

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
Council Member Macaleer - ABSENT
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?

There were no public comments.

3. RESOLUTION NO. 667 – PRELIMINARY PLAN OF TAG BUILDERS, 217 SO. WARREN AVENUE:

Council President Van Sciver announced that a member of Council is currently in France where it is 2:00 a.m. in the morning and he has expressed an interest in participating. However, if he doesn't call in before Council begins its deliberations; he will not be permitted to vote on this application.

Council President Van Sciver announced that Council would be hearing a presentation by TAG. Council will not be granting any zoning variances because we don't have the authority to do so. The developer would have to go before the Zoning Hearing Board if variances are needed. That is another process.

Lauren Duffy, TAG Builders, reported that they were always able to get five lots by-right. They went in a different direction because about a year and a half ago when they went before the Planning Commission, their members said they didn't want driveways onto Warren Avenue. As a result, the plans were changed to include an alley off Second Avenue and they agreed that this was the best plan to fit into the town of Malvern.

Council Member Uzman asked what the square footage of the houses were in the original by-right plan vs. the square footage of the houses in the plan currently before Council. Ms. Duffy responded that three of the lots in the by-right plan had a building coverage of approximately 2200 square feet in comparison to what they are proposing now of about 2000 square feet of building coverage, give or take. Lot 1 is 2,186, Lot 2 is 2,210, Lot 3 is 2,210 square feet of building footprint. Lot 4 is 2,052 and Lot 5 is 5,860. Three homes front Warren Avenue, one home fronts Second Avenue and one home fronts the alley. After 1 ½ years and taking advice from the Planning Commission because they didn't want driveways onto Warren Avenue, the new plan was submitted with the alley.

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Peter Batchelor presented a rendering of what the new homes would look like on the lots.

Council President Van Sciver stated that when Council asked Mr. Galbally to prepare the rendering, we were asking for an engineering perspective drawing that would have quantifiable and verifiable dimensions. Council needs to get assurances that Mr. Batchelor was not given a mission to craft the rendering so that the house size would not be depicted in any way other than a normal sort of view of what the houses would actually look like on the site.

Mr. Batchelor responded that he has been an architect since 1986. He drives up and down Warren Avenue all the time. He stated that Mr. Galbally is a builder that would not build something that would be insulting to Council or the community. Mr. Galbally lives in this town.

He is not trying to force something into this spot. Can he do a perspective that would be accurate? When you do a perspective, it is a relative drawing so the space between is what you are looking at. Another photo was shown that showed density comparable to what is being proposed for this site. This photo is an excellent drawing to show you the density of Malvern. It is similar to what Mr. Galbally is planning. It is not an axonometric automobile drawing.

Council President Van Sciver stated that he just wants to be sure that Mr. Batchelor wasn't given a mission to minimize the size of the houses.

Ms. Duffy stated that they were asked to present something that showed an aerial of what was in the area surrounding this property. They were asked what, within the area, was a similar piece of tract with five or more houses in it. She stated that there are four different sites that portray this criteria. Ms. Duffy stated that their goal is to fit within Malvern. She stated that she has lived here practically her whole life. She believes that this development fits in with what is currently in town. The scale of this development is very similar. She stated that they do care and they do want it to look good.

Mr. Fruchter stated that they asked to talk to Mr. Galbally many times to determine what does fit. The architect did a good job. It does not speak to the issue of density, though. If Mr. Galbally once, in the last 18 months, said we want to sit down and talk with you, we would have been happy to sit down. We are being told to trust you and a rendering to agree that you have the best interests of Malvern in mind. Mr. Fruchter asked why Mr. Galbally has not sat down and figured out what could be done once and for all.

Ms. Duffy responded that she knows that her father sat down with Mr. Fruchter and tried to discuss it with him. But once the signs were put up about TAG Builders destroying the neighborhood, all discussions ended. There were many lies put out there. Hopefully, there will be five nice families living next to Mr. Fruchter.

Cassandra Doughty, 145 Woodland Avenue, stated that she wanted to clarify the square footage of the houses. Ms. Duffy responded that there would be two floors, approximately 3,000 square feet that does not include the garage.

Mr. Fruchter asked the maximum height of the homes and Ms. Duffy responded that the maximum height permitted is 35 feet. Mr. Fruchter asked if the houses would be 27 or 35 feet high. We have to assume they can be 35 feet. Mr. Galbally is not willing to commit to a height other than to say the houses would be within the height restriction. Mr. Fruchter asked if Mr. Galbally would be willing to be held to something less than 35 feet. From a sales point of view, you will basically say you will build whatever the buyer wants.

