

94TH REGULAR SESSION AND EXECUTIVE SESSION – FEBRUARY 24, 2009

On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember M. E. Brubaker, the Mayor and City Council unanimously agreed by voice vote to meet in closed session to consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State, #4 at 6:05 p.m. in Room 407, City Hall, Hagerstown, Maryland. The following people were in attendance: Mayor R. E. Bruchey, II, Councilmember M. E. Brubaker, Councilmember K. S. Cromer, Councilmember L. C. Metzner, Councilmember P. M. Nigh, Councilmember A. Parson-McBean, City Administrator Bruce Zimmerman, Larry Bayer, Community Development Manager, Deborah Everhart, Economic Development Director, Donna Spickler, City Clerk, Tim Gordon, and Barbara Constable. The item discussed was an appeal of denial for a revolving loan fund application. No formal action was taken at the meeting. The meeting was adjourned at 7:02 p.m.

94TH REGULAR SESSION – FEBRUARY 24, 2009

Mayor R. E. Bruchey, II called this 94th Session of the Mayor and City Council to order at 7:14 p.m., Tuesday, February 24, 2009, in the Council Chamber at City Hall. Present with the Mayor were Councilmembers M. E. Brubaker, K. S. Cromer, L. C. Metzner, P. M. Nigh and A. Parson-McBean; City Administrator Bruce Zimmerman, City Attorney John Urner and D. K. Spickler, City Clerk.

The invocation was offered by Councilmember Martin E. Brubaker. The Pledge of Allegiance was then recited.

Mayor Bruchey announced the Rules of Procedure for this meeting will be followed as adopted March 28, 2006. It was announced that the use of cell phones and electronic devices during meetings is restricted and that all correspondence for distribution to elected officials should be provided to the City Clerk and should include a copy for the City Clerk for inclusion in the official record.

The next scheduled meetings are: Work Sessions beginning at 4:00 p.m. on Tuesday, March 17, 2009, Tuesday, March 24, 2009, and the Regular Session on Tuesday, March 31, 2009 at 7:00 p.m. The State of the City will be held on Tuesday, March 3, 2009 at 7:00 p.m. There will be no Work Session held on Tuesday, March 10, 2009.

PUBLIC HEARINGS

Proposed Mixed Use Zoning Districts and Proposed Land Management Code Amendment – Variances for Lot Area Requirements

Mayor Bruchey stated these two hearings are being combined.

Stephen Bockmiller, Development Review Planner/Zoning Administrator, stated changes recommended in the Comprehensive Plan include a revision to the existing C3

District, which is the downtown area, a new neighborhood mixed-use zoning district, and a new zoning category for planned industrial areas.

With respect to Downtown, the Plan recommends a new zoning district that would take the place of the current C3 district. This is the Downtown Mixed Use District. Substantive changes are minimal compared to the current C3 District.

The Neighborhood Mixed Use District is a new district designed to apply to areas where the City envisions a seamless combination of residential, commercial, office, and institutional uses, possibly resulting from a special study or master planning efforts. The idea is to provide standards which would allow and encourage traditional neighborhood development.

The Industrial Mixed Use District is a new district designed to provide locations for light industrial parks, office parks, research and development facilities, hi-tech communication and technology facilities, trucking and distribution facilities, and minor commercial uses that support job centers.

Mr. Bockmiller reported in 2005, the City amended the Zoning Ordinance to prohibit the Board of Zoning Appeals from granting variances to lot area requirements. This was done because the Board was responding too leniently to requests from property owners for variances simply to increase lot or unit yield in subdivisions or development projects.

Since then, the Planning Department has determined that this amendment has created almost as many problems as it has solved. Over time, property owners have approached the Planning Department with issues regarding properties where a variance seems logical, and in the best interest of the community.

An amendment to Article 4 (Zoning Ordinance of the Land Management Code to address this problem has been drafted, while retaining the prohibition of the Board to grant variances that merely increase residential density in development projects.

Mr. Bockmiller entered the following as Exhibits:

Exhibit 1: Notice of legal advertisement for both hearings.

No testimony was presented, either in favor of or against the proposed amendments.

The hearing was closed 7:18 p.m. The record will remain open for 10 days for additional comment.

Comprehensive Zoning Map Amendments – Phase I

Kathleen Maher, Planning Director, stated the 2008 Comprehensive Plan sets forth new City policies that be implemented through a number of separate decisions, ordinances, and laws.

One of these is to update and amend the zoning map to be consistent with the Plan's recommendations. That process is now beginning. The City last completed a comprehensive rezoning in 1977.

