

*DENTON BOARD OF APPEALS
MINUTES
June 8, 2009*

Present: Florence Doherty, Scott Brewster, Michele Wasson, and Troy Livingstone

Recording: William Kastning, Director of Planning & Codes

Visitors: Paul Mills, Tim Glass, Yu-Wei Chen, Ray Claytor, and Wenfei Uva

Called to Order: The meeting was called to order at 6:00 p.m. by Chairperson Doherty

Pledge of Allegiance

Chairperson Doherty called the meeting to order in the Denton Town Conference Room.

Chairperson Doherty introduced the panel and staff members.

Chairperson Doherty swore in all applicants.

New Business #1 – BOA-09-003 Raymond & Mary Claytor/Variance:

Chairperson Doherty read the public notice which appeared in the Times Record.

Ray Claytor made the presentation requesting an eight percentage point area variance to convert the bed and breakfast accessory structure to an accessory apartment.

Chairperson Doherty asked if there were any questions or comments.

Bill Kastning stated the Planning and Codes staff had not received any comments from the public.

Standards for granting a variance and Mr. Claytor's responses:

- a) Strict enforcement of this chapter would produce unnecessary and undue hardship as distinguished from variations sought by applicants for purposes or reasons of convenience, profit or caprice.

“Strict enforcement of this chapter would leave me with no way to produce the income needed to pay for the building, which was required to be replicated as part of the Historic District. I hope

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to change the use back to be part of the B&B as soon as the town develops to a point that I believe would support such a change.”

- b) Such hardship is the result of special conditions and/or circumstances not generally shared by other properties in the same zoning district or vicinity, and which are peculiar to the land, structure or building involved. Such conditions and/or circumstances may include but are not limited to the following: exceptional narrowness or shallowness or both, or irregular shape or topography of the property; unusual and limiting features of the building; or the effective frustration or prevention of reception of satellite programming due to the presence of a physical object or objects which obscure the "line of sight" when such object or objects cannot be easily removed.

“The size of the building was required to meet the Historic District’s requirements.”

- c) Such special conditions or circumstances must not be the result of any action or actions of the applicant.

“Again, I had to adhere to the Historic District’s requirements.”

- d) Granting of the variance must be in harmony with the general purpose and intent of the ordinance and must not be injurious to adjacent property, the character of the neighborhood or the public welfare.

“The building is already in place and used for short term rentals B&B. There is a five-unit apartment house next door.”

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- e) Granting the variance shall not allow a use expressly or by implication prohibited in the zoning district involved.

“The ordinance does not prohibit an accessory apartment, only the size in relation to the main house. The main house footprint is 2249 sq. ft. The Rental space in the cottage is 870 sq. ft. This makes the cottage about 38% of the main house footprint, so I am asking for a variance for the 8% additional sq. ft.”

- f) The condition, situation, or intended use of the property concerned is not of so general or recurring a nature as to make practicable a general amendment to the ordinance.

“I am not aware of any other location that has this issue.”

- g) The variance granted must be the minimum necessary to afford relief.

“All I am asking is to allow the existing structure, which is only a little larger than recommended, to be used as an apartment while maintaining its historic integrity.”

Chairperson Doherty called for a motion.

Mr. Brewster motioned to grant the variance to convert the accessory structure to bed and breakfast to an accessory apartment.

Ms. Wasson seconded the motion.

The Board unanimously approved the variance request.

New Business #2 – BOA-09-004 Wesleyan Heritage Community, Inc./Variance:

Chairperson Doherty read the public notice which appeared in the Times Record.

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Bill Kastning stated the Planning and Codes staff had not received any comments from the public.

Tim Glass and Dr. Paul Mills made the presentation requesting a sign variance for the height and size of the sign for the Wesleyan Center. The scale of the proposed sign will match the scale of the frontage of the property along Camp Road. The sign is designed to complement the recently completed three-tier white fence with brick pillars at various entrances to the Wesleyan Center. There was discussion of the sign's marketing appeal. All standards for granting a variance were discussed.

Chairperson Doherty asked if there were any questions or comments.

Board of Appeals members commented on the size of the letters. Discussion ensued on the sign's height and whether it could be reduced by eliminating the planter. Sign legibility standard was based upon travel speed and that no listing of all businesses was allowed.

Dr. Mills commented the sign will be lighted, irrigated, and planted.

Chairperson Doherty questioned the placement of the sign and traffic flow visibility. She questioned why the proposed sign was the minimum necessary to afford relief.

Chairperson Doherty called for a motion.

Mr. Brewster motioned to grant the size and height variance for the sign.

Motion passed 2:1. Ms. Wasson and Mr. Brewster voted Aye. Chairperson Doherty voted Nay.

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New Business #2 – BOA-09-005 Top Orchids/Variance:

Chairperson Doherty read the public notice which appeared in the Times Record and Star Democrat.

Director Kastning stated no comments were received.

Tim Glass, Yu-Wei Chen, and Wenfei Uva made the presentation for all setback variances for the proposed greenhouses. Mr. Glass explained the site plan and referred to the supplemental use chart for greenhouses and nurseries.

This lot is the most suitable in all of Denton due to its site. Mr. Glass explained that the 100-foot setbacks were appropriate for traditional greenhouses with outside storage, nursery stock, and intense retail. He indicated this greenhouse operation is strictly within the structure and transfer of nursery stock is from the greenhouse directly into delivery trucks. He illustrated how this use conforms to those currently in use in the business park. There will be very little retail.

Mr. Glass discussed each standard for granting a variance.

Chairperson Doherty asked if there were any questions or comments.

Chairperson Doherty stated this was a unique case, requiring no change to the Town code, no safety issue, no detriments, and no property value impact.

Chairperson Doherty called for a motion.

Ms. Wasson motioned to grant the setback variances. Mr. Brewster seconded the motion.

Motion passed unanimously.

The public hearing adjourned at 7:13 p.m.

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ATTEST:

William D. Kastning

DENTON BOARD OF APPEALS:

Florence Doherty

Scott Brewster

Michele Wasson

Troy Livingstone