



## **AGENDA**

### **Regular Zoom Videoconference**

**November 5, 2020**

Government Office Building  
Route 50 & N. Division Street  
Council Chambers, Room 301, Third Floor

**6:00 P.M. -** Call to Order – Gil Allen

Board Members: Gil Allen, Jordan Gilmore, Brian Soper and Shawn Jester.

**MINUTES** – September 3, 2020.

### **PUBLIC HEARINGS:**

**Case #SA-20-986 C. David & Jennifer M. Gammel - 2 ft. Fence Height Variance to Erect an 8 ft. Tall Fence Within the Rear Yard – 102 W. William Street – R-8 Residential District.**

Join Zoom Meeting

<https://us02web.zoom.us/j/81440375484?pwd=UzZjbHZpa09JaVhEMXljSXJ4d05Zdz09>

Meeting ID: 814 4037 5484

Passcode: 984513

One tap mobile

+16465588656,,81440375484#,,,,,0#,,984513# US (New York)

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Dial by your location

+1 646 558 8656 US (New York)

+1 301 715 8592 US (Germantown)

+1 312 626 6799 US (Chicago)

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**Please note that you will be asked to consent to the meeting being recorded.**

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**MINUTES**

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The Salisbury Board of Zoning Appeals met in regular session on September 3, 2020, via Zoom at 6:00 p.m. with attendance as follows:

**BOARD MEMBERS:**

Albert G. Allen, III, Chairman  
Jordan Gilmore, Vice Chairman  
Shawn Jester  
Brian Soper

**CITY STAFF:**

Henry Eure, Project Manager  
Beverly Tull, Recording Secretary  
Pete Golba, Legal Counsel for the Board

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

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Mr. Allen explained that this meeting was being held via Zoom. He requested that each applicant introduce themselves and give their address for the record and that Mr. Eure would then administer the oath. Mr. Eure requested that anyone wishing to testify in the cases before the Salisbury Board of Zoning Appeals raise their right hands and he administered the oath. Mr. Allen explained the procedure for the public hearing.

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**MINUTES:**

Upon a motion by Mr. Gilmore, seconded by Mr. Soper, and duly carried, the Board **APPROVED** the May 7, 2020 minutes as submitted. Upon a motion by Mr. Jester, seconded by Mr. Soper, and duly carried, the Board **APPROVED** the July 2, 2020 minutes as submitted.

\* \* \* \* \*

**#SA-20-773 Value Enterprises, LLC – 10 ft. Front Yard Setback Variance to Construct a Single Family Dwelling within the Required 25 ft. Front Yard Setback – 423 Druid Hill Avenue – R-10 Residential District.**

Mr. Brock Parker and Mr. Chris Adams were present. Mr. Henry Eure presented and entered the Staff Report and all accompanying documentation into the record. He summarized the report explaining that the applicant is requesting permission to construct a single family dwelling within the front yard setback along Frederick Avenue.

Mr. Jester questioned if the house was limited to a maximum width of 25 ft. and if we knew an average estimation of width of the other homes in the neighborhood. Mr. Eure responded that the average home width is 28 ft. Mr. Jester questioned how wide the house was that was located at 425 Druid Hill Avenue. Mr. Eure responded that the house located at 425 Druid Hill Avenue was approximately 31 ft. wide. Mr. Jester commented that the house would be smaller in width than the house next door but not smaller than other homes in the neighborhood.

Mr. Parker explained that he and his client were in agreement with the Staff Report. He discussed that the original subdivision plat was recorded in 1941 and created four (4) lots. Lots 1, 2, and 3 have homes built on them and Lot 4 is the lot in question. The current building envelope to meet the required setbacks would provide room for a 23 ft. by 50 ft. home to be built. Mr. Parker explained that Exhibit 3 in the Staff Report shows the house width dimensions. He noted for the record that the setback variance relief only being sought off of Frederick Avenue, as it was a dead end street. The proposed home would be over 100 ft. from the homes across Frederick Avenue. Applicant's Exhibit 4 was an internet example of what a 20 ft. wide house would look like. The owner, Mr. Adams, prefers not to have a long, narrow house built on the property and the requested variance would allow for something more characteristic of the existing neighborhood. Mr. Parker noted that if the variance was not granted, that this was still a buildable lot in the City of Salisbury. The nature of the requested variance satisfies all the criteria for a variance listed in the Staff report.

