

// A regular meeting of the Council of the City of Lynchburg was held on the 13th day of November, 2007, at 7:30 P.M. in the Council Chamber, City Hall, Joan F. Foster, President, presiding. Council Member Seiffert gave the Invocation, followed by the Pledge of Allegiance led by Boys Scout Troop 50. The following Members were present:

Present: Dodson, Garrett, Gillette, Helgeson, Seiffert, Foster 6

Absent: Johnson 1

// Mayor Foster announced that Council Member Johnson was out of town attending the National League of Cities conference.

// Copies of the minutes of the October 23 (two meetings) and October 30, 2007 meetings, having been previously furnished Council, reading was dispensed with. Council Member Seiffert asked that the October 23 and October 30 minutes be voted on separately since he was unable to attend the October 30 meeting and would like to abstain from voting on those minutes. On motion of Council Member Garrett, seconded by Council Member Gillette, Council by the following recorded vote approved the October 23 (two meetings) minutes as presented:

Ayes: Dodson, Garrett, Gillette, Helgeson, Seiffert, Foster 6

Noes: 0

Absent: Johnson 1

On motion of Council Member Garrett, seconded by Council Member Gillette, Council by the following recorded vote approved the October 30 minutes as presented:

Ayes: Dodson, Garrett, Gillette, Helgeson, Foster 5

Noes: 0

Absent: Johnson 1

Abstention: Seiffert 1

// In the matter of Parks and Recreation, City Council Report #2 was considered. On motion of Council Member Garrett, seconded by Council Member Seiffert, Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-07-141, as presented, amending the FY 2008 City/Federal/State Aid Fund budget and appropriating \$1,500, fully reimbursable, to purchase supplies for an education program on the James River watershed and its importance to the Chesapeake Bay:

Ayes: Dodson, Garrett, Gillette, Helgeson, Seiffert, Foster 6

Noes: 0

Absent: Johnson 1

// In the matter of Community Planning - Zoning Amendments, a public hearing was held regarding City Council Report #3 outlining the petition of Robert Hartless to rezone approximately 0.2 acres from B-3, Community Business District, to B-5C, General Business District (Conditional), to allow the use of an existing building as a car rental business at 2415 Wards Road. City Planner Tom Martin provided a brief

summary regarding the petition. Mr. Thomas Brooks, Acres of Virginia, Inc., representing the petitioner, outlined the request and asked for approval. There was no one else present who wished to speak to this item, and the public hearing was closed. On motion of Council Member Garrett, seconded by Council Member Seiffert, Council by the following recorded vote adopted Ordinance #0-07-142, as presented, granting the rezoning petition:

Ayes: Dodson, Garrett, Gillette, Helgeson, Seiffert, Foster	6
Noes:	0
Absent: Johnson	1

// In the matter of Community Planning - Zoning Amendments, a public hearing was held regarding City Council Report #4 outlining the petition of Lynchburg Renting, LLC to rezone approximately 7.1 acres from R-1, Low Density Single-Family Residential District to R-3C, Medium Density Two-Family Residential District (Conditional) and for a Conditional Use Permit to allow the construction of 76 townhouse units (for sale) and associated parking with access to Leesville Road and Middle Street at 714 Leesville Road. City Planner Tom Martin provided a brief summary regarding the petition, explaining that there is a discrepancy in condition #8 of the Resolution approving the Conditional Use Permit, i.e., the height of the wood board fence should be eight feet instead of six feet. Mr. Bill Berkley, Berkley Howell and Associates, representing the petitioner, outlined the request and asked for approval. Mr. Berkley explained that the site immediately adjacent to this property was rezoned about two years ago for a similar use by the same company and that those townhomes are under construction and half of them are presently occupied. Mr. Berkley went on to say that this project will have ingress/egress via a connection to Middle Street. Six adjoining property owners including the President of the Lakeland Club homeowners association spoke in opposition to the petition citing the following concerns: that the damage to adjoining properties due to stormwater runoff from the current townhomes development will increase; further damage to the lake from stormwater runoff depositing sediment into the lake; and a concern that the retention pond will not contain the stormwater runoff. Ms. Carole VanBlarican presented photographs showing the damage to adjoining properties from stormwater runoff from the current development. There was no one else present who wished to speak to this item, and the public hearing was closed. Council Members discussed the proposed petition and expressed similar concerns regarding the topography of the site, the failure of the company to take appropriate steps to control stormwater runoff from the current development, and the potential for further damage to adjoining properties due to stormwater runoff not only from the current development but the proposed development. Concerns were also expressed about the overcrowding of land given the number of townhouses already existing in this area of the City. Following discussion, and on motion of Council Member Helgeson, seconded by Council Member Garrett, Council by the following recorded vote denied the rezoning request:

Ayes: Dodson, Garrett, Gillette, Helgeson, Seiffert, Foster	6
Noes:	0
Absent: Johnson	1

// In the matter of Community Planning - Zoning Amendments, a public hearing was held regarding City Council Report #5 outlining the petition of Liberty University, Inc. to amend the Future Land Use Map from an Institutional to a Community Commercial use, to rezone approximately 3.6 acres from R-C, Resource Conservation District to B-3C, Community Business District (conditional) and for a Conditional Use Permit at 500 Liberty Mountain Drive to allow the development of a commercial shopping center with one retail building to be constructed across the Campbell County/City of Lynchburg jurisdictional boundary. Vice Mayor Dodson stated that since his company provides pest control services for Liberty University, he will abstain from voting on this request. City Planner Tom Martin provided a brief summary regarding the petition, explaining that although the Planning Division originally recommended denial of the petition due to traffic, pedestrian, land use, environmental and gateway concerns, the petitioner did submit proffers and plan revisions to address those concerns. Jerry Falwell, Jr., representing the petitioner, outlined the request and asked for approval. Dr. Tom Shahady, Associate Professor of Environmental Science at Lynchburg College, along with two Lynchburg College students expressed concerns regarding the effect that this project along with the loss of 3+ acres of conservation land will have on the streams and wetlands within the watershed and suggested that petitioner be required to rezone a comparable track of land in the City to conservation to replenish the land to be rezoned. Mr. Falwell stated that he is agreeable to Dr. Shahady's suggestion and would be willing to proffer the same. In response to Council questioning, City Attorney Walter Erwin stated that State Code does allow amended proffers during a public hearing as long as the amended proffers do not constitute a material change in the petition. Mr. Erwin went on to say that there are currently two proffers that address stormwater management and if the petitioner is willing to submit an amended proffer tonight, then that would be acceptable since the amendment would not constitute a significant material change in the petition. Mr. Falwell offered the following written proffer #9 which states..."Liberty University will work with City staff in petitioning City Council to rezone 3.6 acres of University or Church-owned property in another part of the City to R-C conservation." There was no one else present who wished to speak to this item, and the public hearing was closed. Council Members commented that the petitioner's willingness to work with everyone to address concerns regarding this project was commendable. Dr. Garrett did suggest that there is a need to update the Master Plan for Liberty University. Following discussion, and on motion of Council Member Helgeson, seconded by Council Member Seiffert, Council by the following recorded vote adopted Ordinance #0-07-143, as presented, to amend the Future Land Use Map for property located at 500 Liberty Mountain Drive from Institutional to Community Commercial use:

Ayes: Garrett, Gillette, Helgeson, Seiffert, Foster	5
Noes:	0
Absent: Johnson	1
Abstention: Dodson	1

On motion of Council Member Helgeson, seconded by Council Member Gillette, Council by the following recorded vote adopted Ordinance #0-07-144, as amended to include proffer #9, approving the

petition of Liberty University, Inc., to rezone approximately 3.6 acres at 500 Liberty Mountain from R-C, Resource Conservation District, to B-3C, Community Business District (conditional):

Ayes: Garrett, Gillette, Helgeson, Seiffert, Foster	5
Noes:	0
Absent: Johnson	1
Abstention: Dodson	1

