

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF JUNE 5, 2008 - 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. Let us have a roll call.

Call of Roll:

Members Present:

Jeri Hargiss, Secretary
Frank Lamb
Glen Swaney
Willie Robison, Chairman
Jim Moss

Member Absent:

Billy Mayhand
Barry Taylor

Staff Present:

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

The Chairman stated the first order of business is the approval of the March 6th minutes. Has everyone read the minutes? The Chair will entertain a motion to approve the minutes as written.

Approval of Minutes:

The minutes of the March 6, 2008 meeting were considered for approval.

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

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

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

The Chairman stated who will be voting on the appeal tonight?

Ms. Houston stated everyone seated.

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New Business:

Appeal #2008-03 - Ashley Waller Pettway

The Chairman stated next order of business is Appeal #2008-03, Ashley Waller Pettway, a special exception to allow the operation of a home daycare at 703 Pine Street. Mr. Eady, would you carry us through this?

Mr. Eady displayed color transparencies of the house and grounds located at 703 Pine Street. He stated Ms. Ashley Waller Pettway has requested a special exception to the Daphne Lane Use Ordinance to operate a home daycare at 703 Pine Street. A home daycare by the State of Alabama is defined as a child care facility which is a family home and which receives not more than 6 children for care during the day. The items on page one and two are some that we will probably discuss with you at a later time as I have explained to you prior to this meeting the items marked unknown are not applicable to what we are here for. They are regulated by the State. A little further over you have a list of the adjacent property owners that she has supplied us with. She has given us permission to go on the property to make pictures, which we have. Evidently, Ms. Pettway is a renter, and the property owners, Charles and Joyce Waller, have given her permission to operate a home daycare off of their residence. She also has provided us a copy of the deed confirming that Mr. & Mrs. Waller own the property. If we move a little further we will find a floor plan which shows a living room, den, three bedrooms, a bathroom and the hallway. It is not noted on this floor plan the sizes of any of these rooms, but I am sure that will be taken care of by the State. Then you can see the pictures we made. It is a nice looking home, and the second picture is of the backyard. In it you can see what appears to be a parked blue Chevrolet truck. Whether it is in running order they can answer that for you. The third picture is also of the backyard. The fourth picture is of an approximately ten by thirty foot fenced in area with a walk through gate. I did not measure it. I just estimated that those panels were about ten-feet. They may be longer, but it is approximately that. I am sure Mr. Pettway can clear that up for you. It shows the playground equipment in it. The State recommends three hundred feet minimum and that appears to meet the three hundred-foot requirement. However, it does not look like an acceptable place for children because they are not going to have much room to play and it is out in the sunlight. I do not know exactly what she is planning to do, but I did make note of it. A couple of pictures show the driveway and they have plenty of room to drop off the kids and turn around. We have a layout of the lot and it is kind of shaped with a point at the end of it. I did not see the old well until I looked at this layout. I do not know whether it is a pipe or an open hole, but it is something we need to clear up.

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Mr. Eady stated the lot is a sufficient size and again that is what you need to determine. Where the children will stay and play and how many, so forth and so on.

The Chairman stated are you the property owners? If so, would you like to address the Board? If you would state your name and address for the record. Please speak up because we do not have any power to the microphones.

Ms. Pettway stated okay. I am Ashley Pettway and I am the one renting the house at 703 Pine Street, and this is Charles Waller, he is the homeowner. I will be keeping six children, and that is all I will be licensed to keep. The only place the children are allowed to play is in the fence, and it is three hundred square feet.

Mr. Swaney stated can you address the question Mr. Eady had about the well? Does it exist and what configuration is it now? Is it capped, a pipe or what? The well behind the house.

Mr. Waller stated I think it is just the pipe there. It is just a pipe.

Mr. Lamb stated it is not a big hole in the ground.

Ms. Pettway stated no.

Mr. Waller stated when we bought the place it has been out of service for years. Since the City put water in.

Mr. Swaney stated do you happen to know the diameter of the pipe? How big is it?

Mr. Waller stated it might be three inches. Two and half. Something like that.

Ms. Pettway stated the lady with DHR came out to do her inspection of the property also and she stated that it did not look like a danger to the children. She was mostly concerned about the fenced area and making sure the children are in the fenced area at all times. She did look at it. She checked it out and said it does not look like a danger to the kids.

Mr. Waller stated the blue truck is running. See I am her daddy too. I own the place and she rents from us. I am letting her use the truck because her car is in the shop.

Mr. Moss stated have you applied for a license with the State?

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Ms. Pettway stated yes. They said I had to come here first for approval before I can get my license from them. The Fire Department has been out and everything and my business license has already been paid for.

Mr. Moss stated so everything that is unknown on here that comes from the State or the City is awaiting a decision from this Board.

Ms. Pettway stated yes sir. They just did their inspection and they gave me the paperwork on it. They said they would send me the main copy when this is done.

Mr. Moss stated I can't tell by looking at these pictures, but what time will the children be there?

