

CITY OF CHERRYVILLE

116 S. MOUNTAIN STREET

CHERRYVILLE, N.C. 28021

PHONE: 704-435-1709 FAX: 704-435-9933

E-MAIL: pgreen@cityofcherryville.com

**REGULAR CITY COUNCIL MEETING
MONDAY JANUARY 9, 2023 @ 6:00 PM
CHERRYVILLE COMMUNITY BUILDING
W. J. ALLRAN JR. COUNCIL CHAMBERS
106 S. JACOB ST. CHERRYVILLE, N.C. 28021**

- I. CALL TO ORDER: HONORABLE MAYOR H.L. BEAM III
- II. INVOCATION: PASTOR KEITH HUSS, MT. ZION BAPTIST CHURCH
- III. PLEDGE OF ALLEGIANCE
- IV. AGENDA APPROVAL **VOTE**
- V. APPROVAL OF MINUTES (See Agenda Materials) **VOTE**
 - A. CITY COUNCIL REGULAR MEETING DECEMBER 12, 2022 pg.(s) 1-30
- VI. MAYOR'S COMMENTS
- VII. SPECIAL RECOGNITION OF SENATOR TED ALEXANDER, MAYOR H.L. BEAM
- VIII. SPECIAL RECOGNITION OF SUPERIOR COURT JUDGE JUSTIN DAVIS
- IX. PRESENTATION OF END OF YEAR REPORT FOR CHAMBER OF COMMERCE, CHAIRMAN PETE CRAFT
- X. PRESENTATION OF AUDIT YEAR ENDING JUNE 30, 2022. SHEILA THORTON
- XI. CITIZENS TO BE HEARD: CITIZENS THAT WISH TO SPEAK MAY DO SO BY COMING TO THE PODIUM AND STATING YOUR NAME AND ADDRESS BEFORE YOU SPEAK. COMMENTS WILL BE HELD TO 5 MINUTES PER PERSON. ***(PLEASE SIGN UP WITH THE CITY CLERK AT THE MEETING BEFORE THE MEETING BEGINS. IF YOU WISH TO***

SPEAK ON A MATTER WHERE A PUBLIC HEARING IS BEING HELD, YOU WILL HAVE A CHANCE TO DO SO DURING THE PUBLIC HEARING AND DO NOT NEED TO SIGN UP)

- XII. CONSIDERATION OF PUBLIC HEARING RE: PROPOSED TEXT AMENDMENT FOR THE CONSIDERATION OF PERMITTING FOOD TRUCKS TO THE ZONING ORDINANCE, PLANNING & ZONING DIRECTOR ALEX BLACKBURN (See Agenda Materials) pg.(s) 31-41 **VOTE TO ENTER, CITIZENS TO SPEAK, VOTE TO EXIT, DISCUSSION, VOTE**
- XIII. CONSIDERATION OF PUBLIC HEARING RE: ZONING TEXT AMENDMENT FOR CLARIFICATION OF THE SPECIAL USE PROCESS, PLANNING & ZONING DIRECTOR ALEX BLACKBURN (See Agenda Materials) pg.(s) 42-44 **VOTE TO ENTER, CITIZENS TO SPEAK, VOTE TO EXIT, DISCUSSION, VOTE**
- XIV. PRESENTATION OF FINANCIAL STATEMENT, CITY MANAGER BRIAN DALTON (See Agenda Material) pg. 45
- XV. OTHER BUSINESS
- XVI. ADJOURNMENT

*Providing exceptional service to our community
that inspires life to blossom*



**REGULAR CITY COUNCIL MEETING
MONDAY DECEMBER 12, 2022 @ 6:00 PM
CHERRYVILLE COMMUNITY BUILDING
W. J. ALLRAN JR. COUNCIL CHAMBERS
106 S. JACOB ST. CHERRYVILLE, N.C. 28021**

The Honorable Mayor H.L. Beam called the regular scheduled meeting to order at the community building in the William J. Allan Jr., Council Chambers. Councilmember's Jill Puett, Gary Freeman, Jon Abernethy, and Malcolm Parker were present. City Manager Brian Dalton, City Clerk Paige H. Green, City Attorney Palmer Huffstetler Jr., Planning & Zoning Director Alex Blackburn, Interim Public Works Director Chris J. King, Wastewater Superintendent Larry Wright, Finance Director Dixie Wall, Downtown Director David Day, and Interim Police Chief Brian Doolittle were also present. Michael Powell was present for media coverage.

INVOCATION: PASTOR DALE HENDRICKS, SHADY GROVE BAPTIST CHURCH:

Pastor Dale Hendricks gave the invocation.

PLEDGE OF ALLEGIANCE:

Everyone stood and recited the Pledge of Allegiance.

AGENDA APPROVAL:

Councilmember Abernethy made a motion to approve the agenda as written. Councilmember Parker seconded the motion and the vote was unanimous.

APPROVAL OF MINUTES:

Councilmember Puett made a motion to approve the following sets of minutes:

- A. CITY COUNCIL REGULAR MEETING NOVEMBER 14, 2022
- B. CITY COUNCIL CLOSED SESSION MEETING NOVEMBER 14, 2022
- C. CITY COUNCIL REGULAR WORK SESSION MEETING NOVEMBER 29, 2022

Councilmember Abernethy seconded the motion and the vote was unanimous.

MAYOR IS COMMENTS:

"Our city staff and city workers have been quite busy the past month.

We have finished the official tree lighting for Main Street and I must say that our main street has never looked prettier than it is at this time. I want to thank our Main Street Director David Day along with events coordinator Mary Beth Tackett and all the volunteers of the Cherryville Chamber of Commerce.

There is one individual I want to recognize for his relentless endeavor in making our mini park so beautiful this past year. He is one that does not look for recognition but just goes about his work with enthusiasm and love for our city. A sincere and well deserved thanks goes out to Gary Dellinger for all his volunteer work with our chamber. From the Mayor, City Council, and all our citizens, thanks Gary.

Last week we conducted a ribbon cutting for Caro-Mont Family Health Care and Urgent Carte, one of our city's newest businesses. A huge crowd was on hand to dedicate this facility and its doors were opened for a personal guided tour. We wish future success for this business and want to thank them for locating in Cherryville.

With the holiday season comes our annual Who-Ville celebration and this year saw some of our largest crowds with estimates of up to five thousand in attendance. With all the addition of lighted decorations, the event was a big success as usual.

This past Saturday, we held our annual Christmas Parade and it was a great success. This parade was one of our largest in quite some years. Our streets were lined with large crowds of adults and children alike. Of course, the main attraction was old St. Nick himself. Thanks to all who participated in this event.

On behalf of your Mayor, City Council, and City staff, we take this opportunity to wish all our citizens a safe and happy holiday season."

CITIZENS TO BE HEARD: CITIZENS THAT WISH TO SPEAK MAY DO SO BY COMING TO THE PODIUM AND STATING YOUR NAME AND ADDRESS BEFORE YOU SPEAK. COMMENTS WILL BE HELD TO 5 MINUTES PER PERSON. (PLEASE SIGN UP WITH THE CITY CLERK AT THE MEETING BEFORE THE MEETING BEGINS. IF YOU WISH TO SPEAK ON A MATTER WHERE A PUBLIC HEARING IS BEING HELD, YOU WILL HAVE A CHANCE TO DO SO DURING THE PUBLIC HEARING AND DO NOT NEED TO SIGN UP):

No citizens spoke.

RECOGNITION OF FORMER POLICE CHIEF CAM JENKS, CITY MANAGER BRIAN DALTON:

City Manager Dalton presented Cam Jenks with a plaque of appreciation for his 20 years of service.

CONSIDERATION OF PUBLIC HEARING RE: SPECIAL USE PERMIT FOR 230 DICK BEAM RD., (GIS #210764) ALLOWING GRANITE COUNTERTOP, PLANNING & ZONING DIRECTOR ALEX BLACKBURN:

Councilmember Puett made a motion to enter into a public hearing. Councilmember Parker seconded the motion and the vote was unanimous.

Planning & Zoning Director Alex Blackburn approached the podium and shared that the applicant for the proposed rezoning was not present. Mr. Blackburn asked for consideration to move this agenda item to the bottom of the agenda.

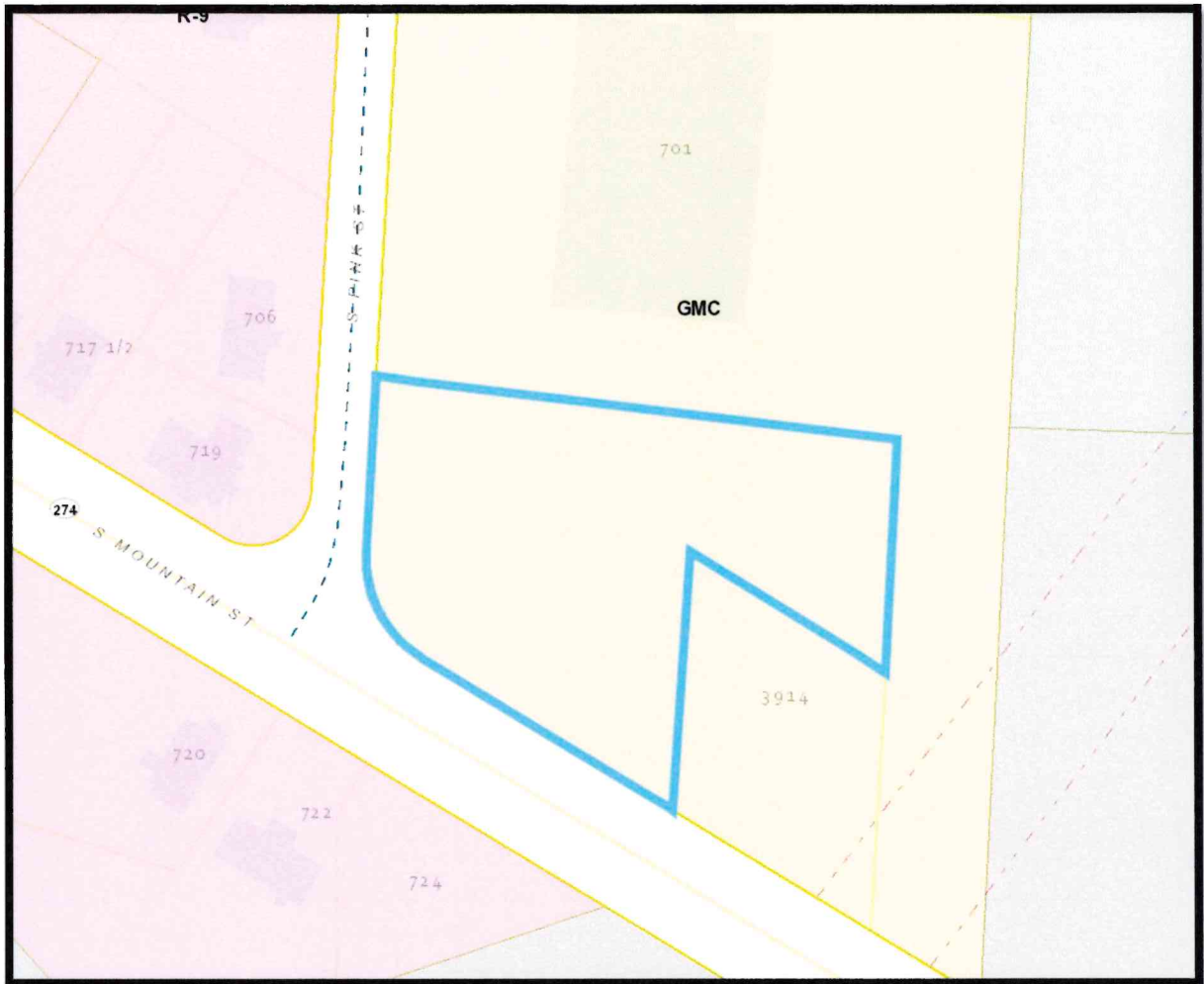
Councilmember Abernethy made a motion to exit the public hearing and move this agenda item to the bottom of the agenda. Councilmember Freeman seconded the motion and the vote was unanimous.

