

**TOWN OF CHEVY CHASE
COUNCIL MEETING
TOWN HALL
September 14, 2016, 7 p.m.**

OPEN SESSION TO VOTE TO ENTER CLOSED SESSION (5:45 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)(8) to consult with legal counsel about pending litigation (ACT lawsuit).

OPEN SESSION (6:45 p.m.)

The Town Council will meet in open session to consult with Montgomery County government representatives about an unfunded accrued liability contribution to the Montgomery County pension plan.

REGULAR MEETING (7 p.m.)

- I. GENERAL BUSINESS
 - A. Call to Order
 - B. Pledge of Allegiance
 - C. Approval of Minutes of July 13, 2016 Council Meeting & Executive Session
 - D. Approval of July 2016 and August 2016 Financial Report
 - E. Town Manager's Report
 - F. Public Comments

- II. COUNCIL DISCUSSIONS
 - A. [Bethesda Downtown Plan and Subdivision Staging Policy](#)
 - B. Purple Line Mitigation
 - C. Stormwater Management & Erosion and Sediment Control Ordinance

- III. VARIANCE HEARINGS
 - A. [6910 Ridgewood Avenue, Front Yard Setback](#)
 - B. [7105 45th Street, Rear Yard Setback](#)

- IV. ADJOURNMENT

Public Hearing on the Montgomery County Subdivision Staging Policy
Testimony from Scott Fosler, Mayor, Town of Chevy Chase
September 13, 2016

I am pleased to testify here tonight, as Mayor of the Town of Chevy Chase. Because our community is adjacent to one of the major urban areas in the County, our residents have a vital interest in the Subdivision Staging Policy proposed for 2016 – 2020.

We appreciate very much the work and insights the Planning Board and staff have contributed in developing this proposed plan. We support many of the recommendations, such as those addressing school issues. But we believe that the changes recommended to transportation are more problematic; some we support, but others we oppose, such as eliminating the LATR and reducing the Transportation Impact Tax in Metro Station Policy Areas. In sum, we want a policy that will encourage responsible development, but also ensure responsible development - goals we all share.

SCHOOLS

The draft SSP makes a number of changes designed to address school overcrowding, while maintaining the principle that new development should contribute to the burdens it places on our schools. We support these changes in general. More specifically, we have reviewed the positions taken by the Montgomery County Council of PTA's and support the MCCPTA's positions.

TRANSPORTATION

The draft SSP recommends sweeping changes to the transportation tests and to the rate structure for the taxes and mitigation fees collected for new development. We focus on three issues: the LATR, the importance of collecting accurate and comprehensive traffic data, and the Transportation Impact Tax.

1. Exemption of Metro Station Policy Areas (like downtown Bethesda) from the Local Area Transportation Review (“LATR”)

We are deeply concerned with the proposed elimination of the Local Area Transportation Review in Metro Station Policy Areas, including downtown Bethesda.

We understand that there are weaknesses in the current LATR testing. We therefore support the recommendation that the impact on transportation from development be measured in “person trip” metrics rather than just vehicle use. We support the move to use more sophisticated measures that take into account delays and operational improvements, rather than only Critical Lane Volume. We also agree that there should be a Comprehensive LATR, which would identify and prioritize master planned infrastructure needs. Indeed, such a comprehensive study could serve as a lens to help us focus on the long stretch of Wisconsin Avenue that is slated for extraordinary development under the proposed Bethesda Downtown Plan.

However, the critical weakness of the proposal is that the Comprehensive LATR is undertaken only every other year, and is conceived to be merely a monitoring program, funded by the public, and with no means of requiring developer involvement in mitigation. We see three major problems:

- First, the program as proposed will be disconnected from the permitting process and too late to identify issues which potentially could have been addressed if considered during the permitting process. It is essential that the impact of individual projects on traffic be well understood, and mitigated as may be appropriate, before development permits are awarded. The Bethesda CBD is growing rapidly and must be able to consider every opportunity to mitigate traffic in the area. If the LATR check to address the infrastructure demands created by development is eliminated, Bethesda and its surrounding neighborhoods face an increased risk that development will create traffic that exceeds the area’s capacity to handle it.
- Second, the proposal makes no provision for developers building projects in MSPAs to contribute financially to the infrastructure needs identified by the Comprehensive LATR.
- Third, there is no discussion as to how results arising from the Comprehensive LATR will be taken into account in planning the Capital Improvements Program. What CIP projects are contemplated that would

actually mitigate congestion and/or address other infrastructure deficiencies which could arise?