Ms. Pettway stated my hours are from 6:30 a.m. in the morning until 5:45 p.m. in the evening.

Mr. Waller stated there is shade on the playground. When they come out there will be shade.

Ms. Pettway stated it is shade in the area.

Mr. Moss stated okay, 6:30 in the morning to 5:45 in the evening. That is what I was getting at.

Ms. Pettway stated they are only allowed to come out when the weather permits anyway, but it is a shaded area. There is a lot of shade around it.

Mr. Moss stated which room in the house do you plan on using for the children?

Ms. Pettway stated the den, since it is the biggest room on the house. Plus it is on the back of the house.

Mr. Waller stated it is half as big as the house. We had it added onto the house.

Ms. Pettway stated it is enough room for twelve kids, but I am only going to keep six.

The Chairman stated are there any other questions or comments?

Mr. Moss stated are you going to limit it to six children?

Ms. Pettway stated six children.

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Mr. Moss stated so there will only be six people delivering and picking up children.

Ms. Pettway stated yes, sir. In order for me to do twelve I would have to be re-licensed over again in about two years to do that. I only want to do six.

The Chairman stated Mr. Eady, at the present time she can have no more than six.

Mr. Eady stated yes, sir that is correct.

The Chairman stated there are some areas in here that are acceptable, but my concern is the unacceptable areas.

Mr. Eady stated Mr. Chairman, would you like for me to go through this?

The Chairman stated yes.

Mr. Eady stated these items are taken from the Minimum Standards for Family Day Care Homes prescribed by the State of Alabama Department of Human Resources. It talks about the home and location. It says each home licensed after the effective date of these regulations shall be the primary residence of the applicant/license which is the case and that is acceptable. Child care shall be provided within the family home, not in a separate building and that is acceptable. If rental property is used, a written statement from the owner of the property granting permission for the applicant to operate a child care home shall be obtained by the applicant and submitted to the Department at the time of initial application, which we have, so that is acceptable. At the time of the initial application, a written statement of compliance with applicable zoning requirements shall be obtained and submitted to the Department. It is in an R-3 zone, and by special exception a home daycare is allowed in an R-3 zone, and that is acceptable. If you move down to the bottom you will see indoor area. The home and grounds shall be maintained in a clean and safe condition, and I marked this unacceptable. Injury prevention. The home shall be free from apparent hazardous conditions. I do not know what the inside of the home looks like it is not our responsibility to go in there. There were some things in the yard and you can see some of them in the pictures that could be cleaned up. I do not know about the vehicle, but there are not suppose to be any in the yard that do not run or that are wrecked. So I marked this as unacceptable because it needed to be addressed. The home shall have electricity, water and gas. It does and that is acceptable. The licensee shall have a working telephone and that is acceptable. All of the unknown items that I marked are things that the State will take up with the licensee.

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Mr. Eady stated if you would move on over to the outdoor area. It talks about the Department of Human Resources does not inspect activities away from the home, including swimming and wading activities, which is when they may put the children in a van and take them some place, on a field trip or somewhere like that. The licensee shall assume full authority and responsibility for away from the home activities. The home and grounds shall be maintained in a clean and safe condition that goes back to the statement I made a few minutes ago. They need to address some things. The grass needs to be cut, groomed and clean. I show that as unacceptable. The children will be supervised at all times, which is an oversight on my part. I assume they will be which will be acceptable. The outdoor play area shall be free from apparent hazardous conditions. The well went into that problem and it is unacceptable. It may change if the well is not something of concern. There shall be at least one outdoor play area of at least three hundred-feet on the grounds. The play ground shall be enclosed by a fence or wall at least four-feet in height, free from sharp, protruding edges, except where prohibited by federal regulations, and that does meet State standards. However, I do not feel, personally, I do not feel that it is acceptable. As you can see in the pictures and I do not know what the ages of these children will be, but you can see that it will be out in the sunlight and not in the shade. I am sure they will be supervised, but this does not look like a good place for children to play. Anyway, that is your decision to make. Some playground equipment is available on site which you can see in the picture. If you would move on down to number six. Concrete or asphalt shall not be used under outdoor play equipment, except wheel toys which is acceptable. The outdoor play area shall be free from any stacked wood, construction materials, lumber, or firewood, which needs to be checked. Injury prevention. The home and grounds shall be from apparent hazards including, but not limited to abandoned automobiles; unused household appliances; uncovered wells and cisterns; stacked lumber with exposed nails; and explosives, which all are unacceptable if they are on the site and that is the end of the list.

The Chairman stated anyone else have any questions or comments?

Mr. Lamb stated the playground area seems awfully crowded. I am trying to envision six children in there playing with some of these things.

Ms. Pettway stated I took some of them out. It is just that when DHR comes to do there inspection they want to see that you have certain things. You do not have to have them all out at the same time, but they do want to see that you have them for the different age groups. They do make sure that you have them, and it is not all out there right now. The playground is the perfect square footage for the children. I just got it put up and DHR came and approved it. The yard was not cut at the time you came to make the pictures, but it is now.

