

The City Council of the City of Charlotte, North Carolina convened for a Dinner Briefing on Monday, October 15, 2012 at 5:37 p.m. in Room CH-14 of the Charlotte-Mecklenburg Government Center with Mayor Anthony Foxx presiding. Councilmembers present were John Autry, Michael Barnes, Warren Cooksey, Andy Dulin, Claire Fallon, David Howard, Patsy Kinsey, LaWana Mayfield, James Mitchell and Beth Pickering.

ABSENT: Councilmember Patrick Cannon

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Tammie Keplinger, Planning, reviewed the public hearings, decisions, deferrals, and withdrawals on the agenda and responded to Council questions. Ms. Keplinger also reviewed the follow up report for Council. Debra Campbell, Planning Director, reviewed the Text Amendment Area Plan and Study Update document and responded to Council questions.

The dinner briefing was recessed at 5:58 p.m. to move to the Council Chamber for the regularly scheduled Zoning Meeting.

ZONING MEETING

The Council reconvened at 6:03 in the Meeting Chamber of the Charlotte Mecklenburg Government Center with Mayor Anthony Foxx presiding. Councilmembers present were John Autry, Michael Barnes; Warren Cooksey, Andy Dulin, Claire Fallon, David Howard, Patsy Kinsey, James Mitchell and Beth Pickering

ABSENT: Councilmembers Patrick Cannon

ABSENT UNTIL NOTED: Councilmember LaWana Mayfield

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INVOCATION AND PLEDGE

Mayor Foxx gave the Invocation and led the Council in the Pledge of Allegiance to the Flag.

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Mayor Foxx explained the Zoning Meeting rules and procedures. He introduced the Chair of the Zoning Committee, Yolanda Johnson who introduced the members of the Zoning Committee and said they will meet next Wednesday, October 24th at 4:30 p.m.

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DEFERRALS AND/OR WITHDRAWALS

Mayor Foxx said we have several items that we need to adjust on the calendar. Item No. 1, Petition No. 2008-31, a request for withdrawal; Item No. 3 Petition No. 2012-67-B deferral of three months into January 2013; Item No. 4 Petition No. 2012-71 deferral of one month until November 12th; Item No. 14 Petition No. 2012-82, deferred one month.

Motion was made by Councilmember Mitchell, seconded by Councilmember Kinsey, and carried unanimously, to withdraw or defer the above items as mentioned.
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DECISIONS

ITEM NO. 2: ORDINANCE NO. 4979-Z AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF CHARLOTTE TO AFFECT A CHANGE IN ZONING FOR APPROXIMATELY 4.02 ACRES LOCATED ON THE NORTH SIDE OF CENTRAL AVENUE BETWEEN MERRY OAKS ROAD AND SAINT ANDREWS HOME PLACE FROM R-4 AND R-22MF TO NS.

Motion was made by Councilmember Kinsey, seconded by Councilmember Barnes and carried unanimously, to approve the Statement of Consistency and Petition No. 2012-065 by the City of Charlotte for the above rezoning, as modified and as recommended by the Zoning Committee.

The ordinance is recorded in full in Ordinance Book 57, at Page 874-875.

The modifications are:

1. Designated an area along Merry Oaks Road for a neighborhood signage structure.
2. Reduced the size of the primary structure from 16,500 square feet to 15,500 square feet.
3. Added a note that commits to additional measures to enhance the chances for survival of several existing trees located on the site.
4. Increased the number of existing trees that are committed to be preserved.
5. Provided supplemental buffer in excess of a class "C" buffer along the residence located along the northern property line.

ITEM NO. 5: ORDINANCE NO. 4980-Z AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF CHARLOTTE TO AFFECT A CHANGE IN ZONING FOR APPROXIMATELY .53 ACRES LOCATED ON THE SOUTH SIDE OF WARP STREET BETWEEN DONATELLO AVENUE AND HERRIN AVENUE FROM R-5 TO UR-1(CD).

Motion was made by Councilmember Kinsey, seconded by Councilmember Barnes, and carried unanimously, to approve the Statement of Consistency and Petition No. 2012-072 by E & A Custom Builders, LLC for the above zoning change as recommended by the Zoning Committee

The ordinance is recorded in full in Ordinance book 57, at Page 876-877.

ITEM NO. 6: ORDINANCE NO. 4981-Z AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF CHARLOTTE TO AFFECT A CHANGE IN ZONING FOR APPROXIMATELY 1.66 ACRES LOCATED ON THE NORTHEAST CORNER OF THE INTERSECTION OF PROVIDENCE ROAD AND MAMMOTH OAKS DRIVE FROM INST(CD) TO B-1(CD).

Motion was made by Councilmember Barnes, seconded by Councilmember Kinsey, and carried unanimously, to adopt the Statement of Consistency and Petition No. 2012-076 by Christ Evangelical Lutheran Church of Charlotte for the above zoning change as recommended by the Zoning Committee.

The ordinance is recorded in full in Ordinance Book 57, at Page 878-879.

ITEM NO. 7: ORDINANCE NO. 4982-Z AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF CHARLOTTE TO AFFECT A CHANGE IN ZONING FOR APPROXIMATELY 3.11 ACRES LOCATED ON THE EAST SIDE OF BEATTIES FORD ROAD NEAR THE INTERSECTION OF ROZZELLES FERRY ROAD, WEST TRADE STREET AND BEATTIES FORD ROAD FROM R-22MF(PED) TO R-22MF(PED-O)

Motion was made by Councilmember Mitchell, seconded by Councilmember Kinsey, and carried unanimously, to approve the Statement of Consistency and Petition No. 2012-077 by Johnson C. Smith University for the above zoning change as recommended by the Zoning Committee.

The ordinance is recorded in full in Ordinance Book 57, at Page 880-881.

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ITEM NO. 8: ORDINANCE NO. 4983-Z AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF CHARLOTTE TO AFFECT A CHANGE IN ZONING FOR APPROXIMATELY 9.02 ACRES LOCATED ON THE NORTH SIDE OF SOUTH TRYON STREET BETWEEN WRIGHTS FERRY ROAD AND GREYBRIAR FOREST LANE FROM R-3 TO INST(CD).

Motion was made by Councilmember Kinsey, seconded by Councilmember Pickering and carried unanimously, to approve the Statement of Consistency and Petition No. 2012-078 by Queen City Health Investors, LLC for the above zoning change as modified and as recommended by the Zoning Committee.

The ordinance is recorded in full in Ordinance Book 57, at Page 882-883.

The modifications are:

1. Modified the throat of the driveways so they remain perpendicular to South Tryon Street past the 40-foot setback.
2. Provided a curb bulb-out at the existing NC 49 directional crossover intersection at Wright's Ferry Road to accommodate the northbound to southbound U-turn movements.
3. Provided a continuous right turn lane extended from Wright's Ferry Road Graybriar Forest Lane.
4. Added a note regarding the sidewalk connection to Wright's Ferry Road which reads: "Developer reserve the right to request a variance from the Zoning Board of Adjustment to waive sidewalk connection to Wright's Ferry Road if sidewalk easement is not granted".

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ITEM NO. 9: ORDINANCE NO. 4984-Z FOR A MUDD-O SITE PLAN AMENDMENT FOR APPROXIMATELY .86 ACRES LOCATED ON THE NORTH SIDE OF WEST MALLARD CREEK CHURCH ROAD BETWEEN CLAUDE FREEMAN DRIVE AND DAVID TAYLOR DRIVE.

Motion was made by Councilmember Barnes, seconded by Councilmember Kinsey, and carried unanimously, to approve the Statement of Consistency and Petition No. 2012-079 by TAG Ventures, LLC for the site plan amendment, as modified and as recommended by the Zoning Committee.

The ordinance is recorded in full in Ordinance Book 57, at Page 884-885.

The modifications are:

1. Added a request for an optional provision to increase the maximum square footage allowed for a dry cleaning establishment within the MUDD zoning district from 4,500 square feet to 6,000 square feet.
2. Removed signage from the building elevations.

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ITEM NO. 10: ORDINANCE NO. 4985-Z AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF CHARLOTTE TO AFFECT A CHANGE IN ZONING FOR APPROXIMATELY .29 ACRES LOCATED ALONG NORTH ALEXANDER STREET BETWEEN EAST 34TH STREET AND EAST 35TH STREET FROM R-5 TO R-8(CD).

