

MINUTES

The Salisbury Board of Zoning Appeals met in regular session on September 2, 2010, in Room 301, Government Office Building at 7:00 p.m. with attendance as follows:

BOARD MEMBERS:

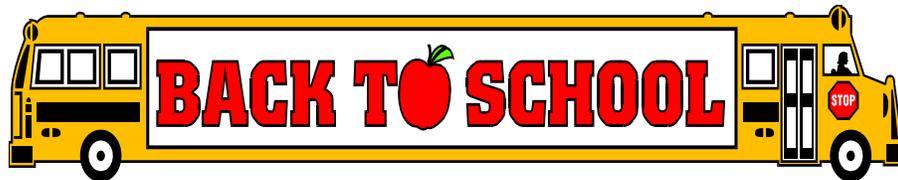
Patricia Layton, Chairman
Dave Rainey, Vice Chairman (Absent)
Daniel Baker
Edgar Williams
Dave Nemazie

CITY OFFICIALS:

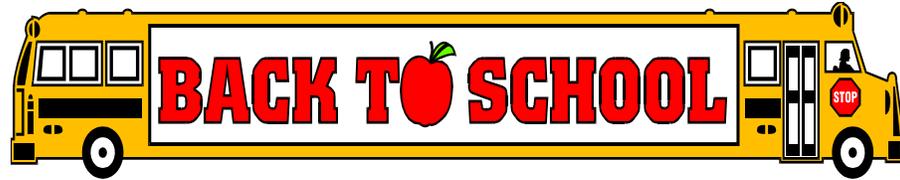
Henry Eure, Building, Permits & Inspections Dept.
Skip Cornbrooks, City Attorney's Office

PLANNING STAFF:

Gloria Smith, Planner
Beverly Tull, Recording Secretary



Mrs. Layton, Chairman, called the meeting to order at 6:58 p.m.

**MINUTES:**

The minutes of the July 1, 2010 and August 5, 2010 were approved unanimously.

**#SA-1021**

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

Mr. Ryan Hohman came forward. Mrs. Gloria Smith presented and entered the Staff Report and all accompanying documentation into the record. She summarized the report explaining that the applicant owns a residential property at 828 South Division Street that is being used as a two-family residence. The property is zoned R-8 Residential, which does not allow two-family residences. The Director of the Department of Building, Permits and Inspections notified the owner by a letter dated April 13, 2010, that the property has an illegally converted dwelling unit. Documentation of a legal nonconforming use was required within 30 days or the Code allows for appeal of the decision to the Board. As provided by the Code, the Applicant appealed the Director's decision, taking the position that the two-family use is a legal nonconforming use that was established at a time when the City's Zoning Code allowed two-family dwellings in this property's particular zoning district.

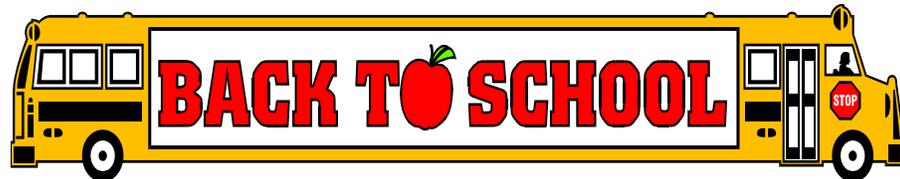
Mr. Eure stated that no evidence had been received. He stated that he concurred with the Staff Report and requested that the Board have the applicant revert the property back to a single family dwelling within 60 days.

Mr. Hohman stated that the case was heard last month and that he didn't have any more evidence than he did last month. He stated that he hadn't had any luck finding evidence. Mr. Hohman requested another month continuance to allow him time to try and find more evidence for the case.

Mr. Baker questioned what method was being used to look for evidence. Mr. Hohman responded that he had been searching records in Wicomico

County and had tried to reach the previous owners. He added that he works a full time job and has family obligations in addition to trying to research this case.

Upon a motion by Mr. Baker, seconded by Mr. Williams, and duly carried, the Board, **CONTINUED** the above referenced case until the October 7, 2010 meeting to allow the applicant to do further research. The Board noted that there would be no further continuances on this case.



#SA-9246-10A James L. Eure, Jr. – Administrative Appeal – Determination regarding an Illegal Two-Family Dwelling – 507 Collins Street – R-5 Residential District.

