

## MINUTES

The Salisbury Board of Zoning Appeals met in regular session on January 7, 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:**

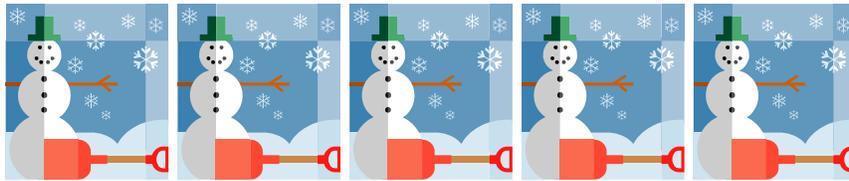
Henry Eure, Building, Permits & Inspections Dept.  
Skip Cornbrooks, City Attorney's Office

### **PLANNING STAFF:**

Gary Pusey, Planner  
Beverly Tull, Recording Secretary



Mrs. Layton, Chairman, called the meeting to order at 6:58 p.m.

**MINUTES:**

The Board unanimously approved the minutes of the December 3, 2009 meeting.

**#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. Maloney explained that he was requesting a postponement of the case until the February meeting. He stated that he had met with Ms. Chambers the week before Christmas but with the holiday season, actual work on the case didn't begin until after Christmas. During the brief time that Mr. Maloney has had the case file, there have been several meetings with the Zoning Office. During the meetings, it became apparent that he needed to research and provide evidence that the two-family use had existed prior to the City's 1959 Zoning Code, and not the 1983 Code as initially thought. Mr. Maloney stated that he needed additional time to do the research on this property and locate prior owners of the property. Mr. Maloney added that part of the issue was having two tenants in the house, therefore, the tenants causing most of the issues have been gone since October and that unit will remain vacant until this case is settled.

Mr. Pusey stated that Staff had no problems with the requested continuance, noting the research that needed to be done related to the City's first Zoning Code that was adopted in 1936 and remained in effect until August 1959. Also, as noted in the letter requesting the continuance, currently the house is being used as a single-family residence and will remain single-family pending the outcome of this appeal to the Board. Mr. Eure concurred.

Upon a motion by Mr. Rainey, seconded by Mr. Baker, and duly carried, the Board **CONTINUED** the above-reference Administrative Appeal until the Board's February 4, 2010 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 summarized for the Board that this case was continued from the December 2009 meeting, at which time the Staff recommended approval of the 2 ft. fence height variance with a condition requiring landscaping. Mr. Buckley expressed concern at that time that he hadn't had an opportunity to discuss the proposed condition with the property owner, and requested a one month continuance. Mr. Pusey stated the Staff's recommendation remained the same.

Mr. Eure stated that the Building Department's recommendation hasn't changed since the December meeting.

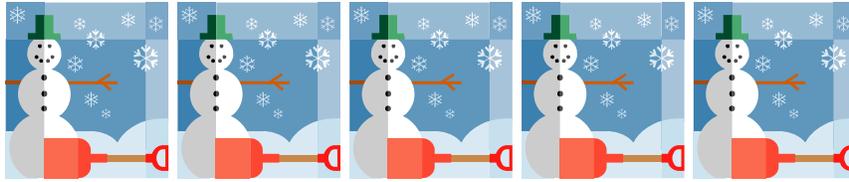
Mr. Buckley stated that he had spoken with Ms. Smith and she had no problems installing the required shrubbery. He requested a reasonable time frame to plant the trees due to the weather.

Mr. Eure recommended that all the trees be planted no later than May 1, 2010.

Upon a motion by Mr. Rainey, seconded by Mr. Nemazie, and duly carried, the Board **APPROVED** the requested 2 ft. Fence Height Variance for 1105 New Bedford Way, based on the criteria listed in Section V(c) of the Staff Report and subject to the following Condition of Approval:

**CONDITION:**

1. A minimum of eight (8) evergreen or flowering shrubs shall be installed along the outside of the fence, between the fence and North Schumaker Drive prior to May 1, 2010.



**#SA-1001      Adkins, Potts, and Smethurst, representing Five Guys Burgers – 20 Space Parking Variance for a Proposed Restaurant in an Existing Building – General Commercial District.**

Mr. Steve Smethurst, Mr. Robert Heron, and Mr. Michael McLaughlin 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 planning to occupy a portion of an existing vacant building that totals 6,000 sq. ft. The Applicant's business (a restaurant) will occupy approximately 3,600 sq. ft. of the building with the remainder of the building proposed for "retail use." Combined, the restaurant and retail use will require 55 parking spaces, and 35 spaces are being proposed. A variance of 20 parking spaces is being requested.

Mr. Eure explained that in addition to the walk up traffic, Salisbury is very restrictive in their parking requirements. He stated that he felt that the Zoning Code was very restrictive in this case. Mr. Eure stated that the Building Department recommended approval with a slightly different wording of the condition of approval.

Mr. Smethurst stated that one of the reasons that they couldn't do any better with the parking requirements was because the only way to reduce the parking was to eliminate square footage in the building which is justification for a variance.

Mr. Williams questioned Mr. Eure on how the Board would be assured that the next tenant complies with the parking requirements. Mr. Eure responded that in addition to the proposed condition being attached to the approval, an Applicant would need to obtain a building permit and occupancy permit before locating in the building. Mr. Eure's department would review the plans to ensure that the Board's condition and all parking requirements were being met.

Mrs. Layton questioned the cars that are currently parked on this property next to the Rental Equipment building. Mr. Heron responded that the cars will be moved and that the adjoining property owners were using those spaces while the building was vacant.

Mr. Williams questioned the number of employees. Mr. Heron responded that there would be no more than eight (8) employees on any shift and that they anticipated most of the employees would be college students.

Mr. Nemazie questioned if the wording of the condition of approval was problematic for any potential other tenant. Mr. McLaughlin responded in the negative.

Mr. Smethurst stated that Mr. McLaughlin and the other owners get to pick the tenant and the tenant must see Mr. Eure prior to getting any permits to utilize the building.

Mr. Williams questioned if the parking would handle the entire building. Mr. Eure responded in the affirmative.

Mr. Rainey questioned Mr. Eure that he stated that the remainder of the building wouldn't be able to be used as a restaurant but could be used as a take-out. Mr. Eure stated that he would like to amend his condition to state that no more than 12 spaces could be used to make the condition easier.

Mr. Smethurst requested approval of the requested variance.

Upon a motion by Mr. Rainey, seconded by Mr. Nemazie, and duly carried, the Board **APPROVED** the requested 20 space Parking Variance for Five Guys Burgers, based on the criteria listed in Section V(c) of the Staff Report and subject to the following Condition of Approval:

**CONDITION:**

1. Any use proposed for the remaining vacant portion of the building that results in more than 12 parking spaces being required, or any uses proposed for the entire building that results in more than 55 spaces being required, must receive an additional parking space variance before any occupation of the building can occur. Any potential future variance request shall be evaluated in accordance with all criteria of the City of Salisbury Zoning Code.



**ADJOURNMENT**

With no further business, the meeting was adjourned at 7:27 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