

CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF DECEMBER 3, 2015 - 6:00 P.M.
COUNCIL EXECUTIVE MEETING ROOM, CITY HALL

Chairman stated the number of members present constitutes a quorum and the regular meeting of the Board of Zoning Adjustment was called to order at 6:05 p.m. and he asked the Board to motion to move to the council's executive meeting room due to a scheduling conflict before roll call.

A Motion was made by Mr. Mayhand and Seconded by Mr. Durant for the Board to move to the council executive meeting room.

The Motion carried unanimously.

Members Present:

Billy Mayhand
Philip Durant
Frank Lamb
Larry Cooke
Willie Robison, Chairman
William Scully

Members Absent:

Thomas Warner

Staff Present:

Adrienne D. Jones, Director of Community Development
Pat Johnson, Recording Secretary
Tony Hoffman, BZA Attorney

Chairman called for the **Approval of Minutes** of the November 5, 2015 meeting. There were no corrections, additions or deletions.

The Minutes were approved unanimously.

Chairman called the next item on the agenda, **Appeal #2015-06 Earline Martin - Harris**, request for a Special Exception to the Daphne Land Use and Development Ordinance. The special exception, if granted, would allow the operation of a day care as a home occupation in accordance to the Land Use Development Ordinance, Article 31-1. The property is 1111 Wilson Avenue, which is zoned R-1, Low Density, Single Family Residential.

Ms. Jones displayed a Power Point Presentation of 1111 Wilson Avenue outlining the perimeter of the house and grounds, and the driveway. Ms. Harris is asking to be a home occupation, but there are several regulations that will have to be adhered to and consistent with the ordinance.

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Ms. Jones stated she has given the applicant a list of questions not addressed in her application which need to be answered before she renders her recommendation. Questions concerning percentage of gross floor area to be used, number of family members engaging in the home occupation, were any internal or external additions or alterations planned in connection with the home occupation, and the hours of activity being limited to between 7:00 a.m. and 10:00 p.m., because according to the Minimum Standards for Day Care Centers and Nighttime Centers nighttime care begins at 7:00 p.m. She stated any special exception approved should be consistent with day care facilities as designated by the state and city standard: 7:00 a.m. (to meet the home occupation provisions) to 7:00 p.m. (to meet the provisions of the State's Minimum Standards for Day Care Centers. She also stated the Public Works Director requested the applicant to render days and hours of operations, typical drop-off and pick-up times, and maximum number of clients for a recommendation, and the Building Official had approved the home as structurally satisfactory, but smoke and carbon dioxide detectors should be installed. Ms. Jones asked the Chair if he did not mind if Ms. Martin-Harris addressed the questions.

Chairman opened the floor for discussion.

Ms. Martin-Harris distributed pictures for review. I own several lots and I am not visible by any of my neighbors. My home is twenty eight hundred square feet, and as for the twenty percent of floor area, Department of Human Resources guidelines are a lot more stringent than yours. After you approve me DHR will come out and inspect my home, not only just the area for the children, but they will inspect every aspect of the home and the surrounding perimeter as well. Employees are limited to me, but according to DHR I must list at least one substitute, and my husband is listed as that substitute in the event that something happens to me, and I am only qualified for six children. I am not doing any remodeling, my house was built in 2012, nor am I doing any additions or anything like that. Now I am specializing in third shifts, meaning people will have to be able to pick up their kids by 11:00 p.m., so maybe you can adjust me for that one hour. I will specialize in third shifts, unusual hours, and weekend care. All of the daycares in Daphne close at 6:00 p.m. so the families needing care after that is having a hard time finding someone dependable in the evenings. The way I came up with this idea is my husband works swing shifts. Some of the guys he works with are young and have wives who are nurses. If they both are on swing shift they are having a hard time maintaining those high paying jobs not being from this area with no family around. If you allow me to I am going to fill in the gap for them.

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Ms. Jones stated thank you. There are a few things we need to look at in the packet that Ms. Martin-Harris mentioned. Under standard criteria for special exception consideration the definition for a home family daycare is a child care facility, licensed and regulated by the Alabama Department of Human Resources, within a single-family dwelling, which receives on a regular basis not more than six children for care during part of the day, and I put emphasis upon care during part of the day to indicate that the definition applies to day care not nighttime care. The next paragraph talks about the standards for day care centers and nighttime centers which are included in your packet as well, and should the applicant desire to operate a nighttime center a variance to the LUDO would be necessary. At this time no variance application has been submitted for review. I have informed the applicant of the need for a variance. The application before you tonight is for a special exception for daytime operation. In the State's Minimum Standards which I placed an excerpt in your packet so that you can see that there are different standards for day care and night care. A night care facility is defined as a child-care facility which is a center or a family home receiving a child or children for care after 7:00 p.m. Additional requirements for centers operating after 7:00 p.m. and for centers operating past midnight can be found in a separate section, which I did not include because our ordinance does not allow nighttime care, but is specific to a day care facility. There are different requirements for a nighttime facility, and again should the applicant desire to operate a nighttime facility a variance would be necessary. At this time no request has been made. In my recommendation I stated any special exception approved should be consistent with day care facilities as designated by the state and city standards. So it would be a compromise between the two, and that would mean a 7:00 a.m. beginning time to meet home occupation provisions in the LUDO to 7:00 p.m. to meet the provisions of the State's Minimum Standards for Day Care Centers, that is my recommendation to you.

