

## MINUTES

The Salisbury Board of Zoning Appeals met in regular session on August 5, 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 (Absent)

### **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 7:02 p.m.

**MINUTES:**

Due to lack of a quorum, the minutes were held for the September meeting.

**#SA-1022**

**Tom & Lydia Welsh, represented by Messick Home Improvements – 3 ft. Side yard Setback Variance for a Porch Addition – 224 North Clairmont Avenue – R-10 Residential District.**

Mr. Tom and Mrs. Lydia Welsh 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 propose construction of a porch addition with a 7 ft. side yard setback. The Code requires a 10 ft. setback. Board approval of a 3 ft. setback variance is requested.

Mr. Eure stated that the Building Department was skeptical at first but after visiting the site the landscaping would impede on putting the addition at the rear of the home. The lot is substandard in size for the area. The Building Department recommended approval of the requested variance.

Mr. Welsh stated that they accepted the Staff Report.

Mr. Williams questioned if the roof line could be discussed as well as why the proposed placement of the addition was the best place to put the porch. Mrs. Smith responded that the roof lines would leave a crevice where water could pool and provide leak problems where the roof lines would join. Mr. Welsh added that the roof line on the south side would match the roof line of the existing structure.

Mr. Baker questioned if any calls had been received concerning this request. Mrs. Smith responded in the negative.

Mr. Rainey requested that the hardship be explained. Mr. Eure responded that the size of the lot and the landscaping were the hardship. Mr. Rainey

questioned if the family room addition had been done by Mr. Welsh. Mr. Welsh responded in the negative, explaining that the family room addition was done when the house was purchased. Mr. Rainey questioned the reason for the porch not being 9 ft. by 14 ft. Mr. Eure responded that if the porch was 9 ft. by 14 ft. that it would reduce the size by 25 percent. Mr. Rainey stated that he understood the desire to improve the house and questioned if they could encroach the setbacks. Mr. Eure responded in the negative, explaining that they could only encroach the rear setbacks and not the side yard setbacks. Mr. Rainey reiterated that he understood the desire to improve the house but believed that there wasn't a hardship and this would set precedent.

Mr. Welsh stated that reducing the size of the porch by 25 percent would make the porch unusable. If the porch was placed on the rear of the house then the landscaping would have to be removed and the roof line would create a water problem. He requested approval of the variance for his porch addition.

Upon a motion by Mr. Baker, seconded by Mr. Williams, and duly carried, the Board **APPROVED** the 3 ft. Side Yard Setback Variance for a Porch Addition, as submitted, based on the criteria listed in Section V(c) of the Staff Report.

**Mr. Rainey opposed the motion.**



**#SA-1021**

**Eve Clark – Administrative Appeal – Determination regarding an Illegal Two-Family Dwelling – 828 South Division Street – R-8 Residential District.**

Mr. Ryan Hohman came forward. Mrs. Gloria Smith presented and entered the Staff Report and all accompanying documentation into the record. She summarized the report explaining that the applicant owns a residential property at 828 South Division Street 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 owner by a letter dated April 13, 2010, that the property has an illegally converted dwelling unit. Documentation of a legal nonconforming use was required within 30 days or the Code allows for appeal of the decision to the Board. 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 weren't any special exceptions granted and there weren't any records of this being a legal nonconforming use. Mr. Eure recommended that the Board uphold the Building Department's determination.

Mr. Rainey questioned if the date that the Board needed to look at was 1990. Mr. Eure responded in the affirmative.

Mr. Hohman stated that he had only been the property manager since 2007. Ms. Clark purchased the property in 1995. The property has been registered for the last four (4) years with the City and was never questioned until recently. The property was also registered with MDE. He added that he was able to provide leases from 2001 until present for the property.

Mr. Rainey questioned if there was anything back to 1990. Mr. Hohman responded in the negative.

Mr. Baker stated that in the past the Board had used affidavits to verify that the property had been in continuous use. He stated that without that information, the Board wouldn't have any basis to overturn that decision.

Mr. Rainey stated that the Code states that the property lost its ability to be a two (2) family residence and without any evidence the Board would have to uphold the Building Department's determination.

