

TOWN OF CHEVY CHASE
TOWN COUNCIL MEETING
September 13, 2006

Present: Linna Barnes, Mayor; Rob Enelow, Vice Mayor; Kathy Strom, Secretary; Lance Hoffman, Treasurer; and Mier Wolf, Community Liaison; Todd Hoffman, Town Manager; David R. Podolsky, Town Attorney; and Dave Walton, Management Assistant.

Residents and guests: John Fitzgerald, 4502 Elm Street; Tim Quinn, MD Society of Surveyors; R.L. Banzhoff, Jr., MD Society of Surveyors; Dedun Ingram, 4411 Elm Street; Tony Newman, 4015 Bradley Lane; Marianne Rhoda, 4015 Bradley Lane; Philip Grill, 7308 Meadow Lane; Jeanne and Richard Clay, 3917 Woodbine Street; Nancy Wolfson, 3916 Leland Street; Steve Keeble, 4414 Walsh Street; Betty Ferber, 6904 Maple Avenue; Julie Thomas, 4421 Ridge Street; Valerie, Thom, and Will Hirsch, 4322 Leland Street; Alice Delaune, 7616 Lynn Drive; Susan and William Blacklow, 6912 Oakridge Avenue; Joe Rubin, 4409 Ridge Street; Bruce Russell, 7107 Oakridge Avenue; Bill Hudnut, 4206 Thornapple Street; Stephen Kinnaird, 4100 Aspen Street.

I. General Business

A. Call to order – 7:00 p.m.

Mayor Barnes called the meeting to order at 7:10 p.m.

B. Pledge Allegiance to the Flag

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

C. Public Comments

There were no comments from residents or guests in attendance.

D. Approval of Minutes of July Regular Meeting and Executive Session and August Executive Session

Councilmember Enelow made a motion to approve the minutes of the July regular meeting and executive session and the August executive session. Councilmember Wolf seconded the motion, and it passed unanimously.

E. Acceptance of June (pre-audit), July, and August Financial Reports

Councilmember Hoffman made a motion to accept the June (pre-audit), July, and August financial reports. Councilmember Enelow seconded the motion, and it passed unanimously.

F. Approval of Supplemental Appropriation for Legal Expenses (FY06)

Councilmember Hoffman made a motion to appropriate an additional \$63,015 in the FY06 budget for legal fees based on actual FY06 expenditures. Councilmember Enelow seconded the motion, and it passed unanimously. Councilmember Enelow made a motion to transfer \$18,430 from the FY06 Parks and Grounds budget into the FY06 Private Security Services budget to cover actual FY06 expenses. Councilmember Hoffman seconded the motion, and it passed unanimously.

G. Approval of Appropriation for Copier Lease

The Town's copier was destroyed as a result of flooding during a July rainstorm. The Town decided to lease a new copier as opposed to purchasing a new one. The annual price for leasing the new copier is \$5,700. Councilmember Hoffman made a motion to appropriate \$5,700 in the FY07 budget for Rents and Leases to cover this unexpected cost. Councilmember Enelow seconded the motion, and it passed unanimously.

II. Variance Requests – (Note: all variance hearings were recorded. A transcript may be made available.)

A. 4015 Bradley Lane, Front Yard Fence

Marianne Rhoda, 4015 Bradley Lane, requested a variance from Town building regulations to construct two front yard fences. The applicant proposed to install a new wrought iron fence and retain a recently replaced wooden fence in the front yard of her property along Hillcrest Place. Both the proposed wrought iron fence and the rebuilt wood fence would encroach onto the Town right-of-way. The Town Code prohibits front yard fences and requires fences on private property to be set back 2' from the public right-of-way.

The Town received two e-mails about the variance request. Both e-mails opposed the installation of the new wrought iron fence but understood the need to replace the wooden fence. Julie Thomas, 4421 Ridge Street, commented that Long Fence has been instructed about the need to obtain Town permits and that approving the fence variance could set a precedent.

Anthony Newman, representing the applicant, stated that the wooden fence needed to be repaired and replaced as the original fence was damaged by WSSC. Additionally, both the wooden fence and wrought iron fence would protect the applicants from intruders and prevent trespassing on the property.

