

CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 2, 2014 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL

Correction: May 1, 2014

Chairman stated the number of members present constitutes a quorum and the regular meeting of the Board of Zoning Adjustment called to order at 6:03 p.m. and asked for roll call.

Members Present:

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

Members Absent:

William Scully
Thomas Warner

Staff Present:

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

Chairman called the next item on the agenda, **Appeal #2014-05 Sportsman's Storage**, a request for a variance proposing to change the west side setback to five feet, in lieu of the required twenty five feet. The property is Lot 2 Sportsman's Marine Subdivision, which is zoned B-2, General Business.

Ms. Jones displayed a Power Point Presentation. She referenced several articles from the Land Use and Development Ordinance, Article 13-3, Compliance with District Requirements, Article 11-5, Subdivision Exceptions and Exemptions and explained the need for the BZA's approval of any variance to required setbacks. The property was annexed into the city in 2007, and recorded in the Probate Records as of March 9, 2007. She described the applicable setbacks for the site and differences between the site plan (2007) and subdivision plat (2008) for Sportsman's marine. When the site plan was approved the line along 3rd Street was considered the rear, and at that time the rear setback was zero for the subject property, however, in recording the subdivision plat in 2008 it caused a reconfiguration of the side yard. The plat notes the proper setbacks, and these notations are consistent with B-2 zoning requirements. The questions to consider are whether their topographic conditions are peculiar to this property and the configuration now making a double fronted flag lot.

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When the site plan was laid out the setbacks were in accordance with the regulations, however, when the subdivision plat was laid out it caused a change in the setback configuration. Is this self-imposed because laying the subdivision out created the problem? Is it an unnecessary hardship? That is debatable. The buildings are already constructed. Do other reasonable options exist that would not create additional hardship? No. Would relief cause substantial detriment to the public good? No. So the request is to entitle Lot 2 to have a five-foot setback along 3rd Street. Ms. Jones stated in my opinion, in considering the merits of the request, it is a case of asking for forgiveness rather than permission, and having no other practical solution to cure the encroachment and she recommended approval of the request.

Chairman opened the floor for discussion. The Board questioned in the event McIntyre or 3rd Streets are ever paved is there sufficient room or would it be fairly close to the building.

Ms. Jones stated there is sixty-feet of right of way along McIntyre. It depends on where they place the path of the road, it can be shifted to one side or the other. If paved they should take into consideration the proximity of the buildings and shift over to the west to accommodate for safe passage.

Chairman opened the floor for public participation.

Scott Hutchinson, a representative from Hutchinson, Moore and Rauch Engineers for Sportsman's Storage, LLC stated Ms. Jones laid out all of the details and I do not have much to add to it, but I can certainly answer any questions on what happened and why.

The Chairman stated if I look at last year's report and compare it to this year's it would be the same. Am I correct?

Mr. Hutchinson stated yes, sir.

The Chairman stated except they are broken out into two appeals rather than one. Basically everything is the same.

Mr. Hutchinson stated the situation has not changed. The applications did. They were split and some more information than last year was added about the details on the west side. Last year it was not very clear that the site plan was approved at five-feet off the west line. It was allowed, designed, approved, and built that way.

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When we came back after it was built for subdivision approval our initial plat submittal showed the setback as five-feet in accordance to where the buildings were. During the subdivision plat approval process the City required us to change it to twenty five-feet, even though the buildings were there. I made it clearer in this application than I did in last years, that is the only difference.

The Chairman thanked Mr. Hutchinson and asked did anyone have any questions. The Board questioned why the city required the change from five-feet to twenty five-feet on the west side and are they both the same on both applications.

Mr. Hutchinson stated Ms. Jones explained that in her presentation. When the site plan was done it was all one lot and the west side was actually allowed a zero setback, but a five-foot was established on that side, and approval was given with that five-foot setback. When the subdivision was done the lot configuration changed. The buildings did not change they stayed where they were designed and built, but the subdivision created a different looking lot so that the west became a side instead of a rear, that is what the subdivision did. The side setback abutting that right-of-way in the plat process made a twenty five-foot setback be required. The plats are the same on both applications. The first application is asking you to change the west side from twenty five-feet to five-feet and the second application is asking you to change the north side from twenty five-feet to twenty-feet. Last year it was all one application, and for very obvious reasons I do not want the whole thing to be turned down because of the opinion on one side.

