

TOWN OF CHEVY CHASE
COUNCIL MEETING
TOWN HALL
April 17, 2017

OPEN SESSION TO VOTE TO ENTER CLOSED SESSION (6 p.m.)

The Town Council will meet in open session for the purpose of voting to enter a closed session pursuant to the Open Meetings Act, Maryland Code, General Provisions Article, Section 3-305(b)(7) to consult with counsel to obtain legal advice on a legal matter regarding private improvements in the public right-of-way; and pursuant to Section 3-305(b)(1) to discuss a personnel matter (staff performance evaluations and recognition).

REGULAR MEETING (7 p.m.)

- I. GENERAL BUSINESS
 - A. Call to Order
 - B. Pledge of Allegiance
 - C. Approval of Minutes of March 13, 2017 Council Meeting & Closed Session and March 22, 2017 Council Work Session
 - D. Approval of March 2017 Financial Report
 - E. Town Manager's Report
 - F. Public Comments

- II. PUBLIC COMMENTS ON FY18 BUDGET

The Town Council will hold a special public comment period to hear from residents about next year's budget and which new or ongoing programs and services they would like to see funded.

- III. COUNCIL DISCUSSIONS
 - A. Bethesda Downtown Plan
 - B. Purple Line Mitigation
 - i. Town Response to Maryland Department of Environment Request for Comments on Permit Application for Dewatering Associated with Construction of the Purple Line Station and Apex Building in Bethesda

- IV. VARIANCE AND APPEAL HEARINGS
 - A. Vollmer, Appeal Related to Construction at 7203 45th Street
 - B. Fort, 7113 46th Street, Right-of-Way Plantings

- V. COUNCIL ACTIONS
 - A. Introduction of FY18 Budget and Tax Rate Ordinance

- VI. ADJOURNMENT

MEMORANDUM

I-E

TO: Town Council
FR: Todd Hoffman, Town Manager
RE: Town Manager's Report
DATE: April 17, 2017

This report highlights some of the initiatives undertaken by Town staff over the past month. In the interest of brevity, I have not included ongoing staff functions. Please let me know if you have any questions or need additional information.

Council/Committee/Board Assistance:

- Provided assistance with Town efforts related to the Bethesda Downtown Plan and Purple Line mitigation.
- Organized and attended Council budget work session.
- Continued work related to proposed Stormwater Management and Sediment Control Ordinance.
- Worked with Community Relations Committee on special events.

Special Projects:

- Continued development of FY18 budget.
- Worked with election contractor to prepare for 2017 Council election.
- Produced election issue of Forecast newsletter.
- Continued oversight of Washington Gas and WSSC infrastructure repairs.
- Continued website redesign process.
- Prepared for spring tree plantings.
- Prepared for concrete (curb/gutter/sidewalk) improvements.
- Managed personnel changes.
- Processed requests for speed humps and new street lights.

STAFF REPORT

IV-A

TO: Town Council
FR: Todd Hoffman, Town Manager
RE: Appeal Related to Construction at 7203 45th Street
DATE: April 17, 2017

Description of Appeal:

Deborah Vollmer, 7202 44th Street, has filed an appeal related to construction at 7203 45th Street. In her written appeal, Ms. Vollmer asserts that the Town Manager erred in refusing her request to compel the removal of the accessory building under construction in the rear yard of the subject property, per the provisions of Section 4-47 of the Town Code. She contends that the garage should be considered a “fence” as defined in the Code and, thus, its height should be limited to 6.5 feet, which is the permissible height of a rear yard fence, per Section 4-52(f) of the Code.

Town Code Section 4-1(b) defines a fence as: “A construction measuring one foot or more in height, made of posts or stakes joined together by boards, wire, rails, or other material to enclose or divide an area.”

