

SPECIAL MEETING  
BOROUGH COUNCIL  
MALVERN BOROUGH

May 20, 2013  
7:30 P.M.

PRESIDING: Woody J. Van Sciver, President

INVOCATION: Gerard J. McGlone, Mayor

PLEDGE OF ALLEGIANCE TO THE FLAG

1. ROLL CALL: Council President Van Sciver  
Council Vice President Raymond  
Council Member Giandonato - ABSENT  
Council Member Macaleer  
Council Member Sponenbergh  
Council Member Uzman  
Mayor McGlone - Late

2. NEW BUSINESS:

a. Subdivision/Land Development Application of TAG Builders, Inc. for 217 S. Warren Avenue – Council President Van Sciver announced that this Special Meeting will be conducted as a Work Session of Borough Council. This will be Council’s first full discussion of the Plan. The Planning Commission’s comments on the Plan were received by Council last week. When a developer puts forth a subdivision plan, there is a mandated clock in which the Borough must respond to the application with an approval or rejection. Council needs to act tomorrow night at the Regular Borough Council meeting and since Borough Council hasn’t had much discussion about this Plan and if there are any issues that Council would need clarification for, Council can still get that information and act on the application tomorrow night.

Council President Van Sciver introduced Lou Colagreco, Esq., conflict counsel for this development project as our appointed counsel has worked for the developer in the past and it presented a conflict of interest for this application. Council President Van Sciver asked Mr. Colagreco about the procedure for approving or rejecting the proposed application this evening. Mr. Colagreco responded that they could discuss draft resolutions for tomorrow night after tonight’s discussions.

Council President Van Sciver announced that Council’s intent is to not take public comment on the Plan this evening. Council will have their own discussions, ask the developer questions, ask information from the Planning Commission and seek legal advice from our counsel. If a decision is made to vote on the application, then there will be a time for public comment.

Tom Galbally, President of TAG Builders, stated that he has been in front of the Planning Commission for almost one and one-half years. He is here tonight looking to get feedback from the Borough Council and suggestions on how to go forward.

Mr. Galbally introduced his engineer, Roman Dychdala and his daughter, Lauren Duffy, who works with him and who will be explaining the proposed plan. Tom stated that he has his

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home built in the Borough and has been living in this area for 32 years and believes in the Borough. He thought the Gable property was out of place and unsightly. He believes his project would be an improvement. He stated that they have listened to the Planners and that is why they made changes to their plans.

Lauren Duffy explained that when they came in one and one-half years ago, they came to the Planning Commission with two plans. One plan included four sets of twins with driveways out onto Warren Avenue and the second plan showed five single homes with two driveways onto Warren Avenue. The next sketch plan showed five single homes and an alley. They went to Roman to get a full set of engineering plans for review by Dan Daley. The driveway for the first home at the corner of Second Avenue and Warren Avenue was not 100 feet from the corner. They then came up with four houses facing Warren Avenue with another alley behind the homes and one house coming in from Second Avenue.

Council Member Uzman stated the plans in front of him show the driveway coming in off the alley and not off Second Avenue.

Mr. Galbally stated the changes were directed by the Planning Commission telling us they wanted all five homes off the alley. Mr. Galbally stated that his attorney, Andy Rau, Esq., sent over a letter this afternoon where he laid out the waivers they are seeking.

Council President Van Sciver asked, during the evolution of the Plan, from Sketch to where we are now, how did the discussion move forward with respect to the number of lots. How did that evolve? Ms. Duffy responded that there is enough area to do five single homes. Economically, we can't just do four homes, we would have to do five.

Council Member Raymond asked that Ms. Duffy explain how the economies work.

Ms. Duffy responded that they look at the sales point. They know what they could sell the homes for, there are lot costs, improvements, sidewalks, alley paving, sticks and bricks cost, acquisition and you think about what you could sell the homes for in the back end.

Council Vice President Raymond asked what they are estimating the cost to be for the price of the homes.

Ms. Duffy responded that she felt they would sell for \$600,000-\$700,000.

Council Member Sponenbergh asked how many square feet of living space they were contemplating.

Ms. Duffy responded that the homes would be two stories totaling about 3,000 s.f.