Mr. Allen questioned the neighboring lots. Mr. Parker referred to Applicant's Exhibit 1 which was the original plat from 1941 which shows the lots are similarly spaced. Due to the Lot 4 being a corner lot, the two (2) front yard setbacks are imposed.

Mr. Gilmore questioned Mr. Parker if this would be a rental or owner occupied. Mr. Parker responded that he couldn't answer that but that it would be a quality single family dwelling.



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Mr. Soper questioned if there was a required width for the building area. Mr. Eure responded that there is not for an existing lot of record. Mr. Soper questioned if the property would maintain the appropriate setbacks. Mr. Eure responded in the affirmative, adding that they will maintain the building envelope. Mr. Soper questioned if there were any other properties that have a reduced setback. Mr. Eure responded that the residence directly across the street has a reduced setback.

Mr. Chris Smith, 425 Druid Hill Avenue, opposed the property being developed at all. He stated that he believed that the plats were split again in 2012 and that the lot was deemed inappropriate for development. He added that he believed that the house would face Druid Hill Avenue. Mr. Eure explained that the front yard setback doesn't dictate the orientation of the house. This is a corner lot with two (2) front yard setbacks. Mr. Smith questioned if the plat was split again in 2012. Mr. Eure responded that a resubdivision in 2012 couldn't have happened because the new lots would have had to have met the 10,000 sq. ft. requirement of the zoning district. These lots have existed since 1941. Mr. Smith questioned if the lots were under the same ownership at one time. Mr. Eure responded in the affirmative, Mr. Smith noted that this was a small lot compared to the other lots in the neighborhood and placing a home on it would crowd the lot. Mr. Eure responded that because the lot is a lot of record, the applicant has the ability to build on the lot. Mr. Smith questioned if the lot is being built on to provide income potential. Mr. Eure responded that the applicant has the ability to build a home on the lot and the variance is being requested to build a nicer home. Mr. Smith stated that building on this lot is detrimental to the public health as it will impede the entrance to Frederick Avenue. Mr. Eure responded that an exact site plan with the driveway location has not been submitted. Mr. Smith stated that building on this lot in such close proximity to his property would devalue his home. He added that there is a great concern that this will be built to be a rental home. Mr. Smith concluded his comments by stating that this request is strictly for the applicant to make money.

Mr. Eddie Morris, 429 Druid Hill Avenue, stated that his argument is that the neighborhood and streetscape should be kept as it currently exists. By granting a setback variance, this house will stick out like a sore thumb. If the Board were to give a lesser setback, then it should be equal to the house across the street. Mr. Morris requested that the Board deny the setback variance and keep the neighborhood as it is.

Ms. Cindy Smith Pilchard, speaking on behalf of her mother Sarah Smith of 1098 Frederick Avenue, stated that she was concerned about a house being built on the lot. Mrs. Sarah Smith was the previous owner and wanted the lot for the kids in the neighborhood to play on. Building a home on this lot will create a problem with stormwater runoff. Parking will be an issue. The visual appearance of a house on this property as well as the stormwater runoff frighten her as it will affect her property.



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Mr. Allen questioned Mr. Eure on the stormwater concerns. Mr. Eure responded that Mr. Parker may be able to better answer stormwater questions, adding that any disturbance less than 5,000 sq. ft. is exempt from stormwater management. Mr. Parker agreed regarding the stormwater management and added that any flooding issues would be handled by the nuisance code.

Ms. Wendy Ward, 422 Druid Hill Avenue, explained that having a house the house face Frederick Avenue but having a Druid Hill Avenue address would give the appearance of her looking out her windows at a trailer. She discussed her concerns regarding drainage as there are already puddles after a storm. Mrs. Smith, the original owner of the property, intended for this lot to remain an open lot. Ms. Ward stated that everyone in the neighborhood is against the development of this lot. She added that it was unfair to the neighborhood to build a house with a 10 ft. setback.

