



**MIDDLEBURG TOWN COUNCIL
REGULAR WORK SESSION
MINUTES**



Thursday, March 24, 2016

PRESENT: Mayor Betsy A. Davis
Councilmember Trowbridge Littleton
Councilmember Catherine "Bundles" Murdock
Councilmember Erik J. Scheps
Councilmember Kathy Jo Shea
Councilmember Mark T. Snyder

STAFF: Martha Mason Semmes, Town Administrator
Cindy C. Pearson, Economic Development Coordinator
William M. Moore, Town Planner
Ashley M. Bott, Town Treasurer

ABSENT: Vice Mayor Darlene Kirk
Councilmember Kevin Hazard

The Town Council of the Town of Middleburg, Virginia held their regular monthly work session on Thursday, March 24, 2016 in the Town Hall Council Chambers, located at 10 W. Marshall Street. Mayor Davis called the meeting to order at 6:00 p.m.

Council Discussion – Request for Sidewalk Repairs – Matt Blunt

Town Administrator Semmes advised Council that Cody Francis, the Town Engineer, looked at this issue and presented some alternatives, the first of which was to construct a standard VDOT sidewalk along the curb. She noted that this would require the construction of steps to the Blunt house, as well as a retaining wall. Ms. Semmes advised that the other alternative was to replace the existing sidewalk with another brick sidewalk; however, she noted that this would require some flexibility from VDOT. She noted that Mr. Francis believed this may be possible since the sidewalk has been in existence for a long time. Ms. Semmes reported that the staff did not have a recommendation but rather wanted to hear the Council's thoughts. She noted that Mr. Francis was available to explain each option in detail.

Mayor Davis questioned whether the options would take the sidewalk down to Pinkney Street. Town Administrator Semmes reported that both options would only take the sidewalk down to the Blunt house.

Mr. Francis noted that the existing sidewalk was located several feet above the road, which was not how most of the sidewalk was along Washington Street. He further noted that most was at the curb elevation; however, there was no curb at this location. Mr. Francis reminded Council that this was where the sidewalk ended and expressed an assumption that it was installed to access the two existing houses. He advised that there were two options for addressing it, the first of which was to replace the existing sidewalk. Mr. Francis noted that this was the less expensive option from a construction standpoint; however, it was questionable as to whether VDOT would accept it for maintenance as this was not typically the standard to which they would design a sidewalk. He advised that the other option was to install curb and gutter and construct a sidewalk at the curb elevation. Mr. Francis noted that this would require the construction of steps to access the entrances to the two properties. He advised that if constructed to the street grade, the question

was where the sidewalk should end. Mr. Francis reminded Council that it currently only went to the two properties and then stopped. He suggested that logically it should go to Pinkney Street. Mr. Francis noted, however, that there was nothing in that area that would require pedestrian access. He advised that often when stopping a sidewalk, the thought was to take it to the next logical crossing. Mr. Francis suggested that if left at its existing elevation, it was less likely that the Council would want to extend the sidewalk down to the intersection due to the grade differences.

Councilmember Littleton suggested the Town repair the existing sidewalk and leave it like it has been for many years.

Councilmember Murdock noted that, currently, pedestrians could cross at the same level. She suggested the sidewalk be reinstalled as it was. Ms. Murdock questioned who installed it initially.

Councilmember Littleton opined that his great grandfather installed the sidewalk, as he used to own both houses. He noted that they were constructed in the 1700s. Mr. Littleton advised that the sidewalk was the only access into town. He reminded Council that it was constructed of two different materials. Mr. Littleton advised that the stone was unusual and opined that it set off the sidewalk.

Councilmember Snyder advised that he would like to repair the existing sidewalk. He expressed concern as to whether the Town would then own it and be responsible for its maintenance. Mr. Snyder questioned whether this was located in the right-of-way.

Town Administrator Semmes confirmed the existing sidewalk was located in the right-of-way and noted that the Town would have to get a permit from VDOT to do the repairs. She opined that part of the Allen house was also located in the right-of-way.

Mr. Francis advised that based on the east end water line plans, a portion of the porch for the Allen house was in the right-of-way, with the pillars for the iron fence being on the right-of-way line. He suggested the front face of the brick columns were one and a half feet into the right-of-way.

Councilmember Murdock questioned whether VDOT would allow the Town to repair what has historically existed. Mayor Davis questioned whether the sidewalk would be grandfathered if the Town was not changing it.

Mr. Francis opined that VDOT would issue a permit to do the work. He noted, however, that the question would be whether they would accept maintenance responsibility for it. Mr. Francis explained that if they would not, they would require the Town or someone else, as a part of the permit, to accept responsibility for the maintenance.

Town Administrator Semmes noted that Councilmember Littleton has suggested simply replacing the existing sidewalk. She suggested some type of base would need to be installed.

Mr. Francis confirmed there were two methods for creating a base – install stone dust or construct a concrete cradle. He noted that the latter was a more durable base and was preferable if there was going to be a lot of heavy traffic, such as trucks, crossing the sidewalk.

Town Planner Moore noted that the Allen house was recently purchased and was pending for redevelopment. He reminded Council that when that redevelopment occurred, there was an expectation that improvements would be installed along the entire frontage of Washington and

Jay Streets, unless the Council granted a waiver. Mr. Moore noted that this would include curb, gutter and sidewalk. He advised that if the Council invested in sidewalk at the existing grade, it may not want to do sidewalk at the curb grade in the future when the redevelopment occurred.

Councilmember Littleton agreed. He noted that if installed at a lower grade, the front porch would be less usable. Mr. Littleton suggested it made more sense to have upper access from a pedestrian point of view.

Town Administrator Semmes noted that the plans showed brick coming up to a point so the porch would be accessible under either option.

