

**REGULAR MEETING
ASHEBORO CITY COUNCIL
CITY COUNCIL CHAMBER, MUNICIPAL BUILDING
THURSDAY, SEPTEMBER 6, 2018
7:00 p.m.**

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

David H. Smith) – Mayor Presiding

Clark R. Bell)
Edward J. Burks)
Linda H. Carter)
Walker B. Moffitt) – Council Members Present
Jane H. Redding)
Katie L. Snuggs)
Charles A. Swiers)

John N. Ogburn, III, City Manager
Holly H. Doerr, CMC, NCCMC, NCCP, City Clerk/Paralegal
Michael L. Leonard, PE, City Engineer
Mark T. Lineberry, Assistant Chief of Police
Trevor L. Nuttall, Community Development Director
Deborah P. Reaves, Finance Director
Jeffrey C. Sugg, City Attorney
D. Richard Thompson, Jr., Police Captain
Jody P. Williams, Chief of Police

1. Call to order.

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

2. Moment of silent prayer and pledge of allegiance.

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

3. Recognition of Retired Police Officer Charles Hamilton for his dedicated service to the City of Asheboro and its citizens.

Chief Williams presented retired Police Officer Charles Hamilton with his service side arm that he carried at the time of his retirement. A plaque that included his badge was given to Officer Hamilton at an earlier retirement luncheon.

Additionally, on behalf of Mayor Smith and the City Council, Mr. Ogburn expressed the city's appreciation for Mr. Hamilton's dedicated service and presented Police Officer Hamilton with a retirement plaque from the municipal corporation.

4. Presentation of a certificate of appreciation to Mr. James Armstrong for assisting an Asheboro Police Department Officer.

On behalf of the Asheboro Police Department, Chief Williams presented Mr. James Armstrong with a certificate of appreciation for assisting Asheboro Police Department Officer Traci Fisher. On the evening of June 17, 2018, Mr. Armstrong assisted Officer Traci Fisher with securing an individual who became combative. Chief Williams thanked Mr. Armstrong for his assistance and for being an outstanding citizen of the City of Asheboro.

5. Update on Zoo City Sportsplex.

YMCA Executive Director Patrick O'Hara gave a brief overview of the fundraising efforts for the Zoo City Sportsplex. During his presentation, Mr. O'Hara reported to the Mayor and Council Members that a significant amount of funding has been received from individuals and organizations for the construction of the Zoo City Sportsplex. The proposed facility will include, among other things, multi-purpose fields, a building for indoor soccer, disc golf, and volleyball courts.

A ground breaking ceremony will be held on October 12, 2018, at 3:00 p.m.

6. Update on the 2019 Sunset Signature Series.

Friends of the Library President Dr. Frances Jones highlighted the planned events for the 2019 Sunset Signature Series. The events, which are free to the public, will take place in the Sunset Theatre.

7. Update on an upcoming Sunset Theatre play.

Mr. Ross Holt invited the Mayor and Council Members to the upcoming Sunset Theatre play *Company K: From Asheboro to the Fields of France*. The play features performances enacting the life of soldiers and their families leading up to Company K's victorious battle during World War I. The event is free and will be held on September 29, 2018, at 8:00 p.m. in the Sunset Theatre.

8. Case No. RZ-18-11: A public hearing on an application to rezone property located at 624 Brewer Street and 621 Franks Street (Randolph County Parcel Identification Number 7761146503) from RA6 (High-Density Residential) and CU-B2 (Conditional Use General Commercial) to O&I (Office & Institutional).

Mayor Smith opened the floor for the resumption of the previously opened public hearing that was continued from the council's regular meeting on August 9, 2018. The requested legislative action that triggered this public hearing was the requested rezoning of approximately 3.32 acres of land from RA6 (High-Density Residential) and CU-B2 (Conditional Use General Commercial) to O&I (Office and Institutional).

The zoning map amendment application was filed by the Eastside Improvement Association, Inc. (the "Applicant"). The Applicant owns the land for which O&I zoning is requested. This land (the "Zoning Lot") is more specifically identified by Randolph County Parcel Identification Number 7761256503.

In addition to certifying to the Council that the statutorily prescribed notice of the public hearing had been provided, Mr. Nuttall utilized a visual presentation to summarize the planning staff's analysis of the rezoning application. The staff report noted the following:

1. The Zoning Lot is located inside the city limits.
2. Brewer and Franks Streets are both local streets. A sidewalk extends along Brewer Street in front of the property.
3. In 1982, a Special Use Permit was issued for a large child care facility (SUP-82-15) in the structure located at 624 Brewer Street. The daycare has ceased operations, and it is possible that the permit issued in 1982 should be deemed to be abandoned.
4. In 2001, the portion of the property with the structure (gym) at 621 Franks Street was rezoned from RA6 to CU-B2 (Conditional Use General Commercial) and a Conditional Use Permit (CUP-02-23) for a membership organization was issued.
5. In June 2018, the Applicant requested a Special Use Permit to change non-conforming uses in a residential district (from a large child care center to professional services (counseling)). The Council denied this request. The Ordinance does allow the applicant to file a new request as long as it is not the same as the request that was denied.
6. Available records show that the property has been used for non-residential purposes since at least the 1950's.
7. The zoning ordinance describes the O&I Commercial District as "intended to produce moderate intensity office and institutional development to serve adjacent residential areas and to provide a transition from residential to commercial uses. Land designated O&I shall normally be located with access to a minor thoroughfare or higher classification street with access to local residential streets discouraged."
8. The request would allow any use permitted by right in the O&I zoning district, including the membership organization within the gym structure at 621 Franks Street.

Proposed Land Use Map Designation: Neighborhood Residential

Small Area Plan: Central

Growth Strategy Map Designation: Primary Growth

The planning board recommended approval of the request. This recommendation was based on the planning board's concurrence with the following analysis from the community development division staff that evaluated the consistency of the requested rezoning with the adopted comprehensive plans as well as the reasonableness of the request and whether the requested rezoning is in the public interest:

After considering the property's land use history and current zoning, including the potential for the former special use permit authorizing a daycare to no longer be

valid due to inactivity, staff believes the requested O&I district to be an appropriate district. The current RA6 district on a portion of the property is intended generally to permit high-density residential uses which does not match how this part of the property has been used historically and prevents most non-residential uses from occupying 624 Brewer Street. A new child care center would not be permitted by right or special use permit under the current zoning ordinance's RA6 standards. A cultural facility, place of worship, and schools are permitted in the current zoning district but require the issuance of a special use permit. In addition, the sidewalk located along Brewer Street along the entire length of the property is a transportation element that is consistent with the O&I district.

Approval of the request would also remove the conditional use general commercial district from the property. The general commercial zoning district, from a land use perspective, is a more commercially intensive zoning district than the office and institutional zoning district. The requested O&I district would continue to permit the gymnasium which has been considered to be a membership organization.

Considering these factors, staff believes the requested O&I district is generally consistent with the Land Development Plan and therefore reasonable and in the public interest.

After the planning staff's analysis was presented, Dr. Dannellia Gladden Green, Mr. Bob Kollm, Mr. DeNeal McNair, Mr. Gerald Gordon, and Ms. Michele Hammond presented comments in support of the requested rezoning.

Mr. Lennitt Bligen, Mr. James Armstrong, Ms. Linda Bivens, and Dr. Kim McMasters presented comments and concerns in opposition to the requested rezoning.

After considering the staff analysis and the statements offered by all of the speakers, Mayor Smith transitioned to the deliberative phase of the hearing.

During the hearing, references had been made to the number of Land Development Plan ("LDP") goals and policies that supported the application (a total of five) versus the number of goals and policies that did not support the application (a total of two).

The LDP goals/policies that **supported** the application are listed as follows:

- (A) Checklist Item 5: The proposed rezoning is compliant with the objectives of the Growth Strategy Map.
- (B) Checklist Item 12: The property is located outside of watershed.
- (C) Checklist Item 13: The property is located outside of a Special Hazard Flood Area.
- (D) Checklist Item 14: The rezoning area is not located on steep slopes of greater than 20%.
- (E) Checklist Item 2.1.2: The city will investigate the creation of an adaptive reuse program to aid infill development. The program will ensure that zoning and building codes are flexible to allow safe, affordable, and compatible reuse of existing buildings and guide business owners through the redevelopment process.

The LDP goals/policies that **did not support** the application are listed as follows:

- (A) Checklist Item 1: Land Development Plan map compliance does not exist because the neighborhood residential designation for the Zoning Lot is not consistent with the requested O&I zoning district.
- (B) Checklist Item 3: The Zoning Lot does not fit the description provided for an O&I district in the zoning ordinance, specifically Article 200, Section 210, Schedule of Statements of Intent.

