

REGULAR MEETING

May 8, 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; Carolyn W. Frank, and Ted Byrd; City Clerk Yvonne "Bonnie" Ryan, MMC, and Chief of Police Donald Harper.

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

Council Member Chenault offered a motion to approve the consent agenda, including approval of the minutes, and a second reading appropriating proceeds received from the sale of the old high school building and land. The motion also included an alley closing request from Craig Hertzler. The motion was seconded by Council Member Frank, and approved with a recorded roll call vote taken as follows:

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

Absent - None

Planning and Community Development Director Turner introduced a request from Mercedes Rodriguez to rezone a 12,843 square foot parcel from R-2 to R-3C. The property is located at 1020 Old Furnace Road and can be found on tax map 32-E-2. She reviewed the surrounding uses in the area. The Comprehensive Plan designates this area as Medium-Density Residential. The applicant has proffered to convert the single family house into a professional office and an apartment. Currently, the single family home is being utilized as the applicant's location for their accounting business. This use is an allowed occupation under the Home Occupation Permit process; however, when applicants apply for their permit, they will sign an agreement that states, if the use becomes an overburden to the neighborhood such as excessive traffic, noise or other disturbances, it may be subject to re-evaluation. The applicant had a Home Occupation Permit for their previous address but do not have a permit for this location. At this time traffic and parking has become an issue of concern. The parking is overflowing into the right-of-way and into the front yard because there is insufficient space to provide for off street parking. Staff has explained to the applicant that if the request is denied, they could continue their accounting business at this location; however, they will have to restructure the business regarding the frequency of customers and parking on the site. The applicant has proffered the following: 1) Maintain the principal building as a family residence. 2) Convert the out building in the rear of the property into a professional office. 3) Construct a six foot fence around the property. 4) Place parking in the rear of the property. 5) Maintain the green space along the

graveled area of the lot as illustrated with the submitted design. She said that Planning Commission has recommended that the request 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 Monday, April 23, and Monday, April 30, 2007.

NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold public hearings on Tuesday, May 8, 2007 at 7:00 p.m., in the City Council Chambers, 409 South Main Street to consider the following:

Rezoning – 1020 Old Furnace Road (Rodriguez)

Public hearing to consider a request from Mercedes Rodriguez to rezone a 12,843 sq. ft. +/- parcel zoned R-2, Residential District to R-3C, Multiple Dwelling Residential District Conditional. The property is located at 1020 Old Furnace Road and can be found on tax map 32-E-2.

The Comprehensive Plan designates this area as Medium-Density Residential. This designation states that these areas are near major thoroughfares or commercial areas. They contain a variety of housing types such as single-family, duplex, and two or three story apartments and densities can range from 1 to 15 units per acre.

The Zoning Ordinance states that the R-2, Residential District is intended for medium-density, single-family and two-family residential development. The residential density ranges for R-2 are single-family, 7,000 sq. ft. minimum and two-family, 5,500 sq. ft/unit. The R-3, Multiple Dwelling Residential District is intended for medium- to high-density residential development and other uses intended to respect the residential character, which are aesthetically compatible within the district by means of architectural expression, landscaping, and restrained traffic flow. The residential density ranges for R-3 are single-family, 6,000 sq. ft. minimum; two-family, 4,000 sq. ft/unit; multi-family, 00 sq. ft. minimum per unit; townhouses, 2,000 sq. ft. minimum per unit; and other uses, 6,000 sq. ft. minimum.

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 rezoning request.

Mercedes Rodriguez said she would like to continue operating the business at this location. There being no others desiring to be heard, the public hearing was declared closed at 7:14 p.m., and the regular session reconvened. Council Member Frank offered a motion to approve this request as presented. The motion was seconded by Vice-Mayor Pace, and approved with a recorded roll call vote taken as follows:

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

Absent - None

Planning and Community Development Director Turner introduced a request from Mountain View Apartments to rezone a 6.92 acre portion of property located at 1385 Port Republic Road from R-1 to R-3C. The property can be found on tax map parcel 88-F-12. The Comprehensive Plan designates this area as Low-Density Mixed Residential. She reviewed the surrounding uses in the area. In June of 2005, City Council denied a rezoning proposal of the subject area from R-1, Single-Family Residential District to R-3C, Multiple Dwelling Residential District Conditional. That plan of development included professional offices along Port Republic Road, duplex units toward the center of the property, and single-family homes on the rear of the property. In October of 2005, Planning Commission approved a preliminary plat of single-family homes on the same property. That plat illustrated the extension of King Edwards Way to a future residential street configuration that eventually connects to Port Republic Road. The applicant is now requesting to rezone a 6.92-acre portion from the larger tract of land. A major factor in the construction of this development is the planned improvement of Port Republic Road, which is to be improved to a five-lane roadway (two lanes in each direction and center turn lane). The Public Works Department is working with the applicant and the applicant's engineer to reach an agreement with right-of-way acquisition. The right-of-way along the frontage of this property is variable, but on average 30 feet in width would be needed. The applicant has proffered the following: 1) All buildings would be used only for medical offices and professional offices. 2) Screening between residential R-1 and proposed medical or professional offices. Screening on the east and west side would be evergreen such as Leyland Cypress or equal. Screening in middle section between R-1 and proposed R-3 would be a six foot tall vinyl fence. 3) All buildings would be one story, all brick and of colonial design similar to attached pictures. Design would have to be approved by Architectural Control Committee. 4) Islands would be landscaped by Developer and maintained by adjoining property owners. This would be a deed requirement. She said that staff appreciates the proffers submitted with this request. The buffering could help separate the uses while the landscaped islands in the center of the street could provide a visual transition between uses as well as traffic calming measure to reduce vehicle speeds. However, staff believes the site could still develop under the current single family zoning classification. Appropriate visual and separation buffers could be constructed to make an attractive single-family home neighborhood. She said that Planning Commission recommended denial of the rezoning request.

At 7:28 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 Monday, April 23, and Monday, April 30, 2007.

NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold public hearings on Tuesday, May 8, 2007 at 7:00 p.m., in the City Council Chambers, 409 South Main Street to consider the following:

Rezoning – 1385 Port Republic Road (Professional Offices)

Public hearing to consider a request from Mountain View Apartments LLC, with representative Ingram-Hagen & Co. to rezone a 6.92-acre portion of property zoned R-1, Single Family Residential District to R-3C, Multiple Dwelling Residential District Conditional. The property is located at 1385 Port Republic Road and can be found on tax map parcel 88-F-12.

The Comprehensive Plan designates this area as Low-Density Mixed Residential. These large undeveloped areas located at the edge of the city are planned for residential development containing a mix of large and small-lot single-family detached dwellings and attractive green spaces.

The Zoning Ordinance states that the R-1, Single-Family Residential District is intended for low-density, relatively spacious single-family residential development. The residential density ranges from 1 to 4 units per acre, with a minimum lot size of 10,000 sq. ft. The R-3, Multiple Dwelling Residential District is intended for medium- to high-density residential development and other uses intended to respect the residential character, which are aesthetically compatible within the district by means of architectural expression, landscaping, and restrained traffic flow. The residential density ranges for R-3 are single-family, 6,000 sq. ft. minimum; two-family, 4,000 sq. ft/unit; multi-family, 3,000 sq. ft. minimum per unit; townhouses, 2,000 sq. ft. minimum per unit; and other uses, 6,000 sq. ft. minimum.

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 rezoning request.

Nathan Miller an attorney representing the applicant said the Port Republic Road corridor from Interstate 81 to the new Rockingham Memorial Hospital is currently a heavy traveled highway which will substantially increase upon the completion of the hospital. The City has asked the

owner to proffer additional real estate for widening of Port Road which indicates a pre-determination that the Port Republic Road corridor will become heavily used as an access highway. The owner notes that professional offices along Port Road would provide a buffer and a transition to the single-family homes in Ashby Meadows. The City street department will allow only one entrance from Port Republic Road to Ashby Meadows, thus residential housing located in the proximity or fronting on Port Road would have rear yards facing the Port Republic Road. The yards, at best, would front on Port Road with a buffer to protect children from traffic, which buffer may or may not be maintained. A viewing of the current situation on the Port Road corridor would evidence several residences which are for sale. This indicates the character of the entire corridor has changed and continues to develop as business/commercial. With the completion of the hospital noise and traffic will increase producing a safety risk which will certainly degrade the area for further expansion and development as residential units. The R-3 zoning will accommodate a controlled development in the area as the whole corridor expands. The R-3 zoning will not increase the school population and will give the City additional sources of revenue.

G.R. Heatwole said R-1 zoning on a five lane highway doesn't have any use. After the lanes on Route 11, Route 33, and Route 42, were increased to four or five lanes, how many single-family building permits did the City issue for land fronting on these streets? "I think this proposal is a definite compromise that is needed for medical and other associated offices because of the hospital."

Deborah Smith said traffic has increased on Port Republic Road. The City has taken part of her front yard for a five lane highway. A five lane highway is not a place for residents to be backing out onto because it is an unsafe situation. Professional offices would be a good buffer.

