



City of Harrisonburg

409 S. Main Street
Harrisonburg, VA 22801

Meeting Minutes - Draft City Council

Tuesday, September 10, 2019

7:00 PM

Council Chambers

1. Roll Call

Present: 5 - Mayor Deanna R. Reed, Vice-Mayor Sal Romero, Council Member Richard Baugh, Council Member Christopher B. Jones and Council Member George Hirschmann

Also Present: 4 - City Manager Eric Campbell, City Clerk Pam Ulmer, City Attorney Chris Brown and Police Chief Eric English

2. Invocation

Council Member Hirschmann offered the invocation

3. Pledge of Allegiance

Mayor Reed led the Pledge of Allegiance.

4. Special Recognition

Council Member Jones stated he would like to recognize someone that our beloved Shenandoah Valley and the world lost, Mr. Larry Hoover. He stated Larry was often referred to as the father of mediation in Virginia and in Harrisonburg Larry was one of the founders of the Fairfield Center which was the first community mediation center in Virginia. He stated Larry served on many community boards including the Community Foundation, Center for Justice and Peace Building, the Community Mediation Center, American Shakespeare Center, Gemeinschaft Home, Church of the Brethren, Shenandoah Valley Public Television (WVPT), Blue Ridge Community College Education Foundation to just name a few. He stated social justice and reform to our legal system is talked about a lot and Mr. Hoover started and lead that charge.

Council Member Baugh stated Larry was his law partner and the one thing that was not in the obituary was that he was stricken with significant dementia towards the end of his life and handled that with as much grace as anyone he has ever known. He stated Larry excepted the diagnosis, did the best he could going forward and never saw his spirit sag. Council Member Jones asked for a moment of silence in remembrance of Mr. Larry Hoover.

4.a. Consider adopting a resolution establishing Welcome Week for the City of Harrisonburg, Virginia

Vice Mayor Romero recognized members of the Welcoming Harrisonburg Council as well as Mr. Ande Banks for being a part of this. He presented a resolution

establishing Welcome Week for the city of Harrisonburg.

He stated there will be a series of events occurring during Welcoming Week, September 13th, 2019 through September 22nd, 2019, and will be posted on social media. He stated a movie called Human Flow showcased at Court Square Theater on September 21, 2019 at 7:00 pm and encourages everyone to attend. He thanked the Welcoming Harrisonburg Council for all they do.

A motion was made by Vice Mayor Romero, seconded by Council Member Baugh, to adopt the resolution as presented. The motion carried with a recorded roll call vote taken as follows:

Yes: 5 - Mayor Reed, Vice-Mayor Romero, Council Member Baugh, Council Member Jones and Council Member Hirschmann

No: 0

5. Consent Agenda (any item placed on the consent agenda shall be removed and taken up as a separate matter, if so requested by any member of Council, otherwise all items will be voted on with one (1) motion)

A motion was made by Council Member Baugh, seconded by Council Member Jones, to approve the consent agenda as presented. The motion carried with a recorded roll call vote taken as follows:

Yes: 5 - Mayor Reed, Vice-Mayor Romero, Council Member Baugh, Council Member Jones and Council Member Hirschmann

No: 0

5.a. Minutes from the August 27, 2019 City Council Special Meeting

These minutes were approved on the consent agenda

5.b. Minutes from the August 27, 2019 City Council meeting

These minutes were approved on the consent agenda

5.c. Consider the reappropriation of encumbrances that were outstanding at the end of Fiscal Year 2019 in the amount of \$6,893,770.40

This reappropriation was approved on the consent agenda

5.d. Consider a supplemental appropriation for the General Capital Projects Fund in the amount of \$6,016,863.60

This supplemental was approved on the consent agenda

5.e. Consider amending Section 15-3-2(d)(4) Noise Violations; penalties to exempt non-road-related construction noise only during the daytime

This ordinance amendment was approved on the consent agenda

6. Public Hearings

6.a. Consider CDBG 2018-2019 Consolidated Annual Performance Evaluation Report (CAPER)

Kristin McCombe, Community Development Block Grant (CDBG) coordinator, presented the Consolidated Annual Performance Evaluation Report (CAPER) for FY2018-19. She reviewed the CDBG projects and recipients and noted Open Doors is the only recipient that has not spent any of their grant funding, but all others have completed their spending. She reviewed the CAPER schedule and stated there will be a 15-day public comment period in which all comments are due by September 26, 2019 at 9:00 am to her directly. She provided her contact information.

