

Denton Board of Appeals

Minutes

July 18, 2011

Present: Troy Livingstone, Florence Doherty, Dallas Lister and Tara Lightner

Recording: Donna Todd, Planning & Codes

BOA Attorney: Christopher Drummond

BOA Planner: Christopher Jakubiak

Visitors: Don Mulrine Tom Batchelor

Al McCullough Tim Glass

Dean Danielson James Ransom

Lenore Retzolk Sue Cruickshank

JOK Walsh Glenn Collins

Agnes Case Michael Owens

Jim Cox Cindy Stone

John Evans Kathy Mackel

Michael McCrea A. G. Mackel

Ann Jacobs Steve Kehoe

Doris Walls

The meeting was called to order at 6:30 p.m. by Chairperson Livingstone. Attendees stood for the Pledge of Allegiance.

Chairperson Livingstone introduced the Board of Appeals members and welcomed Tara Lightner whom was recently appointed to the board.

Chairperson Livingstone introduced Christopher Drummond, Attorney, and Christopher Jakubiak, Planner, representing the Board of Appeals.

The minutes of the June Working Session minutes for June 14 and 23, 2011, were approved as submitted.

New Business #1 – BOA-11-003 Town of Denton/Variiances:

Chairperson Livingstone read the public hearing notice that appeared in the Times Record.

Chairperson Livingstone called for a motion to adjourn into Executive Session to seek legal advice. Mr. Drummond explained that a request was made by the applicant for the recusal of a board member.

Member Doherty motioned to adjourn into Executive Session to seek legal advice. Member Lister seconded the motion. All Aye.

The meeting adjourned at 6:35 p.m. for the Executive Session.

The public hearing was called to order at 7:00 p.m.

Mr. Drummond explained the motion to obtain legal advice regarding the ethics ordinance. Member Doherty was required to make a recusal decision based on the ethics code.

Member Doherty spoke her decision not to recuse herself from the board and explained she could properly exercise her duties. Her decision will be based on if the applicant meets the criteria for a variance.

Chairperson Livingstone asked all witnesses and citizens offering testimony and comments to stand to be sworn in. Chairperson Livingstone swore in all witnesses and citizens that would be offering testimony and comments.

Steve Kehoe, Attorney representing the Town of Denton, explained the request for the five variances and how the variances are related. Three parts to the application include the restaurant, visitor's center, and the fill requirements.

Don Mulrine, Jr., Town of Denton Administrator, was the first witness to provide testimony. The Crouse Park plan involves a Heritage and Visitors Center and a restaurant to enhance the boat ramp and nature trail and create more active and passive recreation at Crouse Park.

The Board of Appeals agenda application was entered into evidence as Exhibit 1.

Mr. Kehoe and Mr. Mulrine discussed the Critical Area letter from Julie Roberts dated May 25, 2011, included in the agenda (Exhibit 1) discussing Option 2. Option 2 outlines the relocation of the restaurant.

Member Doherty asked if there was a 0 setback to the bridge for the restaurant?

Glenn Collins, Project Manager for the Denton Development Corporation, responded that there would be a 30' setback from the bridge as required by the State Highway Administration.

Mr. Collins clarified the 0' setback was from the State Highway Administration right of way and 30' setback from the edge of the bridge.

Member Doherty questioned the proposed 45' height of the proposed restaurant compared to the height of decking on the bridge.

Mr. Collins responded the height of the deck of the bridge is 35'.

Mr. Drummond asked for clarification of the building height and how was it measured, to the centerline of the roof ridge or halfway up the elevation of the roof?

Tom Batchelor, Senior Code Enforcement Officer for the Town of Denton, responded the building height is measured from the grade to the peak.

Member Doherty asked for clarification of parking for the proposed restaurant.

Mr. Kehoe explained that parking would be addressed in the site plan approval process by the Planning Commission. There are three parking proposals being considered at this time.

Chairperson Livingstone asked if the parking proposals would change the requirement for fill that is being requested at this time? Request is for 872 cubic yards and the Board can only allow the minimum necessary.

Member Doherty asked how many seats would be in the restaurant to clarify the parking requirements.

Mr. Mulrine responded the Town is required to meet the requirements of the restaurateur and CDBG funding requirements for providing jobs in the community.

Mr. Collins responded approximately 175 seats is proposed.

Member Doherty stated the requirement is 1space/5 seats and 1 space/2employees.

Mr. Kehoe responded the proposed reconfigured parking is along the roadway with pull in parking and parallel parking.

Member Doherty asked about the proposed parking under the bridge and if this was still being considered.