Councilmembers gave their individual positions on the variance application. Councilmembers Strom and Wolf expressed concern about the new wrought iron portion of the fence. Councilmember Enelow raised a question about the distance between the wrought iron pickets. Councilmember Hoffman asked questions about trespassing that has occurred on the property. Mayor Barnes did not have any questions or comments. The Council offered to direct the Town's overnight security service to regularly check on the property. It was the sense of the Council to consider the variance requests for the iron fence and wooden fence separately. Councilmember Strom made a motion to approve

the replacement wooden fence. Councilmember Wolf seconded the motion, and it passed unanimously. Councilmember Hoffman made a motion to deny the variance request for the installation of the new wrought iron fence. Councilmember Wolf seconded the motion, and it passed unanimously.

B. 4322 Leland Street, Front Yard Fence

Valerie and Thomas Hirsch, 4322 Leland Street, applied for a variance from Town building regulations to construct a 6' board-on-board front yard fence. The proposed fence would be set back at least 2' from the public right-of-way. The Town code prohibits front yard fences and requires any fence to be set back 2' from the public right-of-way.

The applicants stated that they live on a pie-shaped lot with two front yards. They would like to construct the fence for privacy and to allow their dog to have a place to run. The applicants stated that they would not need a variance if they lived on a square or rectangular lot.

Margaret Bright, 4311 Thornapple Street, commented that the fence is a good idea for the neighbor's dog. Julie Thomas, 4421 Ridge Street, supported the fence as long as it did not run parallel to the property line. Jim Mich, 4400 Walsh Street, endorsed the installation of the fence. Costis Toregas, 4325 Leland Street, commented that the fence would be a neighborhood enhancement. The Town received one e-mail in support of the variance request from several neighboring residents.

Councilmembers asked questions of the applicant regarding specifics of the variance application. Councilmember Enelow asked whether the entire fence would be 6' in height, or if the gates would be lower. Councilmember Wolf asked if the fence would be solid, or if people could see through it. Councilmember Strom asked whether the proposed fence was the minimum necessary to meet the applicant's needs. Councilmember Hoffman asked about the impact of the fence on the applicant's driveway access. Mayor Barnes did not have any questions. Councilmember Enelow understood the need for the fence, but raised a concern about the height, and wondered if the council should require screening plantings. Councilmember Strom stated that the fence was similar to a typical rear yard fence and should be allowed. Councilmember Hoffman stated that he thought the fence to be very practical given the shape of the lot.

Councilmember Wolf made a motion that the variance be approved as requested. Councilmember Strom seconded the motion, and it passed unanimously.

C. 7001 Meadow Lane, Side Yard Setback

Alan Beal, consultant to staff, presented this variance request. Jon and Catherine Meyerle, 7001 Meadow Lane, applied for a variance from Town building regulations to enclose an existing covered stoop. The property has a total side setback requirement of 19.8' with a minimum of 8' on one side. The proposed construction requires a 3' variance, as the existing stoop is located 5' from the side lot line.

The applicants stated that their lot is unusually shaped. The current house does not conform to the Town's setback requirements. The applicant's mother-in-law has rheumatoid arthritis, and the applicants need to have a first floor bathroom available for

her when she visits. The only alternative to enclosing the porch is to construct a rear yard addition, which would increase both the footprint of the house and the cost of the project.

Don MacGlashan, 4104 Woodbine Street, expressed concern for any monument trees that may be impacted by the construction. Michael Coplan, 7003 Meadow Lane, objected to the variance for several reasons, including the short distance between the houses, the view of the project from their kitchen and main bedroom windows, and the elimination of open space. He felt that the Town Council should enforce the Town's setback requirements. He also stated that other neighbors who supported the variance request were not impacted by the proposed construction.

Councilmembers asked questions of the applicant regarding specifics of the variance application. Councilmember Hoffman inquired as to the frequency of visits by the applicant's mother-in-law. Councilmember Enelow confirmed that the area of the enclosure is approximately 4'x 5' with a gabled roof. Councilmember Wolf confirmed that this enclosure is the only way to add a first-floor bathroom without adding a rear addition. He expressed concern over the impact a rear addition may have on an existing canopy tree. Councilmember Strom confirmed with the applicants that there was no level area in the rear yard where an addition could be constructed. Mayor Barnes confirmed that there are no trees that would be impacted by the enclosure. Councilmember Hoffman confirmed that the tree in the rear of the property is in good condition.

Councilmember Hoffman stated that he was supportive of the new setback ordinance and was trying to find hardship that would allow him to support the request. Councilmember Enelow echoed Councilmember Hoffman's comments, but felt that the request was inherently reasonable. Councilmember Wolf understood the desire for a first-floor bathroom, and commented that it is more reasonable to enclose the existing stoop as opposed to constructing a rear addition. Councilmember Strom expressed support for what the applicants are proposing to do, but felt that they have to meet the variance standard. She stated that, in this case, approval of the variance would be detrimental to the use and enjoyment of the neighboring house. Mayor Barnes felt that the pre-existing house and pre-existing condition meets the variance standard.

