

1 AS AMENDED ON JULY 9, 2012 and JULY 23, 2012

2
3 **ORDINANCE NO. 2208**

4
5 **AN ORDINANCE OF THE CITY OF SALISBURY, MARYLAND,**
6 **PURSUANT TO CHAPTER 17.228 OF TITLE 17, ZONING OF THE**
7 **SALISBURY MUNICIPAL CODE AND SECTION 4.04 OF ARTICLE 66B**
8 **OF THE ANNOTATED CODE OF MARYLAND, AND ARTICLE VI,**
9 **BOARD OF ZONING APPEALS FOR THE PURPOSE OF AMENDING**
10 **SECTION 17.12.090, ADDING SECTION 17.12.111, AND AMENDING**
11 **SECTION 17.12.120 BOARD OF ZONING APPEALS PROCEDURE.**
12

13 **WHEREAS,** the ongoing application, administration and enforcement of Title 17,
14 Zoning of the Salisbury Municipal Code, demonstrates a need for periodic review, evaluation,
15 and amendment that will keep Title 17 current; and

16 **WHEREAS,** the Mayor and City Council may amend Title 17, Zoning, of the Salisbury
17 Municipal Code, pursuant to the authority granted by Article 66B of the Maryland Annotated
18 Code and in accordance with specific provisions of Chapter 17.228, Amendments and Rezoning,
19 of Title 17, Zoning; and

20 **WHEREAS,** the Mayor and City Council requested that the Salisbury Planning and
21 Zoning Commission periodically review Title 17 in light of existing procedural practices and
22 input from the City Council and members of the Public; and

23 **WHEREAS,** the City Council has proposed amendments to Section 17.12.090 and
24 Section 17.12.120, and new Section 17.12.111 relating to BZA procedures, and said legislation
25 was submitted in accordance with Chapter 17.228, of Title 17, Zoning, of the Salisbury
26 Municipal Code; and

27 **WHEREAS,** a Public Hearing on the proposed amendments was held by the Planning
28 Commission in accordance with the provisions of Chapter 17.228, of Title 17, Zoning, of the
29 Salisbury Municipal Code on May 17, 2012; and

69 shall be open to the public. The board shall **RECORD AND** keep minutes of its
70 proceedings, **WHICH SHOW** the vote of each member upon each question, or, if A
71 **MEMBER** is absent or **FAILS** to vote, **THE MINUTES SHALL INDICATE** such
72 fact. **THE BOARD** shall keep records of its examinations and other official actions, all
73 of which shall be filed immediately in the office of the board and shall be a public record
74 open to inspection during the hours of normal operation of the office. Copies of the
75 minutes shall be made available to interested parties ~~at cost~~. **A PARTY WHO**
76 **REQUESTS A COPY OF THE RECORDING OR ITS TRANSCRIPT SHALL**
77 **PAY THE COST OF THE RECORDING OR TRANSCRIPT.** (Prior code § 150-
78 288)

79
80 **17.12.111 Pre-Hearing Procedure.**

81
82 **A. THE APPLICANT/APPELLANT SHALL FILE ~~FIVE (5)~~ TWO (2) COPIES OF A**
83 **PRE-HEARING STATEMENT NO LATER THAN TWENTY (20) DAYS PRIOR**
84 **TO THE PUBLIC HEARING. THE STATEMENT SHALL INCLUDE THE**
85 **FOLLOWING INFORMATION:**

- 86
87 1. **CITATION TO THE CITY CODE AUTHORIZING THE BOARD OF**
88 **ZONING APPEALS TO APPEAR AND DECIDE THE APPLICATION.**
- 89
90 2. **CITATIONS TO ALL ORDINANCES, RULES, REGULATIONS AND**
CASES UPON WHICH THE APPLICANT RELIES.
- 91
92 3. **ALL FACTS UPON WHICH THE APPLICATION/APPEAL IS**
BASED.
- 93
94 4. **ALL DOCUMENTARY EVIDENCE UPON WHICH THE**
APPLICANT/APPELLANT RELIES.
- 95
96 5. **THE IDENTITY OF ANY EXPERT WHO WILL TESTIFY AND A**
SUMMARY OF ALL EXPERT OPINION TO BE OFFERED.
- 97
98 6. **THE AREA OF EXPERTISE AND QUALIFICATIONS OF ALL**
EXPERT WITNESSES.
- 99
100 7. **IDENTITY OF ALL OTHER WITNESSES WHO WILL TESTIFY.**
- 101
102 8. **COPIES OF ALL WRITTEN AFFIDAVITS UPON WHICH THE**
APPLICANT/APPELLANT RELIES.

103 **B. RESPONSE.**

104
105 **CITY DEPARTMENTS OR PERSONNEL INTENDING TO APPEAR IN**
106 **OPPOSITION TO AN APPLICATION/APPEAL SHALL FILE A SIMILAR PRE-**
107 **HEARING STATEMENT NO LATER THAN TEN (10) DAYS PRIOR TO THE**
108 **DATE OF THE HEARING.**
109
110

111 C. PUBLIC PARTICIPATION.

112
113 THE PUBLIC MAY PRESENT TESTIMONY DURING THE HEARING BUT
114 WRITTEN DOCUMENTS OR AFFIDAVITS MUST BE SUBMITTED NO
115 LATER THAN TEN (10) DAYS PRIOR TO THE DATE OF THE HEARING.
116

117 D. NON-BINDING.

118
119 THE INFORMATION SUBMITTED IN COMPLIANCE WITH THIS SECTION
120 ARTICLE SHALL BE CONSTRUED ONLY AS A STATEMENT OF THE
121 PARTY'S INTENT TO SUBMIT SUCH INFORMATION OR TO PROVIDE
122 TESTIMONY FROM WITNESSES, BUT NO PARTIES ARE BOUND TO
123 INTRODUCE THE SAME AT A HEARING.
124

