

TOWNSHIP OF LOWER MERION

Building & Planning Committee

Issue Briefing

Topic: Bamboo Appeal

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Date: May 6, 2020

I. Action To Be Considered By The Board:

The property owner at 736 Woodleave Road, Bryn Mawr has appealed staff's order and violation notice to remove bamboo within 20' of his property line and the bamboo that has trespassed on the neighbor's property.

II. Why This Issue Requires Board Consideration:

Appeals from bamboo violation notices must come before the Building & Planning Committee and Board of Commissioners for final action.

III. Current Policy Or Practice (If Applicable):

N/A

IV. Other Relevant Background Information:

The Building & Planning Department received a complaint about bamboo growing from the property at 736 Woodleave Road onto the 730 Woodleave Rd property. In this instance, bamboo also exists within 20' of the right-of-way of Woodleave Rd. A violation notice was issued to the property owner ordering them to remove the bamboo within 20' of the property line and removal of any bamboo that has grown onto the adjacent property. The property owner has submitted an appeal of this violation notice. The appeal letter just states that they are appealing the notice but doesn't include the basis for the appeal. Staff has requested the owner to provide some basis for his appeal and he has provided us with an email, which has been included with this memo.

The area where the bamboo currently exists is designated as "floodplain". The Board should be aware that the Zoning Officer has already determined that removal of the bamboo, without making changes to any grade elevations within the floodplain, will not require Zoning Hearing Board approval.

The scheduling of this hearing has been delayed due to the Covid-19 pandemic. During this interim period, the adjacent property owner at 730 Woodleave has installed small red flags at every location a new bamboo stalk has grown in their yard this spring. There are approximately 150 red flags within 25' of the property line abutting the 736 Woodleave Road property. A series of photos of the lawn area on this section of the

730 Woodleave Road property with the red flags has been included with this memo.

Below is a copy of the relevant sections of the bamboo regulations.

§ 59-1 Declaration of objectionable and poisonous vegetation as health hazard and nuisance. Amended 5-18-2016 by Ord. No. 4083; 3-20-2019 by Ord. No. 4161]

A. By reason of the danger they pose to public health, safety, or the ecology of the Township, the following plants or conditions are hereby declared to be nuisances:

(3) Bamboo, meaning any monopodial (running), tropical or semitropical grass from the genus Bambusa, including but not limited to Bambusa, Phyllostachys, and Pseudosasa; including Bambusa vulgaris, commonly known as "common bamboo"; Phyllostachy aurea, commonly known as "golden bamboo"; and Pseudosasa japonica, commonly known as "arrow bamboo."

(6) Other noxious, toxic or allergenic weeds of like kind or, if offensive, any vines, tall grass or other vegetation exceeding 12 inches in height.

B. Prohibited Acts.

(1) It is hereby declared to be unlawful for any landowner or occupant to propagate, allow to grow, or maintain on land within the Township any plant declared by this chapter to be a nuisance.

(2) Qualified Bamboo Exemption. Although bamboo is declared to be a nuisance plant and growing or allowing it to grow on land within the Township is prohibited, bamboo that was propagated or allowed to grow before May 18, 2016, is exempt from the prohibition and may remain on the land. This exemption does not apply, however, to any bamboo that migrates or falls onto any land owned or held by the Township, onto any roadway or sidewalk, onto the private property of another, or which is within 20 feet of the property line of a third party or a public or private right-of-way.

§ 59-2 Notice to abate violation and landowner's duty to abate.

A. The Township is hereby authorized to issue a notice of violation to any landowner upon finding that a nuisance plant is growing on that landowner's property, or has migrated onto any land owned or held by the Township, onto any roadway or sidewalk, or onto the private property of another in violation of this chapter. Such notice shall be served by regular mail, with proof of mailing, or hand delivery, or if service cannot be effected by either means, by posting the notice in a conspicuous manner on the property. The notice shall require the landowner, within 30 days of the date of the notice, to remove the nuisance plant from the property(ies), sidewalk, or roadway specified in the notice, and shall set forth the penalties for a failure to abate, including payment of the costs incurred by the Township in removing the nuisance should the landowner fail to do so.

