



City of Harrisonburg

409 S. Main Street
Harrisonburg, VA 22801

Meeting Minutes - Final City Council

Tuesday, November 12, 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 Jones offered the invocation.

3. Pledge of Allegiance

Mayor Reed led the Pledge of Allegiance.

4. Special Recognition

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 Hirschmann, 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 October 22, 2019 City Council meeting

These minutes were approved on the consent agenda

5.b. Consider approving an ordinance amendment and re-enactment of Chapter 6 Auxiliary Police Force Article B Section 5-6-4, and Article C Sections 5-6-5, 5-6-7, 5-6-8, 5-6-12 and 5-6-13 of the Code of Ordinances, City of Harrisonburg, Virginia

This ordinance was approved on the consent agenda

6. Public Hearings

- 6.a. Consider a request from Claudia M. McClean for a special use permit to allow for a short-term rental at 907 Ridgewood Road.

Adam Fletcher, director of Community Development, presented a short-term rental (STR) request for property located at 907 Ridgewood Road. He reviewed the land use guide for the area, and then reviewed the surrounding properties and their zoning districts. He stated the plan is for two accommodation spaces for a total of up to four guests and the property has enough area for off-street parking with no delineation required.

He stated staff recommended approval with the conditions below, however the Planning Commission voted 3-3 on a motion to approved.

- 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;
- All STR accommodations shall be within the principal structure;
- There shall be no more than two accommodation spaces;
- There shall be no more than four guests at one time;
- 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; and
- 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.

At 7:08 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, October 28, 2019 and Monday, November 4, 2019.

Eugene Leffel, 1107 Ridgewood Road, requested council not approve the special use application. He stated he has resided there since 1976 and if we can't protect a single-family neighborhood here, where can we. He asked council to maintain the integrity of this neighborhood.

Marjorie Kyle, 1102 Ridgewood Road, stated she and her husband own rental properties throughout the city in R-1 neighborhoods. She stated they rent to families, single tenants and occasionally two unrelated tenants as required by the zoning laws in R-1 neighborhoods. She stated they are respectful of the laws and as a result have tenants who build relationships with their neighbors and enjoy the quiet of these remaining R-1 neighborhoods. She stated upon reading the rules and regulations listed on the city's website she was surprised to see how different the rules are for a short-term rental versus R-1 rules. She reviewed some of the differences, such as

tenancy requirements and length of stay. She requested council hold off on approving this request until proper regulations can be put into place.

Alice Doyal, 901 Oakhill Drive, referred to a letter to the editor submitted by the applicant. She stated she doesn't believe that what is considered normal use of residential property confers the same right to use the property for commercial purposes. She stated the distinction between residential and commercial of property has a long social, civic, and legal history. She stated the applicant feels she has the right to run a commercial operation utilizing city and personal resources, however it was the applicant's choice to buy such a large house in a residential neighborhood, not zoned for short or long-term rental, and that the nature of the neighborhood was known to her when she purchased the property. She stated she feels it is not reasonable to allow a commercial operation and believes at the heart of this debate is not the right to utilize resources equally regardless of their purpose but rather what is the purpose and function of a neighborhood: commercial use or residential use. She stated she has enjoyed allowing her children to play freely in the neighborhood and not wonder who is living in any of the houses. She stated it is not wise governance to allow one individual's financial situation to drive policy and should not be the primary determinate of a decision to allow special permitting. She stated this neighborhood is a rarity, and if the request is allowed, it will become a mixed commercial/residential area. She asked Council to preserve this pocket of the city that is purely residential.

Carissa Henriques, 911 Ridgewood, stated she has concerns about the safety of her children, this request will increase the traffic in the neighborhood and others have the same concerns. She asks council to consider the letters of opposition received. She stated there are studies now that suggest short-term rentals contribute to rising home costs, less tax revenue and losses for local businesses. She stated in Harrisonburg the short-term permit runs from one owner to the next, and she is very concerned about how future homeowners of the property might manage and lease the property. Unproper management can lead to many problems including noise disturbances and disrupt the neighborhood. She stated we need policies that attract and support keeping families in the city not pushing them out into the counties and outlying areas.

