

The City Council of the City of Charlotte, NC, convened for a Dinner Briefing on Monday, June 20, 2011, at 5:20 p.m. in Room CH-14 of the Charlotte-Mecklenburg Government Center with Mayor Pro Tem Patrick Cannon presiding. Present were Councilmembers Michael Barnes, Nancy Carter, Warren Cooksey, Andy Dulin, Patsy Kinsey, Edwin Peacock III

ABSENT UNTIL NOTED: Councilmembers Jason Burgess, David Howard, Warren Turner

ABSENT: Mayor Anthony Foxx, Councilmember James Mitchell

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Tammie Keplinger, Planning, reviewed the agenda highlighting the deferrals requested.

[Motion was made by Councilmember Dulin, seconded by Councilmember Carter, and carried]
[unanimously to defer Petition No. 2011-017 for one week.]

Councilmember Howard arrived at 5:26 p.m.

Debra Campbell, Planning, reviewed the area plan status and text amendment update.

Councilmember Burgess arrived at 5:38 p.m.

Barry Mosley, Planning, gave a PowerPoint presentation entitled, "Internet Sweepstakes and Internet Café," a copy of which is on file in the City Clerk's Office.

[Motion was made by Councilmember Barnes and seconded by Councilmember Kinsey to]
[allow staff to begin the process of developing a text amendment that applies to Internet]
[sweepstakes and Internet café establishments.]

The vote was taken on the motion and recorded as follows:

AYES: Councilmembers Barnes, Burgess, Carter, Dulin, Howard, Kinsey, Mitchell, Peacock

NAYS: Councilmember Cooksey

The dinner briefing was recessed at 6:04 p.m. for the Council to move to the Council Meeting Chamber.

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ZONING MEETING

The Council reconvened for the regularly scheduled Zoning Meeting at 6:09 p.m. in the Council Meeting Chamber of the Charlotte-Mecklenburg Government Center with Mayor Pro Tem Patrick Cannon presiding.

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INVOCATION AND PLEDGE

Councilmember Peacock gave the Invocation and led the Council in the Pledge of Allegiance to the Flag.

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Mayor Pro Tem Cannon explained the Zoning Meeting rules and procedures. He recognized the chairman of the Zoning Committee and the Planning Commission, Steven Rosenboro, who introduced his committee.

DEFERRALS

[Motion was made by Councilmember Cooksey, seconded by Councilmember Burgess, and]
[carried unanimously to defer Item No. 7, Petition 2011-008, for three months, and Item No.]
[2, Petition 2011-017, for one week.]

DECISIONS

ITEM NO. 1: PETITION NO. 2010-045 BY CHARLOTTE MECKLENBURG PLANNING COMMISSION FOR THE ADOPTION OF A TEXT AMENDMENT TO THE CITY OF CHARLOTTE ZONING ORDINANCE TO MODIFY AND CLARIFY THE REGULATIONS FOR INFORMATION AND ADVERTISING PILLAR SIGNS

Mayor Pro Tem Cannon said the petition is found to be consistent with adopted policies and to be reasonable and in the public interest.

[Motion was made by Councilmember Barnes, seconded by Councilmember Howard, and]
[carried unanimously to approve the Statement of Consistency and Ordinance 4684-Z for]
[the above rezoning by Charlotte Mecklenburg Planning Commission as recommended by]
[the Zoning Committee.]

The ordinance is recorded in Ordinance Book 57 at Pages 152-153.

ITEM NO. 3: PETITION NO. 2011-023 FOR A CHANGE IN ZONING FOR APPROXIMATELY 106.90 ACRES LOCATED NEAR THE NORTH SIDE OF THE INTERSECTION OF BROOKS MILL ROAD AND ALBEMARLE ROAD FROM R-3, R-3(CD), AND O-1 TO 1-2(CD)

Mayor Pro Tem Cannon said the petition is found to be inconsistent with the East District Plan and the Eastside Strategy Plan but reasonable and in the public interest.

[Motion was made by Councilmember Dulin, seconded by Councilmember Carter, and]
[carried unanimously to approve the Statement of Consistency and Ordinance No.4685-Z]
[for the above rezoning by Vulcan Construction Materials as modified and as recommended]
[by the Zoning Committee.]

The modifications are:

1. Indicated a minimum of 70-foot right-of-way (35 feet from the centerline) will be reserved for the proposed minor thoroughfare as identified on the Metropolitan Planning Organization Thoroughfare Plan.
2. Clarified on sheet 2 under "Permitted Uses" that no asphalt plants or redi-mix concrete plants are proposed for this subject site.
3. Modified the "Site Area" under the "Development Data Table" to reflect 106.90 acres.
4. Indicated that a portion of tax parcel 111-242-12 is included in the proposed rezoning under the "Development Data Table".
5. Modified the site plan to include the existing R-3(CD) zoned property within the boundary of the proposed zoning.

The ordinance is recorded in Ordinance Book 57 at Pages 154-155.

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ITEM NO. 4: PETITION NO. 2011-027 FOR A CHANGE IN ZONING FOR APPROXIMATELY 9.0 ACRES LOCATED ON THE SOUTHEAST CORNER AT THE INTERSECTION OF REA ROAD AND ARDREY KELL ROAD FROM CC TO NS

Mayor Pro Tem Cannon said the petition is found to be consistent with the South District Plan and reasonable and in the public interest.

[Motion was made by Councilmember Howard, seconded by Councilmember Cooksey, and]
[carried unanimously to approve the Statement of Consistency and Ordinance No. 4686-Z]
[for the above rezoning by Blakeney Heath, LLP as modified and as recommended by the]
[Zoning Committee.]

The modifications are:

1. Amended Note 2D to delete the paragraph referring to gross floor area as it is defined in the zoning ordinance.
2. Deleted reference to Chapter 19 in Note 15.
3. Amended Note 5A to specify that the amount of required amount of landscaping (trees and shrubs) as required by the Tree Ordinance will be increased by 15 percent within the 20-foot landscape setbacks.
4. Addressed CDOT comments:
 - a. Provided continuous five-foot sidewalks on both sides of the proposed new internal street from Ardrey Kell Road to Rea Road and provided a sidewalk connection from the existing sidewalk system at the southwest corner of the Rea Road and Ardrey Kell intersection to the site's closest proposed building.
 - b. Addressed the pedestrian bike connection in Note 15.
 - c. The proposed driveway connection to the adjacent multi-family property will be in the form of a recorded joint access easement.
 - d. All transportation improvements including the three new improvements listed above will be implemented before the issuance of the site's first building certificate of occupancy.
5. Addressed Storm Water comments:
 - a. Removed Note 6c under Environmental Features. Storm Water rescinded request to delete Note 6b.
6. Increased maximum square footage from 22,000 to 24,500.
7. Amended Note 15 to specify that a variance from subdivision regulations may be sought for a portion of the sidewalk along Ardrey Kell Road, and that should such a request be filed, the petitioner will work with City staff to look at alternatives to provide a pedestrian access to the site similar to what the required sidewalk would have provided.

The ordinance is recorded in Ordinance Book 57 at Pages 156-157.

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ITEM NO. 5: PETITION NO. 2011-029 FOR A CHANGE IN ZONING FOR APPROXIMATELY 3.90 ACRES LOCATED AT THE INTERSECTION OF PROVIDENCE ROAD AND QUEENS ROAD AND GENERALLY BOUNDED BY HUNTLEY PLACE AND BOLLING ROAD FROM R-4 AND B-1 TO MUDD-O AND FIVE-YEAR VESTED RIGHTS

Mayor Pro Tem Cannon said the petition is found to be consistent with the Central District Plan and reasonable and in the public interest.

[Motion was made by Councilmember Kinsey, seconded by Councilmember Barnes, and]
[carried unanimously to approve the Statement of Consistency and Ordinance No. 4686-Z]
[for the above rezoning by Harris Teeter, Inc. as modified and as recommended by the]
[Zoning Committee.]

The modifications are:

1. Provided a concrete pedestrian waiting pad at the existing CATS bus stop along Providence Road.
2. Indicated the proposed property lines for the parcel with which the minimum 15% tree save area is to be calculated.
3. Modified the second sentence of Note 3.e. to read: "Such building may be divided into two buildings, but the existing building or any such buildings located within Development Area C in the future shall remain in substantially the same location and orientation...".
4. Relocated Note 4.b. to within Note 12 "Streetscape and Landscaping."
5. Modified the second sentence of Note 14.b. to reference Development Area A rather than Development Area B.
6. Modified the list of "proposed Uses" under "Site Data" to match the wording under Note 3.a. which reads "...non-residential uses as permitted by right or under prescribed conditions in the MUDD zoning district...".
7. Modified the "Maximum Principal Building Sizes" under "Site Data" for Development Area C to read "...35,300 square feet (as defined below) which includes the basement space".
8. Clearly identified and labeled the elevation on Sheet RZ-8 which is to represent the proposed "step down in height from Providence Road" on RZ-8 as referenced by the "Maximum Building Height" under "Site Data" and by Note 5.a.
9. Reworded the last sentence of Note 2.c "Development Area C Aspects" as follows: "...(ix) allow parking within for the basement area of the building within Development Area C to adhere to the ratio of one (1) parking space per 1,000 square feet of space as described below."
10. Provided additional details of the one-foot wide "green screen" along Providence Road.
11. Removed Note 2.h. under "Optional Provisions" as it is stated in Note 1.c. and not part of the optional provisions.
12. Added a reference to the alternative development scenarios for Development Area B in Note 3.b. under "Permitted Uses and Development Area Limitations".
13. Clarified on the site plan sheet that the proposed enclosed loading dock area is excluded from the maximum gross floor area.
14. Eliminated Note 2.g. under "Basement of Development Area C" and place the restriction of no restaurants within the basement under the "Permitted Uses" notes on the site plan.
15. Modified the maximum height for Development Area A from 68 feet to 58 feet.
16. Modified Note 12.b. to indicate the existing trees along Bolling Road will be maintained and replaced, if necessary, to continue to provide screening by the owner of Development Area C.
17. Clarified Note 14.c. to indicate how roof-mounted mechanical equipment will be screened.

The ordinance is recorded in Ordinance Book 57 at Pages 158-159.

HEARINGS

ITEM NO. 6: HEARING ON PETITION NO. 2011-002 BY 521 PARTNERS, LLC FOR A SITE PLAN AMENDMENT FOR APPROXIMATELY 12.54 ACRES LOCATED ON THE SOUTHWEST CORNER AT THE INTERSECTION OF PROVIDENCE ROAD WEST AND JOHNSTON ROAD

The scheduled public hearing was held on the subject petition.

Tammie Keplinger, Planning, said this petition is for an O-1 site plan amendment for 12.05 acres. It's located at the southwest corner of Providence Road West and Johnson Road. The property is currently vacant. In terms of this petition, it does have a little history that I would like to go over with you briefly. We did have a public hearing and a Zoning Committee recommendation on this case in March. After the Zoning Committee made their recommendation, the petitioner revised their site plan and addressed all of the outstanding site plan issues. When we took it back to the zoning committee, they recommended a new public hearing. The Council also recommended a new public hearing, and, therefore, we are here before you again tonight.

In terms of the land use for this particular piece of property, the future land use map, which is the South District Plan, recognizes the existing land use in the area to be office and commercial development to the north, multifamily in various locations, and single family residential, vacant land, and there's a church located on this site.

The previous rezoning petition in 2007 amended the South District Plan so this property now shows as office with a financial institution use. The City plan that was approved by the 2007 rezoning allowed for the development of a bank, office building, and a fitness center, and the fitness center is recommended in the little color section. The buildings fronted on the proposed internal streets, and the architectural standards, building articulation, and building materials were provided as part of that petition.

The current petition provides four buildings with office, bank, and hotel uses. There is an option for additional office space if the hotel is not built. The buildings now front along an internal street called Ballencroft Parkway. If you recall from the first rezoning public hearing, these buildings faced along Johnston Road. There is an eight-foot wide shared-use path that runs along Ballencroft Parkway, which is part of the greenway overland connector, and there are sidewalks along Providence Road and Johnston Road, and there is internal open space.

The uses that are proposed are consistent with the recommendation of the South District Plan, and, in addition, the orientation of the office buildings toward Ballencroft promotes the pedestrian activity in this area and also supports the overland connector to the greenway. There are no outstanding issues, and staff is recommending approval.

[There being no speakers either for or against, motion was made by Councilmember Barnes,]
[seconded by Councilmember Cooksey, and carried unanimously to close the public hearing.]

Mayor Foxx said, you know what? We have a speaker on this – Mr. Stephen Overcash. Are you still represented?

Stephen Overcash said I just signed up in case anybody has a question.

Mayor Foxx said no questions.

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ITEM NO. 8: HEARING ON PETITION NO. 2011-030 BY URBANE PROPERTIES, LLC FOR A CHANGE IN ZONING FOR APPROXIMATELY 2.27 ACRES LOCATED ON THE EAST SIDE OF PROVIDENCE ROAD BETWEEN SOUTH SHARON AMITY ROAD AND WESTBURY ROAD FROM R-3 TO INST(CD) 5-YEAR VESTING RIGHTS

The scheduled public hearing was held on the subject petition.

