MIDDLETOWN PLANNING COMMISSION

Middletown Municipal Center
31 West Main Street
Middletown, MD 21769

AGENDA
Monday, April 20, 2015
7:00 p.m.

I.	**Public Comment**	
II.	Minutes of March 2015 Planning Commission meeting	**Approval**
III.	**Plan Review**	
	Sunroom demolition site plan	**Review/Approval**
IV.	**Zoning**	
	Sheffler Board of Appeals decision	**Discussion**
V.	**Miscellaneous**	
	Draft Annual Report	**Review/Approval**
VI.	**Additional Public Comment**	

**** All requests to be on the Planning Commission agenda must be received at the Middletown Municipal Center, 31 W. Main Street, Middletown by 4:00pm on the Monday two weeks prior to the monthly meeting held on the third Monday of each month. All plans being submitted for review must be folded, and an electronic plan is required as well.**

MIDDLETOWN PLANNING COMMISSION
31 West Main Street
Middletown, Maryland

Regular Meeting **March 16, 2015**

The regular meeting of the Middletown Planning Commission took place on Monday, March 16, 2015 at 7:00 p.m. at the Middletown Municipal Center, 31 West Main Street, Middletown, MD 21769. Those present (quorum) were Commissioners David Lake (Vice Chairman), Chris Goodman (Ex-Officio), Bob Miller, Rich Gallagher, and Dixie Eichelberger. Others present in official capacity: Cindy Unangst (Staff Planner), Bruce Carbaugh (Director of Public Works), Ron Forrester (Zoning Administrator) and Annette Alberghini (Recording Secretary). Others present: Scott Chilton (Chesapeake Bay Homes), Mark Crissman (Daft McCune Walker Inc.), Dustin Lavelle (Lavelle and Associates), Dennis Jiffas (property owner) and Brian Sheffler (town resident).

I. PUBLIC COMMENT – None.

II. Regular Meeting Minutes of January 19, 2015 – Approved as submitted.

III. PLAN Review

Overfield Carport Demolition Plan – (No one was present for the applicant.) This is a proposal to remove an existing carport at the rear of the property and then replace it with a garage. The location is 122 East Main Street. All of the requirements of Section 17.32.160 of the Town Code regarding the demolition site plan have been met. A demolition permit from the County will have to be obtained prior to the demolition. Application to the County can take place concurrent with the site plan approval process by the Planning Commission. The Planning Commission has both an aerial photograph of the carport to be demolished and a plot plan that shows the location of the carport. Letters were sent to adjacent property owners informing them of the proposed demolition, and the property has been posted. All demolitions and post demolition restoration shall be completed within ninety days of the issuance of the demolition permit unless otherwise approved by the Middletown Planning Commission. The Staff Planner stated that the applicant has submitted a request for variance to the Board of Appeals regarding setbacks for the property in relation to building the garage. The permit is on hold until the applicant receives Board of Appeal approval. That hearing is scheduled for tomorrow evening March 17, 2014 at 7pm.

Action: Commissioner Miller motioned to approve the Overfield Carport Demolition Plan as submitted. Seconded by Commissioner Gallagher. Motion carried (5-0).

Jiffas Architectural Review – duplex building – (Dennis Jiffas (the applicant) was present. Scott Chilton was present as a representative for Chesapeake Bay Homes (the builder).) The applicant proposes the construction of a duplex building at 406 West Green Street. The Planning Commission conditionally approved a site plan for a commercial office on this property in October 2008. The Planning Commission will have to rescind this approved site plan. The applicant filed a request for variance of the 22 feet from 35-foot front yard setback facing Summers Drive for the proposed duplex. The Board of Appeals granted the exception in December 2014. The proposed building is within the area defined by the Main Street Program. The Main Street Design Committee reviewed the architectural rendering and concluded that it is an appropriate building style and size that will blend in with the existing surrounding historic district.

New information was provided by the applicant after the Planning Commission workshop. A memo was sent to the Planning Commission listing the materials to be used for construction. The builder brought samples of

the roofing materials, siding materials and windows to be used for the project. A picture of what the garage doors will look like was shown. There will be no shutters used on the windows due to the building design.

The Staff Planner stated that after architectural review both a building permit and grading permit (for areas greater than 5000 square feet) will still need to be obtained.

Action: Commissioner Gallagher motioned to approve the Jiffas architectural review plans as submitted for review. Seconded by Commissioner Eichelberger. Motion carried (5-0).

Straits Dedication Plat – (Mark Crissman (Daft McCune Walker Inc.) present for the applicant.) This is to dedicate a portion of the property located at 720 East Main Street, owned by Jeffrey and Lera Straits to public use for right-of-way purposes. After discussion at the workshop last Wednesday, the revised plat was sent out to the Planning Commission members. The final revised plat shows all the required information with the corrections. Note 4 has been added to the plat which states the right of way dedication shown herein shall be to the Maryland State Highway Administration (MD SHA). The plat has been submitted to both the Frederick County Health Department and State Highway Administration for review and approval. The Town Engineer had no comments. Mr. Crissman noted that the plat will not be recorded until the improvement plans have been signed by SHA.

Action: Commissioner Miller motioned to approve the Straits Dedication Plat as submitted. Seconded by Commissioner Gallagher. Motion carried (5-0).

Cross Stone Commons Phase 2 Improvement Plans – (Mark Crissman (Daft McCune Walker Inc.) present for the applicant.) The site is to be developed with 35,357 square feet of commercial space in four separate buildings with 219 parking spaces in a two-phase approach. This set of improvements plans is for Phase 2. The Planning Commission conditionally approved the Phase 1 Improvement Plans for Cross Stone Commons on October 20, 2014. The approval was contingent upon addressing all agency comments, Town Engineer comments, and ARRO Engineering comments as the project moves forward to final signature set submission, review and approval from the Planning Commission for Phase 2, special exception recommendations from the Planning Commission and approval from the Board of Appeals if needed, architectural review and approval of buildings 2 and 4 from Planning Commission, and the 3 year deadline regarding the curb and gutter installation and landscaping for the right-turn-only entrance off Alternate 40A. The Staff Planner stated that the requirements for the temporary asphalt curbing and landscaping in the Phase 2 area of the site can be removed since the plans are coming before the Planning Commission as required. The Phase 2 plans have been submitted to the Town Engineer, ARRO Engineering, Soil Conservation District, and SHA for review. The improvement plans have been routed and reviewed by County agencies with approval or conditional approval from all agencies except for the Soil Conservation District (SCD). SCD denied approval as of last week and no information was given as to why.

- **Town Engineer Comments** – The Town Engineer has reviewed the Phase 2 Improvement Plans and identified the following: The existing water and sewer utilities already in place need to be identified on the plans. This includes a valve box and an existing sanitary sewer manhole lid. Standard Town water and sewer notes should also be added to the plans.

Action: Commissioner Miller motioned to conditionally approve the Cross Stone Commons Phase 2 Improvement Plans, conditional upon the applicant addressing all agency and Town Engineer comments as the project moves forward to final signature set submission, and the applicant shall make any needed corrections to the plans. Seconded by Commissioner Eichelberger. Motion carried (5-0).

Sheffler Special Exception for Restricted Vehicle – (Brian Sheffler (the applicant) was present.) The applicant has applied to the Town Board of Appeals for a special exception to park a restricted vehicle in the driveway or on the street in front of 9 Linden Boulevard. Section 17.44.060 of the Municipal Code requires that all applications for special exception shall be referred to the Planning Commission for a recommendation.

