

REGULAR MEETING

JANUARY 9, 2007

At a regular meeting of Council held this evening at 7:00 p.m., there were present: Mayor Rodney Eagle; City Manager Roger Baker; Assistant City Manager Kurt Hodgen; City Attorney Earl Q. Thumma, Jr.; Vice-Mayor George W. Pace; Council Members Charles R. Chenault; Council Member Carolyn W. Frank, and Ted Byrd; City Clerk Yvonne “Bonnie” Ryan, MMC, and Chief of Police Donald Harper.

Council Member Byrd gave the invocation and Mayor Eagle led everyone in the Pledge of Allegiance.

Bucky Berry, a resident of Harrisonburg, said a survey should be conducted to increase the salaries and benefits of the Harrisonburg’s Police Department.

Steven Jones one of the owners of Boston Beanery in Harrisonburg complained about being assessed a penalty for the Food and Beverage Tax collected in July 2006. He requested that the penalty be waived insisting that his office had mailed the check, but apparently the post office did not postmark it until August 21st since August 20th was a Sunday.

Council Member Chenault offered a motion to approve the consent agenda, including approval of the minutes and second reading of a supplemental appropriation for the Public Works Department, Parks and Fire Department. The motion was seconded by Council Member Frank, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Frank
Vice-Mayor Pace
Council Member Chenault
Council Member Byrd
Mayor Eagle

Absent – None

Planning and Community Development Director Turner introduced a request from Gary L. Beatty for a special use permit at 1101 South Main Street. The Comprehensive Plan designates this area as professional. In November of 2002, the applicant requested a special use permit to allow up to four persons to occupy one unit of the two-unit dwelling; however, he was unsuccessful in attaining the permit. The applicant is again requesting a special use permit to allow not more than four persons to occupy the upper unit. The structure is a two-unit dwelling, with one unit on the basement floor and one unit upstairs. There appears to be adequate parking spaces on the site. She reviewed the surrounding uses in the area. The Comprehensive Plan designates this lot and the remaining lots of this block to the south of the subject parcel as professional. If approved, this would set an unwanted precedent that the City endorses high density for this section of South Main Street. She said that staff does not support this special use permit request, but if Planning Commission does endorse this proposal, staff recommends the

following conditions be added to the request. 1) The property would be inspected on an annual basis by staff to ensure compliance with zoning and building requirements. 2) The Zoning Administrator could revoke the special use permit if the inspection does not take place every 12 months. 3) The Zoning Administrator will review all complaints against this property, and if warranted, bring violations to the attention of the Planning Commission for further action. She said that Planning recommended that the request not be approved.

At 7:11 p.m., Mayor Eagle closed the regular session temporarily and called the evening first public hearing to order. The following notice appeared in the Daily News-Record on Tuesday, December 26, 2006, and Tuesday, January 2, 2007.

NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold public hearings on January 9, 2007 at 7:00 p.m., in the Municipal Building, City Council Chambers, 345 South Main Street, to consider the following:

Special Use Permit – 1101 S. Main St.

Public hearing to consider a request from Gary L. Beatty for a special use permit per Section 10-3-40 (7) to allow an increase in occupancy from two to four persons. The property, zoned R-2, Residential District, is located at 1101 S. Main Street and can be found on tax map 18-H-19.

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 Eagle called on anyone desiring to speak for or against this special use permit request. Gary Beatty said he was pleased with the Land Use Guide's designation, but unfortunately had to deal with the current zoning of the property. He described the uses in the area and said there was only one owner occupied dwelling in this area. He said his area was different than the Maplehurst Avenue neighborhood especially because five lanes of traffic separated them. Some concerns were expressed at the Planning Commission meeting regarding the appearance of the property. "There is no one more concerned about maintaining that property than I am since I have owned property in the area for 12 years". He has also provided sufficient parking for the property. The special use permit will allow the City to have more control of the property because of the annual inspection.

Ruth Gera said that she was opposed to this request because some of houses in the area are occupied by students. Students sit on the roof drinking, make a lot of noise and create a lot of trash, which has not been seen because residents in the neighborhood pick up the trash.

Calvin Farrell, a resident of the City, said a lot of the neighborhood were against the special use request. There being no others desiring to be heard, the public hearing was declared closed at 7:19 p.m., and the regular session reconvened.

Kathy Barnes said there is a big difference between businesses and student houses in the neighborhood. Businesses close at 5:00 p.m., but students are there all night and weekends.

