



City of
Salisbury
Jacob R. Day, Mayor

AGENDA

REGULAR ZOOM VIDEOCONFERENCE

November 4, 2021

6:00 P.M. - Call to Order – Gil Allen

Board Members: Gil Allen, Shawn Jester, and Kevin Utz.

MINUTES – October 12, 2021.

PUBLIC HEARINGS:

Case #SA-21-1095 Amadeus De Sousa – 3 ft. Side Yard Setback Variance to Construct a 14 ft. x 24 ft. Accessory Structure – 128 Holland Avenue - R-8 Residential District.

* * * * *

Topic: Board of Zoning Appeals

Time: Nov 4, 2021 06:00 PM Eastern Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/82030222536?pwd=Vk5CRWlsL3E3THB2UmozVmhVRUNkZz09>

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MINUTES

The Salisbury Board of Zoning Appeals met in regular session on October 12, 2021, in Room 301, Government Office Building at 6:00 p.m. with attendance as follows:

BOARD MEMBERS:

Albert G. Allen, III, Chairman
Shawn Jester
Kevin Utz

CITY STAFF:

Henry Eure, Project Manager
Brian Soper, City Planner
Beverly Tull, Recording Secretary
Laura Hay, City Solicitor
Heather Konyar, City Solicitor

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Mr. Allen, Chairman, called the meeting to order at 6:15 p.m.

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MINUTES:

Upon a motion by Mr. Jester, seconded by Mr. Allen, and duly carried, the Board **APPROVED** the September 2, 2021 minutes as submitted.

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Mr. Allen explained the public hearing procedure. He requested Mr. Eure to administer the oath to anyone wishing to speak before the case heard by the Salisbury Board of Zoning Appeals. Mr. Eure administered the oath.



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Case # SA-21-879 Hammerhead Renovations, on behalf of Larry & Joyce Gilmore – 7 ft. Rear Yard Setback Variance to Construct a 14 ft. x 24 ft. Four-Season Sunroom Addition – 137 Village Oak Drive – R-5A Residential District.

Mr. Richard Cropper, Mrs. Kimberly Cropper, Mr. Larry Gilmore, Jr. and Mrs. Jamie Gilmore came forward. Mr. Henry Eure presented and entered the Staff report and all accompanying documentation into the record. He summarized the report explaining that the applicant requested permission to construct a 14 ft. x 24 ft. four-season sunroom addition. Board approval of a 7 ft. rear yard setback variance is requested.

Mr. Cropper explained that the relief requested was to provide the same benefit that other residents in the neighborhood have. He added that 36% of the homes in the neighborhood have sunrooms and submitted Applicant's Exhibit #1 as pictures of other sunrooms in the neighborhood.

Mr. Allen questioned if the other sunrooms in the neighborhood were similar to what is being proposed. Mr. Cropper responded in the affirmative. Mr. Allen questioned if the lot sizes were the same as this lot. Mrs. Cropper responded that the lot sizes are not available to the public on the Assessment website.

Mr. Cropper stated that they were allowed to build the screened porch so they are just asking to enclose it.

Mr. Jester questioned the reason for wanting the sunroom. Mrs. Gilmore responded that the sunroom would be used for living space as a family room. The addition will be attractive and will be the exact dimension as the deck that was on the property. Mr. Gilmore added that the sunroom will match what is existing and has the approval of the Homeowners Association. Mr. Jester questioned if the Homeowners Association was on board with the addition. Mrs. Gilmore responded in the affirmative. Mr. Gilmore added that they had submitted the drawing to the Homeowners Association and made sure it was identical in size to the deck. Mr. Cropper added that the deck was unsafe and not up to code.

Mr. Allen questioned Mr. Eure if the lot was the same size as the other lots in the neighborhood. Mr. Eure responded that this lot is narrower than the other lots in the neighborhood. Mr. Allen questioned if the other lots were deeper. Mr. Eure responded in the negative, adding that other permits have been issued for sunrooms. Mr. Allen questioned if any of the other lots were small. Mr. Eure responded in the negative. Mr. Cropper submitted Applicant's Exhibit #2 as photographs of similar sized



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lots in the neighborhood. Mr. Utz requested the location of these lots and Mr. Cropper approached the table to show the location on the map in the Staff Report.

Mrs. Gilmore added that the adjoining home has a sunroom.

Mr. Allen explained that the only way to approve the variance was to determine a hardship with the lot. The Board is tasked with finding uniqueness to grant the variance. He requested the applicants speak to anything regarding the property that would make it unique.

Mr. Cropper discussed the size and configuration of the lot. Mrs. Cropper added that some of the lots in the neighborhood are wider than others. Mr. Allen noted that the common area is not as wide in some areas of the neighborhood.