According to Section 17.32.150, it is unlawful to park a restricted vehicle (in the residential districts) except upon approval of a special exception by the Middletown Board of Appeals. A Board of Appeals hearing for this request has been scheduled for Tuesday, March 17, 2015. The vehicle in question is nine feet four inches high and 25 feet in length which meets the definition of a restricted vehicle in the ordinance. The vehicle in question does not meet the definition of a civil emergency vehicle as defined in Section 17.32.060.J.3 of the Municipal Code. The Zoning Administrator report states that the applicant is an electrician who is "on-call" to respond to service calls and other emergency situations for his employer's customers after normal business hours and on weekends. This vehicle is the minimum sized vehicle needed to ensure the applicant has the necessary tools, parts and supplies to respond effectively to most electrical issues and emergencies service calls he routinely performs. The specific standards section of the Municipal Code (Section 17.48.320) states that restricted vehicles parking in residential districts are subject to site plan approval by the Planning Commission for the purpose of obtaining special exception from the Middletown Board of Appeals which at a minimum shall address screening and setbacks. The front yard setback for R-1 district is 35 feet. It appears that the distance from the dwelling to the street is approximately 53 feet. Given the length of the vehicle, if it were to park in the driveway up next to the house, it still would not be situated behind the front yard setback. Special exception approval by the Board of Appeals is granted for specific property owners for specific properties and shall not run with the land. The Staff Planner stated that the Planning Commission will be making a recommendation concerning screening and setbacks at this meeting for the Board of Appeals hearing scheduled for tomorrow evening. No screening or setbacks have been identified or proposed.

The applicant was asked how long he had resided at this address. The applicant stated he has lived at 9 Linden Boulevard for 1 year and 5 months. During that time he has had a similar vehicle parked in the driveway at that location. The Zoning Administrator stated that this was brought to his attention through 3 separate complaints regarding this violation. The applicant stated that he didn't feel that screening would be appropriate not impossible.

Action: Commissioner Miller motioned to recommend to the Board of Appeals to deny the request for special exception. Seconded by Commissioner Gallagher. Motion carried (4-1, Commissioner Eichelberger voted against).

Putman Revised Site Plan Extension Request – The Planning Commission approved the revised site plan on April 16, 2012. Those plans are set to expire April 16, 2015. The applicant is requesting a six month extension due to the timeframe needed for County approval of the site plan improvements and building plans per their surveyor and architect for the project. The applicant plans to move forward with the project. The Staff Planner stated that the Planning Commission can grant extensions of 6 month intervals.

Action: Commissioner Gallagher motioned to grant an extension of the Putman Revise Site Plan for an additional 6 months. Seconded by Commissioner Goodman. Motion carried (5-0).

Putman Revise Improvement Plans – This is in regards to the proposed construction of an office and warehouse building for Putman Plumbing and Heating Company on the south side of Boileau Drive between South Jefferson Street and South Church Street. It is currently a vacant site. The Planning Commission approved the previous improvement plans July 20, 2009. Past concerns included the proposed retaining wall which is no longer proposed, stormwater runoff which is being addressed differently from past plans, fencing, and the proposed lighting on the property. The revised site plan, which was approved April 16, 2012, included a waiver of two parking spaces. The primary changes to the revised site plans are changes in elevation of the building, changes in the grading on site and a change in the type of stormwater management being proposed. All references to the proposed grass channel and filterra system have been removed. The revised site plans do not include the retaining wall and fencing shown on prior plans. The stormwater management system for the revised plans include a dry swale, a grass swale, and a gravel trench drywell, which will be reviewed by the Frederick County Development Review office (no comments as of yet). The proposed light pole at the rear of the building is now 10 feet in height instead of 18 feet in height. The proposed signage has not changed. The Planning Commission granted a waiver of 2 parking spaces on November 17, 2008 from the required 10 parking spaces. Eight proposed

parking spaces are shown on the plans. ARRO Engineering recommended that the parking space dimensions should be placed on the plans. General Construction Note #7 (Sheet1) has been revised to state that stormwater management will be provided in accordance with the Maryland 2007 Stormwater Management Design Manual.

- **Town Engineer Comments** – The Town Engineer has reviewed the revised improvement plans and has the following recommendations:
    1. **Sheet 1** – Revise the "Profile Proposed WHC and SHC". Remove the word propose from the lateral and service. The WHC and SHC were installed in 2011 and terminate with a cleanout or curbstop. The SS Monitoring Manhole and Water Meter will be provided and installed by the developer.
    2. **Sheet 2** – Revise the plan to indicate the locations of the monitoring manhole and water meter are proposed. Provide details of both as well as S-6, S-1, S-2, and W-7 on the plans. Show existing grades on the plan sheet. The Town has concerns for the change in grading of the parking drive areas. Previous approved plans included grades of a majority of 4% and the revised plan includes a majority of 10% and some 5% grades. This will cause a significant change in velocity of water leaving the paved area with no proposed erosion protection. The Town Engineer reserves further comment until Frederick County Development review has commented on the Stormwater management submittal.

Action: Commissioner Gallagher motioned to conditionally approve the Putman Revised Improvement Plans conditional upon the applicant addressing all agency comments as the project moves forward to final signature set submission, the applicant shall address all comments by the Town Engineer, Bruce Carbaugh, and ARRO Engineering as the project moves forward to final signature set submission, and the applicant shall make any needed corrections to the plans per Staff comments. Seconded by Commissioner Goodman. Motion carried (5-0)

IV. ZONING

No report. The Zoning Administrator had sent his report to the Planning Commission members earlier in the month.

V. MISCELLANEOUS –

Annual Report Draft – The Staff Planner is working on the annual report and will have it for the Planning Commission at April's workshop.

Joint Town Board/Planning Commission Meeting – The Staff Planner reminded the Planning Commission members that the next joint meeting of the Town Board and Planning Commission is scheduled for Monday, April 6, 2015 at 6:30pm. If any members have ideas for the agenda please submit them to the Staff Planner or Chairman Carney.

VI. ADDITIONAL PUBLIC COMMENTS – None.

Meeting adjourned at 7:50pm.

Respectfully submitted,

Annette Alberghini
Recording Secretary

Middletown Planning Office

MEMORANDUM

Date: 3/24/2015

To: Middletown Planning Commission

From: Cynthia K. Unangst, Middletown Staff Planner

RE: **MORRISSEY PROPERTY DEMOLITION SITE PLAN**
Tax Map Parcel #03-0144658
Applicant: Kiser & Sons Construction, Inc./Central Maryland Sunrooms
Property Owner: John and Roslyn Morrissey
Plan Dated: March 17, 2015
Date Received: March 19, 2015

GENERAL INFORMATION

Proposal: Remove an existing pre-manufactured sunroom at the rear of the dwelling and replace it with a new larger pre-manufactured sunroom

Location: 202 Lombardy Court

Zoning: R-1 Residential

Present Use: Sunroom

COMMENTS

The following issues should be considered in your review of this Demolition Site Plan:

1. All of the requirements of Section 17.32.160 (Demolition site plan – Required in all districts.) of the Middletown Municipal Code have been met.

2. A permit will need to be received from the County for the demolition to occur. Application to the County can take place concurrent with the site plan approval process by the Planning Commission.

3. An aerial photograph of the sunroom to be demolished (circled) has been attached to this memo along with a couple photos. A plot plan that shows the location of the sunroom to be demolished is also attached.

