

ORDINANCE NO. 5-2016

**A PROPOSED ORDINANCE AMENDING THE ZONING MAP
OF THE CITY OF SHELBY, NORTH CAROLINA
AND GRANTING A SPECIAL USE PERMIT
FOR MULTI-FAMILY DEVELOPMENT
AT 1016 SUE LANE**

WHEREAS, the City of Shelby has received an application requesting a Special Use Permit for property located within the City or its area of Extraterritorial Jurisdiction; and,

WHEREAS, the Staff has reviewed said application for a Special Use Permit and has made its findings and recommendations to City Council; and

WHEREAS, Section 4-7.2 of the City of Shelby Unified Development Ordinance authorizes the establishment of “Special Use Permit” as a means by which special conditions can be imposed on the use of property to assure compliance with the Unified Development Ordinance, promote the welfare of adjacent property owners and the protection of the general public interest; and

WHEREAS, in accordance with GS 160A-364, the City Council has considered a Special Use Permit request by Penco Land Company, LLC in a public hearing on this date following quasi-judicial hearing procedures as outlined in Section 4-7.2 of the City of Shelby Unified Development Ordinance; and

WHEREAS, after hearing all who wished to present testimony on this Special Use Permit request and consideration of the facts presented in this cause, the Council made the Findings of Fact and Conclusions of Law which are stated on Attachment “A” which is incorporated herein by this reference.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE
CITY OF SHELBY, NORTH CAROLINA:**

Section 1. In accordance with Chapter 160A, Article 19 of the North Carolina General Statutes, as amended, the City of Shelby may approve a Special Use Permit according to the requirements of the Unified Development Ordinance (Appendix A of the Shelby City Code) and the Shelby Unified Development Ordinance and Shelby Zoning Map (Appendix A of the Shelby City Code), 1016 Sue Lane is hereby amended from General Business (GB) and Residential 20 (R20) Zoning Districts to General Business (GB) Zoning District. Said area of zoning is more fully described as the parcel listed by the Cleveland County Tax Office as Parcel Identification Number 53518.

Section 2. This zoning change is consistent with the Comprehensive Land Use Plan.

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Section 3. In accordance with Section 4-7.7 of the City of Shelby Unified Development Ordinance, a Special Use Permit is hereby granted to Tom Ulrich for construction of 56 multi-family dwelling units. The terms and conditions of such permit are stated in Attachment, "A" which is attached hereto and incorporated herein by this reference.

Section 4. The City Clerk of the City of Shelby is hereby authorized and directed to cause resolution and recording of this Special Use Permit with the Cleveland County Register of Deeds.

Section 5. This Special Use Permit shall become effective upon its adoption and approval.

ADOPTED AND APPROVED this the 15th day of February 2016.

O. Stanhope Anthony III
Mayor

ATTEST:

Bernadette A. Parduski, NC-CMC, IIMC-MMC
City Clerk

APPROVED AS TO FORM:

Robert W. Yelton
City Attorney

ATTACHMENT "A"

Prepared by and return to the City of Shelby, PO Box 207 Shelby, North Carolina 28151

NORTH CAROLINA

FILE #: 1044

CLEVELAND COUNTY

**THE CITY OF SHELBY, NORTH CAROLINA
SPECIAL USE PERMIT**

On the date(s) listed below, the City Council of the City of Shelby met and held a public hearing to consider the following application:

Record Owner(s): _____ County Home Road Development, LLC _____

Applicant/Developer: _____ Penco Land Company, LLC _____

Tax Map, Block, and Lot#: _____ 53518 _____

Deed Reference: **BOOK** _____ 1262 _____, **PAGE** _____ 1490 _____ **Acreage:** _____ 4.2 acres _____

Type and Intensity of Use: 56 multi-family development for the elderly

Meeting Date(s): _____ February 15, 2016 _____

Approval Date: _____ February 15, 2016 _____

SECTION 1. FINDINGS: Having heard all of the evidence and arguments presented at the hearing, the City Council, at its regular meeting, finds and determines that the application is complete, and subject to the conditions imposed below, the following findings are made:

