

## MINUTES

The Salisbury Board of Zoning Appeals met in regular session on October 7, 2010, in Room 301, Government Office Building at 7:00 p.m. with attendance as follows:

### **BOARD MEMBERS:**

Patricia Layton, Chairman (Absent)  
Dave Rainey, Vice Chairman  
Daniel Baker  
Edgar Williams (Absent)  
Dave Nemazie (Absent)  
Lynn Cathcart

### **CITY OFFICIALS:**

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

### **PLANNING STAFF:**

Gloria Smith, Planner  
Beverly Tull, Recording Secretary



Mr. Rainey, Vice Chairman, called the meeting to order at 7:03 p.m.

**MINUTES:**

The minutes of the September 2, 2010 were continued until the November 4, 2010 meeting due to lack of a quorum.

**#SA-1021**

**Eve Clark – Administrative Appeal – Determination regarding an Illegal Two-Family Dwelling – 828 South Division Street – R-8 Residential District.**

Mr. Rainey stated that the Board had received a letter from Mr. Hohman requesting withdrawal of the case and conversion of the property back to a single family residence.

**#SA-9246-10A**

**James L. Eure, Jr. – Administrative Appeal – Determination regarding an Illegal Two-Family Dwelling – 507 Collins Street – R-5 Residential District.**

Mr. TJ Maloney, Ms. Laura Borowsky, and Mr. James Eure came forward. Mr. Maloney explained that he was retained for this case the day before the September meeting. After the September meeting, Mr. Maloney took a much needed 10-day vacation. Upon his return from vacation, Mr. Eure's mother passed away which consumed quite a bit of his time. Therefore, Mr. Maloney had requested to discuss his concerns regarding the case with Mrs. Smith and Mr. Eure and requested a continuance to the November meeting from the Board. In Attachment #1, which is a letter from Mr. Holland, there is a need to trace the history of the home for many years. Mr. Maloney dispensed a letter to the Board dated July 8, 2010, which was a subsequent letter to Attachment #1, from Mr. Holland regarding 507 Collins Street which seems to limit the issue on whether there was a loss of nonconformity. Mr. Eure filed this appeal on Case

#22042 however the July 8, 2010 letter references Case #22052. Mr. Maloney stated that he needed time to determine whether the issue is the loss of use after April 3, 2006 and why the case is before the Board.

Mr. Rainey questioned if the Board was granting a continuance. Mr. Cornbrooks responded that the Board is being requested to grant a continuance and allow Mr. Maloney the time to work out the issues with the Building Department.

Upon a motion by Mr. Baker, seconded by Mrs. Cathcart, and duly carried, the Board **CONTINUED** the above referenced case until the November 4, 2010 meeting to allow time for additional research regarding the history of this property. The Board noted that this would be the final continuance on this case.



**#SA-9027-10B John Palmer – 40 Space Parking Variance – 117 Bateman Street – General Commercial District.**

Mr. John Palmer 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 applicant proposes reopening this existing building that was formerly a restaurant (the Phoenix) and most recently has been used as storage, as a restaurant. The parking lot has never been paved. The proposed restaurant requires 50 parking spaces for the interior seating and another 7 spaces for the proposed outdoor area. The applicant's plan indicates provision of 17 parking spaces. The Applicant requests a variance for 40 parking spaces.

Mr. Eure stated that the Building Department was sympathetic to the applicant's wish to maximize the use of the building but that the variance requested was excessive. There is no agreement with SU on the use of the parking garage. Therefore, the Building Department recommends denial of the requested parking variance.

Mrs. Smith added that in the Board's package they should have received a letter from SU regarding this case.

Mr. Palmer stated that he was hoping to get leniency on the parking due to the garage across the street. He stated that he wants to maximize the use of the building. Plan B still has issues with parking because of the stormwater management requirements. Mr. Palmer stated that he would like to use the parking garage for excess parking. The garage is not being used to its fullest potential

presently. On any given day, there are still plenty of parking spaces in the garage. The use of the parking garage would help the flow of traffic because of the existing traffic pattern. The use of the parking garage will also provide income for SU. Mr. Palmer stated that if he could utilize the parking garage, then he would be able to employ more people and enhance the use of the space. Mr. Palmer requested consideration of his request for a 70 percent parking variance.

