

**Clifton Heights Borough Council
Meeting Minutes
April 18, 2017**

Present:

Anthony Casadei, Council President
Edward Martin, Council Vice President
Ronald Berry, Councilwoman
Mike Humphreys, Councilman
Leona Papale, Councilwoman
Karen Peterson, Councilwoman
Harris Resnick, Councilman
Jane Tumolo, Councilwoman

Others Present:

Joseph T. Kelly, Mayor
Frank Catania, Solicitor
J.P. Kelly, Engineer
Cynthia Leitzell, Treasurer
Timothy Rockenbach, Chief of Police
Tony Tartaglia, Borough Manager/Code

Pledge of Allegiance

Prayer Led by Mayor Kelly

Councilman Humphreys asked if they could have a moment of silence to remember Borough employee, Michelle Millison, who was involved in numerous activities in Clifton Heights and also Judge of Elections in the Fourth Ward.

(Moment of Silence)

A motion was made by Councilman Martin to dedicate a page of the minutes in memory of Michelle Millison, secretary of the code enforcement department; seconded by Councilman Humphreys; and carried unanimously by a vote of 8-0.

Public Comment:

No opening public comment.

Meeting Minutes:

A motion was made by Councilman Martin to accept the March meeting minutes as presented; seconded by Councilwoman Papale; and carried unanimously by a roll call vote of 7-0. Councilman Humphreys abstained since he was not present at the previous month's meeting. (Resnick – yes, Berry – yes, Martin – yes, Peterson – yes, Tumolo – yes, Papale – yes, Casadei – yes.)

Mayor's Report:

Mayor Kelly announced that the Clifton Heights PAL would be hosting their annual opening day parade on Saturday, April 22nd at 10am.

Mayor Kelly invited all residents to join the Borough for an Opiate Awareness Town Hall Meeting on Wednesday, May 10th at the Clifton Heights Fire Company Hall at 6pm. He said that County Council and the DA and others would be on hand to discuss the opiate crisis with the community. They would be offering connections to resources for treatment and recovery and offering the message of awareness. He encouraged all who could attend to attend.

Mayor Kelly announced that they would have more information on the Memorial Day ceremony for Monday, May 29th at the May Council meeting.

Mayor Kelly announced that the Clifton Heights Boys' Club & PAL carnival would be taking place from Monday, May 22nd to Saturday, May 27th, and he hoped it would be a successful event for both organizations.

A motion was made by Councilman Martin to accept the Mayor's Report as presented; seconded by Councilwoman Peterson; and carried unanimously by a vote of 8-0.

Police Report:

A motion was made by Councilman Martin to accept the Police Report as presented; seconded by Councilwoman Papale; and carried unanimously by a vote of 8-0.

Fire Report:

A motion was made by Councilman Martin to accept the Fire Report as presented; seconded by Councilman Humphreys; and carried unanimously by a vote of 8-0.

Treasurer's Report/Bill List:

A motion was made by Councilman Martin to accept the treasurer's report and pay the bills; seconded by Councilman Berry; and carried unanimously by a roll call vote of 8-0. (Resnick – yes, Humphreys – yes, Berry – yes, Martin – yes, Peterson – yes, Tumolo – yes, Papale – yes, Casadei – yes.)

Manager's Report:

Mr. Tartaglia said that all of his items were covered in the caucus meeting.

Engineer's Report:

J.P. Kelly presented the Engineer's report.

Mr. Kelly said that payment #3 for the Borough Hall renovations was due and ready for payment authorization, with necessary documentation submitted.

A motion was made by Councilman Martin to authorize the 3rd payment to GM Mechanical in the amount of \$112,372.11; seconded by Councilman Berry; and carried unanimously by a vote of 8-0.

Mr. Kelly said that he prepared an updated memo on the MS4 program and its changes. He said that after reviewing the memo, Council members could forward any questions that they have to him.

Mr. Catania asked Mr. Kelly if there was any necessary authorization that Council needed to provide to him over the next month or so to have the annual MS4 status report completed.

Mr. Kelly said that that wouldn't be until September, and they are just preparing the supporting documentation now.

Mr. Catania asked to confirm the purpose of the report.

Mr. Kelly said that MS4 stands for Municipal Storm Sewer Septic System and every municipality in the Commonwealth is required to obtain a federal permit, which regulates stormwater collection. It is a regulation to control stormwater and requires documentation on daily loads. He said all of this stems from the Clean Water Act, which was passed under President Nixon. He said that they pay a \$500 permit fee to the State for this process.

A motion was made by Councilman Martin to accept the Engineer's Report as presented; seconded by Councilwoman Papale; and carried unanimously by a vote of 7-0.

Solicitor's Report:

Mr. Catania said that he had two items to discuss.