At 7:10 pm Mayor Reed closed the regular session and called the first public hearing to order. A notice appeared in the Daily News-Record on Monday, August 26, 2019.

There being no one desiring to be heard, Mayor Reed closed the public hearing at 7:10 p.m., and the regular session reconvened.

No action required

This Public Hearing - No Action was received and filed.

6.b. Consider a request from Anna L. Wilkins for a special use permit to allow short-term rental at 130 South Brook Avenue.

Adam Fletcher, director of Planning and Community Development, reviewed the Short-Term Rental (STR) common conditions recommended for each of the applications which include:

- All STR accommodations shall be within the principal structure.
- Prior to operation, the operator shall submit to City staff a completed Short-Term Rental Pre-Operation Form. The operator shall maintain compliance with the Pre-Operation Form when short-term rental guests are present.
- Minimum off-street parking spaces do not need to be delineated and can be accommodated utilizing the driveway or other areas on the property OR the STR has no minimum off-street parking requirements.
- If in the opinion of Planning Commission or City Council the STR becomes a nuisance, the SUP can be recalled for further review, which could lead to the need for additional conditions restrictions, or revocation of the permit.
- The site shall be the operator's primary residence and the STR shall occur within the operator's dwelling unit.
- If the operator is not the property owner, then the operator shall be present on the site during the lodging period within any dwelling unit.

Mr. Fletcher presented the request for property located at 130 South Brook Avenue.

He reviewed the long-term planning for the area, reviewed the surrounding properties and their zoning districts. He stated the plan is for four accommodation spaces for a total of up to eight guests, the applicant's intention is to rent the entire unit and when it is rented out she will reside nearby, the property is the applicant's primary residence, and staff believes there should be flexibility offered for no off-street parking.

He stated staff recommended approval and the Planning Commission recommended approval (6-0). He stated should City Council approve the application it is suggested by staff to approve with the following conditions:

- The site shall be the operator's primary residence;
- If the operator is not the property owner, then the operator shall be present on the site during the lodging period.
- There shall be no more than four accommodation spaces;
- There shall be no more than eight guests at one time;
- The STR has no minimum off-street parking requirements

At 7:16 pm Mayor Reed closed the regular session and called the second public hearing to order. A notice appeared in the Daily News-Record on Monday, August 26, 2019 and September 2, 2019.

Pamayotis "Poti" Giannakaouros stated he heard the director of Community Development describing staff's rationale for wanting to impose different conditions on owner occupied versus renter occupied property. He stated council heard a throw-away line about the rationale being that an owner would be more likely to be concerned about the maintenance of the property than a renter. He stated this is not a throw-away line and stated the Governor convened the first meeting of his commission to examine racial inequality in Virginia Law yesterday. He stated the purpose of that commission was to root out attitudes that contribute to segregation and discrimination in our Virginia communities. He stated the thing about renters is they do not have permission to maintain their property, and for many renters a serious concern is whether or not they can get property owners to invest in taking care of these properties. He stated renters like to live in nice places just as much as owners do, but they don't always have the ability or right to have those places taken care of. He stated we should have more sensitivity to these issues coming out of staff.

At 7:19 pm Mayor Reed closed the public hearing and the regular session reconvened.

A motion was made by Council Member Jones, seconded by Council Member Hirschmann, to approve the request as presented. The motion carried with a recorded roll call vote taken as follows:

A motion was made by Council Member Jones, seconded by Council Member Hirschmann, to approve the special use permit request as presented. The motion carried with a recorded roll call vote taken as follows:

Yes: 5 - Mayor Reed, Vice-Mayor Romero, Council Member Baugh, Council Member Jones and Council Member Hirschmann

No: 0

6.c. Consider a request from Janice M. Kirby for a special use permit to allow short-term rental at 789 Blue Ridge Drive.