Mr. Baker questioned how the Board could determine a specific amount of spaces with no determination on the stormwater management. Mr. Rainey responded that the Board would need to look at a 70 percent parking variance instead of a number of spaces.

Mrs. Cathcart stated that she knew what the building used to be. The students won't pay to park therefore she wasn't sure what patrons would utilize the parking garage. She questioned the idea of opening a restaurant when most of the clientele would be students. Mr. Palmer responded that the students will be walking or will already have permits for SU lots. He stated that there would only be a minimal amount of people that would walk there. Mr. Palmer explained that he was looking at the more professional clientele and envisioned an establishment such as Back Street Grille or Market Street Inn. He stated that he was looking at a more mature clientele for the restaurant and would be including a breakfast and lunch menu. Mrs. Cathcart questioned if the students would be allowed to use their Gull Card. Mr. Palmer responded in the affirmative.

Mr. Baker stated that a 40 space parking variance seemed like a lot without an agreement with SU. He stated that a more formal agreement for a parking cross-easement would be needed.

Mr. Rainey stated that SU is not interested in a parking agreement with Mr. Palmer.

Mr. Scott Jensen, SU, stated that he had sent in a letter from SU regarding this case. He stated that he had an email from SU's Chief of Police to Mr. Palmer that stated that the garage has certain hours of operation and it's intention is for visitors to SU. This policy may change in the future. Mr. Jensen stated that SU is not interested in any type of cross-easement parking agreement with Mr. Palmer for his restaurant. He stated that SU concurs with the Staff Report. Mr. Jensen went through the criteria for a variance and listed the reasons that SU believes that a variance shouldn't be granted. He stated that he does believe that it would endanger the public's health, safety and welfare because it would go against all that SU has done to try to keep their students on an education path and away from the drinking. The request was based solely on the desire to increase profit on the property. The property is located on SU's east campus and the property is essentially an island which will do harm to the Master Plan for SU's east campus.

Mr. Rainey stated that he assumed SU would be interested in purchasing the property. Mr. Jensen responded that the purchasing of property fell under a different department.

Mr. Rainey stated that a 40 space parking variance was excessive.

Mr. Palmer stated that he appreciated that Board's consideration and fully understands the liability and concerns of the community. He stated that he is looking to open a respectful establishment not a beer floor covered bar. Mr. Palmer stated that he was trying to produce a good quality product while maximizing the square footage of the building. The exterior portion of the plan may not be feasible but he would like to maximize the interior of the building. Mr. Palmer stated that he would accept whatever decision the Board made.

Upon a motion by Mr. Baker, seconded by Mrs. Cathcart, and duly carried, the Board **DENIED** the requested 40 Space Parking Variance, based on Section V(c) of the Staff Report and the testimony received at the meeting.



**#SA-9406-10B JC Bar Development, LLC – Enlargement of a Legal Nonconforming shopping center – 1000-1054 South Salisbury Blvd. – General Commercial District.**

Mr. Jason Mitchell, Mr. Jeff Badger, Mr. Matthew Allen, and Mr. Blair Rinnier 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 applicant proposes demolition of 4,273 sq. ft. of the south end of the existing Clairmont Shopping Center, which is a legal nonconforming shopping center. In addition, demolition of the florist shop and amenities on the Benedict properties is also proposed. Construction of a 12,023 sq. ft. CVS pharmacy building is then proposed. The shopping center is nonconforming only because a Comprehensive Development Plan was never approved by the Planning Commission. The shopping center existed prior to this requirement being included in the Zoning Code. Board approval for the enlargement of a nonconforming use is requested.

