

CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF OCTOBER 6, 2005 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL

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

Call of Roll:

Members Present:

Jeri Hargiss
Billy Mayhand
Glen Swaney, Chairman
Willie Robison
Frank Lamb

Members Absent:

Walt Crimmins
Barry Taylor

Staff Present:

William H. Eady, Sr., Director of Community Development
Pat Houston, Recording Secretary
Jerry Speegle, Attorney*

* Arrive at 6:04 p.m.

The Chairman stated it seems that everyone is present. There are five members present, and four out of the five members must vote affirmatively for a variance to be granted. He stated Mr. Eady, if you would be so kind we are ready to start, but first let us approve the last minutes. Has everyone had an opportunity to look over the minutes, if so I will entertain a motion.

Approval of Minutes:

The minutes of the August 4, 2005 meeting were considered for approval. A **Motion** was made by **Mr. Lamb** and **Seconded** by **Mr. Robison** to **approve the minutes as written.**

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

Ms. Hargiss	Aye
Mr. Mayhand	Aye
Mr. Swaney	Aye
Mr. Lamb	Aye
Mr. Robison	Aye

The Chairman stated first is Appeal #2005-04, Paul & Marianne Grundhoefer, 130 Durnford Hill Court. Now, Mr. Eady, you can start.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF OCTOBER 6, 2005 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

New Business:

Appeal #2005-04, Paul & Marianne Grundhoefer

Mr. Eady displayed color transparencies of 130 Durnford Hill Court. He stated the Grundhoefer's have requested to encroach the back setback line by thirty-four feet. They wish to add a two-car carport on the back of their home. The existing setback line is about four-feet off of the wall, about where you see the brick pavers. The carport will be about twenty-two feet, and when you add the utility area it will be thirty-four feet.

The Chairman stated the carport and the tool shed, which will be twelve feet wide, for a total of thirty-four feet.

Mr. Eady stated that is correct. The red and white striped pole denotes where the actual setback line is from the existing home. It is actually about four point seven feet off the property line. Pat is standing at the thirty-four feet point from the house at the other striped poled, which this gives you an idea of how far it will be from the house. In the last shot, from where Pat is hiding behind the birdhouse to the fence is five-feet. As far the five-feet, it is in line with the Ordinance, and that is all I have.

The Chairman stated who is here for this? Would you like to state your reasons why you would like to have this appeal granted?

Ms. Grundhoefer stated we recently enclosed our garage and we feel like extending it in that direction would comply with the other homes on the street. That would be the only direction to go.

Mr. Grundhoefer stated talk about the street, and how it dead ends right there.

Ms. Grundhoefer stated our house butts up against Beall Lane. Well, part of our property does. We do have a neighbor behind us on part of that property, and that is sort of where we are.

The Chairman stated so there has never been a concept, Mr. Eady of extending that right-a-way. In fact, you will not be able to extend that right-a-way up to the house, the street or whatever, will you?

Mr. Eady stated no, sir. I do not think it can be extended any farther in that area. You may can widen it, but it cannot be extended.

The Chairman stated I see to the left it says there is a twenty-foot drainage easement in there, but the thirty-feet right-a-way stops there.

Mr. Eady stated that is correct. The thirty-feet stops, and the drainage easement continues on.

CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF OCTOBER 6, 2005 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL

Mr. Robison stated I have asked this question before and I will ask it again. I noticed the neighbors listed here as adjacent property owners, and have you all talked to them about how they feel about you adding this on back there. If so, what did they have to say?

Ms. Grundhoefer stated we have spoken to all of our neighbors, and they are fine with it. We talked to the Jacob's beside us, and they do not have a problem with it.

The Chairman asked when you say that, which side are you talking about?

Ms. Grundhoefer stated both, Lot 19 and Lot 17. Both of those neighbors, I believe, received the same letter we did, but they have been knowing that we intend to do this. They are fine with it.

The Chairman stated the people on Lot 19 have no problems.

Ms. Grundhoefer stated no, sir.

The Chairman opened the floor to public participation. He stated are any of them here tonight. With no adjacent property owners present, he closed public participation. He stated does any of the Board members have any questions or comments. If there are no objections, the Chair will entertain a motion.