CONSIDERATION OF PUBLIC HEARING RE: REZONING PROPERTY LOCATED ON THE CORNER OF S. MOUNTAIN ST. & S. PINK ST. (GIS #207096) FROM GENERAL MANUFACTURING AND COMMERCIAL (GMC) TO RESIDENTIAL DISTRICT (R-9) PLANNING & ZONING DIRECTOR ALEX BLACKBURN:

Councilmember Puett made a motion to enter into public hearing. Councilmember Freeman seconded the motion and the vote was unanimous.

Planning & Zoning Director Alex Blackburn approached the podium and shared that the City Staff met with applicant Charles Alvarez, owner of Expert Builders LLC, on September 28, 2022 and received a completed application for a Zoning Map Amendment (see Rezoning). Mr. Alvarez is seeking to change the current zoning designation of the property PID # 207096 from its current GMC District to that of the R-9 residential zoning jurisdiction. This property is located on the north-east corner of the intersection of S. Pink Street and S. Mountain Street and has not been granted an address.

Properties surrounding this parcel are comprised of the R-9 district to the West and South directions, GMC to the North and East sides, and B-3 to the South-West corner across S. Mountain Street. Below is a copy of the site map:



Process:

Staff received the application and scheduled the rezoning request to be considered at the next regularly scheduled meeting of the Cherryville Planning Board on October 17, 2022.

- Pre-filing meeting to discuss proposed amendment and to become familiar with the applicable requirements and approval procedures.
- Filing of Request – September 28, 2022
- Staff to request City Council to set Public Hearing date
- Staff to schedule proper advertisement of the Public Hearing.
 - Ad in newspaper to be ran once a week for two consecutive weeks.
 - November 30, 2022
 - December 7, 2022
 - Notice to be placed in front lobby of City Hall
 - November 21, 2022
 - Zoning Sign(s) on subject property
 - November 22, 2022

- Mailed Notices to all adjoining/adjacent property owners.
 - November 21, 2022

Meeting Dates:

- September 28, 2022 – Meeting and Submittal of Application
- October 17, 2022 – Planning Board review of requested rezoning
- November 14, 2022 – City Council set Public Hearing date.
- December 12, 2022 – City Council to hold Public Hearing.

Staff Comments:

The current zoning designation for this parcel is General Manufacturing and Commercial (GMC) and is recorded in the **City of Cherryville Zoning Ordinance Section 6.2.12 GMC General Manufacturing and Commercial** as:

A district designed primarily for general commercial and industrial land uses, including manufacturing, processing and assembling of parts and products, distribution of products at wholesale, retail, transportation terminals and a broad variety of specialized commercial and industrial operations. Many types of such operations are permitted by right, however, certain types of manufacturing and commercial operations will be allowed only upon issuance of a special use permit after review by the Board of Adjustment and the Board of Adjustment having made certain findings and having determined any required conditions as set forth in Part 13.

The applicant has requested a change to the Single- Two-Family Residential (R-9) District which is further enumerated in **Section 6.2.4 R-9 Residential District** as:

This district is established to accommodate single-family dwellings on 9,000 minimum square foot lots and two-family dwellings on 12,000 minimum square foot lots and to allow under certain conditions and after review and approval by the City Council, a variety of residential dwelling unit arrangements in Planned Residential Developments. R-9 districts are located in older, established areas of the City where mixtures of single and two-family dwellings can be accommodated. Like the R-12 District, public water and sewer service is present in all R09 areas. Review by the Planning Board, and review and approval by the City Council for the residential uses and arrangements, other than those specifically permitted by right, is established to ensure that developments are well-planned and, where applicable, compatible with adjoining single-family residences and neighborhoods. A limited number of private and public community uses are allowed or may be allowed on a special use basis where certain criteria specified in this Ordinance are met. Accessory residences are also allowed on a special basis.

This property is located outside of the City of Cherryville Corporate Limits but within the Extraterritorial Jurisdiction of our Zoning Ordinance. The Future Land Use Plan, as adopted by

City Council on August 13, 2012, shows that this area was intended to maintain the Neighborhood Business type zoning.

As discussed with the Planning Board during their consideration of this request, the **North Carolina General Statute 160D-605(a)** declares that “If a zoning map amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment has the effect of also amending any future land-use map in the approved plan, and no additional request or application for a plan amendment is required.” This would mean that it is within the capability of the City Council as the governing board to approve (if they so desire) a request despite it being inconsistent with the Future Land-Use Map as approved in 2012.

Mayor Beam asked if any citizens would like to speak.

Ms. Marcelette Rollins of 706 S. Pink Street shared her concerns about traffic on S. Pink Street and S. Mountain Street. She was concerned about where the driveways would be for two homes and said it is dangerous to pull out in that area. She shared that she had an accident pulling out of her driveway.

Councilmember Parker made a motion to exit the public hearing. Councilmember Puett seconded the motion and the vote was unanimous.

After some discussion, Mayor Beam read aloud the following Statement of Consistency:



STATEMENT OF CONSISTENCY

CITY OF CHERRYVILLE REQUIREMENT OF SECTION 19.1.10 OF THE CITY OF CHERRYVILLE ZONING ORDINANCE

The Cherryville City Council, held a Public Hearing on: **December 12, 2022** to consider Rezoning the property at the corner of S. Pink Street and S. Mountain Street, **Parcel #207096**. After the Public Hearing and discussion of the rezoning the Council draws the following CONCLUSIONS:

1. It is the Council’s CONCLUSION that, the proposed rezoning **IS / IS NOT** consistent with the City of Cherryville Land Use Plan adopted in August 2012.
 2. The Council finds the proposed rezoning **IS / IS NOT** reasonable and **IS / IS NOT** in the public interest. This conclusion is based on the following:
-

Ordered this 12th day of December 2022

Councilmember Freeman made a motion to approve the Statement of Consistency and the rezoning for GIS #207096. Councilmember Abernethy seconded the motion and the vote was unanimous.

CONSIDERATION TO SET A PUBLIC HEARING FOR JANUARY 9, 2023 RE: PROPOSED TEXT AMENDMENT FOR THE CONSIDERATION OF PERMITTING FOOD TRUCKS TO THE ZONING ORDINANCE, PLANNING & ZONING DIRECTOR ALEX BLACKBURN:

Mr. Blackburn asked for consideration for a public hearing to be held Monday January 9, 2023 for the following proposed text amendment to the zoning ordinance regarding food trucks:

Definitions

Food Truck. A readily-movable (motorized and self-propelled, or towable) wheeled vehicle, licensed to operate on or traverses the public streets of the State of North Carolina designed and equipped to serve and sell, to the general public, ready-to-eat food prepared using equipment and facilities fully contained therein.

Section 5.26 Food Trucks

5.26.1 Permitting and Regulation

Food trucks, as defined herein, shall be allowed to operate within the Business Districts (B-1, B-2, B-3) of the City of Cherryville, but only pursuant to a permit to operate issued by the City, and only in such location(s) and at such time(s) as is/are consistent with the following:

(A) Permits, fees, and approvals.

(1) The food truck shall be subject to any and all permit and/or inspection requirements imposed by the Gaston County Health Department, the State of North Carolina and its Division of Health Services, and/or the County Health Department, if other than Gaston County, in which the food truck's associated commissary restaurant is located.

(2) Food truck operators must apply for and receive either a yearly-renewable, or single-event, permit to operate from the City of Cherryville's Planning Department. The city shall limit the issuance of such yearly permits outstanding to no greater than six (6), at any one time; single-event permits, when issued to food trucks not holding yearly permits, shall be limited to no greater than four for any single event. Permits will be issued on a first-come/first-served basis.

(3) The city shall require applicants for food truck permits to submit a standardized application form, signed by the food truck owner and evidencing unexpired possession of required health department permit(s) and liability insurance coverage, along with the following permit fees:

Yearly Permit	\$
Single-Event Permit	\$

(B) **Location.** When issued by the city, food truck leases shall designate the specific area that the food truck is allowed to occupy within the parking spaces described herein. Spaces are available on a first-come/first-served basis. During special events sponsored and sanctioned by the city, food truck permit-holders may be asked to occupy alternate public locations as determined and directed by the Chief of Police or their designee.

(C) **Days and hours of operation.**

(1) Food trucks holding a single-event permit may operate only on the day of the event (parade, festival, etc.) and only during the actual hours of the event, as well as one hour preceding the event, and one hour following the event. Single-event permit holders may operate between the hours of 7:00 a.m. and 10:00 p.m. the day of the event.

(2) For yearly permit holders, days and hours of operation shall be limited to Mondays through Saturdays, between the hours of 7:00 a.m. and 10:00 p.m.

(D) **Operational standards and clean-up.**

(1) The noise level produced from the food truck, motor, generator, or any other on-site activity must comply with the city noise ordinance (Section 5.18).

(2) A trash receptacle shall be provided for customers. The food truck operator shall be responsible for daily clean-up and proper site disposal of all trash and litter produced. Grease and liquid waste shall not be disposed of in any lawn areas, tree pits, storm drains, sanitary sewers, or on public streets or parking areas.

(3) No signage shall be allowed other than that which is either painted on or permanently affixed to the food truck, and a single sandwich-board style portable menu no more than six (6) square feet in display area which is to be placed on the ground in the customer waiting area.

(4) Customers shall not be allowed to line-up, park, or act in a manner which causes a traffic hazard or a threat to safety of the motoring public or to other customers or non-customer pedestrians. The food truck may not be operated as a drive-up window, and all food vending must be to the curb-side of the parking space(s) designated, not to the street-side.

- (5) If the food truck is to be operated after dark, the operator shall propose, and the City Manager, or their designee, shall approve, an appropriate lighting plan which shall become a condition of the permit. Any such lighting plan shall not allow any source of illumination to be directly visible from any residential district and shall be properly shielded so as to minimize light spill-over to adjacent properties.
- (6) All utilities utilized by the food truck are to be provided by the permit holder. Temporary connections to either potable water or sanitary sewer are prohibited
- (E) **Taxation.** Food truck permit-holders shall comply with all local, county, and state retail sales tax regulations, including prepared food and beverage tax regulations.
- (F) **Insurance and Liability.** Food truck yearly permit-holders shall, at all times during the effective date(s) of their permit, maintain general liability insurance coverage on their operations and facilities and name the City of Cherryville as additionally insured, in a minimum \$500,000.
- (G) **Exemptions.**
- (1) For locations on private residential property, a no-cost permit is required along with written proof of property owner(s) consent, if not invited by the City.
- (i) A property owner may sponsor a food truck to cater a private event on private property.
- (ii) A property and/or homeowners association may sponsor a food truck on common area property such as a clubhouse, pool facility, and/or park owned by the association.
- (H) Food trucks permits may be revoked upon findings by the City Council of either or both of the following:
- (1) Vendors become a nuisance by increasing frequencies at locations all over the community, both supported and unsupported.
- (2) Vendors become itinerant merchant and poach activity to a point of generating complaints from brick and mortar businesses.

