



AGENDA

Regular Zoom Videoconference

July 1, 2021

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 – April 7, 2021

PUBLIC HEARINGS:

Case #SA-20-773 Value Enterprises, LLC – 12-Month Extension of Time to Exercise the Approval for a 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.

Case #SA-21-572 Shiv Patel, on behalf of NEOS Corporation – 10 ft. Landscaping Area Variance to Erect a 6 ft. Tall Fence within the Required 10 ft. wide Landscaping Area – 2130 Windsor Drive – Light Industrial District.

Case #SA-21-573 Tyler Building Company, on behalf of Robert K. Morse – 4 ft. 9-inch Side Yard Setback Variance to Erect a 480 sq. ft. Garage Addition within the 10 ft. Side Yard Setback – 1408 East Upland Drive – Harbor Pointe PRD #3.

Case #SA-21-574 First Move Properties, LLC – Special Exception to Increase Density and Height for a Proposed Apartment Building – 130-132 E. Main Street - Central Business District.

Case #SA-21-575 First Move Properties, LLC – Special Exception to Increase Density and Height for a Proposed Apartment Building -144 E. Main Street – Central Business District.



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Join Zoom Meeting

<https://us02web.zoom.us/j/88565982037?pwd=NVR0MStXaGR0ci9UUE9wK2I2cy9RZz09>

Meeting ID: 885 6598 2037

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MINUTES

The Salisbury Board of Zoning Appeals met in regular session on April 7, 2021, 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
Ashley Bosche, City Solicitor

* * * * *

Mr. Allen, Chairman, called the meeting to order at 6:01 p.m.

* * * * *

Mr. Allen introduced Mrs. Ashley Bosche as a member of our new legal team.

* * * * *

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.

* * * * *

MINUTES:

Upon a motion by Mr. Soper, seconded by Mr. Gilmore, and duly carried, the Board **APPROVED** the February 4, 2021 minutes as submitted.

Department of Infrastructure & Development
125 N. Division St., #202 Salisbury, MD 21801
410-548-3170 (fax) 410-548-3107
www.salisbury.md



* * * * *

Case # SA-21-214 Shiv Patel, on behalf of NEOS Corporation – 2 ft. Fence Height Variance to Erect a 6 ft. Fence within the 50 ft. Front Yard Setback – 2130 Windsor Drive – Light Industrial District.

Mr. Shiv Patel was present. Mr. Henry Eure presented and entered the Staff Report and all accompanying documentation into the record. He summarized the report explaining that the applicants were requesting permission to erect a 6 ft. tall chain-link fence within the front yard setback along both Windsor Drive and Marvel Road. Board approval of a 2 ft. fence height variance was requested.

Mr. Patel stated that he had no comments or questions.

Mr. Soper questioned Mr. Eure if the 10 ft. landscaping buffer would impact traffic. Mr. Eure responded in the negative.

Mr. Allen questioned Mr. Eure if the need for the variance was due to a contradictory Zoning Code. Mr. Eure responded in the affirmative.

Mr. Allen questioned Mr. Patel if he had any problems with the conditions. Mr. Patel responded in the negative.

Upon a motion by Mr. Soper, seconded by Mr. Jester, and duly carried, the Board **APPROVED** the request to erect a 6 ft. tall fence within the front yard setback, subject to the following Conditions of Approval:

1. The fence shall be provided with privacy slats for screening.
2. A 10 ft. wide landscaped area (trees and shrubs) shall be provided on the exterior side of the fence along Shipley Drive as required by Section 17.220.040 of the Zoning Code. The screening/landscaping shall extend for the entire perimeter of the property. (The fence will now have a minimum setback of 10 ft. from both street frontages due to this condition.)

* * * * *

Case # SA-21-237 Joey Gilkerson, on behalf of Windsor Development, LLC – 15 ft. Side Yard Setback Variance – To Erect a 4,200 sq. ft. Warehouse within the 25 ft. Side Yard Setback – 2113 Shipley Drive – Light Industrial District.

Mr. Joey Gilkerson was 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 requests permission to construct a



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42 ft. x 100 ft. warehouse within the side yard setback. Board approval of a 15 ft. side yard setback was requested.

Mr. Allen questioned if the existing structure was in violation of the setbacks. Mr. Eure responded in the affirmative, explaining that the structure was built prior to the Zoning Code.

Mr. Eure stated that there are no records of any variances being granted in the past on this property.

Mr. Gilkerson stated that the existing structure had been repaired many times. In order to meet the setbacks with a new structure, it would have to be a long, skinny building. He stated that they would like to use the existing footprint, adding that with the demolition of the building the concrete pad would remain.

Upon a motion by Mr. Jester, seconded by Mr. Gilmore, and duly carried, the Board **APPROVED** the request to construct a 42 ft. x 100 ft. warehouse with a 15 ft. side yard setback from the northerly property line, subject to the following Conditions of Approval:

1. The fence and gate along Shipley Drive shall be provided with privacy slats for screening.
2. A 10 ft. wide landscaped area (trees and shrubs) shall be provided on the exterior side of the fence along Shipley Drive as required by Section 17.220.040 of the Zoning Code.

* * * * *

Case # SA-21-246 Paulino Hernandez Rios – 2 ft. Fence Height Variance – To Erect Multiple Fences up to 6 ft. tall within the 25 ft. Front Yard Setback – 112 Brooklyn Avenue – R-8 Residential District.

Mr. Paulino Hernandez Rios was 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 was seeking permission to erect a 5 ft. tall chain link fence and a 6 ft. tall vinyl fence within the front yard setback along both Brooklyn and Boston Avenues. Board approval of the fence height variances was requested.

Mr. Allen questioned why the City would be amenable to a 2 ft. variance on the side but not a 1ft. on the front and if it was due to past variances. Mr. Eure stated that he didn't recall there being any variances for the front yard in the past.



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Mr. Rios stated that he needs the fence for privacy and to keep his dogs in. Miss Pelar Hernandez Torres stated that they have a large dog that can jump over small fences as well as a small dog. The neighbors dogs aggravate their dogs. The fences will be installed for safety for their animals. They would also like privacy where no one can see into their yard. She further questioned if they were discussing the 6 ft. vinyl fence in the rear yard and a 4 ft. fence in the front yard. Mr. Allen confirmed that is what the Board was discussing.

Upon a motion by Mr. Soper, seconded by Mr. Gilmore, and duly carried, the Board **APPROVED** the request to erect a 6 ft. tall vinyl fence within the front yard setback along Boston Avenue as shown on the submitted site plan. The Board also **APPROVED** the request to increase the chain link fence height to a maximum of 4 ft. tall within the site visibility triangle located at the intersection of Brooklyn and Boston Avenues. The Board **DENIED** the request to install a 5 ft. tall chain link fence within the front yard setbacks of Brooklyn Avenue and Boston Avenue. Within this area, the fence shall be limited to a maximum of 4 ft. in height.

* * * * *

Case # SA-21-248 Parker & Associates, Inc., on behalf of Amber Ridge, LLC – Two (2) 5 ft. Side Yard Setback Variances to Erect a Two-story Single Family Dwelling within the 10 ft. Side Yard Setback – 714 Howard Street – R-5A Residential District.

Mr. Brock Parker, Mr. Joey Gilkerson, and Mr. Brandon Brittingham 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, on behalf of the owners, request permission to construct a single-family dwelling within both side yard setbacks on a property located at 714 Howard Street. Board approval of two (2) 5 ft. side yard setback variances are requested.

Mr. Parker explained that the lot is 40 ft. wide and if the setbacks are met that they would have to construct a 20 ft. side home. The owners need to provide a marketable home that fits in the character of the neighborhood. The average house on the block is 26 ft. wide. After receiving the Staff Report and seeing the Staff concerns, a revised plan was done and submitted for the Board's review prior to the meeting that reduces the requested variance. After looking at all the houses on Howard Street, a 26 ft. building envelope was developed for review. By approving two (2) 3 ft. side yard setbacks, an attractive house that keeps with the neighborhood can be constructed. Mr. Parker added that they are in agreement with the remainder of the Staff Report.



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Mr. Jester questioned how the parcel came to be and came to be so narrow. Mr. Eure responded that the lots are old and existed prior to the Zoning Code when lot sizes were typically smaller.

Mr. Jester questioned Mr. Parker on the testimony regarding the market value. Mr. Brittingham asked to respond as he sells the residential real estate. If a 20 ft. wide house is built, it will be a rental because they won't be able to sell it. He explained that the owners had purchased several properties on the street and renovated them. If a narrow house is built they won't find a buyer. When a new house is sold, it increases the property values in the neighborhood. He added that it is going to be a challenge to build this house with lumber prices.

Mr. Gilkerson added that they already have a challenging street and to put up a narrow house would make the house become a rental.

Mr. Jester questioned if the request was denied if they would still proceed with building a house. Mr. Brittingham responded in the affirmative because they had to run the infrastructure on the street.

Mr. Gilmore questioned Mr. Eure on number 5 of the criteria and the desire to construct attractive dwelling to increase the income. Mr. Parker responded that it was subjective because they could build a rental and get the maximum rental income out of the house but the owners want to build a house to be sold.

Mr. Eure stated that they were proposing an attractive dwelling but if they built a house that meets the Code requirements it may not be as attractive.

Mr. Soper questioned if they built the house at 716 Howard Street. Mr. Brittingham responded in the affirmative. Mr. Soper questioned if the house was 21 ft. wide. Mr. Brittingham responded that it was larger. Mr. Soper questioned if Amber Ridge owned the property. Mr. Brittingham responded in the affirmative. Mr. Soper questioned the accuracy of ownership as the plat said something different. Mr. Brittingham responded that they have no control over when the deed is recorded. Mr. Soper questioned 714 Howard Street being listed on realtor.com as a pending sale and if they already had a buyer. Mr. Brittingham responded in the negative. Mr. Soper questioned why they built a larger house on 716 Howard Street. Mr. Brittingham responded that 716 Howard Street was a larger lot and was more desirable. Corner lots sell first. Mr. Soper stated that there was a 21 ft. wide house on the market but they were trying to build a larger house. He explained that there isn't a need to grant a larger variance when a 21 ft. wide house has already been built on the street. Mr. Soper questioned how long the house at 710 Howard Street was on the market. Mr. Brittingham responded that it was on the market for 30 to 40 days. Mr. Soper questioned how long 716 Howard Street was on the market. Mr. Brittingham responded that it was on the market for four (4) to five (5) months. Mr. Soper questioned why a variance was not



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requested for the corner lot. Mr. Brittingham responded that they didn't request a variance and it took a long time to sell because it was a narrow house. The wider the house the more desirable it is. Mr. Soper questioned the reason to build a 21 ft. wide home on a corner when they know a corner lot is desirable. Mr. Parker responded the corner lot allowed them to average the setbacks and they had 13 ft. setback so they were already getting two (2) 10 ft. reliefs from the Code. He added that they were willing to amend their request now. Mr. Parker added that 26 ft. is the average width for the block.

Mr. Eure stated that there have been interesting points however Mr. Soper posed interesting points. Mr. Eure suggested a 24 ft. wide home which would be a fair compromise. Mr. Brittingham stated that above a 21 ft. wide home they could work out a plan.

Mr. Soper questioned if there was going to be a need for a variance on the vacant lot next door. Mr. Eure responded that they could combine the lots and build a larger home. Mr. Soper noted that if they grant a variance on the other vacant lot that a precedent would be set.

Mr. Parker thanked the Board of entertaining their request.

Upon a motion by Mr. Gilmore, seconded by Mr. Jester, and duly carried, the Board **APPROVED** two (2) side yard setback variances of 2 ft. each for the construction of a new single-family dwelling. The dwelling shall be no closer than 8 ft. from both side property lines.



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ADJOURNMENT

With no further business, the meeting was adjourned at 7:24 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.

Albert G. Allen, III, Chairman

Amanda Pollack, Secretary to the Board

Beverly R. Tull, Recording Secretary

Memorandum

To: Salisbury Board of Zoning Appeals
From: Henry Eure, Acting City Planner
Date: June 22, 2021
Re: 423 Druid Hill Avenue – Case #SA-20-773

On September 3, 2020, the Salisbury Board of Zoning Appeals granted a 10 ft. front yard setback variance for the construction of a new dwelling at the referenced address. (A copy of the staff report and decision letter are attached.)

Due to several unforeseen circumstances, the owners of 423 Druid Hill Avenue, Value Enterprises, LLC, have requested a 12-month extension for Board of Zoning Appeals Case number SA-20-773. Section 17.12.120 E. of the Zoning Code states, *"Whenever an application, appeal or other matter is approved by the board or any court of competent jurisdiction, the privilege granted thereunder, including any necessary permits, shall be exercised within twelve (12) months from the date of the final action, and, if not exercised within that time, shall automatically lapse and become null and void. However, upon a showing of reasonable cause by the applicant, filed in writing, the board may authorize up to three extensions of the time limit of up to twelve (12) months each. Not more than three extensions of time or extensions greater than twelve (12) months shall be granted without a public notice and hearing."*

The applicants/owners have demonstrated a plausible reason for granting the extension. Approval of the 12-month extension request is recommended.

Value Enterprises, LLC

June 3, 2021

City Of Salisbury
Dept. of Infrastructure & Development
125 n. Division St., #202
Salisbury, MD 21801

RE: Case #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

Dear Anne Roane:

Please allow us a 12-month extension from the date of September 4, 2020 pursuant to the city's zoning code standards on extensions. We are experiencing a high cost of lumber as well as a lack of available contractors needed to perform the work in a timely fashion. We believe these issues to be temporary and will proceed when issues of pricing and availability subsides.

We understand that this request is subject to approval by the Board of Zoning Appeals. Please consider this letter our formal request. Please confirm receipt to CrystalC@valuecarpetone.com. For any further questions, please give us a call at 410-742-2068.

Sincerely,



Crystal Chambers
Building Manager



STAFF REPORT

MEETING OF SEPTEMBER 3, 2020

Case No. 202000773
Applicant: Value Enterprises, LLC
Property Owner: Value Enterprises, LLC
Location: 423 Druid Hill Avenue
Tax Map: #114
Grid #22, Parcel #1403
Zoning: R-10 Residential District
Request: Front Yard Setback Variance

I. SUMMARY OF REQUEST:

The applicant is requesting permission to construct a single family dwelling within the front yard setback along Frederick Avenue.

II. ACCESS TO THE SITE AREA:

The site has frontage along both Druid Hill Avenue and Frederick Avenue. **(Attachment 1)**

III. DESCRIPTION OF PROPERTY:

This site is a corner lot totaling 6,177 square feet in area, and is currently unimproved.

IV. DESCRIPTION OF SURROUNDING AREA/NEIGHBORHOOD:

Surrounding properties are single family homes, and are also located within the R-10 Residential zoning district. Properties further south are in the county, and are located within the R-20 Residential district.

V. EVALUATION:

- (a) **Discussion:** The applicant is requesting a 10 ft. front yard setback variance along Frederick Avenue. The purpose of the request is so the applicant can build a more aesthetically pleasing single family home. **(Attachments 2-4)** (The submitted building elevation and floor plan are an example of the proposed dwelling, but not an exact copy of the finished product.) The current building envelope only allows for a 23 ft. wide dwelling, which would be out of place with other homes in the neighborhood,



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which are all wider. As this is a corner lot, two (2) 25 ft. front yard setbacks are required to be met, which reduces the building envelope considerably, and limits the width of any proposed dwelling.

Section 17.04.180A of the Zoning Code states, *"The depth of any required front yard in any district may be increased or decreased so the front yard will approximate the average depth of existing front yards of existing buildings on adjoining lots on each side or, if there are no adjoining buildings, shall approximate the average depth of the front yards of the nearest buildings on the same side of the street within two hundred (200) feet."* The house located at 422 Druid Hill Avenue has a front yard setback of 22.71 ft. along Frederick Avenue. As it is within 200 ft. of the applicant's property, the building envelope could actually be extended to construct an approximately 25 ft. wide house, which is still somewhat smaller than other homes in the neighborhood.

(b) **Impact:** Staff believes the proposed building envelope will have minimal to no effect on the neighborhood. Neighboring properties should not be impacted by the proposed location of the house.

(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 lot is a rather small lot compared to other lots in the neighborhood. This is coupled with the fact that as a corner lot, two (2) front yard setback requirements are required, which restricts the size/width of any dwelling that may be constructed on the lot. Although the request may not strictly be because of an unnecessary hardship, the proposed expanded building envelope would allow for a wider dwelling that is more in keeping with other homes in the area.

[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.



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Undersized residential lots are scattered throughout the City. Similar setback variance requests for corner lots are not uncommon.

- [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 the hardship may have been caused by the Zoning Code's requirement to maintain two (2) front yard setbacks on corner lots. On smaller lots, such as the subject lot, complying with setback standards limits the type of dwelling that may be constructed.

- [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. The proposed encroachment would still be in excess of 100 ft. from the closest dwelling.

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

Although the variance request may increase the value of the property, the applicant, who has ties to the neighborhood, is making the request to construct a dwelling that is in character with the other dwellings in the neighborhood.

- [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.**

Granting the setback request will not be detrimental to other properties and will 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 setback variance 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, nor will 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 setback variance request will not have an impact on the City's Comprehensive Plan. The proposed use will be a single family dwelling, which is permitted inherently in the R-10 Residential zoning district.

- [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 setback variance requested is the minimum necessary to afford relief from the Code requirements. However, the Board has the discretion to approve the requested variance or grant a lesser variance.

VI. STAFF COMMENTS:

The applicant has requested this variance in order to construct a single family home that will be an attractive addition to the neighborhood. A single family dwelling could be built on the site without the aid of a variance, but the house would be limited to a maximum width of approximately 25 ft., which is less than any of the other dwellings in the neighborhood. The proposed increased width will mirror the approximate width of several other dwellings in the area. Granting the variance will not impact other properties, as the dwellings that are closest to the reduced setback location are still in excess of 100 ft. from the proposed dwelling.

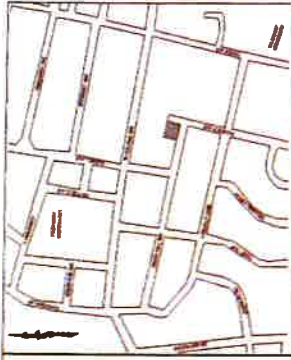
VII. RECOMMENDATION:

Based on criteria for approval as outlined in Section V (c) of the Staff Report, **Approval** of a 10 ft. front yard setback variance request along Frederick Avenue, as submitted, is recommended.

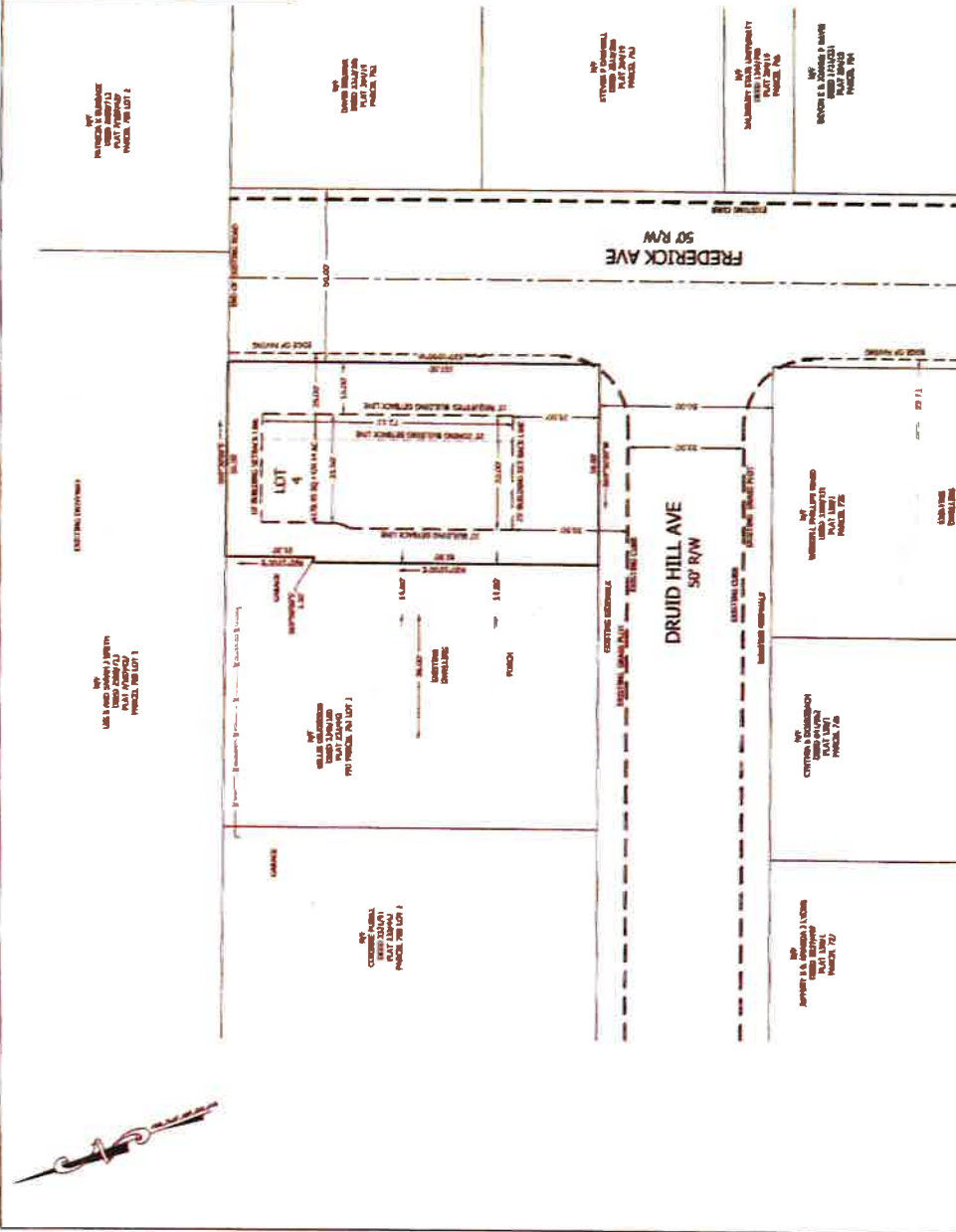
COORDINATOR: Henry Eure, Project Manager



Attachment 1



VICINITY MAP - 1" = 1000'

