

**TOWN OF CHEVY CHASE
COUNCIL MEETING
TOWN HALL
December 10, 2018**

OPEN SESSION TO VOTE TO ENTER CLOSED SESSION (6:00 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 the Town's appeal procedures.

- I. GENERAL BUSINESS (7:00-7:15 p.m.)
 - A. Call to Order
 - B. Pledge of Allegiance
 - C. Approval of Minutes of October 22, 2018 Work Session on Voting Eligibility and November 14, 2018 Council Meeting
 - D. Acceptance of November 2018 Financial Report
 - E. Town Manager's Report
 - F. Public Comments

- II. PUBLIC HEARINGS (7:15-7:45 p.m.)
 - A. Public Hearing to Amend the Town Charter to Allow Non-U.S. Citizens to Vote in Town Elections

- III. COUNCIL DISCUSSIONS (7:45-9:00 p.m.)
 - A. Facility Use Policy During Power Outages
 - B. Draft State Bill on Municipal Planning/Zoning Authority
 - C. Project Updates:
 - 1. East West Highway Safety
 - 2. Purple Line Mitigation
 - 3. Bethesda Downtown Plan Implementation
 - 4. Dog Exercise Area
 - 5. Lee Dennison Sustainable Garden
 - 6. Zimmerman Park Pedestrian Pathway & Staircase
 - D. Public Services Committee Projects
 - 1. Permit Parking Program
 - 2. Town-Wide Traffic Study
 - 3. Traffic/Bicycle Safety Signage Improvements
 - 4. Meadow Lane/East West Highway Redesign

- IV. APPEAL HEARINGS (9:00-9:30 p.m.)
 - A. Public Hearing on an Appeal Regarding Fence Construction at 7400 Connecticut Avenue

- V. ADJOURNMENT (9:30 p.m.)

MEMORANDUM

I-E

TO: Town Council
FR: Todd Hoffman, Town Manager
RE: Town Manager's Report
DATE: December 10, 2018

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.

- Assisted Purple Line Mitigation Committee as follows:
 - Obtained additional information from MTA and PLTP/PLTC.
 - Met with acoustical engineer to discuss noise modeling. In July 2018, the Town Council appropriated a maximum of \$20,000 for this effort.
 - Attended meeting to discuss change order estimate and plans for higher noise wall adjacent to the Town.
 - Communicated with MTA consulting engineer re. stormwater management plans.
- Continued dialogue with SHA representatives and Edgevale residents re. pedestrian safety improvements on East West Highway, including improvements to the crosswalk at Edgevale Street.
- Communicated with MCPD re. possible speed cameras on East West Highway.
- Met with Land Use Committee members, et. al., to review Zimmerman Park water drainage report and discuss next steps.
- Assisted Long Range Planning Committee with responding to Bethesda redevelopment projects.
- Worked with Public Services Committee to respond to resident inquiries re. public safety, traffic and lighting issues.
- Met with Climate and Environment Advisory Group members to discuss “greening” Town operations.
- Assisted Centennial Committee with obtaining centennial proclamations from federal, state and local elected officials.
- Met with Councilmember Baskir and Town attorney to discuss non-U.S. citizen voting eligibility regulations and implementation issues.
- Attended municipal managers’ meeting to discuss small cell tower regulations.
- Reviewed and responded to draft state legislation re. municipal planning/zoning authority.
- Communicated with Montgomery County Department of Transportation about the Town’s interest in participating in dockless vehicles pilot program.
- Drafted revisions to Town’s facility use policy.
- Completed fall infrastructure repairs.
- Continued planning for A/V upgrades to the Town Hall.
- Recruited and conducted interviews for Management Assistant position.
- Worked with Community Relations Committee on special events.

Town of Chevy Chase
Summary of Proposed Charter Amendments to Allow Non-U.S. Citizen Voting

The following proposed amendments to the Town Charter would allow non-U.S. citizens to vote in Town elections. Currently, only U.S. citizens are eligible to vote in Town elections. The amendments would preserve the existing requirement that only U.S. citizens are eligible to serve on the Town Council.

Currently, Councilmembers must be “qualified” voters to be eligible to serve on the Town Council. Thus, if the voter qualifications are amended to include non-U.S. citizens, the Councilmember qualifications must also be amended in order to retain the existing requirement for Councilmembers to be U.S. citizens.

Also, the voter registration process would be amended to require the Town to undertake its own voter registration in order to register non-U.S. citizen voters who do not appear on the registration list that the Town obtains from the County. Currently, the Town does not conduct registration and relies upon the registration list provided by the County. The County list (which is derived from State registration) contains only U.S. citizens.

