

Salisbury, North Carolina
January 3, 2006

REGULAR MEETING

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

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 led those present in the Pledge of Allegiance to the United States flag.

RECOGNITION OF VISITORS

Mayor Kluttz recognized all visitors present.

ADDITIONS/DELETIONS TO THE AGENDA

Mayor Kluttz noted the following changes to the Agenda:

Add – Proclamation regarding Dr. Martin Luther King, Jr. Day

Add – Closed Session to discuss an economic development matter as allowed by NCGS 143-318.11(4).

Omit – Item 10 - Council to consider zoning map amendment Z-16-05 Ruth Medina, 2625 Statesville Boulevard

RECOGNIZE BEN MYNATT PONTIAC GMC NISSAN INC. FOR THEIR SUPPORT OF THE SALISBURY FIRE DEPARTMENT

Fire Chief Bob Parnell recognized Ms. Cyndie Mynatt and Mr. Todd Rakes of Ben Mynatt Pontiac GMC Nissan Inc. and noted that on August 8, 2005 the dealership suffered a significant fire. He stated that as a result of the fire Ben Mynatt Pontiac GMC Nissan Inc. wanted to do something for the Fire Department and held a fire sale where they donated a portion of each sale to a final donation to the Salisbury Fire Department.

Ms. Mynatt commented that she felt the Salisbury Fire Department was phenomenal and commended their heroic and professional work. Mr. Rakes stated that the Fire Department's professionalism has inspired Ben Mynatt employees, adding that the reaction of the Fire Department and of those businesses around them far exceeded their expectations and made him proud to be part of Rowan County. Ms. Mynatt and Mr. Rakes then presented Mayor Kluttz with a check for \$5,000 for the Salisbury Fire Department.

Mayor Kluttz thanked Ms. Mynatt and Mr. Rakes for the generous support and commended the Fire Department for their excellent work.

PROCLAMATION

Mayor Kluttz proclaimed the following observance:

DR. MARTIN LUTHER KING, JR. DAY

January 16, 2006

CONSENT AGENDA

(a) Minutes

Approve Minutes of the regular meeting of December 20, 2005.

(b) Andrew Jackson Masonic Lodge - Brunswick Stew Sale

Approve a request from the Andrew Jackson Masonic Lodge to reverse the flow of traffic and restrict parking on Water Street Thursday, February 23, 2006 for their annual Brunswick Stew sale.

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

HIGHLIGHTS AND GOALS - ZONING BOARD OF ADJUSTMENT

Mr. Graham Carlton, Chairman of the Zoning Board of Adjustment (ZBA), presented Council with the Zoning Board of Adjustment Highlights and Goals for FY2005.

Highlights for FY 2005:

- Held five (5) meetings
- Five (5) Conditional Use requests granted
- One (1) Conditional Use request denied
- Two (2) Variance requests granted
- One (1) Administrative review over-turned

Conditional Uses – Granted:

- Mahaley Avenue and Statesville Boulevard – Two (2) locations for off-premise directional signs for local church
- Isenberg Elementary School – installation of a ground sign for a non-residential use in residential district
- 318 East Council Street – request for a cabinet and woodworking shop in the B-5 district
- Stokes Ferry Road at Jake Alexander Boulevard South – off-premise directional sign for local church

Conditional Uses – Denied

- Oakview Commons – placement of master development sign to be located at the entrance of the subdivision

Variations Granted:

- 3275 West Innes Street – request for reduction of rear yard setback
- 230 Faith Road – requested six-tenths (.6) foot encroachment into front yard setback

Administrative Review Over-turned:

- 130 West Kerr Street – review of the Historic Preservation Commission's ruling for the approval of a building and site design for a proposed office building

Mr. Carlton noted that four (4) ZBA members and the Zoning Administrator attended the Central Council of Governments (CCOG) Fall Planning training workshop in Mooresville. He added that the ZBA's goal for the upcoming year is to continue training for all Board members.

Mayor Kluttz thanked Mr. Carlton for his presentation and the work done by the ZBA throughout the year.

ZONING CASE PROCEDURES

Mayor Kluttz stated that City Council recently received information regarding new General Statute updates for quasi-judicial cases submitted after January 1, 2006 and noted that the cases before Council today were submitted prior to January 1, 2006. She indicated that City Council will follow the old procedural guidelines that were in effect at the time of their submission.

ZONING MAP AMENDMENT - Z-15S-05 - KAY NORMAN

Z-15S-05 - Kay Norman, 316 Mooresville Road

Mayor Kluttz asked City Clerk Myra Heard to confirm the validity of a protest petition that was received regarding this matter. Ms. Heard stated that she has received a valid protest petition for this item and it will require a three-fourths (3/4) vote, or four (4) out of five (5) votes from Council in order for the item to be approved.

(a) Swearing In

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

Preston Mitchell
Kay Norman
Dr. Bryant Norman
Bruce Rogers
Dawn Isenberg
Mark Weddington
Maggie Blackwell
Barbara Wagoner
A.R. Corriher
Mildred Stutts
Elizabeth Rogers

(b) Evidence Presented

Mr. Preston Mitchell, Senior Planner, informed Council that this case is Z-15-S, a special zoning district case and is a request to rezone property from R-8 to R-6A-S. He reviewed photographs of the property and noted that there is one single structure located on it. He then reviewed a zoning map depicting the zoning for the area surrounding the property and noted that the majority of the property on the residential side of Mooresville Road is R-8 single-family residential zoning, the property across the street is R-6 single-family and duplex, and closer to South Main Street the property is zoned M-1 and B-RT. He noted that the property in question is located on the Corner of Third Street and Mooresville Road. Mr. Mitchell explained S-district zoning stating that it is similar to a general district rezoning, but it can be limited to only allow specific uses in the new zone. He added that City Council can also add conditions of development for special district zonings. Mr. Mitchell indicated that the petitioner in this case is requesting an S-district rezoning to allow for a child daycare facility but not allow for any of the other uses that would normally be allowed in the R-6A multi-family zone.

Mr. Mitchell reviewed zoning districts noting that the R-8 district is a detached single-family residential district that also allows accessory structures. He stated that the R-6A district is single-family, duplex, multi-family and a variety of community type uses. He pointed out that the special zoning can limit any of the allowable uses such as the single-family, the duplex, or the multi-family and can also add conditions along with the permit that is attached to the zoning.

Mr. Mitchell noted how the community's long-range Plan (Vision 2020) addresses this. He stated that the property is located in the City's 'Older Neighborhoods' and stated that these are areas served by public transit facilities, relatively higher densities, convenient to neighborhood services, civic and cultural facilities as well as downtown, and are typically pedestrian oriented. Mr. Mitchell stated that there is a policy within the 'Older Neighborhoods' section of the long-range Plan that, "encourages appropriately located, and pedestrian oriented, designed and scaled stores and services providing basic necessities to residents of the City's older neighborhoods." He stated that the Plan goes into further detail as to exactly what it means by "appropriately located" and "pedestrian oriented". He explained that it describes "appropriately located" by stating that these types of services generally need to be located along the planning or neighborhood edges or the planning or neighborhood corners. He described this as the area along Jake Alexander Boulevard and Mooresville Road and stated it could be argued to be a neighborhood edge since Mooresville Road is a major thoroughfare. Mr. Mitchell indicated that there are other policies in the commercial section of the Plan that deal with neighborhood businesses and specifically Policy C-25 states, "Neighborhood serving businesses shall be encouraged to locate away from major thoroughfares." He commented that this policy sounds as if it were in opposition to what he had previously stated but what it is stressing is that neighborhood serving businesses need to be pedestrian oriented and need to serve the area in which they are located, without much cross-town traffic. He stated that it can be argued that a daycare facility is going to be served by automobile traffic for pick-up and drop-off and so the question is if Mooresville Road is the best situation for this type of business. Mr. Mitchell stated that Policy C-26 states, "Neighborhood serving businesses shall be designed at a residential scale and character." He commented that staff believes this particular goal of the long-range Plan is being taken care of by the conditions that the Planning Board recommended for placement on the district. He stated that the Planning Board and staff believe that these conditions will limit any development at the site to the neighborhood scale.

