MINUTES OF THE SPECIAL OF THE
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK
MAY 24, 2019

The City Council of the City of Mountain Brook, Alabama met in public session in the City Hall Council Chamber at approximately 7:30 a.m. on the 24th day of May, 2019. The Council President called the meeting to order and the roll was called with the following results:

Present: Virginia C. Smith, Council President
         William S. Pritchard III, Council President Pro Tempore
         Philip E. Black
         Lloyd C. Shelton
         Alice B. Womack
         Stewart Welch III, Mayor

Absent: None

Also present were City Attorney Carl Johnson, City Manager Sam Gaston and City Clerk Steven Boone.

The Council President stated that a quorum was present and that the meeting was open for the transaction of business

1. CONSIDERATION OF A RESOLUTION (NO. 2019-073) APPROVING AN OFF-SITE PARKING AGREEMENT/LEASE FOR THE EXCLUSIVE USE OF EMPLOYEES OF THE UPSTAIRS RESTAURANT LOCATED AT 2721 CAHABA ROAD (EXHIBIT 1, APPENDIX 1)

President Smith introduced the resolution in writing and invited questions or comments from the audience or elected officials.

City Planner Dana Hazen:
- Back in 2008, the Planning Commission waived 32 on-site parking spaces for this location
- The intent was that the restaurant would only serve dinner when parking in the vicinity was not an issue
- In consideration of the parking requirement waiver, the developer/business operator had to provide an employee-only off-site parking agreement which required approval by the City Council before a business license or certificate of occupancy would be issued
- The current proposal is for two restaurants but the development cannot proceed until the parking issue is resolved

Council President Pro Tempore Pritchard:
- The restrictions imposed back in 2008 were negotiated with the interest of neighboring property owners/businesses
- A year or so later, there was a proposal to relax the restrictions that was vehemently opposed by the surrounding businesses

City Planner Dana Hazen:
- Since 2008, the City has constructed a sidewalk along Hollywood that provides better access to nearby on-street parking
- To get the certificate of occupancy, the businesses have secured the attached parking agreements but may come back later to request that the covenants be modified
- The usage of the nearby businesses has changed since 2008 which has in turn changed the parking patterns

Council member Womack:
• Enforcement of the employee parking restrictions has always been problematic
• Signage may work but not legally enforceable

City Planner Dana Hazen:
• Today, the Council is being requested to approve the off-site employee parking agreements

Tripp Galloway representing the applicant:
• The Presbyterian church on Hollywood Boulevard is close to agreeing to the terms of an agreement pending resolution regarding the language
• A question has been raised whether the terms “rent” or “lease” in the agreement may jeopardize the church’s ad valorem tax exemption
• The City’s covenant requires a “lease” framework
• Once the parking agreement at the church is secured, the agreements presented today [which are not optimal from an accessibility perspective] will no longer be necessary
• Five spaces have been secured at Union Hill (on the opposite side of Highway 280) and ten spaces at the Union Carbide Building

There being no further comments or discussion. The City Council considered the request. After said resolution had been considered in full, Council President Pro Tempore Pritchard moved for the adoption of the resolution. The motion was seconded by Council member Womack. Thereupon, Council President Smith called for vote with the following results:

Ayes: Virginia C. Smith, Council President
       William S. Pritchard III, Council President Pro Tempore
       Philip E. Black
       Lloyd C. Shelton
       Alice B. Womack

Nays: None

The Council President Smith declared that the said resolution (No. 2019-073) is hereby adopted by a vote of 5—0 and evidence thereof she signed the same.

2. CONSIDERATION: ORDINANCE (NO. 2047) REPEALING ORDINANCE NO. 2045 ADOPTED MAY 13, 2019, THAT AMENDED CHAPTER 30 OF THE CITY RELATING TO THE MUNICIPAL COURT (EXHIBIT 2, APPENDIX 2)

President Smith introduced the ordinance in writing and invited questions or comments from the audience or elected officials. There being none, President Smith called for a motion. Council President Pro Tempore Pritchard made a motion that all rules and regulations which, unless suspended, would prevent the immediate consideration and approval of the ordinance be suspended, and that unanimous consent to the immediate consideration of said ordinance is given. The motion was seconded by Council member Womack. Thereupon, Council President Smith called for vote with the following results:

Ayes: Virginia C. Smith, Council President
       William S. Pritchard III, Council President Pro Tempore
       Philip E. Black
       Lloyd C. Shelton
       Alice B. Womack

Nays: None

The Council President Smith declared the motion passed by a vote of 5—0.

