

# BOARD OF ZONING APPEALS MINUTES

## MARCH 5, 2025



MEETING LOCATION: City Council Chambers, City Building

MEMBERS PRESENT: David Kash Stefan Wannemacher  
Thomas Evans Jerry Heidenreich  
Gary Gross

STAFF PRESENT: Claire Fettters Binegar, City Planner  
Amy Blankenship, Staff Attorney

OTHERS PRESENT: Ayshia Mustapha, Dennis Beatty, Carolyn Hayes (Beth), Robert Hagen, Mike Ritchie

### CALL MEETING TO ORDER

Chairman David Kash called the meeting to order at 5:30 p.m. The roll was called by Claire Fettters. A voting quorum was present. Mr. Kash led the pledge of allegiance.

### APPROVAL OF PREVIOUS MEETING MINUTES – FEBRUARY 5, 2024

Mr. Kash then moved to the next item on the meeting agenda: the meeting minutes from the February 5, 2024 meeting. Mr. Kash asked if anyone had any changes or revisions to the meeting minutes. Mr. Wannemacher motioned that the meeting minutes be accepted as presented; Mr. Evans seconded the motion.

David Kash – Yes to Approve

Stefan Wannemacher – Yes to Approve

Gary Gross – Yes to Approve

Jerry Heidenreich – Abstain

Thomas Evans – Yes to Approve

### AREA AND DIMENSIONAL VARIANCE CASE #4-25: 2004 WINTON STREET

Mr. Kash then presented the first variance case of the evening, variance case #4-25: A request by applicant Dennis Beatty on behalf of property owner Zack Ferrell for an area and dimensional variance for the property at 2004 Winton Street to construct a new single-family dwelling on a parcel that does not meet the minimum lot width site development standard for the subject zoning district. The property is zoned R-4: Attached Residential District. The lot width is approximately 49 feet wide; Middletown Development Code Chapter 1204.10(b) requires single family dwellings to be constructed on lots that are a minimum of 70 feet wide.

Mr. Kash sworn in Ms. Fettters. Ms. Fettters presented the staff analysis for the variance case using a PowerPoint presentation. Ms. Fettters stated that public notice was published as well as sent to all property owners contiguous and directly across the street or public right-of-way from the property in question, but the applicant had made an error in their application and notice was sent stating the variance application was for the property at 2000 Winton Street instead of 2004 Winton Street.

Ms. Fetters states the applicant is seeking the variance due to being an infill lot that does not meet the current site development standards. Ms. Fetters noted the applicant asserts the exceptional narrowness, shallowness, or shape of the property and extraordinary situation or condition of the property qualifies the case for a variance. Ms. Fetters then explained the purpose of the R-4 zoning district, and cited the Middletown Development Code section, Chapter 1204.10 (b) Table 1204-4, that defines the minimum lot width for the subject parcel.

Ms. Fetters stated that two public comments were received. Two residents sent in emails to Ms. Fetters expressing opposition of the variance siting concerns of privacy, concerns of the home becoming a rental property, parking, noise, and other safety hazards.

Ms. Fetters explained the lot is non-conforming as the proposed new build does not meet the minimum 1500 square foot requirement for a single-family ranch home, but she was able to administratively approve the proposal for 1370 square foot new build.

Ms. Fetters then displayed pictures of the property and areas surrounding the property, the zoning map, the variance application, the Area & Dimensional Variance Review Criteria, the time limit associated with an approved variance, and the appeal process. Ms. Fetters concluded her staff report.

Mr. Wannemacher asked Ms. Fetters if the proposed plans met the side lot setback of 6 feet. Ms. Fetters stated that as proposed the new build setback from the side lot lines would be 7.5 feet and 40 feet setback from the right-of-way.

Audio indecipherable between 6:41 and 6:55. Ms. Fetters explained the lot lines on zoning map are estimated parcel lines. Ms. Fetters states that if the property at 2008 Winton Street is over the lot line, the property owners would be responsible for determining next steps. Ms. Fetters reiterates that all map data is estimated.

