

REGULAR MEETING

FEBRUARY 8, 2000

At a regular meeting of Council held this evening at 7:30 p.m., there were present: Mayor Rodney Eagle; City Manager Steven E. Stewart; Assistant City Manager Roger Baker; City Attorney Earl Q. Thumma, Jr., Vice-Mayor Hugh J. Lantz, Council Member John H. Byrd, Jr., and Larry M. Rogers; City Clerk Yvonne Bonnie Ryan, CMC/AAE, and Chief of Police Donald Harper. Absent: Walter F. Green, III.

Council Member Rogers delivered the invocation and Mayor Eagle led everyone in the Pledge of Allegiance.

Council Member Rogers offered a motion to approve the consent agenda, including approval of the minutes, and the second reading of a supplemental appropriation for the School Board, and the East Side Road Improvement Capital Project Fund. The motion also included referring a request to close a portion of an alley between Ash Tree Lane and Franklin Street to the Planning Commission. The motion was seconded by Vice-Mayor Lantz, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Rogers

Council Member Byrd

Vice-Mayor Lantz

Mayor Eagle

Absent: Council Member Green

Planning and Community Development Director Turner introduced a request by Heidelberg, LLC, for a Special Use Permit to allow four (4) unrelated persons to occupy a dwelling in the R-2 Residential District, per Section 10-3-40(7) of the Zoning Ordinance. The site is located at 433 West Market Street. She explained that the applicant is requesting this special use permit to allow four (4) unrelated persons to occupy a dwelling in the R-2 Residential District. The land use guide in the Comprehensive Plan recommends this site for neighborhood residential uses. In December 1998, the Zoning Ordinance was changed to require a special use permit for four unrelated individuals to occupy a dwelling in the R-2 Residential District. This property consists of approximately 14,000 square feet which is ample to allow a duplex dwelling unit in the R-2 zoning classification. Also, sufficient parking is available on this lot for eight parking spaces. Staff conducted a property maintenance inspection of the house and found minor problem requiring correction. This site has access to an alley that runs behind the property and to West Market Street in the front of the property. During the review process, it was noted there are a large number of existing rental properties in the area. Staff recommended approval of the request to have four unrelated tenants per unit in this duplex dwelling unit; however, at the Planning Commission meeting there were many neighbors from the area who spoke in opposition to the request. These neighbors expressed concern about traffic in the alley behind the property, that the alley is not maintained by City, alley only maintained for trash, and the use for unrelated occupants. Planning Commission after taking into consideration all of the public comments recommended approval by a vote of four to two with the following conditions: (1) Only four individuals shall reside in each of the two dwelling units. (2) Permanent off-street parking must be adequate to address the parking need of residents in the dwelling. The special use permit will require one parking space per tenant. (3) The owner or owner=s representative must schedule a yearly inspection, similar to the boarding house inspections to ensure building code requirements are met and the number of people residing on the premises meet the criteria of the permit. The permit shall be revoked by the Zoning Administrator if this inspection does not take place every 12 months. (4) Staff is authorized to review complaints received on the property on an on-going basis and based on their findings, to notify the landlord that the permit is being revoked unless they wish to reapply for a special use permit, going through the required public hearings. Otherwise the permit automatically expires one year from the date of approval by City Council and is renewable administratively on an annual basis provided the use is still permitted by the Zoning Ordinance. (5) Access to the alley at the rear of the property must be closed and access from Market Street installed in accordance with City Standards. (6) A change of use permit will be required prior to occupancy to ensure that building code requirements are met and all other provisions of the special use permit have been met. Mrs. Turner repeated that Planning Commission recommended approval of the request with a vote of four to two with the two people voting in opposition to the motion stating that they were concerned about the impact for this type of use on the neighborhood.

At 7:37 p.m., Mayor Eagle closed the regular session temporarily and called the evening=s first public hearing to order. The following notice appeared in the Daily News-Record on Monday, January 24, and Monday, January 31, 2000.