Adam Fletcher, director of Planning and Community Development, presented the request for property located at 789 Blue Ridge Drive. He reviewed the long-term planning for the area, the surrounding properties and their zoning districts. He stated the plan is for three accommodation spaces for a total of up to five guests, the applicant's intention is to rent the entire unit and when it is rented out she will reside nearby, the property is the applicant's primary residence, and off-site parking is available and will not need to be delineated.

He stated staff recommended approval and the Planning Commission recommended approval (4-2) with the below conditions, with the dissenting votes being primarily due to the neighborhood. Vice Mayor Romero stated the property operated as a STR over the past two years with good reviews and seemed like there were no concerns. However, the night of the Planning Commission there were concerns from the neighbors. Conditions are as follows:

- The site shall be the operator's primary residence;
- If the operator is not the property owner, then the operator shall be present on the site during the lodging period within any dwelling unit.
- There shall be no more than three accommodation spaces;
- There shall be no more than five guests at one time;
- Minimum off-street parking spaces do not need to be delineated.

At 7:24 pm Mayor Reed closed the regular session and called the third public hearing to order. A notice appeared in the Daily News-Record on Monday, August 26, 2019 and September 2, 2019.

Emma Phillips, 1121 Starcrest Drive, stated the applicant is her mother who stays with her during the rental period as she lives right next door. She stated over the last two years there have been no issues of noise. She stated some of the concerns during the Planning Commission meeting were about STR's and their safety, but she can say with great certainty that the people who rent the property are delightful people and does not feel unsafe with her children running in the neighborhood.

At 7:25 pm Mayor Reed closed the public hearing and the regular session reconvened.

Council Member Jones thanked Mr. Fletcher for clarification of the Planning Commission's vote, but he does have cause for alarm. He stated the applicant is not

planning on being in the home during the rental period, and if he recalls correctly, he can't recall approving any STR requests if the operator was not in the home. Mr. Fletcher stated almost all of the approvals have given the ability for the STR operator to not be present during the lodging period as long as they are the principal owner of the residence.

Mayor Reed asked if there are discussions during the Planning Commission meetings regarding safety. Vice Mayor Romero stated a few of the neighbors that spoke in opposition were concerned about the increase in traffic, mentioned a few accidents, but there was no evidence that those incidents were linked to the STR. He stated there were the typical concerns about people coming and going.

A motion was made by Vice Mayor Romero, seconded by Council Member Hirschmann, to approve the special use permit request as presented. The motion carried with a recorded roll call vote taken as follows:

Yes: 5 - Mayor Reed, Vice-Mayor Romero, Council Member Baugh, Council Member Jones and Council Member Hirschmann

No: 0

- 6.d.** Consider a request from Orange Sky Investments LLC for a special use permit to allow short-term rental at 165 New York Avenue.

Adam Fletcher, director of Planning and Community Development, presented the request for property located at 165 New York Avenue. He stated the original request from the applicant was looking to have seven accommodation spaces and up to 14 STR operators, however since the Planning Commission meeting the number has been reduced. He stated another change was this was not originally the applicant's primary residence, however that has since changed and indicated they Mr. Wes Smallwood will now be making this his primary residence and staff will work with Mr. Smallwood that it does become his primary residence if approved by council. He stated the applicant was made aware by staff that during the STR permit process they were not to operate as an STR, however, upon investigation, the STR was still in operation. He stated they were issued a civil penalty for this violation.

He reviewed the long-term planning for the area, the surrounding properties and their zoning districts. He stated the plan is for seven accommodation spaces for a total of up to 12 guests and off-site parking is available and will not need to be delineated.

He stated staff originally recommended denial as it was not the primary residence of the operator, and the Planning Commission recommended denial (6-0), however with the change in the application as mentioned earlier, staff believes it makes the application very similar to other applications that have been approved throughout the city and now offers a recommendation of approval of the request with the below conditions:

- The site shall be the operator's primary residence;

- If the operator is not the property owner, then the operator shall be present on the site during the lodging period within any dwelling unit.
- There shall be no more than seven accommodation spaces;
- There shall be no more than 12 guests at one time;
- Minimum off-street parking spaces do not need to be delineated.