Dawn Ruple, 909 Oakhill Drive, stated this is not personal as to the one property owner it is a concern globally about allowing this special use permit to attach to the property and not the owner, she feels it will create avalanche effect that could consume our neighborhood. She asked all supporters in denial of this request in attendance to stand.

Sherry Leffel, 1107 Ridgewood, stated her concern is with the safety of the children. She stated school bus pick up stopped on Ridgewood Road because of the road conditions.

Ashley Schwartz, not a city resident, stated she has rental properties in the city and

would like to address some of the neighborhood concerns. She stated she has a home-stay very similar to the applicant's request, has two young children, safety is not an issue, and this is not a commercial use, it is just using the residential space to its capacity. She stated the concept is the same as if one were to invite family or friends to stay at one's house. She stated allowing guests to stay in a house does not change the single-family home concept in any way, it creates a more utilized single-family home, it does not change the capacity of the neighborhood, create more space or use of supply. She stated anyone renting STR space are based on a rating system, they must be respectful, clean, and nice kind rental people in order to continue to operate on any STR platform.

Lisa Gallagher, 905 Oakhill Drive, asked why there is zoning if we make exceptions for commercial. She stated a rating on a web site might say this is a wonderful person, it is still a stranger and everyone in the neighborhood will be exposed to a stranger. She asked council to consider the sanctity of the neighborhood and all R-1 neighborhoods and keep commercial out of residential areas.

Pamayotis "Poti" Giannakaouros, asked why have zoning, get rid of R-1 zoning, get rid of this mill stone of residential character that has done so much harm to our society. He stated get rid of this concept of the property owner which has hobbled this entire region since we defeated the Confederacy, get rid of these concepts that have been keeping us from running our city in a sensible way.

At 7:30 pm Mayor Reed closed the public hearing and the regular session reconvened.

Council Member Jones asked Mr. Fletcher if there have been any formal complaints received of individuals that have gone through the special use permit short-term rental process. Mr. Fletcher stated of those that have been approved he is not aware of any complaints received. Council Member Jones stated he hasn't heard from anyone say Council approved one and shouldn't have and here is why.

Council Member Jones read an anonymous letter received by council of support.

Council Member Baugh asked Vice Mayor Romero for his opinion and take from the Planning Commission meeting. Vice Mayor Romero stated his decision to recommend denial was mainly due to the showing of opposition of the neighborhood. He stated he was concerned that the majority had come before the Planning Commission to share the opposition and felt he had to give them the benefit of a doubt.

Council Member Baugh stated the issue is with what is appropriate, this policy was deliberately set up to not be a one fits all policy. He stated to date most of the applications that have come forward have been quiet with support from the neighbors and we don't have to come up with a rule for all. He stated the term commercial use in

a residential area is ok to review on a case by case basis via the special use permit. He stated the folks in this neighborhood are unenthusiastic about this request and he is aware that Planning Commission is still reviewing the process, but finds his inclination is to not support this request.

Mayor Reed stated she doesn't understand the statement of strangers in our neighborhood, everyone is a stranger at some point, and we must be careful with language used. Council Member Baugh stated he agrees with the Mayor, but he does have a concern of commercial use in a residential area.

Council Member Hirschmann stated if she moved out of this property and rented it out, the new tenants would become part of the neighborhood, but for short-term rentals are temporary residents.

Council Member Jones stated he finds it interesting that the things that are problematic become even bigger problems when a special use permit request is made, even though the request may not actually affect those problems. He stated the arguments are flawed and as long as we have had short-term rentals in the city without regulations, we never had problems and the potential problematic issues mentioned didn't happen.

Mayor Reed stated neighborhoods change, the city changes. Council Member Jones stated this is a very diverse welcoming city and he hopes we maintain that attitude that we don't become closed off and very negative towards each other.

Council Member Baugh stated it seems that we tend to approve these, but we haven't had a bunch approved where the neighborhood was against it. He stated if these requests were always okay then why have a special use permit process. He stated he remains unprepared to say we should just open it up and make it an upright issue in R-1. He stated he realizes it is not easy for those that come out to speak and that shows how passionate they are about the topic.

