



City of Salisbury

AGENDA

REGULAR MEETING

April 4, 2024

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, Sandeep Gopalan, William Hill, Maurice Ngwaba, and Ed Torbert.

MINUTES –December 7, 2023, January 4, 2024 and February 1, 2024.

ZONING PUBLIC HEARINGS: Case #202400342 – William Gray, on behalf of Onal Koxa Can – Special Exception to Operate An Outdoor Storage Yard at 423-425 E. Vine Street – General Commercial District.

ADMINISTRATIVE MATTER: Salisbury Board of Appeals Handbook Amendments.

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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).

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



MINUTES

The Salisbury Board of Appeals met in regular session on December 7, 2023, in Room 301, Government Office Building at 6:00 p.m. with attendance as follows:

BOARD MEMBERS:

Shawn Jester
William Hill
Edward Torbert

Miya Horsey (Absent)
Maurice Ngwaba (Absent)
Sandeep Gopalan (Absent)

CITY STAFF:

Henry Eure, Senior Planner
Beverly Tull, Recording Secretary
Laura Ryan, City Solicitor

* * * * *

Mr. Jester called the meeting to order at 6:02 p.m.

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MINUTES:

Due to lack of a quorum from the November 2, 2023 meeting, the approval of minutes from the November 2, 2023 minutes were postponed until the next meeting.

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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 #SA23-1487 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.

Mr. Zachary Goodman and Mrs. Cathleen Goodman came forward. Mr. Eure presented the Staff Report and all accompanying documentation into the record. Mr. Eure explained that the applicant requested permission to retain a recently installed 6 ft. tall fence located within the front yard setback.

Mr. Jester moved the Staff Report into the record.

Mr. Goodman explained that the fence is also for safety as his wife has been accosted by men when she is out in the yard. He stated that Attachment #8 is a visual example of the safety the fence will provide so that his wife would be safe in the yard.

Mr. Hill questioned Attachment #2 and the notes listed on the attachment and if the fence was pre-existing. Mr. Eure responded that the fence was pre-existing and had been 4 ft. along the sidewalk and 6 ft. with shrubbery and brush between the properties.

Mr. Torbet noted that he understood the need for privacy and safety as the homes are close together in this neighborhood.

Mr. Emanuel Maldonado, 926 N. Division Street, came in support of the request and noted that the Goodman's are excellent neighbors who are trying to increase the value of their property.

Upon a motion by Mr. Hill, seconded by Mr. Torbert, and duly carried, the Board **APPROVED** the requested 2 ft. Fence Height Variance to retain a 6 ft. tall fence within the front yard setback along London Avenue, based on Section V (c) of the Staff Report.

The Board vote was as follows:

William Hill	Aye
Edward Torbert	Aye
Shawn Jester	Aye



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ADJOURNMENT

With no further business, the meeting was adjourned at 6:18 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.

Shawn Jester, Chairman

Richard Baldwin, Secretary to the Board

Beverly R. Tull, Recording Secretary



MINUTES

The Salisbury Board of Appeals met in regular session on January 4, 2024, in Room 301, Government Office Building at 6:00 p.m. with attendance as follows:

BOARD MEMBERS:

Sandeep Gopalan, Vice Chair
William Hill
Maurice Ngwaba
Edward Torbert
Miya Horsey

Shawn Jester (Absent)

CITY STAFF:

Henry Eure, Senior Planner
Brian Soper, City Planner
Beverly Tull, Recording Secretary
Laura Ryan, City Solicitor

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Mr. Gopalan called the meeting to order at 6:06 p.m.

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MINUTES:

Upon a motion by Mr. Ngwaba, seconded by Mr. Hill, and duly carried, the minutes of the November 2, 2023 were approved as submitted.

Due to lack of a quorum from the December 7, 2023 meeting, the approval of minutes from the December 7, 2023 minutes were postponed until the next meeting.

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



City of Salisbury

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Case #202301591 - Snowfield, LLC – Special Exception to Utilize the Entire Property for Residential Use to Construct 195 Residential Units – Northeast Corner of Toadvine Road and Snow Hill Road – R-8 Residential and General Commercial District.

