



**MIDDLEBURG TOWN COUNCIL**  
**Regular Monthly Meeting Minutes**  
**Thursday, July 8, 2010**  
**Town Office, 10 W. Marshall Street**  
**6:00 PM**



**PENDING APPROVAL**

**PRESENT:** Mayor Betsy A. Davis  
Vice Mayor Darlene Kirk  
Councilmember Kevin Hazard (arrived late)  
Councilmember Catherine "Bundles" Murdock  
Councilmember Kathy Jo Shea  
Councilmember Mark T. Snyder  
Councilmember David B. Stewart

**STAFF:** Rhonda S. North, MMC, Town Clerk  
Elizabeth D. Whiting, Town Attorney  
David M. Beniamino, AICP, Town Planner  
Steven L. Webber, Chief of Police  
Cindy C. Pearson, Economic Development Coordinator  
Debbie J. Wheeler, Town Treasurer

**ABSENT:** Councilmember Trowbridge Littleton

The Town Council of the Town of Middleburg, Virginia held a public hearing and their regular monthly meeting beginning at 6:00 p.m. on Thursday, July 8, 2010 in the Town Hall Council Chambers, located at 10 W. Marshall Street. Mayor Davis led Council and those attending in the Pledge of Allegiance to the flag.

**Public Comment**

Greg Cromer, of Virginia 123.Com Aerial Photography, advised Council that he was taking aerial photographs of all the towns in the state. He displayed a photograph he had taken of Middleburg; and, asked whether there was any interest in having a copy for the walls of the Council Chamber. Mayor Davis noted that the Town had a vendor who has been providing aerial photographs of the town periodically. She thanked Mr. Cromer for bringing in the photograph. Mr. Cromer noted that the one he was displaying sold for \$125; and, that a smaller version sold for \$60.

**Public Hearings** – Zoning Map Amendment 10-01 – Change zoning from A-C to R-3 Residential – 1107 West Washington Street – Betsy A. Allen

No one spoke and the public hearing was closed.

**Council Approval** – Zoning Map Amendment 10-01 – Change zoning from A-C to R-3 Residential – 1107 West Washington Street – Betsy A. Allen

Town Planner Beniamino advised Council that this was a .48 acre lot located at 1105 and 1107 West Washington Street. He explained that the property contained two houses on a single lot, which was zoned AC Agricultural Conservancy. Mr. Beniamino reminded Council that this property came into the Town limits as a part of the Virginia Lane Project. He noted that the Allen family expressed a desire to demolish one of the structures, which was in bad condition; and, to rebuild it. Mr. Beniamino explained that because two houses were not allowed on one lot, they

had to determine what needed to be done to allow for the project. He noted that he originally proposed that the property be rezoned to R-2 Residential; however, the Planning Commission recommended R-3. Mr. Beniamino advised that this would allow the property to be subdivided into two lots, which would allow the house to be demolished and rebuilt.

Town Planner Beniamino reported that the applicant has submitted proffers associated with the rezoning. He explained that the proffers agreed that (1) the property would not be divided into more than two lots; (2) only single-family detached dwellings would be constructed on them; (3) within 180 days of the rezoning, the applicant would submit a subdivision application; (4) if rezoned and subdivided, prior to the issuance of a zoning location permit, the applicant would pay the water and sewer connection fees; (5) prior to the issuance of a zoning occupancy permit, both lots would be connected to public water and sewer; (6) as long as a common driveway existed, there would be a shared access agreement; (7) any new entrances must meet VDOT standards and receive VDOT approval; (8) if sewage disposal for the two lots was through a shared pump, there would be a shared utility agreement; and (9) within thirty days prior to any substantial new construction, the owner would deliver plans to the Zoning Administrator for comment by the HDRC. Mr. Beniamino explained that, as to this last condition, the comments must be received by the owner within thirty days of the delivery of the plans. He further explained that the property would not be proffered to be a part of the Historic District, nor would the HDRC review be binding on the Allen's. Mr. Beniamino advised that the proffers stated that the HDRC would offer advisory comments only.

Town Planner Beniamino advised Council that the staff was in possession of two sets of proffers; and, noted that the ones he just described were the official proffers. He explained that the attorney presenting the Allen's would like to discuss the last proffer condition; and, had prepared a second signed set of proffers in the event the Council agreed to delete that item.

