

## REGULAR MEETING

July 14, 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 Chief Donald Harper.

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

Ralph Geddis complained about too many vacant lots in the City being neglected.

Council Member Byrd offered a motion to approve the consent agenda, including approval of the minutes and the second reading of a supplemental appropriation for the Harrisonburg-Rockingham Office of Comprehensive Services. The motion was seconded by Council Member Frank and approved with a recorded roll call vote taken as follows:

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

Absent – None

Planning and Community Development Director Turner presented a request from Virginia Mennonite Home, Inc., to amend the Virginia Mennonite Retirement Community Master Planned Complex. The Comprehensive Plan designates this area as Institutional. Mrs. Turner reviewed the surrounding uses in the area. The applicant is requesting to amend a portion of the Virginia Mennonite Retirement Community (VMRC) master plan. A master plan is needed whenever any parcel, or parcels, in the City are applying to be included in the institutional overlay district. VMRC is approximately 46.2 acre comprised of three subsidiaries; Park Village, Inc., Heritage Haven Inc., and Virginia Mennonite Home, Inc. An institutional overlay master plan for the original 45 acre tract of VMRC was approved in March 1997. In June 2004, an addition was made to the 1997 plan when 1.2 acres along Park Road was added to the Park Village, Inc., subsidiary of VMRC. With the current request, the applicant would like to modify the allowable uses for the Woodland facility, a 3.5 acre parcel located at 1301 Virginia Avenue, which was approved as part of the original master plan. The Woodland facility was designed as a home for adults and was used until November 1999 when the residents were moved to Crestwood. Since 1999, the Woodland facility has been used for a school, a day program, several nonprofit organizations, and student housing. The Woodland building is a two-story brick structure of approximately 34,500 square feet. Harrisonburg-Rockingham Child Day Care Center would occupy 15,504 square feet of the building. VMRC is also requesting to allow

the building to be used for rental offices and student housing and although offices and housing are not currently planned in conjunction with the child day care center, if approved, the building could accommodate all three at the same time. Mrs. Turner said parking is sufficient for the proposed uses. Planning Commission recommended amending the Virginia Mennonite Retirement Community Master Planned Complex.

At 7:11 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 Monday, June 29, and Monday, July 6, 2009.

## **NOTICE OF PUBLIC HEARING**

### ***Master Plan Amendment – VMRC (Woodland Facility 2009)***

**Public hearing to consider a request from Virginia Mennonite Home, Inc. to amend an approximate 3.5 +/- acre portion of the Virginia Mennonite Retirement Community master planned complex. The request would modify the allowable uses for the Woodland facility located at 1301 Virginia Avenue. The property is zoned R-3, Multiple Dwelling Residential District along with an Institutional Overlay District and can be found on tax map 52-A-1. The Comprehensive Plan designates this area as Institutional. These lands are designated for development by certain nonprofit and public institutional uses such as colleges and universities, hospitals, offices of nonprofit organizations, community assembly uses and institutions which provide for the shelter and care of people. The Zoning Ordinance states that 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. The I-1, Institutional Overlay District is intended to provide for orderly development of certain nonprofit institutional uses and is created as a special overlay district to be superimposed on base districts by approval of City Council. Dimensional and density regulations are intended to supplement those permitted in the underlying zoning classification.**

**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 master plan request.

Marvin Nisley, Vice President of Design and Construction at VMRC, said this is a very beneficial arrangement for VMRC and will provide an opportunity for intergenerational programming and volunteer work at VMRC.

Dennis Durost, President of the Board of Directors for the Harrisonburg Rockingham Child Day Care Center, said this non-profit day care center has served the community for 38 years. Currently, we need to find a new space and are excited about this invitation with VMRC to temporarily occupy this space. There being no others desiring to be heard, the public hearing was declared closed at 7:13 p.m., and the regular session reconvened. Council Member Frank offered a motion to approve the VMRC Master Planned Complex request. The motion was seconded by Council Member Byrd and approved with a recorded roll call vote taken as follows:

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

Absent – None

Planning and Community Development Director Turner presented a request from Craig Steven and Carol Ann Lowry to rezone a parcel from M-1, General Industrial District to B-1, Central Business District. The property is located at 125 West Water Street and can be found on tax map 25-C-16. The Comprehensive Plan designates this area as Mixed Use Development. Mrs. Turner reviewed the surrounding uses in the area. Currently, the property is non-conforming to land use, setback regulations, and parking requirements. Approving this request would bring the property into the zoning conformance. The initiating reason the property owner applied to rezone their parcel was due to a complication they had with a minor subdivision to swap square footage between their lot and the Rosetta Stone parcel that surrounds their property on two sides. Staff could not approve the minor subdivision because it was unable to meet all of the requirements of the Subdivision Ordinance, which related to the Zoning Ordinance's setback regulations. The minor subdivision would have adjusted two property boundaries, one of which was the only property boundary that currently met setback regulations, and therefore could not be approved. Staff also informed the applicant that their property was non-conforming to land use, setback regulations (on three sides), and to the requirements of the parking regulations. The proposal is consistent with the recent rezoning of the Rosetta Stone property and falls within the downtown Revitalization Area while also complying with the Comprehensive Plan's land use designation. Planning Commission recommended approval of the request.