Motion was made by Councilmember Kinsey, seconded by Councilmember Barnes, and carried unanimously, to approve the Statement of Consistency and Petition No. 2012-080 by H. Heath & Elizabeth B. Alexander for the above zoning change, as modified and as recommended by the Zoning Committee

The ordinance is recorded in full in Ordinance Book 57, at Page 886-887.

The modifications are:

1. The petitioner added a note stating the new house will be bungalow style, would or hard siding.

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ITEM NO. 11: ORDINANCE NO. 4986-Z FOR A CC SITE PLAN AMENDMENT FOR APPROXIMATELY 7.55 ACRES LOCATED ONO THE WEST SIDE OF JOHNSTON ROAD BETWEEN NORTH COMMUNITY HOUSE ROAD AND PORTERFIELD ROAD.

Motion was made by Councilmember Cooksey, seconded by Councilmember Kinsey, and carried unanimously, to approve the Statement of Consistency and Petition No. 2012-081 by NRI Communities/Charlotte, LLC for the above site plan amendment, as modified and as recommended by the Zoning Committee.

The ordinance is recorded in full in Ordinance Book 57, at Page 888-889.

The modifications are:

1. The existing five-foot sidewalk and ten-foot planting strip along Johnston Road have been shown and labeled.
2. Sidewalk and planting strip have been reflected to the northern property boundary along Johnston Road.
3. Sheet RZ-2 has been deleted and applicable notes from previous petition 2007-103 have been placed on Sheet RZ-1.
4. Addressed Park and Recreation comments by specifying the approximate width and location of the greenway easement.
5. Amended Note 2b under the heading of "Permitted Uses and Development Areas Limitation" to state that drive-in or drive-through lanes/windows as an accessory use will not be permitted on the site.
6. Amended note 6d under the heading of "Environmental Features and Greenway Easement" as follows:
 - a. To specify that the minimum width of the easement shall be 60 feet;
 - b. To specify that the easement will connect from the northerly end of the site at Johnston Road to the southern end of the site;
 - c. To state that the final, precise location and width of the easement shall be determined at a future time depending upon site constraints, other existing public and private easements, public improvements, structures, etc;
 - d. To state that the easement shall be provided prior to the issuance of a certificate of occupancy in association with the proposed hotel or within two years of the approval of this site plan amendment, whichever occurs first.
7. Added Note 6e under the heading of "Environmental Features and Greenway Easement", which states the petitioner will not be required to provide the greenway easement if the existing easements (e.g. CMUD, Duke Power) do not allow the Petitioner to grant the proposed greenway easement.
8. Amended Note 6d to refer to a greenway easement as opposed to a greenway path easement.
9. Amended labels on Sheet RZ-1.0 to state greenway easement as opposed to greenway access easement.

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ITEM NO. 12: ORDINANCE NO. 4987 FOR A TEXT AMENDMENT TO THE CITY OF CHARLOTTE ZONING ORDINANCE TO 1) CLARIFY THAT OUTDOOR FRESH PRODUCE STANDS ARE ALLOWED AS A PRINCIPAL USE IN ALL ZONING DISTRICTS EXCEPT RESIDETIAL, OFFICE AND INSTITUTIONAL AND 2) ADD PRESCRIBED CONDITIONS IF A PERMANENT STRUCTURE IS UTILIZED FOR OUTDOOR FRESH PRODUCE STANDS WHEN THEY ARE THE PRINCIPAL USE IN ALL ZONING DISTRICTS EXCEPT RESIDENTIAL, OFFICE AND INSTITUTIONAL.

Motion was made by Councilmember Barnes, seconded by Councilmember Kinsey, and carried unanimously, to approve the Statement of Consistency and Petition No. 2012-083 for the subject Text Amendment as recommended by the Zoning Committee.

The ordinance is recorded in full in Ordinance Book 57, at Page 890-891.

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ITEM NO. 12-A: ORDINANCE NO. 4988-Z AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF CHARLOTTE TO AFFECT A CHANGE IN ZONING FOR APPROXIMATELY 1.72 ACRES LOCATED ON THE NORTHEAST CORNER AT THE INTERSECTION OF BALLANTYNE COMMONS PARKWAY AND REA ROAD FROM B-1SCD TO NS.

Motion was made by Councilmember Barnes, seconded by Councilmember Kinsey, and carried unanimously, to approve the Statement of Consistency and Petition No. 2012-068 by Sterling Fox Group, LLC for the above zoning change as modified and as recommended by the Zoning Committee.

The ordinance is recorded in full in Ordinance Book 57, at Page 892-893.

The modifications are:

1. Possible tree save areas have been identified on the site.
2. A note has been added that any trees removed to install the retaining wall on the eastern portion of the site will be replaced.
3. A note has been added that the proposed parking on the eastern portion of the site will be screened with trees and shrubs to screen parking from the adjacent multi-family development and public street.
4. A note has been added that large expanses of wall exceeding 20-feet in length will be avoided through the introduction of articulated facades, using various materials such as brick and other masonry products, stone, different colors of paint, glass windows, water table, and/or soldier course.
5. The proposed building materials have been labeled on the site plan.
6. A note has been added that the "signage" shown on the site plan is not included in the approval of the rezoning site plan and that all signs will comply with the ordinance standards.
7. Possible locations of storm water detention areas have been shown on the site plan.
8. The existing and proposed sidewalks and planting strips along all public streets have been identified on the site plan.
9. A note has been added that no drive thru service windows will be allowed on the subject parcel.

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HEARINGS

ITEM NO. 13: HEARING ON PETITION NO. 2012-075 BY CHARLOTTE-MECKLENBURG PLANNING DEPARTMENT FOR A TEXT AMENDMENT TO THE CITY OF CHARLOTTE ZONING ORDINANCE TO ADD A NEW DEFINITION FOR "ELECTRONIC GAME OPERATIONS", AND ALLOW IT AS A NEW USE WITH PRESCRIBED CONDITIONS IN THE UR-C, B-1, B-2, NS, MUDD, UMUD, CC, TOD-E, TOD-M AND I-1 ZONING DISTRICTS.

The scheduled public hearing was held on the subject petition.

Mayor Foxx said this is a hearing that has been continued from September and we had some discussion about this hearing at dinner and the request here is consider closing this hearing and refer it to the Economic Development Committee.

Motion was made by Councilmember Barnes, seconded by Councilmember Mitchell, and carried unanimously, to close the public hearing and refer this petition to the Economic Development Committee.

Councilmember Cooksey said it is my understanding that the hearing will be reopened after the Economic Development Committee has discussed it. This is not cutting off discussion on this topic by the public.

Mayor Foxx said that is correct.

Council's decision was deferred pending a recommendation from the Economic Development Committee and the Zoning Committee.

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ITEM NO. 15: HEARING ON PETITION NO. 2012-084 BY FRANK AND NANCY NEWTON FOR A CHANGE IN ZONING FOR APPROXIMATELY 2.72 ACRES LOCATED ON THE SOUTH SIDE OF ROCKY RIER ROAD AT THE INTERSECTION OF ROCKY RIVER ROAD AND NEWELL FARM ROAD NEAR OLD CONCORD ROAD FROM O-1(CD) TO B-1(CD).

The scheduled public hearing was held on the subject petition.

Tammie Keplinger, Planning said this is a rezoning from O-1(CD) to B-1(CD) for approximately 2.72 acres. The property that is up for rezoning is shown in the black-out line. In 1995 there was a rezoning for all of the area shown in purple that allowed office development up to 115,000 square feet. Currently on this site there is a single family home located on this property, and on a separate property there are several out buildings that were once associated with farming that was on the site. The site plan for this petition shows that all uses in the B-1 will be allowed except for fast food, gas stations with convenience stores and drive-thru windows. The petitioner proposed to reuse the existing buildings which, as I mentioned there are several out buildings and the single family dwelling. They proposed some expansion of those areas up to 8,500 square feet.

The new area plan recommends office uses based on the previous rezoning from 1995. The proposed request will allow a small community commercial node which will serve the community. Staff does recommend approval upon the resolution of the one outstanding site plan issue.

