MINUTES OF HARRISONBURG PLANNING COMMISSION
October 14, 2009

The Harrisonburg Planning Commission held its regular meeting on Wednesday, October 14, 2009, at 7:00 p.m. in the City Council Chambers, 409 South Main Street.

Members present: Richard Baugh, Jared Burden, Charles Chenault, Muawia Da'Mes, and Alan Finks.

Members absent: Bill Jones and J.M. Snell.

Also present: Stacy Turner, Director of Planning and Community Development; Adam Fletcher, City Planner; Alison Banks, Planner and Secretary.

Chairman Burden called the meeting to order and determined a quorum with four of seven members in attendance. He then asked for review and approval of the minutes from the September 9, 2009 Planning Commission meeting.

Mr. Chenault moved to approve the minutes from the September 9, 2009 meeting.

Mr. Finks seconded the motion.

All voted in favor of approving the minutes. (4-0)

Chairman Burden then asked for review and approval of the minutes from the Comprehensive Plan Review meeting on September 16, 2009.

Mr. Chenault moved to approve the minutes from the September 16, 2009 Comprehensive Plan Review meeting.

Mr. Finks seconded the motion.

All voted in favor of approval. (4-0)

New Business

Special Use Permit – 429 Eastover Drive – Major Family Day Home

Chairman Burden read the first item of business and asked for staff to review. (Commissioner Da'Mes arrived shortly after the beginning of the staff report.)

Mrs. Banks said the Comprehensive Plan designates this area as Low Density Residential. This designation states that these areas consist of single-family detached dwellings with a maximum density of 1 to 4 units per acre. Low-density sections are found mainly in well-established neighborhoods and are designed to maintain the existing character of neighborhoods and to provide traditional areas for home ownership.

The following land uses are located on and adjacent to the property:

Site: Single-family dwelling and minor family day home operation, zoned R-1

North: Across Eastover Drive, intersection with Cardinal Drive and single-family homes, zoned R-1

East: Single-family dwelling, zoned R-1

South: Interstate 81 and across to James Madison University, zoned M-1

West: Single-family dwelling, zoned R-1

The applicants are requesting a special use permit per Section 10-3-34 (6) of the Zoning Ordinance to allow a "major family day home" within the R-1, Single Family Residential District. The property is located at 429 Eastover Drive directly across from the "T" intersection of Eastover Drive and Cardinal Drive. "Major family day homes" are defined by the Zoning Ordinance as: *A child day care program offered in the residence of the provider or the home of any of the children in care for six (6) through twelve (12) children under the age of thirteen (13), exclusive of any children who reside in the home, when at least one (1) child receives care for compensation.*

Presently, the applicants operate a "minor family day home" within their single-family dwelling located on the site. A "minor family day home" is allowed through the home occupation permit process and is defined in the Zoning Ordinance as *a child day care program offered in the residence of the provider or the home of any of the children in care for one (1) through five (5) children under the age of thirteen (13), exclusive of any children who reside in the home, when at least one (1) child receives care for compensation. No conditions more restrictive than those imposed on residences occupied by a single-family shall be imposed on the day home.* Based upon an approved home occupation permit, the applicants' minor family day home, known as Shining Star, has been operating from this location for approximately ten months.

Along with the home occupation permit, the applicants have a current City of Harrisonburg business license, also in the name of Shining Star, as well as being licensed by the Virginia Department of Social Services (VDSS) to operate a Family Day Home for up to 12 children. The VDSS has strict requirements that individuals must meet in order to obtain a license to provide child care in the home. These regulations impose standards for cleanliness, play time, floor area, and more. Staff realizes that many concerns are addressed during the licensing process; however, licensing from the VDSS does not exempt an applicant from maintaining compliance with local ordinances or laws. Therefore, approval of this special use permit application would allow them to operate legally based upon our zoning code.

The applicants have stated their goal is to have the maximum number of children at the Major Family Day Home, with hours of operation between 6 a.m. and 6 p.m. Monday thru Friday. Persons, who do not live at this residence, are permitted to be employed at this Major Family Day Home, and at this time the applicants believe they will have one additional care giver. Currently, drop-off and pick-up times for the Minor Day Home vary for each child, with morning hours being the busiest. The applicants feel this same situation would continue if approved as a Major Day Home.

