

CITY OF DAPHNE  
BOARD OF ZONING ADJUSTMENT MINUTES  
REGULAR MEETING OF APRIL 4, 2024 - 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  
Tasha Quinnelly  
Audra Harper  
Carolyn Courson, Chairwoman

Members Absent:

Derek Wolstenholme

Staff Present:

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

Chairwoman asked for input regarding the March 7, 2024 minutes presented by staff. There being none, minutes stand approved as submitted.

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

A presentation by the Director was given regarding Appeal #2024-04, Daphne Baptist Church seeking approval of a Variance to allow the issuance of a sign permit to replace a sign copy placard on a nonconforming off-premise monument sign, in lieu of the provisions of Section 33-4, Nonconforming, Grandfather Clause, Legal Nonconforming Signs: (1) Existing Off-Premise Signs and Billboards. She showed pictures of the new placard and the existing sign located East of the intersection of Main Street and Dryer Avenue, citing that the property is zoned B-1, Local Business. She noted the sign has been in place many years prior to the 1987 adoption of the Land Use and Development Ordinance in 1987 and any alterations would be permitted and administered by the Code Enforcement and she yielded the floor to Christina Brazell, Code Enforcement Officer for the City of Daphne.

Ms. Brazell stated we were approached back in November by a church member about the sign changes, but by the time she approached our department the sign had already been changed. You have in your packet what the sign looked like prior to and after the changes that were made. As for our discussion at that time due to the current Ordinance because the billboard and sign itself were changed it lost its nonconforming status. Thereafter, we spoke with several members, and we were presented with an email and a letter asking for a variance.

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A variance for permission to allow the change to the sign, but in the midst of the process they changed it back I believe is what we were told at that time. We did not grant them that nor was a permit actually submitted to our office so we could have that discussion formally. I will answer any questions you may have.

Chairwoman called for questions from the Board.

The Board presented questions regarding: which sign is newer; previous changes to the sign in years past; what else does Code Enforcement have a problem with other than the middle sign placard being replaced; will the remainder of the sign have to be taken down now that they have been caught changing out the sign.

Ms. Brazell answered the navy blue is the newer one that replaced the white one and only that part was replaced, not the structure. If you look over the Ordinance itself it does not mention the structure, it was the billboard or the sign that was changed caused it to lose its nonconforming status. I included in your package images I found on Google when I brought it up which was an image from 2008. and I cannot confirm if that was the original sign, and there is one from 2011, and in 2019 it showed the blue sign and now Google images show the white sign.

Mr. Alves stated it is my understanding that the placard has been changed occasionally over time.

Ms. Brazell stated we have no documentation of them and we were not able to have that discussion because a permit was never submitted. We did discuss it over emails after it lost its grandfather status, but it was never addressed. No problem other than it has lost its grandfather status. Now it is in violation of nonconforming status and no permit, and yes, the remainder of the structure will have to be removed because they are in violation from losing their grandfather status.

The Chairwoman opened the floor for the public hearing and called for those in support of the appeal.

Daphne Rudicell, a practicing Attorney and member of Daphne Baptist Church, spoke seeking approval of the variance for the nonconforming off-premise sign citing from personal knowledge the precedent set for the many times the wooden placard changed through the years as not to be an eyesore in the downtown Daphne area. After the church received notice in November that they had violated the Ordinance by changing the placard they advised me and I reviewed the ordinances and found them to be conflicting of one another. She said the sign is grandfathered because it is an off-premise sign, but Section 33-7 clearly states all sign must be kept in good condition and appearance or you will get a citation, therefore the position of the church is that they did not change the sign itself, the structure, ironwork or awning.

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They were complying with Section 33-7 by replacing the broken placard that would have caused them to be in violation of the Ordinance, the part that looked like several dogs had chewed the corners of it. It was not in very good shape. It is a wooden placard that needed to be refurbished, so once they advised us that we could not change it we put the original placard back, but then we were told we are still in violation. It is confusing to us because you have an Ordinance that says you have to keep your sign in good maintained condition. Our church has been in existence since 1885 so by no means do we want to have a poor reflection on the City by having a placard that does not look like what we want our city to look like where we live and enjoy. This is why we are before the BZA to request a variance so that we will not have an issue and lose our grandfathered status.

Chairwoman called for questions from the Board.

The Board presented questions regarding: if the placard was the only change; whether the brickwork on the structure had ever been updated.

Ms. Rudicell answered that the placard was the only change and to her knowledge the brickwork had never been updated perhaps the black painted part may have been done, but that is it.

