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**MINUTES**

The Salisbury Board of Zoning Appeals met in regular session on April 10, 2019, in Room 301, Government Office Building at 6:00 p.m. with attendance as follows:

**BOARD MEMBERS:**

Albert G. Allen, III, Chairman  
Jordan Gilmore, Vice Chairman (Absent)  
Shawn Jester  
Brian Soper  
Alex Paciga

**CITY STAFF:**

Henry Eure, Project Manager  
Beverly Tull, Recording Secretary  
Eric Cramer, City of Salisbury Fire Marshal  
Mark Tilghman, Legal Counsel for the Board  
Pete Golba, Legal Counsel for the City

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Mr. Allen, Chairman, called the meeting to order at 6:00 p.m.

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Mr. Allen made everyone aware that there had been a change to the agenda for the meeting and that the case regarding Court Plaza, Case #19-210, had been withdrawn and would not be heard.

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**MINUTES:**

Upon a motion by Mr. Soper, seconded by Mr. Paciga, and duly carried, the Board **APPROVED** the minutes of the March 7, 2019 meeting as submitted.



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Mr. Eure requested that anyone wishing to testify in the case before the Salisbury Board of Zoning Appeals stand and be sworn in. Mr. Eure administered the oath. Mr. Allen explained the procedure for the public hearing.

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**#SA-19-209**

**BKR Holdings, LLC, on property owned by Building Foundations, LLC – Enlargement of a Legal Nonconforming Structure with a 860 sq. ft. Addition and a 26 ft. Front Yard Setback Variance – 314 Civic Avenue – Light Business and Institutional District.**

Mr. Bret Davis, Mr. Jeff Harman, and Mr. Brendan Frederick came forward. Mr. Henry Eure presented and entered the Staff Report and all accompanying documentation into the record. He summarized the report explaining that the applicant requests permission to construct a 17 ft. x 48 ft., 860 sq. ft. addition to the existing office building. The addition is proposed to have a front yard setback of 19 ft. along Civic Avenue. The Zoning Code requires a minimum of a 45 ft. front yard setback. Board approval of a 26 ft. front yard setback variance is requested.

Mr. Allen questioned that the variance would only be required if they pursued the first option, but if they do the second plan that they would only approval of the enlargement of the legal nonconforming use. Mr. Eure responded in the affirmative, explaining that the first request requires approval of a setback variance as well as enlargement of a legal nonconforming use. The second request only requires the approval of enlargement of a legal nonconforming building.

Mr. Davis explained that the reason for the addition is that a State agency will be moving into this building and they are very strict on their ADA requirements. The current square footage would not suffice. There is a lot of very unique aspects to the interior, so the first plan makes it a lot easier to make the building user friendly to the Department of Rehabilitative Services. The second plan would make the floor plan more of a hindrance.

Mr. Allen questioned if there was anything unique about the property to have a hardship. Mr. Davis responded that he wasn't sure. Mr. Frederick stated that the most advantageous option is Option #1. Mr. Allen questioned Mr. Davis if he was still asking for Option #1. Mr. Davis responded in the affirmative, because it wouldn't change the flow or block any views as it is the corner lot. Mr. Harman added that the building will remain rectangular if Option #1 is used. Mr. Davis added that mobility-wise Option #1 is the best option.



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Mr. Allen questioned if additional parking would be needed. Mr. Davis responded that there is sufficient parking on site. He added that he wished to keep the monument sign that is there as well.

Mr. Jester requested details for the alternative plan. Mr. Davis stated that if you make a building triangular in shape the office spaces would have to be reconfigured. This tenant needs ADA accessible turning radius in each office and bathroom. Keeping a rectangular shaped building will allow the offices to function more efficiently.

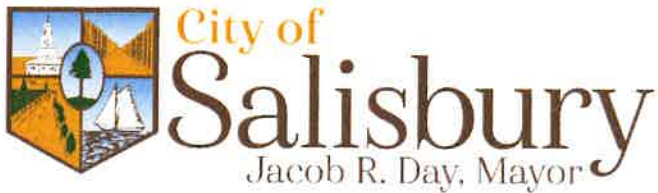
Mr. Soper stated that by providing an alternative solution, you have proven that you can't meet the hardship requirement. Mr. Soper questioned if any studies had been done regarding the entrance to the property. Mr. Davis responded that the goal is to keep the entrance on Civic Avenue. The only reason an alternative plan was provided was to keep from not being able to provide what the customer needs. Mr. Davis stated that he could put a second floor on the building and add an elevator but it would be four (4) times more expensive.

