



City of  
**Salisbury**  
Jacob R. Day, Mayor

**MINUTES**

The Salisbury Board of Zoning Appeals met in regular session on July 1, 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  
Laura Hay, City Solicitor

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

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**MINUTES:**

Upon a motion by Mr. Soper, seconded by Mr. Jester, and duly carried, the Board **APPROVED** the April 7, 2021 minutes as submitted.

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

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**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**

Department of Infrastructure & Development  
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**Single Family Dwelling within the Required 25 ft. Front Yard Setback –  
423 Druid Hill Avenue – R-10 Residential District.**

Mr. Henry Eure presented and entered the extension request, summarizing that the applicant had requested a 12-month extension of time to exercise the approved 10 ft. front yard setback variance for 423 Druid Hill Avenue.

Mr. Gilmore explained the request.

Upon a motion by Mr. Jester, seconded by Mr. Gilmore, and duly carried the Board **APPROVED** the 12-month extension of time to exercise the 10 ft. front yard setback variance to construct a single family dwelling within the required 25 ft. front yard setback. This extension will expire on July 1, 2022.

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**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.**

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 side yard setback. Board approval of a 10 ft. landscaping area variance was requested.

Mr. Shiv Patel explained that the setback would cause a loss of revenue due to the size of the lot. There is not any income on the lot currently. The potential client needs a fence and there will be a loss without a fence. The required 10 ft. setback for the fence leaves a lot of unused space on the property.

Mr. Allen explained that loss of income/financial hardship is not a reason for granting a variance. He questioned if there was anything unique about the property. Mr. Raj Patel responded that he understood that the loss of income is not an allowed reason based on the criteria but without the fence variance, they will lose their client. A fence variance will have no impact the surrounding properties and will be costly to maintain.

Mr. Shiv Patel stated that the uniqueness is the land. The property does not have a structure on it currently and if they are able to build on the land then there will be an increase in revenue.

Mr. Jester questioned Mr. Eure what was permissible for fencing. Mr. Eure responded that a 10 ft. landscaping area is required by the Code. Some properties may have fences to the property line but they were existing prior to 1983 when the Code

was adopted or they have received variances. The Board has granted variances with reduced landscape areas.

Mr. Jester questioned Mr. Shiv Patel on why they needed to have no landscape buffer. Mr. Shiv Patel responded that they were trying to use the maximum amount of the property and build a fence as a barrier from the neighbors.

Mr. Edgar Cisnero explained that within a block of the property is the exact type fence that they want to construct to maximize the use of the property.

Due to lack of a motion, the Board **DENIED** the requested 10 ft. Landscaping Area Variance request as submitted to erect/install a 6 ft. tall fence within the side yard setback/landscaping area along the west and south property lines.

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**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 E. Upland Drive – Harbor Pointe PRD #3.**

Mr. Will Tyler 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 is requesting permission to construct a 20 ft. x 24 ft. garage addition within the side yard setback.

Mr. Tyler explained that the shape of the lot and the setbacks prohibit construction of the garage anywhere else on the property.

Mr. Soper questioned Mr. Eure if the 10 ft. setback was a Code requirement. Mr. Eure responded in the affirmative, adding that a freestanding garage could be constructed within the 5 ft. setback but it would not be in the best interest of the property owner.

Mr. Soper questioned Mr. Eure if there was a setback from the utility easement. Mr. Eure responded in the negative.

Upon a motion by Mr. Gilmore, seconded by Mr. Jester, and duly carried, the Board **APPROVED** the 5 ft. Side Yard Setback Variance to erect a 480 sq. ft. garage addition within the side yard setback, in order to give the applicant a margin of error during construction of the addition, based on the Criteria listed in Section V(c) of the Staff Report.

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**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.**

Mr. Allen questioned Mrs. Hay if they could consolidate the two (2) requests. Mrs. Hay responded that they could consolidate the Staff Reports but would need to have separate motions and Findings of Fact. Mr. Simpson agreed to consolidate the cases. Mr. Eure questioned how the Board wanted the cases presented. Mr. Allen responded that he would call both cases and have Mr. Eure itemize each request for each property but when they reached the criteria to present one (1) case at a time.

