

TOWN OF CHEVY CHASE
TOWN COUNCIL MEETING
October 19, 2005

Present: Bill Hudnut, Mayor; Mier Wolf, Vice Mayor; Rob Enelow, Treasurer; Scott Orbach, Secretary; Linna Barnes, Community Liaison; Todd Hoffman, Town Manager; Marty Hutt, Town Attorney; and David Walton, Management Assistant.

Residents and guests: Please see attached list

I. General Business

A. Call to order – 7:30 p.m.

Mayor Bill Hudnut called the meeting to order at 7:30 p.m.

B. Pledge Allegiance to the Flag

The Mayor led those in attendance in the pledge of allegiance to the flag.

C. Comments, questions, suggestions from residents

Mayor Hudnut commented that he was disappointed in some of the behavior of some Town residents that has come as a result of the Town's moratorium. He hoped that residents could be civil and respectful, even if they have differing opinions.

Ollie Thomas raised a question about the Council's decision to offer partial reimbursement to Town residents who retained attorney David Podolsky during the moratorium public hearings. The Council explained that the Town was reimbursing Mr. Podolsky for work that was ultimately used by the Town in drafting the Moratorium Ordinance. Mr. Podolsky was already very knowledgeable in the case law, so the Town saved on research and development costs that would have been incurred if another attorney was used. Mayor Hudnut asked if any of the Councilmembers who voted in favor of the payment would make a motion to reconsider. No motion was made, and the discussion ended.

Bob Courtland raised a question about the Town's authority to pass the building moratorium, as well as the authority to pass other zoning legislation. Marty Hutt explained that the Town is bound by the Regional District Act, which limits the Town's zoning powers. The judge's ruling on the lawsuit regarding 4420 Ridge Street did not indicate that the Town needed to send the moratorium to Montgomery County prior to enacting the ordinance. The council met in executive session prior to the open meeting to discuss how to proceed following the judge's ruling. Deborah Vollmer stated that the Town should go forward with an appeal.

Bruce Russell asked the Council to contact Park and Planning and get a final resolution on the wall that was constructed at 7201 Oakridge Avenue. The owner of 7201 Oakridge Avenue had been given conflicting advice, and Mr. Russell wanted the matter resolved. The Council instructed Marty Hutt to contact an attorney for Park and Planning and see how the problem could be resolved. If no answer was provided by Park and Planning, Mr. Russell asked the Town to consider contacting Derek Berlage directly to get an answer.

D. Approval of Minutes of September 28 and October 4 Executive Sessions (Minutes of September 14 Council Meeting and September 28 Waiver Hearing Deferred)

Councilmember Enelow made a motion to approve the Minutes of the September 28 and October 4 Executive Sessions. Councilmember Wolf seconded the motion, and it passed unanimously.

E. Acceptance of Financial Report for September

Councilmember Enelow reported that income for the Town was higher than expenses. There are no unexpected problems. Councilmember Orbach made a motion to approve the September Financial Report. Councilmember Barnes seconded the motion, and it passed unanimously.

F. Moratorium Implementation Steering Committee Report – Barry Hager/Jane Lawton

Barry Hager reported to the Council on the progress of the Steering Committee. He reported that the subcommittees have been forced to accelerate their progress given notification and public hearing requirements. The Steering Committee reported that the subcommittees are coming up with their final recommendations, the first of which will be presented to the Council at the November Council Meeting. Mayor Hudnut commended the committees for their efforts and hard work.

II. Consent Agenda

- A. Introduction of an Ordinance Amending Chapter 4, Article 1, Section 4-3, entitled “Building Permit Generally” to Authorize the Town to Adopt Executive Regulations Establishing Conditions to Protect the Public Health, Safety and Welfare when Issuing Building Permits
- B. Introduction of a Resolution Adopting Building Permit Fee Schedule
- C. Introduction of a Resolution Adopting Mandatory Building Permit Pre Construction Meeting and Written Notice Requirements

- D. Introduction of a Resolution Adopting Tree Replacement Fund Fee Schedule
- E. Introduction of a Resolution Adopting Public Hearing Notices for Variances and Waivers

Town Manager Todd Hoffman presented the above legislation and resolutions in order to formally adopt long standing administrative practices. The council introduced the following legislation and executive regulations, and scheduled a public hearing for November 9.

