



# 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

JOHN R. PICK  
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 March 7, 2013, 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  
Lynn Cathcart  
Dave Nemazie

### CITY STAFF:

Henry Eure, City Building, Permits, and Inspections Department  
Mark Tilghman, City Solicitor  
Pete Golba, Asst. City Solicitor

### PLANNING STAFF:

Gloria Smith, Planner  
Beverly Tull, Recording Secretary



Mrs. Layton, Chairman, called the meeting to order at 7:19 p.m.

**MINUTES:**

The minutes of the December 6, 2012 meeting were approved as submitted.



**#SA-1104-13A**      **Riverside Investment Corp., Inc. – Rehearing ordered by Remand from the Circuit Court of Wicomico County – September 25, 2012 – Administrative Appeal – Determination that a two-family dwelling is not an illegal nonconforming use- 507 Poplar Hill Avenue – R-5 Residential District.**

Mr. TJ Maloney, Mrs. Laura Hay, and Mr. Mark Reeves came forward. Mrs. Gloria Smith presented and entered the Staff Report and accompanying documentation into the record, with the exception of the Applicant's Exhibits. She summarized the report explaining that the applicant owns a residential property at 507 Poplar Hill Avenue that is being used as a two-family residence. The property is zoned R-5 Residential, which does not allow two-family residences. The Director of the Department of Building, Permits, and Inspections notified the owner by a letter dated April 8, 2010, that the property has an illegally converted dwelling unit. Documentation of a legal nonconforming use was required within 30 days or the Code allows for appeal of the decision to the Board. As provided by the Code, the Applicant appealed the Director's decision, taking the position that the two-family use is a legal, nonconforming use that was established at a time when the City's Zoning Code allowed two-family dwellings in this property's particular zoning district. The Appeal was heard by the Board on September 1 and October 6, 2011. The Board's decision to Overturn the ruling of the Department of Building, Permits, and Inspections was appealed by the City of Salisbury. On September 25, 2012, Judge Donald C. Davis of the Wicomico County Circuit Court vacated the Board's decision and remanded the case to the Board for a new hearing based consideration of "the failure of the Board to make Findings of Fact and indications that the Board did not properly assign the burden of proof..."

Mr. Eure stated that there was no record or proof that this home was remodeled before 1936. Between 1959 and 1983, there is no proof or evidence that it was converted or came to the Board for a special exception. He requested that

the Board uphold the Building Department's determination with the same condition that Mrs. Smith listed in the Staff Report.

Mr. Maloney wanted to get some procedural issues resolved. He questioned if Mr. Golba was representing the City and Mr. Tilghman was representing the Board that he had an objection as it was a due process violation that the City Attorney was representing both the City and the Board.

Mr. Maloney questioned Mrs. Smith if she had taken out Attachments #5-10. Mrs. Smith responded in the negative, explaining that they were submitted with the original application for the appeal. The Applicant's Exhibit's #1-8 were excluded because they were not part of the original record.

Mr. Maloney introduced Applicant's Exhibits #1-8. Mr. Golba objected, explaining that under the new rule any evidence in the form of affidavits can't be submitted without evidence to back them up. Mr. Maloney objected, stating that the case began before the new rules went into effect. Mr. Tilghman stated that he didn't agree. Mr. Maloney stated that the former City Attorney stated that the case would proceed under the old rules which was confirmed with Mr. Lenox via phone conversation today. Mr. Tilghman responded that it is an ordinance and not a new rule, therefore an ordinance cannot be waived. Mr. Maloney responded that he was told that the new ordinance was not applicable in this case. If the new ordinance is applicable, then a recess is needed to see if the applicant wants to proceed under the new rule. Mrs. Hay added that it was consistent with case law that if the laws changes, the case continues under the original rules. Mr. Tilghman stated that this was a brand new hearing and the old hearing doesn't apply.

Mr. Rainey questioned shouldn't there be a clear direction as to how to proceed. Mr. Tilghman responded that the case should proceed under the new law as it exists. Mr. Rainey stated that the case began a year and a half ago and started before the ordinance went into effect. Mr. Tilghman responded that there was a case a year and a half ago but it was vacated.

Mr. Nemazie requested to have the word vacated defined. Mr. Tilghman responded that Judge Davis vacated the decision therefore it legally didn't happen and the case must start from the beginning.

Mr. Maloney stated that his problem with that was that he was before the Board with a request for a hearing that he filed on May 3, 2011. At the time the rules of procedure and the rules of this Board were as they were at the time that he requested the appeal. Since then, Mr. Reeves has not received a new violation so a new hearing has not been requested. This hearing is about the original request that was filed on May 3, 2011. It is disingenuous to change the rules now, especially when there was an agreement with the former City Attorney to proceed under the old rules and that was discussed with Mr. Lenox today.

Mrs. Layton stated that she was hearing that this case should be called off until Mr. Lenox could be present at the meeting. This case will have to be heard under the new rules as a brand new case. This case was sent back from the judge for a new hearing. Mr. Maloney stated that this is not a model of clarity. Mr. Maloney stated that there were procedural difficulties. He questioned Mr. Tilghman when the current rules of procedure were adopted. Mr. Tilghman responded that the new rules were adopted on July 23, 2012. Mr. Tilghman added that Judge Davis' decision was rendered on September 25, 2012. Mr. Maloney stated that the Judge sent it back for a new hearing and it is based on his request for a hearing that was well before the Judge ruled and well before the new rules took effect. Mr. Maloney requested a five (5) minute recess to look at the Judge's opinion and the new rules so that they could possibly come to an agreement on how to proceed.

Mr. Maloney stated that his client had requested to proceed with the hearing.

Mr. Rainey questioned based on what rules was the case proceeding. Mr. Maloney responded that they were going to proceed and see where it goes. He added that based on Mr. Golba's objection, he was withdrawing the exhibits he had originally tried to enter.