Mr. Chase Dashiell, 424 Druid Hill Avenue, voiced his opposition to the request. He stated that a playhouse would be small on this lot. Mr. Dashiell added that anything built would not match the existing neighborhood.

Mr. Parker stated that most of the objections are against any home being built on the property. He stated that a house will be built on the property and whether it is a rental is irrelevant. The requested variance will give the ability to construct a house that doesn't look like a trailer. Mr. Parker added that with or without the requested variance, a house will be built on this property. By building a larger home, the property value would increase and it would be more in conformity with the existing homes in the neighborhood.

Ms. Ward stated that a 10 ft. setback is a trailer park setback. Mr. Eure advised that there would be a 15 ft. setback from Frederick Avenue.

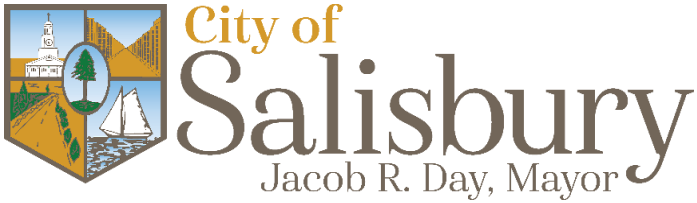
Mrs. Ann Morris, 429 Druid Hill Avenue, stated that she had measured all the homes along Druid Hill and had listed them all as part of the petition that was submitted to the Board. She stated that a 10 ft. to 15 ft. setback would change the aesthetics of the neighborhood.

Mr. Allen questioned Mr. Eure if the setback would be on Frederick Avenue. Mr. Eure responded in the affirmative.

Mrs. Morris stated that all along Frederick Avenue the homes have a setback of 41 ft.

Mr. Soper questioned Mr. Golba if increasing the value of the property could be the sole purpose of the request and his opinion of the word exclusively. Mr. Golba referenced Section 17.236.20, Item 5, and stated that if the Board believed ~~that the request was for a business venture only, that the Board has the discretion to~~

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[www.salisbury.md](http://www.salisbury.md)



weigh more on the other criteria. The Board should be looking at the criteria in totality and having the other factors weigh in as well.

Mr. Soper questioned Mr. Eure if the Zoning Code prohibits manufactured homes. Mr. Eure responded stating that a manufactured home could be put on a permanent foundation, like a Beracah Home, but a trailer would not be permitted. Mr. Soper questioned if the Board had the option to prohibit that. Mr. Eure responded that the Board could place conditions on the approval, such as requiring landscaping, brick foundation, etc. Mr. Soper questioned Mr. Eure if the Zoning Code had any restrictions on the size. Mr. Eure responded that the Building Code has restrictions for certain rooms but not for the total size.

Mr. Allen thanked everyone for sharing their comments and concerns. He added that as a resident of the Camden neighborhood, he walks by this lot regularly so he is familiar with the neighborhood. The current owners have the ability and the right to build on this lot. The Board has the ability to allow a larger home to be built. The lot makes itself the perfect candidate for a variance.

Mr. Jester made a motion to approved the 10 ft. front yard setback variance along Frederick Avenue based on the criteria listed in Section V(c) of the Staff Report. With no second made to the motion, Mr. Allen questioned Mr. Golba if the Chair had the ability to make a second to the motion. Mr. Golba responded that he wasn't sure of the Board's rules and that he was sitting in on behalf of the City and not the Board.

Mr. Chris Smith asked if Mr. Allen was questioning the parliamentary procedure. Mr. Allen responded that he was just asking Legal Counsel a question.

Mr. Soper questioned Mr. Parker if a 10 ft. setback was the minimum needed or if a 7 ft. setback would be appropriate.

As members of the public tried to speak, Mr. Allen reiterated that the public comment portion of the meeting had concluded and requested that the public mute themselves.

Mr. Parker stated that the Board can change the setback but 10 ft. was requested. If the Board chooses to grant a lesser variance, then that will be what the owner works with. He added that if a lesser variance is more amenable, than perhaps the motion could get a second.

Mr. Jester withdrew his motion to allow for the Board to have further discussion.

Mr. Soper questioned Mr. Parker if the owner would be agreeable to a lesser variance of 7 ft.



