



**MIDDLETOWN BOARD OF APPEALS
Middletown, Maryland 21769**

Meeting Minutes for January 13, 2015

Case #MT-B-15-1

The Middletown Board of Appeals (BoA) met on Tuesday, January 13, 2015 at 7:00 p.m. at the Middletown Municipal Center, 31 W. Main Street, Middletown, MD 21769. Present were BoA members Fred Rudy (Chairman), Kenneth Kyler, Tommy Routzahn, and Alex Kundrick (alternate) as well as the Middletown Zoning Administrator, Ron Forrester.

Others present: Noel Manalo (Miles & Stockbridge), Tom Poss (Verdant Development Group), Andrew Brown (J.F. Brown, III & Associates), Trevor Dodman, and TJ Manson.

Election of BoA Chairman for 2015 – Board member Routzahn nominated Fred Rudy to be the BoA Chairman for 2015. Seconded by Board member Kyler. Motion carried (3-0)

Minutes – Chairman Rudy asked if there were any corrections to the December 16, 2014 BoA meeting minutes as submitted. Hearing no comments, the minutes were approved.

Case MT-B-15-1 (Chesterbrook Land, LLC, Chesterbrook Phase 2 Development)– The applicant is requesting a variance for building height regulations for property located at the intersection of Broad and Franklin Streets for proposed construction of multi-family units. The Zoning Administrator stated that for this case all appropriate actions were taken; it was properly advertised, adjoining property owners were notified and the property was properly posted.

Staff Report:

Board member Kyler asked the Zoning Administrator to report what was different from the last time the applicant was here (November 19, 2014).

The Zoning Administrator stated that the development has changed slightly. The request today is asking for only one variance from Town Ordinance Section 17.16.050 - Building height regulations and unit limitations for structures in residential districts. The applicant is proposing the construction of eighteen multi-family units in the Chesterbrook Phase 2 development. When they came in earlier there were additional requests for variance regarding density and open space. However, with the redesign those two areas of the code are no longer relevant for this

development. Tonight we are here to address just the height restriction. The applicant is requesting a variance that allows a height of three stories with a maximum height of forty (40) feet. This variance allows the applicant to use design features that facilitate a reduction in the amount of impervious surface due to less parking spaces. The small lot size and the new storm water management regulations necessitate reducing the impervious surface in the development. The applicant has received a copy of the staff report and all information that was provided to the BoA members in support of the meeting this evening.

Discussions:

Chairman Rudy asked for comments from the audience.

Noel Manalo, Miles & Stockbridge, 15 N. Court Street, Frederick, MD. Mr. Manalo stated he was present on behalf of the applicant. He thanked the BoA for the additional opportunity to come before them regarding this project. They have been working with the Town Planner and the Planning Commission to refine the plan. They are now before the BoA requesting the same height variance as was requested in November, but without the two other variances. The unnecessary hardship pertains to lot size, the Phase implementation straddling changes in the ordinance, and wanting to comply with the storm water management regulations such as decreasing the impervious surface. The variance, if granted, will allow the applicant to utilize a garage product that would decrease the amount of surface parking needed. Since the meeting in November, the design team has been refining the plan based upon input from the BoA meeting and through working with the Town Planner and Planning Commission. It is an infill project which provides some needed infrastructure improvements and the variance is needed to provide the best development for the site. When this request was brought before the BoA in November, the Board members as well as those present did not seem to have an issue with the height variance. The design team is present tonight to answer any questions anyone may have.

Board member Routzahn asked if the developer would be providing 36 parking spaces now. Mr. Manalo stated that was correct for the current plan that is proposed. Without the variance, they would be providing 48 parking spaces.

Board member Routzahn asked what the Town has lead the developer to believe regarding the opening of Broad Street to Route 17. Mr. Manalo stated that yes, it was something that the Town wants to do. These changes are indicated on the plan that is going before the Planning Commission tomorrow at the Planning Commission workshop.

Board member Routzahn stated that on the plat it shows 16 units. The Zoning Administrator stated that the new plat shows 18 units. There are 5 buildings. Three of the buildings have 4 units per building and two buildings have 3 units per building for a total of 18 units. The original approved plat has apartment style buildings clustered together with more units. This plat has less units per building spread out more on the property. It has more open space and other aspects that the approved design did not have. The new plat was received after the materials for this meeting had been mailed to the BoA members. The new plat is part of the materials provided tonight.

T. J. Manson, 114 Franklin Street, Middletown, MD asked what the overall height of the new buildings will be. The Zoning Administrator stated that if the variance is approved the height would be forty (40) feet. If the variance is denied, the height would be thirty five (35) feet. Mr. Manson asked what the overall elevation at the top of these buildings would be in relationship to other homes or buildings around them.

Thomas Poss, Verdant Development Group, 5310 Spectrum Drive, Frederick, MD, 21703, said this site sits lower than the homes across the street so the overall elevation would be forty feet from that ground as shown in the picture on the screen. It will be below any thirty five foot tall houses across the street.

Board member Routzahn asked about the height in relation to the buildings which currently exist in Phase 1. Mr. Poss stated they would possibly a little higher. Mr. Manson indicated in the picture on the screen that the land at the far side of the property was roughly four feet higher than the property closer to the current apartments. He stated that the developer would have to build the lower ground up to meet it. Mr. Poss stated that they would not as they will have walk out units there so it will not be built up. The developer is working with that contour of the property and may have to cut into the ground when approaching the area where the ground is higher. When looked at dimensionally, the new build would screen off the view of the apartments.