Mr. Mitchell informed Council that this item was first brought to the Planning board on November 8, 2005. He stated that there were a number of people from the public who spoke on the item along with significant Board level discussion and the Planning Board felt it would be best to send it to a legislative committee. The committee met on November 15, 2005 to discuss property details, address neighbors concerns, and look at the potential impact. Mr. Mitchell stated that on December 13, 2005 the Planning Board met and the Committee came forward with a conditional approval. The Planning Board voted seven (7) to four (4) to recommend conditional approval to City Council and staff also supports this recommendation. Mr. Mitchell reviewed the conditions recommended by the Planning Board:

- Site plan review and approval shall be obtained by City staff and the North Carolina Department of Transportation (NCDOT)
- As part of the site review, the driveway shall be reconfigured so as to reduce vehicle conflict at the Mooresville Road and Third Street intersection
- A fifteen (15) foot planting yard shall be installed along the east and north property lines and shall provide complete visual separation
- The structure shall not be rebuilt or expanded to exceed one thousand five hundred (1,500) square feet
- Any new construction or expansion of the existing structure shall conform to the residential character, design, and scale of the surrounding residential structures

Mr. Mitchell noted that several facts came out of the Committee level discussion which were that the subject site is currently one thousand three hundred fifty-four (1,354) square feet so the Committee decided to allow for one thousand five hundred (1,500) square feet in case the State, since they have to obtain State licensing, allows or requires any upgrades or up-fits. He stated that the Committee did want to limit the structure to one thousand five hundred (1,500) square feet and no larger for expansion or even for a complete rebuild. He informed Council that the average square footage of all of the surrounding properties, noting that these were the properties that abutted the subject site on all sides including the residential properties located across Third Street, is one thousand three hundred seventy-five (1,375) square feet. He stated he wanted Council to have these facts from the Committee meeting to understand why the conditions are being recommended.

Mayor Klutz then opened the floor to the public and asked for proponents of the issue.

Ms. Kay Wright Norman, 155 Dove Lane, stated that she made a request several months ago related to this property because, as many people know, she has been serving children in this community for more than fifteen (15) years, and she thought this was the perfect location. She stated that she has been looking for two and a half (2 ½) years and had not found anything in the City of Salisbury that was on anything more than a basic, standard size fifty (50) by one hundred (100) foot lot. She stated that she wanted to locate in the City of Salisbury, noting that she has previously been in the Town of East Spencer and expects to remain there but also wanted this facility in the City of Salisbury. She stated that it is important to her because in that community there is no service for children. Ms. Norman commented that she heard concerns about issues related to drug use and other negative things but she felt that any time you support children and support services to children, these are the things you are combating. She stated that she wants Council to know that one thousand three hundred fifty-eight (1,358) square feet is not feasible for her to do a quality child care center and added that she could not do what she thinks is needed to be done in that square footage. She stated that she is limited, yet there is more square footage of outdoor space than you would find traditionally. Ms. Norman informed Council that, minimally, in a high quality child care center, you require one hundred (100) square feet per child of outdoor square footage. She added that seventy-five (75) feet is acceptable but you add twenty-five (25) feet for quality. She stated that the interior is twenty-five (25) to fifty (50) square feet, but you add at least twenty-five (25) more than that, so she feels she is very limited. Ms. Norman commented that it seems that numbers four (4) and five (4) (of the Conditions) almost seem to contradict each other. She noted that one states that a structure shall not be rebuilt or expanded to exceed one thousand five hundred (1,500) square feet but any new construction or expansion of the existing structure shall conform to the residential character. She commented that if the residential character is less than that, adding that the residential character is within the fifty (50) by one hundred (100) foot conformity.

Ms. Norman's time then expired but Dr. Bryant Norman conceded his time to Ms. Norman.

Ms. Norman stated that in a facility you need enough interior space for separate areas for preschool and school age children, bathrooms, sick room, kitchen, and storage inside and out. She stated that both indoor and outdoor areas must meet standards governing North Carolina Statutes governing child care and the environmental rating scale, which is far in excess of what anyone would ever expect. She stated that the environmental rating scale is almost impossible to meet, but using this site it is the only site she has found in the City of Salisbury that would accommodate that environmental scale. She stated that the size she feels she needs to expand it to would be between two thousand six hundred (2,600) and two thousand eight hundred (2,800) square feet. She commented that the property itself will surely accommodate this. Ms. Norman indicated that she recognizes that other homes that are directly in this area are not of this size but if she were the homeowner and lived there she could have expanded it to this size. She stated that she is asking for a special use and added that she feels this is an opportunity to serve children. Ms. Norman stated that she cannot imagine anyone not wanting to hear the voices of children or thinking that children's voices are noise, so she does not feel the noise level is a high level. She stated that she wants to be in a community that values children and she thought that this was one of the things she had found, a community that really valued children, and this is what she is bringing to the community. She added that she sees this as nothing but an asset to the community, but added that she will not use the property and be restricted.

There being no one else to speak in favor of the rezoning, Mayor Klutz asked for those who wished to speak in opposition to please come forward.

Mr. Bruce Rogers, 1616 South Third Street, stated that he believes they have a great neighborhood and many have known each other for many years, have trust in each other and know that they can rely on each other. He stated that he believes in his heart that if this rezoning goes through the neighborhood will slowly go downhill, property values will fall, people will move out and commercialization will slowly work in. He added that then crime will come and stated that if this is what Council wants they should vote for rezoning. Mr. Rogers added that it is beyond his comprehension that Council could feel this way. He noted that he walked through Fulton Heights to Wiley School and Boyden High when he was growing up and this area is a good place to live. He commented that there has been a revitalization of the neighborhoods and people are moving in, fixing up the nice older homes and you now see people walking their dogs and strolling their babies. He stated that he feels why start something now that will have a domino effect on the whole area and gradually tear down the wonderful neighborhoods. He suggested Council draw a line on Highway 150 and not let any type of commercialization start, adding that there are plenty of other places to put a daycare. He asked Council to please put faith back into the hearts of the people that they can trust their elected officials to do the right thing.

Ms. Dawn Isenberg, 721 Mitchell Avenue, stated that she believes granting this rezoning will only benefit the petitioner and would prove detrimental to this neighborhood. She commented that she feels this neighborhood deserves protection and preservation from encroachment. She stated that allowing this rezoning will only open the door for further in-roads by developers into a long established neighborhood. She stated that Salisbury needs residential neighborhoods for homeowners of modest incomes and not their infringement or destruction by developers. She noted that the property in question is bounded on three (3) sides by single family homes and to allow the property to be rezoned would be a case of spot zoning.

