



TUESDAY, JANUARY 26, 2016
CITY OF COLLEGE PARK
COUNCIL CHAMBERS

7:15 P.M.

Public Hearing on Ordinance 16-O-01
An Ordinance of the Mayor and Council of the City of College Park
to Amend the Fiscal Year 2016 Operating and Capital Budget
of the City of College Park, Maryland (Amendment #2)

7:30 P.M.

MAYOR AND COUNCIL MEETING
AGENDA

(There will be a closed session following the conclusion of the regular meeting.)

MEDITATION

PLEDGE OF ALLEGIANCE: Councilmember Nagle

ROLL CALL

MINUTES: Special Session on January 5, 2016; Transcript in lieu of minutes for the
December 1 Oral Argument in CEO-2015-02, Cruz Development Corporation.

ANNOUNCEMENTS

ACKNOWLEDGMENT OF DIGNITARIES

ACKNOWLEDGMENT OF NEWLY APPOINTED BOARD AND COMMITTEE MEMBERS

AWARDS

PROCLAMATIONS

AMENDMENTS TO THE AGENDA

CITY MANAGER'S REPORT: Scott Somers

STUDENT LIAISON'S REPORT: Cole Holocker

COMMENTS FROM THE AUDIENCE ON NON-AGENDA ITEMS

PRESENTATIONS

Presentation of FY '16 Public School Education Grants
to the following 4 of the City's 10 neighborhood school grant recipients:

- High Point High School - Sandy Jimenez, Principal
- Paint Branch Elementary School - Emmett Hendershot, Principal
- Greenbelt Middle School - George Covington, Principal
- Parkdale High School - Tanya Washington, Principal; Karen Bogoski, Technology Department Chair; Parkdale Robotics Students

CONSENT AGENDA

- 16-G-08 Approval of a Request for a Driveway Apron Variance for 9032 48th Place, subject to the applicant entering into a Declaration of Covenants with the City in substantially the form attached, and authorization for the City Manager to sign the Declaration of Covenants
Motion By:
To: Adopt
Second:
Aye: ___
Nay: ___
Other: _____
- 16-G-09 Approval of request by the College Park Community Foundation for City co-sponsorship of the 2016 Mothers Day Weekend 5K Race
- 16-G-11 Approval of a letter to County Council Member Glaros requesting FY '17 funding for a Transportation Demand Management District

ACTION ITEMS

- 16-O-01 Adoption of Ordinance 16-O-01, An Ordinance of the Mayor and Council of the City of College Park to Amend the Fiscal Year 2016 Operating and Capital Budget of the City of College Park, Maryland (Amendment #2)
Motion By: Dennis
To: Adopt
Second:
Aye: _____
Nay: _____ Other: _____
- 16-G-10 City Council Support for Deletion of School Facilities Surcharge exemption areas for Student Housing, and Creation of Exemption for Graduate Student Housing
Motion By: Brennan
To: Adopt
Second:
Aye: _____
Nay: _____ Other: _____
- 16-G-13 Consideration of a state bond bill request for the Hollywood Streetscape Project
Motion By: _____
To: Adopt
Second:
Aye: _____
Nay: _____ Other: _____
- 16-G-12 Appointments to Boards and Committees
Motion By:
To: Adopt
Second:
Aye: ___ Nay: ___
Other: _____

COUNCIL COMMENTS

COMMENTS FROM THE AUDIENCE

ADJOURN

CLOSED SESSION

1. To Consider Matters That Relate To Collective Bargaining Negotiations
2. To Consider The Acquisition Of Real Property
3. To Consult With Counsel On A Legal Matter

STATUS/INFORMATION REPORTS FOR COUNCIL REVIEW

None.

(This agenda is subject to change. For the most current information, please contact the City Clerk. In accordance with the Americans with Disabilities Act, if you need special assistance, please contact the City Clerk's Office at 240-487-3501 and describe the assistance that is necessary.)

**7:15 P.M.
PUBLIC
HEARING
ORDINANCE
16-O-01**

**NOTICE OF PUBLIC HEARING
ORDINANCE 16-O-01
TUESDAY, JANUARY 26, 2016
7:15 P.M.**

**COLLEGE PARK CITY HALL
4500 KNOX ROAD
2ND FLOOR COUNCIL CHAMBERS
COLLEGE PARK, MD 20740**

The College Park City Council will take public testimony on Ordinance 16-O-01, An Ordinance of the Mayor and Council of the City of College Park to Amend the Fiscal Year 2016 Operating and Capital Budget of the City of College Park, Maryland (Amendment #2).

Copies of this Ordinance may be obtained from the City Clerk's Office, 4500 Knox Road, College Park, MD 20740, or by calling 240-487-3501, or visit www.collegeparkmd.gov. In accordance with the Americans with Disabilities Act, if you need special assistance, please contact the City Clerk's Office and describe the assistance that is necessary.

Notice of Public Hearing for Ordinance 16-O-01:

- Published in the Washington Post on January 18, 2016
- Posted to City Bulletin Boards on January 13, 2016
- Posted to City Website on January 13, 2016
- Posted on Cable Television Channel on January 13, 2016

ATTEST:



Janeen S. Miller, City Clerk

ORDINANCE 16-O-01

An Ordinance of the Mayor and Council of the City of College Park to Amend the Fiscal Year 2016 Operating and Capital Budget of the City of College Park, Maryland (Amendment #2)

WHEREAS, the Mayor and Council of the City of College Park, Maryland did adopt a budget for the fiscal year beginning July 1, 2015 and ending June 30, 2016 (hereinafter referred to as “Fiscal Year 2016” or “FY2016”) on May 26, 2015 by the enactment of Ordinance 15-O-03; and

WHEREAS, the Mayor and Council of the City of College Park, Maryland did amend the FY2016 adopted budget on November 24, 2015 (Amendment #1) by the enactment of Ordinance 15-O-05; and

WHEREAS, the Mayor and Council of the City of College Park, Maryland desire to amend the FY2016 adopted budget in order to reallocate certain budgeted expenditures, fund certain new staff positions and adjust the interfund transfer to a Capital Improvement Program (“C.I.P.”) project.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Council of the City of College Park, Maryland, that the budget for fiscal year 2016 be, and hereby is, amended in accordance with the following schedule, with said amendments being indicated by asterisks in the right column. The individual budget amendment changes are itemized in Appendix A, attached hereto and incorporated herein by this reference.

General Fund

	<u>Budget as Adjusted</u>	<u>As Amended by this Ordinance</u>
Revenues		
Taxes	\$ 10,900,642	\$ 10,900,642
Licenses & Permits	1,193,935	1,193,935
Intergovernmental	261,772	261,772
Charges for Services	999,078	999,078
Fines & Fees	2,510,600	2,510,600
Miscellaneous Revenues	<u>194,569</u>	<u>194,569</u>
<i>Total Operating Revenues</i>	\$ 16,060,596	\$ 16,060,596
Non-Revenue Receipts		
Interfund Transfer from Parking Debt Service		
Fund	257,392	257,392
Use of Unassigned Reserve	<u>1,500,000</u>	<u>0</u> *

Total Revenues	<u>\$ 17,817,988</u>	<u>\$ 16,317,988</u> *
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Expenditures

General Government	\$ 4,327,207	\$ 3,102,976 *
Public Services	4,019,776	4,019,776
Planning, Community & Economic Development	664,463	664,463
Youth, Family & Senior Services	1,114,881	1,114,881
Public Works	5,215,750	5,189,981 *
Contingency	10,000	10,000
Debt Service	557,411	557,411
Interfund Transfers to Capital Projects Fund	<u>1,908,500</u>	<u>1,658,500</u> *

Total Expenditures	<u>\$ 17,817,988</u>	<u>\$ 16,317,988</u> *
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Parking Debt Service Fund

	<u>Budget as Adjusted</u>	<u>As Amended by this Ordinance</u>
Revenues		
Highways & Streets		
Parking Meter Revenue	\$ 205,000	\$ 205,000
Fines		
Parking Fines Revenue	<u>45,000</u>	<u>45,000</u>
Total Revenues	<u>\$ 250,000</u>	<u>\$ 250,000</u>

Expenditures

Interfund Transfer to General Fund	<u>\$ 257,392</u>	<u>\$ 257,392</u>
Total Expenditures	<u>\$ 257,392</u>	<u>\$ 257,392</u>

BE IT FURTHER ORDAINED that:

1. All matters and facts contained in Ordinances 15-O-03 (original budget adoption) and 15-O-05 (Amendment #1) other than the amendments contained herein shall remain in full force and effect;
2. In addition to the projected General Fund operating revenue of \$16,060,596, the amount of \$0 is appropriated from the unassigned reserve and the sum of \$257,392 is transferred from the Parking Debt Service Fund;
3. This budget amendment Ordinance provides for a reallocation of certain budgeted expenditures, funding for certain new staff positions and an adjustment in the

interfund transfer to the Capital Improvement Program (C.I.P.), as itemized in Appendix A, attached hereto and incorporated herein by this reference. The net result is a \$1,500,000 decrease in the budgeted use of unassigned reserve from \$1,500,000 to \$0; and

4. This Ordinance shall become effective at the expiration of twenty (20) calendar days following its adoption.

AND BE IT FURTHER ORDAINED by the Mayor and Council of the City of College Park, Maryland that, upon introduction of this Ordinance, the City Clerk shall distribute a copy of the same to each council member and shall publish a fair summary of this Ordinance in a newspaper having general circulation in the City, together with a notice setting out the time and place for a public hearing hereon and for its consideration by the Council.

A public hearing will be held on the proposed Ordinance at **7:15 p.m.** on the **26th** day of **January, 2016** in the Council Chambers, City Hall, 4500 Knox Road, College Park, Maryland. The public hearing will be held in connection with a regular Council meeting. All persons interested will have an opportunity to be heard. After the public hearing, the Council may adopt the proposed Ordinance, with or without amendment, by the affirmative vote of at least six (6) members of the Council. It shall become effective twenty (20) days following its adoption. After its adoption, the City Clerk shall have a fair summary of the Ordinance and notice of its adoption published in a newspaper having a general circulation in the City of College Park, and shall have copies of the adopted Ordinance available at City offices.

Introduced on the **12th** day of January, 2016

Adopted on the _____ day of January, 2016

Effective on the _____ day of February, 2016

Patrick L. Wojahn, Mayor

ATTEST:

Janeen S. Miller, CMC, City Clerk

APPROVED AS TO FORM:

Suellen M. Ferguson, City Attorney

CITY OF COLLEGE PARK, MARYLAND
Appendix A to Ordinance 16-O-01
Itemized FY2016 Budget Amendment #2 Changes

Program	Description	Increase (Decrease)
Revenues- Unassigned Reserve Transfer 399.00	Use of Unassigned Reserve in Adjusted Budget (Amendment #1)	\$ 1,500,000
Gen Govt-Publ Relations-1017	Create a new exempt position entitled "Communications Coordinator" at pay grade 13, and fund for 4 months, including wages and fringe benefits	25,769
Gen Govt- Finance-Non Departmental- 1025	Eliminate FY16 budgeted repayment to the General Fund for the MSRP prior service credit purchase from \$1,250,000 to \$0 as full MSRP prior service credit purchase was accounted for in FY15 financial statements (account 1025-1127).	(1,250,000)
Publ Works- Admin-5010	Eliminate funding for vacant Operations Supervisor position for remaining 4 months of FY16, including wages and fringe benefits, less excess reduction	(26,757)
Publ Works- Admin-5010	Create a new exempt position entitled "Assistant Director, Operations and Facilities" at pay grade 20, and fund for 4 months of FY16, including wages and fringe benefits	39,741
Publ Works- Refuse Mgmt- 5011	Eliminate funding for vacant Crew Chief position for remaining 4 months of FY16 (50% FTE allocation), including wages and fringe benefits	(12,777)
Publ Works- Recycling-5025	Eliminate funding for vacant Crew Chief position for remaining 4 months of FY16 (50% FTE allocation), including wages and fringe benefits	(12,776)
Publ Works-Bldg Maint-5028	Eliminate funding for vacant Custodial Worker position for remaining 4 months of FY16, including wages and fringe benefits	(13,200)
Interfund Transfers-9210	Reduce additional funding for the City Hall Expansion (C.I.P. project 041003) to correct clerical error in adoption of budget Amendment #1	<u>(250,000)</u>
Revenues- Unassigned Reserve Transfer 399.00	Use of Unassigned Reserve in Amended Budget (Amendment #2)	<u>\$ 0</u>

MINUTES

MINUTES
Special Session of the College Park City Council
Tuesday, January 5, 2016
Council Chambers
10:01 – 10:04 p.m.

PRESENT: Mayor Wojahn; Councilmembers Kabir, Nagle, Brennan, Dennis, Stullich, Day, Kujawa and Cook.

ABSENT: None.

ALSO PRESENT: Scott Somers, City Manager; Bill Gardiner, Assistant City Manager; Janeen Miller, City Clerk; Suellen Ferguson, City Attorney; Terry Schum, Director of Planning; Bob Ryan, Director of Public Services; Bob Stumpff, Director of Public Works; Jill Clements, Director of Human Resources; Steve Groh, Director of Finance; Cole Holocker, Student Liaison.

During a regularly scheduled Worksession of the College Park City Council, a motion was made by Councilmember Dennis and seconded by Councilmember Brennan to enter into a Special Session. The possibility of the Special Session was listed on the Worksession Agenda. The comments need to be postmarked by January 6 so this needs to be approved tonight in Special Session. With a vote of 8 – 0 – 0, the Council entered into a Special Session at 10:01 p.m.

ACTION ITEMS

16-G-01 Approval of City comments on the Draft Environmental Impact Statement for the FBI consolidation at Greenbelt Station

A motion was made by Councilmember Nagle and seconded by Councilmember Kabir to approve the revised letter in the red folder providing written comments on the Draft Environmental Impact Statement (DEIS) for the Federal Bureau of Investigation (FBI) Headquarters Consolidation to be submitted to the U. S. General Services Administration.

Councilmember Nagle said that the DEIS considers three locations for a new permanent FBI Headquarters including Greenbelt, Landover and Springfield, and evaluates the short- and long-term impacts of each site alternative. A subcommittee of the City Council was formed to assist city staff with the review of the DEIS focusing on the Greenbelt Metro Area site. A letter to the GSA has been drafted that includes requests for additional information and analysis about the potential impacts of the consolidation of the FBI on the College Park area. Public comments must be postmarked by January 6, 2016.

There were no comments from the audience or from the Council.

The motion passed 8 – 0 – 0.

ADJOURN:

A motion was made by Councilmember Dennis and seconded by Councilmember Brennan to adjourn from the Special Session, and with a vote of 8 – 0 – 0, Mayor Wojahn adjourned at 10:04 p.m.

Janeen S. Miller, CMC
City Clerk

Date
Approved

CITY OF COLLEGE PARK

+ + + + +

ORAL ARGUMENT

+ + + + +

CEO-2015-02
CRUZ DEVELOPMENT CORPORATION
BRANCHVILLE ROAD
FRONT YARD FENCE VARIANCE REQUEST

+ + + + +

TUESDAY,
DECEMBER 1, 2015

+ + + + +

The Oral Argument was heard in the City Council Chambers, 4500 Knox Road, College Park, Maryland, at 7:28 p.m., Andrew M. Fellows, Mayor, presiding.

PRESENT

ANDREW M. FELLOWS, Mayor
DENISE C. MITCHELL, Mayor Pro Tem

COUNCILMEMBER P.J. BRENNAN
COUNCILMEMBER ROBERT W. DAY
COUNCILMEMBER MONROE S. DENNIS
COUNCILMEMBER ALAN Y. HEW
COUNCILMEMBER FAZLUL KABIR
COUNCILMEMBER STEPHANIE STULLICH
COUNCILMEMBER PATRICK L. WOJAHN

ALSO PRESENT

SCOTT SOMERS, City Manager
BILL GARDINER, Assistant City Manager
TERRY SCHUM, Planning Director
MIRIAM BADER, Senior Planner
SUELLEN FERGUSON, City Attorney
JANEEN S. MILLER, City Clerk
COLE HOLOCKER, Student Liaison

1 P-R-O-C-E-E-D-I-N-G-S

2 (7:28 p.m.)

3 MAYOR FELLOWS: And I'll call the oral
4 argument to order.

5 This is an oral argument that's
6 scheduled for right now regarding the record of
7 the case CEO-2015-02, the Cruz Development,
8 Branchville Road, and their request for waiver.

9 The oral argument has been requested
10 and is by Councilmember Mitchell and Thomas
11 Tanner as the party of record. And all other
12 parties of record are able to participate in this
13 oral argument. I just want to note that we
14 received a letter from North College Park that
15 they are not a party of record so as not to be
16 regarded in this matter.

17 Each side is going to be given in
18 support -- well, each side will be able to
19 present. Those in support of the APC
20 recommendation and those against the APC
21 recommendation will have 30 minutes, if needed,
22 to present their arguments. This time will be

1 divided among the individuals that are here
2 tonight to speak. And no person is given less
3 than five minutes to speak.

4 After the oral argument is concluded,
5 each side may have 10 minutes of rebuttal, and no
6 person is given less than two minutes to speak in
7 rebuttal.

8 And please remember that the comments
9 made during this hearing have to be limited to
10 the facts and information that were part of the
11 record made at the public hearing before the APC.
12 No new information may be addressed. And the
13 last hearing we had kind of went all over the
14 place, and so I think we're going to be a little
15 bit more by the book tonight.

