

# Salisbury Post

March 13, 2001

## Local News

### City: Kite can fly

**BY MARK WINEKA**

The bird kite flies.

The Salisbury Zoning Board of Adjustment voted 4-1 Monday to allow Ruffy's Garden Shop at 1335 W. Innes St. to continue flying a \$29.99 bird kite from a pole attached to the corner of its outside arbor.

Zoning enforcement officers had fined garden shop owner Charlie Smith \$50 for flying the bird kite, judged a violation of the city's sign law. Smith appealed the citation to the Zoning Board, which overruled the enforcement action Monday in an administrative review.

"I'm amazed that we're sitting here debating this," Zoning Board member Charlie Walters said before the vote. "What possible harm is this going to do to our city?"

Walters, a former county commissioner, described himself as a small businessman. He said small businesses had to do what they could to survive in today's marketplace, and he described the city's action against Smith as a waste of time and money for the zoning board, the city staff and Ruffy's.

Walters joined Margaret Lipe, Graham Carlton and Nora Faucette in voting to allow the bird kite to fly. Sean Walker cast the lone vote against the kite.

Lipe said she considered the bird kite an object for sale, not an advertisement or sign for the object.

"It's kind of like a hanging basket," she said. "You can't sell them too well if they're sitting on the ground."

Though he voted for Ruffy's, Carlton acknowledged that he was worried about opening the door to businesses who will want to violate the spirit of the sign ordinance.

"I don't want to be up here every month, dealing with car dealers who say, 'We sell these (fluttering devices) in the back,'" Carlton said.

Walker said it was the city's job to enforce the ordinance as written, though he added that he appreciates Smith's stand.

"Sometimes you draw a line in the sand, and sometimes the line seems a bit arbitrary," Walker said.

Zoning enforcement officers ruled that the bird kite fell under Section 9.04 of the Zoning Ordinance which deals with the types of signs that are prohibited.

Item (10) in that section prohibits the following:

"Moving signs or devices designed to attract attention, all or any part of which move by fluttering, rotating, spinning, or moving in some manner, and are set in motion by movement of the atmosphere or by mechanical, electrical or other means.

"Such devices include, but are not limited to, banners, pennants, ribbons, streamers, spinners, propellers or discs, whether or not any such device has a written message."

Carlton said a primary question for him was whether or not the bird kite was actually a sign or just a "a natural scarecrow."

The latter was suggested by Smith.

"You could be scaring off your own crows because you have a lot of exotic plants," Carlton told Smith.

Smith questioned whether any passage in the ordinance addressed products for sale.

"I'm just trying to sell it," said Smith, who acknowledged that sales of the bird kite have increased since the "sign" controversy started.

Smith judged that he heard from 100 to 200 people about the bird kite.

"Nobody can believe it was pushed this far," he said.

Smith described the bird kite as a "natural scarecrow" because it is often sold to beekeepers, farmers and marina operators to scare off pests.

Smith compared flying the kite from the arbor to the hanging baskets he has for sale from the same arbor. The hanging baskets also move with the wind, Smith noted.

Other products in the arbor, such as trees and rose bushes, also are meant to attract attention, and Smith described the arbor in general as a good sales area.

In fact, the city increased his taxes because they consider the arbor as extra retail space, Smith noted.

With the bird kite, he is simply displaying a product for sale, and the best way to sell it is outdoors in the wind, Smith said.

"I'm a merchant," he reiterated. "I sell things."

Smith added that he understands and supports the sign law's intent to prohibit visual clutter as much as possible.

"But a bird gracefully riding in the wind may not be a bad thing," he said.

Smith also gave the board one more thing to consider about his bird kite: "Am I only out of compliance on windy days?"