The first is the request HRES Clifton Heights, a limited liability company, to seek both preliminary and final land development approval for their proposed Wawa Food Market. The plan was prepared by Boller Engineering, dated July 29, 2016 and most recently revised February 9, 2017. It is 23 sheets in reference to the property located at East Baltimore Avenue and Jackson Streets. The Resolution before Council is the culmination of prior meetings and the developer is seeking the Borough's approval for the land development resolution. It is his recommendation to favorably consider this Resolution subject to the following items: that the plan is approved by Council, that the developer obtain all applicable Borough permits and any conditions imposed by the Borough Code Officials be satisfied, that the developer's agreement and public improvements security agreement be executed by all of the parties before constructions can commence on the site with the owner paying any fees and costs in connection with that as provided in the Borough's ordinances, resolutions, rules and regulations; in addition, the conditions set forth in the final review report of the approved plan by Kelly & Close Engineers be satisfied by the developer; and finally, that any terms, conditions or contingencies set forth in the Delaware County Planning Department approval, the Clifton Heights' Planning Commission and the Clifton Heights' Zoning Hearing Board reviews of the approved plan be satisfied.

He said that the lawyer for the owner of the property requested that the Borough specifically consider this resolution.

A motion was made by Councilman Martin to approve the preliminary and final land development approval for HRES Clifton Heights for the property at East Baltimore Avenue and Jackson Streets and subject to the specifications outlined in the Resolution; seconded by Councilman Resnick; and carried unanimously by a vote of 8-0. (Resnick – yes, Humphreys – yes, Berry – yes, Martin – yes, Peterson – yes, Tumolo – yes, Papale – yes, Casadei – yes.)

Mr. Catania said that he discussed this with the developer's attorney Mark D'Amico, who has appeared before Council several times with this matter, and he indicated that he would work with the solicitor and Mr. Tartaglia and Mr. Kelly to finalize the developer's agreement and public improvements. The Borough has done everything that has been asked of it by the developer to move forward with that project.

Mr. Catania said that the second item is the request of Mr. Tony Blanche, owner of the Broadway Bar and Grille, for the Borough to provide an easement to his property over a public right of way that is on the sidewalk in front of the Broadway Bar & Grille. He asked Mr. Blanche to explain his request.

Mr. Blanche said that he thinks that everyone is familiar with the project he has set forth. He has offered the Greater Overbrook String Band a 10 year lease at \$1/month to provide them a space for their corporate offices, storage and a place to hold their Board meetings. He said that the Fire House and Fire Chief have opened up the Fire Hall as a space to hold their large meetings and practices. He said that the space above the Broadway would be for their offices and meetings. It would not be a place for drinking or partying. He said that he placed a large orange line on the sidewalk at his property for the space that he is requesting with the easement. He said that he already encroaches on Borough property with his front step and the window well that is already there. He said that he needs to come 6 inches past the window well, which would still leave one and a half blocks of sidewalk at the front of the Broadway Bar & Grille. He said that it is the best solution aesthetically, as it is hugging up to the side of the building and covered with a metal roof that will be covered with a fabric roof that will have the Overbrook String Band logo on it. He said that he thinks that they all know him and are familiar with how he keeps up with his properties and runs his businesses. He said that all of the terms and conditions would be built into the lease of the property. It would limit the number of people on the 2nd floor to 25 people, and outline the uses. He wondered if Council members were fearful that it would turn into a Two Street situation there. He also said that they have had 2 years of New Year's Day performances at the end of a long day. He said that everyone has been in agreement about what a wonderful thing their presence has been for Clifton Heights. He is requesting that small piece of property to put steps upstairs for a building he owns that has no way to access the 2nd floor. He said that the previous owner tore the steps out and that the only way they get up and down now is with a ladder. He said that he's also paying taxes on an apartment that's not actually an apartment. He said that it's 18 inches over the property line, but he's already over the property line by 12 inches, so he is requesting an additional 6 inches of space that he is requesting.

Mr. Catania explained that this is a Real Estate matter, as Mr. Blanche is requesting an easement. He requested an executive session to discuss the matter with them before they decide on the action to take. He requested the plans from Mr. Blanche and asked for him to wait after the Executive Session to discuss.

Mr. Blanche explained that the rest of the block only has one block of sidewalk in front of his properties, even the Clam Tavern. He said the Broadway Bar & Grille is the only property with two blocks of sidewalk at the front of the property so he doesn't think it interferes with the right of way at all. He said that it might be helpful for Council to see the orange line that he spray painted at the front of the property to see what kind of space he is requesting.

Mr. Catania said that he would be happy to discuss it with them in Executive Session and then discuss it.

Mr. Blanche asked if the problem was the space on the sidewalk or having them as his tenant that is presenting the problem.

