



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

Meeting Minutes for March 17, 2015

The Middletown Board of Appeals (BoA) met on Tuesday, March 17, 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 Zoning Administrator, Ron Forrester.

Others present: Kirk Overfield (resident), Brian Sheffler (resident), John Callan (resident), Mark Carney (resident), David Lake (resident), Vincent Simmel (resident), Myron Ahalt (resident), and Sara Remsberg Weitzel (resident).

Minutes – Chairman Rudy asked if there were any corrections to the January 13, 2015 BoA meeting minutes as submitted. Hearing no comments, the minutes were approved as submitted.

The Zoning Administrator stated that for both cases all appropriate actions were taken; they were properly advertised, adjoining property owners were notified and the properties were properly posted.

Case MT-B-15-3 (Kirk and Mary Overfield, 122 East Main Street) – Applicant requests a variance of 1.5 feet from both 6 foot side yard setbacks/Building Restriction Lines for construction of a two-story garage accessory building in rear yard of property, replacing an existing dilapidated carport that the owners have filed a demolition permit to the Middletown Planning Commission to remove.

Staff Report:

The applicants are filing for a variance of 1.5 feet from both of the required 6 foot side yard setbacks/Building Restriction Lines (BRLs) for building a two-story garage accessory building in the rear yard of the property. The two-story garage accessory building is replacing a dilapidated carport structure that the applicants have filed for approval of a demolition permit to the Middletown Planning Commission and Frederick County for the removal of the current dilapidated carport structure on the property. The applicants have applied for a building permit to construct a two story garage accessory structure on their property if their requests for variances are approved by the Board of Appeals and their demolition permit is approved by the Frederick

County Department of Permits and Inspections. The Middletown Planning Commission approved the demolition permit on March 16, 2015

Staff notes that the lot at 122 East Main Street is irregular in shape – long and narrow (42 feet by 290 feet). An aerial view of properties in the 100 block of East Main Street note several lots that are similar in shape and dimensions to the lot at 122 East Main Street. The conditions for this property (narrow width) creates an unnecessary hardship for the applicants due to their property’s physical shape and dimensions and not conditions generally created by the provisions of the zoning ordinance in the neighborhood or district along the 100 block of East Main Street. Because of these physical limitations, it is not possible for the applicants to construct a new garage accessory structure on their property once the dilapidated carport is demolished in strict conformity with the provisions of the zoning ordinance. The authorization of the variances requested are necessary to enable the reasonable use of this property by the applicants consistent with other surrounding properties. The applicants have not created these property conditions. Staff notes that the primary structure on this property was built in 1910 before there were zoning ordinances for residential properties in Middletown. The initial zoning ordinances for the town were implemented in 1969.

If the variances applied for/requested are granted, staff notes that it will not alter the essential character of the neighborhood or district in which the property is located on East Main Street, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. Staff supports the variances as presented by the applicants as reasonable to afford them relief from Section 17.32.170(D) of the Code while representing a reasonable modification of the regulation in use.

Discussions:

Chairman Rudy asked for comments from the audience.

John Callan, 120 East Main Street, stated that he and his wife moved to the neighborhood in 1988. They are neighbors to the Overfields. He stated they are great neighbors. Mr. Callan is for the granting of the variance, and hopes the BoA does grant it.

Action:

Board member Kyler motioned to approve the variance as requested. The hardship being the physical limitations of the property (shape and dimensions) not allowing the construction of the garage to meet the Town code. Board member Routzahn seconded. The motion carried (3-0)

Case MT-B-15-2 (Brian Sheffler, 9 Linden Boulevard) – Applicant requests a special exception in order to park a restricted vehicle in his driveway at 9 Linden Blvd - a residentially zoned neighborhood.