Councilmember Puett made a motion to set a public hearing for January 9, 2023 for consideration of the text amendment regarding food trucks. Councilmember Abernethy seconded the motion and the vote was unanimous.

CONSIDERATION TO SET A PUBLIC HEARING FOR JANUARY 9, 2023 RE: ZONING TEXT AMENDMENT FOR CLARIFICATION OF THE SPECIAL USE PROCESS, PLANNING & ZONING DIRECTOR ALEX BLACKBURN:

Mr. Blackburn asked for consideration for a public hearing to be held Monday January 9, 2023 for the following proposed text amendment to the zoning ordinance. Mr. Blackburn stated that the City of Cherryville Zoning Ordinance was fairly ambiguous on the processes involved for hearing, granting, and denying a Special Use Permit with some portions of the Ordinance requiring approval by the Board of Adjustment and some sections referencing approval by the City Council with recommendation from the Planning Board.

Mr. Blackburn has made several changes (found below) that he believes will resolve this confusion and guide the process through Planning Board recommendation and approval by the City Council in a quasi-judicial hearing. The proposed changes are highlighted below:

Additions to the current text have been highlighted in yellow and several redactions have been stricken through as such ~~redaction~~.

If you would give this a look over and feel free to make any comments before I take these amendments before the Planning Board for their recommendation to City Council.

5.8.2 Certain uses of a temporary nature [i.e., less than 45 days in duration and held no more than three (3) times per year at any particular location] which would not otherwise be permitted in a particular zoning district may be issued a permit as herein provided. Upon completion and submittal of an application, the Zoning Administrator may grant a zoning permit for the following temporary uses:

1. Christmas tree sales
2. Revivals
3. Shows for civic and youth organizations (i.e., 4-H Shows)
4. Circuses, carnivals, fairs, and rodeos

The permit shall be valid for a specified period only, not to exceed forty-five (45) days in duration.

All other such temporary uses not otherwise listed may only be granted a zoning permit only after (i) an evidentiary hearing has been conducted by the ~~Board of Adjustment~~ City Council, and (ii) the ~~Board of Adjustment~~ City Council had made the following determinations:

1. The proposed use will not materially endanger the public, health, welfare and safety; and
2. The proposed use will not have a substantial negative effect on adjoining properties.

In approving such permit, the ~~Board of Adjustment~~ **City Council** may authorize conditions regarding duration of the use, hours of operation, signage, lighting, etc. and such conditions shall be made part of the permit issued. Violations of such conditions shall be considered a violation of this Ordinance.

No temporary use authorized under Section 5.8.2 of this Ordinance shall involve the keeping or use of livestock within two hundred (200) feet of any residential structure.

5.8.5

In any Residential (R) District a temporary Special Use Permit (SUP) may be granted by the ~~Board of Adjustment~~ **City Council** for not more than one (1) manufactured home to be placed on a residential lot as an accessory use when conditions exists of the need to care for an immediate family member due to medical reasons. The SUP shall be granted only after the ~~Board of Adjustment~~ **City Council** has made all of the following findings:

- (3) That there exists a medically related need for the proximate care of an immediate family member (this finding must be substantiated by a certificate of need from a medical doctor and other evidence the ~~Board of Adjustment~~ **City Council** may desire). [As used herein, proximate care shall mean the same level of care that would normally necessitate living in the same dwelling as the care provider or in a domiciliary care facility, such as care in the basic day-to-day living needs, (e.g., feeding, bathing, and other such functions)];
- (10) That the granting of the SUP will not materially endanger the public health, safety, and welfare.

The following additional requirements shall be applicable:

- a. The SUP shall be valid for one (1) year after issuance or for a shorter period as specified by the City Council, however, no such SUP shall be valid beyond thirty (30) days after any of the reason(s) justifying the SUP cease to exist.
- b. The SUP may be renewed prior to the expiration date with proper application to and approval by the ~~Board of Adjustment~~ **City Council** when the hardship warranting the original permit remains and is verified.
- c. Such permit is granted to a particular owner on the basis of circumstances peculiar to that owner and it shall not remain in effect in the event of a change of ownership of any land structure, use, or other item covered by the SUP.

- d. When granting the SUP, the ~~Board of Adjustment~~ **City Council** may impose reasonable conditions, restrictions, and safeguards as considered necessary to protect the public health, safety, and general welfare in accordance with the purpose and intent of this Ordinance. Violation of these conditions, restrictions, and safeguards shall be considered a violation of this Ordinance.

Section 5.15 Uses Not Expressly Permitted or Special

No building or structure, sign or land shall hereafter be used, erected or occupied and no building or structure shall be erected, expanded or moved except in conformity with the regulations of this Ordinance. This Ordinance specifies uses that are allowed in each zone.

Uses designated as "permitted uses" are allowed in a zone as a matter of right. Uses designated as "special uses" are allowed only after approval by the ~~Board of Adjustment~~ **City Council** pursuant to Part 13 of the Ordinance. Accordingly, a large number of uses are listed as being permitted or special in the various zoning districts. Uses not specifically listed, but closely similar in nature and likely impact on surrounding properties, shall be treated as such similarly listed use, upon a determination being made by the Zoning Administrator.

Certain uses pre-dating the adoption of this Ordinance are allowed to remain as nonconforming uses in accordance with Part 8 of this Ordinance. Certain temporary uses may be allowed in accordance with Section 5.8 of this Ordinance

Section 6.2 General Zoning Districts

General Zoning Districts are designated throughout the zoning jurisdiction and include numerous uses which are allowed by right subject to those uses meeting yard, height, parking, screening, etc. regulations. In addition, each zone allows for special uses that may be developed once a special use permit has been issued by the ~~Board of Adjustment~~ **City Council**. The following general zoning districts are hereby established.

6.2.12 GMC General Manufacturing and Commercial

This district is designed primarily for general commercial and industrial land uses, including manufacturing, processing and assembling of parts and products, distribution of products at wholesale, retail, transportation terminals and a broad variety of specialized commercial and industrial operations. Many types of such operations are permitted by right, however, certain types of manufacturing and commercial operations will be allowed only upon issuance of a special use permit after review by the ~~Board of Adjustment~~ **City Council** and the ~~Board of Adjustment~~

City Council having made certain findings and having determined any required conditions as set forth in Part 13.

7.1.2 Special Uses:

The following uses may be permitted after a special use permit has been issued by the Board of Adjustment City Council in accordance with Part 13 of this Ordinance.

PART 13 SPECIAL USES

Section 13.1 Special Uses

This Ordinance provides for a number of uses to be located by right in each general purpose zoning district subject to the use meeting certain area, height, yard and off-street parking requirements. In addition to these uses, the Ordinance allows some uses to be allowed in these districts subject to the issuance of a Special Use Permit. The purpose of having such "Special Uses" is to insure that they would be compatible with surrounding development and in keeping with the purposes of the general zoning district in which they are located.

Section 13.2 Reserved

Section 13.3 Procedures

The procedures for securing a Special Use Permit shall be as follows:

- a. Twelve (12) copies of a completed written application for a Special Use Permit shall be filed with the Zoning Administrator. The application, as a minimum, shall contain or be accompanied by the following items:
 1. Applicant's full name, address, and telephone number; the property owner's full name, address and telephone number, if different from the applicant.
 2. A scaled boundary survey showing the total acreage, and present zoning classifications for the property(ies) for which the special use permit is sought, date and north arrow. On this survey shall be sketched the information required in Sections 13.3(a)(3-8).
 3. All existing easements, rights-of-way and required setbacks for the lot(s) for which the special use permit is sought.
 4. Proposed size, layout and setbacks of all proposed structures. For residential uses this shall include the number of units and an outline of the area where all principal and accessory structures will be located. For nonresidential uses, this shall include the approximate

gross floor areas of all structures and an outline of the area where the structures will be located.

5. Traffic, parking and circulation plans, showing the proposed locations and arrangement of parking spaces and access points to adjacent streets.
 6. Landscape plan showing proposed screening and landscaping, including location of walls, fences, berms and natural plantings as well as treatment of any existing natural features within the site.
 7. Delineation of areas within the regulatory floodplain as shown on the official Flood Hazard Boundary Maps.
 8. Proposed number, size, type and location of freestanding signs.
 9. Proposed phasing, if any, and approximate completion time of the project.
- b. No application shall be considered complete unless it contain or is accompanied by all items listed in Section 13.3 of this Ordinance and a fee, in accordance with a fee schedule approved by the City Council for the submittal of special use permit applications.
- c. All completed applications shall be submitted to the Zoning Administrator at least fifteen (15) days prior to the **Planning Board** meeting at which it is to be reviewed. This requirement may be waived by a unanimous vote of the **Planning Board** membership present at a meeting of the occurring less than fifteen (15) days prior to the date of submission. In no case, shall the meeting at which the **Planning Board** initially reviews the application occur greater than sixty (60) days after the required number of copies of the completed application have been submitted by the applicant to the Zoning Administrator.
- d. **The Planning Board shall have a maximum of forty-five (45) days from the date at which it initially met to review the application to submit its recommendation to the City Council. If a recommendation is not made during said forty-five (45) day period, the application shall be forwarded to the City Council without a recommendation.**
- e. When dealing with the special use permit process and with the rezoning of properties to a conditional use district, it may be necessary to request information in addition to that listed in Section 13.3 in order to evaluate a proposed use and its relationship to the surrounding area. Therefore, the

~~Board of Adjustment~~ **Planning Board (and/or City Council)** may request such additional information of the applicant as it deems necessary.

A request for such additional information shall stay any further consideration of the application by the ~~Board of Adjustment~~ **Planning Board or City Council**. This information may include (but not be limited to) the following:

1. Storm water drainage plan;
2. Existing and proposed topography at four-foot contour intervals or less;
3. The existing and proposed location of all water and sewer lines and fire hydrants intended to serve the proposed development;
4. Proposed number, type, and location of signs;
5. A traffic impact study of the proposed development prepared by a qualified transportation or traffic engineer or planner. The traffic impact study shall include the following information:
 - (a) existing traffic conditions within the study area boundary;
 - (b) traffic volumes generated by the existing and proposed development on the parcel, including the morning peak, afternoon or evening peak, and average daily traffic levels;
 - (c) the distribution of existing and proposed trips through the street network;
 - (d) analyses of the capacities of intersections located within the study area boundary;
 - (e) recommendations for improvements designed to mitigate traffic impacts and to enhance pedestrian access to the development from the public right-of-way; and
 - (f) other pertinent information, including but not limited to noise, and impacts on air quality and other natural resources.

