The Mayor and City Council met in regular session on Thursday, April 1, 2021 at 7:00 p.m. in the Council Chambers of City Hall located at 114 West Sycamore Street, Lincolnton, North Carolina.

Mayor Ed Hatley opened the meeting and led the Pledge of Allegiance. Mayor Hatley commented on how nice it was to be meeting in person again.

Councilwoman White made a motion to approve the *REGULAR AGENDA.* Members voted 4-0 in favor of the motion.

Councilwoman Poinsette made a motion to approve the *CONSENT AGENDA* as follow:

- **Approval of Minutes for the March 4, 2021 meeting**
- **Approval of Minutes for the March 12, 2021 budget work session**
- **Retirement recognition for Bryan "Scott" Cherry for 30 years of service.**
- **P-01-21 – Policy revisions to the Lincolnton Police Department Standard of Operating Procedures (SOP) Manual**
- **R-03-21 – Resolution authorizing the Local ABC Board to set aside funds for capital improvements**
- **R-04-21 – Resolution in support H.B. 257 (Decommissioning Fund)**

Members voted 4-0 in favor of the motion. ***Immediately following the vote, Councilwoman Poinsette asked that a section of the minutes from the February 1 council meeting be amended to include the part of the discussion where she confirmed with Mr. Huskey that funds to purchase a new building will come from the sale of liquor.***

CZ-1-2021

Request from Workforce Solutions, LLC to rezone 6.722 acres from PB and RMF to the Planned Residential District (PRD) to allow for a planned residential multifamily development consisting of 72 units. The subject property is located at 2350 North Aspen Street (Parcel ID 00468)

Mayor Ed Hatley opened the public hearing, at which time Planning Director Laura Elam spoke to the item.

Mrs. Elam stated that the request was for a conditional rezoning from PB (Planned Business) and RMF (Residential Multi Family) to Planned Residential Development (PRD) in order to allow a multifamily residential development consisting of 72 units. Responding to a question from Mayor Hatley, Mrs. Elam explained that because the property is within the ETJ, that fact that a portion of the property is not inside city limits is no issue. She also informed that unless annexation is requested, no changes will be made.

Mrs. Elam continued, directing council's attention to a map of the subject property and the overall site plan of the proposed development. She spoke to the building elevations submitted by the applicant. Mrs. Elam stated that staff felt that the use is consistent with the Land Use Plan and if rezoning is approved, site would be limited to the site plan submitted since this is a conditional zoning district.

In conclusion, Mrs. Elam reported that Planning Board and staff recommended approval of the request for rezoning as submitted by the applicant subject to staff review committee comments being made conditions of approval. Also, approval of the statement of consistency for approval of the rezoning request, and the rezoning be effective upon receipt by the Zoning Administrator of the written agreement from the applicant and property owner with the conditionals of approval.

Mr. Davis Ray with WENCO Properties, participated by phone. He thanked council for their consideration, briefly speaking to the scope of the project and to the need for affordable housing in the Lincolnton market. With no questions from Council and no one else requesting to speak to the issue,
Councilman Jetton made a motion to close the Public Hearing. Members voted 4-0 in favor of the motion.

Councilwoman Poinsette made a motion to approve as recommended by Planning Board. Members voted 4-0 in favor of the motion

CZ-2-2021

Request from Lance Herman to rezone 1818 North Aspen Street from PB to Highway Commercial Conditional District, HC(CD), to allow a Tatto Studio. The subject property is located at the Colonial Village Shopping Center, 1818 North Aspen Street (Parcel ID 00468)

Mayor Ed Hatley opened the public hearing. Planning Director Laura Elam spoke to this item, giving a brief site and area description. Mrs. Elam described the site being a 900 square foot commercial space located within Colonial Village shopping center to allow a tattoo studio. She continued, stating that no changes will be made to the exterior of the building with the exception of wall signage.

Mrs. Elam reported Planning Boards recommendation was approval of request for rezoning from PB to HC (CD) subject to some very minor staff review committee comments being made conditions of approval, approval of the statement of consistency for approval and that the rezoning be effective upon receipt by the Zoning Administrator of written agreement from the applicant and property owner with the conditions of approval.

Mayor Ed Hatley allowed the applicant, Mr. Lance Herman, to speak to council regarding his request. He and his wife addressed Council and distributed some information regarding their plans for the proposed shop and the benefits of tattoo's. Mr. Herman explained his desire for a simple, yet somewhat classy, tattoo parlor. He also spoke to his concern with the amount of home tattoo artist in Lincolnton and his desire to create an environment for the working class. Mr. Herman expressed his desire to help the home tattoo artist learn about the safety practices relative to tattooing. Mrs. Herman commented on her husbands desire to provide a safe, sterile environment and his desire to give back to the community. Mr. Herman informed that he has made contact with both the Lincolnton Police Department and the Lincoln County Environmental Health Department.

In response to a question regarding the type of education needed to be a tattoo artist, Mr. and Mrs. Herman informed that the state of North Carolina does not require any type of license.

Councilwoman White made a motion to close the Public Hearing. Members voted 4-0 in favor of the motion.

Councilman Eaddy made a motion to approve the request as recommended by the Planning Board. Motion to approve fail receiving only one (1) vote in favor of the motion. Councilman Eaddy voting in favor of the motion, and Councilwoman White, Councilwoman Poinsette and Councilman Jetton voting against.

O-06-21

Request to amend the City of Lincolnton Sidewalk Dining Ordinance, Chapter 114 of the Lincolnton City Code in order to comply with North Carolina General Statues. Revisions include new requirements to be imposed on any sidewalk dining operators with sidewalk dining located within state rights-of-way, including East Main Street in the City of Lincolnton

Mayor Ed Hatley opened the public hearing. Planning Director Laura Elam spoke to this item, explaining the purpose of the request being to amend the City's current sidewalk dining ordinance to make it consistent with state statues regarding sidewalk dining within state rights-of-way and to capture the elements of the sidewalk dining agreement recently entered into ***(a copy of ordinance is attached to and made a part of these minutes)***. Mrs. Elam clarified this agreement pertains to all sidewalks within the NCDOT right-of-way. Some discussion was generated regarding meeting the required standards, as well as the need for permitting along Water Street. Council also discussed some of the issues currently being experienced on the sidewalks.

Councilman Jetton made a motion to close the Public Hearing. Members voted 4-0 in favor of the motion

Councilman Eaddy made a motion to approve the Ordinance as submitted. Members voted 4-0 in favor of the motion.

C-03-21

Agreement between the City of Lincolnton and Spectrum for use of a city owned cement block building measuring approximately 14ft. x 28ft., located on the lot at the Southwestern corner of Lee Avenue and W. Church Street

City Manager Ritchie Haynes spoke to a proposed contract between the City and Spectrum ***(a copy of agreement is attached to and made a part of these minutes)***. Mr. Haynes gave some brief history, informing that the original agreement was entered into in 1998. He noted some of the details of the agreement and how it evolved over the years. In response to a question from Councilman Eaddy, Mr. Haynes confirmed the length and terms of the contract, as well as the rate being charged over the twelve year period. There was some discussion regarding fees changed for using power poles and if the city has a right to terminate the contact. Mr. Haynes verified that a second contract will be needed if request to use additional building is requested.

