



MIDDLETOWN BOARD OF APPEALS
Middletown, Maryland 21769

Meeting Minutes for August 31, 2020

Case #MT-B-20-2 and #MT-B-20-3

The Middletown Board of Appeals (BoA) met on Monday, August 31, 2020 at 7:00 p.m. via Zoom meeting. Present were BoA members Daphne Gabb (Chairwoman), Alex Kundrick, Sean Mahar, and Jonathan Minchoff (alternate), Mark Hinkle (Zoning Administrator) and Patty Guyton (recording secretary).

Others present: Farhad (Memar), Stephanie and Robert Lowe (resident - 212 Layla Drive), Dave Albertson (Browning Pools), David and Danielle Tomlin (residents - 7780 Coblentz road), Charlie and Trish Goodie (residents - 7786 Coblentz road) Cheryl Dougher (resident), Harald Thornberry (resident – 7798 Coblentz road), and Bruce Dzeilinski (resident – 7769 Coblentz road).

Minutes – Chairwoman Gabb asked if there were any corrections to the February 26, 2020 BoA meeting minutes as submitted. Hearing no comments, the minutes were approved.

Case MT-B-20-2 (Memar Corporation – West side of Coblentz Road and north of Middletown County park) The applicant is filling for a special exception approval to allow an active adult community in the R-20 residential district.

Staff Report: Zoning: R-20 Residential. This district permits single-family dwellings along with accessory buildings and uses and home occupations, as well as parks, playgrounds, and residential cluster developments. Numerous special exceptions uses with Board of Appeals approval are also permitted which includes active adult communities. The intent of the district is 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.

Present Use: vacant

Section(s) of the Code that Apply:

17.16.010	R-20 District Special Exceptions
17.44.060	Board of Appeals Special Exceptions
17.48.015	Active Adult Community Special Exception Standards

Active adult community special exception standards were added to the Municipal Code in the year

2000. More recently the specific standards were amended to allow active adult communities on parcels of land less than one hundred acres in size in accordance with the cluster development concept. The specific standards are as follows:

17.48.15 Active adult community.

An adult active community in the R-20 residential district is subject to the requirements of that district except as modified and provided in this section:

- A. An active adult community in the R-20 district may be developed as an integral component of a larger R-20 zoned subdivision consisting of at least one hundred (100) acres in which event the active adult community portion of the development may constitute no more than fifteen (15) percent of the total acreage in the subdivision.
- B. On parcels less than one hundred (100) acres but more than thirty (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 twenty (20) feet from a public or local street.
- E. Any individual dead-end private drive or street may be used to serve no more than ten (10) dwelling units.
- F. Pavers or other alternative materials which meet the standards approved by the town engineer may be used in the construction of private drives or streets.
- G. 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.
- H. The planning commission shall review and make recommendations regarding a concept plan for the active adult community.
- I. If the special exception is granted, the planning commission shall review and comment on the homeowners' association declaration of covenants for the purpose of approval by the burgess and commissioners prior to final plat approval. The planning commission shall also have architectural review authority for the dwelling units to be constructed within the community.

Section 17.16.01O(C) lists the special exceptions allowed in the R-20 District and states "the board of appeals may authorize the following principal uses as special exceptions in accordance with the provisions of Section 17.44.060". Number 5 on that list is: Active adult community.

All applications for a special exception shall be referred to the planning commission for a recommendation to the board of appeals. Based on staff review and site inspection, staff would offer the following:

- A. The subject property is zoned R-20 per the annexation agreement which was approved by the Burgess and Commissioners in 2018 which specifically requires the site to be developed as an Active Adult Community.
- B. The parcel is 94±acres and is proposed to be developed in accordance with the cluster development regulations. The plan shows 148 active adult lots with the remainder of the property reserved for open space and forest conservation retention.
- C. The minimum lot area per dwelling according to the concept plan is 7,800 square feet which exceeds the requirement of 3,200 square feet. The average lot area per dwelling according to the concept plan is 9,059 square feet which exceeds the minimum requirement of 5,500 square feet. None of the lots depicted on the concept plan are less than 4,000 square feet in size.
- D. The front yard setbacks are proposed to be 10 feet or 35 feet if fronting a major town street (arterial or collector); the side yard setbacks are proposed to be 5 feet or 35 feet if fronting a major town street (arterial or collector); and the rear yard setbacks are proposed to be 15 feet or 35 feet if fronting a major town street (arterial or collector). There is no indication on the concept plan that driveways must have a minimum length of 20 feet from a public or local street.
- E. The concept plan does not propose any private drives or streets.
- F. The Planning Commission will require the review and comment on the homeowners' association declaration of covenants for the purpose of approval by the burgess and commissioners prior to final plat approval.
- G. A concept plan has been provided to the Planning Commission for review.

In addition to those specific requirements, the general requirements to be used by the Board of Appeals are as follows:

17.44.060 General Standards. A special exception may be granted when the Board of Appeals finds from a preponderance of the evidence produced at the hearing that:

1. The proposed use, including its nature, intensity and location, is in harmony with the intent of the district;
2. That adequate water supply, sewage disposal, storm drainage and fire and police protection are or can be provided for the use;
3. That the use of adjacent land and buildings will not be discouraged and the value of adjacent land and buildings will not be impaired by the location, nature and height of buildings, walls and fences;
4. That the use will have proper location with respect to existing or future streets giving access to it, and will not create traffic congestion or cause industrial or commercial traffic to use residential streets;
5. That the specific standards (Chapter 17.48) set forth for each particular use for which a special exception may be granted have been met.