Mr. Mark Weddington, 1617 Fourth Street, stated that he is in opposition to the proposed rezoning. He stated that he is neither opposed to children or business but he is adamantly opposed to having a business of any kind move into the neighborhood. Mr. Weddington noted that in 2000 he purchased his childhood home in hopes of raising his children in the same neighborhood where he grew up. He stated that in his opinion the proposed rezoning will change the dynamics of the neighborhood significantly and create an irreversible domino effect on the neighborhood. He stated that it will make neighboring properties less desirable places to live thereby negatively impacting property values. Mr. Weddington indicated that he feels that this will set a precedent for future rezoning and he feels property owners will pursue rezoning of their own property to compensate for lost value and the process will repeat itself until the neighborhood is gone. He asked Council to approach the decision as if the property would be next door to them and if they would want it, recognizing the impact it would have on their lifestyle and their investment, both emotional and financial.

Ms. Maggie Blackwell, 422 Mitchell Avenue, stated that she recognizes and appreciates the many contributions that Dr. and Mrs. Norman have made to the community. She stated that Fulton Heights has a long history of speaking out when its boundaries are threatened by any commercial development. She added that it is their fervent hope that they always speak up appropriately. She informed Council that this tradition began twenty (20) years ago this year, in 1986 when a small group of concerned homeowners worked to achieve an R-8 blanket of zoning running from Mooresville Highway to Lincolnton Road and from Jake Alexander Boulevard to Fulton Street. She explained that prior to this time the area was a combination of

many zoning types and many of the fine old homes were split into duplexes and apartments and commercialism threatened the fine old neighborhoods in this area. Ms. Blackwell stated that this group of homeowners allied and formed a group called the Fulton Heights Neighborhood Association and it is due to their foresight and hard work that her family and many likeminded found this neighborhood to be attractive and family oriented and purchased homes there. She stated that the Association has consistently spoken out against any businesses that have attempted to establish in this geographic area in the past twenty (20) years. She noted that as the current president of Fulton Heights Neighborhood Association, and out of loyalty to her predecessors and to those who will follow her, she respectfully requests that Council deny this request for special rezoning.

Ms. Barbara Uzzell Wagoner, 1625 Fourth Street, informed Council that in 1966 she moved to Fourth Street as a widow returning to Salisbury with three (3) small children. She stated that she wanted a safe surrounding of a residential area, a decent place where neighbors were friends and more like family. She commented that her grown children now tell their children of the great time they had growing up on Fourth Street and this is the kind of neighborhood they have always had. She stated that there are a number of younger people that now live in their parents or grandparents homes and are raising their own children there. She stated that neighbors still seem more like family. She indicated that she has a real concern with putting a daycare center on Mooresville Road, adding that not only do the families that live in the area want to preserve the neighborhood, but wondered if it is a safe and suitable place for children. She noted that she contacted the North Carolina Department of Transportation and obtained the report of vehicles traveling between South Main Street and Jake Alexander Boulevard within a twenty-four (24) hour period and was told there are four thousand eight hundred (4,800) vehicles that travel within this period. Ms. Wagoner stated that she feels this is a lot of traffic, especially on a two (2) lane road. She noted that she feels there is bound to be more congestion added as parent's drop-off and pick-up their children and accidents are likely to happen, adding that as a grandmother she is concerned for the children. She commented that a number of the residents are older citizens and cannot attend today's meeting but many expressed concern about the domino effect the daycare could cause. She stated that they would like to live their lives peacefully in houses they have been in for years and they would like to see their area, what they consider to be an extension of Fulton Heights, remain residential.

Mr. A.R. Corriher, Heilig Avenue, stated that his family has lived in this neighborhood continuously since 1951 and he has been involved in the neighborhood one way or another since that time. He stated that he has been in and out of the neighborhood as an adult and grew up there as a child. He noted that he has been concerned about the composure of the neighborhood for the past twenty (20) years. Mr. Corriher asked Council if they drive on Mooresville Road frequently and noted that if they take the corridor between Second Street and Jake Alexander Boulevard they will know the level of traffic on the road. He stated that this is a main thoroughfare for Salisbury and he has traveled it every day for over fifty (50) years and sees the traffic level at a height he never imagined. He commented that, with respect to this request for rezoning, this is a request for a business to go on Highway 150. Mr. Corriher stated that the traffic levels have changed the neighborhood, which is one of the oldest neighborhoods on the south side of Town. He noted that if we start putting businesses in here that are out of character with the neighborhood, which dates back to the 1920s, a precedent will be set to change the neighborhood. He stated that this is an alternate use for a residential property that has been a residential property since the house was built, probably sometime in the 1940s. Mr. Corriher stated that he hopes Council will give consideration to the location of this piece of property and the fact that this will devalue quite a few properties around it. He pointed out that on Mooresville Highway between Second Street and beyond Fourth Street, on the south side, there is a creek and it is very doubtful that this area could ever be developed as commercial property unless the City of Salisbury performed a lot of ditching and piping. He commented that the area north, known as Fulton Heights, is a residential community that is revitalizing itself because young couples are spending hundreds of thousands of dollars on houses in this area. He added that he felt that this business going in as a daycare center is inconsistent with what we want the south side of Salisbury to be. He noted that he also has concerns with children going in and out of the property, and cars having ingress and egress from the property, adding that the traffic on Mooresville Highway is high speed. He stated that there is opposition to the rezoning, not only from within the neighborhood, but all the way through Maupin Avenue, Mitchell Avenue, and Wiley Avenue. Mr. Corriher stated that he spoke with two (2) people from Planning and Zoning before the meeting and asked if there is a plan for this stretch of land between Second Street and Jake Alexander Boulevard. He noted that they indicated there is the Vision 2020 Plan, but he would like to see a five (5) year Plan for this area, and what the City Council, through its Zoning Board see this area becoming in five (5) years. He questioned whether in three (3) years from now if someone wants to put another building on Mooresville Road the Planning Board will recommend another spot zoning. He asked Council to table this issue until there is a plan for Mooresville Highway, adding that this whole area is teeter-tottering and could go either way and he feels Council knows this. He reiterated that he would like Council to table this for more study.

Ms. Mildred Stutts, 1702 Fourth Street, stated that her son currently lives in the house she owns. She indicated that she has been in the neighborhood since the early 1950s and has seen her former neighbors on many occasions over the last few months since this started. She stated that these people have been living in these homes for many years and have spent a lot of money to upgrade the homes, planning to retire. She noted that she currently does not live in her home but her son does and it is a wonderful neighborhood. She added that if she should retire to this house she would want it to be a "Mayberry" type of neighborhood that it currently is. She added that she is sure there are other places that could be a daycare center site with much more room, noting that she does not know the legal details of how much room is needed per child, but she knows the one thousand three hundred (1,300) square feet would not allow for many children. She also referred to the congestion that she felt this would cause in the neighborhood and she feels it would be a major issue for the retired members of the neighborhood.

Ms. Elizabeth Rogers, 1616 Third Street, noted that she lives right at the property to be rezoned. She stated that she has been friends with Ms. L.V. Wright for many years and when Ms. Wright first told her that she wanted to sell her home to Kay Norman for a future daycare center she was happy for her because she cares about her. She noted that Ms. Wright indicated she wanted to move back to her hometown of Hiddenite, not far from Statesville where her sister lives. She noted that at the time she did not give much thought to the consequences because all she thought about was how Ms. Wright felt, as they had been friends many years. She commented that whenever Ms. Wright would go out of town she called her to keep an eye on her property. Ms. Rogers stated that after speaking with her daughter about the proposal her daughter told her several reasons why it would not be a good idea to put a daycare on the property. She noted that she turned her homeownership over to her daughter and her daughter's husband in 1979 and she can live there the rest of her life, which she plans to do. She stated that her daughter had written her a letter to read before the Planning Board, which she did, and she has copies if anyone wants to read it. She stated that Ms. L.V. Wright can sell her property without selling it to someone who wants to put in a daycare. She asked Council to think hard and thorough before making a decision because there are neighbors and friends who have been there a long time. Ms. Rogers indicated that she has lived here for fifty-seven (57) years and would like to keep it the quiet neighborhood it is. She stated that Ms. Heard has a copy of their petition which was three (3) pages long and all pages were filled with signatures against the zoning.

