

BEFORE THE TOWN OF DENTON BOARD OF APPEALS

**IN RE: REDE, LLC
APPLICATION FOR
SPECIAL EXCEPTION**

Case No. BOA-18-002

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MINUTES, FINDINGS OF FACT, CONCLUSIONS AND DECISION

The Board of Appeals held a Public Hearing on Monday, September 10, 2018, at 6:30 p.m., at the Denton Town Office to consider an application for a Special Exception for REDE, LLC. (hereinafter, the “Applicant”), from the strict application of the Town of Denton Zoning Code (Chapter 128-01, et seq.).

Board Members present were Chairperson Troy Livingstone and Vice Chairperson Florence Doherty. Also present were Counsel for the Board, Chris Drummond and Administrative Aide, Donna Todd. The Applicant’s Attorney and Representative, Ryan Showalter was present.

Two Board of Appeals Members were absent, Jennifer Shull and Harry Wyre.

Other interested persons present include Angela Visintainer, Amanda Travers, Elizabeth Pinkett, Chris Vallee, and Michael Cusimano.

At the conclusion of the Board's receipt of testimony and exhibits, Mr. Livingstone and Ms. Doherty discussed the merits of the application. Mr. Showalter requested that the Board consider postponing a final decision until the full Board was available to rule on the application. Mr. Livingstone and Ms. Doherty agreed. The hearing was suspended until the next regularly scheduled meeting on October 8, 2018 at 6:30 p.m.

On Monday, October 8, 2018, at 6:30 p.m., the Board reconvened the hearing. Board Members present were Chairperson Troy Livingstone, Vice Chairperson Florence Doherty, Board Member Jennifer Shull, and Alternate Member Harry Wyre. Also present were Counsel for the Board, Chris Drummond and Administrative Aide, Donna Todd. The Applicant’s Attorney and Representative, Ryan Showalter was present.

Other interested persons present include Elizabeth Pinkett, Chris Vallee, Becky Loukides, and Nick Loukides.

PROCEDURAL HISTORY

On August 1, 2018, the Applicant filed an application with the Board of Appeals seeking Special Exception approval for the construction of two medical office buildings totaling 9,999 square feet to be located at the corner of Caroline and Sixth Streets, Caroline County Tax Map 103, Parcel 1176.

The application was advertised in the Times Record for two consecutive weeks on August 22nd and 29th, a sign was posted on the property on August 23rd, and all property owners within 200 feet of the property received written notification of the Public Hearing. All public notice requirements have been satisfied.

At the request of the Applicant, the Public Hearing was continued until Monday, October 8, 2018, at 6:30 p.m., when all Board Members would be present.

The application was re-advertised in the Times Record for two consecutive weeks on September 19th and 26th, a sign was posted on the property on September 17th, and all property owners within 200 feet of the property and Chris Vallee received written notification of the Public Hearing. All public notice requirements have been satisfied.

SUMMARY OF PROCEEDINGS

On September 10, 2018 and October 8, 2018, Chairperson Livingstone opened the Public Hearing at 6:30 p.m., followed by the Pledge of Allegiance.

Chairperson Livingstone swore in Ryan Showalter, Angela Visintainer, Amanda Travers, Elizabeth Pinkett, Michael Cusimano, and Chris Vallee.

Vice Chairperson Doherty read the Public Notices advertised in the Times Record for BOA-18-002 into the record.

Ryan Showalter, Applicant's Attorney and Representation, provided a brief summary of the proposed Special Exception use for two 4,999 square foot medical buildings. The use is for professional medical or dental offices less than 10,000 square feet which is permitted by Special

Exception in the Town Scale Residential (TR) District. Mr. Showalter's testimony was provided at both the September 10, 2018 and October 8, 2018 sessions of the Board.

Mrs. Todd verified no written comments were received from the public or other agencies.

TESTIMONY AND EVIDENCE

The Applicant's request is for the proposed Special Exception use of two 4,999 square foot professional medical or dental office buildings. This use for professional medical or dental offices less than 10,000 square feet is permitted by Special Exception in the Town Scale Residential (TR) District.

At the Planning Commission Meeting, there were concerns these medical offices would include substance abuse treatment or methadone clinics. This use is not allowed and is not proposed for this location. The Planning Commission recommended approval of the Special Exception use.

The Applicant included a concept plan for the proposed buildings that Mr. Showalter testified is consistent with the character of the area. This area has a mixed development that includes residential, institutional, and commercial properties. According to Mr. Showalter, the two single story buildings are designed to be residential in character to blend with the residential area instead of one 9,999 square foot building. The design includes buildings with frontage on Sixth Street, parking in the rear of the buildings, and one entrance on Caroline Street.