Nancy Newton, 9325 Hood Road, said my husband and I are the petitioners for this rezoning. I brought a few photographs for you to look at and I thought that would be better than a presentation to let you see exactly what is there on the site and what we are hoping to continue to grow and be able to offer fresh produce to our customers for more than just the summer months. I will be happy to answer any questions. Otherwise that is my presentation. Councilmember Barnes said I think she used 25 seconds, which we appreciate. My colleagues will recall a number of times that we have talked about this property during our discussions regarding outdoor fresh produce text amendments. I'm glad Ms. Newton was able to come and show you what is there now and what they are hoping to continue to do. It is a great public service, a great community service. I support it and have supported it for quite some time and have actually been there. It is a great service and I applaud her for continuing to try to provide the service to the community.

Motion was made by Councilmember Barnes, seconded by Councilmember Kinsey to close the public hearing.

Councilmember Howard said would the way that we are looking at doing the produce stand ordinance have taken care of this?

Ms. Keplinger said no sir, there are two provisions in the fresh produce ordinance that Ms. Newton cannot comply with. First of all she wants to sell things other than fresh fruits and vegetables. She wants to sell wool, meats and baked products and that is not allowed under the fresh product text. Also, if you recall when I showed the property, this site is actually on a separate parcel of land and you have to have principal use to have a fresh produce stand and these are all accessory buildings. There is no principal use so she cannot comply with those two items and needed to rezone.

Mr. Howard said didn't we just vote on a text amendment that dealt with accessory use on certain types of zoned land. That was not one of them?

Ms. Keplinger said you did, but it would not cover this.

Councilmember Dulin said what are we missing here? What is wrong with this?

Ms. Keplinger said I don't think there is anything wrong with what Ms. Newton is trying to do. When we looked at the text amendment for fresh produce the goal was to allow more accessibility in areas where people did not have fresh produce markets near them. What Ms. Newton has done in the past and is wanting to continue to do is something that is a little bit further than that. Bring some other products from the site like the wool and the baked goods. In order to do that she needed to go to the B-1 District.

Mr. Dulin said all of us read through our books differently. I burn through these things pretty quick, but all of a sudden this caught my eye and my note to this was "interesting ?" and then why. Is this different than that guy who has been working out Providence Road all that time?

Ms. Keplinger said I'm getting the nod that yes it is.

Councilmember Mayfield arrived at 6:17 p.m.

Mr. Dulin said I'm sorry I forget what his petition number was, but we've been working on something similar to this for years.

Ms. Keplinger said her property is actually zoned office right now and because it is zoned office she couldn't have the retail use, so that is why she needed to go to B-1.

Mr. Dulin said did I hear you say 1995?

Ms. Keplinger said yes sir.

Councilmember Fallon said is it possible to ask for an addendum to our text or a variance for this?

Ms. Keplinger said I think the text amendment is relatively new and we did try to consider everybody in all the different situations, and I believe we had a Stakeholders Group with this and they felt it was best not to include items that were not fresh produce or fruit derived items.

Ms. Fallon said my problem is sometimes we need to go case by case because one shoe does not fit all.

Ms. Keplinger said that is one of the reasons we are here with the rezoning for Ms. Newton's property because the ordinance did not fit her particular case.

Mr. Barnes said one final comment to some of the issues my colleagues have raised, Ms. Newton and her husband have spent several thousand dollars getting this property rezoned and you may recall that I was trying to find a way to grandfather them into the new text amendment in order to avoid them having to spend all the money they are spending to do this, but there was no practical way to do that.

The vote was taken on the motion to close the hearing and was recorded as unanimous.
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Council's decision was deferred pending a recommendation from the Zoning Committee.

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ITEM NO. 16: HEARING ON PETITION NO. 2012-085 BY CHIDRESS KLEIN PROPERTIES FOR A CHANGE IN ZONING FOR APPROXIMATELY 18.8 ACRES LOCATED ON THE SOUTHEAST CORNER AT THE INTERSECTION OF JOHNSTON ROAD AND MARVIN ROAD FROM R-3 TO UR-2(CD).

The scheduled public hearing was held on the subject petition.

A protest petition has been filed and is sufficient to invoke the 20% rule requiring affirmatives votes of $\frac{3}{4}$ of the Mayor and Councilmembers, not excused from voting in order to rezone this property.

Tammie Keplinger, Planning said this property is located at the corner of Marvin and Johnston Roads. It is approximately 18.8 acres and the rezoning request is from R-3 to UR-2(CD). If you look at the aerial you can see that there is one single family home that is located on the site and a nice creek that runs right through the middle. In terms of the proposal, it is for 281 multifamily units, 3 and 4 stores with the 4 stories being only over a walk out basement. There is a greenway trail that runs through the center of the site. They are proposing a 30-foot landscaped area along the parameter and part of this will include a fence. One of the designs they have for the apartments is that they do have some detached garages that are in individual locations around the site.

The petitioner has agreed to building material conditions, limitations on height. They have also provided a cross section of what the development will look like from the adjacent residential properties. This is the adjacent residential property with the 30-foot buffer, parking area and then you have the first building and it goes down to the center of the creek. In terms of the garage elevations, those are pictured here and you can see they are all one-story and they do have some architectural designs. This is a typical building elevation of the site and this shows the 4-story walk out basement.

In terms of consistency with the adopted plan, this is inconsistent with the South District Plan in terms of the density, but the developer is providing a cross street, a new public street and greenway access. Those two things help meet one of the GDP opportunity goals which allows for the development of the adjacent properties. For that reason staff is recommending approval upon the resolution of outstanding issues.

Collin Brown, 214 North Tryon Street, said I'm here on behalf of the Petitioner, Childress Klein Properties and joining me from Childress Klein are Kelly Dunbar and Fred Klein, also the property owns, John and Mary Hayes. Tammie did a good job with the overview, but there are a few things I would like to point out. This is a site at the corner of Highway 521 and Marvin Road. It has seen developers look at it in the past. It is a challenging site because there is a creek running down the middle. Certainly you all know about the demand for multifamily housing. You probably know that the Ballantyne area is one of the most restricted markets where demand is highest. When Childress Klein looked at this property they were really challenged by staff to take a look at it and try to come up with an innovative site plan, something that set it apart from other traditional garden style developments. One of the things that staff really put on the table was to try to use the creek as a unifying feature, even though it does divide the site, to provide something a little bit different. The Childress Klein team engaged Land Design and spent a lot of time coming up with this concept. There is a greenway component, Mecklenburg Parks and Rec. has requested that and that will be dedicated and become a public greenway with trails. Through the center of the site, this is not dedicated to the county, but there will be a private greenway, built to greenway standards running through the site, connecting Marvin Road to the future greenway. As you can see that wall provides some pedestrian connectivity and we've got to get out of the topography in this area, but there will be a new sidewalk connection to the retail developed to the south which connects our property to that site as well as the surrounding neighborhoods.

I think the most important thing, and I will talk a little bit about neighborhood feedback, the Childress Klein team has been meeting over the past few months with all of the adjoining property owners. We've had two formal community meetings, but a lot of back and forth with the neighbors. Probably 90% of the feedback we are hearing deals with traffic. Anyone in Ballantyne is not going to be surprised to hear that, but this is one of those rare occasions that I have been involved with, that I can actually say that development is going to improve traffic conditions. It doesn't mean that we are not adding trips because we are, but there are significant traffic improvements as a part of this petition and I hope C-DOT will speak to that if you have questions. Let me point out what those are. A lot of concerns about the traffic at the intersection of Marvin Road and Highway 521. One of the reason there is so much traffic along 521 is this is a controlled access corridor so NC-DOT doesn't let you make driveway connections to 521. They don't allow intersections just anywhere. When they purchased this right-of-way from the owners they bought the right from these owners to ever connect with a driveway so there was no way to provide any other access to 521. Initially meeting with the Planning Staff, they said we understand where this site is, we can't support more density unless you can provide some access to 521. We would have been before you about six months ago except Childress Klein took that challenge and went through an extensive process with the North Carolina Department of Transportation, spend about 6 months working with an engineering team from Kimley-Horne to go to Raleigh to go through this process to get approval for what is called a break-in access. Now we are able to show you this little point on the site plan involved a lot of time and work. The state approved an additional access point to 521. That access provides access into our site. As part of the approval of this access point, Childress Klein agreed to some other improvements, which I will take you through. Most importantly is this access point to 521 so if you live in this development you can come out here with a right out only, but you can go back towards Ballantyne without coming out and without using Marvin Road. Secondly, this is what is called a left over so NC-DOT has also approved a break in the median so if you are coming home from Ballantyne or up town to this development, you do not have to use the Marvin Road intersection. You can come directly into the site. This access point to 521 directly to this site is very important to our site and we think most of the residents in this development are going to go directly to use this access point in and out of the site without adding congestion to Marvin Road.