Mr. Maloney explained that Mr. Eure was here tonight. Mr. Maloney stated that Mr. Eure had contacted him earlier in the week to represent him. Mr. Maloney requested a continuance so that he could prepare his case and allow Mr. Eure time to pay his advertising fees. Mr. Maloney requested that the case be heard at the October meeting.

Upon a motion by Mr. Nemazie, seconded by Mr. Williams, and duly carried, the Board **CONTINUED** the above referenced case until the October 7, 2010 meeting to allow the applicant time to retain an attorney and pay his advertising fees.



#SA-1016 Administrative Appeal – Determination regarding an Illegal Two-Family Dwelling – 842 Brown Street – R-8 Residential District.

Mr. Maloney stated that there was an issue regarding the Ashley case from the August meeting. Mr. Patrick Ashley came forward. Mr. Maloney stated that he had sent a letter to Mrs. Layton and Mr. Holland and spoken with Mr. Cornbrooks and Mr. Lenox in an effort to have the Ashley case reheard at the next meeting. Mr. Lenox and Mr. Cornbrooks questioned the need to readvertise the case. Mr. Cornbrooks recommended to the Board to rehear the case. Mrs. Smith stated that Mr. Lenox had instructed her to readvertise the case. Mr. Cornbrooks stated that a

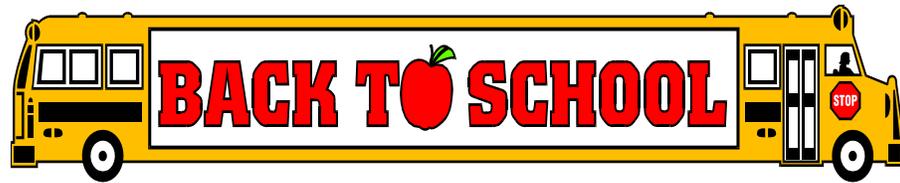
motion needed to be made that put the contingency of a full panel to hear the case. Mrs. Layton stated that she wouldn't be available for the October meeting. Mr. Nemazie stated that he would more than likely be on vacation during the October meeting. Mr. Maloney requested that Mr. Ashley be allowed to keep the property continuously occupied until the case can be heard in November.

Mr. Baker requested something in writing from the City on why the case was being reheard. Mr. Cornbrooks stated that there were procedural problems because the motion wasn't seconded because there were three (3) members and the chair couldn't second the motion. The only recourse that Mr. Maloney has is to take the case to Circuit Court so rehearing the case would avoid costly legal fees. Mr. Cornbrooks stated that the City is in the beginning of updating the Board of Zoning Appeals procedures. These updates will have to go to the Board, then to the Planning Office, then to the Legal Department and then back to the Board. These issues were brought up six (6) months ago but the process hasn't begun yet. There may be a gap in the procedures.

Mr. Nemazie questioned if the City stood by the fact that the Chair couldn't second a motion. Mr. Cornbrooks responded that generally on any committee that he has served on, the Chair can't second a motion. Mr. Nemazie stated that it seemed to be odd that the City wanted a full panel for the rehearing of a specific case. Mr. Cornbrooks responded that the circumstance was that there wasn't a second for the motion which is not a foreign concept.

Mr. Maloney stated that he had issues with the procedures or lack there of but rehearing the case would be the most economical way to proceed. He added that he believed that the Court would send the case right back to the Board if he were to appeal to Court.

Upon a motion by Mr. Nemazie, seconded by Mr. Baker, and duly carried, the Board voted to **REHEAR** the above referenced case at the November 4, 2010 meeting after the case has been readvertised.



#SA-1017

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

Mr. Donnie Williams, Mr. Tom Maloney, and Ms. Laura Borowski came forward. 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 308 East Vine 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 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. Eure stated that the Building Department had not received any evidence to refute the contention and recommended that the Board uphold their determination.

Mr. Maloney read from the Staff Report. There will be issues raised during the meeting. He stated that if you check the City's records for a special exception that you would find very few. There was a zoning change which affected the two-family homes. One of the issues that the applicant faces on the legal nonconforming use is that there is lack of records in the Building Department. Very few records actually exist except for the last few years. When the Building, Housing and Zoning and Neighborhood Service and Code Compliance offices split, Building, Permits and Inspections occupied the space where the records were previously stored and those records were taken to the landfill so it makes it very hard for the applicant to argue their case. Mr. Eure agreed that these facts were fairly accurate.

