

The City Council of the City of Charlotte, NC, convened for a Dinner Briefing on Monday, October 17, 2011, at 5:17 p.m. in Room CH-14 of the Charlotte-Mecklenburg Government Center with Mayor Anthony Foxx presiding. Present were Councilmembers Michael Barnes, Patrick Cannon, Nancy Carter, Warren Cooksey, Andy Dulin, Patsy Kinsey, James Mitchell, Edwin Peacock III

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

Tammie Keplinger, Planning, reviewed the public hearings, decisions and deferrals on the agenda and responded to questions.

Councilmember Burgess arrived at 5:25 p.m.

Councilmember Howard arrived at 5:32 p.m.

[Motion was made by Councilmember Peacock, and seconded by Councilmember Carter to]
[to place Item 7 Petition No. 2011-033 on tonight's agenda for consideration.]

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

AYES: Councilmembers Barnes, Burgess, Cannon, Carter, Cooksey, Dulin, Kinsey, Mitchell, Peacock

NAYS: Councilmember Howard

The dinner briefing was recessed at 6:01 p.m. for the Council to move to the Council Meeting Chamber.

ZONING MEETING

The Council reconvened for the regularly scheduled Zoning Meeting at 6:07 p.m. in the Council Meeting Chamber of the Charlotte-Mecklenburg Government Center with Mayor Anthony Foxx presiding.

INVOCATION AND PLEDGE

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

Mayor Foxx 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 Howard, and seconded by Councilmember Carter to]
[defer Item No. 4, Petition No. 2010-080 and Item No. 8, Petition No. 2011-036 for one month;]
[Item No. 26; Petition No. 2011-068 for two months; and Item No. 3, Petition No. 2008-032]
[for three months.]

The vote was taken on the motion and recorded as unanimous.

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HISTORIC LANDMARKS

ITEM NO. 1: RESOLUTION CALLING FOR PUBLIC HEARING ON THE QUESTION OF DESIGNATING THE PROPERTY KNOWN AS THE “EASTOVER ELEMENTARY SCHOOL” (LISTED UNDER TAX PARCEL NUMBERS 15510236 AND 15509401 AS OF AUGUST 15, 2011, AND INCLUDING THE EXTERIORS OF THE BUILDINGS AND THE PARCELS OF LAND LISTED UNDER THE TAX PARCEL NUMBERS 15510236 AND 15509401 AS AN HISTORIC LANDMARK.

The scheduled public hearing was held on the subject petition.

Tammie Keplinger, Planning, said this is just a resolution to hold the public hearings of both items – 1 and 2 – for the historic landmarks designation, and those hearings, if the resolution is approved, are scheduled for December 12th.

[Motion was made by Councilmember Kinsey, seconded by Councilmember Mitchell, and]
[carried unanimously to hold a public hearing on December 12, 2011, on the question of]
[designating the property known as the “Eastover Elementary School” as an historic property.]

The resolution is recorded in Resolution Book 42 at Pages 383-384.

Councilmember Dulin said that was a happy vote I made since I used to walk the halls of Eastover Elementary School when I was just a little pup.

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ITEM NO. 2: RESOLUTION CALLING FOR PUBLIC HEARING ON THE QUESTION OF DESIGNATING THE PROPERTY KNOWN AS THE “JOHN B. ROSS AND COMPANY MILL” (LISTED UNDER TAX PARCEL NUMBER 078-425-01 AS OF AUGUST 15, 2011, AND INCLUDING THE EXTERIORS OF THE BUILDINGS AND THE PARCEL OF LAND LISTED UNDER THE TAX PARCEL NUMBER 078-425-01 AS AN HISTORIC LANDMARK.

The scheduled public hearing was held on the subject petition.

Tammie Keplinger, Planning, said this is just a resolution to hold the public hearings of both items – 1 and 2 – for the historic landmarks designation, and those hearings, if the resolution is approved, are scheduled for December 12th.

[Motion was made by Councilmember Carter, seconded by Councilmember Cannon, and]
[carried unanimously to hold a public hearing on December 12, 2011, on the question of]
[designating the property known as the “John B. Ross and Company Mill” as an historic]
[property.]

The resolution is recorded in Resolution Book 42 at Pages 385-386.

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Tammie Keplinger, Planning, said on Item No. 8, I believe the motion was to defer to one month, and it should be to November 14th – a little less than a month.

Mayor Foxx said with no objection we will note that.

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DECISIONS

ITEM NO. 5: ORDINANCE NO. 4753-Z AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF CHARLOTTE TO AFFECT A CHANGE IN ZONING FOR APPROXIMATELY 1.16 ACRES LOCATED ON THE WEST SIDE OF PROVIDENCE ROAD BETWEEN MORAVIAN LANE AND ARDSLEY ROAD FROM B-1 TO UR-C(CD)

A protest petition has been filed and is sufficient to invoke the 20% voting rule requiring affirmative votes of ¾ of the Mayor and Council members not excused from voting in order to rezone the property.

Mayor Foxx said the petition is found to be inconsistent with the Central District Plan but to be reasonable and in the public interest.

[Motion was made by Councilmember Dulin, seconded by Councilmember Peacock, and]
[carried unanimously to approve the Statement of Consistency and Petition No. 2011-008]
[for the above rezoning by Thies Realty & Mortgage Co. as modified and as approved by the]
[Zoning Committee.]

Councilmember Kinsey said this is a protest petition. I would note that. It is in District 1. I'm going to support it. It's been a little bit difficult for me to deal with this to tell you the truth because there is one resident who is not happy – not with the entire rezoning but just a portion of it, but I am going to support it. I think in the long run it's better to have that building occupied and in business than to have it stand empty as it has been for the last four years, so I will support it

Terrie Hagler-Gray, Assistant City Attorney, said because this is a protested petition and you do not have a full Council tonight this is supposed to automatically defer to the next meeting.

Councilmember Mitchell said I thought we usually receive permission by the petitioner if they would like to have a vote or not.

Ms. Hagler-Gray said that's true.

Ms. Keplinger said the petitioner would like to have a decision tonight.

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

The modifications are:

1. Added a note regarding the provision of a future cross-access easement. CDOT rescinded the remaining requests regarding consolidation of the driveways along Providence Road and the provision of angled parking at the rear of the site.
2. Deleted Note B under "Streetscape and Landscaping/Screening".
3. Deleted note under "Setback, Side Yard, and Rear Yard Requirements".

The ordinance is recorded in Ordinance Book 57 at Pages 387-388.

ITEM NO. 6: ORDINANCE NO. 4754-Z AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF CHARLOTTE TO AFFECT A CHANGE IN ZONING FOR APPROXIMATELY 2.37 ACRES LOCATED ON THE NORTH SIDE OF PENCE ROAD AND ACROSS FROM HOLLY HILL ROAD FROM B-D TO I-1(CD)

Mayor Foxx said the petition is found to be inconsistent with the Eastside Strategy Plan but to be reasonable and in the public interest.

[Motion was made by Councilmember Carter, seconded by Councilmember Barnes, and]
[carried unanimously to approve the Statement of Consistency and Petition No. 2011-011]
[for the above rezoning by David H. Baldauf and G.T. Godwin as modified and as approved]
[by the Zoning Committee.]

Councilmember Carter said this is District 5. There has been some concern among the citizens about this in that there is not an extensive notification of residents in the area. There is some concern among District 5 residents that there was not an extensive notification of interested parties about this rezoning, specifically Ms. Lindsay, who is the Rezoning Chair for the Charlotte East Community Partners, so if that area is not being tapped, let's do notify those people who are interested, please.

Tammie Keplinger, Planning, said we'll take care of that. We have talked to Ms. Lindsey on several occasions about the notification issues, and this may be outside her area. I'm not sure, but we'll double-check on that. We did send to all the neighborhood organization leaders within one mile, and she should have been in that notice, but we'll double-check.

Councilmember Carter said seeing that is an umbrella group, as east is, perhaps those larger conglomerates could be notified. I would be very grateful.

The vote was taken on the motion and recorded as unanimous.

The modifications are:

1. The language under "Parcel Data" has been revised to state the proposed zoning is I-1(CD).
2. The headings "CATS", "CDOT", "Fire", "LUESA", and "NBS" have been removed from the site plan.
3. New heading "Transportation" has been added to the site plan and the language under "Vehicular Access" moved to this section.
4. The required buffer (seven-foot Class "C" buffer) is now shown along the entire length of the property line to the east (Parcel 10817106).
5. The note requesting that the site plan be revised to eliminate any parking shown within five feet of exterior lot lines has been removed as the parking areas are grandfathered existing conditions. A minimum five-foot walkway has been provided from the front of each building to the public sidewalk along Pence Road.
6. All CDOT and Solid Waste Services comments have been addressed as follows:
 - a. The site plan now shows proposed curb and gutter, a minimum eight-foot planting strip and six-foot sidewalk from the proposed Pence Road future curb line and a concrete driveway through the setback line associated with Tax Parcel 10817105.
 - b. A note has been added indicating that the type of intended garbage service is City pick-up.
7. A portion of an existing concrete slab on Tax Parcel 10817106 will be saw cut and removed to allow for continuation of the required Class "C" buffer.

The ordinance is recorded in Ordinance Book 57 at Pages 389-390.

ITEM NO. 7: ORDINANCE NO. 4755-Z AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF CHARLOTTE TO AFFECT A CHANGE IN ZONING FOR APPROXIMATELY 5.05 ACRES LOCATED ON THE NORTHEAST CORNER AT THE INTERSECTION OF SARDIS ROAD AND CHEVRON DRIVE FROM R-3 TO INST(CD)

A protest petition has been filed and is sufficient to invoke the 20% voting rule requiring affirmative votes of ¾ of the Mayor and Council members not excused from voting in order to rezone the property.

Mayor Foxx said the petition is found to be inconsistent with the South District Plan but to be reasonable and in the public interest.

Mayor Foxx said we actually need to have a vote since there have been changes since the hearing on this petition as to whether to send this back to Zoning Committee or not.

Tammie Keplinger, Planning, said this is a protested petition that is sufficient, so we do need to find out since we don't have a full Council if the petitioner wants to proceed tonight.