Staff Report:

The applicant is filing an appeal for a special exception to allow him to park a restricted vehicle (Hawkins Electric truck) on his property at 9 Linden Blvd and/or on Linden Blvd in front of his residence. The vehicle is seven (7) feet six (6) inches wide, nine (9) feet four (4) inches high and twenty-five (25) feet long. A restricted vehicle is defined in Section 17.04.030 of the municipal code as a "...motor vehicle with permanent outside dimensions greater than eight (8) feet wide or eight (8) feet tall or twenty-two (22) feet long..."The vehicle's height of nine feet four inches exceeds the height dimension of eight (8) feet by sixteen (16) inches and the vehicle's length of twenty-five (25) feet exceeds the length dimension by three (3) feet.

Staff notes that Section 17.32.060 (J) (3) – *Off-Street Parking in Residential Districts*, states that a person may not park a restricted vehicle in a front yard of a residentially zoned property unless the restricted vehicle is defined in the *Maryland Transportation Code* as a civil emergency vehicle such as public utility crews vehicles and snow plows, and recovery vehicles including tow trucks. Based on *Maryland Transportation Code*, the vehicle in question is not defined as a civil emergency vehicle.

Section 17.32.065 – *On-street parking of restricted vehicles in residential districts*, states that "...a person may not park a restricted vehicle on any street in or adjacent to any residential district in Middletown." The only exceptions noted to this section of the code are for vehicles parked for the purpose of loading or unloading freight or passengers and for vehicles parked in connection with the performance of services to any property or public utility. The vehicle being considered does not meet these exceptions for parking on the street in a residential district. Section 17.32.150 – *Restricted vehicles*, provides provisions for restricted vehicles in the residential districts. It states that it is unlawful to park a restricted vehicle in a residential districts except upon approval of a special exception by the Middletown Board of Appeals (BoA).

The standards for approval of special exceptions are addressed in Section 17.48.320, *Restricted vehicles in residential districts*, of the municipal code. This section states that the parking of restricted vehicles in residential districts are subject to the requirements of those districts except where a special exception is granted. Special exception applicants must obtain site plan approval from the Middletown Planning Commission which, at a minimum, shall address screening and setback issues. Staff notes that the front yard setback for the R1 district is 35 feet. Given that the length of the Hawkins Electric truck is 22 feet, the truck, if parked at the top of the driveway near the residence, would still be parked in the front yard setback of the property. Additionally, there is no vegetation or other materials in place that would screen this restricted vehicle from adjacent or adjoining properties. Section 17.48.320 also states that special exception approval is granted for specific property owners for specific properties and that the approval shall not run with the land. Section 17.44.060 – *Special exceptions*, subparagraph C, requires that all applications for a special exception shall be referred to the Middletown Planning Commission for a recommendation. The applicant appeared before the planning commission at their March 16, 2015 public meeting.

Staff notes the applicant is an electrician who is "on-call" to respond to service calls and other emergency situations for his company's customers after normal work hours and on weekends.

The applicant has stated that his employer has determined that the vehicle provided is the minimum sized vehicle needed to ensure the applicant has the necessary tools, parts and supplies to respond effectively to most electrical emergencies facing his company's customers for the type of service calls he routinely performs.

If the special exception applied for/requested is granted, staff notes that it is granted specifically to Mr. Sheffler at 9 Linden Blvd and applies to no other residentially zoned properties in Middletown. Granting a special exception is not deemed to be detrimental to the public welfare. Staff notes that granting of a special exception must meet the specific standards set forth in Chapter 17.48.320, *Restricted vehicles in residential districts*, of the municipal code for each particular use for which a special exception may be granted have been met. Other factors included in Section 17.44.060 *Special exceptions* to be considered include whether the proposed exception is in harmony with the intent of the district and whether the parking of a restricted vehicle in a residential district will impair the value of adjacent land and buildings.

Discussions:

Chairman Rudy asked for comments from the audience.