Being no further discussion, Councilman Jetton made a motion to approve the agreement. Members voted 4-0 in favor of the motion.

Manager's Report/Activity Update

City Manager Ritchie Haynes provided the following executive summary report and activity update for members of council. Executive Summary is as follows:

April 2021 Council Meeting

Executive Summary

February 2021 Year-To-Date

General Fund		Budget 20-21	Actual 20-21	% of Budget	Budget 19-20	Actual 19-20	Difference
Fund 10	Revenues	10,911,910	8,997,373	82%	11,543,700	8,730,658	266,715
	Fund Balance	-	-	-	825,000	-	-
		10,911,910	8,997,373		12,368,700	8,730,658	266,715
	City Manager/Clerk	248,220	123,042		222,495	78,864	44,178
	Human Resources	317,020	195,367		262,720	139,094	56,273
	Finance	158,230	(10,723)		129,630	(102,773)	92,050
	General Expense	1,280,731	889,493		1,103,160	707,801	181,692
	General Debt Service	334,757	11,193		430,632	15,397	(4,204)
	Police	3,400,120	2,322,407		3,223,020	2,159,825	162,582
	Fire	2,234,100	2,188,706		2,364,700	1,587,760	600,946
	Public Works	45,660	3,398		43,010	(48,607)	52,005
	Street	829,825	405,614		1,329,225	561,396	(155,782)
	Equipment Services	211,770	142,304		122,970	59,810	82,494
	Solid Waste	692,375	315,704		908,855	687,004	(371,300)
	General Services	-	-		-	-	-
	Plannin/Zoning	497,239	231,624		557,420	218,009	13,615
	Bus & Comm. Dev	123,200	93,920		423,200	33,215	60,705
	Recreation	1,038,663	613,899		1,247,663	837,191	(223,292)
	Expenses	11,411,910	7,525,949	66%	12,368,700	6,933,985	591,964
	Difference		1,471,424			1,796,674	(325,249)

Water & Sewer Fund		Budget 20-21	Actual 20-21	% of Budget	Budget 19-20	Actual 19-20	Difference
Fund 61	Revenues	8,146,950	5,635,631	69%	7,146,949	5,285,035	350,597
	Fund Balance	-	-		3,725,010		
		8,146,950	5,635,631		10,871,959	5,285,035	350,597
	Water Treatment	1,972,500	801,668		1,496,850	812,821	(11,153)
	Dist & Collection	2,032,900	1,284,901		3,652,160	2,455,950	(1,171,049)
	Wastewater	1,625,000	929,779		1,547,000	812,157	117,621
	W & S Intangibles	4,247,050	983,055		4,175,949	1,155,381	(172,326)
	Expenses	9,877,450	3,999,403	40%	10,871,959	5,236,309	(1,236,906)
	Difference		1,636,229			48,725	1,587,503

Electric Fund		Budget 20-21	Actual 20-21	% of Budget	Budget 19-20	Actual 19-20	Difference
Fund 63	Revenues	7,788,350	6,458,468	83%	7,937,102	5,469,648	988,820
	Fund Balance	-	-		2,330,000	-	-
		7,788,350	6,458,468		10,267,102	5,469,648	988,820
	Electric Dept.	8,696,830	5,285,739		10,267,102	5,343,213	(57,473)
	Expenses	8,696,830	5,285,739	61%	10,267,102	5,343,213	(57,473)
	Difference		1,172,728			126,435	1,046,293
Overtime	80+ hours		409,412			379,634	29,778

Mr. Hayes reported revenues at a good point in all three funds. He spoke to the positive trends being seen and the affect it is having. Continuing, Mr.

Haynes gave an update on several projects, reporting that the former Lincoln Times building purchased by the City has been demolished. He informed that the design portion is being finalized, after which project will go out for bid.

Work is scheduled to begin on the East Water Street sidewalks April 12th . The two bike racks purchased by the Lincolnton Tourism Development Authority are scheduled to be installed at this time as well. Welcome Center will be ready to open once sidewalk is complete. In conclusion, Mr. Haynes informed that Deal Construction will be replacing a storm pipe in the Kennedy/ Rock Creek area over the Easter/Spring Break.

Mayor Ed Hatley informed members that Lincoln County has agreed to take over the CDBG Grant for the Bonview project.

PUBLIC COMMENT:

No one requested to speak during the Public Comment portion of the meeting

NEWS MEDIA:

No news media were present

ADJOURNMENT:

Councilwoman Poinsette made the motion unanimously approved to adjourn the meeting.

______________________________	___________________________
DAPHNE INGRAM	**ED HATLEY**
CITY CLERK	**MAYOR**

MEMO TO: Mayor and City Council Members

FROM: Laura Elam

SUBJECT: CZ-1-2021 Request for rezoning of approximately six acres from PB and RMF to PRD from Workforce Solutions