During their deliberations, Council Members articulated the concern that the range of land uses permitted in an O&I zoning district was too broad, especially in the absence of the protections offered by a conditional use district, for the Zoning Lot with its location in the middle of this residential area to be placed in such a district. Furthermore, the LDP analysis involves more than simply comparing the number of goals and policies that are listed as supportive or unsupportive of an application. Prioritization has to be applied to the different LDP goals and policies.

The Council Members disagreed with the planning staff and planning board analysis of the requested rezonings. LDP map compliance is given high priority, and the zoning ordinance description of the requested district should fit with the Zoning Lot. In the view of the Council Members, the application is not consistent with the high priority goals and policies of the LDP.

Council Member Carter moved to (a) adopt the above-stated consistency statement analysis reflecting that the requested map amendment is inconsistent with the comprehensive plan and, consequently, to (b) reject the requested zoning map amendment. Council Member Snuggs seconded the motion. Council Members Bell, Burks, Carter, Moffitt, Redding, Snuggs, and Swiers voted aye. There were no dissenting votes. The motion to deny the map amendment application was adopted unanimously.

9. Consent agenda.

Upon motion by Ms. Carter and seconded by Ms. Snuggs, the Council Members voted unanimously to approve/adopt the following consent agenda items.

(a) The meeting minutes for the city council's regular meeting on August 9, 2018.

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

(b) The meeting minutes for the city council's special meeting on August 23, 2018.

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

(c) Acknowledgement of the receipt from the Asheboro ABC Board of its meeting minutes for July 2, 2018.

The minutes of the meeting held by the Asheboro ABC Board on July 2, 2018 have been received by the city clerk, distributed to the mayor and members of the city council for review, and are on file and available in the city clerk's office.

(d) The final decision document for land use case no. CUP-18-08.

**Case No. CUP-18-08
Final Decision Document
City Council of the City of Asheboro, North Carolina**

**IN THE MATTER OF THE APPLICATION BY COVANTA ENVIRONMENTAL SOLUTIONS, LLC FOR A
CONDITIONAL USE PERMIT AUTHORIZING A TRANSFER STATION, INCLUDING ANCILLARY
MANUFACTURING, PROCESSING,
AND ASSEMBLY ACTIVITIES**

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

THIS LAND USE CASE came before the Asheboro City Council (the "Council") for a properly advertised quasi-judicial hearing during regular Council meetings held on July 12, 2018, and August 9, 2018. The Council received sworn testimony and considered all competent evidence and argument. On the basis of competent, material, and substantial evidence, the Council does hereby enter the following:

FINDINGS OF FACT

1. By and through an authorized agent, Covanta Environmental Solutions, LLC (the "Applicant") properly submitted an application for a Conditional Use Permit ("CUP") authorizing a land use listed in Table 200-2 of the Asheboro Zoning Ordinance (the "Ordinance") as a transfer station along with ancillary manufacturing, processing, and assembly activities.

2. Article 1100 of the Ordinance defines a transfer station as the "use of land where nonhazardous or nontoxic waste such as residential, commercial or industrial is temporarily deposited for the purpose of a break in bulk and further shipment to a landfill or other appropriate destination."

3. The Applicant's requested additional land use referred to as "ancillary manufacturing, processing, and assembly activities" is listed in Table 200-2 of the Ordinance as manufacturing, processing, and assembly – heavy. Article 1100 of the Ordinance defines the manufacturing, processing, and assembly – heavy land use as follows:

The mechanical or chemical transformation of materials or substances into new products. The land uses engaged in these activities are usually described as plants, factories, or mills and characteristically use power-driven machines and materials handling equipment. Establishments engaged in assembling component parts of manufactured products are also considered under this definition, if the new product is neither a fixed structure nor other fixed improvement. Also included is the blending of materials such as lubricating oils, plastics, resins or liquors.

4. The eight parcels of land for which this CUP is sought (these parcels will be hereafter collectively referred to as the "Zoning Lot") are owned by the Applicant, P & R Development, LLC, and Anthony A. Purguson and Gregory C. Russell. All of the land owners support the CUP application.

5. The Zoning Lot, which is approximately 5.19 acres in size, is located at the following street addresses: 2445 and 2455 North Fayetteville Street as well as 200, 204, and 208 Pineview Street. The parcels that form the Zoning Lot are more specifically identified by the following Randolph County Parcel Identification Numbers: 7753978243, 7763070038, 7753978029, 7753977009, 7753976059, 7753975069, 7753974069, and 7753973059.

6. In a legislative act, the Council placed the Zoning Lot in a CU-I2 (Conditional Use General Industrial) zoning district before deliberating about the requested CUP.

7. Section 102 of the AZO describes a Conditional Use District as follows:

Each Conditional Use District corresponds to a related district in this Ordinance. Where certain types of zoning districts would be inappropriate under certain conditions, and the rezoning applicant desires rezoning to such a district, the CU District is a means by which special conditions can be imposed in the furtherance of the purpose of this Ordinance.

8. Section 102 of the AZO also provides:

Within a CU District, only those uses specifically permitted in the zoning district to which the CU District corresponds (i.e., R15 and CUR15) shall be permitted, and all other requirements of the corresponding district shall be met. It is the intent of this ordinance that all requirements within a CU District be equal to or more stringent than those in a corresponding non-CU District.

In addition, within a CU District no use shall be submitted except as pursuant to a Conditional Use Permit authorized by the City Council, which shall specify the use or uses authorized. Such permit may further specify the location on the property of the proposed use or uses, the number of dwelling units or Floor Area Ratio, the location and extent of supporting facilities including but not limited to parking lots, driveways and access streets, the location and extent of buffer areas and other special purpose areas, the timing of development, the location and extent of rights-of-way and other areas to be dedicated for public use, and other such matters as the applicant may propose as conditions upon the request. In granting a Conditional Use Permit, the Council may impose such additional reasonable and appropriate safeguards upon such permit as it may deem necessary in order that the purpose and intent of this Ordinance are served, public welfare secured and substantial justice done.

The authorization of a Conditional Use Permit in any CU District for any use which is permitted only as a Special Use in the zoning district which corresponds to the CU District shall preclude any requirement for obtaining a Special Use Permit for any such use from the City Council.

9. Section 1013.2 of the AZO establishes the following standards for the issuance by the Council of a Conditional Use Permit:

In considering an application for a Conditional Use Permit, the City Council shall give due regard that the purpose and intent of this ordinance shall be served, public safety and welfare secured and substantial justice done. If the City Council should find, after a public hearing, that the proposed Conditional Use Permit should not be granted, such proposed permit shall be denied. Specifically the following general standards shall be met:

1. That the 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. That the use meets all required conditions and specifications.
3. That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity, and,
4. That 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.

10. The proposed transfer station land use is permitted by Special Use Permit in an I2 zoning district, and the Zoning Lot is in a CU-I2 zoning district.

11. The proposed manufacturing, processing, and assembly – heavy land use is permitted by right in an I2 zoning district.

12. Section 643 of the Ordinance addresses the requirements for the issuance of a Special Use Permit authorizing a transfer station and specifically provides as follows:

Transfer Stations may be permitted in I1, I2, and I3 districts subject to the following requirements:

643.1 A site plan meeting the requirements of Section 1005 shall be submitted as part of the application for this permit. The plans shall also incorporate such additional information as required to indicate compliance with other requirements of this section.

643.2 The use shall be located on a minor thoroughfare or higher classification street or within an industrial development with direct access to such street (direct access shall mean without having to travel residential streets).

643.3 Actual transfer activities shall be conducted within an enclosed structure.

643.4 All access and maneuvering areas shall have a paved surface meeting the requirements of Article 400.

643.5 Stormwater control meeting all local, State, and Federal requirements shall be submitted as part of the required plans.

643.6 If the property adjoins residential districts, in addition to the required buffering and screening, a setback of 100 feet for all activities shall be observed.

643.7 At the close of each business day, the facility shall be left in a clean and sanitary manner. Written plans indicating compliance with this requirement shall be submitted as part of the application.

643.8 Evidence of compliance with all applicable requirements of the Zoning Ordinance shall be submitted as part of the application.

13. The surrounding land uses are as follows:

North: Industrial

East: Commercial/Industrial

South: Legal Nonconforming Junkyard/
Single-Family Residential

West: Single-Family Residential

14. With regard to the city's comprehensive development plans, the Growth Strategy Map identifies the area in which the Zoning Lot is located as a primary growth area. The proposed land development plan map designates the area as employment center, commercial, and neighborhood residential.

