

MINUTES

Regular Meeting
City Hall Council Chamber

May 19, 2008
Monday, 6:00 p.m.

Present: Mayor W. Ted Alexander, presiding; Council Members Christopher H. (Chris) Mabry, Jeanette D. Patterson, Michael R. (Mike) Royster, Joel R. Shores, Jr., Andrew L. Hopper, Sr.; City Attorney Robert W. (Bob) Yelton, City Manager Rick Howell, Acting City Clerk Mary Byrnes, Director of Utilities Brad R. Cornwell, PLS, EI, Fire Chief William Hunt, Director of Public Works Daniel C. (Danny) Darst, Director of Parks and Recreation Charlie Holtzclaw, Director of Planning Services Walter (Walt) Scharer, AICP; and media representatives

Absent: Council Member Larry G. Ware
City Clerk Bernadette A. Parduski

Mayor Alexander called the meeting to order at 6:05 p.m. and welcomed all who were in attendance. Mr. Mabry gave the invocation and Danny Harrill, Commandant of Marine Corp League Foothills Detachment, led the *Pledge of Allegiance*.

A. Approval of agenda:

- 1) Motion to adopt the proposed agenda

Mayor Alexander noted that there were additions to the proposed agenda.

Addition to the Consent Agenda to add the Special Event Permit Application submitted for a Public Discussion with Tim Tyson, author of *Blood Done Sign My Name*, for Saturday, May 31, 2008 at the Court Square from 7:00 PM until 8:30 PM.

Addition to Special Presentations: Recognition of the Mayor's Outstanding Volunteer Service to Operation Inasmuch.

Special Presentations will be made prior to the public hearings portion of the meeting.

ACTION TAKEN: Upon a motion by Mr. Royster, second by Mr. Hopper, City Council voted unanimously to approve the agenda as amended.

B. Special Presentations:

- 1) Recognition of William M. Lynch on the occasion of his retirement from employment with the City of Shelby: Resolution No. 32-2008
- 2) Recognition of the Mayor's Outstanding Volunteer Service Recipient for May 2008: David Brown
- 3) Recognition of the Mayor's Outstanding Volunteer Service Recipient for May 2008: Operation Inasmuch
- 4) Mayor's presentation of *The Order of the Long Leaf Pine* awarded to Eugene F. Allen by Governor Michael F. Easley

C. Public Hearings:

- 1) Consideration of an ordinance amending the Unified Development Ordinance and zoning map of Shelby, North Carolina and the granting of a Special Use Permit: Ordinance No. 20-2008

Request to rezone properties located south of Kings Road and on the west side of East Marion Street, and lying within the City of Shelby, from the Residential 10 (R-10) District to the Residential 6-Conditional Use District (R-6-CU)

Parcel ID Nos. 50584, 22244, and 22247 or Tax Map 6-8, Block 1, Lot Nos. 109, 64, and 67

Mr. Scharer was sworn and presented the staff report. This proposed rezoning from the Residential 10 (R-10) District to the Residential 6-Conditional Use District is for a site on East Marion Street for a 54 unit duplex multi-family development. The total area of the site is approximately 12.5 acres. The subject properties are currently vacant. Surrounding land uses include single family dwellings, multi-family dwellings, the mall and a small mobile home park. The current land development plan designates this area as low density residential that borders a commercial area. The proposed development will create a dwelling unit density of 4 units per acre. This density is identical to the current allowable density of 4 units per acre. The proposal is consistent with the City's Land Development Plan. To the best of staff's knowledge, no non-conformities currently exist on the property and the proposed zoning will create none. The Planning and Zoning Board recommended this zoning change.

Mayor Alexander asked City Attorney, Robert Yelton, to give an explanation of quasi-judicial hearings. Mr. Yelton explained that a quasi-judicial hearing is similar to a court case in that the testimony is sworn and the person testifies

to the facts as they know them to be. Council listens to the testimony as a judge would, then makes their decision based on the facts presented and not on opinions or personalities.

Mayor Alexander opened the public hearing at 6:25 p.m. and invited comments from the public:

Terry Ledbetter, 1868 East Marion Street, spoke against the rezoning and granting of a Special Use Permit. His concerns this development would create were increased traffic congestion to East Marion Street, increase in neighborhood crime, and decrease in property values for the homeowners in the area.