Mr. Maloney questioned Mrs. Smith if this property would have had to have been converted to four (4) units prior to 1936. Mrs. Smith responded in the affirmative. Mr. Maloney stated that she had included in the Staff Report copies of the Zoning Map from 1931. Mrs. Smith responded in the affirmative. Mr. Maloney questioned the difference between Attachment #3 as the 1931 Zoning Map and Attachment #4. Mrs. Smith responded that Attachment #3 is the 1931 Zoning Map and Attachment #4 is labeled as Zoning Map, City of Salisbury, dated April 24, 1931 but then underneath the signature block and between the names of the Chairman and Commissioners, there are several revision dates starting with August 12, 1947 and going through November 2, 1956. Mr. Maloney questioned if the larger map was to the right of Mrs. Smith. Mrs. Smith responded in the affirmative. Mr. Maloney questioned if the color coding on Attachment #4 was on the original map. Mrs. Smith responded that she was showing a full size of version of Attachment #3 and #4. After comparing the two (2) maps, any changes that were found were marked on Attachment #4 in color. Mr. Maloney questioned if the color coding was on the original map or if Mrs. Smith added it. Mrs. Smith responded that she added it to show the difference between Attachment #3 and Attachment #4. Mr. Maloney questioned if the map with the color coding was unsigned. Mrs. Smith responded in the affirmative, explaining that we have several copies of the map in our possession in the Planning Department and none of them have signatures on them. Mr. Maloney questioned that there are several iterations of the 1931 Zoning Map but none of them are signed by the Mayor and Council. Mrs. Smith responded in the affirmative. Mr. Maloney questioned that the references to the size of the property all comes from the 1936 Code. Mrs. Smith responded in the affirmative. Mr. Maloney questioned if Mrs. Smith had a copy of the 1936 Code with her. Mrs. Smith responded in the affirmative. Mr. Maloney requested

that Mrs. Smith look at Section 33 on Page 19 under Identification and requested that Mrs. Smith read that section into the record. Mrs. Smith read the section into the record. Mr. Maloney questioned that the 1936 Zoning Code requires any authentic Zoning Map of the City to be signed by the Mayor and Council. Mrs. Smith responded in the affirmative based on the wording of the Code. Mr. Maloney questioned that the property of Riverside Investment must predate the 1936 Code because it doesn't meet those requirements. Mrs. Smith responded in the affirmative. Mr. Maloney questioned that Mrs. Smith had not located a signed Zoning Map. Mrs. Smith responded that there is not a signed copy of the Zoning Map in the Code. She added that she did not have access to all of the City's records so she wasn't sure where a signed copy was kept or who was responsible for it at that time. Mr. Maloney questioned that there is no evidence that there were ever any special exceptions or variances granted for this property. Mrs. Smith responded that based on the Planning Department's record that goes back to 1960, that is correct. Mr. Maloney questioned if the Zoning Office had any records of zoning issues for properties in the City between 1936 and 1960. Mrs. Smith responded in the negative. Mr. Maloney questioned that if there were a special exception or a variance for this property that was granted between 1936 and 1960 that the Planning Department wouldn't have any record of it. Mrs. Smith responded in the affirmative. Mr. Maloney entered into the record ***Applicant's Exhibit #1*** as Section 33, Page 19 of the 1936 Zoning Code.

Mr. Maloney questioned Mr. Eure if his review led him to reach the same conclusion as Mrs. Smith. Mr. Eure responded in the affirmative. Mr. Maloney questioned Mr. Eure if his department had records to refer to. Mr. Eure responded that he utilizes the records in the Planning Department. Mr. Maloney if Mr. Eure had in his office or had seen a signed 1931 Zoning Map. Mr. Eure responded in the negative. Mr. Maloney questioned if Mr. Eure's office kept building permit records for building permits, remodeling permits or those type of documents. Mr. Eure responded in the affirmative. Mr. Maloney questioned how far back the records go back. Mr. Eure responded that the official documents go back 20 years or so. Mr. Maloney questioned if there had been a time when Mr. Eure or his office had had an occasion to do anything with the records of his department. Mr. Eure responded in the negative that he had not done anything with the records in his department. Mr. Maloney questioned if someone had removed records from Mr. Eure's office. Mr. Eure responded in the affirmative. Mr. Maloney questioned in what period of time the records had been removed. Mr. Eure responded that in 1989, that due to lack of storage, records could be removed that were in excess of three (3) years old and that policy later changed approximately 20 years ago. Mr. Maloney questioned if during 2005-2006, if many of the records maintained in Mr. Eure's department were either moved or destroyed. Mr. Eure responded in the affirmative, explaining that the building plans were moved to City Yard and building applications and things of that nature were destroyed. Mr. Maloney questioned Mr. Eure if he had received any other documents that have a bearing on this matter that are not attached to the Staff Report. Mr. Eure responded in the negative. Mr. Maloney questioned Mrs. Smith the same question. Mrs. Smith responded in the negative.

