



Town of Berwyn Heights

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Minutes Worksession June 18, 2018

The meeting was called to order at 6:03 p.m. Present were Mayor Christopher Rasmussen, Mayor Pro-Tem (MPT) Lynn White, Councilmembers (CMs) Stephen Isler, Jason Papanikolas and Ethan Sweep. Also present were Interim Town Administrator (TA) Mike McLaughlin, Clerk Kerstin Harper, Town Attorney Suellen Ferguson, and residents James Klein and Frederick Mbayu.

1. Town Attorney Briefing on Council Sitting as Appeals Board

Mayor Rasmussen welcomed Town Attorney Suellen Ferguson to brief the Council on its role sitting as an administrative appeals board when adjudicating code or zoning appeals. Attorney Ferguson explained that a number of municipalities she represents have adopted portions of the Prince George's County Code as the basis for enforcing code violations. The Prince George's County housing and building codes in turn reference the widely-used and vetted *International Maintenance Code* and *International Building Code*, among others, as standards for constructing and maintaining homes and yards. Berwyn Heights has adopted relevant parts of the Prince George's County Code in Ordinance 104 - Building, Ordinance 107 - Clean Lot, and Ordinance 120 - Rental Housing.

When the Council conducts an administrative hearing, such as a code appeal or variance request, it sits as a quasi-judicial body. The hearing takes place in an open meeting that must have been properly noticed. Councilmembers may not discuss a case with anyone outside the context of the hearing. Staff members familiar with the case are usually present to provide background and make a recommendation. The proceedings must be documented in writing or by audio/video recording. The appellant, who has been notified of any code violations in accordance with the process outlined in the Town's code, is given time to plead his or her case. Councilmembers may ask the appellant to stay on topic and pose any questions relevant to the case that help them make a decision. If photos are used as exhibits, they should be described for the record.

Attorney Ferguson said that making appeal decisions is often difficult. Some jurisdictions delegate the responsibility to an advisory board appointed for the purpose, which will conduct the hearings and make recommendations to the Council. If the Council does not know how to proceed with a particular case, it may take the matter under advisement and discuss it in a closed session at a later date. However, the Council's vote on an appeal must be held in an open meeting.

Attorney Ferguson said the Town's Clean Lot Ordinance is focused on the maintenance of yards and accessory structures. It does not contain standards for building maintenance, nor does it reference the Prince George's County Housing Code, which has such standards. Thus, it does not provide a good basis for enforcing violations pertaining to the principal structure of a property, as has been done in the case of

the Klein property. The Town could ask the County to enforce the multiple violations of this property, but generally the County prefers not to enforce code in municipalities.

Attorney Ferguson briefly explained the handling of variance requests. The Town of Berwyn Heights can only comment on, but not decide requests for exemptions (variances) from the Prince George's County zoning code, as it does not have zoning authority. Principal grounds for granting variances include:

1. unique or unusual characteristic of a property, such as an odd shape of a corner lot;
2. the unusual characteristic (not self-inflicted) causes undue hardship for the property owner;
3. the variance, if granted, will not violate any master plan.

If the Town supports a variance request, no further justification is needed. The County's Board of Zoning Appeals will follow its own criteria for granting, or not granting the variance. If the Town opposes a variance, it needs to provide good reasons for doing so, explaining why all the above criteria do not apply. Another option is to take no position, which defaults the decision to the Board of Zoning Appeals.

At 7:00 p.m. the Council took a 5-minute break.

2. Discussion Items

Code appeal - 6013 Berwyn Road: Mayor Rasmussen welcomed James Klein, who was present to appeal code violations pertaining to his property at 6013 Berwyn Road. The only violation to be considered tonight carries the case number CE 18-409.

