

**NORTH EAST BOARD OF APPEALS-
North East Town Hall / 106 South Main Street
Thursday, May 22, 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, Peg Hardin, Valerie Combs, alternate member and Melissa Cook-MacKenzie, Town Administrator. Also in attendance were Betsy Vennell, Director of Planning; and Lisa Rhoades, Planning and Zoning Assistant. Marian R. Martino and Maurice Tenney were absent due to a prior engagement.

-MINUTES-

July 31, 2012

Ms. Fye made the motion to approve the July 31, 2012 minutes. Ms. Hardin seconded the motion and the motion was approved by all.

December 12, 2013

Ms. Fye made the motion to approve the December 12, 2013 minutes. Ms. Combs seconded the motion and the motion was approved by all.

-COMMENTS FROM THE PUBLIC-

None.

-NEW BUSINESS-

Case No. A-2014-03-V: A variance application has been filed by property owners Melanie Preisendanz and Richard C. Baer, 23 North Main Street, North East. Tax Map 400, Parcel 130. Applicant is requesting a variance for the installation of a 200 square foot utility building, within the 25 foot Non-Tidal Wetland Buffer. Zoning Classification: "R-2" Two Family Home Residential District. Critical Area Designation: "LDA" Limited Development Area.

Chairman Oldman opened the public hearing at 7:03 p.m.

Mr. Richard Baer and Ms. Melanie Preisandanz, applicants and owners, were present in regards to their variance application for 23 North Main Street. Mr. Richard Baer and Ms. Melanie Preisendanz were sworn in by Penny Comeau, the court reporter.

Deck

Mrs. Vennell reported that she corresponded with Julie Roberts, from the Critical Area Commission, who confirmed that the deck proposed is outside of the Critical Area Buffer and therefore a variance would not be required. Mrs. Vennell reported Mr. Baer and Mrs. Preisendanz would be permitted to put in the deck, without a variance. Ms. Vennell clarified that the deck would be located 10 feet within the property line, the deck would be more than 110 feet from the stream and would not be in the Non-Tidal Wetland Buffer.

Utility Building

Ms. Preisendanz stated that they would like to put a utility building on their property, in the same place as the existing utility building. Ms. Preisendanz reported the existing utility building was crushed by snow this past winter.

Chairman Oldham inquired if the utility building was going to be put in the exact same place as the previous utility building because the previous utility building was over their property line. Mr. Baer stated, they would like to install a 12' x 16' utility building 4 feet inside their property line. Mrs. Preisendanz said they had a survey done several years ago which did show that the previous utility building was over the property line by 8-9 inches and that they do intend, to put the new utility building in the same location but 4 feet inside of their property line.

Ms. Oldham stated that according to the information provided it appears that the original utility building is in the floodplain and in the Non-Tidal Wetland Buffer. Mr. Baer agreed that it was in the 100 year floodplain and wanted to see the map showing the Non-Tidal Wetland Buffer. Mr. Baer then stated he would put the utility building where ever he needs to as long as he can install the utility building.

Ms. Preisendanz stated that they could put the utility building in another place on the property if needed. Chairman Oldham clarified, they may put the utility building anywhere on the property they like within the confines of the regulations. However, if they put the utility building in the non-tidal wetland buffer it will flood at some point. Mr. Baer said he would like the utility building in the location where he proposed and if the weather is calling for flooding, he will move his things out of the utility building until after the flood. Chairman Oldham again clarified that Board of Appeals would continue with the proceeding if Mr. Baer and Ms. Preisendanz wanted to put the utility building within the non-tidal wetland buffer area. However, if they wanted to move the proposed utility building outside of the non-tidal wetland buffer area the Board of Appeals would dismiss the case. Mr. Baer said he wasn't really sure what he wanted to do at this point.

Mrs. Cook-MacKenzie wanted Ms. Preisendanz and Mr. Baer to know that the Appeals Board needs to know what their decision is at this point, did they want to continue with the proceedings. Mr. Baer and Ms. Preisendanz concurred they would continue with the proceedings.

Chairman Oldham asked if Ms. Preisendanz and Mr. Baer would like the application be part of the record. The applicants agreed.

Ms. Combs asked Mr. Baer and Ms. Preisendanz if there is a concrete pad where the previous utility building was located and would anchoring still be required even if the utility building was erected out of the floodplain. Ms. Hardin asked if the utility building was moved 4 feet would it effect any landscaping, trees, etc. Mr. Baer answered that the previous utility building was a wood Black Bear utility building with a wood floor and that no landscaping will be effected by moving the utility building location 4 feet inside the property line. Mrs. MacKenzie also stated yes anchoring would be required. Ms. Combs also inquired about Corp of Engineer permitting. Ms. Vennell reported that she had sent several emails to the Corp of Engineers. To date Mrs. Vennell had not been given a response based on the Non-Tidal Wetland Buffer information presented to them and reported the Corp of Engineers may still require a permit.