Mr. Maloney requested that Mr. Reeves state his name and address for the record. Mr. Reeves responded that he was Mark Reeves, 1121 Cotton Patch Island, Salisbury. Mr. Maloney questioned if he was the owner of 507 Poplar Hill Avenue. Mr. Reeves responded in the affirmative. Mr. Maloney questioned how long Mr. Reeves had owned the property. Mr. Reeves responded that he purchased the property in 1990. Mr. Maloney questioned how the property was configured when he purchased it. Mr. Reeves responded that the property was four (4) units when he purchased it. Mr. Maloney questioned if anything had been done to change the structure. Mr. Reeves responded in the negative. Mr. Maloney questioned if the property had been maintained. Mr. Reeves responded in the affirmative. Mr. Maloney questioned that Mr. Reeves first learned of this with a letter of violation. Mr. Reeves responded in the affirmative. Mr. Maloney questioned Mr. Reeves what he did when he received the violation. Mr. Reeves responded that he tried to handle the matter himself and then hired Mr. Maloney. Mr. Maloney questioned Mr. Reeves about trying to take care of it himself, and he did. Mr. Reeves responded that he tried to deal with Mr. Holland's office. Mr. Maloney questioned what Mr. Reeves did. Mr. Reeves responded that he got some affidavits from people that were in the neighborhood that could attest to it being four (4) units. Mr. Maloney requested that Mr. Reeves look briefly at what was marked as Attachment #5-9 and questioned if these were the documents that were presented to Mr. Holland's office. Mr. Reeves responded in the affirmative. Mr. Maloney stated that they were still part of the record as they were part of the Staff Report so he requested that they remain part of the record. Mr. Golba renewed his objection, and reminded the Board about the language in Section 17.12.120.B about how affidavits can be used. Mr. Maloney questioned Mr. Reeves that he took the documents to Mr. Holland's office. Mr. Reeves responded in the affirmative. Mr. Maloney questioned Mr. Reeves about what his understanding was about what he had to do. Mr. Reeves responded that he had to get some documents. Mr. Maloney questioned if there was a time frame that he was given. Mr. Reeves responded that he wasn't given a time frame that he remembers. Mr. Maloney questioned if Mr. Reeves was told that he had to establish that the property had been converted prior to 1936, when the documents were produced to Mr. Holland's office. Mr. Reeves responded that he was told after he produced the documents that he had to establish that the property was converted prior to 1936. Mr. Maloney questioned Mr. Reeves if he had received any citations from the City of Salisbury. Mr. Reeves responded in the negative, then added that he may have gotten a weed notice. Mr. Maloney questioned if the properties were registered with the City of Salisbury Rental Inspections. Mr. Reeves responded in the affirmative. Mr. Maloney questioned how long the properties had been registered. Mr. Reeves responded that the properties had been registered since the registration requirement came into effect. Mr. Maloney questioned Mr. Reeves that four (4) units had been registered. Mr. Reeves responded in the affirmative.

Mr. Golba questioned Mr. Reeves if he had purchased the property in 1990. Mr. Reeves responded in the affirmative. Mr. Golba questioned Mr. Reeves if he had inquired what zoning or what use was allowed for the property. Mr. Reeves responded that he had asked to make sure since it was in Newtown that it was okay. As things have changed over the years, they have restructured things to make

things as they want it. It was approved as a four (4) unit house at the time. Mr. Golba questioned Mr. Reeves who had asked that it was approved. Mr. Reeves responded that he asked the realtor. It was presented as a four (4) unit apartment building and there was no reason to question it. Mr. Golba questioned that the realtor told Mr. Reeves that it was a four (4) unit apartment building. Mr. Reeves responded in the affirmative. Mr. Golba questioned that no one from the City had stated that it was a four (4) unit building. Mr. Reeves responded in the affirmative, adding that he purchased the property with an attorney. Mr. Golba questioned that based on what the realtor stated, Mr. Reeves presumed that the four (4) units were allowed. Mr. Reeves responded in the affirmative, adding that he wouldn't have bought a house that big if it was single family. Mr. Golba questioned that from the time the home was purchased in 1990 until 2000, Mr. Reeves did not apply for any special exceptions or variances with regards to this property. Mr. Reeves responded that he had not applied for any special exceptions or variances on the property. Mr. Golba questioned if he had applied for anything after 2000. Mr. Reeves responded in the negative, stating that the property is exactly as it was when he bought it. Mr. Golba questioned if prior to purchasing the house in 1990 that he had no knowledge of the previous owners applying for a variance or special exception with regard to the property. Mr. Reeves responded in the affirmative. Mr. Golba stated that since the first hearing, Mr. Reeves knew that the 1936 Code was an issue. Mr. Reeves agreed. Mr. Golba questioned that since the first hearing up until this meeting, no further proof or documentation has been submitted that this property was used back in 1936 as more than a single family home. Mr. Reeves responded in the negative. Mr. Golba questioned what specific time frame Mr. Reeves was told to go back to for documentation. Mr. Reeves responded that he didn't recall. Mr. Golba questioned that when Mr. Reeves purchased the property that all four (4) units were rented. Mr. Reeves responded in the affirmative. Mr. Golba questioned if they had been rented consistently since then. Mr. Reeves responded in the affirmative. Mr. Golba questioned the rental income on the four (4) units. Mr. Maloney objected to the question. Mrs. Layton stated that the income was not relevant to the Board. Mr. Golba stated that one (1) of the arguments that will be heard is an equitable argument on how this is unfair and it is relevant that it will show the opposite of that in the closing argument. Mrs. Layton reiterated that she didn't feel that it was relevant to the Board.

Mr. Maloney called Mr. Michael Day as a witness. Mr. Maloney requested that Mr. Day introduce himself. Mr. Day stated that he was Michael Day and resided at 119 E. Isabella Street, Salisbury, Maryland. Mr. Maloney requested that Mr. Day tell the Board how his property was located with respect to 507 Poplar Hill Avenue. Mr. Day responded that his property was on the corner of Poplar Hill Avenue and E. Isabella Street. Mr. Maloney questioned how long Mr. Day had lived there. Mr. Day responded that he purchased the house in 1983. Mr. Maloney questioned if Mr. Day knew the history of the house that he purchased. Mr. Day stated that his home was built in 1898 by his great grandfather. He added that his grandfather and his father both grew up in the house. Mrs. Layton questioned if this was Mr. Day's home that was being discussed. Mr. Day responded in the affirmative. Mr. Maloney questioned that the house across the street from 507 Poplar Hill Avenue had been the in the family for