Mr. Lamb stated well, my position is, and always will be, is that the Board of Zoning Adjustment is the last bastion on the guardianship of the Land Use Ordinance. We are divided or the City is divided into zones, R-1, R-2, and R-3. R-1 is more valuable property than R-2 or R-3 because of the buildation of the lot size. With that the City has proposed restrictions on setbacks, which is to protect all of the property owners within a subdivision from any encroachments. The value of their property is vested in the setbacks. To allow a variance to a setback demarcates the value of the property, whether it is intended or not because you are allowing someone to break the setbacks that the City has established. One of the charges given to the Board of Adjustment in all of our studies that we have received, are the ones that say, did the property owner bring this hardship upon himself. The answer is yes, in this instance, and it is very clear to me that they did. You brought a piece of property, you enclosed your carport or garage, and now you want to do an addition. It was something you did, not something that somebody else did, and that is what is called a self-imposed hardship. One of the rules of the Board of Zoning Adjustment is that you cannot grant a variance for a self-imposed hardship. If this Board then allows this variance, which is thirty-four feet, and I served on the Board of Adjustment before, and until this day I never saw a variance that deep. The maximum I ever saw was maybe three or four feet in the back. Thirty-four feet is an extraordinary amount for a variance to be granted, and I understand it is because of the lot shape, but still thirty-four feet is enormous.

CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF OCTOBER 6, 2005 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL

Mr. Lamb stated secondly, in that subdivision or any other subdivision, if we grant a variance of that magnitude this Board is going to have a very big problem from this point forward ever denying a variance of any kind in an R-1, because they would have a history. They will say well you did it for this case and for that case, so do it for us. So, in effect what you would do is negate the entire Land Use Development Ordinance regarding setbacks. Setbacks are established to ensure value of property. R-3 setbacks are not as restrictive as R-2, and R-2 is not as restrictive as R-1 and out of them R-1 most restrictive. So, after studying this, looking over it, and reviewing all of the previous notes, this is clearly a self-imposed hardship, to me.

Mr. Robison stated one of the questions asked in number four, under reason for the variance, is "to the best of my knowledge, can you affirm that the hardship was not created by an action of anyone having property interest in the land," which you have an interest in the land, and as Mr. Lamb said, would have created the hardship by closing in the garage. Now you want to have a space to park your vehicle. Another thing under the Land Use Ordinance in granting variances, it says that the requirements of the Zoning Ordinance would create an unnecessary property hardship, which would prevent reasonable use of the property. It may create a hardship for you, but the property, there will not be a hardship. If you add on to it or if you do not add on it, you will not have a hardship. If you do not add on, it will not decrease the value of your property, I would not think.

Mr. Lamb stated the property value would increase.

Mr. Robison stated monetary reasons cannot enter into the picture, but I am like Mr. Lamb, thirty-four feet is a long way.

The Chairman stated any other questions or comments.

Mr. Grundhoefer stated the property behind us, and all the way down the street, also have parking behind them. Are you saying all of them have complied up to this time?

Mr. Robison stated I cannot answer that question for those houses because I do not know where their setbacks are or have they encroached on it.

Mr. Grundhoefer stated it says it right there, and we had to sign before we brought the place. You see that shed adjacent to it.

Mr. Lamb stated you are talking about on Beall Lane.

Mr. Grundhoefer stated yes, sir. There are actually three buildings right there.

The Chairman stated on the other side.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF OCTOBER 6, 2005 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Grundhoefer stated there is a big RV, right here, and then there is a storage shed over here, and you go on down the road. I just wanted to be uniform with what other people are doing. I guess we could put it in the back, but to do that we would have to drive all the way around to get to a garage around here. All of our neighbors have garages like this and that would not accomplish a whole lot because all we would be doing is swapping property. I think it was not only the neighbor to the left and right of us, but I think it was also the neighbor directly behind us. Ray Moore, which is behind us, and all four of my neighbors, after talking with them, are okay. In fact, Ray stated if he needed to come up here to show his support, he would be glad to. It was my understanding that this was not a big deal to let us do this, and that is sort of where we are at.

Mr. Lamb asked Mr. Eady, was Beall Lane or that subdivision there before the Land Use Ordinance was adopted?

Mr. Eady stated no, sir.

Mr. Lamb stated therefore, it is grandfathered.

Mr. Eady stated I do not believe so. I do not know exactly when Beall Lane was built.

Mr. Lamb stated was it there before this house was built.

The Chairman stated I believe this house was constructed before the Land Use Ordinance. Do you know when your house was built?

Mr. Grundhoefer stated probably about eighteen to twenty years ago.