At 7:18 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 Monday, June 29, and Monday, July 6, 2009.

### **NOTICE OF PUBLIC HEARING**

The Harrisonburg City Council will hold several public hearings on Tuesday, July 14, 2009 at 7:00 p.m., in the City Council Chambers, 409 South Main Street to consider the following:

*Rezoning – 125 W. Water St. (Lowry)*

Public hearing to consider a request from Craig Steven Lowry and Carol Ann Lowry to rezone a 3,249 +/- sq. ft. parcel from M-1, General Industrial District to B-1, Central Business District. The property is located at 125 West Water Street and can be found on tax map 25-C-16. The Comprehensive Plan designates this area as Mixed Use Development. This designation includes both existing and proposed new mixed use areas. These areas are intended to combine residential and non-residential uses in planned neighborhoods where the different uses are finely mixed instead of separated. These areas are prime candidates for “live-work” and traditional neighborhood developments. Live-work developments combine residential and office / service uses allowing people to both live and work in the same area. The Zoning Ordinance states that the M-1, General Industrial District is intended primarily for manufacturing, processing, storage, and distribution activities, which are not properly associated with, nor compatible with, residential and institutional development. No minimum lot size restrictions exist in the M-1, General Industrial District. The B-1, Central Business District is intended as an urban and regional center for the conduct of commercial, financial, professional and governmental activities to which the public requires direct and frequent access. No minimum lot size or setback restrictions exist in the B-1, Central 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**  
**Kurt D. Hodgen**  
**City Manager**

Mayor Degner called on anyone desiring to speak for or against this rezoning request. Welby Showalter, an attorney for the applicant, said that he concurred with the recommendation of the Planning Commission. There being no others desiring to be heard, the public hearing was declared closed at 7:19 p.m., and the regular session reconvened. Vice-Mayor Baugh offered a motion to approve the rezoning request. The motion was seconded by Council Member Byrd and approved with a recorded roll call vote taken as follows:

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

Council Member Frank  
Mayor Degner

Absent – None

Planning and Community Development Director Turner presented a request from the Hill Group Properties to preliminarily subdivide three lots with variances requested from the Subdivision Ordinance. The parcel contains approximately 36,682 sq. ft. and is located between Community Street and old North Mason Street right-of-way. The Comprehensive Plan designates this area as Mixed Use Development. Mrs. Turner reviewed the surrounding uses in the area. The applicant is requesting to preliminarily subdivide three lots, zoned B-1, Central Business District, into six lots. The properties include three single family structures, three duplexes (one of which was recently destroyed by a fire), and several buildings. The purpose of the subdivision is to place each dwelling structure on its own lot. After submitting an application to subdivide these properties through an administrative minor subdivision process, staff notified the property owner that both Community Street and old North Mason Street did not have the required 50 feet of right-of-way or the required street infrastructure, and therefore would be required to dedicate the necessary right-of-way and build the street improvements. The applicant has pledged to dedicate right-of-way to the existing porch foundations to help accommodate future street improvements. Since the properties are zoned B-1, there are no area or dimensional requirements and no setback requirements; and other than the above requested variances, the proposed request meets all other subdivision requirements. Planning Commission recommended approval to preliminarily subdivide the three lots with variances requested from the Subdivision Ordinance. Council Member Frank offered a motion to approve the request to subdivide the three lots as presented. The motion was seconded by Council Member Wiens and approved with a recorded roll call vote taken as follows:

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

Absent – None

Planning and Community Development Director Turner presented a request from Scott Kettelkamp to preliminarily subdivide two parcels along Norwood Street, with variances requested from the Subdivision Ordinance. The Comprehensive Plan designates this area as Medium-Density Residential. Mrs. Turner reviewed the surrounding uses in the area. The applicant is requesting to preliminarily subdivide two parcels into three lots with four variances requested from the Subdivision Ordinance. The four variances are associated with right-of-way dedication and required street improvements. The applicant proposes to construct three townhouse units on the new lots. Townhouses are designed to permit individual and separate ownership of each lot and the R-3 zoning regulations require each separate townhouse lot to have at least 2,000 square feet of lot area, 18 feet of lot width, and 112 feet of lot depth. In this case, if the applicant dedicates the 10 feet of right-of-way, he would not have enough lot depth to meet

the requirement of 112 feet; therefore, he cannot construct townhouses. The dedication of right-of-way would also reduce the lot area so that there is not enough available area left to meet the requirement for the construction of a three unit apartment building. There are other options for construction, such as not subdividing and constructing two single-family dwellings on the existing two lots, or constructing a duplex on the site regardless of whether it is re-subdivided.