Secondly, we have dedicated this area as a public street built to USDG standards, connecting it here to the adjoining properties so that in the future if the adjoining properties develop they have another access point to 521 other than Marvin Road. Again, we think this is the major access point. The other thing that I really want to talk about is a signal at Marvin Road and 521. Through that process Childress Klein did propose a full movement intersection there. That was not something that NC-DOT was entertaining, so that was not an option, however, NC-DOT has consented to a partial signal so there will be a traffic light at this intersection and it will only stop north bound traffic here. There will not be a stop-light to stop south bound traffic, but what that will do, and this is reoriented, but looking at Marvin Road and 521, when this light stops traffic in this direction, that allows people on Marvin Road to take a protected right, because there is a stop-light here, turn right and go to town. Coming home in the afternoon, and my understanding is that the traffic in this area cues a long way back. Drivers do not have a protected left turn light here when they are coming home so they chance it, looking for a break in traffic. That causes traffic to stack up here, back into the main travel lanes for 521, which is a safety hazard. When this light is installed it stops traffic that allows us to provide a protected green turn signal so that drivers can now take a safe turn from 521 onto Marvin Road. Additional Childress Klein has committed to extend the existing left-turn lane in this area to provide more storage out of the main travel lanes and improve traffic in this area. We think those are very beneficial. Kimley-Horn, the team that has looked at this for us noted and neighbors will tell you, right now trying to turn here in the morning going north, traffic just back up and up. Kimley-Horn's team has told us they believe this will improve congestion and reduce it by 79%, just stopping that traffic, providing a green arrow to make those rights to go into town.

We presented this at the community meeting and of course you think this is going to be a great thing and everyone will love it. There were other concerns. Some of the folks in the Donnington Neighborhood said well, that is great, we love having this left-turn arrow, the problem is, we make the turn and we are stuck here. This is a day-care center here, traffic backs up, what can you do. It is not yet shown on our plan, but we have worked with C-DOT and we will also be adding a left-turn here on Marvin Road onto Donnington. This has no benefit whatsoever for our

site and doesn't serve us a tall, but certainly as we talked to neighbors, it is one of the things that just made a lot of sense. It is something that we could do, there is the area to do it, so there is the commitment to provide a left-turn lane there and also if you are coming down Marvin Road and want to get into our site, we are providing a left-turn lane in this area right here. Those are the traffic improvements that are provided. A lot of that was working closely with NC-DOT to get those approvals and they are conditioned for us to get this break of access to 521, those are the conditions placed on it so Childress Klein is able to do that. I hope the C-DOT staff will tell you they have reviewed and they think it will have benefits not just for this development, but for the community at large.

I understand there is a protest petition and as I have indicated the Childress Klein team has tried to work very closely with these property owners who live on large lots and have had a very rural feel. This is a major change for them. Childress Klein at this point has agreed on these buildings that are facing Mr. Hammond's property, we would eliminate any second and third story balconies so there wouldn't be people outside. Those would become sunrooms and would all be interior. Our revised plan will have the commitment there. We've also negotiated a fence that would be located in this location, 30-foot buffer area that Tammie mentioned and she also mentioned the location of these garages. That was intentional, to provide something more of a one-story along that buffer to create a little more buffering in that area. There has been a lot of thought put into it by the Childress Klein team, certainly a lot of work has gone into the traffic analysis to try and provide something that serves our site, but really improves the community at large.

David Eaker, 16248 Marvin Road, said I am here for the rest of Marvin Road. A neighbor of ours said you cannot tell a man what to do with his land and he is correct, but when it affects our lifestyle on Marvin Road of how we get in and out of our driveway and which direction we can go all the way around one way or another just opposite of traffic of what part of the day it is. That is what I have a problem with. I don't have a problem with the multifamily or the apartments and there can be other things that are put in on this piece of property. Business offices, medical facilities, whatever is conducive to the area and there is a lot in the area that can be matched up with this piece of property. You are talking about 281 units and I'm guessing 500 cars that will be put on these roads. You cannot just end it that, you've got to look past that because in Childress Klein's pictures, they have a road that comes off Johnston Road and he alluded to it. The other properties are landlocked back in there. You are talking about 15 to 17 acres. You are not just talking about 281, now you are talking double that so you are probably talking about a thousand cars. They did their traffic studies on 500 cars, it should be 1,000 because how many single family homes you know that you have to drive through an apartment complex to get to your single family homes, not too many. In their traffic study they have not taken into fact the human part of it. The people that come off Marvin Road at Audrey Kell and go down Audrey Kell, go through the Harris-Teeter parking lot so they don't have to stop at the stop light. They don't want to go down Marvin Road because it is already backed up to the top of the hill. One problem with their study, they did not do a traffic study on one road which is a key road here. When you come down Marvin Road, cross over Audrey Kell, there is Old Audrey Kell. People take a right there so they can pass all these people and go out to Providence Road West and sit in traffic to get on I-485. The traffic from I-485 already backs up past Providence Road West. When you put a stop-light there you are blocking that traffic all the way to South Carolina now so you can let a few people in that entrance from the apartment complex onto Johnston Road. They won't be able to get on because the traffic will be backed up because of the stop light. There is so much about this with traffic that is wrong. You have too much traffic down there now and if you get something in there the traffic runs opposite of what the traffic runs now you won't have a problem. You won't have a problem with the schools being overloaded if you do that. Just think of traffic and think beyond the books. That is what this is about. Everybody knows that the traffic is horrendous down there and a stop-light is going to fix it.

Ken Hammond, 16202 Marvin Road said I am the adjoining property owner and although we are opposed to the current site plan, we have been working with Childress Klein on some modifications to the buffer between our properties. I think a fence was mentioned, but actually we have talked about a concrete wall, some increased planting along that buffer line planted at certain heights and certain spacing. We would be in support of a revised site plan which I think

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is forthcoming. We filed the protest petition to kind of reserve our right of protest, but we assume that site plan is going to be filed and accepted, and if so we would rescind the petition.

In rebuttal Mr. Brown said as soon as I sat down, Kelly said Collin, it is not a fence, it is a wall. Childress Klein has had extensive discussions with Mr. Hammond. We've actually drafted conditional notes that would eliminate the outdoor balconies, that would provide the engineered wall, that would provide the plantings. As you know we were just not able to submit the revised plan prior to the hearing, but I think we have agreed to the notes and following the hearing we will submit the revised plan. As I mentioned with regards to traffic, there are traffic issues and that is 90% of what we heard at the community meetings. We think we've engaged the best traffic engineering folks to be involved with us. They have worked very closely with C-DOT and we believe that we have more than mitigated the impact of this site, that there will certainly be improved conditions for drivers in the area and several folks have acknowledge that. Certainly they would maybe rather see this be a pony farm forever, but if development is going to occur, at least there are some positives to the surrounding neighborhoods.

Councilmember Mayfield said is there any consideration for a round-about instead of this traffic light since that has continuous movement. If we are looking at a major back-log that is going to affect not just this immediate area, what other considerations do we have outside of a traffic light?

Mr. Brown said I would like for someone from C-DOT to answer that. Certainly when we approached this they talked about a full motion traffic light which seemed to be what the neighborhood would prefer. We are not just dealing with C-DOT, it is NC-DOT which is a heavyweight to deal with and that was something they were not willing to put on the table. We think we've come up with the best plan that will be allowed to put in place. We talked with C-DOT about some other options and I think with the feedback that NC-DOT was giving us we came to the conclusion this is probably the best we are able to do. I think the turn-lanes into Donnington and the turn-lane into our site are the additional things that we could do to mitigate those concerns.