Mr. Eure stated that the site and landscaping plans meet or exceed all the Code requirements. The current plan has everything on land that is zoned commercial. There are concerns about the amount of signage. The Building

Department recommended approval with the condition that the Sign Plan come back as an administrative matter.

Mr. Badger stated that the shopping center has been there for 50 years. This project is staying solely in the general commercial area. The land will be expanded but the building have less square footage. The project does meet or exceed all the Code standards for this type of development. The board on board fence will not be chain link. The conditions listed in the Staff Report are acceptable. Mr. Badger requested approval of the request.

Mrs. Cathcart questioned the drive through location. Mr. Allen demonstrated on the site plan where the drive through would be located. Mrs. Cathcart questioned the driveway in the back. Mr. Allen responded that the driveway in the back would be a one way drive aisle. Mrs. Cathcart questioned if there was any way to make the entrance on W. College Avenue a left turn only. Mr. Allen responded that they didn't want people crossing two (2) lanes of traffic to get out of the shopping center. The entrances shown on the site plan are the safest. He stated that they had met with SHA several times and were proceeding with the permitting process with them. Mrs. Cathcart stated that there is a lot of stacking on W. College Avenue. She stated that wooden fences with Leyland cypress trees are tacky and questioned why the brick wall couldn't be expanded. Mr. Mitchell responded that the extension of the brick wall could be discussed although they had put in what the Code requires. He added that they would be more than willing to work with the neighbors. Mr. Allen added that they could mix in some deciduous trees which would lessen the buffer but provide some diversity. Mr. Mitchell stated that he could discuss these options but he wasn't in a position to make a decision without discussing it with CVS.

Mr. Rinnier stated that he has a number of tenants in the shopping center and that he was looking into changing this into a separate parcel so that CVS would get it's own tax bill.

Mr. Rainey questioned why not provide a 10 ft. buffer beyond the brick wall. Mr. Eure stated that it could be addressed with the elimination of three (3) parallel parking spaces.

Mr. Rainey questioned if they had concerned putting in a brick wall where the existing landscaping is to protect the neighborhood. Mr. Rinnier stated that he may need to relocate some parking because of the loading issue. Mr. Allen stated that they would need to run tractortrailers around the building.

Mr. Rainey stated that consideration should be given to a 10 ft. buffer with a landscape buffer for protection of the neighborhood.

Mrs. Cathcart questioned where the loading dock would be. Mr. Allen displayed the loading area on the site plan.

Mrs. Cathcart stated that the delivery vehicles come early in the morning and tend to idle for long periods of time before they unload.

Mr. Mitchell stated that Benedict's owns the property on the other side of the wall and they could see if they could obtain an easement from them for additional landscaping.

Mr. Rainey stated that there was enough room to add the 5 ft. buffer.

Mrs. Cathcart stated that the existing neighborhood needs to be protected. Mr. Mitchell stated that this project started over two (2) years ago and that they would keep working to overcome the issues and make the project move forward. He added that the signage company is looking at revising the sign plan because they didn't know that they would be part of the shopping center.

Mr. Marcus Stephanides, Clairmont Villager since 1964, stated that he lived in a nice community. He stated that he didn't think that he could object to the project except for the noise. The wall is over 10 ft. and does provide a buffer to the residential neighborhood. He requested that the wall remain intact and be extended if possible.

Mrs. Elichia Venso, 209 College Avenue, stated that she was one (1) residence behind the proposed building. She stated that she didn't have a problem with the request as long as there was a long and tall enough buffer. She stated that the wall was in the plan before. She added that it was a tacky plan for a board on board fence with Leyland cypress because the fence won't have the buffer that the wall would and also won't provide the continuity. Mrs. Venso stated that sound absorption is critical because the residents will be able to hear the traffic even through the brick wall. She added that the brick wall was critical to the resale value of her home since there is commercial property right beside her. This project will affect the resale value of all the homes in the neighborhood.

