

## MINUTES

Regular Meeting  
City Hall Council Chamber

April 21, 2014  
Monday, 6:00 p.m.

**Present:** Mayor O. Stanhope Anthony III, presiding; Council Members Eric Hendrick, David W. White, Jeanette D. Patterson, Dennis C. Bailey, Ben Kittrell, Dicky Amaya; City Manager Rick Howell, City Clerk Bernadette A. Parduski, NCCMC, MMC, City Attorney Robert W. (Bob) Yelton, Director of Finance Justin S. Merritt, MPA, Director of Utilities Brad R. Cornwell, PLS, EI, Police Chief Jeffrey H. (Jeff) Ledford, Fire Chief William P. Hunt, MPA, EFO, Director of Public Works Daniel C. (Danny) Darst, Jr., Director of Planning and Development Services Walter (Walt) Scharer, AICP; and media representatives

Mayor Anthony called the meeting to order at 6:00 p.m. and welcomed all who were in attendance. The Mayor gave the invocation and members of Boy Scout Troops 92 and 101 led the *Pledge of Allegiance* in unison.

### A. Approval of agenda:

#### 1) Motion to adopt the proposed agenda

Mr. Bailey raised the issue of discussing a potentially incompatible zoning change which took place in 2009 as it relates to one of the scheduled public hearings. It was determined that discussion would take place after the public hearing to consider granting a Special Use Permit for a group home at 500 Beaumonde Avenue.

**ACTION TAKEN:** Upon a motion made by Mr. Amaya, City Council voted unanimously to approve the agenda as presented.

### B. Special Presentations:

#### 1) Honoring the life and memory of Lester Davis (Les) Roark: Resolution No. 10-2014

Mayor Anthony expressed his personal gratefulness and that of the City of Shelby to Mrs. Dot Roark and Jeff Roark for Mr. Roark's public service. He greatly admired and respected Les Roark as a mentor and as a model citizen.

The Mayor formally read and presented the framed resolution honoring the

life and memory of Lester Davis (Les) Roark to Mrs. Roark and her son, Jeff.

- 2) Introduction and recognition of Miss Shelby, Molly McKinney, and Miss Shelby Outstanding Teen, Rachel Mower – Danyel Phelps, Executive Director, Miss Shelby/Miss Shelby Outstanding Teen

Ms. Phelps proudly announced since 1974, after a 40-year absence, the Miss America-affiliated Miss Shelby pageant returned in February 2014. She stated the Miss America Organization is a not-for-profit organization that has maintained a tradition for many decades of empowering American women to achieve their personal and professional goals while providing a forum in which to express their opinions, talents, and intelligence. As an official state preliminary associated with the Miss America Organization, the Miss North Carolina Scholarship Pageant is a part of the largest scholarship-providing organization to women in the world and largest corporate funder of the Children's Miracle Network. The Miss North Carolina Organization is a federally recognized 501(c) 3 non-profit organization dedicated to empowering young women to achieve their personal, professional, and educational goals.

Ms. Phelps introduced Molly McKinney as Miss Shelby 2014 and Rachel Leigh Mower as the first Miss Shelby Outstanding Teen. Both representatives will compete for Miss North Carolina in June between two age divisions with a chance to advance to the Miss America pageant.

Next Miss Shelby Molly McKinney introduced her Carolina Princess as Andrea Brown. Miss McKinney shared the specifics of her platform, Children's Homes of North Carolina.

Miss Shelby Outstanding Teen Rachel Leigh Mower introduced her Carolina Princess as Macie Miller. Miss Mower also shared the specifics of her platform, "Dare to Be".

Mayor Anthony extended his congratulations and offered his best wishes to Miss Shelby and Miss Shelby Outstanding Teen as they continue on with their competitive endeavors at the state level. The Mayor acknowledged the good work of their respective platforms as well as Ms. Phelps, for her efforts, experience, and involvement in pageantry.

In closing, Ms. Phelps will provide pageant updates and encouraged the public to follow their progress and support them through on-line voting.

- 3) Uptown Shelby Association (USA) update – Audrey Whetten, Executive Director

Ms. Whetten focused her presentation on a recent North Carolina Main Street report entitled, *Decades of Success – The Economic Impact of Main Street in North Carolina*, prepared for the North Carolina Department of Commerce and the North Carolina Main Street Communities, providing a brief overview of its content.

As background information, Ms. Whetten stated in 1980 North Carolina became one of the first state Main Street programs in the nation. In the 33 years since its inception, the more than one hundred North Carolina Main Street and Small Town Main Street communities have demonstrated that downtown revitalization in the context of historic preservation is cost effective economic development, spurring investment, new businesses, and more jobs all while maintaining each community's distinct character.

Sharing statewide statistics from the report, Ms. Whetten further stated in the last 33 years, over \$2 billion has been invested in North Carolina Main Street and Small Town Main Street communities. The cumulative number of net new businesses in North Carolina Main Streets is 4,290. Since the beginning of the program, more than 17,000 cumulative net new jobs have been created in Main Street districts.