Section 13.4 ~~Board of Adjustment~~ **City Council Decision**

Once a recommendation has been received from the Planning Board, or the forty-five (45) day Planning Board review period has expired, the City Council shall schedule a public hearing concerning the application for a special use permit. Said

public hearing shall be conducted in a quasi-judicial manner. Notice of said public hearing shall be as follows:

- a. A notice shall be published in a newspaper having general circulation in the Cherryville area once a week for two (2) successive weeks, the first notice to be published not less than ten (10) days nor more than twenty-five (25) days prior to the date established for the public hearing. In computing such time, the date of publication is not to be included, but the date of the hearing shall be included.
- b. The City shall conspicuously place a notice in the Cherryville City Hall not less than ten (10) days or more than twenty-five (25) days before the date established for the public hearing.
- c. The City shall conspicuously post a notice on the subject property at least ten (10) days but not more than twenty-five (25) days prior to the public hearing.
- d. At least ten (10) but not more than twenty-five (25) days prior to the public hearing, a notice of the proposed zoning change shall be sent by the City by first class mail to the applicant, the property owner of the property in question (if different than the applicant) and to all contiguous property owners.

If the ~~Board of Adjustment~~ **City Council** should find, after conducting a public hearing, that a special use permit should be granted, the **City Council** may impose such additional reasonable and appropriate special conditions upon such special use permit, as is deems necessary. Any conditions shall relate to the relationship of the proposed use to surrounding property, proposed support facilities such as parking areas and driveways, pedestrian and vehicular circulation systems, screening and buffer areas, the timing of development and other matters that the ~~Board of Adjustment~~ **City Council** may find appropriate or the petitioner may propose. Such conditions to approval may include dedication of any rights-of-way or easements for streets, water, sewer or other public utilities necessary to serve the proposed development. The petitioner will have a reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the ~~Board of Adjustment~~ **City Council**. In no instance shall any of these conditions be less restrictive than any requirements that would pertain to that particular development found elsewhere in this Ordinance.

13.4.1 Burden of Proof

The applicant has the burden of producing competent, material and substantial evidence tending to establish the facts and conditions which Sections 13.4.2(b) and (d) of this Ordinance require. If any person submits evidence allegedly contrary to

any of the facts or conditions listed in Sections 13.4.2(a) and (c) of this Ordinance, the burden of proof for overcoming such evidence shall rest with the applicant.

13.4.2 Required Findings for All Special Use Permits

The ~~Board of Adjustment~~ **City Council** shall issue a special use permit only after having evaluated an application and having determined that:

- a. The use will not materially endanger the public health or safety if located where proposed and developed according to plan, and
- b. The use meets all required conditions and specifications, and
- c. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity, and
- d. The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the Cherryville Land Development Plan.

Section 13.5 Additional Review Criteria

The following specific review criteria for each of the following special uses shall be addressed by the ~~Board of Adjustment~~ **City Council** in addition to those general review criteria set forth in Subsection 13.4.2 (Note: The City Council recognizes that these review criteria may in some respects duplicate the general review criteria set forth in 13.4.2 but that these criteria are provided to more specifically address issues that are particularly critical to certain uses).

13.5.1 Planned Residential Developments

- (a) The location and character of the development will be in keeping with the stated purpose for allowing Planned Residential Developments as set forth in 11.1.1 of this Ordinance.
- (b) The proposed ingress and egress points will not result in a substantial amount of vehicular traffic to be channeled onto adjacent local streets (non-collector/non thoroughfare streets).

13.5.2 Manufactured Home Parks

- (a) The proposed ingress and egress points will not result in a substantial amount of vehicular traffic to be channeled onto adjacent local streets (non-collector/non thoroughfare streets).

- (b) The manufactured home park will not only meet the minimum screening specifications set forth in this Ordinance but that the result of such screening will be to screen the manufacture home park for view from adjoining properties and adjoining street rights-of-way.

13.5.3 Manufacturing Uses

- (a) The use will not overly impact the ability of the City to collect and/or treat any wastewater generated by the use or the ability of the City to treat and distribute any potable water needed by the use.
- (a) The use will not overly impact (impact beyond capacity) the system of streets serving the use or that improvements will be made to such streets in consort with the development of said use, the result of which will be adequate handling of the additional traffic generated.
- (c) That not only will the use meet the minimum screening requirements of this Ordinance, but also that such additional screening will be installed, as necessitated by the visual characteristics of the particular use, such that the use will be screened from view of adjoining residential districts, or that the nature of the topography makes the screening from distant view from such residential areas impossible and that other measures such as heavy on-site landscaping will be taken to lessen any near or distant visual impacts.

13.5.4 Reserved

13.5.5 Multi-Family Developments

- (a) The proposed ingress and egress points will not result in a substantial amount of vehicular traffic to be channel onto adjacent local streets (non-collector/non thoroughfare streets).

13.5.6 Arcade or Amusement Center or Game Room

- (a) That if such use is not located in a Class C Shopping Center, it will be located no closer than three hundred (300) feet from any Residential (R) District.
- (b) That the hours of operation will be limited to the hours between eight o'clock in the morning (8:00 a.m.) and twelve o'clock midnight (12:00 a.m.).

Section 13.6 Binding Effect

Any special use permit so authorized shall be perpetually binding to the property included in such permit unless subsequently changed or amended by the Board of Adjustment City Council. However, minor changes in the detail of the approved plan which (a) will not alter the basic relationship of the proposed development to adjacent property, and (b) will not alter the uses permitted or increase the density

or intensity of development, and (c) will not decrease the off-street parking ratio or reduce the yards provided at the periphery of the site may be made with the approval of the Zoning Administrator.

Section 13.7 Certificate of Compliance

No certificate of compliance shall be issued for any building or land use on a piece of property which has received a special use permit unless the building is constructed or used, or the land is developed or used, in conformity with the special use permit approved by the ~~Board of Adjustment~~ **City Council**. In the event that only a segment of a proposed development has been approved, the certificate of occupancy shall be issued only for that portion of the development constructed or used as approved.

Section 13.8 One Year Limitation

If a request for a special use permit is denied by the ~~Board of Adjustment~~ **City Council**, a similar application for the same property or any portion thereof shall not be filed until the expiration of a twelve (12) month period from the date of the most recent denial by the ~~Board of Adjustment~~ **City Council**. This waiting period shall not be applicable where the application for a special use permit is substantially different from the application that most previously had been denied.

Section 13.9 Change in Special Use Permit

Any request to materially change the special use permit once it has been issued by the ~~Board of Adjustment~~ **City Council** shall first be reviewed by the Planning Board in accordance with Section 13.3 of this Ordinance. The City Council may thereafter change or amend any previously approved special use permit, only after having held a public hearing. Notice of the public hearing shall be in accordance with Section 13.4 of this Ordinance. Amendment by the City Council of a previously issued special use permit shall be subject to the same considerations as provided for in Section 13.4 of this Ordinance.

Section 13.10 Implementation of Special Use Permit

Unless the ~~Board of Adjustment~~ **City Council** issues a special use permit which either is specifically exempted from any time constraints or has some other specified time period for implementation, the applicant shall have a period of twenty-four (24) months from date of issuance of the special use permit to secure a building permit for the project. If the applicant shall fail to obtain a building permit within the time allowed, the Zoning Administrator shall notify the applicant of such a finding, and within sixty (60) days of said notification, the **Planning Board shall make a recommendation concerning the revocation of the special use permit to the City Council**. **The City Council, after having conducted a public hearing to consider the**

revocation, may then rescind the special use permit, or extend the life of the special use permit for a specified period of time. Due notice of said public hearing shall be given as prescribed in Section 13.4 of this Ordinance.

Section 13.11 Changes in Special Uses Within Shopping Centers

When there is a change in use in a shopping center and the change is for a use listed as a special use in the Zoning District in which the shopping center is located then a special use permit is required for the change in use.

Section 15.1 Powers, Duties and Procedures

(A) The Board of Adjustment shall have all the powers and duties authorized by North Carolina General Statute 160D-302, and in the manner provided for in this Ordinance. Generally, such powers and duties shall include, but not be restricted to the following:

- (1) Hearing and deciding all appeals from decisions made by the Zoning Administrator.
- (2) Hearing and deciding appeals which require interpretation of this Zoning Ordinance.
- (3) Hearing and granting variances from the provisions of this Ordinance.
- (4) Temporary subdivision sales office permit application.
- (5) ~~Special use permit applications~~ **RESERVED**.
- (6) Permits for temporary housing in the event of a disaster.
- (7) Hearing applications to replace or for a change in use with respect to nonconformities.

15.5.1 Before a petition for an administrative appeal, ~~special use permit~~ or temporary use permit or variance shall be heard and **an** evidentiary hearing conducted by the Board of Adjustment, a completed application shall be submitted to the Zoning Administrator along with a fee in accordance with fee schedule established by the City Council. Said fee shall be waived for any petition initiated by the Zoning Administrator or other official of the City of Cherryville who initiates a request on behalf of the City. A map clearly identifying the subject property and all contiguous pieces of properties shall accompany the application.

In addition, a list of names and addresses of the owners of said properties, obtained from the most recent official tax records, shall be provided by the applicant.

15.5.4 The concurring vote of four-fifths (4/5) of the Board of Adjustment shall be necessary to, grant a variance or issue a temporary use or special use permit. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this provision, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members. In all matters coming before the Board of Adjustment, the applicant shall have the burden of providing clear, competent and material evidence in support of the application.

Councilmember Puett made a motion to set a public hearing for January 9, 2023 regarding the proposed text amendment to the zoning ordinance. Councilmember Freeman seconded the motion and the vote was unanimous.

CONSIDERATION OF AMENDMENT TO THE CEMETERY FEES, CITY CLERK PAIGE GREEN:

City Clerk Paige Green asked for consideration for the following proposed increases in cemetery fees. Mrs. Green explained that each year the contractor that digs graves increases his fees five to twenty dollars. Below is a copy of the proposed fee increases:

FEES FOR GRAVE OPENING AND CLOSINGS: (CHARGES PRIOR TO INTERMENT)

Cremation Grave Opening	\$ 375.00 \$395.00
Baby Grave Opening	\$ 340.00 \$345.00
Adult Grave Opening	\$ 630.00 \$650.00
Oversized Adult Grave Opening	\$ 730.00 \$750.00

Mrs. Green shared that the proposed increase will only affect the opening and closing fees. After some discussion, Councilmember Parker made a motion to accept the proposed cemetery fees with an effective date of January 1, 2023. Councilmember Abernethy seconded the motion and the vote was unanimous.

CONSIDERATION OF RESOLUTION RE: ACCEPTANCE OF AMERICAN RESCUE PLAN GRANT OFFER OF \$3,000,000 CITY MANAGER BRIAN DALTON:

Mr. Dalton asked for consideration for the following resolution to accept American Rescue Plan Funds (ARPA) of \$3,000,000:

Resolution by Governing Body of Recipient

WHEREAS, the City of Cherryville has received an earmark for the American Rescue Plan (ARP) funded from the State Fiscal Recovery Fund established in S>L> 2021-180 to assist eligible units of government with meeting their water/wastewater infrastructure needs, and

WHEREAS, the North Carolina Department of Environmental Quality has offered American Rescue Plan (ARP) funding in the amount of \$3,000,000 to perform work detailed in the submitted application, and

WHEREAS, the City of Cherryville intends to perform said project in accordance with the agreed scope of work,

NOW, THEREFORE, BE IT RESOLVED BY THE CHERRYVILLE CITY COUNCIL OF THE CITY OF CHERRYVILLE:

That the City of Cherryville does hereby accept the American Rescue Plan Grant offer of \$3,000,000.

