

## MINUTES

The Salisbury Board of Zoning Appeals met in regular session on February 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:**

Gary Pusey, Planner  
Gloria Smith, Planner  
Beverly Tull, Recording Secretary



Mrs. Layton, Chairman, called the meeting to order at 6:59 p.m.

**MINUTES:**

The Board unanimously approved the minutes of the January 7, 2010 meeting.

**#SA-1002**

**James Tarrance & Gail F. Hull, LLC – Reconstruction of a non-conforming single-family residence – 616-618 West Main Street – Central Business District.**

Mrs. Gail Hull and Mr. James Tarrance came forward. Mr. Gary Pusey presented and entered the Staff Report and all accompanying documentation into the record. Mr. Pusey summarized the report explaining that the applicants propose to construct a single-family residence on a lot that recently contained a residence, but has since been demolished. The property is zoned Central Business District (CBD), which does not allow single-family dwellings. The previous residence was a legal nonconforming use, and the Applicants request approval to construct a new single family dwelling. The Code allows nonconforming uses to be "changed" or "altered" only after approval by the Board. The Planning Staff recommended approval, based on the analysis contained in the Staff Report.

Mr. Eure stated that the Building Department concurred with the Staff Report. It is the applicant's wish to use the same footprint that exists from the house that was torn down. The lot is small and wouldn't accommodate the uses permitted in the Central Business District. This lot has been improperly zoned and should be zoned R-5 Residential like the surrounding area. The Board has granted similar requests in this area in the last few years. Mr. Eure stated that the Building Department recommended approval of the request.

Ms. Hull requested approval to replace the home that was torn down.

Upon a motion by Mr. Rainey, seconded by Mr. Williams, and duly carried, the Board **APPROVED** the request to allow the Applicants to construct a single-family residence on this property, based on the criteria listed in Section V(c) of the Staff Report.



**#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.**

Mr. T.J. Maloney and Ms. Rachel Chambers came forward. Mr. Gary Pusey presented and entered the Staff Report and all accompanying documentation into the record. Mr. Pusey summarized the report explaining that the applicant owns a residential property at 205 Elizabeth Street that has been used as a two-family residence. The property is zoned R-8 Residential, which does not allow two-family residences. He presented a summary of the zoning of the property, and stated the Staff found that in order for the two-family use to be considered a legal nonconforming use, the two-family use would have had to be established prior to August 3, 1959, and with no cessation of the use occurring for a continuous period of one year or more. The applicant has submitted information, including affidavits, that support her contention that the applicant's property has been used continuously as a two-family residence since at least 1955, and perhaps as early as the early 1940s.

Mr. Eure stated that the applicant had submitted further information to support the contention that this was a legal nonconforming use. The City has had other issues with this property but nothing that should be addressed by this Board. Mr. Eure stated that he agreed with the Planning Department that the applicant had submitted evidence to support that the two-family use of the property was a legal nonconforming use.

Mr. Rainey questioned if there was anything to rule on, since the Staff is supporting the applicant's position. Mr. Cornbrooks responded that the

applicant has requested that the Board overturn the letter from the Zoning Official and that needs to be ruled.

Mr. Maloney stated that he agreed with the most recent Staff Report and also with Mr. Cornbrooks. The City Zoning Official made a determination and with the appeal and the presence of the affidavits, the applicant has requested that the Zoning Official's decision be changed. Mr. Maloney introduced for the record the original affidavits as **Applicant's Exhibits A-1, A-2 and A-3.** In 1991, there was an inventory done of the properties in the Newtown area that show the property in question as being a two-family residence. This was entered as **Applicant's Exhibit B.** Mr. Maloney stated that the City's legal analysis is correct. Mrs. Warwick's affidavit stated that her family had owned the property next door for over 50 years and that her parents had resided in the second floor apartment of 205 Elizabeth Street in the 1940's. Mrs. Wolfe's affidavit stated that she had managed the property for at least 40 years. Mrs. Chamber's affidavit stated that there had been no lapse in time of the property being a two-family residence. Mr. Maloney submitted the receipt for the registration fee for 205 Elizabeth Street as **Applicant's Exhibit C.** There have been some issues with the occupants of one (1) of the units. He discussed letters that had been received from the Neighborhood Service and Code Compliance Department regarding issues such as over occupied, repairs needed for the front porch, the need for a second trash receptacle and these letters were submitted as **Applicant's Exhibit D.** Mr. Maloney submitted the form from MDE for lead paint that stated that it was a two family residence and this was **Applicant's Exhibit E.** Mr. Maloney stated that the Staff Report was mostly accurate. The property was converted to a two (2) family residence in the 1940's or the early 1950's. The most recent Staff Report states correctly that this is a legal nonconforming use regardless of the licensing issue. Mr. Maloney provided the Board and Mr. Cornbrooks a copy of the Court of Special Appeals Case of Maryland entitled "Mayor and City Council of Baltimore v. Dembo, Inc.," which was of similar circumstances. This was entered as **Applicant's Exhibit F.** He stated that Ms. Chambers would be registering the second unit after the completion of this case. The police calls for service were discussed and he explained that several of the calls came from the residence for assistance and with the exception of two (2) calls, all were cleared with no action taken since July of 2008. The two (2) calls that had action taken were for an attempted suicide and for trespassing. Mr. Maloney explained that Ms. Chambers does not reside in Salisbury and that her goal is to get the property back to the two-family status and the property has also been put up for sale. Ms. Chambers is attempting to obtain a property manager until the property can be sold.

