

Special Meeting
City Council
May 26, 1993

The special meeting was called to order by Mayor Charles B. Black, Jr. at 7:00 P. M. Those present were Councilwomen Phyllis Harris and Lib Nichols, Mayor Pro-Tem Archie Small, Councilmen Bob Jessen, Jim Hope, and J. C. Little, as well as Zoning Administrator Gary Roberts, Zoning Officer Danny Jackson, City Manager Phil Ponder, and City Attorney Kemp Michael.

The invocation was led by Councilman Small.

The meeting was recessed and public hearing called to order for consideration of two items. The first matter was consideration of a request for rezoning from R-8 to O-I/CU concerning a 2.6 acre tract at the corner of West Catawba Avenue and Scott Street. Thomas Springs III had changed his application to a conditional use. Bob Yatko, the developer, said a doctor's office will be built there. City Attorney Michael stated the rehearing is properly before the Council due to an amended application for conditional use with a substantial change being involved. Mr. Roberts displayed the site plan map, and described the improvements as a 2817 square foot office, with future expansion of 500 square feet. The Planning Commission has recommended approval of this application with two conditions: (1) a 240 foot buffer strip be planted as shown on the map (near the building and parking lot rather than on the property line), provided that any future development of the rest of the property which requires a buffer shall meet the zoning requirements; and (2) the driveway shall be placed on Scott Street across from the driveway at the apartments. Mr. Roberts stated that there is a school on one side, a cemetery on the second, and apartments on the third side. He suggested that the Council also require the development be according to the site plan and that they meet the sign ordinance. City Attorney Michael said that a question about spot zoning has been raised, and Mr. Steve Davenport, with Benchmark Inc., who has helped Mt. Holly draft its proposed watershed protection ordinance, was asked to comment. Mr. Davenport stated that he has worked in zoning and planning for thirty years and has reviewed or worked on approximately 1200 cases, that he helped write the first conditional use zoning ordinance in North Carolina, and co-authored a book on the subject. He had reviewed this rezoning request and stated he would have no problem ruling in favor of it because of the land use pattern of the surrounding property, which makes institutional use appropriate. He cited the Kristman case (N. C. Supreme Court) in which it was ruled that if there is a reasonable basis for spot zoning, then it is legal and valid; further, relevant factors were given such as the relationship of the uses in the new zone with the uses currently on the adjacent tracts. He said in his opinion this request would not be spot zoning, but even if you assume it is, the use meets the reasonable basis of the Supreme Court ruling. Mr. Bob Yatko submitted an Affidavit as part of this record (attached) indicating his belief

that the proposed development meets the required findings of fact in the City ordinance for conditional use, and he agreed to comply with the conditions that have been recommended. City Attorney Michael noted for the record that the requirements for findings of fact are in Section 96.6.1, if the Council chooses to approve this request. Mr. Springs stated that his family has held out selling this property for many years because they did not want apartments to be built, and they have been offered more money in the past for the tract, but accepted the doctor's offer because they feel it is a good use for the land, and will benefit Mount Holly; he asked that the request be approved. There were no further comments.

The second public hearing was for consideration of a request for rezoning from R-12 to B-3 involving a tract at 1000 Old Hickory Grove Road owned by Granny's Old Country Inn & Gifts, Inc., represented by Jack Ferrell, the President of said company. The Zoning Administrator Gary Roberts stated that this site is at the intersection of West Catawba Avenue with Old Hickory Grove Road; that across the road is Calvin Burrell's old store, and on the other corner is a business property. He displayed the site plan map and noted that this request is for a single-family residence, a 910 square foot restaurant, and a 760 square foot gift shop. The Planning Commission has recommended approval subject to three conditions: (1) a buffer or five-foot wood fence adjacent to Jacquelyn Moore pursuant to Section 46.6; (2) a buffer on the eastern boundary adjacent to Norman Edwards for 240 feet in length pursuant to Section 46.6; and (3) connect to City sewer system. Mr. Roberts recommended that the Council also require that he comply with the sign ordinance and that the site be developed per the site plan and application; and further suggested that the Council allow the option of connecting to the City system or installing a septic system which meets County approval. Mr. Ferrell submitted an Affidavit as part of this record (attached) stating that he believes the site plan complies with the City ordinance for conditional use and meets all the required findings of fact. He said he will do what the Council asks be done to be allowed to get a permit for the restaurant and gift shop. Mr. Ferrell also stated he does not intend to change the house or land around unless it is to improve it. He further asked that the buffer requirement be re-considered due to the existence of large thick trees already there. He stated they will not be open for breakfast, and will close at 8:00, and on Sunday will only be open for lunch. Margaret Riddle asked who the property is actually owned by; his Affidavit states it is owned by the corporation which is presently owned by Mr. Ferrell. Mrs. Riddle said there is already a family restaurant in the little shopping center on West Catawba that it is among private homes, and although they are nice people, there is a lot of noise and cars coming and going. She is not in favor of this rezoning because it will disturb the residences, and most of the people in that neighborhood are sick about it happening, and they want it to stay residential. Mr. Norman Edwards, 1009 Hickory Grove Road, said he has a restaurant and he feels Mr. Ferrell should have this, and that he owns the property next door and this will not interfere with him. He