4. It is staff's understanding that letters were sent to the adjacent property owners informing them of the proposed demolition, and a copy of that letter has been attached. The property has also been posted.

5. All demolitions and post demolition restoration shall be completed with ninety (90) days of issuance of a demolition permit unless otherwise approved by the Middletown planning commission.

This review will be included in the Middletown Planning Commission materials for the April 20, 2015 public meeting. The applicant is encouraged to attend this meeting and the workshop on the Wednesday prior to the meeting which will be April 15, 2015.

cc: John and Roslyn Morrissey
Doris Kiser

Kiser & Sons Construction Inc.
DBA
Central Maryland Sunrooms
993 Crouse Mill Rd.
Keymar, MD 21757
MHIC #3991
410-775-7644 410-751-1512

March 19, 2015

Town of Middletown
31 W. Main St.
Middletown, MD 21769
RE: 202 Lombardy Ct.

TO WHOM IT MAY CONCERN:

ADDITIONAL INFORMATION FOR DEMOLITION OF EXISTING SUNROOM

Job Location: 202 Lombardy Ct. Middletown, Md.

As a follow up to the letter I submitted on March 17th, it is expected that the date of demolition of the existing sunroom on the property would be approximately two (2) to three (3) weeks after we have received permission from the Town of Middletown to proceed with this project and have received the Frederick County Building Permit. This is subject to weather conditions. As I stated in the letter of March 17th, one (1) day is all that is needed to dismantle and remove all debris of the existing sunroom.

If there should be any further information needed or if there are any questions or concerns, please do not hesitate to contact our office. Thank you.

Sincerely,

Terry E. Kiser

Terry E. Kiser
President

KISER & SONS CONSTRUCTION INC.
DBA
CENTRAL MARYLAND SUNROOMS

Kiser & Sons Construction Inc.
DBA
Central Maryland Sunrooms
993 Crouse Mill Rd.
Keymar, MD 21757
MHIC #3991
410-775-7644 410-751-1512

RECEIVED
MAR 19 2015
TOWN OF MIDDLETOWN, MD

March 17, 2015

Town of Middletown
31 W. Main St.
Middletown, MD 21769
RE: 202 Lombardy Ct.

TO WHOM IT MAY CONCERN:

We have been contracted by Homeowners, **John and Roslyn Morrissey**, to remove an existing pre-manufactured sunroom, 10' X 14', from their property, located at **202 Lombardy Ct.** and replace it with a new 14' X 18' pre-manufactured sunroom. The existing sunroom is attached to the rear of the house. The new sunroom will be located in the same area (footprint) however, there will be an additional 112 square feet added.

On Friday, March 13, 2015, we applied for the Middletown Zoning Certificate, see attached.

As to the demolition of the existing 10' X 14' pre-manufactured sunroom, we propose the following:

1. The start of the demolition would be approximately Two (2) weeks prior to the digging of new pier holes needed for the new sunroom construction.
2. Demolition would be completed within One (1) day.
3. Because this is a wall panel system, much of the debris (aluminum) will be recycled. The remainder would be disposed of using our dump truck and taken to the landfill. No debris will be left on this property.
4. The work will be done by the employees of Kiser & Sons Construction, Inc.
5. Kiser & Sons Construction, Inc. is a Maryland Home Improvement company with a current license, MHIC #3991. We are also fully insured. We have had our home improvement license number for 40 years.
6. No type of explosive is necessary for this demo. This structure is screwed and nailed.
7. As for safety precautions, we will work with the Homeowners to advise that no one should be in close vicinity in the area of the existing sunroom while we are dismantling.
8. We take full responsibility that the work to be performed will be in compliance with all federal, state and local laws, ordinances and regulations including, but not limited to any and all laws and regulations governing "Hazardous Materials" and the disturbance and/or

removal of "Hazardous Materials" from the property. **Please note**, we have done a site evaluation and have found **"NO"** hazardous materials.

9. Once this job has been completed, we propose to grade and seed where needed.

I have attached pictures of the existing sunroom, a copy of the Plot Plan showing the existing location of the sunroom, a copy of the Plot Plan showing the proposed new sunroom with all dimensions of the property, location of the house and location of the proposed new sunroom, a copy of the Middletown Zoning Certificate and the CAD drawings of the new sunroom. Should you require a copy of the Stamped Engineered Drawings for the new sunroom, please see Mr. Ron Forrester, Zoning Administrator.

If there should be any further information needed or if there are any questions or concerns, please do not hesitate to contact our office. Thank you.

Sincerely,

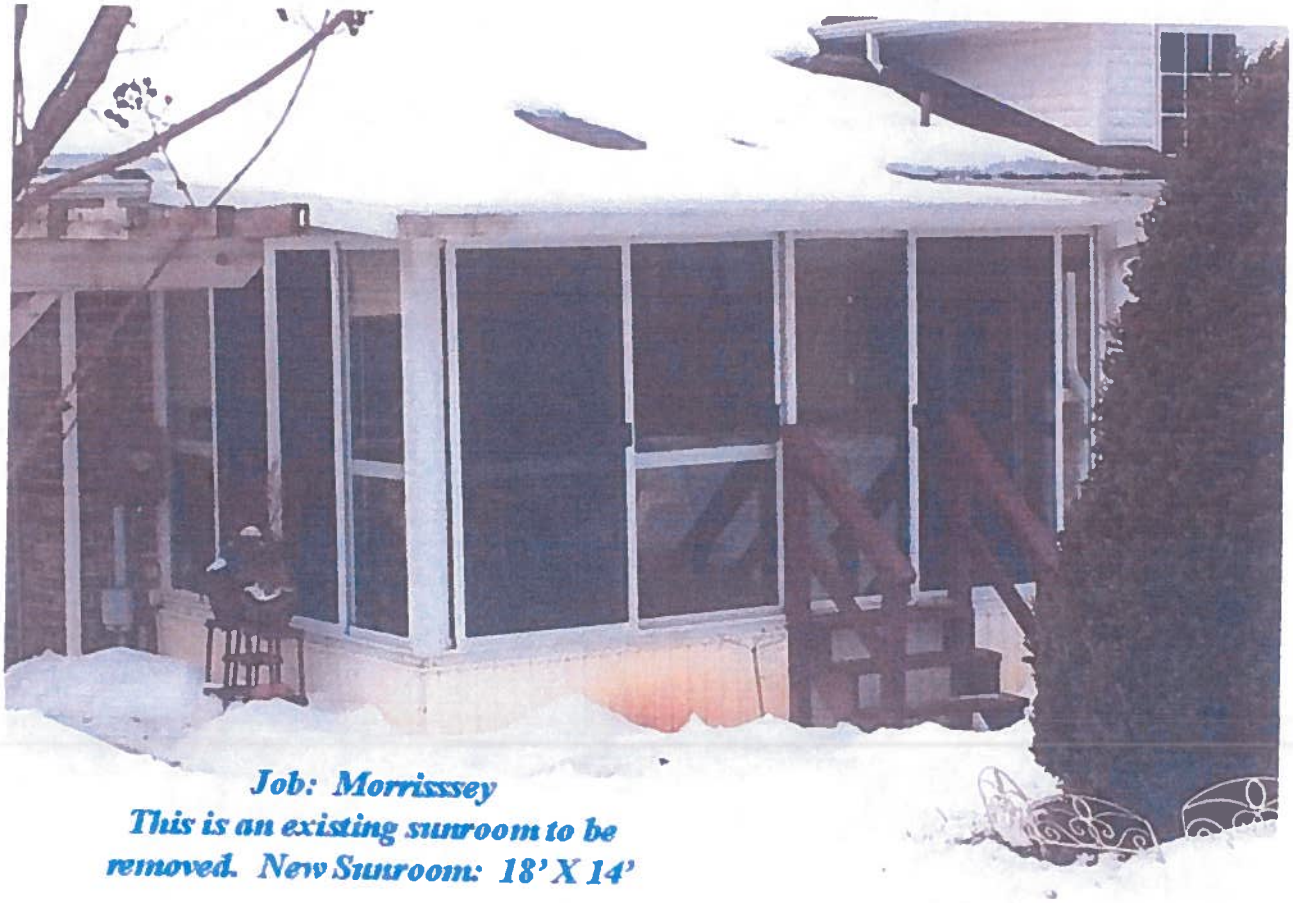
Terry E Kiser

Terry E. Kiser
President

KISER & SONS CONSTRUCTION INC.
DBA
CENTRAL MARYLAND SUNROOMS

attachments

Job: Morrissey
This is an existing sunroom to be removed for new 18' X 14' sunroom.