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Mr. Chris Adams, owner of the property, stated that the goal was to put the garage on the front of the house so cars can come on the property off of Druid Hill Avenue. If the lesser variance is granted, the garage will have to come off of Frederick Avenue. He added that the requested variance allows for the ability to do the right thing on behalf of the residents. Mr. Adams added that this style of home has been built in the City of Salisbury in Harbor Pointe many times by his grandfather.

Mr. Golba noted that his office was forwarding the rules of the Board to him so he could determine if the Chair could second a motion but if the Chair was to remain impartial to break a tie if needed, then he wouldn't be able to second a motion. He added that if the Chair typically votes regardless, then he could second the motion.

Upon a motion by Mr. Soper, seconded by Mr. Jester, and duly carried, the Board **APPROVED** the 10 ft. front yard setback variance along Frederick Avenue, based on the criteria listed in the Staff Report, particularly the criteria listed in Section 17.232.020B, and subject to the following Conditions of Approval:

**CONDITIONS:**

1. The driveway and front door shall face Druid Hill Avenue.
2. The foundation shall be made out of brick veneer.
3. The single family dwelling shall be stick built construction.
4. Vehicular access shall be prohibited from Frederick Avenue.

***Mr. Gilmore opposed the motion.***

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**ADJOURNMENT**

With no further business, the meeting was adjourned at 7:29 p.m.



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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 City of Salisbury Department of Infrastructure and Development Department.

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Albert G. Allen, III, Chairman

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Amanda Pollack, Secretary to the Board

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Beverly R. Tull, Recording Secretary





## **STAFF REPORT**

### **MEETING OF NOVEMBER 5, 2020**

**Case No.** 202000986  
**Applicant:** C. David & Jennifer M. Gammel  
**Property Owner:** C. David & Jennifer M. Gammel  
**Location:** 102 West William Street  
**Tax Map:** #107  
**Grid #03, Parcel #971**  
**Zoning:** R-8 Residential  
**Request:** Fence Height Variance

#### **I. SUMMARY OF REQUEST:**

The applicants have requested permission to erect an 8 ft. tall fence within rear yard of their property.

#### **II. ACCESS TO THE SITE:**

The property has frontage and access along West William Street.

#### **III. DESCRIPTION OF PROPERTY:**

This site consists of a rectangular shaped property approximately 6,450 sq. ft. in area, and has been improved with a two-story single-family dwelling that was constructed in 1914. **(Attachment 1)**

#### **IV. DESCRIPTION OF SURROUNDING AREA/NEIGHBORHOOD:**

Surrounding properties are also located within the R-8 Residential zoning district, and are primarily single-family homes. The neighborhood is also home to Bethesda United Methodist Church and its satellite properties. The area is located within the Newtown Historic District.

#### **V. EVALUATION:**

- (a) **Discussion:** The applicants desire to replace their existing fence, which is located in the rear yard, with an 8 ft. tall wooden fence, with the goal being to acquire additional privacy and protection from surrounding properties. **(Attachments 2**



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**& 3)** Section 17.04.190A. of the City's Zoning Code indicates that, "Fences in all residential districts in rear and side yards shall be limited to six feet in height."

As the property is located within the Newtown Historic District, the proposed fence is also subject to review and approval by the City's Historic District Commission.

**(b)** **Impact:** Staff believes the proposed fence may have a minimal to slight impact on neighboring properties. However, approval of the proposed fence may set a precedent, as staff is unaware of any properties with single family dwellings where yards have been enclosed with an 8 ft. tall fence. In other non-residential zoning districts, an 8 ft. tall fence is permitted inherently when hazardous materials are stored, according to Section 17.04.190G of the Zoning Code.

**(c)** **Relationship to Criteria:** Section 17.236.020 of the Salisbury Municipal Code contains the criteria the Board should consider when approving Variances. Staff has noted how this request complies with the Variance criteria as follows:

**[1] Because of the particular physical surroundings, shape or topographical conditions of the specific structure or land involved, a practical difficulty or unnecessary hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.**

The property does not appear to have any unique conditions that create a practical difficulty or hardship.

**[2] The conditions upon which an application for a variance is based are unique to the property for which the variance is sought and are not applicable, generally, to the property within the same zoning classification.**

Again, there are no unique conditions that this property possesses. It is a typical residential lot in the Newtown area.

