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PUBLIC HEARING - ZONING IN ANNEXED AREAS

The City Council of the City of Charlotte, North Carolina, met on Wednesday, January 4, 1978, at 7:30 o'clock p. m., in the Board Room of the Education Center for the purpose of holding a Public Hearing on Zoning in Annexed Areas. Presiding was Mayor Kenneth R. Harris, with Councilmembers Don Carroll, Betty Chafin, Charlie Dannelly, Harvey B. Gantt, Ron Leeper, Pat Locke, George K. Selden, H. Milton Short and Minette Trosch present.

ABSENT: Councilmembers Thomas Cox and Laura Frech.

Members of the Charlotte-Mecklenburg Planning Commission sat with City Council, as a separate body. Present were Commissioners Ervin, Curry, Jolly, Kirk, Marrash and Royal.

ABSENT: Chairman Tate; Commissioners Broadway, Campbell, and Tye.

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STATEMENT OF PURPOSE.

Mayor Harris stated the purpose of the hearing is to consider ordinances to regulate the zoning of land and the subdivision of land in the ten areas annexed by the City of Charlotte on December 1, 1977.

EXPLANATION OF PROCEDURE.

Mr. Fred Bryant, Acting Planning Director, stated the procedure that Council will follow will be (1) The adoption of a zoning pattern for all ten areas; (2) Adoption of the text of the zoning ordinance and the zoning maps, or district delineations; (3) Adoption of subdivision text regulations, to apply to these same ten areas. This involves only the adoption of the text of the subdivision ordinance as it already exists in the older part of the City - no specific property is involved. (4) Resolutions which Council will need to consider passing in conjunction with the Board of County Commissioners concerning some narrow ten-foot strips.

Mr. Bryant stated basically the State law on zoning, as it relates to annexation, provides that where land is annexed which is already under the zoning authority of County jurisdiction, that the County zoning pattern will remain in effect for a maximum period of 60 days. During this 60-day time period it is expected that the municipality will move through the process of considering the adoption of its own regulations for the areas. If, at the end of 60 days, the municipality has not acted to adopt a zoning ordinance for those areas, all zoning control lapses. In effect, there would be no zoning remaining in those areas. This means they are faced with a time factor as the 60 days will expire about the end of this month; that the schedule which has been established hopefully calls for the Planning Commission to consider what they hear tonight following the hearing and the matter would come back on Council's agenda on January 16.

He stated the fact that they are faced with a considerable time limiting factor, has almost dictated the necessity of presenting to Council for its consideration, generally the same pattern of zoning which is already in effect under County jurisdiction - no change is proposed. There will be some minor differentiations due to the different descriptions of the districts between those of the City and the County. Predominate in this respect is the fact that the County has an O-9 office classification and much of the land is zoned that classification. The City Ordinance does not have an O-9 designation - either an O-6 or an O-15. Therefore it will be necessary to redefine those areas as either O-6 or O-15. That the decision as to which it will be will for the most part be based on the size of the tracts involved as the only difference generally between the two is the somewhat greater lot requirement of the O-15 versus the O-6.

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At Council's direction, the areas were considered one at a time. Mr. Bryant used an overall map of the City, showing in composite form the locations of all ten areas.

North Tryon-Tom Hunter Road

The area involved generally extends from Graham Street along the existing city limits to The Plaza; it is a somewhat elongated, rather lengthy area. Mr. Bryant explained the colored areas on the map, each identifying a different zoning classification. There are R-9 and R-12 zoned areas; rather significant areas of multi-family zoning because there are a great number of apartments already built - along Tom Hunter Road and west of Tryon Street - and smaller amounts on the eastern side of the area.

Business districts are designated generally along the major arteries - North Tryon in this area, at Sugar Creek Road at I-85, along The Plaza and one or two other smaller locations. There is a considerable amount of industrial zoning, both I-1 and I-2. I-2 zoning was noted along the Graham Street-Derita Road area, principally in the vicinity of the trucking terminals. There is a considerable amount of I-1 zoning along the railroad and along Orr Road.