Councilmember Turner arrived at 6:17 p.m.

Mayor Foxx said we now have a full Council, so thank you.

Ms. Keplinger said there are ten changes. These notes will be added to the site plan or the site plan will be changed to reflect them. The nature trail and walking path will not be located within the SWIM buffer. The maximum basement floor elevation of Buildings A and B will be 672 feet, and there is a specific way that is to be measured. Building A and B will be located a minimum of 12 feet from the edge of the SWIM buffer. The SWIM buffer will remain undisturbed. A pedestrian bridge may not be constructed or installed across the creek located on the site. The petitioner will plant five evergreen trees along the common property boundary with Tax Parcel 18914218. That is one of the adjacent property owners that they have worked through these issues with.

The size of the rain gardens depicted on the conditional plan will be increased to depict it more accurately. There are two trees designated as being saved within the – located next to the rain garden. These trees cannot be saved and should be removed from the site plan. With respect to the tree save area located at the site's frontage on Sardis and Chevron, the trees cannot be located within ten feet of the building, so this will decrease the overall tree save area from 36.7% to 35%. Also the open space calculation was removed inadvertently from the site plan and will be put back on there, and the open space will be 50%.

Mayor Foxx said the first threshold question is whether to send this back to the Zoning Committee for discussion and recommendation back to Council or whether you want to take it on tonight.

[Motion was made by Councilmember Dulin and seconded by Councilmember Mitchell to]
[move forward with the vote tonight.]

Councilmember Dulin said this is obviously District 6 on Sardis Road. This is a classic recession area downturn situation that we have. This guy started it. As a matter of fact, I think he is an M.D., Jason, whose passion is or was building, and he has gotten himself out there on this project that stalled. He has come out and with hard work and lots of planning come out with a plan that in my opinion it's a very good plan. It's, as you know, a 55 and older development. It's a niche development, and it is going to take a piece of property that has remained vacant for three years now and do something positive with it. Do I know if anybody 55 and older are going to buy these units from him? No, but that is his risk that he has taken.

He has met with and done a good job of meeting with the neighbors. He has done a better job meeting with the neighbors than meeting with me. I have only met the guy one time, met him last week. I'm willing to give this guy a shot to do this. We have had neighborhood push-back. He has done a very good job of meeting with these neighbors, both the folks who are congruent to his site and those nearby, and with the exception of one gentleman who lives a mile away or a little bit more than a mile away everybody is good. All of the people whose property touches his property are okay with this moving forward, and that is a winner for me -- those of you who go to these meetings when the folks that touches a property owner's property. I plan to support this tonight, and I would appreciate it if y'all would give it a positive nod, too. I think it will be something that we can drive by and enjoy seeing in the years to come.

Mayor Foxx said any further comments on the procedural matter in front of us which is whether to go to Zoning Committee or to have a vote on this tonight. Are these comments related to that issue?

Councilmember Carter said Mr. Dulin just made a statement that the residents are content – those who abut the property. It says here that the protests are sufficient.

Councilmember Dulin said, Tammie, can you speak to that?

Ms. Keplinger said I can tell you that we did have one of the protest petitions today – we had a name withdrawn, but the protest petitions, there were several submitted on this site. They are still sufficient. We do have at least one that is still sufficient, and it could be that the citizens just didn't know they needed to remove their names from those protest petitions.

Councilmember Dulin said that's a great point, Ms. Carter. I have not heard from any – one of the protest petitions that is being lifted I have heard and met with that man, and the other protest petition or petitioners have not contacted me. I haven't had a single call from anybody else that has a protest out there. This thing hasn't worked itself up. You know how some of them get hot, and we spend a lot of time on it. It really has never gotten hot like that. It's been very quiet. The petitioner and his agent have done a good job, I think, of keeping it down and keeping the communication lines open, and for whatever reason, I haven't been contacted about it.

Councilmember Howard said my question is for staff. I'm kind of not sure of what changed. You read a list, but I don't know what it was before then. I don't know if it was a minor tweak to each one of those or a major tweak. I guess I'm wondering, Mr. Manager, Tammie, what is staff's opinion of whether or not it's gone beyond where it should for us to move forward or go back?

Ms. Keplinger said we think that the changes are minor in nature. They are to the benefit of the adjacent property owners, and we feel it's fine to move forward.

Councilmember Turner said my question maybe staff, maybe Mr. Carmichael – he represents this company – can tell us whether or not that particular protest petitioner is active or inactive at this point.

John Carmichael said Mr. Duggins is the protest petitioner -- He is in the audience – who has removed his protest petition. I think there are three other protest petitions that are valid. I assume those folks are still opposed, and I'm not going to represent that any other way. We did work closely with Mr. Duggins. He has tried to contact some of those folks. Mr. Duggins owns three lots that adjoin the property, and the things we have done to the plan were to address his specific concerns. I think we have addressed those, but as to the other folks I want to make sure that we are clear about this that they are still valid. I can't represent to you that they still don't oppose it. For purposes of your decision, they oppose it. I will say that we have had two neighborhood meetings with them, and they voiced their concerns, and we have tried to address their concerns as best we can, but obviously we haven't addressed all their concerns. We have worked hard with Mr. Duggins.

Councilmember Turner said, Madame Staff, can you tell us what it is based on their position that they have?

Ms. Keplinger said of the protesters?

Councilmember Turner said it sounds like there are three.

Ms. Keplinger said there may be three, and, Mr. Turner, I can't tell you exactly what their protest petition indicated. I know there were concerns about traffic, also concerns about whether the petitioner, the developer, had any experience in this type of development, also whether this was not an appropriate land use in the middle of single family residential.

Councilmember Carter said is it appropriate to ask where the three protest homeownership is located on the map?

Ms. Keplinger said I don't know the specifics, but by law they have to be within 100 feet of the property in order to make the protest petition valid, and they have to amount to at least 5% of the circumferential area in order to be validated.

Councilmember Carter said it makes a difference to me if those protest petitioners are located across the street or directly adjacent to the property.

Ms. Keplinger said they could actually be across the street. Many protest petitions – unless the street is more than 100 feet wide in right-of-way, which this street is not, none of these streets are. That's the only time a homeowner across the street would not count, so it very well could be someone across Sardis Road.

Mayor Foxx said what's on the table right now is making a decision tonight as opposed to sending it to the Zoning Committee. There has been a motion and a second to do that.

The vote was taken on the motion to vote on the petition tonight and carried unanimously.

[Motion was made by Councilmember Dulin, seconded by Councilmember Mitchell, and]
[carried unanimously to approve the Statement of Consistency and Petition No. 2011-033]
[for the above rezoning by Daniel Schwarz, Sardis Road Land Company, LLC, as modified]
[and as approved by the Zoning Committee.]

The modifications are:

1. Listed hardy plank siding as a building material as referenced on the building elevations.
2. Specified the parking ratio as 1.5 spaces per unit for a total of 81 parking spaces.
3. Provided specifics on architectural features that will be provided on duplex units to create appearance of a building front. Specifically, all facades facing Sardis Road or Chevron Drive will be articulated with a door, porch, and windows to match the inner facing front facades of these buildings.
4. Added a note that the brick wall to be extended along Chevron Drive will not exceed five feet in height.
5. Removed all notes related to general ordinance requirements such as compliance with the landscaping provisions of the ordinance, tree ordinance, no detention in buffers, and signs.
6. Removed Note #3 under "Binding Effect of the Rezoning Documents and Definitions".
7. Labeled and provided square footage calculations for all proposed tree save areas, which total 36.7%.
8. Amended Note 1 under "Permitted Uses" to state that the site may only be devoted to an age restricted senior living community comprised of a maximum of 54 for sale independent living units and related common areas and amenities and to any accessory uses that are permitted under the Ordinance in the Institutional zoning district.
9. Note 7 under "Transportation" has been amended to add that the internal sidewalks may meander to save existing trees.
10. Note 3 under "Architectural Standards" has amended to add the following: More specifically, each duplex style building will be constructed of brick or stone (30% minimum masonry) and cementitious board or hardy plank, stucco, or synthetic stucco. Window styles, dormer styles, and architectural shutters on Building A and Building B. Roofs will be architectural grade fiberglass shingles on a combination of hipped and gabled roofs. All facades facing Sardis Road or Chevron Road will be articulated with a door, porch, and windows to match the inner facing front facades of these buildings.
11. Note 5 under "Transportation" states that the parking areas underneath Building A and Building B shall be screened from abutting properties by masonry walls of a height that is sufficient to shield the abutting properties from headlights. However, in no event shall the height of such walls be less than four feet.
12. Note 6 under "Transportation" states that as depicted on the Rezoning Plan, a masonry wall with a minimum height of four feet and shrubs shall be installed along the eastern terminus of the driveway between Building A and Building B to shield the abutting properties from headlights.

13. Note 8 under "Transportation" states that sidewalks located along the internal street may be located at the back of curb adjacent to the on-street vehicular parking spaces as depicted on the Rezoning Plan.
14. Note 2 under "Streetscape and Landscaping" states that the street trees may be planted 50 feet on center on average.
15. Note 1 under "Environmental Features" states that in addition to the trees located within the tree save area the Petitioner shall preserve those trees designated on the Rezoning Plan for preservation. With respect to those trees located outside of the tree save areas and designated for preservation, the Petitioner shall engage a certified arborist to prepare and implement a tree protection and preservation plan for these trees, and a copy of the tree protection and preservation plan must be submitted to the Charlotte-Mecklenburg Planning Department prior to commencing any grading activities on the site.

The ordinance is recorded in Ordinance Book 57 at Pages 391-392.

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ITEM NO. 9: ORDINANCE NO. 4756-Z AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF CHARLOTTE TO AFFECT A CHANGE IN ZONING FOR APPROXIMATELY 7.07 ACRES LOCATED ON THE NORTHEAST CORNER AT THE INTERSECTION OF ALBEMARLE ROAD AND REGAL OAKS DRIVE FROM B-2(CD) TO B-1(CD)

Mayor Foxx said the petition is found to be consistent with the Eastland Area Plan and to be reasonable and in the public interest.