On motion of Council Member Helgeson, seconded by Council Member Garrett, Council by the following recorded vote adopted Resolution #R-07-145, as presented, approving a Conditional Use Permit at 500 Liberty Mountain Drive to allow the development of a commercial shopping center with one retail building to be constructed across the Campbell County/City of Lynchburg jurisdictional boundary:

Ayes: Garrett, Gillette, Helgeson, Seiffert, Foster	5
Noes:	0
Absent: Johnson	1
Abstention: Dodson	1

// In the matter of Courts – General, a public hearing was held regarding City Council Report #6 regarding vacating a portion of Ninth Street and approving boundary line adjustments in conjunction with the construction of the new Juvenile and Domestic Relations Courthouse. James S. Talian, Project Manager, outlined the request and asked for approval. There was no one else present who wished to speak to this item, and the public hearing was closed. On motion of Council Member Gillette, seconded by Council Member Garrett, Council by the following recorded vote adopted Resolution #R-07-146, as presented, approving boundary line adjustments in conjunction with the construction of the new Juvenile and Domestic Relations Courthouse:

Ayes: Dodson, Garrett, Gillette, Helgeson, Seiffert, Foster	6
Noes:	0
Absent: Johnson	1

On motion of Council Member Gillette, seconded by Council Member Garrett, Council by the following recorded vote adopted Ordinance #O-07-147, as presented, vacating a portion of Ninth Street in conjunction with the construction of the new Juvenile and Domestic Relations Courthouse:

Ayes: Dodson, Garrett, Gillette, Helgeson, Seiffert, Foster	6
Noes:	0
Absent: Johnson	1

// In the matter of Community Planning – Historic Districts, City Council Report #7A regarding adopting the Updated Lynchburg Historic Districts Residential Design Review Guidelines and Lynchburg Historic Districts Commercial Design Review Guidelines was considered. City Manager Kimball Payne stated that a public hearing was held in September regarding these historic guidelines and that City Council postponed action to a future meeting. Following the September public hearing, staff determined that the

City Code also needed to be amended to reference the adoption date of the new guidelines and that a public hearing regarding the Code amendment is scheduled next on the agenda. City Council will need to take action regarding the guidelines prior to amending the City Code. Mr. Payne also informed that grammatical revisions and corrections as shown in Attachment A will be made to the guidelines. On motion of Council Member Seiffert, seconded by Vice Mayor Dodson, Council by the following recorded vote adopted Resolution #R-07-148, as presented, adopting the Updated Lynchburg Historic Districts Residential Design Review Guidelines and Lynchburg Historic Districts Commercial Design Review Guidelines:

Ayes: Dodson, Garrett, Gillette, Helgeson, Seiffert, Foster	6
Noes:	0
Absent: Johnson	1

// In the matter of City Code/Community Development - Historic Districts, a public hearing was held regarding City Council Report #7B regarding amending Section 35.1-44.1 of the City Code relating to Commercial Historic Districts Design Guidelines and Residential Historic Districts Design Guidelines. City Manager Kimball Payne provided a brief summary regarding the request. There was no one else present who wished to speak to this item, and the public hearing was closed. Council Member Helgeson stated that there are a few items in the historic district ordinance that he would like for City Council to discuss at a future work session. City Manager Payne stated that staff has been reviewing one of the items that City Council previously asked that staff research, i.e., professional standards qualification requirements for Historic Preservation Commission members, and that the report on that item should be ready for either the January or February work session and that Council could also discuss Council Member Helgeson's items at the same work session. On motion of Council Member Gillette, seconded by Vice Mayor Dodson, Council by the following recorded vote adopted Ordinance #O-07-149, as presented, amending Section 35.1-44.1 of the City Code relating to Commercial Historic Districts Design Guidelines and Residential Historic Districts Design Guidelines:

Ayes: Dodson, Garrett, Gillette, Helgeson, Seiffert, Foster	6
Noes:	0
Absent: Johnson	1