The recommended rezonings include specific recommendations of the Plan, as well as additional smaller scale recommendations from staff. Staff recommendations are based on a goal of eradicating illogical and outdated zoning designations where possible. Staff has targeted a specific area as Phase I of the comprehensive rezonings in order to discuss and review a manageable number of properties. It is anticipated there will be a total of three separate phases.

The Planning Commission began a review of these properties last Fall. A Public Review meeting was held by the Planning Commission on October 22, 2008. The Planning Commission then discussed these map amendments further, taking into account public comments, and have forwarded these changes to the Council with a positive recommendation for adoption.

Ms. Maher entered the following as Exhibits:

Exhibit 1: Certificate of Advertisement

Exhibit 2: Planning Commission record by file

This public hearing is being held to hear testimony on each separate issue.

Issue Downtown:

Antietam Street at Dry Bridge (From R2 to D-MU)

Church Street (R2 to D-MU)

W. Franklin (C3 to C2)

W. Antietam (C2, R3 to D-MU)

E. Franklin (R2 to D-MU)

S. Locust (R4 to D-MU)

No testimony was presented.

Issue #1 – Park Circle, Locust Point (C2, R3, R2 to C1)

The following testimony was presented:

Earl Wilk, Bower Avenue, Williamsport, Maryland, expressed his concern that this recommendation appears to be selective. He stated it doesn't seem fair that some uses will be permitted on some properties but not others. He is also concerned that some park property is being changed to R4, which permits higher residential uses.

Ms. Maher stated the proposed changes are based on a recommendation of the comprehensive plan, which was reviewed by the Planning Commission and Planning staff members.

A zoning change for the area at the former Grille at Park Circle is being proposed. This area seems like more of a neighborhood area, rather than an intense commercial use area. A single family or two family use would be permitted in this area, if there is a business as the principal use.

The house trailers at the end of Prospect Street would become non-forming uses, if the recommendation is accepted.

Mr. Wilk suggested changing the zoning at Locust Point so that a store will be a permitted use. He stated people would have to move if the buildings became non-conforming uses.

Ms. Maher stated the City cannot legally spot zone a single property. She clarified that existing uses are “grandfathered in” when zoning is changed on a property. Existing uses would be permitted if they remain the same. If the non-conforming use ends and is not re-activated within one year, the new zoning would govern the use of the property.

There was no further testimony for Issue 1.

Issue # 2 – West side of S. Potomac St., across from Bester Elementary (IR to R2)

No testimony was presented.

Issue # 3 – Frederick and Memorial – Hager Park (R2 to R4) and
Issue # 4 – East side of S. Mulberry St. (C2 to R2)

Ms. Maher stated the recommendation for Issue # 4 is being made because a dead end street is not a good place for a destination commercial use.

The following testimony was presented:

Steve Pfeiffer, 402 S. Mulberry Street, Hagerstown, Maryland, expressed his concern about the traffic problems created when students are picked up at Bester Elementary. He doesn’t know if changing the zoning status will alleviate this situation. He asked that the traffic issue be reviewed.

Councilmember Nigh stated the traffic issue has been discussed with the Board of Education and the Hagerstown Police Department.

There was no further testimony presented.

Issue # 6 – East side of Virginia Avenue (C2 to C1) and
Issue # 7 – Intersection of S. Burhans, W. Wilson Boulevard and Virginia Avenue (C2 to R1)

The following testimony was presented:

Beulah Wilk, Virginia Avenue, Hagerstown, Maryland, is opposed to the recommended change for Virginia Avenue. Parking issues exist and she is concerned that changing the zoning will create more problems. She asked how long it will take for a decision to be made on the proposed changes. Mayor Bruchey indicated there will be work sessions held to discuss the proposed changes. Ms. Maher indicated a letter would be sent to the property owners notifying them of any change.

Keith Hessong, 730 Virginia Avenue, Hagerstown, Maryland, stated he purchased this property as a retirement investment. If the zoning is changed, it will reduce the value of his property. The building is 60 years old and has been a commercial use since it was built. There are 15 to 20 commercial buildings between his property and the city limits. He feels multiple areas of business are good for the neighborhood.

Matthew Sullivan, Boonsboro, Maryland, and Timothy Gipe, Greencastle, Pennsylvania, are the owners of 736 Virginia Avenue. One of the major selling points for this property was the C2 zoning. If the zoning is changed, it will impact the uses that will be permitted.