Mr. Soper questioned if there had been any other Board of Appeals cases for this property. Mr. Eure responded in the negative, explaining that he believed the building was in the County when it was built. Mr. Eure added that setbacks are measured different in this zoning district.

Mr. Allen questioned how the use of the building for the Department of Rehabilitative Services would change how the building is currently being used. Mr. Davis responded that the building had been vacant. Currently, the Department of Rehabilitative Services is located downtown and they're having a difficult time maneuvering with the customer base. Mr. Frederick added that buildings of age don't comply with ADA requirements and it is necessary to make the internal operations comply with those requirements.

Mrs. Linda Kent, 305 Glendale Drive, stated that she was a resident of the neighborhood adjacent to this lot. She stated that the Staff Report was silent on the detriment and problems that this nonconforming structure has caused over the past many years. The problems have existed since 1980. She discussed that the parking spaces provided will be taken up by the staff and clients. Since the original business, a dental office, was built, parking has spilled over into the neighborhood. She discussed the lack of sidewalks, curbs, and gutters in the neighborhood. When parking takes place on Wyman Drive, people walk in the street or on private property. Mrs. Kent submitted **Opponent's Exhibit #1** as a photograph of sticks that neighbors have placed on their yard to protect their private property as well as the parcel and its proximity to the neighborhood. **Opponent's Exhibit #2** was submitted as a photograph of the property with the sign "no parking to the curb". Having people park on the road bed or private property is a safety issue. Mrs. Kent went on to discuss the detriment to the neighborhood.

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She discussed that delivery trucks can't back up in the parking lot. **Opponent's Exhibit #3** was photographs of the area and the parking. Mrs. Kent questioned if the parcel was in the non-tidal wetlands area and explained that she had attempted to reach Ace Adkins of MDE but hadn't received a call back.

Mr. David Suiter, 305 Wyman Drive, stated that he had lived in the neighborhood approximately 20 years. He explained that he was hearing that the extension to the building would take away approximately half of the parking spaces and questioned where people would park. He reiterated that there is parking along Wyman Drive which makes maneuvering vehicles down the road difficult. If the expansion eliminates parking spaces, there won't be places for staff and clients to park.

Mr. Allen questioned Mr. Eure to speak on the parking requirements. Mr. Eure explained that the parking standards have changed and are now one (1) parking space per every 400 sq. ft. There is adequate parking per the Code therefore, no additional parking would be required. Mr. Allen questioned if it was compliant with both the initial application and the second option. Mr. Eure responded that the alternative provides an additional parking space and the addition is smaller than the original request. The total square footage of the building would be approximately 4000 sq. ft.

Mr. Soper requested Mr. Eure to clarify that the structure was nonconforming but the use was conforming. Mr. Eure responded in the affirmative.

Mr. Davis noted that there will be the exact same number of parking spaces in both plans. With the first plan, there can be some added parking behind the building. This is not a high traffic situation. There will not be clients there at all times and the staff goes off-site as well. There is the ability with the first plan to squeeze in a few extra parking spaces. Mr. Davis added that he guaranteed that property values would go up as he believes in providing a high quality building.

Mr. Jester questioned how many parking spaces there were currently. Mr. Davis responded that there are currently 14 parking spaces and three (3) spaces will be accessible spaces. He added that the need for the handicapped spaces is greater than the need for regular spaces as the majority of the clientele will need the ADA accessible offices and parking. Mr. Jester questioned that adding more parking spaces would not require any additional action from the Board. Mr. Eure noted that the applicant was exceeding the maximum parking spaces required by the Code. He added that if the Board required additional parking, they could require additional landscaping or things of that nature. Mr. Frederick noted that option one allows for additional parking if needed.



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Mr. Davis explained that when they do the landscaping and the façade it will not be done by cutting any corners. There is space on the south side to add a barrier of landscaping.

Mr. Harman explained that option two places the addition closer to the neighborhood and option one moves it more towards Civic Avenue. Mr. Frederick added that the building to the north is not in line to the street.

Upon a motion by Mr. Jester, seconded by Mr. Paciga, and duly carried, the Board **APPROVED** a 26 ft. front yard setback variance and the variance to enlarge a nonconforming structure for the property located at 314 Civic Avenue, based on Section V(c) of the Staff Report.

Mr. Soper requested that the motions be done separately. Mr. Allen agreed.

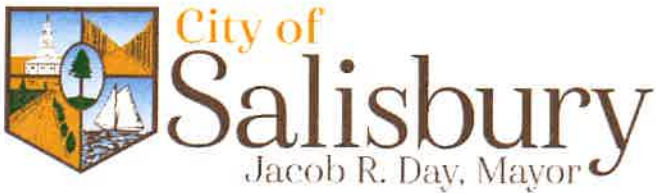
Upon a motion by Mr. Jester, seconded by Mr. Paciga, and duly carried, the Board **APPROVED** a 26 ft. front yard setback variance for the property located at 314 Civic Avenue, based on the criteria listed in Section V(c) of the Staff Report.