// In the matter of Community Planning - Zoning, City Council Report #8 outlining the petition of S.W. Neal Development Group for a Conditional Use Permit at 1200 and 1202 Wood Road to allow the construction of a Planned Unit Development containing 34 attached single-family homes and 11 townhouses in a R-1, Low-Density, Single-Family Residential District, and a R-3, Medium-Density, Two-Family Residential District was again considered. City Planner Tom Martin stated that at the August 14 meeting, City Council held a public hearing for the Locke Haven Planned Unit Development (PUD) project for the proposed construction of forty-five (45) homes, which included a combination of single-family attached and townhouse units. Mr. Martin explained that at that time the petitioner requested an exemption to the

ordinance requirement that twenty (20) percent of the units be single-family detached homes and that City Council decided to delay the vote on the project to allow the developer time to explore options that would satisfy some of the neighbors' concerns, including a provision for at least twenty (20) percent of the residences to be single-family detached houses. Mr. Martin went on to say that S.W. Neal Development Group has revised its request for the approval of a conditional use permit to allow a Planned Unit Development to include the construction of sixteen (16), single-family detached homes, seventeen (17) single-family attached homes and eleven (11) townhouses with landscaping and pedestrian features and that although the decision on whether the plan changes are significant enough to warrant a second public hearing ultimately rests with City Council, it is staff's opinion that another public hearing is not required. Vice Mayor Dodson questioned Trent Warner, the engineer for the project, regarding the proposed change and asked that he also explain why the developers have chosen to use the universal design concept instead of complying with the ADA requirements. Council Members also agreed to allow a representative from the adjoining neighborhood a few minutes to speak to the proposed change. Ms. Ruth Wymer, representing the adjoining neighborhood, stated that the proposed change did not address the neighborhood concerns as outlined at the August public hearing and urged City Council to deny the petition. Ms. Wymer also questioned if the zoning procedure was correctly followed regarding notification to Campbell County since the rezoning request was within one half mile of the county line. In response to Council questioning, City Attorney Walter Erwin stated that he would check to see if the notification to Campbell County was required in this instance. Several Council Members commented that they were still concerned regarding increased traffic, the density of the project, and that the proposed development would be out of character with the existing residential neighborhood. Following discussion, and on motion of Council Member Seiffert, seconded by Council Member Garrett, Council by the following recorded vote denied the petition of S.W. Neal Development Group for a Conditional Use Permit:

Ayes: Garrett, Gillette, Helgeson, Seiffert, Foster	5
Noes: Dodson	1
Absent: Johnson	1

// In the matter of Community Planning - General, Mayor Foster announced that City Council Report #9 has been removed from the agenda.

// In the matter of Public Works – Monument Terrace, City Council Report #10 regarding establishing a policy regarding the placement of future memorials on Monument Terrace and a proposal to place a military order of the Purple Heart Memorial on Monument Terrace was considered. City Manager Kimball Payne provided a brief summary regarding the two requests and asked that City Council vote on the policy prior to considering the proposal regarding the Purple Heart Memorial on Monument Terrace. Mr. Payne stated that the proposed policy states that ...

- Memorials shall have direct applicability to the citizens of Lynchburg, Virginia, and its immediate surroundings.

- Memorials shall recognize intentional acts (such as placement of one's self in harm's way in consequence of entry into military or naval service, imprisonment in an enemy prison, death or wounds in battle) in the lawful execution of assigned duties.
- Memorials shall have direct (e.g. active service) connection with military or naval service.
- Memorials shall be emplaced in harmony with the architecture and design of Monument Terrace.