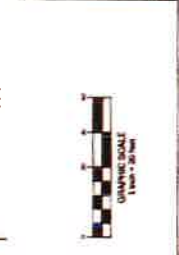


VARIANCE PLAT
LOT 4
"PROPERTY SUBDIVISION FOR HENRY ROBERTS"
DRUID HILL & FREDERICK AVE SALISBURY, MD

CAMDEN ELECTION DISTRICT, WICOMOCO COUNTY, MARYLAND

DATE: 11/2/20
 SCALE: 1" = 20'
 SHEET: 114
 PROJECT: PD 01

| NO. | DATE | DESCRIPTION |
|-----|----------|-------------|
| 1 | 08/25/20 | FILED |

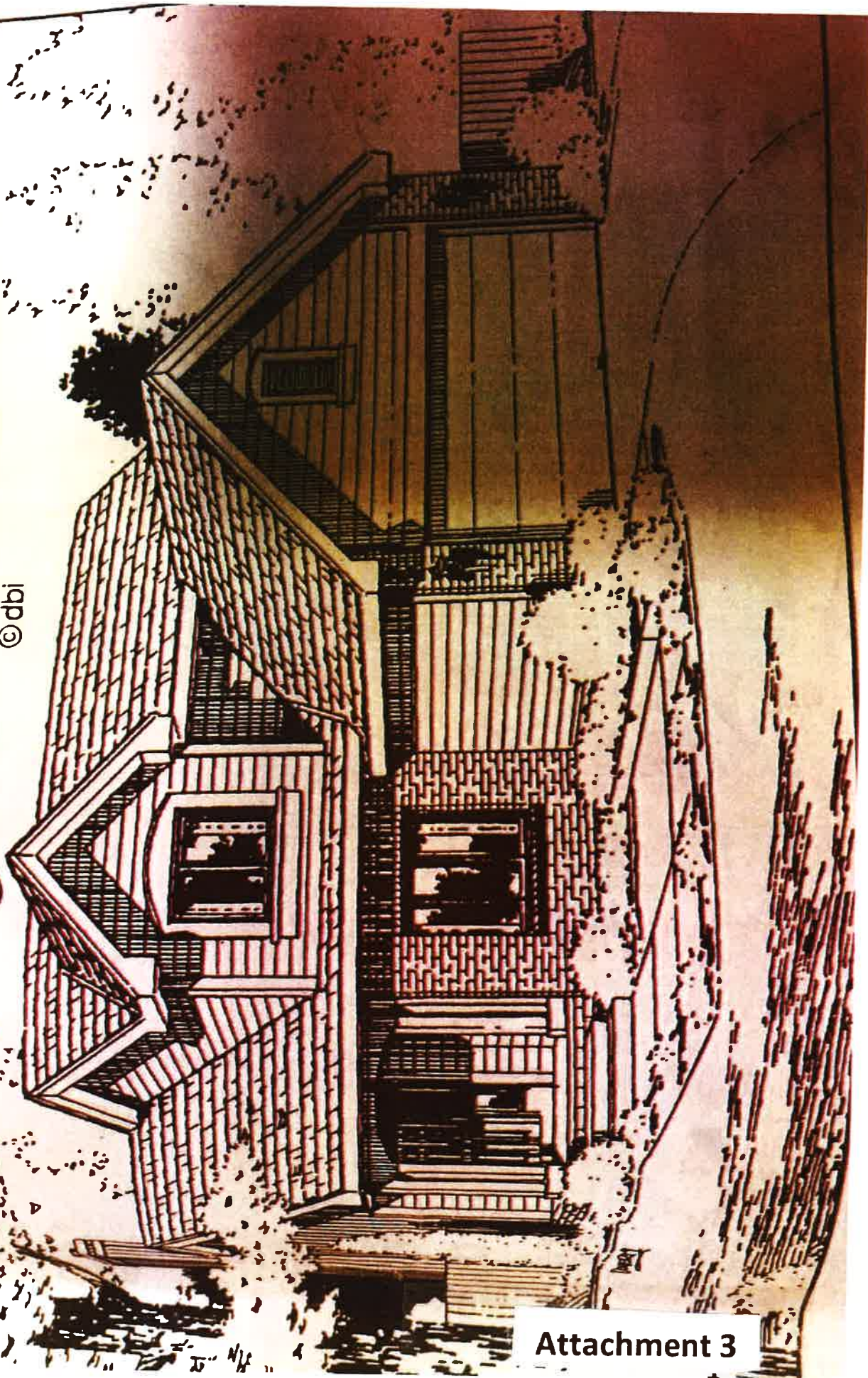


GENERAL NOTES:

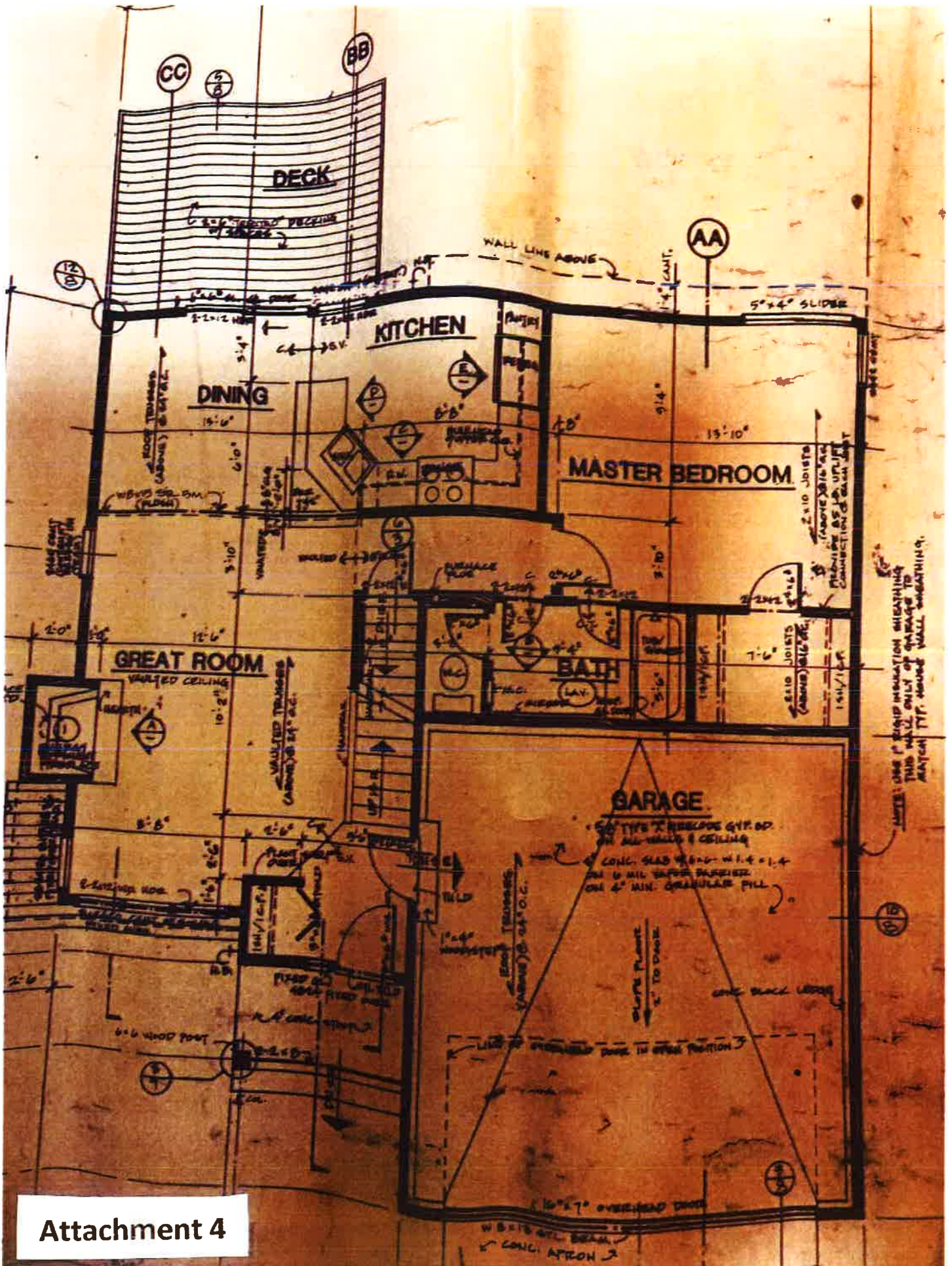
- The property shown herein is currently owned by Henry Roberts, LLC, and is located at 115.00' x 115.00'.
- The proposed subdivision is shown on the attached plat.
- The proposed subdivision is shown on the attached plat.
- The proposed subdivision is shown on the attached plat.
- The proposed subdivision is shown on the attached plat.

Angel Cove

©dbi



Attachment 3



NOTE: SEE P. 10 FOR INFORMATION ON BREATHING THIS WALL ONLY OF GARAGE TO MATCH TYP. HOUSE WALL INDENTATION.

Attachment 4



City of
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September 4, 2020

Value Enterprises, LLC
1530 N Salisbury Blvd
Salisbury, MD 21801

RE: Case #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.

Dear Mr. Adams:

This is to officially notify you that the Salisbury Board of Zoning Appeals at a meeting on September 3, 2020, **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.

Any party dissatisfied with the Board's decision may appeal to the Wicomico County Circuit Court within 30 days from the date of this letter. The court is empowered to overturn or confirm the Board's decision.

You may now proceed with applying for your building permits.



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If you have further questions, please feel free to contact Henry Eure at 410-548-3130.

Sincerely,

Anne Roane | brt

Anne Roane
Secretary to the Board

AR:brt

cc: City Solicitor
Assessments

Brock Parker/528 Riverside Dr/Salisbury, MD 21801

Chris Smith/425 Druid Hill Ave/Salisbury, MD 21801

Sarah Jane Smith/1098 Frederick Ave/Salisbury, MD 21801

Ann & Eddie Morris/429 Druid Hill Ave/Salisbury, MD 21801

Chase Dashiell/424 Druid Hill Ave/Salisbury, MD 21801

Wendell Ward/422 Druid Hill Ave/Salisbury, MD 21801

Sharon Dashiell/1103 Russell Ave/Salisbury, MD 21801

Corinne Pubill/4274 Druid Hill Ave/Salisbury, MD 21801



STAFF REPORT

MEETING OF JULY 1, 2021

Case No. 202100572
Applicant: Shiv Patel
Property Owner: NEOS Corporation
Location: 2130 Windsor Drive
Tax Map: #102
Grid #10, Parcel #2579, Lot 16A
Zoning: Light Industrial
Request: Fence Setback Variance

I. SUMMARY OF REQUEST:

The applicants request permission to erect a 6 ft. tall chain-link fence within the side yard setback. **(Attachment 1)**

II. ACCESS TO THE SITE AREA:

The site has frontage along Windsor Drive and Marvel Road, with a proposed access on Windsor Drive. **(Attachment 2)**

III. DESCRIPTION OF PROPERTY:

This site consists of an unimproved corner lot that is 1.12 acres in size.

IV. DESCRIPTION OF SURROUNDING AREA/NEIGHBORHOOD:

Surrounding properties are a mixture of light industrial uses including contractor's offices and storage, warehouses, manufacturing and unimproved properties. The neighborhood is primarily zoned Light Industrial, although the Industrial Park zoning district is further to the west and northwest.

V. EVALUATION:

- (a) **Discussion:** The applicants plan to use the site for contractor's storage, and wish to utilize as much property as possible for this purpose. In order to maximize the site as well as properly protect the property, a 6 ft. tall chain link fence is proposed within the side yard setback/landscaped area. **(Attachment 3)** The applicants



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intend to place the proposed fence along the west and south side property lines. Section 17.220.040 of the Zoning Code requires that storage areas be screened with either a solid fence or wire fence with slat inserts, and a minimum 10 ft. wide landscaped area. No landscaped area is proposed.

- (b) **Impact:** Staff believes the proposed fence will have a moderate impact on neighboring properties. The lack of screening and landscaping may cause the property to appear unsightly.
- (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 is no unique condition that the property possesses.

- [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 created by the Zoning Code. Required landscaping surrounding outdoor storage is typical city-wide.

- [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 a variance should not be detrimental to the public health, security and general welfare of the neighborhood. However, Staff feels



that providing the required screening and landscaping will aid in maintaining the appearance of the property.

- [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 to utilize additional land space.

- [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.**

Eliminating landscaping where adjoining neighboring properties may be detrimental to these sites, as attractiveness of the subject property may be diminished.

- [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.**

Locating the fence adjacent to the property lines should have minimal effect on neighboring properties except for a reduction in attractiveness.

- [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.



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- [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 fence setback variance request eliminates the possibility of providing an attractive buffer between adjoining properties. 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 applicant's desire to maximize storage area on the site, there does not appear to be any hardship demonstrated or warranted in order to grant the variance as requested.

VII. RECOMMENDATION:

Based on criteria for approval as outlined in Section V (c) of the Staff Report, **Denial** of the variance request as submitted is recommended to erect/install a 6 ft. tall fence within the side yard setback/landscaping area along the west and south property lines.

NEOS Corporation
301 Patsy Ave
Glen Burnie, MD 21060

May 26, 2021

Henry Eure, Project Manager
Department of Infrastructure and Development
City of Salisbury
125 N Division Street, Room 202
Salisbury Maryland 21801

Subject - 2130 Windsor Drive, Salisbury, Maryland - Tax Map: #102 / Grid #10, Parcel#2579, Lot 16A
Light Industrial
Waiver of 10 Feet Setback for Constructing Fence along Non-Traffic Side of the Property Section
17.220.040 of the Zoning Code

Dear Mr. Henry Eure:

NEOS Corporation request permission to construct 6 ft tall chain-link fence along the non-traffic side of the property with no setback. (Attachment 3). NEOS Corporation will construct 6 ft tall chain-link fence with 10 feet setback along Windsor Drive and Marvel Road.

NEOS Corporation has previously received a permit for constructing the 6 ft tall chain-link fence by application number 202100347 Case Number SA-21-237. (Site map - Attachment 1)

The site has frontage along Windsor Drive and Marvel Road, with a proposed access on Windsor Drive. (Attachments 2 & 3). This site consists of an unimproved corner lot that is 1.12 acres in size. Surrounding properties are a mixture of light industrial uses including contractor's offices and storage, warehouses, manufacturing, and unimproved properties. The neighborhood is primarily zoned Light Industrial, although the Industrial Park zoning district is further to the west and northwest.

NEOS Corporation wish to utilize the site for contractor's storage, and wish to utilize as much property as possible for this purpose. In order to maximize the site as well as properly protect the property, a 6 ft. tall chain link fence is proposed within the front yard 10 feet setback along both Marvel Road and Windsor and no setback along the two other non-traffic side of the property line. The proposed fence will have a moderate impact on neighboring properties. 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.

Denying the setback waiver will create an undue hardship on a small minority business. I thank you for your support.

Sincerely

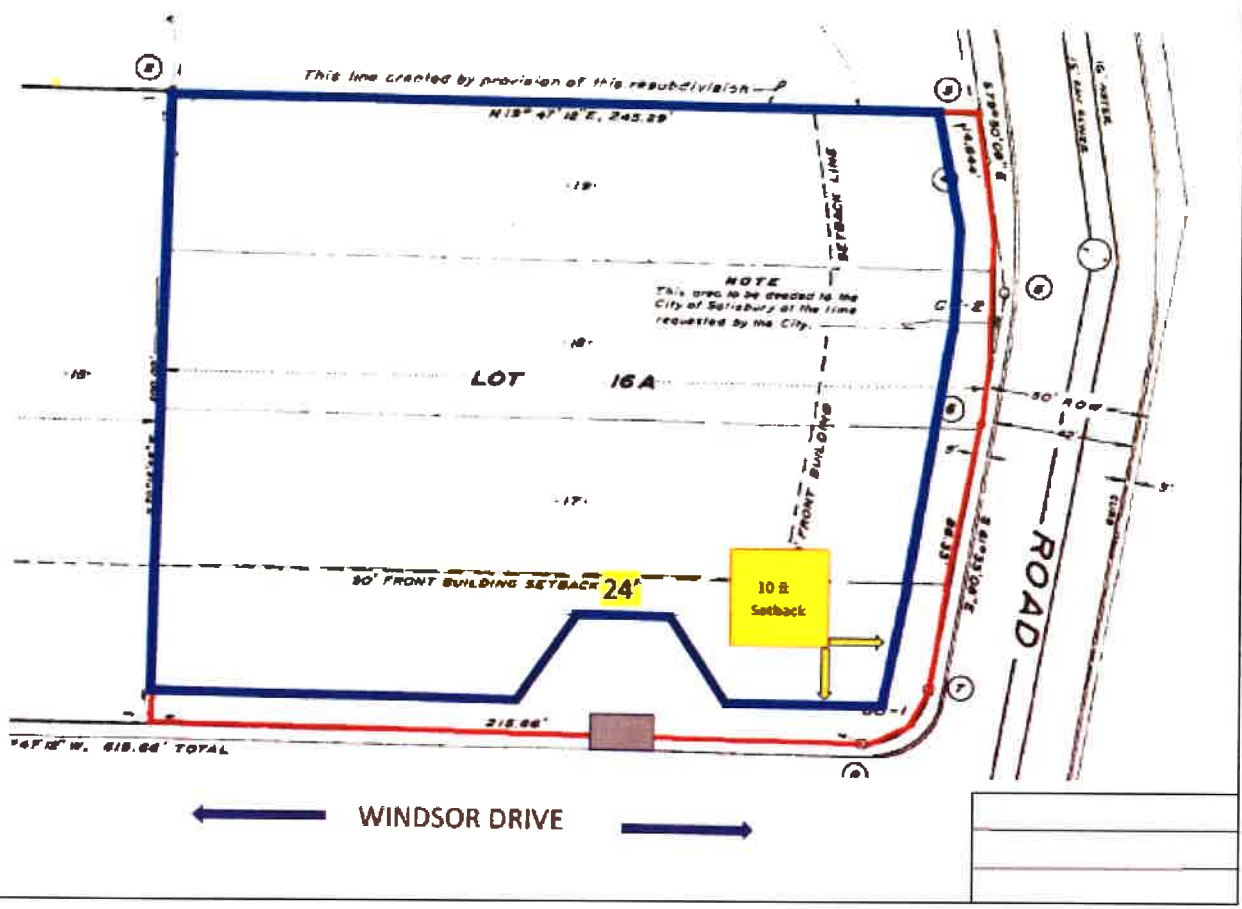


Shiv Patel



6' Fence Outline

2130 Windsor Drive, Salisbury, MD 21801





STAFF REPORT

MEETING OF JULY 1, 2021

Case No. 202100573
Applicant: Tyler Building Co.
Property Owner: Robert K. Morse
Location: 1408 East Upland Drive
Tax Map: #113
Grid #14, Parcel #1131
Zoning: Planned Residential District No. 3
Harbor Pointe, Phase I
Request: Side Yard Setback Variance

I. SUMMARY OF REQUEST:

The applicant is requesting permission to construct a 20 ft. x 24 ft. garage addition within the side yard setback.

II. ACCESS TO THE SITE AREA:

The site has frontage and access along E. Upland Dr. (**Attachment 1**)

III. DESCRIPTION OF PROPERTY:

This site is a wedge-shaped lot totaling 10,014 square feet in area, and has been improved with a two-story single-family dwelling, which was constructed in 1992.

IV. DESCRIPTION OF SURROUNDING AREA/NEIGHBORHOOD:

Surrounding properties in the neighborhood are single-family homes, and are also located within Phase I of Harbor Pointe (Planned Residential District #3). The property adjoining the site immediately to the south is part of Harbor Pointe's open space area and is unimproved.

V. EVALUATION:

- (a) Discussion:** The applicant is requesting a 4.9 ft. side yard setback variance request in order to construct a new 20 ft. x 24 ft. garage addition. (**Attachments 2-5**) Due to the lot's odd shape and the footprint of the existing dwelling, a small portion of the

rear corner of the garage does not meet the minimum side yard setback requirement of 10 ft.

- (b) **Impact:** Staff believes the proposed setback variance request will have minimal to no effect on the neighborhood. Neighboring properties should not be impacted by the proposed location of the addition, as it adjoins property that is unimproved common space for the Harbor Pointe development.
- (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 lot is a wedge-shaped site that narrows the building envelope towards the rear of the property. Due to the unique property shape, there is a difficulty in constructing an addition that can comply with setback requirements along the side yards.

- [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.**

There are a few similarly shaped lots within the neighborhood, as well as throughout the city. Similar setback variance requests for odd-shaped lots are not uncommon citywide.

- [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 the hardship has not been caused by the City's Zoning Code standards, but by the lot's unique shape, which limits the building envelope toward the rear of the property.



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- [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. The proposed encroachment for the garage will be located next to the unimproved Harbor Pointe common area.

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

Although the variance request may increase the value of the property, the request is to simply add an attached garage to the existing dwelling.

- [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.**

Granting the setback request will not be detrimental to other properties and will 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 setback variance 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, nor will this request will affect transportation facilities.



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- [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 setback variance request will not have an impact on the City's Comprehensive Plan. The continued use will be a single-family dwelling, which is permitted inherently in this zoning district.

- [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 setback variance requested is the minimum necessary to afford relief from the Code requirements. However, the Board has the discretion to approve the requested variance or grant a lesser variance.

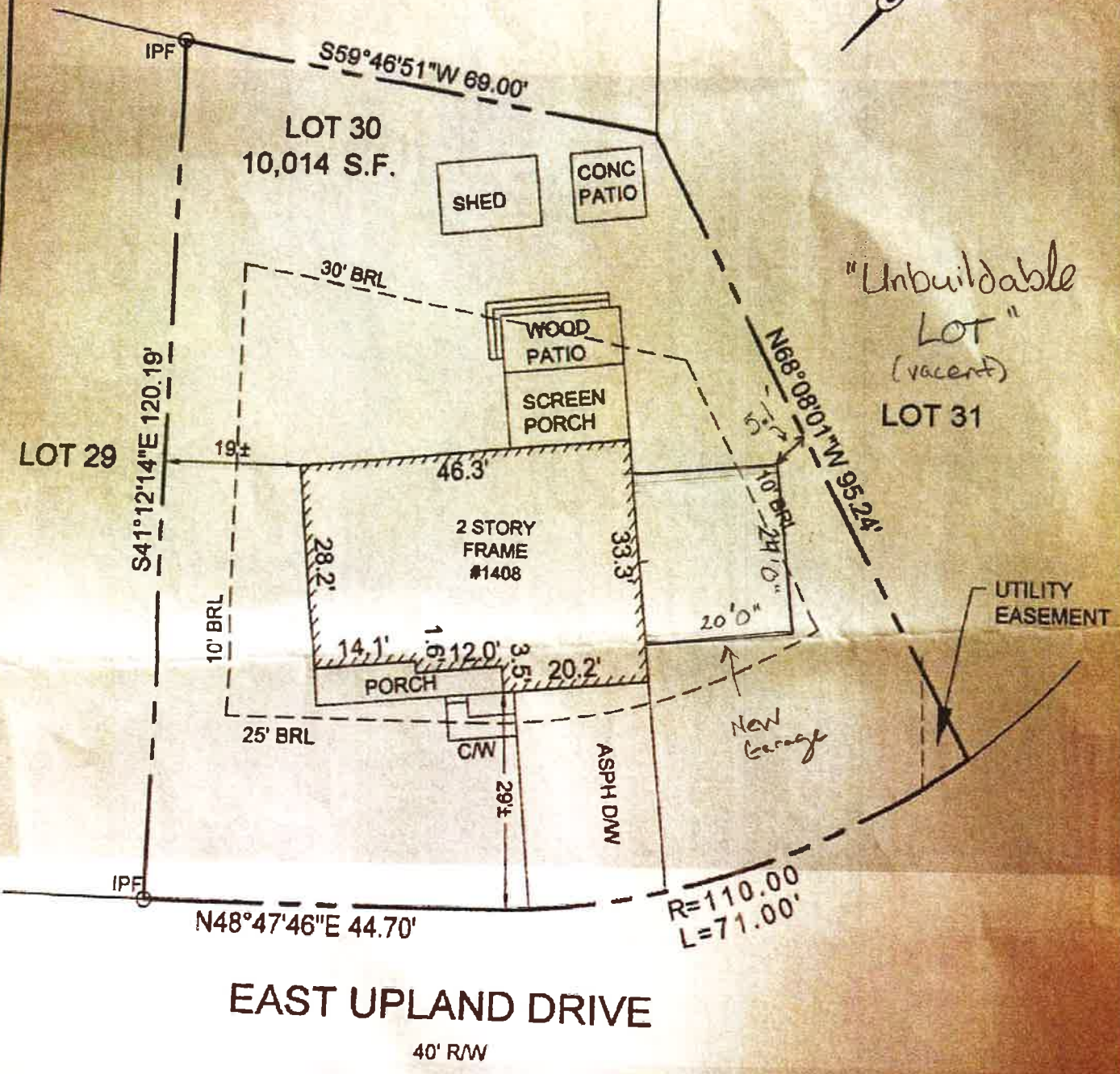
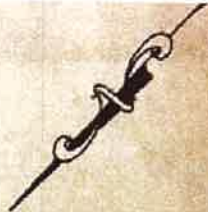
VI. STAFF COMMENTS:

The applicant has requested this variance in order to construct a garage addition on an oddly shaped lot. The addition has been configured to minimize the intrusion into the required side yard setback, while also avoiding violating front yard setback requirements.