Mr. Showalter explained that trip generation rates for this type of activity are drawn from the Institute of Transportation Engineers and project peak trips for morning and afternoon hours at 12 trips per building in the morning and 18 trips per building in the afternoon. This equates to approximately one additional vehicle per 3 minutes during the peak hour in the morning and less during the rest of the day.

The Town Comprehensive Plan supports this concept plan, Mr. Showalter asserted, by noting the following pages:

- 3-17 – Encourage appropriate redevelopment on vacant/underutilized properties
- 3-18 – Stimulating economic investment in older established neighborhoods
- 3-19 – Developing underutilized land with appropriate infill

- 9-29 – Economic Development Section recommends providing more jobs closer to residents and increasing the medical care in the community.

Mr. Showalter noted residents' concerns at the Planning Commission Meeting regarding the site plan design included parking in the front of the buildings to deter people gathering in the parking area after business hours, adequate lighting on the site for security, and installing a privacy fence along the northern boundary of the property.

Vice Chairperson Doherty requested clarification on the Applicants' statement of little or no impacts on the school, Fire Department, and police protection.

Mr. Showalter stated this use will not generate any new students because it is not a residential use.

Vice Chairperson Doherty requested information on the traffic impacts relative to the school traffic.

Mr. Showalter stated this use will have little impact on the traffic because the traffic occurs during the day and the peak hours are relatively minor. A residential use would create a larger impact because the peak hour traffic would coincide with the school traffic hours.

Mr. Showalter also noted that sidewalks are part of the site plan approval process and the Planning Commission can require the striping of crosswalks on adjacent roads.

Mr. Showalter stated that the hours for the medical practitioners would be later than the beginning of the school day. Except for staff, typical business hours are 8:30 a.m. – 4:30 p.m.

Chairperson Livingstone noted the Lockerman Middle School begins as early as 7:10 a.m.

Chris Drummond, Town Attorney, stated the current traffic issues are an existing condition. Traffic relative to this application should be evaluated for this requested use and if it were to make it particularly worse than somewhere else in the same district.

Vice Chairperson Doherty was of the opinion that the proposed use of this property will add congestion to the existing traffic conditions at Sixth Street and Caroline Street, particularly at the beginning and end of the school day at Lockerman Middle School.

Mr. Showalter stated that the peak hour for a residential development will coincide with the school traffic leaving the site and turning left on Caroline to Sixth Street toward their place of employment. For the proposed use, the peak hour traffic will not coincide with the school traffic

and most traffic will be turning right on to Caroline and right from Sixth Street into the site. Therefore, the proposed use will have little impact on the school traffic during the school's peak hour. Regarding the school pedestrian traffic, students aren't generally leaving the school throughout the day.

Vice Chairperson Doherty asked for clarification on the Redevelopment Eligible (RDE) Overlay Zone.

Mr. Showalter stated this RDE Overlay Zone was established by the Town.

Mr. Drummond provided an explanation of the RDE Overlay Zone. The Town has mapped various properties to be eligible for redevelopment and if this overlay zone is applied would allow more flexibility in development options. The Applicant has not requested a Redevelopment Applied (RDA) Overlay Zone in this application.

Mr. Showalter stated there have been discussions with two different tenants for the proposed buildings. At this time, there is no plan for the future development on the site.

Chairperson Livingstone commented that the application included well written proposed findings on the special exception criteria.

Angela Visintainer, 501 Kathryn Court, does not have any issues with this application and believes the professional medical facility is a good use for the property. A residential use would have a large impact on the traffic conditions.

Chairperson Livingstone stated the Town Zoning Code does not allow substance abuse clinics in the TR District and would not be allowed on this site.

Mr. Drummond stated no group homes or halfway houses are permitted in the TR District. Nursing care institutions, intermediate care institutions, disabled or infirm institutions, and child-care institutions are permitted by Special Exception.

Elizabeth Pinkett, 504 Elaine Avenue, resides adjacent to the site, and is concerned about the traffic and future development of the property. Ms. Pinkett is in favor of the medical buildings and would like a fence at the rear of her property.

Chris Vallee, 421 N. Sixth Street, expressed concern about the school traffic and the effect on the property values. Mr. Vallee felt the public did not receive appropriate notice for the project.

Ms. Todd verified that all property owners within 200' of the site received written notification, the Public Hearing was advertised in the Times Record for two consecutive weeks, and the property was posted with a sign. Mr. Vallee's property was not located within 200' of the site.

The Applicant stated traffic is inherent in any use of the property, but the proposed use will have a minimal impact on the traffic. Residential traffic impacts will more likely coincide with existing peak traffic conditions and have a larger impact on traffic conditions.

During his comments on October 10, 2018, Mr. Showalter stated that the Applicant will construct a sidewalk along the property's frontage on Caroline Street. It is also prepared to build screening fences on the northern and western boundaries of the property.