DATE: April 1, 2021

SITE AND AREA DESCRIPTION

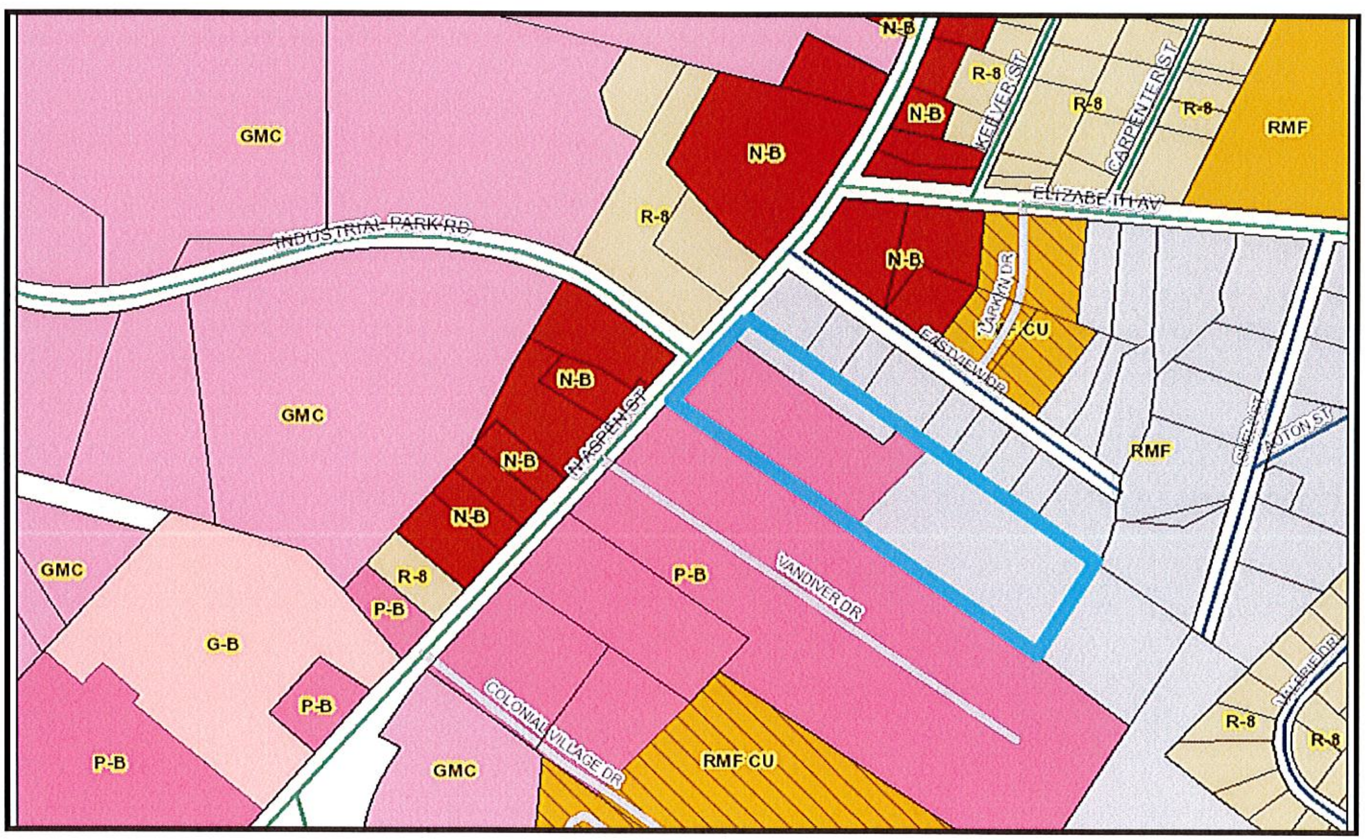
The applicant is requesting a conditional rezoning from PB (Planned Business) and RMF (Residential Multi Family) to Planned Residential Development (PRD) in order to allow a multifamily residential development consisting of 72 units.

The subject property consists of two (2) lots located at 2350 North Aspen Street (Parcel ID 21600 and 21599). The property currently is developed with two single family dwellings.

The majority of the site is located outside of the city limits but within the ETJ. A small portion of the site is located in the city limits.

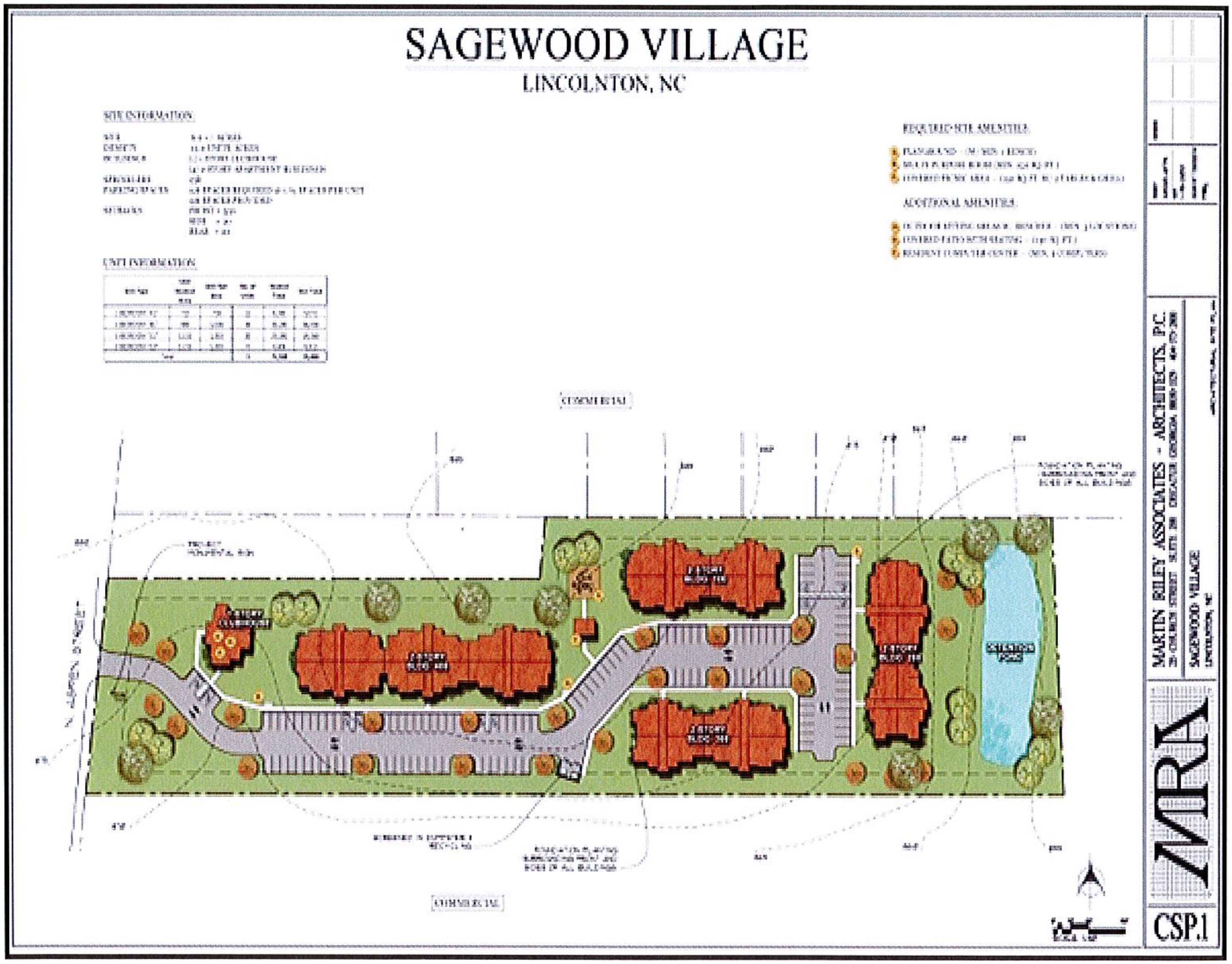
The adjacent properties are primarily commercial or multifamily with several single family dwellings in the vicinity. Zoning around the site is a mixture of commercial and residential.

CURRENT ZONING MAP



PROJECT DETAILS

- The project is approximately six (6) acres in size with 12 units per acre for a total of 72 units.
- There will be one entrance into the site from North Aspen Street.
- There will be four (4) two-story multifamily buildings, a one story clubhouse, and site amenities including a playground, picnic area, covered patio, and sitting area with benches.
- The applicant's site plan is below.



LAND USE PLAN

The Land Use Plan shows the property in the Mixed Use Residential Commercial Planning area. The rezoning of the property to the Planned Residential Development (PRD) district is consistent with the land use plan in staff's opinion.