Eastover Subdivision, where the property is located, has red zone permit parking; therefore, parking permits are necessary Monday thru Friday from 4 a.m. to 6 p.m. In discussions with the Harrisonburg Police Department, staff was informed that permit parking is enforced on a complaint basis within neighborhoods. The applicants have a driveway where parents can pull-in to drop-off children, or they can utilize their visitor parking passes. If complaints arise, the applicants may need to work out some type of arrangement that would ensure violations do not occur.

Staff has no concerns with the operation of a Major Family Day Home at this location and recommends approval of the special use permit request.

Chairman Burden asked if there were any questions for staff. Hearing none, he opened the public hearing and asked if the applicant or applicant's representative would like to speak.

Mrs. Cassandra Allgood, 429 Eastover Drive, said she is the applicant for this special use permit. She is asking for the permit because she would like to provide care for twelve children in her home, which would help with making an honest living.

Chairman Burden asked if there was a big difference in economics when you go from five children to twelve children.

Ms. Allgood replied yes, a little bit.

Chairman Burden asked how the neighbors felt about this request.

Ms. Allgood said she has spoken to neighbors on both sides of her property and they were fine with the idea. I even have a letter from one neighbor. Those neighbors that are before you tonight I cannot answer for them; although, I have never had any problems or heard of any problems from anyone.

Chairman Burden asked if there were any further questions for Ms. Allgood.

Mr. Da'Mes asked if parents usually pulled into the driveway when they dropped off children or do they park along the street.

Ms. Allgood responded that parents usually pull along the street, right in front of the house. The parents all come at different times, it is rare to have two there at a time.

Mr. Da'Mes asked how long has there been a minor day home at this residence.

Ms. Allgood said this is the second year.

Chairman Burden asked if there were any further questions. Hearing none, he asked if there was anyone else who would like to speak for the request. Hearing none, he asked if there was anyone wishing to speak in favor of the request. Hearing none, he asked if there was anyone wishing to speak in opposition of the request.

Mr. Joseph Enedy, 420 Eastover Drive, said he and his wife have lived at this address since 1974 and are both retired. I would like to describe a neighborhood under assault. This is a neighborhood that once gathered every year on Labor Day for a picnic, where children rode bicycles in the street and played in the backyards; but since the City needed a by-pass for downtown and Cantrell Avenue was built, it has lead to other things for our neighborhood. One was the opening up of Paul Street to Cantrell Avenue, before there was only the one entrance that was via Reservoir Street. This opening in turn gave JMU an exit to Paul Street and on to Cantrell Avenue. Was our neighborhood ever consulted about opening up Paul Street? No, we were not; we were under assault from the City. A second major assault came with another City project, the improvements along Reservoir Street. What happened then, and I made my opinions known early about this, was that more traffic was coming through our neighborhood. People were cutting-through, avoiding the traffic light at Hardees. The neighborhood did appear before City Council several years ago in regard to enforcing a neighborhood traffic calming scenario. Most of us in the neighborhood did contribute to a cost sharing with the City for signage, stop signs, and a traffic island at the end of Eastover at Reservoir Street. This has helped with the cut-through traffic. The other improvements were at the lower end of Paul Street, near the JMU back entrance, we actually do not have much JMU cut-through traffic.

Now the neighborhood and personal property has become the victim to outside influences. Parked vehicles have been hit by other vehicles or vandalized. The applicants before you tonight have even

experienced some of this when they had a service vehicle stolen. Another neighbor came out for the morning paper and found a teenager, unconscious, in the front yard; this was not a neighborhood teenager. Neighbors have had vehicles shot at when parked on their private property. Other assaults to the neighborhood come from the normal turnover of residential property. Some properties are being bought by parents of JMU students; they put a child in the residence for four years and that child invites in several friends to help with the rent. This contributes to the parking problem in the neighborhood. JMU has bought several properties along the campus, the City can take those off the tax records; they are creating a buffer. They do maintain the properties nicely, sometimes improve them. There are probably more examples of vandalism, trashing, parking and as far as we can determine it is not the neighborhood residents creating the problems, but someone from outside.

