

Derwood Station South Homeowner's Association

When: Tuesday, February 7, 2023 7:00 PM

Attending: Eli, Dave, George, Jon, Sharon, Jim, Jody

Heather from MTM, Nick Radonic, Jane Markley & Jen Jovin-Bernstein

Welcome

- Approval of Minutes – 2nd - Approved
- Officer Reports

- o President: Dave Minier

- o ! Website construction update – Preliminary design meeting will be held with LPF Hunters on Feb. 15 from 10am-11am via Zoom. Dave will lean on Nick for input & expertise, especially with email functionality. There will be a 30 day buildout then training for the board on how to maintain the website.

Dave announced that Caitlin has resigned from the board due to family commitments. He asked that neighbors be encouraged to join the board.

- o Treasurer: George Wolohojian

- o George & Heather had gone over the 145 page, year-end financial report. \$3000 was transferred from reserves to operating account to cover additional expenses. No fees past 30 days overdue yet. No expense for snow removal last year or this year.

- o Vice President: Jonathan Tubman - nothing

- o Secretary: Eli Nadel

- o Dave mentioned seeing a welcome to new neighbors section in another community's newsletter. He wondered if and how we could do that. I told him that years ago there was a neighborhood welcome committee and they would give the necessary information to be placed in the newsletter.

Board voted via email to pay \$1500 to LPF Hunters to design the new community website and pay \$1000 to Michele Rosenfeld for consultation in regards to the Gude Mansion site.

- Committee Report(s)

- o AERC Liaison – 2 applications since last meeting. One for a new deck and one for new roof, siding and shutters. Both were approved.

- New Business

- o Guest: Michele Rosenfeld – Property Law

- o I recorded the Zoom meeting and used the dictate feature in Word to feed the Welliver-Gude Mansion discussion into the minutes. This discussion is attached with some editing for clarity. The Word dictate feature works well but it's not perfect. Names are added so that you can see who was speaking.

- o Discussion of the contractor waiver request related to landfill hours o Open forum
Current county work hours are M-F 7am-5pm, Sat-Sun 9am-9pm. Construction company is asking for a waiver to start weekend work at 7am.

After a discussion it was determined that this is not an HOA issue and it's up to the affected homeowners to voice their concerns to the county.

- o Next Meeting: May 2 7:00pm
- Adjourn

**Welliver-Gude Mansion discussion with Michele Rosenfeld –
Marylandpropertylaw.com**

(Michele Rosenfeld) You find yourself in the position that so many communities and individuals do you're going about your business and all of a sudden some development application pops down next to you and it kind of turns things upside down because it it's stressful and it causes a lot of anxiety and a lot of uncertainty about what's going to happen and as you see sometimes something happens and much less frequently something does not um I suspect this is just sort of a hiatus in in what's going to ultimately be other applications in the future. Just to know briefly about me, I'm a land use and zoning lawyer in Montgomery County. I ran the legal department for the Montgomery County planning board for 10 years and went out on my own in 2006 and all I do is land use zoning real property law special exceptions variances rezonings and the bulk of my practice is representing communities who are in opposition to a particular development. I do most of my work in Montgomery and Frederick counties I also work out in Washington County and had occasion to wander down to Saint Mary's county not long ago. I practice in Maryland so this is what I do and helping communities like yourselves is precisely the kind of legal practice that I have. With respect to the type of application process. I'm going give a brief overview and then then you're free to ask questions. Typically it will start with pre-community meeting, the type of development applications that I would expect for the Gude property would be the type that require the developer to show up with a set of plans, invite the community. There's a very specific and fairly narrow list of people who get that initial invitation. It's people who share a property boundary, people who are across the street and then civic and homeowner associations within generally about a half a mile. The policy justification for these prehearing community meetings is theoretically to let it developer present plans and get an opportunity for community feedback and perhaps address some of the community issues. I can tell you based on my experience, whatever you see at that community meeting 99.9% of the time is going to be exactly what they file with the planning board. They have, I think it's sixty days after the community meeting, they have to file and if they don't then they have to hold another community meeting. Once the application is filed, the planning department staff will review it. Often they will tell the applicant you need to correct this or supplement something, your traffic statements not complete and then at some point they will accept the application and that staff acceptance date triggers a 120 day period of time for the applicant to get to the planning board for a hearing. That time is often delayed if the applicant requests a delay because they have to address staff comments and that includes transportation staff, state highway administration. It could be comments from Pepco or Washington gas or the fire marshall. There's a whole array of public and private agencies and utilities that review and make comments on these plans. 10 days before the planning board hearing, which is not a lot of time, there will be a staff report posted and a notice mailed to the same original list of adjoining and confronting property owners as well as anybody who attended the community meeting telling you when the hearing will be. It's going take two or three days for that letter to get to you. My worst nightmare is when somebody calls me up and says hey there's a planning board meeting next week. So having an opportunity to look at plans, to find out if there are legal issues that present some basis for challenge, to find