Job: Morrisssey
This is an existing sunroom to be removed. New Sunroom: 18' X 14'

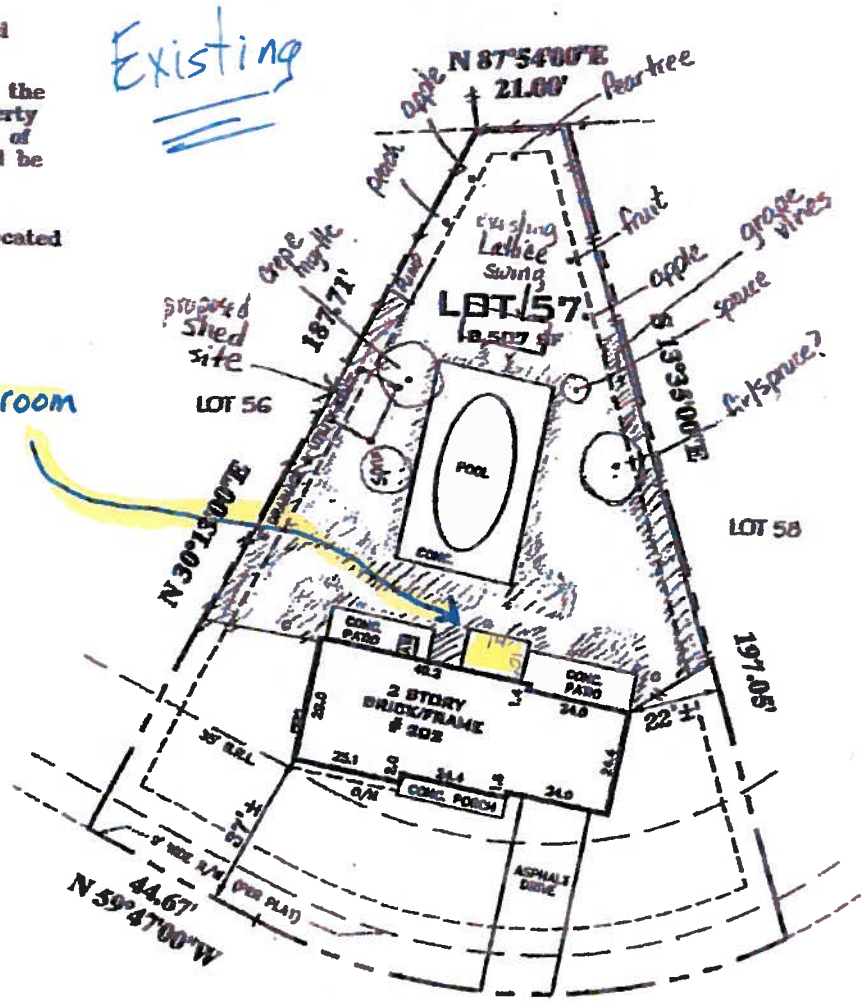
CONSUMER INFORMATION NOTES:

1. This plan is a benefit to a consumer insofar as it is required by a lender or a title insurance company or its agent in connection with contemplated transfer, financing or re-financing.
2. This plan is not to be relied upon for the establishment or location of fences, garages, buildings, or other existing or future improvements.
3. This plan does not provide for the accurate identification of property boundary lines, but such identification may not be required for the transfer of title or securing financing or re-financing.
4. Building line and/or Flood Zone information is taken from available sources and is subject to interpretation of originator.

Notes

1. Flood zone "C" per H.U.D. panel No. 240027-0175C.
2. Setback distances as shown to the principal structure from property lines are approximate. The level of accuracy for this drawing should be taken to be no greater than plus or minus 2 Feet.
3. Fences, if shown, have been located by approximate methods.

Plot Plan showing
Existing 10'x14' sunroom



LOCATION DRAWING
LOT 57
SECTION 5
WOODMERE SOUTH
MIDDLETOWN
FREDERICK COUNTY, MARYLAND

A = 128.10'
R = 134.00'

202 LOMBARDY COURT
(32' R/W)

SURVEYOR'S CERTIFICATE

"THE INFORMATION SHOWN HEREON HAS BEEN BASED UPON THE RESULTS OF A FIELD INSPECTION PURSUANT TO THE DEED OR PLAT OF RECORD. EXISTING STRUCTURES SHOWN HAVE BEEN FIELD LOCATED BASED UPON MEASUREMENTS FROM PROPERTY MARKERS FOUND OR FROM EVIDENCE OF LINES OF APPARENT OCCUPATION."

Jeffrey A. Foster
MARYLAND PROPERTY LINE SURVEYOR REG. NO. 587

REFERENCES	
PLAT BK.	12
PLAT NO.	113
LIBER	
FOLIO	

SNIDER & ASSOCIATES
SURVEYORS – ENGINEERS
LAND PLANNING CONSULTANTS
2 Professional Drive, Suite 218
Gaithersburg, Maryland 20879
301/948-5100, Fax 301/948-1286

DATE OF LOCATIONS		SCALE:	1" = 40'
WALL CHECK:		DRAWN BY:	F.A.
HSE. LOC.:	09-04-2002	JOB NO.:	2002-6841

CONSUMER INFORMATION NOTES:

1. This plan is a benefit to a consumer insofar as it is required by a lender or a title insurance company or its agent in connection with contemplated transfer, financing or re-financing.
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Notes