That the City of Cherryville does hereby give assurance to the North Carolina Department of Environmental Quality that any Conditions or Assurances contained in the Award Offer will be adhered to.

That Brian Dalton, City Manager and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State Agency may request in connection with this project: to make the assurances as contained above: and to execute such other documents as may be required by the Division of Water Infrastructure.

Adopted this the 12th day of December 2022 at Cherryville, North Carolina.

City Manager Signature

Councilmember Parker made a motion to approve the resolution for the ARPA funds. Councilmember Puett seconded the motion and the vote was unanimous.

UPDATE RE: NATIONAL LEAGUE OF CITIES WATER LINE WARRANTY, CITY MANAGER BRIAN DALTON:

Mr. Dalton went over the following information regarding the National League of Cities Service Line Warranty Program. They have reached out to Mr. Dalton wanting to offer this plan to any citizens that may be interested.

BACKGROUND: The National League of Cities (NLC) Service Line Warranty Program, offered by Utility Service Partners, a HomeServe Company, was conceived in partnership with the National League of Cities to educate property owners about their service line responsibilities and to help residents avoid the out-of-pocket expense for unanticipated and potentially costly service line repairs and replacements. Our program, the only one of its kind endorsed by the NLC and, will help the City of Cherryville to achieve its goals by:

- Providing homeowners affordable protection against significant and unexpected costs to remedy leaking/broken/ clogged water lines, sewer lines, and in-home plumbing lines

- Ensuring the delivery of timely, high-quality repair services in adherence to all applicable codes
- Providing exemplary service that reflects positively on the City
- The program generates an ongoing, sustainable source of revenue for partner municipalities and stimulates the local economy by using fully vetted local contractors to complete the repairs.
- The City will receive a royalty of \$0.50 per product per month for the duration of the program.

COVERAGE: NLC Service Line Warranty Program offers three complete and separate voluntary programs. There is never a service fee/deductible or annual or lifetime limit. Residents can cancel the warranties at any time.

Exterior Water Service Line: Includes service to locate, excavate and repair/replace a leaking exterior water service line. Covered repairs include, but are not limited to leaks, breaks, corrosion, blockages, root intrusion, and other types of damage (such as from freezing) that impair or limit the intended function of the system. Includes thawing of frozen water lines. Includes restoration of ground surface features after excavation for service line repair, including filling, raking, reseeding, reinstallation of existing soft landscaping and shrubbery, and patching of paved surfaces.

Exterior Sewer Service Line: Includes services to locate, excavate and repair/replace a leaking exterior sewer service line. Covered repairs include, but are not limited to leaks, breaks, corrosion, blockages (due to fats, oils and grease), root intrusion, and other types of damage (such as from freezing) that impair or limit the intended function of the system. Includes restoration of ground surface features after excavation for service line repair, including filling, raking, reseeding, reinstallation of existing soft landscaping and shrubbery, and patching of paved surfaces.

Internal Plumbing and Drainage: Coverage includes the emergency breakdown costs of repairing or replacing interior water, sewer, and drainage pipe materials, valves and other plumbing-related material, including unblocking, repair and replacement. Repair of clogged toilets.

Product	Monthly	Annual Coverage Limit	Annual Service Calls/Per Call Coverage	Royalty for the City
External Water Line	\$5.75	Unlimited	Unlimited Calls \$8,500 Per Call	\$0.50 per contract per month
External Sewer Line	\$7.75	Unlimited	Unlimited Calls \$8,500 Per Call	\$0.50 per contract per month

In-Home Plumbing	\$9.99	Unlimited	Unlimited Calls \$3,000 Per Call	\$0.50 per contract per month
------------------	--------	-----------	-------------------------------------	-------------------------------

IMPLEMENTATION: The NLC Service Line Program will utilize the City logo to brand the materials used to educate City residents/customers about our repair service plans. Program marketing literature clearly discloses that the Program and the City are separate entities and that the program is voluntary for residents. The NLC Service Line Warranty Program will create all marketing materials with input from the City and will submit all marketing/communications materials to the City for final approval.

ENROLLMENT AND BILLING: The NLC Service Line Program offers residents simple options if they choose to enroll either via mail, phone, or web. We handle all customer billing and residents can choose annual, quarterly, or monthly billing and may pay by check, direct debit/ACH, or credit card. Once we receive the enrollment application, customers receive a welcome letter which includes their service agreement terms and conditions, their payment details, a reiteration of their policy coverage, and our toll-free customer service number. Customers also receive a welcome call from customer service as an additional, personalized confirmation of the program. We handle all customer billing, and a homeowner can enroll or cancel at any time.

FINANCIAL IMPACT: No cost to the City to participate and the City would receive \$0.50 per product per month royalty, paid monthly.

After some discussion, many questions were left unanswered. Council directed Mr. Dalton to ask for a sample copy of materials that will be sent out to Cherryville citizens.

Councilmember Parker made a motion to discuss this matter at the next work session meeting before making a decision. Councilmember Abernethy seconded the motion and the vote was unanimous.

CONSIDERATION OF PUBLIC HEARING RE: SPECIAL USE PERMIT FOR 230 DICK BEAM RD., (GIS #210764) ALLOWING GRANITE COUNTERTOP, PLANNING & ZONING DIRECTOR ALEX BLACKBURN:

Councilmember Abernethy made a motion to enter a public hearing. Councilmember’s Freeman and Puett seconded the motion and the vote was unanimous.

Planning & Zoning Director Alex Blackburn shared the following information:

Planning & Zoning Director Alex Blackburn and applicant Carlos Alexander both took the following oath due to the hearing being a quasi-judicial procedure. The city clerk read the following oath to both gentlemen:

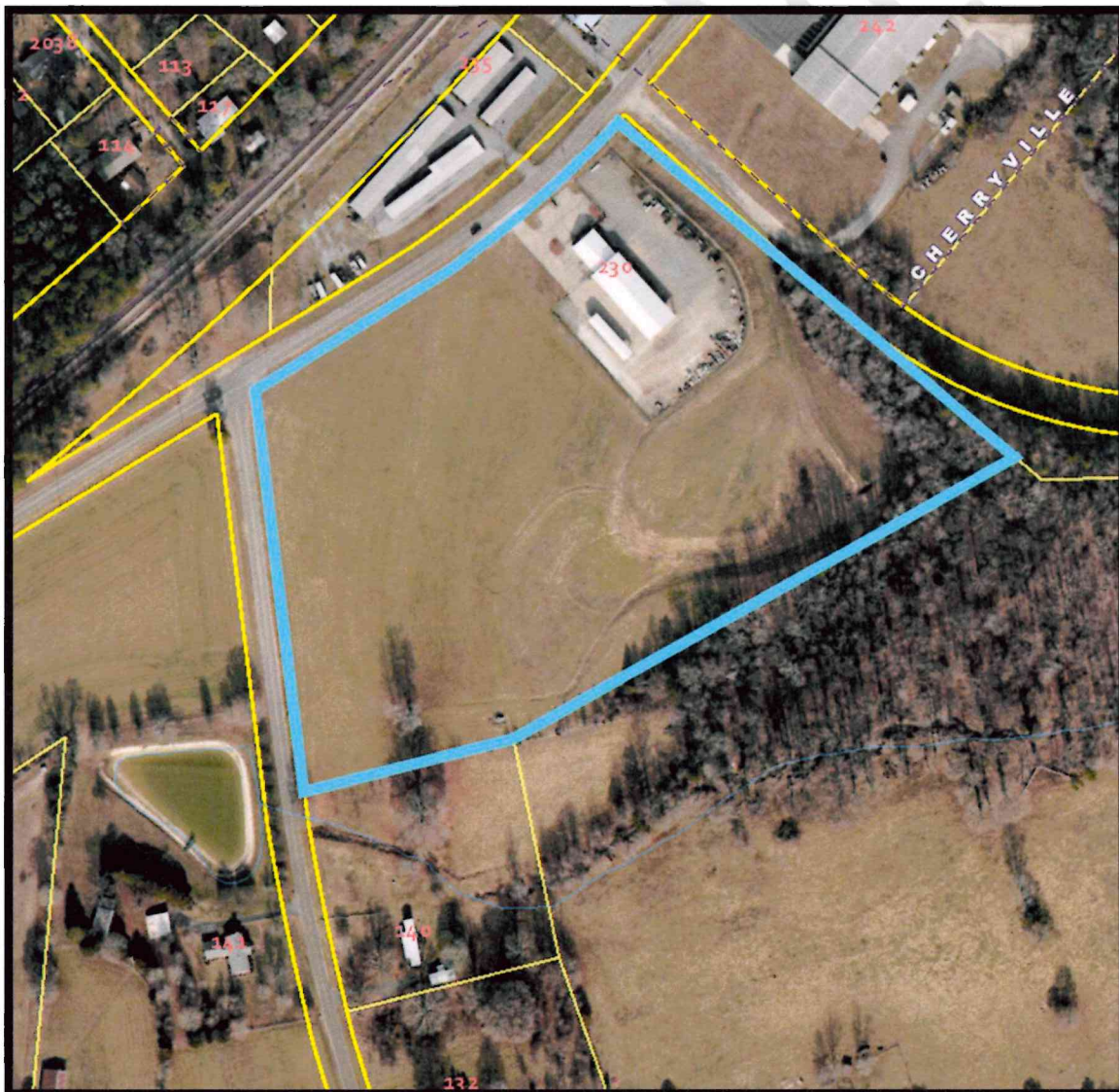
“Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God. Both replied yes.

Planning & Zoning Director Alex Blackburn shared the following information:

Several months ago, City Manager Brian Dalton and Zoning Administrator Alex Blackburn met with property owner (Jerry Denet) and applicant (Carlos Alexander) to discuss possible uses for the property outlined above. The applicant is seeking to operate a granite countertop business on the property in which slabs will be delivered and the final cuts for sinks and other fixtures are cut to order. In accordance with the City of Cherryville Zoning Ordinance Part 7, Section 7.12.1(A)(1)(pp) Cut Stone and Stone Products this would require a Special Use Permit to be presented before the Board of Adjustment and then final approval by the City Council.

The property is currently vacant with the exception of the owner's miscellaneous storage of personal goods.

On Monday, September 19, 2022 a completed application was submitted to City Staff and the Special Hearing Procedure was initiated. Below is a copy of the site map:



Process:

Staff received application and scheduled the Special Use Permit request to be reviewed at the next available meeting of the Cherryville Board of Adjustment meeting (October 17, 2022).

- September 19, 2022 – Staff received application and reviewed for completeness.
- October 17, 2022 – Board of Adjustment to consider request before submitting recommendation to the City Council.
 - The Board of Adjustment voted unanimously to recommend approval of the request.
- November 14, 2022 – City Council to set Public Hearing for December 12, 2022
 - Post Notification signs on property
 - November 22, 2022
 - Publish ad in newspaper once a week for two consecutive weeks
 - November 30, 2022
 - December 7, 2022
 - Post Notices in City Hall main lobby.
 - November 21, 2022
 - Mail adjoining and adjacent property owners of Public Hearing.
 - November 21, 2022
- December 12, 2022 – City Council to hold Public Hearing in quasi-judicial proceedings.

