

TOWN OF CHEVY CHASE
COUNCIL MEETING
TOWN HALL
June 8, 2016, 7 p.m.

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)(1) to discuss the appointment of legal counsel to assist the Town in responding to the Bethesda Downtown Plan; and pursuant to 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.

- I. GENERAL BUSINESS
 - A. Call to Order
 - B. Pledge of Allegiance
 - C. Approval of Minutes of May 11, 2016 Council Meeting
 - D. Approval of May 2016 Financial Report
 - E. [Town Manager's Report](#)
 - F. Public Comments

- II. COUNCIL DISCUSSIONS
 - A. Bethesda Downtown Plan

- III. PUBLIC HEARINGS & COUNCIL ACTIONS
 - A. [Public Hearing & Council Action on Bethesda Downtown Plan Legal Assistance](#)

- IV. VARIANCE HEARINGS
 - A. [Boccardi/Pavlica, 4411 Ridge Street, Rear Yard Setback](#)

- V. TREE REMOVAL PERMIT APPEAL HEARINGS
 - A. [JRK Builders, 4313 Elm Street, Red Oak](#)

- VI. COUNCIL ACTIONS
 - A. [Consideration of a Resolution to Designate the 4100 Block of Aspen Street as a Permit Parking Area](#)
 - B. [Introduction of an Ordinance Granting a Non-Exclusive Cable Franchise to Starpower Communications, LLC](#)

- VII. ADJOURNMENT

MEMORANDUM

I-E

TO: Town Council
FR: Todd Hoffman, Town Manager
RE: Town Manager's Report
DATE: June 8, 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:

- Met with individual Council members to discuss ongoing projects and issues.
- Coordinated volunteer recruitment for Town's special committees.
- Scheduled Council member meetings with Park and Planning and CCES officials.
- Scheduled and attended meeting with Councilmember Rush and State Senator Madaleno.
- Monitored Bethesda Sector Plan and Subdivision Staging Policy.
- Addressed numerous traffic control, street lighting and public safety issues with Public Services Committee.
- Continued working with the Land Use Committee on Stormwater Management and Sediment Control Ordinance.
- Worked with Community Relations Committee, Climate and Environment Committee and Public Services Committee on special events.

Special Projects:

- Scheduled and attended interviews for Bethesda Sector Plan legal assistance.
- Continued oversight of Washington Gas and WSSC infrastructure repairs.
- Scheduled meeting to explore flexible pavement solutions for Town sidewalks.
- Researched options for supervision/management of Town elections.
- Researched status of MD355 signalization project.
- Processed permit parking petition for 4100 block of Aspen Street.
- Processed requests for traffic signs and street lights.

MEMORANDUM

III-A

TO: Town Council
FR: Todd Hoffman, Town Manager
RE: Public Hearing & Council Action on Bethesda Downtown Plan Legal Assistance
DATE: June 8, 2016

At its June 8 meeting, the Town Council will hold a public hearing on a proposal to engage a law firm to assist the Town in continuing to respond to the proposed Bethesda Downtown Plan. The length of the engagement will be approximately 7 months, to coincide with final approval of the sector plan by the County Council, with an estimated cost between \$40,000 and \$55,000.

Attached are the two proposals the Town received in response to the RFP for legal assistance. On May 19, Councilmembers Rush and Bickerman and I met with Doug Bregman and Francoise Carrier of Bregman, Berbert, Schwartz and Gilday; and, on June 2, Councilmember Rush and I met with Casey Cirner of Miles & Stockbridge to discuss their respective proposals.

Council will discuss the proposals, the results of the interviews, and possible retention of legal counsel during the executive session on June 8.

STAFF REPORT

IV-A

TO: Town Council
FR: Todd Hoffman, Town Manager
RE: Boccardi/Pavlica, 4411 Ridge Street, Rear Yard Setback
DATE: June 8, 2016

Variance Requested:

Lauren Boccardi and Paul Pavlica, 4411 Ridge Street, propose to construct a screened porch onto the rear of their house. The project requires variances as follows:

- The screened porch would project 2.7 feet into the 36.7 foot required rear yard setback. Town building regulations do not allow a screened porch to project into a rear yard setback; therefore a variance is required.
- The screened porch has an eave that would project 3.7 feet into the 36.7 foot rear yard setback. Town building regulations allow an eave to project not more than 2.5 feet into a rear yard setback; therefore, a variance of 1.2 feet is required.

