

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF OCTOBER 5, 2006 - 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:

Willie Robison
Barry Taylor
Billy Mayhand
Glen Swaney, Chairman
Walt Crimmins
Frank Lamb
Jeri Hargiss

Staff Present:

William H. Eady, Sr., Director of Community Development
Pat Houston, Recording Secretary
Tony Huffman, Attorney

Staff Absent:

Jerry Speegle, Attorney

The Chairman stated who will be voting tonight, Pat?

Ms. Houston stated everyone except Mr. Taylor and Mr. Lamb.

The Chairman stated okay. To approval an appeal it takes a positive vote of four out of the five voting. If you will, take time out to read the minutes of the meeting of last month. As I understand it, Mr. Huffman, these minutes will go into the record and be certified, so to speak.

Mr. Huffman stated that is correct. Once the minutes are approved they will be part of the record for the appeal.

The Chairman stated the upcoming court appeal.

Mr. Huffman stated correct.

Mr. Lamb stated Pat, even though we cannot vote, we can take part in the discussion.

Ms. Houston stated that is correct.

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The Chairman stated if you would, Mr. Huffman, after we hear this appeal let us touch on the upcoming court appeal. The Chair will entertain a motion to accept the minutes as written.

Approval of Minutes:

The minutes of the September 7, 2006 meeting were considered for approval.

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

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

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

New Business:

Appeal #2006-07, Alain & Clara D. Melendez

The Chairman stated Mr. Eady, would you like to start us off with Appeal #2006-07.

Mr. Eady displayed color transparencies of the proposed site for a new house to be located at 1113 Captain O'Neal Drive. He stated Mr. & Mrs. Melendez, who owns this property has filed an appeal for a variance to encroach the side setback line by two tenths of a foot on the south side and ten-feet on the north side. The home is not built yet. This is what they are asking for in order to build their house. There are some pretty large Oak trees on the site. The little red flag on the left hand side is where the property line is. The building on the right may have been an apartment or a storage building at one time, I assume it will be removed. You can see the red flag on the back side of it. It is the other property line on the opposite side from the one you just saw a second ago.

The Chairman stated which property is that building on? It is awfully close.

Mr. Eady stated it is on this property. There it is right there. It sits pretty close to the property line in the back. See the red flag that is the property line behind it.

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Mr. Lamb stated Mr. Eady, that structure actually violates the setback. It has been there a while.

Mr. Eady stated he is going to tear that down.

The Chairman stated it looks to be right on the lot line.

Mr. Eady stated this is another picture of that building, and this is some of the growth along the road. I took this picture for some reason, but I do not remember why. This is the critical part of the plan, and it shows on the setback that it will come within five-feet of the timbers along the edge of that driveway, on this property. There is a flag a little ways out in the brush there, and this is really the critical part of the project.

The Chairman stated it will be within five-feet of the edge of that driveway.

Mr. Eady stated yes, sir. These are a few sketches to show you his full house plan. The trees will be within five inches of the garage.

The Chairman stated Mr. Eady, can you go back to the very first slide? Is that green area the structure that is proposed?

Mr. Eady stated yes, that is it. The last one is a sketch of the home. You can see how the garage will be on the home.

The Chairman stated are you going to speak in favor of this appeal?

Mr. Melendez stated yes, sir.

The Chairman stated Mr. Eady, if you would, please leave that plot plan up there so that when he comes up we can ask him questions about it.

Mr. Crimmins stated Mr. Eady, the lot is eighty-feet wide. Is that correct?

Mr. Eady stated yes, sir.

Mr. Crimmins stated that requires a fifteen foot setback on each side?

Mr. Eady stated yes, sir. It is an R-1 zone.

Mr. Crimmins stated so it requires a fifteen-foot setback on each side leaving fifty-feet.

Mr. Eady stated yes, sir.

Mr. Crimmins stated thank you.

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The Chairman stated any thing else, Mr. Eady?