Meeting Dates:

- September 19, 2022 – Received Application
- October 17, 2022 – Board of Adjustment Consideration
- November 14, 2022 – Set Public Hearing
- December 12, 2022 – Hold Public Hearing

Purpose of Special Use Permit:

There are many uses identified in the General Manufacturing and Commercial Zoning district listed as “by right uses” in which the uses are allowed as long as they conform to the general requirements of the zoning district (i.e. setbacks, building height, off street parking, and density). In addition to these uses, there are some uses in which applicants are required to obtain the approval of Special Use Permits as to ensure that these uses are compatible with surrounding development and are in keeping with the purposes of the general zoning district in which they are located.

General Manufacturing and Commercial (GMC) Zoning District

This district is designed primarily for general commercial and industrial land uses, including manufacturing, processing and assembling of parts and products, distribution of products at wholesale, retail, transportation terminals and a broad variety of specialized commercial and industrial operations. Many types of such operations are permitted by right, however, certain types of manufacturing and commercial operations will be allowed only upon issuance of a

special use permit after review by the Board of Adjustment and the Board Having made certain findings and having determined any required conditions as set forth in Part 13.

Per the City of Cherryville Zoning Ordinance Part 7, Sub-Section 7.12.1(A)(1)(pp) "Cut Stone and Stone Products" would require the issuance of a Special Use Permit to be granted in order to occupy the property. Other considerations with this request shall include:

§ 7.12.4 Screening and Landscaping

Screening shall be required as provided in Section 5.2 of this Ordinance.

§ 5.2

- a) When a B-1, B-2, B-3 or GMC District abuts a Residential (R) District, screening shall be provided on the lot(s) which are located in the B-1, B-2, B-3 or GMC District at the time such lots are developed (except with a residential use) or when any existing and/or accessory structure on such lot is expanded. In no instance shall screening be required for any residential use located in a B-1, B-2, B-3 or GMC District except as herein provided.

- d) Within any B-1, B-2, B-3 or GMC District, screening shall be required for the open storage of any non-retail goods or any unenclosed structure consisting of a roof, but no walls used for storage of materials, products, wastes or equipment, whenever such storage or structure is located within one-hundred (100) feet of the street right of way line. Screening shall be placed on the property so as to effectively screen such open storage or structure from the public view from any street right-of-way. The use of a fence or wall constructed pursuant to 5.2.2-b of this Ordinance shall be considered an acceptable method (as with planting) for screening outdoor storage.

§ 5.2.2

Any screening required by Subsection 5.2.1 shall be located along side and/or rear property lines of the lot(s) in question except that screening shall not be required along any street right-of-way unless otherwise stipulated in this Ordinance.

Wherever an industrial use is located on the opposite side of a street right-of-way from a (R) residential zone, screening shall be installed on the industrial use property along said street right-of-way.

Staff Comments:

This property is currently bordered on three sides (North, South and East) by the General Manufacturing and Commercial (GMC) Zoning District. To the West, across Wallaby Road, is the residential (R-40) Zoning District.

Additional Review Criteria as outlined in Part 13, Section 13.5.3 of the City of Cherryville Zoning Ordinance also provides additional specific review criteria for each of the following special uses that will need to be addressed.

13.5.3 Manufacturing Uses

- (a) The use will not overly impact the ability of the City to collect and/or treat any wastewater generated by the use or the ability of the City to treat and distribute any potable water needed by the use.
- (b) The use will not overly impact (impact beyond capacity) the system of streets serving the use or that improvements will be made to such streets in consort with the development of said use, the result of which will be adequate handling of the additional traffic generated.
- (c) That not only will the use meet the minimum screening required of this Ordinance, but also that such additional screening will be installed, as necessitated by the visual characteristics of the particular use, such that the use will be screened from view of adjoining residential districts, or that the nature of the topography makes the screening from distant view from such residential areas impossible and that other measures such as heavy on-site landscaping will be taken to lessen any near or distant visual impacts.

Conditions Recommended:

- Use shall conform to all Local, State and Federal Regulations.
- All waste water associate with the use shall be contained and removed by third party vendor to prevent deterioration of city infrastructure including Sanitary Sewer lines, pump station. Applicant has provided documentation that this will be accomplished pending the approval of the request by City Council.
- Screening of Use from neighboring residential uses as provided in Section 5.2 of the City of Cherryville Zoning Ordinance.

The applicant, Mr. Carlos Alexander, shared that he has plans to recycle the water that is used to cut the stone. He also has plans for a company to come and haul off any waste that may be left over, so that the waste does not enter our system.

Councilmember Puett made a motion to exit the public hearing. Councilmember Freeman seconded the motion and the vote was unanimous.

After some discussion, May Beam read the special use permit Findings of Facts:



SPECIAL USE PERMIT

FINDINGS OF FACT

PROPERTY LOCATION: 230 Dick Beam Road, PID 210696

USE: Cut Stone Fabrication Business.

FINDINGS OF FACT

	YES	NO
1. The use will not materially endanger the public health or safety if located where proposed and developed according to plan, and	<u>X</u>	___
2. The use meets all required conditions and specifications, and	<u>X</u>	___
3. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity, and	<u>X</u>	___
4. The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the Cherryville Land Development Plan.	<u>X</u>	___

After having held a Public Hearing on December 12, 2022 and in light of the Finding of Fact listed herein, the following action was taken by Cherryville City Council:

(Approval, Approval with Conditions, Denial)

Conditions: _____

H.L. Beam, Mayor

Paige H. Green, CMC, NCCMC, City Clerk

(SEAL)

Councilmember Abernethy made a motion to approve the Special Use Permit for 230 Dick Beam Rd., with conditions. Councilmember Parker seconded the motion and the vote was unanimous.

OTHER BUSINESS:

City Clerk Paige Green shared that city offices will be closed on December 27, 2022 for the Christmas holiday and the next regular work session meeting is scheduled for that day. Mrs. Green shared that a vote would need to be taken to cancel the meeting or change the date.

Councilmember Abernethy made a motion to cancel the regular work session meeting scheduled for Tuesday December 27, 2022 at 5:30 pm. Councilmember Freeman seconded the motion and the vote was unanimous.

City Manager Dalton went over the financial statement ending October 2022.

ADJOURNMENT:

Councilmember Parker made a motion to adjourn the meeting. Councilmember Abernethy seconded the motion and the vote was unanimous. The meeting adjourned at 7:07 pm.

Adopted this 9 day of January 2023.

H.L. Beam, Mayor

Paige H. Green, CMC, NCCMC, City Clerk

(SEAL)

The City of Cherryville Zoning Ordinance was fairly ambiguous on the processes involved for hearing, granting, and denying a Special Use Permit with some portions of the Ordinance requiring approval by the Board of Adjustment and some sections referencing approval by the City Council with recommendation from the Planning Board.

I have made several changes (found below) that I believe will resolve this confusion and guide the process through Planning Board recommendation and approval by the City Council in a quasi-judicial hearing.

Additions to the current text have been highlighted in yellow and several redactions have been stricken through as such redaction.

If you would give this a look over and feel free to make any comments before I take these amendments before the Planning Board for their recommendation to City Council.

5.8.2 Certain uses of a temporary nature [i.e., less than 45 days in duration and held no more than three (3) times per year at any particular location] which would not otherwise be permitted in a particular zoning district may be issued a permit as herein provided. Upon completion and submittal of an application, the Zoning Administrator may grant a zoning permit for the following temporary uses:

1. Christmas tree sales
2. Revivals
3. Shows for civic and youth organizations (i.e., 4-H Shows)
4. Circuses, carnivals, fairs, and rodeos

The permit shall be valid for a specified period only, not to exceed forty-five (45) days in duration.

All other such temporary uses not otherwise listed may only be granted a zoning permit only after (i) an evidentiary hearing has been conducted by the Board of Adjustment City Council, and (ii) the Board of Adjustment City Council had made the following determinations:

1. The proposed use will not materially endanger the public, health, welfare and safety; and
2. The proposed use will not have a substantial negative effect on adjoining properties.

In approving such permit, the Board of Adjustment City Council may authorize conditions regarding duration of the use, hours of operation, signage, lighting, etc. and such conditions shall be made part of the permit issued. Violations of such conditions shall be considered a violation of this Ordinance.

No temporary use authorized under Section 5.8.2 of this Ordinance shall involve the keeping or use of livestock within two hundred (200) feet of any residential structure.

5.8.5 In any Residential (R) District a temporary Special Use Permit (SUP) may be

granted by the ~~Board of Adjustment~~ **City Council** for not more than one (1) manufactured home to be placed on a residential lot as an accessory use when conditions exist of the need to care for an immediate family member due to medical reasons. The SUP shall be granted only after the ~~Board of Adjustment~~ **City Council** has made all of the following findings:

- (3) That there exists a medically related need for the proximate care of an immediate family member (this finding must be substantiated by a certificate of need from a medical doctor and other evidence the ~~Board of Adjustment~~ **City Council** may desire). [As used herein, proximate care shall mean the same level of care that would normally necessitate living in the same dwelling as the care provider or in a domiciliary care facility, such as care in the basic day-to-day living needs, (e.g., feeding, bathing, and other such functions)];
- (10) That the granting of the SUP will not materially endanger the public health, safety, and welfare.

The following additional requirements shall be applicable:

- a. The SUP shall be valid for one (1) year after issuance or for a shorter period as specified by the City Council, however, no such SUP shall be valid beyond thirty (30) days after any of the reason(s) justifying the SUP cease to exist.
- b. The SUP may be renewed prior to the expiration date with proper application to and approval by the ~~Board of Adjustment~~ **City Council** when the hardship warranting the original permit remains and is verified.
- c. Such permit is granted to a particular owner on the basis of circumstances peculiar to that owner and it shall not remain in effect in the event of a change of ownership of any land structure, use, or other item covered by the SUP.
- d. When granting the SUP, the ~~Board of Adjustment~~ **City Council** may impose reasonable conditions, restrictions, and safeguards as considered necessary to protect the public health, safety, and general welfare in accordance with the purpose and intent of this Ordinance. Violation of these conditions, restrictions, and safeguards shall be considered a violation of this Ordinance.

Section 5.15 Uses Not Expressly Permitted or Special

No building or structure, sign or land shall hereafter be used, erected or occupied and no building or structure shall be erected, expanded or moved except in conformity with the regulations of this Ordinance. This Ordinance specifies uses that are allowed in each zone.

Uses designated as "permitted uses" are allowed in a zone as a matter of right. Uses designated as "special uses" are allowed only after approval by the ~~Board of~~

Adjustment **City Council** pursuant to Part 13 of the Ordinance. Accordingly, a large number of uses are listed as being permitted or special in the various zoning districts. Uses not specifically listed, but closely similar in nature and likely impact on surrounding properties, shall be treated as such similarly listed use, upon a determination being made by the Zoning Administrator.

Certain uses pre-dating the adoption of this Ordinance are allowed to remain as nonconforming uses in accordance with Part 8 of this Ordinance. Certain temporary uses may be allowed in accordance with Section 5.8 of this Ordinance

Section 6.2 General Zoning Districts

General Zoning Districts are designated throughout the zoning jurisdiction and include numerous uses which are allowed by right subject to those uses meeting yard, height, parking, screening, etc. regulations. In addition, each zone allows for special uses that may be developed once a special use permit has been issued by the ~~Board of Adjustment~~ **City Council**. The following general zoning districts are hereby established.