several generations. Mr. Day responded in the affirmative. Mr. Maloney questioned that Mr. Day had owned the house for 30 years. Mr. Day responded in the affirmative. Mr. Maloney questioned if Mr. Day had resided there for those 30 years. Mr. Day responded in the affirmative. Mr. Maloney questioned what Mr. Day had observed with respect to the property at 507 Poplar Hill Avenue over the last 30 years. Mr. Day stated that since 1983 it had been a four (4) unit apartment building just as it is today. Mr. Maloney questioned Mr. Day how long he had been going to his residence. Mr. Day stated that he first went to his address in February of 1947. He added that he could remember being two (2) years old and going to that neighborhood. Mr. Maloney stated that Mr. Day had told him in an off-handed comment that the location of 119 E. Isabella Street was his first visit after the hospital. Mr. Day responded that he left the hospital and went to the house at 119 E. Isabella Street. Mr. Maloney questioned if before purchasing the house, if he visited the property often. Mr. Day responded that he did visit the property often. He added that he would live there for weeks at a time. Mr. Maloney questioned Mr. Day who resided in the house in 1950. Mr. Day responded that in 1950 his grandmother, Nellie Day and his two (2) great aunts Emma Day and Ethel Barnett lived in the house. Mr. Maloney questioned if there were apartments in his house at the time. Mr. Day responded that it was designated and listed as two (2) apartments when he bought the house but it wasn't divided into two (2) apartments with walls. There were two (2) kitchens and two (2) and a half bathrooms and it was set up as separate living quarters. Mr. Maloney questioned Mr. Day about his earliest recollection about 507 Poplar Hill Avenue. Mr. Day responded that he has always remembered it exactly the way it is with the exception of a screened in porch on the front. Mr. Maloney questioned how long the recollection was for. Mr. Day responded that it was from as long as he could remember. He explained that he had sat on the side porch facing Poplar Hill Avenue with his grandmother and discussed the two (2) apartment buildings across the street. Mr. Day stated that at Poplar Hill and Isabella there was a four (4) way stop light there. In 1965, there was a blinking yellow light because he lived at 505 Poplar Hill Avenue in 1965. Mr. Maloney stated that before he bought his family home, he lived on Poplar Hill Avenue. Mr. Day responded in the affirmative, stating that he had lived next door to 507 Poplar Hill Avenue. Mr. Maloney questioned how Mr. Day remembered 507 Poplar Hill at the time. Mr. Day responded that he remembered the house exactly as it is now without the screened porch. Mr. Maloney questioned if during the mid-1950's if Mr. Day had any recollection of apartments at 507 Poplar Hill. Mr. Day responded that he remembered the house exactly as it is now because his grandmother had discussed that there were two (2) nurses that lived there and they had what she called boarders and as he grew up he realized they were apartments. Mr. Maloney questioned that Mr. Day believed that his grandmother was referring to tenants but called them boarders. Mr. Day responded in the affirmative. Mr. Maloney questioned that Mr. Day remembered that information from back in the 1950's. Mr. Day responded in the affirmative. Mr. Maloney questioned if the staircase was on the side of the house. Mr. Day responded in the affirmative. Mr. Day stated that in 1983 when he purchased his home, Mr. and Mrs. Jackson had the bottom apartment and they owned the apartments and he was over there quite often. Mr. Maloney questioned Mr. Day that from the time he could remember, and

particularly from his ownership in 1983 and forward, were those units occupied. Mr. Day responded that the units were always occupied.

Mr. Golba questioned Mr. Day that he lived at 505 Poplar Hill Avenue. Mr. Day responded in the affirmative, explaining that he lived there from June 1965 until November 1965. Mr. Golba questioned when Mr. Day was born. Mr. Day responded that he was born in 1947. Mr. Golba questioned Mr. Day if he had ever been inside 507 Poplar Hill Avenue. Mr. Day responded in the affirmative. Mr. Golba questioned when he had been inside the house. Mr. Day responded that he had been in the house on and off after he bought his home in 1983. Mr. Golba questioned if Mr. Day ever knew anyone that personally lived at 507 Poplar Hill Avenue. Mr. Day responded that he was introduced to the two (2) nurses but he couldn't remember their names.

Mr. Rainey questioned if Mr. Day's grandmother lived at 507 Poplar Hill Avenue. Mr. Day responded in the negative, explaining that his grandmother had lived at 119 E. Isabella Street. Mr. Rainey questioned if he knew the house intimately. Mr. Day responded that he didn't know the house intimately but he knew the comings and goings. Mr. Rainey questioned if Mr. Day's grandmother had mentioned anything about 1936 and 507 Poplar Hill Avenue. Mr. Day responded that he only knew about things that went on in the house that he owns now.

Mr. Maloney requested that Mr. Keith lott come forward and introduce himself. Mr. lott came forward and stated his name and address for the record. Mr. Maloney questioned Mr. lott if he would tell the Board his occupation. Mr. lott responded that he was a licensed architect and a registered engineer. Mr. Maloney entered ***Applicant's Exhibit 2*** as Mr. lott's resume. Mr. Maloney questioned Mr. lott on how long he had been in Salisbury. Mr. lott responded that he had moved here in 1985. Mr. Maloney questioned if Mr. lott was familiar with the area in question. Mr. lott responded in the affirmative. Mr. Maloney questioned Mr. lott on where he resided when he came to town. Mr. lott responded that when he first came to town, he lived in an apartment downtown for the first year and a half or two (2) years and then he bought a house at 303 E. William Street. Mr. Maloney questioned if Mr. lott was familiar with historic structures. Mr. lott responded in the affirmative. Mr. Maloney questioned what his familiarity was. Mr. lott responded that the home that he purchased at 303 E. William Street was an old home built in 1915. He stated that he worked extensively on that house over a period of years, renovating. He added that he was essentially raised in a construction family and have many years of professional experience working on historic structures. Mr. Maloney questioned if he had ever offered any expert testimony on historic structures as part of his career. Mr. lott responded in the affirmative. Mr. Maloney questioned where that had been done. Mr. lott responded that he had done that mainly in Easton and Talbot County. Mr. Maloney questioned if Mr. lott had had the opportunity to go to 507 Poplar Hill Avenue to look at the structure that is the subject of this matter. Mr. lott responded in the affirmative. Mr. Maloney entered ***Applicant's Exhibit 3*** as photographs taken at the house. Mr. Maloney requested Mr. lott tell the Board what he observed upon his visit to 507 Poplar Hill Avenue. Mr. lott

