

**MINUTES
BREVARD CITY COUNCIL
Special Called Meeting
January 3, 2017 – 7:00 PM**

The Brevard City Council met for a Special Called Meeting on Tuesday, January 3, 2017, at 7:00 p.m. in the Council Chambers of City Hall with Mayor Jimmy Harris presiding.

Present - Mayor Jimmy Harris, Mayor Pro Tem Mac Morrow, Council Members Maurice Jones, Ann Hollingsworth, Gary Daniel and Charlie Landreth.

Staff Present – City Attorney Mike Pratt, City Clerk Desiree Perry, Planning Director Daniel Cobb and Planner Aaron Bland.

Press – Matt McGregor, Transylvania Times

A. Welcome and Call to Order – Mayor Harris called the meeting to order, welcomed those present and introduced Council members, City Attorney and City Clerk.

B. Invocation – Mayor Harris offered an Invocation.

C. Pledge of Allegiance – Mayor Harris led in the Pledge of Allegiance.

D. Certification of Quorum - The City Clerk certified a quorum present.

E. Approval of Agenda – Mr. Morrow moved, seconded by Mr. Jones, the Agenda be approved as presented. Motion carried unanimously.

F. Public Hearing

Rezoning Request of John Johnson (RZ12-000004). Request to rezone property located at 1259 Asheville Highway, PIN 8596-09-3864-000, from GR-General Residential to NMX-Neighborhood Mixed Use. The public hearing was properly advertised in the Transylvania Times newspaper on December 19th and 26th, 2016. On December 14, 2016, letters of Notice were mailed to adjoining property owners and Notice was posted upon the subject property.

Mayor Harris opened the public hearing at 7:08 P.M.

Mr. Bland presented the staff report (on file). The subject property consists of 3.6 acres located off of the Asheville Highway, behind Egolf Motors and adjacent to Straus Park. The parcel currently has one single-family detached house on the property. If the subject property is rezoned as proposed, then the single-family home will become a pre-existing nonconforming use. Creating such a nonconformity does have bearing on the potential future use of the property, as new single-family homes are not currently permitted within the NMX district. However, an existing nonconforming residential use may be enlarged or altered as long as the enlargement or alteration is in compliance with all yard requirements and other regulations of such structures as required in the specific district. Nonconforming structures and uses may not be re-established if they are discontinued for 180 days or substantially damaged. The parcel's size of 3.59 acres, coupled with the fact that there is existing NMX zoned property adjacent to the south, eliminates concerns of spot zoning. The subject parcel is situated such that it lies between Corridor Mixed-Use (CMX) district properties along Asheville Highway and GR properties within Straus Park. The designation of NMX seems to be an appropriate choice, allowing the NMX parcel to be a transitional district. Potential benefits of this rezoning as proposed by the applicant include additional allowable residential and commercial uses for this property. If rezoned, the property would be NMX with GR6 as an adjacent district and would trigger a "Type B Buffer" with new development. Potential detriments of this rezoning are commercial uses, light and noise in proximity to residential structures. Ideally the Residential Mixed Use

(RMX) district would be favorable as it is more of a transition district from residential than NMX.

The proposed rezoning is inconsistent with the City's current Land Use plan and Future Land Use Map. North Carolina General Statute 160A-383 requires that the City's review of the proposed zoning map amendment include a written statement as to the consistency of the amendment with adopted plans and policies of the City. This rezoning request is inconsistent with the 2002 Land Use Plan, however, it does enforce the policies from the Comprehensive Plan.

While the proposed rezoning is inconsistent with the Future Land Use Plan, Staff believes that the proposed rezoning represents an appropriate application of the NMX zoning district as a transitional area between the Corridor Mixed-Use properties that front on Highway and the General Residential 6 properties of Straus Park, and will result in a rational and consistent pattern of zoning and resulting land uses. Further, Staff believes that the proposed rezoning does not constitute "spot zoning" due to its geographic location of adjoining and existing Neighborhood Mixed Use district.

The Brevard Planning Board considered this request at their meeting on November 15, 2016, and, noting inconsistency with the Future Land Use Map, recommended Council approve the rezoning.