Mr. Scott Jensen, SU, stated that CVS is a great idea for the college students. He voiced concern over the entrance on W. College Avenue and stated that he would like to see it removed completely as it is already a very congested intersection. He requested a condition of approval for removal of the entrance on W. College Avenue.

Mrs. Elichia Venso, 209 College Avenue, requested that the brick wall become a condition of approval and that it should match the existing brick wall.

Ms. Patti Erickson, 215 S. Clairmont Drive, stated that Lorecrop Drive is a fast track for the students from their houses to the university. She stated that she was very concerned about the College Avenue entrance. Ms. Erickson stated that she believes that a lot of the traffic that would come from the College Avenue entrance would go through her neighborhood. She also voiced concerns about the noise from the dumpsters as the height of the wall is significantly taller now than it will be once it is torn down. Ms. Erickson noted that any lighting on the back of the building will glare into the neighborhood in the evenings. She added that she didn't understand the separation of the CVS parcel from the shopping center.

Mr. Tom Smith, 213 S. Clairmont Drive, stated that a good job had been done by the Staff and the Board and that to the gentlemen that they had come a long way. He stated that trash is a concern and that they have to complain at least once a year about it. The trash pick-up should not occur before 7 am however, the trash pick-up usually occurs around 5 am. The 10 ft. buffer would be a benefit. The plants on the other side of the wall on Clairmont is not a good idea. Mr. Smith stated that he agreed with the idea of closing the entrance on College Avenue. He stated that he had a problem with the wood fence and that the brick wall was part of the covenants from 1964. The wall has not been maintained in accordance with the agreement. He stated that he endorsed everything that has been asked for and requested consideration be given to the wall, the entrance, the drive and the landscape.

Mr. Baker stated that he had concern about the entrance on College Avenue as far as public safety and the fire and ambulances getting to the building from the Route 13 entrances.

Mrs. Cathcart stated that College Avenue has the only signal to get out onto Route 13.

Mr. Rainey stated that the entrance is critical for the shopping center. He stated that moving it away is a benefit. He questioned what the lighting plan was. Mr. Allen responded that the lighting plan hadn't been done but it would be sensitive. Mr. Badger added that the store wouldn't be open past either 9 or 10 pm. The lights will dim once the store closes.

Mr. Rainey questioned if there was a problem with the Board requesting a reduction in the height of the lighting along the rear of the building. He also questioned if they were opposed to the 10 ft. buffer. Mr. Allen responded that he would need to recalculate before he could agree to anything and that he didn't bring his slide with him. He suggested doing an arbor variety of landscaping.

Mr. Rainey stated that the wall should match the existing wall with a minimum landscape area of 4 ft. in front of the existing wall. The brick wall should be continuous and match the existing wall and meet all Code requirements.

Mrs. Smith stated that there would still have to be landscaping where the wall is being extended. She added that they can subdivide the shopping center into two (2) parcels.

Mr. Badger stated that they understand the concerns of the neighborhood and the need for the buffers. The conditions are acceptable and understandable.

Upon a motion by Mr. Baker, seconded by Mrs. Cathcart, and duly carried, the Board **APPROVED** the requested enlargement of a legal nonconforming use, the Clairmont Shopping Center, based on Section V(c) of the Staff Report and subject to the following Conditions of Approval:

#### **CONDITIONS:**

1. The required Resubdivision plat shall be submitted for review and approval by the appropriate City departments.
2. A Revised Sign Plan shall be submitted for administrative review and approval by the Board.
3. A matching brick/block wall shall be extended to West College Avenue along the residential property line and constructed in accordance with the height limitations of the Code at the street.
4. A minimum of 4 feet of landscaping shall be provided along the brick wall area being exposed by the shopping center demolition.
5. Lighting poles or fixtures near the residential neighborhood shall be a maximum of 15 ft. in height with cut-off fixtures.



#### **ADJOURNMENT**

With no further business, the meeting was adjourned at 8:55 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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Dave Rainey, Vice Chairman

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John F. Lenox, Secretary to the Board

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Beverly Tull, Recording Secretary