



## AGENDA

**REGULAR MEETING**

**December 7, 2023**

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

**6:00 P.M. -** Call to Order – Shawn Jester

Board Members: Shawn Jester, Ed Torbert, William Hill, and Miya Horsey.

**MINUTES** – November 2, 2023.

**ZONING PUBLIC HEARINGS:** Zachary & Cathleen Goodman – 2 ft. Fence Height Variance to Erect a 6 ft. Tall Fence Within the Required 25 ft. Front Yard Setback – 1001 N. Division Street – R-8 Residential District.

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**\*\*PUBLIC INPUT – Public comments as part of the public hearings for each case are welcome but are subject to a time allotment of two (2) minutes per person.**

***The Board of Appeals reserves the right to convene in Closed Session as permitted under the Annotated Code of Maryland, General Provisions Article, Section 3-305(b).***



City of  
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John "Jack" R. Heath, Mayor

**MINUTES**

The Salisbury Board of Appeals met in regular session on November 2, 2023, in Room 301, Government Office Building at 6:00 p.m. with attendance as follows:

**BOARD MEMBERS:**

Shawn Jester  
William Hill  
Maurice Ngwaba  
Sandeep Gopalan  
Miya Horsey (VIA ZOOM)

Edward Torbert (Absent)

**CITY STAFF:**

Brian Soper, City Planner  
Henry Eure, Senior Planner  
Beverly Tull, Recording Secretary  
Laura Ryan, City Solicitor  
Reena Patel, Acting City Solicitor for Salisbury Town Center case only

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Mr. Soper, City Planner, called the meeting to order at 6:01 p.m. and turned the meeting over to Mr. Jester.

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**MINUTES:**

Mr. Jester noted that there was an amendment to the Agenda, explaining that the minutes are for the July 6, 2023 meeting. Upon a motion by Mr. Hill, seconded by Mr. Ngwaba, and duly carried, the Board **APPROVED** the July 6, 2023 minutes as submitted.



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Mr. Eure administered the oath to anyone wishing to speak before the cases heard by the Salisbury Board of Appeals.

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**Case #SA23-1263 Alexander G. Fisher, Esq., on behalf of Wade Rentals - Special Exception to Utilize the Property for Outdoor Storage – 2305 Northwood Drive – Light Industrial District.**

Mr. Alex Fisher and Mr. Taylor Wade came forward. Mr. Eure presented the Staff Report and all accompanying documentation into the record. Mr. Eure explained that the applicant requested a special exception to utilize the south portion of the property for outdoor storage.

Mr. Jester moved the Staff Report into the record.

Mr. Fisher had Mr. Wade explain what the reasoning was for the request. Mr. Wade responded that he would have a sole tenant for the outdoor storage, Exelon which is the parent company of DP & L, and that the intention was for it to be kept clean. Mr. Wade added that per the Staff Report, the fence would have slats in it. Mr. Fisher discussed the road frontage and if it would have landscaping. Mr. Wade responded that the only road frontage is along Northwood Drive and it will have landscaping. Mr. Fisher discussed the stormwater management and questioned Mr. Wade on what was being done to handle the stormwater requirements. Mr. Wade responded that he will be installing a wet swale in front of the ditch, which will take up one-third of the property. Mr. Fisher questioned if the tree planting would make it difficult to maintain the stormwater management pond. Mr. Wade responded that it would make it difficult as it is already a struggle to maintain the existing stormwater pond and with the plantings it will be harder to get to the stormwater easement. Mr. Fisher entered Applicant's Exhibit #1 into the record and had Mr. Wade list the properties on Page 1. He questioned Mr. Wade on the photos and what was shown as to whether these properties were all in the neighborhood of his property. Mr. Wade responded in the affirmative. Mr. Wade stated that he feels that the fencing will be sufficient screening and that the plantings will prohibit the machinery from getting to the stormwater ponds for maintenance.

Mr. Fisher requested approval of the Special Exception with the elimination of Condition #2.

Mr. Ngwaba stated that he would have liked to have seen an aerial of the property showing the visual angles. Mr. Wade stated that he was agreeing to planting additional trees along Northwood Drive. Mr. Ngwaba stated that stormwater

management was required by law. Mr. Eure stated that the stormwater requirement was because of the stabilization of the additional area.

Mr. Jester questioned Mr. Wade about the issue of maintaining the stormwater easement. Mr. Wade responded that the fence around the easement makes it difficult to reach with equipment. Mr. Jester questioned Mr. Eure if the City was going to maintain the easement. Mr. Eure responded that the stormwater easement appears to have been neglected in the past but stormwater maintenance is handled by the engineers.

Mr. Gopalan questioned how important were the tree plantings. Mr. Eure responded that it is more important to maintain the stormwater pond.

Upon a motion by Mr. Gopalan, seconded by Mr. Ngwaba, and duly carried, the Board **APPROVED** the requested Special Exception for an outdoor storage yard, based on Section V (c) of the Staff Report and subject to the following Condition of Approval:

**CONDITION OF APPROVAL:**

1. Install a solid or chain link fence with slat inserts on the east, west, and south sides of the storage yard.

The Board vote was as follows:

<b>Miya Horsey</b>	<b>Aye</b>
<b>Maurice Ngwaba</b>	<b>Aye</b>
<b>Sandeep Gopalan</b>	<b>Aye</b>
<b>William Hill</b>	<b>Aye</b>
<b>Shawn Jester</b>	<b>Aye</b>

\* \* \* \* \*

**Case #SA-23-1265 Parker & Associates, Inc. on behalf of Vestoge Salisbury MD, LLC – Special Exception to Increase Density to 14.98 Units per Acre – 10591 Dagsboro Road – R-10A Residential District.**

Mr. Brock Parker came forward. Mr. Eure presented the Staff Report and all accompanying documentation into the record. Mr. Eure explained that the applicant proposes to construct 96 apartment units on 6.41 acres of a 34.67 acre lot. Board approval of a Special Exception for increased density is requested.

Mr. Jester moved the Staff Report into the record.