Next Ms. Whetten shared the cumulative totals from 1981 through 2013 for Uptown Shelby specifically as to:

- Net new businesses – 175
- Net job gain – 618
- Total facades renovated – 149
- Total building renovations – 248
- Total public investment – \$14.8 million
- Total private investment – \$39.4 million

Ms. Whetten added if a vacant storefront is a drain on the downtown economy, there is one strategy that can have a sizable positive impact: upper-floor housing. This strategy is emerging as a major opportunity in North Carolina communities such as Shelby. In most communities, the range of rents is \$400 to \$800 per month. Just as it is not only the property owner who loses money when a building sits empty, other stakeholders can gain when an upper floor becomes a residential unit. The positive impact that one couple living in an upper-floor apartment will have on the immediate downtown economy, if the goods and services are available, could be more than \$11,000 in Shelby. Therefore, Ms. Whetten said it is a great value to having residents living in the Uptown district.

Ms. Whetten concluded her presentation with an update regarding USA's recent spring and upcoming summer events:

- The Uptown Shelby Litter Sweep was held on April 12, 2014 in partnership with Keep Shelby Beautiful.
- A volunteer party is set for May 5, 2014 to celebrate USA volunteers and share opportunities for involvement.
- An Uptown Art Walk in partnership with the Cleveland County Arts Council and 10 participating businesses is scheduled for May 8, 2014.
- Shelby Alive, scheduled for May through August, and formerly known as Alive After Five, is celebrating its 20<sup>th</sup> anniversary with a new format including bigger bands from 6:00 p.m. to 9:00 p.m.
- The Summer Cinema Series from June through August includes six family movies to be shown at the Don Gibson Theatre with two showings each.

Council received the information and took no action.

C. Public Comment: None

D. Public Hearings:

- 1) Consideration of the City of Shelby's submittal of a Community Development Block Grant (CDBG) application to the North Carolina Department of Environment and Natural Resources (NCDENR) Division of Water Infrastructure (DWI)

As background information, Mr. Scharer explained the North Carolina Department of Environment and Natural Resources (NCDENR) Division of Water Infrastructure (DWI) was delegated the authority by the State legislature to administer grant monies received from the US Housing and Urban Development (HUD) Community Development Block Grant (CDBG) Program in July 2013. The NCDENR DWI has opened the 2014 round of CDBG funding assistance for water and wastewater projects that will improve the quality of life for low and moderate income persons.

Specifically, Mr. Scharer stated the purpose of this public hearing is to receive citizen input as to the City's intent to submit a grant application for CDBG funds for a wastewater project in the Cameron and Lily neighborhood and a wastewater project in the Washington Heights neighborhood, as required, before the application may be submitted.

Mayor Anthony opened the public hearing at 6:24 p.m. and invited comments from the public.

The public offered no comments and Mayor Anthony closed the public hearing at 6:25 p.m.

Council took no action at this time.

**2) Consideration of a proposed ordinance amending the zoning map of the City of Shelby, North Carolina: Ordinance No. 19-2014**

Utilizing a map of the area, Mr. Scharer presented the staff report for the proposed zoning amendment for vacant property located on Neisler Street which intersects with West Dixon Boulevard. The majority of the property is currently zoned General Industrial (GI) District while the smaller portion to the west is zoned Residential 20 (R20) District. He stated both the existing and the proposed zoning classifications are consistent with the Comprehensive Land Use Plan.

Mayor Anthony opened the public hearing at 6:26 p.m. and invited comments from the public:

Mike Philbeck who resides at 1805 Arbor Way in Shelby, North Carolina spoke as a representative of the property owners and in support of the proposed zoning map amendment. Mr. Philbeck stated the request to change the R20 strip at the rear of the property is to conform to the majority GI zoning of the site.

Mayor Anthony closed the public hearing at 6:27 p.m.

**ACTION TAKEN:** Upon a motion made by Mr. Amaya, City Council voted unanimously to approve and adopt Ordinance No. 19-2014 entitled, "A PROPOSED ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF SHELBY, NORTH CAROLINA".

**3) Consideration of a proposed ordinance amending the zoning map of the City of Shelby, North Carolina and granting a Special Use Permit for a group home at 500 Beaumonde Avenue: Ordinance No. 20-2014**

Prior to the public hearing, Mayor Anthony provided instructions as to the quasi-judicial process. To find facts, Council conducts a formal evidentiary hearing. Due process mandates that all parties must present factual evidence under sworn testimony. Each finding must be supported by competent, material, and substantial evidence, not unsupported allegations

or lay opinions. Council must make findings of fact and then apply the existing laws and policies to those facts to arrive at a decision.

After taking his oath and utilizing a zoning map of the area, Mr. Scharer pointed to the subject property located at 500 Beaumonde Avenue currently zoned Residential 20-Conditional Use. In 2009, the petitioner declared the intended use of the property for bed and breakfast accommodations with the lapsed permit being null and void at this time. The applicant is requesting a zoning change to Residential 6 (R6) with a conditional use permit to operate a group home. The surrounding Beaumonde neighborhood properties are zoned Residential 8 (R8) District.

Mr. Scharer further stated zoning changes are considered a legislative action by City Council. Therefore, the zoning amendment made in 2009 remains until a legislative action by City Council changes it.

He explained the R20 Residential District is primarily intended to accommodate very low density single-family detached dwellings, modular homes, two-family dwellings, and manufactured homes on individual lots. Maximum densities within the R20 District are approximately 2 dwelling units per gross acre for single-family and two-family dwellings.

