

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF AUGUST 7, 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
Billy Mayhand

Member Absent:

Barry Taylor
Jim Moss

Staff Present:

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

The Chairman stated Pat, who will be voting tonight?

Ms. Houston stated all five members present tonight will be voting.

The Chairman stated the next item on the agenda is the approval of the July 10th 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 July 10, 2008 meeting were considered for approval.

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

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

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

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF AUGUST 7, 2008 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

New Business:

Appeal #2008-08 - Friday Construction

The Chairman stated next on the agenda is Appeal #2008-08, Friday Construction, a variance to allow the residence at 107 Timberline Drive to encroach the front setback line by two-feet on the northwest corner. Mr. Eady, if you would take us through this.

Mr. Eady displayed color transparencies of the northwest corner of the house at 107 Timberline Drive. He stated the house sits at a slight angle. The little red and white pole sits back two-feet on the corner and that is where the encroachment is. It does not go all the way across. It goes to about the middle of the garage where it phases out. The entire house does not encroach the setback, only the northwest corner is encroaching.

Mr. Lamb stated Mr. Eady it starts where the pole is and stops where Pat is standing?

Mr. Eady stated no, sir. It does not go that far. It goes in that direction. It stops about middle ways the garage, probably less than half way across it is clear, maybe not that far.

The Chairman stated anything else?

Mr. Eady stated that is it.

The Chairman stated is the owner here tonight? If you would state your name and address for the record and please speak up for amplification because I have been informed we do not have any microphones tonight.

Mr. Reyner stated my name is Wayne Reyner and I am here on the behalf of the owners of 107 Timberline Drive. We would like to request the variance for the two-foot, twenty-eight inches encroachment on the front setback be granted.

Mr. Swaney stated the house looks fairly new. When was it built?

Mr. Reyner stated it was built, finished three months ago.

Mr. Swaney stated so somebody just missed the setback line?

Mr. Reyner stated right.

The Chairman stated does anyone know how they missed the setback line? I live right around the corner from there, a couple of blocks away.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF AUGUST 7, 2008 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Reyner stated it got missed from the pin coming over from where the junction box and power was. The right side pin was there and the left side, but the middle of the pin was not there so it got missed from the curb coming over. It pulled the setback line halfway through the garage.

The Chairman stated thank you. Is there anyone here in opposition to this appeal? Are there any other questions?

Mr. Lamb stated I have a comment. If I am not mistaken there is no penalty from the City of Daphne for buildings to encroach setback lines. I do not think there is. Is that right Mr. Eady? There is no ordinance that says if a builder encroaches the setback and comes to the Board of Adjustment there is a penalty.

Mr. Eady stated I do not think so, no, sir. Not to my knowledge. Unless you want to make them tear it down.

Mr. Lamb stated however, I certainly would like for this Board to investigate the possibility of a fine for any builder who encroaches the setback. I know when I built my house I had the lot surveyed and surveyed and I made absolutely sure we complied with the setbacks, and time and time again this Board is seeing requests for variances that do not comply with the setbacks. I do not know the mechanism to do this, but in my mind five hundred dollars a foot is nothing. We get them all the time with five, six, eight, ten-foot violations. Recently we had one where after the Building Official had approved it they re-oriented the house and made a five-foot violation. I think it is a good time for the City of Daphne to tell builders that you had better know where the setback is before you build in Daphne. They build over the setback because they say I know that the City is not going to make me tear the house down.

Mr. Swaney stated Mr. Hoffman can you make a comment on that? Would that be feasible or not?

Mr. Hoffman stated I believe it would have to go through the City. We would have to talk with Jay Ross possibly writing an ordinance to that effect.

Mr. Swaney stated so it would have to be a separate ordinance?

Mr. Hoffman stated yes.

Mr. Eady stated the correct procedure would be that you voted to do that exactly how you want it, what you want it to say and what you want the penalty will be, and then we would take it and present it to the Planning Commission. We are updating our Land Use Book now.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF AUGUST 7, 2008 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Eady stated we put it in there and the Planning Commission would recommend it to the Council for approval to be placed in the Land Use Book. The whole Ordinance would be up for a vote before the Council and it takes about three months for the entire process and that is the path you have to take. You have to tell him what you want to say. You vote on it after you approve it and recommend it be included in the Land Use Ordinance to the Planning Commission.