Mr. H.A. Andrews was then sworn in by Mayor Kluttz.

Mr. H.A. Andrews, 230 Maupin Avenue, stated that if he heard correctly the person who wants to purchase the property feels the one thousand five hundred (1,500) square feet would not be enough and they would want to increase it to approximately one thousand eight hundred (1,800) square feet. He stated that he does not know the size of the property and he has not looked at the plat, but the daycare center might not always be there because businesses come and go. He commented that it is all built on profit and the bottom line is if it is making money. He stated that if the daycare does not make money the property would now be zoned business in a residential area. He referred to the zoning map and noted that it is all residential, adding that he lives at the corner of Maupin Avenue and Blair Street and has been there for twenty-five (25) years. Mr. Andrews stated that he has no problem with the lady wanting to have a daycare center, but there are a lot of people that keep children in their homes in a residential area, probably even in Fulton Heights. He stated that if the Salisbury Police wants to write speeding tickets they can park on the corner of Third Street and Mooresville Road and they could write them all day long. He added that it is a very heavily and fast traveled area. Mr. Andrews stated that Maupin Avenue used to be the thoroughfare from Jake Alexander Boulevard to Fulton Street, but four (4) way stop signs were set up throughout the neighborhood to slow the traffic down. He stated that he has five (5) daughters and seven (7) grandchildren, and he loves children but this is not the place to put them on this highway.

There being no one else to speak to Council concerning this issue, Mayor Kluttz asked Council if they had any questions of anyone from the public. There being none, Mayor Kluttz closed the public hearing.

Mayor Pro Tem Woodson stated that when he read this over the weekend he thought about how Council tries to protect neighborhoods as much as possible and today he rode by and looked at the property. He indicated he thought it was on a major road and was fenced in and might not be too intrusive to the neighborhood, but he added that he would have to give the neighbors great due because they had done a great job this afternoon. He commented that they are passionate about their neighborhood and where they live and want to protect it. He added that he would have to say that right now, according to the last gentleman who said at least Council could study it, he could not vote for it today and the best he could do is to study it further. He stated that he thinks the neighbors did an excellent job of making a report and Council is here to listen to what people have to say.

Councilman Kennedy stated that he has traveled Mooresville Road many times and it is truly a highway. He commented that probably with that much traffic the young lady cannot sell her home to anyone else to move to such a heavily traveled area. He stated that he is about being consistent in what he does on the Council and noted that several months ago Council passed a permit for Tonya's Daycare on Liberty Street in the Park Avenue area. He commented that the City has invested millions of dollars in this area, as a vital neighborhood in the City and that particular daycare, in his opinion, has not affected the neighborhood at all. He stated that he has compassion for the neighbors and he understands they do not want anything to change in their neighborhood but he also feels there is a need for daycare in the City. He commented that he lives in a neighborhood with two (2) group homes and these group homes are businesses, and he has not seen a negative effect that they have had on the neighborhood. He added that they live with them and support them. Mr. Kennedy stated that he feels the Planning Board did a fantastic job presenting some conditions that would go along with the rezoning if passed and he could support the things that they listed: the site plan review must be approved by the City and NCDOT, the driveway must be reconfigured to reduce vehicle conflict at Mooresville Road and Third Street, a fifteen (15) foot planting yard would be installed to separate this particular site from the other parts of the neighborhood. He added that it is a small structure so there will not be that many children there and he truly thinks the two (2) can co-exist. He added that he also thinks Council can make this a line in the sand, that no other rezoning could take place in this particular neighborhood. He stated that he could support this rezoning based on the conditions.

Councilman Lewis asked Mr. Mitchell if this is spot zoning. Mr. Mitchell responded that unfortunately the ability to answer that these days, based on case law, is not as easy as you might think. He stated that spot zoning goes beyond just having a different color in amongst a field of one color. He explained that the State of Minnesota has looked at spot zoning very heavily, as well as the States of Texas and Oregon, and they rely heavily on their comprehensive plans and what the plans say about zoning of property in relation to the other uses around it and would the zoning be consistent or inconsistent with the comprehensive plan. He noted that it has morphed over time, because fifteen (15) or twenty (20) years ago it was easy to consider spot zoning just a different color on the map, but now it entails much more analysis and review that includes whether or not there are consistencies with the comprehensive plan for the municipality or county.

Mr. Lewis asked if the Salisbury Vision 2020 Plan addresses this particular corridor, specifically as far as future land uses. Mr. Mitchell responded that it does not address this specific corridor.

Mr. Lewis commented that this is a wonderful neighborhood and he sees many people that he went to church with for a long time and it is good to see their faces again, but he is sorry it happens to be in a situation where they are unhappy about something that someone wants to do. He added that he is sure that the Normans have good intent in their heart and it will come to a conclusion. He stated that he travels Mooresville Road quiet a bit because his bank is building right around the corner and he gets his hair cut over there as well. He noted that he was just there this morning and as he was going down he noticed there is a lot of traffic there. Mr. Lewis stated that this bothers him but not so much for the daycare and the traffic because St. John's Church has its child development center on the corner of Jackson and Innes Streets and he can promise that the vehicle count on Innes Street is more than on Mooresville Road. He added that there have been no incidents and in his mind he is not thinking about the speed, which Council can attempt to control with speed limit signs even though he realizes it is difficult to do. He stated that the number of cars and trips per day is going to increase and the main reason is because if it comes to fruition, the Klunac Road railroad grade crossing will occur on an extension of Mooresville Road and it will become a straight thoroughfare through the area. He pointed out that this may be in twenty (20) years or it may be next year depending on when it is funded, but it will happen and there will continue to be a lot of traffic on this road.

Mr. Lewis commented that one of the arguments that can be made in favor of the petition is that in looking at the alignment of the houses, the house in question aligns towards Mooresville Road whereas the other houses align towards the side streets.

Mr. Lewis stated that in talking about traffic, vehicle trips per day is often used as a justification to rezone something from residential to commercial because it is naturally assumed that people in their residence do not want to live on a busy street. He noted that during the past ten (10) years that he has watched this road there have been five (5) new residential houses built on it. Three (3) are closer to Jake Alexander Boulevard and two (2) built with elaborate fences. He stated that property was purchased and new houses built so he does not think that just because it is residential

that the house cannot be sold, but he feels it comes down to economics. Mr. Lewis stated that this is a very nice size lot when compared to everything else around it and he can see why when it came up for sale the Normans would want to purchase it and put a daycare center there. He commented that it makes perfect sense from a development point of view. Mr. Lewis stated that the truth of the matter is that there are parcels for sale in the zoning areas where daycare centers would be allowed, but the problem is it is cheaper to buy residential property and get it rezoned than it is to buy commercial property. He commented that the petitioner has to have a certain critical mass with a daycare facility to make money unless the initial infrastructure investments are kept down, and he feels this is what they are doing because they will not be able to put a one hundred ninety-nine (199) student facility there because of the size of the land. He stated that something that was said earlier that has resonated in his mind was when Ms. Isenberg stated that the only person who is benefiting from this is the petitioner. He commented that the parents of the children would benefit from it, but those people could also benefit from a daycare in the M-1 zoning. He stated that Council tries to balance the needs of neighborhoods and the needs of the business community because Council gets criticized for not supporting neighborhoods and also for not being business friendly. He noted that when there are two (2) values directly at odds in a particular situation Council has a very difficult choice to make and no matter what is done Council will be praised by some and criticized by others.