Mr. Tilghman suggested going through the criteria and discuss why a variance was appropriate.

Mr. Allen requested that Mr. Jester go through the criteria and discuss why the variance was appropriate. Mr. Jester stated that he agreed with the applicants with the hardship for the clients in the service to the building. The second choice would create a hardship on the business owner's property. Mr. Tilghman stated that given the testimony in regards to making the building accessible to the disabled that this decision will create a building for a disabled accessible structure and it will be meet all the State criteria for ADA accessibility.

Mr. Allen requested a roll call vote on the motion.  
Mr. Allen voted Aye  
Mr. Soper voted Nay  
Mr. Paciga voted Aye  
Mr. Jester voted Aye

Upon a motion by Mr. Jester, seconded by Mr. Paciga, and duly carried, the Board **APPROVED** the request to enlarge a legal nonconforming structure based on Section 17.16.080 of the Zoning Code based on Section ii the enlargement is in the best interest to the community and the services to the neighborhood.



Mr. Allen questioned Mr. Tilghman if there was any other language that needed to be included in the motion. Mr. Tilghman stated that testimony had been heard that if that option was chosen that it would move the construction away from the neighborhood. We have also heard from the developer that additional landscaping could be added in the area along Wyman Drive that would prohibit people from parking along Wyman Drive as well as the potential for expanding the parking lot to create more off-street parking to put the parking in the lot and away from the residential neighborhood.

Mr. Soper requested adding the following condition:

**CONDITION:**

1. The landscaping be continued all the way along the property line to Wyman Drive. As best as they can, landscaping should be done along Wyman Drive from the corner of the lot to Civic Avenue with difference to site lines to entering and exiting Wyman Drive and Civic Avenue. Access to Wyman Drive shall be denied from the parking lot. The number of parking spaces shall be increased while included a minimum of three (3) handicapped spaces.

Mr. Allen requested a roll call vote on the motion.  
Mr. Allen voted Aye  
Mr. Soper voted Aye  
Mr. Paciga voted Aye  
Mr. Jester voted Aye

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**#SA-19-211**

**First Move Properties, LLC – Special Exception for a Height Variance and Density Increase for a Proposed Apartment Building – 130-132 E. Main Street – Central Business District.**

Mr. Nick Simpson, Mr. Michael Sullivan, Mr. TJ Maloney, Mr. Jeff Harman, and Mr. Brendan Frederick came forward. Mr. Henry Eure presented and entered the Staff Report and all accompanying documentation into the record. He summarized the report explaining that the applicant proposes to redevelop two adjoining three and four-story office buildings to a twelve-story building with a commercial retail first floor and the remaining eleven stories as luxury apartments. Board approval of a Special Exception for the height and density is requested.

Mr. Paciga recused himself based on the fact that he sits on the Historic District Commission and has heard the entire case on the record, as well as the fact that from May 2017 until August 2019 he was a tenant in a property that was owned by Mr. Simpson's.

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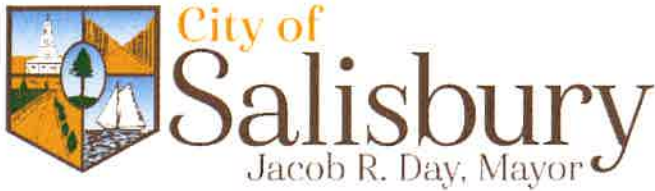
Mr. Sullivan stated that the applicant has no changes or amendments to the Staff Report and agrees with the findings from the Staff. Mr. Sullivan requested that the Staff Report be accepted as evidence for this hearing and was labeled as **Applicant's Exhibit #1**.

Mr. Sullivan stated that this case was heard in September 2018 and the only change for tonight is adding the building at 130 E. Main Street. In November 2018, Mr. Simpson was able to purchase the property located at 130 E. Main Street, which makes this project more viable. This project has received approval from the Historic District Commission as it applies to 130 and 132 E. Main Street as well as approval from the Planning Commission. Hopefully by the end of April, DP & L will be burying the power lines that exist between the parking garage and 132 E. Main Street. The purpose of burying power lines is so that the developer can attach the walking bridge from the building to the parking garage. The parking spaces in the parking garage will go a long way for the residents of this building. At this time the only thing that stands in the way of project permitting is this Board's approval. There is a 24-hour window from a private equity firm to finance 18 million dollars for this project.

