

-NORTH EAST BOARD OF APPEALS-
North East Town Hall / 106 South Main Street
Thursday, August 27, 2009
7:00 P.M.

Chairman Gabrielle D. Oldham called the meeting to order at 7:00 p.m. Present for the meeting included members Sue Fye, Peg Hardin, Maurice Tenney, and Marian Martino. Also present was Brenda Sexton-Wilson, Town Attorney; Betsy Vennell, Director of Planning; and Bethany Brock, Planning and Zoning Assistant. Kathryn Loller was absent.

-MINUTES-

May 28, 2009

Ms. Martino made a motion to approve the May 28, 2009 minutes. Ms. Fye seconded the motion, and the motion was approved by all.

-NEW BUSINESS-

1. **Case No. A-2009-20-V: A variance request has been filed by Lowe's Home Centers, Inc., 1605 Curtis Bridge Road, Wilkesboro, North Carolina 28697. Applicant has requested a 1,280.06 square foot area variance for the purpose of installing a 1,344.06 square foot flat sign on the front of a proposed Lowe's Home Center. The property is located at the North East Station, 2512 W. Pulaski Highway, North East, Maryland 21901, also found on tax map 31, parcel 157.**

2. **Case No. A-2009-21-V: A variance request has been filed by Lowe's Home Centers, Inc., 1605 Curtis Bridge Road, Wilkesboro, North Carolina 28697. Applicant has requested a 116.34 square foot area variance and 13.8 foot height variance for the purpose of installing a 164.34 square foot ground sign; 38 feet in height. The property is located at the North East Station, 2512 W. Pulaski Highway, North East, Maryland 21901, also found on tax map 31, parcel 157.**

Matthew Allen
Bohler Engineering

Matthew Allen of Bohler Engineering was present on behalf of the applicant, Lowe's Home Improvement Centers. Mr. Allen stated that the applicant was requesting two sign size variances.

Mr. Allen stated that the applicant would like to modify the variance request for Case No. A-2009-21-V. Mr. Allen explained that Town staff had brought it to the attention of the applicant that the ground sign originally requested was much larger in proportion to the existing NE Station sign. Mr. Allen stated that the applicant was therefore modifying their request and are now requesting an 80.36 square foot ground sign, which would require a 32.36

square foot size variance. The ground sign height was reduced to 25 feet high; therefore, a variance is no longer required for the sign height.

Mr. Allen stated that the applicant was proposing to install three flat signs on the front façade of the future Lowe's Home Improvement Center store. One sign would be installed over the Lowe's store entrance. A second and third sign would be installed over the entryways to both the Lumberyard and Garden Center, respectively. Mr. Allen stated that together, all three of the flat signs totaled 1,344.06 square feet; this total included the background area behind all lettering, as the North East Zoning Ordinance requires that all backgrounds be counted towards total sign square footage.

Mr. Allen stated that, based on the permitted square footage allowance, the lettering on the flat signs was 1.7 feet tall. The applicant enlarged the size of the sign lettering, and Mr. Allen stated that he believed the enlarged sign size still meets the intent of the Zoning Ordinance. Mr. Allen explained that the front façade of the proposed Lowe's building is over 17,500 square feet, and the building will sit 650 feet off the road. Mr. Allen stated that the enlarged sign size is of reasonable scale in relation to the rest of the building, as well as in relation to the other store signs throughout North East Station. Mr. Tenney asked whether the proposed signage was the standard Lowe's signage size. Mr. Allen stated that the proposed signage was typical for other Lowe's stores. Mr. Tenney confirmed that the sign size was not directly correlated to the distance between the store and the roadway. Mr. Allen stated that the store's distance from the roadway was not the deciding factor in how large the store signs would be, and the proposed signs were typical of other Lowe's stores. Ms. Fye confirmed that the total square footage proposed encompassed all three signs, and Mr. Allen stated that 1,344.06 square feet represented the total square footage for all three proposed flat signs.

Mr. Allen explained that Ms. Vennell had presented the applicant with a sign size comparison between the proposed Lowe's ground sign and the existing North East Station sign already on site. Mr. Allen stated that the Lowe's sign dwarfed the North East Station sign; therefore, the applicant was modifying their original variance request. Mr. Allen presented the Board of Appeals with a new sign rendering, with reduced sign measurements. Mr. Allen noted that the sign had been reduced to 25 feet tall, which eliminated the need for a variance for sign height. Mr. Allen stated that the lettering on the ground sign will now measure approximately 3 feet tall. Mr. Allen stated that State Highway Administration was requiring the applicant to provide a dedicated right-turn lane into the site; this will mean that drivers will need to be able to read the ground sign from a distance of 585 feet in order to have enough time to enter into the right-turn lane to enter to the site. Mr. Allen stated that the new ground sign being proposed is slightly narrower than the originally requested sign.