Council Member Hirschmann stated we still have the right to revoke the special use permit (SUP) if there is a problem.

Vice Mayor Romero stated since he has joined the Planning Commission, reviewing STR SUPS have been the biggest headache. He stated several options were discussed and noted the applicant had ran this STR for 10 months prior to applying without anyone knowing about it, however he still leans towards the consensus of the neighborhood.

Council Member Jones stated he wonders about the people we don't hear from. He stated he is not sure if we create harm to the applicant by not allowing the permit, but he doesn't know if we are protecting the neighborhood from harm by issuing the permit, there isn't any evidence one way or another and he does not feel comfortable

making that decision.

Further discussion took place between all Council Members.

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

Yes: 3 - Vice-Mayor Romero, Council Member Baugh and Council Member Hirschmann

No: 1 - Mayor Reed

Abstain: 1 - Council Member Jones

7. Regular Items

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

Adam Fletcher, director of Community Development, presented a STR request for property located at 165 New York Avenue. He reviewed history of this application as it was heard previously by Council and referred back to the Planning Commission on September 10, 2019 due to changes in the application. He reviewed the land use guide for the area, the surrounding properties and their zoning districts. He stated the plan is for seven accommodation spaces for a total of up twelve guests and the property has enough area for off-street parking with no delineation required.

He stated staff recommended approval with the conditions below, however the Planning Commission recommended denial with a vote of.

- 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;
- All STR accommodations shall be within the principal structure;
- There shall be no more than seven accommodation spaces;
- There shall be no more than twelve guests at one time;
- 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; and
- 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.

Council Member Baugh stated he wonders if this application would have been approved if the number of accommodation spaces and guests allowed would have been reduced even further. Mr. Fletcher stated staff did not have any concerns about

the numbers as we do have a few that have been approved close to these numbers. Vice Mayor Romero stated this is the fourth time he has reviewed this request, changes were made in the application from the original submission and he was in favor of the denial, however he would consider possibly approving if the number of accommodations and guests was reduced even further. Council Member Baugh agreed with Vice Mayor Romero. Further discussion took place regarding parking issues if property was fully rented and the fact that the applicant continued to operate as an STR even after a violation was issued. Further discussion took place regarding reducing the number of guests.

A motion was made by Council Member Baugh, seconded by Council Member Hirschmann, to deny 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

- 7.b.** Consider a request from Virginia Valley Homes, Inc. to preliminarily subdivide a +/- 5.89 acre parcel into 39-townhome parcels, two common area parcels and a +/- 2.42-acre parcel for the existing condominium development at a site located on West Mosby Road and Millwood Loop.

Adam Fletcher, director of Community Development, presented a Preliminary Plat Variance Request at Millwood Townhomes. He reviewed the surrounding areas zoning, the subject property and noted half of the site has previously been developed.

He stated staff and Planning Commission recommended approval 6-0.

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:

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

No: 0

Recess

At 8:19 p.m., Mayor Reed called the meeting into recess.

At 8:24 p.m., Mayor Reed called the meeting back into session.

- 7.c.** Presentation from the Harrisonburg City School Board regarding the second high school

Dr. Michael Richards, superintendent of Harrisonburg City Public Schools, presented the Guaranteed Maximum Price (GMP) from Nielson Builders in the amount of \$87.2M. He provided the time line and history of how the need for a second high

school evolved, what work has been done to date on the planning and noted the newest Weldon Cooper report as of October 2019 that showed continued increase in projected enrollment in all grade levels. He stated the GMP does not reflect the total project costs. He stated \$3.3M had already been spent for the design costs, which must be backed out of any bond.

Eric Campbell, city manager, thanked Dr. Richards and staff for their transparency and inclusion of the city administration as we work through this process. He stated the city administration must take a broader view of overall project costs in considering a project of this magnitude. He stated it requires acquisition of land and right of ways, road improvements, operational equipment and technology. He presented a conservative snapshot of the cost consideration related to the complete project, which include: building, site and design of \$87.2M; furniture, fixtures, equipment and technology for \$8.5M; purchase of land \$5M; road improvements \$5M; and acquisition of right of ways \$4.1M. He stated these costs total \$109.8M with a total bond/borrowing amount remaining of \$104.8M.