### **NOTICE OF PUBLIC HEARING**

**The Harrisonburg City Council will hold a Public Hearing on Tuesday, February 8, 2000, at 7:30 p.m. in the City Council Chambers, 345 South Main Street, to consider the following:**

**SPECIAL USE B PUBLIC HEARING**

**Request by Heidelberg, L.L.C., for a Special Use Permit to allow 4 unrelated persons to occupy a dwelling in the R-2 Residential District, per Section 10-3-40(7) of the Zoning Ordinance. The site, located at 433 West Market Street, is identified as tax map parcel 35-U-4.**

**Maps and other information are available for review in the Community Development Department, 409 South Main Street, Monday through Friday, 8:00 a.m. to 5:00 p.m. All persons interested will have the opportunity to express their views at this public hearing.**

**Any individual requiring auxiliary aids, including signers, in connection with the public hearing, shall notify the City Manager at least five (5) days prior to the date of the meeting.**

**CITY OF HARRISONBURG**

**Steven E. Stewart**

**City Manager**

Mayor Eagle called on anyone desiring to speak for or against approving this special use permit request.

Glenn Loucks said that he wanted to address some concerns expressed by surrounding neighbors at the Planning Commission meeting. The only way to reduce the traffic in the alley behind the property would be to block off other use of the property. The property is not in a residential neighborhood for families and it is on a busy street no longer suitable for families with children. He said that under the special use permit the City would be able to inspect the property on an annual basis and have tighter control over who lives on the property and how the property is maintained. James Butler said that if the City keeps issuing special use permits, it will just create more problems in the neighborhoods.

Norma Nair a resident and home owner in the area said that even though she does not live on Market Street, there are parking problems in the area because of student rental property. Most people do not have driveways or only a short driveway. Families living on her street which is only one block have already experienced the student over flow of parking.

There being no others desiring to be heard, the public hearing was declared closed at 7:43 p.m., and the regular session reconvened.

Discussion by Council Members included mixed neighborhood consisting of college students and families, special use permit being issued with a lot of proffers and conditions, rules being difficult for investors in real estate to understand, and continuing to issue special use permits under special condition will weaken the zoning ordinance. Members also discussed the control the City would have under the special use permit, annual inspections, and uses permitted by right without special use. Following further discussion and comments, Council Member Rogers offered a motion to deny the request for a special use permit. The motion was seconded by Council Member Byrd. A recorded roll call vote was taken as follows:

Vote: Yes - Council Member Rogers

Council Member Byrd

No - Vice-Mayor Lantz

Mayor Eagle

Absent: Council Member Green

City Attorney Thumma clarified that the motion failed because of a tied vote.

Planning and Community Development Director Turner introduced a request to remove references to Aunrelated persons@ from the Zoning Ordinance by amending Section 10-3-40(7), 10-3-45(3), 10-3-51(2), 10-3-84(3), 10-3-24, and 10-3-39(1) of the Harrisonburg City Code. She explained that in December 1998, the Zoning Ordinance was amended to require a special use permit for four unrelated persons to occupy a dwelling unit in the R-2 Residential District. During a recent staff review for a special use permit, it was discovered that an applicant interpreted the ordinance as allowing two relatives and three other individuals to occupy a dwelling unit in the R-2 district. When the ordinance was drafted, staff intended the ordinance to allow either a family of related individuals or a group of four persons as distinguished from a family. To avoid future confusion and remove a potential loophole in the Zoning Ordinance, staff recommended removing all references to Aunrelated persons@ contained in the Zoning Ordinance. Removal of the references amends R-2, R-3, and R-4 Residential Districts. By still leaving in Aoccupy other than permitted by right@ allows a family of more than four people to occupy the dwelling unit. She said that Planning Commission recommended approval of the ordinance amendments.

At 8:09 p.m., Mayor Eagle closed the regular session temporarily and called the evening=s second public hearing to order. The following notice appeared in the Daily News-Record on Monday, January 24, and Monday, January 31, 2000.