Brian Sheffler, 9 Linden Boulevard (applicant), passed out information packets to the BoA members that included, letters of support from 2 neighbors, and a petition signed by neighbors in support of Mr. Sheffler being granted the special exception. Mr. Sheffler stated that he needs to park his vehicle at his property in order to respond to emergency and after hour service calls he receives as part of his employment. If he is not allowed to park the vehicle at his home he will have to change his position within the company which would decrease his income and bring in to question his ability to keep his home. He stated that parking the commercial vehicle at the Town parking lots increases his response time to emergency and after hour service calls. The vehicle contains equipment worth thousands of dollars. Parking it in a Town parking lot does leave it more vulnerable to theft. He purchased his home to live next door to his grandmother in order to help take care of her.

Board member Kyler asked how often Mr. Sheffler is on call. Mr. Sheffler stated that he is scheduled for on call once every 4 weeks, but is often called in when he is not scheduled, and is expected to take those calls as well.

Board member Routzahn asked if Mr. Sheffler has had any problems with theft when parking the truck at his residence. Mr. Sheffler stated not yet.

Board member Kyler asked if this was a front yard or a side yard to the property where the truck is parked. The Zoning Administrator stated it was the front yard.

Board member Kyler asked if there was any way Mr. Sheffler could access the rear of his property using the alley that runs along the back of his property. Mr. Sheffler stated that there is a 2 foot high wall that runs along the back of his property which blocks access.

Vincent Simmel, 11 Linden Boulevard, stated that he moved into the neighborhood 3 years ago. Mr. Sheffler's truck has been parked at his property during that time. He stated that there are younger families moving in to the neighborhood, and they are all working class. The truck parking there is a reflection of the folks who live in that neighborhood and should be allowed to continue to be parked there.

Myron Ahalt, 308 East Main Street, stated he borders the back of Mr. Sheffler's property. The alley mentioned is a right-of-way for his property and to the property next door to him on East Main Street. Mr. Ahalt stated that he has worked at a number of jobs which require taking a work vehicle home. He recognizes that there is a lot of money invested in the work truck in both tools and other equipment, and that those types of trucks should not be parked overnight in a Town parking lot.

Mark Carney, 22 Gray Fox Court, stated he is chairman of the Middletown Planning Commission. He was not in attendance at the last Planning Commission meeting where this issue was discussed. He stated that the Town has been through this issue of restricted vehicles, and text amendments were created when a tow truck was in question. At that time it was determined that there were requirements associated with the tow truck and that a calendar requirement was identified for the number of days it could be allowed to park in a residential district. Mr. Carney's main concern is that if the BoA allows this exception for this truck, then there will be other trucks as well. There are many business trucks of this nature that park at their place of business or the public lots. With the tow truck incident it was determined that the applicant had a contract with a civil emergency vehicle and then identified how many times he was on call. Mr. Carney stated his second concern is the size of the truck and that it is basically an advertisement for the company. The Town does not allow billboards in town.

Board member Kyler asked what if it was a smaller vehicle with the signs. Mr. Carney stated, there would be no problem with it. The current truck is a restricted vehicle. It also has that advertising on it. Mr. Carney said that he would not want to have that in his neighborhood. He said once we start this, we are saying that we are allowing it in the Town. There are other towns in Frederick County where it is allowed and multiple trucks are parked in the street and in the driveways. He didn't think it reflects the quality of life expected in Middletown.

Board member Routzahn asked what the problem was with the screening with the Planning Commission.

David Lake, 24 East Green Street, stated the problem is that there really is no room for screening. Also, the applicant did not propose anything at the Planning Commission meeting.

Board member Kyler stated that Mr. Sheffler's request was for either on street or off street parking.

Mr. Lake stated the Planning Commission deals only with "on property". As shown in the photos provided, there is no room for screening. The screening would have to be 9-10 feet tall. Mr. Lake further stated that it was not the Planning Commission's responsibility to find

screening. Its job was to determine if what was being offered was addressing the intent of the zoning code. What was being offered was not the intent of the zoning code.

