

**NORTH EAST BOARD OF APPEALS-
North East Town Hall / 106 South Main Street
Thursday, June 26, 2014
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, Maurice Tenney, Peg Hardin, Marian Martino. Also present included Melissa Cook-MacKenzie, Town Administrator; Betsy Vennell, Director of Planning and Zoning; and Lisa Rhoades, Planning and Zoning Assistant.

-MINUTES-

May 22, 2014

Mrs. Martino made a motion to accept the minutes as amended and Ms. Fye seconded the motion and the motion was approved by all.

-COMMENTS FROM THE PUBLIC-

None.

-NEW BUSINESS-

Election of Vice Chairman:

Ms. Martino nominated Ms. Sue Fye as Vice Chairman of the North East Board of Appeals. Ms. Hardin seconded the nomination and the nomination was approved by all.

Mrs. MacKenzie reported that per the Zoning Ordinance Requirement, the Mayor appointed the Chairman to the Board of Appeals earlier in 2014.

Chairman Oldham opened the public hearing at 7:08 p.m.

Case A-2014-01-SE: Applicant, Kevin McDevitt, 8 Mauldin Avenue, North East, Maryland, is requesting a special exception for the purpose of opening a Pub/Restaurant at 26 South Main Street, North East, Maryland. Property owner: Maynard Bare, 1171 North East Road, North East, Maryland. Also found on Tax Map 400, Parcel 0270 in the General Commercial Zoning District.

The court reporter, Penny Comeau from Bel Air Reporting, swore in Mr. Kevin McDevitt.

Chairman Oldham asked Mr. McDevitt if he would like his application to be part of the record and Mr. McDevitt concurred.

Mr. McDevitt reported that he currently owns the Pickled Herring Pub at 32 S Main St. North East, Maryland. The lease expires, on the Pickled Herring Pub's location, in a couple of months. Therefore, Mr. McDevitt is requesting permission to open a new Pub/Restaurant next door at the former Laundromat, 26 South Main Street. He is planning on naming the new Pub/Restaurant, Station 26 Firehouse Brew Pub and Restaurant. This proposed location was formerly the first fire house in North East in the early 1900's. He would like to honor the fireman and first responders of that time period and would like to keep the theme and décor (in the Pub/Restaurant) consistent with the locations history. In the new proposed establishment Mr. McDevitt would still like to provide late evening entertainment as well as expand the food service side of the business. Chairman Oldham inquired about live music, where the band would be setting up and the number of seats in the proposed establishment. Mr. McDevitt stated there will be 93 seats inside and although the stage is not depicted on the submitted drawing, the band would be located in front of the wall near bathrooms. The band usually sets up in an 8 foot area. He stated the tables will be moved back to make room for the band and the band will have approximately a 14 foot area. Table 11 and 12, on the sketch, will move to create the band area.

Upper Deck

Chairman Oldham inquired about the upper deck shown on Mr. McDevitt's drawing. Mr. McDevitt stated that the upper deck will give patrons the opportunity to sit outside, enjoy the town, fresh air and sunlight which they do not have currently at the Pickled Herring Pub. Mr. McDevitt reported that his patrons at the Pickled Herring Pub would like an area to sit outdoors. He added that the upper deck will add to the esthetics. Mr. McDevitt reported that although the spiral staircase adds to the outside appearance of the Pub/Restaurant, he is currently working with Fire Marshall to create an access to the upper deck from the inside of the establishment. Also, Mr. McDevitt is considering adding a second set of exterior steps approximately 15 to 20 feet behind the set of spiral stairs.

Mr. Tenney inquired whether the upper deck area would be open at night time and the height of the fence around the deck. Mr. McDevitt stated he

would like to keep the upper deck open all evening. His current hours are 11am-2am., which he plans to maintain at the new proposed Pub/Restaurant and is hoping to have the upper deck open from March thru October and possibly November. Mr. McDevitt clarified, the fence/railing will be 3 foot or whatever the code requires. Mrs. Vennell commented that the fence/railing would have to meet the International Building Code.

Mrs. Martino commented on what safety measures have been taken in regards to the firepit on the roof top deck. Ms. Hardin inquired if the fire pit was secured to the deck and was concerned that it could be easily knocked over causing a potential fire hazard. Mr. McDevitt verified that the fire pit would be safe and meet all Fire Marshall Regulations. In addition, the fire pit does not have an intense flame, it will be covered with glass and secured to the deck.