Councilmember Shea questioned the ADA standards. Mr. Francis advised that VDOT's concern about leaving a sidewalk up high was not necessarily due to an ADA issue, but rather was the drop-off off the edge of the sidewalk due to the grade. He opined that in terms of getting the grade to work, either option would work. Mr. Francis explained that VDOT was concerned about things like the curb ramps at the intersection and making sure the sidewalk had the correct cross slope so it was not too steep in any direction.

Councilmember Shea opined that when the Allen property was developed, VDOT would require that their newer standards be met no matter what. Town Planner Moore advised that this was not necessarily correct. He explained that VDOT would not dictate that improvements would have to take place; however, if they did, they would look at them closely. Mr. Moore suggested that chances were, in terms of accessibility to the structure, the owners would have to meet the requirements in the rear.

Councilmember Snyder suggested that if the property owner came to the Town for redevelopment, the Town would have to address the encroachment issue. He further suggested that the sidewalk issue would also come into play.

Councilmember Littleton opined that the sidewalk would not be as pleasing and presentable as it currently was if it was lowered to the level of the street. He further opined that the buildings would not have the same character. Mr. Littleton noted that the Town removed a tree that was an important part of the entrance to the town.

Councilmember Snyder suggested the best way to handle this was to keep the sidewalk at its current grade. He noted that it would help preserve the character of the area.

Councilmember Shea advised that she hardly noticed the sidewalk due to the condition of the property on the opposite side of the street. She suggested that if the Council was talking about the Town's gateway, this was an issue.

Mayor Davis opined that the sidewalk would be safer for pedestrians at its existing level. Mr. Francis agreed it was at a better grade.

Councilmember Murdock opined that the Council was in agreement to keep the sidewalk at the existing grade. She questioned the next step in the process. Ms. Murdock further questioned whether the Council was agreeable to replacing the existing sidewalk as it currently was.

Town Administrator Semmes advised that there were two questions – (1) would VDOT allow the Town to do something with the old sidewalk and (2) did the Council wish to use Town funds to do something if there was someone who would be coming along who would potentially pay for part of it.

Councilmember Shea advised that if there was no access past the two houses, she would have a hard time agreeing to do much of anything. She suggested that if the Town repaired the existing sidewalk, it would have a sidewalk to nowhere. Ms. Shea questioned whether the Town would be addressing the issue that really needed to be addressed.

Councilmember Snyder expressed an understanding of what Councilmember Shea was saying; however, he noted that the estimate for constructing curb and gutter was \$100,000 versus \$30,000 for the repair of the existing sidewalk. He expressed an assumption that this estimate included a few items that the Council may choose to skirt. Mr. Snyder opined that the \$30,000 cost estimate included some issues that VDOT may be concerned about. He expressed concern about who would maintain the sidewalk if the Town repaired it. Mr. Snyder questioned whether the Town had the funding to maintain a sidewalk that served two houses.

Councilmember Littleton suggested the property owners would maintain it as they have in the past. He opined that they would handle the snow removal.

Councilmember Scheps questioned whether VDOT would require the Town to put something in writing that identified who would be responsible for the maintenance. Mr. Francis explained that typically when VDOT did not want to accept something for maintenance, they would not normally accept a maintenance agreement from a private party but rather would allow an item in the right-of-way as long as the town agreed to perform the maintenance. He advised that the Town could then require the property owner to provide it with a maintenance agreement. Mr. Francis noted that this happened often.

Councilmember Snyder noted that in this case, the Town would be dealing with two property owners. He suggested the Town consider asking them to agree to a modest annual assessment to maintain the sidewalk.

Councilmember Murdock suggested the Town agree to repair the sidewalk if the property owners would agree to maintain it.

Mr. Francis advised that ultimately, what they were talking about with regard to maintenance was replacement. He explained that in VDOT's world, they did not shovel sidewalks. Mr. Francis reiterated that the issue was the replacement of the sidewalk in the future.

Councilmember Shea questioned whether the existing bricks could be re-used. Councilmember Littleton opined that ninety percent of the materials could be.

Mr. Francis advised Council that he did not include the cost for a concrete cradle in the \$30,000 cost estimate and suggested this was not a likely place for one. He noted that this would almost double the cost. Mr. Francis advised that the Town could use steel edging or a concrete curb to hold the brick in place. He noted that there were also some composite plastics that could be used to hold the brick.

Councilmember Murdock questioned what would happen with the stump that remained. Mr. Francis reported that it has been removed. He noted that roots tended to be a problem for sidewalks; however, these have been removed. Mr. Francis reminded Council of the hedges that protruded over the sidewalk and suggested they be cut if the Town planned to replace the sidewalk.

Councilmember Scheps questioned whether it was possible that VDOT would not require a guarantor to maintain the sidewalk. Town Administrator Semmes opined that they would require the Town to maintain it.

Mr. Francis suggested that if the Council knew how it wished to proceed, he could meet with VDOT to determine their requirements.

Councilmember Snyder noted that there were two houses, one of which was subject to redevelopment. He opined that it would behoove the Town to repair the sidewalk in order to maintain the historical character of the town. Mr. Snyder noted the need to work out an agreement with VDOT. He suggested the Town ask the two property owners to maintain the sidewalk, with the Town serving as the guarantor from VDOT's standpoint. Mr. Snyder suggested the property owners may agree to a modest annual assessment or they may simply agree to maintain it.

Councilmember Littleton suggested the Town start by asking VDOT to repair the existing sidewalk.

Mr. Francis noted that the Council inquired about the ADA. He advised that one of the requirements under the ADA was that there be a certain smoothness and opined that it was a quarter of an inch. Mr. Francis suggested there may be a problem replacing the flagstone. He noted that he did not know whether VDOT would raise that and advised that there was a debate of what was governed by ADA in the right-of-way.

Town Administrator Semmes advised that she would ask VDOT if it was possible to re-use the existing materials.

Councilmember Murdock noted that this would affect the Allen house, which would be turned into a museum. She opined that disabled individuals would not utilize the sidewalk to access the museum due to the steps and noted that the plan was to use the rear access.

