

TOWN OF CHEVY CHASE  
COUNCIL MEETING  
February 13, 2008

Present: Linna Barnes, Mayor; Rob Enelow, Vice Mayor; Lance Hoffman, Secretary; Kathy Strom, Treasurer; Mier Wolf, Council Liaison; Todd Hoffman, Town Manager; Ted Pochter, Assistant Town Manager; Dave Walton, Management Assistant; Andi Silverstone, Town Clerk; David Podolsky and Ron Bolt, Town Attorneys; and Alan Beal, consultant. Residents and guests: Sign-in sheets are available in the Town Office.

I. General Business

A. Call to order

Mayor Barnes called the meeting to order at 7:00 p.m. at the National 4-H Center.

B. Pledge Allegiance to the Flag

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

C. Approval of January 2008 Financial Report

Councilmember Strom presented the January 2008 financial report. She made a motion to approve the report. Councilmember Enelow seconded the motion, and it passed unanimously.

D. Approval of Minutes of December 2007 Council Meeting and Executive Session and January 2008 Council Meeting and Executive Session

Councilmember Hoffman presented the minutes as described above to the Council. Councilmember Strom stated that she had circulated a memo to the Council indicating that she had some changes to the January minutes and wanted them deferred until the March Council meeting. Councilmember Enelow made a motion to approve the minutes of the December regular and executive sessions and to defer approval of the January Council meeting and executive sessions. Councilmember Wolf seconded the motion, and it passed unanimously.

II. Jane Lawton Memorial Discussion

Mayor Barnes said that the Council was trying to determine an appropriate memorial for former Councilmember Jane Lawton. Since Ms. Lawton worked for the Montgomery County Government as well, Montgomery County officials are also working on a way to memorialize Ms. Lawton. The County was considering naming the Leland Community Recreation Center after Ms. Lawton.

Councilmember Wolf asked that a committee be formed to find the best way to honor Jane Lawton. He suggested that a possibility would be to name the Town Hall after her. He asked that an effort be made to identify Town residents who might have ideas about ways to honor Ms. Lawton. Councilmember Wolf mentioned that a walk on the Capital Crescent Trail has been scheduled for May 24 to honor Ms. Lawton.

### III. Public Comments

A complete transcript of the public comments and public hearing is available in the Town office and on the Town website.

### IV. Council Actions

#### A. Public Hearing on an Ordinance to Amend Chapter 4 of the Town of Chevy Chase Municipal Code to Adopt New Building Regulations

Mayor Barnes discussed the procedure for speaking at the public hearing. She announced that the hearing was being recorded and that a complete transcript will be available. She announced that there would be at least one additional public hearing on the proposed ordinance and that the Council would be holding work sessions. She encouraged residents to complete an FAR calculation worksheet.

The public hearing ended at 10:00 p.m. The Council scheduled a work session on Wednesday, February 20 at 7:00 p.m. in the Town Hall.

#### B. Council Action on an Ordinance to Establish a Temporary Building Moratorium

Councilmember Strom made a motion to introduce an amended moratorium ordinance. Councilmember Strom's comments on the amended ordinance appear in their entirety at the end of these minutes. Mayor Barnes seconded the motion.

Councilmember Wolf referred to the December Council meeting minutes discussion of a temporary moratorium. He indicated that the first moratorium had been successful but was very divisive. He noted that there is currently not a lot of development going on in Town and that a moratorium is not needed at this point. He expressed his support for using FAR and what the Land Use Committee is doing to control bulk and mass. He said that the moratorium has been a distraction. The housing market has changed. He urged Councilmembers to stay on track to pass a building regulation with a fair FAR and to find closure on the building regulation issue.

Councilmember Hoffman's comments appear in their entirety at the end of these minutes.

Councilmember Enelow's comments appear in their entirety at the end of these minutes.

Mayor Barnes spoke in support of Councilmember Strom's amended motion. She expressed that the ordinance was reasonable and that compromises have been made. She stated that the Council would work together to come forth with a FAR and a building ordinance with changes that would accommodate the concerns raised by residents.

Councilmember Strom expressed her thought that the moratorium amendment would be a bridge and that she hoped there would be a time out. She expressed her thought that the moratorium would be a brief and limited tool while the Council works on how to use the new zoning authority given to municipalities.

The motion for the amended ordinance was called. Councilmembers Barnes and Strom voted in favor of the motion, and Councilmembers Enelow, Hoffman, and Wolf were opposed.

The motion for the original moratorium ordinance was called. Councilmembers Barnes and Strom voted in favor of the motion, and Councilmembers Enelow, Hoffman, and Wolf voted in opposition.

#### V. Discussions

##### A. ~~Oakridge/Thornapple Sidewalks~~ (*Deferred*)

##### B. Traffic Restrictions and Signage Policy (Public Services Committee)

There was discussion about the Town's proposed traffic policy, which was discussed at the January meeting. The Council noted that the recommended policy is similar to the previous traffic policy and to other administrative procedures and policies already in place.

