

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF SEPTEMBER 7, 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
Frank Lamb
Glen Swaney, Chairman
Jeri Hargiss
Walt Crimmins

Staff Present:

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

Members Absent:

Billie Mayhand

Staff Absent:

Jerry Speegle, Attorney

The Chairman asked Pat, who will be voting tonight? Which five of six?

Ms. Houston stated Crimmins, Hargiss, yourself, Lamb, and Mr. Robison.

The Chairman stated okay. If we could, let us start with the approval of last month minutes. If you all have had the opportunity to read them, the Chair will entertain a motion to accept as written.

Approval of Minutes:

The minutes of the August 3, 2006 meeting were considered for approval. A **Motion** was made by **Mr. Crimmins** and **Seconded** by **Mr. Robison to approve the minutes as written.**

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

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

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New Business:

Appeal #2006-06, Barbara Mousseau

The Chairman stated we are here tonight to hear Appeal #2006-06. Bill, you want to start this.

Mr. Eady displayed color transparencies of the two trailers and house located at 27190 Parker Lane. He stated Mr. Chairman this is an Administrative Appeal regarding the trailer home that burned sometime around January 15th of 2004. It is located at 27190 Parker Lane. As we go through the information we are going to find about three different addresses. I think they will be 27190 Parker Lane, one other is 27191, I believe, and 190-A or 191-A. Anyway, it has to do with probably three structures being on the same property. After the fire in January the Fire Chief wrote a letter dated to stating "I request that the Building Official the above listed structure that I feel is unsafe for dwelling". At that particular time the Building Department was under my supervision. On June 9th, 2004, Mr. Ronnie Phillips, who was the Building Official, wrote a letter to Ms. Mousseau, I hope I pronounced that right, and the letter states that on June 7th, 2004, the City Council of Daphne, Alabama, determined that the property located at 27188 Parker Lane, more specifically as a Mobile Home is a public nuisance. The current condition of said property is a public nuisance because of unsafe, dilapidated building(s) exists on the property. On July 2nd, 2004, Mr. David Gautney wrote a letter to the Building Official requesting or asking for a ninety day extension. He said that this is what he needed to do at this time in order to finish the repair that was started in January after the fire and smoke damage. On July 13th, 2004, Mr. Phillips wrote a letter to him, Mr. Gautney saying that his request for extension had been denied. On September 9, 2005 he again wrote another letter again denying the request. In your book you will find a report, the Inspectors report, of the structure. The pages are not numbered, but it is called Form 1, Inspection Report, in which he lists the conditions of several items on the structure, ceiling and partitions, structural conditions, floors, walls, roof, windows, doors, stairs, plumbing, electrical, heating facilities, yard conditions, sanitary conditions, and some general remarks. All of those were listed as poor. Then he also made pictures, which we will go through. This is the location of the site on Parker Lane. Mr. Eady reading from the report stated this is photo #1, it reads in Mr. Phillips reports extreme fire hazard. There is a gas can on top of the natural gas meter. It talks about the larger vertical pipe to the left is a piece of plumbing pipe used as an electrical conduit for the wiring going through the bottom of the floor. The wires are exposed and believed to be nicked. Worst of all is the improper dryer vent discharging at the gas meter with gas can on top of it. Four tires to right have standing water. In Photo #2 is the front door, the main point of egress. It is the way out in case of fire. Mr. Eady continued to read the porch is dilapidated with no guard rails as with steps. Steps are required to have handrails. To the right, underneath is typical condition from end to end of moisture barrier.

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Mr. Eady continues, and apparent makeshift wiring and dilapidated wiring system. In Photo #3 is the breaker panel at the power meter. The current in this panel is unfused to the top of the power company's power pole, and is exposed to the open by the empty breaker spot in the top of the panel. The worst part of the hazard is the child's sticker on the face of the dead front, which to me indicates the presence of children playing in the area. Dead front has no screw fastening it to the panel. Photo #4 is the master bedroom window. This is the only way out in case of fire. Photo #5 Kitchen area destroyed in fire. Stove not salvageable, nor is kitchen cabinets. All plumbing gone is to floor line with infiltration of sewer gas apparent. Photo #6, 7, 8 are typical condition of tie downs. Either not fastened, or the few fastened are rusty, weak or not tight. Very, very poor stabilization effort. In my opinion, this trailer would be gone in a hurricane, possibly causing damage or injury to adjoining property and or owners. Moisture barrier and insulation completely gone exposing sub-floor to all elements and infiltration of rodents and insects. Photo #9, 10, 11 is typical condition of dilapidated and makeshift wiring. The complete electrical system is condemnable, and a fire and safety hazard. The complete underlayment is gone, exposing all sub-floors and duct system to open air, and infestation. Photo #12 shows wall is water damaged apparently due to A/C Unit. Not easily repaired. Photo #13, 14, 15 there are two trailers on the lot. The picture is not very well due to the dark, but right there in the center behind the three mailboxes, is a little white house, that is also on the same lot. It says there are two mobile homes and a house on the same property, which does not meet the Zoning restrictions other than possibly being grandfathered in. The cable on the ground is cable television.

