The City Council of the City of Charlotte, North Carolina met in a televised session on Monday, June 20, 1977, at 7:30 o'clock p. m., in the Board Room of the Education Center, with Mayor John M. Belk presiding, and Councilmembers Betty Chafin, Louis M. Davis, Pat Locke, Neil C. Williams and Joe D. Withrow present.

ABSENT: Councilmen Harvey B. Gantt and James B. Whittington.

The Charlotte-Mecklenburg Planning Commission sat with the City Council and, as a separate body, held its public hearing on the zoning petitions, with Chairman Allen Tate and Commissioners Winifred Ervin, Margaret Marrash, Kimm Jolly, Thomas Broughton and Crutcher Ross present.

ABSENT: Commissioners Campbell, Johnston, Kirk and Royal.

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INVOCATION.

The invocation was given by Reverend Roy E. Capehart, Minister of Chantilly Baptist Church.

MAYOR PROCLAIMS THE WEEK OF JUNE 19-25, 1977 AS TREE APPRECIATION WEEK.

Mayor Belk recognized Mr. Herbert Hechenbleikner, Chairman of the Tree Advisory Commission, and read the following proclamation:

> WHEREAS, the third week in June has been chosen for the people of American to appreciate their heritage of trees, at this time green and lustrious with a mass of foliage as yet untouched by pollution, storms, insects or disease; and
>
> WHEREAS, it behooves the people of this community to maintain the healthful, comfortable and beautiful living environment provided by our trees, and to recognize the benefits derived from their presence; and
>
> WHEREAS, this is the time to identify, evaluate and intelligently select certain species and varieties of trees for future planting, and a time to cherish and think about preservation of those trees that have already been planted;
>
> NOW, THEREFORE, I, John M. Belk, Mayor of Charlotte, do hereby proclaim June 19 - 25, 1977 as Tree Appreciation Week in Charlotte and urge all our citizens to become more aware in the future concerning the selection, planting and maintaining of trees.

Mr. Hechenbleikner presented the Mayor and each Councilmember with potted trees and instructed them on their care. He also recognized other members of the Tree Commission who were present.

APPROVAL OF MINUTES.

Motion was made by Councilwoman Locke, seconded by Councilman Withrow, and unanimously carried to approve the minutes of the last meeting on June 13, 1977.

HEARING ON PETITION NO. 77-23 BY JOHN W. AND DONNA D. HARDING FOR A CHANGE IN ZONING FROM R-9 TO O-6(CD) FOR CONDITIONAL OFF-STREET PARKING ON LAND LOCATED TO THE REAR OF PARCELS FRONTING ON THE EAST SIDE OF SELWYN AVENUE, ABOUT 400 FEET NORTH FROM THE INTERSECTION OF SELWYN AVENUE AND COLONY ROAD.

The scheduled public hearing was held on the subject petition on which a protest petition had been filed and found sufficient to invoke the 3/4 Rule requiring six (6) affirmative votes of the Mayor and City Council in order to rezone the property. A general protest, containing 81 signatures, was also filed.

Mr. Fred Bryant, Assistant Planning Director, indicated the location of the property on Selwyn Avenue on the map, relating it to Hillside Avenue, Tranquil Avenue, Colony Road and Brandywine Avenue. He stated the property is to the rear of the lots facing on Selwyn, between Tranquil and Colony Road and backing up to lots which front on Colony Road. The front portion of these lots at the present time - one is occupied by an existing apartment structure; the other by an existing single family structure.

The surrounding land uses - on the in-town side along Selwyn Avenue there is a solid pattern of residential usage, single-family adjacent to the subject property and for several lots beyond that, then a couple of apartment houses. But, it is entirely a residential pattern from the subject property northward into the center of the City. Directly across Selwyn Avenue, in front of the subject parcels, there is an apartment building technically, but it does rent on a short term basis. Adjacent to the property on the southerly side, or out-of-town side, there begins a solid pattern of commercial or business activity down to Colony Road - a beauty shop, a convenience foodstore, a tire service facility. Around on Colony Road there is a building which at the present time is occupied by a wholesale auto parts facility. The entire area from the subject property down to Colony Road is commercialized at the present time. Along Colony Road from the auto parts place, there is a solid pattern of residential usage.

The zoning pattern in the area reflects a somewhat similar pattern. The subject property is zoned single-family residential at the present time; the front portion of the lot - 120 feet of depth - is zoned for business purposes. One lot adjoining on the northerly side is zoned for office purposes; the property across Selwyn is zoned office as well; and the business pattern extends all the way down to and past Colony Road along Selwyn. There is office classification in existence on the property which is now used by the auto parts facility which has been in effect for some period of time. It was the result of a fairly controversial zoning decision several years ago. There is solid residential zoning along Colony Road. The subject property, then, has residential zoning to the rear, office zoning to the south, office zoning to the north and business zoning on the front portion of the parcel.

Since this is a request for conditional usage of the property, it does require submission of a site plan and the total intent of this rezoning is apparently to allow parking at the rear of these structures which are existing on the property at the present time for an office-related type of activity. The proposal is to bring a driveway in on the southerly side of one building into a parking area which would accommodate about eleven or twelve parking spaces. The other lot would be treated similarly with a driveway on the southerly side and a parking lot of about six or seven parking spaces.

Mr. Bryant further illustrated the area with the use of slides.

Mr. Al Welling, Attorney, represented the petitioners - John and Donna Harding who own the property at 2727 Selwyn Avenue, and Mr. John Cunnock, owner of the property at 2801 Selwyn Avenue. He pointed out, as did Mr. Bryant, the property is almost completely surrounded by existing property that is zoned either B-1 or O-6; the only property that is now zoned residential is the property to the south of these lots.

He read from Section 23-4(a) of the City Code which refers to single-family residences: "The regulations for these districts are designed to maintain a suitable environment for family living." And from Section 23-6(a) - business districts: "The standards established for these business areas are designed to promote sound, permanent business development and also to protect abutting or surrounding residential areas from undesirable aspects of nearby business development."

He stated the first question which comes to mind is "Are these two compatible when they abut?" and "What is the purpose of a proper zoning code when you have two areas like this abutting each other?" It would appear to him that the common objective would be to maintain an environment for family living while promoting sound business practice in the development of business. He passed around photographs of the buildings and explained the proposed plans for the property. The existing multi-family dwelling on

the property they propose to convert to an office building. The front portion of the property is now zoned B-1 and they could do this, as he understands the Code. They do not want to create a parking situation as appears on the photographs and as appears up and down Selwyn Avenue to the south and to the west. They want to, if they convert this to business, place these cars at the rear of the property; they desire to maintain as much of a residential appearance as possible.

Mr. Welling stated he thinks there are two types of people who can honestly object to this change. One would be the residents who own homes in the general area and individuals who own homes directly abutting this property. He does not know of any of the folks who own property that is now zoned B-1 or O-6 who have objected to this change.

Dealing first with the folks who live in this general area, what would their primary objection be? He would assume that it would be that they would want to maintain the status quo of their neighborhood and want it to appear as much as a residential area as possible. What happens if they use the property that is now zoned B-1 for business purposes and completely disregard the rear portion of this property? Then you create a parking situation which looks like what the photographs portray, and that is exactly what they want to get away from. They want to put that parking to the rear of the building; maintain the residential appearance, if possible.

The second group of people who might object would be those to the south, who directly abut this property. What objection do they have? He would assume that they say "If you put a parking lot there you have a drainage problem. You put this parking right on top of us. Now we have a nice grassy lawn or a buffer zone of trees and this sort of thing and we do not have to look at a parking lot." He stated the proposal is to put a hedge or a screen, as the Code would call for, preferably from their standpoint, a green area of trees or bushes to block it off. That whatever appropriate drainage facilities would be required to keep any unnecessary draining that may or may not occur.

He stated they have a small isolated area of land now zoned with a residential zoning. What rights do the adjacent property owners have to maintain this property as an R-9? He assumes that they need it for a buffer zone. If you place a screen there to block off the unnecessary obstacle of parking, etc. he would think this objective would be accomplished; that the objective of moving the parking off of the street should accomplish the point of keeping the area as close to a residential area as possible. In other words, how do you accommodate the two counterpoints? You have part of this property zoned for business purposes and part zoned for residential purposes. The question is "Can the two be compatible?" They submit that they can be with proper planning and proper use of this property.

Mr. Marion Reece, 2815 Glendale Avenue, spoke in opposition to the petition. He stated his comments would be directed to the specific concerns of the adjoining property owners as well as the concerns of the neighborhood. He stated the specific concerns outlined in the formal protest were: Changing the zoning from R-9 to O-6 would (1) completely destroy the backyard privacy of the residences of the Breitenbach and Haney families at 2129 and 2133 Colony Road; (2) if the property is paved it would compound a current drainage problem, if it is unpaved, there would be considerable dust and noise; (3) it would have adverse effect on the values and desirability of these two properties as well as adjoining property; (4) it would permit gain for one at the expense of several.

As stated in the formal protest, the Howard and Haney families have lived in the neighborhood for over 39 years. He, personally, has been a resident since 1963. Most of the homes have been well maintained and are in good condition. Within the past year, the sidewalks have been improved in the neighborhood to further enhance it. The bus line serves the area and is used by many of the residents in the area. What they are concerned about is to see the same type thing happen here as has happened with the Selwyn Auto Parts. There seems to be little control. There are several commercial establishments on all corners of the Selwyn Avenue/Colony Road intersection now. Construction is underway on the Wendover/Woodlawn beltroad approximately

three blocks south. This has already increased traffic in the area and the long range effect is unknown. With additional business activity proposed and the beltway three blocks away, the residents are concerned that this rezoning will have a domino effect on Selwyn Avenue in the direction of Park Road as well as in the direction of Queens College. There is also the danger of the same thing happening to Colony Road, with 2129 practically surrounded by commercial zoning. He stated for 2727, 2721 and 2801 Selwyn Avenue to function as residential areas they now have a small buffer to help stabilize the neighborhood and he hopes Council will concur. He asked that several supporters of his protest petition be recognized in the audience.

Mrs. Angaline Breitenbach, 2129 Colony Road, used the map to point out her residence, which is nextdoor to the Selwyn Auto Parts. She stated there is a fence on top of a two-foot wall beside them which is within about seven feet of the side of their house. Their lot is not very deep and they can live with this change; they bought this house knowing this. This fence gives them some privacy from the auto parts place. They have the noise during the day but not at night except for cars that do come through from Colony to Selwyn - a lot of people are cutting through to avoid the long turn signal at the intersection. Their concern is that if they have parking back there, that regardless of what kind of buffer zone they put with it - a fence, hedge or whatever - they would be surrounded on two sides by that and with their lot as small as it is, it would give them a sort of closed-in feeling.

She stated the Planning Commission had explained to them that there would not be any through driving through there, but she does not know how they are going to prevent that unless they put a wall up. People are human and even if it is unpaved, they are going to cut through. This is their concern about their own property and their privacy. There is a drainage problem from the Selwyn Auto Parts when there is a heavy rain, there is excess water, so they cannot be convinced that they are not going to have the same problem with this property. The lots on Colony set lower than Selwyn Avenue and the homeowners have tried to compensate for this as much as they can, but if there is no grown covering back there, they can foresee that this could be more of a problem.

Mrs. Fran Slocum, 2601 Selwyn Avenue, stated 25 years ago her family bought a home on Selwyn one and a half blocks from the area in question. That three years ago she and her husband bought this home from her mother with the intention of raising their family there. They wanted to put down roots in a settled community. Others have been there a long time - the family across the street from them, 19 years; another 16; another 12. Some have moved from one house on Selwyn to another. Younger families are moving into the area to make it their home.

She stated that six months ago Mr. Harding bought the apartment house at 2727 Selwyn fully aware of the fact that it was zoned residential. This apartment house is now vacant. Others in the area have been approached by him about selling their property. They are deeply concerned about the future of Selwyn. If this zoning is allowed to change, commercial interests would have a towhold in what was originally built for, and has been used for, residences. It is an old established neighborhood, property well kept up; they care about its appearance. She has seen East Morehead and East Boulevard change from residential to business; she does not want this to happen to Selwyn. It is not necessary or desirable for Selwyn to have more business. The beltway crossing Selwyn will result in increased traffic and noise. The intersection of Colony and Selwyn presently has sixteen offices and businesses; Park Road Shopping Center, Southpark and Myers Park Shopping Center are all in close proximity. They have a reasonable amount of business. They have an opportunity to stop the encroachment of business and offices on private residences. It is their earnest hope that Council's decision will allow their neighborhood to retain its residential use without encroachment by business.