out if there are issues that would be helpful. The message that I want to get across to you is that communities who are engaged and engaged early are more likely to get results at the planning board stage than those who don't. The developers typically are represented by very experienced land use and zoning counsel. It is exceedingly rare that you're going to see an application where the result would be the planning board denies it. That you don't usually see situations where for legal reasons they don't generally comply with the zoning regulations but there often are opportunities for what I call nibbling around the edges, you know getting concessions from the developer or through the planning board that can make the project more compatible with your community. If the planning board makes a decision and we think that there is a legal basis to argue that they made a mistake the next step would be to go to the Circuit Court of Montgomery County and you can have a judge review that decision and then that can go up to the next appellate level. **(Dave)** I know we talked on the phone about "political action" relative to an application or to a developers intentions. I wonder if you might touch on that in terms of what you've seen be effective or not effective. Of course most people when they first see something like this their initial thoughts is I need to call my local council member. **(Michele)** There is nothing that the local politicians, and this also applies to state level delegates and other state level legislators, nothing that they hate more than getting involved in a local land use dispute like this. When an application is filed with the planning board exparte rules then kick in. Nobody is in a position to talk to the planning board off the record about an application and I can tell you in my entire career I think I have once in Montgomery County seen a politician show up at a planning board hearing and I sat through hundreds if not thousands of them, for them there it's a no win situation. They don't want to make the developer angry, they don't want to make the community angry, so they will tell you that's not my jurisdiction. I don't have any role to play. I can't talk to the planning board anyway so you need to make your case before that agency. **(Nick)** Are there any limits on what could be developed at the mansion and do you know why they abandoned their existing process. **(Michele)** I can't remember what zone it is in but every property in Montgomery County has a zoning classification and that classification has limits on what use could be developed on the property. The maximum height, the maximum setback, minimum parking requirements. So there are there are definitely limits on what could be placed there and how it could be built. I don't know why they walked away. I will tell you that in my experience typically a developer enters into a contingent contract with the property owner and how much they're willing to pay and whether or not they're willing to go to closing often depends on whether or not they can get the density and or the type of use that they want to get. It could be just that it became clear that they weren't going to achieve the development goals that they wanted. It could be they had trouble getting financing. Could be they said you know we just aren't that interested. I couldn't begin to tell you. There's any number of reasons why they might have walked away from the project. **(Jim)** I'm so glad you're able to join us this evening. I don't know this for sure why the developer walked away. On the Zoom community meeting their that they held they did talk about possibly of having to seek some variances and things of that nature and I think they quickly ascertained the chances of that are without a real uphill battle were not so great. I just, from the outset, want to be clear we're not in opposition to the American Society of Plant Biologists or ASPB. I mean we do understand their staff are teleworking now they may not need to use this they did I do think we have every right and I think we do need to look at what was done with the shady Grove annex plan when they looked at the property and did no historic you know preservation status they did not change the zoning so it's still kind of the industrial zoning but more importantly you know supposedly they looked at the history of the property and even from some of the informal contacts I had with the people at the county level