The R8 Residential District is primarily intended to accommodate moderate density single-family detached dwellings, modular homes, and two-family dwellings. Maximum densities within the R8 District include approximately 5 dwelling units per gross acre.

The R6 Residential District is primarily intended to accommodate a variety of high density single-family detached dwellings, modular homes, apartments, townhomes, and condominiums. Maximum densities within the R6 District range from approximately 7 dwelling units per gross acre for single-family detached dwellings to over 19 dwellings per gross acre for multifamily dwellings.

The Comprehensive Land Use Plan designates the subject property as a High Density Residential. The high-density land use designation refers to single-family detached subdivisions of 7 units per acre and more. The multi-family residential use could also be allowed within this use. Multifamily use designation can refer to a variety of attached housing types, including townhouse, condominiums or rental apartments. As used in the Shelby Comprehensive Land Use Plan, this designation refers to developments of up to 19 units per acre, without implying a specific type of housing unit. Corresponding City of Shelby zoning classifications include R6 Residential District.

Group homes or group care facilities are permitted in the R6 zoning district with development standards. The development standards are as follows:

- No such facility shall be located within a 2000-foot radius (measured by a straight line and not street distance) of another group care facility.
- The facility must be operated by a resident owner or manager. The facility shall be limited to not more than 10 persons including resident managers.
- The use shall be sited and operated so as to mitigate impacts on adjoining residential properties.
- Parking spaces shall be located on-site and located in the rear or to the side of the structure behind the building line.
- All off-street parking lots shall be screened from all adjoining single-family residential uses or residentially-zoned lots by a buffer yard. The required buffer yard shall comply with the requirements of section 14-5.2.

The proposed site plan meets the requirements of the City of Shelby's Unified Development Ordinance. The size of the parcel exceeds the minimum square footage for the R6 zoning district. The parking area is sufficient.

Mr. Scharer concluded by stating the proposed zoning amendment is consistent with the Comprehensive Land Use Plan.

Mr. Bailey questioned the validity of the current R20 zoning, which is surrounded by R8 zoning, and the possibility of spot zoning.

Mr. Howell responded in a spot zoning challenge the courts, not the governing board alone, review and weigh the balance of harm and benefit created by the rezoning. However, in his opinion in this particular matter, spot zoning based on the relationship between the proposed uses and the current uses of adjacent properties appears likely.

Mayor Anthony reminded Council in considering whether to approve an application for a Special Use Permit, it shall proceed according to the following format:

- The City Council shall consider whether the application is complete.

- The City Council shall consider whether the application complies with all of the applicable requirements of the UDO. If the City Council concludes that the application fails to comply with one or more requirements of the UDO, the application shall be denied.
- If the City Council concludes that all such requirements are met, it shall issue the permit unless it adopts a motion to deny the application. Such a motion shall propose specific findings, based upon the evidence submitted, justifying such a conclusion.

Staff certified the following:

- The requested permit is within the jurisdiction of the City of Shelby according to the Table of Permissible Uses (Table 9-3-1).
- The application is complete.
- If completed as proposed in the application, the proposed development will comply with all the requirements of the UDO.

According to the UDO, even if City Council finds that the application complies with all other provisions of this ordinance, it may still deny the permit if it concludes, based upon the information submitted at the hearing, which if completed as proposed, the development:

- Will materially endanger the public health or safety; or
- Will substantially injure the value of adjoining or abutting property; or
- Will not be in harmony with the area in which it is to be located; or
- Will not be in general conformity with the land development plan or other plans officially adopted by the City Council.

Mayor Anthony opened the public hearing at 6:35 p.m. and sworn testimony was given as follows:

Rufus Parker spoke on behalf of Lucille Evans, who was present and who resides at 510 Beaumonde Avenue in Shelby, North Carolina. Mr. Parker, Mrs. Evans' nephew, read a written statement against the proposed Special Use Permit for a group home at 500 Beaumonde Avenue. He stated Mrs. Evans' main concerns were regarding the removal of trees and shrubs, possible damage to the retaining wall on her property, and the placement of a City utility pole during the construction phase to create a parking lot for the



group home. Mr. Parker also stated this is a great, family-oriented community and not a good location for a group home.

Marietta Floyd who resides at 2917 Highland Circle and owns the apartment house at 310 Miles Road in Shelby, North Carolina spoke against the proposed Special Use Permit for a group home at 500 Beaumonde Avenue, stating her concerns included upsetting the balance and stability of the neighborhood, increased traffic, and possible damage to the retaining wall of her apartment house property.

Mary Ann Goins who resides at 503 Beaumonde Avenue in Shelby, North Carolina spoke against the proposed Special Use Permit for a group home at 500 Beaumonde Avenue, stating her concerns included spot zoning in a Residential 8 zoned neighborhood, renovations to the subject property increased its tax value therefore no major deficiencies should prevent its sale, said property is currently undervalued which lowers the market value of the entire neighborhood, traffic congestion will diminish curb appeal, and a group home has the potential to disturb and disrupt a peaceful community enjoyed by many long-term residents.

Mrs. Goins presented a petition to Council from the Beaumonde Avenue neighbors who oppose the proposal to rezone 500 Beaumonde Avenue for a group home.

Alycia Brown who resides at 505 Beaumonde Avenue in Shelby, North Carolina spoke against the proposed Special Use Permit for a group home at 500 Beaumonde Avenue, stating her concerns included property tax values, protecting the investment into her home to increase its value, and the negative connotation a group home could have on the Beaumonde community which is very strong and willing to fight to keep their neighborhood intact.