Tammie Keplinger, Planning, said this is a 2.2 acre site. I'm going to talk about the area plan first. The South District Plan identifies future land uses in this area. We have office retail along the corner of Sharon-Amity and Providence Road. We have multifamily on the subject site and the adjacent site and the site to the rear. We have St. Gabriel's Church, which is located across Providence Road.

The request tonight is generally consistent with the current land uses in the area. The South District Plan does show the subject property as multifamily, but area plans, as we know when we are dealing with daycares, they typically do not tell us where daycares could locate. This property is proposing to have a preschool or childcare development center. The property was up for rezoning in 2008 for multifamily development. That petition was withdrawn. It had quite a bit of opposition.

The current proposal in terms of the details is for a one- or a two-story building with four-sided architecture and building material details. There is sidewalk and planting strip along Providence Road. There is buffer along the southern property line and the property line abutting Bermuda Road, which is to the rear. There is a proposed right-turn lane that will be developed along this site.

The site plan actually we have two renditions, and I apologize. We seem to only have one on the screen, but one shows the driveway at this end of the site, and then another shows the driveway location on the southern side of the site. NCDOT has indicated that the preferred driveway is on this side, and we do have a site plan that will identify that. Also, Bermuda Road is actually a road. It was actually never dedicated to the City. Now, they are going through the process to withdraw the right-of-way from that road. If that occurs, there is another rendition of what will happen along this back property line. Essentially all the buffer area and the parking lot will extend into that area by about ten more feet. The building area will not change, but everything else will shift. It will give them more play yard, more parking space, and the dumpster will be located just a little further back.

Daycares are generally considered to be appropriate uses within proximity to residential uses. This site has the appropriate access, buffers, and building details. It is generally consistent with the district plan, and staff is recommending approval upon the resolution of outstanding issues.

Sandy Weathersbee, 2223 Croydon Rd., said I am the petitioner. I am also a principle in the business, and the other member and principles will be my wife, Betsy, and Dawn Peoples, and Dawn has a significant amount of experience in operating what we will call preparatory preschool. We met with the pre-submittal meetings earlier in the year – one in November and then in February, and we got good direction from the staff. We moved forward with that. Even before I filed the rezoning petition, I walked through the neighborhood. I was aware of the past rezoning history. Did not want to try to bark up the wrong tree with the neighbors. Had a lot of initial support. That support was sort of duplicated when we had our community meeting back in May, so at this point, I can comfortably say I'm not aware of any opposition to our use. There are some general concerns about traffic and cut-through traffic and will we add to the cut-through traffic, and we have been working with CDOT and NCDOT to try to end up with a right-turn lane that will ultimately, in my opinion, eliminate the need for cut-through traffic in the Westbury/Crosby Road area. At this point, I don't have anything additional to say. We have a few details to work out, but there is nothing controversial, no disagreements with staff, and everything appears to be headed in the right direction at this point.

Councilmember Kinsey said I suppose for the safety of the children the building is pushed back from the street.

Mr. Weathersbee said yes.

Councilmember Kinsey said and the parking is in front. Is that going to be pretty heavily planted so you will have –

Mr. Weathersbee said the playground will be surrounded by a brick wall on all sides, and it's our intention, you know, we have a Class C buffer all around the perimeter, and we will and we have to enclose our playground.

Councilmember Kinsey said I was just wondering about screening the cars, the parking area.

Mr. Weathersbee said come at me again with the question.

Councilmember Kinsey said will the parking area be pretty heavily screened with plantings?

Mr. Weathersbee said we'll have the standard amount of planting, probably some additional planting, but the parking lot is not going to be screened from the road, if that's your question.

Ms. Keplinger said the zoning ordinance requires a five-foot screen for any parking, and then they will be required to have street trees, so there will be definitely some screening and some planting there. Whether they go above and beyond that, they haven't committed to it.

Councilmember Kinsey said my only point is so many times now buildings are being pushed up to the road, and I can understand with a prep school, a pre-K, you don't want that for the safety of the children. I just wanted to make sure the parking was screened as much as possible – that's all.

Mr. Weathersbee said it will be plus we have an additional setback because of the institutional zoning, so thank you.

Councilmember Carter said this is about the third or fourth iteration that we have had on this site, and we no longer have the retirement home; is that correct?

Ms. Keplinger said that's correct. The last thing that was proposed to go here was I believe multifamily, and that petition was withdrawn.

Councilmember Carter said it was the Alzheimer unit was the last one, I thought. It was the entire two lots together. This one concerns me because it backs up to some condos, and on our map, the building with the condos is not represented accurately. I think that building is much closer to the line. So my concern is the hours of operation to see if you are addressing second shift and the children playing outside, the noise of coming and going would concern me with the residential area right behind. I also hope that this will be a four or five star unit.

Mr. Weathersbee said that's certainly our goal.

Mayor Pro Tem Cannon said, Mr. Weathersbee, unless there is a question directly for you –

Councilmember Carter said are we addressing the hours of operation?

Mayor Pro Tem Cannon said directing the hours of operation.

Mr. Weathersbee said we will open at 6:30 or 7:00 in the morning and close at 6:30 or 7:00 at night or no later than 7:00.

Councilmember Barnes said I have a couple of infrastructure questions for either staff or the petitioner. I wanted to know if there will be a right-turn lane installed. I see it on the map. Is that a commitment?

Ms. Keplinger said I believe that is a commitment, yes, sir.

Councilmember Barnes said with respect to exiting it appears that you can only make a right out of there; is that true?

Ms. Keplinger said yes.

Councilmember Barnes said I would imagine that a number of your customers may be traveling northbound on Providence in the morning, so they would easily make a right into the facility, but say they are traveling from uptown in the afternoons and need to go get their kids, they would be making a left to go into the facility and then making a left back onto Providence Road, which at 5:00 or 6:00 – I'm sorry. There's a median there; so you can't turn. So they will have to go back to Sharon-Amity and make a U-turn?

Ms. Keplinger said it's not all the way to Sharon-Amity, I don't believe.

Councilmember Barnes said is there a break in there?

Ms. Keplinger said I believe there is. I believe Mike can give us more information.

Mike Davis, Charlotte Department of Transportation, said happy to help address the question. You are wondering how return trips from Center City headed south bound? Median prohibits left turns in and out for southbound movements on Providence. U-turns are prohibited at this median break here. They are permitted here, and you will notice there is actually some curb work that is proposed as part of the plan to sort of facilitate that U-turn movement. Part of the discussion about the location of the driveway is also related to that movement because we feel like if we get the driveway here it will enable or reduce the conflict for people leaving to be able to make U-turns here, or if over time, and we talked about this with the petitioner, if it turns out that this really cannot handle U-turn movements that those U-turns movements could be moved down to Sharon-Amity. But either way it's U-turns for that return movement you described both picking up and dropping off.

Councilmember Barnes said the width of Providence Road at Sharon-Amity on the church side is it wide enough to accommodate, say, a Suburban making a U-turn?

Mr. Davis said you are talking about the church driveway, which would be this?

Councilmember Barnes said, no, I was going up to the intersection.

Mr. Davis said we are confident it's wide enough at Sharon-Amity. There is a possibility that we may have to restrict U-turn movements at the driveway that is sort of shown on this plan on the other side of Providence Road.

Councilmember Barnes said and the capacity is about 220 kids?

Mr. Davis said I don't recall.

Councilmember Barnes said I go to one of these every day, so I have some experience with moms and dads showing up, dropping off, and picking up, and it can be quite a challenge from a traffic perspective and certainly Providence Road presents some different challenges. Ms. Keplinger, he mentioned something about cut-through traffic. Is there a connection from the back side of this property onto Bermuda Road?

Ms. Keplinger said, no, sir, there's not.

Councilmember Barnes said explain the cut-through issue.

Ms. Keplinger said I believe Mr. Weathersbee brought that up from the community meeting.

Mr. Weathersbee said in the community meeting the neighbors just – because of the prior rezoning attempts, which were significantly greater and more intense uses they were well aware of traffic issues that might happen if there was an intense use – one more intense than our preschool. Once they heard what we were talking about and realized that we weren't talking about 64 apartments or something that would have a greater trip generation then I can honestly say everybody said we feel like what is going to happen is an acceptable use, and we would rather have this and that traffic than what we might have otherwise.

Councilmember Barnes said but the point is there is no road connection through your property. They are worried about people traveling Westbury to get to Providence.

Mr. Weathersbee said right.

Councilmember Dulin said I would like to yield to Councilmember Carter.

Councilmember Carter said my concern is the break in the median that is further west is the break that serves St. Gabriel's School, and that is heavily traveled early in the morning, so I have some real concern about safety in that traffic movement. Has that been addressed by CDOT?

Mr. Davis said it has to the extent we have done some field observation about it, and we deliberated at great length the best access for the site. I mentioned earlier that it is a possibility that we would restrict U-turn movements, which if we did it would still allow for left turns into that site, but for the purposes of people leaving this site, they would have to go down to the Sharon-Amity intersection and U-turn, in which case those movements would be separated.

Councilmember Dulin said those of us that were around in '08 remember the trials and tribulations we had on this site before. That did not go and didn't move forward. This is a pretty good site. This guy, Mr. Weathersbee, has come here today with his homework done and all the boxes checked, so I appreciate you, Mr. Weathersbee, for coming and having your homework done, doing the legwork, having your feet on the ground, and going door-to-door is a big deal. This group up here understands door-to-door, and having your homework done before you come to us makes it easier for us to have good questions ready to go. Traffic is going to be a big deal. St. Gabe's has been across the street for at least 50 years, so I wish you luck.

[Motion was made by Councilmember Dulin, seconded by Councilmember Kinsey, and]
[carried unanimously to close the public hearing.]

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ITEM NO. 9: HEARING ON PETITION NO. 2011-032 BY ROBERT W. BURKETT FOR A SITE PLAN AMENDMENT FOR APPROXIMATELY 20.16 ACRES LOCATED ON THE EAST AND WEST SIDE OF PARK SOUTH STATION BOULEVARD SOUTH OF ARCHDALE DRIVE AND GENERALLY BOUNDED BY DELCHESTER DRIVE, MONTPELIER ROAD, AND EDGEWATER DRIVE

The scheduled public hearing was held on the subject petition.

Tammie Keplinger, Planning, said as Mayor Pro Tem said this is a rezoning for 20.16 acres that is actually a site plan amendment for an MX-2 that was approved some years ago. The property in question is actually shown in the hatch lines on the overhead. These areas are currently vacant, but they do have portions of the infrastructure in for the Park South development.

In terms of the land use, the South District Plan recognizes the single family residential nature of the properties adjoining these sites. The area in orange is where the rezoning was approved in 2004, and it recognizes the rezoning by showing that as multifamily. The properties to the north and east are all single family in nature in terms of land use and in terms of zoning, and we do have the greenway to the east.

In 2004, there was a rezoning of the entire property to allow 851 multifamily units that included townhomes and multifamily dwellings, and it was about 119 acres. The current proposal is to take the areas that are shown, which have 91 multifamily residences shown on them, and allow those 91 residences to become single family. There is no change in the number of dwelling units. The petition is consistent with the South District Plan, and we are recommending approval upon the resolution of the outstanding issues.

Robert Burkett said I would just like to point out there is only one reason we are trying to accomplish this, and that is to protect the equity of our existing homeowners by providing a different price point, a much higher price point, where the appraisals will come in higher and therefore protect the equity, and from a self-serving standpoint obviously to hopefully generate more traffic through the site and create more sales. That's the only comment I have.

Councilmember Dulin said we met one day a couple of years ago. One of the things that your residents in this development have problems with are street design, street widths, etc., etc. Are we going to work on fixing those problems on the design of this section?

Mr. Burkett said the section is already basically already designed, and the infrastructure for the most part is already in place. We agreed with staff to put sidewalks on both sides of the street and accommodate considerably more parking that we have already laid out in the plan here.

Councilmember Dulin said is this section going to have the same water situation that the front sections of the development has?

Mr. Burkett said yes.

Councilmember Dulin said what is the name of that company?

Mr. Burkett said Aqua is the private water.

Councilmember Dulin said same situation as the front?

Mr. Burkett said yes.

[Motion was made by Councilmember Peacock, seconded by Councilmember Cannon, and]
[carried unanimously to close the public hearing.]

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ITEM NO. 10: HEARING ON PETITION NO. 2011-034 BY BANK OF THE OZARKS FOR A CHANGE IN ZONING FOR APPROXIMATELY 1.25 ACRES LOCATED ON THE SOUTHWEST CORNER OF PARK ROAD AND HEATHER LANE FROM MUDD(CD) TO MUDD-O

The scheduled public hearing was held on the subject petition.

Tammie Keplinger, Planning, said I will go straight to what the future land use plan calls for this area. This is the Central District Plan, and this plan identifies the adjacent neighborhood behind the petition site. It recognizes the commercial strip along Park Road, which this property is part of. It recognizes the Park Road Shopping Center, and then further commercial along Woodlawn.

In terms of the history, there is a conditional rezoning that was approved for this site in 2008. As a part of that rezoning, there were actually two properties – the subject property and the adjacent property were rezoned. They were rezoned to allow a mixed-use center that allowed approximately 40,000 square feet. The current request is just for one parcel. Eventually if the remaining parcel wants to come in for development, it would also have to go through the rezoning process.