16 So we are going to begin with an
17 orientation by Ms. Bader. So please take us
18 through the case.

19 MS. BADER: Good evening, Mayor and
20 City Council. For the record, I am Miriam Bader,
21 Senior Planner for the City of College Park.
22 Tonight's oral argument is for Case CEO-2015-02,

1 as submitted by the Cruz Development Corporation
2 for their property located at the 4800-4900 block
3 of Branchville Road.

4 Here is an aerial view of the
5 property. The property is outlined here in this
6 red color. And it's a 2-acre triangular-shaped
7 subject property. It's located at the
8 intersection of University Boulevard, Branchville
9 Road, and this is Rhode Island Avenue.

10 The property is undeveloped and mostly
11 wooded. Along the south side of Branchville Road
12 is the Branchville Volunteer Fire Department.

13 This gives you a zoning map of the
14 property. The property on this slide is outlined
15 in blue. And you can see that the majority of
16 the property is zoned R-10, which is multi-
17 family, high density residential. And there is a
18 section of it that's zoned OS which is for open
19 space.

20 The Applicant has requested to erect
21 a 6-foot high fence in their front yard. This
22 requires a variance since the city fence

1 ordinance prohibits front yard fences.

2 Again just to orient you, here's
3 Branchville Road. Here's University Boulevard or
4 MD Route 193. Here's Rhode Island Avenue.

5 This red line right here, that
6 indicates where they would like to put the fence.
7 You'll notice that there's a jog here. The
8 reason for that is that the principal property
9 right here, at the time that it was subdivided
10 they dedicated a 15-foot right-of-way. After
11 that right-of-way dedication, then they purchased
12 this property here. So they did not dedicate
13 right-of-way; that's why you have that jog right
14 there.

15 And actually this is the property line
16 here. The Applicant's proposing to put the fence
17 one foot back from the property line.

18 The blue dashed line here represents
19 a four -- it's mainly 4-foot high chain link
20 fence that's located to the neighboring
21 property's rear yard. They're single family
22 homes along here.

1 This green area is a graveled area
2 that members of the Fire Department routinely
3 park their vehicles there.

4 The blue line here shows the location
5 of the Fire Department.

6 Just to review the time line, the
7 application was submitted on August 13th. There
8 was a hearing on September 3rd in which the
9 Applicant requested that the hearing date be
10 continued to October 1st. So the hearing was
11 held October 1st.

12 At the hearing, the Branchville
13 Volunteer Fire Department testified that the
14 installation of the fence would block the use of
15 the Applicant's property when turning and
16 maintaining their vehicles.

17 We also heard from Kevin Young,
18 President of the Berwyn District Civic
19 Association, who was also opposed to the request.

20 The APC made the following conclusions
21 of law based on the required seven variance
22 criterias, which I have paraphrased for you on

1 the screen.

2 Based on the evidence and testimony
3 presented and the findings of fact and conclusion
4 of law, the APC recommended by a three in favor,
5 one opposed vote, approval of the Resolution
6 Number 15-RR-10 with the following three
7 conditions:

8 One was there was an error on the
9 fence location plans, so they need to correct
10 that;

11 Two, we are recommending, the APC
12 recommended that they reduce the height of the
13 fence from 6 feet to 4 feet to lessen the impact
14 on the neighborhood since the majority of fences
15 in the neighborhood are 4-feet high, and;

16 Three, to upgrade the material of the
17 fence from welded wire to metal posts because the
18 welded wire had the impression of looking like
19 chain link fence, and we don't allow chain link
20 fences in front yards.

21 This concludes the staff orientation.

22 MAYOR FELLOWS: All right, thank you

1 very much.

2 Next we're going to hear from the
3 parties of record opposed to the recommendation
4 of the Advisory Planning Commission. Who would
5 like to speak first?

6 Mr. Tanner, welcome.

7 MR. TANNER: Yes, I'll take that first.

8 MAYOR FELLOWS: All right. And again,
9 just remember to keep it to the --

10 MR. TANNER: Yes, sir.

11 MAYOR FELLOWS: -- things that were in
12 the record already.

13 MR. TANNER: I'll be reporting stuff
14 from out of the packet that I saw off your
15 website.

16 MAYOR FELLOWS: All right.

17 MR. TANNER: Again, the packet you
18 have.

19 For the record, my name is Thomas L.
20 Tanner. I am the Vice President and Trustee at
21 the Branchville Volunteer Fire Company, 4905
22 Branchville Road, the little blue box you see at

1 the bottom of your drawing here.

2 The Branchville fire house has been
3 there since 1924 in one way or another. The
4 current station has been there since 1954. In
5 those 90 years we've not had any problems getting
6 in and out the apparatus, getting the apparatus
7 in and out of that station. Now we're going to
8 have a problem.

9 When I quote some page numbers it will
10 be in the addenda that's in your packet today.
11 Our main argument is against the findings that
12 they found at the APC meeting regarding Criteria
13 No. 5, the variance will not affect public
14 health, safety, welfare or comfort. And notice
15 that's the public health, safety, welfare or
16 comfort.

17 Not sure what can affect public
18 health, welfare, comfort more than delaying
19 emergency response, not affecting the out-of-
20 state property owner but instead the local
21 community.

22 On page 27 of your packet there's a

1 drawing, a schematic. And that's probably where
2 this was taken from; not exactly sure. Of the
3 drawing where the fence line is coming. And it's
4 close to the fire house. This is not one post
5 you can add. Close to the fire house from what
6 you see here, and then it jogs in 8 feet, close
7 to the fire house in front of bay 3, or bay 2
8 actually.

9 And that's where our main issue is
10 regarding this concept. We're not worried about
11 the gravel parking undoubtedly. You notice when
12 we park, we park farther up, okay? For us, we're
13 worried about getting the apparatus out.

14 And so on the original staff report
15 that you might have received on page 39, they
16 didn't have that jog on that drawing. I see they
17 have corrected it here on this one.

18 If you look at page 54, you'll see
19 what happens at that jog when the apparatus has
20 to make that turn. What we did is we set -- the
21 Applicant put up, had some survey stuff done and
22 they put monuments into the ground. So we put

1 cones on the two monuments that are one in front
2 of the other here and here. And then we put a
3 cone here and here to show how that corner works.

4 And you'll see that if we're trying to
5 make that turn out we go across into those cones.
6 That, so that was on page 56.

7 Fifty-seven we have a photo in there.
8 I think it's in the upper-left corner. That was
9 a set of plans we received from Cruz Development
10 back in 1988 showing how they were going to
11 resolve the turning radius per the requirements
12 of the DSP they filed for back then. Those
13 requirements are still the same. Fire trucks
14 don't get smaller, they get bigger.

15 Back then we had a letter, and we
16 mentioned it in the -- in your packet there from
17 the fire chief, about how much distance you're
18 going to need. And they came up, when they did
19 their drawing they came up with a 40-foot radius.
20 The fire chief's recommendation is 45.

21 So page 78 you have the attorney at
22 the time who showed up for the APC meeting,

1 Matthew Tedesco, calling our turning requirements
2 a red herring. Again, if we needed room -- if we
3 didn't need the room, why would we park our
4 vehicles so far up on that gravel lot? We need
5 the room out in front of the fire house to swing
6 out either to respond to calls or to be able to
7 swing upward so we can back in safely into the
8 apparatus bays. The bays are only 11 feet long.
9 Apparatus are near 10 feet wide, or apparatus
10 bays are 11 feet wide, apparatus about 10 feet
11 wide.

12 Just also want to say that I think if
13 you read the testimony clearly, on page 93 there
14 is some lines where I might have been misquoted.
15 And I don't want to give the wrong impression.
16 It says, what it reads is I want to say that I
17 don't think anywhere in my -- previously I said
18 that we needed to have that access for parking.
19 And that's talking about access onto the gravel.

20 I never said that in any of my
21 statements that I needed that access for getting
22 my apparatus in and out. I think that somewhere

1 something got lost in the translation of that
2 second para -- second line. Instead it should
3 say, I never said that in any of my statements,
4 period. I needed that space for getting my
5 apparatus in and out.

6 Because if you add that "that" in
7 there it changed, changes the, the context.

8 Let's see. Also in there on page 116,
9 lines 12 to 16, APC Member Lawrence Bleau made a
10 blanket statement about the video that we showed,
11 shows that we can operate within the right-of-
12 way. But again that doesn't -- that turning, at
13 this turning mark, didn't take into account how
14 that corner there affects us.

15 Basically I just want to say that we
16 enjoy servicing the community but we don't want
17 to be handicapped by having our major, one of our
18 major routes out blocked.

19 If you'll look on one of the other
20 photographs, I think it's on page, page 37,
21 you'll see how when we have the apparatus out for
22 washing or to do maintenance on them, how they

1 sit out on the ramp. If we get call while the
2 apparatus are out, we need to swing out around
3 the unit that's not being used. And being
4 restricted to not being able to turn, having that
5 access to go both ways means that every time
6 we're going to have to go left. And if I always
7 have to go left, instead of me going out right
8 onto University Boulevard and going up to Route 1
9 or going up Rhode Island Avenue, I have to come
10 out left, come down 49, make a left on Greenbelt,
11 make a left on Rhode Island, make a left on 1,
12 just adding a whole lot of time to our responses.

13 And, again, if it's a working fire,
14 fire builds up 100 percent every 30 seconds I'm
15 delayed.

16 So I guess in conclusion, I'd just
17 like to add that if you're going to approve the
18 fence, you have to do something about that, that
19 corner there. And my recommendation is just have
20 them continue it on the property line.

21 We would prefer not to have the fence.
22 We don't see, as we said in our testimony, we

1 don't see the need for a fence. There's never
2 been a dumping issue, not since we started
3 cleaning the lot up in '86, before '86, and all
4 the time we were maintaining it before they
5 started coming in doing their own maintenance in
6 the 2000s, late 2000s.

7 That's everything. Any questions,
8 please?

9 MAYOR FELLOWS: Ms. Mitchell?

10 MAYOR PRO TEM MITCHELL: Yes.

11 Thank you for coming out tonight and
12 giving --

13 MR. TANNER: Yes, ma'am.

14 MAYOR FELLOWS: -- your testimony. I
15 do want to ask in regards to your saying "getting
16 out" because of the blockage of there's going to
17 be the fence put up. How much time will you
18 think it will impact you? I know seconds count,
19 so how much could you possibly estimate that
20 would hinder you?

21 MR. TANNER: If I have to back up, you
22 know, say I come up and I'm coming up on that

1 corner of that fence, I'm going to have to stop,
2 shift gears, go back slowly because I can't see
3 out the back end of my engine very well. I don't
4 have a rear view mirror that's in the center lets
5 me see directly back. All I can see are out my
6 wing mirrors. And remembering I have a 2-story
7 brick fire house behind me that I don't want to
8 run into.

9 Additionally, it's unsafe for us to do
10 that without a backup person. We're required to
11 have a backup person, which means I have to
12 disembark somebody to get out to run to the back,
13 make sure there's nobody walking back there or
14 somebody running up so I don't run them over.
15 Then that person has to get back on.

16 And we're talking a little bit of
17 time.

18 MAYOR PRO TEM MITCHELL: Thank you,
19 Mr. Mayor.

20 MAYOR FELLOWS: All right, thank you.

21 Mr. Brennan.

22 COUNCILMEMBER BRENNAN: Thanks, Mr.

1 Tanner, for coming out this evening. The jog
2 that you're referring to is the main proposed
3 physical fixture that would be in the way of the
4 apparatus?

5 MR. TANNER: Yes, sir.

6 COUNCILMEMBER BRENNAN: And the dotted
7 line that's further up there is --

8 MR. TANNER: The drawing, yes, it's --

9 COUNCILMEMBER BRENNAN: -- is
10 currently not, not in the apparatus -- it's not
11 obstructing the apparatus?

12 MR. TANNER: This is the property line.
13 We go over that, where that low monument is all
14 the time, if not with the wheels, at least the
15 front. The front bumper sticks out 4 feet in
16 front of the front wheels, so if you have a 4-
17 foot tall fence and I have to stop so I don't run
18 over that, I have to back up. Or I always have
19 to go left.

20 COUNCILMEMBER BRENNAN: And earlier you
21 talked about one of the units being pulled out of
22 the garage, out of one of the bays and having to

1 -- not having enough room to negotiate around it
2 and having to turn the other.

3 MR. TANNER: Correct. Right.

4 COUNCILMEMBER BRENNAN: But that's more
5 of an operational issue, it sounds to me, that
6 could be resolved by, by planning ahead and not
7 having that obstruction there?

8 MR. TANNER: We'd have to have it so we
9 only have one piece out at a time to do washing
10 them instead of having both or all three of them
11 out at one time so we can just do them all at
12 once.

13 COUNCILMEMBER BRENNAN: Is there any
14 other location where the apparatus can be
15 maintained and cleaned?

16 MR. TANNER: Originally when the fire
17 house was built we had a wash bay. That's bay 1.
18 But the apparatus have gotten too big to pull
19 into the wash bay. So, yeah, if we're going to
20 do it anywhere else we have to have, you know, a
21 place for hooking up hoses and things like that
22 in order to do the washing.

1 COUNCILMEMBER BRENNAN: And that, is
2 that available on the side of the building or
3 anywhere else?

4 MR. TANNER: No, we don't have, we
5 don't have that available on the side.

6 COUNCILMEMBER BRENNAN: Okay, thank
7 you.

8 MAYOR PRO TEM MITCHELL: Thank you, Mr.
9 Brennan.

10 Mr. Wojahn.

11 COUNCILMEMBER WOJAHN: Thank you, Mr.
12 Tanner. First of all, thank you for coming this
13 evening and thank you for your service.

14 Actually the question, I think this
15 may be more for staff. There was a discussion in
16 the transcript of the APC hearing about a video
17 that demonstrated the truck turning out of the
18 fire house. Is that on the record? And is that
19 --

20 MAYOR FELLOWS: Yes, and there was a
21 link.

22 MS. BADER: Yes.

1 MAYOR FELLOWS: There's a link in your
2 packet.

3 MS. BADER: Right. The video was part
4 of the PowerPoint. Oh, okay. Okay, Janeen has
5 it.

6 MR. TANNER: So set up the video, what
7 it is, that I want to see what happens if I'm at
8 a dead stop and I'm turning right out of the fire
9 house and from that parked position. What it
10 doesn't take into account is, like I said, when
11 you want to back in you have to swing up into
12 that lot to swing back in.

13 Also doesn't take into account there
14 was no vehicle to my right.

15 (Video playing.)

16 So that's bay 4. So the door at the
17 closed bay, that's the old wash bay. We use that
18 as a weight room now and a laundry.

19 So from a dead stop I'm able to pretty
20 much start swinging my wheels all the way, which
21 cuts my turning radius. But right there, that
22 cone is not the cone -- not the monument, that's

1 just a marker cone. But right about where that
2 bumper is is very close to, if not where the
3 monument was placed.

4 I did this before they put the
5 monument so I didn't have a way to mark it. But
6 that, again is from bay 3, bay 3 is your -- bay 4
7 as you're going across from left to right. The
8 engines are kept in bays 3 and 4. So if you have
9 an engine in bay 3, you're definitely going to go
10 all over that.

11 COUNCILMEMBER WOJAHN: Okay. So bay 3
12 is closer towards --

13 MR. TANNER: Closer to the east. So if
14 you go from east, which is toward Rhode Island
15 Avenue, so left to right as you're facing the
16 fire house, bay 1 is the wash bay, bay 2 we use
17 for chief's vehicle, bay 3, 4 are for fire
18 engines, bay 5 and 6 are used for ambulances.

19 COUNCILMEMBER WOJAHN: Thanks. And
20 that's your longest, that's your longest, the one
21 that you just showed us pulling out, that's your
22 longest?

1 MR. TANNER: That's our 31-foot engine.

2 COUNCILMEMBER WOJAHN: Okay, thanks.

3 MAYOR FELLOWS: Other questions for Mr.
4 Tanner based on the record?

5 Ms. Mitchell.

6 MAYOR PRO TEM MITCHELL: Thank you, Mr.
7 Mayor.

8 When one of the criteria is talking
9 about, number one, that there is an extraordinary
10 situation or condition that would support the
11 request for a variance, and it talks about that
12 the property is vacant and there will be concerns
13 about dumping and monitoring of the property. In
14 your opinion, since you're right there, have you
15 seen anything to date right now that would give
16 you concern about it?

17 MR. TANNER: No, ma'am. I was talking
18 to one of our older members, and they cleaned the
19 lot up back in the '80s. And then since then we
20 were maintaining it until the late 2000s, early
21 2010s, when crews started showing up again. They
22 started sending their crew. But before that we

1 were doing all the cutting and maintaining the
2 lot.

3 MAYOR PRO TEM MITCHELL: Okay, thank
4 you.

5 Thank you, Mr. Mayor.

6 MAYOR FELLOWS: All right. Thank you,
7 Ms. Mitchell.

8 Any other questions for Mr. Tanner
9 based on the record? All right, Ms. Stullich.
10 Yes, ma'am.

11 COUNCILMEMBER STULLICH: So I'm just --
12 to help me understand the situation, what you are
13 asking is that instead of the fence jogging
14 towards Branchville Road that it be continued in
15 a straight line? Is that what you're asking?

16 MR. TANNER: If you're going to grant
17 the variance and that's the easiest way to make
18 sure we don't have an issue with our turning
19 radius at that point. Doesn't help me with my
20 new drivers. I can't introduce new stuff so I
21 can't show you this video of this first guy
22 trying to park, do the backing in the first time

1 and how far he goes.

2 But, but for the early just trying to
3 make sure that we can make that turn, that helps
4 solve that part for this instance. It doesn't
5 help me completely when I have multiple apparatus
6 out. But it does make it a lot safer for me to
7 make that turn to the right there.