Mr. R. Michael Childs, 2301 Pembroke Avenue, representing the Myers Park Homeowners Association, also spoke in opposition. He stated the various concerns of the petitioners and the neighborhood residents have been pretty

well explained and there is very little he can add. He emphasized that the Association is here because of their concern for the future of that neighborhood and more immediately for the drainage problem and the screening problem for the people who live adjacent to the property. That Mr. Breitenbach, Mr. Howard and Mr. Haney all have a very serious problem with the deep drop-back of the property that is being proposed for parking above their property. That any solution to the problem should take into account the fact that there is a serious drainage problem and that for a long time this small sliver of residential zoning has provided a screen and a drainage buffer for those people behind it.

He asked Council and the Planning Commission, in reviewing this problem, to think not only in terms of immediate landowners but for the area as a whole. There is a serious question, he thinks, whether any additional office or business zoning is needed in that area. Three or four years ago when they brought their original re-zoning petition, there was single-family zoning down as far as Lorene Avenue. The reason they did not go any further than that was simply because that was the outside boundary of the Myers Park Association. At that time, it was noted that it would have been logical to have brought it on further down. Since that portion has been rezoned to single family, he thinks further extension of single family to the close proximity of this area would be advisable.

In rebuttal, Mr. Welling stated that all of the objections he has heard are exactly what they are trying to overcome. The front part of this property, as he understands the zoning code, they can now use for business. The objections that the folks have is they do not want to see it look like a commercial establishment. That is what they want to do - take those cars off of the street, put them behind the building.

The second major objection, as he understands it, is the drainage to the property below. That they are proposing to do something about - to keep the water off of these people. They can understand their concern there.

That some of the folks stated they were concerned about the buffer. What kind of buffer are they really entitled to? They are saying they will plant trees, put any kind of screening there that would protect the view and they will not have to look at it. People going up and down Selwyn Avenue will not have to look at another commercial establishment.

They are trying through proper planning and planting of bushes and this sort of thing to make the two things coordinate with each other - use it for business but not destroy the neighborhood, not inconvenience the neighbors. Let the property owner use his property in some sort of reasonable fashion.

Decision was deferred for a recommendation from the Planning Commission.

HEARING ON PETITION NO. 77-16 BY JOHN DWELLE FOR A CHANGE IN ZONING FROM R-9 AND R-6MF TO B-2 OF SEVERAL PARCELS OF LAND FRONTING ON THE EAST SIDE OF BALDWIN AVENUE, FRONTING ON BOTH SIDES OF WACO STREET, LOCATED NORTHEAST FROM KINGS DRIVE AND HEARING ON PETITION NO. 77-17 BY JOHN DWELLE FOR A CHANGE IN ZONING FROM R-6MF TO B-2 OF SEVERAL PARCELS OF LAND FRONTING ON THE EAST SIDE OF CHERRY STREET, LOCATED BETWEEN THE INTERSECTION OF EAST FIRST STREET AND CHERRY STREET, AND THE INTERSECTION OF LUTHER STREET AND CHERRY STREET.

The scheduled public hearing was held on the two subject petitions on which a protest petition was filed against Petition No. 77-16 and was sufficient to invoke the 3/4 Rule requiring six affirmative votes of the Mayor and City Council in order to rezone the property.

Mr. Fred Bryant, Assistant Planning Director, stated the two petitions involve property which is located in the Cherry Community of Charlotte. The reason for considering the two petitions at this time is because the two are similar in terms of having a common petitioner, they are requesting a common zoning designation and they are related in their cause because of the fact that the Community Development Department is involved at the present time in a proposal to present to City Council, eventually, a plan for the Cherry Community. It is recognized by the petitioner that some of the contents of that Plan may be contrary to the eventual uses he would seek for his property.

He stated the first petition involved property which is located with some frontage on Baldwin Avenue, mostly related to Waco Street and then comes down to include property that is fairly close to the rear of property on Henley Place.

Mr. Bryant pointed out the Cherry Community area on a map, noting the location of Independence Boulevard, Kings Drive, Charlottetown Mall, Baxter Street, the Charlottetown Office Building, the intersection of Baldwin, the intersection of Morehead Street and Queens Road.

He stated the land at the present time is a combination of vacant and single family uses, scattered single family houses back in the area along Waco and other than that, the property is mostly vacant. The immediate usage of the land around it is predominately residential and there is a substantial amount of non-residential uses along Kings Drive. The most immediate is a service station located at Baldwin and another service station located on Kings Drive, just short of the intersection. Other uses include a recently construction motel on Kings Drive, the Charlottetown Office Building and then Charlottetown Mall.

Mr. Bryant stated the second petition involves property fronting on Cherry Street, extending from First Street, near Independence Boulevard, down to Luther Street, then extending down Luther Street, almost to Torrence and then a widening configuration back over to First and Cherry.

That the property at the present time is almost entirely used for residential purposes and a combination of single family and duplex structures. Again, there is a predominance of residential uses along Torrence, with apartment uses down at the intersection of Torrence and Main, more residential uses along Cherry Street, on the Kings Drive side. He pointed out a rather large area that is occupied by a service station that extends along Independence Boulevard from Kings Drive up to Cherry; a fast-foods facility on Kings Drive, and then more residences from that point.

Mr. Bryant stated the first petition involves the property on Waco and Baldwin and is presently zoned entirely for a combination for R-6MF, which encompasses most of the Cherry Community, and some R-9, single family zoning, that was changed to single family as a result of the recently considered Myers Park action. That the exception to the residentially zoned pattern is that along Kings Drive, there is a solid pattern of B-2, business zoning, at the present time, which extends up to the subject property at this point.

Mr. Bryant stated the second petition on Cherry Street is similarly related with the petitioned area,all being zoned R-6MF, multi-family residential, as is all the property back within the Cherry Community. Across Cherry Street including all of Kings Drive and to the Charlottetown Mall area, is a solid pattern of B-2, as is true along Independence Boulevard.

He stated the property in question is basically related to residential zoning in one direction and business zoning in the other direction. That Council will not only be asked to consider these two zoning requests but before long, Council will be asked to consider a Community Development request for this area.

Mr. Bryant pointed out the intersection of Kings Drive and Baldwin, across the front portion of the property, which is now zoned business, and beginning with the area which includes the subject petition. He noted the vacant lots along Baldwin Avenue which are included in the petition and some of the lots with houses which were not included in the petition.

He stated this will give Council some idea of what the commercial section of Kings Drive appears to be. He pointed out Kings Drive on the map, going toward Morehead Street and stated the subject property would be to the left. Then going down Baldwin Avenue, he noted the vacant lots between the houses which were included in the petition. He pointed out the intersection of Cherry Street and Independence Boulevard and the Mall area, and their relationship to the subject property.

Mr. Vernon Sawyer,Director of Community Development Department, stated position of the Redevelopment Commission is that for several months they have been preparing a Plan for the Cherry area to present to Council. That this petition for rezoning just precedes that presentation and his staff will request a public hearing immediately so they can present their Plan to Council.

That at this point, all they have is a proposed Plan and he wanted to point out to Council that some of the petition today is contrary to the proposal in his proposed Plan. They will propose that this land use remain as currently zoned, which is R-6MF, in the Cherry Street-Luther Street area, and a combination of R-6MF and R-9 in the area around Ellison, Waco and Baldwin Streets.

Mr. Sawyer stated his proposed Plan will be brought to Council as soon as they can request a date for a Public Hearing which will be early in July.

Councilman Williams asked if Council has previously taken such "freezing" actions in Community Development Areas with respect to zoning and Mr. Sawyer replied every Community Development Plan and Redevelopment Plan does include a proposal for zoning for the area. Councilman Williams asked if Council has acted on others already and Mr. Sawyer replied yes.

Councilman Williams stated the petitioner states in his petition that one of the reasons he is seeking rezoning is because he does not want to be"locked-in"to a kind of zoning for a ten year period. That he stated in the written portion that he had not previously requested rezoning because he did not have a suitable project in mind; but the reason he is now is to avoid the "freezing" in the event in the next ten years, he comes upon a suitable project. He asked the legal affect of "freezing" the zoning for Community Development purposes for ten years; is it irreversible for those ten years and Mr. Sawyer replied no; that every Redevelopment Plan and every Community Development Plan does have controls that Council must approve that remains with the land for a certain period of time - the usual period so far has been

twenty years, a minimum of twenty years, but some of them have been a little longer. That this one, they figured ten years, because of the changing nature, because of the location of this particular project and its peculiar location with respect to commercial development and the existing residential community there - they just chose ten years rather than a longer period. He stated any Plan can be amended, but once it is approved, it can only be amended by Council action.

Councilman Williams asked if he is saying that two steps would be required for any rezoning in this area if Council adopted the ten year "freezing plan"; the first step being to amend the Community Development Plan and the second, a petition under the regular State Law and City Ordinances to rezone any property? Mr. Sawyer replied that is correct.

Mr. John Dwelle, the petitioner, stated the first petition that was presented by Mr. Bryant went down Kings Drive and he would like to amend it. He stated he talked to Mr. Bryant earlier and Mr. Bryant told him the petition would have to be amended during this hearing.

He stated he would like to eliminate two lots that back up to the Henley Place property, which are not too important as far as he is concerned anyway, and three lots that face Baldwin. That he would also make the line come straight down Ellison Street, to leave about an acre and a half. Mr. Dwelle pointed out the changes on a map.

Mr. Dwelle stated the main reason he requested this rezoning was because the Community Development Plan was going to be presented to Council in a very short time. He stated the property down on Kings Drive is ripe for doing something with; it is mostly vacant and there are only four old vacant houses down there on the upper end, which may not even be disturbed. That this morning he had what sounded like a real good prospect who was interested in three acres along there for a real nice project. He stated he only had about an acre and a half, already zoned B-2, down on the corner of Kings Drive, below this property. That he needs this parcel for part of a building, and mostly parking. He stated if he cannot get this zone change, it means they will just have to use that frontage for something like a fast-food place, or some small little project, and all this back property there, mostly vacant, weeds, trees, will be condemned for at least ten years and maybe longer, for non-use.

He stated he feels this is a reasonable request and will leave it up to Council to decide.

Mr. Dwelle stated the other petition, covering the property up on Cherry Street, is owned by his sister who bought it, not because of the old residential houses located on it, but mostly to combine it with the property he owns up on the upper end, near Independence Boulevard and Kings Drive. That he encouraged her to buy this land because this property would lend itself to an attractive development. He stated most of these houses are old, frame, single family, four room and three room duplexes that are at least 50 years old and are really getting uneconomical to maintain. That if any strict housing codes were enforced down there, most of them would have to come down. He stated the units there are about 20 or 25% vacant; that they are pretty well fixed up or cleaned up, but no one wants to rent them, even though the rent is the same it was 10 years ago, with one or two exceptions.

He stated the maintenance costs on those houses are just about double from what they were. That the question is whether they are coming down now or if the City wants to buy them or not.

Councilman Williams asked Mr. Dwelle if his petition, dated May 10, stated that"at present the area is occupied with mostly older rental housing which will soon become uneconomical to continue maintaining,

if
especially/housing code is stricly enforced"; and was he aware that the Council relaxed the housing code in community development areas within the last week or two? Mr. Dwelle replied he read that in the paper but if he is not mistaken this pertains to the extra housing code that the Redevelopment or Community Development people added, like paved drive-ways, and things above the regular City Code; that the City Code is pretty strict and is pretty well enforced, but it depends on the Inspector, one will interpret it one way and another another way and once they enforce it there, it will be impossible to fix them up.

Councilman Williams asked if the actions of the Council recently have any bearing on Mr. Dwelle's petitions and Mr. Dwelle replied not a whole lot. Mr. Dwelle stated in their opinion, this is the best use for the property - it will enhance the value of the rest of the community because it will eliminate these older houses and the rest of them back towards Torrence Street, Baldwin Avenue, Baxter Street, etc., most of this will be there for years before it is changed and to eliminate this would enhance the area.

Councilman Withrow asked about the rental for those units in there and Mr. Dwelle replied the two-family units on Lee's Court rent for $8.50 a piece; on Luther Street, they are $9.50 and $10.50 per week; further down Cherry, four-rooms rent for $14.50 and $15.50 per week. That to his knowledge, this is the same rent schedule he had a few years ago.