Mr. Francis explained that the sidewalk must be available for public use. He advised that the ADA did not necessarily cover sidewalks in the right-of-way; however, the Commonwealth of Virginia has made an agreement with the federal government to adopt standards that required VDOT, for things within the right-of-way, to meet ADA standards as closely as possible.

Councilmember Murdock questioned whether this applied to a historic district. Councilmember Snyder noted that ADA standards were not relaxed for a historic district.

Councilmember Murdock noted that there were several restaurants in town that were not handicapped accessible. Mr. Francis explained that they were governed by different policies. He agreed this should be discussed with VDOT, who may agree to permit it even though they would not maintain it.

Town Administrator Semmes noted that the other option was to re-use the existing bricks and to replace the flagstone with bricks.

Councilmember Snyder suggested the Town see what it could do and how close the Town could come to repairing the sidewalk as it currently existed.

Mr. Francis noted that he based the cost estimate on using new brick. He opined that it may be more expensive to re-use the old ones. Mr. Francis advised that the material was \$4-5 per square foot for brick; therefore, the cost would not be that great.

Mayor Davis summarized that the staff would talk with VDOT to determine what could be done, with the preference being to keep the sidewalk as is.

Council Discussion – Request for Financial Support for Artisan Trail Network in Loudoun County

Councilmember Shea questioned whether the money would come from the Arts Council's existing budget. Town Administrator Semmes suggested it come from the contingency reserve funds.

Councilmember Snyder noted that the Council allowed committee's to make funding requests. He opined that this request was in line with those received from other committees.

Councilmember Shea noted that Middleburg was being asked to fund the same amount as Leesburg.

Peter Wood, Chairman of the Middleburg Arts Council, advised Council that he posed that question to the committee, who indicated that the amounts were not based on the size of a locality but rather were based upon the impact of the arts. He further advised that they felt that Middleburg had the same impact as Leesburg; therefore, the marketing as an artisan trail would be on the same footing.

Councilmember Shea noted that the Town already paid Visit Loudoun to do advertising. She opined that they would not exclude the artisan trail. Ms. Shea explained that this was her concern. She advised that she was not opposed to the request; however, she questioned the fairness of paying the same amount.

Mr. Wood advised that in addition to going to the jurisdictions, the galleries would become members of the trail.

Mayor Davis opined that Councilmember Shea was referring to the money the Town paid Visit Loudoun. Councilmember Shea confirmed she was. She noted that this would not be excluded from their advertising. Ms. Shea suggested that Salamander would participate in the trail advertising. She opined that it did not make sense to say that "Middleburg would benefit more and should be charged more".

Councilmember Snyder advised that it would not surprise him to find out that Middleburg paid Visit Loudoun the same amount as Leesburg. He noted that Middleburg had its own direction and priorities.

Mayor Davis questioned whether the Council was willing to do this and to see what the results were next year.

Councilmember Snyder questioned whether the proposal was to take the \$2,000 from the current budget. Town Administrator Semmes confirmed it was. Councilmember Snyder advised that he was fine with that and suggested that funding be included in next year's budget.

Mr. Wood reported that this was not a recurring fee. He advised that it was a one-time request.

Councilmember Snyder moved, seconded by Councilmember Littleton, that the Council provide \$2,000 to the Middleburg Arts Council for the financial support for the Artisan Trail Network in Loudoun County from this year's budget.

Vote: Yes – Councilmembers Littleton, Murdock, Scheps, Shea and Snyder

No – N/A

Abstain: N/A

Absent: Councilmembers Kirk and Hazard

(Mayor Davis only votes in the case of a tie)

Council Discussion – FY '17 Utility Fund Budget

Town Administrator Semmes advised Council that she, Councilmember Snyder and the Utility Committee have been working on the draft budget. She further advised that she and Councilmember Snyder have been working on the utility rate model, with the consultant's assistance. Ms. Semmes confirmed that they have not changed the rate projections for this year. She advised that the model indicated the Town was still a little behind on the sewer side and recommended increasing the sewer rates by five percent, but not the water rates.

Mayor Davis questioned what this would equate to for a normal bill. Town Treasurer Bott advised that the last increase changed the bill from \$59.29 to \$60.76. She opined that the increase equated to approximately \$1.50.

Councilmember Snyder noted that in the next fiscal year, the Town would probably only be looking at a one percent increase. He advised that the rates were stabilizing and things were getting done. Mr. Snyder noted that he, the Town Administrator and the Utility Committee have been working to get projects done.

Councilmember Shea questioned whether there were any projections for connection fees from Salamander. Town Administrator Semmes reminded Council that they have already paid their connection and availability fees.

Councilmember Snyder noted that they were trying to be conservative in estimating the revenues.

Town Administrator Semmes advised that even though Salamander had paid their connection and availability fees, once the units came on line, they would be customers. She further advised that their consumption was projected in the rate model. Ms. Semmes noted that this would not occur until the following fiscal year.

Councilmember Snyder advised that he reviewed the draft utility budget and has made some very minor corrections, which he would give to the Town Administrator. He noted that they did not make any difference. Mr. Snyder suggested that this was a great budget for a first cut.

Councilmember Shea noted that twenty-five percent of the Treasurer's salary came out of the Utility Fund. She questioned whether this represented the approximate amount of time used for that function. Town Administrator Semmes noted that this needed to be checked as it was based on previous years. She confirmed that at least twenty-five percent of the Town Treasurer's time was spent on utilities. Ms. Semmes advised, however, that the fund could not afford to pay more. She noted that this was a gesture. Ms. Semmes advised that the Town Treasurer did provide some year-to-date numbers as of March 15th for this budget. She noted that she would provide more up-to-date numbers as the utility bills were still coming in. Ms. Semmes advised that the water user fees as of the middle of March were \$371,000 and the year-to-date revenues were \$435,000. She noted that the projected revenues were based upon the rate model and opined that it would be close. Ms. Semmes reported that the rate model had been projecting a little high over the past couple of years.