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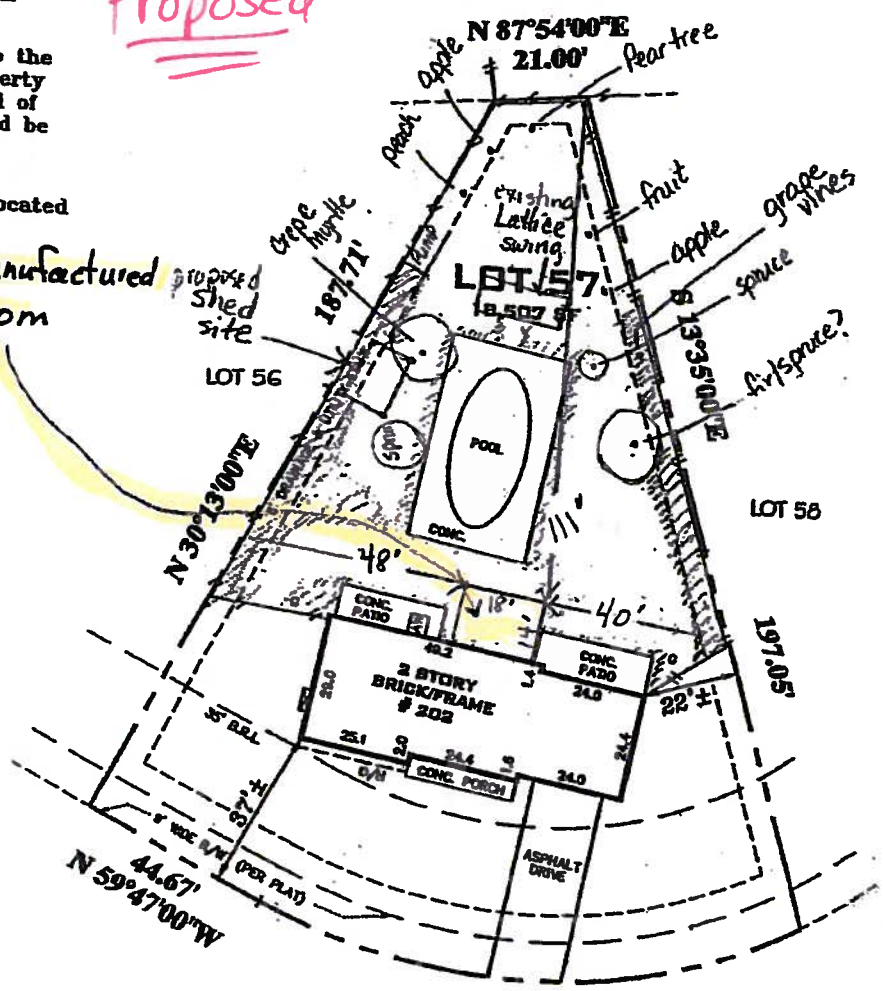
2. Setback distances as shown to the principal structure from property lines are approximate. The level of accuracy for this drawing should be taken to be no greater than plus or minus 2 Feet.
3. Fences, if shown, have been located by approximate methods.

Proposed

Project: 14'x18' Pre-Manufactured Sunroom



STATE OF MARYLAND
JEFFREY A. FOSTER
REG. NO. 587
PROPERTY LINE SURVEYOR

LOCATION DRAWING
LOT 57
SECTION 5
WOODMERE SOUTH
MIDDLETOWN
FREDERICK COUNTY, MARYLAND

202 LOMBARDY COURT
(32' R/W)

Middletown 21769

Property Owners: John & Roslyn Morrissey

SURVEYOR'S CERTIFICATE

"THE INFORMATION SHOWN HEREON HAS BEEN BASED UPON THE RESULTS OF A FIELD INSPECTION PURSUANT TO THE DEED OR PLAT OF RECORD. EXISTING STRUCTURES SHOWN HAVE BEEN FIELD LOCATED BASED UPON MEASUREMENTS FROM PROPERTY MARKERS FOUND OR FROM EVIDENCE OF LINES OF APPARENT OCCUPATION."

Jeffrey A. Foster

MARYLAND PROPERTY LINE SURVEYOR REG. NO. 587

REFERENCES	
PLAT BK.	12
PLAT NO.	113
LIBER	
FOLIO	

SNIDER & ASSOCIATES
SURVEYORS – ENGINEERS
LAND PLANNING CONSULTANTS
2 Professional Drive, Suite 216
Gaithersburg, Maryland 20879
301/948-6100, Fax 301/948-1286

DATE OF LOCATIONS		SCALE:	1"=40'
WALL CHECK:		DRAWN BY:	F.A.
HSE. LOC.:	09-04-2002	JOB NO.:	2002-5641

106 LARCH LANE
104 LARCH LANE
102 LARCH LANE
100 LARCH LANE
18 LARCH LANE
16 LARCH LANE
14 LARCH LANE
200 LOMBARDY COURT
204 LOMBARDY COURT
206 LOMBARDY COURT
202 LOMBARDY COURT
214 LOMBARDY COURT
208 LOMBARDY COURT
212 LOMBARDY COURT
210 LOMBARDY COURT
UNK

March 26, 2015

Mr. & Mrs. Lewis Staley
200 Lombardy Ct.
Middletown, MD 21769

Dear Neighbor,

We have applied to the town of Middletown Planning Commission for a permit to remove the existing sunroom that is attached to the rear of our house. We intend to replace this sunroom with a new sunroom. We have applied to the Town of Middletown for a Zoning Certificate.

All interested persons can attend the Planning Commission hearing on Monday, April 20, 2015 at 7:00 PM in the Middletown Municipal Center, 31 W. Main St., Middletown, MD..

Sincerely,

John & Roslyn Morrissey
202 Lombardy Ct.
Middletown, MD 21769

Cindy Unangst

From: Cindy Unangst
Sent: Friday, April 17, 2015 8:07 AM
To: Planning Commission
Cc: Annette Alberghini; Zoning
Subject: Board of Appeals decision

Planning Commission members – Below is Attorney Clapp's opinion regarding the Sheffler case. The last paragraph states what he had told me Wednesday morning, which I related to you at the workshop. He does also mention in the e-mail the notion of the decision being a mistake and how it can be reconsidered, which he had not conveyed to me during my discussion with him.

I'm presuming that we will discuss this at the meeting on Monday, and then in May will do a thorough analysis of Section 17.48 during our workshop.

Cindy

From: John R. Clapp [mailto:johnrclapp@verizon.net]
Sent: Thursday, April 16, 2015 11:36 AM
To: Cindy Unangst
Subject: RE: Board of Appeals decision

Cindy:

When the Board of Appeals renders a decisions - whether right or wrong - any person who is aggrieved by that decision may appeal it to the Circuit Court. The person appealing must do so within 30 days of the date of the decision. In the circumstances of this case, I believe that both or either the planning commission or the Burgess and Commissioners may also, as a body, appeal the Board of Appeals decision. It is my understanding that the 30 day time period for appealing is about to expire, if it has not already expired. I also understand that neither the Planning Commission nor the Burgess and Commissioner wish to appeal.

Although the Middletown Ordinances do not provide specific authority for the Board of Appeals to reconsider its decisions, the Maryland courts have recognized that administrative agencies acting in a quasi-judicial capacity have the inherent authority to reconsider their decisions. The agency may reconsider its decisions and reach a different conclusion if the original decision was the result of fraud, mistake, surprise, inadvertence or some new factual matter comes to light that would justify a different result. It may not reconsider and change an earlier decision simply because it had a change of mind.

As for the Sheffler case, from what I have been told, the Planning Commission had not approved a site plan for the applicant when the case was heard by the Board of Appeals. As we have discussed previously, Section 17.48.320 provides that one of the specific standards which must be met in order to obtain a special exception under that section is that the granting of the special exception is "subject to site plan approval by the Middletown planning commission for the purpose of obtaining a special exception." Additionally, section 17.48.010 provides that these specific standards "must be met prior to the granting of the special exception." Since site plan approval by the planning commission is "for the purpose of obtaining a special exception", and since the specific standards must be met "prior to the granting of the

special exception", the special exception should not have been granted if there had been no prior site plan approval by the planning commission. In my opinion, granting the special exception without the site plan approval was an error of law.

It may be too late to appeal the case to the Circuit Court. There is no specific time limit for requesting a reconsideration; however the longer this decision remains in effect, the more difficult it will be to reconsider and change the decision - especially if the applicant has begun to act in reliance upon that decision. It may be possible, though, for the Board to reconsider this decision based upon an error or mistake of law. If it were to do that, I would think that the Board could vacate its current decision and suggest to the applicant that it obtain site plan approval from the PC and then, once it is approved, return to the Board for the special exception.

