

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF JULY 10, 2012 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Chairman: the number of members present constitutes a quorum and the regular meeting of the Board of Zoning Adjustment called to order at 6:00 p.m. Let us have roll call.

Call of Roll:

Members Present:

Glen Swaney, Vice Chairman
Frank Lamb
Billy Mayhand
Willie Robison, Chairman
Larry Cooke

Members Absent:

Jim Moss

Staff Present:

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

Chairman: we have a quorum and all five members will be voting tonight. The first order of business is approval of the May 3rd, 2012 meeting minutes. If there are not any corrections, additions or deletions to the minutes. The Chair will entertain a motion.

Approval of Minutes:

The minutes of the May 3rd, 2012 meeting were considered for approval.

A **Motion** was made by **Mr. Lamb** and **Seconded** by **Mr. Swaney** to **approve the minutes as written.**

The Motion carried unanimously.

Chairman: before we get into the new business I would like to take just a minute to welcome our new Alternate, Mr. Larry Cooke. Larry has lived in Daphne twenty years and he is very active. He comes to probably ninety-nine percent of all Council meetings. He helps keep tab on the money of the City by attending the Finance Committee meetings each month. So Larry tries to stay abreast of the things that are going on in the City. Once again Larry welcome and thank you for stepping up to the plate and putting your name in the hat.

New Business:

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Appeal #2012-03 John Powell

Chairman: next item on the agenda is Appeal #2012-03 John Powell, a variance request to allow the rear yard setback to be ten-feet in lieu of the required thirty five-feet and the side yard setback to be ten-feet in lieu of the required twenty-feet in order to build a residence to preserve three large Oak trees. The property is located at 702 Magnolia Avenue, which is zoned R-2, Medium Density, Single Family Residential. Ms. Jones if you would please walk us through this.

Ms. Jones: [passed out a paper copy of the Power Point Presentation of 702 Magnolia Avenue.] Good afternoon. Can you hear me?

Chairman: we are not going to have Power Point tonight?

Ms. Jones: we have Power Point, but it can only be viewed by the audience so I have provided you a copy so that you can flip as I go. This property at 702 Magnolia is in Olde Towne Daphne. The current owner is John Powell. The next slide shows you the plat for Magnolia Hills and it was recorded in 1926. It was one of the first subdivisions in the City of Daphne, not the first, but one of the first. Most of the lots were fifty-foot lots and one hundred or two hundred-feet in depth. The next page provides zoning information. It shows the subject property is zoned R-2, Medium Density, Single Family Residential. The required setbacks are thirty five-feet on front and rear, ten-feet on the side interior and twenty-feet on the corner side. The minimum area is fifteen thousand square feet. The next slide provides the list of the variance requested. The first is for the house to encroach twenty five-feet into the thirty five-foot rear setback allowing a ten-foot setback in lieu of thirty five-feet. The second portion of the request is for a proposed attached carport to encroach ten-feet into the twenty-foot corner yard side setback, and the third portion is to establish the lot area at nine thousand eight hundred and ninety-eight square feet in lieu of fifteen thousand square feet, which is required in an R-2 zone. The next slide gives you the applicant's justification for their request. One being the establishment of the subdivision prior to establishing zoning, and the other is the presence of Heritage Oaks on site. There are three of those. There are two outside of the buildable area and one inside of the buildable area. The next slide gives you a comparison of the buildable area and the close development. On the left is the buildable area which is about two thousand four hundred square feet of area that sits in the minimum setback of R-2. The drawing on the right shows you the proposed layout as provided in the drawings with the application. At the bottom of the slide it shows, in red, the differences in the minimum requirements and what is being requested. The next slide shows you the tree that sits in the buildable area of the footprint, of the building. There are a few more pages, but they are similar to the ones that are in your booklet. I have a slide that shows a highlight of the outline of the property that is contiguous to the subject property.