Mr. R. Michael Childs, 2301 Pembroke Avenue, stated the Myers Park Homeowners Association has tried to stress how important this Bromley-Henley Neighborhood is to their Association and to Myers Park as a community. It is one of the few neighborhoods in Myers Park that has actually had a down-cycle and is now very much on an up-cycle and is pretty much at the top of the peak and they would like to keep it that way.

He stated while trying to protect the Bromley-Henley Neighborhood, at the same time, this is not simply a one-community concern in this case, because the Cherry Neighborhood is as much concerned as Myers Park. That they are all concerned with having business usage right on the border of Myers Park if they can maintain residential uses there. He stated having an extended residential usage, coming up from Kings Drive and Independence, up to Myers Park, will help Myers Park. And, at the same time, they believe that having the opportunity to put this Community Development Plan into effect will be a real benefit to the Cherry Neighborhood as well.

Mr. Childs stated as they understand the Plan as recommended by the Community Development Department and the residents of the Cherry Neighborhood, it is to maintain it as an essentially residential area, through zoning primarily. The business usage would remove a large chunk from the Cherry Plan and put the entire Plan in doubt. The arguments they made in the past about the importance of helping the inner-city neighborhoods are still very valid and as much valid for Cherry as for Myers Park. Regardless of the neighborhood, it would be a real benefit to Charlotte and as a whole, to have a healthy, viable neighborhood that close to Charlottetown Mall and to the inner city. For that reason, he would hope that Council will deny this petition for a zoning change.

Ms. Lucy Ellis, 335 Cherry Street, stated she represents the Cherry Community Association and the Association is present at today's meeting not to protest, but to assist Council in protecting the Cherry Community, their homes. Many of them have lived in Cherry for over 50 years and have served many in their community and are now asking for Council's assistance in keeping Cherry a residential community. That they will submit to Council what their feelings are regarding the purpose of the Community Development Plan. They feel very strongly that

Cherry has already suffered through poor housing, poor street and poor schools, but in spite of all this, they have kept their faith in the desire to live in a safe and decent community.

She stated they therefore request Council to leave Cherry a residential community, not allowing further development of business or office construction, in order that their neighborhood might have new lower income houses built and every effort be made to save the lower income houses. She asked them not to move families from Cherry who would like to become homeowners and further recommend that Community Development Office involve members of the Cherry community in this Plan.

Mr. Oscar Hare, Chairman of the Cherry Community Association, presented a copy of their community's Plan for members of Council and stated they are concerned about their community and they really hope that Council will accept their request. He stated Cherry is the only home he has ever had and played on Baxter Street when he was a child and Baxter Street was a straw field. That he would pray that Council will accept their plan and keep Cherry a residential neighborhood.

He stated they love their homes and some of the people have lived there 60 or 70 years and they would like to stay there, too.

Ms. Mary McLaughlin, 729 Baldwin Avenue, stated her property would be most affected by any rezoning. They have a community there and they are not transients, passing through; this is their home. She stated she has been harrassed tremendously by Mr. Dwelle in reference to 729 Baldwin Avenue, who has come up with the idea now that he wants to make this a business area.

She stated Mr. Dwelle has had businesses there and they have not succeeded. That it is not conducive to business because if you are going to have a business you have to have it in a location where there is a lot of traffic. There is not a lot of traffic there because you have a hospital down at Kings Drive, there is a service station across the street from her and he has threatened to put in a McDonald's to come in and enter at the end of 729 and come out between her house and the Bells' house. That he came to her drive-way and put an iron pipe in the middle of it.

Ms. McLaughlin stated her address used to be 815 Morgan Street, which was a back street; when they put in the paved street, they came through, they measured, they put in the drive-ways for each building on Baldwin Avenue. That if her property is 53 feet instead of the 50 feet, it is not the fault of Wallace and Myers, from whom they bought the property. She stated that is who her Grandfather and Grandmother bought the house from. That this property is her home and if Mr. Dwelle is granted the privilege of making this a business area, she will still be at 729 Baldwin Avenue, paying her utility bills, paying her taxes and contributing to the City of Charlotte, not only the community of Cherry. There are a lot of older people who have always lived in the Cherry community and if they move them, it will not be good for their health.

She stated she would like the members of Council to take a tour through the Cherry community and see who these houses belong to that are considered slums. That money is being taken out of the Cherry community but is not being put back into the community - that is where communities are destroyed. She stated if Mr. Dwelle is allowed to destroy Cherry, he will eventually destroy another area and then other landowners will do the same thing because Council allowed Mr. Dwelle to do it.

That she is pleading with Council, as worthy Charlotte citizens, not to grant this rezoning petition and if anything, to improve the community, and have Mr. Dwelle tear down or fix up his houses. When you have a run-down, slum area, you have a tendency to get slum people in there, which is deteriorating to the community. Cherry is one of Charlotte's oldest communities; it has educated people there, there are educational institutions there. They are trying to teach their children to also be contributors to Charlotte; this is not only her home but her children's home and it was her grandparent's home. That she would hope Council will leave it like it is instead of tearing it down and help the residents to build it up.

Mr. Dwelle stated Ms. McLaughlin's idea to tear the old houses down might be a good idea if it is not economical to fix them up. It was his intention to remove a lot of these old houses on Cherry Street, adjacent to Independence and Baldwin Avenue and that would make that area a lot nicer. He stated it is inconceivable that anyone is going to put houses in there unless it would be the City of Charlotte and he would be glad to sell those houses to them.

Councilman Davis stated last week Mr. Sawyer briefed Council on the progress of the Community Development Program in which they were trying to encourage homeowners to bring the homes up to a standard slightly above the Minimum Code, or else sell them to the City. That Mr. Sawyer told Council there was a rush of people wanting to sell these homes to the City rather than fix them up, even though they were offered low interest rate loans. He stated most of the landowners told Mr. Sawyer even if they had 0-interest rate loans, it would not be economical for them to repair these houses because they could not possibly recover the cost of repairs.

He stated it seems the publicly-assisted programs to encourage homeownership does not work because the people had not responded to the extent they were willing to acquire ownership in homes; that the Public Housing Authority is the biggest single landlord in the city and this program is inadequate to meet the needs and he feels we are in a real dilemma here.

He stated he does not know the answer but he would hope the Planning Commission, after considering the Community Development Plan, will be able to give Council some words of wisdom because he does not know the answer.

Mayor Belk asked how many homes in the Cherry Area are privately owned and Mr. Sawyer replied approximately 70.

Decision on the petition was deferred pending a recommendation from the Planning Commission.

HEARING ON PETITION NO. 77-20 BY BREVARD S. MYERS FOR A CHANGE IN ZONING FROM R-6MF (CONDITIONAL OFF-STREET PARKING), TO O-6 (CD) FOR CONDITIONAL OFF-STREET PARKING ON PROPERTY FRONTING ON THE WEST SIDE OF CHERRY STREET, ABOUT 100 FEET SOUTH OF THE INTERSECTION OF CHERRY STREET AND BAXTER STREET,AND PROPERTY FRONTING ON THE EAST SIDE OF CHERRY STREET AT ITS DEAD END TERMINUS, AND CHANGE FROM R-6MF (CONDITIONAL OFF-STREET PARKING) TO O-6 PROPERTY LOCATED ON THE WEST SIDE OF CHERRY STREET AT ITS DEAD END TERMINUS.

The scheduled public hearing was held on the subject petition.

The Assistant Planning Director advised that the reason he asked Council to separate this particular petition from the other two in the Cherry community is because of the difference in circumstances. He stated a little later in the process, Council will receive an explanation of the proposed change in the Text of the Zoning Ordinance which has been brought about because of a situation where we have gotten into a procedural difficulty in terms of handling conditional use zoning.

Mr. Bryant stated sometime ago Council asked them to examine the Zoning Ordinance with the idea of attempting to recommend some changes that would help to relieve the number of circumstances under which this sort of proposal would come about.

One of the areas which Council will hear about later on is being proposed for change in this respect and this is the use of allowance of off-street parking for office and business purposes in residential districts. That up until now, and including now, the procedure provides that it is possible to request an receive consideration for off-street parking to occur as a Conditional Use in residentially zoned areas for the use of adjacent business or office-zoned land. The recommendation which will be explained later is a proposal to remove that Conditional Use from the Zoning Ordinance.

He stated in this particular case, the Petitioner has three parcels of land located in the Cherry Community on which such Conditional Off-Street parking approval has been granted in the past. No such use has occured on the property as of this time, therefore, if the text of the ordinance amendment is passed as proposed, then the right to develop this property in accordance with that Conditional Use approval would be removed.

Therefore, the Petitioner feels it would be desirable, from his standpoint, to present to Council a proposal to consider granting office zoning, or office CD zoning, on two of these parcels in order to allow him the guaranteed right to continue to develop the property for the off-street parking purposes as he has proposed. The reason for this request is therefore different from the others, although it is still in the Cherry community and has a relationship to the overall planning for the Cherry area.

Mr. Bryant pointed out the subject property and stated the proposal is to have properties located at the end of Cherry Street which is now zoned R-6MF to have conditional off-street parking approval granted to it, to rezone to O-6 (CD) classification with a proposal to continue the same plan of parking which has been in effect there for some period of time.

The property which is located on the Kings Drive side of Cherry Street is proposed to be rezoned to straight office, O-6 classification, without the conditional approach, so this could perhaps be combined with adjoining property on Kings Drive for development purposes.

The one other parcel, which is located just south of Baxter Street intersection on Cherry Street, is zoned R-6MF, with conditional off-street parking approval, and is being requested for office zoning, as well. The total effect of this proposal is to permit the petitioner the guaranteed right to continue to utilize these lots for parking purposes and would not be removed assuming that the text change, which will be discussed later, is considered for approval.

Mr. Bryant stated all three of these parcels are now zoned R-6MF and they do have the conditional off-street parking approval attached to them.

Mr. Brevard Myers, the petitioner, stated he and his brother have an equal interest in this property. He stated he is not present at this hearing because of his own wishes but because governmental action is threatening the reverse of some actions of City Council for privileges they have granted over the last fifteen years.

He stated the first governmental action is what Mr. Bryant has just explained in reference to the text of the Zoning Ordinance. The second in question is the proposed land use for the Community Development.

Mr. Myers stated his request is that Council allow him the privileges which he has had all along, or which Council granted in 1971. He pointed out on a map the location of the property which they have owned since 1950, after Kings Drive was built. He stated the property was very irregularly shaped and was very difficult to develop. They built two small buildings on the right edge of the property where there was adequate depth; these were built in 1953 and 1954. By 1960, in order to make this property develop, they bought additional property but by then it became obvious, with the development of the Charlottetown Mall, that the highest and best use of this property would be for multi-story buildings and not single-story buildings.

He stated in 1970, Council assisted them in closing a portion of Ellison Street and they rounded out the property where it was in useable condition.

Mr. Myers pointed out on a plat which he used in 1971 to obtain the zonings which they now have and which showed the construction of two office buildings, approxiamtely 40,000 square feet and the parking in question on the rear of the property. He stated presently there is additional screening and additional set-backs off Cherry Street and Torrence Street.

In response to a question from Mayor Belk, Mr. Myers stated there are four parcels in there with one private home and the one closest to Charlottetown Mall is vacant. That he has endeavored to negotiate its purchase but has been unsuccessful. The center two lots are owner-occupied and he respects their rights to stay there as long as they wish. He stated they have provided screening at the rear of the property.

Mr. Myers stated on the property closest to their development are absentee-owners and he has had trouble finding the owners. They are scattered all over the country and, as far as he can tell, the property taxes are not paid. It is occupied presently by a renter.

He stated the reason he has not developed this property since 1971 is because they have experienced extreme competition from outlying properties - Albemarle Road, SouthPark and other areas. They hope this has now turned around with more interest by renters of office space closer to town. They hope the concern about energy and other problems has turned the occupants of office buildings to look towards the center of the city.

The second reason has been the extreme competition from Urban Renewal. That he would hope that Mr. Sawyer has now finished flooding the market with the properties he has had available. That third, they suffered a real"black eye"in the half-completed motel on Kings Drive which gave the entire neighborhood a run-down appearance. He is glad to say that this is now completed and is an asset to the community instead of a "black eye".

Mr. Myers stated the next reason is because of the economic turn-around in which they found Charlotte flooded with office space and therefore this property was desirable for speculators and they hope this is also turning around.