Councilmember Dulin said Mr. Hammond I take it when you say there are several dwellings on the back side of this property and you said you are still in communication with the petitioner, he has just made a couple of comments about the wall as opposed to a fence, etc. You are still working with them and you are comfortable with your relationship with them and how they are working with you?

Mr. Hammond said I am. There is a time obviously following this hearing where they will offer a revised site plan and we will sit down together and kind of check off the items we've agreed upon and if so we don't have a problem.

Mr. Dulin said Mr. Eaker I was listening to you and I never speak for Council, but I'm sure others were listening to you.

Councilmember Kinsey said Mr. Brown, you mentioned the greenway through the property. Did I hear you say that was a public greenway?

Mr. Brown said there are two greenway components. This area here, everything south of the new road we are putting in, besides our retention ponds, this area will be dedicated to the county so all of this shaded area is dedicated to the county as county greenway. This portion extending through our site, essentially we've tried to use all the swim buffer to create a natural zone there. This will be privately owned, but it will be built to Parks and Rec Greenway standard. They have gone through that and said if you see this there are to be not transition between the county greenway and your greenway.

Ms. Kinsey said can you put up the colored map?

Ms. Keplinger said that will take a minute because we have to switch, but give us a second.

Ms. Kinsey said what creek runs through the property and what creek does it connect to for the public greenway?

Mr. Brown said the creek through our property, and it may be more of a seasonal creek. I think the name of it is Clems Branch.

Ms. Kinsey said where we see the holding ponds, is that the public?

Mr. Brown said everything south of us. I don't think the county wants our retention ponds and we are showing where they are proposed. Everything that is south of this road that is not our retention ponds, we will dedicate it to the county.

Ms. Kinsey said you don't know what creek that greenway is on?

Mr. Brown said I don't know off the top of head. It is on an adopted greenway plan.

Councilmember Pickering said frankly I'm a little surprised and I understand why the neighbors would welcome the traffic improvement. That is needed right now, no question about it. We are talking about an additional 1,830 trips per day so I'm curious as to the sense from the neighbors that the meetings that you held, I'm a little surprised that we are not hearing more opposition to be frank.

Mr. Brown said it depends on perspectives. I think from the folks living on Marvin Road, their concern is the condition of Marvin Road. Most of our trips would not be down Marvin Road so their question is what is this going to do to the impact of Marvin Road. The folks in the Donnington Neighborhood, who we haven't heard from tonight, their biggest concern is cut-through traffic through their neighborhood. We've talked with them about things to mitigate that. We think our traffic is going to go to 521 and out. We don't think our folks are going to travel through there to Providence Road West, but that is a concern. I can't speak to why there is not more opposition. Traffic is a general concern and we are doing everything we can, not only to address negate our impacts, but to try and improve for the surrounding neighborhood.

Ms. Pickering said you mentioned that NC-DOT was not willing to put in a full stop-light. Do we know why? Did they give a reason as they are not willing to do that?

Mr. Brown said NC-DOT is about moving traffic quickly and I think they are opposed to slowing anything down over there. That is why there will not be a light on this side slowing down south bound traffic. The most we could get was slowing down north bound traffic to give a safe right turn and a safe left turn in. I think they are about moving cars quickly.

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

Council's decision was deferred pending a recommendation from the Zoning Committee.

ITEM NO. 17: HEARING ON PETITION NO. 2012-086 BY EAST GROUP POROPERTIES, LP FOR A CHANGE IN ZONING FOR APPROXIMATELY 43.29 ACRES LOCATED ON THE SOUTHEAST CORNER OF THE INTERESECTION OF STEELE CREEK ROAD AND SHOPTON ROAD FROM I-1(CD) AND R-3 TO I-1(CD) SPA AND I-1(CD).

The scheduled public hearing was held on the subject petition.

Tammie Keplinger, Planning said this is a rezoning that is located at I-485, Steele Creek Road and Shopton Road. The rezoning is from I-1(CD) and R-3, which is just this little tiny corner, to I-1(CD) SPA and I-1(CD). It is approximately 43.29 acres and in 2002 this property was part of a larger rezoning that allowed 500,000 square feet of office flex space, a 200-room motel and 47,000 square feet of retail restaurant uses. As you can see from the aerial some of the
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infrastructure has already been put into place from the 2002 rezoning. The request that we have tonight is a proposal to allow 525,000 square feet of office distribution and industrial uses. There are limits on the height and the lighting. There is an extension of the main road all the way over to Gable Road, which is required by the sub-division ordinance, and you can see the road that is already in place. The petitioner has provided building elevations. Staff does have a little concern about the back of the buildings and we are working with the petitioner to resolve those issues and see if we can get a little more articulation. The proposed request is actually inconsistent with the Steele Creek Area Plan because of the 2002 rezoning, but it is consistent with the general industrial pattern of the area and it is also part of the Shopton Road Industrial Activity Center. It is located along Steele Creek Road which is going to be one of the major corridors to the Intermodal Yard at the Airport. Staff is recommending approval of this petition upon resolution of the outstanding issues.

James McGovern, 5500 Camilla Drive, said I am here to answer questions and to thank staff for all the help they have given us to date on this project.

Matt Cochrane, 11440 Carmel Commons Boulevard, said I am with East Group Properties, the potential developer and we want to thank staff for working with us thus far.

Councilmember Howard said I remember this one and this one was actually supposed to be some type of neighborhood center wasn't it? Didn't it have restaurants, banks and some other stuff back when it was originally done?

Ms. Keplinger said it did have 47,000 square feet of restaurant and retail uses. There is a center that has located across the street.

Mr. Howard said this fundamentally kind of changes that whole strip to something different is what my concern would be. Off the main road I don't have a problem, but considering you have retail that has developed across the street it doesn't feel like this would complement each other real well.

Ms. Keplinger and the last rezoning approved 500,000 square feet of office flex space so it does have some similar uses.

Mr. Howard said that was in addition to the restaurant?

Ms. Keplinger said yes sir, it was 500,000 feet of office flex, a 200-room motel and 47,000 square feet of retail and restaurant.

Mr. Howard said this plan goes away from any retail to all flex space?

Ms. Keplinger said it is 525,000 square feet of office distribution and industrial uses.

Mr. Howard said the rezoning that happened between the retail one and this one actually did away with retail in the last rezoning or was there still retail as a part of that?

Ms. Keplinger said currently there is still 47,000 square feet of retail permitted on the site. This rezoning would eliminate that retail.

Mr. Howard said I'm just not sure that anchors that corner real well. If I remember there is a gas station on one, there is potential for retail on the one that was supposed to be fast food. There is a CVS and then it would be this. I don't know if I care about it being on the site, it is Steele Creek Road and that corner, it seems like it should be something that complements the other corners.

Councilmember Barnes said I may have dozed off for a moment. What is the proposed use?

Ms. Keplinger said the proposed use is 525,000 square feet of office distribution and industrial uses.

Mr. Barnes said and the area plan calls for?

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Ms. Keplinger said the area plan actually calls for a mixed use development based on the previous rezoning from 2002.

Mr. Barnes said so to the gentlemen that are here, how would you suggest that, obviously the uses aren't consistent, but that you could integrate your project into what the area plan envisions for the area?

Mr. McGovern said the area plan initially has all industrial coming down along I-485 because of the noise and cars that are coming from the Airport. The amount of presently business zoned property along Shopton Road and across Steele Creek Road from this, there is basically a shopping center built but unfortunately is not occupied. There is a tremendous amount of presently zoning business property in that area that the jobs that could be developed on this site would actually potentially help some of that.

Mr. Barnes said Mr. McGovern how many jobs would you anticipate being permanently created on the site?

Mr. Cochrane said it is hard to say but one of the six buildings, we already have a lease out for and they will have 100 jobs. We would commence construction on that immediately and they look to hire 40 more people over the next three years.

Mr. Barnes said warehousing?

Mr. Cochrane said yes.

Motion was made by Councilmember Mitchell, seconded by Councilmember Barnes, and carried unanimously, to close the public hearing.
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Council's decision was deferred pending a recommendation from the Zoning Committee.

