

MIDDLETOWN PLANNING COMMISSION

Middletown Municipal Center
31 West Main Street
Middletown, MD 21769

AGENDA
Monday, July 21, 2014
7:00 p.m.

- I. **Public Comment**
- II. Minutes of June 2014 Planning Commission meeting **Approval**
- III. **Plan Review**
 - Verizon Small Cell Installation Plan **Discussion/Approval**
 - Cross Stone Commons Improvement Plans **Discussion/Approval**
- IV. **Zoning**
 - Active Adult text amendment **Discussion/Recommendation**
 - Cluster Development text amendment **Discussion/Recommendation**
 - Adult Entertainment Business text amendment **Discussion/Recommendation**
 - Violations**
- V. **Miscellaneous**
- 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

June 16, 2014

The regular meeting of the Middletown Planning Commission took place on Monday, June 16, 2014 at 7:00 p.m. at the Middletown Municipal Center, 31 West Main Street, Middletown, MD 21769. Those present (quorum) were Commissioners Mark Carney (Chairman), Chris Goodman (Ex-Officio), Bob Miller, David Lake, and Rich Gallagher (Alternate). Others present in official capacity: Commissioner Dixie Eichelberger (Temp. Alternate), Cindy Unangst (Staff Planner), and Annette Alberghini (Recording Secretary). Others present: Dennis Jiffas (property owner).

- I. **PUBLIC COMMENT** – None
- II. **Regular Meeting Minutes of May 19, 2014** – Approved as submitted

III. **PLAN Review**

Jiffas Architectural Review – This is a change in the formal approval of the 2008 Site Plan for the corner of Summers Drive and West Green Street from a commercial office building to a duplex residential building. According to the Town ordinance a site plan of development does not need to be submitted to the Planning Commission for approval. However, the applicant will be subject to an architectural review by the Planning Commission. The Town Zoning Administrator will review the zoning certificate for approval in order for the applicant to obtain a building permit. Any variances for the property are to be reviewed and approved through the Middletown Board of Appeals.

- **Building Orientation** – The applicant initially proposed construction of a duplex 22 feet by 37.8 feet with the front of the building facing 406 West Green Street. Because of required setbacks and after discussion with Planning Commission members, the applicant now proposes the structure face Summers Drive. The applicant will have to obtain a variance from the Middletown Board of Appeals for the proposed duplex given its dimensions.
- **Architectural Review** – The applicant provided an architectural rendering of a building referred to as the James Madison from the Landmark Collection. Because the structure will be within the Main Street District and the National Register Historic District, the Main Street Design Committee reviewed the submitted materials by request from the Planning Commission. The committee's nonbinding recommendations are that the building as presented is consistent with the Middletown Historic District with its massing, size scale, and features. The committee also recommends the Planning Commission request and receives an architectural plan for review in addition to just the provided rendering. The Planning Commission will hold off the Architectural Review until the applicant has received the needed variance(s) from the Middletown Board of Appeals. This will also provide the applicant time to develop a site plan for the proposed duplex. At the time of the architectural review, the Planning Commission will vote to officially rescind the previously approved site plan from 2008. The applicant will continue to work with the Staff Planner as this develops further.

Action: None taken.

IV. **ZONING**

Violations

- **Thompson Funeral Home Parking Lot** – Construction has begun on the parking lot.

V. **MISCELLANEOUS** - None

VI. **ADDITIONAL PUBLIC COMMENTS** – None

Meeting adjourned at 7:24pm.

Respectfully submitted,

Annette Alberghini
Recording Secretary

DRAFT

Middletown Planning Office

MEMORANDUM

Date: 7/9/2014
Hansen#

To: Middletown Planning Commission

From: Cynthia K. Unangst, Middletown Staff Planner

RE: **VERIZON WIRELESS SMALL CELL ANTENNA INSTALLATION-REVISED**
Tax Map Parcel #03-0151727
Applicant: Smartlink, LLC, Lauren Bettis
Property Owner: Middletown Associates Ltd. Partners
Plan Dated: June 17, 2014
Date Received: June 25, 2014

GENERAL INFORMATION

Proposal: Install a small cell antenna within the Town Center Plaza parking lot

Location: 815 E. Main Street

Zoning: GC General Commercial. This district is intended to provide areas for general commercial activities that service the needs of the entire community and the surrounding area. The uses permitted in this district are of such character as to provide for comparative shopping needs, service and repair needs, office uses, specialized commercial and entertainment activities and those establishments which cater primarily to the motoring public.

Present Use: Shopping center

COMMENTS

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

1. **Use** – The applicant is proposing to install a small cell antenna on an existing light pole within the Town Center Plaza parking lot in order for Verizon to improve its service, increase coverage and accommodate customer growth. By utilizing small cell technology instead of large antennas on tall support structures (i.e. towers), Verizon will be able to address current and future coverage and/or capacity issues using a sensible, discrete and targeted design. Users within a 1,000 foot radius of a small cell antenna are offloaded from the nearby macro cell, thereby increasing the capacity of the larger site and improving overall customer service.
2. **Materials provided** – The planning commission is being provided a letter from Smartlink that provides background information on small cell antenna's and their

installation. Included with the letter are many exhibits that show examples of cell antennas, photos of existing utilities in Middletown, the proposed layout within the parking lot on a light post located on an existing island behind the Middletown Valley Bank, and photos of the proposed installation in the parking lot. The revised plan has taken into account the feedback received from the Planning Commission at the June workshop. This is less visible to patrons and Main Street travelers and utilizes an existing buffer.

- 3. Planning Commission review** – Section 17.32.020 of the Middletown Code states that the following essential services of public utility...are permitted in any district provided that a comprehensive plan for such service is submitted for the review and approval of the town planning commission: 1) substations for transforming, boosting, switching or pumping purposes; 2) underground or overhead systems for electrical, gas, communication, steam, water or sewer transmission, distribution, collection supply or disposal; 3) the previously mentioned systems include lines, poles, guy wires, towers, repeaters, boosters, transformers, regulators, pumps, mains, drains, sewers, pipes, conduits, wires, cables, traffic signals and similar accessories and equipment used in conjunction with and constituting an integral part of such systems.

The planning commission's review of essential services will assure that the proposals are in accordance with the town master plan; do not unnecessarily form an obstruction to movement and community growth; and do not prove themselves objectionable by reason or hazard, unsightliness, odor, smoke, gas fumes, noise, vibration, radiation, refuse matter or water-carried waste. Once a long-range plan is approved, erection or construction of parts thereof can proceed according to the approved plan without individual approval.

- 4. Future installations** – The applicant has informed me that at this time, the Town Center Plaza is the only proposed small cell location for Verizon in Middletown. That being said, it would seem that since Verizon is proposing such an installation, it would be expected that AT&T and Sprint might also consider such installations in the future.
- 5. Site plan Exhibit A-3** – As shown in Exhibit A-3, the proposed cabinet would be located 4-feet from the ground. (The first proposed plan indicated that the cabinet would be located a minimum of 7-feet from the ground on a pole located behind the BB&T Bank.) The proposed cabinet's dimensions are approximately 30"H x 22"W x 20"D. (In comparison, the utility cabinet located on the southeast corner of the intersection of US 40A and US 17 is 48"H x 30"W x 18"D and is located ~ 2 ½ feet from the ground.) The existing light pole is about 32-feet in height, and the proposed antenna would add an additional 3 feet to the top of the pole. The proposed antenna would be painted to match the existing light pole.
- 6. Lease exhibit** – The applicant has been in communication with the property owner who has indicated his approval of the revised plan for the small cell antenna installation on this property. Once the Lease Exhibit has been finalized with the property owner, a copy of it will be forwarded to the Town for our review.

7. **Frederick County regulations** – Section 1-19-8.205.2 of the Frederick County Code states “a communications antenna not exceeding 10 feet above and attached to an existing building or structure or attached to a support pole inserted within an existing electrical transmission line lattice tower is permitted in any zoning district’. In speaking to a County planner, staff was informed that communications antennas meeting this regulation are approved by the county zoning administrator via a zoning certificate and do not require other staff or planning commission review.

Findings/Conclusions

Based upon the review and analysis as provided above, Staff finds that the proposed application generally meets the intent of the GC zoning district and the Town’s Comprehensive Plan.

RECOMMENDATION

Staff recommends that the Planning Commission approve this Revised Site Plan for the proposed small cell antenna installation in the Town Center Plaza parking lot. In looking to the future, staff recommends that the Zoning Administrator be authorized to approve proposed small cell antenna installations (as is done by Frederick County), unless the Zoning Administrator feels that the location or proposal requires guidance and/or support of the Planning Commission.

This review will be included in the Middletown Planning Commission materials for the July 21, 2014 public meeting. The applicant is encouraged to attend this meeting and the workshop on the Wednesday prior to the meeting which will be July 16, 2014.

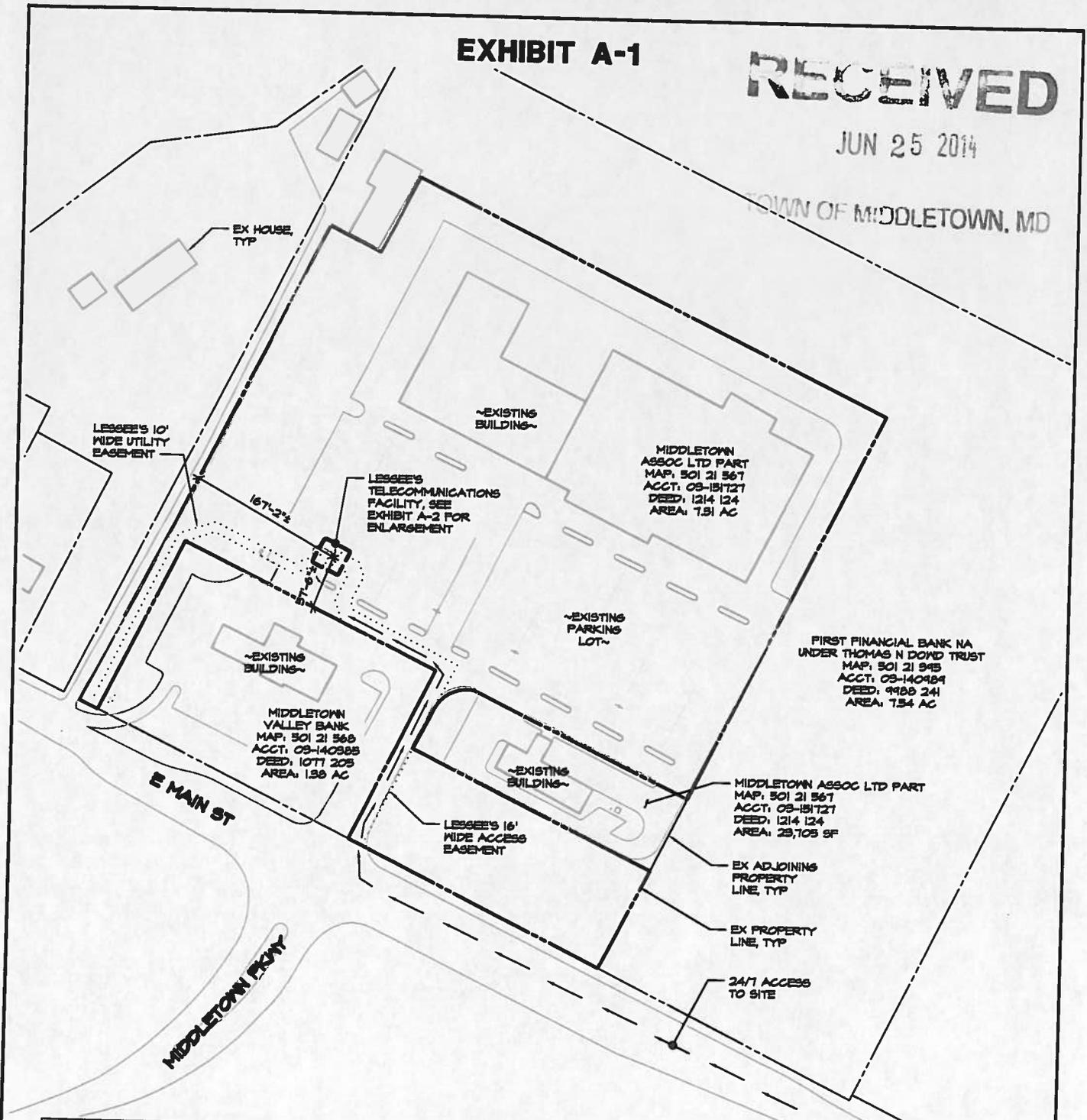
cc: Lauren Bettis, Smartlink
Middletown Associates Ltd. Partners