This background to the neighborhood is necessary before I make one final point regarding this request. My understanding is that, if granted, this variance for the Allgoods would secure a license to increase the number of children they care for from a maximum of five to a maximum of twelve, under the age of thirteen. When I came home at 4:35 today, there were four cars in front of their house. I think two might have been helpers and two were mothers picking-up children, one car was parked such that I could not make a left turn off of Cardinal without creeping into the intersection. If this variance is approved, the door would be open for others in this single-family residential zoning area to ask for variances; one that I can be fairly sure that will happen. Hopefully, a request never approved, is to allow more than two unrelated persons in a single-family residence. The plea will always be the same, "I cannot meet the mortgage, I need more rental". I am not against continuing the situation the same as it is, but to give the flexibility to go to twelve children, that is more than 100% increase. There is no off-street parking at that residence other than what is already occupied by the family's personal vehicles. I do not see how granting this variance promotes the public health, safety, morals, peace, prosperity, and the general community welfare; I believe that is the charge you people work under. To grant a variance does nothing more than provide a loophole, a way for others to come forward. Single-family residential is the most protective, the most restrictive land use the City has and people buying into it generally understand it and do not expect things to disrupt it.

Pam DeBose, 440 Eastover Drive, said she had thought about selling last year and actually had several people who were interested and wanted to turn the home into a residence for JMU students. We are a neighborhood that has approximately 31 houses, we do not have everyone here to speak to this issue; but we have had a concern for some time about the encroachment that has been occurring in the neighborhood. I think we are one of the few neighborhoods that actually borders JMU that is a residential neighborhood. On the other side of campus there is the Maplehurst area, they have the similar zoning; but they have a blue zone parking. For years we have been talking about asking why we cannot get a blue zone parking in our neighborhood. Our neighborhood has become part of the JMU parking area. I know we are here to speak about the request for this variance; therefore, I will speak directly to that. I am not in favor of the variance, I am all about people being able to make more money, but I do not think our neighborhood is the place to have that kind of a variance. I will say that at this particular residence, at the intersection of Cardinal and Eastover Drives, when the parents come to pick-up or drop-off their children they come in multiple cars and they park on the street. It is really not a safe area to be parking, and often encroaches on the other homes. I did bring along some photographs that I wanted to put with the consideration for the parking change (red zone to blue zone). I will say that we appreciate the help of the City in the cut-through traffic,

parking, and speeding problems. I am not sure how I should go about presenting the petition for a zoning change from red parking to blue parking. I think it would have an impact on the variance request that is being discussed now.

Mr. Baugh interrupted and said that the parking is certainly relevant to what you are talking about in terms of the things that the neighbors are feeling and the stress from the parking. However, it is not something that Planning Commission would take up. As a City Council member I am happy to inquire as to how this change can occur; but it is really not technically tied in with what we are doing here tonight.

Ms. DeBose said with the street parking, if it were blue, you would have to have a permit to park there anytime; would that not impact the number of people at the house.

Mr. Baugh replied you have to have a permit now; blue parking just makes it more restrictive.

Ms. DeBose asked would it not matter if you have employees working there and parking on the street.

Mr. Baugh said assuming this was granted, the applicants would have to figure out how to make this compliant with the parking regulations.

Mr. Keith Holzer, 424 Cardinal Drive, said he regrets having to be here tonight, the Allgoods have been quite fine neighbors and I respect their entrepreneurship. However, going from five children in the home to twelve is really changing the nature of the business; it is now a commercial business. It does not seem suited for a residential neighborhood. I know there are a lot of houses with students and the neighborhood just continues to go downhill. This does not seem like a good idea for a neighborhood that is already under stress. I regret to ask that you vote "no" on this matter.