CONDITIONAL ZONING

Because this is a proposed rezoning to a conditional zoning district, if the request is approved, the property could only be used for the specified use in accordance with the approved site plan. Any major modification or change in use would require approval by the City Council through a public hearing process.

STAFF REVIEW COMMITTEE

The Staff Review Committee had the following comments:

1. Prior to final approval, an engineered plan meeting all requirements for planned residential development and UDO requirements must be submitted to and approved by staff.
2. A maximum of 70% of the site can be impervious surface, due to water supply watershed restrictions. Detailed calculations must be given.
3. A sidewalk constructed to City of Lincolnton specifications must be constructed along the entire frontage along North Aspen Street.
4. The City Utility Department is requiring a master meter for the project and the property owner will be responsible for all utility lines within the project boundaries and to the tap.
5. The applicant will be responsible for making the utility tap.
6. The sewer line located adjacent to the detention pond needs to have 20 foot of separation between the line and the pond.
7. City Fire Inspector will need to review and approve all plans prior to development.
8. Detailed landscaping and screening plan will need to be provided.
9. NCDOT driveway permit required, access should line up with Industrial Park Road, need to utilize a street type connection with a minimum 30 foot radii., encroachment agreement may be needed for sidewalks and utility connections, and proposed monument sign should be outside of 10' x 70' sight triangles.
10. Erosion control plans must be submitted and approved by Lincoln County Soil and Erosion prior to development.
11. Building plans must be submitted and approved by Lincoln County Inspection prior to development.

PLANNING BOARD AND STAFF RECOMMENDATION

Planning Board and Staff recommend the following actions:

- approval of the request for rezoning from PB and RMF to the Planned Residential Development (PRD) district subject to the staff review committee comments being made conditions of approval,

- approval of the statement of consistency for approval of the rezoning request, and

- the rezoning being effective upon receipt by the Zoning Administrator of written agreement from the applicant and property owner with the conditions of approval.

Zoning Amendment
Staff's Proposed Statement of Consistency and Reasonableness
for APPROVAL of Application

Case No. CZ-1-2021

Applicant: Workforce Solutions

Parcel ID#: 21600 and 21599

Location: 2350 North Aspen Street

Request: Rezone from PB and RMF to PRD for the use of the property for 72 multifamily units

Proposed Consistency and Reasonableness Statement:

The Lincolnton Land Use Plan designates this property as part of the Mixed Use Residential Commercial Planning Area. The proposed rezoning request **is consistent** with the Lincolnton Land Use Plan. Therefore, **approval of the proposed amendment is reasonable and in the public interest.**

MEMO TO: Mayor and City Council Members

FROM: Laura Elam

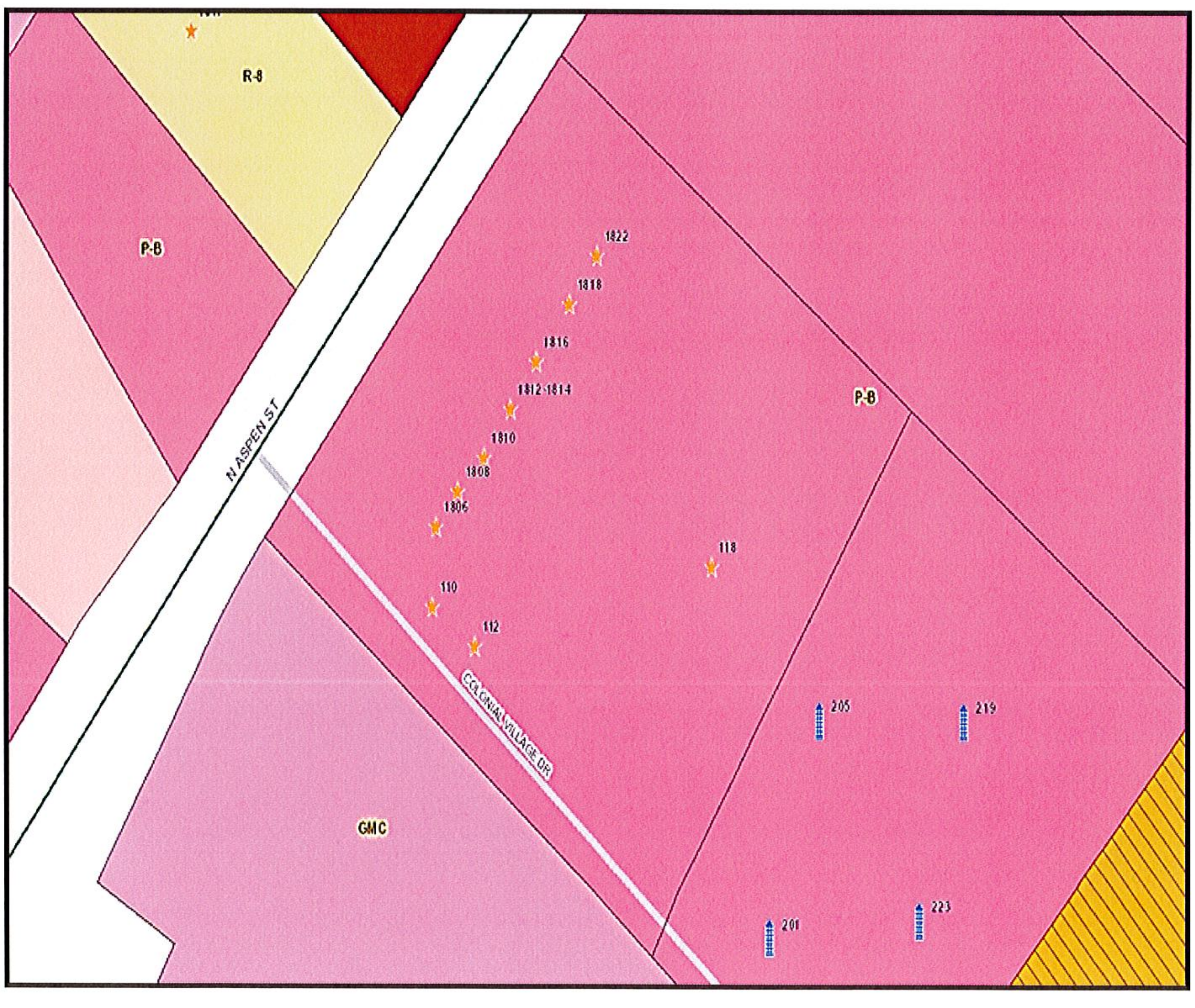
SUBJECT: CZ-2-2021, Request for rezoning from PB to HC(CD) from Lance Herman

DATE: April 1, 2021

SITE AND AREA DESCRIPTION

The applicant is requesting a conditional rezoning from PB (Planned Business) to HC(CD) (Highway Commercial Conditional District) in order to allow a tattoo studio at 1818 North Aspen Street in the Colonial Village Shopping Center (Parcel ID 00468). The site is a 900 square foot commercial space located within the shopping center and has been used for various retail and service uses over the years. The site has ample parking and is surrounded by commercial and multifamily uses. No changes will be made to the exterior of the site.

