

NORTH EAST BOARD OF APPEALS
North East Town Hall / 106 South Main Street
Thursday, January 28, 2016
7:00 P.M.

Chairman Gabrielle Oldham called the meeting to order at 7:00 p.m. Present for the meeting included members Sue Fye, Sonny Tenney, and Marian Martino. Also in attendance was Lisa Rhoades, Planning and Zoning Assistant. Dennis Clower, Esquire was present to represent the North East Board of Appeals. Melissa Cook-Mackenzie, Town Administrator and Betsy Vennell, Director of Planning were representing the Town at the Public Hearing.

-MINUTES-

September 24, 2015

Ms. Fye made a motion to approve the minutes as presented with a minor correction. Ms. Martino seconded the motion and the motion was approved by all, as amended.

-COMMENTS FROM THE PUBLIC-

None.

-OLD BUSINESS-

None.

-NEW BUSINESS-

Election of Chairman

Ms. Martino made a motion to re-elect Ms. Gabrielle Oldham as Chairman. Ms. Fye seconded the motion and the motion was approved by all.

Election of Vice Chairman

Ms. Fye made a motion to elect Ms. Marian Martino as Vice Chairman. Mr. Tenney seconded the motion and the motion was approved by all.

Public Hearing

Chairman Oldham opened the public hearing at 7:05 p.m. and read the following into the record:

“Case A-2016-01-A: Appeal by William Riddle, attorney/agent for the applicant, David Iwersen, for an interpretation from the Zoning Administrator concerning Section 8-2 Nonconforming Lots of Record and Section 8-3 Nonconforming Uses of Land. The applicant’s agent has stated that Sections 8-2 and 8-3 of the Zoning Ordinance do not

apply to the land and dwellings located at 101-109 Wallace Ave., North East MD. Also found on Tax Map 0400, Parcels 0040, 0483 and 0519. Property Owner: David Iwersen, 107 Wallace Avenue, North East, Maryland. Zoning Designation: "R-2", Two-Family Residential."

Ms. Kimberly Dacey, Certified Court Reporter, swore in William Riddle, esquire, applicant and Mr. David Iwersen, property owner; Mrs. Betsy Vennell, Director of Planning and Mrs. Melissa Cook-Mackenzie, Town Administrator. Chairman Oldham inquired if Mr. Riddle and Mr. Iwersen would like to have the application made part of the record and Mr. Iwersen stated yes.

Attorney Riddle reported he is representing Mr. David Iwersen who recently purchased the property at 101, 103, 105, 107 and 109 Wallace Avenue, North East, Maryland. Attorney Riddle displayed an image of the subject property (Applicant Exhibit 1) which was provided by the Planning Office to Mr. Iwersen. Attorney Riddle indicated that the garage shown on the exhibit, between 105 and 109 Wallace Avenue, was removed prior to Mr. Iwersen purchasing the property.

Attorney Riddle referenced Exhibit 1, and referenced The North East Zoning Ordinance, Section 8-2, indicating that all of the parcels are of single ownership and the structures are fronting Wallace Avenue, which means they are essentially the same parcel at this time. Attorney Riddle stated he is not disputing that all of the structures front Wallace Avenue and that they, according to the North East Zoning Ordinance, are all located on one parcel. Attorney Riddle is disputing the nonconforming use of the properties, stating that "all of the structures are single family homes, they have always been single family homes, that is what they were constructed to be, and that is what they continue to be."

Attorney Riddle distributed a copy of the State of Maryland Department of Assessments and Taxation Property Record Card-Reassessment Year 2016 and 2012 for 101, 103, 105, 107 and 109 Wallace Avenue (Applicant Exhibit 2) and stated it is important because it supports that the structures are identified as single family homes. Attorney Riddle stated the assessment record has always viewed these structures as individual single family homes and reported that they have not ceased to continue to exist, as they have not been destroyed or removed. Attorney Riddle stated the homes are present and they have been assessed by the tax office and they continue to be single family units.

Attorney Riddle stated at the subject property there are 5 addresses with the post office and 5 structures on the property. Attorney Riddle reported Mr. Iwersen would like to refurbish all 5 single family homes and does not want to increase the footprint of any of the structures and he does not plan to extend, or build onto any of the structures.