they didn't do a very good job honestly and there's even green space issues that are noted in the annex plan. If you look at the sign on the property, on the metal sign it says American Society for Plant Biologists 1924. So you kind of have this assumption well they've been here since 1924 they're not going anywhere. We don't have to do anything. Well of course that's not true. It's also the case that everybody assumed that they weren't going to be doing anything which is potentially not true. There is a very strong case that can be made for historic preservation status which means whoever buys the property, and we're not opposed to the sale, does preserve the grounds and the house. The second thing with a very minimal amount of digging you know we found out that it was the home of Judson Welliver the first speechwriter to an American president. It was also the home of Gilbert Gude who served in Congress and the Gude family. I think the other issue though is the fact that this property has never even been put on the historic Atlas and I don't know if you want to say a little bit more about that which is usually one of the first steps in the process and the process for seeking historic preservation. I can tell you in the very short amount of time we've had and the amount of history and digging we have, if you actually Google the address it actually comes up with the ASPB and then it goes on to say the Welliver-Gude house. I really don't know how hard it would be to try to fight to get the property rezoned so that nobody is putting up a two-story biochemical processing plant. I think in the long run trying to do what we can for this property, to maintain what I consider to be a historic building but also the green space around it which was a gift from the Gude family to the American Society of Plant Biologists. Adolf Gude actually died before he put this in his will. His heirs did not have to fulfill his intention to do this but they did anyway because they knew it was his intention to preserve it and to preserve this green space as a barrier between the commercial development on one side and what is now our you know residential development on the other. The documentation of that is actually on the ASPB website and history. **(Michele)** The only person who can apply for a rezoning is the property owner so we simply are not in a position to do that. The council can rezone a property on a comprehensive basis which means it would look at everything in your master plan area and then adopt a comprehensive rezoning. That simply is a non-starter. With respect to the historic preservation though you as non-property owner can seek historic preservation designation of a resource. If that is something that you can achieve it would protect your community because then the structure would have historic designation. For any kind of demolition or modification it would have to go to the Montgomery County historic preservation Commission and typically when they designate a structure as a historic resource particularly one like this they also designate what's called an environmental setting they probably won't designate the entire property but they'll pick some perimeter around the property so that when other stuff gets built you still have a sense of what that looked like in its original state. I would recommend strongly that you reach out to Montgomery preservation Inc or Peerless Rockville Eileen McQuackian is with both of those organizations. I think you might have had conversations with her already they honestly that is not something that I typically would help with I've represented MPI for many years and work with them in a number of ways but I don't get involved in how to prepare that application I'm not a historian couldn't begin to tell you what to go in there but those folks have done it many times that is something that you could proactively start now and see where that leads you. **(Jim)** We've done that so even getting on the Atlas, that is something that has to be done through the historic preservation process? **(Michele)** Yes that's right and at this point I think you'll need to check with Eileen but I think you can skip the Atlas and simply seek designation. Go straight for that. It's been a few years since I've been involved in a designation process but she will know she'll be able to just tell you what you can and cannot do with respect to those applications. **(Jim)** So everyone knows I

have been talking with Eileen and some others and you know we've started looking at you know and gathering the materials we would need for the application process now part of it is made difficult by the fact that it would really be helpful to be able to go into the house and document you know take pictures document you know what is still there in terms of the historic features and the interior. I have e-mailed Crispin Taylor who's the CEO of American Society of Plant Biologist and got an e-mail back right away that says, yeah any further contact talk to our lawyers and I said thank you very much. I asked for a response from the lawyers, nothing. A couple weeks later I contacted the lawyers again directly and CC Crispin.

Absolutely no response. Now there is a part of me that is and again I haven't done this as I'm not representing the HOA I am doing this as a homeowner but there is a part of me that and I don't know whether it would be better to do this as an HOA or I will do it in on my own but to contact the board of directors for the ASPB because I don't know how much they know about all this or not but given them the American Society for Plant Biologists the fact that they were willing to see 4.5 acres get paved over my suspicion is some of them at least may not be aware of this. I don't know that is going get us anywhere not and I haven't done that and I'm not saying I'm going to but at the same time you know I do recognize the fact it's their property, not trespassing, not going in there, not taking pictures even of the outside and we can do this as my understanding without you know their cooperation permission whatever I mean in terms of putting this application in but if you have any thoughts or suggestions on ways of approaching this in a way that you know we might be able to do this because I really did what I said was which is true we have both an architect who specializes in historic buildings who's willing to go pro bono to come in and do an assessment and somebody who does interior photography pro bono doing the same and anything we got we would share with them.