Mr. Hohman requested an extension for a month to try and get documentation back to 1990.

Mr. Williams questioned Mr. Cornbrooks what the legal basis of accepting the affidavit versus the special exception was when the Code changed in 1990. Mr. Cornbrooks responded that the affidavit or the special exception would be considered pieces of evidence. He added that the applicant had requested a continuance so that was now the question before the Board.

Upon a motion by Mr. Baker, seconded by Mr. Williams, and duly carried, the Board, **CONTINUED** the above referenced case until the September 2, 2010 meeting to allow time to gather more evidence regarding the history of the structure.



**#SA-1015**

**Hilda Escobar, rep. by Thomas J. Maloney – Administrative Appeal – Determination regarding an Illegal Two-Family Dwelling – 624 East Church Street – R-5 Residential District.**

Mr. Tom Maloney, Ms. Laura Borowski, and Ms. Hilda Escobar 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 624 East Church Street that is being used as a two-family residence. The property is zoned R-5 Residential, which does not allow two-family residences. The Director of the Department of Building, Permits and Inspections notified the owner by a letter dated April 30, 2010, that the property has an illegally converted dwelling unit. Documentation of a legal nonconforming use was required within 30 days or the Code allows for appeal of the decision to the Board. 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 weren't any records of a special exception or any records of a legal nonconforming use. Mr. Eure recommended that the Board uphold the Building Department's determination.

Mr. Rainey questioned if the date the Board should be using was April 23, 1990. Mr. Eure responded in the affirmative.

Mr. Maloney stated that his partner, Mr. Cockey, had helped draft the legislation in 1990. If the special exception had been granted then the case wouldn't be before the Board. If the evidence is given, then the Board can say that this property is a legal nonconforming use.

Mr. Maloney stated that he would be submitting seven (7) affidavits for the record and that he concurred with the Staff Report regarding the date. This case provided for the shortest time frame for most cases that have been before the Board. ***Applicant's Exhibit #B*** was entered into the record as an affidavit from Mr. Marshall Moore who owned the property from 1965 until January 4, 1991 and stated that it was always occupied as a two-family dwelling. This affidavit gets the date prior to 1990. ***Applicant's Exhibit #C*** was entered into the record as an affidavit from Mr. Bruce Ruark who purchased the property on January 4, 1991 from Mr. Moore and sold

the property in 2000. Mr. Ruark stated that he lived at the property in 1961 and that it had always been a two-family residence. *Applicant's Exhibit #D* was entered into the record as an affidavit from Mr. J. Morgan White who purchased the property on June 16, 2000 and sold it to Mr. Jeff Lang on May 30, 2002. *Applicant's Exhibit #E* was entered into the record as an affidavit from Mr. Jeffrey Lang who sold the property on July 19, 2005 and stated that it had always been a two-family residence. *Applicant's Exhibit #F* was entered into the record as an affidavit from Mr. Adam Glushakow who owned the property from 2005 until June 2006 and stated that it was always a two-family residence. *Applicant's Exhibit #G* was entered into the record as an affidavit from Mrs. Sandra Smith who lived next door to the property since 2006. *Applicant's Exhibit #H* was entered into the record as an affidavit from Mrs. Hilda Escobar who purchased the property in February 2009. Mrs. Escobar lives on the first floor of the property and rents out the second floor to a family friend. Mr. Maloney stated that the property has been a nonconforming use since 1965.

Mr. Williams questioned if any leases were available for the record. Mr. Maloney responded in the negative, explaining that he has a hard enough time getting the affidavits. Most landlords do not keep copies of leases, however, they were requested with each person interviewed.

Mr. Baker questioned the terminology to overturn the Building Department's decision if the Board chose to grant the appeal. Mrs. Smith responded that the terminology should be that the Board is overturning the Building Department's determination.

Mr. Williams stated that there was thorough evidence for the client submitted. He questioned if this evidence could have been given to the Staff so that the Board wouldn't have to have heard the case. Mr. Maloney responded in the affirmative, explaining that the affidavits are hard to get and some in this case were dated the same date as the meeting.