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Ms. Jones: I also have a picture, which is also in your report, of the house that adjoins on Magnolia Avenue, and the adjoining house on Sixth Avenue. The questions that we typically ask when we consider a variance is, first are there any topographical conditions peculiar to this property, and the answer to that is no. Are there self-imposed conditions? No. Is it an unnecessary hardship? Yes. Are there other reasonable options exist that would not create an additional hardship? My answer would be to reduce the footprint of the building to be less of an impact on the rear yard setback. The next question is would relief cause substantial detriment to the public good? My answer is that I am not sure what impact the proposal would have on the adjoining house to the south. So as I stated in the report, before making a final decision, you may consider requesting more information from the applicants to prove that the twenty five-foot request is absolutely necessary, and that evidence could be building floor plans and building elevations, a report from an Arborist on the condition of the existing trees, especially the one that is in the buildable area. So the points of interest here is that the intent of the Zoning Ordinance is allow minor variances to accommodate extraordinary and exceptional conditions. It is reasonable to consider a variance to the setbacks in an effect to protect both the tree and the root of the Heritage Oak tree. I have three questions. Is a twenty five-foot encroachment into the rear yard absolutely necessary in this case? Would it be appropriate to remove the one tree that encroaches and to preserve the other two Oak trees or would such be considered as upholding the intent and purpose of the Landscape and tree protection standards? So in summary I guess my recommendation depends on what your thoughts are if you consider needing additional information or allowing the applicants to bring forth more information to help justify the request then I would be agreeable with that. However, on the other hand if not, just taking the information that we have in our packet, and if you asked me the question as to whether or not a twenty five-foot encroachment would be appropriate then I would say no. The proposed attached carport is questionable, and that would depend on whether the tree would be removed or not. Again, I need something to justify fully that it absolutely had to be located in that location. There is one aspect that I would certainly say yes for you to approve, and that is the minimum area because there is no other area that can be incorporated into the property to make it be fifteen thousand square feet, which R-2 requires. So in that respect, in that regard, I would recommend approval.

Chairman: Ms. Jones, when I was in the service I failed compass and map reading in our jungle training and got captured by the enemy. When I was out looking at the property it seemed to me that it faced Sixth Street and not Magnolia.

Ms. Jones: well the proposed frontage for the applicant is for it to front onto Magnolia and the side yard would be Sixth.

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Chairman: as far as wanting to build?

Ms. Jones: correct. The front door will face Magnolia.

Chairman: not as it is presently.

Ms. Jones: correct.

Chairman: I did not think I was looking at the wrong house when I saw it facing east and west. Does anyone have any questions for Ms. Jones?

Mr. Lamb: on a corner lot that is real playable where you can say I want an address that says Magnolia or I want an address that says Sixth, and you can orient the house accordingly.

Ms. Jones: that is correct, but by definition in our Ordinance it says that the front is the most narrow side of the lot.

Mr. Lamb: so regardless how they orient the house the front is Magnolia.

Ms. Jones: yes.

Chairman: so if the front door was facing the other way it would still be Magnolia.

Ms. Jones: yes.

Chairman: okay. Does anyone else have any questions for Ms. Jones? Is Mr. Powell here? Mr. Wachter will you be representing Mr. Powell?

Mr. Wachter: yes, sir.

Chairman: if you would please step up to the microphone and speak directly into it and give us your name and address because this is being recorded. Thank you.

Mr. Wachter: my name is Chason Wachter and I am representing Mr. Powell, the property owner, and my address is 118 General Canby Drive, in Spanish Fort, Alabama. You want me to just explain how we got here?

Ms. Jones: yes.

Mr. Wachter: it all started with three Oaks, trying to save three huge live Heritage Oaks. If you look at the drawings there are only two property lines, two setback lines that are being requested to adjust, and that would be the rear facing Magnolia on the south and west end. On the Oak trees you do not only have to consider the size of the tree trunk itself but the huge canopy and the way that the canopy flows.

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Mr. Wachter: the largest tree itself sits within the building path. So the home is actually configured to save that tree in an "L" shape. The only way you can have a garage or carport would be to put it on the Sixth Street side and do a drive. So the house would actually face Magnolia, but the drive itself would come off of Sixth Street. So that was the only way it could possibly be configured to save that particular Oak tree. The couple that is interested, you know, that was the thing that they fell in love with, these trees, and they do not have an interest in cutting any of the trees down. So to save the trees this is the only way that it could be done to configure that house and make it fit within the area.

Mr. Swaney: what is the square footage of the house?

