

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

**IN RE: EUGENE HICKS  
APPLICATION FOR  
SPECIAL EXCEPTION**

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**Case No. BOA-21-001**

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

The Board of Appeals held a Public Hearing on Monday, April 12, 2021, at 6:40 p.m., at the Denton Town Office to consider an application for a Special Exception for Eugene Hicks, (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, Board Member Florence Doherty, and Board Member Harry Wyre. Also present were Counsel for the Board, Chris Drummond, Town Administrator, Donald H. Mulrine, Jr., Acting Chief of Police, George Bacorn, Jr., and Planning and Codes Staff, Donna Todd. The Applicant, Eugene Hicks, was present.

Other interested persons present include Jaylene Hicks and George Schwaeble.

**PROCEDURAL HISTORY**

On February 19, 2021, the Applicant filed an application with the Board of Appeals seeking Special Exception approval for an Intermediate-Care Home to be located at 1233 Painted Fern Road, Denton, Maryland, Caroline County Tax Map 104, Parcel 991, Lot 68.

The application was advertised in the Times Record for two consecutive weeks on March 24<sup>th</sup> and March 31<sup>st</sup>, a sign was posted on the property on March 18<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 April 12, 2021, Chairperson Livingstone opened the Public Hearing at 6:40 p.m., followed by the Pledge of Allegiance.

Board Member Doherty made a motion to nominate Troy Livingstone as the Chairperson, seconded by Board Member Wyre, passed unanimously (3:0).

Board Member Doherty made a motion to nominate Harry Wyre as the Vice Chairperson, seconded by Chairperson Livingstone, passed unanimously (3:0).

Board Member Doherty read the Public Notice advertised in the Times Record for BOA-21-001 into the record.

Chairperson Livingstone swore in Eugene Hicks.

Eugene Hicks, Applicant, provided a brief summary of the proposed Special Exception use for an intermediate-care home at his residence to care for not more than four (4) elderly individuals. The Applicant and his wife have been employed in the health care system for more than twenty (20) years. During the pandemic, there was an increased need for assisted living homes. His home would provide a more residential living facility for individuals that are immobile or require assistance with daily medications.

The Town Attorney requested an interpretation for the State License included with the application for an Assisted Living Facility, Level of Care III.

The Applicant stated this license allows his home to provide care for individuals that require assistance with medication or mobility health issues. Any care beyond a Level of Care III, the State requires individuals to be relocated to another facility. Level of Care III does not include physical therapy or patients with bed sores.

Individuals would not be visible to neighboring properties.

The State regulations require a nurse or caregiver to administer medication.

The Applicant is licensed to care for individuals classified as Level of Care I, II, and III.

The State regulations have certain guidelines for Dementia patients, and the Applicant has not been approved for this level of care.

Mrs. Todd verified no comments were received from the public or other agencies. One neighbor that received notification contacted the office for more information.

Board Member Doherty requested clarification on the evacuation plan included with the application. The house floor plan and evacuation diagram are not consistent. Board Member Doherty wants to confirm there is a clear evacuation plan for emergencies.

The Applicant's evacuation plan is regulated by the State. The diagram is required for the staff member for orientation and two fire drills are also required annually. The State of Maryland Office of Health Care Quality (OHCQ) performed a survey of the home and approved the evacuation plan.

The Applicant will revise the evacuation plan if requested by the Board. The evacuation plan submitted with the application was a sample evacuation plan and not intended to be reflective of the home.

This home does not contain a fire sprinkler system, and it is not required by the State. All windows are exitable.

Individuals are referred to the Applicant through online marketing and through nursing home and hospital contacts.

The Applicant stated he resides in the home with his family and grandparents. If necessary, the Applicant will hire employees.

Mr. Mulrine noted the International Building Code (IBC) does include recommendations for evacuation plans and placing placards on each floor to demonstrate the evacuation plan. Glow in the dark stencils help for visual needs in the night times. Providing this address and this use of the property to the Fire Department for notification is helpful.

The Applicant has installed grab bars in the bathrooms and alarms on all the windows and doors. Evacuation signs are posted throughout the house, and the Fire Department has been notified of the use of the property.

The OHCQ inspects the house annually or by complaint. They recently inspected the property and found no deficiencies within the home.

## **TESTIMONY AND EVIDENCE**

The Applicant's request is for the proposed Special Exception use for an intermediate-care home. This use for an intermediate-care home is permitted by Special Exception in the Suburban Residential (SR) District.

The Planning Commission recommended the Board of Appeals hear the case for the Special Exception use.

The Applicant's testimony included a brief description of the intermediate-care home.

The proposed use is in accordance with the Town's Comprehensive Plan, suitable for the property, will not impact street traffic or parking, and will not adversely affect the property values or health, safety, and general welfare of residents of the area.

There is a comprehensive evacuation plan booklet that was provided to the State for approval.

## **DELIBERATIONS**

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

Board Member Doherty requested clarification on the evacuation plan included with the application.

Chairperson Livingstone confirmed the State License would require an evacuation plan.

## **FINDINGS AND DECISIONS**

Special Exception Request – Board Member Doherty made a motion that the Special Exception application filed by Eugene Hicks, BOA-21-001 for an intermediate-care home be approved with the conditions that the Applicant provide the approved actual comprehensive evacuation plan provided to the State and issuance of an approved use permit by the Planning and Codes Department. The motion incorporated the proposed 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.

**In accordance with the Town's Comprehensive Plan due to the fact it is permitted as a Special Exception use.**

- (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 building is an existing structure, and there will be no exterior changes to the building because the use is indoors.**

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

**There will be a minimal or no impact on parking.**

- (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.

**This use will not impact the property values and will not adversely affect the health, safety, and general welfare of residents of the area or the surrounding area. This use does not cause any environmental effects such as undue smoke, odor, noise, improper drainage, or inadequate access.**

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

**Staff Item** – None.

The meeting on April 12, 2021, adjourned at 7:20 p.m.

ATTEST:

Donald H. Mulrine, Jr.

Donald H. Mulrine, Jr.

7/15/2021

Date

DENTON BOARD OF APPEALS:

Troy Livingstone 4/16/21  
Troy Livingstone, Chairperson

Florence E. Doherty 4/16/21  
Florence Doherty, Board Member

Harry Wyre  
Harry Wyre, Board Member