Council Members discussed the proposed policy at length, including whether to limit memorials to the citizens of Lynchburg and those who have a direct connection to the City especially since it was the citizens of Lynchburg who spent \$2 million to renovate Monument Terrace. In response to questioning regarding the intent of the policy, Mr. Payne stated that the intent of the policy is to recognize those men and women who die in direct action in a military conflict that has a relative clear identity to it. Mr. Payne went on to say that memorials should be put up after a conflict is over and has been defined by history as to when it started and when it ended. Mr. Payne also noted that it is not the intent of the policy to memorialize individuals in the military who die in the performance of their duty that is not caused by a direct action in a military conflict, such as a National Guardsman who is in Mississippi and falls off a levy and drowns. Council Member Helgeson made a motion, seconded by Council Member Seiffert, to approve the policy as presented. Council Member Gillette made a substitute motion, seconded by Vice Mayor Dodson, to change the first bullet to read..." Memorials shall have direct applicability to the citizens of Lynchburg, Virginia," and Council by the following recoded vote adopted Resolution #R-07-150, as amended, establishing a policy to guide the placement of future memorials on Monument Terrace:

Ayes: Dodson, Garrett, Gillette, Helgeson, Seiffert, Foster

6

Noes:

0

Absent: Johnson

1

Mr. Dennis Janiak, representing the Central Virginia Chapter of the Military Order of the Purple Heart (MOPH), provided an overview regarding a request to place a MOPH memorial in the center of the first landing down from Court Street on Monument Terrace. Mr. Janiak stated that the memorial will be completely funded by the chapter and plans are to have it completed and dedicated on Memorial Day 2008. Mr. Janiak went on to say that the memorial will include the names of 276 individuals who are currently engraved on Monument Terrace. Mr. Terry Jamerson, a Marine Veteran, expressed concern that there might not be space available in the future on Monument Terrace to honor those individuals who have been killed in the current conflict. Mr. Payne noted that all proposals regarding the placement of memorials on Monument Terrace would need City Council approval. Mr. Payne went on to say that there have been discussions regarding the placement of an appropriate memorial on Monument Terrace once the current conflict has been defined. In response to Council questioning, Mr. Payne stated that it would not be appropriate for any memorial to be used for commercial purposes. Mr. Payne explained that any such use would not be in keeping with the dignity and design of the current memorials on Monument Terrace and would be totally inappropriate. Following discussion, and on motion of Council Member

Helgeson, seconded by Council Member Garrett, Council by the following recorded vote approved a proposal to place a military order of the Purple Heart Memorial on Monument Terrace:

Ayes: Dodson, Garrett, Gillette, Helgeson, Seiffert, Foster	6
Noes:	0
Absent: Johnson	1

// In the matter of Finance - General, City Council Report #11 was considered. On motion of Council Member Seiffert, seconded by Council Member Gillette, Council by the following recorded vote adopted Resolution #R-07-151, as presented, amending the FY2008 City Capital Projects Fund budget and rescinding \$3,402,123 in appropriations for projects in order to more accurately reflect expected expenditures:

Ayes: Dodson, Garrett, Gillette, Helgeson, Seiffert, Foster	6
Noes:	0
Absent: Johnson	1

// In the matter of Finance - General, City Council Report #12 was considered. On motion of Council Member Seiffert, seconded by Council Member Garrett, Council by the following recorded vote adopted Resolution #R-07-152, as presented, approving the up-grade of a part-time Financial Technician III position to a full-time position in the Finance Department - Human Services Financial Division:

Ayes: Dodson, Garrett, Gillette, Helgeson, Seiffert, Foster	6
Noes:	0
Absent: Johnson	1

// In the matter of Commonwealth Attorney, City Council Report #13 was considered. On motion of Council Member Gillette, seconded by Council Member Garrett, Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-07-153, as presented, amending the FY 2008 City/Federal/State Aid Projects Fund budget and appropriating \$12,280, fully reimbursable, to hire an Americorp member to assist the office of the Commonwealth's Attorney with the Community Court Program:

Ayes: Dodson, Garrett, Gillette, Helgeson, Seiffert, Foster	6
Noes:	0
Absent: Johnson	1

// City Attorney Walter Erwin informed City Council that there is a provision in the State Code that requires notification of the Chief Administrative Officer in adjoining counties under certain zoning circumstances, but that notification was not necessary in the Locke Haven petition since the petition was for a Conditional Use Permit and not a request to change the zoning of the property.

// The meeting was recessed at 10:54 P.M. to November 27, at 1:00 P.M., to conduct a work session regarding several items.

Clerk of Council