Attorney Riddle stated the Zoning Directors position is that only one 2-family unit is permitted, as it is under one single ownership. Attorney Riddle stated Mr. Iwersen now has a nonconforming use by having 5 units on 3 parcels. Attorney Riddle stated the structures will be used as they have always been used, as single family homes and added the North East Zoning Ordinance allows for nonconforming uses to continue,

unless they have been removed or destroyed. Attorney Riddle argued that they have not been removed or destroyed and stated that the continuous use is single family homes, which is consistent with the neighborhood and the surrounding properties. Attorney Riddle stated there has been no stoppage of the use as single family homes. Attorney Riddle stated that the Town of North East Zoning Director's position is based on occupancy, and reported that occupancy solely does not make something a nonconforming use. Attorney Riddle stated again that he does not believe occupancy is the sole basis as to whether a structure is used as a single family home or not.

Attorney Riddle continued to state that these structures are single family homes and occupancy should not determine their nonconformity, stating again that the nonconforming use should be allowed to continue as they were built as single family homes and continue to be single family homes. Attorney Riddle stated these structures have never been condemned and could be refurbished. Attorney Riddle reported that there has been no notice from the Planning Office to any of the owners of this property stating that these structures are no longer to be single family residences or any notice stating this is no longer a conforming use under the North East Zoning Ordinance. Attorney Riddle stated it is his and Mr. Iwersen's position that these are permitted to continue to be used as single family homes because they have separate tax assessments, separate addresses and the Town of North East has always accepted these as single family homes. Attorney Riddle stated the interpretation of the North East Zoning Ordinance by the Town of North East Zoning Director is incorrect in stating that a nonconforming use has stopped and ceased and therefore only a 2-family unit can ever occupy this property based on the North East Zoning Ordinance. Chairman Oldham inquired if there was any additional information Attorney Riddle or Mr. Iwersen would like to add. Mr. Iwersen and Attorney Riddle stated no.

Ms. Martino inquired why all of the properties are listed as 107 Wallace Avenue on the Tax Assessment, Applicant Exhibit 2. Attorney Riddle responded that if that is what the Tax Assessment states in the corner than that is what it states. Mr. Tenney stated that it appears the address is reflecting the mailing address not the property address for the assessment. Attorney Riddle agreed. Ms. Martino inquired if Mr. Iwersen purchased the property under one address or individual addresses. Attorney Riddle stated the deed to the property references 101, 103, 105, 107 and 109 Wallace Avenue and description states there are 3 parcels. Mr. Tenney inquired if the parcels or structures were purchased from different individuals. Attorney Riddle explained Mr. Iwersen purchased the property from Novo Realty as this property was a foreclosure. Ms. Martino inquired how long the structures were unoccupied. Attorney Riddle stated he did not know. Ms. Martino inquired if the structures were occupied when Mr. Iwersen purchased them. Attorney Riddle stated the structures were unoccupied when purchased by Mr. Iwersen. Ms. Martino inquired if the property was purchased October 16, 2015. Attorney Riddle stated yes. Chairman Oldham confirmed that the structures were not occupied when Mr. Iwersen bought the property in October 2015. Attorney Riddle confirmed that the structures were unoccupied.

Ms. Martino inquired if 107 Wallace Avenue was subdivided into two living units as stated in the letter from Mrs. Vennell dated October 13, 2015. Ms. Martino quoted the letter from Mrs. Vennell: "107 Wallace Avenue - the structure appears to be the main house and is a single family home. I've learned that there is a second dwelling unit

which has been added within this structure. Please note, a second dwelling unit was unauthorized by this office and was added without the Town or County approvals and is not permitted and may not be utilized.” Attorney Riddle stated that dwelling unit was in existence prior to Mr. Iwersen purchasing the property and further stated that the letter from Ms. Vennell was pursuant to a meeting which Mr. Iwersen had with the Town prior to purchasing the Wallace Avenue property.