15. The Applicant's site plan is compliant with the Ordinance.

16. The Zoning Lot is located inside the city limits.

17. North Fayetteville Street is a state-maintained major thoroughfare at this location. Pineview Street, which is a state-maintained minor thoroughfare at this location, connects North Fayetteville Street with I-73/I-74. This section of Pineview Street is proposed to be widened from two lanes in each direction to three lanes (two lanes in each direction plus a center turn lane) with construction projected to begin during the winter of 2020 (North Carolina Department of Transportation Project U-5711).

18. The Ordinance's description of the underlying I2 General Industrial district is "to produce areas for intensive manufacturing, warehousing, processing and assembly uses, controlled by performance standards to limit the effect of such uses on adjacent districts."

19. The Zoning Lot is located within an Opportunity Zone. These zones, comprised of lower income census tracts, provide certain federal tax incentives for qualifying economic investments.

20. A transfer station is located on the adjoining property at 2501, 2503, and 2505 North Fayetteville Street. Although a vehicular connection to the existing transfer station is proposed, the adjoining property is not part of this application.

21. The application includes the addition of a shredding/process building that is approximately 24,000 square feet (120' X 200'), parking areas, a guardhouse, open storage, and a future office.

22. One entrance is proposed from Pineview Street, and one entrance is proposed from North Fayetteville Street.

23. Mr. Barron Thompson, Esq. and Mr. Greg Russell were placed under oath and offered testimony in support of the application. On behalf of the Applicant, and in their capacities as authorized representatives of the Applicant, these representatives consented to the following conditions that were recommended by the city planning staff for attachment to the requested Conditional Use Permit in an effort to ensure the compatibility of the proposed transfer station and the ancillary uses with the surrounding land uses and to ensure future compliance with the Ordinance:

- (A) Prior to the issuance of a Zoning Compliance Permit for the proposed land uses, the Applicant shall submit documentation detailing the following approvals:
 - (1) The required driveway permit(s) from the North Carolina Department of Transportation.
 - (2) The required erosion control approval(s) from the North Carolina Department of Environmental Quality.

- (B) Prior to the issuance of a Zoning Compliance Permit, the Applicant shall submit a revised site plan with additional detail concerning the following items:
 - (1) Outdoor lighting consistent with the Ordinance's Section 317A (Performance Standards in Industrial Zoning Districts).
 - (2) The number of employees on the largest shift and the number of facility vehicles in order to determine compliance with the minimum number of parking spaces required by the Ordinance's Table 400-1.
 - (3) Screening of open storage consistent with the requirements of the Ordinance's Section 305A.
 - (4) Front yard landscaping consistent with the requirements found in Section 308A of the Ordinance.
 - (5) Buffer "D" adjacent to the Michael T. Davis property (DB 1578, PG 551).

The revised site plan shall be submitted to staff members of the Asheboro Community Development Division for staff review and, if compliant with the Ordinance, inclusion in the file without further review by the city council.

- (C) The following items shall be approved by the Asheboro Fire Department prior to the issuance of a Zoning Compliance Permit:
 - (1) Additional fire hydrant(s) within the Zoning Lot as determined necessary by the fire chief.
 - (2) The appropriate fire officials must be satisfied that the access gate(s) meet the requirements of the North Carolina Fire Prevention Code.
 - (3) A Spill Prevention, Control, and Countermeasures Plan must receive fire department approval.

- (D) Building materials on facade(s) facing North Fayetteville Street may be any material permitted by the Ordinance's Article 300A, Section 316A.C.

- (E) The Applicant shall be responsible for ensuring compliance with all state and federal permitting requirements.

- (F) A setback of 125 feet rather than 100 feet shall be maintained between the residential property to the west of the Zoning Lot and the activities on the Zoning Lot by means of utilizing undeveloped space on the former residential lot at 208 Pineview Street. [This additional condition was offered by the Applicant's representative, Greg Russell, during his testimony.]

- (G) Prior to the issuance of a Zoning Compliance Permit for the proposed land use, the owner(s) of the Zoning Lot shall properly execute and deliver to the Zoning Administrator for recordation in the office of the Randolph County Register of Deeds a Memorandum of Land Use Restrictions prepared by the City Attorney for the purpose of placing notice of the conditions attached to the Conditional Use Permit in the chain of title for the Zoning Lot.

24. No testimony was offered in opposition to the application or the testimony offered by the witnesses, including the testimony by an owner of one of the parcels in the Zoning Lot that the proposed land uses will not be damaging to neighborhood property values.

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

CONCLUSIONS OF LAW

1. When an applicant has produced competent, material, and substantial evidence tending to establish the existence of the facts and conditions that the Ordinance requires for the issuance of a CUP, prima facie the applicant is entitled to the permit. A denial of the permit has to be based upon findings contra that are supported by competent, substantial, and material evidence appearing in the record.
2. In this case, the Applicant properly submitted an application for a CUP authorizing a transfer station land use and a manufacturing, processing, and assembly – heavy land use on the Zoning Lot that is in a CU-12 zoning district.
3. In light of the evidence and the acceptance of the conditions proposed for attachment to the CUP, the proposed land uses are compliant with the applicable Ordinance requirements.
4. On the basis of substantial evidence in the record, the Council has concluded that the proposed land uses meet the four general standards for granting the requested CUP. The proposed land uses will not materially endanger the public health or safety, meet all required conditions and specifications of the Ordinance, will not substantially injure the value of adjoining or abutting property, and will be in harmony with the area in which they are to be located and are in general conformity with Asheboro's plan of development.

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

ORDER

Subject to the following conditions, a Conditional Use Permit authorizing a transfer station land use and a manufacturing, processing, and assembly – heavy land use on the Zoning Lot is hereby approved and issued to the Applicant and the Applicant's heirs, successors, and assigns. The continuing validity of this Conditional Use Permit is hereby made expressly contingent upon the Applicant and the Applicant's heirs, successors, and assigns complying at all times with the applicable provisions of the Asheboro Zoning Ordinance, the approved site plan, and the following supplementary conditions:

- (A) Prior to the issuance of a Zoning Compliance Permit for the proposed land uses, the Applicant shall submit documentation detailing the following approvals:
 - (1) The required driveway permit(s) from the North Carolina Department of Transportation.
 - (2) The required erosion control approval(s) from the North Carolina Department of Environmental Quality.
- (B) Prior to the issuance of a Zoning Compliance Permit, the Applicant shall submit a revised site plan with additional detail concerning the following items:
 - (1) Outdoor lighting consistent with the Ordinance's Section 317A (Performance Standards in Industrial Zoning Districts).
 - (2) The number of employees on the largest shift and the number of facility vehicles in order to determine compliance with the minimum number of parking spaces required by the Ordinance's Table 400-1.
 - (3) Screening of open storage consistent with the requirements of the Ordinance's Section 305A.
 - (4) Front yard landscaping consistent with the requirements found in Section 308A of the Ordinance.
 - (5) Buffer "D" adjacent to the Michael T. Davis property (DB 1578, PG 551).

The revised site plan shall be submitted to staff members of the Asheboro Community Development Division for staff review and, if compliant with the Ordinance, inclusion in the file without further review by the city council.
- (C) The following items shall be approved by the Asheboro Fire Department prior to the issuance of a Zoning Compliance Permit:
 - (1) Additional fire hydrant(s) within the Zoning Lot as determined necessary by the fire chief.
 - (2) The appropriate fire officials must be satisfied that the access gate(s) meet the requirements of the North Carolina Fire Prevention Code.
 - (3) A Spill Prevention, Control, and Countermeasures Plan must receive fire department approval.
- (D) Building materials on facade(s) facing North Fayetteville Street may be any material permitted by the Ordinance's Article 300A, Section 316A.C.

Within a CU District, only those uses specifically permitted in the zoning district to which the CU District corresponds (i.e., R15 and CUR15) shall be permitted, and all other requirements of the corresponding district shall be met. It is the intent of this ordinance that all requirements within a CU District be equal to or more stringent than those in a corresponding non-CU District.

In addition, within a CU District no use shall be submitted except as pursuant to a Conditional Use Permit authorized by the City Council, which shall specify the use or uses authorized. Such permit may further specify the location on the property of the proposed use or uses, the number of dwelling units or Floor Area Ratio, the location and extent of supporting facilities including but not limited to parking lots, driveways and access streets, the location and extent of buffer areas and other special purpose areas, the timing of development, the location and extent of rights-of-way and other areas to be dedicated for public use, and other such matters as the applicant may propose as conditions upon the request. In granting a Conditional Use Permit, the Council may impose such additional reasonable and appropriate safeguards upon such permit as it may deem necessary in order that the purpose and intent of this Ordinance are served, public welfare secured and substantial justice done.

The authorization of a Conditional Use Permit in any CU District for any use which is permitted only as a Special Use in the zoning district which corresponds to the CU District shall preclude any requirement for obtaining a Special Use Permit for any such use from the City Council.

