



Jeffrey Z. Slavin  
Mayor

## TOWN OF SOMERSET

4510 Cumberland Avenue  
Chevy Chase, MD 20815  
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town@townofsomerset.com



Rich Charnovich  
Town Manager/Clerk-Treasurer

### November 6, 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: Two Town residents addressed the Mayor and Council concerning the Mother Earth Project and Renewable Energy. They asked the Town to look into the idea of converting to renewable energy for Town owned facilities. Residents at 4801 Falstone Avenue spoke opposing the Town tree that was planted adjacent to their property. It was agreed a public hearing would take place at the December 4 Council Meeting on this topic.

#### Consent Agenda

1. August 7, 2017 Council Meeting Minutes
2. September 5, 2017 Council Meeting Minutes
3. Recognize November as Municipal Government Works Month

Motion Shaul, second Zeughauser to approve the consent agenda, items 1-3. Motion passed 5-0.

## Non Consent Agenda

4. Bob Diss of Lindsey and Associates was in attendance and presented the FY17 Audit to all in attendance.
5. Approval of the FY17 Audit: The Audit Committee unanimously recommended approval of the FY17 Audit. Motion Shaul, second Zeughauser, to approve the FY17 Audit. Motion passed 5-0.
6. Ed Mulheron of Mulheron Tree Experts was in attendance to outline winter preparedness plans for the winter of 2017/2018.
7. Town Manager Charnovich provided both the October administrative and financial reports
8. 5710 Surrey Street: Applicants requested permits for the following scope of work: building permit for a rear yard addition, dumpster permit, HVAC unit installation, and 3 tree removals. At this time the steps and wall in the side yard would not be included. Motion Shaul, second Zeughauser, motion passed 5-0.
9. 5813 Surrey Street: This is an item the Council is acting as the Local Advisory Panel. The applicants are proposing the following: enlarge an existing one-story addition and below grade garage at the right side of the property, construct a second story expansion over the enlarged right side addition and garage, enlarge the existing driveway at the front of the subject property, and construct a new central walkway/steps at the front of the subject property. Motion Peale, second Zeughauser, Motion passed 5-0.
10. 5813 Surrey Street Established Building Line waiver request: Applicants requested an established building line waiver (EBL) of 8 feet 3 inches to construct an addition that will project into the setback on Surrey Street. Motion Shaul, second Zeughauser to approve the waiver request. Motion passed 5-0. The detailed decision is appended to these minutes.
11. 4518 Cumberland Avenue HVAC Unit permit: Motion Shaul, second Zeughauser to approve the HVAC Unit installation permit. Motion passed 5-0.
12. 5511 Uppingham Street HVAC Unit permit: Motion Shaul, second Peale to approve the HVAC unit installation permit. Motion passed 5-0.
13. 4810 Falstone Avenue permit to remove 3 trees: Motion Zeughauser, second Condos to remove the following 3 trees: 2 black cherry and 1 Cherry. Motion passed 5-0.
14. 4718 Essex Avenue permit to remove 12 trees: Motion Zeughauser, second Condos to remove the following trees: 1 Southern Magnolia, 1 Cryptomeria, 5 Leyland Cypress, 1 Blackgum, 3 Birch, and 1 American Holly. The approval also includes the reforestation plan as provided by Dr. Feather in his report. Motion passed 5-0.
15. 2 Town trees proposed for removal: Dr. Feather has recommended the following 2 Town trees be removed: 4715 Essex, Ash Tree, number 281 and 4816 Grantham, Pin Oak, number 448. Motion Zeughauser, second Condos to approve the removal of the 2 trees. Motion passed 5-0.
16. Introduction of a proposed Ordinance to amend Section 6-102 of the Town Code to revise the defined terms for the designation of corner lots, the replacement of fences or walls, and the distinctions between types of walls: This item was tabled until a later time.
17. Purchase of a John Deere compact utility tractor at a cost of \$22,100: This item was tabled until a later time.

18. General Code Update: Charter amendments are scheduled to take effect in November.  
No other update at this time.
19. Mayor's Report: Mayor Slavin provided his report to the Council and had copies available in the room for any interested citizens.
20. Adjourn at 9:25 pm

**Town of Somerset  
Decision Granting Waiver**

No. W-11-17-1

Re: 5813 Surrey Street  
Application of Dan Kreisler Rosenthal and Aviva Steinberg Rosenthal

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 5813 Surrey Street, Chevy Chase, Maryland 20815. The applicants, Dan Kreisler Rosenthal and Aviva Steinberg Rosenthal, seek a waiver of 8.25 feet from the required front setback, in order to accommodate construction of an addition.

2. Section 6-312(c)(1) of the Town Code requires a front setback that equals the greater of 25 feet or the average front setback of "nearby houses", as defined by the Code. According to the site plan submitted for the record, the existing main building is located 31 feet from the front lot line. The average setback of nearby houses is 40.25 feet. The proposed addition would project 8.25 feet into the required 40.25-foot front setback along Surrey Street.

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 add additional space to their home in order to add more usable space. They assert that the waiver is necessary because of the large average setback of nearby houses which results from the larger depth of the neighboring lots that are included in the calculation of the front setback. Also, they note that the existing house is non-conforming to the front setback, as it is located 31 feet from the front lot line. The subject property is a corner lot, at the intersection of Cumberland Avenue and Surrey Street. As a result, the lot is subject to two front setbacks.

5. The proposed addition would be located 32 feet from the front lot line, and would encroach less into the required front setback than the existing house. Also, the applicants note that the addition would be no taller than the existing house and would not impact any neighbors. The addition would be set back 20 feet from the rear lot line and approximately 59 feet from the side lot line to the east, on Surrey Street. At the hearing, Mr. Rosenthal stated that he consulted with all the adjoining and confronting neighbors and received unanimous support for the project.

## **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 addition would encroach no farther into the required front setback than the existing house. It would encroach 1 foot less. Also, the addition would be no taller than the existing house and would be significantly set back from the side and rear lot lines;

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 front setback, and with Montgomery County Code requirements. The addition would conform to the Town's minimum 25-foot front setback;

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 at the front of the house could not be undertaken without a waiver. Given the non-conforming location of the house, and the lot's two front setbacks, 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 addition would encroach into the required front setback less than the existing house. Also, the addition would be no taller than the existing house, would be sufficiently set back from the side and rear 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 November 6, 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:

TOWN OF SOMERSET

*Richard Charnovich*

Richard Charnovich, Town Manager

By:

*Jeffrey Slavin*  
Jeffrey Slavin, President  
Town Council

Date: 11-20-17

↙ For  
Marnie Shaul,  
Council  
vice  
President