Mr. Sullivan explained that they were requesting a special exception for a 165 ft. tall building that will consist of the entire footprint of 130-132 E. Main Street. The building will have commercial retail on the first floor with the remaining floors being residential housing. The goal is to have the project constructed by August of 2020. The business model is high class residential apartment living for Salisbury University graduate students as well as graduate students for UMES where a lot of clinical work takes place near downtown Salisbury. In order to have all of those residents, an increase in density is required. The increase in density is to 340 units. Mr. Sullivan added that the applicant requested that the Board grant the special exceptions exactly as requested in the Staff Report. This product will dramatically change downtown Salisbury by doubling the residential inventory. The Downtown Master Plan is based on people living in downtown Salisbury and right now people don't live there. The developer would like to bring the residents and all the amenities that they require to downtown. One of the goals is to create a link between Salisbury University and downtown and this will. Mr. Sullivan added that they are prepared to sign the paperwork for the financing for this project.

Mr. Allen questioned the second criteria under Section 17.24.040B4 where it discusses the type of residential development proposed where it discusses the ability of the site to handle the density that is proposed. This is a very ambitious project that is being placed on top of two (2) 100-year old buildings. Mr. Frederick responded that they will maintain the historic façade while demolishing the interior of the structures. The party wall will be maintained in its entirety. The new structure that will maintain the integrity of the building is totally independent of any current structural systems. For the property to the west, the structure will be set off the property lines so the structure won't impinge upon that. There will be no structural impact to the adjacent structures. The building will be on a pile foundation going into a steel frame. The structural frame as well

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as the floor system will meet the fire rating. Due to the height of the building, all sprinkler requirements will be met.

Mr. Allen questioned that they would be able to support the building by not relying on the shared wall. Mr. Frederick responded in the affirmative.

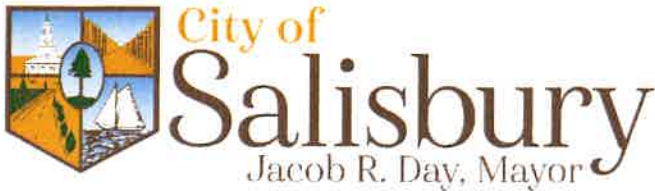
Mr. Allen questioned the City services that are being installed as part of the Master Plan will be sufficient to handle the density and capacity that is being proposed. Mr. Harman responded in the affirmative, explaining that they had coordinated with the contractor to do the hookups while the work on Main Street was being done. Mr. Frederick added that they had engineers on board for the hookups. Mr. Soper questioned the sizing for the hookups. Mr. Simpson responded that there would be an eight (8) inch sanitary, six (6) inch fire, and four (4) inch water main for the project. Mr. Harman added that the storm drains are in the alley behind the building. The building will also have a green roof which will be planted which will reduce the runoff. Mr. Soper questioned if they were prepared to meet the IDA standards for Critical Area. Mr. Harman responded in the affirmative.

Mr. Soper stated that the Board approved the project at the September 2018 meeting and the property adjacent to the original approval was purchased in February 2019. Is this request based upon the building became available or because of structural issues with the single building? Mr. Frederick responded that the opportunity came available to purchase the second building. Mr. Sullivan added that there were no issues with the original building. He discussed the funds that have been put into the acquisition of the properties. The funding for this project comes with a timeline of the next day. If the funding doesn't happen due to lack of approval, then the developer will have to look for other funding. Mr. Soper stated that he didn't want to be back in another six (6) months because another property had been acquired and added to this project. Mr. Frederick stated that by widening the footprint that the cost per square foot comes down. Mr. Simpson added that the trash is now inside the building with the added building for the project.

Mr. Soper questioned how they would adjust the parking if the spots in the parking garage were not available. Mr. Sullivan responded that they did ask the City for the parking spaces for free but they were denied. There is a developer's agreement that is in draft form until permitting is complete. The cost of the parking spaces will be passed along to the tenant. Mr. Soper stated that the City has the ability to sell the parking garage and questioned if there was a plan if that option was not available. Mr. Simpson responded that they were looking to use the existing facilities that are available. On any given day there are over 140 spaces that are not used on the top floor of the parking garage. The City has not agreed to lock in a price on those spaces but there are no required parking regulations for downtown. Mr. Soper stated that he just wanted the developer to realize that the viability could be affected if the parking wasn't available. Mr. Sullivan stated that they could use the trolley to take people to campus.

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Mr. Soper acknowledged that the trolley only runs at night. Mr. Sullivan stated that they could get the trolley hours increased. Mr. Frederick added that if the opportunity arose that the parking garage was for sale that Mr. Simpson could look at purchasing it.

