



# City of Salisbury – Wicomico County

DEPARTMENT OF PLANNING, ZONING AND COMMUNITY DEVELOPMENT

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## MINUTES

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The Salisbury-Wicomico Planning and Zoning Commission met in regular session on August 21, 2014 in Room 301, Council Chambers of the Government Office Building, with the following persons in attendance:

### COMMISSION MEMBERS:

Charles "Chip" Dashiell, Chairman  
James W. Magill  
Gail Bartkovich  
Scott Rogers (Absent)  
Tim Spies (Absent)  
Newell Quinton  
James McNaughton

### CITY/COUNTY OFFICIALS:

Maureen Lanigan, Deputy County Attorney  
Matt Hedger, City Public Works Department

### PLANNING STAFF:

Jack Lenox, Director  
Gloria Smith, Planner  
Beverly Tull, Recording Secretary



The meeting was called to order at 1:35 p.m. by Mr. Dashiell, Chairman.

**Minutes:**

Upon a motion by Mr. Magill, seconded by Mrs. Bartkovich, and duly carried, the Commission **APPROVED** the minutes of the July 21, 2014 meeting with a correction on page 5.



Mr. Dashiell asked if anyone was present for the Farlow Fields case, and there was no response. He noted that an email had been received from Mr. Brock Parker to remove the case from the agenda, and that he would again ask prior to when the case was scheduled on the agenda to see if anyone was present for the case prior to action.

**#WP-1401**

**PUBLIC HEARING – SPECIAL EXCEPTION – Apartment complex in the R-8 Residential District and Reduced Parking Ratio and Development Plan approval – Booth Street Apartments – Booth Street Phase I, LLC, rep. by KCW Engineering Technologies, Inc. – 901-921 Booth Street – R-8 Residential District.**

Mr. Lenox read the ad and administered the oath to anyone wishing to testify in this matter. Mr. Dashiell explained the public hearing procedure.

Mr. Patrick Stewart, Ms. Suzanne Brown, Mr. Kevin Anderson, and Mr. Mark Tsitlik came forward. Mrs. Gloria Smith presented and entered the Staff Report and all accompanying documentation into the record. She summarized the report explaining that plans have been submitted on behalf of Booth Street Phase I, LLC and the Wicomico Housing Authority to redevelop the Booth Street Apartments complex. The Plans submitted include the Overall Site Plan, proposed Site Plan for Phase I, Demolition Plan, Landscaping Plans, and Building Elevations.

Ms. Brown introduced herself as the Acting Executive Director of the Housing Authority, stating that they were very excited about reinventing what is at Booth Street and that they were available to answer any questions.

Mr. Stewart stated that the project is 100 percent affordable. He displayed a board of photos that are of the current property. This project is part of a program through the Housing and Urban Development (HUD) Department. Mr. Stewart added that his firm would be the managing group for the property.

Ms. Brown stated that the new units would be energy efficient and amenity rich units. The project will provide a place for the residents to be proud to live.

Mrs. Bartkovich stated that she thought the proposal was an improvement to what exists now. She questioned if the bedroom configurations were being changed. Ms. Brown responded that there would be one (1) and two (2) bedroom units as well as one (1) and two (2) bedroom accessible units available. Mrs. Bartkovich questioned if there would be any four (4) or five (5) bedroom units. Ms. Brown responded that there was not anyone on the list who needed a four (4) or five (5) bedroom unit so it would be one (1), two (2), and three (3) bedroom units. Mrs. Bartkovich questioned what would happen to the current residents while the demolition and new construction was being done. Ms. Brown responded that there are 100 units that have sat vacant and that a relocation plan is being worked on. Mrs. Bartkovich questioned the time frame for the units to be completed. Mr. Stewart responded that they anticipated a maximum of 14 months for completion of the units.

Mr. Stewart stated that they were working with HUD to get relocation vouchers for the residents and that the project would be done in staggered phases to get residents moved in.

Ms. Brown stated that they have a case worker in the Housing Authority Office to work on relocation and provide continuity.

Mr. Quinton questioned if there was a way to anticipate the cost to the families. Ms. Brown responded that the housing moves include utility hookups to keep at the same cost as their current cost. Mr. Stewart added that the family will pay no more than 30 percent of their income for rent and utilities. This figure only changes if their income changes.

Ms. Brown stated that the residents have been part of the process and are very excited about the project.

Mr. Dashiell announced that this was a Public Hearing, and asked if there was anyone present that wanted to be heard. No one came forward, and the Hearing was closed.

