

Salisbury, North Carolina
June 16, 2009

REGULAR MEETING

PRESENT: Mayor Susan W. Kluttz, Presiding; Mayor Pro Tem Paul B. Woodson, Jr., Councilmen William (Bill) Burgin, William (Pete) Kennedy, and Mark N. Lewis; City Manager David W. Treme; City Clerk Myra B. Heard; and City Attorney F. Rivers Lawther, Jr.

ABSENT: None

The meeting was called to order by Mayor Kluttz at 4:00 p.m. The invocation was given by Councilman Kennedy.

PLEDGE OF ALLEGIANCE

Mayor Kluttz asked that the local men and women serving in the Armed Forces be remembered as she led those present in the Pledge of Allegiance to the United States flag.

RECOGNITION OF VISITORS

Mayor Kluttz recognized all visitors present.

PROCLAMATIONS

Mayor Kluttz proclaimed the following observances:

A DAY OF THE ARTS
PARKS AND RECREATION MONTH

JUNE 20, 2009
JULY 2009

RECOGNITION – POPS AT THE POST

Mayor Kluttz recognized the sponsors, committee members, and participants for the 5th Annual Pops at the Post event. She explained that Pops at the Post began five years ago as a one-time event to celebrate the 100th birthday of the Salisbury Post and the event was such a success it became an annual event. She stated that many people have worked very hard for these last five years to make this event possible.

Mayor Kluttz presented certificates to the following sponsors, committee members, and participants:

Sponsors

- F&M Bank
- Jim & Gerry Hurley
- Food Lion, LLC
- Robertson Foundation
- Fred & Alice Stanback
- Duke Energy
- Rowan Regional Medical Center
- Bank of North Carolina
- Community One Bank
- First Bank
- Global Contact Services
- Tom & Martha Smith
- Summit Developers
- Trinity Oaks
- Wachovia Bank
- Community Bank
- KKA Architecture
- Ramsay, Burgin, Smith Architects
- Bill & Nancy Stanback
- Taylor Clay Products
- Salisbury Academy
- SunTrust Bank

Committee Members

- Audrey Eudy
- Dyke Messinger
- Susan Shinn
- Ronnie Tomlinson
- Linda Jones
- David Jones
- David Hagy
- Lisa Houston
- Randy Hemann

- Betz McKeown
- Bob Setzer
- Jack Potvin
- Melonie Thompson

Participants

- Kent Bernhardt
- Salisbury Police Department Explorers
- Salisbury High School Air Force JROTC
- Salisbury Fire Department
- Salisbury Police Department
- Public Services Street Division
- Public Services Solid Waste Division
- Public Services Landscape Operations
- Jody Vail
- Rowan County Air National Guard

Mayor Kluttz commented that the Pops at the Post event takes many people working many hours to make it a success and she thanked everyone involved with the event.

RECOGNITION – SALISBURY’S RELAY FOR LIFE TEAM

Ms. Elaney Hasselman, Parks and Recreation Marketing and Community Relations Manager, addressed Council regarding Salisbury’s Relay for Life Team. She stated that the City of Salisbury team has been involved in the Rowan County Relay for Life for eight years and has been active each year. She noted that this year’s theme was Celebrating Heroes in Hope: Police, Fire, and Military and the event was held May 1-2, 2009 with several employees and retirees assisting with the efforts. She pointed out that the Salisbury’s team goal was to raise \$3,000 and they surpassed that goal by raising \$4,496. The City of Salisbury Relay for Life team members are Becky Albrecht, Lakai Brice, Niki Castor, Ann Cooper, Michelle Hardin, Elaney Hasselmann, Ruth Kennerly, Kizzy Lea, Mark Martin, Aggie Penninger, Mike Penninger, Craig Powers, Maurice Price, Teri Shaw, P. J. Smith, Jewel Stokes, and Chipper Thomas.

Mayor Kluttz stated she is very proud that City employees take their personal time to make the City such a special place.

CONSENT AGENDA

(a) Approval of Minutes

Approve Minutes of the Regular meeting of June 2, 2009 and the Recessed Meeting June 4, 2009.

(b) Voluntary Annexation – North Hills Christian School

Receive a petition requesting voluntary annexation of North Hills Christian School located at 2970 West Innes Street and adopt a **RESOLUTION** directing the City Clerk to investigate the sufficiency of the petition.

RESOLUTION DIRECTING THE CITY CLERK TO INVESTIGATE A PETITION RECEIVED UNDER G.S. 160A-58, FOR VOLUNTARY ANNEXATION OF 17.119 ACRES FOR NORTH HILLS CHRISTIAN SCHOOL LOCATED ON WEST INNES STREET.

(The above Resolution is recorded in full in Resolution Book No. 13 at Page No. 31, and is known as Resolution 2009-16.)

(c) Municipal Records Retention and Disposition Schedule

Adopt the updated Municipal Records Retention and Disposition Schedule.

(d) Temporary Street Closure

Close the 200 block of South Shaver Street Saturday, June 13, 2009 from 11:00 am until 5:00 p.m. for Gray's Chapel Church.

Thereupon, Mr. Woodson made a **motion** to accept the Consent Agenda as presented. Mr. Burgin seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (5-0)

YOUTH PROTECTION ORDINANCE

(a) Chief Mark Wilhelm addressed Council regarding a Youth Protection Ordinance. He indicated that he presented a draft Ordinance at Council's last meeting and noted that the purpose of the Ordinance is to protect juveniles from victimization and exposure to criminal activity by establishing a curfew for juveniles under the age of 16 in the City of Salisbury. He pointed out that the restricted hours are Monday through Thursday from 11:00 p.m. to 6:00 a.m. and Friday and Saturday from 12:00 a.m. to 6:00 a.m. He indicated that the Ordinance holds parents, juveniles, and property owners accountable for any violations knowingly committed or allowed to take place and violators could be fined up to \$100 in court. He noted that there are exceptions in the Ordinance for certain activities such as church functions, school sponsored activities, and employment.

(b) Mayor Kluttz convened a public hearing, after due notice thereof, to receive comments on the proposed Youth Protection Ordinance.