The Staff has reviewed the above standards and the subject property and makes the following findings:

- A. The subject property is zoned R-20 Residential and is adjoined to the north and west by agricultural land outside of town limits, to the south by Open Space-zoned land with a public park, and to the east by large-lot residential dwellings outside of the town limits. Given that the R-20 district allows for cluster developments in which dwellings are grouped together on a site with the remainder of the property reserved for open space and conservation, staff feels the intensity of the proposed use is in harmony with the intent of the district and is compatible with the surrounding area. The clustering of the lots will also provide for the protection of the existing sensitive areas including streams, stream buffers, wetlands, wetland buffers, forest, and steep slopes.
- B. Wells have been drilled on the property and sufficient quantities of water have been established by the Maryland Department of the Environment. It has also been established that sewage facilities within the Town are adequate to provide for the new development. The applicant will need to continue working with the Town's Engineer on supplying water and sewage disposal to the subject property. Fire service is just over a mile away, and there are deputy sheriffs assigned to the Town for police protection. Stormwater management will need to be reviewed and approved by Frederick County if this use is approved.
- C. Given the intensity and scale of development is as proposed, and the clustering of the residential lots on the property, the value of adjacent land and buildings should not be impaired.
- D. A traffic study for this proposed use has been done and was approved by the Burgess and Commissioners. The use will not cause industrial or commercial traffic to use residential streets.
- E. The applicant has proposed the use in accordance with the specific standards as discussed above.

Staff Recommendation: Given that most of the specific standards for the proposed use are being met or will be met upon review and approval by the planning commission during the appropriate assessment stage, and the general standards for special exception uses are or will be met, staff would recommend the Special exception **APPROVAL**, to allow an active adult community in the R-20 residential district with the condition that the Middletown Planning Commission will review plans going forward which will include architectural drawings and elevations.

Discussions: Danielle Tomlin (resident – 7780 Coblenz road) asked if the water testing for the wells have been completed yet and Farhad stated that they have and passed. David and Danielle Tomlin are concerned about the construction timeline, how long this is going to take, and what impacts this is going to have on their property. Chairwoman Gabb stated that these questions are more for when the project moves to the Planning Commission stage.

Charlie and Trish Goodie (resident – 7786 Coblenz road) How is this going to affect their wells? Since water has been an issue for a while in Middletown. Chairwoman Gabb stated that Maryland Department of the Environment would determine if the new community would affect the current wells and if they did, residents could be moved to public water.

Bruce Dzielinski (resident – 7769 Coblenz road) wanted to know why all adjacent properties were not notified by letter. Mark Hinkle stated that all adjoining properties were notified by letter and that there was a Public Hearing advertised, twice in the Newspaper for all other residents.

Action: Motioned by Board member Kundrick to approve the special exception for an Active Adult Community and move forward to the Planning Commission. Seconded by Board member Mahar. Motion carried (3-0)

Case MT-B-20-3 (Richard Lowe - 212 Layla Drive) The applicant is filing for a variance of approximately 8' from the required 18' setback for placement of an inground pool to the rear of the existing principal dwelling located at 212 Layla Drive. The lot is in the Foxfield subdivision.

Staff Report: The Zoning Administrator reported that the property in question is .46 acres and the proposed pool is 16'x34'. Variances are typically granted based on unnecessary hardship or that the property lot characteristics do not allow for reasonable use of the property. The setback requirements could be met for this project with a re-design of pool size and location. Any unwillingness to make this change does not constitute a hardship nor does it restrict reasonable use of the property in question.

Staff recommends that the application for variance be DENIED and that the applicant re-submit acceptable plans if they wish to move forward with the project.

If the variance applied for and requested is granted, staff notes that it will not alter the essential character of the neighborhood or district in which the property is located on Layla Dr., nor substantially impair the appropriate use or development of adjacent property and/or confronting properties, nor be detrimental to the public welfare.

Discussions: Board members asked Zoning Administrator why does he recommend this variance be denied? Zoning Administrator stated because it is an unnecessary hardship caused by the size of the pool, most hardships are caused by narrow yards.

Board members asked if the pool could be moved to another location, possibly to the side yard, where there is more space. Dave Albertson (Browning Pools) stated that it is a safety issue to place the pool in the side yard because the pool would not be visible from the house. He also stated that due to the unique slopes and lay out of the yard, the location they presented is the best place for the pool.

Board members asked what the impacts would be if they did decide to approve the 8' setback over the 18' variance? Robert Lowe stated that the property backs up the Foxfield Walking Trail easement and that they have no neighbors on the back side of their property.

Dave Albertson, Robert and Stephanie Lowe stated that they thought of every way possible to meet the requirements but due to the unique lay out of the yard, safety issues with side yard, storm water runoff issues, and the County set back of 10' from the foundations. This location is the best scenario that works with everything besides the setbacks from the Middletown's code.

Board member Minchoff agrees with the property owners and pool developer. He does not feel it is necessary to have them submit different plans/drawings. What we are asking is creating a hardship in its own. He stated that we look at these case by case and every case is different.

Chairman Gabb stated that this case is very subjective on hardships. The property has easements, slope and storm water draining issues. The property is more unique than most.

Action:

Motion by Board member Kundrick to approve the variance to grant the 8' setback instead of the required 18" setback. Seconded by Board member Mahar. Motion carried (3-0).

The meeting adjourned at 8:31 p.m.

Respectfully submitted,

Patty Guyton
Town Receptionist