Mr. Hoffman stated you would do that as a codification to the land to be sure it passes the muster both from the City's point of view and yours. I would recommend the concept that we talk about it and work out a draft and let the City Council look at it to make sure that they believe that it passes the muster, we think it passes the muster and then you vote to adopt it to recommend to the City.

Mr. Eady stated we would want legal to review it to make sure every thing was okay.

The Chairman stated anyone else? If not, the Chair will entertain a motion. The motion must be made in the affirmative.

A **Motion** was made by **Mr. Swaney** and **Seconded** by **Ms. Hargiss** to **approve Appeal #2008-08 Friday Construction, for a variance to allow the northwest corner of the residence of 107 Timberline Drive to encroach the front setback line by two-feet.**

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

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

The Chairman stated the appeal is granted and you can pick that up from Pat in the morning after nine o'clock. Do you know where the Planning Department office is on County Road 64? Okay. You can pick it up after nine o'clock.

Mr. Reyner stated yes, sir. Thank you.

New Business:

Appeal #2008-09 - Metropol #1 LLC

The Chairman stated the next item on our agenda is Appeal #2008-09, Metropol #1 LLC.

CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF AUGUST 7, 2008 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL

The Chairman stated a variance to allow a proposed duplex to be built on Lot 55 and 56 of the Lakeview Townhomes, Phase 3 to encroach the rear setback line by twenty-feet.

Mr. Eady displayed color transparencies of Lot 55 and 56 of the Lakeview Townhomes, Phase Three and the structure proposed to be placed on it. He stated you will see in the upcoming photo is where Metropol has started disturbing Lot 55 and 56 on Lakeshore Drive and that is all I have.

Mr. Swaney stated the elevation is something like thirty-feet.

The Chairman stated does anyone have any questions for Mr. Eady?

Mr. Swaney stated is Appeal 9 and 10 the four lots are adjacent to one another, right?

Mr. Eady stated yes, sir, just paired lots. As far the setbacks, the original rear setback is ten-feet. There is a thirty-foot utility easement that belongs to Lake Forest. It goes across the front of the lots and I understand Lake Forest did not want to give it up. So you cannot build in the easement so you have to move behind the utility easement. There is suppose to be a twenty-five easement in the rear so they are using up twenty feet of that and there is also a five-foot utility easement across the back of the lot. So that is the only thing that is going to be left between the home, the setback line and the golf course.

The Chairman stated five feet.

Mr. Eady stated yes, sir.

Mr. Swaney stated I know we are here to talk about these four lots, but I could not help but notice the setback on the adjacent lots is fifteen-feet and these are thirty and I was wondering why.

Mr. Eady stated that is what I was telling you. Lake Forest has got a thirty-foot utility easement across the front of them.

Mr. Swaney stated according to what I see here in Appeal 2008-10 this property has a smaller setback. Am I wrong?

Mr. Eady stated yes, sir.

Mr. Mayhand stated a point of correction under the engineering comments. It should be Lots 55 and 56 instead of 57 and 58.

The Chairman stated okay.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF AUGUST 7, 2008 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Eady stated Lots 57 and 58 are coming up next.

Mr. Mayhand stated it says Lot 57 and 58 for Appeal 2008-09 and it should be Lots 55 and 56. It does not have a page number, but it is the page one over from the new business page, in the staff report.

Mr. Eady stated okay.

Ms. Houston stated it is a typo on my part. It should read Lot 55 and 56.

The Chairman stated it is showing Lot 57 and 58 and it should be 55 and 56. Is there anyone that would like to speak in favor of this appeal? If so, please step up, speak loud and state your name and address for the record.

Mr. Pikes stated my name is Wesley Pikes and I am here representing the owner, Metropol #1, LLC and I also have with me Mr. Danny Hamilton, who is one of the managers for Metropol #1, he has got a lot more knowledge than I do. In essence we are seeking a variance because the thirty-foot easement that runs across the front of really all four of these lots makes any construction impossible on top of that easement, so we have to go back, if you have the easement and then you have a twenty-five foot setback line behind it. We put it in our application, but that only leaves somewhere between, I believe, twenty-five to twenty-eight feet for construction which we believe creates a substantial hardship and so we are asking for a variance on the rear setback line so that we can move backwards and not be on top of that easement, to kind of move to the back of the lot.

