

MINUTES

The Salisbury Board of Zoning Appeals met in regular session on September 1, 2011, 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
Edgar Williams (Absent)
Dave Nemazie

CITY STAFF:

Henry Eure, City Building, Permits, and Inspections Department
Roscoe Leslie, City Solicitor'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 minutes of the July 7, 2011 minutes were approved as submitted.

**#SA-1106**

Kevin & Kristine Adams – 2 ft. Fence Height Variance – 700 Smith Street – R-8 Residential District.

Mr. Kevin Adams 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 is requesting approval of a 6-ft. tall fence within the “front” yard of this property along Ohio Avenue. The property is a corner lot with frontage along Smith Street and Ohio Avenue, and by the Code’s definition, has two front yards. The City Code limits the height of fences to 4 ft. in front yards. Board approval of a 2-ft. fence height Variance is requested.

Mr. Eure explained that the Building Department recommended approval of the request as this was a long, narrow lot and that applicant was wishing to utilize the front yard along Ohio Avenue.

Mr. Adams explained that he had gone before the Historic District Commission and got a 4 ft. fence but had to come to this Board to get a variance to go back to the Historic Commission to have a 6 ft. fence approved. He stated that the only thing historic about this area is the shootings. The fence would solve the littering problem. There are no doors on this side of the residence. This is simply a place for vagrants. The fence would help improve the neighborhood. The 6 ft. fence would deter trespassers as well as provide some security for the residents. A security light has already been installed. Mr. Adams added that there are other houses in the neighborhood that have a 6 ft. fence.

Mrs. Layton questioned if the house was a duplex. Mr. Adams responded in the affirmative. Mrs. Layton questioned if the fencing would be for both tenants. Mr. Adams responded that he wasn't sure how that would work but the fence would primarily keep the first floor tenants safe.

Mr. Rainey questioned if Mr. Adams would be required to go back to the Historic District Commission. Mr. Eure responded in the affirmative, adding that it is a requirement.

Mr. Adams stated that he thought that he could put up the fence the length of the house without going before the Historic District Commission but he was wrong. He added that the fence would not go past the length of the house.

Upon a motion by Mr. Rainey, seconded by Mr. Baker, and duly carried, the Board **APPROVED** the requested 2 ft. Fence Height Variance for the property at 700 Smith Street, based on the criteria listed in Section V(c) of the Staff Report.



#SA-1104

Riverside Investment Corp. Inc. – Administrative Appeal – Determination that a two-family dwelling is not an illegal nonconforming use – 507 Poplar Hill Avenue – R-5 Residential District.

Mr. Tom Maloney, Mrs. Laura Hay, and Mr. Mark Reeves 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 507 Poplar Hill Avenue 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 8, 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. Leslie stated that things would be done a little more formally. He stated that he would present the case and ask questions of Mr. Eure. Mr. Maloney will have a chance to ask questions of Mr. Eure. The Board will have a chance to ask questions of Mr. Eure. Mr. Maloney will then present his case by calling his witnesses, asking them questions and presenting their testimony. Mr. Leslie will then have the chance to ask questions. The Board will then get to ask questions of them. After all the questions have been asked, Mr. Leslie stated that he would give his closing statements and then Mr. Maloney will give his closing statements. There may be rebuttals from both sides. After the testimony on both sides is done, would be the appropriate time for public comments. Mr. Leslie stated that they were trying this method out at the Board's pleasure and hopefully it would be more effective.

Mr. Maloney questioned if it was permissible of him to ask questions of Mrs. Smith since she entered the Staff Report into the record. Mrs. Layton responded that he could ask questions when it was his turn.

Mr. Leslie requested that Mr. Eure state his name and position for the record. Mr. Eure responded that his name was Henry Eure and he is the Zoning Administrator for the City of Salisbury and that he worked in the Department of Building, Permits, and Inspections. Mr. Leslie requested that Mr. Eure very briefly describe the property that is located at 507 Poplar Hill Avenue. Mr. Eure responded that it had been improved with a dwelling that was constructed in 1910. Mr. Leslie questioned who the owned the property. Mr. Eure responded that Mr. and Mrs. Reeves owned the property through a corporation. Mr. Leslie questioned the square footage of the lot of this property. Mr. Eure responded that the lot was about 3,834 sq. ft. Mr. Leslie questioned how this property was currently zoned. Mr. Eure responded that the property was zoned R-8 Residential. Mr. Leslie questioned if under today's Code it was a single family only area. Mr. Eure responded in the affirmative. Mr. Leslie questioned if it had come to the City's attention that the property was being used in violation of the Zoning Code. Mr. Eure responded in the affirmative. Mr. Leslie questioned how it was being used. Mr. Eure responded that it was being used as a four apartment home. Mr. Leslie questioned if the property was currently being used in a way that is not conforming with the current Zoning Code. Mr. Eure responded in the affirmative. Mr. Leslie questioned if the City undertook any investigation to determine if the property was potentially a legal nonconforming use that is grandfathered. Mr. Eure responded in the affirmative. Mr. Leslie questioned what that investigation consisted of. Mr. Eure responded that it originally began with a letter being sent from Mr. Holland in our office to the property owner indicating that we had no record that the property was a legal nonconforming use. Mr. Leslie stated that the City requested information showing that this was a legal nonconforming use. Mr. Eure responded in the

affirmative. Mr. Leslie questioned if the owner of the property provided documentation that this was a legal nonconforming use. Mr. Eure responded that there were several letters that came from neighbors who were familiar with the property. Mr. Leslie questioned that basically just letters were provided. Mr. Eure responded in the affirmative. Mr. Leslie questioned in particular which documents were found to be the most useful. Mr. Eure responded that there was a letter from Mr. Withey that indicated that the property was converted approximately in 1959. Mr. Leslie questioned if the letter from Mr. Withey was notarized when it was first received. Mr. Eure responded in the affirmative. Mr. Leslie questioned if the City undertook efforts to have the context of the letter sworn to under penalties of perjury by Mr. Withey. Mr. Eure responded that he would presume so. Mr. Leslie questioned if Mr. Eure had had a chance to review the affidavit and the contents of Mr. Withey's letter. Mr. Eure responded in the affirmative. Mr. Leslie questioned what Mr. Withey's qualifications and expertise were in respect to the neighborhood that the property is located in. Mr. Eure responded that Mr. Withey had resided in that area. Mr. Leslie stated that Mr. Eure should feel free to read from the letter some of Mr. Withey's qualifications. Mr. Eure stated that Mr. Withey resided in the neighborhood from the time he was born. Mr. Leslie stated that according to his letter and qualifications, he seemed to be a reputable source of information on the area. Mr. Eure responded in the affirmative. Mr. Leslie questioned what the letter indicated about the date when the property was converted from a single family home into apartments. Mr. Eure responded that Mr. Withey indicated that the conversion took place somewhere around 1959. Mr. Leslie questioned that under the Zoning Code that would have been in effect when that property was converted in 1959, would the use of the property as apartments have been a legal use. Mr. Eure responded in the negative. Mr. Leslie questioned what steps were involved in the analysis of that determination. Mr. Eure responded that they had checked the 1959 Zoning Code as well as 1936 Zoning Code. Mr. Leslie stated that in 1959 the Zoning Code changed. Mr. Eure responded in the affirmative. Mr. Leslie questioned that they had looked at both Zoning Codes to see which one would apply. Mr. Eure responded in the affirmative. Mr. Leslie stated that it was the City's determination that in the 1959 Code and the 1936 Code that the lot size would have been too small for more than one family. Mr. Eure responded in the affirmative. Mr. Leslie stated that we would walk through it a little more in detail. Under the 1936 Code, how was the property zoned. Mr. Eure responded that the property was zoned R-40C which was a residential zoning. Mr. Leslie questioned what the density constraints were for a family in connection with lot size. Mr. Eure responded that there could be no more than 18 families per acre or one family allowed per every 2,420 sq. ft. Mr. Leslie questioned what the square footage of this property was. Mr. Eure responded that the lot was 3,843 sq. ft. which was still only allow for one (1) family. Mr. Leslie questioned that it would only allow for one (1) family under the 1936 Code. Mr. Eure responded in the affirmative. Mr. Leslie questioned if the apartment had

been converted after 1936 and converted into just two (2) apartments, it in effect would have been illegal at that time. Mr. Eure responded in the affirmative. Mr. Leslie stated moving forward to 1959, how was the property zoned in 1959. Mr. Eure responded that the property was zoned Residential C. Mr. Leslie questioned what the density constraints for families were at that time. Mr. Eure responded that 2,500 sq. ft. were needed per family. Mr. Leslie questioned what the lot size was. Mr. Eure responded that the lot was 3,843 sq. ft. Mr. Leslie questioned how many families would have been allowed on this lot. Mr. Eure responded that only one (1) family would have been allowed on the lot. Mr. Leslie stated that if the property had been converted in 1959 or after, it would have been an illegal nonconforming use. Mr. Eure responded in the affirmative. Mr. Leslie questioned that in either the 1936 or the 1959 Code, a conversion of the house from single family into apartments would have resulted in an illegal nonconforming use. Mr. Eure responded in the affirmative. Mr. Leslie stated that this was consistent with Mr. Withey's testimony that the conversion happened around 1959. Mr. Eure responded in the affirmative. Mr. Leslie stated that to allow for this current use to continue, the City would need some evidence that the property was converted prior to 1936. Mr. Eure responded in the affirmative. Mr. Leslie questioned if the City had received any evidence that the property was converted before then. Mr. Eure responded in the negative. Mr. Leslie questioned that what we have indicates that it was converted after 1936. Mr. Eure responded in the affirmative. Mr. Leslie stated moving forward under today's Code, would today's Code or any of the Code's in effect after 1936 allow for more than one (1) unit to be on this lot. Mr. Eure responded in the negative. Mr. Leslie stated that in conclusion under all the Zoning statutes that the City has had, this lot size would only allow for single family. Mr. Eure responded in the affirmative. Mr. Leslie stated that he had no further questions.

