



**MIDDLEBURG TOWN COUNCIL**  
**Monday, May 10, 2010**  
**Town Office, 10 W. Marshall Street**



**8:00 a.m.**

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**REGULAR WORK SESSION**  
**PENDING APPROVAL**

**PRESENT:** Vice Mayor C. Darlene Kirk  
Councilmember Trowbridge Littleton  
Councilmember Catherine “Bundles” Murdock  
Councilmember Lisa Patterson (arrived late)  
Councilmember Mark T. Snyder

**STAFF:** Rhonda S. North, MMC, Town Clerk  
Steven L. Webber, Chief of Police  
David M. Beniamino, AICP, Town Planner

**ABSENT:** Mayor Betsy A. Davis  
Councilmember Judith Pryor Plescow  
Councilmember Kathy Jo Shea

The Town Council of the Town of Middleburg, Virginia held their regular monthly work session on Monday, May 10, 2010 in the Town Hall Council Chambers, located at 10 W. Marshall Street. Vice Mayor Kirk called the meeting to order at 8:00 a.m.

Council Discussion – Request to waive site plan – Annie’s Bistro – 101 W. Federal Street

Town Planner Beniamino reminded Council that they discussed this request during their last work session; and, advised that Mark Manley and Carole Roberts have since submitted a revised request. He reported that, following the work session, he spoke with the Town Attorney who advised that while it was not illegal to grant the original waiver request, the Town would probably lose if challenged in court. Mr. Beniamino further reported that the Town Council could interpret the ordinance as it liked; however, the staff’s interpretation was that the original request was not in compliance with it.

Town Planner Beniamino reiterated that Mr. Manley and Ms. Roberts have submitted a revised request; and, noted that it contained two “ideas”. He explained that the first was that they use the first floor only of 101 West Federal Street, which consisted of approximately five hundred fifty square feet. Mr. Beniamino advised that based on this, two parking spaces would be required, which the building had. He confirmed that seeking a site plan waiver for the first floor occupancy only was acceptable; and, the Town would be in no danger by granting the waiver.

Town Planner Beniamino explained that the applicant’s second idea was to use the first floor when open; and, to use the second floor on weekends and evenings under a shared parking agreement with their neighbor. He advised that a shared parking agreement was allowed by ordinance. Mr. Beniamino explained that shared parking normally occurred in situations such as churches and offices, where the two parties had opposite hours. He reminded Council that this would involve a lot of paperwork to ensure that the parking would not disappear if there should

ever be a disagreement between the two parties. Mr. Beniamino noted that, in this situation, he and the Town Attorney would advise Council that if they wished to consider this option that they require the applicants to first provide the Town with the documents for the shared parking. He noted that Bill Brown, an attorney, owned the adjacent building; and, suggested that he could prepare the agreement, which the Town Attorney would then review. Mr. Beniamino advised Council that he was unsure if the applicants were serious about the second option; however, he anticipated they would present it to Council during their regular meeting.

Town Planner Beniamino advised Council that the staff was okay with the recommendation for the site plan waiver based upon the use of the first floor; and, noted that this would allow the restaurant to be open. He further advised that as to the second option, the Town would need all of the paperwork associated with it before the staff could make a recommendation. Councilmember Snyder advised Council that he was fine with the staff's recommendation. Vice Mayor Kirk suggested the need to make it clear that the applicants could only use the first floor. She asked whether the occupancy permit would be affected if they used the second floor and basement for storage. Town Planner Beniamino advised Council that based upon a review of the ordinance, there was no parking requirement for storage. He confirmed that if they used these spaces for storage, there was nothing the Town could do. Mr. Beniamino advised that the occupancy permit would be issued for the first floor only; and, explained that if the applicants used the second floor (for restaurant use), they would be in violation of the permit and the Town could shut the business down. Councilmember Snyder suggested that under the second option, if the applicants disregarded the time restrictions related to the shared parking, they would also be in violation of the permit. Town Planner Beniamino noted that the Town would have to take them into court for the violation. He confirmed that if the applicants broke the terms of their occupancy permit, the Town could stop their operations in the entire building.

Councilmember Littleton expressed his opinion that they would want to use the second floor and shared parking when the town was busy, as this would be when they would be busy. He suggested that their operations would be the same as when everyone else was in operation.

Councilmember Snyder suggested that if the applicants used the second floor that they be restricted to the use when the shared parking was available. He further suggested this would be on the weekends. Town Planner Beniamino noted that part of the paperwork that would have to be reviewed was the agreement in order to find out when the adjoining businesses were open. He advised that he had not looked at each one to see if they were retail or office uses; however, he expressed his opinion that a number were office spaces. Mr. Beniamino expressed his opinion that Saturday morning use of the second floor may not be an issue as they only needed three additional parking spaces. (Councilmember Patterson arrived at the meeting at 8:07 a.m.) He reiterated the need for the calculations, which the applicant would have to provide. Councilmember Snyder agreed the Town needed the paperwork so it could establish a sense of reasonableness to the request.