B. A landowner may appeal a notice of violation by letter setting forth the grounds therefor and sent within 14 days of receipt or posting of the notice of violation to the Director of Building and Planning. The appeal shall be heard by the Building and Planning Committee of the Board of Commissioners.

C. It shall be a valid and complete defense to a notice of violation based on the presence of bamboo on the respondent-landowner's property either that:

(1) The bamboo was growing on the property prior to May 18, 2016, and is not within 20 feet of the property line of a third party or a public or private right-of-way; or

(2) The following:

(a) The bamboo migrated from property not owned or controlled by the respondent-landowner, and either:

[1] Before receiving the notice of violation, the respondent-landowner had given written notice to the owner of the land from which the bamboo migrated of the unlawful encroachment and had demanded its removal, to no avail; or

[2] The respondent-landowner has taken steps to remove the encroaching bamboo.

D. If, after 30 days, the recipient of a notice of violation has neither abated the violation as required by the notice nor timely contested the notice of violation by the procedure prescribed herein, the Township is hereby authorized to abate the violation by removing the nuisance plants specified in the notice of violation from the property of the landowner or from any adjoining property, public or private onto which said plants have migrated. All costs incurred by the Township in abating the violation, including, but not limited to, the costs of notice, removal, restoration, and inspection, shall be the responsibility of the respondent-landowner and may be collected as provided by law, including the filing of a municipal claim.

E. If bamboo growing on a property prior to May 18, 2016, encroaches onto adjoining property, public or private, or within 20 feet of the property line of a third party or a public or private right-of-way, the respondent-landowner is hereby required to remove the encroachment and to install at least 20 feet from the property boundary an impenetrable barrier to a depth of three feet below grade to prevent the encroachment from recurring. The failure to comply with either of these requirements shall constitute a separate violation.

F. The appeal of a notice of violation shall toll the running of the thirty-day period for abating a violation until the date of a final decision.

§ 59-3 Performance of work upon noncompliance with notice.

In the event that the owner or occupant shall refuse or neglect to abate such health hazard or nuisance within a period of 10 days as required by such notice, the

Department of Building and Planning may cause such weeds, vines, tall grasses, poison ivy, poison sumac, poison oak or other objectionable vegetation to be cut, eradicated and removed, keeping an account of the expenses of inspecting the premises, service of notice and abating the health hazard and nuisance; and all such costs and expenses shall be charged to and paid by such owner or occupant.

§ 59-4 Collection of costs.

All costs and expenses incurred by the Township in the abatement of such health hazards and nuisances shall be a lien upon the premises, and whenever a bill therefor remains unpaid for a period of 60 days after it has been rendered, the Township Solicitor shall file a municipal claim or an action of assumpsit for such costs and expenses, together with a penalty of 10%, in the manner provided by law for the collection of municipal claims.

§ 59-5 Violations and penalties.

Any person, firm or corporation failing to abate such health hazard or nuisance in accordance with the requirements of any notice given as provided in § 59-2 above shall, in addition to the payment of said costs and expenses, be subject to a fine or penalty not exceeding \$600 for each and every offense; and whenever such person shall have been notified by the Director of Public Works by service of such notice or summons in a prosecution or in any other way that he is committing such violation of this chapter, each day that he shall continue such violation after the expiration of the aforesaid 10 days shall constitute a separate offense punishable by a like fine or penalty. Such fines or penalties shall be collected as like fines or penalties are now by law collected.

V. **Impact on Township Finances:**

This would have no impact on Township finances unless the property owner fails to remove the bamboo and the Township is required to perform this work and lien the property for all costs incurred to remove the bamboo.

VI. **Staff Recommendation**

Subject to making the determination that the code violation does exist after hearing the evidence presented at the hearing, staff recommends the Board of Commissioners order the removal of the bamboo as required by Chapter 59-2