Mr. Richard Hutch, 619 Lincolnton Road, stated that he has seen vandalism to street signs throughout Rowan County. He stated that a juvenile's idea of fun is different than that of an adult. He indicated that without adult supervision children can make bad

decisions and that the Ordinance is a great idea and he hopes that it will help.

Mr. Clyde Overcash, Salisbury resident, stated that he thinks residents have waited a long time for this Ordinance. He indicated that he attends neighborhood action group meetings and all of the members would support this Ordinance.

Ms. Mary Arey, 415 West Marsh Street, stated that she is in favor of the curfew for the youth. She indicated that she has seen youth outside at 2:00 a.m. and has noticed vandalism in the City. She pointed out that the Ordinance could help reinforce parental discipline.

Mr. Frank Montgomery, Old Salisbury neighborhood, stated that he is a retired judge and has seen a lack of parental responsibility as juveniles come through the court system and he recommend Council adopt the Ordinance.

Mr. Cleveland Brown, First Calvary Church, noted that based on the report from the Police Department there will be a fine of up to \$100. He indicated that many parents may not be able to afford the fine. He stated that he would be interested to know what the minimum cost would be. He also indicated that when enforcing the Ordinance the Police should take each incident on a case by case basis and not group all the youth together.

Mr. William Peoples, 522 North Fulton Street, stated that he participated in discussions regarding a curfew a few years ago. He indicated that he feels a curfew is needed but the City must look at itself because there is nothing for young people to do. He stated that if the City can invest in enforcement for the Ordinance, then the City will also have to invest in recreation for the youth. He noted that there is only one public gym and swimming pool for the entire City and if there is no recreation for the youth the situation could get worse. He pointed out that the Ordinance is a good thing but it needs to be tempered with giving youth something to do.

There being no one else to address Council, Mayor Kluttz closed the public hearing.

Councilman Burgin thanked those who helped the City with the Ordinance. He stated that the Ordinance is not something Council typically likes to be involved in, but it is Council's responsibility to protect the youth of the City from the influence of gangs. He indicated that the Ordinance is fairly modest and hopes that each case will be reviewed individually. He stated that he will support the Ordinance because it is a statement that Council is trying to give the youth guidance and encourage good parenting.

Mayor Pro Tem Woodson stated that he thinks the Ordinance will help parents have more strength with their children. He indicated that he fully supports the Ordinance.

Councilman Kennedy indicated that he sees the Ordinance from a protection point of view and that youth who are out late at night can be influenced by negative forces. He stated that he thinks the Ordinance will protect the youth.

Councilman Lewis noted that the fines issued when there is a violation are at the discretion of the court. He stated that the Ordinance seems to give flexibility for enforcement and he hopes each case will be considered individually. He pointed out that the Ordinance is a reasonable place to start since similar Ordinances have worked in other Cities.

Mayor Kluttz stated that the Ordinance is a way to protect children and is a continuation of the City's anti-gang initiatives designed to keep youth safe. She indicated that Council's top priority is safety for citizens and children and she is grateful for all who have participated and supported the Ordinance.

(c) Thereupon, Mr. Burgin made a **motion** to adopt an Ordinance amending Chapter 20, Police, of the Code of the City of Salisbury, relating to youth protection and curfew. Mr. Kennedy seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (5-0)

AN ORDINANCE AMENDING CHAPTER 20, POLICE, OF THE CODE OF THE CITY OF SALISBURY, RELATING TO YOUTH PROTECTION AND CURFEW

(The above Ordinance is recorded in full in Ordinance Book No. 22 at Page Nos. 102-106, and is known as Ordinance 2009-37.)

POOL HALL PERMIT – 2168 STATESVILLE BOULEVARD

(a) Lt. Melonie Thompson addressed Council regarding an application for a pool hall permit for Fuel Depot Bar & Grill located at 2168 Statesville Boulevard. Lt. Thompson indicated that Daryl Dees and Brian Fox are applying for a pool hall permit for two pool tables for the establishment. She pointed out that a background check on Daryl Dees and Brian Fox found nothing that would prevent a recommendation for the permit. She indicated that the prior owners had eight Police calls; two for disturbances in the parking lot and the others were for loud noises which were unfounded. She pointed out that this location is currently permitted for two pool tables under the previous owners.

(b) Mayor Kluttz convened a public hearing, after due notice thereof, to receive comments on the application to operate a pool hall at 2168 Statesville Boulevard.

There being no one to speak, Mayor Kluttz closed the public hearing.

(c) Thereupon, Mr. Woodson made a **motion** to approve a permit for Daryl Dees and Brian Fox to operate a pool hall located at 2168 Statesville Boulevard. Mr. Burgin seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (5-0)

POOL HALL PERMIT – 425 EAST LAFAYETTE CIRCLE

(a) Lt. Melonie Thompson addressed Council regarding an application for a pool hall permit for Billiards Catering located at 425 East Lafayette Circle. Lt. Thompson indicated that Julio Nunez is applying for a pool hall permit for eight pool tables for this establishment and that no alcohol will be sold. She noted that Mr. Nunez is in the process of acquiring a business license.

Councilman Burgin asked if the pool hall permit will come back to Council for review if Mr. Nunez applies for an Alcoholic Beverage Commission (ABC) permit. Lt. Thompson indicated that if Mr. Nunez applies for an ABC permit a review would be conducted by the Police Chief. Mr. Burgin asked if Council can review the number of pool tables allowed if Mr. Nunez decides to apply for an ABC permit. City Manager David Treme indicated that the number of pool tables will not come back for review if an ABC permit is added.

City Attorney Rivers Lawther pointed out that ABC sales is not included as part of the pool hall permit process.

Lt. Thompson stated that the owner has operated a pool hall at Ellis Crossroads for nine months with no calls for service. She noted that Mr. Nunez's current location is being sold and he is simply moving to a new location.

(b) Mayor Kluttz convened a public hearing, after due notice thereof, to receive comments on the application to operate a pool hall at 425 East Lafayette Street.

There being no one to speak, Mayor Kluttz closed the public hearing.