Mr. Manson asked if the elevation on the plans displayed was accurate and, if so, what would the elevation of the buildings closer to Franklin Street be. It was stated that the general elevation to the peak of the roof would be roughly 59 feet to the peak of the roof. Mr. Manson stated that they would be roughly 20 feet higher than some of the taller buildings around there. It is not representative of the one-story homes in the area. They are going to tower over the homes in the area. He is opposed because of that and thinks that height should be taken into consideration. The skyline is going to change dramatically for those home owners. Board member Routzahn asked if this development affects Mr. Manson's home as well as the next two or three homes towards Route 17. Mr. Manson said yes plus the four single-story homes across the street on Franklin.

Board member Kyler asked Mr. Manson with that height, what view for him is being blocked. Mr. Manson stated that it wasn't the view so much as having big houses when he walks out his front door. He thinks it needs to be considered before the five feet is granted.

The Zoning Administrator stated that from a staff perspective the approved plat for this property already allows 16 apartment style buildings which will be very tall anyway. Board member Kyler stated that the BoA is here to decide whether or not to allow the additional five feet in height.

Board member Kyler asked if there were any other residents who would like to comment. Trevor Dodman, 203 Franklin Street, Middletown, MD, 21769 commented that he prefer the Town not grant the variance to allow the extra height to these buildings. He would prefer for the Town to hold the line on the height allowed. He was pleased with the results of the last BoA meeting where all three variances requested were struck down. He is hoping for a similar result tonight.

He does not think the Town should acquiesce and reverse course. He would prefer that the developers present plans that conform to the Town ordinances.

Board member Kyler asked Mr. Dodman what his challenge was with the extra five feet. Board member Kyler stated that not many residents like the idea of that property being developed. But, the BoA can't do anything about that as it has already been approved. The BoA's only decision is to whether or not to grant the variance for the extra five feet in height.

Mr. Dodson commented that he wanted to go on the record saying that he is not opposed to the development. He thinks it would be good for Middletown. For him, he recalls the discussion last BoA meeting. Since the meeting on November 19, he has had time to look over the plans and is wondering about the green space and the density requirement. He acknowledged that there has been a change in the plan, but is wondering if the numbers are true.

Board member Kyler stated that the Planning Commission is the body that addresses those issues and has absolute authority on the layout and such. The BoA can only address the request that is in front of it, whether or not to grant the 40 foot variance. The resident will want to address his concerns to the Planning Commission. The Zoning Administrator stated that the Planning Commission meets tomorrow, January 14th for its workshop and then will have a meeting next Monday, January 19th. Board member Kyler stated that that is where you take your concerns on density and open space.

Board member Kyler asked "do we or do we not approve the variance request to go from 35 to 40 feet?" That is what we are here to address. Mr. Dodson stated that he believes the request should be denied. Board member Kyler asked for Mr. Dodson's reasons. Mr. Dodson stated that the reason is; if the BoA approves the variance, it makes it easier for the next developer to build higher. He doesn't think The Town should set that precedent. The Town has set the limit at 35 feet, and this case does not warrant going any higher. Mr. Manson stated that those heights are established for a reason. Most ordinances have validity to them. This one is no different. We are just stating that we are opposed to it.

Mr. Manalo stated that he wanted to address the discussion and that Board member Kyler pointed out the process that we do go through is designed to meet all the requirements levied by the Planning Commission. Variances are not precedential. Each variance is granted on a case by case basis and granted to a particular property for a particular project. By granting a height variance for one project does not mean it will be granted for another. The five foot variance discussion is a critical component for this project because of the history of the project, the two lots, the new storm water regulations, and the desire to decrease the impervious surface. That five feet makes a big difference just for better planning of the project.

Mr. Poss stated that during the November hearing when the applicant was looking for all three variances to be granted together; because that is what was required to make the earlier plan work, under testimony, under oath and under direct questioning by the BoA, Mr. Dodson was asked if he had any opposition to the height variance and he said no, he had no problem with the height variance. Why has that changed now? The applicant is back simply asking for the height variance in which everyone at the November BoA meeting had no problem with. Mr. Dodson

stated that he had time to educate himself on the height requirement and what it would mean visually. The height has become an issue.

Andrew Brown, J.F. Brown, III & Associates, Old National Pike, Middletown, MD, 21769 reiterated that the main reason for the height variance is for the garage units. Visually the difference would be the parking lot. Without garaged units, the developer will add eighteen more parking spaces to the parking lot. Visually there would be eighteen more cars in the parking lot. Allowing the garages, would rid the lot of eighteen paved parking spaces and make it more visually attractive, with more green space. The garages count as one of the parking spaces. Mr. Manson stated that less units would give more green space too. Mr. Brown agreed.

Mr. Poss stated that we are just here today asking for the variance that everyone indicated was not objectionable at the November 19th BoA meeting.

Board member Kyler stated he was still trying to understand why the residents were struggling with the five foot difference. The residents have stated this is the way it is zoned and they don't think a variance should be granted on it, but Board member Kyler has not heard why. Variances are given for a variety of reasons. The BoA tries to use a common sense perspective. He is trying put himself in the resident's place and make his decision. He is trying to understand what that five feet really means to the residents. Currently Board member Kyler does not see a problem with five feet.

Board member Routzahn asked for any other comments. None were given. Board member Kyler encourages the residents to approach the Planning Commission with their concerns on this project. That is where many of their issues need to be presented.

Action:

Motion by Board member Routzahn to approve the variance to grant the five additional feet in height, seconded by Board member Kyler. Motion carried (3-0).

The Zoning Administrator reiterated that the Planning Commission is meeting for their monthly workshop tomorrow evening, to be followed by the Planning Commission meeting on next Monday evening. He stated that the Planning Commission is where their issues should be voiced.

The meeting adjourned at 7:25 p.m.

Respectfully submitted,

Annette Alberghini
Town Receptionist