

Village of Martin's Additions
7013 Brookville Road, Suite B, Chevy Chase, MD 20815
Council Meeting Minutes
March 18, 2021
VIA ZOOM CONFERENCE CALL

Council Members Present: Susan Fattig; Arthur Alexander; Todd Mann; Jeff Blander; Katya Hill; **Village Manager:** Niles Anderegg; **Building Administrator:** Doug Lohmeyer; **Village Attorney:** Ron Bolt; **Residents and other Attendees:** Keith Allen (Turner Ln); Tiffany Cissna (Bradley Ln); Marty Langelan (Chestnut St); Naomi Naierman (Quincy St); Larry Wasson (Delfield St); Lorie Mitchell (Cummings Ln); Holly Worthington (Turner Ln); Paula Goldberg (Bradley Ln); Mark Shaffer (Shepherd St); John Grasser (Melville Pl); John MacDonald (Summit Ave); Lynn Welle (Oxford St); Katherine Hample (Cummings Ln); Tom Plotz (Delfield St); Matthew Canter (Turner Ln); John Sharrow (Chestnut St); Katie Howard (Taylor St); Jeffrey Goldberg (Oxford St.); Anita Difanis (Bradley Ln); Phil Lerman (Turner Ln); Diane Everts (Raymond St.); Susan Kahn (Bradley Ln); Peter Kahn (Bradley Ln); Brian Oliver (Delfield St.); Ben Dunford (Taylor St.); Aleta Margolis (Turner Ln); John Starrels (Shepherd St.); Gary Glickman (Raymond Street)

7:31 PM Call to Order: Fattig

The meeting was called to order at 7:31.

Keith Allen (Turner Ln) gave his weather report. This week saw the first measurable amount of rain since March 1. Spring has sprung and is going to be a warm one.

7:33 PM Opportunity for the Council to Hear Residents' Comments

Katie Filipczyk Howard (Taylor St) asked why the gas leak that occurred at a construction site on February 12 wasn't mentioned in the Manager's report at the February 18 Council meeting. She also asked for more communication from the Village Office about this event and other construction projects. Marty Langelan (Chestnut St) pointed out that when the gas leak happened, it was hard to drive on Chestnut and for the fire truck to get through. She then recognized some positive actions taken during the pandemic including Linda Kirschten and Debbie Brown for Manna, volunteers at Chevy Chase at Home, Amy Herman for Marth's Table, and Lynn Welle for his distribution of a Washington Post article about the Village.

7:39 PM Committee Updates

Community Engagement Committee

Keith Allen (Turner Ln) reported that the committee will meet soon and talk about the possibility of in-person events resuming in the summer and fall.

Jeff Blander moved that the Council appoint him a liaison to the Community Engagement Committee; Susan Fattig seconded the motion. Motion passed unanimously.

Election Committee

Tiffany Cissna (Bradley Ln) reported that nominations closed March 5 and that it will be a competitive election for the two open seats. Candidate statements will go out to the community no later than by Friday, March 26.

Jeff Blander thanked the committee for its hard work. He asked if the one-week window currently allowed between the postmark on ballots and when they are received is risky. Tiffany commented that the committee anticipates that most of the ballots will be mailed back before the deadline in response to frequent reminders, based on last years' experience with vote-by-mail election. Ron Bolt noted that, last year, the election vendor suggested the second date (May 20) because sometimes ballots are received with no postmark. He also urged residents to get ballots in early as recommended by Electec, the election vendor.

7:48 PM Building Administrator's Report: Lohmeyer

The Village Council received Building Administrator Douglas Lohmeyer' report on ongoing building projects in the Village. (See attached.)

7:49 PM Approval of Minutes

Todd Mann moved to approve the minutes from the February 18th Council meeting; Susan Fattig seconded. Motion passed unanimously.

7:50 PM Public hearing and Possible Adoption of Ordinance 2021-1-1 “an Ordinance to Expand the Jurisdiction of the Ethics Committee to Include Oaths of Service, And to Add Complaint Resolution Procedures”