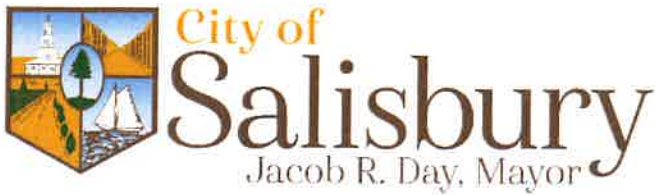
Mr. Harman stated that the downtown parking district was created to be looked at globally.

Mr. Jester questioned the height. In September the building was 10 stories and 120 ft. in height and now it is 12 stories and 165 ft. in height. Mr. Jester questioned the change and why it is so much higher. Mr. Simpson responded that the new building would be roughly 30 ft. above One Plaza East. He discussed the architectural design of the building and the changes that are being made to handle the slope of the road. Mr. Frederick added that if they had had the ability before to go higher they would have. Mr. Soper questioned if there were any comments from the hospital as it relates to height. Mr. Simpson responded that there were no issues with the hospital.

Mr. Allen questioned the height of the building in regards to the Fire Department. Fire Marshal Eric Cramer, Salisbury Fire Department, stated that the Staff Report discussed the fire type. The building is designed to handle fire suppression with the stand pipes and the fire rated stairwells. Mr. Frederick stated that they would comply with all the Fire Department requirements. Fire Marshal Cramer added that they had been involved with the project since before the first building was purchased. Mr. Allen questioned that the Fire Department was confident with the project. Fire Marshal Cramer responded that he was confident that the building would take care of itself as far as fire suppression needs were concerned. Mr. Frederick stated that they must meet the NFPA standards. Mr. Eure added that the stairwell is considered to be a safe haven where you are in a safe place and can exit the building safely. Mr. Frederick added that there will be call boxes in the stairwell to allow people to call the Fire Department Command Center so they can be assisted out safely.

Mr. Jester questioned Section 17.232.020B of the Salisbury Municipal Code discusses the intent and capability of a project. The deadline is tomorrow for the 18 million-dollar financing. Mr. Simpson stated that the deadline was based on this Board's decision. Mr. Jester questioned what would happen if the Board denied the request. Mr. Sullivan responded that they would have to start over again looking for financing. Mr. Jester questioned what that would entail. Mr. Simpson responded that the project would be delayed and it would cost a lot of money. He added that he is fully committed to developing this project. Mr. Simpson added that there is backup financing should this one fall through. Mr. Jester questioned opening in 2020 and if it was an aggressive time frame. Mr. Simpson responded that this was an aggressive time frame. Mr. Jester questioned 2020. Mr. Simpson responded that the project is geared to students and they only look for housing in certain cycles. Mr. Jester questioned the lack of leeway in the construction timeframe. Mr. Simpson responded that they can do the December move in timeline and are willing to take that risk with this project. Mr. Maloney stated that part

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of the financial structure that they are entertaining has some padding when it comes with the loan. There is an incentive to do this project as fast as possible.

Mr. Soper questioned if the project was limited solely to students. Mr. Sullivan responded in the negative. Mr. Frederick added that they have built in contingencies.

Mr. Jester stated that they just wanted to make sure that the project is viable.

Mr. Soper questioned what is needed to construct this building. Mr. Frederick responded that they are working with Whiting Turner during pre-construction. A crane is anticipated to be used to hoist materials. They further discussed that there would be a construction manager on board early. Mr. Simpson added that they had an agreement with the Chamber of Commerce to use the front parking lot to fence off and utilize that area. Mr. Frederick added that the initial hardship will be with framing. Once the structure is stabilized, they will start at the top and work their way down.

Mr. Soper questioned the square footage of the commercial space on the first floor. Mr. Frederick responded that the commercial space is approximately 3500 sq. ft. Mr. Soper questioned how many businesses would be in there. Mr. Simpson responded that they were ideally looking for one business that would complement the residential units such as a drug store or restaurant. Mr. Sullivan added that the next item would be to look for a national anchor for the commercial space.

Mr. John Robins, 128 E. Main Street, stated that he was an attorney that owned the property at 128 E. Main Street. He did state that Mr. Simpson had inquired as to if his property was for sale but it is not. Mr. Simpson added that he did not inquire to add to this project. Mr. Robins submitted **Opponent's Exhibit #1** as comments that he offered to abbreviate his comments. He stated that he had appeared before both the Historic Commission and the Planning Commission and the concern was that the report would indicate that the project had been blessed by each of those bodies. The height and density were not blessed by those boards. Mr. Robins stated that he wished Mr. Simpson well with the project but the project needs to be toned down. The bookends are not the same as there is a substantial height difference. The Zoning Code states that the maximum height is 75 ft. with a maximum of 40 units per acre. He questioned if this was a contradiction to what the rules of the Comprehensive Plan have in place. Mr. Allen stated that anyone is allowed to request a special exception from the Board. Mr. Robins stated that if this is the future of downtown Salisbury then so be it.