Downstairs Outside Seating

Mrs. Hardin inquired about the amount of seating outside downstairs and how close to the sidewalk would the tables be. Mr. McDevitt stated there would be 12 seats and they would be placed approximately 7 feet from sidewalk. Mrs. Vennell inquired if there would be a railing installed to section off the downstairs outside seating. Mr. McDevitt confirmed there would be a railing installed as per the code. Chairman Oldham commented on the roof top deck as to whether it was recessed or not. Mr. McDevitt confirmed that the roof is somewhat recessed and that the railing will sit on top of the edge of the roof as per the drawing.

Parking

Mrs. Martino and Chairman Oldham inquired about parking. Mr. McDevitt stated that he will have the use of 15 spaces previously used for Laundromat parking.

Mrs. Vennell added the applicant did not want to submit a site plan until after Board of Appeals opinion due to the engineering costs. In addition, Mrs. Vennell forwarded a recommendation from the Planning Commission to the Board of Appeals for approval with conditions.

Mr. Mc Devitt concluded by stating that his current establishment, the Pickled Herring Pub, has been in business for 5 years and has done fairly well. However, he would like the opportunity to continue to be a business owner in the town of North East as well as expand his business. Mr.

McDevitt stated that he thinks this proposed use (of the former Laundromat) would be good for the building and the town.

Noise

Ms. Hardin inquired about how near the closest residents where to the proposed restaurant. Mrs. Martino responded that there were some apartments across the street but if Mr. McDevitt had some acoustic music or faced any speakers inward the noise level should be okay. There is a candy shop and retail stores adjacent to the proposed pub/restaurant location Chairman Oldham stated the stores do give a buffer as well as the parking lot behind the former Laundromat but noise may become an issue in the future. Mrs. Vennell added that the noise ordinance is 50 feet, beyond that there should be no noise. Mr. McDevitt stated the band will be staged inside the establishment. A noise disturbance would also be a police matter.

Mr. Tenney motioned that Case A-2014-01-SE be approved with conditions which are outlined in Mrs. Vennell's memo dated 05/21/2014:

1. Applicant shall submit a Modified Site Plan (modified, as the building is already constructed), and in accordance with the North East Zoning Ordinance. Article 10, and the receipt of site plan approvals from the North East Planning Commission.
2. Water Allocation and Sewer Allocation shall be obtained prior to Final Site Plan Approval.
3. Applicant outlines mechanisms which will be used to deter undesirable activity which may occur in conjunction with the proposed Blues and Jazz Restaurant.
4. Any other conditions that are applicable to the establishment or are necessary for the protection of the public interest and to secure compliance with Section 9-15.

In addition:

1. Must comply with all safety codes for fire pit, railing and fire escape(s).
2. Noise will be monitored by Board of Appeals on an as needed basis.

Mrs. Martino seconded the motion and was approved by all.

Case A-2014-02-SE: Applicant, Kevin McDevitt, 8 Mauldin Avenue, North East, Maryland, is requesting a special exception for the purpose of obtaining an on premise alcohol beverage license for 26 South Main Street, North East, Maryland in conjunction with a Pub/Restaurant. Property owner: Maynard Bare, 1171 North East Road, North East, Maryland. Also found on Tax Map 400, Parcel 0270 in the General Commercial Zoning District.

Chairman Oldham inquired if the liquor license would just be transferred from the Pickled Herring Pub at 32 S. Main St to 26 S. Main St. Mr. McDevitt and Mrs. MacKenzie concurred that the liquor license would be transferred.

Mrs. Martino made a motion to approve with the same conditions as the proposed restaurant Case-A-2014-01-SE, which were outlined in Mrs. Vennell's memo dated 05/21/2014:

1. Applicant shall submit a Modified Site Plan (modified, as the building is already constructed), and in accordance with the North East Zoning Ordinance. Article 10, and the receipt of site plan approvals from the North East Planning Commission.
2. Water Allocation and Sewer Allocation shall be obtained prior to Final Site Plan Approval.
3. Applicant outlines mechanisms which will be used to deter undesirable activity which may occur in conjunction with the proposed Blues and Jazz Restaurant.
4. Any other conditions that are applicable to the establishment or are necessary for the protection of the public interest and to secure compliance with Section 9-15.

In addition:

1. Must comply with all safety codes for fire pit, railing and fire escape(s).
2. Noise will be monitored by Board of Appeals on an as needed basis.

