

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF AUGUST 3, 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:

Walt Crimmins
Billie Mayhand
Glen Swaney, Chairman
Jeri Hargiss

Staff Present:

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

Members Absent:

Willie Robison
Frank Lamb
Barry Taylor

Staff Absent:

Jerry Speegle, Attorney

The Chairman stated we will get into the appeal in a minute, but first approval of the minutes from the last meeting. Has everybody had an opportunity to read those minutes? Are there any corrections or additions? If not, the Chair will entertain a motion to accept the minutes as written.

Approval of Minutes:

The minutes of the June 1, 2006 meeting were considered for approval. A **Motion** was made by **Mr. Crimmins** and **Seconded** by **Mr. Mayhand** to **approve the minutes as written.**

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

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

New Business:

Appeal #2006-04, Lambco, Wayne & Phyllis Lambert

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The Chairman stated we only have four members of the Adjustment Board here tonight, which in essence means that everybody, on the Committee, must vote aye to approve an appeal. Normally the number voting would be five, but tonight we just have four. So, you need to accept that if you present your appeal to the Board tonight. The first appeal here tonight is Appeal #2006-04. Mr. Eady, would you get us started.

Mr. Eady displayed color transparencies of Lot 160 & 161 on Camellia Court in the Whispering Pines Subdivision. He stated, Mr. & Mrs. Lambert, who live at 2410 McPhillips Drive are requesting that they be allowed to encroach the front setback line on Lot 160 and 161 on Magnolia Court by ten-feet. It is in an R-1 zone. They are building a house on it, which means they have a forty-foot setback in the front, so there will still remain thirty-feet afterwards, if it is approved. I had a conversation with the gentlemen across the street, and he said he has no problem with what the Lamberts are planning to do. He has started some work in there, and you can see that there are a good bit of wetlands in the back. This is a floor plan of the home they are planning to build. As you can see, it gets real deep in that area right there, and this is the fill that he started placing in there. I am not sure, maybe he can tell you, if there is a running stream back there or not. There is also a ditch down towards here, and this area is the only high place on the site. The gentleman across the street told me that, at one time, all of this was a part of his lot. His lot is up real high, as far as the slope is concerned, and that all of the drainage came off here and ran along here. The water now drains in through here, and the City is looking at possibly putting a pipe in here to collect some of that water and carry in on into that area to stop the erosion. The property line is actually along this area right here. They are asking for it to be a thirty-foot setback.

Mr. Crimmins asked how much of a setback would that leave?

Mr. Eady stated thirty-feet across the front. There is forty-foot total on the front, in an R-1 zone.

Mr. Crimmins stated they would go from forty-feet to thirty-feet.

Mr. Eady stated yes, sir.

The Chairman stated on the plans you presented it appears they plan to build a house on both lots.

Mr. Lambert stated I have actually created a house plan that is better than the one I gave them earlier. I changed it because of the distance between the setbacks. There are new plans.

The Chairman stated you are, Mr. Lambert, for the records.

Mr. Lambert stated yes, sir. I wanted to say it is not Magnolia Street. On the map it says Magnolia Street, but it is actually called Camellia Court. It has been changed since those maps were made.

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Mr. Lambert stated what we are trying to do is stay away from the wetlands, stabilized it, and take out as less trees as possible.

The Chairman stated I see. Do you still plan to build on half of both lots?

Mr. Lambert stated yes, sir. That is the only place you can build it. It would be almost impossible to build on just one lot.

The Chairman stated the setbacks you are requesting are still within accordance with the area.

Mr. Lambert stated let me point out that for some reason or another Camellia Court is the only street, in the area, that has a sixty-foot easement or right-of-way. All the rest of them in the subdivision are fifty-feet. So, it is not really going to appear that it is really any different by moving it ten-feet forward. Another thing is, not the house right next door, but the other two houses down the street are sitting forward also. They are not forty-feet back, at all. They are probably the same, if not closer. The way it is wooded and the way it sets you will not be able to tell it sits forward at all. Aesthetically, the landscaping has been a certain way for thirty something years, but we are going to put up a nice house that meets with the terrain. The way we are setting it up, you will not be able to tell it all.

The Chairman stated anything additional you want to say?