Anthony Lester, 4609 Dundas Drive, Greensboro, NC, spoke for the rezoning and granting of a Special Use Permit. Mr. Lester is the site designer for the Kensington Gardens development.

Maida Renson, 309 Country Club Drive, Greensboro, NC, spoke for the rezoning and granting of a Special Use Permit. Ms. Renson is employed by Carolina Community Developers, the applicant for the rezoning request and special use permit. She gave a description of the development and provided Council with pictures of the proposed duplexes. She stressed that the development is not a subsidized housing project.

Rex Morris, 2452 Kings Road, spoke against the rezoning and granting of a Special Use Permit. He provided Council with a printed copy of his comments. He pointed out that the City's Strategic Growth Plan states that Shelby is committed to homeownership. He added that Shelby's percentage of renter occupied housing, 42.7 percent, exceeds the NC State average of 32 percent. He voiced concern over potential increase in crime and in traffic congestion with this development's location.

Cheryl Huntley, 1854 East Marion Street, presented a petition of 139 signatures of citizens opposed to the rezoning and granting of a Special Use Permit for this development project. She also voiced concern over the potential increase in traffic congestion with this development's location.

Brett Lawrence, 119 Spiral Lane, spoke against the rezoning and granting of a Special Use Permit. He is concerned that this development is a fundamental change in land use and the developer should develop the property within the constraints of the current zoning district.

Stacy Heavner, 417 Allen Street, spoke against the rezoning and granting of a Special Use Permit. He voiced concerns that this development over time will create an increase in crime, traffic congestion, and decrease in property

values for this area. He stressed that growth in home ownership is important to Shelby's future prosperity.

Karen Ledbetter, 1868 East Marion Street, spoke against the rezoning and granting of a Special Use Permit. She wants to see Shelby stay the City of Pleasant Living.

Kathy Revere, 1909 East Marion Street, spoke against the rezoning and granting of a Special Use Permit. As a senior citizen, she expressed her concern over the safety of the senior citizens who live alone in this area and the potential for increase in crime.

Eddie Sisk, 117 Spiral Lane, spoke against the rezoning and granting of a Special Use Permit. He voiced concern over the quality of management and type of residents these developments can bring into an area.

Deborah Oates, 1856 East Marion Street, spoke against the rezoning and granting of a Special Use Permit. She feels the quiet neighborhood will be disturbed by the increase in traffic and potential foot traffic that may use her property to access the mall area. She also feels homeowners take pride in their property and renters do not.

Mayor Alexander closed the public hearing at 6:58 p.m.

Mr. Yelton advised Council that a quasi-judicial hearing require them to state a justifiable reason for denial or approval of the petition. Discussion by Council followed.

Mr. Hopper stated he has not been convinced the zoning should be changed to accommodate a rental development when the City wants to promote homeownership and the property is zoned for development of single family dwellings. Based on the available information, he would vote to deny Ordinance No. 20-2008.

Mr. Shores stated that Shelby needs growth in homeownership and does not support this rental development. Based on the available information, he would vote to deny Ordinance No. 20-2008.

Mr. Royster stated the citizens demonstrated with their petition their opposition to this type development and the R-10 zoning district is already established in this area. Based on the available information, he would vote to deny Ordinance No. 20-2008.

Mrs. Patterson stated that the R-10 zoning district should not be changed since the homeowners have spoken and they are as expert on their own

properties as anyone can be. Based on the available information, she would vote to deny Ordinance No. 20-2008.

Mr. Mabry gave respect to the Planning and Zoning Board which passed this rezoning request by unanimous vote, and now based on the available information, he would vote to deny Ordinance No. 20-2008.

ACTION TAKEN: Upon a motion by Mr. Hopper, second by Mr. Shores, City Council voted unanimously to deny Ordinance No. 20-2008 entitled, "AN ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE AND ZONING MAP OF SHELBY, NORTH CAROLINA AND THE GRANTING OF A SPECIAL USE PERMIT".

