

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

February 5, 2019  
7:30 P.M.

PRESIDING: Council President Grossman

INVOCATION: David B. Burton, Mayor

PLEDGE OF ALLEGIANCE TO THE FLAG

1. ROLL CALL

PRESENT

Council President Grossman  
Council Vice-President Uzman  
Council Member Finkbiner  
Council Member Laney  
Council Member Meisel  
Council Member Raynor  
Council Member Siquett  
Mayor Burton

ABSENT

2. RECORDING OF MEETING

Council President Grossman asked in accordance with Resolution No. 714 if any member of the audience was recording the meeting.

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

3. APPROVAL OF MINUTES

A motion was made by Council Vice-President Uzman, seconded by Council Member Laney, and carried by a vote of 7-0, to approve the minutes of the meeting held on Tuesday, January 15, 2019, as submitted.

4. RESOLUTION NO. 780 – FINAL SUBDIVISION/LAND DEVELOPMENT PLAN FOR 155 CHANNING AVENUE (WOLFE INVESMENT PROPERIES LLC)

Brad Wolfe, property owner/applicant, Nicholas Vastardis, P.E., Project Engineer, and Scott Withers, Esq., Applicant's Attorney, were present on behalf of the project located at 155 Channing Avenue. Alyson Zarro, Esq., Alternate Borough Solicitor, and Michael Conrad, P.E., Alternate Borough Engineer, were present on behalf of the Borough.

Borough Manager Bashore summarized the proposed project, noting that the application proposes the subdivision of an existing 0.62 acre parcel into two (2) lots. The existing 4-unit multi-family dwelling unit is proposed to remain on lot #1 and a new single family detached dwelling unit is proposed for lot #2. Borough Manager Bashore stated that the vote at the Planning Commission resulted in a 3-3 tie.

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A motion was made by Council Vice-President Uzman to approve, subject to conditions, the plan entitled "Wolfe Investment Properties, LLC 155 Channing Avenue" prepared by Vastardis Consulting Engineers, LLC, dated October 23, 2018, last revised January 21, 2019, signed and sealed by Nicholas L. Vastardis, P.E., Registered Professional Engineer, proposed the subdivision of an existing 0.62 acre lot at tax parcel 2-4-235 into two (2) lots, with one (1) new single family detached dwelling unit proposed for construction and the existing four (4) unit apartment building proposed to remain pursuant to the Malvern Borough Land Development Ordinance of 2006, as amended ("Land Development Ordinance") for the development of certain property ("Property") in the Borough of Malvern ("Borough"), Chester County, Pennsylvania in the R-4 Residential Zoning District. Council Member Laney seconded the motion.

Council President Grossman asked if there were any questions from Borough Council. There were no questions from Borough Council at this time. Council President Grossman asked if there were comments from the public. The floor was open to public comment.

Sidne Baglini, 203 Channing Avenue, asked if Borough Council questioned why the Planning Commission vote was a tie and if any corrections were made to the plan. It was noted that no changes were made to the plan other than those discussed at the January 17, 2019 meeting of the Planning Commission. Council Vice-President Uzman stated that he spoke with members of the Planning Commission and was satisfied. Council Members Finkbiner and Sinquett noted that they were in attendance at the Planning Commission meeting where it was discussed. Council President Grossman, Council Member Laney, Council Member Meisel, and Council Member Raynor noted that they had discussed the matter with Borough Manager Bashore.

Glenn Diehl, Esq., stated that he represented neighboring property owners (Kurt & Isabel Leininger, Sidne & Norman Baglini, and Paul & Margaret Sidlick) and they were requesting three (3) changes: 1) a 10 ft. side yard with a 7 ft. wide construction easement, 2) off-street parking on lot #1 provided equal to what is required for the use in the Zoning Ordinance, and 3) depiction of a PECO easement on the plan.