8 COUNCILMEMBER STULLICH: Okay. And so
9 what -- but the other problems that continuing
10 the fence straight you said would not address all
11 of the problems.

12 MR. TANNER: Correct.

13 COUNCILMEMBER STULLICH: What would be
14 the solution to address all of those turning
15 problems?

16 MR. TANNER: Have the fence farther
17 back. That way we can get, if we have, like I
18 said, if we have one apparatus out and I need to
19 swing the other one in front of it, then that
20 gives me that room to get between the front of
21 the one apparatus and out onto the gravel.

22 COUNCILMEMBER STULLICH: Right. And do

1 you -- I understand I can ask the Applicant when
2 they are up -- but what is the reason for that
3 jog towards Branchville Avenue?

4 MR. TANNER: The reason is because when
5 Applicant bought the property back in 1986 it was
6 a consolidation of four residential lots. And it
7 was then re-zoned into the current R-10. And it
8 ended right here.

9 This property, that's called Parcel A.
10 This is called Parcel 91. Parcel 91 was owned by
11 the state of Maryland at the time. Then the
12 Applicant was able to buy it.

13 And as I mentioned in my statement,
14 somehow they were able to buy it a year after we
15 asked the state if we could buy it, and were
16 denied. And they were given permission to buy
17 it. When they did that, there was no stipulation
18 that they had to have the additional right-of-way
19 for widening of Branchville Road. That's why it
20 basically comes to a "T" right there. You have
21 the 15 foot difference between the two property
22 lines.

1 COUNCILMEMBER STULLICH: Okay. So, so
2 on the Parcel A it's --

3 MR. TANNER: Right here. Which
4 originally --

5 COUNCILMEMBER STULLICH: Right.

6 MR. TANNER: -- came all the way down
7 here to Branchville Road. Now it stops here and
8 comes across.

9 COUNCILMEMBER STULLICH: And it's set
10 back to allow for potential widening of
11 Branchville Road?

12 MR. TANNER: Yes, ma'am.

13 COUNCILMEMBER STULLICH: But if you
14 can't widen it at that one little section, then
15 you can't widen it. Seems like that makes the
16 widening -- I don't know if widening is in the
17 works, but I don't really understand why you'd
18 want to have room to widen Branchville Road
19 except for that little corner.

20 MR. TANNER: I could discuss that but
21 then it wouldn't be anything in the record. And
22 I don't think that's germane to this unless

1 someone says we can go into that.

2 COUNCILMEMBER STULLICH: Okay, thank
3 you.

4 MR. TANNER: I'm sorry. I could answer
5 it but.

6 COUNCILMEMBER STULLICH: Thank you.
7 Thank you, Mr. Mayor. Thank you very much.

8 MAYOR FELLOWS: And I should thank you
9 for restricting your --

10 COUNCILMEMBER STULLICH: Keeping this
11 on the record.

12 MAYOR FELLOWS: Yes.

13 MR. TANNER: Trying to get everybody
14 out.

15 MAYOR FELLOWS: Appreciate that.

16 Other questions or?

17 (No response.)

18 MAYOR FELLOWS: Okay, thank you, Mr.
19 Tanner.

20 Any other opposition care to testify
21 now? Mr. Young, welcome. Great to see you.

22 MR. YOUNG: Thank you, Mr. Mayor. For

1 the record, I'm Kevin Young, President of the
2 Berwyn District Civic Association.

3 Mr. Mayor, the BDCA is opposed to the
4 requested variance for reasons outlined in our
5 written remarks that were submitted to staff on
6 August the 28th, 2015. These written remarks,
7 along with three photos and a copy of a written
8 agreement between the property owner Mr. Cruz and
9 the BDCA, were discussed and submitted as
10 evidence at the APC hearing on November the 1st.

11 At this point I'd like to reaffirm our
12 opposition and point out a couple highlights from
13 the written comments that may help you understand
14 why the BDCA opposes a fence of any height of any
15 material in this location.

16 First and foremost, Mr. Tanner spoke
17 in great detail and length about the turning
18 radius and the need for the fire apparatus to be
19 able to exit the station safely. That is
20 probably our foremost concern is the potential
21 negative impact this fence would have on the
22 operations of our community's first responders at

1 Branchville Volunteer Fire Company.

2 As I pointed out in my testimony
3 before the APC, both the Applicant and counsel
4 for the Applicant acknowledged on record before
5 this Council at the November 5th, 2014, work
6 session, that ingress, egress and turning radius
7 for the fire apparatus would be worked out. You
8 can see that in the transcript on page 90, line
9 25. You can also see it on the work session
10 video at 2 hours 34 minutes point.

11 Additionally, Mr. Tanner entered into
12 evidence at the APC hearing -- I believe that was
13 November the 1st or was it -- I'm sorry, October
14 the 1st. I got it wrong the first time. It was
15 October the 1st of this year -- a document which
16 is marked Exhibit 12, page 57, showing the turn
17 radius in details that was agreed to in a
18 previously-approved site plan from 1988. The
19 community is aware of this previous agreement.
20 And also have it here and staff has it as well.

21 If a fence is erected, and that is if
22 you approve this variance, the previously agreed-

1 to turning radius would no longer exist. The
2 community remains concerned about inadequate
3 turning radius in the operations, restriction of
4 the operation of the Fire Department. And the
5 matter was obviously a big enough deal to be
6 discussed in great detail and agreed to a
7 solution in 1987-88, as well as mentioned at the
8 previously-mentioned work session, November the
9 5th, 2014.

10 Number two, the agreement between the
11 BDCA, there is an agreement that exists, and that
12 was entered into evidence as well. The agreement
13 between the owner and the BDCA, which in part
14 clearly demonstrates the parties' desire to allow
15 access to the rear of the residential properties
16 along 48th Place. The installation of a fence
17 would nullify that agreement. Again, you have
18 that agreement in your packet. You can read that
19 at Number 6 in the agreement.

20 And I also want to point out, at the
21 end of the agreement, Number 11 states that "this
22 agreement shall be binding upon the heirs,

1 successors and assigns of all parties hereto, and
2 may not be modified except in writing." The
3 community considers this a binding agreement.

4 The Civic Association upheld its end
5 of the deal, testifying before this Council and
6 the county to assist Mr. Cruz in achieving the
7 record plat and his approved site plan at the
8 time. The community had nothing to do with the
9 Applicant's decision not to build out or develop
10 that property in 1988.

11 Number three, the lack of maintenance
12 on the western portion of the frontage on
13 Branchville Road is well illustrated in the
14 photos that are included in my exhibit. We have
15 many examples of undeveloped property in the city
16 that have been fenced off and seemingly forgotten
17 about. Mandalay Property on Route 1 I think most
18 of you are familiar with, across from the China
19 Buffet is one. The former site of the abandoned
20 house at Edgewood and Baltimore Avenue comes to
21 mind as well.

22 We don't want to have a situation

1 where this fence is agreed on a, on any basis. I
2 see that the staff report still mentions the fact
3 that the Applicant has proffered this as being of
4 a temporary duration. The APC nor the Council
5 has the authority to grant a temporary variance.
6 So no weight should be given to that.

7 Another point -- well, at that point
8 Mr. Tanner covered some things that I was going
9 to mention. I'd like to answer any questions you
10 may have.

11 MAYOR FELLOWS: All right. Questions
12 for Mr. Young?

13 Mr. Brennan.

14 COUNCILMEMBER BRENNAN: May I ask
15 counsel for clarification? Mr. Young cited two
16 different publications: one was a map that showed
17 a turning radius from an agreement on page 57;
18 and the other was the previous agreement between
19 the BDCA and the Applicant. And what is the,
20 what is the position on the validity of those
21 documents and what weight that they might hold?

22 MS. FERGUSON: The reference to

1 paragraph 6 of the BDCA agreement is a provision
2 that says, "The property owner," meaning Cruz,
3 "shall allow limited and restricted access along
4 the westerly side of the property." You'll note
5 the north is up on this diagram, so the westerly
6 side of the property is over there. Okay. The
7 fence variance is for the front yard fence.
8 There's no variances required for the side and
9 rear.

10 And it says, "The owner shall allow
11 limited and restricted access along the westerly
12 side of the property, as provided in the special
13 exception site plan marked as Addendum No. 1,
14 only to those abutting R-55, one-family detached
15 residential who own a fee simple title and reside
16 in the adjoining properties." No one from any of
17 those, that housing testified at the hearing that
18 their access was being blocked.

19 "This limited and restricted access
20 shall not be for everyday use but, rather,
21 limited for necessary access to the 'rear of the
22 lot' owned by the abutting fee simple owners."

1 And that's it.

2 So that that's what it says. There is
3 nothing of record that showed that there had been
4 any claim by anyone that their access to the rear
5 of their properties out of necessity on various
6 occasions was going to be denied or blocked. We
7 are dealing with the front yard fence on this
8 issue.

9 And so this was deemed to be of very
10 little value in terms of because it doesn't
11 reference fences. It doesn't reference a
12 prohibition against fences. It just mentions
13 that adjoining owners, none of whom appeared with
14 any kind of complaint about this, will be allowed
15 access when necessary, that is restricted and
16 limited.

17 So that wasn't seen as particularly
18 helpful in this case.

19 COUNCILMEMBER BRENNAN: And before you
20 move on to the next. Any planning comment as to
21 whether or not the placement of the access point
22 into the property was what gives that limited

1 access to the rear of the property, those
2 properties on the west?

3 MS. SCHUM: And you're talking about
4 the access to the site?

5 COUNCILMEMBER BRENNAN: So in the
6 agreements the properties to the west should be
7 able to access the rear of their property from
8 the adjoining property. And there's an access
9 point that's been designed in the Applicant's
10 fence proposal. And the -- with the limited
11 access that counsel just mentioned and given the
12 overgrowth of trees and brush there and those
13 people will still have that limited access to
14 their, to their site, or to that property?

15 MS. SCHUM: Actually that's not
16 something that was in the record. Terry Schum,
17 Planning Director, for the record, for the court
18 reporter.

19 The development plan was not part of
20 the record before the APC.

21 COUNCILMEMBER BRENNAN: But the
22 agreement with the BDCA is?

1 MS. FERGUSON: The agreement is there.

2 And --

3 COUNCILMEMBER BRENNAN: Right.

4 MS. FERGUSON: -- all we know about it
5 is that that's what it says. There's no
6 indication that the access that's referenced
7 there is being interfered with. And that
8 actually is a claim of those individuals, it's
9 not -- it's a contract between them and the BDCA
10 I guess and this owner. But there was nothing of
11 record that we had or have that shows that anyone
12 cannot access when -- in a limited way when
13 necessary.

14 COUNCILMEMBER BRENNAN: Okay. And I
15 interrupted you. Sorry.

16 MS. FERGUSON: So and then you referred
17 also to another?

18 COUNCILMEMBER BRENNAN: Yes. Page 57
19 of the package which is the map that shows the
20 turning radius that was previously agreed upon.

21 MS. FERGUSON: Both 57's that I have
22 don't show a map of a turning radius.

1 COUNCILMEMBER BRENNAN: It's called
2 "Concern: adequate turning radius." It's the, I
3 believe it's the Fire Department's documents.

4 MS. FERGUSON: Oh, I see. Okay, I see
5 that.

6 COUNCILMEMBER BRENNAN: Sorry, 53.

7 MS. FERGUSON: It's 53.

8 COUNCILMEMBER BRENNAN: Little number
9 53.

10 MS. FERGUSON: The evidence of record
11 at this hearing, this is an unusual item to have
12 to take up or issue to have to take up because
13 you're talking about a turning radius that is on
14 someone's owned property by someone who doesn't
15 own it. And posing that as part of a variance
16 process when it doesn't really go with the
17 variance process, it's a matter of the previous
18 development owns a certain piece of property,
19 which is laid out as you see.

20 The Fire Department is asking for you
21 to require them to be able to have a turning
22 radius onto that property when they haven't paid

1 for that, nor have they acquired it. So that
2 would be like one party imposing their needs on
3 another party. And that's why the APC did not
4 consider that as a matter affecting the public
5 safety because that is not something you're
6 allowed to do without paying for it, to impose
7 your rights on someone else's property.

8 So but that, all of this came into the
9 record, was allowed into the record because that
10 is the complaint that some -- that the Civic
11 Association and the Fire Department have about
12 this. Which seems to focus mainly on the jog
13 over of the fence, the jog south of the fence,
14 which may be dealt with later, I don't know.

15 But so the reference on page 53 of an
16 adequate turning radius, that was not matched up
17 to what we have up on the screen here. However,
18 my understanding was from what was said in the
19 record and at the hearing was that city staff did
20 review the area, the city engineer and one of the
21 -- and Ms. Bader. And that there was a turning
22 radius ability in the area that was provided, and

1 would be provided, continue to be provided.

2 So that was not something that, other
3 than this showing in the record, had much of an
4 explanation with it.

5 COUNCILMEMBER BRENNAN: Thank you. And
6 one last question. Can you clarify, Mr. Young
7 mentioned our inability and the APC's inability
8 to define "temporary." What is our opportunity
9 to define "temporary"?

10 MS. FERGUSON: You do not issue
11 temporary variances nor do you issue temporary
12 building permits. They are generally issued for
13 permanent.

14 However, there's been a proffer, which
15 was referenced again in the materials, by the
16 owner that the length of duration of this fence,
17 the proposed length of duration was that it would
18 only go for so long as the property was
19 undeveloped for the purposes that they stated,
20 which is to protect the property from dumping and
21 other use. And that they would remove that fence
22 as part of that development process. And then

1 whatever setbacks and et cetera were required at
2 that time, that's what would happen. And that
3 that is what would happen if they go ahead and
4 develop it.

5 There would be a new detailed site
6 plan developed for approval. So I, I -- that's
7 the difference. The owner can proffer it.

8 And, now, this Council can accept a
9 proffer that that's what it's going to be. But
10 it's not something that is a separate category
11 that exists in city law. That's all.

12 COUNCILMEMBER BRENNAN: Okay, thank
13 you.

14 MAYOR FELLOWS: Thank you, Mr. Brennan.
15 Other questions for either staff of
16 Mr. Young?

17 (No response.)

18 Seeing none, thank you, Mr. Young.

19 MR. YOUNG: Thank you.

20 MAYOR FELLOWS: Appreciate it.

21 Any other parties of record who would
22 like to speak in opposition to the

1 recommendation? I believe that's the only.

2 Okay, we now go to hear from parties
3 of record in favor of the recommendation of the
4 APC. Mr. Lynch. Welcome.

5 MR. LYNCH: Good evening. For the
6 record, Dan Lynch with the law firm McNamee
7 Hosea, here on behalf of Cruz Development.

8 We're here tonight to determine
9 whether or not the Applicant met its burden in
10 meeting the criteria for approval of the granting
11 of the variance. Your staff in its staff report
12 felt that we did meet that burden. And we
13 adopted as part of our case the staff report.

14 The APC also found that we met the
15 burden.

16 The question then is on what evidence
17 can you base a denial of this application?
18 Because that is what the opposition is asking you
19 to do. They're asking you to deny this
20 application. And there is no evidence submitted
21 into the record that refutes the positive
22 recommendation of staff or the evidence placed

1 into the record by the Applicant.

2 What do you have before you? You have
3 the testimony of a representative of the Fire
4 Department who's asking you and asked the APC to
5 place a burden on our property for their use.
6 That's not appropriate. That is not even part of
7 the criteria for approval.

8 They have located their fire station
9 on Branchville Road and are relying upon a
10 private property to be able to access their fire
11 station. That is not appropriate and this
12 Council cannot base its determination on that.

13 Now, regardless of what they're asking
14 you to do, your staff did their own analysis and
15 made a determination that the Fire Department
16 could safely and adequately move their trucks in
17 and out of that station without burdening my
18 client's property. There was enough room within
19 the existing dedicated right-of-way for them to
20 access their station, regardless of the
21 presentation made by representatives of the Fire
22 Department.

1 Now, Cruz Development is not
2 unreasonable. We have been trying to work with
3 both the community as well as the Fire Department
4 on certain issues out there. And we have done
5 this not only this time around but when we
6 originally came forward back in the '80s with our
7 proposal.

8 We did not object to a suggestion made
9 by staff that our fence along that edge that
10 comes a little bit closer to the right-of-way be
11 relocated slightly in order to accommodate the
12 Fire Department. Obviously, we do not want to
13 impact the safety of the community. So we are
14 willing to, in proffer to this Council, that
15 we're willing to amend our fence location survey
16 to address those concerns.

17 But again, it doesn't go to the fact
18 as to whether or not we met the criteria. And it
19 doesn't go to whether or not the Fire Department
20 can safely move their trucks in and out of the
21 station. Because I believe the staff has told
22 you that they can. And that video that you saw

1 also demonstrates that they can move those trucks
2 in an out of that station.

3 But we are willing to accommodate in
4 order to obtain or help obtain the underlying
5 support of this Council for this application.
6 Our major concern is the protection of our
7 property.

8 Now, the representative of the Fire
9 Department indicated that there has been no
10 dumping on the property. Well, there has been
11 dumping. And we have a company that comes out on
12 a regular basis to clean up the property.

13 In addition to that, the Fire
14 Department in its testimony admitted that they
15 trespass on this property on a regular basis. I
16 believe it's Exhibit 10-A shows representatives
17 of the Fire Department lighting a car on fire on
18 this property. They didn't have authorization to
19 do that. And as a matter of fact, what liability
20 is incurred by my client as a result of that
21 action?

