

REGULAR MEETING
BOROUGH COUNCIL
MALVERN BOROUGH
1 East First Avenue
Malvern, PA 19355

February 16, 2021
7:30 P.M.

PRESIDING: Amy Finkbiner, Ph.D., President

INVOCATION: David B. Burton, Mayor

1. ROLL CALL

PRESENT

Council President Finkbiner
Council Vice-President Grossman
Council Member Bones
Council Member Laney
Council Member Meisel
Council Member Phillips
Council Member Raynor
David B. Burton, Mayor

ABSENT

Council President Finkbiner announced that this evening's meeting was being held virtually due to the COVID-19 pandemic and as permitted under Act No. 15 of 2020. Council President Finkbiner announced the following guidelines for the meeting:

- Participants will be asked to identify themselves when being accepted into the meeting.
- The public will be muted during the meeting when the members of Borough Council are speaking.
- For each agenda item, the public will be unmuted and given an opportunity to comment and ask questions.
- Public Comment received via email will be read by the Borough Manager either during the topic on the agenda or the general "Public Forum" period.
- Participants wishing to comment must state their name and must speak one at a time.

2. APPROVAL OF AGENDA

A motion was made by Council Member Laney, seconded by Council Member Raynor, and carried by a vote of 7-0, to approve the agenda for the February 16, 2021 meeting of Borough Council as presented.

3. ANNOUNCEMENTS

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a. Recording of the Meeting

Council President Finkbiner asked in accordance with Resolution No. 787 if any member of the audience was recording the meeting. Council President Finkbiner noted that the meeting was being recorded for minute taking purposes, but the recording would not be posted on the Borough website.

No member of the audience identified themselves as recording the meeting.

b. Council President Finkbiner announced that Borough Council met in Executive Session on Thursday, February 4, 2021 for informational purposes with the Borough Solicitor.

c. Council President Finkbiner announced that Borough Council met in Executive Session on Tuesday, February 16, 2021 prior to this evening's meeting in order to discuss personnel matters.

d. Council President Finkbiner announced that the Malvern Public Library is now open for limited public browsing on the following days/times: Monday & Tuesday from 4:00 pm to 8:00 pm, Wednesday & Thursday from 4:00 pm to 6:30 pm, and Saturday from 9:00 am to 4:00 pm. Curbside pick-up is still available.

e. Council President Finkbiner announced that the Comprehensive Plan survey is live and a link is available on the Borough website. Please contact the Borough if you would like a physical copy of the survey to complete.

f. Council President Finkbiner stated that Borough Council would like to thank the members of the Public Works Department for their efforts during the recent snow events.

g. Council President Finkbiner announced that the Chester-Ridley-Crum Watershed Association is holding an invasive species removal on Saturday, February 20, 2021 and invited interested individuals to contact the Chester-Ridley-Crum Watershed Association if they are interested in volunteering.

4. MINUTES & REPORTS

a. APPROVAL OF MINUTES

A motion was made by Council Member Laney, seconded by Council Member Phillips, and carried by a vote of 7-0, to approve the minutes from the February 2, 2021 meeting of Borough Council as presented.

b. APPROVAL OF REPORTS

A motion was made by Council Member Bones, seconded by Vice-President Grossman, and carried by a vote of 7-0, to approve the Treasurer's Report, the Committee Reports

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for Finance and Administration, Public Safety, Public Works, the Chief of Police Report, the Code Enforcement Department Reports (Building Inspector's Report, Housing and Property Maintenance Report, and Zoning Report), the Superintendent of Public Works Report and the Manager's Report for the month of January 2021, as submitted.

c. BOROUGH COUNCIL COMMITTEE REPORTS

- Finance & Administration

Council Member Laney stated that the Finance & Administration Committee has not met since the January 19, 2021 meeting of Borough Council. The Committee is scheduled to meet on February 24, 2021. Information from that meeting will be reported at the March 16, 2021 meeting of Borough Council.

- Public Safety

Council Member Meisel stated that the Public Safety Committee has not met since the January 19, 2021 meeting of Borough Council. The Committee will be working to schedule a meeting prior to the March 16, 2021 Borough Council meeting.

- Public Works

Council Member Bones stated that the Public Works Committee met on February 11, 2021. Topics included the 2021 paving program, adjustments to the proposed bicycle pump track, work related to Second Avenue, policies related to the Public Works Department, the Jennings Lane stormwater concern, installing woods chips on the Battlefield walking trails, and the sidewalk/walking path connecting to Malvern Preparatory School.