Mr. Campbell reviewed the borrowing scenarios, based on amount borrowed, and the overall estimated payments ranging from \$75M through \$100M of funds borrowed. He reviewed the city's debt capacity reflecting the range of \$75M to \$100M of funds borrowed. He reviewed the debt payment analysis reflecting debt rolling off and the real estate tax rate impact. He reviewed what impact the maximum real estate tax rate would have versus what is paid now and the surrounding localities current tax rates.

Dr. Richards stated the slide is very clear in terms of the burden to the average home owner. He stated staff works very closely with the City Council, it is cooperative and collaborative, there is a desire to work together, and understand the schools are only one point of the costs of the city. He stated at the last liaison meeting concerns were heard regarding tax rate increase and debt capacity, and the concerns were heard. He stated due to those concerns he decided to present a potential alternative of phasing this project into two phases. He stated the alternative is to build the building on the land, without the auxiliary gym, football stadium, and sports fields, which would mean no boundaries would be set or facilities naming until Phase 2. He stated the bike path, parking lot and bus loop would be a part of Phase 1. He stated the alternative of phasing would change the GMP and would reflect a reduction of 7.2M for those changes to \$77M, the new soft costs would be approximately \$8M, for a total ask of \$85M.

Council Member Jones stated with the alternative phasing we are still looking at \$97.6M for the project.

Some discussion took place of the price that was advertised versus the actual costs.

Mayor Reed stated she appreciates the compromise and along with the cost is a tax

increase in which she is concerned about. She stated she can't afford a tax increase of this magnitude and even with the alternative phasing, it equals a 12.3 cent increase.

Council Member Jones stated people have been made aware of this possible tax increase and potential cost in the mid \$90M's.

Mayor Reed is in support of the high school, she knows something needs to be done, but she is aware this will put a burden on some people. Council Member Hirschmann stated it will hurt him, too.

Vice Mayor Romero stated he shares those concerns as well and asked if there is an opportunity to spread the increase over a period of time. Mr. Campbell stated it depends all on timing that the bond would be obtained and when the debt payments would be required.

Council Member Jones asked if Mr. Campbell can do a report that reflects what other debt will be rolling off over the next few years. Mr. Campbell stated a report was presented last year to council showing those figures and he would be able to provide to Council again.

Vice Mayor Romero stated he appreciates that the school board is willing to work with Council, and we must be realistic regarding Phase Two of the project, if we don't build it now, it may not happen. He stated this council may not be here to approve Phase Two. Dr. Richards stated he hopes it would be added to the Capital Improvement Plan to schedule it out.

Council Member Jones asked Mr. Campbell if the time line shown in the GMP seems reasonable. Mr. Campbell stated he cannot answer that until the proposed alternative plan is vetted.

Mayor Reed stated there will be a Public Hearing, Dr. Richards confirmed and stated it will be with the School Board on Thursday, November 14, 2019 at 7pm in the Council Chambers and noted that all the Private Public Education and Infrastructure Act bids received will be viewable by the public.

Dr. Richards stated in order to adhere to schedule, a decision would need to be made by the next council meeting on November 26, 2019.

Council Member Jones asked if any concessions were being made by Nielsen since it is local.

John DeLucas, Nielson Builders, stated 55% of contracts will be through Harrisonburg/Rockingham for contractors and supplies. He stated they were able to work with the subcontractors and architects to make changes that brought this project

under state average. He stated he has a team that is committed and wants to see this happen, he is confident they are giving the city the best number.

This Presentation was received and filed.

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)

James "Bucky" Berry, 30 West Washington Street, stated he has seen very little action with the hungry and the homeless, he is concerned about those on the street in the cold, we need to have a low barrier shelter to get those off the street. He stated JMU will give about \$10,000 worth of food to the Brent Berry Food Drive which has been around for over 45 years. He stated they will also set up at Walmart this winter and on March 12 at the Red Front grocery store. He stated he is concerned about a real estate tax increase and how it will affect the community as many are barely making ends meet now.