Councilmember Hoffman made a motion to accept the policy. Councilmember Enelow seconded the motion, and it passed unanimously.

##### C. Economic Impact Study

Staff was directed to contact two or three land use economists to conduct an economic impact study of the building regulations ordinance. Staff was directed to contact prospective consultants and then the Council will decide how to proceed.

Councilmember Strom cautioned that there is no way to know what all impacts would be in the future and not to have false expectations. Ms. Strom is not in favor of having an economic impact study on all ordinances.

#### IV. New Business

There was no new business.

The meeting was adjourned at 10:45 p.m.

Respectfully submitted,

Lance Hoffman  
Secretary

Transcribed by Andi Silverstone

Statements of Councilmembers on the Proposed Ordinance  
to Establish an Emergency Building Moratorium

Kathy Strom  
2/13/08

Before I offer my amendment tonight let me restate my position so that everyone here understands. I do not want to prevent people from having homes that are beautiful and ample. My position is that there are recognized concerns of neighbors and the community that need to be addressed, concerns about out of scale building, houses that are too tall and too massive. These are basic concerns that are being raised not only here but in many places all over the nation. After a lot of discussion, thought and deliberation, we hope to address these concerns through new, careful and fair building regulations.

Thank you all for coming out tonight and last week as well. We are very fortunate to have so many concerned and involved citizens and yes, we are listening to you – all of you— about the proposed moratorium and about the building ordinance. Tonight I move to amend the proposed moratorium ordinance to incorporate comments made by several residents at our public meetings and to address some of the concerns we have heard about the scope of the time out proposed.

The amendment I offer tonight allows town permits to go forward not only in the case of the exceptions already in the proposed ordinance, namely, not only where a county permit has issued as of today, not only where only a 500 square footprint is involved in a proposed addition, not only where there has been a fire or other unanticipated disaster, but also where the floor to area ratio of the proposed project is .5 in the case of an addition and .45 in the case of other new construction. This additional exception will allow many residents who have planned projects which are reasonable in scope to go forward, consistent with the proposed building ordinance, and will limit the scope and impact of the proposed time out, which is already limited in time to expire on April 30.

I move to amend the moratorium ordinance to include this additional exception as set forth in the revised ordinance which has been posted on the town website and made available tonight. We all cherish the town and we all want to protect our interests and the interests of the community. I urge that we continue to listen and build bridges to find solutions that work for the community. I support a brief and very limited time out as a tool to let us achieve these important goals.

Lance Hoffman  
2/13/08

This is the most difficult issue I have faced since being elected to the Council almost two years ago.

I was elected on a platform of controlling oversize development, and I remain committed to that goal. But it is my duty to listen to all residents, and I can't ignore the fact that the community is almost evenly split on this moratorium. I've had 112 pro-moratorium and 135 anti-moratorium communications, mostly email. Both sides have presented good arguments and done so in the usual world-class Chevy Chase fashion. This of course is in addition to the petitions (290 pro-moratorium, 378 con-moratorium). So what is a Councilmember to do? What would you do?

For me, three goals anchor my thinking on this question: a positive long term "look and feel" of the Town; fairness; and minimizing uncertainty.

The Town should remain a mixture of old and new houses that are, with few exceptions, aesthetically pleasing. Just as importantly, how we feel about living here –interacting with each other and enjoying the benefits of such a unique community – should be very positive.

People want to feel the government process is fair and they have been heard. From the first time I heard that this moratorium was going to be introduced, I insisted on transparency. And I think both sides agree that the public comments have been extremely informative.

Let's be honest. If we pass the moratorium tonight, a little more than half the residents who signed the anti-moratorium petition could sign a petition to demand a referendum to reverse it. Some moratorium opponents are talking about doing just that. The Town under its Code would be obligated to hold such a referendum. The Emergency Ordinance that will be law starting tonight would be struck down if the referendum were successful. And then there would be no more protection in place than what there is today. This on-again, off-again situation just adds to uncertainty rather than reducing it. More energy will be spent on the referendum and less on the land use controls, which is what this is all about.

And if we are not able to arrive at a new building ordinance after two months, extending the moratorium is even more divisive and destructive to existing residents. Most people here want to go about their lives without unnecessary disruption. They did not sign up for Government by Moratorium or Government by Referendum. That's why we have a representative government.

A moratorium will not achieve the goals of a positive long term look and feel of the Town, and fairness, and will not minimize uncertainty. That is why I will propose tonight and introduce at the next Council meeting a better solution, a Streamlined Building Ordinance. This will be somewhat similar to the Temporary Moratorium Ordinance we are voting on. But it provides a better path to both a short term and long term solution to the problem of managing building size. As a much slimmed-down, user-friendly version of the Land Use Committee's recommendations, it will rein in very large houses, set a reasonable threshold for the great majority of current residents to be able to improve their property without a variance, and have an undue

hardship clause. This would not be emergency legislation. It would be passed after regular public hearings where any contentious issues can be aired and resolved. If the Council continues to meet weekly, we can fast-track this and pass it in April. I have a detailed schedule available that I can show you after this meeting and will include as a part of the record of this meeting.