Upon a motion by Mr. Magill, seconded by Mrs. Bartkovich, and duly carried, the Commission **APPROVED** the Special Exception for Apartments in the R-8 Residential District, a Special Exception for a Reduced Parking Ratio, and **APPROVED** the Development Plan for redevelopment of the Booth Street Phase I project, including a **WAIVER** of the Community Impact Statement, subject to the Staff Findings and the following Conditions of Approval:

**CONDITIONS:**

1. This site shall be developed in accordance with the approved Special Exceptions and Development Plan, including the Parking Lost Island layout. Minor plan adjustments may be approved jointly by the Directors of Planning and Zoning and Public Works.
2. A Development Plan shall be submitted for Phase II prior to construction of the second phase of the project.
3. This approval is subject to further review and approval by the Salisbury and Wicomico County Public Works Departments, including provisions of the Booth Street Apartments Redevelopment – Phase I letter issued August 12, 2014 and any subsequent amendments to this letter.



**#SP-1402**

**PUBLIC HEARING (Continued) - TEXT AMENDMENT - SALISBURY MUNICIPAL CODE - James S. Bardsley, Jr. & Brenda M. Bardsley - Section 17.76 - Lt. Industrial District - to add Funeral Trade Services and Blacksmith shop, Forge and Foundries as permitted uses; to add Crematorium as a Use Permitted by Special Exception, and to add Development standards related to the above uses - recommendation to Salisbury City Council.**

Mr. Dashiell noted that this was a continuation of the public hearing and explained the public hearing procedure. He added that all correspondence that has been received regarding this case is now part of the record. He requested that Mr. Lenox summarize the status of this case from last month's meeting.

Mr. Lenox gave an update on the case. This is the third month that this request has been heard. The minutes have been done in greater detail than normal due to the complex language involved. This is Mr. Bardsley's petition and he can proceed to the City Council even if the Commission doesn't come to a complete agreement. The foundry, forge, and blacksmith shop have been excluded from the request. The language that the Commission has before them has been simplified by staff to allow a crematory by special exception in the Light Industrial District and previous language regarding "incidental uses" is not included.

Mr. Bardsley thanked the Commissioners for their time to consider this text amendment. He apologized for his wife not being present for the meeting. He stated that with staff's recommendation they are basically at the point of having a definition that allows them to be a contract crematorium that is not a funeral establishment. This would strictly be a crematorium and fall under the jurisdiction of the Office of Cemetery Oversight. Since this would not be a funeral establishment, they would be totally dependent on interaction with other funeral homes.

According to Mr. Bardsley, it has become abundantly clear through the course of the hearings that the funeral homes in the immediate area will not work with this crematory. He would be relying on the greater Delmarva area for business, including his son who is a licensed mortician that could set up a funeral home and use this crematorium. Mr. Bardsley stated that even if they did 10 or so cremations a month, they wouldn't be able to pay the mortgage on the building so they couldn't rely on their son's business alone to pay the mortgage. The other issue is that their son would still have to set up a licensed establishment which would require the purchase or the lease of another building. Originally the intent was to put everything in one (1) building which is still their intent. Under the current recommendation of the Staff they would be a contract crematorium that would be dependent on business from other funeral homes. He stated that they couldn't see themselves surviving in that scenario so a funeral establishment would have to be set up. Since that can't be done under the current recommendation in the building in question or the district in question, that would require purchasing a building where it is permitted to have a funeral establishment. Mr. Bardsley stated that they are going to have to make a decision soon because their time is running out on the building that they are interested in. He added that they needed to know if there was a compromise that could be reached so they could do what they wanted to do in one (1) building which is to have a licensed establishment in the Light Industrial District and have the crematorium as the accessory use. Mr. Bardsley stated that this was all explained in his letter that should be part of the staff report.

Dr. McNaughton questioned Mr. Lenox if it was possible to have a crematorium and a funeral establishment in the same building. Mr. Lenox responded that it was not possible under the current zoning to have either or both. He stated that Mr. Bardsley would like a broader definition than what has been put before the Commission by staff. In zoning terminology, he is proposing to have a crematory as an accessory use to a funeral establishment. If the crematory has incidental uses which are also under the definition of the funeral home, then it starts to get into a different realm. The Staff is not suggesting allowing for a full service funeral home in the Light Industrial District, but that is only Staff's recommendation. The Commission has to advise the Council on what they believe is appropriate.