Public Participation

Mayor Harris read aloud an email dated Monday, January 2, 2017, at 9:06 PM from Susan Winsor addressed to Aaron Bland. She requested the rezoning of the property be tabled for further study. (Exhibit A)

Mr. John Johnson, applicant and property owner, spoke. Mr. Johnson explained previously the property was a part of a City approved PUD (Planned Development) and up until 2006 it was zoned highway corridor district. In 2006 the City adopted a new zoning plan (Unified Development Ordinance) and with the adoption of the UDO his property was rezoned (by the City) from highway commercial to General Residential 6. He explained he wasn't aware of it or he would have spoken against the rezoning at that time. The property was rezoned at the same time Straus Park's United Community Bank and clock tower, Fisher Realty, Mr. Neuman's office, etc., were zoned NMX. Development of the houses within Straus Park's Meadowview, and that are in close proximity to his property, were built prior to 2006 while his property was still zoned highway commercial. The value of his land was changed significantly when the zoning was changed from highway commercial to residential, and added that at this time the property is not under a contract or agreement and is not currently for sale.

Mr. Pratt advised Council (1) Ms. Winsor's email suggests a specific use (potential apartment complex) and that Council can only consider all potential uses that could be permitted within the NMX district, and, (2) value of land (increased or decreased value) is not to be considered.

Mr. Manuel Reyes-Otalora, 287 Stone Creek Road, spoke on behalf of the Straus Park Homeowners Association and in opposition to the proposed rezoning. He presented to Council a handout titled "Time Line of Request for Change in Zoning" (Exhibit B) and expressed concern over the fact the rezoning request was received by the City and presented to the City Planning Board for their recommendation without any notification being made to the Straus Park Homeowners Association or neighboring property owners making them aware of the rezoning request, giving them opportunity to ask questions, and to voice their concerns prior to tonight's public hearing. Questioned if the City met the legal Notice requirements as a map of the requested rezoning was not published within the newspaper. The "rezoning sign" posted upon the property was placed before the Egolf car dealership rather than upon the frontage of the property in question. Questioned why when the City Code states a rezoning application shall be submitted at least 60-days prior to the Planning Board review, it was accepted and considered when only received 18-days prior. The proposed NMX

district would allow for many potential commercial uses that could have a negative impact upon the neighboring residents. The commercial uses in Straus Park within the NMX district are subject to the development's covenants which provides for some protections to the residential uses; however, the Johnson property, while it adjoins Straus Park property, would not be subject to the covenants. He questioned if rezoning to commercial is appropriate when considering (a) the land is land-locked and has access only by means of an easement; (b) emergency access; (c) property currently serves as a buffer of sound from highway; and (d) drainage issues. He asked Council to consider the Straus Park property owners concerns and the impact rezoning the property to commercial would have upon them. Asked Council to view them as not just a development but see them as a part of our community, residents who are active in the community, volunteer and who have moved here to enjoy the quality of life offered in Brevard.

Mr. Cobb was asked to explain about the 60-day rezoning application requirement. Mr. Cobb explained staff is not obligated to accept an application if submitted less than 60 days. However, if we (Staff) can process and complete the work in less than 60 days, then we can choose to do so.

Ms. Nina Shippen, 67 Hillcrest Avenue, spoke in opposition to the rezoning. Stated she previously owned and lived in a house on Meadow View Road in Straus Park. Had she known there would be the potential of commercial development so close to her (then owned) property, she doubts she would have purchased that house. Stated prior to purchasing her home at 67 Hillcrest Avenue she did her due-diligence and verified the surrounding properties are zoned residential. Expressed concern and asked, "What's to prevent one from doing as is being considered tonight, to request a rezoning to commercial next to existing residential?"

Ms. Amy Fisher, 52 Meadow View Road, spoke in opposition to the rezoning. Stated Straus Park was not originally in the City limits; property developer William McKee petition the property be annexed into the City. NMX has many allowable possibilities, some would be great and some would not. Twenty houses could be allowed which would triple the impact on her and her neighbors. Suggested, if Council were to consider rezoning, to consider the Residential Mixed Use (RMX) district in order to minimize the impact to the residents in Straus Park while allowing Mr. Johnson greater property value.