CURRENT ZONING



LAND USE PLAN

The Land Use Plan shows the property in the Mixed Use Residential Commercial Planning area. Rezoning of the property to the Highway Commercial (HC) district is consistent with the land use plan in staff's opinion.

CONDITIONAL ZONING

Because this is a proposed rezoning to a conditional zoning district, if the request is approved, the property could only be used for the specified uses in accordance with the approved conditional rezoning. Any major modification or change in use would require approval by the City Council through a public hearing process.

STAFF REVIEW COMMITTEE

The Staff Review Committee had the following comments:

- Use of the property to be limited to a tattoo studio, office or commercial uses as allowed in the PB district.
- Building plans must be approved by Lincoln County prior to issuance of building permits.
- Fire code requirements must be reviewed and approved by the Fire Marshal.

PLANNING BOARD AND STAFF RECOMMENDATION

Planning Board and Staff recommend the following actions:

- approval of the request for rezoning from PB to HC(CD) subject to the staff review committee comments being made conditions of approval,

- approval of the statement of consistency for approval of the rezoning request, and

- the rezoning being effective upon receipt by the Zoning Administrator of written agreement from the applicant and property owner with the conditions of approval.

MEMO TO: Mayor and City Council Members

FROM: Laura Elam, Planning Director

SUBJECT: Request to Amend Sidewalk Dinning Ordinance to Conform to State Legislation.

DATE: April 1, 2021

BACKGROUND

A review of the state statutes regarding sidewalk dining within state rights-of-way indicates the below revisions are necessary to the city's sidewalk dining ordinance

PROPOSED TEXT AMENDMENT

- Revision of the liability insurance provision,
- Addition of a hold harmless indemnity agreement provision,
- Maximum posted speed limit of 45 MPH on adjacent road,.
- City to obtain permission from NCDOT to permit the right-of-way of any federal-aid route on or off the National Highway System to be used for sidewalk dining,
- No permits to be issued for sidewalk dining on interstates,
- Restaurant operator and / or owner of the sidewalk dining operation is responsible for repairing any incidental damage to state right-of-way resulting from the operation of the sidewalk dining,
- City may impose additional requirements on a case-by-case basis and nothing in this ordinance requires the city to issue or maintain any permit for sidewalk dining activities if, in the opinion of the city, such activities cannot be conducted in a safe manner,
- City Manager to provide any updates to the ordinance to NCDOT,
- City Manager to maintain a list or database of all current permits and issued parties,

- City to meet any other requirement deemed necessary by NCDOT to safely allow sidewalk dining,

- Revision of the standards for sidewalk dining include:

    - Tables and chairs to be at least six feet from any travel lane,

    - Tables and chairs to leave clear at least five feet of unobstructed paved space of the sidewalk for the passage of pedestrians and to provide adequate passing space in compliance with ADA,

    - Tables and chairs toll not obstruct any driveway, alleyway, building entrance or exit, emergency entrance or exit, fire hydrant or standpipe, utility access, ventilation areas, or ramps necessary to meet accessibility requirement under ADA, and

    - Restaurant operator is to cease part or all sidewalk dining activities in order to allow construction, maintenance, or repair of any street, sidewalk, utility, or public building by NCDOT, the city or any other governmental entity or public utility.

ACTION REQUESTED

Approval of attached revised Sidewalk Dining Ordinance.

(O-06-21)
An Ordinance to Amend the City of Lincolnton Sidewalk Dining Ordinance In Order To Comply With North Carolina General Statutes

Section 1. Amend Chapter 114 of the City Code, Sidewalk Dining, as follows. Newly adopted language is underlined and highlighted in yellow. Language to be deleted is ~~struck through~~ and in ~~red font.~~

CHAPTER 114: SIDEWALK DINING

§ 114.03 APPLICATION.

Any business owner desiring to operate a sidewalk café shall prepare and file an application with the City Manager which shall contain the following information:

(A) The name, addresses and telephone number of the business desiring to operate a sidewalk café;

(B) The name, address and telephone number of the business operator;

(C) The type of products to be sold and served at the sidewalk café;

(D) The hours of operation of the business and the proposed hours of operation of the sidewalk café;

(E) A site plan showing the section of sidewalk or pedestrian way to be used for the sidewalk café, and the section to be kept clear for pedestrian and fire lane use, and depicting the proposed placement of tables, chairs, umbrellas, trash receptacles and other furnishings on the sidewalk or pedestrian way;

~~(F) Proof of an insurance policy, issued by an insurance company licensed to do business in the state, protecting the permittee and the city from all claims for damages to property and bodily injury, including death, which may arise from operation under or in connection with the permit. The insurance shall name the city as additional insured and shall provide that the policy shall not terminate or be canceled prior to the expiration date without 30 days advance written notice to the city. The insurance shall afford minimum limits of $1,000,000 aggregate annually. In addition to the aforesaid general liability coverage provided by permittee on behalf of city, the permittee shall also offer proof of a liquor liability policy or endorsement issued by an insurance company licensed to do business in the state, which protects the permittee and the city from all claims for damages to property or bodily injury, including death, which may arise from operation under or in connection with the permit (and specifically for the sale and consumption of alcoholic beverages as authorized by this chapter). Additional liquor liability policy or endorsement shall name the city as additional insured and shall provide that the policy or endorsement shall not terminate or be cancelled prior to the expiration date without 30 days written notice to the city. The liquor liability insurance policy or endorsement shall afford minimum limits of $1,000,000 aggregate annually;~~

(F) Evidence of adequate liability insurance in an amount satisfactory to the city, but in no event in an amount less than amount specified under G.S. Sec. 160A-485 as the limit of the city's waiver of immunity or the amount of Tort Claim liability specified in G.S. Sec. 143-299.2, whichever is greater. The insurance shall protect and name the N.C. Department of Transportation (hereinafter referred to as the "Department") and the city as additional insureds on any policies covering the business and the sidewalk activities.

(G) A written agreement to indemnify and hold harmless the Department and the city from any claim resulting from the operation of sidewalk dining activities.

(G) (H) A copy of all the permits and licenses issued by the county, state or the city, including health and ABC permits ~~and business licenses,~~ if any, necessary for the operation of the business, or a copy of the application for the permit if no permit has been issued. This requirement includes any permits or certificates issued by the city or other governmental authority, for exterior alterations or improvements to the building;

(H) (I) A sworn statement describing any violation by the business operator of any laws, regulations or ordinances relating to the possession, sale, consumption or transportation of intoxicating beverages or controlled substances during the five years immediately preceding the date of the permit application;

(I) (J) Additional information as may be requested by the City Manager or his or her designee in order to determine compliance with this section; ~~and~~

(J) (K) An annual fee in the amount as set forth in the fee schedule to cover the cost of processing and investigating the application and issuing the permit, and

(L) Any other requirements deemed necessary by the Department or the city.

§ 114.04 ISSUANCE OF PERMIT.

