

*DENTON BOARD OF APPEALS
MINUTES
December 8, 2014*

Present: Troy Livingstone, Florence Doherty and Brian Tyler (Arrived 6:40 p.m.)

Absent: Dallas Lister

Recording: Donna Todd
Christopher Drummond, Town Attorney

Visitors: Rebecca Faggio

Called to Order: The meeting was called to order at 6:35 p.m. by Chairperson Livingstone

Attendees stood for the Pledge of Allegiance.

The November 10, 2014, minutes were approved.

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

Mr. Tyler disclosed he is a resident of Mallard Landing and recused himself.

New Business #1 – BOA-14-003 Rebecca Faggio/ Special Exception:

Chairperson Livingstone swore in the applicant, Rebecca Faggio.

Ms. Faggio gave a brief introduction of the request for the increase in capacity of her existing daycare. Applicant is currently licensed for eight (8) children and has made application to the State for a large family daycare for twelve (12) children. This requires an additional employee and she has met that requirement, and currently has two (2) part-time employees.

Exhibit #1, State Fire Marshall's Fire Safety Inspection Report was provided to the Board. Applicant had to install emergency lighting, fire extinguishers, emergency exit signs, and have her fire sprinkler inspected.

Exhibit #2, Maryland State Department of Education Family Child Care Home Review was provided to the Board.

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Vice Chairperson asked for clarification of the total square feet of outdoor recreational area.

Ms. Faggio referred to the site plan and survey provided in her application.

The Town Code does not allow the front yard to be used in the calculation for the outdoor recreational area.

Chairperson Livingstone stated there were no comments from the public. Support letters were included with the application.

Ms. Faggio stated she parks her vehicles in the guest parking lot and the three parking spaces in front of her townhome are available for parents for pick up and drop off. If the parents park elsewhere in the parking lot, there is a \$25 fine. Street parking is also available and traffic flows around the circle.

Mr. Drummond requested clarification on the rear yard calculation. Mr. Drummond referred to the photographs in the application for the outdoor area and asked if the entire grassy area behind the townhome was a common area for everyone to use. If this is the case, the usable outdoor recreational area will be greater than 1200 square feet and will meet the requirement of the Town Code.

Ms. Faggio confirmed this was correct. The applicant stated there would be an average of no more than five (5) children outside at one time because she would split the children into age groups. Her employee would supervise the remainder of the children. In addition, Ms. Faggio utilizes the community playground for their outdoor recreation.

Mr. Drummond requested the State requirements for outdoor recreation.

Ms. Faggio responded 75 square feet per child for outdoor recreation.

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Mr. Drummond stated the State licensing program may pre-empt the local jurisdiction's requirements for the daycare license.

The Planning Commission made a favorable recommendation to approve the special exception.

Ms. Faggio contacted the Mallard Landing Home Owner's Association (HOA) and requested an approval letter. The HOA will approve if the application is approved by the Town. The bylaws allow family daycare, and Ms. Faggio did not receive any written statement from the HOA as was requested.

Vice Chairperson Doherty motioned to grant the special exception for the property located at 1903 Blue Heron Drive for an increase in daycare capacity from eight (8) children to twelve (12) children conditioned upon the applicant provides a copy of the daycare license stating twelve children (12) were approved by the State.

Vice Chairperson Doherty read the requirements to grant the special exception:

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 Planning Commission made a favorable recommendation, therefore, it was keeping with the intent of Chapter 128, Zoning.

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- 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.

No comments were received from the neighbors, and the request will not change the appearance or character of the vicinity.

- 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 secured parking is controlled by the applicant in the form of fines so it does not affect other property owners in the surrounding area.

- 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.

Daycares are allowed and the provision of quality daycare is beneficial to the residents of the area. The property was inspected and approved by the Fire Marshall. Applicant has provided adequate access for daycare parents.

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

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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.

The Board finds that the applicant has met the outdoor recreation area requirements utilizing the common area. The Board finds that the Maryland State Department of Education (MSDE) has approved the additional capacity of the increase to twelve (12) children and finds their regulations may supersede the Town's requirements. MSDE evaluates the health and safety standards for daycares.

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

Staff Item:

Chairperson Livingstone discussed the meeting time, and the consensus of the Board was the time should remain at 6:30 p.m.

Chairperson Livingstone noted the terms defined in Town Code §128-8 Terms defined for Child Daycare are regulated by the Maryland State Department of Education and not the Department of Human Resources. Thus, this will require a text amendment to the Town Code and will be referred to the Planning Commission.

The public hearing adjourned at 7:20 p.m.

