

REGULAR MEETING  
BOROUGH COUNCIL  
MALVERN BOROUGH

May 21, 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

2. PUBLIC FORUM:

Council President informs all present that copies of the agenda are available at the front desk. This is a Public Session of Council. Should any citizen/taxpayer wish to offer comments on any item on the agenda, now is the time to bring those comments before Council. Are there any citizens/taxpayers who wish to bring before Council any item not on the agenda?

- a. Kristin Thomas, 326 E. Broad St., reported that a different artist had been commissioned for the mural on the rear of Gallagher's Auto Service facing the train station. Because the building sits back from the station, it requires a bigger, bolder design. We want to paint something to do with the Paoli Battlefield. There is a setback on the corner of the building. A picture of the Monument can be placed in this corner or we can paint the word Malvern in this corner. Ms. Thomas asked Council for their opinion. Following discussion, Council decided on having the word Malvern painted in this corner.

The property owner also wants to place a sign on the rear of his building and Ms. Thomas asked if the sign could be mounted on the roof so that it doesn't conflict with the mural design. Council directed Ms. Thomas to the Codes Officer.

Ms. Thomas also informed Council that the artist who had originally painted the dragon mural in the library (which was removed when the addition was put on the building) is willing to paint a new "mystery woods" mural in the library. Ms. Thomas asked if Council will approve this mural or if the library would approve it. Council felt it should be approved by the library since it is going in the library space.

Ms. Thomas talked about a mural on the sidewalk side of the steel bridge on Bridge Street. Great Valley Art students are interested in painting this mural that would be a theme of Malvern Today.

Ms. Thomas also reported that David Dellaporta is looking into having Carrie, the artist who is painting at Malvern Pizza, paint the rear of Eastside Flats where there are the two levels

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of concrete. The design they came up with is archways peeking through to a tree-lined streetscape that will promote Malvern and Eastside Flats.

Council Member Sponenbergh stated that a former Council Member had raised the question of whether a mural on the bridge would be distracting to motorists. Chief Marcelli did not feel the actual mural would be a distraction. He would only be concerned with the safety of the students painting the mural. Ms. Thomas stated that the students would only be painting on the side where the sidewalk exists.

b. Council President Van Sciver announced that a vacancy currently exists on the Malvern Borough Council. If you are interested in interviewing for this vacancy, please contact the Borough Manager at 610-644-2602, via e-mail at [malvern@malvern.org](mailto:malvern@malvern.org) or submit a letter of interest to Borough of Malvern, Attention Borough Manager, 1 E. First Avenue, Suite 3, Malvern, PA 19355. Inquiries will be accepted through June 10, 2013.

c. John Buckley, 165 Church Street, commented on the following:

1. Dogs defecating on his lawn;
2. No Parking on Church Street – he feels the problem is not the parking in front of the old fire house, but the people who don't stop at the stop sign in front of the old fire house and on Roberts Lane. He reported that he was almost struck on two occasions. He feels that if the tree was trimmed, it would help.
3. Parking at King & Woodland – buses have to back up to get around the corner. He feels that is a safety issue with children on the buses.
4. Mr. Buckley reported that he was pushed and assaulted by someone in the Borough but, after his initial report, no police officer called him back to discuss the assault.
5. Expressed concern about the safety of walking along Warren Avenue. He feels this is a safety issue that doesn't get addressed.

d. Frank Ortner, 144 Griffith Avenue, reported that he just heard that no formal invitations to participate in the Parade were sent to the Council and he apologized for that and invited all to participate and be a part of the Parade on June 2<sup>nd</sup>. Council President Van Sciver stated that he hoped that all of Council would be available to participate.

e. Kristin Thomas, 326 E. Broad Street, questioned whether buffering was considered on the back of Eastside Flats during the approval process, or was it not considered because it was across the railroad tracks?

Council President Van Sciver responded that the property is not adjacent to a residential area but is adjacent to the railroad tracks so buffering was not required.

f. Council President Van Sciver recognized Chris Mongeau, Chair of the Planning Commission, in the audience and thanked Chris for attending the Special Meeting last night. He stated that Chris was the focus of some correspondence from a resident on Channing Avenue that

almost casts aspersions on the quality of his work and not doing things up front. President Van Sciver assured Mr. Mongeau that Council is very happy that he and his fellow Commissioners are volunteers on the Planning Commission. President Van Sciver thanked Mr. Mongeau very much for his efforts.