Mr. Heidenreich asked Ms. Fetters if the lot became available because a house was previously torn down as part of the urban renewal project. Ms. Fetters states she did not look into the demolition of the property, so she is unable to answer.

Mr. Kash asked Ms. Fetters if the variance is only needed because this is a new structure that's going on the property. Ms. Fetters states yes. Mr. Kash states that he believes the neighborhood was constructed before the development code was enacted. Ms. Fetters states yes, it was constructed before the current iteration of the development code.

Mr. Kash asked if there were any questions for staff. Seeing none, Mr. Kash opened the public hearing to anyone wishing to speak in favor of the request. Dennis Beatty was sworn in.

Mr. Beatty states he has been working on similar builds on infill lots around the City of Middletown. Mr. Beatty states he is trying to build nice houses for the residents of the City of Middletown. Mr. Kash asked if the board had any questions for Mr. Beatty. No questions were asked.

Mr. Kash asked if anyone else wished to speak in favor of the application; seeing none, Mr. Kash then asked if anyone wished to speak in opposition to the proposal. Carolyn Hayes was sworn in.

Ms. Hayes shared a letter written by herself and her brother, who resides at 2008 Winton Street, expressing concerns about the construction of a home on the lot in question. Ms. Hayes states she does not feel the application sufficiently demonstrates the proximity of her brother's home to the proposed new construction. Ms. Hayes also states she does not believe the front lot line is 49 feet in width, but rather 37.5 feet based upon her measurement of the sidewalk squares.

Ms. Hayes also states that in addition to an invasion of privacy the proposed new construction would cause a significant safety and fire hazard. Ms. Hayes elaborates on the duress the variance would cause her brother and asks the board to deny the request.

Ms. Hayes read a letter on behalf of her brother, Robert Hagan. Ms. Hayes stated in the letter from her brother that he was in opposition of the variance and asked the board to deny the request for a variance.

Mr. Kash asked Ms. Hayes if her brother had lived there for 25 years. Ms. Hayes stated that was correct. Mr. Kash asked if there was a house on the property at 2004 Winton Street at any point in time when Ms. Hayes brother had lived in his residence at 2008 Winton Street. Ms. Hayes confirmed no house has been on the lot in question since her brother has lived there.

Mr. Kash asks if the board has any additional questions for Ms. Hayes. With no additional comments, Mr. Kash asked if anyone else would like to comment in opposition. Mr. Kash sworn in Robert Hagen.

Mr. Hagen states as far as he knows there has never been a home on the lot in question. Mr. Hagan states his property at 2008 Winton Street is wider in the front and narrows towards the back supporting his sister's, Ms. Hayes', statements regarding the discrepancy in width of the lot in question. Mr. Hagen stated he has spoke with his neighbors who have expressed to him they are also in opposition. Mr. Hagen also states concern of additional traffic in the area.

Mr. Heidenreich asked Mr. Hagen who currently maintains the lot in question. Mr. Hagen states the tenant in 2000 Winton Street maintains the lot in question. Mr. Heidenreich asks Mr. Hagen who the title of the property of 2000 Winton Street is under. Mr. Hagen states he assumes Zack Ferrell.

Mr. Kash asks Ms. Fetters to show the image of the aerial for the property with parcel lines and building footprints. Mr. Kash asks Mr. Hagen if he understands based on the image where the proposed home would be constructed on the lot in question. Mr. Hagen acknowledges. Mr. Kash asks Mr. Hagen if he purchased the home or if Mr. Hagen had the house built. Mr. Hagen states he purchased the home after it had been constructed.

Mr. Kash states it appears that the parcels seem to be the same size. Mr. Hagen affirms his lot has an outcropping on his lot. Mr. Hagen shows the Butler County website shows the difference in the lots. Mr. Kash asks Mr. Hagen if he has looked at the plat from Butler County. Mr. Hagen says he has not.