125 E. NON-COMPLIANCE.

126
127 THE REBUTTAL EVIDENCE IS NOT REQUIRED TO BE SUBMITTED IN
128 ADVANCE. NO EVIDENCE WHICH IS REQUIRED TO BE SUBMITTED IN
129 ADVANCE UNDER THIS SECTION ARTICLE WILL BE ADMITTED AS
130 EVIDENCE UNLESS THE OFFERING PARTY HAS COMPLIED WITH THIS
131 SECTION ARTICLE. FAILURE TO COMPLY WITH THE REQUIREMENTS
132 OF THIS SECTION ARTICLE MAY RESULT IN A POSTPONEMENT,
133 CONTINUANCE OR DISMISSAL OF AN APPLICATION AT THE
134 DISCRETION OF THE BOARD.
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136

137 17.12.120 Hearings and meetings--Action on similar application--Time limit.

138
139 A. The board shall fix a reasonable time and place for the public hearing of an application,
140 appeal or other matter, give public notice thereof, as well as due notice to the parties in
141 interest, and decide the same within a reasonable time. All meetings of the board shall be
142 open to the public. At the hearing, any party may appear in person or by agent or by
143 attorney and testify as to any material facts. The burden of proof and persuasion on all
144 questions of fact which are to be determined by the board shall be on the applicant or
145 appealing party.
146

147 B. ANY EVIDENCE WHICH WOULD BE ADMISSIBLE UNDER THE GENERAL
148 RULES OF EVIDENCE APPLICABLE IN JUDICIAL PROCEEDINGS IN THE
149 STATE OF MARYLAND SHALL BE ADMISSIBLE IN HEARINGS BEFORE
150 THE BOARD. THE BOARD MAY ALSO ADMIT AND GIVE APPROPRIATE
151 WEIGHT TO EVIDENCE WHICH POSSESSES PROBATIVE VALUE
152 COMMONLY ACCEPTED BY REASONABLE AND PRUDENT PERSONS,
153 INCLUDING AFFIDAVITS OR OTHER HEARSAY EVIDENCE WHICH
154 APPEARS TO BE RELIABLE IN NATURE. HEARSAY EVIDENCE MAY BE
155 USED SOLELY TO SUPPLEMENT OR EXPLAIN DIRECT EVIDENCE AND
156 SHALL NOT, ABSENT DIRECT EVIDENCE, BE SUFFICIENT TO SUPPORT A

157 FINDING UNLESS THE HEARSAY WOULD BE ADMISSIBLE OVER
158 OBJECTION IN CIVIL ACTIONS IN COURTS OF COMPETENT
159 JURISDICTION IN THIS STATE. THE BOARD SHALL EXCLUDE
160 INCOMPETENT, UNRELIABLE, IRRELEVANT, OR UNDULY REPETITIOUS
161 EVIDENCE. THE NUMBER OF WITNESSES MAY BE LIMITED IF IT
162 APPEARS THAT THEIR TESTIMONY IS CUMULATIVE.
163

164 C. THE CITY SOLICITOR OR AN ASSISTANT CITY SOLICITOR SHALL
165 ADVISE THE BOARD ON ALL ISSUES OF LAW, INCLUDING EVIDENTIARY
166 RULINGS AND THE BURDEN OF PROOF.
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168 **BD.** If an application is disapproved by the board, thereafter the board shall take no action on
169 another application for substantially the same proposal on the same premises until after
170 twelve (12) months from the date of the final determination by the board or any court of
171 competent jurisdiction. ~~When an application or appeal is made involving substantially the~~
172 ~~same premises or portion thereof immediately following the twelve month waiting~~
173 ~~period, it shall be the duty of the board to see that notification by ordinary mail is given at~~
174 ~~least one week in advance of the date fixed by the board for its hearing in the current~~
175 ~~matter to all parties of record, in writing, at the prior proceeding and may also notify~~
176 ~~those parties known by the board to have been interested in the prior proceeding. The~~
177 ~~board shall also see that the applicant is furnished with a list of the parties so notified.~~
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179 **CE.** Whenever an application, appeal or other matter is approved by the board or any court of
180 competent jurisdiction, the privilege granted thereunder, including any necessary permits,
181 shall be exercised within twelve (12) months from the date of the final action, and, if not
182 exercised within that time, shall automatically lapse and become null and void. However,
183 upon a showing of reasonable cause by the applicant, filed in writing, the board may
184 authorize up to three extensions of the time limit of up to twelve (12) months each. Not
185 more than three extensions of time or extensions greater than twelve (12) months shall be
186 granted without a public notice and hearing. (Ord. 1599 § 14, 1995; prior code § 150-12)
187

188 **AND BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF**

189 **SALISBURY, MARYLAND,** that this Ordinance shall take effect from and after the date of its
190 final passage, but in no event until ten (10) days after the date of the Council's Public Hearing,
191 and

192 **THE ABOVE ORDINANCE** was introduced at a meeting of the Council on the 9th day
193 of July, 2012, and thereafter, a statement of the substance of the ordinance having been published
194 as required by law, in the meantime, was finally passed by the Council on the 23rd day of
195 July, 2012.

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ATTEST:

Kimberly R. Nichols
Kimberly R. Nichols
City Clerk

Approved by me this July
day of 26th, 2012.

James Ireton, Jr.
James Ireton, Jr.
Mayor of the City of Salisbury

Terry E. Cohen
Terry E. Cohen
President of the City Council
of the City of Salisbury