

CITY OF SALISBURY

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF SALISBURY TO AMEND CHAPTER 17.12 TO CHANGE THE BOARD OF ZONING APPEALS PROCEDURES FOR APPEALS RELATED TO NONCONFORMING USES.

WHEREAS, the Mayor and Council recognize that a fundamental principle of zoning under Maryland law is to reduce nonconformance;

WHEREAS, the Mayor and Council are concerned that a shortage of safe, code compliant, low and moderate income housing exists in the City of Salisbury and that the past conversions of single-family residences to multifamily residential use have provided and continue to provide, in many cases, unsafe and non-code compliant low and moderate income dwelling units in the City, which pose a threat to the health, safety, and welfare of the Citizens of Salisbury;

WHEREAS, the Mayor and Council recognize that nonconforming use enforcement efforts are being undermined by the practical effect of certain provisions of the hearing procedures set forth in the Salisbury Municipal Code for the Board of Zoning Appeals: specifically, the presentation of affidavits, which often cover periods of time in excess of fifty years, in lieu of live testimony and the desire of the board to question witnesses regarding discrepancies that appear in the affidavits and evidence presented.

WHEREAS, the Mayor and Council have determined that an applicant or appellant should have to meet a more demanding burden of proof when seeking to have a nonconforming use declared lawful because a fundamental principle of zoning law is to reduce nonconformance.

WHEREAS, the purpose of these amendments is to promote the goal of returning nonconformance to conformance by ending unlawful nonconforming uses, establishing uniform standards and criteria for remedying the problem of unlawful and, in some cases, lawful conversions from single-family to multifamily residential uses and, in so doing, incorporate the

concepts of equity necessary to protect those who should be deemed faultless. Nothing herein shall be construed to limit the rights of any person under the provisions of the Zoning Code.

NOW THEREFORE, be it enacted and ordained by the City Council of the City of Salisbury, in regular session, as follows:

Chapter 17.12

Article VI Board of Zoning Appeals

Sections

17.12.120 Hearings and meetings—Actions on similar application—Time Limit

A. The board shall fix a reasonable time and place for the public hearing of an application, appeal or other matter, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. All meetings of the board shall be open to the public.

1. Hearings other than Nonconforming Uses. At the hearing, any party may appear in person or by agent or by attorney and testify as to any material facts. The burden of proof and persuasion on all questions of fact, which are to be determined by the board by a preponderance of the evidence, shall be on the applicant or appealing party.

2. Hearings on Nonconforming Uses. At the hearing, a party shall appear and may be represented by an attorney. A person offering testimony shall appear and testify in person. The burden of proof and persuasion on all questions of fact, which are to be determined by the board by clear and convincing evidence, shall be on the applicant or appealing party.

AND BE IT FURTHER ENACTED AND ORDAINED BY THE COUNCIL OF THE CITY OF SALISBURY, that this ordinance shall take effect upon final passage.

THIS ORDINANCE was introduced and read at a meeting of the Council of the City of Salisbury held on the ____ day of _____, 2009, and having been published as required by law, in the meantime, was finally passed by the Council on the ____ day of _____, 2009.

Brenda J. Colegrove, City Clerk

Louise Smith,
President of the Council of
the City of Salisbury

Approved by me, this _____
day of _____, 2009.

James Ireton,
Mayor of the City of Salisbury