Barbara Clemmons who resides at 509 Beaumonde Avenue in Shelby, North Carolina spoke against the proposed Special Use Permit for a group home at 500 Beaumonde Avenue, stating her concerns included preserving the history and foundation of established neighborhoods such as Beaumonde Avenue which are essential to the City of Shelby. Mrs. Clemmons urged Council to rezone the subject property back to its original Residential 8 zoning in order to protect its unique character.

Sandra Stroud who resides at 417 Beaumonde Avenue in Shelby, North Carolina spoke against the proposed Special Use Permit for a group home at 500 Beaumonde Avenue, stating her concerns included the definition of family as defined in the City of Shelby's Unified Development Ordinance,

which provides protection for the family unit in the City's neighborhoods. The City's growth and prosperity can be attributed to its founding families and history of residential neighborhoods. Miss Stroud stated the intended use of 500 Beaumonde Avenue is contrary to traditional family life. She urged Council to save a good residential neighborhood and honor the meaning of family by rezoning 500 Beaumonde Avenue back to Residential 8 zoning.

Sarah Starnes who resides at 205 Belvedere Avenue in Shelby, North Carolina spoke against the proposed Special Use Permit for a group home at 500 Beaumonde Avenue, stating there is no harmony in locating a group home in a residential neighborhood such as Beaumonde. Mrs. Starnes added a group home will also diminish the growth and progress of the Chestnut Street and Belvedere Avenue neighborhoods made through such programs as Weed and Seed, Project Safe Neighborhood, and the Shelby Police Department Neighborhood Watch.

Michael Gullatte who resides at 1024 Cumberland Drive in Shelby, North Carolina spoke in support of the proposed Special Use Permit for a group home at 500 Beaumonde Avenue and as the Senior Pastor at Shelby's Christ for the Nations Church and the Executive Director of the Cleveland County Rescue Mission. Pastor Gullatte stated his church has ministered to homeless families for the past 10 years. He reminded Council about the project on Buffalo Street to build a new homeless facility for men, which saves Cleveland County money and keeps the homeless community from loitering in the Uptown area. The intended use of a group home for 500 Beaumonde Avenue is an expansion of his ministry. He assured the residents a group home would not take away from the community but would be an addition to it, and the women who would live in the home would go through a strict process before being admitted. Pastor Gullatte has maintained successful partnerships with more than 40 churches, the City of Shelby, Cleveland Regional Medical Center, and Gardner-Webb University. He requested Council's support for the proposed zoning of Residential 6 – Conditional Use.

Tracy Duncan who resides at 406 Thompson Street in Shelby, North Carolina spoke in support of the proposed Special Use Permit for a group home at 500 Beaumonde Avenue and firsthand as a two-year resident of the Heart 2 Heart group home.

Mack Bridges who resides at 504 Plato Lee Road in Shelby, North Carolina spoke as the applicant in support of the proposed Special Use Permit for a group home at 500 Beaumonde Avenue. Mr. Bridges stated the subject property has been vacant and on the market for several years until its

foreclosure. The size of the home makes it an ideal property for the intended use as a group home for women and children who wish to assimilate into a tightknit neighborhood setting with a sense of community. Mr. Bridges stated group homes are permitted in the Residential 6 zoning district with development standards and those requirements will be adhered to so as not to demean the Beaumonde neighborhood. The plan is to develop the property as an asset and not a detriment to the surrounding properties. Mr. Bridges requested Council's favorable consideration of his proposed zoning request.

Joan Bridges who resides at 504 Plato Lee Road in Shelby, North Carolina spoke in support of the proposed Special Use Permit for a group home at 500 Beaumonde Avenue. Mrs. Bridges stated the subject property has eight bedrooms, which after renovations, would serve a maximum of four women at a time, with one or two children, and a resident manager. She further stated she and her husband wish to help women and children who often do not have options which in turn will help the City of Shelby. Mrs. Bridges said she and her husband understand the concerns of the Beaumonde neighborhood and fully plan to increase the value of the property.

Bryan LeGrand who resides at 1205 Bob Falls Road in Shelby, North Carolina suggested City Council review and consider adopting Cleveland County's ordinance regulating group homes, which may be beneficial to the City of Shelby.

Andrew Leon who resides at 501 Beaumonde Avenue in Shelby, North Carolina spoke against the proposed Special Use Permit for a group home at 500 Beaumonde Avenue, stating his concerns included the same as his neighbors as to decreased property values if the rezoning is allowed in the family-oriented residential neighborhood.

Nancy Freeman who resides at 2125 Ledbetter Road in Shelby, North Carolina spoke in support of the proposed Special Use Permit for a group home at 500 Beaumonde Avenue. Miss Freeman stated the facility will be operated as a transitional home for women and children. Prospective residents must qualify for admission and adhere to strict guidelines established by the Heart 2 Heart Program. Training, education, and mentoring are provided to the residents in order to lead them to a self-sustaining lifestyle. Miss Freeman made assurances the facility is staffed at all times.

Ed Goforth who resides at 257 Goforth Road in Kings Mountain, North Carolina spoke in support of the proposed Special Use Permit for a group home at 500 Beaumonde Avenue. Mr. Goforth owns the property across the

street from 500 Beaumonde Avenue. He attended the Heart 2 Heart neighborhood meeting about the rezoning, which addressed his concerns, and ultimately endorsed the plan.

