



## **SPECIAL AGENDA FOR THE TOWN WORKSHOP**

**September 4, 2014**

**6:30 p.m.**

6:30PM Davenport & Associates – Financial Presentation

7:15PM Community Deputy Report

7:20PM **Public Hearing - Ordinance 14-08-03**

AN ORDINANCE TO AMEND TITLE 17 OF THE MIDDLETOWN MUNICIPAL CODE TO PROVIDE DEFINITIONS FOR THE TERMS “ADULT ENTERTAINMENT ACTIVITIES” AND “ADULT ENTERTAINMENT BUSINESS”; TO AUTHORIZE THE USE OF PROPERTY AS AN ADULT ENTERTAINMENT BUSINESS PROVIDED IT IS NOT LOCATED WITHIN 1,500 FEET OF OTHER PROPERTY USED AS A SCHOOL, PARK, CHILD DAY CARE CENTER, CHURCH OR HOUSE OF WORSHIP, OR ANOTHER ADULT ENTERTAINMENT BUSINESS.

7:35PM **Public Hearing - Ordinance 14-08-04**

AN ORDINANCE TO REPEAL AND RE-ENACT, WITH AMENDMENTS, TITLE 17, CHAPTER 17.48, SECTION 17.48.015 OF THE MIDDLETOWN MUNICIPAL CODE PERTAINING TO SPECIAL EXCEPTION REQUIREMENTS FOR ACTIVE ADULT COMMUNITIES; TO AUTHORIZE THE ESTABLISHMENT OF AN ACTIVE ADULT COMMUNITY AS A RESIDENTIAL CLUSTER DEVELOPMENT ON PARCELS OF BETWEEN THIRTY AND ONE HUNDRED ACRES; TO ESTABLISH SPECIAL EXCEPTION STANDARDS AND REQUIREMENTS FOR ACTIVE ADULT COMMUNITIES AS A RESIDENTIAL CLUSTER DEVELOPMENT.

### **STAFF REPORTS:**

[Staff Planner](#)

[Zoning Administrator](#)

[Engineer's Report](#)

[Main Street Manager](#)

### **Regular Workshop Items**

## MEMORANDUM

Date: 9/2/2014

To: Burgess and Commissioners, Middletown  
From: Cynthia K. Unangst, Middletown Staff Planner  
RE: Adult Entertainment Business text amendment

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**The Middletown Planning Commission on July 21, 2014 reviewed the proposed Adult Entertainment Business text amendment which would provide definitions for the terms “Adult Entertainment Activities” and “Adult Entertainment Business” and authorize the use of property as an adult entertainment business provided it is not located within 1,500 feet of other property used as a school, park, child day care center, church or house of worship, or another adult entertainment business. By consensus the Planning Commission recommends approval of the proposed text amendment. A public hearing has been scheduled for Thursday, September 4, 2014.**

Below are minutes from discussions that took place within the past eight months concerning the proposed text amendment regarding active adult communities:

### **Planning Commission meeting – July 21, 2014:**

**Adult Entertainment Business Text Amendment** – On July 14, 2014 the Town Board introduced the draft text amendment regarding Adult Entertainment businesses. It has been forwarded to the Planning Commission for review and recommendation. Recommendation from the Planning Commission is required due to the location of this specific ordinance in the Zoning section of the Middletown Municipal Code Book. The Staff Planner stated that the research on the effects adult entertainment businesses have on communities has been completed by other municipalities so it does not have to be completed here. The Town can use that information in making any determination. The ordinance includes significant definitions relating to adult entertainment activities and businesses. The Town Board has recommended that adult entertainment businesses not be allowed within 1,500 feet of any school, park, child day care center, church or house of worship or another adult entertainment business. This means that these types of businesses would effectively not be allowed in town.

**Action:** Commissioner Miller motioned to accept the Adult Entertainment Business Text Amendment as presented and to forward it to the Town Board for approval. Seconded by Commissioner Smart. Motioned carried (4-0-1), Commissioner Goodman abstained.

## ORDINANCE NO. 14-08-03

**AN ORDINANCE TO AMEND TITLE 17 OF THE MIDDLETOWN MUNICIPAL CODE TO PROVIDE DEFINITIONS FOR THE TERMS “ADULT ENTERTAINMENT ACTIVITIES” AND “ADULT ENTERTAINMENT BUSINESS”; TO AUTHORIZE THE USE OF PROPERTY AS AN ADULT ENTERTAINMENT BUSINESS PROVIDED IT IS NOT LOCATED WITHIN 1,500 FEET OF OTHER PROPERTY USED AS A SCHOOL, PARK, CHILD DAY CARE CENTER, CHURCH OR HOUSE OF WORSHIP, OR ANOTHER ADULT ENTERTAINMENT BUSINESS.**

### RECITALS

**WHEREAS**, the Burgess and Commissioners of the Town of Middletown are concerned with the potential adverse secondary effects of adult oriented entertainment businesses which may elect to locate in the Town of Middletown; and

**WHEREAS**, the Burgess and Commissioners have reviewed the evidence of the adverse secondary effects of adult oriented businesses found in various studies, experiences and reports made available to them and which have been considered by other municipalities and local governments, including but not limited to:

- “Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime? An Examination Using Spatial Analysis” Eric S. McCord and Richard Tewksbury; *Crime & Delinquency*, October 2013; vol. 59, 7: pp. 1108-1125., first published on November 29, 2012.
- “Adult Business Study” Town and Village of Ellicottville, Cattaraugus County, New York January 1998.
- Testimony to Illinois State Senate Public Health Committee March 2012 re: Illinois Senate Bill 3348 of Richard McCleary, (Professor of Criminology, Environmental Health Science, and Planning, University of California, Irvine) and Lori Sexton, (Assistant Professor at the University of Missouri, Kansas City).
- “Crime-Related Secondary Effects Of Sexually-Oriented Businesses” - Report To The County Attorney Palm Beach County, Florida ; Valerie Jenness, Ph.D., Richard McCleary, Ph.D., James W. Meeker, JD, Ph.D. August 15, 2007.

- “The Association of Adult Businesses with Secondary Effects: Legal Doctrine, Social Theory, and Empirical Evidence”, Alan C. Weinstein and Richard McCleary Cleveland-Marshall College of Law, Cleveland State University, October 2011.
- A report on the secondary impacts of adult use businesses in the city of Denver January 1998.
- Caroline County, Maryland Ordinance #2005-002 and findings stated therein;

and

**WHEREAS**, court decisions considering issues relative to the secondary effects of adult oriented businesses hold that such secondary effects are a legitimate basis for regulating such businesses. Such cases include, but are not limited to:

- *Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002)
- *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000)
- *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986)
- *Steiner v. County Commissioners of Caroline County*, 490 F.Supp.2d 617 (D.Md.,2007)
- *Imaginary Images, Inc. v. Evans*, 612 F.3d 736 (4<sup>th</sup> Cir. 2010)
- *Independence News, Inc. v. City of Charlotte*, 568 F.3d 148 (4<sup>th</sup> Cir. 2009);

and

**WHEREAS**, the material reviewed by the Burgess and Commissioners show that adult oriented businesses are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties and property values, urban blight, litter, and sexual assault and exploitation; and

**WHEREAS**, the Town of Middletown has a population of 4,136 as of the last census (2010) and is relatively small in size having a geographic area of 1.741 square miles; and

**WHEREAS**, the Town of Middletown has no police department and must rely upon a resident Frederick County Sheriff's deputy as its primary means of law enforcement, and law enforcement efforts and effectiveness will be increasingly strained with any increase in criminal activity; and

**WHEREAS**, the Burgess and Commissioners, in an effort to prevent such secondary adverse effects in the Town of Middletown, and to protect and promote the safety, health, morals, and general welfare of the citizens of the Town of Middletown, have determined that the nature of adult oriented businesses requires the enactment of certain zoning restrictions relating thereto and that adult oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses.