Mr. Swaney stated question. On the second lot. Do you have one of those sheets with you tonight? Let us show Lot 55 and 56, please.

Mr. Pikes stated I do not have one of those booklets. I only have the application with me tonight. If it is something we submitted then I will have it.

The Chairman stated Mr. Eady can you put that on the screen for us please?

Mr. Eady stated which one?

Mr. Swaney stated let us show Lot 55 and 56 that you had the plot plan of.

Mr. Eady stated Lot 55 and 56 are right here.

Mr. Swaney stated okay. Now put the plot plan you had back up there.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF AUGUST 7, 2008 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Swaney stated now am I in error? But what I see on that drawing indicates a fifteen-foot setback.

Mr. Eady stated that is right.

Mr. Swaney stated what?

Mr. Eady stated that is true, that is what is supposed to be there, but there is already a thirty-foot utility easement through there, which takes up those fifteen-feet so they cannot build in the utility easement. They have to come all the way back thirty feet.

Mr. Swaney stated the plot plan you put up of Lot 57 and 58 shows that thirty-feet and I am wondering why.

Mr. Eady stated it is just not showing on the map.

Mr. Swaney stated once again, going back. Are you sure that the thirty-foot easement covers all four lots?

Mr. Pikes stated yes, sir. We are as sure as we can be. Mr. Hamilton has actually met with the owners of the easement and asked if they would vacate it and they said no. We have had surveys done and that is how they show the easement.

Mr. Swaney stated is there a representative from the Lake Forest group here tonight?

Mr. Crimmins stated we are all a part of the Lakeview Townhomes Property Owners Association.

The Chairman stated let me make a statement before we go any farther, since the question has been asked. I serve on the Lake Forest POA Board. I have not discussed this issue with anybody concerning that, this is the first I have heard of the Lake Forest POA granting the variance or whatever on the thirty-foot easement through there is when I got this and read it and when Mr. Eady was talking about it. So as far as representation of the Lake Forest POA we do not have anyone here tonight representing the Lake Forest POA. I am here as a citizen of Daphne to serve on the Board of Zoning Adjustment for the City of Daphne and that is the only reason why I am here tonight. I would like for that to be made known up front because no matter how we vote tonight I want that to be made known up front.

Mr. Eady stated Mr. Chairman there is the thirty-foot easement on 57 & 58 and it continues on across on 55 and 56.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF AUGUST 7, 2008 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Swaney stated is there anybody here tonight that can address how this thirty-feet is being used?

Mr. Hamilton stated the thirty-foot easement actually belongs to the Daphne Utilities.

Mr. Swaney stated the thirty-foot easement.

Mr. Eady stated no, it does not.

Mr. Hamilton stated I have met with the Daphne Utilities.

Mr. Eady stated it belongs to Lake Forest.

Mr. Swaney stated Daphne Utilities.

Mr. Hamilton stated yeah, and they say that the sewer lines that runs from Lake Forest straight down into the sewer plant is about twenty four-feet deep. So that is why you have got a thirty-foot easement all the way down the length of Lakeshore Drive including the rest of the houses down through there. Now the reason it is not a problem the rest of the way is because of this drain, but when you get down to 55 and 56 you have taken up with the curve. So not only are you losing the thirty-feet you are losing so more because of the way the street runs.

Mr. Swaney stated okay. I was wondering. This is something that does not evidently show on the original plot plan.

The Chairman stated I have a question. When I was out there looking, and as you saw in the pictures, it had been cleared off to start construction on all this. Did someone come out and say you could not continue?

Mr. Hamilton stated let me start back from the beginning. I was in the Building Department office to take out permits for another job and in the meantime I had been talking to the owners of 57 and 58 about buying those. Well I saw that there was a file sitting on the desk that had 57 and 58 on it, written on it. So I ask the question what is the deal with this lot. They said nobody has been able to build there because nobody can come up with the right plans for these lots. They said they have to be built the same as what is there. So in talking to the owner of the lots he said yeah you have got to build like kind quality, the same type of house there and I have got the plans and everything. So I took the plans and had them redrawn based on the way everything looked. Then when I come back and find out there is a thirty-foot easement there that has not shown up. Then I start talking and find out we are going to have to go before someone to see if we cannot vacate the easement.

CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF AUGUST 7, 2008 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL

Mr. Hamilton stated I went to Mr. Eady office, went to the City of Daphne, went to the Mayor and I went to talk to the guy at the Utilities Board and they said no we cannot do that because of the reason I gave you, the sewer. Then we come up with a redesign. We basically take the house, turn it around, and make changes to it front and at the same time when I went over here to the Building Department she said you have got to get a letter from the Lakeview Townhomes Association Architectural Committee that gives you their approval before we can do anything, I said okay. After conversations and after redesigning everything we went to the Committee and said this is what we have. So we get a letter that we build this particular unit, with a few changes and most were cosmetic changes, but take that letter to the Committee and they would give me a permit to clear the lot. So we go out there and we clear the lot. Then I get a call from the City saying do not, we cannot give you the building permit until we work out this twenty-five foot easement on the back. I told her there is no twenty five-foot easement on the back, there is a five-foot easement, a utility easement. A twenty five-foot setback, a five-foot easement is not showing up back there. So we get back with the surveyor and based on the original map book, everything, and page number that there is no twenty five-foot setback out there, but we still could not get a permit until all of this has been worked out so that is why you have a piece of cleared property that is still sitting there.

Mr. Lamb stated if this house gets built, from the rear of the house to the rear of the property, will be five-feet. Is that correct?

Mr. Hamilton stated yes, sir.

Mr. Swaney stated in looking at that property up there it is easy to see that the new property line is all part of the easement.

Mr. Hamilton stated yes, sir. You have got approximately fifteen-feet between the property line and the path. Then it gets wider in some places and then it narrower in other places.

Mr. Lamb stated how are you going to keep that filled hole from dropping off with rain and all that?

Mr. Hamilton stated basically what you have got is your foundation. When you step out of this door you are going to be stepping on the top of this drain so the back of this building is going to serve the retaining wall also. It is not sitting way back here you have got that retaining wall like you have got right now. The twelve inch concrete block poured in the concrete and basically what you have got is a basin in this area. It is going to be right up against it. It is going to be five-feet off the property line. Then in between the two buildings you have got to do a retaining wall.

CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF AUGUST 7, 2008 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL

Mr. Hamilton stated so what you have got right there comes up between the two buildings.

Mr. Lamb stated who does the balcony belong to that show on the sketch of the house itself? If you have a house with balconies on both sides then you have to take that into consideration as being part of the house. Were they considered for the side setback?

Mr. Hamilton stated yes, sir.

Mr. Lamb stated ten-foot setbacks on the side.

Mr. Hamilton stated yes, sir.

Mr. Lamb stated it looks mighty tight, and it was hard for me to see it on this drawing, that is in the setbacks.

Mr. Hamilton stated you have got thirteen-feet on the rear and you have to a ten-foot balcony, but it is not covered or anything.

Mr. Lamb stated once it is covered it is part of the structure so therefore the outside edge of the property line has got to be ten-feet. Both sides.

Mr. Hamilton stated go back to your original plot plan you had up there. It shows a ten-foot easement and it requires five-feet.

Mr. Eady stated it is R-4.

Mr. Lamb stated it is what?

Mr. Eady stated it is R-4, twenty-five feet in the front, twenty-five in the rear, six and six.

Mr. Lamb stated I thought the little footnote on that page said ten-feet.

Mr. Eady stated I do not know, our Ordinance says six-feet.

Mr. Swaney stated Mr. Eady can you put that front elevation of the house back onscreen? Considering that the elevation at the back of the lot is about thirty-feet, where is the thirty-foot elevation? What level is it in that plot plan? In other words are both of those floors thirty-feet above the golf course level?

Mr. Hamilton stated the front door is going to be around fifteen to eighteen-feet above, half way up from the curb of the lot, because that rod is actually going to be under the house.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF AUGUST 7, 2008 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Swaney stated where is the back of the lot?

Mr. Hamilton stated the back of the lot is probably to the top of the back door, of the front door.

Mr. Swaney stated so there will not be any windows on the bottom of the first floor?

Mr. Hamilton stated the first floor is going to be even with the ground level when you are looking out of this dock hole from the first floor when you are standing in the house and then under that is the garage. So basically you have got an embankment underneath the garage.

Mr. Swaney stated okay. So that means that the bottom is thirty-feet above sea level.

Mr. Hamilton stated I would say more like twenty.

