

Meeting minutes of Town Council on 11-13-18
As reviewed, approved, and accepted by the Town Council on December 4, 2018

There being a quorum, Mayor James Ruspi called the regular meeting of the Town Council to order at 7:32 p.m. Council Members Charles Bradsher, Tom Burke, James O'Hair and Paul Simonetti were present. The Treasurer, Clerk and Assistant Clerk were also present as were three residents.

Mayor Ruspi stated that additional information has been received regarding the zone reclassification request for 7000 Brink Road submitted by Christine Wilkinson. Mayor Ruspi said the additional information will be read into the record at this time. Mayor Ruspi asked Charles Hendricks if he would like to read his statement into the record.

Mr. Charles Hendricks of 7011 Brink Road read the following statement he sent to Mayor Ruspi:

“Written Comments on the Rezoning Application Filed by Christine Wilkinson

The information provided to the Mayor and Council by the town’s legal counsel, Victoria Shearer, at the Work Session on 23 October 2018 pointed to some strong reasons why approving the application to rezone the property at 7000 Brink Road from the residential historic zone to the commercial historic zone would be a mistake. The discussion at that Work Session also pointed to an alternative that might benefit both the town and the applicant.

Ms. Shearer observed that the state’s “change or mistake rule” must guide the rezoning decision. She said that demonstrating a mistake in the zoning would be very difficult, so the key question regarding the rezoning application appears to be whether or not the evolution of different uses of other properties in the neighborhood of 7000 Brink Road since the adoption of the town’s comprehensive plan in 2014 justifies the rezoning. What has changed in the neighborhood in that period? There have been no new commercial developments in the surrounding properties, nor has any nearby property been rezoned into a commercial zone. In contrast, during the past two years five new residences have been constructed and occupied on the lots in the Laytonsville Preserve development that adjoin Brink Road directly west of Ms. Wilkinson’s property, and one of those parcels directly adjoins her lot. Thus the neighborhood around Ms. Wilkinson’s property has since 2014 become more residential in character, not less. Any recent changes to the commercial use of the gas station property at 21625 Laytonsville Road, directly across that road from Ms. Wilkinson’s house, have been very limited. Indeed any substantial change in the use of that property would exceed the grandfathered rights to a nonconforming use that the owner holds on this property, which is also in the town’s residential historic zone.

As Ms. Shearer explained, however, a decision by the town to change the zoning of the property at 7000 Brink Road would create just the type of change that could provide neighboring property owners the right to request that their properties be rezoned as commercial properties and, if denied by the Mayor and Council, afford substantial grounds for an appeal to the Circuit Court. I understand that the town in August 2018 authorized legal action to challenge possible current unsanctioned commercial activities at 21532 Laytonsville Road, a property in the residential historic zone that is just three parcels south of Ms.

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Wilkinson's property. A rezoning of Ms. Wilkinson's property might well give additional legal rights to the owner of 21532 Laytonsville Road. It might also lead Laytonsville Communities LLC, the owner of the vacant lot at 21620 Laytonsville Road directly south of Ms. Wilkinson's property, to seek to have that parcel rezoned into the commercial historic zone on the basis of a change in its neighborhood.

One concern that Mayor Ruspi expressed at the Work Session was that the historic house at 7000 Brink Road might become unoccupied and contribute to community blight. But Laytonsville has not experienced significant problems of this type, at least since I moved here in 2005. Other homes on busy Laytonsville Road have remained quite regularly occupied, generally by homeowners. Even the house at 21517 Laytonsville Road—which as I understand was repossessed by Fannie Mae after the death of one of its owners, a clergyman, and suffered significant interior water damage during the mortgage association's seven-and-a-half-month stewardship of the property, when it was unoccupied—was sold in December 2016 to a new owner who now lives there and maintains the property nicely. I am not aware of any currently vacant residences on Laytonsville Road. While the house at 7101 Brink Road purchased in April 2018 by Dan and Ann Wolf of Ellicott City, Maryland, has remained unoccupied since they bought it, the new owners have invested in improvements to the property and are, as I understand, contemplating moving there when Dan's employment situation makes that appropriate; they may rent the house in the interim. As an immediate neighbor to that property, I can affirm that it is in no way contributing to community blight.

Mayor Ruspi invited the Historic District Commission at its meeting on 15 October 2018 to comment on the rezoning application submitted for 7000 Brink Road, if it chose to do so. In response the commission unanimously approved (with one member absent) a motion proposed by its senior member, Jill Ruspi, expressing the view that the important historic value of the Layton House at that address would, in its opinion, be better secured were the property to remain in the residential historic zone. So the Historic District Commission clearly does not anticipate that a rejection of the rezoning request would in any way contribute to community blight.