**NOW, THEREFORE, BE IT ORDAINED AND ENACTED** by the Burgess and Commissioners of the Town of Middletown, Maryland that Title 17 of the Middletown Municipal Code be, and hereby is, amended as follows.

**SECTION I.** Title 17, Chapter 17.04, Section 17.04.030, "Definitions" of the Middletown Municipal Code is hereby amended by adding thereto the definition of "Adult Entertainment Activities" and by adding thereto the definition of "Adult Entertainment Business", "Adult Oriented Business" or "Sexually Oriented Business". Said definitions shall be codified and inserted in Section 17.04.030 of the Code alphabetically. The remaining provisions of Section 17.04.030 remain unchanged.

## TITLE 17 ZONING

### Chapter 17.04

#### Section 17.04.030 – Definitions

“Adult Entertainment Activities” means:

A. Any merchandise, object, item, or device that is designed and/or marketed with the intention of causing, or that reasonably may be expected to cause, sexual stimulation, sexual excitement or sexual gratification.

B. Any performance, conduct, activity, depiction, or text that is intended to cause or provide, or reasonably may be expected to cause or provide, sexual stimulation, sexual excitement, or sexual gratification and:

1. in which an individual or individuals appear in a state of nudity or partial nudity; or
2. that consists, in whole or in part, of action, activity, poses, portrayal, depiction, or description of:
  - (a) human genitals in a discernable state of sexual stimulation or arousal; or
  - (b) any act, whether real or simulated, of masturbation, sexual intercourse, anal intercourse, sodomy, fellatio, cunnilingus, fondling of the buttocks, anus, female breasts, pubic area, or genital area, sadomasochistic activity, physical contact or attempted contact with clothed or unclothed genitals, pubic areas, buttocks, anus, or female breasts; or
3. consists of contact with animals or inanimate objects.

“Adult Entertainment Business” also known as “Adult Oriented Business” or “Sexually Oriented Business” means a business establishment whose primary business and stock in trade is dependent upon Adult Entertainment Activities. By way of example, and not by way of limitation, the following shall be considered as an adult entertainment business:

A. An arcade or other place to which the public is permitted or invited and where photographs, motion pictures or other image-producing devices are maintained to, for money or other value, show images depicting or describing Adult Entertainment Activities.

B. A bar, club, cabaret, lounge, dance hall, restaurant, or other similar establishment or place of business which features dancers, strippers or similar entertainers or employees that engage in Adult Entertainment Activities, or any such business establishment, the advertising for, or a sign identifying which, uses the words, "adult," "topless," "nude," "bottomless," or other words of similar import.

C. A motion picture theater or similar commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, CDs, DVDs, slides, or similar photographic reproductions are regularly, commonly, habitually, or consistently shown that are characterized by the depiction or description of Adult Entertainment Activities.

D. A retail store or similar commercial establishment that, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video cassettes or video reproductions, slides, or other visual representations that depict or describe Adult Entertainment Activities, and novelty items, games, greeting cards, instruments, devices, or paraphernalia that are designed for use in connection with Adult Entertainment Activities.

**SECTION II.** Title 17, Chapter 17.32, of the Middletown Municipal Code is hereby amended by adding thereto the following as Section 17.32.225.

## TITLE 17 ZONING

### Chapter 17.32 Design Standards Generally

#### Section 17.32.225 – Adult Entertainment Business

A. It is the purpose of this ordinance to regulate Adult Entertainment Business in order to promote the health, safety, and general welfare of the citizens of the town, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of Adult Entertainment Business within the town. It is the intent of the Burgess and Board of Commissioners in adopting this ordinance to enact a content neutral ordinance that imposes time, place and manner restrictions in order to address the adverse secondary effects of Adult Entertainment Business. It is not the intent of the Burgess and Board of Commissioners to suppress any speech protected by the First Amendment to the United States Constitution or Article 40 of the Maryland Declaration of Rights. Similarly, it is neither the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material.

b. Adult Entertainment Businesses are permitted provided that such businesses are not located within 1,500 feet of any school, park, child day care center, church or house of worship or another Adult Entertainment Business. For the purpose of this sub-section, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where an Adult Entertainment Business is conducted to the nearest property line of the school, park, child day care center, church or house of worship, or other Adult Entertainment Business.

**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 \_\_\_\_\_, 2014**  
**PASSED ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2014**  
**EFFECTIVE DATE: \_\_\_\_\_, 2014**

**ATTEST:**

**BURGESS AND COMMISSIONERS  
OF MIDDLETOWN**

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

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

## MEMORANDUM

Date: 9/2/2014

To: Burgess and Commissioners, Middletown  
From: Cynthia K. Unangst, Middletown Staff Planner  
RE: Active adult/Cluster development regulations text amendment

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**The Middletown Planning Commission on July 21, 2014 discussed the revised Active Adult/Cluster development text amendment that would separate out the cluster development regulations from the active adult regulations. The Planning Commission did not make a recommendation either for or against the revised regulations; no action was taken after the discussion.**

**The Town Attorney has drafted an ordinance which is attached in which the cluster development regulations are a separate section of the Code and are a permitted use in the R-20 District. The draft ordinance includes the provisions for active adult communities that are on parcels less than 100 acres and are developed as a cluster development, and the provision that driveways in the active adult communities need to be a minimum of 20 feet from a public or local street. A public hearing has been scheduled for Thursday, September 4, 2014.**

Below are minutes from discussions that took place within the past eight months concerning the proposed text amendment regarding active adult communities:

### **Planning Commission meeting – July 21, 2014**

**Active Adult Text Amendment and Cluster Development Text Amendment** – The Burgess and Commissioners did not approve the Active Adult text amendment which included the cluster development regulations at their meeting June 23, 2014. It is being referred back to the Planning Commission. The Burgess and Commissioners would like the cluster development regulations to be allowed in developments other than active adult developments. Draft language to be included in the Active Adult community special exception regulations incorporating the language first proposed by Farhad Memarsadeghi and inclusion of the cluster development requirement, along with a draft separate section of the Code related to Cluster Development regulations was provided to the Planning Commission members.

- **New Item for Discussion** – Commission members determined that cluster development extended to other zoning areas within the Town required more discussion. The Planning Commission was originally tasked with addressing Active Adult communities within R-20 zoning. Addressing Cluster Development as a standalone ordinance would make it a new agenda item for future Planning Commission meetings. This would include discussion as to what other zoning areas to include it in, whether or not to make it an overlay etc.
- **Return to Town Board With no Change in Recommendation** – The question was raised as to what would happen if the Planning Commission returns the Active Adult Text Amendment to the Town Board with no change in recommendation. The Staff Planner stated that if the Planning Commission took no action the Town Board could take what was proposed tonight to Public Hearing and then approve it by a majority vote. APA guidelines for cluster

development regulations and other municipalities' cluster development regulations are in line with what has been proposed tonight.

**Action:** - None taken.

### **Town Board Meeting – June 23, 2014**

**Ordinance 14-05-01 – Residential Clusters** – Burgess Miller stated that the public hearing for this Ordinance was held on May 12, 2014. At that public hearing we heard comments from residents and we took into consideration of making the driveway's longer to 20' so that pedestrians are able to use sidewalk instead of walking around vehicles into the roadway.

Commissioner Ventre stated that he has a problem with where the Planning Commission wants to place this ordinance within the Active Adult section of the zoning code only. Commissioner Ventre stated that he agrees with Cindy's staff report that this should be a separate section of the code in order to address any potential types of cluster developments that could occur in other zoning districts.

Motion by Commissioner Goodman to approve the ordinance as written. Motion failed with no second. It was agreed to send this back to the Planning Commission to consider as a separate section in the zoning code for all zoning districts.

### **Town Board Public Hearing – May 12, 2014**

#### **PUBLIC HEARING**

Ordinance No. 14-05-01 – to repeal and re-enact, with amendments, Title 17, Chapter 17.48, Section 17.48.015 of the Middletown Municipal code pertaining to special exception requirements for active adult communities; to authorize the establishment of an active adult community as a residential cluster development on parcels of between thirty and one hundred acres; to establish special exception standards and requirements for active adult communities as a residential cluster development.