Mr. Mark Cropper, Mr. Jason Malone, and Mr. Brock Parker came forward. Mr. Eure presented the Staff Report and all accompanying documentation into the record. Mr. Eure explained that the applicant requested permission to construct a 195 unit residential subdivision to be known as the Village at Snowfield. The site is located within the R-8A Residential and General Commercial zoning districts. A special exception is being requested to construct residential units in the General Commercial district pursuant to Zoning Code standards.

Mr. Eure moved the Staff Report into the record.

Mr. Gopalan questioned Mr. Eure if there were any changes between the Staff Report from September 2022 and this Staff Report. Mr. Eure responded in the negative.

Mr. Cropper introduced Mr. Malone and Mr. Parker. Mr. Cropper referenced the decision letter from the prior meeting dated September 6, 2022 that approved this exact request and moved the letter into the record as ***Applicant's Exhibit #1***.

Mr. Cropper questioned Mr. Malone and Mr. Parker if they concurred with the Staff Report and both responded in the affirmative. Mr. Cropper requested Mr. Parker explain what is left to be done to exercise the special exception. Mr. Parker responded that there are two (2) remaining comments to be addressed with the City's Department of Infrastructure and Development. The traffic circle plans have been approved by State Highway. The Comprehensive Development Plan is scheduled on the February 15, 2022 Planning Commission agenda. Mr. Cropper reiterated that if everything had been completed prior to September 2023 this case wouldn't be back before the Board. Mr. Cropper added that the use is appropriate per the Code as long as all criteria are met.

Mr. Ngwaba questioned when the traffic study was done. Mr. Parker responded that the traffic study has been completed and the traffic circle design has been approved.

Mr. Ngwaba questioned if the Board of Education comments were needed before this project was approved. Mr. Eure responded that Staff must simply make the Board of Education aware of the project.

Mr. Torbert questioned if the County had approved the discharge onto Toadvine Road. Mr. Parker responded in the affirmative, adding that there will be a traffic light installed at Robins Avenue and Snow Hill Road. Mr. Torbert questioned if there had been any concerns from the residents on Toadvine Road. Mr. Parker responded in the negative.



Mrs. Donna Toadvine Hoch, 1300 Snow Hill Road, stated that she had missed the notification about this during the initial request in 2022 but was concerned about the traffic and not being able to get out of her driveway. She explained that cars run the stop sign at Toadvine Road and Snow Hill Road all the time. People are using her driveway to avoid the stop sign. She further questioned how the roundabout would affect her property and requested more information.

Mr. Parker stated that there had been an extensive traffic impact study completed. The City Department of Infrastructure and Development and State Highway are working together on the approval of the roundabout, with encouragement to put an outlet onto Toadvine Road. The traffic circle will be a traffic calming device.

Mr. Torbert questioned if Toadvine Road was in the County. Mr. Parker responded and added that County Public Works has seen the plan and approved it.

Mr. Gopalan reiterated that the Board can only make a decision based on the criteria listed in the Code.

Mrs. Hoch requested the location of the roundabout. Mr. Eure provided a copy of the Staff Report and Mr. Parker located the proposed roundabout on the attached map. He noted that this will serve Snowfield as well as a future development behind Summersgate.

Mr. Torbert noted that the Board is restricted to the criteria in the Code and suggested that Mrs. Hoch reach out to the County Executive's office with her concerns.

Upon a motion by Mr. Hill, seconded by Mr. Torbert, and duly carried, the Board **APPROVED** the Special Exception to utilize the entire property for residential use to construct 195 residential units on the property located at the northeast corner of Toadvine Road and Snow Hill Road, based on the criteria listed in the Staff Report, particularly the criteria listed in Section V(c), and subject to the following Condition of Approval:

CONDITIONS:

1. Subject to further review and approval by the Salisbury Department of Infrastructure and Development, the Salisbury Fire Department, and other agencies as appropriate.

The Board vote was as follows:

Sandeep Gopalan	Aye
William Hill	Aye
Maurice Ngwaba	Aye
Edward Torbert	Aye
Miya Horsey	Aye



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ADJOURNMENT

With no further business, the meeting was adjourned at 6:41 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.