No permit for the operation of a sidewalk café may be issued unless the application is complete and the following requirements are met.

(A) The sidewalk café must be associated with an operating business so that it is under the same management and shares the same preparation facilities, restroom facilities and other customer convenience facilities as the business. The sidewalk café must be operated under the same name as the business and may not be open or operated at any time when the business is not open for business.

(B) The operation of the sidewalk café must be clearly incidental to the associated business. The seating capacity of the sidewalk café may not be more than 50% of the interior seating capacity of the associated business.

~~(C) The placement of tables, chairs and other furnishings as shown in the site plan must be done in a manner that at least five feet of unobstructed space (as measured from the building façade or, in the absence of a building façade, a straight line connecting the building façades) remains on the sidewalk or pedestrian way for the passage of pedestrians. No fire exits or lanes may be blocked and must remain clear at all times. The pedestrian passage may not be used for the display of merchandise or for portable signs otherwise authorized.~~

(C) Tables, chairs and other furnishings shall be placed a minimum of six feet from any travel lane.

(D) Tables, chairs, and other furnishings shall be placed in such a manner that at least five feet of unobstructed paved space of the sidewalk, measured from any permanent or semi-permanent object, remains clear for the passage of pedestrians and provides adequate passing space that complies with the American with Disabilities Act.

(E) Tables, chairs and other furnishings shall not obstruct any driveway, alleyway, building entrance or exit, emergency entrance or exit, fire hydrant or standpipe, utility access, ventilation areas, or ramps necessary to meet accessibility requirement under the Americans with Disabilities Act.

(F) The maximum posted speed permitted on the roadway adjacent to the right-of-way to be used for sidewalk dining activities shall not be greater than 45 miles per hour.

(G) The restaurant operator shall cease part or all sidewalk dining activities in order to allow construction, maintenance, or repair of any street, sidewalk, utility, or public building by the Department, the city, their agents or employees, or any other governmental entity or public utility.

~~(D)~~ (H) The business seeking to operate the sidewalk café must front on and open onto the sidewalk or pedestrian way proposed for the sidewalk café. The placement of tables, chairs and other furnishings may not extend beyond the sidewalk or pedestrian way frontage of the associated business, with the following exception: tables, chairs and other furnishings may extend up to eight feet onto adjacent property frontage in either or both directions with the written permission (provided at the time of application) of the occupant of the adjacent property.

~~(E)~~ (I) The tables, chairs and other furnishings used in the sidewalk café shall not be anchored and shall be of a type of street furniture that is easily movable.

~~(F)~~ (J) Except as elsewhere permitted by the code, the operation or furnishing of the sidewalk café shall involve no permanent alteration to or encroachment upon any street, sidewalk or pedestrian way or to the exterior of the associated business.

~~(G)~~ (K) Each sidewalk café shall provide adequate trash removal for its patrons. At the end of each business day and during operating hours, the operator shall remove all trash and debris of any sort from the sidewalk area. In addition, the operator shall remove from the sidewalk alongside and abutting properties any trash or debris originating as a result of the operation of the sidewalk café.

~~(H)~~ (L) Tables, chairs and other furnishings that remain on the sidewalk at times when the business is not in operation shall be secured in a manner that allows clear access from the street equal to or exceeding half of the frontage of the associated business.

(M) The city shall obtain permission from the Department to permit the right-of-way of any federal-aid route on or off the National Highway System to be used for sidewalk dining.

(N) No permits may be issued for sidewalk dining on any interstate route.

(O) The restaurant operator and / or owner of the sidewalk dining operation shall be responsible for repairing any incidental damage to state right-of-way resulting from the operation of the sidewalk dining.

(P) The city may impose additional requirements on a case-by-case basis and nothing in this ordinance requires the city to issue or maintain any permit for sidewalk dining activities if, in the opinion of the city, such activities cannot be conducted in a safe manner.

§ 114.10 COORDINATION WITH NORTH CAROLINA DEPARTMENT OF TRANSPORTATION.

(A) The City Manager shall provide any updates to this ordinance to the Department.

(B) The City Manager shall keep and maintain a list or database of all current permits and issued parties that may be requested by the Department at any time. A copy of all paperwork and submitted documents shall be kept on hand and provided to the Department if requested.

(C) The City shall meet any other requirement deemed necessary by the Department to safely allow sidewalk dining.

Section 2. That this ordinance shall become effective upon its adoption.

SECOND AMENDMENT TO CONTRACT OF LEASE

This Second Amendment to Contract of Lease (this "**Second Amendment**") is entered into as of April 1, 2021 (the "**Second Amendment Effective Date**"), between Landlord and Tenant (each as defined in Section 1 of this Second Amendment). For valuable consideration, the receipt and adequacy of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. Definitions. In this Second Amendment, the following terms have the following meanings:

(a) **Landlord**: City of Lincolnton, a North Carolina municipal corporation

(b) **Tenant**: Spectrum Southeast, LLC, successor in interest to Charter Communications, LLC, as successor in interest to Charter Communications II, LP.

(c) **Lease**: Contract of Lease dated February 12, 1998, between Landlord and Tenant: as amended by First Amendment to Contract of Lease dated August 1, 2008 ("**First Amendment**"), as renewed by renewal notice dated November 9, 2017.

(d) **Premises**: The real property described as that certain cement block building measuring approximately 14 ft. x 28 ft., and located on the lot at the southwestern corner of Lee Avenue and W. Church Street in Lincolnton, NC, together with any other portion of land necessary to run cable, utility and other communications lines from a public right-of way to the Land.

(e) **Land**: The parcel or lot owned by Landlord located at the southwestern corner of Lee Avenue and W. Church Street in Lincolnton and upon which the Premises is situated.

Any capitalized term used in this Second Amendment, but not defined in this Second Amendment, has the meaning given such term in the Lease.

2. Rent. As of April 1, 2021 and continuing thereafter throughout the remainder of the current term, monthly rent (the "**Monthly Rent**") for the Premises will be payable as follows:

PERIOD	MONTHLY RENT
April 1, 2021 – February 28, 2022	$525.00
March 1, 2022 – February 28, 2023	$535.50

Landlord agrees that Tenant may make its Monthly Rent payments via ACH transfer or any other form of direct deposit (and Landlord will provide Tenant with all bank instructions and other information needed for such ACH transfer or other direct deposit payment).

3. Complimentary Services. Landlord is currently receiving certain video, broadband, telecommunications, wireless or other services at three or more sites/outlets at no charge (**"Complimentary Services"**), and more particularly described in Section II of the Lease, in lieu of Monthly Rent for the Premises. Notwithstanding anything in the Lease to the contrary, as of March 31, 2021, at 5:00 p.m. prevailing local time the Complimentary Services will be terminated. Landlord acknowledges and agrees that the Monthly Rent set forth in Section 2 above includes compensation for the termination of the Complimentary Services, and Landlord will need to contact a Spectrum Customer Service Representative at 1-888-438-2427, prior to March 31, 2021, in order to subscribe to one or more services if Landlord desires to continue to receive services from Spectrum after March 31, 2021. Landlord will have no right to terminate the Lease, or seek any other remedy, compensation, or damages, based on the termination of Complimentary Services.

