

## MINUTES

The Salisbury Board of Zoning Appeals met in regular session on December 3, 2009, 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 OFFICIALS:**

Henry Eure, Building, Permits & Inspections Dept.

### **PLANNING STAFF:**

Gary Pusey, Planner  
Beverly Tull, Recording Secretary



Mr. Rainey, Vice Chairman, called the meeting to order at 7:00 p.m.

**MINUTES:**

The Board unanimously approved the minutes of the November 5, 2009 meeting.

**#SA-0905**

**Dionne Smith, represented by Tim Buckley – 2 ft. Fence Height Variance – 1105 New Bedford Way – R-8 Residential District.**

Mr. Timothy Buckley came forward. Mr. Gary Pusey presented and entered the Staff Report and all accompanying documentation into the record. Mr. Pusey summarized the Staff Report explaining that the Applicant is requesting approval of a 6-ft. tall fence within the “front” yard of this property along North Schumaker Drive. The property is a “through” lot, with frontage on both New Bedford Way and North Schumaker Drive, 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 stated that this was an identical request to three (3) others that the Board had heard in this neighborhood. The Building Department did not have any issues with the request. Mr. Eure recommended approval of the request with the condition listed in the Staff Report.

Mr. Buckley stated that the fence had been erected along North Schumaker Drive for added privacy for the lot. He explained that he had not spoken with the home owner regarding the condition of approval necessitating the planting of eight (8) evergreens or shrubs and that he wasn’t comfortable accepting the condition without her approval. He added that he was only the fence contractor.

Mr. Rainey questioned if the fence was already installed. Mr. Buckley responded in the affirmative.

Mr. Rainey explained that the Board had three (3) options on this matter which were to approve the request with the condition of approval, deny the request, or postpone the hearing until January to allow Mr. Buckley to contact the homeowner. Mrs. Layton added that the only way to keep the fence that had been installed was to plant the required landscaping. She added that a time limit could be given to complete the plantings.

Mr. Buckley questioned how far apart the shrubs or evergreens would need to be planted. Mr. Rainey responded that the shrubs or evergreens would need to be spaced out along the fence.

Mr. Baker questioned how long the Board could give to have the landscaping completed. Mr. Eure responded that the length of time was at the discretion of the Board but suggested that the Board consider three (3) to four (4) months due to weather.

Mr. Buckley requested a postponement to allow him to contact the homeowner regarding the landscaping condition.

Upon a motion by Mr. Baker, seconded by Mrs. Layton, and duly carried, the Board **POSTPONED** the requested 2 ft. Fence Height Variance for Dionne Smith, until the January 7, 2010 meeting to allow Mr. Buckley an opportunity to contact the home owner regarding the proposed condition of approval.



**#SA-0711-09B Addison Court, LLC, represented by Parker & Associates – Special Exception to Increase the Density for an Apartment Complex to 13.95 Units per Acre – South Side of East North Pointe Drive – General Commercial District.**

Mr. Edward Hastings came forward. Mr. Gary Pusey presented and entered the Staff Report and all accompanying documentation into the record. Mr. Pusey summarized the Staff Report explaining that the Applicant proposes construction of a 300 unit apartment project (to be called "Addison Court Apartments") on a 21.5 acre parcel. The proposed density is 13.95 units per acre. The Code permits apartment projects in the General Commercial at a density of 12 units per acre, with a higher density permitted through the granting of a Special Exception from the Board of

Zoning Appeals. The applicant has applied to the Board for the Special Exception to allow the higher density.

Mr. Eure explained that this was the same package that the Board had seen twice before however there was more detail this time on the landscaping plan. The buildings have been made to look more attractive. All requirements for increased density have been met or exceeded. Mr. Eure stated that Mr. Markofsky had been into his office and stated that they are ready to proceed this time and have obtained the financial backing needed.

Mr. Hastings stated that the project was delayed due to the DP & L pump station being at capacity. A letter from the Salisbury Public Works Department was received stating that nothing would get approval until the pump station was upgraded. The project is currently under review by the Public Works Department and they have been given the ability to proceed with the project.

Mr. Baker questioned if the density was the same as before. Mr. Eure responded in the affirmative.

Mr. Hastings stated that Mr. Markofsky had donated a piece of land on Naylor Mill Road to the City for the pump station and that it was located near his current project, Mill Pond Village.

Upon a motion by Mr. Baker, seconded by Mrs. Layton, and duly carried, the Board **APPROVED** the requested Special Exception for increased density in the Addison Court development, to a maximum of 13.95 units per acre for Addison Court, LLC, based on Section V (a) and Section V (c) of the Staff Report and subject to the following Conditions of Approval:

#### **CONDITIONS:**

1. All conditions imposed by the Planning Commission at its May 17, 2007, meeting shall be met, unless modified by the Commission during the Final Comprehensive Development Plan review.
2. In accordance with Code requirements for apartment projects, a 10-ft. wide perimeter landscaped area shall be provided, with numbers and types of plantings to be shown on the Landscape Plan as part of the Planning Commission's Final Comprehensive Development Plan review.



**#SA-0804                    Salisbury Board of Zoning Appeals Findings of Fact -  
Crockett Family Investments, LLC – 8' 9" Side Yard Setback  
Variance to Retain a Mechanical Room and Walk-In Cooler  
– 1235 Pemberton Drive – Neighborhood Business District.**

Mr. Gary Pusey presented and entered the Findings of Fact into the record. The Board approved an 8' 9" side yard setback variance, with 3 Conditions, for a walk-in cooler and mechanical room. The decision was appealed by an Opponent to the Wicomico County Circuit Court. On September 23, 2009, Judge Donald C. Davis ordered that the Board's decision be vacated and the case remanded back to the Board for "further consideration and to make findings of fact." The Court's order is attached. All interested parties from the December 2008 Public Hearing have been notified that these are on the agenda for the Dec. 3, 2009 meeting. However, the Board "closed" the record in December 2008 so that no additional public testimony will be accepted.

Mr. Rainey stated that he would like the Findings to reflect the agreement made between the parties at the table the night of the original hearing. Mr. Pusey stated that he would add that into the Findings.

Upon a motion by Mrs. Layton, seconded by Mr. Baker, and duly carried, the Board **APPROVED** the Findings of Fact for the Crockett Family Investments, LLC case as amended.



**#SA-0906                    Rachel Chambers – Administrative Appeal – Appeal of the  
Decision of the Director of the Department of Building,  
Permits & Inspections that a Single-Family Dwelling was  
Illegally Converted to a Two-Family Dwelling – 205  
Elizabeth Street – R-8 Residential District.**

Upon a motion by Mr. Baker, seconded by Mrs. Layton, and duly carried, the Board **POSTPONED** the above-reference Administrative Appeal until the Board's January 7, 2010 meeting.



**ADJOURNMENT**

With no further business, the meeting was adjourned at 7:28p.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.

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Dave Rainey, Vice Chairman

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John F. Lenox, Secretary to the Board

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Beverly Tull, Recording Secretary