- 2) Consideration of a resolution granting a Special Use Permit to Penco Land Company, LLC located at the corner of Sue Lane, Earl and County Home Roads: Resolution No. 35-2008

Parcel ID No. 53518 or Tax Map 6-56, Block 1, Portion of Lot 76

Mr. Scharer presented the staff report. This proposed special use permit is for a site at the corner of Sue Lane and Earl and County Home Roads for a 48 unit multi-family apartment complex. The total area of the site is approximately 5 acres. A multi-family development with 25 or more units is permitted by a special use permit in the General Business zoning district. The subject property is currently vacant. To the best of staff's knowledge, no non-conformities currently exist on the property and the proposed zoning will create none.

Mayor Alexander opened the public hearing at 7:23 p.m. and invited comments from the public:

Mike Philbeck, 1805 Arbor Way Drive, spoke for the resolution granting a Special Use Permit. He noted that the applicant meets the findings of fact of the Special Use Permit. He added that Sue Lane area was zoned GB to encourage this type of development for the area.

James Ross, 12223 Fox Valley Street, Raleigh, NC spoke for the resolution granting a Special Use Permit. He is the architect for this development.

Frankie Pendergraph, 2708 Highway 64 West, Apex, NC spoke for the resolution granting a Special Use Permit. She is the developer of the project. She spoke about other uses allowed in the GB district that are less desirable than this development.

D. P. Smith, 1016 and 1012 Earl Road, spoke against the resolution granting a

Special Use Permit. He feels these type developments attract undesirable people to the area and he is concerned about increased traffic congestion in the area. He is opposed to the project being a rental property development.

Christine Keaton, 909 Earl Road, spoke against the resolution granting a Special Use Permit. She is concerned about the increase in undesirables living in these type developments. She also felt the neighborhood was not properly notified about this meeting as she claims to be the only one who received the public hearing notice in her area. She is not opposed to single family dwellings built on this property.

Roy L. Cook, 1019 Gant Street, spoke against the resolution granting a Special Use Permit.

Lee VanDeCarr, 2105 Browning Place, Raleigh, NC, spoke for the resolution granting a Special Use Permit. He works for the developer and stated that the plans are to build an attractive development and it conforms with the City's Land Development Plan for this area.

Stacey Heavner, 417 Allen Street, spoke against the resolution granting a Special Use Permit. He voiced his concern about the potential for increased traffic congestion in this area.

Mayor Alexander closed the public hearing at 7:57 p.m.

Discussion by Council followed.

Mr. Shores, Mr. Hopper, Mr. Royster, Mrs. Patterson, and Mr. Mabry all stated the same reasons that the property is already zoned for this type development and this is a good use of the property in the GB zoning district.

ACTION TAKEN: Upon a motion by Mr. Shores, second by Mrs. Patterson, City Council voted unanimously to approve and adopt Resolution No. 35-2008 entitled, "A RESOLUTION GRANTING A SPECIAL USE PERMIT TO PENCO LAND COMPANY, LLC LOCATED AT THE CORNER OF SUE LANE, EARL AND COUNTY HOME ROADS".

- 3) Consideration of a resolution granting a Special Use Permit to Cleveland County Schools located at 1004 Industry Drive: Resolution No. 36-2008

Parcel ID No. 46902 or Tax Map 3184, Block 1, 45,000 SF of Lot 39

Mr. Scharer presented the staff report. This proposed special use permit is for a site at 1004 Industry Drive for the construction of a 7,258 SF mobile classroom. The total area of the site is approximately 45,000 SF lease space.

Schools are permitted by a special use permit in the Light Industrial zoning district. The subject property is currently zoned Light Industrial and is also vacant. To the best of staff's knowledge, no non-conformities currently exist on the property. Staff has reviewed the proposed site plan for compliance with all City regulations.

Mayor Alexander opened the public hearing at 8:02 p.m. and invited comments from the public.

The public offered no comments and Mayor Alexander closed the public hearing at 8:03 p.m.

There was no discussion by Council.

ACTION TAKEN: Upon a motion by Mr. Royster, second by Mr. Hopper, City Council voted unanimously to approve and adopt Resolution No. 36-2008 entitled, "A RESOLUTION GRANTING A SPECIAL USE PERMIT TO CLEVELAND COUNTY SCHOOLS LOCATED AT 1004 INDUSTRY DRIVE".

