

MIDDLETOWN BOARD OF APPEALS
Middletown, Maryland 21769

Board of Appeals Minutes

November 19, 2014

The Middletown Board of Appeals (BoA) met on Wednesday, November 19, 2014 at 7:00 p.m. at the Middletown Municipal Center, 31 W. Main Street, Middletown, MD 21769. Present were Chairman Fred Rudy, Kenneth Kyler, Tommy Routzahn, Alex Kundrick (alternate) and Zoning Administrator, Ron Forrester.

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

Minutes – Chairman Rudy asked if there were any corrections to the June 24, 2014 minutes. None were given. The minutes were approved as submitted.

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

Case MT-B-14-2 (Heather and Matt Delauter, 329 South Jefferson Street) – asking for a variance of 25’ from the 35’ front yard setback, a variance of 17’ from the 40’ rear yard setback, and a variance from required minimum 6000 square feet lot size in the R-2 Residential District for constructing a single-family dwelling.

Staff Report:

The Zoning Administrator reported that the applicant is filing for a variance of 25 feet from the required 35 feet front yard setback/Building Restriction Line (BRL) and variance of 17 feet from the required 40 feet rear yard setback/BRL for building a single family dwelling. Additionally, a variance from the required minimum lot size of 6000 square feet for a single-family dwelling in a R-2 residential district. The lot is approximately 5227 square feet (.12 acres) with an irregular shape. The front lot line is 77.72 feet, the north lot line is 58.52 feet, the rear lot line is 67.02 feet, and the south lot line is 80.41 feet. With a drainage ditch on the north side of the lot, the proposed single family dwelling is offset on the lot to compensate for this feature. The current single family dwelling on the property is 672 square feet in size and was built in 1890. The applicants received approval for a demolition permit from the Middletown Planning Commission on November 17, 2014 to remove the current dilapidated, uninhabitable structure. After an inspection of the current structure, it was deemed structurally unsound and cannot be refurbished

or restored. The applicants will apply for a building permit to construct a small Cape Cod style home on the property if their requests for variances are approved by the Board of Appeals.

The Zoning Administrator noted that the lot at 329 South Jefferson Street is irregular in shape, narrow and shallow in size with a drainage ditch along the north property lot. These conditions are peculiar to this particular property and create an unnecessary hardship for the applicants due to these conditions and not conditions generally created by the provisions of the zoning ordinance in the neighborhood or district along the 300 block of South Jefferson Street. Because of these physical limitations, it is not possible for the applicants to construct a new home on the property once the uninhabitable house is demolished in strict conformity with the provisions of the zoning ordinance and that the authorization of the variances requested are necessary to enable the reasonable use of the property. The applicants have not created these property conditions.

If the variances requested are granted, it will not alter the essential character of the neighborhood or district in which the property is located on South Jefferson Street, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Zoning Administrator supports the variances as presented by the applicants as reasonable to afford them relief from Section 17.16.070 of the Code while representing a reasonable modification of the regulation in use.

Discussion:

Board member Kyler asked the applicant, when determining the setbacks why those distances. Heather Delauter stated that when trying to set the house on the lot, they wanted to leave room behind the house to build a deck, construct a shed and still leave room for a small backyard. Board member Kyler stated that a hardship exists because having no back yard presents a safety hazard for children who would be forced to play in the front yard next to a busy street.

Board member Routzahn stated that there are many factors against that property without the variances. Ms. Delauter agreed.

Chairman Rudy asked if any neighbors wanted to comment.

Bob Smart, 7525 Coblenz Road, stated that South Jefferson Street is one of the older streets in Town. Many of the houses along that are very close to the street. The applicant's request for a 10' setback is consistent with other houses as you drive up and down Jefferson. It would not be out of appearance with the others houses on those older lots. It was common when those houses were built to be built close to the street. Setting it further back would make it look out of line with the other homes in the neighborhood.

Action:

Board member Kyler motioned to approve all variances requested. Seconded by Board member Routzahn. Motion carried (3-0).

When asked by Mrs. Delauter, the Zoning Administrator stated that the applicants will receive an official notification that their variances have been approved.

Case MT-B-14-3 (Chesterbrook Land, LLC, Chesterbrook Phase 2 Development) – requesting variances from the Section 17.16.050 - Building height regulations and unit limitations for structures in residential districts, Section 17.16.075 - Open space requirements, and Section 17.16.080 - Townhouse development/Density portions of the Middletown Municipal Code for the proposed construction of twenty (20) townhouse condominium units.

Staff Report:

The Zoning Administrator reported that the applicant is filing for variances in three sections of the Middletown Municipal Code.