further stated that he would sell the corner lot to Mr. Ferrell if he wants it, and he thinks it will help the community for this to be granted. Mr. Mike McIntosh, West Catawba Avenue, said he borders Mr. Edwards' lot, and did not even know Mr. Edwards might sell that lot to Mr. Ferrell. His concern is that if the City rezones this to business in a residential area, it sets up a chain effect so that the other property will go to business, and that means no residential property is protected. Any old house in Mount Holly across from an old business could be rezoned business and so on. He said Mr. Edwards is only in favor of this because he wants to build a business on the corner lot. Mr. McIntosh asked if the conditional use permit means he can never use the property for anything else, or if it can be rezoned later. City Attorney Michael stated that any property in Mount Holly can be rezoned if an application is filed, notice and hearings are held, and the Council votes in favor of it. Mr. Edwards said he bought that corner lot, and when the City dropped zoning for a few months, he obtained a building permit to build a hardware and a couple other things, and was told the permit was good forever. Then interest rates went up and he did not ever build, and now he is told it has to be built within a couple years. He said he is 73 years of age and too old to build anything now, so he might sell the lot. There were no further comments.

The public hearings were adjourned and the special meeting resumed. City Attorney Michael said both these matters may be heard by the Council due to a substantial change in the applications, and that if the Council chooses to act, there is a procedure to follow under our ordinance as outlined in his memo to them. Two factors are necessary: (1) determine that the rezoning be allowed based upon findings of fact in compliance with Section 96.6.1, and (2) attach a conditional use permit with stated conditions. The proposed motions he had prepared contain the conditions which the Planning Commission and staff have recommended, but the Council may add, delete or change them as it wishes; if Council wished to deny the motion, it need not make any findings of fact; the Council may also choose to take no action or to table the matter, and it is free to discuss the matter or ask the staff questions. Councilman Hope noticed that the copy of the revised application from Mr. Springs he had been given had not been corrected to read O-I/CU. Mr. Springs stated for the record that he had changed his application to O-I/CU and wants it to read that way. Mr. Yatko objected to the fifth condition on the proposal motion because it would not give them any leeway if they needed to move the building a couple feet or if the parking lot ran a little smaller or larger when the asphalt is laid; he asked that the Council insert "substantially" after "to be developed". City Attorney Michael said that would be alright, but any changes should be first reviewed by the City Manager or Mr. Roberts. The following **MOTION** was made by Councilman Hope, and seconded by Councilman Jessen:

I make the MOTION to approve the Thomas Springs III rezoning request for the property located at the corner of W. Catawba Avenue and Scott Street, from R-8 to O-I/CU, and to authorize

the issuance of a conditional use permit, based upon the affirmative determination of the Findings of Fact as listed in Section 96.6.1, with the following conditions:

1. The use of the property shall be limited to a medical doctor's office, not to exceed 3317 square feet in size.
2. A buffer strip as defined in Section 41.6 must be planted along the 240 foot length between the rear of the proposed building/parking lot area and the remaining undeveloped portion of the lot provided that any future additions in said undeveloped portion must comply with the buffer requirement.
3. The driveway entrance must be in alignment with the driveway for the apartments located directly across Scott Street.
4. Subject to compliance with the sign ordinance in effect at the time of application for a sign permit.
5. Subject property to be developed substantially in accordance with the application and site plan except as stipulated by the conditions set forth above.