Town Administrator Semmes advised that the budget was conservative. She reiterated that they were continuing to project the increase that was proposed. Ms. Semmes advised that the Town would still be able to work on the west end pump station project and expressed hope to secure a grant for security fencing at the Stonewall Treatment Plant. She expressed hope to make progress on the water lines in the Ridgeview Subdivision and the sewer lines that needed to be repaired downtown. Ms. Semmes noted that it would be great to replace all the two-inch lines in the Ridgeview Subdivision in terms of economy of scale; however, the Town did not have the money. She advised that the staff would not know what the cost would be to replace the west end pump station until the design was complete. Ms. Semmes suggested the Town would probably use a package plant in order to save on the cost.

Councilmember Snyder expressed concern that the last page of the handout was confusing and advised that he revised it so it would be easier to read. Town Administrator Semmes explained that Councilmember Snyder added information in order to provide a true budget picture. She reminded Council that the water tower rental revenue was not included in the model for rate setting purposes. Ms. Semmes advised that she was continuing to refine the draft budget.

Town Administrator Semmes advised Council that the proposed budget was five and a half percent lower than the current one due to the completion of some large projects. She noted that this was based on the use of bond proceeds. Ms. Semmes reported that the east end project was essentially done and the other project would be done later in the evening. She advised Council that she would bring the budget back to them again with updated figures.

Council Discussion – Zoning Text Amendment 15-03

Town Planner Moore noted that this was a comprehensive zoning text amendment. He explained that it started with a proposal from Salamander Development to revise the maximum front yard setback in the R-1 and R-3 Districts, where they would develop their single-family residences. Mr. Moore reported that the Planning Commission studied this for months and advised that there was concern about making changes at the request of one developer. He noted that the reality was that the majority of the R-1 and R-3 zoned land in town was the vacant land which Salamander would be developing. Mr. Moore advised that there was just a sparse amount of R-1 and R-3 land scattered throughout the town, all of which was developed. He reiterated that the Commission was sensitive to making sure this change was not just for one developer; however, he acknowledged that the benefit would go mostly to that developer. Mr. Moore advised that the Commission also looked carefully at the other properties that contained this zoning to determine the potential affects if the changes were made and opined that there would be none.

Town Planner Moore advised that the question then became whether this was an appropriate change to the maximum setback. He reminded Council that a maximum setback was intended to keep a feel of a residential neighborhood so a house would not be sited so far back that it did not fit into the streetscape. Mr. Moore advised that the Commission looked at that carefully. He noted that when the proposal initially came in from Salamander, the numbers were much higher. Mr. Moore opined that the goal was a good one as the amount of grading and the alteration of the landscape in the areas Salamander would be developing would be significantly affected, particularly in the R-1 area, if they had to stay within the current setback requirements. He noted that he provided an exhibit, prepared by Salamander, which offered an idea of the minimum and maximum setback window.

Councilmember Snyder questioned whether anyone had asked to change the minimum setback requirements. Town Planner Moore confirmed that no one had made that request. He reminded Council that he made reference to a proposal to exempt flag lots in the R-1 District from the maximum setback requirement; however, he did not explain what a flag lot was. Mr. Moore

explained that it was a lot that sat behind another lot and had a pipe stem that connected to the street. He advised that the goal of trying to maintain a house that was sitting toward the street was already gone for a flag lot; therefore, there was no reason for a maximum setback. Mr. Moore opined that the current five foot window in the R-3 District and the ten foot one in the R-1 District were very restrictive and would result in the need to disturb land to a great extent. He noted that Salamander has gone to a great effort to respect the existing topography in their construction plans. Mr. Moore advised that after a long deliberation, the Commission agreed to unanimously recommend the numbers that were proposed.

Councilmember Snyder questioned whether anyone asked for a change to the minimum requirements for rear yards. Town Planner Moore acknowledged the concern that if the Council allowed a house to be constructed further back on the lot, it would then be closer to the rear lot line. He confirmed this was not the case as both zoning districts had rear yard setback requirements and advised that there was no proposal to change those setbacks.

Councilmember Snyder questioned whether the floor-area ratio would remain the same. Town Planner Moore reminded Council that the floor-area ratio was proffered by Salamander; therefore, there were limitations on the footprint of the principle structures in both districts. He explained that what was requested was the ability to be more flexible in the siting of the houses on the lots.

Town Planner Moore advised Council that those were the only portions of the zoning text amendment requested by Salamander. He explained that because they were addressing yards, he proposed some other changes, which were on his radar as needing attention. Mr. Moore further explained that the first such change was to identify a side yard adjacent to a street right-of-way separate from side yards for interior lots. He noted that the change also identified what type of encroachments would be permitted into side yards adjacent to the street. Mr. Moore explained that because it was not currently defined, the ordinance allowed for things that would typically be found in a side or rear yard, such as sheds and taller fences. He further explained that because a side yard adjacent to a street was not distinguished from one that was not, they were allowed in very close proximity, including in some cases a fence on the right-of-way line. Mr. Moore advised that this was not a typical planning practice. He further advised that it was a typical planning practice to treat yards adjacent to streets in like fashion, whether defined as multiple front yards or as side yards adjacent to a street. Mr. Moore noted that the Planning Commission deliberated on these issues. He explained that with regard to accessory structures, they were trying to allow for some flexibility because the existing neighborhoods were fully developed. Mr. Moore noted that a lot of the corner lots were non-conforming as to required yards. He explained that in those cases, the houses may be pushed further into the corner, meaning that if there was an absolute prohibition on accessory structures in the side yard adjacent to a street, it would be very limiting. Mr. Moore advised that the Planning Commission proposed some flexibility in that administration so that if someone wanted an accessory structure, but there was not room in a side or rear yard, it would be allowed in the side yard adjacent to the street or the front yard but only to the minimum encroachment necessary to accommodate it. He noted that if there was room for the structure in the side or rear yard, it would have to be placed there. Mr. Moore reiterated that the amendment would offer some flexibility.