Mr. Jester stated that the open space was unique but the City's opinion is that the open space is not a hardship. Mr. Eure responded that most lots have open space adjoining them.

Mr. Gilmore noted that they would not be encroaching the open space.

Mr. Utz stated that the unique factor is the common open space area.

Mr. Gilmore noted that they have a smaller lot but one of the larger backyards in the neighborhood.

Mr. Jester questioned Mr. Eure if the Villages at Tony Tank was constructed under the current Code. Mr. Eure responded in the affirmative.

Mr. Allen explained that if the Board grants this variance that a precedent is set for the neighborhood. Mrs. Cropper stated that almost every home has a deck, sunroom, porch or pergola. Mr. Allen reiterated that a precedent would be a long-term concern.

Mr. Jester questioned if a 7 ft. variance was the smallest variance that could be requested. Mrs. Cropper responded that the foundation was already complete.

Mr. Allen questioned Mr. Eure on why a porch was allowed but not a sunroom. Mr. Eure responded that the Zoning Code allows it and it was written in 1983. A screened porch has a 20 ft. setback and a sunroom has a 30 ft. setback.

Mrs. Carolyn Collins, Homeowners Association President, stated that the Homeowners Association had reviewed the request and approved it as long as it



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remained on their property, matched the size of the existing deck, and matched the colors on the house. She added that there have not been any complaints received from the neighborhood.

Upon a motion by Mr. Jester, seconded by Mr. Utz, and duly carried the Board **APPROVED** the requested 7 ft. rear yard setback variance based on the small size of the lot, the adjacent common area and the surroundings of the neighborhood.

Mr. Allen opposed the motion.

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ADJOURNMENT

With no further business, the meeting was adjourned at 6:50 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



STAFF REPORT

MEETING OF NOVEMBER 4, 2021

Case No. 202101095
Applicant: Amadeus DeSousa
Property Owner: Amadeus DeSousa
Location: 128 Holland Avenue
Tax Map: #108
Grid #10, Parcel #1981
Zoning: R-8 Residential
Request: Side Yard Setback Variance

I. SUMMARY OF REQUEST:

The applicant requests permission to retain a car port that was constructed within the side yard setback on a property located at 128 Holland Street.

II. ACCESS TO THE SITE AREA:

The site has frontage and access along Holland Avenue. (**Attachments 1 & 2**)

III. DESCRIPTION OF PROPERTY:

The property, which is located within the R-8 Residential Zoning District, is an average-sized (6,960 sq. ft.) lot for the neighborhood. However, it does not meet minimum lot size requirements for properties in the R-8 district, as newly created lots must be at least 8,000 sq. ft. in area. The property has been improved with a 1,069 sq. ft. single-family dwelling that was constructed in 1946.

IV. DESCRIPTION OF SURROUNDING AREA/NEIGHBORHOOD:

The neighborhood is well-established, and consists of other single-family homes located within the R-8 Residential zoning district. Further west, properties are in the R-5 Residential district.

V. EVALUATION:

- (a) **Discussion:** The applicant has constructed an approximate 14 ft. x 24 ft. carport that is approximately two (2) feet from the side property line. A building permit

was not issued for the structure. Within the R-8 District, the minimum side yard setback is 5 ft. from the property line for accessory buildings/structures. The applicant is seeking to retain the structure with the current setbacks by requesting a 3 ft. side yard setback variance. **(Attachments 3 - 6)**

(b) **Impact:** Staff believes the carport as constructed has the potential to have an increased fire hazard to the adjoining property and dwelling due to its proximity to the side property line.

(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.**

Although the lot is slightly undersized (approximately 1,000 sq. ft.) for properties in the R-8 Residential district, it is typical of other properties in the neighborhood. There are no other unique characteristics that distinguish this property from other properties.

[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.**

This is a typical lot in the neighborhood. Most of the properties are of similar dimensions and area.

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

Staff believes that there has been no practical difficulty that was created by the Zoning Code.



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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 may have an impact on the neighboring property located at 130 Holland Avenue. Due to the proximity of the car port to the adjoining lot, there is an increased fire risk.

- [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 on the applicant's desire to provide cover for a vehicle.

- [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.**

Again, there is the potential for increased fire hazard to the neighboring property.

- [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. However, as identified previously, there the potential for increased fire risk for the adjoining property.

- [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 transportation, water, sewer, school, park or other public 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.

- [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 request is unwarranted. The applicant has not demonstrated any hardship that would warrant granting the request as submitted. However, the Board has the discretion to approve the requested variance or grant a lesser variance.