Mr. Tenney inquired if the past billing for water, sewer, town and county taxes etc. was included in the foreclosure process. Attorney Riddle stated Mr. Iwersen paid the pro-rated water and sewer bills during the current billing cycle at the time of purchase. Attorney Riddle reiterated his argument that these are single family homes and their use has not ceased to exist, as the structures still currently exist as single family homes. In addition, the structures on the subject property have not been condemned.

Chairman Oldham confirmed that Mr. Iwersen came into the Town Hall to meet with Mrs. Vennell prior to the purchase of the subject property. Mr. Iwersen stated he inquired about the subject property and that was all. Mr. Iwersen stated that after his meeting with Mrs. Vennell he spoke with his attorney. Ms. Martino stated she believes the section of the North East Zoning Ordinance which Attorney Riddle and Mr. Iwersen are disputing is section 8-3 Non-conforming use of land. Paragraph 3. “If any such nonconforming use of land ceases for any reason for a period of more than 90 days, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the zoning district classification in which such land is located.” Ms. Martino attempted to clarify Attorney Riddle’s interpretation that these structures were still single family homes and there was discussion as to whether lack of occupancy means lack of use. Mr. Iwersen stated there are many homes that are currently unoccupied due to foreclosure, that doesn’t mean they don’t exist. Chairman Oldham stated that doesn’t mean the homes are or are not in a “nonconforming status” nor does it mean that the unoccupied homes are within the corporate limit of the Town of North East.

Attorney Riddle stated the Town is taking for granted that these structures were unoccupied for greater than 90 days and reports that he is disputing that as well. Attorney Riddle stated he does not feel that it is his client’s responsibility to prove or disprove the occupancy, stating that the Town has never provided any notification to any of the prior owners that the homes were unoccupied for more than 90 days. Mr. Tenney inquired the length of time that the structures were in foreclosure. Attorney Riddle stated on July 31, 2012 all of the parcels were conveyed to Novo Realty and that Mr. Iwersen had informed him that there was a resident with life estate rights, which permitted one resident to live on the property. Attorney Riddle believes it was sometime in 2015 when the life estate terminated for whatever reason. Attorney Riddle also stated he believes that the life estate resident lived in the house identified as 107 Wallace Avenue, the main house. Attorney Clower inquired if the life estate was terminated due to the foreclosure. Attorney Riddle responded that he did not believe so. Attorney Riddle stated that when White House, LLC purchased the subject property prior to the foreclosure, a life estate was established and subject to the purchase of the property. Ms. Martino inquired if there were plans to keep 107 Wallace Avenue as two dwelling units. Mr. Iwersen stated he would keep it as a two family

dwelling unit if he was not able to keep the other structures. If he is able to keep the other structures he will keep 107 as a single family home. Chairman Oldham inquired if there were any further questions or statements. Attorney Riddle and Mr. Iwersen stated not at this time.

Mrs. Cook-Mackenzie, Town Administrator, Town of North East and Mrs. Vennell, Director of Planning, Town of North East, came forward to testify in regards to the Case. Mrs. Cook-Mackenzie spoke about the North East Zoning Ordinance, the intent of the North East Zoning Ordinance and gave evidence that pertains to the Case.

Life Estate-101 Wallace Avenue

Mrs. Cook-Mackenzie stated that the Town of North East has information in regards to the life estate in relation to 101-109 Wallace Avenue. Mr. White, the resident with the lifetime estate rights, did terminate his lifetime estate April 14, 2015 for a fee of \$4,500. (Town Exhibit 4), and Mr. White did not reside in the main house known as 107 Wallace Avenue. Mrs. Cook-Mackenzie stated when Attorney Fockler of White House, LLC purchased the property, a 200 square foot area was negotiated for Mr. White to reside in, located at the rear of 101 Wallace Avenue. Mrs. Cook-Mackenzie stated that 107 Wallace Avenue was previously Mr. White's parent's home. The structure, 101 Wallace Avenue, was fed water through an unpermitted tap off of the main service line which entered 107 Wallace Avenue. Mrs. Cook-Mackenzie reported in April of 2015 a water line leak in 107 Wallace Avenue led to the water being shut off by Novo Realty. Due to the shut off, Mr. White no longer had water to serve his 200 square foot living area and proceeded to pull a motor home on the property to live in. However, Cecil County Health Department was called by Novo Realty (the current owner at the time) and Mr. White was evicted and ended his lifetime estate agreement.