In addition, if a goal is to reduce single-occupancy vehicle trips and increase multi-modal trips in Metro Station Policy Areas, as stated in the draft SSP, then assessing transportation demands of individual development projects through LATR traffic studies will help facilitate mitigation measures supporting that goal. Further, continuing LATR traffic studies in metro areas will allow these areas to benefit from the improvements in the LATR methodology that the Planning Board is recommending.

For these reasons, we do not support the draft SSP recommendation to eliminate the LATR in Metro Station Policy Areas. The obligation to undertake the LATR should remain.

We also suggest that the Council direct staff to develop a proposal which will combine the project specific requirements of mitigation and developer responsibility, with the broader perspective provided by a Comprehensive LATR. Such a policy should lead to the timely delivery of improvements in transportation access, with appropriate responsibility assigned to developers and government, while taking into account the cumulative development in an area.

2. Exemption of Metro Station Policy Areas (like downtown Bethesda) from the Transportation Policy Area Review (“TPAR”)

The proposed SSP would exempt Metro Station Policy Areas from the TPAR, because of their high level of existing transit service. We do not oppose this recommendation, provided that the Planning Board continues to collect crucial transportation access data. The draft states that “The recommended new approach does not mean that the [current] roadway metric would be entirely abandoned. Staff recognizes that the current TPAR methodology continues to have utility in the planning process and should be retained for use in assessing proposed master plan recommendations, evaluating capital programming needs and supporting travel monitoring efforts.”

We understand that Planning Board staff fully intends to continue to collect this data. But how would this be undertaken systematically? It is particularly important to define a clear process, since the draft Bethesda Downtown Plan proposes a new, untested idea for distributing density: a pool of unassigned density available on a first-come, first-served basis. The impact of this new density pool

idea is uncertain. It is therefore vital that the SSP continue to require roadway and traffic data collection and analysis. The obligation and timing for collecting this data should be clearly set out in the SSP, as well as how such data will continue to contribute to the development and review of master plans.

3. Transportation Impact Tax Reductions

We oppose reductions in the Transportation Impact Tax in MSPAs. We understand long standing County policy to have a lower rate for the Transportation Impact Tax for urban areas than for suburban and rural areas. This is accomplished through the adjustment factor to the general rates. In the proposed plan, general tax rates would not change materially, but the adjustment factors would. Residential development in MSPAs would be charged 25% of the base rate, rather than the current 50%. Commercial development would be charged 50% of the base rate, equal to the current rate.

We recommend that the adjustment factor for residential development be maintained at 50%, and not cut in half. We also recommend that the commercial rate be increased to 75%, which was the result of the Planning Board staff's original calculations for this draft. Given the need for funds to support necessary transportation infrastructure improvements and other important urban amenities, such as parks and open space, and considering the rapid pace of development in Bethesda, we see no need to provide a further incentive to developers by reducing taxes on development. Indeed, our major concern is how the accelerated pace of development in Bethesda will be addressed without the financial resources necessary for infrastructure improvements.

If the adjustment factor for residential development remains at 50%, and is increased to 75% for commercial space, the collected funds could continue to be used as set out in the County code: to contribute to the funding of the Capital Improvement Program, 9% of which is supported by this tax. Alternatively, some of the amount raised could be allocated for general-amenity-fund use within the MSPA.

We recognize that using some of the tax revenue for purposes other than traffic could require a change to the County code. However, the draft SSP asks the County to think broadly about transit and development and not be limited to the lens of vehicular traffic. While the draft does not make recommendations about parks, it does acknowledge that future SSPs should include this important part of infrastructure, noting that as density of MSPAs increases, the need for parks

increases. In that regard, the County Council soon will address the new sector plan for Bethesda. The proposed plan provides for a park impact fee to be paid by developers accessing newly created density – but at a rate less than half of the initial staff recommendation, and far less than what would be required to support the park program identified in the plan. So why not start building this amenity fund now, to broaden the funding base for critical infrastructure in the County’s major metro areas?

Thank you for considering our community’s comments. They are intended to promote and ensure responsible and sustainable development for the long term.