Mr. Catania said that it is a property issue.

Mr. Blanche said that the issue is 6 inches.

Mr. Catania said that he is an advocate for his position and a very articulate one at that. He said that they will discuss the property issue, and they've never had this type of request before. He said that they are spending so much time on this issue because he is a respected businessman in the Borough.

Mr. Catania said that concluded his report, except for the action needed for Mr. Blanche's request after the Executive Session.

A motion was made by Councilman Martin to accept the solicitor's report as presented; seconded by Councilwoman Tumolo; and carried unanimously by a vote of 8-0.

Old Business:

No old business.

New Business:

Councilman Berry said that Chief and the Mayor had requested a \$1 an hour increase for part-time patrol officers. He said that he went through this with the Finance Committee, and they were in support of the wage increase.

A motion was made by Councilman Berry to increase the pay of the part-time officers of the Borough's police department by an additional \$1 per hour; seconded by Councilwoman Papale; and carried unanimously by a vote of 8-0.

Ward Reports:

Councilman Resnick had nothing to report.

Councilwoman Papale announced that the Clifton Heights Swim Club would be hosting a flea market the swim club on Sunday, April 30th. She said that information is provided in the Clifton Quarterly. She said that they Clifton Heights Civic Association would be hosting a Mystery Dinner Theater at Romarco's by the Aldan Colonial Playhouse Players on Saturday, June 3rd. Admission is \$30. She thanked the Civic Association for the great job that they are doing in the Borough. She announced that Borough resident Shane Birdsaw was taking part in an international competition with the USA weightlifting program. She said that he is a 16 year old lifting 260 pounds and doing great things in the weightlifting program, with hopes of making the Olympics in 2018.

Councilman Humphreys had nothing to report.

Councilman Berry commended Councilwoman Papale for her great effort with the Clifton Quarterly. He asked if they could have larger print next time to make it easier to read.

Councilwoman Papale thanked him and said that she was going to work to make it better and that she is learning as she goes, but trying to keep it budget friendly and to the one page.

Councilman Martin had nothing to report.

President Casadei had nothing to report.

Councilwoman Peterson thanked the Clifton Heights Civic Association and Lou Pontarelli for the great event that they put on with the annual Easter Egg Hunt.

Councilwoman Tumolo said that she was sure that the Clifton Heights Civic Association's Dinner Theater would be a great event because the Aldan Colonial Playhouse Players are really a great group who put on great shows over at their venue at Magnolia Ave.

Closing Public Comment:

Rich DePompeo, Broadway Ave., said that his grandson was in a show with the Aldan Players over Christmas and that they really do a great job.

The President of the Greater Overbrook String Band thanked the Borough for their support over the last 2 plus years and asked them to really keep them in mind as part of the community as they make a decision on the easement. He said that their organization has grown since they've moved to Clifton, with new members joining and becoming a part of their community.

POST-EXECUTIVE SESSION:

Solicitor Catania announced that the Borough considered the option that Mr. Blanche, owner of the Broadway Bar & Grille, presented, which was the plan with the stairway in the front. He said that they are also aware that there are two other options to depart from the top floor, one of which is to go out the existing door on the roof and go over the roof and down to the driveway and the other being to go out the door on Edgmont Ave, similar to Mary's Café.

Mr. Blanche said that the Edgmont Ave. option would be an eyesore out the side of the building with the windows and people looking out and would go over top of the patio that he has 3 tables at for customers to dine at. He said that if he goes over top of the roof, the expense would go way up and he would lose his driveway, and it would come out further into the sidewalk because of the slope needed to get up to the top of the building at that point.

Mr. Catania said that they understand that the options might not be economically palatable, but the Borough has to balance the other options that are available with the request that is being made of them.

Mr. Blanche said that it's an additional six inches.

Mr. Catania said that he is a very effective advocate, but it was more than six inches.

Mr. Blanche said that someone in the lobby asked him why he didn't go the Zoning Commission for this. He asked why he wasn't told to go to the Zoning Commission for this approval.

Mr. Catania said that he would need an easement from the Borough to go to the Zoning Commission. He said that he is asking the Borough for an easement to put in steps, and coming to the Borough is the first step. He said that he may have to go to Zoning Board to get this kind of relief. He said that he is requesting an easement that in his opinion as the Borough Solicitor, has two problems. One of which is that it is increasing an encroachment that already exists, so there is a liability issue there. It increases the Borough liability because it is on the Borough's property, and the Borough would be liable for any problem there.

Mr. Blanche asked if an indemnification agreement could be prepared that it could the Broadway's liability.

