

*Denton Board of Appeals
Minutes
August 8, 2011*

Present: Troy Livingstone, Florence Doherty, Dallas Lister and Tara Lightner

Recording: Donna Todd, Planning & Codes

BOA Attorney: Christopher Drummond

BOA Planner: Christopher Jakubiak

Visitors: Don Mulrine Jennifer Pomeroy
Al McCullough Tim Glass
Dean Danielson Harry Wyre
Steve Kehoe Sue Cruickshank
JOK Walsh Glenn Collins
Agnes Case Michael Owens
Ann Jacobs Kathy Mackel
Michael McCrea

The meeting was called to order at 6:30 p.m. by Chairperson Livingstone. Attendees stood for the Pledge of Allegiance.

Chairperson Livingstone introduced the Board of Appeals members, and appointed representation for the Board of Appeals, Christopher Drummond, Attorney, and Christopher Jakubiak, Planner.

The minutes of the July 18, 2011, were approved as submitted.

New Business #1 – BOA-11-003 Town of Denton/Variiances:

Chairperson Livingstone explained this was a continuation of the public hearing on July 18, 2011, that closed due to time constraints.

Chairperson Livingstone asked all witnesses and citizens offering testimony and comments to stand to be sworn in. Chairperson Livingstone swore in all witnesses and citizens that would be offering testimony and comments.

Glenn Collins, Project Manager for the Denton Development Corporation, distributed Exhibit #11, a summary of the variance requests. Mr. Collins clarified the summary of the five variances and amended the previous variance requests per the comments and suggestions of the members of the Board. The minimum variance necessary for each variance request were reviewed and amended if possible to meet the recommendations from the Board.

Member Doherty asked for clarification about the Nontidals Wetlands Buffer on the map.

Al McCullough responded that the Maryland Department of the Environment is split into two entities, the Nontidals Wetlands Division and the Tidal Wetlands Division, and they both have jurisdiction over Crouse Park. The 1972 Wetlands Map of Maryland straddles Crouse Park and everything landward of the line is nontidal and everything waterward is tidal. It is a regulatory division and the permitting required for Crouse Park is both Nontidal and Tidal Wetlands Division depending where the line is on the map.

Member Doherty asked for clarification on the critical area buffer.

Mr. Drummond stated the 1,000 foot buffer for the critical area is measured from the 1972 wetlands maps and confirmed that Critical Area Commission has approved the locations.

Mr. McCullough stated the Critical Area Commission approved the location because it is an educational facility.

Chairperson Livingstone asked for clarification on any changes to the reconfiguration on the location of the buildings due to the floodplain ordinance.

Mr. Walsh responded that the project has been in the planning stages for ten years and the site had been reconfigured during the previous years. It has taken at least six years to complete the regulatory process.

Mr. Drummond clarified that the floodplain ordinances for the development are regulated and administered at the local level as required by FEMA. These are boiler plate ordinances throughout the State.

Mr. Collins stated that reconfiguring the site was not possible because of the physical site constraints and the water quality garden and stormwater pond need to be located in the low area. The floodplain ordinance does not prohibit development.

Member Lister referred to Variance #1 to allow a Heritage & Welcome Visitor Center in the flood protection setback and the reasons for good and sufficient cause. Does the Town own other property that a visitors center could be built on? Is there a lien or financial hardship to the Town if development does not occur? When was this process started and if we deny the variance, will there be a financial hardship because costs have been implemented?

Mr. Drummond explained soft costs would not be considered a hardship. If you have spent money on experts, that does not constitute a hardship.

Member Doherty stated costs have been spent on other amenities such as the Nature Trail.

Mr. Jakubiak clarified that Member Lister's comment for the standard for granting a variance applies to the height and setback variance for the restaurant and is not the standard applied to Variance #1 for the 100 foot setback.

Steve Kehoe stated this is the only town owned developable waterfront property for this project that is located at the Town center and can be used as an educational facility for the river.