The proposal for this site is to allow a 12,000 square foot branch bank and any other office use that is allowed in the MUDD district. There is a height limitation of two stories or 60 feet. We do have building elevations, and one of the things I would like to point out with the building elevations is this is Park Road. The drive-thru's for the bank will be under the building, and the front will actually be a faux office. They will have maybe some storage and stairs in this area. So when you look from Park Road, this is the view you will see.

In terms of transportation issues, the existing driveway onto Park Road will be limited to right-out only. The cross-access easements will be allowed for the adjacent property, and there will be additional right-of-way dedication along Park Road and Heather Lane. There are a couple of optional provisions with this request. One is to allow the drive-thru service lanes and windows, which are permitted only as an accessory to the bank or the financial institution, parking and

maneuvering between the building and Heather Drive, and a ground-mounted detached sign that will have a maximum square footage of face area of 50 square feet.

The proposed request actually minimizes the impact to the drive-thru's through their design while preserves the urban form visualized for this section of Park Road. The uses are consistent with the recommendations of the Central District Plan, and staff is recommending approval upon the resolution of outstanding issues.

Councilmember Howard said when this one came up a couple of years ago, Tammie, there was a question about how the back side of the property backs up – isn't that still a single family house?

Ms. Keplinger said yes.

Councilmember Howard said any concerns about the buffering in the back along that property?

Ms. Keplinger said the buffer – they will be required to meet the ordinance requirement. They do not have anything special in this area – any additional buffer.

Councilmember Howard said as far as the drawings and the site plan can I get bigger versions of that?

Ms. Keplinger said yes.

Councilmember Kinsey said I attended the public meeting. I think there were three of us there. I was concerned about the neighbors because they had gone through somewhat difficult zonings in the past, and there seems to be no question from the neighbors about what is going in there. They seem to be supporting it, but I see a representative here.

Suzanne Todd said on behalf of Bank of the Ozarks. I did not sign up to speak, but I'm here to answer questions.

[Motion was made by Councilmember Barnes, seconded by Councilmember Howard, and]
[carried unanimously to close the public hearing.]

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ITEM NO. 11: HEARING ON PETITION NO. 2011-048 BY GREATER GALILEE BAPTIST CHURCH FOR A CHANGE IN ZONING FOR APPROXIMATELY 0.30 ACRES LOCATED ON THE NORTH SIDE OF SOUTH MINT STREET AND SOUTH SIDE OF SPRUCE STREET NEAR THE INTERSECTION OF SOUTH MINT STREET AND SPRUCE STREET FROM MUDD-O HD-O TO UR-C(CD) HD-O

The scheduled public hearing was held on the subject petition.

Tammie Keplinger, Planning, said in terms of the future land use the future Central District Plan was updated with 2010 rezoning, which shows this site as a parking lot. It is surrounded by single family residential. To give you a little history of why this is back in front of you tonight, this was part of the 2010 rezoning where we rezoned not only the church proper and adjacent parking lot as well as this site. During the review, when they came in to get permits, we discovered that we missed something when we went through the original rezoning, and a free-standing parking lot is not allowed in the MUDD district. For that reason, we are bringing this petition back to you tonight to ask it to be rezoned to the UR-C district, which is consistent with some of our other rezonings that we have had for churches that have parking across the street.

Nothing will change in terms of the site plan that was approved. Everything will remain the same. We still have buffers as required. They will have entrances and exits as they showed on the original plan. The only difference is the change in the nomenclature on the zoning. Staff is recommending approval, and we'll be happy to answer any questions.

Councilmember Carter said was the church charged an additional rezoning fee?

Ms. Keplinger said, no, ma'am.

[Motion was made by Councilmember Barnes, seconded by Councilmember Howard, and]
[carried unanimously to close the public hearing.]

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ITEM NO. 12: HEARING ON PETITION NO. 2011-049 BY MELANGE HEALTH SOLUTIONS FOR A CHANGE IN ZONING FOR APPROXIMATELY 9.78 ACRES LOCATED NORTH OF THE PLAZA, EAST OF GLENFIDDICH DRIVE, AND AT THE END OF WILANN DRIVE FROM R-4 TO INST(CD)

The scheduled public hearing was held on the subject petition.

Tammie Keplinger, Planning, said the property in question is a little hard to see on the overhead. It actually houses a charter currently. In terms of the future land use map, you can see the Northeast District Plan does recommend institutional uses for this site as well as the adjacent site, which is a public school. It recommends multifamily residential to the west and single family residential around the remaining portion of the site.

In terms of the request, the petition proposes to allow counseling services to operate and serve the students within the school. The use of the existing structures, which are approximately 20,000 square feet, will be utilized, and we are recommending approval upon the resolution of outstanding issues.

Damon Scott, COO, Melange Health Solutions, 145 B Scaleybark Rd., said I'm here to talk in favor of Petition No. 2011-049. Under this operating agreement between Melange Health Solutions and KIPP Academy for 931 Wilann Drive, we are proposing use of two interior classrooms on existing buildings on the property to provide a day program and counseling services for assisting KIPP students. With that being said, I'm here today to speak in favor of zoning request so that will allow that day program to exist at that location.

Vicki Fewell, President, Charlotte East Community Partners, said the only reason I wrote down for I also wrote on that card "with a condition", which has been discussed, and it shows on the community meeting down in a footnote that the surrounding communities are concerned about having an institutional zoning in that area because we have previously in 2006 fought an institutional rezoning on that same property. KIPP, however, has been a good neighbor, but we would still be concerned about the future. If KIPP outgrows that 9 point whatever acres and they try to sell, who would allow to be moved into that spot if it is zoned institutional. So I'm for the institutional, but only if there is some sort of condition. Ms. Keplinger explained a while ago about certain issues that can be resolved by Friday between the parties, and then it goes to the zoning board, but like I say, I am for it but with a condition.

Councilmember Barnes said I wanted to ask a brief question of staff, and my question is whether the CD would take care of the issue she just raised.

Ms. Keplinger said at the Dinner Meeting I believed that the CD would take care of that, however, after I got back into the details of this request, I found it is an outstanding issue with staff; that we have asked them to note exactly what the proposed uses will be for the site. That's one of the things that your last speaker was referring to. We hope to have that resolved and have notes on the site plan by the time it goes to Zoning Committee limiting the uses.

Councilmember Barnes said so the petitioner would specifically exclude the uses that some people are concerned about.

Ms. Keplinger said we will relay that message to the property owner. I can't tell you that they are agreeable to that, but if they are not then it would be an outstanding issue.

Diane Boyd, 5124 Fireside Ct., said my property is adjacent to KIPP School. I live in Highland Trace. I have lived there for 26 years, and this is the fourth time this tract of land has come before Council. The first rezoning was in 1984 by Kluttz Realty to rezone the property from single family to multifamily. This request was approved; however, it is unfortunate that the homeowners were not made aware of this multifamily zoning before they purchased homes in the neighborhood. The second request for zoning was in 1987 for a site plan amendment by Kluttz Realty, and, again, this petition was denied. The third request for zoning was in 2006 by Family Support Services to rezone from R-4 to INST(CD). This petition was denied by Council. Now, in 2011, five years later, we have a different group of petitioners requesting the exact same zoning change – INST(CD). We were not in favor of the zoning change five years ago, and we are not in favor of the zoning change now. Our greatest concern is who will occupy the land once KIPP School leaves. It's my understanding that KIPP is near capacity, and this came from our community meeting. When I called Planning and inquired about this petition, I was told the zoning request was needed due to the pay program that KIPP School would be using. They have to pay in order to use the counseling service. At the information meeting that was held earlier this month, I learned that Melange Health Solutions is volunteering their services to KIPP School to help the teachers and students learn how to deal with students with behavior problems. The director of Melange said they could not continue to volunteer their services and in order for them to get paid they would have to rezone the land. I do not have an issue with Melange Health Services going into KIPP School and helping the students and the teachers, however, I do have a problem with the rezoning. At the community meeting that was held at KIPP School, we advised staff that KIPP and Melange that if they would change the zoning petition to conditional for education only we would support the petition. That being if the land was sold that only another educational institution could occupy the site request. As a matter of fact on Friday, I was advised that KIPP's board has some concerns if that commitment was made – that they may have some difficulty in selling the land. When KIPP School first came to Charlotte and according to a KIPP press release on March 1, 2007, and I quote, "KIPP Academy Charlotte is an open enrollment public school to which students are admitted regardless of prior academic record, conduct, or socioeconomic background. Students and parents enroll by signing a commitment to excellence learning pledge that outlines KIPP's high expectations, extended days, and structured discipline." In addition to recruiting kids with behavior problems, as they admitted at the community meeting, the kids expelled from Charlotte-Mecklenburg School System are appearing at their doorstep, then it seems to me that they should have some type of counselors on staff to accommodate these kids and their behavior since they were recruiting these type of kids. Also, there are less than 3% of the kids enrolled in KIPP that live in our neighborhood. Our neighborhood is vulnerable. We are in the process of starting a neighborhood association to address the many issues currently facing Highland Trace, and unfortunately we are having to start with what seems to be an occurring issue. We ask Council to please vote against this petition if KIPP is not willing to do the conditional zoning.

Judy David, 5117 Fireside Ct., said I and members of my neighborhood as well as members of the surrounding neighborhoods are asking you to please vote no for the rezoning request as it stands at this point. The reason for the rezoning is we think even as Melange Health Services is unable to get paid to come into the Academy right now, and they need the rezoning in order to use two of the classrooms to provide counseling services to the students. Melange, as you know, is already currently doing this on a voluntary basis. The petition states zoning allows for payroll. The community was before Council, as you know also, in 2006 for the very same rezoning request for the very same land, then by Family Support Services petitioning to have the land rezoned also to institutional. Their plan was to build a four-story housing development/group home for adults with mental and other challenges. The rezoning was denied, and to go back now and approve it would overturn what we were able to accomplish up to this point. As a result of several meetings, all parties, including KIPP Academy, Melange Health Services, and the representatives from the surrounding neighborhoods were in agreement that to add the condition of educational to the rezoning request would be in the best interest of all parties. This way KIPP could have their services, Melange could get paid, and the community would not have to undo the rezoning that we fought so hard for. However, on this past Friday, we were informed by Ms. Flowers, the co-owner of KIPP Academy, that KIPP has decided not to seek the condition of educational as we have discussed to this point. They now feel that it would perhaps be a problem for them to sell the land later. The community, however, feels that to rezone the land to

institutional would not only potentially devalue our homes but also overturn the success of the battles that we just fought in 2006. Surely the original petitioners could come right back and do exactly what they were planning to build – this four-story building or other companies as well. The services of Melange Health Solutions are already in place in the school and also at a private facility. If they decided they can no longer do this on a voluntary basis then we feel the Academy or the parents should provide the option of transportation to get the students to where the services are already being offered at Melange's facility. Of course, another solution would be to have the students transferred back into the public school system where that option is being offered already, but we feel that the burden of providing a means of payment between KIPP and Melange should not be placed on the shoulders of the community as we are struggling to bring the quality of life in this areas from transitional back to stable.

Councilmember Carter said I have several questions. Before we came to the dais, I asked Ms. Keplinger to please explain to us some of the differences in these rezonings. I don't expect you to do that tonight – well, if you can, it would be very appreciated – but to understand what is the exact difference between the institutional and the educational zonings. What is permitted in the institutional that is not permitted in the educational? What would be the difference in land value if we get into this differentiation? Then can those limitations, if they are simply educational limitations placed as a condition, how can they be challenged? How can they be overturned? Is that simply a variance? So, three questions, and I'm sorry to pile them on, but I would be grateful for your help.

Tammie Keplinger, Planning, said, first of all, the zoning ordinance does not distinguish between an institutional and an educational district. We have districts that allow education or public schools or schools. The institutional district is one of those districts. The way we would be able to restrict the use is like any other rezoning we would say it's an institutional CD rezoning, and the uses would be limited to a charter school or other public school and what other uses might be appropriate such as single family residential, so it allows some development to occur. So it's not that there is an educational district.

There is a difference between the INST(CD) that they are requesting now and the one they requested in 2006. In 2006, they proposed the four-story buildings with adult care. They would not be able to do that on this site because what they are showing currently is this site plan, so any use that would be permitted would have to go into those existing buildings. What staff would like to do between now and the time we get to Zoning Committee is talk to KIPP and to see if they fully understand, the fact they will be restricted to those buildings and the types of uses.

In terms of challenging – I'm going to skip the value and come back to the land value. In terms of challenging that, as with any conditional rezoning, the only way someone can do something other than what it shown on the site plan is to come back through the rezoning process. There are minor administrative changes we can make as a staff, however, we cannot change the uses, we cannot change the buildings, and things of that nature. It's very, very restrictive. In terms of the land value, I cannot answer that question. That is something I'm just not qualified to provide an adequate answer for you.

Councilmember Carter said with regard to establishing this office with paid services is that allowed what is zoned currently? Is it absolutely essential to have the rezoning?

Ms. Keplinger said I would like to refer to Katrina Young, our zoning administration, who has worked on this petition from that standpoint.

Mayor Pro Tem Cannon said while she is coming I do want to let Mr. Scott know and any others that you do have an opportunity for rebuttal if you choose to rebut what has been stated.

Katrina Young, Planning, said the reason that it needs the rezoning is for the office use. Even though it's going to serve just the children in the school because it's a use that is not a part of the school it's a stand-alone office use just like any other office use. But with the INST(CD) zoning, what the language could say is that the office use has to be in conjunction with the school, and that would eliminate the concerns that I have heard tonight about some other uses. I think if they

write the language correctly then it would allow what is currently going on now, but it just would be a different zoning on paper.