#### **NOTICE OF PUBLIC HEARING**

**The Harrisonburg City Council will hold a Public Hearing on Tuesday, February 8, 2000, at 7:30 p.m. in the City Council Chambers, 345 South Main Street, to consider the following:**

#### **ORDINANCE AMENDMENT**

**Consider amending an ordinance that stipulates a use permitted only by Special Use Permit in the R-2 Residential District. Section 10-3-40(7) of the Zoning Ordinance would read as follows:**

**(7) Occupancy, other than permitted by right, of not more than four (4) ~~unrelated~~ persons (except such occupancy may be superseded by building regulations), provided one off-street parking space per tenant is provided on site.**

#### **ORDINANCE AMENDMENT**

**Consider amending an ordinance that stipulates a use permitted by right in the R-3 Multiple Dwelling Residential District. Section 10-3-45(3) would read as follows:**

**(3) Dwelling units may be occupied by a family or not more than four (4) ~~unrelated~~ persons, except that such occupancy may be superseded by building regulations.**

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**ORDINANCE AMENDMENT**

**Consider amending an ordinance that stipulates a use permitted by right in the**

**R-4 Planned Unit Residential District. Section 10-3-51(2) would read as follows:**

**(2) Dwelling units may be occupied by ~~families~~ a family or not more than four (4) ~~unrelated~~ persons, except that such occupancy may be superseded by building regulations.**

**ORDINANCE AMENDMENT**

**Consider amending an ordinance that stipulates a use permitted by right in the**

**B-1 Central Business District. Section 10-3-84(3) would read as follows:**

**(3) Hotels, motels, and buildings used for dwelling units, CBD, as defined under article F. Dwelling units, CBD, may be occupied by a family or not more than four (4) persons, except that such occupancy may be superseded by building regulations.**

**ORDINANCE AMENDMENTS**

**Consider amending the following definitions contained in Section 10-3-24 of the Zoning Ordinance: AAccessory living unit@, AFraternity or sorority house@, AFraternity or sorority house in R-3 zones@, and ABoardinghouse or roominghouse in R-3 zones@. The purpose of the request is to remove references to unrelated persons. Also, consider removing the definition of AUnrelated person(s)@ from Section 10-3-24.**

**ORDINANCE AMENDMENT**

**Consider amending an ordinance that stipulates a use permitted by right in the**

**R-2 Residential District. Section 10-3-39(1) would read as follows:**

**(1) Any ~~dwelling~~ use permitted by right in the R-1 Single-Family Residential District.**

**Maps and other information are available for review in the Community Development Department, 409 South Main Street, Monday through Friday, 8:00 a.m. to 5:00 p.m. All persons interested will have the opportunity to express their views at this public hearing.**

**Any individual requiring auxiliary aids, including signers, in connection with the public hearing, shall notify the City Manager at least five (5) days prior to the date of the meeting.**

**CITY OF HARRISONBURG**

**Steven E. Stewart**

**City Manager**

Mayor Eagle called on anyone desiring to speak for or against amending these ordinances.

Barry Kelly said his family consists of four people and they live in an R-2 district. He questioned if it would be illegal to hire a maid? The answer was no.

There being no others desiring to be heard, the public hearing was closed at 8:10 p.m., and the regular session reconvened. Council Member Rogers offered a motion to approve Planning Commission's recommendation amending these ordinances for a first reading. The motion was seconded by Vice-Mayor Lantz, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Rogers

Council Member Byrd

Vice-Mayor Lantz

Mayor Eagle

Absent: Council Member Green

Planning and Community Development Director Turner presented for Council's consideration adopting an updated Bike Plan. Mrs. Turner explained that the City of Harrisonburg adopted its first Bicycle Plan in 1994. By generating an awareness of bicycling issues, the plan prompted the City to include bike lanes in the design and construction of a new street, Neff Avenue. It also promoted awareness of funding mechanisms the City has since used to obtain grant funds for changes to Port Republic Road. In 1999, the Harrisonburg Planning Commission recognized the need for the plan to be reviewed and updated. As many of the routes identified in the original plan still lacked improvements or signage, Planning Commission felt the base plan remained viable and appointed a relatively small committee to work on the plan. The committee consisted of Todd Alexander (Planning Commission), Jim Baker (Director of Public Works), Charles Chenault (Parks and Recreation Commission), Lee Foerster (Superintendent of Parks), Art Fovargue (Shenandoah Valley Bicycle Club), Paula Gucker (Director of Parks and Recreation), Ralph Smith (Transportation and Safety Committee), Stacy Turner (Director of Planning and Community Development), and Leonard VanWyk (Shenandoah Valley Bicycle Club). Mrs. Turner said that the committee tried to simplify the plan, consider bike routes with all future street improvements, increase bicycle safety awareness, and set reasonable goals with the most cost effective way to implement the plan. She said that Planning Commission, Parks and Recreation Commission, and the Transportation and Safety Commission has recommended approval of the updated Bike Plan.