22 And that's what we're here trying to

1 protect. We have asked them to refrain from
2 using our property on numerous occasions. And
3 this is not just in recent, in the recent years.
4 They constructed a volleyball court on the
5 property. We asked them to remove that.

6 They constructed a shed on our
7 property. We asked them to remove that.

8 They had storage containers on our
9 property which we had to ask them to remove.

10 And regardless of our demands to them
11 to stop using our property, they've continued to
12 do so. I don't know about the rest of you, but I
13 don't know what type of contamination occurred
14 when they lit that car on fire. And that
15 occurred in 2014. And, yes, that's one of the
16 reasons why we applied for this variance, because
17 apparently they feel that they can do anything on
18 that property, regardless of the impact, the
19 environmental impact on our property.

20 I don't know what kind of chemicals
21 leak from an automobile. But if there were any
22 chemicals leaking from the automobile during that

1 fire, that's on that property today.

2 Now, Mr. Young made a point with
3 regard to access to the properties to the west.
4 There is -- because I've walked this property, an
5 area that has been cleared. And, again, if this
6 Council so desires, we'd be more than willing to
7 adjust our fence location survey to ensure that
8 they do have access to that alley.

9 I've had conversations with the folks
10 back there. They have gates on that alley and
11 like to go back and forth. And, again, we are
12 willing to work with them and work with your
13 staff to come up with a fence location survey
14 that addresses that. We have every intention of
15 respecting any agreement between ourselves and
16 the Berwyn folks, any valid agreement.

17 And I've had those conversations with
18 Mr. Young as to whether or not that agreement
19 remains valid today. It did not have anything to
20 do with the record plat. It did not have
21 anything to do with the detailed site plan. It
22 was based upon gaining their support for a

1 special exception which was never pursued and
2 never approved.

3 And just for point of clarification,
4 the site plan that shows the turning radius that
5 was referenced in the Fire Department's package,
6 as well as in the testimony of Mr. Young, that
7 was associated with the special exception site
8 plan that was never pursued, never approved. So
9 it really carries no validity or no weight,
10 should not be considered by this Council as part
11 of their deliberation on this application.

12 But, again, I think your attorney
13 stated it correctly: you are not here to
14 determine whether or not the Fire Department has
15 a right to use our property. Because that's what
16 is really being considered here today. They
17 don't. Just as they don't have the right to use
18 the public right-of-way to wash their vehicles or
19 repair those vehicles. My understanding is that
20 they have a lease with the county for the
21 adjacent property.

22 So, again, here they are using the

1 public right-of-way and using our property.
2 We're willing to work with them. We're willing
3 to work with this Council. We're willing to
4 adjust our fence location survey because we're
5 not trying to negatively impact this community.
6 But, again, you know, it's, I just don't think
7 it's appropriate for that to be considered as
8 part of your deliberation.

9 What's to be considered is the
10 criteria for approval. And we met the criteria
11 for approval. And your staff concurred and made
12 a positive finding that we met each and every one
13 of the criteria set forth in your code.

14 Is this an unusual shaped piece of
15 property? Absolutely. It's a through-lot. We
16 have two frontages.

17 Does it impact us more significantly
18 than any other properties in the area?
19 Absolutely. Because we have two frontages, we're
20 not able to put a fence on that length of the
21 property, and as a result of that we are not able
22 to protect our private property interests.

1 Will this negatively impact the fence
2 ordinance? No. Because that was designed, as
3 your staff indicated during their presentation,
4 for more residentially -- single-family
5 residential properties, as opposed to this, which
6 is a multi-family property located directly
7 across the street from a fire station.

8 I think I heard the chime. I believe
9 -- that's not it? Okay. Thank you.

10 MAYOR FELLOWS: I don't think so.

11 MR. LYNCH: So, again, if you look at
12 it, we addressed the criteria. Your staff agreed
13 we addressed the criteria. And although there
14 was testimony offered in opposition, that
15 testimony did not go to whether or not we met the
16 criteria for approval, that went to whether or
17 not the Fire Department can impede upon our
18 private property interests, and whether or not we
19 complied with an agreement. So it really doesn't
20 go to the criteria for approval.

21 So in my mind, and I believe in the
22 APC's mind, there is no evidence in the record to

1 refute the positive findings made by staff.

2 And I'd be happy to answer any
3 questions that this Council has.

4 MAYOR FELLOWS: All right. Thank you,
5 Mr. Lynch.

6 Questions? Ms. Mitchell.

7 MAYOR PRO TEM MITCHELL: Thank you, Mr.
8 Mayor. Thank you, Mr. Lynch for coming tonight -

9 -

10 MR. LYNCH: Thank you.

11 MAYOR PRO TEM MITCHELL: -- and
12 providing testimony and helping me to understand
13 clearly about burden of proof with regards to
14 your Applicant.

15 Cruz Property has had this piece of
16 property for how long?

17 MR. LYNCH: The '80s.

18 MAYOR PRO TEM MITCHELL: And you said
19 that the Fire Department has on numerous
20 occasions have done things to loiter, dump, so
21 forth. And since the 1980s till now you have not
22 looked to obtain a fence to take care of the

1 situation until now?

2 MR. LYNCH: That's correct, yes.

3 MAYOR PRO TEM MITCHELL: Seems kind of
4 interesting.

5 MR. LYNCH: Well, we thought we had a
6 good working relationship with them. Any time we
7 had an issue we would send them or call them and
8 they would remove whatever obstruction there had
9 been. But, again, when you start lighting cars
10 on the property, that's really stepping over the
11 boundaries.

12 MAYOR PRO TEM MITCHELL: Okay.

13 MR. LYNCH: Because that then does
14 cause environmental damage to the property. And
15 that occurred in 2014.

16 MAYOR PRO TEM MITCHELL: 2014, okay.

17 MR. LYNCH: Yes.

18 MAYOR PRO TEM MITCHELL: Because it
19 didn't sound as though what you were saying
20 perception-wise --

21 MR. LYNCH: No, we pulled that
22 information down off their website.

1 MAYOR PRO TEM MITCHELL: Okay. Thank
2 you, Mr. Mayor.

3 MAYOR FELLOWS: Thank you, Ms.
4 Mitchell.

5 Other questions? Mr. Brennan.

6 COUNCILMEMBER BRENNAN: Thanks, Mr.
7 Lynch. You mentioned that you were willing to
8 push the fence on the newly acquired property
9 further back? Did I hear you correctly?

10 MR. LYNCH: Yes. We can make that, we
11 can line that up with the fence line shown on I
12 believe it's Parcel A. We can move that so it's
13 -- it lines up with that, with the other sector,
14 yes.

15 COUNCILMEMBER BRENNAN: As Mr. Tanner
16 said, and I do understand that he would prefer no
17 fence, and I understand his preference, but that
18 it would be preferred if the fence is there that
19 that is moved back. So that's one issue that's
20 resolved.

21 The other is the temporary nature of
22 the fence. And I understand, and what counsel

1 has stated here, is that upon the development or
2 potential development of the property the fence
3 would be removed?

4 MR. LYNCH: Yeah.

5 COUNCILMEMBER BRENNAN: Now, that --

6 MR. LYNCH: I would proffer that upon
7 the issuance of permits for the development of
8 the property, we would, you know, remove that
9 fence at the start of construction.

10 COUNCILMEMBER BRENNAN: Okay. And
11 remind me, I've only seen, you know, photocopied
12 pictures. The fence that's going in, it's of a
13 equal, lesser or better quality to a chain link
14 fence?

15 MR. LYNCH: We -- I had proposed, and
16 unfortunately I came up with some ideas from some
17 developments I've seen in the area, this fence
18 that's not chain link but welded metal seems to
19 be a trendy type of fence that's being used in
20 construction. However, staff did not like that.
21 They felt that it looked too much like chain
22 link. So they made some recommendations as to

1 alternative types of fences.

2 And we have, as part of our
3 presentation to the APC, we did agree to make
4 modifications to the fence.

5 MR. LYNCH: And will we be able to see
6 that before it's installed? Will that be a part
7 of --

8 MS. BADER: I do have a slide of what
9 they're proposing.

10 Okay, this is what they proposed. And
11 then this is with the condition, more like a
12 metal rod.

13 COUNCILMEMBER BRENNAN: Great. Okay,
14 great.

15 MR. LYNCH: Yeah, I was trying to come
16 up, we were trying to come up with something that
17 you could see through, because that's one of the
18 criteria to make sure that it doesn't obstruct
19 the views. So we came up with that.

20 Staff came up with almost a faux
21 wrought iron. And that's acceptable to us.

22 COUNCILMEMBER BRENNAN: Okay. And you

1 said "faux."

2 MR. LYNCH: Well, it's not wrought
3 iron.

4 COUNCILMEMBER BRENNAN: Okay.

5 MR. LYNCH: Okay. It's a little --

6 COUNCILMEMBER BRENNAN: Okay. And so
7 the construction of the fence limits the access
8 to the property. There's going to be gate which
9 I assume will be locked on the property.

10 MR. LYNCH: Correct.

11 MS. FERGUSON: And I believe there's
12 been some expression of concern about the
13 maintenance of the property. So who has been
14 maintaining the property?

15 MR. LYNCH: We have a company that
16 comes out that maintains the property. Come out
17 and mow the lawn and clean up branches and litter
18 on the property.

19 COUNCILMEMBER BRENNAN: Okay. And the
20 -- and that agreement will maintain moving
21 forward?

22 MR. LYNCH: That's correct.

1 COUNCILMEMBER BRENNAN: And it will be
2 of a way that the -- in a way that leaves the
3 property clean and not with tall grass growing up
4 the side of the fence? It will be weed-whacked
5 or something like that?

6 MR. LYNCH: That's correct. And
7 obviously if they don't comply with that then
8 we'll be subject to your property maintenance
9 violations. So, you know, in this situation we
10 had been maintaining the property. We have a
11 company that's on contract to do so. And that
12 will continue through until construction begins
13 at some point in the future.

14 COUNCILMEMBER BRENNAN: Okay. Thank
15 you.

16 MAYOR FELLOWS: Anything further? Mr.
17 Wojahn.

18 COUNCILMEMBER WOJAHN: Thank you, Mr.
19 Lynch.

20 Can you go back to the diagram showing
21 the layout of the property? I think it was the
22 one within where the fence is.

1 That's the one, yes. Thanks.

2 I wanted to go back to the other point
3 that you made about the access on the western
4 point. You said you were willing to shift the
5 fence. And when you said that, when you referred
6 to it you said there's some sort of an alleyway?

7 MR. LYNCH: It's not an alley per se.
8 When I walked that -- and I'll try to speak up --
9 there is a grassy stretch between the fence and
10 this fence.

11 COUNCILMEMBER WOJAHN: Can we use a
12 hand mike? Alan, give him the hand mike so he
13 can.

14 MR. LYNCH: Okay. The last time I
15 walked it there was -- it's heavily wooded in
16 this area here. This along our western property
17 line. And then this is a grass strip that goes
18 all the way up to 193. And some of the houses
19 have fences back there with gates.

20 And I believe that's what the Berwyn
21 District folks were trying to protect through
22 that agreement: their ability to access that rear

1 portion of the property.

2 MAYOR FELLOWS: And you are responding
3 to a question but I think we're getting a little
4 off the record.

5 COUNCILMEMBER WOJAHN: Well, I want to
6 -- I'd like to know what he's -- you've offered
7 to do something additional with the fence.

8 MR. LYNCH: So what we would do is make
9 sure, and again make sure that when that comes,
10 when the fence is constructed on our fence
11 location survey, it stops so that grassy area is
12 not obstructed.

13 COUNCILMEMBER WOJAHN: Okay. So
14 basically move, move the end of that over a
15 little bit to the east so that people can get
16 back there?

17 MR. LYNCH: That's correct.

18 COUNCILMEMBER WOJAHN: Okay.

19 MAYOR FELLOWS: Thank you. Mr. Dennis.

20 COUNCILMEMBER DENNIS: Yes. Thank you,
21 Mr. Mayor.

22 Thank you, Mr. Lynch, for being here

1 and for your testimony today. I want you to
2 follow up on some of the line of questioning that
3 my colleague Councilmember Brennan was leading to
4 having to do with maintaining and maintenance of
5 the property.

6 Can you specifically say which of the
7 parts of the property are being mowed and kept,
8 kept up to maintenance level? Because much of
9 the western part of the property is grown up with
10 trees, et cetera, et cetera, et cetera, so we're
11 not talking about that being regularly mowed and
12 kept clean, are we?

13 MR. LYNCH: Oh no, not at all.

14 COUNCILMEMBER DENNIS: Okay.

15 MR. LYNCH: That, we're leaving that in
16 a natural state until such time as the property
17 is developed. What I'm talking about is the
18 grassy area between that tree line, which you
19 can't see it on this.

20 Do you have the aerial photo?

21 What I'm talking about is, you see the
22 grassy area to the right of that blue dot. And

1 then the rest obviously are trees. And that's,
2 you know, that's leaving that in its natural
3 state.

4 COUNCILMEMBER DENNIS: And just a
5 second question. So you've indicated that you
6 would, in order to satisfy the, some of the
7 turning radius issue, make the Branchville side
8 property in a contiguous line and not do that jog
9 on the easternmost part?

10 MR. LYNCH: That's correct. I mean
11 what we did here was we had the fence follow the
12 property line, okay.

13 COUNCILMEMBER DENNIS: Yes.

14 MR. LYNCH: This is the -- everything
15 outside of this we're 1 foot off the property,
16 and outside of that is dedicated right-of-way.
17 So we just ran the fence about a foot off our
18 property line down here and then we jogged it
19 down here.

20 COUNCILMEMBER DENNIS: Yes.

21 MR. LYNCH: We can just continue to run
22 that fence down straight to this point.

1 COUNCILMEMBER DENNIS: Okay. And so
2 the green area there is sometimes utilized by
3 Fire Department vehicles to turn or whatever. So
4 are you --

5 MR. LYNCH: No, the green area is used
6 by the Fire Department. I believe they said it's
7 where they park vehicles.

8 COUNCILMEMBER DENNIS: So as a result
9 of this, these discussions, what is your position
10 as to continuous -- continued use of the Fire
11 Department by that green space, green area?

12 MR. LYNCH: I don't know why they park
13 there to begin with.

14 COUNCILMEMBER DENNIS: And is that, I
15 don't think that's --

16 MR. LYNCH: And that's way outside the
17 record.

18 COUNCILMEMBER DENNIS: Right. I'll
19 withdraw that.

20 MAYOR FELLOWS: All right, thank you.

21 Ms. Stullich.

22 COUNCILMEMBER STULLICH: Thank you. My

1 question is about the grassy strip or the grassy
2 area on the left side of the property. And is
3 that grassy area within your property or is it
4 within the adjoining properties?

5 MR. LYNCH: Are you speaking of this
6 area down here to the left?

7 COUNCILMEMBER STULLICH: Right. But
8 can we go back to that other diagram that was
9 used before?

10 All right. So here you were talking
11 about --

12 MR. LYNCH: Oh, yes.

13 COUNCILMEMBER STULLICH: -- wanting to
14 have access to the grassy strip. And what, is
15 the grassy strip on your property or on other
16 people's property?

17 MR. LYNCH: If it's, if it's on our
18 property, okay, I just, I proffer that we'll
19 adjust the fence location to ensure that they can
20 continue to access that area.

21 If it's on their property we will not
22 be putting a fence there.

1 I just cannot tell from this where
2 that, where that area exists.

3 Hold on, let me just -- this may show
4 us better. Yeah. You can see I believe part of
5 it right here. Okay. That's driveway?

6 MS. BADER: That's a driveway.

7 MR. LYNCH: Okay, okay. Well, then
8 that's -- you can't see it. But there's an area.
9 I just do not know on whose property that exists.
10 So if it's on their -- if it's on our property,
11 we'll adjust our fence accordingly to make sure
12 they continue to have access.

13 If it's on their property then we
14 don't have to do a thing; they still have access
15 back there.

16 COUNCILMEMBER STULLICH: So I guess
17 what I'm hearing is that you don't have a problem
18 with some people trespassing on your property on
19 that side, you just have a -- is that right? You
20 just have a problem with the Branchville Fire
21 Department vehicles?

22 MR. LYNCH: What my point is, if we

1 adjust this it's not trespassing, that's
2 basically giving them authority to access the
3 back of the property.

4 What we're trying to accomplish here
5 is we're trying to accomplish protecting our
6 property from people who are using it without our
7 permission. And again, that's what we're trying
8 to do. And as I said, our major concern arose in
9 2014 when a vehicle was set on fire on our
10 property.

11 I don't believe the people to our west
12 are causing any damage. They just want some
13 limited access back there. And I only proffered
14 that because according to the discussions or the
15 agreement that Mr. Young referred to, we
16 previously agreed to allow some limited access
17 along that western property line.

18 COUNCILMEMBER STULLICH: All right.
19 Well, I guess I'm not, I'm honestly not convinced
20 of the need for the fence. I'm not convinced
21 that --

22 MR. LYNCH: Well, just what they've

1 said to 10-A.

2 COUNCILMEMBER STULLICH: -- meets the
3 criteria for a variance from the fence ordinance.

4 MR. LYNCH: Would you like someone to
5 light a car on fire on your property?

6 COUNCILMEMBER STULLICH: I know that
7 you're making a lot of that. I'm pretty sure
8 that they're not going to do that again. And
9 that sounds like that was definitely a mistake,
10 poor judgment. But I don't think there's a -- I
11 don't see a reason to believe that's going to be
12 something that continues to happen.

13 It seems like you're, you know, I
14 think you may feel like that's the most effective
15 argument you can make and so you keep hammering
16 on that one, one incident.