Mayor Bruchey asked what C1 zoning does not allow. Ms. Maher indicated there can be a single or two family use, if there is a commercial use on the ground floor. This district reduces the number of commercial uses that are permitted. Councilmember Metzner asked for a list of the differences in the options and uses for the Mayor and Council's review during the work session discussion.

Mr. Gipe stated he looked at the uses in the area before he purchased the property at 736 Virginia Avenue. He and Mr. Sullivan felt a business in this location would benefit the community. He doesn't see how changing the zoning will benefit the neighborhood.

Lisa Henderson, 734 Virginia Avenue, Hagerstown, Maryland, stated she doesn't understand why this recommendation is being made. She purchased the property based on the existing zoning.

Councilmember Brubaker stated the recommendation was made by the Planning Commission, based on the review of the 2008 Comprehensive Plan. The neighborhood is more fitting with a C1 designation, rather than C2, which is generally for self contained industries. He stated he will consider the testimony presented when reviewing the recommendations.

Mr. Wilk asked why the zoning at Surrey School is not being changed. Ms. Maher indicated the use is permitted in the R1 district. Mr. Wilk stated the amount of traffic to the school makes it a commercial use. He stated if their property on Virginia Avenue is being changed, others should also. He asked why Locust Point is being changed but not the Gibney property on Virginia Avenue. Councilmember Metzner indicated the

Planning Commission determined that Locust Point is more of a neighborhood business and the flower shop is a business that serves the general public.

Mr. Wilk stated he is asking for consistency in possible rezonings.

There was no further testimony.

Issue #8 – West side of S. Potomac (IR to C2)

Ms. Maher stated the properties in this area are being used as C2 zoning. If the zoning is left at IR, it will be difficult for property owners to meet the setback requirements.

The following testimony was presented:

Rick Palmer, 779 S. Potomac Street, Hagerstown, Maryland, (Eddie's Upholstery Shop) is concerned this zoning change would affect the use of the property.

Councilmember Metzner is interested in seeing how the setback requirements affect these properties.

There was no further testimony.

Issue # 12 Frederick Street (C2, IG, IR, R1 to R3, C2) and Issue # 13 First Street Industrial Area (IG to IR)

Ms. Maher stated these changes are an attempt to bring some logic to the zoning classifications in this area. There are multiple zoning districts and some lots are too small to develop with modern uses.

There was no testimony presented.

Issue # 14 Northeast Corner Locust & Lee (R4 to R2)

Sandy Gordon, 8200 Kenfield Court, Bethesda, Maryland, is concerned this rezoning will limit the potential uses on his property.

Michael Stanford, 12709 Bradbury Court, Smithsburg, Maryland, stated he is representing Mr. Gordon. The concern about devaluing the property is not a long term possibility. If the properties are rezoned, the devaluing would occur immediately. A property owner may have difficulty being approved for a loan if the zoning is changed on a property.

There was no further testimony presented.

Issue # 15 Frederick & Hager Street (C2 to R4)

Mr. Maher stated the uses in this area are strictly residential. It is recommended that the zoning be changed to reflect the current use.

There was no testimony presented.

The hearing was closed at 8:27 p.m. The record will remain open for 10 days for additional comments.

CITIZEN COMMENTS

Mary Haines, 27 Lanvale Street, Hagerstown, Maryland, was prepared to provide information about the Alm's House. Mayor Bruchey asked that she present the material during a Work Session in March. Ms. Haines has materials to prove the Alms House was used as a medical facility during the Civil War. An idea has been discussed of a walking tour that would include Rose Hill Cemetery, the Museum, the Hager House, the Black Heritage Museum and the Alms House. This would bring foot traffic downtown. She pointed out that Gettysburg is getting ready to mark the 175th anniversary of the Civil War and many people will be in the area. Some of them may travel to Hagerstown. The City could provide the plaques for placement on the buildings. This would have to be completed by Spring 2011.

Virginia Macgruder, Belview Avenue, Hagerstown, Maryland, stated her research has not indicated the Alms House was used as a hospital, as reported in the Herald Mail newspaper. She has found that Irish people were treated there. Others were treated outside. There may have been confederate soldiers treated on the grounds because of the confederate sympathy in this area.

MINUTES

On a motion duly made by Councilmember K. S. Cromer and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve minutes, as presented, for the meetings held on January 6, 2009 and January 13, 2009.

