

**CITY OF DAPHNE  
BOARD OF ZONING ADJUSTMENT MINUTES  
REGULAR MEETING OF APRIL 5, 2007 - 6:00 P.M.  
COUNCIL CHAMBERS, CITY HALL**

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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 6:06 p.m.

Call of Roll:

Members Present:

Willie Robison  
Billy Mayhand, Vice Chairman  
Frank Lamb  
Jeri Hargiss

Members Absent

Glen Swaney, Chairman  
Walt Crimmins, Secretary  
Barry Taylor

Staff Present:

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

The Vice Chairman stated there are only four Board members here tonight, so we want to make note that it will take a yes vote, from all four members, to pass this appeal. The first order of business is the approval of the minutes from the last meeting. Hopefully, everyone has read the minutes, if so the Chair will entertain a motion to accept the minutes as written.

**Approval of Minutes:**

The minutes of the March 1, 2007 meeting were considered for approval.

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

Upon roll call vote, the **Motion failed due to lack of a fourth aye vote.**

|                    |                  |
|--------------------|------------------|
| <b>Mr. Robison</b> | <b>Aye</b>       |
| <b>Mr. Mayhand</b> | <b>Aye</b>       |
| <b>Mr. Lamb</b>    | <b>Abstained</b> |
| <b>Ms. Hargiss</b> | <b>Aye</b>       |

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Mr. Hoffman stated Mr. Chairman, since there are only three votes to approve the minutes we may need to approve them next month.

The Vice Chairman stated okay. Since we had one to abstain.

Mr. Lamb stated I abstained because I was not here.

Mr. Hoffman stated that is correct. I just want to make sure of that.

The Vice Chairman stated okay, let the minutes reflect that we will revisit that motion in the next meeting.

**New Business:**

**Appeal #2007-06 - Terranda Mitchell**

The Vice Chairman stated the first order of business is Appeal #2007-06. Mr. Eady, if you would please.

Mr. Eady displayed color transparencies of 1402 Maple Drive. He stated a request has been made by Ms. Terranda Mitchell, of 1402 Maple Drive, which is in an R-1 Low Density Single Family Residential zone in the Daphmont Subdivision. She is asking for a special exception to keep children ranging in age from six weeks to five years old. The home daycare is allowed in this zone with the Board of Zoning Adjustment approval. These are slides of the home, and we do not go inside the house to measure anything. As you can see there is a dog tied to the pole.

Mr. Lamb stated is that on the property itself?

Mr. Eady stated yes, sir. That is a broken down fence between the two homes, which belongs to the neighbors next door. You have a report in your packets which says conditions listed below are not acceptable for a home daycare for children. It says there are two automobiles that do not move on their own power. There is no loading and unloading zone for the children. We do not have a fenced playground area or at least a grassed area for them to play on. There are two bulldogs in the backyard, one in the fenced area, and one tied to a pole, and dog waste is on the ground. As I already mentioned the fence on the side of the yard is collapsed, and I know it is not theirs, but it will need to be fixed, if children are going to be playing out there. The yard in the back does not have any grass and it is really not suitable for a playground for the children. The playground equipment I showed you was all that I saw at the home.

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The Vice Chairman stated thank you, sir. You have heard the presentation by Mr. Eady, are there any questions or comment? Are the homeowners here? Ms. Mitchell, if you would please?

Ms. Mitchell stated am I just supposed, to start?

The Vice Chairman stated if you do not mind, would you please state your name and address?

Ms. Mitchell stated my name is Terranda Mitchell. I live at 1402 Maple Drive. I know he showed you pictures of the front where the red thing is, well from the corner of the house back to the driveway is going to be the fenced playground area. I am not going to use the back yard.

The Vice Chairman stated are you talking about that side?

Ms. Mitchell stated no, sir, the whole front yard.

The Vice Chairman stated oh, the whole front yard.

Ms. Mitchell stated I have gotten an estimate for the fence. The lady from DHR said that I can use the front yard as long as I had it fenced, and it had to be a five foot fence, as long as it does not come out to the road.

Mr. Robison stated could you point out where it is coming out to with the pointer?

Ms. Mitchell stated from this side of the house all the way across the yard. The dogs are boxers. The pen where the black one is in is for both of them. She just was not in it that day.

The Chairman stated are you referring to the one that was on the chain?

Ms. Mitchell stated yes. They both go in that pen. She just was not in it that day. The broken down fence hanging over our yard, even though it is not ours, we are going to have it fixed, and this car is sold and we are waiting for them to come and pick it up. The white car back there I am having hauled off. As soon as the guy finishes working on the house I am going to have the fence started on.

