



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

**Meeting Minutes
February 22, 2017**

**THESE MINUTES WERE APPROVED AT THE JULY 26, 2017
BOARD OF APPEALS MEETING**

Case # MT-B-17-1

The **Middletown Board of Appeals (BoA)** met on Wednesday, February 22, 2017 at 7:00 p.m. at the Middletown Municipal Center, 31 W. Main Street, Middletown, MD 21769. BoA members present were Fred Rudy (Chairman), Tim Coakley, and Alex Kundrick. Ron Forrester (Zoning Administrator (ZA)) was also present as BoA Secretary / Recorder.

Others present: Hubert Brown (Eric Moore General Contracting LLC / applicant), Eric Moore (Eric Moore General Contracting LLC), Selvia Gouker (resident), Janis Nalborczyk (resident), Brenda Coblentz (resident), Barbara Reeder (resident), Ray Reeder (resident), Todd Gouker (resident), Chris Goodman (resident/Town Commissioner), and Tom Catania (resident/Town Commissioner).

Call to Order: The meeting was called to order at 7:01 pm by Mr. Rudy and attendees were asked to stand and participate in the pledge of allegiance to the flag.

Old Business:

Approval of Meeting Minutes – Chairman Rudy asked if there were any corrections, deletions or changes to the October 20, 2016 BoA meeting minutes as submitted for Case #MT-B-16-3. Board members Coakley and Kundrick said they had no additions or changes to the meeting minutes as submitted. Chairman Rudy said the meeting minutes were approved as submitted (3-0).

New Business:

Election of BoA Chairman for 2017: Board member Coakley nominated Chairman Rudy to serve as BoA chairman for 2017. Board member Kundrick seconded the motion. Motion passed 3-0.

Case MT-B-17-1 (219 South Jefferson Street) – The applicant, Hubert Brown representing Eric Moore General Contracting LLC, filed an appeal for four (4) variances from Section 17.16.070 - Required lot area, lot width and yards (in residential districts) in R-3 zoned district of the Middletown Municipal Code.

The ZA stated that all appropriate actions were taken for Case #MT-B-17-1; notices were posted in town hall and in the Middletown Valley Citizen newspaper advertising the BoA public hearing (February 2, 9, 16 editions), letters were sent to all adjacent/adjoining property owners, and the property was properly posted in accordance with Section 17.44.070 of the municipal code. Additionally, the ZA noted that the Middletown Planning Commission conditionally approved the Demolition Site Plan for the property at their public meeting on February 20, 2017 and the applicant has 90 days from February 22nd to complete the demolition.

Staff Report:

The applicant is filing for four (4) variances from Section 17.16.070 of the Middletown Municipal Code. The variances being requested are: (1) seventeen (17) foot variance from the required sixty (60) foot minimum lot width per structure required for a property in a R-3 district; the lot is forty-three (43) feet wide; (2) six (6) foot variance from left side yard and six point six (6.6) foot variance from right side yard setback / building restriction line (BRL) requirement of twelve (12) foot; and (3) a fifteen (15) foot variance from the 35 foot front yard setback / BRL requirement for a property located in a R-3 residential zoned district. This setback allows for a minimum distance of 20 (twenty) feet for the driveway on the property.

Staff notes that the lot at 219 South Jefferson Street is 0.216 acres (12,760 square feet) in size and is forty-three (43) foot wide and two-hundred and fifty (250) foot deep and is located in an R-3 zoned district. All the adjoining properties are located in an R-3 residentially zoned district. The front boundary of the property is South Jefferson Street. The residential properties behind the property are townhouses located in Jefferson Village subdivision. The lot was created in the late 1880s well before the current zoning ordinance were implemented in 1969. An aerial view of properties in the 200 block of South Jefferson Street show a number of properties that are similar in shape and dimensions to the lot at 219 South Jefferson Street – narrow in width. The conditions for this property (narrow width) create an unnecessary hardship for the applicant due to the property's physical shape and dimensions and not conditions generally created by the provisions of the zoning ordinance in the neighborhood or district along the 200 block of South Jefferson Street. Because of these physical limitations, it is difficult for the applicant to construct a new single family dwelling (SFD) on the property in strict conformity with the provisions of the zoning ordinance. The applicant plans on

building a SFD on the property that reasonably matches the general architecture design and size of other SFDs found on adjacent and adjoining properties. The applicant has not created these property conditions. In fact, the current dilapidated SFD is situated on the property line with the adjacent property at 217 South Jefferson Street. The authorization of the variances requested are necessary to enable the reasonable use of this property by the applicant to construct a new SFD that is consistent with surrounding properties.