4. Assignment and Subletting.

(a) Notwithstanding anything in the Lease to the contrary, if Landlord does not consent or object in writing to any proposed sublease or assignment within 10 days after its receipt of Tenant's request for consent, Landlord's consent will be deemed given.

(b) Notwithstanding anything in the Lease to the contrary, Tenant has the right to sublet all or a portion of the Premises or to assign the Lease, without Landlord's consent, to any of Tenant's Affiliates (as defined below) or to any Communications Purchaser (as defined below). Any such subtenant or assignee will have a similar right to sublet all or a portion of the Premises or to assign the Lease, without Landlord's consent, to any of Tenant's Affiliates or to any Communications Purchaser. As used herein: (i) "**Tenant's Affiliates**" means any person or entity that Controls (as defined below), is Controlled by, or is under common Control with, Tenant, or any successor entity resulting from a merger, acquisition, consolidation, reorganization, or other business combination by Tenant; (ii) "**Control**" (including its correlative form "**Controlled**") means the power to direct the management and policies of an entity, directly or indirectly, whether through the ownership of voting securities, by contract, or otherwise; and (iii) "**Communications Purchaser**" means any purchaser of all or a portion of the communications systems, equipment or business operations of Tenant or any of Tenant's Affiliates located on or related to the Premises. Upon any assignment of the Lease as permitted by this Section, Tenant will be relieved of all obligations and liabilities arising under the Lease after the date of such assignment. No transfer or assignment of the stock of Tenant, or any ownership interest in Tenant, whether by sale, merger, reorganization, consolidation, exchange, or other means, will constitute an assignment of the Lease.

5. Default by Landlord. In the event of any default by Landlord in the performance of its obligations under the Lease, Tenant's rights will include the following:

(a) If an event, condition or situation adversely affects the health, safety, or welfare of Tenant's employees, customers, vendors, suppliers, guests, or invitees, or adversely affects

Tenant's ability to conduct normal business operations from the Premises (collectively, an "**Emergency Default**"), and if Landlord fails to commence a cure for such Emergency Default within one business day after receiving notice of such Emergency Default, or if Landlord fails to diligently pursue such cure to completion, then Tenant will have the right to exercise such self-help measures as may be reasonably necessary to cure such Emergency Default. Any costs and expenses so incurred by Tenant (plus a fee equal to 15% of the cost to cure such Emergency Default as an administrative fee) will be reimbursed by Landlord upon demand, or, at Tenant's option, deducted from any rent or other amounts due or becoming due for periods subsequent to the date that Tenant incurs such costs or expenses.

(b) If Landlord fails to cure any default not otherwise falling within clause (a) above within 20 days after written notice of such default, or if Landlord fails to diligently pursue such cure to completion, Tenant will have the right, in its sole discretion, to exercise such self-help measures as may be reasonably necessary to cure such default. Any costs and expenses so incurred by Tenant (plus a fee equal to 15% of the cost to cure such default as an administrative fee) will be reimbursed by Landlord upon demand, or, at Tenant's option, deducted from any rent or other amounts due or becoming due for periods subsequent to the date that Tenant incurs such costs or expenses.

(c) Without limiting anything in clauses (a) or (b) of this Section, if Landlord fails to cure any default within 30 days after receipt of written notice of such default, Tenant will have the right to terminate the Lease, without penalty, upon written notice to Landlord. Any such termination will be effective as of the termination date designated in Tenant's termination notice.

(d) Whether or not Tenant exercises its self-help right as provided in this Section, Monthly Rent will be abated from the date following expiration of the applicable cure period until the date the specified default is cured by Landlord.

6. Landlord's Insurance. At all times during the term, Landlord will carry and maintain commercially reasonable property insurance covering the Land and the Premises. Landlord shall also carry commercial general liability insurance with a minimum of $1,000,000 per occurrence and $2,000,000 aggregate. Upon request by Tenant, Landlord shall provide Tenant with a certificate of insurance evidencing Landlord's required insurance herein.

7. Hazardous Materials. Notwithstanding anything in the Lease to the contrary, Landlord will be responsible, at its sole cost and expense, for the remediation of, and will defend, indemnify, and hold harmless Tenant, its subsidiaries and affiliated entities, and the officers, directors, employees, partners, shareholders, members, managers, representatives, agents, predecessors, successors, and assigns of Tenant, and its subsidiaries and affiliated entities, from and against any and all claims, demands, actions, causes of action, damages, awards, judgments, fines, forfeitures, penalties, losses, liabilities, costs and expenses, including, without limitation, actual attorneys' fees reasonably incurred, arising out of or in connection with any of the following: (a) any mold, asbestos or asbestos-containing material that is discovered at or in the Premises, at any time during the term; (b) any hazardous materials, hazardous waste, or any other chemical, material, waste, or substance which may, or could reasonably be expected to, pose a hazard to the health and safety of persons or cause damage to the environment, including, without limitation, any leaded paint, petroleum, petroleum products or PCBs, discovered at or in

the Land or the Premises (collectively, "**Hazardous Materials**") and not introduced to the Land or the Premises by Tenant; or (c) any other environmental cleanup or restoration of the Land or the Premises, except to the extent directly caused by Tenant's introduction of Hazardous Materials to the Land or the Premises. Landlord's obligations under this Section will survive the expiration or earlier termination of the Lease.

8. Waiver of Subrogation. Landlord and Tenant each waives any claims that it may have against the other to the extent such claims are covered by property insurance policies actually carried or required to be carried under the Lease. Landlord and Tenant agree that they will cause their respective insurers to issue appropriate waiver of subrogation rights provisions to all property insurance policies required to be carried under the Lease.

9. Notice Address. Section 3 of the First Amendment is deleted in its entirety and replaced with the following:

For the purpose of any notice or other communication under the Lease, Landlord's address and Tenant's address are amended to be as follows:

If to Landlord: City of Lincolnton

If to Tenant: Spectrum Southeast, LLC
c/o Charter Communications
6360 S. Fiddler's Green Circle
Suite 100
Greenwood Village, Colorado 80111-4951
Attn: Charter Real Estate
(with a copy to the same address: Attn: VP, Counsel, Real Estate)
File ID No.: NC0022

with a copy by email to: leaseadmin@charter.com

Except for an Emergency Default (as defined below), any notice or other communication required or permitted under the Lease must be in writing and provided to the other party via: (a) postage prepaid certified mail, return receipt requested; (b) personal delivery; or (c) Federal Express or any similar overnight delivery service that routinely issues receipts. Any notice will be deemed received on actual receipt (or refusal to accept delivery). Notwithstanding the foregoing, during an Emergency Default, Tenant may give notice to Landlord via email at: ____________________________; or via telephone to the following 24-hour emergency line: __________________________ and the same will be deemed to have satisfied the notice requirements under the Lease. For purposes of the Lease, "**Emergency Default**" means an event, condition, or situation that adversely affects the health, safety, or welfare of Tenant's employees, customers, vendors, suppliers, guests, or invitees, or that adversely affects Tenant's ability to conduct normal business operations from the Premises.