Mr. Kehoe stated there would be handicap parking next to the restaurant. After the proposed relocation of the restaurant, this prompted the reconfiguration of the parking.

Member Lister asked for clarification on the height of the variance request. Why does the proposed restaurant have to be 2 stories and 45'? Explain how the requested variances are minimizing the impact.

Mr. Kehoe discussed the need for the square footage in relation to the number of patrons needed for the investment of the restaurateur. The floodplain variance requires the height variance to achieve the smallest footprint with usable space of 5,000 square feet. If you reduce the height, to achieve the footprint necessary would encroach in the boat ramp launch area.

Chairperson Livingstone asked for clarification on number of stories.

Mr. Kehoe stated the proposed building is two stories but the requirement for the pilings adds an extra story. If you could build to grade, it would comply.

Al McCullough, Engineer, confirmed the floodplain study. COMAR requirements are Elevation 8, 8' above grade, for the pilings. 1' above the 100 year flood would meet the code requirement.

Chairperson Livingstone asked why the applicant is asking for an additional 7' above the requirement of 8'.

Mr. McCullough exceeded the requirement necessary to meet the COMAR requirements.

Mr. Lister asked if the requested variances could be minimized through the architectural plans since the variances are being requested prior to the design of the restaurant.

JOK Walsh, Chairman of the Denton Development Center, explained the restaurants need to be at least 4,000 square feet, on two floors to be successful.

Member Doherty asked if there was any documentation to support the comment based on the required square footage for functionality.

Mr. Collins commented the two stories as opposed to one floor were to minimize the green space and the parking.

Member Doherty asked for an explanation of the stormwater runoff for the restaurant.

The two engineers present, Tim Glass and Al McCullough, can offer testimony for the stormwater management plan.

Mr. Drummond asked if there was a deal with State Highway Administration to maintain the proposed restaurant since the Town was asking for a 0' setback?

Mr. Collins responded there was no deal with State Highway Administration but there has been discussion regarding the parking under the bridge.

Chairperson Livingstone asked if the 0' setback would impede any repairs necessary to maintain the bridge.

Mr. Kehoe responded the setback was to the State Highway right of way.

Mr. McCullough stated there was a 10' minimum needed around the building structure.

Mr. Collins referred to the aerial of Crouse Park (Exhibit 2) and showed the BEA, 25' shoreline setback, floodway line, all the constraints, and to maximize the green space and keep the parking, pointed out the area that could be built on. The area is very constrained with the placement of the building without taking out green space and parking to avoid variances. One story would meet the height variance.

Member Doherty questioned if the smallest side of the building was suppose to be parallel to the river.

Mr. McCullough responded that it was immaterial because the building would be built on pilings and would not touch the water.

Mr. Collins stated the intent is to keep the restaurant on the existing roadway to minimize the impact on the green space.

Member Doherty clarified the amount of boat trailer parking spaces lost for the proposed visitor's center with the parking lot at the visitor's center and the parking to the exit.

Mr. Collins stated two spaces.

Member Lightner asked if a one story is built and moved with no variances, how many parking spaces will be lost.

Mr. Collins stated 10-12 spaces.

Mr. Mulrine stated it would be boat parking and single parking.

Mr. Drummond asked if the spaces can be accommodated elsewhere on the property? You are asking for variances requiring a hardship. If you do not get the setback variance, can the spaces be relocated on the property?

Mr. Collins does not have any calculations but would find it highly unlikely to recreate parking elsewhere on the property.

Member Doherty asked what % of the property will be converted to parking.

Mr. Collins stated that will be part of the site plan and will be reviewed by the Planning Commission.

Member Doherty questioned the Critical Area mitigation for the lot coverage.

Member Doherty asked if arrangements had been made for the restaurant's pumping of sewage due to the amount of grease generated.

Michael McCrea from Preston responded that it would have a grease trap and it would be pumped out separately. State regulations for restaurants require it to be separate from sewer. It would be a pump station and not be gravity fed.

Member Doherty stated the importance of this subject based on the Critical Area.

Mr. McCullough stated approval has been gained from the Critical Area Commission for the approval through mitigation and the park would be in a better environmental state.

Lenore Retzolk, Denton resident, referred to and commented on a letter from Julie Roberts and noted the change would be reviewed.

Mr. Collins referred to another letter that the Critical Area Commission had evaluated three options.

