

## REGULAR MEETING

The Town Council of the Town of La Grange, North Carolina met in Regular Session at the Town Hall on January 5, 2009, at 7 p.m. with the following present:

Mayor Woodard H. Gurley; Mayor Pro Tem Bobby Wooten; Council Members Larry Gladney, Elliott Sutton, George Koonce, Gregory Rouse and Clifton Harrison; Town Manager, John P. Craft; Town Attorney, George Jenkins, Jr.; Town Clerk, Nelda H. Johnson, CMC.

Absent: None

Guest: 17

### **ITEMS 1, 2, 3: CALL TO ORDER, INVOCATION, WELCOME**

Mayor Gurley called the meeting to order and Mayor Pro Tem Wooten gave the invocation. Mayor Gurley welcomed the guest.

### **ITEM 4: PUBLIC HEARINGS**

None

### **ITEM 5: BOARD OF ADJUSTMENT**

#### **a. Case VAR2009-01-05 – Warren Riley Variance Request**

Mr. Riley was requesting a variance to conduct a home occupation in a nonconforming structure.

Nelda H. Johnson, Town Clerk, administered a sworn oath to Warren Riley, the applicant; Eddie Pelletier, witness; and Heith Harrison, Code Enforcement Office for the Town of La Grange.

Mr. Riley read a prepared statement and he also provided each Council Member with a copy of his statement. Copy of statement hereto attached.

Heith Harrison gave a summary of the case as follows:

Mr. Harrison stated that previous to Mr. Riley purchasing the duplex, either Mr. Riley called the Town Hall or came by the Town Hall and at that time Manager Craft informed Mr. Riley that he would not be able to do what he wanted to do with the duplex; but, since it was an eyesore, Mr. Riley purchased the duplex anyway and the hardship lies on his own doing. In the staff report, Mr. Harrison stated that he had prepared a map of the parcel where the proposed use is requested. Also, as required by law, all adjacent property owners were notified and a list is provided in the staff report.

Mr. Harrison stated that he did receive three letters from property owners; Mark Kennedy, Lucille Kennedy and Joe Masters and all related that they were for allowing Mr. Riley to have a home occupation in the proposed building. Also, Mr. Harrison stated he received a phone call from Eugene Holmes who also said he was for Mr. Riley's request. No one spoke against the request.

The address of the proposed request is 6198 West Washington Street and joining to the east of Mr. Riley's residence. The recommendation from the Staff is that the Council deny the request to use the larger accessory building. Home occupations are allowed in all residential districts; but, they have certain limitations that must be met in order for them to exist. If you have what Mr. Riley wants, an 1800 heated square feet building which the tax card reads the total square footage is 2,305. If the Council amends the zoning ordinance to allow an accessory use at 2,300 square feet, even though it is not the case for Mr. Riley, someone in the future could build a 1,500 square foot house and then build a 2,300 square foot building behind their house as an accessory use for a

home occupation and that is going to cause problems in the future. That is the main reason why the request should be denied. If the Council grants this request then Mr. Riley would need to combine both lots into one where he would meet the one acre requirement; then, the Council would need to amend Article 6: Section 61B of the Zoning Ordinance to allow an accessory building not exceeding 2,300 square feet for home occupations. It would not be right to allow Mr. Riley the privilege and no one else; so, that is the reason why a variance is not the right course of action.

Mr. Harrison called for comments or questions from the Council.

Mayor Pro Tem Wooten asked Mr. Harrison to clarify one point made in his earlier presentation. Mayor Pro Tem Wooten wanted to know that if he understood it to be correct that Mr. Riley knew what the restrictions were before he purchased the land/property.

Mr. Harrison stated that his understanding from Manager Craft was that before Mr. Riley purchased the property/duplex, Mr. Riley had asked Manager Craft what he could do and at that time he was told that he could not use the property/duplex for a business.

Manager Craft spoke stating that he and Mr. Riley did talk prior to his purchase and a lot of things have changed and progressed with that property over time. The initial discussions did not include combining the property; the initial discussion was about operating a business in the duplex as a stand alone operation. Mr. Craft stated that his interpretation of the Ordinance is that it does not meet the guidelines of the Zoning Ordinance; the primary purpose of the property as zoned is residential and secondary uses can be done. An error was made when the first permit was issued. Also, information given to Mr. Riley concerning home occupations was given in error but was corrected before Mr. Riley even left the office. Manager Craft stated that Mr. Riley has done a wonderful job with his home and that is not an issue. It is not an issue as to whether Mr. Riley would fix up the property nicely because he would without question. The issue is that Mr. Riley wants a use that is secondary in nature to a residential property. The ordinance was developed to ensure that the primary use did not become a business by having a larger structure than the house. Mr. Riley does have two courses of action: a variance which he has requested which is an appropriate course of action; but, it has to meet six stipulations within the ordinance "Finding of Facts" and if you apply the Finding of Facts to this case all stipulations cannot be met. Staff recommends that the Council deny the variance request and if you decide it is in order to grant the variance is this something the Town Council needs to do each and every time; and, if the Council grants the variance it is essentially establishing case law because this is a quasi-judicial situation.