Mr. Maloney questioned Mrs. Smith that she had prepared the Staff Report and submitted it and that her understanding was that there were four (4) units and not two (2) units on this property. Mrs. Smith responded in the affirmative. Mr. Maloney questioned that the zoning is indicated in the first paragraph of the Staff Report as being R-5 but the current zoning is R-8. Mrs. Smith responded that the R-8 is the correct zoning and that the R-5 in the Staff Report was an error. Mr. Maloney stated that he wanted to turn the attention to Page 2, Section V under evaluation, the fourth paragraph down, the last paragraph before the bottom, the ending sentence in that paragraph reads "*The Board records for this area date back to 1960*". Mrs. Smith responded in the affirmative. Mr. Maloney questioned if that would be fair to say that those records being referred to are zoning records. Mrs. Smith responded in the affirmative. Mr. Maloney questioned when the analysis was prepared to determine the zoning history of this property; you would have referred to the current and the previous Zoning Codes as well as Zoning Maps. Mrs. Smith responded in the affirmative. Mr. Maloney stated that he needed clarification

so that he knew who to ask most of the questions to about the Codes and the Maps. Mr. Maloney questioned Mrs. Smith if her office maintained the zoning records for the City of Salisbury and the City Maps and Codes or is it Mr. Eure's office or both. Mrs. Smith responded that both offices maintain the Codes and Maps. Mr. Maloney questioned that it was Mrs. Smith's opinion, that in 1936 records or do we not go back to 1936. Mrs. Smith responded that there is a map book on which we plot the zoning cases and for this area the earliest case plotted on that map is 1960. Mrs. Smith stated that was as far back as we go for Board records or Planning Commission records. If there was a Board or some form of review between 1936 and not 1960, we do not have those records. Mr. Maloney stated that puts the issue much clearer. Mr. Maloney questioned Mrs. Smith if her office maintained a 1936 Zoning Code. Mrs. Smith responded that the Planning Office did have a copy of the 1936 Zoning Code. Mr. Maloney questioned if this was the first case that the 1936 Zoning Code had been indicated. Mrs. Smith responded that she believed that we had some other cases in which the zoning was referenced from the 1936 Code. She added that there had been others that Staff Reports were prepared for that referenced the 1936 Code. Mr. Maloney stated that he would ask some of these same questions of Mr. Eure. Mr. Maloney stated when he goes to the 1936 Zoning Code, which he proudly has a copy of and is probably only one (1) of the four (4) copies in the City, the Code was adopted on July 13, 1936 but the Code is going to tell zoning designations and zoning classifications. He stated that he couldn't look in the Code and find out how a property is zoned by looking at the Code. Mrs. Smith responded in the affirmative. Mr. Maloney questioned what he had to look at to see how a property was zoned. Mrs. Smith responded that she believed that the Planning Department still has an old map. Mr. Maloney questioned an old Zoning Map. Mrs. Smith responded in the affirmative. Mr. Maloney questioned if in doing the analysis, did she refer to an old Zoning Map for the area in which this property is located. Mrs. Smith responded that the Building, Permits and Inspections Department referred to the Zoning Map and provided that information to us but she believed that the Planning Department also had a copy of that map. Mr. Maloney questioned if she knew what year that Zoning Map was. Mrs. Smith responded that she did not know the year of that Zoning Map. Mr. Maloney questioned with respect to the custodian of the zoning records, the official records of the Zoning Codes and Maps, which office maintains those records. Mrs. Smith responded that she wasn't sure who officially maintains the records. Because the Planning Department is also the Staff for the Salisbury Planning and Zoning Commission, and handles Zoning Code and Zoning Map amendments, we have a copy of the 1936 Code. The Planning Department has a copy of the 1959 Code and is believed to have the original type written copy of the 1983 Code, which has been amended a number of times since 1983. The Planning Department is the custodian, officially or unofficially, for a number of iterations of Zoning Maps and other maps for the City of Salisbury. Mr. Maloney questioned if the Zoning Maps

go back before the 1959 Code. Mrs. Smith responded that she believed that the maps go back before the 1959 Code but she knows that there are a number of various maps and documents but she'd have to pull the file out to see if the Planning Department actually had the map. ***Mr. Maloney showed a video of a Zoning Map and handed out a copy which was entered as Applicant's Exhibit #1.*** Mrs. Smith stated that she did have a copy of that blue print map. Mr. Maloney stated that if he could have Mrs. Hay swing the computer around. Mr. Nemazie asked if it could be projected. Attempts were made to link the laptop to the projection screen but were not successful. Mr. Maloney questioned Mrs. Smith if she could tell what year the Zoning Map was that he handed her. Mrs. Smith stated that the map said it was handed to the Zoning Commission April 24, 1931 and there are a number of revision dates on the bottom of it and she couldn't make out those dates. Mr. Maloney stated that they were going to help her with that if they could get the map to come back up on the computer. Mr. Maloney questioned if this was the Zoning Map that was reviewed for Mr. Eure's office. Mrs. Smith responded in the affirmative, adding that we did have a copy of it in our Department. Mr. Maloney questioned that we had a copy of this map and that it was a 1931 Zoning Map. Mrs. Smith responded in the affirmative. Mr. Maloney questioned that the Zoning Code was adopted in 1936. Mrs. Smith responded in the affirmative. Mr. Maloney questioned that there was a Zoning Map five (5) years before the Zoning Code was adopted. Mrs. Smith responded that this copy doesn't have an approved date or the Mayor and Council's signature on it. Some things take a while to go through the zoning process and we've had amendments to the Code before that were started in one year and not fully adopted by the City Council until two (2) years later. The 1931 date on it might mean that was when it was prepared and presented to the Planning and Zoning Commission that was sitting at that time but the actual adoption of the Code didn't occur until some time later. She added that this was based on her experience in the Department. Mr. Maloney questioned that she would not really know what happened in the 1930's. Mrs. Smith responded that she was afraid not. Mr. Maloney questioned that the map was done in 1931 and the Code was adopted in 1936. Mrs. Smith responded that it was possible. Mr. Maloney stated that Mrs. Smith indicated that this map was not signed or dated by the Mayor or City Council. Was this the map that you were referring to for your analysis of this case? Mrs. Smith responded that it was a map of this configuration and without going to the office to get the map, she couldn't tell if the copy that she has is signed or not. Mr. Maloney stated that Mrs. Smith indicated that there are a number of amendments to this map. Mrs. Smith responded in the affirmative, explaining that there are a number of revision dates at the bottom. Mr. Maloney questioned if the map that they were looking at was the original 1931 Zoning Map or the product of the last revision. Mrs. Smith responded that it was a question that she could not answer. Mr. Maloney stated for the record that Mrs. Hay was showing on the computer screen, blown up some, the Zoning

Map, City of Salisbury. Mrs. Hay stated that the map stated Revised, August 12, 1947, December 27, 1950, January 1, 1953, June 25, 1953, February 7, 1955, and November 2, 1956. Mr. Maloney stated that since Mrs. Hay was reading that into the record, that it was a CD of the Zoning Map and asked her to state where she received that CD. Mrs. Hay responded that she received the CD from Mrs. Smith's office. Mr. Maloney questioned Mrs. Smith if it sounded about right that this was the map that they were working with from the Planning Office. Mrs. Smith responded in the affirmative. Mr. Maloney stated that we really don't know with respect to these revisions what version of the map we are looking at when we look at the map that was submitted as an exhibit. Mrs. Smith responded in the affirmative. Mr. Maloney stated that the way this map worked was that Mrs. Smith indicated that certain sections of the City are broken down into sections shown in dark lines. Mr. Maloney stated that he apologized that he didn't have more copies but he could flip it around if anyone wanted to strain their eyes. For a particular section on the map, it has a number on it in a circle. Mrs. Smith stated that was correct. Mr. Maloney stated that the legend for that is in the top right corner of the map. Mrs. Smith responded in the affirmative. Mr. Maloney questioned when you determine how a property is zoned, you don't go look at the Code, you go look at the map. On the old map, you look at the section where the property is located, look at the number in the section where it is located and then look at the legend and make it correspond. Mrs. Smith responded in the affirmative. Mr. Maloney stated that if we don't know which version we have and there were six (6) revisions and the original 1931 map, we don't know how areas on the map might have been changed with respect to their zoning if we're looking at an unsigned map that reports to be a 1931 Zoning Map. Mrs. Smith stated that we don't know if areas on the map have changed or if that Zoning Map was amended to take in the areas of the City that were annexed and then those areas were zoned. Maloney stated that some of those areas could have been changed with respect to zoning from 1931 to 1953. Mrs. Smith stated that she doesn't have a way of knowing what was amended when. Mr. Maloney stated that if we are with the 1931 Zoning Map or whatever year that may be and the 1936 Zoning Code, and we have no zoning records that predate 1960, do we really know definitively, what this property was zoned prior to 1959. Mrs. Smith responded that the only thing that we can say is that on this map the area that Mr. Maloney had highlighted is designated #5 and area #5, at that time, was zoned R-40C Residential and this map was in effect until the 1959 Zoning Code and accompanying map were adopted. Mr. Maloney stated that it was possible because we don't have records or the documentation that perhaps the last date of this Zoning Map, or the last time it was changed, may have brought 507 into an area that has the #5 on it that designates it as the C zoning. Mrs. Smith responded that it was possible. Mr. Maloney stated that the property was a 3,843 sq. ft. lot, which is stated in the Staff Report, as the description of the property. Mrs. Smith responded in the affirmative. Mr. Maloney questioned that the structure is 3,568 sq. ft. Mrs. Smith

responded that that information came from the State Department of Taxation and Assessments, and if it has not been surveyed, then we rely on their records and the lot area could be more or the footprint of the structure could be less. Mr. Maloney questioned that these were the numbers that she was going from. Mrs. Smith responded that these were the numbers that we were going from because that is the data that is available. Mr. Maloney questioned that there was no Zoning Code before 1936. Mrs. Smith responded that there wasn't one that she was aware of. Mr. Maloney stated that the report indicates that the structure was built in 1910. Mrs. Smith responded in the affirmative, adding that information was also from the assessment records. Mr. Maloney questioned that she had no reason to dispute that. Mrs. Smith responded in the affirmative. Mr. Maloney stated that the house was built in 1910 and when the 1936 Zoning Code was passed, you indicated that from the map and not having exact knowledge that the property would be in the C zone according to the map that you reviewed. Mrs. Smith responded R-40C. Mr. Maloney questioned that in the Zoning Code it was referred to as a C district. Mrs. Smith responded in the affirmative. Mr. Maloney questioned in the 1936 Zoning Code in Section 21 under C district it reads as follows "the following regulations and restrictions shall apply in C area districts:

- A. No building shall occupy more than 30 percent of the area of an interior lot than more than 40 percent of the area of a corner lot.