Councilmember Snyder opined that the graphics provided were not to scale and suggested they were only illustrations. Town Planner Moore confirmed they were close to scale. He advised that they were loosely based on existing lots.

Councilmember Snyder advised that in looking at the first two examples in Exhibit 1, he would assume that in both cases, the rear yard could not be close to thirty feet, which was the minimum required. Town Planner Moore confirmed this was correct. He explained that there were a large

number of developed lots that were non-conforming and advised that this provision would only be allowed for non-conforming lots. Mr. Moore noted that Example 1 was a real example that could be seen in town. He suggested that if the Town treated those lots as if they were just side yards, there would be no opportunity to allow for an accessory structure. Mr. Moore noted that the Planning Commission deliberated on this provision and unanimously recommended the proposal before Council. He advised that the staff was supportive of the change, as it believed this was a good approach to address accessory structures.

Town Planner Moore advised that as to fences, the staff and Planning Commission had different recommendations. He noted that the Commission did listen to the staff and while they took his opinion into account, they chose to make a different recommendation. Mr. Moore explained that currently, the Town Code allowed for a four foot fence in the front yard and a six foot fence in a side or rear yard. He noted that an eight foot fence was allowed in the case of a property that backed up to a different zoning district; however, this did not usually come into play. Mr. Moore explained that because the Town Code did not currently define a side yard adjacent to a street, a six foot fence could be constructed up to the right-of-way line. He advised that in addition to being contrary to typical planning practices, the staff has fielded some complaints regarding these types of fences. Mr. Moore noted that the first three photographs contained in the agenda packet were of fences for which he has received a complaint. He advised that the first example was a fairly new fence.

Councilmember Murdock questioned why people were complaining about it. Councilmember Shea advised that it was very distracting to drive down the road and look at a solid fence. She further advised that when it was constructed, it made a huge difference in her view of the road. Councilmember Snyder opined that it changed the streetscape dramatically because it fronted a road. Councilmember Shea noted that it used to look open and inviting and it now looked like a fort.

Town Planner Moore explained that the open and inviting part was a basic good planning premise. He further explained that having street frontage was typically why one would not see opaque fences and walls of such a height. Mr. Moore acknowledged that it was private property; however, he noted that it was along the public realm.

Mayor Davis noted that if she lived there and wanted some privacy from the street, she would want such a fence.

Councilmember Shea opined that there were other things the property owner could do. She suggested a screen of some kind could be constructed around an area that was on the property, but not on the edge. Ms. Shea further suggested the use of vegetation.

Councilmember Snyder suggested the Council compare the photographs of the opaque fences versus the open ones. He opined that the difference was dramatic.

Councilmember Murdock suggested that some people, particularly if they were on a small lot, wanted some privacy. She advised that she was denied a request for a fence and planted bushes; however, she would have preferred to have a wall instead. Ms. Murdock noted that privacy was very important to some people.

Town Planner Moore advised that he was sensitive to that; however, he asked the Council to consider what the neighborhood would be like if every property owner had a wall. Councilmember Murdock opined that it would be like living in Europe and would be charming.

Town Planner Moore explained that this was something that people who lived on corner lots dealt with. He advised that typically, there were some options and suggested that one way to address it was to install privacy fencing in a much smaller portion of the yard. Mr. Moore explained that rather than having the fence along the right-of-way, it would be in line with the plane of the house. He explained that under what he proposed, the fence would not be that far off the right-of-way; however, it would provide some relief as it would be in line with the plane of the house.

Mayor Davis questioned whether the idea for the change was related to traffic. Town Planner Moore confirmed there were provisions in the ordinance to prohibit visual obstructions at corners. He advised that in the case of a tall fence, it did not go all the way to the cross street. Mr. Moore reiterated that there were provisions to prevent the construction of a tall fence on a corner even if the ordinance was adopted as proposed. He explained that this had more to do with having a tall fence visually along a right-of-way. Mr. Moore acknowledged that some people did not mind that look. He advised Council that he was questioned by the Commission as to why he was creating an issue; and, reiterated that this was not only a case that this was a typical planning practice found in most jurisdictions but was also submitted in response to complaints he received. Mr. Moore opined that the construction of the first fence in the example changed the character of the streetscape and questioned whether this change was amenable to the Council. He advised that his professional preference was to not allow for a six foot fence directly along the right-of-way on either frontage; however, he suggested that an option was to allow for a taller fence for the purposes of pet containment and to allow a larger area of the yard to be fenced that high but to require that the character be open. Mr. Moore noted that this would not achieve privacy; however, if privacy was desired, that could be attained by pulling the fence back to the plane of the house and fencing a smaller portion of the yard. He advised that this would allow for greater height and adequate circulation of air and light. Mr. Moore noted that this was the area in which the staff and the Commission differed in their recommendations; and, advised that the Council had the Commission's recommendation in the draft ordinance. He reiterated that he included the option to require that this type of fence along a right-of-way have an open character in the event the Council wished to consider it.

Councilmember Murdock questioned why the Planning Commission rejected the proposal with regard to an open character fence. Town Planner Moore opined that it was for the same concerns that Councilmember Murdock cited. He advised that the Planning Commission's recommendations would continue to allow for a stockade fence. Mr. Moore noted that the first three photographs contained in the agenda packet were allowed under the existing regulations and would continue to be allowed under the changes recommended by the Planning Commission. He advised that the fourth fence would as well. Mr. Moore explained that under the staff's recommendation, the first three fences would not be allowed; however, the fourth would as it had an open character.

Mayor Davis questioned the extent to which the Town could control aesthetics. She further questioned whether the Town could identify the types of fencing that it would allow, which were aesthetically appealing as opposed to a stockade fence.