DELIBERATIONS

During and following the receipt of all testimony and evidence, the Board deliberated in Open Session.

Vice Chairperson Doherty does not know what the solution is for the Sixth Street traffic.

Chairperson Livingstone does not believe the proposed use for this site would have an impact on the Caroline Street traffic.

There was discussion of an entrance off of Sixth Street in addition to the entrance off Caroline Street.

Mr. Drummond stated that existing problems when considering a use should not be the sole grounds for denial of the project. If it exacerbates the problem and it is unique to that property's location, then this may be grounds for denial. The existing problem was not created by this property or by this use.

Mr. Drummond stated the law for considering a Special Exception use considers if the adverse impacts of the proposed Special Exception use on surrounding properties are uniquely different because of the location of the proposed use as compared to the adverse effects would create on other properties in the same district. If the impacts are the same wherever the use is proposed in the district, that would not be grounds upon which to deny a Special Exception. Are the traffic impacts being considered unique because of the location of the property in the TR

District? Due to the location of the school, this may be a unique impact. Are the traffic problems due to existing uses? Will this use add to the existing problem in an unacceptable way?

There was discussion on installation of sidewalks. Currently, there are no sidewalks on Caroline Street. Pedestrian traffic, particularly Lockerman Middle School students, walk in the road.

Chairperson Livingstone stated the Applicant would only be allowed to install sidewalks on his property and not to the school.

Mr. Drummond stated pedestrians walking in the road is not a legal use of the road.

Vice Chairperson Doherty believes this use will exacerbate the traffic problem, and this is a safety concern.

Chairperson Livingstone believes a different use or residential use will have a greater impact on the traffic problem that coincides with the school traffic between 7:00-8:00 a.m. and 5:00 p.m. A sidewalk down Caroline Street to the school would be a valuable improvement as would a traffic light at the intersection of Sixth Street and Caroline Street. However, that is not relevant to this application. The Lockerman Middle School does provide a crossing guard, and the school does try to mitigate the traffic problem on Caroline Street.

Chairperson Livingstone does not believe the application should be denied due to the existing traffic conditions, and this use would cause a minimal impact on the traffic conditions. The hours of operation would be normal business hours for this use.

Mr. Drummond noted townhouses and apartments are not a permitted use in the TR District. Single family homes are permitted at a density of 5 dwelling units per acre.

Vice Chairperson Doherty believes there are other places better suited for a medical facility and believes this will add more confusion to the pedestrian traffic and Sixth Street traffic.

Mr. Drummond stated pedestrians crossing Sixth Street is outside the scope of a relevant consideration for the proposed use for this site.

Vice Chairperson Doherty restated her concerns with the existing traffic conditions and school pedestrian traffic during the school peak hours. This is a unique situation and she believes the additional traffic for this use will worsen the traffic hazards on Caroline Street. If this parcel was developed residentially, there would be less impacts on traffic.

Member Shull stated most doctor offices open at 8:00 a.m., and the Lockerman Middle School traffic begins at 7:15 a.m. and dismissed at 2:30 p.m. The problem with the site is the poor street design and crossing across Sixth Street to Camp Road. After reviewing the list of eligible uses for this site, many would create higher demands for traffic. Changing the entrance to Camp Road is the solution for the traffic issues which is not the responsibility of the Applicant. The requested use is a permitted use in this zone with conditions. There are sidewalks on the east side of Sixth Street and on the Lockerman Middle School property. There is a program available for funding through State Highway for safe routes to school. Installation of a barrier on the northern and western property line would deter the pedestrians cutting through the lots and sidewalks and crosswalks would help to control the pedestrian traffic.

Alternate Member Wyre stated a sidewalk on the Sixth Street side of the Applicant's property would cause more pedestrian traffic problems and should only be required on the Caroline Street side of the Applicant's property.

Mr. Showalter stated if a sidewalk is not required on the Sixth Street side of the property, these funds could be applied to the expense of the crosswalks.

Mr. Drummond stated the Board of Appeals should not be considering illegal acts when considering if this use is appropriate for this site. Enforcement of illegal acts is a law enforcement issue.

Mr. Drummond had provided the Board of Appeals with a copy of the Loyola decision in which the Judge opined that the Board of Appeals should not consider geographical comparisons.

No other comments were received from the public.

Mr. Drummond summarized Mrs. Pinkett's concern and other witnesses' concerns were screening and fencing between the property lines. The neighboring property owners were in support of the use and were not in favor of more residential dwellings.

