

## MINUTES

The Salisbury Board of Zoning Appeals met in regular session on March 31, 2010, in Room 301, Government Office Building at 7:00 p.m. with attendance as follows:

### **BOARD MEMBERS:**

Patricia Layton, Chairman  
Dave Rainey, Vice Chairman  
Daniel Baker (Absent)  
Edgar Williams (Absent)  
Dave Nemazie

### **CITY OFFICIALS:**

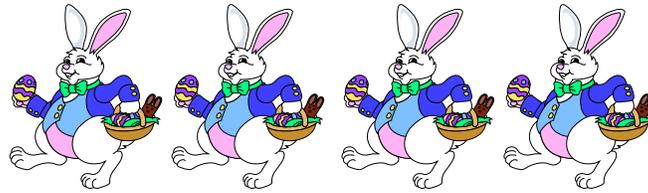
Henry Eure, Building, Permits & Inspections Dept.  
Skip Cornbrooks, City Attorney's Office

### **PLANNING STAFF:**

Gloria Smith, Planner  
Beverly Tull, Recording Secretary

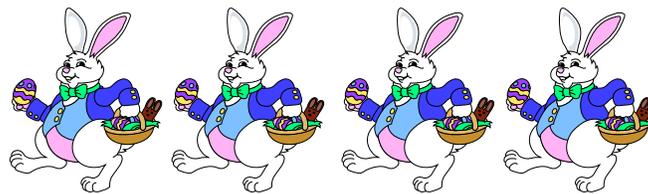


Mrs. Layton, Chairman, called the meeting to order at 6:59 p.m.



### **MINUTES:**

The Board unanimously approved the minutes of the March 4, 2010 meeting as submitted.



### **#SA-1004**

**Eastern Shore Medical Center, rep. by Selby Sign Co. – 4 ft. 10 inch Setback Variance for a Freestanding Sign – 910 Eastern Shore Drive – General Commercial District.**

Mr. John Selby and Ms. Gidget Carey came forward. Mrs. Gloria Smith presented and entered the Staff Report and all accompanying documentation into the record. She summarized the Staff Report explaining that the applicant requests permission to install a free-standing sign with a setback of 10 ft. 2 inches from the curbline along Eastern Shore Drive. The Code requires a 15 ft. setback. Board approval of a 4 ft. 10 inch setback variance is requested.

Mr. Eure stated that there was no other suitable location for the sign. The building is 15 ft. from the curbline. The sign size is smaller than what is allowed. It is a tasteful sign. The clients for this office are having a difficult time getting to the building. Mr. Eure stated that the Building Department recommended approval of the setback variance. He added that a directional sign permit had been issued.

Mr. Selby stated that this is a small size sign that should help people turn into the correct parking lot.

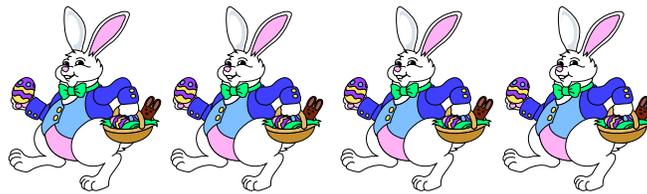
Ms. Carey stated that there has been a lot of drama regarding the location of the parking lot and that has created the need for the sign.

Mr. Selby stated that one (1) of the reasons that they didn't put the sign on the building was so that the patients wouldn't turn into the wrong parking lot.

Ms. Carey added that the patients are turning into the wrong parking lot and being towed.

Mr. Rainey questioned if there was an issue with the top of the sign infringing on the setback. Mr. Selby stated that they would make the sign work.

Upon a motion by Mr. Rainey, seconded by Mr. Nemazie, and duly carried, the Board **APPROVED** the requested 4 ft. 10 inch sign setback variance for the free-standing sign as submitted.



