

**CITY OF DAPHNE  
BOARD OF ZONING ADJUSTMENT MINUTES  
REGULAR MEETING OF JUNE 1, 2023 - 6:00 P.M.  
COUNCIL CHAMBERS, CITY HALL**

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Chairwoman called to order the regular meeting of the Board of Zoning Adjustment at 6:00 p.m. Roll was called and the number of members present constituted a quorum.

Members Present:

Clay Covert  
Derek Wolstenholme  
Carolyn Courson, Chairwoman  
Audra Harper  
Donald Burton, Jr.

Members Absent:

Tasha Quinnelly  
Herb Cole

Staff Present:

Adrienne D. Jones, Director of Community Development  
Pat Johnson, Recording Secretary  
Shawn Alves, BZA Attorney

Chairwoman asked for input regarding the March 3, 2022 minutes presented by staff. There being none, minutes stand approved as submitted.

Chairwoman called for the next order of business: a request for Special Exception as presented on the meeting agenda.

She polled the crowd for the number in favor of and opposed to the appeal.

Meeting recessed at 6:04 p.m. for each side to select their representatives and reconvened at 6:07 p.m.

A presentation of the report packet was given by the Director regarding application #2023-02 for Weinacker Properties, LLC seeking approval of a preschool at 415 College Avenue. Article 35, Table of Permitted Uses of the Land Use & Development Ordinance allows a preschool, an institutional use in an R-2, Medium Density Single Family Residential Zone, upon approval of a Special Exception. She cited Article 13-2 & Article 13-3 requirements and stated the existing building was originally a Protestant Episcopal Church who conveyed it to Luv-N-Care Inc., a daycare twenty years later, who in turn conveyed it to John Weinacker, and he conveyed it to Weinacker Properties LLC, who operated a childcare facility, until they moved to North Main Street late in 2013. It is currently an office building for Weinacker Properties, LLC. Mrs. Jones reserved further staff comments until after the hearing.

Chairwoman called for questions from the Board. There were none.

The Chairwoman opened the floor for the public hearing, asking for the applicant, those in favor and then those in opposition, followed by rebuttal.

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John Weinacker, owner of Weinacker Properties, LLC, spoke in favor of Weinacker Montessori School proposing no adverse impact to the neighborhood. He has a site on Main Street certified by the State, and wishes to reinstate his previous childcare at this location. He said there are less than a hundred licensed facilities. He plans to renovate, remodel, and refurbish the building and the playground if approved.

Dr. Deidre Powe, Director, Lake Forest Montessori School, said Daphne currently has only 20 preschools in place and she has 102 pupils with a long waiting list, and there is a need for quality childcare for infants to 11 years old.

Chairwoman called for questions from the Board. There were none. The Chairwoman called for those with opposition to come forth.

William Doyle, 1510 Third Street, spoke in opposition as the spokesman for several of his neighbors and expressed concerns regarding: lack of parking, area school traffic cutting through, late evening traffic, safety, early morning noise from diesel trash trucks emptying dumpsters, trash in their yards from the dumpster, visitors parking on private property, 22.0' narrowness of Third Street and the impossibility of being able to turn unto the 12 parking spaces provided, which were all problems 13 years ago, but now magnified due to increased enrollment of area schools and city events. He read statements from the Land Use & Development Ordinance about complying with the requirements to get an approved special exception of which he stated this appeal does not because it adversely affects him and his neighbor's property.

Pate Brantley, 1507 Third Street, spoke in opposition and expressed concerns regarding: traffic, insufficient parking, emergency response, dumpster trash smell and predators; visitors parking on his private property and toys thrown over the fence and left on his lot; property depreciation and peace and harmony along Third Street vanishing completely.

The Chairwoman closed the floor to the public hearing and offered the applicant the opportunity for rebuttal.

Mr. Weinacker said the parking is adequate for the number of teachers in the past and now, and nobody has ever said anything about any issues currently or in the past and he is not anticipating any.

Chairwoman called for questions from the Board.

The Board asked how many students were being planned for at this location, and what is the drop-off and pick-up plan.

Mr. Weinacker answered up to 99 students and he stated that all of the students would not be dropped off or picked up at the same time, usually at peak times there may be 3 or 4 arriving at the same time, but there is adequate parking off road for it in the off-street parking section on College Avenue and Third Street.