The Chairman stated since we will be reviewing the north side a little later we will focus on this west side for now. In your paperwork it states the site plan approved by the City of Daphne Planning Commission showing a five-foot west setback. The storage buildings were constructed five-feet off of the west property line as approved, and the property was subsequently subdivided. During the subdivision process, the City of Daphne required that the west setback be changed from five-feet to twenty five-feet, even though the storage units were already constructed five-feet off of the west line. The previous administrator concluded that Third Street was an alleyway, therefore the setback would have been within the LUDO requirements. Is that correct?

Mr. Hutchinson answered yes, sir.

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Ms. Jones stated Article 13-6 does not talk specifically about an alleyway. It list local streets, arterial streets, collector streets, county and highway roads. The issue is the change from a rear setback, which had a zero setback requirement to the reconfiguration of the lot making it a side yard. So the side yard requirement on a corner lot is twenty-five feet. So it is not where we were imposing twenty five-feet as an arbitrary number. The regulation for a corner side yard is and always has been twenty five-feet. If I had said that five-feet was okay without an okay from you then I would be violating the Ordinance because there is nowhere in it that says the site plan establishes the variance. So as mentioned before in Article 13-3, it has to comply with the district requirements unless a variance is approved by the BZA. Perhaps we should have been here in 2008 to discuss this matter, but nonetheless my recommendation is still for approval due to the circumstances that have come to pass and the building is already there.

The Chairman stated thank you. Is there anyone else that would like to speak in favor or opposition of this appeal?

Mr. Wetzel stated good afternoon, my name is Mark Wetzel, I live on Belrose, but we do own property on McIntyre Street. I am trying to wrap my head around all of this. Is this a situation where they have already built this so they are asking for forgiveness basically? Is that what we are confronting here? Okay, so there will be no more building closer to McIntyre or Third Street?

The Chairman stated no. At this time the issue is dealing with Third Street, the paved road to the west of the property. The north setback will be dealt with momentarily.

Mr. Wetzel stated okay. My concern is I have seen a lot of drainage issues actually arising from buildings that have gone up, and we are downstream from all of it. So I will talk more about McIntyre Street because I think that is where the issue is, and that will be momentarily. Have there been any consequences for violation of the code and is there going to be any remediation of the drainage problems due to the building of this?

Ms. Jones stated when the Planning Commission approved this they would have already addressed and approved the drainage if it was incorporated within their site plan, but perhaps that is a question you should ask Mr. Hutchinson, for clarification sake.

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The Chairman stated thank you. Is there anyone else that would like to speak in favor or opposition of this appeal? Being none, the Chair closed the floor for public participation and entertained a motion.

A **Motion** was made by **Mr. Durant** and **Seconded** by **Mr. Lamb** to **approve Appeal #2014-05, Sportsman's Storage, LLC, a variance request to change the west side setback to five feet, in lieu of the required twenty five feet. No discussion on the motion.**

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

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

Chairman explained that the request was approved and the paperwork can be picked up around nine o'clock in the morning in Community Development.

Chairman called the next item on the agenda, **Appeal #2014-06 Sportsman's Storage**, a request for a variance proposing to change the north setback to twenty feet, in lieu of the required twenty five feet. The property is Lot 2 Sportsman's Marine Subdivision, which is zoned B-2, General Business.

Ms. Jones displayed a Power Point Presentation. She stated Appeal 2014-06, Sportsman's Storage, LLC, has requested to reduce the north setback from twenty five feet to twenty feet. She described Article 13-3 of our Land Use & Development Ordinance district compliance requirements for a Planned Unit Development with modifications as required by the Planning Commission, and Lot 2 of Sportsman's Marine Subdivision plat was not developed as a planned unit development. She outlined the southern portion of the property's annexation into the City of Daphne in 2007 zoned as B-2 General Business, which required certain setbacks. She pointed out that in the site plan of 2007 and subdivision plat of 2008, the northern property line was to be developed at twenty five-feet in accordance with the plat and the side yard setback. In 2007 this would have been considered a side corner setback, in 2008 it is considered as either a front or a rear. In consideration of this request the questions that need to be considered are in regard to topographic, and it was found that there are not certain conditions peculiar to this property.