The Chairman stated I think it was constructed prior to the Land Use Ordinance going into effect.

Mr. Grundhoefer stated I am sorry, but are you talking about our house?

Mr. Lamb stated Beall.

The Chairman stated no, I believe your house was constructed prior to the Land Use Ordinance going into effect.

Mr. Grundhoefer stated one other thing, if you do not mind me saying. There are no houses that face Schieffien. I think there is only one house up toward Main Street, which faces Schieffien. All of the other properties use either Beall or Durnford Hill. I understand that it is a severe encroachment, but there is only one person that uses Schieffien, down where we are, and that is our neighbor. They can either go out on Beall or come in to their house on Schieffien.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF OCTOBER 6, 2005 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

The Chairman stated Schieffien is that short street.

Mr. Eady stated it is sort of an awkward lot.

Mr. Lamb stated I think I understand. On Lot 17 you said something about an RV?

Mr. Grundhoefer stated well, it is probably irrelevant, but the neighbor parks their RV and there is another neighbor that has a storage shed. I am sure they are in compliance. To get the point of that is this, putting a structure up that actually matches the house, and it is not seen by any traffic because there is no traffic on the road behind it, and nobody is planning on building anywhere within that area, it really seems to just drop right out of the sky.

The Chairman stated that is not relevant for the variance. If we vote on this tonight, and it does not pass, what is the particular rule on that. You cannot bring it back before the Board for a year.

Mr. Eady stated that is correct. If you turn it down then they have fifteen days to notify us that they want to carry it to Circuit Court.

The Chairman stated I was just thinking that.

Mr. Eady stated Circuit Court is the only avenue left.

Mr. Speegle stated what you are talking about Mr. Sweeney, there is a year requirement. You cannot bring it back for a year.

The Chairman stated what I was actually getting to was at this time we do not vote on the issue or at least table it, which would be at no extra expense to them, until the point in time that the easement is decreased, and then you can come back with this.

Mr. Eady stated you will have to vote one way or the other, tonight.

Mr. Robison stated we have to vote tonight, to approve it or not approve it. We have to vote on it. We could not table it, tonight.

The Chairman stated we could table it tonight. Correct, Mr. Speegle.

Mr. Speegle stated yes, to my recollection, I do not have a copy the bylaws in front of me, I think they are in my other notebook. I think it says you have to rule on it, my recollection is within forty-five days from the date the petition is filed. Is that right?

Mr. Eady stated thirty days.

Mr. Speegle stated okay, thirty days.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF OCTOBER 6, 2005 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Speegle stated so, what usually would be done is, if you table it now then you would set up a special meeting to take it up before that time period runs out.

Ms. Grundhoefer stated is it my understanding that by tabling it we are or you are. What are we accomplishing by doing that?

Mr. Speegle stated or you can withdraw it, but you just have to pay another hundred dollars to refile it in the next month or so, but if they go ahead and rule on it, you would be prevented from bringing it back for another year.

The Chairman stated I just want to point out that you can withdraw it at this point in time, and there is no charge to review it again.

Mr. Grundhoefer stated what laws were you saying. Are you saying it was written before or after? Does that really apply?

The Chairman stated yes, it does apply. It was in effect prior to your house being built as it pertains to the criteria for variances. Any additional questions or comments? Again, if you withdrew it, there would be no charge, and you may be able to decrease the encroachment.

Ms. Grundhoefer stated may I ask a question. What would be a reasonable encroachment?

The Chairman stated I knew that question was going to come up. I cannot speak on that. None of the Board can speak on that or make any comments.

Mr. Grundhoefer stated can I make a comment. Was the law in effect for the people on Beall before or is there any way of knowing how long ago the encroachments were passed on the permanent structure behind my house.

The Chairman stated I cannot answer that. Mr. Eady, do you know?

Mr. Eady stated I do not know because I do not know when they were built. I have been here since 1989 and those structures were already there. I have never been involved with anything over there so they had to be that way before then.

Mr. Grundhoefer asked do you know what I am referring to, though?

Mr. Eady stated sir?

Mr. Grundhoefer stated do you know what I am referring to. Were you there taking pictures?

Mr. Eady stated yes, sir. I made the pictures on your property.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF OCTOBER 6, 2005 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Grundhoefer stated I was wondering if you noticed the three structures that are right behind my house where one actually comes over on my land by two-feet.