Mr. Eady stated no, sir.

The Chairman stated Mr. Melendez, would you like to get started?

Mr. Melendez stated when we bought this lot, and of course it has not been that long, about three months ago, my wife and I were extremely excited to make this our home. My wife is from Alabama and I am from Vera Cruz, South America. All of these drawings come from our architect and myself. We sketched this one up, and I did not make any copies, but our architect actually met and made me a quick sketch, which explains what we are asking for.

The Chairman stated I was going to ask you where the trees are on that plot plan.

Mr. Melendez stated there are a couple of beautiful trees on the property that I am trying my best not to touch. I am trying to be extremely careful because I think it makes the whole character of the property. It is the only reason we are putting the garage so close to the other side of the property, to be able to make that curve without having to come too close to the root of the trees on that driveway, and that is our biggest concern. Otherwise, in order for our family to fit everything that we are looking for, we need around sixty-feet of house size. In doing that we are talking about ten, fifteen feet on one side, which would be an access for any work to be done on the back. On the actual house size we are looking for eleven feet on the other side, and that truly is what we are looking for, but the garage needs to be located where it is, from the street. It will really be hard to make that turn. This is a special tree located right here. We are a family of six, and we cannot get away from the big trucks, and my wife has a big problem making those turns, and this is a beautiful Live Oak, and this is a beautiful Live Oak. The one shown on the picture is right here and the other one is here, and the tree here is dead so we are going to take it down. We already have a permit from the City to take it down. We have done all of this trying to follow the rules. The house is going to be brought back from the Bay because we also have a lot of work to be done on the retaining wall as well. We could adjust the house and make the garage work if it were not for the location of those three trees. I have spoken to the neighbors, the McAleers, who live on this property, and their driveway comes around here, before I attempted to come to you guys I wanted to check and see if it was alright with the neighbors for me to come and request this. Everybody is happy that somebody is going to build on the lot. It is a beautiful property, and we are trying to do the best building that we can, if you will allow us to.

The Chairman stated you cannot move the house closer to the Bay because of a big tree?

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Mr. Melendez stated well, no. The tree is right here, and that tree is dead, and I have a permit signed by one of your, I am sorry, I cannot remember his name, but that tree is actually dead. Because of our little kids we are trying to keep them as far away from the edge of the Bay as possible, and that is why we are moving the house back like that. So we are trying to follow the rules as best we can, but still have a nice two-story house, and get along with the neighbors. We talked about an open porch, but my wife likes the idea of getting out of the car, and going straight into the house from under a covered garage for safety reasons.

The Chairman stated could you get rid of that offset?

Mr. Melendez stated it would have to be an open porch to do that. We can probably work around that, but if you guys would allow us to do the eleven feet right there we can get with the architect to try and get it all on one side or maybe move the house a different way.

Mr. Taylor stated I am just curious. Is the garage going to be any closer to the property line than where this structure is now? Will it be located about the same place? Did you not know what the setbacks were?

Mr. Melendez stated it will be about the same. The existing property is actually located about right here. When we bought the property we talked to Mr. Eady at one point and asked him a bunch of questions about it. It is a beautiful lot, and the people around it have made long term investments. We are going to spend a lot of money saving this tree because it makes the whole character of the community.

The Chairman stated I understand. You have spoken to the McAleers on one side, and they said okay, no problem.

Mr. Melendez stated I also spoke with Mr. & Mrs. Powell, who live on this side, and they are happy someone is building on this property, and they do not have any issues. I am sorry, but I have forgot the last name of the gentlemen that lives right here. I personally went, before I applied for this, in person and spoke to them about this, and initially, none of them had a problem with it. Before I made application I wanted to be sure. I do not want to do anything except beautify the area. We are going to build a pretty nice house.

The Chairman stated anything additional you would like to add? There will probably be some questions for you.

Mr. Melendez stated no, sir. I will be glad to answer any questions

The Chairman stated does any of the Board have any questions?

