



City of Salisbury – Wicomico County

DEPARTMENT OF PLANNING, ZONING AND COMMUNITY DEVELOPMENT

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DIRECTOR OF ADMINISTRATION

MINUTES

The Salisbury Board of Zoning Appeals met in regular session on December 6, 2012, 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 (Absent)

CITY STAFF:

Henry Eure, City Building, Permits, and Inspections Department
Mark Tilghman, City Solicitor

PLANNING STAFF:

Gloria Smith, Planner
Beverly Tull, Recording Secretary



Mrs. Layton, Chairman, called the meeting to order at 7:00 p.m.

**MINUTES:**

The minutes of the October 4, 2012 minutes were approved as submitted.



#SA-0408-12D Jubilant Cadista Pharmaceuticals, Inc. – Enlargement of a Nonconforming Structure – 94,270 sq. ft. two-story production and warehouse addition and a 2 ft. fence height variance – 207 Kiley Drive – Light Industrial District.

Mr. Brock Parker, Mr. Matt Smith, Mr. Dwight Miller, and Mr. Ward Barney came forward. Mrs. Gloria Smith presented and entered the Staff Report and all accompanying documentation into the record. She summarized the report explaining that the applicants propose construction of a 94,270 sq. ft. addition to the existing facility with the building and parking enclosed by a 6 ft. tall fence. The current facility is a nonconforming industrial building that is nonconforming as to setbacks. The Code requires Board approval for the enlargement. The Code permits only a 4 ft. fence in the front yard setback, therefore, a 2 ft. fence height variance is also required.

Mr. Eure stated the proposed addition is to the north and west of the existing building. There will not be an impact on the surrounding properties. The Building Department recommended approval for the enlargement of the nonconforming use. He also explained that the fence was there to protect the property as this was a pharmaceutical business. The Building Department also recommended approval of the fence height variance.

Mr. Barney stated that as a drug company, they have to protect the property. There are several new drugs that are being proposed to be made at this facility. Some of these drugs are narcotics. The FDA license will be expanded. The fence will be needed to protect the property. This will be the best looking property on the street. This site has become the home office for Jubilant Cadista. There isn't a lot of shipping done from this facility with perhaps two (2) trucks per day going in and out of the site.

Mr. Baker questioned the future gate access. Mr. Barney explained that the 45 degree angle fences will be added. Mr. Parker explained that the shipping access has a key pad access already. Mr. Baker questioned how people know where to park on the site. Mr. Parker explained that there is sufficient parking on site and the overflow parking is across the street. Mr. Barney added that the worst time for parking is at the 4:30 p.m. shift change. Mr. Baker questioned that there was sufficient parking on site without having to park across the street. Mr. Parker responded in the affirmative.

Upon a motion by Mr. Baker, seconded by Mr. Rainey, and duly carried, the Board **APPROVED** the requested enlargement of a legal nonconforming structure and a 2 ft. fence height variance along Kiley Drive, based on the criteria listed in Section V(c) of the Staff Report.



#SA-1206

Galo W. & Maria E. Morales, rep. by Dale Watson – Administrative Appeal – Continued use of a Two-Family Dwelling – 112 Prince Street – R-8 Residential District.

Mr. Watson explained that his clients, the Morales', did not speak English and that he had brought a court certified interpreter, Ms. Rosa Savage, for them. He requested that everyone speak slowly for the interpreter to be able to translate for his clients.

Mr. Dale Watson, Ms. Rosa Savage, Mr. Galo Morales, Mrs. Maria Morales, and Ms. Shawna Majors came forward. Mrs. Gloria Smith entered the staff report and accompanying documents into the record and explained that the applicant's attorney had requested a postponement in October in order to adhere to the new regulations.

Mrs. Smith explained that Mr. Holland cited this property in June as an illegal two-family residence. The property may have been legally converted at a time when two family residences were allowed in the R-8 District (between May 1983 and April 1990) except that an 11,700 sq. ft. lot was also required. There is no record of approval of the accompanying Lot Area Variance.

Mr. Eure explained that the applicants had to prove that either the property was converted or built as a two-family residence before the 1959 Zoning Code or that a Special Exception was granted by this Board in 1983. There is no evidence to support either of these scenarios. Mr. Eure requested that the Board uphold the Building

Department's determination and revert this back to a single family residence within 60 days.

Mr. Watson stated that he had filed a rebuttal to Mr. Holland's original letter which stated that the property owners were guilty of an illegal nonconforming use. He stated that the emphasis was on the word "use". Mr. Watson explained that under the rules of what family consists of, the property is being used correctly. The house contains a married couple with one (1) unrelated person.

