

REGULAR MEETING

June 9, 2009

At a regular meeting held this evening at 7:00 p.m., there were present: Mayor Kai Degner; City Manager Kurt Hodgen; Assistant City Manager Evan Vass; City Attorney Earl Q. Thumma, Jr.; Vice-Mayor Richard A. Baugh; Council Members David Wiens, Carolyn W. Frank and Ted Byrd; City Clerk Yvonne "Bonnie" Ryan, MMC; and Chief of Police Donald Harper.

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

Roger Baker who lives on Paul Street expressed his concerns regarding allowing "backyard chickens" in the City. Mr. Baker said chickens are noisy, allowing chickens could lead to other requests for animals and fowl, pointed out that Rockingham County restricts chickens within 300 feet of residential areas, encouraged supporting the Farmers Market by purchasing fresh eggs, and reminded Council that they represent everyone, not just a few citizens.

Diane Gray who lives on Collicello Street said it would be detrimental to residents living close to other City residents keeping chickens in the yard. Real estate values will be impacted. Avian flu could be a big threat to the poultry industry. Ms. Gray opposed allowing chickens in the neighborhood simply to satisfy a few people.

Council Member Byrd offered a motion to approve the consent agenda, including approval of the minutes and the second reading of supplemental appropriations for the Police Department, Fire Department, and Tourism office. The motion also included referring an alley closing request by Donna R. Brock to the Planning Commission. The motion was seconded by Vice-Mayor Baugh and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Byrd
Council Member Frank
Vice-Mayor Baugh
Council Member Wiens
Mayor Degner

Absent – None

Planning and Community Development Director Turner presented a request from Dana Joy Harshberger to close a portion of an alley between South Willow Street and South Dogwood Drive. The alley is located adjacent to tax map parcels 36-R-3, 7, & 11. The applicant would like to enlarge her yard and made use of a portion of the alley to install a secondary entrance onto her property at 195 South Willow Street. Mrs. Turner reviewed the surrounding uses in the area. Since there is a public sanitary sewer line located within the limits of the alley an easement would need to be established prior to the sale. Staff has also determined there is a private stormwater pipe, which would be the responsibility of any future owners to maintain. The alley

is not being utilized for trash collection or emergency services nor are there any plans to develop the alley. Staff does not have any objections to the request as long as the easements are maintained. Planning Commission recommended approval of the alley closing request.

At 7:09 p.m., Mayor Degner 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 Friday, May 29, and Friday, June 5, 2009.

**NOTICE OF INTENTION TO VACATE
A FIFTEEN FOOT (15') WIDE ALLEY LOCATED
LOCATED ON THE WEST SIDE OF SOUTH WILLOW STREET
BETWEEN WEST BRUCE STREET AND WEST WATER STREET
IN THE CITY OF HARRISONBURG**

**City Council Chambers
409 South Main Street
Harrisonburg, VA 22801
Tuesday, June 9, 2009
7:00 P.M.**

The Harrisonburg City Council will hold a public hearing on Tuesday, June 9, 2009, 7:00 P.M., at City Council Chambers, 409 South Main Street, Harrisonburg, Virginia, to consider a request by Dana Joy Harshberger to vacate and close an alley that adjoins her property on the north and is located on the west side of South Willow Street between West Bruce Street and West Water Street in the City of Harrisonburg, Virginia.

A copy of the plat showing the alley to be vacated and the recommendation of the City's Planning Commission are available in the City Community Development office, 409 South Main Street, Monday through Friday.

All persons interested will have an opportunity to express their views at this public hearing.

**CITY OF HARRISONBURG
Kurt D. Hodgen,
City Manager**

Mayor Degner called on anyone desiring to speak for or against the alley closing request. Willard Hertzler did not oppose the alley closing, but questioned whether he would still have access to the alley if it was ever needed in the future.