Manager Craft further stated that it was not an issue to the Town as to whether or not it is going to be a business because Mr. Riley does meet the stipulations for operating a home occupation from his property and can do so from his home. He can use a certain percentage of the home and the building that is on the property already meets the size limitations that the Council has set in the Ordinance. The additional duplex provided is additional space, and he can use it for storage, so as long as he combines the property into one and it is secondary to the home use and he uses it for personal storage. Mr. Riley can operate the business from a portion of his home and from the existing storage building that does not exceed the 1,000 square feet that is stipulated in the ordinance. Mr. Riley can utilize it for storage and he still can own his own business but Mr. Riley cannot use the particular building that he wants and meet the ordinance. The Town's position is that if you desire to give Mr. Riley the variance, but, legally you cannot because the variance request does not meet the Finding of Facts, instead of granting an exception to one individual from our Ordinance, the Town should amend the Ordinance to make it standard for each individual in a residential district in La Grange to do the same thing Mr. Riley is asking.

The Town Attorney, Mr. Jenkins, stated that he had not heard any evidence that would meet five of the six requirements of the Ordinance as it relates to granting variances. There maybe evidence that can be offered but no evidence has been heard relating to Numbers 1, 2, 3, 4, or 5 is met. The law is here to give us the way to grant variances, it

is a check list and the Council is required to follow. If you do not follow the law, an illegal variance would be granted and then as Manager Craft stated the next step would be to amend the Zoning Ordinance.

Eddie Pelletier, witness, stated that he was representing his mother who is a property owner near Mr. Riley's property. Mr. Pelletier stated that he was speaking on her behalf and she is okay with what Mr. Riley wishes to do. It would be a great improvement for the neighborhood and wished to support Mr. Riley.

Council Member Harrison stated that he wished to make some comments. Mr. Harrison stated that he wanted to do what was right and was not taking sides with anyone. Mr. Harrison read directly from the Zoning Ordinance book, which he helped develop and write, "The purpose of the regulations shall be to accomplish a coordinated balance and harmonious development of land between the corporate limits of the Town of La Grange in a manner that would best promote the health, safety, moral convenience, order, prosperity and general welfare of the people as well as provide for efficient and economy in the process of development; to make adequate provisions for traffic to ensure safety from fire, panic and other hazards; to provide for light and air and to prevent the over crowding of land; to avoid undue concentration of population; to facilitate adequate provisions of transportation, water, sewage, schools, parks and other public requirements; to promote desirable living conditions and sustain stability of neighborhoods and to protect property against blight and depreciation." This ordinance was developed to serve the citizens of La Grange and not the citizens to serve the zoning ordinance. Council Member Harrison read again directly from the Zoning Ordinance book on the meaning of a variance. "A variance means a modification or alteration of any of the requirements of this ordinance." Mr. Harrison further stated that he felt a variance was justifiable when it improved the neighborhood or when it is providing a hardship or even when the neighborhood wants it. Mr. Riley's property is not within the city limits and it is zoned Agricultural-Residential. Councilman Harrison stated that he felt that the Zoning Ordinance gives the Council the right to grant a variance and it would be legal based on the definition of a variance.

Council Member Gladney stated that he wanted to be fair and consistent in this situation as he had been in an earlier case.

Mayor Gurley stated that Mr. Riley's property was not within the city limits, but it was within the Town's one mile extraterritorial jurisdiction.

After continued discussion among the Town Manager, Town Attorney and the Town Council concerning the variance request or amending the Zoning Ordinance, motion was made by Council Member Harrison, seconded by Council Member Gladney to grant Mr. Riley the right to use the building for storage for his business whether it be done through a variance or whether it be done through a conditional or a special use.