After said ordinance had been considered in full by the Council, Council President Pro Tempore Pritchard moved for the adoption of the ordinance. The motion was seconded by Council member Shelton. Thereupon, Council President Smith called for vote with the following results:
Ayes: Virginia C. Smith, Council President  
William S. Pritchard III, Council President Pro Tempore  
Philip E. Black  
Lloyd C. Shelton  
Alice B. Womack  

Nays: None  

The Council President Smith declared that the said ordinance (No. 2047) is hereby adopted by a vote of 5—0 and evidence thereof she signed the same.

3. ANNOUNCEMENTS

The next regular meeting of the City Council will be Tuesday, May 28, 2019, at 7:00 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213.

4. ADJOURNMENT

There being no further business to come before the City Council, Council President Smith adjourned the meeting at approximately 7:52 a.m.

5. CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct transcript of the joint, special meeting of the City Council of the City of Mountain Brook, Alabama held at City Hall, Pre-Council (Room A106) on May 24, 2019, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that a quorum was present.

City Clerk  

EXHIBIT 1

RESOLUTION NO. 2019-073

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby approves the off-site parking agreements in attached Exhibit “A,” in accordance with covenants recorded against the property at 2721 Cahaba Road for the exclusive use of employees of the upstairs restaurant at said location during the hours therein stated.

APPENDIX 1
ORDINANCE NO. 2047

AN ORDINANCE REPEALING ORDINANCE NO. 2045 AMENDING CHAPTER 30 OF THE CITY CODE RELATING TO THE MUNICIPAL COURT

BE IT ORDAINED by the City Council of the City of Mountain Brook, Alabama as follows:

Section 1. Ordinance No. 2045 adopted on May 13, 2019, that amended Chapter 30 of the City Code is hereby repealed.

Section 2. Repealer. All ordinances or parts of ordinances heretofore adopted by the City Council of the City of Mountain Brook, Alabama, that are inconsistent with the provisions of this ordinance are hereby expressly repealed.

Section 3. Severability. If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect notwithstanding such holding.

Section 4. Effective Date. This ordinance shall become effective immediately upon adoption and publication as provided by law.

APPENDIX 2
STATE OF ALABAMA |
JEFFERSON COUNTY |
PARKING LEASE

1. Landlord: MTB Office Park, LLC ("Landlord").

2. Tenants: Libertas Ventures, LLC and Libertas Venture, LLC (collectively, "Tenants").

3. Lease Premises: Ten (10) parking spaces located on the rear of the property more particularly described as:

   lot 1-4, according to a survey of lots 1, 2, 22, 13 and 24, of Block A, Mountain Brook Village, as recorded in Map Book 58, Page 76, in the Probate Office of Jefferson County, Alabama (the "Property")

which parking spaces adjoin the above (7) parking spaces referenced as item (1) to Exhibit A in the deed of the Property to Landlord which is recorded in instrument #6081134 in the Office of the Judge of Probate of Jefferson County, Alabama (the "Leased Premises"); Landlord and Tenants acknowledge that this Lease is only effective from 4:00 p.m. until 1:00 a.m. the following day. The parking rights conveyed hereunder are contemplated to allow Tenants and the employees of the occupants of Tenants’ building located at 2721 Cahaba Road, Mountain Brook, AL 35223 to park on the Leased Premises.

4. Term: Maximum of five (5) years in one (1) year renewable increments.

5. Termination Options: Landlord and Tenants may terminate the lease at any time by giving the other party written notice thereof at least ninety (90) days in advance.

6. Rent: The rent for the Leased Premises shall be $10.00 (per space) per month, payable in cash or as a dining credit at the eating establishments occupying Tenants’ property at Mountain Brook Village. Rent shall be paid on or before the 5th of each month, and Tenants shall be in default if monthly rent is not paid by the 10th day of any month.

7. Insurance: Tenants shall name Landlord as additional insured on a general liability policy in an amount of at least $1,000,000.

8. Indemnity: Tenants shall indemnify Landlord for any damage or loss associated with the use and enjoyment of the Tenants’ rights and privileges under the lease.

9. Use Restriction: Tenants agree that the Leased Premises may only be used for parking purposes and that the use shall be done in such a manner so as not to damage any portion of the Landlord’s property. Tenants further agree not to dispose of any trash or debris on the Leased Premises or any other portion of Landlord’s property.

10. Commencement of Lease: This Lease shall become effective as of June 1, 2019.

Done this 23rd day of May, 2019.

[Signatures]

MTB OFFICE PARK, LLC
__________________________
[Signature]
Lease Tenant

[Signature]
Lease Tenant

[Signature]
Lease Tenant

[Signature]
Lease Tenant
STATE OF ALABAMA  
JEFFERSON COUNTY

PARKING LEASE

1. **Landlord**: Union Hill Limited Liability Company ("Landlord").
2. **Tenants**: United RVs, LLC and United Vans, LLC (collectively, "Tenants").
3. **Landlord Premises**: Five (5) parking spaces (the "Landlord Premises") located on the property more particularly described as:

   Unit 4, according to a Resurvey of Union Hill Office Park, First Addition as established by the Alabama Declaration of Condominiums, which is recorded in Real Volume 2841, Page 2, as amended by Real Volume 3223, Page 75, further amended in Volume 3257, Page 299.