(c) Thereupon, Mr. Woodson made a **motion** to approve a permit for Julio Nunez to operate a pool hall located at 425 East Lafayette Street. Mr. Kennedy seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (5-0)

SPECIAL USE PERMIT- SECONDARY DWELLING 702 MITCHELL AVENUE

SUP-01-09 Marsha Woods, 702 Mitchell Avenue

Councilman Lewis indicated he needed to recuse himself from deliberation because his bank holds the mortgage on this property.

Thereupon, Mr. Burgin made a **motion** that Council excuse Councilman Lewis from this vote. Mr. Kennedy seconded the motion. Messrs. Burgin, Kennedy, Woodson, and Ms. Kluttz voted AYE. (4-0)

(a) Swearing In

Mayor Kluttz swore in the following persons to testify in this case:

Mr. David Phillips
Ms. Marsha Wood
Ms. Jane Nussman

(b) Receive Testimony

Mr. David Phillips, Zoning Administrator, stated that the property in question is located at 702 Mitchell Avenue and the request is for a Special Use Permit that would allow a secondary dwelling to be constructed on the site. He referred to the site on an aerial map and noted its location at Mitchell Avenue and Boyden Street in the Fulton Heights neighborhood.

Mr. Phillips indicated that the process for the Special Use Permit is a quasi-judicial hearing and any evidence presented will be based on sworn testimony. He stated that evidence should only be given during the public hearing. He asked if any Council member has had any ex parte communication, or communication outside of the public hearing, that should be acknowledged to the public.

Mayor Kluttz stated that she received a telephone call from Mr. Steve Thomas who requested he be given more than three minutes to testify during the public hearing. She noted that she explained to Mr. Thomas she was unable to allow him to have more time in order to be fair to every person who speaks at public hearings, as all people are given the same amount of time. She reiterated that she informed Mr. Thomas she was unable to grant his request but indicated he could speak to Council members or submit something in writing. She stated that she did receive a letter from Mr. Thomas, and he is the only person she has spoken to about this case.

Councilman Burgin stated that Mr. Steve Thomas also contacted him and brought him a letter and several photographs, along with a copy of the Special Permit ordinance. He stated that he spoke to Mr. Thomas for about five minutes, where Mr. Thomas simply explained his opposition to this request.

Councilman Kennedy stated that he was also contacted by Mr. Thomas by telephone and received written information to read.

Mayor Pro Tem Woodson stated that he also received the same information and he also drove by the property.

Mayor Kluttz asked if there were any other disclosures before Council proceeds. There being none, Mayor Kluttz recognized Mr. Phillips for the staff presentation.

Mr. Phillips reviewed the decision-making rules for a Special Use Permit which state:

- The Land Development Ordinance (LDO) must spell out the standards for granting a Special Use Permit (SUP), and those decision-making standards cannot be developed on a case-by-case basis
- The decision to grant or deny the SUP, or to impose conditions on the approval, must be based solely on the LDO standards
- The standards must provide sufficient guidance for decision. The application, neighbors, and board(s) all need to know what the ordinance requires for approval

Mr. Phillips then reviewed the production of evidence

- The burden is on the applicant to present sufficient evidence to allow the board(s) to make findings that the required standards will be met
- The burden is on an opponent to present sufficient evidence that a standard will not be met
- If insufficient evidence is presented that the required standards will be met, then the SUP must be denied
- If uncontradicted evidence is presented that all of the standards will be met, then the SUP must be issued
- If uncontradicted evidence is presented that even one of the general or specific standards will not be met, then the SUP must be denied
- If there is conflicting evidence, the board(s) decides what the facts are and decides accordingly

Mr. Phillips stated that there are three general standards that must be met as part of the standards for decision. He stated that the three general standards are:

1. The use meets all required principles and specifications of the Ordinance and any adopted land use plans and is in harmony with the general purpose and intent and preserves its spirit; and
2. The proposed plan as submitted and approved will be visually and functionally compatible to the surrounding area; and
3. The public health, safety, and welfare will be assured and the proposed development will not substantially injure the value of adjoining property and associated uses if located where proposed

Mr. Phillips stated that this is the first Special Use Permit for a secondary dwelling to be considered since the Land Development Ordinance (LDO) was adopted in January 2008. He noted that there are eight additional standards that must be met in order to proceed. He stated that secondary dwellings are only allowed in Rural Residential (RR), General Residential (GR), Urban Residential (UR), Historic Residential (HR) and Residential Mixed Use (RMX) Districts. He added that Fulton Heights is zoned HR. He stated that secondary dwelling units within single-family houses or on

single-family lots shall be encouraged and designed to meet housing needs and he referred to the eight standards that must be met. Mr. Phillips indicated that the eight standards, along with a response from the applicant as to how they felt they met the standards, was included in Council's information packet. The eight standards are:

1. The accessory dwelling unit shall be subordinate to the primary living quarters
2. Not more than one secondary dwelling unit is permitted per lot
3. Any secondary dwelling unit shall be located in the rear yard of a single family use lot subject to the requirements of this Section
4. Secondary dwelling units may be created as a second story within detached garages provided that the height of the secondary dwelling unit and/or garage does not exceed the height of the principal structure on the lot. There shall be a two story height maximum
5. The secondary dwelling unit may not be larger than 50 percent of the gross floor area of the principal structure with a minimum habitable area of not less than 300 square feet. Maximum building footprint for a secondary dwelling unit shall be 750 square feet
6. No additional parking spaces are required for the secondary dwelling unit provided the number of spaces for the principal structure (per Chapter 10) is satisfied
7. Secondary dwelling units shall be architecturally compatible to the principal building (e.g. pitch of roof, wall or trim materials, architecture style, window details)
8. The property owner(s) on which the accessory dwelling unit is to be located shall occupy at least one of the dwelling units on the premises (GR, UR, & HR only)

Mr. Phillips displayed maps of the site along with ground photographs of the residence and the surrounding properties.