The following discussion by Council Members included: Were most of the houses in the area being used for R-1 or R-2 zoning classification? How many houses were connected to the Catholic Student Center? It is a density issue. It would allow six unrelated people to live in a single family house. It is related to spot zoning. All neighborhoods of the City should be protected at all costs. This request could also place a strain on policing policies and inspection. Following further discussion and comments, Council Member Frank offered a motion to approve the special use permit; however, the motion failed for lack of a second.

Council Member Byrd offered a motion to deny the special use permit. The motion was seconded by Council Member Chenault, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Vice-Mayor Pace
Council Member Chenault
Council Member Byrd
Mayor Eagle

No - Council Member Frank

Absent – None

Planning and Community Development Director Turner introduced a request from Wayne Engel for a special use permit at 547 East Market Street. The property is zoned R-2, Residential District and can be found on tax map 27-F-24. The Comprehensive Plan designates this area as Professional. She said that in March of 2000 the applicant was granted a special use permit to operate the Stonewall Jackson Bed and Breakfast facility at 547 East Market Street. At that time, the applicant stated on his application that the house would have six to eight guest rooms, but a condition was not placed on the special use permit. The applicant would now like to modify the previous special use permit request to include the additional four guest rooms along with the construction of a ground floor living space for his son who will be the proprietor of the bed and breakfast. The City ordinance requires the innkeeper to live on premises. This update to the previous permit will reflect the current number of rooms open for public rental. She reviewed the surrounding uses in the area. There is sufficient space on site to provide this parking. She said that Planning Commission recommended approving the special use permit.

At 7:38 p.m., Mayor Eagle closed the regular session temporarily and called the evening second public hearing to order. The following notice appeared in the Daily News-Record on Tuesday, December 26, 2006, and Tuesday, January 2, 2007.

NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold public hearings on January 9, 2007 at 7:00 p.m., in the Municipal Building, City Council Chambers, 345 South Main Street, to consider the following:

Special Use Permit – 547 E. Market Street (Wayne Engel)

Public hearing to consider a request from Wayne Engel, LLC to modify an existing special use permit per Section 10-3-40(8) to enlarge the bed and breakfast operation at 547 East Market Street. The property is zoned R-2, Residential District and can be found on tax map 27-F-24.

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 Eagle called on anyone desiring to speak for or against this request.

Wayne Engel said that the bed and breakfast facility has been successful. He said that he would be moving from the facility and his son would move into the innkeeper's living space. There being no others desiring to be heard, the public hearing was declared closed at 7:40 p.m. Council Member Chenault offered a motion to approve this special use permit request. The motion was seconded by Vice-Mayor Pace, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Frank
Vice-Mayor Pace
Council Member Chenault
Council Member Byrd
Mayor Eagle

Absent – None

Planning and Community Development Director Turner introduced a request from Leonard and Sylvia Aamodt to subdivide two parcels totaling 5.96 acres located at the end of

Wyndam Drive. The property, zoned R-1, Single Family Residential, is located at the end of Wyndam Drive and can be found on tax map 23-X-10&11. The Comprehensive Plan designates this area as Low-Density Residential. She reviewed the surrounding uses in the area. The applicants are requesting to subdivide two undeveloped parcels, zoned R-1, Single Family Residential District, into six lots. This new configuration requires the vacation of one existing property line that bisects these two properties. The applicants would extend Wyndham Drive approximately five hundred feet from the current termination at the existing temporary cul-de-sac. The new extension would end with a temporary T-turnaround. In the future, this road could be extended through to intersect with Neyland Drive, if and when Neyland Drive is ever extended. The applicants have offered to dedicate right-of-way for a potential street connection to James Place, which is currently under construction. Because the Aamodts are not maximizing their lot densities and the future street connection is uncertain because of the required participation of adjacent property owners, staff feels the dedication of this right-of-way is all that should be required. She said that Planning Commission recommended approving this request. Vice-Mayor Pace offered a motion to approve this request as presented. The motion was seconded by Council Member Byrd, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Frank
Vice-Mayor Pace
Council Member Chenault
Council Member Byrd
Mayor Eagle