Mr. Kash asks Ms. Fettters if the parcel lines on the map are drawn from the plat or engineer drawings. Ms. Fettters states the GIS administrator receives all parcel data from the County.

Mr. Kash reiterates his concerns that the lots on the street all appear to be the same width. Mr. Hagen states he is sure his is different because his fence follows his property line and the fence is 5 feet wider in the front.

Mr. Heidenreich asks Mr. Beatty if the 7.5 feet that's shown in the proposed plan is 7.5 feet from the side lot line, not 7.5 from where the side lot lines start at the front property line. Mr. Heidenreich suggests perhaps there is a discrepancy in the parcel lines stating Mr. Hagen believes his lot is wider than what the plat suggests. Mr. Beatty states he would be willing to do some research on it and return to the board.

Mr. Kash asks if Mr. Hagen or his sister, Ms. Hayes, had taken a measurement of the front lot line pin-to-pin. Mr. Hagen stated him and his sister, Ms. Hayes, had not. Mr. Hagen stated they were only estimating.

Mr. Kash invited any additional questions for Mr. Hagen from the board. No questions were asked. Mr. Kash invited any additional comments in opposition to the case. With no additional public wishing to speak, Mr. Wannemacher asked if he could ask Mr. Beatty additional questions. Mr. Kash stated yes. Mr. Kash re-opened the public comments portion of the hearing and invited Mr. Beatty up to speak.

Mr. Wannemacher asked Mr. Beatty if the lot in question had been surveyed. Mr. Beatty stated he was unsure. Mr. Wannemacher asked Mr. Beatty if Mr. Ferrell intended to sell the property. Mr. Beatty shrugged.

Mr. Heidenreich asked Mr. Beatty where his plans are from that showed the lots along Winton Street being 50 feet wide. Mr. Beatty stated he received them from the County and the County shows the lots being 325 feet by 50 feet.

Mr. Heidenreich asked Mr. Beatty if the Q number on the plan is the correct lot the County has registered. Mr. Beatty confirms that's correct. Mr. Heidenreich asks Mr. Beatty if he believes the dimensions that were shown on the records provided by the County were correct. Mr. Beatty affirms.

Mr. Kash invited any additional comments in opposition to the case. With no additional public wishing to speak, Mr. Kash closed the public hearing.

Mr. Heidenreich states he believes the accuracy of the plat from the County and does not see an issue with the 7.5-foot side lot setback. Ms. Fettters states the variance is for the lot width in total.

Mr. Kash invited any additional comments from the board. Mr. Wannemacher states that judging by the dimensions shown in the County plat and the setbacks that are being followed, the variance is a reasonable request.

Mr. Heidenreich states that if the board accepts the variance, the dimension of the lot width be verified as 50 ft.

Mr. Kash states, and does not discount Ms. Hayes' and Mr. Hagen's measurement, that the lot size and plat recorded with the County should be weighed as the accurate measurement.

Ms. Fetters offered to pull up the County Auditors website to further verify the lot lines. Ms. Fettters displays the parcel as drawn on the Butler County Auditors website. Ms. Blankenship used the measurement tool on the Butler County Auditors website to provide an approximate lot width.

Mr. Kash invited any additional comments or questions from the board. Mr. Kash asked if Ms. Hayes would like speak again in light of additional information. Ms. Hayes approached the podium and stated that the property line looks like it's on the house; however, there is 6 feet between the house and the fence.

Mr. Wannemacher motioned to approve the variance, noting Review Criteria 1 and 2; Mr. Heidenreich seconded the motion. The motion was approved through roll call, passing with a 4-1 vote.