Margaret Sidlick, 143 Channing Avenue, noted that she was concerned about root damage to the existing arborvitae tree line as a result of construction activity, which may result in the death of the trees. Council President Grossman asked if Ms. Sidlick had retained an arborist. Ms. Sidlick stated that an arborist has not been retained at this time.

Council Member Finkbiner asked about the replacement of the existing trees at 143 Channing Avenue and if that could be required. Borough Solicitor Zarro stated that the applicant would need to agree to this condition as it is an off-site improvement. Borough Engineer Conrad suggested conducting a field survey, obtaining photographic documentation of the existing trees, and replacing if the applicant is agreeable to replacement. Council Vice-President Uzman noted that digging out dead trees could do damage to living trees.

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Council Vice-President Uzman asked about the PECO easement. Borough Solicitor Zarro stated that no easement exists in the title for the property. Glenn Diehl, Esq., stated that PECO has an easement regardless and it must be shown on the plan.

Sidne Baglini, 203 Channing Avenue, stated that she researched easements through a conversation with PECO. Ms. Baglini was told that she needed to provide 15 ft. for access to the lines.

Danny Fruchter, 234 Channing Avenue, appeared before Borough Council, but refused to present his comments in accordance with the established Code of Conduct adopted by Borough Council and publicly posted at the meeting. Council President Grossman repeatedly cautioned Mr. Fruchter about his behavior prior to making his comments, warning him that his continued disruptive behavior during the meeting would result in his expulsion. Mr. Fruchter was permitted to speak after agreeing to conform to the Code of Conduct.

Mr. Fruchter stated that the PECO lines provide service to the entire neighborhood. Mr. Fruchter noted the requirements of section 181-511.F. of the Borough's Subdivision & Land Development Ordinance and that this plan would create a non-conforming lot. Council Member Finkbiner noted issues with this section of the ordinance and stated that the majority of zoning districts do not meet the width to depth ratio requirements prescribed. Borough Manager Bashore noted that the applicant has met the minimum lot width requirements prescribed in the Zoning Ordinance.

Sidne Baglini, 203 Channing Avenue, expressed concern over not providing additional parking on lot #1 and the death of trees adjacent to the property.

Council Vice-President Uzman stated that the applicant is working to preserve the existing dwelling unit on the property and that pushing too hard may result in the loss of both the house and parking on Channing Avenue. It was noted that the applicant was within his right to propose a 3-lot subdivision.

Mr. Wolfe stated that he was willing to work with Ms. Sidlick to protect her trees and is sensitive to her concerns. Council Member Raynor stated that she would not want to lose any trees and believes that documentation would be beneficial. Borough Solicitor Zarro stated that the applicant would need to agree to any condition of approval regarding the trees since they are off-site.

Danny Fruchter, 234 Channing Avenue, stated that no action taken by Borough Council this evening would prevent a 3-lot subdivision in the future.

Connie Scanga, 152 Woodland Avenue, asked if the house could be moved. Nick Vastardis, P.E., stated that the proposed house could not be moved.

Isabel Leininger, 211 Channing Avenue, asked about the role of the Planning Commission and asked if changes needed to be made to the Borough's ordinances. Council President Grossman stated that the Brandywine Conservancy has been retained to conduct a full review of the Borough's Zoning Ordinance. Ms. Leininger asked about damage on a

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neighboring property. Borough Solicitor Zarro stated that would be an issue between property owners that the Borough would not become involved in.

Council Member Meisel stated that an agreement between the neighbors was probably the best course of action as it relates to the trees. Council Member Sinquett noted that the trees are problematic and that Mr. Wolfe was within his rights to cut back any branches or overhang that was encroaching on his property.

Barbara Rutz, 212 Monument Avenue, stated that a neighboring property owner to her planted arborvitae that she believes has encroached on to her property. Ms. Rutz stated that this should not be Borough Council's concern as it is a private matter.

There being no further comments from Borough Council or the public, Council President Grossman called the vote. The motion to adopt Resolution No. 780, approving, subject to conditions, the plan entitled "Wolfe Investment Properties, LLC 155 Channing Avenue" passed by a vote of 7-0.