Mr. Allen discussed if this project is consistent with the Metro Core Plan. Mr. Eure responded in the affirmative as the City envisions the downtown area increasing in density.



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Mr. Soper read from the Comprehensive Plan for the Central Business District and that the vision is to increase the downtown area with residential and businesses.

Mr. Frederick noted that he is on the Historic District Commission and recused himself from this case. He noted that the Historic District Commission approved the massing and the building materials.

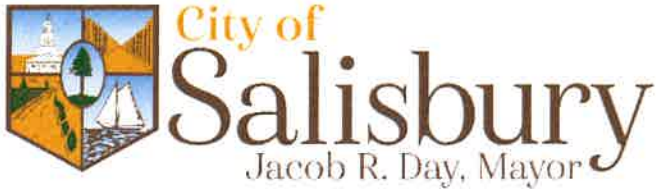
Mr. Allen noted that the Planning Commission approved the Site Plan but declined to make any recommendations on density or the special exception. Mr. Tilghman questioned if there was a recommendation from the Planning Commission. Mr. Eure responded in the negative, explaining that one of the criteria is that the Planning Commission may provide a recommendation but it is not required. Mr. Tilghman stated that there are development standards and the Board can consider any or all criteria of the development that is proposed but it is not mandatory.

Mr. Soper argued that the Planning Commission had the opportunity to make a recommendation but they declined. Mr. Sullivan stated that the Planning Commission declined to make a recommendation on whether the applicant met the standards for a special exception for increased height. It was not a decline as the Site Plan included the height of the building. Mr. Sullivan submitted **Applicant's Exhibit #2** as the site plan that was approved by the Planning Commission. He reiterated that the Commission did not decline the height or density.

Mr. Soper noted that the Site Plan shows the parcels being consolidated into one (1) parcel, however, at this time that has not been done. The Board could add a condition of approval that requires that the resubdivision of the two (2) parcels into one (1) parcel is required.

Mr. John Robins stated that Mr. Dashiell was very careful not to address any of the criteria of the special exception. There is no doubt that the Mayor and the Administration is very much in favor of this project. The Mayor testified in regards to this project. Mr. Dashiell, the Commission Chair, suggested that the Code be changed if they were going to promote projects at this suggested height and density so that it is consistent with the Comprehensive Plan as well as the Zoning Code.

Mr. Soper questioned Mr. Tilghman that the Zoning Ordinance was adopted prior to the Comprehensive Plan, however, the Comprehensive Plan is encouraging this type of development through a special exception. With that idea, does the Comprehensive Plan allow for projects to be approved by special exception until the Zoning Ordinance can be updated. Mr. Tilghman responded in the affirmative. Mr. Robins rebutted that the Comprehensive Plan itself refers to the Zoning Code as one of the comprehensive elements to implement the Comprehensive Plan so the Code is integrated into the plan itself.



Mr. Allen questioned Mr. Robins if he wished to speak in regards to the party wall. Mr. Robins responded in the negative, explaining that Mr. Simpson had discussed all the issues with him. The party wall will not be compromised in the construction of this project. There will be security for the building. Mr. Robins added that he wished that the project was more consistent with what is downtown now, as well as, more consistent with the Zoning Code.

Mr. Jester questioned what would happen if the Board were to approve the density but approve less of a height variance. Mr. Simpson responded that a lesser height variance would drastically affect the financial capability of this project which the Board has questioned. This project has been based on the square footage which has been vetted. In order to maximize the footprint to reduce the cost because there is so much life safety that is in our Code that has to be followed.

Ms. Kay Gibson, 103 E. Isabella Street, came forward. She discussed the drastic street scape change that this development would bring to downtown. Ms. Gibson suggested that other small historic towns should be a guide for our downtown development as they are not allowing 12 story buildings in their historic districts. Traffic is also a concern. There will be a great increase in density. The use of the parking garage is what is being proposed but what happens when there is a different administration that may not allow the use of the parking garage. Parking lots downtown are being sold so is there enough parking downtown for all the density that is being proposed or will there be no parking downtown. Mr. Allen noted that in this district, parking does not need to be considered to make a decision. Ms. Gibson noted that there is something very valuable downtown but once this building is built it will look very strange.