The zoning designations are basically the same as those in effect under the jurisdiction of Mecklenburg County. He pointed out two or three minor changes that were necessary to consider. On Poplar Street, off Derita Road and Graham Street, there is one small lot which at the present time is zoned O-9 - the recommendation is that it be changed to O-6. There is also a small parcel of O-9 zoning on Wilson Lane, west of Sugar Creek Road, which is recommended for a change to O-6. A small, very unusual shaped situation located to the south of Mineral Springs Road which at the present time is zoned Rural CD; there is no rural classification in the City Ordinance. The purpose of the change made by the County about two years ago was to zone it rural in order to allow a mobile home placed there by the Northside Baptist Church to remain. It was placed there during the time of construction and used by a security guard; after it was completed they found it advantageous to keep it there for the same purpose. It was recommended that this area be eliminated and replaced with the same R-9 zoning now present in the general area. It would not have any real material effect; it would only have the effect of making that mobile home a non-conforming use. It can remain; there is no question about that; it seems to be the easiest way to handle that situation.

Mr. Bryant referred to an area generally in the Hampshire Hills Area, at the end of Viewmont - a vacant parcel of land which has been the subject of a couple of zoning processes over the last several years. Initially, this property was zoned I-1, and a request was filed to rezone it to R-9MF some years ago. This was granted by the County but no use was ever made of that multi-family zoning. There was left at that time a 50-foot strip of land zoned I-1, adjacent to the end of Viewmont, for the purpose of creating what would be a permanent open area of at least 50 feet wide to separate the single family homes from any possible multi-family development. At the time, that was the only feasible way to accomplish the open space even though it created a very unusual pattern. This is the same property which Council acted a few weeks ago to acquire from the John Crosland Company for park purposes, and that property is now officially under the ownership of the City of Charlotte for the purpose of creating a park. Therefore, the recommendation is that Council either consider eliminating the 50-foot strip of industrial zoning and replacing it with R-9MF, or R-9 - the adjacent zoning; or consider taking the entire parcel which would consist of the 50-foot I-1 and the remaining R-9MF and zone it R-9. Since it is going to be used for park purposes it would really have no effect as far as the zoning category is concerned.

Councilmember Carroll asked if this land necessarily has to be used for a park and Mr. Burkhalter replied it is not designated. Councilmember Carroll stated the zoning of the property then could have an effect on it if it were not used for a park. Mr. Bryant stated if the City made a decision to use it in some other fashion, that would be true.

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Councilmember Short asked if the Board of the Northside Church is aware of the suggestion that the mobile home become non-conforming? Mr. Bryant replied that he does not believe that they are.

Councilmember Gantt asked about the area at Sugar Creek Road and I-85 and Mr. Bryant identified the red area as representing the filling stations, the Motel and a construction company on the service road. He also confirmed that there is scattered residential usage in the Graham Street-Derita Road where there is I-2 zoning. It is an old subdivision. Councilmember Gantt stated there are a number of places where there is industrial zoning - in the Hampshire Hills area for one - and asked if it is developed now? Is there a rail facility in there?

Mr. Bryant replied there is no rail facility without crossing Orr Road. The main line of the Southern is in the area but you have to cross Orr Road to get to it. The only portion of the industrially zoned property that has been developed is on a little industrial street called Commercial Place. On Orr Road at the railroad is the chemical plant.

Councilmember Gantt stated that one thing about this particular pattern that is very glaring is that they do have a situation from the standpoint of planning that does not work very well and that is single family residential abutting industrial property.

Mr. Bryant replied he agrees with him and he is not sure that if they were facing a situation where they were completely free to evaluate the zoning in this area that would be the pattern they would necessarily propose.

Councilmember Gantt stated in the time limit they have now they obviously are talking about adoption of pretty much what the pattern of zoning has been for the County, but that at some future time that whole area may need to be reevaluated. Mr. Bryant replied that is very true; that as Council is very much aware, there has been considerable agitation in this area over the industrial zoning as well as some of the street configurations, etc. That at some time in the future, that undoubtedly will need to be looked at.

