



Jeffrey Z. Slavin  
Mayor

## TOWN OF SOMERSET

4510 Cumberland Avenue  
Chevy Chase, MD 20815  
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Rich Charnovich  
Town Manager/Clerk-Treasurer

### December 4, 2017 Council Meeting Minutes

#### Town Officials Present

Jeffrey Slavin, Mayor  
Marnie Shaul, Council Vice President  
Barbara Condos, Council Member  
Dudley Fowlkes, Council Member  
Franny Peale, Council Member  
Barbara Zeughauser, Council Member  
Doug Lohmeyer, Engineering Consultant  
Tolbert Feather, Town Arborist  
Ron Bolt, Town Attorney

Public Comment Period: No comments

#### Consent Agenda

Motion Shaul, second Zeughauser, to approve the following items 1-5 on the consent agenda:

1. October 2, 2017 Council Meeting Minutes
2. October 24, 2017 Council Meeting Minutes
3. November 6, 2017 Council Meeting Minutes
4. Setting the January 2018 Council Meeting date for January 2, 2018 at 7:30 pm
5. Setting the September 2018 Council Meeting date for September 4, 2018

Motion passed 5-0.

#### Non Consent Agenda

6. Town Manager Charnovich provided both the November financial and administrative reports.

*"Where People and Trees Have Deep Roots and Grow Strong"*

7. 5803 Warwick Place waiver request-Applicant requested a 2-foot waiver from the side yard setback in order to enclose an existing second floor deck. Motion Shaul, second Zeughauser to approve the waiver request, with the Final Decision as written by the Town Attorney appended to these minutes. Motion passed 5-0.
8. 5803 Warwick Place permits request-Applicants requested permits to add a new shed dormer to the attic, screen the existing second floor deck, temporary dumpster, and installation of a HVAC unit. Motion Zeughauser, second Peale, to approve the permits requested. Motion passed 5-0.
9. 5710 Surrey Street plan amendment-Applicants requested a plan amendment to install a retaining wall (and basement steps) in the right side yard. Motion Zeughauser, second Condos to approve the permit requested. Motion passed 5-0.
10. 5412 Trent Street HVAC Permit-Applicants requested a permit to replace 1 HVAC unit. Motion Shaul, second Condos to approve the permit. Motion passed 4-0, Council Member Zeughauser recused herself from the item.
11. 5524 Greystone Street HVAC Permit-Applicants requested a permit to replace 1 HVAC unit. Motion Shaul, second Zeughauser, to approve the permit. Motion passed 5-0.
12. 4801 Falstone Avenue Sugar Maple tree appeal-Property owners at 4801 Falstone Avenue expressed concerns about the Sugar Maple Town tree planted adjacent to their property. The concerns were mostly due to their desire to install solar panels on their home in the future. An email from Town resident at 5812 Warwick Place was entered into the record, expressing how nice Sugar Maple trees are. Town resident at 4901 Dorset Avenue expressed that the Town should consider climate change in the context of its tree-planting program in the immediate to long term. Motion Peale, second Fowlkes to replace the 1 Sugar Maple tree with 2 ornamental trees that would be worked out between the Town Arborist and property owners at 4801 Falstone. Motion passed 3-2, with Council Members Shaul and Zeughauser against.
13. Resolution adopting a Policy of the Town Council acting as the Local Advisory Panel to the Historic Preservation Commission-After discussion, this item was tabled until a future meeting for the Policy to be modified.
14. Precision Concrete Cutting proposal to reduce sidewalk tripping hazards-Precision Concrete submitted a proposal to eliminate 74 tripping hazards at a cost of \$4,480.00, as recommended by Town Engineering Consultant, Doug Lohmeyer. Motion Zeughauser, second Shaul, motion passed 5-0.
15. Resolution establishing Rules and Regulations for public information requests under the Maryland Public Information Act-Motion Peale, second Shaul, motion passed 5-0.
16. State of Maryland small cell towers legislation-Council Vice President Shaul informed the Council and Mayor about the work the MML Chapter was working on concerning this proposed legislation. Town Attorney Ron Bolt provided information on the legal ramifications if the proposed legislation is passed by the State of Maryland.
17. Town Pool area bridge maintenance work proposal-Jill Glassgold, President of Masonry Resurfacing and Construction Co. Inc., along with a colleague, was in attendance at the meeting to generally discuss a proposal to complete maintenance work on the bridge leading from the upper pool parking lot area to lower parking lot area. It was determined the goal would be to place a final contract on the January, 2018 Council Meeting Agenda. Town Manager Charnovich would check to determine if any permitting would be required to complete the proposed work.

18. General Code Update- Council Member Peale informed those in attendance she was ready to send the mark-up she has to General Code for Town Code portion of the project. The Town Charter amendments are now effective and have been reported to the State Department of Legislative Services.
19. Mayor's Report-Mayor Slavin provided his report to the Council and made copies available for those in attendance
20. Adjourn at 10:20 pm

**Town of Somerset  
Decision Granting Waiver**

No. W-12-17-1

Re: 5803 Warwick Place  
Application of Daniel A. Butts and Marta E. Wosinska

After a duly noticed public hearing, and based on the evidence presented, the Town Council of the Town of Somerset hereby grants the referenced waiver application, upon the following findings and with the conditions noted below.