Council Member Sponenbergh stated that he has spent more time learning about subdivision development but his question is about the by-right plan. A by-right plan says a developer who owns the land is able to do whatever he wants to do on that property as long as it

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requires no waivers or variances. He understands that Mr. Galbally never did the engineering to validate the by-right plan.

Mr. Dychdala, TAG's engineer, responded that the by-right plan meets the bulk and area regulations. The only engineering that has not been done is the grading, utilities, stormwater, etc., and we believe it could be validated as a by-right plan.

Council Member Sponenbergh stated that in his deliberations, with the by-right plan, you are able to develop five houses on this property. This makes his decision pretty cut and dry. He just wants to know how strong this by-right plan is. He's trying to get his arms around this whole process.

Pat Marcozzi, 221 Channing Avenue, asked what the proposal was going to be for the alley. Mr. Galbally responded that it is going to be 16 feet.

Ms. Marcozzi asked how two cars would go in and out. Mr. Galbally responded that with only five houses, someone may have to pull over. Cars are 8 feet wide.

Helen McDonnell, 322 E. King Street, asked if there are waivers for this plan and what waivers are being sought?

Council President Van Sciver responded that waivers were being requested and he does not believe there has ever been a plan approved without waivers in either the Borough of Malvern or in any other town.

Mr. Ross Unruh, attorney for TAG Builders, stated that waivers were requested. In the past couple of weeks, a zoning issue arose with respect to the alley. The simplest way to resolve the issue is to ask for two different waivers. Andy Rau, Mr. Unruh's associate, listed six waivers and we request two additional waivers for the common driveway or alley as follows:

1) To allow the right-of-way width of the common driveway to be reduced from 25 to 20 feet and allow more than two lots to be served by the common driveway;

2) Requiring lots to be regularly shaped and that the depth of lots shall generally not exceed their width by more than two and one-half (2 ½) times;

The four-step design process is no longer an issue. It has been followed.

The waiver for the Lot 5 driveway will not be needed and we won't need a definition for alley.

Council Member Raymond asked which of the list of waivers the applicant considered essential to the Plan? Mr. Unruh responded that all five waivers are essential.

Jack Weikert, 137 Monument Avenue, asked if the same waivers would be needed for the by-right plan. Mr. Unruh responded that they are confident they wouldn't need any waivers for the by-right plan and they don't want to use the by-right plan as a club.

Steve Stuit, 218 Channing Avenue, asked how far from his property line the common driveway would be located? Mr. Dychdala responded that the last submitted plan showed the edge of the driveway was within two feet of the property line. Due to the diligence of the interested residents in the community, the driveway is an accessory structure so they are required to maintain a seven foot setback. Mr. Stuit asked if there would be a buffer. Ms. Duffy responded that it is their plan to create natural barriers.

Ronnie Pratt, 122 Church Street, stated that when the gentleman on the Council asked for clarification of by-right, Ms. Duffy said we are confident we would have a by-right plan. The proposed plan has waivers that must be decided upon tonight. We don't know what waivers might still be held in the balance. Ms. Pratt stated that Mr. Unruh indicated that in the last week something came up regarding the alley. That suggests that it is still in the balance. Mr. Unruh replied that they are switching two waivers for two other waivers regarding characterizing the

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alley into something else.

Council Member Uzman stated the topic of the driveway vs. alley is not new to Council. It has been in discussion since early May. A driveway is a service road.

Council President Van Sciver stated that these subdivision regulations are very crude tools to regulate land development. Ultimately, our community and Borough Council has to make a decision if this is good or not for the community. Ms. Pratt asked what Council members use to make that decision for the good of the community? Council President Van Sciver responded that he has spent 20 years at Planning Commission and Borough Council meetings trying to formulate the ordinances that we have now.

Tara Bramwell, 203 Monument Avenue, stated that she thinks the larger issue at stake is that whenever you approve certain conditions with zoning, what would we be approving that would establish our zoning for the future? Council President Van Sciver responded that each development is different and any waivers granted to one developer are not required to be granted to another developer. The zoning laws have been in effect for ten years. Council does not grant variances; Council only considers the granting of waivers.

Mrs. Bramwell asked that since the zoning was put into place, have we had any variances for a common driveway or is this the first one? Council President Van Sciver responded that, frankly, he would prefer a common driveway off Second Avenue rather than five lots onto Warren Avenue.

Mayor McGlone feels there is some confusion regarding waivers vs. variances. Borough Council can only grant waivers. The Zoning Hearing Board grants variances. Over the past ten years, Council has approved waivers because they are common place in every development.