Mr. Nicholas Simpson was present. Mr. Henry Eure presented and entered the Staff Report and all accompanying documentation into the record. He summarized the report for 130-132 E. Main Street explaining that 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. Mr. Eure summarized the report for 144 E. Main Street explaining that 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 and height is requested.

Mr. Eure presented a brief description of each property followed by the criteria for each property. Once this was complete, he provided Staff's recommendation for each property.

Mr. Allen questioned if the recommendation from the Planning Commission for approval of the site plan from 2019 had anything to do with the height of the buildings. Mr. Eure responded that the Planning Commission does not look at the height and only approved the Certificate of Design and Site Plan. Mr. Allen stated that it seems odd that the Planning Commission does not make a recommendation. Mr. Eure responded that by approving the Certificate of Design approval is granted for height.

Mr. Eure administered the oath to Mr. Nicholas Simpson and Mr. Brendan Frederick.

Mr. Simpson explained that the project was delayed by COVID so that is the reason the cases are before the Board again for approval. The changes being presented are important to Downtown vitality. He added that he concurs with the Staff

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Report and Staff's recommendation. Mr. Frederick added that he also concurred with Staff's recommendation.

Mr. Allen questioned if the prior approval for 130-132 E. Main Street was height up to 120 ft. and density of 240 units per acre. Mr. Simpson responded that the height was at 165 ft. but now would be 185 ft. He added that for 144 E. Main Street the height has been increased.

Mr. Soper questioned if there was any reason that Mr. Simpson had not requested an extension. Mr. Simpson responded that due to the increase in height the case had to come back to the Board for approval. Mr. Soper questioned the increase in height for 144 E. Main Street. Mr. Simpson responded that 130-132 E. Main Street would be 185 ft. in height and 144 E. Main Street would be 120 ft. in height. He added that the majority of 144 E. Main Street will be 97 ft. in height but the remainder of the height would cover the elevator extensions.

Mr. Bob Taylor thanked Staff for sending him the requested materials. He voiced his opposition to the cases and summarized his comments, which were submitted to the Board and Staff in regards to the Boards inability to act on the requests as they do not comply with State law and are self-imposed hardships. Mr. Taylor contended that the requests should be for variances and not special exceptions. He also questioned the City Attorney weighing in on these requests as they have represented the client in the past. Mr. Allen noted for the record that the Board is required to adhere to the City Zoning Code as it is written. Mr. Soper questioned Mrs. Hay on the validity of the statement about the City Attorney having a conflict of interest. Mrs. Hay responded that the partners of the firm had met regarding this case and found no conflict of interest, as they are not representing Mr. Simpson in any of these requests. Mr. Soper questioned the Board's ability to hear the case. Mrs. Hay responded that the Board could hear the case as presented as explained by the Code in Section 17.12.100.

Mr. Soper questioned if the Certificate of Design by the Planning Commission approves the construction of the buildings. Mr. Eure responded in the affirmative.

Mr. Simpson explained that he was working on the Master Plan and thanked the Board for hearing his applications.

Upon a motion by Mr. Soper, seconded by Mr. Gilmore, and duly carried, the Board **APPROVED** the Special Exception requested on 130-132 E. Main Street to increase the density to 340 units per acre and the height to 185 ft., based on the criteria listed in the Staff Report, particularly the criteria listed in Section 17.232.020B, and subject to the following Condition of Approval:

**CONDITION:**

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.)

Upon a motion by Mr. Gilmore, seconded by Mr. Jester, and duly carried, the Board **APPROVED** the Special Exception requested on 144 E. Main Street to increase the density to 80 units per acre and the height to 120 ft., based on the criteria listed in the Staff Report, particularly the criteria listed in Section 17.232.020B, and subject to the following Condition of Approval:

**CONDITION:**

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.)

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**ADJOURNMENT**

With no further business, the meeting was adjourned at 7:51 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