Mr. Galbally stated that to answer Ms. Raymond's question, there are a lot of infrastructure costs to extend the sewer, water, gas mains, demolition of the existing structures. The acquisition costs plus improvements costs is the reason it doesn't work with four lots.

Council President Van Sciver asked if they have had discussions with the Planning Commission about the actual size of the houses?

Mr. Galbally responded that they are conscious about the size but buyers want the homes to be maintenance free and want them to be about 3,000 s.f.

Council President Van Sciver asked about the size of the two new homes that front on Monument Avenue at Griffith Avenue. Ms. Duffy responded that Lot 2 is approx. 3,000 s.f. and

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Lot 1 is approx. 4,000 s.f. The average sale price was \$840,000 for the new homes on Griffith Avenue.

Council Member Macaleer asked how many waivers they were given for the project on Monument Avenue.

Ms. Duffy responded that they received a waiver for the road for a 50' right-of-way. The road was 28' wide with a 50' right-of-way.

Mr. Galbally stated that he has been building in Chester County for over twenty-five years and he has not had one plan that was waiver-free.

Council President Van Sciver asked if Mr. Galbally was familiar with the homes that were built by Mr. D'Annunzio at the corner of Griffith Avenue and King Street. Council President Van Sciver stated that he is trying to get an idea of how they fit into the neighborhood.

Ms. Duffy responded that she would guess they were 2,500 s.f. to 2,800 s.f. Their parcels are narrow and long and that is what you see in a lot of the urban settings.

Council President Van Sciver stated there has been a lot of chat over whether it is an alley or a driveway. Council had correspondence from a neighbor expressing concern over how it might impact his property with respect to cars parking and missing the driveways. If the cartway gets to be closer to the property line, if it is a driveway, how can that be addressed?

Mr. Dychdala responded that there is a 16' cartway for both a common driveway and an alley. Driveways must be five feet from the property line. A driveway requires a 35' driveway with a 16' cartway width.

Council Member Uzman questioned a turnaround at the end of the alley. He stated that he is looking at the right-of-way plans and what he sees as a turnaround is on private property. He stated that he finds it curious of whether it is an alley or a driveway, you have to go on private property to turn around. His concern is with the emergency vehicles because 16 feet is pretty narrow. He stated that he understands the subdivision ordinance and he's read all the correspondence, and he also looks at what is written and how the lawyers have interpreted it but he looks at the intent of the ordinance, as well. He looks at it as a common driveway addressing two or three houses. This plan proposes five houses using the common driveway. He considers an alley as a thru thoroughfare and a direct access to the house. On this Plan, he does not see a direct access. The driveway should go to the property line of the Borough and a turnaround should be provided.

Ms. Duffy stated that two driveways could go out onto Second Avenue but the Planning Commission didn't want access onto Warren Avenue.

Council Member Uzman responded that he agrees that you don't want to go onto Warren Avenue. He just has concerns about the turnaround and the width for emergency vehicles.

Ms. Duffy asked what he thought would be an appropriate width for the emergency vehicles.

Council Member Uzman replied that he would like to see 18-20 feet so you can get two vehicles going by at one time.

Mr. Dychdala stated that he doesn't see a problem with widening the cartway but the turnaround would be a problem for five lots.

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Mayor McGlone arrived at the meeting.

Council President Van Sciver stated that he thinks it might be good to get some feedback from the Planning Commission as he thinks there are a lot of good reasons for no curb cuts on Warren Avenue. Council President Van Sciver asked the Fire Chief for his comments.

Neil Vaughn, Fire Chief, reported that he did review both sets of plans. He stated that their maximum width for a fire truck is 14 feet when it is set up. The 16 foot cartway would give them space. For a minimum, they could make it work. Water supply in that area is good and the Plan is workable. Could it be better? Everything could be better. Fourteen feet is great for us. Warren Avenue is also good from a mutual aid perspective with companies who have larger apparatus.

Council Vice President Raymond asked how they plan to address issues of snow removal and maintenance on Gable's Alley.