Chairperson Livingstone asked for any public comments.

Ann Jacobs, Main Street Manager, stated this location is an anchor for our downtown businesses for economic development.

Harry Wyre, Harry's on the Green, expressed his support for the project and the growth of the downtown businesses.

Agnes Case expressed her opinion that she does not support the project.

Member Doherty asked for clarification on how the boat launch will be accommodated with the buildings.

Mr. Walsh has discussed with Dettling Yacht Company and there is enough room to maneuver the boats and launch a 70 foot boat.

Mike Owens, Color 'N' Clay, commented that teenagers travelling from the basketball courts at Crouse Park and have been causing mischief in the downtown with the downtown businesses.

Mike McCrea, 406 Market Street, commented the development of Crouse Park would create jobs for the community thus giving youth a sense of ownership in their community.

Kathy Mackel, Tourism Director for Caroline County, expressed her support and stated the economic effect it will have on the Denton community and downtown businesses.

Member Lightner inquired if there are any numbers or studies for the economic impact on Denton.

Mrs. Mackel stated she received inquiries from developers seeking waterfront properties for restaurants. There are a lot of group tours that contact the tourism office seeking waterfront areas for visitors.

Chairperson Livingstone requested clarification for restaurants in the RP zone, BEA, and IDA referring to Variance #2/Restaurant Development 25' variance.

Mr. Jakubiak stated the base zoning is RP and the other zoning is regulatory zoning of BEA/IDA.

Mr. Collins clarified that the Town's ordinance allows for a riverfront restaurant in the RP/BEA only.

Member Doherty stated that the only problem is the 25' side yard setback for that zone. The Comprehensive Plan documented that further development was planned for Crouse Park. Testimony from restaurateurs verified that this building can be built safely.

Member Lister questioned how many businesses are financed by the Town?

Mr. Walsh stated that there is an enormous amount of businesses that receive public financial assistance through loans, grants, and façade improvements. All the restaurants in the downtown have received some type of public financial assistance.

Member Lister stated that the Town's responsibility is to provide economic growth. Why is the restaurateur not asking for a variance? How is this variance a hardship to the Town?

Mr. Kehoe responded that in order to attract a restaurateur there needs to be a variance to create the RFP.

Member Lightner clarified with the applicant that the Town will not build the restaurant, the variances are necessary to secure a commitment from a restaurateur; which an anchor in that location will help the economic development of the town, and not allowing a restaurant in that location would be a hardship because the Town would lose the benefits.

Mr. Drummond clarified variances run with the land and are not personal to the applicant.

Mr. Kehoe stated the Town will lease the ground for the restaurant space. All restaurant approvals will be based upon the Town Council, Planning Commission, CDBG, etc., review for the overall project.

Chairperson Livingstone questioned the setback of the restaurant and the location.

Mr. Drummond clarified the restaurant could only be built in the RP/BEA and this limits the location of the restaurant.

Mr. Jakubiak stated the variances are necessary because of the site limitations of that location.

Member Doherty asked if the park maintenance was a financial hardship for the Town and converting the park to a commercial entity to produce tax revenue and lease revenue to maintain park expenses.

Mr. Mulrine stated no. The Town can maintain the park.

Member Lightner stated that crime was an issue for the park. Development would help with crime prevention at the park.

Mr. Jakubiak stated that the deteriorated road and road maintenance could be considered a financial hardship to the Town.

Standards for granting Variance #2/Restaurant.

- (1) A showing of good and sufficient cause. *Area is the only Town owned waterfront developable property and facts support a restaurant is a good use for Crouse Park.*
- (2) A determination that failure to grant a variance would result in exceptional hardship (other than economic) to the applicant. *Yes, there will be no development.*
- (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing local and state laws or ordinances. *No.*
- (4) The variance action shall be the minimum necessary, considering the flood hazard, to afford relief. *25 feet from the edge of the water is the minimum necessary due to site limitations.*

Chairperson Livingstone moved to Variance #3/Flood Fill Placement.