**#SA-8517-10A Tabernacle of Prayer – Change of Special Exception for a 10,463 sq. ft. Church Addition, Paving Variance and Parking Lot Setback Variance – 143 Mitchell Road – R-5A Residential District.**

Ms. Rosemary Edwards, Mr. Steve Engle and Mr. Dale Watson came forward. Mrs. Gloria Smith presented and entered the Staff Report and all accompanying documentation into the record. She summarized the Staff Report explaining that the Tabernacle of Prayer proposes construction of a 10,463 sq. ft. addition for a fellowship hall, kitchen and classrooms. The Code allows Churches in the R-5A Residential District by special exception. A change of the special exception granted in 1985 is requested for expansion of the church. In addition, a parking lot expansion for 23 graveled parking spaces is proposed over a utility easement with a 0 ft. setback at the southeasterly corner of the site. The Code requires parking for 5 or more vehicles to be paved with an all weather material and setback 3 ft. from an interior property line. Approval of a paving variance and a 3 ft. parking lot setback variance is also requested.

Mr. Eure stated that the site plan was very attractive. The Building Department recommended approval of the Special Exception and the Variance request with the added condition that the applicants provide the written agreement from the Salisbury Public Works Department.

Mr. Watson submitted ***Applicant's Exhibit A*** which was the Church's Expansion Proposal. ***Applicant Exhibit B*** was submitted as the license agreement email for the utility easement which would be memorialized in writing and once signed would be recorded in the Land Records.

Mr. Watson introduced Ms. Rosie Edwards who has been at the church since it was founded and is the pastor there. He questioned if the building was a sanctuary. Ms. Edwards responded in the affirmative, explaining that they have a church, youth classes, Sunday school and other activities. Currently the Church office is being used for Sunday school classes. Mr. Watson questioned Ms. Edwards that the traffic would not increase but that the expansion would just allow the Church to handle the existing activities. Ms. Edwards responded in the affirmative. Mr. Watson questioned if a kitchen was being added. Ms. Edwards responded in the affirmative. Mr. Watson questioned Ms. Edwards if the kitchen would be for public use. Ms. Edwards responded in the affirmative. Mr. Watson questioned if there would be any additional activity or traffic. Ms. Edwards responded in the negative. Mr. Watson questioned if the Church got along with the neighbors. Ms. Edwards responded in the affirmative. Mr. Watson questioned Ms. Edwards if she was okay with the Staff Report. Ms. Edwards responded in the affirmative. Mr. Watson questioned Ms. Edwards if the Church was asking for relief. Ms. Edwards responded in the affirmative.

Mr. Nemazie questioned Mr. Watson if they accepted that the Staff had included a condition to change the size of the parking. Mr. Watson responded that he would have the Engineer address that issue.

Mr. Watson questioned Mr. Engle if he had developed the site plan. Mr. Engle responded in the affirmative. Mr. Watson questioned the company's purpose in the project. Mr. Engle responded that they had surveyed and designed the project to meet all the City requirements. He stated that it was their idea to approach the City to use the easement. The City's utilities will not be impacted and it will be kept in gravel. Mr. Watson questioned if the firm had tried to configure the needs to make the project work. Mr. Engle responded in the affirmative, explaining that many designs had been done to make this project work. Approximately 20 parking spaces were placed under the canopy of the building to make the best use of the area. The building had to be reconfigured to make the design work. The variances are needed for the parking spaces. Mr. Watson questioned if the parking configuration and reduction of the parking size could be addressed. Mr. Engle responded that it was a great idea to reduce the parking spaces to 18 ft. which will allow the parking area to be shifted so the easement will only be needed to access the parking area.

Mr. Eure noted that all spaces could be reduced to 9 ft. by 18 ft. to reduce the paving costs.

Mr. Watson questioned Mr. Engle if the reduction was done would it work better. Mr. Engle responded in the affirmative. Mr. Watson questioned if the gravel or all weather material would be maintained. Mr. Engle stated that there was gravel there now and it will be maintained. Mr. Watson questioned if the 3 ft. parking setback variance would still be needed. Mr. Engle responded that he wouldn't know

until it was laid out. Mr. Watson questioned if Mr. Engle wanted the Board to still consider the 3 ft. parking lot setback variance. Mr. Engle responded in the affirmative.

