

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MARCH 22, 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, Vice Chairman
Walt Crimmins
Willie Robison

Members Absent:

Frank Lamb

Staff Present:

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

* Arrive at 6:04 p.m.

Mr. Eady stated the five of you are the board members. Mr. Frank Lamb has been appointed as first alternate, and he is out of town tonight. We are still short a second alternate.

The Vice Chairman stated am I right, Mr. Eady, in assuming that since five members are present a super majority is required tonight. In other words, four out of the five members must vote affirmatively to issue a variance.

Mr. Eady stated four of the five is correct. Four members have to agree.

The Vice Chairman stated if everyone has had an opportunity to look at the minutes I will entertain a motion to approve them.

Approval of Minutes:

The minutes of the September 2, 2004 meeting were considered for approval. A **Motion** was made by **Mr. Mayhand** and **Seconded** by **Mr. Crimmins to approve the minutes**. Mr. Robison abstained since he was not a member of the Board of Zoning Adjustment at that time.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MARCH 22, 2005 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

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

Ms. Hargiss	Aye
Mr. Mayhand	Aye
Mr. Swaney	Aye
Mr. Crimmins	Aye
Mr. Robison	Abstained

The Chairman stated on to the first appeal for a variance. Appeal #2005-01, Brian & Kim Bozenhardt, 27179 Creekwood Drive, Creekside Subdivision.

Mr. Eady stated I am sorry, Mr. Chairman, but we have them reversed on our power point presentation.

Ms. Anderson stated I am sorry. It will take a very seconds for me to switch over to the next presentation.

The Vice Chairman stated that is alright, we will just go to the second appeal. It will be easier for us to switch.

New Business:

Appeal #2005-02, Lot 2, on American Way, Daphne Commercial Park

Ms. Anderson displayed a color power point presentation of Lot 2, on American Way, Daphne Commercial Park, developed by Frank Dagley & Associates, Incorporated.

Mr. Dagley stated my name is Frank Dagley, Consultant Engineer, 717 Executive Park Drive, Mobile. I am here representing my client, who wishes to put a daycare center in Daphne Commercial Park. The zoning requires a variance because it is basically a commercial park.

The map is a little bit inaccurate, in that, where you see the site. The owners have put a cul-de-sac in. It has already been before the Planning Commission and approved. This is the basic layout we are looking at to have a daycare center. As you know, parents come in, drop their kids off and leave. They will come into the cul-de-sac, turn left into the driveway, drive through and there will be a covered drop-off point, then, of course, they will exit out onto the main road. There is certain criterion set for daycare centers as to the fence and playground that is controlled by the Department of Human Resources. We have met all of the requirements for the City of Daphne, Building Codes. We feel like this, especially being at the end of a cul-de-sac, is ideal to where you can make a circle and come right back out. I will be happy to answer any questions you may have.

The Vice Chairman stated this is new construction, is it not.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MARCH 22, 2005 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Dagley stated that is correct.

The Vice Chairman stated there will no through traffic around this site. How many children will be here?

Mr. Dagley stated I am not the developer. I will let Mr. James Michael McIntyre, the owner, answer that. I call him Mike.

Mr. McIntyre stated they will start out with about forty children, and over time, they are looking to go to an estimated seventy or eighty children over five years old.

Mr. Mayhand asked what will be the square footage of the building?

Mr. McIntyre answered the square footage on the building will be about six-thousand square feet.

Mr. Dagley stated once again, DHR controls that. You are required thirty-two square feet for each child, of course, excluding bathrooms, and that sort of stuff. It is pretty much controlled by the size of the building. Six-thousand divided by thirty-two is about two hundred and there definitely will not be that many. You have the administrative offices, bathrooms and support facilities. I think what Mr. McIntyre said is accurate as to what they can accommodate.

The Vice Chairman stated you have met all of the requirements, in case, anyone wants to bring up an argument over it.

Mr. Dagley stated yes, sir. It has to go through all of the proper channels with the Planning Commission, assuming the special exception is granted. It will have to be under review again. We have a concept here, there may be some slight deviations from where the building is going. We did not want to make this site specific. In fact, we have shown it to you with two possible driveways on the property. As you can see, the dotted line is an alternate or possible way we might want to do the driveway. We went for a general variance here to put the daycare center in hoping that it would not have to be site specific. We may want to alter it somewhat. I am talking about minor changes, like maybe going into the building a little different, or putting the fence around the playground.

Mr. Robison stated if I may ask a question or make a statement. Somewhere in all the packets I was given, I believe you applied for a small daycare with DHR. The way I understand it is, and if I am way off base let me know, is you have the large and small daycare, and you applied for the small daycare, of which, you can go up to a certain number of children. What number did you say you were going to have?

Mr. Dagley stated I am not familiar with the small and the large. I do not know if there has been any application made as of yet.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MARCH 22, 2005 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Robison stated I read applied for a small daycare with DHR with up to five children.

Mr. McIntyre stated like Mr. Dagley, I am not aware of them actually applying with DHR for a small or large. The couple that this building is actually for have license and have been licensed for quite some time. What they shared with me is that they are looking at starting out with about forty children, and expect within three to five years going to seventy-five to eighty children.