Either Landlord or Tenant may add additional addresses or change its address for purposes of receipt of any such communication by giving 10 days' prior written notice of such change to the other party in the manner prescribed in this Section.

10. Renewal Option. Section 6 of the First Amendment is deleted in its entirety and replaced with the following language:

Tenant will have the option to renew the term of the Lease for two (2) additional terms of 5 years each (the "**Second Renewal Term**" and the "**Third Renewal Term**", respectively, and each an "**Additional Renewal Term**"), subject to the further provisions of this Section.

(a) Tenant must exercise the option with respect to each Additional Renewal Term, if at all, by giving notice of exercise to the Landlord on or before the date that is 30 days prior to the then applicable expiration date.

(b) Each Additional Renewal Term will be on the same terms and conditions as the Lease, except that the Monthly Rent will be payable as follows:

SECOND RENEWAL TERM	MONTHLY RENT
March 1, 2023 – February 29, 2024	$546.21
March 1, 2024 – February 28, 2025	$557.13
March 1, 2025 – February 28, 2026	$568.28
March 1, 2026 – February 28, 2027	$579.64
March 1, 2027 – February 29, 2028	$591.24

THIRD RENEWAL TERM	MONTHLY RENT
March 1, 2028 – February 28, 2029	$603.06
March 1, 2029 – February 28, 2030	$615.12
March 1, 2030 – February 28, 2031	$627.42
March 1, 2031 – February 29, 2032	$639.97
March 1, 2032 – February 28, 2033	$652.77

11. Disputes. The parties agree that if any claim, controversy or dispute arising out of or relating to this Lease (each such claim, controversy or dispute, a "**Dispute**") is not resolved in the ordinary course of business, either party may require escalation by each party to appropriate representatives at a higher level of management than those involved in the day-to-day administration of the Lease ("**Escalation**"). Such higher level representatives will thereafter attempt, in good faith, to resolve such Dispute within 30 days (or such longer period as the

parties may agree upon) after Escalation. Each party agrees that it will not have the right to demand arbitration as set forth below in this Section without first attempting to resolve the applicable Dispute through Escalation. Any Dispute not resolved after Escalation shall, upon demand by either party, be resolved by binding arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration will be conducted in the county in which the Premises are located. There will be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the parties. The arbitrator(s) will have the authority only to award equitable relief and compensatory damages, and will not have the authority to award punitive damages or other non-compensatory damages. The parties hereby waive all rights to and claims for monetary awards, other than compensatory damages. The decision of the arbitrator(s) will be final and binding and may not be appealed. Either party may apply to any court of competent jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon. Notwithstanding anything in this Section to the contrary, the following need not be resolved by arbitration: (i) any action by Landlord that seeks repossession of the Premises as part of Landlord's remedy; (ii) any action by Landlord or Tenant seeking an injunction or temporary restraining order; and (iii) any action by Landlord or Tenant seeking any prejudgment remedy. Further, the parties may cancel or terminate the Lease in accordance with its terms and conditions without being required to follow the procedures set forth in this Section.

12. Holdover. Tenant will have the right under the terms and conditions of this Section to elect to remain in possession of the Premises and continue to pay Monthly Rent for a period of between one and six months following the then applicable expiration date ("**Hold Over**"). In order to exercise such Hold Over election, Tenant must provide written notice to Landlord at least 90 days prior to the then applicable expiration date, and include in such notice the number of months that Tenant desires to Hold Over. Tenant will not have the right to Hold Over if, at the time of Tenant's Hold Over notice, Tenant is in default of any material provision of the Lease beyond any applicable notice and cure period. Any Hold Over possession will be subject to the provisions of the Lease (other than those relating to the term of the Lease), at a Monthly Rent equal to the last Monthly Rent paid or payable during the month immediately preceding the expiration of the then applicable term. If Tenant fails to exercise its Hold Over election but remains in possession of the Premises after the expiration of the then current term without Landlord's consent and without a new lease, amendment, renewal, or extension of the Lease, Tenant will occupy the Premises under a month-to-month tenancy, at a Monthly Rent equal to the last Monthly Rent paid or payable during the month immediately preceding the expiration of the then applicable term. Any such month-to-month tenancy may be terminated by either party by giving 30 days' prior written notice of such termination, and the termination will be effective as of the last calendar day of the month in which such 30-day period expires.

13. Broker. Landlord and Tenant respectively represent and warrant to each other that neither of them has consulted or negotiated with any broker or finder with regard to the Premises or the preparation of this Second Amendment. Landlord and Tenant each agree to indemnify, defend, and hold harmless the other from and against any and all claims, demands, actions, causes of action, liabilities, losses, costs, and expenses (including, without limitation, court costs and disbursements, and actual attorneys' fees reasonably incurred) arising from or related to any claim by any broker, agent or other person or entity, for any commission, fees, or other form of

compensation, reimbursement or consideration, with regard to the Premises, the preparation of this Second Amendment or the transactions contemplated hereby.

14. Estoppel. Landlord hereby represents and warrants that as of the date of execution of this Second Amendment: (a) Tenant is not in default or breach of the Lease; (b) no event has occurred which with the passage of time or the giving of notice would constitute such a breach or default of the Lease; and (c) all rent, additional rent and other amounts due and payable under the Lease have been paid in full through and including March 31, 2021.

15. Confirmation of Lease. Landlord and Tenant confirm and ratify in all respects, the terms and conditions of the Lease, as amended by this Second Amendment. In the event of any conflict or inconsistency between any of the provisions of this Second Amendment and any of the provisions of the Lease, the provisions of this Second Amendment will govern.

16. Drafting. Landlord and Tenant each acknowledges that this Second Amendment was fully negotiated by the parties and that no provision of this Second Amendment will be interpreted in favor of either Landlord or Tenant, or against either Landlord or Tenant, merely because such party or its legal representative or advisor drafted such provision.

17. Counterparts; Facsimiles. This Second Amendment may be executed in counterparts, each of which (once executed) will constitute an original and all of which together (once executed) will constitute one and the same document. This Second Amendment may be signed and delivered by facsimile or electronically, and the same facsimile or "pdf" signatures will constitute original signatures with all force and effect of law.

18. Lender's Consent. Landlord hereby represents and warrants that: (a) no lender consent is required for this Second Amendment; and (b) the effectiveness of this Second Amendment is not conditioned upon Landlord receiving any lender's consent.

Landlord and Tenant have executed this Second Amendment as of the Second Amendment Effective Date.

LANDLORD:	TENANT:
City of Lincolnton	**Spectrum Southeast, LLC** By: Charter Communications, Inc., its Manager
By:	By:
Name:	Name: Michael D. Reid
Title:	Title: GVP, Corporate Services