responded that there were many indications that the fact that the house was constructed with multiple dwelling units. The first unit that was visited was the first floor which is entered through the original entrance and it is obvious that the stairway that was part of the home has been closed up. You can no longer access the second and third floor from the first floor apartment. To observe the second floor apartment, of which there are two (2), you had to go to a stairway that is located on the southerly side of the home and go in that entrance. The upper portion of the original center stair of the home to visit the two (2) apartments on the second floor and from there another door that leads to a third floor apartment, which is essentially an attic that has been converted. The third floor is fitted as a one-bedroom apartment. Mr. Maloney questioned if he visited all the apartments. Mr. Lott responded in the affirmative. Mr. Maloney questioned what he observed. Mr. Lott stated that in each of the apartments there is a full kitchen. The second floor apartments have porcelainized steel sinks with inner drainboards. The inspection of the plumbing showed copper drain pipes and copper water supplies. The cabinetry and the plumbing are indicative of the different construction eras. The kitchen sink is actually constructed in front of a window. When you are sitting at the kitchen sink, the original window sash is behind you. If you put a soap container up on the shelf it could fall down in the gap. The third floor apartment, or former attic, is equipped with a smaller kitchen but that kitchen has a small range, small refrigerator and a bathroom that is fitted under the eave of the traditional attic. Mr. Maloney questioned if the photographs that were attached to the report were photographs that Mr. Lott had taken. Mr. Lott responded in the affirmative. Mr. Maloney questioned the exhaust fan in the photographs. Mr. Lott responded that it was a kitchen exhaust fan. There is one (1) in the kitchen and also one in the bathroom. He stated that he was able to pull the cover off the fan and get a model number and it is listed as a Kenmore fan. The Sears Service Center has no record of that fan as their system didn't go back that far. Mr. Maloney questioned the Wadsworth fuse panel that was on the third floor. Mr. Lott stated that it was located immediately behind the kitchen and it is an electrical fuse panel that has the screw in glass fuses and pull out cartridge-like fuses that are shown in figure 3. Mr. Maloney questioned if he could date the era of those construction items. Mr. Lott responded that from his research, the circuit breaker was invented in the early 1950's. The old screw-in fuse boxes fell out of service in the early 1950's because they were replaced by the circuit breaker. Mr. Maloney questioned if this still had fuses. Mr. Lott responded that they still had fuses and one (1) of the fuses that was a pull out type cartridge was labeled. Mr. Maloney questioned the Art Deco label on the water heater. Mr. Lott responded that it was the water heater that serves the house currently. It is an 88 gallon water heater and was able to research it back to the 1950's and from the faceplate information he was confident that it actually predates that era. It is a huge water heater and is likely on its 70<sup>th</sup> year of service. Mr. Maloney questioned if this hot water heater was still in service. Mr. Lott responded in the affirmative. Mr. Maloney questioned Mr. Lott in his professional experience, would you see an 88 gallon water heater in a single family residence. Mr. Lott responded in the negative. Mr. Maloney questioned if the 88 gallon water heater served all four (4) units. Mr. Lott responded in the affirmative. Mr. Maloney questioned if it was connected by copper pipe. Mr. Lott responded in the affirmative. Mr. Maloney questioned how long the copper plumbing has been there. Mr. Lott responded that it

appears to be the same vintage as the water heater. Mr. Maloney questioned from the review of the property, had Mr. Lott reached a date for the conversion of the units in this structure. Mr. Lott responded in the affirmative. Mr. Maloney questioned when Mr. Lott thought the structure had been converted. Mr. Lott responded that the structure had been converted sometime in the 1940's. Mr. Maloney questioned if he had looked at the moldings and did they point to the 1940's. Mr. Lott responded in the affirmative, explaining that there is a lot of molding and millwork near the third floor that was from the 1910's and there is other molding that is of a different vintage but not a modern vintage. There has been a progression of repairs in the area of the foyer and it is obvious that there was a conversion sometime in the past and given the hardware it leads him to believe it was done in the 1940's. Mr. Maloney stated that Mr. Lott has rendered an opinion and offered him as an expert.

Mr. Golba questioned Mr. Lott if the conversion took place in the 1940's or 1950's. Mr. Lott responded that the conversion took place in the 1940's. Mr. Golba questioned if he wrote the written report and signed it. Mr. Lott responded in the affirmative. Mr. Golba stated that several times in the report Mr. Lott stated in the 1940's or the early 1950's. Mr. Lott responded in the affirmative. Mr. Golba questioned not the 1930's. Mr. Lott responded in the affirmative.

Mrs. Cathcart questioned what was used for hot water when the house was being built. Mr. Lott responded that many houses of this era had water exchangers. Mrs. Cathcart questioned what kind of piping was used before the water heater was installed. Mr. Lott responded that prior to this it would have been the thread and steel pipe but copper pipe has been used for most of this century. Mrs. Cathcart questioned if the stairway from the first floor was boarded up and when it was done. Mr. Lott responded in the affirmative, explaining that it appears that the conversion was done all at the same time.

Mr. Maloney entered multiple exhibits. ***Applicant's Exhibit #4*** was the Zoning Map. ***Applicant's Exhibit #5*** as an affidavit from Mark Reeves. ***Applicant's Exhibit #6*** was an affidavit from Robert Withey. Mr. Golba reiterated his objection to the affidavits. ***Applicant's Exhibit #7*** was an affidavit from Gary Hill. ***Applicant's Exhibit #8*** was an affidavit from Wirt Wolfe. ***Applicant's Exhibit #9*** was a historic district listing. ***Applicant's Exhibit #10*** was a memorandum of law on the burden of proof. ***Applicant's Exhibit #11*** was a memorandum of law on zoning estoppel. ***Applicant's Exhibit #12*** was the transcript of the original hearing. Mr. Golba objected based on the order that the case was remanded back for a rehearing.