Background:

On February 22, 2017, Deborah Vollmer requested that the Town Manager require the removal of the accessory building under construction at 7203 45th Street because it exceeded the height allowed for a fence. This structure was approved for construction as part of the building permit issued on October 28, 2016. The Town Manager informed Ms. Vollmer that the building is not a fence. Accordingly, removal was not compelled by the Town. Ms. Vollmer feels that this was a new decision made by the Town Manager and filed a written appeal with the Town on February 23, 2017.

The Town has not received any correspondence related to this appeal request.

Administrative History:

Staff believes that this appeal is not timely and that an accessory building is not a “fence,” as provided by the Town building code.

The building permit for construction of the accessory building was issued on October 28, 2016. Section 4-47 of the Code requires an appeal to be made within 30 days of a decision of the Town Manager. The review of the applicable building regulations related to the accessory building was completed prior to the issuance of the permit and affirmed by the issuance of the permit. Staff believes that the Town Manager’s confirmation expressed to Ms. Vollmer that the accessory building is not a fence, was not a new decision made under Chapter 4 of the Code. Because more than 30 days had passed between the issuance of the permit and Ms. Vollmer’s appeal, the appeal is not timely. Staff notes that the Town Council denied an appeal of the building permit made by Ms. Vollmer at the December 2016 Council Meeting.

Even if the appeal had been timely filed, staff believes its consideration of the detached garage as an accessory building (and not a fence) for purposes of height and setbacks is consistent with the

Code, which applies different standards and regulations to buildings and fences. Staff believes that Ms. Vollmer's interpretation that the accessory building is a fence is incorrect. If this interpretation were applied, no main or accessory building would be allowed to be constructed in the Town at a height exceeding 6.5 feet.

STAFF REPORT

IV-B

TO: Town Council
FR: Todd Hoffman, Town Manager
RE: Fort, 7113 46th Street, Right-of-Way Plantings
DATE: April 17, 2017

William and Patricia Fort, 7113 46th Street, are proposing to plant 16 skip laurel shrubs in the public right-of-way adjacent to Willow Lane, as shown on the attached site plan. The Town Code prohibits the installation of any hedge or shrubbery on public property devoted to private use; therefore, a variance is required.

Background:

As of April 13, the Town has not received any correspondence related to the variance request.

Staff note: The following assertions summarize materials provided by the applicant in support of the variance request. Their inclusion in the Staff Report does not intend to convey staff support for the approval or denial of the variance request. The applicant should indicate to the Council if any arguments have been misrepresented. Council should consider the entire record in considering the variance request.

Applicants' Claims for the Variance Request:

1. The variance is requested because the property's location represents an extraordinary condition. Willow Lane is a highly trafficked street. The applicants are concerned that the lack of screening impacts their children's safety and privacy.
2. Approval of the variance is requested because conforming to the Town's building ordinance would cause undue hardship. Without the privacy bushes in place, the applicants' rear yard is in plain view of those driving, walking, and parking on Willow Lane.
3. The proposed improvements will not be detrimental to the use and enjoyment of neighboring properties. The shrubs will not impact neighboring residents in any way. The existing trees in the public right-of-way will still be visible to neighbors on all sides.
4. The request is the minimum necessary to overcome the exceptional condition that is causing the hardship. The applicants feel that the planting of the proposed shrubs is the most natural way to provide privacy to their rear yard. Many other residents in the Town have similar plantings.
5. The proposed improvements do not impair the general plan of the Town. There is no public sidewalk along the south side of Willow Lane that would be impacted by the plantings. The Town's general plan should provide for the privacy and protection of children.

Staff note: If the variance is approved, a standard condition would be the execution of a right-of-way usage agreement in a form provided by the Town.