Marc Efron (chair, Ethics Committee) outlined the process used by the Ethics Committee in writing this ordinance. Agendas and minutes for four open Committee meetings were [posted](#) and residents were invited to comment. The proposed changes do not create the requirement that Village officials and committee members act with impartiality. That requirement is created by the existing oath of office, required by Village policy. The proposed code changes create accountability in the existing code about impartiality. Without code changes there is no system to address complaints of serious violations of impartiality. The code changes define impartiality in a narrow, focused way that aligns with the federal government's and Department of Justice's statement of principles of ethical conduct and is consistent with Maryland law and the Maryland Code of Ethics statement on impartiality. If individuals subject to the Village's impartiality requirement have a concern about their ability to maintain impartiality on a specific matter, they can recuse themselves from the matter or, under the proposed code, can request an advisory opinion from the Ethics Committee. The contemplated code requires the dismissal of any ethical complaints of alleged violations that are insubstantial, which is defined as too remote to affect the integrity of an official's decision. Just as the current code provides, with respect to complaints filed with the Ethics Committee about business or financial conflicts of interest, under the

proposed code provisions, the Ethics Committee and the Council would have to exercise their judgment over the validity of a complaint about the failure to act with impartiality, but, unlike the current code, in the contemplated code, there are many features that ensure fairness: a complaint must be fact-based, and those facts must be accurate and complete; all complaints must be subject to an initial assessment by the Ethics Committee; and the Ethics Committee and Council will be required to seek informal resolution of complaints. If any complaint survives the initial assessment, the subject will be given time to respond and access to evidence, provisions that do not exist in the existing code. The proposed code changes also include confidentiality provisions that enhance those in the current code. They protect the privacy and the reputation of the person responding to an ethics complaint, but they can be waived by the respondent. There are no criminal penalties for ethics violations in the proposed code, but there are in the current code. The proposed code would penalize the offending official by being disqualified from participating in a particular matter and/or from his/her position. Codification of the changes are necessary to ensure that the provisions have unquestionable legal effect.

Jeffrey Goldberg (Oxford St.) cited a list of ten items that concern him: the ordinance is a solution in search of a problem; the changes should be subject to a vote of all residents; the vote should be delayed until after the election; the idea of a personal manual was prematurely dismissed; a personal manual does have legal weight; no other Maryland Village or township of similar size has such an ordinance; this process has created serious divisions in the community; the Ethics Committee and Village Council have not shown who was responsible for the firing of a former office assistant; the Village Council has not shown the cost of the legal work for this ordinance; and the Ethics Committee has been warned that they may be individually sued if they pursued these proposed changes. Marc Efron clarified that no one on the Ethics Committee has been threatened during this process. Susan Fattig noted that there may be some misconceptions about what triggered the proposed changes. Lynn Welle (Oxford St.) commented that he feels residents need more time before action is taken on the ordinance. Anita Difanis (Bradley Ln) thanked the Ethics Committee and Todd Mann for their work, expressed concern about the lack of civility around the issue, and expressed support for the ordinance, calling for unanimous Council approval of the changes. Phil Lerman (Turner Ln) praised what he described as the clarity of Susan Fattig's written statement on the ordinance but questioned whether the problems really warrant the changes to the ordinance, given the division it has caused and potential unintended consequences. Gary Glickman thanked the Council for bringing the ordinance to the community's attention. In his view, the ordinance supports a culture of ethics and good government, would not lead to unintended consequences, and should be passed. Diane Everts (Raymond St.) asked if what transpired could be found in public records and Susan Fattig responded that residents are able to obtain records of meetings and emails. Diane expressed support for the ordinance and thanked the Council and Ethics Committee for its hard work. Larry Wasson (Delfield St) spoke in favor of an opinion piece written by Peter Kahn and shared on the listserv that argues that impartiality is difficult to define. Larry urged the Council not to adopt the ordinance. Naomi Naierman (Quincy St.) asked if an ethics violation is subject to civil penalties and added that a change in any ordinance should have a more inclusive process. Marc Efron clarified that the only consequence in the proposed ordinance for a violation would be recusal or removal from office. Ron Bolt further noted that under the current code there are civil penalties and criminal penalties, as permitted under State law, but the proposed ordinance removes both civil and criminal penalties. He recommended that an additional sentence be added

to the code that makes that clear. Susan Kahn (Bradley Ln) said that the proposed ordinance asks residents to take on faith that future councils and committees would be able to discriminate between petty grievances and serious violations. She commented that examples of what motivated this ordinance would help to clarify the need for the ordinance, noted that residents have good reasons to be partial, and described the proposal as creating disharmony in the community. She urged the Council to reject the proposed ordinance and look at alternatives to avoid further conflict. Ron Bolt noted that while most area communities do not have a regulation with respect to impartiality, possibly because the law is often responsive and the issue may not have come up, the Town of Somerset does hold its Election Committee members to a higher standard in terms of neutrality and has a process for reviewing whether neutrality has been breached. The Maryland constitution requires that people who hold offices of “public trust” take an oath of office that includes a duty to act impartially. As a result, committee members serving in an office of public trust, like election committees, likely have a State-mandated duty to act with impartiality.