[Motion was made by Councilmember Carter, seconded by Councilmember Howard, and]
[carried unanimously to approve the Statement of Consistency and Petition No. 2011-050]
[for the above rezoning by Quik Trip Corporation as modified and as approved by the Zoning]
[Committee.]

The modifications are:

1. Provided supplemental tree plantings along Regal Oaks Lane and Albemarle Road frontages.
2. Added a note indicating that all drive-thru uses will be prohibited.
3. Limited detached signs to monument style signage.
4. Limited detached lighting to 25 feet in height including the base.
5. Modified the second sentence within Note 4.a to read "...buildings that may be constructed on Parcel A shall be substantially similar in appearance to these building elevations and shall be constructed predominantly of brick or decorative masonry materials."
6. Modified Note 4.b to read "Buildings located on Parcel B shall front Regal Oaks Drive and/or the private street identified in paragraph 3.c above. No rear elevations shall be oriented along these two street fronts. All elevations along these streets shall be constructed predominately of brick or decorative masonry materials and be designed with architectural elements to prevent blank walls in excess of 20 feet in length."
7. Modified Note 3.c by replacing all "private drive" references with "private street".
8. Modified Note 3.c to read "Prior to the issuance of a building permit for development on Parcel B, the Petitioner shall construct a private street with two ten-foot travel lanes, two 2.5-foot curb/gutter sections, two eight-foot planting strips, and two six-foot sidewalks in order to provide a street connection from Regal Oaks Drive to the adjoining property to the east of the Site."
9. Provided a note to indicate that the completion of the private drive/access easement which extends from Albemarle Road across Parcel A north to the private street associated with Parcel B will be completed prior to the issuance of a building permit for development on Parcel B. Also indicated the five-foot internal sidewalk located on the eastern side of the private drive will be extended to the private street.
10. Removed information related to parking from the site data table on sheet RZ-1.
11. Amended the site plan to reflect 7.07 acres.

12. Addressed CDOT issues regarding the private street cross section and the 16-foot maximum width of the right-in only driveway from Regal Oaks Drive.
13. Removed the second paragraph under Note 1 "General Provisions".

The ordinance is recorded in Ordinance Book 57 at Pages 393-394.

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ITEM NO. 10: ORDINANCE NO. 4757-Z AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF CHARLOTTE TO AFFECT A CHANGE IN ZONING FOR APPROXIMATELY 1.707 ACRES LOCATED WEST OF THE INTERSECTION OF GRIFFITH STREET AND POINDEXTER DRIVE NEAR SOUTH BOULEVARD FROM TOD-MO AND I-1 TO TOD-M

Mayor Foxx said the petition is found to be consistent with the New Bern Transit Station Area Plan and to be reasonable and in the public interest.

[Motion was made by Councilmember Barnes, seconded by Councilmember Cannon, and]
[carried unanimously to approve the Statement of Consistency and Petition No. 2011-051 for]
[the above rezoning by Woodfield Investments, LLC as approved by the Zoning Committee.]

The ordinance is recorded in Ordinance Book 57 at Pages 395-396.

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ITEM NO. 11: ORDINANCE NO. 4758-Z FOR A CC SITE PLAN AMENDMENT FOR APPROXIMATELY 2.80 ACRES LOCATED ON THE WEST SIDE OF ODELL SCHOOL ROAD NEAR THE INTERSECTION OF CAROLINA LILY LANE AND ODELL SCHOOL ROAD

Mayor Foxx said the petition is found to be consistent with the Northeast Area Plan and to be reasonable and in the public interest.

[Motion was made by Councilmember Barnes, seconded by Councilmember Carter, and]
[carried unanimously to approve the Statement of Consistency and Petition No. 2011-052]
[for the above rezoning by Odell School Highway Investment Traders, LLC as modified and]
[as approved by the Zoning Committee.]

The modifications are:

1. Amended Note 6f to state that a six-foot sidewalk and eight-foot planting strip will be provided along the tract frontage on Odell School Road.
2. Added Note 6i to state that access to Odell School Road from tract 029-191-08 will be limited to right-in/right-out upon the completion of the Odell School Road roadway improvements by NCDOT.
3. Added Note 6j to state that along the property frontage of Odell School Road the Petitioner agrees to reserve 50 feet of right-of-way from the existing centerline of Odell School Road.

The ordinance is recorded in Ordinance Book 57 at Pages 397-398.

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ITEM NO. 12: ORDINANCE 4759-Z AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF CHARLOTTE TO AFFECT A CHANGE IN ZONING FOR APPROXIMATELY 2.85 ACRES LOCATED ON THE WEST SIDE OF SOUTH BOULEVARD BETWEEN THE JOHN BELK FREEWAY AND ARLINGTON AVENUE FROM TOD-MO TO TOD-M

Mayor Foxx said the petition is found to be consistent with the South End Transit Station Area Plan and to be reasonable and in the public interest.

[Motion was made by Councilmember Turner, seconded by Councilmember Cannon, and]
[carried unanimously to approve the Statement of Consistency and Petition No. 2011-053]
[for the above rezoning by 1200 South Boulevard Partners, LLC as approved by the Zoning]
[Committee.]

The ordinance is recorded in Ordinance Book 57 at Pages 399-400.

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ITEM NO. 13: ORDINANCE NO. 4760-Z FOR A CC SITE PLAN AMENDMENT FOR APPROXIMATELY 16.11 ACRES LOCATED ON THE SOUTH SIDE OF FAIRVIEW ROAD AND ACROSS FROM CAMERON VALLEY PARKWAY

Mayor Foxx said the petition is found to be consistent with the SouthPark Small Area Plan and to be reasonable and in the public interest.

[Motion was made by Councilmember Barnes, seconded by Councilmember Cannon, and]
[carried unanimously to approve the Statement of Consistency and Petition No. 2011-054]
[for the above rezoning by Phillips Place Partners, LLC as modified and as approved by the]
[Zoning Committee.]

The modifications are:

1. Staff has removed the request to identify proposed solid waste and recycling location(s) on the site plan as the current note describing method of screening suffices, and the site plan as proposed shows no building footprints or parking spaces.

The ordinance is recorded in Ordinance Book 57 at Pages 401-402.

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ITEM NO. 14: ORDINANCE NO. 4761-Z AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF CHARLOTTE TO AFFECT A CHANGE IN ZONING FOR APPROXIMATELY 10.96 ACRES GENERALLY BOUNDED BY SOUTH COLLEGE STREET, MARTIN LUTHER KING, JR. BOULEVARD, SOUTH BREVARD STREET, AND EAST STONEWALL STREET FROM UMUD TO UMUD-O

Mayor Foxx said the petition is found to be consistent with the Center City 2020 Vision Plan and to be reasonable and in the public interest.

[Motion was made by Councilmember Mitchell and seconded by Councilmember Kinsey to]
[approve the Statement of Consistency and Petition No. 2011-055 for the above rezoning]
[by Charlotte Regional Visitors Authority as approved by the Zoning Committee.]

Councilmember Dulin said the write-up on this – maybe I missed something, guys – is about the Convention Center board out front, and yet they want to rezone 10.96 acres, so that’s not how big the building is. It’s not that large, I don’t think, and wouldn’t this come under our sign ordinance?

Tammie Keplinger, Planning, said the entire parcel is 10.96 acres, so that is what was applied for the zoning.

Councilmember Dulin said obviously if they want to change the sign out front, fine, but is this going to allow them to do other signage around the building?

Ms. Keplinger said they will be allowed to do the signage as per the ordinance. The only thing that will be outside the ordinance is the changeable copy sign or the digital video board outside. Councilmember Dulin said this doesn't affect anything else uptown then. The 10.96 acres caught me.

Ms. Keplinger said it's just the Convention Center site.

Councilmember Dulin said are they going to be able to make it bigger or just high tech?

Ms. Keplinger said it's high tech. The frame of the sign will be as the existing frame is. When you look at the current sign, the digital reader board that is there only takes up about two-thirds of the sign. The video board will take up the entire sign area, but the size will still remain the same.

Councilmember Dulin said those were my questions.

The vote was taken on the motion and recorded as unanimous.

The ordinance is recorded in Ordinance Book 57 at Pages 403-404.

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ITEM NO. 15: ORDINANCE NO. 4762-Z AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF CHARLOTTE TO AFFECT A CHANGE IN ZONING FOR APPROXIMATELY 6.19 ACRES LOCATED ON THE EAST SIDE OF STEELE CREEK ROAD BETWEEN WHISPERING PINES LANE AND SHOPTON ROAD FROM R-3 TO O-2(CD)

Mayor Foxx said the petition is found to be consistent with the Westside Strategic Plan and to be reasonable and in the public interest.

[Motion was made by Councilmember Turner and seconded by Councilmember Barnes to]
[approve the Statement of Consistency and Petition No. 2011-056 for the above rezoning]
[by Tennyson and Lorna Curtis as modified and as approved by the Zoning Committee.]

Councilmember Turner said I just want to comment. Personally I think this continues the process in development on this particular location and the investment that the City has made and the infrastructure improvements along this corridor. I think without a doubt it's an appropriate rezoning request.

The vote was taken on the motion and recorded as unanimous.

The modifications are:

1. Amended Note 2 under "Streetscape and Landscaping" to state that a 51-foot Class B buffer will be provided along the rear of the lot.
2. Amended Note #2 under "Transportation" to say that the right-of-way maintenance of both sides of the right-of-way for relocated Red Spring Drive will be the responsibility of the tenant/property owner/developer of Parcel 1410113.
3. Indicated that all glazed areas (storefront work, entrance doors, room windows, etc.) shall be insulated glass in aluminum or vinyl frames at the discretion of the developer.
4. Removed Note #3 under "Architectural Standards" as it is a general ordinance standard.
5. Amended the first sentence under "Environmental Features" to state that the tree save areas shown exceed that required and will not be modified during final design.
6. Deleted Note 1 under "Signage".
7. Clarified that the lighting height will include the base of the lighting fixtures.
8. Addressed all CDOT issues as follows:

9. Amended Note 5 under "Transportation" to state that the petitioner will deed 20 feet of additional right-of-way along the site's frontage on Steele Creek Road.
10. Added a note to clarify and consolidate all transportation improvements as generally depicted on the site plan.
11. Added note that the site's proposed 5 foot sidewalk on either side of the extended Red Spring Drive will connect and transition to the existing 4-foot sidewalks located east of the eastern property line.
12. Added note that Steele Creek Road will be widened to accommodate two travel lanes, a left-turn lane, a northbound right-turn lane, and a 5-foot bike lane. The future curb line will be established during the construction permitting process.
13. Added a note that the petitioner agrees to pay for the installation of one speed hump on the extended Red Spring Drive using CDOT's contractor (cost not to exceed \$2,500). If the speed hump is not warranted after two years from the receipt of hotel occupancy, this stipulation is waived.
14. Added a note that all identified transportation improvements (excluding a possible future speed hump) shall be completed and approved by the City and/or NCDOT before the first certificate of occupancy will be issued.