17 MR. LYNCH: It's not one incident.

18 COUNCILMEMBER STULLICH: One car fire.

19 MR. LYNCH: That's the most
20 significant.

21 COUNCILMEMBER BRENNAN: And I don't
22 think it was discussed in the record, so it's --

1 MR. LYNCH: Yeah.

2 COUNCILMEMBER STULLICH: The car fire
3 was not discussed in the record? It's within our
4 package, isn't it?

5 MR. LYNCH: There's an Exhibit 10-A.

6 MS. BADER: There's a photo of it in
7 your Exhibit 10-A.

8 COUNCILMEMBER STULLICH: Thank you.

9 MAYOR FELLOWS: All right. Other
10 questions?

11 Dr. Kabir.

12 COUNCILMEMBER KABIR: Thank you, Mr.
13 Lynch, for coming out.

14 MR. LYNCH: Yes.

15 COUNCILMEMBER KABIR: So you're saying
16 the dumping, the trash problem, when, since when
17 you are having this problem or seeing this
18 problem?

19 MR. LYNCH: I have records going back
20 to the '80s of problems with trespassing. I have
21 records going back to the '80s with trash and
22 debris.

1 But again, those were issues that
2 were, seemed to have been easily cured back in
3 the '80s and the '90s.

4 COUNCILMEMBER KABIR: Okay. Have you
5 submitted any complaints to the City's Code
6 Department, Code Enforcement?

7 MR. LYNCH: No. We were trying to be
8 good neighbors.

9 COUNCILMEMBER KABIR: Okay. So when --
10 okay, you never submitted any claims or any --

11 MR. LYNCH: No.

12 COUNCILMEMBER KABIR: -- any
13 complaints.

14 In page 75, the record 75 and page 71
15 in our packet, I see that there is an ongoing
16 prowler dispute with the Fire Department. I
17 understand we can't talk about that. That's kind
18 of out of the scope.

19 And I was just wondering if there is
20 any correlation with the application? That
21 sounds like a very recent event and but you're
22 saying the reason you're applying for variance is

1 because of the dumping of the trash and other
2 stuff. I was just ---

3 MR. LYNCH: And the, and the admitted
4 trespasses on our property.

5 COUNCILMEMBER KABIR: Okay. And it has
6 nothing to do with the prowler dispute?

7 MR. LYNCH: The trespass -- Go ahead.

8 MS. FERGUSON: We took great care at
9 the Advisory Planning Commission level to deal
10 only with the variance requirements and not what
11 may be going on separately amongst these parties,
12 and because that was what we were required to do.
13 And motive is not an issue unless there -- you
14 may be calling into question the factual truth of
15 what they're saying, the owners are saying. You
16 can do that. But otherwise going after a motive
17 as to why somebody is applying for a variance
18 would be kind of outside what --

19 COUNCILMEMBER KABIR: Okay.

20 MS. FERGUSON: -- we would normally
21 discuss.

22 COUNCILMEMBER KABIR: Okay, thank you.

1 About the car fire, is it, is it you
2 were saying that 2014 is the first time you saw
3 it?

4 MR. LYNCH: I'm sorry?

5 COUNCILMEMBER KABIR: Is it in last
6 year you saw this event happening?

7 MR. LYNCH: We, we became aware of the
8 fire by reviewing the Branchville Volunteer Fire
9 Department website where it showed that the car
10 was set afire, set on fire on my client's
11 property.

12 COUNCILMEMBER KABIR: And do you know
13 why they did it?

14 MR. LYNCH: I do not know.

15 COUNCILMEMBER KABIR: Okay. Maybe we
16 can ask Mr. Tanner when he comes.

17 MR. TANNER: It's outside of the scope.

18 COUNCILMEMBER KABIR: Outside the
19 record. Okay.

20 MS. FERGUSON: It is outside the
21 record.

22 COUNCILMEMBER KABIR: Okay.

1 MS. FERGUSON: It's in the record that
2 there was a car fire on the property, on the Cruz
3 Development property and that it's from the Fire
4 Department. That, that's a fact that was
5 accepted by the APC.

6 COUNCILMEMBER KABIR: Okay, thank you.

7 MAYOR FELLOWS: Thank you. Other
8 questions?

9 Mr. Day.

10 COUNCILMEMBER DAY: So I've just got to
11 go back to this temporary issue. So it's
12 possible if we grant them this fence that it
13 could be there indefinitely. "Temporary" has no
14 time frame on it in this case that they've
15 submitted?

16 MS. FERGUSON: At this point it does
17 not. A variance generally goes with the
18 property. Every other variance that you hear,
19 that comes up to you out of the consent or is
20 determined by you is a permanent attribute then
21 on the property. And then subsequent owners have
22 a right to keep that unless they do something

1 different.

2 So, yes, there's no automatic limit
3 here about how long that fence would be there.

4 COUNCILMEMBER DAY: So if it would have
5 been a temporary thing back in the '80s when they
6 first applied, it would still be there today and
7 that would still be a temporary fence?

8 MS. FERGUSON: That is not something
9 that normally comes up during the course of a
10 variance proceeding because it's assumed that
11 whatever is being asked for would be a permanent
12 installation. Whether or not something is going
13 to be permanent is not part of what you would
14 look at in terms of a granting a fence variance.
15 The length of time that the fence will be there
16 isn't part of the criteria that you're allowed to
17 determine.

18 MR. DAY: Okay. All right, thank you.

19 MAYOR FELLOWS: Thank you, Mr. Day.

20 Mr. Wojahn.

21 COUNCILMEMBER WOJAHN: Thank you.

22 I have to say, and I'm going to go out

1 on a limb here a little bit and I'll ask Ms.
2 Ferguson to watch this if it's inappropriate.
3 But I am struggling a little bit with the
4 necessity of this. And one of the reasons why is
5 that I have to ask, and maybe I can phrase it
6 this way, if there's anything in the record that
7 indicates this, that I understand there was an
8 incident, the car fire and some other things that
9 have been happening over the years.

10 It seemed like for, you know, a long
11 time you had a good relationship with the Fire
12 Department, but now it seems to have, for
13 whatever reason now you feel this need to build a
14 fence, that whatever relationship existed in the
15 past no longer does.

16 Can you, can you tell us if there is
17 anything on the record that indicates or this,
18 say, had tried to work things out with the Fire
19 Department to try and figure out, you know, if
20 you had a good relationship for decades why is it
21 suddenly an issue so much that you need to build
22 a fence?

1 MR. LYNCH: There is nothing in the
2 record to address that particular question.

3 COUNCILMEMBER WOJAHN: Thank you.

4 MAYOR FELLOWS: Other questions?

5 Mr. Brennan.

6 COUNCILMEMBER BRENNAN: Since my
7 colleague brought up there not being a time
8 frame, and I know we don't have the ability to do
9 anything from our, our side, but again, the
10 Applicant stated that upon development or the
11 granting of whatever to proceed with development,
12 the fence would be removed, would the Applicant
13 be willing to set some type of time line that the
14 Council could accept?

15 I do think that that is some concern
16 because, you know, indefinite is a very long
17 time. And there are no guarantees for the
18 future. Would there be a number?

19 MR. LYNCH: Based on my experience with
20 the development process in Prince George's
21 County, I would estimate that it would take
22 approximately one year to obtain our land use

1 approval to do something on this property,
2 whether it be similar to what was previously
3 approved back in the '80s, or some alternative.

4 Once it is approved, it would take
5 approximately one year to obtain your permits.
6 And then they allow for another six months to do
7 some preliminary work and get the thing moving.

8 So I would estimate in terms of it
9 would be at least three years but no more than
10 four years the fence would be in place.

11 COUNCILMEMBER BRENNAN: So can we
12 accept three-and-a-half years or three-and-a-half
13 years that if the fence was constructed that that
14 would be what would be accepted by Council?

15 MR. LYNCH: I think that is a
16 reasonable assumption to make that the fence
17 would be there three-and-a-half years and the
18 Applicant would proffer that to this Council.

19 COUNCILMEMBER BRENNAN: And that would
20 also be if the development was expedited faster,
21 that whatever comes first?

22 MR. LYNCH: Well, if the development

1 was expedited faster and we were able to obtain
2 all our approvals, including our permits, within
3 a two-year period, then the fence would be
4 removed that much sooner.

5 COUNCILMEMBER BRENNAN: Right.

6 I just want to say I agree with the
7 statements about the need for the actual fence.
8 I do feel that the city is being placed between a
9 separate dispute between parties that I do feel
10 very uncomfortable with. I wish that it would be
11 taken into that particular setting and resolved
12 in that setting. And I really do feel that
13 that's the most appropriate place to resolve that
14 dispute. Because I do believe that we are
15 talking about two very reasonable parties here
16 who can agree to, you know, work together, not
17 trespass, not do anything untoward to that
18 property.

19 But generally speaking, and this needs
20 to be separated. This is a fence issue and a
21 development issue that I think are being
22 conflated at times. But I think generally

1 speaking the community surrounding this area
2 would prefer not to see a fence in this area just
3 because, you know, it hasn't been there for many
4 years already. And, again, I think something can
5 be worked out amicably so that a physical fixture
6 is not attached to the property.

7 So that's all I have to say.

8 MR. LYNCH: Well, just in response to
9 that let me say this, and maybe this will answer
10 the question by your fellow Councilmember. I
11 personally when I'm representing a client don't
12 come into a community to pick a fight. I reach
13 out to the community to try to reach a resolution
14 because the last thing I want when I go before
15 the Planning Board is opposition.

16 So that being said, I wouldn't have on
17 behalf of my client, applied for this variance if
18 I felt there was any alternative. We always
19 reach out to try to reach an agreement, to try to
20 be amicable.

21 You've sat in our meetings with us
22 trying to address the community's concerns. So

1 we don't come in and try to pick a fight. And
2 that's what we're not attempting to do here, but
3 just do not feel like we have any choice at this
4 moment.

5 COUNCILMEMBER BRENNAN: Okay.

6 MAYOR FELLOWS: Thank you, Mr. Brennan.

7 Other questions or comments?

8 (No response.)

9 All right, thank you very much, Mr.
10 Lynch.

11 MR. LYNCH: Thank you very much.

12 MAYOR FELLOWS: Now would the parties
13 in opposition like to speak in rebuttal?

14 MS. FERGUSON: May I? Can we have a
15 question, please?

16 MAYOR FELLOWS: Ms. Ferguson, yes.

17 MS. FERGUSON: Mr. Lynch.

18 MR. LYNCH: Yes?

19 MS. FERGUSON: You have just given an
20 estimate of time for a length of time that the
21 fence would be needed. Is that a proffer on your
22 part or an estimate?

1 MR. LYNCH: I would proffer, I would
2 proffer three years, three-and-a-half years, as I
3 discussed with the Councilmember.

4 COUNCILMEMBER WOJAHN: From today?

5 MR. LYNCH: From the date of the fence
6 permit's issuance.

7 COUNCILMEMBER WOJAHN: Okay.

8 MAYOR FELLOWS: All right, thank you.

9 Again, would the parties in opposition
10 like to speak in rebuttal?

11 Mr. Tanner.

12 MR. TANNER: I guess the main point I
13 want to go onto is his last statement about the,
14 his last statements about the --

15 MAYOR FELLOWS: And just your name and
16 affiliation.

17 MR. TANNER: Oh. Tom Tanner,
18 Branchville Volunteer Fire Company. Sorry.

19 Regarding communications from the
20 1980s forward, we never heard anything from them
21 until they put forth their development. And
22 there was -- we, all of our information about our

1 lot, use of the lot has been on our website for
2 many years and we never heard word one.

3 Additionally, the -- if you'll look at
4 the dates for application for the fence and the
5 dates for the other things that we're not
6 supposed to talk about, you'll see there is a
7 correlation. But and just to be reasonable, I
8 don't need it to go all the way out here as long
9 as it jogs down to -- there's a light post here
10 that goes up here. That light post is where I
11 need to have that room because we can't hit a
12 light post.

13 MAYOR FELLOWS: All right.

14 MR. LYNCH: Thank you.

15 MAYOR FELLOWS: Mr. Young or?

16 MR. YOUNG: No, thank you.

17 MAYOR FELLOWS: All right. And so I
18 guess there's not much to -- would the parties in
19 favor like to speak in rebuttal? And there's not
20 really anything to rebut there.

21 So thank you all for your comments.

22 And now we're going to turn to the Council for

1 comments on this matter.

2 Just wanted to remind everybody that
3 the majority of the Mayor and Council can accept,
4 deny or modify the recommendation of the APC or
5 return the case to the APC to take further
6 testimony, or reconsider its recommendation. So
7 those are our options.

8 Ms. Stullich.

9 COUNCILMEMBER STULLICH: Yes. I have
10 a question for staff.

11 So if a variance were approved, then
12 that variance stays with the property; right? So
13 if that front yard fence variance were approved
14 then they could, I mean they may say that they
15 are not planning to, but if they're building
16 construction project ultimately if they wanted to
17 have a front fence, a fence in the front yard
18 they would be -- they would have the right to do
19 that?

20 MS. FERGUSON: The proffer has been
21 made for a time limit. While you cannot require
22 that, the terms of the variance for

1 consideration, you can accept it.

2 MAYOR PRO TEM MITCHELL: And so the
3 proffer is a legal agreement that would be --

4 MS. FERGUSON: You would make it part,
5 you would make it part of your order that the
6 proffer was made and was accepted by you. As all
7 the proffers that were made today you may accept
8 or not. But those would all be referenced in --
9 any that you accepted would be referenced in your
10 order.

11 MAYOR PRO TEM MITCHELL: And if the
12 property were to change hands then?

13 MS. FERGUSON: The variance has its
14 conditions on it. They get no more, they don't
15 buy anything more than what's in the variance.

16 MAYOR PRO TEM MITCHELL: Thank you.

17 In terms of comments, I don't really
18 see the -- I don't really see the, I don't
19 believe the need for a fence has been justified.
20 I think that we adopted a fence ordinance that
21 restricts a fence in the front yards of
22 properties for a reason, and it's because they

1 are generally not attractive or desired by the
2 neighbors.

3 I can't think of other vacant lots,
4 some within neighborhoods. And if a fence were
5 put around, put on the front yards, as this
6 property, I think it would be something that many
7 people would object to.

8 It seems that the Applicant is not
9 necessarily opposed to trespassing, they seem to
10 have a problem just with trespassing by the
11 Branchville Fire Department. And it just seems
12 like that's something that could be, could be
13 worked out without resorting to a fence that
14 affects everybody who passes by or lives near the
15 property.

16 But I also think that front yard
17 fences are generally something that we, that are
18 discouraged or not allowed under our fence
19 ordinance. And I generally am not in favor of
20 variances of that provision.

21 Thank you.

22 MAYOR FELLOWS: All right, thank you.

1 Other comments?

2 Ms. Mitchell.

3 MAYOR PRO TEM MITCHELL: Thank you, Mr.
4 Mayor.

5 I would like to go ahead and make a
6 motion if it's permissible at this time for Oral
7 Argument CEO-2015-02, the Cruz Development
8 Corporation, to move to reverse the decision of
9 the APC and deny the application, showing that I
10 don't see where there's an extraordinary
11 situation or petition. And I do see it as a
12 public health and safety concern, especially when
13 we talk about the Branchville Fire Department as
14 they provide services for our community. And we
15 need to make sure that they are able to make --
16 get out in a timely fashion when calls come upon
17 it.

18 MAYOR FELLOWS: All right. We have a
19 motion.

20 COUNCILMEMBER KABIR: Second.

21 MAYOR FELLOWS: Seconded by Dr. Kabir.

22 MAYOR PRO TEM MITCHELL: No additional

1 comments.

2 MAYOR FELLOWS: Additional comments?

3 MAYOR PRO TEM MITCHELL: No.

4 MAYOR FELLOWS: Or no additional
5 comments. All right.

6 So, Mr. Wojahn?

7 COUNCILMEMBER WOJAHN: I have a
8 question, Mr. Mayor. Thank you.

9 And I appreciate the motion and am
10 inclined to agree with the direction where it's
11 going but I'm inclined to disagree with the
12 reasons offered in support.

13 What would be the appropriate, if we,
14 if I agree with the ultimate result but not with
15 the reasons given for reversing the opinion of
16 the APC? What would be the appropriate step?

17 MS. FERGUSON: It would be required to
18 find that one or more of the criteria were not
19 met. And so referencing the Fire Department's
20 use of another's property as part of that is
21 something that we've advised already is outside
22 of those variance criteria.

1 So it would have to be something that
2 falls within that. You could find that if the
3 one or more of the criteria are not met you --
4 that the variance is not going to be granted.

5 And we can go back over those at this
6 point. You would have to make a motion based on
7 that. So.

8 COUNCILMEMBER WOJAHN: Okay, thank you.

9 So the motion, in other words Mrs.
10 Councilmember Mitchell's motion includes the
11 justification that she's providing as well as the
12 --

13 MS. FERGUSON: She has said that she
14 does not feel that there is an exceptional or
15 extraordinary condition, which is Criteria Number
16 1.

17 MAYOR PRO TEM MITCHELL: And I also
18 stated Criteria Number 5, which I feel as though
19 that there is a adverse effect public safety-wise
20 with regards to BBB Fire Department.

21 COUNCILMEMBER WOJAHN: Thanks.

22 MS. FERGUSON: You could find that the

1 denial would not prevent the owner from securing
2 his property, that there are other ways to do
3 this. That there are a number of other matters
4 that you could find in your discretion from the
5 record that you have.