Mr. Fred Allgood, applicant at 429 Eastover Drive, said the children for the day care begin to come in between 5:30 a.m. and 6:00 a.m. When a car arrives to drop a child off for day care they are there only two to three minutes and then they are gone. There may be an occasion when they bump into each other in the evening when they pick a child up; but they are not there long at all. There is a little, maroon car, I believe it might be a Toyota, and it is always parked along our side of the street, near our house. This car is not part of the day care; but it is parked there all day, every day. I have never had a problem with parking in the neighborhood. I do not have a problem with the JMU students. We have one truck and one car at our house and that is all; that is all we own. We have five children of our own and they will come by and visit on Saturdays or whenever; they do not block any one's parking space or travel. I have never had a problem with any of these neighbors. I have been living a 429 Eastover drive for eleven years and have tried to befriend all my neighbors; but there are people here tonight who not spoken to me or my wife in those eleven years.

Chairman Burden asked if all the children were being dropped-off at the same time frame every day.

Mr. Allgood replied it is different times for each child. A child may be dropped-off at 6:00 a.m. and the parents are getting off from work at 1:00 p.m. and come by to pick the child up. Some children are dropped-off at 8:00 a.m. and picked-up at 4:00 p.m. or 5:00 p.m. Some are dropped-off at 9:00 a.m. and so on. Generally, all the children are gone about 5:30 p.m. Sometimes parents may bump into each other, and there may be a couple of cars; but not to the point that it is a problem. We used to have many more vehicles there, when our children were at home there were four or five vehicles there all the time. Now we have both our vehicles in the driveway, I do not feel it is congested.

Chairman Burden asked if there were any further questions for Mr. Allgood. Hearing none, he asked if there was anyone else wanting to speak in regard to the request.

Mr. Jim Fukumoto, 430 Eastover Drive, said he did not intend to come and speak tonight. The Allgoods have been good neighbors; I do not want you to think that the Allgoods do not have neighbors in the neighborhood. Although they do not have a lot of traffic there now, the people who do come make "U" turns right there at that intersection. But it does bother me to think that it may become commercial instead of residential in that area.

Chairman Burden asked if there was anyone else who wished to speak. Hearing none, he closed the public hearing and then stated that he wanted to make some clarification regarding the term variance that has been frequently used tonight. This is not a variance request. A variance is defined as a reasonable deviation from those provisions regulating the size or area of a lot or parcel of land, or the size, area, bulk, or location of a building or structure, when the strict application of the ordinance would be unfair and present undue hardship. This is a special use permit request, not a variance, and as such, the major family day home is one of the listed uses which are explicatively set forth in the code as okay in the R-1 zoning if a special use permit is granted. Therefore, there was a time when the City Council adopted this ordinance with the idea that, under certain circumstances, a major family day home use could be appropriate and be located in an R-1 district. So it is not the same thing as a variance and I think that point needs to be made.

Mr. Chenault made a motion to deny the special use permit. This is an application for a major family day home and for whatever it is called, it is surely a home occupation of one of the heaviest type of uses one can have. We have had recently an application for a home occupation that would involve one person coming to the house at a time and I believe by proffer was limited to just that. The applicants are entitled to a minor family day home by right. Quite frankly, as far as traffic is concerned, this is akin to me as having a small type of convenience store in the neighborhood. I am concerned not only with the safety of the neighbors in the neighborhood, but for the extra children that will be coming to this day care and their safety on this street. Finally, this is an R-1 neighborhood, and I agree with the characterization that it deserves the highest protection for the residents that live in it of any other type of zoning classification. I have a hard time justifying what I consider being an increased usage for any R-1 neighborhood. I think that this is just too heavy of a usage for this neighborhood at this location.

Chairman Burden asked if there was a second on the motion to deny. Hearing none, he stated without a second the motion will not be considered. He then asked if there was any further discussion to be heard on the matter.

Mr. Finks said when we first started discussing major and minor day homes several months ago I was shocked of all the things that were allowed in the R-1 zoning district. I feel a lot like Mr. Chenault does; however, four months ago I voted in favor of a major family day home in my own neighborhood area. To be honest with you, that use has not been as bad as I thought it would be.

Mr. Chenault said I do not think we had anybody speaking in opposition to that particular request; as with this request, we have people from the neighborhood, who all have a vested interest, speaking out in opposition. I can clearly see the difference between the intersection at which the other day care was located and this location, as well as the fact that the use was already being done at that location.