Mr. Maloney stated that his questioned was if the structure was built, not talking about the date of conversion, but when it was built in 1910 when the 1936 Zoning Code was adopted, it immediately becomes a nonconforming structure because it takes up more than 30 percent of the lot. Mrs. Smith responded that she would say that it takes up definitely more than 30 percent of the lot. Mr. Maloney questioned if the 91 percent of the lot would be close on that calculation. Mrs. Smith responded that it sounded like it was close. Mr. Maloney stated that as soon as the Code was past, this house became nonconforming because it was well more than 30 percent of the lot. Mrs. Smith responded that it was a question more from Mr. Eure to make that determination. Mr. Maloney stated that Mr. Eure could be thinking on that before he got to him. He continued that his next question was would it be fair to say with her knowledge as a zoning official, with respect to most of the properties that are in the area of this property, that most every property in the Newtown area is a nonconforming structure. Mrs. Smith responded that without doing an extensive review of properties and square footages and size of structures, but from what knowledge I have of driving through the neighborhood, that is probably correct because most of them are large houses on relatively small lots. Mr. Maloney questioned to her knowledge, prior to the last 18 months, has your office experienced a large number of issues related to nonconforming structures or nonconforming uses. Mrs. Smith responded that she

didn't think so. Mr. Maloney questioned in the Staff Report, it was indicated that for the property to be legal it would have had to have received a special exception between and 1990 and 2000 or been constructed prior to 1936. So it is possible that somewhere between 1936 and 1959 someone may have applied for a special exception for this property, we just don't have the records for that. Mrs. Smith responded in the affirmative. Mr. Maloney questioned doesn't the 1959 Code also allow for special exceptions. Mrs. Smith responded that she didn't know off hand. Mr. Maloney, just for the record, stated that in the actual Staff Report and in the paperwork in which you apply for one of these hearings, Riverside Investments is referred to as the applicant, is that correct. Mrs. Smith responded in the affirmative. Mr. Maloney questioned if they were really the appellant. Mrs. Smith responded in the affirmative. Mr. Maloney stated that was all he had for Mrs. Smith at this time.

Mr. Maloney stated if he could ask some questions of Mr. Eure. Mr. Maloney questioned if Mr. Reeves, prior to the hearing tonight, had had contact with Mr. Eure's office. Mr. Eure responded in the affirmative. Mr. Maloney questioned if it would be fair to say that after he received a letter notifying him of the City's position that this property was a nonconforming use that Mr. Reeve's came quietly and well-behaved into the Building Department wanting to know what this was about. Mr. Eure responded in the affirmative. Mr. Maloney questioned if Mr. Eure was present and spoke to Mr. Reeves about what this meant and what he needed to do. Mr. Eure responded that he didn't recall speaking with Mr. Reeves directly about it but that most of the conversations had taken place with Mr. Holland. Mr. Maloney questioned that Mr. Eure was aware that Mr. Holland and Mr. Reeves had a conversation. Mr. Eure responded in the affirmative. Mr. Maloney questioned that Mr. Eure was aware that the documentation attached to the Staff Report was documentation submitted by Mr. Reeves to the Building Department. Mr. Eure responded in the affirmative. Mr. Maloney questioned if that was done at Mr. Holland's request. Mr. Eure responded that he didn't know but he would presume so. Mr. Maloney questioned if initially it was Mr. Eure's understanding that Mr. Reeves was trying to take care of this on his own, without having to incur legal expenses through Mr. Maloney. Mr. Eure responded in the affirmative. Mr. Maloney stated that he just wanted that for the record. Mr. Maloney stated that Mr. Reeves brought in the documents that were attached to the Staff Report into the Building Department and from what Mr. Eure testified earlier, the City actually got one of those letters from Mr. Withey notarized. Mr. Eure responded in the affirmative. Mr. Maloney questioned if Mr. Eure was aware of what the Building Department told Mr. Reeves what he needed to do or what he needed to show in order for this property to be conforming. Mr. Eure responded that he was not aware of what Mr. Reeves was told. Mr. Maloney questioned if Mr. Eure had any information on if Mr. Reeves was told that he had to go back to 1959. Mr. Eure responded that he did not know that. Mr. Maloney

stated that Mr. Eure's report indicated that this property is in R-8 zoning. Mr. Eure responded in the affirmative. Mr. Maloney stated that he wanted to go back to some of the same questions that he asked Mrs. Smith. He stated that before he went to Mrs. Smith's questions or the type of questions with respect to the Zoning Map and the Zoning Code, he stated that he wanted to ask Mr. Eure about some other records maintained in his office. Mr. Maloney questioned if Mr. Eure's office maintained zoning records. Mr. Eure responded that they had some. Mr. Maloney questioned that they had some zoning records. Mr. Eure responded in the affirmative. Mr. Maloney questioned that Mr. Eure's office primarily has building permits, building plans, and those kinds of documents. Mr. Eure responded in the affirmative. Mr. Maloney questioned if Mr. Eure knew to what date those records go back. Mr. Eure questioned if he was referring to the building plans and documents. Mr. Maloney responded in the affirmative. Mr. Eure responded that the building plans and documents, the actual documents in our office, specifically just have the last few years. There are plans that are housed over in the City Yard. Mr. Maloney questioned if those plans were housed in a maintenance building. Mr. Eure responded in the affirmative and he didn't know how far they went back, but probably around 20 to 25 years. Mr. Maloney questioned if it would be a fair statement to say that probably some time in 2005 or 2006, the City Building Office destroyed or took to the dump, many years of building plans and records and permits. Mr. Eure responded that he wouldn't limit it to that year but yes due to limited storage. Mr. Maloney questioned that it may have happened more frequently than the period of time 2005-2006. Mr. Eure responded in the affirmative. Mr. Maloney questioned that Mr. Eure's office does not maintain a comprehensive set of building permits from, let's start with 1900. Mr. Eure responded in the negative. Mr. Maloney questioned 1930. Mr. Eure responded probably not. Mr. Maloney questioned the 1950's. Mr. Eure responded that he would doubt it but he didn't know. Mr. Maloney questioned the 1970's. Mr. Eure responded perhaps. Mr. Maloney questioned that there may be some plans from the 1970's. Mr. Eure responded that perhaps, but he does not know what is stored at the City's Maintenance Building. Mr. Maloney questioned with respect to Mr. Eure's office sending Mr. Reeves, on behalf of Riverside Investment, a letter that this property was a nonconforming use, and in response to a question asked to you by Mr. Leslie about what the City did with respect to this case, you indicated that there are some documents attached to this Staff Report, all provided by Mr. Reeves, is that correct. Mr. Eure responded in the affirmative. Mr. Maloney questioned if Mr. Eure's office went through any files to look for any plans, permits, or anything else with respect to the construction of this property or its renovation into four (4) units. Mr. Eure responded in the negative. Mr. Maloney questioned if Mr. Eure's office went through any zoning records to determine if any application for a variance or special exception or any other matter relating to the zoning of this property for four (4) units. Mr. Eure responded in the affirmative. Mr. Maloney questioned Mr. Eure would records they went through. Mr. Eure responded that

they went through the records that are stored in Mrs. Smith's office. Mr. Maloney questioned if they were the records that went back to 1960. Mr. Eure responded in the affirmative. Mr. Maloney stated that Mrs. Smith indicated that Mr. Eure's office maintains a copy of the 1936 Code. Mr. Eure responded in the affirmative. Mr. Maloney questioned when Mr. Eure's office came into possession of that Code. Mr. Eure responded that they'd had that Code. Mr. Maloney questioned the Zoning Map from 1931. Mr. Eure responded that he didn't know when they came into possession of that. Mr. Maloney questioned if that map was in Mr. Eure's office. Mr. Eure responded in the affirmative. Mr. Maloney questioned if the map was on the wall. Mr. Eure responded in the affirmative, adding that it was the same map that Mr. Maloney had displayed at the meeting. Mr. Maloney questioned if Mr. Eure could tell from looking at it if it was the same map. Mr. Eure responded in the negative. Mr. Maloney questioned if Mr. Eure knew if there was more than one (1) version of that map. Mr. Eure responded in the negative. Mr. Maloney questioned if Mr. Eure's office maintained any iterations of Zoning Map changes from 1931 to 1959. Mr. Eure responded in the negative. Mr. Maloney questioned if he asked Mr. Eure if this was zoned in the C district, adding that Mr. Eure had it as R-40C. Mr. Eure responded in the affirmative. Mr. Maloney questioned if the C was actually the zoning designation in the 1936 Code. Mr. Eure responded in the affirmative. Mr. Maloney questioned if Mr. Eure if he knew if that had been changed from 1931 to 1959. Mr. Eure responded that he had no way of knowing that. The map could simply reflect annexations and not changes in zoning. There is no way to know. Mr. Maloney questioned in the report that was attached to the Staff Report, Mr. Eure indicated in the report that the nonconforming use of the property was for four (4) units and that the use could not have lapsed for more than a year. Mr. Eure responded in the affirmative. Mr. Maloney questioned if that was true of all periods under City Zoning Codes. Mr. Eure responded that he didn't know, adding that this report was based upon the most current Zoning Code. Mr. Maloney questioned if it would be fair to say under the 1983 Zoning Code the use couldn't lapse for more than a year but under the 1959 Code the use could lapse for up to two (2) years. Mr. Eure responded that he wasn't able to answer that question. Mr. Maloney questioned if Mr. Eure's office was aware that the four (4) units at this property address have been registered in Mr. Stevenson's office of Code Compliance for the last five (5) years. Mr. Eure responded that he didn't know if his office was aware of that or not but specifically Mr. Eure stated that he did not know that. Mr. Maloney stated that he had no further questions for Mr. Eure.

Mr. Rainey questioned if a four (4) unit building was allowed in the Code in 1959 on this property. Mr. Eure responded that in either Zoning Code it would not have been allowed.