Mr. Wachter: the total square footage has not been determined, but we are only talking about around twenty one hundred feet on the first floor and might have some rooms above it. We are probably talking total twenty eight hundred to three thousand. In the footprint itself we are only looking at about twenty one hundred square feet. So it is not a huge home.

Mr. Swaney: you did say there are plans for it to be a two-story home?

Mr. Wachter: well not a true two-story. It may have a couple of rooms up so it may be a story and a half.

Mr. Swaney: will that require some heavy cutting back of the trees?

Mr. Wachter: well no, that is why we sort of shaped it the way we did so the canopy can remain. The intent is for the canopy to remain, so the house was pushed back, and the second story is added or new rooms are put up it would be configured to stay out of the canopy itself.

Mr. Swaney: I do not see how after a while you could possibly save a couple of those very large limbs on the tree that is closest to the house, on a two-story home.

Mr. Wachter: well if you look at the drawing and you see the "L" shape of the house, the front is going to be a porch. So depending on the roof line, and the slope of the roof, the hope is that you can stay out of that canopy that is the whole reason the house was designed this way.

Mr. Swaney: do you at this point in time have drawings of the house plans?

Mr. Wachter: we do not have the complete drawings of the house. You know, they did not want to get too far down the road not knowing if this is going to be approved or not. So they have been working on just the footprint of the first floor.

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Mr. Wachter: that could be something if you requested it that they could determine if it is something that they want to move forward with.

Chairman: Mr. Lamb, Mr. Swaney, myself and Mr. Mayhand. Do you remember the house on Captain O'Neal several years ago where it was a similar situation and he went back and reconfigured the house. Do you remember that? One of the problems I have is having no plans we do not know what is going there, and if we granted a variance without plans, that variance, and Ms. Jones correct me if I am wrong, would basically be there with perpetuity. It would be there, not saying that this would happen, but you could come back and change the plans to where you totally do the opposite to what we thought we were approving. Looking at it and I have scribbled all over my book and somebody might ask some of these questions before I ask all of them, but when I was out there looking at the lot it seemed to me as if, as Ms. Jones said, the one tree on the west side, at the end of the house, would probably be the one that you could remove and save the other two and not need a twenty five-foot setback variance. I have a problem with this twenty five-foot there, and also, not having the plans because once the variance is given and I believe the Planning Commission would have to wait on the BZA to grant a variance. Does this have to go to the Planning Commission?

Ms. Jones: it has already gone to the Planning Commission to re-plat the lot. They have approved combining Lot's 1 and 2 of Magnolia Subdivision to re-plat the lots as one.

Mr. Mayhand: does the same individual own both lots?

Ms. Jones: yes.

Mr. Wachter: let me make this point. Is there an interest in taking out the tree? I think the request tonight is as stated. I do not think they have an interest in moving forward if that tree has to be taken down.

Mr. Lamb: have you established the health of the tree?

Mr. Wachter: have I? Or can I?

Mr. Lamb: have you?

Mr. Wachter: no, we have not established the health of the tree. I mean we can, but we have not done that. I mean the whole point is the closer you get to that tree you have got to deep footers and you are getting into a root system that is the whole point as you look at the shape it is to stay away from that whole root system. I can understand a request on the first floor, but unless it is just the second floor you are worried about, the limbs.

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Mr. Wachter: you know if you are talking about the other rooms it is an architect issue. They may be willing to go that step, but to me the important thing is, knowing the footprint, and how we are trying to stay out of that area of the tree.

Mr. Swaney: I am of kind of the same point of view as the Chairman is and that is simply that we do not have enough information, as I see it.

Mr. Wachter: right.

Chairman: one of the things that the BZA must look at is and I am going to read it rather than quoting it because sometimes my mind forgets things, but it says "before making a final decision the BZA may consider requesting more information from the applicants to prove that the twenty five-foot request is absolutely necessary. Evidence may include building floor plans and building elevations, a report from an Arborist on the condition of the trees, etc. If this advice is not heeded, then CD recommends denial of the first two requests and approval of the third request." So in asking for additional information or additional plans this would not be the first time this has happened. It has happened in many cases in the past because you have got to look and see what is going there, and go from there.

Mr. Wachter: right.

Mr. Mayhand: would the owners be opposed to combining the lots?

Mr. Wachter: well the lots have been combined.

Mr. Mayhand: they are already combined.

