



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

Meeting Minutes for September 30, 2020

Case #MT-B-20-4 and #MT-B-20-5

The Middletown Board of Appeals (BoA) met on Wednesday, September 30, 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: Cody Weinberg (Miles and Stockbridge P.C.), Tom Poss (Verdant Development Group), Kevin and Kimberly Kloster (716 Glenbrook Drive), and Annette Clayton (13 Walnut Pond Ct).

Minutes – Chairwoman Gabb asked if there were any corrections to the August 31, 2020 BoA meeting minutes as submitted. One correction was announced, minutes were approved with the correction.

Case MT-B-20-4 (Verdant Development Group, LLC) The applicant is filing for a Variance from the Section 17.16.050 - Building height regulations and unit limitations for structures in residential districts of the Middletown Municipal Code for the proposed construction of eighteen (18) multi-family units. Project is Chesterbrook Phase 2.

Staff Report- The applicant is filing for variance from a section of the Middletown Municipal Code.

Section 17.16.050 - Building height regulations and unit limitations for structures in residential districts requires that *“No building will exceed two and one-half stories or thirty-five (35) feet in height.”* ***The Applicant is requesting a variance that allows a height of three (3) stories, with a maximum height of forty (40) feet. This variance allows the applicant to use design features that facilitate a reduction in the amount of impervious surface (due to less parking spaces). The small lot size and the new storm water management regulations necessitate reducing the impervious surface area.***

Staff notes that the originally conceived “Chesterbrook Manor” was approved for seven (7) multi-family dwelling unit apartment buildings on two lots, Lots 1 and 2, and that these site improvements were approved under Zoning Ordinances in effect in 1969. The original concept for Chesterbrook Manor has changed so the applicant is attempting to put Lot 1 to its highest and best use after Lot 2 has already been approved under provisions of Zoning Ordinances that have changed or no longer exist. The applicant submits that the practical difficulties created by applying current Zoning Ordinance provisions to essentially “phase 2” of a project previous planned are numerous. Due to these practical difficulties, the applicant is faced with unnecessary hardship requiring the requested variance for this property to be developed as outlined. It is also noted that a change in the approved planned use of Phase 2 requires the applicant to make infrastructure improvements in order to comply with Zoning Ordinances currently in

effect to include storm water management facilities, road and pedestrian improvements, water/sewer infrastructure, etc.

Staff notes that the lot is irregular in shape and that this provides some challenges for the Applicant in developing the property and building garage-loaded, multi-family units versus apartment buildings based on new and stricter storm water management requirements, etc. The Applicant's position is that the physical circumstances or conditions of the property – its size and shape - preclude the possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is necessary to enable the reasonable use of the property. The Applicant states a variance is required to Sections 17.16.050 – Building height regulations. The rationale is that a variance is needed “in order to provide for the most orderly and efficient development of the Property, while also providing desired and necessary infrastructure improvements (including but not limited to road and pedestrian improvements, water/sewer infrastructure and storm water management facilities), the Applicant encounters practical difficulties in planning and design, when constrained by the building height.” For these reasons, the variance from Section 17.16.050 is requested. Staff also notes that there are few existing properties in Middletown that can support the development of this type of multi-family residential project. Additionally, the existing topography of the surrounding structures should allow these garaged-loaded, multi-family residential units to fit in seamlessly within the character of the surrounding neighborhood.

Staff notes that if the variance requested is granted, it will not alter the essential character of the neighborhood or district in which the property is located at the intersection of Broad Street and Franklin Street, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. *Staff finds the variance as presented by the applicant as reasonable to afford them relief from Section 17.16.050 of the Code while representing a reasonable modification of the regulation in use.*

Discussion – There was discussion about if the new Town code on building height has been approved. The new Town code has not been approved but if it does then the building height will comply.

Annette Clayton (resident – 13 Walnut Pond Ct) stated that she does not see the reason to build taller buildings. She also stated that Middletown is being over developed, has less farmland, and schools are already too crowded.

Cody Weinberg stated that the intention behind the rule of the variance is to allow the increase in height for bottom level garages, to take up less land area. He also stated that the more land surface you use, there will be more storm water run off issues.