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Mr. Robison stated would it be proper to ask Mr. Eady, why the department is recommending that it not be approved.

Mr. Eady stated because a variance has to be based on a hardship. It cannot be man made, nor can it be monetary. The fact of that is what the Ordinance says is what I felt my obligation was to bring out.

Mr. Robison stated thank you.

Mr. Lamb stated I see the major problem is the garage. I looked at this sketch, and I saw from the front you have a very nice front. If you tried to move the garage over it is going to block out a window on the right side.

Mr. Melendez stated it is not really a problem at all.

Mr. Lamb stated in moving the garage to get into conformance your proposed dwelling is eleven feet off the property line, which requires a four foot variance. If you continue that line down you would whack off four feet of your garage. Follow me?

Mr. Melendez stated correct. If we had a small vehicle it would not be a big deal, at all. If you guys allow the eleven feet we will be fine with that. I mean we will figure out a way to do the garage. I do not have a problem driving a large vehicle, but my wife does, and that is the biggest deal. She is afraid of not making the turn. She takes the kids to school everyday, and I am not home until on the weekends. We will be grateful with anything you can give us to help build this home. If this is something we need to work around, we will.

The Chairman stated let me ask a question. The appeal asks for a five foot minimum offset clearance from the lot line. Can we or can the panel say that. I cannot see how they can say that eleven feet would be a lot. I mean the question before this group is whether or not to approve the requested appeal showing five-feet off the lot line. The point is could we approve eleven-feet.

Mr. Huffman stated I think if the appeal requested it that would require a separate appeal to the City. I think you are correct. In other words it would state that.

The Chairman stated if we reject this appeal tonight for the five-feet, what happens?

Mr. Eady stated supposedly, it would be a year before it comes back. Counselor, correct me on this if I am incorrect, but if that is what you are willing to do, why not come back next month, with the eleven feet if that is what you want to do.

The Chairman stated how do we do that.

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Mr. Eady stated he can make a separate application.

Mr. Crimmins stated how can we do that and not notify those people.

Mr. Eady stated I do not know.

Mr. Huffman stated I believe he can file an amended request, but he cannot modify his appeal.

The Chairman stated I think if I read the thing properly, we either approve or disapprove this appeal, and then as Mr. Eady indicated, he can come back next month. Next month with a different appeal. I guess if it were the same appeal then it would have to be a year.

Mr. Eady stated I do not have a problem with it.

Mr. Huffman stated I think you can amend it, yes.

The Chairman stated I just wanted to get those legal points out of the way.

Mr. Crimmins stated so he withdraws the appeal and amend it.

Mr. Eady stated that might be better rather than your denying it.

Mr. Crimmins stated I think if we deny it the time frame drops in.

Mr. Huffman stated I think that is correct.

Mr. Crimmins stated is that not correct, Mr. Huffman? If we deny it he has a year before he can bring it back.

Mr. Huffman stated I believe the proper way would be to withdraw his request at this time and bring it back.

The Chairman stated I would like to make an additional point. There are no guarantees if you modified your appeal and bring it back that it will be approved.

Mr. Eady stated we will have to re-advertise it and go through the whole procedure again.

Mr. Lamb stated what our responsibility is to maintain the integrity all of the proper zones and this is zoned R-1 residential, which is a fifteen feet side setback. Now, that is not only for your protection in the future, but for everyone in an R-1 zone. Houses that are constructed to conform to what they have to conform to. It is what the Ordinance calls for. When we get a request for a variance we have to look at what the impact is on all of the houses, not just your house, and the neighbors beside you because we set precedence.

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Mr. Lamb stated well, if you did it for him why cannot you do it for us. What we are trying to do is work with you, so you can build a house and protect the environment because you want to save some trees, but at the same time we have to look at that impact in the future on different areas. It is not that we have never allowed a variance of your request size of eleven feet. I think we are amenable to four foot variance just for the garage because it is a narrow lot. On the other hand, when you bought the property, you should have known if it is eighty-feet wide how wide can I build my house. Therefore, it becomes a self imposed hardship, and self imposed hardships are not a reason to grant a variance. You have to understand where we are coming from.