David Kash – Yes to Approve

Stefan Wannemacher – Yes to Approve

Gary Gross – No to Deny

Jerry Heidenreich – Yes to Approve

Thomas Evans – Yes to Approve

#### **AREA AND DIMENSIONAL VARIANCE REQUEST #5-25: 429 MCKINLEY STREET**

Mr. Kash presented case #5-25: A request by applicant Dennis Beatty on behalf of property owner Zack Ferrell for an area and dimensional variance for the property at 425 McKinley Street to construct a new single-family dwelling on a parcel that does not meet the minimum lot area or lot width site development standards for the subject zoning district. The property is zoned R-4: Attached Residential District. The lot size is approximately 6,534 square feet; Middletown Development Code requires single family homes in the R-4 zoning district to be constructed on lots that are at least 9,000 square feet. The lot width, ranges from approximately 29 feet wide to 40 feet wide; Middletown Development Code Chapter 1204.10(b) requires single family dwellings in the R-4 zoning district to be constructed on lots that are a minimum of 70 feet wide.

Ms. Fetters presented the staff analysis using a PowerPoint presentation. Ms. Fetters states the applicant is seeking the variance due to being an infill lot that does not meet the current site development standards. Ms. Fetters noted the applicant asserts the exceptional narrowness, shallowness, or shape of the property and extraordinary situation or condition of the property qualifies the case for a variance. Ms. Fetters then explained the purpose of the R-4 zoning district, and cited the Middletown Development Code section, Chapter

1204.10 (b) Table 1204-4, that defines the minimum lot width for the subject parcel.

Ms. Fetters stated that per the Middletown Development Code, public notice was published as well as sent to all property owners contiguous and directly across the street or public right-of-way from the property in question. No comments were received.

Ms. Fetters then displayed pictures of the property and areas surrounding the property, the zoning map, the variance application, the Area & Dimensional Variance Review Criteria, the time limit associated with an approved variance, and the appeal process. Ms. Fetters concluded her staff report.

Mr. Kash asked if there were any questions for staff. Mr. Kash asked Ms. Fetters if this lot had a residence on it previously. Ms. Fetters did not know.

Mr. Kash opened the public hearing to anyone wishing to speak in favor of the request. Dennis Beatty was sworn in.

Mr. Beatty states this variance is similar to the previous variance. Mr. Beatty states he does believe there was a residence on the lot previously that was demolished. Mr. Beatty stated the lot was purchased by Mr. Ferrell and Mr. Beatty is looking to build more homes for the City of Middletown.

Mr. Heidenreich asked Mr. Beatty if the home was a two-bedroom place and what the square footage of the proposed home would be. Mr. Beatty stated around 1400 square feet. Mr. Heidenreich clarified the application states it will be a 4-bedroom home.

Mr. Kash asked if anyone wished to speak in favor of the variance. Hearing none, Mr. Kash asked if anyone wished to speak in opposition. With no additional public wishing to speak, Mr. Kash closed the public hearing.

Mr. Heidenreich commented it was difficult to object to putting a house on the lot given the similarity of the lot in question to neighborhood lots.

Mr. Kash asked Ms. Fetters to what extent does demolition of the structure on a residence trigger the new development code. Ms. Blankenship states she would need to find that language in the zoning code. Ms. Fetters elaborates on the process of rebuilding after demolition of a home occurs.

Mr. Wannemacher motioned to approve the variance, noting Review Criteria 1 and 2; Mr. Gross seconded the motion. The motion was approved through roll call, passing with a 5-0 vote.

David Kash – Yes to Approve

Stefan Wannemacher – Yes to Approve

Gary Gross – Yes to Approve

Jerry Heidenreich – Yes to Approve

Thomas Evans – Yes to Approve

### AREA AND DIMENSIONAL VARIANCE REQUEST #6-25: 4819 CAPRICE DRIVE

Mr. Kash presented case #6-25: A request by applicant Dennis Beatty on behalf of property owner Zack Ferrell for an area and dimensional variance for the property at 4819 Caprice Drive to construct a new single-family dwelling on a parcel that does not meet the minimum lot width site development standard for the subject zoning district. The property is zoned R-4: Attached Residential District. The lot width is approximately 49.5 feet wide; Middletown Development Code Chapter 1204.10(b) requires single family dwellings in the R-4 zoning district to be constructed on lots that are a minimum of 70 feet wide.