At 8:15 p.m., Mayor Eagle closed the regular session temporarily and called the evening's third public hearing to order. The following notice appeared in the Daily News-Record on Monday, January 24, and Monday, January 31, 2000.

### **NOTICE OF PUBLIC HEARING**

**The Harrisonburg City Council will hold a Public Hearing on Tuesday, February 8, 2000, at 7:30 p.m. in the City Council Chambers, 345 South Main Street, to consider the following:**

#### **CONSIDER ADOPTION OF UPDATED BIKE PLAN**

**Maps and other information are available for review in the Community Development Department, 409 South Main Street, Monday through Friday, 8:00 a.m. to 5:00 p.m. All persons interested will have the opportunity to express their views at this public hearing.**

**Any individual requiring auxiliary aids, including signers, in connection with the public hearing, shall notify the City Manager at least five (5) days prior to the date of the meeting.**

**CITY OF HARRISONBURG**

**Steven E. Stewart**

**City Manager**

Mayor Eagle called on anyone desiring to speak for or against adopting the updated Bike Plan.

Jessica Gallagher said that as a regular biker in the area, she rides to save on gas, health, and environmental reasons. She said this bike plan would be a great idea for the City.

Leonard VanWyk said that he served on the committee and as a bicyclist he knew a lot of people who would like to ride but were afraid to ride.

There being no others desiring to be heard, the public hearing was declared closed at 8:17 p.m., and the regular session reconvened. Council Member Byrd offered a motion to approve this updated bike plan. The motion was seconded by Council Member Rogers, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Rogers

Council Member Byrd

Mayor Eagle

Abstained - Vice-Mayor Lantz

Absent: Council Member Green

At 8:20 p.m., Mayor Eagle closed the regular session temporarily and called the evening's fourth public hearing to order. The following notice appeared in the Daily News-Record on Monday, January 24, and Monday, January 31, 2000.

#### **NOTICE OF PUBLIC HEARING**

**The Harrisonburg City Council will hold a Public Hearing on Tuesday, February 8, 2000, at 7:30 p.m. in the City Council Chambers, Municipal Building, 345 South Main Street, Harrisonburg, Virginia.**

**The Harrisonburg City Council will receive the views of citizens regarding the proposed use of funds paid under the Local Law Enforcement Block Grant as it relates to the Harrisonburg Police Department's entire budget. At this hearing, persons shall be given as opportunity to provide written and oral views to the City Council about the Department's budget and the relation of the Grant to the**

**entire budget.**

**CITY OF HARRISONBURG**

**Steven E. Stewart**

**City Manager**

Mayor Eagle called on anyone desiring to speak for or against the local Law Enforcement Block Grant.

Colonel Don Harper stated that the United States Department of Justice issues the local Law Enforcement Block Grant to assist localities in improving public safety. A public hearing must be held to receive these funds which will be used to purchase in-car cameras for police vehicles and a software power point training aid.