Mr. Lenox stated that when you wrestle with this issue, you are not just dealing with nuisance-type considerations alone, but what uses are best in the Light Industrial District and what you want to reserve the Light Industrial District for. Therefore,

you don't allow uses that are more general commercial in nature. The question is whether a funeral establishment is most appropriate in that district or somewhere else. Dr. McNaughton questioned that if this was approved, could this type of establishment be done anywhere at any time. Mr. Lenox responded that anyone could apply to go before Board of Zoning Appeals for a site in the Light Industrial District. Dr. McNaughton questioned if this was what Planning and Zoning wanted. Mr. Lenox responded that the decision is up to the Commission.

Mr. Bardsley stated that they had no intention of being a full service funeral home. He stated that they are being forced to do this under the current regulatory regime. As Ms. Arty explained at prior hearings, they have to be under the Board of Morticians and there would have to be an establishment to have a crematory that is functioning in the capacity of being able to store, refrigerate, embalming or preservation for other funeral homes and do arrangements or cremations. These trade services that they wanted to do are not able to be done unless they are a funeral establishment. There are degrees of establishment where a full establishment would be more like our definition of a funeral home. There are also limited establishments that do not do everything that a full establishment does, which may be better suited for this district where you could limit it to crematories that want to be able to work for themselves in addition to other funeral homes. The problem is that they cannot be self-sufficient under the regulations that are laid out for them. Mr. Bardsley stated that they need to be able to control their own destiny which means being under the Board of Morticians.

Ms. Arty stated that the Board does license full service funeral establishments which are traditionally what we think of when you think of a funeral home. The housing of mortuary services where human remains are brought, stored, prepared, viewed, services, refrigeration, and embalming among other things. The Board also recognizes and licenses restricted funeral establishments where somebody declares which facets of mortuary science are going to be conducted in that building or structure and then leases out to a full service, traditional establishment the other aspects of mortuary science that would need to be conducted to conduct the business of the final disposition of human remains. There are funeral establishments in the State that conduct arrangements only at one address and are restricted out of the agreement of a full service establishment. Some restricted establishments do arrangements and viewings but no preparation or storage. She added that all of these are applications to the Board for determination for what type of license can be obtained.

Mr. Bardsley questioned if a restricted license would require a direct affiliation of a full license funeral home. Ms. Arty responded in the affirmative. Mr. Bardsley stated that they would still require an agreement with a full licensed establishment.

Ms. Arty noted that there are very few restricted funeral establishments in the State of Maryland.

Mr. John Holloway, Holloway Funeral Home, stated that a funeral home, whether restricted or full, is still a funeral home. The issue of tissue donation or organ donation concerns him greatly. If this is a restricted location without an embalming room then those types of actions could not be taken. He questioned what is considered an affiliation with another funeral home. Mr. Holloway stated that there are no restricted funeral homes in Wicomico or Worcester Counties.

Mr. Leonard Zeller, Zeller Funeral Home, questioned if there would not be any harvesting of tissue in Salisbury. Mr. Bardsley responded that they would not do whole body donation or recovery for research and education, but they wanted to be able to have transplant programs such as the Local Eye Bank to recover corneas there. Mr. Zeller questioned if he was only referring to corneas. Mr. Bardsley responded that he was referring to anything that was transplantable. Mr. Zeller questioned if he was talking about femur bones or arms. Mr. Bardsley responded that anything that could be harvested for therapy that is not in a controlled environment and generally that is corneas and sometimes pieces of skin. He stated that they would not be doing it and then it would be done under a licensed transplant program that would use their facility. Mr. Zeller questioned if a licensed transplant program would come into the facility to do the harvesting. Mr. Bardsley responded in the affirmative. Mr. Zeller questioned if the facility would be available for the harvest team to come and harvest parts. Mr. Bardsley stated that their facility would not be the ones dealing with any recovery, but they don't want to be excluded from those things. Mr. Zeller questioned if in their recovery if they ever did embalming. Mr. Bardsley responded that they do some profusions when they have three (3) day classroom labs when they have to extend usefulness, they have to preserve the body to a degree. Mr. Zeller questioned how the community would know about the facility. Mr. Bardsley responded that they would advertise. Mr. Zeller questioned if they would also advertise harvesting. Mr. Bardsley stated that they already advertise harvesting in this area. He added that they already get four (4) to six (6) cases from Delmarva per month. Mr. Zeller questioned if Delmarva is from the Chesapeake Bay to the ocean. Mr. Bardsley responded in the affirmative.