Mrs. Cook-Mackenzie stated that the Planning Office has records which indicate that there are 7 units not 5 units on the subject property, and displayed an aerial image to indicate the dwelling units in each structure (Town Exhibit 1). 101 Wallace Avenue is a two family dwelling unit, 103 Wallace Avenue is a single family dwelling unit, 105 Wallace Avenue is a single family dwelling unit, 107 Wallace Avenue is a two family dwelling unit and 109 Wallace Avenue is a single family dwelling unit.

Mrs. Cook-Mackenzie stated that the Board of Appeals has seen other cases which have dealt with nonconforming uses and pointed out that the North East Zoning Ordinance has not been amended since those cases were heard. The North East Zoning Ordinance is approved and passed under the authority of the Annotated Code of Maryland Land Use Planning and North East Zoning Ordinance as other towns and counties have nonconforming regulations.

Use: Mrs. Cook-MacKenzie reported that the North East Zoning Ordinance states: "the purpose or activity for which land or any building thereon is designed, arranged or intended, or for which it is occupied or maintained, which may be lawfully established in a particular district or districts provided it conforms with all regulations, requirements, and standards of such district." Mrs. Cook-Mackenzie stated that prior to Mr. Iwersen's purchase of the property, the property was neither occupied nor maintained.

“R-2” Two-Family Residential District: Mrs. Cook-MacKenzie reported that the purpose of the “R-2” Two Family Residential District is for single family and two family residential development of moderately spacious character. In addition it permits accessory uses and structures as permitted in the “R-1” Single Family Residential District. The accessory uses in this district state the property owner is permitted one accessory building per lot. The only exception, would be if the property has 4 acres or more, which does not apply to the subject property of this case. The intent of the North East Zoning Ordinance (also stated in the ordinance which is not unique to North East, Maryland) is to not encourage the survival of nonconformities. Such uses are declared by the ordinance to be incompatible with the permitted uses in the “R-2” district. Mrs. Cook-Mackenzie submitted into the record an aerial image of the North and South side of Wallace Avenue (Town Exhibit 1) which shows the subject property is not compatible with the surrounding area. The surrounding area has a traditional appearance; one single family home with one accessory use in the rear yard. There are no other properties on Wallace Avenue that have multiple units on one lot/3 parcels, on one deed.

Occupancy: Mrs. Cook-MacKenzie reported that the North East Zoning Ordinance defines the use as occupied or maintained.

Mrs. Cook-MacKenzie read the following sections into the record:

Section 8-3 Non-conforming Uses of Land, paragraph 3.

Section 8-4 Nonconforming Structures, paragraph 2.

Section 8-5 Nonconforming Uses of Structures, paragraph 5.

Vacant: Mrs. Cook-Mackenzie researched the Black Laws Dictionary which defines vacant as not having any contents or inhabitants. Mrs. Cook-Mackenzie stated whether the word occupied or vacant is used, the subject property has not had the use required to meet the intent which Attorney Riddle has attempted to use in this case.

Mrs. Cook-Mackenzie reported that the North East Zoning Ordinance is consistent throughout in reference to its intent regarding nonconforming use and occupancy.

Water Usage: Mrs. Cook-Mackenzie reported there are not 5 individual water meters, nor are there 5 individual service lines to the structures. There are 3 water meters and at some point in time, one of the past property owners tapped into the existing service lines and ran water lines to the other structures to meet their needs.

Mrs. Cook-Mackenzie presented documentation (Town Exhibit 7) that there was no water usage in some of the units for more than a year.

109 Wallace Avenue - the last time there was water usage in this unit, was in 2010. It was determined that the water usage was the result of a water leak. This unit had no water usage since 2011.

103 and 105 Wallace Avenue - had no water usage for 2015. There was some water usage in 2014 and 2013 but no water usage in 2012, 2011 or 2010.