- Section 17.16.050 - Building height regulations and unit limitations for structures in residential districts requires that “*No building will exceed two and one-half stories or thirty-five (35) feet in height.*” The applicant is requesting a variance that allows a height of three (3) stories, with a maximum height of forty (40) feet. This variance allows the applicant to use a garage-townhouse design, which facilitates a reduction in the amount of impervious surface (due to fewer parking spaces). The small lot size and the new storm water management regulations necessitate reducing the impervious surface area.
- Section 17.16.075 - Open space requirements requires that residential projects of five or more dwelling units in one structure that “*...at least .05 acres per dwelling unit shall be devoted to use as an active recreational area for the combined area being developed.*” The proposed development of 20 condominium units based on the code would require one (1) acre of active recreational open space. The applicant requests a variance and waiver of this requirement since this project is essentially phase two of the existing Chesterbrook Apartments (Middletown Valley Apartments) site. The applicant contends that consideration should be given to existing open space and recreational areas as well as the number of town parks in the proximity of the project (i.e., Middletown Memorial Park to the north, Remsberg Park to the south, etc.) servicing the larger area inclusive of the Chesterbrook Phase 2 project. The applicant anticipates that the amenities available in the Middletown Valley Apartments (Lot 2) would be available to the residents of their project subject to further discussions and agreements.
- 17.16.080(B) - Townhouse development / Density requires that “*The overall density shall not exceed one dwelling unit per six thousand (6,000) square feet or 7.26 units per acre of the net development area excluding floodplain and slopes of twenty-five (25) percent or more.*” While this project consists of 20 dwellings owned as separate condominiums on one contiguous lot, the applicant states that dwelling units are more in line with a “townhouse development” and is requesting a variance to allow for an overall density not to exceed one dwelling unit per three thousand seven hundred and eighty-four (3,784) square feet.

The originally conceived “Chesterbrook Manor” was approved for seven (7) multi-family dwelling unit apartment buildings and that these improvements were approved under Zoning

Ordinances in effect in 1969 (45 years ago). (Note: Site Plan for Chesterbrook Residential Rental Apartments – Phase 2, 16 rentals units was approved by Planning Commission on February 2, 2007). It is also noted that a change in the approved planned use of Phase 2 requires the applicant to make infrastructure improvements in order to comply with Zoning Ordinances currently in effect to include storm water management facilities, road and pedestrian improvements, water/sewer infrastructure, etc.

The lot is irregular in shape provides some challenges for the applicant in developing the property and building condominium units versus apartment buildings based on new and stricter storm water management requirements, etc. The applicant's position is that the physical circumstances or conditions of the property preclude the possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of variances are necessary to enable the reasonable use of the property. The applicant states that variances are required to Sections 17.16.050 – Building height regulations, 17.16.075 – Open space requirements and 17.16.080 – Townhouse development (density). The rationale is that variances are needed “in order to develop Lot 1 to its highest and best use while providing the necessary infrastructure improvements...to develop the Property with attractive, garage-loaded townhouse product at densities supporting the necessary road improvements benefiting the Town as a whole requires the requested variances.”

Staff notes this type of townhouse-condominium development is not well defined in the code. If the variances requested are granted, it will not alter the essential character of the neighborhood or district in which the property is located at the intersection of Broad Street and Franklin Street, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. Staff finds the variances as presented by the applicant as reasonable to afford them relief from Section 17.16.050, 17.16.075, and 17.16.080(B) of the Code while representing a reasonable modification of the regulation in use.

Discussions:

Chairman Rudy asked if the BoA needed to vote on each request for variance separately or as one package. The Zoning Administrator stated that it was the Board's prerogative as to how it wanted to proceed. Chairman Rudy stated they should take them one by one.

Chairman asked for comments from the applicants.

Noel Manalo, Miles & Stockbridge, 15 N. Court Street, Frederick, MD
Andrew Brown, J.F. Brown, III & Associates, Old National Pike, Middletown, MD

Noel Manalo thanked the Chairman for the opportunity to speak on behalf of the applicant. He stated for the record his concurrence with the staff report as presented, and that he and Mr. Brown are willing to answer any questions the BoA might have regarding their request.

Board member Routzahn stated that they are asking for the additional 5 feet in height, he is assuming for the garage beneath. Mr. Manalo stated that is correct.

Chairman Rudy asked if anyone in the audience wanted to comment.

Trevor Dodman, 203 Franklin Street, lives across the street from the Chesterbrook development, stated he has comments related to the other two variance requests for this property. He stated in the notes he is looking at the Town website dated 10/20/14 which states that the rationale for the request for variance has to do with amount of impervious surface. He would like someone to explain that to him.