Mayor Ruspi stated at the Work Session that he believes that the type of commercial use that Ms. Wilkinson desires could be allowed if only the town's Zoning Ordinance would extend to non-resident property owners in the historic residential zone the opportunities for various uses it currently offers to resident-owners in that zone through the process of special exceptions approved by the Board of Appeals. Section 129 of the town's Zoning Ordinance provides a comparatively simple method of amending that ordinance, and this process could be used to extend those opportunities to non-resident property owners. If Mayor Ruspi is correctly interpreting the applicant's wishes, such an amendment to the Zoning Ordinance would satisfy her desires without the dangerous legal consequences of rezoning her property at this time.

I pointed out during the public hearing on this rezoning application that Section 111.01 of the town's Zoning Ordinance states that properties within the Commercial Historic "Zoning district must be recommended for inclusion in this zone by the Comprehensive Plan for the Town." As shown on the map labeled Exhibit A on page 47 of the 2014 Laytonsville Comprehensive Plan, a map labeled "Proposed Land Use Plan, Town of Laytonsville," that comprehensive plan did not recommend that the property at 7000 Brink Road be zoned commercial historic. It did make that recommendation for three other properties currently zoned residential historic located on the east side of Laytonsville Road. Thus a legal rezoning of the property at 7000 Brink Road would require the amendment of the town's Comprehensive Plan. This is a much more arduous task than the approval of an amendment to the town's Zoning Ordinance.

I recommend that the applicant's rezoning request be refused in light of the fact that its approval is not justified under the "change or mistake" rule, would violate the town's zoning ordinance, and would create undesirable risks of future rezoning demands. But I also recommend that the Mayor and Council review whether the town's Zoning Ordinance should be amended to permit non-resident owners of property in the residential historic district to take advantage of some or all of the commercial-use opportunities now afforded to resident owners there under special exception procedures. Such a change in the Zoning Ordinance might allow the applicant to achieve her goals and could also be appreciated by the other homeowners in the residential historic district who testified that they have an interest in a possible commercial use for their properties. I must add, though, that I do not have any desire to put my own property in that district to a commercial use.

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Charles Hendricks
7011 Brink Road
Laytonsville”

Mayor Ruspi asked the Clerk to read into the record three additional statements that were received from residents and the Historic District Commission. The Clerk read the following email from Neal Bataller of 21513 Laytonsville Road:

“From: Neal Bataller [<mailto:bataallern@comcast.net>]
Sent: Saturday, October 27, 2018 9:30 PM
To: laytonsvillemayor@comcast.net
Subject: Zoning Change Request

Dear Town Council:

This email is a follow-up on some of the discussion that took place at the Town Council work session on Tuesday, October 23, 2018. The discussion involved a request by the owners of 7000 Brink Road to reclassify the property from Residential-Historic to Commercial-Historic. While my email may touch on various points discussed during the meeting, I begin and end with my expectation that the Town Council follows both the "Zoning Ordinance of Laytonsville Maryland" (Amended through June 7, 2011) and the Zoning Map of the Town. (Amended June 7, 2011).

Regarding some of the topics discussed:

Spot-Zoning - I am not a lawyer, and ask that the Town Attorney carefully consider the issue of spot-zoning. In the meantime, I present an excerpt from “Court of Appeals of Maryland, The MAYOR AND COUNCIL OF ROCKVILLE et al. v. RYLYNS ENTERPRISES, INC., No. 43, Sept. Term, 2001:”

‘Spot zoning,’ the arbitrary and unreasonable devotion of a small area within a zoning district to a use which is inconsistent with the use to which the rest of the district is restricted, has appeared in many cities in America as the result of pressure put upon councilmen to pass amendments to zoning ordinances solely for the benefit of private interests. It is, therefore, universally held that a ‘spot zoning’ ordinance, which singles out a parcel of land within the limits of a use district and marks it off into a separate district for the benefit of the owner, thereby permitting a use of that parcel inconsistent with the use permitted in the rest of the district, is invalid if it is not in accordance with the comprehensive zoning plan and is merely for private gain.

On the other hand, it has been decided that a use permitted in a small area, which is not inconsistent with the use to which the larger surrounding area is restricted, although it may be different from that use, is not ‘spot zoning’ when it does not conflict with the comprehensive plan but is in harmony with an orderly growth of a new use for property in the locality. The courts have accordingly upheld the creation of small districts within a residential district for use of grocery stores, . and even gasoline filling stations, for the accommodation and convenience of the residents of the residential district.