Mrs. Bramwell asked what impact we have if we grant waivers? Lou Colagreco, Esq., responded that waivers are not precedent. Council is not bound to grant the same waivers for each development. The legislature recognized that one shoe doesn't fit all pieces of ground. A blueprint can handle 80% of developments. The legislature takes into account peculiarities and pieces of ground. Circumstances differ. Legally it is not precedential. The Zoning Hearing Board would pay more attention to a variance and the precedent that would set. The standards for a variance are more strict and stringent.

Connie Scanga, 152 Woodland Avenue, asked if the plan is an R-4 plan? Council President Van Sciver responded that it is. The lot is a little over an acre.

Amy Finkbiner, 121 Woodland Avenue, stated that she is not sure the by-right plan was reviewed by anyone in the Borough. Council President Van Sciver responded that it is the contention of the developer that he could present a by-right plan and it would have to be approved. That plan would require driveways off Warren Avenue and we do not think that would be good for the Borough.

Cassandra Doughty, 145 Woodland Avenue, stated this development is in R-4. She does not feel it is accurate to say this rendering is still R-4. R-4 is medium density. She believes a better answer to Ms. Scanga's question is that this would no longer be an R-4 development. Council President Van Sciver explained that R-4 allows 7,000 sq. ft. lots per dwelling unit. There are areas in the Borough with requirements for 3,000 sq.ft. Ms. Doughty asked why this development wasn't stopped in the beginning? Council President Van Sciver responded that it is considered medium density. Ms. Doughty stated that she would consider this rendering high density.

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Ms. Scanga stated the mix of density allowed for variables. What's happening is that we are being pushed to the highest density that is allowed. If I want to leave my house during rush hour, I don't know if I can get out of Malvern. We're talking about what's good for the town and it is not good if our quality of life is threatened with all the traffic. New development will impact future traffic.

Andrew Currie, 135 Woodland Avenue, stated that by the end of tonight, he gets the feeling that the vote will be passed. Aside from that, if Council agrees to have five houses built, there is no purpose except for the benefit of the developer making money. What would benefit the greater community?

Dana Mashetta, 8 Crest Avenue, stated there would be a lot of asphalt so how do we handle rain attenuation? Council President Van Sciver responded that stormwater has not been an issue raised. The stormwater ordinance was recently updated.

Danny Fruchter, 234 Channing Avenue, asked Mr. Unruh if he was aware that if the waiver requests are granted for a common driveway, that the plan as presented has to be withdrawn and completely redrawn? Lot lines must all be re-drawn and impervious coverage all recalculated excluding the driveways. Mr. Unruh responded that the application does not have to be withdrawn. The applicant's engineer is aware of the common driveway and the configuration will look the same and the basic layout will remain the same. If the Council approves the waivers, the lot lines would have to be refined for final approval.

Mr. Colagreco stated that if Borough Council agrees to approve this plan with the alley re-characterized as a common driveway, would it change the plan that Borough Council is being asked to approve? The applicant would be taking the risk, with waiver accommodation, if he can't make it work. He would not be able to get final approval. Mr. Colagreco stated that he presumes the applicant has suggested that he can make it work. It is a comfort level—he will proceed to a lot more engineering and if he can't make it work, it is a lot of money down the drain. The applicant identified two problems for seeking waivers. They presumably think they can make it work.

Council Member Uzman stated that he is looking back to the density issue. He's looking at the setback lines and the space that is shown between the houses looks a lot more than ten feet. He questioned whether the perspective was accurate? Mr. Dychdala responded that the setback line is ten feet.

Isabel Leininger, 211 Channing Avenue, stated that she thought the request was that the rendering to be presented was something that the builder would be committed to. If the builder is committed to building according to this perspective drawing, does the plan need to be changed to show five foot side yards or is he not being required to build from the drawing?

Council President Van Sciver stated that Council can only regulate the building envelope. The request was to have a drawing as to how the houses would look with regard to the rest of the neighborhood. Mr. Batchelor depicted what he thought they would look like based on his discussions with the developer.

Mrs. Bramwell stated that she would ask that if anyone on Borough Council felt they had a conflict of interest, that they abstain from the vote.

Frank Ortner, 144 Griffith Avenue, stated the main question that Council must consider this evening is whether to go with a by-right plan or go with the plan that requires waivers. He believes it is relatively simple. Do we want houses with driveways onto Warren Avenue or a driveway where four houses are abutting that driveway off Second Avenue and the Council has

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the flexibility to request certain things from the builder? With regard to the builder, I live in a house that the builder has built and I am very satisfied. We are dealing with a good, competent builder in this case. Option A is to accept the by-right plan; Option B is a better plan but requires waivers. To Mr. Ortner, Option B is better than Option A.