Section 202. Qualifications of councilmembers.

To be eligible to serve on the council, [Councilmembers] a person shall: (1) be a citizen of the United States; (2) have resided in the town for at least one (1) year immediately preceding their election; (3) [shall] be a qualified voter[s] of the town; and (4) [shall] continue to reside in the town for their term of office.

Section 401. Qualifications of Voters.

(a) Except as provided in subsection (b) below, [E]very person who: (1) is a citizen of the United States or, if not a citizen, is legally authorized to reside in the United States; (2) is at least eighteen (18) years of age; (3) has resided within the corporate limits of the town for thirty (30) days next preceding any town election; and (4) is registered in accordance with the provisions of this charter, is a qualified voter of the town. Every qualified voter of the town is entitled to vote at all town elections.

(b) A person is not qualified to be a voter if the person: (1) has been convicted of a felony and is currently serving a court-ordered sentence of imprisonment for the conviction; (2) is under guardianship for mental disability and a court of competent jurisdiction has specifically found by clear and convincing evidence that the person cannot communicate, with or without accommodations, a desire to participate in the voting process; or (3) has been convicted of buying or selling votes.

Section 403. Registration.

Voters may register for town elections according to such rules and regulations as may be established by the council from time to time. The town ~~[shall not have a separate registration of voters but]~~ shall accept registration as a voter in the State of Maryland ~~[Montgomery County]~~ for purposes of registration as a voter in the town provided the statewide ~~[county]~~ voter registration list ~~[identification]~~ reflects a home address within the town for that voter. A separate list of qualified voters who are not U.S. citizens shall be maintained by the town. The elections board shall keep the registration lists up-to-date by striking from the lists persons known to have died or to have moved out of the town.

NOTE: Underlining indicates language added to the Charter
~~[Brackets and Strikethrough]~~ denotes language deleted from the Charter

Charter Amendment Res. No.: 18-1
Adopted:
Effective Date:

TOWN COUNCIL OF THE TOWN OF CHEVY CHASE

A RESOLUTION TO AMEND SECTION 401 OF THE CHARTER OF THE TOWN OF CHEVY CHASE

This Resolution of the Council of the Town of Chevy Chase is adopted pursuant to the Constitution of Maryland, Article XI-E, the Maryland Code, Local Government Article, Section 4-301, *et seq.*, and the Charter of the Town of Chevy Chase, to amend Section 401 of the Charter to allow non-U.S. citizens to qualify to vote in Town elections.

Section 1. BE IT RESOLVED BY THE TOWN COUNCIL, that said Section of the Town Charter be amended to read as follows:

Section 401. Qualifications of Voters.

(a) Except as provided in subsection (b) below, [E]very person who: (1) is a citizen of the United States or, if not a citizen, is legally authorized to reside in the United States; [,] (2) is at least eighteen (18) years of age; [,] (3) has resided within the corporate limits of the town for thirty (30) days next preceding any town election; [,] and (4) is registered in accordance with the provisions of this charter, is a qualified voter of the town. Every qualified voter of the town is entitled to vote at all town elections.

(b) A person is not qualified to be a voter if the person: (1) has been convicted of a felony and is currently serving a court-ordered sentence of imprisonment for the conviction; (2) is under guardianship for mental disability and a court of competent jurisdiction has specifically found by clear and convincing evidence that the person cannot communicate, with or without accommodations, a desire to participate in the voting process; or (3) has been convicted of buying or selling votes.

NOTE: Underlining indicates language added to the Charter
[Boldface Brackets] denote language deleted from the Charter

Section 2. AND BE IT FURTHER RESOLVED, that the date of the adoption of this Resolution is _____, 2018 and that the amendment to the Town Charter hereby proposed by this enactment shall be and become effective on _____, 2018 (fifty (50) days from adoption), unless a proper petition

for a referendum hereon shall be filed as permitted by law on or before _____, 2018 (forty (40) days from adoption).

Section 3. AND BE IT FURTHER RESOLVED, that a complete and exact copy of this Resolution shall be posted at 4301 Willow Lane, Chevy Chase, MD 20815 for at least forty (40) days following adoption and a fair summary of this Resolution shall be published in a newspaper of general circulation in the Town of Chevy Chase not less than four (4) times, at weekly intervals, within a period of at least forty (40) days starting immediately after the date of adoption.