Mr. Art Cole, 43 Sunset Trace, spoke in opposition to the rezoning. Questioned City Staff and Planning Board's recommendation to approve while recognizing the request is not consistent with the City's Land Use Plan; asked if the size of the tract is reasonable; rezoning would be of benefit to the property owner and potential buyer while being a detriment to the neighboring property owners; and questioned if the property qualifies as a "transition district" when considering it's topography, the property is landlocked, has no pedestrian walkways or connectivity to one, and adjoins highway commercial.

Mr. David Calhoun, President of the Straus Park Mountain Park residents, and resides at 155 Camptown Road, spoke in opposition to the rezoning. Stated the applicants, John and Sharon Johnson, are outstanding citizens. Mountain Park consists of 28 homes and 14 lots and are closest to the subject property. Unfortunately, due to holiday travel, a large number of residents could not attend tonight's special called public hearing. Mountain Park owners are concerned NMX would open up property for development to negative uses; understand the right of one to sell their property; however, it should not come at the expense of neighboring property owners and their property values and quality of life. Requested Council either deny the request or to table the matter until Council's February 20th meeting.

Mayor Harris asked Mr. Johnson if he would like to respond to comments.

Mr. Johnson stated someone mentioned a stream is on the property and that there may be some environmental issues; there is no stream and no environmental

issues with the property. Again, the Meadow View homes were built pre-2005 when his adjoining subject property was zoned highway commercial. Straus Park was aware of his interest in pursuing develop potentials for the property as not long ago his attorney met with Straus representatives in order to request right-of-way, which was denied, followed by a second meeting with another Straus representative. As mentioned previously, the property contains a single-family residence and does have many trees, which one previously mentioned serve as a buffer from sound and light from the adjoining commercial. He reminded those present as property owner, whether the rezoning is approved or not, he has the right to remove trees if he should desire to do so. He then stated, as previously stated, he does not have anything planned for the property.

Mr. Manuel Reyes-Otalora stated that he and other Straus property owners who are present at this hearing are here because they care and are concerned with the potential of rezoning the property to commercial. Explained Straus Park maintains a perimeter buffer in order to help protect residents, and, he did not make mention of the meetings held between Straus Park and Mr. Johnson's attorney as he does not believe that matter is a part of the rezoning process.

8:09 P.M. - Public Participation ended as all who had signed up to speak had spoken.

Mayor Harris stated he owns a lot in Straus Park on Hawks Crest. The City Attorney and Council members are aware of this fact as he has previously disclosed this to them.

Mayor Harris asked Mr. Cobb if he is correct in understanding the property as currently zoned GR-6 allows 6 units per acre, and that if rezoned to NMX it would allow up to 10 units per acres with a potential of up to 15 units per acre by Special Use Permit (SUP). Mr. Cobb stated that is correct and added to receive a SUP would further require stormwater, traffic, and similar reviews. While the land is technically land locked, that does not mean that a road could not be built to service the parcel.

Mr. Morrow asked Mr. Cobb if Mr. Johnson is within his rights to request a rezoning of his property. Mr. Cobb replied, "Yes".

Mr. Morrow asked Mr. Cobb if proper Notice of the rezoning was given. Mr. Cobb replied, "Yes. Notice requirement were met."

Mr. Landreth asked Mr. Cobb if the 60-day rezoning application period is intended to allow Staff ample time to process. Mr. Cobb replied, "Yes".

Mr. Landreth asked Mr. Cobb about the Land Use Plan map (Attachment E within the submitted Staff Report). Mr. Cobb explained the attachment is an excerpt from the 2002 Land Use Plan (LUP), and that most LUP's are a snap shot of what exists at the time of the Plan, not necessarily a "future" look.

