

# MIDDLETOWN PLANNING COMMISSION

Middletown Municipal Center  
31 West Main Street  
Middletown, MD 21769

## AGENDA

Monday, December 16, 2013  
7:00 p.m.

- I. Public Comment
- II. [Minutes of November 2013 Planning Commission meeting](#) Approval
- III. Plan Review - none
- IV. Zoning
  - [Forest Conservation Ordinance text amendment](#) Discussion/Recommendation
  - Violations
    - Thompson parking lot
- V. Miscellaneous
  - [Fee Schedule review](#) Discussion/Recommendation
- 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**

**November 18, 2013**

The regular meeting of the Middletown Planning Commission took place on Monday, November 18, 2013 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, Rich Gallagher (Alternate) and Bob Smart. Others present in official capacity: Commissioner Ron Forrester (Temp. Alternate), Cindy Unangst (Staff Planner), and Annette Alberghini (Recording Secretary). Others present: Rick Dietrick (Town Commissioner), Victor White (Hogan Companies), Bruce Dean (Linowes & Blocher LLP), David Lingg (Lingg Property Consulting), Mark Crissman (Daft, McCune, & Walker), Susan Barthol (Frederick County Office of Project Management), Tracey Diggs (Frederick County Department of Project Management), and Nancy Newton (Town Resident).

- I. PUBLIC COMMENT – None.**
- II. Regular Meeting Minutes of August 19, 2013 – Approved as revised**  
**Regular Meeting Minutes of September 16, 2013 – Approved as revised**  
**Regular Meeting Minutes of October 18, 2013 – Approved as revised**

**III. PLANS**

**Cross Stone Commons FRO Plan –**

- **Middletown Forest Banking Program:** The applicant is proposing to meet the mitigation requirement by purchasing off-site banking credits. The mitigation plan would be met by a purchase ratio of 1:1 for a new forest credit. In this case, the amount of new forest needed would be 1.04 acres. Staff would rather the applicant meet the afforestation requirements by off-site plantings rather than the purchase of off-site banking credits. Chairman Carney stated that the applicant must submit a final plan for this, and the applicant must work with staff for off-site afforestation. If an off-site location is unavailable, then the applicant could purchase off-site banking credits.
- **FRO approval by MD DNR:** Cindy stated that the Forest Delineation and Preliminary Forest Conservation plan has been submitted to the Maryland Department of Natural Resources for review and approval.
- **Incorrect information:** Cindy stated that the proposed area of dedication as stated in the top right hand corner of the drawing should be 0.072 acres not 03072 acres.

Cindy stated she will bring the information regarding off-site planting locations to the next Town workshop.

**Action:** Commissioner Smart motioned to approve the preliminary plan as presented, seconded by Commissioner Miller. Motion carried (5-0). Commissioner Miller wanted it on the record that the applicant has been very cooperative throughout this process.

**Cross Stone Commons Addition Plat –** Cindy reviewed her report stating that the proposal is to combine the remainder of Farm Lot1, Roderick Farm Lot (4.409 acres) with the remainder of Airview Acres, Section 1 (2.622 acres) into one building lot comprised of 6.959 acres and a right-of-way dedication of 0.072 acres. The addition plat shows all the information required.

- **Minimum Building Restriction Lines:** The list at the bottom of the plat which lists the minimum building restriction lines incorrectly shows the rear setback to be n/a instead of 40 feet.
- **Frederick County Health Department Approval:** The addition plat has been submitted to the County Health Department for their review and approval. The Town Administrator has reviewed the capacity management plan and forwarded his findings to the Health Department as requested. Cindy stated she has no time frame as to when the approval/disapproval will come from the County.

**Action:** Commissioner Miller motioned to conditionally approve the Cross Stone Commons addition plat, conditional upon the approval by the Frederick County Health Department, seconded by Commissioner Gallagher. Motion carried (5-0).

