MIDDLETOWN PLANNING COMMISSION
31 West Main Street
Middletown, Maryland

Regular Meeting **April 20, 2015**

The regular meeting of the Middletown Planning Commission took place on Monday, April 20, 2015 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), David Lake (Vice Chairman), Bob Smart, Bob Miller, Rich Gallagher, and Dixie Eichelberger. Others present in official capacity: Cindy Unangst (Staff Planner), Ron Forrester (Zoning Administrator) and Annette Alberghini (Recording Secretary).

Commissioner Goodman was not present for the meeting. Commissioner Gallagher (alternate) acted in his place as part of the quorum. Commissioner Smart was late to the meeting. Commissioner Eichelberger (temp alternate) acted in his place as part of the quorum until Commissioner Smart's arrival at 7:01pm. The quorum then consisted of Chairman Carney, Commissioners Lake, Smart, Miller and Gallagher.

I. PUBLIC COMMENT – None.

II. Regular Meeting Minutes of March 16, 2015 – Approved as submitted.

III. PLAN Review

Sunroom Demolition Site Plan – (No one spoke for the applicant.) This is a proposal to remove an existing pre-manufactured sunroom at the rear of the dwelling at 202 Lombardy Court and then replace it with a new larger pre-manufactured sunroom. All of the requirements of Section 17.32.160 of the Town Code regarding the demolition site plan have been met. A demolition permit from the County will have to be obtained prior to the demolition. Application to the County can take place concurrent with the site plan approval process by the Planning Commission. The Planning Commission has both an aerial photograph of the sunroom to be demolished and a plot plan that shows the location of the sunroom. Letters were sent to adjacent property owners informing them of the proposed demolition, and the property has been posted. All demolitions and post demolition restoration shall be completed within ninety days of the issuance of the demolition permit unless otherwise approved by the Middletown Planning Commission. A County building permit has already been approved.

The Staff Planner received an email this afternoon from Mr. C. Douglas Remsberg, 214 Lombardy Court, who owns the adjacent lot at 204 Lombardy. The email stated that Mr. Remsberg does not give permission for the construction company to access 202 Lombardy through his lot due to past transgressions and damage to that lot. He has no concerns otherwise.

Action: Commissioner Lake motioned to approve the sunroom demolition site plan as submitted. Seconded by Commissioner Smart. Motion carried (5-0). The approval letter being sent to the applicant will include the information on property access denial provided by Mr. Remsberg.

IV. ZONING

Sheffler Board of Appeals Decision. The Planning Commission members had in their packet a copy of the April 17, 2015 email opinion from the Town Attorney pertaining to the Sheffler Board of Appeals decision regarding the restricted vehicle. The Town Attorney stated that there are two options to possibly pursue in order to appeal that decision. First, the decision could be appealed within thirty days of the Board of Appeals decision. The thirty days has expired. Second, the Board of Appeals could reconsider its decision and reach a different

conclusion if the original decision was the result of fraud, mistake, surprise, inadvertence or some new factual matter comes to light that would justify a different result. If the matter is neither appealed nor reconsidered, then the decision stands. A decision by the Board of Appeals which is not changed – whether correct or not – remains valid until a higher authority, like the courts, decide otherwise. The efficacy of the decision is not diluted simply because others (to include the Town Attorney) feel the opinion may be erroneous. The Town Attorney concluded by stating he sees no requirement for the applicant to obtain site plan approval after the Board has granted his special exception. Instead, he may park his restricted vehicle on his property without the necessity for screening or set-back restrictions.

The Town Attorney was asked to outline the steps for reconsideration. In an email dated April 20, 2015 the Town Attorney stated there is no provision in the Town's Code for reconsideration, so there is no specified procedure to be followed. He recommends that the Planning Commission, as a body, send the Board of Appeals something in writing requesting that the Board of Appeals reconsider its decision and state the reasons for that request. Once the request is received, the Board of Appeals would undertake a 2-step process. The first step is to consider and decide whether to grant the request for reconsideration. If the request for reconsideration is denied it ends there. If the request is granted, the Board of Appeals would hear arguments and consider and decide whether the original decision should be changed or modified. At this second step the Board of Appeals would have to decide whether to have a whole new hearing or just consider the arguments of the Planning Commission based on the facts already on record. In the end it might re-affirm its original decision, or it might revise the original decision in some way. He concluded that any written request by the Planning Commission for reconsideration should also be sent to the applicant as well as any other persons who appeared and spoke at the Board of Appeals hearing since they are considered parties. Notice of the public Board of Appeals hearing should also be provided to all.

