



**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**

The Honorable Mayor H.L. Beam called the regular scheduled meeting to order at the community building in the William J. Allran 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., Public Works Director Chris J. King, Planning & Zoning Director Alex Blackburn, Wastewater Superintendent Larry Wright, Finance Director Dixie Wall, Downtown Director David Day, Fire Chief Jason Wofford, and Interim Police Chief Brian Doolittle were also present. Michael Powell was present for media coverage.

INVOCATION: PASTOR KEITH HUSS, MT. ZION BAPTIST CHURCH:

Pastor Keith Huss gave the invocation.

PLEDGE OF ALLEGIANCE:

Everyone stood and recited the Pledge of Allegiance.

AGENDA APPROVAL:

Mayor Beam shared that the agenda will need to be amended to add to item number 9. Mayor Beam shared that consideration of appointment to the chamber of commerce board needs to be added.

Councilmember Puett made a motion to add consideration of appointments to the chamber of commerce board to item number 9. Councilmember Abernethy seconded the motion and the vote was unanimous.

APPROVAL OF MINUTES:

Councilmember Parker made a motion to approve the minutes of the regular city council meeting of December 12, 2022. Councilmember Freeman seconded the motion and the vote was unanimous.

MAYOR'S COMMENTS:

“Welcome to all in attendance and all those watching via media streaming to tonight’s meeting. We have a very special council meeting tonight so, my comments will be very brief tonight because I know many of you will be eagerly awaiting the TV broadcasting of the college football national championship that we be played later this evening.

Let me begin by acknowledging that today is National Law Enforcement Appreciation Day. On behalf of all U.S. citizens, I want to say thank you to all law enforcement officers for putting their lives on the line not just today but each and every day to protect and serve all of us that live in the greatest country in the world-the United States of America. Thanks once again to all law enforcement officers.

City Manager Dalton has informed me that the Federal Government grant in the amount of \$114,000 has been approved for the city’s Police Department renovations. We are hoping for the new roof and interior work to start within the month. A new lift pump that will keep sewage/water out of the basement area will be put in place during this rehab.

Interviews for a new Police Chief have started this past week and we want to thank Gaston County District Attorney Travis Page for helping our city manager with these interviews. We are anticipating having a Chief in place by February of this year.

Thanks go out to our Public Works guys who have worked extremely hard this past week trying to make up for holiday time off. They have worked ten hour days to get out sanitation routes on schedule as well as operating the leaf truck to try to keep the leaf pick up under control.

It is with a heavy heart and deep sadness that I report the death of former Mayor Bob Austell. Bob was the city’s mayor for ten years. City Manager Dalton and I as well as several Council Members paid our respects by attending his funeral yesterday. As a special tribute to Mayor Austell, at this time I would ask everyone to please stand as Council Member Jon Abernathy will lead us in a special prayer for the Austell family.

As I close the mayor comments, I want to wish all our citizens a very Happy 2023 New Year and may your favorite college football team win the national championship tonight.”

SPECIAL RECOGNITION OF SENATOR TED ALEXANDER, MAYOR H.L. BEAM:

Mayor Beam introduced Senator Ted Alexander and Superior Court Judge Justin Davis, stating that Senator Ted Alexander has chosen our meeting to take his oath of office and Superior Court Judge Justin Davis will administer the oath to him.

SPECIAL RECOGNITION OF SUPERIOR COURT JUDGE JUSTIN DAVIS:

Superior Court Judge Justin Davis administered the oath of office to Senator Ted Alexander.