In May, Planning Commission recommended approving the variance requests from Section 10-2-66 and 10-2-67 of the Subdivision Ordinance and recommended denying the variance requests from Section 10-2-41 and 10-2-45, which required the dedication of right-of-way. However, at the May Council meeting, Mr. Kettelkamp changed the request by stating that he would establish an agreement with the City that would require either he, or future owners, to dedicate right-of-way to the City at no cost. The new proposal would allow the construction and the maximization of the density while also ensuring the City the right-of-way needed for the future. As this new proposal had not been reviewed by the Planning Commission, City Council made a motion at its May 12<sup>th</sup> meeting to return the new proposal to the Planning Commission for further review.

Mrs. Tumer said that because this property is located in a R-3 zoning classification by right the applicant can build different types of dwelling units. There is enough lot area to build three townhouses on the property. However, when re-subdividing the property the requirement that lots front on City streets that meet City street standards comes into play. It would require the applicant to dedicate 10 foot of right-of-way along the frontage of these lots. The street will need to have 50 foot right-of-way to meet City's standard. Ten feet of the right-of-way will need to come from this undeveloped property. Then the lot cannot meet the requirement of 112 feet of lot depth in the R-3 zoning classification for townhouse lots. The subdivision cannot be approved with the follow through of the dedication of the right-of-way as the applicant has requested.

Mr. Kettelkamp is requesting that the dedicated right-of-way not be required at this time. Staff has concerns with allowing a subdivision that would, at some point, place the parcels into non-conformance to lot depth and possibly parking requirements. Staff continues to object to a variance that would deviate from the requirements to dedicate right-of-way at the time of subdividing simply to maximize density. Planning Commission recommended denying the subdivision request by a vote of three to two.

Following a very lengthy discussion and comments, Council Member Frank offered a motion to preliminarily subdivide two parcels along Norwood Street with variances requested from the Subdivision Ordinance. 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 Degner

No - Vice-Mayor Baugh  
Council Member Wiens

Absent – None

City Manager Hodgen announced that the Finance Director will make a budget line adjustment regarding a request to transfer funds from Water Capital Projects account to Port Republic Road Street Improvement account. Council does not need to take any action on Agenda Item #10.

The next item of business was holding a public hearing to authorize the re-appropriation of several encumbrances that were outstanding at June 30, 2009. City Manager Hodgen said the purchase orders were for goods and/or services which were contracted for but not received prior to June 30, 2009. The 2009-2010 budget will be increased by \$1,002,696.14. Council Member Byrd offered a motion to approve this request for a first reading, and that:

\$211,047.64 chge. to: 1000-31010 Amount from fund balance  
395,308.79 chge. to: 1111-31010 Amount from fund balance  
11,396.88 chge. to: 2011-31010 Amount from fund balance  
5,578.12 chge. to: 2012-31010 Amount from fund balance  
205,482.71 chge. to: 2013-31010 Amount from fund balance  
173,882.00 chge. to: 2014-31010 Amount from fund balance

\$ 13,000.00 approp. to: 1000-121511-43100 Professional services  
6,553.49 approp. to: 1000-122011-48172 Hardware  
5,000.00 approp. to: 1000-122011-48273 Software  
800.00 approp. to: 1000-310131-43330 Main & repairs-Mach & equip  
1,077.00 approp. to: 1000-310331-48111 Machinery & equipment  
5,725.00 approp. to: 1000-310331-48211 Machinery & equipment  
8,100.00 approp. to: 1000-320232-43360 Main & repairs-Bldg & grounds  
9,098.00 approp. to: 1000-320232-48113 Equipment  
16,329.00 approp. to: 1000-320232-48181 Buildings and grounds  
6,400.00 approp. to: 1000-430221-43364 Main & repairs-212 S. Main St  
3,579.75 approp. to: 1000-410241-43372 Main & repairs-Bridges  
40,000.00 approp. to: 1000-410241-48173 Software  
85,885.40 approp. to: 1000-710271-48184 Improvements  
9,500.00 approp. to: 1000-810521-43134 Lab Market & training survey  
88,382.49 approp. to: 1111-111114-40610 Instruction  
13,000.00 approp. to: 1111-111114-40620 Admin-Attend-Health ser  
171,629.20 approp. to: 1111-111114-40620 Operations & maintenance  
122,297.10 approp. to: 1111-111114-40680 Technology  
4,896.88 approp. to: 2011-322061-43320 Service contract  
6,500.00 approp. to: 2011-372061-48181 Buildings and grounds  
3,675.00 approp. to: 2012-412061-43310 Repairs and maintenance  
1,903.12 approp. to: 2012-462061-43320 Service contracts  
91,107.71 approp. to: 2013-872081-48181 Buildings and grounds  
54,375.00 approp. to: 2013-872081-48253 Transit buses  
60,000.00 approp. to: 2013-872081-48254 School buses  
35,980.00 approp. to: 2014-912242-43320 Service contracts