- An Ordinance Amending Chapter 4, Article 1, Section 4-3, entitled “Building Permit Generally” to authorize the Town to adopt Executive Regulations establishing conditions to protect the public health, safety and welfare when issuing building permits.
- A resolution formally adopting the current building permit fee and performance bond schedule.
- A resolution requiring that no building permit for new construction shall be issued prior to a pre-construction meeting held with a representative of the Town Council and the permit applicant. Adjoining and confronting property owners shall be given ten (10) business days notice prior to the meeting.
- A resolution adopting a tree replacement fund fee of \$250.00 per tree as required by the Town’s Tree Protection Ordinance.
- A resolution adopting a formal ten (10) business day notification requirement for public hearing notices for variances and waivers from the Town Code.

Councilmember Enelow inquired about adding language that would increase the amount of the fines that the Town could issue for municipal infractions. It was the sense of the Council that the moratorium subcommittees will address this issue as part of their final recommendations.

III. Public Hearings

A. Variance, 4200 Leland Street, Roofed Porch Setback

Patricia and Howard Sachs, 4200 Leland Street, applied for a variance from Town building regulations to construct a roofed front porch that extends 9 feet into the required 25-foot front yard setback. The Town Code allows roofed, unenclosed porches to extend no more than 3 feet into minimum required yards. Therefore, a variance of 6 feet is required.

The house is a corner lot, and the proposed porch will not interfere with the sight lines of the neighbors. The surrounding neighbors all expressed their support of the variance application, and the applicant provided a visual that showed other houses along Leland Street that have similar porches. Councilmember Enelow felt that the porch was a great enhancement, and did not have any questions. Councilmember Orbach supported the application. Councilmember Barnes expressed concern about the porch and

expressed her opinion that the variance should not be granted. Councilmember Wolf wanted to make sure that the Council evaluated similar variance requests consistently, and thought that the overwhelming support of the neighbors held great weight in this case. Mayor Hudnut felt that since the subject property is a corner lot and the proposed porch will not interfere with any sight lines, that it was acceptable.

Councilmember Wolf made a motion to approve the request. Councilmember Enelow seconded the motion. The motion carried 4 – 1 with Councilmember Barnes voting in opposition.

B. Variance, 7710 Meadow Lane, Front Yard Fence

John Gill and Tony Varona, 7710 Meadow Lane, applied for a variance from Town building regulations to construct a front yard fence, a portion of which abuts the public right-of-way along East-West Highway. The applicants had already built their fence, as they were unaware of Town fence regulations. Town Code prohibits front yard fences and requires fences on private property to be set back 2 feet from the public right-of-way.

The applicants had one letter in support of the fence and have planted trees that will screen the fence from view. Councilmember Barnes felt that the house's location on East-West Highway made the construction of the fence appropriate and reasonable. Councilmember Orbach expressed concern that the fence was constructed without a permit and asked the Town to notify local fence companies of Town regulations. He supported the variance application. Councilmember Wolf supported the proposal. Councilmember Enelow supported the application due to the proximity of the property to East-West Highway.

Julie Thomas commented that she wished the Town to be more proactive on dealing with fences and walls that were constructed before a permit was issued, especially if they require a variance. Town Manager Todd Hoffman responded that code enforcement is largely voluntary. When the Town finds an example of work being done without a permit, a stop work order is issued, and the permitting process begins.

Councilmember Barnes made a motion to approve the variance request at 7710 Meadow Lane without condition. Councilmember Enelow seconded the motion. Councilmember Wolf amended the motion, requiring the applicants to screen the fence with plantings to be approved by the Town Manager. The amendment was seconded by Councilmember Barnes, and the variance passed unanimously.

C. Variance, 7201 Meadow Lane, Front Yard Fence

Jeffrey Balkind and Françoise Le Gall, 7201 Meadow Lane, applied for a variance from Town building regulations to erect three hand-carved wooden Nepalese screens in the front yard of their property. Town Code prohibits front yard fences and walls, which these structures constitute. The screens will be six feet tall, two feet wide, and installed approximately eleven feet from the Town right-of-way.

Councilmember Barnes had no objection as the screens were decorative and sculptural. Councilmember Wolf felt that the screens were decorative and beautiful. Councilmember Enelow did not have an objection. Councilmember Orbach inquired about the material of the screen, which is asian mahogany and will weather well. Mayor Hudnut did not express any questions.