EXHIBIT A-1

RECEIVED

JUN 25 2014

TOWN OF MIDDLETOWN, MD



**PRELIMINARY
FOR REVIEW ONLY**

SITE PLAN

SCALE: 1" = 150'

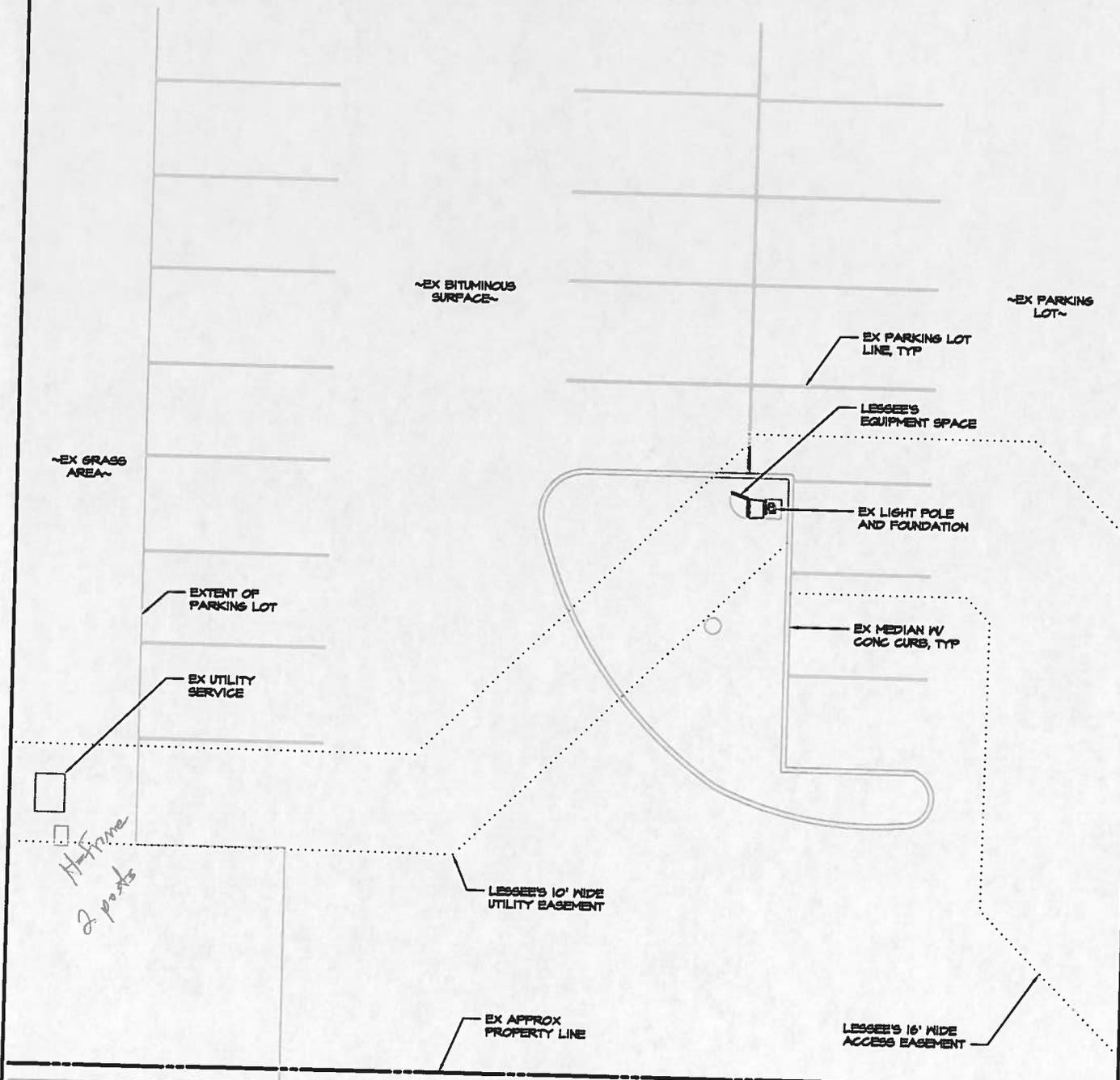


MORRIS & RITCHIE ASSOCIATES, INC.
ENGINEERS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS
1220-C East Joppa Road, Suite 505
Towson, Maryland 21286
(410) 821-1690
Fax (410) 821-1748

TOWN CENTER PLAZA
815 E MAIN ST
MIDDLETOWN, MD 21769
FREDERICK COUNTY

SCALE: AS NOTED	DATE: 06/17/14	DRAWN BY: JDO	DESIGN BY: RJD	REVIEW BY: RJD	JOB NO.: 10427.1548
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EXHIBIT A-2



**PRELIMINARY
FOR REVIEW ONLY**

COMPOUND LAYOUT

SCALE: 1" = 15'

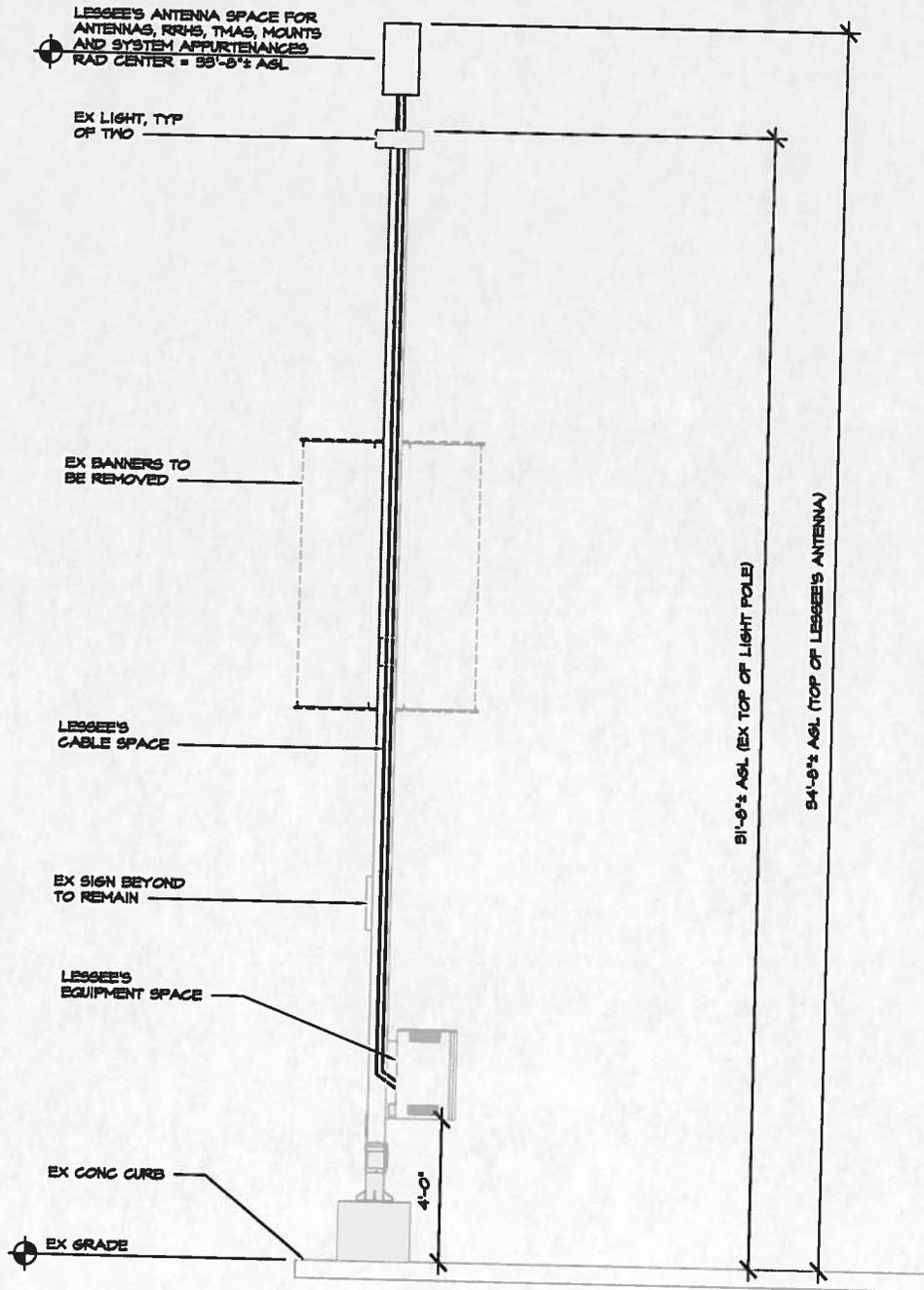


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SCALE: AS NOTED	DATE: 06/17/14	DRAWN BY: JDO	DESIGN BY: RJD	REVIEW BY: RJD	JOB NO.: 10427.1548
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EXHIBIT A-3



**PRELIMINARY
FOR REVIEW ONLY**

POLE ELEVATION

SCALE: 1" = 10'-0"



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JUN 25 2014

TOWN OF MIDDLETOWN, MD

Town Center Plaza
Existing View 1

 **verizon**wireless

MRA

**MORRIS & RITCHIE
ASSOCIATES, INC.**
1220-C East Joppa Road, Suite 505
Towson, Maryland 21286
410-821-1690
410-821-1748 Fax