**Town of Chevy Chase
Budget and Tax Rate Ordinance**

Resolution No.:
Introduced: April 17, 2017
Adopted:
Effective Date: July 1, 2017

SUBJECT: AN ORDINANCE TO ADOPT A BUDGET FOR FISCAL YEAR JULY 1, 2017 TO JUNE 30, 2018 AND TO LEVY A TAX ON CERTAIN REAL AND PERSONAL PROPERTY UNDER THE PROVISIONS OF SECTION 6-203 OF THE TAX-PROPERTY ARTICLE OF THE MARYLAND CODE, AS AMENDED

WHEREAS, Maryland Code, Local Government Article, Section 5-202, as amended, grants to the legislative body of every incorporated municipality in Maryland, including the Town of Chevy Chase, general power to pass such ordinances not contrary to the Constitution of Maryland, or the public general law, as deemed necessary in order to assure the good government of the municipality, to protect and preserve the municipality's rights, property, and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort and convenience of the citizens of the municipality;

WHEREAS, Maryland Code, Local Government Article, Section 5-205, as amended, authorizes the legislative body of each municipal corporation in the State of Maryland to spend money for any public purpose and to affect the safety, health, and general welfare of the municipality and its occupants;

WHEREAS, Maryland Code, Tax-Property Article, Section 6-203, as amended, grants authority to municipal corporations to levy a tax on personal property, land, and improvements thereon, within the municipal corporation;

WHEREAS, Section 301 of the Town of Chevy Chase Charter authorizes the Town Council to pass ordinances as it may deem necessary for the good government of the Town; for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger and destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare and happiness of the resident(s) of the Town; and for such other police and health matters as it may deem necessary;

WHEREAS, pursuant to Section 501 of the Town of Chevy Chase Charter, the Town operates on an annual budget;

WHEREAS, Section 503(a) of the Town of Chevy Chase Charter authorizes the Town Council to levy and collect from the owners of real and/or taxable tangible personal property used in a trade or business in the town, tax on the assessed valuation of the real and/or taxable

tangible personal property used in a trade or business within the boundaries of the Town at a rate or rates set by the Town Council;

WHEREAS, the Town Council introduced the following Ordinance in public session assembled on the 17th day of April, 2017;

WHEREAS, the Town Council, after proper notice to the public, considered the following Ordinance at a public hearing held on the 2nd day of May, 2017; and

WHEREAS, the Town Council finds that the ordinance as hereinafter set forth is necessary for the good government of the Town; for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger and destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare and happiness of the residents of the Town.

NOW, THEREFORE, the Town Council does hereby adopt the foregoing Ordinance.

BE IT ORDAINED AND ORDERED, this ____ day of ____, 2017, by the Town Council, acting under and by virtue of the authority given it by the Maryland Code and the Town of Chevy Chase Charter, that the attached Budget be and is hereby adopted.

AND BE IT FURTHER ORDAINED AND ORDERED, that the Town Council of the Town of Chevy Chase, pursuant to the authority granted by the Town Charter and Section 6-203 of the Tax-Property Article of the Maryland Code, hereby levies a tax at the following rates:

- (i) zero dollars and one cent (\$0.01) per One Hundred Dollars of assessable value (fair market value) on real property subject to taxation;
- (ii) zero dollars and zero cents (\$0.00) per One Hundred Dollars of assessed value of assessable business-owned personal property subject to taxation; and
- (iii) zero dollars and sixty-six cents (\$0.66) per One Hundred Dollars of assessed value of assessable utility property subject to taxation.

AND BE IT FURTHER ORDAINED AND ORDERED, by the Town Council, acting under and by virtue of the authority granted to it by the Maryland Code, and the Charter of the Town of Chevy Chase, that:

- (1) That the tax levied hereby be certified to the County Council for Montgomery County, Maryland;
- (2) If any part or provision of this Ordinance is declared by a court of competent jurisdiction to be invalid, the part or provision held to be invalid shall not affect the validity of the Ordinance as a whole or any remaining part thereof; and

(3) This Ordinance shall take effect on the 1st day of July, 2017.

ATTEST:

TOWN OF CHEVY CHASE

Fred Cecere, Secretary

Scott Fosler, Mayor
Town of Chevy Chase