Tim Dimos, attorney for the applicant, and Demetria Allen Alvarado, granddaughter of the property owners, appeared before Council. Mr. Dimos advised Council that Ms. Alvarado's mother originally lived in the house at 1107 West Washington Street; however, she moved into the adjacent house with the family patriarch after the structure developed some problems. He explained that the family would like to raise the house at 1107 West Washington Street and construct a new one; however, they could not do so under the current zoning.

Mr. Dimos advised that as to the last condition in the proffers, he would have to ask "why bother" if the HDRC's comments were not binding. He explained that the reason the condition was included was that the Planning Commission clearly wanted to offer the members of the HDRC, not necessarily as committee, as a resource to the Allen's as they designed the house. Mr. Dimos reported that the Allen's were happy with that and delighted to do so. He explained that the language in condition "F" was his legally cautious way of writing what he heard the Planning Commission say; and, advised that it was clear that their recommendation was that they did not intend for the HDRC's comments to be binding or for the property to become a part of the Historic District. Mr. Dimos expressed his opinion that the Commission only wanted the HDRC to have the opportunity to comment on the plans; and, reiterated that this was how he drafted the language. He expressed his opinion that this was not a suitable condition for a proffer; however, he advised that if the Council was comfortable with it, the Allen's were happy to leave it in the document.

Councilmember Murdock asked whether it was correct that Mr. Dimos' clients were happy to have the condition in or out of the proffers. Mr. Dimos confirmed they were. Councilmember Murdock asked why it was not appropriate to have this condition in the proffers. Town Planner Beniamino explained that it was not binding. He noted that the Planning Commission spent considerable time reviewing this request; and, that it was clear in the end that they did not want a

binding review by the HDRC. Mr. Beniamino explained that the Allen's could bring in plans that the HDRC hated, the HDRC could offer twenty-five comments on the plans; and, the Allen's could say they were not changing anything. He further explained that the Planning Commission wanted the Allen's to bring the plans to the HDRC so they could offer free architectural advice.

Councilmember Murdock expressed her opinion that this appeared to be a safety valve. Councilmember Snyder expressed his opinion that there was value in the review to both parties regardless of whether the Allen's addressed or considered the HDRC's comments. He explained that it would be valuable to the Allen's to receive the comments; and, valuable to the Town to provide them. Mr. Snyder noted that, as Mr. Dimos made clear, the Allen's would be under no obligation to even acknowledge the comments.

Town Planner Beniamino noted that the proffer language was crafted so that if the HDRC did not meet within thirty days, he could take the plans to the individual members for comments. Councilmember Snyder noted that if there were no comments, the Allen's could proceed. Mr. Dimos expressed confidence that the Allen's would welcome the HDRC's comments. He noted that they would probably construct a modular house; and, advised that Mr. Clites corrected him when he expressed his thoughts that there were only two versions of modular houses. Mr. Dimos noted that there were all kinds of variations. He explained that cost was an issue for the Allen's; and, advised that the family was trying to do this project as economically as possible. Mr. Dimos expressed his opinion that if the Council felt the property should be subject to architectural review, they should legislate it into the Historic District. He suggested it was not right to ask a property owner to become subject to Historic District regulations.

Councilmember Shea agreed that if the Council wanted the property to be a part of the Historic District, it should extend that district. She expressed her opinion that what the proffers offered was the cooperation that was necessary to look at the entrance corridors in the town. Ms. Shea advised that if the Allen's were okay with the proffer condition, she would prefer that it stay in the document. Mr. Dimos confirmed this was acceptable.

Mayor Davis noted that the HDRC reviewed the plans for the Virginia Lane Project. Town Planner Beniamino advised Council that the Planning Commission held discussion as to whether the Allen's should follow the same rules. He reminded them that the owners of the Virginia Lane Project agreed to the HDRC's review because the project involved affordable housing. Mr. Beniamino noted that they were aware of the stigma attached to affordable housing; and, wanted to make sure that Middleburg knew that it was not going to be "throw away" housing. Mayor Davis noted that they did take the HDRC's comments into consideration. Town Planner Beniamino confirmed the proffer language for the Virginia Lane Project was stronger. Councilmember Snyder noted that the proffer language clearly allowed the Allen's to walk away; and, advised that they had no risk.