20 June 2014



PROPOSED VERIZON WIRELESS
ANTENNA PAINTED TO MATCH
EXISTING LIGHT POLE

PROPOSED VERIZON WIRELESS
EQUIPMENT CABINET

PROPOSED VERIZON WIRELESS
DISCONNECT

MRA
**MORRIS & RITCHIE
ASSOCIATES, INC.**
1220-C East Joppa Road, Suite 505
Towson, Maryland 21286
410-821-1690
410-821-1748 Fax

Town Center Plaza Proposed View 1

20 June 2014



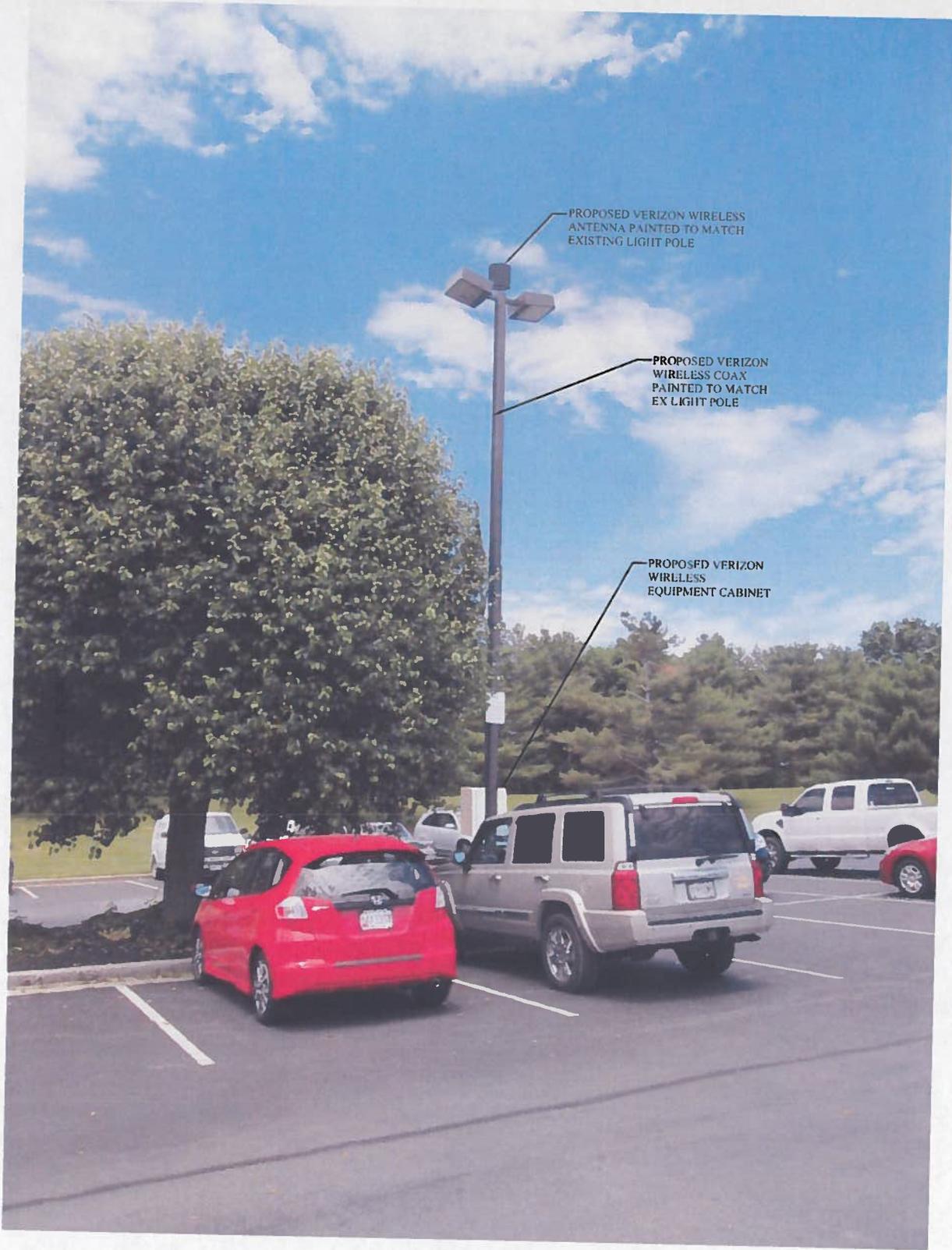


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Town Center Plaza Existing View 2

20 June 2014





PROPOSED VERIZON WIRELESS
ANTENNA PAINTED TO MATCH
EXISTING LIGHT POLE

PROPOSED VERIZON
WIRELESS COAX
PAINTED TO MATCH
EX LIGHT POLE

PROPOSED VERIZON
WIRELESS
EQUIPMENT CABINET

MRA

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Towson, Maryland 21286
410-821-1690
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Town Center Plaza Proposed View 2

20 June 2014

 **verizon**wireless



RECEIVED

MAY 30 2014

May 30, 2014

TOWN OF MIDDLETOWN, MD

Middletown Municipal Center
31 West Main Street
Middletown, Maryland 21769

OFFICE COPY
DO NOT REMOVE

Attention: Middletown Planning Commission

Re: 815 E. Main Street, Middletown, MD: Proposed Verizon Wireless Small Cell Antenna Installation

Dear Members of the Middletown Planning Commission:

The purpose of this letter is to provide you with background information on the wireless industry, generally introduce the recent deployment of Verizon's small cell initiative, and to identify the specific small cell proposal for 815 E. Main Street located in Middletown, Maryland. In doing so, it is Verizon's hope that you approve the small cell antenna use and installation within the Town Center Plaza parking lot in order to improve its service, so that Verizon can move forward in obtaining a Zoning Certificate and Frederick County Building Permit.

By way of background, when a wireless company enters a new market, it usually erects a minimal number of large antennas on tall support structures (i.e. towers) to cover an entire region. *See Exhibit 1.* However, these tall support structures can only reach a finite number of users. Therefore, when wireless customers increase, a second layer of additional large antennas are added in strategic locations in order to increase coverage and accommodate customer growth. *See Exhibit 2.* With the introduction of smart phones, tablets, laptops, new apps, and a demand for high quality video streaming, data usage has increased exponentially creating a 24/7 desire for effective data usage. In fact, industry forecasts project exponential growth in data demand worldwide, with mobile data traffic expected to grow 11-fold between 2011 and 2018.¹

As cellular and data usage undoubtedly will continue to increase, Verizon has chosen to implement small cells rather than continuing to build the aforementioned large structures. By utilizing small cell technology, Verizon will be able to address current and future coverage and/or capacity issues using a sensible, discrete and targeted design. Small cells are fully featured short range mobile phone base stations used to complement mobile device service from larger macro-cell towers. This technology is strategically installed in high traffic locations in order to offload traffic and compliment larger towers in the area. *See Exhibit 3.* By providing coverage within the approximate 1,000 foot radius of a small cell antenna, roughly 60 to 120 users are offloaded from the nearby macro cell, thereby increasing the capacity of the larger site and improving overall customer service.

Small cell equipment is significantly smaller than macro cell equipment which allows for installations on existing structures, eliminating the visual effect evident from the larger traditional sites. Generally, small cell antennas are about two feet (2') in height and approximately one foot (1') in width. The shape of the antenna is determined based on site specific conditions, but the two

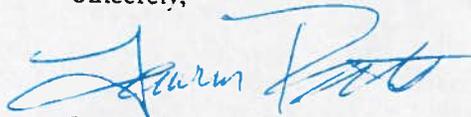
¹ Cisco Global Data Traffic Forecast Update 2013-2018

most common types of small cell antennas are cylindrical and flat panel. *See Exhibit 4.* Equipment cabinets, the largest of which is approximately 55" tall by 22" wide and only 20" deep, can be attached to utility poles, building walls, rooftops, or placed on the ground. *See Exhibit 5.* To put things into perspective, light post installations are very similar in size and visual appearance to existing equipment currently mounted on poles within utility easements. *See Exhibit 6.*

In this particular case, Verizon is proposing a small cell installation to an existing light post located in the Town Center Plaza parking lot. *See Exhibits 7 & 8.* A cantenna will be placed on the top of the existing pole with a cabinet attached to the existing pole at approximately seven feet (7') above grade level. By removing the light post banners, engineers have certified that the structural capacity of the existing light post is capable of accommodating the additional weight of the proposed equipment. The antenna is designed to capture individuals using their wireless devices within the Town Center Plaza parking lot as well as accessible areas within the nearby shops. Verizon chose this location over others in order to compliment the coverage of an existing tower location. *See Exhibit 9.* Private parking lots to shopping areas are preferred small cell targets as these areas are typically high cellular traffic areas that serve a large number of customers at the same time.

In sum, the proposed small cell will benefit Verizon customers living and visiting the Middletown area with minimal visual impact. Should you have any questions or require additional information for purposes of your review, I would be happy to assist you. I look forward to working with you on this proposal in the hopes of obtaining your approval.

Sincerely,



Lauren Bonanni Bettis
Smartlink, LLC
Land Use & Real Estate Specialist
lauren.bettis@smartlinkllc.com
240-838-6237

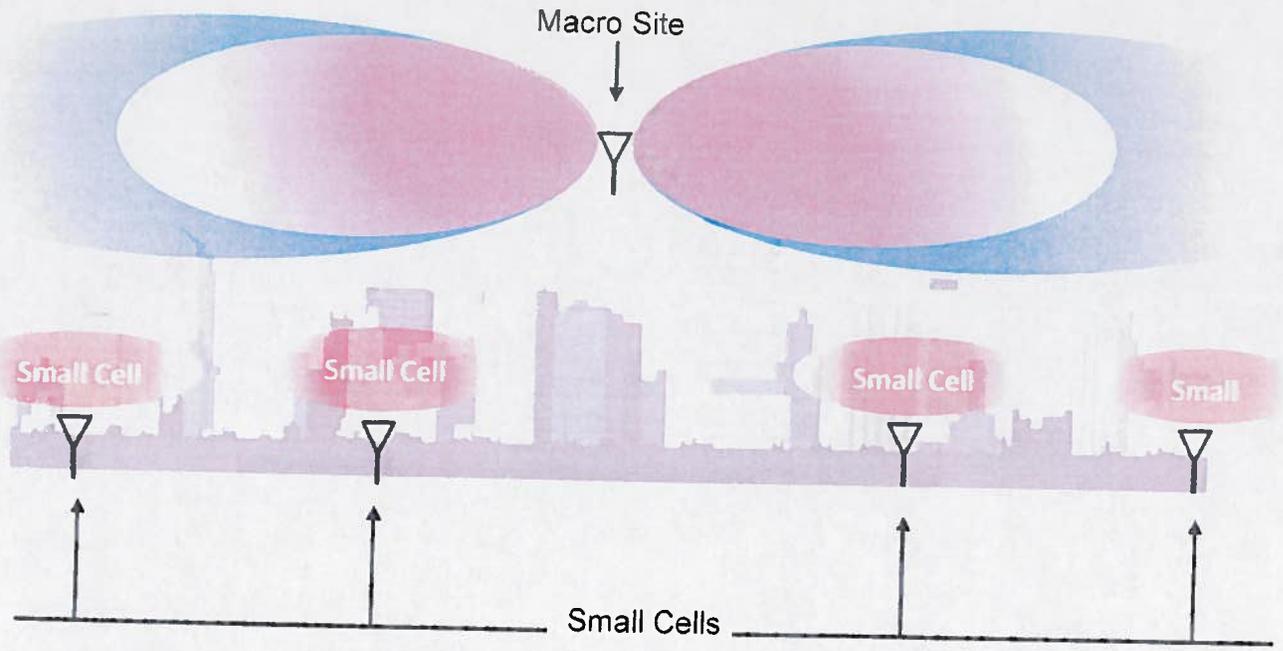
EXHIBIT 1
Cell Tower Examples



EXHIBIT 2
Macro Cell Examples



EXHIBIT 3
Coverage Goals





Three types of existing utilities visible from one corner in Middletown.

