

MINUTES

The Salisbury Board of Zoning Appeals met in regular session on May 6, 2010, in Room 301, Government Office Building at 7:00 p.m. with attendance as follows:

BOARD MEMBERS:

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



Mr. Rainey, Vice Chairman, called the meeting to order at 6:59 p.m.

**MINUTES:**

The Board deferred the minutes of the March 31, 2010 meeting until the June 3, 2010 meeting due to lack of a quorum.

**#SA-1006**

Tom Smith, represented by Messick Home Improvements – Alter/Enlarge a Legal Nonconforming Freestanding Garage – 213 South Clairmont Avenue – R-10 Residential District.

Mr. Tom Smith 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 proposes construction of an addition to a free-standing garage that sits 2 ft. from the side property line. An 18-ft. by 14-ft. addition is proposed. Board approval for the enlargement of a nonconforming structure is requested.

Mr. Eure stated that the Zoning Code allows for single family homes to be enlarged in line with the existing setback but excludes accessory buildings from this privilege. Mr. Eure recommended approval of the request.

Mr. Nemazie questioned if Mr. Smith was satisfied with the Condition listed in the Staff Report. Mr. Smith responded in the affirmative.

Mr. Baker questioned if the 8 ft. rear setback complied with the Code. Mr. Eure responded in the affirmative, explaining that the rear setback only has to be 5 ft.

Mr. Williams questioned how the Building Department would ensure that the fire wall was installed. Mr. Eure responded that there would be inspections done to ensure that the fire wall was installed.

Upon a motion by Mr. Williams, seconded by Mr. Baker, and duly carried, the Board **APPROVED** the requested enlargement of a legal nonconforming structure, as submitted based on the Section V(c) of the Staff Report, and subject to the following Condition of Approval:

CONDITION:

1. The north wall of the existing garage shall be reconstructed with the same one hour fire resistant materials as is required for the proposed addition.



#SA-1007

**Robert & Laverne Briddell – Administrative Appeal –
Determination regarding an Illegal Two-Family Dwelling –
140-142 Second Street – R-5 Residential District.**

Ms. Laverne Briddell and Ms. Betty Diggs 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 applicants own a residential property at 140-142 Second Street that is being used as a two-family residence. The property is zoned R-5 Residential, which does not allow two-family residences.

Mr. Eure stated that the Staff Report was clear and that the Building Department concurred with the Staff Report. Mr. Eure requested that the Board uphold the Building Department's and use the residence as only a single family residence.

Ms. Diggs stated that her parents purchased the property in 1983 and the tax assessment office said that there were two (2) apartments in the unit and had two (2) meters. She stated that there was no evidence that the home was ever converted to two (2) units. She questioned how the papers could be lost or that it wasn't documented that the home was converted to a two family residence.

Mr. Rainey questioned why it took five (5) years to renovate the house after the fire. Ms. Diggs responded that the economy was bad and her parents weren't getting rent from their other tenants. Her mother became ill in 2006 and then her father was diagnosed cancer. Once both parents were better, her father got sick again. The kids got involved to get the house straightened out and the renovations finished.

Mr. Nemazie stated that the challenge that the Board faces is that the decisions are cut and dried by the facts that are presented. He questioned if there were any records to show that the house was a rental with two (2) units. Ms. Diggs responded that there were records before the fire occurred. She added that the water bill showed where they paid for two (2) units.

Mr. Rainey questioned Mr. Eure in 1983 was the home two (2) units. Mr. Eure stated that he would venture to say that the home was two (2) units. He added that the home pre-existed any Zoning Codes.

Mr. Rainey questioned Mr. Eure again if the home was a two (2) family residence in 1983. Mr. Eure responded that he would guess that it was a two (2) family residence in 1983. Mr. Rainey questioned in 1959 if the home was a two (2) family residence. Mr. Eure responded that he would have no way of knowing back to 1959. He stated that if the two (2) family residence was permitted in 1959 then it would have been allowed. Mr. Rainey stated that chances are that the house was an existing nonconforming unit. Since the building permit took almost five (5) years to be utilized, the house lost its nonconformity.

Mr. Cornbrooks stated that the house was condemned after the fire and that the Code doesn't permit reoccupancy after condemnation until a CO is issued.

Mr. Rainey stated that the Code allows for hardships. The problem is that there isn't any proper documentation for the hardship. The Board is here to hear the facts but the problem lies with a five (5) year period where the house was unoccupied so the nonconformity was lost.

Ms. Diggs stated that the permit ran out and then a new permit was applied for but nothing was ever received documenting that the original permit had expired. Mr. Eure stated that the permit is no longer valid if there is six (6) months of inactivity.

Mr. Rainey stated that the Code states that you lose the nonconforming status after one (1) years time.

Mr. Nemazie stated that the Certificate of Occupancy states that this will be a single family residence. He questioned if the home was rebuilt as two (2) units. Ms. Diggs stated that they could convert the house back to one (1) unit but people won't be able to afford a big place like that. From Second Street there are six (6) apartment houses and on Delaware Avenue there are 11 apartments.

Mr. Rainey stated that the five (5) year period is the issue and a hardship was not applied for.

Ms. Briddell questioned if she could rent the house to whomever she wished. Mr. Nemazie responded that she would need to get a permit for the house to be a rental and then she could rent the house as a single family residence.

Upon a motion by Mr. Nemazie, seconded by Mr. Williams, and duly carried, the Board **UPHELD** the Building Department's determination that the residence at 140-142 Second Street has lost its nonconforming status as a two-family dwelling and required that steps be taken to preclude further occupancy as a two-family dwelling.



ADJOURNMENT

With no further business, the meeting was adjourned at 7:25 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.

Dave Rainey, Vice Chairman

John F. Lenox, Secretary to the Board

Beverly Tull, Recording Secretary