

TOWN OF CHEVY CHASE  
COUNCIL MEETING  
TOWN HALL  
May 11, 2016, 7 p.m.

- I. GENERAL BUSINESS
  - A. Call to Order
  - B. Pledge of Allegiance
  - C. Oath of Office - Newly Elected Council Members
  - D. Election of Officers & Committee Liaisons
  - E. Approval of Minutes of April 13, 2016 Council Meeting and May 3, 2016 Annual Meeting
  - F. Approval of April 2016 Financial Report
  - G. [Town Manager's Report](#)
  - H. Public Comments
  
- II. VARIANCE HEARINGS
  - A. [Mich/Denning, 4400 Walsh Street, Front Yard Fence](#)
  
- III. TREE REMOVAL PERMIT APPEAL HEARINGS
  - A. [Kelly, 4112 Rosemary Street, Pin Oak](#)
  
- IV. PUBLIC HEARINGS & COUNCIL ACTIONS
  - A. [Public Hearing on an Ordinance Related to Curb Entrance Permits and Appeals](#)
  
- V. COUNCIL ACTIONS
  - A. [Approval of FY17 Budget and Tax Rate Ordinance](#)
  
- VI. COUNCIL DISCUSSIONS
  - A. Bethesda Sector Plan and Related Legal Assistance
  - B. Purple Line Mitigation
  
- VII. ADJOURNMENT

# MEMORANDUM

I-G

TO: Town Council  
FR: Todd Hoffman, Town Manager  
RE: Town Manager's Report  
DATE: May 11, 2016

This report highlights many 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:**

- Monitored Bethesda Sector Plan developments on behalf of the Town Council.
- Met with Community Relations Committee members to discuss Town communication tools and methods.
- Worked with Community Relations Committee, Climate and Environment Committee and Public Services Committee on special events.
- Continued working with the Land Use Committee on Stormwater Management and Sediment Control Ordinance.

## **Special Projects:**

- Produced election edition of the Forecast newsletter.
- Managed absentee ballot voting for 2016 election.
- Organized and attended annual meeting.
- Organized and attended public meeting re. utility work.
- Revised procedures and permits to reflect changes to Town tree ordinance.
- Finalized standard operating procedures for administrative variances.
- Received and distributed proposals for Bethesda Sector Plan legal assistance.
- Corresponded with County officials re. municipal tax duplication reimbursement.
- Continued oversight of Washington Gas and WSSC infrastructure repairs.
- Completed spring tree plantings (16 public, 9 private).
- Processed requests for traffic signs and street lights.

# STAFF REPORT

II-A

TO: Town Council  
FR: Todd Hoffman, Town Manager  
RE: Mich/Denning, 4400 Walsh Street, Front Yard Fence  
DATE: May 11, 2016

## **Variance Requested:**

Jim Mich and Tracey Denning, 4400 Walsh Street, propose to construct a 6 foot privacy fence within the front yard of their property along East Avenue. The proposed improvement is shown on the attached site plan. Town building regulations do not allow fences in front yards; therefore, a variance is required. A portion of the fence will replace an existing 4 foot fence.

## **Background:**

As of May 6, the Town has received two letters and one phone call (see attachments) supporting the request. Any additional comments received by the Town will be provided to the Council at the public hearing.

*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 is a corner lot with two front yards. The rear yard, back of house, and screened porch lack privacy. These conditions represent extraordinary conditions.
2. Approval of the variance is requested because conforming to the Town's building ordinance causes unusual practical difficulties. The existing 4 foot fence does not provide sufficient privacy, and the back of the house is exposed. The applicants have had several instances of trespassing in the rear yard and desire a taller fence that will make the rear yard and screened porch less visible and more secure.
3. The proposed fence will not be detrimental to the use and enjoyment of neighboring properties. The fence will look the same on both sides, so there won't be a "bad" side facing the street or neighbors. The proposed fence does not extend all the way to the East Avenue property line, and does not run the entire length of the house.
4. The request is the minimum necessary to overcome the exceptional condition that is causing the hardship. The request is nominal. Shrubbery and bushes would not provide the security desired by the applicants. There is an existing fence that will be increased in height by 2 feet and extended by only 16 feet.
5. The proposed fence does not impair the general plan of the Town. The fence will be installed without damaging any protected trees. There are a number of similar fences that already exist in the Town.

