

REGULAR MEETING

DECEMBER 10, 2002

At a regular meeting of Council held this evening at 7:30 p.m., there were present: Mayor Joseph Gus Fitzgerald; City Manager Roger Baker; Assistant City Manager Kurt Hodgen; City Attorney Thomas H. Miller, Jr., Vice-Mayor Larry M. Rogers; Council Member Carolyn W. Frank, Dorn W. Peterson, Hugh J. Lantz; City Clerk Yvonne "Bonnie" Ryan, CMC/MMCA, and Police Captain Malcolm Wilfong. Absent: Chief of Police Donald Harper.

Members of the Harrisonburg High School Honors Choir presented a brief performance of seasonal music and delivered the invocation. Mayor Fitzgerald led everyone in the Pledge of Allegiance.

Mayor Fitzgerald announced that the Harrisonburg High School Honors Choir has been invited to perform at Carnegie Hall in June 2003.

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

Vote: Yes – Council Member Frank
 Council Member Lantz
 Vice-Mayor Rogers
 Council Member Peterson
 Mayor Fitzgerald

Absent – None

Planning and Community Development Director Turner presented the 2003-2004 through 2007-2008 Capital Improvement Program. Mrs. Turner explained that the Capital Improvement Program is a budgetary tool that allows the City to plan for capital expenditures for a five-year period. These are projects that cost \$25,000 or greater. She reviewed only the new projects with a priority one or two ranking in the report. The Police Department includes a mobile data computer system allowing laptop computers in patrol cruisers. There are no new projects in the Fire Department. There are several new projects in the Community Development Department including replacing windows, exterior painting, brick work, and installing a central air conditioning system in the Municipal Building, and replacing the awning on the building used by the Department of Planning and Community Development. In addition, there are renovations planned for office space in the Municipal Building and roof replacement. The Economic Development Department includes the Hardesty-Higgins House renovations. The Public Works Department includes Cooks Creek bridge replacement, Erickson Avenue improvements, Garber's Church Road improvements and installing sidewalks on Garber's Church Road, and phase two of the NPDES project assisting in creating a better stormwater management system.

The Parks and Recreation Department includes restroom facilities at Smithland Road Soccer Fields, Purcell Park athletic fields and picnic shelter improvements, replace Community Activities Center exercise room, and a pesticide/chemical storage shed at Heritage Oaks Golf Course. The Smithland Road project continues in the Department of Water and Sewer fund. The Transportation Department includes school bus additions. There were no new projects ranked priority one or two in the Sanitation Division of the Public Utilities Department. Mrs. Turner said that Planning Commission recommended approval of the plan.

At 7:47 p.m., Mayor Fitzgerald closed the regular session temporarily and called the evening's first public hearing to order. The following notice appeared in the Daily News-Record on Saturday, November 30, and Saturday, December 7, 2002.

NOTICE OF PUBLIC HEARING

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

The proposed Capital Improvement Program, for fiscal years 2003-2004 through 2007-2008. The Capital Improvement Program is a multi-year projection and scheduling of capital projects of \$25,000 or greater. This plan is prepared annually in an effort to facilitate planning and setting priorities among capital improvement needs over a subsequent five-year period. Copies of the Capital Improvement Program are available for review in the Department of Planning and Community Development, the City Manager's office and the Rockingham Public Library.

For any additional information, contact the City Manager's office, 345 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 this public hearing.

Any person requiring auxiliary aids, including signers, in connection with the Public Hearing shall notify the City Manager at least five (5) days prior to the date of the meeting.

**CITY OF HARRISONBURG
Roger D. Baker
City Manager**

Mayor Fitzgerald called on anyone desiring to speak for or against approving the Capital Improvement Program. There being no one desiring to be heard the public hearing was declared closed at 7:47 p.m., and the regular session reconvened. Council Member Peterson offered a motion to adopt the Capital Improvement Program. The recorded roll call vote was taken as follows:

Vote: Yes – Council Member Frank
 Council Member Lantz
 Vice-Mayor Rogers

Council Member Peterson
Mayor Fitzgerald

Absent – None

Planning and Community Development Director Turner introduced a request by Fairfield Language Technologies to rezone from M-1, General Industrial District and R-3, Multiple Dwelling Residential District to B-1, Central Business District. The site is located at 135 West Market Street and occupied by a five-story building that currently houses Fairfield Language Technologies. The Comprehensive Plan designates this area as Commercial. She reviewed the surrounding uses in the area. Fairfield Language Technologies is a software company that works with language translation software. The business sits on two parcels of property along West Market Street. The parcel closest to the railroad track is zoned M-1, the parcel directly to the west is zoned R-3. The applicant would like to unify the zoning for this business to B-1. In the operation of this business, language-learning software is developed and shipped from this location. Warehousing of materials takes place on this property as an accessory use that is incidental to the permitted use of software development; however, no processing or assembly operations are performed on site. There are several benefits to adjusting the zoning to B-1, Central Business District. The first advantage is that this zoning classification does not have any property setback requirements. The current building does not conform to the setbacks for the two zoning classifications. Under the Zoning Ordinance's Non-conformance Section, if the building were damaged beyond fifty percent of its value, it would not be permitted to be rebuilt, as it exists today. The B-1 district does not have any off-street parking requirements, so the applicant would not need to supply enough on-site parking. Currently, there is an arrangement with nearby churches to utilize their parking lot for employees; in addition, the public parking garage is only one block southwest of the site. Fairfield Language rehabilitation of this older building is a definite plus to the Central Business area. She said that Planning Commission recommended approval of the rezoning request.

At 7:54 p.m., Mayor Fitzgerald closed the regular session temporarily and called the evening's second public hearing to order. The following notice appeared in the Daily News-Record on Monday, November 25, and Monday, December 2, 2002.

NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold public hearings on Tuesday, December 10, 2002, at 7:30 p.m. in the Municipal Building, City Council Chamber, 345 South Main Street, to consider the following.

REZONING – FAIRFIELD LANGUAGE TECHNOLOGIES

Public hearing to consider a request by Fairfield Language Technologies to rezone a 26,946 square foot lot from M-1, General Industrial District and R-3, Multiple Dwelling Residential District to B-1, Central Business District. The property can be found on tax map 35-X-9&10 and is located at 135 West Market Street.

The Comprehensive Plan designates this area as Commercial. Commercial uses include retail, wholesale, or service functions. These areas are found along the major travel corridors and in the Central Business District of the City.

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 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; 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 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.

CITY OF HARRISONBURG

Roger D. Baker

City Manager

Mayor Fitzgerald called on anyone desiring to speak for or against this rezoning request. There being no one desiring to be heard the public hearing was declared closed at 7:55 p.m., and the regular session reconvened. Vice-Mayor Rogers offered a motion to approve this rezoning request. The recorded roll call vote was taken as follows:

Vote: Yes – Council Member Frank
 Council Member Lantz
 Vice-Mayor Rogers
 Council Member Peterson
 Mayor Fitzgerald

Absent – None

Planning and Community Development Director Turner introduced a request by Gary Beatty for a special use permit to allow not more than four (4) persons to occupy one unit of a two unit dwelling. She explained that the property is located at 1101 South Main Street. The site is zoned R-2, Residential District and current zoning regulations would permit the applicant to rent each unit to two individuals, for a total occupancy of four persons for the structure. She said that this past summer the property was converted from a single-family structure into two apartment units. The bottom unit, located in the basement has two bedrooms. Its occupancy would stay at two persons. The upstairs space, with four bedrooms is the unit that would receive the additional density. She reviewed the surrounding uses in the area. She also said that residents of the Maplehurst Avenue area presented a petition at the Planning Commission meeting asking that this request be denied and citing continued concerns with the appearance of the area

and parking problems in their neighborhood. She said that after consideration by staff, it was recommended to approve the request with the following conditions to be applied to the property.

- 1) A minimum of six (6) off-street parking spaces must be provided in the rear of the subject property. The surface must consist of an all-weather stabilized, dust free surface.
- 2) The property shall be inspected on an annual basis, similar to the boarding house inspection, to ensure building code requirements are met and the number of people residing on the premise meets the criteria of the permit. This inspection is to take place while all tenants are residing in the structure.
- 3) After a property passes its annual inspection, the Zoning Administrator will administratively renew the special use permit provided the use is still permitted by the Zoning Ordinance.
- 4) The Zoning Administrator shall revoke the permit, if this inspection does not take place every twelve (12) months.
- 5) A landscaping buffer shall be installed and maintained along the boundaries of the rear parking area, with mixed evergreen trees and/or shrubbery, to be no less than three feet tall at time of planting, to create an opaque buffer which shall shield adjoining property owners from the increased density, headlights, and vehicular storage and movement.
- 6) The Planning Commission shall be authorized to review complaints received on the property on an on-going basis and based on their findings, notify the landlord that the permit is being revoked unless they wish to reapply for a special use permit.

Mr. Beatty owns eight properties in the area, which are utilized for rental purposes. This section of South Main Street and the properties along Harrison Street to the rear, are almost wholly comprised of rental properties and James Madison University office facilities. She said that Planning Commission recommended by a vote of four to two to approve this special use permit request.

At 8:03 p.m., Mayor Fitzgerald closed the regular session temporarily and called the evening's third public hearing to order. The following notice appeared in the Daily News-Record on Monday, November 25, and Monday, December 2, 2002.

NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold public hearings on Tuesday, December 10, 2002, at 7:30 p.m. in the Municipal Building, City Council Chamber, 345 South Main Street, to consider the following.

SPECIAL USE PERMIT – GARY BEATTY

Public hearing to consider a request by Gary Beatty for the granting of a special use permit to allow not more than four (4) persons to occupy one unit of a two unit dwelling in the R-2 zoning district under Section 10-3-40 (7) of the City's Zoning Ordinance. The property can be found on tax map 18-H-19-21 and is located at 1101 South Main Street.

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 hearings shall notify the City Manager at least five (5) days prior to the date of the meeting.

CITY OF HARRISONBURG**Roger D. Baker
City Manager**

Mayor Fitzgerald called on anyone desiring to speak for or against this special use permit.

Gary Beatty, a resident of 450 South Mason Street, said that he has a lot of money invested in rental property on Main Street. He has been very conscious of maintaining the aesthetics and value of those properties. He has had parking problems with students having friends visit the property and has created a larger parking area at one of the adjacent properties. This property is in compliance with off-street parking and square footage. He said that two students will not increase the density.

John Sowers, a resident of 25 Maplehurst Avenue, said that the area is predominantly student housing, but the neighborhood does go beyond South Main Street. He said, "What happens over on the west side of Main Street does have an impact on the east side and it's not positive." The more students living in that area the more it infringes on the neighborhood. There are parking problems, noise, and traffic problems in the Maplehurst Avenue/Hillcrest Drive area. All the problems are not just along Main Street. City Council and the Planning Commission have been trying to improve neighborhood situations by reducing parking problems, reducing overcrowding, improving a noise ordinance, holding landlord accountable, and proposing multi-student properties back to single family properties. He urged City Council to say no to this special use permit request.

Kathy Whitten, a resident of 560 South Main Street, said that when the special use permit became part of the ordinance the whole purpose was to give people living close and, who would be effected, an opportunity to come before Planning Commission and City Council. These people have had that opportunity and they have spoken and we need to listen to them. She said there is nothing special about this use. When the property was purchased it should have been understood how it could be used. She encouraged City Council to listen to the people who live in the area day in and day out and more importantly night in and night out.

Beverly McGowan, a resident of 281 Campbell Street, said that although she did not live in the South Main Street area, she was concerned about the appearance of the area. She requested that Council vote no on the special use permit. Two more students could lead to two more special use permit requests in time. She asked Council to vote no to the request. There being no others desiring to be heard, the public hearing was declared closed at 8:20 p.m., and the regular session reconvened.

The following discussion by Council Members relative to the special use permit request included adequate parking behind the property, whether the house will ever convert back to a single family use, inspection every year, whether another owner will keep the property in the same condition, student housing along major thoroughfare of the City, questioned whether more student housing is needed, and concern about the student housing market's effect on established neighborhoods. Following further discussion and comments, Council Member Peterson offered a motion to approve this special use permit request. The recorded roll call vote was taken as follows:

Vote: Yes – Council Member Frank
Council Member Peterson

No - Council Member Lantz
Vice-Mayor Rogers
Mayor Fitzgerald

Absent – None

Phoebe Kilby, President of Sympoetica, presented an overview of a report on the Comprehensive Plan. She said her firm was hired to rewrite the Comprehensive Plan. Student housing is an issue in Harrisonburg. The Comprehensive Plan approach to a more generalized process may resolve these issues by coming up with a policy of how to deal with it. An overall approach should help in establishing policies reflecting the desires of the community including, students, business owners, and residents. She encouraged City Council to get involved and encourage the citizens of Harrisonburg to participate in the process. She noted that Council Member Peterson and Mayor Fitzgerald would be serving on the Comprehensive Plan Advisory Committee. She said another role of City Council after adopting the plan is to implement it, use its policies to make land use decisions, changes to the ordinances and influence decisions perhaps in the Capital Improvement Program. The Planning Commission is charged by the Code of Virginia to “prepare the Comprehensive Plan.” The role of the Comprehensive Plan Advisory Committee (CPAC) is working hard to engage the public in planning, help develop and recommend a draft plan that Planning Commission will consider and make a recommendation to City Council. Comprehensive Planning involves intelligence gathering, demographic and economic information, land use, housing, and policymaking. The Comprehensive Planning includes the beginning of the process, not the end of the process. A Comprehensive Plan involves land use, housing, transportation, water and sewer, but it should not be huge thick documents that citizens cannot use. She suggested that it should be readable and accessible to the public, placed on the City’s web site, and have a good executive summary short and to the point. According to Virginia law every locality must adopt a Comprehensive Plan and it must be reviewed at least once every five years. The Plan is only a guide for making community development decisions. The Plan is not an ordinance. Some trends in Virginia regarding Comprehensive Planning include a high level of public participation and consulting with citizens. It also involves a strong linkage between land use and transportation, and greater attention to design. She said that the preparation of the plan becomes a forum for assessing community attitudes, developing a vision for the community’s future, and creating implementation mechanisms to achieve that vision.