Mr. Wachter: already.

Chairman: however combined it makes nine thousand eight hundred and ninety eight square feet.

Mr. Lamb: on the house that is on the corner of College and Old County Road that we saw.

Chairman: talking about the Robinson house across from Bayside.

Mr. Lamb: yes. What was the setback on the rear allowed to be reduced to? Was it a ten-foot reduction?

Ms. Jones: this was Steve and Daphne Robinson, Appeal #2007-09, located at the northeast corner of Old County Road and Dryer Avenue. The variance was approved to allow a proposed residential structure located at the corner of Old County Road and Dryer Avenue to encroach the rear setback line by twenty-feet.

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Ms. Jones: if it is zoned R-1 the rear setback is forty-feet, so that was half.

Mr. Lamb: that was twenty-feet. Now the one across the street, on the other side of Dryer, where the man wanted to add on to the back of his house in the alley way there, we granted a variance on the back side of that one. You know where the flashing warning light is?

Ms. Jones: has that been recently?

Chairman: is that the one across from the Olde Daphne Methodist Church, in that area right there?

Mr. Lamb: remember he wanted to add on to the back, but he had an encroachment on the back and there was an alley way.

Chairman: it backed up to an alley.

Mr. Lamb: yeah.

Ms. Jones: I do not remember that one.

Chairman: I think that was done when Mr. Eady was here.

Ms. Jones: okay. I do not have the information on that one. Not here.

Mr. Lamb: I remember we had a lot of discussion about that one.

Mr. Swaney: I think it is very commendable that you want to save those trees. There are a couple of huge trees on that lot. Again, without knowing what the configuration would be of the house, after looking at this very carefully, I tend to question a two-story house.

Mr. Wachter: well it is not a two-story house. It is called a story and a half. It is not a true two-story. It is not a very large house.

Mr. Lamb: the problem I have is two setbacks variances, twenty five-feet in the rear and ten-foot on the side.

Chairman: going back to the Robinson's house, across from Bayside. Do you know where I am talking about of?

Mr. Wachter: yes, sir.

Chairman: they had plans that we were able to look at to determine exactly what was going on that lot, and their same request was in saying that they wanted to save fifteen Oak trees that would surround the house. They had their plans that we could look at, and we could see what was going there, how aesthetically pleasing it would be.

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Chairman: in saving the Oak trees I am like everyone else, Oak trees, we breathe what they put off, and without the trees we do not live. So I understand that. If you had something that we could visually look at and determine would this take away from the neighborhood or would it add to the neighborhood. Then we could make a decision based on that. Does anyone else have any questions for Mr. Wachter?

Mr. Swaney: so the removal of the large tree is out of the question?

Mr. Wachter: correct. I mean it can be done. It is just not of any interest to them to pursue it if that is the only option. So we need more information?

Chairman: yes. Is there anyone here that wishes to speak against this appeal? Sir, are you opposed to the variance?

Mr. Wachter: I have a question.

Chairman: okay. Would it be okay if we heard him and then come back to your question?

Mr. Wachter: yes, sir.

Chairman: again, state your name and address for the record.

Mr. Miller: my name is Harold Miller. I have lived here forty-four years right down the street. I own the house next door, the only house on that street. It is in the middle, 1804 Sixth Street. They are looking for a twenty five-foot setback as opposed to a thirty-five and that got my attention. I happen to know these people, they are good people. I would like them to be my neighbors, and I was going to ask you if there is one thing that I want, and I want to turn it over to you all to handle, obviously, I was concerned about where they would put their air conditioning. Instead of thirty five-feet away it would be ten-feet away, roughly, from our deck and patio, what have you. So if it can be moved to another wall, I would let the rest go, that is a concern that I have. I actually own half of the house with my son. My son and his wife live in the house, and he is out of town on business so I am here. If there is a way that can be worked into the agreement that would be a concern we would like you to address.

Mr. Swaney: does your home face Sixth Street? Is that right?

Mr. Miller: yes, the only one of those three houses.

Mr. Swaney: is your garage is adjacent to this lot?

Mr. Miller: well actually we have what is three lots. I have a picture if you want to see it. The story is the subdivision as it is today is not what it was when it started.