6.2.12 GMC General Manufacturing and Commercial

This district is designed primarily for general commercial and industrial land uses, including manufacturing, processing and assembling of parts and products, distribution of products at wholesale, retail, transportation terminals and a broad variety of specialized commercial and industrial operations. Many types of such operations are permitted by right, however, certain types of manufacturing and commercial operations will be allowed only upon issuance of a special use permit after review by the ~~Board of Adjustment~~ **City Council** and the ~~Board of Adjustment~~ **City Council** having made certain findings and having determined any required conditions as set forth in Part 13.

7.1.2 Special Uses:

The following uses may be permitted after a special use permit has been issued by the ~~Board of Adjustment~~ **City Council** in accordance with Part 13 of this Ordinance.

PART 13

SPECIAL USES

Section 13.1 Special Uses

This Ordinance provides for a number of uses to be located by right in each general purpose zoning district subject to the use meeting certain area, height, yard and off-street parking requirements. In addition to these uses, the Ordinance allows some uses to be allowed in these districts subject to the issuance of a Special Use Permit. The purpose of having such "Special Uses" is to insure that

they would be compatible with surrounding development and in keeping with the purposes of the general zoning district in which they are located.

Section 13.2 Reserved

Section 13.3 Procedures

The procedures for securing a Special Use Permit shall be as follows:

- a. Twelve (12) copies of a completed written application for a Special Use Permit shall be filed with the Zoning Administrator. The application, as a minimum, shall contain or be accompanied by the following items:
 1. Applicant's full name, address, and telephone number; the property owner's full name, address and telephone number, if different from the applicant.
 2. A scaled boundary survey showing the total acreage, and present zoning classifications for the property(ies) for which the special use permit is sought, date and north arrow. On this survey shall be sketched the information required in Sections 13.3(a)(3-8).
 3. All existing easements, rights-of-way and required setbacks for the lot(s) for which the special use permit is sought.
 4. Proposed size, layout and setbacks of all proposed structures. For residential uses this shall include the number of units and an outline of the area where all principal and accessory structures will be located. For nonresidential uses, this shall include the approximate gross floor areas of all structures and an outline of the area where the structures will be located.
 5. Traffic, parking and circulation plans, showing the proposed locations and arrangement of parking spaces and access points to adjacent streets.
 6. Landscape plan showing proposed screening and landscaping, including location of walls, fences, berms and natural plantings as well as treatment of any existing natural features within the site.
 7. Delineation of areas within the regulatory floodplain as shown on the official Flood Hazard Boundary Maps.
 8. Proposed number, size, type and location of freestanding signs.
 9. Proposed phasing, if any, and approximate completion time of the project.
- b. No application shall be considered complete unless it contain or is accompanied by all items listed in Section 13.3 of this Ordinance and a fee, in accordance with a fee schedule approved by the City Council for the

submittal of special use permit applications.

- c. All completed applications shall be submitted to the Zoning Administrator at least fifteen (15) days prior to the **Planning Board** meeting at which it is to be reviewed. This requirement may be waived by a unanimous vote of the **Planning Board** membership present at a meeting of the occurring less than fifteen (15) days prior to the date of submission. In no case, shall the meeting at which the **Planning Board** initially reviews the application occur greater than sixty (60) days after the required number of copies of the completed application have been submitted by the applicant to the Zoning Administrator.
- d. **The Planning Board shall have a maximum of forty-five (45) days from the date at which it initially met to review the application to submit its recommendation to the City Council. If a recommendation is not made during said forty-five (45) day period, the application shall be forwarded to the City Council without a recommendation.**
- e. When dealing with the special use permit process and with the rezoning of properties to a conditional use district, it may be necessary to request information in addition to that listed in Section 13.3 in order to evaluate a proposed use and its relationship to the surrounding area. Therefore, the ~~Board of Adjustment~~ **Planning Board (and/or City Council)** may request such additional information of the applicant as it deems necessary.

A request for such additional information shall stay any further consideration of the application by the ~~Board of Adjustment~~ **Planning Board or City Council**. This information may include (but not be limited to) the following:

1. Stormwater drainage plan;
2. Existing and proposed topography at four-foot contour intervals or less;
3. The existing and proposed location of all water and sewer lines and fire hydrants intended to serve the proposed development;
4. Proposed number, type, and location of signs;
5. A traffic impact study of the proposed development prepared by a qualified transportation or traffic engineer or planner. The traffic impact study shall include the following information:
 - (a) existing traffic conditions within the study area boundary;
 - (b) traffic volumes generated by the existing and proposed development on the parcel, including the morning peak, afternoon or evening peak, and average daily traffic levels;
 - (c) the distribution of existing and proposed trips through the

street network;

- (d) analyses of the capacities of intersections located within the study area boundary;
- (e) recommendations for improvements designed to mitigate traffic impacts and to enhance pedestrian access to the development from the public right-of-way; and
- (f) other pertinent information, including but not limited to noise, and impacts on air quality and other natural resources.

Section 13.4 ~~Board of Adjustment~~ City Council Decision

Once a recommendation has been received from the Planning Board, or the forty-five (45) day Planning Board review period has expired, the City Council shall schedule a public hearing concerning the application for a special use permit. Said public hearing shall be conducted in a quasi-judicial manner. Notice of said public hearing shall be as follows:

- a. A notice shall be published in a newspaper having general circulation in the Cherryville area once a week for two (2) successive weeks, the first notice to be published not less than ten (10) days nor more than twenty-five (25) days prior to the date established for the public hearing. In computing such time, the date of publication is not to be included, but the date of the hearing shall be included.
- b. The City shall conspicuously place a notice in the Cherryville City Hall not less than ten (10) days or more than twenty-five (25) days before the date established for the public hearing.
- c. The City shall conspicuously post a notice on the subject property at least ten (10) days but not more than twenty-five (25) days prior to the public hearing.
- d. At least ten (10) but not more than twenty-five (25) days prior to the public hearing, a notice of the proposed zoning change shall be sent by the City by first class mail to the applicant, the property owner of the property in question (if different than the applicant) and to all contiguous property owners.

If the ~~Board of Adjustment~~ City Council should find, after conducting a public hearing, that a special use permit should be granted, the City Council may impose such additional reasonable and appropriate special conditions upon such special use permit, as is deems necessary. Any conditions shall relate to the relationship of the proposed use to surrounding property, proposed support facilities such as parking areas and driveways, pedestrian and vehicular circulation systems, screening and buffer areas, the timing of development and other matters that the ~~Board of Adjustment~~ City Council may find appropriate or the petitioner may propose. Such conditions to approval may include dedication of any rights-of-way

or easements for streets, water, sewer or other public utilities necessary to serve the proposed development. The petitioner will have a reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the ~~Board of Adjustment~~ **City Council**. In no instance shall any of these conditions be less restrictive than any requirements that would pertain to that particular development found elsewhere in this Ordinance.

13.4.1 Burden of Proof

The applicant has the burden of producing competent, material and substantial evidence tending to establish the facts and conditions which Sections 13.4.2(b) and (d) of this Ordinance require. If any person submits evidence allegedly contrary to any of the facts or conditions listed in Sections 13.4.2(a) and (c) of this Ordinance, the burden of proof for overcoming such evidence shall rest with the applicant.

13.4.2 Required Findings for All Special Use Permits

The ~~Board of Adjustment~~ **City Council** shall issue a special use permit only after having evaluated an application and having determined that:

- a. The use will not materially endanger the public health or safety if located where proposed and developed according to plan, and
- b. The use meets all required conditions and specifications, and
- c. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity, and
- d. The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the Cherryville Land Development Plan.

Section 13.5 Additional Review Criteria

The following specific review criteria for each of the following special uses shall be addressed by the ~~Board of Adjustment~~ **City Council** in addition to those general review criteria set forth in Subsection 13.4.2 (Note: The City Council recognizes that these review criteria may in some respects duplicate the general review criteria set forth in 13.4.2 but that these criteria are provided to more specifically address issues that are particularly critical to certain uses).

13.5.1 Planned Residential Developments

- (a) The location and character of the development will be in keeping with the stated purpose for allowing Planned Residential Developments as set forth in 11.1.1 of this Ordinance.
- (b) The proposed ingress and egress points will not result in a substantial

amount of vehicular traffic to be channeled onto adjacent local streets (non-collector/non thoroughfare streets).

13.5.2 Manufactured Home Parks

- (a) The proposed ingress and egress points will not result in a substantial amount of vehicular traffic to be channeled onto adjacent local streets (non-collector/non thoroughfare streets).
- (b) The manufactured home park will not only meet the minimum screening specifications set forth in this Ordinance but that the result of such screening will be to screen the manufacture home park for view from adjoining properties and adjoining street rights-of-way.

13.5.3 Manufacturing Uses

- (a) The use will not overly impact the ability of the City to collect and/or treat any wastewater generated by the use or the ability of the City to treat and distribute any potable water needed by the use.
- (a) The use will not overly impact (impact beyond capacity) the system of streets serving the use or that improvements will be made to such streets

in consort with the development of said use, the result of which will be adequate handling of the additional traffic generated.
- (c) That not only will the use meet the minimum screening requirements of this Ordinance, but also that such additional screening will be installed, as necessitated by the visual characteristics of the particular use, such that the use will be screened from view of adjoining residential districts, or that the nature of the topography makes the screening from distant view from such residential areas impossible and that other measures such as heavy on-site landscaping will be taken to lessen any near or distant visual impacts.

13.5.4 Reserved

13.5.5 Multi-Family Developments

- (a) The proposed ingress and egress points will not result in a substantial amount of vehicular traffic to be channel onto adjacent local streets (non-collector/non thoroughfare streets).

13.5.6 Arcade or Amusement Center or Game Room

- (a) That if such use is not located in a Class C Shopping Center, it will be located no closer than three hundred (300) feet from any Residential (R) District.
- (b) That the hours of operation will be limited to the hours between eight

o'clock in the morning (8:00 a.m.) and twelve o'clock midnight (12:00 a.m.).

Section 13.6 Binding Effect

Any special use permit so authorized shall be perpetually binding to the property included in such permit unless subsequently changed or amended by the ~~Board of Adjustment~~ **City Council**. However, minor changes in the detail of the approved plan which (a) will not alter the basic relationship of the proposed development to adjacent property, and (b) will not alter the uses permitted or increase the density or intensity of development, and (c) will not decrease the off-street parking ratio or reduce the yards provided at the periphery of the site may be made with the approval of the Zoning Administrator.

Section 13.7 Certificate of Compliance

No certificate of compliance shall be issued for any building or land use on a piece of property which has received a special use permit unless the building is constructed or used, or the land is developed or used, in conformity with the special use permit approved by the ~~Board of Adjustment~~ **City Council**. In the event that only a segment of a proposed development has been approved, the certificate of occupancy shall be issued only for that portion of the development constructed or used as approved.