Council President Grossman called a brief recess prior to continuing the meeting in order to allow for the change in Borough Solicitor from Alyson Zarro, Esq., to Scott Yaw, Esq.

Prior to continuing the meeting agenda, Borough Solicitor Yaw commented on the discussion regarding trees planted along a property line. Borough Solicitor Yaw stated that he has argued cases regarding trees along property lines and there are determinations by the courts that tree roots are trespassers.

5. RESOLUTION NO. 781 – DISPOSITION OF PUBLIC RECORDS

A motion was made by Council Vice-President Uzman, seconded by Council Member Laney, and carried by a vote of 7-0 to adopt Resolution No. 781, authorizing the disposition of records of the Borough of Malvern pursuant to the Municipal Records Manual.

6. RESOLUTION NO. 782 – AUTHORIZING THE SUBMISSION OF AN APPLICATION FOR TRAFFIC SIGNAL APPROVAL TO THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

Borough Manager Bashore stated that before Borough Council this evening is proposed Resolution No. 782. This resolution is required as part of the Borough's Application for Traffic Signal Approval being submitted to the PA Department of Transportation (PennDOT) for the proposed pedestrian signals at the intersections of E. King St. and Church St. and E. King St. and Ruthland Ave. The resolution would authorize the Borough's Traffic Engineer to submit the applications.

A motion was made by Council Vice-President Uzman to adopt Resolution No. 782, authorizing the Malvern Borough Traffic Engineer, McMahon Associates, Inc., to submit an application for traffic signal approval to the Pennsylvania Department of Transportation for the installation of pedestrian crossing signals at the intersections of E. King St. and Church St. and E. King St. and Ruthland Ave. Council Member Laney seconded the motion.

Frank Venditti, 118 W. First Avenue, asked about the criteria and the kind of lights that were being discussed for King St. Council Member Meisel stated that the Borough evaluated the intersections for all-way stop control, but they were found not to meet the necessary warrants. Council Member Meisel noted that the lights were recommended by the Borough Traffic Engineer as part of the *Malvern Borough-wide Multimodal Transportation Study* and are designed to alert motorists to pedestrians. Council Member Raynor noted that there has been an increase in pedestrian traffic in the area as a result of the businesses in East Side Flats. Council President Grossman noted that the study is available for public review on the Borough website.

There being no further comment from Borough Council or the public, Council President Grossman called the vote. The motion to adopt Resolution No. 782, authorizing the submission of an application for traffic signal approval to the Pennsylvania Department of Transportation for the installation of pedestrian crossing signals at the intersections of E. King St. and Church St. and E. King St. and Ruthland Ave. passed by a vote of 7-0.

7. RESOLUTION NO. 783 – AUTHORIZING THE SUBMISSION OF AN APPLICATION FOR TRAFFIC SIGNAL APPROVAL TO THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

Borough Manager Bashore stated that before Borough Council this evening is proposed Resolution No. 783. This resolution is required as part of the Borough's Application for Traffic Signal Approval being submitted to the PA Department of Transportation (PennDOT) for the upgrade of the existing traffic signal at King St. and Warren Ave. This is part of the N. Warren Avenue Transit Project. The resolution would authorize the Borough's Engineer and Traffic Engineer to submit the application.

A motion was made by Council Vice-President Uzman, seconded by Council Member Laney, and carried by a vote of 7-0 to adopt Resolution No. 783, authorizing the Malvern Borough Engineer, Edward B. Walsh & Associates, Inc., and the Malvern Borough Traffic Engineer, McMahan Associates, Inc., to submit an application for traffic signal approval to the Pennsylvania Department of Transportation for the upgrade of the existing traffic signal at the intersection of King St. and Warren Ave. as part of the N. Warren Transit Project.

8. UNFINISHED BUSINESS

Council President Grossman stated there were no items for discussion.