The Chairman stated does the LUDO say 7:00 a.m. to 5:00 p.m.?

Ms. Jones stated no. A home occupation can operate from 7:00 a.m. to 10:00 p.m.

The Chairman stated what is the provision for day care?

Ms. Jones stated the city does not have a standard for a daycare's operation time, but the State of Alabama does for a daycare, which is 7:00 a.m. to 7:00 p.m., anything after 7:00 p.m. would fall into the provisions of nighttime care.

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The Board discussed the difference between the hours of a day care facility and a nighttime facility, and the applicant wanting to operate until at least 11:00 p.m., which the LUDO does not allow for a home occupation, and the need to submit a separate request for a variance to operate past 10:00 p.m.

Ms. Martin-Harris stated this is something new to the area, something that has been absent. DHR is a lot more stringent than the city. They do background checks and medical reports on everyone in the house. A lot of cities have not had to address this issue of overnight care, because it has not been something that has been needed. I would prefer to do overnight care if you all would work with me in that aspect because that is the greatest area of need. I would also ask that you consider suspending your rules and allow me to operate a nighttime facility.

Mr. Hoffman stated the Board cannot do that.

The Board discussed the involvement and recommendation of the Public Works Director, the Building Official, the Zoning Administrator and Community Development, which are both Ms. Jones, and the definition of may, will, shall and should. They also discussed what type of traffic will be generated with six children and the fact that there was no fenced area for the children to play in, if indeed she was going to have a play area and the dog in the cage as you come up the driveway of the right. It was also discussed that the special exception would be issued to Ms. Martin-Harris as long as she operates at this location, and one bedroom and bathroom will be used for the home occupation.

Ms. Martin-Harris stated let us keep in mind that there are certain rules for six children and under, and DHR will make sure that the dog is not intermingling with the kids as well. They will play inside. Eventually they will just be coming in the evening time, and I can show you on the slide. I will use the family room, and that second bedroom and bathroom. Is that twenty percent? DHR is also going to regulate which area and percentage that we use. While I am here before you all I would like for your requirement to coincide with DHR's, and they are going to come out and physically measure. I am requesting up to six children. Let us just say if they come out to measure. They say no, your measurements only qualify you for three children so then that is going to be a discrepancy or maybe some concern for one way or the other, but DHR is going to decide how many kids I get at the end of the day. However, DHR will not come out and measure until you all say okay.

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The Board discussed the home functioning as a home and home occupation, and it being inspected by the fire marshal, code enforcement, building official, the revenue officer and Ms. Jones, the Zoning Administrator in acquiring a business license. Also discussed was DHR's after 7:00 p.m. definition of nighttime care and a variance being needed to operate a nighttime facility.

Ms. Martin-Harris stated unless you give me a special exception to do so. If anything is out of whack DHR will give me six months. They will give you a temporary license for six months to get everything in compliance if they see something. So actually on here it says from 7:00 a.m. to 10:00 p.m. and if there is any kind of way you all could approve it for an additional hour.

The Board discussed the fact that the special exception for the home occupation would allow her to operate from 7:00 a.m. to 10:00 p.m., but DHR only allows her until 7:00 p.m. unless she qualifies as a nighttime facility. So she would be able to operate until 10:00 p.m. and if she had turned in an application for day care and nighttime care we could consider both.

Ms. Jones stated no, because it conflicts with our definition for day care, and we are trying to find the distinction between the day care and nighttime care. Yes, a home occupation can operate until 10:00 p.m. but anything after 7:00 p.m. puts her in a different classification for the use. Right now we are talking about day care and not a night care facility. If she had submitted a request for a variance then we could have considered both, and you would have two motions to make for two applications. If she had submitted both applications we could have had both in one meeting, but they are two separate applications.

Ms. Martin-Harris stated in her defense I would have had to pay twice versus coming for the special exception and having one motion to approve both. On the application that I did for the City of Daphne it does say daycare slash nighttime care. Right now it is a discrepancy between DHR and maybe the City of Daphne's ordinance because I am trying to do something that has not been done before. So if you can find some kind of median place to make it work I would really appreciate it. It would be a benefit because I could start looking for a family in January. I am not sure if I am going to have six families right away, this is just a preliminary step. After I leave you all then I have to go before DHR which is another process all over again. My initial application was from 7:00 a.m. to 10:00 p.m.

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Ms. Jones stated that is the reason my recommendation says from 7:00 a.m. to 7:00 p.m. to avoid having a conflict between those two things and I did tell Ms. Martin-Harris upfront that there was a need for a variance to do nighttime care.