Mr. Landreth stated the applicant's property graphically looks like a "spot zone" and asked if, by character, the RMX district would be more compatible to Straus Park? Mr. Cobb responded, yes, RMX is an option. No hard and fast rule for spot zoning. In general, one piece of land zoned different than those around it is often thought to be "spot zoned". Does feel RMX would be a better fit for the property.

Ms. Hollingsworth asked Mr. Cobb if she's correct in that if the property were rezoned to NMX or RMX both would require a Type B buffer. Mr. Cobb replied, yes, both districts would require a Type B buffer.

Public Hearing Closed – There being no further questions or comments, Mayor Harris closed the hearing at 8:28 P.M.

G. New Business

G-1. Ordinance No. 2017-_____ An Ordinance Amending The Official Zoning Map Of The City Of Brevard By Rezoning Property Owned By John Johnson To Neighborhood Mixed Use Zoning District

Mr. Morrow moved Council adopt the drafted Ordinance to rezone the John Johnson property from GR-6 to NMX. Motion was not supported by a second. Motion failed.

Ms. Hollingsworth moved Council table the matter until their regular meeting in February.

Mr. Pratt advised Council that procedurally, when a motion is made and there is no second, the matter is then over with. It takes a super majority vote to revisit a matter, so, to table this matter would then require four of the five Council members to agree to table in order to pass the motion.

Ms. Hollingsworth restated her motion for Council to table the matter until their regular meeting in February. Mr. Daniel seconded the motion.

Vote on the Motion: Aye – Ms. Hollingsworth and Mr. Daniel
Nay – Mr. Jones, Mr. Landreth and Mr. Morrow.
Motion failed.

No additional motions were offered. The applicant's request to rezone the property was denied.

Mr. Jones asked Staff if the applicant could come back and resubmit a different rezoning request for something other than NMX district.

Mr. Cobb shared the City Code specifies upon denial of a (rezoning) application, a similar application cannot be filed within one year.

G-2. Appointments to Brevard Personnel Board. Mr. Morrow moved, seconded by Ms. Hollingsworth, Mr. Don Owen be appointed as a regular member of the Brevard Personnel Board with the term expiring November 2019, and, Ms. Carol Dillingham be appointed as an alternate member of the Board with the term expiring November 2018. Motion carried unanimously.

G-3. City Council 2017 Meeting Schedule. Mr. Morrow moved, seconded by Mr. Landreth, Council adopt the 2017 Meeting Schedule as presented. Motion carried unanimously.

Brevard City Council 2017 Meeting Schedule

Day / Date	Time	Type	Location
Tuesday, January 3, 2017	7:00 PM	Special Called Meeting	Council Chambers
Tuesday, January 17, 2017	7:00 PM	Regular Meeting	Council Chambers
Thurs. & Fri., Jan. 26 & 27, 2017	8:30 AM	Annual Retreat	TC Library Rogow Room
Monday, February 20, 2017	7:00 PM	Regular Meeting	Council Chambers
Monday, March 20, 2017	7:00 PM	Regular Meeting	Council Chambers
Monday, April 17, 2017	7:00 PM	Regular Meeting	Council Chambers
Monday, May 15, 2017	7:00 PM	Regular Meeting	Council Chambers
Monday, May 22, 2017	5:30 PM	Budget Work Session #1	Council Chambers

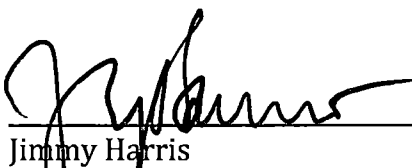
Monday, June 5, 2017 (If Needed)	5:30 PM	Budget Work Session #2	Council Chambers
Monday, June 12, 2017 (If Needed)	5:30 PM	Budget Work Session #3	Council Chambers
Monday, June 19, 2017	7:00 PM	Regular Meeting	Council Chambers
<i>No Meetings Are Scheduled For July</i>			
Monday, August 21, 2017	7:00 PM	Regular Meeting	Council Chambers
Monday, September 18, 2017	7:00 PM	Regular Meeting	Council Chambers
Monday, October 16, 2017	7:00 PM	Regular Meeting	Council Chambers
Monday, November 20, 2017	7:00 PM	Regular Meeting	Council Chambers
Monday, December 4, 2017	7:00 PM	Organizational Meeting	Council Chambers
Monday, December 18, 2017	7:00 PM	Regular Meeting	Council Chambers

