

*DENTON BOARD OF APPEALS
MINUTES
September 14, 2015*

Present: Troy Livingstone, Florence Doherty, Dallas Lister, and Jennifer Shull

Recording: Christopher Drummond, Town Attorney
Donald H. Mulrine, Jr., Town Administrator

Visitors: Brian Tyler, Paula Wright, Jeff Wright, David Keller, Amy Fenzel,
JOK Walsh, Kathy Mackel, Steve Konopelski, and Joanne Farina

Called to Order: The meeting was called to order at 6:30 p.m. by Chairperson Livingstone

The Denton Town Council appointed Jennifer Shull as a Temporary Alternate Member for the Board of Appeals on September 3, 2015, due to the recusal of Dallas Lister and Florence Doherty and the Alternate Member, Brian Tyler, is the applicant.

Attendees stood for the Pledge of Allegiance.

Chairperson Livingstone asked Mr. Tyler if he was comfortable proceeding with two members due to two members recusing themselves as there could be a split decision.

Mr. Tyler responded yes.

New Business #1 -- BOA-15-004 Brian Tyler, Tyler Holdings LLC/ Special

Exception:

Chairperson Livingstone read the notice of public hearing into the record that was properly noticed in the Times Record.

Chairperson Livingstone swore in the applicant.

Brian Tyler gave a brief introduction of the request for the combination use at 202-208 Market Street. Brian Tyler is the principal owner of the Market Street Public House at the corner of Market Street and plans to expand the restaurant into the two adjacent storefronts with apartments on the second floor. Mr. Tyler is interested in refurbishing downtown Denton.

*DENTON BOARD OF APPEALS
MINUTES
September 14, 2015*

The prerequisite from Provident State Bank for the restaurant expansion loan was to achieve a plan to cashflow this project. Currently, there are two units on the second floor. The addition of the four units would ensure the cashflow for the restaurant expansion.

Chairperson Livingstone swore in all visitors.

Chairperson Livingstone noted that the Planning Commission made a favorable recommendation for the proposed combination use and parking in the Central Business Commercial District (CBC) is satisfied utilizing the municipal parking lots and on street parking areas. Joanne Farina contacted the Town regarding the trash management of the proposed apartments.

JOK Walsh, closest local resident, and retired Economic Development Professional spoke in favor of the proposed project for the reuse or adaptive use of the historic building and revitalization of the downtown. Mr. Tyler's business is the keystone business in the downtown for other commercial projects. Mr. Walsh also supports the project as an owner-occupied resident located near this project.

Kathy Mackel, Director of Tourism for Caroline County and a resident of Denton, spoke in favor of the proposed project and confirmed the Market Street Public House is one of the key anchors of the downtown for tourism.

Steve Konopelski, owner of Turnbridge Point Bed and Breakfast, spoke in favor of the project. Currently, there are two restaurants in the downtown for occupants of the Bed and Breakfast to eat meals, and Mr. Tyler's restaurant is the only place serving lunch.

Jeff Wright, Wright Real Estate, has sold the entire structure several times and Mr. Tyler's restaurant has been a successful business. Mr. Wright's business is located in the downtown and currently owns nine apartments in the downtown. Mr. Wright noted that his

*DENTON BOARD OF APPEALS
MINUTES
September 14, 2015*

downtown rentals have not experienced any issues with parking or trash. Mr. Wright supports this combination use and does not expect any issues.

Chairperson Livingstone read the requirements to grant the special exception and offered findings of fact for each (in italics below):

In granting a special exception, the Board shall make findings of fact consistent with the provisions of this chapter. The Board shall grant a special exception only if it finds adequate evidence that any proposed use submitted for a special exception will meet all of the standards listed for the proposed uses. The Board shall, among other things, require that any proposed use and location be:

- a) In accord with the Town's Comprehensive Plan and consistent with the spirit, purposes, and intent of this Chapter 128, Zoning.

Request is consistent with the spirit, purposes, and intent of Zoning Chapter 128. The proposed combination use is consistent with the goal of encouraging viable uses in the Central Business Commercial (CBC) District.

- b) Suitable for the property in question and designed to be in harmony with and appropriate in appearance with the existing or intended character of the general vicinity.

The request will not change the appearance or character of the property and is suitable and consistent with nearby structures and their residential and commercial uses.

- c) Suitable in terms of effects on street traffic and safety with adequate access arrangements to protect streets from undue congestion and hazard.

Street traffic will not change, and this change will not contribute to congestion or traffic hazards. Sufficient parking exists in on street parking and municipal parking areas.

*DENTON BOARD OF APPEALS
MINUTES
September 14, 2015*

- d) Not detrimental to the property values of adjacent development, do not adversely affect the health, safety, and general welfare of residents of the area, and will not adversely affect the area and surrounding property with adverse environmental effects such as undue smoke, odor, noise, improper drainage, or inadequate access.

The renovation and proposed use of the property will increase the value of the adjacent development. The impact of business operations will not adversely affect the area and surrounding property.

The Board may impose whatever conditions regarding layout, circulation, and performance it deems necessary to insure that any proposed development will secure substantially the objectives of this chapter. Violation of such conditions and safeguards, when made a part of the terms under which the special exception is granted, shall be deemed a violation of this chapter. The Board shall consider recommendations of the Planning Commission prior to rendering a decision. The Planning Commission shall review and comment on all applications for special exceptions prior to review and decision by the Board. The applicant for a special exception shall have the burden of proof on all points material to the application, which shall include the burden of presenting credible evidence as to each material issue and the burden of persuasion on each material issue. The Board of Appeals may disregard evidence, even if uncontroverted by an opposing party, if the Board finds such evidence not to be credible.