Upon questioning, Mrs. Bridges clarified the Thompson Street Heart 2 Heart Home will remain open and will continue to serve single women while the Beaumonde Street property will serve women with children or seeking custody of their children.

Mayor Anthony closed the public hearing at 7:35 p.m.

**ACTION TAKEN:** Upon a motion made by Mr. Bailey to deny the rezoning of the subject property from Residential 20 – Conditional Use to Residential 6 – Conditional Use on the grounds that it perpetuates a spot zoning situation and further to rezone the property to Residential 8 in order to rectify the existing spot zoning situation and to bring the parcel into conformity with the zoning of the surrounding neighborhood, City Council voted unanimously to approve and adopt Ordinance No. 20-2014 entitled, “A PROPOSED ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF SHELBY, NORTH CAROLINA FOR 500 BEAUMONDE AVENUE”, as amended.

- 4) Consideration of a proposed ordinance amending the zoning map of the City of Shelby, North Carolina and granting a Special Use Permit for multi-family dwelling units at 1012 South Washington Street: Ordinance No. 21-2014

Prior to the public hearing, Mayor Anthony provided instructions as to the quasi-judicial process. To find facts, Council conducts a formal evidentiary hearing. Due process mandates that all parties must present factual evidence under sworn testimony. Each finding must be supported by competent, material, and substantial evidence, not unsupported allegations or lay opinions. Council must make findings of fact and then apply the existing laws and policies to those facts to arrive at a decision.

After taking his oath and utilizing a zoning map of the area, Mr. Scharer pointed to the subject property located at 1012 South Washington Street, which is home to the former Ella Mill and is utilized for limited warehousing. This site and the surrounding properties were zoned industrial by the City of Shelby in the 1950s when the mill was in high textile production. However, today the area has lost its industrial viability and the character of the area is currently much more residential. Land uses in the area are primary single family dwellings with retail and service businesses along South Lafayette Street. The applicant is proposing a zoning amendment for the property to Residential 6 (R6) and a Special Use Permit for an 84-unit multi-family

development. Mr. Scharer noted multi-family developments with 25 or more dwelling units require a Special Use Permit approved by City Council.

Mr. Scharer explained the R6 District is primarily intended to accommodate a variety of high density single-family detached dwellings, modular homes, apartments, townhomes, and condominiums. Maximum densities within the R6 District range from approximately 7 dwelling units per gross acre for single-family detached dwellings to over 19 dwellings per gross acre for multifamily dwellings.

Mayor Anthony opened the public hearing at 7:30 p.m. and invited comments from the public.

Mayor Anthony closed the public hearing at 7:31 p.m.

Mayor Anthony reminded Council in considering whether to approve an application for a Special Use Permit, it shall proceed according to the following format:

- The City Council shall consider whether the application is complete.
- The City Council shall consider whether the application complies with all of the applicable requirements of the UDO. If the City Council concludes that the application fails to comply with one or more requirements of the UDO, the application shall be denied.
- If the City Council concludes that all such requirements are met, it shall issue the permit unless it adopts a motion to deny the application. Such a motion shall propose specific findings, based upon the evidence submitted, justifying such a conclusion.

Staff certified the following:

- The requested permit is within the jurisdiction of the City of Shelby according to the Table of Permissible Uses (Table 9-3-1).
- The application is complete.
- If completed as proposed in the application, the proposed development will comply with all the requirements of the UDO.

According to the UDO, even if City Council finds that the application complies with all other provisions of this ordinance, it may still deny the permit if it concludes, based upon the information submitted at the hearing, which if

completed as proposed, the development:

- Will materially endanger the public health or safety; or
- Will substantially injure the value of adjoining or abutting property; or
- Will not be in harmony with the area in which it is to be located; or
- Will not be in general conformity with the land development plan or other plans officially adopted by the City Council.

Having heard all of the evidence and arguments presented at the public hearing, Council discussed the findings of fact relative to the proposal and determined the application of Guilford Financial Services, LLC is complete; and, the following conclusions were made:

- The owner of the property, Guilford Financial Services, LLC, submitted the required application and site plan for a Special Use Permit.
- According to Article 9-3-1, multi-family dwelling units are permitted in the R6 Zoning District with a Special Use Permit.
- The subject parcel lies within the City of Shelby fronting at 1012 South Washington Street in the Light Industrial (LI) District; and land use in the surrounding area is a mixture of commercial and residential uses.
- The Comprehensive Land Use Plan designates this area as a Corridor Revitalization Area.
- The petitioner has declared that the intended use of the property is for multi-family dwelling units.
- Other than what is shown on the site plan, no other changes to the site are planned.
- To the best of staff's knowledge, no non-conformities currently exist on the property and none will be created by the requested Special Use Permit.
- The use will not materially endanger the public health or safety if located where proposed and developed according to the plan.
- The use will not substantially injure the value of adjoining or abutting property.

- The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the Comprehensive Land Use Plan.

**ACTION TAKEN:** Upon a motion made by Mr. Bailey, City Council voted unanimously to approve and adopt Ordinance No. 21-2014 entitled, “A PROPOSED ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF SHELBY, NORTH CAROLINA AND GRANTING A SPECIAL USE PERMIT FOR MULTI-FAMILY DWELLING UNITS AT 1012 SOUTH WASHINGTON STREET”.