Mr. Watson questioned Mr. Morales to which Mr. Morales provided the following Information: He resides at 112 Prince Street, Salisbury, Maryland, the document that he was showing him was his deed, and the date of the deed was November 28, 2006. ***Mr. Watson submitted Applicant's Exhibit B as the deed to the residence.*** In response to Mr. Watson, Mr. Morales continued that he owned the property with his wife; they had lived at the property since they purchased it, and, the Morales' had lived at the property the entire time since they purchased it. Mr. Morales continued that the property was in the same condition as when they purchased it, that Ms. Shawna Majors also lives in the residence; three (3) people live in the house. Mr. Morales explained that he and his wife lived downstairs and Ms. Majors lives upstairs and Ms. Majors already lived in the house when they purchased it. Mr. Morales said that Ms. Majors is not related, that they had met Ms. Majors when they purchased the home, and that Ms. Majors had resided there for the past 20 years.

Mr. Watson showed photos of the house and questioned Mr. Morales about the photos. Mr. Morales responded that he had only planted a few trees since he purchased the property. Mr. Watson questioned Mr. Morales about another photo and Mr. Morales responded that the picture was of the stairs that go to Ms. Majors' apartment and the door to the living room, that there was no lock on the door to the living room on the inside or outside, Ms. Majors has the ability to go in and out as she pleases, and the Morales' could go upstairs whenever they wanted. Mr. Watson submitted the photo as ***Applicant's Exhibit C.***

Mr. Watson questioned Mr. Morales as to where the next photo was taken. Mr. Morales responded that it was a photo of the door on the side that goes to the living room and to the stairs that go to the apartment upstairs, another photo was taken from the front porch, that the door to the right goes to the living room, and the door at the head of the stairs went to Ms. Majors apartment. Mr. Watson submitted the photo as ***Applicant's Exhibit D.***

Mr. Watson questioned Mr. Morales about the next photo and he explained it was of the back of the house. Other photos were also discussed.

Mr. Watson questioned Ms. Majors and she explained that she lived at 112 Prince Street in Salisbury, Maryland, that she had lived there since 1982, that the house had never been owner occupied until the Morales' purchased it, and that the address was 112 Prince Street. Ms. Majors continued she had access to the downstairs,

and that she was not employed and was on disability and felt like she belonged in the house.

Mr. Rainey questioned what the address was before. Ms. Majors responded that she had put up a mailbox after her mail got stolen out of the regular mailbox and her disability check was cashed. The mailbox that she installed she labeled 112B Prince Street. She also kept a PO Box in Allen, however, she has taken down the mailbox she installed and all the mail says 112 Prince Street. To Mr. Rainey's questions, Mrs. Majors responded that there was a lock on the door at the top of the stairs, the homeowner had a key, and that the rent was \$550 and that she paid \$248 and HUD paid the rest and utilities were included. She continued there was a kitchen upstairs, prior to the Morales' purchasing the home that Mr. Frank Hastings owned the house, and that someone else had then purchased the home. There had been renters downstairs that had a lock on the door in the living room, that prior to the Morales' purchasing the home the paneling that covered the door to the upstairs apartment had to be cut out to prove that it was one home and that she was included in the sale of the house as a tenant. Mr. Rainey questioned if Mr. Damon put the door in to sell the home. Ms. Majors responded that the paneling just had to be removed that covered up the door.

Mr. Watson questioned if the wall to the stairs was one (1) piece of paneling and when the Morales' purchased the home it had to be removed. Ms. Majors responded in the affirmative.

Mr. Baker questioned the City on Attachment #10, letter C on it meant that the house was owner occupied. Mrs. Smith responded that the same information was included in Mr. Watson's rebuttal that was at each Board member's place at the meeting.

Mr. Tilghman stated that the law that was passed on four (4) to two (2) permitted two (2) or more persons who were related living in the same house as well as one (1) unrelated individual that could share the unit. In this case, it is clear that there are two (2) dwelling units and that is what the citation was for. The house has a dwelling unit that is occupied by a husband and wife and a dwelling unit that is occupied by Ms. Majors.

Mr. Rainey questioned Mr. Eure what would force the people to convert the home back to a single family dwelling unit. Mr. Eure responded that the elimination of one (1) kitchen would make them live as a family unit. Mr. Rainey stated that mother-in-laws quarters would have its own kitchen. Mr. Tilghman stated that a mother-in-law would be a relative. Mr. Watson noted that the criteria state that there can be one (1) person who is unrelated in the home. Ms. Majors stated that HUD requires her to have her own refrigerator and food or she loses her monthly stipend from them.