The Chairman stated we are in essence, I guess, giving you the option of withdrawing your appeal tonight or modifying it, and coming back. Or you can leave it as it is.

Mr. Crimmins stated on the consequences that this appeal is denied does he have to wait a year to come back.

Mr. Huffman stated yes, I believe that is correct.

Mr. Melendez stated unfortunately, I cannot wait a year.

Mr. Crimmins stated okay. If we vote on this particular variance, and it is not approved, I believe our Land Use Ordinance says you must wait a year to bring it back up before this Board.

The Chairman stated the only other option is to appeal to Circuit Court.

Mr. Melendez stated we do not want to fight. We are not fighters. To be honest with you when we first got this property we call Mr. Eady and asked how difficult it was to make a change to the property, that maybe we wanted a little wider house on the property. The information I got from Mr. Eady was go ahead and buy it. We went to Mr. Eady's office to show our plans and he told us that we needed to come here to make our house wider. If you are recommending me to withdraw and reapply then I guess that is my option. If you tell me I will be wasting my time I will accept that. This is a high priced piece of property and I do not want to keep throwing my money away. I would rather give it to my kids.

The Chairman stated there are no guarantees. Well, all we can say is that historically these variances have not been granted. Less minor variances have, but there are no guarantees as to how that vote might go the next time.

Mr. Melendez stated correct.

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Mr. Lamb stated you understand that the garage has to be in the same line with the residence.

Mr. Melendez stated correct.

Mr. Lamb stated or move it back and in with just a walkway, unless you just wanted it attached to the house.

Mr. Melendez stated for safety reasons we thought about that with the options of a collective garage, but decided against it. For safety.

Mr. Lamb stated drive in, close the garage door, and then go directly into the house.

Mr. Melendez stated just for safety issues. The tree is standing fairly close to Captain O'Neal Drive. The property is long and grady. We can probably bring it back and work around it.

The Chairman stated it is your prerogative. However you would like to handle it, but I think you understand the questions that you have gotten and how this vote might go.

Mr. Melendez stated I have read all of the signs. I will be more than glad to wait. You said it will take a month before another meeting.

Mr. Eady stated yes.

Mr. Melendez stated okay. The first Thursday of next month.

Ms. Hargiss stated do you have a local architect?

Mr. Melendez stated yes, madam.

Ms. Hargiss stated perhaps he can help you out a little bit on that.

Mr. Melendez stated he is from Mobile.

Ms. Hargiss stated he would be aware of all of this.

The Chairman stated are you going to withdraw your appeal, tonight?

Mr. Melendez stated yes, sir, I will.

The Chairman stated okay.

Mr. Melendez stated I will see you Monday to get all of the required paperwork.

The Chairman stated are we doing this in the proper manner to allow this appeal to be withdrawn tonight?

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Mr. Huffman stated if he withdraws his appeal tonight and comes back in a month that would be proper.

The Chairman stated okay.

Mr. Melendez stated thank you. I really appreciate you guys taking the time to talk with me. Thank you, Mr. Eady.

The Chairman stated back to old business, I guess I should say.

Mr. Lamb stated Mr. Chairman, do we need to discuss this on the record or adjourn since it will about a legal proceeding.

The Chairman stated no. Great idea.

Mr. Huffman stated if we talk about the litigation itself then it is okay to adjourn.

Adjournment:

A **Motion** was made by **Mr. Robison** and **Seconded** by **Mr. Lamb** to adjourn. **The Motion carried unanimously.**

There being no further business the meeting was adjourned at 6:34 p.m.

Respectfully submitted by:



Pat Houston, Recording Secretary

APPROVED: November 2, 2006


Glen Swaney, Chairman

/ph