Mr. Eady stated I know about them. Like I said, I came here in 1989, and they had to be already there.

The Chairman stated at this point in time shall we go ahead or can somebody make a motion or do you wish to withdraw.

Mr. Grundhoefer stated is it pretty clear that it is going to be voted down at this point.

The Chairman stated we need, of course, a super majority of four to approve it.

Ms. Grundhoefer asked if we withdraw it, can we come back, at any time?

Mr. Speegle stated if you withdraw your application you can come back whenever you want to, and make another application for a variance with the same configurations or different configurations.

Mr. Grundhoefer if we come back with it, do we have to actually bring more evidence or does that even play a part. I feel like I am in Court all of a sudden. I am not sure if the Board understands.

Mr. Speegle stated I feel like I am in Court, too. The problem is that this Board is what is called a quasi judicial body. They do not give you advice. They simply make decisions. Mr. Eady, has the history in his brain of how this Board has ruled in the past, so you might want to talk to him later. Nobody can really give you advice on this Board.

Mr. Eady stated I really do not see the advantage of bringing it back, if you are going to turn this one down because even at twenty-feet, I feel like, you will do the same thing again. What is the point? I do not know what your access would be. You do have a slot over there a little farther to the left. You would have enough room to build it. All you have to do is get a permit.

Mr. Speegle stated the Board generally rules on what is an unnecessary hardship, not just a hardship. What the Board usually looks at is, the property, the configuration, and can you do something different, and I think you have heard something about some options where you could build the structure, and not encroach on any setbacks.

Mr. Eady stated they can build it in this slot over here. I do not know what the arrangement on his driveway would be. That is not a part of it, but you could build to the left of this dashed line. You would not have to ask anybody only get a permit to do it.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF OCTOBER 6, 2005 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Speegle stated I will also tell you that I have been doing this for a lot of years, and I cannot read this Board or any other Board. I have heard comments before, and then there is a vote, and it has gone way different than what I thought it was going to go. Every member has their own opinion about how they are going to vote.

Mr. Lamb stated what would be the rear setback line on that yard, Mr. Eady.

Mr. Eady stated right there.

Mr. Lamb stated it is forty-feet.

Mr. Eady stated yes, see how that lot goes back in, and that easement is part of their lot. The setback to the left goes out, and fits that area in the back.

The Chairman stated you can see that cut off.

Mr. Eady stated they could build inside that, and I am not telling them where to build it, but the forty-foot setback goes across and up. You could build in there, up to where it says outlet, and all you would have to have is a building permit.

Mr. Grundhoefer stated from here, all the way around.

Ms. Grundhoefer stated there is just grass out there. It is just out. This right here is out. It does not belong to anybody.

Mr. Grundhoefer stated that is just grass. The City right-a-way is washed away.

Ms. Grundhoefer stated it is closed off, and there is grass. The carport will be encroaching on the setback line here, on that property there is really nothing there.

Mr. Mayhand asked where is the privacy fence?

Ms. Grundhoefer stated it is here.

Mr. Speegle asked Mr. Eady, is that right-a-way in use right now?

The Chairman stated it is. Most of the neighbors use it.

Mr. Eady stated that is Schiefflen Lane.

Mr. Grundhoefer stated there are no major utilities using it. The garbage truck does not use it.

The Chairman stated no.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF OCTOBER 6, 2005 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Ms. Grundhoefer stated in fact, we are the only ones that do not use it, and we are hoping maybe one day to do so, too, but for now it just stops.

Mr. Grundhoefer stated this is a dead end here, and this is the road, right here. There really should be a pipe here because of the water, and at some point in time, that may be an answer. There is really nothing in here.

The Chairman stated well, we really should move on.

Mr. Lamb stated let me ask a question. Mr. Eady, what would be the chance of the City abandoning a portion of that right-a-way, since it is of no value or use to the City.

Mr. Eady stated they would not do that. The only way you can get rid of a right-a-way is to have it vacated, appraised, and the adjoining property owners pay an appraise value.

Mr. Speegle stated that is what I was getting at, whether it was really in use right now or not, we might be able to vacate it.

Mr. Lamb stated I was thinking that thirty-feet would allow them to do that, and they would have some more room to get around.

The Chairman stated okay, shall we go ahead and vote.

Ms. Grundhoefer stated thank you.

Mr. Grundhoefer stated thank you.

The Chairman stated you want us to vote on the issue.

Mr. Grundhoefer stated yes, sir.