Noel Manalo stated that in regards to impervious surface they are referring to parking on the site. If the BoA saw fit to grant a variance, it would allow the garage product which would decrease the need for paved parking spaces. Without the garage-style townhouse unit, we would have to have more paved parking spaces. So the variance requested allows the developer to decrease the need for impervious parking surfaces and would the development to be in compliance with stormwater management regulations currently in place that addresses the water that would be running across those surfaces.

Trevor Dodman said he assumed that building fewer units on the site would also reduce the amount of impervious surface required. In other words, the solution is not to just build higher units to meet stormwater management regulations, you could also build fewer units.

Thomas Poss, Verdant Development Group, 5310 Spectrum Drive, Frederick, MD, stated he is with the developer of the project. This situation is somewhat unique in that it currently has a valid Site Plan for the construction of sixteen, two and one-half story rental townhomes with surface parking. He said the development group chose to go to a redesign option that would allow them to construct for-sale units of higher value with garage parking and a nicer unit versus more rental units in the same location. He stated that if they wanted to, the developer could pull a grading permit tomorrow and begin construction on what is approved now, under the old stormwater management regulations which has the old impervious paving requirements with less green space, etc. The redesign is more expensive to develop but requires paving that allows water to move through, and has bio filters, etc. So yes, there are four more units, the tradeoff is we are going with a for-sale higher priced unit versus a rental unit in that location. We decrease the impervious area which is facilitated by the garages under the townhomes. The options are to either built sixteen rental units, two and one-half story condominiums, or we go through with this redesign, build something a little bit nicer, with a nicer transition from the apartments to the neighborhood around it. Thus the request to the BoA for the variances.

Board member Routzahn asked if these new condos would be sold as well as rented. Mr. Poss stated that no, these would all be for sale. Board member Kyler asked what the prices would be. Mr. Poss stated they would be in the \$300,000 range.

Chairman Rudy asked for any other comments or input from those in attendance in regards to the height of the units.

Board member Routzahn asked, since we broke this up into the three different variances, what is your feeling if one of the variances you requested is rejected. Mr. Poss stated that in order to make the change from the existing approved Site Plan to what we feel is the better plan for the

Town, for the neighborhood, and bringing it current with the new stormwater management, we need all three variances. The alternative is we would just construct what is approved.

Mr. Manalo stated that in relation to density in considering the constraints of the site, it would be difficult to analyze the variances separately. Chairman Rudy then asked the applicant if they wanted to talk about all the variances at the same time. Mr. Manalo stated yes.

Board member Kyler stated he did not understand the requested for greater density. It says they are more in line with the townhouse development. If they are more in line with a townhouse development, what is your rationale for asking for more density, where is your correlation? Mr. Manalo stated that it falls somewhat in between when you walk by the product, it looks like a townhome product, but its ownership is in a condominium structure with common space, but separately sold units.

Board member Kyler asked what the alternative is if it is not a townhouse. Mr. Poss stated the zoning ordinance, when drafted, viewed condominiums as either your traditional 3 story garden apartment/condominium or you had a townhome. Chairman Rudy asked Bob Smart for his view since he is a member of the Planning Commission.

Bob Smart stated in his opinion they are crossing 2 different items. We are crossing the concept of ownership methods which is a condominium and a building structure style which is a townhouse versus an apartment. I believe that the applicant is choosing to consider it as a condominium or a townhouse as to which gives them the most favorable point at each individual point of the discussion and bounces back and forth. I believe that as a structure, it is a townhouse. What the method of ownership is does not matter to the density.

Board member Kyler asked if it is not a townhouse, what it is. Mr. Smart replied, I think it is a townhouse. The Zoning Administrator stated that it is a townhouse in the code that they are asking the variance from. So it is a townhouse from a structural perspective. Taking ownership aside, when looking at the rest of the code it is either single family, dual family, multifamily – but not a condominium, or a townhouse. Board member Kyler stated so that is the part that is missing, multifamily- but not a condominium. The Zoning Administrator stated they are asking for a variance from the townhouse piece from a structural perspective, but then you must look at other development aspects of townhouses under the same section of the code, and are they complying with all that, some of that, or none of that.

Board member Kyler asked what the density requirement is for a multifamily – not a condominium structure. The Zoning Administrator stated 4000 square feet is the lot size. Board member Kyler asked if they wanted this to be considered a multifamily house – not a condominium since its square footage correlates roughly what they are asking for. The Zoning Administrator said yes, what the developer is asking for in this variance correlates to multifamily. Andrew Brown stated it was consistent with the rest of Chesterbrook.