If the matter is neither appealed nor reconsidered, then the decision stands. As we discussed, a decision by the Board which is not changed - whether correct or not - remains valid until a higher authority, like the courts, decide otherwise. The efficacy of the decision is not diluted simply because others (including me as Town counsel) feel the opinion may have be erroneous. At this point, I see no requirement for the applicant to obtain site plan approval after the Board has granted his special exception. Instead, he may park his restricted vehicle on his property without the necessity for screening or set-back restrictions.

John

John R. Clapp
Clapp & Carper, LLC
5235 Westview Drive
Suite 100
Frederick, Maryland 21703
(301) 694-9700
johnrclapp@verizon.net
-------Original Message-------

From: Cindy Unangst
Date: 4/16/2015 9:51:16 AM
To: 'John R. Clapp'
Subject: Board of Appeals decision

Could you please provide a written response to your opinion on the Sheffler case as we discussed yesterday? Specifically, the standing of the BOA decision and any action that could now take place given the decision?

Thanks! Cindy

Middletown Planning Office

MEMORANDUM

Date: 3/5/2015

To: Middletown Planning Commission

From: Cindy Unangst, Middletown Staff Planner

RE: **DRAFT ANNUAL REPORT**

The following document is enclosed for your review and direction:

- Draft Annual Report for the year ending 2014, and all planning and zoning activity reflected for that year, conducted by the PC, staff, zoning administrator, and Board of Appeals. This report must be reviewed, and staff would request comments, especially on goals for the new year, before forwarding with recommendation of adoption by the Town Board to submit to the State.

MIDDLETOWN PLANNING COMMISSION

2014
ANNUAL REPORT

Approved _____, 2015 by Burgess & Commissioners

BURGESS & COMMISSIONERS

John Miller, Burgess (4/2012-4/2016)
Jennifer Falcinelli, Burgess Pro-tem (4/2010-4/2014) (4/2014-4/2018)
Larry Bussard (4/2010-4/2014) (4/2014-4/2018)
Richard Dietrick (4/2010-4/2014) (4/2014-4/2018)
Anthony Ventre (4/2012-4/2016)
Chris Goodman (4/2012-4/2016)

Andrew J. Bowen, Town Administrator

Middletown Planning Commission

Mark Carney, Chairman (12/2011-12/2016)
Robert Smart (12/2011-12/2016)
David Lake (2/2012-2/2017)
Bob Miller (5/2013-5/2018)
Chris Goodman, Comm. Ex-Officio (4/2012-4/2016)
Rich Gallagher, Alt. (2/2011-2/2016)
Ron Forrester, Temp. Alt (6/2012-1/2014)
Dixie Eichelberger, Temp. Alt (2/2014-6/2017)

Middletown Board Of Appeals

Fred Rudy, Chair (6/2013-6/2016)
Thomas Routzahn (2/2011-2/2014) (2/2014-2/2017)
Kenneth Kyler (2/2011-2/2014) (2/2014-2/2017)
Chris Stimac, Alternate (1/2008-2/2014)
Alex Kundrick, Alternate (2/2014-2/2017)

Planning Department Staff

Cynthia K. Unangst

Town Zoning Administrator

Ron Forrester (2/2014-

Engineering Staff

Bruce Carbaugh, Director of Public Works

INTRODUCTION

Section 1-207 of the Land Use Article of the Annotated Code of Maryland requires that the Planning Commissions of non-charter counties and municipalities prepare, adopt and file an annual report with the local legislative body and a copy of the report be mailed to the Director of the Maryland Office of Planning. The report is a retrospective look at development activity within the jurisdiction with a focus on whether that activity is or is not consistent with a variety of adopted plans. The report thus informs both the Planning Commission and local legislative body about the strengths and weaknesses of the local planning program.

POPULATION IN MIDDLETOWN

YEAR	POPULATION	INCREASE OR DECREASE
1970 Census	1,262	N/A
1980 Census	1,748	486
1990 Census	1,834	86
2000 Census	2,668	173
2001 Estimate	2,768	100
2002 Estimate	2,951	183
2003 Estimate	3,237	286
2004 Estimate	3,655	418
2005 Estimate	3,833	178
2006 Estimate	3,966	133
2007 Estimate	4,105	139
2008 Estimate	4,198	93
2009 Estimate	4,239	41
2010 Census	**4,136**	**-103**
2011 Estimate	4,163	27
2012 Estimate	4,272	109
2013 Estimate	4,295	23
2014 Estimate	4,313	18

TEN YEAR PERIODS OF POPULATION GROWTH based on Census

1970 – 1980	486
1980 – 1990	86
1990 – 2000	834
2000 – 2010	1,468
	2,874

MIDDLETOWN PLANNING COMMISSION

The Middletown Planning Commission is a five-member commission, which has review and approval authority of site plans and subdivisions. In addition, the Planning Commission makes recommendations to the Burgess and Commissioners on rezoning, text amendments, annexations, and any other issue, which is planning related. The Middletown Planning Commission also makes recommendations to the Middletown Board of Appeals on cases involving special exceptions. **(Plan names are shown on attached map.)**

CONCEPT PLANS PRESENTED-2014

Name	Units	Zoning	Request for:
1A. Garden Center North Church Street	1	GC	Discussion of concept plan for new garden center (3/17)

SITE PLANS-2014

Name	Units	Zoning	Request for:
2A. Cross Stone Commons Middletown Parkway	2	GC	Approval of architectural renderings for 2 buildings (Approved 3/17)
2B. Zion Cemetery Stg. Shed Ifert Drive	1	OS	Approval of storage shed for Lutheran cemetery (Approved 4/21)
2C. Garden Center North Church Street	1	GC	Approval of garden center (4/21; Approved 5/19)
2D. AMVETS Expansion West Green Street	1	OS	Approval of revised expansion plans (Approved 5/19)
2E. Jiffas Architectural Review West Green Street	2	TC	Approval of architectural renderings for duplex (6/16)
2F. Verizon Small Cell Antenna East Main Street	1	GC	Approval of small cell antenna installation (Approved 7/21)
2G. Asian Cafe Parking Lot East Green Street	1	TC	Approval of revised overflow parking lot use (Approved 9/15)
2H. Chesterbrook Phase 2 Franklin St. /Broad St.	3	R-3	Approval of revised plans for multi-family development (10/20)
2I. Cross Stone Commons Middletown Parkway	4	GC	Approval of revised site plan for shopping center (Approved 10/20)
2J. Delauter Demolition Jefferson Street	3	R-2	Approval of demolition of dwelling and two sheds (Approved 11/17)
2K. Library C-Container Prospect Street	1	R-2	Approval of temporary C-container (Approved 12/15)

MASTER PLANS-2014

Name	Units	Zoning	Request for:
None			

PRELIMINARY PLANS-2014

Name	Units	Zoning	Request for:
None			

MASS GRADING/SWM PLANS-2014

Name	Units	Zoning	Request for:
None			

IMPROVEMENT PLANS-2014

Name	Units	Zoning	Request for:
3A. Cross Stone Commons Middletown Parkway	4	GC	Approval of improvement plans for shopping center (3/17; 4/21; 5/19; Approved 7/21)
3B. Cross Stone Commons Middletown Parkway	4	GC	Approval of revised improvement plans for shopping center (Approved 10/20)