Councilmember Orbach made a motion to approve the variance with no conditions, Councilmember Barnes seconded the motion, and it passed unanimously.

D. Variance. 3916 Underwood, Front Yard Fence

Robert and Laura Lederman, 3916 Underwood Street, applied for a variance from Town building regulations to reconstruct a front yard fence, a portion of which abuts the public right-of-way along Underwood Street. The applicants have already reconstructed the fence. Town Code prohibits front yard fences and requires fences on private property to be set back 2 feet from the public right-of-way.

The fence was a replacement of an existing fence of the same height, style, and materials. Four of the neighboring residents expressed support for the variance application. Mr. Lederman felt that the work that was done should be considered maintenance and should not require a variance at all. Mayor Hudnut asked if any of the Councilmembers wished to make a motion waiving the variance application fee. No motion was made.

Councilmember Wolf had no objections to the fence replacement. Councilmember Enelow pointed out that the administrative variance process applied to walls, but not fences. Councilmember Orbach did not have an objection as the fence is geometrically identical to the previously existing fence. Councilmember Orbach made a motion to approve the variance as requested. Councilmember Barnes seconded the motion, and it passed 4 – 0, with Mayor Hudnut abstaining. The Mayor expressed an opinion that there was some legitimacy in the claim that the variance was not needed. Mayor Hudnut asked the Town Manager to look at the Town Ordinance that applied and review it for clarity.

IV. Discussion

A. Supplemental Appropriation for Legal Counsel

When staff prepared the budget for FY06, the amount budgeted for Legal Counsel was \$50,000. That figure was based on the experience of prior years. As of September 30, 2005, the Town's legal expenses were \$41,887, leaving only \$8,113 left in the budget for the remainder of this fiscal year. As of October 13, 2005, there were \$43,405.60 in unpaid invoices for legal services.

Council was asked to approve a supplemental appropriation in the amount of \$36,000 to cover the additional legal expenses the Town had incurred to date. Councilmember Barnes made a motion to approve a supplemental appropriation in the amount of \$36,000. Councilmember Enelow seconded the motion, and it passed unanimously.

B. UMD Institute for Governmental Service Contract

The Town's moratorium Steering Committee recommended that the Council appropriate \$10,930 for the UMD Institute for Governmental Service (IGS) contract for their proposal to help guide the Town's visioning process. The Town's Visioning Committee has developed six principles, and the IGS will be helping to evaluate them through a series of projects, interviews, etc.

Councilmember Wolf made a motion to approve the \$10,930 expenditure. Councilmember Orbach seconded the motion, and it passed unanimously.

C. Norwood Park Contribution

Representatives from the Friends of Norwood Park requested a \$2,500 donation to help fund playground improvements for Norwood Park, which is used by a number of Town residents. Other neighboring municipalities have made contributions, and the Friends of Norwood Park were hoping that the Town would continue its support of the Park. Following a brief presentation, Councilmember Barnes made a motion that the Town donate \$5,000 to the effort. Councilmember Enelow seconded the motion, and it passed unanimously.

D. Overnight Security Patrol Gas Surcharge

Montgomery Investigative and Security Services (MISS) requested that the Town pay an additional \$100 per month to account for higher gas prices. The request capped the increase at \$100 per month. Councilmember Wolf made a motion to approve the \$100 increase per month until the end of the fiscal year. Councilmember Enelow seconded the motion, and it passed 4 – 1 with Councilmember Orbach opposed.

V. Reports

A. Mayor

Mayor Hudnut asked the Town Attorney for clarification on the public hearing process, specifically when and how the public is allowed to comment on Town Council business. Secondly, he wanted to wish Town Clerk Andi Silverstone well on her recent surgery and ensure that the Town had sent a gift basket.

B. Town Manager

Town Manager Todd Hoffman reported that the Town's webpage redesign was proceeding apace. He confirmed that the Town Council has asked him to keep the Court Decision for 4420 Ridge Street off of the Town's webpage, pending a final decision on an appeal.

There being no further business, the meeting was adjourned at 10:10 PM.

Respectfully submitted,

Scott Orbach
Secretary

Transcribed by David Walton