The conditions for this property (irregular shape – very narrow) coupled with the requirement to reposition the new SFD on the lot require that variances of six (6) foot from left side yard and six point six (6.6) foot from right side yard setback / building restriction line (BRL) be approved from both the side yard setback / BRL distances of twelve (12) foot. Additionally, the variance of fifteen (15) foot from the front yard setback / BRL of 35 foot is reasonable considering the shallow front yards noted for the other residential structures to the north side of 219 South Jefferson Street. The variance of 17 foot from the minimum lot width per structure of 60 feet is required to allow applicant to build a SFD on the property once the dilapidated structures are removed.

Staff noted that the applicant has not created these property conditions. The authorization of the variances requested are necessary to enable the reasonable use of this property by the applicant to construct a new SFD on the property.

If the variances applied for are granted, staff notes that it will not alter the essential character of the neighborhood or district in which the property is located on the 200 block of South Jefferson Street, nor substantially impair the appropriate use or development of adjacent property and/or confronting properties, nor be detrimental to the public welfare. Staff supports the variances as presented by the applicant as reasonable to afford them relief from Section 17.16.070 of the Middletown Municipal Code while representing a reasonable modification of the regulation in use.

Discussions:

Chairman Rudy asked if the property owner wished to address the board or wanted to make a comment or speak on behalf of the variances submitted before the BoA. Mr. Brown, applicant, said he is the contract purchasers of the property and has an affidavit from the property owners to proceed with requesting the variances presented to the board. A copy of the affidavit was provided to the zoning administrator. He said the current SFD is not worth fixing up because of its deteriorated condition so the plan is to demolish the old structure and build a new SFD on the property. He said the proposed house they plan on constructing on this lot works very well on narrow lots and they have built the same house in Brunswick on narrow lots. The house design allows for two off-street parking spots – one vehicle in the garage and one vehicle in the driveway. Mr. Brown said the six foot setbacks on each side the proposed structure are adequate to ensure

proper drainage on the property and should ensure less water goes on the property at 217 South Jefferson Street when everything is completed and the lot is properly graded. He concurred with the recommendation and information provided in the zoning administrator's staff report concerning the variances required from the BoA to build a new SFD on the lot once the existing dilapidated SFD and storage shed/accessory building were demolished. When asked by Chairman Rudy if the applicant had access to the lot from the back of the property, Mr. Brown said that they do have access from an unimproved alley that runs behind the properties on the 200 block of South Jefferson Street. Mr. Coakley asked if the driveway for the property was behind the sidewalk. Mr. Brown said that there was approximately a three (3) foot distance between the sidewalk and where the front property line starts. For that reason, the driveway should be 22 or 23 foot in length.

Chairman Rudy asked if any other attendees wanted to address the board. Ms. Reeder spoke on behalf of her nephew, Todd Gouker, who lives at 217 South Jefferson Street. Ms. Reeder asked the BoA members if they had visited the property. They all affirmed that they had visited the property on more than one occasion. She commented that the lot is only 43 foot wide when the code requires it be 60 foot wide. She then asked if that was what the 17 foot variance was for and was told it was. She commented that without the 6 and 6.6 foot side variances being granted for each of the side yards that the house constructed could only be 19 foot wide versus 31 foot wide if the variances are approved. She said this is a long narrow lot and that there are many house plans on-line that would fit on this lot better. She distributed copies of house plans for a 20 foot and a 22 foot wide SFD. She asked if the homeowners on the other side of the 219 South Jefferson Street responded to the BoA letter. It was noted they had not. Ms. Reeder said those folks have the 12 foot side yards. A picture of the concrete alley between 217 and 219 South Jefferson Street was shown. She expressed concern that the demolition and other site work might damage the concrete wall between the properties. Additionally, she said that six feet side yard setback on the right side of the property was not enough distance between Todd Gouker's property and the new SFD. Because of the topography of the lot, the water drains from the back to the front of the property which is a concern. Therefore, she said six foot wasn't enough distance to ensure that water does not run onto the property at 217 South Jefferson Street. Additionally, she was confused by the front yard variance being requested by the applicant. It was explained that the house would set 20 feet from the front property line if the 15 foot variance the applicant is requesting was approved from the required 35 foot variance in the municipal code. She said she does not want the 6.6 foot variance to the right yard setback of 12 foot approved. She wants the side yard distance to be 12 foot as currently required in the code.