Mr. Parker explained that the Planning Commission had granted Preliminary Comprehensive Development Plan approval for this mixed-use community. This request pertains to the apartment section of the development. The apartments will be 24-unit buildings shown in a pod. The requested density increase would be for the apartment side of the project. The special exception criteria have all been met. Additional open space is being provided. The design is a stand-alone apartment project that is part of the overall project and will share amenities with the single family homes and the townhomes. The apartments will be for rent and the single family and townhomes will be for sale. The design has kept like products next to like products. Once a connection is made with future developments, it will connect to the hub on the north end of Salisbury. The entire project is in strict conformance with the Zoning Code.

Mr. Ngwaba questioned if the buildings were three (3) stories in height. Mr. Parker responded in the affirmative. Mr. Ngwaba questioned if there were two (2) types of townhomes. Mr. Parker responded in the affirmative.

Mr. Jester questioned how tall the buildings would be. Mr. Parker responded that three (3) story buildings are usually about 35 ft. tall.

Mr. Bob Taylor, N. Park Drive, stated that only a variance could be used for an increased density request, not a special exception. He entered into the record, ***Protestant's Exhibit #1 a memo dated October 27, 2023, Protestant's Exhibit #2 an a slide from the Maryland Department of Planning Education Course, and Protestant's Exhibit #3 an email dated October 31, 2023.*** He suggested that the City Legal Department should contact the Attorney General's Office regarding only a variance being allowed for an increased density request. He stated that the Salisbury Zoning Code provides a special exception for increased density which is unlawful. He further stated that these cases would be appealed due to the obvious conflict of State law. Mr. Taylor requested that the emails that he sent in to the Staff last week be made part of the record. He also requested that the email that he sent in the week of the meeting be made part of record.

Mr. Ngwaba questioned Mrs. Ryan regarding the combination of the Boards. Mrs. Ryan responded that the Board of Appeals can grant variances and special exceptions.

Mr. Taylor stated that the Boards may have combined but the function of the Boards didn't change. He added that he has never seen any other Boards use special exceptions for density increases. In the 1970's State law changed to make it clear that you must use a variance. Mr. Taylor added that he had submitted an extract from a publication from the Maryland Department of Planning that's consistent with what

he has said.

Mr. Jester questioned Mrs. Ryan if the Board could grant a special exception. Mrs. Ryan responded that the Zoning Code, as written, is proper. She stated that it is not within the Board's purview to declare the Zoning Code unlawful. The Board is hearing the case to determine if the criteria has been met.

Upon a motion by Mr. Ngwaba, seconded by Mr. Hill, and duly carried, the Board **APPROVED** the requested Special Exception to increase the density to 14.98 units per acre, based on Section V (c) of the Staff Report and subject to the following Conditions of Approval:

**CONDITIONS OF APPROVAL:**

2. Obtain a Final Comprehensive Development Plan Approval from the Salisbury Planning Commission prior to construction.
3. Subject to further review and approval by the Salisbury Department of Infrastructure and Development, the Salisbury Fire Department, and other agencies as necessary.

The Board vote was as follows:

<b>William Hill</b>	<b>Aye</b>
<b>Maurice Ngwaba</b>	<b>Aye</b>
<b>Sandeep Gopalan</b>	<b>Aye</b>
<b>Miya Horsey</b>	<b>Aye</b>
<b>Shawn Jester</b>	<b>Aye</b>

\* \* \* \* \*

**Case #SA-23-1266 Parker & Associates, Inc. on behalf of Salisbury Town Center Apartments, LLC – Special Exception to Increase Density to 77 Units per Acre – Lot 3, District 09, Account #061002; Lot 4, District 09, Account # 060987, Lot 5, District 09, Account #055207; and Lot 6, District 09, Account # 052534 (which are commonly known as part of municipal parking lot 1, and all of parking lots 11 and 15) – Central Business District.**

Mrs. Ryan recused herself from this case and turned it over to Ms. Reena Patel.

Mr. Michael Sullivan, Mr. Brad Gillis, Ms. Wendy Oberer, Mr. Kevin Carney, Mr. Dave Laikin, Mr. Brock Parker, and Mr. Michael Connor came forward. Mr. Soper presented the Staff Report and all accompanying documentation into the record. Mr. Soper

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explained that the applicant proposes to construct a 222-unit apartment building on Lots 3, 4, 5, and 6 as shown on Attachment #5 and is requesting approval of a Special Exception under 17.24.040B.2.c to increase density to 77 units per acre for the project area. The inherent density per 17.24.040B.2.b is 40 units per acre.

Mr. Jester moved the Staff Report into the record. He also moved Mr. Bob Taylor's comments from the previous case into the record as Protestant's Exhibit's #1 a Memo from Robert Taylor, Protestant's Exhibit #2 an Email from Robert Taylor dated October 31, 2023, Protestant Exhibit #3 an email dated October 27, 2023 and Protestant's Exhibit #4 Maryland Department of Planning Education Slides..

Mr. Sullivan introduced everyone, adding that Ms. Betty Tustin was in the audience and is the traffic study expert. He explained that the LDA brings this before the Board and it sets forth the project must be done. There are four (4) buildings that equal 222 luxury apartments across 2.92 acres which equals 77 units per acre. In comparison, there were 144 units per acre for The Ross property. He discussed the lots and stated that lots 3, 4, 5, and 6 would be where the development was constructed.

Ms. Oberer displayed and discussed images in the packet. This is a non-contributing site in the Historic District. Mr. Jester moved the aerial into the record.

Mr. Sullivan entered **Applicant's Exhibit #1 Parking Study Memo**, which was a memo from Desman Consultants about the parking study. Mr. Connor completed the parking study and he discussed his work to create the study. He further discussed the parking spaces needed and being provided.

Mr. Parker stated that the design of the project will adhere to all Codes. The project will maintain the same streetscape as Main Street.

Mr. Ngwaba questioned Ms. Tustin if she had considered the roundabout in the study. Ms. Tustin responded that she used peak hour trips for the traffic study. The traffic circle was not analyzed because this development will not affect it with more than a few trips. Mr. Jester questioned Ms. Tustin regarding the number of trips being 86 and if that number was larger. Ms. Tustin responded that the data used was standard and that she was confident with the numbers. Mr. Jester questioned Ms. Tustin on if there were 50 additional trips to the roundabout as the residents will use all different ways to leave the development.

