



The Mebane City Council met for its regular monthly meeting at 6:00 p.m., Monday, January 3, 2022 in the Council Chambers of the Glendel Stephenson Municipal Building located at 106 East Washington Street.

Councilmembers Present:

Mayor Ed Hooks
Mayor Pro-Tem Tim Bradley
Councilmember Patty Philipps
Councilmember Sean Ewing
Councilmember Montrena Hadley
Councilmember Jonathan White

Also Present:

Chris Rollins, City Manager
Preston Mitchell, Assistant City Manager
Lawson Brown, City Attorney
Stephanie Shaw, City Clerk
Cy Stober, Development Director
Terrence Caldwell, Police Chief
Adam Cole, Police Lieutenant

Mayor Hooks called the meeting to order. He then recognized Mac Williams, retired Alamance County Chamber of Commerce President. Mayor Hooks shared that Mr. Williams served as the Chamber President for 17 years and has 45 years of economic development experience. He stated that Mr. Williams played a key role in the recruitment of major companies to Mebane and the Alamance County area, bringing thousands of jobs to Mebane. Mayor Hooks shared an impressive list of those companies, along with naming several projects in which Mr. Williams role was instrumental, including the expansion of the North Carolina Industrial Center, the development of the North Carolina Commerce Park and the creation of the Community Recovery loan program during the pandemic. Each Council member, Mr. Rollins and Mr. Brown shared brief remarks commending Mr. Williams and thanking him for all he has done for Mebane. Mr. Williams thanked everyone for their kind words and praised the Council and City staff for their successes due to trust and teamwork. Mayor Hooks then presented Mr. Williams with a Key to the City, stating that Mr. Williams is the first recipient to receive the prestigious honor.

Mr. Brown opened a discussion about prayer at Council meetings. He stated that the City's historical approach to opening meetings with a Christian invocation has been legally questionable for a number of years and was pointed out to the Council about 10 years ago by the previous City Attorney. He shared that most recently the City received a formal challenge to that practice and as a result at the last Council meeting, a moment of silence was held. Since then, Mr. Brown has had individual conversations with the Council and Mayor regarding the applicable law relative to the subject. Having provided such information, Council members and the Mayor have individually advised staff of a desire for the Council's consideration of a written policy on the same. He explained that there was excellent summary of the case law and constitutional limitations of separation of church and state provided in the packets. The primary restrictions as articulated by various judicial opinions of various courts (including the federal Fourth Circuit of Appeals which Court decisions are applicable to North Carolina) restrictions can be summarized in five points. First, the prayer practice, if adopted, must be open to all religions. Second, the prayer should be given by invited clergy. Third, the prayer should be given at the outset of the meeting to solemnize the work of the Council. Fourth, the praying clergy or other speaker, should not proselytize, or coerce participation by any persons in attendance. Finally, there should be no evidence that attendees will be treated differently by the Council if attendees decline to attend or participate during the prayer "portion" of the meeting. Any adopted policy should contain five tenets. First, the purpose of the prayer should be articulated: to solemnize the meeting. Second, the policy should state the types of prayers (i.e., to solemnize the actions of the Council) and prayers are not to proselytize a particular faith. Third, it needs to be clear that members of the public are free to leave during such time. Fourth, the policy should be clear that no one will be treated differently by the Council in its consideration of all matters, on any basis as a result of the prayer. Finally, the policy should include a description of the process the City uses in selecting those providing the prayer or invocation.

Mr. Bradley said for 28 years he has sat on this Council, either he, the past Mayor Glendel Stephenson or the current Mayor Ed Hooks have been the ones to give the invocation. He said, as stated earlier by Mr. Brown, that the previous City Attorney advised the Council that unless

they altered that course and offered some variations or tried to pray without proselytizing a particular faith, that Council could be and maybe legally challenged which is what has now happened. He said that Council recognized based on the federal Fourth Circuit of Appeals decisions, Council understands that changes are necessary to avoid a costly lawsuit for the City. Mr. Bradley said that he was saddened and disappointed by the recent social media comments directed to the Mayor and Council regarding this subject. He explained that Council swore to uphold the Constitution of North Carolina, not in conflict with, the Constitution of the United States, and that swearing of the oath requires that elected officials measure any issue before the Council in respect to Constitutional law and Council has been shown that constitutionally that the current prayer practice has probably violated the Constitution. He expressed support for staff drafting a written policy.