Councilmember Enelow made a motion to grant the variance. Councilmember Wolf seconded the motion. The motion passed as Councilmembers Enelow, Barnes, and Wolf voted in favor of the variance request. Councilmembers Hoffman and Strom were opposed.

D. 7308 Meadow Lane, Side Yard Setback

Alan Beal, consultant to staff, presented this variance request. Philip and Stephanie Grill, 7308 Meadow Lane, applied for a variance from Town building regulations to install an air conditioning unit that extends into a side setback. The Town Code prohibits air conditioning units from encroaching into side setbacks.

The applicant stated that the proposed air conditioner unit would be located opposite of the neighbor's air conditioner unit. The unit is 33" wide and 36" tall and cannot be seen from either the front or rear of the house. They would face practical difficulties if the unit were to be installed in a legally conforming manner, including voiding the warranty, increased inefficiency of the unit, and potential damage from water if it were to be installed in a pit.

The Council received one letter of support from the adjacent resident. There were no residents in attendance who commented on the application.

There were no questions from the Town Council. Councilmember Hoffman stated that there were practical limitations, and the installation would not be detrimental to neighboring residents. Councilmember Wolf made a motion to approve the variance request. Councilmember Enelow seconded the motion, and it passed unanimously. *(Note: Prior to the hearing, the applicants agreed to provide a boundary survey with a margin of error of 1" or less to confirm the specifics of the variance request. The approval is conditioned on the survey confirming the variance request as presented by the applicants.)*

III. Public Hearings – (Note: both public hearings were recorded. A transcript may be made available upon request.)

A. Public Hearing on an Ordinance to Adopt a New Chapter 28 of the Town of Chevy Chase Municipal Code to Implement a Water Drainage Management Program

The Town Council heard various comments on the Town's proposed Water Drainage Ordinance from both residents and non-residents. The Council agreed to evaluate the comments and hold a work session prior to considering the ordinance. Town Manager Todd Hoffman will work with the Council to choose a date either before or at the October Council meeting.

B. Public Hearing on an Ordinance to Adopt a New Article IV of Chapter 2 of the Town of Chevy Chase Code to Establish an Administrative Procedure for Executive Regulations

Bruce Russell, 7107 Oakridge Avenue, testified before the Council as the Chairperson of the Regulatory Review and Enforcement Committee. This legislation gives the Town the authority to develop executive regulations that are consistent with the Town's Charter or Code and would provide more specificity. This legislation would give the Town the flexibility to impose site management conditions for a particular property consistent with the executive regulations adopted. There were no other public comments.

Mayor Barnes indicated that both the Water Drainage Ordinance and the New Article IV of Chapter 2 would be placed on the October Council Meeting Agenda.

IV. Council Actions

A. Consideration of a Contribution to Neighborhood 5K Run/Walk

Nancy Wolfson, 3916 Leland Street, came before the Council to request a donation to Ellen's Run. Ellen Snyder, a resident of Chevy Chase Section 5, recently passed away, and a community run has been planned in her honor. Proceeds from the run will benefit the Bethesda-Chevy Chase High School Community Fund and the Mental Health Association. Councilmember Wolf made a motion to donate \$1,000 to the run.

Councilmember Strom seconded the motion. Discussion followed. Councilmember Wolf stated that Ellen was a community leader, whose work benefited all of the local schools. He pointed out that the Town made a significant donation to Chevy Chase Elementary School when that school was being renovated. Councilmember Strom agreed with Councilmember Wolf's comments and added that \$1,000 was an appropriate contribution. Councilmember Hoffman felt that the contribution would support a worthy cause. He expressed concern that the Town did not have general guidelines on what groups or specific donations are appropriate. A vote was taken on the motion, and it passed unanimously. Nancy Wolfson thanked the Council for their ongoing support and received permission to include the Town logo on a banner listing sponsors of the run.

V. Discussion

A. Community Services Survey

Todd Hoffman, Town Manager, presented the most recent iteration of the proposed resident services survey. The survey has been reviewed by Vic Tervalo, who provided substantive comment. Additionally, comments from the Council have been incorporated. The Town will send the survey out with return postage to make it easy for residents to return. The Council directed Mr. Hoffman to remove questions asking for resident feedback on future additional services. Additionally, the Council wanted to include a request for block numbers and street names instead of a map asking residents to identify their specific quadrant of the Town. The Council was generally supportive of the survey, and Mr. Hoffman was instructed to send it out.