Background:

As of June 3, the Town has received two e-mails (attached) 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 location of the existing house on the lot represents an extraordinary condition. The Town's 36.7 foot required rear yard setback creates a very small buildable area in the rear yard, allowing a by-right improvement only 9.9 feet deep. The existing house is set back 2.7 feet behind the established front building restriction line, restricting the total allowable depth of the house compared to other houses on the block. *(Staff note: The Town allows a 1-for-1 reduction in the rear setback for a house, measured from the established front building line (EBL), if the EBL exceeds 30 feet. If this reduction was measured from the front building line of the house instead of the EBL, a sufficient credit would be given so that no variance would be necessary for the proposed screened porch and eave.)*
2. Approval of the variance is requested because conforming to the Town's building ordinance would be impractical and would cause undue hardship. The required rear yard setback unreasonably limits the homeowners' ability to construct a practically-sized screened porch,

impacting their ability to enjoy meaningful outdoor living space like a number of other houses along the block. There is no other location on the property to place a family-sized screened porch.

3. The proposed addition will not be detrimental to the use and enjoyment of neighboring properties. The rear yard is surrounded by a privacy fence and substantial foliage. The porch will be open and unimposing and consistent with the scale and style of the existing house. The screened porch will replace an existing wooden deck that extends 3.8 feet more into the rear yard than would the proposed screened porch, resulting in a proposed reduction of impervious surfaces and less encroachment into the rear yard.
4. The request is the minimum necessary to overcome the exceptional condition that is causing the hardship. The front of the existing house is set back 2.7 feet from the established building line, resulting in 2.7 feet less buildable space in the rear yard. The requested variance of 2.7 feet would allow the applicants to build a structure of the dimensions that would be allowed by right if the existing house were built at the established building line. The depth of the addition is the minimum necessary to meet the need for usable outdoor space.
5. The proposed relief would not impair the general plan of the Town. The location, style, and scale of the porch addition fit with the existing house and surrounding community. A porch that offers meaningful outdoor living space in keeping with the scale of the existing house and property will enhance the house both functionally and aesthetically.

STAFF REPORT

V-A

TO: Town Council
FR: Todd Hoffman, Town Manager
RE: JRK Builders, 4313 Elm Street, Red Oak
DATE: June 8, 2016

Appeal Information:

Fernando Guedes, representing JRK Builders, 4313 Elm Street, has filed an appeal of a denied tree removal permit for a red oak located in the side yard of the property.

Background:

On April 4, 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 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 is necessary to provide a safe working space during construction of a new house.
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 does not propose to install any replacement trees; however, landscaping will be installed.
3. The applicant's intention to retain and protect existing trees.
Staff note: Other trees on the property and in the public right-of-way will be protected in accordance with Town permitting requirements.

4. The facts in support or opposition presented by town residents.
Staff Note: The Town has not received any correspondence related to the request. Any correspondence received will be provided to the Council at the hearing.
5. Information provided by the town arborist.
Staff note: The denied tree removal permit application, and a summary sheet detailing the tree condition from the Town Arborist, are 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 Red 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 past two years.

Resolution No.:
Introduced: June 8, 2016
Adopted: June 8, 2016
Effective Date: June 8, 2016

**RESOLUTION OF
THE TOWN OF CHEVY CHASE**

**SUBJECT: Resolution to Designate Permit Parking Area
(4100 block of Aspen Street)**

WHEREAS, Section 15-31(a) of the Town of Chevy Chase Municipal Code (the “Town Code”) authorizes the Town Council to designate roads, streets, and other areas within the Town in which the parking of vehicles may be restricted, in whole or in part, during certain specified times, to vehicles displaying valid parking permits or guest cards; and

WHEREAS, in accordance with Chapter 15 of the Town Code, the Town Council designated the 7600 block of Maple Avenue as a permit parking area, Monday through Friday, from 7:00 am to 7:00 pm, as provided by Resolution No. 08-16; and

WHEREAS, in accordance with Section 15-31(e) of the Town Code, after a street or portion of a street has been designated as a permit parking area, any adjacent street shall be added to the designated parking permit area upon a petition to the Town Council supported by sixty (60) percent or more of the households of the adjacent street and upon completion of a survey or vehicle count; and

WHEREAS, residents of the 4100 block of Aspen Street, a street adjacent to Maple Avenue, submitted a petition, signed by more than sixty (60) percent of the households of said block, to designate the block as a parking permit area; and

WHEREAS, in response to the petition, a vehicle count was completed by the Town.