Action: Motioned by Board member Mahar to approve the variance, as presented from the Section 17.16.050 - Building height regulations and unit limitations for structures in residential districts of the Middletown Municipal Code for the proposed construction of eighteen (18) multi-family units. Project is Chesterbrook Phase 2. Seconded by Board member Kundrick. Motion carried (3-0)

Case MT-B-20-5 (Kimberly Kloster – 716 Glenbrook Drive) - The applicant is filing for a variance of approximately 5' from the 18' left side yard setback and 9' from the 18' rear yard setback for the placement of an inground pool to the rear of the existing principal dwelling located at 716 Glenbrook Drive. The lot is in the Glenbrook subdivision. The property in question is .24 acres and the proposed pool is 16'x37'.

Based on the application, the applicant states that the yard is both narrow and shallow. The property is 75' wide and with appropriate setbacks that would only allow 39' for a swimming

pool, there is also a drop in elevation that would cause retaining walls to be built. The lot is 30' deep from the footers for an attached deck. There would be no potential for flooding of adjacent lots or properties.

Variances are granted based on Section 17.44.050 found in Town Code and copied here.

17.44.050 - Variances.

- A. Filing of Variance. An application may be made to the board of appeals for a variance where it is alleged that the provisions of the zoning ordinance inflict unnecessary hardship upon the applicant. The application must be on a form provided for that purpose by the town. The applicant must provide all the information requested on the form, together with any other information and data that may be required to advise the board on the variance, whether such information is called for by the official form or not.
- B. Standards for Variances. Where there is unnecessary hardship, the board may grant a variance in the application of the provisions of this title provided that the following findings are made where relevant in a given case:
 - 1. That there are unique physical circumstances or conditions including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located;
 - 2. That because of such physical circumstances or conditions, the property cannot be developed in strict conformity with the provisions of the zoning ordinance without unnecessary hardship and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;
 - 3. That such unnecessary hardship has not been created by the applicant.
 - 4. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare;
 - 5. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.
- C. No grant of a variance shall be authorized unless the board specifically finds that the condition or situation of the specific piece of property or intended use of such property, for which the variance is sought, is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such conditions or situation.
- D. Conditions. In granting any variance, the board may attach such reasonable conditions and safeguards as it considers necessary to implement purposes of this zoning ordinance.

(Ord. No. 15-12-02, § I, 12-14-2015; Ord. 182 § 10.4, 1976)

The setback requirements could be met for this project with a re-design of pool size and location. The deck, which was constructed on the property by the applicant, has created the hardship and exacerbated the conditions noted. The deck was built by the applicant under Frederick County permit #138047 which received Town approval on December 22, 2015.

Staff recommends that the application for variance be **DENIED based on Section 17.44.050**

B3 found in Town Code. The applicant re-submits 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, nor substantially impair the appropriate use or development of adjacent property and/or confronting properties, nor be detrimental to the public welfare.

Discussions: The Kloster's asked Zoning Administrator why he recommends this variance be denied when other pool variances in the same neighborhood have been approved in the past. Zoning Administrator stated because it is an unnecessary hardship caused by the size of the pool and an existing deck, most hardships are caused by narrow yards. The Kloster's stated that the deck had to be placed there due to the back door being 4-5 feet off the ground when the house was built.

The Board of Appeals members asked if the pool could be moved to another location or made smaller to comply with the setback requirements. Kevin Kloster stated that the pool already is not a "big" pool and making it smaller would not be worth it. He also stated that pool engineers have looked at every location for the pool and this location is the best one due to a slope on the right side of the yard. The Kloster's also have Glenbrook HOA requirements that must be met. Glenbrook HOA requires that the pool equipment (7' X 5' area) be placed on the back right side of house, out of sight of neighbors and street view.

After discussing with the Board of Appeals members, the Kloster's stated that they are willing to meet back with the pool engineers and have the pool moved 5' to the right to meet the 18' setback on the left side.

Action:

Motion by Board member Mahar to approve the variance to grant the 9' setback instead of the required 18" setback on the back side of pool but deny the 13' setback from left side of pool. Homeowners will resubmit revised plans to meet the required 18' setback on left side after meeting with pool engineers. Seconded by Board member Kundrick. Motion carried (3-0).

The meeting adjourned at 8:37 p.m.

Respectfully submitted,

Patty Guyton
Town Receptionist