Mr. Baker questioned Mr. Cornbrooks if the statement in the Staff Report about "failure of the applicant to register....." was a registration issue and not a zoning issue. Mr. Cornbrooks responded in the affirmative.

Mr. Williams questioned what could have affected the zoning to make this convert back to a single family residence. Mr. Eure responded that in order

for this house to convert back to a single family residence, it would have to remain empty for more than one (1) year. Mr. Williams questioned if the property had always been occupied. Ms. Chambers responded in the affirmative.

Mrs. Layton questioned if there was access to the property through the Milford Twilley parking lot. Ms. Chambers responded in the affirmative. Mr. Maloney added that at one time the Twilley's owned the property. There is an easement on record for access to the garage from the property that used to be a bank and is now the offices for the Twilley rental management business.

Mr. Williams stated that there were affidavits from Mrs. Warwick, Mrs. Wolfe, and Ms. Chambers but no affidavits from the other owners. Mr. Pusey stated that Mrs. Wolfe's affidavit stated that she managed the property during the time that it was under other ownership and her affidavit further states that it was never unoccupied during this time. Mr. Williams questioned if the case was before the Board solely for Ms. Chambers. Mr. Eure responded that if either unit wasn't occupied for more than a year then the house becomes an illegal nonconforming use. Mr. Williams stated that there wasn't any evidence to the contrary so he must assume that it is correct. If there was a gap in the evidence then there would be a wrinkle. Mr. Pusey stated that Mrs. Wolfe stated that at all times the residence was a two-family residence. Mr. Williams questioned where it was stated. Mr. Maloney responded that Mrs. Wolfe explained that the property had always been occupied in Paragraph #6 of her affidavit.

Ms. Aleta Davis, Newtown Resident, stated that she didn't see anything in the description of the house in the deeds that stated that it was a two family residence. Mr. Cornbrooks responded that the deeds don't discuss two family residences; they are more of a description of the property and do not provide details of the improvements on the property. Ms. Davis stated that her grandparents had built a house that was a two family residence but it had two separate addresses.

Mr. Jim Ireton, 203 W. Philadelphia Avenue, stated that it was documented in the Staff Report that there were troubles with the property but these were not under the purview of this Board. In 1936 the property was zoned Industrial and there is no evidence that the property was a two family residence. In 1959 the property was zoned Commercial and the lot was less than what is allowed and there is no evidence that the property came to the City for a nonconforming use. In 1983 the property was zoned R-8 with a two family residence allowed if there was enough square footage but no special exception was requested. There have been four (4) different times that this property has not proven to be what the Code allows. The burden of proof falls on the owner who wouldn't bring the issue up due to monetary loss. Mr. Ireton questioned if the property was ever a legal use. He stated that he wasn't satisfied with the legal records and requested that the Board give an extension of time for more legal work to be done.

Mr. Maloney stated that he appreciated Mr. Ireton's comments. He stated that the issue of the special exception and the nonconformity is governed by specific criteria. The use is no longer conforming to the law when the Code was changed. The use occurred prior to the change giving the property the nonconformity. The use has always been a two family residence. The nonconformity came in 1959 when the Code changed. There is an affidavit in the record stating that the house never lost the nonconforming use. When the property got the nonconformity it had been legal at the time. The property has been two (2) units since 1955 and met all the requirements under the Salisbury Zoning Code. The use has never lapsed to make it illegal and both units have been occupied from 1955 until October 2009.

Mr. Ireton stated that he appreciated the affidavits but without affidavits with lease agreements then it can't be verified that the house was a two family residence and occupied the entire time. This is the heart of a residential neighborhood. Mr. Ireton stated that he wasn't disputing the affidavits that had been submitted. Mr. Ireton again requested an extension of time to decide if the 1936 house was used as it was supposed to be.

Ms. Sue Ellen Smith, 401 N. Division Street, questioned item #6 of Mrs. Wolfe's affidavit as it stated that at all times from 1955 until the present that both units were occupied. She stated that Mr. Maloney had stated that both units were not occupied, as one of the units has been vacant since October 2009. Ms. Smith stated that she had only lived here for a year but that there should be some questions regarding the affidavits information. She questioned the nonconforming use in regards to the lot's square footage. Mr. Eure explained that the square footage requirement was more to prevent overcrowding of the lot. Ms. Smith stated that there was an obligation for the safety of the people. She questioned if the definition of a two (2) family dwelling means that two (2) families live in a single building. Mr. Pusey responded that the definition of a two (2) family dwelling means that two (2) families reside in one (1) structure, as "family" is defined by the Code. Ms. Smith stated that prostitution was taking place in this house therefore it was not a family and ignorance of the law is not an excuse. She questioned if Ms. Chambers would lose her license as a landlord if more than three (3) service calls to the residence were made. There were 22 service calls and with the police breaking down the door on one (1) of the calls. She questioned if a business had been in this home and not two (2) families. Ms. Smith stated that Ms. Chambers should lose her landlord license. She added that she believed that more things had slipped through the cracks regarding this residence.