He stated they feel this is a most desirable spot, close-in to town, because there are not many spots of large acreage ready for the type of development which they would like to make. That the Dwelle property has been mentioned as a possibility; there is also the Lassiter property on Fourth Street and probably one urban renewal tract left but basically the sites are running out and to bring businesses closer in to town, they need large acreage.

Mr. Myers stated he would call attention to the fact that there is no housing on this property and denying this petition will not save any houses. Second, denying this petition will not provide vacant lots for additional housing because economic conditions are such that no one has built any housing in Cherry since they built about 18 units in 1958 or 1959. That rents charged in the neighborhood will not support the cost of new construction.

He stated the Community Development project has a life expectancy of only about 8 years but the development they propose has a life expectancy of some 50 years. That property taxes on the property under consideration in this petition have been paid on the basis of its marked-up value for commercial purposes since the zoning was changed and if this petition is denied, then the tax base will revert back to the lower evaluation.

Mr. Myers stated they have paid this additional tax over these years rather than waiting for a zoning changes so this property might be immediately available for development. That they have used this property to some extent for a limited amount of parking but they prefer not to test the Grandfather clause law.

He stated Community Development has not objected in their planning to the R-6MFP-type zoning they have had as evidenced by the fact that they have not, in their Plan, requested a reversal of this zoning and he would hope Mr. Sawyer will confirm this shortly.

That he has made one exception to his request on this zoning in which he is asking for O-6 on one lot in lieu of the O-6 (CD) which restricts him to strictly parking. He pointed out the area in question and stated this comes very close to one of the buildings and without that being changed to O-6, it will greatly restrict the freedom of development on the property facing Kings Drive, by virtue of set-back lines. So, he is requesting O-6 (CD), not for the purpose of building on the property, but to give him some relief on the point that sticks right down in the frontage.

Mr. Myers stated he has asked a realtor who is very well acquainted with this neighborhood, Mr. Bobby Percival, to make a few comments because he has been very instrumental in the development of the Cameron-Brown Building, the Rexham Building, the Kemper Building, and more recently, the North Carolina Employees' Credit Union Building - all of which have occurred in these areas.

Mr. Percival pointed out the property and stated the main point about this is that there are very few tracts left in this area that are in any acreage size. That they originally had all the redevelopment land but much of that is gone; more recently, the Thompson Orphanage Chapel property was sold to the City of Charlotte and the parcel of Thompson Orphanage property between Third Street and the Cinema was sold to the North Carolina Employees' Credit Union so there are practically no tracts left for good office development in the three to four acre size.

He stated one of the concepts of redevelopment, originally, was to a single property for orderly development because it had become practically impossible for a developer to go out and acquire a tract where he has to deal with three, four, five or ten owners. If the office market stabilizes, there is going to be a greater demand for tracts of this size in areas such as this.

Mr. Myers stated in the last few months they have had an appreciable increase of inquiries from clients who want to be in an area such as this; there are a lot of them who do not want to be all the way downtown but do not want to be out in the surburbs either. This is evidenced by the North Carolina Employees' Credit Union Building there.

He stated it is highly desirable to have tracts of land like this ready to go without waiting for zoning changes at the time you have a prospect. When you find a prospect, he is usually too impatient to wait for governmental action to have the property ready.

That he is basically asking to retain the privilege they already have; it has taken him 20 years to put this tract of land together, with Council's assistance, and he would now ask that Council not deny what they have already granted.

Council decision was deferred for a recommendation of the Planning Commission.

HEARING ON PETITION NO. 77-18 BY JAMES H. ALEXANDER FOR A CHANGE IN ZONING FROM R-9 TO B-2 OF PROPERTY FRONTING 75 FEET ON THE NORTH SIDE OF TYVOLA ROAD, LOCATED ABOUT 525 FEET EAST OF THE INTERSECTION OF TYVOLA ROAD AND SOUTH BOULEVARD.

The scheduled public hearing was held on the subject petition.

The Assistant Planning Director located this property on the map as it relates to Seneca Place, pointing out Tyvola Road as it comes from Interstate 77 from the west and crosses Old Pineville Road and South Boulevard. He stated the property is vacant at the present time; is adjoined on the easterly side by a day care nursery and then single family housing from that point on easterly. To the rear are single-family residences which front on Milford Road. To the west there is a partially vacant lot which is tied in with a convenience foodstore, a lounge and then a service station on the corner. He pointed out a large area indicated on the map for commercial use as being the Woolco Store; and also indicated another area which is used for apartments; and Smith Junior High School.

He stated the zoning pattern at the present time is the subject property is zoned R-9 (single family) and everything from that point easterly along Tyvola Road on the north side. The south side of the road there is R-9MF zoning throughout the area. Adjoining the subject property on the west side is one small area of O-6 zoning and then there is B-1 zoning and B-2 zoning all along Tyvola. The subject property, therefore, is related to a small area of office building and then from that point on, business zoning on out to South Boulevard.

He stated the convenience foodstore is located on the business portion of this property and the office zoned portion is under the same ownership. Some years ago when there was a change in zoning there it was recognized that this portion of the property would be used for business purposes and the sphere of office zoning would be installed at that point. So, this property does have office zoning on one side of it and residential zoning on the other.

Mr. Myles Haynes, Attorney for the petitioner, stated this is a 75 ft. by 166 ft. vacant lot and that Mr. and Mrs. Alexander are asking that it be rezoned from its present classification of R-9 to a B-2. He has been authorized by his clients to be very candid in why they are requesting this change.

They have an offer for the sale of that lot by a person in the medical profession who wants to utilize that lot in conjunction with the little piece of O-6 next door in order to get 150 ft. frontage by 166 ft. depth to build a professional office building. That the prospective purchaser has a tentative agreement with the Cities Service Oil Company which owns the Citco self-service place next door to buy their little piece of O-6 which they also maintain as a vacant lot - they keep it grassed and keep it mowed. What they have is a vacant piece of land, caught in between B-1 from South Boulevard down to the O-6 piece and sort of zoned off on the other side - buffered is a better word - by this day care center.

He stated the building portion of the day care center will adjoin this piece of property; the play yard for the center will be on the easterly side and away from this building. The present neighbors are a Crown Oil station, the Tee-Wee Drive In which is a quick service food place, a beauty parlor, the Yellow Tulip Lounge, Citco quick service place, then this vacant O-6 piece and then Mr. and Mrs. Alexander's property.

He stated if you stood on the Alexander property and looked back to South Boulevard, you would have the Tyvola Mall and almost directly across the street to the right would be the service base for the Woolco Auto service place, plus a parking lot; looking to the left you would be looking at the Tyvola apartments which continue down to where the Smith Junior High School property starts, approximately a city block to the east.

He stated that mixture of classifications itself is enough to merit the change because that 75 ft. lot will never be developed under the present classification for residential purposes. More compelling than that is

the recent upgrading of Tyvola Road to a four-lane thoroughfare which everybody in town is now using as well as out-of-towners, as a connector between I-77 and Park Road. The afternoon paper carried a letter from one of the residents there complaining now because the traffic count, she thinks, has gone from 15,000 cars a day up to approximately 20,000 and has caused her to have to install an extra driveway because she cannot back into Tyvola but has to go out on Baker which is a connecting street.

Early in the morning or late in the afternoon, at traffic time, cars will back up from Tyvola Road down beyond this piece of property in question waiting to go westbound on Tyvola Road. He stated again that the property will not develop as an R-9; its logical use is a transitional use which will allow zoning so that the property can be used for office building purposes.

Commissioner Jolly asked why, if they are building an office building, they need B-2 zoning? Mr. Haynes replied for what he believes is a very logical reason - they have a prospective purchaser who has to put the two things together in order to utilize the property. That he suggested to Mr. Alexander that since they do not have contracts in hand in either instance, if that should fall through and the situation being as volatile as it is right now at that point on Tyvola Road, they should go for the widest classification they can get so that if this should not go through, then at least he would have some way to market that 75 ft. lot.

Councilman Davis asked if office zoning would be acceptable to his client if he could not get the B-2? Mr. Haynes replied it would be, but again if this particular project should fall through (he has no reason to believe that it will) then he has a 75 ft. lot and it is just going to be a hard piece of property to market by itself.

No opposition was expressed to this petition.

Decision was deferred for a recommendation from the Planning Commission.

HEARING ON PETITION NO. 77-19 BY SARAH B. AYCOCK FOR A CHANGE IN ZONING FROM B-1 TO B-2 OF PROPERTY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF INDEPENDENCE BOULEVARD AND HAWTHORNE LANE.

Mr. Fred Bryant, Assistant Planning Director, pointed out on the map the location of this property, stating at the present time it is a service station adjoined on the Hawthorne side by a lot which is occupied by a residential structure, then a lot which is occupied by an office, other residences from that point and then a church. Across Hawthorne is the Krispy-Kreme Doughnut shop, and residential usage along Hawthorne from that point. Across Independence is another service station and other residential structures involved. There is a vacant piece of property on the other side of the subject property, facing on Independence.

The zoning pattern at the present time is one of generally B-1 zoning all along Independence Boulevard in the vicinity on both sides. There is one lot in the area zoned for office use; and multi-family zoning. Technically, the subject property is surrounded by B-1 zoning on all sides.

Replying to a question from Councilman Withrow, Mr. Bryant stated this is a very high volume intersection; there have been numerous problems in the area. That there is still the long range thinking in terms of what is to be the future of Independence Boulevard at this location.

Ms. Sarah Aycock, the petitioner, stated she and her husband operate the station at 932 Independence Boulevard. They moved in April 4 of this year from a station on the corner of Sharon Amity and Independence where they had been for six years. They brought with them six Hertz trucks. At that time they did not know that this property was not zoned to rent trucks. When their customers pull in for gas sometimes they want to move their furniture, if they can get into their gas station. The way the traffic lights are constructed there, with the median, they have trouble getting into the station to even buy gas. When they come up East Independence Boulevard, the only way they can get into the station is to go up Central Avenue and come down Hawthorne Lane going south. If they come up South Hawthorne there is no way

they can come into the station because of the median in Hawthorne.

Her main reason for being here is to ask that this property so they can keep their trucks because they have signed a lease with Texaco for one year; that without the trucks she cannot keep the station. They get a commission on the trucks each month, maybe $300 or $400 which helps them to pay the rent on this leased property. She stated she has a letter from Mr. E. M. Wilkinson, owner of the property, and he does not object to the rezoning.

She stated sure there is a residential area back there, but further on down East Independence she can name several places that rent trucks. She lives behind one - in Eastway Park - and they have no objections to these people renting trucks. She does not think the neighbors behind them would object because the trucks are not parked in anyone's way. They are parked on the right side of the station facing Krispy-Kreme, the back of the building, and the view is not blocked at all.

She asked Council to please consider this carefully because if it is not changed she will either have to move, get out and look for another station. She stated she and her husband work 15 hours a day in order to keep this operation going and have a three-year-old child; that her husband supports three other children by a previous marriage and there is no other way that he has of making a living because he has been in service station work all of his life.

She stated she cannot understand why the City does not want them to rent trucks. She would appreciate an explanation because she never knew you had to be zoned to rent a truck until this came about and she received a letter from the zoning inspector. When they were at Sharon Amity and Independence for the six years they had no problem, of course, because it was zoned B-2.

Mr. Bryant stated as far as the distinction between allowance and non-allowance of rental of vehicles of this sort, they need to keep in mind that B-1 is basically a neighborhood oriented business classification and generally speaking is located in neighborhood areas designed to provide day to day type services for a neighborhood relationship. It was felt when the ordinance was drafted that the rental of trucks was not a necessary part of a neighborhood operation and would more appropriately be associated with B-2 which is a general business district and more frequently it provided for business facilities to serve a wider area than just the neighborhood. It is strictly in terms of the types of uses that are allowed down the line in the two district zonings - it has nothing to do particularly with this exact location.

Councilman Withrow asked if there is any way to provide conditional use with the B-1 zoning? Mr. Bryant replied not with B-1; it would be possible to assign B-2(CD) so that the only additional use that could be made of the property would be allowance for the rental of trucks, but it would require rezoning to B-2(CD). Mrs. Aycock indicated this would be acceptable to her.

Mr. Welton, 2501 East Fifth Street, stated he is president of the Elizabeth Community Association and has looked into this petition to see what they felt the impact would be on the Elizabeth community. He is not inclined to take Ms. Aycock's family business away from her. They are not excited about having the trucks there, but it is on Independence Boulevard, it is an area where they feel they have to be reasonable with a station like that.