Regarding the 2021 paving program, Council Member Bones stated that the Borough Engineer is going to bid out the paving of Ruthland Avenue and Green Street at this time and we will look to bid out the remaining projects in April. Certain projects are estimated to exceed the previous budget amounts based on the Borough Engineer's evaluations due to the need for more base repair than initially projected.

Regarding the adjustments to the proposed bicycle pump track, Council Member Bones stated that the Committee asked the Borough Engineer to make the following modifications:

- Elimination of the internal sidewalk components, except for a small area near the entrance.
- Install 6 ft. privacy fencing on the west and north sides and 6 ft. post/rail fence on the south and east sides. For the post/rail sides, we requested that the Engineer evaluate methods to prevent scaling.
- Move the landscape buffer closer to the western property line and install a berm for additional privacy.

- Installation of small seating areas in place of the sidewalk, such as benches and/or picnic tables.

The Borough Engineer has made these requested changes.

5. SPECIAL BUSINESS

a. RESOLUTION NO. 821 – AUTHORIZING THE EXECUTION OF A CABLE FRANCHISE AGREEMENT BETWEEN THE BOROUGH OF MALVERN AND VERIZON PENNSYLVANIA, LLC

Council President Finkbiner stated that this resolution would approve the new franchise agreement between the Borough and Verizon Pennsylvania, LLC. The franchise agreement will be for five (5) years and allows Verizon to locate FiOS infrastructure in the public right-of-way in order to provide service to the community subject to applicable fees paid to the Borough. The Borough engaged The Cohen Law Group through the Chester County Municipal Managers Consortium in order to complete the negotiations. Council President Finkbiner noted that the current franchise agreement expires in December 2021, but it is recommended that the agreement be executed at the Borough's earliest convenience.

Mayor Burton asked if this meant that new lines would be installed. Borough Manager Bashore stated that this was not the case and that this agreement allows Verizon to locate its FiOS infrastructure in the public right-of-way.

A motion was made by Vice-President Grossman, seconded by Council Member Phillips, and carried by a vote of 7-0, to approve Resolution No. 821, authorizing the execution of a cable franchise agreement between the Borough of Malvern and Verizon Pennsylvania, LLC.

b. EXPANDED OUTDOOR DINING FORBEARANCE AGREEMENTS

- Restaurant Alba – 60-day extension

Council President Finkbiner stated that Restaurant Alba is requesting a 60-day extension of their existing agreement for outdoor dining during the COVID-19 pandemic. All existing conditions are proposed to remain in place. Council President Finkbiner stated that the agreement would expire on April 19, 2021.

A motion was made by Council Member Raynor, seconded by Council Member Bones, and carried by a vote of 7-0, to approve the 60-day extension to the Outdoor Dining Forbearance Agreement for Restaurant Alba.

6. UNFINISHED BUSINESS

a. CONTINUED PUBLIC HEARING – CONDITIONAL USE APPLICATION FOR ROBERT & ARLENE RUGGIERO – 147 W. FIRST AVENUE – APPLICATION # CU-20-01

Council President Finkbiner announced that Borough Council will continue the Public Hearing to consider the Conditional Use application for Robert & Arlene Ruggiero regarding 147 W. First Avenue. The hearing was originally opened on January 19, 2021 and continued to this evening's meeting. The applicant is seeking Conditional Use approval pursuant to section 220-602(A)(5) of the Borough's Zoning Ordinance in order to construct a single-family detached dwelling unit with 25% building coverage.

A motion was made by Council Member Laney, seconded by Council Member Phillips, and carried by a vote of 6-0, to resume the public hearing for the Conditional Use application for 147 W. First Avenue. Vice-President Grossman reaffirmed her recusal from the Public Hearing due to the proximity of her property to the proposed project.

Council President Finkbiner turned the Public Hearing over to Alyson Fritzges, Esq., Borough Solicitor. Borough Solicitor Fritzges outlined the parameters for the continued hearing, including guidelines for public comment and the Borough's next steps in the Conditional Use process. Borough Solicitor Fritzges stated that a verbal decision may be issued at the next scheduled meeting and a written decision will be issued within 45 days of the close of the hearing.