Mr. Nemazie questioned Mr. Cornbrooks if a continuance would bring forth any more evidence to help the Board make a decision. Mr. Pusey stated that the Board could continue the case and Staff will continue to research this case, but to this point Staff has not been able to uncover any additional information.

Mr. Nemazie questioned if the Board could require the lease agreements. Mr. Cornbrooks responded that the Board has evidence from the applicant and no evidence has been submitted to the contrary so there is no indication that there will be any luck to find anything else to the contrary regarding this case.

Mr. Rainey stated if there was nothing to refute the affidavits and evidence is produced down the road then the Zoning Official could change the determination and this case could come back.

Mr. Rainey stated that the structure is a legal nonconforming use based on the affidavits. The Board is only here to decide if it is a legal nonconforming use and all other issues aren't part of the Board's decision.

Mr. Pusey stated that one (1) of the reasons that a public hearing is held is to give people a chance to provide additional evidence.

Ms. Sue Ellen Smith, 401 N. Division Street, stated that Ms. Chambers and Mr. Maloney have both said that the home has not been a two (2) family residence since October 2009 when the affidavits state that it currently has two (2) families living there. She added that this is a legal meeting. She questioned if the easement would confer with the property. Mr. Maloney responded in the affirmative, explaining that the easement is for the house and comes through the Twilley Rental Office property.

Ms. Nancy Marusco, 117 Elizabeth Street, stated that she is President of the Newtown Association and this house had come under their radar because of the number of service calls and the registered sex offender that was residing there.

Mr. Jeff Smith, 401 N. Division Street, stated that Mrs. Wolfe's affidavit stated that she was over the age of 18 when she did the affidavit and that she has knowledge from 1955 which would have made her approximately five (5) years old in 1955. He questioned the legitimacy of this statement.

Mr. Ireton stated that he had concerns when there were questions from the Board to the Staff. He questioned why the applicants shouldn't be pressured to provide more information. Mr. Nemazie responded that the Board has a process to follow. Mr. Ireton stated that the tough questions should come from the Board and not the citizens. He requested that the Board ask the tough questions to provide the burden of proof.

Mr. Rainey questioned if there was any reason to doubt the affidavits given. Mr. Cornbrooks responded that the decision is up to the Board with respect to the question of the house being occupied from 1955 to now by two (2)

families. He stated that the affidavits are done to the person's best knowledge. As far as the house not having two (2) families since October 2009, that has not let the dual occupancy drop for more than one (1) year. The burden of proof lies with the applicant. If the applicant has met the burden of proof then it switches to the City to prove otherwise. The decision of the Board is to decide if anything contradicts anything that the applicant has submitted and so far nothing has been heard to offer any contradictions.

Mr. Rainey questioned that this was really a licensing issue. Mr. Eure responded in the affirmative.

Mr. Maloney referred back to Mrs. Warwick's affidavit in paragraph 4 which read from all times from 1957 until 2005 that the home at 205 Elizabeth Street had been two units and occupied. This information was based on Mrs. Warwick's personal knowledge but she could only offer her knowledge up to 2005.

Mr. Williams stated that he didn't feel extremely comfortable with the evidence presented especially with Mrs. Wolfe's affidavit. The burden of proof was on Ms. Chambers and Mr. Maloney. The City's Attorney, Mr. Cornbrooks, has said that now the burden of proof is on the City and whether Staff has the time to find anything to the contrary. If at any time something is found contrary to what has been provided, then this matter can come back before the Board. Mr. Williams added that he would have liked to have seen lease or property agreements provided as well as information from the other three (3) owners.

Mr. Maloney stated that the evidence that has been presented was done to rebut the Zoning Official. The Staff Report was accurate. The law and the Code did change and the Staff's analysis and recommendation is proper because it follows the law. He requested that the Board adopt the Staff's recommendation.

Upon a motion by Mr. Rainey, seconded by Mr. Baker, and duly carried, the Board **UPHELD** the Applicant's contention that the two-family residence at 205 Elizabeth Street is a legal nonconforming use, and may continue to operate as such, subject to all requirements of Salisbury's Zoning Code as to legal nonconforming uses. The Board's decision was based on testimony presented and evidence entered into the record, and the information presented in the Staff Report dated January 27, 2010, including all attachments to the Staff Report.



**ADJOURNMENT**

With no further business, the meeting was adjourned at 8:11 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.

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Patricia Layton, Chairman

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John F. Lenox, Secretary to the Board

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Beverly Tull, Recording Secretary