He stated he had hoped what they would do would be to go to a B-2(CD) as Mr. Withrow suggested. He stated he is afraid the house behind the station on Hawthorne which is vacant will get delapidated and run down if they do not protect that house from the trucks. It is for sale right now and he is wondering what the viability of that piece of property is. The people who are renting the next house as an office do not object to the change of zoning; their view is blocked by the other house, but they did say they were a little concerned about when trucks get parked at the end of the lot because they would block the view for traffic if it was coming very fast. Their only request was that the trucks not be parked all the way down to the street. He stated in order to protect the first house, if it were possible in the conditional zoning, it would be nice to have a wooden fence that would run on the back side of the subject property. They just do not want this to cascade down Hawthorne to where the property would then run down. The area has maintained its integrity pretty well in terms of residential - there are some

nice apartment buildings and he would hope they could use some judgment to protect it from the trucks. That B-2(CD) with those conditions is what the people of Elizabeth hope will happen.

Decision was deferred for a recommendation from the Planning Commission.

HEARING ON PETITION NO. 77-21 BY RAMA PROPERTIES FOR A CHANGE IN ZONING FROM R-9MF TO O-15 OF PROPERTY FRONTING 200 FEET ON THE NORTH SIDE OF FLORENCE AVENUE, LOCATED ABOUT 310 FEET WEST FROM THE INTERSECTION OF FLORENCE AVENUE AND RAMA ROAD.

Mr. Bryant, Assistance Planning Director, used the map to point out the location of the property. He stated the property is mostly vacant although there is a residence on one portion of it. Generally, there is vacant property around it to the west and across the street. That the adjoining property is being planned for development by the Housing Authority for the public housing which is proposed for that area. There is a medical office building located at the intersection of Rama and Florence and a much larger office building which fronts on Monroe Road. He also pointed out the Lemon Tree Apartment area and an area of single-family housing on one side of Rama and a scattered pattern of single-family housing down toward the end of Florence. He also pointed out McClintock Junior High School which is located on Rama Road.

The zoning pattern at the present time shows the subject property as R-9MF as well as the property to the north and to the west and to the south. The only alternative to that is office zoning which extends from the subject property out to Rama.

Mr. Don Lee, Dellinger and Lee Associates, stated this is Dr. Bonomo who is one of the owners of the property in question. He used a map to show what is happening around the area. He stated that presently the development trends on Monroe Road, in the east Charlotte area, are being influenced by the continued suburban growth of the area. The development of Eastland Mall, completion of a portion of the Tyvola-Sardis link and the most recent annexation. That at this time there are very few medical facilities in this area. That Dr. Bonomo and Dr. Pattishall had this property rezoned in 1971 for the purpose of putting a medical building on the front portion of the property. They did this and became a very good neighbor to the residential area.

He stated they are not looking at this property as a development venture as much as a truly professional office mart to serve the neighborhood. That as Mr. Bryant has pointed out, they are sitting in a quadrant of the R-9MF. What they are proposing to do - now, there is a dentist who is already committed and would like to be on this piece of property; and the doctors have other potential professional people who would like to be in the area. This represents the density that the Housing Authority is proposing to do. It comes out to about 7.5 units per acre versus about 12.5 units per acre on the adjoining Lemon Tree parcel.

What they are proposing to do would be to develop a very low profile professional park on the entire piece of property, leaving a large portion of the site undeveloped. The traffic generated from this park would be sufficiently less than if they go in and develop it as a multi-family complex. He pointed out on the map the existing building. He stated this type of park for professionals is better located off of a secondary street which is now going into what is becoming a major thoroughfare on Rama Road because of the use that a lot of parents make of it to visit the dentist and the future doctor. That it has been proven that even though there is a high concentration of office parks in the adjacent property and the piece on the corner of Monroe and Idlewild, doctors and dentists have a hard time locating in these facilities because they have to go in to what is a business environment.

He stated the doctors are committed to develop the property in a similar manner to this, in a very low key and low scale development. That if the doctors are only able to use the front portion, and develop the rear portion as an R-9MF, they would probably have to put 14.8 units per acre and what is approximately a three-story 31,000 sq. ft. unit and parking of some 42 cars

or 15,000 sq. ft. He thinks they can see what they are proposing to do and that the track record has already shown that what they proposed to do in the beginning they did, and they will continue to do this.

He showed photographs of the existing building indicating the street now as undeveloped - a dirt road. What they tried to do was go in, build a green berm in front of the building to try to hide the cars, and on the interior of the property where the entrance to the building is located, they have tried to leave as much of the planning amenities as they possibly could.

Another photograph showed the back of the Rama office complex and the high density of the Lemon Tree development where there has been very little area left for trees, etc.

Mr. Lee stated allowing Rama Properties to extend their services will not only help the existing community, but it will serve a need that the Housing Authority is developing with the low-rent housing they are putting in in that area. Besides serving he thinks it will also help protect the family housing development. It is a wise decision in only using the land at some 7.5 units per acre as it will carry through with the same kind of low key development.

No opposition was expressed to this petition.

Decision was deferred for a recommendation from the Planning Commission.

HEARING ON PETITION NO. 77-22 BY CHARLOTTE-MECKLENBURG PLANNING COMMISSION TO CONSIDER A TEXT AMENDMENT TO THE ZONING ORDINANCE TO ESTABLISH A CLEAR DISTINCTION BETWEEN THE CONDITIONAL REZONING PROCESSS AND SPECIAL USE PERMIT PROCESS, AND TO CLARIFY CERTAIN USES ACCORDING TO THIS DISTINCTION.

Mr. Fred Bryant, Assistant Planning Director, referred to a 47-page booklet included with the agenda and explaining this petition for a text amendment to the zoning ordinance. He stated it is a rather extensive change which the need to consider has been brought about by the circumstances they found themselves in relative to the conditional zoning processes. There is a very serious need to examine the conditional zoning approach and attempt to come up with alternative methods of handling it, wherever possible, to avoid the lengthy quasi-judicial proceedings they have gotten involved in.

They have examined the whole structure of conditional zoning, special use permit zoning and conditional district zoning. Their report is a result of many, many hours of work with Mr. Underhill, Mr. Boyd and his staff and Mr. Young and Mr. Landers of the Planning Commission staff. What is proposed in some ways is a fairly drastic change and in other ways it is not. As far as content is concerned there is not that much change. What is proposed is to eliminate, first of all, the use of the terminology "conditional use." Instead, it is proposed that there be recognized a series of conditional districts. "Conditional districts," according to the legal interpretation, can be handled without the quasi-judicial procedures because they involve a change in zoning, changing from one district to another. They propose to continue the process of conditional districts. Everything else would remain by way of extraordinary processes and would become, as far as terminology is concerned, special use permits - there would remain a number of these.

With the use of a chart he showed the basic content of what they are talking about. The parallel conditional district, which they are beginning to rely on more and more, would remain as they are at the present time, except that the concept of the parallel conditional district be expanded so that the special use permits, which are necessary under some district organization such as the distributive business district and the institutional district, would become in effect uses by right under the conditional zoning process. Therefore, you would avoid the specialized hearing situation that normally would come about through that utilization.

The B-1SCD, which is one they rely on primarily from the standpoint of regulating conditional shopping center situations, would remain in the ordinance and would be expanded to include any retail sales establishment over 100,000

square feet. He stated that what got them into this situation to start with was a retail facility that was proposed to be located in an existing industrial district; it was over 100,000 square feet and required a conditional hearing process.

He stated under this proposal, any retail sales establishment over 100,000 square feet would just be eliminated as a use by right in business and industrial districts; and the only place it would go would be in a B-1SCD context and therefore would require conventional rezoning - not the quasi-judicial procedures. It would accomplish the same kind of control, but would eliminate the lengthy proceedings they got into before. B-1SCD, therefore, assumes an expanded role in the business concept of the development of the community.

R-20MF, which is a specialized multi-family, low-density district, would remain. Some of the considerations have been refined in terms of the factors to be considered. That is true of most of the changes - they have refined the conditions under which consideration would be given.

PUD (Planned United Development) would basically stay the same. This is the large scale development which has not been utilized in the last several years.

RMH (Mobile Home District) would remain with no significant change.

B-2 Highway Business District has been in the ordinance since 1962 and has never been utilized - this district would come out. Since it has not been used in the 15 years it probably is not needed.

The Special Use Permit category does have some changes in it and may be the cause of some comment. As he has already stated, the use of the word "conditional use" would be eliminated and they would utilize the terminology "special use permit" for everything beyond the conditional district concept. This includes many of the uses which heretofore were utilized in conditional use and, therefore, the ones remaining in the ordinance will continue to require the quasi-judicial proceedings because they are special use considerations. What remains in that concept is, first of all, petroleum products storage of over 100,000 gallons requiring special consideration. They feel that needs to be left in there because anytime you want to store 100,000 gallons of gasolene or any other petroleum product, it is a potentially hazardous situation and should require special consideration. However, they are proposing that it be deleted as a use from the I-3 district, which is located only around the central business district, and they question if they would ever want to allow this kind of petroleum storage in that location.

Commercial Outdoor Amusements is a specialized circumstance which probably will not be used very much anymore. Several years ago they went through a whole process of recognizing many of the shopping centers as sites for these special promotion, ride situations. There may still be a need for it at some point in time, so they say leave it in, but they have refined the findings that would be necessary in order to make it more appropriate to what would be the logical considerations.

Breakways, etc. - this was only utilized one time, it may never be utilized again, but it could be so they have left it in, but they say that the findings should be modified to require, among other things, that it be at least 1,000 feet from any residential district.

High-Rise Buildings in Residential Districts - this is a relatively recent district and stipulates that any building over 60 feet in height in a residential district would require special consideration. It has been left in but, again, the findings have been refined a bit to make them more appropriate.

Distributive Business Special District - This is a specialized district which is designed to accomplish certain things in certain areas of a highly controlled nature. Most of the uses which are allowed in this district require special consideration. They say continue that except that it now would be possible to combine it with a parallel conditional process and wrap it all up in one process and avoid the quasi-judicial proceedings.

Institutional District - this is also a specialized district, primarily in effect out around the University in the County area and no significant change is proposed in that district.

Institutional Uses in Residential Districts - this is one that is going to be used as much as anything else. We just went through a process of installing this into the ordinance whereby such things as nursing homes, day care centers and other activities could become special consideration circumstances in residential districts. Frankly, they went round and round and round on that trying to find some way to avoid the special hearing process on that, but at this point they have not been able to do this. There are certainly enough reasons to want to examine each location for this use to probably justify the additional activity that it will require. Basically, they have redefined the findings so that they become more reasonable and more practical. They have separated day care and pre-schools in I-1 and I-2 because they have made some changes there. They propose that I-1 and I-2 would become areas in which these would be allowed as uses by right whereas now they are specialized circumstances. The rest of the Institutional Uses would stay the same.

Mr. Bryant stated there are other special use permit circumstances which have been deleted from the proposed amendment because they are fairly significant. Quarries, for example, have been in as conditional use circumstances would be taken out and allowed only under Industrial zoning; not allowed as a conditional use in residential districts. This has no effect on the City situation because there are none of them in the City. Later, if they get into the County, they may have a problem with one in that respect, but they feel that it is no longer practical or reasonable to consider that as a conditional use under residential zoning.

He pointed out that in some of the districts they propose to delete there would potentially be some problems in terms of those locations which have received this type of approval but have not been constructed as yet - it would remove their right to so construct. There are none of these in the Quarries.

Social Clubs in Multi-family and Planned Unit Development areas - this is one they have treated for a roughly short period of time. They had a big discussion some while back about allowing social clubs to have the retail sale of beverages and food items. It was originally put in as a special use permit use. In the process of examining this, it is indicated that perhaps that can be allowed as a use by right subject to a refinement of the operational requirements. He stated not a single one that has been requested has been denied; primarily because they have been able to work with the petitioners in each instance to iron out any potential problem that appeared as to location, as to hours of operation, any control methods of that process. It does seem, to avoid the quasi-judicial proceedings, this now can operate as a use by right, with the refinement of the operational requirements. It has been worked out with the Inspection Department, with the ABC Board and others who have been concerned about this type of activity.