6. Section 1013.2 of the Ordinance establishes the following standards for the issuance by the Council of a CUP:

In considering an application for a Conditional Use Permit, the City Council shall give due regard that the purpose and intent of this ordinance shall be served, public safety and welfare secured and substantial justice done. If the City Council should find, after a public hearing, that the proposed Conditional Use Permit should not be granted, such proposed permit shall be denied. Specifically the following general standards shall be met:

1. *That the 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. *That the use meets all required conditions and specifications.*
3. *That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity, and,*
4. *That 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.*

7. Section 210 of the Ordinance contains a statement of intent for the RA6 residential zoning district, and this statement of intent provides as follows:

The RA6 Residential District is intended to produce a high intensity of residential uses in close proximity to major nodes of non-residential development, characterized primarily by group housing, plus the necessary governmental and other support facilities to service that level of development. Land designated RA6 shall normally be located with access to a minor thoroughfare or higher classification street with access to local residential streets discouraged.

8. A PUD is permitted by special use permit in an RA6 zoning district.

9. Section 630, Subsection A of the Ordinance lists the following specific requirements for the issuance of a special use permit, which will be a CUP in this case, allowing a PUD:

1. *Residential Planned Unit Developments may be permitted in any R40, R15, R10, R7.5, RA6 or OA6 zoning district as long as the proposed development contains a minimum of 2 acres. Those uses ordinarily permitted by right, by SUP, or as an accessory within the district (where) the development is to be located may be included in the development.*
2. *Review of an application for a PUD SUP shall occur simultaneously with a review of plats submitted in compliance with the Asheboro Subdivision Ordinance. If the PUD requires review as a "major" subdivision the Sketch Design Plat shall be properly submitted, reviewed and recommended by*

the Planning Board for the City Council's consideration as the PUD SUP. The Sketch Design Plat and the site plan required for the SUP may be combined on one plat so long as the requirements for each are met. If the PUD requires a minor subdivision the required subdivision plat shall be properly submitted for approval. Approval shall be subject to any conditions of the PUD SUP and granted only after approval of the SUP by the City Council.

3. *Residential PUDs may have direct access to City streets or State roads which are not major or minor thoroughfares, provided such access will not create safety hazards due to design or congestion.*
4. *Streets within a PUD may be public or private according to the regulations of the Asheboro Subdivision Ordinance.*
5. *The yard and height regulations set forth in Table 200-1 may be modified for a PUD, provided that, for such development as a whole, excluding public street right-of-ways or the area dedicated to private streets but including individual lots, common areas, parks and other permanent open spaces, there shall not be less than the required area per dwelling unit for the district in which such development is located.*
6. *Utilities shall be planned and installed according to the Asheboro Subdivision Ordinance.*
7. *Provisions and plans for garbage and waste collection shall be included with the application.*
8. *Buffers and/or screening shall be installed and maintained based on the types of individual uses contained within the development as per Article 304A.*
9. *Signs will be regulated as per Article 500.*
10. *Off street parking shall be provided as per Article 400.*
11. *General landscaping shall be installed and maintained. Plans indicating all required and non-required landscaping shall be submitted as part of the application.*

10. The land uses surrounding the Zoning Lot are as follows:

North: Medium-Density Residential **East:** Medium-Density Residential

South: Undeveloped Residential **West:** Medium-Density Residential

11. With regard to the city's comprehensive development plans, the growth strategy map identifies the area in which the Zoning Lot is located as a primary growth area, and the proposed land development plan map designates the area as neighborhood residential.

12. The Zoning Lot's existing land use is classified as undeveloped.

13. The Zoning Lot is located inside the city's corporate limits.

14. East Allred Street is a state-maintained minor thoroughfare.

15. The underlying RA6 zoning district allows single, two-family, and multi-family dwellings.

16. The western portion of the Zoning Lot (approximately 1.6 acres of land) is located within a flood hazard area.

17. The Zoning Lot was previously zoned CU-RA6 with a permit issued for 11 residential dwelling units. This permit expired, and the Zoning Lot was rezoned back to R10 in 2015.

18. Portions of the Zoning Lot are within a flood area, including a part of the proposed turnaround for emergency vehicles. Although the dwelling units appear to be outside of the flood hazard area, Units 8 and 9 are immediately adjacent to the flood area. Confirmation that dwellings and other development activity requiring a flood permit are either completely outside of the flood area or meet flood ordinance requirements (including any required flood development permit(s)) will be needed prior to the issuance of a Zoning Compliance Permit(s).

19. The Applicant's site plan indicates that the units will have a minimum of 1,200 square feet. There are three residential structures. Two of the structures contain four dwelling units each. The third

structure contains two dwelling units. The proposed design includes single-story units with a one-car garage provided for each of the units.

20. The North Carolina Building Code requires a two-hour rated firewall for the structures with two dwellings. The structures with four dwellings require a one-hour rated firewall plus a sprinkler system.

21. A recreational area is proposed for the west side of the Zoning Lot.

22. The Applicant proposes to use a combination of planted buffering/landscaping, existing vegetation, and an evergreen screen between the proposed public street and the adjoining residential use to the east.

23. Mr. Barron Thompson, Esq. was placed under oath and provided testimony on behalf of the Applicant. As part of his testimony, Mr. Thompson expressed agreement with the following conditions that were recommended by the city's planning staff for attachment to the requested Conditional Use Permit in order to ensure long-term compliance of the proposed development with the Ordinance:

- (A) The site plan shows preservation of the existing vegetation, outside of areas of necessary site disturbance, along the western and northern portions of the Zoning Lot. If the vegetation is not preserved in this area, a Type A Buffer or Screen shall be installed by the developer.
- (B) The site plan shows a combination of preserved existing vegetation and planted vegetation, outside of areas of necessary site disturbance, within the front yard along East Allred Street. At a minimum, the vegetation required by Section 308A of the Ordinance shall be installed and maintained within the front yard along East Allred Street.
- (C) The enclosure of concrete pads to the rear of dwellings or other additions to the rear of residential dwellings outside of the common area will not be considered a modification that requires a new permit.
- (D) Units shall possess a minimum of 1,200 square feet of heated space.
- (E) Prior to the issuance of a Zoning Compliance Permit for the proposed land use, the Applicant shall submit documentation detailing the following approvals:
 - (1) Driveway permit(s) from the North Carolina Department of Transportation.
 - (2) Erosion control approval(s) from the North Carolina Department of Environmental Quality.
- (F) Prior to the issuance of a Zoning Compliance Permit for the proposed land use, the owner(s) of the Zoning Lot shall properly execute and deliver to the Zoning Administrator for recordation in the office of the Randolph County Register of Deeds a Memorandum of Land Use Restrictions prepared by the City Attorney for the purpose of placing notice of the conditions attached to the Conditional Use Permit in the chain of title for the Zoning Lot.

24. The proposed street is 457 linear feet in length and includes a public service vehicle turnaround. This length meets the requirement that permanent dead-end streets not exceed 500 feet unless topography or property configuration necessitates their use. The presence of extensive flood plain and adjacent development patterns support the subdivision's street layout.

25. The proposed PUD does not pose any elevated risk of generating health and safety concerns.

26. No testimony was offered in opposition to either the Applicant's request or the testimony/evidence introduced during the hearing of this land use case.

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

CONCLUSIONS OF LAW

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

2. In this case, the Applicant properly submitted an application for a conditional use permit authorizing a PUD on the Zoning Lot that is located in a CU-RA6 zoning district.

3. In light of the evidence and the Applicant's acceptance of the conditions attached to the conditional use permit by the Council, the Applicant's proposed land use is compliant with the applicable requirements of the Ordinance.

4. On the basis of substantial evidence in the record, the Council has concluded that, with the clarifications and protections provided by the conditions attached to this permit, the proposed land use meets the four general standards for granting the requested conditional use permit. The proposed land use will not materially endanger the public health or safety, meets all required conditions and specifications of the Ordinance, will not substantially injure the value of adjoining or abutting property, and will be in harmony with the area in which it is to be located and is in general conformity with Asheboro's plan of development.

5. The Applicant's subdivision sketch design review application, with the comments/conditions noted herein, is compliant with the applicable land use regulations.