Mr. Fletcher noted that due to the changes from the original application reviewed by Planning Commission, Council has the opportunity to refer back to the Planning Commission for further review and recommendation.

Council Member Jones asked what the thoughts were from Planning Commission on the violation. Mr. Fletcher stated the Planning Commission was not aware of the violation. Council Member Jones asked what the original cut-off date was for operating an STR without a permit. Mr. Fletcher stated it was August 1, 2019.

At 7:33 pm Mayor Reed closed the regular session and called the fourth public hearing to order. A notice appeared in the Daily News-Record on Monday, August 26, 2019 and September 2, 2019.

Dionne Jones, one of the property owners, stated Airbnb did not allow cancellations of reservations without a \$500 fine as opposed to the \$100 fine issued by the city. She stated there were no provisions from the Planning Commission for those operations in limbo during the permit process if operations could continue. Council Member Jones asked what the dates were of the reservation. Ms. Jones stated the one they received the violation on was August 24, 2019 and could not be cancelled. Council Member Jones stated the city provided a warning when the ordinance was created. Ms. Jones stated this reservation was made last year and cancelling it would have cost a lot of money for all Airbnb owners. Council Member Jones stated the \$500 fine would be worth it to stay out of violation so that they could keep operating once approved versus risking how the violation from the city would be viewed by council. Ms. Jones stated there wasn't anything written or given verbally as to what operators are supposed to do during the permit process as far as continuing or discontinuing operations.

Wes Smallwood, 930 Turkey Run Road, applicant, stated he now resides at 165 New York Avenue. He stated the reservation for August 24, 2019 as well as the ones up through November 2019 were all made in advance and noted that Airbnb delayed taking the rental unit down on the website. He stated they already had reservations made well in advance prior to the August 1, 2019 deadline, he understands the fine, but feels reservations already made should be grandfathered. Council Member Jones stated one still needs to abide by the rules and regulations and reservations should have been cancelled as soon as the notice of the ordinance change was released. Mr. Smallwood stated it was not made apparent that all STR's had to cease and desist operations on August 1, 2019 if they were in the permit process. Further discussion took place regarding the ordinance and the requirements for STR's. Mr.

Smallwood stated there was also concern that because the applicant was listed as a company rather than an individual that flipping would be occurring, and that is not the case. He stated this is not an out of town company purchasing property to operate as a STR.

Council Member Hirschmann stated it is his understanding that everything is on the straight and narrow for this operation at this time, therefore wanted to know what the applicant needed to do now to move forward. Mayor Reed stated we either send it back to Planning Commission or council can vote on it. Vice Mayor Romero stated he thinks the concern from council is the fine. Council Member Jones stated his concern is that the applicant conscientiously put it online or left it online knowing that isn't the process. Vice Mayor Romero stated that he is not sure what difference it would make going back to Planning Commission because the application is very similar to many of the others that have been approved by Council, so at this point it is definitely a decision Council needs to make, and he believes it is not appreciated that the STR was left online and doesn't encourage anyone to violate the law, but at the same time there is a consequence and in this case we agree as a body the consequence is a fine, he should pay the fine and then Council votes on the application. Mayor Reed stated let's continue with public comment on this public hearing.

Jack Garmer, 155 New York Avenue, stated his house is next to the house in question. He stated the previous owner built the property in the 1940's, passed it on to a nephew, it has a disproportionate value due to the size, the house was not kept up well, previous tenants were problems, but the house is now up to par, it has been remodeled, there have been no complaints, and as a STR he hasn't had any problems with traffic due to the rental. He stated the traffic is heavy but not due to the rental and will be seeking a traffic study be done in the area. He stated out of curiosity, are there are any stipulations that the owner of a property be a resident of the city or county.