Section 4. AND BE IT FURTHER RESOLVED, that as soon as the amendment hereby enacted shall become effective, either as herein provided or following a referendum, the Mayor shall send, by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, to the Department of Legislative Services, the following information concerning the amendment: (i) the complete text of the amendment as hereby enacted; (ii) the date of the referendum election, if any, held with respect thereto; (iii) the number of votes cast for and against the question concerning the amendment, whether by the Town Council or in a referendum; and (iv) the effective date of the amendment.

Section 5. AND BE IT FURTHER RESOLVED, that the said Mayor be and is hereby specifically instructed to carry out the provisions of Sections 3 and 4. As evidence of compliance herewith, the said Mayor shall cause to be placed in the Town files the following information concerning the amendment: (i) appropriate certificates of publication of the newspaper in which a fair summary of this Resolution shall have been published; and (ii) the return receipts of the mailing referred to in Section 4, and shall further complete and execute the Certificate of Effect attached hereto.

Barney Rush, Mayor

Kirk Renaud, Council Member

Cecily Baskir, Council Member

Joel Rubin, Council Member

Wicca Davidson, Council Member

ATTEST:

Kirk Renaud, Secretary

Charter Amendment Res. No.: 18-2
Adopted:
Effective Date:

TOWN COUNCIL OF THE TOWN OF CHEVY CHASE

A RESOLUTION TO AMEND SECTION 403 OF THE CHARTER OF THE TOWN OF CHEVY CHASE

This Resolution of the Council of the Town of Chevy Chase is adopted pursuant to the Constitution of Maryland, Article XI-E, the Maryland Code, Local Government Article, Section 4-301, *et seq.*, and the Charter of the Town of Chevy Chase, to amend Section 403 of the Charter to allow the requirements for voter registration to be established and amended from time to time by rules and regulations adopted by the Town Council, and to allow a list of non-U.S. citizen voters to be maintained.

Section 1. BE IT RESOLVED BY THE TOWN COUNCIL, that said Section of the Town Charter be amended to read as follows:

Section 403. Registration.

Voters may register for town elections according to such rules and regulations as may be established by the council from time to time. The town [shall not have a separate registration of voters but] shall accept registration as a voter in the State of Maryland [Montgomery County] for purposes of registration as a voter in the town provided the statewide [county] voter registration list [identification] reflects a home address within the town for that voter. A separate list of qualified voters who are not U.S. citizens shall be maintained by the town. The elections board shall keep the registration lists up-to-date by striking from the lists persons known to have died or to have moved out of the town.

NOTE: Underlining indicates language added to the Charter
[Boldface Brackets] denote language deleted from the Charter

Section 2. AND BE IT FURTHER RESOLVED, that the date of the adoption of this Resolution is _____, 2018 and that the amendment to the Town Charter hereby proposed by this enactment shall be and become effective on _____, 2018 (fifty (50) days from adoption), unless a proper petition for a referendum hereon shall be filed as permitted by law on or before _____, 2018 (forty (40) days from adoption).

Section 3. AND BE IT FURTHER RESOLVED, that a complete and exact copy of this Resolution shall be posted at 4301 Willow Lane, Chevy Chase, MD 20815 for at least forty (40) days following adoption and a fair summary of this Resolution shall be published in a newspaper of general circulation in the Town of Chevy Chase not less than four (4) times, at weekly intervals, within a period of at least forty (40) days starting immediately after the date of adoption.

Section 4. AND BE IT FURTHER RESOLVED, that as soon as the amendment hereby enacted shall become effective, either as herein provided or following a referendum, the Mayor shall send, by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, to the Department of Legislative Services, the following information concerning the amendment: (i) the complete text of the amendment as hereby enacted; (ii) the date of the referendum election, if any, held with respect thereto; (iii) the number of votes cast for and against the question concerning the amendment, whether by the Town Council or in a referendum; and (iv) the effective date of the amendment.

Section 5. AND BE IT FURTHER RESOLVED, that the said Mayor be and is hereby specifically instructed to carry out the provisions of Sections 3 and 4. As evidence of compliance herewith, the said Mayor shall cause to be placed in the Town files the following information concerning the amendment: (i) appropriate certificates of publication of the newspaper in which a fair summary of this Resolution shall have been published; and (ii) the return receipts of the mailing referred to in Section 4, and shall further complete and execute the Certificate of Effect attached hereto.