The Chairman stated before you leave that picture, Mr. Eady, what is that piece of pipe there? Do you know?

Mr. Eady stated that one.

The Chairman stated yes, sir.

Mr. Eady stated that is the sewer pipe that comes out right there with the two little circles around it. Evidently, it is, I think, one of the sinks or maybe the septic tank, and it drains down that ditch.

The Chairman stated thank you.

Mr. Eady stated this is a little further down the ditch, and it eventually goes on out into the storm drain. I am going to backup just a minute, and I am going to talk about the same thing. Anyway, we have talked about the two mobile homes and the house on the same property, which does not meet the zoning restrictions, other than the property being grandfathered. We have talked about the cable that is on the ground is cable television wire, apparently serving all three structures.

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Mr. Eady stated the pipes draining into the City maintained drainage ditch in #14 and #15 comes from under the house, and that was the report that he made of the site. Mr. Eady stated be patient with me just one minute. On June 28th of this year, 2006, Ms. Mousseau filed an application for request for an Administrative Appeal. On part of her administrative appeal she states that even if the non-conforming structure is damaged by more than fifty percent, the Board of Zoning Adjustment has authority to allow the restoration of the structure to the same non-conforming use pursuant to §9-2(b)(4), which she is absolutely correct. However, she never did bring it to the Board of Adjustment. It goes on to say at the end of the report that this appeal is to dispute the determination by the Building Official that the trailer was destroyed by more than fifty percent, and that is what you have to determine tonight.

The Chairman stated thank you, Mr. Eady. How many people are here tonight to speak for this appeal?

Mr. Eady stated Mr. Richard Merchant, is the Building Official now. He came on board as Building Official after I was out of it, and Mr. Ronnie Phillips had left the City, so he has some information as well. Mr. Kirby is here to give a report as the Code Enforcement Officer, and he is also a licensed professional electrician, so he can answer any questions about the electrical work.

The Chairman stated okay. I would just like to get a show of hands to see about how much information we are going to have this evening. Just one person speaking in favor of the appeal?

Mr. Stankoski stated good evening gentlemen. My name is Robert Stankoski, I am an attorney in Fairhope, and I represent the Mousseau family. I am here to present their case, and I will be happy to let the Mousseau's tell you their side of the story as well. From initial glancing at the pictures that have been presented, which is the first time that I have seen these pictures, it is my understanding that the initial cause of action was brought upon Ms. Mousseau based upon the fact that there was a fire inside the trailer, and our argument being that the fire inside the trailer did not destroy more than 50% of the trailer as it existed at the time. All previous problems that we have seen up here on the pictures that were shown probably were the condition of the trailer as it was. It was grandfathered in as grandfather status. So our argument that we are here to make to the Board tonight is that it was not damaged more than fifty percent, therefore, they should be allowed to restore the use or allowed to continue on as it is. Before I start though, I would like to put out up here what I have marked as exhibit "8", but I only brought one copy so I ask that you pass it down, if you will.

The Chairman stated sure. Thank you.

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Mr. Stankoski stated exhibit "8" reflect the changes that have been made in the trailer, and has been corrected, that is the condition of the trailer today.

The Chairman stated today? When did the rebuilding start?
The Chairman stated I can see some letters here.

Mr. Stankoski stated the rebuilding started shortly after the fire if not before. Just as part of the history, as well, they were charged with violating stop work order in continuing to work on that. They went to Daphne City Court and had a trial that, and was found not guilty on that particular charge as well, this is part of that file history. I will allow you a few minutes to take a look at the photographs, and I will be happy to answer any questions that I can.

Mr. Lamb stated can you explain this last statement that you said about Court. About the Stop Work Order.

Mr. Stankoski stated yeah. The Mousseau's began doing work on the trailer, to have it restored, to do work on it. They were charged or Barbara Mousseau was charged with violating the City Stop Work Order on the house. They argued that they were not in violation of the Stop Work Order, and they had to take her to criminal court here in the City of Daphne, and following the trial the matter was found not guilty.

The Chairman stated so that Stop Work Order was issued around when.

Mr. Stankoski stated the Stop Work Order was issued around January of 2006.

The Chairman stated okay.

Mr. Merchant stated the Stop Work Order was before that.

Mr. Stankoski stated I was incorrect on that. The Stop Work Order was posted previous to January of 2006. We are unsure of the exact time frame.

The Chairman stated previous to January of 2006.

Mr. Stankoski stated previous to January of 2006.

The Chairman stated okay. We will get into that a little later. While we are waiting to look at the picture, Mr. Huffman, according to the credence of the appeal we have here, the non-voting members of our Board, can participate in the discussions.

Mr. Huffman stated yes, sir.