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

ORDER

Part 1 – Conditional Use Permit

Subject to the following conditions, a Conditional Use Permit authorizing the proposed residential planned unit development on the Zoning Lot is hereby approved and issued to the Applicant and the Applicant's heirs, successors, and assigns. The continuing validity of this Conditional Use Permit is hereby made expressly contingent upon the Applicant and the Applicant's heirs, successors, and assigns complying at all times with the applicable provisions of the Asheboro Zoning Ordinance, the approved site plan, and the following supplementary conditions:

- (A) The site plan shows preservation of the existing vegetation, outside of areas of necessary site disturbance, along the western and northern portions of the Zoning Lot. If the vegetation is not preserved in this area, a Type A Buffer or Screen shall be installed by the developer.
- (B) The site plan shows a combination of preserved existing vegetation and planted vegetation, outside of areas of necessary site disturbance, within the front yard along East Allred Street. At a minimum, the vegetation required by Section 308A of the Ordinance shall be installed and maintained within the front yard along East Allred Street.
- (C) The enclosure of concrete pads to the rear of dwellings or other additions to the rear of residential dwellings outside of the common area will not be considered a modification that requires a new permit.
- (D) Units shall possess a minimum of 1,200 square feet of heated space.
- (E) Prior to the issuance of a Zoning Compliance Permit for the proposed land use, the Applicant shall submit documentation detailing the following approvals:
 - (1) Driveway permit(s) from the North Carolina Department of Transportation.
 - (2) Erosion control approval(s) from the North Carolina Department of Environmental Quality.
- (F) Prior to the issuance of a Zoning Compliance Permit for the proposed land use, the owner(s) of the Zoning Lot shall properly execute and deliver to the Zoning Administrator for recordation in the office of the Randolph County Register of Deeds a Memorandum of Land Use Restrictions prepared by the City Attorney for the purpose of placing notice of the conditions attached to the Conditional Use Permit in the chain of title for the Zoning Lot.

Part 2 – Subdivision Sketch Design Approval

The subdivision sketch design plat submitted under Case No. SUB-18-02 for the residential planned unit development known as Cane Creek Townhomes is hereby approved with the comment/condition that homeowners' documents with restrictions concerning recreational vehicle parking and maintenance mechanisms for the common area must be recorded with the final subdivision plat.

The foregoing final decision document was adopted by the Asheboro City Council in open session during a regular meeting held on the 6th day of September, 2018.

/s/David H. Smith
David H. Smith, Mayor
City of Asheboro, North Carolina

ATTEST:

/s/Holly H. Doerr
Holly H. Doerr, CMC, NCCMC, City Clerk
City of Asheboro, North Carolina

- (f) **The final decision document for land use case no. CUP-18-14 (the original meeting agenda listed the erroneous case no. SUP-18-03).**

**Case No. CUP-18-14
City Council
City Council of the City of Asheboro, North Carolina**

IN THE MATTER OF THE APPLICATION BY ANTONIO CALIZ, JUAN CALIZ, BRAYAN CALIZ, AND ABRAHAM CALIZ FOR A CONDITIONAL USE PERMIT AUTHORIZING A MANUFACTURING, PROCESSING, AND ASSEMBLY – LIGHT LAND USE

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

THIS LAND USE CASE came before the Asheboro City Council (the “Council”) for a properly advertised quasi-judicial hearing on August 9, 2018, under file no. SUP-18-03. The assignment of a special use permit file number was the result of a clerical error. The applicants need a conditional use permit to conduct the proposed land use, and the correct file/case number is CUP-18-14.

During the quasi-judicial hearing, sworn testimony was received, and the Council considered all competent evidence and argument. On the basis of competent, material, and substantial evidence, the Council does hereby enter the following:

FINDINGS OF FACT

1. By and through their agent, Antonio Caliz, Juan Caliz, Brayan Caliz, and Abraham Caliz (these individuals will be hereafter collectively referred to as the “Applicant”) properly submitted an application for a Conditional Use Permit (a “CUP”) authorizing a land use identified in Table 200-2 of the Asheboro Zoning Ordinance (the “Ordinance”) as a manufacturing, processing, and assembly – light land use.

2. In compliance with the Ordinance, the Applicant submitted a site plan showing the proposed land use on a parcel of land owned by Kathryn H. Allred. Ms. Allred testified during this hearing as to her support for the CUP application.

3. This land for which a CUP is sought (the “Zoning Lot”) is approximately 6.7 acres in size and is located at 307 and 313 East Allred Street. The Zoning Lot is more specifically described as a portion of the parcel of land identified by Randolph County Parcel Identification Number 7762112401.

4. The Zoning Lot is located in a CU-B2 (Conditional Use General Commercial) zoning district.

5. Section 102 of the Ordinance describes a Conditional Use District as follows:

Each Conditional Use District corresponds to a related district in this Ordinance. Where certain types of zoning districts would be inappropriate under certain conditions, and the rezoning applicant desires rezoning to such a district, the CU District is a means by which special conditions can be imposed in the furtherance of the purpose of this Ordinance.

6. Section 102 of the Ordinance further provides as follows:

Within a CU District, only those uses specifically permitted in the zoning district to which the CU District corresponds (i.e., R15 and CUR15) shall be permitted, and all other requirements of the corresponding district shall be met. It is the intent of this ordinance that all requirements within a CU District be equal to or more stringent than those in a corresponding non-CU District.

In addition, within a CU District no use shall be submitted (sic) except as pursuant to a Conditional Use Permit authorized by the City Council, which shall specify the use or uses authorized. Such permit may further specify the location on the property of the proposed use or uses, the number of dwelling units or Floor Area Ratio, the location and extent of supporting facilities including but not limited to parking lots, driveways and access streets, the location and extent of buffer areas and other special purpose areas, the timing of development, the location and extent of rights-of-way and other areas to be dedicated for public use, and other such matters as the applicant may propose as conditions upon the request. In granting a Conditional Use Permit, the Council may impose such additional reasonable and appropriate safeguards upon such permit as it may deem necessary in order that the purpose and intent of this Ordinance are served, public welfare secured and substantial justice done.

The authorization of a Conditional Use Permit in any CU District for any use which is permitted only as a Special Use in the zoning district which corresponds to the CU District shall preclude any requirement for obtaining a Special Use Permit for any such use from the City Council.

7. Section 1013.2 of the Ordinance establishes the following standards for the issuance by the Council of a CUP:

In considering an application for a Conditional Use Permit, the City Council shall give due regard that the purpose and intent of this ordinance shall be served, public safety and welfare secured and substantial justice done. If the City Council should find, after a public hearing, that the proposed Conditional Use Permit should not be granted, such proposed permit shall be denied. Specifically the following general standards shall be met:

1. *That the 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. *That the use meets all required conditions and specifications.*
3. *That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity, and,*
4. *That 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.*

8. The manufacturing, processing, and assembly – light land use (also referred to as manufacturing, processing, and assembling, light” in the Ordinance) is defined by the Ordinance to mean the following:

Activities described in Manufacturing, Processing and Assembling, Heavy conducted wholly within an enclosed structure and not employing more than 10 persons and utilizing no more than a total of 25 horsepower in power driven machines and material handling equipment.

9. The manufacturing, processing, and assembling, heavy land use is defined by the Ordinance to mean the following:

The mechanical or chemical transformation of materials or substances into new products. The land uses engaged in these activities are usually described as plants, factories, or mills and characteristically use power-driven machines and materials handling equipment. Establishments engaged in assembling component parts of manufactured products are also considered under this definition, if the new product is neither a fixed structure nor other fixed improvement. Also included is the blending of materials such as lubricating oils, plastics, resins or liquors.

10. The manufacturing, processing, and assembly – light land use is permitted by special use permit in the B2 zoning district.

11. Section 628 of the Ordinance lists requirements for the issuance of a special use permit authorizing a manufacturing, processing, and assembly – light land use and specifically provides as follows:

Light manufacturing activities may be permitted in B2 districts subject to the following standards:

- 628.1 *Off-street parking and loading spaces provided in accordance with Article 400.*
- 628.2 *The applicant shall have adequate facilities (water, sewerage, etc.) so that the proposed operation shall meet the requirements of the City Fire, Building Inspection, and Engineering Departments.*
- 628.3 *The activity shall not endanger, damage, or have any other undesirable effects upon nearby non-industrial development by reason of its existence and operation.*
- 628.4 *Buffering and screening shall be required as set forth in Article 304A.*
- 628.5 *Approvals granted under this section shall be for one specific use, to be identified by the applicant at the time of application, and shall not be transferable to other light industrial uses. Requests for such changes in use shall be covered by the submission of a separate Special Use Permit Application.*
- 628.6 *Light Manufacturing, Processing and Assembly as permitted by this SUP shall mean activities which are conducted within a fully enclosed structure, require no outdoor storage, utilizes no boilers or other equipment in excess of 25 HP individually, and employ a total of 10 or fewer employees.*

12. The land uses surrounding the Zoning Lot are as follows:

North: Manufactured Home Park

East: 2 Manufactured Homes
(B2 Zoning District)

South: Undeveloped Residential/
Commercial

West: Undeveloped Commercial

13. With regard to the city's comprehensive development plans, the Growth Strategy Map identifies the area in which the Zoning Lot is located as a primary growth area, and the proposed land development plan map designates the area as commercial.