Town Planner Moore advised that it was difficult to get into the regulation of materials that were being used, unless it was something like barbed wire, which had a safety aspect to it. He suggested that outside of a district that had some type of architectural control, it was difficult to regulate materials. Mr. Moore advised that the open character provision was a common one.

Councilmember Snyder reminded Council that one of the big issues that brought zoning into the modern era was air and light. He noted that this went back to the foundation of zoning.

Town Administrator Semmes advised that on the east coast and in the mid-west, the area between the front yard and the beginning of the house was typically a semi-private area. She noted that it was an area where people could walk by and say “hi” to their neighbors. Ms. Semmes advised that the area from the line of the house back was the area that was considered to be the private area, and the area where higher fences were constructed. She noted that this was a neighborhood character issue as opposed to an aesthetics issue.

Councilmember Shea noted that one of the photographs showed a fence that looked like one on her street. She advised that there was a very different sense of community when driving around the walled-in property and noted that all of the other properties were open. Ms. Shea advised that from her perspective, this was an issue of sense of community.

Councilmember Murdock suggested a five foot fence be allowed and explained that for those who had a swimming pool, the BOCA Code required a five foot entrance. She explained that because she could only construct a four foot fence, she had to construct the fence along with a tall “thing” that stuck in the air. Ms. Murdock suggested the staff check the BOCA Code.

Councilmember Snyder opined that that portion of the BOCA Code only applied to rear and side yards. Councilmember Murdock opined that it applied to any location where there was a swimming pool.

Town Planner Moore advised Council that swimming pools were not allowed in front yards. He suggested that typically, if the property owner only wanted the perimeter fence to serve as the required fencing for the pool, they were generally not going to be able to achieve that. Mr. Moore noted that the proposed changes would allow at least one of the frontages to have up to a six foot fence.

Councilmember Murdock reiterated that swimming pools were an issue that needed to be considered.

Town Planner Moore advised that in addition to those changes, there were some minor ones proposed. He noted that he would not go through each of those unless the Council had a question.

Councilmember Shea noted that page seven referred to decks and patios as “attached” and questioned whether they needed to be physically attached. She questioned whether the changes would affect a free-standing patio if it was not physically connected to the house. Ms. Shea questioned what the term “attached” meant. She questioned whether a property owner could still build a patio that was not physically attached to the house. Town Planner Moore confirmed they could.

Councilmember Shea noted that there appeared to be language missing from Section 182(e). Town Planner Moore noted that this was existing language and advised that he would check it.

Town Planner Moore advised Council that the next step was to schedule a public hearing on the amendments. He noted that they did not need to make a decision on any of the aspects of the ordinance at this time. Mr. Moore questioned whether the Council had any concerns or questions regarding the proposed changes. He noted that the only thing the staff was presenting without a favorable recommendation or for the Council to consider otherwise was the provision for fences. Mr. Moore further noted that they had time to consider the direction they wished to pursue there.

Councilmember Snyder questioned whether the changes related to the setback regulations incorporated the illustrations provided by Salamander. Town Planner Moore advised that the illustrations were visuals to show what the proposed revisions would accomplish in their development plans.

Councilmember Snyder questioned whether the changes with regard to fences were included in this same zoning text amendment. Town Planner Moore confirmed they were.

Councilmember Shea strongly agreed with the staff's recommendations regarding the openness of fences.

Councilmember Snyder noted that he disagreed with Councilmember Murdock's recommendation regarding tall fences adjacent to streets.

Town Planner Moore questioned whether the Council was comfortable scheduling a public hearing during their May meeting. He suggested that during the April work session, they could discuss this further in order to see if there was a consensus regarding the options. The Council agreed it was.

Council Discussion – Short-term Rentals

Town Planner Moore reminded Council that they held some general discussion regarding this concept in the fall. He noted that shortly thereafter, legislation was introduced before the General Assembly that would address localities' abilities to regulate short-term rentals. Mr. Moore opined that this legislation was troubling from a staff perspective, as well as a local government perspective, as it would have usurped the local zoning authority to regulate these types of uses. He advised that the Senate narrowly passed the original language; and, while the House of Delegates passed the bill, it prohibited any of the language from being enacted unless it was re-enacted next year, with a study group being convened. Mr. Moore noted that he corresponded with Delegate Minchew, who was convinced there would be some changes in the language next year. He further noted that Delegate Minchew continued to oppose the usurping of local government authority when it came to this bill. Mr. Moore advised that since any provisions would not be enacted until July 1, 2017 at the soonest, the staff was recommending the Town move forward with the development of regulations that would fit what the Council wanted. He noted that there were details that must be worked out.

Town Planner Moore reminded Council that they were aware of this issue before it went before the General Assembly. He noted that these uses were popping up as the Town already had to deal with one. Mr. Moore reminded Council that Salamander had the ability to do some form of short-term rentals at the Residences at Salamander in their plans. He noted that if the end result was this type of use would not be allowed, it would affect their development plans. Mr. Moore opined that the Council needed to get ahead of this issue and decide what was appropriate for the Town so that Salamander would understand the governing regulations.

Councilmember Snyder opined that the Council would end up agreeing that Airbnb types of uses would be allowed, but that the Town needed to regulate them to prevent the most egregious examples like the one the staff had to deal with, which was essentially a house of ill repute. He noted that what the General Assembly was doing would not allow the Town to do that.

Town Planner Moore noted that he had some ideas for the framework of a draft ordinance. He questioned whether the Council preferred that he work with the Planning Commission on this or whether they preferred that he bring an initial draft to them so they could determine whether he was going in the right direction.

Councilmember Murdock questioned why Councilmember Snyder thought the Council would agree to this. She further questioned whether there was any way to have Salamander's use be called something else so that it would not be a short-term rental, which some members opposed.

Councilmember Shea opined that the danger of discussing this issue in that context was it created a "them" and "us" situation. She advised that she wanted Salamander to be a part of the town.

Councilmember Murdock noted that if the Council went in that direction, she could rent out her mother's house on daily or weekly basis.

