

MINUTES - REGULAR MEETING OF CITY COUNCIL - SEPTEMBER 10, 2002

REGULAR MEETING

SEPTEMBER 10, 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, Dorn W. Peterson, Hugh J. Lantz; City Clerk Yvonne Bonnie Ryan, CMC/MMCA, and Chief of Police Donald Harper.

Council Member Frank gave the invocation and Mayor Fitzgerald led everyone in the Pledge of Allegiance.

Council Member Peterson offered a motion to approve the consent agenda, including approval of the minutes and the second reading of several Supplemental Appropriations for the Police Department, Fire Department and the Public Utilities Department. The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Peterson

Council Member Lantz

Council Member Frank

Vice-Mayor Rogers

Mayor Fitzgerald

Absent None

Planning and Community Development Director Turner introduced a request by Freedom Baptist Church for a special use permit to allow the operation of a Child Day Care Program. The church facility is located at 141 Pleasant Hill Road. She reviewed the surrounding uses in the area. City ordinance defines child day care center as a regularly operating service arrangement for two (2) or more children under the age of thirteen (13), where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision and well-being of a child for less than a twenty-four hour period, a facility that is not the residence of the provider or of any of the children in care. The church currently has adequate space to house the facility and sufficient parking to support the use. Regulation and inspection of the facility will be the responsibility of the Virginia Health Department. Mrs. Turner said that staff recommended approval of the special use permit to allow Freedom Baptist Church to operate a child day care center, with the following conditions: 1) Hours of operation for the site are to be restricted to Monday through Friday between 6:00 a.m. to 7:00 p.m. 2) Special use permit shall remain valid for only the period of time a child day care center is in operation on the site. The church meets all the required setbacks for places of worship and the surrounding neighborhood is comprised mostly of residential uses of varying densities. She said that the Planning Commission recommended approval of the request.

At 7:37 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, August 26, and Tuesday, September 3, 2002.

NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold Public Hearings on Tuesday, September 10, 2002, at 7:30 p.m. in the City Council Chambers, 345 South Main Street, Harrisonburg, Virginia to consider the following.

SPECIAL USE PERMIT-FREEDOM BAPTIST CHURCH

Public Hearing to consider a request by Freedom Baptist Church for a special use permit {per Section 10-3-34 (1)} to allow the operation of a Child Day Care Program. The property is identified as tax map 8-B-5 and is located at 141 Pleasant Hill Road.

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 person 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 special use permit.

Bucky Berry, a resident of 877 North Main Street, asked City Council to approve the special use permit. There being no others desiring to be heard, the public hearing was declared closed at 7:38 p.m., and the regular session reconvened. Council Member Frank offered a motion to approve this request. The recorded roll call vote was taken as follows:

Vote:	Yes -	Council Member Peterson
		Council Member Lantz
		Council Member Frank
		Vice-Mayor Rogers
		Mayor Fitzgerald
Absent	None	

Planning and Community Development Director Turner introduced a request by BIZ L.L.C. for a special use permit to allow not more than three (3) individuals to occupy the front unit of a two-family dwelling unit at West Fairview Avenue. She explained that the front portion of the structure contains three bedrooms while the rear portion has two bedrooms. A recently approved minor subdivision reapportioned sections of the rear yards of two neighboring lots to increase the square footage of the subject property lot. The extra area was needed to make the existing two-unit structure a conforming use under the City's Ordinance. A minimum of 11,000 square feet is required for a two unit dwelling in the R-2, Residential District. She reviewed the surrounding uses in the area. She also said to reduce the impact on the surrounding

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neighborhood the following conditions are recommended by staff: 1) A minimum of five (5) off-street parking spaces must be provided in the rear of the subject property. The surface must consist of an all-weather stabilized, dust free surface that is clearly defined from adjoining on-site improvements, as required per Section 2.5.5 of the Design and Construction Standards Manual. 2) The property shall be inspected on an annual basis, similar to the boarding house inspection, to ensure building code requirements are met and the number of people residing on the premise meets the criteria of the permit. This inspection is to take place while all tenants are residing in the structure. 3) After a property passes its annual inspection, the Zoning Administrator will administratively renew the special use permit provided the use is still permitted by the Zoning Ordinance. 4) The Zoning Administrator shall revoke the permit, if this inspection does not take place every twelve (12) months. 5) The Planning Commission shall be authorized to review complaints received on the property on an on-going basis and based on their findings, notify the landlord that the permit is being revoked unless they wish to reapply for a special use permit. This section of Fairview Avenue and the intersecting Harrison Street are almost wholly comprised of rental properties. She said that Planning Commission recommended approval of the request.

At 7:45 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, August 26, and Tuesday, September 3, 2002.

NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold Public Hearings on Tuesday, September 10, 2002, at 7:30 p.m. in the City Council Chambers, 345 South Main Street, Harrisonburg, Virginia to consider the following.

SPECIAL USE PERMIT-BIZ, L.L.C.