   In the Probate Office of Jefferson County, Alabama (with said Declaration of Condominium filed for record in May Book 157, Page 15, and amended in May Book 158, Page 20, in said Probate Office; the By-Laws of Union Hill Condominium as referred to in said Declaration of Condominium being filed for record in Real Volume 2841, Page 20, in said Probate Office; together with an undivided interest in Common Elements assigned to said Unit 4, by said Declaration of Condominium of Union Hill Condominium, a Condominium (the "Property").

**Landlord** and **Tenants** acknowledge that this lease is effective from 9:00 a.m. until 5:00 p.m. the following day. The parking rights conveyed herein, are contingent upon Tenant being assigned to a space located at 2731 Cahaba Road, Mountain Brook, AL 35223 to park on the Lessor Premises.

4. **Term**: Maximum of five (5) years in one (1) year renewable increments.

5. **Termination Options**: Landlord and Tenants may terminate the lease at any time by giving the other side written notice thereof at least ninety (90) days in advance.

6. **Rent**: The rent for the Lessor Premises shall be $10 per space per month, payable in cash or as a monthly credit at the existing establishments occupying "Tenants" property in Mountain Brook Village. Rent shall be paid on or before the 25th of each month, and Tenants shall be in default if monthly rent is not paid by the 25th day of any month.

7. **Indemnity**: Tenants shall name Landlord as additional insured on a general liability policy in an amount of at least $1,000,000.
Background:
In 2008 the Planning Commission approved an exception to the city code parking requirements which waived 32 on-site parking spaces in conjunction with the construction of the building that was to house Ace Draughts and two small suites. The approval of the waiver of parking was based on the fact that covenants would be recorded to disallow any restaurant use to open for business prior to 4:30 p.m. Mon-Sat. The covenants were also to include a provision for 15 off-site parking spaces be secured (via a lease with another property owner in the vicinity) for the exclusive use by employees of the restaurant. Although the restaurant did not open prior to 4:30, this requirement for employee parking remained from neighboring commercial interest concerns that restaurant employees would arrive mid-afternoon to prepare for the 4:30 opening, and would saturate street parking in the immediate vicinity. Said covenants were recorded as herein attached.

Proposed Use:
A new restaurant has signed a lease for the upstairs space in the previous Ace Draughts location. The covenants indicate that neither a certificate of occupancy nor a business license may be issued for said second floor restaurant until such a time that the off-site parking agreement has been secured and approved by the city council.

The property owner proposes two offsite parking agreements, which are attached. Staff has asked that maps be provided to indicate the relationship of the proposed parking areas to the restaurant site. Such maps will be provided at the meeting. The parking should be a reasonable distance from the restaurant location, and should be made available in the early-mid afternoon, as to accommodate employees arriving in the afternoon to prepare for opening of business.

GALLOWAY & SIMONVILLE, LLC
MAY 1, 2008

The Facsimile Transmission #879-5811
Ms. Dawn O. Bunn, ACP
City Planner
City of Mountain Brook
15 Church Street
Mountain Brook, AL 35213

Re: Mountain Brook Village Covenants

Dear Dawn and Carl:

Please allow this letter to serve as confirmation, that I, as service of the Declaration of Restrictive Covenants recorded in the Office of the Judge of Probate of Jefferson County Alabama in Book 21093 at Page 1724, by Lifetimes Video, LLC, with affixation and recording of a servient's affidavit showing that the total number of new parking spaces to be created by this new development is correct, within the 90 days that is set forth in the recorded recorded covenant. It is my understanding that with the transmission of this letter, all should be in order for the issuance of a building permit for the project.

Please let me know promptly if any mistakes in this understanding.

Sincerely,

Frank C. Galloway III

Frank C. Galloway III

STATE OF ALABAMA )
JEFFERSON COUNTY )

DECLARATION OF RESTRICTIVE COVENANTS

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, GALLOWAY & SIMONVILLE, LLC ("Declaration") is the owner of the following described real property, located in the City of Mountain Brook, Alabama (the "City") in Jefferson County, Alabama which is presently owned Local Business Division

See Exhibit A of the Property"

WHENAS, there was a former property located for the Property and Declaration desires to develop a 7,500±square foot two-story building on the Property consisting of approximately 4,338 square feet of first floor commercial space and 2,662 square feet of landscaped amenities; and

WHEREAS, due to such development, Declaration requests a 18 parking spaces for the Property, which are essential to the needs of the parking required by the City Code, but is less than the Property's prior use; and

WHEREAS, Declaration desires to impose certain restrictive covenants on the Property so as to confirm that the development and use thereof shall be such that the use will not create an undue burden on the parking capacity in Mountain Brook Village.