Middletown Planning Office

MEMORANDUM

Date: 7/10/2014
Hansen# 14281

To: Middletown Planning Commission

From: Cynthia K. Unangst, Middletown Staff Planner

RE: **CROSS STONE COMMONS IMPROVEMENT PLAN**

Tax Map Parcels #03-156044 and 03-174158

Applicant: DMW and Lingg Property Consulting

Property Owner: Nancy R. Newton, ET. Al.

Plan Dated: January 30, 2014

Date Received: February 5, 2014; April 7, 2014 (monument sign renderings)

GENERAL INFORMATION

Proposal: Site is to be developed with 35,357 square feet ± of commercial space in four separate buildings with 219 parking spaces.

Location: West side of Middletown Parkway at the intersection with US Route 40-A (Old National Pike)

Zoning: GC General Commercial. This district permits numerous uses along with numerous special exception uses, including shopping centers, with Board of Appeals approval. The intent of the district is to provide areas for general commercial activities that service the needs of the entire community and the surrounding area. The location should be such that stores and commercial activities can be grouped together in an attractive and convenient manner that will not infringe on residential areas.

Present Use: Agricultural land.

COMMENTS

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

1. **Site Plan approval** – The Planning Commission conditionally approved the site plan for Cross Stone Commons on November 18, 2013. The approval was contingent on the following:
 - Formal approval of the Stormwater Management Plan by Frederick County
 - Official acceptance by State Highway of the right-in-only turn lane off Alt. US 40 (See attached SHA letter granting conditional approval for the right in only entrance from US 40 ALT.)
2. **Expiration of improvement plans** – Per Section 16.12.060 of the Town Code, approval of an improvement plan shall expire three years from the date on which the Planning Commission approves the improvement plan unless construction has begun as defined by “start of construction.” Once improvements have begun, the developer will be expected to proceed with

due diligence to completion with visible, substantial and progressive construction activities. Extension of the improvement plan may be granted by the Planning Commission for delays attributable to town, county or state agencies.

3. **FRO – A final forest conservation plan was approved on May 19, 2014 by the Planning Commission with forest conservation obligations to be met by offsite plantings at Wiles Branch Park.**
4. **GC District Uses** – Shopping centers are a special exception use in the GC District. The Town’s definition of a shopping center is “one or more retail and/or commercial establishments on a lot greater than one acre, planned, developed, owned and managed as a unit with off-street parking provided on the property and related in size, type and number of shops to the trade area that the unit serves.” The Middletown Board of Appeals approved the special exception use of a shopping center on May 8, 2013 conditional on the applicant receiving approval from the Planning Commission of an exemption from the yard and buffer requirements set forth within the specific standards for shopping centers, as well as Planning Commission approval for the landscaping plan and architectural review approval.

Additional special exception uses for the General Commercial district that would need a recommendation from the Planning Commission and subsequent approval by the Board of Appeals would be gas stations, private and commercial schools, retail of construction and building materials, vehicle repair and services, animal kennels and clinics, child care centers, and self-storage rental spaces for storage of personal goods.
5. **Traffic Impact Study** – The Town Board has expressed concern about the possibility of increased traffic along the Middletown Parkway in conjunction with the proposed shopping center. They feel that the developer of the shopping center should install the extra lanes needed (decel, accel and turning lanes) since the potential of increased traffic will necessitate those lanes to be built and the Town does not want to be put in the position of paying for the road construction as they have had to do in the past. The Town Engineer, Bruce Carbaugh, in his review has stated that the Town will require some type of acceleration and deceleration lane into each proposed entrance as required by the Town’s Design Manual for Streets and Commercial entrances. **The developer has submitted a drawing to the Town Board showing improvements to the Middletown Parkway that include accel and decel lanes. At their meeting on Monday, July 14th, the Town Board accepted, on a 5-1 vote, the recommendation of Bruce Carbaugh to allow the two entrances on the parkway with the proposed accel and decel lanes. In addition to the Middletown Parkway improvements, the developer has also agreed to bond 50% of the improvement cost of closing the median at the north entrance. The median would only be closed in the event of a to-be-determined accident count attributed directly to the left-in/left-out movement, within a certain number of years after the improvements are completed. The Town Board accepted the proposed improvements subject to the bond and its specific language yet to be determined.**
6. **Landscape plan** – Section 17.48.230G. of the Code states that when adjacent to an R district, a screen planting as approved by the planning commission and at least six feet in height must be provided along the R district boundary. The applicant is proposing a 6-foot high vinyl privacy fence along the boundary with the adjacent residential properties along with landscape screening.

The landscape screening consists of Eastern Red Cedar trees, Leyland Cypress trees, and American Holly trees, which are all evergreens. The proposed trees are to be 5-6 foot, or 6-8 foot balled and burlapped plants. The variety of trees, shrubs and other plantings for the site are a good mix of native plants with a good distribution along the boundary and within the parking areas. Additional shrubs have been added along the Middletown Parkway at building #1 to prevent car lights from shining onto the Parkway. Sheets 19 and 20 (Landscape Plans) show a discrepancy in the number of Northern Bayberry shrubs (47 shown and 56 listed in the Plant Schedule on Sheet 20), and Arrowwood Viburnum shrubs (25 shown and 30 listed in Plant Schedule on Sheet 20). Also, trees shown to be planted adjacent to stop signs should be relocated to better locations.

7. **Signage** – A proposed freestanding shopping center identification sign is indicated on the plans at the corner of Old National Pike and the Middletown Parkway. A revised rendering of the proposed monument sign has been submitted for the Planning Commission's approval. In determining the monument sign area, the surface area of the largest face of a monument sign will be used to determine the total square footage of the sign. The calculation will exclude the first eighteen inches of the base if it does not include any sign copy or other graphic. Section 17.36.070B.2. of the Middletown Municipal Code states that for shopping centers an identification monument sign with an area of one square foot per five linear feet of lot frontage on which the sign is to be erected, up to a maximum of 120 square feet and a maximum height of 8 feet shall be permitted. The proposed sign elevation shows the brick base of the sign to be 2-foot one and 1/8 inches high with the rest of the sign to be 5-foot 7-inches high. The rendering does not indicate what the height of the pillars is proposed to be. The zoning administrator will need to determine whether the surface area of the largest face of the sign, as referred to in the definition, includes the brick pillars. As proposed by the sign elevation submitted, the signage meets the allowable square footage. The location of the proposed monument sign does not meet the setback requirements for the GC district which has a front yard setback of 40-feet. (Section 17.36.070 of the Code states that an identification sign for a commercial shopping center shall be subject to the setback requirements for the district in which it is located.)

Staff recommends that the Planning Commission request a formal written opinion from the zoning administrator on the surface area of the sign in relation to the brick pillars. Regarding the setback issue, Section 17.36.130G of the Code states that upon a showing that an owner...seeking to display a sign is unable to effectively display one or more signs in compliance with the requirements of this chapter due to unusual conditions on the property such as size, location, topography or other situation, then with the authorization of the planning commission, the zoning administrator may issue a sign permit authorizing the displaying of a sign not in strict compliance with the requirements of this chapter if, in doing so, the intent of this chapter may still be met.

8. **Fencing** – Staff assumes that the Board Fence detail on Sheet 2 is for the dumpster enclosures. The detail shows the board fence to be 8 feet tall. According to Section 17.32.170 of the Municipal Code, fences no more than six feet high shall be allowed in any yard areas in the commercial and industrial districts. Fences in excess of six feet in height in commercial and

industrial districts and for nonconforming businesses may be approved by the planning commission subject to review of the fence material during site plan review.

9. **Bike racks** – There is a detail shown on Sheet 2 for a bicycle rack, but the locations for bike racks are not shown in the plans.
10. **Architectural review** – The Planning Commission approved the architectural renderings for Buildings 1 (CVS) and 3 at their March 17, 2014 meeting, except that any dramatic change to Building 3 due to proposed tenants will need to come back to them for review and approval ahead of building permit approval.
11. **Minor error on plans** – The adjacent property owner shown on Sheets 4, 12, 17 and 20 as being Byron Moser & Leslie Zerby should be changed to the new owner, Matthew Axline.
12. **Review by Town Engineer, Bruce Carbaugh** – Bruce’s comments have been submitted to the applicant and are attached again for the Planning Commission’s review.
13. **Approval by Frederick County** – The Stormwater Management Development Plan was approved by the County on December 6, 2013.
14. **County review** – The improvement plans have been routed and reviewed by County agencies with these comments received from those agencies thus far.
 - Office of Life Safety – conditional approval – 2/21/2014
 - Health Department – conditional approval – 2/28/2014
 - Development Review, Engineering – conditional approval – 2/27/2014
 - Soil Conservation District – unacceptable
 - State Highway – denied – 2/18/2014 (due to right-in-only access from 40 Alt.) –**Now has conditional approval**

Since the developer just recently came to a resolution on the right-in-only issue and the Middletown Parkway improvements, the Improvement Plan updates haven’t been finalized. The plans are just now being updated to make the necessary changes for all outstanding agency comments.

RECOMMENDATION

Staff recommends that the Planning Commission approve the Improvement Plans with the following conditions.

- 1) The applicant shall address all agency comments as the project moves forward to final signature set submission.
- 2) The applicant shall address all comments by Town Engineer, Bruce Carbaugh, and ARRO Engineering as the project moves forward to final signature set submission.
- 3) The applicant shall require a review and approval of the Planning Commission if any closure or modification of the entrance from US 40 Alt is made in the future.

- 4) Any proposed uses within the shopping center that are special exception uses in the General Commercial district will need a recommendation from the Planning Commission and subsequent approval by the Middletown Board of Appeals.
- 5) The applicant shall revise the Landscape Plans to correct the discrepancies noted in staff comment #6.
- 6) The applicant shall add the bike rack locations to the plans.
- 7) The applicant shall return to the Planning Commission for architectural review and approval of any dramatic change to Building 3 due to proposed tenants ahead of building permit approval.
- 8) The applicant shall submit architectural renderings for Buildings 2 and 4 to the Planning Commission for review and approval ahead of building permit approval.