Ms. Philipps read aloud the following statement written by herself:

The summary of the current legal opinions related to public prayer at government meetings from City Attorney Lawson Brown and staff provides a path forward that would allow the City of Mebane to continue with its tradition of an invocation at the beginning of the meeting, with a change to asking clergy to provide the prayer, rather than a council member. If the majority of the Council votes to proceed in that direction, I believe that we would be in compliance with existing legal guidance. I am concerned, however, about the process for inviting clergy to participate. Would council members issue the invitations on a rotating basis? Would staff send out the invitations? Would a statement be made prior to the invocation indicating which council member invited the clergy for that particular meeting? My concern is that Mebane, like our country as a whole, is populated with people from many different faith backgrounds. Would the invited clergy actually be representative of the local population, or would it skew toward a particular denomination? Would anyone take issue with any of the invited clergy, considering their views contrary to their own? There are dozens of churches in Mebane, and my belief is that the large variety of different churches is directly related to the Establishment Clause of the US Constitution. Many of the early immigrants to the US from Europe came here because their particular Christian denomination was being persecuted by another Christian denomination in their home country. The Church of England persecuted the Puritans. Mennonites, Huguenots, Catholics and multiple varieties of Protestants were all victims of persecution, which was particularly savage in countries which had an official state religion. The First Amendment to the US Constitution, ratified in 1791 in the Bill of Rights, prevents the establishment of a state religion and provides for the free exercise of religion. This founding principle of our country allows people of all faiths to follow the teachings of their own faith community in peace. What a great blessing that has been for our country. The courts of our country have interpreted this Constitutional provision in a manner which aims to prevent governmental bodies from imposing a specific form of faith observance. As a reminder, The First Amendment of the US Constitution states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." We can comply with the Constitution and acknowledge the free exercise of religion in our meeting by providing a moment of silence during which citizens, staff and council alike may use this time in accordance with their own faith tradition or beliefs. This is not a removal of prayer from the meeting. It is an acknowledgment that in our country we should be permitted to pray, meditate or otherwise seek guidance in accordance with our own beliefs. I will yield the floor now, but I want to formally state my preference for beginning our meetings with a moment of silence.

Mr. Ewing said he looks forward to moving forward with being inclusive with religions, inviting clergy at possibly a first come, first serve basis. Not only clergy within the city limits or around city limits but around the area.

Mr. White stated that he agrees with the perspective that the practice that the Council has had in the past, although had good intentions, it is wise to make some adjustments. He explained that as he sought to evaluate the different options, there are three (3) rubrics privilege that he has been trying to filter his thinking 1) is the practice legal, 2) is it kind or respectful to the people in our community and/or 3) is it the best practice. He said he feels both of the options before Council meets the criteria of being legal and of being kind and respectful, so then becomes the question of what is the best practice for the City. He said there is a lot to be said for the moment of silence prayer in terms of the logistical simplicity but in speaking to a number of people from

the community, he has come to the conviction that it would be best to try to institute a policy that allows for prayer.

Mayor Hooks called for a moment of silence before opening the discussion to public comments.

Ms. Hadley added that she is also in support of having staff draft a written policy.

Ed Priola, Mebane resident and candidate for the NC House of Representatives District 63, objected to prayer being removed from Council meetings. He stated that the decision was made abruptly without the input from citizens. He urged Council to reconsider the abrupt nature of the policy and moving forward, he requested that Council take steps to ensure that public opinion and input is heard and considered when making momentous policy changes in the future.

Stuart Smith, Mebane resident, said while he does understand the reasoning why Council is changing its policy; however, he finds it frustrating that the threat of litigation is forced on Mebane by those that have most likely never visited Mebane and have only witnessed the Council meeting via video. He said also frustrating to see the negative comments in news print and on social media from those in the community. Mr. Smith stated that he recently viewed approximately 30 online meetings such as city council meetings, county commissioner meeting and school board meetings and most of the meetings he observed opened with a prayer. He stated his support for a policy which would allow clergy to offer a prayer at meetings.

Ken James quoted an excerpt from Isaiah 33:22: "For the Lord is our judge, the Lord is our lawgiver, the Lord is our king. He will save us." He explained that the Founding Fathers used that verse as a pattern for developing three branches of government: judicial, legislative, and the executive branch and the Founders held that verse in high regard. He said to begin official meetings with prayer shows an appreciation and a regard for the solemnity of the responsibilities that have been entrusted to the Council. He said additionally when a person approaches a task in prayer, it encourages a spirit and a demeanor of humility which is highly desirable of those that serve the community. He encouraged the Council to continue with opening meetings with prayer.