NOW, THEREFORE, in accordance with the City's Planning Commission's

Declaration of Restrictive Covenants for Parking Requirements for Local Business Division (the "Declaration") Declaration hereby acknowledges the receipt and sufficiency of such covenant and does hereby impose on the Property the following covenants, limitations and covenants which shall be to said land and use and said land and use or unless the Property is (a) removed to another zoning district, (b) is associated with what land is to as except the need for the Exception, (c) the City's reserved and/or regulations or modified so that the Exception is not necessary, or (d) the improvements on the Property are modified so that the Exception is no longer needed, at which time the covenant(s) not forth below shall be null and void:

Restrictive Covenants: (a) 18 parking spaces (including, but not limited to) to be used for restaurant purposes as defined and allowed under the City and Mountain Brook Village Covenants for Local Business Division. Provided, however, such parking shall not be open for business by any vehicle at any time or any vehicle at any time or the parking spaces shall be used as a parking space for the business. Please see Exhibit A for opening for business.

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shall not apply to loundas. Additionally, any portion of the improvements on the first floor of the building located on the Property shall be subject to the City of Mountain Brook's Zoning Code for Local Businesses, that includes but is not limited to the following: (a) a minimum rooftop area of 100 square feet; (b) a minimum rooftop height of 15 feet; (c) a maximum rooftop area of 3,000 square feet; and (d) a maximum rooftop height of 50 feet.

It is understood that the City of Mountain Brook may impose reasonable restrictions, limitations, and conditions on the use of the Property as a restaurant, including but not limited to the following: (a) a maximum number of employees of 15; (b) a maximum number of patrons of 200; (c) a maximum number of parking spaces of 10; (d) a maximum number of outdoor seating areas of 20; and (e) a maximum number of outdoor lounges of 5.

The Condemnation, restrictions, and limitations contained herein shall be enforceable by way of injunctive relief, for which no bond shall be required.
ORDINANCE NO. 2045

AN ORDINANCE AMENDING CHAPTER 30 OF THE CITY CODE
RELATING TO THE MUNICIPAL COURT

BE IT ORDAINED by the City Council of the City of Mountain Brook, Alabama that Chapter 30 of the City Code shall be amended to add the following provisions:

Section 1. Section 30 of the City Code shall be amended by inserting the following provisions:

Sec. 30-7. Failure to appear in court.
(a) It shall be unlawful for a defendant in the municipal court of the City of Mountain Brook, whether at liberty under bond or on his or her own recognizance, to fail to appear in court on the date set for the hearing of his or her case.
(b) Penalty. Any person who violates this section by failing to appear in court on the date set for the hearing of the case shall be punished by a fine not to exceed $500.00 and/or a sentence of imprisonment or hard labor for the city for a period not to exceed six months at the discretion of the court.

Sec. 30-8. Failure to comply with the orders of the court.
(a) If it shall be unlawful for a defendant in the municipal court of the City of Mountain Brook, to fail to comply with the orders of the court to include: (i) the payment of any installment when the court permits the payment of fines or other imposed costs in installments; (ii) the payment of any fine or other imposed costs by the court ordered date when the court has continued the case to a date certain for the defendant to make such payment(s); (iii) participation in the court referral program, counseling, or the performance of community service; or (iv) any other order of the court.
(b) Arrest warrant. A warrant shall be issued for the arrest of any defendant who fails to pay his or her fine or any installment thereof, to the extent the court permits payment upon installments, on the date ordered by the municipal court, or who otherwise fails to comply with any order of the court to which the defendant is subject.
(c) Penalty. Any person who violates this section by failing to comply with an order to which he or she is subject shall be punished in accordance with the court’s discretion and statutory authority to enforce the orders of the municipal court.

Section 2. Repealer. All ordinances or parts of ordinances hereafter adopted by the City Council of the City of Mountain Brook, Alabama, that are inconsistent with the provisions of this ordinance are hereby expressly repealed.

Section 3. Severability. If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect notwithstanding such holding.

Section 4. Effective Date. This section shall become effective immediately upon adoption and publication as provided by law.

ADOPTED: This 13th day of May, 2019.

APPROVED: This 13th day of May, 2019.

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of an ordinance adopted by the City Council of the City of Mountain Brook, Alabama at its meeting held on May 13, 2019, as same appears in the minutes of record of said meeting, and published by posting copies thereof on May 14, 2019, at the following public places, which copies remained posted for five (5) days as required by law.

City Clerk

APPENDIX 2
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