Mr. Phillips reviewed a site survey showing the existing principal structure and the proposed location of the secondary dwelling. He noted that one of the conditions that must be met is the footprint of the secondary dwelling cannot exceed 750 square feet. He indicated that the original elevation drawing depicted a porch running the full width of the residence, but it had to be modified to meet the 750 square foot footprint. He stated that there is now a covered stoop proposed, as depicted on the rendering, but the original house plans still include the full porch.

Mr. Phillips stated that the proposed secondary dwelling is a two-story residence and cannot exceed 50% of the principal structure. He explained that based on the size of the principal structure, the secondary dwelling must not exceed approximately 1,800 square feet. He stated that the proposed secondary dwelling is 1,200 square feet.

Mr. Phillips indicated that the secondary dwelling unit only has to meet a 5' setback on the rear and the applicant has established the setback on the side street to be more in line with the adjacent house facing Boyden Street.

Mr. Phillips displayed a rendering of the front elevation and reiterated that a covered stoop has been added to replace the initially proposed covered porch which would have increased the building footprint beyond the allowable 750 square feet. He also displayed other architectural drawings for the proposed dwelling.

Mr. Phillips explained to Council that in order to approve the Special Use Permit it needs to provide Findings of Fact that meet the three general standards. He added that if Council finds the eight additional standards have been met, then those should be part of the Findings when Council makes its decision.

Mr. Burgin asked if Council had the ability to request conditions on the permit. Mr. Phillips responded that Council has the ability to place reasonable conditions on the permit.

Mayor Klutz opened the floor to receive public comment.

Ms. Marsha Wood, 360 Autumn Chapel Drive, stated she is the applicant for the structure. She stated that her main purpose is to be close to her daughter, son-in-law and three grandchildren. She stated that they currently live in the China Grove area and her daughter is moving back to Salisbury and she would also like to be closer. Ms. Wood indicated she plans to live in the secondary dwelling and will enhance the neighborhood through her gardening skills. She stated that she enjoys landscaping and she and her son-in-law have already decided on gardens and landscaping for the property. She stated that she does not believe she will provide any negative energy to the neighborhood and she looks forward to being closer to her grandchildren and family and hopes Council will offer her this chance.

Ms. Jane Nussman, stated that she lives adjacent to the property in question and is the property's current owner. Ms. Nussman stated that she grew up in Fulton Heights and it is a very special place for her and she only has best interests for the area. She noted that she owns other properties in the area that she holds as investments and she is very particular about applicants because she wants to protect the neighborhood. She stated that she would not have invested in the neighborhood for her personal residence or in investment properties if she did have the best of feelings about it. Ms. Nussman stated that she has known this family through three generations and she thinks they will be an asset to the neighborhood. She added that she does not think anyone will have anything other than rave reviews once the structure is built if this is approved. She stated that anyone can go by the families' current residences and see immaculate homes with beautifully landscaped yards. Ms. Nussman stated that she thinks one of the things that drew the applicant to the neighborhood was the friendliness and neighborliness of it. She indicated that she hopes the family will be welcomed and that this request will be approved in their favor.

Mr. Steve Thomas, 208 Boyden Street, stated that he is looking at this situation differently and it is not a personal issue with Ms. Wood. He stated that his purpose of

addressing Council is to defend the integrity of the single family neighborhood. He stated that during the Planning Board meeting he was told by a member who lives in Fulton Heights that she could touch her neighbor on one side and almost touch her neighbor on the other. He noted that this is not the case in the lower area of Fulton Heights where they still have the history of the area, but also have space between the houses. Mr. Thomas stated that he appreciates the density Council wishes to accomplish in older neighborhoods, but his immediate displeasure with this Special Use Permit is the impact that the secondary dwelling would have on his screened porch, which is his family's favorite room in the house. He provided pictures to Council of the screened porch and the views of the proposed site for the secondary dwelling. Mr. Thomas stated that he has no problem with the front setback, but the side setback of five feet severely affects his view-shed. He commented that moving the secondary dwelling toward the main house will open the view-shed. He referred to the standards that the Special Use Permit request had to pass at the Planning Board and noted that Ms. Wood will be occupying the structure as a residence so it will be functional. He added that it will not be visually compatible because it cuts his view-shed. He stated that this is an established neighborhood where most of the houses have been located for over 80 years. Mr. Thomas invited Council to sit on his screened porch to see the scenery and trees and to see what brought him and his wife back to Salisbury. He stated that the screened porch was an attraction when they first purchased the home. He noted that he has a fear that the secondary dwelling will become a rental property in the future. Mr. Thomas stated that there are only two residences immediately affected by the structure; the primary house that wants the secondary dwelling, but wants it as far away as possible, and his house. He stated that he understands Council has a desire to encourage secondary dwellings to meet housing needs and he asked Council to carefully consider his request. He requested Council consider moving the house from a 5' setback to 15' setback and to incorporate a complete visual buffer to be mature in three years.

Mayor Klutz then administered the oath to Ms. Shelly Cross.

Ms. Shelly Cross, 360 Autumn Chapel Drive, stated that her family would like to purchase 702 Mitchell Avenue and would like for her mother to be able to be located behind her. She stated that her family is close and her mother helps with her children. She stated that they take pride in their home and would like Council's consideration for this permit that will allow them to purchase this home. She stated that she is drawn to the neighborhood because of the park and the families that are located in it.

There being no one else present to offer testimony, Mayor Klutz closed the public hearing.

Mr. Woodson stated that when the Ordinance was passed he considered his own neighborhood and what could be constructed. He stated that the Special Use Permit was put in the Ordinance so each case could be decided individually. He stated that he has looked at the property and he thinks the secondary dwelling will be very attractive. He commented that he thinks the 5' setback is too close and he could see the house being 15' away with a buffer and this would satisfy him. He stated that if he lived at the Thomas'

house he would not want the adjacent house right on top of his, but with a 15' setback and a nice buffer, he could support the permit.