Town Planner Moore explained that there were different ideas for addressing this. He advised that one such idea was to require a special use permit so this use would not be allowed by-right. Mr. Moore noted that in deliberating on such applications, the ability of the property to be properly managed and to have a twenty-four hour contact could be considered.

Councilmember Snyder reminded Council that the entire business concept was based upon people going from one location to another and using someone's house. He acknowledged that the use has gone beyond that and noted the need to have control.

Councilmember Scheps noted that people were using this as a revenue stream.

Councilmember Murdock opined that this would "muck" up her neighborhood. Councilmember Shea noted the need for controls so it would not.

Town Planner Moore advised Council that he was hesitant to get too far ahead in the discussions until the Council could see an initial proposal. He suggested the need to see how it could be structured, other than just saying "you're allowed to do it". Mr. Moore opined that there was a way to structure it so (1) there would be more control; (2) the Council would have a better idea of the concentration of them by limiting the number that would be allowed in a certain area and (3) as to address the way they were managed. He noted that all of this could be included in the permit to operate one.

Councilmember Snyder noted that it may make a difference in writing the regulations if this was a use managed by a property owner doing occasional short-term rentals versus a property that was dedicated to this type of use. He suggested that one could be by-right and the other could require a permit.

Mayor Davis questioned whether the Council was interested in having the staff return directly to them with some proposed language. The members agreed they were.

Councilmember Murdock agreed with Councilmember Shea regarding Salamander in that the Council did want them to be a part of the town.

Councilmember Scheps opined that Salamander's business model would not allow for a nightly rental. He opined that their model would be based upon the homes being vacant for months.

Prem Devadas, of Salamander Development, advised Council that their program was not for monthly rentals but was, in fact, rentals for people who wanted to stay in a resort environment. He noted that it was for the benefit of the owner, who would receive the majority of the income. Mr. Devadas advised that this would not necessarily be for one night and noted that he could see a family renting property for a weekend.

Councilmember Shea suggested the Council could not assume what Salamander would do. She further suggested the need to determine what would work for the Town. Ms. Shea noted that Salamander would have an opportunity to offer comments. She encouraged the Council to not discuss this any further and to allow the staff to return with a proposal.

Council Discussion – Amendments to Town Code Chapter 89 Pertaining to Parking

Mayor Davis suggested this item be deferred due to the absence of the Town Clerk.

Council Discussion – Town Office Drainage Improvements

Town Administrator Semmes advised Council that the staff had Tim Painter, of Painter Lewis, look at the crawl space under the Town Office to ensure that the Town would not have to do mold remediation again. She reported that when he went into the crawl space, he found more water and stated that it needed to be removed from the building. Ms. Semmes advised Council that Mr. Painter reported that the gutters on the building were not large enough, that the property should be regraded and that the drainage should be picked up so the water would not go under the building, which it was doing on both sides. She reminded Council that the staff has authorized Snider Plumbing to dig up the existing drain pipe in order to determine where it currently came out. Ms. Semmes advised that Mr. Painter proposed, and she liked the idea of, insulating the floor above the crawl space as the staff felt the difference in temperature from season to season. She opined that this would not be very expensive. Ms. Semmes reiterated that Mr. Painter believed that inadequate drainage was the cause of the water in the crawl space and noted that this included under-sized gutters and an inadequate, clogged underground drainage system. Ms. Semmes reported that the staff was already working on the latter item and that the Facilities & Maintenance Supervisor was getting a cost estimate for replacing the gutters.

Councilmember Littleton inquired as to the size of the existing gutters. Town Administrator Semmes opined that they were five inch gutters and advised that the staff would get a cost estimate for six-inch ones.

Councilmember Shea asked that the staff also look at the gutters on the public restrooms in the Liberty Street Parking Lot and noted that they overflowed. She advised that during the winter, the water from the gutters then froze on the sidewalk.

Councilmember Murdock questioned whether the staff had done anything in front of the Carroll building and noted that the water also froze on that sidewalk. Town Administrator Semmes confirmed that this was being fixed as a part of the Washington Street Project. She noted that a pipe would be extended under the sidewalk and reported that Mr. Carroll agreed to pay for it.

Town Administrator Semmes opined that the main thing the staff needed to find out from Mr. Painter was what he was proposing in order to address the drainage system and a grading plan. She noted that the Town did not need to pay for it at this time and suggested that it find out what he was recommending in detail.

Town Administrator Semmes advised Council that Mr. Painter recommended the removal of the large Holly bushes and suggested they could be removed. She noted that they were good in that they hid the stair case from view; however, the areas under them were damp all the time. Ms. Semmes questioned the Council's thoughts on Mr. Painter's recommendations, including the removal of the Holly bushes. She suggested the staff remove the bush that was closest to the Town Treasurer's office and trim the other one away from the building's foundation.

Councilmember Murdock asked that they be saved if possible.

Councilmember Littleton agreed the grading needed to be addressed and advised that if that was not taken care of, the remainder of the items were useless.

Councilmember Snyder suggested priority be given to locating the end of the drain pipe. He noted the need to make sure that it went to the street.

Councilmember Shea suggested the staff look at what it would cost to enclose the exterior stair way and to bring the doorway out further. She suggested the building be extended out further. Ms. Shea advised that she did not care how many years the Town remained in the building; however, she noted that accessibility to the second floor was difficult. She suggested that having the stair case enclosed would help a great deal. Ms. Shea suggested that by having an arctic entry, the Town would be able to do something different with the drainage. Councilmember Snyder advised that he was willing to look at that.

Town Administrator Semmes noted that this would require the removal of the existing staircase and the construction of interior stairs.

Councilmember Littleton opined that it would this would not look good and would not fit in with the existing building.

Councilmember Shea suggested an architect would need to prepare a design.

Councilmember Snyder suggested drawings be prepared that the Council could look at. He noted that he was not optimistic that it would look like something the Council would endorse.