VI. STAFF COMMENTS:

Staff understands that the applicant's desire to provide protection for his vehicle. However, a hardship has not been demonstrated with this request. The City's Zoning Code currently indicates that a standard parking space shall be provided with a minimum width of 9 ft., while previous standards had a minimum width of 10 ft. If the carport were to be reduced to 11 ft. in width, the parking area beneath the carport would still exceed the minimum width requirements, while still being compliant with setback standards. Additionally, as currently constructed, the carport is not in compliance with City building code standards. According to the 2018 International Residential Code, which is the adopted standard for the City, structures (including accessory structures) that are between 3 ft. and 5 ft. from the property line shall meet one of the following standards:

1. Be provided with a wall with a 1 hour fire-resistance rating that is protected from exposure to fire from both sides. No more than 25% of the wall shall have openings or unprotected areas.
2. Be provided with an automatic sprinkler system. Unlimited openings in the wall are permitted if sprinklered.

Building Code standards are not subject to variances from the City's Building Board of Appeals. The Building Board may only determine if there has been a misinterpretation of the code or if an alternative method of construction meets the spirit of the prescribed standards.

VII. RECOMMENDATION:

Based on criteria for approval as outlined in Section V (c) of the Staff Report, it is recommended to **Deny** the applicant's request as submitted. However, if the Board



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grants approval of the variance request, it is recommended that the following condition be included in such approval:

1. The carport shall be constructed in compliance with Section R302.1 of the 2018 International Residential Code.



Attachment 1



HOLLAND AVE

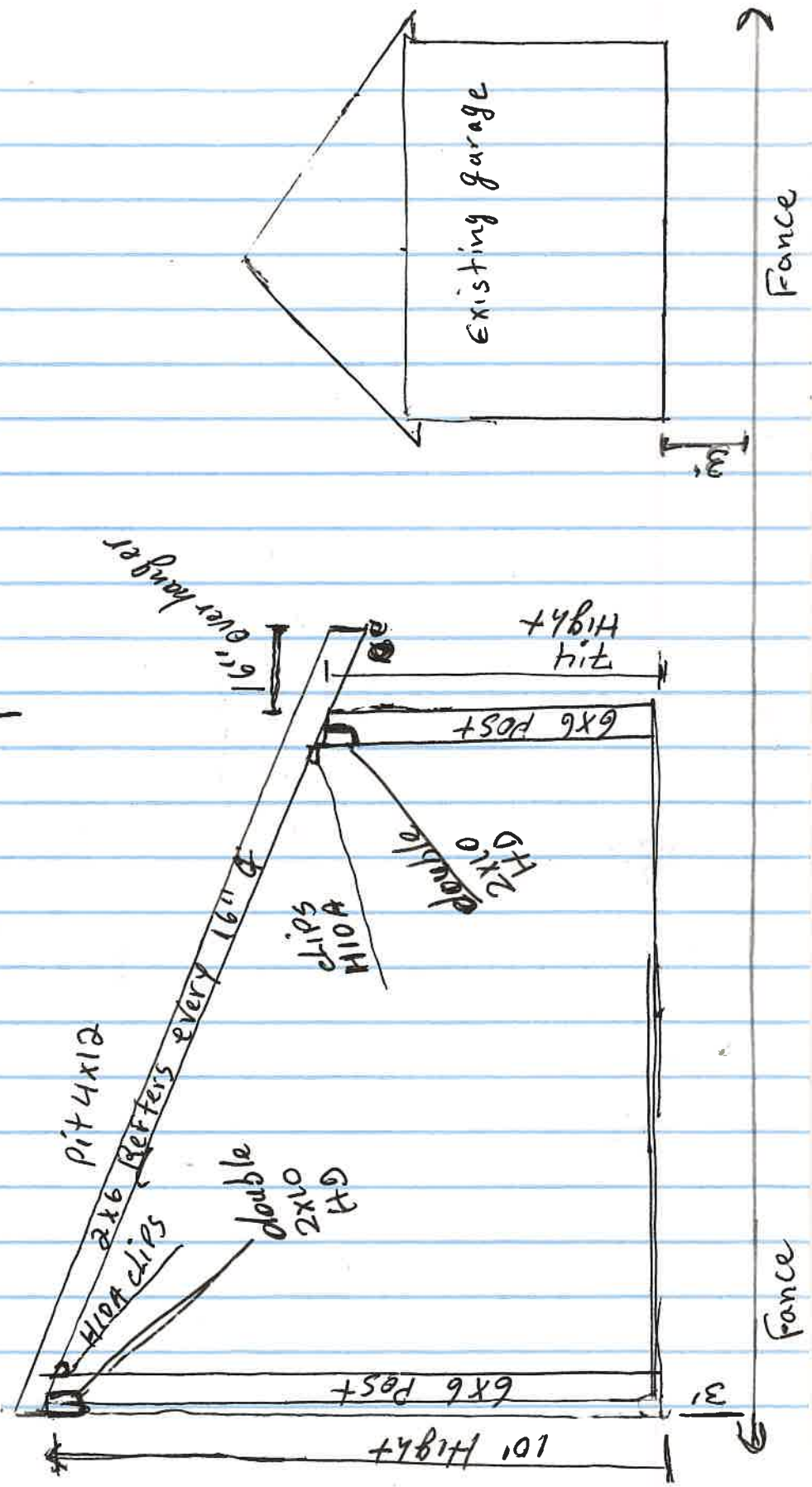
Attachment 2

128 Holland Ave
Salisbury md

443-497-2502
Amadeus Sousa
Car Port roof

43'8" Long

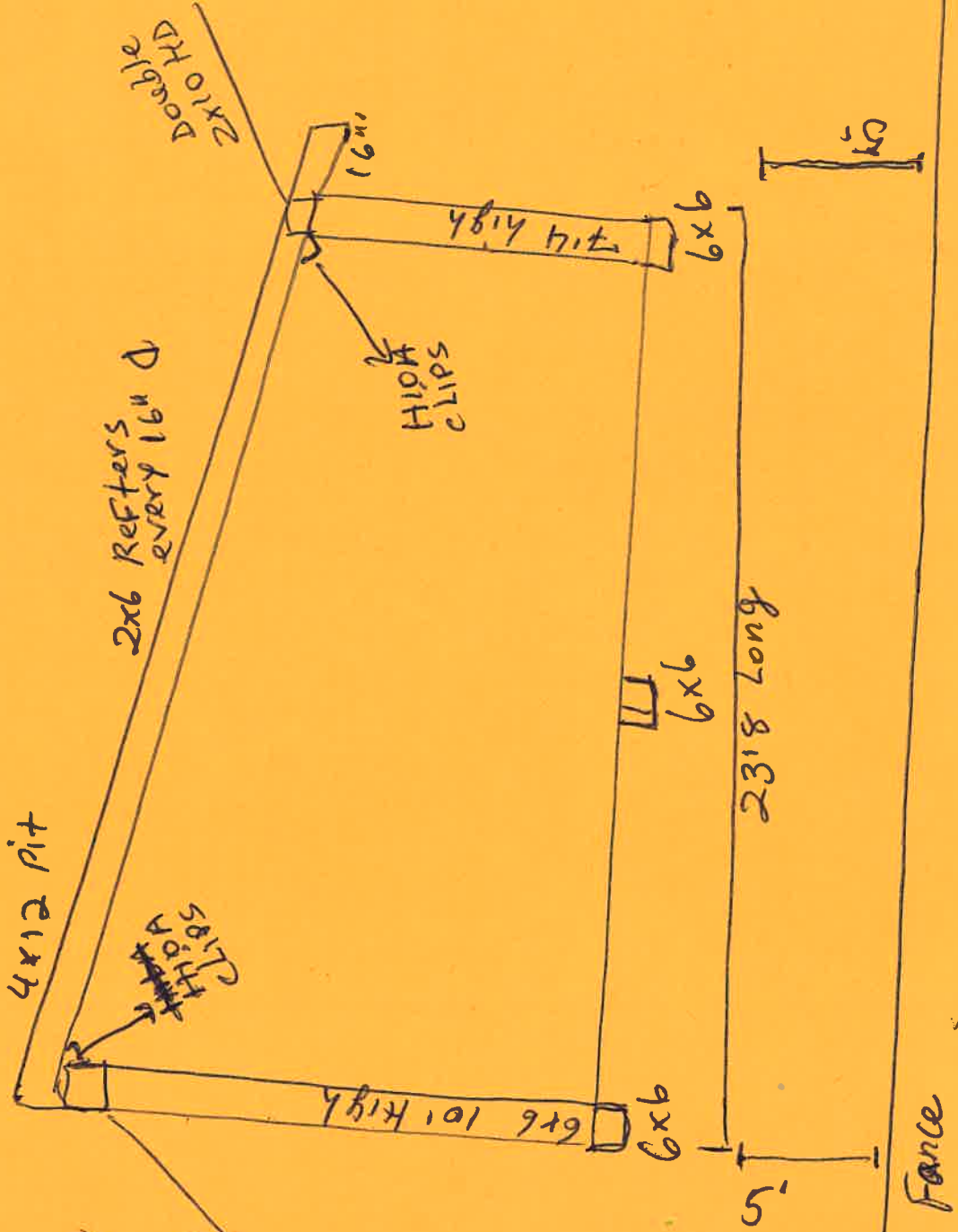
Attachment 3



413-4972502

128 Holland Ave
Salisbury md 21804

Car Pot ~~ROOF~~



Attachment 4

Amadeus de Sousa.



Attachment 5



Attachment 6

PROPERTY LINE MARKER