FINDINGS AND DECISIONS

Special Exception Request – Board Member Shull made a motion that the Special Exception application filed by REDE LLC, BOA-18-002 for medical offices be approved with

the conditions that (a) the Planning Commission require some type of barrier be constructed along the north and west boundaries of the property to prohibit pedestrian traffic across the property and screen the proposed use from residential neighbors; (b) a sidewalk is constructed along the Caroline Street side of property; (c) crosswalks across Sixth Street and the south side of Caroline Street at State Highway Administration property are created; (d) the Planning Commission look into the potential funding for sidewalks on Caroline Street to the Lockerman Middle School. Ms. Shull's motion incorporated the proposed Findings of Fact on the four conditions of the Special Exception Criteria supplied by the Applicant as follows:

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

Commercial uses surround the Property to the southeast. A school is situated to the west, and State and County facilities to the south. Residential properties lie to the north and east. The Denton Comprehensive Plan ("Plan") specifies the need and desire for community-based uses that enhance the health, wellbeing, and access to services for the public within residential areas such as the TR zone where the Property is located. By permitting the proposed use in the TR district by special exception, the Town Council has acknowledged the appropriateness of the placement of the use in the district, so long as any effects caused by the use are not more impactful on the Property than they would be elsewhere. The effects of the proposed use will not be more impactful to the surrounding properties and neighborhood and will in fact advance the wellbeing of nearby residents by offering new, centrally-located healthcare options.

The proposed use will not have any negative impacts to environmental resources, drainage, the Critical Area, or existing forest cover. The demand on public utilities will be minimal in comparison to some other uses that are permitted in the TR district, such as nursing homes, colleges, and hospitals.

The proposed use conforms to all minimum requirements of the TR zoning district. Although a Redevelopment District Eligible (RDE) overlay zone encumbers the Property, the TR district use restrictions and bulk standards apply to the Property and the buildings proposed for the use will comply with all applicable design and use standards.

- (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.

As described above, the use conforms with the Comprehensive Plan and provides necessary and essential services to the area in which it is proposed. As shown by the elevation drawing submitted with the application as Exhibit B, the buildings proposed for the use are one and a half-story structures that fit well into the appearance of the quasi-residential neighborhood to the east and north of the Property. They have been designed to conform with the appearance of the character of the general vicinity.

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

The proposed use will not cause undue congestion or hazard on nearby streets because it is a low-frequency use that will generate little traffic and relatively low vehicle trips per day, the majority of which will occur during business hours. Applicant will work with the Town staff to address any concerns regarding traffic and access to the Property to protect the adjacent streets from undue congestion and hazard.

- (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.

No odor, smoke, dust, fumes, fire, vibration, noise, or hazardous conditions will be generated by the use. Drainage and stormwater will be designed to comply with State standards. The Property will not generate any adverse drainage conditions on or over neighboring properties.

As described above, access to the Property from Caroline Street is designed for safe entry to and exit from the Property. This access will be designed to accommodate two-way traffic and adequate parking will be provided on-site for visitors and employees. The use is proposed on a secluded lot that is surrounded by other uses that are consistent with the TR district such as a school, restaurant, State Highway Administration building, single-family residential homes, and townhouses. Following construction, the Property will be attractively landscaped to ensure that the new buildings conform with and enhance the image of the neighborhood.

The proposed use will not overburden public facilities. The establishment of this use will help to fill a critical community public health need. The proposed use will generate no impacts to public schools and minimal impacts, if any, on police and fire protection. Construction will comply with applicable building construction and fire codes. All water and wastewater services will be provided by existing public systems. The minor traffic associated with staff and patients will be insignificant in comparison to many of the uses permitted in the TR district. All stormwater management will be provided in accordance with applicable State and Town requirements.

The proposed use, on the proposed Property, complies with the requirements for approval of the special exception sought by this application. The use proposed will enhance the image of the area and offer a service that will improve the health, safety, and general welfare of Denton's residents and the citizens of Caroline County.

This approval for the use does not exempt the Applicant from meeting all the development conditions required by the Planning Commission.

Chairperson Livingstone seconded the motion. The motion passed 2:1 with Ms. Doherty in opposition.

Staff Item – There is a Board of Appeals Public Hearing scheduled for Tuesday, November 13, 2018, at 6:30 p.m.

The meeting on October 10, 2018, adjourned at 7:20 p.m.

ATTEST:



Donna Todd

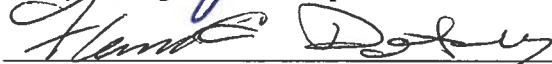


Date

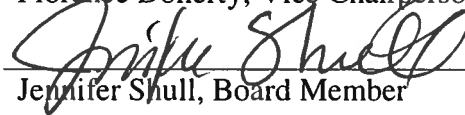
DENTON BOARD OF APPEALS:



Troy Livingstone, Chairperson



Florence Doherty, Vice Chairperson



Jennifer Shull, Board Member