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The Chairman stated I just wanted to re-verify that. While they are still continuing to look at these pictures, Mr. Stankoski, do you want to continue?

Mr. Stankoski stated that is pretty much my argument. I would like to see if it is the City of Daphne's position that the building was destroyed more than fifty percent.

Mr. Stankoski stated I would like somebody at the City of Daphne to show me what artistical measure that they used. Did they use a framer to look at this other than just taking look at pictures and saying he considered the home to be bad condition due to the applicable damage. Based upon the Building Inspector's report it is impossible to determine what percentage of the home has been destroyed by the fire, and as a result I would say that it is absolutely vague or void that the Building Inspector can come in and make a factual determination that it is beyond fifty percent lost such as that it would lose grandfather status.

The Chairman stated I understand.

Mr. Crimmins stated that is incumbent. Actually, I was hoping that you would tell us what the value was. I think it is up to you to rebut what the City says.

Mr. Stankoski stated I would disagree with you in that. Due process would require us the opportunity to at least be able to challenge the evidence that has been presented in this case, and a Building Inspector's report that says poor, very poor, uninhabitable, without anything additional to be able to support that claim is unfair to place the burden on the property owner.

Mr. Crimmins stated well, that is the procedure. Do you have any figures?

Mr. Stankoski stated I do not have any figures.

The Chairman stated let us hold any additional questions about costing for the minute. Perhaps, Mr. Kirby, would you like to make some comments about this. You have been involved in this thing.

Mr. Kirby stated yes, sir, I was asked to go. I have been on the site, as a matter of fact, I was on the site just a day after the fire, and I went in this structure also, but not as a Building Official. I was there strictly in a Code Enforcement capacity. I did write a citation for failure to obey a Stop Work Order, and that was not processed. It was not, a not guilty verdict. It was not processed because at the time we went to Court we did not have the green cards where she had signed that she received the letters. We could not produce them, Mr. Phillips had failed to bring them, so Judge Doyle null processed that case because of that.



The Chairman asked do you know the date of that Stop Work Order?

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Mr. Kirby stated it was some time prior to October 13th of 2005 because that is when I wrote the citation.

The Chairman stated 2005.

Mr. Kirby stated I do not have the exact date. Actually, right after the fire there was a sign put up stating it was a safety and health hazard so that nobody would go on the property.

The Chairman stated I understand. Okay. Any additional comments, Mr. Kirby?

Mr. Kirby stated unless there is a question that I might answer.

Mr. Crimmins asked when did this Court case take place again?

Mr. Kirby stated the Court case would have been in November. I believe it was the 15th of 2005.

Mr. Crimmins asked how many months after the fire?

Mr. Kirby stated that was over a year after the fire because it was January of 2004.

Mr. Stankoski stated if I can just for clarification purposes. I do have a certified copy of the Court proceedings here marked as, Exhibit "6", in which Judge Sweet not Judge Doyle who was the City Judge at that time found the Mousseau's not guilty, and you can check this out, and I will submit this into evidence.

Mr. Kirby stated I apologize, Judge Sweet was in attendance that night.

The Chairman stated okay. Thank you.

Mr. Lamb stated Mr. Merchant, let me ask you a question. If a building suffers fire loss, has a fire, is it the responsibility of the Building Inspector just to look at the confines for the fire or should they also look at the condition of the building because within a fire you can have just so much damage, but they could weaken, for example, the structural integrity of the building, which would, in effect, make it a hazard, as it might collapse, but my definition, pardon, is a Building Inspector only required, totally required, to only look at fire damage or must they look at integrity of the entire structure.

Mr. Merchant stated if the structure is in noncompliance, and you get a significant amount of damage, yes, you have to bring the entire structure up to the current codes, which would require it in this case, the wiring, the furnace, when he reached in to look at the furnace, the burner fell off in his hand. I mean the furnace would be condemned. The wiring would have been condemned, and the plumbing possibly, and overall conditions were just poor.

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Mr. Merchant stated the Stop Work Orders, to clarify that, they were verbal, but they were with a Police Officer. I was there two or three times, and also uniformed officers.

The Chairman stated okay. Anything else, Mr. Merchant.

Mr. Merchant stated no, sir.

The Chairman stated do we have any additional questions for, Mr. Merchant. Before we go on I have a couple of questions, I guess, for Mr. Stankoski. The question has been brought up about wiring and the furnace, and seven things in all. What do you know about those two repairs?

Mr. Stankoski stated I am unclear of all of the repairs, but I do know that they were asked at one point that they were violating the septic Code violation in that there were multiple trailers hooked up to one single septic system. They remedied that repair, and got a new septic tank. I think the issue that we are talking about here is that there are Code violations in the home. Plumbing is not up to date, the wiring is not up to date, and I think it is incumbent upon the City of Daphne to go and say you are not in violation of a particular Code or you are not in violation of our plumbing or our wiring, issue a citation at that time, and at that point the homeowner would then have the opportunity to rectify the situation, but to simply declare a public nuisance, and ask that it be removed or demolished without giving the homeowner the opportunity to rectify it, is my problem.