This review will be included in the Middletown Planning Commission materials for the July 21, 2014 public meeting. The applicant is encouraged to attend this meeting and the workshop on the Wednesday prior to the meeting which will be July 16, 2014.

cc: David Lingg, Lingg Property Consulting
Mark Crissman, DMW
Nancy Newton
Jeffrey and Lera Straits
John Thomas Moser Jr.
William Wiles
Matthew Axline
Marilyn Moser

Martin O'Malley, *Governor*
Anthony G. Brown, *Lt. Governor*



James T. Smith, Jr., *Secretary*
Melinda B. Peters, *Administrator*

MARYLAND DEPARTMENT OF TRANSPORTATION

June 30, 2014

RE: Frederick County
US 40 Alt, west of Middletown Pkwy
Cross Stone Commons
SHA Tracking No. 13APFR019XX
Pavement Marking Concept Plan
Mile Point 6.21

Mr. Mark Keeley
Traffic Concepts, Inc.
7525 Connelly Drive, Suite B
Hanover, MD 21076

Dear Mr. Keeley,

Thank you for the opportunity to review the Pavement Marking Concept Plan prepared by Traffic Concepts, Inc. dated May 29, 2014 for the Cross Stone Commons Property in Frederick County, Maryland. The Maryland State Highway Administration (SHA) review is complete and we are pleased to respond.

The review determined the major report findings and the SHA comments and conclusions as follows:

- Access to the Commercial Development (a 13,000 square feet Pharmacy with drive through; 3,900 square feet of a fast food restaurant; 7,000 square feet of high turnover restaurant; and 10,800 square feet of specialty retail) is proposed via one (1) right-in only movement site access from US 40 Alt and via two (2) full movement site access points from Middletown Parkway (a County road).

Based on the information provided, please address the following comments in a point-by-point response:

1. The SHA Access Permit will contain a condition of approval for the right in only entrance from US 40 ALT. SHA will monitor crash data at this location and if it is found that a safety issue exists the entrance will be closed and/or modified.
2. SHA District 7, Traffic Division, concurs with the *conceptual geometric design* of the proposed turn lane.

Mr. Mark Keeley
13APFR019XX
Page No. 2
June 26, 2014

3. Please incorporate into the construction plans for the improvements relocated sidewalk along US 40 Alt. to coincide with the new turn lane. It appears right-of-way dedication near the eastern corner of the property to the west of the proposed right-in access point will be necessary to construct and maintain roadside features.
4. Please incorporate into the construction plans for the improvements a full-width turn lane that is marked half with dashed markings (puppy tracks) and half with a solid line.
5. Please incorporate into the construction plans for the improvements required bicycle pavement markings and signing for the proposed bicycle pocket lane.
6. Along eastbound US 40 Alt., approximately 295 feet from the stop line at Middletown Parkway, there are micro-loop probe sets for the traffic signal, connected to a hand hole adjacent to US 40 Alt. which will need to be relocated due to the widening. Please note that a Design Request will be required to review plans for the traffic signal equipment modification.

The SHA concurs with the conceptual geometric design of the turn lane and will not require the submission of a revised concept plan or traffic analyses. However, an access permit will be required for all construction within the SHA right of way. Please submit seven (7) hard copies and one (1) electronic copy of design plans and a point-by-point response addressing the above comments to the SHA Access Management Division addressed to Mr. Steven D. Foster. Please reference the SHA Tracking Number on future submissions. Unless specifically indicated in the SHA response on this report, the comments contained herewith do not supersede previous comments made on this development. Please note that if this project has not obtained the SHA access permit and begun construction of improvements within five (5) years of this approval an updated analysis must be resubmitted for SHA review and concurrence that the proposed improvements continue to mitigate the development's traffic impacts prior to an extension of the approval. If you have questions or comments regarding the enclosed review, please contact Mr. Paul Silberman at 443-741-3500 or via email at psilberman@sabra-wang.com.

Sincerely,

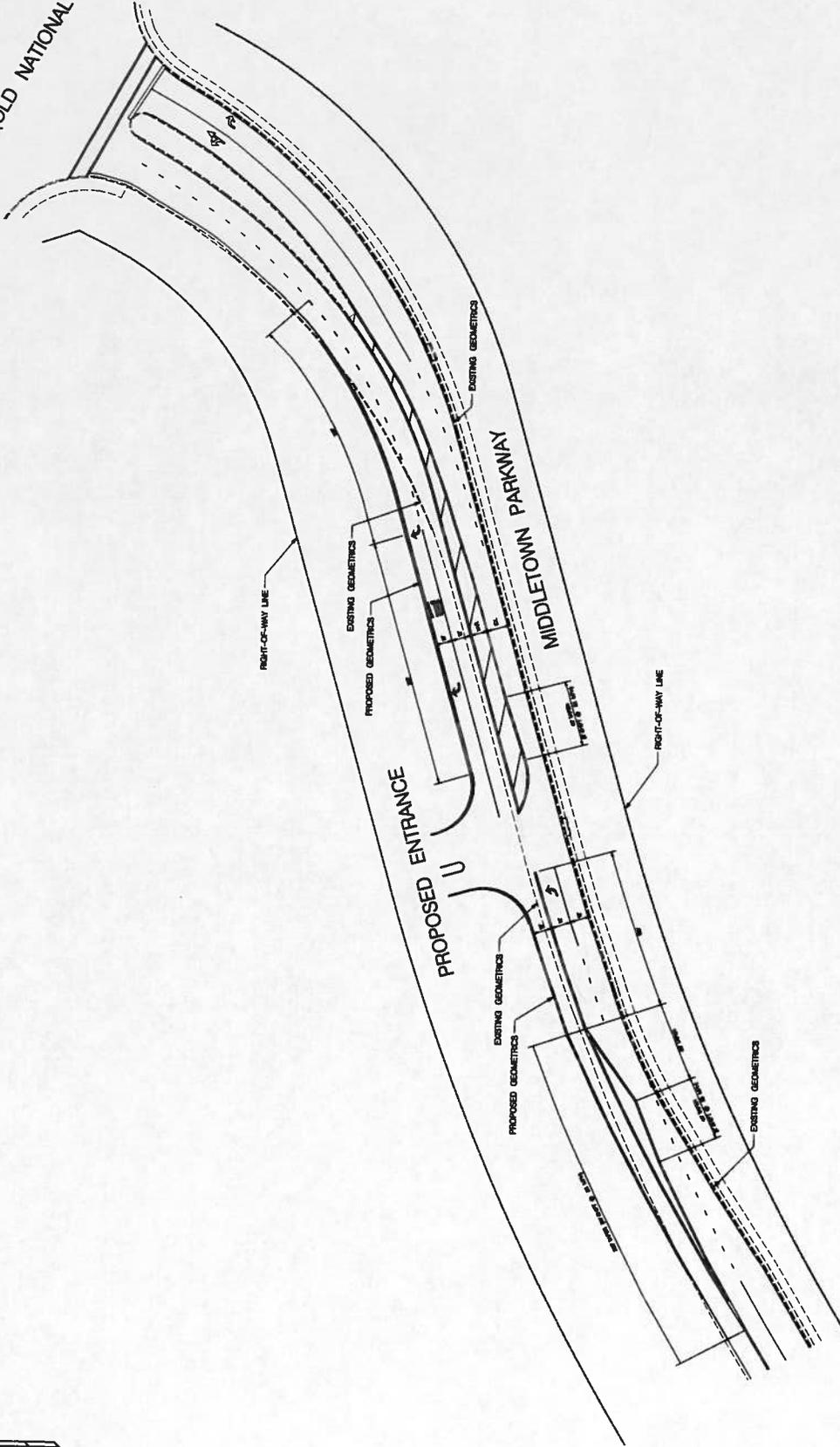


Steven D. Foster, Chief/Development Manager
Access Management Division

SDF/elw/ps

cc: Mr. Matt Baker, SHA RIPD
Mr. Ron Burns, Frederick County Development Review
Mr. John Concannon, SHA District 7
Mr. Dave Coyne, SHA District 7
Mr. Mark Crampton, SHA District 7
Ms. Rola Daher, SHA DSED

US 40A (OLD NATIONAL PIKE)