STAFF REPORT

III-A

TO: Town Council
FR: Todd Hoffman, Town Manager
RE: Vogelstein, 6910 Ridgewood Avenue, Front Yard Setback
DATE: September 14, 2016

Variance Requested:

Jacob and Rachel Vogelstein, 6910 Ridgewood Avenue, are proposing to construct a new covered front porch. The roof over the porch would project 8.4 feet into the 30.9 foot front yard setback. Town building regulations allow a roof over a porch to project not more than 3 feet into a front yard setback; therefore, a variance of 5.4 feet is required.

Background:

The applicants had applied for administrative approval of a similar variance request; however, objection to the approval of that request was received by the Town during the comment period, so it could not be approved administratively. The letters of objection received by the Town are attached.

Prior to requesting consideration of the variance at a public hearing, the applicants modified the request to reduce the encroachment of the roof by 0.4 feet and modified the stoop to conform to Town building regulations. As of September 9, the Town has not received any correspondence about the modified variance request. Any 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 established building line (E.B.L.) for property represents an extraordinary situation. 6910 Ridgewood Avenue has an E.B.L. that is significantly more stringent than the 25 foot minimum front yard setback. The current house was constructed closer to the front lot line than the other houses included in the E.B.L. calculation, severely limiting options for the construction of a porch. Porches similar to the proposed porch are a consistent feature of the neighborhood.
2. Approval of the variance is requested because conforming to the Town's building ordinance would be impractical. The E.B.L. does not allow the construction of a porch at the main entrance, leaving the owners and visitors without cover while standing at the door. The porch will also provide articulation to the existing façade, keeping it in character with the neighborhood.
3. The proposed porch will not be detrimental to the use and enjoyment of neighboring properties. The proposed porch at 6910 Ridgewood Avenue maintains the scale of the existing house and neighborhood. The projection of the proposed porch was determined by using the average set back from the front property line of the two neighboring porches (6908 and 6912 Ridgewood). Furthermore, the new porch protects the entry from the elements, which will benefit anyone entering the home through the front door.
4. The request is the minimum necessary to overcome the exceptional condition that is causing the hardship. The architects took the average setback of the neighboring porches into consideration to

determine the size of the new structure. The intent of this porch is to provide a transitional space from the street to the house, as well as improving the scale of the front façade by providing an articulating element at the entry.

5. The proposed porch does not impair the general plan of the Town. The design took the scale of the existing property and community into consideration. The new porch will provide a transitional area from the public to the private space which is a prevalent characteristic of the neighborhood.

STAFF REPORT

III-B

TO: Town Council
FR: Todd Hoffman, Town Manager
RE: Maisel, 7105 45th Street, Rear Yard Setback
DATE: September 14, 2016

Variance Requested:

Harvey Maisel and Andrea Boyarsky-Maisel, 7105 45th Street, are requesting consideration by the Council to modify a condition of a previously approved variance. At the April 2016 Council Meeting, the Council approved a variance request for a generator to be placed within the rear yard setback, with a condition that the generator not exceed a volume of 50 decibels at any receiving property lines. Following installation of the generator, the applicants commissioned a sound study, which determined that noise abatement required to achieve the required 50 decibel volume is impractical, and would require additional variances from both the Town and County. As installed, with no noise abatement, the generator creates a volume of 74 decibels at the nearest receiving property line.

The applicants are proposing to construct a sound barrier measuring 6.5 feet tall around the generator that will reduce the volume of the generator to not more than 57 decibels at any receiving property line.

Background:

As of September 9, the Town has not received any correspondence about the variance request. Any comments received by the Town will be provided to the Council at the public hearing.

To support the modification request, the applicants have submitted:

- An email requesting the modification;
- A site plan showing the generator and proposed sound enclosure;
- A report from Acoustical Design Collaborative, the acoustical engineer; and
- Technical information on the proposed noise barrier (Acousta Shield)

In addition, the variance decision from the April meeting and a fact sheet from the Montgomery County Department of Environmental Protection are attached.

Staff Note 1: The Montgomery County noise ordinance does not allow nighttime noise exceeding 55 decibels at a receiving property line. This regulation is typically enforced by the County by complaint. Their enforcement regulations allow a 2.5 decibel allowance for possible inaccuracies in the sound meter or the operator, so the proposed generator and abatement would likely be permissible to the County; however, they would enforce the regulation as they see fit.

Staff Note 2: The staff report serves to 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.