Councilmember Carter said but it would absolutely limit that use as defined in the language.

Ms. Young said absolutely. It would limit the uses. Again, as R-4, there are certain uses that are allowed now that this INST(CD) may take away depending on the language such as high schools, religious institutions, etc. that could go into that location now, which may actually trigger more traffic than what is being proposed with the office use.

Councilmember Carter said I hope there will be some way that our neighbors and the institution and Melange can sit down together with staff to understand these differences, and hopefully some of us who are interested on Council could be with you as we discuss this issue. I so respect what KIPP is doing for our youngsters, and I so respect the neighbors who are trying valiantly to build a community, and a school is an important part of a community. So if we can all work together, we might have some success, and I do understand the concerns, and I think the limitation is a good one.

Damon Scott, 145 B Scaleybark Rd., said I have a couple of clarifying points to make. One of the things in terms of the institutional zoning request is a condition of a licensure that we have to have in order to have a day program. It's not uncommon as the day program. It's a similar arrangement that exists between day program and Charlotte-Mecklenburg Schools that have those same existing programs, so within the context of our proposal it has always been to just use the existing structure that is on the property located and no change in terms of the physical plant of anything that is there at KIPP Academy, nothing to the exterior environment, no changes whatsoever, and it was an extension of our investment that we have been there at KIPP Academy over the past year to an investment that we made in terms of helping those students, and the establishment of a day program at that particular location will help them meet some of their long-term objectives. That's why the proposal is very specific in terms of working with the students that are existing there and not beyond that scope and also as well to use what was already in place and meet the licensure requirements where the program, that rehab, in order to formally have that program exist there. Other than that, that was the basis of it all.

Councilmember Howard said I think the underlying concern from the community I have heard is that if for some reason KIPP closed what would this zoning that they have now and adding this CD allow a future property owner to do?

Ms. Keplinger said right now because if – let me ask you for clarification. Are you assuming that their INST(CD) is approved?

Councilmember Howard said, yes, what would be the result of us approving this to a future operator if KIPP left?

Ms. Keplinger said currently it would allow all the uses that are allowed in the INST district within the buildings and the site plan that is shown and gets approved with the rezoning. That could be a church, a school, any of – I think it allows some office districts. I'm going to have to look to Katrina to confirm. It allows some minor office uses. The institutional district when you look at the hierarchy of zoning districts is the one that is closest to residential.

Councilmember Howard said what about the office part of it, which is the part that we are talking about? I get the institutional part, which is everything you just said can happen now if they move because it's institutional right now; right?

Ms. Keplinger said, no, it's R-4 right now. It's single family residential right now, and you can have schools in an R-4 district. You cannot have the office use.

Councilmember Howard said what happens with the office use? All the things you just named could have an office with it. Could this counseling service expand and keep doing what they are doing if KIPP were to move?

Ms. Keplinger said under the current site plan and the current notes, yes, they could.

Councilmember Howard said you are comfortable you have some language you can put in the notes that would restrict them that if KIPP moves they have to move as well?

Ms. Keplinger said I think that one of our outstanding issues was that we needed for them to define what they proposed to use the site for other than the school and the counseling service. Because they haven't defined that yet, I think we, as a staff, will go back and look at that. If they don't define it, that will be an outstanding issue for us.

Councilmember Howard said in the past have we been able to come up – and, Katrina, it may be for you, too. Have we been able to come up with language that would limit it so that if one use changed it would cover that secondary use as well?

Ms. Keplinger said certainly. We do that all the time with conditional zoning. It's just in how we craft the language.

Councilmember Howard said, again, I'm a huge fan of KIPP. I have told you that over and over, Mr. Scott, so it's not geared towards you guys or the counseling agency, but also I sat back there when we dealt with this before, and I know that the neighborhood has a real concern about things slipping in on them and them not being able to address it because it was passed with some other decision.

Ms. Keplinger said I have not personally had any conversations with KIPP. Mr. Scott is going to be renting or leasing the space for the counseling service, so I don't believe that KIPP is actually represented, and they are the property owners, and they are the ones who have to decide whether they want to put these types of restrictions on their plan. From what the adjacent property owners were saying, they may not be willing to do that.

Councilmember Howard said, Mr. Scott, help me understand again, and you probably said this already and it was a bit over me because I don't do this every day. What's the difference between the school that you have now and a day program? Is that the same thing?

Mr. Scott said absolutely not. A day program – what we have now we volunteer staff to have a program manager here that we send over to KIPP Academy on an as-needed basis. For example, they had a teacher that died in the month of May, and we sent a licensed psychologist and our licensed therapist there on a volunteer basis to provide grief and bereavement counseling. We did that out of a general need to help them manage through the end of the school year. That's very different than a day program where you have structured daily routine between a certain set of hours up to six hours a day that also allows for additional types of programming for children that they identify to have some severe emotional behavioral issues.

Again, like I said, it's not uncommon for a day program to exist within a public/private partnership, and Charlotte-Mecklenburg Schools has a very similar arrangement, so it's a more structured program within the context of an educational setting. On our end, in order for our licensure, we have to be licensed in order to do that, and institutional zoning, whether it be conditional or open, is the only way on our end that we can be licensed and provide that type of structured program within an existing program.

Councilmember Howard said explain to me why that is not something that KIPP can do. From my understanding in talking to staff that is something that goes beyond your license. You can't just provide that service and hire people on staff to do that?

Mr. Scott said we have those credentialed staff that already exist within our agency, but in order to have a mental health program licensed as a day program it has to be at a specific location in an educational setting, and that is totally different than what we currently have. We just volunteer our staff to go over to help KIPP meet the objectives when they identify students that have issues that go beyond the classrooms.

For example, if there is a child that loses a parent or a child that has been diagnosed with attention deficit disorder and disrupts the normal day-to-day routine of the classroom, that child then may need something in addition to the normal educational structure or setting that is there. In that situation, a day program is often something that is offered to offset what is currently placed for a traditional school setting. So, that's what we have been talking about trying to establish at KIPP.

Councilmember Howard said I have more questions, but I won't do that to you guys tonight. I will just get with you after because I do want to understand these examples of the way it's done with the public schools somewhere else.

Councilmember Peacock said my question is for Ms. Fewell. Also, the first speaker after Ms. Fewell. I think it was Ms. Boyd. Ms. Fewell, I was just trying to get a clear understanding if what you objected to earlier or not objected to, but you said with your condition if that had been met from the answers that you just heard that staff was giving to Mr. Howard and has been?

Ms. Fewell said, yes, it has. May I ask another question?

Mayor Pro Tem Cannon said no.

Councilmember Peacock said unfortunately no.

Mayor Pro Tem Cannon said the rules won't allow that.

Councilmember Peacock said my next question will be for Ms. Boyd. It sounds like this is a very different petition from what you all saw in 2006. From the way you all feel about the petitioner, it sounds like you all have a dialogue that has been occurring and one continues. What is the most ideal scenario here for you? It appears to me, and you tell me if I'm seeing this wrong from your perspective, Melange is coming to serve current customers they are already helping. They need to be near their customer. This is for an office use, and it sounds like your greatest fear is they leave and you all are left with something that will bring an absolutely controllable element into your neighborhood.

Ms. Boyd said that's correct. Another issue is that no one from KIPP is here. Now, my thing is this. If KIPP leaves because KIPP is near capacity now – I understand they have 300, and they can only have 360. I think KIPP is doing a wonderful idea. They are my neighbor. I love them. However, I'm concerned about what is going to happen when KIPP leaves. If we rezone it then no telling what is going to come in there.

Councilmember Peacock said, Ms. Keplinger, if KIPP leaves, Melange probably wouldn't stay there. Who could be the next customer who could come in? What would be the worst case scenario that this neighborhood would experience? What type of use could come in under INST(CD)? Can you give me some examples of some of the most controversial ones in your history in the Planning Department?

Ms. Keplinger said under the INST(CD) as it is currently proposed – if someone will hand me my zoning ordinance, I will give you a few.

Councilmember Peacock said, Ms. Boyd, I'm trying to begin with the end in mind here – the absolute worst scenario. When we hear petitioners who are opposed to the person – to this. It doesn't sound like you all are having a problem with the business of what Melange does to help KIPP in that respect.

Ms. Boyd said we are not. It's what is going to happen when they leave.

Councilmember Peacock said would improved communications between you and KIPP make you feel better about their permanency in the neighborhood? Does it sound like there is no dialogue there at all?

Ms. Boyd said, no, we had a nice community meeting with them. They are near capacity, and they are looking at doing a high school, and there right now it's fifth through eighth grade. I think they are doing a wonderful job. I think Melange Services are needed there. That's not my issue. My issue is when they leave and that property is rezoned. That's right near me. We are already having a problem with the apartments behind us, and I know that doesn't have anything to do with this, but people come in. They promise one thing; they do another.

Councilmember Peacock said you are being pretty generous, Mr. Mayor Pro Tem. I hope we don't get in trouble with Ms. Hagler-Gray.

Mayor Pro Tem Cannon said I'm looking at her, and she is looking at me, so we need to try to round this thing out. Ms. Keplinger, have you found the information you were looking for?

Ms. Keplinger said, yes, sir. One of the things about the institutional district is many of the uses that are permitted have prescribed conditions, so you have to go to other sections of the zoning ordinance to determine whether something could go on a certain site. With that in mind, I'm going to give you a few uses that I think could go there, but just to let you know they may not be able to once all the regulations are figured out – a child daycare center, drop-off donation facility, dormitories. Again, a lot of these uses are institutional type uses that would probably not go in this location anyway. Funeral homes, but there are some real restrictive regulations associated with that. Large child daycare centers, nursing homes, rest homes, homes for the aged and infirmed, schools, open space, recreational uses, radio and telephone towers, cell towers.

Mayor Pro Tem Cannon said no video gambling though, right?

Ms. Keplinger said, no, sir. Stadiums and arenas, but, of course, that wouldn't locate in a place like this fortunately. Short-term care facilities, subdivision sales office, which are temporary, and there are some others, but those are the main ones. It's very limited.

Councilmember Peacock said that's very helpful.

Mayor Pro Tem Cannon said I have a couple of questions for you. One, because I know Mr. Rosenboro has some questions also and maybe some of the other members of the Zoning Committee. There can be an education use only added to this condition piece; can it not be?

Ms. Keplinger said it can be added, however, the property owner has to agree to add the condition.

Mayor Pro Tem Cannon said, right, to the site plan per se. Of course, they are not here to respond to that.

Ms. Keplinger said they do have time after this meeting before we get to the Zoning Committee to do that.

Mayor Pro Tem Cannon said I would suggest and/or recommend that be followed through on and see what kind of response we can get back with regard to that. Also, for any other particular use that may be coming thereafter. Let's say there are there for a moment and then they leave, we go back through another process. CDOT is reengaged, your offices are reengaged, and it's been my history and I think the members of this body's history to know that staff has pretty much never brought us back anything and even the Zoning Committee – they have never brought us back anything that is going to harm the fabric of the community. I would imagine that is going to be the same case going forward, but I do hear and understand what their levels of concern happen to be.

Again, if we could touch base with them and find out where they are with this added piece for educational purposes only. We heard from some of the speakers this evening speak about that, and it sounds like it can help with this process. Zoning Committee?

Steven Rosenboro, Chair, Zoning Committee, said just to follow up on a comment you said. We would like to encourage this applicant and others to use this opportunity to resolve issues

before it comes back to the Zoning Committee. The Zoning Committee really with outstanding issues tends to have a deferral, and in order to speed up the process, in order to produce good government here, we would encourage all applicants to get with staff and try to resolve these issues before it comes to us.

[Motion was made by Councilmember Barnes, seconded by Councilmember Kinsey, and]
[carried unanimously to close the public hearing.]

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ITEM NO. 13: HEARING ON PETITION NO. 2010-080 BY CHARLOTTE-MECKLENBURG PLANNING COMMISSION FOR THE ADOPTION OF A TEXT AMENDMENT TO THE CITY OF CHARLOTTE ZONING ORDINANCE TO MODIFY THE REGULATIONS FOR “OUTDOOR SEASONAL FRESH PRODUCE SALES” BY: 1) RENAMING THEM TO “OUTDOOR FRESH PRODUCE STANDS”, 2) EXPANDING THE ZONING DISTRICTS IN WHICH THEY ARE PERMITTED WITH PRESCRIBED CONDITIONS, AND 3) MODIFYING THE PRESCRIBED CONDITIONS

The scheduled public hearing was held on the subject petition.

Tammie Keplinger, Planning, said Sandy Montgomery is a coordinator with the Planning Department, and she and Solomon Fortune have worked on this text amendment, and she is going to present the findings and information to you tonight.

Sandy Montgomery, Planning, said I’m going to give you a little bit of history on this text amendment before we get started with the slides. We had a public hearing on this text amendment back on January 18th, and we heard some concerns about the proposed text amendment, the changes, so based on those concerns, staff went back and revised the text amendment. We met with the interested parties several times for different presentations, and we have drafted the text amendment here again.

Because there were some substantial changes from the first public hearing, the Zoning Committee recommended and Council approved that we have a second public hearing on this text amendment, so that’s a little bit of history on where we are for the second public hearing on this text amendment.