Public Hearing to consider a request by BIZ L.L.C., for a special use permit {per Section 10-3-40 (7)} to allow not more than three (3) individuals to occupy the front unit of a two-family dwelling unit at 55 West Fairview Avenue. The property is zoned R-2, Residential District and can be found on tax map parcel 18-1-94 & 95.

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 person 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 special use permit.

Franklin Blatt representing BIZ, L.L.C. said that the structure was built originally as a three-bedroom house in the 1950's. A back unit was added later, making it a two unit dwelling. The reason for the minor subdivision for this property was to make this structure conform to the lot size requirements for a two unit dwelling in the

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R-2 zoning classification. He said rather than increasing density by right, he was only asking for a special use permit for the front portion of the property. He reviewed some of the improvements he has planned for the property. There being no others desiring to be heard, the public hearing was declared closed at 7:50 p.m., and the regular session reconvened. Council Member Peterson offered a motion to approve this request. The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Peterson

Council Member Lantz

Council Member Frank

Vice-Mayor Rogers

Mayor Fitzgerald

Absent None

Planning and Community Development Director Turner introduced a request to amend Section 10-3-24 of the Zoning Ordinance. She explained that the proposed amendment would clarify the definition of the ordinance. Mrs. Turner reviewed the current definition of the ordinance and said that it was not very clear. The new definition will read: *Public Use*: Any instance where a lot or parcel of land, or any improvement on a lot of parcel of land, is used by (1) the City of Harrisonburg, or (2) another government entity having a contractual relationship with the City for the use of such lot or parcel or improvement.

At 7:54 p.m., Mayor Fitzgerald 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, August 26, and Tuesday, September 3, 2002.

NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold Public Hearings on Tuesday, September 10, 2002, at 7:30 p.m. in the City Council Chambers, 345 South Main Street, Harrisonburg, Virginia to consider the following.

ORDINANCE AMENDMENT

Public Hearing to consider amending the Zoning Ordinance definition of public uses:

Article F. Definitions, Section 10-3-24.

***Public Use*: Any instance where a lot or parcel of land, or any improvement on a lot or parcel of land, is used by (1) the City of Harrisonburg, or (2) another governmental entity having a contractual relationship with the City for the use of such lot or parcel or improvement.**

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 person 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.

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City Manager Baker presented an overview of Governor Mark Warner's drought executive order. He explained that the executive order applies to all localities in the state except an area in Northern Virginia and an area in Southwest Virginia. The order does not state that a locality has to impose restrictions or penalties only that it may impose restrictions or penalties. Mr. Baker recommended that the City go to a voluntary restriction stage to notify the City's biggest water users and educate the public. Mr. Baker said that although the City has an adequate supply of water at the current time, "I would hate to have to come in here in October and say we have to go straight to an emergency level without educating people. We've had a lot of calls from people wondering what they can and can't do. It would be less confusing to people if we go to the voluntary conservation phase."

Council Member Lantz said there is no need to add to the state's restrictions, particularly since the City's water problems are relatively minor. He said, "If this was July or early August, I might have been inclined to do it, but it is mid-September and it's starting to cool down. People don't use (as much water) this time of year. The governor's already given a decree and people realize there's a drought. He said he was concerned residents might not take future orders seriously, when the City's problems may be more severe, if water restrictions are imposed now. I'd hate to cry wolf when we don't really have a problem."

Council Member Peterson said it is important to reinforce the state's order. He said, "We need to avoid the confusion of having two different governments on two different sides of the issue. I'm worried if we don't do this, people will read the paper tomorrow and think there's no problem. He also said not to institute phase one conservation might give residents the impression that the state's order does not apply to them."

Vice-Mayor Rogers suggested that Council wait two weeks to determine how residents are responding to the state's order and to give Mother Nature a chance to cooperate. The citizens are already conserving water because the City has been in this situation before. Council Member Frank offered a motion to implement voluntary water restrictions. The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Peterson

Council Member Frank

Mayor Fitzgerald

No - Council Member Lantz

Vice-Mayor Rogers

Absent None

Residents of the 300 block of Myers Avenue appeared before City Council to discuss parking problems.

Sandra Landes, a resident of 323 Myers Avenue, presented a petition containing signatures of the residents of Myers Avenue. She said the residents of Myers Avenue who live directly across from the Spotswood Elementary School are experiencing constant parking problems, noise, unruly behavior and traffic congestions. At times it is difficult to get in and out of our own driveways due to the congested parking on both sides of the street. A group gathers almost every day of the week to play soccer in either the Spotswood playground or Kiwanis Park. This issue has no relation to the City's soccer league. She said that the residents are requesting no parking or permit parking seven days a week and 24 hours a day for both sides of the 300 block of Myers Avenue. Myers Avenue is currently in a red zone which allows parking Monday through Friday from 4:00 a.m. to 6:00 p.m.