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Mr. Miller: it involved my relatives since 1826, and times got hard and that section from Sixth Street to Main Street the lots changed a little bit, see two lots would have given Bryan a hundred feet on Magnolia. He has got ninety-feet. Later on they sold three lots and the owner built that little house in what would be sixty-feet, and Bryan has ninety, which is enough to do what they want to do. I was concerned about the a/c, the fan going on and off.

Mr. Lamb: that is why we have setbacks to protect our adjacent neighbors.

Mr. Miller: well that is the only concern I want to voice, and I think we can work that out.

Chairman: thank you, sir. Mr. Wachter, you had a question as to where you go from here.

Mr. Wachter: I did. Can the proposed buyers speak?

Chairman: yes, they can.

Mr. Wachter: step up and state your name.

Ms. Simmons: good evening, I am Leslie Simmons and my address is 28825 Canterbury Road, Daphne and I am here tonight with my husband Bryan. Thank you so much for hearing us. Before we leave I just wanted to make sure that you understood exactly what it is we want to do. You indicated that if you approved this we can come back and build really anything we wanted to, and I want to make it very clear what our plans are. We do not have a completed house plan because we have already gone to a lot of expense just in preparation for this whole ordeal. The owner of the property is in New Mexico, not I think it is in Arizona, sorry. We agreed to take care of everything for him, including the cleaning up of the lot, and the removal of the two buildings. So, it is going to cost us more to have these house plans put together and then you deny it, and we just had not taken that step farther. We do not want to cut the tree. If we have to cut the tree we are going to forego the purchase of the lot, but the type of house that we are going to build is, and I think it is important for you to know this, it is a cottage style house. We do not want to build a big stucco or brick style home. It would be a wooden house with a metal roof, wrap around porch, a lot of square footage is coming from that southern veranda style porch that wraps around, and that is one of the reasons that we have to pull the house back a little further into the property, it is so we can have that porch that wraps around the front and side of the house. We met with a builder and we have gotten a lot of ideas from our builder. I think regarding the A/C units, that it would be on the side of the house, our side, out of your sight. It would not be on the south end of the property that would cause any kind of noise or any type of problem for the Miller's.

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Ms. Simmons: just one last thing that I would like to add. My husband spent a lot of his childhood in Daphne, and I have spent fifteen, twenty years every summer coming to Daphne, my best friend lived here, and what we are wanting to do is not take away from what is already here. We met in college in 1994, not in Daphne, but knew this is where we wanted to live, and we knew we wanted to be in Olde Daphne. We did not want to be on the east side of Highway 98. We do not want to take away from the character or the charm of Olde Daphne. We want to add to it, and the type of house we want to build is similar to the type of new homes that they built across the street. Across Magnolia they have built cottages, two or three down that street and that is exactly what we want to build. The reason our square footage is a little higher than twenty eight hundred square feet or even up to three thousand square feet is because that is our buffer. It is because there are five of us, we have three children and we want them raised in Olde Daphne. We want them raised with a large yard. If we have to cut a tree and put the house in the middle of the lot then there goes our yard. So, if we pull our house back we have the entire front open for them, you know, I mean that is what we want and that is what we are going for. We are not trying to build something that is going to be an eye sore or something that is going to maim the value of the homes in the neighborhood causing them to go down. If anything, I think it we would improve it. That is all I wanted to say. Thank you.

Chairman: does anyone have any questions?

Mr. Mayhand: I have a statement I would like to make. Far be it from me to tell you what to do with the tree on the lot you are buying, but I just want to tell you what I go through every Spring and Fall. I have about five or six Live Oaks in my yard and every Fall and every Spring I look up and I want to cut them down because they drop millions of leaves twice a year. I wish I have cut a few of them down when I had the opportunity. I just wanted to say that trees are nice, but they also come with some baggage.

Ms. Simmons: we have three Oak trees on our property now. One is in excess of the size of ones on this lot, so we completely understand that.

Mr. Mayhand: I just wanted to make sure you did.

Ms. Simmons: we do, but it is worth it.

Mr. Mayhand: well come by my house and help out any time.

Chairman: does anyone else have any questions? Thank you, Madam. We appreciate it.

Ms. Simmons: thank you.