Off-Street Parking - here is where they get back to what he was talking about in terms of the Cherry situation. It is now possible to, under some circumstances, approve off-street parking for business and office purposes in residentially-zoned areas. It is proposed that this be deleted for the primary reason of avoiding the quasi-judicial proceedings; secondly, and most importantly, now that we have the parallel conditional district possibility they can now request, as Mr. Myers did, office(CD) and they can accomplish exactly the same thing through that process as they can through the conditional process. It does create a number of situations where they have received approval for this but have not built the parking facilities yet. If this is approved then it will not be possible for them to continue with that approved use of the property.

He stated every single property owner who is affected in this way has been contacted - where Council has granted in the past specific conditional approval to develop the property in a certain manner and that is now being taken away by this amendment, they have contacted those people. That under the I-2 situation (Councilman Davis asked about this) nothing is being taken away from them - it is only being changed from a conditional use, which they do not have the automatic right to make of it anyway, to a B-1SCD requirement.

He stated the City Attorney's Office is working now on a possibility of inserting in this section a delayed right to develop under this. They may say, for example, that this authorization would continue for six months, or for a year, whatever time period might be reasonable in terms of giving them some leeway time in order to develop the property in that way, if they saw fit. In most instances they have no actual plans so they feel like many of these are many, many years old and perhaps development plans have changed and they have no further interest in that respect.

Institutional Uses in Business Districts - this is a new refinement on the institutional uses. They are proposing that day care facilities and nursing homes be permitted as a use by right in business districts. When this was set up originally, day care facilities and nursing homes were put in as a conditional use in business districts because it was felt that perhaps there would be some circumstances where they might need protection from their own surroundings which they were proposing to go into. On further examination, this does not appear to be too likely.

Truck Terminals in I-1 - this is now a conditional use and is proposed to be removed altogether. It would leave truck terminals as being allowed under I-2 zoning; if someone had I-1 zoning and wanted to make use of it for truck terminal purposes, instead of requesting conditional use they would just have to request a change to I-2.

Golf Driving Ranges in Residential Districts - this would also be removed as a conditional use and require probably rezoning under the CD process if a situation came up. Included in this category are tennis facilities. There are three of those which have been approved - two have been built and one which has never been built. A contact was made on the one which has not been built and no response was made. It was down off Randolph Road and has shown no signs of being activated and probably never will be.

Apartment Conversions in the B-3 District - this is another section that has never been used. It was put in many years ago and it is proposed to be deleted. They are working out an alternative to this. It would have to do with older buildings in the B-3 District that might be considered for apartments, for example, but would not be able to meet the dimensional criteria necessary for that. They will come back very shortly with something appropriate by way of consideration for that.

Manufacturing and Research Districts - this is one that has never been utilized and they felt this should be treated as a specialized circumstance and not as one necessary under the conditional process.

Parking in the Set-back in the R-1.0MF District - this district was replaced by the Urban District for the Fourth Ward area and would no longer have an application.

Mr. Ben Horack, Attorney, stated with one exception his comments do not relate to any particular case or petition. The one thing that has bothered him from the beginning is the whole thrust of this new comprehensive amendment does not really address itself to something he will suggest now that never should have been in there in the present form to begin with. That now is the time to do a housecleaning, if Council agrees with him. He refers to the fact that one cannot amend or withdraw a petition without the consent of the City Council and does not know whether that request is allowed until the night of the hearing. That the three things that he had in mind, procedurely, to talk about, he has seen examples tonight of all of them.

That Mr. Dwelle's petition - he was suppose to file that ahead of time. But in any event, he wanted to amend the petition and said so, but nothing happened. It is nonsensical. He knows how it came about - it was an effort on the part of City Council to protect neighborhood groups and other adjoining property owners from presumed harassment and overbearingness of developers who would use withdrawal or amendment as a last minute ploy to thwart neighborhood reaction and organization to make their wishes known.

His point is that in the name of common sense, there should be a point in time when a petitioner who has filed his petition is allowed to amend or withdraw it at any fairly early magic date or time schedule that Council

might pick out so that the petition could be withdrawn. He cannot think of anything more sterile than to force a petitioner to proceed with a petition he does not want heard. If he is using it as a ploy, then maintain a certain period toward the end that you are not going to let him do it, you are going to stick him with it. He would be stuck and obviously would not pursue it with much vigor and he would be put in cold storage for two years. But, if it is an honest withdrawal - maybe he wants to start over and do a better job, maybe with the Planning staff's recommendation. He has made his point. That at some point in time, fairly early in the game, they should allow withdrawals or amendments.

If it is an amendment they are talking about, then arrange matters so that when it comes up before Council, as hard pressed as both public bodies are, that it comes to them in the best posture, providing there is no overbearingness or ploy to the detriment of the neighborhood groups. Illustrative of what he is talking about in terms of an amendment, Mr. Bryant mentioned social clubs - they have never had any trouble with social clubs because there was always that sitting down and reasoning together that is most beneficial to thoughtful petitioners. That strictly speaking, even on these schematic plans, as he reads it, the plan is part of the application and hence the petition, and literally applies and cannot be modified one single iota until the day of the hearing, and then only with Council's permission. That he and Council know that every day it is done otherwise. That there was some overkill to begin with in the breadth and overbearingness of that language which needs to be alleviated.

Mr. Horack stated he is fully aware of the prohibition against contract zoning - namely, the Raleigh case. If they do not know it by name, they know it by substance. It is where you cannot grant a general, basic zoning change - like a straight B-1 or a straight I-1 - unless it has in there a declaration to the effect that before you can grant a straight zoning request you must evaluate the thing - not from any proffered suggestion of a particular use - but rather any use that is permitted as a matter of right or otherwise in that particular district. That is a tough one. He thinks it really ought to be wrestled with. For example, the Planning Commission or City Council, one or the other, initiated a proposal to have industrial zoning in order to accommodate the satellite sanitation truck location. Strictly speaking, you cannot even breathe that. Suppose a property owner has B-1 property and he needs another three feet either to correct a side yard or to accommodate some sort of developmental adjustment - you cannot even breathe that.

The proposed amendment also edicted originally, before the addendum, that you may not allude, or must refrain from any written, oral or graphic presentation of a particular use. The addendum strikes out two of them and just says you cannot do it by graphics. That in the case of the doctor's petition tonight, they must blind themselves to everything he said, including his graphics, and think of that in terms of an electric sub-station, a gas substation, a motel, etc. If in their infinite wisdom, they do not find it is a suitable change to accommodate all of that panorama of 0-15 uses, then, as he understands it, they are not suppose to grant it. That is nonsense. That hard cases make bad law - that is bad law. That with a little bit of ingenuity, if the problem cannot be obliterated perhaps it can be ameliorated and he would recommend that.

The third thing he wants to speak to relates to a cause in which he does have some interest - the applicability of the new ordinance to a conditional use that has been approved by Council in the past. They saw an example of that tonight in the person of Bernard Myers. The only difference between his situation and his Ford Leasing Development one on South Boulevard which Council approved two months ago is that his is not "green for go" yet, so he wants some sort of CD so that it will be there when he is ready. He does not know that the Ford people have any monopoly on the problem, but it really highlights the inequity of the amendment, at least at this juncture. It wipes out all of these past approvals, of which the Ford conditional park is one, and that makes it a non-conforming, and because it has not been developed, then they cannot do anything with it. It is undeveloped land from that point;

the only recourse would be to come back, start all over, scrub everything that has been done and come back on a CD basis. He does not believe that is equitable; he does not believe Council intends that; and Mr. Bryant has already alluded to the fact that there has been some discussion with Mr. Underhill on that score. There are others like his situation; he is using Ford simply as an example. The petition was filed in November of 1976; a hearing was held in January; the City Council approved the request in March and the Ford people purchased the land two months ago today. That some sort of moratorium in there, whether it is six months or a year, to give those who legitimately got their approval an opportunity to follow through with their plans rather than turn around and start from scratch and take their chances.

Council decision was deferred for a recommendation of the Planning Commission.

MEETING RECESSED AND RECONVENED.

Mayor Belk called a recess at 10:10 o'clock p.m., and reconvened the meeting at 10:20 o'clock p.m.

DECISION ON PETITION NO. 77-13 BY BALLENGER AND BETTY TRAYNHAM FOR A CHANGE IN ZONING OF RPOPERTY FRONTING ON THE EAST SIDE OF EASTWAY DRIVE, NORTH OF THE INTERSECTION OF EASTWAY DRIVE AND NORFOLK SOUTHERN AND AT & T RAILROAD LINES, DEFERRED.

Councilwoman Locke moved that the subject petition be deferred until next week when Councilmembers Whittington and Gantt are present. The motion was seconded by Councilwoman Chafin, and carried unanimously.

DECISION ON PETITION NO. 77-14 BY O. T. WAGGONER FOR A CHANGE IN ZONING OF PROPERTY NEAR THE NORTHWEST CORNER OF THE INTERSECTION OF BRIAR CREEK DRIVE AND OLD MONROE ROAD, FRONTING ON BRIAR CREEK DRIVE AND ON COLONNAIDE DRIVE, DEFERRED.

Councilman Withrow moved that decision on the subject petition be deferred until the next meeting because of the 3/4 Rule requiring six affirmative votes in order to rezone the property. The motion was seconded by Councilman Williams, and carried unanimously.

CONTRACT WITH GREATER GETHSEMANE A.M.E. ZION CHURCH, APPROVED.

Motion was made by Councilwoman Locke and seconded by Councilwoman Chafin to approve the contract with Greater Gethsemane A.M.E. Zion Church, in the amount of $223,551, for a Special Education Program for Community Development Area Youth.

Councilman Davis asked if this program is operated generally for children who have access to kindergarten and public school programs, or remedial to compensate for the basis academic or communicative, social skill deficiencies? Reverend Battle, Director of the program, replied that is correct. He stated some of the children have not had access to public school programs as they work with pre-schoolers in the area, and some may not have had access to kindergarten.

Councilman Davis stated he wanted to point this out because later in the meeting he wants to have a discussion on a group of children who might also be served under Community Development Programs who have not had access to public schools.

The vote was taken on the motion, and carried unanimously.

SETTLEMENT WITH SYSTEM DEVELOPMENT CORPORATION FOR OUTSTANDING CLAIMS, APPROVED; AND ADOPTION OF ORDINANCE NO. 577-X TRANSFERRING FUNDS TO PROVIDE SUPPLEMENTAL APPROPRIATION; AND MAYOR AUTHORIZED TO EXECUTE RELEASE FOR ALL CLAIMS AND OTHER DOCUMENTS NECESSARY TO CONSUMATE THE SETTLEMENT.

Councilwoman Locke moved approval of the Settlement, in the amount of $227,500, with System Development Corporation for outstanding claims and adoption of an Ordinance transferring $189,264 within the General Capital Improvement Fund. The motion was seconded by Councilman Williams for discussion purposes. Councilman Williams stated he received a memorandum from the City Attorney but he has not had a chance to really study it. He asked if we are paying them a sizeable sum to settle some claims and Mr. Underhill, City Attorney, replied that is correct.

Mr. Underhill stated we have retained under contract $127,500 for their over-running the contract time, or the period of time in which the work was to be completed and they had disputed that. He stated they basically claim that their delay in completing the contract was caused by a number of reasons; one, faulty specifications; two, City-incurred delays, or delays in getting things approved which preventing them from proceeding in a timely, expedient fashion. They also alleged that some of the contract provisions are ambiguous and as he pointed out in the memorandum which he sent to them, they feel if there is any ambiguity, it is usually construed very strictly against the parties who prepared the contract, which in this case, is the City, the State and the Federal Government.

He stated he believes there is a very strong liklihood that liquidated damages that they have withheld up to this point in time, if it were litigated, the City would probably not be allowed to retain - which is not to say we do not have some good legitimate defenses and some reasons for doing it.

Mr. Underhill stated what they have tried to do is to work through claims which at one time totalled over a million dollars and analyzed some specific claims in which they felt they had some weaknesses and that the Contractor had some valid arguments and to arrive at something that is a compromise situation with a view toward trying to avoid litigation, which they think is a fairly strong possibility if we are unable to settle it.

That when you look at that possibility, he would suggest that Council look at what the cost would be attendant to defending that litigation; they feel it would be rather sizeable and a very complex kind of suit. He stated the suit would very probably be initially brought in the State of California, where the Contractors' home base is. He does not think they would be allowed to proceed in California but every indication they have had from them is that they would at least try to file in the California State Court System which would put the City in the task of trying to get it moved to North Carolina and then litigating the thing until it was completed, which would be a fairly expensive proposition, even if we never had to pay anything.