Ms. Hardin seconded the motion and all were in favor.

Case A-2006-05-SE: Applicant, Anthony Covatta, owner of the Black Pearl Restaurant, 2 South Main, North East, Maryland. Property Owner: 2 S. Main NE, LLC, PO Box 66, Havre De Grace, Maryland. Applicant requests a change of conditions for a previously approved Special Exception for the use of a restaurant. Applicant proposes to add an outdoor seating area with six tables (24 seats). Also found on Tax Map 400, Parcel 350. Zoning: GC- General Commercial.
Note: Case number was incorrectly referenced and should be Case A-2005-06-SE.

The court reporter Penny Comeau, from Bel Air Reporting, swore in Mr. Anthony Covatto.

Chairman Oldham asked Mr. Covatta if he would like his application to be part of the record. Mr. Covatta concurred.

Mr. Covatta reported that he would like to create an outdoor seating area in front of his current establishment, The Black Pearl Restaurant. Mr. Covatta stated that a 4 ft. high solid cedar fence, bollards and cement flower pots would surround 6 tables of 4 seats, a reception desk, and a waitress staging area. There will be no outdoor bar or outdoor music. However, alcohol would be served in this area during dining. As per the submitted drawing there will be a single entrance and exit. Mr. Covatta also stated the Cecil County Liquor Board has given their approval as of 06/25/2014.

Fencing

Chairman Oldham inquired about the fencing around the seating area and confirmed that it is a solid fence. Mr. Covatta replied that he felt a solid fence would be better due to the wind and dust. He added there will also be pilings or bollards in front of the fence as well as cement flower pots.

Parking Lot

Ms. Hardin reported that she had seen a large truck parked in The Black Pearl Restaurant parking lot abutting Cecil Ave. She was concerned about the width of the driving lane between the bollards and the parking area along Cecil Avenue and wanted to know how much space there

would be between the bollards and the parking area. Mr. Covatta did not know how much room there was between the bollards and the parking area. Mrs. Vennell stated that the Black Pearl's previous site plan indicated 2 handicap spaces were originally approved at this location and that they had been relocated due to pre-existing fuel pumps (which were removed at a later time). At the request of the Planning Commission during their June 2, 2014 meeting, Mrs. Vennell sent Mr. Covatta a letter that the Planning Commission required only one handicap space per the current ADA regulations and it would be Mr. Covatta's decision on whether to keep two handicap spaces. Mrs. Martino inquired about the entrance to the parking area off of South Main Street. Mr. Covatta reported that 3 years ago he closed off that entrance to help with the flow of traffic (he is having a new sign made in regards to this previous entrance) and for the safety of his patrons. He also stated that he would like to keep both handicap spaces, however he is moving the handicap space at the corner of Cecil and Main next to the other handicap space near the entrance to the Black Pearl. Mr. Covatta is also thinking about putting in speed bumps as well as some additional signage to address parking lot issues (entrances, exits, no parking). Mrs. Vennell concurred that directional signs are fine as long as the signs do not interfere with State Highway signage. Mrs. Martino stated she would like to make it a condition of approval that the proper signs are posted.

Outdoor Dining Area

Ms. Hardin requested clarification that inside diners would now be looking at outside diners instead of the parking lot and traffic. Mr. Covatta confirmed that was correct. Mrs. Oldham inquired about how wide the outdoor seating area was, entering and exiting the outdoor seating area as well as the material of the outside eating area. Mr. McDevitt explained he is proposing a four foot wide gate and hostess station adjacent to the parking lot. The floor of the outdoor seating area will remain asphalt and a solid cedar fence with 8-10 inch wide bollards spaced 8 foot apart set in the ground 36 inches with 48 inches above ground. There will also be (4) 36 inch flower pots placed in front of the bollards. He added that the tables were 5 foot across and there would be another 3 feet on either side of the tables, so approximately 8 feet. Mrs. Oldham had concerns of whether the bollards would be sufficient in providing enough safety for patrons. She also stated that the decorative design at the corner of the parking lot may add some additional safety. Mr. Tenney inquired if there were any specific codes in regards to the required size of the bollards. Mrs. Vennell stated that there is no specified requirement that she is aware of but she will verify this and make sure that all requirements are met. Mrs. Martino wanted to clarify

whether or not the other establishments in town with outdoor seating needed a Special Exception. Mrs. Vennell explained that the original use of a restaurant was required by a special exception, therefore, an amendment to the original approval requires the request to go back before both original Boards. Mr. Covatta would be making changes to his approved site plan and that two Boards are required to hear the case.