6 MAYOR FELLOWS: Well, actually, if I
7 may ask, so there's a motion and a second for the
8 basis for a denial. Other Council Members could
9 add other reasons to the motion? Or is it simply
10 a -- I mean it's more like comments upon the
11 reasons for a vote upon the motion. Because I
12 think it's pretty clear the reasons, the basis
13 that the motion maker is saying we should, that
14 the Council should deny.

15 So if other people want to take it
16 from a different point, I'm not sure that the
17 motion needs to be amended. I think it --

18 COUNCILMEMBER STULLICH: The motion
19 would include that.

20 MS. FERGUSON: Yes.

21 COUNCILMEMBER STULLICH: The reasons.
22 The criteria.

1 MAYOR FELLOWS: Well, she made a
2 motion. So that's what I'm saying, so I guess
3 the motion maker could accept additional reasons.

4 MS. FERGUSON: Yes, the motion maker
5 could accept additional positions from other
6 Council Members that there is other criteria were
7 not met.

8 MAYOR FELLOWS: Okay. So is that --

9 COUNCILMEMBER WOJAHN: So if we're
10 voting in support of this motion we can be voting
11 to deny the variance for other reasons other than
12 what was stated?

13 MS. FERGUSON: You should state the
14 reasons for the denial. And if they include that
15 you do not feel that Number 2 has been met, then
16 that should be included. This will result in a
17 written decision that must be supported by the
18 reasons for the denial.

19 COUNCILMEMBER WOJAHN: Let me just
20 state what I'm getting at here because I do have
21 concerns about granting -- about not granting the
22 variance for reasons that we've been told that we

1 are -- that's not for us to consider. I feel
2 uncomfortable voting in support of a motion that
3 includes that reasoning.

4 But I do concur with the results.

5 MS. FERGUSON: I understand. And so
6 you should include in your reasons for denial any
7 of these criteria that you have felt were not
8 met. Obviously one Councilmember has decided
9 that Number 5 has not been met. But all of those
10 that you feel have not been met should be
11 included because the full reasoning for your
12 decision should be available.

13 COUNCILMEMBER WOJAHN: Okay. Well, I'd
14 like to include Criteria Number 2 in that.

15 MAYOR FELLOWS: So Criteria 2 is now
16 the variance will result in a peculiar and
17 unusual practical difficulty to, or an
18 exceptional or undue hardship to its owner?

19 COUNCILMEMBER WOJAHN: Right.

20 MAYOR FELLOWS: Okay.

21 MS. FERGUSON: You could ask the motion
22 maker to include that reasoning in her motion.

1 COUNCILMEMBER WOJAHN: Would the motion
2 maker be willing to include that reasoning in her
3 motion?

4 MAYOR PRO TEM MITCHELL: Could you
5 please repeat it? Excuse me.

6 COUNCILMEMBER WOJAHN: That the
7 Applicant has not met Criteria Number 2 which --
8 and has not shown that denial would result in a
9 peculiar and unusual practical difficulty or
10 exceptional or undue hardship to the owner.

11 MAYOR PRO TEM MITCHELL: I'll be glad
12 to accept that.

13 MAYOR FELLOWS: All right, thank you.
14 Ms. Stullich.

15 COUNCILMEMBER STULLICH: I would like
16 to ask the motion maker if she would be willing
17 to remove Criteria Number 5 about the public
18 health, safety, welfare, et cetera, from her
19 motion? I feel that the most relevant criteria
20 here are 1, 2 and 3, which we have so discussed.

21 MAYOR PRO TEM MITCHELL: Okay. I'll be
22 willing to do that.

1 COUNCILMEMBER STULLICH: Okay.

2 MAYOR FELLOWS: All right. Thank you.

3 COUNCILMEMBER DENNIS: So is Ms.

4 Stulich asking that Criteria Number 3 be a list
5 of the --

6 COUNCILMEMBER STULLICH: Oh, I'm sorry.
7 Has 3 not been discussed?

8 COUNCILMEMBER DENNIS: No.

9 COUNCILMEMBER STULLICH: Okay. So I
10 was suggesting that Number 3 also be included.

11 I was actually looking at the fence
12 ordinance to look where there is discussion of
13 the intent, purpose and integrity, and I was not
14 finding that language. Is it in the ordinance?
15 Or was it in other documents related to the
16 ordinance?

17 MS. FERGUSON: The criteria are all
18 there.

19 COUNCILMEMBER STULLICH: No, I'm sorry.
20 The Criteria Number 3 says, "Granting the
21 variance will not impair the intent, purpose or
22 integrity of the fence ordinance." And then the

1 Applicant -- Let's see.

2 Sorry, I'm looking for the Applicant's
3 discussion of Criteria Number 3.

4 MAYOR PRO TEM MITCHELL: Page 18.

5 COUNCILMEMBER STULLICH: I think maybe
6 it's 22, little page 22, where the Applicant was
7 talking about the plan. I thought it was the
8 intent of the fence ordinance, the Applicant
9 talked about the integrity of the plan which is
10 the Prince George's County plan.

11 MS. FERGUSON: Yes, that's different.
12 That's a general criteria, that's not one of the
13 criteria specifically that applies to our fence
14 ordinance variance.

15 COUNCILMEMBER STULLICH: Okay. So I do
16 feel that the feel is wrong. I do think that
17 granting the variance would impair the intent,
18 purpose and integrity of the fence ordinance. I
19 think the fence ordinance was specifically
20 intended to prohibit front yard fences, which is
21 what this would be. It seemed like the motion
22 maker was comfortable with adding that rationale,

1 --

2 MAYOR PRO TEM MITCHELL: Yes, I was.

3 COUNCILMEMBER STULLICH: -- that
4 criteria to the motion.

5 MAYOR FELLOWS: So the final criteria
6 that we're discussing are 3 --

7 MS. FERGUSON: 1, 2 and 3.

8 MAYOR FELLOWS: 3, 2 and 1. All right.
9 So is the motion maker and the second are fine
10 with that?

11 MAYOR PRO TEM MITCHELL: I am fine.

12 MAYOR FELLOWS: All right. Additional
13 comments from the Council?

14 (No response.)

15 All right, all those in favor of the
16 motion say "aye."

17 (Ayes.)

18 Opposed?

19 (No response.)

20 Other votes?

21 The motion or the order is denied.

22 And --

1 MS. FERGUSON: Mayor, if I might?

2 MAYOR FELLOWS: Yes.

3 MS. FERGUSON: Based on the
4 discussions, we will be putting this into writing
5 in a written order which will be returned to
6 Council, to be referred to document and returned
7 to Council for approval.

8 MAYOR FELLOWS: Okay.

9 MS. FERGUSON: And it will be placed in
10 writing for you.

11 MAYOR FELLOWS: Am I right to assume
12 that that might be next week? Is it this Council
13 that will be?

14 MS. FERGUSON: I believe that the
15 agenda at this point does not have any action
16 items. But that could be a consent item.

17 MAYOR FELLOWS: Okay.

18 MS. FERGUSON: And generally would be
19 handled in that way if the language is agreeable
20 to everyone.

21 MAYOR FELLOWS: Okay. All right, thank
22 you.

1 All right, with that we are now going
2 to take a short recess for five minutes or so to
3 get back into the normal work session mode. So
4 we'll reconvene at about 9:10.

5 (Whereupon, at 9:00 p.m., the oral
6 argument was concluded.)
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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Oral Argument CEO-2015-02

Before: City of College Park

Date: 12-01-15

Place: College Park, MD

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



Court Reporter

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

16-G-08

DECLARATION OF COVENANTS

THIS DECLARATION OF COVENANTS, is made this ____ day of January, 2016 by Patrick D. O'Brien (hereinafter referred to as the "Declarant"), in favor of the CITY OF COLLEGE PARK (the "City") a municipal corporation of the State of Maryland.

WHEREAS, the Declarant is the owner of certain real property situated within the City of College Park, referenced as map 25, grid E4, subdivision 5030, lot 1, block G, Plat A-0671, with the address of 9032 48th Place, College Park, Maryland, and with deed reference Liber 30574 folio 00094 among the land records of Prince George's County, Maryland (the "Property"); and

WHEREAS, the Declarant wishes to construct a double-wide driveway apron, with a twenty four foot (24') width at the street and a twenty foot (20') width at the property line; and

WHEREAS, the City standard provides for a driveway with a seventeen foot (17') width at the street and ten foot (10') width at the property line; and

WHEREAS, the construction of a doublewide driveway apron in the size desired by the Declarant would create a non-standard driveway apron; and

WHEREAS, the Mayor and City Council of the City of College Park have reviewed the Declarant's application for a building permit to allow a doublewide driveway apron and have approved same, conditioned upon the Declarant providing perpetual maintenance of the expanded portion of the driveway apron, to be evidenced by the execution of this Declaration of Covenants.

NOW, THEREFORE, in consideration of the premises, the sum of \$1.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Declarant hereby declares that the Property is and shall be held, transferred, sold, leased, rented, hypothecated, encumbered, conveyed or otherwise occupied subject to the following covenants, conditions,

restrictions, limitations and obligations which shall run with and bind the Property or any part thereof, and shall inure to the benefit of and be enforceable by the City, its successors and assigns.

1. Declarant shall be solely responsible for the new double-wide driveway apron on the Property which, except for the width of twenty four feet (24') at the street and twenty feet (20') at the property line, shall comply with all City and County requirements. All costs and expenses associated with the construction of the driveway apron shall be borne by the Declarant.

2. Declarant and his successors and assigns shall be solely responsible to the City for all costs and expenses associated with the maintenance of that portion of the driveway apron that exceeds the City standard of a seventeen foot (17') width at the street and a ten foot (10') width at the property line.

3. The Property shall be held, conveyed, encumbered, sold, leased, rented, used and/or occupied subject to the terms and provisions of this Declaration.

4. Declarant hereby agrees to indemnify and hold the City harmless from and against any and all claims, causes of action, liability, damages and/or expenses associated with the installation and maintenance of the doublewide driveway and driveway apron on the Property, except as otherwise stated herein.

5. Each person accepting a deed, lease or other instrument conveying any interest in the Property shall be bound by the terms of this Declaration, whether or not the same is incorporated or referred to in such deed, lease or instrument and this Declaration is hereby incorporated by reference in any deed or other conveyance of all or any portion of each person's interest in any real property subject hereto.

IN WITNESS WHEREOF, Patrick D. O'Brien and the City have caused these presents to be executed and delivered.

WITNESS/ATTEST:

DECLARANT:

Patrick D. O'Brien

STATE OF MARYLAND)

)

ss:

COUNTY)

)

I HEREBY CERTIFY, that on this __ day of _____ 2016, before me, a Notary Public in and for the State aforesaid, personally appeared Patrick D. O'Brien, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purposes therein contained.

WITNESS my hand and Notarial Seal.

_____ (SEAL)

Notary Public

My Commission Expires: _____

WITNESS/ATTEST:

CITY OF COLLEGE PARK

Janeen S. Miller, CMC, City Clerk

By: _____

Scott Somers, City Manager

STATE OF MARYLAND)

) ss:

COUNTY OF)

)

I HEREBY CERTIFY that on this ____ day of _____, 2016, before me, the subscriber, a Notary Public in the State and County aforesaid, personally appeared Scott Somers, who acknowledged himself to be the City Manager of the City of College Park, and that he, as such City Manager, being authorized so to do, executed the foregoing Declaration of Covenants for the

purposes therein contained by signing, in my presence, the name of said City of College Park, by himself, as City Manager.

WITNESS my hand and notarial seal.

_____(SEAL)
Notary Public
My Commission Expires:_____

THIS IS TO CERTIFY that the within instrument has been prepared under the supervision of the undersigned Maryland attorney-at-law duly admitted to practice before the Court of Appeals.

Suellen M. Ferguson

After recording, please return to:

Suellen M. Ferguson, Esq.
Council, Baradel, Kosmerl & Nolan, P.A.
125 West Street, 4th Floor
P.O. Box 2289
Annapolis, MD 21404

Patrick O'Brien
9032 48th Pl.
College Park, MD 20740
November 19, 2015

Steven Halpern
City Engineer
City of College Park
9217 51st Ave.
College Park, MD 20740

Dear Steven Halpern:

I am writing to formally request the ability to expand my driveway apron from 10' to 18' wide. I have been granted County and City permits for a 20' wide driveway, but due to the layout of my property I do not have enough depth to be able to get two cars parked on the driveway pad simultaneously with only a 10' entrance.

I need the ability to park two cars off of the street due to the following:

- I have twin toddlers and my wife leaves for work early in the morning, often before sunrise. I don't want them to have to walk in the street and possibly down the street to get to our vehicles
- My property is a corner lot with a wide sweep at the corner, resulting in 60' of curb space being unavailable for adjacent parking. The rest of Catawba St. past my home is a no parking zone.
- The parking situation near my house is already tight, with residents of the nearby townhouses and the rental property across the street frequently parking in front of my house on Catawba and around the corner on 48th Pl.
- The addition of approximately 400 units of housing directly adjacent to my property and directly across Rt. 1 will cause severe and detrimental impacts to parking near my home. These properties are being built with exceptions to build less than the recommended amount of parking, resulting in many more cars being parked on City streets near my house.

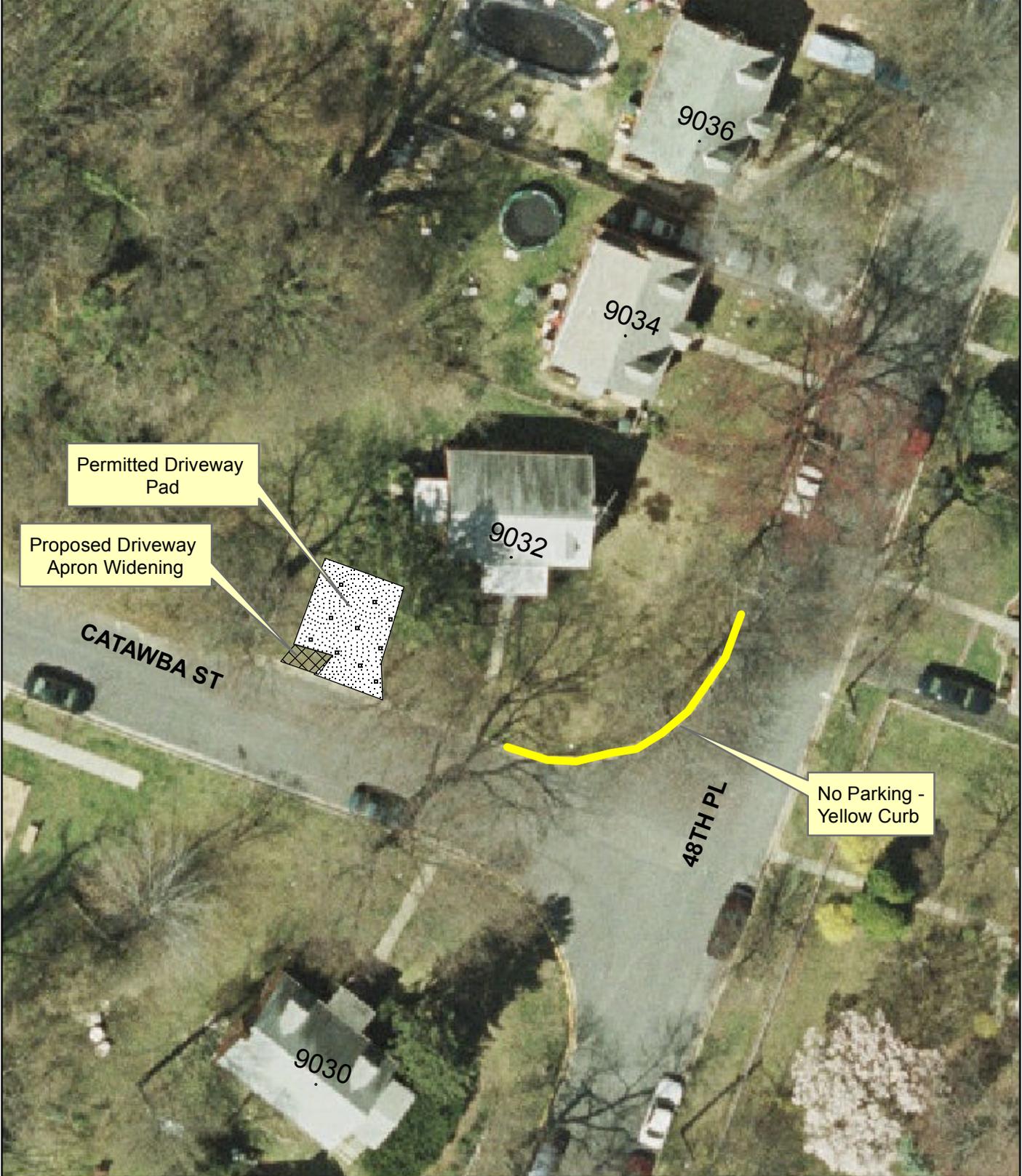
I am willing to enter into a Declaration of Covenants with the City regarding maintenance costs for the apron. Thank you for your consideration.

Sincerely,

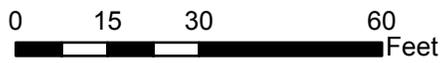
Patrick O'Brien
Homeowner

Attachment: Location Map

9032 48th Avenue - Driveway Apron Variance



By: College Park Engineering
Date :12-10-15
Source: M-NCPPC GIS



16-G-09



2016 College Park Mother's Day 5k

**Saturday, May 7, 2016, 8:00 am
Start & Finish: College Park City Hall**

About the Race:

The College Park Community Foundation (CPCF) is pleased to host the 3rd Annual College Park Mother's Day 5k. Runners and families will make their way around a five-kilometer (3.1 mile) course around downtown College Park, Calvert Hills, and Old Town, starting and ending at City Hall (course map attached). The race will welcome participants of all ages and abilities and feature a special start for runners with strollers, walkers, and families that choose to race together.