**Findings of Fact**

Based upon the staff report(s) and plans and specifications submitted for the record, and the testimony received, the Town Council makes the following findings:

1. The subject property is known as 5803 Warwick Place, Chevy Chase, Maryland 20815. The applicants seek a waiver of approximately 3 feet from the required combined side setback, in order to enclose a second-story non-conforming deck.

2. Section 6-312(c)(1) of the Town Code requires a side setback of 8 feet for one side, and 18 feet for the sum of both sides. According to the site plan submitted for the record, the existing main building is located 7.9 feet from the south lot line. Accordingly, the proposed enclosed deck, on the north side of the building, requires a setback of 10.1 feet. The existing unenclosed deck is located only 8 feet from the north side lot line. The proposed enclosed deck, including its roof, would be located approximately 7.1 feet from the north side lot line. Thus, a waiver of approximately 3 feet is required.

3. As reflected by the Neighbor Signature Sheet, the applicants presented their plans to the residents of all adjoining and confront properties. No objection to the request was submitted to the Town.

4. The applicants explain that they propose to enclose the deck to provide protection from pests, including mosquitoes. They assert that the waiver is necessary because the existing house is non-conforming to the side setback, as it is located 8 feet from the north side lot line, where 10.1 feet is required, due to the actual setback of the house on the south side. The subject property adjoins the Somerset Elementary School to the north.

5. The wall of the proposed enclosed deck would encroach no farther into the required side setback than the existing house. The roof of the enclosed deck would encroach only approximately 1 foot farther. The enclosed deck addition would be no taller than the existing house. The applicants assert that the design would match the character of the existing house. The footprint would not be expanded.

## **Conclusions**

Based upon the staff report(s) and plans and specifications submitted for the record, the testimony received, and the above findings of fact, the Town Council makes the following conclusions:

1. The proposed construction would not unduly interfere with light and air between residences or other structures because the mass of the enclosed deck addition would encroach no farther into the required side setback than the existing house. The roof would encroach only minimally more. Also, the enclosed deck addition would face the property of the Somerset Elementary School, and not a residential lot;

2. The proposed construction would not be unduly incompatible with the scale, massing, and character of the Town or nearby residences or other structures because the proposed addition would comply with the Town's required setbacks, other than the combined side setback, and with Montgomery County Code requirements. The walls of the enclosed deck addition would conform to the Town's minimum 8-foot side setback. The existing footprint would not be expanded;

3. The proposed construction would not unduly adversely affect the use, enjoyment or value of nearby properties because the requested waiver is modest in scale, and does not materially alter existing conditions, given the existing non-conforming location of the house. Also, no objections to the request were submitted;

4. The strict and literal application of the Town Code would result in peculiar or unusual practical difficulties to the owner of the lot on which the proposed new building construction is to be located due to extraordinary situations or conditions peculiar to the property. Due to the non-conforming location of the existing house, an addition to the north side of the house could not be undertaken without a waiver. Given the non-conforming location of the house, the area available for an addition is limited;

5. The aforementioned difficulties are not created by the existence of other nearby structures or buildings that do not comply with the Town Code, the granting of a waiver on other lots, or any condition resulting from the conduct of the applicants or the applicants' predecessor(s) in title; and

6. The waiver is for the minimum reasonably necessary to avoid the above conditions or situations because the existing footprint would not be expanded and the construction would face a non-residential lot. Also, the proposed construction would be no taller than the existing house, would be sufficiently set back from other lot lines, and would not materially alter any existing sightlines or the flow of light and air. The proposed construction otherwise complies with the Town Code.

**Grant of Waiver**

Based on the above conclusions, the Town Council grants the requested waiver, upon the following conditions:


1. The construction shall comply with the plans and specifications submitted, all of applicants' representations in this matter, and all conditions attached to the issued permit;
2. Any changes, modifications, additions or deletions to the approved construction shall require the prior written consent of the Town, except for changes, modifications, additions, or deletions resulting from the repair or maintenance of the construction provided such changes do not change the height, width, length or appearance of the construction; and
3. A building permit for the construction authorized by this Decision shall be obtained from the Town within twelve (12) months of the date of this Decision or the waiver shall be void, unless an extension is granted in writing by the Town Manager. The terms and conditions of this Decision shall be conditions of the building permit.

The foregoing Decision was approved by a vote of 5 to 0, after a public hearing conducted by the Town Council at a meeting duly held on December 4, 2017 after notice and an opportunity to present evidence and testimony was provided to the applicants and any interested parties according to Town Code Section 6-308(a).

Attest:

  
Richard Charnovich, Town Manager

TOWN OF SOMERSET

By:   
Marnie Shaul, Vice President  
Town Council

Date: 12-13-17