uses and/or structures.

E. Landscaping

1. Landscaping shall be designated as a Type 3 on the buffer and screen matrix (Article 300A, Section 304A.3) with the following modification: The width of the landscaping shall be consistent with a buffer width for the respective abutting use or zoning, and planting materials (i.e. trees, shrubs, ground cover) shall be consistent with the requirements for the required screening plantings for the respective abutting use or zoning.

F. Lighting

1. No colored exterior lighting shall be permitted.

Provisions in Table Effective until June 1, 2010

Table 400-1 Parking Requirements

USE	# of Spaces
Adult Uses	3.0 per 500 sq. ft.
Massagists	3.0 per 500 sq ft GFA

Provisions in Table Effective on and after June 1, 2010

Table 400-1 Parking Requirements

USE	# of Spaces
Adult Establishment General	As determined by underlying equivalent non-adult use; if no equivalent exists, 5.0 per 1,000 sq. feet
Adult Establishment with Live Entertainment and On Premise Consumption of Alcoholic Beverages	3.0 per 5 occupants as established by the current NC Building Code as amended for occupancy load.

~~636 Adult Establishments~~

~~Business dealing in any activity which exhibits specified sexual activities or specific anatomical areas. The display of specific of sexual activities or specific anatomical areas are not the primary function of the establishment. Such as, but not limited to, Adult Cabaret, Adult Lounge, Adult Bar, Adult Nightclub, Adult Carwash.~~

~~OR~~

~~Business Dealing Primarily in Sexually Explicit Materials or Activities~~

~~Business dealing primarily in sexually explicit materials or activities including, but not limited to, Adult Book Stores and Adult Motion Picture Theaters, may be permitted in B2, General Business Districts and B3 Central Business Districts subject to the following requirements~~

~~OR~~

~~Massagist as permitted under the Asheboro City Code~~

~~The business, trade, or profession of massagist and the carrying on of the business, trade or profession commonly known as massage parlors, health salons, physical culture studios or similar establishments wherein massage or physical manipulation is carried on or practiced may be permitted in B2, General Business Districts and B3, Central Business Districts subject to the following requirements~~

~~636.1 Minimum lot area as per Table 200-1.~~

~~636.2 No use permitted under Section 636 shall be located within 1000 feet of another such use, as measured from the property line.~~

~~636.3 No use permitted under Section 636 shall be located with 1000 feet of residentially zoned property, as measured from the property line.~~

~~636.4 No use permitted under Section 636 shall be located within 1000 feet of a church or synagogue, as measured from the property line.~~

~~636.5 No use permitted under Section 636 shall be located within 1000 feet of any school (public or private) as measured from the property line.~~

~~636.6 Plans shall be submitted, :-~~

~~(1) Which meet the requirements of Section 1005.~~

~~(2) Plan shall include the following information:~~

~~A. Land Owner~~

~~B. Lessee~~

~~C. Hours of Operation~~

~~636.7 Signs shall be limited to one ground sign and not more than three (3) wall signs. No portable signs shall be permitted~~

~~636.8 Activities taking place on the premises shall be confined to the area inside the structure and not be visible from the street right-of-way.~~

~~636.9 Off street parking (Section 400) shall apply as required by the type of business. (Only applies to uses in B2 district).~~

636 Adult Establishment with Live Entertainment and On Premise Consumption of Alcoholic Beverages

LOCATION STANDARDS

636.1 No use permitted under this section shall be located within 500 feet of any residentially zoned property. The distance shall be measured in a straight line from the zoning lot line of the proposed establishment to the nearest point of the residentially zoned lot line or property, whether such district or use is located within the City of Asheboro jurisdiction or not.

636.2 No use permitted under this section shall be located within 500 feet of any church, synagogue, mosque, and/or any other place of worship. The distance shall be measured in a straight line from the zoning lot line of the proposed establishment to the nearest point of the lot line for the church, synagogue, mosque, and/or any other place of worship, whether such use is located within the City of Asheboro jurisdiction or not.