Alfred Bradburn representing the property owners at 131 South Willow Street said they have used the alley for 45 years to access their backyard. The Bradburns are willing to purchase their half of the alley. 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 a request to close a portion of an alley between South Willow Street and

South Dogwood Drive. The motion was seconded by Council Member Wiens and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Byrd
Council Member Frank
Vice-Mayor Baugh
Council Member Wiens
Mayor Degner

Absent – None

Planning and Community Development Director Turner presented a request to amend Section 10-3-24 of the Zoning Ordinance. Home occupations are a use permitted by right in every residential zoning district. Mrs. Turner reviewed the guidelines for people who are seeking to have a “home occupation” or business from their home. This proposed amendment would change the City existing definition for “home occupation” to specifically allow professional counselors the privilege of operating from residential zoning districts. Dr. Cobb has proposed a clinical private practice as a by-right use with an approved “home occupation” permit. This proposed amendment would also include language that would clearly allow residents who provide music lessons from their home to operate under the “home occupation” permit. Planning Commission has proposed the following language be added to the “home occupation” definition. The foregoing notwithstanding, providing professional counseling services by appointment only for not more than ten clients per week, and giving music lessons shall constitute home occupations. Planning Commission recommended approval of the proposed ordinance.

At 7:29 p.m., Mayor Degner 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 Tuesday, May 26, and Monday, June 1, 2009.

NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold several public hearings on Tuesday, June 9, 2009 at 7:00 p.m., in the City Council Chambers, 409 South Main Street to consider the following:

Ordinance Amendment – Home Occupation Definition Modification

Public hearing to consider a request from the City of Harrisonburg to amend Section 10-3-24 of the Zoning Ordinance by modifying the definition of “home occupation.”

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
Kurt D. Hodgen
City Manager

Mayor Degner called on anyone desiring to speak for or against amending this ordinance. Harriet Cobb said she operates a small professional clinical private practice in her home. The practice is by appointment only and usually involves one client at a time in one vehicle. Dr. Cobb said this practice will not interfere with the character of the neighborhood. There being no others desiring to be heard, the public hearing was declared closed at 7:36 p.m., and the regular session reconvened. Following further discussion and comments, Council Member Wiens offered a motion to adopt Section 10-3-24 of the Zoning Ordinance as proposed for a first reading. The motion was seconded by Council Member Frank and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Byrd
Council Member Frank
Vice-Mayor Baugh
Council Member Wiens
Mayor Degner

Absent – None

Planning and Community Development Director Turner presented a request from Iglesia Nueva Vida Pentecostes for a special use permit to allow a religious use within the M-1, General Industrial District zoning classification. 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. Mrs. Turner reviewed the surrounding uses in the area. This proposal was originally presented to Planning Commission on December 11, 2002. City Council approved the special use permit request on January 14, 2003. In early 2007 the applicant came back to the City requesting the identical special use permit at the same location. Again, staff and Planning Commission recommended approval with the lighting condition and City Council granted the special use permit in May 2007. 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. On April 15, 2008, almost a year after approval, a preliminary site plan for the church was submitted to the Fire Department for review. The Fire Department review and comments were returned to the applicant's engineer on April 17, 2008. No further submissions regarding site development were forwarded to the City until February 3, 2009, when the comprehensive site plan was submitted for review. Because of the considerable gap in time from Council approval to the comprehensive site plan submission, the special use permit expired because the applicant failed to diligently pursue their plan of development. Staff informed Iglesia Nueva Vida Pentecostes that the comprehensive site plan review would move forward; however, they would need to renew the special use permit request. Iglesia Nueva Vida Pentecostes is again requesting a special use permit to allow a religious use within the M-1, General Industrial District. The applicant would like to construct a 17,450 square foot church on the property. The new building would contain a sanctuary, classrooms, offices, and a kitchen area. The church would not provide housing facilities. There is a requirement for dedication of right-of-way along

Waterman Drive during the site plan process. Planning Commission recommended approval of the special use permit request with the condition that exterior lighting is provided for security purposes at any parking, walkway, and entrance area. Planning Commission also is recommended that the special use permit request be good for a period of three years.

At 8:00 p.m., Mayor Degner 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 Tuesday, May 26, and Monday, June 1, 2009.

NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold several public hearings on Tuesday, June 9, 2009 at 7:00 p.m., in the City Council Chambers, 409 South Main Street to consider the following:

Special Use Permit – Iglesia Nueva Vida Pentecostes (2009 Renewal)

Public hearing to consider a request from Abel Castro of Iglesia Nueva Vida Pentecostes 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 39-E-7A.