Barbara McKee said single-family housing is so important for this area. Our community needs affordable housing. These homes would be close to an elementary school and shopping center.

Debbie Peterson said she was opposed to the rezoning and would rather see residential housing in the area. My neighborhood is also concerned about extra traffic that will come through the neighborhood from the professional offices. There being no others desiring to be heard, the public hearing was declared closed at 7:51 p.m., and the regular session reconvened.

The following discussion by Council Members included: Changes have occurred in the Port Republic Road area. Professional offices are a good buffer to residential areas. The area will still have 24 new residential houses. The Port Republic Road corridor should be protected from any further development because of a planned new park, Turner Ashby monument access road relocation, and hopefully construction of athletic fields in the area. R-1 property in the City is at an extreme premium. The City is losing professional people because of the BPOL tax. This is a decent compromise proposal consisting of two-thirds residential and one-third commercial. A key for future proposals coming into this corridor will be the transportation alignment. Following further discussion and comments, Council Member Frank offered a motion to approve this rezoning request. The motion was seconded by Council Member Byrd, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Byrd
Council Member Frank
Mayor Eagle

No - Vice-Mayor Pace
Council Member Chenault

Absent - None

Planning and Community Development Director Turner introduced a request from Iglesia Nueva Vida Pentecostes for a special use permit to allow a religious use within the M-1, General Industrial District. The property is located at 760 Waterman Drive and can be found on tax map parcel 39-E-7A. The Comprehensive Plan designates this area as Commercial. She reviewed the surrounding uses in the area. This proposal was presented to the Planning Commission on December 11, 2002. City Council approved the special use permit request on January 14, 2003. However, there is a provision in the Zoning Ordinance, which states that if construction is not diligently pursued within 12 months the special use permit will expire. The applicant is requesting a renewed special use permit. Because this area is predominately industrial uses with limited nighttime activities, staff feels that outdoor lighting should be provided to illuminate any parking areas, walkways and entrances to provide security for church patrons. She said that Planning Commission has recommended that the special use permit be approved.

At 8:08 p.m., Mayor Eagle closed the regular session temporarily and called the evening third public hearing to order. The following notice appeared in the Daily News-Record on Monday, April 23, and Monday, April 30, 2007.

NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold public hearings on Tuesday, May 8, 2007 at 7:00 p.m., in the City Council Chambers, 409 South Main Street to consider the following:

Special Use Permit – 760 Waterman Drive (Castro)

Public hearing to consider a request from Iglesia Nueva Vida Pentecostes, with representative Abel Castro for a special use permit per Section 10-3-97 (9) of the Zoning Ordinance to allow a religious use within the M-1, General Industrial District. The property is located at 760 Waterman Drive and can be found on tax map parcel 39-E-7A.

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. Jeremiah Scuol said the new church would help the community. There being no others desiring to be heard, the public hearing was declared closed at 8:11 p.m., and the regular session reconvened. Vice-Mayor Pace offered a motion to approve this special use permit. The motion

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

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

Absent - None

Council Member Byrd offered a motion to approve a request by Wyndham Woods residents to hold a Memorial Day picnic on Sunday, May 27th. The motion was seconded by Vice-Mayor Pace and approved with a unanimous vote of Council.

City Manager Baker presented for Council's consideration an ordinance enacting Section 4-1-39 of the Harrisonburg City Code. This request was tabled from the April 24th City Council meeting until further information could be received to allow charging of a bad check fee. He said that the process to run a bad check through twice costs the City \$5.00. At the present time HEC charges \$10.00 for overdrafts and the City Water Department charges \$20.00 for administrative fees. He recommended that the word "shall" be changed to "may" in the sentence to allow charging a fee of \$35.00. Vice-Mayor Pace offered a motion to approve this ordinance as presented for a first reading. The motion was seconded by Council Member Chenault, and approved with a recorded roll call vote taken as follows:

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

Absent - None

Police Chief Harper presented a request for a supplemental appropriation for the Police Department. He said that these funds were received through a grant for Gang Task Force and will be used for overtime. Council Member Chenault offered a motion to approve this request for a first reading, and that:

\$603.84 chge. to: 1000-32211 State weed and seed

\$603.84 approp. to: 1000-310531-41020 Salaries/wages overtime

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

Vote: Yes - Council Member Byrd

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

Absent - None

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

RESOLUTION
Pol. Sub. – Section 138 Covered Employees
Retirement Multiplier of 1.85%