Ms. Fetters presented the staff analysis using a PowerPoint presentation. Ms. Fetters states the applicant is seeking the variance due to being an infill lot that does not meet the current site development standards. Ms. Fetters noted the applicant asserts the exceptional narrowness, shallowness, or shape of the property and extraordinary situation or condition of the property qualifies the case for a variance. Ms. Fetters then explained the purpose of the R-4 zoning district, and cited the Middletown Development Code section, Chapter 1204.10 (b) Table 1204-4, that defines the minimum lot width for the subject parcel.

Ms. Fetters stated that per the Middletown Development Code, public notice was published as well as sent to all property owners contiguous and directly across the street or public right-of-way from the property in question. One resident adjacent to the property commented in general support of a new home being constructed on the lot with hopes the side lot setback would be similar to the original home on the lot of 10-12 feet.

Ms. Fetters then displayed pictures of the property and areas surrounding the property, the zoning map, the variance application, the Area & Dimensional Variance Review Criteria, the time limit associated with an approved variance, and the appeal process. Ms. Fetters concluded her staff report.

Mr. Heidenreich asked Ms. Fetters about the 25-foot setback from the front lot line when the development code states this proposed home would require a 30-foot setback and if it should be an additional request or if the existing request could be modified to include the 30-foot setback variance. Ms. Blankenship states the 30-foot setback variance can not be added to the existing request because per code notice would need to be provided to the public.

Mr. Kash opened the public hearing to anyone wishing to speak in favor of the request. Dennis Beatty was sworn in.

Mr. Beatty stated the house is proposed to have a 25-foot setback to align the front face of the proposed home with adjacent home and the residence that was previously on the lot. Mr. Beatty discussed the potential of submitting an additional variance or amending the current plan.

Mr. Kash asked if anyone wished to speak in favor of the variance. Hearing none, Mr. Kash asked if anyone wished to speak in opposition. With no additional public wishing to speak, Mr. Kash closed the public hearing.

Mr. Evans commented that the driveway apron from the previous structure remains on the property.

Mr. Evans motioned to approve the variance, noting Review Criteria 1 and 2; Mr. Heidenreich seconded the motion. The motion was approved through roll call, passing with a 5-0 vote.

David Kash – Yes to Approve

Stefan Wannemacher – Yes to Approve

Gary Gross – Yes to Approve

Jerry Heidenreich – Yes to Approve

Thomas Evans – Yes to Approve

#### AREA AND DIMENSIONAL VARIANCE REQUEST #7-25: 316 SHARON COURT

Mr. Kash presented case #7-25: A request by applicants and property owners James and Barbara Profitt for an area and dimensional variance for the property at 316 Sharon Court to construct an enclosed insulated sunroom on the rear side of the house. The property is zoned O-1P: Planned Development District. The proposed sunroom will encroach on the rear yard setback, being 19.2 feet from the rear property line; Middletown Development Code Chapter 1206.01(e)(15) requires porches and decks that are enclosed (with walls made of screening or other materials) meet the setback requirements for principal buildings in the applicable zoning district.

Ms. Fetters presented the staff analysis using a PowerPoint presentation. Ms. Fettters states the applicant is seeking the variance due to being a corner lot with a shallow backyard. Ms. Fetters noted the applicant asserts the proposed enclosed patio would face the side of their neighbor's house that does not have any doors and rarely uses the yard the patio would face. Ms. Fetters also states the applicant sought the variance to utilize more of the property in a safe manner due to being handicapped. Ms. Fetters then explained the purpose of the O-1 zoning district, and cited the Middletown Development Code section, Chapter 1206.01(d)(6), Chapter 1206.01 Table 1206-1, and Chapter 1206.01 (e)(15).

Ms. Fetters stated that per the Middletown Development Code, public notice was published as well as sent to all property owners contiguous and directly across the street or public right-of-way from the property in question. One resident commented stating they were in general support of the variance and asked for clarification on where the proposed structure would be located and how large the structure would be.