Mr. Brown pointed out on the property plat (projected on the screen) where the swells for draining the storm water off the property are proposed to be. He said there should be less of a chance of water going onto 217 South Jefferson Street after the new SFD is constructed and the property / lot is landscaped to handle the water runoff. He said their intent is to protect the property and to repair any

structure / wall if damaged during the demolition and /or construction of the new SFD. Ms. Reeder said that using one of the house plans she suggested would allow the SFD to be constructed using the depth of the lot and would not require either of the side yard variances being requested. Mr. Brown cautioned that as you go towards the back of the property that the elevation of the lot increases substantially providing additional challenges for a SFD being constructed on the lot.

Chairman Rudy said that the BoA does not have the authority to tell the property owner what type of house they can build on their property; nor can the county. The BoA can only address the applicant's request for variances in accordance with the municipal code. Ms. Reeder said that the BoA should listen to the concerns of the neighbor who doesn't want the new SFD constructed so close to them. She said the BoA should not approve the 6.6 foot side yard variance being requested for the right side of the property because the neighbor doesn't want it. She said the builder can build another style of house that fits the lot without potentially impacting a neighbor's property. She felt she had provided enough reasons for the BoA members to not approve the right side variance as requested by the applicant.

Board member Coakley asked if the property at 217 South Jefferson Street had experienced water damage from water runoff. Ms. Reeder said there had not been any water damage from water runoff and they wanted to keep it that way. Ms. Reeder reiterated her position that the right side variance of 6.6 foot should not be approved by the BoA members.

Ms. Coblentz who lives across the street from 217/219 South Jefferson Street expressed a concern regarding where the driveway for the new SFD would be. Her concern was that when people park on the street across from her driveway, she cannot get out of her driveway because of the size of the vehicle she drives. She said that since the new driveway is not directly across from her driveway that she will still have a problem with people parking their cars on the street opposite her driveway. She said she will need to contact the town and see if the street across from her house could be designated as a no parking zone to ensure she can safely ingress and egress her driveway.

When Chairman Rudy asked if there were any other comments, Mr. Brown responded. He said that he has built 15 houses on narrow lots like the one he is proposing to construct on the lot at 219 South Jefferson Street and that this model works well on this type of lot. He noted that because of the topography of the lot at 219 South Jefferson Street placing the SFD further back on the lot means you have at least a 12 to 14 foot elevation increase which cause additional challenges with building a SFD on property as well as the potential for additional problems with water runoff, etc. He said he is confident the house planned will work well for this lot.

Chairman Rudy said that Frederick County Permits and Inspections are very aware of water drainage issues and that he is sure they would ensure proper runoff from this property as well. He noted that this is not an issue this board has to deal with this evening.

Board members Coakley and Kundrick expressed their support for the four variances requested by the applicant after weighing all the information discussed during the meeting. Chairman Rudy expressed his support and asked if board member Coakley wanted to make a motion to approve the applicant's appeal for variances.

Action:

Board member Coakley made a motion to approve the four variances requested by Mr. Brown, the applicant, representing Eric Moore General Contracting, for the property at 219 South Jefferson Street. Board member Kundrick seconded the motion. The motion carried (3-0).

With no other matters or business before the board, Chairman Rudy adjourned the BoA meeting at 8:15 p.m.

Respectfully submitted,

Ronald G. Forrester
Zoning Administrator
BoA Secretary