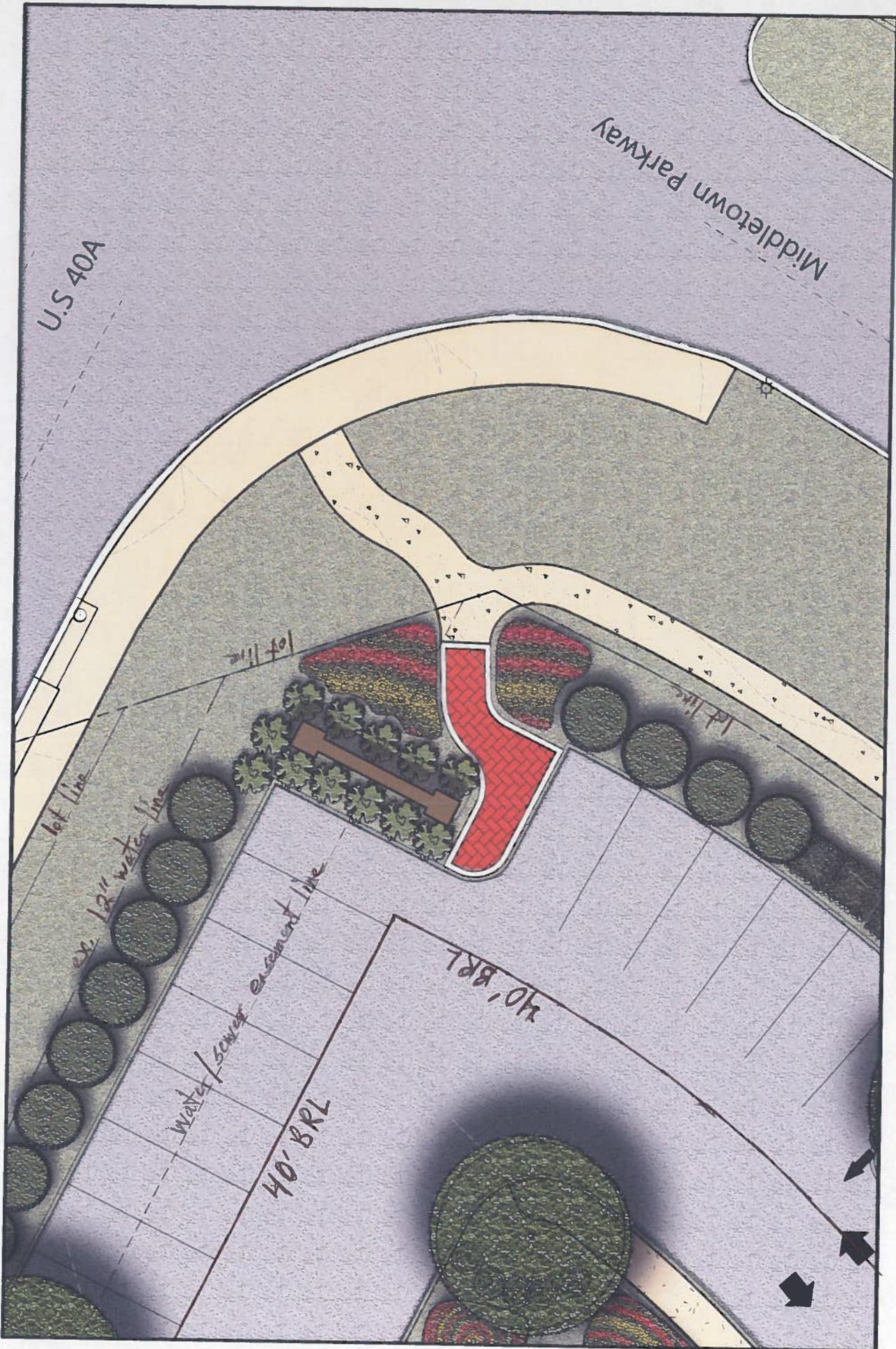


CONCEPT PLAN

US 40A (OLD NATIONAL PIKE)
AND MIDDLETOWN PARKWAY
FREDERICK COUNTY

DRAWN BY: B. SCHMIDT
DESIGNED BY: T. ZAVOGLI
DATE: 6-27-14
SHEET NO. OF
SHEET TOTAL: 27

TRAFFIC CONCEPTS, INC.
 7825 Conroy Drive
 Suite 10
 Hanover, MD 21076
 (410) 201-2929
 (410) 201-2930
 FAX: (410) 201-2931
 E-MAIL: TRAFFIC@TRAFCONCEPTS.COM
 WWW: TRAFCONCEPTS.COM



U.S. 40A

Middletown Parkway

lot line

ex. 12" water line

water/sewer easement line

40' BRL

40' BRL

lot line

lot line



Burgess and Commissioners of Middletown 31 W Main St Middletown, MD 21769 Phone 301-371-6171 Fax 301-371-6474
Bruce A. Carbaugh, P.E. Director of Public Works Email: bcarbaugh@ci.middletown.md.us

MEMORANDUM

TO: Cindy Unangst, Town Planner

FROM: Bruce A. Carbaugh, P.E., Director of Public Works

DATE: May 1, 2014

RE: CROSSTONE COMMONS IMPROVEMENT PLAN Review 1

The Town has reviewed the Cross Stone Improvement plans prepared by DMW and dated January 30, 2014 sheets 1 thru 20. The review includes water lines, sewer lines and storm drain lines that are connected to the existing systems Owned and Maintained by the Town. **The systems located on this development property are to generally be constructed in accordance with the Town Design Manual and Standards but the Town will not be assuming Ownership or maintenance of these systems.** No review has been performed for the onsite paving areas or storm water management (Frederick County). Any portion of the entrance driveways outside of the property line will require an entrance easement from the Town and will remain the Developers / Owners responsibility for maintenance.

After plan approval separate construction cost estimates for Sediment and Erosion Control and Storm Water Management will be required to reviewed and approved by Frederick County through the Town. Separate cost estimates for Public Improvements – roads, storm water drainage, water and sewer are to be submitted to the Town for approval. Public Works Agreements will be submitted to the Town for Public Improvements (within Town ROW), Storm water and Sediment and Erosion Control. The guarantees for each individual agreement in the form of a Letter of Credit will be filed with the Town before construction can begin. A 1% inspection fee is assessed on the guarantee amounts for Public Works, Stormwater Management and Sediment and Erosion Control.

Sheet 2

1. Curb used along or tying into the Parkway shall be MDSHA Type A curb.
2. Provide details of the pole and site lighting.

Sheet 3

1. Please show a roadway profile for each proposed entrance. There should be no runoff from the driveways into the Parkway.
2. Please add a note for landscape material and fence removal. See similar comments on sheet 16.

3. Any sidewalk constructed in the Town ROW will require tactile warning plates at grade changes (Town Std East Jordan Iron Works truncated dome plates).
4. SD-2 Type S is not large enough to accommodate the existing 30"RCP.
5. Verify the receiving Inlet (156) downstream from SD-40 and SD-58 has the capacity for the perceived increase in runoff to this area. (Scan is attached of the downstream storm drain system. SK-3 and SK-4 and design comp table).
6. Identify the type of structure for SD-22.
7. Show the locations for proposed parking lot lighting.
8. Provide a crosswalk at the right turn in off Main St entrance.
9. Depending on final arrangement of accel and decel lanes the existing PVC fence should be installed along the proposed driveway radius.
10. There appears to be an existing utility pole in the proposed right in only that will require relocation.
11. The Town will require some type of acceleration and deceleration lane into each proposed entrance (Design Manual Streets Section 2.14 Commercial Entrances subparagraph d.). A grass median or concrete median will need to be constructed beyond the first entrance limiting it to right in and right out only. The Middletown Parkway was designed as a divided minor arterial road (part plans attached SK-1 and SK-2) and constructed to be added onto. The construction of the southbound dual lane is a possibility in lieu of the accel/decel lanes through the proposed southern most entrance and transitioning back into the existing roadway. The sidewalk should be aligned with the roadway. The Town Burgess and Commissioners have also expressed their concern that a flashing signal be installed at the intersection with Glenbrook Drive. The signal when required would be upgraded to a standard traffic signal.

Sheet 4

1. Identify the type of structure for SD- 38, 50 and 52.

Sheet 11

1. If the existing 2" natural gas is to be extended into the site please show the proposed locations.
2. The Town prefers no 2" blow offs and instead on lines maintained by the Town uses fire hydrants as the end condition. In the past Frederick County FM has had an opposing opinion but since the Town owns and maintains the fire hydrants, where accepted, this has been our standard practice. Since this line will owned and maintained by others you may proceed as your engineer advises. If the Owner requests the Town to flush the main system in our biannual flushing program we will require a letter requesting this and a note on the plan referencing the letter. The Owner is free to flush the main themselves during our scheduled periods.
3. The Town standard is 3 valves at every tee, you may want to consider at least a second valve at station 0+96 and 12+70 on the Building 1 side so that you may control repairs and limit outages if needed.
4. The details of the master meter vault will need to be clarified with the Town. Our meter standard is Sensus and if the meter is larger than 6" we will need to develop a detail. We currently have a detail for 6" but it will

- need updated since Sensus has changed their meters. A detail on the plan will be required.
5. Use the Town Standard water and sewer notes and details. Will forward by email. Exception to Town Standard water notes:
 - a. At your option you may install the DIP without granular bedding and initial backfill.
 - b. At your option you may install non domestic fittings and castings
 6. Add a note regarding the grease trap for Building 2 and any other structure that may be fitted out as food service facility, "Grease trap will be sized by the Town of Middletown with plans supplied by the Building Permit Applicant in accordance with Town Policy". Show a connection after the grease trap that will be used for domestic sewage (non grease laden discharge).
 7. SS MH-1 should be labeled as Frederick County Monitoring Manhole.

Sheet 12

1. Please verify that the individual 1" services will be sufficient for building #3 (no fire suppression system).

Sheet 14

1. Provide the restrained length table of the profile sheet and shade and note the restrained lengths needed at each fitting or valve. Treat valves as dead ends from either direction.

Sheet 16

1. Provide additional spot elevations at each entrance construction along the existing edge of pavement. Please use the detail for roadway tie (staggered joints) in (attached).
2. Any 3:1 slopes or steeper in the Town Right of Way shall be matted with soil stabilization matting. Please label any 3:1 slopes.
3. Existing shrubs and trees in the ROW shall be marked for removal so the Owner may have the opportunity to remove and relocate.
4. The existing fence within delineated limits shall be removed and turned over to the Town (or the Town may choose to remove themselves).
5. Conflicts with existing street lights and conduit shall be verified and the Developer will be required to resolve the relocation or addition of street lights to adequately light the intersection. There should be two street lights on each side of the commercial entrances.
6. Is there any intent to construct the shopping center in phases? Will all utilities be installed in one phase and the site permanently stabilized. Will buildings be constructed in any order or concurrently?
7. Provide an estimate of the earthwork quantities. Cut and Fill required. If the site is an unbalanced waste job the Town may require a truck wash to avoid soil being tracked onto the Parkway.

MEMORANDUM

Date: 6/26/2014

To: Middletown Planning Commission

From: Cynthia K. Unangst, Middletown Staff Planner

RE: Memar Corp. Text Amendment with Cluster Development Regulations

The Burgess and Commissioners did not approve the Active Adult text amendment which included the cluster development regulations at their meeting on Monday, June 23rd. It is being referred back to the Planning Commission. The Burgess and Commissioners would like the cluster development regulations to be allowed in developments other than active adult developments. Below is a draft of language to be included in the Active Adult community special exception regulations incorporating the language first proposed by Farhad and inclusion of the cluster development requirement, along with a draft separate section of the Code related to Cluster Development regulations. New proposed language is in italics and bolded below.

Section 17.48.015 Active adult community.

An Active Adult Community located in the R-20 residential district *is and* subject to the requirements of that district except as modified and provided in this *Section chapter*:

- A. An active adult community in the R-20 district *may must* be developed as an integral component of a larger R-20 zoned subdivision *consisting of at least 100 acres in which event the active adult community portion of the development and* may constitute no more than fifteen (15) percent of the total acreage in the subdivision.
- B. ~~Minimum size of overall R-20 subdivision: one hundred (100) acres.~~ *On parcels less than 100 acres but more than 30 acres, the entire parcel may be used for an active adult community in accordance with the cluster development concept and regulations in Section 17.42.*
- C. Minimum lot area per dwelling: three thousand two hundred (3,200) square feet; minimum average lot area per dwelling, five thousand five hundred (5,500) square feet; provided that no more than twenty-five (25) percent of the total number of lots may be less than four thousand (4,000) square feet.
- D. The planning commission, at its discretion, may approve reduced yards, subject to the following limitations:
 - 1. The front, rear or side yard setback from any lot fronting on a major town street (arterial or collector) shall be thirty-five (35) feet.

2. Minimum setbacks for lots fronting on interior public or private subdivision streets shall be as follows:
 - a. Front: ten (10) feet;
 - b. Rear: fifteen (15) feet;
 - c. Side: five (5) feet.
3. ***Driveways must have a minimum length of 20 feet from a public or local street.***

E. Any individual dead-end private drive or street may be used to serve no more than ten (10) dwelling units.

F. Pavers or other alternative materials which meet the standards approved by the town engineer may be used in the construction of private drives or streets.

G. A homeowner's association shall be established to maintain all open spaces, common areas, stormwater management facilities, and private streets and to arrange for private waste removal services, if required, and snow removal services for private streets and drives. The homeowner's association shall have the responsibility to enforce all covenants and special conditions required of residents and property owners in the active adult community.

H. The planning commission shall approve a site development plan for the active adult community and shall have architectural review authority for the dwelling units to be constructed within the community.