It appears to me that any change to the 7000 Brink Road property that does not conform to the town’s zoning ordinance and is instead being done solely for private interests and merely for the private gain of the property owner, makes any such change invalid.

The development of the Fulks property has resulted in a change in the character of the neighborhood

Should this argument be considered as valid, either the Zoning Ordinance or Zoning Map should be amended to reflect this change and, more importantly, all Residential-Historic properties should have equal consideration of a change to

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Commercial-Historic. The matter should not be one of first-come, first-served, but rather if one, two, three or all Residential-Historic properties request changes on the basis of a change in the character of the neighborhood, all requests should be equally considered.

If only 7000 Brink Road is considered for the any current change in character of the neighborhood, then it is logical to conclude that all of surrounding properties should be considered for subsequent changes in their immediate neighborhoods resulting from a commercial business operating in their midst. Should those surrounding Residential-Historic properties then be considered for a zoning change, then the additional properties surrounding them should also be considered for Commercial-Historic. Through this logic, all properties in town could be eventually be considered as commercial.

If the zoning change is not permitted for 7000 Brink Road, the property might become derelict and to the detriment of the town – Again, this is an argument that could be put forth for any Residential-Historic property in town. Any property in town can sell if the property is sold at a price that is appropriate for the current real estate market. 7000 Brink Road cannot be sold because the price is too high for the current market. While we all commend the owners for the love and care they put into the house, it is not realistic to expect a buyer can be readily found for the sales expectation of the owner. The house is presumably being priced at \$650K, but various websites represent an estimated value of the property between \$510K and \$575K. Should I price my own house at \$75-100K above market value, I, too, would expect to have difficulty in selling the property. Would my difficulties then cause concern that my house might become derelict, too, and so warrant a zoning change? I remind the Town Council there are a number houses in town that have been uninhabited and/or are close to being derelict. And one these uninhabited homes is zoned Commercial-Historic. Zoning designation is no guarantee that a property might become derelict or that a business can be found.

The increase in new housing units requires that the town have additional commercial services – There is nothing in the Zoning Ordinance that allows for individual properties to change zoning designation based on this argument. Should the Town Council want to increase the number of commercial properties that are available in a growing town, the Zoning Ordinance and Zoning Map should be amended to reflect a well-thought out plan.

The only difference between Residential-Historic businesses and the Commercial-Historic businesses is that the resident must live on the premises – While this is major difference, but there are additional differences, as are described the Zoning Ordinance. The matter is moot, however. Should the principle of residency be abandoned for 7000 Brink Road, the same requirement should be abandoned for all Residential-Historic properties. More importantly, any such major change must first be made through a major revision of the Zoning Ordinance with subsequent changes to the Zoning Map.

In conclude with - Should the Town Council approve the zoning change for 7000 Brink Road based on a change in the character of the neighborhood, I will be putting in a request for the same zoning change for my own property, 21513 Laytonsville Road. Since we have moved into the property in 1995, there have been recent and significant changes to our immediate neighborhood that affect us personally and affect the value of our property. While I am not registering a complaint about these changes with this email, I nonetheless note that they have a significant impact on my wife and me. Boyland Electric has installed floodlights in the back of their property that shine directly (and powerfully) into our bedroom window. The business, All Stage and Sound, creates frequent and sleep-awakening noises in the middle of the night, often between 2:30 and 3:30 am. On a number of occasions, we had to walk across the street in the middle of the night to inform the workers of the noise they were creating. The old firehouse lot on the corner of Howard Street is now used as a parking lot for All Stage and Sound, with up to twenty cars being parked there. The lot, previously a grassy area, is now an unsightly lot of mud and gravel. The house across the street from us, which is zoned Commercial-Historic, has not been lived in for some time. While 21517 Laytonsville Road (next to our house) recently has a resident, the property had been derelict for a number of years.

My hope is, though, that the Town Council closely follows the intent and provisions of the Zoning Ordinance and Zoning Map. Any changes in approach should be done through the amendment of these documents, rather through a process that might be considered as similar to that of spot-zoning.

Thank you for your considerations.

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Sincerely,

Neal Bataller
21513 Laytonsville Road
Laytonsville, MD 20882

The Clerk read the following email from Jill Ruspi of 7111 Brink Road:

From: Jill Ruspi [<mailto:jruspi@aol.com>]
Sent: Sunday, October 28, 2018 5:36 PM
To: jimruspi@aol.com
Subject: Rezoning

To: Mayor Ruspi, Council Members, Tom Burke, Charles Bradsher, Paul Simonetti, and Jim O'Hair
From: Jill S. Ruspi
Date: October 28, 2018

Dear Sirs,

I am writing these comments as a private citizen living at 7111 Brink Road, Laytonsville, MD. I have, however, served on the Laytonsville Historic District Commission (HDC) for over ten years. These comments do not reflect any opinions related or representative of the HDC.