Cindy Unangst, Staff Planner went over the Ordinance and amendments.

Barbara Reeder, 4 Groff Court – stated that the driveways in the current Active Adult Community are not long enough for a car to park in without blocking the sidewalk. Mrs. Reeder also stated that she feels the streets should be wide enough for snow plows to be able to maintain the street properly.

Burgess Miller stated that we have learned from our previous actions with developments and agrees that vehicles parked in the driveway should be able to be parked in the driveway without blocking the sidewalk.

It was the consensus of the Board to have Cindy add language to the Ordinance that the house setback is 10 feet and that the driveway must be a minimum of 20 feet to allow for cars to be parked in driveway without blocking sidewalk.

The Public Hearing adjourned at 7:32pm.

### **Planning Commission meeting – March 17, 2014**

**Cluster Development Regulations** – The changes suggested from last month's meeting and last week's workshop were reviewed. It was suggested that a definition for "eligible uses" be added to the definitions section of the regulations. Subsection A of section 17.42.060 Home Owner's Association was recommended to be removed as it is already mentioned in section 17.48.015 Active Adult Community. It was also recommended that subsections B and C of Section 17.42.060 Home Owner's Association be incorporated into Section 17.48.015 Active Adult Community after subsection G, but before subsection I.

The Staff Planner stated that she recommends placing the cluster development regulations as part of active adult communities stating that she thinks these regulations should have their own section in order to be able to address any potential types of cluster developments which could occur in the future. The Planning Commission has discussed this issue at previous meetings/workshops and understood the Staff Planner's recommendation.

**Action:** Commissioner Lake motioned to approve the cluster development regulation for active adult communities as amended tonight for recommendation to the Town Board for approval at the next Town Board meeting March 24, 2014. Commissioner Miller seconded. Motion carried (4-0-1). Commissioner Goodman abstained.

### **Planning Commission meeting – February 17, 2014**

#### **Cluster Development Regulations –**

- **Location within the Municipal Code and Purpose -** Discussion occurred as to the location and purpose of the cluster development regulation. Positions expressed regarding these regulations were: 1) These regulations should be included as part of the specific standards for adult active communities. 2) These regulations should have their own section in order to include any other types of future cluster developments within the town. 3. Putting the regulations in an overlay district. The Commission members decided to review the draft regulation which would help clarify this point.
- **Draft Regulation Section Review –** The Planning Commission discussed the draft regulation and reviewed it section by section. After review of the draft regulations, the Planning Commission reached consensus that these cluster development regulations should be included as part of the specific standards for active adult communities. The Staff Planner was tasked with making the changes and to send the draft to the text amendment applicant and Planning Commission members. It will also be added as an agenda item for the March Planning Commission Meeting.

**Action:** None

### **Town Board Meeting – January 27, 2014**

**Discussion of Active Adult Text Amendments –** Burgess stated that the Planning Commission has forwarded us proposed language for the proposed Active Adult text amendment submitted by Memar Corporation. The proposed language refers to “cluster development regulations,” which at this time there is no definition for. The Board stated that they would like to see the definition for “cluster development” before we are able to proceed any further.

### **Planning Commission meeting – January 20, 2014**

**Active Adult Text Amendment -** Cindy reviewed the text amendment changes submitted by the applicant. The proposed text amendment change request now states that on parcels less than 100 acres but more than 30 acres, entire parcel can be used for active adult community using the cluster development concept as long as total density remains below 2 units per acre and complies with any other requirement of the cluster development regulations.

- Discussion ensued regarding whether the wording should remain “total density remains below two units per acre” or be changed to “total density should remain at or below 2 units per acre”. Commissioner Lake stated that the regulation should state at or below 2 units per acre. Mr. Memarsadeghi (Admar Custom Homes, Inc.) stated that this point should actually be reflected in the cluster development regulations and not in this section. Cindy stated that the Planning Commission needs to make a recommendation to the Town Board before its' next meeting on

January 27, 2014, and that the Planning Commission in that recommendation can state that the cluster development regulations will be forthcoming.

- **Cluster Development Regulation:** The Planning Commission has tasked Cindy with developing starting points on cluster development regulations. The Planning Commission will then take those and complete the cluster development regulations within the month.

**Action:** Commissioner Lake motioned to approve text amendment section 17.48.015 Active Adult Community with changes as noted for submittal to the Town Board for modification. Commissioner Smart seconded. Motion carried (4-0-1). Commissioner Goodman abstained.

### **Town Board Meeting – December 9, 2013**

**Active Adult Text Amendment-Planning Commission Response** – Burgess Miller introduced the proposed Active Adult text amendment submitted by the Memar Corporation. The Board will hold a public hearing on this in January. Burgess Miller stated that the Planning Commission has reviewed this and made no recommendation at this time; they feel more information is needed. Burgess Miller stated that this will be on the joint Town Board and Planning Commission meeting in January.

**ORDINANCE NO. 14-08-04**

**AN ORDINANCE TO AMEND TITLE 17 OF THE MIDDLETOWN MUNICIPAL CODE TO AUTHORIZE THE USE OF PROPERTY FOR PURPOSES OF RESIDENTIAL CLUSTER DEVELOPMENT IN THE R-20 ZONING DISTRICT; TO ENACT CHAPTER 17.42 TO ESTABLISH REGULATIONS FOR THE USE OF PROPERTY FOR PURPOSES OF RESIDENTIAL CLUSTER DEVELOPMENT; TO STATE THE PURPOSES FOR AND TO DEFINE CERTAIN TERMS RELATING TO RESIDENTIAL CLUSTER DEVELOPMENTS; TO ESTABLISH CRITERIA FOR DEVELOPMENT AS A RESIDENTIAL CLUSTER DEVELOPMENT; TO STATE THE REQUIREMENTS FOR A SITE DEVELOPMENT PLAN FOR A RESIDENTIAL CLUSTER DEVELOPMENT AND TO ESTABLISH CRITERIA FOR PLANNING COMMISSION REVIEW OF SUCH SITE PLANS; TO REQUIRE THE ESTABLISHMENT OF A HOMEOWNERS' ASSOCIATION FOR A RESIDENTIAL CLUSTER DEVELOPMENT; TO AMEND SECTION 17.48.015 TO AUTHORIZE AN ACTIVE ADULT COMMUNITY TO BE DEVELOPED AS A RESIDENTIAL CLUSTER DEVELOPMENT AS A SPECIAL EXCEPTION UNDER STATED CONDITIONS.**

**SECTION I. BE IT ORDAINED AND ENACTED** by the Burgess and Commissioners of Middletown that Title 17, Chapter 17.16, Section 17.16.010 of the Middletown Municipal Code be, and hereby is, amended as follows. Language being deleted is designated by being ~~in brackets and stricken through~~. New language is designated by being in **BOLD CAPITAL LETTERS**.

**TITLE 17 - ZONING**

**Chapter 17.16 Residential Districts**

**17.16.010 R-20 district**

A. Purpose. The R-20 district is intended to encourage and promote the development of single-family residential neighborhoods on large lots free from land usage which might adversely affect such development; **EXCEPT IN THE CASE OF CLUSTER DEVELOPMENTS IN WHICH DWELLINGS ARE GROUPED TOGETHER ON A SITE,**

**THUS SAVING THE REMAINING LAND AREA FOR COMMON OPEN SPACE, CONSERVATION, RECREATION, AND PUBLIC AND SEMIPUBLIC USES.**

B. Uses Permitted in the R-20 District. No building or structure may be erected or used and no land may be used or occupied except for one or more of the following principal uses:

1. Single-family dwellings;
2. Churches, public schools, libraries and parks, playgrounds, family day care homes;
3. Accessory buildings and uses;
4. Home occupations[-];
5. **RESIDENTIAL CLUSTER DEVELOPMENT.**

C. *{Unchanged}*

**SECTION II. BE IT ORDAINED AND ENACTED** by the Burgess and Commissioners of Middletown that Title 17 of the Middletown Municipal Code be, and hereby is, amended by adding thereto the following as “Chapter 17.42 – Residential Cluster Development”. New language is designated by being in **BOLD CAPITAL LETTERS**.