The Chairman stated who is here to speak against this appeal. Step around here. Step up to the podium, please and give us your name.

Mr. Stevens stated my name is Richard Stevens, and I live at 27204 Parker Lane. It is catty-corner from the subject property. I became interested in buying the property in 2004 and I noticed the trailer with the windows broken out and the burn marks. I asked Harry Brown about it and he said that it had been condemned, and was suppose to be removed. I had also asked Mr. Eady about it, and he said that he understood that it was condemned, and it would also to be removed. During the construction of my house I had some thief of building materials. We contacted the Police Department, and talked to a Detective Rivers, and he brought up the subject that that property was no stranger to the Police Department. It has also been some problems with animal control. I would very much like to see the trailer removed. It is not very practical for the neighborhood. I have an article from the newspaper dated January 15th. It says that the cause of the fire was an explosion of a meth lab inside of it, and that can also be a problem environmentally for the neighborhood as well, and to sum it up, that is all I have.

The Chairman stated thank you, and then this gentleman over here.

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Mr. Williams stated I am Bill Williams and I live at 27191 Parker Lane, and my comment to Mr. Eady here is did you say 27191 was one of the possible addresses on this thing.

Mr. Eady stated I believe that was one of them.

Mr. Williams stated well, that is totally incorrect. My address is 27191 and it is an assigned number so I would like to have it removed please, but anyhow. I hear it was grandfathered in, but in reality this mobile home was moved in after the Ordinance was passed. I wish I had written down a date. It is not a grandfathered situation. It is a mobile home park right there if they want to move it around the corner into the mobile home park I have no objections. I think it is against the Ordinance for the mobile home to be there, and two the reason for the fire was that it was a meth lab. We do not know if it has been checked and all of those chemical have been removed. It is a hazard to the neighborhood. I mean when you wake up and your Fire Department is there and everything else. I just do not think it fits the neighborhood. It is a mobile home and I have no objections if it is in the mobile home park.

The Chairman stated thank you, sir. Any additional persons? If you would.

Ms. Lewis stated my name is Sandra Lewis, and I am a resident of Yancey Branch Woods, which is the last subdivision on Parker Lane. My experience is that I moved into my home which was being constructed November 2004. Due to medical reasons I am hoping to be able to relocate to be near my son. I put my house up for sale, and because my house is on the market for two hundred and thirty five thousand dollars, I am sorry to say, and it is the truth that several prospective buyers have made a remark about what they have had to go by in order to get to Yancey Branch Woods. Now, this is not a problem of the City, but there are residents of Yancey Branch Woods, who were under the impression that there would have been another entrance way into the community, so that we would not have to be subjected to that. I also want to say that I am aware of the fact that there have been several, of course, a lot of people make fun of Sound Off, but there have been a lot of calls in to Sound Off regarding the property language. I also would like to say that there have been complaints registered with City because of unkept grounds, garage cans out by the road, and I do not know if they call it a restriction or whatever it is, but cans are not suppose to be out twenty-four hours before or after, and I will say that those garage cans are out there seven days a week, and that is all I have to say.

The Chairman stated thank you very much, madam. Does anybody else want to speak either for or against this appeal?

Ms. Gormandy stated my name is Deborah Gormandy, and I grew up at 27188 Parker Lane. The trailer that had the fire, it was over a year from when the fire started.

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Ms. Gormandy stated after the fire, I decided, nothing was done, so I decided to fix the trailer up for my daughter, who just went through a divorce and has three little boys. One of which was born August 29th during Hurricane Katrina. All we wanted to do was give these three boys a home, so I was trying to fix it up, but under all of this harassment they denied it. There is nothing wrong with that trailer. It is very livable. If I had called FEMA they would not have turned us down. They would have made the City let us live in there. At this point, I am having to pay for her to live somewhere else when she could have lived there for free because it belongs to us. There is nothing wrong with it, and I was trying to fix it up nice. During this time my husband had a heart attack, and I could not put the stress on him of putting her and all three kids in my home. So now I am having to pay for her to live somewhere else because she cannot afford to work because she has three kids.

The Chairman stated I understand. Thank you very much.

Mr. Merchant stated I just stood to say that none of the repairs were permitted or inspected. She brought that point up.

The Chairman stated okay. Mr. Stankoski, would you like to add anything?

Mr. Stankoski stated yes, sir, I do have a couple of final things to add to this. For one, there are still multiple trailers on that site. Getting rid of one trailer is not going to solve the problem, which appears to be the majority of the complaints of the property owners there, which are that there are mobile homes located there. The Mousseau's have owned this property in Daphne before the City of Daphne was even incorporated. They have stayed on this property for a long period of time, and they consider it to be their family home. It might not be pretty, it might not be anything that the Board would choose to live in or anybody else might choose to live in, but fact is it is their home and it is where they will be. In America one of the most important things that you have is your property, and before you start trying to take about from this property or take away from the existence of it you have to watch out for due process in determining this. I feel for the neighbors around there that do not want these homes there. I completely understand that, but the homes are there, and if they do not want to move those homes and move into a trailer park, they were grandfathered in. They certainly do not have to. They will have to decide when they want to move off that property or when they want to sell the property, at some point later, and allow development to come in. All we are asking for the Board tonight is to treat the Mousseau's fairly, and I think we have proven our evidence without a doubt.