Mr. Baugh said when I first got on Planning Commission we had a number of cases that came before us that were similar to this. By that I mean, it is obvious there has not been a whole lot of communication between the neighbors until now. A lot of the communication is taking place right now; it has taken this public hearing to get the communication flowing. Sometimes we find ourselves being asked to go ahead and make a decision while the people who have the interest in this are still exchanging information and learning for themselves. My inclination is to vote for this, knowing that I will get to vote again at City Council and I reserve the right to change my mind. In the mean time I am hopeful that there can be communication between the parties and perhaps some sort of agreement can be met on some of the issues. It may be that the neighbors have a concern that is expressed to the Allgoods and in turn the Allgoods agree that they would be willing to make that change.

I certainly understand many of the issues, such as parking, that were brought up tonight and there is no reason why we cannot look into why this area is red zone parking instead of blue zone parking, especially if the neighborhood wants to be blue zone. The traffic issue I am very sympathetic to, but this neighborhood is by no means the only neighborhood in Harrisonburg that has a 25 MPH speed limit that people go through at 35 or 40. The only solution to that is to have law enforcement out there 24/7. Finally, the issue of rental property; again, we are happy to work with you on that to get those issues resolved; but you need to let us know.

This request is not the same as a home occupation. There is recognition that the community does need good child day care and there is a shortage of it in the community. That is why there is a special rule that allows us, on a case by case basis, to permit this type use in an R-1 neighborhood. Therefore, I do not think it is quite the same as a convenience store and it is not opening the door for other uses. I intend to vote in favor of the request and I intend to state that my "yes" tonight may not mean a "yes" at City Council, but that is up to discussion among neighbors.

Mr. Finks said we have seen many things come before us where the neighbors were able to get together and discuss the situation and resolve issues. It makes me wonder that there are places where this neighborhood could meet in the middle on some of these issues.

Chairman Burden asked if there was another motion at this time.

Mr. Da'Mes moved to recommend approval of the special use permit as described. There seem to be a lot of external elements that the neighborhood has expressed tonight. As long time residents of Harrisonburg, all of us have seen the growth of the City and have experienced it at some level or another and are very sympathetic to this neighborhood. It is a natural evolution of a City like Harrisonburg that is dominated by a university. There are things that have been put in place to help mitigate the traffic and I feel they are working. In terms of students living in the homes in the neighborhood; that needs to be reported and resolved on a case by case basis. I have complete faith in the Planning Staff to address those concerns. Those situations occur quite a bit in this City and we rectify it. I do not think any of these issues should be held against the Allgoods and I do not think that the neighborhood is holding against them. The concept of a major family day home, for me the first time I heard one of these, I was very reserved on it. I had many concerns, but as I observe the prior major family day home that we approved, I have been very surprised. I have not seen a negative impact on the neighborhood. So, I would like to think that if approved by City Council, that you, the neighbors would also see the minimal impact as well. With concessions, as Mr. Baugh stated, it will help everyone feel as if they were part of the process and everyone will understand what the day care is.

Chairman Burden asked if there was a second for the motion to recommend approval.

Mr. Baugh seconded the motion and added that at the previously approved major family day home location, traffic was more of a concern than at this location. I understand what the neighborhood is saying about this intersection and if the house was one or two lots down the street it would probably make all the difference. But it is nothing compared to the intersection of Blue Ridge Drive and Country Club Road where the other family day home is located. One of the things that happened with that was the communication to the day care applicant about specific concerns, she in turn talked to the parents about it and a solution was worked out. This is a specific example of what can work. So whatever it is, I cannot tell a neighborhood how to handle it; but perhaps this can be the basis for some communication between neighbors. If it is something as simple as not making U-turns in the street or parking along the curb here instead of there, I am sure the Allgoods could express this to the parents; if those lines of communication are opened up.

Chairman Burden asked if there was any further discussion. Hearing none, he called for a roll on the motion.

Commissioner Finks – yes.

Vice Mayor Baugh – yes.

Commissioner Chenault – no.

Commissioner Da'Mes – yes.

Chairman Burden – yes.

Chairman Burden said this will move forward to City Council on November 10, 2009 with a favorable recommendation. (4-1)

Subdivision Ordinance Amendment – 10-2-41(k)

Chairman Burden read the request and asked staff to comment.