**5) Consideration of a proposed ordinance amending the zoning map of the City of Shelby, North Carolina: Ordinance No. 22-2014**

Utilizing a zoning map of the area, Mr. Scharer pointed to the Light Industrial (LI) zoning area surrounding the former Ella Mill located at 1012 South Washington Street, which includes single family dwellings that were originally part of the mill village established for the adjacent mill. The properties have all lost their industrial character or no longer serve an industrial purpose. Therefore, staff proposed amending the zoning map to have the residential properties on South Morgan Street and Ella Street rezoned Residential 8 (R8) and the properties at the corner of South Morgan Street and Textile Street rezoned Neighborhood Business (NB).

Mr. Scharer added the proposed zoning map amendment promotes the current, existing uses in place and is consistent with the Comprehensive Land Use Plan. The Planning and Zoning Board also recommended the proposed zoning map amendment.

Mr. Scharer pointed out a correction to Ordinance No. 22-2014 in which the property located at 1012 South Morgan Street (Cleveland County Parcel Identification Number 20782) should be listed among the properties being rezoned from Light Industrial (LI) to Neighborhood Business (NB).

Mayor Anthony opened the public hearing at 7:35 p.m. and invited comments from the public:

Tommy Willis who owns Willis Auto Electric at 1012 South Morgan Street in Shelby, North Carolina expressed his concern about the future of his business at that location.

Mr. Scharer responded the proposed rezoning of 1012 South Morgan Street will have no impact on Mr. Willis' business.

Mayor Anthony closed the public hearing at 7:37 p.m.

**ACTION TAKEN:** Upon a motion made by Mr. Bailey, City Council voted unanimously to approve and adopt Ordinance No. 22-2014 entitled, “A PROPOSED ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF SHELBY, NORTH CAROLINA”, as corrected.

- 6) Consideration of a resolution granting a Special Use Permit for multi-family senior housing at 200 block of Cherryville Road: Resolution No. 16-2014

Prior to the public hearing, Mayor Anthony provided instructions as to the quasi-judicial process. To find facts, Council conducts a formal evidentiary hearing. Due process mandates that all parties must present factual evidence under sworn testimony. Each finding must be supported by competent, material, and substantial evidence, not unsupported allegations or lay opinions. Council must make findings of fact and then apply the existing laws and policies to those facts to arrive at a decision.

After taking his oath and utilizing a location map of the area, Mr. Scharer pointed to the subject property located along Cherryville Road. This vacant 3.78 acre site is currently zoned Residential Office (RO) and is surrounded by the Residential 10 (R10) Zoning District. The applicant, Weaver-Kirkland Development, LLC, is requesting a Special Use Permit to allow up to 60 units of multi-family senior housing. The RO zoning district permits multi-family dwellings; however, when a proposed development exceeds 25 dwelling units, a Special Use Permit from City Council is required. The Unified Development Ordinance (UDO) permits up to 67 dwelling units within a multi-family development for this site.

Mr. Scharer explained the RO District is primarily intended to accommodate high density multifamily residences; offices; public and institutional; business, professional, and personal services; and limited support retail businesses. Permitted residential uses include single-family detached dwellings, modular homes, apartments, townhomes, and condominiums. One of the objectives of this district is to encourage land uses that serve as an adequate buffer between intensive nonresidential uses and residential uses.

The R10 District is primarily intended to accommodate low to moderate density single-family detached dwellings and modular homes at a maximum density of approximately 4 dwelling units per gross acre. Nonresidential uses permitted within this district include customary accessory,



recreational, educational, and institutional land uses that are compatible with the low density residential character of the R10 District.

The Comprehensive Land Use Plan designates this property as a Medium Density Residential Area. The medium density land use designation refers to single-family detached developments of approximately 4 units per acre. Corresponding City of Shelby zoning classifications include R10 and R8 Residential Districts.

The current proposed site plan shows 62 parking spaces. The City's UDO requires 1.5 spaces per dwelling unit. Weaver-Kirkland Development, LLC will request an exception given that their proposed development will be restricted to residents 55 years of age and older and considers their offering of 62 parking spaces more than adequate.

Mr. Scharer stated this requested Special Use Permit is consistent with current zoning; however, is not consistent with the Comprehensive Land Use Plan.

Mayor Anthony opened the public hearing at 7:50 p.m. and sworn testimony was given as follows:

Lindsay Lovelace who resides at 1014 South Shem Drive in Mount Pleasant, South Carolina spoke as a representative of Weaver-Kirkland Development and in support of its application for a Special Use Permit for multi-family housing at the 200 block of Cherryville Road. Ms. Lovelace introduced the companies involved in the proposed project as Weaver-Kirkland Development, the developer; Weaver Cooke Construction as the general contractor; and Zimmerman Properties Development as the management team, providing background information about their markets and development portfolio. Ms. Lovelace stated she and the Weaver-Kirkland team held a neighborhood meeting prior to the Council meeting to discuss this project with the neighbors to gather comments and concerns about the project. Ms. Lovelace provided an overview of the complex which includes 60 units of 30 one-bedroom and 30 two-bedroom apartments with full amenities, including full-time management and maintenance staff.