Ms. Shull noted that the purpose of the CBC District is to revitalize the downtown. Historically, there was always a mixture of use, and the shop owners lived above their shops. As shop owners became more prestigious, they moved in homes and rented their second floor spaces for residential. The mixture of apartments and businesses have always been part of a thriving

*DENTON BOARD OF APPEALS
MINUTES
September 14, 2015*

business district. Apartments in the CBC District utilize the parking areas at different times than the downtown businesses. The 15% general landscape does not apply to the CBC District.

Ms. Shull inquired if the Planning Commission addressed the landscape requirement.

Mr. Mulrine noted that this was not an issue with the Planning Commission nor was the parking.

Ms. Shull noted that this is impervious surface and there is not sufficient space available to meet the landscape requirement so it was not a concern of the Planning Commission.

Mr. Drummond agreed the Zoning Code was conflicted and could be better written. Mr. Drummond's interpretation that only 128-95(A) should apply to the CBC District. There is no minimum off street parking required for multifamily housing. There is no minimum open space requirement for the CBC District.

Chairperson Livingstone's interpretation is that only six units are permitted and that a fee in lieu can be required for the landscape requirement, and that the Planning Commission can require this fee.

Ms. Shull noted that the Planning Commission heard this case and did not require a fee in lieu and has made their recommendation for this application, and that the Town's attorney has provided legal advice. The Planning Commission may need to amend the Zoning Code for clarity per the recommendation of the attorney.

Mr. Tyler will provide the trash management plan in the final architectural draft and an area will be designated for trash. The Market Street Public House has a dumpster and is emptied twice a week and is in the process of adding recycle bins to that general area.

Ms. Shull requested clarification for the architectural plans, additional seating capacity, liquor license, and laundry facilities.

*DENTON BOARD OF APPEALS
MINUTES
September 14, 2015*

Mr. Tyler explained there is currently an opening to the adjacent space for the restaurant expansion. There will be two additional openings for the restaurant, one for the restrooms and one in the front. Seating capacity is currently ninety (90), and the additional seating capacity for the restaurant expansion will be ninety (90). The third space seating capacity could be one hundred fifty (150+) for banquets. Mr. Tyler plans to furnish the events and his current liquor license will be sufficient for the expansion and the banquet room. Laundry facilities will be added to the second floor.

Ms. Doherty asked for clarification on the exiting plan for the apartments.

Mr. Tyler noted that the windows are boarded up and the boards will be removed. A microbrewery will be in the room behind the rental hall on the first floor.

Joanne Farina was sworn in and noted there is a trash problem with the existing apartments that face her business on Third Street. Brian Tyler's business is not the problem because his trash is contained in a dumpster. Mrs. Farina is picking up trash daily.

Mr. Drummond questioned if the apartments were required to be ADA accessible.

Mr. Tyler's building is grandfathered and apartments are not ADA accessible.

Mr. Tyler also noted there is a trash problem in that area, and he picks up trash on a daily basis.

Mr. Tyler's first floor for the restaurant will be ADA accessible.

Mr. Drummond advised the Board for multifamily housing/apartments, Town Code §128-95(A) applies to the CBC District. The CBC District does not require multifamily housing to meet open space requirements or parking requirements. The Town Code in §128-95(A) & (B) and §128-97(A) need to be amended.

*DENTON BOARD OF APPEALS
MINUTES
September 14, 2015*

Ms. Shull recommended stating in the special exception request that the open space requirement is not applicable due to the parcel is all paved surface. In the findings of this application, Town Code §128-95(B)(4) has been reviewed and found not to pertain because this is a redevelopment project in the IDA Critical Area and all surface is covered with building or pavement therefore it would be impractical as a redevelopment project.

Mr. Lister requested information on the egress plan and approval from the Fire Marshall.

Mr. Tyler stated that architectural sealed plans will be reviewed and approved by the State Fire Marshall. No building permit will be issued without the Fire Marshall approval.

Ms. Shull motioned to grant the special exception request as presented before the Board for six apartments and mixed use for property under purchase contract by Brian Tyler, Tyler Holdings LLC, for the property located at 202-208 Market Street, Tax Map 103, Parcel 106, zoned Central Business Commercial (CBC), and the applicant be permitted two or more principal uses by the special exception. The applicant is permitted for six apartments on the second floor, the Board noted and reviewed the discussion on landscaping and open space requirements and found that it was not applicable to this application because it is a redevelopment project, and it is not a new construction. In addition, this project is located in the IDA Critical Area and is a CBC project and the entire surface is paved or covered by buildings making this requirement impractical.

Chairperson Livingstone seconded the motion. The motion passed 2:0.

Staff Item: None.

The public hearing adjourned at 7:10 p.m.

*DENTON BOARD OF APPEALS
MINUTES
September 14, 2015*

ATTEST:

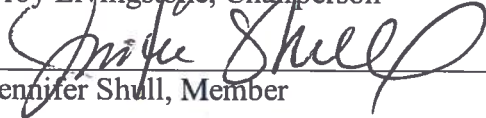


Christopher Drummond, Town Attorney

DENTON BOARD OF APPEALS:



Troy Livingstone, Chairperson



Jennifer Shull, Member