

MINUTES

The Salisbury Board of Zoning Appeals met in regular session on March 4, 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
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 7:00 p.m.

**MINUTES:**

The Board unanimously approved the minutes of the February 4, 2010 meeting.

**#SA-1003**

Karen Lee Marshall – Administrative Appeal – Illegal Conversion of a single-family residence to a two-family residence – accessory apartment over detached garage – 707 North Park Drive – R-8 Residential District.

Ms. Karen Marshall and Mr. Steve Cox came forward. Mr. Cox requested a moment of the Board's time explaining that at some point they may be requesting a continuance to allow additional time to get people to testify or give affidavits regarding this case.

Mr. Cornbrooks advised the Board that it may be to their advantage to hear the case as he wasn't clear on how any affidavits would affect the change in this legal proceeding.

Mr. Cox stated that the affidavits would state when the building was used as an apartment and how long it had been in use.

Mrs. Layton questioned the relevance to this case. Mr. Cox responded that the issue is that in 1991 the apartment was built and has been in continuous use since that time. In 2000, there was an amendment change to the Code which ceased the use and required any existing accessory apartments to have a special exception. He questioned if the City had records that covered this time period, adding that they had only been able to obtain records for the last two (2) years from NSCC.

Mrs. Layton advised the applicant that if the Board was to hear the case that they have the right to rule on it tonight without a continuance.

Mr. Cornbrooks stated that he didn't see any relevance in the documents Mr. Cox was discussing, as the use wouldn't be relevant because there was no special exception obtained for the apartment.

Mrs. Gloria Smith presented and entered the Staff Report (**Planning Office Exhibit A**) and all accompanying documentation into the record. Mrs. Smith summarized the report explaining that the applicant owns a residential property at 707 North Park Drive 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 Applicant by letter dated September 28, 2009, that the two-family dwelling was in violation of the City Zoning Code, and required compliance within 60 days of the date of the letter. 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 Staff Report had summed up the issue. Although the Building Department is sympathetic to the applicant because she didn't cause the issue, the building permit issued was not for an apartment and a special exception was not obtained. Mr. Eure requested that the Board uphold the Building Department's decision and have the apartment abandoned within 60 days.

Mr. Cox questioned how far back the records in Building, Permits and Inspections are kept. Mr. Eure stated that they had provided their records for the Staff Report. Mr. Cox questioned if the Building Department had records that went back to 1991. Mr. Eure responded that the Building Department and Planning and Zoning Department do have the records back to 1991. Mr. Cox questioned Ms. Marshall regarding the purchase of the property last fall. Ms. Marshall stated that the listing was advertised with the apartment over the garage renting for \$500 per month. She stated that she was told it was licensed and she contacted the City who said that they only kept records for two (2) year time periods. The multi-listing was entered as **Applicant's Exhibit B** and the Maryland Assessment records for this property was entered as **Applicant's Exhibit C**. Ms. Marshall stated that she applied for the rental licensing and made a correction on the one (1) violation that the inspector found. She stated that she hadn't had anyone say that the apartment couldn't be used and the neighbors have told her that the apartment has always been rented. Ms. Marshall displayed photographs of the property and they were entered into the record as **Applicant's Exhibit D1-D3**. A letter dated March 4, 2010, from Ms. Judith Miles was entered into the record as **Applicant's Exhibit E** which stated that when Ms. Miles was interested in purchasing the property that the realtor stated that the apartment could be rented. Ms. Marshall stated that there was ample parking available for both the house and the apartment. She added that she lives on the property with her two (2) children. Ms. Marshall stated that she wouldn't allow anyone unsafe to rent the

apartment. The Rental Unit Owner License Application was entered as ***Applicant's Exhibit F***, an Inspection report was entered as ***Applicant's Exhibit G***, a Reinspection report entered as ***Applicant's Exhibit H*** and the License fee invoice for Joe & Ron Callis was entered as ***Applicant's Exhibit I***.

Mr. Ron Callis, previous owner, stated that he bought the house with his father in 1991 and it was to be used as his father's home. Mr. Mike Rose was the previous owner and had obtained a permit for the garage to be started. He stated that everyone assumed that the garage had been built and converted and was done to Code. He stated that the property is directly across the pond from the Ward Museum. The work was completed in 1992 and the apartment has been rented continuously since then. He stated that they had rented the apartment to people who worked at Piedmont Airlines as well as to a Mr. Bob White. The rental business was sold in 2004. The landlord licensing went into effect in 2004 and the apartment was registered. In 2007 there was a random check and there were no problems found during the inspection. The next inspection was done in October 2009 with Ms. Marshall as the owner. Mr. Callis stated that the City had taken the money for taxes on this apartment but nothing was said until Ms. Marshall got the letter saying that the apartment was illegal. Mr. Callis added that if he had known that the apartment was a problem, then he would have obtained a special exception.

Mr. Nemazie questioned Mr. Callis if he was the co-owner of the property. Mr. Callis responded in the affirmative, explaining that the property was later transferred into his father's trust.

Mr. Rainey questioned if Mr. Callis sold the property. Mr. Callis responded that the trust sold the property. Mr. Cox added that at the last minute the property went from the Joe Callis Trust to the sister's trust and then it was sold.

Ms. Marshall stated that there is a separate entrance door, architectural windows that match the house, and sky lights were installed. She questioned why someone would spend extra money on those things for something that couldn't be used.

Mr. Cox noted that Mr. Michael Rose was the person who took out the building permit for the garage.

Mr. Cox requested that the Board accept as fact that the property has been licensed since the conception of the landlord licensing law.

Mr. Rainey questioned if the property was licensed currently. Mr. Eure responded that he could assume that the property was licensed but that this was a zoning issue so the matter of licensing did not bear any weight.