Building upon the success of the previous two races, CPCF plans to present a professional, well-managed race that:

- Will be a family & community event centered on health and togetherness
- Promote a healthy, connected community
- Appeal to a diverse audience of ability and age
- Bring together College Park's different neighborhoods

The registration fee will range from \$20 (early bird), \$25 (regular) and \$35 day-of, and families will also be able to save by registering as family (of up to 3 people) at a reduced cost. Children 8 and under will race for free. Each registration includes a race premium runner bib, and a premium Bibtag timing system. This fee structure is on the low-end of races that offer similar premiums and we are excited to offer this opportunity to the residents of the city of College Park.

In addition, CPCF will encourage registrants to participate in the popular "Couch to 5k" program and will offer facilitated group runs/walks between mid-March and race day.

Prizes will be awarded to the top 3 finishers in different categories (Male, Female, Overall, Stroller Runners, etc.). Prizes will include pies, as well as donations from local businesses.

Participation:

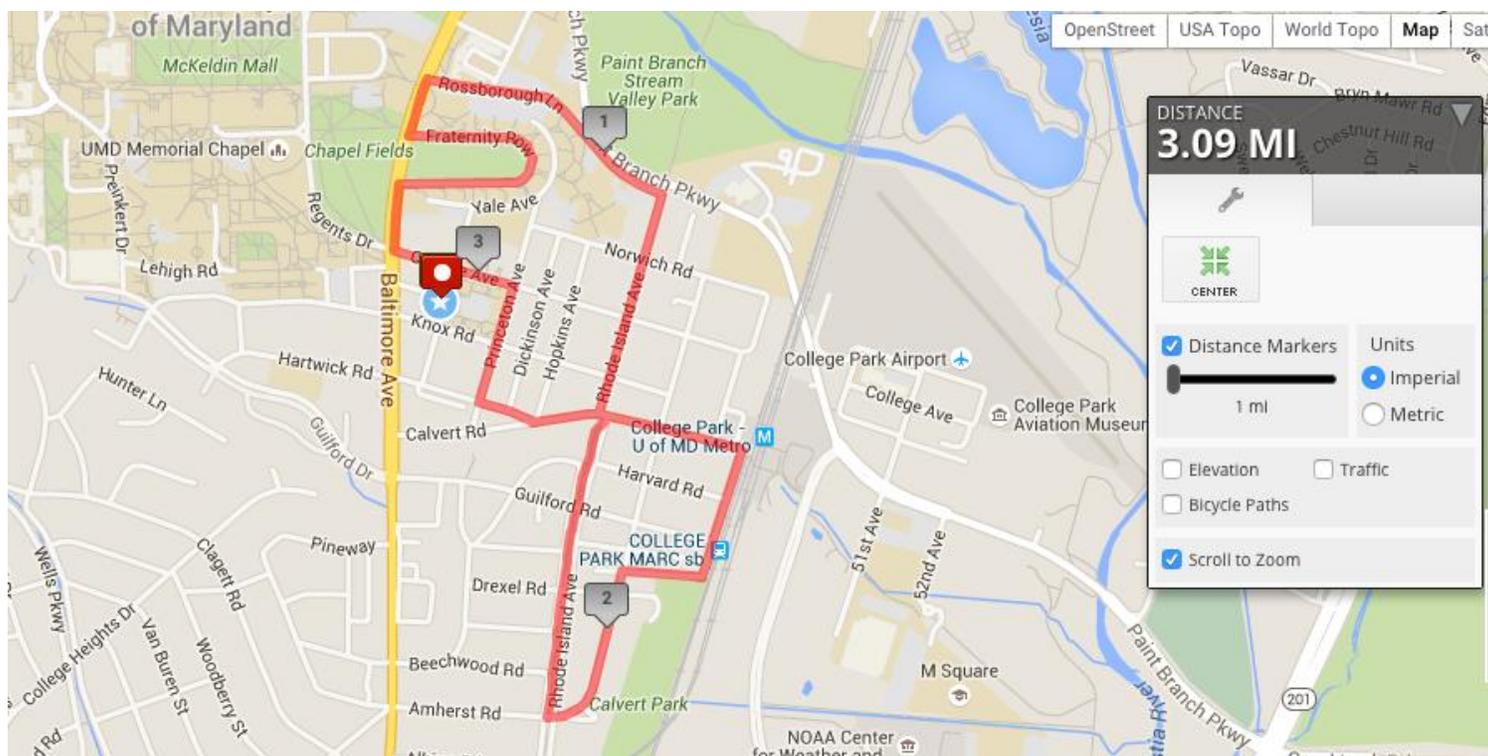
The 2014 race had approximately 90 participants, with limited outreach and marketing, which was a significant number of participants, especially considering it was the first year of the event. The 2015 race, with increase outreach and marketing, included 130 participants. For the 2016 race, CPCF anticipates approximately 150 participants. Registration will range from \$20-\$55 (early-bird, regular, onsite, and Family Registration.)

CPCF will seek sponsorships and partnerships from local businesses to increase involvement from various community stakeholders. Proceeds from this event will benefit the grant-making activities of CPCF. Each year, through a competitive application process, CPCF awards monetary grants to non-profits and service organizations that charitably serve College Park residents in three priority areas: Education, Quality of Life, and Community-Building. In 2015, CPCF granted \$6,400 to nine organizations and intends to increase grant awards in 2016.

Proposed Route:

While the race has been in held in north College Park for the past two years, CPCF will hold the race in downtown College Park in 2016 to highlight other areas/neighborhoods of the city. It is CPCF's ultimate goal to rotate the race on routes throughout the city.

The race will start and finish at College Park City Hall. The scenic route will take participants through the streets of Calvert Hills and Old Town, and end through Frat Row and Baltimore Avenue. Where possible, participants will use sidewalks and the Trolley Trail. Race volunteers, contract police, and UMPD police will be stationed throughout the race route to ensure everyone's safety and adherence to the race route.



City Partnership:

The City of College Park has been a critical partner and sponsor of this race since 2014 and CPCF is hopeful the city will sponsor the 2016 race. The sponsorship package would entail:

- Use of City Hall Parking Lot, including electrical hook-up
- Use of City Hall bathroom facilities
- Complimentary parking in the City's Parking Garage for the morning of the race
- Contract Police Support/Public Works Support
- Street cones to mark areas of the route
- Coverage through the City's Insurance Policy, indemnifying the University of Maryland

In the event that the race cannot be held in downtown College Park, we will relocate the race to last year's location at the Hollywood Shopping Center in north College Park and follow the route from 2014 and 2015 on Sunday, May 8, 2016. At that location, City sponsorship would include:

- Contract Police/Public Works Support
- Street cones to mark areas of the route
- Coverage through the City's Insurance Policy, indemnifying the University of Maryland

The College Park Community Foundation greatly appreciates the incredible support of the City of College Park – Mayor and Council and its dedicated staff – for this special, community-building event.

16-G-11

January 26, 2016

The Honorable Dannielle Glaros, Vice-Chair
Prince George's County Council
County Administration Building
14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772-3050

Dear Vice-Chair Glaros:

I am writing on behalf of the City of College Park to request County funding in FY17 for a Transportation Demand Management District (TDMD) that will include parts of College Park, University Park, Riverdale Park, and the City of Hyattsville. County legislation has authorized, and County plans have called for such districts to be established, but so far none have been created. We believe that we should work together to establish a TDMD in our area now.

We know you are cognizant of the current and planned new development in our area, as well as the challenges this development presents to our transportation systems if we do not implement changes. We value your work and experience supporting quality development that creates mixed-use, walkable and attractive areas. With the wide range of transportation options in our area, we can do more to reduce traffic congestion. An effective TDMD will implement incentives, increase transportation options, and improve the efficiency of all transportation modes.

We appreciate your consideration of this request, and look forward to working with you and our neighbors to create a TDMD that benefits all of our communities.

Sincerely,

Patrick L. Wojahn
Mayor

cc: Mayor Len Carey, Town of University Park
Mayor Vernon Archer, Town of Riverdale Park
Mayor Candace Hollingsworth, City of Hyattsville
Carlo Colella, Vice President for Administration & Finance, UMD
Elizabeth M. Hewlett, Chair, M-NCPPC

16-O-01

MOTION:

I move to adopt Ordinance 16-O-01, An Ordinance of the Mayor and Council of the City of College Park to Amend the Fiscal Year 2016 Operating and Capital Budget of the City of College Park, Maryland (Amendment #2)

DISCUSSION:

This budget amendment ordinance was introduced on January 12th and a public hearing was held earlier this evening.

This budget amendment contains 2 separate components. The first component corrects a clerical error in the adoption of Ordinance 15-O-05, FY2016 Budget Amendment #1, on November 24, 2015.

The second component transfers budgeted funds from 3 vacant positions in Public Works to cover 2 new positions. In Public Works, a new position would be created, entitled Assistant Director, Operations and Facilities, who would be responsible for supervising Public Works staff as well as being involved in the maintenance of all City buildings, negotiating contracts, and researching and recommending building systems. This exempt position would report to the Director of Public Works.

The second new position is a Communications Coordinator who would work under the direction of the Assistant City Manager to improve the communications between the City and its residents in the ways identified in the strategic plan, including website review and social media. It has not yet been determined whether this position would begin as a full-time exempt position or might start as an intern. The funding provided by this budget amendment would allow flexibility in making this decision once applications are reviewed.

Once this budget amendment is effective, the FY2016 budget would have a -0- use of unassigned reserve and the unassigned reserve balance would be 29.4% of the expenditure budget.

The budget amendment ordinance will be effective 20 days following its passage.

ORDINANCE 16-O-01

An Ordinance of the Mayor and Council of the City of College Park to Amend the Fiscal Year 2016 Operating and Capital Budget of the City of College Park, Maryland (Amendment #2)

WHEREAS, the Mayor and Council of the City of College Park, Maryland did adopt a budget for the fiscal year beginning July 1, 2015 and ending June 30, 2016 (hereinafter referred to as “Fiscal Year 2016” or “FY2016”) on May 26, 2015 by the enactment of Ordinance 15-O-03; and

WHEREAS, the Mayor and Council of the City of College Park, Maryland did amend the FY2016 adopted budget on November 24, 2015 (Amendment #1) by the enactment of Ordinance 15-O-05; and

WHEREAS, the Mayor and Council of the City of College Park, Maryland desire to amend the FY2016 adopted budget in order to reallocate certain budgeted expenditures, fund certain new staff positions and adjust the interfund transfer to a Capital Improvement Program (“C.I.P.”) project.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Council of the City of College Park, Maryland, that the budget for fiscal year 2016 be, and hereby is, amended in accordance with the following schedule, with said amendments being indicated by asterisks in the right column. The individual budget amendment changes are itemized in Appendix A, attached hereto and incorporated herein by this reference.

General Fund

	<u>Budget as Adjusted</u>	<u>As Amended by this Ordinance</u>
Revenues		
Taxes	\$ 10,900,642	\$ 10,900,642
Licenses & Permits	1,193,935	1,193,935
Intergovernmental	261,772	261,772
Charges for Services	999,078	999,078
Fines & Fees	2,510,600	2,510,600
Miscellaneous Revenues	194,569	194,569
<i>Total Operating Revenues</i>	\$ 16,060,596	\$ 16,060,596
Non-Revenue Receipts		
Interfund Transfer from Parking Debt Service		
Fund	257,392	257,392
Use of Unassigned Reserve	1,500,000	0 *

Total Revenues	<u>\$ 17,817,988</u>	<u>\$ 16,317,988</u> *
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Expenditures

General Government	\$ 4,327,207	\$ 3,102,976 *
Public Services	4,019,776	4,019,776
Planning, Community & Economic Development	664,463	664,463
Youth, Family & Senior Services	1,114,881	1,114,881
Public Works	5,215,750	5,189,981 *
Contingency	10,000	10,000
Debt Service	557,411	557,411
Interfund Transfers to Capital Projects Fund	<u>1,908,500</u>	<u>1,658,500</u> *

Total Expenditures	<u>\$ 17,817,988</u>	<u>\$ 16,317,988</u> *
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Parking Debt Service Fund

	<u>Budget as Adjusted</u>	<u>As Amended by this Ordinance</u>
Revenues		
Highways & Streets		
Parking Meter Revenue	\$ 205,000	\$ 205,000
Fines		
Parking Fines Revenue	<u>45,000</u>	<u>45,000</u>
Total Revenues	<u>\$ 250,000</u>	<u>\$ 250,000</u>

Expenditures

Interfund Transfer to General Fund	<u>\$ 257,392</u>	<u>\$ 257,392</u>
Total Expenditures	<u>\$ 257,392</u>	<u>\$ 257,392</u>

BE IT FURTHER ORDAINED that:

1. All matters and facts contained in Ordinances 15-O-03 (original budget adoption) and 15-O-05 (Amendment #1) other than the amendments contained herein shall remain in full force and effect;
2. In addition to the projected General Fund operating revenue of \$16,060,596, the amount of \$0 is appropriated from the unassigned reserve and the sum of \$257,392 is transferred from the Parking Debt Service Fund;
3. This budget amendment Ordinance provides for a reallocation of certain budgeted expenditures, funding for certain new staff positions and an adjustment in the

interfund transfer to the Capital Improvement Program (C.I.P.), as itemized in Appendix A, attached hereto and incorporated herein by this reference. The net result is a \$1,500,000 decrease in the budgeted use of unassigned reserve from \$1,500,000 to \$0; and

4. This Ordinance shall become effective at the expiration of twenty (20) calendar days following its adoption.

AND BE IT FURTHER ORDAINED by the Mayor and Council of the City of College Park, Maryland that, upon introduction of this Ordinance, the City Clerk shall distribute a copy of the same to each council member and shall publish a fair summary of this Ordinance in a newspaper having general circulation in the City, together with a notice setting out the time and place for a public hearing hereon and for its consideration by the Council.

A public hearing will be held on the proposed Ordinance at **7:15 p.m.** on the **26th** day of **January, 2016** in the Council Chambers, City Hall, 4500 Knox Road, College Park, Maryland. The public hearing will be held in connection with a regular Council meeting. All persons interested will have an opportunity to be heard. After the public hearing, the Council may adopt the proposed Ordinance, with or without amendment, by the affirmative vote of at least six (6) members of the Council. It shall become effective twenty (20) days following its adoption. After its adoption, the City Clerk shall have a fair summary of the Ordinance and notice of its adoption published in a newspaper having a general circulation in the City of College Park, and shall have copies of the adopted Ordinance available at City offices.

Introduced on the **12th** day of January, 2016

Adopted on the _____ day of January, 2016

Effective on the _____ day of February, 2016

Patrick L. Wojahn, Mayor

ATTEST:

Janeen S. Miller, CMC, City Clerk

APPROVED AS TO FORM:

Suellen M. Ferguson, City Attorney

CITY OF COLLEGE PARK, MARYLAND
Appendix A to Ordinance 16-O-01
Itemized FY2016 Budget Amendment #2 Changes

Program	Description	Increase (Decrease)
Revenues- Unassigned Reserve Transfer 399.00	Use of Unassigned Reserve in Adjusted Budget (Amendment #1)	\$ 1,500,000
Gen Govt-Publ Relations-1017	Create a new exempt position entitled "Communications Coordinator" at pay grade 13, and fund for 4 months, including wages and fringe benefits	25,769
Gen Govt- Finance-Non Departmental- 1025	Eliminate FY16 budgeted repayment to the General Fund for the MSRP prior service credit purchase from \$1,250,000 to \$0 as full MSRP prior service credit purchase was accounted for in FY15 financial statements (account 1025-1127).	(1,250,000)
Publ Works- Admin-5010	Eliminate funding for vacant Operations Supervisor position for remaining 4 months of FY16, including wages and fringe benefits, less excess reduction	(26,757)
Publ Works- Admin-5010	Create a new exempt position entitled "Assistant Director, Operations and Facilities" at pay grade 20, and fund for 4 months of FY16, including wages and fringe benefits	39,741
Publ Works- Refuse Mgmt- 5011	Eliminate funding for vacant Crew Chief position for remaining 4 months of FY16 (50% FTE allocation), including wages and fringe benefits	(12,777)
Publ Works- Recycling-5025	Eliminate funding for vacant Crew Chief position for remaining 4 months of FY16 (50% FTE allocation), including wages and fringe benefits	(12,776)
Publ Works-Bldg Maint-5028	Eliminate funding for vacant Custodial Worker position for remaining 4 months of FY16, including wages and fringe benefits	(13,200)
Interfund Transfers-9210	Reduce additional funding for the City Hall Expansion (C.I.P. project 041003) to correct clerical error in adoption of budget Amendment #1	<u>(250,000)</u>
Revenues- Unassigned Reserve Transfer 399.00	Use of Unassigned Reserve in Amended Budget (Amendment #2)	<u>\$ 0</u>

16-G-10

MOTION:

I move that the City Council support State legislation that will: 1) Remove the current exemption to the County school facilities surcharge for new student housing in the City of College Park; and 2) Create an exemption to the County school facilities surcharge for new multi-family (not dormitory) housing located in College Park that has been designated by both the City Council and the County Council as graduate student housing.

DISCUSSION:

In 2003 an exemption to the school facilities surcharge was created by State law for new residential units designated for student housing. In 2007 the exemption was limited to specific areas within College Park. Since the law was enacted, approximately 3,400 student housing “beds” have been constructed off-campus in College Park, and 1,500 beds are under construction. The surcharge exemption is no longer necessary to incentivize this type of housing.