The "Layton House" at 7000 Brink Road, Laytonsville, MD, was nominated and placed on the National Register of History Places on September 25, 1975 and on a Survey of Historic American Buildings in 1936. Thus, the significance of this structure is well-documented on United States official surveys from at least 1936.

Within the data sheet for the nomination of the Layton House for the National Registry in the Statement of Significance, there are many reasons listed to explain why the structure is included. I will limit my list to three that I consider important in relation to the history of the Town of Laytonsville.

The Layton House, built by the family from whom the town takes its name, is in a part of Montgomery County that was sparsely settled by holders of large tracts of land until the Revolutionary War era...and was the center of settlement in northern Montgomery County

It is remarkable, therefore, that the first house built in the present town and the focal point around which Laytonsville Developed, is a self-consciously Federal-style house of a plan and form that was very population early nineteenth-century Montgomery County...

Thus, by 1850, the Layton Family were prominent enough to have imprinted their name on the town...the owner had a role in the community as postmaster and prominent merchant and landlord.

In addition, I would like to quote from the first paragraph under the topic, "Historical and Cultural Resources" within the Comprehensive Plan for the Town of Laytonsville, Montgomery County, Maryland, prepared April 2013.

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Three broad long-term historic preservation goals for Laytonsville are:

1. Identify and protect the historic resources as visual and physical reminders of themes and periods in the town's development
2. Preserve and maintain the integrity of the designated resources in the Town of Laytonsville.
3. Promote the Town's historic resources to a wider audience and develop a deeper appreciation of Laytonville's history.

Since moving to Laytonsville in 1980, I have observed the character of the Town change as older residents no longer remain and new residents move into the Town and adjoining areas. I have worked on the HDC as three new developments have been annexed into Town limits. Because of my tenure on the HDC, I understand there are many difficulties maintaining an historic district.

Specifically related to the rezoning for the Layton House, I would like to make a few observations.

When a property is used as a place of business, the object of the owner is to make a profit. As a natural result, the first change is a request for a sign. There are sign ordinances within the Town, however, if the property is within the HDC additional restrictions may be necessary to maintain a 19th Century character.

Next, the owner of a place of business such as one proposed for within the Layton House may wish to have additional parking spaces, preferably within walking distance of the building. Parking within Laytonsville is limited, especially within the HDC. The idea to increase parking on the premises may appear a good idea; however, the Layton House is particularly questionable. The lot is small with little area for additional parking areas. In addition, traffic is notoriously clogged for approximately 4 hours a day both on Brink Road and Route 108, thus making entrance and egress to the property difficult and dangerous.

Another desirable addition to a business property from the point of view of the owner is increased lighting. Business owners want to increase lighting outside the property because of a perceived need for security. Increased lighting also provides additional street presence.

Naturally wanting to announce events such as sales, a business owner may place what I call non-permanent incidental signs. Placing a paper or plastic rectangle on a wooden post may seem reasonable to a business owner, however, this type of sign detracts from the historical presence of the building and is also not representative of the character of the HDC.

In conclusion, I believe the current zoning classification for the buildings with the Laytonsville Historic District are adequate and fair. I do not believe the application in question for the Layton House should be approved."

The Clerk read the following statement from the Historic District Commission:

"From: Jill Ruspi [<mailto:jruspi@aol.com>]
Sent: Sunday, October 28, 2018 8:58 PM
To: jimruspi@aol.com
Subject: Layton House

At the regular monthly meeting of the Laytonsville Historic District Commission, October 15, 2018, the following motion was made by Commissioner Jill Ruspi, seconded by Commissioner Charles Hendricks and unanimously passed.

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"In order to retain the historic district integrity, with recognition that the Layton House is the most historic property within Laytonville's historic district, the Historic District Commission (HDC) recommends that zoning for the property remain Historic Residential, recognizing that a residential property may have a special exception for specified commercial uses."

Mayor Ruspi said copies of all statements have been provided to the Council Members and then asked if there was anyone else in attendance that has a statement they would like to provide to the Council at this time. No additional statements were provided. Mayor Ruspi closed the record on the application for zone reclassification for 7000 Brink Road submitted by Christine Wilkinson. Council Member Simonetti read Resolution R-03-18 to defer the decision of the Mayor and Council beyond 30 days to December 4, 2018. Council Member Simonetti made the motion to approve the resolution. Council Member O'Hair seconded the motion. ***Unanimously approved.***

Minutes: The minutes from the Public Hearing held on October 2, 2018, the minutes from the Town Council Meeting held on October 2, 2018 and the minutes from the Work Session held on October 23, 2018 were approved as submitted.