Mr. Maloney stated that he apologized for the length of some of this examination but very briefly he wanted to make a couple comments before he started some other direct testimony. Mr. Maloney stated that the City of Salisbury Code provides a proceeding of this nature before this Board that the burden of proof and persuasion and all questions of facts are determined by the Board. Mr. Maloney stated that he had a legal argument about the burden of proof being on the applicant's. He stated that he could make that now or at the end. Mrs. Layton responded that it sounded like a summary and to continue with his presentation. Mr. Maloney requested that Mr. Reeves come closer. Mr. Maloney requested that Mr. Reeves state his name and address. Mr. Reeves responded that his name was Mark Reeves and he lived at 1121 Cotton Patch Island in Salisbury, Maryland. Mr. Maloney questioned if he was the owner of Riverside Investments. Mr. Reeves responded in the affirmative. Mr. Maloney questioned if that was the applicant or appellant in this case. Mr. Reeves responded in the affirmative. Mr. Maloney stated that he was going to refer to Mr. Reeves interchangeably as the owner and that would be referring to the corporation. Mr. Maloney questioned when Mr. Reeves bought the property. Mr. Reeves responded that he purchased the property in 1990. Mr. Maloney questioned when Mr. Reeves bought the property in 1990, did it have four (4) units. Mr. Reeves responded in the affirmative. Mr. Maloney questioned if it was occupied when he purchased the property. Mr. Reeves responded that the house had tenants in it when he purchased the property. Mr. Maloney questioned if the house had been continuously occupied from 1990 until today by tenants. Mr. Reeves responded in the affirmative. Mr. Maloney questioned if there had been any lapse in any of those units for more than a year. Mr. Reeves responded in the negative. Mr. Maloney stated that the property had been occupied in all four (4) units since he purchased the property. Mr. Reeves responded in the affirmative. Mr. Maloney questioned if had done any work on the property. Mr. Reeves responded that he had done maintenance and repairs to the property as well as painting. Mr. Maloney questioned if Mr. Reeves had registered the property with the City for its licensing permit. Mr. Reeves responded in the affirmative. Mr. Maloney questioned if it had been registered since the permitting process had started. Mr. Reeves responded in the affirmative. Mr. Maloney questioned that all four (4) units had been licensed. Mr. Reeves responded in the affirmative. Mr. Maloney stated that Mr. Reeves had indicated that he had done some work on the property and questioned if there was any specific work such as electrical, plumbing or anything that would have required a permit. Mr. Reeves responded that he had done some electrical work. Mr. Maloney questioned what the electrical work was. Mr. Reeves responded that there was a single meter and there were four (4) units so it was changed so that each tenant would be responsible for their own electric bill. Mr. Maloney questioned if Mr. Reeves got a permit for this work. Mr. Reeves responded in the affirmative, adding that ADT in Parsonsburg did the work and a permit was gotten. Mr. Maloney stated that he just wanted to show the Board

before he entered it into the record an affidavit that Mr. Reeves had signed that was his testimony. **Mr. Maloney entered Applicant's Exhibit #2 into the record, an Affidavit from Mr. Withey.** Mr. Maloney stated that the City, with its Staff Report, an affidavit of Robert Withey and it was an affidavit where he attested to the information in his letter. **Mr. Maloney entered into the record, Applicant's Exhibit #3, which was an Affidavit of Mr. Withey.** Mr. Maloney stated for the record that he had introduced it into the record. He requested that the copies be shared among the Board. He stated that he wouldn't read the entire thing into the record but the purpose of Mr. Withey's affidavit was to clarify any sort of lingering questions that may have come up as a result of his letter to the City. Indeed, in paragraph #3, it says that the purpose of this affidavit is to clarify my prior correspondence. Mr. Maloney stated that Mr. Withey indicated that to his knowledge, at least since the early 1960's, this has been occupied, at least up until 2004 when his knowledge ceased because he moved to Florida, that the four (4) units had been there. He also indicated that he wasn't sure in terms of the construction that he observed was the actual conversion of the four (4) units or the renovation of the four (4) units and that would be the third sentence of paragraph number 3. Paragraph 4 just talks more about his background and his knowledge with the respect to the neighborhood and the properties surrounding, including this property. **Mr. Maloney entered into the record as Applicant's Exhibit #4 an affidavit of Gary Hill, and for the record he wanted to spend a little time on it if he could.** Mr. Hill, as he indicated in paragraph #2, was hired as the City Housing Inspector for the City of Salisbury in 1965 and remained an employee of the City until 1992. Mr. Maloney stated that he started as the Housing Inspector for the City and then later took the Building Inspector position and then the Deputy Building Official and indicates that he was charged with conducting the building and zoning inspections in the City of Salisbury. Mr. Maloney stated that Mr. Withey indicated in paragraph #3 that he worked with the Plumbing Inspector, another Building Inspector in respect to code compliance. He also indicates in paragraph #4 that because of his direct involvement, he became familiar with the properties converted from single family homes to multi-family dwellings. He indicates that the vast majority of those conversions took place prior to the adoption of the 1959 Code, and indicates that most conversions indeed occurred in the 1940's and 1950's and were done so legally without objection from the City. He indicates that he is familiar with a lot of the properties converted in Salisbury after 1965. The property located at 507 had been converted to four (4) units prior to 1965 when he became a Building Inspector. Mr. Maloney stated that he would indicate for the record, paragraph #5 Mr. Withey stated that during his tenure it was always the policy of the City that if the property was safe in basic building standards, that the property was considered to be legal, nonconforming use and could remain as such. The property at 507 would have been considered a legal, nonconforming use in 1965. This is from the City's Building Inspector and someone in Mr. Eure's current office for 27 years. **Mr. Maloney, lastly on the**

affidavit, Applicant's Exhibit #5 was an Affidavit from Wirt Wolfe. Mr. Wolfe's affidavit indicates that he and his wife purchased 511 Poplar Hill Avenue in January 1974 according to paragraph #2. Prior to that date, he resided at 213 Isabella Street and had been there since 1971 and has been in a lot of areas in the Poplar Hill Avenue/Elizabeth Street area. Mr. Maloney stated that Mr. Wolfe indicated that he had personal knowledge of the structure located at 507 Poplar Hill Avenue from 1971-1990. He knew the property owner, Alice Jackson and indicates that there were four (4) units there and they were continuously occupied. ***Mr. Maloney stated that he would also submit into the record, Applicant's Exhibit #6, which was from the Historic District's Ratings Database.*** He stated that he took the liberty of writing the date on the top. This was done on April 8, 1987 and about three-quarters of the way down the page it indicates that in 1987 that 507 Poplar Hill was a multi-family, four (4) units, dwelling.

Mr. Maloney called Mr. Keith lott to come forward as a witness. Mr. Maloney requested that Mr. lott state his name and address for the record. Mr. lott responded that his name was Keith lott of 4364 Union Church Road in Salisbury, Maryland. Mr. Maloney questioned what Mr. lott did for a living. Mr. lott responded that he was an architect and an engineer. ***Mr. Maloney entered Applicant's Exhibit #7 into the record as Mr. lott's resume.*** Mr. Maloney stated that the resume showed that Mr. lott was a licensed architect in Maryland, Delaware, and Virginia. Mr. lott responded in the affirmative. Mr. Maloney questioned if Mr. lott had a number of projects that he had worked on included in his resume, as well as he was one time the Chairman of the Salisbury Historic District Commission. Mr. lott responded in the affirmative. Mr. Maloney questioned how long he sat on that Commission. Mr. lott responded that he was on the Commission for approximately three (3) years, from 1997 until 2000 and then from 2000-2002, he was the Chair. Mr. Maloney questioned if he had given expert testimony in other cases. Mr. lott responded in the affirmative. Mr. Maloney questioned if Mr. lott had given expert testimony in cases involving historic structures and historic committees. Mr. lott responded in the negative. Mr. Maloney questioned that Mr. lott had never done anything in respect to historic properties. Mr. lott responded that he had certainly worked on historic properties, but he would say that he had given expert testimony with respect to historic properties. Mr. Maloney stated well welcome aboard and tonight is your first night. ***Mr. Maloney entered Applicant's Exhibit #8 into the record as colored photographs and report regarding the conversion of the property.*** Mr. Maloney questioned Mr. lott if he could identify the document dated August 31st. Mr. lott responded that it was a report that he generated in which he rendered an opinion on the property. Mr. Maloney questioned that Mr. lott actually went to 507 Poplar Hill. Mr. lott responded in the affirmative. Mr. Maloney questioned what the purpose was of Mr. lott going to visit 507 Poplar Hill. Mr. lott responded that his purpose was to attempt to determine with a reasonable degree of certainty when the conversion of the home may have occurred. Mr. Maloney

questioned if Mr. Lott took the series of photographs while he was in the property. Mr. Lott responded in the affirmative. Mr. Maloney stated that Mr. Lott looked into some of the construction features of the property. Mr. Lott responded in the affirmative. Mr. Maloney questioned what the inspection told him in respect with determining the conversion into a multi-family. Mr. Lott responded that having owned a property 75 yards from this property that was also a converted multi-family; he stated that he had a fair amount of experience with this. Mr. Lott stated that he inspected each of the apartments and found some very interesting characteristics. Probably the most telling characteristic was the fact that each of the apartments had a kitchen. Obviously, a single family dwelling would not require four (4) kitchens. The kitchen on the third floor and the third floor is essentially a converted attic. The kitchen on the third floor has an exhaust fan that exhausts into the attic and that exhaust fan appears to be from the 1940's or the early 1950's. Most telling about that kitchen is though that the range in the kitchen is served from an electrical panel that is in the attic immediately adjacent to the kitchen. There is a photograph of the electrical panel in the exhibits and it was made by the Wadsworth Electrical Manufacturing Company, Inc. of Covington, Kentucky. What is interesting about the electrical panel is that it is actually a fuse panel with the pull out fuses and then also the old glass fuses. One of the pull out fuses actually says "Range" on it. Mr. Lott stated that his surmise was that there would be no reason for a range in a third floor room in a single family dwelling. So therefore that electrical panel was installed as a part of the conversion of the home from a single family dwelling to a multi-family dwelling. Mr. Maloney referred Mr. Lott to his report on page 2 about half-way down it states "Both the second floor apartments have kitchens that are obviously from the 1940's or 1950's". Mr. Lott stated that those kitchens were actually constructed in what would have likely have been bedrooms in the original home. The entries to both of those apartments are off of a common foyer which in the single family dwelling would have been the central foyer or the central stairway for the main house. Each of those kitchens has porcelain steel sinks, one of which has a notable drain basin and from the nature of the plumbing, which is all soldered cooper, undoubtedly that is 1940's or 1950's plumbing in each kitchen. One of the kitchens, the counter is actually constructed in front of the original window that again was presumably a bedroom window. It is undoubtedly that those kitchens were added to the original single family dwelling and I would presume in the late 1940's if not the early 1950's. Mr. Maloney directed Mr. Lott's attention to the end of his report where it stated "Conclusion. The home is four (4) apartments, three of which were constructed in the 1940's or the 1950's as evidenced previously". Mr. Maloney questioned if Mr. Lott held that opinion to a degree of professional certainty as an engineer and architect. Mr. Lott responded in the affirmative. Mr. Maloney called for Mr. Lott as an expert witness in construction and engineering. He has experience with historic structures, sat on the Historic District Commission. Mr. Maloney said he would offer him as an expert and that

he now had the original to offer as Exhibit #8. Mr. Maloney questioned Mr. Iott that he had looked at this property and that he had also indicated that he had lived about 75 yards from this property. He questioned what time frame Mr. Iott was referring to. Mr. Iott stated that he had bought a house at 303 E. William Street in approximately 1987 and it was a converted single family home into two (2) apartments. He stated that he performed extensive renovations from 1987 until he built a new house. He stated that he knew it was time when he was redoing the renovations that he had done when he first bought the house. Mr. Maloney asked Mr. Iott to describe the character of the neighborhood very briefly. Mr. Iott responded that many of the homes in the neighborhood were converted single family dwellings. His neighbor at the time to the west was a converted single family dwelling. He stated that his neighbor had three (3) apartments. There were many converted single family dwellings because those houses were all very large. Mr. Maloney stated that this wasn't an unusual property for the neighborhood. Mr. Iott responded certainly not. Mr. Maloney stated that was all he had for Mr. Iott.