3. APPROVAL OF MINUTES:

A motion was made by Council Member Uzman and seconded by Council Vice President Raymond to approve the minutes of the Regular Meeting held on Tuesday, April 16, 2013, as submitted.

Council Vice President Raymond asked that her comments on Page 8, 4<sup>th</sup> paragraph, second sentence, be amended as follows: "She sees the report as saying only that Malvern is an attractive location to home buyers. She thinks that the report is somewhat limited in purpose, and she does not believe the report meant to say that 600 homes could fit economically or desirably in the TOD development area."

The motion, as amended, carried unanimously by a vote of 5-0.

4. APPROVAL OF REPORTS:

A motion was made by Council Vice President Raymond, seconded by Council Member Uzman and unanimously carried by a vote of 5-0 to approve the Treasurer's Report, the Committee Reports for Finance and Administration, Public Safety, Public Works and the Chief of Police Report, the Code Enforcement Officer's 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 April 2013, as submitted.

Council Member Sponenbergh stated that he really likes the Chief's new reporting format that describes the incidents that have occurred, the times they occurred and the resolution of the incidents. Council President Van Sciver agreed.

5. PUBLIC HEARING – RENTAL PROPERTY

Council President Van Sciver announced that Borough Council will now open a public hearing to consider an ordinance to require housing licenses for all rental units within the Borough.

The Notice of Public Hearing was published in the Daily Local News on May 12, 2013, as required.

The Manager explained the purpose of the amended ordinance.  
There being no public comment, the public hearing was closed.

ORDINANCE NO. 2013-3 – RENTAL PROPERTY:

A motion was made by Council Member Macaleer, seconded by Council Member Sponenbergh and unanimously carried by a vote of 5-0 to adopt Ordinance No. 2013-3, an Ordinance amending Chapter 162 of the Borough of Malvern Code of Ordinances entitled “Rental Property” to require housing licenses for all rental units within the Borough.

6. PUBLIC HEARING – VEHICLES AND TRAFFIC:

Council President Van Sciver announced that Borough Council will now open the public hearing to consider an ordinance to establish stop intersections at certain intersections along Second Avenue and to prohibit parking on the east side of Church Street between King Street and Green Street.

The Notice of Public Hearing was published in the Daily Local News on May 12, 2013, as required.

Council Member Sponenbergh, Chair of the Public Safety Committee, explained the reasons for amending the ordinance.

There being no public comment, the public hearing was closed.

ORDINANCE NO. 2013-4 – VEHICLES AND TRAFFIC:

A motion was made by Council Member Sponenbergh, seconded by Council Member Uzman and unanimously carried by a vote of 5-0 to adopt Ordinance No. 2013-4, an Ordinance amending Chapter 200 of the Borough of Malvern Code of Ordinances entitled “Vehicles and Traffic” to establish Stop intersections at certain intersections along Second Avenue and to prohibit parking on the east side of Church Street between King Street and Green Street.

7. PUBLIC HEARING – PEDDLING AND SOLICITING:

Council President Van Sciver announced that Borough Council will now open the public hearing to consider an ordinance to require solicitation licenses for peddlers and solicitors going to private homes or residences or on the public streets or highways within the Borough.

The Notice of Public Hearing was published in the Daily Local News on May 12, 2013, as required.

Council President Van Sciver explained the purpose of this ordinance and the need to have people who go door-to-door properly licensed with a background check being one of the requirements.

There being no public comment, the public hearing was closed.

ORDINANCE NO. 2013-5 – PEDDLING AND SOLICITING:

A motion was made by Council Member Sponenbergh, seconded by Council Vice President Raymond and unanimously carried by a vote of 5-0 to adopt Ordinance No. 2013-5, an Ordinance amending Chapter 142 of the Borough of Malvern Code of Ordinances entitled “Peddling and Soliciting” to require solicitation license for peddlers and solicitors going to private homes or residences or on the public streets or highways within the Borough.

8. RESOLUTION NO. 664 – BOROUGH FEE SCHEDULE:

A motion was made by Council Member Uzman, seconded by Council Member Sponenbergh and unanimously carried by a vote of 5-0 to approve Resolution No. 664, a Resolution establishing fees charged for services of the Building/Zoning Department and the Administration Department of the Borough of Malvern.

9. OTHER BUSINESS:

a. TAG Development, 217 So. Warren Avenue – Council President Van Sciver reported that TAG Builders has granted Council an extension to make a decision on this application until July 2<sup>nd</sup>.

Council Member Macaleer stated that President Van Sciver made a statement at the Special Meeting that there wasn’t any cluster housing in the neighborhood and asked for some clarification.