It was further noted that prior complaints in the Village were not investigated since there was no process in place so those complaints were not proven and are therefore inappropriate to share, and since hypotheticals may be misunderstood, it is difficult to give examples. One common theme in past complaints, however, has been the concern that someone in a position of authority made decisions that potentially harm someone else. Uninvestigated complaints are being treated as confidential because if they are frivolous, they should not be republished. Currently, someone may submit a frivolous complaint, and, with the ordinance, there would be a clear process for resolving complaints as opposed to review by the Council, which might be involved in the complaint. While the proposed ordinance has drawn considerable public comment, it may be a way to address conflict and recurring divisions in the community. Currently, Council members and staff are already subject to the provisions of the proposed ordinance, but it would add committee members and the Tree Supervisor. Ron further clarified that a complaint would have to relate to the exercise of a duty, which limits the scope of complaints. Holly Worthington (Turner Ln) asked the Council to reject the ordinance out of concern with process. Marty Langelan (Chestnut St) offered to draft a volunteer manual that, in her view, would be sufficient to handle ethics violations, whereas the ordinance may have unintended consequences. She also asked what happens if the Ethics Committee is the subject of a complaint. Marc responded that members would recuse themselves and/or refer the matter to the Council. Brian Oliver (Delfield St) thanked the Committee and Council for its work and commented that in his view the Council has been wrongly criticized. He argued that the Village already has an ordinance which the Council is trying to fix and believes the ordinance should be passed. Peter Kahn (Bradley Ln) expressed concern that while other jurisdictions have laws regarding conflicts of interest, which are inherently amenable to evidence, impartiality is difficult to determine based on evidence. In his view, the ordinance should include standards of evidence that should be used to evaluate complaints. Ben Dunford (Taylor St) commented that a divisive ordinance is not going to help a community that is divisive and rejected the idea that a Freedom of Information Act request should be necessary to obtain information about the complaints that led to the ordinance. Aleta Margolis (Turner Ln) expressed support for establishing a process to address grievances but is opposed to the ordinance which she sees as divisive. Tiffany Cissna (Bradley Ln) spoke in support of the amendment to the code, noting the value of creating a process when the Council is not dealing with a specific case. She also pointed out that the Village is a municipal government,

not a nonprofit or home-owner association, and State law and the Village Charter dictate the process that must be followed. She also reminded residents that the matter has been discussed openly ten times.

Todd Mann thanked residents for taking the time to comment. Arthur Alexander noted that the ordinance does not take away any of the prerogatives that the Council now has. He suggested making the proposed code applicable only to standing committees, not short term/temporary committees, and that standing committees take the same oath as the Council members. Susan supported removing short term committees and expressed gratitude to the Ethics Committee, noting that it addressed many of the issues raised over the past months.

Jeff Blander recommended an amendment to the ordinance that all complaints go to the Council before being passed to the Ethics Committee, as laid out in PowerPoint slides (see attached). He critiqued the process that led to the ordinance, arguing that if a public forum had preceded the proposing of an ordinance, there would have been less controversy. He also urged the Council to formulate standard operating procedures for its own work and to improve the ordinance process. Katya Hill recommended that the Council move forward with a vote. Todd commented that he believes the process has been open. He reiterated that there were serious complaints lodged earlier this year and wished that examples could have been shared without breaching confidentiality. The ordinance, in his view, provides a good process for evaluating complaints and reduces the penalties currently in place. Jeff responded that he felt the previous complaint could have been handled through clarified standard operating procedures. Ron suggested that the ordinance be amended to include language that a violation shall not constitute a civil or criminal infraction and that enforcement shall be limited to the provisions of Chapter 4 and shall not include the penalties set forth in Chapter 3. Arthur further proposed that the ordinance be amended to apply to all members of the Council, the Ethics Committee, the Elections Committee, the Tree Supervisor, and all staff.

Jeff Blander moved to amend the ordinance so that all complaints go first to the Council and the Council would refer complaints to the Ethics Committee at their discretion. The motion died for the lack of a second.

Todd Mann moved that the proposed ordinance be adopted as amended to apply to the Elections Committee, Ethics Committee, Tree Supervisor, Council and all staff and to include the statement regarding penalties. Katya Hill seconded. Motion passed (4 in favor; Jeff Blander abstained).