Councilmember Murdock noted that the building owned by Tom Staats had thirteen parking spaces. She asked where the condo association was located. Town Planner Beniamino explained that Mr. Staats owned the building on the corner, with Mr. Brown owning the building next door. He further explained that the condo association was the mechanism that allowed multiple buildings on the same property. Mr. Beniamino advised Council that what made this a condo association was that both buildings were located on the same parcel. He reiterated that the buildings were individually owned and could be sold separately; however, the land upon which they were situation was owned by the condo association.

Councilmember Murdock asked whether there was a road between the two buildings. Town Planner Beniamino confirmed there were not. He explained that the building in question was located at the corner of Pendleton and Federal Streets, with a group of buildings being located next door. Mr. Beniamino reported that he has had similar discussions with Gerri Chittick, who has multiple buildings on the same parcel.

Councilmember Murdock noted that a waiver of the site plan requirement could be granted under Section 3.4 as long as the existing facilities did not require an upgrade. She asked whether this referred to interior or exterior upgrades. Town Planner Beniamino confirmed it was exterior upgrades only. Councilmember Snyder explained that it referred to items such as construction on the building. Town Planner Beniamino noted that it could also refer to parking and landscaping requirements. He advised Council that the Benedetto property would not be eligible for a site plan waiver because it did not have parking, sidewalks, etc. Councilmember Murdock expressed her opinion that the interior needed to be greatly changed. Town Planner Beniamino explained that since the County dealt with interior changes, he interpreted the ordinance as applying to exterior changes only.

#### Council Discussion – Request from Planning Commission to reduce their membership to five

Councilmember Patterson reminded Council that two years ago, they reduced the number of members to six in an attempt to help achieve a quorum; however, it did not. Councilmember Murdock asked whether this number included the chairman. Town Planner Beniamino confirmed it did. He reviewed the membership, assuming Councilmember-Elect Hazard was appointed to the Commission as the Council representative, which would consist of: Chairman Plescow, Councilmember Hazard and Commissioners Woodruff, Clites and Ribaud. Councilmember Littleton asked whether the Council representative could vote on matters before the Planning Commission. Town Planner Beniamino confirmed he could. He noted that Councilmember Littleton could not vote on HDRC matters. Councilmember Patterson explained that the State Code was different for Planning Commission representatives.

Councilmember Patterson reiterated that when the Council previously reduced the number, they thought it would help with the quorum issue; however, it did not. She explained that if they dropped the number by one more, it would help as only three members would be needed to achieve a quorum. Town Planner Beniamino explained that currently four were needed.

Councilmember Snyder advised that his only reservation was that it became more incumbent on the Council to examine each person they appointed to the Commission if its membership was five rather than seven. He noted that under a five member board, three made a quorum; and, reiterated that it made the appointments more important. Mr. Snyder advised that he expected more lively discussions about who the Council would appoint to the Planning Commission as reducing the membership made the seats more powerful. He noted that he would go along with the reduction with the understanding that this was a result. Councilmember Littleton noted that the Town has had a problem finding people willing to serve.

Councilmember Patterson suggested the Council increase the membership to seven if they did not reduce the number. She reiterated that they have had trouble achieving a quorum. Councilmember Murdock noted that the Commission had missed quite a few meetings recently. Councilmember Snyder reminded the Council that they used to have a waiting list for serving on the Commission. He suggested that they may get to a point in the future where they want to raise the number. Councilmember Murdock reiterated that meetings have recently been cancelled; and, suggested the public was suffering. Councilmember Patterson advised Council that the Commission has been good about rescheduling the meetings to the following week; however, she explained that the problem was the public hearings that required notices. She noted that she

recently had the flu and could not get to the phone to alert the Commission of her absence; and, they sat for twenty minutes waiting for a quorum. Ms. Patterson reminded them that some of the members also participated in coaching activities, as well as serving on other Town committees. She explained that the Commission made this request because of its comfort level with the group; and, the fact that they worked well together. Ms. Patterson reiterated her request that if the Council did not scale the membership back by one that they increase it in order to make achieving a quorum easier. Town Planner Beniamino advised the Commission that if they did not reduce the membership, they would need to find at least one replacement. He explained that if they scaled the membership back, they already had five existing members. Mr. Beniamino reiterated that if they did not reduce the number, they would need to find one replacement. He noted that Councilmember Patterson was recommending that they appoint two members if they decided not to reduce the membership.

Councilmember Snyder suggested that the Council accept the Commission's recommendation; and, scale the membership back. He reiterated that the Council needed to bear in mind that the new Commission members would become more important. Mr. Snyder suggested that as more people were drawn into town, the Council may want to consider raising the number to seven.