Mr. Fletcher said City staff is proposing to amend Section 10-2-41 (k) of the Subdivision Ordinance to reflect the accurate cul-de-sac radii widths as recently modified within the City's Design and Construction Standards Manual (DCSM).

On September 8, 2009, City Council approved several amendments to the City's DCSM; some of which included requirements for a Preliminary Engineering Report (PER) for water and sewer utilities, stormwater management requirements, transit improvements, new street standards, and several others. Specifically, there is now a requirement for sidewalk along both sides of new streets and for sidewalk across all lot frontages (this includes lots within the cul-de-sac). To be consistent, the City's Subdivision Ordinance must be amended to reflect the design guidelines that are implemented by the DCSM.

The amendment is within Section 10-2-41, which outlines the design standards for streets and alleys. In particular, subsection (k) specifies the necessary cul-de-sac radii widths. As opposed to the existing subdivision standard, the City now draws a distinction between the requirements necessary for residential cul-de-sacs and the requirements needed for commercial/industrial cul-de-sacs. Staff is proposing for subsection (k) to be amended as shown: Where permitted by the planning commission, *residential* permanent dead-end streets, courts or cul-de-sacs shall be terminated with a turnaround having an outside roadway diameter of not less than ninety (90) feet, and a ~~street property line~~ *right-of-way* diameter of not less than ~~one hundred (100)~~ *one hundred ten*

(110) feet. *Commercial/industrial permanent dead-end streets, courts or cul-de-sacs shall be terminated with a turnaround having an outside roadway diameter of not less than one hundred (100) feet, and a right-of-way diameter of one hundred twenty (120) feet.*

As shown in the proposed ordinance language, the roadway diameter of a residential street has not changed, but the right-of-way width has increased to allow for the construction of sidewalk around the cul-de-sac. Commercial/Industrial cul-de-sacs have an additional ten-foot requirement for their roadway diameter, which also requires the additional right-of-way for the sidewalk.

Staff supports the proposed amendment.

Chairman Burden asked if there were any questions for staff.

Mr. Baugh moved to approve the amendment.

Mr. Chenault seconded the motion.

Chairman Burden called for a voice vote on the motion.

All voted in favor of the motion to approve.

Chairman Burden said the motion is approved (5-0) and this will move forward to City Council with a favorable recommendation on November 10, 2009.

Unfinished Business

None.

Public Input

None.

Report of secretary and committees

Mrs. Banks said proactive zoning was not done this month and we hope to pick it back up in November.

Mr. Baugh said at the City Council meeting last night we took action on two matters. One was the approval of an ordinance amendment and the other was echoed in the unanimous approval of the Blackwell's recreation area off of Red Oak Street. Many of you may already know this; Cypress Park was withdrawn at the applicant's request and will be coming back to Planning Commission next month.

Mr. Fletcher said yes, it will return to Planning Commission. The applicants have made some changes for us to review. There is also an ordinance amendment and a Master Plan Change for VMRC which you should be familiar with.

Other Matters

Mr. Da'Mes said he had a question that was a bit off topic. I have driven through neighborhoods that are in the midst of being expanded and it ends in either a cul-de-sac or an unfinished end of street, which is left open with a gravel pit area that is either occupied by construction equipment or just a bunch of pot holes that are not maintained. Why is that?

Mr. Fletcher said it depends on the particular situation as to why it was left in that condition. For some cul-de-sacs, they are temporary because the street is to be extended, which may end up being

a long time until they are extended. An all weather, gravel surface, not asphalt, is permissible by our code for these temporary turn around.

Mrs. Turner said we used to allow the temporary cul-de-sac to be totally graveled and now we require the straight street to be paved and the turning radius within the street may be graveled. But in either case we can probably do something if you notice some excessive pot hole type situations.

Mr. Fletcher reminded Planning Commission that after this meeting we would be adjourning to the Community Development Classroom for a Comprehensive Plan Work session on chapters 7, 8, and 9.

Adjournment

The meeting was adjourned at 8:10 p.m.

Chairman Jared Burden

Secretary, Alison Banks