**Cross Stone Commons Revised Site Plan** – Cindy reviewed the issues identified for the site plan. She noted that additional shrubs have been added along the Middletown Parkway at building #1 to prevent car lights from shining onto the Parkway. Other related items:

- **State Highway Administration (SHA) review of Traffic Impact Study:** The SHA comments include their denial of a permit access along US 40 Alt. The applicant has responded to that denial with additional information. SHA has not responded to that information as of yet.
- **Lot requirements:** Applicant has made a formal request for exemption from the yard from the yard requirements applicable to shopping centers. Bruce Dean (Linowes & Blocher LLP) stated that the zoning ordinance requires separate approval for setbacks and buffer areas. Exhibits A and B are also included that spatially show the modifications requested.
- **Parking requirements for shopping centers:** The applicant is proposing six loading spaces clearly shown with the addition of the dimensions for each space. Exhibit C shows the loading spaces clearly as shown by the highlighted areas.
- **Storm Water Management (SWM) approval by Frederick County:** The project has received verbal approval by Frederick County. Awaiting official written approval from the County.
- **Lighting:** The residential light poles in Glenbrook are 14 feet. Thoroughfares light poles in Glenbrook are 16-18 feet. This location has proposed 20 feet tall, which are typical for these types of locations. Exhibit D is a lighting IsoLine Contour exhibit that shows the contours for the 2 and 5 foot-candle values.
- **Architectural review:** The Main Street Design Committee has studied the proposed plans and two building renderings and has provided feedback to the Commission. Chairman Carney recommended that the architectural review, including materials and visuals, occur simultaneously as part of the improvement plan review process.

**Action:** Commissioner Smart motioned to conditionally approve the revised site plan, conditional upon formal approval of the SWM plan by Frederick County and official acceptance by SHA of the right-in-only turn lane off Alt. US 40. Motioned seconded by Commissioner Miller. Motion carried (5-0),

**Middletown Fire Station Site Plan** – Cindy stated that the Middletown Volunteer Fire Department has dedicated the parcel to Frederick County per the Middletown Fire Department Final Plat, which was conditionally approved on October 23, 2013. Sheet C-1A has been revised to show the new property lines per the Final Plat. The area of the amended parcel is 2.73 acres. The Storm Water Management plan was approved by Frederick County. The FRO requirements have already been met in conjunction with the Primary School development. Cindy also stated that the plant schedule list has been amended to indicate the correct number of shrubs as shown on the plans. Other related items:

- **Parking requirements:** Cindy stated that there are no parking requirements in the code for a facility like this. 59 spaces are proposed. The gross floor area of the proposed fire station is

18,388 square feet which means there is one parking space for every 312 square feet. This is close to the commercial requirement of one space for every 300 square feet.

- **Storage of inflammable fuels:** According to the comment letter received from the applicant, the fuel tank is currently located at the existing fire station site. Records show that the tank is 300 gallons diesel only. It is 72 inches long, 36 inches in diameter with no containment area. Tracy Diggs (Frederick County Department of Project Management) stated that is the information he has on file as well.
- **Modification to height limitation:** The plans list the proposed height of the building to be 42 feet tall. Since the proposed height is 17 feet taller than the height limit of 25 feet, the increase in setbacks should be 8.5 feet. The plans show this requirement being met.
- **Address of the Fire Station:** Staff has assumed and would anticipate that the address for the new fire station would be 401 Franklin Street. The activity center currently has that address although work is underway to change their address to Fireman's Lane/Way. The Town is awaiting word from the Fire station that the activity center address is changed. Cindy will write a letter to inform the post office of the changes once the address is determined.
- **Demolition of Pavilion:** Cindy stated she has not received a go ahead for Planning Commission review and approval of the demolition plan for the pavilion that is located across the property boundary line. She recommended that the site plan approval be conditional upon the demolition plan approved and demolition completed.

**Action:** Commissioner Smart motioned to conditionally approve the Fire Station site plan, conditional upon the pavilion demolition plan approval and demolition completion. The motion was seconded by Commissioner Smart. Motion carried (5-0).

#### IV. ZONING

**Active Adult Text Amendment** - Cindy reviewed the text amendment changes submitted by the applicant. Cindy stated that the Planning Commission does not have to make a recommendation tonight if they feel that further review is needed. After discussion Planning Committee members could make no recommendation. There were several questions regarding Open Space requirements. There are concerns that the entire parcel can be used with no open space with the way the text amendment is written. More information is needed. The applicant is agreeable to meet with the Planning Commission for further discussion. This item will be readdressed at the January workshop and planning commission meeting.