Vice Mayor Kirk asked whether anyone has expressed an interest in appointment to the Planning Commission. Town Clerk North confirmed no one had. Town Planner Beniamino noted that the Council just appointed Eura Lewis to the BZA. He reminded Council that many of the members of the Town's committees, such as HDRC and Streetscape, did not live in town. Councilmember Snyder suggested that because business was quiet and people were struggling, the Council reduce the membership to five. He advised that when the Salamander Resort opened, he expected people to get interested in the Town; and, suggested there may be an opportunity to draw them into service on the Commission.

Town Planner Beniamino reminded the Council that they did not want to reduce the membership until July 1 after Councilmember-Elect Hazard took office. He suggested the Council could advertise the position before then to see if there was any interest. Councilmember Snyder suggested the Council should not advertise a position that was not available.

Councilmember Murdock asked how the Council would implement the reduction. Town Planner Beniamino recommended that it be on the agenda for the last meeting in June. Town Clerk North explained that the Town Code already allowed for as few as five members. She further explained that the Council could make the recommendation by simply approving a motion. Vice Mayor Kirk asked whether this motion would be made during the work session or regular meeting in June. Town Clerk North advised Council that they could approve the motion during their May 13<sup>th</sup> meeting, with an effective date of July 1. Council agreed they would like to do so; and, asked the Town Clerk to draft a motion for their consideration.

Town Planner Beniamino asked if Council had any questions related to the letter from the Shaggy Ram, which was attached to his monthly report. Councilmember Murdock noted that she agreed with it; however, she advised that she did not know how the Town could take action on some of the items. She noted that it could take action on the display of merchandise on the street. Ms. Murdock suggested this matter be discussed during the regular meeting. She reiterated her agreement related to items such as merchandise on the street. She reminded Council that they discussed these issues previously; and, agreed that because businesses were suffering, they did not want to "come down hard" on the violators. Town Planner Beniamino expressed his opinion that the violations took away from what the HDRC was trying to accomplish.

Councilmember Snyder noted that these were items the Town already did not permit. Vice Mayor Kirk noted that the Town has been “looking the other way”. Town Planner Beniamino advised Council that he has spoken with some of the violators and they removed the items; however, they simply put them out again. He expressed his opinion that the Town would have to fine the violators in order to gain compliance. Councilmember Snyder recommended that they be threatened with the fine first; and, if they ignored the warning that they then be fined. Town Planner Beniamino reminded Council that they would receive complaints about the pursuit of the violations. Councilmember Snyder advised that he was willing to “take the heat”. He reiterated his recommendation that the violators be given a warning first; and, suggested they specifically be told that the next time there would be a fine. Vice Mayor Kirk suggested that they be told that the Town would be “tough” starting xxx date. Chief Webber suggested the violators be given a verbal warning the first time; and, that they be given a written warning the second. He further suggested that a paper trail be created, noting the date and time the verbal warning was issued. Councilmember Snyder expressed his opinion that the violators had already been given a verbal warning. He suggested that it was appropriate for the Town to issue written warnings.

Town Planner Beniamino reminded Council that violators had the right to appeal his written warning to the Board of Zoning Appeals. He noted that they had thirty days to do so. Mr. Beniamino explained that if they did not appeal and were still in violation, he would have to take the matter through the court process. Councilmember Snyder suggested this was a good approach.

Councilmember Murdock disagreed with Councilmember Snyder; and, noted that the Town had let the violations slide for a year or two. She suggested the Zoning Administrator should explain to the violators that the Town was looking at other ways to attract shoppers; however, it was receiving complaints from shoppers, residents and businesses that they found the outdoor display of merchandise to be unattractive. Ms. Murdock suggested that this be handled through a combination of public relations efforts and explaining the Council’s conclusion that the Town would enforce the ban on the display of merchandise on the sidewalk. She suggested that the violators be asked to remove the items; and, that the staff explain that if not, the Town would start to ticket the violators.

Chief Webber suggested the Zoning Administrator should also provide the violator with a copy of the ordinance. He further suggested that he keep notes on when he met with the violator and when he gave them a copy of the ordinance. Chief Webber recommended that the Zoning Administrator then follow-up with a written notice as people frequently did not remember what they were told. Vice Mayor Kirk agreed. She suggested that the Chief assist the Zoning Administrator in addressing the violations.

Councilmember Littleton suggested the violators be given a “soft” letter. Town Planner Beniamino noted that he could give them a form letter that was not specifically addressed to anyone. Councilmember Murdock suggested the staff verbally convey that the Council was aware that business was suffering; and, noting that the Town was trying to help in other ways to bring business into town. Town Planner Beniamino advised Council that he would draft a letter for their review during the regular Council meeting. Councilmember Littleton recommended that a copy of the ordinance be attached.