WHEREAS, by resolution legally adopted and approved by the City of Harrisonburg, a political subdivision, participates in the Virginia Retirement System under §51.1-130 of the Code of Virginia, as amended; and

WHEREAS, by resolution legally adopted and approved by the City of Harrisonburg has elected to provide the enhanced benefits described in §51.1-138, subdivision B to selected public safety employee groups, such benefits being referred to collectively as “Section 138 Coverage”, and

WHEREAS, the Virginia General Assembly passed legislation effective July 1, 2007, allowing the City of Harrisonburg to elect to provide for its employees with Section 138 Coverage a retirement allowance equal to the amount of creditable service multiplied by 1.85 percent of average final compensation as provided in clause (ii) in subsection A (1) of §51.1-206 (the “1.85 Multiplier”); and

WHEREAS, the City of Harrisonburg desires to make this irrevocable election and provide the 1.85 Multiplier to its employees that now have, or may in the future be given, Section 138 Coverage;

NOW, THEREFORE, IT IS

RESOLVED, that the City of Harrisonburg elects to establish the 1.85 Multiplier for all employees who are now, or who may be in the future, provided Section 138 Coverage; and it is further

RESOLVED, that the City of Harrisonburg agrees to pay the employer cost for providing the 1.85 Multiplier to all employees who are now, or who may be in the future, provided Section 138 Coverage, pursuant to this irrevocable election; and it is further

RESOLVED that the City of Harrisonburg, Roger D. Baker, City Manager, and Yvonne Ryan, City Clerk, are authorized and directed in the name of the City of Harrisonburg to execute any required contract to carry out his irrevocable election, and to

do any other thing, or things, incident and necessary in the lawful conclusion of this matter. The seal of the City of Harrisonburg shall be affixed to any such contract and attested by the Clerk, and Finance Director of the City of Harrisonburg is authorized and directed to pay over to the Treasurer of Virginia from time to time such sums as may be required to be paid by the City of Harrisonburg or its employees for this purpose.

CERTIFICATE

I, Yvonne Ryan, Clerk of the Harrisonburg City Council, certify that the foregoing is a true and correct copy of the resolution passed at a lawfully organized meeting of the Harrisonburg City Council governing body held at Harrisonburg, Virginia, at 7:00 p.m. on May 8, 2007.

Given under my hand and seal of the Harrisonburg City Council this 8th day of May, 2007.

CITY CLERK

City Manager Baker said the 2007 General Assembly (Senate Bill 1166) made several changes to retirement benefits for hazardous duty employees. The retirement multiplier will increase from 1.70 percent to 1.85 percent. Taking this action will cost the City \$143,000. Council Member Chenault offered a motion to approve this resolution effective July 1, 2007. The motion was seconded by Vice-Mayor Pace, and approved with a recorded roll call vote taken as follows:

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

Absent - None

Council Member Chenault offered a motion that Mayor Rodney Eagle and Community Development Planning Director Stacy Turner, be appointed to a term on the Central Shenandoah Planning District Commission to expire on June 30, 2010. The motion was seconded by Council Member Byrd, and approved with a unanimous vote of Council.

Council Member Chenault offered a motion that Council Member Carolyn Frank be appointed to a term on the Central Shenandoah Planning District Commission effective July 1, 2007 and expires on June 30, 2010. The motion was seconded by Council Member Byrd, and approved with a unanimous vote of Council.

Council Member Chenault offered a motion that Kathy Whitten, 560 South Mason Street, be appointed to a second term on the Blue Ridge Community College Board of Trustees to

expire on June 30, 2010. The motion was seconded by Vice-Mayor Pace, and approved with a unanimous vote of Council.

Council Member Chenault offered a motion that Donovan Branche be appointed to a term on the TAC Policy Board as a voting member. The motion was seconded by Council Member Frank, and approved with a unanimous vote of Council.

At 8:39 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 Blue Ridge Community College Board of Trustees, Central Shenandoah Planning District Commission, and non-voting member of TAC Policy Board, exempt from the public meeting requirements pursuant to Section 2.2-3711(A)(1) of the Code of Virginia. Consultation with legal counsel regarding proposed contracts requiring the provision of legal advice of such legal counsel, exempt from public meeting requirements pursuant to Section 2.2-3711(A)(7) 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 Byrd
Vice-Mayor Pace
Council Member Frank
Council Member Chenault
Mayor Eagle

Absent - None

At 10:00 p.m., 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 (20) 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 10:05 p.m., there being no further business and on motion adopted the meeting was adjourned.

CITY CLERK

MAYOR

