

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

March 2, 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 March 2, 2021 meeting as presented.

3. ANNOUNCEMENTS

REGULAR MEETING

March 2, 2021

Page 2

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 Tuesday, February 23, 2021 for the purpose of meeting with the Borough Solicitor to deliberate on the Conditional Use application for 147 W. First Avenue. Vice-President Grossman did not participate as she has recused herself from this application.

c. Council President Finkbiner announced that Borough Council met in Executive Session on Tuesday, March 2, 2021 prior to this evening's meeting in order to discuss personnel matters.

d. 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. The survey will be open until the end of March. A link is provided on the agenda.

e. Borough Council thanked the members of the Public Works Department for their efforts this winter.

4. MINUTES & REPORTS

a. APPROVAL OF MINUTES

A motion was made by Council Member Laney, seconded by Vice-President Grossman, and carried by a vote of 7-0, to approve the minutes from the February 16, 2021 meeting of Borough Council as amended.

b. 2020 VOLUNTEER BOARD & COMMITTEE REPORTS

The 2020 Volunteer Board & Committee reports were presented to Borough Council as follows:

- Planning Commission – Carroll Siquett III
- Historical Commission – Lynne Frederick, former Historical Commission Chair
- Shade Tree Commission – Borough Manager Bashore presented on behalf of Chair Linda Burton
- Parks & Recreation Committee – Borough Manager Bashore presented on behalf of Chair Helise Bichesky, DO

- Environmental Advisory Council – Borough Manager Bashore presented on behalf of Chair Helise Bichefsky, DO

Council President Finkbiner thanked all the members of the Borough's volunteer boards and committees for their service and dedication during 2020. Borough Manager Bashore stated that the full reports will be posted on each committee's page on the Borough website.

5. SPECIAL BUSINESS

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

Council President Finkbiner stated that Borough Council will render its decision on the Conditional Use application for 147 W. First Avenue. The public hearing was closed on February 16, 2021. 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. Vice-President Grossman recused herself from the vote before Borough Council.

A motion was made by Council Member Laney to approve application # CU-20-01 to allow construction of a single-family detached dwelling unit with building coverage at 25% pursuant to Section 220-602(A)(5) of the Malvern Borough Zoning Ordinance, subject to the following conditions and with the understanding that as part of this decision, Council has made the determination that the proposed residence shall have a Prospect Avenue address:

- Applicant shall obtain any necessary zoning relief as a result of the residence having a Prospect Avenue address, in addition to any other zoning relief identified by the Borough.
- The garage shall be limited to two (2) bays. The ultimate location of the two (2) bays, within the yard shown on the plans, shall be decided after discussions with the Borough.
- All exterior utility items such as air conditioning condensers and generators shall be located on the northern part of the property and screened by either landscaping or fencing.
- Lighting on the rear of the property shall be limited to those that are activated by motion sensor.
- Landscaping shall be placed on the property as approved by the Borough.
- Roofs shall have an 8/12 rise-over-run.
- The residence shall be the size and shape of the footprint shown on the plan and the master bedroom wing and garage wing shall be limited to one-and-a-half stories.
- The residence shall be constructed consistent with the testimony and exhibits presented as part of the conditional use hearing.

Council Member Phillips seconded the motion. Council President Finkbiner asked if there were any comments from Borough Council on the motion. Council President Finkbiner noted that the rear yard will be on the east side due to the change to a Prospect Avenue address and would require a 25 ft. rear yard setback. The plan does not currently meet that requirement and would need relief from either the Zoning Officer or the Zoning Hearing Board.

There being no further comments from Borough Council, Council President Finkbiner opened the floor to comments from the public. There were no comments from the public.

Council President Finkbiner called the vote. The motion approving application # CU-20-01 to allow construction of a single-family detached dwelling unit with building coverage at 25% pursuant to Section 220-602(A)(5) of the Malvern Borough Zoning Ordinance, subject to conditions based by a vote of 6-0.

b. Malvern Borough MS4 Program – Pollution Reduction Plan

Council President Finkbiner stated that this update is to address comments received from the PA Department of Environmental Protection (DEP). The Pollution Reduction Plan serves as a document that outlines the Borough's plan to meet the regulatory requirements under its MS4 permit. The objective is to plan for the short-term reduction of pollutant loads within the term of the Borough's permit (five (5) years). Borough Council authorized the plan for public comment at the January 19, 2021 meeting. The plan was advertised in the January 22, 2021 edition of the Daily Local News and posted on the Malvern Borough website.

Borough Engineer Daley was before Borough Council to provide an over of the Pollution Reduction Plan (PRP) and the MS4 program as a whole. Borough Engineer Daley stated that the PRP has a goal of addressing water quality in the waterways in the municipality and this was implemented in the 2018 permit cycle. Borough Engineer Daley stated that the first draft was submitted in the DEP November 2017 and comments were received in March 2020. Borough Engineer Daley stated that the Borough must implement the PRP within five (5) years of the date of approval from DEP. Borough Engineer Daley stated that the PRP outlines potential projects, but they are subject to change as the Borough evaluates potential projects.