The Chairman stated comments, questions, entertain a motion. Who would like to make a motion?

Mr. Lamb stated I am always confused. Do you have to put the motion in an affirmative way.

Mr. Eady stated yes.

Mr. Robison stated yes.

The Chairman stated yes.

Mr. Speegle stated the stature reads that way.

Mr. Lamb stated affirmatively, if you are against it.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF OCTOBER 6, 2005 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Eady stated it is extremely confusing.

Mr. Speegle stated it is very confusing, and the stature just reads that way. It says it takes an affirmative vote.

Mr. Lamb stated what do you advise.

Mr. Speegle stated my advice has always been, stature says it, and that is the way you do it.

Mr. Eady stated we have only had one Chairman, who insisted it be done, and in most cases, they had to explain to the members what they had voted on, after they voted.

The Chairman stated I am going to say let us make a motion to either affirmative or not affirmative.

Mr. Eady stated you cannot do that.

Mr. Speegle stated the problem you have is, and I do not know if you will ever have this problem, but it is always confusing to do that. You really upset a lot of citizens doing that because somebody makes the motion to approve it and then votes against it, but the stature really does read that way. I have never had it come up in Court, and I have tried a number of cases before, and never had it come up. I do not know if it is that big a deal, but that is what the Court has always done because that is what stature reads. You can do it, if there is an affirmative vote of four people, and you have not had an affirmative vote. I guess if you deny it you have no affirmative vote.

A Motion was made by Mr. Lamb and Seconded by Mr. Mayhand to deny Appeal #2005-04, Paul & Marianne Grundhoefer, 130 Durnford Hill Court, to encroachment the rear setback by thirty-four feet.

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

Mr. Lamb	Aye
Mr. Robison	Aye
Mr. Swaney	Nay
Mr. Mayhand	Aye
Ms. Hargiss	Aye

The Vice Chairman stated the appeal is denied, and I guess the recourse is to, Mr. Speegle.

Mr. Speegle stated the recourse is to file a petition with the Circuit Court.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF OCTOBER 6, 2005 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Eady stated they need to notify us within fifteen days if they are going to do that.

The Chairman stated good. Thank you.

Appeal #2005-05, Carl & Lisa Powell

The Chairman stated okay, Mr. Eady, next appeal.

Mr. Eady displayed color transparencies of the property located at 27054 Bit & Spur Drive in the Stratford Glen Subdivision. He stated next is this home that needs to clear the title. The home was built about a half of a foot over the setback line on Lot 50. On the rear it is a little over a foot, and on the front it is a half of a foot. Ms. Milstead, of Remax by the bay, is here representing the owners. If you would, Ms. Milstead, come on up. The setback is ten-feet. The survey shows that the front of the house is nine point five-feet off of the side setback line, and the red and white pole shows eight point sixty-five feet off the rear setback, representing a one point four foot encroachment.

The Chairman asked did you have that house constructed?

Ms. Milstead no, I did not. I am a realtor, and I am representing the owners of the house, who bought it from another party that had bought it from Mitchell Company. It has gone through two closings, and nobody noticed. I happen to look at it when I was listing the home. I asked for their survey, and I looked at it, and thought oh, gee because it has been sold twice. So, that is why I am here going through this procedure, to ask for a setback line variance.

The Chairman stated in actually, they just built the house too large for the lot.

Ms. Milstead stated well, they moved it actually. If it were on the other side there is plenty of room. What is it? I think it is eleven-feet on the south side.

Mr. Eady stated that is right.

Ms. Milstead stated Rester & Coleman, I believe, were the surveyors. It is just one of those things.

Mr. Lamb stated you are saying that this house has gone through two other closings without anyone questioning it.

Ms. Milstead stated nobody. The first owners closed with Mitchell Homes, and that is the survey there, and nobody said anything to him about it.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF OCTOBER 6, 2005 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Lamb stated when you say that, you mean nobody looked at the survey to see if it was right.

Ms. Milstead stated I suppose so. That is right, and I called Mitchell Homes.

Mr. Lamb stated I wonder how many of them we have missed.

Ms. Milstead stated exactly. You know I am beginning to look at these now. I mean I have been set up here for eleven years, and of course, you probably know that in Lake Forest it is grandeur.

The Chairman stated yes, but this house is new.

Ms. Milstead stated right, this house is new. It is a new subdivision.