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The Board again asked about the drop-off and pick-up route; and plans to become compliant with the American Disability Act.

Mrs. Jones stated she would comment on the City Engineers findings in her closing remarks.

Mr. Weinacker answered in my experience drop-off and pick-up has been predominantly down College Avenue. They would come down College and park in one of the twelve spaces on College and some would come down and park on Third Street sometimes. I have never had a problem during the many times I needed to park on College Avenue and we are planning to totally remodel even though we have had a ramp that worked, and we will make the changes that are necessary. However, I do think the parking is adequate because of the number of students and teachers that we have had in the past and they were able to get in and get out, without any accidents.

The Chairwoman asked for those in opposition.

Mary Boyd, 1500 Old County Road, discussed parking not being sufficient for special events.

Mr. Doyle stated the pre-school would be 12 hours a day, 5 days a week, 12 months a year from 6:00 a.m. to 6:00 p.m.

Councilman Steve Olen, 437 Village Drive, said having up to 99 students there being no way that the parking is adequate.

Jennifer Magli, 1508 Third Street, expressed opposition regarding pedestrian safety and traffic speeding down Third Street back in 2011-2012 and still doing it, and their children not being able to ride their bikes along the street in the afternoons because pick-up time did not start at 6:00 p.m., but rather 3, 4 and 5 with late parents rushing down the street.

Wib Magli, 1508 Third Street, expressed the number of required parking spaces being noncompliant.

The Chairwoman closed public participation and asked Mrs. Jones for her comments.

Mrs. Jones in her closing statement presented the provisions of Article 13 referring to the criteria for Uses Permitted by Special Exception. She identified seven criteria that the applicant needed to meet including recommendations of the City Engineer and Building Official and herself. She explained that the City Engineer evaluated the site and noted deficiencies regarding ADA compliance, inadequate sidewalk width and parking. The Building Official gave a favorable recommendation for use of the building as a childcare facility. She stated if the applicant is approved they would have to submit an Administrative Site Plan to be reviewed and approved by City Staff because it is an existing structure, but all of the noted deficiencies must become compliant prior to the establishment being allowed to open. Everything from ADA compliance resurfacing to sidewalks and parking must be brought into compliance if the special exception is approved.

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Mrs. Jones recommended a one-way street with directional use signage as a solution to eliminate some of the traffic problem, however she was not sure if it was enforceable. It was also her recommendation that all parking meet ADA compliance requirements, as well as one-way parking in the front on College Avenue. She noted that directional arrows and signage will be provided, and the property shall be used exclusively for a preschool childcare facility for Weinacker Properties, LLC, and she asked that there be no access for patriots along Third Street.

Mr. Alves, BZA Attorney pointed out to the Board that under Article 13-3(b) if they decide opposite of staff recommendation then you need to give the particular reason for deviation.

Hearing no further comments from the Board, the Chairwoman called for an affirmatively stated motion.

**A Motion was made by Mr. Wolstenholme and Seconded by Mrs. Harper to approve Appeal #2023-02, Weinacker Properties, LLC, request for a Special Exception to the Daphne Land Use and Development Ordinance to allow the operation of a private school, i.e., preschool and childcare center associated with Weinacker Montessori School at 415 College Avenue, zoned R-2, Medium Density Single Family Residential.**

Upon roll call vote, **the Motion failed.**

<b>Mr. Covert</b>	<b>Nay</b>
<b>Mr. Wolstenholme</b>	<b>Nay</b>
<b>Mrs. Harper</b>	<b>Nay</b>
<b>Mr. Burton</b>	<b>Nay</b>
<b>Mrs. Courson</b>	<b>Nay</b>

The Chairwoman stated the motion is not approved - Mr. Covert's opposition - lack of ADA compliance for safe parental parking and possible delayed emergency response; Mr. Wolstenholme's opposition - design, and location not being for the general welfare of the neighbors; Mrs. Harper's opposition - the use does not line up with Article 13-1 as fitting with the neighborhood; Mr. Burton's opposition - the pick-up and drop-off of 99 students having a detrimental effect on the area; and the Chairwoman's opposition - the adverse effect to the neighborhood traffic the health, safety and general welfare of the residents.