T. J. Manson, 114 Franklin Street, Middletown, MD stated he wanted to be sworn in to be part of the conversation. He will speak when he sees the opportunity.

Board member Routzahn asked if there are any other adjacent neighbor property owners that would like to say something. No response.

Board member Kyler said he was struggling with the open space requirements. If this is going to be owned property versus managed by the same company that owns/manages the apartments, how is it the open space for the apartments is open space for this development. Mr. Poss stated that there will still be a condominium association that will manage the limited common areas. Board member Kyler asked if the applicant would have some sort of legal agreement with the owner of the apartment complex. Mr. Poss said yes. Board member Kyler asked what that arrangement would be. Mr. Poss stated it would be an easement. Board member Kyler asked, for the kids to go use the playground. Mr. Poss replied correct. Board member Routzahn asked if the applicant would be providing any additional recreational space. Mr. Poss said they would not be providing additional recreational space. It should be noted that the existing approved Site Plan in place right now is consistent with that, that there is no additional recreational space provided. Board member Kyler stated the difference then is this, you are still one business unit, if it is an expansion of the apartment complex with the same managing entity correct. Mr. Poss said no. Board member Routzahn stated that this would be a different home owners association. Mr. Poss noted the original approved site/improvements plans valid right now for 16 rental units were approved within the last 6 years is pending grading permits right now. All we are trying to do is modify it. Chairman Rudy asked the Zoning Administrator what the open space requirement would be if we looked at both the apartments and this proposal, would they meet the combined open space requirements. The Zoning Administrator stated he did not calculate that. Board member Kyler stated it would be far from it. The Zoning Administrator displayed the aerial view of the property and showed the Board members the site that the developers are discussing next to the Middletown Valley Apartment complex. He stated that if you included the open property on the left side, it might be enough to meet the requirement for the entire complex, but he would have to calculate it.

Mr. Smart stated as he remembered it, when the applicant for the rental townhouses came before the Planning Commission several years ago, the ownership then was the same as the ownership of Chesterbrook apartments and, therefore, any open space, because it was a single ownership property was part of the same ownership group and could combine all open space on that site plan. The new proposal has different ownership. Mr. Poss said then as now it was a recorded separate lot and there was no deed restriction that said it couldn't be sold. We want to do the exact same thing and are agreeable to having the variances granted subject to having the easements in place.

Board member Kyler stated there are two things he would like to know. One, would the combined properties meet the density requirement. If they do, that is one answer. If they don't, then he is struggling with that issue.

Mr. Brown approached the board with copies of several density studies which were done for both properties. Study 1 shows proposed density for lot 1 which is 1/3784 sq. ft. Study 2 is just for lot 2/ just Chesterbrook apartments 1/4184 sq.ft., which is over the 1/4000 sq. ft. for multifamily. Study 3 is when you take both lot1 and lot 2 total acreage/total number of units which comes out to 1/4107 sq. ft. We are meeting that 1/4000 sq. ft. that used to govern the entire site. The

previously approved plan for 16 rental units is 1/4730 sq. ft. Study 5 is the actual Site Plan from 1969 is 1/3560 sq. ft. And study 6, which I think is the most important, since our site is in fill, we are using areas off site to facilitate our development, i.e. the common entrance coming in, the storm pond we are going to be building is off of our lot and the outfall of our storm easements are going to be outside of our property, so if you consider all of that, it puts us at 1/5700 sq. ft. Board member Kyler stated I really meant open space. What I am drilling down on now is the open space. You are taking the two entities and combining them together, because that is what you are essentially proposing from the open space perspective, would they meet the open space requirement for the recreational purposes. He noted that there are no sidewalks on Church Street/MD Route 17 to get to Memorial Park, the closest recreational area. Mr. Brown stated that it is 350 feet to the municipal park. Board member Kyler stated there is no sidewalk on that side of the street. Mr. Brown stated that if you wanted to build an active park for the development and our development, you would need 7 acres available. Board member Kyler stated so you are not going to meet that requirement.

Mr. Dodman asked about the 2008 Site Plans being used as a weight on the other side of the scale, how long are they active/good for? And wouldn't they need a variance for this as well? Mr. Poss stated the answer is the site plans and improvement plans are valid until 2019. He noted that once a grading permit is pulled that the plans are valid forever. They are fully approved. Mr. Dodman asked why the plans were approved without a variance. Mr. Poss stated that Mr. Smart was correct because they were two separate lots but were owned by the same person at the time the Planning Commission reviewed the plans that they ignored that issue. So there are no variances needed or additional approvals needed. Mr. Poss said the developer has an approved Site Plan, Improvement Plans and cost estimates that allow them to pull a grading permit tomorrow and begin construction.