Mr. Ngwaba questioned Mr. Connor if the spaces rented from the City are in the study. Mr. Connor responded in the affirmative. Mr. Jester questioned the parking if all beds at The Ross was occupied. Mr. Connor responded that the parking study included The Ross being fully occupied. Mr. Jester questioned what the 222 luxury apartments meant. Mr. Carney responded that it's not just 222 units but amenities as well.



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All buildings are connected by elevated bridges. Mr. Jester questioned if the bridges were walking bridges. Mr. Sullivan responded that The Ross had their bridge installed this week. Mr. Jester questioned the desirability of having people walk through buildings to get to other buildings or the parking garage. Mr. Carney responded that the bridges are secured so there will be limited access to the residents only. Mr. Jester questioned the parking. Mr. Connor responded that there would be 216 spaces, which do not include the 191 spaces at Unity Square. There will be parking in the parking garages as well as curbside parking. There will be a total of 1401 parking spaces after the development of the new parking garage and curbside spaces. Mr. Jester questioned how long it would take to build the parking garage. Mr. Carney responded that the parking garage would take approximately seven (7) to ten (10) months to construct.

Mr. Bob Taylor, 203 N. Park Drive, stated that he had spoken with Mrs. Ryan about the cases on West Law. He explained that there is a 1995 case that states a special exception can't be a substitute for a variance. Mr. Taylor submitted his exhibits into the record. He went on to discuss **Protestant's Exhibit #5, an aerial photograph from Google Earth showing the three (3) parking lots and the area around them**. He stated in the photograph that there were 276 spaces utilized in the three (3) lots on the day that he counted. Mr. Taylor explained that a lot of people have stopped coming downtown because of the construction and S. Division Street being closed. The parking study excluded Lot 16 and Lot 10 which are further to the east. Lot 10 will be a hotel and parking will be eliminated. Currently, Lot 10 provides excess parking when needed. Parking meters will not be fed by parking permit holders once Lot 10 is gone. Lot 16 is permit parking and currently has approximately 49 cars and is being sold for luxury apartments. Tenants of The Ross pay \$35/month while other permit holders pay \$70/month. Approximately 220 people will have first right of refusal to the new parking garage. This development will have 369 bedrooms and the rent for the units will range from \$1795 to \$2495 per month. Mr. Taylor questioned who would rent the units at that price point, adding that if they could afford that rent that they would likely have multiple vehicles. He concluded his parking comments with the notion that there will not be any parking in the downtown area south of Route 50 and west of Route 13. Mr. Taylor also discussed the FEMA flood map and the parking that would be in the floodplain.

Mr. Parker stated that the development is 2 ft. above flood elevation and FEMA will approve it. Mr. Taylor stated that there is flooding on Market Street already and the barriers will flood the other properties and the streets. He stated that the Planning Commission gave Site Plan approval and were misled by Mr. Sullivan and Mr. Soper about the parking criteria. The Code was amended for the Central Business District as laid out in, **Protestant's Exhibit #8**. The Commission has not made a recommendation on parking. Mr. Jester moved all of Mr. Taylor's exhibits into the record.

Mr. Jester questioned Mr. Gillis about Mr. Taylor's comments. Mr. Carney responded that the elevation will be 2 ft. above floodplain. He added that they



don't have to take into consideration where the water goes and that the FEMA map change is being done. Mr. Gillis added that they are subject to the same standards as all developments are. Market studies have been done and they are moving forward with this development at their own risk.

Mr. Anthony Gorski, 2661 River Road, entered into the record **Protestant's Exhibit #9, a letter protesting the requested Special Exception.** He stated that he represented several people to include Holly Worthington, Randy Taylor, and Back Street Investments. He stated that the City Code is not in compliance with State law. He stated that he would appeal this case if it was approved. Mr. Gorski stated that he had spent several years in the Attorney General's office and that an opinion on this matter could be requested for free. He stated that it is the Board's obligation to act as Planning Officials per State law. Salisbury's Code is just wrong. Other property owners will be adversely affected by this development. The scale of the development is a problem, as is the displacement of parking. Based upon the City's promise to give permit holders spaces in the parking garage, half of the parking spaces will be gone. He questioned where the Library patrons would park. Mr. Gorski stated that lenders for commercial space look at parking as part of the loan process. He voiced his agreement with Mr. Taylor in regards to parking. Mr. Gorski discussed the effect this development would have on Market Street Inn's business and employees. There is a contract that is approved by the Mayor and City Council and the Board can't be objective hearing this case. The City put the Board in this position. If the density change isn't approved, this project goes away. This is illegal contract zoning. The citizens do not have confidence in the Board because the City told the Board what they want. The City has no Adequate Public Facilities Ordinance. Mr. Gorski stated that the City currently has parking needs and questioned why they are paying to build a \$10 million parking garage. The approval of this project should not create a financial burden on the City. The Comprehensive Plan is out of date and should have been updated in 2020. The 2010 Comprehensive Plan says that the Central Business District should be increased by 15 units. The Board has to make factual findings of fact that give legal support as to why the request was approved. Mr. Gorski argued the density because Lot 4 was taken out because it didn't have apartments on it. The density should be 93 units per acre not 77 units per acre. He went on to discuss the City not being up to date on stormwater management. Market Street will be under water when it rains because of this development. The Historic District Commission has a separate approval process. The approval of materials does not dictate to this Board. There are not enough details in this plan. Mr. Gorski stated that parking for the Opportunity Shop is a concern for the Pastor of Asbury United Methodist Church and he entered **Protestant's Exhibit #10, a letter from the Pastor of Asbury UMC.** Mr. Gorski concluded his comments by stating that this project will cause his clients harm.