- (1) A showing of good and sufficient cause. *Road has deteriorated and additional work needs to be done.*
- (2) A determination that failure to grant a variance would result in exceptional hardship (other than economic) to the applicant. *Roadway will not be improved if the variances are not granted.*
- (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create

nuisances, cause fraud or victimization of the public, or conflict with existing local and state laws or ordinances. *Additional safety concerns if the roads are not repaired. Floodplain Study will support this as evidence.*

- (4) The variance action shall be the minimum necessary, considering the flood hazard, to afford relief. *The 872 cubic yards is a unique number supported by the study and the minimum necessary.*

Member Doherty moved to Variance #5/Side Yard Setback.

Chairperson Livingstone noted that the side yard setback request was changed to 11 feet because the building can be moved. Why can't the building be moved 25 feet? Would it cause hardship if the building is moved 25 feet?

Chairperson Livingstone referred to standards for granting a variance:

- (a) Strict enforcement of this Chapter 128, Zoning would produce unnecessary and undue hardship as distinguished from variations sought by applicants for purposes or reasons of convenience, profit or caprice. *Enforcing this would not bring a hardship. The building can be smaller or wider.*
- (b) Such hardship is the result of special conditions and/or circumstances not generally shared by other properties in the same zoning district or vicinity, and which are peculiar to the land, structure or building involved. Such conditions and/or circumstances may include but are not limited to the following: exceptional narrowness or shallowness or both, or irregular shape or topography of the property; unusual and limiting features of the building; or the effective frustration or prevention of reception of satellite programming due to the presence of a physical object or objects which obscure the "line of sight" when such object or objects cannot be easily removed. *Does not apply.*
- (c) Such special conditions or circumstances must not be the result of any action or actions of the applicant. *Covenience and aesthetics.*
- (d) Granting of the variance must be in harmony with the general purpose and intent of this Chapter 128, Zoning and must not be injurious to adjacent property, the character of the neighborhood or the public welfare. *Does not apply.*
- (e) Granting the variance shall not allow a use expressly or by implication prohibited in the zoning district involved. *Zoning allows restaurants.*
- (f) The condition, situation or intended use of the property concerned is not of so general or recurring a nature as to make practicable a general amendment to the ordinance. *No.*
- (g) The variance granted must be the minimum necessary to afford relief. *If building can be shifted 11 feet, it can be moved 25 feet. Parking is permitted under elevated structures.*

Chairperson Livingstone moved to Variance #4/Restaurant Height. Applicant has changed the request for a 8 foot variance allowing a total height of 38 feet.

Chairperson Livingstone referred to standards for granting a variance:

- (a) Strict enforcement of this Chapter 128, Zoning would produce unnecessary and undue hardship as distinguished from variations sought by applicants for purposes or reasons of convenience, profit or caprice. *Due to the fact they are building in a floodway fringe and are having to build up defines unnecessary and undue hardship.*
- (b) Such hardship is the result of special conditions and/or circumstances not generally shared by other properties in the same zoning district or vicinity, and which are peculiar to the land, structure or building involved. Such conditions and/or circumstances may include but are not limited to the following: exceptional narrowness or shallowness or both, or irregular shape or topography of the property; unusual and limiting features of the building; or the effective frustration or prevention of reception of satellite programming due to the presence of a physical object or objects which obscure the "line of sight" when such object or objects cannot be easily removed. *Yes.*
- (c) Such special conditions or circumstances must not be the result of any action or actions of the applicant. *Yes.*
- (d) Granting of the variance must be in harmony with the general purpose and intent of this Chapter 128, Zoning and must not be injurious to adjacent property, the character of the neighborhood or the public welfare. *In the spirit of the ordinance.*
- (e) Granting the variance shall not allow a use expressly or by implication prohibited in the zoning district involved. *No.*
- (f) The condition, situation or intended use of the property concerned is not of so general or recurring a nature as to make practicable a general amendment to the ordinance. *No.*
- (g) The variance granted must be the minimum necessary to afford relief. *8 feet is the minimum necessary.*

Chairperson Livingstone moved to Variance #1/Heritage & Welcome Visitor Center.