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ITEM NO. 18: HEARING ON PETITION NO. 2012-087 BY AEA, LLC FOR A CHANGE IN ZONING FOR APPROXIMATELY 3.56 ACRES LOCATED ON THE SOUTH SIDE OF BALLANTYNE COMMONS PARKWAY BETWEEN REA ROAD AND WILLIAMS POND LANE FROM R-3 TO O-1(CD).

The scheduled public hearing was held on the subject petition.

Tammie Keplinger, Planning said this is a rezoning from R-3 to O-1(CD). The property is the former home of Chester Brook Academy which was a private school. It is 3.56 acres and you can see the building where the school was located, the parking and the playground or recreational area. The request is to rezoning this to allow the existing facility to be used as a daycare. Originally I believe the petitioner was asking for 250 children and I believe they are prepared to reduce that to 220 tonight. Access is off of Ballantyne Commons and there are no building expansions proposed. There is a 26-foot buffer along the property line with the adjacent residential properties. There will be a new 5-foot sidewalk and an 8-foot planting strip along Williams Pond Lane. You can see this is the one section that does not have sidewalks now so it will connect this to the little commercial node at the corner. The rezoning is really inconsistent with the South District Plan because it is for an institutional use and our plans do not usually tell us where we should put those uses, but they let us look at each one individually. In this case the reuse of the existing building is one of the things that we feel merits allowing the rezoning for this petition. We are recommending approval upon resolution of the outstanding issues. One of the outstanding issues that I would like to note is that C-DOT is concerned about the cueing space for the daycare and they have asked for additional information from the petitioner and we are hoping to get that information so we can resolve any issues that may be from cueing.

John Carmichael, 101 North Tryon Street said I represent the Petitioner, AEA, LLC. The point of this petition is to allow a daycare center to occupy a building formerly occupied by

Chester Brook Academy which is a private pre-school, elementary and middle school that formerly operated on the site on Ballantyne Commons Parkway. As you know a school is allowed in R-3, but a daycare is not, hence we are here trying to rezone the property to O-1(CD). It would be the only use allowed if the petition is approved. No expansion of the building, as Ms. Keplinger indicated. There is one outstanding issue. C-DOT does have a concern about the cueing for the site and how that would work. We are meeting with C-DOT and NC-DOT on Wednesday of this week to provide more information to resolve that issue. I have every confidence that we can. If we can't resolve it by this Friday then we would request that the decision be deferred a month by the Zoning Committee and this body, but we are going to work with C-DOT and NC-DOT to resolve this issue. I have Ms. Pretlow here who is with the daycare center if you have a question about the daycare center operation.

Councilmember Pickering said Ms. Keplinger mentioned that you might be reducing the number of children from 250 to 220. Is that correct?

Mr. Carmichael said that is correct.

Ms. Pickering said so the number is 220 now?

Mr. Carmichael said yes ma'am.

Motion was made by Councilmember Barnes, seconded by Kinsey, and carried unanimously, to close the public hearing.
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Council's decision was deferred pending a recommendation from the Zoning Committee.

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ITEM NO. 19: HEARING ON PETITION NO. 2012-088 BY PIRHL DEVELOPOERS, LLC FOR A NS SITE PLAN AMENDMENT TO APPROXIMATELY 5.09 ACRES LOCATED ON THE NORTH SIDE OF NOLLEY COURT NEAR THE INTERESECTION OF NOLLEY COURT AND GALLERIA BOULEVARD.

The scheduled public hearing was held on the subject petition.

Tammie Keplinger, Planning said this petition is located at Sardis Road North and Monroe Road. The property is 5.09 aces and it is for a Neighborhood Services Site Plan Amendment. In 2004 this property was rezoned along with a larger portion of property to allow 30,000 square feet of commercial uses, 54,000 square feet of office and 93 multifamily residential units. One of the conditions on the site plan was that the multifamily units would not be for rent. The current site plan removes the note about rental unit and it shows that there will be 80 elderly units that will be three stories in height. There is 20-foot landscape buffer along the adjacent residential property line. The maximum building height is 45 feet and the amenities that they are proposing include a gazebo and covered picnic areas. The elevations that go along with this petition shows the building will be 50% brick, you can see the elevations from all sides, and the color rendering of the site plan. This would be a view from the residential property line behind the site. In terms of this petition, it is consistent with Independence Boulevard Area Plan. Staff is recommending approval upon resolution of outstanding issues.

Reid Harkey, 1340 Sardis Road North said my family and I own the larger parcel adjoining the proposed property and we are in favor of it. The developers have been very accommodating with our request for privacy and noise reduction. We like the idea of the 55 and older and we are for the project.

Paul Trotter, 1515 Mockingbird Lane, said I'm with Trotter Properties, the property owner and this property was part of the property my father, William Trotter, who was Planning Commission member many years ago and assembled and developed the Sardis Forest neighborhood and patio homes and has always had during that period some sort of multifamily development. Dealing with older family members have seen the great need in this community for

housing that is designed specifically for that age group and think this is a real asset to the community.

Councilmember Howard said there was a note on the rezoning for the rental part and we can just remove it and it wasn't deed restricted or anything else?

Ms. Keplinger said we don't check the deed restrictions, but it is simply the note and that administrative approval process that set forth in the zoning ordinance does not allow staff to remove that note administratively, so it did have to come back before Council.

Councilmember Dulin said this is a good project and it is a good piece of dirt and it will work out for everybody. I'm going to support this and Mr. Harkey your family still lives in the country out there and I appreciate you coming down to say something nice about the project.

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

Council's decision was deferred pending a recommendation from the Zoning Committee.

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ITEM NO. 20: HEARING ON PETITION NO. 2012-089 BY UNIVERSITY INVESTMENT GROUP, LLD FOR A MUDD(CD) SITE PLAN AMENDMENT FOR APPROXIMATELY 6.0 ACRES LOCATED ON THE NORTHWEST CORNER AT THE INTERSECTION OF UNIVERSITY CITY BOULEVARD AND EAST MALLARD CREEK CHURCH ROAD.

The scheduled public hearing was held on the subject petition.

Tammie Keplinger, Planning said there was a protest petition submitted on this rezoning, however it was submitted one day after the General Statute deadline, so it is not considered valid.

This property was actually part of a larger rezoning that was approved in March of 2012 for approximately 250 multifamily units with 750 bedrooms. The maximum building height was 90 feet or five stories and one of the main contributors to the site plan was they had a 10-foot path that led along Highway 49 to the University. The proposed request tonight basically has to do with the number of units. They are asking to increase the number of units to 250 to 300 and within that 300 units they will have a reallocation of the bedrooms. The bedrooms will actually be reduced from 750 to 725. All of the previous conditions that went with the site plan still apply, the elevations, the building footprint, everything is exactly the same as before and the only thing that has changed is the number of units and the parking associated. As the rooms changed so does the parking. This request is consistent with the University City Area Plan and staff is recommending approval.

Lindsey McAlpine, said I will be brief and I have already lost a bet. I didn't think we would get here before 7:30 so I'm impressed with the movement of the agenda. Tammie did a great job with the summary. In March Petition No. 2011-072 was unanimously approved by this Council and all the neighborhood groups around us except the Fraternity property next door supported that rezoning. The only change that we are asking for is a design change that will allow us to do more one-bedroom units which we realize the market was demanding more after our market studies and they came in after our rezoning or otherwise we wouldn't be here. You will see on the conditional plans that we have submitted, there is a bubbled area in the top left-hand side and that is the only change, so design, transportation, roadway improvements, sidewalks, buffers, physical characteristics of the building, all of those are staying the same. Just to be clear, we are very aware, as a lot of people in the community are, that this City is looking at a re-write of the ordinance or considering ideas as it relates to student housing. We plan to participate in that and we have all good faith, as we have participated in these in the past and I'm sure many of the Councilmembers have as well as the Planning Commission members that will turn out well. We look forward to participating in that and we are going to manage this in the highest quality as the

ordinance allows. I want to be very specific. That is a management issue of structures. This is a design issue of the structure that we are asking to change. The decision is fairly simple, which is one of the reasons we are asking for it tonight. An affirmative rezoning vote here would reduce the number of people on the site and there is already a pre-agreed parking ratio related to that, that reduces the number of parking spaces. We are asking for the vote tonight because it is clear we have a very short lease up window and we have to get into design very quickly. We are happy going in either direction and we think this meets the spirit of conversations that we've had and the spirit of potential changes that are coming in the reduction of the mass on this site.