Mr. Lambert stated other than the fact that we have redesigned our plans to try and fit it in there better. I design houses so I am trying to fit something that looks good in here that does not encroach any further than required. It actually will be a little more elongated. We are lucky that the City has corrected a lot of the erosion already that was actually eroding away the street. We have corrected a lot of that. I have been working closely with the Street Department correcting some drainage that comes from across the other side of the street, which drains several lots. Drainage is what I do, so we are going to try and fix that, and make the cul-de-sac look good. We are going to put in some nice trees.

The Chairman stated it is a nice subdivision. Does anybody else want to speak in favor of this appeal?

Mr. Steadman stated my name is John Steadman, and I live directly across the street, from where Mr. Lambert's property is. I have been there forty-one years. I had my house built, where it is now, in 1965. The lot has remained vacant all these years. Because of the steepness of it, nobody wanted to touch it. The man that owned the property prior to Mr. Lambert buying it, would not give a right-of-way, when the City sewers were suppose to be put in our area. As I understand it, Mr. Lambert has offered the right-of-way, so there are three of us on the street that does not have sewer.

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Mr. Steadman stated I cannot see it in the foreseeable future, unless Mr. Lambert gives the right-of-way. There is my home, the one right next to me, and the one on the right hand side of my property. If he cannot get this to come through or have this agreed upon, then there is no way that I am ever going to have sewer in there.

The Chairman stated I would think though, Mr. Eady that the sewer will be coming down that street. Would it not?

Mr. Eady stated should be, but they do not have it.

Mr. Lambert stated no, sir, we do not. At the end of the cul-de-sac the elevation goes down too low to drain back up.

Ms. Houston stated excuse me, but I am not getting any of this on the tape. I am so sorry.

The Chairman stated maybe you can speak up. Thank you very much.

Mr. Lambert stated thank you, sir. When they installed sewers last year or year before, the bottom of the cul-de-sac runs downhill to where mine and Mr. Steadman's properties are, and what happens is there is not enough fall to drain back to the main street on Camellia Lane, which is the cross street that would be the main server from the sewer station. So, what they did was run down the creek behind me, and they stopped right behind my property. I have been told by Terry that in the future that they are going to extend the sewer on up to one of the subdivision on Whispering Pines Road, and at that time we are going to tap through my north line right up to the back of the cul-de-sac, along the creek there, then right around the end of the cul-de-sac. They probably will not have to take it to the end of the street.

The Chairman stated thank you very much, and if you would just stay there for a second.

Mr. Steadman stated I would like to say one more thing. I met with Mr. Lambert on two or three, four different occasions while he was out there doing this work. I can see that the man is going to build something decent across the street over there, and I do not have any problem with it at all. I look forward to having him as a neighboring.

The Chairman stated thank you, Mr. Steadman. Does anybody here want to speak against this appeal? If not, are there any other questions from the Board. Will you stay there for a moment, please?

Mr. Crimmins stated I have just one. Mr. Eady, there is a picture in here called "image 14", would you have that in one of your graphs there.

Mr. Eady asked which one?

Mr. Crimmins stated it is "image 14".

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Mr. Eady asked is that the one you are talking about.

Mr. Crimmins stated no. It is the one with the road cut in it. That looks like the back of it. Maybe, that is it. Turn that around. Okay, that is it. Does that show where the front of the house will be?

Mr. Lambert stated yes. See where the tank is, and the perm of dirt that is running right there parallel beyond the tank, that is the house position if the thirty-foot setback is allowed. The house will extend, it will actually extend over, probably, beyond that pine tree area against those pads.

Mr. Crimmins stated I have got you.

Mr. Mayhand stated how much backyard footage will be left on the rear once your house is in there.

Mr. Lambert stated probably about fifty or sixty-feet. It is a very steep grade down through it, and that is why we are trying to stay away from it as much as possible.

The Chairman stated okay. Any additional discussion or questions?

Mr. Lambert stated oh, by the way, the hill is actually red dirt, and that dirt has not been brought in. There is some dirt that has been brought in, but that whole hillside is red dirt. It is not like we were bringing that dirt in.

The Chairman stated if there are no additional questions, the Chair will entertain a motion.