(Michele) I don't have any concerns about you approaching the society directly as an individual to the to the extent that you know they are going to rope it they reach out and realize what's going on you know if they're in a position to overrule future development then that takes care of that. If they are aware and we're not going to get in the way they're going to defer to the attorney there's no doubt telling these people don't let anybody on there, they're looking to designate it as a historic resource. **(Jim)** We're not making any secret of that right so you know I mean yeah so I guess the point is I think there is an opportunity to work with them but only if they're obviously interested in working with us because my understanding there are tax credits and things they could use to even do repair work on the property. **(Michele)** There are they are they are but if they're if their long term goal is development they they're not going give you access.

(George) I have a question that continues this discussion about the historic designation because and I'd appreciate that Jim's persistence and enthusiasm for this it's great and I know he's being thoughtful about this and the courteous with our neighbors and like I think it's important to whether he's representing us as a board or just himself I think approaching this in a cordial way just makes the most sense but it also seems to me that since the bottom line for the organization is to dispose of this property because it has no purposeful value to them and but it does have significant financial value to them is what they want to do because of where they are now in their organization history and in with the way they operate oh carrying on and holding this property doesn't make any sense so it if Jim or others or group or can move forward with the effort from historical designation Michelle I guess the question is in the process like that I would assume it would become adversarial very quickly because the other side will the owners would say no thank you after all the Gude family, who clearly understand this history since they are deep in the history of our county, could have designated this as part of the transfer when they handed it over and named it and they kept it they didn't. My guess is they didn't do that because they forgot I think they didn't do it because they didn't

want to put any strings on this knowing what historical designation means to a piece of property and its value and its upkeep. So what kind of adversarial activity should we expect? **(Michele)** That's a very good question. If a property does not want the property to be designated as a historic resource it can become very adversarial. Ultimately that application goes to a hearing before the Montgomery County planning board and it's the planning board that makes the decision by to recommend designation to the council or not at the end of the day it's the County Council that does the final designating. I have seen some very contentious hearings before the board. So you know they can it can become an extremely adversarial process. **(Jim)** To be clear the Gude's actually did put a restriction on that that there be no development, you know, no substantial changes for 20 years and why 20 years because that's the maximum you could put on and still get the tax write off for making the donation. To be clear the truth of the matter is it's their property they can do whatever they want with it is also true that the zoom meeting that the developers did, they did not contact any of the three HOA's. All they did was contact the homeowners that were directly adjacent to the property which I'm assuming is kind of the minimal that you would do in those instances. **(Michele)** Actually if they did not contact the HOA they were in violation of the development manual regulations. The development manual is very clear that for the community meeting they're supposed to notify adjoining and confronting property owners and HOA. We're going to certain geographical radius. It's typically half a mile so if the HOA didn't receive notification that might have been part of what their problem was. I mean that if that happened that's confirmation in my mind of the fact that it was a sloppy application because that is a requirement. **(Dave)** My concern, having heard the notion of additional adversarial confrontation and what we need to think about is as an HOA particularly is potential legal challenges and expense associated with pursuit of a historical designation particularly if we do it as a group so I think that's a take away for us to think about. Obviously Jim you as a citizen certainly can pursue that and from what I've heard Michelle, that if that adversarial event happens, that's not your bailiwick so that means it's a different practice of law. **(Michele)** Let me speak to that just for a minute. First with respect to the notice to the HOA, it's required they have to pull your HOA information from a database that Park and Planning has. I find a lot of homeowners' associations are not aware of that and Dave tomorrow we can touch base so that we can make sure that your name and address is in that database so that it gets printed out with their next notice list. With respect to the adversarial process, there is a law in Maryland, it's state law, and it's called the strategic litigation something against public participation and what that law does if a developer sues a community member or an HOA or any other entity for participating in any type of public process that they're legally entitled to avail themselves of, the court will dismiss that litigation. The law has been in place for probably at least 20 years it's been there a long time and basically what it does is protect people who become involved in land use issues exercising their right to testify to oppose projects to seek applications and approvals for different things through publicly available procedures. So on the one hand you're right Dave that anybody can get sued for anything but pursuing a historic application itself would be protected under that statute and so there would be no liability that would arise from that because it should be just dismissed immediately