VII. RECOMMENDATION:

Based on criteria for approval as outlined in Section V (c) of the Staff Report, **Approval** of a 5 ft. side yard setback variance request is recommended, in order to give the applicant a margin of error during construction of the addition.



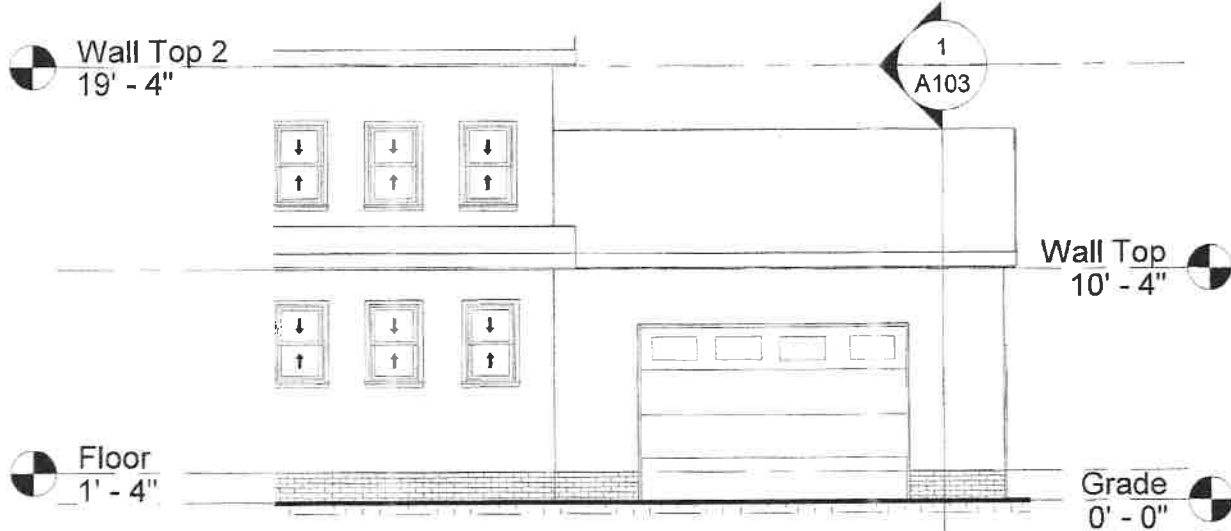


- NOTES:
1. THIS LOCATION DRAWING IS OF BENEFIT TO A CONSUMER ONLY IN SO FAR AS IT IS REQUIRED BY A LENDER OR A TITLE INSURANCE COMPANY OR ITS AGENT IN CONNECTION WITH CONTEMPLATED TRANSFER, FINANCING OR REFINANCING.
 2. THIS LOCATION DRAWING IS NOT TO BE USED FOR BUILDING OF FENCES OR OTHER IMPROVEMENTS.
 3. THIS LOCATION DRAWING IS NOT TO BE RELIED UPON FOR THE ACCURATE IDENTIFICATION OF PROPERTY BOUNDARY LINES, BUT SUCH IDENTIFICATION MAY NOT BE REQUIRED FOR THE TRANSFER OF TITLE OR SECURING FINANCING OR REFINANCING.
 4. LEVEL OF ACCURACY IS 2'±.

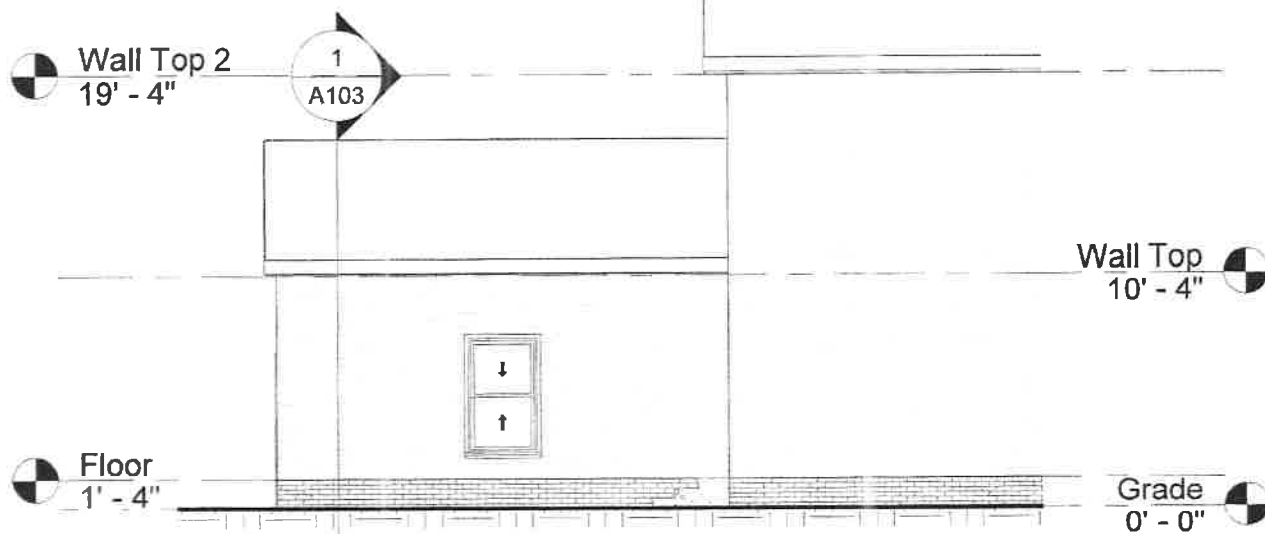
SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT I HAVE SURVEYED THE PROPERTY SHOWN HEREON FOR THE PURPOSE OF LOCATING THE IMPROVEMENTS ONLY, AND THE PROPERTY CORNERS HAVE NOT BEEN ESTABLISHED OR SET, UNLESS OTHERWISE NOTED.


LAND PRO A
8900-E GREEN

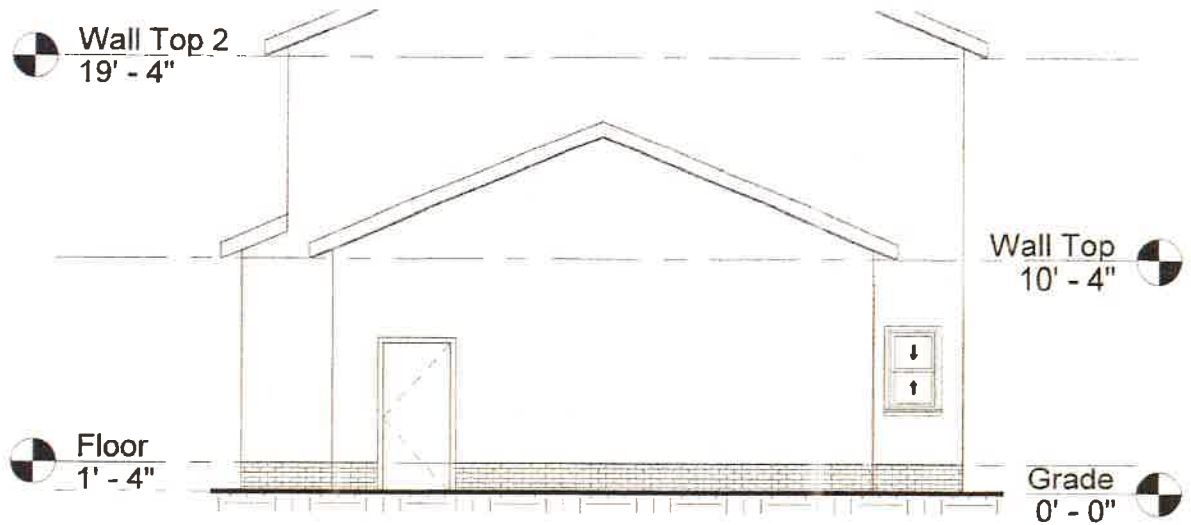


1 East
1/8" = 1'-0"

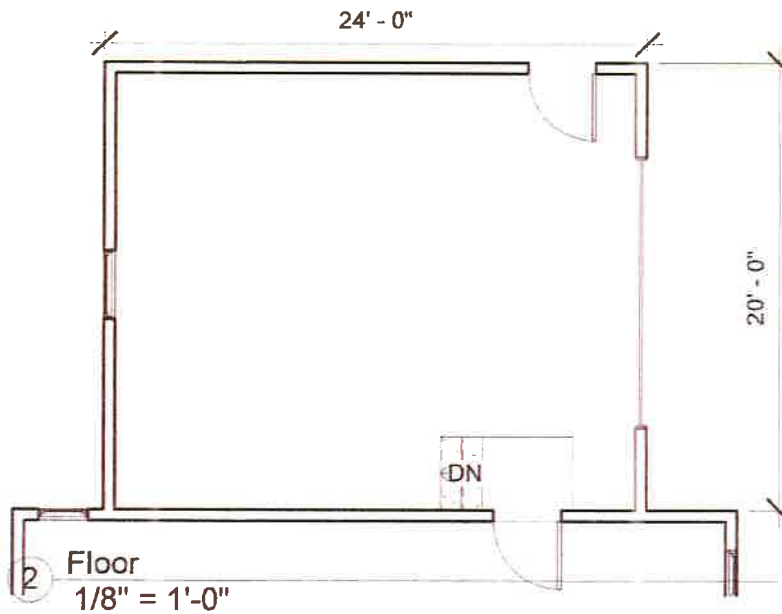


3 West
1/8" = 1'-0"

| | | | |
|---|-----------------------------------|---|---------------------------------------|
|  Tylerbuildingcompany.com | Morse Garage | East and West | |
| | | Project number _____ Date 5/26/2021 Drawn by Gage Sabater Checked by _____ | A101 Scale 1/8" = 1'-0" |



1 North
1/8" = 1'-0"



2 Floor
1/8" = 1'-0"

Tyler
Building
Company

Tylerbuildingcompany.com

Morse
Garage

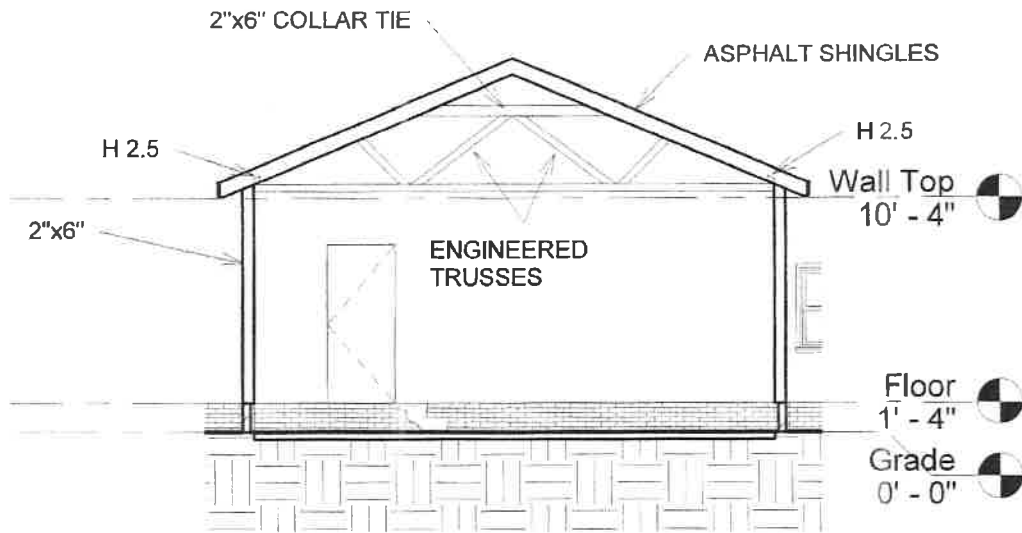
North and Floorplan

| | |
|----------------|--------------|
| Project number | - |
| Date | 5/26/2021 |
| Drawn by | Gage Sabater |
| Checked by | - |

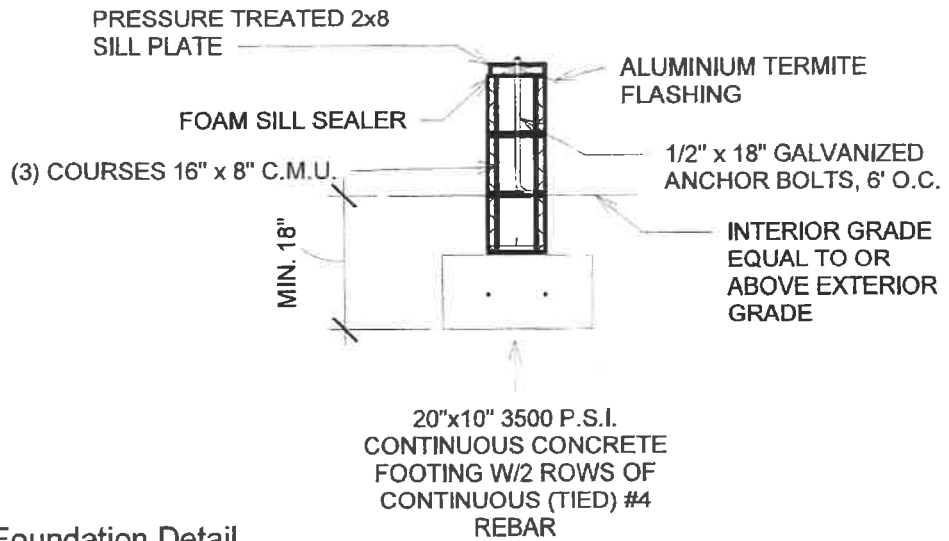
A102

Scale 1/8" = 1'-0"


Attachment 4



1 Section 1
1/8" = 1'-0"



2 Foundation Detail
1/2" = 1'-0"

| | | | |
|---|---------------------|---|---------------------------------------|
|  Tylerbuildingcompany.com | Morse Garage | Section and Details | |
| | | Project number - Date 5/26/2021 Drawn by Robert Duong Checked by | A103 Scale As indicated |

STAFF REPORT

MEETING OF JULY 1, 2021

Case No. 202100574
Applicant: First Move Properties, LLC/Nicholas Simpson
Property Owner: First Move Properties, LLC
Location: 130 & 132 East Main Street
Tax Map: #107
Grid #15, Parcels #855 & #856
Zoning: Central Business District
Request: Special Exception – Height and Density Increases

I. SUMMARY OF REQUEST:

The applicant proposes to redevelop the site of two formerly 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. **(Attachment 1)**

II. ACCESS TO THE SITE AREA:

The site has frontage and access on the south side of East Main Street.

III. DESCRIPTION OF PROPERTIES:

The site at 130 East Main Street is 3,300 sq. ft. in area and was improved with a three-story, 7,157 sq. ft. building which was constructed in 1920. Meanwhile, the property located at 132 East Main Street is 4,400 square feet in size and was improved with the existing 16,456 sq. ft., four-story office building, which was also constructed in 1920. Both of the buildings, with the exception of both front façades has been demolished. The previous building footprint for both buildings essentially extends to all property lines. Both properties are also in the Intensely Developed Area (IDA) of the Chesapeake Bay Critical Area Program. **(Attachment 2)**



IV. HISTORY:

The two properties have an extensive history of approvals for the proposed building, as well as its sister building located at 144 East Main Street, dating back to 2019. Demolition of the previous buildings began in 2019. Due to a number of unforeseen circumstances, several previous approvals, including Historic Commission and Board of Zoning Appeals approvals, have since expired. The applicant is now returning to the Board to again seek special exceptions for both height and density.

V. DESCRIPTION OF SURROUNDING AREA/NEIGHBORHOOD:

Surrounding properties are also in the Central Business zoning district. Nearby buildings include the U.S. Post Office, Wicomico County Courthouse, and the Salisbury Parking Garage.

VI. EVALUATION:

- (a) **Discussion:** The applicant proposes to resubdivide the existing properties into one parcel by removing the lot line which separates 130 and 132 East Main Street. (The property located at 144 East Main Street will also be included in the proposed resubdivision.) Construction of a twelve-story, 185 ft. tall (maximum height is 185 ft., while the primary height is 165 ft.), 93,080+/- sq. ft. building is then proposed for the existing two subject lots, and the building footprint will extend to the rear property line at 130 East Main Street. The remaining existing setbacks, including the 4.6 ft. setback along East Main Street, will be maintained. The existing historic building façades have been retained for the proposed new building. The first floor will be a mixture of retail and office uses, while the remaining eleven floors will be converted to two, three, and four bedroom luxury apartments. A total of 60 residential units are proposed, with a density rate of 340 units per acre. Parking for the tenants is proposed to be provided in the City's parking garage, and will be accessed via a 4th story walking bridge which will connect the garage to the subject property. **(Attachments 4 - 5)** The Zoning Code requires a special exception for buildings exceeding 75 ft. in height in the Central Business District. A special exception is also required for densities exceeding 40 units per acre.
- (b) **Impact:** Staff believes the proposed addition will have a significant impact on adjacent properties, and the downtown area in whole, by bringing additional commerce to downtown area businesses.

- (c) **Relationship to Criteria:** In addition to the criteria discussed above pertaining to increased density and height, Section 17.232.020B. of the Salisbury Municipal Code contains the criteria the Board should consider when approving special exceptions. Staff finds that this request complies with the Special Exception criteria as follows:

- [1] The proposal will be consistent with the Metro Core Plan, the objectives of the Zoning Ordinance and any other applicable policy or plan adopted by the Planning Commission or City Council for development of the area affected.**

The site is located in the Central Business zoning district, which inherently allows apartments above the first floor, as well as apartment buildings. Retail sales and office uses are also permitted within the district. Increases in height and density of residential uses is permitted by special exception. The Metro Core Plan states, “The CBD should be targeted for more office, retail and residential development, thereby strengthening its role as a vital city center where people come to work, live, and play.” Additionally, the Salisbury Downtown Master Plan indicates that this proposed development is the exact type of redevelopment project that the city envisions – compact, mixed income housing on upper floors, with the first floor consisting of retail and commercial.

- [2] The location, size, design and operating characteristics under the proposal will have minimal adverse impact on the livability, value or appropriate development of abutting properties and the surrounding area.**

The proposed redevelopment is expected to bring additional business to nearby stores and restaurants which will in turn increase property values.

- [3] 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 proposed addition lends itself to the historical flavor of the Downtown Historic District, as was evidenced by the Historic District Commission’s previous approval of the project. (This proposal will be heard again at the Historic Commission’s June 30, 2021 meeting.)



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

Staff does not find that the proposed use will have a negative effect on any of these items.

- [5] 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.**

Although the height of the proposed building will obviously cast some shadows on neighboring properties, other negative impacts will be negligible. As the property is located in the heart of downtown, with parking provided in the parking garage, traffic should not be impacted, as residents will be within walking distance to many activities.

- [6] The proposal will not adversely affect transportation or unduly burden water, sewer, school, park, stormwater management or other public facilities.**

The proposal should have minimal impacts on transportation, water, sewer, stormwater management or other public facilities.

- [7] The proposal will preserve or protect environmental or historical assets of particular interest to the community.**

As the original proposal received approval from the Salisbury Historic District Commission, it is expected that the development as proposed will enhance the Downtown Historic District.

- [8] The applicant has a bona fide intent and capability to develop and use the land as proposed and has no inappropriate purpose for submitting the proposal, such as to artificially alter property value for speculative purposes.**

The applicant has in the past demonstrated an interest in maintaining the vitality, appearance and economic growth of Salisbury by investing in other properties and improving the appearance and value of the same.

Furthermore, Section 17.24.040B.4. of the Salisbury Municipal Code contains the criteria the Board should consider when approving special exceptions in the

Central Business District. Staff finds that this request complies with the Special Exception criteria as follows:

[i] Recommendation from the planning commission.

The proposed development received a Certificate of Design and Site Plan approval from the Planning Commission on March 21, 2019. (There was no expiration date for this approval.)

[ii] The type of residential development proposed relative to the ability of the site to accommodate the density proposed.

The previously existing buildings essentially extend to all property lines, except for a small portion of at the rear of 130 East Main Street. The footprint will be expanded to the rear property line at this address. Density will be increased by expanding the building vertically.

[iii] 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.

All necessary infrastructure is currently in place and adequately serves the site, although water upgrades may be necessary. The applicant and City are currently in discussions regarding any upgrades that may be required. This site is located within the downtown parking authority district. Parking is not required to be provided for sites within this special district. However, the applicant has an agreement with the City to reserve a number of parking spaces in the adjacent parking garage for residents of the apartments. **(Attachment 6)**

[iv] The functional, visual and spatial relationship of the proposed height relative to surrounding development and the CBD as a whole.

Although the building will be considerably taller than surrounding buildings, and will become the tallest within the city, this is the type of development/redevelopment that is targeted for the downtown area.

- [v] Whether the proposed height will create an intrusion or conflict with the spatial arrangement of existing or proposed buildings.**

The proposed construction should not cause conflict with surrounding properties, and will help serve to create a symmetry in height with taller structures “bookending” both ends of the block.

- [vi] Shadows which may interfere with solar panels or other solar equipment already in existence or under contract to be installed on existing buildings or buildings approved for construction in the immediate vicinity.**

None of the surrounding properties contain solar panels/equipment, and the City is not aware of projects in the neighborhood that will include the installation of this type of equipment.

- [vii] Water pressure and capability of community firefighting equipment, in addition to any required construction of fire safety devices, to assure safety of occupants.**

The proposed maximum building height will be 185 feet. The City’s ladder truck can extend to 95 feet. The building will be of type 1A construction, which will consist entirely of noncombustible materials. According to the 2018 International Building Code, which has been adopted by the City of Salisbury, buildings of type 1A construction have an unlimited building height and unlimited number of stories when used residentially. Additionally, apartments are required to be protected with an automatic sprinkler system.

- [viii] The merits of the design and whether the treatment of setbacks, landscaping or other amenities, in addition to architectural treatment of the building, provide a excellence of design which contributes to the furtherance of the purpose of the CBD.**

The proposed construction is a vertical addition to the facades of previously existing structures. Building setbacks are already established, and will not change, with the exception of extending the rear setback at 130 East Main Street to the rear property line. The design, as shown, has received approval from the Salisbury Historic District Commission (and is pending approval again on June 30, 2021) and Salisbury Planning



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Commission, and will enhance the City's skyline. Furthermore, the addition of 60 apartments within the Central Business District meets the Salisbury Zoning Code purpose as set forth in Section 17.24.010C., which states in part, "...to enhance the vitality of the downtown by encouraging residential uses..." Additionally, adding 60 residential units is a step towards the Salisbury Downtown Master Plan of adding 500 residential units to the downtown area within the near future.