FOREST CONSERVATION PLANS-2014

Name	Units	Zoning	Request for:
4A. Coblentz Property East Green Street	81	R-3	Approval of final forest conservation plan (Approved 4/21)
4B. Cross Stone Commons Middletown Parkway	4	GC	Approval of final forest conservation plan (Approved 5/19)

CORRECTION PLATS-2014

Name	Units	Zoning	Request for:
None			

ADDITION PLATS-2014

Name	Units	Zoning	Request for:
5. Schoonover Lombardy Drive/Linden Boulevard	0	R-1	Approval of addition of parcel to the Town (Approved 10/20)

FINAL PLATS-2014

Name	Units	Zoning	Request for:
6. Coblentz Property East Green Street	81	R-3	Approval of final plats for 81-lot subdivision (Approved 11/17)

RE-ZONING REQUESTS:

None

ANNEXATIONS:

None

TEXT AMENDMENTS:

Text Amendments recommended to Burgess and Commissioners for adoption. (Municipal Code Number)

Forest Resource regulations – Planning Commission recommended adoption of regulations relating to forest conservation including the addition of definitions for "priority funding area" are "stream restoration project" and the addition of exemptions from the forest conservation requirements. (Section 16.40) [PC recommended 12/16/2013; B&C adopted 1/13]

Fee Schedule – Planning Commission recommended adoption of assessment and collection of fees for the submission and review of documents relating to various land use, planning and zoning matters, and a fee schedule for such fees, including the assessment of an electronic filing fee for certain submissions. (Section 17.52) [PC recommended 1/20; B&C adopted 4/14]

Sandwich Board Signs – Planning Commission recommended adoption of regulations pertaining to A-Frame, T-Frame and Sandwich Board Signs including amending the definition of such signs and to provide for conditions under which displaying such signs require and do not require a permit issued by the Town. (Section 17.36) [PC recommended 1/20; B&C adopted 4/14]

Cluster Development regulations – Planning Commission reviewed, but did not recommend, adoption of regulations to authorize the use of property for purposes of residential cluster development in the R-20 zoning district and to establish regulations for the use of property for purposes of residential cluster development, as well as authorizing an active adult community to be developed as a residential cluster development as a special exception under stated conditions. (Sections 17.16, 17.42, and 17.48.015) [PC did not recommend adoption 7/21; B&C adopted 9/8]

Adult Entertainment Businesses – Planning Commission recommended adoption of definitions for terms relating to adult entertainment businesses and regulations to authorize the use of property as an adult entertainment business provided it is not located within 1,500 feet of other property used as a school, park, child day care center, church or house of worship, or another adult entertainment business. (Sections 17.04 and 17.32.225) [PC recommended 9/15; B&C adopted10/13]

BOARD OF APPEALS: (Applicant names are shown on attached map)

Applicant	Request	Location	Motion	Date
A. Dacey	variance of 16' for deck	509 Glenbrook Dr.	Approved	6/24/14
B. Delauter	variances from lot size and setbacks	329 S. Jefferson St.	Approved	11/19/14
C. Chesterbrook Phase 2	variances for height, open space and density	corner of Broad and Franklin Streets	Denied	11/19/14
D. Jiffas	variance of 22′for duplex	406 W. Green Street	Approved	12/16/14

INFRASTRUCTURE PROJECTIONS:

TRANSPORTATION:
Action taken by the Town in the year 2014 has been consistent with the Town Comprehensive Plan and best management planning practices.

A Middletown Parkway remains a priority of the Town and is included in the Town Comprehensive Plan with alignments both north and south of town. Future development should incorporate roadway dedication and construction to provide minimum collector type road links from east to west, and a collector from US 40-A north to I-70.

The County and Town should develop plans to transfer Coblentz Road from county road status to the municipal street system in conjunction with the Admar annexation, should that ever occur.

The State Highway Administration is resurrecting the plans and cost estimates for improvements to the Main Street area of Middletown. The scope of the work includes replacement of water mains and storm water lines in

the Main Street SHA right-of-ways and the feasibility studies for relocating utility lines, new signage, traffic patterns, and replacement or installation of curb, gutter and sidewalks.

WATER SUPPLY AND DISTRIBUTION:
The Town depends on 22 wells, 4 groups of springs, two reservoirs, and a water tower to supply water to the Town. The current total withdrawal permitted by the Town is 387,000 gallons per day (gpd). The average daily use for 2014 was 299,000 gpd. The water system is routinely monitored for possible contaminants in accordance with Federal and State laws, and none were at violation levels in 2014.

WASTE WATER TREATMENT FACILITIES:
The East End Wastewater Treatment Plant (WWTP) on the south side of Holter Road at Hollow Creek is designed to process 350,000 gpd of sewerage. The current discharge permit for the plant is 250,000 gpd. Average daily flows for 2014 were 233,000 gpd.

The discharge permit for the West End WWTP at Catoctin Creek in the southwest section of Town is 250,000 gpd. Average daily flows for 2014 were 241,000 gpd.

There were no violations for either plant in 2014.

WATER/SEWER MASTER PLAN
Although the Town developed a Water/Sewer Master Plan as a Subsidiary Plan to the County Water/Sewer Master Plan, it was denied by the State in 2004, and consequently the Town complies with the County's Water and Sewer Master Plan.

PARKS AND GREENWAYS:
In 2014, the Town completed construction of a pavilion at Remsberg Park.

PROTECTION OF HISTORIC STRUCTURES:
At the present time, the only regulations regarding the demolition of buildings are a zoning control (Section 17.32.160, Zoning, Middletown Municipal Code), which requires a Demolition Permit. This permit allows a building to be inventoried prior to the demolition but does not prohibit demolition.

The Town has approval of two historic districts approved by the National Register, allowing for property owners to voluntarily participate in government programs to recognize and improve properties. This process required establishment of a Historic Commission, which acts as a conduit between property owners and available programs. The Town also worked with private citizens to implement an identification plaque program for placement of plaques on historically significant structures in the historic districts. No plaques were placed on historically significant structures in 2014.

STRATEGIC PLANNING INITIATIVES

ZONING ORDINANCE UPDATE

The Planning Commission and planning staff completed their comprehensive review of the Town Zoning Ordinances to review changes for consistency with the updated Middletown Comprehensive Plan in 2010 and have sent the proposed revisions to the Town Board for approval.

COMPREHENSIVE PLAN REVIEW

Due to the fact that there have been no policy changes made in recent years to warrant an update to the Town's Comprehensive Plan at this time, the Plan will most likely be updated in 2020 in conjunction with the 2020 Census data.

PLANNING COMMISSION RECOMMENDATIONS:

ONGOING RECOMMENDATIONS:

1. Review walkway and road construction strategies to be incorporated into current & future growth and development.

2. Review and refine a management system for the plan review process to help ensure that files are complete and easily accessible, and which includes a checklist to verify that all agency approvals are in place.

3. Continue review of zoning ordinances as needed to ensure compatibility with the comprehensive plan.

4. Work on promotion and development of a trails system as shown in the Comprehensive Plan by working with the Town Board, citizens and community groups.

NEW RECOMMENDATIONS:

1. Work closely with Main Street Maryland Program to help revitalize downtown Middletown.

2. Work on promoting sustainable development practices thru the development review process.

3. Work on potential projects to consider for any applicable funding associated with the new Sustainable Communities designation through DHCD.

4. Planning Commission will promote electronic filing of permits and plans, adjustment of submission requirements as needed and use of electronic records review by the planning staff and the Planning Commission.