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Mr. Simmons: I am Bryan Simmons, Leslie is my wife, same address. I just like to say that you guys seem to have all been out to the property and seen what is there currently. I think you guys have had tons of problems with the current owner with what is existing on the property now.

Ms. Houston: would you please speak into the microphone.

Mr. Simmons: I have known Mr. Miller here for probably ten, eleven, twelve years, very well, and I know his son very well, great people, love them to death. I will put that air conditioning unit wherever you want it.

Chairman: Mr. Simmons address the Board please.

Mr. Simmons: I will the air conditioning wherever he wants it. It does not matter to me, that is unimportant to me, but what I would like to say is that we would be improving the property whatever we put on the property considering what is on there now. Mr. Miller's son David has complained, to me, several times, about rats and things, from that existing building on the property getting into his house. So there is definitely improvement to be done there. I do not know how, I understand Mr. Miller and his son would like to buy that property, you know, David has told me that a time or two, and that is fine if they want it. I mean, it is not the only lot in Daphne, we can go find something else, but I am not going to cut the tree down because that is what is appealing to us that is why it is so beautiful to us. We want that canopy. We want the tree. We want to protect it. We want to build something pleasing to the neighborhood around it. We think we will have a beautiful home there. We think we would enhance the neighborhood, and if we had to go in and cut that tree or do anything like that then it is really loses its appeal to us, and that is not meaning any disrespect to you guys for recommending that or asking that. It just loses the character of the lot. So we would probably go somewhere else, we are not willing to do that. I think Leslie said that to as well. I just wanted to say Mr. Miller's son David and himself, and I know them very well, he approved the planning of the home in talking with him earlier. Part of the plans for the home on the back side is kind of like a wall of the home would be. You are looking at a slab and part of that would be the patio. So there is a buffer there. It is not like the wall of the home would be right there.

Mr. Swaney: I guess that is part of the problem that we are having to look and consider the outline of the property without plans.

Mr. Simmons: it would have a concrete foundation.

Mr. Swaney: that is getting back to the problem that I have. I do not have anything to look at that tells me where or what this would be.

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Mr. Simmons: well as my wife stated, we have sank a lot of money already and we are not wealthy people like some of you are.

Chairman: whoa. I am on a fixed income, which is fixing to be lowered even more.

Mr. Simmons: I am just saying that we are really scared to spend a lot more money. It would cost us five, ten thousand more dollars to have a plan drawn up and another five to ten to have the existing houses on the lot removed. So we are kind of at a standstill, and I do not know if it is very smart for us to continue on this road if we do not have some clear, concise, direction. I understand what you guys want to see. I just do not know. We could provide that and you could say well I do not know and I need you to go back and do this or I need you to go do a tree sample test that cost us fifteen hundred or something. I mean it never ends. So I would like something a little more concise from you guys to say exactly what it is you want and let us provide that if we can.

Chairman: Mr. Simmons, are you saying you all do not want to move the house back? You want it up where the trees are? Where the current house is? You want to move it back farther so that the trees will not come into play. That is what you want?

Mr. Simmons: that is right, not any farther than the existing house. Yes, sir.

Chairman: as far as giving you something definitive we cannot tell you what to do. We can make suggestions as to something you may consider because if your appeal is denied tonight you cannot come back for a year on the same situation. If you withdraw your appeal tonight, and let us look at some other ways the house can be reconfigured, so that the trees do not come into play and things of that nature we would have something to go on. We cannot tell you what to do. Mr. Wachter?

Mr. Wachter: I have a few questions just to be clear. If we withdrew, do you think the issues are both requested setbacks and more not having the look of the home and how it fits in with the trees?

Chairman: probably both.

Mr. Wachter: the reason I am asking is because I do not think there is any other way to do the configuration of the home. We spent hours and hours on this. The reason the carport is on Sixth Street, if you think about it, is that there is a ten-foot setback on the east side, and that is not adjustable. It will not fit there. It can fit on the rear and it cannot fit on the front so it has got to be on that side of the house, to have a car shelter. Supposedly, those were the two absolute lines that had to be adjusted for this to work.

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Mr. Wachter: I guess what I am asking is if we withdraw due to what you think is the issue of the two lines then we are going to have a standoff. Do you think that it is more of an issue of this home fitting under this tree?