Mr. Mayhand stated do you have a drawing showing the back side?

Mr. Hamilton stated yes, sir. I have a copy of the plans right here.

(The Board took five minutes to review and discuss these plans)

Mr. Pikes stated I want to re-emphasize that no matter what the design on this particular house or dwelling is you still have the issue of the thirty-foot easement in the front and the twenty five-foot setback line, which really only leaves twenty-five to twenty-eight-feet for construction. The developers are going to work with the Architectural Committee to do whatever they want done to have that approved. They do not want to put in something that is out of character. The condition for the variance is that it is really impossible to put any kind of habitable dwelling in there the way it is, situated right now, because of the setbacks and the easements.

The Chairman stated is there anyone else that would like to speak in favor of this?

Mr. McMurphy stated my name is David McMurphy, and I am on the Architectural Review Committee, and we approved the plans for this building, architecturally the unit for our community. The problem is the building does not fit the building pad. The smallest unit on our street is fourteen hundred and fifty square feet and I think the largest is twenty three hundred so we feel like from a value standpoint it is important that they build something big enough to keep the value of our property up. We have approved it based on that and based on the property setback. No where did it say twenty five-foot setbacks.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF AUGUST 7, 2008 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. McMurphy stated so we hope you grant the variance so our property values can stay up. We cannot approve a unit any smaller than twelve hundred square feet to be close to our values. We think he has done a good job with the architecture. Thank you.

The Chairman stated thank you. Anyone else?

Mr. Crimmins stated I am Walt Crimmins, I am President of the Homeowners Association, and I would just like to echo what David said. Probably more than a dozen years ago another builder attempted to develop both of those lots and we had a terrible condition, and they were unsuccessful. We would like to see our neighborhood complete. We certainly would like to see the open lot that is partially developed now completed. He is developing the lot where the structures, one of them will be roughly seventy one-foot from the street and the other will be seventy eight-feet. I do not think of all the homes in the area there are not any smaller than fourteen hundred feet. I think we are all around eighteen hundred to two thousand square feet. We would like something that is similar, and he has worked with us and brought something similar to the neighborhood. Right now there are three different style homes in the neighborhood, but basically they are all townhomes with the garage in the front. This one is different but there are actually four different styles right now within the neighborhood, but they all have the same basic townhome with the garage in the front. It is slightly different from the other models, but the Architectural Committee and the Homeowners Association have approved it.

The Chairman stated before you sit down. I know I should not ask this question. You having sat up here for many, many years in being a member of the BZA. In my mind I was curious how your mind would be thinking. Could you remove yourself from out there and put yourself up here with having to look at the issues based on the Land Use Ordinance with the way that it reads that you can have a variance based on a hardship of the land and not make this a value appeal?

Mr. Crimmins stated Willie that is a dirty trick for somebody that has sat almost eight years on that Board. But it is something brought on by the land, and the size of the lot. That is why I say the depth of the lot itself, that and the easement leaves them with very little usable room. Certainly nothing will be complimentary to the neighborhood. They would be trying to put what some people call the Katrina cottage in there and that is what we do not want. So you are dealing with something brought on by the land, the depth of the lot, and those lots were there from at least 1984 or earlier and there is the easement that Lake Forest has.

CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF AUGUST 7, 2008 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL

Mr. Swaney stated that easement did exist from day one? Did it not Mr. Crimmins?

Mr. Crimmins stated Glen I have heard since I got here that there is a thirty-foot easement, a utility easement that actually runs right through our cul-de-sac on down towards the water treatment facility, but I was never aware that it cut into those four lots like it does. I was thinking that it was down the middle of the street all the way. This is sort of a new revelation to me tonight.

Mr. Swaney stated thank you.

The Chairman stated is there anyone that would like to speak in opposition of this appeal?

Mr. Ziekle stated Arthur Ziekle I live on 54. I would like Mr. Eady first off to put on here the building for the contractor to show me how high the floor is off the ground.

Mr. Hamilton stated the bottom of the door level, from the floor down is going to be roughly eighteen-feet.

Mr. Ziekle stated from the floor with the patio on it to the ground is eighteen-feet.

Mr. Hamilton stated about eighteen-feet.

Mr. Ziekle stated now where is that in comparison to the golf course?

Mr. Hamilton stated the golf course will be at the same level in comparison to the patio.