DRAFT

Permits Issued

TYPE	1996	1997	1998	1999	2000	5 yr.	2001	2002	2003	2004	2005	5 yr.	2006	2007	2008	2009	2010	5 yr.	2011	2012	2013	2014	2015	5 yr.
Single - Family	45	36	29	18	40	**168**	75	106	92	45	22	**340**	30	31	12	17	23	**113**	10	12	5	8		
Multi-Family	0	0	0	0	0	**0**	0	0	0	0	0	**0**	0	0	0	0	0	**0**	0	0	1	0		
Duplex	0	0	0	0	0	**0**	0	0	0	0	0	**0**	1	0	0	0	0	**1**	0	0	0	0		
Townhouse	0	0	0	0	0	**0**	0	0	42	15	0	**57**	16	19	23	24	0	**82**	0	0	0	0		
Apartments	0	0	1	0	0	**1**	0	1	0	0	0	**1**	0	0	0	0	0	**0**	0	0	0	0		
Interior Improvements	0	0	0	0	0	**0**	9	11	20	19	22	**81**	18	20	19	12	19	**88**	15	11	12	15		
Additions	0	0	0	0	0	**0**	6	15	15	28	20	**84**	8	12	2	6	2	**30**	6	7	4	2		
Pools & Hot Tubs	5	5	4	6	3	**23**	7	9	9	16	4	**45**	8	12	7	4	3	**34**	2	6	5	2		
Decks & Porches	18	23	34	20	11	**106**	18	38	36	64	39	**195**	37	41	31	27	28	**164**	32	19	9	15		
Accessory Structure	6	12	18	5	25	**66**	14	15	24	23	16	**92**	18	13	14	9	9	**63**	6	5	7	8		
Fences	6	13	19	17	11	**66**	18	27	41	36	29	**151**	23	16	25	24	20	**108**	16	24	13	15		
Demolitions	1	2	2	0	2	**7**	1	1	0	1	2	**5**	0	2	0	2	1	**5**	2	1	2	1		
Propane Tanks	0	0	0	0	0	**0**	1	1	3	6	6	**17**	3	4	2	2	1	**12**	6	2	4	1		
Sales Trailer	0	0	0	0	0	**0**	3	2	0	0	3	**8**	0	0	0	0	0	**0**	0	0	0	0		
Pump Station	0	0	0	0	0	**0**	1	0	0	0	0	**1**	0	0	1	0	0	**1**	0	0	0	0		
Signs	1	8	2	2	3	**16**	8	6	4	4	7	**29**	5	7	2	5	6	**25**	7	8	6	10		
Solar panels	0	0	0	0	0	**0**	0	0	0	0	0	**0**	0	0	0	0	0	**0**	0	0	4	37		
New Commercial	0	7	2	2	4	**15**	2	4	0	0	0	**6**	0	0	0	0	1	**1**	0	0	2	0		
Commercial Conversion	0	0	0	0	0	**0**	4	5	7	6	8	**30**	1	2	7	3	3	**16**	4	6	5	5		
Industrial Conversion	0	0	0	0	0	**0**	2	0	0	0	0	**2**	0	0	0	0	0	**0**	0	0	0	0		
Office Conversion	0	0	0	0	0	**0**	4	4	0	1	4	**13**	14	3	0	5	2	**24**	0	3	0	0		
Other														2	1	2	2	**7**	5	4	4	6		
Total Permits	82	106	111	70	99	**468**	173	245	293	264	182	**1157**	182	184	146	142	120	**774**	111	108	83	125		

Town of Middletown Planning Department

To: Burgess & Commissioners and Middletown Planning Commission

From: Cindy Unangst, Staff Planner

Date: 4/7/2015

RE: Monthly Planning Update

Major Subdivisions:

Coblentz on Green - Master Plan Amendment approved - March 11, 2013
Planning Commission conditionally approved preliminary plan – March 18, 2013
Improvement plans conditionally approved – October 16, 2013 (Plans expire 10/16/2016)
Final FRO Plan approved – April 21, 2014
Final Plats conditionally approved – November 17, 2014

Foxfield Section 4- 6 homes still to be built.

Site Plans and Minor Subdivisions:

AMVETS Expansion Plans – Revised Site Plan approved – May 19, 2014 (Plans expire 5/19/2017)

Chesterbrook Apts/Middletown Valley Apts - Site Plan approved – July 17, 2006
Improvement Plans approved and signed – September 16, 2008
Phase 2 Site Plan conditionally approved – January 19, 2015 (Plans expire 1/19/2018)
Phase 2 FRO plan conditionally approved – January 19, 2015

Fire Station – Concept plan submitted to PC for comments – April 22, 2013
Fire Station plat conditionally approved – October 16, 2013
Fire Station Site Plan conditionally approved – November 18, 2013 (Plans expire 11/18/2016)

Horman Apartments- Site Plan approved – April 21, 2008
Improvement Plans conditionally approved – May 17, 2010

Jiffas – Site Improvement Plan conditionally approved – October 20, 2008
Forest Conservation Plan approved – October 20, 2008
Revised Architectural Plans submitted and reviewed – June 16, 2014
BOA hearing for variance requests (approval received) – December 16, 2014
Architectural plans approved by PC – March 16, 2015

Middletown H.S. Stadium Concession Stand Expansion Plan – approved June 18, 2012
(Plans expire June 18, 2015)

Miller (Ingalls) – Concept and Phase I & II Plan approved & signed – September 27, 2010
Revised Concept Plan reviewed by PC – September 16, 2013
SHA comment letter received February 18, 2014

Morrissey – demolition plan for sunroom submitted – March 18, 2015

Newton Property (Cross Stone Commons) – BOA Special Exception Use Hearing – May 8, 2013
Revised architectural plans approved by PC – March 17, 2014
Final FRO Plan approved – May 19, 2014
Revised Site Plan conditionally approved – October 20, 2014 (Plans expire Oct. 20, 2017)
Phase 1 Improvement Plans conditionally approved – October 20, 2014
(Plans expire October 20, 2017)
Addition Plat recorded– November 10, 2014
Dedication Plat conditionally approved – March 16, 2015
Phase 2 Improvement Plans conditionally approved – March 16, 2015

Nicholson - Final Plat submitted for review – March 2, 2015

Overfield – demolition plan for carport approved – March 16, 2015

Putman – Site Plan conditionally approved- November 17, 2008
Forest Conservation Plan approved – June 16, 2009
Improvement Plans approved and signed by all agencies – July 2010
Revised Site Plan approved – April 16, 2012; (Plans expire April 16, 2015)
Revised Site Plan Extension request approved for 6-months – March 16, 2015
Revised Improvement Plans conditionally approved – March 16, 2015

Sheffler–Special Exception request - Restricted Vehicle –PC recommended denial–March 16, 2014

Thompson Funeral Home Parking Lot – revised site plan conditionally approved April 22, 2013
SWM Plans conditionally approved by Frederick County – October 29, 2013

Annexations:

A.C. Jets Property- PC approval of annexation petition of 35.96 acres – December 21, 2009
Public hearing date - Monday, October 11, 2010
Annexation petition denied – October 11, 2010

Text Amendments:

Zoning Code review – town board to be holding public hearings first half of 2015

Subdivision regulations review – Planning Commission began review – January 2015

Reports: Beginning to draft 2014 Annual Report

Meetings: **Frederick County Green Team Summit – March 25, 2015**

Next Joint town board/planning commission workshop – April 6, 2015