Mr. Allen stated that numerous other businesses within the corporate limit of the Town of North East had been granted ground sign variances. Waffle

House was only permitted 32 square feet for a ground sign and was granted 77 square feet. C & S Warehouse was only permitted 48 square feet and was granted 159 square feet. Holiday Inn Express was only permitted 12 square feet for a ground sign and was permitted 65 square feet. Mr. Allen noted that Lowe's is proposing to install 80.36 square feet of ground sign, and is only requesting a 32 square foot variance—less than what numerous other businesses have previously been granted.

Mr. Allen indicated on a site plan where the ground sign would be installed. He stated that the ground sign will be offset from the existing North East Station ground sign. Chairman Oldham asked what the grade was at the installation sign, and Mr. Allen stated that the Lowe's ground sign may sit slightly higher than the North East Station ground sign. Mr. Tenney stated that the revised variance request was much more reasonable than the original variance request.

Ms. Vennell stated that she had met with Mr. Allen and the applicant several months ago regarding the size of the ground sign. Ms. Vennell stated that the original variance application has been amended, and she had no additional comments for the Board's consideration.

- 3. Case A-2009-24-SE: Special Exception Application from Hook, Line, & Sinkers, LLC, 33 Lake Forest Drive, Elkton, MD 21921. (Re: Pickled Herring Pub and Hot Chicks Wings, 32 S. Main Street) Expansion of Picked Herring Pub by 860 square feet into Suites 8 & 7 connecting into a new restaurant entitled "Hot Chicks Wings" consisting of 1,400 square feet, in the remainder of Suite 14. Zoning Designation is General Commercial**
- 4. Case A-2009-25-SE: Special Exception Application from Hook, Line, & Sinkers, LLC, 33 Lake Forest Drive, Elkton, MD 21921. (Re: Pickled Herring Pub and Hot Chicks Wings, 32 S. Main Street) Expansion of existing liquor license into Suites 8 & 7 and the remainder of Suite 14, as well as a portion of the privately-owned sidewalk at the front of 32 S. Main Street. Zoning Designation is General Commercial.**

Chairman Oldham noted that the Board of Appeals had been provided with comment from the Planning Commission in regard to both special exception cases. Chairman Oldham noted that the Planning Commission had met on August 18, 2009 and recommended a continuance of both Case A-2009-24-SE and Case A-2009-25-SE until the September 15, 2009 Planning Commission meeting, assuming that all outstanding requirements and conditions had been fulfilled.

Chairman Oldham stated that she agreed with the Planning Commission's recommendation to continue both special exception cases until such time that the applicant could fulfill all outstanding requirements. Ms. Fye stated that she felt it would be best if the Board of Appeals refrained from hearing either case until the applicant could meet all outstanding requirements and

the Planning Commission could hear both cases first. Mr. Tenney stated that he felt it would be a waste of time to consider either case at this time without having first received verification from the applicant that all outstanding requirements had been satisfied.

Ms. Martino motioned to request a continuance of Case A-2009-24-SE and Case A-2009-25-SE until the next Board of Appeals meeting on September 24, 2009 at 7:00 p.m., assuming that all conditions as required by the Planning Commission have been addressed and satisfied by the applicant. Mr. Tenney seconded the motion, and the motion was approved by all.

- 5. Case No. A-2009-26-V: A variance application has been filed by Paradise Grille, LLC, for the property located at 510 S. Main Street, North East, Maryland. Applicant is requesting a stream buffer variance of 98 feet for the purpose of construction which occurred prior to the receipt of an approved Construction Authorization for a new handicapped ramp and stairs which have been constructed 12 feet from the stream. Zoning District: VC. Also found on Tax Map 401; parcel 421.**

Jeff Isaacs
50 Range Road
North East, MD 21901

Jeff Isaacs was present on behalf of the applicant, Paradise Grille, LLC. Mr. Isaacs stated that Paradise Grille was required by law to have handicap-accessible bathrooms on site; however, all of the entrances into the restaurant are not handicap accessible. Mr. Isaacs stated that the lack of handicap accessibility into the restaurant was unfair to those who needed it, and it was also a safety concern, as restaurant patrons who used wheelchairs often had to be physically lifted into the restaurant. Mr. Isaacs provided the Board of Appeals members with photographs of himself and another individual lifting a restaurant patron in her wheelchair into the restaurant (Exhibits 1 – 10).

Mr. Isaacs stated that due to the lack of handicap accessibility into his restaurant, he decided to construct a handicap ramp and adjoining stairs on the side of the building. Mr. Isaacs stated that he constructed the ramp and stairs on the south side of the building because it afforded the most space for construction, and it was also the safest site to construct a handicap ramp, as it was away from traffic and the parking lot. Mr. Isaacs noted that while construction of the ramp and stairs began before permits were obtained, all necessary permits have since been attained and submitted back to the Town. Mr. Isaacs noted that he was requesting a stream buffer variance from the Board of Appeals, due to the structure's close proximity to the stream located near the southside of the restaurant. Mr. Isaacs stated that the ramp and stairs are no closer to the stream than the existing flower boxes, which were required by the Town. Mr. Isaacs stated that the handicap ramp and adjoining stairs are structurally sound; the structure is anchored to the existing porch, which is footed.