14. In terms of zoning history, file no. SUP-87-04 shows that the property was previously placed in a CU-B2 zoning district and a special use permit was issued for light manufacturing.

15. The Zoning Lot is located inside the city's corporate limits.

16. East Allred Street is a state-maintained minor thoroughfare.

17. The Applicant proposes to use existing buildings.

18. There are currently two access driveways on the property. One will serve the proposed land use, and the second driveway serves the existing manufactured home.

19. The previously issued special use permit authorized the manufacturing, processing, and assembly – light land use on the property for the purpose of constructing accessory buildings (i.e. storage sheds, etc.).

20. The Ordinance requires a new permit, in this case a CUP, when there is deemed to be a significant change in the manufacturing, processing, and assembly – light activities.

21. The Applicant is proposing to operate a granite, quartz, and marble business on the Zoning Lot.

22. The existing manufactured home is a legal non-conforming use. This use may continue subject to meeting code requirements.

23. Certain legal non-conforming situations exist on the Zoning Lot, such as a lack of paved parking and a deficiency in front yard landscaping. The Applicant proposes to retain the existing vegetation along the west and north side of the Zoning Lot, which is not required by the zoning ordinance. The Applicant's site plan proposes retaining existing vegetation in the front yard and adding five trees. The Applicant also proposes to maintain access drives and parking areas as required by the fire department.

24. The Applicant agreed to the following conditions that were recommended by the planning staff for attachment to the requested CUP in order to ensure the continuing compliance of the proposed land use with the Ordinance:

- (A) Prior to occupancy of the proposed land use, the following items shall be approved and completed:
 - (1) The Final Decision Document approving the requested CUP.
 - (2) Approvals related to a Change of Occupancy application.
 - (3) One or more instrument(s) drafted to establish in fact the boundary lines shown on the submitted site plan shall be properly executed and recorded in the Office of the Randolph County Register of Deeds. Notice of such recordation shall be provided in a timely manner to the City of Asheboro Zoning Administrator.
 - (4) The construction of a fire access road at least 20 feet in width consisting of an all-weather surface in the location shown on the approved site plan and repairs to existing access/driveway surfaces for emergency services as required by authorized Asheboro fire suppression and fire inspection personnel.
 - (5) Van accessible handicapped parking space as labeled on the approved site plan.
- (B) The site plan identifies one manufactured home on the Zoning Lot. Subject to Article 800 of the Ordinance, if this structure is replaced by another manufactured home, such an action shall not be considered a modification requiring a new Conditional Use Permit.
- (C) The removal of structure(s) on the Zoning Lot that are unnecessary for the proposed land use shall not be considered a modification requiring a new Conditional Use Permit.
- (D) Along with meeting the requirements of the above-stated Conditions (A)(4) and (A)(5), and consistent with Ordinance Table 400-1, parking spaces serving customer(s) and employee(s) shall be provided and clearly marked with wheel stops or other similar means of marking spaces. Subject to other permit conditions and all other applicable regulatory requirements, if the Applicant relocates a designated parking space, this action shall not be considered a modification of the Conditional Use Permit.
- (E) If the Applicant chooses to either pave these parking areas (including parking spaces, access, and maneuvering areas) or loading spaces, which is optional, such an action shall not be considered to be a modification of the Conditional Use Permit.
- (F) Access gate(s) shall be subject to the approval of the Asheboro Fire Department.
- (G) With the exception of necessary grading and the placement of required infrastructure, existing vegetation on the north side of the Zoning Lot shall be retained to the maximum extent possible. Existing vegetation within the front yard shall be maintained. If any vegetation within the required front yard is removed, the removed vegetation shall be replaced in a manner that is compliant with the requirements of Ordinance Section 308A.

25. Mr. H.R. Gallimore, who is an experienced real estate agent, offered uncontroverted testimony that the proposed land use will not have a negative impact on the marketing of properties surrounding the Zoning Lot.

26. No testimony was offered in opposition to the Applicant's request for a CUP.

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

CONCLUSIONS OF LAW

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

2. In this case, the Applicant properly submitted an application for a Conditional Use Permit authorizing a manufacturing, processing, and assembly – light land use, more specifically a granite, quartz, and marble business, on the Zoning Lot that is located in a CUB2 zoning district.

3. In light of the evidence and the acceptance by the Applicant of the conditions attached to the Conditional Use Permit by the Council, the Applicant's proposed land use is compliant with the applicable requirements of the Asheboro Zoning Ordinance.

4. On the basis of substantial evidence in the record, the Council has concluded that the proposed land use meets the four general standards for granting the requested Conditional Use Permit.

- (g) **Approval to schedule for October 4, 2018, and to advertise, a combined public hearing on an application to rezone property at 618 and 622 Franks Street (Randolph County Parcel Identification Numbers 7761144135 and 7761144098) from RA6 (High-Density Residential) to CU-O&I (Conditional Use Office & Institutional) and to issue a conditional use permit for a place of worship.**

The above-listed land use case will be advertised and heard by the Council on October 4, 2018.

- (h) **A resolution supporting and authorizing an application for state grant/loan funding for the sanitary sewer lift station number 3 improvements project.**

RESOLUTION NUMBER 20 RES 9-18

CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA

A RESOLUTION SUPPORTING AND AUTHORIZING AN APPLICATION FOR A STATE GRANT/LOAN FOR THE SANITARY SEWER LIFT STATION NO. 3 IMPROVEMENTS PROJECT

WHEREAS, the Federal Clean Water Act Amendments of 1987 and the North Carolina Water Infrastructure Act of 2005 (codified in Chapter 159G of the North Carolina General Statutes) have authorized the making of loans and grants to aid eligible units of government in financing the cost of construction for a wastewater collection system; and

WHEREAS, the City of Asheboro (hereafter referred to interchangeably as the "City" and the "Applicant") needs and intends to construct wastewater collection system improvements described as the Sanitary Sewer Lift Station No. 3 Improvements Project (hereafter referred to as the "Project"); and

WHEREAS, the City intends to request state loan or grant assistance for the Project.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro (hereafter referred to as the "Council") that the City, if approved for a State loan or grant award, will arrange financing for all remaining costs of the Project; and

BE IT FURTHER RESOLVED by the Council that the City will adopt and place into effect on or before completion of the Project a schedule of fees and charges, in addition to other available funds, that will provide adequate funding for the proper operation, maintenance, and administration of the system and the repayment of all principal and interest on the debt; and

BE IT FURTHER RESOLVED by the Council that a provision will be included in the loan agreement authorizing the State Treasurer, upon failure of the City to make scheduled repayment(s) of the loan, to withhold from the City any State funds that would otherwise be distributed to the City in an amount sufficient to pay all sums then due and payable to the State as a repayment of the loan; and

BE IT FURTHER RESOLVED by the Council that the City will provide for the efficient operation and maintenance of the Project infrastructure upon completion of the construction thereof; and

BE IT FURTHER RESOLVED by the Council that John N. Ogburn, III, who is the city manager for the Applicant (the city manager will be hereafter referred to as the "Authorized Official"), and any successor so titled, is hereby authorized to execute and file an application on behalf of the Applicant with the State of North Carolina for a loan to aid in the construction of the Project described above; and

BE IT FURTHER RESOLVED by the Council that the Authorized Official, and any successor so titled, is hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such application or the Project, to make the assurances as contained above, and to execute such other documents as may be required in connection with the application; and

BE IT FURTHER RESOLVED by the Council that the City has substantially complied or will substantially comply with all Federal, State, and local laws, rules, regulations, and ordinances applicable to the Project and to Federal and State grants and loans pertaining thereto.

This Resolution was adopted by the Asheboro City Council in open session during a regular meeting that was held on the 6th day of September, 2018.

/s/David H. Smith
David H. Smith, Mayor
City of Asheboro, North Carolina

ATTEST:

/s/Holly H. Doerr
Holly H. Doerr, CMC, NCCMC, City Clerk
City of Asheboro, North Carolina

- (i) **A resolution declaring the city's official intent to purchase municipal vehicles and equipment and to reimburse the General Fund with installment financing proceeds.**

RESOLUTION NUMBER _____ **21 RES 9-18**

CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA

A RESOLUTION DECLARING THE OFFICIAL INTENT OF THE CITY OF ASHEBORO TO PURCHASE MUNICIPAL VEHICLES AND EQUIPMENT AND TO REIMBURSE THE GENERAL FUND WITH INSTALLMENT FINANCING PROCEEDS

WHEREAS, in order to maintain a satisfactory level of municipal services, the Asheboro City Council has adopted a budget ordinance for fiscal year 2018-2019 that allocates funding for the acquisition of vehicles and equipment deemed essential for maintaining uninterrupted, high quality municipal services; and

WHEREAS, the following vehicles and equipment are to be acquired by city departments that receive their funding from the municipal corporation's general fund:

1. One dump truck budgeted at \$90,000.00 in the facilities maintenance department;
2. Four command vehicles budgeted at \$160,000.00 in the fire department;
3. One service truck budgeted at \$42,500.00 in the fleet maintenance department;
4. Six vehicles budgeted at \$158,724.00 in the police department; and
5. One 1-ton truck, one 2-ton flatbed truck, one tandem dump truck, and one paver collectively budgeted at \$456,000.00 in the street department.