David White, Mebane resident, read aloud the following statement:

My purpose tonight is not simply to speak on the propriety of opening these council meetings in prayer, although I would strongly urge you to consider how appropriate it is that public prayers would be made here, asking that God would give all of you wisdom and clarity as you seek to make best and wisest decisions you can for the city of Mebane. Public prayer is a very appropriate way to begin these meetings. But rather, I'd like to speak for just a few moments on some of the legal aspects of this issue. I appreciate the work that Mr. Brown has done in researching the relevant Circuit Court and Supreme Court cases that apply to this issue and putting out some guidelines of how a policy of public prayer can be established. Let me spend just a moment pointing out something the Supreme Court emphasized heavily in its 2014 decision in *Town of Greece vs. Galloway*. Not only did that decision declare that prayer before city council meetings is legal – it emphasized that even sectarian prayers, expressing the religious beliefs of the clergy member who is praying, are also allowable. Some of the prayers given in the *Town of Greece* were prayed in the name of Jesus and called for the workings of the Holy Spirit. The Supreme Court found no fault with that. In fact, Justice Kennedy, who wrote the majority opinion, pointed out that prayers before legislative sessions of the US Congress have been made "in the name of our Lord Jesus Christ, and have sought the grace of our Lord Jesus Christ." In fact, it's striking that, in the Supreme Court decision which is 19 pages long, Justice Kennedy spends 8 and a half pages making this very point. As long as the prayers of clergy members do not "denigrate nonbelievers or religious minorities, threaten damnation, or preach conversion," the court found that those prayers (whatever religion they may represent) to be both permissible and also perfectly in keeping with the long tradition of sectarian legislative prayer in our nation. So, I would simply like to urge you, Council members, that as you draw up guidelines for prayer in this chamber, do not think that you are legally obligated to required clergy members to pray non-sectarian prayers, as if the only God welcome in this room is a vague, non-specific, generic God. The Supreme Court said that our government "acknowledges our growing diversity, not by forbidding sectarian content, but by welcoming ministers of many creeds." If this Council does the same thing, you will be on very firm legal footing.

Steve Holt stated that he and his family are new Mebane residents and this is his first attendance to a City Council meeting. Mr. Holt spoke in support having prayer at public meetings. He said as someone previously said he does not believe it was best to declare this change to be so without first having public discussion and a city council vote. He said that he appreciates the intent expressed by Council tonight. He then emotionally expressed that he is committing to pray for wisdom, insight and courage as to the Council's duties as elected officials.

Mr. Bradley made a motion, seconded by Mr. Ewing, to have staff write a policy consistent with Council's discussion to have clergy come in to give invocation and that those clergy be random and not selected by Council. The motion carried unanimously.

Mayor Hooks gave an overview of the Consent Agenda:

- a. Approval of Minutes- December 6, 2021 Regular Meeting
- b. Final Plat- Havenstone 1C
- c. Police- Purchase Capital with Federal Equitable Funds
- d. Sole Source Justification for Axon Enterprise, Inc.

There was discussion regarding the addition of the police department body cameras and the storage of data by Axon Enterprise and the requirements in place for public release of data. Staff clarified that there were two separate police purchasing items on the consent agenda: 1) Federal Equitable Funds purchases- two (2) K-9s and firearms and 2) budgeted purchases- body cameras.

Mr. Bradley made a motion, seconded by Ms. Philipps to approve the consent agenda as presented. The motion carried unanimously.

A public hearing was held on a request from Gryffindoor Properties, LLC to rezone the property addressed as 122 S. Lane Street from R-12 to R-10. Mr. Stober presented the request. The property is currently developed with a single-family home and accessory structures. The applicant is seeking to demolish the current structure and subdivide the property into two lots but there is not sufficient area for two lots to meet the R-12 minimum lot size. A rezoning to R-10 would meet the minimum lot area of 10,000 square feet and minimum lot width of 70 feet can be met and allow for an exempt subdivision. The surrounding zoning and land use in the immediate area is R-12, single family residential. While there are not any R-10 zoned properties in the surrounding area, several properties on Lane and Webb Streets are nonconforming R-12 lots that have areas less than 12,000 square feet. Higher density R-8 residential zoning exists nearby to the east, in addition to mostly vacant R-20 lots to the south.