This contract is between the City and the Systems Development Corporation and the City has separate Municipal Agreements with the State Department of Transportation in which they participate in funding this contract. What they will do, if Council authorizes this settlement, is then attempt to justify to the State to their satisfaction, that the settlement is a good one and have them participate in the same fashion as they participated in the original contract; the same with the Federal Government. That being the case, the City may or may not be able to re-coop some of these claims or the amount being paid in the settlement of these claims from the State and Federal Governments; we have no assurance they will do this; they have talked to them about it and feel they will listen to them and hear them out. They are fairly hopeful they will be able to see fit to help.

Mayor Belk stated this is the type thing the City gets caught in when they have to accept the low bidder.

Councilman Williams asked if the City Attorney is satisfied this is the best way to handle this and Mr. Underhill replied yes, as a matter of fact, this offer lay on the table for several months before it was accepted, or offered to Council for approval, which is the only way the City can operate. They started with their million dollar amount and are now down to this; it took approximately eight months to get to this point. He stated he feels this is as low as they are going to go and considering all the circumstances, it is a good settlement.

Councilman Davis stated this is a large sum of money in relation to the original contract which was $1,245,000 and in a way, we ought to go ahead and maybe it would be worthwhile running this through the judicial process to see exactly who erred and where because it may very well be that we can either tighten up on our bidding procedures or supervisory procedures.

Mayor Belk stated the problem was that the City had to take the low bidder. Councilman Davis stated the City apparently made some mistakes, too. That the bidder submitted some extra work which was nice to have but was not required in the contract and then the City said this is nice to have but it does not work right and we want you to fix it, thereby, the City acquired the liability for the whole deal that he had installed; this is the part that he is making the claim against us for.

Councilman Davis stated this was perhaps an error on our part because we became obligated for additional monies beyond the $1,245,000.

Mayor Belk stated if we continue on the legal part, it will only cost the City more money. Councilman Davis stated it might not be the best way to go, but he feels Council should deal with this matter of $227,000. Mayor Belk stated he feels the quicker we get rid of this matter, the better the City will be.

Mr. Underhill stated $127,500 was retained under the contract, which would be a part of the $227,500. Councilman Davis stated the City was entitled to this. Mr. Underhill stated they dispute this and if this is a disputed matter that ends up in litigation, then there is a fairly strong liklihood that it might be resolved against us and we would have to pay that amount anyway. He stated the State is in agreement with this because you have a very difficult time just because of the posture of the law in being able to retain liquidated damages. That he tried to explain in the memorandum that if the Court finds any ambiguity at all, it usually resolves that ambiguity against the party who drafted the contract. He stated the City drafted the contract, with the assistance of Consultants from the State and Federal Government. That part of the problem is the Booklet, called the Green Book, is the North Carolina State Highway Commission's standard specifications which was incorporated by reference under this Contract; it is the standard specifications for roads and structures and a lot of the language in there does not really lend itself to this kind of contract, but the City was dealing with the State and the State was paying a large portion of this money and this was a pilot-kind of program, Charlotte and Raleigh were the only two cities that used this approach initially, which was to contract with the party directly and with the State and Federal Governments participating independently of that construction contract and Raleigh's experience has been the same as Charlotte's; they just settled a claim with their contractor.

He stated Mr. Corbett would be quick to tell Council that his Department learned some things from this but it was a difficult situtation and he feels, based upon what he knows about it, which is right much at this point because they spent a good bit of time in dealing with this, he believes this settlement is the best we are doing to do under the circumstances and even if the City does not have to pay out a dime, they would have to pay this much in expenses and court-related litigation costs.

Councilman Davis stated he would at least like to have a report back from the City Manager on how this was handled and what actions were taken to prevent a reccurrence of this because we have to have some way we can protect ourselves from this sort of over-run. That this experience would make a Councilmember feel pretty tense about approving a million and quarter contract if they think they have to be prepared for that size over-run.

Mr. Corbett, Director of Traffic Engineering, stated the only thing he might add to that concerns the claims and their review of the claims. Following the presentation of the claims in December of 1975 by the Contractor, his staff reviewed them and informed the contractor that they could not agree with any of them, basically because he had not followed the methods as set forth in the Green Book in filing his claims. There are cases where the contractor is morally entitled to some additional funds but since he did not follow the procedures, they could not approve them. The Contractor subsequently represented his claims and reduce them by roughly one-third, from a little over a million dollars down to six hundred thousand dollars. They then met with the Contractor on a number of occasions in an attempt to get him to change the way in which he kept certain records regarding the claims, not they were not able to get him to do any of these. That after consulting with Mr. Underhill on several occasions and meeting with the Contractor and listening to his claims and all of the ramifications, they concluded that the best out for the City at this point in time is to recommend to the City Council that we settle for this $227,500 - that is $100,000 over and above the contract because they retained $127,000 as liquidated damages because the cititzens of this City suffered during the progess of the contract which would go back to him because he did, in fact, do the work that was required and secondly, the $100,000 in recognition of the actual original million dollars worth of claims.

He stated the million dollars in claims does not include the $125,000 so he could be awarded in court the million dollars plus the $125,000.

Councilman Davis stated perhaps a good thing to do at this point when the City considered declaring the Contractor in default which it elected not to do because it would have been an inconvenience to the motoring public, maybe that is the point where we should have declared default, cut our losses and started over.

Mr. Corbett stated the problem at that point was the public of this City and members of City Council were quite irked at the operation of the signal system on the street. That they were unable to get the Contractor to let our staff lay hands on the system to put in what he considered adequate operations in the timing of the signals. In order to get their hands on the system for a ten day period, they had to enter into an agreement with the Contractor, making certain concessions or our part and certain concessions on the Contractors' part, but the night before,they met with the letter of default of their hands and said "either you give us the signal system for ten days, or we declare you in default tonight"; they agreed to give it to us and they worked for about 20 hours a day for 10 straight days with our staff and developed new programs, put them into effect on the street and from that point on the public in this city and the members of City Council and the media, stayed off their backs.

The vote was taken on the motion and carried unanimously.

The ordinance is recorded in full in Ordinance Book 24, at Page 241.

Councilwoman Locke moved to authorize the Mayor to execute a release for all claims arising out of the Signal System Contract and any other documents necessary to consummate the settlement, which motion was seconded by Councilwoman Chafin, and unanimously carried.

ORDINANCE NO. 578-X AND ORDINANCE NO. 579-X REVISING THE ESTIMATED REVENUES AND APPROPRIATIONS TO FINANCE THE CONSTRUCTION OF THE METRO-CHARLOTTE AND THE NORTH MECKLENBURG "201" PROJECTS, ADOPTED.

Motion was made by Councilwoman Chafin, and seconded by Councilman Williams to adopt the two ordinances. After explanation by the Utility Director, the vote was taken on the motion, and carried unanimously with the ordinances being recorded in full in Ordinance Book 24, at Pages 242 and 243.

ORDINANCE NO.580-X TRANSFERRING FUNDS WITHIN THE UTILITIES CAPITAL IMPROVEMENT PROJECT FUND TO PROVIDE A SUPPLEMENTAL APPROPRAITION FOR SANITARY SEWER RELOCATION ON INTERSTATE 77.

Upon motion of Councilman Withrow, seconded by Councilwoman Locke, and unanimously carried, the subject ordinance was adopted transferring $179,622.52 to provide supplementaly appropriation for sanitary sewer relocation on Interstate 77.

The ordinance is recorded in full in Ordinance Book 24, beginning at Page 244.

CONTRACT WITH ARTHUR ANDERSON & COMPANY FOR ANNUAL AUDIT OF CITY ACCOUNTS.

Councilwoman Locke moved approval of a contract with Arthur Anderson and Company for the annual audit of the City's accounts for the year ending June 30, 1977, in an amount not to exceed $35,000. The motion was seconded by Councilman Withrow, and after comments by the Finance Director, carried unanimously.

CARRIE GRAVES APPOINTED TO CHARLOTTE AREA FUND BOARD OF DIRECTORS TO FILL UNEXPIRED TERM.

Councilwoman Chafin moved appointment of Ms. Carrie Graves to the Charlotte Area Fund Board of Directors to fill the unexpired term which will expire October 16, 1977. The motion was seconded by Councilwoman Locke, and carried unanimously.

RESOLUTION AMENDING THE RESOLUTION ESTABLISHING THE CHARLOTTE HISTORIC DISTRICT COMMISSION RELATING TO APPOINTMENTS.

Councilwoman Chafin moved adoption of the resolution amending the resolution establishing the Charlotte Historic District Commission to delete the requirement that two persons serving as members of the Historic District Commission be members of the Charlotte-Mecklenburg Planning Commission, and provide in lieu thereof that one person be a member of the Planning Commission, and that the Planning Commission recommend to the City Council one other member to serve on the Historic District Commission. The motion was seconded by Councilman Williams, and carried unanimously.

The resolution is recorded in full in Resolutions Book 12, at Page 422.

AWARD OF CONTRACTS FOR MALLARD CREEK WASTEWATER TREATMENT PLANT AND IRWIN CREEK WASTEWATER TREATMENT ADDITIONS.

(a) Upon motion of Councilwoman Locke, seconded by Councilman Withrow, and unanimously carried, contract was awarded the low bid by Noll Construction Company, Inc., in the amount of $4,987,300, on a unit price/lump sum basis for general construction work for Mallard Creek Wastewater Treatment Plant.

The following bids were received:

Noll Construction Company	$4,987,300
Lee Construction Company	5,118,612
James E. Cox	5,153,673
Republic Contractors	5,365,000
Ballenger Corporation	5,465,450
T. A. Loving -C.W. Gallant	5,700,000
Frank Black, Incorporated	6,483,987

(b) Councilman Withrow moved award of contract to the low bid by Ind-Com Electric Company in the amount of $497,206 on a lump sum basis for electrical work for Mallard Creek Wastewater Treatment Plant. The motion was seconded by Councilman Davis, and carried unanimously..

The following bids were received:

Ind-Com Electric Company	$ 497,206
Driggers Electric & Control Co.	499,000
Watson Electric Construction	548,872

(c) Councilman Davis moved award of contract to the low bid by Air Masters of Charlotte in the amount of $56,740 on a lump sum basis for the mechanical work for Mallard Creek Wastewater Treatment Plant. The motion was seconded by Councilman Withrow, and carried unanimously.

The following bids were received:

Air Masters	$ 56,740
Mechanical Constructors	57,485
Climate Conditioning, Inc.	61,900
P. C. Godfrey	67,900
Smith A/C	69,950

(d) Upon motion of Councilwoman Locke, seconded by Councilman Withrow, and unanimously carried, contract was awarded the low bid by Sanders Brothers, Inc., in the amount of $1,028,006 on a unit price/lump sum basis, for Irwin Creek Wastewater Treatment Plant additions, polishing lagoon, general construction.

The following bids were received:

Sanders Brothers, Inc.	$1,028,006
Hickory Construction Company	1,098,678
L. O. Chapman Company, Inc.	1,165,475
James Cox Construction Co., Inc.	1,197,673
Blythe Industries, Inc.	1,268,278

(e) Motion was made by Councilman Withrow, seconded by Councilman Davis, and unanimously carried, awarding contract to the low bid by Watson Electric Company, INc., in the amount of $182,821, on a lump sum basis for electrical work for the Irwin Creek Wastewater Treatment Plant additions, polishing lagoon.

The following bids were received:

Watson Electric Company, Inc.	$ 182,821
Bagby Elevator & Electric Company	187,000
Ind-Com Electric Company	195,153

RENEWAL OF LEASES FOR TWO YEARS.

Councilwoman Chafin moved approval of a renewal of lease with A.M.E. Zion Publishing House, for 6,912 square feet of office space at 401 East Second Street, at $5.45 per square foot for the Manpower Department. The motion was seconded by Councilwoman Locke..

Councilman Davis asked why it is necessary for this space to be contiguous to the Governmental Plaza? The City Manager replied that is a policy Council adopted and instructed staff to put in the rental property. Councilman Davis suggested that Council consider removing that specification as it is causing us to incur higher office space costs. Some of the buildings being considered are not as convenient to the bus service as some other office space that is available in the central business district. This restrictive specification has caused our office space cost to go up; and he does not believe we are getting

a corresponding benfit for it.

