

**Board of Zoning Adjustment**  
**Staff Report**  
November 18, 2019



<b>Case No:</b>	19-VARIANCE-0015 and 19-VARIANCE-0016
<b>Project Name:</b>	Middletown Station
<b>Location:</b>	12965 Shelbyville Rd
<b>Owner(s):</b>	J. Layson Hagan, Middletown Partners, LLC
<b>Applicant:</b>	J. Layson Hagan, Middletown Partners, LLC
<b>Jurisdiction:</b>	Middletown
<b>Council District:</b>	19 – Anthony Piagentini
<b>Case Manager:</b>	Lacey Gabbard, AICP, Planner I

**REQUESTS:**

1. **Variance** of Land Development Code section 5.3.2.C.2.b to allow parking to encroach into a portion of the required side and rear setback between C-2 and C-2 (19-VARIANCE-0015)
2. **Variance** of Land Development Code section 5.7.1.B.1 to increase the maximum building height within a Transition Zone from 45 feet to 60 feet along Aiken Road, between the Suburban Marketplace and the Neighborhood Form Districts (19-VARIANCE-0016)

**CASE SUMMARY/BACKGROUND**

The subject site is zoned C-2 Commercial in the Suburban Marketplace Corridor form district. It is located on the east side of Aiken Road, north of the intersection with Shelbyville Road. The site currently has no structures, but is partly covered by a parking lot/impervious area. The site is surrounded by other C-1 and C-2 zoned parcels to the east, south and west, and R-6 Residential Multi-family parcels to the north. The applicant is proposing to construct a 326 unit apartment community with four, multi-story apartment buildings with a combination of surface parking and tuck-under parking spaces.

Previous cases:

- 9-82-78: Change in zoning from R-4 Residential Single Family to C-2 Commercial for a commercial center

There is an associated Revised Detailed District Development Plan (19-DDP-0024) and two waiver requests that were heard at the Development Review Committee meeting on October 30, 2019. The waiver requests are to increase the 120 foot maximum distance between ILAs (19-WAIVER-0014) and to reduce the LBA from 15 feet to 5 feet between C-2 and C-2 (19-WAIVER-0013). The Board of Zoning Adjustment does not take action on these requests.

**STAFF FINDINGS**

The variances are adequately justified and meet the standard of review.

## **TECHNICAL REVIEW**

Public Works and MSD have provided preliminary approval.

## **INTERESTED PARTY COMMENTS**

Staff has received emails from interested parties concerning this request, which are included in the case file.

## **STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE OF SECTION 5.2.3.C.2.b TO ALLOW PARKING TO ENCROACH INTO A PORTION OF THE REQUIRED SIDE AND REAR SETBACK BETWEEN C-2 AND C-2**

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The variance will not adversely affect the public health, safety or welfare because the property line between the two C-2 zoned properties is located between two parking lots interior to Middletown Station. Since the proposed development on the subject site is residential and the neighboring C-2 zoned property to the east is commercially used, the less intense residential use will not adversely affect the adjacent property.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The requested variance will not alter the essential character of the general vicinity because the line between the two C-2 zoned properties is located between two parking lots interior to Middletown Station. The neighboring C-2 zoned property to the east is commercially used, with expansive parking lots.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will not cause a hazard or nuisance to the public because the line between the two C-2 zoned properties is located between two parking lots interior to Middletown Station. The parking areas that are proposed to encroach into the setback will be primarily used by residents of the proposed development and their guests.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations because the applicant is requesting only a small portion of the parking encroach into the setback.

## **ADDITIONAL CONSIDERATIONS:**

1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance arises from special circumstances which do not generally apply to land in the same zone because the property line between the subject site and the neighboring C-2 zoned property are both interior to the Middletown Station development. Additionally, the applicant is only proposing to encroach into a portion of the required side and rear setback.

2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because the proposed parking is adjacent to another large parking lot which is interior to Middletown Station.

3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought. The applicant is not responsible for the location of the existing property line.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE OF LAND DEVELOPMENT CODE SECTION 5.7.1.B.1 TO INCREASE THE MAXIMUM BUILDING HEIGHT WITHIN A TRANSITION ZONE FROM 45 FEET TO 60 FEET ALONG AIKEN ROAD, BETWEEN THE SUBURBAN MARKETPLACE AND THE NEIGHBORHOOD FORM DISTRICTS**

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The requested variance will not adversely affect public health safety or welfare since there is only one proposed building located in the transition zone, and the proposed structures are located over 100 feet from the nearest residential structures on the opposite side of Aiken Road.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The requested variance will not alter the essential character of the general vicinity since the applicant is proposing to locate only one building in the transition zone. There do not appear to be any buildings in the general vicinity that exceed the maximum building height, however, if the subject site were not a transition zone, the maximum building height would be 60 feet. If setbacks are increased within the Neighborhood form district (located on the other side of Aiken Road) then additional building height would be permitted. Additionally, the Aiken Road right of way is 80 feet, which provides a buffer and transition area between the proposed development and neighboring developments.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will not cause a hazard or nuisance to the public since the increased height does not appear to pose a safety issue. Additionally, the proposed structures are located over 100 feet from the nearest residential structures on the opposite side of Aiken Road.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations since the proposed structures are located interior to the Middletown Station site, and are located over 100 feet from the nearest structures on the opposite side of Aiken Road.