Mr. Leslie questioned Mr. Iott that after looking at his report that he had seen for the first time tonight, he wanted to ask a couple quick questions. After reviewing it, there is no mention of the 1930's. Is there any evidence that you would have put in your report that would indicate that the conversion occurred in the 1930's. Mr. Iott responded that he would have no way of determining if the renovation was actually in the 1930's. Mr. Leslie questioned if prior to going to the house to make this report, was there any personal knowledge of this property. Mr. Iott responded in the negative. Mr. Leslie stated no further questions.

Mr. Nemazie stated that Mr. Iott had no knowledge that it could have been converted in the 1930's but the testimony said that at least the appliances and the fuses say that it was done in the 1940's. Mr. Iott responded that it was the 1940's or early 1950's but not the 1930's.

Mr. Maloney requested that Mr. Reeves come back up to the table. He questioned Mr. Reeves if during his ownership of this property; he had received any citations from the City. Mr. Reeves responded in the negative. Mr. Maloney questioned if there had been any complaints from the neighbors about the tenants. Mr. Reeves responded in the negative. Mr. Maloney questioned who in Mr. Eure's office Mr. Reeves had conversations with about this case. Mr. Reeves responded that he had conversations with Mr. Holland. Mr. Maloney questioned what Mr. Holland said to Mr. Reeves. Mr. Reeves responded that Mr. Holland told Mr. Reeves that he had to go back to 1959. He added that the first time he saw anything about the 1936 Code was in the Staff Report.

Mr. Nemazie questioned when the initial Staff Report was done. He further questioned if there was not a Staff Report done before this went to continuance. Mrs. Smith responded that there had been a rough draft done but then found out that we had been asked to postpone it so it was not published. Mr. Nemazie questioned if there was a continuance in this case. Mr. Maloney responded that there was a continuance in this case by consent of the Board without attending a Board hearing. Mrs. Smith concurred. Mr. Nemazie questioned when you say that the first time you learned of it being the 1936 Code, was that at the time of requesting the continuance or was that just last week. Mr. Reeves responded that it was last week when he received the Staff Report. Mr. Nemazie questioned that Mr. Maloney didn't request a continuance of this case with that new knowledge. Mr. Maloney responded that he didn't request a continuance because he received the Staff Report and his argument has to deal with the 1936 Code and we are of course under that Code. Mr. Nemazie voiced his understanding but questioned with the new information that he still chose not to request a continuance because he didn't think that he would find additional evidence or because you didn't think it would serve your client. He stated that he was trying to understand why he hadn't sought a continuance in this case to be able to go back from 1959 to 1936. Mr. Maloney responded that to answer the question truthfully, and he wanted to do that, is that in order to take this case back 75 years with someone who has personal knowledge about conversions or about occupancy because the rule of nonconforming uses is that you have to show continuance use. To try and find somebody who would have personal knowledge, going back before 75 years from now that would be old enough to remember it, is probably in a nursing home or most of them are deceased. I thought continuing for that purpose would be a fruitless point.

Mr. Rainey questioned Mr. Lott that his inspection basically indicates that the renovations from his opinion occurred sometime in the 1940's or 1950's. Mr. Lott responded in the affirmative.

Mrs. Sue Ellen Smith stated that she had a suggestion and then she had a couple of comments. One of the things is that even though those people might have been around at that time, might be deceased or might not be of sound mind, there are the census rolls that can be consulted to determine when, 1930, 1940, etc how many people or whatever. She stated that she wanted to make a comment that a lot of homes in the mid and late 1940's were temporarily converted because we had war veterans coming home. There was a housing shortage. A lot of people opened their homes or opened a bedroom in order to house war veterans. That was not at all unusual. A lot of those homes went back to being single family homes. It was more like having your relatives in after their house burned or something. Mrs. Smith stated that she believed that the fuse panel was illegal and would now be considered

a fire hazard. It should be changed. Mr. Hill's and Mr. Withey's document do not in any way say that this was a legal, conforming house. Mr. Withey's in particular, in fact all of these, are from the 1950's on. They don't go back and do any burden of proof that this was done back in 1936. We are missing that. Also, the inference was made about Mr. Hills' document that he said usually it would be considered by the City to be legal. She stated that she wanted to point out that he wasn't in the Planning and Zoning Department so he really doesn't have the authority. He is not the legal person that could swear to the legality of this being an okay conforming use. A comment was made as far as the size that all of Newtown would be in violation of the less than or equal to 40 percent or less than or equal to 30 percent as far as the size. Newtown is a lot older than 1936 so therefore, she thought it would be grandfathered. That is sort of a red herring and shouldn't be brought up. She added that she almost didn't come tonight because she had received an advanced copy of the Staff Report and it relieved her mind and made her feel so much better because she thought this would be taken care of because the Board had the advanced copies and would read them and the wisdom would decide that Riverside Investments Corporation had not shown that this had been done. The timelines aren't right. The affidavits don't support anything except that it's been since the 1950's.

Mr. Christopher Whittle stated that he lives directly across the street from this property and he had two (2) comments to make. Mr. Reeves stated under oath that he has not received any complaints about his tenants. In fact, he has had complaints about drug use and his tenants. Mr. Whittle stated that he had moved in 2008. The second floor was occupied by two marijuana smokers and we could smell marijuana smoke on the street. Also since 2008 until this past year, only three (3) of the units have been occupied. The fourth unit, the third floor was just occupied this past year. Mr. Reeves also received a written notice about the current tenant growing hallucinogenic plants in the front yard and possible damage that that might cause to children in the neighborhood.

Mrs. Aleta Davis, Isabella Street, stated that every time one of these homes comes up, it's the same concern. She stated that she had lived in the neighborhood since 1990. When they moved in, they were told that there were certain standards that had to be kept up for historic homes. She stated that they were told everything that they were not allowed to do. She stated that they knew that the house had had apartments in it at one point. She stated that they were also told that they couldn't put them back. There is a reason that there are so many multi-family homes in the neighborhood and that is because NSCC only has four (4) people to monitor the entire the City. To this day you see people buying homes and trying to add apartments to them. Nobody seems to know how many people live in these homes. Nobody seems

to be able to get records. Mrs. Davis stated that what Mrs. Smith said was excellent. Why haven't the census records been checked for these homes? These homes put new windows in without checking. They put storm doors or other outer doors that are not approved for historic homes. When neighbors complain we have to prove when they put these windows in. Isn't it enough that you don't have a modern window in a house that was built 150 years ago? Mrs. Davis stated that there was a house across the street that has five (5) apartments that was never registered as a multi-family home, yet there are 13 or 14 different people allowed to live in those five (5) apartments. It has devalued all of the homes in the neighborhood. Mrs. Davis stated that she really thought that some of the neighbors who have put all of their money and their lives into preserving the historic integrity of these neighborhoods should have some kind of input into how the neighborhood is being used. It is the oldest neighborhood in Salisbury. There are some of the most beautiful valuable homes and almost every architectural period from the Victorian back as far as the late colonial period and Poplar Hill Mansion is represented. Yet, when people drive through the neighborhood, they are seeing a 150 year old home with new storm windows or some tacky door or they have managed to slip siding on the home. Mrs. Davis stated that they had painted their home two (2) times since they moved in. They are not able to put siding on their home so why is it that multi-family home are everywhere and they can do whatever they want. Mrs. Davis begged the Board to please consider what they are allowing to happen to our oldest historic neighborhood.

Ms. Nancy Carey, 104 Elizabeth Street, stated that the only comment that she wanted to make is that she appreciates the City addressing the density issue in this town. There has been a lot of evidence tonight that this house has definitely been multi-family for a long, long time. She stated that she had lived in the neighborhood for 34 years and up until two (2) months ago she didn't realize that this building was anything but two (2) units. She stated that she was told two (2) months ago that this building was a three (3) unit building for the last three (3) years for sure and the fourth one was just put in recently. Ms. Carey stated that a couple pieces of evidence tonight about these letters that have been sent, there is nowhere that it stated that there were four (4) units in this house. She added that she didn't doubt that Mr. Reeves was a very good landlord. He is a smart business man. He has done well but her concern was the future when he no longer owns this house and what will happen down the line with the multi-family use. Two (2) doors down from this house there is an example of that right now and hopefully it will be demolished due to neglect. If a multi-family house gets into the wrong hands, those things happen and it only pulls down the entire neighborhood. She summarized that she supports the Board's effort to work on the density in the City where it should be worked on.