Mr. Lewis stated that when he heard Ms. Norman talk about the need to increase the size of the facility to two thousand six hundred (2,600) or two thousand eight hundred (2,800) square feet which would probably maximize the number of children she could have at the center based on the square footage of the lot, that is when he turned toward thinking he does not agree with allowing this to happen. He commented that, in truth, Ms. Norman is right; it needs to be that size to be economically feasible. Mr. Lewis noted that he did not know if this would truly be spot zoning in a court decision, but it concerns him about what could happen going down that road. He stated that if it had been similar to what Mr. Leatherman did on Jake Alexander Boulevard, where he had property from Mooresville Road to the South Main overpass and wanted it rezoned to commercial, the neighborhood agreed to it and while they would probably prefer woods the development is not as bad as they thought it was going to be. He pointed out that Mr. Leatherman owned all of the property. He stated that if there was a comprehensive specific plan for this corridor that suggested Council should go in this direction then he feels he could support this, but Council does not have that. He noted that there are only so many resources in the City and many areas throughout the City that need to be looked at, so he is not sure if this area can be studied any time soon, but until it is studied he has difficulty supporting this request. He noted that Mr. Kennedy made a good point regarding the case on Liberty Street and the point of being consistently fair and he is anxious to hear from Councilman Burgin and Mayor Kluttz.

Councilman Burgin stated that this case is a little tougher for a number of reasons. He commented that he knows how much work Kay Norman has done for children in the community and it is to be admired. He added that she not only works with children at her school but serves us as a community on our school board. He stated that in regards to the consistency question, one of the first cases he served on almost eight (8) years ago was establishing the rules and regulations for childcare within the City. He stated that it was four (4) to one (1) against him because he felt like the community needed to support and embrace opportunities to take care of children in neighborhoods to a greater extent than what Council voted. He stated he felt there was wisdom in the multitude that day because there are neighborhoods that develop in a way that they do not want the situation where there are children. Mr. Burgin stated that one thing Council does consistently is to listen to what neighbors say as it relates to a zoning case and when Council hears what neighbors have to say in support, or in non-opposition, he feels Council weighs this into their decision. He stated that he can say consistently that when Council hears neighbors come out not in support Council also weighs this into the decision. Based upon this, he stated that he feels Council is being consistent. He stated that he feels this is a business and he feels there will be forty (40) to fifty-six (56) children. He commented that he is concerned about Mooresville Road because, as Councilman Lewis mentioned, it will only increase in traffic because of the direction that Council has pushed the railroad underpass on Klumac Road. He stated that, as it relates to 2020, these kinds of businesses are more neighborhood serving type businesses and he thinks this one may be a little more of broader community type business, which would allow it to be located in another place. He noted that his conflict here is knowing the good work that the Normans do and wanting to help them succeed, but also recognizing the question of the zoning case and he cannot support it. He stated that he hopes the Normans can find another location that Council can support because he knows the need is there, adding that he has argued for the embracement of children in our neighborhoods but this is not what Council has done or what our neighborhoods have been supporting. He stated that based on that he cannot support this rezoning.

Mayor Kluttz stated that this is difficult for her because like Councilman Burgin she has known Ms. Norman through working with the School Board for many years and the wonderful work she does and the wonderful business she has. She stated that she feels this case concerns zoning and she has always felt strongly that Council has a zoning map for a reason. She added that the zoning map is the way it is for a reason and it was decided before any of the current members were on Council. She stated that she believes very strongly that zoning should not be changed without a compelling reason and she feels very strongly this way, particularly on residential property. Mayor Kluttz commented that Ms. Blackwell pointed out the fact that the R-8 district that blankets the neighborhood from Mooresville Road to Lincoln Road was the result of the hard work of Fulton Height property owners when the Association was formed in the 1980s. She noted that they worked very hard to make sure that it was all R-8 as it is now. She stated that she thinks this Council has a strong history of protecting neighborhoods and as Mayor it is exciting to her, no matter how difficult a meeting is, when neighbors are passionate about their neighborhood. She added that she thinks this is what makes Salisbury special and she is proud that people want to support and protect their own neighborhoods. Mayor Kluttz stated that Council has shown support lately with WestCliff, Fulton Heights and Eagle Heights. She commented that having heard some of the policies of Vision 2020 they encourage mixed-use, but, she added, she served on the Task Force that put Vision 2020 together and mixed-use for neighborhoods was encouraged where there were neighborhoods that wanted the business there for their convenience. She stated that Council's history with daycares, particularly daycares in homes, is that before a special use permit is issued it requires general neighborhood acceptance. Mayor Kluttz commented that she believes Council has turned down two (2) daycares because the neighborhoods did not want them. She stated that the one Councilman Kennedy spoke of on Liberty Street had neighborhood support and Council approved it. She indicated that she feels Council needs to be consistent with neighborhood protection and she would not want to see anything happen to Fulton Heights any more than any other neighborhood. She added that Ms. Norman has an excellent business and she hopes Ms. Norman can find an appropriate site in the City, but she does not think this is the appropriate place to rezone the residential neighborhood.

Mr. Kennedy spoke to Ms. Norman and indicated that the Planning Board is recommending one thousand five hundred (1,500) feet and that she indicated that she needed over two thousand (2,000) feet to be effective and asked if she disagrees with their recommendation. Ms. Norman stated that this is correct.

Mr. Woodson asked Ms. Norman how many children would be at the location. Ms. Norman stated that she spoke with her child care

consultant and she has to go by the law, adding that if she has one hundred (100) square feet per child outside, and fifty (50) to seventy-five (75) square feet indoors, she is exceptionally limited. She added that it would not mean a great deal of children and added that the way it would work is the children would be coming in at different times during the day. She added that there would be a flow of traffic in the early morning and a flow in the afternoon, after school because they serve school age children and she is planning to serve preschool as well. Ms. Norman stated that she wanted to make a correction that she has never run a for-profit facility, the facility is a non-profit, reiterating that it is a business but it is a not-for-profit business. Mr. Woodson commented that if she expanded the facility she could put thirty (30) children in it. Ms. Norman responded that it depends on the rated license and so many things are involved. She explained that the higher the rated license the more square footage and environmental issues you have to deal with. She pointed out that within the space she would also be required to have office space, area for sick children, area for service, and area for activities and that is why the current size would not be suitable. Mr. Woodson indicated that he can see why Ms. Norman picked the location.

Mr. Kennedy stated that he was supportive of what the Planning Board had worked out, but Ms. Norman is in disagreement with what they worked out. Ms. Norman stated that she is not just saying this today but has stated this from the outset, that the larger size is what she would require. Mayor Klutz asked Ms. Norman to confirm that she did not agree when the Planning Board put the restrictions on the approval. Ms. Norman responded that no, she did not agree and if it cannot be larger there is no reason for her to pursue it. She told Council that she called the agent today and she does not want to restrict Ms. Wright's ability to sell her property because she understood the circumstance Ms. Wright was in. She added that she withdrew until after today's Council meeting, and if, at this time, there were no other offers she would continue to pursue it. She reiterated that she withdrew everything to give Ms. Wright an opportunity if the property can be sold, because she needs it sold. She added that during this time only one (1) person has looked at the property.

Mr. Woodson stated that one problem he sees is that the neighbors are rejecting the one thousand five hundred (1,500) square feet and he certainly thinks they would object to two thousand eight hundred (2,800) square feet.

Mr. Mitchell informed Council that staff would not be in support of anything larger than one thousand five hundred (1,500) square feet.