101 and 107 Wallace Avenue - In April of 2015 there was a water leak, and the basement of 107 Wallace Avenue flooded and therefore, the water was shut off. As a result of the water shut off at 107 Wallace Avenue, the water was also shut off to 101 Wallace Avenue. In addition, Mrs. Cook-Mackenzie presented a letter from Novo Realty (current owner at the time of the correspondence) March 27, 2015 which indicates that the water was shut off at the main and they had no intention of restoring water service at this property as there were no occupants. (Town Exhibit 6).

Cecil County Department of Permits and Inspections: Mrs. Cook-Mackenzie stated that the Town of North East received a letter from Cecil County Permits and Inspections dated January 26, 2015 stating that 101 (2nd floor apartment), 103, 105, and 109 Wallace Avenue have been vacant for an extended period of time. Mrs. Cook-Mackenzie reported that as a result of this condition, the Planning Office met with Cecil Bank/Novo Realty onsite and performed a visual inspection. At this time, the structures were found to be uninhabitable and unsecured, posing a potential safety threat to the surrounding community. Cecil County Permits and Inspections posted the structures as unsafe (Town Exhibit 3).

Town Board Meeting-Wallace Avenue Residents Complaint: Mrs. Cook-Mackenzie stated at the January 14, 2015 Town Board Meeting several residents of Wallace Avenue expressed their concerns regarding the subject property. (Town Board Meeting Minutes, Town Exhibit 2). The residents indicated the 'condemnation' signs had been removed, debris spread about the property, windows are open, and roofs are collapsing, in addition to vagrants living in the structures. At this time the town became aware of how many units were in the structures.

Mr. Tenney inquired who had posted the property or structures uninhabitable or unsafe. Mrs. Cook-Mackenzie responded, Cecil County Department of Permits and Inspections. The Town of North East as well as some other municipalities within Cecil County utilizes Cecil County Department of Permits and Inspections certified building inspectors to perform building inspections in correlation with the International Building Code. Mrs. Cook-Mackenzie presented photographs taken by the Town of North East Planning and Zoning Department January 15, 2015, (Town Exhibit 5). These photographs indicate that the property was not maintained nor occupied, the property clearly appears to be abandoned by virtue of neglect.

Utilities and Taxes

Mrs. Cook-Mackenzie stated the 105 Wallace Avenue assessment record and the 109 Wallace Avenue assessment record reflect a land value but no improvements. The only address that reflects improvements is 107 Wallace Avenue. (Town Exhibit 8)

Communication with Novo Realty: Mrs. Vennell addressed Attorney Riddle's previous comment regarding the Town of North East's lack of notifications to Novo Realty in regards to the subject property and its non-conforming status.

Mrs. Vennell reported that on September 19, 2013 she spoke with Novo Realty and informed them of the status of the property as the Planning Office had received several inquiries in regards to the purchase of 101-109 Wallace Avenue. The Planning office informed Novo Realty that the subject property is in an "R-2" Two Family Residential Zoning district and gave them a copy of the North East Zoning Ordinance Article 8 Nonconforming Uses, and discussed:

101 Wallace Avenue - contained two dwelling units and this is a nonconforming use of land and should the house be demolished, vacated, or condemned it will lose its grandfathered status. A nonconforming status may not be used again for a dwelling unit.

103 Wallace Avenue - consisted of a boarded up structure in 2013 which is nonconforming and had already lost its grandfathered status and was not permitted to be used again as a dwelling at any time.

105 Wallace Avenue - consisted of a boarded up structure which was nonconforming and had lost its grandfathered status and was not permitted to be used again as a dwelling unit at any time.

107 Wallace Avenue - no one was residing in this structure. This structure appears to be the main house straddling two parcels. The Town of North East has been informed that this structure contains two dwelling units, however this was an unpermitted conversion. In the "R-2" Family district, the conversion would be permitted provided all of the other nonconforming uses and structures were removed.

109 Wallace Avenue - is a nonconforming structure and has been posted by Cecil County as unsafe. It has lost its grandfathered status and is not to be used again as a dwelling unit.

Mrs. Cook-Mackenzie inquired if Mrs. Vennell recalled meeting with Mr. Iwersen prior to receiving the application for appeal, and inquired when the subject property transferred.