Chairwoman called for those in opposition and rebuttal. There were none. The Chairwoman closed the floor to the public hearing and called for discussion by the Board, and asked the Attorney for his findings.

Mr. Alves stated the sign is the whole structure. I am not an Engineer, but it appears to have two structural components, two brick columns that support a wrought iron frame, which appears to hold the placard that everyone has been referring to as the sign, but the sign is the whole structure. I have looked at the Ordinance and researched some case law, and your Nonconforming Grandfathered Off-premise clause is covered under Section 33-4(a)(1) which says that if at any such time as any existing off-premise sign or billboard is removed or destroyed the replacement sign or billboard shall be in conformance with the provisions of this Ordinance, and the Ordinance prohibits off-premise signage. There is a definition in the Ordinance for destroyed and structural deterioration which reads if any nonconforming sign is removed or destroyed or becomes fifty percent (50%) or more structurally deteriorated as determined by the Code Enforcement Officer, then the replacement sign shall conform to the requirements of the Ordinance. Therefore, if a car ran off the road and hit this sign and laid over all of the structural components I feel that you would not be able to put the sign back. Has the sign been removed? The sign consists of two brick columns and a wrought iron frame, which clearly has not been removed, so the question is can they replace the placard.

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I have looked and the Ordinance does not really address it, so I looked at case law that mostly deal with billboards and in these law cases they looked to see if there was any structural alteration and I do not think the replacing the placard is a structural alteration. Then they look to see if the nonconforming use has been expanded, for instance, has the structural square footage been expanded and they have not done that in this case. Have they done something to make the sign bigger, larger or more nonconforming, no. I even found a case where they took a single billboard and made it into a tri-board having a motor to rotate the columns to show three advertisements on it, but it did not expand the nonconforming use because it did not increase the size they still were able to maintain their grandfather status. Clearly this placard does not increase the size of the sign or change the status of the nonconforming use. The placard has been changed multiple times over the years and we do not know if it has been once or twice since the Ordinance was passed, but it appears that it has been changed at least once prior to this incident. The replacement of the placard did not destroy the sign, it did not replace the sign and it did not structurally alter the sign, and it does not expand or enlarge the nonconforming use. One way to look at this is if you had a billboard that was in a prohibited area with nonconforming pre-existing use and say it had a car dealership advertisement on it and they stopped paying and the sign company changed the coating, the cover, the paint job and the plastic wrap, whatever was on the billboard for a law firm, I do not think that makes the sign nonconforming. I am of the opinion that this did not alter the sign in a way that removes its grandfather status and based on those reasons I think you can grant the variance to only replace the placard as requested with the understanding that if on the next day it gets ran over by a truck it still falls under the grandfather status. However, if the structure is destroyed more than fifty percent then it cannot be replaced, it must be removed, but I believe replacing the placard expands the nonconforming use and prohibits it from having the protection of Section 33-4(a)(1).

The Chairwoman called for discussion from the Board.

The Board asked what would happen if the sign were totally destroyed?

Mr. Alves stated that would be a question for the municipality and not the BZA.

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

A **Motion** was made by **Mrs. Harper** and Seconded by **Mrs. Quinnelly** to approve **Appeal #2024-04, Daphne Baptist Church, request for a Variance to allow the issuance of a sign permit to replace a sign copy placard on a nonconforming off-premise monument sign on the property located east of the intersection of Main Street and Dryer Avenue, in lieu of the provisions of Section 33-4(a)(1), Nonconforming, Grandfather Clause, Legal Nonconforming Signs: (1) Existing Off-Premise Signs and Billboards based upon the recommendation of Attorney Shawn Alves that replacing the placard is not a structural alteration which causes the loss of grandfather status.**

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

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|-----------------------|------------|
| <b>Mr. Covert</b>     | <b>Aye</b> |
| <b>Mrs. Harper</b>    | <b>Aye</b> |
| <b>Mrs. Quinnelly</b> | <b>Aye</b> |
| <b>Mrs. Courson</b>   | <b>Aye</b> |

The Chairwoman stated the motion carried, the appeal is granted. You may go by the office of Community Development around 9:00 a.m. in the morning to pick up the paperwork.

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

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

**The Motion carried unanimously.**

The meeting adjourned at 6:46 p.m.

**Respectfully submitted by:**



Pat Johnson, Recording Secretary

**APPROVED: August 1, 2024**



Derek Wolstenholme, Vice-Chairman