Council President Van Sciver responded that cluster housing currently exists at Remington Lane, Tidewater, Brampton Chase on Sugartown Road in Willistown Township, etc. Many people may not consider Remington Lane to be cluster housing but because the open space for this development is actually in Willistown Township, it is cluster housing. Cluster housing is not a by-right provision in the current Zoning Ordinance. President Van Sciver stated his comment was directed to the argument that had been made that it wasn’t fitting in to the vernacular of the community, it is houses with street frontage. They were talking about turning the homes into little clusters of two.

Council Member Macaleer stated that it seems to him that the big issue is objection to the applicant putting five homes on this property. Everything else is a side show with the alley, driveway, buffer, etc. The applicant put all these various plans together and there seem to be issues with all of them. It all comes down to five houses. If that is the way that Council feels, we owe it to the applicant to tell him that rather than ask for lots of other things. The big issue is still the number of houses being proposed.

Council President Van Sciver responded that as Lou Colagreco, Esq., stated last night, to say we will get a plan with no waivers is not going to happen. He can produce a plan that conforms but would include driveways onto Warren Avenue. Neither the Planning Commission nor I would like to see a Plan with curb cuts out to Warren Avenue.

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Chris Mongeau stated that the Planning Commissioners did not want to see curb cuts onto Warren Avenue so they asked him to be creative. That is how we ended up with the Plan that he has been pushing hard.

Council President Van Sciver stated that if he represented the Council in any way that they did not want to go, we still have time to change. Council Member Macaleer responded that the number of homes seems to be the issue.

At the meeting last night, Mr. Galbally said by right, he can get five homes without requesting a lot of waivers.

Danielle Whalen, 234 Woodland Avenue, stated that he wants to put \$600,000-\$800,000 homes in that area. There may be a lot of high-end upgrades in the end. Generally, \$600,000-\$800,000 homes has a minimum of five cars per household and the homes would not fit in with the rest of the neighborhood. If this project is approved, shouldn't the Borough Council consider stepping back and looking at all the codes and revise the ordinances? If you want to set a precedent, step back and look at the zoning and tighten them up. The Borough should have some flow.

Council President Van Sciver responded that the Borough has a variety of houses and sizes in the town. When the Zoning Ordinance was crafted, it was done with satellite imagery and the lots were set up to reflect what was on the ground. When you step back and consider changing the ordinances, you may be creating a burden on the existing landowners who want to put a shed on their property, add an addition, etc., then you are creating a scenario where they have to go to the Zoning Hearing Board, pay a fee, get a plan drafted by an engineer, go before the Planning Commission and then to Borough Council. The Ordinance was crafted so that it met what was on the ground for the greatest number of cases. We wanted to avoid issues to the property owners by not having them go through all the machinations listed above.

Mrs. Whalen stated that every time something comes up, it seems that we have loose language that developers can use to get blood out of a stone.

Council President Van Sciver stated that the in-fill lots in the Borough have increased in value over the years. The owners of those lots want to get the most out of it when they sell the land. Once the in-fill lots are sold and developed, that process is done.

Council Vice President Raymond stated that even if the ordinances were amended, there would still be situations where we would have arguments because every piece of land is unique and it is easy to have problems that are not foreseen. Our best efforts may not prevent this from happening again.

Council President Van Sciver reported that Council has received correspondence from people who actually like this project.

Pat Marcozzi, 221 Channing Avenue reported that she had a hard time visualizing 15 cars going in and out of the new homes, getting in and out of the driveway, etc. If they were small cars, it may not be as difficult, but what if they are big Navigators. She can visualize there being fights and it being a nightmare.

Isabelle Leininger, 211 Channing Avenue, stated that she is thinking about three in-fill lots in this direct neighborhood where new homes were built in the last few years. They all fit

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into the neighborhood beautifully. Nobody even fussed about the modular home on Woodland Avenue. That is the same size as the rest of the homes and fit in the Zoning Ordinance.

Council President Van Sciver responded that if those lots were not part of a subdivision and there was just a vacant lot that is a whole different procedure. If it was not part of a subdivision, there was no public comment and only a building permit would have been required.