Mike Griffith, Gryffindoor Properties, LLC, PO Box 90214, Raleigh, NC, gave an overview of his request, explaining that after purchasing the property and having his general contractor evaluate the existing house on the property, it was determined that to renovate that house to today's standards, would cost just as much as it would be to build a brand-new home. Therefore, he felt it would make better sense financially and would be better for the neighborhood to split the property into two (2) lots. The proposed rezoning would allow the 0.5 acres lot to be divided into 0.25 acre lots. He shared a PowerPoint slide highlighting the properties in the area of a similar size and a slide of lots in the area that do not conform to the current R-12 zoning. Mr. Griffith also showed some example photos of the style homes they plan to build, which square footage ranged from 1300-1700 square feet.

Mr. Bradley questioned how many of the lots that are non-conforming are under a 0.25 acre. Mr. Griffith said every one of the nonconforming lots are under the R-12 minimum lot size and the majority of the lots are smaller than the 0.25 acres.

Ms. Philipps questioned if both driveways would face Lane Street. Mr. Griffith said that Mr. Stober recommended that plan but he is open to a different plan. Ms. Philipps then asked if the plan meets the road frontage requirements for R-10 zoning. Mr. Stober said a driveway facing Webb Street would also be conforming but the concern was the spacing from the intersection for optimal safety. Ms. Philipps stated that she is curious why the purchase was made prior to having a survey done.

There was considerable discussion about why the surrounding lots are nonconforming. Mr. Stober explained that there are many lots in the older parts of Mebane and the immediately surrounding area that were zoned by the City decades ago and have not been rezoned to reflect the current lot dimensions. He said the minimum lot area and the road frontage for R-12 prohibits the construction of the houses as the lot exists today to be subdivided to two lots. The proposed rezoning is consistent with the guidance provided within *Mebane By Design*, the Mebane Comprehensive Land Development Plan. The subject property is located in the G-4 Secondary Growth Area, which recommends land uses that are primarily residential and businesses to serve residential needs.

Chris Watkins stated that his mother lives at 435 E. Webb Street, Mebane, directly beside the property under consideration. He stated that they are opposed to the rezoning and subdivision, citing concerns with the small lot size after subdividing. He said in their opinion lot sizes that small would be out of place along that street.

Barney Liggins stated that he lives down the street from the property under consideration and his mother lives at 406 E. Webb Street. He spoke in opposition of the rezoning.

Mr. Bradley made a motion, seconded by Ms. Philipps, to close the public hearing. The motion carried unanimously. Mr. Bradley said he does not believe it is necessary for Council to correct inconsistencies or nonconforming zones by taking one lot that does conform and dividing it into two. He said also he believes the issue of nonconforming lots is not a big of issue as taking an established neighborhood and take a piece of property with one house that has been there for sixty years and then split the property into two lots. He said it does not seem to reflect the harmony with the rest of the neighborhood, therefore, he made a motion, seconded by Ms. Philipps, to deny the R-10 rezoning request due to the lack of harmony with the surrounding area. The motion carried unanimously.

A Quasi-judicial Board of Adjustment public hearing was held on a request from Michael Pettiford for a variance for the property at 4746 Mrs. White Lane to allow for an accessory structure in the side yard. ETJ Board of Adjustment members, Ms. Akins and Mr. Ferraro, joined the meeting and took their seats at the front table. Mr. Stober and Mr. Brown explained that in compliance with NC general statutes, and in order to protect the rights of all to an impartial hearing, each Council member needs to give a statement affirming their impartiality on the issue being presented and disclose if they have had any communications with the applicant. Additionally, any person wishing to speak on the matter, must be sworn in.

Ms. Hadley stated that prior to submittal, the applicant has spoke with her about the process of a variance. She said she has not formed an opinion on the matter.

Mr. Bradley stated he has talked about the matter with another Councilmember but has not formed an opinion.

Ms. Philipps stated she has not discussed the matter with anyone, nor has she formed an opinion.

Mayor Hooks stated that he spoke with a real estate agent but has not formed an opinion.

Mr. White stated that he spoke with Mr. Rollins regarding the quasi-judicial process but has not formed an opinion.

Mr. Ewing stated he spoke about the matter with another Councilmember but has not formed an opinion.

Ms. Akins stated that she has not spoken with anyone nor has she formed an opinion.