I. The planning commission shall review and approved the homeowner's association declaration of covenants, articles of incorporation and by-laws prior to final approval of the site development plan for an active adult community.

17.16.010 R-20 district.

A. Purpose. The R-20 district is intended to encourage and promote the development of single-family residential neighborhoods on large lots free from land usage which might adversely affect such development; ***except in the case of cluster developments in which dwellings are grouped together on a site, thus saving the remaining land area for common open space, conservation, recreation, and public and semipublic uses.***

B. Uses Permitted in the R-20 District. No building or structure may be erected or used and no land may be used or occupied except for one or more of the following principal uses:

1. Single-family dwellings;
2. Churches, public schools, libraries and parks, playgrounds, family day care homes;
3. Accessory buildings and uses;
4. Home occupations;
5. ***Residential cluster development.***

C. Special Exceptions in the R-20 District. The board of appeals may authorize the following principal uses as special exceptions in accordance with the provisions of Section 17.44.060:

1. Community centers;
2. Medical centers;

3. Nursery schools, child care center;
4. Public utility building;
5. Active adult community;
6. Public safety services, subject to site development plan approval.

Chapter 17.42 RESIDENTIAL CLUSTER DEVELOPMENTS *(This entire section would be new.)*

Sections:

17.42.010 Purpose.

17.42.020 Definitions.

17.42.030 Applicability; General Provisions.

17.42.040 Contents of Site Plan.

17.42.050 Review Criteria.

17.42.060 Home owner's association.

17.42.010 Purpose.

The purpose of this chapter is to permit such flexibility and provide performance criteria, which can result in residential cluster developments in order to:

- A. encourage creative and flexible site design that is sensitive to the land's natural features and adapts to the natural topography;
- B. protect environmentally sensitive areas of a development site and preserve on a permanent basis common open space and natural features;
- C. decrease or minimize nonpoint source pollution impacts by reducing the amount of impervious surfaces in site development;
- D. promote cost savings in infrastructure installation and maintenance by such techniques as reducing the distance over which utilities, such as water and sewer lines, need to be extended or by reducing the width or length of streets;
- E. provide opportunities for social interaction and walking and hiking in common open space areas; and
- F. provide a more desirable environment than would be possible through the strict application of other sections of this Title. A residential cluster development shall be a separate entity with a distinct character in harmony with surrounding development. Common open space must be an essential and major element of the plan, which is related to and affects the long-term value of the homes and other developments.

17.42.020 Definitions.

As used in this ordinance, the following words and terms shall have the meanings specified herein:

“Buffer” means land maintained in either a natural or landscaped state and used to screen and/or mitigate the impacts of development on surrounding areas, properties, or rights-of-way.

“Cluster” or “Clustering” means a site-planning technique that concentrates buildings and structures in specific areas on a lot, site, or parcel to allow the remaining land to be used for recreation, common open space, and/or preservation of features and/or structures with environmental, historical, cultural, or other significance. The techniques used to concentrate buildings may include, but shall not be limited to, reduction in lot areas, setback requirements, and/or bulk requirements, with the resultant common open space being devoted by deed restrictions for one or more eligible uses.

“Cluster development, residential” means a land development project in which the site planning technique of clustering dwelling units is employed.

“Common open space” means the portion of the site set aside in perpetuity as open space. This area may include wetlands, floodplains or flood-hazard areas, stream corridors, scenic views, historical or cultural features, archaeological sites, or other elements to be protected from development, as well as easements for public utilities.

“Eligible uses” means parkland, recreational fields, trails, community buildings or similar-type uses or as approved by the Middletown Planning Commission.

“Gross buildable area” means the total area of the site minus the areas that are not buildable, such as wetlands, floodplains, steep slopes, buffers and other environmental features. This resulting area is used to determine the maximum number of units to be built.

“Infrastructure” means the facilities and services needed to sustain residential, commercial, industrial, institutional, and other activities.

“Land development project” means a project in which one or more lots, tracts, or parcels of land are to be developed or redeveloped as a coordinated site for a complex of uses, units, or structures, including, but not limited to, planned unit development and/or cluster development for residential, commercial, institutional, recreational, common open space, and/or mixed uses as are provided for in the zoning ordinance.

“Street, private” means a local roadway serving only abutting lots, not publicly dedicated or maintained by the Town but meeting specific municipal improvement standards, and providing access for service and emergency vehicles.

17.42.030 Applicability; General Provisions.

- A. A residential cluster development shall be permitted in the R-20 residential zoning district. All principal and accessory uses authorized in the R-20 district shall be allowed in the cluster development.
- B. The following provisions shall apply to any residential cluster development, regardless of the general requirements of the R-20 zoning district:
 - 1. The minimum area of the cluster development shall be 30 acres.
 - 2. Total density shall be 2 or fewer units per acre.
 - 3. A minimum width of 60 feet per dwelling unit shall apply unless requested by the applicant and approved by the planning commission.
 - 4. A minimum side yard setback of 5 feet shall be provided between all principal buildings and structures.
 - 5. A minimum yard or common open space of at least 25 feet in depth shall be provided as measured from all streets and from the side and rear lot lines at the boundaries of the entire cluster development.
 - 6. The maximum height limitation shall be that established for the R-20 zoning district.

17.42.040 Contents of Site Development Plan.

- A. The preliminary and final site development plans for a residential cluster development shall include, but shall not be limited to, the following information:
 - 1. The maximum number and type of dwelling units proposed.
 - 2. The areas of the site on which the dwelling units are to be constructed and their building envelope size showing the general area in which the dwelling unit is to be located.
 - 3. The calculations for the permitted number of dwelling units based on gross buildable area.
 - 4. The areas of the site on which non-residential principal and accessory uses may be located and their size.
 - 5. The areas of the site designated for common open space and their size.
 - 6. The areas of the site designated for parking and loading and the size of the spaces.
 - 7. The location of sidewalks, trails, and bike paths.
 - 8. The proposed landscaping for the development.
 - 9. A phasing plan for the construction of the development.

17.42.050 Review Criteria.

- A. In reviewing a residential cluster development, the planning commission shall determine whether:
 - 1. The site plan satisfies all requirements of Section 17.42.040 above;

2. Buildings and structures are adequately grouped so at least 25% of the total area of the site is set aside as common open space. To the greatest degree practicable, common open space shall be designed as a single block and not divided into unconnected small parcels located in various parts of the development;
 3. Pedestrians can easily access common open space;
 4. The site plan establishes, where applicable, an upland buffer of vegetation of at least 50 feet in depth adjacent to wetlands and surface waters, including creeks, streams, springs, lakes, and ponds;
 5. Individual lots, buildings, structures, streets, and parking areas are situated to minimize the alteration of natural features, natural vegetation, and topography;
 6. Existing scenic views or vistas are permitted to remain unobstructed, especially from public streets;
 7. The site plan accommodates and preserves any features of historic, cultural, or archaeological value;
 8. Floodplains, wetlands, and areas with slopes in excess of 25% are protected from development; and
 9. The cluster development advances the purposes of this ordinance as stated in Section 17.42.010 above.
- B. The planning commission may, in its opinion, apply such special conditions or stipulations to its approval of a residential cluster development as may be required to maintain harmony with neighboring uses and to promote the objectives and purposes of the comprehensive plan and the zoning and subdivision ordinances.
- C. In approving a residential cluster development, the planning commission may reduce the pavement width of any public or private streets that would otherwise be required by the subdivision regulations if the town engineer is in concurrence. An applicant who wants the reduction of pavement width of public or private streets shall submit a statement of justification for the reduction along with the site plan.
- D. Common Open Space. At least twenty-five (25%) percent of the entire tract of land to be developed in a residential cluster development must be devoted to common open space purposes. Areas that are reserved as common open space shall be shown on the plat and approved by the Planning Commission.
- E. Public Utilities and Facilities. Public water and public sewer must be provided to the development. The planning commission may require the reservation of development sites for other public facilities (schools, fire or police stations, library, etc.) if the need of the development justifies the facilities.

17.42.060 Home owner's association.

- A. A home owners' association shall be established to maintain all open spaces, common areas, stormwater management facilities, and private streets and to arrange for private waste removal

services, if required, and snow removal services for private streets and drives. The homeowners' association shall have the responsibility to enforce all covenants and special conditions required of residents and property owners in the active adult community. Before assuming any responsibility for lands and facilities held or controlled by the homeowners' association, the burgess and commissioners may require that such land and facilities meet the minimum standards required of similar facilities for which the Town is generally responsible.

B. The planning commission shall review and approve the homeowners' association declaration of covenants, articles of incorporation and by-laws prior to final approval of the site development plan for a residential cluster development. In the event that a homeowners' association fails, refuses or neglects for any reason to maintain, operate or improve all or part of any of the facilities, common areas, common open spaces, streets, or other portions of the subdivision held or controlled by it and for which it is responsible, the Town may, but shall not be obligated to, fulfill such obligations, and upon doing so, the costs and expenses incurred by the Town shall be paid by the owners of the properties which are subject to the Homeowners' Association Declaration of Covenants. Each property shall be responsible for its' pro rata share of the expense based upon the number of properties subject to the HOA Covenants, and such charges shall be a lien upon the property and may be collected in any manner, including the collection of taxes. In no event, however, shall the Town be obligated to undertake the maintenance, operation or improvement of all or part of any of the facilities, common areas, common open spaces, streets, or other portions of the subdivision for which the homeowners' association is responsible.

17.08.100 Approval of zoning amendment.

- A. No amendment shall be considered or acted upon by the burgess and commissioners unless it is first submitted to for review by and recommendation of the planning commission. If the planning commission recommends against approval of the amendment, it may be approved and adopted only if it receives a majority vote of the entire burgess and commissioners.
- B. Where the purpose and effect of the proposed amendment is to change the zoning classification, the burgess and commissioners shall make findings of fact in each specific case, including, but not limited to, the following matters: population change, availability of public facilities, present and future transportation patterns, compatibility with existing and proposed development for the area, the recommendation of the planning commission and the relationship of such proposed amendment to the town's master plan; and may grant the amendment based upon a finding that there was a substantial change in the character of the neighborhood where the property is located or that there was a mistake in the existing zoning classification. A complete record of the hearing and the votes of all members of the burgess and commission shall be kept.
- C. An application for a reclassification shall not be accepted for filing by the burgess and commission if the application is for the reclassification of the whole or any part of land the reclassification of which has been opposed or denied by the burgess and commission within twelve (12) months from the date of the local legislative body's decision. No change in or departure from the proposed amendment, as recommended by the planning commission, shall be made unless the same is resubmitted to the commission for its further recommendations. No amendments, supplement or change shall be adopted contrary to the recommendations of the planning commission except by a majority vote of the burgess and commissioner.