A Motion was made by Mr. Crimmins and Seconded by Ms. Hargiss to approve Appeal #2006-04, Lambco, Wayne & Phyllis Lambert, request for a variance to allow the front setback line on Lots 160 & 161 on Camellia Court in the Whispering Pines Subdivision to be moved forward 10-feet.

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

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

The Chairman stated obviously, there are no nays. The appeal is accepted, and you can pick it on tomorrow morning. Is that correct?

Ms. Houston stated that is correct. First thing in the morning.

Mr. Lambert stated thank you, very much.

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The Chairman stated let us move on to the next Appeal #2006-05. Again, Mr. Eady, if you would like to start us off.

Mr. Eady displayed color transparencies of 805 Captain O'Neal Drive. He stated Mr. Karl Gustafson has made a request to allow a 17' x 30' addition unto the existing house at 805 Captain O'Neal Drive. The lot is twenty five-feet wide and four hundred and fifteen-feet deep according to the survey made on January 19, 1988, done by McCrory and Williams Engineers. This shot shows you the gravel drive from Captain O'Neal Drive down to the home. Where it says variance request is where the home is located.

The Chairman stated the variance request appears on the front of the house, I guess.

Mr. Eady stated you can see the back here. This gives you a little better view of the area. The blue area is the area he is working with, and this area right here is where the driveway goes all the way to Captain O'Neal Drive. The area here is his property, and this is an ingress egress easement, I think, I assume it goes to any one of these properties in here. He can answer that question a little later. The property he is concerned with is this one.

The Chairman stated may I ask a question Mr. Eady, as you are going through. Why is this lot only twenty five-feet wide? Was it once an access to the bay?

Mr. Eady stated it appears to me that it was. I do not have anything that says that it is. We do have some other accesses along the Bay that are twenty five-feet wide or twenty-feet wide. I had one map that showed it as part of this property in here. Mr. Gustafson's property is this one, and it is twenty five-feet wide, and I really do not know what the purpose of it was. In talking with some of the neighbors down there it appears that at one time there was a fishing camp in here. I do not know if the home that is there now was a part of the fish camp. I do not know the answer to that. This is the front view of the home, and this is the property line. In fact, the left fence is off of the property line a little bit, in that direction, and this right in here is the property line on the other side connecting with these two lots. This is standing on the pier looking at the rear of the home, and this is a shot of the drive standing in front of the home looking back to Captain O'Neal. The final shot shows the second floor of the home which has been added, at some point. It has just been added because this is the old metal roof and this is a shingle roof right there. The lot is twenty five-feet wide and four hundred and fifteen-feet deep according to the survey. The width of the lot, twenty five-feet wide makes it non-conforming. I have given you the definition, and some parts of the Ordinance to make reference to. You see where it says non-conforming use on page 26, (121) a use of land existing lawfully at the time of the enactment of this Ordinance, or at the time of a Zoning Amendment and which does not conform with the regulations of the district in which it is located.

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Mr. Eady stated the property is also located in an R-1 Single Family Residential Zone, which requires a lot to be one hundred-feet in width at the setback line and contain twenty-thousand square feet. Also, noted in Section 9-4, under "Lots" on page 38 it says "residential lots served by central water and sewerage systems shall not be less than fifty-feet wide at the building setback line nor less than five thousand square feet in area, provided they comply with the requirements of the zoning district in which the development is to occur, and certainly this does not comply with the R-1 zoning district. The property is served with water and sewer, but it does not comply with R-1 zoning requirements. Also, if you look on page 37 at 9.2, I think your book may say 9.4, but it is actually 9.2, page 37, (1) No nonconforming building can be structurally altered, except for repairs on or the installation of plumbing fixtures required by law; the changing of interior partitions; interior remodeling, cannot be substantially added to, moved, or extended in any manner unless such building is changed so as to conform with the provisions of this Ordinance. Also, "Lots of record" in Article 9.6 on page 37, (3) a nonconforming use of land shall be restricted to the lot occupied by such use as of the effective date of this Ordinance. The effective date of the Ordinance was 1987. A nonconforming use of a building or buildings shall not be extended to include either additional buildings or land subsequent to the enactment of this Ordinance, and I have showed you the pictures.

The Chairman stated your points are dually noted, Mr. Eady. Mr. Gustafson what would you like to say about this appeal.