Mr. Rob Mulford, 130 W Market Street, stated that his concerns included stormwater and the financial impacts this development would have on his business. Currently where there are torrential downpours and high tide at the same time,

his business will flood. He stated that there are EPA issues as the stormwater goes into his grease trap and that goes into the river. Installing retaining walls will be the death of his building because the water will be pushed to his property. The bulkhead in parking Lot 12 is washing away. He discussed the financial loss his business has taken since 2001 and stated that without parking, he will be out of business. Mr. Mulford added that his business has already suffered with the construction of Unity Square.

Mrs. Sharon Dashiell, Russell Avenue, stated that she was one (1) of the owners of the Cannon building on Circle Avenue. She questioned parking be available for the public that utilizes her building and other businesses downtown.

Ms. Lisa Gingrich, 316 N. Division Street, stated that the historic guidelines address new construction and not just what exists. This is a generic, modern architecture design. The City will have big brown buildings. This project gives no nod to the historic area.

Mr. Randy Taylor, 403 Camden Avenue, stated that he owns a building downtown and has served on the Historic District Commission. He stated that he does preservation work. There are lots of problems with this. The City Administration is not listening to the citizens. Mr. Taylor stated that he has held up his project for fear of something like this happening. The parking garage loses \$425,000 per year in cash flow now. He stated that he was not against development but this project sucks. He requested that the Board table the case until more information could be received.

Ms. Brandi Nichole Wallace, 225 W. Main Street, stated that there is confusion with her clients about parking now. She stated that she was born and raised here and has come back to her home to build her business. Parking is needed for her business and her elderly clients and wheelchair bound clients don't know where to park or how to work the new parking meters. Her clients are at her business for approximately 30 minutes to two (2) hours. They do benefit from the free hour of parking but the older clients don't have the ability to use the new technology of the parking meters. She discussed the clientele that utilize the Opportunity Shop on Thursdays and need parking. Ms. Wallace requested that the Board think of the business owners. Due to the construction, there is already a fight for the parking spots between business owners.

Ms. Sharmeen Bolden, 304 W. Main Street, Apartments 3, stated that she has lived downtown for eight (8) years and with this development, she will be losing her parking. The residents and business owners of downtown were not consulted. She discussed the increased number of people that would be brought downtown. Ms. Bolden also discussed the housing crisis and that luxury apartments don't help with the housing needs. She further discussed the ongoing issues with traffic and the backups that take place at the roundabout. Ms. Bolden requested that the Board think of the people who already live downtown before making a decision.

Mr. Michael Weisner, 438 Rolling Road, spoke in opposition to the request. He stated that a lot of adverse conditions had been brought up to the Board. Mr. Weisner stated that there was no necessity for the requested density and that the project could be built within the cap. The Central Business District doesn't require parking, however, over the last few years the parking lots have been sold. The developers are not providing parking and the City is spending \$10 million on building a new parking garage. He requested that the Board deny the request.

Mrs. Carolyn Wohlgemuth, 1118 Gransby Run, stated that the City did not provide the information for the public to review in a timely manner and that information was left out of the packet in regards to parking and the parking garage. She listed several issues that she had with the City and requested denial.

Mrs. Nancy Roisum, 209 Beaverdam Drive, stated that the Community Impact Statement was not provided to the Planning Commission. She discussed the issues with the parking. The density increase upsets the balance of the Central Business District. Due to lack of information, the Board does not have enough information to make an informed decision.

Ms. Christine Adams, 100 W Main Street, stated that she owns Adams Housing and doesn't want her business to be collateral damage to this development. Her business and tenants require 27 parking spaces. She stated that there is no talk of where people will park during construction. She requested that the Board table this request until all issues are worked out.

Ms. Holly Worthington, 300 W. Main Street, stated that she purchased her building in 2021. There is historical significance on more than just Main Street. There is a need for affordable housing and The Ross and this development do not provide affordable housing. She stated that when she purchased her building, she was told that Lot 15 was parking for her building. Her tenants and her clients will lose their parking with this project. Ms. Worthington requested that the Board take into consideration all the comments that have been made before making a decision. This project will devalue her investment.

Mr. Bob Taylor stated that the Envision Salisbury Plan stated that Lot 15 would remain parking.

Mr. Sullivan questioned Mr. Parker about the stormwater. Mr. Parker responded that there is tidal, runoff, and true stormwater. A lot of the flooding comes from the river. Flood waters don't get displaced. The predominate flooding is due to the tides. Mr. Sullivan questioned if any agency had reviewed the stormwater. Mr. Parker responded that FEMA has reviewed the stormwater and given preliminary approval for the map amendment. Mr. Parker explained that the site is almost all impervious now and

this development will reduce the impervious surface. The remainder of the stormwater is being managed on-site. This project will reduce the runoff.

Mr. Sullivan questioned Mr. Connor if there would be sufficient parking during construction. Mr. Connor responded in the affirmative, and that there would be a surplus during construction. Mr. Connor added that the permit holders do not use their parking spots 24/7.

Mr. Sullivan stated that the request is for the special exception for increased density. The Code provides for a special exception for increased density. He stated that he had reviewed the minutes from the April 2019 Board of Zoning Appeals meeting and several comments were made about the parking lots. The City declared the parking lots as surplus. The Mayor and Council made decisions that the public property was no longer needed for public use. We are here for eight (8) general and eight (8) specific standards that are required for consideration regarding the special exception request to increase density. Between 2018 and now, the Board has considered over nine (9) requests for increased density. Mr. Sullivan requested approval of the applicant's request.

Mr. Anthony Gorski stated that the FEMA map amendment is about the elevation of the ground floor of the property.

Ms. Lisa Gingrich stated that the mention of the 2019 meeting doesn't mean this should just be approved. There have been a lot of concerns raised that are valid. She requested that the Board table the request.

Mr. Gopalan questioned Mr. Soper about Section 17.24.040B.3 in regards to the \$10 million parking garage and what factor was used to determine that there was no undue burden. Mr. Soper responded that the LDA required that the parking garage be built. The Parking Authority grants the City the ability to build a garage.

Mr. Soper noted for the record that the Planning Commission approved the Certificate of Design and Site Plan which is the requirement of the Central Business District. The Certificate of Design and Site Plan approval does not require a Community Impact Statement.