Middletown Planning Office

MEMORANDUM

To: Middletown Planning Commission

Date: 7/10/2014

From: Cynthia K. Unangst, Middletown Staff Planner

RE: ADULT ENTERTAINMENT BUSINESS TEXT AMENDMENT

On Monday, July 14th, the Town Board introduced the draft text amendment regarding Adult Entertainment Businesses. It is being forwarded to the Planning Commission for your review and recommendation. Recommendation from the Planning Commission is required due to the location of this specific ordinance in the Zoning Section of the Middletown Municipal Code Book.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND TITLE 17 OF THE MIDDLETOWN MUNICIPAL CODE TO PROVIDE DEFINITIONS FOR THE TERMS “ADULT ENTERTAINMENT ACTIVITIES” AND “ADULT ENTERTAINMENT BUSINESS”; 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.

RECITALS

WHEREAS, the Burgess and Commissioners of the Town of Middletown are concerned with the potential adverse secondary effects of adult oriented entertainment businesses which may elect to locate in the Town of Middletown; and

WHEREAS, the Burgess and Commissioners have reviewed the evidence of the adverse secondary effects of adult oriented businesses found in various studies, experiences and reports made available to them and which have been considered by other municipalities and local governments, including but not limited to:

- “Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime? An Examination Using Spatial Analysis” Eric S. McCord and Richard Tewksbury; *Crime & Delinquency*, October 2013; vol. 59, 7: pp. 1108-1125., first published on November 29, 2012.
- “Adult Business Study” Town and Village of Ellicottville, Cattaraugus County, New York January 1998.
- Testimony to Illinois State Senate Public Health Committee March 2012 re: Illinois Senate Bill 3348 of Richard McCleary, (Professor of Criminology, Environmental Health Science, and Planning, University of California, Irvine) and Lori Sexton, (Assistant Professor at the University of Missouri, Kansas City).
- “Crime-Related Secondary Effects Of Sexually-Oriented Businesses” - Report To The County Attorney Palm Beach County, Florida ; Valerie Jenness, Ph.D., Richard McCleary, Ph.D., James W. Meeker, JD, Ph.D. August 15, 2007.

- “The Association of Adult Businesses with Secondary Effects: Legal Doctrine, Social Theory, and Empirical Evidence”, Alan C. Weinstein and Richard McCleary Cleveland-Marshall College of Law, Cleveland State University, October 2011.
- A report on the secondary impacts of adult use businesses in the city of Denver January 1998.
- Caroline County, Maryland Ordinance #2005-002 and findings stated therein;

and

WHEREAS, court decisions considering issues relative to the secondary effects of adult oriented businesses hold that such secondary effects are a legitimate basis for regulating such businesses. Such cases include, but are not limited to:

- *Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002)
- *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000)
- *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986)
- *Steiner v. County Commissioners of Caroline County*, 490 F.Supp.2d 617 (D.Md.,2007)
- *Imaginary Images, Inc. v. Evans*, 612 F.3d 736 (4th Cir. 2010)
- *Independence News, Inc. v. City of Charlotte*, 568 F.3d 148 (4th Cir. 2009);

and

WHEREAS, the material reviewed by the Burgess and Commissioners show that adult oriented businesses are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties and property values, urban blight, litter, and sexual assault and exploitation; and

WHEREAS, the Town of Middletown has a population of 4,136 as of the last census (2010) and is relatively small in size having a geographic area of 1.741 square miles; and

WHEREAS, the Town of Middletown has no police department and must rely upon a resident Frederick County Sheriff's deputy as its primary means of law enforcement, and law enforcement efforts and effectiveness will be increasingly strained with any increase in criminal activity; and

WHEREAS, the Burgess and Commissioners, in an effort to prevent such secondary adverse effects in the Town of Middletown, and to protect and promote the safety, health, morals, and general welfare of the citizens of the Town of Middletown, have determined that the nature of adult oriented businesses requires the enactment of certain zoning restrictions relating thereto and that adult oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Burgess and Commissioners of the Town of Middletown, Maryland that Title 17 of the Middletown Municipal Code be, and hereby is, amended as follows.

SECTION I. Title 17, Chapter 17.04, Section 17.04.030, "Definitions" of the Middletown Municipal Code is hereby amended by adding thereto the definition of "Adult Entertainment Activities" and by adding thereto the definition of "Adult Entertainment Business", "Adult Oriented Business" or "Sexually Oriented Business". Said definitions shall be codified and inserted in Section 17.04.030 of the Code alphabetically. The remaining provisions of Section 17.04.030 remain unchanged.

TITLE 17 ZONING

Chapter 17.04

Section 17.04.030 – Definitions

“Adult Entertainment Activities” means:

A. Any merchandise, object, item, or device that is designed and/or marketed with the intention of causing, or that reasonably may be expected to cause, sexual stimulation, sexual excitement or sexual gratification.

B. Any performance, conduct, activity, depiction, or text that is intended to cause or provide, or reasonably may be expected to cause or provide, sexual stimulation, sexual excitement, or sexual gratification and:

1. in which an individual or individuals appear in a state of nudity or partial nudity; or
2. that consists, in whole or in part, of action, activity, poses, portrayal, depiction, or description of:
 - (a) human genitals in a discernable state of sexual stimulation or arousal; or
 - (b) any act, whether real or simulated, of masturbation, sexual intercourse, anal intercourse, sodomy, fellatio, cunnilingus, fondling of the buttocks, anus, female breasts, pubic area, or genital area, sadomasochistic activity, physical contact or attempted contact with clothed or unclothed genitals, pubic areas, buttocks, anus, or female breasts; or
3. consists of contact with animals or inanimate objects.

“Adult Entertainment Business” also known as “Adult Oriented Business” or “Sexually Oriented Business” means a business establishment whose primary business and stock in trade is dependent upon Adult Entertainment Activities. By way of example, and not by way of limitation, the following shall be considered as an adult entertainment business:

A. An arcade or other place to which the public is permitted or invited and where photographs, motion pictures or other image-producing devices are maintained to, for money or other value, show images depicting or describing Adult Entertainment Activities.

B. A bar, club, cabaret, lounge, dance hall, restaurant, or other similar establishment or place of business which features dancers, strippers or similar entertainers or employees that engage in Adult Entertainment Activities, or any such business establishment, the advertising for, or a sign identifying which, uses the words, "adult," "topless," "nude," "bottomless," or other words of similar import.

C. A motion picture theater or similar commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, CDs, DVDs, slides, or similar photographic reproductions are regularly, commonly, habitually, or consistently shown that are characterized by the depiction or description of Adult Entertainment Activities.

D. A retail store or similar commercial establishment that, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video cassettes or video reproductions, slides, or other visual representations that depict or describe Adult Entertainment Activities, and novelty items, games, greeting cards, instruments, devices, or paraphernalia that are designed for use in connection with Adult Entertainment Activities.

SECTION II. Title 17, Chapter 17.32, of the Middletown Municipal Code is hereby amended by adding thereto the following as Section 17.32.225.

TITLE 17 ZONING

Chapter 17.32 Design Standards Generally

Section 17.32.225 – Adult Entertainment Business

A. It is the purpose of this ordinance to regulate Adult Entertainment Business in order to promote the health, safety, and general welfare of the citizens of the town, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of Adult Entertainment Business within the town. It is the intent of the Burgess and Board of Commissioners in adopting this ordinance to enact a content neutral ordinance that imposes time, place and manner restrictions in order to address the adverse secondary effects of Adult Entertainment Business. It is not the intent of the Burgess and Board of Commissioners to suppress any speech protected by the First Amendment to the United States Constitution or Article 40 of the Maryland Declaration of Rights. Similarly, it is neither the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material.

b. Adult Entertainment Businesses are permitted provided that such businesses are not located within 1,500 feet of any school, park, child day care center, church or house of worship or another Adult Entertainment Business. For the purpose of this sub-section, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where an Adult Entertainment Business is conducted to the nearest property line of the school, park, child day care center, church or house of worship, or other Adult Entertainment Business.

SECTION III. BE IT FURTHER ENACTED AND ORDAINED that this Ordinance shall take effect twenty (20) calendar days following its approval by the Burgess and Commissioners.

INTRODUCED ON THE _____ DAY OF _____, 2014

PASSED ON THE _____ DAY OF _____, 2014

EFFECTIVE DATE: _____, 2014

ATTEST:

**BURGESS AND COMMISSIONERS
OF MIDDLETOWN**

Andrew J. Bowen, Town Administrator

By: _____
John D. Miller, Burgess

Town of Middletown Planning Department

To: Burgess & Commissioners and Middletown Planning Commission

From: Cindy Unangst, Staff Planner

Date: 7/7/2014

RE: Monthly Planning Update

Major Subdivisions:

Coblentz on Green – SWM Concept Plan – approved by County October 15, 2010
Water Tap agreement approved by Burgess & Commissioners – March 2012
Planning Commission approved Forest Stand Delineation/Forest Conservation Plan – Jan 2013
Master Plan Amendment approved - March 11, 2013
Planning Commission conditionally approved preliminary plan – March 18, 2013
Improvement plans conditionally approved – October 16, 2013
Final FRO Plan approved – April 21, 2014

Foxfield Section 4- 8 homes still to be built.
2nd year FRO review – 68% compliance – 196 additional trees were planted (May 2014)
With additional trees planted, the rest of the FRO LOC was released – June 2014.

Site Plans and Minor Subdivisions:

AMVETS Expansion Plans – Revised Site Plan approved – May 19, 2014

Chesterbrook Apts/Middletown Valley Apts - Site Plan approved – July 17, 2006
Improvement Plans approved and signed – September 16, 2008
SWM waiver received from County – May 12, 2011
SWM admin waiver shall expire on May 4, 2017; final plans approved prior to May 4, 2013.

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

Hollow Creek Golf Course SWM Pond #1 Revision plans submitted to County - December 1, 2010
Plans approved by County – December 22, 2010
Revised Plans submitted for PC review – December 30, 2010

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

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

Newton Property (Cross Stone Commons) – Concept Plan submitted – October 1, 2012
Traffic Impact Study submitted – October 18, 2012
BOA Special Exception Use Hearing – May 8, 2013 (Conditionally approved)
FRO Preliminary Plan approved – November 18, 2013
Addition Plat conditionally approved by PC – November 18, 2013
Revised Site Plan conditionally approved by PC – November 18, 2013
Improvement Plans submitted – February 5, 2014
Revised architectural plans approved by PC – March 17, 2014
Final FRO Plan approved – May 19, 2014

Potomac Gun Depot – plans conditionally approved – February 18, 2013
Revised site plan conditionally approved – June 17, 2013; (Plans expire June 17, 2016)

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)

Subway property - Garden Center – Revised Site plan conditionally approved – May 19, 2014

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

Verizon Small Cell Antenna Installation – site plan reviewed – June 16, 2014
Revised site plan submitted – June 25, 2014

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 – ongoing

Active Adult text amendment – received language from Farhad – October 28, 2013
Planning Commission recommended approval of text amendment with cluster development regulations – March 17, 2014
Public Hearing held May 12, 2014
Town Board decided to send text amendment back to the PC due to disagreement with placement of text amendment in the Town Code – June 23, 2014.

Adult Uses text amendment – Town Board will introduce draft ordinance on July 14, 2014

Reports: **Approved Annual Report sent to MDP – June 24, 2014**