Mr. Jeff Badger, 124 E. Main Street, stated that he was just trying to get information. He questioned if the Board had already approved ten (10) stories for 132 E. Main Street. Mr. Allen responded in the affirmative. Mr. Badger questioned that the applicant was only asking for an additional two (2) stories. Mr. Allen responded in the affirmative, explaining that the height was only one (1) of the reasons they were before the Board. Mr. Eure stated that there were before the Board not only for an increase in height, but also an increase in density and the addition of another building. Mr. Badger questioned if the approval of the original plan for 132 E. Main Street was still valid. Mr. Allen responded in the affirmative. Mr. Badger questioned how many tenants are anticipated for the units. Mr. Simpson responded that they anticipated 174 tenants in the units. Mr. Badger questioned how the density was determined. Mr. Harman explained that 340 units per acre is a very large number. The lot is only 0.17 acres in size so the density is large. The total number of units will be 60 for residential and one (1) commercial. Mr. Badger questioned if there was an anticipated number of cars for the tenants. Mr. Simpson responded that they will be targeting the student population so not all will have cars. Mr. Badger questioned if there were a number of parking spots in the garage that they were working for. Mr. Sullivan responded that they would be discussing the parking

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with the City after the Board of Zoning Appeal decision. He further explained that the developer would get the parking money through the rent so any payment for parking would be passed along to the tenants.

Mr. Simpson pointed out that the tenant use of the building is primarily residential and they will be at school during the work day so the parking would mainly be for nights and weekends for the tenants.

Mr. Badger questioned how many parking spaces there were on the top floor of the parking garage. Mr. Eure stated that the parking garage has 703 parking spaces so that is roughly 175 spaces per floor. Currently, one-half to two-thirds of the parking spaces are leased annually. Therefore, on any given day there is roughly 100 spaces available during the business day. Mr. Bader noted that the only time he hears that there are problems with the parking garage is if there are multiple juries running. Mr. Simpson added that they are trying to avoid people parking behind the building. Mr. Badger questioned if there could be a condition of approval that there be a parking agreement. He added that the symmetry of the building is a bit much and would prefer to see the 10 story building which is already approved. Mr. Badger stated that it is an exciting project but he would like to see it scaled back a bit.

Mr. Soper questioned the height of the Guerrieri Center at Salisbury University. MR. Harman responded that the Guerrieri Center is 175 ft. tall. Mr. Soper stated that he was trying to get a reference for height.

Mr. Allen questioned Mr. Sullivan if he could speak on the parking condition with the City that Mr. Badger suggested. Mr. Sullivan responded that if they cannot reach a parking agreement with the City that it would essentially hold the special exception hostage if it were a condition of approval and he would not support that condition. The project is not viable at ten (10 stories).

Mr. Allen questioned Mr. Tilghman on the Board's ability to add a condition of parking. Mr. Tilghman responded that the Board has the ability to impose conditions but it is not mandatory to consider parking.

Mr. Sullivan reiterated that as property owners they are not subject to parking requirements in the downtown district. If people have cars, measurers will be taken to make sure they have a place to park. He added that the reality is that this is the first of many projects that are coming to the downtown area. The downtown area is growing. Mr. Frederick added that a walkable city is becoming a reality.

Mr. Sullivan stated that this is an 18-million-dollar investment in downtown Salisbury. This will bring a substantial amount of laborers to build the project, a substantial amount of residents, but also it is going to bring a substantial increase in property taxes. The significant increase that is going to happen because of

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improvements made to that property have not been discussed. Mr. Sullivan stated that he was white trash, pure and pure. He has lived here all his life and has never heard anyone say that.

Mr. Soper discussed the parking by stating by putting in a walkway and linking it to the garage you are essentially linking it to the parking garage. If the Board was to condition that the minimum spaces be provided whether by agreement or by other means, the proposed walkway to the garage does link the two properties. Mr. Sullivan responded that they would not have proposed the walkway if they had not been informed that there was sufficient availability within the parking garage to provide parking. The parking garage is underutilized. Mr. Soper stated that the project was proposed to the financier with the walkway to the parking garage but there is not an agreement in place for the parking. Mr. Sullivan responded that the special exception is not based on the parking. Mr. Soper questioned if a parking agreement was ever presented in early meetings with the City. Mr. Sullivan responded in the negative. He explained that in early meetings they had discussed the walkway and it would be maintained in perpetuity. A draft agreement has been done to handle the maintenance as well as the temporary construction agreement. Mr. Soper added that there are concerns about the Administration changing and having nothing in place to protect that maintenance agreement. Mr. Sullivan agreed with Mr. Soper that the Administration could change.