Mrs. Betsy Wolfe, 300 E. William Street, has also lived at 511 Poplar Hill Avenue. She explained that she wanted to state for the record that when that area of Salisbury was developed which includes 509, 511, 507, 505 – those houses sat on very small lots. The address of 511 has a larger lot because 509 was never developed. Mrs. Wolfe stated that it was not unusual during this period of time for the houses to sit on extremely small lots and honestly be developed into apartments. She stated that she thought one of the most important things is that when a historic survey was done for Newtown, and her father was the representative to the Maryland Historical Trust, at that time of course the property was a four (4) unit dwelling and that was in the early 1970's. Mrs. Wolfe stated that they used as their reference point the assessments. The Department of Interior also worked with them. The Sandborn Maps were also used. Mrs. Wolfe stated that one of the more important books that she had read about Newtown was called "Around the Pond", which brings up about how heavily populated and the land use was done for the Newtown area. People made very good use of their buildings and the land and it was not unusual to have multi-family units.

Mr. Rainey questioned Mr. Eure and Mrs. Smith if in their opinion, that in 1936 would this have been legal. Mr. Eure responded that based on the Zoning Code standards and the maps that are available that it would not have been legal.

Mr. Leslie stated that for the Board's sake, the attorneys have agreed that they are each going to have one (1) shot at this. Mr. Leslie stated that his intuition was that Mr. Maloney was going to go a little longer than he would but Mr. Leslie's case was clearer and simpler. Mr. Maloney will focus on a lot of different possibilities, a lot of conjecture, and a lot of what ifs. Mr. Leslie stated that he was focusing on what we know and what is clear. As long as Salisbury has had zoning laws, only one (1) family would have been permitted at this lot. Under the 1936 Code, one family. Under the 1959 Code, one family. Under the 1983 Code, one family. The only circumstances that would make it legal for this property to be a multi-family dwelling would have been if it were converted prior to the City's zoning laws being instituted in 1936. There is some period between 1990 and 2000 that you could have a special exception. In general, since 1936 it has been just a single family home. The City has evidence that has been provided by the property owner's themselves back when the City asked for it to show the use of this property. They gave us what they could find and was their best evidence at the time and which I will take as being their best evidence and their most reliable evidence because that is when we offered them the chance. The City received evidence that the conversion happened in 1959. This is not just from somebody off the street. This is from somebody who is respected in the community and is well known in the community. This person also swore that this was the truth to the City. We took them on their word with

the information that they gave us. Now they have come forward today with some new evidence and what I will say is less reliable evidence because now their evidence that they gave us the first time didn't work and they've come up with new evidence. They have come up with evidence from that person that seems to wiggle a little bit on what they said. Mr. Leslie stated that he considered that somewhat less reliable at this point. There is an affidavit from somebody who used to be employed by the City but he says he has no recollection of inspecting the property for conversion during his 27 year tenure at the City. So we have somebody who may not have even been in the property. That is the kind of evidence that we have. The evidence of maps and what may or may not be on a map. But we do have testimony that is reliable from somebody that the property owner provided. We have evidence from the City's zoning staff who is doing the best that they can and we think that is appropriate evidence for this Board to consider in making this decision. If you strip away the rhetoric and you look at the facts that we have, a lot this size has never been allowed to have more than one (1) unit under the City zoning laws. We have evidence that says that the apartments were there starting in 1959. It was an illegal conversion then and it has been an illegal conversion ever since. Mr. Leslie stated that if we have evidence that the City has proven this case. There is evidence from Mr. Eure. There is evidence from the other side. There is evidence proving this case and carrying this burden of proof. Mr. Leslie stated that he thought that the Board has enough real, solid evidence to make its decision. Mr. Leslie thanked the Board for their consideration.

Mr. Maloney thanked Mr. Leslie on agreeing to only talk once. Mr. Maloney stated for the record that one (1) of the issues that he was going to bring up earlier and the Chair suggested it was better for closing so it will be brought up now, is that part of the problem in cases of this nature, and he doesn't believe that this Board is empowered to do anything about it but it needs to be put on the record, and that is the following, that the burden of proof in persuasion in these cases according to the City Code for the Board of Zoning Appeals with respect to all questions of fact are to be determined shall be on the applicant or appealing party. Mr. Maloney stated that his position is, for example, in Wicomico County if there was an alleged zoning violation under the Wicomico County Zoning Code, those cases are brought before the District Court for a zoning violation and the burden of proof is on the County by clear and convincing evidence to establish a zoning violation. That is not the standard before this Board. Mr. Maloney disputed that it was legal and offered as Applicant's Exhibit #9, a Memorandum of Law. He stated that the Memorandum stated that the burden of proof in these cases is on the applicant and indeed to allege a zoning violation it should be on the City. This is an important issue for this Board because Mr. Reeves, on behalf of his company that owns this property, received a letter from the City saying that it was a nonconforming use. Mr. Maloney stated that he was not aware that the

testimony was that there was a lot of research done to see if it was. They looked through some zoning records that Mrs. Smith keeps. The problem is that the applicant is required to go back before 1936 to show that this property is legal. That is 75 years ago and Mr. Reeves has the burden to show that his property is legal instead of the City showing it is illegal. Mr. Maloney stated that the burden is wrong. That burden should be on the City and not on the applicant. Mr. Reeves testified, and it is consistent with Mr. Eure's position and his testimonies, that Mr. Reeves got the letter. He went to see Mr. Holland. Mr. Holland told him whatever he told him. Mr. Reeves ran around and got a hold of people that he thought would have information about the property. He got a hold of Mr. Withey, whose affidavit is from Florida. He got a hold of Mr. Withey who says in 1959 he remembers construction there. His affidavit that was obtained from him clarifying that he wasn't sure that it was actually the conversion or the renovation of conversions but that there was some stuff going on there and that he knew it was four (4) units in 1959 and the early 1960's and continued. That was what Mr. Reeves did before he came for legal representation hoping that it was enough. Mr. Maloney stated that he was not going to sit before this Board and tell them that the conversion occurred before the 1936 Zoning Code. He stated that he would be a liar to sit there and tell them that he thought that was true. We know that, through Mr. Lott who has inspected this stuff and who has looked at those component parts that this conversion probably occurred in the 1940's or 1950's and it is consistent historically with other cases and other testimony that has been heard before this Board that many of these properties were converted post World War II. Mr. Maloney stated that he believed that was when the majority of the properties in Newtown did. This is the first case that Mr. Maloney has been involved in with respect to the 1936 Code and thank you for asking the question about a continuance on that but he said he wasn't going to spend any more time trying to get this back before 1936 because he didn't believe that it was converted before that. He stated what needed to be looked at was when you looked at the City's position and you put the burden on the property owner to go establish that this property was established before 1936, what do you look at. Where would you get that information with respect to its use or permitting? He would get that usually from the municipal records or City records. Mr. Maloney stated that he believed that the evidence was pretty clear that we have no zoning records before 1960. We have very little in the permit department before 1970 maybe. The place that a person would look to get that information, he testified that he bought the property in 1990. He obviously didn't build it in 1910. Access to those records is limited as to what he can find from the City. The City doesn't have them. Mr. Maloney stated his client now has to come in here and prove that this property was converted before 1936. Mr. Maloney stated that he had an issue with that because he thinks that there was a lack of certainty and a lack of clarity about the zoning for which they are saying this property is falling under. That is to say, we have zoning maps. We have one (1) map that I am aware of that has had six (6)

revisions. We don't know if it's the 1931 actual map. We don't know if it's the 1956 revision. We don't know if this property was illegally zoned because we don't know what happened from a zoning standpoint between 1931 when the map was created, 1936 when the Code was adopted up through six (6) iterations and introduced the 1959 Code. Mr. Reeves was going back before 1959 because that was what he thought he was going to do. Mr. Maloney stated that he was not convinced that this property was a C district because he doesn't think that the City has the records to establish that it is. The City says that they think it is based on their records but the zoning records aren't available. All the zoning maps are not available. All the zoning iterations are not available for that time period. Based on that, Mr. Maloney stated that it was a tremendous effort on Mr. Reeves' part. Mr. Maloney stated that he believed that there was very credible evidence that this property was converted 50 if not 60 years ago. The property has been occupied for at least the last 52 years continuously. The property is indeed four (4) units. Given the lack of specificity and the lack of the City's ability to pinpoint the zoning of this property through the zoning iterations from 1931 forward, that Mr. Reeves has met his burden of proof. The role of this Board says that the primary purpose of this Board is to act as a safety for which property owners can seek relief from the strict applications from the terms of the zoning ordinances. Mr. Maloney stated that they were here to ask the Board to do that. He stated that Mr. Reeves had done a tremendous job documenting the property and when it was converted. Mr. Lott is a very credible witness. It has been around for 50 or 60 years and now the burden is higher. Now we are in 1936 and perhaps the next one we're going to have to do before the zoning map of 1931. Mr. Maloney stated that he didn't know where it was fair to expect the property owner to be held to come up with that kind of information. In closing, Mr. Maloney asked the Board to look at Mr. Hill's affidavit. Mr. Hill's affidavit states that he was a Zoning Inspector from 1965 until 1992. He started as the Building Inspector and that he, and he referenced some other folks that he worked with, that they considered these properties to be legal, nonconforming uses. That is the City Building Inspector with 27 years of experience as an Inspector of this City. He deemed those properties to be legal, nonconforming uses. It has not been challenged until 2011. Mr. Maloney asked the Board to give consideration to that. ***He also asked, and submitted as Applicant's Exhibit #10, a Memorandum on Zoning Estoppel, which basically says that if you look at a property's history, its use, the City's failure to enforce its zoning laws for a number of years, and people rely to their detriment, which apparently this owner and other owners have done, that it is only fair to say that they are allowed to keep their uses.*** In this case, it is going to be like many other cases, if we're now going back to 1936 and then 1931, the fact of the matter is that many of these units were converted in the late 1940's and they've been around for over 60 years. This Board has the authority and the discretion to grant this applicant relief and to reverse the City's determination.

Mr. Nemazie questioned in terms of the City's Newtown Historic District had done research to see when conversions were done on homes and is that official anywhere. Mrs. Wolfe responded that research was done by the Maryland Historical Trust through the Department of the Interior and each property was assessed when it was done. It also had to do with the date and if it was a multi-family, single-family, what type of siding, that type of thing. Those were our records. Mr. Maloney gave you an updated list from the 1980's but the original one was from 1975. Mr. Nemazie questioned if he understood correctly that they would know when each home was converted or is that just a general statement as to when the homes in the area were converted. Mrs. Wolfe responded that when they did the survey it didn't state when the homes were converted. Mrs. Smith added that it appeared to have a date of construction but not conversion. Mr. Nemazie questioned when the sheet was done. Mr. Maloney responded that the survey was done in 1987. Mrs. Wolfe added that the original was done in 1975. Mr. Nemazie stated that his question was had the Historical District done research on when the homes were converted.