VII. STAFF COMMENTS:

The proposed project, which is very ambitious, has the support of the City's Administration, as well as previous approvals from the Historic District Commission and Planning Commission. The addition will undoubtedly change the appearance of the City's downtown skyline, however, the design lends itself to enhancing the City's downtown historic district. The use of the property for first floor retail with residential uses above meets the purpose of the City's Central Business District by placing a mixture of both uses within the district to strengthen the role of the downtown area. Infusing the downtown with new dwelling units will help bring additional commerce to the surrounding area, especially retail and food service locations. Furthermore, by incorporating desired, but not required, parking for the building in the adjacent parking garage, traffic congestion will be minimalized.

VIII. RECOMMENDATION:

Based on the criteria for approval as discussed above in this staff report, Section V (c), the Planning Staff recommends **Approval** of the Special Exception requests to increase the building height to 185 feet, and increasing the density to 340 units per acre, subject to the recommended conditions as follows:

CONDITION OF APPROVAL:

1. Obtain final approvals from the Salisbury Historic District Commission.
2. Consolidate the properties located at 130, 132 and 144 East Main Street into one (1) parcel. (The resubdivision will reduce the overall density to 144.36 units per acre.)

FIRST MOVE PROPERTIES, LLC

**P.O. Box 4565
Salisbury, MD 21803**

May 27, 2021

City of Salisbury, Maryland
Department of Infrastructure & Development
Attn: Amanda H. Pollack, DID, Director (apollack@salisbury.md)
125 N. Division Street, Room 202
Salisbury, Maryland 21801

Dear Ms. Pollack,

On behalf of First Move Properties, LLC ("First Move") and pursuant to Chapter 17.232 of the City Code, please accept this letter for filing the enclosed Application for four (4) Special Exception requests by First Move in connection with its redevelopment of the Property located at 130-132 E. Main Street (Building 1) and 144 E. Main Street (Building 2). The Project consists of a building approximately 185ft tall, complete with sixty (60) residential apartment units comprised of two-person, three-person, or four-person luxury-style apartments located at 130-132 E. Main St. and a building approximately 120ft tall, complete with forty-five (45) residential apartment units comprised of two-person, three-person, and four-person luxury-style apartments located at 144 E. Main Street.

130-132 E. Main Street

First Move Properties, LLC, "The Ross Building"; 132 E. Main Street, Salisbury, Maryland 21801 (Map 0107, Grid 0015, Parcel 0856) and 130 E Main Street, Salisbury, Maryland 21801 (Map 0107, Grid 0015, Parcel 0855); Request for Special Exception

Building 1 was previously granted a special exception on April 10, 2019, to increase the building height to 165ft and increase density to 340 units per acre (Case #SA-19-211). Since the approval, Building 1 was delayed because of the Coronavirus Pandemic and now respectfully requests the City of Salisbury Board of Zoning Appeals (the "Board") update First Move Properties previous approvals and grant the following Special Exceptions for the Property:

- (1) Request for Extension of Special Exception for Increased Height (Chapter 17.24.040(B)(3))** – Pursuant to Chapter 17.24.040(B)(3), First Move requests a Special Exception permitting a building height of 185 feet.
- (2) Request for Extension of Special Exception for Increased Density (Chapter 17.24.040(B)(2))** – Pursuant to Chapter 17.24.040(B)(2), First Move requests a Special Exception permitting density in excess of forty (40) units per acre for development of Building 1.

This request by First Move refers to the Property in its entirety (i.e., both 130 E. Main and 132 E. Main). Prior to commencing construction of Building 1 and in accordance with Chapter 16.28.010, First Move will submit a Resubdivision Plat providing for the lot-line removal to combine 130 E. Main and 132 E. Main into one parcel (i.e., the Property), having a premises address of 132 E. Main Street, Salisbury, Maryland 21801, for approval by the City's Department of Infrastructure and Development.

Attachment 1

FIRST MOVE PROPERTIES, LLC
P.O. Box 4565
Salisbury, MD 21803

Request for Extension of Special Exception for Increased Height:

The Building 1 plans call plans for constructing a building with a proposed building-height up to 185 feet, including improvements available for use by the Buildings residents. The building is located in the City's Central Business District (the "CBD"); under Chapter 17.24.040(B)(3)(a), seventy-five feet (75) feet is the maximum permitted height for all buildings or structures located in the CBD unless otherwise permitted by Special Exception. Accordingly, to construct Building 1 as planned, First Move requests a Special Exception allowing a height up to 185 feet for the building located at 130-132 E. Main Street, Salisbury, Maryland.

Request for Extension of Special Exception for Increased Density:

The Property on which Building 1 will be developed, is located within the City's zoning district designated the Central Business District (the "CBD"). The Property at which Building 1 is planned for development consists of 7,160 square feet or .164 acres +/- (a copy of the Site Plan for Building 1 is enclosed with First Move's Application). Building 1 will consist of Sixty (60) two-person, three-person, and four-person luxury-style apartment units. Pursuant to Chapter 17.24.040(B)(2)(b), the inherent density for development in CBD may not exceed forty (40) units per acre. Nevertheless, Chapter 17.24.040(B)(2)(c) allows the Board to increase the density permitted in CBD by special exception. Accordingly, First Move requests the Board grant a Special Exception increasing the permitted density for Building 1's planned Sixty (60) residential units.

144 E. Main Street Request:

First Move Properties, LLC; "The Ross" Downtown Salisbury Development Project; 144 E. Main Street, Salisbury, Maryland 21801 (Map 0107, Grid 0015, Parcel 0858) ("144 E. Main") and 119 E. Market Street ("119 E. Market") (144 E. Main and 119 E. Market referred to collectively as "Building 2"); Request for Special Exception

Building 2 was previously granted a special exception on February 6, 2020, to increase the density at 144 E. Main Street to 53 units per acre (Case #SA-20-044). Since the approval, Building 2 was delayed because of the Coronavirus Pandemic and now respectfully requests the City of Salisbury Board of Zoning Appeals (the "Board") update First Move Properties previous approvals and grant the following Special Exceptions for the Property:

- (1) Special Exception for Increased Height (Chapter 17.24.040(B)(3))** – Pursuant to Chapter 17.24.040(B)(3), First Move requests a Special Exception permitting a building height up to 120 feet.
- (2) Special Exception for Increased Density (Chapter 17.24.040(B)(2))** – Pursuant to Chapter 17.24.040(B)(2), First Move requests a Special Exception permitting density in excess of Forty (40) units per acre for development of Building 2.

FIRST MOVE PROPERTIES, LLC

P.O. Box 4565

Salisbury, MD 21803

Request for Special Exception for Increased Height:

Building 2 calls for the construction of a building with a proposed Building-height up to 120 feet, including rooftop area improvements available for use by the building's residents. The building is located in the City's Central Business District (the "CBD"); under Chapter 17.24.040(B)(3)(a), seventy-five feet (75) feet is the maximum permitted height for all buildings or structures located in the CBD unless otherwise permitted by Special Exception. Accordingly, to construct Building 2 as planned, First Move requests a Special Exception allowing height up to 120 feet for the building located at 144 E. Main Street, Salisbury, Maryland.

Request for Special Exception for Increased Density:

The Property on which Building 2 will be developed is located within the City's zoning district designated the Central Business District (the "CBD"). The Property consists of 25,497 square feet or .585 acres +/- (a copy of the Site Plan for Building 2 is enclosed with First Move's Application). Building 2 will consist of Forty-Five (45) residential apartment units, consisting of two-person, three-person, and four-person luxury-style apartments. Pursuant to Chapter 17.24.040(B)(2)(b), the inherent density for development in CBD may not exceed Forty (40) units per acre. Nevertheless, Chapter 17.24.040(B)(2)(c) allows the Board to increase the density permitted in CBD by special exception. Accordingly, First Move requests the Board grant a Special Exception increasing the permitted density for Building 2's planned Forty-Five (45) residential apartment units.

Conclusion:

The Project complies with the City's goals for development in the CBD zoning district. At its heart, the purpose of the CBD: "is to maintain and strengthen the role of the downtown area as the community and regional center for a broad range of governmental, cultural, institutional, professional, business, service, and retail activities; [and,] to enhance the vitality of the downtown by encouraging residential uses." (See Chapter 17.24.010(C)). Here, the Project involves completely remodeling and repurposing historic buildings in the CBD. All told, the Project will convert three buildings exclusively for office space into two new buildings equipped with over 100 new luxury-style apartments. When finished, the Project will more than double the residential inventory available for rent in Downtown Salisbury; and, because the Project is centrally focused on offering high-quality apartment-style rentals to university students, the Project will inextricably strengthen the connection Downtown Salisbury shares with Salisbury University.

City water and sewer services are available to serve the Project once developed; and, the increased density will not impose any undue burden or expense on the City. The Project also includes plans for the construction of a walking bridge connecting the buildings to the City's parking garage to service the parking needs of the residents. Furthermore, the Project will comply with all stormwater management and environmental regulations. As for protecting the community's historical assets, the City's Historic District Commission has approved First Move's plans for the massing and façade of the building in connection with First Move's development of the Project.





THE ROSS APARTMENT COMPLEX
 130 - 148 E. MAIN STREET
 SALISBURY
 WICOMICO COUNTY, MD

COVER SHEET & OVERALL LAYOUT

PROJECT NO.: 201910.00
 DATE: 10/21/19
 SCALE: 1" = 20'

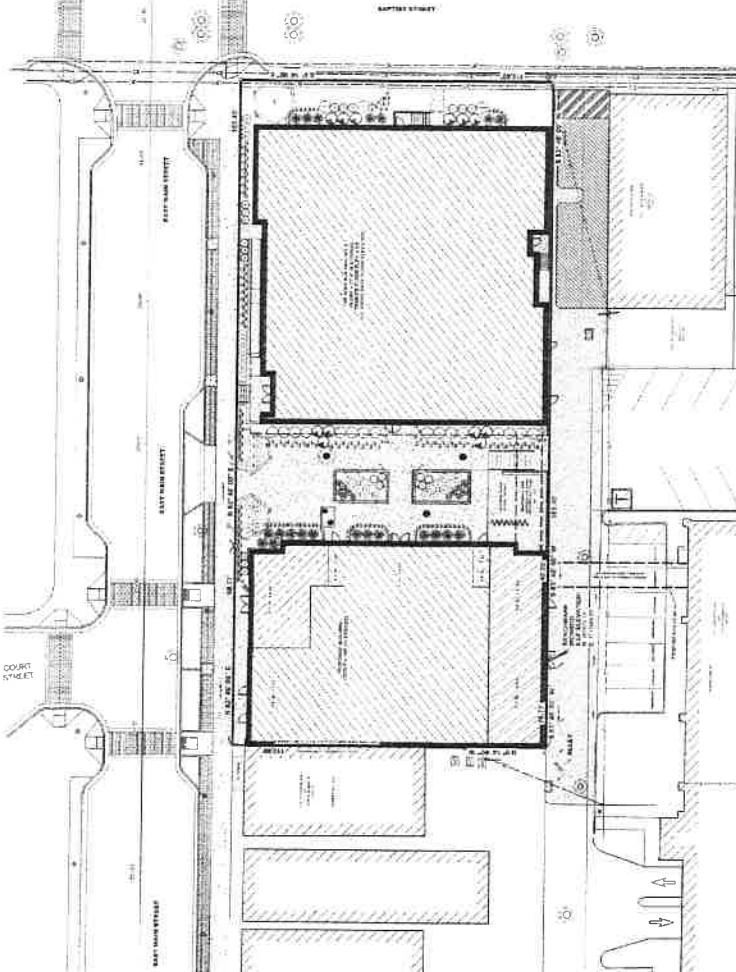
C-001

THE ROSS APARTMENT COMPLEX
SALISBURY, MARYLAND
 CITY OF SALISBURY
 WICOMICO COUNTY, MD



SITE DATA

1. PROJECT NAME: THE ROSS APARTMENT COMPLEX
2. PROJECT ADDRESS: 130 - 148 E. MAIN STREET, SALISBURY, MD 21801
3. PROJECT OWNER: BECKER MORGAN GROUP
4. PROJECT ARCHITECT: BECKER MORGAN GROUP
5. PROJECT ENGINEER: BECKER MORGAN GROUP
6. PROJECT INTERIOR DESIGNER: BECKER MORGAN GROUP
7. PROJECT CONTRACTOR: [REDACTED]
8. PROJECT START DATE: [REDACTED]
9. PROJECT END DATE: [REDACTED]
10. PROJECT PHASE: [REDACTED]
11. PROJECT STATUS: [REDACTED]
12. PROJECT DESCRIPTION: [REDACTED]
13. PROJECT LOCATION: [REDACTED]
14. PROJECT ZONING: [REDACTED]
15. PROJECT PERMITS: [REDACTED]
16. PROJECT REGULATIONS: [REDACTED]
17. PROJECT STANDARDS: [REDACTED]
18. PROJECT REFERENCES: [REDACTED]
19. PROJECT NOTES: [REDACTED]
20. PROJECT CONTACTS: [REDACTED]



GENERAL NOTES

1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF SALISBURY AND WICOMICO COUNTY.
2. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AND UTILITIES AT ALL TIMES.
3. THE CONTRACTOR SHALL PROTECT ALL EXISTING UTILITIES AND STRUCTURES NOT TO BE REMOVED.
4. THE CONTRACTOR SHALL MAINTAIN ADEQUATE EROSION CONTROL MEASURES THROUGHOUT CONSTRUCTION.
5. THE CONTRACTOR SHALL MAINTAIN ADEQUATE DRAINAGE AND FLOOD CONTROL MEASURES.
6. THE CONTRACTOR SHALL MAINTAIN ADEQUATE ACCESS TO ALL ADJACENT PROPERTIES.
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13. THE CONTRACTOR SHALL MAINTAIN ADEQUATE ACCESS TO ALL ADJACENT BIKEWAYS.
14. THE CONTRACTOR SHALL MAINTAIN ADEQUATE ACCESS TO ALL ADJACENT TRAILS.
15. THE CONTRACTOR SHALL MAINTAIN ADEQUATE ACCESS TO ALL ADJACENT OPEN SPACES.
16. THE CONTRACTOR SHALL MAINTAIN ADEQUATE ACCESS TO ALL ADJACENT RECREATION AREAS.
17. THE CONTRACTOR SHALL MAINTAIN ADEQUATE ACCESS TO ALL ADJACENT CULTURAL RESOURCES.
18. THE CONTRACTOR SHALL MAINTAIN ADEQUATE ACCESS TO ALL ADJACENT HISTORIC RESOURCES.
19. THE CONTRACTOR SHALL MAINTAIN ADEQUATE ACCESS TO ALL ADJACENT ARCHITECTURAL RESOURCES.
20. THE CONTRACTOR SHALL MAINTAIN ADEQUATE ACCESS TO ALL ADJACENT SCULPTURAL RESOURCES.

CITY OF SALISBURY GENERAL NOTES

1. THE CITY OF SALISBURY IS A CITY AND COUNTY IN THE STATE OF MARYLAND.
2. THE CITY OF SALISBURY IS INCORPORATED UNDER THE MARYLAND CITY AND COUNTY ACTS.
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CITY OF SALISBURY - UTILITY CONSTRUCTION NOTES

1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF SALISBURY AND WICOMICO COUNTY.
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CITY OF SALISBURY - FIRE MARSHAL

| ITEM | DESCRIPTION | STATUS | DATE |
|------|--------------------------|----------|----------|
| 1 | PERMITS | APPROVED | 10/21/19 |
| 2 | INSURANCE | APPROVED | 10/21/19 |
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| 17 | RECORDS | APPROVED | 10/21/19 |
| 18 | ARCHIVES | APPROVED | 10/21/19 |
| 19 | LIBRARY | APPROVED | 10/21/19 |
| 20 | MUSEUM | APPROVED | 10/21/19 |

SOILS LEGEND

| ITEM | DESCRIPTION | STATUS | DATE |
|------|--------------------------|----------|----------|
| 1 | PERMITS | APPROVED | 10/21/19 |
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LEGEND

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OWNERS CERTIFICATION

I, the undersigned, hereby certify that the information provided in this plan is true and correct to the best of my knowledge and belief.

DATE: 10/21/19

OWNER: [REDACTED]

ENGINEERS CERTIFICATION

I, the undersigned, hereby certify that the information provided in this plan is true and correct to the best of my knowledge and belief.

DATE: 10/21/19

ENGINEER: [REDACTED]

DIRECTOR'S APPROVAL BLOCK FOR SITE PLAN

I, the undersigned, hereby certify that the information provided in this plan is true and correct to the best of my knowledge and belief.

DATE: 10/21/19

DIRECTOR: [REDACTED]

SHEET INDEX

| NO. | DESCRIPTION | DATE |
|-----|-------------------------------|----------|
| 1 | COVER SHEET & OVERALL LAYOUT | 10/21/19 |
| 2 | FOUNDATION & RETAINMENT WALLS | 10/21/19 |
| 3 | FOUNDATION & RETAINMENT WALLS | 10/21/19 |
| 4 | FOUNDATION & RETAINMENT WALLS | 10/21/19 |
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BUILDING DATA - FIRE MARSHAL

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LEGEND

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LEGEND

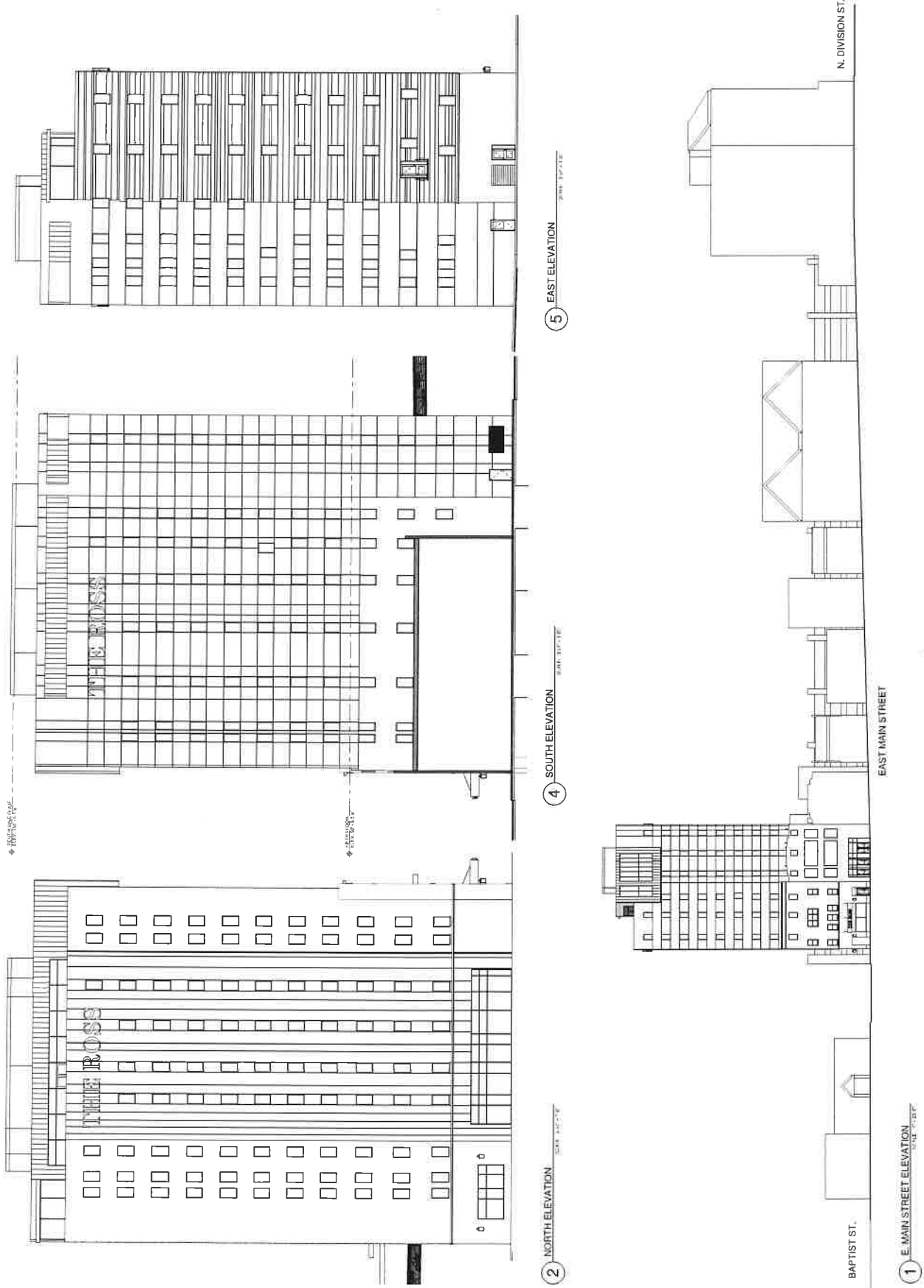
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| 14 | POST-CONSTRUCTION | | |





Attachment 5



BECKER
MORGAN
CORPORATE



BECKER
MORGAN
GROUP



BECKER
MORGAN
GROUP



BECKER
MORGAN
GROUP



BECKER
MORGAN
GROUP



BECKER
MORGAN
GROUP

AS AMENDED ON JANUARY 13, 2020
RESOLUTION NO. 2990

A RESOLUTION OF THE CITY OF SALISBURY, MARYLAND AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH FIRST MOVE PROPERTIES, LLC FOR THE PURCHASE OF PARKING PERMITS IN THE DOWNTOWN PARKING GARAGE, ~~TO GRANT A TEMPORARY CONSTRUCTION EASEMENT AND PERPETUAL MAINTENANCE EASEMENT, AND TO GRANT A DEED OF EASEMENT TO FIRST MOVE PROPERTIES, LLC.~~

WHEREAS, First Move Properties, LLC intends to improve properties it owns located at 130 East Main Street, 132 East Main Street and 144 East Main Street in the Central Business District; and

WHEREAS, the attached Developer's Agreement details the agreement between the City of Salisbury and First Move Properties regarding parking spaces in the garage; ~~and~~

~~WHEREAS, First Move Properties, LLC requires easements across real property owned by the City of Salisbury in order to improve the properties identified as 130 E. Main Street and 132 E. Main Street, City of Salisbury, to create a walkway from the property to the City of Salisbury parking garage; and~~

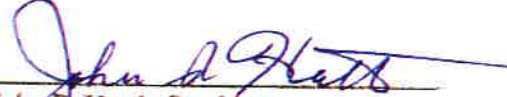
~~WHEREAS, the attached Deed of Easement and the attached Temporary Construction Easement and Perpetual Maintenance Easement detail the aforementioned easement areas and agreement between the City of Salisbury and First Move Properties, LLC.~~

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF SALISBURY, MARYLAND, that the Mayor is authorized to negotiate, sign and enter into an agreement ~~and easements~~ with First Move Properties, LLC that ~~are~~ is substantially similar to the attached Developer's Agreement, ~~Temporary Construction and Perpetual Maintenance Easement and Deed of Easement,~~ with such other terms and conditions as may be required by the City Solicitor.

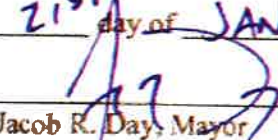
THIS RESOLUTION was duly passed at a meeting of the Council of the City of Salisbury held on January 13, 2020, and is to become effective immediately upon adoption.

ATTEST:


Kimberly R. Nichols, City Clerk


John R. Heath, President
Salisbury City Council

APPROVED BY ME THIS:

21st day of JAN, 2020

Jacob R. Day, Mayor

DEVELOPER'S AGREEMENT

THIS DEVELOPER'S AGREEMENT ("Agreement"), is dated this 21st day of January 2020, by and between the *City of Salisbury, Maryland*, a municipal corporation of the State of Maryland (the "City"), and *First Move Properties, LLC*, a Maryland limited liability company ("First Move") (the City and First Move are hereinafter referred to collectively as the "Parties").