Treasurer's Report: The Treasurer reviewed the Profit and Loss Report for the month of October 2018. Total Income for the month of October was \$57,034 including \$190 from the CIP. Major sources of income were: \$9,600 from Income Tax and \$42,921 from Real Property Taxes. Major Expenses for the month of October were \$3,753 for Payroll Expenses, \$2,913 for Grounds Maintenance and \$3,133 for Waste Collection. Total Expenses for the month of October were \$12,805. Total Net Income for the month of October was \$44,229. Looking at the Balance Sheet for the month of October 2018, the fund balances for the General Fund was \$1,149,879 and \$170,661 for the CIP account. The total fund balance for the Town of Laytonsville for October 2018 was \$2,223,595.

Council Member Bradsher made a motion to approve the October Treasurer's report subject to audit. Council Member Simonetti seconded the motion. ***Unanimously approved.***

Committee/Board Reports

None

Old Business

Sundown Road Sidewalk: Mayor Ruspi said he contacted Montgomery County about replacing the sidewalk on both the north and south sides of Sundown Road. The County will address this in the spring.

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Miller Park: Mayor Ruspi stated that work has begun on Miller Park. The developer, Lennar, has taken down the marked trees and placed stakes marking the path. Since the plan is now to have a passive park, Mayor Ruspi explained he submitted a letter to the Department of Natural Resources relinquishing the grant funds that had been previously awarded to put a playground in the park.

Picnic Financials: Mayor Ruspi said the financial records have been completed and a donation of \$5000.33 has been made to the organization selected by the picnic committee, Lollipop Kids Foundation.

Audit: Treasurer Wilkinson highlighted several pages of the annual audit prepared by Lindsey and Associates. Council Member Burke inquired about the amounts for grounds maintenance and snow removal. Treasurer Wilkinson clarified the scope of work and the amounts budgeted for each. Mayor Ruspi said the Town is maintaining additional grounds some of which are to be maintained by the State on a less frequent rate.

New Business

Work Session: No work session is scheduled.

Special Meeting: A special meeting will be held on November 27, 2018 at 7:30p.m. Mayor Ruspi stated this meeting is being held for the Town Council Members to exercise their vote on the application for zone reclassification by Christine Wilkinson of 7000 Brink Road.

MML Legislative Dinner: Mayor Ruspi said the annual Maryland Municipal League Legislative Dinner is being held on December 13, 2018 at 6:30p.m. in Rockville. The Town of Laytonsville has invited Del. Anne Kaiser and Del. Pam Queen to attend. Mayor Ruspi asked any Council Member to notify the Clerk if they would like to attend.

Tree Lighting: The annual tree lighting at the Town Hall will be held on December 7, 2018 at 7:00p.m.

January Council Meeting: The January Town Council Meeting will be rescheduled to January 8, 2019 at 7:30p.m. to avoid conflict with New Year's Day.

Snow Removal Proposal: Mayor Ruspi stated that snow removal bids were received from two companies and the lower priced bid was from JB Kline Landscaping.

Council Member Bradsher made a motion to approve the snow removal contract from JB Kline Landscaping. Council Member Simonetti seconded the motion. ***Unanimously approved.***

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Residents Forum:

James O'Hair of 21726 Mobley Farm Drive said the deadline for orders for the Lion's Club fruit and nut sale is tomorrow.

Tom Burke of 21710 Laytonsville Road asked if the American flags are taken down in the winter months.

Adjournment: Council Member Burke made a motion to adjourn at 8:39pm. Council Member O'Hair seconded the motion. ***Unanimously approved.***

Respectfully submitted,

Joy Jackson
Assistant Clerk
November 13, 2018

Trash/Recycling Update

When trash and recycling pick-up occur on Monday or Thursday holidays, the following day, Tuesday or Friday, will be the designated pick-up day.

In order to be picked up, mixed paper recyclable materials must be separated from other recyclable materials. Please do not put yard waste or mulch out for the regular trash pick-up. Yard waste should be placed in brown bags. Place all trash and recycling materials at the curb no later than 7:00am.

ATTN HISTORIC DISTRICT RESIDENTS: Exterior home repairs may qualify for Montgomery County tax credits. For more information contact the Historic District Commission.