Mr. Burgin stated that this situation is exactly why this piece of the Ordinance was created, to allow families to have mothers help raise children. He stated that it is interesting that this is the first opportunity Council has had to see how this works. He stated that he thinks this situation is what drove this to be included in the Ordinance. Mr. Burgin stated he is in favor of finding a way to make this work. He referred to Mr. Woodson's comments and stated that because the neighbor's screened porch is grandfathered, it is actually on the property line and is closer than it should be. He stated that this puts more pressure on the house than it would in a normal situation. He added he thinks that because the lot is so large, using the 5' setback almost separates the secondary dwelling as a separate house. He suggested Council add a condition that the setback be 10'. He explained that he is not using Mr. Woodson's suggested 15' because he believes part of the problem is that the Thomas' house is closer than it should be, but he also appreciates that it exists. He noted that if Council can add an additional 5' to the setback then some of the burden has been shifted back to the applicant and creates a fairly equal situation. Mr. Burgin stated that he thinks this will give Council a true picture of what the Ordinance can do, given the fact that there will most likely never be a situation where a screened porch is built right on the property line again. He pointed out that there is also an alley located between the houses which adds additional space. He stated that he would be comfortable if the side setback is increased to 10' and he would support the application.

Mr. Kennedy stated that Council passed the Land Development Ordinance a while back and the applicant has met the requirements of the Ordinance and he would support her request. He noted that he agrees that a 10' setback would make the dwelling better for the neighbor and he can support the addition.

Mayor Kluttz agreed that this is a good idea and she is glad the LDO Committee included it in the Ordinance. She stated that she is also happy that a Special Use Permit is required for this type of use because each case needs to be reviewed individually without one rule applying to all, especially in older neighborhoods. She stated that she understands the point about the closeness to the neighbor's property and she agrees with Councilman Burgin regarding the 10' setback. She suggested a buffer also be included.

Mr. Woodson stated that he would agree to a 10' setback with a buffer.

Mr. Burgin asked if the buffer would be the same as what is required for developments, which is a 6' visual separation. Mr. Phillips stated that 6' is what is stated in the Ordinance when a buffer is required. Mr. Burgin asked if it could be a planting buffer. Mr. Phillips responded that it could be a planting buffer, a privacy fence or a combination of the two.

(c) Findings of Fact

Mr. Woodson offered the following Findings of Fact for the secondary dwelling on Mitchell Avenue:

1. The use meets all required principles and specifications of the Ordinance and any adopted plans and is in harmony with the general purpose and intent and preserves its spirit
2. The proposed plan as submitted as approved will be visually and functionally compatible to the surrounding area and will include a 10' setback and 6' buffer
3. The public health, safety and welfare will be assured and the proposed development will not substantially injure the value of the adjoining property and associated uses if located where proposed
4. The additional eight standards as per section 3.3(k) for secondary dwelling have been complied with

(d) Thereupon, Mr. Burgin made a **motion** to approve the application as presented with two exceptions: that the 5' side setback be changed to 10'; and that the applicant have the option of a 6' fence or planting buffer. Mr. Kennedy seconded the motion. Mr. Phillips asked for a point of clarification regarding the 6' buffer. He asked if Council wished to be more exact as far as how much of the side property line should be screened. Mr. Burgin stated that the buffer should be along the wall of the house. Mr. Phillips clarified that Mr. Burgin intends the depth of the house. Mr. Burgin agreed. Messrs. Burgin, Kennedy, Woodson, and Ms. Kluttz voted AYE. (4-0)

SPECIAL USE PERMIT- HAVANA KNIGHTS CIGAR & WINE SHOP 217 SOUTH LEE STREET

SUP-02-09 Havana Knights Cigar and Wine Shop

(a) Swearing In

Mayor Kluttz swore in the following persons to testify in this case:

Mr. David Phillips
Mr. Dunkan Echevarria

(b) Receive Testimony

Mr. David Phillips, Zoning Administrator, stated that the property in question is located at 117 South Lee Street. He added that it is the center unit of the Urban Firehouse Lofts that have been constructed in the last two years at the corner of South Lee Street and East Fisher Street. He pointed out that the property is zoned DMX (Downtown Mixed-Use) with a local Historic Overlay. He noted that the same decision

making rules apply to this request as for permit SUP-01-09 (considered by Council previous to this item), the same as far as the production of the evidence, and the same three general standards for decision. He pointed out that the additional standard for this type of use in the Downtown Mixed-Use District is that no such facility shall be located within 500' of any lot containing a school. He added that to his knowledge there is no lot within 500' that has a school on it.

Mr. Phillips reviewed an aerial view of the site and pointed out the Urban Firehouse Lofts, South Lee Street, East Fisher Street and noted that the unit is the center unit and was once occupied by O'Malley's Restaurant and Wicked Sisters Deli. He displayed an enlarged aerial view and a photograph of the street view of the unit.

Mr. Phillips explained that the use of the property will be for a cigar bar, but the applicant has requested on-site consumption of alcoholic beverages be allowed, consisting mainly of wine and some mixed drinks. He pointed out that based on the City's definition of a bar, any use not associated with a restaurant falls under the classification of a bar and tavern. He added that in order to have on-site consumption of wine and mixed drinks, along with cigar smoking, the applicant had to talk to the neighbors. He noted that one concern brought up at the Planning Board, even though not associated with the Special Use Permit, regarded the discharge of smoke from the establishment. He pointed out that the applicant is planning to put in a smoke odor eater to dissipate the smoke. He added that the City should not have a concern with the smoke because it is not part of the Special Use Permit, but was brought up at the Planning Board.

Mr. Phillips indicated that other than that one concern, staff has found no problems with the application and the Planning Board has recommending approval by a unanimous vote.

Mayor Kluttz opened the floor to receive public comment.

Mr. Duncan Echevarria, applicant, stated that he moved from Miami, Florida to Salisbury about three months ago. He explained that he was originally an interior designer and is a member of the American Society of Interior Designers (ASID). He added that his specialty for the past eight years has been flipping houses. He indicated that the economy has not been good, so he changed gears. He noted that he has family who lives in the area and that he came to Salisbury in December 2008 and fell in love with the City. He stated that he immediately began preparations to move to Salisbury and bought a house in the Cameron Glen area.