**ADDITIONAL CONSIDERATIONS:**

1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since the transition zone only applies to a portion of the site, and if it were not in a transition zone then the maximum permitted building height would be 60 feet. Also, the Aiken Road right-of-way is 80 feet and separates the proposed development from neighboring properties.

2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land since the proposed structures are located interior to the Middletown Station site. According to the applicant, the additional height of the structures is necessary in order to accommodate taller ceilings while still accommodating the necessary mechanicals.

3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought. The subject site is a vacant lot in the Middletown Station development, which is appropriately zoned for this type of development.

**REQUIRED ACTIONS:**

- **RECOMMEND APPROVAL** or **DENIAL** of the **Variances** to Middletown

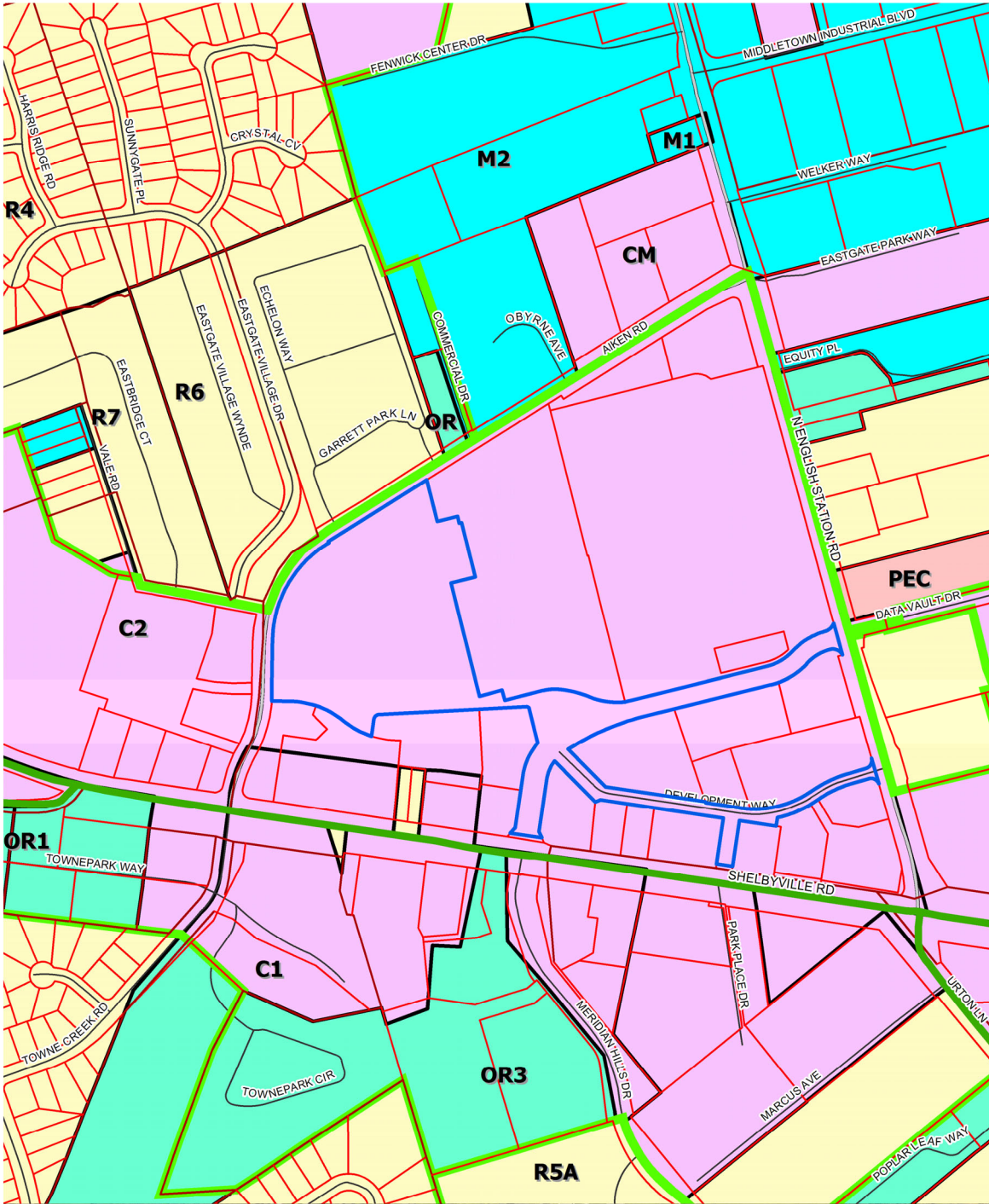
**NOTIFICATION**

Date	Purpose of Notice	Recipients
11-18-19	Hearing before BOZA	1 <sup>st</sup> tier adjoining property owners Speakers at Planning Commission public hearing Registered Neighborhood Groups in Council District 22

**ATTACHMENTS**

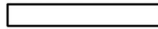
1. Zoning Map
2. Aerial Photograph

1. Zoning Map



12965 SHELBYVILLE RD

feet



480

Map Created: 7/12/2019



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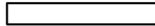


2. Aerial Photograph



12965 SHELBYVILLE RD

feet



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