Al McCullough, 410 South 2nd Street, licensed Civil Engineer for the State of Maryland, Pennsylvania, Virginia, Delaware, District of Columbia, and Hawaii. Mr. McCullough's resume entered as Exhibit 3. Mr. McCullough has been involved since 2005 in the development of Crouse Park. A regulatory time log entered as Exhibit 4 was distributed. Three issues for the floodplain are described in the floodplain narrative included in Exhibit 1. The proposed structures and road improvements will not change the flow behavior of the Choptank River. The elevation used was 11', which is one foot above the 500 year storm elevation. Mr. McCullough used a more conservative number and added height to be above the minimum height requirement to be safe.

Member Doherty asked what the mean high tide is.

Mr. McCullough responded he would get an answer.

Mr. McCullough commented on the proposed roadway improvements and that there would be no appreciable change. Raise the road up and the road will be above the tidal influence and water will flow to the pond.

Member Doherty asked if there was a regulation with the State of Maryland regarding the fill.

Mr. McCullough commented that the State of Maryland has issued two tidal wetland licenses and there are two Nontidals authorizations that were extended twice.

Member Doherty asked if the State of Maryland authorized the fill for the roadway.

Mr. McCullough will be submitting this report for authorization for the roadway to the State of Maryland.

Mr. Drummond stated he was not aware that the State of Maryland regulates the fill landward from the mean high tide line.

Mr. McCullough stated the State of Maryland will have to authorize the fill and how it affects the flood elevation.

Mr. Kehoe entered photos Exhibit 5 A-G.

Mr. Collins stated that Dave Guignet, State MDE Floodplain Coordinator, has reviewed Mr. McCullough's report and provided a letter.

Mr. McCullough stated the 872 cubic yards of fill is to alleviate the flooding of the roadway and this is the minimum necessary to elevate the roadway.

Member Lightner asked if this would be the minimum necessary for the fill requirement.

Mr. McCullough responded there is about 1' of water in the roadway, and I assumed about 1.2 feet for the fill. It will be raised about 6" above the current sidewalk. It will not create a ponding condition.

Tim Glass, Lane Engineering, involved with the project since 2008, performed the stormwater management analysis and made comments. There is one single pond to meet the water quality requirements. Mr. Glass designed the stormwater management facility for the Visitors Center. Currently there is no stormwater management plan for Crouse Park. Stormwater runoff would end up in the pond area. In the high tide, the flooding will stay off the roadway. Two main reasons to improve the roadway are for maintenance and safety. The Town relocated the basketball court to the Sharp Road Park. The Fifth Avenue road improvements provided a walkway and access to the Sharp Road Park.

Al McCullough stated that the buildings have to be supported by pilings based on a geotechnical analysis of the material underneath the proposed sites. Pile foundations will be longer lived than the roadway.

Chairperson Livingstone would like clarification on why you need additional footage for the height of the proposed restaurant.

Mr. McCullough has proposed 8' above existing grade level.

Member Doherty questioned can the Visitors Center and Restaurant be moved? Can you reposition the layout of the proposed buildings?

Mr. Mulrine explained that the funding stream was approved and allocated to the current location for the Visitors Center. The Critical Area Commission recommended the placement of the restaurant. The funding of \$986,000 was allocated for this project and if the project is changed, the funding is lost. SHA (State Highway Administration) is supporting this project and funding is locked into this location.

Mr. Kehoe explained the small peninsula causes the variances requested.

JOK Walsh, Chairman of the Denton Development Corporation, spent several years in the planning and funding process.

Chairperson Livingstone stated that all requests need to meet the requirements of the variances in order to grant the variance.

Mr. Kehoe stated there are three footprints before the Board for requiring variances in order to proceed with the project. The three footprints are the roadway, Visitors Center, and waterfront restaurant. The purpose of the project was to improve the park's passive and active recreation. This is the only parcel that a waterfront restaurant and Visitors Center can be located.

Member Doherty stated that the Floodplain Ordinance is strict and must be enforced.

Mr. McCullough has worked with the State and Federal agencies to mitigate the impact.

Mr. Jakubiak reminded the applicants that the Board requires information on how the standards for granting a variance that are set forth the floodplain are to be met. The Town is following the ordinance, and the Town needs to explain why the application needs the variance to meet the standards. The Board needs specific answers to determine if the application meets the standards. This program allows development in the floodplain if certain conditions are met and certain facts presented. Mr. Kehoe stated the program of the space and why does the Visitors Center need to be where it is. Is it reasonable?

Mr. Collins distributed a narrative, Exhibit 6, to the Board. The Town wants to develop the park to attract people to Denton and help the downtown businesses. Over the years, market studies have been completed and Crouse Park was identified to be developed to attract people. Exhibit 7, GMB Improvements Plan, was distributed to the Board. The variance requested is due to the requirement of the Flood protection setback of 100' which does not allow to build within a 100', and the Critical Area designation of IDA/BEA which only permits to build within a 100'. If both guidelines are obeyed, there is no building area.