*Vice Mayor Kirk moved, seconded by Councilmember Snyder, that Council adopt an ordinance approving Zoning Map Amendment 10-01 for Betsy A. Allen for property known as 1105 and 1107 West Washington Street. Vice Mayor Kirk further moved, seconded by Councilmember Snyder, that the ordinance reference the proffer statement dated July 8, 2010, which included paragraph "F".*

Vote: Yes – Councilmembers Kirk, Murdock, Shea, Snyder and Stewart  
No – N/A  
Abstain: N/A  
Absent: Councilmember Littleton and Hazard  
(Mayor Davis did not vote as there was no tie to require her vote)

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**Approval of Minutes**

*Councilmember Snyder moved, seconded by Vice Mayor Kirk, that Council approve the June 10, 2010 Regular Meeting and June 24, 2010 Work Session Meeting Minutes as amended.*

Vote: Yes – Councilmembers Kirk, Murdock, Shea, Snyder and Stewart

No – N/A

Abstain: N/A

Absent: Councilmember Littleton and Hazard

(Mayor Davis did not vote as there was no tie to require her vote)

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**Staff Reports**

Councilmember Murdock asked whether there were any problems on the Fourth of July. Chief of Police Webber confirmed there were not. He noted that the celebration resulted in a good turnout.

Economic Development Coordinator Pearson advised Council that a new vendor, Obergood, would be at the Farmers Market this coming weekend; and, noted that they sold goat cheese. She further advised that Oak Springs Dairy would also be present; and, noted that they sold cow’s milk cheese. Ms. Pearson reminded Council of the upcoming Bluemont Concert scheduled for July 10th at the Community Center featuring the Mary Ann Redmond Band. She noted that the Biz Buzz meeting would be held on July 13<sup>th</sup>; and, advised that it would consist of a barbeque. Ms. Pearson reminded Council of the need for advanced notice of attendance.

Councilmember Murdock noted that the Fall Art Celebration would include signs on the sidewalks. She asked whether the Town should apply for a permit for this event. Economic Development Coordinator Pearson advised Council that she applied for a permit for the sidewalk sale; and, suggested that as long as the Town was not blocking traffic or the sidewalks, it was fine. She confirmed that she could apply for a permit.

Councilmember Shea encouraged Council to review the presentation materials provided by Donovan Rypkema on “*The Importance of Downtown and Historic Preservation to Local Economic Development*”. She expressed her opinion that it contained some good information.

Vice Mayor Kirk asked whether the Pink Box visitors’ numbers were drastically down. She further asked whether they were keeping regular hours. Economic Development Coordinator Pearson confirmed the numbers were down; and, that the Pink Box was keeping regular hours. Vice Mayor Kirk asked whether the digital frame displaying town photographs would be located inside the Pink Box. Economic Development Coordinator Pearson confirmed it would.

Councilmember Murdock asked whether the Town staff did as she requested and visited the new Lou Lou’s location. She encouraged Council to visit the site to see what could be done with a different location. Town Planner Beniamino reported that Wiley Wagg has also completed its expansion. Mayor Davis noted that they were not yet open to the public. Councilmember Murdock expressed her opinion that these projects should help business in the core area of town.

Town Planner Beniamino reported that Charles Carroll has submitted a special use application to allow offices on the first floor of the Noble House. He noted that the Council would see the application within the next month.

Town Planner Beniamino reported that Councilmember Shea asked him to look at the retaining wall that was cracked and falling behind the Health Center building. He advised that Mr. Carroll has agreed to work on this within the next week.

Mayor Davis noted that the Town received a nice letter from the Pappas' regarding the Town Planner's assistance in addressing their drainage issue. She further noted that, while not a Town issue, Mr. Beniamino worked with the Pappas and VDOT to get the matter resolved. Ms. Davis expressed her appreciation for his efforts.

Town Treasurer Wheeler reminded Council that the end of the fiscal year figures included in her June report were not audited figures; and, were subject to change. She reported that she has asked the Town Clerk to put an item on the July 22<sup>nd</sup> work session agenda to discuss new software for the real estate tax billing. Ms. Wheeler advised Council that the existing software company was "going under"; and, advised that the company that provided the Town's utility billing software – Logics – was implementing new software for real estate taxes. She noted that the seven users in this area have been working with them; and, agreed they should stick with the Logics software. Ms. Wheeler noted that information on the new software would be available for discussion during the work session.