Mr. Burgin commented that he feels the Planning Board was trying really hard to approve the request and find what would make it acceptable for the neighborhood but, in truth, he does not think it meets the Norman's needs. He added that it is restrictive, which indicates to him that they were trying to do a little separation from the neighborhood which speaks to the fact that the request may not be perfect. He added that he feels Council has to deny the request.

Mr. Woodson stated he feels the big thing is that for some of the cases the neighbors have wanted the daycare facility and Council listened to what they wanted, but he feels the problem is there is not anyone from the neighborhood coming forward to say they want this.

Mr. Lewis commented that the frustrating part is the City needs more daycare because more frequently both parents have to work, but if the neighborhoods do not want one of the houses inside of their neighborhood converted, one that can allow five (5) or six (6) kids, and on the fringe of the neighborhood they do not want one that allows thirty (30) or forty (40) kids, and Council does not want to put them on major highways, where will they be put? He stated that as a City that is a challenge for Council because of the economic viability. He noted that this is such a heavily regulated industry and if you have only three (3) or four (4) children you can survive, as well as if you have one hundred ninety-nine (199), but when it is in the twenty (20) to one hundred (100) child range he does not know how they do it. He stated that one of the answers, as Ms. Norman stated, is through a non-profit organization and he commends her wishes to do this and hopes that a site can be found within the City for her to do it. He added that this is just not the place.

(c) Findings of Fact

Councilman Lewis offered the following findings of fact:

1. The site is not considered the neighborhood edge or corner; therefore, the conversion of a single-family home to a business is inconsistent with our adopted comprehensive plan and restricting the size to one thousand five hundred (1,500) square feet would not meet the needs of the petitioner
2. There is no other commercial or multi-family zoning located along this stretch of Mooresville Road
3. The neighborhood is not in general support of the requested use regardless of the request for special zoning
4. The allowance of a daycare is inconsistent with the community's concept of neighborhood goods and services

Mr. Kennedy noted that since the petitioner does not agree with what is recommended by the Planning Board he will have to go with the majority and assume this will not work out for them.

(d) Decision

Thereupon, Mr. Lewis made a **motion** to deny amending the official zoning map of the City of Salisbury for Z-15S-05 for rezoning from R-8 to R-6A-S. Mr. Woodson seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Klutz voted AYE. (5-0)

(e) Special Use District Permit

No action was taken on the Special Use Permit as the request was denied.

ZONING MAP AMENDMENT - Z-17S-05 - CITY OF SALISBURY

(a) Swearing In

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

Mr. Preston Mitchell

(b) Evidence Presented

Mr. Preston Mitchell, Senior Planner, stated that this case is Z-17S-05 and is a request to rezone property from B-6S, a special zoning district, to B-RT. He reviewed aerial photographs of the property in question and noted that it consists of three (3) parcels located at the corner of Sunset Drive and Mooresville Road. He noted that Jake Alexander Boulevard is further to the east of the property. Mr. Mitchell reviewed photographs of the site and pointed out one structure that is located on it and a fence wrapping around the property. He then referred to a zoning map for the area and noted that the property is currently zoned B-6S, which was the special district zone adopted by City Council originally in 1998, and readopted in 2000. Mr. Mitchell stated that the zoning around the property varies and pointed out that there is B-RT on both sides of the property with R-8 zoning to the south near the Sunset Drive neighborhood, and with a heavier commercial zone closer to Jake Alexander Boulevard.

Mr. Mitchell reviewed the zoning districts and stated that the B-6S district was established in 1998 and reestablished in 1999 with a slight amendment. He stated that the special district allowed for B-RT retail trade business uses including the uses of storage of vehicles and a car wrecker service. He noted that the B-RT district is basically a community wide retail district, adding that the area reaches beyond neighborhood so it is not necessarily neighborhood serving but it is not as large as a regional serving type zone such as B-6. He stated that B-RT is right in between the zones.

Mr. Mitchell informed Council that when an S-district is established it is required that the property owner signs the petition; however, once it is established the property can be rezoned in a standard manner. He noted that this could be by the property owner, City Council, or a third party rezoning. He reiterated that it just has to be established by the property owner. He stated that City Council has the authority to impose reasonable conditions on the property for the S-district permit that is associated and also has the authority to review, amend, or terminate a special use permit based on certain circumstances.

Mr. Mitchell reviewed the impact on the neighborhood of the B-RT zone and noted that B-RT is already in place on both sides of the property. He stated that this would be considered the neighborhood edge or corner and is an approximately one (1) acre site. He commented that, based on maximizing the site, it might produce a seventeen thousand (17,000) square foot building with parking and landscaping. He stated that Mooresville Road is a major thoroughfare, but staff used this particular link of Mooresville Road a little differently than the other link (for the previous case heard by Council). He noted that this section of Mooresville Road is more heavily traveled.

Mr. Mitchell stated that staff believes this site is good for B-RT and any lesser zones, such as B-CS, may be more appropriate for neighborhood serving goods and services, but staff does not think this link of Mooresville Road would be good for B-CS or any type of lesser zone. He added that staff feels rezoning to B-RT is appropriate for the link and for the surrounding area.

Mr. Mitchell reviewed the zoning history and noted that it was established in 1964, went to B-RT and B-CS in 1978, and then in 1998 it was set up with the S-district and amended in 1999 to include a small section of land owned by the North Carolina Department of Transportation located on Sunset Drive. He stated that there was a request to expand the uses to include major auto repair but the request was not approved.

Mr. Mitchell informed Council that at the Planning Board meeting of December 13, 2005 there was very little board level discussion on this item and the Planning Board voted unanimously to recommend approval of the rezoning and recommend approval of the S-district permit termination. He added that staff also supports this recommendation.

Mayor Kluttz then opened the public hearing to receive comments regarding this issue. There being no one to address Council regarding this issue, Mayor Kluttz closed the public hearing.

Mayor Pro Tem Woodson commented that this is a good case of where Council did not listen to the neighborhood and for several years had a lot of problems and difficulties. He stated that he could certainly support changing this from an S-district to B-RT and he feels it would be much better for this section of town. He commented that this area is well traveled and is wide with a lot going on and he would support this.

Councilman Lewis stated that in defense of the Council that approved this, there are good neighbors and bad neighbors who operate the same use and noted that there is a difference between storage of vehicles and junk yard, adding that he did not know what the real definition change is, but he felt this was a junkyard.

Councilman Burgin stated he assumes this rezoning request is coming from the property owner. Mr. Lewis indicated that it is not, it is coming from him. He explained that while placing campaign signs he saw the advertisement to sell the property and it had the S-district. He called staff and suggested they look at it. Mr. Burgin commented he was just trying to piece together why this was happening because it was almost too good to be true. He asked if the S-district included all of the B-RT uses as part of the district. Mr. Mitchell responded that this is correct and confirmed that no uses are being added.

Mr. Mitchell explained that what will need to occur is if Council decides to act on this the findings of fact will need to be made and then a vote on the zoning map amendment. He stated that staff talked with the Institute of Government regarding this case because terminating a Special Use Permit (SUP) is not as easy as it should be and staff wanted guidance on the circumstances under which an SUP can be terminated so it is not seen as unilateral. He indicated that if City Council decides to rezone the property it will create an automatic non-conformity between the permit and the zoning and at that time the permit can be terminated.

Councilman Kennedy stated that he understands Council has had a great deal of problems with this property and he feels the rezoning will work well, but he has a problem with someone rezoning someone else's property without their permission. He added that it seems like a property rights issue. Mayor Kluttz stated that when Council established the zoning it was made very clear that Council could also take it away. Mr. Mitchell commented that staff was also very concerned about this and talked with Richard Ducker at the Institute to get clarification. Mr. Kennedy asked Mr. Mitchell if Council is just removing the special district. Mr. Mitchell responded that this is correct.