The total budgeted amount for the purchase of the above-listed vehicles and equipment needed by the listed city departments to deliver essential municipal services is \$907,224.00; and

WHEREAS, Section 160A-20 of the North Carolina General Statutes authorizes the city to finance the purchase of personal property by means of installment financing that creates a security interest in the purchased property; and

WHEREAS, in order to provide uninterrupted high quality municipal services, the above-listed vehicles and equipment will be purchased and placed into service as soon as possible with available funds in the city's general fund; and

WHEREAS, the Asheboro City Council has decided that the above-stated expenditures are to be reimbursed to the general fund during the current fiscal year with proceeds from an installment financing agreement that will create security interests in the above-listed municipal vehicles and equipment to be acquired by the city during its 2018-2019 fiscal year; and

WHEREAS, more favorable financing terms can be obtained if the city takes the steps necessary to allow the lending institution from which financing is ultimately obtained to exclude the interest paid or payable under an installment financing agreement with the city from the gross income of the lending institution; and

WHEREAS, in accordance with the applicable treasury regulations, one of the steps necessary to avoid jeopardizing the ability of a lender to exclude from its gross income the interest paid or payable under an installment financing agreement is for the city to declare its intent to reimburse the general fund for the expenditures used to purchase the needed vehicles.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro that, prior to the execution of any installment financing agreement and consistent with the city's budget ordinance for fiscal year 2018-2019, a maximum of \$907,224.00 may be expended from the general fund, with the intent of seeking reimbursement for the expenditures from installment financing proceeds, for the above-listed vehicles and equipment; and

BE IT FURTHER RESOLVED that the City Council of the City of Asheboro does hereby formally and explicitly declare the official intent of the City of Asheboro to fully reimburse, with loan proceeds from an installment financing agreement that is to be executed prior to the end of the 2018-2019 fiscal year, any and all expenditures from the general fund for the purchase during this fiscal year of the vehicles and equipment referenced hereinabove and that are necessary to the provision of essential municipal services.

This Resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 6th day of September, 2018.

/s/David H. Smith
David H. Smith, Mayor
City of Asheboro, North Carolina

ATTEST:

/s/Holly H. Doerr
Holly H. Doerr, CMC, NCCMC, City Clerk
City of Asheboro, North Carolina

- (j) **A resolution authorizing the purchase of additional land for the proposed Zoo City Sportsplex.**

RESOLUTION NUMBER 22 RES 9-18

CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA

RESOLUTION AUTHORIZING THE PURCHASE OF ADDITIONAL LAND FOR THE PROPOSED ZOO CITY SPORTSPLEX

WHEREAS, the Randolph County Senior Adults Association, Inc., a North Carolina non-profit corporation, owns a parcel of land (Randolph County Parcel Identification Number 7669574332) near the intersection of Zoo Parkway and Old Cox Road that is approximately 8.992 acres in size and adjoins the city-owned land proposed for development as the Zoo City Sportsplex; and

WHEREAS, the Asheboro City Council has budgeted funds for additional land acquisition in support of the proposed Zoo City Sportsplex; and

WHEREAS, the Asheboro City Council has concluded that the viability of the proposed Zoo City Sportsplex will be enhanced by the acquisition of the above-referenced land from the Randolph County Senior Adults Association, Inc.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro that Mayor David H. Smith is hereby authorized and directed to offer on behalf of the City of Asheboro to purchase and contract for the acquisition of the referenced 8.992-acre parcel of land from the Randolph County Senior Adults Association, Inc. for a purchase price of Two Hundred Ninety-One Thousand and No Hundredths Dollars (\$291,000.00); and

BE IT FURTHER RESOLVED by the City Council of the City of Asheboro that the authorized offer to purchase and contract shall be in the form of the legal instrument attached to this Resolution as ATTACHMENT A, which is hereby incorporated into this Resolution by reference as if copied fully herein.

This Resolution was adopted by the Asheboro City Council in open session during a regular meeting on September 6, 2018.

/s/David H. Smith
David H. Smith, Mayor
City of Asheboro, North Carolina

ATTEST:

/s/Holly H. Doerr
Holly H. Doerr, CMC, NCCMC, City Clerk
City of Asheboro, North Carolina

ATTACHMENT A

STATE OF NORTH CAROLINA

**OFFER TO PURCHASE
AND CONTRACT**

COUNTY OF RANDOLPH

The **CITY OF ASHEBORO**, a North Carolina municipal corporation, (the **“Buyer”**) and the **RANDOLPH COUNTY SENIOR ADULTS ASSOCIATION, INC.**, a North Carolina non-profit corporation, (the **“Seller”**) mutually agree to this Offer to Purchase and Contract (the **“Contract”**) as of the _____ day of September, 2018.

The Buyer hereby contracts and agrees to buy the real property described herein for the purchase price stated below, and the Seller hereby contracts and agrees to sell and convey to the Buyer for the purchase price stated below 8.992 acres, more or less, of land (the "Property") that is described as follows:

Grant Township, Randolph County, North Carolina:

BEING ALL of that 8.992 acres of land, more or less, shown as Lot # 2 on a plat of survey drawn under the supervision of Jerry A. King, Professional Land Surveyor with License Number L - 3373, and titled "MINOR SUBDIVISION FOR RANDOLPH COUNTY SENIOR ADULT ASSOCIATION." The plat of survey is recorded in the Office of the Register of Deeds of Randolph County, North Carolina in Plat Book 120, Page 4.

For a back reference, see the deed recorded in Book 2109, Page 465, Randolph County Registry.

The purchase price for the Property is Two Hundred Ninety-One Thousand and No Hundredths Dollars (\$291,000.00) to be paid in good funds by the Buyer on the date of closing.

This offer from the Buyer is subject to the following terms and conditions which, if accepted by the Seller, are the terms and conditions of sale:

1. The Buyer is responsible for obtaining a title examination and any other studies deemed appropriate in the sole discretion of the Buyer. If the results or findings of any such studies or examinations are not acceptable to the Buyer, written notice shall be provided to the Seller. The parties shall make a reasonable effort to resolve any unsatisfactory matters disclosed by the studies or examinations. If such unsatisfactory matters cannot be resolved prior to the closing date referenced below, the Buyer may terminate its offer without any penalty or cost to itself, and the parties will have no further rights or obligations regarding the sale of the Property.
2. The Seller shall be responsible for ad valorem taxes prorated on a calendar year basis to the date of closing.
3. All deeds of trust, liens, and other charges against the Property must be paid and cancelled by the Seller prior to or at closing.
4. Title must be delivered at closing by means of a North Carolina General Warranty Deed and must be fee simple marketable title, free of all encumbrances and exceptions other than those approved by the Buyer.
5. The Buyer shall be responsible for the cost of preparing and recording the North Carolina General Warranty Deed and for the payment of closing costs not otherwise assigned to the Seller by this Contract. In addition to the cost of preparing and recording the general warranty deed, the closing costs to be paid by the Buyer specifically include the cost of any title search, title insurance, survey, any other inspections/examinations ordered by the Buyer, the settlement agent's fee, and any excise tax (revenue stamps) associated with the conveyance of the Property from the Seller to the Buyer.
6. Closing shall be completed on or before **September 28, 2018, TIME BEING OF THE ESSENCE WITH REGARD TO THE CLOSING DATE**. An attorney mutually agreeable to the Seller and Buyer will conduct the closing.
7. This Contract contains the entire agreement between the parties. There are no representations, inducements, or additional provisions other than those expressed herein. All changes, additions, or deletions hereto must be in writing and signed by both parties.

DATE OF OFFER: _____

CITY OF ASHEBORO ("BUYER"):

By: _____ **(SEAL)**
David H. Smith, Mayor

ATTEST: _____
Holly H. Doerr, CMC, NCCMC, City Clerk

This instrument has been preaudited in the manner prescribed by the Local Government Budget and Fiscal Control Act.