TITLE 17 – ZONING

**CHAPTER 17.42 RESIDENTIAL CLUSTER DEVELOPMENT**

**SECTIONS:**

- 17.42.010 **PURPOSE.**
- 17.42.020 **DEFINITIONS.**
- 17.42.030 **APPLICABILITY; GENERAL PROVISIONS.**
- 17.42.040 **CONTENTS OF SITE PLAN.**
- 17.42.050 **REVIEW CRITERIA.**
- 17.42.060 **HOME OWNER’S ASSOCIATION.**

**17.42.010 PURPOSE.**

**THE PURPOSE OF THIS CHAPTER IS TO PERMIT SUCH FLEXIBILITY AND PROVIDE PERFORMANCE CRITERIA, WHICH CAN RESULT IN RESIDENTIAL CLUSTER DEVELOPMENTS IN ORDER TO:**

**A. ENCOURAGE CREATIVE AND FLEXIBLE SITE DESIGN THAT IS SENSITIVE TO THE LAND'S NATURAL FEATURES AND ADAPTS TO THE NATURAL TOPOGRAPHY;**

**B. PROTECT ENVIRONMENTALLY SENSITIVE AREAS OF A DEVELOPMENT SITE AND PRESERVE ON A PERMANENT BASIS COMMON OPEN SPACE AND NATURAL FEATURES;**

**C. DECREASE OR MINIMIZE NONPOINT SOURCE POLLUTION IMPACTS BY REDUCING THE AMOUNT OF IMPERVIOUS SURFACES IN SITE DEVELOPMENT;**

**D. PROMOTE COST SAVINGS IN INFRASTRUCTURE INSTALLATION AND MAINTENANCE BY SUCH TECHNIQUES AS REDUCING THE DISTANCE OVER WHICH UTILITIES, SUCH AS WATER AND SEWER LINES, NEED TO BE EXTENDED OR BY REDUCING THE WIDTH OR LENGTH OF STREETS;**

**E. PROVIDE OPPORTUNITIES FOR SOCIAL INTERACTION AND WALKING AND HIKING IN COMMON OPEN SPACE AREAS; AND**

**F. PROVIDE A MORE DESIRABLE ENVIRONMENT THAN WOULD BE POSSIBLE THROUGH THE STRICT APPLICATION OF OTHER SECTIONS OF THIS TITLE. A RESIDENTIAL CLUSTER DEVELOPMENT SHALL BE A SEPARATE ENTITY WITH A DISTINCT CHARACTER IN HARMONY WITH SURROUNDING DEVELOPMENT. COMMON OPEN SPACE MUST BE AN ESSENTIAL AND MAJOR ELEMENT OF THE PLAN, WHICH IS RELATED TO AND AFFECTS THE LONG-TERM VALUE OF THE HOMES AND OTHER DEVELOPMENTS.**

**17.42.020 DEFINITIONS.**

**AS USED IN THIS ORDINANCE, THE FOLLOWING WORDS AND TERMS SHALL HAVE THE MEANINGS SPECIFIED HEREIN:**

**“BUFFER” MEANS LAND MAINTAINED IN EITHER A NATURAL OR LANDSCAPED STATE AND USED TO SCREEN AND/OR MITIGATE THE IMPACTS OF DEVELOPMENT ON SURROUNDING AREAS, PROPERTIES, OR RIGHTS-OF-WAY.**

**“CLUSTER” OR “CLUSTERING” MEANS A SITE-PLANNING TECHNIQUE THAT CONCENTRATES BUILDINGS AND STRUCTURES IN SPECIFIC AREAS ON A LOT, SITE, OR PARCEL TO ALLOW THE REMAINING LAND TO BE USED FOR RECREATION, COMMON OPEN SPACE, AND/OR PRESERVATION OF FEATURES AND/OR STRUCTURES WITH ENVIRONMENTAL, HISTORICAL, CULTURAL, OR OTHER SIGNIFICANCE. THE TECHNIQUES USED TO CONCENTRATE BUILDINGS MAY INCLUDE, BUT SHALL NOT BE LIMITED TO, REDUCTION IN LOT AREAS, SETBACK REQUIREMENTS, AND/OR BULK REQUIREMENTS, WITH THE RESULTANT COMMON OPEN SPACE BEING DEVOTED BY DEED RESTRICTIONS FOR ONE OR MORE ELIGIBLE USES.**

**“CLUSTER DEVELOPMENT, RESIDENTIAL” MEANS A LAND DEVELOPMENT PROJECT IN WHICH THE SITE PLANNING TECHNIQUE OF CLUSTERING DWELLING UNITS IS EMPLOYED.**

**“COMMON OPEN SPACE” MEANS THE PORTION OF THE SITE SET ASIDE IN PERPETUITY AS OPEN SPACE. THIS AREA MAY INCLUDE WETLANDS, FLOODPLAINS OR FLOOD-HAZARD AREAS, STREAM CORRIDORS, SCENIC VIEWS, HISTORICAL OR CULTURAL FEATURES, ARCHAEOLOGICAL SITES, OR OTHER ELEMENTS TO BE PROTECTED FROM DEVELOPMENT, AS WELL AS EASEMENTS FOR PUBLIC UTILITIES.**

**“ELIGIBLE USES” MEANS PARKLAND, RECREATIONAL FIELDS, TRAILS, COMMUNITY BUILDINGS OR SIMILAR-TYPE USES OR AS APPROVED BY THE MIDDLETOWN PLANNING COMMISSION.**

**“GROSS BUILDABLE AREA” MEANS THE TOTAL AREA OF THE SITE MINUS THE AREAS THAT ARE NOT BUILDABLE, SUCH AS WETLANDS, FLOODPLAINS, STEEP SLOPES, BUFFERS AND OTHER ENVIRONMENTAL FEATURES. THIS RESULTING AREA IS USED TO DETERMINE THE MAXIMUM NUMBER OF UNITS TO BE BUILT.**

**“INFRASTRUCTURE” MEANS THE FACILITIES AND SERVICES NEEDED TO SUSTAIN RESIDENTIAL, COMMERCIAL, INDUSTRIAL, INSTITUTIONAL, AND OTHER ACTIVITIES.**

**“LAND DEVELOPMENT PROJECT” MEANS A PROJECT IN WHICH ONE OR MORE LOTS, TRACTS, OR PARCELS OF LAND ARE TO BE DEVELOPED OR REDEVELOPED AS A COORDINATED SITE FOR A COMPLEX OF USES, UNITS, OR STRUCTURES, INCLUDING, BUT NOT LIMITED TO, PLANNED UNIT DEVELOPMENT AND/OR CLUSTER**

**DEVELOPMENT FOR RESIDENTIAL, COMMERCIAL, INSTITUTIONAL, RECREATIONAL, COMMON OPEN SPACE, AND/OR MIXED USES AS ARE PROVIDED FOR IN THE ZONING ORDINANCE.**

**“STREET, PRIVATE” MEANS A LOCAL ROADWAY SERVING ONLY ABUTTING LOTS, NOT PUBLICLY DEDICATED OR MAINTAINED BY THE TOWN BUT MEETING SPECIFIC MUNICIPAL IMPROVEMENT STANDARDS, AND PROVIDING ACCESS FOR SERVICE AND EMERGENCY VEHICLES.**

**17.42.030 APPLICABILITY; GENERAL PROVISIONS.**

**A. A RESIDENTIAL CLUSTER DEVELOPMENT SHALL BE PERMITTED IN THE R-20 RESIDENTIAL ZONING DISTRICT. ALL PRINCIPAL AND ACCESSORY USES AUTHORIZED IN THE R-20 DISTRICT SHALL BE ALLOWED IN THE CLUSTER DEVELOPMENT.**