The Vice Chairman stated thank you, Ms. Mitchell. Do any of the Board members have any additional questions or comments?

Mr. Lamb stated can you put a fence in the front yard? Are there any subdivision regulations against it?

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Mr. Eady stated yes, sir, you can put a fence in the front yard as long as it does not come out past the driveway line.

The Vice Chairman stated would the fence extend out to the other one there on the right or would it stop at the end of the house?

Ms. Mitchell stated it would stop at the end of the house. It only has to be so many feet. She said that would be plenty of space.

Mr. Lamb stated has the State come to look at the property?

Ms. Mitchell stated DHR came. She was the one who told me about the fence.

Mr. Lamb stated was the fencing okay with them?

Ms. Mitchell stated yes. The fence has to be five-feet.

The Vice Chairman stated did she say anything about the animals?

Ms. Mitchell stated she said as long as they were not pit bulls or any dog that is known to be real aggressive. The dogs that we have are boxers, and she said they will have to be in their pen any time the daycare is open.

The Vice Chairman stated any other questions?

Ms. Hargiss stated when I went by the property to view it there was one dog on a chain out of the pen. During the day when children are there will they both be in that fenced area?

Ms. Mitchell stated yes, madam. She said any time the daycare is open the dogs must be in the pen. So both of them will be in the pen.

Mr. Lamb stated we are concerned, although this is a special exception to our Ordinance. We are always concerned about the welfare of the children. Of course, it is the State's responsibility to make sure that everything is adequate for the protection of the children. Of all the special exceptions that I have been involved in and we have approved, I am sorry to say this, but this is the least satisfactory that I have seen. Most of them have already fenced in the yard with a gate, and they have play equipment. They are pretty well setup already for a home daycare. I am sorry to say that this does not look like it is setup for a daycare. I am not just worried about the dogs. You do not want a child wandering off and getting hurt.

Ms. Hargiss stated where will your extra parking be with a fenced in yard there?

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Ms. Mitchell stated where the driveway is to there. We are getting the driveway redone after the man comes and does the fencing. It will go straight from here all the way to the back. All of that is going to be paved and it is going to start right there after the guy finishes all of the repairs that are being done. Eventually, we are going to carry it all the way to the back for a parking lot. You keep saying it is not suitable and stuff but we had to wait because this is my Mom's house, and we are remodeling to be equipped for a daycare and stuff. That is why the guy is on the picture he is working on different stuff in the house.

Mr. Robison stated am I to understand that all of the work that is going to be done will be predicated upon the fact of you receiving the special exception for a daycare.

Ms. Mitchell stated yes.

Mr. Robison stated so all of this will be done in the future based on the fact of your receiving this tonight.

Ms. Mitchell stated yes.

Mr. Robison stated so all of this will be based on the decision tonight you will not put up a fence, you will not have that driveway asphalted or concreted.

Ms. Mitchell stated from my understanding whenever I got the zone or whatever, after you have voted. Then she said I would have to go to the City of Daphne for an actual license. Well, before she can come out again all of that has to be done. Then she told me that I had to make sure that I had all of the stuff that she has already told me done before she could give me a license. I need to get a license, but you cannot get a license if you do not have the right playground equipment and everything that you need in the front yard to appear that a daycare is there. Well you see the dogs and all of this stuff has to be done before you can get a daycare license, period.

Mr. Robison stated so all of the dogs have to be taken care of, the fence has to be put up, and the driveway has to be done before they will even consider approving you for the license.

Ms. Mitchell stated before they will approve me.

Mr. Eady stated the City will not issue a license until it meets all of the State's specifications.

Mr. Robison stated until the State agrees it meets all if their specifications.

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Mr. Eady stated yes, sir.

Mr. Robison stated okay. Thank you.

The Vice Chairman stated let me get this straight. The City cannot issue a license until the State issues you a license.

Ms. Mitchell stated DHR cannot issue a license until you issue one, but unless you approve me for the zoning I cannot just go to the City and say I want license for this business, not until the zoning is issued for it. Once the zoning is issued then I can go to the City and ask for a license. DHR will not even come out and tell me that I need some more of this or I need to do some more of that for the daycare license until all of the stuff they have already told me to do is done. They will not even open your chapter unless this stuff is done. This has got to be done.

The Vice Chairman stated okay. Mr. Eady, this question is for you. Can they put up a fence before this Board approves anything?

Mr. Eady stated they can put up a fence any time they want to.

The Vice Chairman stated at this point?

Mr. Eady stated yes, sir. The State will not issue her a license until the City has issued her a license. The City will not issue her a license until it has met safe standards, and that is kind of where we are right now.