Rhonda Lentz, is a property owner, registered voter and lives in the city. She stated she provided a letter to all council members supporting this STR request, outlining the reasonings for her support. She presented an addendum to that letter to council and reviewed what the addendum consisted of. She noted one of the documents provided was a Surrounding Property Owners Notice, which reflected six addresses owned by non-resident owners. She asked Council would they rather have non-resident owners renting out property long term that don't deal with issues or would they rather have someone that is on the property every day maintaining the property to maintain their positive reviews on Airbnb and keep the property rented. She reviewed an extract from the July 9, 2019 Council Meeting from statements made by Mayor Reed and Council Member Jones. She stated this is America, land of the free, what does free enterprise mean to each Council Member. She thanked Council for their time.

Erin Bishop, 331 New York Avenue, stated she is a business owner in the city and operates within the law and zoning as required. She stated zoning is put into place very thoughtfully, we have the opportunity to speak and be represented by commissions and ultimately Council. She stated those processes are things that she really appreciates being a part of and doesn't like to see these processes taken advantage of. She stated to hear people state they are operating a business in flagrant disregard to the zoning in place, that has been in place for a while, where there has been notifications through council, social media, news etc., she feels it is really concerning to have someone with such flagrant disregard to those processes to come before Council with contingencies in hopes that they will comply with the conditions. She asked if a seven-bedroom hotel something that is allowed by right on this property and she has concerns with that continuing.

Michele North, 718 South High Street, stated there is a lack of affordable housing, she never had problems renting out her property and she feels this request is more of a hotel accommodation in a residential neighborhood. She stated the original application showed it was a business entity running a business and was not a primary residence and she feels this is truly a hotel, there are not caps on how long a STR can be let, and even though many properties are rentals in the area it is remarkable of the longevity of the individuals that are renting. She stated originally the applicant wasn't going to reside in the property, however now he has changed his mind to move in to the property, she stated this is a bit unsettling, is he really willing to do that. She requests council deny the application and moving forward recognizing having unlimited STR days could be detrimental.

Pamayotis "Poti" Giannakaouros, stated with all due respect to Ms. Bishop, it is a delightful opportunity to agree with Ms. Lentz. He stated there are a few things on how this special use permit is designed that address the concerns that were said. He stated while it may be potentially possible that this particular building could be operated in a way that wasn't exactly envisioned the primary residence stipulation limits the extent to which these properties could be bought, it is a self-limiting process. He stated he has consistently stated his concerns as to how we came to this process, the rules are the rules, but it is useful to reflect on the process we have gone through and take note going forward. He stated on the eve of passing what was passed he observed in Planning Commission that a pretty reasonable consensus was starting to form around guidance that was scrolled on a paper napkin by former Council Member Byrd, which was going toward doing this by right, but the worst of the three, the least favorite option, was chosen. He stated we now see the impact of that decision who were operating. He stated we have meetings clogged up by special use permit requests and now cost problems. He stated when we think of what impact something is going to have on a business we anticipate these types of issues. He referred to his request to ban Polycyclic Aromatic Hydrocarbon Coal Tar parking lot sealant as an example. He stated a bill was presented to the State Legislature and when our Delegate wrote the language he wrote provisions in that for the businesses that were

already operating to use up their existing stock. He stated if we had been consulting hand in and with the prospective Airbnb owners the types of issues you see here might have come up and been resolved. He stated instead we have been concentrating on residential character, in which council has conveyed back to Planning Commission that should not be a deciding factor. He stated if someone is operating a business part of the reason for imposing fines if something is a profit-making situation is, so people stop breaking even. He stated the harshest aspect of this special use permit process is that it makes people beg and plead for special use permits and feel they have to make a personal case about their own character which shouldn't be entering into land use. He stated he hopes this gets better in the future.

At 8:09 pm Mayor Reed closed the public hearing and the regular session reconvened.

Vice Mayor Romero asked Council Member Baugh if he thinks this is something the Planning Commission would want to see back. Council Member Baugh stated he takes seriously that staff felt this was something they would recommend on, and we are now asked to vote on something that is very different from what Planning Commission made a recommendation on. He stated it was clear the applicant reacted and changed is application to reflect the concerns of the Planning Commission. He stated he thinks Council should kick it back to Planning Commission. Mayor Reed stated she agrees with Council Member Jones regarding the violation, if a council member advises someone they should listen. She stated she would like to see this go back to Planning Commission because it is different than the original application presented to them. Council Member Hirschmann stated he is under the general impression that if it goes back to Planning Commission it will come back with a more favorable recommendation. Council Member Baugh stated we have rules and regulations and even if number crunching shows the best action would be to break the rules, it's not ok and we don't have to accept that.