Mr. Rainey questioned the 1956 map and if the classifications on the map would allow this house to be legal. Mrs. Smith responded that she didn't know without going through that Code because there are 11 different classifications up in the corner. There are three (3) residential classifications and Mrs. Smith stated that she wasn't aware if any of those classifications allowed multi-family or not or whether there were special provisions, like our Code has now, that may have allowed multi-family but required certain lot size. Mr. Rainey questioned if the 1956 was the only map that Staff had before 1960. Mrs. Smith responded that she thought that Staff had one (1) large scale copy of a map showing the revisions up to 1956. Mr. Rainey stated that as far as the Staff's documents to prove that the Code was 1936 we only have a map that revised in 1956. Mrs. Smith responded in the affirmative. Mr. Rainey questioned Mr. Eure that this house could not be legal in 1936. Mr. Eure responded in the affirmative.

Mr. Nemazie questioned if lines could be erased on the map. Mr. Rainey stated that the lines could go either way. Mr. Nemazie stated that as zones would change, they would erase the line. Mrs. Smith responded that if the zone was expanded that they would move the line. In this case we don't know. This is labeled number 5 which is 40C Residential but we don't know if in 1936 that boundary included all of that or if that boundary where those number 5's are in a circle could have been number 4 or number 6 because that is two (2) other residential zones. We don't know what the changes were to the map, where they occurred, or how they occurred. Mr. Nemazie questioned is the appellant in this case just assuming that the conversion was done in the 1940's or 1950's. Mr. Maloney responded that from what they've learned that they can't say that it went back before 1936. Mr. Nemazie questioned that he

thought he heard Mr. Maloney state that they assumed that the conversion was done in the 1940's or 1950's. Mr. Maloney responded that there was no evidence that would lead him to state otherwise but he wasn't going to misconstrue the evidence that had been presented to the Board.

Mr. Rainey questioned Mr. Maloney that the testimony is that he agrees that the according to the Salisbury City Code that it is the appellant bears the burden of proof. Mr. Maloney responded that he believed that was what the Board's rules say. Mr. Leslie added that is what the Code states.

Mr. Rainey questioned Mr. Eure if he felt that the house in 1936 was definitely illegal but that there was the possibility that the map was changed. There were corrections made to that map so it is possible that in 1956 that the zoning was changed. Mr. Eure responded that it was a possibility. Mrs. Smith responded that it was a possibility that there is no way to trace. Mr. Eure stated that in even if 1956 were the latest change, the change took place in 1959 so even under the 1936 Zoning Code it would still be illegal.

Mr. Baker questioned in the 1936 Code is there a listing of the current zoning classifications. Mr. Eure responded that he wasn't familiar with it. Mr. Baker questioned how they related to the ones that were on the map. Mr. Eure responded in the negative. He added that it was like Mr. Maloney explained earlier, the map just shows zoning designations. The Zoning Code gives you the standards. Mrs. Layton stated that the Code would be like a key to the map. Mr. Baker stated that the legend up on the top right lists the type of zoning areas and questioned if they were listed in the table of contents and if they were all listed in the Code. Mr. Eure responded that the zoning classifications illustrated on the map tell you what section of the Code to look for both use and densities. Mr. Baker stated that what he was getting at was if all the ones listed on the legend is noted directly in that Code then anything on this map as far as a revision would be an adjustment of those areas, not just adding of additional areas.

Upon a motion by Mr. Nemazie, seconded by Mr. Baker, and duly carried, the Board **UPHELD** the Building Department's determination that the residence at 507 Poplar Hill Avenue is not a legal, nonconforming structure, based on the evidence heard at the meeting and the evidence provided for the Staff. ***This motion did not pass due to a tie vote with Mr. Rainey and Mrs. Layton opposing the motion.***

Mrs. Layton questioned what the tie vote did to the Board. Mr. Maloney requested to confer with Counsel for a moment. Mr. Maloney stated that there is a rule about tie votes.

Mr. Leslie read the section of the Code regarding decisions.

Mr. Maloney stated that there was a situation about 12 to 14 months ago where it was a split decision. The effect of a split decision is that the Board has made no decision. The Board has neither upheld nor reversed the City Building Inspector's determination. The recourse is to talk a little longer amongst the Board members or the case has to come back for a full hearing from start to finish.

Mr. Rainey questioned if the Board could talk amongst themselves in the back room.

Upon a motion by Mr. Rainey, seconded by Mr. Nemazie, and duly carried, the Board went into a recess.

Mr. Nemazie questioned that regardless of both attorneys being present, that either the appellant or the City has equal rights to appeal to the Circuit Court. Mr. Leslie responded that either side could appeal to the Courts within 30 days of the decision.

Mr. Rainey questioned Mrs. Smith and Mr. Eure that there are archives. Mr. Eure responded that there are limited archives. Mr. Rainey questioned if they felt that there was a possibility that some of these zoning maps are available from 1931 to 1936 and 1950 to 1956 to establish what revisions were made to the maps. Mr. Eure responded that he didn't want to speculate but his guess was that the Board was seeing what was available. Mr. Rainey stated that he would move for a continuance for 30 days if Staff felt that they could go to the archives and find when those revisions to the map were made. Mr. Eure responded that they could make that attempt.

Upon a motion by Mr. Rainey, seconded by Mr. Nemazie, and duly carried, the Board **CONTINUED** the case until the October 6, 2011 meeting. The Board requested further Staff research regarding the mapping revisions to the 1936 Salisbury Zoning Map.



#SP-1105

Michael A., Constance E., & Holly M. Crane – Administrative Appeal – Determination that a two-family dwelling is not an illegal nonconforming use – 115 Walnut Street – R-8 Residential District.

Mr. Thomas Maloney, Mrs. Laura Hay, and Holly Crane 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 115 Walnut 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 18, 2011, 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. Leslie requested that Mr. Eure introduce himself for the record. Mr. Eure responded that his name was Henry Eure and he works for the City of Salisbury Department of Building, Permits, and Inspections. Mr. Leslie requested that Mr. Eure describe the property and what it consists of. Mr. Eure responded that the property consists of a two-family dwelling that is approximately 2800 sq. ft. in area and the lot size 11,370 sq. ft. Mr. Leslie questioned who the owner of the property was. Mr. Eure responded that as listed in the State website is Michael A., Constance E. and Holly M. Crane. Mr. Leslie questioned how the property was currently zoned. Mr. Eure responded that the property is currently zoned R-8 residential. Mr. Leslie questioned that under today's Code this is single-family only. Mr. Eure responded in the affirmative. Mr. Leslie questioned if it had come to the City's attention that the property is being used in violation of the current Zoning Code. Mr. Eure responded in the affirmative. Mr. Leslie questioned how the property was being used. Mr. Eure responded that the property was being used as a two-family dwelling. Mr. Leslie questioned that this doesn't conform to the current zoning laws. Mr. Eure responded in the affirmative. Mr. Leslie questioned if the City

undertook an investigation to determine whether this was a legal, nonconforming use. Mr. Eure responded in the affirmative. Mr. Leslie questioned what steps were taken. Mr. Eure responded that the City checked the zoning records dating back to 1960 and there was no evidence of any approval. Mr. Eure added that they also asked the appellant to provide any documentation providing proof that this property had been converted to a two-family home prior to 1983. Mr. Leslie questioned if Mr. Eure knew approximately when they made that request. Mr. Eure responded that a letter was sent by Mr. Holland in April. Mr. Leslie questioned that from April 2011 until now had Mr. Eure's office received any information about the history of the property. Mr. Eure responded in the negative. Mr. Leslie questioned that as far as Mr. Eure could tell from the information that the City has and the information that was requested from the owner of the property to provide to the Building Department, as far as you can tell under the current Zoning Code that is applicable, a house this size is a single-family house. Mr. Leslie questioned that this is an illegal, nonconforming use. Mr. Eure responded in the affirmative. Mr. Leslie stated that he had no further questions.

Mrs. Hay questioned Mr. Eure that his position was that if the property contained two (2) units prior to 1983 that it is a legal nonconforming use. Mr. Eure responded in the affirmative. Mrs. Hay stated that was all she had for Mr. Eure.

Mrs. Hay entered Appellant's Exhibit #1 as an Affidavit from Mr. Wolfe. Mr. Wolfe owned property that is located 200-202 Walnut Street, which is diagonally across from 115 Walnut Street. This property was owned since 1993, however, Mr. Wolfe and his wife have owned numerous other properties in this specific area and they have been residents there since the 1970's and have owned at least a dozen other properties. Mr. Wolfe is personally familiar with this property located at 115 Walnut Street. It is his opinion that from all times from the early 1970's until the present that the residence at 115 Walnut Street has contained two (2) dwellings and each of these dwellings have been occupied by separate households and that this occupancy, two (2) unit occupancy has not lapsed for a period of more than one (1) year from the 1970's until the present.

Mrs. Hay entered the next Affidavit as Appellant's Exhibit #2 as an Affidavit from Mr. Donnie Williams. Mr. Williams owns 119 Walnut Street which is directly next door to 115 Walnut Street. Despite the numbering, there is actually no 117 Walnut Street. These two (2) structures are actually right next to each other. He has owned the property next door to 115 Walnut Street since March 16, 1983. Because of his ownership of the property next door, he has become personally familiar with the structure and occupants of 115 Walnut Street and he has said that at all times since he purchased the neighboring

property in 1983, 115 Walnut Street has contained two (2) dwelling units and has been occupied by two (2) households and this use has not lapsed for a period of more than one (1) year.

Mrs. Hay entered Appellant's Exhibit #3 as an Affidavit from Holly Crane. She explained that Ms. Crane is obviously here and willing and able to answer any of the Board's questions but for efficiency purposes, Mrs. Hay walked the Board through the affidavit. Any testimony that the Board would like could be illicit that from her. Mrs. Hay stated that Ms. Crane had owned the property since 2004. She states that the two (2) houses are actually mirror images of each other. It is Ms. Crane's understanding that it was constructed this way because it is a side-by-side duplex that are mirror images of each other. Although she is not an expert in this area she can opine that the property was in fact constructed in this way. Ms. Crane knows that since she purchased the property in 2004, it has always had two (2) dwelling units and that the use has not lapsed for a period of more than one (1) year since her time of purchase. Mrs. Hay asked if the Board had any questions of Ms. Crane in light of her abbreviated testimony.