The purpose for the text amendment in general is we wanted to expand the locations and zoning districts in which fresh produce stands could be located to where citizens could access fresh fruits and vegetables on a more regular basis and have more opportunities when they are out and about. The second reason was an institutional use did approach us and express a concern about not being able to have a fresh produce stand to sell fresh fruits and vegetables in the institutional zoning district where retail sales are not allowed, so based on that that was the original purpose and the purpose right now for the text amendment. She began a PowerPoint presentation entitled, “Outdoor Fresh Produce Stands Text Amendment”, a copy of which is on file in the City Clerk’s Office.

First, I’m going to go over some of the highlights of the text amendment and compare it with the existing regulations we have today and the proposed regulations. The types of sales involved originally were fresh produce, fruits, vegetables, and nuts. We are still keeping that as the major focus for these produce stands. Now, up to 10% of the sales in our existing ordinance are allowed to have fruit or vegetable derived products and baked goods. The revision is that up to 10% of the sales areas in the nonresidential districts can have fruit and vegetable derived products. We backed out the baked goods because that does require a health inspection for the kitchens it’s made in.

As for the zoning districts themselves, we expanded it from the four districts that it’s allowed in now: urban residential, commercial, the B-1 and B-2 districts, and the commercial center district. We proposed to allow it in every zoning district with some conditions. The permit right now is either a three-month or six-month permit for fresh produce stands. We propose now to

allow that to be year-round. The hours of operation would remain the same as they are now in the zoning ordinance from one-half hour before sunrise to half-hour after sunset. The location has changed.

Right now we allow it as an accessory use on any lot occupied by a nonresidential use. The proposed changes are broken out by zoning district. In the residential districts, it would be allowed as an accessory use on a lot with an institutional use that abuts a major thoroughfare. In the office and institutional districts, again, an accessory use on a lot with either an institutional or an office use. In all the other zoning districts, it would be allowed as an accessory use on any lot occupied by a nonresidential use.

The change in the size is another substantial change in the text amendment. Originally we were looking at produce stand being one unit, and we said the maximum size was 360 square feet. That was per stand. What we have done in the proposed amendment is look at more produce stands on any one lot, and again broken it out by zoning districts. In the residential districts, you can have a combined 750 square feet for all stands on a lot, and in all the other districts 1,500 square feet, so that allows a number of produce stands that might want to locate on the lot.

The existing regulations no permanent buildings are allowed. It's a temporary use, and that still remains the same in our proposed regulations. The design standards basically stay the same. A few of those highlights are that a produce stand must be mounted on a road-worthy trailers. The wheels and axles need to remain in place. Wooden finish display counters and skirtings would be used to conceal the tires, the axles, and the tongue of the trailer, and an awning can be provided. Basically we are keeping all the design standards for the structure based on some of the comments from the last public hearing.

There are a few exceptions. One, we have added that a temporary canopy or tent can be used to shelter the stand, and we have noted that a separate permit is required for that. We have modified the location of where the awning provision is that allows it to extend no further than five feet from the base to make that part of the fresh produce stand design standards. And, we lastly had a requirement that required customers to purchase food inside the perimeter, and we are deleting that because under this revision produce stands could be a table set-up. Somebody could sell off the back of a truck, so there would be no inside perimeters. There was also a provision that said that they may have a refrigerator and since it wasn't mandated we thought that provision isn't really needed. They still can have one or they can choose not to.

I'm going to get into how does a fresh produce stand vary from other uses that sells similar type of units, which I know is some of your concern. A farm is allowed to sell products grown or raised on farm premises. I should say farmer and occupants. A farm has to have a minimum of three acres, and it's allowed in a number of zoning districts – single family, multifamily, research, institutional, office, business, mixed use, and industrial.

We also have a farmers market category, which is for sale of fresh produce. It can be plants, baked goods, dairy products, meats, crafts, the whole gamut of items. It's really considered as a retail use, and it's allowed in an enclosed building. The districts where the farmers market type is allowed is in business, the transit-oriented development district, MUDD, UMUD, commercial center, neighborhood service, and industrial. Some examples – Wal-Mart and Hillbilly Produce Market. Those are retail uses completely within a building. We have Atherton Mill and other types of retail sales in an enclosed building.

Last I have the Charlotte Regional, which is a state-run farmers market. This is one of five markets run by the State of North Carolina and operated by the North Carolina Department of Agriculture and Consumer Services. This land out at the Yorkmont Center is zoned industrial CD. That is another use that is allowed.

Marilyn Marks, 601 Briarpatch Ln., said I am the chair of the Charlotte-Mecklenburg Food Policy Council, and I appreciate you giving us time to speak in favor of this amendment today. The vision of the Charlotte-Mecklenburg Food Policy Council is good, healthy food accessible to all people of Mecklenburg County. We communicate, educate, and advocate, and we continuously bring the issue of food to the table, and tonight we are to bring the issue to the

zoning table about fresh produce stands. Last summer the Food Policy Council joined with Mecklenburg-County Health Department and UNC-Charlotte to publish the Mecklenburg County Community Food Assessment. Unfortunately, this study showed us we have 72,000 people inside of Mecklenburg County who live in communities with no access to fresh fruits or vegetables. That's a city the size of Gastonia inside our bounds with no fruits and vegetables. Since that time, the Council has been searching for ways to increase produce accessibility in these areas. A priority taskforce headed by Lisa McDonald and Megan Dean have been working on all different ideas for getting fresh fruits and vegetables into these areas lacking access. We want to particularly thank Solomon Fortune and Mark Fowler, who gave us lots of time to come in and talk with them about these changes. They invited us in, and they wanted to know our input on the outdoor fresh produce stands. I want to speak to the fact that it's collaboration like this with the people who make the rules that are in fact going to keep us on the same page and are going to show that we can get that accessible food and bring that food to the table. Now, Lisa McDonald is going to talk about some specifics we wanted to point out.

Lisa MacDonald, 6089 St. Johns Ln., said I appreciate the time to come up and speak in favor of this text amendment. I, as Marilyn mentioned, am a member of the Charlotte Food Policy Council and also a south Charlotte resident. We really want to thank and appreciate the collaboration we had with the staff, both with Solomon and Sandy Montgomery and Mark Fowler, who really were easy to work with. They were very professional, willing to answer our questions and explain to us the process not only of this hearing but how the text amendment had been written and questioned before. Specifically we are in favor of the acknowledgement of the intent of the regulation is to encourage greater consumption of fruits and vegetables, which is acknowledged by a lot of different nutritionists as being very important as a component of all of our diets in order to increase health and reduce obesity in our population. Likewise, we are also in favor specifically of expanding the timing of the permit from three months or six months to all year. That makes it easier for nonprofit agencies to operate an outdoor produce stand or other places. The part of the amendment that expands the fresh produce stand into all of the different districts is something that is important. As Marilyn mentioned, we have a lot of people that live in neighborhoods where it's a very long bus ride and sometimes two transfers to get to a grocery store that sells something other than a banana and an apple at the convenience counter next to the beer and the cigarettes. My passion is to improve access to healthy food and underserved neighborhoods in our city and out county, and I think this amendment will help make a difference to that.

David White, 2523 E. Providence Dr., said I am the owner of Providence Produce. We operate three seasonal produce markets in the south Charlotte area, and those are our pictures that you saw on the display, so that kind of represents what we do. We own the locations that were in that PowerPoint. We do support obviously what we do – we support that – but we feel like this amendment is very, very extreme in how wide it's opening it up. The question is do you want to have no restrictions on what people are doing out there. This is my father, Howard White. He is also involved with the company. This is kind of a quick run-through he is going to tell you.

Howard White, 6012 Lancelot Dr., said I think David wants to yield the remainder of his time to me, if that's allowed. We are not in the U.S. Senate, but we are before an august body. We are concerned that we have worked with staff and we wrote the original ordinance and got it approved in 2005, and that facilitated the business that my son has been running since then. An awful lot of people come to his produce stands, and they are very successful. We would love to see that kind of activity throughout the City of Charlotte, but we find that this ordinance is opening the door so extreme that we have great concerns. Let's talk about the time of the year. The idea of running outdoors produce stands in December, January, and February is frankly ridiculous, and you can refer to my write-up to get some details on that. We suggest March 1st is early enough. December 30th, it ought to be closed outdoors. You can't run a produce stand outdoors in the winter time. Nobody comes, and the produce freezes, and there's no local produce much that time of the year anyway. Then let's talk about the zoning districts and the location. Well, they are just anywhere based on the ordinance that is being proposed. We think that ought to be kind of looked at to see do we really want that broad an application as a huge jump from where we are today. The maximum size area of 1,500 square feet is like a house, and we think that we ought to consider limiting the size of a produce stand. 750 square feet for any given stand no matter where it is would certainly be big enough. The items sold, we agree that's

a pretty good idea. We don't have any real complaints with that. We would like to add local honey, and we would like to restrict it from ice cream and all kinds of little fruit drinks and frozen drinks and lemonade and that kind of thing. We want to make sure it's not just a place to come get a sweet drink with some fruit in it, okay. The days and hours of operation – well, again, we don't think you should operate produce stands in Charlotte in December, January, and February. We would ask that be limited. The buildings, the idea of the trailer that we use in David's business – it's not my business – that he uses in his business works very well. We don't allow the customers inside the trailer. We think that's too dangerous. We do ask that the canopy be extended five feet beyond the roof line because the roof of the produce stands is substantially wider than the base, and that just makes sense. Why limit that in this new ordinance. We had no idea. It seems like an unnecessary thing. The produce stand shown in the picture had the awning five feet beyond the roof – not the base. And, you may see more in my write-up you have before you. The idea of tents of different colors and stakes and ropes and so forth, this is what people will choose to use almost all the time if they are given the opportunity to do so, and I don't know that we want Charlotte cluttered with a lot of different looking tents. The existing ordinance was designed to make the produce stand blend in with the architecture of the surroundings, and that's not a bad idea. The parking – okay. The idea we don't need parking for produce stands is ridiculous. You notice there is no regulation on parking that makes any sense in the existing proposed ordinance, and I got a detail here as to how we might make the parking responsible. It's not safe to have five parking spaces for five produce stands. It's very dangerous. A lot of children run around a produce stand with cars coming in and going out. These are some of the concerns we have, and I hope we can get this ordinance made more responsible. We have met with staff twice, and we are still not satisfied. We don't really know why the staff is going to such an extreme to broaden the ordinance as much as they have, but I'm sure the institution that was favoring expansion in their area, we can accommodate that sort of thing, but let's don't make this ordinance a free-for-all. We'll be back here in this same room in three years with a big outcry to get rid of all these clutter produce stands around the city and have more responsibility with the vendors. I think that's about –

Mr. David White said I just want to provide an example. Back to the tent thing. We took a lot of time making sure that our locations look very, very nice and appealing and clean and clutter-free, you know, nice pieces of the community, but if you look around there are some guys who have set up dog kennels this year and are selling peaches out of dog kennels with tarps over the top. I just have a concern that would be the direction the people are going. They are not all going to look as nice and pretty and nice pieces of the community like ours are. We spent a ton of time making our locations very nice and keeping them well themed and well with what we believe they should be. You are going to see a lot of carports and dog kennels and tents and junk everywhere. I don't think you are going to be very happy with the result of saying, okay, guys, you can do whatever, whenever.

Mr. Howard White said the carport is a very popular way to set up shade and shelter from a thunderstorm for a produce stand. You got three or four tables under the aluminum carport and set it up, and tents with stakes and all of that and ropes are also popular, but you are going to see that sort of thing if we don't put some sense in this ordinance. Charlotte is supposed to be Tidy Town, but you aren't going to be Tidy Town for this.

Councilmember Turner arrived at 7:40 p.m.

Ms. Hagler-Gray said you may want to allow the staff, since they are the actual petitioners –

Mayor Pro Tem Cannon said this is true.

Ms. Keplinger said we would like to just cover a couple of points if we may. I want to hit a couple of highlights, and Sandy – we are going to do this together. In terms of the zoning district and opening this up, you heard from these ladies how important that is to provide fresh produce, fruits, and vegetables to people that don't have the ability to get to that type of food now, so we feel that it is a good thing. We feel that the restrictions that are in the text amendment are actually restrictive enough so we don't have a lot of these popping up in areas where they should not. We are not limiting the color on the tents. You can have tents. We have tents all

throughout the ordinances for different types of uses, and they are all regulated the same way, so we are proposing the same regulations for the tents in this situation.

In terms of the times of the year, I think that is kind of a self-regulating item. The permit will be good for a year, and if the produce is not available, as many of us know it's not during the cold winter months, I assume those stands probably will not be in operation then, but we would have the permit that would be available for a year. The limit on the square footage – in the ordinance right now it is 360 square feet, and what we found is sometimes we have vendors that want to set up side-by-side, and by allowing 1,500 square feet, this would allow you to have a variety of vendors in the small locations contained and still have more produce and maybe a different variety.

The parking issue, the ordinance does propose five parking spaces. It can be shared parking with the church or the use that is on the site. We feel like that is adequate to cover the need, and also the carports, the aluminum carports, that were mentioned, those would not be permitted. That's a permanent building, and those would not be allowed.