To be more specific, Council Member Harrison amended his motion to amend the Zoning Ordinance as a special exception that would allow for Mr. Riley to use the building on his property. Council Member Gladney seconded the amended motion. Motion failed 2-4. Council Members Harrison and Gladney voted in favor of the motion. Mayor Pro Tem Wooten, Council Members Koonce, Rouse and Sutton voted against the motion.

#### **ITEM 6: PUBLIC COMMENT PERIOD**

None

#### **ITEM 7: AMENDMENT(S) TO AND APPROVAL OF AGENDA**

Motion was made by Mayor Pro Tem Wooten, seconded by Council Member Harrison to approve the printed agenda. Motion carried 6-0 in favor of motion.

#### **ITEM 8: CONSENT AGENDA**

- a. Approval of Minutes

- i. December 1, 2008 Regular Session Minutes
  - ii. December 1, 2008 Closed Session Minutes
- b. Approval of Annual Fire Department Roster. Copy of Resolution No. 2009-01-218 hereto attached and filed in Resolution Book IV. Copy of roster on file in Clerk's office.
- c. Approval of 2008 Fire Department Officers. Copy of Resolution No. 2009-01-219 hereto attached and filed in Resolution Book IV.
- d. Approval of NC Rural Center Documents
  - i. Capital Project Budget. Copy of Resolution No. 2009-01-220 hereto attached and filed in Resolution Book No. IV.
  - ii. Resolution Affirming Residential Water & Sewer Rates are 1.5% of the annual median household income for 5,000 gallons usage. Copy of Resolution No. 2009-01-221 hereto attached and filed in Resolution Book No. IV.

Motion was made by Council Member Koonce, seconded by Council Member Gladney to approve the Consent Agenda. Motion carried 6-0 in favor of motion.

## **ITEM 9: NEW BUSINESS**

### **ITEM 9A: ESTABLISH DATE OF JANUARY 12, 2008 TO CONDUCT A SPECIAL INFORMATIONAL MEETING TO INFORM PUBLIC OF POLICE DEPARTMENT CONSOLIDATION/MERGER WITH LENOIR COUNTY SHERIFF'S DEPARTMENT**

Manager Craft stated that he recommended to the Council that the date of January 12, 2009, at 7 p.m. be established as a Recessed Meeting from tonight's meeting. The sole purpose of this Recessed Meeting would be to conduct an informational session concerning the Police Department consolidation/merger with the Lenoir County Sheriff's Department and receive public comment.

Manager Craft provided information concerning the Police Department merger and why the merger was being considered.

- Current Economic Situation
- Routinely explore most efficient ways to provide services
- Vacancies within the department
- Additional Coverage
- Additional Resources
- Reduced Redundancy Reduced Cost

Town of La Grange Officers and Equipment at present:

- 15 Officers
  - Chief
  - Assistant Chief
  - 2 Investigators
  - 6 Patrol Officers
  - 5 Part time officers
- 12 Cars
- 0 Narcotics Officers
- 0 Police Dogs

Lenoir County Sheriff's resources at present:

- 61 Officers
  - 14 Investigators for evidence control, narcotics, investigations
  - 13 Member Special Response Team
  - 3 Police Dogs
  - Crime and Narcotics Lab
  - Equipped Mobile Command Center

The current Police Department Budget is \$664,100 for the FY 08-09 Budget and tax collections were budgeted at \$559,221 for the FY 08-09 Budget. Police Department

operations currently cost 118% of property taxes collected. The Town tax rate has remained at \$0.50/\$100 since 1997, the past 13 years.

Manager Craft gave information on the cost comparison per citizen, cost comparison per hour, departmental expenditures, current staffing level, proposed staffing level, tax rates, current coverage and proposed coverage, coverage comparison, LCSD contract costs for the first year compared to year two of the contract, and the coverage that would be provided with a contract with the LCSD. Copy of Manager Craft's presentation hereto attached.

Motion was made by Mayor Pro Tem Wooten, seconded by Council Member Sutton to conduct the informational meeting for the citizens on January 12, 2009, at 7 p.m. to be held at the La Grange/Frink Alumni & Friends Association, 5766 Aldridge Store Road, for the purpose to provided an additional opportunity for the public to learn about the proposed contract and to receive public comment. Motion carried 6-0 in favor of motion.

#### **ITEM 9B: SELECTION OF FIRM TO UPDATE TOWN'S WEB SITE**

Manager Craft stated that he had discussed previously the potential of updating Town's website presence by hiring a firm to do a professional job.

Proposals have been received from two firms:

1. Market Force (Raleigh) - \$15,155
2. Alter-Imagining (Charlotte) - \$13,750

ElectriCities has made a contribution of \$6,000, as a match, toward the cost of the project. Should the Town not update the website, this contribution would have to be returned.