The ordinance is recorded in Ordinance Book 57 at Pages 405-406.

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ITEM NO. 16: ORDINANCE NO. 4763-Z AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF CHARLOTTE TO AFFECT A CHANGE IN ZONING FOR APPROXIMATELY 0.38 ACRES LOCATED ON THE NORTH SIDE OF NORTH McDOWELL STREET AND EAST OF THE INTERSECTION OF EAST 37TH STREET AND NORTH McDOWELL STREET FROM I-2 TO R-5

Mayor Foxx said the petition is found to be inconsistent with the North Charlotte Plan but to be reasonable and in the public interest.

[Motion was made by Councilmember Carter, seconded by Councilmember Mitchell, and]
[carried unanimously to approve the Statement of Consistency and Petition No. 2011-057]
[for the above rezoning by Merideth Sorrentino as approved by the Zoning Committee.]

The ordinance is recorded in Ordinance Book 57 at Pages 407-408.

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ITEM NO. 17: ORDINANCE NO. 4764 FOR A TEXT AMENDMENT TO THE CITY OF CHARLOTTE ZONING ORDINANCE TO ADD A NEW SUBSECTION TO THE URBAN RESIDENTIAL DISTRICTS FOR AREA, YARD, AND HEIGHT REGULATIONS AND TO MODIFY DEFINITIONS

Mayor Foxx 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 Cannon, seconded by Councilmember Cooksey, and]
[carried unanimously to approve the Statement of Consistency and Petition No. 2011-058 for]
[the above text amendment by Fairhills Park South Associates, LLC as approved by the]
[Zoning Committee.]

The ordinance is recorded in Ordinance Book 57 at Pages 409-411.

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ITEM NO. 18: ORDINANCE NO. 4765 FOR A TEXT AMENDMENT TO THE CITY OF CHARLOTTE ZONING ORDINANCE TO ADD STANDARDS REGARDING HOUSING DESIGN

Mayor Foxx 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 Peacock, seconded by Councilmember Cannon, and]
[carried unanimously to approve the Statement of Consistency and Petition No. 2011-059 for]
[the above text amendment by Charlotte-Mecklenburg Planning Commission as modified and]
[as approved by the Zoning Committee.]

The modification is:

1. Modify Section 12.509(2) of the text amendment to include a reference that trees and shrubs shall also meet any standards and regulations set by a public utility. The revised section shall read as follows: “Lots created for single-family development after December 31, 2011, shall not have major overhead public utility structures which support transmission lines or otherwise part of the transmission network located in any established front setback unless the structure is 100 feet or more beyond the high voltage transmission right-of-way and a 50-foot wide buffer consisting of nine trees and 60 shrubs per 100 linear feet is provided beginning 25 feet behind the high voltage transmission right-of-way. Trees and shrubs shall meet the standards of Section 12.302(9) and any standards and regulations set by the public utility.

The ordinance is recorded in Ordinance Book 57 at Pages 412-415.

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ITEM NO. 19: ORDINANCE NO. 4766 FOR A TEXT AMENDMENT TO THE CITY OF CHARLOTTE TREE ORDINANCE TO MODIFY THE TREE SAVE REQUIREMENTS FOR SINGLE FAMILY DEVELOPMENT

Mayor Foxx 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 Mitchell and seconded by Councilmember Howard to]
[approve the Statement of Consistency and Petition No. 2011-5001 for the above text amend-]
[ment by Charlotte-Mecklenburg Planning Commission as approved by the Zoning Committee.]

Councilmember Carter said I find myself really conflicted over this decision. There are two issues here. Number one, the separation between buildings, and it's three feet moving to five feet, which is the original. The incentive to get the three feet zoning regulation is saving trees. I want more distance between the houses, but I do want to save the trees, so I am faced with a difficulty, and there are some proposals that have come before Council that have reduced some of our regulations about trees. I am concerned for our tree ordinance, and I'm going to say that publicly, and I hope our citizens will step up and make their wills known about our tree canopy, which I find somewhat threatened by the actions we are taking on Council these days. Even though I have that concern, my concern for citizens and the space that they have to access by emergency vehicles overrides the tree save, so I am going to support this petition, but I do have difficulty.

The vote was taken on the motion and recorded as unanimous.

The ordinance is recorded in Ordinance Book 57 at Page 416.

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HEARINGS

ITEM NO. 20: HEARING ON PETITION NO. 2011-060 BY RONALD E. SHAVER FOR A CHANGE IN ZONING FOR APPROXIMATELY 0.55 ACRES LOCATED ON THE NORTH SIDE OF NORTH ALEXANDER STREET AND EAST OF THE INTERSECTION OF EAST 37TH STREET AND NORTH ALEXANDER STREET FROM I-2 TO R-5

The scheduled public hearing was held on the subject petition.

Tammie Keplinger, Planning, said this is a small piece of property located in NoDa. It's actually within a little pocket of industrial development. Earlier tonight you actually approved the rezoning for this property from I-2 to R-5. The request before you with this public hearing is to also rezone this property from I-2 to R-5. It is a conventional request. The North Charlotte Plan recommends industrial uses, but the proposed R-5 district is compatible with the surrounding residential uses, and staff is recommending approval.

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

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ITEM NO. 21: HEARING ON PETITION NO. 2011-061 BY ROBERT D. SMITH FOR A CHANGE IN ZONING FOR APPROXIMATELY 10.46 ACRES LOCATED ON BROWNE ROAD AND ACROSS FROM AMBER GLEN DRIVE FROM R-3 AND INST(CD) TO INST(CD) AND INST(CD) SPA

The scheduled public hearing was held on the subject petition.

Tammie Keplinger, Planning, said this site might look familiar to you. Part of it was rezoned in May of this year to INST(CD). This is a swim and racquet club that is located up on Browne Road. In terms of the reason we are here tonight with this petition again is once the rezoning was approved and the petitioner went in to get permits we discovered that the road that is shown on the property and will access the indoor tennis club that is proposed to the rear is actually on the R-3 property. The zoning ordinance says that you cannot access institutional or business properties through residential, so staff worked with the petitioner. He had to pay half of the fee instead of the full rezoning fee, and he is requesting INST(CD) for the entire site. There are some inconsistencies with the district plan, however, we feel that the use is compatible with the surrounding uses, and we are recommending approval upon the resolution of outstanding issues.

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

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ITEM NO. 22: HEARING ON PETITION NO. 2011-062 BY KEMPO CORPORATION FOR A CHANGE IN ZONING FOR APPROXIMATELY 3.69 ACRES LOCATED ON THE EAST SIDE OF STATESVILLE ROAD BETWEEN CINDY LANE AND NEVIN ROAD FROM B-1 TO B-2

The scheduled public hearing was held on the subject petition.

Tammie Keplinger, Planning, said this property is located on Statesville Avenue in an area in a corridor with business and industrial uses. It is a conventional petition to rezone from B-1 to B-2. The request is consistent with the Northeast District Plan, and staff is recommending approval.

Ben Barry, 1501 Waxhaw Indian Trail Rd., said we don't need to speak. We are in support of the staff recommendation.

Councilmember Mitchell said, staff or even Mr. Barry, and I know I have to be careful because it's B-2. What usage do we know, and I know it's a range, but do we have a good idea of what development will occur there?

Ms. Keplinger said because it is a conventional petition what I can tell you is that all uses in the B-2 district that are permitted are allowed. B-2 is a highway business district. It includes any type of retail uses, restaurants, retail, fast food, office, car dealerships, anything of that nature.

Councilmember Mitchell said, sir, are you the petitioner?

Mr. Barry said yes.

Mayor Foxx said come down to the podium. You might get a question from Mr. Mitchell.

Councilmember Mitchell said I'm not sure the Nivens community is aware of this rezoning, and I know I did not have any knowledge of it until today, so a couple of questions, if you don't mind. Have you had a community meeting with the citizens of the Nivens community?

Mr. Barry said, no, we have not.

Councilmember Mitchell said are they aware of this particular rezoning, to your knowledge?

Mr. Barry said to my knowledge they are notified through the standard procedures.

Councilmember Mitchell said, staff, did we notify the citizens of Nivens about this rezoning?

Ms. Keplinger said this petition because it is conventional is not required to have the community meeting that we have with our conditional rezonings. It does go through the normal notification process, which is any property owner within 300 feet and any neighborhood organization within one mile. We'll be glad to verify whether the Nivens community was notified.

Councilmember Mitchell said I feel very uncomfortable tonight. Well, this is just a hearing, so hopefully between now and decision you can reach out to me and the residents of Nivens just to get a more comfortable feeling with what you are planning on doing here. Is this your first development in Charlotte?

Mr. Barry said, no, sir. I am the architect on the project representing the developer, and he is a builder, so this is not the first development he has been involved with, no.

Councilmember Mitchell said you are representing him, so he is the developer.

Mr. Barry said that's correct.

Councilmember Mitchell said can you come down, please, sir. Council, I apologize, but I don't want the citizens of Nivens to be caught blind-sided. Can you share your experience, and secondly, will you be okay reaching out to the citizens of Nivens between now and the decision just so they can get very comfortable with the development?

Unidentified Speaker said, yes, sir, definitely do that. So far we have a church behind us, and we talked to a couple of folks up there, and they are really comfortable with what we are doing over there. We don't have any opposers. We have cross-street is all, I think, C-1, which is commercial – I-1.

Councilmember Mitchell said, Tammie, can you help me out. So he is right here at B-2?