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
Kurt D. Hodgen
City Manager**

Mayor Degner called on anyone desiring to speak for or against this special use permit request. There being no one desiring to be heard, the public hearing was declared closed at 8:01 p.m., and the regular session reconvened. Council Member Frank offered a motion to approve this special use permit request for a period of three years. The motion was seconded by Vice-Mayor Baugh and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Byrd
Council Member Frank
Vice-Mayor Baugh
Council Member Wiens
Mayor Degner

Absent – None

School Board Finance and Technology Director, Dee Dee Dawson, presented a request for a transfer for the School Board. Mrs. Dawson said that these funds will be transferred within the school's operating budget because it is a normal procedure for the time of year to make funds available where they are needed. No additional City dollars are required for the school division to receive this transfer. Council Member Byrd offered a motion to approve transferring these funds, and that:

\$200,000.00 chge. to: 1111-111114-40610 Instruction

\$100,000.00 approp. to: 1111-111114-40620 Administration/Attendance & Health

100,000.00 approp. to: 1111-111114-40680 Technology

The motion was seconded by Vice-Mayor Baugh and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Byrd
Council Member Frank
Vice-Mayor Baugh
Council Member Wiens
Mayor Degner

Absent – None

The next item of business was a request to reserve unexpended funds for the Parks & Recreation Department. Parks & Recreation Director Foerster said that the department is requesting to reserve \$22,500.00 in unexpended funds that were designated for the First Tee Pavillion Project. Weather related delays have pushed the completion of this project beyond the end of the current fiscal year. Council Member Frank 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 Byrd
Council Member Frank
Vice-Mayor Baugh
Council Member Wiens
Mayor Degner

Absent – None

The next item of business was a request to consider funding for Our Community Place and the Northeast Neighborhood Association. These two organizations had sought support for their projects through the City's CDBG program, but funds were exhausted before reaching their spots on the priority list. Our Community Place is being considered for a \$5,000.00 appropriation and the Northeast Neighborhood Association is being considered for a \$2,000.00 appropriation.

Kaystyle Madden representing the Northeast Neighborhood Association requested that their name be removed from any consideration for project funding.

Council Member Byrd offered a motion to approve establishing a Neighborhood Association Committee and to appoint Mayor Degner and Council Member Byrd to serve on the committee. Neighborhood Association representatives will also be encouraged to serve on the committee. The motion was seconded by Council Member Frank and approved with a unanimous voice vote.

Council Member Wiens offered a motion to approve a supplemental appropriation request for “Our Community Place” for a first reading, and that:

\$5,000.00 chge. to: 1000-940111-49310 Reserve for contingencies

\$5,000.00 approp. to: 1000-910411-45912 Our Community Place

The motion was seconded by Vice-Mayor Baugh and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Byrd
Council Member Frank
Vice-Mayor Baugh
Council Member Wiens
Mayor Degner

Absent – None

City Manager Hodgen presented for Council’s consideration amending and re-enacting Section 7-4-1 of the Harrisonburg City Code. Mr. Hodgen said these annual step increases in water and sewer utility rates will become effective July 1, 2009. Council Member Byrd offered a motion to approve amending and re-enacting Section 7-4-1 of the City Code. The motion was seconded by Vice-Mayor Baugh and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Byrd
Council Member Frank
Vice-Mayor Baugh
Council Member Wiens
Mayor Degner

Absent – None

City Manager Hodgen presented an application from Jack Brown’s Beer and Burger Joint for an “Outdoor Dining Facility License”, which would allow them to offer outdoor dining on City right-of-way (part of an alley between Main and Federal Streets). Mr. Hodgen said staff is recommending approval of the application. Vice-Mayor Baugh offered a motion to approve this

request for an “Outdoor Dining Facility License”. The motion was seconded by Council Member Wiens and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Byrd
Council Member Frank
Vice-Mayor Baugh
Council Member Wiens
Mayor Degner

Absent – None

At 8:35 p.m., Council Member Frank offered a motion that Council enter into a closed session for consultation with legal counsel regarding a proposed contract 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. The motion was seconded by Vice-Mayor Baugh and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Byrd
Council Member Frank
Vice-Mayor Baugh
Council Member Wiens
Mayor Degner

Absent – None

At 9:25 p.m., the closed session ended and the regular session reconvened. City Attorney Thumma read the following statement, which 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 requirement 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 9:26 p.m., there being no further business and on motion adopted, the meeting was adjourned.

CITY CLERK

MAYOR