The Chairman stated right. It was built after the Land Use Ordinance.

Ms. Milstead stated of course this is about the County, but they had one out in Austin Brooks Subdivision, that had a five-foot violation.

Mr. Lamb stated in the course of human events, where does the responsibility lay, to ensure that the structure is built within the setback. At the bottom line, who is that?

Mr. Eady stated Building Official.

Mr. Lamb stated the Building Official.

Mr. Eady stated he checks to see if it is in the right place when they stake out the slab.

Mr. Lamb stated when it is staked out.

Mr. Eady stated that is when he checks it. The ultimate responsibility, of course, is the builder, but as far as the City is concerned, to check them, then that is what needs to be done.

Mr. Lamb stated this is Stratford Glen.

Ms. Milstead stated yes, sir, Stratford Glen Subdivision.

Mr. Robison stated with it going through two closings, and this will be the third closing, somewhere down the line someone would not be able to get a clear title, would they.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF OCTOBER 6, 2005 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Ms. Milstead stated their title company insured it, and title companies will insure it, but I am told that what weighs in on it is whether the lenders will approve it because they do not care. I just wanted it to be right. Whenever it is sold again, I want it to be done right.

The Chairman stated you are doing the right thing.

Mr. Lamb stated we get a lot of this, and if you have a problem, and I think we have a problem, then we need to somehow stop the problem. I do not know if it is in the developer staking out his lots or if was the actual contractor who builds it or if it is the Building Inspector, who checks it, and if we in the final analyze find that it is Building Inspector, he is an employee of the City.

Mr. Eady stated it is quite possible that after he checks it, because all they have is a string line, it gets offset, then the slab is poured. You can see where the slab is off eleven and a half feet on this side. It is a very valuable home, and it is going to be there for a long time.

Mr. Lamb stated well, I do not have a problem with that, but I do think we are going to find a lot more of these type homes, correct.

Mr. Eady stated I do not think so. The City is doing a much better job at catching these type things now because we have more help to do so. The City has a new Building Official with more Building Inspectors now.

Mr. Lamb stated okay.

The Chairman stated the whole City is responsible for, in essence, the survey, which is what was done. So the City was not privy to that survey to know that it was off.

Mr. Eady stated it is the surveyors job to survey it. If he stakes it out wrong then he had to do it.

Mr. Speegle stated well, if it is staked the Building Official can run a tape, and they know whether it is over the line, but you also, like Mr. Eady said, do not know if they might move it later or what. It has not happened in the last couple of years, Mr. Eady is right. The number of these that have come before the Board in the last two or three years have been negligible compared to what they were eight, nine years ago, but you do not even know if the Building Official measured this, without looking at the records. I mean there have been some that I do not think anybody ever went out and looked.

Mr. Eady stated I do not know if they did then, but I do know they do now.

Mr. Speegle stated they do now.

CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF OCTOBER 6, 2005 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL

Mr. Lamb stated well, I commend you for bringing this to be cleared before any farther actions are taken.

Ms. Milstead stated thank you.

Mr. Speegle stated would you please state your name.

Ms. Milstead stated Sharon Milstead.

The Chairman stated do any of the Board members have any additional questions or comments. If there are no objections, the Chair will entertain a motion.

A **Motion** was made by **Mr. Robison** and **Seconded** by **Mr. Hargiss** to approve **Appeal #2005-05, Carl & Lisa Powell, 27054 Bit & Spur Drive, to encroach the Northeast side setback line by 1.35-feet and the Northwest side setback line by 0.5-feet.**

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

Mr. Lamb	Aye
Mr. Robison	Aye
Mr. Swaney	Aye
Mr. Mayhand	Aye
Ms. Hargiss	Aye

The Chairman stated the appeal is granted, and it can be picked up in the morning.

Ms. Milstead stated thank you all. I appreciate it.

Adjournment:

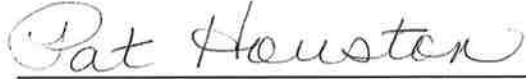
The Chairman stated if there is no other business or no objection, the Chair would entertain a motion to adjourn.

A **Motion** was made and **Seconded** to adjourn. **The Motion carried unanimously.**

There being no further business the meeting was adjourned at **6:43 p.m.**

CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF OCTOBER 6, 2005 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL

Respectfully submitted by:



Pat Houston, Recording Secretary

APPROVED: January 5, 2006



Glen Swaney, Chairman

/ph