Ms. Fetters then displayed pictures of the property and areas surrounding the property, the zoning map, the variance application, the Area & Dimensional Variance Review Criteria, the time limit associated with an approved variance, and the appeal process. Ms. Fetters stated the setback standard was difficult to find due to its change from P-1 in 1995 to its current O-1 zoning. Ms. Fetters stated she accepted the previous P-1 zoning effective setback. Ms. Fetters concluded her staff report.

Mr. Kash asks Ms. Fetters if the property had to adhere to the P-1 setback standard since no definition for setback was designated when the property was rezoned as O-1. Ms. Fetters stated that was correct.

Mr. Kash opened the public hearing to anyone wishing to speak in favor of the request. Barbara Profitt was sworn in.

Ms. Profitt elaborated on the reasoning behind submitting the application for the variance. Ms. Profitt stated that her and her husband were handicapped and feel an enclosed sunroom would allow them to better enjoy the property.

Mr. Heidenreich asked Ms. Profitt about the slab proposed on the plans. Ms. Profitt states she wasn't sure why that was included.

Mr. Kash asked if anyone wished to speak in favor of the variance. Mike Ritchie was sworn in.

Mr. Ritchie stated the intention is to take the existing 10-foot slab and take it out and go about 6 feet out and establish an insulated sunroom. Mr. Ritchie elaborates the entire neighborhood is under a 30-foot variance.

Mr. Heidenreich asks Mr. Ritchie if there is an entrance or exit directly to the sunroom. Mr. Ritchie confirms there is.

Mr. Kash asks Mr. Ritchie if he has located any markers or pins on the property. Mr. Ritchie states no.

Mr. Heidenreich asks Mr. Ritchie if there will be any external heating or air conditioning. Mr. Ritchie states there will be a P-TAC unit installed.

Mr. Kash asked if anyone wished to speak in favor of the variance. Hearing none, Mr. Kash asked if anyone wished to speak in opposition. With no additional public wishing to speak, Mr. Kash closed the public hearing.

Mr. Wannamacher motioned to approve the variance, citing review criteria 1 and 9; Mr. Heidenreich seconded the motion. The motion was approved unanimously through a roll call vote, with a 5-0 vote.

David Kash – Yes to Approve

Stefan Wannemacher – Yes to Approve

Gary Gross – Yes to Approve

Jerry Heidenreich – Yes to Approve

Thomas Evans – Yes to Approve

#### USE VARIANCE REQUEST #8-25: 236 N. Breiel Boulevard

Mr. Wannemacher recused himself from the case.

Mr. Kash presented case #8-25: A request by applicant Ayshia Mustapha for a use variance for the property at 236 N. Breiel Boulevard to allow for an assisted living facility. The property is zoned O-1: Office District. The variance requested is to allow for the skilled nursing or personal care facility use type in the O-1 zoning district, a prohibited use according to Table 1204-3 of the

Middletown Development Code.

Ms. Fetters presented the staff analysis using a PowerPoint presentation. Ms. Fetters states the applicant is seeking the variance due to the hardship presented by the physical attributes of the property. Ms. Fetters noted the applicant asserts the design layout and proximity to essential services are not fully utilized due to the current zoning regulations. Ms. Fetters then explained the purpose of the O-1 zoning district, and cited the Middletown Development Code section, Chapter 1230 "Skilled Nursing Facility" definition, Chapter 1230 "Personal Care Facility" definition and Chapter 1204.08 Table 1204-3.

Ms. Fetters stated that per the Middletown Development Code, public notice was published as well as sent to all property owners contiguous and directly across the street or public right-of-way from the property in question. Two comments were received – one resident is concerned about who will be utilizing the facility in the immediate future as well as if the variance would remain with property if the owner transferred the property. That resident expressed concern regarding privacy and noise. An additional resident spoke in general support of the variance.