Mr. Eady stated I think what you might be thinking about is a small and large home daycare which can have from six to twelve children.

Mr. Robison stated somewhere within all of this, I read, six to twelve children, but that is strictly for a home daycare.

Mr. Eady stated yes, sir. Strictly for a home daycare. When you keep children in the home under certain rules you can have up to six, and under certain rules they can have up to twelve, but this is not a home daycare. It is a daycare.

The Vice Chairman stated Mr. Eady, I see your office recommends approval.

Mr. Eady stated yes, sir. They meet all of the regulations.

The Vice Chairman opened the floor to public participation. 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.

A Motion was made by Mr. Crimmins and Seconded by Mr. Mayhand to approve Appeal #2005-02, James M. McIntyre, Lot 2, American Way - Daphne Commercial Park, to allow the operation of a Daycare.

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

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

The Vice Chairman stated okay, the appeal is approved and again, give me the time it can be picked up in the morning.

Ms. Houston stated around nine o'clock in the morning.

Mr. Dagley stated thank you.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MARCH 22, 2005 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Appeal #2005-01, Brian & Kim Bozenhardt

The Vice Chairman stated now back to Appeal #2005-01, Brian & Kim Bozenhardt, Creekside Subdivision. Who is going to start this off, Mr. Eady?

Mr. Eady stated the real estate agent, and I will help her.

Ms. McAlister stated my name is Cynthia McAlister, and I am actually the real estate agent, and this is Jason Schoettelkotte, he is the new manager of the Belks Department Store in Malbis and he is the one that is going to be purchasing this house in Creekside. The owners of this home, presently, the husband is in Russia, and his wife had to take her mother to Las Vegas. They had talked to Mr. Eady, and the Mayor, requesting a variance. Basically, we have a piece of property on the market that had two incorrect surveys. The house is actually encroaching the setback 6.1-feet on the northeast corner and 2.0 on the northwest corner, and we need a variance for it to comply with the thirty-foot rear setback line.

The Vice Chairman stated in the request for a variance it states, in essence, that the house should have been facing one street and later they requested it face the other. Is that what this is?

Mr. Eady stated Mr. Chairman, this happens quite often on corner lots. The Ordinance says on a corner lot the narrow side facing the street is the front. It does not have anything to do with the orientation of the house at the front of the lot. According to the Ordinance this side would be the front on the lot. The house faces Creekwood Drive, which is the side of the lot. As you can see here the front of the lot should have been on Holley Court, but now on the rear of the house is an extremely deep gully. There were really limited as to how the house was built upon it. Here you can see on the northeast corner where the house is 6.1-feet into the rear setback.

Mr. Crimmins stated so that is not the back of the house.

Mr. Eady stated no, that is the front.

Mr. Crimmins stated no, I know that is the front, but I mean that end is the back of the house now. It is the opposite of the narrow end.

Mr. Eady stated yes. It would be the rear of the lot.

Mr. Crimmins stated okay. It would be 6.1-feet over the setback. The side of the house before is now the rear of the house.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MARCH 22, 2005 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Eady stated it is the side of the house and the rear of the lot.

Mr. Crimmins stated thank you.

Mr. Eady stated this is the existing property line. Here is another close up of the property line, and this is the rear of the house. This is still the rear of the lot and the side of the house with 6.1-feet on the northeast corner and 2.0-feet on the northwest corner over the rear setback line.

The Vice Chairman stated you indicated that the previous surveys were in error. To me this looks like the right.

Mr. Eady stated that is correct, this is the right survey. The reason the others were in error was because they used the side of the lot, facing Creekwood Drive, as the front, and that is wrong.

The Vice Chairman stated to begin with that was not a street.

Mr. Eady stated yes, sir. It reads that on a corner lot that the narrow side facing the street, which the narrow side does face Holley Court, is the front of the lot. The one facing the house has nothing to do with it. Let us keep in mind that the lots are laid out long before the homes are built.

The Vice Chairman stated I understand, but to me it is the wording of the Ordinance.

Mr. Speegle stated excuse me, Mr. Chairman. Mr. Eady, did the Ordinance use to read differently from that many years ago.

Mr. Eady stated no, it did not.

Mr. Speegle stated I thought it said the principle street or something like that, was the front.

Mr. Eady stated no.

Mr. Speegle stated I do understand from talking to the City Attorney, that the City understands this situation. As a matter of fact, Mr. Waldrop, when he was the Building Inspector, actually inspected the house, issued a certificate of occupancy, and said the lot lines were fine. Of course, this is what you have with these kinds of corner lots all the time. The City's position is as far as the enforcement side is that they do not ever intend to enforce the setback line here. I think this property has been sold two or three times, and I understand the problems with the surveys.

Ms. McAlister stated no, it has not. These are the original owners.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MARCH 22, 2005 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Speegle stated okay. Mr. Ross told me he thought it had been sold once before. Anyway, the City has no interest in trying to enforce the literal reading of the Ordinance.

Mr. Eady stated this is only to clear the title. That is all it is.