The vote was taken on the motion, and carried as follows:

YEAS: Councilmembers Chafin, Locke, Williams and Withrow
NAYS: Councilman Davis

(b) Councilwoman Locke moved approval of the renewal of the lease with the Nelson Company, for 1,738 square feet of office space, at 623 East Trade Street, for the City-County Community Relations Committee, at $5.60 per square foot. The motion was seconded by Councilman Withrow, and carried as follows:

YEAS: Councilmembers Locke, Withrow, Chafin and Williams.
NAYS: Councilman Davis.

CONSENT AGENDA APPROVED.

Upon motion of Councilwoman Locke, seconded by Councilman Davis, and unanimously carried, the consent agenda was approved as follows:

(1) Ordinances ordering the removal of weeds, grass, limbs and trash:

(a) Ordinance No. 581-X ordering the removal of trash and rubbish from 6.87 acres on South Boulevard.
(b) Ordinance No. 582-X ordering the removal of trash, weeds and grass from 2344 and 2340 Olando Street.
(c) Ordinance No. 583-X ordering the removal of limbs and trash from 1109 Broadmore Drive.
(d) Ordinance No. 584-X ordering the removal of weeds and grass from 421 Heathcliff Street.
(e) Ordinance No. 585-X ordering the removal of weeds and grass from vacant lot adjacent to 2028 Russell Avenue.
(f) Ordinance No. 586-X ordering the removal of weeds and grass from vacant lot adjacent to 2044 Garnette Place.
(g) Ordinance No. 587-X ordering the removal of weeds and grass from vacant lot adjacent to 435 Wellingford Street.

The ordinances are recorded in full in Ordinance Book 24, beginning at Page 245 and ending at Page 251.

(2) Ordinances affecting housing declared unfit for human habitation:

(a) Ordinance No. 588-X ordering the demolition and removal of an unoccupied dwelling at 200 Oregon Street.
(b) Ordinance No. 589-X ordering the demolition and removal of an unoccupied dwelling at 1827 North Allen Street.
(c) Ordinance No. 590-X ordering the occupied dwelling at 632 Fortune Street to be vacated and closed.
(d) Ordinance No. 591-X ordering the unoccupied dwelling at 1009 Grace Street to be closed.

The ordinances are recorded in full in Ordinance Book 24, beginning at Page 252 and ending at Page 255.

(3) Contracts for the construction of water mains:

(a) Contract with The Ralph Squires Company for the construction of 1,465 feet of 8-inch, 6-inch and 2-inch water mains and one fire hydrant to serve Timber Creek Subdivision, Section 2-C, outside the city, at an estimated cost of $12,000.

(b) Contract with Carolina Connecticut Properties, Inc., for the construction of 5,115 feet of 6-inch, 2-inch and one-inch water mains and five fire hydrants to serve Johnston's Bluff, Village of Walden, outside the city, at an estimated cost of $38,600.

(c) Contract with John Crosland Company for the construction of 3,970 feet of 6-inch and 2-inch water mains and four fire hydrants to serve Walnut Creek Section 5A and B (Village of Stoney Brook), outside the city, at an estimated cost of $30,900.

(d) Contract with Carolina Connecticut Properties, Inc., for the construction of 4,175 feet of 6-inch and 2-inch water mains and four fire hydrants to serve Carmel Ridge, Village of Walden, outside the City, at an estimated cost of $31,100.

Each applicant will finance his entire project, with no funds required from the City, and all mains will be owned, maintained and operated by the City.

(6) Streets taken over for continuous maintenance by the City:

(a) Piney Grove Road, from 13 feet west of Eaglewind Drive to 140 feet west of Eaglewind Drive.
(b) Curtiswood Drive, from Bingham Drive west to the dead-end.
(c) King Road, from View Way Drive north to dead-end.
(d) Celia Avenue, from LaSAlle Street to 987 feet west of LaSalle Street.
(e) Cedar Rose Lane, from Greenhill Drive west to dead-end.
(f) Jessie Street, from Hickory Lane to Northerly Road.
(g) Benson Street, from Woodward Avenue north to dead-end.
(h) Linda Lake Drive, from 200 feet west of Southway Road to 625 feet west of Southway Road.
(i) Patch Avenue, from Isenhour Street west to dead-end.
(j) Kelly Street, from Summey Avenue to Sharon Amity Road.
(k) Kelly Street, also from Summey Avenue to Dallas Avenue.
(l) Sharon Amity Road, from Hickory Grove Road to Shamrock Drive.
(m) Tyvola Road, from Farmbrook Drive to Park Road.
(n) Fourth-Trade Connector from West Fourth Street to West Trade Street.
(o) Kings Drive, from East Fourth Street to Armory Drive.
(p) Park Road, from Park Road to Tyvola Road.
(q) Park Road, also from Tyvola Road to Closeburn Drive.
(r) Lester Street, from Amay James Avenue to 319 feet west of Amay James Avenue.
(s) Reid Avenue, from Amay James Avenue to 150 feet west of Amay James Avenue.
(t) Caronia Street, from 670 feet west of Clanton Road to 930 feet west of Clanton Road.
(u) Polk Street, from Callahan Street to 700 feet south of Callahan Street.
(v) Callahan Street, from Statesville Avenue to 230 feet northwest of Polk Street.
(w) Hamilton Street, from Polk Street to 50 feet west of Polk Street.

(7) Encroachment agreement with the North Carolina Department of Transportation for construction of an 8-inch sanitary sewer line with eleven manholes in the right of way of the 3800 block of I-85 to serve Hartley Street and Joe Street Area.

(8) Property transactions:

(a) Acquisition of 15' x 41.65' of easement, plus construction easement, at 1240 Larkhaven Road, from Glenn E. Odom and wife, Sylvia M., at $50 for sanitary sewer to serve Westborune Subdivision.

(b) Acquisition of 15' x 167.16' of easement, plus construction easement, at 1812 Larkhaven Road, from Walter L. Miller and wife, Montez H. at $170, for sanitary sewer to serve Westbourne Subdivision.

CITY COUNCIL MEETING SCHEDULE FOR JULY AND AUGUST, APPROVED.

Motion was made by Councilwoman Locke, seconded by Councilman Davis, and unanimously carried, approving the City Council Meeting Schedule for July and August, 1977 as prepared and sent to all Councilmembers earlier.

APPRECIATION EXPRESSED TO CAROL LOVELESS, ADMINISTRATIVE ASSISTANT TO CITY MANAGER.

Mayor Belk stated he would like to recognize Miss Carol Loveless and thank her for all the nice work she has been doing.

REQUEST OF FUNDS FOR PURCHASE OF LAND IN FOURTH WARD FOR USE BY THE ST. MARK'S DAY CARE CENTER PRESENTED BY COUNCILMAN DAVIS.

Councilman Davis stated he would like to discuss the $500,000 request submitted for general revenue sharing money for the St. Mark's Day Care Center for the profoundly retarded. This was not recommended by Staff for funding.

He stated this program has been operated out of a church - St. Mark's Lutheran Church on Queens Road, and at St. Luke's Episcopal Church on Marsh Road. These churches have been very accommodating and have given their facilities free of charge and furnished the utilities and soforth. But the program has grown to the point they now have 75 clients and it is to the point where the Church will either have to turn over the building to the program, and find themselves a new home, or the program will have to move into a larger and some permanent facility.

He stated this is basically an educational process, and the school system will be involved. But since the need is there, and just as the Council did in helping out the Nevins Vocational Training Center to insure that continuity was there for community services, he thinks a similar contribution could be made here so that it would be a real community service. Even if we cannot fund the entire $500,000, they have worked out a compromise if Council agrees which will enable the program to have a new home.

Councilman Davis stated there is located in Fourth Ward on the old Bethune School site a block of land that would be ideal site from a standpoint of geographic location, located in Fourth Ward and in proximity to the clients it serves. The land is owned mostly by the School System. On the assumption the School System will make this land available, then the only remaining portion of it - this site is located off Graham Street, between Ninth and Tenth Streets - that is privately owned is what the Community Development Departments estimates is about $160,000 worth of property. We already plan to purchase $35,000 of it to build a park in the Fourth Ward Development Plan.

Councilman Davis stated he would like for Council to consider spending $160,000 instead of the $35,000, which is an increase of $125,000 and for that increase we could purchase the entire block. That would make an ideal site and Mr. Sawyer tells him there is in the Community Development Department a sum of money of $255,000 that is labeled for day care centers. This money has no immediate use, and Mr. Ed Chapin of the Social Services Department says he has no plans for the use of it, and in fact would endorse its use for the St. Mark's Day Care Center. This would be day care service for a segment of the population that is not now being served in a public facility.

Councilman Davis stated with some kind of consensus that the Council is willing to buy this land, a group from the St. Mark Center will take this proposal to the School Board, get their agreement to donate the Bethune Site to this project. Then they would come back to this Council for normal approval of this land purchase. When the whole land package is together, the Community Development money would be available. While they cannot construct the entire first class facility they want, they could get the basic operating units to care for the school age children in the day care program. The City would not have any continuing involvement in the operation of it. It would operate the same way it is operating today - largely with state and federal funds that come primarily through educational channels. The City would build it with city owned land and city tax money, and would lease it at $1.00 a year to a tax exempt corporation similar to the way Nevins Center is run.

He stated if Council is in general agreement with this, he would like to see the group take it to the School Board, and bring it back before Council. As far as the $160,000 needed for the land acquisition, he talked with Mr. Burkhalter and he can give Council some assurance this money could be arranged out of our Revenue Sharing Money without taking it away from any commitment that Council has already made to another program.

Councilwoman Locke stated she would commend Councilman Davis on what he has done. That he has done a lot of work on this, and has gone into a lot of the details and brought a lot of people together to put this together. That he would have her vote on that, and she would like to hear from the City Manager about the monies.

Mr. Burkhalter stated when they considered the windup of the CIP they placed some money from the Fire Training for a driving course, and divided that up for parks and sidewalks. He hopes they do not change that program after it is already prepared. But after the first of July, Council can at its pleasure do this. Council has a memorandum from him today telling them the priorities that will be proposed for the new public works act which indicates that our city will get in the neighborhood of $2.0 million worth of projects. In line with some of Council's suggestions earlier in the budget conversations and the CIP which was approved previously, they used this as a guideline. There could be considerably more money for the projects they put that $100,000 into. What he is saying, he thinks the city will get at least $2.0 million worth of public works projects, and we may be able to divert some of that money from the CIP - at least $125,000. That $35,000 is allocated to this already.

Mr. Burkhalter stated we might be able to buy it for less than the $160,000. The $35,000 we have is for severance because it was being cut off. If we go the $125,000 route, we will be taking all the property, and not have any severence damage, and we may be able to acquire it for a little less.

Councilwoman Chafin stated she would certainly encourage us to do this. This is a very worthwhile project.

Mr. Burkhalter stated the land would have to be given to the City, and not to the organization. We cannot spend Community Development money on someone else's property; it has to be on city owned property.

Councilman Davis asked if the School would have to donate the land to the ciy with the understanding that we will build it, and lease it to them. Councilman Williams stated this would be similar to the Bethlem Center Day Care - the City owns title to the real estate, and they provide the staff. He stated he thinks this is worthwhile also.

Mr. Burkhalter stated he thinks Council should hear from the other departments that they do not need the child care center, and all these other things instead of he and Mr. Davis telling them this. Councilman Davis stated this is a foot in the door deal; this does not take care of the whole project, and he hopes next year we may find some money to complete it in the manner they would like.

Councilman Williams stated this is another situation where the city is gradually moving into areas that traditionally were reserved for the County Government. The more urban we become, this will continue to happen. Councilwoman Chafin stated there are options open to the City that are not available to the County.

COUNCIL MEMBERS INDICATE SUPPORT FOR FUNDING SUMMER POPS IN THE AMOUNT OF $1500.

Councilwoman Chafin stated Council has held its last working budget session; yet she suspects there are still some changes that Council members will want to make. She asked if she is to assume they will make those at the time Council formally adopts the budget on the 27th? Mayor Belk replied that is the time Council will formally adopt the budget.

Councilwoman Chafin stated she would like to indicate to Council that she is very interested after hearing from Mr. Berne tonight in seeing the $1500 made available for Summer Pops, and perhaps doing something for Historic Properties Commission.

Mr. Burkhalter, City Manager, stated as long as they are not major he does not think there will be any problem. If Council members will just tell them tonight, staff will put it in there. No member of Council indicated disagreement with the proposal for Summer Pops.

ADJOURMENT.

Motion was made by Councilman Withrow, seconded by Councilwoman Locke, and unanimously carried, adjourning the meeting.

Ruth Armstrong

Ruth Armstrong, City Clerk