**Action:** No action taken.

**Zoning Code Review – 17.36 Signs** – Discussion arose concerning the special exemption given to an off-Main Street business that has signs displayed on Main Street during the day. Chairman Carney asked what the original period of time the business was given for displaying the sign. Cindy stated 1 month if they were open 5 days a week, but a longer time was given since they are open 3 days per week now.

- **Zoning Enforcement:** Commissioner Miller asked if there was enforcement of the ordinance regarding signage for businesses on US 40 Alt. Cindy replied that the Town Board voted a stay of any enforcement as they see it as town business development. The Zoning Administrator agrees with the decision of the Town Board. Chairman Carney asked that zoning enforcement be an agenda item for the joint Town Board/ Planning Commission meeting in January.
- **Special Exemptions Process:** Commissioner Smart stated that nowhere in the ordinance does it specify a process applicants must complete to receive approval from the Planning Commission for special exemptions. Discussion continued regarding incorporating an exemption process for Planning Commission approval for special exemptions for all signs. The Planning Commission cited possible abuse of the system by businesses in the future. Review of town ordinance 17.36.130G. sign permit procedures will be added as an agenda item for the December Planning Commission meeting.

**Action:** No action required.

**Violations** – Commissioner Miller reported that there is a portable dumpster on Washington Street that has been there for several days. It has not been picked up. Cindy stated that C container regulations do not include dumpsters at this time although the Planning Commission has recommended adding dumpsters to the code. Cindy will check on the dumpster on Washington Street.

V. **ADDITIONAL PUBLIC COMMENTS** – None

**Meeting adjourned at 8:15pm.**

Respectfully submitted,

Annette Alberghini  
Receptionist

## MEMORANDUM

Date: 12/6/2013

To: Middletown Planning Commission

From: Cynthia K. Unangst, Middletown Staff Planner

RE: Forest Conservation Ordinance proposed changes per changes in State regulations

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Last year Maryland House Bill 706, titled "Forest Conservation Act of 2013" was passed which made changes to the State's Forest Conservation Act. This bill requires several changes to the Town's Forest Resource Ordinance. House Bill 706 requires the following amendments to the Town's ordinance:

- Add definitions for "Priority Funding Area" and "Stream Restoration Project"
- Add the following project types to the current list of projects that are exempt from the provisions of the Forest Resource Ordinance:
  - Stream restoration projects that meet certain criteria.
  - Maintenance or retrofitting of stormwater management structures with certain stipulations.
  - Redevelopment of previously developed areas covered by impervious surface where located within a Priority Funding Area.

In accordance with State law, the Town must send all FRO text amendments to the Maryland Department of Natural Resources for review and approval. The amendments were sent to the State on November 11, 2013.

Attached to this ordinance are proposed changes to the Middletown Forest Conservation Ordinance to bring it in line with the new state regulations. The Planning Commission shall review the proposed amendment and shall submit its recommendations or comments to the Burgess & Commissioners.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND TITLE 16, CHAPTER 16.40, OF THE MIDDLETOWN MUNICIPAL CODE RELATING TO FOREST CONSERVATION; TO ADD DEFINITIONS FOR THE TERMS "PRIORITY FUNDING AREA" AND "STREAM RESTORATION PROJECT"; TO ADD EXEMPTIONS FROM THE FOREST CONSERVATION REQUIREMENTS; TO AMEND THE TOWN'S FOREST CONSERVATION ORDINANCE IN ACCORDANCE WITH THE STATE OF MARYLAND FOREST PRESERVATION ACT OF 2013.

**SECTION I. BE IT RESOLVED, ORDAINED AND ENACTED** by the Burgess and Commissioners of Middletown that Title 16, Chapter 16.40, Section 16.40.011 "Definitions" of the Middletown Municipal Code be, and hereby is, amended by adding definitions for "Priority Funding Area" and "Stream Restoration Project". Each definition shall be codified by inserting the definition alphabetically in section 16.40.011. New language is designated by being in **BOLD CAPITAL LETTERS**:

Title 16 Subdivisions

Chapter 16.40 Forest Conservation

16.40.011 Definitions

**"PRIORITY FUNDING AREA" MEANS AN AREA DESIGNATED AS A PRIORITY FUNDING AREA UNDER §5-7B-02 OF THE STATE FINANCE AND PROCUREMENT ARTICLE, ANNOTATED CODE OF MARYLAND.**