Sandeep Gopalan, Vice Chair

Richard Baldwin, Secretary to the Board

Beverly R. Tull, Recording Secretary



MINUTES

The Salisbury Board of Appeals met in regular session on February 1, 2024, in Room 301, Government Office Building at 6:00 p.m. with attendance as follows:

BOARD MEMBERS:

Shawn Jester, Chair
Edward Torbert
Miya Horsey (via Zoom)

Sandeep Gopalan, Vice Chair (Absent)
William Hill (Absent)
Maurice Ngwaba (Absent)

CITY STAFF:

Henry Eure, Senior Planner
Brian Soper, City Planner
Beverly Tull, Recording Secretary
Laura Ryan, City Solicitor

* * * * *

Mr. Jester called the meeting to order at 6:00 p.m.

* * * * *

MINUTES:

Due to lack of a quorum from the December 7, 2023 and the January 4, 2024 meetings, the approval of minutes from the December 7, 2023 and January 4, 2024 meetings were postponed until the next meeting.

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



City of Salisbury

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Case #202400024 – Becker Morgan, on behalf of TidalHealth Peninsula Regional, Inc. – Special Exception to Construct a Clinic – 805 E. Church Street – R-5A Residential District.

Mr. Mark Cropper and Mr. Kevin Parsons came forward. Mr. Eure presented the Staff Report and all accompanying documentation into the record. Mr. Eure explained that the applicant requested permission to construct a 16,846 sq. ft. residential community clinic at the referenced address, which is located in the R-5A Residential zoning district. A special exception is required for the proposed use. Mr. Eure moved the Staff Report into the record.

Mr. Jester moved the Staff Report into the record.

Mr. Cropper had Mr. Parsons introduce himself and questioned if he agreed with the Staff Report. Mr. Parsons responded in the affirmative. Mr. Cropper questioned the start date of the project. Mr. Parsons responded that construction should begin in the summer. The project is in stage two (2) of the review process and the City has three (3) stages of review.

Mr. Torbert stated that this is appropriate for the property to become a medical clinic like it was in the beginning.

Mr. Jester noted that he grew up close to this area and the proposed rendering does resemble the original Hotel Esther.

Upon a motion by Mr. Torbert, seconded by Ms. Horsey, and duly carried, the Board **APPROVED** the Special Exception to construct a residential medical clinic at 805 E. Church Street, based on the criteria listed in the Staff Report, particularly the criteria listed in Section V(c)

CONDITIONS:

1. Subject to further review and approval by the Salisbury Department of Infrastructure and Development, the Salisbury Fire Department, and other agencies as appropriate.

The Board vote was as follows:

Edward Torbert	Aye
Miya Horsey	Aye
Shawn Jester	Aye



City of Salisbury

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ADMINISTRATIVE MATTER:

Case #202300334 – Cristo Vive Church – 12-Month Extension Request for Enlargement of a Legal Nonconforming Structure and a 27.7 ft. Side Yard Setback Variance – 1308 Westchester Street – R-10 Residential District.

Mr. Eure explained the requested 12-month extension. Mr. Jester moved the May 4, 2023 decision letter into the record. Mr. Eure requested that the Board grant the 12-month extension from the date that the original approval would expire, May 4, 2024. If granted, the new expiration on the approval would be May 4, 2025.

Mr. Soper noted for the record that the engineering plans have been submitted but will not be through the final review and ready to apply for a permit by May 4, 2024 when the original approval would expire. Mr. Eure added that the Church had to make some changes to the plan because of the denial of front yard setback request.

Upon a motion by Mr. Torbert, seconded by Ms. Horsey, and duly carried, the Board **APPROVED** a 12-month extension, until May 4, 2025, to exercise the **APPROVED** 27.7 ft. Side Yard Setback Variance and the **APPROVED** Enlargement of a Legal Nonconforming Structure.

The Board vote was as follows:

Edward Torbert	Aye
Miya Horsey	Aye
Shawn Jester	Aye

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DISCUSSION – SALISBURY BOARD OF APPEALS HANDBOOK AMENDMENTS.