Mr. Maloney stated that he believed that he'd met the burden of proof for his client and requested that the Board overturn the Building Department's decision.

Upon a motion by Mr. Baker, seconded by Mr. Williams, and duly carried, the Board **OVERTURNED** the Building Department's determination that the residence at 624 East Church Street was an Illegal Multiple-Family Dwelling based on the Affidavits submitted at the meeting.



**#SA-1016**

**Patrick & Deniece Ashley, rep. by Thomas J. Maloney – Administrative Appeal – Determination regarding an Illegal Two-Family Dwelling – 842 Brown Street – R-8 Residential District.**

Mr. Patrick Ashley, Mr. Tom Maloney, and Ms. Laura Borowski 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 842 Brown Street 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 owner by a letter dated May 3, 2010, that the property has an illegally converted dwelling unit. Documentation of a legal nonconforming use was required within 30 days or the Code allows for appeal of the decision to the Board. 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 in 1977 the property came before the Board for a variance for a two-family dwelling and it was denied. He requested that the Board uphold the Building Department's determination.

Mr. Rainey questioned if the date on this case was 1959. Mr. Eure stated that in 1977 the previous owner had requested a two-family dwelling. Mr. Rainey again questioned if the date the Board needed to keep in mind was 1959. Mr. Eure responded in the affirmative. Mr. Rainey stated that the Board had heard a case for this property for a two-family residence in 1977.

Mr. Maloney stated that the information was correct in the Staff Report but that it wasn't the entire story. There are two (2) aspects of this case – the legal nonconformity and the denied land area variance. He stated that they had traced the title of the property and determined that the property was a two-family dwelling in the late 1940's. **Applicant's Exhibit #B** was entered into the record as an affidavit from Mr. Richard Taylor whose grandparents owned the property from 1946 until 1965 and maintained that property as a two-family residence. **Applicant's Exhibit #C** was entered into the record as an affidavit from Harvey Beahm who owned the property at 425 Truitt Street from 1949 until 1993. His property backed up to this property at 842 Brown Street. From 1955 until 1966, Mr. Beahm stated that he had personal

knowledge that the property at 842 Brown Street was occupied as two units. ***Applicant's Exhibit #D*** was entered into the record as an affidavit from Mr. Jack Smith who currently resides in Florida. Mr. Smith purchased the property in 1965 and owned it until 1976 and maintained that the property was always occupied as a two-family dwelling. ***Applicant's Exhibit #E*** was entered into the record as an affidavit from Mr. Dale Albert who resided at the property at 845 Brown Street from 1972 until 1985. He stated that he was actually a tenant in the building and that it was always occupied as a two-family residence. ***Applicant's Exhibit #F*** was entered into the record as an affidavit from Mr. Dennis Gilman who owned the property from 1985 until 1988 and stated that it was always occupied as a two-family residence. ***Applicant's Exhibit #G*** was entered into the record as an affidavit from Mr. Ted Evans who purchased the property in 1988 and owned it until 2002 and stated that it was always occupied as a two-family residence. ***Applicant's Exhibit #H*** was entered into the record as an affidavit from Mr. Patrick Ashley who purchased the property in 2002 and stated that it has always been occupied as a two-family residence.

Mr. Maloney stated that the Staff Report didn't state how far the residence had to be traced back but it was a legal residence in 1959 and it was converted to a two-family residence in the 1940's. There was a wave of zoning cases in the late 1970's and some of the cases before the Board lately have also come before the Board between 1976 and 1979. Mr. Maloney stated that he had worked with Mr. Eure and Mrs. Smith on some of these cases to find decisions from the Board in the late 70's. In this case, it is unknown why the variance was requested in 1977. ***Applicant's Exhibit #I*** was entered into the record as a determination letter from the City of Salisbury. In this case, there was a variance that was denied in 1977 but was a permitted use from the 1959 Code. Mr. Maloney stated that this was a nonconforming use that was traced back to the 1940's. The evidence is there. He stated that he didn't think that people got nonconforming uses in the 1970's. The 1983 and 1990 Code brought these cases out for nonconforming uses.