Mayor Davis noted that she asked Charlie Triplett, of Loudoun Water, about the water tables; and, he said they were doing fine and that he would keep a close watch on them. She suggested that while the Town was fine as of this moment, if there was a need to implement some form of control, she would recommend a system whereby residents on one side of the street would be affected on even days and those on the other on odd days in order to lessen the impact. Ms. Davis recommended this be done first as opposed to prohibiting all watering. She noted that the Town's system was okay for now.

Councilmember Murdock asked whether the Town would be okay if there was no rain between now and the July 22<sup>nd</sup> work session. Councilmember Snyder confirmed it would from a ground water standpoint, as long as people didn't go "hog wild" watering their yards.

Vice Mayor Kirk asked whether Mr. Triplett indicated that the Town was experiencing normal water usage. Mayor Davis confirmed he did. Councilmember Snyder reiterated that the Town would be fine for several weeks, as long as residents did not water their lawns. He reported that Middleburg was ahead of the Dulles area in terms of annual rainfall to date. Mayor Davis suggested the Town could ask for voluntary compliance. Councilmember Snyder reminded Council that the rainfall had only tapered off in the last thirty to forty-five days. He advised that the water table was fine, it was just the grass that was turning brown. Councilmember Murdock noted that some residents were still watering their plants. Councilmember Snyder reminded Council that the amount of water used to water plants was incidental. He explained that he was talking about the massive watering of lawns; and, reiterated that the Town would be fine as long as it did not see that type of activity. Mr. Snyder expressed his opinion that there was no need to act now or warn residents about water use as long as their use was reasonable.

Vice Mayor Kirk asked whether the meters were just read. Town Treasurer Wheeler confirmed that the water bills would go out in the morning; and, advised that the readings were fine. She reported that some accounts that had in the past experienced high usage were back down to normal. Vice Mayor Kirk suggested that Gary Garrett would have raised this issue if he had noticed massive uses when reading the meters.

**Action Items** (non-public hearing related)

**Council Re-Organization** - Election of Vice Mayor

Councilmember Murdock asked Ms. Kirk if she wanted to be Vice Mayor again. Ms. Kirk agreed to do so. Councilmember Murdock asked whether anyone else was interested in the position. (No response was received.)

*Councilmember Murdock moved, seconded by Councilmember Stewart, to nominate Darlene Kirk as Vice Mayor for the Town of Middleburg.*

Vote: Yes – Councilmembers Kirk, Murdock, Shea, Snyder and Stewart

No – N/A

Abstain: N/A

Absent: Councilmember Littleton and Hazard

(Mayor Davis did not vote as there was no tie to require her vote)

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**Council Approval** – Referral of Special Use Permit Application to Planning Commission – Middleburg Volunteer Fire Department building renovation project

Town Planner Beniamino reminded Council that the Fire Department originally received approval of their site plan for a new structure in 2008. He explained that due to drastic changes that have been proposed to the design, they must come back to the Town for a new special use permit. Mr. Beniamino further explained that this application needed to be referred to the Planning Commission so the process could begin. He reminded them that the application would come back before them with a recommendation from the Commission.

Vice Mayor Kirk asked whether Council's action was to refer the matter to the Commission. Town Planner Beniamino confirmed it was.

Councilmember Murdock asked whether this project simply involved a renovation to the existing building, with no new structures being added. Town Planner Beniamino confirmed there were no extra buildings being proposed. He reiterated that the Fire Department was proposing a substantial alteration to the original approved plan; therefore, it needed to come back to the Town. Mr. Beniamino noted that they were proposing to construct a cistern to collect rain water that would then be used to fill the fire trucks. He explained that items such as this were not on the original plan; therefore, he wanted the Department to go through the proper process.

*Councilmember Murdock moved, seconded by Councilmember Snyder, that Council refer a request for a special use permit from the Middleburg Volunteer Fire Department, Inc. for the renovation/expansion of their facility located at 901 West Washington Street to the Planning Commission for their consideration and recommendation.*

Vote: Yes – Councilmembers Kirk, Murdock, Shea, Snyder and Stewart

No – N/A

Abstain: N/A

Absent: Councilmember Littleton and Hazard

(Mayor Davis did not vote as there was no tie to require her vote)

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Council Approval – Request for reimbursement of special use permit fee – Middleburg Volunteer Fire Department

Town Planner Beniamino explained that the Fire Department had to pay the special use permit fees so he could accept their application. He reminded Council that they approved the fee waiver the last time the Fire Department applied for a special use permit. Mr. Beniamino recommended that the Council waive only the base fees; and, noted the review fees associated with the Town Attorney and Town Engineer's reviews, which came out of the Town's pocket. Councilmember Murdock asked whether the proposed motion would accomplish this. Town Clerk North confirmed that the proposed motion would only allow for the reimbursement of the fees that have been paid to date.

