

*DENTON BOARD OF APPEALS
MINUTES
October 12, 2015*

Present: Troy Livingstone, Florence Doherty, and Brian Tyler

Absent: Dallas Lister

Recording: Christopher Drummond, Town Attorney

Visitors: Christopher & Kimberly Schall, Brad Taylor, Anne Jones
Maureen Duggan, Dave Bixler, Virginia Belay, and Judith King
Donald H. Mulrine, Jr., Town Administrator

Called to Order: The meeting was called to order at 6:30 p.m. by Chairperson Livingstone

Attendees stood for the Pledge of Allegiance.

Mrs. Doherty requested clarification on whether the square footage of the proposed physical therapy clinic was less than or greater than 10,000 square feet.

Mr. Drummond confirmed that square footage is calculated based on the footprint of the building which is 40' x 100' (4,000 square feet).

Mr. Drummond confirmed the special exception request is contingent upon the variance request.

Chairperson Livingstone changed the order of the agenda to begin with the variance request prior to continuing the special exception request.

New Business #1 – BOA-15-005 Christopher & Kimberly Schall/ Side Yard

Variances:

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

Chairperson Livingstone swore in the applicants, Christopher and Kimberly Schall, and all other visitors in attendance.

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Christopher Schall gave a brief introduction of the request for the combination use at 103 South 7th Street. The Schalls' rent space at the Homestead Manor for the physical therapy clinic, Advantage Rehab. The applicants are interested in purchasing property for the physical therapy clinic and move their established business to this property. The first floor will be used for the physical therapy clinic, and the second floor will be a residential apartment.

At the Board Meeting in August, 2015, there were some issues with the pre-existing side yard setbacks. These setbacks were met with the residential use but not with the clinic use which recently became a special exception use in the MR District under Ordinance No. 669. The applicants are requesting side yard setback variances.

Brad Taylor asked for an explanation of the side yard setback variance.

Chairperson Livingstone explained there are Town Code requirements for the separation of buildings on properties. Mr. Drummond confirmed that Ordinance No. 669 establishes a 40' side yard setback for medical clinics in the MR District.

Mrs. Doherty requested if the site plan presented by the applicants was drawn from a survey.

Mr. Schall located the property markers. This plan was drawn from the property markers, and he has not completed an official survey of the property. For this reason, the requested variance is for 22+/- feet and will be verified with an official survey of the property.

Mrs. Doherty read the following standards for granting a variance into the record and offered findings of fact as to each (shown in italics):

- (a) Strict enforcement of this chapter would produce unnecessary and undue hardship as distinguished from variations sought by applicants for purposes or reasons of convenience, profit or caprice. *The existing structure cannot be relocated or reduced in size to meet the*

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40' side yard setback only recently created in Ordinance No. 669.

- (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. *Applicant did not create the nonconformance of the side yard setback because this was an existing structure. Ordinance No. 669 is intended for new construction for health care and dental clinics for which a 40' side yard setback was generally appropriate. Ordinance No. 669 encourages the development of clinics.*
- (c) Such special conditions or circumstances must not be the result of any action or actions of the applicant. *Applicant did not construct the building.*
- (d) Granting of the variance must be in harmony with the general purpose and intent of this chapter and must not be injurious to adjacent property, the character of the neighborhood or the public welfare. *The physical therapy facility is no more injurious to adjacent properties than it would be if located elsewhere in the MR District. It may be used as a health care facility with or without the mixed use.*
- (e) Granting the variance shall not allow a use expressly or by implication prohibited in the zoning district involved. *The Zoning Code allows for the use in the district with special exception approval.*
- (f) The condition, situation or intended use of the property concerned is not of so general or

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recurring a nature as to make practicable a general amendment to this chapter. *The 40' side yard setback was intended to apply to undeveloped properties and an amendment may be necessary for developed properties. This is the first application since Ordinance No. 669 was adopted in May 2015.*

- (g) The variance granted must be the minimum necessary to afford relief. *The request is to reduce the side yard setbacks only to the location of the existing structure.*
- (h) In granting a variance, the Board of Appeals may prescribe appropriate conditions in conformity with this chapter. Violation of such conditions, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter. *The variances will only apply if special exception approval is granted for the physical therapy clinic.*
- (i) The applicant for a variance shall have the burden of proof on all points material to the application, which shall include the burden of presenting 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 applicants have provided sufficient proof that they could not relocate the existing structure to meet the new 40' side yard setback.*

Mrs. Doherty read the following applicants' responses for granting a variance into the record:

- (a) The pre-existing structure lacks the appropriate setbacks needed for a mixed use property. Enforcing the 40' side yard setback as designed for new construction and applied to the existing structure would produce an undue hardship.
- (b) The existing structure can not be easily removed or altered to meet the new construction site requirements.