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It was found that it is a double frontage flag lot, and the reconfiguration of the property did not changed from the site plan to the subdivision, however an error was made by the contractor as mentioned in your application. Is that an unnecessary hardship? That is debatable because the buildings are already constructed and the error has already been made. Are there reasonable options existing that would not create additional hardships? No, because the buildings are already there. Would relief cause substantial detriment to the public good? Again, no because the two buildings are already there and this only applies to Lot 2. So the variance request for Appeal #2014-06 is to entitle Lot 2 to a twenty foot setback along McIntyre Street in lieu of twenty five feet. Considering the merits of this petition approval is recommended.

Chairman opened the floor for discussion. There was no discussion. Chairman closed the floor for discussion.

Chairman opened the floor for public participation.

Scott Hutchinson, a representative from Hutchinson, Moore and Rauch Engineers for Sportsman's Storage, LLC stated Ms. Jones gave a very good explanation so I will just answer any questions. The Chairman asked has anyone in the last year talked to the contractor about his error.

Mr. Hutchinson stated I am not aware of if they have or not.

The Chairman stated let me say this last year when the appeal was denied I felt as if we should have approved the one we just approved and denied the other one, but since it was one appeal we were advised not to break it out. We would have to either grant or deny the entire appeal. So right now we are dealing with my bone of contention from last year, to me, I believe the intentional encroachment of the twenty five foot setback.

Mr. Cooke stated the request is for Lot 2 to change a minimum setback from twenty five feet to twenty feet. Is that correct?

Mr. Hutchinson stated yes, sir.

Mr. Cooke stated on the map here, Sportsman's Marine plat, Lot 2 in my packet has a pencil note that says this is the setback that we are requesting to move to five feet. Is the setback moving from twenty five to twenty or is it from twenty five to five?

The Chairman stated is that the one showing McIntyre?

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Mr. Cooke stated correct.

The Chairman stated that would only be dealing with the twenty five to twenty feet at that end, on the north end. Is that correct?

Mr. Hutchinson stated that is correct.

Mr. Cooke stated well this note is incorrect then that you are moving it to five feet?

The Chairman stated if it was five feet then it would be the west side.

Mr. Hutchinson stated bear with me one second.

Mr. Cooke stated this is showing the north side.

Mr. Hutchinson stated may I approach and look at what he has.

The Chairman stated yes. Is not the west side also from twenty five to five, Ms. Jones?

Ms. Jones stated but the north is from twenty five to twenty. So the note should have said to encroach five feet.

Mr. Hutchinson stated that should say twenty. When I redid those sheets to break it out for the fourth time I should have written twenty instead of five.

Mr. Cooke stated I was just a little bit confused there.

Mr. Hutchinson stated I understand. That is my fault.

Ms. Jones stated so just to clarify for the display should read this is the setback that we are requesting to encroach five feet.

Mr. Hutchinson stated correct. If there are questions about drainage I will be more than happy to stay and answer them afterwards.

The Chairman stated thanks Mr. Hutchinson. Is there anyone else that would like to speak in favor or opposition of this appeal?

Mr. Wetzel stated Mark Wetzel, we have property on McIntyre. I am really concerned about the fact that a business or somebody can encroach upon public land and not have any kind of reprimand.

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It may have taken four times for him to get in front of you, time and time again in asking for this, but as you said nobody has talked to the contractor. There has been an error, and it is encroaching on all of us. I am happy to hear that there will be no new building upon this area. If you do not mind, flash back to the picture of McIntyre and Third. You can actually see how the parking lot drains, and in this picture you can see that it drains straight downhill to the rest of us which is now also a church down that way. So it is picking up in that area as far as traffic goes. It is being degraded. Like I said I am happy to hear no new buildings, but this encroachment on the common property does concern me and that is why I am in opposition of approving such a measure.

The Chairman stated a question that we have asked many, many times is how we can hold someone responsible, such as a contractor, surveyor or someone who does this. So far we have not found a way that we as a body can do it. I am like you I do not like it when built over like that. It was my bone of contention at the original request. I wanted an answer from the contractor why they went over by five feet. An inch, a foot I can understand, but five feet to me seems intentional. Those are my feeling so I do understand where you are coming from.

Mr. Mayhand stated I understand your concerns in this matter, however, this appeal will not change anything that is there. The only thing this appeal will do is clear up the title they have on the property. So it is not going to add or subtract anything from the way that the property is now.