Ms. Keplinger said right here, and this is the I-2(CD) across from him.

Councilmember Mitchell said are you saying you own that or you talked to the owner?

Unidentified Speaker said, no, we talked to the owner. We don't have any residential behind us. We have behind our property and church we have two or three acres empty land, which belongs to the church.

Councilmember Mitchell said what are you specializing in your development?

Unidentified said I do commercial, residential. I own a construction company. I am a general contractor for last 11 years. I do a lot of commercial work.

Councilmember Mitchell said thank you, Mayor and Council. I can talk to you off-line, but if we can make sure we definitely engage in Nivens community before the decision.

Unidentified Speaker said we can. No problem.

Ms. Keplinger said, Mr. Mitchell, the area that he was referring to between him and the church is part of this property.

Councilmember Mitchell said he is sharing that saying what?

Ms. Keplinger said he was saying even though this is zoned residential he does not have any residential uses behind him. He has the vacant land and then the church. That's what he was referring to.

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

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ITEM NO. 23: HEARING ON PETITION NO. 2011-063 BY TYVOLA OAK LAKE, LLC FOR A CHANGE IN ZONING FOR APPROXIMATELY 2.99 ACRES LOCATED ON THE NORTH SIDE OF YORKMONT ROAD BETWEEN OAK LAKE BOULEVARD AND WEST TYVOLA ROAD FROM I-1 TO NS

The scheduled public hearing was held on the subject petition.

Tammie Keplinger, Planning, said this petition is a piece of property that was developed in the I-1 district, and when we go to the arrow, you can see there is an existing building on the site. It's not an industrial building. It's an office, retail, and restaurant building. They have a tenant on the first floor of this building that is a restaurant, and they are wanting to provide outdoor seating for their customers. Since the property was developed under the I-2, it meets general ordinance standards in terms of parking, and they don't have any extra parking. The request that is before you tonight is to rezone it from I-2 to NS to allow them a reduced level of parking so they can allow this seating for the restaurant. The request is inconsistent with the land use recommendations of the Southwest District Plan, but it is consistent with the West Side Strategic Plan Land Use Objectives, which is to promote pedestrian activity at our major intersections. Staff is recommending approval, and there are no outstanding issues.

Walter Fields, 1919 South Blvd., said I'll take questions, Mayor.

Councilmember Carter said if we are deleting parking and the restaurant is a component of this whole, how are people going to park for the restaurant if the parking is deleted? That's a very simplistic question.

Ms. Keplinger said it's actually not a deletion of parking. It's just a change in the ratio of what's required. Under the I-2 district, the parking ratio for a restaurant is one parking space for every 75 square feet. The proposed with this petition is one space for every 125 feet, so it's a little bit different. For all other uses, and I believe this is the first floor only, the parking ratio will be one space for every 300 square feet, which would be typically one to every 250. It actually is just a small reduction. It also allows them to have about 12 to 14 extra spaces in case any of their tenants additionally want to add outdoor seating.

Councilmember Carter said it doesn't seem to me that there is any on-street parking in that area. It looks like there are thoroughfares.

Mr. Fields said, Ms. Carter, if I could call your attention to the aerial photo. This is basically the intersection of Yorkmont Road and Tyvola Road. We adjoin two hotels, neither of which has a restaurant. We are directly across the street from Belk Store Services and I don't know how many hundreds or thousands of people work there. There are actually several restaurants in this building. It has become a very popular location, and there had been some outdoor seating in the past, but we began to realize that we were triggering new parking requirements every time one of the restaurants wanted to add outdoor seating, so we came to the staff and asked them if they could help us resolve the issue. We are not taking away any parking spaces that are already there. A large portion of the people who come to these restaurants actually walk from the two hotels and from Belk Store Services across the street.

Councilmember Carter said that helps a great deal.

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

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ITEM NO. 24: HEARING ON PETITION NO. 2011-066 BY 52 EIGHTY, LLC FOR A SITE PLAN AMENDMENT FOR APPROXIMATELY 4.15 ACRES LOCATED ON THE SOUTH SIDE OF CROSS BEAM ROAD BETWEEN BEAM ROAD AND ROSE LAKE DRIVE

The scheduled public hearing was held on the subject petition.

Tammie Keplinger, Planning, said this site is currently zoned BD(CD). It was zoned this in 1982. The conditions on this plan did not anticipate any desires to put a cell tower on this site. Back in 1982, we probably had not heard of many cell towers. The request before you tonight is to amend the conditions on this site plan to allow the location of a cell tower. In the BD district, cell towers are allowed. Again, the only reason this one has to come before you is because it is a conditional district. We are recommending approval. It is consistent with the Southwest District Plan.

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

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Mayor Foxx said I wanted to recognize North Carolina Representative Rodney Monroe. Welcome.

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ITEM NO. 25: HEARING ON PETITION NO. 2011-067 BY TWILIGHT CARIBBEAN RESTAURANT FOR A CHANGE IN ZONING FOR APPROXIMATELY 0.32 ACRES LOCATED ON THE NORTH SIDE OF BERKELEY PLACE DRIVE NEAR THE INTERSECTION OF WEST MALLARD CREEK CHURCH ROAD AND BERKELEY PLACE DRIVE FROM CC TO MUDD(CD)

The scheduled public hearing was held on the subject petition.

Tammie Keplinger, Planning, said this petition proposes to rezone one building that is located within the Pinnacle Point development to allow all uses permitted in the MUDD district including one nightclub, bar, or lounge. The current zoning is CC, which is commercial center, and it requires a 400-foot radius or separation for many residential zoning when we have a nightclub, bar, or lounge. The reason for the request to MUDD is to reduce that 400-foot radius to 100 feet per the MUDD standards.

There is a residential building that is right across the street from the site. The petition is consistent with the Northeast District Plan, which recommends a mix of retail and office uses. Staff is recommending approval. I would like to point out that we did recently have a rezoning on Mineral Springs and Graham Street for a community theatre. It was the same type of rezoning to go to the MUDD district. In that case, staff was not supporting the petition initially because the petitioner could not meet any of the MUDD standards. This site actually meets all of the MUDD standards, and that is one of the reasons that staff is supporting it.

Mayor Foxx said, by the way, one of the conversations we were having back in the back room was whether to go forward with the hearing knowing that the decision would happen after a new Council takes its office, so the decision, at least I think there is going to be a recommendation that the hearing be held open so those folks can have access to the same conversation that we have.

Teresa Hawkins, 21326 Bethel Church Rd., said I am representing Mr. Darryl Ramjohn with Twilight Caribbean. This rezoning request is not here to gain, but we are here to continue an operation of an existing business, which is a restaurant. We vehemently disagree that this is a nightclub. Twilight Caribbean is located in a building in Pinnacle Point mixed-use development. It's on Mallard Creek Church Road at I-85 North. In 2006, this building was built to accommodate the Utopia Jazz Club. The original upfit plans constructed a small stage, a sound system, a small dance floor, an area where they could have a pool table, and the zoning of CC at that time was deemed sufficient to accommodate this jazz club use. I don't think that this was a restaurant. It was strictly a club. Fortunately they went out of business.

Twilight Caribbean Restaurant moved into the space in February of 2010, and at that time, the zoning granted their upfit with no problem. They only required an ABC permit and a new sign permit. So, Darryl moved in his operation, which is a full service restaurant offering lunch and dinner, full service menu, seven days a week. He offers ancillary entertainment two to three days a week, and this includes a karaoke, a DJ, occasionally a band.

In the fall of 2010, Twilight Caribbean, in a late-night visit from the Police Department and the zoning inspector, received a zoning violation that ruled that the restaurant was operating with live entertainment within 400 feet of a residential use. Heretofore it had never been an issue. In 2006, Utopia Jazz Club moved in. In February of 2010, Twilight Caribbean moved in, and everybody offered this ancillary entertainment component, but as a result, Mr. Ramjohn was cited with a notice of a zoning violation.

Twilight Caribbean's business, as you can see from the aerial, is just barely over 400 feet from the apartment complex across Berkeley Place Drive. Berkeley Place Drive is a very wide boulevard, about 100 feet of right-of-way, so that gives another buffer. Curiously in the same development, as you can see at the very top of the aerial is an establishment called Wild Wings Café. Wild Wings Café is also a restaurant but offers a much heavier component for live entertainment. They offer live entertainment seven days a week, seven nights a week, and sometimes during the day on the weekends. Their establishment is a little over 100 feet from an existing residential use just north off of the aerial. Zoning determined that Wild Wings Café were already in business, and, therefore, somehow grandfathered or nonconforming. I have never been able to understand how they can operate and not be under a zoning violation and Twilight Caribbean is, but, in fact, they are not. They continue operating as a fairly heavy-duty restaurant with entertainment every day, every night.

As I said, Twilight Caribbean operates as a full-service restaurant. Their food sales make up over 60% of their total sales, so they are just not a bar and nightclub. Twilight Caribbean offers entertainment via DJ or karaoke two to three times a week. We have been working with staff on this issue since last fall. Initially we thought that we would appeal the definition of a nightclub and go before the Zoning Board of Adjustment, and we were encouraged not to do that but to work with staff to find a more straight forward process, so we are here tonight working with staff, working with your zoning administrator, working with your zoning inspector to allow Mr. Ramjohn to continue his business primarily as a restaurant offering ancillary entertainment.

You might recall as you have driven or lived in Charlotte all these years that there are many restaurants that offer live entertainment as a component of their business. They are everywhere - up and down Seventh Street, Monroe Road, Central Avenue; you name it, there are restaurants that offer an ancillary live entertainment component, and they are within 400 feet of a residential zone or district. With that, I will answer any questions you have. Mr. Ramjohn is here as well. This is really I think a matter of fairness and just save a guy's business. He has invested quite a lot of money into this business, so in terms of hardship, you ask what is the monetary hardship for continuing this hearing? Number one, he has had to pay the zoning fee; and, number two, he has output of money to hire a consultant such as me even though I have tried to be very frugal with my hours on this petition. With that said, I'll answer any questions, or we'll have, I guess, the opposition speak.