Mr. Catania said that could happen in theory, but it would not be his recommendation because they don't know what it really means because they've never dealt with a similar issue before previously. He said that that is part of the other problem, the precedential value of this, the Borough creating a precedent by allowing this very large structure on a main thoroughfare. He said that if they let this structure on this right of way, which is not just the Borough's right of way, but the residents' right of way, it could impact and impede residents, while creating a precedent, and possibly even affect the Americans with Disabilities Act. He said that since there are two different, viable options that, admittedly, may cost more, but are viable, his recommendation to Council would be because of the unknown consequences of the precedent and the potential liability, that they not give this easement. He said that is his recommendation as the Borough Solicitor.

Mr. Blanche thanked Mr. Catania for his time and said that he could throw the plans in the trash with \$3,000 for the architects' fees. He asked why someone didn't tell him from the get go that they were not going to approve this. He asked why he spent this money and made this set of plans for a non-profit organization that

is good for the community without being given a heads up from Council that this would not work. He said he thinks it is a lack of cooperation from Council in the process.

Mr. Catania said that Council wouldn't be able to consider his request without a definition of what his request would be.

Mr. Blanche said that everyone knew that he was looking for six inches of property.

Mr. Catania said that he is not just asking for six inches of property.

Mr. Blanche said it is six inches past what he already has.

Mr. Catania said that the encroachment that already exists actually means that the occupancy isn't legal on the property because an easement was never provided for those window wells or steps. He said that he is asking them to extend an easement and encroachment that was never provided for, so it is more than six inches.

Mr. Blanche asked if he could buy the property.

Mr. Catania said that he can't buy the property because it doesn't actually belong to the Borough but belongs to the residents.

Mr. Blanche asked if they have gone down to look at the orange line on the property.

Mr. Catania said that they did not.

Mr. Blanche asked how they could make a decision without seeing how wide the sidewalk is.

Mr. Catania said that he told him that they did not, and he asked them to make a decision tonight with the facts that they had before them, and that is what they did. He said that he believes that they will go down and look at the lines, but he asked them to make a decision tonight.

A resident who lives 5 houses down and is a Philadelphia Mummer said that the Greater Overbrook String Band has brought something special to the Borough. She asked if he was saying that the residents need to see what Tony is proposing and have a say in what they want.

Mr. Catania said that those words did not come from his mouth. He said that what they are saying is they were asked if they should provide an easement or allow an easement to come out further and the consequences of that compared to the other options that Mr. Blanche has to provide access to the 2nd floor of the property. His other options are better options and preserve every other right of people in the Borough.

Mr. Blanche said he didn't think his neighbors were going to want to look at the option built the other way, but he could build it.

The resident asked if they could create a petition for the residents.

Mr. Catania explained that they cannot make the decision in a vacuum. He said that the decision that they make affects every property in the Borough.

The resident said that there are properties with high grass and knocked out windows, and they are concerned about 6 inches. She asked if they were kidding. She said that that is why Clifton looks the way that it does. She said that they have 2 business owners who are active in this community and you don't care.

Mr. Blanche said that when anyone asks him for help, he provides it. He supports the PAL and Boys' Club.

Mr. Catania said that there is no question as to Mr. Blanche's charity. He said that the decision that the Borough makes does not just affect this item at Broadway Bar & Grille but all of the properties in the Borough. He said it is Council's job to make these difficult decisions all the time and balance the consequences of that against how it will impact the rest of the Borough.

The resident said that Baltimore Pike looks like West Philadelphia. She said that her stepfather was born and raised in Clifton Heights and knows the Mayor. She said that Clifton Heights is now an eyesore and she is ashamed to say she lives in Clifton Heights, and they are calling out business owners and giving them a hard time for 6 lousy inches.

Mr. Catania said that is a whole separate issue.

Mr. Blanche said that if the issue is a precedent, shouldn't each situation be addressed individually.

The resident said that he is being turned down and they should look at Baltimore Pike and how many hair braiding stores and smoke shops they have there. He said that they are bringing in the riff raff from Darby, Upper Darby and Philadelphia. She said that they have Philadelphia Mummers who are trying to do something good for this Borough and Mr. Blanche is trying to help them.

Mr. Catania said that all of the comments tonight are that the Mummers are welcome in the Borough. It is just a question of how to get up and down a 2nd floor structure.

Fred Rich, 82 Chester Ave., said that they are now acting as if things need to be done a certain way. He said that last year he complained about a tree on Chester Ave. that has grown into the sidewalk and is impeding on the Americans with Disabilities Act.

President Casadei said that is a separate issue that has nothing to do with this easement issue.

Adjournment:

A motion was made by Councilman Martin to adjourn; seconded by Councilwoman Papale; and carried unanimously by a vote of 8-0.

Respectfully Submitted,

Kimberly A. Duffy
Clifton Heights Borough Secretary

This page of the minutes is fondly dedicated to the memory of Michelle Millison.