The Chairman stated Mr. Huffman, what are our legal parameters here? I heard said that we can not approve if there is more than fifty percent damage.

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Mr. Eady stated Mr. Chairman, I would like to know if they ever got a Building Permit for repairs.

Ms. Gormandy stated no.

Mr. Stankoski stated no, they did not get the Building Permit. They were denied a Building Permit.

The Chairman stated were denied a Building Permit. They requested one and were denied.

Mr. Stankoski stated they have never gone down and made official application. I think the last thing that happened in the matter was that they called the utility company to come out and run power out there and the City of Daphne pulled up and said you can not run power to this, it is not C.O.'d, there is no way, and they do not have a building permit at this time, and they did not allow them to hook up power.

The Chairman stated thank you. Mr. Huffman.

Mr. Huffman stated yes, Mr. Chairman, to answer your question. The way I read the appeal, which was filed by Ms. Mousseau, was the question that was presented to the Board was whether the structure itself is damaged or destroyed fifty percent of the reasonable estimated replacement value that was a decision by the administrative. While it was mentioned, as to the restoration of the structure, in the request that was not part of the appeal.

The Chairman stated I am sorry, would you repeat that last part of your sentence.

Mr. Huffman stated the reference in the zoning in the appeal as to the Board has the right to allow a nonconforming structure damaged by more than fifty percent to restore the structure, but the way I read Ms. Mousseau's appeal that was not the issue raised. The only issue raised was whether or not the fifty percent was met and satisfied.

The Chairman stated I understand. Any additional questions from the Board?

Mr. Robison stated Mr. Williams, did I hear you say that this particular trailer was moved on the lot after the Land Use Ordinance was passed.

Mr. Williams stated yes it was.

Mr. Robison stated so, and I am asking a legal question. Would this trailer come under the grandfather clause if it was moved on that lot after the Land Use Ordinance was passed?

Mr. Huffman stated the answer is no.

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Mr. Robison stated thank you. Now, Mr. Stankoski, you said it is up to us to determine the fifty percent there. So if we did determine it was more than fifty percent, what would be your question to that?

Mr. Stankoski stated well, the way I read it I would take a little bit of a disagreement from the way Mr. Huffman is interpreting it according to the public notice that was issued in this hearing.

Mr. Stankoski stated what I have understood this hearing to accomplish today it could be two fold in front of the Board. Question one could be whether or not home or whether or not the City would have proven that the home was damaged beyond a reasonable estimated value more than fifty percent of the trailer. If the Board determines that no, it is not damaged more than fifty percent, then it still would keep its nonconforming structure, although it was grandfathered in, and the Board would not have to incur it. If the Board determines that it was damaged over fifty percent then this Board does have some digressions to grant a variance for a stay as a nonconforming structure on the criteria that is the way I see this hearing here tonight. Now my point is that we disagree that the home was moved there after the Land Use Ordinance, and the gentleman that was up here testifying that it was done before was incorrect, and therefore it is grandfathered.

Mr. Robison stated I have another question. Would this do irreparable harm to the land? If it was denied would it cause there to be an irreparable harm done to the land?

Mr. Stankoski stated I do not know.

Mr. Robison stated or would it be harm to these people?

Mr. Stankoski state it would be a hardship for the owners.

Mr. Robison stated it will be a hardship for the owners, but would it be a hardship for that piece of property that it sits on if it was denied.

Mr. Stankoski stated you are asking me if it was denied, and they would have to move the structure from the site would it create a hardship for the land, is that the question.

Mr. Robison stated yes. If it was denied would it be a hardship for the land?

Mr. Stankoski stated I would say yes, probably.

Mr. Robison stated in what respect, would you say that it would cause a hardship to the land. Would it damage it by moving the mobile home trailer off the lot?

Mr. Stankoski stated it might be difficult to move that home without destroying trees or it might be difficult to move it without causing incidental damages to the trailer surrounding it.

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Mr. Stankoski stated it might be very difficult to move it off the site without causing large damage to the land. I do not know details have to be done, but I am sure you would have to bring equipment in there to take it apart, and jack it up, and load it up on somebody's truck, and it has to go back there to do it. I would say yes upon that.

Mr. Robison stated that is your surmise on that.

Mr. Stankoski stated I am guessing that.

Mr. Robison stated thank you.

Mr. Lamb stated Mr. Merchant, let me ask you a question. After a building has had a fire does the City require a Building Permit to repair internal damage?

Mr. Merchant stated yes, sir.