**"STREAM RESTORATION PROJECT" MEANS AN ACTIVITY THAT:**

**(1) IS DESIGNED TO STABILIZE STREAM BANKS OR ENHANCE STREAM FUNCTION OR HABITAT LOCATED WITHIN AN EXISTING STREAM, WATERWAY, OR FLOODPLAIN;**

(2) **AVOIDS AND MINIMIZES IMPACTS TO FORESTS AND PROVIDES FOR REPLANTING ON-SITE AN EQUIVALENT NUMBER OF TREES TO THE NUMBER REMOVED BY THE PROJECT;**

(3) **MAY BE PERFORMED UNDER A MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT, A WATERSHED IMPLEMENTATION PLAN GROWTH OFFSET, OR ANOTHER PLAN ADMINISTERED BY THE STATE OR LOCAL GOVERNMENT TO ACHIEVE OR MAINTAIN WATER QUALITY STANDARDS; AND**

(4) **IS NOT PERFORMED TO SATISFY STORMWATER MANAGEMENT, WETLANDS MITIGATION, OR ANY OTHER REGULATORY REQUIREMENT ASSOCIATED WITH PROPOSED DEVELOPMENT ACTIVITY.**

**SECTION II. BE IT RESOLVED, ORDAINED AND ENACTED** by the Burgess and Commissioners of Middletown that Title 16, Chapter 16.40, Section 16.40.013 “Exemptions” of the Middletown Municipal Code be, and hereby is, amended as follows. New language is designated by being in **BOLD CAPITAL LETTERS**:

16.40.013 Exemptions.

This chapter does not apply to:

(A) – (L) {*Unchanged*}

**(M) ANY STREAM RESTORATION PROJECT FOR WHICH THE APPLICANT FOR A GRADING OR SEDIMENT CONTROL PERMIT HAS**

**EXECUTED A BINDING MAINTENANCE AGREEMENT OF AT LEAST 5 YEARS WITH THE AFFECTED PROPERTY OWNER.**

**(N) MAINTENANCE OR RETROFITTING OF A STORMWATER MANAGEMENT STRUCTURE THAT MAY INCLUDE CLEARING OF VEGETATION OR REMOVAL AND TRIMMING OF TREES, SO LONG AS THE MAINTENANCE OR RETROFITTING IS WITHIN THE ORIGINAL LIMITS OF DISTURBANCE FOR CONSTRUCTION OF THE EXISTING STRUCTURE, OR WITHIN ANY MAINTENANCE EASEMENT FOR ACCESS TO THE STRUCTURE.**

**(O) PREVIOUSLY DEVELOPED AREAS COVERED BY AN IMPERVIOUS SURFACE AND LOCATED IN A PRIORITY FUNDING AREA AS DEFINED IN SECTION 16.40.011 AT THE TIME OF THE APPLICATION FOR SUBDIVISION PLAN, GRADING, OR SEDIMENT CONTROL PERMIT APPROVAL.**

**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 \_\_\_\_\_, 201\_\_**

**PASSED ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 201\_\_**

**EFFECTIVE DATE: \_\_\_\_\_, 201\_\_**

**ATTEST:**

**BURGESS AND COMMISSIONERS  
OF MIDDLETOWN**

\_\_\_\_\_  
Andrew J. Bowen, Town Administrator

By: \_\_\_\_\_  
John Miller, Burgess

**Town of Middletown Planning Department**

To: Burgess & Commissioners and Middletown Planning Commission  
From: Cindy Unangst, Staff Planner  
Date: 12/2/2013  
RE: Monthly Planning Update

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**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

**Foxfield Section 4-** FRO plantings have all been installed. 12 homes still to be built.  
1<sup>st</sup> year FRO review – 67% compliance – 232 additional trees planted (May 2013)

**Minor Site Plans and Subdivisions:**

**AMVETS Expansion Plans** – Site Plan approved – October 15, 2012; (Plans expire 10/15/2015)

**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.

**Coblentz Grove minor subdivision** – Preliminary/Final Plat conditionally approved – Nov. 15, 2010  
FSD & Forest Conservation Plan approved – November 15, 2010  
Improvement Plans conditionally approved – February 21, 2011  
Final Plat approved – July 18, 2011 (recorded – October 24, 2012)  
Building permits applied for – October 30, 2012  
U&O's released for two of the lots – October 29, 2013