*Councilmember Murdock moved, seconded by Vice Mayor Kirk, that Council approve a request from the Middleburg Volunteer Fire Department for reimbursement of the \$3,250 fee paid with their special use permit application.*

Town Planner Beniamino reported that he received a call from Joe Murphy of the Fire Department asking whether the Town would consider waiving the charges for water usage for the Department. He advised that after speaking with the Town Attorney, he recommended that the Department write a letter to the Council making this request. Councilmember Murdock asked whether the Department paid for their water usage. Town Planner Beniamino confirmed they did. Councilmember Shea asked whether the charges were for water used to fill the fire trucks or for use at the fire station. Town Planner Beniamino confirmed it was for water used at the fire station.

Councilmember Snyder asked that Council discuss the request before them; and, noted that a motion was on the table. He advised that he was willing to waive the fees this time; however, he would not be willing to do so a third time. Mr. Snyder explained that he did not have a lot of sympathy when someone came in multiple times for the same permit because they changed their mind. He advised that he did not mind waiving the fee once or twice.

Councilmember Murdock asked how many of the changes were due to the Fire Department and how many were due to the County's involvement. Town Planner Beniamino reminded Council that this project has been delayed due to the County's lack of funding. He advised that he did not know the impetus for the changes.

Councilmember Snyder advised that before he would entertain an additional fee waiver request, he wanted a strong reason for doing so. He further advised that he wanted the Department to show that it was not due to their "dithering".

Town Planner Beniamino reminded Council that the previous application did not include the signalization of the Department's access road at Washington Street. (Councilmember Hazard arrived at the meeting at 6:36 pm.) He advised that while it was not included in the proposed plans, he intended to fight to get the County to fund the signalization as this was a safety issue. Vice Mayor Kirk agreed.

Mayor Davis expressed her opinion that most of the changes in the site plan were not related to the Fire Department, but were the result of the County's green initiatives. Town Planner Beniamino noted that the building has also increased in size. Mayor Davis reiterated her opinion that the changes were not the fault of the Fire Department. Councilmember Snyder explained that he was only raising a caution flag. Vice Mayor Kirk noted that the remainder of Council may feel differently. Councilmember Snyder explained that he was only raising the issue in the event this came up again.

Vote: Yes – Councilmembers Kirk, Hazard, Murdock, Shea, Snyder and Stewart  
No – N/A  
Abstain: N/A  
Absent: Councilmember Littleton  
(Mayor Davis did not vote as there was no tie to require her vote)

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**Discussion Items**

Council Re-Organization – Mayor Davis’ appointments to committees

Mayor Davis advised Council that she has appointed the following individuals to the Town’s committees for the 2010-2012 period: Finance/Personnel Committee - Vice Mayor Kirk; Public Safety Committee – Councilmember Murdock; Public Works Committee – Councilmember Snyder; Land Use Committee – Councilmember Littleton; Economic Development Committee – Mayor Davis; Historic District Review Committee – Councilmember Littleton; Planning Commission – Councilmember Hazard; Health Center Advisory Board – Vice Mayor Kirk; Pink Box Advisory Board – Councilmember Stewart; Main Street Middleburg – Economic Development Coordinator Pearson; Traffic Calming Task Force – Mayor Davis; and, Loudoun County Action Advisory Committee - Councilmember Shea. She noted that the structure of the Loudoun County Action Advisory Committee had changed. Ms. Davis further noted that Councilmember Shea had done a great job; and, advised that she would like to keep her on the Committee.

**Information Items**

Mayor Davis expressed her opinion that the Fourth of July celebration was great, including the fireworks. She displayed a certificate the Town received from the Community Center acknowledging its sponsorship of the celebration.

Vice Mayor Kirk announced that the Upperville Volunteer Fire Department would hold an all-you-can-eat breakfast on July 11<sup>th</sup> from 8:00-11:00 a.m. She noted that it was for a worthwhile cause.

There being no further business, a motion was made to adjourn the meeting at 6:39 p.m.

APPROVED:

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Betsy A. Davis, MAYOR

ATTEST:

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Rhonda S. North, MMC, Town Clerk