***Applicant's Exhibit #J*** was entered into the record as City of Salisbury Records regarding a Code Compliance visit to this residence. This write up indicated numerous violations and the write-up listed the dwelling as having two (2) kitchens. The avenue to appeal the Code Violations is to the Board of Adjustments and Appeals. In the City's own records they list this property as having two (2) units. These records were dated May 3, 1977. Mr. Maloney stated that he didn't understand why the case went for a variance. He stated that when a property is written up for a Code violation there is usually a follow-up, especially if there are electrical issues. This property has been two (2) units for several years. Mr. Maloney stated that the burden of proof was placed on the applicant and that burden of proof has been met.

Mr. Rainey questioned why there wasn't an affidavit from Mr. Webber. Ms. Borowski responded that there wasn't any response from Mr. Webber after many phone calls and letters were sent to him.

Mr. Williams questioned if the reason that this case was before the Board was because it was previously denied. Mr. Eure responded in the affirmative. Mr. Williams questioned if there were issues with what was presented. Mr. Eure responded that he had not seen any of the evidence until the meeting. Mr. Williams questioned the square footage issue. Mr. Eure stated that under today's Code the square footage would be an issue but it would not have been under the previous Code. Mrs. Smith added that they couldn't determine the reason for the variance coming before the Board from the minutes of that meeting.

Mr. Williams questioned the age of Mr. Harvey Beahm. Mrs. Borowski responded that Mr. Beahm was in high school in 1959 and went to his grandparent's house every day after school. Mr. Williams stated that he had issue with taking a teenagers memory and stated that his affidavit was a weak link in the case. Ms. Borowski responded that Mr. Beahm's family had owned the Truitt Street property and he had a recollection of the property in question. Mr. Williams stated that he didn't think that a 15 or 16 year old could provide concrete information and that his affidavit was a weak link.

Mr. Rainey questioned Mr. Ashley on how the house was separated into two (2) units. Mr. Ashley responded that there was a unit upstairs and a unit downstairs. Mr. Rainey questioned if there were separate entrances. Mr. Ashley responded in the affirmative. Mr. Rainey questioned if the units had separate kitchens. Mr. Ashley responded in the affirmative. Mr. Rainey questioned the number of bedrooms. Mr. Ashley responded that there was one (1) bedroom upstairs and one (1) bedroom downstairs.

Mr. Williams questioned if the house was built in 1910. Mr. Eure responded that the tax assessment documents indicate that the house was built in 1910.

Mr. Maloney reiterated that they had met the burden of proof for his client.

Mr. Rainey questioned when the variance was requested. Mr. Maloney responded that the variance was requested in August 1977 but that the Code violations were written up in May 1977.

Mr. Cornbrooks stated that he didn't read the City's records as the unit having two (2) kitchens. He stated that he only saw reference to one (1) kitchen in the violation notice, adding that he had skimmed the material and not read it completely. Mr. Maloney stated that he disagreed with Mr. Cornbrooks.

Mr. Cornbrooks stated that it was possible that two (2) kitchens were referenced but he didn't see it when he was skimming through the documents. He stated that on page 13 there is a reference to the kitchen but it doesn't specify two (2) kitchens. He stated that they were referenced in the singular. Mr. Cornbrooks stated that another scenario is condemnation from May 1977 and August 1977 when the case came to the Board for a variance for a two-family residence. He stated that there is no evidence to support that but all the evidence given at the meeting has been presumptuous.

Mr. Williams questioned Mr. Cornbrooks on page 17 the second to the last paragraph how the language should be read since it lists a tenant. Mr. Cornbrooks responded that you don't read into the language because it is standard language that is being used.

Mr. Maloney stated that he appreciated Mr. Cornbrooks testimony but that he reads the document as stating that there were two (2) units in the residence. The language is in the City's document and if the language isn't clear than it shouldn't be his client's problem. Mr. Maloney stated that he didn't believe that people in their 60's, 70's or 80's are lying in their affidavits. He added that the reading is consistent with the affidavits.

***Applicant's Exhibit #K*** was entered into the record as the Memorandum of Law on Zoning Estoppel.

Upon a motion by Mr. Baker, and due to no second, the motion failed. Therefore, the Board **UPHELD** the ruling by the Department of Building, Permits, and Inspections that the residence at 842 Brown Street was illegally converted to a two-family dwelling.