Council President Van Sciver closed the public comment period and declared a ten minute recess prior to a vote.

When Council reconvened, Council President Van Sciver stressed that these four or five houses will not lead the Borough down a path for the demise of the Borough. He stated that you've heard about the TOD study and the study has determined that there is a tremendous market desire to be in the borough. Property values will keep going up. We have a borough that has a heterogeneous demographic. The way you continue that is that lots get smaller and that is something that we have to consider. That is going to impact our community and how do we make provisions for that in the future. Please keep vigilant of those issues. Members of Council are a part of the community, too.

Council Member Sponenbergh stated that Council President Van Sciver had received a letter this afternoon from John Snook who was instrumental in developing our SALDO and he was quoted relative to this development.

Council President Van Sciver responded that Mr. Snook is with the Brandywine Conservancy and assisted in drafting the SALDO. Council President Van Sciver read Mr. Snook's e-mail and stated that Borough Council did not solicit the e-mail but we are glad that he did send an e-mail.

Council Member Sponenbergh stated that he is on record as stating in the past that he opposed five houses on this property and acknowledged that Mr. Galbally builds a good house. His test was would he want to live there and buy one of those houses. At that point, he would have said "no". Since then, he has become more knowledgeable about the subdivision process, he's gone over the Planning Commission work, he took into consideration their recommendations and then he considered the by-right plan that he believes can be validated vs. the alternative. His position that he could not approve five houses in this space is no longer valid. There will be five houses on this property.

Council Member Uzman stated that he is looking at this and this is just preliminary. There are things that would have to be tweaked if we approve this tonight. There are a couple of items that I'm still not comfortable with. I have been going back and forth on this since we first heard about it. I've listened to the neighbors pitch and appreciate all of their comments. Even tonight I have gone back and forth. I'm torn. I have to vote and if I vote "no", I have to have a legitimate reason and can't say "no" just because I don't like it. I told Mr. Galbally that if he brought it before us, I would vote against it. My concern is, I take my experience and knowledge and the common driveway vs. alley is 16 feet wide. I am concerned about people coming in and out at the same time. Then, I started thinking. I live at Charleston Greene with 20 units in one building and 14 units next door. My driveway, with what we share, we have less than 16 feet and we get by fine. So, with four houses and sharing a driveway, that is not a bad idea. I look at the alternate of a by-right plan that I have been told can be done. I do not like the idea of having entrances onto Warren Avenue. I think it will be bad for the people living here. The common driveway lends to a better design than what was being proposed with the by-right plan. There are a lot of good valid points. I'm going on record as approving this plan.

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Council Member Giandonato said to Council Members Uzman and Sponenbergh that he felt the same way. After months of e-mails going back and forth, we just learned more and more about this situation and feel it is for the good of the borough. The by-right plan is the one I don't like. There should be no access onto Warren Avenue.

Council Vice President Raymond stated that she sees the basis for Council's decision as the public interest. She sees the public interest as balancing all the concerns of what goes on in this property. She thinks of the owner and her right to sell it; she thinks of the neighbors who will be more intimately affected, and she thinks of the interests of the borough. It is always nice to have more residents to pay taxes and when I look at all the concerns that the neighbors were bringing to our attention, the concern was more about density. I was leaning against voting for the plan. Two things are actually making me feel more comfortable that a balance could be struck; (1) was Mr. Snook's e-mail and (2) was Mr. Fruchter's model. I was uncomfortable about how close the buildings would be. At this point I am leaning towards a positive vote.

Mayor McGlone stated that he does not have a vote but his feeling is that we, as property owners, have a right to develop our properties. If, in fact, they can engineer and we can validate that five houses are allowed by-right, the question not answered to me is can they really do it by-right. I don't know if it has been documented as being by-right.

Mr. Colagreco responded that it is Mr. Galbally's engineer's opinion that it can be by-right. What Borough Council is doing tonight is asking how can we know? Council would know if they voted on the by-right plan and it was fully engineered. It is Council's comfort level. Whenever you believe you have seen enough from both engineering and design perspectives, you can pull the cord at any time. This may be enough to convince you; Mr. Galbally's testimony may be enough to convince you. Legally, you would only know when it has been through the process of being fully engineered.

