

MINUTES - REGULAR MEETING OF CITY COUNCIL - JULY 9, 2002

REGULAR MEETING

JULY 9, 2002

At a regular meeting of Council held this evening at 7:30 p.m., there were present: Mayor Joseph Gus Fitzgerald; City Manager Roger Baker; Assistant City Manager Kurt Hodgen; City Attorney Thomas H. Miller, Jr., Vice-Mayor Larry M. Rogers; Council Member Carolyn W. Frank, Hugh J. Lantz; City Clerk Yvonne Bonnie Ryan, CMC/MMCA, and Chief of Police Donald Harper. Absent: Council Member Dorn W. Peterson.

Vice-Mayor Rogers delivered the invocation and Mayor Fitzgerald led everyone in the Pledge of Allegiance.

Council Member Frank offered a motion to approve the consent agenda, including approval of the minutes of the June 25 and July 1 City Council meetings, and a second reading amending and re-enacting Section 7-4-22 of the Harrisonburg City Code. The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Lantz

Council Member Frank

Vice-Mayor Rogers

Mayor Fitzgerald

Absent Council Member Peterson

Mayor Fitzgerald said, Carolyn, I want to thank and salute you for your two years of service as Mayor. It hasn't always been smooth because I haven't always agreed with you, but what missteps you took I hope were educational for both of us. At the same time you did an excellent job in some regards most notably in, well Rudyard Kipling writes of those who can walk with kings without losing the common touch. Certainly you have made the government of Harrisonburg more accessible to its citizens than it has been at sometimes in the past. You certainly connected better with the citizenry and I certainly hope that I live up to your standards in that regard.

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Council Member Frank said, I appreciate those kind words. It was an honor to serve. I enjoyed it and I probably won't always agree with you either.

Mayor Fitzgerald presented Council Member Frank with a walnut gavel and block.

Planning and Community Development Director Turner introduced a request by Rodney and Penny Conley, to change the proffers for tax map parcel 18-AA-39. She explained that the property is zoned B-2C, General Business District (conditional). The purpose of the request is to amend previously proffered conditions to allow personal service establishments. The parcel is located at 860 South High Street. The Comprehensive Plan's Land Use Guide designates this property as neighborhood residential. This classification is intended for neighborhoods in which existing conditions dictate the need for careful consideration of the types and densities of future residential development. These are older neighborhoods, which can be characterized by larger housing units on small lots. She reviewed the surrounding uses in the area. She said that the property located at 860 South High Street has been the subject of City planning staff's attention several times over the past twenty years. In 1980 the owner of the property received final plat approval for Homeplace Townhomes, the development to the rear of the subject house. At the Planning Commission meeting the owner stated that the subject structure was slated for demolition after the construction of the townhomes. The City, however, did not force the demolition and the building was never removed. The house was sold in 1992 to Mr. Dooley. The next year Mr. Dooley attempted to obtain building permits for the structure, but was denied the permits because a small section of the structure located along Logan Lane encroached into the street right-of-way. City Council granted permission for the structure to remain in the right-of-way with no modifications necessary to bring the building into conformance. The following year Mr. Dooley applied for a change in zoning from R-2, Residential District to B-2C, General Business District Conditional. His intent was to use the second floor as a residence, which is currently being done, and utilize the first floor for a photography studio, which is currently being done. He proffered that the only B-2 use he would use was professional offices. Contract purchasers Rodney and Penny Conley have requested to adjust the proffers attached to the conditional zoning of the property located at 860 South High Street. The Conleys have asked to adjust the proffers to allow for their hair salon facility to occupy the first floor of the structure. They also intend on continuing the use of the residence on the second floor. For the salon to be an allowed use, the current proffered conditions must be modified to include personal service establishments under 10-3-90(1) of permitted uses in the B-2 zoning classification. Personal services include uses such as health clubs, beauty shops, barbershops, and laundry cleaning. If approved, this new conditional B-2 zoning would only allow for professional offices and personal service establishments at this location. If the parcel is rezoned there is ample parking spaces on the property. The location of this structure on the highly traveled South High Street thoroughfare makes this a prime location for this type of business. The B-2 use of this facility will continue to provide a buffer between the more intense uses associated with M-1 property to the south and the residential uses on the north and east. She said that Planning Commission recommended unanimous approval of the rezoning request.

At 7:39 p.m., Mayor Fitzgerald 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, June 24, and Monday, July 1, 2002.

## **Notice Of Public Hearing**

The Harrisonburg City Council will hold public hearings on Tuesday, July 9, 2002, at 7:30 p.m. in the Municipal Building, City Council Chamber, 345 South Main Street, to consider the following.

**REZONING, PROFFER CHANGE DOOLEY/CONLEY PROPERTY**

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Public hearing to consider a request by Rodney and Penny Conley, to change the proffers for tax map parcel 18-AA-39. The property is zoned B-2C, General Business District (conditional), the purpose of the request is to amend the previously proffered conditions to allow personal service establishments. The parcel is located at 860 South High Street.