Anton Blann, aka Vass Castle, stated he is thankful of what he has seen this evening and the confessions and changes that are happening all over town. He has been working with the lower state of the community who have been ignored for a while, those labeled as criminals and mistreated by the justice system. He stated he has helped many get through the emotional trauma, helping them being taken care of at night. He stated he feels he will be used for something with the new school to help build up financial support. He stated he is part of a new church community providing sacrificial love throughout the entire city. He stated he believes many on the street suffer from PTSD, emotional trauma, depression, drugs and identity problems. He stated many are paranoid, afraid to be around community members. He stated he has been on the streets since December 2018 he has found a lot of information that the city can use to provide a resource for everyone to get help. He stated he is willing to continue to get all the information he needs, not to cause harm to any person or grow hatred, but to find a way that unity can begin to help the city in all situations. He stated he wishes people would realize he is for real, he is not trying to gain any profit, or become a king, but is more of a servant. He stated he wants to talk to the churches and ask they support the city and the budgeting for the new school. He stated he believes there is hope for the city as he has seen changes all over town, less overdoses, those individuals he is around do not cause murder, less drinking, some are finally getting their life together, and where there was no hope now have hope and he helps lead them there. He asks for support from the city and residents for blankets for the homeless. He stated if we stop being so selfish and work together as a team many problems will be fixed without requiring the government to always step up.

8.b. City Council and Staff

Council Member Jones stated on Thursday, November 14, 2019 at the Friendly City Dance Studio, there will be panel and group discussion and after-hours event regarding quality in the workplace, hosted by a combined effort between the Diversity

Council of the Chamber of Commerce and the Women's Alliance. He stated this is a small venue, admission is free, but registration is required.

Eric Campbell, city manager, stated there, is a national professional organization known as the Alliance for Innovation, it is one of the forefront think tanks or local government, it is where practitioners in the field work with the academics from educational institutions. He stated each year they hold a major conference where the best and brightest projects across the county in local government are presented and vetted. He stated he is pleased to inform Council that the HCAP program for the city has been selected out of over 100 applications to be presented in Phoenix, Arizona in 2020 as one of the most innovative programs in the country. He stated he is very proud of staff.

9. Closed Session

- 9.a. Virginia Code Section 2.2-3711(A), under: Subsection 7 for consultation of legal counsel regarding specific legal matters requiring the provision of legal advice for such counsel, namely the negotiation of a potential contract.

Council Member Baugh stated Vice Mayor Richard Baugh stated for reasons related to legal professional ethics he recused himself from Agenda item 9.a.

Vice Mayor Baugh stated the Virginia State and Local Conflict of Interest Act requires that he make the following disclosure to be recorded in the city records on any matter from which he is prohibited by law from participating:

The transaction involved is the item taken up on the November 12, 2019 Agenda as Item 9(a), a closed session for consultation regarding legal advice. He will be participating in all other matters appropriate for the closed session. His personal interest in the transaction relates to the ethical requirements to which he must adhere as a licensed member of the Virginia State Bar; he affirms he will not vote or any manner act on behalf of city council on this matter

At 9:16 pm a motion was made by Council Member Jones, seconded by Council Member Hirschmann, to enter into closed session as authorized by the Virginia Freedom of Information Act, Virginia Code Section 2.2-3711(A), under: Subsection 3 for a discussion of the acquisition of real estate where public discussion would adversely affect the city's negotiating position and Subsection 7 for consultation with legal counsel regarding specific legal matters requiring the provision of legal advice for such council, namely the negotiation of a potential contract. 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

10. Adjournment

At 9:30 p.m., the closed session ended and the regular session reconvened. City Attorney Brown read the following statement, which was agreed to with a unanimous recorded vote of Council: I hereby certify that to the best of my knowledge (1) only public business matters lawfully exempted from open meeting requirements under Chapter 37 of Title 2.2 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 meeting was convened were heard, discussed or considered in the closed meeting by the City Council.

At 9:31 p.m., there being no further business and on motion adopted, the meeting was adjourned.

CITY CLERK

MAYOR