Mr. John Holloway questioned if this facility were to have a room or a place for tissue harvesting and they are doing topical preservation then it is considered embalming. Ms. Arty responded that under the definition the preservation of human remains in any way is considered the practice of mortuary science. Therefore, any profusion or flushing would be considered preservation and require the use of an embalming facility both for the surgical procedures but to meet the regulations for chemicals.

Mr. Bill Simms, Creekside Drive, stated that he does have an interest in this property. He stated that he wondered if we were getting off on tangents which is not specifically what the law requires. He stated that the Commission needs to focus on what the law will allow and determine if what Mr. Bardsley wants to do is allowed by the law.

Dr. McNaughton questioned if this request was for a full established funeral home. Mr. Lenox responded that if the funeral home was listed in the table of uses permitted by special exception then the Commission could provide for that. Mr. Lenox stated that he was having difficulty pulling apart the various components involving a full establishment. He stated that he needed to make sure that in the end this is something that the Zoning Inspector can actually enforce, which is why Staff left out the language about tissue recovery. Mr. Lenox stated that he couldn't send someone in there to see if there is tissue recovery, but the tissue is being used for this and not for that. The way it is crafted in the Staff's version, which is not as permissive as Mr. Bardsley would like, it would be restricted to a crematorium. Dr. McNaughton stated that if the business was ever sold that someone else may want a full service funeral establishment.

Mr. Bill Simms stated that the Commission needed to be careful about setting a precedent because it could be binding for years to come.

Mr. Lenox stated that legislation is being discussed and the Council can go back later and make a change. If a use is included legislatively as a Special Exception, the City would be saying that this is appropriate in the district subject to meeting certain standards, and then the Board of Zoning Appeals would act in more of an administrative capacity.

Mr. Quinton stated that it seems that we are tailoring this request to a specific situation. Mr. Lenox responded that he had not shown the Commission a map, or a lot, or a picture of Mr. Simms' building. What is being discussed is the district and whether this type of use may be appropriate on a site by site basis in the Light Industrial District. When Mr. Bardsley's language got more specific, Mr. Lenox stated that he got more concerned about whether that was appropriate language to include in the Zoning Code. Mr. Quinton questioned if this is combined together does this full service facility become permitted in a Light Industrial area. Mr. Lenox responded that it is not permitted currently. The question is whether it is appropriate. If it is, then the Commission should recommend that it be permitted.

Mr. Dashiell stated that the Commission has a recommendation from the Planning Staff that essentially indicates that if the Commission is agreeable they would include a crematorium by special exception within the Light Industrial District, and that is the limitation that has been provided and recommended by the Staff. If the Commission is interested in supporting that recommendation, the language for amending the definitions has been provided and the special exception would be for a crematorium and only a crematorium. Text amendments related to development standards are included, to be met if in fact the crematorium is applied for and granted as a special exception within the Light Industrial District. Mr. Dashiell stated that this seems appropriate. Beyond that are other issues that are more complex.

Mrs. Bartkovich questioned if the definition of a funeral home or establishment is currently included in the Light Industrial District. Mr. Lenox responded in

the negative, explaining that currently it is not defined in the Code and the intent is to define it and therefore, define it as something different than the crematorium. It is not repeated under the Section 17.76.020B. Right now there are four (4) special exception items in that district and this would be a fifth as a crematorium.

***Mr. Magill made a motion to forward a favorable recommendation to the City Council for the amendments as listed in the August 21, 2014 staff recommendation, however, it died due to lack of a second.***

Mrs. Bartkovich stated that she was not comfortable having a crematorium or a funeral establishment in a Light Industrial District. This should be more of a commercial use. The thing that bothered her the most about this is that as time has gone on and both the Planning and Zoning Department and the Commission has been enlightened about the laws and regulations in Maryland, this whole thing has changed and changed. She stated that this is something that Mr. Bardsley should have gotten right from the beginning and understood all this and not had the request constantly change. She stated that she was uncomfortable with the way this has all proceeded and she didn't think this was appropriate.

Dr. McNaughton stated that he concurred with Mrs. Bartkovich. He stated that too much has changed over time. The negotiations should not have taken place before the Commission.