Frank Ortner, 144 Griffith Avenue, stated that he didn't meet Mr. Galbally until he was in the process of building his home on Griffith Avenue. There were three homes built on Tom Randolph's property that was part of the subdivision process and Mr. Galbally purchased three additional lots. Mr. Ortner stated that he lives in a home that was built on one of the three purchased lots. He stated that Mr. Galbally builds a quality home. As far as other developments in the Borough, look at Griffith Avenue and King Street. He doesn't recall any complaints about those houses. The same thing is true of the new homes on Longford Avenue, Old Lincoln Highway, Bridge Street and the new multi-family units currently under construction on E. King Street. This development has raised a brouhaha that has gotten way out of proportion. Mr. Galbally is a quality builder and I think we're looking for a builder who is tasteful. He is not looking to build a home he can't sell. He stated that with the four new homes in his development, there are not even ten cars.

William Doughty, 145 Woodland Avenue, stated the concern is the number of homes being considered. Mr. Galbally seems to have the square footage but he needs waivers. They don't have to be granted. That is the choice of Borough Council.

Council President Van Sciver stated that if it is Council's opinion that five homes doesn't work, we owe it to the developer to tell him now. President Van Sciver queried the members present:

Council Member Sponenbergh would not approve five homes.

Council Member Uzman would not approve five homes.

Council Member Macaleer would not say he would not approve five homes.

Council Member Raymond doesn't like the idea of five homes but she doesn't like the idea of having Mr. Galbally go to the Zoning Hearing Board to have Council's decision overturned.

Council President Van Sciver stated that he wouldn't stake his reputation on it that he can't get a hardship decision.

Council Member Macaleer suggested that Council go ahead and look at the renderings and see if that gives them any better feel. He believes that Council needs to be honest with these developers.

Council Member Uzman agreed. He stated that maybe the renderings will soothe him over.

Thomas Kadyszewski, 217 Church Street, stated that he doesn't understand why Council is delaying it. The people in the neighborhood have voiced their opinions very strongly. He hopes that Council has taken those comments into serious consideration.

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The question was raised as to why we would accept the extension when the feeling is that Council may not approve it. Council President Van Sciver stated the vote was two against and three undecided.

b. Council President Van Sciver stated that he would like to revisit the Birchall tract development process. It was characterized as a contentious discussion between him and the applicant. He does not think the points were made that could be made and he would like to invite the developer to come back and explore changing the zoning for that one lot. He would like to invite her to our next meeting.

Council Member Macaleer stated that Council encouraged her to go to the Planning Commission. Why would we ask her to come back?

Council President Van Sciver responded that there are very important implications of changing the zoning for one lot and he would argue that it makes the whole district unenforceable and could make the whole zoning area unenforceable. Council President Van Sciver reported that he and the Manager talked to the Borough Solicitor about future ordinances to be enacted and he was concerned if we limit the zoning change to an area immediately surrounding the train station, it could be attacked as a spot zoning issue. Council President Van Sciver thinks it is very important to understand the implications of changing the zoning to the extent we might want to maintain regulations so they are enforceable. Zoning Ordinances are looked at very carefully and can be crafted in such a way to be restrictive. Developers of other tracts in the LI District would see what is being done on the Birchall property and ask why they can't do the same thing on their property. To say we will entertain changing this tract to residential, then we're opening up a can of worms for other developers who might want to do the same thing.

Mr. Mongeau asked that the attorney's correspondence also be forwarded to the Planning Commission. He explained that part of the tract is already zoned for residential. They may get hardship relief. The merit of each development must be taken and examined. In this case, it is not that simple.

Council President Van Sciver responded that the Birchall tract is close to Warren Avenue. It goes right through an Exceptional Value stream so the regulatory hurdle to develop on that side is far more complicated than developing on the west side.

Mr. Mongeau stated that he believes she can get a hardship for the LI District. She can probably develop something on that side. Council President Van Sciver stated that in his opinion she conflated the hardship that she could argue is related to the LI portion of the tract. Mr. Mongeau stated that she could put on another warehouse on that piece of property or build something else. The question is, what do you want to see? If you want to have homes there, you will have to give up some things.

Council President Van Sciver responded that we can't spot zone.

Council Member Sponenbergh stated that we don't want to be setting a precedent.

Council President Van Sciver stated that if the no build option is the way we want to proceed, we're already set.

Ms. Peck and Sean O'Neill, Esq., will be invited to the next Council meeting.

10. ADJOURNMENT:

Council President Van Sciver announced that, following adjournment, Council will meet in Executive Session to discuss a personnel matter.

All business having been discussed, a motion was made by Council Member Uzman, seconded by Council Member Sponenbergh and unanimously carried by a vote of 5-0 to adjourn the meeting at 9:07 p.m.

Respectfully submitted,

Sandra L. Kelley  
Secretary/Manager