Mr. Echevarria provided pictures of the smoke odor eater equipment that has already been installed, along with pictures of the work already completed on the interior of the store. He pointed out that the store is going to be a boutique cigar shop. He explained that the shop will have a stock of hand-rolled cigars that were grown in Honduras, Dominican Republic, as well as Nicaragua. He noted that he has visited some of the plantations in Nicaragua and Grenada and is trying to learn the business to bring a

pure product that is enjoyable, fun and is part of a status symbol. He noted that a saying of the trade is that if you cannot get a good Cuban cigar, get a good cigar done by great Cubans. He noted that Miami is the capital for the cigar industry with more boutique hand-rollers per capita than in the entire United States.

Mr. Echevarria pointed out that the Urban Firehouse Loft location is beautiful, and is just less than 1,000 square feet. He added that the equipment being installed is commercial grade rated to 4,000 square feet, which will insure that no smoke goes outside the boundaries of the enclosed space. He stated that he is also installing a humidification system also rated at 4,000 square feet, which will make the entire space a humidior. He explained that the front area of the store is a beautiful lounge environment with two seating areas and the back area of the store will be lockers for private members with Post Office box service, free membership magazines, and several other free items. He pointed out that the boutique will be aesthetically pleasing and will add more aesthetic value to the building. He thanked Council for the opportunity to talk to them.

There being no one else present to offer testimony, Mayor Kluttz closed the public hearing.

Mayor Pro Tem Woodson stated that Mr. Echevarria made an excellent presentation with very good pictures. He noted that he feels this will help downtown and provide a twist that it does not have. He added that he is in agreement to support this project.

Councilman Kennedy stated that he also supports the project.

Councilman Lewis stated that he started a cigar club in Salisbury ten years ago in the basement of La Cava Restaurant. He stated that his only concern for Mr. Echevarria is the State law regarding public smoking and what impact it may have on the boutique. Mr. Echevarria responded that the boutique will not be considered an eating establishment. Mr. Lewis indicated that he is excited for the new downtown business.

Councilman Burgin stated that it is interesting that Mr. Echevarria flips houses because he is in the potential flip area of the country, and when the economy changes there will be a lot of building stock that may interest him.

(c) Findings of Fact

Mayor Pro Tem Woodson stated that he would like to make a Findings of Fact for the bar and tavern at 217 South Lee Street. He noted that Council feels that:

- A. The use meets all required principles and specifications of the Ordinance and any adopted plans and is in harmony with the general purpose and intent and preserves its spirit
- B. The proposed plan as submitted and approved will be visually and functionally compatible to the surrounding area

- C. The public health, safety and welfare will be assured and the proposed development will not substantially injure the value of adjoining property and associated uses if located where proposed
- D. The proposed establishment is not located within 500 feet of any lot containing a school

(d) Thereupon, Mr. Lewis made a **motion** to issue a special use permit to allow on-site alcohol consumption at Havana Knights Cigar and Wine Shop located at 17 South Lee Street. Mr. Burgin seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (5-0)

Mayor Kluttz stated that she thinks this will be a wonderful enhancement to the Fisher Street entertainment district.

ZONING MAP AMENDMENT – LDOZ-2-02-09 102 MOCKSVILLE AVENUE

(a) Mr. Preston Mitchell, Senior Planner, stated that the City has received a request to rezone a parcel currently split-zoned between Residential Mixed-Use (RMX) and Neighborhood Mixed-Use (NMX) to entirely RMX. He reviewed aerial photographs of the property located on the corner of Caldwell Street, Franklin Street and Mocksville Avenue and noted that the property is split-zoned through the building and parking lot. He explained that an individual has asked to develop the property into medical offices and the City requested the property be rezoned to RMX so implementation of the Land Development Ordinance (LDO) will be easier.

Mr. Mitchell displayed ground photographs of the site and pointed out that the Planning Board voted unanimously to recommend approval.

(b) Mayor Kluttz convened a public hearing, after due notice thereof, to receive comments on zoning map amendment LDOZ-2-02-09.

There being no one present to speak, Mayor Kluttz closed the public hearing.

(c) Mayor Pro Tem Woodson stated that the City Council hereby finds and determines that adoption of an Ordinance to rezone the property described herein is consistent with the goals, objectives, and policies of the Vision 2020 Comprehensive Plan and that adoption of the Ordinance is reasonable and in the public interest. Thereupon, Mr. Woodson made a **motion** to adopt an Ordinance amending the Land Development District map of the City of Salisbury, North Carolina, by rezoning approximately 1.0 acre (1 parcel), identified as tax map & parcel 006-246 from Neighborhood Mixed-Use (NMX) and Residential Mixed-Use (RMX) Districts to entirely Residential Mixed-Use District. Mr. Kennedy seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (5-0)

AN ORDINANCE AMENDING THE LAND DEVELOPMENT DISTRICT MAP OF

THE CITY OF SALISBURY, NORTH CAROLINA, BY REZONING APPROXIMATELY 1.0 ACRE (ONE PARCEL), IDENTIFIED AS TAX MAP & PARCEL 006-246 FROM NEIGHBORHOOD MIXED-USE (NMX) AND RESIDENTIAL MIXED-USE (RMX) DISTRICTS TO ENTIRELY RESIDENTIAL MIXED-USE (RMX) DISTRICT.(PETITION NO. LDOZ-2-02-2009)

(The above Ordinance is recorded in full in Ordinance Book No. 22 at Page Nos. 07-108, and is known as Ordinance 2009-38.)

DRIVEWAY VARIANCE – 403 WEST 15TH STREET

Mr. Dan Mikkelson, Director of Engineering and Development Services, stated that the City received a request from the Salisbury Housing Authority for a driveway connection on Maxwell Street to serve a duplex unit at the corner of Maxwell Street and 15th Street. He reviewed an aerial photograph of the property and noted that there are five units. He explained that according to the City's Code, property with a two-family dwelling is restricted to two driveway connections.

Mr. Mikkelson pointed out that the Salisbury Housing Authority is in the process of upgrading the unit at 403 West 15th Street to be completely handicap accessible and noted that the proposed driveway will provide an entrance with acceptable grades for handicap accessibility. He explained that the City's traffic engineer has inspected the site and is in favor of the proposal and Section 22-68 of the City Code allows Council to grant variances from the standards.

