



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

Meeting Minutes for October 15, 2015

The Middletown Board of Appeals (BoA) met on Thursday, October 15, 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), Tommy Routzahn, Alex Kundrick (Alternate) and Zoning Administrator, Ron Forrester.

Others present: Bob Smart (resident), Jay Shew (resident), Fred Burrier (resident), and Doug Murphy (property owner).

Minutes – Chairman Rudy asked if there were any corrections to the March 17, 2015 BoA meeting minutes as submitted. Hearing no comments, the minutes were approved as submitted.

Official Response to Planning Commission Request to Reconsider Special Exception

Granted to Case MT-B-15-2 – Board member Routzahn motioned that the Board of Appeals not consider the Planning Commission's request to reconsider the special exemption granted in the case MT-B-15-2. Seconded by Board member Kundrick. The motion carried (3-0)

Case MT-B-15-4 (Robert Smart, Jr., 122 East Main Street) – Sections 17.16.070 of Middletown Municipal Code. Applicant requests a variance of fifteen (15) feet from lot width requirement of seventy-five (75) feet (lot width is sixty (60) feet) in an R-1 residential zoned district and a request for a four (4) foot variance from a side yard setback / Building Restriction Line of twelve (12) feet for property located at 214 Broad Street to construct a single-family dwelling.

The Zoning Administrator stated that for this case all appropriate actions were taken; it was properly advertised, adjoining property owners were notified and the property was properly posted in accordance with Section 17.44.070 of the municipal code.

Staff Report:

The applicant is filing for two requests for variances from Section 17.16.070 of the Middletown Municipal Code. The first request is for a variance of fifteen (15) feet from the seventy-five (75) feet minimum lot width requirement per structure for an R-1 zoned residential district. The second request is for a four (4) feet variance from the twelve (12) feet side yard requirements for

the north facing side of the property. These variances are being requested so the property owner can build a forty (40) foot wide, single family structure/dwelling on the lot. The lot does not currently have any structure or dwelling on it.

Staff notes that the lot at 214 Broad Street is rectangular in shape. The lot is sixty (60) feet wide by two-hundred (200) feet deep. The lot was created in the late 1940s before the current zoning ordinance were implemented in 1969. An aerial view of properties in the 200 block of Broad Street notes a number of properties that are similar in shape and dimensions to the lot at 214 Broad Street. The conditions for this property (narrow width) creates an unnecessary hardship for the applicant due to the 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 200 block of Broad Street. Because of these physical limitations, it is not possible for the applicant to construct a new forty (40) feet wide single family dwelling on his property in strict conformity with the provisions of the zoning ordinance. The applicant plans on building a structure on the property that matches the general architecture design and size of other residential structures found on adjacent and adjoining properties. The applicant has not created these property conditions. The authorization of the variances requested are necessary to enable the reasonable use of this property by the applicant to construct a new single family structure that is consistent with other surrounding properties.

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 the 200 block of Broad Street, nor substantially impair the appropriate use or development of adjacent property and/or confronting properties, nor be detrimental to the public welfare. Staff supports the variances as presented by the applicant as reasonable to afford him relief from Section 17.16.070 of the Middletown Municipal Code while representing a reasonable modification of the regulation in use.

Discussions:

Chairman Rudy asked for comments from the audience.

Robert Smart, Jr., 7525 Coblenz Road (applicant), stated he plans to build a new forty (40) foot wide 1 ½ story bungalow, Cape Cod style, stick built home to include an attached two (2) car garage. The house will line up with other homes on Broad Street. He wants the house placed off center of the lot for future vehicle access to the back yard, if ever needed. He purchased the lot at auction in May 2015.

Jay Shew, 218 Broad Street, stated he had sent the Town an email with questions about this property and the type of house being built but had not heard from the Town. He thought it was very quick to only have two weeks' notice for a Board of Appeals meeting. Mr. Shew further stated, if the new owner knew prior to purchasing the lot that it would not meet the minimum building requirements of the Town Ordinance, why spend the money to purchase the lot unless he knew the variance would be granted. Shouldn't the Town change the ordinance so that a person does not have to seek a variance?

The Zoning Administrator stated that because many lots, especially in the older parts of town, were created prior to the enactment of the Town Ordinance in 1969, the zoning ordinances allow property owners to request variances, like this request, to allow development or improvements to these smaller lots.

Mr. Shew stated that a home can be built on the lot in question without a two car garage and still meet the minimum setback requirements of the Town. Others in that neighborhood have done modifications to their homes, and built garages without requesting variances from the Board of Appeals.

Mr. Smart stated he had not planned to build a garage behind the new house because he did not want to have to worry about complying with the new storm water regulations regarding impervious surfaces.

Mr. Shew stated there are no two (2) car garages in the neighborhood. The applicant can build an oversized one car garage and maintain the required setbacks.

Chairman Rudy stated that the Board of Appeals cannot tell a resident what type of home and/or garage to build on their property. It can only look at what is being requested and determine if a hardship exists that warrants a granting of a variance.

Fred Burrier, 209 Broad Street, stated that Mr. Smart wanted to downsize. Now he wants to build a bigger house than the Town allows. He said Mr. Smart knew the house would not meet the current town zoning ordinances when he purchased the property.

Doug Murphy, 6103 Spring Meadow Lane, Frederick, MD 21701, co-owner of 212 Broad Street, stated that he and his daughter are renovating the home at 212 Broad Street and want the setbacks according to the Town ordinance. He further stated that hardships should only apply to the original owners of a property. Is it a hardship when someone who knows the ordinances and purchases the property knowing the potential home does not meet the standards?

The Zoning Administrator stated that hardship is determined by whether or not the property itself; through its shape, size, topography, etc. provides a hardship for someone trying to build a structure on the lot. The same consideration also applies to older lots where the existing structures are replaced or added to. The Board of Appeals must determine in each case if a hardship exists.

Mr. Shew stated if someone was an original owner making changes it could be a hardship. It seemed to him that spending a large amount of money for that lot knowing that a variance or variances would have to be approved before a house could to be constructed was a big risk unless the buyers knew variances would be granted. He then asked Mr. Smart if he had any connection to the Town besides being a resident. Mr. Smart stated that he was a member of the Middletown Planning Commission.

The Zoning Administrator stated that similar issues involving other older lots within the town have come before the Board of Appeals in the past year. He noted that the applicant followed the

correct procedures outlined in the zoning ordinance in presenting his case for variances before the Board of Appeals.

Board member Routzahn stated that Mr. Smart took a risk knowing that he required variances to the zoning ordinances when he purchased the property, as would anyone else who purchased the lot.

Action:

Board member Routzahn motioned to approve the variances as requested. The hardship being the physical limitations of the property (dimensions) not allowing the construction of the new home to meet the Town code. Board member Rudy seconded. The motion carried (2-1)

The meeting adjourned at 7:37 p.m.

Respectfully submitted,

Annette Alberghini
Town Receptionist