



City of Salisbury – Wicomico County

DEPARTMENT OF PLANNING, ZONING AND COMMUNITY DEVELOPMENT

P.O. BOX 870

125 NORTH DIVISION STREET, ROOMS 203 & 201

SALISBURY, MARYLAND 21803-4860

410-548-4860

FAX: 410-548-4955



JAMES IRETON, JR
MAYOR

TOM STEVENSON
CITY ADMINISTRATOR

RICHARD M. POLITT, JR
COUNTY EXECUTIVE

R. WAYNE STRAUSBURG
DIRECTOR OF ADMINISTRATION

MINUTES

The Salisbury Board of Zoning Appeals met in regular session on June 5, 2014, in Room 301, Government Office Building at 7:00 p.m. with attendance as follows:

BOARD MEMBERS:

Dave Rainey, Vice Chairman
Daniel Baker
Jordan Gilmore
Dave Nemazie (Absent)
Chad Brown

CITY STAFF:

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

PLANNING STAFF:

Gloria Smith, Planner
Beverly Tull, Recording Secretary



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

**MINUTES:**

The minutes of the February 6, 2014 meeting were approved as submitted.



#SA-1402 David Smith, on property owned by John E. Smith Real Estate Limited Partnership – 935 sq. ft. Expansion of a Legal Nonconforming Structure – 222 Florida Avenue – Neighborhood Business District.

Mr. David Smith 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 expansion of this legal nonconforming structure by construction of a 935 sq. ft. addition. The current structure is nonconforming with regard to the side setback. The Code requires Board approval for the proposed expansion.

Mr. Eure explained that this is a small building. The addition will be a benefit to the community. There are not a lot of vehicles that frequent the establishment. The Code does require parking. Mr. Eure stated that the Building Department recommended approval of the request with the condition listed in the Staff Report.

Mr. Smith stated that the tenant has been there for more than 20 years. This is a benefit to the community. He mainly services the ethnic community who walk to the store. The owner of the store has discussed putting in a side opening to handle money orders. The owner also needs some storage area. Mr. Smith noted for a point of reference that this used to be the Red Door Sub Shop.

Mr. Baker questioned Mr. Eure if the applicant does a new parking plan and can't meet the parking if he would have to come back for a variance. Mr. Eure responded in the affirmative, adding that he thought he could obtain a parking agreement. Mr. Smith stated that he would have to check into getting a parking agreement. Mr. Eure added that the Board could grant a variance on the parking at this meeting if they wished. Mr. Smith discussed the possibility of modifying the existing parking.

Mr. Rainey questioned if customers had to back up to the adjacent property. Mr. Smith stated that there are parking bumpers there now.

Mr. Brown questioned where deliveries are received. Mr. Smith responded that deliveries are received on the right side of the building or through the front door.

Mr. Rainey questioned if this was a nonconforming space. Mr. Eure responded that the spaces were complaint but that the drive aisle was not compliant. He added that a couple parallel parking spaces could be added near the angled spaces.

Mr. Rainey questioned if there was anything between the neighbor and this property other than the parking bumpers and who the bumpers belonged to. Mr. Smith responded that he didn't know who the bumpers belonged to but they were the only thing between the two (2) properties.

Mr. Eure stated that there was concern about spaces along the side of the building because there is no room to turn around.

Mr. Smith requested that the parking variance be granted as well as the enlargement of the nonconforming use.

Mr. Rainey stated that he had an issue granting a parking variance when it was not advertised.

Upon a motion by Mr. Baker, seconded by Mr. Brown, and duly carried, the Board **APPROVED** the requested addition to a legal nonconforming structure as submitted, based on the criteria listed in Section VI(c) of the Staff Report, and subject to the following Condition of Approval:

CONDITION:

1. The applicant shall work with the Building staff to create a usable parking arrangement or shall secure a shared parking agreement with an adjoining property.



#SP-1403

**Smith & Long Investment Properties, LLC, represented by Thomas J. Maloney
- Stay of Board Proceedings & Extension to Initiate Reconstruction of a
Nonconforming Structure - 237 Hazel Avenue - R-8 Residential District.**

Mr. TJ Maloney and Mr. Rodney Long 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 desire reconstruction/rehabilitation of a structure partially destroyed by fire. Under the Code, the applicants are required to rehabilitate the structure as a single-family residence. The applicants have requested a Stay in the proceedings until the MD Court of Special Appeals rules on an appeal regarding nonconforming uses. An extension of the one year time limit for initiating reconstruction of a nonconforming use is also requested. Board approval is required to Stay the proceedings until the MD Court of Special Appeals rules and Board approval is required for an extension of time to begin reconstruction of the residence.

Mr. Golba stated that the City agrees to what is being proposed. Mr. Eure can summarize the case.

Mr. Eure explained that this case is exactly what Mrs. Smith explained in the Staff Report. We are waiting for a decision to come back from the Maryland Court of Special Appeals before proceeding. The Zoning Code indicates that the applicants have one (1) year to reconstruct a nonconforming building or use that was damaged by fire. In the event that this might last longer than what is allowed, the applicant is wishing to extend that time for one (1) year which the Board has the ability to do.