Ms. Montgomery said we did not restrict what type of structure people might want to put their produce on whether it be a table or the back of a truck if they parked in the parking lot of a church, for instance. As for selling in a dog kennel, I mean I can't really respond to that because a dog kennel to me has a pitched or rounded roof, but any type of platform could be used.

Mayor Pro Tem Cannon said, Madame Attorney, what are the rules here since we have proponents on both sides? You have the staff, of course, and you have persons represented right now.

Ms. Hagler-Gray said the rules require that proponents are given a two-minute rebuttal, and since staff is the petitioner here that would have included them, but you may have the opportunity to ask direct questions to the ladies that spoke in support of the text amendment.

Councilmember Peacock said, Sandy, I was wondering if you could talk about what consultation you have had directly with people that are in the business – farmers. These two gentlemen here are the only ones – they have spoken to us before actually. I want to say it was a while ago. How come they are the only ones we have heard from? I know we have farmers markets located very close to the Government Center here. Have y'all done any research and talked with them? Have they been in favor of this – other people in Mr. White's business?

Unidentified Speaker said, Solomon, have you been contacted by other farmers or other associated type of users in the City in the drafting of this? No, we haven't.

Councilmember Peacock said I understand the objective from the Food Policy Council and the desire to want to address the ability to have more food access around. From your presentation I'm still trying to determine where this need is coming from. Where are the requests coming from on this? Where has staff in the past met some objections? Where have we had a potential petitioner who maybe got frustrated with the process and backed off? I'm just wondering if what these ladies here are advocating for on the Food Policy Council side that are advocating for it, they are wanting to see this problem changed by what you are doing right now. I'm just curious where we are with the need and what problem are we solving, and how does this help things?

Ms. Keplinger said, Mr. Peacock, if I may take a stab at that. Under the current ordinance, we only allow these types of uses in four districts. They are very limited. It's the UR-C, the B-1, the B-2, and the CC. When you think about those districts and you think about the uptown area, just as an example, we don't have many of those districts in the uptown area. By allowing this use, which has all the restrictions we went over, in all districts, we do provide availability for people to get to the fresh fruits and vegetables. Also, it's an accessory use, so this would not be able to go on a lot as a principle use, so you have to have the principle use in order to do this.

Councilmember Peacock said the one item that jumped out at me when you mentioned you haven't talked with any farmers or people that do this for a living and sell this, why no baked

goods? That just jumped out at me. I don't know why you singled out baked goods. I heard you said because it required County health inspection. Again, where is the problem with baked goods currently, and why are we excluding that? I need to know where my doughnut will be Saturday morning.

Ms. Montgomery said the original fresh produce stand text amendment, which was back in 2004, we worked with the White's, who were at the time the produce stand we were familiar with, and drafted what type of uses would be allowed there, and that's where the 10% of the fruit and vegetable derived products came in. At that time, they helped draft what it included and the language. It talks about what specific vegetables, as an example, and also baked goods. They were interested in baked goods at that time. We tried to cover the gamut, and we thought that was an allowable thing we have seen at fresh produce stands, but we found out later that requires some type of health inspection for the kitchens where products like that are made.

Councilmember Peacock said I would like to ask if staff could reach out to the folks at the Charlotte Center City Partners, who convene a pretty extensive taskforce associated with the new efforts that they have, which is now going to be the location at Reid's. They have reached out to a lot of folks in the farmer's community. They just hired a director to head up that operation. I feel like if we are only hearing from Mr. White's audience as it relates to people from his industry, I think we need to hear from more. Frequently, if we don't reach out to them, they are going to be reacting to us. What I don't want to have is what Mr. White has predicted, which we are going to have people that are going to be frustrated with the quality of what we are seeing in the community whether it be something small or large.

Ms. Montgomery said I did forget to mention that we did speak with Nancy Newton, who has a produce stand out in the northeast – Newell area – and she has been running that for a while out there. She has been considered an outdoor seasonal sales out there. She would be allowed to continue. This text amendment does not affect what she is doing out there. Center City Partners again has the food vending program uptown and regulations there. As for the market you were talking about within an enclosed building in retail, that is an allowed use that would be encompassed within buildings allowed by-right now anyway.

Councilmember Peacock said my question isn't about that. My question is about having staff piggyback off of their efforts to work directly with vendors. The trouble with an uptown farmers market is it is forced to compete with King's Market, the Carolinas Medical Center Market, the one that is now located in SouthEnd. The objective of the Food Policy Council and those that are advocating for more farmers markets is to bring the farmers into Charlotte and have them sell more of their product. My question is if they knew this restriction had been removed what are their feelings about it? Will it help them, and will it solve the problem we are trying to identify here, which is getting more food distributed across this area?

We have had people who have spoken to us tonight who have said there is an area as large as Gastonia that could be served how people get more fresh produce, so just wanted to find out – Sort of push staff to look a little bit deeper to find out their thoughts. They may be similar, but we are only hearing from one person in the industry.

Ms. Montgomery said we'll be glad to do that.

Mayor Pro Tem Cannon said if I might take a moment of personal privilege. I think the people that are standing before us in that of Ms. Marks and Ms. McDonald as you talk about piggybacking off of those persons associated with those in the uptown area, I think you are looking at those folks right now. If you had a minute, what would you say?

Ms. McDonald said we represent a lot of the different food systems in Charlotte, so Mr. Fortune we kind of inundated him at our last meeting, but we had representation from the farming community, we had representation from the Black Women's Health Network, we had representation from the Historic West End Market, and we had representation from the Health Department, who wanted to have an outdoor fresh produce stand last year under the old regulations and weren't allowed to do it. So they wanted to sell fresh produce to people who really needed it, but they couldn't do it.

Ms. Marks said I want you to know that the farmers want this because they are looking for a new way to make some money selling food on other days of the week perhaps that markets aren't open. We met with the Catawba Land Conservancy just this week, who is going to have a December conference and bring in other areas that have these kinds of markets where they make money. I sit on the steering committee for the 7th Street Market and helped hire the new person. In fact, today we were binging emails around about who had better ideas. The Center City Market is dedicated to serving the food deserts as well as downtown, so we do know the farmers, and I think your question is a really good one. The reason they want it is simply to make enough money to keep them in business.

Councilmember Howard said I think Councilmember Peacock brings up a really, really good point to reaching out to not just folks that run the stands but North Carolina Farmers Market and some of those other guys that are in the industry, not necessarily the ones that do the stands but are in the industry of helping us get fresh produce. The other thing is I just mentioned to someone I was talking to on staff about the appearance. It would seem that if it could be kind of anywhere that we may have some appearance issues, not only with what they put up and what they display but what they leave behind when they are gone, and I would love to know how we regulate that and not have carts and stuff just all over town because people can set up anywhere.

The other question that Mr. White posed that was interesting to me was about what people could sell especially in off-season when there is not really product. How do we regulate them not selling juice boxes and every other little thing in the world and make sure it's fresh fruit and those types things and not candy because that is not the intent of what you are trying to do not to compete with convenience stores all over town. What is staff's thinking on appearance and how we regulate what they sell?

Ms. Montgomery said we do have our provision in the ordinance, which would remain in there, that any trash and spoiled product is removed at the end of each day, and at the end of the permit conclusion of the termination process or length of time. We also have very specific language that talks about what type of product can be sold including but not limited to tomatoes, squash, corn, cucumbers, beans, berries, melons, apples, pears, peaches, citrus fruit, root vegetables, green vegetables, pie pumpkins, nuts, and other fruits and vegetables. So we are trying to be specific that it's not drinks. We certainly can put in there some restrictions.

Mayor Pro Tem Cannon said would that help, Councilmember Howard?

Councilmember Howard said it is still the enforcement of it that is a concern to me, and I'm just not sure who is enforcing.

Councilmember Kinsey said I want to make very sure about what I'm hearing, and I'm very supportive of markets. In fact, we are going to open a new one on July 2nd at the corner of Shamrock Drive and Eastway. I went to three markets on Saturday. I want to make sure that these are as an accessory – all of this just applies to an accessory market – not my favorite market on Kings Drive.

Ms. Montgomery said correct.

Councilmember Kinsey said I was at West End also on Saturday, so where does that fall? Are any of these grandfathered in case they don't quite meet the new restrictions?

Ms. Montgomery said, yes, they can continue. This regulation would not affect those that are in existence.

Councilmember Carter said I have six questions, and I apologize to my colleagues. There is some interesting parallels between this ordinance and the ordinance that addresses the mobile food vendors, and I think they are linked, so I think as we review that issue we can learn from this one as well. I have looked through my papers and have not found Mr. White's comments, so if staff could please provide those for us I would be very grateful. Mr. Howard, I agree with you. There is a section in the list of current regulations, proposed regulations, and rationale. The

second issue is a permit, and it says there is a provision if a produce stand is inactive or discontinued for more than 14 days the permit shall expire. Who enforces that? How do you enforce that?

Ms. Montgomery said the reason we put that in there is so we wouldn't have a vendor with a permit for a year that would leave out tables or tents year-round and then just sell peaches during several months. So this got to the point if the vendor did not come back that permit would become void, and the remaining structures, etc. would need to be removed.

Councilmember Carter said to Mr. White's point, there is a selling season apparently, but I understand from what you are saying is you want this a year-round service and very active. Is that the intent?

Ms. Montgomery said yes. Also, if we are limiting the square footage on any one lot that can be occupied by a produce stand, if someone is just selling peaches, that limits that so no other vendor could come in them and sell fresh produce the other months of the year or sell other types of vegetables, so it places some restrictions.

Councilmember Carter said I am extremely grateful to Mr. Michael Cataldo. He has helped me load two pictures. This past week I was with Ms. Roberts in Germany at the 250th anniversary of the coronation of Queen Charlotte in Mecklenburg. These pictures are fresh produce vendors in Varin, and this is in the center of the square. You can see that residences are right there. They have commercial parts at the bottom. So this is the central part, and look at the aggregation of those trucks. There are two slides. It's a vital part of the life of that city, and it's absolutely fascinating how active folks are around these vehicles, and they do a marvelous of bringing that produce in. Some of it is fresh meat, some of it is fresh produce, some of it is baked goods, but they are mobile, so I'm wondering if we could use them somewhat like ice cream trucks and you could sell on the streets, and I'm wondering if we have been explosive enough in our thoughts to take that further. It's just a challenge to staff to see if we all concur in that possibility.

There is a statement in produce stands being allowed up to 180 days, and it deletes the requirement that customers have to purchase on the outside and operators permitted inside. Don't we get into health regulations when there is a mixture of the public buying and not limited space?

Ms. Montgomery said I'm not aware of that. If you sold produce from a table there, for instance, wouldn't be an interior space.

Councilmember Carter said that does make sense. I do have concern about not offering baked goods because those are somewhat associated, and I think Mr. Rosenboro is going to be asking that question as well, so I'll second what he is going to say.

Ms. Montgomery said I have a response to some of the questions. We did not get a copy of the White's comments. I don't know if there was a rebuttal letter.

Mayor Pro Tem Cannon said we need a copy of that. If you would give it to the Clerk.

Ms. Montgomery said as to the mobile trucks those are not prohibited. What we were looking at is allowing those, as I said, trucks, tables, whatever as an accessory use on an institutional use, for instance, on the lot. The truck then would be on the property like in the parking lot or in the driveway where it wouldn't be restricting traffic flow. It wouldn't be on the streets. It would be off on the site. What was your question about the 180 days again?

Councilmember Carter said people can be allowed within the parameters where the operator is.

Ms. Montgomery said, again, it's just allowing flexibility in terms of how people want to sell produce including farmers who may not want to have a more permanent structure. They could sell off the back of their truck or a table they set up.

Councilmember Carter said I do want to congratulate all of the staff on this. This is very flexible. It seems like it will open up the sale of fresh produce to everyone who needs it.

Ms. Montgomery said we'll look into the baked goods issue, too.

Steven Rosenboro, Chair, Zoning Committee, said two issues – one has been covered. First, kudos to staff. Setting out current and proposed regulations is an excellent review so we can all understand what is proposed. This issue of baked goods is something we have dealt with. Council has expressed an interest as the committee has. If a product has been inspected or produced in a facility that is inspected, we think you should examine that. If you go to your last point, it says add to requirements that all other federal, state, and local codes apply. I think, Mayor Pro Tem, that might cover the issue with respect to how to get Councilmember Peacock and myself our doughnuts. We like doughnuts.

Mayor Pro Tem Cannon said there was a point brought up from the Whites with regard to tents and so forth and so on – clutter and sort of rainbow sprinkles throughout the community, if you will, and I don't know if there is something in here that reflects that if tents do go up that they be uniform in a way they look such that we don't have those types of issues in the community because obviously clutter is something the City has always been conscious about from what goes on our buses to anything else that is out there, so what is your comment with regard to that?

Ms. Keplinger said we allow tents for many uses currently without the restrictions that they look alike or whether they are same size and things like that. This proposal in the fresh produce we intended for the tents to follow the normal permitting process that has already been established, but that is something that we could look into.

Mayor Pro Tem Cannon said wish you would consider that.

[Motion was made by Councilmember Dulin, seconded by Councilmember Barnes, and]
[carried unanimously to close the public hearing.]