You may go by Community Development after 9:00 a.m. in the morning to pick up your paperwork.

Meeting recessed at 7:19 p.m. for a break and reconvened at 7:25 p.m.

Chairwoman called for the next order of business: a request for a Variance as presented on the meeting agenda.

A presentation of the report was given by the Director for application #2023-03, Carlisle, LLC, seeking a Variance to modify the buffer zone requirements by allowing the installation of a 2.63' tall retaining wall in lieu of the required 6.0' high privacy fence.

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Mrs. Jones stated and by also allowing the installation of a 4.5' wide landscape greenbelt in lieu of the required 6.0 wide landscape greenbelt at 10058 Belgrove Avenue, for Ace Hardware, on Lot 1 zoned B-2(a), Limited Local Business while

Lots 2 & 3 are zoned R-2, Medium Density Single Family Residential. Lot 2 is the homestead of Danny & Donna Parks, the original owners, who sold to Carliste, LLC and Lot 3 is vacate. The buffer is required by our Ordinance in Article 19.

Dwayne Smith, 50 N. Florida Street, Mobile, spoke in favor of Carliste, LLC, citing they wanted to do as the neighbor prefers, otherwise they have no problem doing what the Buffer Zone Ordinance calls for.

Danny Parks, 10092 Belgrove Avenue, spoke in favor of Carliste, LLC, citing that granting the variance would make the modification to the buffer requirements a welcomed advantage for his property that abuts this site.

Steve Ascik, 119 Savannah Square, Fairhope, spoke in favor of Carliste, LLC, citing that he had made a commitment to Mr. Parks to make the development as aesthetically pleasing as possible when he sold me the property, but due to construction issues it has not turned out that way.

The Board questioned whether aesthetics was the reason Mr. Parks wanted the modification.

Mr. Parks answered confirming that it would be more stable and aesthetically pleasing, and it would allow easier maintenance where his fence runs with Ace's property, making it beneficial to him and Ace.

The Chairwoman closed public participation and asked last comments.

Mrs. Jones explained the four criteria for granting a variance as stated in Section 21-1(f)(3) and stated because the intent of the buffer and privacy fence is to mitigate impact when abutting residential areas, but due to these unusual circumstances the LUDO design would be less beneficial than the proposed design, and Mr. Parks has asked Carliste to reduce the requirements. A retaining wall aids in stormwater management and is completely impervious compared to a wooden privacy fence. As not to be contrary to the provisions of the Ordinance staff recommends approval so that the intent of the landscape buffer would not cause undue and unnecessary burden on Lot 2 caused by stormwater run-off and intrusion from Ace Hardware.

Hearing no other comments or discussion the Chairwoman called for an affirmatively stated motion.

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A **Motion** was made by **Mr. Wolstenholme** and Seconded by **Mrs. Harper** to approve **Appeal #2023-03, Carlisle, LLC, request for a Variance to the Daphne Land Use and Development Ordinance to allow the installation of a 2.63' tall retaining wall in lieu of the required 6.0' privacy fence and the installation of a 4.5' wide landscape greenbelt in lieu of the required 6.0' landscape greenbelt at 10058 Belgrove Avenue, zoned B-1(a) Limited Local Business**

Upon roll call vote, **the Motion carried unanimously.**

<b>Mr. Covert</b>	<b>Aye</b>
<b>Mr. Wolstenholme</b>	<b>Aye</b>
<b>Mrs. Harper</b>	<b>Aye</b>
<b>Mr. Burton</b>	<b>Aye</b>
<b>Mrs. Courson</b>	<b>Aye</b>

The Chairwoman stated the motion is approved and you may go by the office of Community Development around 9:00 a.m. in the morning to pick up your paperwork.

There being no other business Chairwoman called for a **Motion to Adjourn.**

A **Motion** was made by **Mrs. Harper** and **Seconded** by **Mr. Covert** to adjourn. **There was no discussion of the motion.**

**The Motion carried unanimously.**

The meeting adjourned at 7:32 p.m.

**Respectfully submitted by:**



Pat Johnson, Recording Secretary

**APPROVED:** December 7, 2023



Carolyn Courson, Chairwoman