Mr. Gustafson stated I appreciate it Bill. I am Karl Gustafson, and as you can tell this is an interesting house that has developed in that area. The house was the first in the subdivision. The way it is told to me, Bill do you have your pointer, is this whole strip was once owned by one group, who originally owned it all. They put a house there, originally. It was the first lot. The first house in the subdivision was that one. Then in 1987 they renovated it into what you see now, the two-stories, but the guy that owned this, to my knowledge, sold off on both sides and ended up keeping this piece of property to himself. It is a private driveway, and it is not an easement for the general public.

The Chairman stated there are multiple drives or multiple houses off of that drive. Is that not correct?

Mr. Gustafson stated yes, sir.

The Chairman stated okay.

Mr. Gustafson stated my part is the only one here that does, and Andy Citrin uses it. Just for trivial knowledge, all of these people I have known for fifteen, twenty years. Warren West, I understand use to sit on the committee with you all. What we are trying to accomplish here, and it is funny that we are talking about their sewer.

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Mr. Gustafson stated the house only has one full bathroom upstairs. I have a thirteen year old girl who wants a bathroom for herself. So what we are trying to do is add enough onto the house to add a full bathroom and a full bedroom for her. It just happens to be Warren's great-grand niece on his side. A variance has been granted in the past to this house and this house of similar form. They added an addition here and they added an addition on the back.

The Chairman stated by similar form what do you mean.

Mr. Gustafson stated they did not conform to the setback, so they were allowed variances to add onto their house.

The Chairman stated I see.

Mr. Gustafson stated my hardship here other than the thirteen year old is the fact that you are not going to find many twenty five foot lot wide properties. That is a hardship with the property. One is it was the original piece in the area, and the fact that it is just twenty five-feet wide.

Mr. Mayhand asked when did you purchase it?

Mr. Gustafson stated I purchased it just a couple of months ago.

Ms. Hargiss stated you are not going to have a garage there?

Mr. Gustafson stated no, madam.

Ms. Hargiss stated I just wondered a lot of them down there do.

Mr. Gustafson stated I might try and put a spot where we can pull up under the addition, but I had not thought of a closed in garage.

Ms. Hargiss stated that is what I was asking. That is all.

Mr. Gustafson yes, madam. We will try to do that it depends on whether the supports will allow it.

Ms. Hargiss stated I just wondered because so many lots near the water enjoy having those for more space.

Mr. Gustafson stated yes, madam, and that is really about it. From what I read from the information is, you know, that I have got to come up with a legitimate hardship, and that was to only one that was represented to me, as being a real hardship, that pertained in the guidelines. I consider a thirteen year old needing her own bathroom a hardship. I started to bring her down here, but she would do it. The fact that the house was the original in the area, I mean it is the oldest home in that area. All of the other houses were just built prior, after this one.

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The Chairman stated although we do have on record a letter, from, I guess, Mr. West, on lot 5 that you see up there, that indicate the original structure was a fish camp, single story. Is that correct?

Mr. Gustafson stated yes, sir. In 1987 the owner, who I bought it from, Hank Jordan, raised it and renovated the property with the City's approval to do so. There is even a letter that when I bought the property that is recorded with the minutes from the meeting with the City that grants the right that if it ever burns or blows down, a hurricane takes it down it can be rebuilt, also.

Mr. Crimmins stated would you say that again.

Mr. Gustafson stated there is a letter recorded and minutes from the City Council granting, and a letter from the Mayor, granting the right that if the house ever burned or is blown down it can be rebuilt.

The Chairman stated that would be back in 1987.

Mr. Mayhand stated however, it appears to me that the hardship is actually being induced by yourself. It is not like when you bought this property you did not know there were some problems with the size being in an R-1 zone. So, in my opinion, I just think the hardship is being induced by yourself, and that the property is not the problem. It is you wanting to add onto it that creates the problem.

Mr. Gustafson stated right.

The Chairman stated if you would just stay there, Mr. Gustafson. Does anybody else want to talk for this appeal, address the committee for this appeal or anybody against the appeal? Any additional questions? Mr. Crimmins?

Mr. Crimmins stated no.

Mr. Hargiss stated you know, I will say one thing, I reviewed the pictures of your yard, and it is a nice piece of property. I can well understand with a family that you need a little bit more space.

Mr. Gustafson stated thank you.