Mr. Ngwaba questioned Mr. Soper if the documents were complete. Mr. Soper responded in the affirmative. He explained that the link to the documents were sent Thursday evening. There was an issue with the website and it was corrected.

Ms. Roisum stated that sending out the packet on Thursday, the week before the meeting, was too short of notice.



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Mr. Gopalan questioned Mr. Soper if the increase in density was good for the environment, why wasn't it mentioned in the Staff Report. Mr. Soper responded for the Staff Report they only dealt with stormwater and the reduction of impervious surface. The undue burden is listed strictly as financial.

Mr. Sullivan noted for the record that the City's Capital Improvement Plan had the parking garage listed.

Mr. Gorski argued that anything that Mr. Sullivan said was biased.

Mr. Ngwaba thanked the community and the developers for everything. He stated that there were concerns raised that were significant. He suggested that a meeting between all parties should take place.

Mr. Gillis stated that if they were to come back to the Board, they wouldn't be able to come back in 30 days due to the filing requirements. He stated that they had done a good job with transparency and everything is on the up and up. The request was before the Board to discuss specific issues.

Upon a motion by Mr. Hill, seconded by Ms. Horsey, and duly carried, the Board **DENIED** the requested Special Exception to increase the inherent density of 40 units per acre by 37 units to 77 units per acre, not to exceed 222 units over the project area. The Board's decision was based on the failure to meet all the criteria in 17.232.020B, specifically Item 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 Board vote was as follows:

<b>William Hill</b>	<b>Aye</b>
<b>Maurice Ngwaba</b>	<b>Aye</b>
<b>Sandeep Gopalan</b>	<b>Nay</b>
<b>Miya Horsey</b>	<b>Aye</b>
<b>Shawn Jester</b>	<b>Nay</b>



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**ADJOURNMENT**

With no further business, the meeting was adjourned at 11:01 p.m.

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This is a summary of the proceedings of this meeting. Detailed information is in the permanent files of each case as presented and filed in the City of Salisbury Department of Infrastructure and Development Department.

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Shawn Jester, Chairman

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Richard Baldwin, Secretary to the Board

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Beverly R. Tull, Recording Secretary



# City of Salisbury

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## STAFF REPORT

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MEETING OF DECEMBER 7, 2023

**Case No.** 202301487  
**Applicant:** Zachary and Cathleen Goodman  
**Property Owner:** Zachary and Cathleen Goodman  
**Location:** 1001 North Division Street  
**Tax Map:** #104  
**Grid #10, Parcel #531**  
**Zoning:** R-8 Residential  
**Request:** 2 ft. Fence Height Variance

**I. SUMMARY OF REQUEST:**

The applicants have requested permission to retain a recently installed 6 ft. tall fence located within the front yard setback. **(Attachment 1)**

**II. ACCESS TO THE SITE:**

The property has frontage along North Division Street and London Avenue, with access along London Avenue. **(Attachment 2)**

**III. DESCRIPTION OF PROPERTY:**

This site consists of an L-shaped property approximately 8,050 sq. ft. in area, and has been improved with a two-story single family dwelling that was constructed in 1935. A two-story accessory building has also been constructed on the property.

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

Surrounding properties to the north, south and west consist of single family homes, and are also located in the R-8 Residential zoning district. Properties to the east are located in the General Commercial zoning district, and are a mixture of various business, retail and commercial uses.

**V. EVALUATION:**

**(a) Discussion:** The applicants have erected a 6 ft. tall shadowbox style fence within



# City of Salisbury

the front yard setback along London Avenue. Fences are limited to a maximum height of 4 ft. within the front yard. By definition, corner lots, such as the referenced address, have two (2) front yards and two (2) side yards for setback purposes. The fence is located approximately 5 ft. from the curblin, along the back of the sidewalk. According to the property owners, the purpose of the increased height is to provide an increased level of privacy on a portion of the lot.

(b) **Impact:** Staff believes the fence will have minimal impact on neighboring properties, and will not obstruct the vision of motorists traveling in any direction. Similar fence height variance requests have been granted throughout the City in the past.

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

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

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

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

Again, there are no unique conditions that this property possesses.

[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 practical difficulty may have been created by the Zoning Code. The Code indicates that corner lots must have two (2) front yards, and that fences in front yards are limited to 4 ft. in height. There is no relief for fence height based on the orientation of the dwelling or along secondary streets.



- [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. Other nearby properties have fences that are 6 ft. tall within the front yard setback.

- [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 provide a small amount of added privacy in a portion of the property.

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

Increasing the fence height to 6 ft. within the front yard 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 fence height increase will not create any hazardous traffic conditions due to its distance from North Division Street, nor otherwise impact public safety.

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

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

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

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

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

Staff believes that the fence height variance request 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:**

As previously indicated, other residential properties in the neighborhood, as well as throughout the City, have fences located within the front yard setback that are 6 ft. in height. The Board of Appeals has a history of typically granting similar requests. The proposed request is minor in nature as only about 30 ft. of fencing is at the 6 ft. height, and is approximately 125 ft. from the intersection of North Division Street and London Avenue.