(c) Findings of Fact

Councilman Lewis offered the following findings of fact:

1. The business that operated under approval and guidelines of the S-district zone and permit is out of business and has vacated the premises and the property is for sale
2. The approved S-district uses were, and remain to be, incompatible with the abutting neighborhood potentially causing diminution of value of homes
3. The City of Salisbury is authorized to rezone the subject property
4. A rezoning of the subject property will create a non-conformity situation for the associated S-district permit
5. The Vision 2020 Plan calls for neighborhood-servicing goods and services to be located at neighborhood and planning edges

(d) Decision

Thereupon, Mr. Lewis made a **motion** to adopt an Ordinance amending the official zoning map of the City of Salisbury by rezoning properties located at 1035 Mooresville Road from B-6S to B-RT. Mr. Burgin seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (5-0)

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF SALISBURY, NORTH CAROLINA, BY REZONING APPROXIMATELY 0.97 ACRES, THREE (3) PARCELS, LOCATED AT 1035 MOORESVILLE ROAD, IDENTIFIED AS TAX MAP AND PARCELS 061-1074, 061-1075, & 061-1178, FROM B-6-S DISTRICT TO B-RT DISTRICT.

(The above Ordinance is recorded in full in Ordinance Book No. 21, Zoning & Planning, at Page Nos. 1-2, and is known as Ordinance No. 2006-01.)

(e) Special Use District Permit

Thereupon, Mr. Lewis made a **motion** to adopt an Ordinance to repeal and terminate an S-district permit in conjunction with the previously adopted Ordinance due to the non-conformity created by amending the official zoning map. Mr. Burgin seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (5-0)

AN ORDINANCE OF THE CITY OF SALISBURY, NORTH CAROLINA, TO REPEAL AND TERMINATE AN S-DISTRICT PERMIT IN CONJUNCTION WITH ORDINANCE 2006-01.)

(The above Ordinance is recorded in full in Ordinance Book No. 21, Zoning & Planning, at Page No. 3, and is known as Ordinance No. 2006-02.)

ZONING MAP AMENDMENT - Z-16-05 - RUTH MEDINA

This item was omitted.

FIRE HOUSE LOFTS SIDEWALK ENCROACHMENT

Mr. Dan Mikkelsen, Director of Land Management & Development, stated that this item was presented at the December 20, 2005 Council Meeting, noting that at that meeting Council had requested more information. Mr. Mikkelsen displayed photographs and plans of the Firehouse Urban Lofts property located on East Fisher Street and pointed out the steps that would have the greatest encroachment into the right-of-way. Mr. Mikkelsen explained that the right-of-way is approximately ten (10) feet from the wall of the building to the back of the curb. He added that the handrail would extend about two (2) feet nine (9) inches into the right-of-way, leaving over seven (7) feet to the curb.

Councilman Burgin stated that the State Building Code allows an encroachment of twelve (12) inches, and the request is for two (2) feet eleven (11) inches. He asked if the State Code allowed more than a twelve (12) inch encroachment. Mr. Mikkelsen stated that the State Building Code allows the steps to encroach up to twelve (12) inches, adding that the original request was for one (1) step, but once the sidewalk was installed at standard slope, there was a need for an additional step. He stated that he believed the City Council could elect to allow a greater encroachment than allowed by the State Building Code.

Mr. Gray Stout, Project Architect, stated that the cross slope of the new sidewalk is limited by the Americans with Disabilities Act, requiring an extra step to be added. He noted that the design provided accessibility to all ground floor units through elevators and ramps at the back entries to each of the units. He explained that the stair design would meet the Building Code, but he could not answer the encroachment question. Mr. Stout expressed concern for pedestrians bumping into the handrail and noted that he is required to present a letter to Council assuming liability for the handrail encroachment. He added that he and staff have discussed several landscaping options and he has agreed to install large planting pots on each side of the handrails to prevent people from walking into them.

Mr. Burgin stated that he could not yield to the two (2) foot eleven (11) inch encroachment request without clarification of what the State Building Code allows. He expressed his concern of setting a precedent leading the way for other City businesses to request larger encroachments. He concluded by stating that before he could make a decision he needed clarification of the State Building Code and he feels Council then needs to make a conscious decision as to whether yielding to a two (2) foot eleven (11) inch encroachment is something Council can be consistent with in other situations.

Mr. Stout indicated that he did not know this encroachment, as it relates to the Building Code, was an issue, and stated that he feels Council needs to take encroachments on a case-by-case basis because exceptions will need to be made to encourage downtown development.

Councilman Lewis established the fact that the encroachment request would have to be in compliance with the State Building Code and also be approved for City Council to receive a Certificate of Occupancy (CO), noting that Council's approval would not supersede a negative decision made by the State.

Mr. Mikkelson stated that he is unsure if the State Building Code, which allows a one (1) foot encroachment, would prohibit an additional encroachment allowed by the City. He asked Mr. Rivers Lawther, City Attorney, for clarification. Mr. Lawther stated that the State Building Code would have to be reviewed but he felt that it would be allowed if the City approved it, noting that it appears the Code allows twelve (12) inches without the City's approval.

Mayor Kluttz suggested postponing this item until after Item fourteen (14) of the Council meeting, in order to allow time to obtain a copy of the State Building Code as it pertains to this encroachment request. Mr. Stout stated that he would review a copy of the State Building Code and return to the meeting.

** This item was continued after Closed Session - Page 26.

COMMENTS FROM THE CITY MANAGER

- (a) Park Avenue Apartments
-

Mr. David Treme, City Manager, stated that a request was received from Mr. Dick Palmore regarding subordination of a City lien on Park Avenue Apartments. He noted that loans had been made to Mr. Palmore for the rehabilitation of the Park Avenue Apartments by the previous owner, the City, and F&M Bank.

Mayor Kluttz indicated she needed to be excused from this item due to a conflict of interest.

Thereupon, Mr. Kennedy made a **motion** to excuse Mayor Kluttz from deliberation and discussion from this issue. Mr. Burgin seconded the motion. Messrs. Lewis, Woodson, Burgin, and Kennedy voted AYE. (4-0)

Mr. Rivers Lawther, City Attorney, stated that Mr. Palmore agreed to purchase and rehabilitate the Park Avenue Apartments, which has been completed. He added that in order to make this viable, Mr. Palmore secured a loan from the property owner who was selling the property, F&M Bank, and the City. He noted that the original loan from the City was \$80,000 and it has been paid down to \$50,000. Mr. Palmore would like to utilize some equity in the property to collateralize a new, unrelated loan with F&M Bank. He stated that F&M Bank will approve the loan only if this new lien is positioned ahead of the City's. Mr. Palmore is requesting the City subordinate their lien on the Park Avenue Apartments in order for F&M to approve the new loan. Mr. Lawther stated that the City would still have a lien on the apartments but added that F&M Bank would own the first mortgage, followed by the loan from the previous property owner, then the new loan from F&M Bank, and then the City's loan. According to appraisals, the current value of the apartments exceeds the value of all four (4) liens, and cash flow would enable Mr. Palmore to make all the lien payments.

Mr. Lewis stated that this request should be approved due to the fact that Mr. Palmore has renovated the apartments, benefited the City with social issues in the area, and increased the tax value of the property.

Mr. Lawther indicated that Mr. Palmore's loan balance with the City was \$50,000 and that he is requesting a new loan from F & M Bank in the amount of \$68,000.