Mr. Watson questioned Ms. Edwards if she was aware that the portion over the utility easement would have to be maintained in gravel. Ms. Edwards responded in the affirmative. Mr. Watson questioned if Ms. Edwards was aware that if the City had to dig in the easement that the Church would be required to fix any disturbance to the easement. Ms. Edwards responded in the affirmative. Mr. Watson questioned if the rest of the parking would be in all weather material. Ms. Edwards responded in the affirmative.

Mr. Watson stated that the Church fits in the community and has been there for over 20 years. The expansion is being done to accommodate the church programs. He requested approval of the Special Exception and Variance requests.

Mr. Rainey questioned Mr. Eure if the original special exception included a variance for 40 parking spaces. Mr. Eure responded in the affirmative. Mr. Rainey questioned if this would meet the current Code. Mr. Eure responded in the affirmative.

Mr. Nemazie questioned if the applicants still requested the 3 ft. parking lot setback variance. Mr. Engle responded that currently the parking spaces go into the easement and will still go to the property line so the setback won't be met. Mr. Eure stated that the 3 ft. setback was from the park. Mr. Engle stated that it would be ok to not have the 3 ft. setback variance for the parking lot.

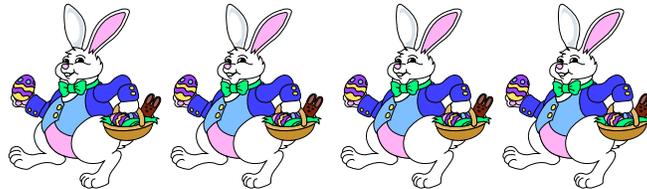
Mr. Richard Parsons, neighbor, stated that he owns the property across the street from the Church. He stated that the Church has been an asset to the community and has cleaned up the area. He stated he was in favor of anything that would improve their property.

Ms. Von Siggers, neighbor, stated that the Church has put a positive influence in the neighborhood and requested approval.

Upon a motion by Mr. Rainey, seconded by Mr. Nemazie, and duly carried, the Board **APPROVED** the requested Change of Special Exception to construct the 10,463 sq. ft. expansion and also **APPROVED** the Paving Variance for the 23 parking spaces in the City Utility Easement. The Board required amendment of the Site Plan to create 9 ft. by 18 ft. parking spaces on the southeasterly side of the Church to avoid the need for a parking lot setback variance. The Board's approval is subject to the following Conditions of Approval:

**CONDITIONS:**

1. The parking lot shall be constructed as shown on the Site Plan, including the landscaping islands and treated with an all weather material as prescribed by the Code prior to issuance of an occupancy permit for the fellowship hall and kitchen facilities.
2. The applicants shall provide a copy of a written agreement with the Salisbury Public Works Department regarding the utility easement.

**#SA-1005****BN Properties, LLC – Administrative Appeal – Illegal Conversion of a Single-family residence to a two-family residence – accessory apartment – 912 Spring Avenue – R-8 Residential District.**

Mr. John Nielson came forward. Mrs. Gloria Smith presented and entered the Staff Report and all accompanying documentation into the record. She summarized the Staff Report explaining that the applicant owns a residential property at 912 Spring Avenue that is being used as a two-family residence. The property is zoned R-8 Residential, which does not allow two-family residences. The Director of the Department of Building, Permits and Inspections notified the Applicant by letters dated December 9, 2009 and February 12, 2010, that the two-family dwelling was in violation of the City Zoning Code, and required submission of documentation demonstrating that the property was a legal nonconforming two-family residence within thirty (30) days. As provided by the Code, the Applicant appealed the Director's decision, taking the position that the two-family use is a legal nonconforming use that was established at a time when the City's Zoning Code allowed two-family dwellings in this property's particular zoning district.

Mr. Eure stated that there was no evidence to support that the residence was converted legally. It appears to have been converted around 1980. There have been no Board cases regarding this property. The Building Department requested that the Board uphold the Building Department determination.