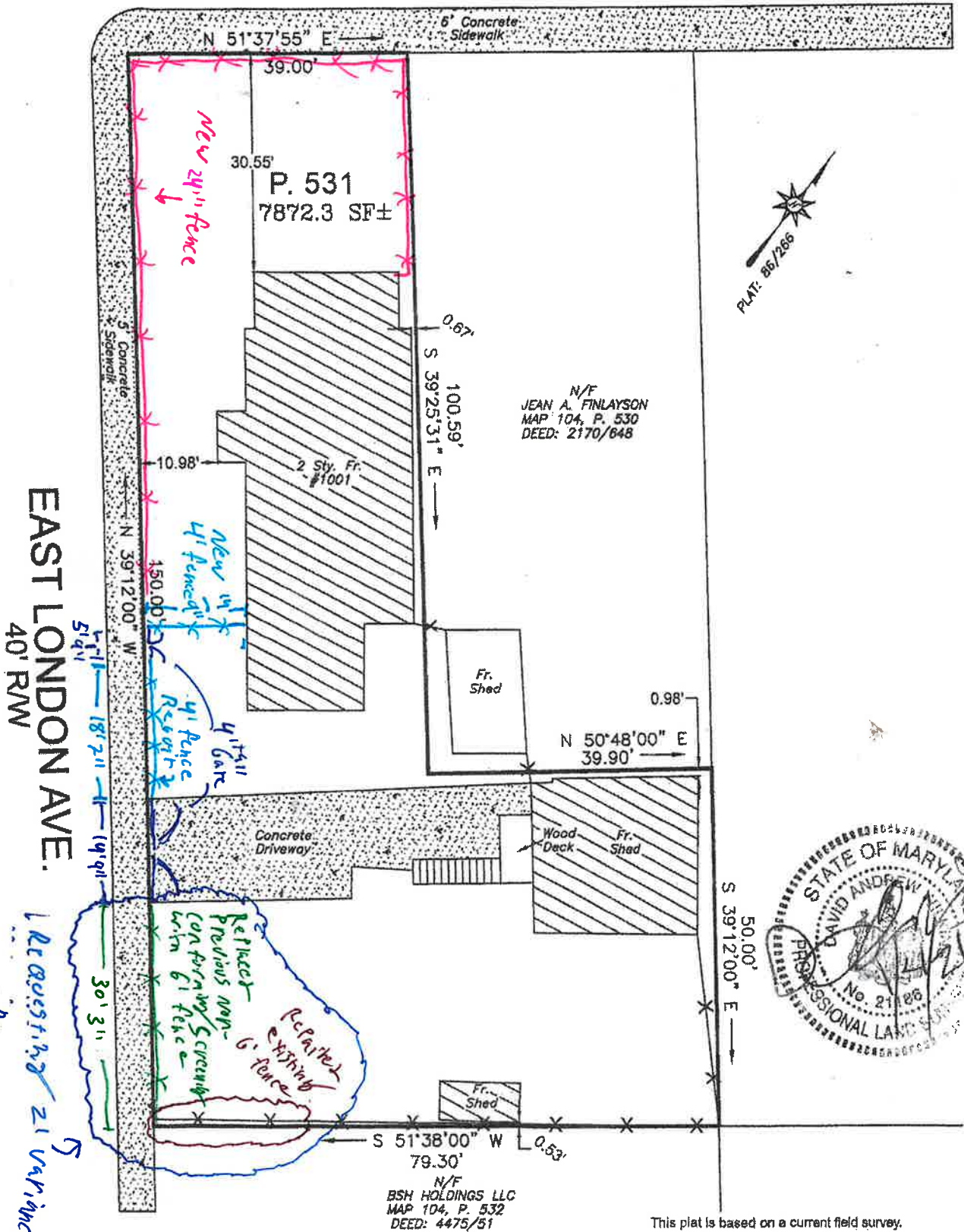
**VII. RECOMMENDATION:**

Based on criteria for approval as outlined in Section V (c) of the Staff Report, **Approval** of the variance request as submitted is recommended to retain a 6 ft. tall fence within the front yard setback along London Avenue.



© All EagleView Technol

NORTH DIVISION ST.  
35' R/W



N/F  
BSH HOLDINGS LLC  
MAP 104, P. 532  
DEED: 4475/51

N/F  
JEAN A. FINLAYSON  
MAP 104, P. 530  
DEED: 2170/648

This plat is based on a current field survey.

No Title Report Furnished.

Except as specifically stated or shown on this plat, this survey does not purport to reflect any of the following which may be easements; b subdivisions r regulations, a

Attachment 2

EAST LONDON AVE.  
40' R/W

Requesting 21 Variance

DISCLAIMER

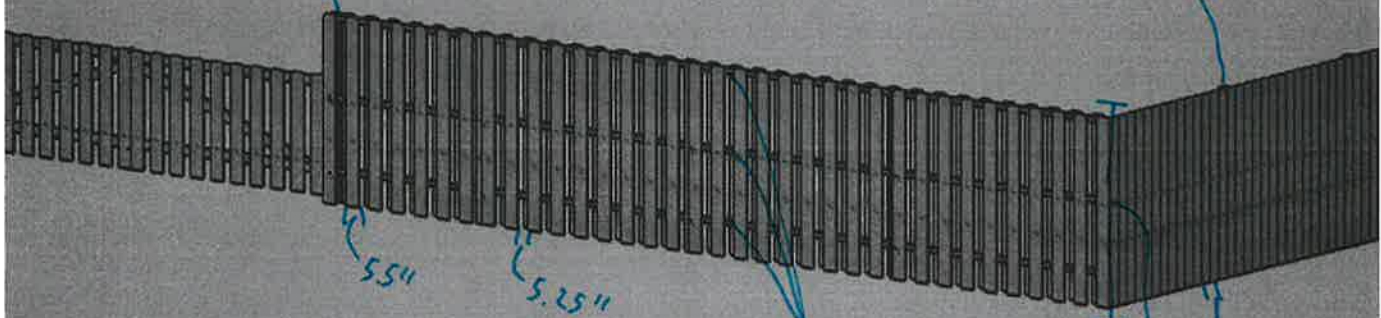
LOCATION DRAWING  
FOR LANDS OF  
GEATO LLC

THIS PLAT IS FOR THE BENEFIT OF THE CONSUMER ONLY INsofar AS IT IS REQUIRED BY A LENDER OR A TITLE INSURANCE COMPANY OR ITS AGENT IN CONNECTION WITH CONTEMPLATED TRANSFER, FINANCING OR REFINANCING. THE PLAT IS NOT TO BE RELIED UPON FOR THE ESTABLISHMENT OR LOCATION OF FENCES, GARAGES, BUILDINGS OR OTHER EXISTING OR FUTURE IMPROVEMENTS AND DOES NOT PROVIDE FOR THE ACCURATE IDENTIFICATION OF PROPERTY BOUNDARY LINES. BUT SUCH INFORMATION MAY NOT BE OBTAINED AND