Tim Bennett, 17534 Randells Ferry Road, Norwood, NC said I know it was late on the petition filed, and the main reason I'm here is because we wanted to go to the community meeting and meet with them although we didn't get the correspondence about the meeting until the day after the meeting. When we called the Clerk's office they said it was at 6:00 and we sent people at 6:00 and found out later on from the Secretary of the Church that it was at 5:00. Matter of fact the only person at the meeting besides the petitioner was the Secretary of the Church, who opened it for them. I know he threw the Fraternity word out there which is nice, however there is not a fraternity in that house anymore. The Alumni Board is charged with maintaining the house. Who resides in the house now is the Queen City Preparatory Academy, which is a K-12 Boarding School that has come up there in the last month. Their lease is for the next four years and probably from that point on, which brings me to why I'm here.

The problem that I have and that we have when we look at it and we watch traffic going in and out of Mallard Creek Church Road, it is a divided highway. The driveway is going to be right beside ours, but the bottom line is, if you've ever been out there, and I've set there and watched it on Friday morning at 7:00 and watched the number of cars trying to turn, or going from University City Boulevard down and doing a U-turn a half mile away to come up that is going to turn into a driveway right beside ours. The original petitions all came about from that section of property right there, the original developer worked with us and we talked about buffers and things like that. We haven't heard anything from this one, which is why I'm talking to you. The traffic we talked about earlier, that earlier petition you talked about 1,500 to 1,800 vehicle movements per day, the original petition for this DOT said there is going to be 3,000 which was in 2002. Now they are down to about 1,500, but still you are talking about that corner, one light, both divided, 1,500 movements per day and 750 parking spaces which the zoning commission says is pretty liberal anyway. I think traffic is going to be a big issue and with me it is a safety thing. We've got kids that are going to be in there now and be in there for the foreseeable future, in talking to Tony Parker who is doing yeomen's work over there.

The next thing, part of that is wetlands down at the bottom of that hill and if you look at the graph up there, at the corner everything flows downhill from that corner. What you are looking at basically, if you go by the most conservative water runoff areas, they are turning a lot of pervious area into impervious area. If you look at a weighted average in an average summer storm you are looking at between 2,500 and 6,000 cubic feet of water in a normal storm that has got to go somewhere. Right now it goes to the bottom of that hill, sits in wetlands, flows over into the apartments behind it, but when they build that up it is all coming toward our house. I am a bit concerned about the safety of our residents that we have in there. Basically, the last thing is simply elevation. We've got kids that are going to be in the house, we're already at least 10 to 15 feet below grade from where the structure is going to start 90 feet up. If you do a little trig on that it is going to be a 30 degree angle looking up at that thing from our house. If you look at 30 degrees up, it is almost going to block the sun during the winter months as it goes across the southern horizon. With that said, we just thought we needed to bring this out here, that it wasn't just some Fraternity guy sitting in there anymore. It is a K-12 school and I think that some of the safety issues are actually very valid.

Mayor Foxx said I want to understand the notice issues that Mr. Bennett raised.

In rebuttal Mr. McAlpine and I'm glad you brought that up. The Planning Department of our City does an excellent job providing us with the names of community leaders, their contact information, adjacent neighbors, everybody that we need to send a letter to for meetings. We never change the meeting date or time and there has not been any complaints from any other group except the group you just heard from. We were there during that time and we stayed a
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little over an hour and we had no body show up. It was a beautiful afternoon and sat in front of the church. I think maybe there is some misunderstanding on where their mailings are going and who is reading them, but every other community leader got them. At one time the Fraternity was a potential seller of ours and we were not able to come to terms to buy their property and since that time they have been a protester. About a month ago I got yet another e-mail about they would be in favor of our rezoning if we would allow them the use of our pool and our parking lot which we said we would not do. Since then I guess, or sometime in the interim they have leased to a daycare center. If you will all remember in March I read the arrest reports, police reports for the Fraternities, several have been in the house and they are not a good neighbor frankly. So again all of these issues were dealt with with very active community groups around us. University Terrace who is right behind us is in support of this change. All of the other community groups are in support so we are sorry that the Fraternity is not, but we've done our best collaborate with them in the past and we have had conversations.

Councilmember Kinsey said my understanding is that it is no longer a fraternity. Is that correct?

Mr. McAlpine said correct.

Ms. Kinsey said I would encourage developers to not hold community meetings at 5:00 p.m. because some people work and they can't get there at 5:00 p.m. I think that is sort of a sneaky way to hold community meetings unless you are going to do it on a Sunday afternoon and I don't think that is a good time either. I would hope developers would reconsider and not have community meetings at 5:00 p.m.

Councilmember Barnes said it might also be helpful to make the District Representatives aware of the community meetings. I didn't know about it. Regarding the K-12 use at that house, is it zoned for that? Are those institutional uses not delineated for residential districts?

Ms. Keplinger said currently the Fraternity property appears to be zoned R-12MF which is a multifamily district. I'm not sure if that allows the type of use that is there, but that is certainly something we will be checking into to see if they are in compliance. I think our Zoning Administrator might be working on that now.

Mr. Barnes said that would be helpful and also during dinner Mr. McAlpine, you heard one of our concerns was the ultimate impact of the ordinance that we are exploring regarding student housing uses and renting by the room. I think I indicated to you that it would be helpful to most of us to know precisely how many one-bedroom, two-bedroom, three-bedroom units you might have and it would be helpful for you to explain to us your position on that. Also I think it would be good to have you highlight when you are planning to open so that we can understand the urgency of voting tonight because I don't like to vote on the same night as the hearing, but if you could just briefly elaborate on those two issues it would help.

Mr. McAlpine said absolutely, and I thought there might be some questions about the number of units, you and I discussed it on the phone. We added the note and I guess it is not required by the current zoning ordinance, but the number of beds so we could be sure we were reducing density and we could put that in writing for the Council. We haven't fully designed the entire building yet. That is what we need to be doing right now and we are trying to decide do we design more or less, one-bedroom units. The market study suggests that we should have more one-bedroom units, which is why we are asking for this change. The reason for the expedited hearing, we talked to staff about this and we thought at one point that since we were reducing the number of people on the site that this might be an administrative change and they asked us to go through a rezoning, which is fine, and we are running up against the clock. It will take in the neighborhood of 12 to 18 months to build this product, 12 would be unbelievably good if we had perfect weather for the next year which is doubtful. In student housing students show up late summer, school starts in September so we have about 6 weeks of lease time so we have to deliver in late summer at the very, very latest and we are up against that clock right now. We think another 30 days, we are probably better off to design to the currently approved plan that we have and move forward with that.

Mr. Barnes said you would be delivering for the fall semester of 2014?

Mr. McAlpine said yes.

Councilmember Howard said would you address the other issue he talked about with the leasing by the room?

Mr. McAlpine said we talked about this a little bit in the Dinner Meeting. If this were up and leasing right now we would lease by the unit because that is what our Zoning Administrator has said needs to happen in the types of complexes. There may be a carve out in the next six months for specific student housing and I hope there is but we will follow whatever that new ordinance is at the time. Again we won't be leasing up until the summer of 2014 and we know there is a rewrite that is going to happen in the meantime, but if it were today we would do it by the unit.

Mr. Howard said what Mr. Barnes and Mr. McAlpine are talking about is right now there are some properties up in the University area that are actually renting by the room, not by the unit, which we have figured out is not legal and we are trying to figure out how to deal with that. What we were doing was asking Mr. McAlpine to go on the record that he fully intends to rent these units by the unit and not by the room because that is causing problems with public safety and otherwise in the University Area. Probably other parts of the city, but we are working on it, just FYI for the public.

Councilmember Cooksey said I have a question for Mr. Bennett. I heard your presentation, but I got to be that guy and ask this. The sole question before us on this petition is does the developer build basically 750 beds or 725 beds. Do you have any objection to reducing the number of bedrooms in the development?

Mr. Bennett said no, as long as it is rented by the unit.

Mayor Foxx said the request is to make a decision tonight. I do have a question for staff on the notice requirements because I am concerned that more generally. Is there a particular amount of time by which the mailings have to be sent prior to a community meeting?