CONSENT AGENDA

On a motion duly made by Councilmember K. S. Cromer and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve the consent agenda as follows:

- A. Engineering:
 - 1. Modifications to Signals at N. Mulberry Street & East Avenue – Valentine Electric Heating & Air, Inc. (Hagerstown, MD) \$ 40,850.00
 - 2. Install Sidewalks Along Salem Avenue/MD Rte. 58 – Concrete Central, LLC (Hagerstown, MD) \$ 150,307.00

3. Termination of Contract with Ardent Company, LLC for Jonathan Street Reconstruction & Utility Replacement and Execution of Appropriate Documentation
 4. Jonathan Street Reconstruction & Utility Replacement – Charles E. Brake Company, Inc. (St. Thomas, PA) \$ 2,096,940.75
 5. Contract Addition for MUNIS Software for Permitting – Tyler Technologies (Falmouth, ME) \$ 171,850.00
- B. Light Department:
1. GIS Facility Software – Milsoft Utility Solutions (Abilene, TX) \$ 28,750.00
 2. Garage Door Replacement – K & K Door (Chambersburg, PA) \$ 11,475.00
 3. Heavy Duty Digger Derrick Vehicle – Altec Industries (Plains, PA) \$ 165,917.00
 4. Single Phase Voltage Regulators – Wesco (Berwyn, PA) \$ 45,960.00
- C. Community Development: Realtor Services for Single Family Homeownership Program – Century 21 Market Professionals (Hagerstown, MD) 3% Commission

UNFINISHED BUSINESS

There was no unfinished business.

NEW BUSINESS

A. Introduction of an Ordinance: Green Buildings Tax Credit

Action: On a motion duly made by Councilmember M. E. Brubaker and seconded by Councilmember A. Parson-McBean, the Mayor and City Council unanimously agreed by voice vote to introduce an ordinance to create a property tax credit for high performance buildings, also known as green buildings. This credit would provide a 20-30% property tax credit on the increase in assessment for LEED certified silver, gold and platinum buildings for a period of three years.

B. Approval of a Resolution: Designation of Green Practices for the City of Hagerstown

Action: On a motion duly made by Councilmember M. E. Brubaker and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve a resolution to designate and adopt certain “Green Practices” for the City of Hagerstown. These practices will increase the efficiency in which the City and the residents

use energy, water, and natural resources; improve the public health; and sustain our lifestyle. The City staff shall commence implementing the requirements as outlined in the Resolution.

C. Approval of a Resolution: 2009 Summer Play Camp Operations – Hagerstown YMCA

Action: On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember A. Parson-McBean, the Mayor and City Council unanimously agreed by voice vote to approve a resolution to authorize the execution of a contract for the Hagerstown YMCA to operate a play camp program at Hellane Park and Pangborn Park, serving 60 children per day at each site at a cost of \$ 24,827, for an eight (8) week period during the summer 2009 season.

D. Approval of a Resolution: 2009 Summer Play Camp Operations – Girls, Inc.

Action: On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember P. M. Nigh, the Mayor and City Council unanimously agreed by voice vote to approve a resolution to authorize the execution of a contract for Girls, Inc. to operate a play camp program, at their location, serving an additional 45 children per day above their program level at a cost of \$ 15,000, for an eight (8) week period during the summer 2009 season.

E. Approval of a Resolution: 2009 Summer Play Camp Operations – Memorial Recreation

Action: On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember M. E. Brubaker, the Mayor and City Council unanimously agreed by voice vote to approve a resolution to authorize the execution of a contract for Memorial Recreation to operate a play camp program at Wheaton Park, serving 60 children per day at a cost of \$ 17,000 for an eight (8) week period during the summer 2009 season.

F. Approval of a Resolution: To Submit to the Voters Whether to Change the Dates of the City Elections

Action: On a motion duly made by Councilmember K. S. Cromer and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve a resolution to direct that a question shall appear on the ballot for the General Election for the City of Hagerstown on May 19, 2009 asking voters whether the date of the City elections should be changed to occur on the same date(s) as the primary and general elections for President and other Federal offices, beginning in 2012.

G. Approval of a Resolution: Deed of Easement for Construction of a Traffic Signal Device at North Mulberry Street and East Avenue

Action: On a motion duly made by Councilmember M. E. Brubaker and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve a resolution to enter into a Deed of Easement with the Hagerstown Housing Authority for the construction of a traffic signal device in the southeast corner of the intersection of North Mulberry Street and East Avenue. This easement allows the signal equipment to be set-back behind the sidewalk so the sidewalk is not narrowed.