Mrs. Vennell responded that the property transferred in Mid-October 2015, and that she did recall meetings and phone calls with Mr. Iwersen, which all occurred prior to the purchase of the property:

July 14, 2015: Mrs. Rhoades, Planning and Zoning Assistant and Mr. Iwersen had a conversation about the nonconformities on the property. Mr. Iwersen gave Mrs. Rhoades his business card.

August 31, 2015: Mrs. Vennell and Mrs. Rhoades had a telephone conference with Mr. Iwersen regarding the subject property and the nonconformities, and what Mr. Iwersen could do with the property.

September 28, 2015: Mrs. Vennell met with Mr. Iwersen regarding the subject property and also gave Mr. Iwersen documentation on the Nonconforming Uses of Land. In addition, accessory buildings were also discussed.

October 5, 2015: Mr. Iwersen and the Cecil County Department of Permits and Inspections along with Mrs. Vennell and Mrs. Rhoades met onsite of subject property to discuss the nonconformities and the status of the unsafe structure.

October 12, 2015: Mr. Iwersen met with Mrs. Vennell to discuss the subject property and go over what he could and could not do with the nonconforming structures on the property, as per the North East Zoning Ordinance.

Mrs. Cook-Mackenzie inquired if Mrs. Vennell at any time during any of the meetings, as the representative of the Town of North East, notified Mr. Iwersen that he may occupy 5 units or 7 units on the subject property. Mrs. Vennell responded no.

Mrs. Cook-Mackenzie concluded by stating that she believes the Planning Office has interpreted the North East Zoning Ordinance correctly and has been substantiated by presenting some information regarding past cases heard by the Board of Appeals regarding the Planning office's interpretation of the North East Zoning Ordinance (Town Exhibit 9 and Town Exhibit 10). In regards to the two referenced cases previously heard, the Board of Appeals upheld the Planning Office interpretation in both cases. In addition, Mrs. Cook-Mackenzie stated that Mrs. Vennell and the Town's Attorney had prior communication regarding information relating to nonconformities, the interpretation and the enforcement of the Town of North East Zoning Ordinance (Town Exhibit 11). In a memorandum addressed to Mrs. Vennell from Attorney Clower dated June 11, 2014, Attorney Clower states "while it is difficult normally to establish an owner's intent to abandon a nonconforming use, structure, etc. the lengthy period of neglect and refusal to respond to condemnation proceedings would give the Court reason to infer such an intent (not that it is required under the North East Zoning Ordinance.) Mrs. Cook-Mackenzie stated that the Town of North East is not required to prove to a property owner that there was an intent to abandon, the Town of North East must just show that it has occurred. In addition, Mrs. Cook-Mackenzie submitted into the record (Town Exhibit 12) correspondence dated February 7, 1990 from Attorney Clower, where he responds to Mrs. Cook-Mackenzie's inquiry: "Is it proper for the Zoning Inspector for North East to consider prior decisions of the Board of Zoning Appeals in the day-to-day administration of the Ordinance?" Attorney Clower responded by stating that "in matters of interpretation, it is not only allowed but completely necessary."

Attorney Clower inquired if Mrs. Vennell sent Novo Realty a letter dated September 19, 2013 or was she referring to notes from a conversation she had with Novo Realty on that date. Mrs. Vennell replied she was referring to notes which she had from the conversation with Novo Realty.

Mr. Tenney inquired if Mr. Iwersen had received a disclosure notice from Novo Realty in regards to the status of the subject property prior to purchase. Mr. Iwersen stated no he had not.

Mr. Iwersen expressed interest in seeing the images submitted into the record by the Town of North East. Chairman Oldham informed the applicant he was welcome to review all of the documents submitted into the record. Mr. Iwersen stated, as he pointed to 101 Wallace Avenue, on Town Exhibit 1, the only item he was required to