Chairman: I cannot speak for any of the other Board members, but as for myself those two issues. I do not have anything to look at and the twenty five-foot setback. I cannot speak for the others that is for me.

Mr. Lamb: without a footprint of exactly what you might build, I am not quite sure on the east side if it is twenty-feet. What would you propose rather than encroach that twenty-feet?

Mr. Wachter: we did not adjust the east side or the front. The only reason we made adjustments to the house was for the tree, and that is the bottom line. To move it away from the tree we had to move the rear line. The other line for them to have any kind of car shelter had to be adjusted on Sixth Street. If we cannot do those two then there is no way to fit a house on there. I guess what you are saying is that you want the tree down, and the only way to do it with the tree up is not to do those two lines, which there is no way you can fit a house on there is what we are saying. We can look at providing more drawings, but it is not going to help us if we cannot work within these perimeters that we have drawn out for the footprint. It is a clear footprint. It shows the porches and it shows the car shelter. It just does not show the whole ratio. I just want to be sure if we withdraw that I understand what it is that you want to see. So you do not like the setback lines the way they are drawn? You would take the tree down.

Chairman: that is what I am having a problem with, those two issues. I do not have anything to look at and with the setbacks.

Ms. Simmons: we do not want to cut the tree. We will not cut the tree. Somebody else will have to buy that lot and cut that tree down, but if we keep the permanent setback line on the south side, you would have a very, narrow, shotgun house that none of us in this room would want to live in, especially me with three children. It would be very, very narrow. We are not trying to be greedy or trying to build some big house, we are just trying to make it work without cutting the tree. I do not know how clear the rendering is that you have, but I can see it clearly on the Power Point, we had to move it back to give it that cottage appearance with a front porch. It is like an eight to ten-foot deep porch that kind of wraps around, so that is not even our house that is not even living space. So we had to kind of slide the house back, absolutely, as far as we can get it, just to avoid having a tiny little house for five people.

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Mr. Lamb: have you considered that perhaps an insurance company may not insure your house with the closeness of the big Oak?

Ms. Simmons: yes, sir. We checked on everything. Everything. We have even had unofficially an Alabama State Forester, who suggested, and I do not have that in writing, I can get it in writing because he is in Mobile, Alabama, but he suggested that we push that house back as far as we can get it because of the tree. He did not want to officially test that aging tree because of the boring on holes, anyway that was his professional recommendation.

Mr. Wachter: so really, I guess, from the Committees standpoint the only way to build from what you are looking at, is not to adjust the line that much. For that lot to buildable you would have to take the tree out is where we are, because to build on it you would have to move the lot line back. So what you are saying is you are having a problem with the line, you wish we would take the tree out.

Chairman: do you want to continue with the appeal?

Mr. Wachter: I do not think that we can. It would take a year's wait if it is denied. If I am understand correctly, if it goes to a vote and it is denied then I have to wait a year.

Chairman: well you have another course of action, if your appeal is denied you can appeal to the Baldwin County Circuit Court in Bay Minette.

Mr. Wachter: I think it would be best to withdraw, but withdraw based on your recommendation for more information. Is that correct?

Chairman: so you want to withdraw your appeal tonight. You can come back at a later date. Just re-file.

Mr. Hoffman: you can table it.

Chairman: the one on Captain O'Neal withdraw and came back with new plans and information. Or it can be postponed to another date. When you table something that means you want to take it up again in the meeting that you are presently in.

Ms. Jones: unless you table it for a specific time.

Chairman: that way you can postpone it for a specific time. We all use the word table, and we can use the terminology table, but the correct way is to postpone it to whatever date it is you want to use.

Mr. Wachter: can we postpone it to whatever the next meeting date is in order to bring that information back?

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Chairman: that is in August. We have two appeals in August, presently right?

Ms. Jones: August 2nd.

Mr. Wachter: if we postpone it they would have the option of withdrawing after it is postponed? Correct?

Mr. Hoffman: correct.

Mr. Wachter: that sounds better to me. Is that what you guys want to do? Just to be clear the information requested would be the option you have on the slide.

Ms. Jones: yes, I will give you a copy of the report.

Mr. Lamb: would it be out of order to vote on establishing the lot area? Or is this all one package?

Ms. Jones: all one package.