Mr. Rainey questioned Mr. Eure on Attachment #11 of the Staff Report which was a letter from the Building Department. Mr. Rainey questioned if this letter was the basis for this case. Mr. Eure responded in the affirmative. Mr. Rainey requested that Mr. Eure read the first paragraph of the letter. Mr. Eure read into the record the first paragraph of the letter. Mr. Rainey questioned if the entire case was based on this letter. Mr. Eure responded in the affirmative. Mr. Rainey questioned what other records regarding this property were being referred to. Mr. Eure responded that

the records would be the Board of Zoning Appeals cases held by the Planning and Zoning office. Mr. Rainey questioned that Mr. Eure testified that they have none of those records. Mr. Eure responded that the Building Department wouldn't have those records because they are kept in the Planning and Zoning office. Mr. Rainey questioned that whatever was presented today was all the records that the Planning office has. Mr. Eure responded in the affirmative. Mr. Rainey questioned what records Mr. Eure's office had. Mr. Eure responded that his office had building permit records and they utilize the records in the Planning office. Mr. Rainey questioned that Mr. Eure had testified that the records don't exist prior to a certain year. Mr. Eure responded that those records do not exist but there is a ledger which is a listing of the permit applications back to 1960 or so. Mr. Rainey questioned that the whole issue with this is predicated on the maps. Mr. Eure responded in the affirmative. Mr. Rainey questioned that the current law allows how many unrelated persons to live in a residence. Mr. Eure responded that it depends on the district but in this district it is two (2). Mr. Rainey questioned if that was two (2) unrelated families or two (2) unrelated individuals. Mr. Eure responded that it would be two (2) unrelated persons.

Mrs. Cathcart questioned why it took so long to determine that this was illegal. Mr. Eure responded that he couldn't answer that.

Mr. Harvey Evans, 508 Poplar Hill Avenue, stated that he purchased his residence in 1989. This has always been an apartment building. The tenants are excellent. If the property is converted back to a single family dwelling, there is absolutely no yard. The property would not be bought and would become another blighted property of the City. Mr. Reeves takes excellent care of the property and it is an asset to the neighborhood.

Mrs. Sue Ellen Smith, 401 N. Division Street, stated that she had submitted a chart which showed research that she had done on this property a year and a half ago. After the first hearing and when it was continued, she didn't realize that the Board could not hear new testimony. All of the information on the chart came from the Library from the reference materials in the Maryland Room. She stated that this was a single family home up until 1959. Mrs. Smith listed phone numbers and names that were listed in the telephone books that she researched. In 1969, there were four (4) people were living in this residence as there were four (4) phone numbers listed for this address. Mrs. Smith stated that there is no penalty or payback for giving true information. The City contends that this was an illegal use but doesn't support anything that the plaintiff is actually saying in this case in reference to Mr. Hill's affidavit. She further referenced Mr. Hill's affidavit referencing Item 6 and the affidavit doesn't make the conversion okay. The owners had the right between 1990 and 2000 to request a special exception to make it a legal multi-family residence. Mrs. Smith discussed Attachment #6 which was the Historic District Rating sheet and stated that it doesn't go back to 1936 and doesn't prove that it was constantly used. There is a 1976 document that shows what the house was in 1974. Mrs. Smith entered **Protestant's Exhibit #1** as the Historic Survey. Mrs. Smith entered **Protestant's Exhibit #2** as City of Salisbury Ordinance #1142. Mrs. Smith entered **Protestant's Exhibit #3** as the Commission's Analysis. She

stated that 507 Poplar Hill Avenue was listed as a single family home in 1976 in Protestant's Exhibit #3. Mrs. Smith referenced the water heater decal and stated that it could be put in after the fact. The fuse panel could have been put in after the fact by salvaging materials.

Mr. Tim Spies, 414 Virginia Avenue, stated that he had purchased his home in 1993. He stated that his research showed that his home had always been a single family home. In the early to the mid 1950's there was a major renovation of the home. This renovation included the installation of an 80 gallon water heater in a single family home.

Mrs. Cathcart stated that she had a real problem with all of this because she couldn't imagine someone putting all those fuses in a house when something better is available.

Mr. Baker questioned Mr. Maloney regarding Attachment #13 from the Judge that the Board that Riverside Investments bears the burden of proof. The testimony and affidavits given today indicate that the renovations were done around the mid 1940's. Is there any other evidence that is available that states that this was done before 1936? Mr. Maloney responded in the negative, adding that in his closing arguments he would address the 1936 issue.

Mrs. Layton questioned Mrs. Smith that this has never been eligible for two-family due to the square footage of the lot. Mrs. Smith responded in the negative, explaining that from the research that was done, specifically in the old Codes, that this lot has never met the land area requirements to be a multi-family unit. According to the 1959 Code, there should have been 2500 sq. ft. of land per residential unit in that house. Mrs. Layton questioned that under no Zoning Code would it have met the qualifications of a two-family house. Mrs. Smith responded that she did not believe so because in a more recent Code, a two-family house required an 11,700 sq. ft. lot and it still doesn't have the minimum land area. Mr. Eure concurred.

Mrs. Cathcart questioned if a special exception could have been applied for. Mr. Eure responded that a special exception could have been granted but there is no record of one.

Mr. Rainey questioned if the Zoning Code was enforced in the 1940's. Mr. Eure responded that he couldn't answer that question. Mr. Rainey stated that this whole case is based upon documents that don't exist. He stated that he was having a really hard time with this case because the maps aren't signed and documents don't exist. The applicant purchased the property in 1990 that was approved by the City, has been licensed by the City, has been inspected by the City and the City can't sit here and say that there are records prior to 1961 that clearly define what the rules were in 1936. Mr. Eure responded that the burden of proof is on the applicant.

Mrs. Layton stated that if the City doesn't have the documentation, how would the owner of the property have the documentation.

Mr. Nemazie questioned Mr. Eure if the Building Department had inspected records in the Newtown neighborhood of how many other homes fall under this issue. Mr. Eure responded that they receive notification from the Neighborhood Services Department about a property that may be questionable. Mr. Nemazie questioned what would make NSCC determine if they should do an evaluation of a home. Mr. Eure responded that he doesn't know what criteria is used to determine if an evaluation should be done.

Mrs. Cathcart questioned if some of the inspections are complaint driven. Mr. Eure responded in the affirmative.