Dr. Phillip Bugalski, 10210 Berkeley Place Dr., said I am a doctor of optometry and a property owner at the Pinnacle Point. I am also president of the condo association for Building 3, and I'm here on my own behalf and on behalf of two other owners, who signed a protest petition that was filed in the Clerk's Office last Wednesday. We have been told that the petition because of our condo regs does not represent enough of an ownership stake to invoke the 3/4 rule, but who we do represent are three of the four other private owners in the building under question. The other two owners in the building are banks that own property via foreclosure, and one of those banks is the landlord, and Mr. Ramjohn is a tenant in that foreclosed property.

We, as owners, are opposed to the zoning change allowing a nightclub and allowing for adult entertainment in our building. Adult entertainment as advertised on Saturday, May 28th, Club Twilight, Fantasy Factory from 9:00 p.m. to 2:00 a.m., presenting girls, girls, girls, three go-go dancers from your local favorites by Vicious Vanity, a Graveyard Boulevard and Rock Scars production with DJ commotion, give-aways from the Red Door, and Absolute tattoos here at 10210 Berkeley Place Drive. Join us at the hottest party in town, sponsored by the Red Door and Absolute tattoo.

Councilmember Barnes said could you pass that to us, please? To me?

Mayor Pro Tem Cannon said give it to the Clerk here at the end.

Dr. Bugalski said when we purchased at Pinnacle Point, we purchased with the knowledge that the development was a CC, and we purchased knowing that the intent of the developer was to include square feet for retail, office, and medical space in a warm and pedestrian friendly setting. They speak of carefully designed signage for retail and office users. They speak of the location being close to UNC-C and University Research Park making Pinnacle Point a good choice for retailers, offices, and medical users – not nightclubs – and had the zoning allowed for nightclubs the three of us wouldn't have bought there. We purchased in 2006 years before Mr. Ramjohn signed his lease.

The other tenants of adjacent buildings are examples of what the development is like. In our building, we have an insurance agent, we have a tax service, a beauty salon, my pediatric optometry practice. There is a music school for children. There is a communications company. Next door there is an Italian restaurant, a Chinese restaurant, a beauty salon, an optical, a dentist's office, an insurance company, a travel agency – professional and retail offices and medical services.

At the recent community meeting, Mr. Ramjohn stated his wish to provide daily entertainment, and the other private owner, who wasn't present at that meeting, didn't want to sign the petition, but he was kind of concerned, and he recommended that Mr. Ramjohn just keep an eye on business. Everything would be okay if you take care of stuff. The next day there were beer bottles in the parking lot and discarded food in the parking lot. A few days later there are handbills in the parking lot promoting the third annual Libra-Scorpio Birthday Bash by Miami's Supa Sound FT Twitch and Carmine Hite and VI's Red Lion Sounds. That's this October 22nd at Twilight Caribbean. Nowhere on this handbill is there any mention of their food or their restaurant. Well, Twilight Caribbean Restaurant, nothing about the restaurant, but it's marketed as a nightclub.

The tenant is already acting as if – well, they are providing their restaurant and their ancillary entertainment services. They are breaking the rules of the zoning currently. They know what the zoning is. It may be open to interpretation, but if we make the zoning change, what's going to happen next. If, for example, handbills aren't even allowed by our condo association. Our condo association has been in trouble though because the developer went out of business, and the developer was running the condo association, so we haven't been able to manage ourselves and police ourselves. We have been too worried about paying water bills.

The question might be why don't we do business in the daylight and entertainment at night? The Charlotte Music School next door to this restaurant/night club has children taking music lessons until 8:00 p.m. The communication company upstairs is open 24 hours/7 days a week providing phone translation services for deaf people that staff has complained to their property owner, one of the people who signed the petition, about crowds in the parking lot, about garbage in the common areas, and about noise. My office is right upstairs. I like to provide seminars for parents who are bringing their patients to me, and we provide those in the evenings, and when my floor starts vibrating with the sound of a sub-woofer I have stopped doing seminars in my office except maybe once a month now on Mondays when they are usually quiet because that kind of noise does not represent the professional environment that the owners of the property want. That was our desire; that's why we bought there.

There might be a concern about vacancy, and I know about Mr. Ramjohn has talked about he is not sure if he is going to be able to renew his lease if he can't do entertainment every night. The restaurant business is hard. There are four other restaurants in the area that are private. There is a fairness concern about Wild Wings' exception. The exception for Wild Wings is unfair to the residential property next door, and if the residents have a complaint, they have channels to make a complaint, but just because Wild Wings got an exception doesn't mean making an exception for Twilight Caribbean would be fair to the other building owners.

What will likely happen and what Mr. Ramjohn admitted at the community meeting was that when he signed his lease he took the agent's word about what was allowed in the space. He didn't do his due diligence. We, as owners, did due diligence. When I signed my contract back in 2005, I read through the statement of purpose, use, and restrictions. The property shall be used for general business, office, and retail purposes, and such other purposes as are incidental to maintenance of office and retail space, and for no other purposes. I got the zoning maps, and it says it's zoned for CC. CC zoning was not a mistake. Maybe the tenant made a mistake by signing a lease in an area that was not designed to have a nightclub and have adult entertainment.

So, the other owners have done their due diligence and oppose rezoning. We believe rezoning is not an appropriate land use in the midst of this professional development, professional retail and medical office space. And I'm done. Any questions?

Councilmember Barnes said if you would, please, sir, tell us on approximately how many occasions have you experienced issues with the club downstairs?

Dr. Bugalski said prior to what they described as their late night raid I would have to go downstairs during patient hours and ask them to turn down the music. They talked about doing a sound track. The number of occasions – I can remember at least three occasions, and my staff has told me about two other occasions when they have gone down instead of me going downstairs. I can understand asking them to turn down the music once. I see patients until 6:00 p.m., and any nights on seminar that just fires up.

Mayor Foxx said you have a two-minute rebuttal as well.

Councilmember Barnes said after the rebuttal.

Mayor Foxx said thank you very much. We have a two-minute rebuttal. Mr. Turner, you want to let the rebuttal happen, or do you want to go for now?

Councilmember Turner said let me ask my questions to the gentleman. This flyer you just passed out was there an address in there that pertained to that club?

Dr. Bugalski said it's on the bottom.

Councilmember Barnes said it says 10210 Berkeley Place Drive.

Councilmember Turner said is that the address of the business at which he operates?

Dr. Bugalski said that was in their window.

Councilmember Turner said my concern is you said a lot, and in my past experience over here on this Council for eight years we close people down for what this gentleman is doing. If what you stated to us tonight is factual, under the current zoning, we shut clubs down that are operating as clubs. I'm surprised to hear that there is no complaint from the Charlotte-Mecklenburg Police Department. I'm surprised to hear that there is no concern from ALE because the very thing that he is doing that you are indicating to us is I know for a fact because I helped with some of those issues that we close them down or we made them come under the proper ordinance to operate under which you just indicated to us that they are doing.

I'm very concerned if that is the case why we are not involved from the other side to help this process be a little easier because they are operating clearly out of their right to do. There should be some other issues going on here from some other organizations or our government, and I'm concerned that staff seems to think that it's something we could support, that they believe it would be okay because of consistency. I do understand your point about Wild Wings. I think there are some exceptions. I'm not sure this is one of the times where this should be one. We are going to wait to hear what the gentleman has to say, and you get an opportunity to rebuttal that as well.

Dr. Bugalski said I don't believe I have a rebuttal, but in response to your point about if there had been any prior complaints. I know they got their late night raid. I sing with the Charlotte Symphony. We were out of town that weekend singing in Charleston.

Councilmember Cannon said point of order, Mr. Mayor.

Mayor Foxx said why don't we let the rebuttal happen, and then we can have this conversation.

Councilmember Cannon said it is okay, Mr. Mayor, but as a point of clarification, I don't think that staff was under the idea that this was operating as it's been currently suggested. They were told it was restaurant, restaurant, restaurant related and not they were operating under what has been indicated tonight. This is news to them, so I wanted to make sure we clarified that.

Mayor Foxx said why don't we have the rebuttal and then we can discuss among ourselves and clarify.

Ms. Hawkins said I find it curious that Dr. Bugalski came to our community meeting and didn't bring up any of this that he has presented tonight. In fact, when we left the community meeting and there was another condo owner and Mary Hopper with University City Partners, I felt everyone present at the community meeting was supportive of this rezoning request. So I'm flabbergasted that Dr. Bugalski didn't bring up any of these issues at the community meeting, and with that I will let Mr. Ramjohn say a few words.

Darryl Ramjohn, 10210 Berkeley Place Dr., said I'm the only tenant that is open until 2:00 in the morning. Dr. Bugalski's office I believe closes at 8:00. He hasn't provided us what his hours of business are, but I have been there for a year and seven months. I'm the only one at night. The pizzeria opens until ten. Mr. Bugalski had come to us when we first opened back in April or May of last year twice saying the music was disturbing his patients upstairs. That was the last time there was an issue. Nothing has happened since then, never had a complaint from them, never had a complaint from neighbors, never had the police, never had ALE violations, nothing. We have been doing business from day one the same way we are doing it now, and we would just like to continue to do business so we can support the people that work for us and provide a service for the small Caribbean community that we have.

Councilmember Barnes said I have a question of the petitioner regarding this flyer about this May 28th party. Was that a party held at your facility?

Mr. Ramjohn said that was propaganda is what that was. It was designed to be a UNC college party that I have nothing to do with. That is a promoter that came on board and did that, but that party never happened.

Councilmember Barnes said is this party that is scheduled for this coming Saturday night – Mr. Ramjohn said with the DJs, yes.

Councilmember Barnes said – a Libra-Scorpio.

Mr. Ramjohn said that is one of the things we were talking about. We were told we could not have DJs.

Councilmember Barnes said were you aware of any of this, Ms. Keplinger?

Ms. Keplinger said I personally was not.

Councilmember Barnes said let me say this. When I got involved with this several months ago, I was led to believe that you all were running a restaurant that happened to have live entertainment, reasonable entertainment on a regular basis. I have been going through personally some of the issues that the gentleman who spoke against this petition has gone through in terms of folks coming into an office park and using it for things that it wasn't intended for, so I sympathize with what he has been talking about.