Ms. Fetters then displayed pictures of the property and areas surrounding the property, the zoning map, the variance application, the Area & Dimensional Variance Review Criteria, the time limit associated with an approved variance, and the appeal process.

Mr. Heidenreich asks Ms. Fetters if the building is currently existing. Ms. Fetters states yes.

Mr. Kash asks Ms. Fetters if the intended use of the facility falls within the definitions of skilled nursing facility and personal care facility. Ms. Fetters states yes. Mr. Kash asks Ms. Fetters if either of these definitions limit the recipient of care to the elderly or if the definitions expand to different demographics. Ms. Fetters says the definition does not and is only defined as a short-term residential facility.

Mr. Kash asks Ms. Fetters to clarify that the concerned resident is worried if the variance remains with the property it could be purchased and operated as an in-house rehab center. Ms. Blankenship states she would need to look into the definitions of the use type to determine the answer.

Ms. Blankenship states that this variance can only be approved with a vote of four; therefore, approval would have to be unanimous.

Mr. Evans asks Ms. Fetters if in the O-1 district, a dental office falls under the general office criteria. Ms. Fetters states yes.

Mr. Kash asks Ms. Fetters if the intended use of an assisted living facility for seniors would fall into any other criteria in Table 1204 of the development code. Ms. Fetters says no.

Ms. Blankenship states she does not believe they could foreclose the possibility of having a rehab facility at the property in the future as it is not excluded under the definition of skilled nursing facility or personal care facility.

Mr. Kash opened the public hearing to anyone wishing to speak in favor of the request. Ayshia Mustapha was sworn in.

Ms. Mustapha stated she owns several healthcare facilities in other surrounding jurisdictions. Ms. Mustapha distributed paper copies of the plans for the building.

Ms. Mustapha wanted to address the resident's concerns and states she does not believe based on current laws and regulations it would not be suitable for a drug rehab facility and accepted by the Department of Medicaid.

Ms. Mustapha intends to house up to 5 individuals in the building in suites and states no one under the age of 60 would be eligible to live in the facility. Ms. Mustapha addresses an additional concern of noise citing the potential for ambulance runs.

Ms. Mustapha states the facility is not intended to provide technical skilled nursing care as defined at the state level, but instead operate more as an independent living facility. Ms. Mustapha states the facility would also be housing full-time care staff within the facility.

Ms. Mustapha states she would not be opposed to constructing a fence or buffer from concerned residents.

Mr. Kash asks if Ms. Mustapha is familiar with the Butler County treatment facilities providing counselling services. Ms. Mustapha states yes.

Mr. Kash asks if based upon the state's definition of facilities providing counseling services such as the Butler County treatment facilities mentioned, would the transfer of ownership of the property then open the doors for an outpatient facility to operate as a rehab center. Ms. Mustapha states yes.

Ms. Mustapha does not believe the definition of personal care facility would fall under the use category and could allow a rehab facility since "personal care" by her understanding includes bathing, changing, and feeding where outpatient may include the use of prescription drugs for treatment as outpatient facilities may.

Mr. Heidenreich asks Ms. Mustapha if the individuals living there will have cars with them. Ms. Mustapha said a majority of them will not, but their insurance can provide them transportation.

Mr. Heidenreich asks Ms. Mustapha where food will be prepared. Ms. Mustapha states it will be prepared in the facility.

Mr. Heidenreich asks Ms. Mustapha if an additional permit will be required to provide food on-site. Ms. Mustapha suggests they will contract out a food provider, but house the food in-facility.

Mr. Heidenreich asks Ms. Mustapha about the degree of expertise her staff is equipped with to care for the patients. Ms. Mustapha states 2 registered nurses will be on staff or on call

24/7.

Mr. Evans asks Ms. Mustapha if the interior is set-up similar to the drawing she provided. Ms. Mustapha said no, the drawing represents what the facility will look like in the future.

Mr. Evans asks Ms. Mustapha if they will be making the meals on site. Ms. Mustapha states she would be adding a kitchen to the facility for staff to prepare meals in.