# STAFF REPORT

III-A

TO: Town Council  
FR: Todd Hoffman, Town Manager  
RE: Kelly, 4112 Rosemary Street, Tree Appeal – Pin Oak  
DATE: May 11, 2016

## **Appeal Information:**

David Kelly, 4112 Rosemary Street, has filed an appeal of a denied tree removal permit for a pin oak located in the front yard of 4112 Rosemary Street.

## **Background:**

On April 6, the applicant filed a permit application with the Town to remove the tree. The Town Manager found that the tree is a canopy tree that is not dead, dying, in danger of falling, or a hazard to the safety of persons or property; therefore, the permit application was denied.

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

## **Procedure:**

The Town Council shall consider the following factors in deciding whether to approve or deny an appeal request for a denied tree removal permit. The record of the appeal is attached.

1. The reasons cited by the applicant for wanting to remove the canopy tree.

*Staff note: The applicant claims that removal of the tree will allow for better treatment of storm water runoff given the large required tree protection area; that the tree is too large for its location in front of the proposed house; that the tree devalues that property; and that the construction of the house and related improvements will damage the tree even if tree protection measures are in place.*

2. The applicant's intention to plant replacement trees, with consideration of the number, size and desirability of species, and with a minimum goal of replacing the canopy tree to be removed.

*Staff note: The applicant proposes to plant two 3" oak trees in the rear yard, and is willing to discuss other alternatives with the Council.*

3. The applicant's intention to retain and protect existing trees.

*Staff note: There are no other protected trees on the property. Tree protection will be*

*required for the trees in the public right-of-way.*

4. The facts in support or opposition presented by town residents.

*Staff Note: The Town has received one letter (attached) from a resident requesting that the appeal be denied. Any additional correspondence will be provided to the Council at the hearing.*

5. Information provided by the town arborist.

*Staff note: The denied tree removal permit application detailing the tree condition and a report from the Town Arborist is attached.*

6. The extent to which no alternative to canopy tree removal exists that would allow the proposed development, construction, or land use otherwise permitted under the town building code.

7. The desirability of preserving a canopy tree by reason of its age, size or outstanding qualities, including uniqueness, rarity or species.

*Staff note: A description of Pin Oak trees from the Manual of Woody Landscape Plants is attached.*

8. The overall effect on the tree canopy of the adjacent properties, the neighborhood and the town.

9. The aggregate or cumulative effect of the proposed canopy tree removal(s), including any and all canopy tree removals from the property within the prior two-year period.

*Staff note: No canopy trees have been removed from the property in the prior two years.*

# MEMORANDUM

IV-A

TO: Town Council  
FR: Todd Hoffman, Town Manager  
RE: Public Hearing on an Ordinance Related to Curb Entrance Permits and Appeals  
DATE: May 11, 2016

On May 11, the Town Council will hold a public hearing on an ordinance to amend the Town's building code to expand the factors to be considered by the Town in granting curb entrance permits and to allow the Town Council to impose conditions in connection with related appeals. The Council introduced this ordinance at its April 13 meeting.

The purpose of the proposed ordinance is to address the impacts to Town streets and properties from current and proposed development adjacent to the Town. The proposed ordinance would ensure that the proposed construction or expansion of a curb entrance, driveway, driveway apron, or sidewalk would not interfere with the public health, safety, or welfare.

**Town of Chevy Chase  
Ordinance to Modify Section 4-9**

Resolution No.:  
Introduced:  
Adopted:  
Effective Date:

AN ORDINANCE TO AMEND TOWN OF CHEVY CHASE MUNICIPAL CODE SECTION 4-9 TO ADD FACTORS TO BE CONSIDERED BY THE TOWN MANAGER REGARDING CURB ENTRANCE PERMIT APPLICATIONS AND TO ALLOW THE TOWN COUNCIL TO IMPOSE CONDITIONS IN CONNECTION WITH APPEALS RAISED BY AGGRIEVED PERSONS.