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- (c) We were not involved in the planning or construction of the pre-existing structure.
- (d) The Chapter 128 Zoning allows for medical practice occupying less than 10,000 square feet. The exterior appearance of the structure will not change. The parking areas will be accessed from Franklin Street.
- (e) The use may be permitted by Special Exception by the Board of Appeals.
- (f) No other property has applied for this use.
- (g) The variance requested is for the existing structure to remain with the original building setbacks, creating approximately 22+/- side yard setback variances, to be shown on the final survey with deed and recorded in the Land Records.
- (h) N/A
- (i) N/A

Mrs. Doherty commented this structure was not built by the applicants, and the structure should be considered as grandfathered. The setbacks will not affect the aesthetics of the neighborhood.

Mrs. Doherty moved to grant the 22+/- side yard setback variances, based upon the proposed findings of fact, contingent upon granting the special exception request for the physical therapy clinic.

Mr. Tyler seconded the motion. Motion passed unanimously (3:0).

Old Business #1 – BOA-15-003 Christopher & Kimberly Schall/ Special Exception

(Continued from 8/10/15):

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Mrs. Doherty requested clarification of the rear yard fence. It appears the fencing restricts access and clients will use the neighboring parking area on 101 South 7th Street to enter and exit the building from the proposed back parking lot on 103 South 7th Street. Mr. Schall stated the fenced area will be used for physical therapy for children. The fence is necessary for safety.

Mrs. Doherty requested clarification regarding the contract to purchase the neighboring property. Mr. Drummond noted that the purchase of 101 South 7th Street is contingent upon approval of the special exception sought by the applicants.

Brad Taylor stated any entrance except Franklin Street will impact the neighborhood. An entrance off Randolph Street would be an issue as current and future owners could access the property from Randolph Street. The site plan does not propose to develop an entrance from Randolph Street. Additionally, the fenced area to the rear of the existing building extends into the strip of the applicants' land running to Randolph Street.

Mr. Schall confirmed he will provide the lot line revision, and he will own both properties if special exception is granted.

Mrs. Doherty confirmed with the applicant that he located the survey pins for the properties, and this information was used to prepare the Property Layout Proposal A.

Chairperson Livingstone provided an explanation for the proposed parking areas for both properties, and the intent was to eliminate the additional parking and traffic on 7th Street.

Mr. Taylor's concern is that this use will create a change in the aesthetics of the neighborhood. If there is no signage or visible changes within that property, it will remain visibly as a residential dwelling.

Mrs. Doherty noted signage would be needed for the business and it will be located on 7th Street. There will be two handicap accessible parking spaces in front of the house and a ramp.

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Mr. Taylor opposes this business in his neighborhood because it will change the appearance of the property and will lead to cars parking along 7th Street which is detrimental to nearby residents.

Mr. Drummond clarified that health care clinics less than 10,000 square feet are permitted in the MR District by Board of Appeals' special exception approval. There are no commercial uses allowed in the MR District as a matter of right. There are some commercial uses allowed with Planning Commission approval. All other commercial/institutional uses require Board of Appeals special exception approval. The Board of Appeals' role is to decide whether the proposed use creates unique impacts to the neighborhood. The question is whether there is something unique about the use at this location that will cause adverse impacts in the neighborhood different than impacts to other neighborhoods in the MR District. If the same use is located anywhere in the MR District and if the impacts are the same and not unique, the proposed use may be allowed. The Town Council has approved this use as a provisional use in the MR District.

Mr. Taylor's opinion is that this proposed use is unique because it required a variance and because the applicants were required to purchase adjacent property. These items may not be required in other parts of town. Mr. Taylor believes that because adjustments have to occur, it makes this property unique.

Mrs. Doherty commented that if the applicants meet conditions for off-street parking, exiting and entering from Franklin Street, to reduce extra traffic on 7th Street and the potential for parking on 7th Street, the proposed use would not appear to have more negative impacts on the nearby residents than if located elsewhere in the MR District. She also noted that handicap accessible spaces are permitted for any residence.