Mr. Cox entered as ***Applicant's Exhibit J*** the Salisbury Property affidavit that accompanied the deed that was recorded. ***Applicant's Exhibit K*** was the Rental Owner's License for Joe & Ron Callis. ***Applicant's Exhibit L*** was entered as the Owners/Sellers Affidavit. ***Applicant's Exhibit M*** was entered as the Deed from Mr. Mike Rose to Mr. Joe Callis and Mr. Ron Callis.

Mr. Cox stated that the plans were submitted along with the Department's recommendation that clearly shows a separate entrance and stairs but doesn't show the second floor. The plans were submitted by Mr. Michael White, the builder.

Mr. Cox stated that the concern of the Board was two (2) or more residences on a single lot. He offered a map from the Salisbury Police Department that stated that there had been little crime in the area and entered it as ***Applicant's Exhibit N***.

Mr. Cox stated that the permit shows that Mr. Rose lived at the residence which was why he checked the box for a garage. He stated that Mr. Rose applied for the permit a month before the deed changed. He added that you could imply that the new owner wasn't aware that anything additional would be needed to change the inside of the garage.

Applicant's Exhibit O was entered as the TriState electrical inspection certificate that was dated October 4, 1991.

Mr. Nemazie questioned if Mr. Michael White had been contacted to determine if he finished the apartment. Ms. Marshall responded that Mr. White had only built the shell of the garage. Mr. Nemazie questioned who finished off the inside of the garage. Mr. Callis responded that his father had finished the inside of the garage and it had passed inspection. Mr. Nemazie stated that there wasn't a plumbing inspection associated with the property according to the information in the Staff Report. Mr. Callis responded that random inspections were completed on the apartment.

Mr. Eure stated that a homeowner can do work but would still need to obtain a permit. The only permit that was issued was for the garage.

Mrs. Smith stated that there was no occupancy permit in the City's folder regarding the garage.

Mr. Cox questioned Mr. Eure if he would assume that an Occupancy Permit was issued for the garage. Mr. Eure responded that he would assume that the Occupancy Permit was issued for the garage.

Mr. Baker questioned the definition of an accessory building. Mr. Eure stated that the setbacks are different for an accessory building and a two (2) family residence or an accessory apartment. Mr. Baker questioned the setback. Mr. Eure discussed the required setbacks for an accessory apartment or two (2) family residences and then explained that an accessory building such as a garage would have a 5 ft. rear and side setback.

Mr. Nemazie questioned if the house was built in the County and then annexed into the City. Mr. Eure responded that he wasn't able to answer that question. Mrs. Smith added that the property was annexed and then construction of the home took place.

Mr. Rainey questioned if Attachment #5 in the Staff Report was the actual permit issued. Mr. Eure responded in the affirmative. Mr. Rainey read from the permit and stated that it was signed by the builder. Mr. Eure stated that he wasn't sure whose signature was on the permit application but would assume that it was the builder's.

Mr. Rainey read from the Sellers Affidavit that states under #11 that any improvements must be authorized by a building permit.

Mr. Rainey stated that the electrical inspection could have been just for the garage.

Mr. Eure stated that the City and County don't do electrical inspections and that they are completed by an independent agency who would not be familiar with zoning regulations.

Mr. Nemazie stated that the property may have been falsely advertised allowing for a lawsuit against the seller.

Ms. Marshall stated that she had grown up in this area and always loved this home. The area doesn't produce a lot of police calls or code violations. The apartment has been there for a solid 20 years and has been income for the Salisbury tax base. She stated that the apartment has benefited prior owners as well as her. Ms. Marshall stated that it was never the intent for anything to be covered up. There have been no complaints from the neighborhood. She stated that she reads every day how the City struggles with landlords and how the City needs to address the problems in the City limits. Ms. Marshall stated that she depends on the income to help pay her mortgage. Many discrepancies have been found with not being able to obtain more than two (2) years worth of licensing records.

Mr. Cox requested that the Board consider how the City can live with a property the way it has for 20 years, tax it for 20 years for an apartment, accept

the registration money for it for the last six (6) years, conduct random inspections and then deny the right to have the apartment exist. He further questioned if this property has been properly zoned.

Mr. Rainey questioned if the applicant was seeking a special exception. Mr. Eure responded that this is an administrative appeal. Mr. Rainey questioned if this property would also need variances. Mr. Eure responded in the negative because this property can't request a special exception in this district after the change to the Code in 2000. Mr. Rainey questioned if there were any other apartments in this zoning district. Mr. Eure responded that there may be other situations like this in the zoning district but not necessarily in this neighborhood.

Mr. Nemazie questioned if the State does the tax assessment. Mr. Cornbrooks responded that the comment had been made that the right hand doesn't know what the left hand is doing and although they travel in very narrow lanes, this is simply a zoning issue.

Mr. Rainey questioned if there was any case law that addressed these circumstances. Mr. Cornbrooks responded that there is case law that addresses these circumstances but the Board is here to address the zoning issue.

Mr. Rainey stated that the Board was not there to decide this case. Although this is no fault of the applicant, there is nothing that the Board can do about her inheriting the zoning issue when she purchased the property.

Upon a motion by Mr. Rainey, seconded by Mr. Williams, and duly carried, the Board **UPHELD** the Department's determination that the apartment over the garage at 707 North Park Drive is an illegal residence and required that the apartment be vacated within 60 days of the Board's ruling, with steps taken to preclude further occupancy.



Mrs. Smith reminded the Board that the April meeting has been rescheduled for Wednesday, March 31, 2010 due to schedule conflicts. She added that Mr. Williams would not be available that night but that there was a quorum to have the meeting.



ADJOURNMENT

With no further business, the meeting was adjourned at 7:54 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