

**BEFORE THE TOWN OF DENTON BOARD OF APPEALS**

**IN RE: C&N RENTALS, LLC  
APPLICATION FOR  
SPECIAL EXCEPTION**

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**Case No. BOA-18-003**

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**MINUTES, FINDINGS OF FACT, CONCLUSIONS AND DECISION**

The Board of Appeals held a Public Hearing on Tuesday, November 13, 2018, at 6:30 p.m., at the Denton Town Office to consider an application for a Special Exception for C&N Rentals 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, Vice Chairperson Florence Doherty, and Member Harry Wyre. Also present were Counsel for the Board, Chris Drummond and Administrative Aide, Donna Todd. Brandon Nier, Applicant’s Representative and Business Partner, was present.

Member Jennifer Shull was absent.

**PROCEDURAL HISTORY**

On June 30, 2017, the Applicant filed an application with the Board of Appeals seeking Special Exception approval for the combination use of one commercial unit and two residential units to be located at 15 South Third Street, Caroline County Tax Map 103, Parcel 120, after receiving notice by the Town of Denton the apartments were not an approved use. The Applicant also requested relief for payment of additional water and sewer allocation fees for the apartments.

Town staff referred this request to the Town Attorney, Chris Drummond, whom sent a response on behalf of the Town. This response informed the Applicant that the Board of Appeals has no jurisdiction over water and sewer allocations, and the application was incomplete. In order to proceed with the application process, a site plan showing the

configuration of the second floor, parking, and an explanation of the Special Exception request was required.

The Applicant finalized the application on September 24, 2018, and a Public Hearing was scheduled for Tuesday, November 13, 2018.

The application was advertised in the Times Record for two consecutive weeks on October 24th and 31st, a sign was posted on the property on October 30<sup>th</sup>, and all property owners within 200 feet of the property received written notification of the Public Hearing. All public notice requirements have been satisfied.

### **SUMMARY OF PROCEEDINGS**

On November 13, 2018, Chairperson Livingstone opened the Public Hearing at 6:30 p.m., followed by the Pledge of Allegiance.

Chairperson Livingstone swore in Brandon Nier.

Vice Chairperson Doherty read the Public Notice advertised in the Times Record for BOA-18-003 into the record.

Brandon Nier, Applicant, provided a brief summary of the proposed Special Exception use for one first floor commercial unit and two second floor residential units. This use is permitted by Special Exception.

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

### **TESTIMONY AND EVIDENCE**

The Applicant's request is for the Special Exception use for the combination use of one commercial unit and two residential units. This building was purchased in 2011 and consisted of one first floor unit and two second floor units. Initially, the CPA practice would be on the first floor and later expand to the second floor. After realizing the firm would not need to expand to the second floor, the Applicant proceeded to renovate the second floor residential units. The Applicant believed that residential units on the second floor had been created many years ago and had received all necessary approvals. The Applicant stated Mr. Batchelor visited the site

during the residential renovations in 2012. Both residential units have been rented since 2012 by the Applicant.

The Town Code Enforcement Staff, Bill Clemens, notified the Applicant that a Special Exception was required for the combination use. The Applicant claimed the residential units were pre-existing to the purchase of 2011 and were a grandfathered use.

The Applicant received a favorable recommendation from the Planning Commission on October 30, 2018, for the Special Exception request.

The Denton Town Staff did not locate any records approving the two residential units on the second floor and have been working with the Applicant to become compliant.

### **DELIBERATIONS**

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

Chairperson Livingstone requested clarification on the grandfathered use of the property since the Town did not locate any official records for the approval of the residential units.

Mr. Drummond explained a “grandfathered” use is typically a legal nonconforming use. In this case, the second floor apartments are an illegal use because the Town never approved the use.

Vice Chairperson Doherty requested clarification why this was considered an illegal use if agents from the Town stated differently.

Mr. Drummond explained that was the recollection of the Applicant in 2011 but not the recollection of Mr. Batchelor. Even if Mr. Batchelor made the statements described by the Applicant, he did not have authority to make a use legal that does not have required approvals.

Mr. Drummond referred to his letter sent to the Applicant and speculated that the apartments were created in the late 80’s without any permits or approvals by the Town. Additional water and sewer allocations would have been required for the apartments.

Vice Chairperson Doherty requested clarification on the approval of one apartment vs. two apartments.

Mr. Drummond stated one apartment could be approved by the Planning Commission. Two apartments require a Special Exception by the Board of Appeals for a combination use.

Vice Chairperson Doherty requested if the Applicant had registered the apartments and if the apartments were inspected.

Mrs. Todd stated that Mr. Clemens contacted the Applicant regarding the unregistered apartments.

Mr. Nier stated the apartments have been registered and inspected since 2012.

Most of the commercial units in the downtown of Market Street have second floor apartments.

Water and sewer allocations are approved by the Town Council and are not within the jurisdiction of the Board of Appeals.

After approval of the Special Exception use, the Applicant will need to resolve the water and sewer allocation requirement.

### **FINDINGS AND DECISIONS**

Special Exception Request – Vice Chairperson Doherty made a motion that the Special Exception application filed by C&N Rentals LLC, BOA-18-003 for the combination use of one commercial unit and two residential units located at 15 South Third Street be approved with the conditions that the Applicant resolve any water and sewer allocation requirement within sixty (60) days. The motion includes the Findings of Fact on the four conditions of the Special Exception Criteria as follows:

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

**The combination use is consistent with the Comprehensive Plan.**

- (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 combination use is consistent with the neighboring properties on Market Street as many also have second floor apartments.**

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

**Parking is available nearby in the Municipal Parking Lot.**


(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.

**There was no evidence of adverse impacts on the surrounding properties or that this use is detrimental to values of nearby properties.**

Member Wyre seconded the motion. The motion passed 3:0.

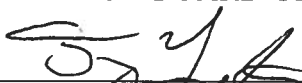
The meeting adjourned at 6:55 p.m.


ATTEST:

  
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Donna Todd

11-29-2018  
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Date

DENTON BOARD OF APPEALS:

  
\_\_\_\_\_  
Troy Livingstone, Chairperson

  
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Florence Doherly, Vice Chairperson

  
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Harry Wyre, Board Member