137,902.00 approp. to: 2014-972043-48151 Motor vehicle and equipment

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

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

Absent – None

City Attorney Thumma presented for Council's consideration amending and re-enacting Section 15-3-2 of the Harrisonburg City Code. This change to the existing ordinance is requested by the Police Department and the Commonwealth's Attorney's office to bring the City's noise ordinance up to date and also be in compliance with a Supreme Court of Virginia case that overturned a Virginia Beach noise ordinance as being unconstitutional. Council Member Byrd offered a motion to approve this ordinance for a first reading. The motion was seconded by Council Member Wiens and approved with a recorded roll call vote taken as follows:

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

Absent – None

The next item of business was a presentation of draft ordinances regulating "Fowl, chickens and other domestic birds". City Attorney Thumma said that in May 2009, Council directed staff to prepare draft ordinances concerning a backyard chicken proposal. Staff members consisting of the Assistant City Manager, the City Attorney, the Community Development Department, the Police Department, the Public Works Department, and the Recreation Department have met several times to discuss, express concerns, and review numerous ordinances from other localities. The only difference between the two ordinances is the size of the parcel (a minimum of twenty thousand (20,000) square feet of land, and a minimum of two (2) acres of land). Concerns expressed and discussion by Council Members included a Virginia Livestock Premises Registration process, proposed ordinances too restrictive, questioned the higher fee, property inspection, inadequate housing for the chickens, spreading disease, reducing the minimize lot requirement, and whether the City should allow chickens or not. Council agreed to reduce the minimum property size from 20,000 square feet to 12,000 square feet in one proposed ordinance and leave the other proposed ordinance at a minimum two acres of land. Council also agreed to schedule a public hearing on July 28<sup>th</sup> to consider these two



proposed ordinances (one ordinance amended) regulating “Fowl, chickens and other domestic birds”.

The next item of business was approving a State Performance Contract for the Community Services Board. City Manager Hodgen said that the Code of Virginia calls for a formal vote on this contract. However, if no action is taken by September 15, 2009, it is considered approved. Council Member Byrd offered a motion to approve the FY 2010 State Performance Contract for the Harrisonburg-Rockingham Community Services Board. The motion was seconded by Council Member Wiens and approved with a recorded roll call vote taken as follows:

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

Abstained - Council Member Wiens

Absent – None

City Manager Hodgen presented a request for a supplemental appropriation for the Parks and Recreation Department. These funds will reimburse the department budget for costs associated with the African American Festival, a new scoreboard for the Youth Football/Baseball program, and construction of a pavilion adjacent to the First Tee Learning Center. Council Member Byrd offered a motion to approve this request for a first reading, and that:

\$7,285.55 chge. to: 1000-31809 Donations

\$7,285.55 approp. to: 1000-710871-48111 Machinery & Equipment

\$22,500.00 chge. to: 1000-31010 Amount from Fund Balance

\$22,500.00 approp. to: 1000-730371-4818 Buildings and Grounds

\$1,500.00 chge. to: 1000-31809 Donations

\$1,500.00 approp. to: 1000-710171-45803 P&R Administration-Festivals

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

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

Absent – None

Council Member Frank offered a motion that Dr. Ramona D. Rogers, 455 Andergren Drive, be appointed to a first term on the Social Services Advisory Board to expire on July 1, 2013. The motion was seconded by Council Member Byrd and approved with a recorded roll call vote taken as follows:

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

Absent – None

Council Member Frank offered a motion that David L. Smith, 942 Northfield Court, be appointed to fill the unexpired term of Erica Martin on the Social Services Advisory Board to expire on July 1, 2011. The motion was seconded by Council Member Byrd and approved with a recorded roll call vote taken as follows:

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

Absent – None

At 9:15 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