Mr. Nemazie questioned if complaint driven inspections were the only way. Mr. Eure responded in the negative, adding that NSCC's policy is to inspect properties once every three (3) years. Mr. Nemazie questioned when that started. Mr. Eure responded that it started in approximately 2006 or 2007. Mr. Nemazie questioned if it started after the registration of properties began. Mr. Eure responded in the affirmative. Mr. Nemazie questioned if it was done through Mr. Holland's office. Mr. Eure responded in the negative, explaining that it was done through NSCC, Mr. Tom Stevenson's office.

Mr. Maloney stated that the remand of this case to this Board by an opinion of a Judge in the Circuit Court who reminded the Board that the burden of proof is on the applicant. The applicant can meet the burden of proof. The Board's Rules of Procedure and Handbook says "The Board of Zoning Appeals is a quasi-judicial Board of local citizens to guarantee the right of appeal from the terms of the zoning ordinance. The Board serves as a safety valve to prevent the provisions of the Code from creating undue hardship on local citizens and should be regarded as an essential component in the entire zoning process." The Board's procedures and the rules also state "While the Board has certain discretionary powers in making its decisions, these powers have definite limits. The Board must always abide by the powers granted to it by the local law, the local zoning ordinance, and decisions established by the Board." Mr. Maloney stated that he was asking the Board to take that seriously and look at what the law states. He suggested that it was undisputed that the City of Salisbury, perhaps somewhere in existence, but not before this Board, has not presented at any point in these proceedings that they have a zoning map that is an authentic, legal zoning map for the 1936 Code. The City is saying that Mr. Reeves has to comply with the 1936 Zoning Code and his property doesn't meet those requirements. The City is asking the applicant to let the City have its cake and it eat it too. Why is that? The City wants to enforce the provisions of the 1936 Zoning Code with the exception of the Zoning Code Section 33 that says that the official zoning map for the City must be signed by the Mayor and Council. Mr. Maloney stated that he had absolutely no idea that what was included in the packets and what was displayed on the bulletin board is the official zoning map of the City. Mr. Maloney questioned how it would be known if it was the

official map because it doesn't comply with the zoning ordinance that the City is trying to enforce. The first argument is that you cannot use the 1936 Zoning Code for this property because the only way you can locate is with the map that is not an official document. By the rules that you are governed by, you can't enforce that. The City can't enforce that. It is widely accepted that a zoning ordinance that is enacted without an accompanying map showing the location various zones is invalid by law. Mr. Maloney cited multiple case laws regarding zoning ordinances and maps. Under this widely accepted case law, if the map signed by the Council is not present and may or may not exist, then the zoning ordinance is null and void and can't be enforced. Mr. Maloney entered ***Applicant's Exhibit #13*** as a Memorandum of Law. He stated that the City is asking the Board not to reverse this determination because Mr. Reeve's property can't go back to 1936 based on the 1936 Code but at the same time ignore the requirement of the zoning ordinance that you have to have an official map. Mr. Maloney stated that based on that, he didn't think that they had to go to the 1936 Code. He added that he believed that the 1936 Code is off the table. The first official zoning map that he is aware of that the City has even remotely referred to is the 1959 Code and its accompanying zoning map. The question becomes what is the status of property in 1959. Mr. Maloney stated that the Board had ample evidence by affidavits and by live testimony to establish that this use of four (4) units prior to the adoption of the 1959 Zoning Code of the City of Salisbury was a pre-existing use. The years of 1936-1959 are off the table. With respect to the burden of proof, the applicant has done heroic efforts to locate people who have familiarity with this property, knowledge of its use, and the time it was converted. Mr. Maloney stated that Mr. Lott's written opinion is that the conversion took place in the 1940's if not the early 1950's. There were four (4) units predating the 1959 Zoning Code and 1959 map. Mr. Maloney stated that there is ample evidence to find that the 1936 is not applicable in this case because the City does not have an official zoning map and that is a matter of law. Second, there is sufficient evidence both from affidavits and live testimony that this property was converted prior to the 1959 zoning ordinance. Based on that, literally in conformance with Judge Davis' opinion, this Board has substantial evidence to establish that this was a legal nonconforming use by versus of the fact that it existed prior to 1959. Mr. Maloney entered submitted some proposed Findings of Fact for the Board's consideration and review with respect to a ruling on this matter.

Mr. Golba stated that the issue is that you have to use the best evidence that is available and the best evidence is the City locating maps in their office that shows this property and where it was zoned and then when you tie it into the Zoning Code that describes how it should be used, it was not used as such. Mr. Golba stated that Mr. Lott confirmed that when he said that the conversion was done in the 1940's or 1950's but not the 1930's when the Code was adopted. There is no specific proof that has been put forward that they had a special exception or a variance or that it was ever asked for or requested. Mrs. Smith testified that with regard to this property it is simply the lot size that precluded any use but a single family use for this property, no matter which Code you look at. In fact, this Code in 1959, has a provision that it could be used as apartments. If you go back to the lot size, it was not allowed to be done that way. What happened with the property is that someone converted it,

and just used it and it wasn't caught or brought up until now. It has been brought up now and you can't go back and ignore what the law is without proof being put forward by Mr. Reeves with regard to him being burdened as required and that the Judge has rightfully informed everyone of. If you take a look at the specific language that has been used in Mrs. Smith's report or Mr. Eure's report, they summarize the Zoning Code. They summarize this property, the size of it, the potential uses for it, and this property was bought blindly. It was bought because it was being used as four (4) units and without getting any check on it, any permission, or any confirmation from the City, it has now come back after being rented for 23 years and determined that this property should never have been used as such. As unfair as it seems, it is just a matter of going back and tracing this property and seeing that it was never allowed to be used as such. There is no proof that anyone ever said that you could use this property for four (4) units or two (2) units or as an apartment. The size of the lot determined that and it has been clearly established. Mr. Golba asked the Board to uphold the Building, Permits, and Inspections Department's decision that was rendered.