Manager Craft recommended that Alter-Imaging be selected to update the Town's web presence because they were the lowest responsible bidder and their websites were more impressive.

Motion was made by Mayor Pro Tem Wooten, seconded by Council Member Gladney to accept the recommendation of the Town Manager and contract with Alter-Imaging of Charlotte to update the Town's website. Motion carried 6-0 in favor of motion.

#### **ITEM 9C: APPROVAL OF RESOLUTION ORDERING THE DEMOLITION OF 403 NORTH FORBES STREET AND 702 WEST QUEEN STREET**

Code Enforcement Officer, Heith Harrison, stated that the properties located at 403 North Forbes Street and 702 West Queen Street is owned by Darius and Ladi Clarke. The property owners are non-responsive. The Town Attorney's guidelines have been followed and as Code Enforcement Officer, Mr. Harrison is recommending the demolition of the properties.

In accordance with N.C.G.S. 160A-426, the findings of fact are as follows for the structure located at 403 North Forbes Street:

1. Deteriorated structural members
2. Defective and/or missing windows
3. Inadequate means of weatherproofing the structure
4. Has a tendency to attract persons intent on criminal activities or other activities which would constitute a public nuisance
5. Is likely to cause or contribute blight, disease, vagrancy, or danger to children
6. Is dangerous to life, health, or other property

In accordance with N.C.G.S. 160A-426, the findings of fact are as follows for the structure located at 702 West Queen Street

1. Deteriorated roof covering
2. Deteriorated windows
3. Has a tendency to attract persons intent on criminal activities or other activities which would constitute a public nuisance

4. Is likely to cause or contribute blight, disease, vagrancy, or danger to children
5. Is dangerous to life, health, or other property
6. Lack of insulation
7. Deteriorated structural members in the roof system

Motion was made by Council Member Harrison, seconded by Council Member Sutton to approve RESOLUTION APPROVING DEMOLITION OF BUILDING AND REMOVAL OF DEBRIS LOCATED AT 403 NORTH FORBES STREET and RESOLUTION APPROVING DEMOLITION OF BUILDINGS AND REMOVAL OF DEBRIS LOCATED AT 702 WEST QUEEN STREET. Motion carried 5-1. Council Member Koonce voted against the motion. Copies of Resolutions NOS. 2009-01-222 and 2009-01-223 hereto attached and filed in Resolution Book No. IV.

#### **ITEM 9D: APPROVAL OF RESOLUTION ORDERING THE DEMOLITION OF 108 WEST RAILROAD STREET**

Code Enforcement Officer, Heith Harrison, stated that the property located at 108 West Railroad Street, also known as the Hadley House, is owned by Nicholas and Leisa Picciotti. Mr. Harrison presented information to the Council that he first contacted the Picciotti's on September 25, 2006 and has been working with them since that time.

Mr. Harrison stated that Mr. Picciotti had done some repairs to the house, painted under the front porch and painted some of the side and repaired the foundation under the back porch. Mr. Harrison's recommendation was to give Mr. Picciotti 60 days, until March 2, 2009, to complete the following repairs. The reason for the additional time is because Mr. Picciotti has made some progress on the house and also Mr. Picciotti is military and expects to be deployed three weeks in February.

- Replacement of missing windows
- Replacement of deteriorated wood
- Repair of footing, piers, and curtain walls

Mr. Picciotti stated that Mr. Harrison had been working with him for about two years and he was in the military. He stated that his intention was to repair the house to its original state. Mr. Picciotti asked for extra time as he will be deployed in February.

After discussion among the Town Council, Mr. Harrison and Mr. Picciotti, motion was made by Council Member Wooten, seconded by Council Member Gladney to grant Mr. Picciotti six months to complete the repairs to 108 West Railroad Street. Motion carried 5-1 in favor of motion. Council Member Rouse voted against the motion.

#### **ITEM 10: UNFINISHED BUSINESS**

None

#### **ITEM 11: CLOSED SESSION**

Motion was made by Council Member Harrison, seconded by Mayor Pro Tem Wooten to go into Closed Session as authorized by North Carolina General Statute 143-318.11 (a) (4) (5) (6). Motion carried 6-0 in favor of motion.

#### **ITEM 12: ADJOURNMENT**

Motion was made by Council Member Harrison, seconded by Mayor Pro Tem Wooten to recess the meeting until January 12, 2009. Motion carried 6-0 in favor of motion.