**B. THE FOLLOWING PROVISIONS SHALL APPLY TO ANY RESIDENTIAL CLUSTER DEVELOPMENT, REGARDLESS OF THE GENERAL REQUIREMENTS OF THE R-20 ZONING DISTRICT:**

- 1. THE MINIMUM AREA OF THE CLUSTER DEVELOPMENT SHALL BE 30 ACRES.**
- 2. TOTAL DENSITY SHALL BE 2 OR FEWER UNITS PER ACRE.**
- 3. A MINIMUM WIDTH OF 60 FEET PER DWELLING UNIT SHALL APPLY UNLESS REQUESTED BY THE APPLICANT AND APPROVED BY THE PLANNING COMMISSION.**
- 4. A MINIMUM SIDE YARD SETBACK OF 5 FEET SHALL BE PROVIDED BETWEEN ALL PRINCIPAL BUILDINGS AND STRUCTURES.**
- 5. A MINIMUM YARD OR COMMON OPEN SPACE OF AT LEAST 25 FEET IN DEPTH SHALL BE PROVIDED AS MEASURED FROM ALL STREETS AND FROM THE SIDE AND REAR LOT LINES AT THE BOUNDARIES OF THE ENTIRE CLUSTER DEVELOPMENT.**
- 6. THE MAXIMUM HEIGHT LIMITATION SHALL BE THAT ESTABLISHED FOR THE R-20 ZONING DISTRICT.**

**17.42.040 CONTENTS OF SITE DEVELOPMENT PLAN.**

**A. THE PRELIMINARY AND FINAL SITE DEVELOPMENT PLANS FOR A RESIDENTIAL CLUSTER DEVELOPMENT SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO, THE FOLLOWING INFORMATION:**

1. THE MAXIMUM NUMBER AND TYPE OF DWELLING UNITS PROPOSED.
2. THE AREAS OF THE SITE ON WHICH THE DWELLING UNITS ARE TO BE CONSTRUCTED AND THEIR BUILDING ENVELOPE SIZE SHOWING THE GENERAL AREA IN WHICH THE DWELLING UNIT IS TO BE LOCATED.
3. THE CALCULATIONS FOR THE PERMITTED NUMBER OF DWELLING UNITS BASED ON GROSS BUILDABLE AREA.
4. THE AREAS OF THE SITE ON WHICH NON-RESIDENTIAL PRINCIPAL AND ACCESSORY USES MAY BE LOCATED AND THEIR SIZE.
5. THE AREAS OF THE SITE DESIGNATED FOR COMMON OPEN SPACE AND THEIR SIZE.
6. THE AREAS OF THE SITE DESIGNATED FOR PARKING AND LOADING AND THE SIZE OF THE SPACES.
7. THE LOCATION OF SIDEWALKS, TRAILS, AND BIKE PATHS.
8. THE PROPOSED LANDSCAPING FOR THE DEVELOPMENT.
9. A PHASING PLAN FOR THE CONSTRUCTION OF THE DEVELOPMENT.

**17.42.050 REVIEW CRITERIA.**

- A. IN REVIEWING A RESIDENTIAL CLUSTER DEVELOPMENT, THE PLANNING COMMISSION SHALL DETERMINE WHETHER:
  1. THE SITE PLAN SATISFIES ALL REQUIREMENTS OF SECTION 17.42.040 ABOVE;
  2. BUILDINGS AND STRUCTURES ARE ADEQUATELY GROUPED SO AT LEAST 25% OF THE TOTAL AREA OF THE SITE IS SET ASIDE AS COMMON OPEN SPACE. TO THE GREATEST DEGREE PRACTICABLE, COMMON OPEN SPACE SHALL BE DESIGNED AS A SINGLE BLOCK AND NOT DIVIDED INTO UNCONNECTED SMALL PARCELS LOCATED IN VARIOUS PARTS OF THE DEVELOPMENT;
  3. PEDESTRIANS CAN EASILY ACCESS COMMON OPEN SPACE;

4. THE SITE PLAN ESTABLISHES, WHERE APPLICABLE, AN UPLAND BUFFER OF VEGETATION OF AT LEAST 50 FEET IN DEPTH ADJACENT TO WETLANDS AND SURFACE WATERS, INCLUDING CREEKS, STREAMS, SPRINGS, LAKES, AND PONDS;
5. INDIVIDUAL LOTS, BUILDINGS, STRUCTURES, STREETS, AND PARKING AREAS ARE SITUATED TO MINIMIZE THE ALTERATION OF NATURAL FEATURES, NATURAL VEGETATION, AND TOPOGRAPHY;
6. EXISTING SCENIC VIEWS OR VISTAS ARE PERMITTED TO REMAIN UNOBSTRUCTED, ESPECIALLY FROM PUBLIC STREETS;
7. THE SITE PLAN ACCOMMODATES AND PRESERVES ANY FEATURES OF HISTORIC, CULTURAL, OR ARCHAEOLOGICAL VALUE;
8. FLOODPLAINS, WETLANDS, AND AREAS WITH SLOPES IN EXCESS OF 25% ARE PROTECTED FROM DEVELOPMENT; AND
9. THE CLUSTER DEVELOPMENT ADVANCES THE PURPOSES OF THIS ORDINANCE AS STATED IN SECTION 17.42.010 ABOVE.

**B. THE PLANNING COMMISSION MAY, IN ITS OPINION, APPLY SUCH SPECIAL CONDITIONS OR STIPULATIONS TO ITS APPROVAL OF A RESIDENTIAL CLUSTER DEVELOPMENT AS MAY BE REQUIRED TO MAINTAIN HARMONY WITH NEIGHBORING USES AND TO PROMOTE THE OBJECTIVES AND PURPOSES OF THE COMPREHENSIVE PLAN AND THE ZONING AND SUBDIVISION ORDINANCES.**

**C. IN APPROVING A RESIDENTIAL CLUSTER DEVELOPMENT, THE PLANNING COMMISSION MAY REDUCE THE PAVEMENT WIDTH OF ANY PUBLIC OR PRIVATE STREETS THAT WOULD OTHERWISE BE REQUIRED BY THE SUBDIVISION REGULATIONS IF THE TOWN ENGINEER IS IN CONCURRENCE. AN APPLICANT WHO WANTS THE REDUCTION OF PAVEMENT WIDTH OF PUBLIC OR PRIVATE STREETS SHALL SUBMIT A STATEMENT OF JUSTIFICATION FOR THE REDUCTION ALONG WITH THE SITE PLAN.**

**D. COMMON OPEN SPACE. AT LEAST TWENTY-FIVE (25%) PERCENT OF THE ENTIRE TRACT OF LAND TO BE DEVELOPED IN A RESIDENTIAL CLUSTER DEVELOPMENT MUST BE DEVOTED TO COMMON OPEN SPACE PURPOSES. AREAS THAT ARE RESERVED AS COMMON OPEN SPACE SHALL BE SHOWN ON THE PLAT AND APPROVED BY THE PLANNING COMMISSION.**

**E. PUBLIC UTILITIES AND FACILITIES. PUBLIC WATER AND PUBLIC SEWER MUST BE PROVIDED TO THE DEVELOPMENT. THE PLANNING COMMISSION MAY REQUIRE THE RESERVATION OF DEVELOPMENT SITES FOR OTHER PUBLIC FACILITIES (SCHOOLS, FIRE OR POLICE STATIONS, LIBRARY, ETC.) IF THE NEED OF THE DEVELOPMENT JUSTIFIES THE FACILITIES.**