Chairman. Oldham inquired if there were any comments from the public or any other agencies. Mrs. Vennell reported that the Critical Area Commission replied that they had no comment, and Pat Doordan and Carrie Doordan stated (by phone) they are in full support of the proposed expansion to the restaurant. Mrs. Vennell also added that extra water and sewer allocations will be necessary if this case is approved and Mr. Covatta is aware of these requirements.

Mrs. Martino made a motion to approve with conditions:

1. To obtain proper water allocation.
2. Consult with Town engineer regarding bollards.
3. Install and maintain signage and pavement markings.
4. Compliance with Memorandum from Betsy Vennell and North East Planning Commission dated June 5, 2014.

Ms. Fye seconded the motion and the motion was approved by all.

Case A-2014-04-V: Applicants, Clyde W. Reynolds, Jr. and Suzanne A. Chinnici, 216 East Thomas Ave, North East, Maryland, are requesting a 27 foot rear yard variance for the purpose of installing a 12' x 24' accessory building three feet from the property line. Also found on Tax Map 401, Parcel 0407. Zoning District: R-1, Single Family Residential.

The court reporter Ms. Penny Comeau, from Bel Air Reporting, swore in Mr. Clyde Reynolds and Ms. Suzanne A. Chinnici.

Chairman Oldham asked if the applicants would like to make their application part of the record. Mr. Reynolds and Ms. Chinnici concurred.

Mr. Reynolds explained they (he & Ms. Chinnici) need an accessory building large enough to hold their lawn tractor, tools and equipment. He stated that they currently have 2 storage units, it is getting expensive and this is the reason they need shed. Mr. Reynolds stated that due to a creek in the front yard of the home the only good location is the back yard.

Chairman Oldham inquired about the size of the existing shed. Mr. Reynolds answered 8' x 10'. Mr. Tenny stated that it appears the current shed is across their property line. Mr. Reynolds confirmed that it was but it will be removed before new shed comes. Mrs. Vennell submitted a letter to the North East Board of Appeals dated June 2, 2014 which outlined previous cases requesting variances for accessory buildings.

Mrs. Martino commented that the Board has approved similar cases in the past. Ms. Fye was in favor of the new accessory building being with the applicant's property line. Chairman Oldham stated that the proposed accessory building would not be in the floodplain.

Mr. Tenney made a motion to approve Case-A-2014-04-V with one condition:

1. Existing shed must be removed.
2. Conditioned outlined on the letter from Betsy Vennell dated June 2, 2014.

Mrs. Martino seconded the motion and all were in favor.

Case A-2014-05-V: AutoZone Development Corporation, 123 Front Street, Memphis, Tennessee. Property Owner: North East Station LLC, KIMCO Realty Corporation, 3333 New Hyde Park Road, New Hyde Park, New York. Applicant requests a 23.2 foot rear yard setback variance for the purpose of a parking area for the proposed AutoZone at 2520 Pulaski Highway, North East, Maryland. Also found on Tax Map 31, Parcel 1314. Zoning District: HC-Highway Commercial.

The court reporter Ms. Penny Comeau, from Bel Air Reporting, swore in Troy Ursprung, a representative for AutoZone and senior project manager for Bergmann Associates.

Chairman Oldham asked if Mr. Ursprung would like AutoZone's application to be made part of the record. Mr. Ursprung concurred.

Mr. Troy Ursprung stated the AutoZone project was located at 2520 Pulaski Highway, North East Station. Mr. Ursprung reported the property is zoned Highway Commercial and the proposed building is 6,816 square feet and would be located on a 25,788 square foot parcel of land known as Lot 2. Mr. Ursprung stated they are required to install 39 parking spaces and 21 spaces would be provided on site. The balance of the

parking would be shared parking with the North East Station. Mr. Ursprung provided an exhibit (known as Exhibit 1) of the proposed AutoZone building (the view of each side of the building) and also an exhibit (known as Exhibit 2) of the shopping center, Lot 2, showing the proposed AutoZone. Mr. Ursprung reported that all the setbacks can be met except the rear yard setback. Therefore, Mr. Ursprung requests a 23.2 foot variance. He explained that due to the size of the lot it is not possible to provide all of the parking and meet the requirement of the 25 feet rear yard setback. There is 12 feet from the building to the curb on the backside of the building. Mrs. Martino inquired if there would be a sidewalk located at the rear of the AutoZone. Mr. Ursprung concurred there would be a 5 foot wide sidewalk abutting a 7 foot wide green space.