Chairman Oldham and Ms. Martino asked for clarification on the exact location of the ramp. Mr. Isaacs stated that the ramp and stairs are located at the front southside of the building; he indicated on a site plan where the ramp and stairs had been constructed. Mr. Tenney asked how handicapped patrons will access to the ramp. Mr. Isaacs stated that handicap parking is located adjacent to the entrance door, and a patron would simply walk along the front of the restaurant to reach the ramp on the southside. Chairman Oldham asked whether the structure would in any way obstruct access to the water meter. Mr. Isaacs stated that the water meter is located within close proximity to the structure; however, a hinged door provides easy access to the meter.

Mr. Tenney asked why the ramp and stairs were constructed without first obtaining the necessary permits. Mr. Isaacs stated that he received conflicting stories from Town staff in regards to whether a ramp in that location would be permitted. Ms. Vennell stated that a letter had been sent to Mr. Isaacs in April 2009 outlining all necessary procedures that would need to be followed to obtain approval for construction of a ramp and stairs in that location. Ms. Vennell stated that the Town had conferred with both Maryland Department of the Environment and the Critical Area Commission to ensure that the applicant was aware of all agency requirements prior to construction. Mr. Tenney stated that it would have been best if the applicant had obtained all of the necessary permits before starting construction.

Ms. Vennell stated that the applicant's variance application had been submitted to the Critical Area commission for review. The Critical Area Commission indicated that the applicant did not need to obtain a variance from Critical Area; however, because construction occurred without a permit, a fine had to be paid by the applicant of \$1/square foot in violation, as outlined in the North East Zoning Ordinance. Ms. Vennell stated that the applicant had paid a \$40 fine, as well as had planted two shrubs to satisfy the Critical Area Commission's requirement for mitigation. Ms. Vennell stated that the Town had no objection to the construction of a handicap ramp or stairs in the proposed location. Ms. Vennell noted that no comments had been received from either Maryland Department of the Environment or the public in regards to the variance request.

Chairman Oldham closed the public hearing closed at 7:53 p.m.

In regard to Case A-2009-20-V, Ms. Fye noted that the proposed Lowe's Home Improvement Center will be a big building set far off the road; the applicant will need a large sign just to be visible from the roadway. Ms. Martino noted that the proposed flat signs are no larger than signs located at other Lowe's stores.

Mr. Tenney motioned to approve Case A-2009-20-V for a 1,280.06 square foot variance for the purpose of installing 1,344.06 square feet of flat signage. Ms. Fye seconded the motion, and the motion was approved by all.

In regard to Case A-2009-21-V, Ms. Martino stated that she was glad that the applicant was requesting a smaller ground sign. Chairman Oldham agreed. Mr. Tenney noted that the requested variance was consistent with other variances that have been approved in the past.

Ms. Martino motioned to approve Case A-2009-21-V for a 32.36 square foot variance for the purpose of installing a 80.36 square foot ground sign. Ms. Martino noted that no variance was required for the sign height. Ms. Hardin seconded the motion, and the motion was approved by all.

In regard to Case A-2009-26-V, Ms. Fye stated that there did not seem to be any other reasonable location to construct a handicap ramp on the property. Ms. Martino stated that if the stream buffer variance was not approved, the Board of Appeals was, in essence, forcing the applicant to remain non-handicap-accessible. Mr. Tenney questioned why the issue of handicap accessibility at the site was just now being discussed. Ms. Vennell stated that this had been an ongoing discussion since the restaurant first opened; however, financial reasons probably delayed the construction of the ramp at first.

Ms. Fye stated that it bothered her that the applicant had not first applied for permits before constructing the ramp. Ms. Martino stated that the Board of Appeals could not deny the variance request just to spite the applicant.

Mr. Tenney motioned to approve Case A-2009-26-V for a 98 foot stream buffer variance for the purpose of construction which occurred prior to the receipt of an approved Construction Authorization for a new handicapped ramp and stairs which have been constructed 12 feet from the stream. Ms. Hardin seconded the motion, and the motion was approved by all.

-OLD BUSINESS-

-REPORTS-

Pickled Herring Pub – new site plan

Ms. Vennell reported that Lance Rowe had submitted a new site plan to the Town for review in regards to Special Exception Cases A-2009-24-SE and A-2009-25-SE. All Board of Appeals members were provided with this new site plan for their review.

Senate Bill 280 – mandatory training for all Board of Appeals members

Ms. Vennell reported that per Senate Bill 280, all members of all statewide Planning Commission boards and Boards of Appeals will be required to complete specified training.

Change in date for October 2009 Board of Appeals meeting

Ms. Vennell requested that the October 2009 Board of Appeals meeting be changed to the last Thursday of the month – October 29, 2009. All members of the Board of Appeals agreed to this date change.

-MISCELLANEOUS-

-NEXT MEETING-

September 24, 2009

-ADJOURNMENT-

Mr. Tenney made a motion to adjourn the meeting at 8:20 p.m. Ms. Fye seconded the motion, and the motion was approved by all.

Respectfully submitted:

Attest:

Bethany Brock
Planning and Zoning Assistant

Gabrielle D. Oldham
Chairman