The Comprehensive Plan designates this area as Neighborhood Residential. This designation states that this type of land use highlights those neighborhoods in which existing conditions dictate the need for careful consideration of the types and densities of future residential development. These are older neighborhoods, which can be characterized by large housing units on small lots.

The Zoning Ordinance states that the B-2, General Business District is intended to provide sufficient space in appropriate locations for a wide variety of retail shopping, commercial, automotive, miscellaneous recreational, and service activities. No minimum lot size restrictions exist in the B-2, General Business 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 an opportunity to express their views at these public hearings.

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**

**Roger D. Baker**

**City Manager**

Mayor Fitzgerald called on anyone desiring to speak for or against this rezoning request.

Penny Conley, a resident living at 637 Stonewall Drive, said she currently owns and operates a salon facility on South Gate Court. Over the past three years the business has grown and she now needs a new facility to meet the demands of her business. This location has the space and the visibility she would like for her salon. The Conley s would like to clean up the property and make it more attractive than its current condition. There being no others desiring to be heard, the public hearing was declared closed at 7:40 p.m., and the regular session reconvened.

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Vice-Mayor Rogers offered a motion to approve this request as presented for a first reading. The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Lantz

Council Member Frank

Vice-Mayor Rogers

Mayor Fitzgerald

Absent Council Member Peterson

Planning and Community Development Director Turner introduced a request to amend Section 10-3-110 of the Zoning Ordinance. She explained that the proposed amendment was brought about by a series of events that started with a complaint to the Zoning Administrator, which when followed up with the property owner, lead to an appeal before the Board of Zoning Appeals (BZA). The amendment will fill a void that has been left in the ordinance and was suggested by the BZA. A complaint was received on a property in the Brayton Subdivision for a house that encroached into the ten-foot sideyard setback. Section 10-3-110 allows functional or ornamental devices up to two feet, eight inches. The Zoning Administrator interpreted this to permit bay windows, roof overhands, or siding as architectural treatments or functional elements which would be allowed to encroach the two feet, eight inches. The house had been constructed with a bay window (as labeled on the building plans) that did not have a window seat or shelving, but was being used as livable floor space out into the required ten-foot setback. The Zoning Ordinance as interpreted did not consider this to be a bay window, but cantilevered floor area (living space) and as such could not encroach into the required setback. The property owner was notified of the violation and appealed the decision to the BZA for consideration. Over the next several months the BZA considered the definition, obtaining information from the property owner and further definitions from staff. After much consideration the Board decided not to affirm the Zoning Administrator's decision and asked that the language for Section 10-3-110 be clarified to restrict the use of floor space within the setback. She said that Planning Commission recommended unanimous approval of amending the ordinance.

At 7:43 p.m., Mayor Fitzgerald 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, June 24, and Monday, July 1, 2002.

## Notice Of Public Hearing

MINUTES - REGULAR MEETING OF CITY COUNCIL - JULY 9, 2002

**The Harrisonburg City Council will hold public hearings on Tuesday, July 9, 2002, at 7:30 p.m. in the Municipal Building, City Council Chamber, 345 South Main Street, to consider the following.**

ORDINANCE AMENDMENT

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**Public hearing to consider amending the Zoning Ordinance, Article T. Modifications and Adjustments, Section 10-3-110. General Modifications:**

**(a) Architectural treatments and functional elements, including, but not limited to; chimneys, moldings, rain gutters, downspouts, roof eaves, buttresses and bay windows, shall be allowed to project not more than two feet, eight inches (2 8 ) into the required yard setback, provided they do not include additional floor space.**

**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 an opportunity to express their views at these public hearings.**

**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**

**Roger D. Baker**

**City Manager**

Mayor Fitzgerald called on anyone desiring to speak for or against amending this ordinance. There being no one desiring to be heard, the public hearing was declared closed at 7:45 p.m., and the regular session reconvened. Council Member Lantz offered a motion to approve amending Section 10-3-110 of the Zoning Ordinance for a first reading. The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Lantz

Council Member Frank

Vice-Mayor Rogers

Mayor Fitzgerald

Absent Council Member Peterson

City Manager Baker presented the following resolution for Council's consideration of approval:

**RESOLUTION OF  
THE CITY OF HARRISONBURG, VA  
AUTHORIZING MEMBERSHIP IN THE  
VIRGINIA TRANSIT LIABILITY POOL**

**WHEREAS, The City of Harrisonburg on behalf of Harrisonburg Transit (the Applicant) wishes to join with other political subdivisions as a member of the Virginia Transit Liability Pool ( Pool ), whereby members jointly and cooperatively self-insure and pool the separate risks and liabilities of the individual members pursuant to the terms of Chapter 27 of Title 15.2 of the Code of Virginia (the Act ), and whereby the jointly pooled funds provide the necessary financing for comprehensive general liability, automobile liability and automobile physical damage; and**