Mrs. Ryan discussed that proposed amendments to the Salisbury Board of Appeals Handbook. She specifically pointed out the added language about the Pretrial Rules. These amendments must be voted on by the Board at a future meeting and then sent to the City Council to be adopted. There is no deadline to have the updated Handbook adopted.

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Mr. Soper announced his resignation to the Board and thanked the Board members for the service. He also thanked Staff and Legal for their assistance during his tenure with the City of Salisbury.



Mr. Jester thanked Mr. Soper for his service as both a former Board of Zoning Appeals member and a Staff member for the City.

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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.

Shawn Jester, Chair

Richard Baldwin, Secretary to the Board

Beverly R. Tull, Recording Secretary



City of Salisbury

STAFF REPORT

MEETING OF APRIL 4, 2024

Case No. 202400342
Applicant: William Gray for Onal Koksal Can
Property Owner: Onal Koksal Can
Location: 423 - 425 East Vine Street
Tax Map: #0112, Grid #0015, Parcel #1743
Zoning: General Commercial District
Request: Special Exception Request to Operate an Outdoor Storage Yard

I. SUMMARY OF REQUEST:

The applicant proposes to utilize the rear of the property for outdoor storage. Board approval of a Special Exception for an outdoor storage yard is requested.

II. ACCESS TO THE SITE AREA:

The site has frontage and access along East Vine Street. **(Attachment 1)**

III. DESCRIPTION OF PROPERTY:

This site is 17,500 sq. ft. in size, and located on the north side of East Vine Street. The site was previously occupied by R.H. Polliard Plumbing and HVAC Service.

IV. DESCRIPTION OF SURROUNDING AREA/NEIGHBORHOOD:

Surrounding properties to the north and east are also in the General Commercial zoning district, while properties to the south and west are within the City's R-8 and R-5 Residential Districts, respectively. **(Attachment 2)**

V. EVALUATION:

- (a) Discussion:** The applicant proposes to use the rear portion of the property (approximately 9,800 sq. ft.) as an outdoor storage yard for the temporary storage of towed vehicles. The Code requires a special exception for outdoor storage yards in the General Commercial District.

The previous use of the property for a plumbing and HVAC contractor used the rear of the property for a limited amount of storage of materials and vehicles. However, the proposed use is expected to intensify storage of vehicles on the site.

Section 17.220.040 of the Zoning Code indicates that outdoor storage be provided with a minimum 10 ft. wide landscaping and screening area consisting of a combination of landscaping materials and a 6 ft. to 8 ft. solid fence or wire fence with slat inserts. However, as the use of the rear of the property for outdoor storage existed prior to the adoption of the City's current Zoning Code standards, landscaping and screening requirements were not required when the previous use occupied the property, and is therefore legally nonconforming with current standards regarding the 10 ft. wide landscaping area. Currently, the property is screened with a 6 ft. solid fence along the side property lines. A 6 ft. tall chain link fence is located at the rear of the property, but has not been provided with slats for screening, and appears to be on the neighboring property. The rear of the property should be provided with solid fencing/screening to comply with the screening aspect of the Zoning Code standards. **(Attachment 1)**

- (b) **Impact:** Staff believes the proposed use is consistent with uses permitted and associated with the General Commercial Zoning District.
- (c) **Relationship to Criteria:** Section 17.232.020 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 General Commercial zoning district, which allows outdoor storage yards by Special Exception. The Code notes that the purpose of the Light industrial district is "to provide a wide range of functional and attractive regional retail, office, service, wholesale, storage, distributing and light manufacturing activities. Providing a storage yard for towed vehicles is consistent with the Metro Core Plan for commercial-type uses in the district.

- [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.**

Although the proposed storage yard will be utilized more than previously,

this is still a low-intensity, low traffic use that will have minimal adverse impacts on the surrounding area. However, additional screening should be provided at the rear of the property to bring the property closer to compliance.

- [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.**

Screening is required by the City's Zoning Code to minimize the visibility of stored materials and equipment.