1. The application is complete; and
2. The appointed agent of the property, Penco Land Company, LLC, submitted the required application and site plan for a Special Use Permit; and
3. According to Article 9-3-1, multi-family dwelling units are permitted in the General Business (GB) Zoning District with a Special Use Permit issued by City Council; and
4. The subject parcel lies within the City of Shelby fronting at 1016 Sue Lane in the General Business (GB) and Residential 20 (R20) Zoning Districts; and
5. Land Uses in the surrounding area is a mixture of commercial, residential, and institutional uses; and
6. The Comprehensive Land Use Plan designates this area as a Corridor Revitalization area; and

7. The petitioner has declared that the intended use of the property is for fifty-six (56) multi-family dwelling units for the elderly; and
8. Other than what is shown on the site plan, no other changes to the site are planned; and
9. If completed as proposed in the application, the development will comply with the requirements of the Unified Development Ordinance; and
10. The use will not materially endanger the public health or safety if located where proposed and developed according to the plan; and
11. The use will not substantially injure the value of adjoining or abutting property; and
12. 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
13. The location and character of the use, if developed according to the plan as submitted and approved, will be in general conformity with the Comprehensive Land Use Plan.

SECTION 2. CONCLUSIONS:

1. It is the City Council's CONCLUSION, that if completed as proposed, the development, will NOT materially endanger the public health or safety; and
2. It is the City Council's CONCLUSION, that if completed as proposed, the development, will NOT substantially injure the value of adjoining or abutting property; and
3. It is the City Council's CONCLUSION, that if completed as proposed, the development, will be in harmony with the area in which it is to be located; and
4. It is the City Council's CONCLUSION, that if completed as proposed, the development, will be in general conformity with the Comprehensive Land Use Plan or other plans officially adopted by the City Council.

SECTION 3. CONDITIONS: Now, therefore, the application to make use of the above-described property for the purpose indicated is hereby approved and granted, subject to all applicable provisions of the Unified Development Ordinance, Sections 3 and 4 of this permit, and the following special condition(s), which the City Council finds to be in the public interest:

1. Construct sidewalks adjacent to the apartment complex development along Sue Lane per Section 40-17 in the City of Shelby Code of Ordinance
2. The development of the tract shall proceed in conformity to all plans and design features submitted as part of the Special Use Permit application and kept on file by the City of Shelby Planning Services Department; and

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SECTION 4. VESTED RIGHTS. Approval of this permit confers upon the property the right to develop with the type and intensity of use as herein described and as shown on the approved site plan in accordance with section 4-15 of the Unified Development Ordinance.

SECTION 5. SEVERABILITY AND RECORDATION. Invalidation of any one or more of the conditions set forth herein shall not adversely affect the balance of said conditions, which shall remain in full force and effect. This permit shall become null and void if not recorded in the office of the Register of Deeds, Cleveland County, North Carolina, on or before February 15, 2017.

O. Stanhope Anthony III
Mayor

ATTEST:

Bernadette A. Parduski, NC-CMC, IIMC-MMC
City Clerk

CERTIFICATE

I, Bernadette A. Parduski, the duly appointed, qualified, and City Clerk of the City of Shelby do hereby certify that the attached Extract from the Minutes of the Regular Meeting of the City Council of said City held on February 15, 2016 at 6:00 PM, is a true and correct copy of the original minutes of said meeting on file and of record in my office insofar as said original minutes relate to the matters in said attached extract. I further certify that the copy of the Special Use Permit appearing in said attached Extract is a true and correct copy of said permit adopted at said meeting and on file and of record in my office.

IN WITNESS THEREOF I have hereunto set my hand and official seal of the City of Shelby on this the 15th day of February 2016.

Bernadette A. Parduski, NC-CMC, IIMC-MMC
City Clerk

(City Seal)

_____, appointed agent of the subject property, do hereby acknowledge receipt of this Special Use Permit and agree to the conditions stated within. I further acknowledge that no work may be done pursuant to this permit except in accordance with all of its conditions and requirements and that this restriction shall be binding upon me and my successors in interest and shall run with the land in perpetuity.

ATTEST:

AGENT, PENCO LAND COMPANY, LLC