Mr. Maloney continued that there is now a problem with a conversion that occurred without and records to back up the case. **Applicant's Exhibit #B** was entered into the record as an affidavit from Mrs. June Elliott who purchased the property for rental units in 1978. Mr. Elliott obtained all the necessary

permits and rented the units out. The two-family use didn't lapse before the property was sold in May of 1983. Mr. Elliott paid all of the necessary permit costs and had the inspections done. In 1983, the property was purchased by Mr. Ronald Nelson and his brother-in-law. Mr. Nelson sold the property to Mr. Donnie Williams in 1996. **Applicant's Exhibit #C** was entered into the record as an affidavit from Mr. Ronald Nelson who stated that the property had always been a two-family residence and had never lapsed for more than a year. The tenants were actually there when he purchased the property and had lived there for a few years. Mr. Donnie Williams purchased the property in January 1996 and has retained all or partial ownership from 1996 until the present time. **Applicant's Exhibit #D** was entered into the record as an affidavit from Mr. Donnie Williams. Mr. Maloney went on to explain that this property was purchased in 1978 and was permitted by the City to be a two-family dwelling. This property has been permitted as a two-family dwelling for 32 years. The conversion was not done until 1978 but it was done with the City's permission. The City of Salisbury has allowed this nonconforming use for 32 years and now has a problem with it. Mrs. Elliott's affidavit gives the evidence that her husband did the conversion with the City's approval. The City has destroyed all their records up to roughly the year 2005 so the City can't refute Mrs. Elliott's testimony. Mr. Williams' affidavit states that the property has been licensed with NSCC. The City had knowledge of this unit for 32 years and failed to do anything about it. Mr. Maloney read his memorandum on this case. This was entered as **Applicant's Exhibit #E**.

Mr. Maloney stated that Mr. Cornbrooks would argue that the Doctrine of Zoning Estoppel has been tampered with at least three (3) different times. Mr. Maloney stated that the Doctrine of Zoning Estoppel was an excellent statement of what the Doctrine was all about. This is a classic case where the City should be estopped from trying to change this back to a single family dwelling 32 years later. Mr. Maloney stated that based on the affidavits, there's nothing that is not credible on Mrs. Elliott's affidavit. There isn't anything in the City's records to argue this case. Mr. Maloney requested that the Board consider his memo and the Doctrine of Zoning Estoppel and determine that the owner can continue to have a two family dwelling.

Mr. Williams questioned Mr. Cornbrooks opinion about the City being barred. Mr. Cornbrooks responded that the Court of Special Appeals is not permitted to adopt law but only the Court of Appeals can adopt law. There are reasons why the Court of Special Appeals may do that. In the case of Maryland Reclamation, the Court of Special Appeals didn't adopt the Zoning Estoppel. The State of Maryland has not adopted the Zoning Estoppel. There is an equitable estoppel that does not go against municipalities. The argument in Mr. Maloney's memo is misleading in respect to permitting. There's an issue that the Courts may not look favorable upon in regards to the City dumping records. Mr. Cornbrooks stated that he had heard that some of the records were put in storage. He encouraged the Board to be careful in looking at the evidence.

Mr. Williams questioned who has the burden of proof. Mr. Cornbrooks responded that the applicant has the burden of proof. If the documents aren't there it is hard to argue the case. Mr. Eure stated that he had been employed by the City since December of 1989 and that a permit is issued to the applicant and they get a copy and the City keeps a copy. He stated that they used to keep records for three (3) years and then purge them out but the City was advised in 2005 that they had to keep records for 50 years per the State of Maryland. There is a ledger of permits issued prior to 2005.

Mr. Maloney stated that in some instances 911 address changes have occurred which makes it difficult to know if a permit was actually issued for a property if the property may have had a different address at the time.

Mr. Eure stated that for larger developments, the plans have been kept but not for a single family residence or something small like this.

Mr. Nemazie questioned if the City has records since 2002. Mr. Eure responded that the City did have records for a different case that proved the case for the City.

Mr. Nemazie questioned if there was any other public transaction that takes place that might add to the evidence. Mr. Cornbrooks responded that there may be something that shows up on the tax records if an addition is put on a residence but there would be nothing available to see a conversion of a property.

Mr. Williams stated that there is a two and a half (2 ½) year gap in the evidence presented. Mr. Maloney responded that Mr. Nelson purchased the property and the tenants came with the property so they cover the gap.

Mrs. Layton stated that about the time she came onto the Board was when they stopped allowing conversions of properties. Prior to that time, conversions were allowed all over town.