Todd thanked residents for their comments and the Ethics Committee and Council members for their contributions. Marc Efron recognized Lorie Mitchell and Debbie Rommell for their hard work on this and thanked the residents who made suggestions to improve the ordinance. Lorie thanked Marc for his leadership, her fellow Committee member Debbie, and the residents.

10:08 PM Discussion and Possible Introduction of an Ordinance to “To Adopt an Urban Forest Program”

Arthur Alexander moved to introduce the ordinance to adopt an urban forest program with one amendment to remove the clause requiring that the Tree Supervisor approve the location of the trees on private property. Jeff Blander seconded. Motion passed unanimously.

10:13 PM Financial Matters, including Treasurer's Report and Budget Amendments to the FY 21 Budget: Alexander

Arthur Alexander gave the Treasurer's Report. The proposed FY22 Budget reflects little change from last year and tax rates are not changing. A large amount of money might come to the Village from the American Rescue Plan Act, but most of the money may be targeted for items that are not part of the Village's operations. Niles Anderegg said that on a call with Senator Van Hollen, the Senator described the expenses mentioned as covered by the American Rescue Plan Act as illustrative, not restrictive (broadband internet access, rolling out vaccines). Further guidance will come from the Treasury Department. Arthur noted that some of the recommendations made by the Walkability Task Force could be implemented with these funds.

Arthur Alexander moved that the FY22 budget ordinance and tax rate resolution be introduced. Seconded by Todd Mann. Motion passed unanimously.

10:19 PM Manager's Report: Anderegg

Niles Anderegg gave the Manager's Report. Together with the Building Administrator and Traffic Engineer, he is developing an action plan to implement Walkability Task Force recommendations. The RFP has closed for the election service provider; two proposals were submitted and interviews conducted. He spoke about the gas leak on Feb. 12, and thanked Katie Howard for her efforts. Niles had emailed the Council and residents of affected streets about the gas leak when it occurred. He has had further communication with Washington Gas and the contractors since then. He will seek ways to improve communication on such problems. Larry Wasson (Delfield St) said residents have reported water in the gas lines at Taylor and Delfield that has gone into equipment in their homes. Niles will follow up. The Village Office is updating the voter roll and will send out more communications shortly. A call for volunteers to serve on the Public Safety Task force went out and so far four people have applied. Pepco installed a streetlight on Thornapple St. that had been approved in Nov. 2019. RFPs will be going out for waste and recycling and street maintenance. In response to a question by Jeff Blander, Niles clarified that, as was done last year, the service provider will check the voter signature on the ballot envelope against the address on the voter roll. If questions arise, the Election Committee adjudicates ballots by verifying names on the voter roll.

10:27 PM Opportunity for Council to Hear Residents' Comments: Fattig

Katie Filipczyk Howard (Taylor St) said that she submitted her nomination to serve on the Village Council at 11:59 pm, March 5, according to the time stamp on her email. The Elections Committee, however, did not accept her nomination on the grounds that it was received too late. She added that for six years now there has been no representation on the Council from Thornapple, Summit, Taylor, Chestnut, and Delfield and her neighbors had urged her to run. She

also expressed support for term limits. Jeff Blander inquired as to how Katie's complaint should be resolved. Ben Dunford (Taylor) expressed support for Katie's candidacy as did Larry Wasson (Delfield St), Marty Langelan (Chestnut St), and Kathy Bishop (Taylor St). Since no one from the Election Committee was still present at the Council meeting, Katya Hill suggested taking this issue offline until both sides can be represented. Arthur asked Katie to send information to Ron Bolt so he can explore further.

Lynn Welle (Oxford St) requested that contractors be required to park on the side of the street that is permitted for legal parking, leaving the traffic lane open. He also recommended that the Election Plan for 2021 Election be amended so that the term "VMA qualified voter" replaces "resident." He also expressed concern about the timeline for returning ballots, the required signature, and the discarding of improper ballots. Niles Anderegg noted that residents will have close to a month between the time they receive their ballots and the deadline for receipt by the vendor. Lynn Welle's email on these matters will be shared with the Elections Committee.

Jeff Blander called for a restoration of civility and kindness in all Council meetings going forward and emphasized that all people should be treated with respect.

10:55 PM Adjournment: Fattig

Katya Hill made a motion that the meeting be adjourned; seconded by Arthur Alexander. Motion passed unanimously.