Discussion followed thusly: Councilwoman Harris stated that she wanted the record to show that the Council did not rezone this property at the last meeting because of the form of the request before it and that they are all in favor of having the new doctor in Mount Holly, and she did not vote against the doctor. Councilman Small stated he was under the impression that this rezoning request would be spot zoning and still wonders if it is not. He noted that the property on Oak Grove was rezoned for this doctor's office, but then he did not buy that property because of some problem with it that would require about \$3,000 to remedy; so they came up here asking for O-I for this property which would allow anything in that zone. Councilman Small said he thought the Mayor spoke out of turn at the May 10 meeting when he made comments to the Council about this matter. Councilman Hope said the application on 11-30-92 was filed by Harold Stroupe from a H-I zone to a B-2NB zone. He stated that this request came to the Council as a rezoning for O-I and the question before the Council was never whether it wanted a new doctor, but whether or not to approve the rezoning request, and the Council had to consider what the appropriate zone for this property would be. Mayor Black stated that he was on the committee with Councilwoman Nichols to obtain a doctor, which required a lot of hard work, and that if it were not for him getting on the phone and contacting a lot of people, this would not have been brought back, and he stood by what he said before. Councilwoman Harris said she hopes the Council will give the same effort to its consideration of all businesses who come before it. The motion carried with six ayes.

As to the request by Granny's Old Country Inn and Gifts, Inc., Councilman Hope stated that Jacquelyn Moore had sent a letter through him asking that a fence not be put up, but perhaps we could require one if she moved. Councilman Jessen said he felt it is unfair to require something be done later if and when something happens; he said it appears to him there is already a lot of buffer naturally and it already meets the intent of the requirements of the ordinance. Councilwoman Nichols said the

County did not approve the property for a septic tank so she did not see any point in giving them that option. Mr. Roberts said the letter from the County did not approve it but offered three options to the standard septic tank. Mr. Roberts said the Planning Commission recommends tapping onto the City system, and the letter from Mr. Ferrell's engineer recommends that he tie onto the City system with a pump station. Councilman Hope said the Council should stick to the rezoning request and let the County worry about the septic problem. Councilwoman Nichols stated she still believes this is in a residential section, and although she does not object to Mr. Ferrell operating a restaurant, she does object to the location and would rather it was in a business zone downtown. Councilman Hope made the following **MOTION** based upon the recommendation of the Planning Commission and staff, seconded by Councilman Jessen and carried with four ayes and two nays (Nichols and Little):

I make the **MOTION** to approve the Granny's Old Country Inn and Gifts, Inc. (Jack Ferrell) rezoning request for the property located at 1000 Old Hickory Grove Road, from R-12 to B-2/CU, and to authorize the issuance of a conditional use permit, based upon the affirmative determination of the Findings of Fact as listed in Section 96.6.1, with the following conditions:

1. The use of the property shall be limited to a single family residence, a 910 square foot restaurant, and a 760 square foot gift shop.
2. Subject to compliance with the sign ordinance in effect at the time of application for a sign permit.
3. Subject premises must be served by either connecting to the City sewer at owner's own expense OR by a County-approved septic tank system which is approved for restaurant purposes. Any sewer connection to the City system must be in accordance with City specifications and standards for similar uses.
4. Subject property to be developed substantially in accordance with the application and site plan except as stipulated by the conditions set forth above.

City Manager Phil Ponder submitted to the Council a proposed budget for the 1993-1994 fiscal year. He does not propose a tax rate increase or a water/sewer rate increase. He said he would send out the supporting documentation soon, and asked the Council to plan for work sessions and a public hearing to act on the budget by the end of June.

Mayor Black reminded the Council of the public hearing on June 8 in connection with the proposed watershed protection ordinance.

City Attorney Michael asked the Council if they would go consider going into executive session for attorney-client purposes; all six agreed. Councilwoman Harris **MOVED** to go into executive session for attorney-client purposes after a five minute recess, seconded by Councilman Small, with all in favor.

The Council resumed the special meeting and adjourned upon **MOTION** duly made, seconded and carried unanimously.

Philip S. Ponder, Jr.
City Clerk

Charles W. Black
Mayor