Board member Kyler stated you are not going to send kids down that side of the street to get to the playground. That playground is used extensively by MVAA and others. To come down the other way is a really long hike to get to Remsberg Park. Is the Town still talking about opening up Broad Street down onto 17? Board member Routzahn stated that it was a dead issue. Board member Kyler stated there was a danger with that much traffic on Broad Street and with children walking down that street. He noted that residents of Broad Street are concerned with speed on Broad Street so he was very leery of putting kids in there with no place to play and may end up out in the street. The variance request for the height does not bother me at all. He noted he is struggling with the variance requests on density and open space.

Board member Routzahn asked if the adjacent property owners have objections to the additional five feet in height. Mr. Dodman stated he had no problem with the additional height, but did have a problem with the open space issue and the density issue. He stated that he found it hard to imagine that it is in the best long-term interests of the residents to give ground on the open space requirement and also the density of units for this particular space. There is already a good deal of traffic in the area. Was there a traffic study done? Policy of the Town of Middletown states that developers complete a traffic study when requested by the Town.

Mr. Poss stated one of the differences here again is what it comes down to. The Chesterbrook Phase 2 development will either be a 16 unit, non-garage rentals townhomes with no open space,

as approved now, or 20 three-story garaged for-sale units with no open spaces. That is the difference. The 16 unit development will be built under the old stormwater management with more run off.

Chairman Rudy stated that Planning and zoning have a lot of meetings to approve site plans etc. and that the BoA has nothing to do with that. We can only deal with what is brought to us. Whether or not I like the previous plan is immaterial. We have nothing to say about that.

Mr. Manalo stated that he wanted to clarify that, when we say no open space, what we are talking about is Lot 1. If we do have an easement agreement a resident could walk out in lot 1 and use space in lot 2. It is not as if there is no open space available. We are proposing essentially what was initially conceived which was to take them as one project. There are certain instances and circumstances that require us to look at variances because we have two separate lots of record in different ownership yet originally it was conceived that the two would be taken together where the residents of both parts would have common open space. So when we say no open space, it means we are not providing any new open space because there has always been open space in lot 2.

Board member Kyler asked if you only have 16 units would they be bigger. Mr. Poss stated we would not spend the money to re-engineer everything when we have a set of fully approved, fully engineered plans. The cost to make this change of re-engineering to conform with the new stormwater management regulations is over \$100,000. We wouldn't do that for the sake of doing it. We thought we would be bettering it and are shocked that we even had anyone that was upset. Mr. Skyler stated it may be attributable to the time lapse between plan approvals and now. From 2008 to now, there are new owners and new residents. Mr. Poss stated that when we bought it we said this would be better. This is a better way to do the project and that is how we got here.

Mr. Manson stated, if it is that important to you, you will give it another go and let us educate ourselves a little bit. The congestion of the units is the problem when looking at how many people they want to pack in there in an already congested intersection at Broad and Franklin.

Mr. Poss stated that part of what drives this is that the Town has required us to make substantial improvements to that intersection. Mr. Manson asked to see those improvements. Mr. Brown stated it would require us putting in a right-turn-in lane as you come south on Franklin at that intersection. It is a couple hundred thousand dollar road improvements that would vastly improve traffic. We were told by the Town that this is going to happen and that is why we had to put this in. We have to provide for all future traffic coming off of Route 17. Mr. Brown reviewed the difference on the drawing showing on the screen. Mr. Poss said we are putting in the right-turn-in lane as it goes with this new development, not the existing site plan.

Board member Kyler stated that if Broad Street is not going to happen, I would take another look at that as the developer and go back to the zoning guys as that doesn't make a bit of sense to do that if they are not going to open up Broad Street. Mr. Poss stated that he thinks from the Town's perspective they have one shot to get it from somebody even if they are not certain it is going to happen.

Board member Kyler stated I am still bothered by the density. There are a lot of kids in Town, and more new kids moving in to town. I lumping density and open space together, for all practical purposes, it's the same discussion. I am not comfortable with the lack of open space. We have seen this issue in other requests for variance from other houses that have been built out to the edge and now we have to give them variances to put a deck on and what not. I am not willing to go there.

Action:

Motion by Board member Routzahn to reject the requests for the three variances, seconded by Board member Kyler. Motion carried (3-0).

The Zoning Administrator will inform the applicants that the BoA is not happy with the open space requirement and the density as part of his report.

The meeting adjourned at 7:48 p.m.

Respectfully submitted,

Annette Alberghini
Town Receptionist