Mr. Nielson stated that he had purchased this property in 2004 but that the previous owner was now deceased. The contract of purchase stated that this property was a duplex. The rental license fee and lead paint fees have been paid since 2004 and the property has passed two (2) inspections. He stated that he had 45 other homes and never had any problems. He stated that there are two meters on the house

and four (4) parking spaces available. A lot of upgrades have been done and at no point was it determined to not be a duplex. Mr. Nielson stated that he does not rent to college students and that he has two (2) families living in this house. He added that he has all of his rental homes registered with the City.

Mr. Rainey questioned if there were stairs to the second floor. Mr. Nielson responded that there is a separate entrance at the back of the house and interior stairs to the apartment on the second floor.

Mr. Rainey stated that the Board was only there to make a zoning decision. He added that even if Mr. Nielson wasn't at fault, that the house could be converted back to a single family residence.

Mr. Nielson stated that if he had known that the house wasn't a duplex that he wouldn't have bought it.

Mr. Nemazie questioned which apartment was added for the duplex. Mr. Nielson responded that apartment B which is the upstairs was the added apartment.

Mr. Nemazie questioned if the inspectors would have to go back and do a plumbing and electrical inspection if the house was converted back to a single family residence. Mr. Eure responded in the affirmative because there was no record to prove that it had been done legally.

Mr. Nielson questioned what he could do if the house can't be kept as a duplex. Mr. Eure responded that the Board can not require that the home be converted back to a single family home but that one (1) of the units must be abandoned. He added that there wasn't anything that says that you can't have two kitchens in a house.

Mr. Nielson stated that it appears that there was only a permit to build the house until it was permitted in 2004 for a roof, siding and new windows.

Mr. Nemazie noted that the rental and code inspectors are different than the zoning inspectors.

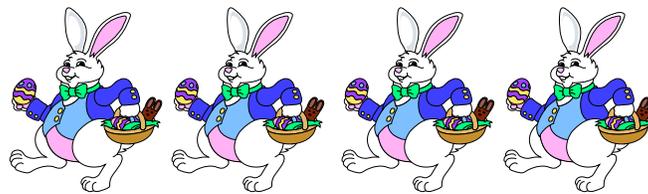
Mr. Nielson stated that the complaint came from Mr. Tom Stevenson that the home was not registered as a duplex.

Ms. Karen Marshall, N. Park Drive, stated that the City Departments don't communicate and don't cross their records. People purchase homes and can't be certain about what they've purchased when the records aren't available. She stated that she came to support the applicant because she was in the same situation.

Mr. Nielson stated that he didn't want to lose his landlord license. Mr. Cornbrooks stated that the landlord license had nothing to do with this case. He stated that this case only has to do with one (1) property.

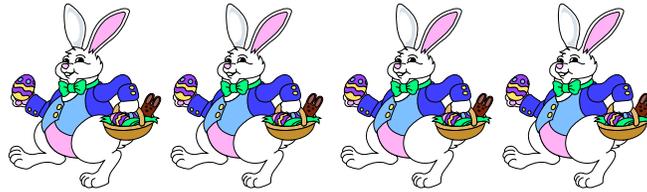
Mr. Nemazie stated that he recommended that the Building Department review Mr. Nielson's other 44 properties for any zoning issues. Mr. Nielson stated that he didn't own any other duplexes. The rest of his rental properties are all single family residences. The only reason he bought the duplex was because it was a good money maker. He added that he was only concerned about losing his landlord license.

Upon a motion by Mr. Nemazie, seconded by Mr. Rainey, and duly carried, the Board **UPHELD** the Building, Permit and Inspections Department's determination that the second floor apartment at 912 Spring Avenue is an illegal residence. The Board's ruling further requires that the apartment be vacated within 60 days of the Board's decision, with steps taken to preclude further occupancy.



## **ADJOURNMENT**

With no further business, the meeting was adjourned at 8:02 p.m.



This is a summary of the proceedings of this meeting. Detailed information is in the permanent files of each case as presented and filed in the Salisbury-Wicomico County Department of Planning, Zoning and Community Development.

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Patricia Layton, Chairman

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John F. Lenox, Secretary to the Board

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Beverly Tull, Recording Secretary