The basics of the streamlined building ordinance I will introduce are these:

- 3000 square feet minimum floor area guaranteed
- No cap on lot size used for computing FAR
- 28 foot height limit
- No additional “incentives” now (though they could be added later)
- 0.50 maximum FAR for all projects

This number may change once we get enough data, which we are continuing to collect, to have a reasonably large sample (probably around 200) of Town properties on which to base a number. The number would be such that the great majority of current residents to be able to improve their property without a variance.

As a Councilmember, I am entrusted to help decide what the Town will look like in the future and I have some influence in setting the backdrop for how we will feel about living in the Town. Some say that I am also indirectly entrusted with a lot of other people’s money. I don’t take any of this lightly.

For that reason, I am voting NO on the moratorium and will introduce at the next Council meeting the Streamlined Building Ordinance. Comments will be solicited on it and one or more public hearings will be scheduled on it such that soon we will have in place more effective height and mass controls over whatever is built in our Town.

People of good will on both sides of this complex issue can work together to arrive at a building ordinance that is reasonable and fair.

Rob Enelow  
2/13/08

This moratorium proposal is flawed, it represents a false dichotomy:

Just three days ago, on Sunday afternoon, I sat in the living room of a friend who is an ardent supporter of this ordinance. Both of us feel passionately about the mansionization of this town, how developers and speculators have tried to overbuild this community. And I felt on Sunday, that just maybe, just maybe, a compromise could be reached, to somehow stop the last 2 mammoth projects that might be built. The goal of this moratorium is to reduce the harm to the neighbors surrounding those 2 projects, to protect those 8 families who live on Virgilia and Oakridge. “To protect people from harm.”

If only it were that simple. It turns out, just a few hours later, on that Sunday evening, I received a call from a council-member telling me that the ordinance would be modified, so that a new house with a FAR of 0.45 or less would be exempt, or an addition of 0.50 would also be exempt. And then it turned out over the next 2 days, that our town government had done a lot of measuring of a lot of houses, and many of these older houses had a FAR greater than 0.45 or 0.50 or 0.55, and that many of these houses would be unable to do any meaningful additions at all. And many of these houses are modest, very modest. And many of these homeowners could be harmed by this moratorium.

So let's talk about what I call this "false dichotomy". If you oppose the moratorium, then you don't care about the fact that speculators and developers are harming the town. If you oppose the moratorium, then you don't care about the tree canopy. If you oppose the moratorium, then you don't care about the environmental damage from the construction and the water runoff. If you oppose the moratorium, then we should just continue as before. THAT false choice is an extremely inaccurate, and extremely unfair, characterization. I hate to get personal here, but I helped create that tree ordinance, and I shepherded that tree ordinance thru the council. I am proud of that ordinance. It prohibits the teardown of ANY canopy tree greater than 24 inches in circumference. Passage of a moratorium will not prevent ONE SINGLE CANOPY TREE from being chopped down. Not one. And this entire council helped Lance Hoffman with the water ordinance, which has had a significant impact on minimizing another problem of over-development. Have the tree and water ordinances succeeded? Only partially. But please do not characterize my opposition to this moratorium as a lack of understanding of the mansionization, or a lack of sympathy to the neighbors of these 2 large projects. That is a distortion of the reality.

The Virgilia project, by the way, is on hold. This moratorium would impact only ONE project, on Oakridge. One project. Barry Hager said a few minutes ago that we should favor community rights over individual rights. With all due respect to Mr. Hager, I must disagree. The job of an elected legislative body is to balance our community rights with the individual rights of our citizens. It's a delicate balance.

Just 3 years ago, before our new setbacks ordinance was passed, you could build a very large 20-foot high garage only 5 feet from your neighbor's fence. The new setbacks changed that- at my urging, on a 3-2 vote, the rules were changed. If you wanted a tall garage it had to be 7.5 feet from your neighbor's fence, not 5 feet. Well, it turns out that the last garage in Chevy Chase to be built under the old rule is standing just a few feet from my kitchen window. I see my neighbor's garage all day long, a 20 feet high structure just 5 feet from my fence, blocking the sunlight from entering my kitchen. Could I have tried to extend the moratorium to prevent this? I considered it. But it wouldn't have been fair to my neighbor, or to others.

In the practice of medicine, the first rule is "do no harm." If a medication has a 20% chance of harming somebody, you only prescribe if it's life or death. If it has only a 0.05% chance of harming the patient, I usually am willing to take that chance. This moratorium has at least a significant chance of harming people. Even though its

supporters are sincere, and care deeply and passionately about this community, I cannot prescribe their remedy. So to my friend who I saw on Sunday afternoon, I don't feel that I let you down.

So let's get to work. Let's work on a new building ordinance that our town can agree upon, that will limit the scale of the new construction in a fair and reasonable way. Let's build a consensus. Let's stop the divisiveness. Thank you.