Council President Van Sciver thanked the Planning Commission for their efforts. They really got into the details with the developer. He also thanked Mr. Fruchter because he pointed out so many things that the borough might not have noticed otherwise about the plan. Council President Van Sciver thinks the question for him was, when the plan was originally presented to him, was approval of the greenway plan that would connect right-of-ways with the Paoli Memorial Association and the Paoli Battlefield with a trail along Second Avenue to Willistown Township. The Patriot's Path comes up Warren Avenue from East Whiteland. This property sits at that junction. So, I am going to condition my support on a number of things that have been pointed out by Mr. Snook and Mr. Fruchter. We have the ability to require road widening on both streets. The Planning Commission did not require any road widening on First Avenue but on Second Avenue. One of my conditions would be (1) that the applicant be obligated to widen the entire streetscape around the property but, in lieu of doing that, that the same sum be given to the Borough for other streetscape improvements. He stated that he would avoid sidewalks on Second Avenue because that is to be a naturalized greenway path. Mr. Galbally believes he needs the sidewalks in front of his properties in order to market his properties. Council Member Van Sciver (2) would require the applicant to install sidewalks on Warren Avenue in front of his properties. The Public Works Committee had a conversation with the Borough Engineer and Borough Manager and we were considering streetscape grants about how to alter the intersection at First and Warren to make it more accessible for pedestrians. The engineer came up with two schemes. That would be a place where I might target funds. The other condition, (3) I would not be interested in giving borough land for a buffer and if it becomes an issue for the homeowners in the future and they want to purchase land in the future, they can come back and talk to us. (4)

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There has to be buffering on Mr. Stuu't's and Mr. Fruchter's properties. Those things have to be addressed. (5) I would not want to imply that the Borough Council would even think about impacting any zoning issues. That issue would have to go forward with the Zoning Hearing Board.

With those conditions, Council President Van Sciver stated that he would support the Preliminary Plan.

Mr. Colagreco stated that he had prepared two Resolutions; one to approve and one to deny. We have fifteen days to communicate to the applicant.

Council Vice President Raymond stated that she supports the Plan with the conditions as outlined by the Council President.

Tom Galbally stated that he agreed with the conditions.

The applicant proposed that the access roadway no longer be classified as an alley but a common driveway. In association with that definition change, 503.A. is to be reduced from 35 feet to 20 feet. If the applicant does not agree to the conditions, the plan is denied.

Mr. Colagreco reiterated the conditions as follows:

(1) In lieu of the widening otherwise required for Warren Avenue and Second Avenue, those monies will be paid as a fee-in-lieu of that obligation to the Borough for use as Borough Council determines, provided those monies are dedicated to streetscape improvements in the borough. The amount of that fee-in-lieu will be in the sole discretion of the borough engineer as approved by Borough Council.

(2) A waiver from the requirement to provide sidewalks along Second Avenue with those monies similarly to be paid over to the Borough to be used for streetscape improvements.

(3) Any landscaping on borough property shown on the pending plan shall be removed.

(4) Upon final plan submission, the applicant shall submit a buffer plan to ameliorate the properties of Mr. Stuu't and Mr. Fruchter. It will be at the discretion of Borough Council whether the screening plan so submitted fulfills that condition.

(5) Through approval of this plan, Council is not approving any variances relative and to the extent that variances are necessary and, if necessary, must be approved by the ZHB prior to Final Plan approval.

(6) Sidewalk extended along Warren Avenue be extended within the right-of-way to First Avenue, if approved by the Borough, and that those improvements will be secured with the posting of an improvement bond and a maintenance bond for 18 months.

Mr. Colagreco stated that it is important to him that Mr. Galbally understands the fee-in-lieu of condition. You have Council who says it is okay.

A motion was made by Council Member Sponenbergh, seconded by Council Member Uzman and unanimously carried by a vote of 5-0 to approve Resolution No. 667, a Resolution approving the Preliminary Plan of TAG Builders with the conditions as read into the record by our Counsel, Mr. Colagreco.

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4. APPOINTMENT – MEMBER OF BOROUGH COUNCIL:

A motion was made by Council Vice President Raymond, seconded by Council Member Uzman and unanimously carried by a vote of 5-0 to appoint Robert Coughlin as a member of Borough Council, to replace the unexpired term of Duane McCrory. Said term will expire 1/1/2014. Mr. Coughlin was interviewed and nominated for appointment at the June 18, 2013, meeting of Borough Council.

5. ADJOURNMENT:

All business having been conducted, 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 9:55 p.m.

Respectfully submitted,

Sandra L. Kelley
Secretary/Manager