- **Letter for Reconsideration -** Since the appeals deadline has passed the Planning Commission must decide whether or not to ask the Board of Appeals to reconsider its decision. Since the commission members believe that there was a mistake made during this process, and since the Board of Appeals decision was made based off of that mistake, the Planning Commission decided to send a letter requesting the Board of Appeals reconsider its decision. The letter should include the Town Attorney's interpretations, outline the process on how the reconsideration process should work, include that no site plan was submitted therefore the Planning Commission recommended denial, and recommend addressing the situation through the process outlined by the Town Ordinance. The Board of Appeals should not refuse the reconsideration when taking into consideration the official position of the Burgess and the Town Attorney. Reconsideration should also occur without further cost to the applicant.
  The ordinance is clear that site plan approval must come first in this instance. There are other instances when it is not clearly stated, and the Board of Appeals has given conditional approval referencing Planning Commission actions that needed to occur for the decision to stand.
- **Time Consideration –** The question was raised that if a letter was drafted how soon would the Planning Commission be able to meet to review and approve it. Are there any challenges with waiting until May to review and approve the letter? The Zoning Administrator will contact the Chair of the Board of Appeals to get his response. Board of Appeals meetings are scheduled based on a request for special exception or variance. The Planning Commission could include in its letter a request for a special meeting of the Board of Appeals on this issue.

Action: Commissioner Smart motioned that Chairman Carney and the Staff Planner draft a letter requesting that the Board of Appeals reconsider the decision made regarding the Sheffler restricted vehicle and they bring that letter before the Planning Commission for review before it is sent to the Board of Appeals. Seconded by Commissioner Miller.

- **Discussion -** The Zoning Administrator referenced the Town Attorney's April 17, 2015 email comment, "There is no specific time limit for requesting a reconsideration; however the longer this decision remains in effect, the more difficult it will be to reconsider and change the decision – especially if the applicant has begun to act in reliance upon that decision." The Zoning

Administrator stated the applicant is parking in his driveway and is in compliance with the Board of Appeals decision. There are no other active measures that the applicant has had to take to make the Board of Appeals decision operative. This letter is just to request a reconsideration. The Board of Appeals can do whatever it wants with the request. The expectation is that the letter would provide all the details gathered here and include arguments which would support the case for reconsideration. The reconsideration process should be gone through if only to reinforce the process outlined in the Town ordinance.

Motion carried (5-0).

V. MISCELLANEOUS –

Annual Report Draft – There are two (2) revised pages to the 2014 Draft Annual Report; the first and last pages. The first page revisions include changes to the term limit dates for various Commissioners and added information that had not been included previously. The Zoning Administrator asked the page also be revised to show that he is appointed (along with his appointment date) and therefore does not have a term limit. The approved by date statement will be changed to reflect approval by the Middletown Planning Commission and not the Middletown Burgess and Commissioners. The last page revision is the addition of the Comprehensive Plan Review section and statement. That new section was presented to the MDE Planner who stated that it appropriate both as stated, and as part of this document.

Once the Planning Commission approves this document it will be presented to the Town Board as information only, and then forwarded on to the State. A copy of the annual report will also be sent to Frederick County. The deadline for submission to the State is July 1, 2015.

Action: Commissioner Lake motioned to approve the 2014 Annual Report with the revisions and points of discussion to be applied. Seconded by Commissioner Miller. Motion carried (5-0).

The Staff Planner thanked the Planning Commission members for their hard work and dedication. The Planning Commission in turn thanked the Staff Planner for her hard work.

Middletown High School Stadium Concession Stand Expansion Plan – The plan will expire June 18, 2015. Multiple letters have been sent to the applicants reminding them of the deadline. They are aware. The Staff Planner does not think this is a priority at the moment considering the current status of MVAA funds.

Super Cuts – The Town has received the paperwork and zoning certificate application for a Super Cuts salon to go in to the Safeway Shopping Center where Jaley's Ice Cream was located. The address for that location is 811 East Main Street. The applicant submitted the paperwork with an incorrect address. The Zoning Administrator will inform the applicant of the correct address during the approval process. The application includes change of use/tenant and interior renovations.

Political Signs Status – The Zoning Administrator spoke with Mr. Harvey of the County Board of Elections regarding political sign size Town ordinance compliance and requesting permission to include a letter of instruction regarding posting political signs within Town limits in election packets given to candidates. Mr. Harvey stated that these signs, including those of statewide candidates, must comply with the Town municipal code. The Zoning Administrator is waiting for information from the Board of Elections on how to get this information into candidate's packets. The length of time for removal of signs after an election is not addressed within the Town ordinances. It was suggested that candidates, or their representatives, have thirty (30) days after results are published to remove their political signs from properties within Town limits. The Zoning Administrator can make a policy decision on this, or there can be a change in the Town ordinance to reflect this. The Zoning Administrator is willing to create a document including all this information for the Board of Elections to give to future election candidates.

Thompson Funeral Home Parking Lot – The landscaping has been completed. The lines for parking spaces have not been painted.

VI. ADDITIONAL PUBLIC COMMENTS – None.

Meeting adjourned at 7:45pm.

Respectfully submitted,

Annette Alberghini
Recording Secretary