

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 3, 2007 - 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
Walt Crimmings, Secretary
Glen Swaney, Chairman
Frank Lamb
Jeri Hargiss

Members Absent

Billy Mayhand, Vice Chairman
Barry Taylor

Staff Present:

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

The Chairman stated there are five Board members present tonight, so I guess all five members will be voting tonight. It will take four yes votes out of the five to pass an appeal. The first order of business is the approval of the minutes from the March 1st meeting. The Chair will entertain a motion to accept the minutes as written.

Mr. Robison stated Mr. Chairman if you would turn to Page 18 of the minutes I would like some corrections made, please. The gentlemen's name was French and not Franks in the first sentence. On Page 20, the last paragraph and it may not make much difference. About a quarter of the way down it says "that if the Architectural Committee of Lake Forest makes a decision the Board cannot override their decision". It should be made by and not make. In my reading over these those are the only ones that I saw.

The Chairman stated Ms. Houston, could you make those corrections to the minutes.

Approval of Minutes:

The minutes of the March 1, 2007 meeting were considered for approval, with the two corrections made by Mr. Robison.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 3, 2007 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

A **Motion** was made by **Mr. Crimmins** and **Seconded** by **Ms. Hargiss** to **approve the minutes.**

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

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

The Chairman stated Pat, are we able to approve the minutes from the April 5th meeting minutes since the majority of us were absent?

Ms. Houston stated no, sir.

The Chairman stated okay. We will postpone that until the next meeting. We are ready to hear our appeals for tonight.

Mr. Eady stated Mr. Chairman before we get started, Appeal #2007-08, Dr. Cecil and Linda Ennis, 450 Village Drive, has been pulled because Dr. Ennis had emergency open heart surgery today, so we are asking that you postpone their appeal until next month.

Mr. Lamb stated Mr. Eady did you say Dr. Ennis had surgery?

Mr. Eady stated yes, sir. Dr. Ennis had emergency open heart surgery.

The Chairman stated that is not one of the appealers, right, that is the gentlemen who is presenting the appeal.

Mr. Eady stated no, that is the appellant, Linda and Cecil Ennis. We were expecting a good number of people to be here tonight because they have been calling all day. I think the property owners association got the word out.

The Chairman stated I do not know whether this requires a motion on our part or not, Mr. Eady? Or will it just simply come back next month? Is that what you are indicating?

Mr. Eady stated it would be best to do a motion.

A **Motion** was made by **Mr. Crimmins** and **Seconded** by **Mr. Robison** to **postpone Appeal #2007-08 for one month or however long it takes for Dr. Cecil Ennis to recover.**

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 3, 2007 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Upon roll call vote, the Motion carried unanimously.

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

New Business:

Appeal #2007-07 - Ron & Evelyn Simon

The Chairman stated okay, let us go on with Appeal #2007-07, Mr. Eady, if you would please.

Mr. Eady displayed color transparencies of Lot 98 and 99 on Broadmoor Drive. He stated this is a request made by Ms. Evelyn Simon, of 138 Broadmoor Drive, which is in an R-3 High Density Single Family Residential zone in Lake Forest. The purpose for this appeal is that they want the home and garage to become one with a covered walkway from one to the other. They are asking that the property line and the easement be vacated. They came to the Planning Commission last meeting and they voted to favorably recommend to the Council that the easement and the property line be vacated. We feel like the Council will go along with the Planning Commission on that. So you really do not have to consider this encroach right here because if they are vacated it will go away. As you can see this is the original drawing, and this is just another shot of the easement, which you can see the lots at the time this was laid out on the property.

The Chairman stated so it is simply an error in surveying. Is that correct, Mr. Eady?

Mr. Eady stated yes, sir. It shows the one point eight-foot corner encroachment of the building. The whole building is off, however, if the property line and easement are vacated this one will go away.

Mr. Robison stated Mr. Eady even though that is two lots and it has the one owner, do you still have the setback requirements between the house and the garage where you are showing it there as one point eight feet, in front of it, even though it is owned by one person?