Mr. Ursprung added he would like the following to be considered by the Board of Appeals approval.

1. Literal enforcement will not allow sufficient parking.
2. Mr. Ursprung believes Lot 2 is smaller than other lot sizes in the North East Station.
3. The size of Lot 2 would not allow to be developed as proposed without variance.
4. Granting a variance will not be providing any special privilege;
5. Granting the Variance will not change character, and it is consistent with other business;
6. Will be in harmony with the plaza;
7. Will not be injurious to the neighborhood;
8. Applicant is aware of restrictions.
9. The proposed use is a permitted use in the district.

Mrs. Martino inquired which way the store was facing and is there a landscaping plan. Mr. Tenny stated it appears to be facing Route 40. Mr. Ursprung confirmed the store front faces Route 40, and there is a landscaping plan but he did not have it with him. Ms. Fye inquired how the patrons would enter the parking lot and park. Mr. Ursprung demonstrated the flow of traffic through the parking lot using Exhibit 2.

Mrs. Vennell commented that Kimco Realty owns the site and will continue to own the site. She added that Article 6-8 addresses shared parking. Chairman Oldham inquired about the shared parking. Mrs. Vennell commented that the shared parking must be located within 300 feet from subject site. Mr. Tenney wanted some rational why the building would be facing Route 40. Mr. Ursprung stated AutoZone preferred the back of the building not face Route 40 and referred to Exhibit 1. Mrs. Vennell commented that the front, back and side have

the same façade. Mr. Tenney inquired if there was any entrance off Route 40. Mr. Ursprung confirmed that the entrance to the AutoZone would be the existing entrance to the North East Station, through the driveway.

Chairman Oldham asked if there were any letters from Planning and Zoning.

- Letter from Mrs. Vennell dated June 6, 2014, with recommendations from the Planning Commission to the Board of Appeals.
 - Applicant installs plantings per Bufferyard C, along the front side yard and east side yards. If the additional landscape cannot be accommodated within these locations due to unforeseen site constraints, a recommendation that the additional landscape be installed within the front yard line, of the adjoining lot to the west, thereby creating a visually and aesthetically appealing landscape fronting Route US Route 40.

Mr. Tenny made a motion to approve with the following condition as stated in the Planning Commission letter dated June 6, 2014:

Ms. Fye seconded the motion and the motion was approved by all.

Chairman Oldham closed the public hearing at 8:15pm

-OLD BUSINESS-

Paradise Grill:

Mrs. MacKenzie reported that a meeting was held with the Owner and representative of the Paradise Grill, Mr. Jeff Isaacs and Ms. Hallsey, Melissa Cook-MacKenzie the Town Administrator, Gabrielle Oldham, Chairwoman for the Board of Appeals, Earl Bradford from the Cecil County Liquor Board, Darrell Hamilton the North East Chief of Police, Betsy Vennell the Director of Planning and Zoning and Lisa Rhoades the Planning and Zoning Assistant. The meeting was in response to noise complaints received by the Town. The owners of the Paradise Grill had already addressed some of the issues, prior to the meeting that we were

planning to discuss. Three of the incidents involving the police were all centered around one individual and that individual has been banned from the establishment. They have also raised the price of drinks which has brought in a different type of client. The owners are willing to keep the lines of communication open between themselves and the Town of North East and were hopeful with the new changes they would have a good summer.

-REPORTS-

No comments.

-MISCELLANEOUS-

Mrs. Martino inquired about the new library. Mrs. MacKenzie reported that a public hearing was held June 25, 2014 which she attended and stated that there was a lot of support in favor of the site and location. Mrs. MacKenzie reported that it will be a couple years before they would start building the library.

-NEXT MEETING-

The next meeting was re-scheduled to August 5, 2014.

-ADJOURNMENT

Ms. Fye made a motion to adjourn at 9:07P.M. Ms. Hardin seconded the motion and the motion was approved by all.

Respectfully submitted:

Attest:

Lisa Rhoades
Planning and Zoning Assistant

Gabrielle D. Oldham
Chairman