- [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.**

As previously noted, the rear of the property has been used in the past for limited outdoor storage. The use of a portion of this site for an outdoor storage yard should have minimal impacts on the surrounding properties or adversely impact public safety.

- [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. There should be no impacts on schools or parks.

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

It is expected that environmental impacts will be minimal, and the property has minimal historic value.

- [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 will be utilizing the site for the temporary storage of vehicles. Staff is of the opinion that this criterion is not applicable to this particular case.

VI. STAFF COMMENTS:

The applicant is proposing to use the property in a fashion similar to how it was used previously, as the storage yard was an accessory to the primary use of the property as a plumbing and HVAC business. The proposed use will have minimal impact on neighboring properties, as the use is low intensity with limited traffic.

VII. RECOMMENDATION:

Based on the criteria for approval as discussed above in this Staff Report, Section V (c), the Staff recommends **Approval** of the requested Special Exception for an outdoor storage yard, subject to the recommended conditions as follows:

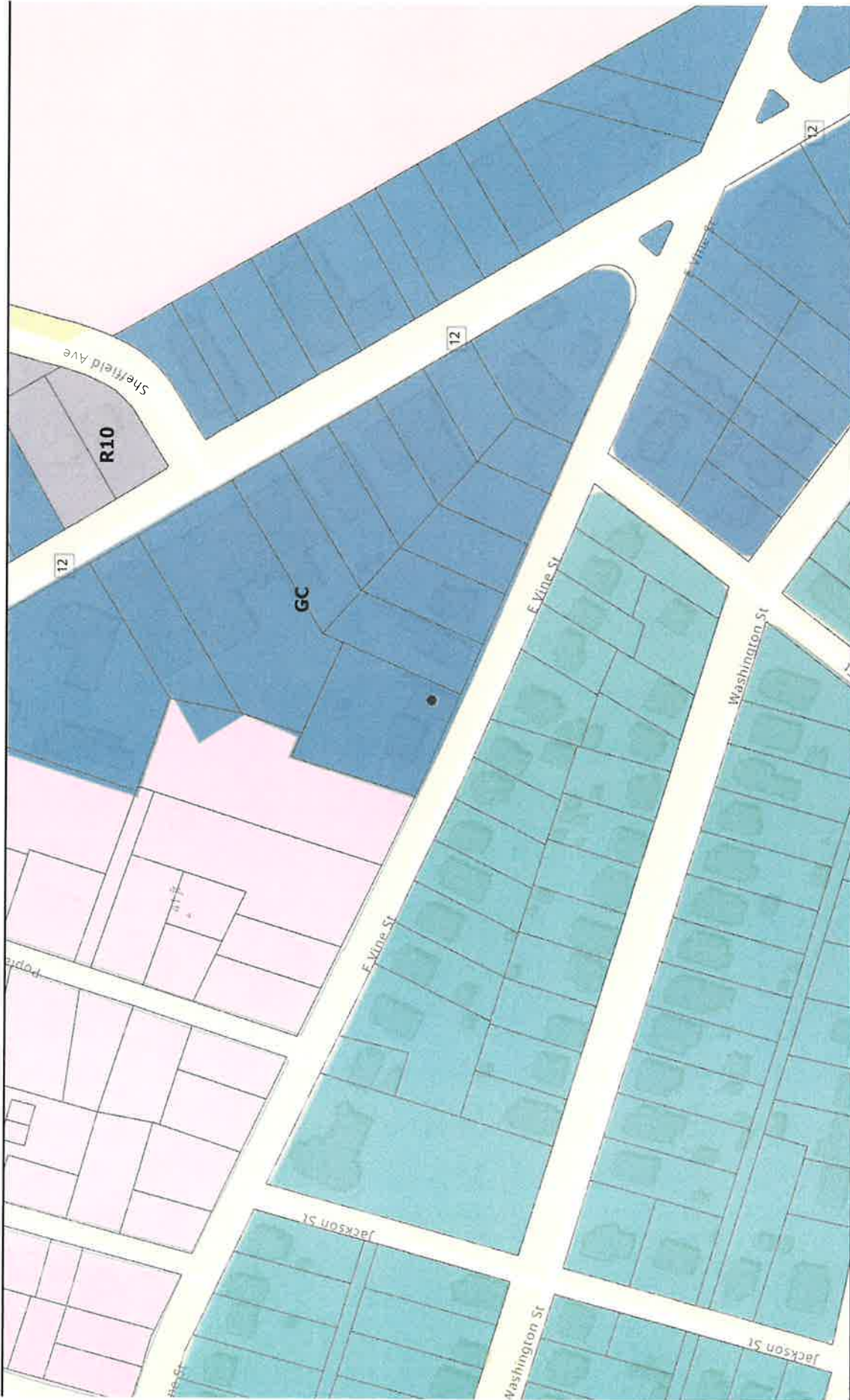
CONDITIONS OF APPROVAL:

1. Provide screening at the rear of the property as required by the Salisbury Zoning Code.



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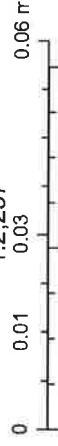
Salisbury Utility View



2024, 9:43:12 AM

- Parcels
- R10
- GC
- R8
- R5A
- CorpLimit
- GC

1:2,257



Sources: Esri, Airbus DS, USGS, NGA, NASA, CGIAR, N. Robinson, NLS, OS, NMA, Geodataslyrsen, Rijkswaterstaat, GSA, Geoland, Intermap and the GIS user community, Esri Community Maps Contributor of Salisbury, VGIN, © OpenStreetMap, Microsoft, Esri, TomTom.

SALISBURY BOARD OF APPEALS

RULES OF PROCEDURE

April _____, 2024



GOVERNMENT OFFICE BUILDING
SALISBURY, MARYLAND

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Section I: Authority.

These Rules of Procedure are promulgated under the authority vested in the Board of Appeals by Md. Code Ann., Land Use § 4-301 *et. seq.* and by Article VI, Chapter 17.12, Title 17, of the Salisbury City Code (hereinafter referred to as the "Code"). It is the intent of these Rules of Procedure to prescribe the means for the implementation of the Code.

Section II. Organization.

A. *Name.* The name of this body is the "Salisbury Board of Appeals," referred to herein as "the Board."

B. *Membership.* The Board shall consist of five members and two alternates appointed by the Mayor and confirmed by the City Council. When possible, preference shall be given in order to ensure that the Board includes at least one building professional/architect/engineer, tenant, property owner and/or attorney, as well as potential members who have a demonstrated special interest, specific knowledge, or professional or academic training in public health. Members shall be appointed for terms of three years. A member whose term has expired may continue to serve until reappointed or replaced. A Board member may be re-appointed for additional and consecutive terms.

C. *Standards of Conduct:*

1. No Board member shall allow bias or prejudice to affect the ability to exercise fairness and reason in any proceeding before the Board.
2. No Board member shall represent an applicant, appellant or member of the general public before the Board.
3. A Board member may appear before the Board on any application or appeal, but may not participate as a Board member.
4. A Board member shall note on the record, before any proceeding before the Board commences, or as soon as realized after a proceeding has commenced, that there is a conflict of interest or the appearance of a conflict of interest. If the Board member believes, as a result, that they cannot make any decision related to the proceeding in a fair and impartial manner, they shall recuse themselves from participating in the proceeding.

D. *Removal of Members.* A member of the Board may be removed by the Mayor for:

1. Incompetence;
2. Misconduct; or
3. In the same manner as for a member of a State board or commission:

- a. Failure to attend meetings under § 8-501 of the State Government Article; or
- b. Conviction of a crime in accordance with § 8-502 of the State Government Article.

Prior to Removal, the Mayor shall provide to the member:

1. A written statement of charges stating the grounds for removal; and
2. An opportunity for a public hearing to contest the charges.