Mr. Rainey stated that there are two (2) dwelling units on this property. Mr. Watson stated that the Bank made them cut the hole in the wall to make it a single family dwelling unit again. Mr. Rainey stated that it was Mr. Watson's burden to prove that it is a single family dwelling unit. Mr. Watson stated that everyone has access to the home and it is owner occupied with one (1) unrelated person. The house became more open when the Morales' purchased it. Mr. Watson questioned Mr. Morales who cut the hole in the wall and when. Mr. Morales responded that the board had been up and they opened it. Mr. Watson questioned who they were. Mr. Morales responded that the previous owners had done that. Mr. Watson questioned if the door was there when they moved in. Mr. Morales responded that the house was like it is now when he and his wife moved in.

Mr. Rainey questioned Mr. Eure if the only thing that made this a two (2) family dwelling unit was the kitchen upstairs. Mr. Eure responded in the affirmative. Mr. Rainey questioned Mrs. Smith if she agreed. Mrs. Smith stated that she concurred, explaining that based on other requests that had come to the Planning Department that the second kitchen makes it a two (2) family residence. Mr. Rainey questioned that there was access to the upstairs and downstairs and nothing stopping that either way based on the testimony.

Mr. Tilghman read the definition of a dwelling unit and then read the definition of a two-family dwelling unit. The apartment referred to is defined as a dwelling unit. Mr. Tilghman stated that it was his opinion that if there are facilities for two (2) families then it is a two (2) family dwelling.

Mrs. Silvia Watson, interested party, stated that when her home was purchased in 2007 that she had two (2) kitchens in one (1) house with only one (1) family living there. Mrs. Layton questioned when the house was built. Ms. Watson responded that the house was built in 2006. Mr. Watson questioned where the house was located. Mrs. Watson responded that the house was located on S. Clairmont Drive in Salisbury, Maryland.

Mr. Tilghman discussed a case he had read in another part of Maryland where the mother-in-law had a separate kitchen but the family ate all meals together therefore it was deemed by a judge to be a single family dwelling unit. Mr. Rainey questioned if there was the ability to move freely through both levels. Mr. Tilghman responded that under the Salisbury Code this is clearly a separate unit.

Mr. Baker questioned Mr. Tilghman on his opinion if there was no locking mechanism to separate the two (2) units. Mr. Tilghman responded that there was no definition in the Code but a Special Exception had not been sought and the zoning only allows for a single family dwelling unit. This case is about a structure that is not allowed under the Code.

Mr. Rainey questioned Mr. Eure what would constitute a kitchen. Mr. Eure responded that the stove constitutes the kitchen as a place to prepare food.

Mr. Rainey questioned Mr. Morales if there was a stove upstairs. Mr. Morales responded in the affirmative, explaining that Ms. Majors had to prepare herself food.

Mr. Watson requested that the Board use common sense and accept that the way his clients are living constitutes a family.

Mr. Rainey stated that there was a new law written to address this issue. The burden of proof falls on the applicant to prove that this isn't a two (2) family dwelling.

Mr. Rainey questioned Mr. Eure that in the City's mind that if the stove was gone it would help the case. Mr. Eure responded that it would help a lot of the stove was gone.

Mr. Watson thanked the Board for their time. He explained that the Morales' had immigrated here. They both work for Perdue. They did not understand what they were buying. The home is basically the same home that was built in 1955. There was a door added to the front in 1982 or 1983. The dwelling is owner occupied. The rebuttal stated that a family can consist of one (1) unrelated person in a single family dwelling unit in the R-8 District. The home is opened to all the occupants of the house. Some rooms do have locks. Mr. and Mrs. Morales and Ms. Majors are basically living as a family. The facts speak for themselves. When the hole was cut in the wall it changed the character of the house. Mr. Watson requested that the Board use common sense and reverse the decision of the City and that the occupants are not living in a home that is illegal in nature.

Mr. Rainey made a motion to grant the appeal, with no second, the motion failed.

Mr. Baker made a motion to uphold the Building Department's decision based on the current layout of two (2) kitchens and locking of the first and second floors and that if that was changed in 60 days that it would reverse the City's determination of an illegal nonconforming structure, with no second, the motion failed.

Upon a motion by Mr. Rainey, seconded by Mr. Baker, and duly carried, the Board **OVERTURNED** the Department's determination that the residence at 112 Prince Street is not an illegal nonconforming two-family dwelling and required that steps be taken to remove the kitchen from the second floor.



ADJOURNMENT

With no further business, the meeting was adjourned at 8:44 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