Mr. Eady stated yes, sir. It is still two lots.

Mr. Robison stated it is still two lots, therefore, it would come under the setback restrictions.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 3, 2007 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Eady stated yes, sir. You have a set of setbacks for each lot. What they are asking the Council and Planning Commission to do is vacate that center property line and it will be one lot, therefore when that happens you will only have the one property line setback violation.

The Chairman stated is it true that the easement is currently not being used and there are no plans for it to be used by the utility companies as indicated by their letters?

Mr. Eady stated yes, sir. They are not being used, and there are no plans to use them.

Mr. Lamb stated that is pretty much standard procedure on lots with utility easements on either side.

Mr. Eady stated yes, sir. When you have the big lots you still have the easement on each side. There is a balcony on the rear of the garage where you can look out onto the golf course. Ms. Pat is standing close to the rear property line. There is a stake down there that we used to eyeball where it was so that is pretty close to it.

The Chairman stated has there been any objection by any of the adjoining property owners to this appeal?

Mr. Eady stated no, sir. We did not receive any negative replies back from the list in your packet.

Mr. Robison stated I have one here that is a positive reply from a Mr. Rodney Lee.

Mr. Eady stated yes, sir.

The Chairman stated any additional comments? Are you Ms. Simon? Would you like to make some additional comments about this appeal?

Mr. Robison stated I have one question for Mr. Eady. Did someone from the City inspect this before the slab was poured because I looked at several requests for inspections, and somebody signed off every time on it?

Mr. Eady stated yes, sir, it is on the yellow sheets.

Mr. Robison stated when they signed off on it would they have known that it was beyond the setbacks?

Mr. Eady stated I cannot answer that.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 3, 2007 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Robison stated because somebody signed off up here every time.

Mr. Lamb stated Mr. Eady, it is not, well, at least it is my understanding that it is not the responsibility of the City Building Inspector to make sure that the survey for the property line and the setbacks are correct.

Mr. Eady stated true.

Mr. Lamb stated that is not their responsibility.

Mr. Eady stated it is not their responsibility.

Mr. Lamb stated the burden lies with the surveyor or whoever staked it out.

Mr. Eady stated we recommend that they do it, but no, it is not their responsibility.

The Chairman stated so in essence it would have to be resurveyed to verify the setbacks.

Mr. Eady stated yes, sir. The reason for it is, and it has been discussed a good bit, that it is not his job. If when the Inspector goes out to inspect it, and he makes a decision about the property lines, and he makes an error in that respect, then the City can be sued for that, so that is the background for that. We have to be very careful in making decisions about a property line.

Mr. Lamb stated on the way down here I had a passing thought. In actuality when we get familiar with a surveyor staking out incorrectly, in my opinion, the surveyor really should pay all of the charges, not the homeowner. It falls on the homeowner due to a surveying mistake. I mean I am just not that for that.

Mr. Eady stated that is between the property owner and the surveyor.

Mr. Lamb stated I know. I wish I knew who all of the surveyors were because we get so many that are off and somebody else corrects it.

Mr. Eady stated I know I remember two that happened in the past that was because of the surveyor.

Mr. Robison stated I can remember about three years ago when I first came on the BZA we had one where I mean it was eight-feet out of kilter. I agree with Mr. Lamb somebody besides the homeowner should bear the burden.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 3, 2007 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Eady stated yes, I remember that.

The Chairman stated Ms. Simon, would you like to add something to this?

Ms. Simon stated I just wanted to let everyone know that there certainly was no mol intent or intentional wrongdoing meant in doing this project. It was just probably an honest mistake. The Planning Commission approved our request to vacate the easement, and we have all of the signatures from the utility companies and what not. Hopefully you will pass it, and like I said it was just an honest mistake.

The Chairman stated I imagine the mistake was originally made by the slab, fountain layout person.