Mr. Nemazie questioned that she resided at one (1) of the units at 115 Walnut for most of the years since the date of purchase. Mr. Nemazie questioned what the approximate years were. Ms. Crane responded that she had resided there for approximately four (4) years. Mr. Nemazie questioned if she resided there from the time she purchased it until 2008. Ms. Crane responded that she purchased the property to live there. Mr. Nemazie questioned if she rented out the other unit. Ms. Crane responded in the affirmative. Mr. Nemazie questioned the number of tenants she had throughout the period. Ms. Crane responded that she had had approximately 10 tenants.

Mr. Baker questioned where the entrance to the second unit was. Mrs. Crane responded that the units were side-by-side. The very front door when you walk in, there are two doors, one on each side. There are doors off the porch that are on both sides. Mr. Baker stated that there was single door that opens to a hallway and then the doors are off the hallway. Ms. Crane responded in the affirmative. Mr. Nemazie questioned if there was an "A" and a "B". Ms. Crane responded in the affirmative. Mrs. Layton questioned the stairs. Ms. Crane responded that the stairs go directly up the middle of the house. Mr. Nemazie questioned that there were two (2) separate staircases. Ms. Crane responded that each unit had a staircase.

Mr. Leslie questioned Ms. Crane if she had any documentation of any kind that dates to 1983 or before about the use of the property. Ms. Crane responded in the negative.

Mr. Wirt Wolfe, who lives in the neighborhood, stated that he was familiar with the property. It is an example of several properties on E. Main Street that are made the same way and were built in the 1930's over there owned by Mr. White. They have a similar front door and they open to mirror images either way. If their house was built in the 1930's, then that is presumably about when that was built. He stated that he had knowledge of that property that goes back to the early 1970's and it has always been a two-unit duplex to his knowledge.

Mr. Nemazie stated that his affidavit states that he was personally familiar with the property since the early 1970's.

Mr. Leslie stated that his contention is that it would be better to have Mr. Wolfe testify as a witness. His testimony as a witness is more reliable than his testimony in an affidavit form and would allow Mr. Leslie to ask him questions.

Mr. Leslie questioned Mr. Wolfe that he purchased the house in Walnut Street in 1985. He further questioned if that was the first time that you lived in the neighborhood. Mr. Wolfe responded that he had lived in the neighborhood since 1971. Mr. Leslie questioned where he lived. Mr. Wolfe responded that he lived at 211 E. Isabella Street. Mr. Wolfe stated that he then purchased a house on Elizabeth Street that was a two-unit rental and converted that to single family in the early 1970's. He stated that they then moved subsequently to 511 Poplar Hill in 1974. He added that he had owned property on Walnut Street. He stated that he had renovated the house next to the house in question and converted it from a duplex to single family. Mr. Wolfe stated that he owned a duplex at the end of Gay Street that runs into Walnut, that is 200-202 and it remains a duplex. Mr. Leslie questioned the house that Mr. Wolfe had converted was next door to the property in question. Mr. Wolfe responded in the affirmative. Mr. Wolfe questioned the house number in this case. Mr. Leslie responded that the house in question was 115. Mr. Wolfe responded that the house that he converted was 113. Mr. Leslie questioned when the conversion occurred. Mr. Wolfe responded that the conversion occurred in 1997 or 1998. It had been two (2) units historically like the one you discussed earlier right after the WWII. Mr. Leslie quoted from the affidavit that "at all times from the early 1970's until the present, the residence located at 115 Walnut Avenue contained two (2) dwelling units". Mr. Wolfe responded in the affirmative. Mr. Leslie questioned when the first time that Mr. Wolfe learned that it had two (2) dwelling units. Mr. Wolfe responded that during his tour of the neighborhood, and having been all around the neighborhood since the early 1970's, he knew Alberta Giudice who lived there and her sister lived on the other side. These sisters lived there prior to the 1983 date. Mr. Leslie questioned if he knew specific dates that she was there. Mr. Wolfe responded that Ms. Giudice

was a prior owner and he couldn't give the information of who she sold the property to or when she sold the property. Mr. Leslie questioned that two (2) sisters lived in the referenced house. Mr. Wolfe responded in the affirmative. Mr. Leslie questioned if Mr. Wolfe had ever gone inside the house. Mr. Wolfe responded that he did visit Alberta Giudice. He added that the current owner described the house the way it is. Mr. Leslie questioned the current owner. Mr. Wolfe responded that the lady present at this meeting. Mr. Leslie questioned that Mr. Wolfe went into one (1) unit. Mr. Wolfe responded in the affirmative. Mr. Leslie questioned what year Mr. Wolfe visited the home. Mr. Wolfe responded that he visited the home in the early 1980's or 1979. He added that a number of the homes have been converted back to single family. Mr. Leslie questioned that Mr. Wolfe was not sure what year he had visited the home. Mr. Wolfe responded that he knew it was prior to 1983 and he was sure of that. Mr. Leslie questioned how he was sure of that. Mr. Wolfe responded that he was sure of that because of his time span of working in the neighborhoods and visiting and talking to people.

Mrs. Sue Ellen Smith asked for a point of information why the standard was 1983 in this situation. Mr. Eure responded that the previous Zoning Code would have allowed two-family dwellings in this district.

Mr. Leslie stated that there were no other witnesses so they would do their closing.

Mr. Leslie stated that this is a simple case. This is a two-family dwelling in a one-family zone. The City asked for evidence months ago from the homeowners, that was back in April and no evidence was provided for months and months and months. Now we come here today and for the first time City Officials are receiving affidavits from various people, testimony from various people and we've never had a chance to look at this, review it, talk with people. All of this could have been provided months ago. You have to ask yourself why this wasn't provided earlier if it was available so easy. Why is this sprung on us at the last minute? Mr. Leslie stated that to him that lowered the reliability of this evidence. He stated that it makes it somewhat suspect because it puts the City in a very difficult position of being able to evaluate it on whether it is accurate or not. Mr. Leslie added that he understands that we have people in person who have said that they have been in there but the testimony is that they are not sure of the date that they were in there. If the witness is not sure and has had time to think about, again there is some question of reliability. Mr. Leslie added that he wasn't saying that anybody was lying or not telling the truth but it's difficult to tell what is reliable and what is not. He added that it is clear that this is a single-family zone that is being used as two (2) and the City's position is that we don't really know what its use was before 1983.

Mrs. Hay stated that she would like to address the issue of not providing documentation. If you look at the letter that started this case and it's in the Staff Report. The letter states that they must provide documentation within 30 days. Failure to provide documentation within 30 days will result in the City taking further action. Obviously it is hard to get all these affidavits and all this evidence within 30 days so by the time you get everything you have already past the 30 day deadline and you've passed the deadline to file an appeal. Once the appeal is filed, you are governed by the rules of this Board. The rules of this Board do not provide for the parties exchanging information before the end. They do not require the applicant or the appellant, whatever the case may be, to provide their information beforehand. Likewise, they don't require the City to provide their documentation beforehand. All the City provides is the Staff Report which we get roughly three (3) to five (5) days before one of these cases. Regardless of that, the evidence presented today shows that this property was a two-family structure well before 1983. The City's in agreeance that 1983 is the year to go back to in this case. Mrs. Hay stated that there was an affidavit from a neighboring property owner, Mr. Williams. That affidavit says that when he bought the property in 1983, 115 Walnut Street had two (2) units and two (2) occupants and that use hasn't lapsed. There is an affidavit from Mr. Wolfe who is here and available to testify live that from the early 1970's until the present that the property has had two (2) units and the use of it has not lapsed. Either one of those affidavits in and of themselves is enough to show that this property was used as a two-family structure before 1983 and that use has not lapsed. In addition to that, you have the affidavit of the present property owner who says that since she bought the property in 2004 it has been two (2) units and it hasn't lapsed. The Board also has her testimony that the property is a mirror image. It is highly unlikely that this property was a one (1) family dwelling that was then converted to two (2) identical units. More than likely it is in accordance with what Mr. Wolfe testified to that the property was built in the 1930's as two (2) separate units and is essentially a duplex but doesn't have the two (2) doors going in on the front so it has one (1) door that leads to two (2) doors. Based on the evidence presented, there is more than enough to determine that the property was used as two (2) units prior to 1983 and the use has not lapsed. If the Board feels otherwise, Mrs. Hay suggested to the Board that based on the Doctrine of Zoning Estoppel, the City is estopped from repudiating its prior conduct when the property owner has provided in good faith on its actions. One of the common cases of zoning estoppel is when the City has failed to enforce their own zoning regulations. In this case there is evidence that the City hasn't enforced their regulations leading back to at least the early 1970's because that was when the first affidavit we have submitted today goes back to. ***While Mrs. Hay stated that she wouldn't belabor the Doctrine of Zoning Estoppel because the Board has heard it lots of times before, she submitted a Memorandum of Law on Zoning Estoppel as Appellant's Exhibit #4.***

Mr. Rainey questioned if the City felt that it needed further time to investigate the evidence presented. Mr. Leslie responded that the City would like more time but didn't know if it would be fruitful.

Mr. Nemazie questioned Mr. Eure if he was familiar with structures like this in the City that were built this way or would this be a unique type structure. Mr. Eure responded that he hadn't had the opportunity to visit any buildings that have been constructed in this manner.

Mr. Wolfe responded that on E. Main Street there were probably as many as seven (7) owned by the White family and their heirs built the very same way in the 1930's. He stated that he had been in those structures and had personal knowledge of them. He added that he had done a lot of work for the White's so they could testify to the fact that he knows what he is saying. They are built exactly like that. Mr. Nemazie questioned if they were built that way originally and not necessarily converted. Mr. Wolfe responded that they were built that way originally and that Mr. White's father built them as investment properties. Mr. Nemazie questioned if he had missed it and did Mr. White own this property at some point. Mr. Wolfe responded in the negative, stating that he didn't think Mr. White had owned this property.

Upon a motion by Mr. Baker, seconded by Mr. Nemazie, and duly carried, the Board **OVERTURNED** the Building Department's determination that the residence at 115 Walnut Street is not an illegal nonconforming two-family dwelling based on the Staff Report and the testimony given at the meeting.



ADJOURNMENT

With no further business, the meeting was adjourned at 10:15 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.

Patricia Layton, Chairman

John F. Lenox, Secretary to the Board

Beverly Tull, Recording Secretary