Mr. Ferraro stated that he has not spoken with anyone nor has he formed an opinion.

Clerk Shaw swore in the following:

Cy Stober- Mebane Development Director
Glenn Cornett- 4719 Mrs. White Lane

Michael Pettiford- Applicant- 4746 Mrs. White Lane
Avante Brown- 610 S. Eighth Street
Marius Pettiford- 610 S. Eighth Street and owner of 4718 Mrs. White Lane
William Hester- 4962 Mrs. White Lane
Wilson Fuller- 4702 Mrs. White Lane

Mr. Stober presented an overview of the request. He began by briefly sharing what a variance is and what it is not. Staff makes no recommendation as variance requests are at the discretion of the Board of Adjustment (BOA), as they represent a request for relief from the Mebane UDO due to a hardship with the properties. The undue burden placed by the hardship is the responsibility of the applicant to prove and the BOA to judge. Per Article 4, Section 2.B.1(b), "...accessory structures shall be located in rear yards and shall be no closer than 10 feet to rear or side yard lines". The placement of Mr. Pettiford's residence on the property limits the ability to place the structure on this +/-2.77-acre property to less than a 0.5-acre area to the rear of the house. One of the two existing accessory structures on the property will be demolished to allow for this new, second accessory structure. Mr. Stober stated that there are challenges with the rear yard in regard to the grade and in regard to the applicant stating that location will not perk.

Mayor Hooks questioned if sewer is located across the street. Mr. Stober said there appears to be.

Mr. Bradley asked for clarification regarding the hardship. He said the hardship is due to the drainage issue and the site not perking; not that there is not enough room for the structure. Mr. Stober said that is his understanding.

Avante Brown, spoke on behalf of the Pettiford brothers. He said due to the challenges mentioned previously regarding drainage and the rear yard not perking they would like to put the structure in the side yard. Mr. Brown stated that the brothers each own property and it is their vision to make improvements to the properties as a whole.

Mr. Hester spoke highly of Mr. Pettiford and encouraged approval of the request.

Mr. Fuller spoke in favor of the request.

Mr. Cornett shared his concerns with the request. Mr. Brown addressed his concerns.

Michael Pettiford stated that he is planning to retire soon and building the shop will allow him to continue his hobby of working on cars.

Marius Pettiford said his family has owned the land under consideration, along with some adjacent lots, since 1925. He addressed some of the concerns mentioned earlier by Mr. Cornett. He also briefly shared he and his brother's future plans for their family property, stating that they have received positive feedback from adjoining neighbors.

Mr. Bradley asked for evidence that there is actually a hardship that requires a variance. Mr. Pettiford spoke to the drainage problems in the rear yard.

Mr. Ewing asked Mr. Pettiford and Mr. Brown if they have any evidence proving that the land does not perk. Mr. Brown said that he was told verbally that the rear lot would not perk but he does not have any documents stating such, however he could work on getting that proof for the Council.

Mr. Ferraro asked if the brothers did a recombination and move the lot lines since they own the joint lots and still kept the building behind the existing houses which would be in the rear yard, would that negate the need for a variance. Mr. Stober said yes it would be to the rear to the frontage of one of the brother's houses. He stated he was unaware that their goals were so closely aligned. That suggestion could indeed be a remedy, to do an exempt plat to move the property line that would place the accessory structure, still to the side, but would be behind the home which is the intention of the rear lot under the UDO. It would just need to be offset by the 10-foot setback from the property line.

Attorney Brown said the BOA could continue this hearing and if the applicant is able to work out the exempt plat solution, then the applicant could withdrawal the request or should that solution not work out the applicant can bring back documented proof of the hardship for the BOA's consideration. Ms. Philipps made a motion, seconded by Mr. Ewing, to continue the public hearing. The motion carried unanimously.

Mr. Rollins stated at the December meeting Council adopted a policy regarding Council meeting procedures post Covid and within that policy it states that if Council is meeting in person, those wishing to make public comments must be physically present at the meetings to speak. However, as the new Covid variant is starting to spread across the state and nation, would Council like to consider allowing written or emailed comments again for the next couple of meetings.

Ms. Philipps said if people are scared to come to meetings due to health concerns, she would prefer to allow comments by email. It was the consensus of the Council to allow written comments by email.

There being no further business, the meeting adjourned at 7:51pm.

Attest: _____
Stephanie W. Shaw, City Clerk

Ed Hooks, Mayor