The Zoning Administrator stated that in his staff report he specifically addressed that the way the code reads is that the BoA in looking at this issue of restricted vehicles has certain guidelines for special exceptions that they are to focus on. That listed in section 17.48.320 of the Town Code. It references a site plan that is approved by the Planning Commission for this special exception, which is at a minimum to address screenings and setbacks. Other areas of the code reference that section. The implications in reading that and reviewing a special exception for restricted vehicles in Middletown is that it implies that only restricted vehicles parked on residential property are the only time a site plan of this nature is needed. The Zoning Administrator stated that when responding to Board member Kyler's question regarding on-street parking he did not see anything in the Code that allows the BoA to address that section of the Town Code that restricts on-street parking.

Board member Kyler asked if the BoA was premature in hearing this case because the applicant has not presented any site plan to the Planning Commission. Mr. Lake stated that the site plan comes after the applicant receives the special exception. The Zoning Administrator stated that the applicant was made aware of the requirement of the code about providing this type of information to the Planning Commission. The BoA has in front of it the Planning Commission's recommendation on this case; there was no site plan, no screening, and no setbacks so the Planning Commission recommended denial of the special exception.

Board member Kyler stated that the BoA had been down this road before with the tow truck case. The question is what they would be approving. Is the BoA approving that particular truck, or that class of truck? The Town is driven by complaints, how would the BoA know that the truck is within the special exception that was given. Board member Kyler further stated that personally he did not have a problem with the truck being there, but that is not the question. The question is the special exception, and then the applicant then going back to the Planning Commission with the site plan. Board member Kyler asked Board member Routzahn if he had any thoughts on the case.

Board member Routzahn stated that he agreed with Board member Kyler that those are the issues. Board member Routzahn also stated that he did not have a problem with the truck either as it is almost a necessity for Mr. Sheffler to have it parked at his residence.

Board member Kyler asked if Mr. Sheffler had considered other options such as trying to come in through that alley into the back of his property. Board member Routzahn asked the applicant if the wall was his. Mr. Sheffler said yes. Board member Kyler asked if it was a public access alley. Mr. Ahalt stated No, that he pays the taxes on it.

Board member Kyler stated that he is trying to help Mr. Sheffler out within the rules. From the aerial photos there does not look like there is room down the side of the house for a driveway to the rear.

Sarah Remsberg Weitzel, 10 Linden Boulevard, stated that she has no problems with Mr. Sheffler parking his truck on the street. Even when it is parked on the street she has no problem entering or exiting her driveway. She lives directly across from the Sheffler residence. She doesn't understand the regulations, but she doesn't mind Mr. Sheffler parking there.

Board member Kyler stated that Mr. Sheffler's problem is not the BoA, but the Planning Commission. If the BoA ignored the Planning Commission recommendation and approved the special exception the bigger problem is the site plan and screening.

Mr. Sheffler stated that last night at the Planning Commission meeting the Zoning Administrator stated that there was a possibility for a waiver from the Planning Commission concerning screening and setbacks. The Zoning Administrator said that was the only way with the way that the Code reads; if Mr. Sheffler does not get a special exception from the BoA he is not going to be able to park his vehicle at his residence. The Zoning Administrator couldn't address the other items which could potentially be used in another motion. The scope of the motion is that the BoA could address screening and setbacks as part of their recommendation based on his interpretation of Section 17.48.320.

Mr. Carney stated that the interpretation of a request to waive a requirement of the Planning Commission would have to come from the Planning Commission since it is a Planning Commission requirement for screening and setback. Board member Routzahn agreed with Mr. Carney that it would have to go to the Planning Commission to make the waiver determination.

Board member Kyler stated that he thinks the applicant deserves a chance. If the applicant is shut down now he does not have the opportunity to go in front of the Planning Commission and request a waiver.

Action:

Board member Kyler motioned to grant the special exception as requested. Board member Routzahn seconded. Motion carried (3-0).

The meeting adjourned at 7:35 p.m.

Respectfully submitted,

Annette Alberghini
Town Receptionist