Councilmember Murdock noted that the Shaggy Ram letter also referenced the appearance of the backs of some of the buildings on Federal Street. She expressed her opinion that the Town could not help in this area. Town Planner Beniamino confirmed it could not unless it applied the demolition by neglect ordinance; however, he suggested that was not applicable in most cases. He advised that he could approach the property owners to inform them of the complaint; however, he could not legally do anything about it. Councilmember Patterson expressed her

opinion that the new retail establishment on Federal Street was working on the back of one of the buildings; and, suggested it would probably start to look better. Councilmember Murdock asked whether this was the worst building. Councilmember Patterson confirmed it was at one time; however, it was no longer.

Vice Mayor Kirk reported that she has heard complaints about vehicles parking in the alley, blocking through access. Councilmember Patterson confirmed this occurred during construction; however, the vehicles have now started to park on the grass. Vice Mayor Kirk advised that the complaint she heard was related to Wiley Wagg employees parking in the alley.

#### Review of May 13<sup>th</sup> Meeting Agenda

Vice Mayor Kirk asked Councilmember Patterson to review the meeting minutes to assure that her comments were accurately reflected.

Vice Mayor Kirk noted the public hearings on the real estate tax rate and utility rates scheduled for the regular meeting. Councilmember Snyder asked that information be made available during the regular Council meeting on the ramifications of reducing the proposed real estate tax rate by one-half or a full penny.

Vice Mayor Kirk noted that the action items involved the appointment of the Mayor as Town Administrator and the site plan waiver request submitted by Annie's Bistro. She asked whether Council had any other items to discuss.

Councilmember Murdock noted the PODS unit that was located in town. She asked whether this was something that needed to be brought before the Council. Town Planner Beniamino explained that the PODS unit was located in the driveway of Mark Manley and Carole Roberts. He further explained that he did not plan to sign their occupancy permit until the PODS unit was removed. Mr. Beniamino confirmed that the unit did not meet the Town Code requirements. Councilmember Murdock expressed her opinion that the PODS unit had been at this location for a long time. Town Planner Beniamino reiterated that he would not sign their permits until this problem was corrected. He explained that the plan was to allow the Council to approve their site plan waiver request and then to withhold the occupancy permit until the PODS unit was removed. Vice Mayor Kirk asked whether there were any other houses in Middleburg that had PODS units. Chief Webber reported that the Windy Hill Foundation had a couple of PODS units that were in violation of the Town Code. Councilmember Murdock asked whether PODS units were allowed in town. Town Planner Beniamino confirmed they were if they were placed on an impervious surface. He noted that the owner must secure a permit from the Town, with the permit being good for thirty days, with up to another thirty day extension. Mr. Beniamino advised Council that Windy Hill told him the PODS units would be in place for sixty to sixty-five days; however, they have now gone beyond that period. He explained that they were remodeling the homes in this area; and, secured the PODS units so the residents could move their items out of the homes during construction. Mr. Beniamino advised Council that the solution he has proposed was for Windy Hill to relocate one PODS unit to the rear of their property. He further advised that they would eliminate the other. Vice Mayor Kirk expressed her opinion that the point of a PODS unit was to move items elsewhere. Town Planner Beniamino confirmed it was; however, he advised that people have begun to use them as storage sheds, which was what the ordinance was designed to prohibit. He reiterated that he was trying to deal with the PODS units now. Vice Mayor Kirk asked that something about PODS units be placed in the next newsletter.

Councilmember Murdock noted the need to develop new items for the newsletter. Town Clerk North advised Council that whenever they mentioned an item for the newsletter, she immediately wrote an article and plugged it into the next draft so it was ready to go at the time of printing.

Councilmember Snyder noted that he recently read something related to the General Assembly's action on medical PODS. He asked whether the Town had to "bow down" to those units. Town Planner Beniamino noted the recent article in the Washington Post. Councilmember Snyder expressed his opinion that the General Assembly action overrode local zoning ordinances. Town Planner Beniamino expressed his opinion that the reporter was trying to use "scare tactics". He suggested that this would be a dwelling; and, advised that the Town would have to allow more than one dwelling unit per lot. Town Clerk North confirmed that the General Assembly recently adopted legislation related to the placement of temporary housing on residential lots for medical purposes. Councilmember Snyder asked that the staff research this legislation; and, noted that the State Code allowed the placement of the temporary PODS for housing as long as a doctor certified it was necessary. He suggested that in those cases, there was nothing the Town could do.

There being no further business, a motion was made to adjourn the meeting at 8:34 a.m.

APPROVED:

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C. Darlene Kirk, VICE MAYOR

ATTEST:

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Rhonda S. North, MMC, Town Clerk