Mayor Harris asked if there is any thought toward the Planning Commission taking the initiative? Mr. Bryant replied not in this area specifically. That they are involved in a very much in depth look at all zoning patterns, zoning texts and requirements. A preliminary report was presented to the Planning Commission at its meeting last night which begins to give some feel for the depth in which this question is being examined. He cannot say at this point that they have any specific plan to isolate this area and examine it. If Council so desires they can certainly consider it.

Mr. Robert Mundt, 5811 Whittingham Drive, stated he represents the Northeast Community Organization; that the parcel of land that was acquired from the Crosland Company is one that has concerned them for a long time. He stated that Mr. Bryant has pretty well covered some of the concerns the organization has, and they are aware that Council is looking at short term actions now, but they request that they also look at some of the longer range problems in the area. That the serious problem they wanted to point to has already been identified - that their residential area of Hampshire Hills and Eastbrook Woods abut light industrial zoning. They are very concerned about this problem. There are several possibilities for this eventually, such as creating a green strip or barrier between the two. A lot of the property that is not developed is owned by the Southern Railway and is currently for sale, and has been for a long time, and it is in the industrially zoned area. If someone does not buy this and develop it industrially while it is still possible, they would like to see that area zoned residential with the hope that some of it could be used for park development in the future. He cannot offer anything very specific but just to express the concerns of the community and to suggest that whatever short term steps Council takes, that they do that with the explicit understanding that they will take a look at it and try to eliminate some of the zoning problems that now exist.

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Albemarle-Delta Roads Area.

This is generally the area north of Albemarle Road and Lawyers Road, extending from the existing city limits near Sharon-Amity Road to include most of the built up subdivision area going out very close to the Harrisburg Road intersection. The zoning pattern recommended is generally the one in effect now. It is basically the same pattern the City had in the area when it was under perimeter control, so that they are really talking about a pattern that the City itself generally adopted many, many years ago.

The majority of the property is proposed for single family residential classification with some very significant departures from that. Most of the area is zoned R-12 and R-15 - the higher single family residential classification. He pointed out the Eastland Shopping Center with a zoning classification of B-1SCD which would continue the control of that shopping center as it now exists. There is a pattern of almost continuous business zoning, with some interspersed office zoning, along Albemarle Road, from Central Avenue all the way out to the Lakeforest area. Most of that is B-2 zoning with some small areas of B-1.

North of that area, along Delta Road, on out Albemarle Road and coming back around to Lawyers Road there is a considerable amount of multi-family zoning, a combination of R-12MF and R-20MF, the old Delta Airport being in the area.

He pointed out an area on Wilora Lake Road, just north of Albemarle Road, is now zoned O-9 and it is proposed that be considered for change to O-15. The lots are large enough to accommodate O-15 and most of the office zoning in the general vicinity is already O-15. It is not developed.

Councilmember Gantt asked if the City is required to notify the property owner that the zoning has changed in these instances? Mr. Bryant replied no, not legally, not individually.

Mayor Harris stated this serves as a public hearing for that purpose? Mr. Bryant replied yes.

Councilmember Gantt stated there appears to be only a small amount of this kind of inconsistency occurring. Would it be too much to notify the property owners that the zoning has changed in the process of annexation? The opinion was expressed by the Mayor and several Councilmembers that this should be done as a courtesy, especially if the restrictions are being increased. Mr. Bryant stated his office could certainly do that; they will notify owners involved in all of the 10 areas if Council so desires.

Thermal Road Area.

This is one of the smaller areas annexed. A majority of the area is single family residential; there is a small amount of land along Thermal Road that is zoned multi-family. That if they were dealing with changes in the area, this is a pretty good example of how development has not followed the zoning pattern. The land is zoned multi-family but has been developed single family. When they start evaluating zoning that is the sort of change that can occur.