Mr. Ziekle stated okay. Now I would like Mr. Eady to show the picture with all of the dirt and pylons because there is one shot that shows my backyard and I want you people to see that.

Mr. Eady stated which one?

The Chairman stated do you have a picture that shows his place? We have them in our book.

Mr. Ziekle stated okay, that is it right there. Now as you can see I have got a gazebo in my backyard. The top of that gazebo is nine-feet high. My patio is a cement patio at the bottom of it. I have got a eight-foot high hundred pound block retaining wall behind there and I am still four-feet lower than the golf course, which means if he puts this patio eighteen or sixteen-feet above ground level those people are going to stand up there and look right down into my patio.

CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF AUGUST 7, 2008 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL

Mr. Ziekle stated now there is no other unit out there that has that available, Lots 45 and 54 on everybody is eight-feet. All of those lots are thirty-foot frontage and twenty-foot rear. Now if you look at this map on Lot 54 I have got a hundred and twenty nine-feet on one side and ninety one on the other. So my ninety one-feet on the top is the start of the short lots as shown on Lot 54. I have got thirty-feet on the front and twenty in the back, and I do not see that this thing was done in 1984. I think everyone has been aware of it. They have tried to build on it two different times and could not make it. Just because somebody goes out and buys the lot and says now I am going to form a house that is going to sit there and you people are going to give me the variance so that I can do it because them units do not look like mine. If they would be on the same level as me I would have no complaints, but he is going to put a patio on the side where people can walk out their doors stand on that patio and look down ten-feet into my back yard. Now I would not want that and I do not think anyone on the Board would.

The Chairman stated does anyone have any questions? Is there anyone else that would like to speak in opposition of this appeal?

Ms. Frush stated my name is Carol Frush, and I think you have a copy of the letter that I wrote to the Board. One of my primary concerns is one as it has already been mentioned is the fact that there has been attempted development before on this property. Previous developers have tried to get a variance from the City and they were denied the variance. We have basically lived with what we refer to as the ruins there for about four years, until we could get the developer to tear it down because he had already started to develop it when the City came along and said no you cannot do that. Another great concern that I have that I mentioned in the letter is that there is no back yard and you have already established that. These are rental units and inherently if you are going to have rentals you are going to have children. There is absolutely no place for those children to play in the back, which means that those children are going to have to play either on the golf course which is against the law or in the street. When you come around the corner to Lots 54 and 55 it is a blind curb. So any child who lives in 54 or 55, who is even close to the edge of the driveway, is in danger of being hit. There is no question about it. I find that very disturbing. I realize that there is not a bloody thing that I can do about the fact that he wants to build rental units. He is the owner, developer he can build what he wants to. I totally disagree with some things that other Board members have said, or that Architectural members have said about it enhancing our neighborhood. I do not think rental property that looks like what he is going to develop jammed onto this lot with no back yard is going to enhance our property whatsoever. I have lived in my townhome since 1983 and I have seen the neighborhood go up and down, and up and down.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF AUGUST 7, 2008 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Ms. Frush stated it really bothers me and I feel very passionately about what he want to put on those two lots in particular because I think it is very dangerous that this will decrease the value of my property. Let me add one other thing. In all fairness, I am on the Architectural Committee, and when I first looked at those plans I approved them. Mr. Eady can you put the plans up again so we can see what the unit looks like. I was originally told that these were going to be windows with no access and then later the developer said it would be two or three feet. I have a special concern. Again, there is no backyard. As you can see the patios are not buffered. Mr. Hamilton's attorney asked me prior to this meeting about landscaping. We have already removed everything except on the golf course side and we are going to have to have forty-foot trees there in order to have a buffer between those side patios. There is not another unit, and granted there are different style units, but there is not another unit on that street that have the top porches or the open side porch. All of our decks are in the rear, and every deck has a partition between them so that there is privacy. You cannot look out of your deck and look onto someone else, except of the golf course side, there are some that may be open on the golf course side. Thank you.

The Chairman stated thank you, Ms. Frush. Anyone else?