E. *Officers.*

1. The Board shall have as officers a Chair, Vice-Chair and Secretary. The Board shall also appoint at least one Open Meetings Act representative who shall receive all required training on the Maryland Open Meetings Act.
2. The Director of the Department of Infrastructure and Development or their designated representative shall serve as Secretary to the Board.
3. The Chair shall sit as the presiding officer of the Board. The Chair shall direct the Secretary in the preparation of the agenda and rule on any requests for postponement submitted prior to the hearing date. The Chair shall call meetings to order, rule on all points of order, administer oaths, bring to vote all matters required of Board action, and together with the Secretary, authenticate the record of meetings, actions, orders, certificates and other proceedings of the Board.
4. The Vice-Chair shall perform the duties of the Chair in the Chair's absence.
5. The Secretary shall issue all required notices of meetings, including notices to members. At the direction of the Chair, the Secretary shall prepare the agenda, distribute required documentation to Board members, record the proceedings and prepare minutes of the meetings, maintain official records and files of the Board and conduct the general correspondence of the Board. The Secretary will receive and process all applications for appeal filed with the Board.
6. Election of Officers.
 - a. The Board shall elect a Chair and Vice-Chair, as well as an Open Meetings Act representative, whose terms shall be for two years or until their successors have been elected.
 - b. The Secretary of the Board shall preside over the nomination and election of the Chair. Thereafter, the Chair shall preside over the meeting and conduct and supervise the nomination and election of a Vice-Chair.
 - c. Should the office of Chair become vacant for any reason, the Vice-Chair shall

become the Chair for the duration of the unexpired term and the Board shall elect a new Vice-Chair to fill the unexpired term.

Section III. Meetings.

A. Open Meetings Act.

1. All meetings of the board shall be open to the public, except that the Board may hold closed sessions in accordance with the Maryland Open Meetings Act.
2. Public Attendance.
 - a. At any open session of the Board, the general public is invited to attend and observe.
 - b. Except in instances when the Board expressly invites public testimony, questions, comments, or other forms of public participation, or when public participation is otherwise authorized by law, no member of the public attending an open session may participate in the session.
3. Disruptive Conduct.
 - a. A person attending an open session of the Board may not engage in any conduct, including visual demonstrations such as the waving of placards, signs, or banners, that disrupts the session or that interferes with the right of members of the public to attend and observe the session.
 - b. The Chair may order any person who persists in conduct prohibited by subsection (a) of this section or who violates any other regulation concerning the conduct of the open session to be removed from the session and may request police assistance to restore order.
 - c. The Chair may recess the session while order is restored.
4. Recording, Photographing, and Broadcasting of Open Session.
 - a. A member of the public, including any representative of the news media, may record discussions of the Board at an open session by means of a tape recorder or any other recording device if the device does not create an excessive noise that disturbs members of the Board or other persons attending the session.
 - b. A member of the public, including any representative of the news media, may photograph or videotape the proceedings of the Board at an open session by means of any type of camera if the camera: (1) Is operated without excessively bright artificial light that disturbs members of the Board or other persons attending the session; and (2) Does not create an excessive noise that disturbs members of the Board or other persons attending the session.
 - c. A representative of the news media may broadcast or televise the proceedings of the Board at an open session if the equipment used: (1) Is operated without excessively bright artificial light that disturbs members of the Board or other persons attending the session; and (2) Does not create an excessive noise that disturbs members of the Board or other persons attending the session.
 - d. The presiding officer may restrict the movement of a person who is using a recording device, camera, or broadcasting or television equipment if such restriction is

necessary to maintain the orderly conduct of the session.

5. Recording Not Part of Record. A recording of an open session made by a member of the public, or any transcript derived from such a recording, may not be deemed a part of the record of any proceeding of the Board.

B. *Meetings.*

1. Meetings shall be held on an as-needed basis.
2. Meetings of the Board shall be convened by the Chair, or in the Chair's absence, the Vice-Chair. In the event both are absent, the regular member in attendance with the greatest seniority of service shall act as Chair.
3. The Chair or, in the Chair's absence, the acting Chair may administer oaths.
4. The Board shall record and keep minutes of its proceedings, which show the vote of each member upon each question, or, if a member is absent or fails to vote, the minutes shall indicate such fact. The Board shall keep recordings of all proceedings, records of its examinations and other official actions, all of which shall be filed immediately in the office of the Board and shall be a public record open to inspection during the hours of normal operation of the office. Copies of the minutes shall be made available to interested parties. A party who requests a copy of the recording or its transcript shall pay the cost of the recording or transcript.
5. The Board, in its discretion, for any reasonable purpose stated, may decide to continue a public hearing to any other reasonable time, place or location it deems advisable. The appellant/applicant, as well as all other interested parties who registered at the initial hearing, shall be notified in person or in writing of the date, time and place of the continuance meeting.