PRESENTATION OF END OF YEAR REPORT FOR CHAMBER OF COMMERCE, CHAIRMAN PETE CRAFT:

Mr. Pete Craft, Chairman of the Chamber of Commerce, gave the following presentation for the end of year report:

Cherryville Chamber of Commerce Year in Review 2022

Ribbon Cuttings:

- Turner Animal
- Frank Zayas Photography
- New Cherryville YMCA Building
- Hometown Healthy
- Main Street Family Urgent Care
- Caromont Urgent Care
- Piedmont Lithium Foundation Office

Dedications and Business After Hours:

- Assisted with the Dedication Ceremony for the newly revitalized Belk office and Apartment Building
- Assisted with the business Afterhours held at Peak Resources Cherryville

Community Relations:

- Hosted a joint Movie Night with the Cherryville YMCA and Main Street Family Care
- Assisted with Somersets Disco Community Meet and Greet
- Provided Community Marketing Materials (such as Restaurant guides, shopping guides, Cherryville Branded fans, chip clips, writing pens and website QR code cards)

School Partnerships:

- Took the Sanderson Sisters, Sponge Bob, Patrick, The Grinch and Santa to the Elementary School, Intermediate and Middle Schools
- Helped find sponsorships for area schools for things such as Athlete Sponsorships to ensure each athlete had the proper equipment needed, student of the month programs, and assisted with Teacher Christmas gift baskets

Festivals Committee:

Assisted with the planning and execution of the following events:

- Independence Day Celebration
- Hocus Pocus Parade
- Monsters March
- Scary-Ville
- Tree Lighting
- Who-Ville
- Christmas Parade

Sponsorships Total: \$25,150.00

Volunteer Hours: 488 hours

- **We helped gain sponsors to help pay for \$9,500.00 of the City’s fireworks display for the Independence Day Celebration.**
- **We did not use any of the city’s budgeted money for any Halloween Events or Christmas events.**
We raised enough sponsors to where it was not needed.

Mayor Beam asked for consideration for the re-appointment of chairman Pete Craft and board member Emily Hurst.

Councilmember Freeman made a motion to re-appoint chairman Pete Craft and board member Emily Hurst. Councilmember Abernethy seconded the motion and the vote was unanimous. Both appointments are three year terms.

PRESENTATION OF AUDIT YEAR ENDING JUNE 30, 2022. SHEILA THORNTON:

Ms. Sheila Thornton, managing partner of Butler & Stowe, presented the audit of fiscal year ending June 30, 2022. A copy of this audit is available in the city clerk’s office at city hall.

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):

None.

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

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

Mr. Blackburn shared the following proposed draft for consideration of permitting food trucks to the zoning ordinance:

Proposed Draft/Food Trucks

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	\$400.00
Single-Event Permit	\$25.00

(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.

Mayor Beam asked if any citizens would like to speak. No citizens spoke.

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

Councilmember Abernethy made a motion to approve the proposed draft to the zoning ordinance permitting food trucks. Councilmember Puett seconded the motion and the vote was unanimous.

CONSIDERATION OF PUBLIC HEARING RE: ZONING TEXT AMENDMENT FOR CLARIFICATION OF THE SPECIAL USE PROCESS, PLANNING & ZONING DIRECTOR ALEX BLACKBURN:

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

Mr. Blackburn shared the following proposed draft, for consideration of, clarification of special use process to the zoning ordinance:

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 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. 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.

Mayor Beam asked if any citizen would like to speak. No citizens spoke.

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

After some discussion Councilmember Parker made a motion to approved the proposed draft for clarification of the special use process. Councilmember Abernethy seconded the motion and the vote was unanimous.

PRESENTATION OF FINANCIAL STATEMENT, CITY MANAGER BRIAN DALTON:

City Manager Dalton went over the following financial report ending November 30, 2022. A copy can be obtained from the finance director.

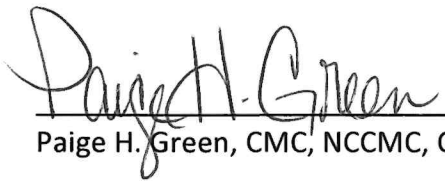
OTHER BUSINESS:

Mayor Beam shared that he has had complaints concerning speeders on Eaker Circle. He asked if patrol could be more present in the area.

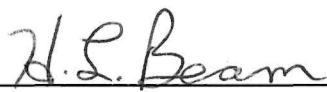
ADJOURNMENT:

Councilmember Abernethy made a motion to adjourn the meeting. Councilmember Parker seconded the motion and the vote was unanimous.

Adopted this 13 day of March 2023.



Paige H. Green, CMC, NCCMC, City Clerk



H.L. Beam, Mayor