Code Supervisor Glass summarized the code violation. The specific violation pertains to *Section 4 L - Accessory Structures* of Ordinance 107 - Clean Lot, which mandates that "no accessory structure shall pose a public health or safety hazard..." On March 8, Code Officer Forbes surveyed and took photos of Mr. Klein's rear yard from a neighboring property. The photos, included in the background documentation, show a rear patio cover in an apparent advanced stage of decay, as well as decaying front steps. A violation notice was sent to Mr. Klein on the same day, requiring the owner to repair the broken structures, and to submit a plan for repair to the Code office within 45 days of the notice being sent, or April 22. If no repairs are made, nor a plan submitted within that time period, a \$100 fine would be imposed.

Mr. Klein responded with an appeal letter dated April 2 to then Code Compliance Department Head Rasmussen, alleging that the violation notice does not sufficiently describe the violations and the steps he must take to correct them. TA Cowles and Code Supervisor Glass replied to Mr. Klein's appeal letter on April 13 with a letter clarifying the violations and the corrective actions required to address them. Mr. Klein informed the Code Department that he wished to appeal the matter to the Town Council.

Mayor Rasmussen asked Mr. Glass to confirm that *Section 4 L - Accessory Structures* of Ordinance 107 is used as the basis for asking the owner to make repairs to the main structure, and to describe why the current condition of the structures cited pose a health and safety hazard. Mr. Glass did so.

Mr. Klein stated that he does not regard the missing bricks and crumbling concrete of the front stoop, or the broken roof of the rear patio cover as a safety hazard. No one who has been on his property has been hurt. The issues identified by the Code Department are only aesthetic defects, which are not sufficient grounds for a citation or repair order. Mr. Klein further alleged that it is not possible for him to comply with the repair order because the violation notice does not say clearly enough why there is a safety issue and how he must address it. For example, under corrective actions for the broken patio cover, removal was not one of the options indicated in the violation notice.

In response to Councilmembers questions, Mr. Klein stated the period given in the violation notice (45 days) was not long enough to comply, as he did not receive the March 9 notice until March 26, leaving only 27 days to remedy the violations. Additionally, he was notified by regular mail and by posting on his door, but not by certified mail. This is contrary to the process outlined in Ordinance 107. In conclusion, he is not inclined to make any repairs to the structure, unless the Town can show how he is violating the relevant ordinances and itself follows the letter of the law set forth in its ordinances.

Mayor Rasmussen closed the hearing, saying the Council will take the matter under advisement and further deliberate on the case in a closed session to be held within 30 days. The Council requested that certified mail receipts of notifications sent to Mr. Klein be furnished for future deliberations, as well as clarification whether “incidental” to the main building means separate from the main building.

Variance requests - 8626 Cunningham Drive, 8803 62nd Avenue: Mayor Rasmussen said he has placed these items on the agenda to discuss the role of the Council in deciding variances. Two variance hearings will be held at the June 20 Town meeting. The Council will render an opinion at that time. TA McLaughlin added that the role of the Council on variances is one of review and comment, not decision. The County’s Board of Zoning Appeals will ultimately decide whether to approve or deny a variance request, but it likes to have input from the municipality in which the property is located. The variances on the agenda already had a hearing before the Zoning Board. The Board is holding the record open for the Town to comment, preferably by June 27.

Mayor Rasmussen asked how the criteria mentioned earlier by Town Attorney Ferguson might be applied here. TA McLaughlin said the Cunningham Drive property might fit the “unique circumstance” criteria because it is a corner lot with an unusual shape. In addition to the tent/car port, an existing shed also needs a variance as it does not conform with set-back requirements. It would likely be a hardship for the owner if he were ordered to remove it. On the other hand, the 62nd Avenue property has a fairly standard lot where the unique circumstance criteria may not apply. Neither variance request would violate a land use master plan.

In response to questions, TA McLaughlin said the Council has the option to take no position on a variance. The presence of the shed on the Cunningham Drive property does not complicate the variance request for the car port. It just validates the existing condition of a shed with insufficient front and side yard setbacks.

Mayor Rasmussen invited Frederick Mbayu, the owner of the 62nd Avenue property, to comment. Mr. Mbayu said he received a violation notice and stop work order from the Town for constructing a cover for a front porch and steps without a Town permit. This was a surprise to him because he was in the process of getting permits and a variance from the County. The violation cannot be resolved until he hears from the County as to whether a variance will be approved. Then he can obtain building permits from the County and the Town.