**Fire Co Activities Center-** SWM Plan approved by Frederick County – November 3, 2011  
Revised Site Plan conditionally approved – April 22, 2013  
Improvement Plans conditionally approved – April 22, 2013  
Building permit issued – May 24, 2013

**Fire Station** – Concept plan submitted to PC for comments – April 22, 2013  
Concept Site Plan reviewed by PC at their August meeting  
Fire Station plat conditionally approved – October 16, 2013  
**Fire Station Site Plan conditionally approved – November 18, 2013**

**Hollow Creek** – Revised Site Plan approved and signed – October 14, 2010  
Revised Site Plan (leaderboard) approved – February 21, 2011; (Plans expire February 21, 2014)

- Hollow Creek Golf Course SWM Pond #1** Revision plans submitted to County 12/1/2010  
 Plans approved by County – December 22, 2010  
 Revised Plans submitted for PC review – December 30, 2010  
 Revised Plans submitted to SCD for review – January 5, 2011
- 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
- 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  
 Concept Plan sent to SHA for review – September 23, 2013  
**SHA comment letter received November 22, 2013**
- More Ice Cream site plan** – conditionally approved – June 17, 2013  
 Change of Use permit approved – July 2, 2013
- 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**
- Potomac Gun Depot** – plans conditionally approved – February 18, 2013  
 Revised site plan conditionally approved – June 17, 2013
- 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** – site plan reviewed for ice cream parlor during workshop discussion– May 15, 2013
- The Valley School** – BOA special exception use hearing – May 8, 2013 (Approved)  
 Forest Conservation Plan approved – June 17, 2013 (fee-in-lieu paid 7/8/2013)  
 Site Plan and Improvement Plans approved by Planning Commission – August 19, 2013  
 Building permit issued – October 7, 2013
- Thompson Funeral Home Revised Parking Lot Site Plan** – conditionally approved April 22, 2013  
 SWM Plans conditionally approved by Frederick County – October 29, 2013

**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

**County Park** – Annexation agreement approved by BOCC – May 30, 2013  
Annexation agreement approved by Town Board – June 10, 2013  
Annexation recommended for approval by PC – September 16, 2013  
**Public Hearing scheduled for December 5, 2013**

**Reports:**

**Meetings:** MD Planning Director’s Roundtable – December 4, 2013  
Municipal/County Planners Quarterly Meeting – December 13, 2013

**Town of Middletown Zoning Department**

To: Burgess & Commissioners and Middletown Planning Commission  
From: Cindy Unangst  
Date: 12/2/2013  
RE: Monthly Zoning Update

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**P & Z Issues:**

**Zoning Code review** – ongoing

**New State FRO Ordinance – Forest Preservation Act of 2013**

House Bill 706 requires the following amendments to the Town’s Forest Resource Ordinance:

- Add definition of “Stream Restoration Project”
- Add the following project types to the current list of projects that are exempt from the provisions of the Forest Resource Ordinance:
  - Stream restoration projects that meet certain criteria
  - Maintenance or retrofitting of stormwater management structures with certain stipulations
  - Redevelopment of previously developed areas covered by impervious surface where located within a Priority Funding Area

**Active Adult text amendment** – received language from Farhad – October 28, 2013  
**Planning Commission review** – November 18, 2013 (no recommendation)

**BOA Hearings:** none

**Zoning Violations: Thompson Parking Lot**

<b>November 2013 Zoning Permits</b>	<b>Address</b>	<b>Permit #</b>	<b>M-town</b>	<b>C. Unangst</b>	<b>County</b>
			<b>Received</b>	<b>Approved</b>	<b>Approval</b>
LAM Properties - temporary signage	30 E. Green Street	Town	10/31/2013	11/1/2013	n/a
Admar Custom Homes - fences	Coblentz Grove	Town	11/20/2013	11/26/2013	n/a
Wilson - fence	101 N. Pointe Terrace	Town	11/25/2013	11/26/2013	n/a