Mr. Rainey questioned that the request was strictly to extend the period. Mr. Eure responded that they were requesting to extend the one (1) year time period. Mr. Rainey questioned when the one (1) year extension was done. Mr. Eure responded that it would be June 5, 2015 and also approve their request for the Stay.

Mr. Tilghman stated that the City wanted to enter into this agreement. The City doesn't have the right on its own to act, this Board must decide. It says under Section 17.12.120A that the Board shall fix a reasonable time and place for the public hearing, application or appeal on a matter. Under that, normally a reasonable time would not be to wait until the Court of Special Appeals acted but since both the City and the applicant don't wish to go forward slugging it out and spending unnecessary money or waste anyone's time, everyone is in agreement that they would like to wait until the Court of Special Appeals gives us guidance on what the law is with regards to this multifamily dwelling within a single family neighborhood and when and if there has been a waiver on when to enforce that law. Mr. Tilghman stated that he didn't think that the one (1) year period really applies under paragraph E because no action has been taken by the Board. That gives you the right to extend once the action is done but really the only requirement that the Board has is a reasonable time. The applicants are agreeing and Exhibit B shows that they are actually going to convert it to a one-family dwelling in the interim so there is no member of the public who can complain and the City doesn't mind because as far as they are concerned they are in compliance and if he is willing to wait rather than waste the time and money on legal fees.

Mr. Rainey questioned if the Board was just extending the time limit. Mr. Tilghman stated that the Board was approving the wait that has been agreed to by the parties as reasonable and agreeing to set the date after that decision has been rendered. Mr. Rainey questioned that they would be asking for possibly more than a year. Mr. Tilghman responded in the affirmative, explaining that we are waiting for the Court to act but the Court is waiting for the City to brief them so it is going to be more than a year. Mr. Rainey questioned that if the Board extends the time limit for initiating the repairs by one (1) year then they will have to come back. Mr. Tilghman responded that he didn't think the Board should do the extension for a year. He suggested that the Board Stay it until a decision is rendered in the case. He added that the Board is only bound to do it within a reasonable time. With all the parties in agreement and the

public not being harmed, it is reasonable to extend it until a decision is rendered. Mr. Rainey questioned that the Board was granting a Stay of the Board of Zoning Appeals proceedings until the Maryland Court of Special Appeals acts. Mr. Tilghman stated that you are waiting on a decision on the case of the City of Salisbury Board of Zoning Appeals versus Riverside Investments. Mr. Rainey stated that there is no one (1) year extension as is listed in the Staff Report. Mr. Tilghman agreed, explaining that he didn't think that the one (1) year was really applicable. Mr. Tilghman stated that the Board could approve the agreement of the parties on the record. There are other elements to the agreement. The City is agreeing not to further the force against the property and not to claim the delay of more than one (1) year but that isn't really relevant to the decision that has to be made today.

Mr. Maloney stated that the goal was to not have to go to Court or file an appeal. By Staying and having an agreement like this, it protects the applicant in two ways.

Mr. Rainey stated that the Board is just accepting the agreement and not granting a time limit to begin repairs.

Mr. Maloney stated that Mr. Tilghman and Mr. Golba summarized it properly. The reason why the agreement was done was that under the Code if you have a structure that is a nonconforming use and it has some damage to it, the Code requires that it be fixed within a period of a year or the use lapses. The other issue is that it is a nonconforming use under the Zoning Code, if the use lapses for more than a year and a day, then the applicant can't reoccupy it as a nonconforming use. The agreement puts all this on hold so that the City can't come back a year and a month from now and say that it hasn't been occupied by two families therefore you can't have a two-family dwelling.

Mr. Maloney requested that the Board accept the agreement.

Mr. Tilghman noted that no one had Exhibit B and he had reviewed Exhibit B. He requested that it be included in the record as it should be.

Mr. Eure noted for the record that he has done some building inspections since the permit was issued and they are compliant.

Upon a motion by Mr. Baker, seconded by Mr. Gilmore, and duly carried, the Board granted a **STAY** on the proceedings regarding the above-noted property until the Maryland Court of Special Appeals renders a decision on an appealed case (Riverside Investment Corporation #02617) regarding nonconforming uses. This Stay includes the extension of time for initiating reconstruction of a nonconforming use partially destroyed by fire. These decisions were predicated on the information in the Staff Report and Exhibit B in the Stay Agreement.

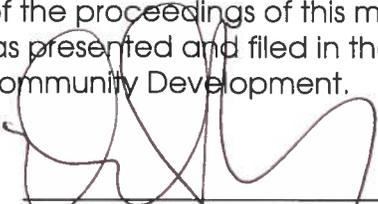


ADJOURNMENT

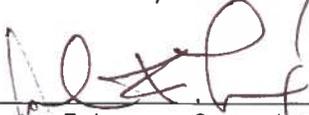
With no further business, the meeting was adjourned at 7:32 p.m.



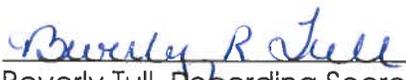
This is a summary of the proceedings of this meeting. Detailed information is in the permanent files of each case as presented and filed in the Salisbury-Wicomico County Department of Planning, Zoning and Community Development.



Dave Rainey, Vice Chairman



John F. Lenox, Secretary to the Board



Beverly Tull, Recording Secretary