This PH-Special Use Permit was referred to the Planning Commission

7. Regular Items

- 7.a.** Consider approving a resolution setting the percentage of Personal Property Tax Relief to Tax Year 2019

Chris Brown, city attorney, presented a resolution to establish the percentage of personal property tax relief for tax year 2019. He stated this derived from the Personal Property Tax Relief Act of 1998 (car tax) and every year the General Assembly gives the city money to be allocated amongst the various personal property automobiles in the city. He stated the director of Finance and the Commissioner of the Revenue each year do the formula and calculations and this year the city received

\$1,522,583.00 from the Commonwealth and the result of this is any vehicle assessed at less than \$1,000 no personal property tax is charged, vehicles valued between \$1,000 and \$20,000 receive a 25.5% relief.

A motion was made by Council Member Baugh, seconded by Council Member Hirschmann, to approve the resolution as presented. The motion carried with a recorded roll call vote taken as follows:

Yes: 5 - Mayor Reed, Vice-Mayor Romero, Council Member Baugh, Council Member Jones and Council Member Hirschmann

No: 0

7.b. Consider a refund for a portion of the 2019 Business, Professional and Occupational License (BPOL) tax for two businesses.

Chris Brown, city attorney, stated he is presenting on behalf of the Commissioner of Revenue and it is a request for a refund of Business, Professional and Occupational License (BPOL) tax for two businesses. He stated Taxpayer A notified the Commissioner of Revenue that the business had ceased business June 30, 2019 and a prorated refund of \$7,198.25 was due. He stated Taxpayer B notified the Commissioner of Revenue that the business changed ownership on August 12, 2019 and a prorated refund of \$3,144.34 was due.

A motion was made by Council Member Baugh, seconded by Council Member Hirschmann, to approve the request as presented. The motion carried with a recorded roll call vote taken as follows:

Yes: 5 - Mayor Reed, Vice-Mayor Romero, Council Member Baugh, Council Member Jones and Council Member Hirschmann

No: 0

8. Other Matters

8.a. Comments from the public, limited to five minutes, on matters not on the regular agenda. (Name and address are required)

no one spoke

8.b. City Council and Staff

Council Member Jones stated he attended the recent Community Criminal Justice Board (CJJB) meeting and wanted to encourage everyone to attend a presentation from the new superintendent of the Middle River Regional Jail (MRRJ) on December 2, 2019 at 4:00 pm at City Hall, Lower level classrooms 011 and 012. He stated this would be good for anyone that had questions regarding updates at MRRJ and anything else regarding our justice system in Harrisonburg and Rockingham County.

Council Member Baugh thanked Council Member Jones for the kind words of his partner, Larry Hoover. He stated there will be a celebration of life for Mr. Hoover on Saturday at the Bridgewater Church of the Brethren at 10:30 a.m.

Council Member Hirschmann stated as a reminder September 11th is an important day that calls for reflection and maybe a prayer or two for 9/11.

Amy Snider, assistant to the city manager, stated Vice Mayor Romero and herself are part of the Charlotte Harris Community Remembrance Project and the Virginia General Assembly's History of Lynching's in Virginia Workgroup, chaired by Senator Jennifer McClellan, will be meeting September 16, 2019 at 6:00 pm at the James Madison University Memorial Hall. She stated the workgroup is going to facilitate a local community conversation about the past of racial terror in our community and we are the first city to host this workgroup meeting in the state. She stated she hopes Council will attend and members of the public are also welcome to attend. Mayor Reed stated this is a very important event and she hopes we can pack the house.

Mayor Reed stated a public forum will be held Thursday, September 19, 2019 at Purcell Park Kids Castle Playground, and feedback is needed on the future of the park. She stated people can drop by from 3:00 pm to 8:00 pm to take part.

9. Adjournment

At 8:24 p.m., there being no further business and on motion adopted, the meeting was adjourned.

CITY CLERK

MAYOR