Deborah P. Reaves, Finance Officer

DATE OF ACCEPTANCE: _____

RANDOLPH COUNTY SENIOR ADULTS ASSOCIATION, INC.
("SELLER"):

By: _____ (SEAL)
(Signature of Authorized Officer)

(Printed Name of Authorized Officer)

(Title of Authorized Officer)

(k) A request to extend the time allowed between Preliminary and Final Plat review for the Robins Nest Phase 2 Subdivision.

The written request by William Atkinson, PE for an additional one year period between preliminary plat and final plat approval for the Robins Nest Phase 2 Subdivision was received by the city planning department, distributed to the Mayor and Council Members, and approved. A copy of the written request is on file in the city clerk's office.

10. Consideration of an application for \$604,000 in Community Development Block Grant (CDBG) funding for Neighborhood Revitalization.

Mayor Smith opened the public hearing on an application for \$604,000 in Community Development Block Grant funding for Neighborhood Revitalization. The project for which the city is seeking funding is focused on street and sidewalk improvements and is known as the Eastside Walks Neighborhood Revitalization Project.

Mr. Nuttall reported that a public workshop was held on August 30, 2018, at the Asheboro Public Library in order to give the public an opportunity to learn about and to comment on the potential Community Development Block Grant application. During his presentation, Mr. Nuttall presented and recommended adoption, by reference, of a resolution authorizing the City of Asheboro to submit an application for funding from the Community Development Block Grant Program for the Eastside Walks Neighborhood Revitalization Project.

During the public hearing, Mr. James Armstrong, Ms. Thalia Ellison, Ms. Peggy Hammond, and Mr. Clyde Leon Foust, Jr. asked questions and presented comments that were generally supportive of the application. With no further comments from the public, Mayor Smith transitioned to the deliberative phase of the hearing.

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

RESOLUTION NUMBER _____ 23 RES 9-18

RESOLUTION AUTHORIZING THE CITY OF ASHEBORO TO SUBMIT AN APPLICATION FOR FUNDING FROM THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM FOR THE EASTSIDE WALKS NEIGHBORHOOD REVITALIZATION PROJECT

WHEREAS, the Asheboro City Council has indicated its desire to assist with neighborhood revitalization efforts within the City; and

WHEREAS, the Asheboro City Council has held two public hearings concerning the proposed application for Community Development Block Grant funding to benefit low to moderate incomes in Randolph County Census Tract 303.02 by way of the Eastside Walks Project; and

WHEREAS, the Asheboro City Council has concluded that the City of Asheboro should submit a formal application for Community Development Block Grant funding to benefit Randolph County Census Tract 303.02 by way of the Eastside Walks Project.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Asheboro, North Carolina that the city's officers and employees are authorized to submit, on behalf of the City of Asheboro, a formal application to the North Carolina Department of Commerce for a Community Development Block Grant for Neighborhood Revitalization; and

BE IT FURTHER RESOLVED that the Asheboro City Council certifies the City of Asheboro will meet all federal regulatory and statutory requirements of the Small Cities Community Development Block Grant Program; and

BE IT FURTHER RESOLVED that the City of Asheboro will administer this grant funding in accordance with the rules and regulations of the North Carolina Department of Commerce.

This Resolution was duly adopted by the Asheboro City Council in open session during a regular meeting held on the 6th day of September, 2018.

/s/David H. Smith
David H. Smith, Mayor
City of Asheboro, North Carolina

ATTEST:

/s/Holly H. Doerr
Holly H. Doerr, CMC, NCCMC, City Clerk
City of Asheboro, North Carolina

11. Case No. RZ-18-12: Public hearing on an application to rezone property at 936 East Salisbury Street (Randolph County Parcel Identification Number 7761229036) from CU-OA6 (Conditional Use Office-Apartment) to O&I (Office & Institutional).

Mayor Smith opened the public hearing, which was legislative in nature, on the application by Iglesia De Dios Getsemani (the "Applicant"), by and through Minister Ventura Hernandez, to rezone the church's approximately 1.5 acres of land at 936 East Salisbury Street from CU-OA6 (Conditional Use Office-Apartment) zoning to O&I (Office and Institutional) zoning. The Applicant's land is more specifically identified by Randolph County Parcel Identification Number 7761229306.

Mr. Nuttall utilized a visual presentation to summarize the planning staff's analysis of the request. The staff report noted the following:

1. The property is located inside the city limits.
2. The most recent 2014 Comprehensive Transportation Plan identifies this segment of East Salisbury Street/NC Highway 42 (a state-maintained major thoroughfare) as over capacity based on 2012 volumes measuring average annual daily vehicles/day (11,600 capacity vs. 13,200 AADT 2012 volume).
3. In order to relieve the congestion that currently exists on NC Highway 42 North, the current NCDOT Transportation Improvement Program has committed funding to road improvements (Project No. U-5743) along NC Highway 42 extending between the East Salisbury Street intersection and US Highway 64 (East Dixie Drive). Proposed improvements include the addition of a center turn lane, sidewalks, curbing and guttering. Public right-of-way acquisition is currently scheduled to begin in 2019, with construction scheduled to begin in 2020.
4. At the time CU-OA6 zoning was applied to the property (2001), there was no O&I (Office and Institutional) district. The O&I district prohibits residential (single-family, two-family, and multi-family) use of the property.
5. The zoning ordinance describes the O&I Commercial District as "*intended to produce moderate intensity office and institutional development to serve adjacent residential areas and to provide a transition from residential to commercial uses. Land designated O&I shall normally be located with access to a minor thoroughfare or higher classification street with access to local residential streets discouraged.*"
6. Noting changing conditions and other similar rezoning activity along NC Highway 42, the Land Development Plan Proposed Land Use map designation of the property was changed from Neighborhood Residential to Office and Institutional in 2015.
7. Zoning design standards including building material requirements and internal pedestrian connections may apply to future addition(s) and/or new structure(s).

The planning board recommended approval of the zoning map amendment application. This recommendation was based on the planning board's concurrence with the following analysis from the community development division staff's evaluation of the consistency of the requested rezoning with the adopted comprehensive plans as well as the reasonableness of the request and whether the requested rezoning is in the public interest:

The request is supported by its consistency with the Land Development Plan's Proposed Land Use map, which designates office and institutional uses for both the subject property and adjacent properties along NC Highway 42 extending to Dublin Square Road. The proposed land use map amendments in 2015 recognize that the subject property is in a transitional area between commercial uses to the

east and residential uses to the west. The request is also supported by its consistency with the zoning ordinance's description of the O&I district.

Staff notes a number of changing conditions that support the O&I district request since the current CU-OA6 zoning was applied in 2001. At that time, there was no general district that limited allowable uses to office and institutional uses, while excluding residential uses and heavier commercial uses. Staff also notes enhancement of zoning standards since 2001 related to building design and materials, and pedestrian connectivity that are essential elements of office and institutional uses. The current use of the property for an institutional use since 2001 also supports the request to rezone the property to a district that accommodates the current use and other uses likely to have similar impacts on adjacent properties.

Staff also acknowledges that although NC Highway 42 is over its capacity as it is currently designed, upcoming improvements will help address concerns over existing transportation infrastructure to better accommodate uses permitted in the O&I district.

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

Upon motion by Mr. Moffitt and seconded by Mr. Bell, the Council voted unanimously to follow the staff and planning board recommendations to approve the requested rezoning by adopting a multi-part motion that took the following actions:

1. City Council Analysis of the Requested Map Amendment: The requested rezoning is consistent with the Land Development Plan's Proposed Land Use map that designates office and institutional uses for both the Applicant's property and the adjacent properties that extend to Dublin Square Road along North Carolina Highway 42. The Applicant's property is in a transitional area between commercial uses to the east and residential uses to the west.

The application is also supported by the consistency of the zoning lot with the description of the O&I district in the Asheboro Zoning Ordinance. Further support exists for the application because of the following factors:

- (a) When the CU-OA6 zoning district was applied to the zoning lot in 2001, there was no general district that limited permitted uses to office and institutional uses while excluding residential uses and heavier commercial uses.
 - (b) Zoning standards have been enhanced since 2001. More specifically, building design and materials standards have been enhanced along with the strengthening of pedestrian connectivity standards. These areas of improvement address essential elements of office and institutional uses.
 - (c) The utilization of the property for an institutional use since 2001 also supports the request to rezone the property to a district that accommodates the current use and other uses likely to have similar impacts on adjacent properties.
 - (d) Upcoming improvements to North Carolina Highway 42 will help address concerns over existing transportation infrastructure and its ability to accommodate the uses permitted in the O&I district.
2. In light of the above-stated analysis, the requested zoning map amendment to place the Zoning Lot in an O&I zoning district is approved as consistent with the adopted plan.

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

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

12. Public comment period.

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

Mayor Smith closed the public comment period.