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ITEM NO. 14: HEARING ON PETITION NO. 2011-024 BY CITY OF CHARLOTTE NEIGHBORHOOD AND BUSINESS SERVICES FOR A CHANGE IN ZONING FOR APPROXIMATELY 2.38 ACRES LOCATED AT THE NORTH CORNER OF THE INTERSECTION OF MT. HOLLY-HUNTERSVILLE ROAD, HARWOOD LANE, AND MOUNTAIN AIRE CIRCLE

The scheduled public hearing was held on the subject petition.

Tammie Keplinger, Planning, said the Northwest District Plan shows residential around the petition site. The petition site is shown as institutional and that is due to a rezoning that was done in 2005. The property was rezoned back then to allow a daycare, and the daycare would have up to 13,000 square feet of building area and 150 children. When the petitioners came in to permit their building, they discovered the building they have does not match the elevations that were shown on that site plan, which led them to reflect on their rezoning into the proposed amendment. They are adding one building for a total of three buildings. They are reducing the square footage, and they are moving the location of the proposed buildings from the original plan.

These are the elevations that are currently shown on the site plan. In talking with the petitioner, we believe the revised site plan is going to show some elevations that allow a little more flexibility so they don't get into the situation they are currently in again. The plan does recommend institutional for this site, and once we get all the outstanding issues addressed, staff will be recommending approval.

Councilmember Howard said why is it being filed by a City department? Why is the petitioner Neighborhood and Business Services?

Ms. Keplinger said because this is a small business opportunity the petitioner needed to go through this process, and we worked with N&BS to help them with the fee.

Councilmember Howard said has this been done before?

Ms. Keplinger said, yes, sir.

[Motion was made by Councilmember Peacock, seconded by Councilmember Barnes, and]
[carried unanimously to close the public hearing.]

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ITEM NO. 15: HEARING ON PETITION NO. 2011-028 BY CHARLOTTE-MECKLENBURG PLANNING COMMISSION FOR A CHANGE IN ZONING FOR APPROXIMATELY 17.29 ACRES GENERALLY FRONTING MT. HOLLY ROAD, CHATTAROY DRIVE, LAYTON RIDGE LANE, AND TAFTNALE COURT FROM R-17MF(LWPA) AND R-3(LWPA) TO R-8(LWPA)

The scheduled public hearing was held on the subject petition.

Tammie Keplinger, Planning, said the future land use map is part of the Catawba Area Plan that was just adopted in 2010. As a part of that adoption, one of the intents was to run the land use with the zoning districts. The property that are fronting Mt. Holly Road are currently zoned R-17MF, and if you look, you can see the single family neighborhood that has been developed to the rear of this one and also includes the properties in the R-17MF. There are two larger tracts that are partially zoned R-17MF.

When we first envisioned rezoning this site to make the land use and the zoning consistent, we looked at taking this area to R-6, but we talked to this property owner and looked at the non-conformities that would be created in the single family area and determined that an R-8 district would be more compatible. The property owner that owns this that is a single family home with part of it being R-17 and part of it being R-4 has requested that we didn't significantly reduce the density that would be allowed, and they were comfortable with the R-8 zoning. Even though it's inconsistent with the Catawba Area Plan, which recommends R-6, we do believe it is a good compromise and we are recommending approval.

[Motion was made by Councilmember Barnes, seconded by Councilmember Howard, and]
[carried unanimously to close the public hearing.]

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ITEM NO. 16: HEARING ON PETITION NO. 2010-037 BY CHARLOTTE-MECKLENBURG PLANNING COMMISSION FOR THE ADOPTION OF A TEXT AMENDMENT TO THE CITY OF CHARLOTTE ZONING ORDINANCE TO MODIFY THE SINGLE ROOM OCCUPANCY RESIDENCE REGULATIONS AND DEFINITION AND EXPAND THE ZONING DISTRICTS IN WHICH THEY ARE PERMITTED WITH PRESCRIBED CONDITIONS

The scheduled public hearing was held on the subject petition.

Tammie Keplinger, Planning, said this is the single resident occupancy text amendment. This started out in the Transportation and Planning Committee and has ended up in the hand committee. At the Council Dinner Meeting on March 21st of this year, we received direction to actually file this text amendment. What it does is it takes a building with between 11 and 120 units available for rent for single room occupancy for a period of seven-plus days. They must have on-site management, cleaning services with utilities that are mass metered. They may have

a maximum of 120 rooms on site and a minimum of 11 units. There is a Class B buffer that is required if it's adjacent to residentially zoned or used properties.

In terms of the process, we did have a stakeholders group on this, and their process was to investigate the possibility of changing SRO standards regarding the following: the notification and/or the increased awareness of proposed projects, the proximity of other SROs and similar uses in an area, identify appropriate zoning classifications in coordination with changes being made to the local housing policy to minimize conflicts.

The current requirement requires one building to be allowed per site with a maximum of 120 units. Under the recommendation, it would allow up to three buildings per site with a maximum of 120 units per site. One of the reasons for this is so you could have a differentiation between male and female in the units if you needed to. Under the current regulations, it's a seven-day minimum rental period. Under the proposed, it would be a 30-day rental period. We do not have regulations currently for supportive services, but under the new recommendation, there would be a requirement for the SROs to provide supportive services.

Also, a new recommendation is to add the definition of supportive services to the zoning ordinance, so we will define what that means. Under the current regulations, these are allowed in institutional, light industrial, business, urban mixed use, and TOD zoning districts. Under the proposal, we are removing them from the institutional districts and the light industrial zoning districts, which we feel are not appropriate. As I stated earlier, they are allowed in institutional, light industrial, business, urban mixed use, and TOD. The recommendation is to allow them in business, office, urban residential, urban mixed use and TOD zoning districts.

Legally conforming SROs at the time of adoption will be allowed to expand consistent with these requirements. Under the current ordinance, units may house more than one person. Under the proposed ordinance, there is a limit to each unit to one occupant. Under the current requirements, minimum size is 80 square feet. We have added a maximum room size of 450 square feet under the new recommendation. We have also added a requirement that the SRO facility must be accessed through one primary entrance and changed the sign recommendations so that instead of being in accordance with the underlying zoning district it now has its own specific requirements.

We have also added a minimum distance requirement of a half mile between SRO uses. No notification requirement has been added to the SROs. This was something that was talked about as part of the scope of the original team, but they decided not to have the notification requirement. Staff is recommending approval, and we will be happy to answer any questions.

Councilmember Howard said on supportive services, will you define? You say you guys are going to get into the definition flushing that out. Can that be voluntary, or are you going to require it to be some type of permanent arrangement of providing those services?

Ms. Keplinger said they will have to provide supportive services. That is a requirement.

Councilmember Howard said and ongoing. It's not something they do when they get a permit. It's something that if we find out they are not doing it they can lose –

Ms. Keplinger said, yes, sir, it has to be ongoing.

[Motion was made by Councilmember Barnes, seconded by Councilmember Kinsey, and]
[carried unanimously to close the public hearing.]

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ITEM NO. 17: HEARING ON PETITION NO. 2010-038 BY CHARLOTTE-MECKLENBURG PLANNING COMMISSION FOR THE ADOPTION OF A TEXT AMENDMENT TO THE CITY OF CHARLOTTE ZONING ORDINANCE TO MODIFY HEIGHT REGULATIONS IN RESIDENTIAL ZONING DISTRICTS

The scheduled public hearing was held on the subject petition.

Katrina Young, Planning, said it is my pleasure to present the proposed text amendment for height in residential districts. Just to give you a little background, Planning staff was directed by Council to examine our existing regulations, to address some citizens' concerns of height in residential district after a third party rezoning was filed. We formed a stakeholders group and began our meetings in September 2009. In addition to the stakeholders meetings, staff had met several times with the full Planning Commission.

What we found from our stakeholders concerns is there are currently no maximum heights in our ordinance. There were some concerns about building capability, loss of development rights, and the creation of some nonconforming buildings. Our existing regulation does allow for a maximum base height. Any structure can go to 40 feet with no limitations; however, once you exceed 40 feet, you do have some restrictions. If you are adjacent to a residential use or a residential district, you must increase your yard requirement by one for every foot over 40. If you are not adjacent to residential, then you can increase your side yard for one foot for every two feet in height.

This graphic is to illustrate what the building envelope is under our current regulations. It show you that at the front setback you can go to an infinite number, whatever you can fit onto your property and that there is no maximum height. The ratio adjacent to residential is your one-for-one, and that would be for the sides and rear. Currently for nonresidential and multifamily, again, there is no maximum height. When you are adjacent to a commercial, the ratio is 2:1, and when you are adjacent to residential, it's 1:1.

So with that information when we started our stakeholders' process, we did come up with four goals. Our goals were to improve the capability of single family neighborhoods while minimizing creation of nonconforming structures. We wanted to maintain and preserve the development rights in the zoning districts and to define terms and clarify how height is measured. This slide is just to indicate what we are talking about is just residential districts, so this would not be your office, business, or industrial districts. It would be your single family, multifamily, urban residential, and the MX portions of your mixed use and mobile home districts.

We have basically two recommendations. The first recommendation would be for our single family districts and our low-density multifamily, which is going to be your R-8 and R-12. Again, currently there are no maximum heights for buildings. We are proposing to have a maximum height. The maximum height right now is just on the sides and rear. We are going to continue with a base maximum height on your sides in a residential district but not at the rear, and we will keep the prescribed condition that if you are over 40 feet then you have to go a height ratio from the property line.

This graphic will show – again, it's the same graphic I just showed you, but I wanted to show you again. This is what you can do now. You can go straight up to 100 feet, 150 feet, whatever on your front and then on your sides you start at your required side yard and then you move your building inward from that point. What we are proposing is to flatten that out a little bit and to lower it, so for the R-4 and R-4 and R-8 and R-12, you would have a maximum height of 48 feet at the front. On the sides, we would not change that. It would start at 40, but then it would increase the 1:1 when adjacent, and we would clarify that it's just for a portion of the building that's exceeding the 40 feet, and there would be no measurement on the rear.

So this is a graphic that kind of shows you the type of structure you could build in that building envelope when you are adjacent to residential uses in residential districts. Most houses constructed are below the 40 foot maximum. We do have some that are above, but typically we get two- or three-story homes that fit comfortably within the 40 feet.

Our second recommendation is for the high density multifamily and nonresidential. Currently, no maximum height. We are proposing a maximum height. Under the current code, you can increase your yards for the portion of the building above 40 feet, and we are suggesting that you

can continue to do that, and no measurement of height currently at the setback, and the proposal is it would just depend on what you are adjacent to. This would be for the multifamily and nonresidential.

Here is an illustration currently of what could potentially be built, which you can go as tall as you would like at the front setback. At the side yards when you are adjacent to commercial, you can go 1:2 once you get over the 40. The right side illustrates if you are adjacent to residential you have to do the 1:1 when you get above the 40 feet, and that's whether it's a residential use or a residential district.

What we are proposing is to have a maximum height of 100 feet, so when you are adjacent to commercial or another multifamily you can go straight up with your 100 feet. If you are adjacent to a single family use in a single family district only, then you would have to do the 1:2 ratio, and that would be one foot up for every two feet over. I will emphasize there that is for the residential use in a residential district, so if that commercial – that nonresidential or multifamily was adjacent to a residential use in a multifamily district then that ratio would not be applicable. This graphic again shows you how a building could fit within that envelope.

Our current multifamily development – this illustration is to basically show if you have multifamily and you are next to multifamily but you are adjacent to residential. Currently your multifamily you would go up again 2:1, two additional feet for every foot you move it from the property line, and there is no maximum height, so you can see that it really does impact when you are adjacent, across the street from residential. You can get a very large building.

What we are proposing is again a maximum height of 100 feet, and for that portion of the building that's adjacent to residential use in a residential district, you would do your ratio except if it's a major thoroughfare then you can go straight up. This is an illustration of the types of buildings that can be located in that building envelope.

This graphic illustrates if it's a nonresidential building in a single family and multifamily. In a single family, the only nonresidential buildings you will have are you religious institutions and your schools. In multifamily you can have some different ones such as childcare centers, etc. This shows that currently you can go as tall as you like on the front and on the parts that are residential, regardless of if it's in a residential district or residential use, you have to do your ratio of 1:1, so for every foot you go above 40, you also have to go in one.

The proposed regulations would take into consideration the nonresidential buildings in the single family and multifamily, but it would also consider the adjacent uses. So, again, if it's a residential district with a residential use, you would have your ratio of 1:2. If it's not a residential use, you could just go straight up. The graphic illustrates the type of building you could construct, nonresidential building.

The additional recommendations we have are that we modify the current definition of height to exclude chimney and firewalls because currently it's not clear and to clarify how average grade is calculated. We also took into consideration for those especially multifamily buildings that have multi-owners that if it is an act of God and the building is destroyed the amount of time they would have to rebuild and still be in compliance. We modified Section 11.208, which are MX districts, to add building height as a standard that could be modified through the innovative development process, so if you needed to go higher than what the standards currently allow then you could do that in the innovative process.

As a recap, we create a system that we believe encourages compatible structures. The height requirements would be based on zoning districts for use and whether or not it was adjacent to a single family zoning use, the increased time period for nonconforming structures to be rebuilt and to limit heights in our residential districts only, and we would request that if this amendment is approved that the effective date would be January 1, 2012.