**17.42.060 HOMEOWNERS' ASSOCIATION.**

**A. A HOMEOWNERS' ASSOCIATION SHALL BE ESTABLISHED TO MAINTAIN ALL OPEN SPACES, COMMON AREAS, STORMWATER MANAGEMENT FACILITIES, AND PRIVATE STREETS AND TO ARRANGE FOR PRIVATE WASTE REMOVAL SERVICES, IF REQUIRED, AND SNOW REMOVAL SERVICES FOR PRIVATE STREETS AND DRIVES. THE HOMEOWNERS' ASSOCIATION SHALL HAVE THE RESPONSIBILITY TO ENFORCE ALL COVENANTS AND SPECIAL CONDITIONS REQUIRED OF RESIDENTS AND PROPERTY OWNERS IN THE ACTIVE ADULT COMMUNITY. BEFORE ASSUMING ANY RESPONSIBILITY FOR LANDS AND FACILITIES HELD OR CONTROLLED BY THE HOMEOWNERS' ASSOCIATION, THE BURGESS AND COMMISSIONERS MAY REQUIRE THAT SUCH LAND AND FACILITIES MEET THE MINIMUM STANDARDS REQUIRED OF SIMILAR FACILITIES FOR WHICH THE TOWN IS GENERALLY RESPONSIBLE.**

**B. THE PLANNING COMMISSION SHALL REVIEW AND APPROVE THE HOMEOWNERS' ASSOCIATION DECLARATION OF COVENANTS, ARTICLES OF INCORPORATION AND BY-LAWS PRIOR TO FINAL APPROVAL OF THE SITE DEVELOPMENT PLAN FOR A RESIDENTIAL CLUSTER DEVELOPMENT. IN THE EVENT THAT A HOMEOWNERS' ASSOCIATION FAILS, REFUSES OR NEGLECTS FOR ANY REASON TO MAINTAIN, OPERATE OR IMPROVE ALL OR PART OF ANY OF THE FACILITIES, COMMON AREAS, COMMON OPEN SPACES, STREETS, OR OTHER PORTIONS OF THE SUBDIVISION HELD OR CONTROLLED BY IT AND FOR WHICH IT IS RESPONSIBLE, THE TOWN MAY, BUT SHALL NOT BE OBLIGATED TO, FULFILL SUCH OBLIGATIONS, AND UPON DOING SO, THE COSTS AND EXPENSES INCURRED BY THE TOWN SHALL BE PAID BY THE OWNERS OF THE PROPERTIES WHICH ARE SUBJECT TO THE HOMEOWNERS' ASSOCIATION DECLARATION OF COVENANTS. EACH PROPERTY SHALL BE RESPONSIBLE FOR ITS PRO RATA SHARE OF THE EXPENSE BASED UPON THE NUMBER OF PROPERTIES SUBJECT TO THE**

**HOA COVENANTS, AND SUCH CHARGES SHALL BE A LIEN UPON THE PROPERTY AND MAY BE COLLECTED IN ANY MANNER, INCLUDING THE COLLECTION OF TAXES. IN NO EVENT, HOWEVER, SHALL THE TOWN BE OBLIGATED TO UNDERTAKE THE MAINTENANCE, OPERATION OR IMPROVEMENT OF ALL OR PART OF ANY OF THE FACILITIES, COMMON AREAS, COMMON OPEN SPACES, STREETS, OR OTHER PORTIONS OF THE SUBDIVISION FOR WHICH THE HOMEOWNERS' ASSOCIATION IS RESPONSIBLE.**

**SECTION III. BE IT ORDAINED AND ENACTED** by the Burgess and Commissioners of Middletown that Title 17, Chapter 17.48, Section 17.48.015 of the Middletown Municipal Code be, and hereby is, amended as follows. Language being deleted is designated by being ~~[in brackets and stricken through]~~. New language is designated by being in **BOLD CAPITAL LETTERS**.

#### TITLE 17 - ZONING

##### Chapter 17.48 Specific Standards for Special Exceptions

##### 17.48.015 Active adult community

**AN ADULT ACTIVE COMMUNITY IN ~~[in]~~ the R-20 residential district IS ~~[and]~~ subject to the requirements of that district except as modified and provided in this SECTION ~~[chapter]~~:**

A. An active adult community in the R-20 district **MAY ~~[must]~~ be developed as an integral component of a larger R-20 zoned subdivision **CONSISTING OF AT LEAST 100 ACRES IN WHICH EVENT THE ACTIVE ADULT COMMUNITY PORTION OF THE DEVELOPMENT ~~[and]~~ may constitute no more than fifteen (15) percent of the total acreage in the subdivision.****

B. ~~[Minimum size of overall R-20 subdivision: one hundred (100) acres.] **ON PARCELS LESS THAN 100 ACRES BUT MORE THAN 30 ACRES, THE ENTIRE PARCEL MAY BE USED FOR AN ACTIVE ADULT COMMUNITY IN ACCORDANCE**~~

**WITH THE CLUSTER DEVELOPMENT CONCEPT AND REGULATIONS IN SECTION 17.42.**

C. Minimum lot area per dwelling: three thousand two hundred (3,200) square feet; minimum average lot area per dwelling, five thousand five hundred (5,500) square feet; provided that no more than twenty-five (25) percent of the total number of lots may be less than four thousand (4,000) square feet.

D. The planning commission, at its discretion, may approve reduced yards, subject to the following limitations:

1. The front, rear or side yard setback from any lot fronting on a major town street (arterial or collector) shall be thirty-five (35) feet.

2. Minimum setbacks for lots fronting on interior public or private subdivision streets shall be as follows:

- a. Front: ten (10) feet;
- b. Rear: fifteen (15) feet;
- c. Side: five feet.

**3. DRIVEWAYS MUST HAVE A MINIMUM LENGTH OF 20 FEET FROM A PUBLIC OR LOCAL STREET.**

E. - I. *{Unchanged}*

**SECTION IV. 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 \_\_\_\_\_, 2014.**

**PASSED ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2014.**

**EFFECTIVE DATE: \_\_\_\_\_, 2014.**

**ATTEST:**

**BURGESS AND COMMISSIONERS  
OF MIDDLETOWN**

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

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

**Town of Middletown Planning Department**

To: Burgess & Commissioners and Middletown Planning Commission

From: Cindy Unangst, Staff Planner

Date: 9/2/2014

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  
Master Plan Amendment approved - March 11, 2013  
Planning Commission conditionally approved preliminary plan – March 18, 2013  
Improvement plans conditionally approved – October 16, 2013  
Final FRO Plan approved – April 21, 2014

**Foxfield Section 4-** 7 homes still to be built.  
2<sup>nd</sup> year FRO review – 68% compliance – 196 additional trees were planted (May 2014)  
With additional trees planted, the rest of the FRO LOC was released – June 2014

**Site Plans and Minor Subdivisions:**

**Asian Café/Model Garage** – Revised parking lot site plan submitted – August 28, 2014

**AMVETS Expansion Plans** – Revised Site Plan approved – May 19, 2014 (Plans expire 5/19/2017)

**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.

**Fire Station** – Concept plan submitted to PC for comments – April 22, 2013  
Fire Station plat conditionally approved – October 16, 2013  
Fire Station Site Plan conditionally approved – November 18, 2013 (Plans expire 11/18/2016)

**Hollow Creek Golf Course SWM Pond #1** Revision plans submitted to County - December 1, 2010  
Plans approved by County – December 22, 2010  
Revised Plans submitted for PC review – December 30, 2010

**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  
Revised Architectural Plans submitted and reviewed – June 16, 2014

**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  
SHA comment letter received February 18, 2014

**Newton Property (Cross Stone Commons)** – Concept Plan submitted – October 1, 2012  
BOA Special Exception Use Hearing – May 8, 2013 (Conditionally approved)  
Addition Plat conditionally approved by PC – November 18, 2013  
Revised Site Plan conditionally approved by PC – November 18, 2013  
Revised architectural plans approved by PC – March 17, 2014  
Final FRO Plan approved – May 19, 2014  
Improvement Plans conditionally approved by PC – July 21, 2014

**Potomac Gun Depot** – plans conditionally approved – February 18, 2013  
Revised site plan conditionally approved – June 17, 2013; (Plans expire June 17, 2016)

**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 - Garden Center** – Revised Site plan conditionally approved – May 19, 2014  
(Plans expire – May 19, 2017)

**Thompson Funeral Home Parking Lot** – revised site plan conditionally approved April 22, 2013  
SWM Plans conditionally approved by Frederick County – October 29, 2013