NOW, THEREFORE, it is, this 8th day of June, 2016, by the Town Council of the Town of Chevy Chase:

RESOLVED, the 4100 block of Aspen Street, between the intersections of Maple Avenue and Chatham Road, be and is hereby designated as a permit parking area, Monday through Friday, from 7:00 am to 7:00 pm, and the parking of vehicles in said parking permit area during said days and times shall be restricted to only vehicles displaying valid parking permits or guest cards issued by the Town; and it is further

RESOLVED, that the Town Manager be and is hereby authorized to issue appropriate parking permits and cause parking signs to be posted in the area, as necessary to implement this Resolution; and it is further

RESOLVED, that this Resolution shall become effective on June 8, 2016.

I, Fred Cecere, Secretary of the Town Council of the Town of Chevy Chase, hereby certify that the foregoing Resolution was adopted by the Town Council at its meeting on June 8, 2016.

Fred Cecere, Secretary
Town of Chevy Chase

**Town of Chevy Chase
Ordinance Granting Non-Exclusive Franchise for the
Operation of a Cable Television System**

Resolution No.:
Introduced: June 8, 2016
Adopted:
Effective Date:

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 5-204(d) and Section 1-708(c), as amended, authorize the legislative body of each municipal corporation in the State of Maryland to grant a franchise for a cable television system;

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 residents of the Town; and for such other police and health matters as it may deem necessary;

WHEREAS, Section 26-2 of the Town of Chevy Chase Code authorizes the Town Council to grant franchises in accordance with Chapter 26 of the Town Code;

WHEREAS, Starpower Communications, L.L.C. has applied for renewal of its non-exclusive franchise for the operation of a cable television system within Montgomery County, Maryland, including within the corporate limits of the Town of Chevy Chase;

WHEREAS, on behalf of the Town and other participating municipalities, Montgomery County, Maryland negotiated a franchise agreement renewal with Starpower Communications, L.L.C., upon the terms and conditions set forth in that certain Cable Franchise Agreement by and between Montgomery County, Maryland and Starpower Communications, L.L.C., and conducted a public hearing on said Franchise Agreement on May 3, 2016 (the "Franchise Agreement");

WHEREAS, the Franchise Agreement was approved by the Montgomery County Council on May 3, 2016;

WHEREAS, the Franchise Agreement is to be administered by Montgomery County, Maryland within the Town, according to Montgomery County Chapter 8A;

WHEREAS, the Town Council introduced the following Ordinance in public session assembled on the 8th day of June, 2016;

WHEREAS, the Town Council, after proper notice to the public, considered the following Ordinance at a public hearing held on the ___ day of _____, 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 uncodified Ordinance.

BE IT ORDAINED AND ORDERED, this ___ day of _____, 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 subject to Chapter 26 of the Town Code, a non-exclusive franchise for the operation of a cable communications system be and the same is hereby granted upon the following conditions:

1. Starpower Communications, L.L.C. shall enter into an agreement with the Town of Chevy Chase upon the same terms and conditions as are set forth in the Franchise Agreement; and

2. The franchise within the Town of Chevy Chase shall be effective from the effective date of the Franchise Agreement until the end of the term of the Franchise Agreement in the unincorporated areas of Montgomery County.

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 Town of Chevy Chase Charter, that:

1. The Mayor of the Town of Chevy Chase be and is hereby authorized to execute any and all documents necessary to effectuate the intent and purpose of this Ordinance;

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 _____ day of _____, 2016.

ATTEST:

TOWN OF CHEVY CHASE

Fred Cecere, Secretary

Scott Fosler, Mayor
Town of Chevy Chase