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Don Wallinger, a resident of 331 Myers Avenue, said that cars are double parking on both sides of the street. He said, I am concerned about safety because children are running out into the street after soccer balls.

Dr. Bijan Saadatmand, a resident of 345 Myers Avenue, said that he was tired of constantly having to pick up after the players and expressed concern about more serious criminal activity. He said, For many hours they will sit in their cars, so called watching the game where it is too far to see the game. They are watching the activities in our front yards. He said that a neighbor could not get into his driveway because of the congestion caused by illegally parked cars. We have tried to reason with the players, but it is difficult to communicate with them.

The following discussion by Council Members relative to the parking problem issue included changing to the blue zone could hinder a lot of family activities, area has not met blue zone parking requirements, restrict parking to one side of the street, users of the park should be allowed to park along the streets, ask the School Board to consider developing a parking lot off of Reservoir Street, compromise, banning parking from one side of the street, and parking problems being an enforcement issue. Vice-Mayor Rogers offered a motion to table this issue and requested that City Manager Baker and the Transportation Safety Commission present a report with recommendations to the City Council at the October 8 meeting. The motion was approved with a unanimous vote of Council.

City Manager Baker stated that the Virginia Municipal League has been scheduled for October 21-23, 2002. Council Member Peterson offered a motion naming City Manager Roger Baker as the voting delegate and Mayor Joseph Gus Fitzgerald as the alternate voting delegate. The motion was approved with a unanimous vote of Council.

Parks and Recreation Director Foerster presented a request for a supplemental appropriation for the Parks and Recreation Department. He explained that these reserved funds would be used for a Skateboard Park project and making improvements to the Ramblewood Athletic Complex. Council Member Peterson offered a motion to approve this request for a first reading, and that:

\$200,000.00 chge. to: 1000-31010 Amount from fund balance

\$182,000.00 approp. to: 710171-48229 Skateboard Park

18,000.00 approp. to: 710871-48184 Improvements

The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Peterson

Council Member Lantz

Council Member Frank

Vice-Mayor Rogers

Mayor Fitzgerald

Absent None

Police Chief Harper presented a request for a supplemental appropriation for the Police Department. He explained that these funds were received from state asset seizure money to cover training and computer items

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for investigation of computer crimes. Council Member Lantz offered a motion to approve this request for a first reading, and that:

\$5,503.00 chge. to: 1000-31010 Amount from fund balance

\$1,758.00 approp. to: 1000-310331-45530 Training

2,245.00 approp. to: 1000-310331-48273 Software

1,500.00 approp. to: 1000-310331-48272 Hardware

The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Peterson

Council Member Lantz

Council Member Frank

Vice-Mayor Rogers

Mayor Fitzgerald

Absent None

Police Chief Harper presented a request for a supplemental appropriation for the Police Department. He explained that the department has received reimbursement money from the Division of Motor Vehicles to purchase a large print display board and rebuild a speed trailer. . Council Member Lantz offered a motion to approve this request for a first reading, and that:

\$1,489.00 chge. to: 1000-33524 DMV Grant

\$1,489.00 approp. to: 1000-310231-48211 Machinery and equipment

The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Peterson

Council Member Lantz

Council Member Frank

Vice-Mayor Rogers

Mayor Fitzgerald

Absent None

Bucky Berry, a resident of 877 North Main Street, complained about his deteriorating sidewalks.

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City Manager Baker reminded everyone that a Harrisonburg and Rockingham County memorial service will be held on Wednesday, September 11, 2002 at 8:15 a.m. on the Court House lawn.

At 9:08 p.m., Council Member Peterson offered a motion that Council enter a closed session for the discussion of performance of specific public officers, appointees or employees of the Harrisonburg City Council. A closed session is permissible for this purpose to Section 2.2-3711.A.1 of the Code of Virginia (1950), as amended (the Code). IN ADDITION, the purpose of the closed session is for the discussion of matters related to the acquisition of real property. A closed session is permissible for this purpose pursuant to Section 2.2-3711.A.1 of the Code of Virginia (1950), as amended (the Code). The motion was approved with a unanimous vote of Council.

At 9:30 p.m., the closed session ended and the regular session reconvened. City Clerk Ryan read the following statement which was agreed to with a unanimous recorded vote of Council: I 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 Title 2.1 of the Code of Virginia, 1950, as amended, and (2) only such matters as were identified in the motion by which the closed session were convened were heard, discussed or considered in the closed session by the City Council.

Council Member Peterson offered a motion that James E. Huffman, 1214 Windsor Road, be appointed to a second term on the Harrisonburg Planning Commission to expire on December 31, 2006. The motion was approved with a unanimous vote of Council.

Council Member Peterson offered a motion that J.T. Turner, 870 Blue Ridge Drive, be appointed to a term on the Central Shenandoah Emergency Medical Services Council to expire on October 10, 2005. The motion was approved with a unanimous vote of Council.

At 9:31 p.m., there being no further business and on motion adopted the meeting was adjourned.

CITY CLERK

MAYOR