Mr. Bardsley apologized for any confusion, but the initial application did include several things. He stated that the crematory laws are just kicking in now. This is new ground that is being broken throughout the State. He stated that crematories are now just being inspected for the first time. The insinuation that they should have done their homework; he tried very hard to provide all the information to the Commission from the onset and they are subject to interpretation. He stated that they are still confused to this date. This was never supposed to be a body donor program. Preservation of bodies for research is not being done here. This was supposed to be a crematorium that offered support services. Mr. Bardsley stated that he always wanted to do refrigeration for trade, embalming for trade, and the cremations. The blacksmith shop and forging was a hobby that was evolving into a business. He stated that he decided to drop that because it was holding them back from what they wanted to do here. He stated that he could pursue that anytime and anywhere and it was precluding them from what they wanted to do.

Upon a motion by Mrs. Bartkovich, seconded by Dr. McNaughton, and duly carried, the Commission made an **Unfavorable** recommendation on the requested Text Amendments to the Salisbury Municipal Code to amend Section 17.76 of the Light Industrial District to add Funeral Trade Services and Blacksmith shop, Forge and Foundries as permitted uses; to add Crematorium as a Use Permitted by Special Exception, and to add Development Standards related to the above uses. This recommendation will be forwarded to the Mayor and Salisbury City Council. ***Mr. Magill opposed the motion.***



#SP-0405-14B

**REVISED PRELIMINARY COMPREHENSIVE DEVELOPMENT PLAN APPROVAL - Farlow Acquisition Co., LLC, rep. by Parker & Associates - 336 Unit Apartment Complex - Farlow Fields - Beaglin Park Dr., Old Ocean City, and Parker Roads - R-10A Residential - M-38; P-295, 110, & 429, G-12.**

Mr. Parker.

The Commission noted **WITHDRAWAL** of this case at the request of



#SP-9115-14F

**REVISED SIGN PLAN - To Add Wall Sign Color - University Square - 1147 S. Salisbury Blvd. - General Commercial District - M-117; G-4; P-3267.**

Mrs. Gloria Smith presented the Staff Report. Mr. Ryan Miller and Dr. Kota Chandrasekhara have submitted a request to modify the Sign Plan at University Square shopping center.

Dr. McNaughton questioned if the signs would all be black and gray eventually. Mrs. Smith responded that the sign is already up.

Upon a motion by Mr. Magill, seconded by Dr. McNaughton, and duly carried, the Commission **APPROVED** the Revised Sign Plan for University Square Shopping Center, to add the colors black and gray, as submitted.



### SALISBURY SUBDIVISION PLAT:

#### Centre at Salisbury – Preliminary/Final – 2 Lots – Centre Drive (M-119; G-15; P-237).

Mrs. Gloria Smith presented the Staff Report. The applicants propose resubdivision of a 4.05 acre outparcel (Parcel 7) that contains two restaurants. Each lot will have frontage on Centre Drive. One lot will contain the Red Lobster restaurant, 152 parking spaces and will be 2.06 acres in size. The second lot will contain the Olive Garden Restaurant, 125 parking spaces and will be 1.99 acres in size.

Mr. Dashiell questioned if this resubdivision was being done to alleviate parking issues. Mr. Magill stated that Darden has sold Red Lobster.

Upon a motion by Mr. Magill, seconded by *Mr. Quinton*, and duly carried, the Commission **APPROVED** the Preliminary/Final Plat for General Mills Restaurants, Inc., subject to compliance with the following Conditions of Approval:

### CONDITIONS:

1. The Final Plat shall comply with all requirements of the Salisbury Municipal Code Title 16, Subdivision Regulations.
2. This approval is subject to further review and conditions imposed by the Salisbury Department of Public Works.
3. This approval is subject to further review for compliance with the requirements of the Forest Conservation Act.
4. Health Department approval is required prior to the recordation of the Final Plat.
5. A signature block shall be included for the Salisbury Planning Commission.
6. A Cross Access and Parking agreement shall be executed between the two owners and a copy provided to the Planning Department for the subdivision case file as well as the agreement noted on the plat.



Mr. Lenox noted that he had thanked Ms. Arty on her way out today for her assistance in the crematory text amendment.



Mr. Lenox informed the Commission that the County Council voted at their meeting on August 19, 2014 to defer the Comprehensive Plan adoption to the incoming Council. Mrs. Bartkovich noted that this was not a unanimous decision.



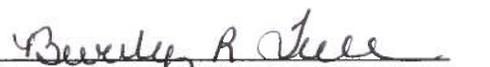
There being no further business, the Commission meeting was adjourned at **3:18** p.m. by Mr. Dashiell.



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 Office.

  
Charles "Chip" Dashiell, Chairman

  
John F. Lenox, Director

  
Beverly R. Tull, Recording Secretary