Max O'Keefe, Esq., was present to represent the applicants, Robert and Arlene Ruggiero. Testimony was presented by John M. Robinson, P.E. (applicant's engineer), Dr. Robert Ruggiero, MD (property owner), and James Renehan (applicant's builder).

Borough Manager Bashore reaffirmed the following individuals as having been granted party status on January 19, 2021:

- Jamie Grossman – 143 W. First Avenue
- Stephen Gross – 206 W. First Avenue
- Deborah Hankins – 212 W. First Avenue
- Susan Horton – 230 W. First Avenue
- Michael & Karen Martinez – 142 W. First Avenue
- David & Joanne McQuiston – 133 W. First Avenue
- Anthony Celentano – 125 & 131 Prospect Avenue

Max O'Keefe, Esq., entered the following additional exhibits onto the record for the applicant:

- Exhibit A-11 a & b: Building footprint comparison
- Exhibit A-12: Rear yard elevation rendering for the proposed project

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Borough Solicitor Fritzges invited individuals who had been granted party status to enter exhibits on to the record.

Jamie Grossman, 143 W. First Avenue, entered the following exhibits onto the record:

Exhibit Grossman-1: Recommendation from the Malvern Planning Commission on the proposed amendments to the Malvern Borough Zoning Ordinance dated November 13, 2019.

Exhibit Grossman-2: A picture depicting the northwest rear property view of 147 W. First Avenue from the rear of 143 W. First Avenue.

Exhibit Grossman-3: An alternate picture depicting the northwest rear property view of 147 W. First Avenue from the rear of 143 W. First Avenue.

Exhibit Grossman-4: A picture depicting the view of 147 W. First Avenue from the master bedroom of 143 W. First Avenue.

Exhibit Grossman-5: A picture of the rear yard view of 143 W. First Avenue to the existing dwelling at 147 W. First Avenue.

Exhibit Grossman-6: A picture from the rear yard of 143 W. First Avenue to the east toward Powelton Avenue.

Public comment was presented by the following members of the public:

- Jamie Grossman – 143 W. First Avenue
- Deborah Hankins – 212 W. First Avenue
- Susan Horton – 230 W. First Avenue (email correspondence read into the record)
- Michael & Karen Martinez – 142 W. First Avenue
- David & Joanne McQuiston – 133 W. First Avenue
- Anthony Celentano – 125 & 131 Prospect Avenue
- Susan & Kenneth Sylvester – 144 W. First Avenue (email correspondence read into the record)

ALL TESTIMONY AND PUBLIC COMMENT WAS TRANSCRIBED BY COURT REPORTER CARA FITZPATRICK. TO OBTAIN A COPY OF THE OFFICIAL TRANSCRIPT AS PREPARED BY THE COURT REPORTER, PLEASE CONTACT THE MALVERN BOROUGH ADMINISTRATIVE OFFICE.

At the conclusion of all testimony and public comment, a motion was made by Council Member Phillips, seconded by Council Member Raynor, and carried by a vote of 6-0, to close the public hearing for the Conditional Use application for the property at 147 W. First Avenue.

7. NEW BUSINESS

a. Zoning Hearing Board

Council President Finkbinder announced that there are no new applications before the Zoning Hearing Board.

8. PUBLIC FORUM

Council President Finkbinder stated that Borough Council will now take comment from the public on any item not on the agenda.

John Buckley, 165 Church Street, stated that he received a notice from the Borough's Code Enforcement Officer regarding the accumulation of material on his front porch. Council President Finkbinder stated that Mr. Buckley should contact the Code Enforcement Officer regarding the notice.

Chris Buckley, 55 Ruthland Avenue, discussed the Borough's bicycle pump track project that was reviewed at the February 2, 2021 meeting. Mr. Buckley asked if the changes were put forward to lower the cost of the project. Council Member Bones stated that the Committee sent changes to the Borough Engineer and that an updated cost estimate is forthcoming. Council Member Bones noted that certain changes were included to reduce costs, while others were included to enhance the project.

Mr. Buckley stated that he has been researching this issue and noted a new item that he discovered. Mr. Buckley stated that he was hoping that the Borough Council would be open to hearing about an alternate location. Mr. Buckley proposed the idea of a land swap with the Willistown Conservation Trust and noted that this is a common practice. Mr. Buckley outlined the concept of the land swap. Mr. Buckley stated that there is also space in Randolph Woods outside of the woods where the proposed bicycle pump track could be installed. Mr. Buckley stated that he believes that this will serve many benefits, including environmental and cost savings benefits.