Councilmember Shea acknowledged that this may be the case. She suggested, however, that if the Council was talking about putting money into the building, it should make changes that would make it more useful.

Councilmember Murdock questioned whether the exterior stairs were used. Town Planner Moore confirmed he used them at times. He noted that he did not have visitors come up the stairs.

Mayor Davis opined that this may be an issue during the winter.

Councilmember Shea opined that the existing set-up rendered the upstairs space less usable in the long run.

Mayor Davis suggested the staff explore this further.

Councilmember Murdock asked that the Holly bushes not be touched in the meantime.

Town Council Reports

Councilmember Shea reported that Go Green was moving forward on developing a battery collection system. She further reported that the staff has ordered kits that could be filled and returned. Ms. Shea advised that they would do this in conjunction with the Drug Take-Back Program and was contacting Middleburg Bank to do it in conjunction with their Paper Shredding Day on April 30th. She noted that one kit was ordered for lithium batteries and one for household batteries. Ms. Shea advised that the cost was approximately one hundred thirty dollars.

Town Administrator Semmes advised that it was more than that; however, the cost included the return postage costs. She opined that the boxes would hold a lot of batteries and noted the need to get the word out so people would use this service.

Mayor Davis noted that when Go Green offered its annual report, they said that Home Depot also accepted used batteries. She suggested this information be included in a newsletter.

Councilmember Shea suggested the page be taken out of Go Green's report, with information being added regarding the collection dates and locations. She further suggested this then be advertised.

Mayor Davis reported that the Economic Development Advisory Committee met. She reported that the deadline has passed to accept proposals for website design services.

Town Administrator Semmes reported that twenty-three proposals were received. She advised that she would distribute the copies so the number of proposals could be narrowed down.

Mayor Davis reported that the Route 50 Traffic Calming Committee had not met recently.

Councilmember Snyder reported that the Public Works Committee met. He advised that prior to the meeting, he, the Town Administrator and Terry Inboden evaluated the proposals for engineering advice for the design of a west end pump station. Mr. Snyder noted that a package pump station looked promising. He advised that the Committee recommended the award to Bob Krallinger.

Town Administrator Semmes advised Council that a contract would be presented to them during their April meeting for approval. She reminded them that the funding for the project would come from the bond proceeds. Ms. Semmes advised that the contract would not only be for the preliminary design work, but would also take the Town through the construction process.

Discussion

Councilmember Snyder noted that the Town was storing a Confederate Flag in the Town Office and opined that this was not appropriate. He suggested that plans be made to donate it to a museum or wherever the Council deemed appropriate.

Councilmember Scheps questioned whether it has been in the Town Office "forever". Town Administrator Semmes confirmed it was discovered during the mold remediation.

Councilmember Snyder noted that there was also an American Flag, which was a forty-eight star flag. He advised that both flags were made of wool and opined that both were made in the 1940s. Mr. Snyder suggested these were not Town treasures.

Mayor Davis questioned whether this was something that could be donated to the museum.

Town Administrator Semmes advised that she did not know whether they had any value.

Councilmember Snyder reiterated his request that the Town make proper plans to dispose of the flags by finding an appropriate home for them.

The Council held some discussion regarding the disposal of the flags. It was suggested that the staff contact the Leesburg Museum to determine their interest in this donation.

Councilmember Shea announced that a Local Government Forum has been scheduled for April 5th. She noted that the Town Council candidates have been invited to attend. Ms. Shea advised that Erik Combs has agreed to moderate the event. She asked that as many members of the Council and staff join as possible. Mayor Davis noted that she would be out of town and could not attend.

Councilmember Scheps reminded Council that there was a section of sidewalk that was absent on Stonewall Avenue, behind the BB&T Bank. He questioned why there was no sidewalk in this location.

Town Administrator Semmes opined that this was because this property has never been developed and has always been a parking lot. She advised that she did measure it one day on the GIS map and opined that it was seventy-five feet. Ms. Semmes agreed with the need to construct sidewalk in this location as children walked in that area. She suggested the Town Engineer develop a design, with the project being placed in the Town's Capital Improvement Plan.

Councilmember Snyder suggested that, as a temporary measure, a gravel path be constructed along the street. He opined that the long-term solution would require something to address the grade. Mr. Snyder advised that he did not see an alternative to some type of steps.

Councilmember Scheps suggested the Town Engineer look at this. The remaining members agreed.

Mayor Davis suggested the construction of a mulch path. Town Administrator Semmes advised that the grade needed to be addressed. She suggested the need for a concrete curb, gutter and sidewalk. Ms. Semmes recommended that rather than trying to turn the corner, there just be a landing to go across to the sidewalk on the other side. She reminded Council that Tim Clites would be constructing sidewalk on his side of the street. Ms. Semmes advised that there would still be a piece missing on Pickering Street by the Red Horse Tavern and suggested the Town could try to get funding for that piece. She suggested there may be safe routes to school funding and noted that this area was used by children who were going to the Community Center and the library.

Councilmember Scheps noted that there was already a contractor in town who was constructing sidewalk. He further noted that this was a small area. Mr. Scheps suggested that something be installed soon.

Town Administrator Semmes noted the need to talk to VDOT about this project and to get a design done.

Councilmember Scheps asked that VDOT be put on alert as to the need for sidewalk in these locations.

Town Administrator Semmes noted the need to do some engineering. She suggested it would not be easy to accomplish and opined that there was a reason it has not been done to date. Ms. Semmes agreed it was a top priority.

Councilmember Shea noted that BB&T owned the lot. She suggested they may have some community funds.

Town Administrator Semmes opined that this may be a location that would require a railing on the rear.

Councilmember Snyder noted the need for a design that could be taken to VDOT.

There being no further business, Mayor Davis declared the meeting adjourned at 7:55 p.m.

APPROVED:

Betsy A. Davis, Mayor

ATTEST:

Rhonda S. North, MMC, Town Clerk