4) Consideration of a proposed ordinance to amend the Unified Development Ordinance of the City of Shelby: Ordinance No. 21-2008

Mr. Scharer presented the staff report. According to Shelby's Unified Development Ordinance (UDO), one of the objectives of the RO Residential-Office District is to encourage land uses that serve as an adequate buffer between intensive nonresidential uses and residential uses. Uses permitted in the Residential Office District include single family and multifamily residences; offices; institutional; business, professional, and personal services; and limited support retail businesses. Several proposed rezonings in the past couple of years have raised concerns among staff, Planning and Zoning Board, and citizens. The primary concern is that many of the uses currently permitted in the RO District are more intense than necessary. Some of these uses include restaurants and convenient stores. The Planning and Zoning Board reviewed the City's permitted uses in the Residential Office District in the UDO and proposed changes to the RO district in an effort to encourage land uses that serve as an adequate buffer between intensive nonresidential uses and residential uses.

The Planning and Zoning Board recommends that City Council consider amending the permitted uses in the Residential Office District found in Article IX, Section 9-3.1. The proposed amendment deletes the following uses from the RO Zoning District:

- Boarding and Rooming House
- Group care Facility

- Halfway House
- Homeless Shelter
- Multi-Family Conversion of Single-Family Residence
- Barber Shop
- Beauty Shop
- Cleaning and Restoration Contractor
- Hotel or Motel
- Photocopying and Duplicating Services
- Shoe Repair or Shoeshine Shop
- Veterinary Clinic
- Vocational, Business or Secretarial School
- Bookstore
- Computer Sales
- Convenience Store
- Drugstore
- Florist
- Gift, Novelty and Souvenir Shop
- Newsstand
- Optical Goods Sales
- Restaurant

Each of these uses listed above will continue to be permitted in other zoning districts.

Mr. Royster recused himself from this case due to conflict of interest since his company owns and operates convenience stores in Cleveland County.

Mayor Alexander opened the public hearing at 8:10 p.m. and invited comments from the public:

The public offered no comments and Mayor Alexander closed the public hearing at 8:11 p.m.

There was no discussion by Council.

ACTION TAKEN: Upon a motion by Mrs. Patterson, second by Mr. Mabry, City Council voted four in favor (Patterson, Mabry, Shores, and Hopper) and one abstention (Royster) to approve and adopt Ordinance No. 21-2008 entitled, "A PROPOSED ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE OF THE CITY OF SHELBY".

- 5) Consideration of an ordinance amending the zoning map of the City of Shelby, North Carolina: Ordinance No. 22-2008

Request to rezone properties located at 1009 West Dixon Boulevard, 423

Leander Street, and the southwest corner of West Dixon Boulevard and Westside Drive from the Residential 8 (R-8) District to the Residential Office (RO) District

Parcel ID Nos. 23094, 20465, and 70325 or Tax Map S-43, Block 6, Lot Nos. 1, 2, and 15

Mr. Scharer presented the staff report. The total acreage of the subject properties is 1.474 acres. The three properties lie south on West Dixon Boulevard between Leander Street and Westside Drive. The current land development plan designates the properties as low to medium density residential. In the current land development plan, this site is part of a low to medium density residential area. However, this area has been designated as part of a corridor revitalization area on the draft framework plan of the new comprehensive land use plan. The corridor revitalization area will be defined in more detail when the comprehensive land use plan moves into the economic development phase of the project. The neighborhood adjacent to this site remains stable; however, there is a relatively high volume of rental housing close to the subject properties. If this property were developed for non-residential uses then great care should be taken to ensure a compatible transition and proper screening to the single family dwellings. This section of US 74 or West Dixon Boulevard has an ADT of roughly 30,000 vehicles per day. Staff recommends no direct access to US 74 and only permitting access from Leander Street and Westside Drive. In light of the current volume of vacant commercial property throughout Shelby, Staff feels that it would be wise to evaluate the new comprehensive land use plan and the new corridor revitalization district before acting on such a general use rezoning of this area. However, staff does not object to a possible conditional use zoning change.

Council questioned Mr. Scharer about the case.

Mayor Alexander opened the public hearing at 8:15 p.m. and invited comments from the public:

Johnny Presson, 829 Elmwood Drive, is undecided about this rezoning request. He would like to know more about what type of business would locate in this area as he is concerned about potential increase in traffic congestion at a dangerous intersection. He requested Council to delay action on rezoning these properties to RO and requested a copy of the RO district .