Mr. Galbally responded that they would like to have a Homeowners Association or cross easement. With only five houses it makes it difficult to run a Homeowners Association. They are looking at a cross easement. They have had a lot of interest in this development. They are looking to have a turn-key operation with one person taking care of snow removal, maintenance, etc.

Council President Van Sciver asked if it was their intent to move towards a common driveway?

Mr. Galbally responded that they are looking at relief. The Planning Commission's recommendation to Borough Council was for five houses. They would be seeking relief from the 35 foot common driveway to 20 feet. The 35 feet contemplates easements for utilities and there is not a need for right-of-ways for utilities. The sewer main will go down the center of the driveway.

Council Member Uzman stated that Council has also received comments about the soil testing and asked what remediation would be taken, if necessary.

Mr. Galbally responded that they have not completed the soil testing but will comply with any government regulations that are required. He stated that he can't get a construction loan from his bank unless he can prove the soil conditions are satisfactory.

Council Member Uzman questioned the buffer between the Borough Hall and the properties and the fact they are intending to plant trees on Borough property that will act as their buffer. He would think the buffer would be on their property.

Mr. Galbally stated that was fine and that it could be on their property. Placing it on the Borough property was recommended by the Planning Commission.

Mr. Dychdala stated that the Planning Commission suggested it would be nice if they could use the Borough property to disperse some of the plantings and the applicant agreed to do that.

Council Member Uzman asked if there is any intent to put a buffer where the common driveway curls back?

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Mr. Dychdala responded that it is their intent to kick it back a little closer to Warren Avenue and put some plantings closer to the driveway for the property adjacent to the rear property line.

Council President Van Sciver asked Chris Mongeau, Chair of the Planning Commission, for an overview of the project.

Mr. Mongeau stated that this was a long process with a lot of deliberation between the attorneys, concerned neighbors and the Planning Commission members. Based upon what the developer stated, he did come to us and, as a group, we gave him some direction towards this final plan that the Planning Commission's recommendations are based upon. The Planning Commission recommended not to approve the plan. The Planning Commission felt the project didn't really speak to the character of the neighborhood. As you did see in our recommendation, individually we went through each one of the waiver requests in order to give the applicant direction going forward and we approved or rejected them individually.

Council President Van Sciver introduced Dave Knies, Chairman of the Comprehensive Plan Task Force, and asked if he could comment how the Plan conforms to the Comprehensive Plan. Mr. Knies stated that, despite the applicant's attorney at the Planning Commission's first May meeting saying we couldn't use the Comprehensive Plan, the Revitalization Plan or Zoning Ordinance, this project is in Planning Area #8. The mean lot size is 11,500 s.f. Mr. Knies feels the proposed five houses are just too dense and all of the problems the Planning Commission had dealt with derives from that density of five vs four homes. It is just plain too dense. It is a driveway, not an alley. The alleys in the Borough measured 25 feet. This project did not pass his last test of would he want to live next door to it. The Planning Commission did suggest the buffer being on Borough property.

Mr. Mongeau reported the reason the suggestion was made was if the Borough was building today, they would be required to buffer their parking lot from the adjacent residential properties. It really doesn't make a difference. The applicant said they would maintain it. The Planning Commission never really made a formal recommendation about the buffering. It doesn't affect any of the building envelopes, etc.

Council Member Van Sciver asked Mr. Colagreco if there was any reason the buffer has to be set from the side yard.

Mr. Colagreco responded there was not. Under the buffer requirements, buffering is required only for residential consisting of ten or more multi-family units, commercial, industrial, or intensive uses such as a junkyard. There is no buffer requirement for 4-5 lots. The only other time a buffer would be required is if it is determined by the Borough Council upon recommendation of the Planning Commission.

Council President Van Sciver stated he guessed the thought of the Planning Commission was the parking lot on the Borough property was elevated and car headlights would be shining through the windows of the houses and a buffer would be in order. The buffer could be within the side yard.

Mr. Knies stated that it also cleans up that area. Another thought about the driveway is that Section 513 allows the Borough to ask for "pull over" areas to provide safe passage of two

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vehicles. If you had 8'x20', maybe four of those along the driveway as the homes are large enough and it gives the ability to pull over.

Council Member Sponenbergh asked Mr. Colagreco to explain the purpose of waivers in this kind of exercise, how they are necessary, are we obligated to grant them and what do they do?