I quite frankly feel misled and used in this process, and that's not a good thing at all because I work hard to help people who are acting in good faith with me, and I don't feel like that has happened here. I don't like any of this, quite candidly, because it's not what I want in my district, and I wouldn't want to operate a business above it either. So, I would like for you all to talk me back from the edge, if you can? I don't think you can, but if you would like to try, that would be fine.

Mayor Foxx said is there a question in there?

Councilmember Barnes said, yes, if they want to try to talk me back from the edge, I welcome it. Would you like to try?

Mr. Ramjohn said, Councilmember Barnes, we were told if you have a restaurant and you have a bar you cannot have entertainment. What part of that entertainment perturbs you? Is it the DJs, is it the partying; what is it?

Councilmember Barnes said it is the fact that you are creating, according to the gentleman that spoke against you, in what I believe would be the case a disturbance to your neighbors, to the neighboring businesses. It is that I was trying to help you guys get an exception to the current rule because I thought that the issue was that the Utopia Jazz Lounge had closed; that you were occupying that space playing jazz music or something of the equivalent, and what this is – I won't even say what this is, but it goes beyond, well beyond jazz music. That is at the heart of my concern and my disappointment. In other words, Code Enforcement told me don't do it. These guys somehow have been convinced to do it, and I now see why Code Enforcement and the Police were telling me not to do it. So that's a statement, Mr. Mayor.

Councilmember Cannon said I have a question, maybe a legal question, Ms. Hagler-Gray, and that is we were told during the dinner meeting that right now they would still be able to operate under what they are currently doing, which, in my opinion again, is illegal based upon what we have heard this day. Is that still the case that they would still be able to operate up until decision time by this body – this comes back when for their schedule? December 12th.

Ms. Keplinger said since we have had someone to speak against it it depends on the Council action whether you hold the public hearing open. If you hold the public hearing open until December 12th, the decision date would be January 17th.

Councilmember Cannon said let me tell you what I'm trying to drive at here. I would rather not see this operate the way it's operating through that date, and I would like to know what can be done by this body to prevent that because right now, again, like Mr. Barnes, nobody clarified, not even for you, staff, what the actual use happened to be across the board. You were told restaurant. Nobody clarified or defined entertainment per se. I started to ask that backstage, but I'm glad we waited and got it out here in the public to get a better idea of what we are talking about. I would like to know, one, will they continue to be able to operate the way they are operating presently?

Ms. Hagler-Gray said that has been the policy of zoning enforcement. If there is an NOV issue and there was an NOV issue for this establishment, I think they were cited as being a nightclub. They disagreed; said they were a restaurant and have gone through this process to try to remedy the situation. Our practice has been as long as that process is ongoing zoning enforcement is stayed.

Councilmember Turner said, Madame Attorney, based on what I think I just heard you indicate is that they have been cited, and they are here trying to correct that process that will allow them to operate as they are currently doing. How much of this is really now an issue? We have one issue before us, and that is to decide whether or not we think the hearing should be closed or kept open for decision later about their request, but even if we didn't make that decision, there seem to be some other issues here that I think ALE and some other folks will look into because it's clearly legal if he's doing what we have been told tonight, I mean the current zoning of that building.

I was just wondering have we got any report from law enforcement, were they involved, have they come to you? I heard Councilmember Barnes indicate that as of his statement that apparently code enforcement and law enforcement have spoken with him, but have they spoken to the City staff in regards to this concern?

Ms. Keplinger said, Mr. Turner, I wasn't involved in the information on the NOV, but Katrina Young is here, our zoning administrator, and I believe she had some input in some of this process, so I would like to call her up to answer your questions.

Councilmember Turner said I would love to hear from Ms. Young.

Katrina Young, Planning, said I apologize. I didn't hear your question.

Councilmember Turner said has anyone from law enforcement or any of our code enforcement brought to you their concern about this facility the way it's currently operating?

Ms. Young said when they issued the notice of violation I was consulted on that. Just to clarify, the way we determine whether it's a restaurant or whether it's a nightclub is the entertainment, so if he was just providing the food, then it would be fine, but when you start providing the entertainment and you are serving the alcoholic beverages, we consider it currently to be a nightclub/bar/lounge. We do also have a citizens' advisory group that we are doing right now to address those definitions.

Councilmember Turner said Mecklenburg County ALE requires he report his liquor sales as well as his food sales. Do we know currently today whether or not he has violated any of those laws that require him to have a greater percentage of food sales versus alcohol?

Ms. Young said we are not aware of any violation. To my understanding, it's 30% food sales and 70% alcohol to still be considered a restaurant, so you can still have a larger dollar amount of alcohol sales and be considered a restaurant.

Councilmember Turner said there is an entertainment factor that falls in there clearly.

Ms. Young said, right, the entertainment is really what the issue is, and I do want to clarify that nightclubs typically are a permitted use in the CC district. So you do find a lot of nightclubs in the commercial centers. The issue with this particular property is the separation requirement. Right across the street, about 300 feet actually, is the multifamily, and you need to be 400 feet. So with the MUDD zoning, it allows for a lower separation requirement, so with the MUDD, he would meet the separation requirement. Again, based on the flyer that I saw, that would be bordering not really on nightclubs, bars, and lounges, but maybe adult establishments, which would not be permitted at that location.

Councilmember Turner said all right. I won't be here on this Council, but I hope that this Council listens to the facts and understand what they are facing. I think we will be setting another bad precedent here going forward with establishing a MUDD, which clearly currently zoned is in violation of such business, but I do want the gentleman to have a fair opportunity, and I think he is going to get that, but I just think it's in the wrong place, and I hope this Council will see that in the future.

Councilmember Carter said I would like to review the process to some degree but also to confirm that Mr. Ramjohn has 60% food sales at his establishment. My question is if the public hearing is closed, since this is not a protested petition, the decision could be made November 14th rather than continuing it.

Ms. Hagler-Gray said because it is not protested, but since there was a speaker against the decision has to be deferred until December.

Councilmember Carter said in that case in order that the new Council be informed I do think it wise that the hearing be kept open so that they can hear this argument. This argument was significant tonight, and I think it changed some minds significantly. If the new Council doesn't hear this debate, I think they would make another decision, so I am concerned about the process.

Councilmember Turner said I just want to piggyback on what you said, Ms. Carter, is that from a legal perspective in our proceedings, if this gentleman removes his concern, this decision could be made before this Council; is that correct?

Ms. Hagler-Gray said at this point he has already spoken against it, and the rules are specific about either a protest petition being filed or speakers in opposition. Since you have had the speaker in opposition, you are not able to make the decision in November. It would have to be December.

Councilmember Turner said he is still here. That is still his right. He could clearly say I'm no longer in opposition of it. He could clearly tell us that tonight, and that changes this whole situation.

Ms. Hagler-Gray said you mean if he withdrew his objections tonight?

Councilmember Turner said yes.

Ms. Hagler-Gray said yes.

Councilmember Turner said and this Council would be able to make that decision if they chose to.

Councilmember Cooksey said I have a question for Dr. Bugalski.

Mayor Foxx said only if there is a question directed to you, sir.

Councilmember Cooksey said I have a question. I needed to check something. It's referenced in the rebuttal you are on the list of attendees of the community meeting October 4. So you were at that community meeting.

Dr. Bugalski said, yes, sir.

Councilmember Cooksey said the summary of the community meeting submitted to this Council reads, "All of the attendees expressed support for Twilight Caribbean's rezoning request and volunteered to appear before City Council at the public hearing to express their support." Does that reflect your position at the time?

Dr. Bugalski said, no, sir, I did not express for or against. I said I would be at the City Council meeting.

Councilmember Cooksey said just wanted to clarify what we were getting in that community meeting report versus this speaker here.

Councilmember Barnes said so is Dr. Bugalski interested in –

Dr. Bugalski said withdrawing my comments?

Councilmember Barnes said in withdrawing his opposition so we can vote on this on November 14th?

Dr. Bugalski said it's withdrawn, sir.

Councilmember Barnes said, Mr. Mayor, I would move that we put this on the November 14th agenda. I'm not trying to turn November 14th into a zoning meeting, but it already is.

Mayor Foxx said let me make something very clear. Council, can you give us your guidance on what has all happened here and whether this is legal?

Ms. Hagler-Gray said my understanding is now the gentleman that spoke in opposition is withdrawing his opposition; is that correct?

Dr. Bugalski said withdrawn, yes, ma'am.

Ms. Hagler-Gray said if there is no opposition and there is no protest petition then you are allowed to have a decision in November.

Mayor Foxx said I will say that I understand where people are trying to go with this, but I also argued a little bit back behind here that having this hearing was perilous anyway because it opens a door that you can't easily close. You are going to have people, theoretically at least, voting on the petition in December. Now it seems like the kind gentleman who is standing at the podium has withdrawn his opposition, and that now makes it possible, Madame Attorney, to proceed with the decision in November.

Ms. Hagler-Gray said that's correct.

Councilmember Carter said this is perhaps not the legal position, but Dr. Bugalski has talked to us. He has had impact on this Council. I do not think it fair that we move ahead as if that protest or that negative statement did not exist. Because he spoke, some of us have changed our position, and I don't think it fair for a Council to take action as if they had not heard the opposition. I'm sorry. If we have that same debate before the new Council, I think the same result would come through, and in fair stance to keep our process ethically I think it's important that we continue the hearing.

Councilmember Turner said I disagree with that. I think you are making a bad assumption to assume how one is going to vote and whether they know the facts now or not. You are going to have three new Council persons on this Council, and I don't personally believe that this current Council is not in a position to make that decision based on the facts. We have heard from both parties. Nothing is going to change. They can't be heard again. We simply are going to hear it and we are going to make a decision on it. Whether it be now or later, I think has no effect on the outcome or whether or not it's ethically right or wrong. The lawyer has clearly told us that we are in no violation, and he has every right to remove his position.

Councilmember Barnes said in the interest of being sensitive to the issues that Ms. Carter has raised and the issues that the Mayor has expressed I would not be opposed to having the vote on December 12th during the new Council. Of course, I am assuming that dangerous, but I am hoping that I will be here as a member of this body on that day. I don't want to give any false impressions. I don't want people to feel misled by the way we do business.