- (1) A showing of good and sufficient cause. *Area is the only Town owned waterfront developable property.*
- (2) A determination that failure to grant a variance would result in exceptional hardship (other than economic) to the applicant. *Yes, there will be no development.*
- (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create

nuisances, cause fraud or victimization of the public, or conflict with existing local and state laws or ordinances. *No.*

- (4) The variance action shall be the minimum necessary, considering the flood hazard, to afford relief. *35 feet from the edge of the water is the minimum necessary.*

Mr. Drummond acknowledged a letter that a member received from the Town Council by email as part of the record. Member Lightner had acknowledged a letter received from a resident emailed by a Town Council person that was against the project and the letter was not entered as testimony.

Chairperson Livingstone called for a motion on Variance #1.

Member Doherty motioned to approve a variance for the Heritage & Welcome Visitor Center in the floodway protection zone of 35 feet from the edge of the water for the reasons and findings of fact announced by the Board on record during the deliberations and which counsel will incorporate in a written decision, so moved.

Member Lister seconded the motion.

Member Lister voted Aye. Chairperson Livingstone voted Nay. Motion passed 2:1.

Chairperson Livingstone called for a motion on Variance #2.

Member Doherty motioned to approve a variance for the restaurant in the floodway protection zone of 25 feet from the edge of the waterfront side of the restaurant for the reasons and findings of fact announced by the Board on record during the deliberations and which counsel will incorporate in a written decision, so moved.

Member Lister seconded the motion. All Aye. Motion passed 3:0.

Chairperson Livingstone called for a motion on Variance #3.

Member Lister motioned to grant the placement of 872 cubic yards of fill in the floodway fringe for the reasons and findings of fact announced by the Board on record during the deliberations and which counsel will incorporate in a written decision, so moved.

Member Doherty seconded the motion.

All Aye. Motion passed 3:0.

Chairperson Livingstone called for a motion on Variance #4.

Member Lister motioned to grant the 8 feet height variance above the 30 feet and not to exceed 38 feet in total height for the reasons and findings of fact announced by the Board on record during the deliberations and which counsel will incorporate in a written decision, so moved.

Member Doherty seconded the motion.

All Aye. Motion passed 3:0.

Chairperson Livingstone called for a motion on Variance #5.

Member Lister motioned to deny the application request for the 11 feet side yard setback for the restaurant for the reasons and findings of fact announced by the Board on record during the deliberations and which counsel will incorporate in a written decision, so moved.

Member Doherty seconded the motion.

All Aye. Motion passed 3:0.

No other business.

Mr. Drummond asked for direction on the written decision and will forward electronically to the Board for review prior to sending to the applicant.

The appeals process for the Board of Appeals decision begins after the written decision has been issued.

Member Doherty moved to close the meeting.

Member Lister seconded the motion. All Aye.

The public hearing adjourned at 9:01 p.m.

ATTEST:

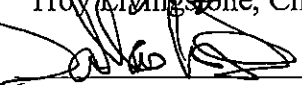


Donna Todd

DENTON BOARD OF APPEALS:



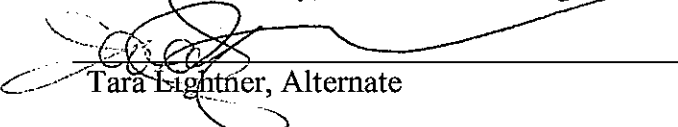
Troy Livingstone, Chairperson



Dallas Lister, Member



Florence Doherty, Member



Tara Lightner, Alternate