Recitals

WHEREAS, the City is the owner of all that certain real property, and improvements thereon, located in the City of Salisbury, Parsons Election District, Wicomico County, State of Maryland identified as Map 0107, Grid 0015, Parcel 0881, and being described as "61,979 SQ FT NS CIRCLE AVE CITY OF SALISBURY", consisting of 61,979 square feet of land, more or less (said real property is hereinafter referred to as "**Parcel 881**");

WHEREAS, the City is the owner of all that certain real property, and improvements thereon, located in the City of Salisbury, Parsons Election District, Wicomico County, State of Maryland identified as Map 0107, Grid 0015, Parcel 0880, and being described as "L-18, 151 SQ FT 115-117 MARKET ST CITY OF SALISBURY", consisting of 18,151 square feet of land, more or less (said real property is hereinafter referred to as "**Parcel 880**") (Parcel 881 and Parcel 880 are hereinafter referred to collectively as the "**City Property**");

WHEREAS, the City Property is improved by a four-story structure, consisting of approximately 189,572+/- square feet of floor space, used and maintained by the City as a parking garage (the "**Downtown Parking Garage**") for the purpose of providing parking to the general public at a fee, subject to applicable local law and regulations;

WHEREAS, the Downtown Parking Garage contains a total of Seven Hundred Three (703) parking spots;

WHEREAS, First Move is the owner of all that certain real property, and improvements thereon, located in the City of Salisbury, Parsons Election District, Wicomico County, State of Maryland identified as Map 0107, Grid 0015, Parcel 856, and being described as "L-40X110 132-134 E MAIN ST CITY OF SALISBURY"; being in all respects the same property conveyed by George H. White and Deborah W. Poole unto First Move, by Deed dated March 1, 2018 and recorded among the Land Records of Wicomico County, Maryland in Liber 4296, folio 283 (said real property is hereinafter referred to as "**132 E. Main**");

WHEREAS, First Move is the owner of all that certain real property, and improvements thereon, located in the City of Salisbury, Parsons Election District, Wicomico County, State of Maryland identified as Map 0107, Grid 0015, Parcel 855, and being described as "3,300 SQFT 130A-130 E. MAIN ST CITY OF SALISBURY", and further being in all respects the same property conveyed by Livingston Holdings, LLC unto First Move, by Deed dated February 6, 2019 and recorded among the Land Records of Wicomico County, Maryland in Liber 4430, folio 483 (said real property is hereinafter referred to as "**130 E. Main**") (132 E. Main and 130 E. Main are hereinafter referred to collectively as the "**E. Main Properties**");

WHEREAS, pursuant to the terms and conditions set forth in that certain Commercial Sales Contract, dated September 20, 2019 (the "**Contract of Sale**"), by and between First Move and Salisbury Area Chamber of Commerce, Inc. ("**SACC**"), First Move has agreed to purchase from SACC all that certain real property having a premises address of 144 E. Main Street, Salisbury, Maryland 21801, more particularly identified by the Maryland Department of Assessment and Taxation Records as Map 0107, Parcel 0858 (Maryland Tax ID# 05-022673) (said real property is hereinafter referred to as "**144 E. Main**"), and all that certain real property having a premises address of 119 E. Market Street, Salisbury,

Maryland 21801, more particularly identified by the Maryland Department of Assessment and Taxation Records as Map 0107, Parcel 0878 (Maryland Tax ID# 05-022703) (said real property is hereinafter referred to as "**119 E. Market**") (144 E. Main and 119 E. Market are hereinafter referred to collectively as the "**Chamber Property**");

WHEREAS, First Move plans to redevelop the E. Main Properties by constructing a twelve-story, approximately one hundred sixty-five feet (165'+/-) tall, structure thereon, which, when completed, will consist of commercial retail spaces on the first floor, fifty-nine (59) luxury-style apartments on the second through eleventh floors, and an event space on the twelfth floor (the said twelve-story structure First Move plans to construct at the E. Main Properties is hereinafter referred to as the "**Ross Building**");

WHEREAS, upon its purchase of the Chamber Property, First Move plans to redevelop the Chamber Property by constructing a five-story structure thereon, which, when complete, will consist of twenty-five (25), four-person luxury-style apartments (the "**Chamber Building**") (the Ross Building and the Chamber Building are hereinafter referred to collectively as the "**FMP Project**");

WHEREAS, the fifty-nine (59) residential apartments within the Ross Building are designed to provide housing for a maximum of one hundred fifty-six (156) tenants, and, the twenty-five (25) residential apartments within the Chamber Building are designed to provide housing for a maximum of one hundred (100) tenants, thus, when complete, the FMP Project is intended to provide luxury-style apartment housing for a maximum of two hundred fifty-six residential tenants (residential tenants of the FMP Project are hereinafter referred to individually as a "**FMP Tenant**" and collectively as the "**FMP Tenants**");

WHEREAS, the Parties acknowledge and agree the FMP Project will have a material impact on the revitalization of Downtown Salisbury by: (i) significantly increasing the housing inventory available within Downtown Salisbury; and, (ii) directly linking Salisbury University students to the Downtown Salisbury area;

WHEREAS, the Parties further acknowledge and agree that the long-term viability of the FMP Project is contingent upon adequate public parking for the FMP Tenants;

WHEREAS, in order to provide adequate public parking for the FMP Tenants, First Move desires to ensure its ability to purchase up to two hundred fifty-six (256) parking permits for parking within the Downtown Parking Garage for the use of FMP Tenants;

WHEREAS, the Parties acknowledge that, as of the date and year first above written, the Downtown Parking Garage is not used to its full capacity and that two hundred fifty-six (256) parking spots are normally available for use by potential FMP Tenants;

WHEREAS, in consideration of the foregoing, the City agrees, on an annual basis, to make available up to two hundred fifty-six (256) parking permits authorizing the FMP Tenants to park within the Downtown Parking Garage, which said municipal parking permits shall be purchased annually by First Move from the City, on behalf of the FMP Tenants, pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties hereby agree as follows:

1. **Term.** The term of this Agreement shall commence on the date and year first above written and shall continue for a term of three years (the "**Initial Term**").

a. The term of this Agreement shall automatically renew for successive terms of one (1) year (each such additional term of one (1) year is hereinafter referred to as a "**Renewal Term**"), unless either party provides written notice, at least ninety (90) days prior to the end of the Initial Term or any Renewal Term, as the case may be, specifying the party's election to

terminate this Agreement at the end of the Initial Term or such applicable Renewal Term (as used in this Agreement, the word "Term" shall be deemed to include, where appropriate, the Initial Term and all Renewal Terms (if any)).

b. In the absence of such written notice from either party, the Initial Term or such applicable Renewal Term, as the case may be, shall automatically renew for an additional one (1) year term as aforesaid upon the same terms and conditions set forth herein.

c. The City retains the right to suspend this Agreement without notice in the event of an emergency (including but not limited to damage to the Downtown Parking Garage which prohibits the safe use of the structure), or upon written notice following a determination by the City that the Downtown Parking Garage is in need of renovation or maintenance or that replacement of the garage is necessary. In the event of suspension of this Agreement, the Grantor will offer alternative parking permits to Grantee in other City locations to be determined by the Grantor.

2. **Parking Spaces.** Beginning with the execution of this Agreement and continuing for the duration of the Term, the City shall issue up to two hundred fifty-six (256) parking permits to First Move, authorizing the holders thereof to use appropriate and available parking spaces in the Downtown Parking Garage for public parking, by tenants of First Move in accordance with the provisions of Sections 3 and 5. (Any and all municipal parking permits purchased by First Move for use by its Tenants as contemplated by this Agreement are hereinafter referred to as the "**Parking Garage Permits**").

3. **Purchase of the Parking Garage Permits.** Beginning with the execution of this Agreement, and on or before September 1st of each Fiscal Year thereafter during the Term, First Move shall purchase the number of Parking Garage Permits that First Move deems necessary and appropriate, in its discretion, for the operation and management of the FMP Project, including the provision of adequate public parking for the FMP Tenants residing at the FMP Project from time to time (for purposes of this Agreement the term "**Fiscal Year**" shall mean the period of July 1 – June 30). First Move expressly acknowledges and agrees that the City shall have no obligation whatsoever to reserve more than two hundred fifty-six (256) Parking Garage Permits for purchase by First Move.

4. **Purchase Price of Parking Garage Permits.** The purchase price for each Parking Garage Permit reserved for purchase by First Move shall be in that amount determined annually by the City in connection with the municipal budget adopted by the City Council and approved by the Mayor.

5. The City does not guarantee the availability of parking spaces in the Downtown Parking Garage for any permit holder. The permits issued are a license to park in any appropriate and available parking space. The issuance of the permit does not entitle the holder to a reserved space or the right to park at all times. All spaces are available on a first come first served basis.

6. **Miscellaneous.**

(a) **Authority.** Each party represents and warrants to the other party that: (i) it has the full right, power and authority to execute this Agreement; (ii) the execution and delivery of this Agreement and the performance of its obligations hereunder are not prohibited by or in breach of, and the provisions hereof do not conflict with, any other agreement, mortgage, contract or other instrument or document to which it is a party or by which it is otherwise bound; and, (iii) there are no legal requirements imposed upon it which prohibit or limit the execution and delivery of this Agreement and the performance of its obligations hereunder.

(b) **Entire Agreement.** This Agreement, and all exhibits attached hereto, constitute the entire agreement and understanding of the Parties with respect to the matters set forth herein, and all

prior negotiations, writings and understandings relating to the subject matter of this Agreement are merged herein and are superseded and canceled by this Agreement.

(c) **Waiver - Amendments.** Any of the terms or conditions of this Agreement may be waived but only in writing by the party which is entitled to the benefit thereof, and this Agreement may be amended or modified in whole or in part only by an agreement in writing executed by all of the Parties.

(d) **Binding Nature of Agreement.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors and permitted assigns. First Move may assign this Agreement and all its rights hereunder to any successor(s)-in-interest of First Move with respect to its ownership of, or any of its rights in and to, the FMP Project or any part or portion thereof.

(e) **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect or otherwise limit the validity and enforceability of the other provisions hereof.

(f) **Construction.** This Agreement and all of the terms and conditions set forth herein shall not be construed or enforced in favor of or against any party hereto by reason of the fact that party or that party's agent or attorney drafted all or any part of this Agreement. Section headings are for convenience of reference only and shall not limit or otherwise affect any of the provisions of this Agreement. As used herein, any reference to the masculine, feminine or neuter gender shall include all genders, the plural shall include the singular, and the singular shall include the plural.

(g) **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Maryland, without regard to its conflict of laws principles. The Parties hereto acting for themselves and for their respective successors and assigns, without regard to domicile, citizenship or residence, hereby expressly and irrevocably consent to and subject themselves to the jurisdiction of the Maryland courts and to venue in Wicomico County, Maryland with respect to any matter arising under, from or in connection with this Agreement.

(h) **Waiver of Jury Trial.** The Parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counter-claim brought by a party hereto against the other on any matter whatsoever arising out of or in any way connected with this Agreement, the relationship of the Parties to one another, and/or any claim, injury or damage arising from or consequent upon this Agreement.

(i) **Recitals.** The Recitals set forth hereinabove are incorporated by reference herein, and made a part hereof, as if fully set forth in this Agreement.

(j) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

7. Non-Appropriation.

In the event no funds or insufficient funds are appropriated and budgeted or are otherwise not available in any fiscal year, any funding required by the City in this Agreement shall terminate on the last day for which appropriations were received by the City, without penalty or expense to the City.

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals and acknowledged this Developer's Agreement as of the day and year first above written.

WITNESS/ATTEST:

THE CITY:

Handwritten signature

City of Salisbury, Maryland

By: Jacob R. Day (SEAL)
Jacob R. Day, Mayor

FIRST MOVE:

First Move Properties, LLC

By: Nicholas R. Simpson (SEAL)
Nicholas R. Simpson, Managing Member

DEED OF EASEMENT

THIS DEED OF EASEMENT, is made this ____ day of _____, 2020, by **THE CITY OF SALISBURY**, a municipal corporation of the State of Maryland (hereinafter referred to as "**Grantor**"), and **FIRST MOVE PROPERTIES, LLC**, a Maryland limited liability company (hereinafter referred to as "**Grantee**") (Grantor and Grantee are hereinafter referred to collectively as the "**Parties**").

RECITALS

WHEREAS, Grantor is the owner of all that certain lot, piece and parcel of land situate in the City of Salisbury, Parsons Election District, Wicomico County, State of Maryland identified as Map 0107, Grid 0015, Parcel 0881, and being described as "61,979 SQ FT NS CIRCLE AVE CITY OF SALISBURY," consisting of 61,979 square feet of land, more or less (said lot, piece and parcel of land owned by Grantor is hereinafter referred to as "**Parcel 881**");

WHEREAS, Grantor is the owner of all that certain lot, piece and parcel of land situate in the City of Salisbury, Parsons Election District, Wicomico County, State of Maryland identified as Map 0107, Grid 0015, Parcel 0880, and being described as "L-18, 151 SQ FT 115-117 MARKET ST CITY OF SALISBURY," consisting of 18,151 square feet of land, more or less (said lot, piece and parcel of land owned by Grantor is hereinafter referred to as "**Parcel 880**") (Parcel 881 and Parcel 880 are hereinafter referred to collectively as the "**City Property**");

WHEREAS, the City Property is improved by a four-story structure, consisting of approximately 189,572+/- square feet of floor space, constructed, operated and maintained by Grantor as a parking garage for purposes of providing parking to the general public (the "**Downtown Parking Garage**");

WHEREAS, Grantor is an owner of a public right-of-way extending East from Baptist Street and running Westerly behind the properties situate on East Main Street to the North, known as 144 E. Main Street and 132 E. Main Street through 116 E. Main Street (the "**Alleyway**");

WHEREAS, Grantor is aware of third-parties with private rights to the use of said right-of-way;

WHEREAS, Grantee is the owner of all that certain lot, piece and parcel of land situate in the City of Salisbury, Parsons Election District, Wicomico County, State of Maryland identified as Map 0107, Grid 0015, Parcel 856, and being described as "L-40X110 132-134 E MAIN ST CITY OF SALISBURY," being in all respects the same property conveyed by George H. White and Deborah W. Poole unto Grantee, by Deed dated March 1, 2018 and recorded among the Land Records of Wicomico County, Maryland in Liber 4296, folio 283 (hereinafter referred to as "**Parcel 856**");

WHEREAS, Grantee is the owner of all that certain lot, piece and parcel of land situate in the City of Salisbury, Parsons Election District, Wicomico County, State of Maryland identified as Map 0107, Grid 0015, Parcel 855, described as "3,300 SQFT 130A-130 E. MAIN ST CITY OF SALISBURY", and being in all respects the same property conveyed by Livingston Holdings, LLC unto Grantee, by Deed dated February 6, 2019 and recorded among the Land Records of Wicomico County, Maryland in Liber 4430, folio 483 (hereinafter referred

to as "Parcel 855") (Parcel 856 and Parcel 855 are hereinafter referred to collectively as the "FMP Property");

WHEREAS, Grantee plans to redevelop the FMP Property by constructing a twelve-story, approximately one hundred sixty-five feet (165'+/-) tall, building thereon, which, when completed, will consist of commercial retail spaces on the first floor, fifty-nine (59) luxury-style apartments on the second through eleventh floors, and an event space on the twelfth floor (the said twelve-story building Grantee plans to construct at the FMP Property is hereinafter referred to as the "Ross Building");

WHEREAS, for the use and operation of the Ross Building, Grantee desires the right to unrestricted use of a portion of the air space through which the Aerial Walkway will extend to connect the fourth level of the Downtown Parking Garage to the fourth floor of the Ross Building, the Property over which the Aerial Walkway extends is more particularly described in Exhibit A attached hereto and incorporated herein (a portion of the air space over the Property described in Exhibit A is hereinafter referred to as the "Easement Area");

WHEREAS, for purposes of Grantee's development and construction of the Ross Building, Grantor desires to grant and convey to Grantee, in accordance with the terms and conditions of this Deed of Easement, a perpetual, non-exclusive easement, over and through a portion of the air space over the Easement Area.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and obligations of the Parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged by the Parties, Grantor and Grantee, for themselves and their respective successors and assigns, do hereby covenant and agree as follows:

1. **Grant of Easement.** Grantor does hereby grant and convey unto Grantee, its successors and assigns, a perpetual non-exclusive easement, to the air space through which the Aerial Walkway will extend to connect the fourth level of the Downtown Parking Garage to the fourth floor of the Ross Building, above the Easement Area. The easement shall continue for so long as a parking garage is maintained on the subject property and so long as Grantee utilizes and maintains the Aerial Walkway to the parking garage described herein. In the event that the Grantor determines, within its sole discretion, that the Downtown Parking Garage must be renovated (including tearing down and rebuilding) or be expanded, the Grantor will re-connect the Aerial Walkway to the repaired or replaced garage. If the Downtown Parking Garage ceases to exist in sufficiently close proximity to Grantee's property such that the currently planned Aerial Walkway cannot reasonably be utilized, the Grantor's obligations herein shall cease and this Easement will terminate.

2. **Purpose of Easement.** Grantor grants and conveys the easement described in Section 1 hereof for the purpose of granting and conveying unto Grantee, its successors and assigns, the right to a portion of the air space over the Easement Area, such that Grantor, its successors or assigns, shall not construct, maintain or erect, or permit the construction, maintenance or erection of any structure, of any type or kind whatsoever, permanent or temporary, that will infringe or otherwise obstruct the said air space of the Easement Area.

3. **Grantor's Use of the Property.** Subject to the terms set forth in Section 2 hereof, Grantor reserves unto itself, its successors, heirs and assigns, the full use and enjoyment

of the City Property, and in addition to the terms in Section 2., Grantor reserves the right to restrict access to the easement areas described herein whenever the City, in its sole discretion, deems it necessary for the maintenance, expansion or reconstruction of the Downtown Parking Garage or the Easement Area.

4. Non-Appropriation.

In the event that no funds or insufficient funds are appropriated and budgeted or are otherwise not available in any fiscal year, any funding required of the Grantor as a result of this Easement shall terminate on the last day for which appropriations were received by the Grantor, without penalty or expense to the Grantor.

5. Miscellaneous.

(a) **Run with the Land.** All covenants, obligations and benefits set forth in this Deed of Easement shall run with the City Property and the FMP Property and shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors and assigns.

(b) **Further Actions.** The Parties each covenant and agree to cooperate with one another and to do all things reasonably necessary in implementing the provisions of this Deed of Easement and to take whatever action(s) may be reasonably required of them respectively, from time to time, in order to implement the provisions of this Deed of Easement and all of the transactions contemplated hereby.

(c) **Completion of the FMP Project by Grantee.** Unless otherwise agreed to in writing by the Parties, in the event Grantee, its successors or assigns, fails or otherwise refuses to secure a Certificate of Occupancy for the Ross Building within three (3) years from the date hereof, this Deed of Easement, including all rights granted unto Grantee hereunder, shall terminate and be of no force and effect.

(d) **Recording.** The Parties expressly acknowledge and agree that this Deed of Easement, and all exhibits attached hereto, shall be recorded in the Land Records of Wicomico County, Maryland. Grantee shall bear all costs, if any, incurred in connection with the recording of this Deed of Easement as aforesaid.

(e) **Interpretation; Severability; Amendment.** This Deed of Easement shall be governed by the laws of the State of Maryland without regard to its conflict of laws principles. The section headings contained in this Deed of Easement are inserted for convenience of reference only and do not, in any way, define, limit or describe the scope of this Deed of Easement or the intent of the provisions hereof. If any term of this Deed of Easement or any application thereof is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Deed of Easement shall remain in full force and effect. Any provision of this Deed of Easement held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable. This Deed of Easement constitutes the entire agreement of the Parties with respect to the matters set forth herein, and all prior negotiations, writings and understandings relating to the subject matter of this Deed of Easement are merged herein and are superseded and canceled by this Deed of Easement. This Deed of Easement, and all the terms and conditions set forth herein, shall not be construed or enforced in favor of or against any party hereto by reason of the fact that party or that party's

agent or attorney drafted all or any part of this Deed of Easement. This Deed of Easement may be amended or modified only by an instrument in writing signed by the Parties hereto. The Recitals set forth hereinabove are incorporated by reference herein, and made a part hereof, as if fully set forth in this Deed of Easement.

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals and acknowledged this Deed of Easement as of the day and year first above written.

WITNESS/ATTEST:

GRANTOR:

City of Salisbury, Maryland

Kimberly R. Field

By:

Jacob R. Day
Jacob R. Day, Mayor

(SEAL)

GRANTEE:

First Move Properties, LLC

By:

Nicholas R. Simpson
Nicholas R. Simpson, Managing Member

(SEAL)

STATE OF MARYLAND, COUNTY OF Wicomico, TO WIT:

I HEREBY CERTIFY that on this 21st day of January, 2020, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared JACOB R. DAY, who acknowledged himself to be the Mayor of THE CITY OF SALISBURY, MARYLAND, and that he, as such officer, being authorized to do so, executed the foregoing instrument on behalf of said municipal corporation for the purposes therein contained.

AS WITNESS my hand and Notarial Seal.

Drew R. Carter
NOTARY PUBLIC

My Commission Expires: 5-16-22



STAFF REPORT

MEETING OF JULY 1, 2021

Case No. 202100575
Applicant: Nicholas Simpson
Property Owner: First Move Properties, LLC
Location: 144 East Main Street
Tax Map: #107
Grid #15, Parcel #858
Zoning: Central Business District
Request: Special Exception – Height and Density Increases

I. SUMMARY OF REQUEST:

The applicant proposes to construct a new eight-story apartment building on the former Chamber of Commerce site. Board approval of a Special Exception for the density is requested. **(Attachment 1)**

II. ACCESS TO THE SITE AREA:

The site has frontage and access on the south side of East Main Street, and west side of Baptist Street.

III. DESCRIPTION OF PROPERTY:

The site is 25,497 sq. ft. in area, and was previously improved with a 9,700 sq. ft., two-story office building. The property is located within the City's Central Business Zoning District, as well as the Downtown Historic District. The site is also in the Intensely Developed Area (IDA) of the Chesapeake Bay Critical Area Program. **(Attachment 2)**

IV. DESCRIPTION OF SURROUNDING AREA/NEIGHBORHOOD:

Surrounding properties are also in the Central Business zoning district. Nearby buildings include the U.S. Post Office, Wicomico County Courthouse, and the Salisbury Parking Garage.

V. HISTORY:

The property has had several approvals for the proposed building, as well as its sister building located at 130-132 East Main Street, dating back to 2019. Demolition of the previous buildings began in 2019. Due to a number of unforeseen circumstances, several previous approvals, including Historic Commission and Board of Zoning Appeals approvals, have since expired. The applicant is now returning to the Board to seek special exceptions for both height and density.