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Mr. Taylor's complaint is there will be people parking on the street. No parking signs will not be enforced. Sidewalks will be damaged.

Virginia Belay is in favor of the proposed use at this location. Ms. Belay's son is required to have physical therapy three times a week and is a client. As a resident of Denton, Ms. Belay would only park in the designated parking areas. The sidewalk is a Town issue. If the Schall's decide to sell the building, any new business will have to receive appropriate approvals. This business is very beneficial to the Town of Denton.

Mr. Taylor supports the Schalls' business but believes it should be located in Denton, just not in this location. Mrs. Doherty suggested that issues regarding parking on 7th Street and the sidewalk be directed to the Town Council and is separate from this request.

Mr. Drummond clarified that the physical therapy clinic is classified as a conditional use/special exception and may be approved by the Board of Appeals if it does not create unique impacts.

Mr. Drummond posed some site design questions. Why isn't the parking located behind the building in the fenced area?

Mr. Drummond stated that people attending the physical therapy clinic with limited mobility may park in the undesignated parking area behind the adjacent apartment building. The lot line revision needs further consideration. Parking spaces for the second floor apartment are straddling the property line which is not permitted without an easement between the two properties. Mr. Drummond asked how clients will exit their vehicles and enter the physical therapy clinic. If the applicants convey 101 South 7th Street and are no longer in control of both properties, there could be conflicts if physical therapy clients are required to walk across the 101 South 7th Street property. Will clients with physical therapy needs want to park in the very rear of the applicants'

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property and walk some distance to the clinic? Mr. Drummond suggested that the lot line revision be modified so some parking might be located along the fenced area to the rear of the clinic. Mr. Schall mentioned that the current revision line had been suggested by the bank from which he is seeking financing. He agreed, though, to work with Town staff on changes to the lot line revision.

Anne Jones had to attend physical therapy recently at the applicants' present location at Homestead Manor and had to walk a distance. She did not believe the proposed location of the clinic's parking area will be a problem.

Directional signage on 7th and Franklin Streets for the parking area for the clinic will be erected and clients will be informed of the location of the parking area.

Mr. Taylor testified he does not have an issue with the handicap parking spaces in front of the building as this is permitted for any residence. He opposes the application because the additional parking on 7th Street would likely be caused by the new clinic.

Dave Bixler, client of Advantage Rehab, requested clarification for the parking issues on 7th Street and the approval process.

Chairperson Livingstone stated the applicant has minimized the impact of the parking and traffic for the residents by purchasing the neighboring lot and creating a parking area to be accessed by Franklin Street.

Mr. Drummond agreed that the applicant has met their burden of proof. The applicant has responded to the issues raised by the Board of Appeals at the August, 2015 meeting.

Maureen Duggan is opposed to the use of this property and is the neighbor across the street from the subject property. Her opinion is this use is changing the character of the neighborhood and will negatively impact her property value.

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Mrs. Doherty made a motion to grant the special exception with the following conditions:

(1) approval will only apply to the physical therapy clinic, and it will not continue to any other facility without special exception approval; (2) signage is to be installed at the right of way between 101 and 103 South 7th Street directing clinic patients to use Franklin Street to access the parking area; and (3) directional signage on South 7th and Franklin Streets will be installed to direct clinic patients to the rear parking area.

Mr. Tyler seconded the motion. The Board then deliberated on the findings required for special exception approval (the Board's findings are in italics).

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. *Ordinance No. 669 specifically allows uses like the proposed clinic in the MR District by special exception.*
- (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. *It is an existing residential building that will not be altered in its exterior appearance. Apartments are existing on the corner lot which is a structure originally built for a hardware store.*
- (c) Suitable in terms of effects on street traffic and safety with adequate access arrangements to protect streets from undue congestion and hazard. *Patients will be directed by signage and by the applicants to enter the property from Franklin Street. Onsite parking is more*

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than adequate. As an added precaution, the Board recommends to the Town Council that "No Street Parking" signs be added near the property on 7th Street.

(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. *Meets the criteria that it is not detrimental to the property values of adjacent development and does not adversely affect the surrounding properties in a manner different than the use would affect neighboring properties elsewhere in the MR District.*

(3) 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 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 conditions of approval are included in the motion for approval.*

The motion passed unanimously (3:0).

Staff Item: None.

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The public hearing adjourned at 8:11 p.m.

ATTEST:



Christopher Drummond

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Troy Livingstone, Chairperson



Florence Doherty, Member



Brian Tyler, Member