Absent – None

Planning and Community Development Director Turner introduced a request from Gary Bodkin to subdivide one, .77-acre parcel located at 2541 Reservoir Street into nine townhouse lots. The property, zoned R-3, Multiple Dwelling Residential District, is located at 2541 Reservoir Street and is found on tax map 81-A-12. The Comprehensive Plan designates this area as Medium-Density Mixed Residential. In September 2005, City Council approved a request to preliminarily plat 10 townhouse lots on .77-acres of land along Reservoir Street near the City limits; however, in September 2006 the applicant asked for an extension to this preliminarily plat because it was about to expire. The applicant's new plan reduced the number of units from 10 down to nine units. She reviewed the surrounding uses in the area. In October Planning Commission recommended approval of the preliminary plat request with variance and a new condition to limit the occupancy of each unit to a family or no more than two unrelated individuals. Since October the applicant has made revisions to the plan, which is very similar to the most recent plan from October 2006. They have also proposed providing 11 more parking spaces than required. There will be a total of 34 parking spaces. The garage spaces; however, are essential to accommodate the number of vehicles maneuvering within the development, and the applicant has agreed to place a deed restriction on the garages that they cannot be converted to living spaces. The applicants are willing to dedicate an additional 15 feet of right-of-way for a total of 20 feet along the frontage of the property. She said that Planning Commission has recommended approving the new preliminarily plat with the conditions that were previously discussed. Vice-Mayor Pace offered a motion to approve this request as presented. The motion

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

Vote: Yes - Council Member Frank
Vice-Mayor Pace
Council Member Chenault
Council Member Byrd
Mayor Eagle

Absent – None

Reggie Smith, Director of Public Transportation, presented an overview of a Transit Development Plan. He said this five-year development plan was paid for by the Virginia Department of Rail and Public Transportation. It is a requirement to receive Federal funding as part of the state transportation plan. This study focused on City routes and the service provided to the citizens of Harrisonburg. He reviewed the service improvement alternatives included in the report. The report suggests serving smaller towns in Rockingham County; however, this aggressive approach would depend on receiving funding from the localities.

City Manager Baker presented a request for a supplemental appropriation to increase the 2006-2007 budget. He said these funds were received for investment earnings. The additional estimated earnings will be transferred to the General Capital Projects Fund and will be used for the Greendale Road project and Evelyn Byrd Avenue project. Council Member Chenault offered a motion to approve this request for a first reading, and that:

\$195,000.00 chge. to: 1000-31513 Investment earnings
195,000.00 chge. to: 1310-34210 Transfer from General Fund

\$195,000.00 approp. to: 1000-990111-49216 Transfer to General Capital Proj. Fund
100,000.00 approp. to: 1310-910141-48666 Greendale Road
95,000.00 approp. to: 1310-910141-48667 Evelyn Byrd Avenue

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

Vote: Yes - Council Member Frank
Vice-Mayor Pace
Council Member Chenault
Council Member Byrd
Mayor Eagle

Absent – None

City Manager Baker presented a request to reserve a portion of the General Fund unappropriated fund balance. He said the reserve will be used to pay the future debt payments on the old high school bonds. The reserve will be for \$2,779,902.50. When the old high school

was sold the City was unable to defease the remaining debt on the building due to a call restriction. Therefore, legal counsel recommended that the remaining debt outstanding be provided for in a reserve. Vice-Mayor Pace offered a motion to approve reserving \$2,779,902.50 of the General Fund unappropriated fund balance. The motion was seconded by Council Member Chenault, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Frank
Vice-Mayor Pace
Council Member Chenault
Council Member Byrd
Mayor Eagle

Absent – None

City Attorney Thumma presented for Council’s consideration an ordinance amending and re-enacting Section 4-1-27(b) and enacting Article K of Title 4, Chapter 2 of the Harrisonburg City Code. Commissioner of the Revenue said changing the collection dates of the tax will require hiring extra help, moving deadlines, and rewriting more ordinances. She said that under Article K of Title 4, Chapter 2, one vehicle would be exempt for a couple or individual who qualifies under the income and net worth requirements. Following further discussion and comments, Council Member Chenault offered a motion to approve enacting Article K of Title 4, Chapter 2 of the Harrisonburg City Code for a first reading. The motion was seconded by Vice-Mayor Pace, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Frank
Vice-Mayor Pace
Council Member Chenault
Council Member Byrd
Mayor Eagle

Absent – None

Police Chief Harper presented a request for a supplemental appropriation for the Police Department. He said these funds include funding for a Gang Task Force, funding from DMV, funding from state asset seizure money, and funding through grants for Weed and Seed Gang Task Force. Vice-Mayor Pace offered a motion to approve this request for a first reading, and that:

\$6,937.90 chge. to: 1000-32211 State Weed and Seed

\$3,558.18 approp. to: 1000-310531-41020 Salaries/wages OT

1,934.40 approp. to: 1000-310331-41020 Salaries/wages OT

1,445.32 approp. to: 1000-310631-41020 Salaries/wages OT

\$14,750 chge. to: 1000-31010 Amount from fund balance

\$ 7,250.00 approp. to: 1000-310131-48236 Property room renovation
7,500.00 approp. to: 1000-310331-45530 Training/travel

\$190.52 chge. to: 1000-33524 Federal DMV grant

\$190.52 approp. to: 1000-310231-41020 Salaries/wages OT

\$1,247.12 chge. to: 1000-32211 State weed and seed

\$1,247.12 approp. to: 1000-310531-45530 Travel and training

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

Vote: Yes - Council Member Frank
Vice-Mayor Pace
Council Member Chenault
Council Member Byrd
Mayor Eagle

Absent – None

Commissioner of the Revenue June Hosaflook commented on Mr. Steven Jones comments made earlier this evening to City Council regarding a penalty for Boston Beanery concerning an overdue tax payment. She said that meals tax must be postmarked by the 20th of the month, and her department does keep the mailing envelopes. If the 20th of the month occurs on a Sunday, the postmark of the 21st is accepted. She said that Mr. Jones insisted he mailed all of the payments the same day to different localities and had not received other complaints. She said that the City has waived the penalty for Boston Beanery two times for late payments in the past and that Boston Beanery has never paid the tax early. She said, “ Mr. Jones should know that this money is not Boston Beanery’s money. This money was collected from the tax payers and that every day he keeps it we don’t have it”.

City Manager Baker reported that the plans have been drawn up for bids on the bridge downtown. The City will pay half of the cost of the bridge repairs.

Council Member Chenault offered a motion that Reggie Smith be re-appointed retroactively to the MPO Board as of March 3, 2006 to expire on March 3, 2009. The motion was seconded by Council Member Byrd, and approved with a unanimous vote of Council.

Council Member Frank offered a motion that Aaron Smith-Walter be recommended as a member to the TAC Board as of January 9, 2007. The motion also included that Aaron-Smith-Walter be approved as non-voting member of the Policy Board. The motion was seconded by Council Member Chenault, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Frank

Vice-Mayor Pace
Council Member Chenault
Council Member Byrd
Mayor Eagle

Absent – None

Council Member Frank offered a motion that James B. Acker, 302 Fairway Drive, be appointed to an unexpired term of Dennis Snyder on the Industrial Development Authority to expire on March 14, 2007. The motion was seconded by Council Member Chenault, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Frank
Vice-Mayor Pace
Council Member Chenault
Council Member Byrd
Mayor Eagle

Absent – None

Council Member Frank offered a motion that Charles H. Tibbits, 1475 Virginia Avenue, be appointed to an unexpired term of Michael Wong on the Blue Ridge Disability Services Board to expire on February 1, 2008. The motion was seconded by Council Member Chenault, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Frank
Vice-Mayor Pace
Council Member Chenault
Council Member Byrd
Mayor Eagle

Absent – None

At 9:37 p.m., Council Member Chenault offered a motion that Council enter a closed session for discussion and consideration of personnel, and prospective candidates to be appointed to the Harrisonburg Parking Authority, Board of Viewers, and Industrial Development Authority, exempt from the public meeting requirements pursuant to Section 2.2-3711(A)(1) of the Code of Virginia. Discussion and consideration of the acquisition of real estate to be used for public purposes, exempt from public meeting requirements pursuant to Section 2.2-3711(A)(3) of the Code of Virginia, 1950, as amended. The motion was seconded by Council Member Byrd, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Frank
Vice-Mayor Pace
Council Member Chenault
Council Member Byrd

Mayor Eagle

Absent – None

At 9:55 p.m., the closed session ended and the regular session reconvened. City Clerk Ryan read the following statement was agreed to with a unanimous recorded vote of 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 Title 2.1 of the Code of Virginia, 1950, as amended, and (2) only such public business matters as were identified in the motion by which the closed session was convened, were heard, discussed or considered in the closed session by the City Council.

At 9:56 p.m., there being no further business and on motion adopted the meeting was adjourned.

CITY CLERK

MAYOR