Ms. Martin-Harris stated I did ask if there was a way that we could do it all at one time. Same people, same issue. We are just talking about a couple of hours.

Mr. Hoffman stated just so you understand, from a legal prospective this Board can only do what the City of Daphne authorizes them to do under the ordinance. If the ordinance says a certain thing then they cannot just say well the ordinance does not make sense and we want to help Ms. Martin-Harris. They must stick with what they are governed by one way or another. It is a formality and you might not understand it, but if you need the variance you have to apply for it, and that is the legal requirement. The Board is here to enforce the Ordinance.

Ms. Jones stated the City has a definition for day care not nighttime care, and nothing is a surprise to Ms. Martin-Harris because we talked about this.

The Board discussed the definition of a home occupation and its hours of operation versus the hours of operation for a day care. The consensus was that they wanted to help Ms. Martin-Harris if it could be supported by the ordinance and they understood the need for a variance to operation beyond the 10:00 p.m. regulation and they questioned whether there was some way they could do so legally by adding a caveat to the motion.

Mr. Hoffman stated you certainly can add one, however, DHR's standards would not allow Ms. Martin-Harris to operate as a nighttime care facility according to their definition and the city's standards does not allow for nighttime care hours for a home occupation, and we do not have an ordinance for nighttime.

Ms. Martin-Harris stated nighttime facilities with DHR are a little bit different. I cannot even have the same equipment for day care and nighttime care. The day care kids can use cots and the nighttime kids use beds. That is going to be very important for us to come into consensus as to what we would like to do. I cannot move any farther with DHR until I make some steps forward with you all. I did not buy any cots, I bought beds, and they have to be in place for DHR to even come out. I bought six and I am in like a catch 22, I cannot move forward with DHR until I move forward with you. So maybe we can find some kind of compromise, if you all say okay we will do this.

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Ms. Martin-Harris stated whatever it is that you would like to do, and I can take that to DHR, and DHR says this is what I am compromising to do, and we can merge together. Because right now we are not really on the same page with what your Ordinance is requiring and with what DHR is requiring, and that is a big expense on me to keep having to buy stuff. I am buying this stuff online and I may not be able to send it back as easy as I can to Wal-mart so please take that in consideration as well, as to what I am trying to do to satisfy you and DHR as well, because at the end of the day I want to be in compliance with both.

Mr. Hoffman stated understand that it is not on the table tonight that you can be a nighttime facility because you did not apply for the variance to do so. DHR will come and assess you, but only as a day care facility with cots according to their definition of 7:00 a.m. to 7:00 p.m.

Ms. Martin-Harris stated so you are saying I will have to buy cots as well.

Mr. Hoffman stated I am saying we understand you are telling us that you want a nighttime facility, but you did not apply for the variance to do so, therefore according to DHR's definition you can only be a day care facility, and according to the City's definition for home occupation you can only be a day care facility. The special exception can be granted for the home occupation, without attaching a time, and she can operate a day care facility, but the DHR will not grant it as a nighttime facility according to the 7:00 p.m. cut-off time.

The Chairman asked would anyone else like to speak in favor or opposition of the special exception. Being none, Chair closed the floor for public participation and entertained a motion.

A Motion was made by Mr. Lamb and Seconded by Mr. Mayhand to approve Appeal #2015-06, Earline Martin-Harris, for a special exception to allow the operation of day care as a home occupation in accordance to the LUDO Article 31-1. The property is 1111 Wilson Avenue, which is zoned R-1, Low Density Single Family Residential.

Upon roll call vote, the motion carried.

Mr. Cooke	Nay
Mr. Durant	Aye
Mr. Lamb	Aye
Mr. Mayhand	Aye
Mr. Robison	Aye

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The Chairman stated the request for the special exception is granted. You may go to the office of Community Development after nine o'clock in the morning and pick up the necessary paperwork. It is not on the agenda tonight because we have been waiting until we have more members present, but the draft letter to the Council for possible action against repeat violations can be done tonight or should we wait until after the first of the year. Okay, the consensus is to wait until next year. Next on the agenda is the election of officers. The Chair opened the floor for the nominations for Chairman.

Mr. Durant nominated Mr. Robison for Chairman, and Mr. Cooke seconded. The nominations were closed with no other nominations, Mr. Willie Robison is Chairman.

The Chair opened the floor for the nominations for Vice Chairman.

Mr. Mayhand nominated Mr. Cooke for Vice Chairman, and Mr. Lamb seconded. The nominations were closed with no other nominations, Mr. Larry Cooke is Vice Chairman.

The Chairman stated Ms. Pat Johnson is our recording Secretary.

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

A **Motion** was made by Mr. Lamb and **Seconded** by Mr. Durant to adjourn. There was no discussion on the motion.

The Motion carried unanimously.

The meeting was adjourned at 7:18 p.m.

Respectfully submitted by:


Pat Johnson, Recording Secretary

APPROVED: February 4, 2016


Willie Robison, Chairman