**Verizon Small Cell Antenna Installation** – site plan reviewed – June 16, 2014  
Revised site plan conditionally approved – July 21, 2014

#### **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

#### **Text Amendments:**

**Zoning Code review** – ongoing

**Active Adult text amendment** – received language from Farhad – October 28, 2013  
Planning Commission recommended approval of text amendment with cluster development regulations – March 17, 2014  
Public Hearing held May 12, 2014  
Town Board sent text amendment back to the PC due to disagreement with placement of text amendment in the Town Code – June 23, 2014. No response from PC – July 2014.  
**Public Hearing to be held – September 4, 2014**

**Adult Uses text amendment – PC recommended approval of text amendment - July 21, 2014.  
Public Hearing to be held – September 4, 2014**

**Gun sales restrictions – PC to discuss potential regulations – September 15, 2014**

**Reports:** none

**Meetings:** County/Municipal Planners quarterly meeting – September 12, 2014  
Quarterly MD Planning Director’s meeting – September 24, 2014

## Town of Middletown Zoning Department

To: Burgess & Commissioners and Middletown Planning Commission

From: Ron Forrester, Zoning Administrator

Date: 9/4/2014

RE: Monthly Zoning Update – August 2014

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**BOA Hearings:** None.

**Zoning Violations:**

- (1) Thompson Parking Lot –final site preparation activities are well underway on parking lot.
- (2) Unapproved Freestanding Directional Sign, Franklin Street. Sign erected by Middletown Volunteer Fire Company (MVFC) on Franklin Street opposite entrance to Firemen’s Way to provide direction to their Activities Building. No sign permit (zoning certificate) was request before sign erected. Violation letter send to the MVFC on July 9, 2014. Information on need for sign permit and other supporting information attached to letter. Paul Fink from MVFC talked with me on July 14<sup>th</sup> about the sign. He understood they were in violation of the municipal code erecting the sign without a permit. I also discussed with him the need for an approval letter from the owner of the property the sign was erected on since the sign was not on their property but was in front of the Chesterbrook Apartments. I also noted that the sign is also partially obscured by three other directional signs in close proximity to the MVFC sign when driving from South Church Street to Activities Center. Sign permit/Zoning Certificate filed on 15 Aug 14. Email to Burgess on 8 Aug 14 requesting town approve sign being erected in town right-of-way. Open.
- (3) Boat and Trailer in Driveway, 3 Manda Court. Violation letter sent to home owner on 29 Jul 14. On subsequent site visit on 72Aug14, boat/trailer were no longer in driveway. Closed
- (4) Three untagged/inoperable motor vehicles parked on property, 204 South Jefferson Street. Zoning violation letter sent to homeowner on 31 Jul 14. On subsequent visit on 28 Aug 14, untagged/inoperable truck no longer parked next to house and two untagged/inoperable vehicles no longer parked on grass. Owner responded to violation letter. Closed.
- (5) Utility trailers parked on property in side yards/pick-up truck parked on grass in side yard, 208 South Jefferson Street. Violation letter sent to homeowner on 31 Jul 14. A series of emails have been exchanged with property owner clarifying how trailers need to be screened and what the definition of screening is from the municipal code. On subsequent visit on 28 Aug 14, pick-up truck not parked on grass, trailers still need to be properly screened from adjoining properties. Open.
- (6) Utility trailer parked in side yard, 9 Young Branch Drive. Violation letter sent to homeowner on 1 Aug 14. On follow-up visit to site, utility trailer no longer parked in side yard. Closed.
- (7) Utility trailer parked in side yard, 17 Knoll Side Lane. Violation letter sent to homeowners on 29 Aug 14. Utility trailer was not appropriately screened from adjoining properties. Open
- (8) Utility trailer stored in side yard/truck parked beside garage on grass, 5 North Pointe Terrace. Violation letter sent to property management office on 29 Aug 14. Open.

**Miscellaneous:**

- (1) Classic Barber Shop temporary freestanding sign request. Section 17.36.140, Exempt signs, under subparagraph 8, identifies exempt temporary business signs not requiring a sign permit as A-frame, sandwich board, or T-frames. Freestanding temporary business signs are not addressed in zoning ordinance. All exempt signs, however, shall comply with the other applicable requirements of chapter 17.36. Owner of barbershop was asked to provide dimensions of sign as well as a letter from landlord saying he will allow a freestanding

temporary sign to be displayed on his property. Owner of barbershop told that his proposed temporary freestanding sign is not specifically address in the municipal code. Open.

(2) More's Ice Cream employees parking on grass in back section of lot behind approved business parking space/garage. This is not covered in zoning ordinance per se for TC zoned properties.

<b>August 2014 Zoning Certificates</b>	<b>Address</b>	<b>Permit #</b>	<b>M-town Received ZC</b>	<b>RForrester Approved</b>	<b>County Approval</b>
Admar Custom Homes – new single family home	9 Gladhill Drive	119736	6/24/14	8/4/14	yes
Admar Custom Homes – new single family home	4 Hoffman Drive	120815	7/16/14	8/4/14	yes
Clayton Doing – install 4' wooden fence/extend driveway	210 Lombardy Court	Town	8/11/14	8/14/14	no
Robert & Teresa Denion – construct 15' x 23' one story addition on rear of house with wrap around porch	110 Mina Drive	121631	8/13/14	8/15/14	yes
Carolyn Nair – install 58 roof-mounted solar panels	109 Ivy Hill Drive	121701	8/5/14	8/14/14	yes
Roslyn Morrissey - install 52 roof-mounted solar panel	202 Lombardy Court	121704	8/14/14	8/14/14	yes
Matthew Decker – install 6' fence around side and rear of property	7 Walnut Pond Court	Town	8/15/14	8/15/14	no
Middletown VFC – erect directional sign on Franklin Street for Activities Center	13 South Church Street	Town	8/15/14		no
John and Beth Hartner – construct 8' x 12' storage shed in rear yard	334 South Jefferson Street	Town	8/21/14	8/25/14	no
Robert Brenengen – Art Studio in space above Main Cup Restaurant – rental replacing Rockstar Fitness	14 West Main Street	122037	8/25/14	8/25/14	yes
Lori Benedetto – area way stairs/entry on back of home	621 Glenbrook Drive	122048	8/25/14	8/26/14	yes
Middletown High School – concession trailer at stadium	200 School House Drive	121952	8/22/14	8/27/14	yes
Mahesh Krishnamoorthy – construct 20' x 20' deck on rear of home	512 Glenbrook Drive	122141	8/27/14	8/27/14	yes
Ryan and Jen Kuhn – install 4' wooden fence	103 Cone Branch Drive	Town	8/28/14	8/28/14	no

Zoning Certificate submitted to ZA -- actions pending					
Ron Terbush – repair porch, <i>demolish &amp; remove existing open shed</i> , remove and replace fence in back yard	100 East Main Street		3/28/14		
Erik Jenkins - installing a new 12' x 16' deck on back of house	8 Linden Blvd		5/14/14		
Nancy R. Newton – general construction permit for CVS Pharmacy bldg. at proposed Cross Stone Commons Shopping Center	800 East Main Street		7/30/14		yes

**Public Works Monthly Report  
September 4, 2014**

**COMPLETED WORK**

**Streets and Utilities, Facilities**

Maple Street waterline replacement, received 6 folding 8ft picnic tables. Replaced Main St leaking service. Stained four Pedestrian Bridges, Paint curbs, replace all clevis's on swings as recommended by Inspector, repaired Town sidewalks and others, Received new tailgate spreader and new plow.