Elly Swecker, Executive Director Harrisonburg-Rockingham Free Clinic, presented a brief overview of the clinic’s programs. She said that the clinic provides outpatient health services to the uninsured in the community. Some patients have multi-chronic conditions and the daytime clinic allows an opportunity for staff members and volunteers to get to know these patients. The clinical atmosphere is friendly and supportive. The clinic is also able to provide some prevention services, pharmaceutical supplies, medical counseling, diet counseling, and a dental clinic. Most patients only use the clinic for their medical problems as a short-term solution. The clinic also refers patients to the Department of Rehabilitative Services for job retraining. The clinic also relies on in-kind support including Rockingham Memorial Hospital conducting diagnostic work. Some patients provide a \$3.00 donation for prescriptions; however,

some patients cannot afford that cost. She reviewed other services provided by the clinic and thanked City Council for their support.

Joan Strickler, Executive Director of First Night, presented a brief overview of the First Night activities. She explained that this will be the eleventh year of First Night and the series of artistic performances will include local and national acts. Plans for this year are similar to those of past years requests for street closing and sanitation crews. Mr. Doyle Hess will handle the fireworks arrangements, which will be on Court Square. Council Member Peterson offered a motion to approve First Night's request for its activities and fireworks display and to close certain streets. The motion was approved with a unanimous vote of Council.

Police Captain Wilfong presented for Council's consideration an application from James Michael Furr of ABC Cab Company for a Certificate of Public Convenience and Necessity to operate a taxicab business. He explained that the Police Department has conducted an investigation in accordance to City Code Section 14-1-1. Police Captain Wilfong recommended that the application be approved. Council Member Peterson offered a motion to approve the application and issue a Certificate of Public Convenience & Necessity for ABC Cab Company. The motion was approved with a unanimous vote of Council.

Council Member Lantz offered a motion to recommend Earl A. Budd, Gary D. Buennemeyer, Richard H. Collins, Monica K. Frackelton, and Edward P. Shank to the Circuit Court for appointment to the Board of Equalization. The motion was approved with a unanimous vote of Council.

Police Captain Wilfong presented a request for a supplemental appropriation for the Police Department. He explained that these insurance funds will be used for replacement of a wrecked police vehicle. Council Member Lantz offered a motion to approve this request for a first reading, and that:

\$11,350.00 chge. to: 1000-34011 Insurance Recovery Money

\$11,350.00 approp. to: 1000-310431-48151 Motor Vehicles and Equipment

The recorded roll call vote was taken as follows:

Vote: Yes – Council Member Frank
 Council Member Lantz
 Vice-Mayor Rogers
 Council Member Peterson
 Mayor Fitzgerald

Absent – None

Bucky Berry, a resident of 877 North Main Street, complained about the hours of operation of the Public Works Department during a snowstorm and his deteriorating sidewalks.

At 9:30 p.m., Council Member Peterson offered a motion that Council enter a closed session for the purpose of the investing of public funds where bargaining is involved, where, if made public initially, the financial interest of the City would be adversely affected. A closed session is permissible for this purpose pursuant to Section 2.2-3711.A.6 of the Code of Virginia (1950), as amended (the Code). In addition, the purpose of the closed session is for the discussion or consideration of prospective candidates for appointment to the following boards or commissions: the Harrisonburg Parks and Recreation Commission and the Harrisonburg Planning Commission. A closed session is permissible for this purpose pursuant to Section 2.2-3711.A.1 of the Code of Virginia (1950), as amended (the Code).

At 10:04 p.m., the closed session ended and the regular session reconvened. City Clerk Ryan read the following statement which was agreed to with a unanimous recorded vote of Council: I certify to the best of my knowledge and belief that (1) only public matters lawfully exempt from open meeting requirements pursuant to Chapter 21 of Title 2.1 of the Code of Virginia, 1950, as amended, and (2) only such matters as were identified in the motion by which the closed session were convened, were heard, discussed or considered in the closed session by the City Council.

Vice-Mayor Rogers offered a motion that Reginald Foucar-Szocki, 1922 Lynne Place, be appointed to a first term on the Harrisonburg Planning Commission to expire on December 31, 2006. The motion was approved with a unanimous vote of Council.

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


CITY CLERK


MAYOR