**#SA-1017**

**Salisbury Alliance Realty, LLC, rep. by Thomas J. Maloney – Administrative Appeal – Determination regarding an Illegal Two-Family Dwelling – 308 East Vine Street – R-8 Residential District.**

Mr. Donnie Williams, Mr. Tom Maloney, and Ms. Laura Borowski came forward. Mr. Maloney requested a continuance of this case for a second time. He stated that they had located an owner of the property who's in Arizona and has not gotten that affidavit back yet.

Upon a motion by Mr. Baker, seconded by Mr. Williams, and duly carried, the Board **CONTINUED** the above referenced case until the September 2, 2010 meeting to allow the applicant to do further research. The Board noted that there would be no further continuances on this case.



**#SA-1023**

**Hardison-Hickling Properties, LLC, rep. by Thomas J. Maloney – Administrative Appeal – Determination regarding an Illegal Two-Family Dwelling – 410 West College Avenue – R-10 Residential District.**

Ms. Sarah Showell, Mr. Thomas Maloney, and Ms. Laura Borowski came forward. Mrs. Gloria Smith presented and entered the Staff Report and all accompanying documentation into the record. She summarized the report explaining that the Applicants own a residential property at 410 West College Avenue that is being used as a three-family residence. The property is zoned R-10 Residential, which does not allow three-family residences. The Director of the Department of Building, Permits and Inspections notified the owners by a letter dated June 2, 2010, that the property has two illegally converted dwelling units. Documentation of a legal nonconforming use was required within 30 days or the Code allows for appeal of the decision to the Board. As provided by the Code, the Applicant appealed the Director's decision, taking the position that the three-family use is a legal nonconforming use that was established at a time when the City's Zoning Code allowed multi-family dwellings in this property's particular zoning district.

Mr. Eure stated that the unit would have had to have existed prior to the 1959 Code. He requested that the Board uphold the Building Department's determination.

Mr. Rainey questioned if the date was 1959 for three (3) units but 1990 for two (2) units. Mr. Eure responded in the affirmative, adding that they would have needed a special exception to keep the residence between 1990 and 2000.

Mr. Maloney stated that the Staff Report stated that the correct date would to have the property predating 1959. He stated that he had located four (4) people with personal knowledge of this property.

***Applicant's Exhibit #B*** was entered into the record as an affidavit from Edward Nock who had a friend that resided in the 3<sup>rd</sup> floor apartment that he visited regularly. Mr. Nock purchased the property at 421 W. College Avenue in

1965 and still resides there. ***Applicant's Exhibit #C*** was entered into the record as an affidavit from Mr. Gary Chandler which was dated three (3) days prior to the meeting. Mr. Chandler is a well-known landlord. His grandmother resided at 410 W. College Avenue in 1972. Mr. Chandler's aunt, Rosalyn Burbage purchased the property in 1954. The Burbage's owned the property from 1959 until 1973. Mrs. Burbage currently resides in the 1000 block of Riverside Drive. ***Applicant's Exhibit #D*** was entered into the record as an affidavit from Ms. Susan Horn who purchased the property at 408 W. College Avenue in 1973 and owned that property until 2005. She stated that the property in question had been occupied as three units the entire time that she owned the neighboring property. Ms. Horn actually met with the Building Department in 1991 about purchasing the property in question however never proceeded any further. ***Applicant's Exhibit #E*** was entered into the record as an affidavit from Ms. Sarah Showell who purchased the property in 2005 and stated that all three (3) units have been continuously occupied.

Mr. Maloney stated that he had provided evidence and met the burden of proof for his client in this case. ***Applicant's Exhibit #F*** was entered into the record as his Memorandum on Zoning Estoppel.

Upon a motion by Mr. Williams, seconded by Mr. Baker, and duly carried, the Board **OVERTURNED** the Building Department's determination that the property located at 410 West College Avenue was an Illegal Multiple-Family Dwelling based on the Affidavits submitted at the meeting.



## **ADJOURNMENT**

With no further business, the meeting was adjourned at 8:33 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