WHEREAS, Maryland Code, Local Government Article, Section 5-202, as amended, authorizes the legislative body of each municipal corporation in the State of Maryland to pass ordinances that such legislative body deems necessary 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, 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, Section 702 of the Town of Chevy Chase Charter provides that the Town has control of all public ways in the Town except those that are under the jurisdiction of the State Highway Administration and, subject to the laws of the State of Maryland and the Town Charter, the Town may do whatever it deems necessary to establish, operate, and maintain in good condition the public ways of the Town;

WHEREAS, Section 703 of the Town of Chevy Chase Charter further provides that the Town may regulate and change from time to time the grade lines, width, and construction materials of any town public way or part thereof, bridges, curbs, and gutters;

WHEREAS, the intensification of development in areas adjacent to the Town has resulted in increased motor vehicle and pedestrian traffic hazards, traffic and parking congestion, and other detrimental impacts upon Town properties;

WHEREAS, traffic is anticipated to be further intensely increased at the Town borders as a result of the increased density and other development standards under consideration by the

Maryland-National Capital Park and Planning Commission (M-NCPPC) for the Bethesda Sector Plan;

WHEREAS, such traffic intensification will result in a much greater burden on residential streets within the Town and further motor vehicle and pedestrian traffic hazards, traffic and parking congestion, and other detrimental impacts upon Town properties;

WHEREAS, M-NCPPC staff has initially estimated that, in connection with future development according to the proposed Bethesda Sector Plan, traffic congestion at the intersections of Connecticut Avenue and East-West Highway, Connecticut Avenue and Bradley Lane, and Wisconsin Avenue and Bradley Lane (representing three corner boundaries of the Town) will exceed, or come close to exceeding, acceptable congestion standards, unless traffic remedial measures are implemented;

WHEREAS, the Town Council finds that the traffic impacts could be worse than initially anticipated by M-NCPPC staff, as a result of how Bethesda is ultimately developed;

WHEREAS, Section 4-9(b) of the Town Code currently provides that the Town Manager shall grant a permit to construct or expand a curb entrance, driveway, driveway apron, or sidewalk only if the proposed construction would comply with all laws, rules, regulations, and ordinances, and would not interfere with the public health, safety, or welfare;

WHEREAS, the Town Council finds that it is necessary to amend Section 4-9(b) to expand the express factors that the Town Manager should consider in determining whether the construction or expansion of a curb entrance, driveway, driveway apron, or sidewalk would interfere with the public health, safety, or welfare;

WHEREAS, after proper notice to the public, the Town Council introduced the following Ordinance in an open meeting conducted on the \_\_\_ day of \_\_\_\_\_, 2016;

WHEREAS, after proper notice to the public, the Town Council considered the following Ordinance in public session assembled on the \_\_\_ day of \_\_\_\_\_, 2016;

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.

THEREFORE, BE IT ORDAINED AND ORDERED, this \_\_\_ day of \_\_\_\_\_, 2016, by virtue of the authority given to it by the Maryland Code and the Town of Chevy Chase Charter, the Town Council of the Town of Chevy Chase does hereby adopt the following ordinance:

SECTION 1. BE IT ORDAINED AND ORDERED, this \_\_\_ day of \_\_\_\_\_, 2016, by the Town Council of the Town of Chevy Chase, acting under and by virtue of the aforementioned authority, that Chapter 4 of the Town Code is hereby amended to read as follows:

\* \* \*

**Sec. 4-2. - Building permit, in general.**

(a) Unless a permit has been issued by the town manager, it shall be unlawful for any person to:

\* \* \*

- (10) Construct, expand, replace, or remove a curb entrance, driveway, or driveway apron within a public right-of-way or on private property.