Mr. Heidenreich asks Ms. Mustapha if she will have a social facility for the residents to congregate. Ms. Mustapha states there will be a reception space designed for the residents to engage with one another and meet with family members.

Mr. Heidenreich asks if there will be an outdoor seating area. Ms. Mustapha states yes.

Mr. Kash asks Ms. Mustapha if she and her husband currently own the property. Ms. Mustapha states no, but the contract is going into effect today. Mr. Kash asks Ms. Mustapha if that is contingent upon the variance request. Ms. Mustapha states yes.

Mr. Kash asked if anyone wished to speak in favor of the variance. Dennis Beatty was sworn in.

Mr. Beatty asks the board if a variance is granted on a building and the building is sold, does the variance go away. The board says no.

Mr. Kash asked if anyone wished to speak in favor of the variance. Hearing none, Mr. Kash asked if anyone wished to speak in opposition. With no additional public wishing to speak, Mr. Kash closed the public hearing.

Mr. Kash states he knows where the building is located and feels it's isolated, but code dictates the proposed use is prohibited.

Mr. Heidenreich agrees with Mr. Kash that the intended use is prohibited. Ms. Blankenship states the purpose of the board is to approve variances from the code including uses that may be currently prohibited.

Mr. Gross states in the variance review criteria it says that clear and convincing evidence that all of the criteria must be met.

Mr. Kash applauds Ms. Mustapha for her preparation and services to be rendered, but remains concerned about the future transfer of ownership.

Ms. Blankenship asks the board to only consider their use variance review criteria. The board continues discussion on how the variance requested meets the criteria.

Mr. Kash swears in Ayshia Mustapha.

Ms. Mustapha asks the board if for any reason she transfers ownership of the property if

she would be able to come back to the board and have the variance vacated before the transfer. Ms. Mustapha states she would be willing to do this if allowable.

Ms. Blankenship states the original uses will always be allowable. Ms. Blankenship states that the board has the right to condition variances, so the board has the ability to terminate the variance upon sale or a transfer of the land.

Mr. Gross motioned to approve the variance subject to the condition that the property's use variance as stated would expire on transfer to a new owner; Mr. Evans seconded the motion. The motion was approved with conditions through a roll call vote, with a 4-0 vote.

David Kash – Yes to Approve

Stefan Wannemacher – Abstain

Gary Gross – Yes to Approve

Jerry Heidenreich – Yes to Approve

Thomas Evans – Yes to Approve

#### OLD/NEW BUSINESS

##### *Area and Dimensional Variance Request #1-25: 4680 Caprice Drive*

Ms. Fetters presented area and dimensional variance request #1-25: A request by applicant Ben Ransick on behalf of Shenming Yu for an area and dimensional variance for the property at 4680 Caprice Drive to determine the screening requirements needed per Middletown Development Code 1216.10(a) and (b). The property is zoned B-3: General Business District. The variance requested is to allow for a reduction in screening requirements for off-street loading areas due to the location of the lot lines of the parcel.

Ms. Fetters displayed the applicants request to withdraw the application.

Mr. Wannemacher motioned to approve the withdraw; Mr. Heidenreich seconded the motion. The motion was approved through a roll call vote, with a 5-0 vote.

David Kash – Yes to Approve

Stefan Wannemacher – Yes to Approve

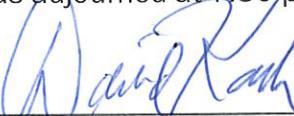
Gary Gross – Yes to Approve

Jerry Heidenreich – Yes to Approve

Thomas Evans – Yes to Approve

#### ADJOURNMENT

With no further business to conduct, Mr. Kash motion to adjourn the meeting. The meeting was adjourned at 7:30 p.m. The motion passed unanimously.

  
\_\_\_\_\_  
David Kash  
Board of Zoning Appeals Chairman

  
\_\_\_\_\_  
Claire Fettters  
City Planner

\*Full Meeting Recording Available on the City's YouTube Channel.