Mr. Colagreco explained that PA Law allows governing bodies to grant waivers. What's the rationale behind that? It is very difficult to write an ordinance that applies to every situation, especially in an older municipality. To abide by the requirements may provide an unnecessary hardship. If a waiver was granted or denied, the courts are uniformly hands-off and very deferential to the governing body. Subdivision waivers have a more relaxed standard of review. If a better plan is presented as a result of waivers, they can be granted.

Council Vice President Raymond stated that is one of the most discretionary areas in the SALDO. She stated that she was unable to find information on the waivers in the SALDO. Mr. Colagreco referred her to Section 802, which parallels the Municipalities Planning Code.

Mr. Colagreco stated it is up to Borough Council to grant the waivers and determine if the applicant has met the hardship requirements.

Council Member Sponenbergh referred to the discussion about depth of lots and the language of "generally not exceed". He needs to understand if this is just a suggestion that we attempt to get 2.5 or does the 2.5 mean "stop"?

Mr. Colagreco explained that "generally" is not precise. The applicant's attorney, because of that word "generally", feels it is not enforceable. If not capable of objective interpretation, it is not capable of understanding of what the term means. He would look at it as being subjective. There is no interpretation available. The applicant suggested the ordinance cannot be enforceable and the applicant has asked for a waiver in that regard. If it were litigated, I don't know how the Court would come down on that. I know the law doesn't favor subjective language.

Council President Van Sciver stated that someone found the driveway is an accessory use of the lot and that there are restrictions on setback requirements for accessory uses that exceed the SALDO and Zoning Ordinance. If the Plan was to move forward, will there be a zoning situation?

Mr. Dychdala responded that he would look at the ordinance. He believes the intent was to mean driveways or parking for driveways. Residential driveways cannot be closer than five feet from side and rear setbacks.

Mr. Colagreco stated that he would look at it and provide a response to Borough Council tomorrow.

Council President Van Sciver stated that it seems like the greatest concern of the Plan to date has been more the bulk size that we don't have regulatory control over regarding how big the houses will be built. Mr. Colagreco agreed that local government cannot control design or aesthetics of any building.

Council President Van Sciver asked if the developer would be amenable to some sort of compromise? Not so much as quantity of the dwelling units but the mass of the neighborhood.

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Is that something that you may see in having some flexibility in when addressing the Plan? Mr. Galbally responded that people want a small house but when you tell them what's in it, they want a bigger house. Ms. Duffy stated that on paper, the houses may look larger but since the lots are longer and more narrow, they won't look as big. Mr. Galbally stated that he wants to build something that sells and that people want.

Council President Van Sciver stated that one of the residents put together a model and it was impressive.

Mr. Galbally stated that one of his plans showed two twins and a single, but the SALDO was so restrictive that he would have needed twelve waivers. They have fully engineered two sets of Plans. They have direction from the Planning Commission but are getting push-back. The Gables have a right to sell their property for the maximum amount of money. Mr. Galbally stated he is trying to work with the Gables and he's trying to build something for the entrance to the Borough that would be attractive. The benefit with doing the twins, you have a common property line. He stated that he would then do a condo association that would take out a lot of the waivers that he would need. It would also create more green area in the project.

Ms. Duffy stated that both East Bradford and West Chester have cluster developments. She thought they were going in the right direction by taking the driveways off Warren Avenue.

Council President Van Sciver called for a ten minute recess.

Following the recess, Council President Van Sciver stated, in response to a question about a public address system, that in his twenty years of service to the Borough, there have only been four meetings where there were this many people in attendance. We apologize. We want the residents to come and we welcome you. There are a diminishing number of in-fill sites going forward.

Council President Van Sciver reported that the developer has offered an extension until July 2, 2013. President Van Sciver suggested that we not accept this extension unless the applicant agrees to provide renderings of the size of the homes in relation to the neighborhood as well as the homes on South Warren Avenue. President Van Sciver asked if Mr. Galbally would accept that caveat?

Council Vice President Raymond stated that she is a little skeptical about how informative those renderings will be. It may be less helpful than that implies but she's willing to hear what the rest of Borough Council thinks about it.