Ms. Hargiss stated it is a nice area. I drove down that way, and I well understand what you want to do with it. I feel it will enhance the property if the neighbors have already approved it, you know. It is a nice neighborhood.

Mr. Gustafson stated I did speak with all of the neighbors, and a couple of them did offer to come down, and admit their mistake. I told them it was not necessary because they would have written in the problem, if they had a problem.

Ms. Hargiss stated that figures.

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The Chairman stated well, again, I will mention Mr. West did. He said he could not attend, but did want to send a letter. The other neighbors you talked to were which ones.

Mr. Gustafson stated I talked with Warren and Gayle Dearman, which Warren is right here, his house is right here. He owns all the way down, and this is David, I forget Dave's name.

Ms. Corte stated Donnell.

Mr. Gustafson stated Donnell. David Donnell. They just bought the house before I bought this one. They told us about the variance that they got on the back side, and this is Gayle Dearman, who has probably been there a second longer than the rest of them, who got her variance on this side. Gayle specifically offered to come down and speak and support it. Warren said that he was not going to oppose it. He had talked to Bill Eady before, you know, about coming down and doing something valid. Bill had backed up what his position is already, is that, you know, Warren thought, I do not think that they are going to be able to add onto it because of the parts that came out. Warren was supportive if we could get it. I mean he was talking that he would not stand in our way.

The Chairman stated okay. Any additional questions or discussion? Everybody has to vote for this appeal. The appeal motion has to be made in a positive manner, so I will call now for a motion concerning this appeal.

A Motion was made by Mr. Crimmins and Seconded by Ms. Hargiss to approve Appeal #2006-05, Karl J. Gustafson, 805 Captain O'Neal Drive, for a variance to allow a 17' x 30' addition onto the existing nonconforming structure.

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

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

The Chairman stated I am sorry the appeal is denied.

Mr. Gustafson stated well, I appreciate you all taking the time and effort to review it.

The Chairman stated thank you.

Mr. Eady stated explain to him that he has fifteen days to notify us.

The Chairman stated before you leave, Pat would you like to make that explanation about he has fifteen days.

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Ms. Houston stated let Mr. Eady do it.

Mr. Eady stated he has fifteen days to notify the City, plus our department, if he intends to appeal to the Circuit Court.

The Chairman stated okay.

Mr. Gustafson stated to appeal what.

The Chairman stated you can appeal to the Circuit Court, if you notify us within a fifteen day schedule.

Mr. Gustafson stated thank you.

The Chairman stated thank you. Is there any additional old or new business, Mr. Eady.

Mr. Eady stated no, sir. I am disappointed that our attorney is not here. I do not know why, but in cases like this and others we do need legal advice from time to time, and that is not the purpose of this Board. It is a Quasi-Judicial Board, and I think our attorney should be here, and I request that the Board so makes a motion or whatever that we write the attorney a letter to request that he is here at every meeting or a representative from his office be here.

The Chairman stated let us put that in the form of a resolution, and I will inaugurate the thing by saying that we do wish that the attorney for the Board of Zoning Adjustments to appear at the meetings, if all possible. If we could let us have a vote.

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

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

Adjournment:

The Chairman stated is there anything else, Mr. Eady?

Mr. Eady stated no. We will write the letter for your signature.

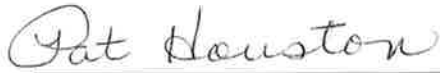
The Chairman stated okay. I will drop by and sign it.

A Motion was made by Mr. Crimmins and Seconded by Mr. Mayhand to adjourn. The Motion carried unanimously.

There being no further business the meeting was adjourned at 6:40 p.m.

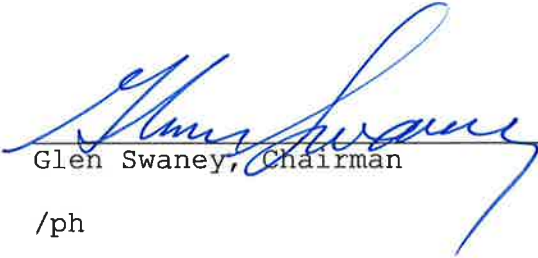
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Respectfully submitted by:



Pat Houston, Recording Secretary

APPROVED: September 7, 2006



Glen Swaney, Chairman

/ph