Mr. Tilghman stated that the simple answer is that a legal argument has been raised that may determine the case. Legal arguments about whether a law is or is not valid is not really factual determinations for the Board to make. They are legal determinations to be made. Mr. Tilghman asked that he be given the opportunity to research the legality of the law. The cases that were cited were not Maryland cases. This issue was not raised before this meeting or the laws could have been looked up. Mr. Tilghman stated that he had nothing there to give him an opinion on what the law was. He stated that his gut reaction was that the law was probably not invalid but if he found that it was, he would tell the Board. Whether this particular copy of the map is signed or not is really irrelevant. Section 33 states that the copy attached to the ordinance would be signed not that every copy used by the City or its officers would be signed. There may be a copy at the State Hall of Records or somewhere else that is signed but that doesn't have to be in evidence in this case. That is really a question on whether a law is valid or properly executed. The cases that are cited are not Maryland cases. Mr. Tilghman stated that what he heard was that if the 1936 law applies, that this property is not proper and he also has a very good argument that the 1936 law is invalid. From what you have today, you can't make a determination on the validity of the law.

Mr. Rainey questioned that if Mr. Tilghman couldn't make a determination in the validity of the law, how the Board makes a ruling on this case. Mr. Tilghman responded that you have to make a determination, but he would need to look into whether the law is valid and that would require him researching the case laws that Mr. Maloney cited.

Mr. Rainey questioned what evidence could be presented from the City's side prior to 1959. Mr. Tilghman responded that the 1939 Zoning Code is the law. Mr. Rainey stated that the Code states that there has to be a signed copy of the map. Mr. Tilghman read from the Code that stated that the Mayor had to sign the map that accompanied the zoning ordinance but it didn't state that every single copy of

the map had to be signed. Mr. Rainey stated that there isn't a signed copy of the map. Mr. Tilghman stated that the map that exists qualifies as an ancient document that has been in their possession and use for all these years and that is one (1) argument but it may be that there is a signed copy on file with the State of Maryland. Mrs. Layton stated that there isn't a signed ordinance either. Mr. Tilghman stated that you don't need the signed ordinance. The law is what the law is and this law is a valid law. You must take judicial notice of what the law is. You do not need a signed copy of this ordinance to make a decision, you just need to know what the law is and abide by that when making a decision. Mr. Rainey stated that Mr. Tilghman was stating that the law is what the law is but Mr. Reeves' attorney has stated that there is no evidence of what the law is. Mr. Tilghman stated that anytime that you are involved in an old ordinance or an old statute that is 40 or 50 years old, you can always argue to the Judge that the 1960 or 1959 statute is not legal but the Judge is going to look into that and determine whether there is a statute and if it is or is not valid. You just have to determine whether this is or is not the law. Mr. Rainey stated that the current ordinance states that the burden of proof is not beyond a reasonable doubt, it is merely 50/50. Mr. Tilghman stated that he didn't think that there was much of a dispute of the facts. When the Board weighs the facts, you must weigh the facts by preponderance of the evidence. The facts are undisputed. There are different dates but the facts are undisputed.

Mr. Nemazie stated that the City's attorney has stated that the property was never allowed even if it was approved by the City. He questioned if someone were to purchase a home today and they wanted to determine if a home was legal because it was broken up into a multi-family home, how would they go about making that determination. Mr. Golba responded that you would do due diligence and ask someone in the City Zoning Department or NSCC or Building Department. Mr. Nemazie questioned if you could go to a plat that showed if all the variances were put in place. Mr. Golba responded that he believed that the City offices would respond to the homeowner. Mr. Nemazie questioned if that would be with legal services. Mr. Golba stated that Mr. Maloney raised the zoning estoppel argument, and then you would get more into that avenue but the City did nothing to make Mr. Reeves buy the property, to make him change the property, or anything. Mr. Nemazie stated that he was trying to figure out what happens tomorrow if someone goes to buy a house with three (3) apartments in it in Newtown for an investment property. What would be the process for certainty that they could get the information needed that it was a legal use. Mr. Golba stated that in this case the evidence states that there were four (4) units in the home when he purchased the property and it wasn't allowed when he bought it.

Mrs. Layton questioned if Mr. Tilghman's opinion was the Board couldn't make a determination at this meeting. Mr. Tilghman stated that he was supposed to advise the Board of the law. None of the cases cited by Mr. Maloney were Maryland cases that he could see but yes this is the law in Maryland. Mr. Tilghman stated that with what he had available at the meeting, he could not make a determination on whether the Code was valid or not. He stated that the Board could take his opinion for what it was worth after the Board received it but there is no way to advise the Board based on the information available at this meeting. Mrs. Cathcart

questioned if Mr. Tilghman was referring to the 1936 law. Mr. Tilghman responded in the affirmative. He added that the 1959 map may not be signed either. Mrs. Smith stated that there was a signed map for 1959. Mr. Nemazie stated that from what the Board's attorney has said, the map had to be signed even if the Board doesn't see the signed copy. Mr. Rainey stated that the Board asked the last time for time to be taken to find the maps and the maps were not presented last time. The question remains is the Board to assume that the map is accurate without the signature. The map could be accurate but it may also not be accurate. Mrs. Cathcart stated that even if the maps are accurate, without a special exception being granted, the property was never big enough.

Upon a motion by Mr. Rainey, seconded by Mrs. Cathcart, the motion was made to **OVERTURN** the Building Department's determination that this was an illegal nonconforming use. The motion failed as Mrs. Layton, Mr. Baker, and Mr. Nemazie voted against the motion.

Mr. Tilghman stated that he would prepare Findings of Fact for the Board's review at a future meeting that would also allow him time to review the case laws cited by Mr. Maloney at this meeting.

Upon a motion by Mr. Baker, seconded by Mr. Nemazie, and duly carried, the Board made a **Preliminary Decision** to **UPHOLD** the Department's determination that the residence at 507 Poplar Hill Avenue is not a legal nonconforming multi-family dwelling and require that steps be taken to covert the residence to single-family occupancy within 60 days. Findings of Fact shall be prepared for this decision to be adopted at a special meeting of the Board.

*Mr. Rainey and Mrs. Cathcart voted against the motion.*



## ADJOURNMENT

With no further business, the meeting was adjourned at 10:21 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