Ms. Simon stated yes, Mickey Mantle was the one we had to survey it. He had said that he did a lot of the lots in Lake Forest. He was just retiring when he surveyed Lots 98 and 99. We were doing this long distance. So that was in April of 2005 and in April of 2006 we submitted plans for the layout of the lot to Lake Forest and the City. We planned for it to be a weight, game and television room. They all agreed and said that is fine, but we would have to connect. According to Lake Forest we do have to have a connecting covered deck type thing, which we want. In 2006 we got the permits and then in June the foundation contractor came with his plans and everything, I do not know, but I think this may be where the mistake was made. Lake Forest on their property line may have placed the post, you probably have seen those white post if you have played golf out there, in the wrong place. Across the back are two posts and one sort of in the middle. They shot it and strung it they measured in twenty-feet, in fact, the string is still there. I guess, I do not know, I think maybe something is off.

The Chairman stated it looks to me like the out of bounds stakes.

Mr. Robison stated yes, sir. Ms. Simon that white steel post you see there in the middle is called the out of bounds stake for the golfers. If they go south of that they are out of bounds. I have discussed that with them before, and the out of bounds stake does not constitute property lines. Some people think that is the property line, but it is not.

Ms. Simon stated oh, I see. I think the contractor Mr. Mantle thought that was the property line. My husband was called away to another plant in Tennessee, so there we had a big delay in there, over a year. Then when the contractor started again perhaps he used the wrong stake, and that is the mistake.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 3, 2007 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

The Chairman stated Mr. Lamb do you have anything else? Mr. Lamb has a question for you, Mr. Eady.

Mr. Lamb stated you make a comment in our packet that says the question is if the property line and easement is vacated and the two structures are connected does that make the existing home nonconforming since they will be on one lot. You are talking about if you combine the two lots. Would the nonconforming structure be the home or the garage?

Mr. Eady stated neither. They will be connected together as one unit.

Mr. Lamb stated no, let us take this one step at a time, Mr. Eady.

Mr. Eady stated okay.

Mr. Lamb stated the easement is gone and the variance is approved now you have two structures.

Mr. Eady stated the garage is nonconforming.

Mr. Lamb stated the garage is nonconforming.

The Chairman stated does the lot line separating the two lots still exist?

Mr. Eady stated no. When everything is said and done it will go away. There will be one large lot.

The Chairman stated one large lot.

Mr. Eady stated about what Mr. Robison said. I too thought that those white steel posts were the property line stakes because from where I was standing on that one corner I was looking straight down through here. If that was not indeed the corner, if the builder picked up on that, then it may not be off. It may not be violating the setback. We are only talking about a foot and a half.

Ms. Simon stated the two far corners are what the surveyors used and I understand Mr. Robison that is not the legal boundary line, anyway those two stakes match exactly because the surveyor trusted that.

The Chairman stated you did have an additional survey done, at least that is what is in our literature, by Geo Surveying.

Mr. Crimmins stated you discovered the mistake doing this? Is that correct? Is that how we know it is off?

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 3, 2007 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Ms. Simon stated Geo. When we resurveyed it.

The Chairman stated Geo Surveying did an additional survey.

Ms. Simon stated we had to have a survey to vacate the easement.

Mr. Robison stated not all of those out of bounds stakes are wrong. Some turn and go back in and it depends on the configuration of the property. It can be very confusing to people if they used our stakes as a guide because some turn and shoot back in.

Ms. Simon stated yes. I know that is what the foundation contractor did when he measured it all out and strung the line. I was there because my husband could not be there. Of course we wanted to get it close to the property line because according to Lake Forest we do have to connect the two, which we want to do. We want a very nice covered deck and that sort of thing. So they strung a line and they moved that off to where it is.

The Chairman stated any additional questions?

Mr. Lamb stated I am struggling with the Land Use and Development Ordinance that you pointed out Mr. Eady. Article 9-2, Paragraph 3, a nonconforming use of land shall be restricted to the lot occupied by such use as of the effective date of this Ordinance. 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. I have been thinking about this, and to me this is all like a double barrel shotgun, one trigger, triggers the other. If you grant the variance, and the City Council in their jurisdiction vacates the easement, if what we are talking about applies in subsection then we in effect have said that we do not believe in our Ordinance, and that is what I am struggling with.