Ms. Keplinger said prior to a community meeting, there is not. The Statute does not identify that you have to give people a week or two weeks, but we do advise people to give at least a week to 10 days before they hold the meeting.

Mayor Foxx said Mr. McAlpine, at what point was the notice sent for this community meeting?

Mr. McAlpine said we were close to 30 days prior to the meeting that we sent the notices out. We had to reserve the church space to make sure they didn't have school going on or something like that. By the way the 5:00 p.m. meeting time was a suggestion of one of our neighborhood groups that didn't want us to cut into their family time in the evening.

Mayor Foxx asked Mr. Bennett if he had something to say in response to my question?

Mr. Bennett said according to the church secretary, Ms. Chris Morrison, who was the only person there, said according to her calendar this meeting was changed by Mr. McAlpine a week prior. She had that on her calendar, she couldn't tell me exactly when it was changed a week prior and what it was changed to, but that it had been changed when I was trying to figure out why we missed a meeting that we should have been at.

Mayor Foxx said this is tough for us because we are not really in a position right now to do depositions and get information about exactly what happened, but what does concern me is anytime I hear a resident say they got the notice the day before, the day of or the day after that I think is a problem and I think at some point we should take a look at whether there ought to be something in our ordinance that says by a particular point in time before the community meeting that a notice be send because that is a problem I just don't like to hear regardless of what happened in this situation, I think it is something we need to deal with.

Ms. Keplinger said we can look at the community meeting report that is on line and check the dates and that may provide some clarity as to what has occurred. We will look into that and get that information for Council.

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

Motion was made by Councilmember Barnes, seconded by Councilmember Cooksey, to ask the Zoning Committee to consider the request from the petitioner and return with a 90-seconds recommendation, or longer if you would like. The vote was unanimous.

Mayor Foxx said while that is happening, a couple of announcements, tomorrow is a really, really big day for us as a community and I really wanted to thank the Council to a person on a bipartisan basis whatever we are going to announce tomorrow at 10:00 would not have been possible without a lot of bipartisan support. I want to thank all of you because you've been a part of going to Washington and making the case there, you've been part of talking to our State Legislators, you've been part of making the community really aware of how big this project is and what it can do for our community, whatever that project is. I want to thank everybody, Andy, LaWana, John, James, Claire, David, Mayor Pro Tem, Beth, Patsy, Michael and Warren for your hard work as well as our out staff. I'm not at liberty to say what the announcement is but whatever it is tomorrow is a big deal.

Councilmember Fallon said the radio said it already.

Mayor Foxx said well I'm not going to say it, but it will be at the Ninth Street Trolley Stop. We can change the name to Street Car whenever you are ready.

Councilmember Barnes said if I might Mr. Mayor, thank you for saying the things you've said and we also owe you a large thank you for your continued efforts. I have continued to check in with people at the state and federal level and there is continued bipartisan support of whatever this may be, which makes me feel good so despite some of the things that are happening politically in our society right now, people recognize the value of whatever this thing may be and are very much willing to continue to support it. Unfortunately Curt is not here tonight, but going from Curt to Pam and beyond, a lot of people have contributed and certainly you've been key to that and so have the rest of our colleagues here tonight. I wish Ms. Kinsey well with her efforts with whatever this may be coming first and hopefully getting to me at some point.

Mayor Foxx said one other announcement, actually before the Democratic National Convention we did a series of Access to America Dialogues and many of you came to one or more of those dialogue conversations. Before we did those dialogues, I'd ask a group of community leaders to attend the discussions and to develop some responses to those discussions, some reactions that could be shared later. On November 26th that group will come and share their reactions to that series. It was the earliest they could actually get it on our schedule, but I wanted you to know that is coming so you will see that coming on the calendar going forward.

Councilmember Mayfield said keeping in mind with that spirit opposed to waiting until the end, I wanted to send out a special thank you to the students at Tuckaseegee Elementary. Their 5th grade class invited me to come spend some time with them and talk about Council about two weeks ago, but last week I received a packet filled with handmade cards as well as written letters that I want to thank them for because that made by week, receiving that on Wednesday evening. Now I am working on creating something in my office so that I can put up all of the art display that was presented so when we arrange a visit from those 5th graders they can see just how much their works and the fact that they were paying attention and asking really great questions, just how much that meant, not only for that day but for every day that I'm not having such a good day, like we all don't have sometimes, then I have their cards and letters to help cheer me up.

Mr. Barnes said next Monday will be the birthday of a very special little boy in my life, my first born and I wish him a Happy Birthday and I love him. He will be six.

Councilmember Howard said since we have time and since you did that my son actually turned six yesterday, so Happy Birthday Chase. We actually spend the day at Discovery Place, the I-Max and Pizza and the whole thing. So Happy Birthday.

Councilmember Pickering said I thought we might mention to the folks at home that early voting starts this week, Thursday, and I might mention that the ballot is such that there is really three sections on it. The Presidential section, the middle section where our Congressional, State, local candidates are and then the judges follow that. You really want to think about the ballot in three sections. Some folks like to do a straight ticket and that is fine, but that will only pertain to the middle section. You can do that but don't forget to do your Presidential candidate and your judicial candidates at the bottom. That starts Thursday, October 18th, early voting. One thing I like about early voting is that once I have voted, I can spend the next 2 ½ weeks encouraging others to vote and explaining the ballot to them.

Mayor Foxx said I'm going to say one more thing because the birthdays made me remember that my 11th anniversary is today so Samara I love you and I will see you later on tonight.

ORDINANCE NO. 5004-Z FOR A SITE PLAN AMENDMENT FOR APPROXIMATELY 6.0 ACRES LOCATED ON THE NORTHWEST CORNER AT THE INTERSECTION OF UNIVERSITY CITY BOULEVARD AND EAST MALLARD CREEK CHURCH ROAD.

Ms. Keplinger said the Zoning Committee found this petition to be consistent with the University City Area Plan and reasonable in the public interest by a vote of 5 to 1 and voted 5 to 1 to recommend approval.

Mr. Barnes said what were the issues with the one?

Greg Phipps, Zoning Committee said to be consistent with my previous vote. I was the only committee member to vote no the first time. In listening to the comments on the previous petition, Petition 2011-072 the neighbors were concerned about the elevation, the change in the plan, the fact that the plan at that time was not consistent with the University City Plan, that it was consistent with another general development plan that was approved by staff and also the conversion of similar type projects within close proximity of the area, I didn't think that the transportation issues were addressed in a manner that was conducive to the safety of the community, plus some public safety concerns expressed by CMPD also gave rise to some concerns that I had at that time. I really don't think my opinion has been swayed by this vote tonight.

Mr. Barnes said we have tried to address a number of things that you are talking about. Were you referring to the Crescent Petition as well?

Mr. Phipps said yes.

Mr. Barnes said we've tried and I understand very much what you are saying and appreciate your vote.

Motion was made by Councilmember Barnes, seconded by Councilmember Howard, to approve the Statement of Consistency and Petition No. 2012-089 by University Investment Group, LLC for the above site plan amendment, as recommended by the Zoning Committee.

Councilmember Dulin said what we are voting on tonight, is it the smaller number of units?

Mr. Barnes said smaller number of beds. Fewer bedrooms, fewer parking spaces.

Ms. Keplinger said if I may clarify, the number of units will go from 250 to 300 and the number of bedrooms will go from 750 to 725. You have more units and a reconfiguration of the bedrooms within those units.

Mr. Dulin said where does that put us? For instance Mr. Howard I would love to know where you were on that because I know you spoke well about it at dinner.

Mr. Howard said if you are talking about the issue with renting by the room, it actually takes care of that one because there would be only bedroom so it would be less multi-bedroom units for people to do what we were worried about to be honest on that issue. I think overall it shrinks the project by cars, by bedrooms by people.

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

YEAS: Councilmembers Autry, Barnes, Cooksey, Dulin, Howard, Mitchell and Pickering.
NAYS: Councilmembers Fallon, Kinsey and Mayfield.

The ordinance is recorded in full in Ordinance Book 57, at Page 911-912.

ADJOURNMENT

The meeting was adjourned at 7:33 p.m.



Stephanie C. Kelly, City Clerk

Length of Meeting: 1 hour 56 minutes
Minutes Completed: January 1, 2013