V. EVALUATION:

- (a) **Discussion:** The applicant proposes to construct a new eight-story, 45-unit apartment building. The building's maximum height will be 120 ft., but the majority of the building will be approximately 97 ft. 9-inches tall. The Code requires a special exception for apartment buildings with a density in excess of 40 units per acre. The proposed density will be 80 units per acre. The Zoning Code also requires a special exception for buildings over 75 ft. tall within the Central Business District. Parking for the tenants is proposed to be provided in the City's parking garage, and will be accessed via a 4th story walking bridge which will connect the garage to the sister building located at 130-132 and also to the subject property. **(Attachments 3 -5)**
- (b) **Impact:** Staff believes the proposed apartment building, coupled with the adjoining apartment building at 130-132 East Main Street, will have a significant impact on adjacent properties, and the Downtown area in whole, by bringing additional commerce to Downtown area businesses.
- (c) **Relationship to Criteria:** In addition to the criteria discussed above pertaining to increased density, Section 17.232.020B. of the Salisbury Municipal Code contains the criteria the Board should consider when approving special exceptions. Staff finds that this request complies with the Special Exception criteria as follows:
- [1] **The proposal will be consistent with the Metro Core Plan, the objectives of the Zoning Ordinance and any other applicable policy or plan adopted by the Planning Commission or City Council for development of the area affected.**

The site is located in the Central Business zoning district, which inherently allows apartment buildings. Increases in density of residential uses is permitted by Special Exception. The Metro Core Plan states, "The CBD should be targeted for more office, retail and residential

development, thereby strengthening its role as a vital city center where people come to work, live, and play.”

- [2] The location, size, design and operating characteristics under the proposal will have minimal adverse impact on the livability, value or appropriate development of abutting properties and the surrounding area.**

The proposed redevelopment is expected to bring additional business to nearby stores and restaurants which will in turn increase property values.

- [3] 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 proposed building complements the proposed apartment building next door, and lends itself to the historical flavor of the Downtown Historic District, as was evidenced by the Historic District Commission’s previous approval of the project on January 22, 2020. (The project is scheduled for Historic Commission review on June 30, 2021.)

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

Staff does not find that the proposed use will have a negative effect on any of these items.

- [5] 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.**

Although the increased height of the proposed building will obviously cast some shadows on neighboring properties, other negative impacts will be negligible. The proposed building is compliant with height restrictions for the Central Business zoning district. As the property is located in the heart of Downtown, with parking provided in the Parking Garage, traffic should not be impacted, as residents will be within walking distance to many activities.



City of
Salisbury
Jacob R. Day, Mayor

- [6] The proposal will not adversely affect transportation or unduly burden water, sewer, school, park, stormwater management or other public facilities.**

The proposal should have minimal impacts on transportation, water, sewer, stormwater management or other public facilities.

- [7] The proposal will preserve or protect environmental or historical assets of particular interest to the community.**

As the original proposal received preliminary approval from the Salisbury Historic District Commission, it is expected that the development as proposed will enhance the Downtown Historic District.

- [8] The applicant has a bona fide intent and capability to develop and use the land as proposed and has no inappropriate purpose for submitting the proposal, such as to artificially alter property value for speculative purposes.**

The applicant has in the past demonstrated an interest in maintaining the vitality, appearance and economic growth of Salisbury by investing in other properties and improving the appearance and value of the same. The sister project located next door has begun, further evidencing the applicant's investment in the City.

Furthermore, Section 17.24.040B.4. of the Salisbury Municipal Code contains the criteria the Board should consider when approving special exceptions in the Central Business District. Staff finds that this request complies with the Special Exception criteria as follows:

- [i] Recommendation from the planning commission.**

The proposed development received a Preliminary Certificate of Design and Site Plan Approval from the Salisbury Planning Commission on January 16, 2020. On June 17, 2021, the Planning Commission approved the updated proposal revised the building to 8 stories, with an overall height of 120 ft.



- [ii] The type of residential development proposed relative to the ability of the site to accommodate the density proposed.**

The proposed building essentially extends to three (3) of four (4) property lines. The density increase has been created by proposing to construct an eight-story building. The necessary parking increases warranted by adding residential uses has been addressed by securing parking in the City's Parking Garage. **(Attachment 6)**

- [iii] 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.**

All necessary infrastructure is currently in place and adequately serves the site, although water upgrades may be necessary. The applicant and City are currently in discussions regarding any upgrades that may be required. The existing Parking Garage is sufficiently sized to accommodate the additional parking required to serve the residents of the apartments.

- [iv] The functional, visual and spatial relationship of the proposed height relative to surrounding development and the CBD as a whole.**

Although the building will be considerably taller than surrounding buildings, and will become one of the tallest within the city, this is the type of development/redevelopment that is targeted for the downtown area. The proposed structure should complement the sister building located next door, and also provide a "bookend" with the One Plaza East building located at the other end of the block.

- [v] Whether the proposed height will create an intrusion or conflict with the spatial arrangement of existing or proposed buildings.**

The proposed construction should not cause conflict with surrounding properties, and will help serve to create a symmetry in height with One Plaza East.

- [vi] Shadows which may interfere with solar panels or other solar equipment already in existence or under contract to be installed on existing buildings or buildings approved for construction in the immediate vicinity.**

None of the surrounding properties contain solar panels/equipment, and the City is not aware of projects in the neighborhood that will include the installation of this type of equipment.

- [vii] Water pressure and capability of community firefighting equipment, in addition to any required construction of fire safety devices, to assure safety of occupants.**

The proposed maximum building height will be 120 feet. The City's ladder truck can extend to 95 feet. The building will be of type 1A construction, which will consist entirely of noncombustible materials. According to the 2018 International Building Code, which has been adopted by the City of Salisbury, buildings of type 1A construction have an unlimited building height and unlimited number of stories when used residentially. Additionally, apartments are required to be protected with an automatic sprinkler system.

- [viii] The merits of the design and whether the treatment of setbacks, landscaping or other amenities, in addition to architectural treatment of the building, provide an excellence of design which contributes to the furtherance of the purpose of the CBD.**

The proposed design has received approval from the Salisbury Planning Commission (the Salisbury Historic District Commission will hear the case on June 30, 2021), and will enhance the City's skyline. Furthermore, the addition of 45 apartments within the Central Business District meets the Salisbury Zoning Code purpose as set forth in Section 17.24.010C., which states in part, "...to enhance the vitality of the downtown by encouraging residential uses..." Combining this proposal with the sister apartment project will help the City's Downtown Master Plan of adding 500 residential uses in the CBD.

VI. STAFF COMMENTS:

The proposed project has the support of the City's Administration, and has received Certificate of Design and Site Plan approval from the Salisbury Planning Commission.



City of
Salisbury
Jacob R. Day, Mayor

Preliminary approval (since expired) was granted by the Salisbury Historic District Commission for a six-story building, and approval of the revised eight-story building is anticipated. The building, coupled with the sister project located next door, will undoubtedly change the appearance of the City's downtown skyline. However, the design lends itself to enhancing the City's Downtown Historic District. The use of the property for residential uses meets the goal of the City's Central Business District of strengthening the role of the Downtown area. Infusing the Downtown with new dwelling units will help bring additional commerce to the surrounding area, especially retail and food service locations. Furthermore, by incorporating the parking for the building in the adjacent Parking Garage, traffic congestion will be minimalized.

VII. RECOMMENDATION:

Based on the criteria for approval as discussed above in this staff report, Section V (c), the Planning Staff recommends **Approval** of the Special Exception request to increase the building height to 120 feet, and increasing the density to 80 units per acre, subject to the recommended conditions as follows:

CONDITION OF APPROVAL:

1. Obtain final approvals from the Salisbury Historic District Commission.
2. Consolidate the properties located at 130, 132 and 144 East Main Street into one (1) parcel. (The resubdivision will increase the overall density to 144.36 units per acre.)

FIRST MOVE PROPERTIES, LLC

**P.O. Box 4565
Salisbury, MD 21803**

May 27, 2021

City of Salisbury, Maryland
Department of Infrastructure & Development
Attn: Amanda H. Pollack, DID, Director (apollack@salisbury.md)
125 N. Division Street, Room 202
Salisbury, Maryland 21801

Dear Ms. Pollack,

On behalf of First Move Properties, LLC ("First Move") and pursuant to Chapter 17.232 of the City Code, please accept this letter for filing the enclosed Application for four (4) Special Exception requests by First Move in connection with its redevelopment of the Property located at 130-132 E. Main Street (Building 1) and 144 E. Main Street (Building 2). The Project consists of a building approximately 185ft tall, complete with sixty (60) residential apartment units comprised of two-person, three-person, or four-person luxury-style apartments located at 130-132 E. Main St. and a building approximately 120ft tall, complete with forty-five (45) residential apartment units comprised of two-person, three-person, and four-person luxury-style apartments located at 144 E. Main Street.

130-132 E. Main Street

First Move Properties, LLC, "The Ross Building"; 132 E. Main Street, Salisbury, Maryland 21801 (Map 0107, Grid 0015, Parcel 0856) and 130 E Main Street, Salisbury, Maryland 21801 (Map 0107, Grid 0015, Parcel 0855); Request for Special Exception

Building 1 was previously granted a special exception on April 10, 2019, to increase the building height to 165ft and increase density to 340 units per acre (Case #SA-19-211). Since the approval, Building 1 was delayed because of the Coronavirus Pandemic and now respectfully requests the City of Salisbury Board of Zoning Appeals (the "Board") update First Move Properties previous approvals and grant the following Special Exceptions for the Property:

- (1) Request for Extension of Special Exception for Increased Height (Chapter 17.24.040(B)(3))** – Pursuant to Chapter 17.24.040(B)(3), First Move requests a Special Exception permitting a building height of 185 feet.
- (2) Request for Extension of Special Exception for Increased Density (Chapter 17.24.040(B)(2))** – Pursuant to Chapter 17.24.040(B)(2), First Move requests a Special Exception permitting density in excess of forty (40) units per acre for development of Building 1.

This request by First Move refers to the Property in its entirety (i.e., both 130 E. Main and 132 E. Main). Prior to commencing construction of Building 1 and in accordance with Chapter 16.28.010, First Move will submit a Resubdivision Plat providing for the lot-line removal to combine 130 E. Main and 132 E. Main into one parcel (i.e., the Property), having a premises address of 132 E. Main Street, Salisbury, Maryland 21801, for approval by the City's Department of Infrastructure and Development.

Attachment 1

FIRST MOVE PROPERTIES, LLC
P.O. Box 4565
Salisbury, MD 21803

Request for Extension of Special Exception for Increased Height:

The Building 1 plans call plans for constructing a building with a proposed building-height up to 185 feet, including improvements available for use by the Buildings residents. The building is located in the City's Central Business District (the "CBD"); under Chapter 17.24.040(B)(3)(a), seventy-five feet (75) feet is the maximum permitted height for all buildings or structures located in the CBD unless otherwise permitted by Special Exception. Accordingly, to construct Building 1 as planned, First Move requests a Special Exception allowing a height up to 185 feet for the building located at 130-132 E. Main Street, Salisbury, Maryland.

Request for Extension of Special Exception for Increased Density:

The Property on which Building 1 will be developed, is located within the City's zoning district designated the Central Business District (the "CBD"). The Property at which Building 1 is planned for development consists of 7,160 square feet or .164 acres +/- (a copy of the Site Plan for Building 1 is enclosed with First Move's Application). Building 1 will consist of Sixty (60) two-person, three-person, and four-person luxury-style apartment units. Pursuant to Chapter 17.24.040(B)(2)(b), the inherent density for development in CBD may not exceed forty (40) units per acre. Nevertheless, Chapter 17.24.040(B)(2)(c) allows the Board to increase the density permitted in CBD by special exception. Accordingly, First Move requests the Board grant a Special Exception increasing the permitted density for Building 1's planned Sixty (60) residential units.

144 E. Main Street Request:

First Move Properties, LLC; "The Ross" Downtown Salisbury Development Project; 144 E. Main Street, Salisbury, Maryland 21801 (Map 0107, Grid 0015, Parcel 0858) ("144 E. Main") and 119 E. Market Street ("119 E. Market") (144 E. Main and 119 E. Market referred to collectively as "Building 2"); Request for Special Exception

Building 2 was previously granted a special exception on February 6, 2020, to increase the density at 144 E. Main Street to 53 units per acre (Case #SA-20-044). Since the approval, Building 2 was delayed because of the Coronavirus Pandemic and now respectfully requests the City of Salisbury Board of Zoning Appeals (the "Board") update First Move Properties previous approvals and grant the following Special Exceptions for the Property:

- (1) Special Exception for Increased Height (Chapter 17.24.040(B)(3))** – Pursuant to Chapter 17.24.040(B)(3), First Move requests a Special Exception permitting a building height up to 120 feet.
- (2) Special Exception for Increased Density (Chapter 17.24.040(B)(2))** – Pursuant to Chapter 17.24.040(B)(2), First Move requests a Special Exception permitting density in excess of Forty (40) units per acre for development of Building 2.

FIRST MOVE PROPERTIES, LLC

P.O. Box 4565

Salisbury, MD 21803

Request for Special Exception for Increased Height:

Building 2 calls for the construction of a building with a proposed Building-height up to 120 feet, including rooftop area improvements available for use by the building's residents. The building is located in the City's Central Business District (the "CBD"); under Chapter 17.24.040(B)(3)(a), seventy-five feet (75) feet is the maximum permitted height for all buildings or structures located in the CBD unless otherwise permitted by Special Exception. Accordingly, to construct Building 2 as planned, First Move requests a Special Exception allowing height up to 120 feet for the building located at 144 E. Main Street, Salisbury, Maryland.

Request for Special Exception for Increased Density:

The Property on which Building 2 will be developed is located within the City's zoning district designated the Central Business District (the "CBD"). The Property consists of 25,497 square feet or .585 acres +/- (a copy of the Site Plan for Building 2 is enclosed with First Move's Application). Building 2 will consist of Forty-Five (45) residential apartment units, consisting of two-person, three-person, and four-person luxury-style apartments. Pursuant to Chapter 17.24.040(B)(2)(b), the inherent density for development in CBD may not exceed Forty (40) units per acre. Nevertheless, Chapter 17.24.040(B)(2)(c) allows the Board to increase the density permitted in CBD by special exception. Accordingly, First Move requests the Board grant a Special Exception increasing the permitted density for Building 2's planned Forty-Five (45) residential apartment units.

Conclusion:

The Project complies with the City's goals for development in the CBD zoning district. At its heart, the purpose of the CBD: "is to maintain and strengthen the role of the downtown area as the community and regional center for a broad range of governmental, cultural, institutional, professional, business, service, and retail activities; [and,] to enhance the vitality of the downtown by encouraging residential uses." (See Chapter 17.24.010(C)). Here, the Project involves completely remodeling and repurposing historic buildings in the CBD. All told, the Project will convert three buildings exclusively for office space into two new buildings equipped with over 100 new luxury-style apartments. When finished, the Project will more than double the residential inventory available for rent in Downtown Salisbury; and, because the Project is centrally focused on offering high-quality apartment-style rentals to university students, the Project will inextricably strengthen the connection Downtown Salisbury shares with Salisbury University.

City water and sewer services are available to serve the Project once developed; and, the increased density will not impose any undue burden or expense on the City. The Project also includes plans for the construction of a walking bridge connecting the buildings to the City's parking garage to service the parking needs of the residents. Furthermore, the Project will comply with all stormwater management and environmental regulations. As for protecting the community's historical assets, the City's Historic District Commission has approved First Move's plans for the massing and façade of the building in connection with First Move's development of the Project.





THE ROSS APARTMENT COMPLEX
 130 - 145 E. MAIN STREET
 SALISBURY
 WICOMICO COUNTY, MD

COVER SHEET & OVERALL LAYOUT

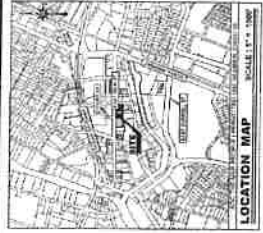
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|--------------|-----------------------|
| PROJECT NO.: | 1021810.00 |
| DATE: | 10/26/10 |
| SCALE: | 1" = 20' |
| DRAWN BY: | 2104 JEFFREY W. JAMES |
| CHECKED BY: | ROBERT J. MORGAN |
| DATE: | 10/26/10 |

C-001

THE ROSS APARTMENT COMPLEX
SALISBURY, MARYLAND
 CITY OF SALISBURY
 WICOMICO COUNTY, MD



Know what's below.
 Call before you dig.
 811



SITE DATA

1. OWNER: BECKER MORGAN GROUP
2. PROJECT: THE ROSS APARTMENT COMPLEX
3. PROJECT ADDRESS: 130 - 145 E. MAIN STREET, SALISBURY, MD 21801
4. PROJECT PHASE: CONSTRUCTION
5. PROJECT NUMBER: 1021810.00
6. PROJECT REFERENCE: 1021810.00
7. PROJECT USE: APARTMENT
8. PROJECT DATE: 10/26/10
9. PROJECT DESIGNER: BECKER MORGAN GROUP
10. PROJECT ENGINEER: ROBERT J. MORGAN
11. PROJECT ARCHITECT: BECKER MORGAN GROUP
12. PROJECT CONTRACTOR: [BLANK]
13. PROJECT PERMIT NUMBER: [BLANK]
14. PROJECT PERMIT DATE: [BLANK]
15. PROJECT PERMIT EXPIRES: [BLANK]
16. PROJECT PERMIT STATUS: [BLANK]
17. PROJECT PERMIT TYPE: [BLANK]
18. PROJECT PERMIT FEE: [BLANK]
19. PROJECT PERMIT NOTES: [BLANK]
20. PROJECT PERMIT CONTACT: [BLANK]
21. PROJECT PERMIT ADDRESS: [BLANK]
22. PROJECT PERMIT PHONE: [BLANK]
23. PROJECT PERMIT FAX: [BLANK]
24. PROJECT PERMIT EMAIL: [BLANK]
25. PROJECT PERMIT WEBSITE: [BLANK]
26. PROJECT PERMIT COMMENTS: [BLANK]

OWNERS CERTIFICATION

I, the undersigned, being duly qualified, certify that I am the owner of the above described property and that the information furnished herein is true and correct to the best of my knowledge and belief.

ENGINEER CERTIFICATION

I, the undersigned, being duly qualified, certify that I am a duly licensed Professional Engineer in the State of Maryland and that I am the Engineer of Record for the above described project and that the information furnished herein is true and correct to the best of my knowledge and belief.

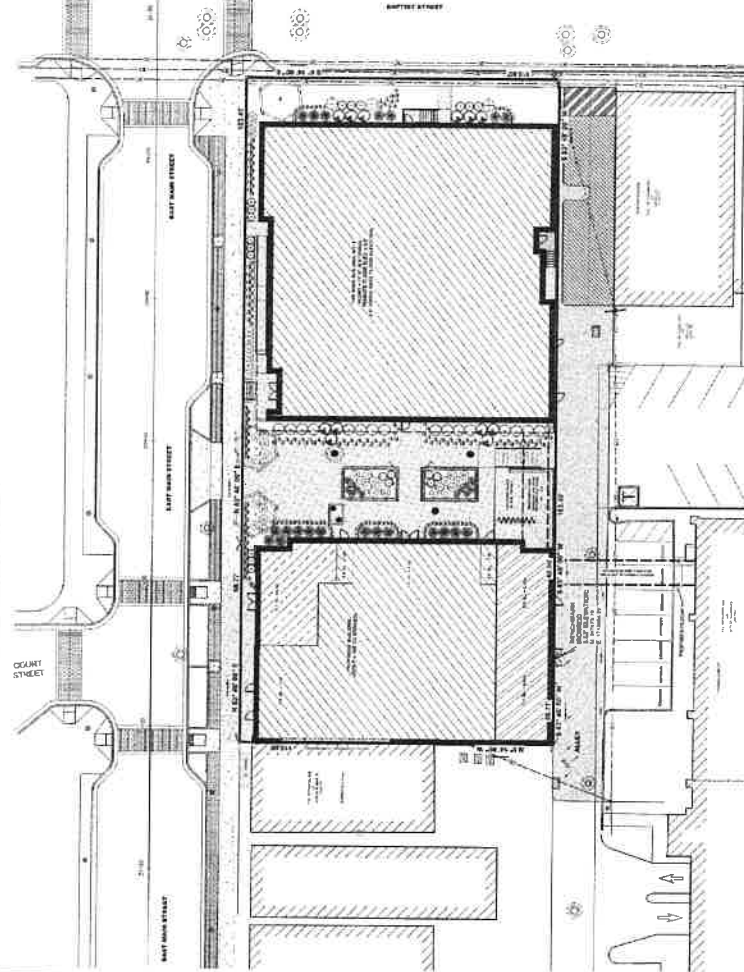
CITY ENGINEER'S APPROVAL BLOCK FOR SITE PLAN

CITY OF SALISBURY
 WICOMICO COUNTY, MD

DATE: 10/26/10
 SCALE: 1" = 20'

GENERAL NOTES:

1. THE APARTMENT COMPLEX IS TO BE CONSTRUCTED IN ACCORDANCE WITH THE CITY OF SALISBURY ZONING ORDINANCE AND THE CITY OF SALISBURY SUBDIVISION ORDINANCE.
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SHEET INDEX

| SHEET NO. | TITLE |
|-----------|------------------------------|
| C-001 | COVER SHEET & OVERALL LAYOUT |
| C-002 | FOUNDATION PLAN |
| C-003 | FOUNDATION PLAN |
| C-004 | FOUNDATION PLAN |
| C-005 | FOUNDATION PLAN |
| C-006 | FOUNDATION PLAN |
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SOILS LEGEND:

| SOIL TYPE | DESCRIPTION |
|-----------|-------------|
| 100 | CLAY |
| 200 | SAND |
| 300 | SILT |
| 400 | GRAVEL |
| 500 | PEAT |
| 600 | ORGANIC |
| 700 | ROCK |
| 800 | ICE |
| 900 | WATER |

BUILDING DATA - FIRE MARSHAL

| BUILDING | TYPE | USE | HEIGHT | AREA |
|-------------------|------|-----|--------|--------|
| APARTMENT COMPLEX | 1 | U | 4 | 10,000 |

EXISTING LEGEND:

| ITEM | DESCRIPTION |
|------|--------------------|
| 1 | EXISTING BUILDING |
| 2 | EXISTING DRIVE |
| 3 | EXISTING SIDEWALK |
| 4 | EXISTING CURB |
| 5 | EXISTING UTILITY |
| 6 | EXISTING TREE |
| 7 | EXISTING LANDSCAPE |
| 8 | EXISTING FENCE |
| 9 | EXISTING SIGN |
| 10 | EXISTING LIGHT |
| 11 | EXISTING PAVEMENT |
| 12 | EXISTING GRAVEL |
| 13 | EXISTING SAND |
| 14 | EXISTING SILT |
| 15 | EXISTING GRAVEL |
| 16 | EXISTING SAND |
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| 19 | EXISTING SAND |
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| 21 | EXISTING GRAVEL |
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CITY OF SALISBURY GENERAL NOTES:

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CITY OF SALISBURY - UTILITY CONSTRUCTION NOTES:

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10. THE APARTMENT COMPLEX IS TO BE CONSTRUCTED IN ACCORDANCE WITH THE CITY OF SALISBURY ZONING ORDINANCE AND THE CITY OF SALISBURY SUBDIVISION ORDINANCE.