The Vice Chairman stated so the point that I am trying to get here is does all of this work need to be done before approval is given here. Because I would like to see a lot of that work done before I approve anything.

Mr. Eady stated yes, sir. We recommend that it be done before you approve it because something might happen and it may not get done. We cannot allow one to go in under these present conditions.

The Vice Chairman stated I agree.

Mr. Robison stated I know in the past we had one similar to this where, I forget which one it was, but we cannot tell you whether something will be approved or whether it will not be approved if you do this or that, but we suggest what you might do. If you would like to come back, perhaps postpone our ruling on this for a month or so, and then come back, and ask for a special exception, but if you withdraw it now you cannot come back for a year. Is that correct?

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Mr. Hoffman state if it is denied, she cannot come back for a year.

Mr. Robison stated okay. If it is denied you cannot come back for a year, but if you withdraw it and come back in the next month or two from now it might be better.

Mr. Hoffman state if it is withdrawn then they will have to go back through the process with Mr. Eady. What you can do with an individual is table it for discussion until next month, and then she brings the same thing back before you. Procedurally, if she withdraws then she would have to go back through Mr. Eady.

Mr. Lamb stated does the recommendation of the Community Development Department that we have remain the same?

Mr. Eady stated yes, sir.

Mr. Lamb stated if she withdraws and resubmits after she has done the required things that we have seen that need to be done does she have to pay all of the fees over again?

Mr. Eady stated yes, sir, because we have to re-advertise it and everything.

The Vice Chairman stated okay. To help you try and get what we are saying here, I think it would be mindful, before we take a vote, just so that you understand, that you may consider this, but it is up to you.

Ms. Mitchell stated withdraw it.

The Vice Chairman stated you are withdrawing to come back at a later date when we feel that some of these items have been corrected?

Ms. Mitchell stated will I have a list of the items? Do you know what I am saying? Where can I know what needs to be done.

The Vice Chairman stated we cannot provide you with a list of items.

Ms. Mitchell stated I need to know.

Mr. Eady stated what he is saying is that you can withdraw it and go do these things that you are planning to do to meet the State specifications and come back whenever you get them finished. However, if they vote on it and deny it then you cannot come back under any circumstances for a year.

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Ms. Mitchell stated I understand the part, but can I get something in hand saying what needs to be done.

The Vice Chairman stated you told us what has to be done.

Ms. Mitchell stated yes, I understand that, but is that all that you see that needs to be done. The fence and the dogs.

The Vice Chairman stated well, I am saying the dogs, of course, and the fence.

Mr. Eady stated you are going to have to meet State standards. When you get it to the point where they will accept it then we will accept it as well.

Ms. Mitchell stated if you are saying go by the State, well they are not going to look at it until you accept it. Do you see what I am saying?

Mr. Robison stated I think what we are trying to say is, correct me if I am wrong, you already know what you have to do before the State will come out, and you already know what you have to do before the City will issue you a license so you need to do those things. The State has already told you what needs to be done. Is that correct?

Ms. Mitchell stated yes, sir.

Mr. Robison stated you must have the fence, etc. So if you do those things then you come back and the special exception could possibly be granted. I do not know. I cannot say whether it would or would not, but I would not feel comfortable tonight saying yes to the special exception and as Mr. Eady said it may not ever get done because something could take place that would cause it to fall through. Then we have a situation where a special exception has been granted and it puts us in a bad situation. Now that is the way I understand it.

Ms. Mitchell stated the only thing that I am saying is in order for me to go to the State I have to have my zoning. So all that I am saying is after I have done all of the stuff that you have already pointed out is there anything else besides these things that you feel needs to be done so that when I come back after having done all of these things that you do not say well you need to do something else.

Mr. Lamb stated you do not want any surprises.

Ms. Mitchell stated that is right. I do not want any surprises after having done all of this. So is there anything else?

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The Vice Chairman stated I understand your concern I am sure if you do what the State has said for you to do, you will not have any surprises. We have told you our concerns, we are not holding anything back. If there was something else that we had a concern about we would mention it.

Ms. Mitchell stated okay. I withdraw and I will just come back.

The Vice Chairman stated thank you.

Mr. Robison stated thank you.

The Vice Chairman stated is there any other business before the Board tonight? If not, the Chairman will entertain a motion to adjourn.

**Adjournment:**

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

There being no further business the meeting was adjourned at 6:32 p.m.

**Respectfully submitted by:**

  
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Pat Houston, Recording Secretary

**APPROVED:** November 1, 2007

  
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Glen Swaney, Chairman

/ph