Mr. Eady stated the way I see it is if you approve it then you do not have a nonconforming situation anymore.

Mr. Lamb stated by approving it we eliminate the nonconforming structure, and therefore, we say this particular section does not really apply to you even though that is what we are required to uphold.

The Chairman stated now I am going to need a little additional clarification because the way I read this is we also have an exception with the rear lot line, the one closest to the Lake Forest Golf Course, of some small amount of footage, in addition to those exceptions over near where the easement is. Is that correct Mr. Eady?

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 3, 2007 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Eady stated yes, sir.

The Chairman stated okay. It still would be nonconforming, after we approve it, even though now it will be the same lot.

Mr. Lamb stated if the survey had been correct to begin with and the request from Mr. & Mrs. Simon were solely to vacate the easement then it would be incumbent upon Council members to determine whether they wanted to approve a nonconforming structure. Is that correct?

Mr. Eady stated no. They do not approve nonconforming structures.

Mr. Lamb stated they would approve the vehicle to get to nonconforming.

Mr. Eady stated the only thing that the Council can do is vacate the property line and the easement.

Mr. Lamb stated but we cannot approve something that is nonconforming.

Mr. Eady stated well, it will not be nonconforming when that is done.

Mr. Lamb stated okay.

Mr. Eady stated it will not be there. It goes away.

Mr. Lamb stated so one of the blasts from the shotgun is gone.

Mr. Eady stated yes, sir.

Mr. Lamb stated the other one is there, if we do our duty as we see it. They did not do their duty as they should have seen it.

Mr. Eady stated yes, sir.

The Chairman stated again, once more for the record, I would like to identify that the upper left corner of the garage does extend over the setback line, I cannot read it from here, but by some small amount.

Mr. Eady stated one point eight feet on one corner.

The Chairman stated even though it will be one lot we still would be approving the nonconforming aspect of that lot. So the easement does not vacate all of this.

Mr. Eady stated as of today, and tonight, it is encroaching both setback lines.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 3, 2007 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

The Chairman stated okay. As of tonight.

Mr. Eady stated as of tonight. However the vehicle is in place through the Planning Commission and going through the Council to eliminate the property line and the easement between the two structures, which will eliminate that violation between the two structures.

The Chairman stated okay.

Mr. Eady stated the one in the rear will remain.

Mr. Lamb stated I am wondering if the Planning Commission knew or ever even thought about a nonconforming structure.

Mr. Eady stated we presented it unto them just like we have you. The same way with the same slides.

The Chairman stated do any of the members have any other questions? If not, the Chair will entertain a motion.

A Motion was made by Mr. Crimmins and Seconded by Ms. Hargiss to approve Appeal #2007-07, Ron & Everlyn Simon for a variance to allow the garage under construction to encroach the rear setback line by 0.6-feet on the northwest corner, 1.6-feet on the northeast corner, and encroach the side yard setback line by 1.8-feet on the southeast corner.

Upon roll call vote, the Motion carried.

Mr. Robison	Aye
Mr. Crimmins	Aye
Mr. Swaney	Aye
Mr. Lamb	Nay
Ms. Hargiss	Aye

Ms. Simon stated thank you, very much.

The Vice Chairman stated our other appeal has been postponed for tonight. Is there any other business to discuss tonight? If not, the Chairman will entertain a motion to adjourn.

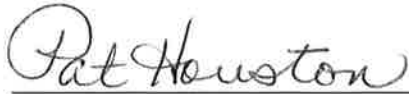
Adjournment:

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

There being no further business the meeting was adjourned at 6:31 p.m.

CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 3, 2007 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL

Respectfully submitted by:



Pat Houston, Recording Secretary

APPROVED: August 2, 2007



Glen Swaney, Chairman

/ph