H. Approval of an Application: State of Maryland Grant Funds for Revolving Loan Program

Action: On a motion duly made by Councilmember K. S. Cromer and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed to authorize an application for \$ 150,000 in State of Maryland grant funding to support the City of Hagerstown Revolving Loan Program. The City's match of \$ 250,000 shall come from the Economic Redevelopment Fund.

I. Approval of Grant Application for Interpretive Plaques and Sidewalk Enhancement Project

Action: On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember K. S. Cromer, the Mayor and City Council unanimously agreed by voice vote to submit grant applications to the Maryland Heritage Area Authority for two projects: \$ 5,000 for 15 interpretive plaques celebrating Hagerstown's heritage; and \$ 100,000 to expand the S. Potomac Street sidewalk enhancement project to the first block of N. Potomac Street. The matching funds would come from the Downtown Beautification account in the General Fund, bond proceeds, and/or General Fund transfer.

Councilmember Metzner noted this is not authorization to spend the money; it is authorization to apply for the grant.

Councilmember Nigh asked if anything had been decided about the mural on the Elizabeth Hager Center wall. Bruce Zimmerman, City Administrator, stated the Mayor and City Council authorized staff to move forward with removing the mural during the last discussion.

J. Approval of Mini-Grant Application for Mural Replacement Proposal

Action: Councilmember L. C. Metzner made a motion to submit a mini-grant application to the Heart of the Civil War Heritage Area in the amount of \$ 2,120 for a project to install enlarged, framed historic photos on the wall of the Elizabeth Hager Center. This project would serve to replace the existing mural which is to be removed this spring. The \$ 2,120 match for the grant would come from the Downtown Beautification account in the General Fund. Councilmember A. Parson-McBean seconded the motion.

Discussion: Councilmember Cromer asked when the Mayor and Council were going to discuss the cost for removal of the mural. Mr. Zimmerman indicated it had been discussed two weeks ago. Four quotes were received. The one less than \$ 10,000 was chosen and work will begin in the spring.

Motion carried, 4-1 with Councilmember K. S. Cromer voting No.

K. Award of Sewer Allocation from Discretionary Reserve

Action: Councilmember M. E. Brubaker made a motion to award 2,300 gallons per day of sewer allocation from the Discretionary Reserve to Dynacorp, Inc. for their apartment complex site plan at Collegiate Acres. Councilmember L. C. Metzner seconded the motion.

Discussion: Councilmember Parson-McBean stated there are 800 empty units in the City and she is concerned that more rental units are being built. Mr. Zimmerman stated some of the vacant units are due to renovation and some are between tenants.

Kathleen Maher, Planning Director, stated the developer has 2/3 of the allocation they need to have their site plan reviewed.

Motion carried, 3-2 with Councilmember A. Parson-McBean and Councilmember P. M. Nigh voting No.

L. Acceptance of Community Legacy Award for Hagerstown Neighborhood Development Partnership, Inc.'s Project – McBare's Pub Building

Action: Councilmember L. C. Metzner made a motion to sign a letter indicating the Mayor and Council's acceptance of a \$ 150,000 Community Legacy award on behalf of Hagerstown Neighborhood Development Partnership, Inc. for a rehabilitation project at the McBare's Pub building on S. Potomac Street. Councilmember K. S. Cromer seconded the motion.

Motion carried 4-1 with Councilmember A. Parson-McBean voting No.

CITY ADMINISTRATOR'S COMMENTS

Bruce Zimmerman, City Administrator, had no additional comments.

MAYOR AND COUNCIL COMMENTS

Councilmember M. E. Brubaker had no additional comments.

Councilmember A. Parson-McBean thanked Congressional leaders for listing the City of Hagerstown in the Omnibus bill for appropriations funding of \$ 800,000. She thanked Congressman Bartlett for writing the bill supporting the women and minority owned business program. She also thanked The Ferguson Group for their assistance.

Councilmember L. C. Metzner expressed condolences to the family of Cecil Bittinger, who passed away on February 21, 2009. He attended the annual Firefighter's banquet. He thanked April Gelwicks, who designed the butterfly the City chose for the Taking Flight program for the Barbara Ingram School for the Arts.

Councilmember K. S. Cromer and Councilmember P. M. Nigh also expressed condolences to the family of Cecil Bittinger.

Mayor R. E. Bruchey, II expressed condolences to the families of Ruth South and Cecil Bittinger.

There being no further business to come before the Mayor and City Council, on a motion duly made, seconded and passed, the meeting was adjourned at 8:59 p.m.

Respectfully submitted,

Donna K. Spickler, City Clerk

Approved: March 31, 2009