**Attachment 3**

4x4 Post, Set no more than 8' on Center  
Set 2' into Ground w/concrete



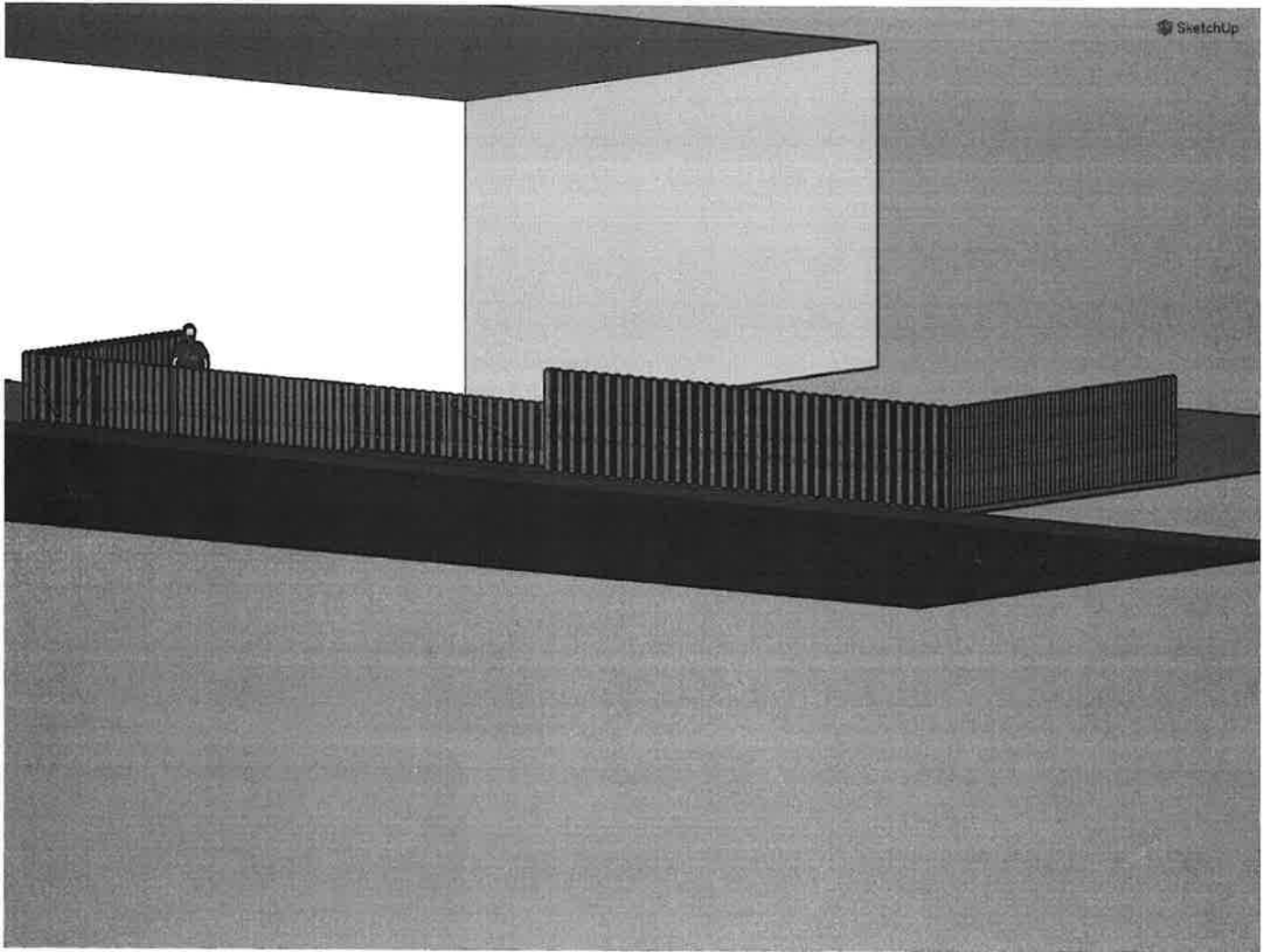
5.5"

5.25"

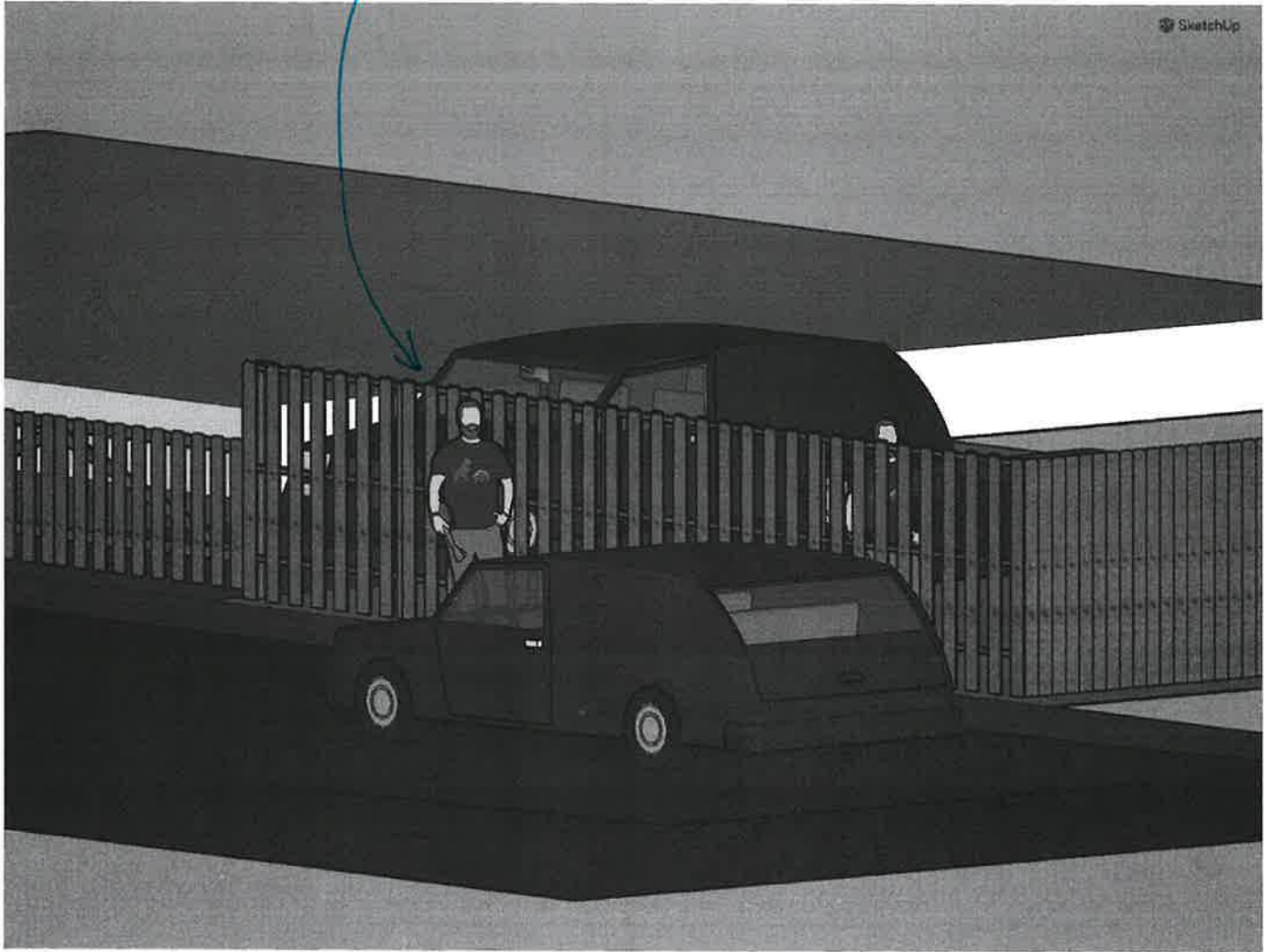
2x4 Rails  
2 Nails Per Rail Per Picket  
(6 Nails Per Picket)