I think I have expressed clearly why I want to go on and vote on the 14th, but I'm willing to move our vote to December 12th. I would like to know, and this may not be a big issue, but I will just say that I am really disappointed by this whole process because I have been operating under one set of facts and learned things tonight that I had no clue about, and that has complicated my job and made it a bit difficult for me to react without emotion tonight. If the Council's pleasure is to be more transparent, more open about how we conduct our process, I'm willing to vote on December 12th, not continue the public hearing, but actually have a vote on the 12th. I will withdraw the motion and make a new motion that we have the vote on December 12th.

Mayor Foxx said is there a motion to close the public hearing?

[Motion was made by Councilmember Barnes and seconded by Councilmember Mitchell to]
[close the public hearing.]

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

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

NAYS: Councilmember Turner

ITEM NO. 27: HEARING ON PETITION NO. 2011-069 BY CHARLOTTE-MECKLENBURG PLANNING DEPARTMENT FOR ESTABLISHMENT OF B-2 (PED) ZONING FOR APPROXIMATELY 0.43 ACRES LOCATED NEAR THE SOUTH CORNER AT THE INTERSECTION OF PECAN AVENUE AND COMMONWEALTH AVENUE

The scheduled public hearing was held on the subject petition.

Tammie Keplinger, Planning, said this is a small piece of property that is located in the Plaza Central Business District. If you notice, it's showing up as white. That's because this is a residual portion of the Independence right-of-way. The request is for the establishment of zoning to the B-2(PED) district. The request is consistent with the Plaza/Central Pedscape Plan, and we are recommending approval.

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

ITEM NO. 28: HEARING ON PETITION NO. 2011-070 BY HUNTER'S AFFORDABLE BONDING FOR A CHANGE IN ZONING FOR APPROXIMATELY 0.10 ACRES LOCATED ON CHARLOTTETOWN AVENUE AT THE INTERSECTION OF FOX STREET AND CHARLOTTETOWNE AVENUE FROM R-22MF TO O-1

The scheduled public hearing was held on the subject petition.

Tammie Keplinger, Planning, said this petition proposes to rezone the existing single family property to allow all uses in the office district. This is located at the corner of Fox Street and Charlottetowne Drive. This is a conventional request that has no associated site plan. The request is inconsistent with Cherry Small Area Plan but it is consistent with the draft

recommendations of the Mid-Town Cherry Area Plan, which recommends a mix of residential and office uses for the site. We are recommending approval of this petition.

Councilmember Kinsey said I wanted to know if the Cherry neighborhood has been contacted about this rezoning.

Ms. Keplinger said, yes, ma'am, the Cherry neighborhood is part of our notification process, any neighborhood organization within one mile. It is a conventional request, so there was not a community meeting that was held. They have been notified. Also, through the Mid-Town Cherry Area Plan that we are working on, the recommendation that came out of that had a lot of involvement from the Cherry neighborhood, and this is consistent with that plan.

Councilmember Kinsey said were they informed of this particular rezoning?

Ms. Keplinger said, yes, ma'am, they would have received notice through our normal rezoning notification process.

Councilmember Kinsey said do you know who receives those notifications?

Ms. Keplinger said I want to say it may be Sylvia Biddle-Patton, but I'm not real sure. We'll verify that.

Councilmember Kinsey said please do because I have some concerns about this.

Councilmember Cooksey said the question I was expecting Councilmember Kinsey to ask, but I will ask it. In a notification mail for a straight-up rezoning, does the notification include a listing of the by-right uses in that zoning district?

Ms. Keplinger said, no, sir, it does not. We would have to include the whole zoning ordinance in some cases, but the information is available on line, and that information is provided on the notification as well as the staff contact people if they have any questions.

Councilmember Cooksey said, in essence, the notification consists of the proposal is R-22MF to O-1, and that's it.

Ms. Keplinger said we have a map showing the property, and we give the dates and times of the meeting. There is a lot of information that needs to be relayed, so we do rely a lot on the internet to help us do that.

Councilmember Kinsey said in the notification does it include the name of the petitioner?

Ms. Keplinger said, yes, ma'am.

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

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MAYOR AND COUNCIL TOPICS

Councilmember Mitchell said, Mayor and Council, and I'm going to look at City Manager Walton, would it be possible to hear from several of us today about notification – would it be possible to work with the department that notification go out and that the district reps get a copy of it just so we will feel comfortable it went out because we get calls from citizens saying I was not notified. I think staff did an excellent job. You break it down by district, so just a notification so we will have it so we can address those questions. If that won't be too much on staff, I would like for you to look into it. Do I need to make an official referral, Mayor?

Curt Walton, City Manager, said, no, that's fine, Mr. Mitchell. Good suggestion.

Councilmember Kinsey said I have asked for that before. That's very good because sometimes we get calls about a petition, and we haven't even heard about it at all because we don't sometimes know until we get this book, so that would help at least me know about it ahead of time when I get that call.

Mayor Foxx said Restructuring Government met today, and I don't know if y'all want to report out or whether you want to keep it moving.

Councilmember Cooksey said we will be meeting again to finalize matters.
Mayor Foxx said when is your next meeting?

Councilmember Cooksey said November 14th.

Councilmember Dulin said this is a follow-up, Council, and it's something we are all interested in. We had a long discussion the other night about the street lights, and staff came back to us with this report that is in our packet. This thing has resonated, at least with the people that communicate with me. Even people I don't know are stopping me going – this guy was apologizing for watching us last Monday night. I said, no, a lot of people do, sir. He said whatever you are on about the street lights stay on it because it irritates people to see them burned out, and it irritates them more to find out we are paying \$9.90 a month for a burned out streetlight.

We went over those numbers last week, and I asked if there were – I said surely there is technology that could let Duke Power know when a street light isn't working. Well, sure enough if you read your – and everybody read it. There is technology available. Duke Power can install technology to a telephone pole for the cost of \$2.50 per pole per month. They want to charge us \$2.50 more per month. By the way, this isn't even talking about the Duke rate increase that is going to cost us 18 cents per month per pole more. But I think we are the customer here, Mr. Manager, and I think Duke has gotten – I don't know – maybe I'm reading this thing wrong. Who is buying and who is selling in this deal? I mean we are the customer, and they ought to be trying to help us because dad-burn-it they should help their customers. We are in the customer business, and we try to help our folks; not hurt them.

I am not done asking for Duke Power and asking our City staff to figure out how we can save money. We are spending roughly \$79,000 a month, per month, to power light poles that don't have a functioning light on them. Per month -- \$79,000 throughout this city, and that's wrong. We owe it to the people we work for to get this thing right and not to drop it.

Curt Walton, City Manager, said if I could address that, Mayor. We are not dropping it. It has only been six days, so we haven't completed it yet. Let me start a little bit further back. Duke is one of our absolute best partners. The street lights should make a very good point. But in utilities, power for pumping is probably our greatest expense, and they work with us to a very extensive level on reducing those power bills. If you look at street lights, yes, but it's an imprecise science, but we will work with them to see what we can do whether it's in the right-of-way and getting Duke to move their poles so we can build a project more cheaply or whether it's utilities or whatever the case may be. There is an issue with streetlights absolutely. We'll work on that, but I don't want the perception to be left that Duke is somehow gauging us because they are with us at the table almost every day of what we do.

Councilmember Carter said it's the same topic. Mr. Dulin, sometimes we enjoy your passion on subjects, but it really worked. Mr. Charles Ledford, one of our District 5 residents, called in ten outages on The Plaza and one in front of his house, so your passion is getting our citizens to work with us, which is one of the best results here, so I do want to complement you on that.

Councilmember Dulin said thank you.

Councilmember Cannon said was that put into a service request?

Councilmember Carter said haven't yet because I have been away, but I will do it.

Councilmember Dulin said, City Manager, I appreciate that, and I would only assume that power for pumping is the power we purchase from Duke Power to pump water, pump sewage. We move a lot of that stuff around, so I get that, and we can be a good customer there. But, for instance, Council members, \$79,000 per month, and we are not going ever capture it all back, but that's \$79,000 a month that we can't spend on potholes. That's \$79,000 a month that we can't spend on bulletproof vests for the police officers or new safety equipment for the firefighters. There is money out there. All we have to do is capture it.

Mayor Foxx said I understand where you are coming from. There has been a referral of the issue; the staff is working on it, so let's see where that lands.

Councilmember Cannon said let's put the service request in now. I think it goes from Plaza, Cove Creek up to W.T. Harris those lights that need to be looked into that are out.

City Manager Walton said give me that again.

Councilmember Cannon said from Plaza Road and you would start at Cove Creek, which would be down by the Hampshire Hills neighborhood up to W.T. Harris.

Councilmember Burgess said I had a quick question for City Manager Walton. If we are paying per month, possibly they offered us \$15 a month, and we talked them down to \$9 a month. Who knows? Maybe this is already a very good deal for the City of Charlotte, but if they are going to be charging a per month fee, it seems like we should have a guaranteed response time. It says in the write-up that it's two to three days, but it would be nice to have some sort of guarantee.

City Manager Walton said there may be. I'm not aware of one, but we'll have that conversation.

Councilmember Cooksey said since Dr. Burgess brought it up just to refresh. The \$9.90 a month is the standard street light fee that Duke Energy gets to charge every municipality in North Carolina by ruling of the State Utilities Commission. That is where that is set. There is no negotiation with us. It is the utility negotiating with the Utilities Commission on what they are going to charge municipalities per pole instead of sticking a meter on the circuit that lights the lights. That's the source of it.

Mayor Foxx said as distinguished from the 9/9/9.

Councilmember Dulin said it's a 9/9/0. That's fine, and I don't mind paying Duke Power for a light pole that works, but I don't want to pay them for a light pole that doesn't work, and I don't want them charging my city \$2.50 per pole for the technology they ought to be installing on their poles to be more customer friendly to their best customer.

Mayor Foxx said I think we got the point. I think we need to in the future remember that when one of us talks everyone else has to listen. Let's call this meeting adjourned.

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ADJOURNMENT

The meeting was adjourned at 7:45 p.m.

Stephanie C. Kelly, MMC, City Clerk

Length of Meeting: 2 Hours, 28 Minutes
Minutes Completed: November 16, 2011