The waiver of the fee for housing designated for graduate students could incentivize the construction of new units for graduate students. Both the City and the County would be required to determine if the housing should be designed as “graduate student housing” and therefore eligible for the exemption. Both the City and the County would want to ensure that the housing is occupied by graduate students for the duration of the project.

ATTACHMENTS:

1. Draft Legislation [*The text within brackets is to be deleted, and the text in all capital letters is to be added to existing legislation.*]
2. Worksession Staff Report
3. Map of current exemption areas

Article 17 – Prince George’s County

Sec. 10-192.01. - School facilities surcharge.

- (a)(1) The County Council, by ordinance, shall impose a school facilities surcharge on new residential construction for which a building permit is issued on or after July 1, 2003.
- (2)(A) Except as provided under subparagraph (B) of this paragraph, the County Council may impose a school facilities surcharge on new residential construction for which a building permit is issued on or after July 1, 2003, by a municipal corporation in Prince George's County with zoning authority and the authority to issue building permits.
- (B) The County Council may not impose a school facilities surcharge on new residential construction for which a building permit is issued by a municipal corporation if Prince George's County has collected a surcharge on issuance of a County permit for the same new residential construction.
- (b)(1)(A) For Fiscal Year 2004, a school facilities surcharge imposed on a single-family detached dwelling, townhouse, or dwelling unit for any other building containing more than a single dwelling unit shall be in the amount of:
- (i) Except as provided in items (ii) and (iii) of this subparagraph, Twelve Thousand Dollars (\$12,000);
 - (ii) Seven Thousand Dollars (\$7,000) if the building is located between Interstate Highway 495 and the District of Columbia; and
 - (iii) Seven Thousand Dollars (\$7,000) if the building is included within a Basic Plan or Conceptual Site Plan that abuts an existing or planned mass transit rail station site operated by the Washington Metropolitan Area Transit Authority.
- (B) For Fiscal Year 2005 and each succeeding fiscal year, the facilities surcharge established in subparagraph (A) of this paragraph shall be adjusted for inflation in accordance with the Consumer Price Index for all urban consumers published by the United States Department of Labor, for the fiscal year preceding the year for which the amount is being calculated.
- (2) The school facilities surcharge does not apply to a mixed retirement development or elderly housing.
- (3) The school facilities surcharge does not apply to a single-family detached dwelling that is to be built or subcontracted by an individual owner in a minor subdivision and that is intended to be used as the owner's personal residence.
- (4)(A) The school facilities surcharge does not apply to multi-family housing that is located in:
- (i) The area bounded by Maryland Route 193 to the west and north, U.S. Route 1 to the east, and the southern boundary of the City of College Park to the south;
 - (ii) The area bounded by U.S. Route 1 to the west, Berwyn House Road to the north, Rhode Island Avenue to the east, and Lakeland Road to the south;
 - (iii) The area bounded by U.S. Route 1 to the west, Paint Branch Parkway to the north and east, Rhode Island Avenue to the east, and College Avenue to the south;
 - (iv) The area bounded by University Boulevard to the north, Adelphi Road to the east, Stanford Street to the south, and University Hills Park to the west;
 - (v) The area bounded by the eastern boundary of Paint Branch Stream Valley Park to the west, Park Road and a line extending from the western end of Park Road directly west to Paint Branch Stream Valley Park to the north, U.S. Route 1 to the east, and Erie Street and a line extending from the western end of Erie Street directly west to Paint Branch Stream Valley Park to the south;

- (vi) The area bounded by Autoville Drive and a line extending from the southern end of Autoville Drive directly south to Maryland Route 193 to the west, Erie Street to the north, U.S. Route 1 to the east, and Maryland Route 193 to the south;
 - (vii) The area bounded by U.S. Route 1 to the west, Maryland Route 193 to the north, 48th Avenue to the east, and Greenbelt Road to the south; or
 - (viii) (II) The area within the campus of Capitol College located adjacent to and east of Springfield Road in Parcels 1 and 2 in the subdivision of land known as "Parcels 1 and 2, Capitol Institute Of Technology", as per plat recorded in Plat Book NLP 115 at Plat 31 among the Land Records of Prince George's County, Maryland.
- (B) Subject to the approval of the County Council and the municipality where the multi-family housing is located, the school facilities surcharge does not apply to multi-family housing designated as student housing for any areas not listed under subparagraph (A) of this paragraph in the City of College Park, the City of Hyattsville, and the Town of Riverdale Park.
 - (C) **THE SCHOOL FACILITIES SURCHARGE DOES NOT APPL TO MULTI-FAMILY HOUSING WITHIN THE CITY OF COLLEGE PARK THAT IS DESIGNATED BY THE COUNTY COUNCIL AND THE CITY OF COLLEGE PARK AS GRADUATE STUDENT HOUSING.**
 - (D) If the housing is converted from student housing **OR GRADUATE STUDENT HOUSING** to multi-family housing for the general population, the owner of the property shall pay, at the time of the conversion, the school facilities surcharge in accordance with the laws at the time of the conversion.
- (5) The school facilities surcharge does not apply to a single-family dwelling unit that is to be built or subcontracted by an individual owner to replace on the same lot a previously existing single-family dwelling unit that was destroyed by fire, explosion, or a natural disaster if the single-family dwelling unit is:
 - (A) Similar to the previously existing single-family dwelling unit; and
 - (B) Owned and occupied by the same individual who owned and occupied the previously existing single-family dwelling unit.
 - (6) The school facilities surcharge does not apply to a single-family attached dwelling unit if the single-family dwelling unit is:
 - (A) Located in a residential revitalization project;
 - (B) Located in the developed tier as defined in the Prince George's County General Plan;
 - (C) Located in a Transforming Neighborhood Initiative (TNI) Area;
 - (D) Located on the same property as previously existing multi-family dwelling units;
 - (E) Developed at a lower density than the previously existing multi-family dwelling units;
 - (F) Offered for sale only on a fee simple basis; and
 - (G) Located on a property that is less than 6 acres in size.
- (c)(1) The school facilities surcharge under this section shall be reduced by 50% for multifamily housing constructed:
 - (A) within an approved transit district overlay zone; or
 - (B) where there is no approved transit district overlay zone, within one-quarter mile of a metro station; or Ch. 685 2013 Laws of Maryland
 - (C) within the Bowie State Marc Station Community Center designation area, as defined in the approved bowie state marc station sector plan and sectional map amendment.
 - (2) The school facilities surcharge under this section does not apply to a dwelling unit that is a studio apartment or efficiency apartment if the dwelling unit is located:

- (A) within the County Urban Centers and Corridors, as defined in [§ 27A-106](#) of the County Code;
 - (B) within an approved transit district overlay zone; or
 - (C) where there is no approved transit district overlay zone, within one-quarter mile of a metro station.
- (d) The school facilities surcharge shall be paid by the seller at the time a building permit is issued for the dwelling unit. The school facilities surcharge may not be construed to be a settlement cost.
 - (e) Payment of the school facilities surcharge does not eliminate any authority to apply any test concerning the adequacy of school facilities under the County's adequate public facility ordinance.
 - (f) Revenue collected under the school facilities surcharge shall be deposited in a separate account and may only be used to pay for:
 - (1) Additional or expanded public school facilities such as renovations to existing school buildings or other systemic changes; or
 - (2) Debt service on bonds issued for additional or expanded public school facilities or new school construction.
 - (g) Revenue collected under the school facilities surcharge is intended to supplement funding for public school facilities and may not supplant other County or State funding for school construction.
 - (h) The County Executive of Prince George's County shall prepare an annual report on the school facilities surcharge on or before August 31 of each year for the County Council of Prince George's County, the Prince George's County Senate Delegation, and the Prince George's County House Delegation, to include:
 - (1) A detailed description of how fees were expended; and
 - (2) The amount of fees collected.
 - (i) This Section does not apply to any property located in an infrastructure finance district approved before January 1, 2000.

NEW LANGUAGE IN CAPITAL LETTERS.

Deleted language in [brackets].



**CITY OF COLLEGE PARK, MARYLAND
WORKSESSION AGENDA ITEM**

Prepared By: Bill Gardiner
Assistant City Manager

Meeting Date: January 19, 2016

Presented By: Bill Gardiner

Proposed Consent Agenda? No

Originating Department: Administration

Issue Before Council: Council consideration of supporting State legislation to eliminate the County school surcharge fee exemption areas for student housing

Strategic Plan Goal: Goal 4: High Quality Development and Reinvestment (Baltimore Ave. Corridor, promote walkable nodes and residential infill)

Background/Justification:

Prince George's County imposes a student surcharge fee for new housing in order to offset the anticipated K-12 education costs that new housing usually creates. The per-unit fee in College Park is \$9,035, except for certain locations and unit types. State law passed in 2003 and amended in 2007 exempts the fee in certain College Park areas (see map) for designated student housing. The exemption of the fee reduces the cost to build student housing in those eligible areas. The Varsity, the View, the Enclave, Landmark, Mazza Grand Marc and Terrapin Row were all eligible for the exemption. In 2013 State law was passed that reduced the surcharge by 50 percent for multi-family housing near metro stations, and exempted efficiency and studio units in designated County Centers and Corridors. Staff is trying to confirm with the County that Baltimore Avenue in College Park qualifies as a designated Corridor.

In 2013 the City supported amending the areas so that the surcharge fee exemption would not apply to areas 2, 3, 5, and 6. The only remaining eligible area east of Baltimore Avenue would have been at the south-eastern quadrant of the Baltimore Avenue intersection with University Boulevard. However, State legislation was not pursued.

On December 17th City staff met with Senator Rosapepe, Eric Olson (CPCUP), Bridget Warren (Councilmember Lehman's office), and Carlo Colella, Anne Martens, and Omar Blaik (UMD) to discuss--in the context of broader housing issues--the current student surcharge exemption areas in College Park for student housing. The group agreed that the subsidy is no longer necessary for the construction of new housing specifically designed for students (furnished, shared units with private bedrooms). The group discussed the needs for graduate students, who generally are not attracted to the student housing buildings and generally seek lower-cost housing (one exception may be the Enclave, which apparently is leasing to many graduate students), and whether or not there would be a way to subsidize graduate student housing.

Approximately 3,400 student housing "beds" have been constructed off-campus in College Park, and Terrapin Row will add nearly 1,500 more beds. UMD currently has 12,500 beds on-campus. Student housing on University property is exempt from state and local property taxes and new housing is exempt from various fees, including the student surcharge fee.

A 2011 University of Maryland housing study indicates that most graduate students currently live with roommates in 2- or 3-bedroom unfurnished units. Low cost is an important factor in their housing selection. The 2011 UMD student housing study states there is a gap of 684 beds of unmet demand for on-campus graduate housing (including 200 apartment-style units), and called for the University to do more comprehensive planning for student housing.

City and University staff agree that College Park needs to develop housing attractive to families and individuals in their post-college years in order to attract the diverse amenities necessary for a vibrant City. The current

surcharge exemption for student housing worked to incentivize student housing, but additional student housing in certain areas may not promote the City overall goals.

Creating incentives specific to graduate student housing is more challenging, and possibly less effective, than the surcharge exemption incentive for student housing. There is not one type of housing (such as the dorm model) that is attractive to graduate students. If the exemption for studio and efficiency units does apply to housing in the Baltimore Avenue corridor, that may slightly lower the overall cost for graduate students seeking that unit type. The housing location that likely offers the lowest cost for new construction is on UMD property, which is exempt from many fees and property taxes. Additionally, the University can restrict housing to graduates or undergraduates, whereas private housing cannot.

Fiscal Impact:

There is no direct fiscal impact on College Park if the exemption areas are retained, changed, or removed. The surcharge is a County fee.

Council Options:

- #1: Support legislation for consideration by the General Assembly to remove all or some of the student housing exemption areas in College Park.
- #2: Support legislation for consideration by the General Assembly to remove the student housing exemption areas in College Park and add an exemption and areas for graduate student housing .
- #3: Take no action, which would keep the current exemption areas for student housing and could incentivize additional student housing.

#4:

Staff Recommendation:

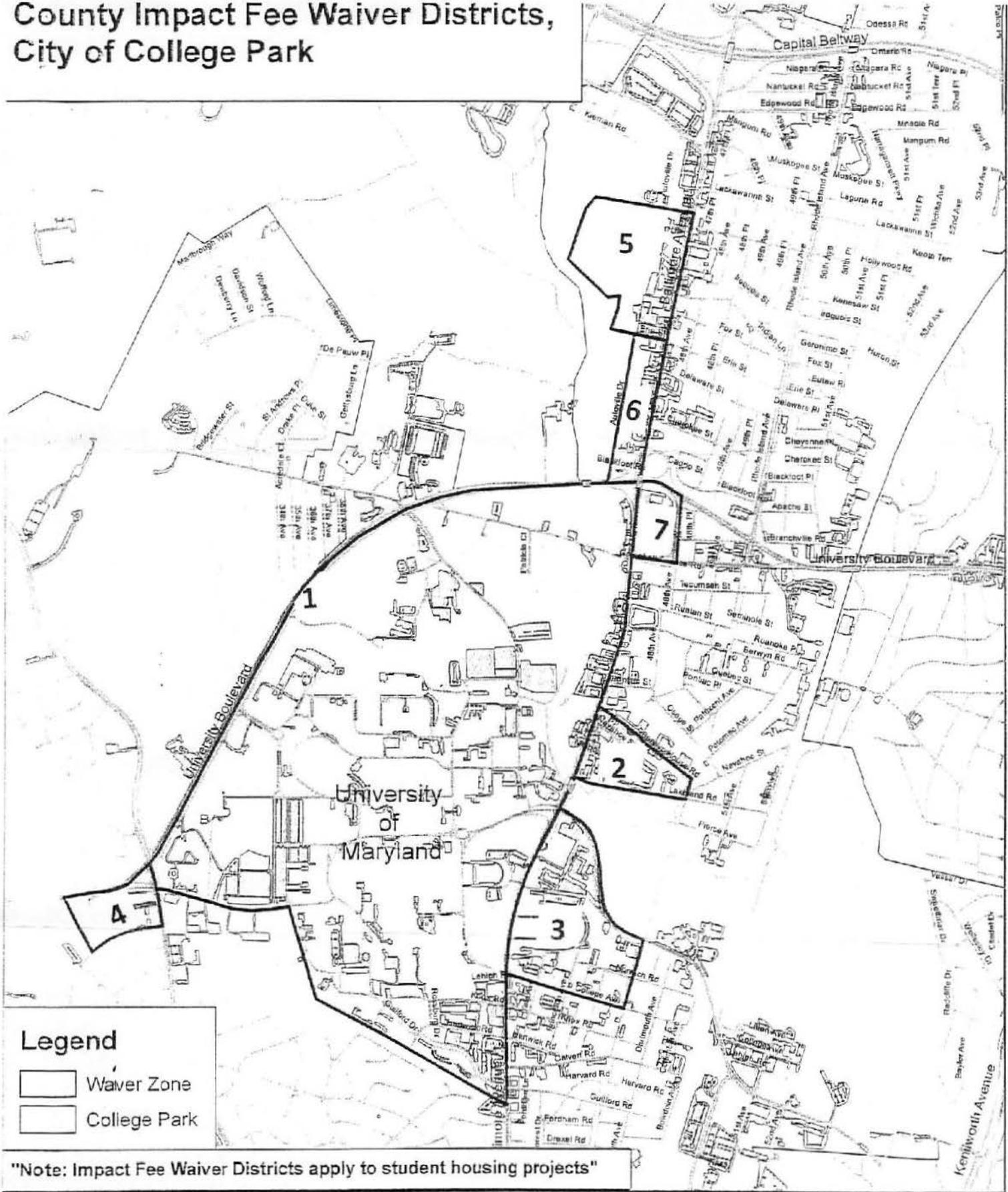
Option #1 or #2

Recommended Motion:

Attachments:

Map of current student surcharge exemption areas for student housing in College Park

County Impact Fee Waiver Districts, City of College Park

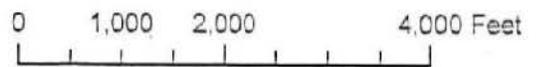


Legend

-  Waiver Zone
-  College Park

"Note: Impact Fee Waiver Districts apply to student housing projects"

Prepared By: Engineering
 Date: September 17, 2009
 Source: M-NCPPC GIS



16-G-13

MOTION:

I move that the City Council request a State Bond bill for \$200,000 in capital funding for the Hollywood Streetscape project.

DISCUSSION:

The City has developed plans that will significantly improve the safety and attractiveness of the public areas in the heart of the Hollywood commercial district. Approximately 6,000 residents live in the neighborhoods of north College Park serviced by the Hollywood Commercial District, where two destination retailers, REI and MOMs, are located.

The Hollywood Streetscape project will provide a more unified and safe streetscape within the Hollywood Commercial District by improving the quality of pedestrian and bicycle amenities, enhancing circulation and access for businesses, integrating stormwater management and green space, and providing outdoor seating and gathering spaces.

The estimated total capital cost exceeds \$1 million. The City would like to proceed with the streetscape phase of the plan, at an estimated cost of \$106,000 for design and \$425,000 for construction (\$531,000 total). City funds would pay for \$331,000 of the cost, and the State bond bill would provide the remaining \$200,000.

If funded, the project schedule would be as follows:

Final Design:	March 2016 – August 2016
Permits:	September 2016 – November 2016
Advertise for Bids:	December 2016 – February 2017
Construction:	April 2017 – July 2017

16-G-12

Appointments to Boards and Committees

16-G-12

Councilmember Brennan:

Appoint Dawn Powers to the Education Advisory Committee