6'

5.5"  
No Spacing

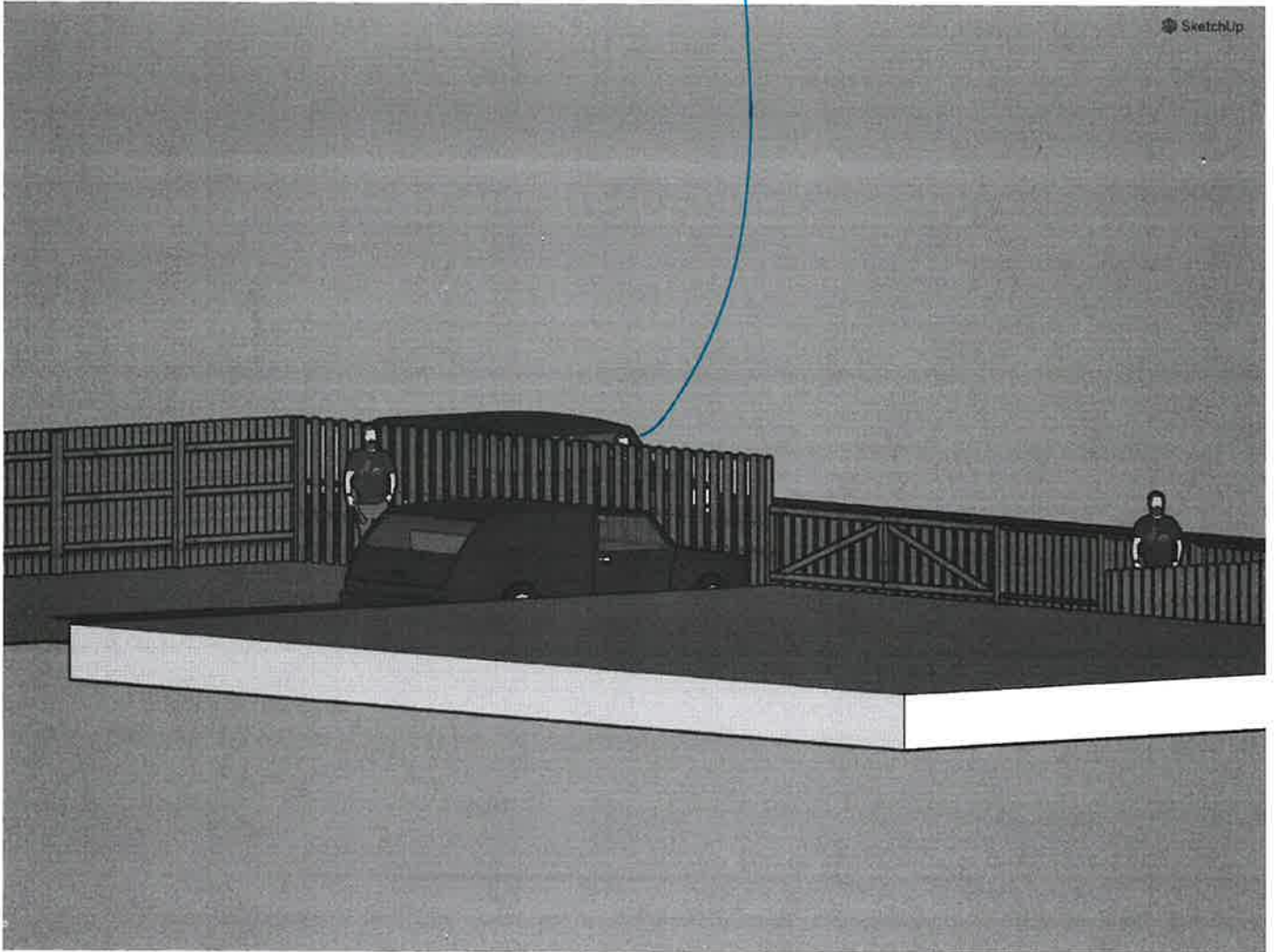


cars visible in Drive way  
to oncoming traffic





cars & Pedestrians  
Visible as leafy Driveway.



Direct Sightline  
Blocker for Safety