In response to a question from Councilmember Carroll as to whether there are any multi-family units in the area, Mr. Bryant stated there are some condominium units located in one segment; he pointed out the location of the creek.

Sardis Road North Area.

This is another small area. Basically, it is all subdivided into single family housing, with an R-12 classification.

Providence-Rea Roads Area.

This is land located generally west of Providence Road. For the most part this is single family/multi-family pattern of zoning, predominately single family. All of the area generally between Providence and Old Providence

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Road is R-15; there is an area down along Rea Road which is solidly zoned for R-15 purposes, the only exception being an area of R-15MF in the Swan Run area where there are a number of apartments and duplexes already in place. They were there even before zoning was applied to this area by the County. Another exception is at the intersection of Providence and Old Providence where there is an Exxon Service Station and zoned B-1, and adjacent to that is a small area which is zoned R-20MF. It is vacant property.

Sterling Area.

This is the smallest area - one which was actually added toward the latter stages of the annexation consideration. It is immediately south of the City and west of South Boulevard and Pineville Road. It is west of the Southern Railroad which parallels South Boulevard in this vicinity. Part of the area is zoned R-9, the middle portion which includes the school and church, and the lower portion is zoned an industrial classification. Mr. Bryant pointed out that this is the first instance in which the City of Charlotte has touched its neighboring municipality - the Town of Pineville has annexed right up to that point.

Councilmember Gantt stated that is a situation where he does not know if there is much possibility of doing even a weak study of a longer term situation. It is a small area with an industrial area and he does not know that they will ever be able to change that situation.

Mr. Bryant stated there is a mixture of uses. There is some scattered industrial activity and a number of residences. He stated the R-9 zoning was put there by request a few years ago because it involves the church, a relatively new one, and the school and some other smaller activities. There is some more R-9 inside the City and that was the result of a developer who wanted to do something out there residentially but never could pull it off.

Arrowood-York Road Area.

The zoning pattern in this area for the most part is single family, R-12. Much of the area is developed with single family units. There is an area of R-12MF on York Road and apartments are there already. There is a B-1SCD area at the intersection of the two roads. It has not been developed as yet but there is an approved plan and presumably some day that will be developed.

Mr. LaFontaine Odom, attorney for Mr. Calvin Kindley who owns 25 acres of land at the apex of the top triangle of the yellow portion of the map, stated at the very tip of that corner there is a pet cemetery that has been there for a number of years and Mr. Kindley's land adjoins that property. He has been farming this property for a number of years and now he is confronted with the prospect of trying to farm inside the city limits. With the increased taxation he expects to follow suit sometime the latter part of this year, he feels that he will not be able to make ends meet. But, he does have a more serious problem than that and he wants to ask Council to study this entire area and as it affects Mr. Kindley they would like to propose some rezoning. The property that he now has, that fronts on York Road, is all zoned R-12, but as it now stands, based on the last 10 to 15 year history throughout this area, this property will never be able to be developed as single family residential area.

He stated that starting where the old city limits started at the landfill area and going south on Highway 49, all the way out past Carowinds Boulevard - in the last 15 years, there has been only one subdivision that has been attempted in that particular area on York Road. That subdivision was built by Ed Griffin at the intersection of Arrowood Road and York Road. It was started five to seven years ago. At the present time it looks as though it is only about 20 percent complete; there are new houses that have stood unoccupied now for two or three years. In fact, they have had to repaint them. The only thing that has been successful on that particular tract of land has been some apartments - they have remained full. They feel that Mr. Kindley's property is best suited at the present time for apartments.

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At the same time, although at the corner there is the B-1SCD classification, it has been there for a good while and yet nothing has happened. Mr. Kindley would also like to see the front part of his property zoned in the B-1 or B-2 area so that perhaps some business could be put in there.

On down past York Road you begin to run into heavy industrial zoning. That is the problem that the people are confronted with in this particular area. They would be sandwiched in between some very heavy industrial area that begins along Arrowood Road and extends on south past the Seaboard-Arrowood Industrial Complex. He believes if Councilmembers would ride out in the area they will see the point he is making.