Mr. Lamb stated regardless to whether there is any other damage, other than inside. The Fire Department came and put it out, and from that point on if they want to fix their house up they need it.

Mr. Merchant stated yes, sir. We do what is called a Fire Inspection after the fire. We go in after the fire and we do an inspection. We determine what has been damaged, and if anything else has to be brought up to compliance.

Mr. Lamb stated it is encumbrance on the property owner to get the building permit.

Mr. Merchant stated yes, sir. They come make application and it goes from there.

Mr. Lamb stated in this case that did not happen.

Mr. Merchant stated no, sir.

Mr. Crimmins stated I have question for Mr. Eady. What is in our grandfather clause when something is damaged fifty percent or more from storm, fire, whatever? What is the normal procedure, what is the normal form that is used to determine that fifty percent?

Mr. Eady stated I do not know because I am not the Building Official.

Mr. Crimmins stated what is the normal way that is figured?

Mr. Merchant stated well, in this instance you really do not have, to be honest with you, a whole lot to go with. You have got an old trailer and you try and place a value on it. You know we could do it like a residence at sixty dollars a square foot on a new residence, but it is a trailer.

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Mr. Merchant stated so I would estimate, in my opinion, it would be an opinion thing, an old trailer maybe three thousand dollars, and so it does not take a lot to get over fifty percent. Just rewiring it would be over fifty percent of it.

Mr. Crimmins stated Mr. Eady, did not we have a Raceway gas station that lost their sign a long time ago. If it is completely destroyed I can see it, but do we have a procedure that tells us exactly how we accrue the value.

Mr. Merchant stated no, sir.

Mr. Crimmins stated that Form 1, Mr. Eady went through was used. Essentially, that Form 1 was used.

Mr. Merchant stated yes, sir.

Mr. Crimmins stated all of the stuff on Form 1 needed to be done to bring it back up to Code.

Mr. Merchant stated yes, sir.

Mr. Crimmins stated there is a trailer park in the vicinity, is that correct.

Mr. Merchant stated yes, sir.

The Chairman stated I have one additional point of clarification. It has been mentioned that it is grandfathered in and that it was here before the Bill was passed. Was this unit grandfathered in? Was it there before the Land Use Ordinance?

Mr. Merchant stated we do not know.

The Chairman stated we do not know.

Mr. Merchant stated because we could not establish a time.

Mr. Crimmins stated that gentleman has his hand up. Let us hear what he has to say.

Mr. Gautney stated well, it seems like nobody in here really knows much about mobile homes, and I work for the mobile home trailer park behind my property, and I have rebuilt many trailers. A trailer, all it is, is a frame with wood and nothing. There is nothing to rebuilding a trailer compared to a house. When it comes to repairing wiring or anything to a trailer, as far as wiring all you have got to do is pull the panels off of it, all wood panels, and within in two days you can have it rewired. It is that simple, as far as the grandfather clause.

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The Chairman stated well, before you leave that, was this trailer rewired.

Mr. Gautney stated no, sir. There was no damage to the wiring. The only damage was to the kitchen itself. I went in there, and I had to repair the floor which had a spot about like that in it. So what I did was repair the floor. I repaired the kitchen cabinets, and put a sink in. Then we whitewashed, which is if any of you all have had grandparents and stuff like that then you know that we power washed the trailer, which entitles bleaching, and washing it, and all that.

Mr. Gautney stated well, I pull every individual panel out, throughout where the fire was, and checked the insulation for smoke damage. The only places I found smoke damage was right in the kitchen behind the stove, and behind where the burnt spot was, and I replace it. I would like to say something else about the meth lab situation. They suspected a meth lab. They had no evidence on anything other than the person that lived there had painting supplies. They done one foolish thing they had a can of paint thinner on the table, and one sitting right here by the sink. Well, it is a gas stove and when it leaked the fumes caught and blew that can into the refrigerator, and burnt the refrigerator, and melted my kitchen cabinets to where the faucet sprayed water and put the fire out. That tells you how bad the fire was. It put it out. To my knowledge, sir, there has never been no conviction on any meth lab. I did talk to the Fire Department, and they asked my how much it would cost me to repair that trailer, and I told them about six hundred dollars, and pretty much that is about what it took. I pulled all the carpet out of it, and I put a new box in it, which upgrades the electrical, with a two hundred amp circuits. Well, me and my sister put tile down in there because we did not want no more carpet. I even put some stuff on the floor, if I remember correctly, as fire retardant, to keep everything, to keep it from rotting, and stuff like that.

The Chairman stated okay. I am sorry, sir, but I did not get your name.

Mr. Gautney stated I am David Gautney, my parents owned this place. I was the one that helped my daddy move the trailer in here. So I know that it was there before the City of Daphne even thought about being a City of Daphne.

The Chairman stated you said when you started that it was your trailer. Is that correct?