Mr. Wetzel stated to clarify, I am happy to hear that nothing new will be built, whenever I first started to kind of review this issue that was my big red flag, so they are going to try and build even more stuff this way. The damage has already been done, but it does not mean that we have to approve of that damage. We do not need to condone someone that is acting out, that is just not how it should be, but who to hold responsible you do run into a big area there. In the end I know if I am having something built I look over the contractors back because I would like it build properly. If they had gone five feet the other direction I guarantee you there would have been an issued raised because they would have been losing space instead of gaining space, and that is why I agree with you sir. It seems intentional and it is a gross intentional error that is stepping on our public property. I suppose that is why I do not agree with approval of it, and that is piece and I will leave it at that.

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The Chairman stated thank you sir.

Mr. Hutchinson stated I will be brief. I just wanted to clear up one comment. I certainly understand the concern, but it is not encroaching on public right-of-way. Everybody I think understands that. It is still on the private property. There is no encroachment into a right-of-way or into public property. It is simply moved beyond a setback. So I just want to make sure everybody understands that.

The Chairman stated thank you, sir. I have wrestled with this issue since I knew it would be coming back to us. I have looked at it and yes it is a self-imposed hardship, and that is not to be taken into consideration, but there are many other perimeters you have to take into consideration when making a decision. There have been times the vote was no and times the vote was yes, and with this one there are other issues that come into play based upon past history. Whether it is an aye or nay it is not a decision made lightly. It is one that I have wrestled with for a long time. Is there anyone else that would like to speak in favor or opposition of this appeal? Being none, the Chair closed the floor for public participation and entertained a motion.

A Motion was made by Mr. Durant and Seconded by Mr. Mayhand to approve Appeal #2014-06, Sportsman's Storage, LLC, a variance request to change the north setback to twenty feet, in lieu of the required twenty five feet. There was no discussion on the motion.

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

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

Chairman explained that the request is approved and as stated before you can pick up your paperwork around nine o'clock in the morning in Community Development.

Ms. Jones stated once the lots adjoining Highway 98 in that area, which are in the city limits of Daphne, are developed they will go through the site plan approval process and we review drainage, traffic impact and several other factors. We typically put up signs on the property if something is coming.

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To give notice to the surrounding property owners to come find out what is going on. So in the future if something is going on there keep your eyes open so that you will be aware of it so you can give your input and come and see it.

Mr. Wetzel stated my name is David Wetzel and I have a question. There is a piece of property to the west of this discussion that has been cleared quite a bit. Something is going on there does anybody know what that is.

Ms. Jones stated I do not, but it is in unincorporated Baldwin County. So give Baldwin County a call.

Mr. Wetzel stated that is Baldwin County.

Ms. Jones stated yes.

The Chairman stated I believe after you past that gulley it is County.

Mr. Wetzel stated I am referring to the property to the west, about eight acres that has been clear cut, due west of the storage facility the paved road that now goes down to the church that they have paved. There is a big Oak in there with a large piece of equipment sitting next to it. Directly west toward Scenic 98 there is a stretch of land we have been watching them just butcher all of the big trees in there. So this is not in regard to this discussion it is just a question of is anybody is aware of what is being built to the west of this.

The Chairman stated you can talk to the County since it is in an unincorporated area.

Mr. Wetzel stated I was just wondering if you are aware of it.

The Chairman stated yes.

Mr. Cooke stated do you know who paved 3rd street?

Mr. Wetzel stated no, sir, I do not.

Mr. Cooke stated you do not know if it was the City, State or County.

Mr. Wetzel stated it was the County.

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Ms. Jones stated Ms. Johnson is giving him a number to call the County to find out information about it.

Mr. Hutchinson stated I just want to say thank you.

Chairman called for the **Approval of Minutes** of the April 3, 2014 meeting. There were no corrections, additions or deletions.

A **Motion** was made by **Mr. Lamb** and **Seconded** by **Mr. Mayhand** to **approve the minutes. There was no discussion on the motion.**

The Motion carried unanimously.

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

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

The motion carried unanimously.

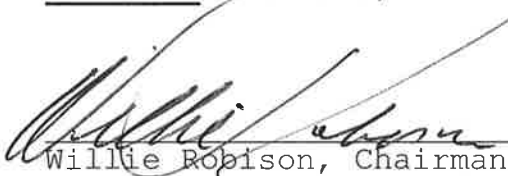
The meeting was adjourned at 6:51 p.m.

Respectfully submitted by:



Pat Johnson, Recording Secretary

APPROVED: June 5, 2014


Willie Robison, Chairman