Mr. Speegle stated yes, that is right. Just to clear the title.

The Vice Chairman stated I understand all of the above, but I cannot help wondering though, if the Ordinance language ought to be cleared up in some manner.

Mr. Speegle stated it is confusing. Over the years I do not know how many times this has come up. A lot of them.

Mr. Robison stated you said this happens quite a lot. If it is in the Ordinance that the narrow side of the lot is the front, why is it that the builders do not build on it that way. If the narrow side is the front why did the builder not build on Holley Court.

Mr. Eady stated they are not required to face the house in any particular direction. It is a matter of choice.

Ms. McAlister stated the customer requested to build this way.

Mr. Robison stated well, I rode out there and looked. I went down Holley and Creekwood, and I thought to myself if you turned it around how could they have built a house like that. Like the attorney said if the City never intends to enforce an ordinance, why do they even have an ordinance like that.

Mr. Speegle stated I think, at least this is what I was told, is because of the circumstances surrounding it. The City's Building Inspectors goes out and inspect foundations to make sure they are not over the lot lines or to stop construction before you have a finished house there. The City is pretty much saying our Building Inspector looked at this, said it was in compliance, and issued a Certificate of Occupancy. It complies with the City Ordinances.

Mr. Robison stated are you saying they intend to enforce this particular Ordinance.

Mr. Speegle stated yes, sir. They fully intend to enforce their Ordinances.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MARCH 22, 2005 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Eady stated I do not like the selection of words. We fully intend to enforce our Ordinances. We have a new Building Official now and he does check the setbacks at the time the string line is put up for the foundation. That is the time to check it, before the foundation is ever poured. This house was built in 1999, and we have had them before, particularly in Lake Forest. Just like the others we have done in the past this is simply to clear the title because if it is not cleared there will be a cloud over it from now on.

The Vice Chairman stated it appears to me based on the layout of this house it could not have been built facing Holley Court.

Mr. Eady stated as you can see from the layout they have a bulkhead back there. There is a deep gully along here and it could have been moved this way a little bit.

The Vice Chairman stated I guess my point is it could not have been built facing Holley Court.

Mr. Eady stated no, sir.

Mr. Speegle stated I believe Mr. Eady pointed out that with the gully back, since we do not have anyone here pointing out different Ordinances, I think his point is, although he can correct me if I am reading something into it that is not correct, if asked at the time, this property might have been one where you could have asked for a necessary hardship because there is a gully down the side of the property and you cannot use it as you normally would a corner lot. Mr. Eady, was that your point.

Mayor Small stated if I may, Mr. Vice Chairman. One thing I noticed is that Bozenhardt's did get signed affidavits from the adjoining property owners giving their consent to this variance, and I think it is on record as well. I would like to make it part of this record as well, and for you to know it. This is clearly just a problem that happened years ago and something, hopefully, we would like for you all to get straightened out for us so we can move forward.

The Vice Chairman stated hopefully, we can do that this evening.

A Motion was made by Mr. Crimmins and Seconded by Mr. Robison to approve Appeal #2005-01, Brian & Kim Bozenhardt, 27179 Creekwood Drive, to encroach the 30-foot rear setback line by 6.1-feet on the northeast corner and 2.0-feet on the northwest corner.

CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MARCH 22, 2005 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL

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

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

The Vice Chairman stated the variance is approved as requested. The next order of business is the election of officers. It seems like it is coming up early this year.

ELECTION OF OFFICERS:

Mr. Eady stated we have not had a meeting since last September.

The Vice Chairman stated Mr. Jensen is not here tonight.

Mr. Eady stated he is not on the Board any longer. The five of you are the Board officers. Mr. Frank Lamb has been appointed as first alternate and we do not have a second alternate yet.

The Vice Chairman stated since Mr. Jensen is no longer on the Board we need to open the nominations for a Chairman, Vice Chairman and a Secretary.

A **Motion** was made by Mr. Robison and **Seconded** by Mr. Mayhand **to appoint Mr. Swaney as Chairman.**

The Motion carried unanimously.

The Vice Chairman opened the nominations for Vice Chairman.

A **Motion** was made by Mr. Swaney and **Seconded** by Mr. Robison **to appoint Mr. Mayhand as Vice Chairman.**

The Motion carried unanimously.

The Vice Chairman opened the nominations for Secretary.

A **Motion** was made by Mr. Robison and **Seconded** by Mr. Mayhand **to appoint Mr. Crimmins as Secretary.**

The Motion carried unanimously.

Adjournment:

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

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MARCH 22, 2005 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

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

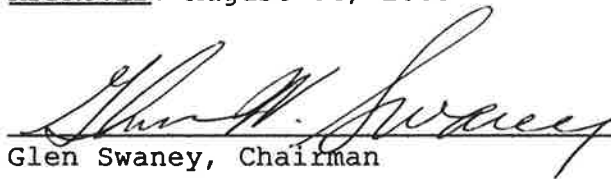
There being no further business the meeting was adjourned at 6:37 p.m.

Respectfully submitted by:



Pat Houston, Recording Secretary

APPROVED: August 04, 2005



Glen Swaney, Chairman

/ph