In addition to only the one subdivision having started in the last several years, his recollection is and Mr. Kindley's recollection is that there has not been one single family home built in this particular area, from the landfill on South Tryon Street all the way out past Carowinds, in the last 15 to 20 years. The few houses that are along there are quite old. They submit for Council's serious consideration, the rezoning of Mr. Kindley's property - the front part to either B-1 or B-2; and the back portion at the very minimum being zoned multi-family - either a R-9MF or R-12MF. He stated that Mr. Kindley was formerly in the contracting and building business and this is not a matter of seeking to have it rezoned so that he can sell it - he would be involved, according to his present intentions, in doing that himself.

Councilmember Short asked if Council can zone land less restrictively as a result of this hearing. Mr. Underhill, City Attorney, replied yes - they are adopting new zoning - they are not limited.

Mr. Odom presented a sketch to illustrate his request.

Councilmember Leeper asked where this property is located in reference to the other apartment units that are already developed? Mr. Bryant pointed out the areas on the map, stating there is one street of single family lots that exist north of the present apartments - York Road Apartments - and Mr. Kindley's property begins north of that. Mr. Odom pointed out that the street is there but there has not been one single development on it - it is just a street with a lot of weeds. That it is just a problem that people are not buying single family housing in that area.

Mr. Odom referred to a comment by Mayor Harris about people not knowing about this hearing; that is very true - Mr. Kindley happened to see it in the paper two or three weeks ago and he asked a lot of people about it and no one knew about it. That he made a lot of telephone calls to County government and City Hall trying to find out what was going on. He finally got some answers last week.

Mayor Harris stated an effort was made to notify as many people as possible during the last couple of weeks about this but evidently the word did not get out.

Councilmember Selden asked what would be the procedure if Council wished to alter the zoning; could they pass the present zoning to avoid going beyond the 60-day limit, for a given time frame and then come back and change it, have another hearing, etc.?

Mr. Underhill, City Attorney, replied any zoning Council adopts is subject to change at the discretion of Council. Zoning, unlike a lot of property owners think, provides no contract - it is not a static thing, it is subject to change. It would require another public hearing. If Council adopts the present County zoning as recommended, then Mr. Kindley could petition the Council to change that zoning, or as an alternative, the Council in considering the new zoning could adopt what is being proposed by Mr. Odom and his client. That is Council's option. He stated the time situation does not allow for the deliberative consideration that normally takes place - it is unfortunate but the statute just provides 60 days and you are dealing with large areas.

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Mayor Harris stated once this gets into the news media as to what they are doing, that by the January 16th meeting when Council takes action, they are probably going to hear some comments; that Councilmembers may have to adjust some of their thinking.

Mr. Underhill stated that raises another point. Under Council's rules of procedure, this is the hearing and Council cannot hear comments on a zoning matter after it has received a public hearing.

Councilmember Short asked about the possibility of recessing this hearing rather than adjourning. For example, there is the man out there at Wilora Lake Road. If this meeting is adjourned, they will call that man afterwards and tell him they have already had a hearing on his land and they propose to down-zone from R-12 to R-15 and it is already beyond the possibility of his making any comment about it. That if they recess rather than adjourn, that would leave the possibility that affected parties could at least come in and say something.

Mr. Underhill stated the Planning Commission is expected to make some recommendations and if those recommendations cannot be made until after the hearings are complete, they would be putting off their consideration of the matter.

Mayor Harris stated he is concerned about the input or the reactions of the public in this area.

Mr. Underhill stated a simpler way to handle this would be to suspend Council's rules on that day, if they want to allow someone else to speak - they have that authority, with a two-thirds vote of Council.

This was generally agreed to be the best procedure to follow.