Mr. Gautney stated no, my daddy's. We brought it in here. My sisters were supposed to live in the trailer when it was brought in here. The reason that the repairs were made was because my niece needed a home, and as far as the property and stuff we have all had hurricane damage. I am still trying to fix everything. Another thing, you all had asked if it would cause any damage to the property if the trailer was moved, yes, the tree has to be took down. When you move the trailer it is probably going to warp, and I have got no way to fixing that.

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Mr. Gautney stated there is a septic tank there, and it is up to Code, and as far as it goes, if you all give us a permit we will put a privacy fence across it, and I will plant bushes out there, but I work ten hours a day, every day, and everybody here does, and we do the best we can do. As far as the garage cans I put them out there three or four times for them to haul off, but they will not take them. I mean what can you do.

The Chairman stated thank you, very much.

Mr. Gautney stated alright, I appreciate it.

The Chairman stated Jeri, you had an additional questions or concern.

Ms. Hargiss stated it is about this grandfather clause. I mean what year was the trailer was moved in.

Mr. Gautney stated madam. I was about six and I am forty years old now.

The Chairman stated do any of the members have any additional questions or comment?

Mr. Lamb stated the repairs were done without a Building Permit, and Mr. Stankoski said that you know in America we have property rights, but in America we also follow the law. The law is the Ordinance, and the Ordinance also says that you have got to have a Building Permit, and so, that was a violation there. You did not follow procedure.

Mr. Crimmins stated how should the motion be made on this?

The Chairman stated one short additional comment, Mr. Gautney.

Mr. Gautney stated the Building Permit issue. We tried to ask for a Building Permit when he pulled up on the property, and we were talking about it, okay. We said we are going to come up there and buy a permit, we are going to try and get this all fixed. He told us, well, he told my sister, if she came up there to get a permit, he was going to fine her. So, what could we do. We had no choice. Nobody would give us a permit. They would give us a fine. So, we done what we could.

The Chairman stated in response to Mr. Crimmins, any motion that is made will be in the form of a positive request.

Mr. Lamb stated I am full of questions. Maybe the gentleman can answer this for me. I have a problem with the exceeding fifty percent of the reasonable estimated replacement cost of the structure during improvement. Now, that determination according to the Ordinance is strictly, and I dare say this, is based on the Building Inspector determination. However, I do not see how, I am not quite sure how the Building Inspector would determine what the cost is, what the replacement cost would be, unless he did some kind of analysis.

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Mr. Lamb stated now, you have to know pretty much what the estimate is or get a quote from somebody saying it is going to cost, in order to get this up to Code it is going to cost this much money. It is going to cost wiring, and it is going to cost plumbing, and we have to put in tie downs to meet the Code, and all of that will cost X amount. At that point, that should have some type of value on a trailer. What would an existing trailer because it would be hard to find one just like this, be worth, you can not find one? A trailer that is this old with these types of amenities what is acceptable. Then you compare the two, but to just have it where generally speaking I say well, that is more than fifty percent is really no basis of the facts. You have to have something to go on.

Mr. Crimmins stated I think we should call for a vote.

Mr. Crimmins stated again, going back. There were two issues, I guess, in this thing. One was whether it was fifty percent or not, and if it was fifty percent should we make a motion to that. Anyway, the other was whether they can restore it as nonconforming use. I think we need to decide what we are making an affirmative motion for. There are two different things here, and I think we need to be clear in our minds what we are doing, and one other question I need to ask while we all are thinking about that. If this appeal was denied what is the effect? Does that trailer have to move?

Mr. Merchant stated yes.

Mr. Crimmins stated does the City have the power to enforce it?

Mr. Merchant stated yes, we do, we have an Abatement Ordinance.

Mr. Eady stated she could appeal to Circuit Court, which would stay everything. Am I not right?

Mr. Huffman stated that is correct.

The Chairman stated I think the appeal really requests, as Mr. Stankoski stated. We need to determine if the trailer was more than fifty percent damaged or less, which is really the summation of the whole thing, as I see it. Is that correct, Mr. Huffman?

Mr. Huffman stated that is correct. It is not just fifty percent, fifty percent of the reasonable estimated replacement cost. It would not be actual cost. Just what is estimated?

The Chairman stated clarify that for if you would.

Mr. Huffman stated at the time damage is reviewed the way the Ordinance is written fifty percent of the reasonable estimated replacement cost. The explanation is what is reasonably estimated a replace at the time the damaged conditions is noticed.

The Chairman stated okay.

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Mr. Huffman stated the Administrator decide that it was more than fifty percent, so the question whether he was correct or not.

The Chairman stated does any of the Board have any additional questions or comments?

Mr. Lamb stated since Mr. Phillips is not here to explain I wonder what kind of figures he used. This gentleman said that it cost six hundred dollars.

Mr. Merchant stated it cost more than that. The wiring cost that much to replace.

Mr. Crimmins stated another question before us is whether it has been grandfathered in. Am I right or wrong?