fix by Cecil County Department of Permits and Inspections was the set of stairs at 101 Wallace Avenue leading to the second floor apartment. Mr. Iwersen stated he had invited Cecil County Department of Permits and Inspections to the Wallace Avenue property to inquire whether the structures were condemned. Mr. Iwersen stated the Cecil County Building Inspector, Mr. Dean, informed Mr. Iwersen the structures were not condemned. Mr. Iwersen reported to the Board of Appeals that new windows and siding can fix most of the problems with the structures on the subject property. Mr. Iwersen requested that the Board of Appeals keep that in mind, while they were making their decision. Mr. Iwersen stated that 107 Wallace Avenue is currently in fine shape. Mrs. Cook-Mackenzie inquired what Mr. Iwersen paid for the subject property. Attorney Riddle stated \$90,000. Mrs. Martino stated in 2005 the subject property sold for \$345,000. Mr. Iwersen stated that the other homes on Wallace Avenue are small and equal in size to the structures on his property. Ms. Fye inquired if the Cecil County Building Inspector entered the structures. Mr. Iwersen responded that he had not. Mrs. Cook-Mackenzie inquired if Mr. Iwersen had spoken to Cecil County Department of Public Works or Cecil County Department of Permits and Inspections to request any documents pertaining to the subject property prior to settlement. Mr. Iwersen stated no.

Chairman Oldham closed the public hearing 8:12 p.m.

Chairman Oldham stated the applicant's argument is based on the interpretation of the North East Zoning Ordinance regulations. However, the intent of Article 8, Section 8-5 Nonconforming Uses of Structures is to not encourage the survival of nonconformities within the Town of North East. Mrs. Martino stated that most of the structures, other than 101 Wallace Avenue have been unoccupied for years. The structures were not grandfathered with the nonconforming status when Mr. Iwersen bought the subject property.

Chairman Oldham and Ms. Martino discussed Section 8-3 Nonconforming Uses of Land and Section 8-5 Nonconforming Uses of Structures with regard to the occupancy of the subject property. Ms. Martino stated considering the definitions for occupancy, vacant or abandoned, the property was unoccupied at the time Mr. Iwersen purchased the property. Chairman Oldham stated the applicant is arguing the validity of the North East Zoning Ordinance. Ms. Fye stated that the use of land does not mean that the property is occupied. Ms. Martino stated that just because there is a home on the land does not indicate that the structure is occupied. Ms. Martino further clarified that a structure can be a single family home but that does not mean there is a family living in it. Ms. Martino stated she believes Article 8, Section 8-5 Nonconforming Uses of Structures is clear in its intent. Chairman Oldham referred to the definition of Use (that Mrs. Cook-Mackenzie presented during the public portion of the hearing) stating that it refers to the purpose or activity for which land or any building thereon is designed, arranged or intended, or for which it is occupied or maintained. The definitions clarify the North East Zoning Ordinance. Mr. Tenney stated that the applicant is questioning the interpretation of the North East Zoning Ordinance and reported that it is his opinion that the North East Zoning Ordinance has been interpreted correctly by the Planning Office. Chairman Oldham asked the advice of Attorney Clower, whether the Board of Appeals should make two separate motions or could they make one motion and should the Board address each section stated on the

appeals application. Attorney Clower inquired if the applicant was appealing two sections of the North East Zoning Ordinance. Attorney Clower reported it is the role of the Board of Appeals to either uphold the staff's interpretation, or not. For purposes of this hearing, only one motion is necessary.

Mrs. Martino made a motion to uphold the original decision and interpretation by the Town of North East Zoning Administrator concerning the nonconforming uses of land at 101, 103, 105, 107, and 109 Wallace Avenue. Ms. Fye seconded the motion and the motion was approved by all.

-REPORTS-

No comments.

-MISCELLANEOUS-

26 South Main

Ms. Martino inquired about the status of 26 South Main Street project. Mrs. Rhoades reported that Mr. McDevitt picked up the approved Construction Authorization prepared by the Town of North East on January 27, 2015. Subsequently, Mr. McDevitt planned on filing his permit with the Cecil County Permits and Inspection Office to obtain a Building Permit to commence construction.

-NEXT MEETING-

Chairman Oldham has cancelled the February 25, 2016 meeting, as there are no agenda items.

-ADJOURNMENT

Mr. Tenney made a motion to adjourn at 8:30 p.m. Ms. Martino seconded the motion and the motion was approved by all.

Respectfully submitted:

Attest:

Lisa Rhoades
Planning and Zoning Assistant

Gabrielle D. Oldham
Chairman