**Water and Sewer**

Ordered New Aerator for W WWTP, greased aerators, removed old shed and abandoned electrical at reservoir, repaired air chain at E WWTP, replaced filtrate pump. Lead and Copper samples

**Projects**

**Reservoir:** Design of potable water and process water improvements

**Unbudgeted Expenses:**

none

Sludge cost for FY \$7,830.00 36000 gal hauled, 53550 gal bedded **Total hauled** 81000gal **Bedded** 103530gal

**Water Use (Average Daily for the Month, Flows stated in gallons per day)**

**Permit Limits (gal) 387,000/504,000 AD/MMU 250,000 AD 250,000 AD**

MONTH	WATER USE		SPRING FLOW		East WWTP		West WWTP	
	past yr	present yr	past yr	present yr	past yr	present yr	past yr	present yr
January	291,000	301,000	137,000	129,000	270,000	270,000	235,000	258,000
February	286,000	283,000	137,000	138,000	280,000	353,000	288,000	331,000
March **	284,000	290,000	137,000	138,000	276,000	270,000	190,000	226,000
April **	305,000	322,000	137,000	132,000	185,000	264,000	129,000	271,000
May	306,000	309,000	132,000	137,000	210,000	324,000	176,000	403,000
June	297,000	308,000	132,000	136,000	204,000	230,000	179,000	261,000
July	292,000	294,000	115,000	134,000	197,258	197,000	157,000	167,000
August	293,000	294,000	98,000	115,000	168,000	172,000	133,000	138,000
September	309,000	310,000	78,000	69,000	159,000	140,900	133,000	122,000
October **	311,000	312,000	79,000	62,000	215,000	180,000	248,000	167,000
Novembr**	278,000	288,000	120,000	61,000	233,000	184,000	243,000	114,000
December	287,000	278,000	126,000	97,000	217,000	318,000	147,000	282,000

Avg Daily/yr 294917 299083 119000 112333 217855 241908 188167 228333  
 Avg Yr Flw 107.64 109.17 43.44 41.00 79.52 88.30 68.68 83.34

\*\*Hydrants flushed this month

April 11 696,000, April 12 563,000 gal Oct 12 778,000, April 13 684,039, Oct 13 660,700 April 14 709,560

**Planned Work**

Potable waterline to chemical building, install relief valve at Well 15, Sewer Cleanout repairs in Foxfield, Eastern Circle and Franklin Overlay, Lead and Copper Report, Muffin Monster conveyor brush replacement. Sanitary Sewer Root Prevention, Stop Bar installation, restriping of streets, Memorial Park Fountain Installation, Booster Station: Control Valve 4 pilot to be rebuilt

## PROJECTS

### Open Projects

**W WWTP:** Control panel rebuilt, rewiring the junction box.

**Develop Grease Trap Ordinance and Education Program:** No Action

**West Green Street:** Plans to be reviewed. No action.

**Water System: Hydraulic Model:** No action, **System:** Reservoir pumping was even for August.

**Brookridge PS:** Control Panel Upgrade. No action

**Sidewalk Inspections:** Completed 24 reinspections

**Main St. Waterline Replacement:** No action

**Streetscape:** Attended project update meeting on August 21 and September (65% complete).

**Street CIP:** Broad Street RFP – No Action

**Well 15 Filters:** Have sketch plans 90% complete, need to create the control scheme and turn over to Engineer for formal plans and construction permit to be submitted to MDE. No action

**Reservoir Repairs:** Final draft has been received. Final review not completed. No action

**2015 Dump Truck:** Truck at upfitter completion approximately in one month.

**SSO and I&I:** RFP needed - No action.

**Lead and Copper:** Report and calculations to be submitted by end of September, received all samples and lab results.

**Reservoir Waterline:** Design and material list completed. Installation to begin early September.

**Drainage Issues:** none

**Equipment:** Received GMC 5500 with new snow plow and hitch. Selling 10ft salt spreader

**Memorial Park:** Memorial water fountain purchased, planning installation.

**Patching Contract:** 50% complete. Western portion of Town remains as well as overlay projects. Reviewed Elm St concrete retaining wall with superintendent.

### Developments

**Cross Stone:** Received resubmittal for review have begun review.

**Coblentz Road Subdivision:** Received revised Asbuilts. No action

**Coblentz Property:** Performing second review.

**Fire Department Activities Building:** Need to send a letter to Fire Department regarding the use and maintenance of the grease interceptor. Drain needs to be installed on the vault hatch. Completed inspections and drafted letter.

### Planned Work

Fire Hydrant ID tag and numbering system

Water System: Manganese Removal Well 15 – Design, install

Patching Contract

W Green St: Review plans

Regulatory: Grease Ordinance completion.

E WWTP: design spray system for clarifier,



**TO:** The Burgess and Commissioners  
**FROM:** Becky Reich, Main Street Manager  
**DATE:** September 4, 2014  
**RE:** Workshop Report

### PROMOTIONS:

- **Frederick Fair History Day** – Thursday, September 18, 2014 – From 10am to 8pm – The Board voted we participate in this event this year to continue to promote Middletown’s Civil War history. We will be able to bring the exhibit case, banners, and sell our promotional items. We have enough volunteers to cover the evening hours.
- **Heritage Festival** is Saturday, September 27, 2014 - Main Street Middletown will participate in the parade, set up a table to sell remaining Sesquicentennial items, and host a mid-day ribbon cutting at 1:00pm.
- **Frederick Chamber of Commerce – Business Expo Day** – Tuesday, November 4, 2014 – From 7:30am to 5:30pm. We will receive financial support from the Middletown Valley Bank to help cover the costs of this event, so we are very thankful for their continuing support of the Main Street activities.
- **Battle of South Mountain Anniversary Events** – September 13-14 and 20-21. I reached out to Steve Robertson, Head Park Ranger at South Mountain Battlefield State Park and asked if they wanted to borrow our Civil War Retractable Banners and Exhibit Case. To date, I have not heard back from Mr. Robertson, but believe this would be a great opportunity to have the banners on display.

### ECONOMIC DEVELOPMENT:

- We have two new members of our Economic Development Committee – Heather Gramm, Director of Regional Growth and Retention at the Office of Business Development in the Maryland Department of Business and Economic Development, and Scott Durrant, Retail Vice President at Middletown Valley Bank. Our first goal is to complete a more detailed business inventory. This will provide us with useful data on which we can begin to build a business retention program.
- As mentioned above in Promotions, Main Street has been asked by the Middletown Branch of the Frederick County Public Library to assist with a Ribbon Cutting celebration on Saturday, September 27<sup>th</sup> at 1:00pm. The staff is aware that this may be difficult for folks to attend, but this will be the first day the library will be open since closing its doors on September 2 for interior renovations and the addition of new amenities.
- Bob and Kim Brenengen have a new tenant coming to office space above the Main Cup. The new tenant is a local artist. Look for upcoming details on when we will plan another Ribbon Cutting ceremony for this exciting new tenant!
- Business Appreciation Week is October 27-31 with Thursday, October 30<sup>th</sup> being Middletown’s day.

### DESIGN:

- The Design Committee will meet on Thursday, September 11, 2014. After Tim and Kirk’s major roles in the 150<sup>th</sup> event, we are ready to get back on track with design guidelines, and other new projects.

## ORGANIZATION:

- The Main Street Board of Trustees voted to enlarge our Board of Trustees to 12 members. We are excited to announce that we have voted Robin Bowers, Director of the Middletown Branch of the Frederick County Public Library to be our newest member!

## GRANTS:

- I am applying for a Department of Housing and Economic Development Technical Assistance Grant to begin updating our website. We will phase the project into two or three phases. The first phase will be collecting marketing data and formulating it into a market position statement and our website content.
- I am also planning to apply for the highly competitive National Main Street Technical Assistance Grant to have one of the National Main Street staffers come to Middletown for a 1-day intensive visit. They can assist us capacity issues, like starting a giving campaign, board development, etc.

## SESQUICENTENNIAL AND BEYOND!

- David Guiney and I put together an application for an award for the Sesquicentennial products for a Maryland Tourism Award.
- David Guiney has been asked me to attend a 1-day meeting where we will present our strategy and end products at the Maryland Scenic Byways program.
- David Guiney and I are submitting an application to the National Main Street Conference to present our project as one of the workshops/seminars. The National Main Street Conference will be held in Atlanta in March 2015.

*Thank you for your Continued Support of Main Street Middletown!*