John Blanton, 805 Elmwood Drive, spoke against the ordinance to rezone the property to RO. He voiced concern over increase in traffic congestion and the rezoning would be detrimental to keeping the integrity of the neighborhood.

Marlene Peeler, 217 Windsor Drive and Chair of the Planning and Zoning Board, spoke for the ordinance to rezone the property to RO. She spoke about there are no intrusive uses left in the RO district that could be detrimental to this neighborhood. She reviewed the land uses allowed in the RO district.

RESIDENTIAL USES
Bed and Breakfast or Tourist Home
Existing Detached Garage Apartment
Family Care Home
Modular Home
Multifamily Dwelling (including condominium)
Planned Unit Development
Single-Family Detached Dwelling
Temporary Shelter
Townhouse Dwelling
Two-Family Dwelling (duplex)
ACCESSORY USES AND STRUCTURES
Accessory Dwelling Unit
Accessory Uses and Structures (customary)
Caretaker Dwelling
Communication Tower Under 60' in Height
Emergency Shelter
Home Occupation
Satellite Dish Antenna
Swimming Pool
RECREATIONAL USES
Athletic Fields
Civic, Social and Fraternal Associations
Country Club with Golf Course
Dance School, Music Instruction
Golf Course
Physical Fitness Center
Private Club or Recreation Facility, Other
Public Park or Recreational Facility, Other
Sports and Recreation Club, Indoor
Swim and Tennis Club

Steve Costner, 1222 Donna Drive spoke for the ordinance to rezone the property to RO. He owns homes at 422 and 423 Leander Street and rents the homes. It is difficult to build home ownership in this location, because of the close proximity to West Dixon Boulevard.

Janice Beaver, 603 Leander Street, spoke against the ordinance to rezone the property to RO. She would like to know more about what the development plans are for the properties. She is concerned the potential use may be detrimental to the residential area.

Mark Hamrick, 107 Borders Road, spoke against the ordinance to rezone the property to RO. He questioned the timing of this case presented right after Council approved changes to the RO zoning district.

Mayor Alexander closed the public hearing at 8:39 p.m.

Discussion followed by Council.

ACTION TAKEN: Upon a motion by Mr. Shores, second by Mr. Royster, City Council voted unanimously to deny Ordinance No. 22-2008 entitled, "AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF SHELBY, NORTH CAROLINA".

6) Consideration of an ordinance to extend the corporate limits of the City of Shelby, North Carolina: Ordinance No. 23-2008

Mr. Scharer presented the staff report. In March of 2007 the City of Shelby accepted a donation of 1.887 acres of land abutting the Shelby-Cleveland County Regional Airport. City Council adopted a resolution of intent to annex this property at its regular meeting on April 21, 2008. The resolution also set a date for a public hearing for this annexation at the City Council meeting for May 19, 2008.

Mayor Alexander opened the public hearing at 8:40 p.m. and invited comments from the public.

The public offered no comments and Mayor Alexander closed the public hearing at 8:41 p.m.

ACTION TAKEN: Upon a motion by Mr. Royster, second by Mrs. Patterson, City Council voted unanimously to approve and adopt Ordinance No. 23-2008 entitled, "AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF SHELBY, NORTH CAROLINA".

D. Public Comment: None

E. Consent Agenda:

ACTION TAKEN: Mayor Alexander presented the consent agenda. Mr. Shores made a motion to approve the consent agenda and each item as presented. After a second from Mrs. Patterson, the consent agenda and following items were unanimously approved:

1) Approval of the Minutes of the Regular Meeting of May 5, 2008

- 2) Approval of the Minutes of the Special Meeting of May 8, 2008
- 3) Approval of the Minutes of the Special Meeting of May 13, 2008
- 4) Approval of a Special Event Permit Application:
 - a. A Public Discussion with Tim Tyson sponsored by the Cleveland County Chamber's Division of Travel & Tourism on May 31, 2008

END CONSENT AGENDA

F. Unfinished Business: None

G. New Business: None

H. City Manager's Report: None

I. Adjournment:

- 1) Motion to adjourn

ACTION TAKEN: Upon a motion by Mr. Shores, second by Mr. Hopper, City Council voted unanimously to adjourn the meeting at 8:44 p.m.

Respectfully submitted,

Mary K. Byrnes
Acting City Clerk

W. Ted Alexander
Mayor

Minutes of May 19, A. D. 2008