Council Member Macaleer stated that he would be in favor of the rendering. More information would be helpful.

Council President Van Sciver stated there are ways to produce renderings that are architecturally accurate to determine balance of scale.

Council Member Uzman suggested that instead of a rendering, he would like to see a model. The house to the east ( Dan Fruchters house) and houses for lots 1, 2, 3, 4 and 5 and maybe include South Warren Avenue. The side yards are close and the houses are close together. If you go down Warren Avenue towards King, you will see that the houses are close

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together but they are small. He would like to see a comparative with how they fit in with the neighborhood.

Council Member Sponenbergh stated that he agrees with Council Member Macaleer that seeing something to scale along with more information is better than what we have right now. He believes that what Mr. Galbally is proposing to do with the property is infinitely better than what it has been for the past thirty years; however, if you asked me to vote right now for five homes, I would vote no. I have to ask myself, would I like to live in one of those houses? I'm struggling with five in this space.

Mr. Galbally asked if he should come back with a by-right plan with driveways onto Warren Avenue, with twins, and again he's looking for Council's direction.

Council President Van Sciver stated that his feeling is that five singles would work if the houses vary in their size, but he doesn't know until he can see them. Council has no regulatory control over size or design.

Council Vice President Raymond believes two twins and a single might have been a better direction. But, getting a better perspective on your current proposal would be better.

Council President Van Sciver stated that he respects Zeyn's concern about access, but he would prefer less curb cuts. The issue is how the houses are lining up and how they present themselves. The Planning Commission is probably unanimous with a common driveway. The common driveway solves a lot of driveway issues. But, the size of the houses is a big concern.

Mayor McGlone stated his general impression is the same. He's concerned about the scale and the five houses. He believes it is a good idea to get the renderings. He would be against curb cuts on Warren Avenue. How do we make it work?

Mr. Galbally stated that a common driveway will require waivers.

Council President Van Sciver stated that as much as everyone is concerned about storm water management, there hasn't been a big push for additional green space. I don't have a problem with waivers for a common driveway in order to alleviate curb cuts. I also want to consider the neighbors. No curb cuts is "good stuff".

Mr. Dychdala stated that Council is putting them in a bad position with no curb cuts but only four homes and a common driveway.

Council Member Uzman stated that he thinks curb cuts on Warren are a mistake but his concerns as it exists is the width and turning around on the end. He also has concerns with these properties, a two car garage may not be enough. Where will all these people park if there was a party. I look at the plan and we have a 16 foot cartway to Lot 1. Lot 1 narrows to ten feet. Mr. Dychdala stated the Planning Commission made a recommendation to reduce it to 10 feet. The only person using it would be the residents.

Mr. Galbally stated if that is the concern, please give us direction. We can put two lots on the end and the other access would be onto Warren Avenue.

Ms. Duffy stated the better Plan would be to not have driveways onto Warren Avenue.

Council Vice President Raymond stated having a reasonable turnaround would be better. Perhaps two twins and a single would allow for a turnaround.

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Mr. Galbally stated they could go to 18 feet of paving and make it work. They will make it to a scale that the Borough is comfortable with.

Mr. Galbally stated that he will accept the conditions with the renderings.

Amy Finkbiner, a member of the Planning Commission, asked if the rendering would include a setback from the Channing Avenue property and she would want to see the scale of the development.

Council Members Uzman and Raymond indicated that they would still prefer to see a model.

Mr. Dychdala stated that they can do a 3D computer model.

Council Member Uzman stated that any time his was involved in a large development, they did a model. Mr. Galbally responded that they are only talking five homes.

Council would like to see the renderings prior to making a decision.

A motion was made by Council Vice President Raymond, seconded by Council Member Sponenbergh and unanimously carried by a vote of 5-0 to accept TAG's extension of time until July 2, 2013 for Council to render a decision.

3. ADJOURNMENT:

All business having been discussed, a motion was made by Council Member Uzman, seconded by Council Vice President Raymond and unanimously carried by a vote of 5-0 to adjourn the meeting at 9:27 p.m.

Respectfully submitted,

Sandra L. Kelley  
Secretary/Manager