Borough Engineer Daley provided an overview of the two (2) watersheds in the Borough and outlined the potential projects for each watershed. The projects included streambank restoration to Little Valley Creek along N. Warren Avenue, segments of stream restorations in Randolph Woods and the Paoli Battlefield area, a potential basin retrofit project on the Malvern Fire Company property, and two (2) potential infiltration beds in the Randolph Woods area. Borough Engineer Daley stated that these projects are not intended to address development activity and these projects must address water quality.

Council Member Bones asked if Borough Council would make the decisions on the projects to proceed forward with. Borough Engineer Daley stated that the projects would be Borough Council's decision and he would prepare the necessary cost estimates for Borough

REGULAR MEETING

March 2, 2021

Page 5

Council's review. Borough Engineer Daley noted that grant funding would be researched, but the possibility for funding is limited. Borough Manager Bashore stated that these projects would be incorporated into the Borough's Capital Improvement Program.

A motion was made by Council Member Bones to approve the Pollution Reduction Plan for Malvern Borough and authorize the Borough Engineer to submit the plan to the PA Department of Environmental Protection. Council Member Phillips seconded the motion.

Council President Finkbinder opened the floor to public comment.

Danny Fruchter, 234 Channing Avenue, noted that a large amount of land in the Borough is in the hands of private owners and opined that there could be a large number of incentives that could be applied for retaining stormwater on existing properties. Mr. Fruchter asked if the PRP and the recommendations could be sent to the Environmental Advisory Council and Comprehensive Plan Task Force, noting that this would be of interest to both bodies. Borough Engineer Daley stated that the MS4 program only pertains to the stormwater system in the municipal public rights-of-way and does not include water that does not enter the municipal stormwater system. Mr. Fruchter discussed his property and the storm inlet installed as part of the Channing Avenue Streetscape Project. Borough Engineer Daley stated that the Borough has no regulatory authority to mandate stormwater work on existing properties, but did note that this could be encouraged and outlined methods of communicating that information. Borough Engineer Daley outlined the provisions of the Borough's stormwater management ordinance. Council President Finkbinder stated that the plan could be circulated to other Borough boards and committees as appropriate.

There being no further comment, Council President Finkbinder called for a vote. The motion approving the Pollution Reduction Plan for Malvern Borough and authorizing the Borough Engineer to submit the plan to the PA Department of Environmental Protection passed by a vote of 7-0.

c. EXPANDED OUTDOOR DINING FORBEARANCE AGREEMENTS

- Anthony's Pizza & Italian Restaurant

Council President Finkbinder stated that Anthony's Pizza & Italian Restaurant desires to enter into a new agreement for expanded outdoor dining. The original agreement expired on January 24, 2021. This new agreement would be identical to the previous one approved in 2020. Council President Finkbinder stated that this would extend until May 1, 2021.

A motion was made by Council Member Raynor, seconded by Council Member Phillips, and carried by a vote of 7-0, to approve the outdoor dining agreement with Anthony's Pizza & Italian Restaurant.

6. UNFINISHED BUSINESS

a. Update – Bicycle Pump Track

Council President Finkbiner stated that a grant application has been submitted to the Chester County Municipal Grant Program. Council President Finkbiner stated that awarding may be announced in late spring and an update will be provided when information is available. The grant application was for approximately \$92,000. Council President Finkbiner stated that the Borough spoke with the Willistown Conservation Trust (WCT) regarding a land swap and it was determined that this is not feasible since it is all one parcel. Council President Finkbiner noted that the WCT acknowledged that it would be possible to change the boundaries of the easement, but that is not an easy process and their needs to be a benefit for them. Council President Finkbiner stated that the possibility of placing the bicycle pump track in the grassy area of Randolph Woods was discussed, but it was determined that this was counter to the goal of removing biking from the Randolph Woods area.

Chris Buckley, 55 Ruthland Avenue, stated that he spoke with the WCT and his interpretation was different from what Council President Finkbiner explained. Mr. Buckley reviewed the contents of the conservation easement document. Mr. Buckley stated that he is of the opinion that if there is an alternative location that makes sense, those should be pursued. Mr. Buckley stated that the WCT would not object to taking over the proposed area and that this is sensitive land that would benefit the easement. Mr. Buckley stated that he contacted other land conservation organizations and was informed that amending the easement was possible. Mr. Buckley outlined his opinions regarding the cost and environmental impacts.

Council President Finkbiner stated that the Borough is aware that Mr. Buckley spoke with the WCT and that the Borough's conversation did not match Mr. Buckley's interpretation.

Carol Shanely, 127 W. First Avenue, stated that the Borough needs to appreciate what the community has and respect the available green space. Ms. Shanely stated that she did not believe that the proposed location is appropriate and opined that the Borough in general may not be an appropriate location. Ms. Shanely noted the fire company access drive and the impact this could have on response time. Council President Finkbiner stated that the Borough has been in discussion directly with the Malvern Fire Company and reviewed the grant applications that are being pursued for other areas of Randolph Woods.

Council Member Phillips stated that the rationale for the proposed location was for environmental reasons. Council Member Phillips stated that the trees on the proposed site are in poor condition. Council Member Phillips highlighted the planning process and stated that the goal is to improve the overall environmental health of Randolph Woods.