Mr. Treme stated that he felt approval of Mr. Palmore's request would put him in a better position to pay the loan back to the City, adding that the current \$50,000 loan is at three (3) percent interest for fifteen (15) years. He noted that Mr. Palmore had helped the City by increasing the tax base and stabilizing the neighborhood.

Thereupon, Mr. Woodson made a **motion** to subordinate the City lien on Park Avenue Apartments.

Mr. Kennedy stated that he appreciates the work Mr. Palmore has done for the community and would like to approve his request, but could not approve it without first seeing defined information regarding the loan amounts and appraisals. Mr. Lewis noted that it would be helpful to have the beginning balance of all three (3) loans, the current balance on all three (3) loans, and the appraised value. Mr. Treme stated that he and Mr. Lawther would obtain the requested information and present it to Council at the next meeting.

Mr. Woodson then withdrew his motion at Mr. Kennedy's request.

Mayor Kluttz tabled the request until the January 17, 2006 Council Meeting.

(b) Salisbury's Position on National Water Quality Issues

Mr. Tremé stated that the City has received general questions regarding the City's position on water quality in relation to national issues. He reviewed a memorandum from Mr. Matt Bernhardt, Assistant City Manager for Utilities, to the City Manager stating that: The City has no water quality violations during the past year; the City meets all State and Federal requirements; the City tests the water three hundred and sixty-five (365) days per year, several times during the day; the City meets all State and Federal drinking water standards; and the City has a survey that comes out regarding the condition of the City's water which is shared with the public. Mr. Tremé presented this memorandum to Council and stated that it will be forwarded to anyone who has questions regarding the City's water. He added that the City of Salisbury is very confident in the quality of its drinking water.

(c) Retiree Healthcare Insurance

Mr. Tremé noted that Council has previously asked questions regarding health care insurance for retirees. He stated that some governmental agencies, including the State of North Carolina, provide health insurance for the life of the person, with some even providing family coverage. He stated that Mr. John Sofley, Management Services Director, and Mr. Wade Furches, Finance Manager, reviewed the new requirements under the General Accounting Standards and Procedures (GASP) 45 which requires the City to show the actuarial valuation of the City's liability for future retirees health insurance benefits on the balance sheet. He stated that the City currently pays for individual retirees' coverage through the age of sixty-five (65), if the retiree has been employed with the City for the required number of years. After the age of sixty-five (65) the retirees are not carried on the City's insurance coverage but are covered under Medicare.

He provided to Council information developed by Mr. Sofley, Mr. Furches, and Ms. Melissa Taylor, Human Resources Director, regarding the impact of providing retiring health care insurance.

(d) Time Warner Cable

Mr. Tremé stated that he has received correspondence from Time Warner Cable outlining describer rights and obligations as defined by the franchise between the Governing Authority and Time Warner Cable. This includes the terms for digital phone service, high speed digital internet service, privacy support, service and repairs. Mr. Tremé stated that since the City is the franchise owner, he wanted to provide this information to City Council and to the public.

MAYOR'S ANNOUNCEMENTS

(a) Martin Luther King, Jr. Humanitarian Breakfast

Mayor Klutz announced the 20th annual Martin Luther King, Jr. Humanitarian Breakfast will be held Monday, January 16, 2006 from 7:00 a.m. to 8:30 a.m. at the Salisbury Civic Center.

(b) Oak Grove Freedman's Cemetery Dedication

Mayor Klutz announced a dedication ceremony will be held for the Oak Grove Freedman's Cemetery Monday, January 16, 2006 at 11:00 a.m. at Soldier's Memorial AME Zion Church, 306 North Church Street.

(c) Martin Luther King, Jr. Parade

Mayor Klutz announced the Martin Luther King, Jr. Parade will be held Monday, January 16, 2006 at 2:00 p.m. starting at the 300 block of North Main Street to Monroe Street, ending at Livingstone College.

CLOSED SESSION

Mayor Klutz informed Council that she would entertain a motion for the Council to go into closed session concerning a personnel matter as allowed by NCGS 143-318.11(6) and for an economic development matter as allowed by NCGS 143-318.11(4).

Thereupon, Mr. Kennedy made a **motion** to the just read motion. Mr. Woodson seconded the motion. Messrs. Burgin, Kennedy, Lewis, Woodson and Ms. Klutz voted AYE. (5-0)

RETURN TO OPEN SESSION

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

Mayor Klutz stated that Council took no action on the economic development matter.

Thereupon, Mr. Burgin made a **motion** to increase the City Manager's base salary by four (4) percent. Mr. Woodson seconded the motion. Mr. Burgin stated that Council unanimously recognized the good job David Tremé is doing for the City, adding that it is more than a job, it is a calling for Mr. Tremé and this is reflected in his performance and his care for the City. Council members extended their thanks to Mr. Tremé. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Klutz voted AYE. (5-0)

FIRE HOUSE LOFTS SIDEWALK ENCROACHMENT – CONTINUED

** Council began discussion of this issue earlier in the meeting – Page 22.

Mayor Kluttz asked Mr. Mikkelson if he had additional information for Council regarding the State Building Code.

Mr. Mikkelson stated that the State Building Code was reviewed but since City staff does not administer the State Codes and has no experience in them, he does not feel qualified to interpret the State Codes. He agreed that the request before Council has changed from the initial request and noted that the total requested encroachment is two (2) feet nine (9) inches, leaving over seven (7) feet of clear sidewalk. He pointed out that it is consistent with urban design for sidewalks to have a zone close to the building for encroachments such as furniture and displays. There is usually a similar zone near the curb for items such as utility poles, planters and benches, provided that there is a clear zone the length of the sidewalk. He stated that if Council feels this encroachment is acceptable, staff recommends approval of the request. He added that if Council feels this request is unacceptable or sets a precedent that Council is unwilling to defend at other locations staff recommends denial of the request.

Mr. Woodson asked what alternatives Mr. Stout has in dealing with this issue, should Council deny the encroachment request. Mr. Stout stated that it would be difficult but the sidewalk and curb could be raised resulting in a higher elevation from curb to street or the entrance/exit could be eliminated which might create a safety issue of exiting the building. Mr. Stout stated that a landscape strip, including planter boxes and benches, could be installed three (3) feet out from the building so no one is walking right beside the building.

Mr. Lewis stated that he is comfortable with the seven (7) foot clearance of the sidewalk; however, he is concerned about the precedent being set in granting the encroachment.

Mayor Kluttz discussed the possibility of reviewing the City's Ordinance and establishing a minimum and maximum encroachment.

Mr. Burgin stated that his objective was to understand what was being asked of Council, noting that the first request was for an encroachment of eleven (11) inches and this request is for two (2) feet nine (9) inches. He stated that this is a significant difference and additional information was needed for him to comfortably make a decision.

Thereupon, Mr. Burgin made a **motion** to approve the encroachment based on the fact that the street involved is a secondary traffic pattern for pedestrians and five (5) feet will provide an adequate measure of capacity and that would be the basis for allowing the encroachment the way it is. Mr. Woodson offered an amendment that planters be required as recommended by staff. Mr. Burgin accepted the amendment. Mr. Kennedy seconded the motion in that the developer will assume all responsibility for any claims arising from any accident. Messrs. Burgin, Kennedy, Lewis, Woodson, and Ms. Kluttz voted AYE. (5-0)

ADJOURNMENT

Motion to adjourn the meeting was made by Mr. Woodson, seconded by Mr. Burgin. All council members agreed unanimously to adjourn. The meeting was adjourned at 7:20 p.m.

Mayor

City Clerk