Mr. Buckley then began addressing a number of other points. Council President Finkbinder stated that she believes that several of these points have been raised in e-mail correspondence and asked if there were any new points. Mr. Buckley stated that he would like a response and would like a member of Borough Council to volunteer to be a direct contact so that he receives a response.

Council Member Bones stated that Borough Council has already voted to proceed with the grant application to Chester County and asked what the process would be for reversing that action. Council President Finkbinder stated that a new resolution would need to be adopted cancelling the authorizing resolution.

Council Member Phillips stated that there have been two (2) Randolph Woods task forces who have looked extensively at this issue. Council Member Phillips clarified the areas that

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are in the conservation easement area and outlined the planning efforts that have been done to date. Council Member Phillips noted that this has been part of a four (4) year planning process. Council Member Phillips discussed the costs and noted that the Borough has no obligation to install a buffer or berm, but is taking that action to reduce the impact on the neighboring properties. Council Member Phillips highlighted the condition of the area of the proposed project and his experiences cleaning the area in the Chester-Ridley-Crum Watershed Association. Council Member Phillips stated that he believes that this will be a beneficial for the community and none of these decisions have been made lightly.

Mr. Buckley stated that he appreciated the comments that Council Member Phillips made, but would like the Borough to research the option of a land swap and offered to contact them. Council President Finkbinder stated that this should be a Borough official and not an outside party. Council Member Phillips stated that he would be open to the Borough contacting the Willistown Conservation Trust, but did not believe that it was appropriate for an outside party to contact them.

Jamie Bemiller, 57 Ruthland Avenue, stated that she supported the proposal from Mr. Buckley.

Vice-President Grossman stated that the discussion is becoming circular and noted that the policy of the Borough is to not respond to correspondence outside of a public meeting.

Ms. Bemiller asked about the difference between the concerns presented at the earlier Conditional Use hearing and this matter. Vice-President Grossman discussed the provisions in the Borough's Zoning Ordinance. Ms. Bemiller discussed her knowledge and experience dealing with the Borough as it relates to the Zoning Ordinance. Council President Finkbinder stated that the Borough was listening to all sides and did not believe that Borough Council was ignoring their concerns. Ms. Bemiller stated that she believes that this project is a surprise and she has been highly involved her entire life. Ms. Bemiller stated that she believes that the location is unsafe. Council Member Phillips stated that he apologizes if Ms. Bemiller believes that she has not been properly notified. Council President Finkbinder apologizes if Ms. Bemiller was misled by the individual who sold her new home to her, but if they had contacted the Borough, they would have received the facts. Council President Finkbinder noted that if any member of Borough Council believed that this was dangerous, they would not be pursuing this project. Ms. Bemiller discussed safety concerns with Ruthland Avenue. Council President Finkbinder stated that the Public Safety Committee will review the conditions of Ruthland Avenue.

Marisa Buckley, 55 Ruthland Avenue, noted safety concerns with the access driveway for the Malvern Fire Company. Council President Finkbinder stated that a fence is proposed in order to mitigate concerns with the Malvern Fire Company.

Annette Kohli, 53 Ruthland Avenue, asked how parking will be addressed for this project. Council President Finkbinder stated that the topic of leasing back spots from the Comcast building and acknowledged issues with parking on Ruthland Avenue. Ms. Kohli stated that she

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did not understand why there was a rush on this project. Council Member Phillips stated that this has been part of a larger planning process and discussed the process.

Ms. Bemiller asked about the number of children each member of Borough Council had. Vice-President Grossman stated that the discussion had become objectionable. Chief Marcelli warned the public that discussions are not permitted to be argumentative. Chief Marcelli stated that he would have ended the current discussion sooner if this was an in-person meeting.

Council President Finkbiner stated that the Borough was willing to contact the Willistown Conservation Trust and that this should not be done by a third party. No member of Borough Council objected to this process.

Rebecca Stark, 51 Ruthland Avenue, asked about decisions on policy related to the bicycle pump track and those needed to be determined at this time. Council President Finkbiner stated that any operational decisions may be made in the future.

9. ADJOURNMENT

All business having been discussed, a motion was made by Vice-President Grossman, seconded by Council Member Bones, and carried by a vote of 7-0, to adjourn the meeting at 10:26 p.m.

Respectfully submitted,

Christopher Bashore
Borough Manager/Secretary