Thereupon, Mr. Burgin made a **motion** to adopt a Resolution authorizing the City Engineer to grant a variance of the City Code Section 22-73(b) and 22-73(g), for driveway permit for 403 West 15th Street. Mr. Lewis seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (5-0)

RESOLUTION AUTHORIZING THE CITY ENGINEER TO GRANT A VARIANCE OF THE CITY CODE, SECTIONS 22-73(b) AND 22-73 (g), FOR A DRIVEWAY PERMIT FOR 403 WEST 15TH STREET.

(The above Resolution is recorded in full in Resolution Book No. 13 at Page No. 32, and is known as Resolution 2009-17.)

CONGESTION MITIGATION AND AIR QUALITY (CMAQ) FUNDING

Mr. Rodney Harrison, Transit Manager, stated that the City's "Help Clean the Air with Free Bus Fare" received funding from the Congestion Mitigation and Air Quality (CMAQ) for its implementation. He explained that recently the North Carolina Department of Transportation (NCDOT) offered a limited opportunity to apply for 100% funding for "fast track" CMAQ projects. He noted that the third and final year of free

bus service on Ozone Action days qualified for the “fast track” program and this opportunity allows the City to avoid the standard 20% local match. Mr. Harrison noted that the “Help Clean the Air with Free Bus Fare” received approval for “fast track” funding at 100%.

Councilman Lewis stated that this is very timely due to the danger of not receiving Federal funding for transportation because the City is in a non-attainment area.

Thereupon, Mr. Lewis made a **motion** to adopt a Supplemental Agreement with the North Carolina Department of Transportation (NCDOT) for Congested Mitigation and Air Quality (CMAQ) fast track funding, Project C-4906. Mr. Woodson seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (5-0)

PUBLIC COMMENT

Mayor Kluttz opened the floor to receive public comments.

There being no one to speak, Mayor Kluttz closed the public comment session.

COMMENTS FROM THE CITY MANAGER

(a) Adopt final FY2009-2010 Budget Ordinance

City Manager David Treme stated that at Council’s June 4, 2009 Budget Workshop, it adopted the FY2009-2010 budget ordinance with several changes to be made, including the distribution of funds from one line item into several line items. He explained that a technical review of the Budget Ordinance determined that some funds needed to be distributed into the separate line items and he recommended Council adopt the final FY 2009-2010 Budget Ordinance in order to meet the technical standards of the State Statutes of North Carolina.

Thereupon, Mr. Kennedy made a **motion** to adopt the final Budget Ordinance of the City of Salisbury for the fiscal year beginning July 1, 2009 and ending June 30, 2010. Mr. Lewis seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (5-0)

BUDGET ORDINANCE OF THE CITY OF SALISBURY FOR THE FISCAL YEAR BEGINNING JULY 1, 2009, AND ENDING JUNE 30 2010.

(The above Ordinance is recorded in full in Ordinance Book No. 22 at Page Nos. 109-127, and is known as Ordinance 2009-39.)

(b) Report on American Recovery and Reinvestment Act Transit funds

City Manager David Treme asked Mr. Rodney Harrison, Transit Manager, and Mr. Doug Paris, Assistant to the City Manager, to report on the American Recovery and Reinvestment Act Transit (ARRA) funds. He congratulated Mr. Harrison and Mr. Paris for submitting a successful application for ARRA transit funds in the amount of \$756,000.

Mr. Paris stated that the ARRA award relates directly to the Transportation Investment Generating Economic Recovery (TIGER). He noted that the ARRA funds received are a 100% federal share that do not require a local match and explained that the funds apply specifically to capital expenses. He noted that the total award is \$756,000 and Mr. Paris reviewed the Statewide Focus:

- Two groups of funds
 - Urban Transit Systems
 - Non-Urban Transit Systems
- 80 systems eligible
- 59 systems applied
- \$23 million available for Non-Urban Transit Systems
- \$392,000 average award per system
- Salisbury ranked third in receiving funds

Mr. Harrison reviewed the awarded funding and what it includes:

Associated Capital - \$203,850

- Shelters, Trash Cans, Benches
- Spare Parts for buses for two years
- Mobil Jack Stand
- Life Head Adaptors
- Water and Oil Separator

Facility Improvements - \$151,000

- HVAC
- Roof Audit and Repair
- Waste Oil Handling Infrastructure
- Vehicle Exhaust System
- Interior Repair and Improvements
- Light Upgrades
- Garage Door Improvements

Preventive Maintenance - \$400,000

- To be used for over two years
- As defined by 49 U.S.C. 5302(a)(1)
- Advanced Technology (\$1,800)
 - Engine and Transmission Software

Mr. Harrison stated that the City had vehicles identified in the proposal that were not funded. He explained that the State did allow the City the opportunity to move these vehicles to the Cooperating Technical Partner (CTP) grant which means they will be funded 90% by the State and 10% by the City. He reviewed what is included in the CTP fund shift of \$550,000:

- 90% funded by State - \$495,000
 - Transit Bus
 - On-site Fuel System (Fleet Strategic Plan)

Mr. Paris explained that the fuel system will allow for continuity of services. He noted that the \$756,000 awarded to the City through the ARRP grant and the \$495,000 received through the CTP grant totals over \$1.2 million in funds to the City.

Mayor Kluttz thanked Mr. Paris, who has been identified as the City staff member appointed to pursue grant funds, and Mr. Harrison, who has done a wonderful job to find transit funding. She also thanked City Manager David Treme and Management Services Director John Sofley for their work in obtaining these grants. She noted that stimulus money is available, but often difficult to obtain.

Councilman Lewis stated that these grants are equivalent to a five to six cents tax rate and will allow funding for many capital items that the City would otherwise have to fund.

Councilman Kennedy thanked Mr. Paris and Mr. Harrison. He pointed out that he attended the initial meeting of the Transit Advisory Board (TAB) and that the Board consists of a good group of people who plan to make future recommendations to help the transit system.