The Chairman stated it is a grandfathered structure, but it would not fall under that classification if it were more than fifty percent damaged, and it has been decided that it is by the Building Inspectors.

Mr. Merchant stated Mr. Chairman, how could you put in a septic tank, repair a furnace, and all of this work for six hundred dollars? The furnace is dangerous if it is not changed. I would not move in it.

Mr. Gautney stated there is nothing wrong with the furnace. The furnace was really never used. What we have got in there or what we are going to have in there is an air conditioned heater.

The Chairman stated a heat pump.

Mr. Gautney stated yes. Another thing, as far as, the Building Inspector, the actually one that went in there, all he did was walk around the trailer. He called hisself taking some pictures here and there, but so far I do not think, have any of you all seen any of the pictures, then you know that it is mainly smut, if you looked at them. If you seen where he took the pictures of the kitchen that was the only place that was damaged.

Mr. Robison stated Mr. Huffman, Mr. Crimmins asked a question about the grandfathering. I may be totally confused, but I do not think this is being grandfathered in because it was already grandfathered in as a nonconforming structure, so, therefore, 9-14 under grandfather clause has nothing to do with this it just says that it shall be allowed to continue the nonconforming use. We are not talking about grandfathering this in. It has already been that. We are just talking about continuing as a nonconforming structure. Is that correct?

Mr. Crimmins stated continuing as a nonconforming structure.

Mr. Huffman stated that is correct. There has been no appeal as to whether or not it has been grandfathered by anyone.

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The Chairman stated exactly.

Mr. Robison stated Mr. Chairman, someone has a question.

The Chairman stated what is your question? Then I think we need to vote.

Mr. Williams stated number one he said twenty-five years. I built my house in 1988, and the trailer was moved in after I moved in.

Mr. Williams stated a long time. Number two if it was grandfathered in why would you be voting on whether it was a nonconforming structure if it was already in there. If you said it was there before the Ordinance was passed then what does it need to be grandfathered in for.

The Chairman stated I understand. Any additional thoughts, comments, questions or what have you?

Mr. Eady stated at the time that the Building Permit was denied, why did not they appeal to the Board of Zoning Adjustment at that time rather than wait these two years, do all of this work and then do it.

Mr. Gautney stated I can answer that for you. The reason we did not appeal that was because we had, and it is this gentlemen right here, because we have been threatened. I went so far as putting surveillance cameras up at my home. I had your Building Inspector come on my property after no trespassing signs were put up, walking around the property taking pictures of this and that outside the property. The only thing I did not catch him doing was going in that trailer, and had I done that I would have had the Sheriff's Department arrest him. Back then I did not have him arrested for doing what he did because he was friend, of the family, I thought, but the stuff he was doing, and I assume, why the Council or whoever it was that got rid of that Building Inspector, he was doing things he should not have been doing.

The Chairman stated okay. I think that in this point in time we need to, the Chair will entertain a motion.

Mr. Crimmings stated I am with you. If we make the motion to keep this structure in the nonconforming status, then it would take four approving votes to approve it. Is that correct? Would that fill the bill for tonight meeting?

The Chairman stated exactly four to approve the appeal. We would need four positive votes, affirmative votes.

Mr. Huffman stated right.

The Chairman stated I think the question is, well, we have asked that. In essence, the question is whether or not this continues as a nonconforming structure.

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A **Motion** was made by **Mr. Crimmins** to approve Appeal #2006-06, Barbara Mousseau, request for a variance at 27190 Parker Lane to continue as a nonconforming structure.

The Motion failed due to lack of a Second.

The Chairman stated do we have a Second to that motion? If there is no Second, then the appeal is denied. Do we have a Second to that motion? The Chairman stated no Second received. Correct me, if I am wrong, Mr. Huffman, but in my opinion, the Appeal is denied. Is that correct?

Mr. Huffman stated that is correct.

The Chairman stated okay. The Appeal #2006-06 is denied. It has fifteen days to appeal this, to notify the City, and the Board, and to appeal this in Circuit Court. Is that not correct, Mr. Eady, Mr. Huffman?

Mr. Eady stated they have fifteen days to notify the City of their intent to go to the Circuit Court, yes, sir.

The Chairman stated okay. Thank you very much. Is there any other additional business before the Board tonight?

Adjournment:

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

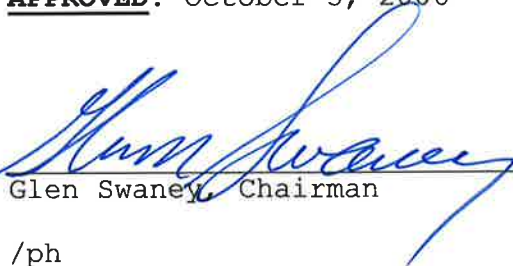
There being no further business the meeting was adjourned at 7:08 p.m.

Respectfully submitted by:



Pat Houston, Recording Secretary

APPROVED: October 5, 2006


Glen Swaney, Chairman

/ph