Attachment 4



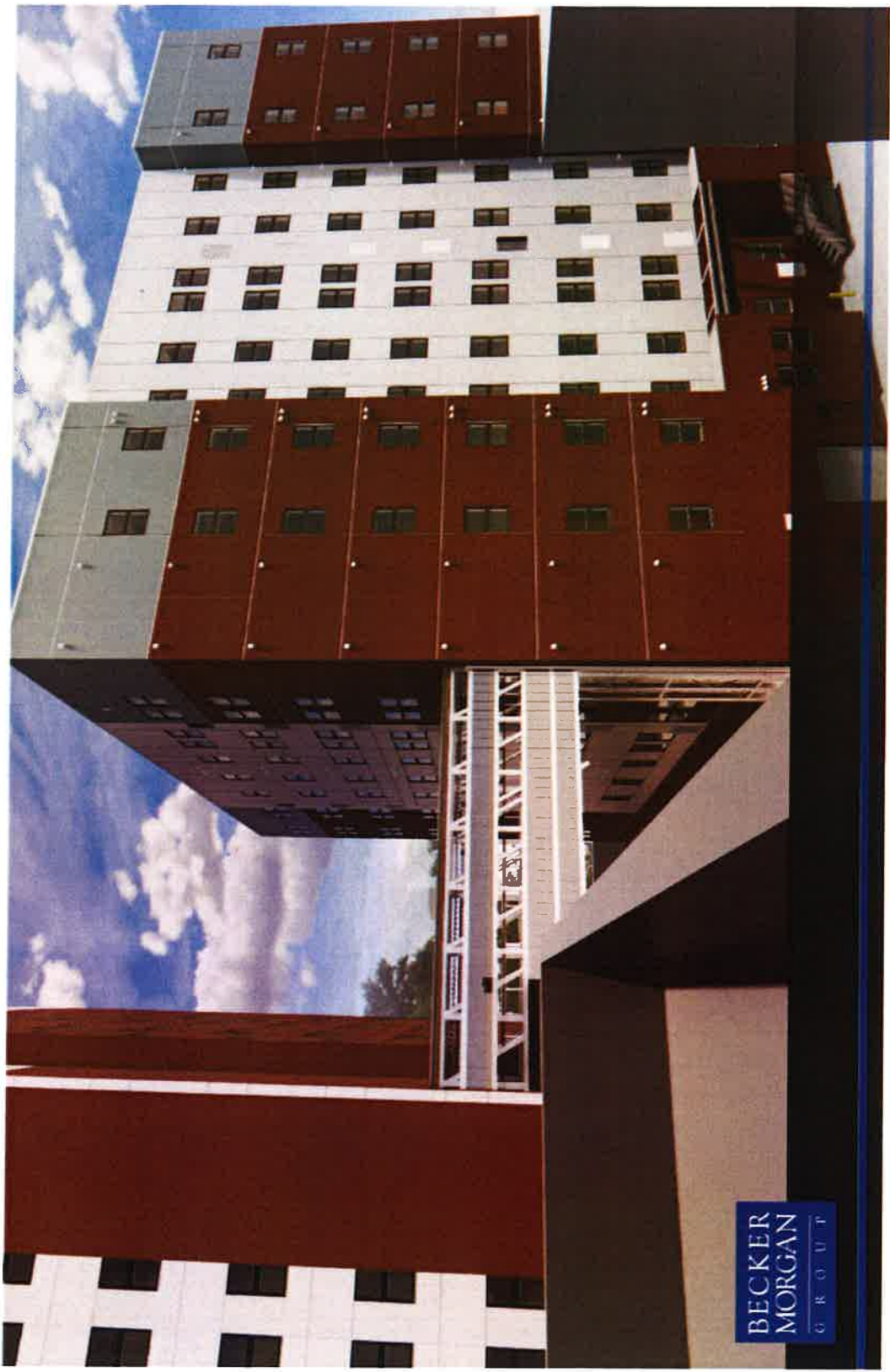
BECKER
MORGAN
GROUP



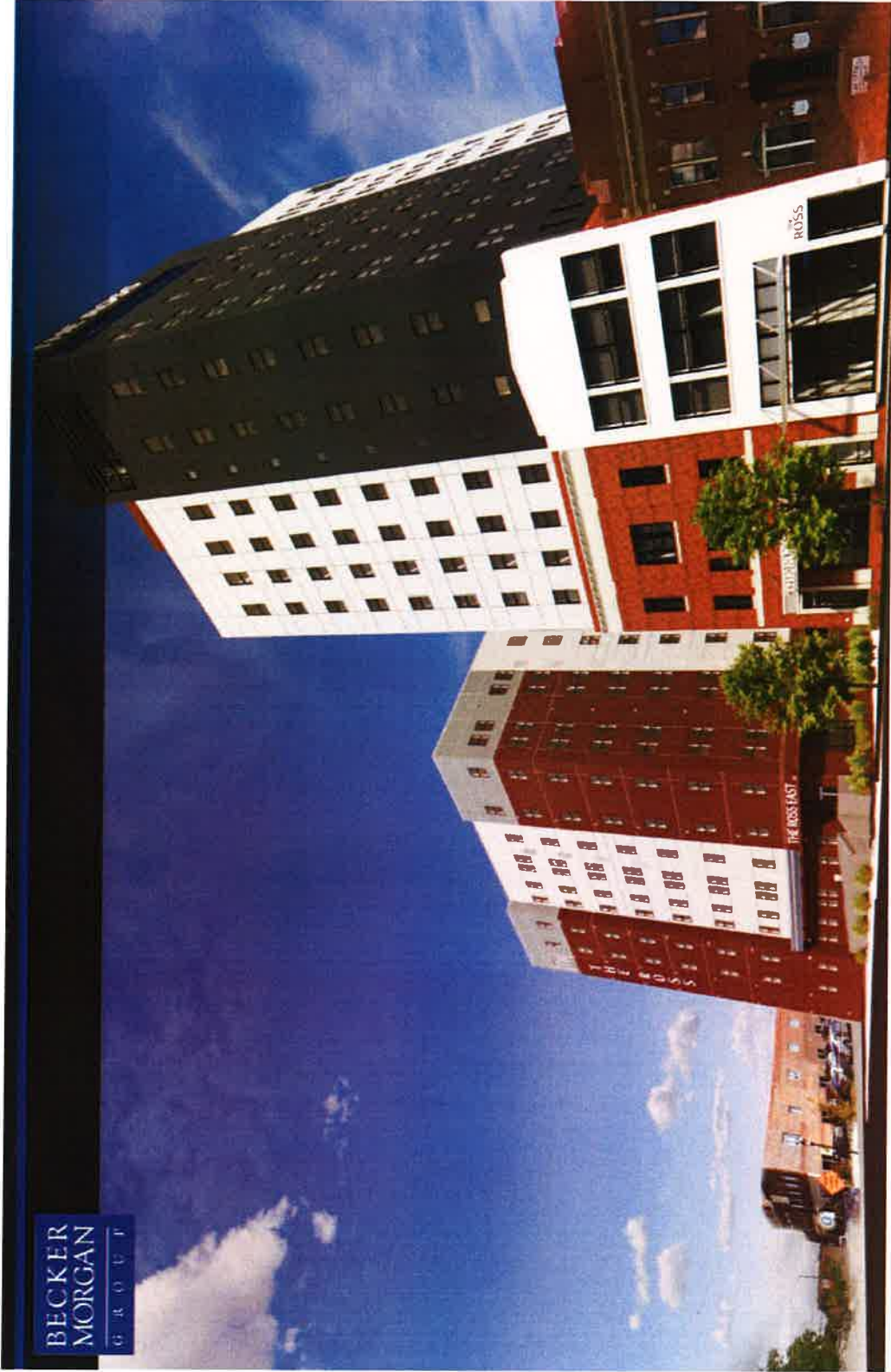
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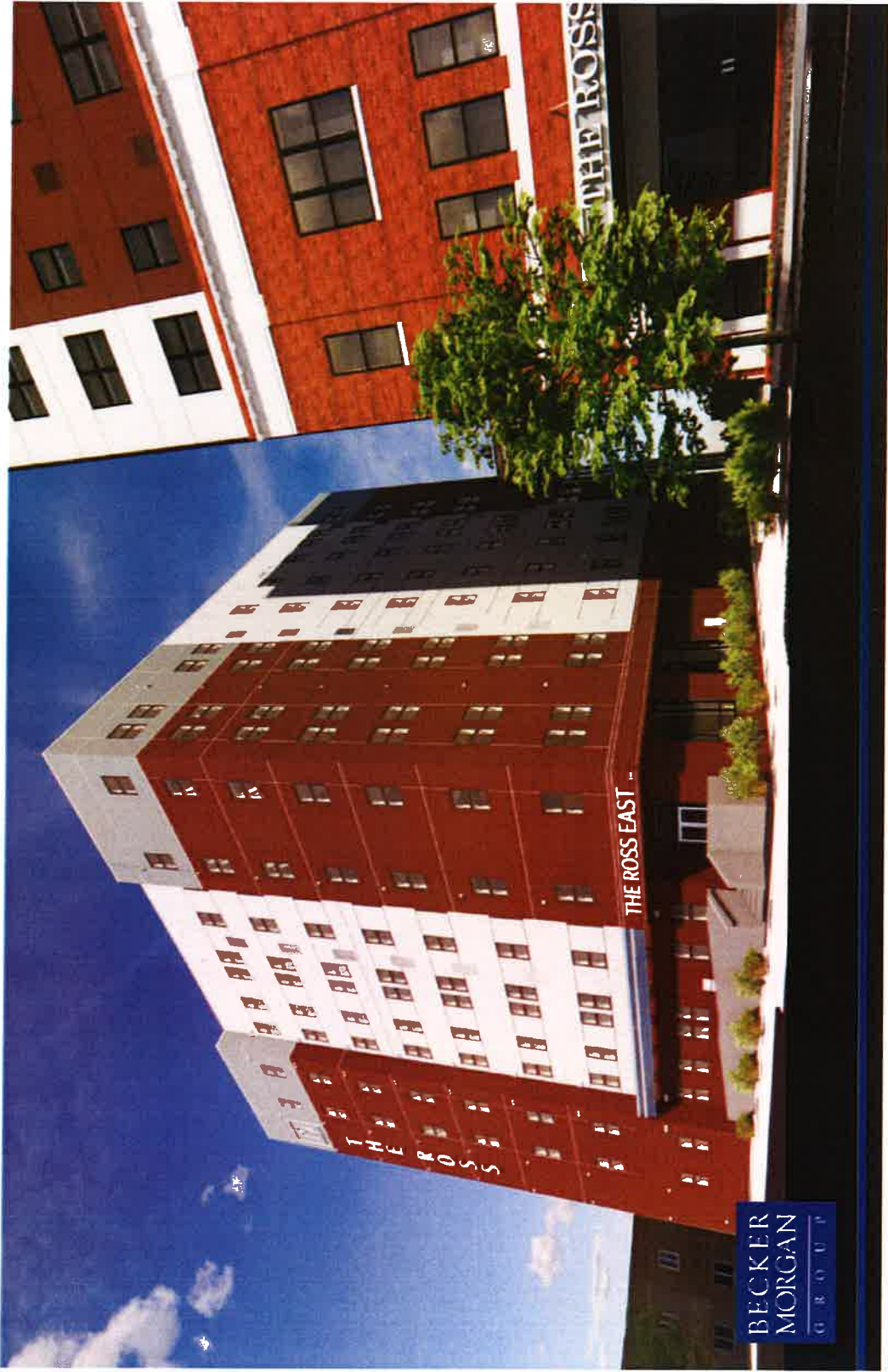
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BECKER
MORGAN
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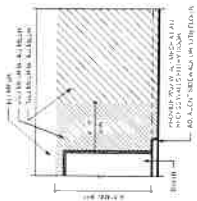
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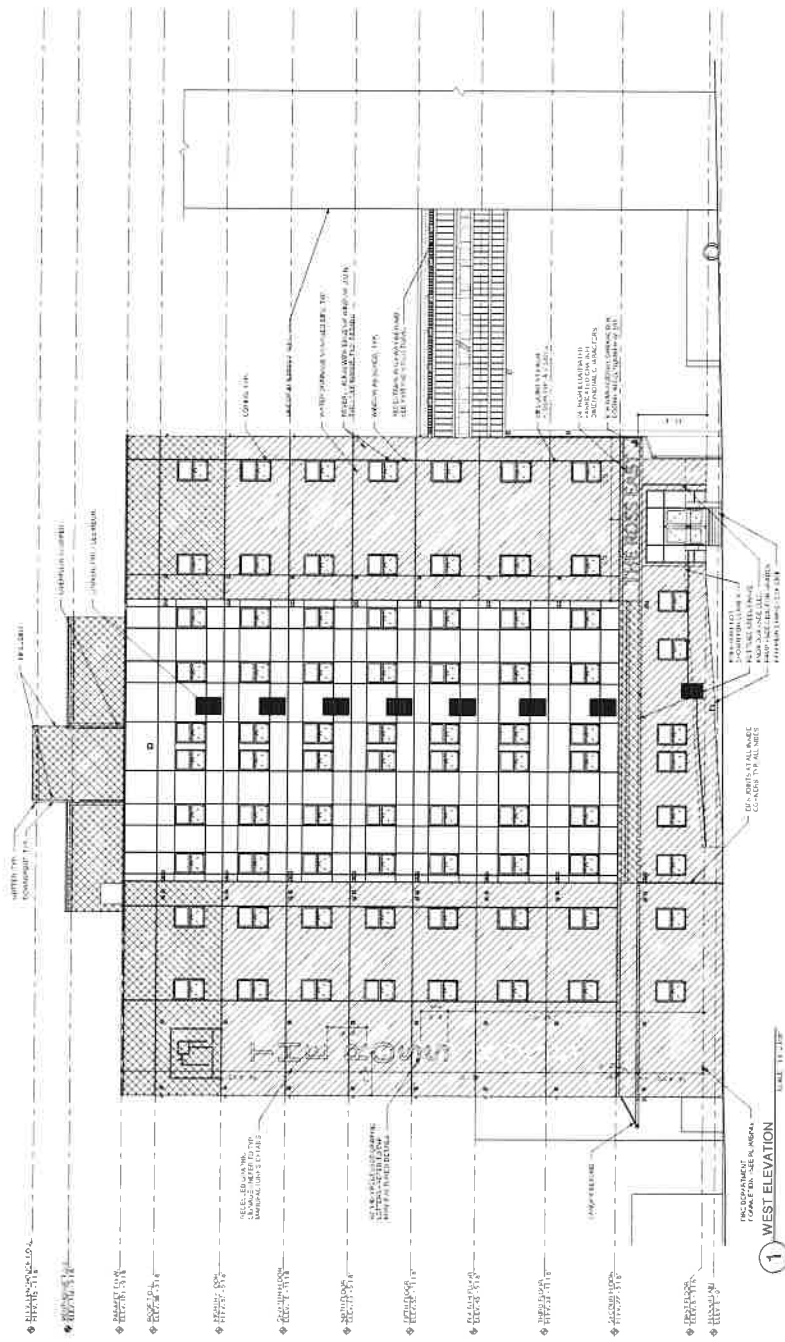
BECKER
MORGAN
GROUP

| | |
|-------------|--------------------------|
| PROJECT NO. | 20-00000 |
| DATE | 01.10.2020 |
| SCALE | AS SHOWN |
| DESIGNED BY | BECKER MORGAN ARCHITECTS |

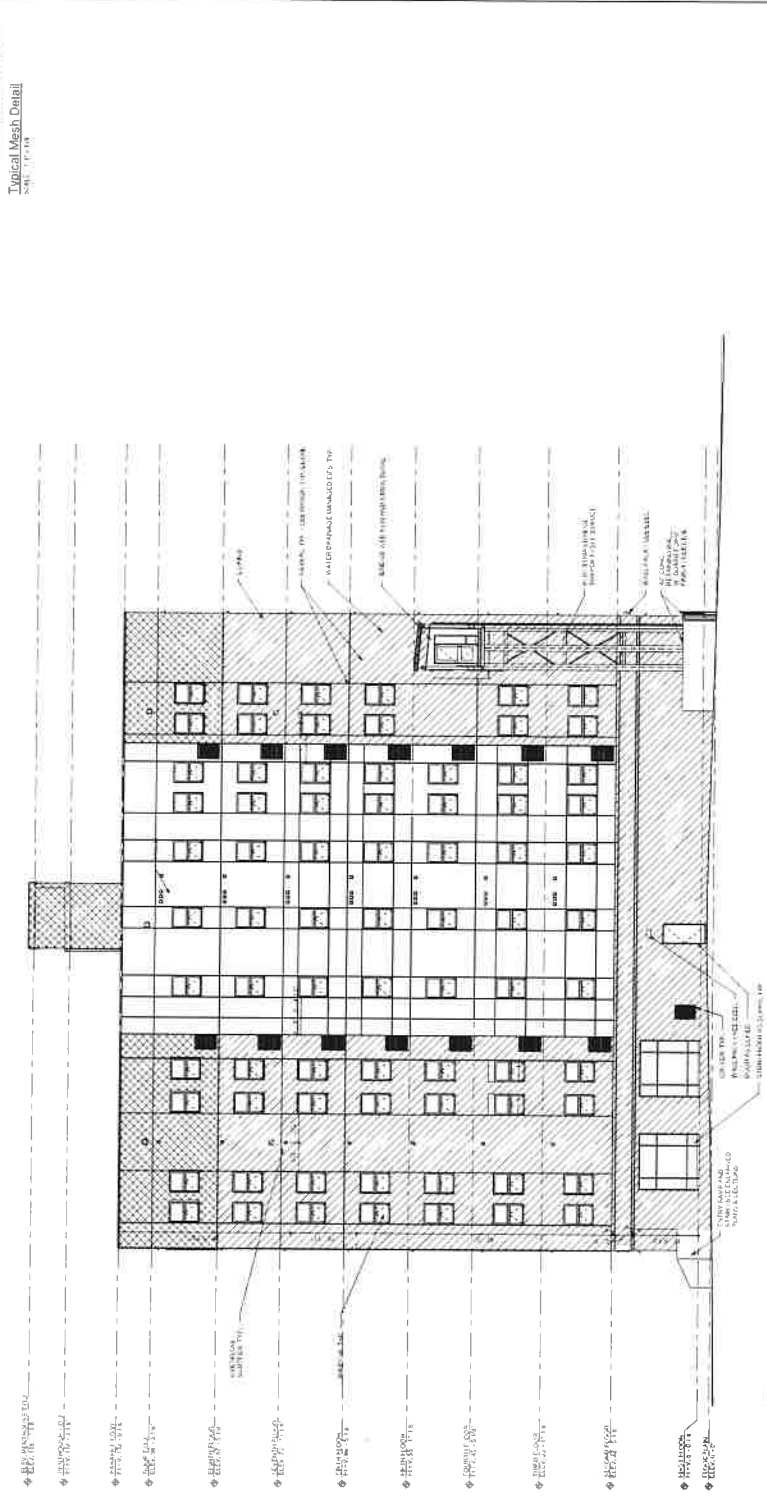
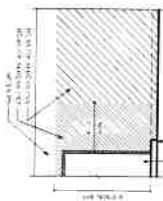
EXTERIOR COLOR LEGEND



Typical Mesh Detail



EXTERIOR COLOR LEGEND



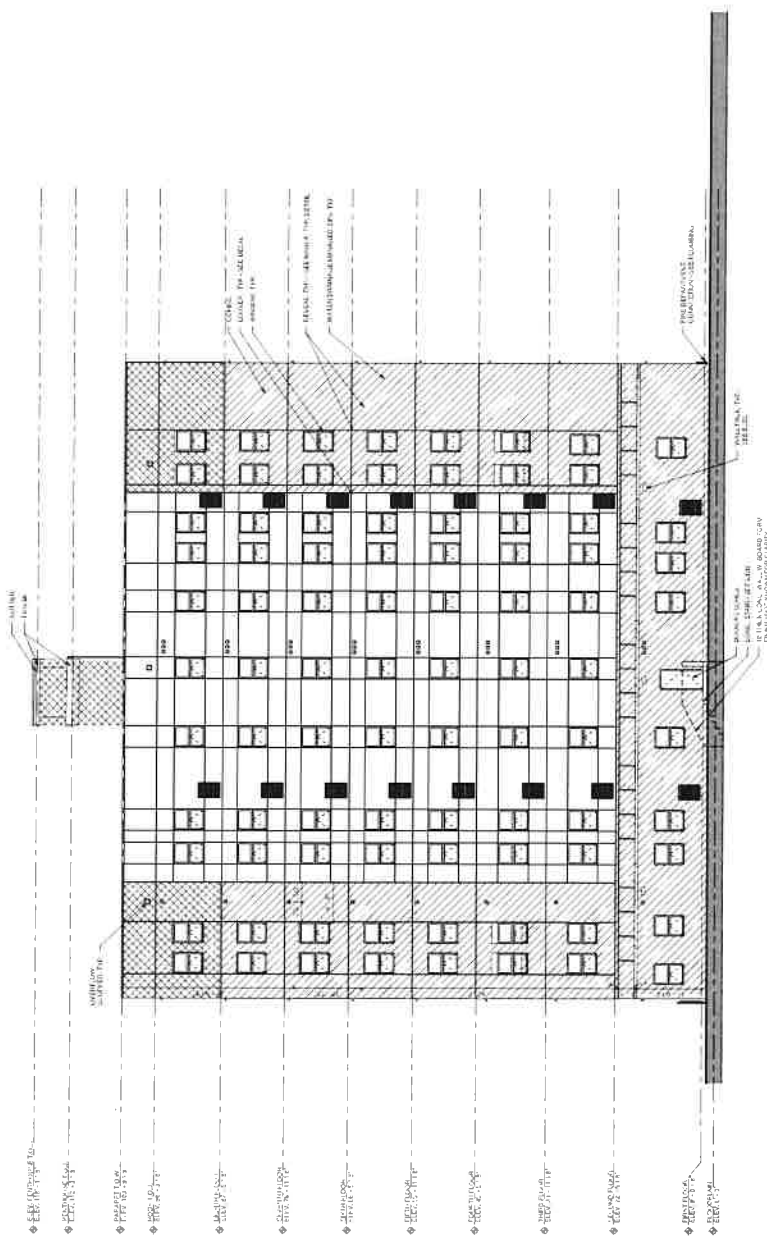
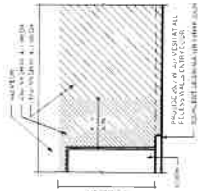
1 SOUTH ELEVATION

10/11/2021 10:42 AM
PROJECT: THE ROSS - BUILDING 2
DRAWING: EXTERIOR ELEVATIONS
DATE: 10/11/2021
DRAWN BY: J. HARRIS
CHECKED BY: J. HARRIS
SCALE: AS SHOWN
SHEET NO.: A203
SHEET TOTAL: 2

| | |
|-------------|------------------------|
| PROJECT NO. | 20090502 |
| DATE | 05/11/11 |
| SCALE | AS SHOWN |
| DRAWN BY | JAW / PROJ / MJB / BDT |

EXTERIOR COLOR LEGEND

- SW - LIGHT
- SW - MEDIUM
- SW - DARK
- SW - WHITE



1 NORTH ELEVATION
SCALE: 1/8" = 1'-0"

NOT TO SCALE
ALL DIMENSIONS ARE IN FEET AND INCHES
UNLESS OTHERWISE NOTED
ALL MATERIALS AND FINISHES TO BE AS SHOWN
ON THE DRAWINGS
ALL WORK TO BE IN ACCORDANCE WITH THE
LATEST EDITIONS OF THE BUILDING CODES
AND ALL APPLICABLE REGULATIONS
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THE LATEST EDITIONS OF THE BUILDING CODES
AND ALL APPLICABLE REGULATIONS

AS AMENDED ON JANUARY 13, 2020
RESOLUTION NO. 2990

A RESOLUTION OF THE CITY OF SALISBURY, MARYLAND AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH FIRST MOVE PROPERTIES, LLC FOR THE PURCHASE OF PARKING PERMITS IN THE DOWNTOWN PARKING GARAGE. ~~TO GRANT A TEMPORARY CONSTRUCTION EASEMENT AND PERPETUAL MAINTENANCE EASEMENT, AND TO GRANT A DEED OF EASEMENT TO FIRST MOVE PROPERTIES, LLC.~~

WHEREAS, First Move Properties, LLC intends to improve properties it owns located at 130 East Main Street, 132 East Main Street and 144 East Main Street in the Central Business District; and

WHEREAS, the attached Developer's Agreement details the agreement between the City of Salisbury and First Move Properties regarding parking spaces in the garage; ~~and~~

~~WHEREAS, First Move Properties, LLC requires easements across real property owned by the City of Salisbury in order to improve the properties identified as 130 E. Main Street and 132 E. Main Street, City of Salisbury, to create a walkway from the property to the City of Salisbury parking garage; and~~

~~WHEREAS, the attached Deed of Easement and the attached Temporary Construction Easement and Perpetual Maintenance Easement detail the aforementioned easement areas and agreement between the City of Salisbury and First Move Properties, LLC.~~

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF SALISBURY, MARYLAND, that the Mayor is authorized to negotiate, sign and enter into an agreement ~~and easements~~ with First Move Properties, LLC that ~~are~~ is substantially similar to the attached Developer's Agreement, ~~Temporary Construction and Perpetual Maintenance Easement and Deed of Easement~~, with such other terms and conditions as may be required by the City Solicitor.