Joseph Lorusso, 59 Ruthland Avenue, stated that he is disappointed that the arguments being made are being dismissed by Borough Council. Mr. Lorusso stated that the residents have established a grassroots effort and outlined a petition being circulated. Mr. Lorusso challenged the statement of Council President Finkbiner that there is widespread community support and outlined deficiencies in the petition included in the Randolph Woods Master Site Plan. Mr.

REGULAR MEETING

March 2, 2021

Page 7

Lorusso opined that Borough Council is approaching this decision from an unrelenting position and stated that these decisions should be made in a conciliatory manner. Mr. Lorusso questioned why Borough Council would want its legacy to be one that divided the community. Mr. Lorusso urged Borough Council to take a different approach. Council President Finkbinder stated that Borough Council has been listening and she does not believe that any member has expressed animosity. Mr. Lorusso stated that Borough Council's dismissive attitude has created animosity.

Annette Kohli, 53 Ruthland Avenue, reviewed cost information for the proposed project, noting shortfall. Council President Finkbinder noted that the Borough may pursue other grant opportunities if this one is successful to offset the cost. Ms. Kohli discussed census information for the Borough. Ms. Kohli opined that the cost is too high for serving few residents. Council Member Phillips stated that the cost of the bicycle pump track is minimal compared to the costs of the buffer and fencing. Council Member Phillips stated that the Borough is trying to make this work for everyone and, if the Borough was seeking to cut costs, removing the buffer areas would be a first place to start, but that is not being considered. Ms. Kohli asked how much input the residents would have on the buffer plantings. Council Member Bones stated that the plantings have not been detailed and that the Borough would be open to their suggestions.

Tiffany Brouillet, 37 Ruthland Avenue, discussed issues pertaining to parking on Ruthland Avenue and believes that this use would exacerbate the existing parking issues. Ms. Brouillet stated that the location may not be appropriate. Council President Finkbinder stated that Borough Council is aware of the issues on Ruthland Avenue.

Jamie Bemiller, 57 Ruthland Avenue, stated that it is sad to see the community being divided and she feels dismissed by Borough Council. Ms. Bemiller stated that she believes that their opinions are being dismissed. Council President Finkbinder stated that she understands the impact that the residents are feeling and is sorry that the residents feel dismissed, but Borough Council is attempting to take everything in order to develop a plan that works best for everyone. Council President Finkbinder noted that she believes that concerns are being addressed through the inclusion of buffer plantings and fencing. Council President Finkbinder stated that the density of the Borough results in everything being close together.

John Buckley, 165 Church Street, stated that he believes that the wooded area behind Quann Park would be a nice location. Council President Finkbinder stated that this area cannot be considered because there are deed restrictions.

Chris Buckley, 55 Ruthland Avenue, reviewed the content of a press release issued by the Borough on February 18, 2021. Mr. Buckley asked if the residents could be apprised when any zoning or building permits are issued for this project as it is their intention to contest their issuance. Council President Finkbinder stated that she had no objection to the residents being notified, but was not sure if they applied.

There was no further discussion.

7. NEW BUSINESS

a. Zoning Hearing Board

Council President Finkbinder stated 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.

Council President Finkbinder stated that one (1) email public comment was received that should be read into the record. Borough Manager Bashore read the following public comment into the record from Ryan Miller, 37 Ruthland Avenue:

I would like to provide comments regarding the proposed pump park installation on Ruthland Avenue for the public forum on 2/2/21. As a homeowner on Ruthland avenue, I do not think that the planned location and size of the pump park are appropriate or in the best interest of the community of the borough. The main issues with the park are parking and the intended audience. If the park is made specifically for the borough residents age 10-13, which is a vast minority of the borough population, then building a \$200,000 (or even \$100,000) attraction at the expense of the borough taxpayers and borough owners privacy seems unwise. Additionally, living on Ruthland Avenue, parking is consistently an issue already without the additional burden of people driving into the borough to use the pump park. There is no available designated parking at the firehouse, or along the access road.

Thank you,

Ryan Miller

Kel Schmitt, 17 Channing Avenue, discussed the current Facebook contest being done by the Malvern Historical Commission. Mr. Schmitt stated that the winner receives a copy of Malvern Items.

Catherine Raymond, 6 Karen Drive, stated that the current contest runs until March 7, 2021.

John Buckley, 165 Church Street, stated that the Code Enforcement Officer has not responded to him in writing yet regarding a recent notice of violation that was issued. Mr. Buckley discussed water issues on his property and asked about curbing along the rear of his property. Borough Manager Bashore stated that Green Street was evaluated for curbing in 2019 and it was determined that the road was not wide enough to install curbing. Mr. Buckley discussed water issues on his property.

REGULAR MEETING

March 2, 2021

Page 9

9. ADJOURNMENT

All business having been discussed, a motion was made by Vice-President Grossman, seconded by Council Member Laney, and carried by a vote of 7-0, to adjourn the meeting at 9:07 p.m.

Respectfully submitted,

Christopher Bashore
Borough Manager/Secretary