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Mr. Waller stated actually there had been a storm and some limbs had been knocked down out of the trees.

Ms. Pettway stated the yard man did not come out after the rain, but it is cut now and it will be kept up, especially, if I want my business to be successful.

Mr. Waller stated the size of the yard is about a half of an acre, and if you can imagine, talking about too sunny. It has four full grown Pecan trees back there and it is shaded. I had to grow some Saint Augustine grass back there because it would not grow back there because it is so shaded. Plus they have certain times of the day to go out and play. You cannot just take them out. There may be some that are two years old that go out, and some four years old, but the most of them will be five years old. They do not all go out at the same time, but it has been approved by the State of Alabama.

Mr. Swaney stated Mr. Eady indicated that he thought the playground area was too sunny, but you are indicating that it is shaded. What changed that?

Mr. Waller stated it is shaded. The sun may come over the playground an hour and a half a day. I have four Pine trees in there.

Ms. Pettway stated all of the children will not be out there at the same time. Some will be playing in the little houses in the playground area.

Mr. Eady stated if you will look at the truck with the pickup truck on it. The yard does have a lot of trees on it, but the fenced playground is not under those trees.

Mr. Waller stated it will be dangerous to put it directly under them.

Ms. Pettway stated it cannot be directly under the trees.

The Chairman stated if you would, please address the Board. I have a question on the picture of the playground. If you would look to the left of it you will see a swing. Is that a working swing or not?

Ms. Pettway stated that is a swing set, but it is not on the playground. It is not for the children. It is a family swing.

The Chairman stated is it in working condition?

Ms. Pettway stated yes.

The Chairman stated what is that to the right of that?

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Ms. Pettway stated it is the blue truck.

The Chairman stated is that the blue truck we have been talking about?

Ms. Pettway stated yes, sir.

Mr. Waller stated I can understand what Mr. Eady is saying, but the kids will not be out there when it is not shaded, and they have to be inside the fence.

Ms. Pettway stated they cannot play outside the fence.

Mr. Waller stated they walk from there to the fence and then back into the house.

Mr. Moss stated that is what I was going to ask you. Access from the house to the fence is open, but from there it is shaded. Are there some stepping stones or a walkway?

Mr. Waller stated yes.

Mr. Lamb stated is the daycare across the street from you open?

Ms. Waller stated yes, sir.

Mr. Lamb stated it has nothing to do with you. I saw it and I could not tell whether it was or not.

Ms. Pettway stated okay. Yes, it is open.

Mr. Eady stated if you look at the picture with the truck in it. The playground sits right in here, and you can see that is not a very long distance from the playground to the back door.

Ms. Pettway stated if a daycare does not have any shade or trees at all, then they have to go and buy those umbrellas to be put up. Only when weather permits can we take them out there. We have a schedule to take them out early in the morning or late in the afternoon. We cannot take them out in the heat of the day when it is hot.

Mr. Eady stated this driveway comes in from the street and goes around this area right here.

The Chairman stated are there any other questions or comments? If not, the Chair will entertain a motion. The motion must be made in the positive and you will need four votes in the affirmative to approve to grant this appeal tonight.

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A Motion was made by Mr. Swaney and Seconded by Mr. Lamb to approve Appeal #2008-03, for a special exception to allow the operation of a home daycare at 703 Pine Street.

Mr. Lamb stated we did have one objection.

The Chairman stated correct. We had one objection from Mr. Jim Banks, who owns property on Pine Street, because the property is zoned single family residential.

Mr. Eady stated it appears he lives in Los Angeles, California.

Upon roll call vote, the Motion carried unanimously.

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

The Chairman stated when can they pick that up, Pat?

Ms. Houston stated first thing in the morning.

The Chairman stated do you know where the Planning Department is?

Ms. Pettway stated yes, sir. Thank you.

The Chairman stated if there is no other business the Chair will entertain a motion to adjourn.

Ms. Houston stated one moment please. Due to our next meeting being on the 3rd of July some of the Board may have plans to be out of town so would you like to schedule our next meeting for the 10th of July.

A motion was made by Mr. Swaney and Seconded by Mr. Lamb to change our regular meeting date from the first Thursday of the month which would be July 3rd, 2008 to the following Thursday, July 10th at 6:00 p.m. in the Council chambers due to the July 4th holiday.

The Motion carried unanimously.

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Adjournment:

A **Motion** was made by **Mr. Swaney** and **Seconded** by **Mr. Mayhand** to adjourn.

The Motion carried unanimously.

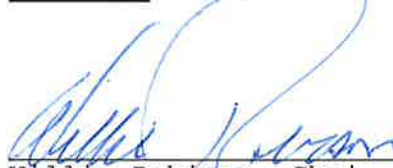
There being no further business the meeting was adjourned at 6:25 p.m.

Respectfully submitted by:



Pat Houston, Recording Secretary

APPROVED: July 10, 2008



Willie Robison, Chairman

/ph