

*DENTON BOARD OF APPEALS
MINUTES
March 14, 2011*

Present: Troy Livingstone, Brittani Thomas, Florence Doherty and Dallas Lister

Recording: William Kastning, Director of Planning & Codes

Town Attorney: Stephen Kehoe

Visitors: John Wilburt and Don Mulrine

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

Attendees stood for the Pledge of Allegiance.

Chairperson Livingstone asked for nominations for Chairperson and Vice Chairperson. Ms. Doherty nominated Mr. Livingstone, whose nomination was seconded by Ms. Thomas. Mr. Livingstone's nomination was approved unanimously. Ms. Doherty nominated Ms. Thomas for Vice Chairperson, whose nomination was seconded by Chairperson Livingstone. Ms. Thomas's nomination was approved unanimously.

New Business #1 – BOA-11-001 John and Dawn Wilburt Special Exception:

Mr. Wilburt was sworn in by Attorney Kehoe.

Mr. Kastning indicated that the application was properly noticed in the Times-Record, a sign had been posted on the property and all property owners within 200 feet were sent letters by the applicant. Mr. Kastning also stated that property taxes were current.

Applicants are requesting approval to increase the size of their family child care center in their rental home from eight to 12 children. Their center is currently licensed by the state for up to eight children and state is awaiting Town approval before issuing a new license to accommodate the increase in number of children.

Board members previously received the Director of Planning's memo reviewing the application and referencing items for the Board to consider.

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Board members were notified of the positive recommendation by the Planning Commission supporting the special exception.

Board members inquired if the Planning and Codes Department had received any comments from those notified about the application. Planning Director Kastning indicated one nearby resident, Ursula Owens, had called the office to express displeasure over increased traffic and indicated she would send a letter, however no letter from Ms. Owens was received. No other communication, written or oral, from any other individual was received by the department.

During his testimony, Mr. Wilburt introduced a letter from Mr. Marshall A. Becker, a neighbor on Willow Court, who gave his support of the Wilburts' application. Mr. Wilburt conceded Ms. Owens contention that traffic would increase somewhat on Weeping Willow Court due to the increase in number of children from eight to 12. Mr. Wilburt also indicated the center had received a \$23,000 grant from the state for its operation.

Mr. Wilburt stated that the property issues identified by the Planning and Codes enforcement officer, Tom Batchelor have been resolved (appropriate rear stairs' landing size and two hand rails). He also stated that the Fire Marshall had inspected the property and his requirements, to place additional fire extinguishers, emergency lighting, and emergency exit signs, have been completed.

Ms. Doherty inquired about the height of the gate latches. Mr. Wilburt replied they were at a height accessible by some of the taller children. He agreed to install additional latches at a height of 56 inches.

Mr. Wiburt testified that the normal hours of operation would continue, in general from 6:00 a.m. to 5:00 p.m. He indicated, from time-to-time children will sleep over when parents' jobs keep them from home.

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When asked about the number of employees, Mr. Wiburt indicated there will be two full-time employees and one part-time employee. He indicated on-site parking to accommodate these individuals was sufficient although at times their cars would be parked on the street to allow children chalk playtime on the parking apron.

Board members asked whether the owner of the property concurs with the application. Mr. Wilburt indicated he does as evidenced by his co-signing the application. Mr. Wilburt also indicated the Savannah Overlook Homeowners' Association provided a letter of support.

Attorney Kehoe indicated that the special exception runs with the land. If ownership was to change and the new owners had no interest in a child care center, the use would lapse after six months as dictated by the Town Code. Otherwise new owners such as the Wilburts, if they decided to purchase the property, would be able to continue offering the expanded child care center services.

When asked about whether the nearby propane gas farm was of any concern, Mr. Wilburt indicated that it was not and access to it was secured by two fences, one on his property and another surrounding the tank farm.

Board members determined that there would be no detrimental effect on nearby property values and the use is suitable and desirable to be in harmony with the neighborhood. In addition, the Board determined the use to be consistent with the Town's Comprehensive Plan and the Town's code, specifically Chapter 128-Zoning. Lastly, they determined the slight increase in traffic on the cul-de-sac was not harmful to safety.

Chairperson Livingstone asked for a motion. Ms. Doherty made the motion to approve the application as it 1) was consistent with the comprehensive plan, 2) did not negatively impact nearby property values, 3) did not affect road safety, and 4) was in harmony with the

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neighborhood. Her motion also conditioned the approval on placement of gate latches at a height of 56 inches, licensing by the state for up to 12 children, and Planning and Codes confirmation that the landing and step enhancements had been made. Ms. Thomas seconded the motion which passed unanimously among the three regular members.

Mr. Wilburt requested an approval letter as soon as possible in order to communicate the approval to the state, which conditioned the new license upon gaining the Town's approval. Planning Director Kastning indicated a letter would be sent this week.

Staff Item:

Attorney Kehoe provided a quick overview of the new state ethics requirements and indicated the Board had acted in a professional and appropriate manner with Wilburts' application.

The public hearing adjourned at 7:30 p.m.

ATTEST:

DENTON BOARD OF APPEALS:

William D. Kastning, Director

Troy Livingstone, Chairperson

Brittani Thomas, Vice Chairperson

Florence Doherty, Member

Dallas Lister, Alternate