THIS RESOLUTION was duly passed at a meeting of the Council of the City of Salisbury held on January 13, 2020, and is to become effective immediately upon adoption.

ATTEST:


Kimberly R. Nichols, City Clerk


John R. Heath, President
Salisbury City Council

APPROVED BY ME THIS:

21ST day of JAN, 2020


Jacob R. Day, Mayor

DEVELOPER'S AGREEMENT

THIS DEVELOPER'S AGREEMENT ("Agreement"), is dated this 21st day of January 2020, by and between the *City of Salisbury, Maryland*, a municipal corporation of the State of Maryland (the "City"), and *First Move Properties, LLC*, a Maryland limited liability company ("First Move") (the City and First Move are hereinafter referred to collectively as the "Parties").

Recitals

WHEREAS, the City is the owner of all that certain real property, and improvements thereon, located in the City of Salisbury, Parsons Election District, Wicomico County, State of Maryland identified as Map 0107, Grid 0015, Parcel 0881, and being described as "61,979 SQ FT NS CIRCLE AVE CITY OF SALISBURY", consisting of 61,979 square feet of land, more or less (said real property is hereinafter referred to as "**Parcel 881**");

WHEREAS, the City is the owner of all that certain real property, and improvements thereon, located in the City of Salisbury, Parsons Election District, Wicomico County, State of Maryland identified as Map 0107, Grid 0015, Parcel 0880, and being described as "L-18, 151 SQ FT 115-117 MARKET ST CITY OF SALISBURY", consisting of 18,151 square feet of land, more or less (said real property is hereinafter referred to as "**Parcel 880**") (Parcel 881 and Parcel 880 are hereinafter referred to collectively as the "**City Property**");

WHEREAS, the City Property is improved by a four-story structure, consisting of approximately 189,572+/- square feet of floor space, used and maintained by the City as a parking garage (the "**Downtown Parking Garage**") for the purpose of providing parking to the general public at a fee, subject to applicable local law and regulations;

WHEREAS, the Downtown Parking Garage contains a total of Seven Hundred Three (703) parking spots;

WHEREAS, First Move is the owner of all that certain real property, and improvements thereon, located in the City of Salisbury, Parsons Election District, Wicomico County, State of Maryland identified as Map 0107, Grid 0015, Parcel 856, and being described as "L-40X110 132-134 E MAIN ST CITY OF SALISBURY"; being in all respects the same property conveyed by George H. White and Deborah W. Poole unto First Move, by Deed dated March 1, 2018 and recorded among the Land Records of Wicomico County, Maryland in Liber 4296, folio 283 (said real property is hereinafter referred to as "**132 E. Main**");

WHEREAS, First Move is the owner of all that certain real property, and improvements thereon, located in the City of Salisbury, Parsons Election District, Wicomico County, State of Maryland identified as Map 0107, Grid 0015, Parcel 855, and being described as "3,300 SQFT 130A-130 E. MAIN ST CITY OF SALISBURY", and further being in all respects the same property conveyed by Livingston Holdings, LLC unto First Move, by Deed dated February 6, 2019 and recorded among the Land Records of Wicomico County, Maryland in Liber 4430, folio 483 (said real property is hereinafter referred to as "**130 E. Main**") (132 E. Main and 130 E. Main are hereinafter referred to collectively as the "**E. Main Properties**");

WHEREAS, pursuant to the terms and conditions set forth in that certain Commercial Sales Contract, dated September 20, 2019 (the "**Contract of Sale**"), by and between First Move and Salisbury Area Chamber of Commerce, Inc. ("**SACC**"), First Move has agreed to purchase from SACC all that certain real property having a premises address of 144 E. Main Street, Salisbury, Maryland 21801, more particularly identified by the Maryland Department of Assessment and Taxation Records as Map 0107, Parcel 0858 (Maryland Tax ID# 05-022673) (said real property is hereinafter referred to as "**144 E. Main**"), and all that certain real property having a premises address of 119 E. Market Street, Salisbury,

Maryland 21801, more particularly identified by the Maryland Department of Assessment and Taxation Records as Map 0107, Parcel 0878 (Maryland Tax ID# 05-022703) (said real property is hereinafter referred to as "**119 E. Market**") (144 E. Main and 119 E. Market are hereinafter referred to collectively as the "**Chamber Property**");

WHEREAS, First Move plans to redevelop the E. Main Properties by constructing a twelve-story, approximately one hundred sixty-five feet (165'+/-) tall, structure thereon, which, when completed, will consist of commercial retail spaces on the first floor, fifty-nine (59) luxury-style apartments on the second through eleventh floors, and an event space on the twelfth floor (the said twelve-story structure First Move plans to construct at the E. Main Properties is hereinafter referred to as the "**Ross Building**");

WHEREAS, upon its purchase of the Chamber Property, First Move plans to redevelop the Chamber Property by constructing a five-story structure thereon, which, when complete, will consist of twenty-five (25), four-person luxury-style apartments (the "**Chamber Building**") (the Ross Building and the Chamber Building are hereinafter referred to collectively as the "**FMP Project**");

WHEREAS, the fifty-nine (59) residential apartments within the Ross Building are designed to provide housing for a maximum of one hundred fifty-six (156) tenants, and, the twenty-five (25) residential apartments within the Chamber Building are designed to provide housing for a maximum of one hundred (100) tenants, thus, when complete, the FMP Project is intended to provide luxury-style apartment housing for a maximum of two hundred fifty-six residential tenants (residential tenants of the FMP Project are hereinafter referred to individually as a "**FMP Tenant**" and collectively as the "**FMP Tenants**");

WHEREAS, the Parties acknowledge and agree the FMP Project will have a material impact on the revitalization of Downtown Salisbury by: (i) significantly increasing the housing inventory available within Downtown Salisbury; and, (ii) directly linking Salisbury University students to the Downtown Salisbury area;

WHEREAS, the Parties further acknowledge and agree that the long-term viability of the FMP Project is contingent upon adequate public parking for the FMP Tenants;

WHEREAS, in order to provide adequate public parking for the FMP Tenants, First Move desires to ensure its ability to purchase up to two hundred fifty-six (256) parking permits for parking within the Downtown Parking Garage for the use of FMP Tenants;

WHEREAS, the Parties acknowledge that, as of the date and year first above written, the Downtown Parking Garage is not used to its full capacity and that two hundred fifty-six (256) parking spots are normally available for use by potential FMP Tenants;

WHEREAS, in consideration of the foregoing, the City agrees, on an annual basis, to make available up to two hundred fifty-six (256) parking permits authorizing the FMP Tenants to park within the Downtown Parking Garage, which said municipal parking permits shall be purchased annually by First Move from the City, on behalf of the FMP Tenants, pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties hereby agree as follows:

1. **Term**. The term of this Agreement shall commence on the date and year first above written and shall continue for a term of three years (the "**Initial Term**").

a. The term of this Agreement shall automatically renew for successive terms of one (1) year (each such additional term of one (1) year is hereinafter referred to as a "**Renewal Term**"), unless either party provides written notice, at least ninety (90) days prior to the end of the Initial Term or any Renewal Term, as the case may be, specifying the party's election to

terminate this Agreement at the end of the Initial Term or such applicable Renewal Term (as used in this Agreement, the word “**Term**” shall be deemed to include, where appropriate, the Initial Term and all Renewal Terms (if any)).

b. In the absence of such written notice from either party, the Initial Term or such applicable Renewal Term, as the case may be, shall automatically renew for an additional one (1) year term as aforesaid upon the same terms and conditions set forth herein.

c. The City retains the right to suspend this Agreement without notice in the event of an emergency (including but not limited to damage to the Downtown Parking Garage which prohibits the safe use of the structure), or upon written notice following a determination by the City that the Downtown Parking Garage is in need of renovation or maintenance or that replacement of the garage is necessary. In the event of suspension of this Agreement, the Grantor will offer alternative parking permits to Grantee in other City locations to be determined by the Grantor.

2. **Parking Spaces.** Beginning with the execution of this Agreement and continuing for the duration of the Term, the City shall issue up to two hundred fifty-six (256) parking permits to First Move, authorizing the holders thereof to use appropriate and available parking spaces in the Downtown Parking Garage for public parking, by tenants of First Move in accordance with the provisions of Sections 3 and 5. (Any and all municipal parking permits purchased by First Move for use by its Tenants as contemplated by this Agreement are hereinafter referred to as the “**Parking Garage Permits**”).

3. **Purchase of the Parking Garage Permits.** Beginning with the execution of this Agreement, and on or before September 1st of each Fiscal Year thereafter during the Term, First Move shall purchase the number of Parking Garage Permits that First Move deems necessary and appropriate, in its discretion, for the operation and management of the FMP Project, including the provision of adequate public parking for the FMP Tenants residing at the FMP Project from time to time (for purposes of this Agreement the term “**Fiscal Year**” shall mean the period of July 1 – June 30). First Move expressly acknowledges and agrees that the City shall have no obligation whatsoever to reserve more than two hundred fifty-six (256) Parking Garage Permits for purchase by First Move.

4. **Purchase Price of Parking Garage Permits.** The purchase price for each Parking Garage Permit reserved for purchase by First Move shall be in that amount determined annually by the City in connection with the municipal budget adopted by the City Council and approved by the Mayor .

5. The City does not guarantee the availability of parking spaces in the Downtown Parking Garage for any permit holder. The permits issued are a license to park in any appropriate and available parking space. The issuance of the permit does not entitle the holder to a reserved space or the right to park at all times. All spaces are available on a first come first served basis.

6. **Miscellaneous.**

(a) **Authority.** Each party represents and warrants to the other party that: (i) it has the full right, power and authority to execute this Agreement; (ii) the execution and delivery of this Agreement and the performance of its obligations hereunder are not prohibited by or in breach of, and the provisions hereof do not conflict with, any other agreement, mortgage, contract or other instrument or document to which it is a party or by which it is otherwise bound; and, (iii) there are no legal requirements imposed upon it which prohibit or limit the execution and delivery of this Agreement and the performance of its obligations hereunder.

(b) **Entire Agreement.** This Agreement, and all exhibits attached hereto, constitute the entire agreement and understanding of the Parties with respect to the matters set forth herein, and all

prior negotiations, writings and understandings relating to the subject matter of this Agreement are merged herein and are superseded and canceled by this Agreement.

(c) **Waiver - Amendments.** Any of the terms or conditions of this Agreement may be waived but only in writing by the party which is entitled to the benefit thereof, and this Agreement may be amended or modified in whole or in part only by an agreement in writing executed by all of the Parties.

(d) **Binding Nature of Agreement.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors and permitted assigns. First Move may assign this Agreement and all its rights hereunder to any successor(s)-in-interest of First Move with respect to its ownership of, or any of its rights in and to, the FMP Project or any part or portion thereof.

(e) **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect or otherwise limit the validity and enforceability of the other provisions hereof.

(f) **Construction.** This Agreement and all of the terms and conditions set forth herein shall not be construed or enforced in favor of or against any party hereto by reason of the fact that party or that party's agent or attorney drafted all or any part of this Agreement. Section headings are for convenience of reference only and shall not limit or otherwise affect any of the provisions of this Agreement. As used herein, any reference to the masculine, feminine or neuter gender shall include all genders, the plural shall include the singular, and the singular shall include the plural.

(g) **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Maryland, without regard to its conflict of laws principles. The Parties hereto acting for themselves and for their respective successors and assigns, without regard to domicile, citizenship or residence, hereby expressly and irrevocably consent to and subject themselves to the jurisdiction of the Maryland courts and to venue in Wicomico County, Maryland with respect to any matter arising under, from or in connection with this Agreement.

(h) **Waiver of Jury Trial.** The Parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counter-claim brought by a party hereto against the other on any matter whatsoever arising out of or in any way connected with this Agreement, the relationship of the Parties to one another, and/or any claim, injury or damage arising from or consequent upon this Agreement.

(i) **Recitals.** The Recitals set forth hereinabove are incorporated by reference herein, and made a part hereof, as if fully set forth in this Agreement.

(j) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

7. **Non-Appropriation.**

In the event no funds or insufficient funds are appropriated and budgeted or are otherwise not available in any fiscal year, any funding required by the City in this Agreement shall terminate on the last day for which appropriations were received by the City, without penalty or expense to the City.

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals and acknowledged this Developer's Agreement as of the day and year first above written.

WITNESS/ATTEST:

THE CITY:

Kimberly R. Debb

City of Salisbury, Maryland

By: Jacob R. Day (SEAL)
Jacob R. Day, Mayor

FIRST MOVE:

First Move Properties, LLC

By: Nicholas R. Simpson (SEAL)
Nicholas R. Simpson, Managing Member

DEED OF EASEMENT

THIS DEED OF EASEMENT, is made this ____ day of _____, 2020, by **THE CITY OF SALISBURY**, a municipal corporation of the State of Maryland (hereinafter referred to as "**Grantor**"), and **FIRST MOVE PROPERTIES, LLC**, a Maryland limited liability company (hereinafter referred to as "**Grantee**") (Grantor and Grantee are hereinafter referred to collectively as the "**Parties**").

RECITALS

WHEREAS, Grantor is the owner of all that certain lot, piece and parcel of land situate in the City of Salisbury, Parsons Election District, Wicomico County, State of Maryland identified as Map 0107, Grid 0015, Parcel 0881, and being described as "61,979 SQ FT NS CIRCLE AVE CITY OF SALISBURY," consisting of 61,979 square feet of land, more or less (said lot, piece and parcel of land owned by Grantor is hereinafter referred to as "**Parcel 881**");

WHEREAS, Grantor is the owner of all that certain lot, piece and parcel of land situate in the City of Salisbury, Parsons Election District, Wicomico County, State of Maryland identified as Map 0107, Grid 0015, Parcel 0880, and being described as "L-18, 151 SQ FT 115-117 MARKET ST CITY OF SALISBURY," consisting of 18,151 square feet of land, more or less (said lot, piece and parcel of land owned by Grantor is hereinafter referred to as "**Parcel 880**") (Parcel 881 and Parcel 880 are hereinafter referred to collectively as the "**City Property**");

WHEREAS, the City Property is improved by a four-story structure, consisting of approximately 189,572+/- square feet of floor space, constructed, operated and maintained by Grantor as a parking garage for purposes of providing parking to the general public (the "**Downtown Parking Garage**");

WHEREAS, Grantor is an owner of a public right-of-way extending East from Baptist Street and running Westerly behind the properties situate on East Main Street to the North, known as 144 E. Main Street and 132 E. Main Street through 116 E. Main Street (the "**Alleyway**");

WHEREAS, Grantor is aware of third-parties with private rights to the use of said right-of-way;

WHEREAS, Grantee is the owner of all that certain lot, piece and parcel of land situate in the City of Salisbury, Parsons Election District, Wicomico County, State of Maryland identified as Map 0107, Grid 0015, Parcel 856, and being described as "L-40X110 132-134 E MAIN ST CITY OF SALISBURY," being in all respects the same property conveyed by George H. White and Deborah W. Poole unto Grantee, by Deed dated March 1, 2018 and recorded among the Land Records of Wicomico County, Maryland in Liber 4296, folio 283 (hereinafter referred to as "**Parcel 856**");

WHEREAS, Grantee is the owner of all that certain lot, piece and parcel of land situate in the City of Salisbury, Parsons Election District, Wicomico County, State of Maryland identified as Map 0107, Grid 0015, Parcel 855, described as "3,300 SQFT 130A-130 E. MAIN ST CITY OF SALISBURY", and being in all respects the same property conveyed by Livingston Holdings, LLC unto Grantee, by Deed dated February 6, 2019 and recorded among the Land Records of Wicomico County, Maryland in Liber 4430, folio 483 (hereinafter referred

to as "Parcel 855") (Parcel 856 and Parcel 855 are hereinafter referred to collectively as the "FMP Property");

WHEREAS, Grantee plans to redevelop the FMP Property by constructing a twelve-story, approximately one hundred sixty-five feet (165'+/-) tall, building thereon, which, when completed, will consist of commercial retail spaces on the first floor, fifty-nine (59) luxury-style apartments on the second through eleventh floors, and an event space on the twelfth floor (the said twelve-story building Grantee plans to construct at the FMP Property is hereinafter referred to as the "**Ross Building**");

WHEREAS, for the use and operation of the Ross Building, Grantee desires the right to unrestricted use of a portion of the air space through which the Aerial Walkway will extend to connect the fourth level of the Downtown Parking Garage to the fourth floor of the Ross Building, the Property over which the Aerial Walkway extends is more particularly described in Exhibit A attached hereto and incorporated herein (a portion of the air space over the Property described in Exhibit A is hereinafter referred to as the "**Easement Area**");

WHEREAS, for purposes of Grantee's development and construction of the Ross Building, Grantor desires to grant and convey to Grantee, in accordance with the terms and conditions of this Deed of Easement, a perpetual, non-exclusive easement, over and through a portion of the air space over the Easement Area.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and obligations of the Parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged by the Parties, Grantor and Grantee, for themselves and their respective successors and assigns, do hereby covenant and agree as follows:

1. **Grant of Easement.** Grantor does hereby grant and convey unto Grantee, its successors and assigns, a perpetual non-exclusive easement, to the air space through which the Aerial Walkway will extend to connect the fourth level of the Downtown Parking Garage to the fourth floor of the Ross Building, above the Easement Area. The easement shall continue for so long as a parking garage is maintained on the subject property and so long as Grantee utilizes and maintains the Aerial Walkway to the parking garage described herein. In the event that the Grantor determines, within its sole discretion, that the Downtown Parking Garage must be renovated (including tearing down and rebuilding) or be expanded, the Grantor will re-connect the Aerial Walkway to the repaired or replaced garage. If the Downtown Parking Garage ceases to exist in sufficiently close proximity to Grantee's property such that the currently planned Aerial Walkway cannot reasonably be utilized, the Grantor's obligations herein shall cease and this Easement will terminate.

2. **Purpose of Easement.** Grantor grants and conveys the easement described in Section 1 hereof for the purpose of granting and conveying unto Grantee, its successors and assigns, the right to a portion of the air space over the Easement Area, such that Grantor, its successors or assigns, shall not construct, maintain or erect, or permit the construction, maintenance or erection of any structure, of any type or kind whatsoever, permanent or temporary, that will infringe or otherwise obstruct the said air space of the Easement Area.

3. **Grantor's Use of the Property.** Subject to the terms set forth in Section 2 hereof, Grantor reserves unto itself, its successors, heirs and assigns, the full use and enjoyment

of the City Property, and in addition to the terms in Section 2., Grantor reserves the right to restrict access to the easement areas described herein whenever the City, in its sole discretion, deems it necessary for the maintenance, expansion or reconstruction of the Downtown Parking Garage or the Easement Area.

4. **Non-Appropriation.**

In the event that no funds or insufficient funds are appropriated and budgeted or are otherwise not available in any fiscal year, any funding required of the Grantor as a result of this Easement shall terminate on the last day for which appropriations were received by the Grantor, without penalty or expense to the Grantor.

5. **Miscellaneous.**

(a) **Run with the Land.** All covenants, obligations and benefits set forth in this Deed of Easement shall run with the City Property and the FMP Property and shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors and assigns.

(b) **Further Actions.** The Parties each covenant and agree to cooperate with one another and to do all things reasonably necessary in implementing the provisions of this Deed of Easement and to take whatever action(s) may be reasonably required of them respectively, from time to time, in order to implement the provisions of this Deed of Easement and all of the transactions contemplated hereby.

(c) **Completion of the FMP Project by Grantee.** Unless otherwise agreed to in writing by the Parties, in the event Grantee, its successors or assigns, fails or otherwise refuses to secure a Certificate of Occupancy for the Ross Building within three (3) years from the date hereof, this Deed of Easement, including all rights granted unto Grantee hereunder, shall terminate and be of no force and effect.

(d) **Recording.** The Parties expressly acknowledge and agree that this Deed of Easement, and all exhibits attached hereto, shall be recorded in the Land Records of Wicomico County, Maryland. Grantee shall bear all costs, if any, incurred in connection with the recording of this Deed of Easement as aforesaid.

(e) **Interpretation; Severability; Amendment.** This Deed of Easement shall be governed by the laws of the State of Maryland without regard to its conflict of laws principles. The section headings contained in this Deed of Easement are inserted for convenience of reference only and do not, in any way, define, limit or describe the scope of this Deed of Easement or the intent of the provisions hereof. If any term of this Deed of Easement or any application thereof is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Deed of Easement shall remain in full force and effect. Any provision of this Deed of Easement held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable. This Deed of Easement constitutes the entire agreement of the Parties with respect to the matters set forth herein, and all prior negotiations, writings and understandings relating to the subject matter of this Deed of Easement are merged herein and are superseded and canceled by this Deed of Easement. This Deed of Easement, and all the terms and conditions set forth herein, shall not be construed or enforced in favor of or against any party hereto by reason of the fact that party or that party's

agent or attorney drafted all or any part of this Deed of Easement. This Deed of Easement may be amended or modified only by an instrument in writing signed by the Parties hereto. The Recitals set forth hereinabove are incorporated by reference herein, and made a part hereof, as if fully set forth in this Deed of Easement.

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals and acknowledged this Deed of Easement as of the day and year first above written.

WITNESS/ATTEST:

GRANTOR:

City of Salisbury, Maryland

Kimberly R. Avelar

By:  (SEAL)
Jacob R. Day, Mayor

GRANTEE:

First Move Properties, LLC

By:  (SEAL)
Nicholas R. Simpson, Managing Member

STATE OF MARYLAND, COUNTY OF Wicomico, TO WIT:

I HEREBY CERTIFY that on this 21st day of January, 2020, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared JACOB R. DAY, who acknowledged himself to be the Mayor of THE CITY OF SALISBURY, MARYLAND, and that he, as such officer, being authorized to do so, executed the foregoing instrument on behalf of said municipal corporation for the purposes therein contained.

AS WITNESS my hand and Notarial Seal.

Drane R. Carter
NOTARY PUBLIC

My Commission Expires: 5-16-22