Mr. Cornbrooks stated that this was not necessarily an issue in the residential capacity until the early to middle 1980's.

Mr. Nemazie stated that this was really critical because the Board could hear a case where there weren't any records available and the attorney's could say that nobody cared about preserving the records at that time.

Mr. Cornbrooks noted that the Eastern Shore had been lax about keeping records compared to other counties such as Montgomery County.

Mr. Baker questioned if there could be an argument made that the permits were obtained but the records are no longer available to confirm that information. Mr. Cornbrooks responded that the Board would have to make a decision based on the evidence that they've heard.

Mr. Baker questioned Mr. Eure if the Building Department issued different types of permits in 1978. Mr. Eure responded that he wasn't sure how in depth the permits were that were issued in 1978 because he had never seen any of those permits.

Mr. Williams questioned Mr. Eure what the oldest permit he had seen was dated. Mr. Eure responded that the oldest permit he had seen was probably dated somewhere between 1984 and 1986 and that it was for a larger project and was probably an application and not the actual permit.

Mr. Williams stated that he appreciated the affidavits and written documents from the attorney's but that it makes it difficult for the Board when there aren't any records. He stated that he was looking for evidence and when he didn't see what he thought was the proper evidence or a full chain of evidence that it makes it difficult on the Board.

Mr. Nemazie requested that the City provide a date from which point forward they have maintained their records so the Board would have a better basis for which to make their decisions. He added that there could be cases where the owners are no longer alive to provide affidavits.

Mrs. Layton stated that there weren't any records from the Board of Zoning Appeals from that era. Mr. Nemazie questioned if there would have been minutes from the Board meetings at that time.

Mrs. Smith stated that there is a map book that the cases are mapped on and can note the earliest case. She stated that the earliest case that she had seen in the map book is either 1959 or 1960.

Mr. Nemazie questioned if this case would have gone before the Board in 1978. Mr. Cornbrooks responded that variances and special exceptions were heard so nonconforming uses would have come before the Board as well. Mr. Eure added that he didn't know what the policy of the Building Department was in the 1970's. Mrs. Smith added that some determinations of what cases came to the Board may have gone back to who was interpreting the Code at that time.

Mr. Nemazie questioned if he could assert that the permit could have been obtained without the Board hearing the case. Mrs. Layton responded that people have obtained permits without the Board hearing the case in the past.

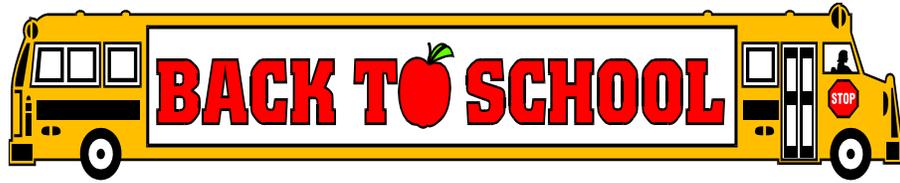
Mr. Maloney stated that the Board had had a good discussion. He stated that he sincerely appreciated being heard. The law can be adopted by the Court of Special Appeals so he stated that he had to disagree with Mr. Cornbrooks on that fact. Mr. Maloney read from his position memorandum where the Court's recognize the need for the Zoning Estoppel. He stated that he didn't know why the Board of Zoning Appeals couldn't use the Zoning Estoppel if the Court of Special Appeals had ruled on the document. Mr. Maloney stated that the City decides to deal with certain types of uses and that there had been a theme in all these cases. In all the years that the units did exist, no one said anything and now all of a sudden it is wrong. The burden is on the applicant and there is nothing in this case to rebut that. It seems to be the fault of the property owner that he doesn't have the permit from 32 years ago to show the Board. Mr. Maloney stated that people don't convey those permits, nor do they tend to keep them once the work has been completed and inspected. He stated that the City didn't have the records from 32 years ago either. Mr. Maloney stated that he filed a Freedom of Information Act for 308 E. Vine Street and he received a correspondence stating that the City didn't have any records on that property. Mr. Maloney stated that he appreciated all the comments that were made but believed that the Zoning Estoppel looks at the situation that the owner finds himself in.

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 308 East Vine Street was an illegal two-family nonconforming use. The Board's decision was based on the evidence submitted at the hearing, noting the fact that affidavits have been submitted as evidence in past cases and that the necessary building permits were obtained by previous owners for conversion of the residence as noted in the Affidavits.



ADJOURNMENT

With no further business, the meeting was adjourned at 8:15 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