Barney Rush, Mayor

Kirk Renaud, Council Member

Cecily Baskir, Council Member

Joel Rubin, Council Member

Wicca Davidson, Council Member

ATTEST:

Kirk Renaud, Secretary

Charter Amendment Res. No.: 18-3
Adopted:
Effective Date:

TOWN COUNCIL OF THE TOWN OF CHEVY CHASE

A RESOLUTION TO AMEND SECTION 202 OF THE CHARTER OF THE TOWN OF CHEVY CHASE

This Resolution of the Council of the Town of Chevy Chase is adopted pursuant to the Constitution of Maryland, Article XI-E, the Maryland Code, Local Government Article, Section 4-301, *et seq.*, and the Charter of the Town of Chevy Chase, to amend Section 202 of the Charter to maintain the requirement that councilmembers be U.S. citizens, as a result of an amendment to Section 401, allowing non-U.S. citizens to qualify for voting.

Section 1. BE IT RESOLVED BY THE TOWN COUNCIL, that said Section of the Town Charter be amended to read as follows:

Section 202. Qualifications of councilmembers.

To be eligible to serve on the council, [Councilmembers] a person shall: (1) be a citizen of the United States; (2) have resided in the town for at least one (1) year immediately preceding their election; [,] (3) [shall] be a qualified voter[s] of the town; [,] and (4) [shall] continue to reside in the town for their term of office.

NOTE: Underlining indicates language added to the Charter
[**Boldface Brackets**] denote language deleted from the Charter

Section 2. AND BE IT FURTHER RESOLVED, that the date of the adoption of this Resolution is _____, 2018 and that the amendment to the Town Charter hereby proposed by this enactment shall be and become effective on _____, 2018 (fifty (50) days from adoption), unless a proper petition for a referendum hereon shall be filed as permitted by law on or before _____, 2018 (forty (40) days from adoption).

Section 3. AND BE IT FURTHER RESOLVED, that a complete and exact copy of this Resolution shall be posted at 4301 Willow Lane, Chevy Chase, MD 20815 for at least forty (40) days following adoption and a fair summary of this Resolution shall be published in a newspaper of general circulation in the Town of Chevy Chase not less than four (4) times, at weekly intervals, within a period of at least forty (40) days starting immediately after the date of adoption.

Section 4. AND BE IT FURTHER RESOLVED, that as soon as the amendment hereby enacted shall become effective, either as herein provided or following a referendum, the Mayor shall send, by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, to the Department of Legislative Services, the following information concerning the amendment: (i) the complete text of the amendment as hereby enacted; (ii) the date of the referendum election, if any, held with respect thereto; (iii) the number of votes cast for and against the question concerning the amendment, whether by the Town Council or in a referendum; and (iv) the effective date of the amendment.

Section 5. AND BE IT FURTHER RESOLVED, that the said Mayor be and is hereby specifically instructed to carry out the provisions of Sections 3 and 4. As evidence of compliance herewith, the said Mayor shall cause to be placed in the Town files the following information concerning the amendment: (i) appropriate certificates of publication of the newspaper in which a fair summary of this Resolution shall have been published; and (ii) the return receipts of the mailing referred to in Section 4, and shall further complete and execute the Certificate of Effect attached hereto.

Barney Rush, Mayor

Kirk Renaud, Council Member

Cecily Baskir, Council Member

Joel Rubin, Council Member

Wicca Davidson, Council Member

ATTEST:

Kirk Renaud, Secretary

STAFF REPORT

IV-A

TO: Town Council
FR: Todd Hoffman, Town Manager
RE: Appeal of Decisions related to Town Building Permit F-18-33 and
Variance Approval V-18-19 (7400 Connecticut Avenue)
DATE: December 10, 2018

Description of Appeal:

Gary and Sarah Kessler, 3903 Virgilia Street, have filed an appeal related to decisions made by the Town Manager concerning a fence constructed at 7400 Connecticut Avenue pursuant to a variance approved by the Town Council in May of 2018.

The appellants assert that that it would be an error for the Town Manager to allow:

- (1) the fence to be constructed with tiers instead of a continuous top rail; and,
- (2) the measurement of the height of the fence to be based upon the finished grade instead of the preconstruction grade.

No final decision has been made by the Town with respect to the fence height, as height is typically confirmed during the final inspection. A final inspection has not been completed given the filing of the appeal. Staff has, however, measured the fence as it currently stands in order to assist the Council in resolving this appeal. Resolution of this appeal will provide guidance with respect to what additional work, if any, must be completed by the residents at 7400 Connecticut Avenue prior to final inspection.

As of December 7, the Town has received two letters (attached) related to the appeal.