Charlie Heritage who resides at 2515 Glen Meadow in Greensboro, North Carolina spoke as a representative of Weaver-Kirkland Development and in support of its application for a Special Use Permit for multi-family housing at the 200 block of Cherryville Road. Mr. Heritage also mentioned the neighborhood meeting held prior to this meeting and stated the main concern reiterated by the neighbors in attendance was traffic on Cherryville Road. He met and discussed traffic counts on Cherryville Road with North Carolina

Department of Transportation (NCDOT) District Engineer Gary Spangler, who stated the daily traffic count on Cherryville Road between East Marion Street and the YMCA facility ranges between 9,000 to 12,000 and possibly as high as 13,000 trips. Mr. Heritage said DOT calculates a multi-family development's daily traffic count as 10 trips per unit; therefore, the proposed development of 60 units would add approximately 600 trips to the current traffic count on Cherryville Road. In his opinion, the proposed development for seniors, who may drive less during the peak travel hours, will create a minimal impact on the existing traffic issue. Mr. Heritage further stated Weaver-Kirkland has agreed to widen Cherryville Road and add a turning lane at their expense as a condition in order to proceed with the project.

Tab Bullard who resides at 2311 Honeysuckle Lane in Smyrna, Georgia spoke as a representative of Weaver-Kirkland Development and Wilhoit Properties and in support of its application for a Special Use Permit for multi-family housing at the 200 block of Cherryville Road. Mr. Bullard began his presentation with the statistics related to the developer's market supply and demand for the area, which determined there is a lack of units for the targeted population of ages 55 and older. He also presented a series of photographs of their residential buildings, varying in styles, elevations, and age, as examples of existing communities. Mr. Bullard reviewed the findings of fact for Council's consideration and stated the proposed development will have no long-term negative impact on the existing market or surrounding properties. The project will be a modern development, professionally managed with ongoing property maintenance, and a potential for positive impact on surrounding property values. Mr. Bullard concluded by stating the proposed development, although high density in nature, should be classified as a medium density residential area due to the fact that there is a 30-year deed restriction on the subject property for a targeted population of persons age 55 and older, which will keep it in harmony with the area and in general conformity with the Land Use Plan.

Thomas Hockman is a member of the Schell Bray Law Firm with offices at 230 North Elm Street in Greensboro, North Carolina spoke on behalf of the applicant and in support of its application for a Special Use Permit for multi-family housing at the 200 block of Cherryville Road. With regard to findings of fact and competent evidence, Mr. Hockman made reference to North Carolina General Statute 160A-393(k)(3) for Council's consideration.

William R. Plaster who resides at 1237 Brookwood Road in Shelby, North Carolina spoke against the application for a Special Use Permit for multi-family housing at the 200 block of Cherryville Road, stating no sidewalks, curbing, or guttering along Cherryville Road presents a clear and present danger to all citizens, both children and adults, who attempt to cross

Cherryville Road. Dr. Plaster said he does not oppose development but any increase in traffic on Cherryville Road is not a good use and presents a public safety issue. Granting this permit will set a precedent for further development in the area. Dr. Plaster urged Council to be stewards of the community when making their decision.

Jon Anders who resides at 326 Sunrise Circle in Shelby, North Carolina spoke against the application for a Special Use Permit for multi-family housing at the 200 block of Cherryville Road, stating the proposed development would be detrimental to property values, safety, and overall quality of life for residents and property owners of Sunrise Circle and Brookwood Drive. Mr. Anders expressed his concerns about the traffic congestion at the intersection of East Marion Street and Cherryville Road as well as at the intersection of Wyke Road and Cherryville Road. This area has also experienced a huge increase in pedestrian traffic in recent years. There are no sidewalks along the road, which has uneven shoulders, and pedestrians are forced to walk in the roadway. Mr. Anders said multi-family housing will add to the already burdensome traffic issues and mentioned the NCDOT published the 2012 average daily traffic volume on Marion Street, ranging between 13,000 and 14,000 vehicles, and on Cherryville Road as 12,000 vehicles. Mr. Anders also pointed out the City would need to extend sewer service to the area in order to support the proposed development.

Mr. Anders presented a petition to Council from his neighbors who oppose the granting of a Special Use Permit for multi-family senior housing at the 200 block of Cherryville Road along with a letter in opposition from Doug Smith dated April 17, 2014.

Brownie Plaster who resides at 218 Vauxhall Drive in Shelby, North Carolina spoke against the application for a Special Use Permit for multi-family housing at the 200 block of Cherryville Road, stating the proposed development will create additional traffic congestion at every intersection on the east side of Shelby and not just at Cherryville Road. Mrs. Plaster stated 60 apartments on three acres is high density for the area, noting seniors today lead very active lifestyles. She encouraged Council to decline the request for a Special Use Permit.

Martha Staton who resides at 205 Cherryville Road in Shelby, North Carolina spoke against the application for a Special Use Permit for multi-family housing at the 200 block of Cherryville Road, reiterating the previous comments related to traffic congestion in the area.

Upon questioning, Mr. Yelton advised the petitions which were submitted and Mr. Spangler's comments are considered hearsay evidence and should be excluded as information presented during hearing.

Mayor Anthony closed the public hearing at 8:20 p.m.