C. *Pretrial Rules:*

1. Exhibit List: At least 10 days before the hearing, the appellant or applicant, as well as any other person who plans to participate in the hearing, must provide the Board with copies of all documents and other materials in their possession or control that they intend to use at the hearing.
2. Witness Lists: At least 10 days before the hearing, the appellant or applicant, as well as any other person who plans to participate in the hearing, must provide the Board with the names and business affiliations of all witnesses they intend to present at the hearing.
3. Exclusion of Documents or Witnesses: Parties may not present any documents or other materials not produced and/or any witnesses not identified in accordance with these rules at the hearing, unless the Board determines that good cause exists for the failure to produce the

document or identify the witness. Good cause includes the need to use documents or call witnesses for rebuttal or impeachment purposes based on developments during the hearing. The Board, in its reasonable discretion, may also exclude documents or materials offered by non-parties intending to participate in the hearing which were not provided at least 10 days before the hearing.

D. Order of Business.

1. The Chair, or the Chair's assigns, may call each case to be heard by the Board.
2. The Chair or the acting chair shall administer oaths. The witness whose testimony may be desired at any hearing before the Board shall testify orally, under oath, unless the Board, for good cause shown, deems it proper in special cases that written evidence, under affidavit or otherwise, be submitted. All witnesses who testify must contribute materially to the issue before the Board.
3. The Chair shall, at the Chair's discretion, take such steps as necessary to ensure the proper and orderly conduct of meetings. In order to afford all persons an opportunity to be heard on an appeal or other agenda item, the Chair may impose reasonable time limits upon comments.
4. Each party has the following rights at a hearing:
 - a. To call and examine witnesses on any matter relevant to the issues of the hearing;
 - b. To introduce documentary and physical evidence;
 - c. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing; and
 - d. To represent themselves or to be represented by anyone of their choice who is lawfully permitted to do so.
5. Order of Hearing. Participants in a hearing shall appear in the following order: (a) Introduction of the case by the Chair or the Chair's designee, including City staff member; (b) Appellant's or Applicant's presentation; (c) Respondent's presentation; (d) Appellant's or applicant's rebuttal.
6. Burden of Proof. Unless contrary to any applicable law, the appellant or applicant bears the burden of proof.

E. Quorum and Voting.

1. Three members shall constitute a quorum. The Chair shall be counted in reaching a

quorum. A member of the Board shall recuse themselves from participating in a matter in which the member may have a conflict of interest or an appearance of a conflict of interest. If a majority of the Board does not approve the application or find in the favor of the appellant, the Board's inability to reach a decision by majority vote shall result in denial of the application or appeal.

2. Questions put to a vote are decided by a majority of the members present and voting; however, no decision shall be made in the absence of a quorum.
3. A tie vote by the Board shall be interpreted as a defeat of the motion upon which the vote was taken.
4. The Secretary shall record the name of the Board member making each motion and the name of the member who seconds the motion.
5. Each motion shall contain a statement of the findings of fact and grounds forming the basis of the Board's action or decision, and the full text of said motion and record of members' votes shall be incorporated in the minutes of the Board.
6. The official date of the Board's decision shall be that date shown on the Notice of Decision sent to the applicant and/or their representative.
7. No application requesting the same relief previously ruled upon by the Board shall be heard by the Board for a period of one (1) year following the date of the decision.

F. *Appeals.* Any applicant, appellant or interested person aggrieved by a decision of the Board shall have the right to appeal that decision to the Circuit Court for Wicomico County. Any appeal shall be noted in the Circuit Court within 30 days of the Board's decision.

Section IV. Amendments.

These Rules of Procedure, and any part thereof, may be amended by the Board, subject to approval by the City Council.