Mr. Lamb: when we vote in the future we will vote on each individual item or all.

Ms. Jones: on each individual item.

Mr. Lamb: how come we cannot vote on one now if we are going to do them individually? We can establish the lot area tonight.

Ms. Jones: it depends on whether they ask you to postpone the whole thing or not.

Mr. Wachter: you can break it up to vote on the separate items?

Mr. Hoffman: it can be done. It may depend on what additional items you will be providing.

Chairman: we have no problem, from what I have gathered from the other Board members, with the lot area. In combining the two lots even though it is less than fifteen thousand square feet, we have no problem with it because Olde Towne Daphne has very unique situations in those areas. So you can break that one out and vote on it tonight and have the other two postponed until August 2nd. Is that correct?

Mr. Hoffman: that is correct.

Chairman: is that okay with you Mr. Wachter?

Mr. Wachter: say that again.

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Chairman: we are going to vote on combining the two lots to establish the lot area as nine thousand eight hundred and ninety eight-feet and keep the other two until August 2nd.

Mr. Wachter: I think that would be the way to go. Okay.

Chairman: the Chair will entertain a motion in the affirmative to approve establishing the lot area in Appeal 2012-03.

A Motion was made by **Mr. Cooke** and **Seconded** by **Mr. Swaney** to approve **Appeal #2012-03, John Powell, for a variance to establish the lot area as nine thousand, eight hundred and ninety eight-feet in lieu of the required fifteen thousand square feet. The property is located at 702 Magnolia Avenue, and it is in an R-2, Medium Density, Single Family Residential Zone.**

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

Mr. Swaney	Aye
Mr. Mayhand	Aye
Mr. Lamb	Aye
Mr. Robison	Aye
Mr. Cooke	Aye

Chairman: the request for the combining of the two lots is approved. You can pick that up in the Community Development office in the morning after nine o'clock. The other part of this appeal is postponed until August 2nd, 2012, six o'clock in the evenings.

Mr. Wachter: at that time we can bring in farther information.

Ms. Jones: you need to bring it in as soon as you can get it so we can put it in their packet.

Mr. Lamb: I would just like to say that the purpose of this Board is to try and maintain the integrity of Land Use and Development Ordinance especially with regards to setbacks. If every setback request was approved then we just may as well disband. We must look at all conditions of the request otherwise we are not being fair to the citizens in the City. We are not trying to give you a hard time we must try to do what is best for all of the citizens of Daphne, and we do not want someone in the future to come saying well you approved this one and you approved that one so why cannot you approve mine, and a Judge at Circuit Court might see it the same way, so that is why we are asking all of these questions. We are trying to be fair based on your individual appeal, and get a full understanding on the impact that your request will have not only on this gentleman and the next door neighbor, but also on the City of Daphne. Thank you.

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Mr. Simmons: Mr. Lamb I disagree with you. If the people of the City of Daphne took a vote, they would not want that tree cut, as oppose to, that house being built a little closer up on the middle of that lot. I understand what you said and I fully respect what you guys are doing and I think it is a good thing. We do need boundaries, and we do need checks and balances and I totally agree with that. If I polled ten people I would probably find nine that would not want that tree cut, just like I do not and that is what I am trying to do here tonight. That is all I wanted to say. I did want to ask a question about the plans. What kind of plans are you guys looking for? Do you want like a sketch of what would be on the lot? Or do you want little house plans?

Chairman: personally, I do not any technical drawings. I need where it is going to be, and the story and a half elevation. Things like that. Mr. Wachter is good at that, he can do it.

Mr. Simmons: okay.

Chairman: thank you. I appreciate your time. We look forward to seeing you next month. Thank you, Mr. Miller for your concerns. If there is no other business, the Chair will entertain a motion to adjourn.

Adjournment:

A **Motion** was made by **Mr. Cooke** and **Seconded** by **Mr. Swaney** to adjourn.

The motion carried unanimously.

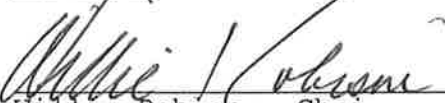
There being no further business the meeting was adjourned at 6:58 p.m.

Respectfully submitted by:



Pat Houston, Recording Secretary

APPROVED: August 2, 2012



Willie Robison, Chairman

/ph