Section 13.8 One Year Limitation

If a request for a special use permit is denied by the ~~Board of Adjustment~~ **City Council**, a similar application for the same property or any portion thereof shall not be filed until the expiration of a twelve (12) month period from the date of the most recent denial by the ~~Board of Adjustment~~ **City Council**. This waiting period shall not be applicable where the application for a special use permit is substantially different from the application that most previously had been denied.

Section 13.9 Change in Special Use Permit

Any request to materially change the special use permit once it has been issued by the ~~Board of Adjustment~~ **City Council** shall first be reviewed by the Planning Board in accordance with Section 13.3 of this Ordinance. The City Council may thereafter change or amend any previously approved special use permit, only after having held a public hearing. Notice of the public hearing shall be in accordance with Section 13.4 of this Ordinance. Amendment by the City Council of a previously issued special use permit shall be subject to the same considerations as provided for in Section 13.4 of this Ordinance.

Section 13.10 Implementation of Special Use Permit

Unless the ~~Board of Adjustment~~ **City Council** issues a special use permit which either is specifically exempted from any time constraints or has some other

specified time period for implementation, the applicant shall have a period of twenty-four (24) months from date of issuance of the special use permit to secure a building permit for the project. If the applicant shall fail to obtain a building permit within the time allowed, the Zoning Administrator shall notify the applicant of such a finding, and within sixty (60) days of said notification, the Planning Board shall make a recommendation concerning the revocation of the special use permit to the City Council. The City Council, after having conducted a public hearing to consider the revocation, may then rescind the special use permit, or extend the life of the special use permit for a specified period of time. Due notice of said public hearing shall be given as prescribed in Section 13.4 of this Ordinance.

Section 13.11 Changes in Special Uses Within Shopping Centers

When there is a change in use in a shopping center and the change is for a use listed as a special use in the Zoning District in which the shopping center is located then a special use permit is required for the change in use.

Section 15.1 Powers, Duties and Procedures

(A) The Board of Adjustment shall have all the powers and duties authorized by North Carolina General Statute 160D-302, and in the manner provided for in this Ordinance. Generally, such powers and duties shall include, but not be restricted to the following:

- (1) Hearing and deciding all appeals from decisions made by the Zoning Administrator.
- (2) Hearing and deciding appeals which require interpretation of this Zoning Ordinance.
- (3) Hearing and granting variances from the provisions of this Ordinance.
- (4) Temporary subdivision sales office permit application.
- (5) ~~Special use permit applications~~ **RESERVED**.
- (6) Permits for temporary housing in the event of a disaster.
- (7) Hearing applications to replace or for a change in use with respect to nonconformities.

15.5.1

Before a petition for an administrative appeal, ~~special use permit~~ or temporary use permit or variance shall be heard and **an** evidentiary hearing conducted by the Board of Adjustment, a completed application shall be submitted to the Zoning Administrator along with a fee in accordance with fee schedule established by the City Council. Said fee shall be waived for any petition initiated by the Zoning Administrator or other official of the City of Cherryville who initiates a request on behalf of the City. A map clearly identifying the subject property and all contiguous pieces of properties shall accompany the application.

In addition, a list of names and addresses of the owners of said properties, obtained from the most recent official tax records, shall be provided by the applicant.

15.5.4

The concurring vote of four-fifths (4/5) of the Board of Adjustment shall be necessary to, grant a variance **or** issue a temporary use ~~or special-use permit~~. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this provision, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members. In all matters coming before the Board of Adjustment, the applicant shall have the burden of providing clear, competent and material evidence in support of the application.

Definitions

Food Truck. A readily-movable (motorized and self-propelled, or towable) wheeled vehicle, licensed to operate on or travers the public streets of the State of North Carolina designed and equipped to serve and sell, to the general public, ready-to-eat food prepared using equipment and facilities fully contained therein.

Section 5.26 Food Trucks

5.26.1 Permitting and Regulation

Food trucks, as defined herein, shall be allowed to operate within the Business Districts (B-1, B-2, B-3) of the City of Cherryville, but only pursuant to a permit to operate issued by the City, and only in such location(s) and at such time(s) as is/are consistent with the following:

(A) Permits, fees, and approvals.

(1) The food truck shall be subject to any and all permit and/or inspection requirements imposed by the Gaston County Health Department, the State of North Carolina and its Division of Health Services, and/or the County Health Department, if other than Gaston County, in which the food truck’s associated commissary restaurant is located.

(2) Food truck operators must apply for and receive either a yearly-renewable, or single-event, permit to operate from the City of Cherryville’s Planning Department. The city shall limit the issuance of such yearly permits outstanding to no greater than six (6), at any one time; single-event permits, when issued to food trucks not holding yearly permits, shall be limited to no greater than four for any single event. Permits will be issued on a first-come/first-served basis.

(3) The city shall require applicants for food truck permits to submit a standardized application form, signed by the food truck owner and evidencing unexpired possession of required health department permit(s) and liability insurance coverage, along with the following permit fees:

Yearly Permit	\$
Single-Event Permit	\$

(B) Location. When issued by the city, food truck leases shall designate the specific area that the food truck is allowed to occupy within the parking spaces described herein. Spaces are available on a first-come/first-served basis. During special events sponsored and sanctioned by the city, food truck permit-holders may be asked to occupy alternate public locations as determined and directed by the Chief of Police or their designee.

(C) **Days and hours of operation.**

(1) Food trucks holding a single-event permit may operate only on the day of the event (parade, festival, etc.) and only during the actual hours of the event, as well as one hour preceding the event, and one hour following the event. Single-event permit holders may operate between the hours of 7:00 a.m. and 10:00 p.m. the day of the event.

(2) For yearly permit holders, days and hours of operation shall be limited to Mondays through Saturdays, between the hours of 7:00 a.m. and 10:00 p.m.

(D) **Operational standards and clean-up.**

(1) The noise level produced from the food truck, motor, generator, or any other on-site activity must comply with the city noise ordinance (Section 5.18).

(2) A trash receptacle shall be provided for customers. The food truck operator shall be responsible for daily clean-up and proper site disposal of all trash and litter produced. Grease and liquid waste shall not be disposed of in any lawn areas, tree pits, storm drains, sanitary sewers, or on public streets or parking areas.

(3) No signage shall be allowed other than that which is either painted on or permanently affixed to the food truck, and a single sandwich-board style portable menu no more than six (6) square feet in display area which is to be placed on the ground in the customer waiting area.

(4) Customers shall not be allowed to line-up, park, or act in a manner which causes a traffic hazard or a threat to safety of the motoring public or to other customers or non-customer pedestrians. The food truck may not be operated as a drive-up window, and all food vending must be to the curb-side of the parking space(s) designated, not to the street-side.

(5) If the food truck is to be operated after dark, the operator shall propose, and the City Manager, or their designee, shall approve, an appropriate lighting plan which shall become a condition of the permit. Any such lighting plan shall not allow any source of illumination to be directly visible from any residential district and shall be properly shielded so as to minimize light spill-over to adjacent properties.

(6) All utilities utilized by the food truck are to be provided by the permit holder. Temporary connections to either potable water or sanitary sewer are prohibited

(E) **Taxation.** Food truck permit-holders shall comply with all local, county, and state retail sales tax regulations, including prepared food and beverage tax regulations.

(F) **Insurance and Liability.** Food truck yearly permit-holders shall, at all times during the effective date(s) of their permit, maintain general liability insurance coverage on their

operations and facilities and name the City of Cherryville as additionally insured, in a minimum \$500,000.

(G) **Exemptions.**

(1) For locations on private residential property, a no-cost permit is required along with written proof of property owner(s) consent, if not invited by the City.

(i) A property owner may sponsor a food truck to cater a private event on private property.

(ii) A property and/or homeowners association may sponsor a food truck on common area property such as a clubhouse, pool facility, and/or park owned by the association.

(H) Food trucks permits may be revoked upon findings by the City Council of either or both of the following:

(1) Vendors become a nuisance by increasing frequencies at locations all over the community, both supported and unsupported.

(2) Vendors become itinerant merchant and poach activity to a point of generating complaints from brick and mortar businesses.

CITY OF CHERRYVILLE
MAJOR FUND FINANCIAL SUMMARY REPORT
5 MONTHS ENDING NOVEMBER 30 2022



42%

A	B	C	E	F	G	H	I	J	L	M	N	
1												
2												
3												
4												
5												
6												
7												
8	Revenues		Annual Budget	Actual to Date	YTD %				General Fund	\$ 5,600,515	Operating Acct	\$ 2,112,500
9	Current Year Levy Property Taxes	\$	2,518,000	\$ 1,431,745	57%				Cemetery	32,306	NCCMT	10,205,239
10	ABC Profit Distribution	\$	25,000	12,500	50%				Powell Bill	374,227		
11	Utility Franchise Taxes	\$	397,000	-	0%				Electric Fund	3,658,702		
12	Local Option Sales Taxes	\$	850,000	303,342	36%				Water and Sewer Fund	2,675,810		
13	Grants/Donations	\$	24,500	(16,191)	0%				Solid Waste/Sanitation	(23,821)		\$ 12,317,739
14	Powell Bill	\$	200,500	105,294	53%				Total	\$ 12,317,739		
15	Contributions/Charges Other Funds	\$	108,600	-	0%							
16	Fund Balance Appropriated	\$	933,485	-	0%							
17	All Other Revenues	\$	168,300	95,793	57%							
18	Total	\$	5,225,385	\$ 1,932,483	37%							
19												
20			Annual Budget	Actual to Date	YTD %							
21	Expenditures		FY '22-23	FY '22-23	Spent							
22	Governing Body	\$	55,650	\$ 25,179	45%							
23	Administration		582,200	251,069	43%							
24	EDC		236,200	116,843	49%							
25	Police		1,868,985	682,061	36%							
26	Fire		1,229,130	494,465	40%							
27	Public Works		123,425	37,586	30%							
28	Streets		412,410	90,378	22%							
29	Powell Bill		462,150	33,503	7%							
30	Recreation		255,660	119,084	47%							
31	Appropriations/Contributions		-	-	0%							
32	Total	\$	5,225,810	\$ 1,850,167	35%							
33												
34												
35			Annual Budget	Actual to Date	YTD %							
36	Revenues		FY '22-23	FY '22-23	Collected							
37	Fund Balance Appropriated	\$	476,225	\$ -	0%							
38	CMSP		-	3,120	#DIV/0!							
39	Total	\$	476,225	\$ 3,120	1%							
40												
41			Annual Budget	Actual to Date	YTD %							
42	Expenditures		FY '22-23	FY '22-23	Spent							
43	CMSP	\$	476,225	\$ 233,314	49%							
44	Total	\$	476,225	\$ 233,314	49%							
45												
46												
47			Annual Budget	Actual to Date	YTD %							
48	Revenues		FY '22-23	FY '22-23	Collected							
49	Cemetery Sales	\$	87,000	\$ 47,192	54%							
50	Fund Balance Appropriated		-	-	0%							
51	Total	\$	87,000	\$ 47,192	54%							
52												
53			Annual Budget	Actual to Date	YTD %							
54	Expenditures		FY '22-23	FY '22-23	Spent							
55	Administration	\$	86,575	\$ 30,459	35%							
56	Contributions to Other Funds		-	-	0%							
57	Total	\$	86,575	\$ 30,459	35%							
58												
59	YTD Fund Balance Increase (Decrease)		-	(131,145)								
60												
61												

***given to council/dept heads monthly

45