Background:

Thad and Anne Inge, 7400 Connecticut Avenue, applied for a variance to install a fence in the Virgilia Street and Connecticut Avenue front yards of their property in April of 2018. At the variance hearing, held during the May 2018 Council Meeting, the Council approved installation of the fence, and the Town issued a building permit for the fence in July of 2018.

In October 2018, Mr. Kessler contacted the Town and raised concerns about the height of the fence and the installation of “tiered” fence panels. David Walton, the Town’s Permitting Manager, visited the property and found that portions of the fence were taller than allowed by the variance decision and building permit. Mr. Walton contacted the Inges and informed them of his findings. Consistent with past administrative practice, Mr. Walton informed the Inges that the fence could be brought into conformance by lowering the fence or by adjusting the grade of the soil adjacent to the fence, where practical. Both the Kesslers and the Inges were informed that the Town does not prohibit the installation of “tiered” fence panels. Subsequent to these conversations, the Inges have attempted to bring the fence into conformance by reducing the height of some sections of the fence and performing some regrading work. The Town has verbally

informed the Inges that some sections of the fence, including the gates, still remain taller than allowed.

Town Regulations:

- 1) Tiering: The Town's administrative practice is to measure the height of the fence to ensure it does not exceed the maximum allowable height. Fence applications, including for variances, do not typically show individual tiers. The subject variance approval (V-18-19) limits the maximum height of the fence in 3 areas but does not dictate whether the fence panels may be tiered.

- 2) Height: Building Code Sections 4-1 and 4-3 specifically provide that building height is measured from the lower of finished or preconstruction grade. Such a provision is not included for fences and walls. In many cases, the installation of a fence or wall includes the addition or removal of soils in order to level the yard or eliminate gaps at the bottom of a fence. The Town does not regulate grading, absent the need for a water drainage plan, and does not require a grading plan to be submitted with fence and wall permits. As such, fence height is confirmed from the finished grade upon final inspection.

Precedent:

Tiered fences are very common in the Town. Some pictures are attached. For example, front yard fences that were constructed with tiered panels following variance approval can be found at 3921 Aspen Street (2005) and 7508 Tarrytown Road (2007). Neither variance approval dictates whether the fence panels may be tiered.

Regrading work is common during fence installation. In many cases, a fence is installed as part of a larger landscaping plan, and major regrading work is done. In all cases, the fence height is measured from the finished grade. Soils are commonly brought in to level the ground under fence panels that are installed with a level top. In cases where the panels are the maximum height allowed, these soils bring the fence into conformance with the height requirements.

The appellants claim that the regrading has created drainage issues on public and private property. In this case, the Town's building regulations do not address drainage matters between private properties (i.e., no water drainage plan is required for the work that has been done). There does appear to be some ponding occurring on the sidewalk, but, upon staff inspection, it appears to be the result of a drainage system that was installed and is not a result of the fence installation.

Current Situation:

The Inges have removed the tiered portion of the fence along the shared property line with 3903 Virgilia Street. The fence adjacent to Connecticut Avenue continues to have tiered panels at several locations.

The fence measured to the current grade is too tall in a few areas. At the southwest corner of the property, three of the fence panels are approximately 3 inches too tall when

measured on the west side of the fence (the fence measures 46 inches in height, where a height of 43 inches was approved). The other segments of the fence, running north along the shared property line, are in compliance. In a few other locations, along the front property lines, undulations in the grade result in a portion of a panel being approximately 1 inch out of conformance even though the panel generally meets the height requirement.

Each of the gates are too tall when measured to the hardscape beneath. The hardscape is a few inches lower than the adjoining grade, on each side of the gates. The gate facing Virgilia Street has a maximum height of 52.5 inches measured from the ground to the highest point of the gate (where a maximum height of 43 inches was approved, as reflected in the approved site plan, attached). The rounded gate in front of the walkway on Connecticut Avenue has a maximum height of 77 inches (where a maximum height of 70.5 inches was approved). The gate at the driveway on Connecticut Avenue has a maximum height of 73.5 inches (where a maximum height of 70.5 inches was approved).

Council Decisions:

The Council is asked to decide the following questions:

- 1) Did the Town Manager err in allowing the fence to be constructed with tiered panels instead of a continuous top rail?
- 2) Did the Town Manager correctly apply the Town Building Code in allowing the fence height to be measured from the finished grade as opposed to the pre-construction grade?
- 3) What, if any, corrective actions should be required of the permit/variance holder?