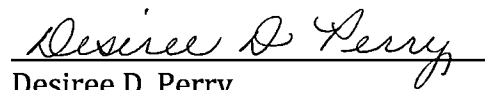
H. Closed Session – Mayor Harris asked the City Attorney if it would be appropriate for Council to hold a closed session to discuss a matter of economic development. City Attorney advised pursuant to **GS § 143-318.11. (a)(3) (4)** it would be appropriate to convene a closed session on the matter. Closed sessions require a separate motion, second and vote to discuss the matter. Council will enter and exit regular session for a closed session.

H-1. Closed Session - At 8:37 P. M. Mr. Landreth moved, seconded by Mr. Jones, Council go into closed session to discuss an economic development matter. Motion carried unanimously. (A three minute break was taken to allow Council Chambers to be cleared.)

Council Returned to Regular Session – At 9:26 P.M. Council resumed the meeting in regular session. No official action was taken in closed session and the Minutes of the closed session are authorized to be sealed.

I. Adjourn – There being no further business, Ms. Hollingsworth moved, seconded by Mr. Daniel, the meeting be adjourned. Meeting adjourned at 9:26 P.M.


Jimmy Harris
Mayor


Desiree D. Perry
City Clerk

Minutes Approved: February 20, 2017

1-3-2017 Mayor Harris read aloud the below email for the public hearing record.

Desiree Perry, City Clerk

Aaron Bland

From: Susan Winsor <susanawinsor@icloud.com>
Sent: Monday, January 02, 2017 9:06 PM
To: Aaron Bland
Subject: Re-zoning Request

Follow Up Flag: Follow up
Flag Status: Completed

Mr. Bland

My name is Susan Winsor. My husband, Coville, and I and own a home at 134 Meadow View Road in Staus Park. We have owned the home for less than 18 months and we are very distressed to hear that the property between Staus Park and Egolf Ford Dealership is under consideration for re-zoning for the potential construction of an apartment complex. Although our property is in the vicinity of this property, we received no notice of the re-zoning request directly and only became aware of it through the home owners association.

We looked for several years for a community here we could retire and feel secure and be involved only to now learn that incompatible development may occur within site of our home. We will be unable to attend the Brevard City Council public hearing tomorrow evening, but please accept this email as our opposition to re-zoning until such time that a suitable and compatible use of the property can be fully considered. Therefore, I respectfully request that re-zoning of this property be tabled for further study.

Sincerely

Susan Winsor

Sent from my iPad

*Exhibit A
 1-3-2017 Johnson Rezone Request
 Public Hearing*

Time Line of Request for Change in Zoning

*1-3-2017 Presented to Council
by Mr. Reyes-Otalora
Johnson Rezone Public Hearing*

Date	Action
October 27, 2016	Request for Change in Zoning received by City Planning Department.
November 15, 2016	Planning Board Meeting - Planning staff submitted report recommending approval of zoning change. No representatives of Straus Park were present at this meeting.
December 16, 2016	Letter from City of Brevard regarding Zoning Amendment was mailed to Harry Fiedler, President of Straus Park Master Association (SPMA).
December 18, 2016	Letter from City of Brevard regarding Zoning Amendment was mailed to Straus Park Master Association (SPMA) Board Members.
December 19, 2016	Margo Evans emailed a copy of the City's letter to owners of Straus Park Town Homes.
December 26, 2016	IPM E-Blast from SPMA President Harry Fiedler with City's letter as an attachment was sent to all Straus Park residents. This IPM email was the first notification of most Straus Park residents of proposed change in zoning.
December 29, 2016	Community Meeting at Straus Park Lake House.
December 30, 2016	IPM E-Blast summarizing Dec 29 community meeting sent to all residents of Straus Park.

*Exhibit B
1-3-2017 Johnson Rezone Request
Public Hearing*