Mr. Jakubiak confirmed this critically important point for the Board members.

Mr. Collins stated the hardship for the restaurant is that it has to be placed within the BEA (Buffer Exemption Area) which creates the need for a variance. The Critical Area Commission is very reluctant to create more BEA and would like the Town to stay within the existing BEA area. A meeting with the Critical Area Commission led to the options provided by the Critical Area Commission. The project's site placement is due to the existing drainage ditch to the Choptank without creating more channels to handle the discharge. The back corner of the restaurant is 35' from the water line. The Town Council has voted over the years to move

forward with this project to improve the Town. The exceptional hardship is that there is not a lot of land that can be built on due to the manmade and natural constraints that predate the project. The Town wants to keep the pavilion and restroom for the boaters.

Mr. Kehoe distributed the Retail Market Study as Exhibit 8, noting pages 15-16, to the Board members.

Mr. Collins explained the Retail Market Study's concept of leakage to the Board members. Leakage is the percentage of local market that decides to shop elsewhere than Denton for their goods and services.

Mr. Kehoe noted pages 21-22 states that Denton can support two to five new restaurants and that an anchor restaurant at this location can serve as a catalyst for other restaurants.

Mr. Collins stated that the purpose of the project is to make Denton a restaurant destination that will lead tourists to shopping and other activities in Denton.

Mr. Drummond stated these are public policy issues that are beyond the Board of Appeals. If the Town wants these things, why doesn't the Town create legislation to allow it?

Member Lightner commented that the Board of Appeals does not make a decision based on growth or no growth. Focus on the purpose of the variances.

Mr. Kehoe stated the Town has the right to change the ordinance.

Mr. Collins stated the constraints of the site cause the placement. The Visitors Center's purpose and function is to be an eco-educational center for the Choptank River and will overlook the Choptank River. The hardship is that without the variances, the site will not be able to be developed. Granting the variances will not increase the flood heights. Funding is being provided by grants. The maintenance and operation plan would not be funded by the Town. This is the only place to build the project to take advantage of the river's active and passive recreation and not compromise the proposed stormwater and mitigation areas.

Mr. Kehoe stated to build on the existing parking lot would interfere with the boat activities and building closer to the road would compromise the stormwater management.

Mr. Mulrine stated CDBG has requirements that have to be met for the restaurant by the developer.

Member Doherty asked if the Town will be held responsible for the loan for the restaurant if there is no restaurateur. Public extraordinary expense?

Mr. Walsh stated the restaurant will only proceed if there is a restaurateur. The Town will not be responsible for the loan.

Member Doherty clarified the fact that there will only be a restaurant if there is a restaurateur and the restaurant is not being built on spec. Applicant is requesting a variance for a space but will not create a restaurant without a developer?

Mr. Mulrine stated without the variances there is no RFP to solicit developers.

Member Lightner clarified the fact that in order to attract a restaurateur there needs to be a spec to design the building. A restaurateur needs to know the square footage.

Mr. Mulrine confirmed that is why the variances are necessary to provide the specs to the restaurateur. All developers are stating in order to make a return on their investment, the building needs to be 5,000 square feet.

Mr. Collins stated that the Town's hardship is that the variances are necessary to develop the park and enhance the community. The Town has just assumed responsibility of the CDBG funding from the County but no monies have been spent by the Town.

Member Doherty asked about the maintenance of the marina?

Mr. Walsh stated the restaurateur will have the option to run the marina. Most restaurateurs want to run the marinas because it's more business. It will not be an extra expense for the restaurateur unless they wish to assume it.

Mr. Mulrine stated the boat fees from the boaters are used to pay for the dredging.

Chairperson Livingstone would like to confirm the minimum necessary for the height of the building.

Mr. Collins stated the design of the proposed restaurant would be in character with the Visitor's Center and that is how the 45' was derived. The plan is to build a restaurant that complements the surroundings.

Chairperson Livingstone commented that if the hardship is for 8' above grade and 30' for the building, then why is the applicant requesting 45'.

Mr. Collins asked if the Board of Appeals has discretion to adjust the height.

Mr. Drummond responded the Board has discretion with the height.

Chairperson Livingstone would like to confirm the minimum height necessary to build the restaurant? Variances are for hardships beyond control.

Member Doherty confirmed with the applicant that the minimum variance necessary for the height is 8' which would allow a 38' building.