B. Proposal for Setback Review/Zoning Study

Town Manager Todd Hoffman updated the Council on the bid results from the request for proposal for a Setbacks Review and Zoning Study that was sent out in June. The Town received one bid, in the amount of \$35,370, from Jakubiak and Associates. Councilmember Strom has reviewed the proposal and thinks that it is logical and comprehensive. She recommended a pre-meeting with Chris Jakubiak to discuss some specific questions and flesh out certain portions of the proposal to ensure that the consultant understands the goal and direction of the study. She also wanted to ensure that the Town and consultant needed to agree on a point person who will direct the consultant through the course of the study. Councilmember Wolf feels that it is important to get appropriate lines of communication established very early in the process. Councilmember Enelow felt that the Council should vote on accepting the proposal but condition the acceptance on a successful pre-meeting. Councilmember Strom was supportive of Councilmember Enelow's suggestion. Councilmember Hoffman was in agreement that the Town should accept the proposal subject to a pre-meeting, a well defined schedule of deliverables, and a payment schedule. Once the Council accepts the proposal, Todd Hoffman will work out payment details and develop a formal contract. Mayor Barnes also agreed that the Town should accept the proposal conditionally.

Councilmember Enelow made a motion to accept the proposal and authorize Councilmember Strom and Town Manager Hoffman to coordinate a meeting to discuss

potential areas of concern before finalizing a contract. Councilmember Strom seconded the motion, and it passed unanimously.

C. RCN Cable Franchise Fees

Town Manager Todd Hoffman asked the Council if they wish to contribute RCN Cable Franchise Fees to Montgomery Municipal Cable (MMC). Currently, the Town donates all Comcast Franchise Fees, which total approximately \$20,000 per year to MMC. RCN franchise fees are expected to be approximately \$1,030 per year. Because RCN franchise fees would replace Comcast franchise fees, the net contribution would not change. Councilmember Hoffman made a motion to contribute RCN franchise fees to MMC. Councilmember Enelow seconded the motion, and it passed unanimously.

D. Street Light Proposal from Climate Change Committee

Stewart Sessions, 7700 Meadow Lane, came before the Council on behalf of the Climate Protection Committee to explain that committee's proposal to offset carbon dioxide emissions that are a result of the Town's street lights. The Town has entered into the Mayor's Climate Protection Agreement that mandates a 7% reduction in greenhouse gas emissions by 2012. Street lights in the Town emit approximately 100 tons of greenhouse gasses per year, approximately equal to the emissions from 10 homes. In order to minimize these emissions, the Town has several options. The Town could switch to solar powered lights, could purchase renewable energy at a cost of \$10,000 to \$20,000 per year, or could purchase green tags that will buy outside greenhouse gas reductions equal to those produced by the Town's street lights. Mr. Sessions recommended purchasing a six month offset, at a cost to the Town of \$275, until a more permanent solution can be found.

Additionally, a consortium of municipalities has begun to negotiate with PEPCO to purchase renewable energy in bulk. Councilmember Strom made a motion to appropriate \$275 to purchase energy offsets and to accept the recommendation to allow Todd Hoffman and Christine Real de Azua to participate in the renewable energy consortium. Councilmember Hoffman seconded the motion, and it passed unanimously.

VI. Council/Staff Reports

A. Mayor's Report

Mayor Barnes will be reserving a table at the December 11 Montgomery Breakfast. All Councilmembers are invited to attend. Additionally, the Mayor is finalizing the committee appointments. Appointment letters should be ready to go out around September 18.

B. Town Manager's Report

Town Manager Todd Hoffman reported that he is working to set up a meeting with PEPCO to discuss the ongoing problem of power outages in the Town. He will coordinate the meeting with interested council members.

VII. Adjournment

Councilmember Enelow requested that the Town's election process be placed on an agenda for discussion in the near future. Mayor Barnes stated that a meeting with the League of Women Voters will be scheduled at the end of September or in early October to discuss the Town's election process. Councilmember Hoffman expressed interest in serving on a County-wide election security and process committee. He was encouraged to do so.

There being no further business, the meeting was adjourned at 10:45 p.m.

Respectfully submitted,

Kathy Strom
Secretary

Transcribed by David Walton