There being no others desiring to be heard, the public hearing was declared closed at 8:21 p.m., and the regular session reconvened. Council Member Rogers offered a motion to approve this block grant. The motion was seconded by Vice-Mayor Lantz, and approved with a recorded roll call vote as follows:

Vote: Yes - Council Member Rogers

Council Member Byrd

Vice-Mayor Lantz

Mayor Eagle

Absent: Council Member Green

Jack Gordon, Manager of Development for First Centrum, presented an overview of a plan for an independent living seniors apartment project. First Centrum was formed in the late 1970's for the purpose of developing affordable multifamily housing, but was a for profit company. He explained that his company would like to build 50 two bedroom apartments on a 4.2 acre parcel on West Mosby Road. The land is zoned R-3 multi-dwelling. This project would be for independent living seniors, persons 55 and over. According to the Fair Housing and Housing for Older Person Acts, ages of all residents in the community would be limited to 55 and over. The project is designed to fulfill the needs of active seniors for security, companionship, and convenience without restricting independence. Each unit will feature fully equipped kitchen, bath, and an emergency call system. The community building will have senior-oriented services including 24-hour management presence, grocery and pharmacy delivery, monthly newsletters, a wellness program, organized activities and trips, an optional meal plan, optional hairdressing and barber services and optional housekeeping and linen service. The company plans to raise equity financing for the community through Federal low income housing tax credits which are allocated by the Virginia Housing Development Authority. He reviewed the rent restriction, age restriction, and household income limits. In order for the project to receive the financing, it must compete with other projects based on the criteria listed in Virginia's Qualified Allocation Plan. He said the project should be an asset to the City. Following further discussion and comments, Council Member Rogers said that he needed further information regarding this project and requested that City Manager Stewart make inquiries and present a recommendation to City Council at the next meeting. Vice-Mayor Lantz seconded the request.

City Manager Stewart introduced a request by Tim Lacey for approval of a preliminary subdivision plat, with variances, for ASpringfield Village, @ for R-1 subdivision proposed to be located on Garber's Church Road. He explained that this is the third meeting this request has been before City Council and staff did not have anything new to present.

Tim Lacey said the plans for the subdivision started as R-2 Conditional and had been changed to R-1 because of neighbor=s concern. He also said because staff had expressed concern about the 7% grade in the cul-de-sac, it had been reduced to 6% grade. The other variances include two flag lots, 850' long cul-de-sac grade, and 23 units on a cul-e-sac. Council Member Rogers offered a motion to approve the variances so Mr. Lacey could proceed with the subdivision. The motion was seconded by Vice-Mayor Lantz, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Rogers

Vice-Mayor Lantz

Mayor Eagle

No - Council Member Byrd

Absent: Council Member Green

Council Member Rogers offered a motion to approve a Certificate of Public Convenience & Necessity for Western Virginia Transportation Inc. (Yellow Cab) for five (5) years. The motion was seconded by Vice-Mayor Lantz, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Rogers

Council Member Byrd

Vice-Mayor Lantz

Mayor Eagle

Absent: Council Member Green

Vice-Mayor Lantz offered a motion to approve a Certificate of Public Convenience & Necessity for First Choice Transport, Inc. for five (5) years. The motion was seconded by Council Member Rogers, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Rogers

Council Member Byrd

Vice-Mayor Lantz

Mayor Eagle

Absent: Council Member Green

City Attorney Thumma introduced an ordinance for Council's consideration enacting Title 6, Chapter 1, Article E of the Harrisonburg City Code. He explained that when the Federal Government amended the telecommunications laws several years ago, the City had a franchise agreement with GTE to furnish telecommunication services. During the last several years two other companies has started to operate within the City. A new franchise agreement has not been negotiated with GTE based on the Federal legislation. The General Assembly has enacted a statute that allows localities to charge a public right-of-way user fee. The fee would be based on the number of access lines the company has in the public right-of-way and would be determined from a formula developed by the Virginia Department of Transportation. Public Works Director Baker suggested adding a penalty in the ordinance for users who may refuse to pay the bill. Mr. Baker estimated the proposed fee agreement could generate at least \$136,000 in annual revenue for the City. Council Member Rogers offered a motion to approve enacting Title 6, Chapter 1, Article E including adding the late fee for a first reading. The motion was seconded by Vice-Mayor Lantz, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Rogers

Council Member Byrd

Vice-Mayor Lantz

Mayor Eagle

Absent: Council Member Green

City Manager Stewart presented for Council's consideration an amendment between the City of Harrisonburg and the Virginia Department of Health. He explained this is a written agreement between the City and the Health Department. This reflects the appropriation approved by City Council for fiscal year 1999-2000. Vice-Mayor Lantz offered a motion to approve this agreement. The motion was seconded by Council Member Rogers, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Rogers