Mayor Anthony reminded Council in considering whether to approve an application for a Special Use Permit, it shall proceed according to the following format:

- The City Council shall consider whether the application is complete.
- The City Council shall consider whether the application complies with all of the applicable requirements of the UDO. If the City Council concludes that the application fails to comply with one or more requirements of the UDO, the application shall be denied.
- If the City Council concludes that all such requirements are met, it shall issue the permit unless it adopts a motion to deny the application. Such a motion shall propose specific findings, based upon the evidence submitted, justifying such a conclusion.

Staff certified the following:

- The requested permit is within the jurisdiction of the City of Shelby according to the Table of Permissible Uses (Table 9-3-1).
- The application is complete.
- If completed as proposed in the application, the proposed development will comply with all the requirements of the UDO.

According to the UDO, even if City Council finds that the application complies with all other provisions of this ordinance, it may still deny the permit if it concludes, based upon the information submitted at the hearing, which if completed as proposed, the development:

- Will materially endanger the public health or safety; or
- Will substantially injure the value of adjoining or abutting property; or
- Will not be in harmony with the area in which it is to be located; or
- Will not be in general conformity with the land development plan or

other plans officially adopted by the City Council.

Having heard all of the evidence and arguments presented at the public hearing, Council discussed the findings of fact relative to the proposal and determined the application of, Weaver-Kirkland Development, LLC is complete; and, the following conclusions were made:

- The owner of the property, Weaver-Kirkland Development, LLC, submitted the required application and site plan for a Special Use Permit.
- According to Article 9-3-1, multi-family dwellings of more than 25 are permitted in the RO Zoning District with a Special Use Permit issued by City Council.
- The subject parcel lies within the City of Shelby fronting at the 200 block of Cherryville Road in the Residential Office (RO) District.
- Land uses in the surrounding area are primarily residential uses.
- The Comprehensive Land Use Plan designates this area as a Residential Medium Density Area.
- The petitioner has declared that the intended use of the property is for an up to 60 unit multi-family senior housing.
- Other than what is shown on the site plan, no other changes to the site are planned.
- To the best of staff's knowledge, no non-conformities currently exist on the property and none will be created by the requested Special Use Permit.
- The use will not materially endanger the public health or safety if located where proposed and developed according to the plan.
- The use will not substantially injure the value of adjoining or abutting property.
- This requested Special Use Permit is not consistent with the City of Shelby Comprehensive Land Use Plan.

**ACTION TAKEN:** Upon a motion made by Mr. Bailey, City Council voted unanimously to deny Resolution No. 16-2014 entitled, "A RESOLUTION

**GRANTING A SPECIAL USE PERMIT FOR MULTI-FAMILY SENIOR HOUSING AT 200 BLOCK OF CHERRYVILLE ROAD”.**

**E. Consent Agenda:**

**ACTION TAKEN:** Mayor Anthony presented the consent agenda. Mr. White made a motion to approve the consent agenda and each item as presented. The consent agenda and following items were unanimously approved:

- 1) Approval of the Minutes of the Regular Meeting of April 7, 2014
- 2) Approval of Special Event Permit Applications:
  - a. June Bug Jam 5K Run/Walk and Kids Fun Run, requested date: May 31, 2014
  - b. Shelby Alive, requested dates: May 22, June 26, July 24, and August 28, 2014
  - c. West Shelby Jubilee, requested date: May 3, 2014
- 3) Approval of a resolution authorizing the assignment of a sole source vendor for the purchase of an aeration blower for the City of Shelby’s Wastewater Treatment Plant Upgrade Project: Resolution No. 17-2014

**END CONSENT AGENDA**

**F. Unfinished Business:**

- 1) Consideration of an ordinance amending the Charter of the City of Shelby to change the method of electing the Mayor and Members of City Council to nonpartisan primary and election: Ordinance No. 23-2014

Mayor Anthony introduced Ordinance No. 23-2014 for Council’s consideration. The Mayor stated for the record that City Council initiated and completed a charter amendment to change the election method in the City of Shelby, following the procedures set out in North Carolina General Statute 160A-102 and the recommendations of Mr. Yelton.

**ACTION TAKEN:** Upon a motion made by Mr. White, City Council voted unanimously to approve and adopt Ordinance No. 23-2014 entitled, “AN ORDINANCE AMENDING THE CHARTER OF THE CITY OF SHELBY TO CHANGE THE METHOD OF ELECTING THE MAYOR AND MEMBERS OF CITY COUNCIL TO NONPARTISAN PRIMARY AND ELECTION”.

**G. New Business: None**

**H. City Manager's Report: None**

**I. Council Announcements and Remarks:**

- 1) **Mayor Anthony reminded Council the Foothills Merry Go Round Festival Honors Awards Banquet is April 24, 2014 and the Festival will be held April 26 and 27, 2014 at Shelby City Park.**
- 2) **Mr. Bailey reported he participated in conference call with the North Carolina League of Municipalities General Government Legislative Action Committee today and will provide a further update to Council at the next meeting.**

**J. Adjournment:**

- 1) **Motion to adjourn**

**ACTION TAKEN: Upon a motion made by Mr. White, City Council voted unanimously to adjourn the meeting at 8:27 p.m.**

**Respectfully submitted,**

**Bernadette A. Parduski, NCCMC, MMC  
City Clerk**

**O. Stanhope Anthony III  
Mayor**

**Minutes of April 21, 2014**