**[3] The practical difficulty or unnecessary hardship is caused by this Title and has not been created by intentional action of any person presently having an interest in the property.**

Staff believes that there is no practical difficulty or hardship caused by the City's standards. The applicants simply desire increased privacy from neighboring properties.

- [4] The granting of the variance will not be detrimental to or endanger the public health, security, or general welfare or morals.**

The granting of the requested variance should not be detrimental to the public health, security and general welfare of the neighborhood. It would, however, appear to set a precedent by allowing 8 ft. tall fences in residential neighborhoods.

- [5] The granting of the variance is not based exclusively upon a desire to increase the value or income potential of the property.**

The variance request is based simply on the applicant's desire for additional privacy.

- [6] The variance will not be injurious to the use and enjoyment of other property in the immediate vicinity nor substantially diminish and impair property values in the neighborhood.**

Increasing the fence height to 8 ft. within the rear yard should not be detrimental to other properties and should not adversely impact nearby property values.

- [7] The granting of the variance will not impair an adequate supply of light and air to adjacent property or overcrowd the land or create an undue concentration of population or substantially increase any congestion of the streets or create hazardous traffic conditions or increase the danger of fire or otherwise endanger the public safety.**

The requested fence height increase will not create any hazardous traffic conditions, nor otherwise impact public safety.

- [8] The variance will not adversely affect transportation or unduly burden water, sewer, school, park, or other public facilities.**

The requested variance will have no impact on water, sewer, school, park or other public facilities. Staff does not believe this request will affect transportation facilities.

- [9] The granting of the variance will not adversely affect the implementation of the Comprehensive Plan for the City of Salisbury approved by the Planning Commission and the City Council or any other plan approved by the Planning Commission or City Council for development of the area in which the variance is requested.**



The fence height variance request will not have an impact on the City's Comprehensive Plan.

- [10] Within the intent and purpose of this Title, the variance, if granted, is the minimum necessary to afford relief. (To this end, the Board may permit a lesser variance than that applied for.)**

Staff believes that the applicants have not demonstrated a hardship or practical difficulty that would require relief from the Zoning Code requirements, and necessitate the erection of an 8 ft. tall fence. It appears that the request is based on the applicants' desire for additional privacy. However, the Board has the discretion to approve the requested variance or grant a lesser variance.

**VI. STAFF COMMENTS:**

Although Staff is sympathetic to the applicants' request and desire for additional privacy for the use and enjoyment of their rear yard, the request does not appear to meet the strict standards for the granting of a variance. Similar results can be achieved by other methods, such as planting a hedgerow or utilizing trees for screening. There are no height restrictions for vegetative screening.

**VII. RECOMMENDATION:**

Based on criteria for approval as outlined in Section V (c) of the Staff Report, Staff must unfortunately recommend **Denial** of the variance request to erect/install an 8 ft. tall fence within the rear yard as submitted.



E. WILLIAM

WEST WILLIAM STREET

NORTH DIVISION STREET



328 N. Division St.



Douglas K.  
Hamilton House  
for Recovery:  
326 N.  
Division St.



324 N. Division St.



Our home:  
102 W.  
William St.



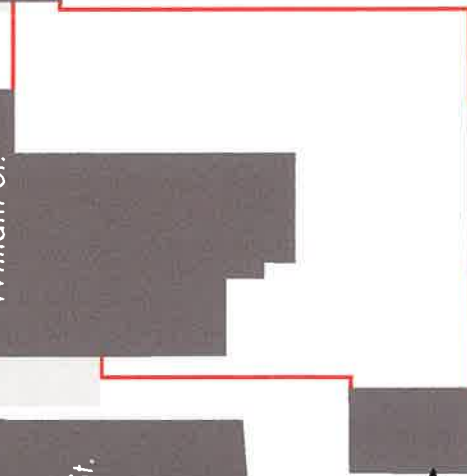
104 W.  
William St.



Shed  
(104 W. William St.)



Shed (324 N. Division)



Homes



Streets/Driveways



Our existing back yard fence

# Attachment 2



Proposed new fence (8' tall)