\* \* \*

**Sec. 4-9. - Driveways and driveway aprons.**

\* \* \*

(b) (1) The town manager shall grant a permit to construct or expand a curb entrance, driveway, driveway apron, or sidewalk only if the proposed construction would comply with all laws, rules, regulations, and ordinances, and would not interfere with the public health, safety, or welfare. In determining whether the construction would interfere with the public health, safety, or welfare, the town manager shall consider the following:

- (1) a. Location of street trees;
- (2) b. Location of fences, walls, hedges, berms, and shrubbery or other plant growth;
- (3) c. Location of public utilities;
- (4) d. Possible obstruction of visibility of or by pedestrian and/or vehicular traffic, **or other motor vehicle or pedestrian traffic hazards;**
- (5) e. Location of other public and private improvements in the public right-of-way;
- f. Location of other potential access points;**
- (6) g. Water drainage; ~~and~~
- h. Traffic and parking congestion;**
- i. Detrimental impacts on other public and private property in the town resulting from traffic, parking, noise, and/or litter; and**
- (7) j. Other factors as may be determined by the town manager to be necessary to protect the public health, safety, or welfare.

**(2) Any person aggrieved by a decision or action of the town manager under this section may file an appeal to the town council according to section 4-61. In addressing**

**such an appeal, the town council may affirm the decision of the town manager, may direct the town manager to issue a permit, or may direct the manager to issue a permit upon such conditions, terms, or restrictions as the town council may deem necessary to accomplish the intent and purposes of this chapter.**

(c) Construction. The applicant shall be responsible for all costs associated with initial construction and/or expansion of a curb entrance, driveway, and/or driveway apron.

(d) Maintenance. The town shall pay the cost of maintenance and repair of an existing curb entrance, driveway, driveway apron, and public sidewalk within a public right-of-way unless such maintenance or repair is necessitated by the actions of the property owner or the property owner's guests or invitees, except for wear and tear from ordinary use. The use of a driveway, or driveway apron, by trucks or construction equipment shall not be considered ordinary use. Notwithstanding the foregoing, the town shall not be obligated to pay the cost of maintenance and repair of any betterments, or alternative materials, installed by property owners.

(e) Removal. In the event a curb entrance, driveway, or driveway apron within a public right-of-way is removed, the owner(s) of the lot previously served by the curb entrance, driveway, and/or driveway apron shall restore the portion of the area within the public right-of-way from which the curb entrance, driveway, and/or driveway apron was removed by installing a curb, sidewalk, grass or other ground cover and/or plantings consistent with the adjacent area as determined by the town manager.

\* \* \*

**Sec. 4-61. - Appeals to the town council.**

Any person aggrieved by a decision or action of the town manager under this chapter may file an appeal to the town council. Such appeal shall be filed within thirty (30) days after issuance of the decision. The town manager shall transmit to the town council all documents and papers pertaining to the appeal which shall constitute the record on appeal. The town council shall hold a public hearing on the appeal. At least fifteen (15) days prior to the public hearing, the town shall post the property and provide written notification to all adjoining and confronting property owners and to all council members. The effective date of any decision shall be the date the council issues its written decision.

\* \* \*

SECTION 2. AND BE IT FURTHER ORDAINED AND ORDERED, this \_\_ day of \_\_\_\_\_, 2016, by the Town Council of the Town of Chevy Chase, acting under and by virtue of the aforementioned authority, that:

(1) 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

(2) This ordinance shall take effect on the \_\_\_ day of \_\_\_\_\_, 2016.

ATTEST:

TOWN OF CHEVY CHASE

\_\_\_\_\_  
Vicky Taplin, Secretary

\_\_\_\_\_  
Al Lang, Mayor  
Town of Chevy Chase

**Bold and Underline** indicates new material

~~Strike through~~ indicates material deleted

\* \* \* indicates material unchanged

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

Resolution No.:  
Introduced: April 13, 2016  
Adopted:  
Effective Date: July 1, 2016

**SUBJECT:** AN ORDINANCE TO ADOPT A BUDGET FOR FISCAL YEAR JULY 1, 2016 TO JUNE 30, 2017 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 13<sup>th</sup> day of April, 2016;

WHEREAS, the Town Council, after proper notice to the public, considered the following Ordinance at a public hearing held on the 3<sup>rd</sup> day of May, 2016; 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 11<sup>th</sup> day of May, 2016, 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 zero cents (\$0.00) 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 1<sup>st</sup> day of July, 2016.

ATTEST:

TOWN OF CHEVY CHASE

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Vicky Taplin, Secretary

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Al Lang, Mayor  
Town of Chevy Chase