Chairman Oldham asked if there were any additional comments. Mrs. Vennell reported that there was one letter from an adjoining neighbor that was in favor of granting the variance. Mrs. Vennell also reported that the Critical Area Commission was in favor of the utility building being moved out of the Non-Tidal Wetlands Buffer. Kevin Wagner from MDE indicated, in an email to Mrs. Vennell, that the Department of the Environment identified that a Core of Engineers permit may be required.

Read into the record were letters from the following:

1. Adjoining neighbor Norman Wehner letter dated May 12, 2014, stating that he is in favor of a variance being granted for the utility building.
2. Critical Area Commission email dated May 20, 2014 from Julie Roberts stating that they have no comments on the variance request. However, they would support the utility building being moved out of the 25 foot Non-Tidal Wetland Buffer.
3. Kevin Wagner, email dated May 2, 2014 stated since the utility building would be located in a Non-Tidal Floodplain, a Waterway Construction permit would be required from Maryland Department of the Environment. It is also possible that other permits may be required in regards to the Non-Tidal Wetland Buffer.

With no further comments, Chairman Oldham closed the Public hearing at 7:32pm.

Ms. Hardin was concerned that the proposed utility building is in the Non-Tidal Wetland Buffer and that area will flood at some point. Chairman Oldham stated according to the application they have addressed the flooding with venting on the bottom of the utility building.

Ms. Combs inquired what type of precedence the Board of Appeals would be setting if a variance is granted allowing a utility building to be put in the Non-Tidal Wetland Buffer. Chairman Oldham stated that if it was also in the 100 year

floodplain this wouldn't be an issue and felt that if the applicants were going to put the utility building on the property line this would set a negative precedence.

Ms. Hardin inquired how much closer to the deck, would the utility building be, if it was moved out of the Non-Tidal Wetland Buffer. After much discussion it was agreed upon that the utility building could be placed in the proposed location.

Chairman Oldham called for a motion. Ms. Combs motioned to approve the variance with the following conditions:

- *Applicant proceeding at their own risk if they proceeded with permits prior to the deadline of the required appeal process.*
- *The utility building, including overhang or projections shall be located four (4) feet inside the side yard property line-south* see attached drawing*
- *The placement of the utility building from the rear yard line shall be as shown on the submitted drawing in the applicant's application.*
- *Outline on the property, the location of the proposed utility building.*
- *Only one (1) utility building per lot is permitted.*
- *Per applicant's plans, applicant shall install four (4) floodplain vents 12" x 12", totaling 144 square inches each.*
- *Anchoring the Utility Building: The utility building must be anchored to prevent flotation of the building during a flooding event. Inspection shall be required by the Town to verify the structure has been anchored. It shall be noted that the applicant has not provided or shown which mechanism of anchoring shall be used.*

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

-OLD BUSINESS-

None.

-REPORTS-

510 South Main Street, the Paradise Grill. Mrs. MacKenzie reported on alcohol related complaints. Mrs. MacKenzie has researched the Paradise Grill case file to review what the previous conditions were and asked the Board of Appeals if they would like to revisit their case or would they like the North East Police to handle the complaints as they arise. Mrs. MacKenzie recalled that the Paradise Grill was

required to give monthly reports to the Board of Appeals. Due to the lack of complaints the Board of Appeals did not require these reports any longer.

Ms. Hardin inquired about the type of complaints. Mrs. MacKenzie reported. May 10, 2014 disorderly conduct, March 15, 2014 disorderly conduct, March 2, 2014 two customers vehicles were keyed, February 8-10 people fighting, May 2, 2014 arrest following a fight, May 2, 2014 subjects fighting in parking lot, March 14, 2014 5 individuals disorderly conduct. Verbal complaints from neighbors. All incidents where between the hours of 1:30pm-11pm, with the majority of incidents 9-11pm.

Chairman Oldham clarified that the Board of Appeals had agreed on extending the hours, for the Paradise Grill with the understanding that Paradise Grill would keep a café environment, and this doesn't sound very café. The Board of Appeals concurred. Mrs. MacKenzie suggested the Town wait to see what position the Liquor Board will take and suggested that a meeting take place with the Liquor Board, Chief of Police, the Owner of Paradise Grill and a representative from the Board of Appeals. The Board was in agreement.

(A meeting was scheduled for June 6, 2014).

-MISCELLANEOUS-

None.

-NEXT MEETING-

June 26, 2014.

-ADJOURNMENT-

Ms. Fye made a motion to adjourn at 7:38 P.M. Mrs. Combs seconded the motion and the motion was approved by all.

Respectfully submitted:

Attest:

Lisa Rhoades
Planning and Zoning Assistant

Gabrielle D. Oldham
Chairman