Mr. Jester questioned if there was any indication that the walkway to the garage would occur. Mr. Sullivan responded in the affirmative. Mr. Jester questioned if there had been any discussed about parking. Mr. Sullivan responded in the affirmative. Mr. Jester questioned if there had been any discussion about a parking agreement. Mr. Maloney responded in the affirmative, adding that there is a bridge under contract as it is part of the design.

Upon a motion by Mr. Allen, seconded by Mr. Jester, and duly carried, the Board **APPROVED** the Special Exception requested on 130 and 132 E. Main Street to increase the building height to 165 ft. and the density to 340 units per acre, based on the criteria listed in the Staff Report, particularly the criteria listed in Section 17.232.020B and more specifically that this development is consistent with the Metro Core Plan for Salisbury as it currently exists. Further the location, size, design and operating characteristics will have a minimal adverse impact on the livability, value or appropriate development of abutting properties and the surrounding area based on the testimony that we heard at the meeting. The design of the site and structures for the proposal will be as attractive as the nature of the use and its setting warrants. The proposal will not be detrimental to or endanger the public health, security, general welfare or morals. The proposal will not impair an adequate supply of light or air to adjacent property or overcrowd the land or create any undue concentration of population or substantially increase the congestion of the streets or create hazardous traffic conditions or increase the danger of fire or otherwise endanger the public safety. The proposal will not

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adversely affect transportation or unduly burden water, sewer, school, park, stormwater management or other public facilities as the Downtown Main Street Master Plan is incorporating this development into its water supply. The proposal will preserve or protect environmental or historical assets of particular interest to the community. As noted, this proposal has been approved by the Historic District Commission on multiple occasions. The Board heard considerable testimony that the applicant has a bona fide intent and capability to develop and use the land as proposed. The motion is also based on Section 17.24.040B.4 of the Salisbury Municipal Code, specifically that the site plan as it was presented to the Board and Applicant's Exhibit #2 has been approved by the Planning Commission for Wicomico County and the City of Salisbury. Further, concerning the type of residential development proposed as relative to the ability of the site to accommodate the density proposed, the Board heard testimony from the architect and engineer that the site will be gutted and there will be new structural integrity installed which will not have any adverse effects on neighboring properties. The availability of city services to the site, such as water, sewer, streets and parking lots or structures; and whether the site can accommodate a higher density and/or height without an undue burden of expense to the city. As already noted, the Board found that the Downtown Master Plan is going to accommodate water to this site. There is available parking that is underutilized which the residents of this project will be able to inhabit. The functional, visual and spatial relationship of the proposed height relative to surrounding development and the Central Business District as a whole. There was not any testimony heard concerning that or whether the proposed height would create a conflict with the spatial relationship of existing or proposed buildings or any evidence that shadows may interfere with anything. There was no testimony in regards to solar panels. The Board heard from the Fire Marshal that the City's Fire Department has no concerns about its ability to serve this site, therefore, Mr. Allen stated that he believed that the capability of the community firefighting is adequate to service this site. The merits of the design and treatment of setbacks, landscaping and other amenities in addition to the architectural treatment of the building, provide an excellence of design which contributes to the furtherance of the purpose of the Central Business District. This will obviously change the landscape of downtown Salisbury but as previously noted it is in compliance with the Metro Core Plan and there has been adequate testimony that it meets that factor.

Mr. Tilghman noted that the proposed plan that Mr. Allen made mention to had not been introduced into the record. Mr. Allen noted that a smaller exhibit had been introduced as Applicant's Exhibit #2.

Mr. Soper requested to discuss the motion and possible conditions. Mr. Allen stated that he would entertain possible conditions although the motion had been seconded without any conditions.

Mr. Soper questioned Staff if the applicant had submitted for review to consolidate the parcels yet. Mr. Eure responded in the negative. Mr. Soper ~~questioned if that would hold up the plan. Mr. Harman responded that the plan has been~~

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prepared but until all the final decisions were made they did not want to submit for recordation because they didn't want to combine them unless they knew the project was viable. Mr. Eure noted that a cursory review had been done and it would be compliant with Zoning Code standards.

Mr. Soper requested that a condition be added to have the parcels resubdivided.

Mr. Allen questioned that Mr. Soper was requesting that the motion be amended to include a condition that the parcels be resubdivided as shown on the site plan approved by the Planning Commission. Mr. Allen entertained a second on the amended motion which was done by Mr. Jester. Mr. Allen called for a roll call vote.

Mr. Jester voted Aye.

Mr. Soper voted Aye.

Mr. Allen voted Aye.

\* \* \* \* \*

**ADJOURNMENT**

With no further business, the meeting was adjourned at 9:07 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.

Albert G. Allen, III, Chairman

Amanda Pollack, Secretary to the Board

Beverly R. Tull, Recording Secretary