Mr. Drummond clarified that a critical area variance is not necessary for the restaurant if placed in the BEA.

Chairperson Livingstone stated there are two other variances necessary for the restaurant. There is a 0' side setback and 25' from the riverbank.

Mr. Drummond stated the parking plan is a site plan consideration for the Planning Commission to review.

Mr. Jakubiak stated parking could be addressed as a public health and safety issue.

Chairperson Livingstone expressed concerns about the parking.

Mr. Mulrine stated that fixing the road would alleviate the flooding and help with the parking. The proposed site for the restaurant was designated to be removed to allow for the mitigation.

Mr. Collins referred to the parking concept plan, Exhibit 9. The parking plan was prepared by Mr. Glass and approved by the Denton Planning Commission that addressed some of the parking needs.

Mr. Kehoe distributed an aerial view of Crouse Park, Exhibit 10, to the Board.

Mr. Jakubiak asked what happens in the 100 year flood event to the cars in the parking spaces. Do they flood or float away.

Mr. McCullough responded it would be fewer than 3'. It was tidal waters.

Mr. Jakubiak asked how the normal tidal flooding affects the area.

Mr. McCullough responded that the elevation would be raised above the normal tide floods. Essentially there would be no flooding in the parking area.

Chairperson Livingstone adjourned the meeting at 10:10 p.m. for a break.

Chairperson Livingstone called the meeting back to order at 10:30 p.m.

Chairperson Livingstone proceeded with remarks and comments from the public.

Dr. Agnes Case stated her opinion that she was not against the project just the place. She distributed a copy of her opinion to the Board.

Member Lightner clarified that the Town Council had voted for the project.

Mr. Mulrine clarified that the nature trail is in place and the Town is already responsible for the maintenance of the nature trail.

Mr. Danielson questioned the zoning of the park?

Mr. Collins stated it was originally zoned Central Commercial (CC). It was changed with the Comprehensive Plan.

Mr. Danielson asked if the Critical Area Map was changed.

Mr. Collins responded yes. It was corrected by the Critical Area Commission and changed back to the IDA/BEA designation.

Member Lightner clarified the minimum height of the building requested is 38'.

Mr. Mulrine responded 38' is the minimum height necessary to construct the building.

Chairperson Livingstone stated the code allows 30'.

Mr. Drummond questioned the 0' side yard setback. How will you get emergency repairs and emergency vehicles through if you don't have an agreement with State Highway?

Chairperson Livingstone would like to know the minimum necessary for the side yard setback.

Mr. Mulrine stated it was 30' from the bridge.

Member Lister expressed concern that all alternatives and resources had not been exhausted and would like a list of how the restaurant impacts the surroundings similar to the written proposal that was distributed for the Visitor's Center. What is the minimum variance necessary to complete the project and why are the variances being requested.

Mr. Drummond clarified that the building needs to be in the BEA and is concerned about the fire lane access.

Member Lightner would like to know if the 10' setback would be the minimum necessary.

Member Doherty asked the Chairperson to entertain the motion to postpone a decision until next month's meeting since new information was distributed to the Board for review and to listen to public remarks and comments before adjourning due to the late hour.

Member Lister seconded. All Aye.

Michael Owens, owner of Color and Clay, expressed support for the project.

Kathy Mackel, Caroline County Office of Tourism, expressed support for the project. The bus tours can't come into Denton because we do not have public restrooms or a restaurant to accommodate bus tours.

Mr. Evans, Times Record, would like to know how many variances affect the Visitors Center and how many variances affect the restaurant? He expressed support for the Visitors Center.

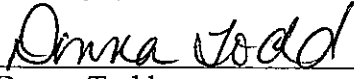
Member Doherty moved to close the meeting.

Chairperson Livingstone moved to continue the meeting on Monday, August 8, 2011, at 6:30 p.m.

Member Lister seconded the motion. All Aye.

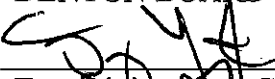
The public hearing adjourned at 11:15 p.m.

ATTEST:




Donna Todd

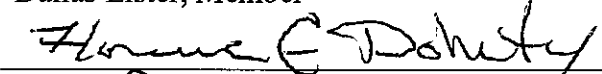
DENTON BOARD OF APPEALS:



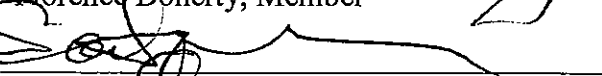
Troy Livingstone, Chairperson



Dallas Lister, Member



Florence Doherty, Member



Tara Lightner, Alternate