9. NEW BUSINESS

a. Verizon Franchise Agreement

Borough Manager Bashore stated that Malvern Borough currently has franchise agreements with Verizon and Comcast that allow these entities to locate facilities in the Borough's rights-of-way in order to provide services to the community (e.g., cable television, internet, and telephone). The Borough's current agreement with Verizon will expire in 2021 (the franchise agreement with Comcast runs through 2024).

There are several Chester County municipalities who have franchise agreements with Verizon expiring at the same time. Recently, the idea of working jointly on the negotiations of a new agreement has been floated to municipalities in the County. In speaking with the Borough Solicitor, there is no issue with working on this as a multi-municipal effort. Working on these types of agreements jointly is also a fairly standard practice. The two municipalities leading this effort are West Goshen and Upper Uwchlan Townships.

The Cohen Law Group would be used to work on this issue and costs would be shared. A pricing proposal is being worked on by West Goshen and Upper Uwchlan Townships. Additionally, the Borough Solicitor shall also have a role as final reviewer of the new franchise agreement prior to submission to Borough Council for approval. To date, approximately 20 municipalities have expressed interest in participating in this effort.

Borough Manager Bashore stated that the group is working to obtain a cost proposal from The Cohen Law Group and that will be provided to Borough Council for final approval.

A motion was made by Vice-President Uzman, seconded by Council Member Raynor, and carried by a vote of 7-0 to authorize the Borough administration to participate in exploring the re-negotiating of the Borough's franchise agreement with Verizon on a multi-municipal basis.

b. Zoning Hearing Board

Borough Manager Bashore stated that there is one (1) new application for the Zoning Hearing Board. The application is for 156 West King Street. The applicant is seeking to house a personal trainer use in the basement of the apartment building currently under construction. A copy of the application has been attached. This application will be before the Zoning Hearing Board on February 25, 2019. Borough Manager Bashore noted that the application has not been reviewed by the Planning Commission.

The Zoning Hearing Board had been scheduled to hear the appeal of 331 Old Lincoln Highway on January 9, 2019. The applicant is appealing a Notice of Violation issued by the Zoning Officer for violations against sections 220-201, 220-701, and 220-2309 of the Zoning Ordinance. These sections pertain to the use of the property as a junk yard. The attorney for the applicant contacted the Borough Solicitor in regards to reaching a settlement. As settlement discussions are underway, the Zoning Hearing Board agreed to grant a continuance. The hearing has been continued until March 25, 2019.

No action was taken at this time.

c. Section 181-511.F. of the Borough's Subdivision & Land Development Ordinance

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A motion was made by Council Member Finkbiner, seconded by Council Vice-President Uzman, and carried by a vote of 7-0, to direct the Malvern Planning Commission to review section 181-511.F. of the Borough's Subdivision & Land Development Ordinance for possible amendment and/or deletion.

d. Section 220-2301 (Historic Preservation Standards) of the Borough's Zoning Ordinance

A motion was made by Vice-President Uzman, seconded by Council Member Laney, and carried by a vote of 7-0, to direct the Malvern Planning Commission to review the Historic Preservation Standards found in the Borough's Zoning Ordinance and recommend amendments accordingly.

10. PUBLIC FORUM:

Council President Grossman informed all present that Public Forum is the time to offer comments on any item not on the agenda and to bring any issues/concerns before Council.

Lynne Frederick, 227 E. Broad Street, thanked Borough Council for their hard work and dedication. Ms. Frederick stated that she understands the extensive time commitment involved and appreciates all of their efforts.

David Knies, Ph.D., 114 Warrington Way, echoed Ms. Frederick's sentiments. Dr. Knies noted that the issues raised by Borough Council in the past regarding inappropriate communication have begun to permeate the Planning Commission.

11. ADJOURNMENT

All business having been discussed, a motion was made by Council Vice-President Uzman, seconded by Council Member Laney, and carried by a vote of 7-0 to adjourn the meeting at 9:17 p.m.

Respectfully submitted,

Christopher C. Bashore  
Borough Manager/Secretary