(c) Railwalk Streetscape Improvement Project

City Manager David Treme requested a Budget Ordinance amending the FY2008-2009 Budget in the amount of \$27,000 for the Railwalk Streetscape Improvement Project. He reported that bids came in close to the amount appropriated and stated that he feels the project will be able to go forward. He pointed out that the City needs to match the developer's funds with the City's appropriation through the budget amendment.

Therefore, Mr. Lewis made a **motion** to adopt an Ordinance amending the FY2008-2009 Budget Ordinance of the City of Salisbury, North Carolina to appropriate funds for the Railwalk Streetscape Improvements. Mr. Burgin seconded. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted ATE (5-0)

AN ORDINANCE AMENDING THE 2008-2009 BUDGET ORDINANCE OF THE CITY OF SALISBURY, NORTH CAROLINA TO APPROPRIATE FUNDS FOR RAILWALK STREETSCAPE IMPROVEMENTS.

(The above Ordinance is recorded in full in Ordinance Book No. 22 at Page Nos. 128, and is known as Ordinance 2009-40.)

MAYOR'S ANNOUNCEMENTS

(a) Sculpture Show

Mayor Kluttz announced that University of North Carolina (UNC) TV will air a segment on the Salisbury Sculpture Show "Discover What's Outside" on the NC Weekend Show June 18, 2009 at 9:00 p.m. and June 19, 2009 at 8:00 p.m.

(b) Sculpture Show Awards

Mayor Kluttz announced that the "Best in Show" Sculpture Show awards will be presented Saturday, June 20, 2009 at 12:00 p.m. on Easy Street as part of the Salisbury Day of the Arts celebration.

(c) Day of the Arts Activities

Mayor Kluttz announced that the Day of the Arts celebration will include Art on Easy Street with over 100 booths with artists from all over the Southeast. The celebration will be held Saturday, June 20, 2009 from 10:00 a.m. until 5:00 p.m. and will be located on Easy Street, in the F&M Bank parking lot on North Main Street, the 100 block of East Liberty Street, and the 200-400 blocks of North Lee Street. She noted that the celebration will also include a St. Thomas Players performance of "You Never Can Tell" by George Barnard Shaw at Catawba College in the Florence Busby Corriher Outdoor Theater. She pointed out that the performance will run June 18 – 20, 2009 and June 24 – 27, 2009 at 7:30 p.m. and June 21, 2009 at 2:00 p.m. Mayor Kluttz also noted that the Rowan Blues and Jazz will be performing at the Lee Street Blackbox Theater Saturday, June 20, 2009, at 7:30 p.m.

CLOSED SESSION

Mayor Kluttz asked for a motion to go into closed session regarding acquisition of property located on Tax Map 101 Parcel 206 as allowed by North Carolina General Statute 143-318.11(5).

Thereupon, Mr. Woodson made a **motion** to go into closed session. Mr. Burgin seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted ATE (5-0)

RETURN TO OPEN SESSION

Thereupon, Mr. Burgin made a **motion** to return to open session. Mr. Kennedy seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (5-0)

Mayor Kluttz announced that no action was taken in closed session.

FIBER TO THE HOME

Mayor Kluttz recognized Mr. Mike Crowell, Broadband Services Manager to update Council on the Fiber to the Home project.

Mr. Crowell stated that Atlantic Engineering Group (AEG) has completed the preliminary design on the FTTH project and has divided the City into 68 areas as defined by the Local Convergence Point (LCP) cabinets. He reviewed the FTTH key points to date:

- Location of 68 cabinets approved by the City
 - Three cabinets located in Salisbury Historic Districts
 - Historic Preservation Commission approval received
- Detail design for 32 areas completed, 7 areas pending City approval
- Each area submitted to Duke Power for approval
 - 39 books submitted
 - 24 books returned
- 22 areas are aerial only, 46 areas have some or are all underground
- Make ready approved by Duke Power for 16 areas
 - AEG has subcontracted with Utililines for the work
 - Work started this week
 - Completed in three areas
- Aerial construction of the fiber will begin July 6, 2009
 - AEG will supply two crews to begin
 - AEG will bring in two to four splicers to begin work at the same time
- Utililines has two light duty crews
 - Expected to complete 20 poles per day
 - Expected to finish the make ready for the first areas within two weeks
- Utililines will bring two heavy crews beginning June 29, 2009
 - Will begin installation of new poles where required
- Underground installation of conduit has been completed in 12 areas

Mr. Crowell explained that there has been one design change. He stated that the original design was based on using 1 by 32 splitters, which meant that one fiber leaving the headend would feed up to 32 homes or businesses. He noted that staff decided to use 16-way splitters which will provide a 70Mg symmetric connection to every premise

instead of 35Mg. He added that the City will still be able to provide a symmetric 100Mg to those who need it.

City Manager David Treme stated that the City has shared information with citizens regarding FTTH through television, radio, and by speaking at several civic clubs. He added that staff will also start a “Straight Talk about Fiber” information piece in the Salisbury Post to make people aware of the difference in fiber and coaxial cable. He noted that he recently read comments provided to the Federal Communications Commission (FCC) regarding broadband and they all indicate that broadband technology is the next infrastructure and is the new wave of creating new jobs. He reviewed areas of the community that FTTH will benefit including hospitals through telemedicine, schools and education, and public safety.

Councilman Burgin stated that Fiber To The Home is one of the major motivators for North Hills Christian School to request annexation into the City.

Mr. Crowell stated that staff has started a blog on Salisbury FTTH at www.salisburyftthblog.com.

Mayor Kluttz stated that she feels it is important to reach those citizens who are not familiar with FTTH and she would like to see the articles in the Salisbury Post feature questions and answers from the community.

COUNCILMAN BURGIN BIRTHDAY

Mayor Kluttz and Council wished Councilman Bill Burgin a happy birthday.

ADJOURNMENT

Motion to adjourn the meeting was made by Mr. Burgin, seconded by Mr. Kennedy. All council members in attendance agreed unanimously to adjourn. The meeting was adjourned at 6:37 p.m.

Susan Kluttz, Mayor

Myra Heard, City Clerk