Edmonston Road WSSC water main replacement project: Mayor Rasmussen said that TA Cowles had briefed the Council that WSSC was in the planning stages for a water main replacement (WMR) project in Berwyn Heights that is to commence in the summer of 2019. TA McLaughlin provided additional information. He has obtained 70% plans from the WSSC engineering contractor. They call for replacing the water mains and lines to individual homes for the entire length of Edmonston Road, including College Park Estates and Yarrow. When finished, they will repave the road. Director Hall is working with WSSC to coordinate this project with the Town’s road repair plans. Mayor Rasmussen said the Town will keep the residents informed as the project plans become more set.

Quality of Life Commission: Mayor Rasmussen said that the Town has heard from 12 residents who have expressed interest in serving on the Citizens Commission on Quality of Life. Councilmembers can also add people they have talked to. The goal is to have a diverse group of members representing different constituencies and the diversity of the Town. The resolution establishing the Commission calls for up to 11 members, and 12 residents have applied. The Council discussed how and when the Commission should be empaneled. It was agreed to increase the number of members to 15, including 3 residents named by the Council; to adopt the Resolution and appoint the members at the upcoming Town meeting; and to designate Angela Wolfinger as acting chair until the Commission elects a chair.

Priorities of the 48th Council: Mayor Rasmussen asked for any additional priorities Councilmembers might like to add to the list that has been composed thus far. MPT White proposed exploring better street lighting to light dark areas and enhance security. Mayor Rasmussen proposed a review of Town ordinances to determine if they accomplish what the Council intends, in particular whether the issuance of building permits by the Town is warranted. The priorities' list is to be finalized at the July 2 worksession.

Dog park – coordination with M-NCPPC: Mayor Rasmussen said he, CM Sweep and CM Papanikolas had a long conversation with County Councilmember Glaros at the MML convention on a variety of topics, including a dog park for Berwyn Heights. She advised to write a letter to the head of Park & Planning expressing the community's interest in a dog park, proposing a location and asking what needs to be done to make it happen.

CM Sweep said Ms. Glaros also suggested that interested residents form a "Friends of the Dog Park" commission. He has begun to talk with several residents about forming such a group. People should contact him if they want to join. The under-utilized Indian Creek Park T-ball field could be proposed as a possible location. An alternative location might be the tennis courts at the school, or the hockey rink at Sports Park. The biggest challenge may be to convince Park & Planning to build another dog park. It is likely that Berwyn Heights will have to contribute funds for and/or maintain the park.

Four Cities agenda: The Council confirmed the agenda items for the July 25 Four Cities meeting in Berwyn Heights. A presentation on the 2020 US Census is to be arranged and the agenda submitted to the partner cities for input.

3. Minutes

On a motion by CM Isler and second by CM Sweep, the May 7 worksession minutes were approved 5 to 0. On a motion by MPT White and second by CM Isler, the May 21 worksession minutes were approved 5 to 0.

4. Department Reports/ Announcements

Mayor Rasmussen suggested that those councilmembers who attended the MML convention give a brief report at the next Town meeting. He asked the Council to review a draft Town meeting agenda and made a couple of changes. CM Isler reported that he did not attend as many meetings last month as he would like due to schedule conflicts. He will be on a brief vacation after the school year ends. CM Papanikolas attended a meeting at which Prince George's County Public Schools (PGCPS) plans to hire a new vendor for before and after care was discussed.

MPT White commended Public Works for cleaning up and planting flowers around the Town Center and Town parks. CM Sweep reported that Public Works has installed new dog waste stations around Town. Mayor Rasmussen said he has not received any new information from the Chief on the vandalism of multiple cars and asked for an update at the Town meeting.

5. Citizen Comments

There were none.

6. Town Council Schedule

The June 26 Maryland primary election was added to the calendar and will be posted on the website.

The meeting was adjourned at 9:09 p.m.

Signed: *Kerstin Harper*, Town Clerk