Council Member Byrd

Vice-Mayor Lantz

Mayor Eagle

Absent: Council Member Green

City Manager Stewart presented a request to transfer funds to the Boys and Girls Club. He explained that the Harrisonburg Redevelopment and Housing Authority has notified the City they have to discontinue its financial support for the Boys and Girls Club. The amount is \$30,000. City Manager Stewart suggested that City Council transfer \$15,000 for the remainder of the year out of Reserve for Contingencies and then consider picking up the full amount for fiscal year 2000-2001. Vice-Mayor Lantz offered a motion to approve to transfer these funds:

\$15,000 chge. to: 1000-940111-49310 Reserve for contingencies

\$15,000 approp. to: 1000-910411-45669 Boys and Girls Club

The motion was seconded by Council Member Rogers, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Rogers

Council Member Byrd

Vice-Mayor Lantz

Mayor Eagle

Absent: Council Member Green

Barry Hensley read the following statement: The recent somewhat difficult approval of the Lacey property on Garbers Church Road has caused me to have some reflection and discuss the process with my neighbors. He said, AThe City has developed a well conceived professional set of R-1 residential building codes and regulations. The purpose of these regulations are multiple, but certainly include the orderly and well controlled development of residential property. Codes are also designed to provide continued integrity of existing properties. R-1 codes are guaranteed to citizens, to both present and future property owners, that their investments are well placed and protected into the future. Property owners contribute a large part of tax revenues and have every right to expect that codes and regulations designed to protect investments do exactly that. At the last Council meeting discussion was heard concerning the number and types of variances allowed by the City in past R-1 developments. Projects under consideration in part were justified on the past deviations from R-1 regulations. It appears to me that deviation from the codes are not intended to foster optimum development of the community or to enhance existing developed property, but rather better designed for the short term needs of developers. This type of approach to development encourages future developers to request and expect similar considerations. Over an extended period of time, R-1 codes may become a point of departure to request change. The Garbers Church Road neighborhood is ripe for development. Development will occur in this area within the foreseeable future especially with the construction of the long anticipated municipal golf course. I would like for the Council to consider that the development of Garbers Church Road be implemented in a manner consistent with R-1 rules and regulations. In this manner the neighborhood will develop in a mode consistent with the long term needs of the City, future residents, and existing property owners. City staff has done a commendable job in creating an excellent set of standards. It is my opinion that they should be enforced. The voices of the community which were heard earlier tonight concerning granting a special use permit certainly reflect the need for consistent implementation and enforcement of these codes.

At 9:12 p.m., Council Member Rogers offered a motion that Council enter a closed session for discussion and consideration of personnel and prospective candidates to be appointed to the Social Services Advisory Board, Commission on Children and Youth, and Harrisonburg Parking Authority, exempt from public meeting requirements pursuant to Section 2.1-344(A)(1) of the Code of Virginia, 1950, amended. Discussion and consideration of the acquisition of real estate to be used for a public purpose, namely utility easements, exempt from public meeting requirements pursuant to Section 2.1-344(A)(3) of the Code of Virginia, 1950, as amended. Consultation with the City Attorney and briefing by staff members pertaining to pending litigation, exempt from public meeting requirements pursuant to Section 2.1-344(A)(7) of the Code of Virginia, 1950, as amended. The motion was seconded by Vice-Mayor Lantz, and approved with a unanimous vote of Council.

At 11:30 p.m., the closed session was declared closed and the regular session reconvened. The following statement was agreed to with a unanimous recorded vote of the Council: I hereby certify to the best of my knowledge and belief that (1) only public matters lawfully exempt from open meeting requirements pursuant to Chapter 21 of the title 2.1 of the Code of Virginia, 1950, as amended, and (2) only such public matters as were identified in the motion by which the executive or closed meeting were convened, were heard, discussed or considered in the closed session by the City Council.

At 11:31 p.m., there being no further business and on motion adopted the meeting was adjourned.

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CLERK

MAYOR