Mr. Bryant stated there is one other alternative they might consider by way of allowing proper consideration of the sort of request that has been presented and that is, they might consider going ahead and adopting the pattern which is being presented and offer at some future time the right for these particular requests to be heard at a future public hearing without the usual filing fee, etc. as attached to a rezoning request. That would have not only the advantage of allowing full exposure of the proposal on the part of the petitioner, but it also would set it in motion, the normal procedure for notifying adjoining property owners that such a change is being considered. If they do it on the basis of what they hear tonight, there has been no opportunity, if there is another opinion to be voiced, they have not had an opportunity to receive that. So, that a full-blown public hearing procedure at some future date would grant that right for anyone else who wished to be heard on the merits of the case.

Councilmember Short stated that is offering a free ride for thousands and thousands. Mr. Bryant replied he is only suggesting that for those who are here tonight to vent their plea.

Mayor Harris stated he is speaking of making sure that the citizens have an opportunity to make their wishes known before Council makes a decision regarding the zoning in these areas. Mr. Bryant stated he was not making that as a counter-suggestion to what Mr. Underhill said; this would cover a different sort of situation.

Councilmember Gantt stated that with all due respect to Mr. Kindley's and Mr. Odom's presentation, his reaction to this is that if in fact Council decided to accept the request for a change in the zoning, Mr. Bryant is right that other parties have not had a chance to respond to this properly. That under the circumstances, if they adopted the proposal as recommended by the Planning Commission, Mr. Kindley would still have the right to petition this body for a change in the zoning at some future time. This would allow for the kind of deliberative hearing that they want. That Mr. Odom stated he found out about this case at a very late date and it would be fair then to everyone. He stated his concern earlier was that where they have changed the zoning, where people's property actually will

PRESENTATION OF PROPOSED RESOLUTIONS PROVIDING FOR THE CONTINUATION OF COUNTY ZONING CONTROL IN BOUNDARY AREAS ANNEXED DECEMBER 1, 1977; AND RESCINDING COUNTY ZONING CONTROL IN BOUNDARY AREAS ANNEXED JANUARY 25, 1974.

Using a map to illustrate his explanation, Mr. Bryant stated as a result of a requirement of the State Law dealing with annexation, you are restricted in terms of utilizing a roadway right-of-way for line definition purposes. You cannot just go to any point along a road and say that you are going to go out 100 feet in this location, or 150 feet in this location - you cannot utilize it in that way. As a result, both in 1974 when annexations occurred and again this time, it is necessary as a part of the working out of a system which would be both legal from the statutory requirements and at the same time, give the City control of the full right-of-way for maintenance and other regulatory purposes, to define a strip of land as being included in the annexation areas which is only 10 feet wide where the line follows road rights-of-way.


Using Albemarle Road as an example, he stated that in 1974 all of the area to the south of Albemarle Road was annexed. The official description line at that time was a line parallel to and 10 feet north of the northerly right-of-way line of Albemarle Road. So that, in effect, a 10-foot strip was annexed along the northerly side of Albemarle Road. When you come to zoning, obviously the City has no reason to be regulating a 10-foot strip along a roadway. So, what was done at that time was an agreement between the City and the County that the County would accept continued jurisdiction of that 10-foot strip. They would continue their zoning authority in that 10-foot strip.

The two resolutions which are being proposed would first of all go back and pick up those instances such as Albemarle Road where now you are annexing property adjacent to that 10-foot strip and requesting the County to abandon their claim to zone that strip. The second resolution would do the same thing that was done in 1974 and move out into the new areas where new 10-foot strips are being created and request that the County accept jurisdiction of those strips. It does require joint resolutions to be passed by the City Council and the Board of County Commissioners. This same information has already been transmitted to the Board of County Commissioners and it is expected that it will be on their agenda for their consideration on January 16.

Mr. Bryant stated action on the resolutions should be included as part of Council's adoption of the proposed zoning pattern for the ten areas.

ADJOURNMENT:

Motion for adjournment was made by Councilmember Locke, seconded by Councilmember Carroll, and carried unanimously.


Ruth Armstrong, City Clerk