**WHEREAS, the Pool is licensed by the Bureau of Insurance of the State Corporation Commission, pursuant to the Act and Regulations adopted thereunder; and**

**WHEREAS, the Applicant has been provided with the following documents which provide the rights and responsibilities of the members of the Pool and the amount and terms of the coverage to be provided;**

- 1. 1. Member Agreement;**
- 2. 2. Sample declaration pages and coverage forms;**
- 3. 3. Virginia Transit Liability Pool Constitution and By-Laws; and**
- 4. 4. Virginia Transit Liability Pool Financial Statements;**

**NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Harrisonburg is a meeting assembled on the 9<sup>th</sup> day of July, 2002;**

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1. 1. Applicant certifies its intention to become a member of such Pool for three years

beginning July 1, 2002;

2. 2. Such membership is contingent upon:

a. a. Final approval of the membership of Applicant by the Members

Supervisory Board of the Pool;

b. b. Payment of \$13,430 + \$158,136 for the 13 month period (July 1, 2002 July 31, 2003) contribution to the Pool pursuant to the quotation submitted

to Applicant or such final amount as mutually agreed upon by the member and the Pool or their respective designees. Quarterly payments are optional.

3. 3. Applicant understand and agrees that pursuant to the terms of the Member

Agreement, members of the Pool may be required to pay additional assessments to the Pool and that in the event the Pool is in a deficit position which is not corrected, a member will be liable for any and all unpaid claims against such member.

4. 4. The Transportation Director is authorized to do all things necessary to enable

Harrisonburg Transit to become and remain a member of the Pool including, but not limited to, execution of the Member Agreement and any amendments to the Member Agreement which comply with the Act and Regulations adopted thereunder and which have been duly adopted by the Members Supervisory Board of the Pool.

IN WHITNESS WHEREOF, the City Council of the City of Harrisonburg has caused this resolution to be executed in its behalf by Mayor Joseph Gus Fitzgerald and attested by City Clerk Yvonne Ryan.

By: \_\_\_\_\_

Joseph Gus Fitzgerald

Mayor of the City of Harrisonburg

Attest:

\_\_\_\_\_

Clerk of the City Council

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City Manager Baker explained that when the Virginia Transit Liability Pool was jointly formed by other government transit systems in Virginia, Harrisonburg did not join. Mr. Baker said that joining this transit liability pool would provide insurance coverage for the Transit System. He also said that it will be necessary for the City to designate voting representation on the Board of Directors of Virginia Transit Association. He recommended designating Transportation Director Reggie Smith and Transit Supervisor Vickie Conley as voting members of the board and Purchasing Agent Pat Hilliard and Administrative Assistant Vicki Sullivan as alternates. Council Member Frank offered a motion to approve this resolution as presented. The motion was approved with a unanimous vote of Council Members present.

The agenda item request to amend the taxi ordinance was withdrawn.

City Attorney Miller presented for Council's consideration amending and re-enacting Section 13-1-60.1(b) of the Harrisonburg City Code. He explained that City Council had approved adding Woodland Drive, Scarlet Oak Court and White Oak Court to the blue permit-parking zone at the June 11, 2002 meeting. Council Member Frank offered a motion to approve amending this ordinance for a first reading. The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Lantz

Council Member Frank

Vice-Mayor Rogers

Mayor Fitzgerald

Absent Council Member Peterson

Lynn Rexrode, a resident of 583 Hawkins Street, complained about not receiving any help from the City when a skunk got into his house through the basement one recent Saturday night. He said he called the City Fire Department, City Police Department, Animal Control Officer, and the Verona Game Reserve and no one would help him with the situation. He said, "What would happen if the skunk had rabies and endangered my family?" He also complained about fireworks rules and regulations not being displayed at each site selling fireworks.

Bucky Berry, a resident of 877 North Main Street, complimented Carolyn Frank on the good job she had done representing the City as Mayor. He also complained about City vehicles being used as a personal vehicle.

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City Manager Baker announced that the contract for the Rescue Squad Building had been signed and the project should begin soon.

Mayor Fitzgerald thanked everyone who participated in the July 4<sup>th</sup> celebration at the fair ground. He suggested that perhaps a parade could be added to the celebration for next year.

Mayor Fitzgerald suggested that discussion of a retreat should be on the July 23<sup>rd</sup> agenda when all Council Members are present.

Vice-Mayor Rogers suggested that perhaps the Charter Committee should be abolished.

Vice-Mayor Rogers offered a motion that Wayne E. Heatwole, 530 Collicello Street, be appointed to a term on the Community Services (Chapter 10) Board to expire on July 1, 2005. The motion was approved with a unanimous vote of Council Members present.

At 7:58 p.m., there being no further business and on motion adopted the meeting was adjourned.

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CITY CLERK

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MAYOR