Ken Davies, 2112 E. Seven Street, said I represent the Myers Park Homeowners Association, and we are the ones who obviously filed the petition in 2008 to correctly rezone a number of properties on Selwyn Avenue, and we wanted to thank Planning staff for their diligent efforts in

taking a proactive reaction to it actually and shepherding this process. When I signed up to speak today, the Clerk asked me if I was for or against this, and I said is there a neutral at this point? We need to take a good look at it. The board is meeting tomorrow night, and we expect we can respond this week to the proposal, the text amendment, and we are looking favorably at it, and we think this is going to be a win-win situation. If all goes well, we anticipate withdrawing our rezoning petition, which has been part for a long period of time since 2008.

Sandy Weathersbee, 2223 Croydon Rd., #403, said I am here just because I was on the Myers Park Homeowners Association Board at the time. I attended all the stakeholders' meetings. I am no longer on the board, but my experience while going through the stakeholders' process is a lot was accomplished and I think subject to what Ken has already said, I think the result is not a perfect solution for the association but it is supporting.

Councilmember Peacock said if we could go back to the petition that started all this at the corner of Selwyn of Queens, do you have a graphic or could let Council know what would have happened in this situation if this regulation would be put in place?

Ms. Young said for that particular –

Councilmember Peacock said, uh-huh, based off the plans that were finally submitted.

Ms. Young the graphic that I showed that showed the surrounding multifamily would be the one. If I'm not mistaken, it was surrounded by multifamily, but this graphic would kind of show that if you are surrounded by multifamily you can still go to a height of 100 feet except for that piece that would be impacting the residential uses in the residential district on the right side. In that instance, you would start with your 40 feet and then go in one for two until you reach your maximum of 100. But if it was all surrounded by multifamily, you could go straight up with 100.

Councilmember Peacock said in that case, and I guess I will ask those that are speaking here as well, I believe Mr. Branch was talking about putting something up that would have gone in excess of the tree line, if I recall, and that was where we heard so much objection from everyone on that.

Mr. Davies said thank you, Councilmember Peacock, for that question. What precipitated the Myers Park Homeowners Association's petition was a rezoning request at Selwyn and Queens Road West that would have allowed for an eight-story, 138-foot condominium tower with pretty much an agreed upon tree line of 70 feet, so well above that. That is what started this ball rolling with this.

Ms. Young said we can get those graphics for you.

Councilmember Cooksey said two things. I want to check the record of that. Wasn't the tower what could be built by-right, and the rezoning was a building with lower height. The rezoning of a lower height building was opposed, so it was the by-right taller building that initiated the concern, so it wasn't a rezoning for the taller building; right?

Ms. Young said right.

Mr. Davies said I apologize, you are correct. It's been three years, but you are right.

Councilmember Cooksey said my question, Ms. Young, is in the presentation, I appreciate the illustrations about what could be built under the proposed changes. I would be interested in seeing what could be built, something similar, under the current regulations. I don't have a sense of what the current system is. I have been kind of skeptical of this all along, but I have held my tongue because I have wanted to see the details of it and the presentation, but outside of one particular instance, I'm not sure that a blanket citywide solution is the appropriate sledgehammer to go after the finishing nail of the one incident we have talking about. Show me something similar about what kinds of things would get built, can get built, under our current regulations because that gives me a sense of comparison between what is now and what is proposed.

Ms. Young said we did our best to do that. The problem is because currently we don't have limits on height, so it would depend on the lot size as to what your final product is going to be because there are no maximums, but we can get some specific sites like a typical R-3.

Councilmember Cooksey said thank you because that relates to another question. The phrase keeps saying we have no maximum height limit. As I interpret it, and correct me in my misinterpretation here. It's not that we don't have a specific height limit. It's that the height limit is variable depending on the size of the lot and what is developed because in each of the current regulation pyramids you are showing me it looks like there is an upper bound, and it's the upper bound based on the one foot in for every one foot from the setback. It's going to be variable based on the lot size.

Ms. Young said its variable based on the lot size, you are correct, and dependent on the number of lots you accumulate you could potentially have a very large structure that ends up being adjacent or across the street.

Councilmember Cooksey said I appreciate that, but in terms of communication being the delicate sense that it is to say that there is no maximum height creates the implication in my opinion that you could build a 60-story tower on any lot, which you can't do because you have got to go in one foot for every foot of what.

Ms. Young said I'm not an architect, but there is no maximum height at the front setback, so if I wanted to I could build – I don't know what it would look like, but I could built up to 200 at the setback and then figure out the rest of the building so it connected to that, so that's why we say there is no maximum height. I understand what you are saying is that there is going to be some restrictions that will ultimately limit the size of the building, but as a property owner if I was to go into a neighborhood I honestly would not currently know potentially what size building would be able to be built next to me.

Councilmember Cooksey said a 70- to 75-foot wide lot I might be able to go up 200 feet at the front, but once I get to maybe 100 or 120 – again, I'm not saying ratios either – we are now talking just a spire and not any kind of actual floor area, any living space I'm presuming here if you are getting to that height. That's the kind of thing I would be interested in seeing. You have got the examples of what could be built under the proposal, but there is nothing shown from a practical perspective of what could be built under current regulations, and that prevents me from having a decent comparison. I hope the presentation can be modified to include that type of detail.

Councilmember Kinsey said, Ms. Young, you made reference to something, and I don't know which slide, allowed on a major thoroughfare and go straight up. I am assuming that is multifamily.

Ms. Young said multifamily in nonresidential.

Councilmember Kinsey said nonresidential.

Ms. Young said institutional uses.

Councilmember Kinsey said maybe institutional is okay. That satisfies my concern. On the other hand, I guess my concern is what is a major thoroughfare? I know Independence Boulevard, I know – but some people might think Selwyn Avenue was a major thoroughfare. There are a lot of cars. I used to live on it, so that didn't strike me very positively.

Ms. Young said for clarity the major thoroughfare is a 100-foot wide right-of-way. So the reason we said that was because if you have that type of road – I should say I guess 70 to 100 – but if you have that type of road, so you have a lot of traffic on that road anyway. The building is not really impacting you as much as the traffic that is already on that road, which is like a North Tryon Street, South Boulevard – those are major thoroughfares, and major thoroughfares are based on the width of the road.

Councilmember Kinsey said some people might argue with that.

[Motion was made by Councilmember Peacock, seconded by Councilmember Cooksey, and]
[carried unanimously to close the public hearing.]

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ITEM NO. 18: HEARING ON PETITION NO. 2010-039 BY CHARLOTTE-MECKLENBURG PLANNING COMMISSION FOR THE ADOPTION OF A TEXT AMENDMENT TO THE CITY OF CHARLOTTE ZONING ORDINANCE TO MODIFY THE URBAN DEVELOPMENT AND DESIGN STANDARDS AND REORGANIZE THE REGULATIONS OF THE PEDESTRIAN OVERLAY DISTRICT (PED)

The scheduled public hearing was held on the subject petition.

Tammie Keplinger, Planning, said I get to introduce John Howard, who is a principle planner with the Long Range Division of the Planning Department. John has headed up this process, and he is going to present this to you.

John Howard, Planning, said I'll give you a little background before I get to the presentation. The PED overlay is a relatively new district. It was adopted in 2000, and similar to our TOD back in 2007 or 8 and looking at how it's performing now. It's new, therefore, we have some projects on the ground. We are trying to look at how it's performing as to what we are doing right and what we are doing wrong, and we did form a stakeholders group that was involved with REBIC. We had the Apartment Association, we had developers, we property owners, business owners within those PED districts all involved throughout the process along with City staff, plan review, and Planning and CDOT.

Basically, the overall objective of the PED overlay is, one, to encourage development that enhances adjacent neighborhoods. In other words, how is the transition from the PED overlay back into single family neighborhoods; and, two, to increase development potential of those PED overlay zoned properties.

Some of the goals of our project were to add flexibility. We found in our review it was kind of restrictive in some ways. So go in and make the PED overlay a little bit less restrictive and allow that kind of urban development to happen by-right as we are supposed to. Also to improve the transition from the PED overlay to single family neighborhoods was very important, and to enhance the streetscape.

We have five PED overlays on the ground currently – West End, Plaza-Central, Sunnyside, East Boulevard, and West Morehead, and two more pending that are within two area plans – Bryant Park and Independence Boulevard. Generally you can see that they are all kind of within the Central District, around uptown, in the most urbanized part of Charlotte. We organized this in terms of categories, the first being streetscape, and the issue was that streetscape requirements for façade improvement projects are too restrictive. You need to try to put an awning on your building or paint your building or put on new windows, you have to implement your streetscape, and we thought that was too restrictive, so we removed that requirement. Now, if you do a major façade improvement, you don't have to put in your streetscape.

The second issue was building additions or expansions. Currently, if you expand your building up to 5% or 1,000 square feet, you have to put in your streetscape. That means a bathroom or a kitchen you have put in your streetscape. That was too restrictive as well, so we went back and said 25% is more reasonable or 1,000 square feet, whichever is less. This stuff is based on comments we heard from the public and business owners as well.

The second category is site conditions and streetscape. We saw that in PED overlays we tend to have some challenging parcels. Some are triangulated, some are bound by more than one street, and some are just very small because they were single family parcels that are now commercial

parcels. So the issue was add flexibility for challenging parcels. The recommendation is to add second (inaudible) to the administrative approval process meaning lot configuration, lot size, and lot width, and those kinds of issues would be able to go through administrative review rather than a rezoning process, again, meaning the intent of the by-right PED overlay process.

The next category was building design. The issue was the scale and massing of PED zoned properties across from or next to single family zoned properties. That is where PED abuts directly to single family neighborhoods. An issue was having very massive buildings without any articulation, not much detail, so we added some design criteria such as roofline variation, porch design standards, if you have one, building entrance locations, and façade variation as criteria for how you break up a large multifamily building or large commercial building.

The next category is street walls. This affects mostly the ground level, the pedestrian ground, if you will. This issue was we don't have enough regulations to look at the detail of that ground level of a building. Typically if you have a podium type structure where you have bottom level parking and then units on top without any uses on the bottom the recommendation is to have active uses on the ground floor meaning residential, retail, or office, or our protection standards such as staircases, stoops, or porches. At the top right, you see one that is a podium building where the bottom level is a parking garage. It is enclosed, but there is no active use on the ground floor. The bottom two are how they treated that differently. One has a staircase on the left-hand side at least down to the pedestrian level. The other has a retail or office use on the ground level, so you don't have to have an actual conditional space such as office or retail. It can be done architecturally.

The next category is open space. Right now we don't have any open space standards in PED. You can build without having any kind of urban open space environment. Our proposal is to have a requirement to develop a lot one acre or more you must include some kind of public or private open space, and that would be either one square foot per one hundred square feet of gross floor area or one per two hundred of lot area, whichever is greater. It doesn't have to be a whole lot of space, but it's better than what we have now, which is nothing. The reason being these are going to be small parcels usually. One acre lots are pretty hard to find in these PED areas. There are a few out there, but not very many. Most are going to be half-acre or less, but if you are going to redevelop a large site, that is a good opportunity for us to get a good centralized open space.

The next issue is parking. This came up during our TOD text amendment a few years ago, and the issue is when you have a single family across the street from higher density PED development the impact of the garages for each individual multifamily unit what we are saying is to disallow having those individual driveways and garages for each multifamily unit. It can have one driveway to a centralized parking deck or parking area in the rear, but not one parking space for every single unit. Under certain conditions, the director can allow it if there is some kind of topographic issue or some kind of outstanding issue, but in general the streetscape should be mostly houses and not garages and carports and parking areas.

In regard to setbacks, we wanted to have some flexibility for certain building elements such as porches, certain kinds of walls and fences. Because PED areas tend to be very shallow in their land area, we felt that allowing the porch to increase eight feet into the setback would be a nice gesture to get that kind of residential feel along the streetscape. It also allows fences and walls to the setback to a certain height of three feet or less.

Joe Padilla said I'm the executive director of REBIC. We have been involved in the process with the PED overlay, and for the most part we support a lot of the changes that are made and the flexibility. We still do have some concerns though in general about the streetscape requirements as they relate to a change in use from one commercial use to another commercial use; the issue being, as you all are aware in this economy, you have got small businesses which are struggling in many cases to find a way to stay afloat and stay solvent, and in the environment we have when you have a change in use from one commercial user to another some of these streetscape requirements might put a bit of a burden on that user or on the landlord in terms of finding a tenant who would be able to come in there and make those changes. That's one concern.

The other concern we have relates to the structured parking active uses. We think it's admirable as you are looking to improve the streetscape. Economically it's somewhat unfeasible and unrealistic to expect active uses on the base of a parking structure, and we are concerned about the impact again this is going to have economically on someone who wants in and wants to build structured parking in some of these areas. In any market, it would be very difficult to find a tenant or user for the ground level of a structured parking facility. So those are our main remaining concerns, and, again, while we appreciate and we think it's admirable that staff is trying to improve the streetscape in many of these areas that are covered by the overlay, we do ask Council to consider balancing that need against the small businesses right now that are trying to come into opportunities and come into spaces where some of these requirements might a burdensome cost that is just a little tough to deal with in this economy.

[Motion was made by Councilmember Howard, seconded by Councilmember Kinsey, and]
[carried unanimously to close the public hearing.]

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ADJOURNMENT

The meeting was adjourned at 8:55 p.m.

Ashleigh Martin, Deputy City Clerk

Length of Meeting: 3 Hours, 30 Minutes
Minutes Completed: September 19, 2011