Mr. McMurphy stated the way the subdivision was built after Lake Forest and it is from the bottom side to the fairway and it does slope drastically from my side to the lake side. We do have different elevations and mine is the lowest unfortunately. I am in 50 and he is on 49, 50, but just recently sold one side to another person. I am his next door neighbor and my first floor is fourteen-feet below his first floor, and we have been neighbors ten years. It is just part of the topographic of the street as it has developed with me being on the center of the development. So it is higher on Mr. Hamilton's end and it gets higher on the turn in end. So we do have different elevations and all of our balconies are open to the golf course. As part of approving his architectural plans he has agreed upon a landscape plan, which is typical of any development, so that we can monitor how he plans to buffer his patio and his balcony from the street. I think we have twenty-eight units maybe give or take on our street, and I know five of them are already rented so it is not uncommon for our street. Now we do not have but three little children on our street, you know, I wish we had more, but there are five rental units already. The unit next door to me was a rental before I move in.

The Chairman stated sir, state your name again for the record.

Mr. McMurphy stated I am David McMurphy.

The Chairman stated thank you. Let us call for a vote.

CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF AUGUST 7, 2008 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL

Mr. Morris stated James Morris, number 41 Lakeshore. I just have a question for Mr. Hamilton. It is being emphasized that these are going to be rental properties, that assumption that is being made. Is that your plans? Are they going to be regular or sold for rentals or what? I think that needs to be clarified.

Mr. Hamilton stated as we are going into this project they are to be set-up as rental units. Now they are townhomes and eventually they will be sold but as a townhomes. The rent range is going to be around twelve to fifteen hundred dollars a month, more like twelve, twelve hundred and fifty dollars, but if somebody comes along and says we do not want to rent your townhome we want to buy it. Well two hundred and twenty thousand dollars and it is yours, one hundred and ninety-nine thousand dollars, maybe so. A business man or somebody comes along and wants to buy it certainly we will sell it, but you have to present everything. You cannot go in and say you are going to sell these and then all of a sudden turn them into rentals. If you go in with the approach of yes sir, they are going to be rented out, and this is how much they are going to rent for. So the bank and everybody knows this up front and if it happens to sell the bank is happy to hear it. Now let me make one other statement about developed land. That is the elevation from the porch down to right where the driveway is at. From the porch down to the yard, on that side, you are looking at seven to eight, maybe nine-feet at the most, but when you get down to the driveway into the street you are looking at a higher elevation back there. It is designed to where when you walk out and you are standing in that house on the first floor you are even with the golf course, and so we know that it is not eighteen-feet there.

Ms. Davis stated my name is Janice Davis, and I have been living on Lakeshore Drive for about four and a half years, and I am on the Board, was recently voted onto the Board as Treasurer. During the process of approving these plans I was not invited to the meeting so I cannot say that I had a part in approving this. When I bought my unit and moved into the area I understood it to be a residential area where the majority of people had owned homes for fifteen or twenty years there. It is a residential area like Lake Forest or any other community whether it be Rock Creek, whether you have homes in the half a million dollar range, Lake Forest includes the two to three hundred thousand dollar range, the townhomes there are, I do not know if they are two hundred and twenty thousand because the value has gone down. A couple of the owners have sold and there are some units there that are rented and I think that any time you bring rentals into an area it lowers the property values. The people that have been there ten, fifteen, twenty and twenty-five years have a lot of money invested in those units, and you are going to remove this approach because we recently had a tremendous apartment complex that was put to the left of us.

CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF AUGUST 7, 2008 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL

Ms. Davis stated my unit is on the end which is directly across from all those units. Now we have got someone coming in that wants to build rental units up front which is going to create four more units. How would you like it if somebody built right next to your house that you had two hundred thousand dollars invested in and it was going to be a rental unit? You would not like that because it is going to lower the property values. The tax on our property is always probably ten to twenty thousand dollars higher than we could possibly sell them for now because the values have gone down so much. Two years ago when Katrina came through there was a lot of out of state investors that came through wanting to buy a lot of property in this area, and I was approached by them. When I learned that they wanted to buy them for the purpose of renting them I said no I am not going to do that to my neighbors, who have been here for twenty years, and invested a lot of money, their lives and they love the area. We do not want anymore rental property on this street, this is a family area. We cherish it for that. We are between the Lake and the golf course. We love our street. We love living there and we do not want anymore rental units on there. If you lived, I do not know where you live, but if you had someone that was wanting to build a rental unit next to your property, it is a slap in the face, and it depreciates your value automatically. I was not in that meeting to approve this and I would not have approved it. I saw the house plans and I thought it looked nice, but you are going to be on the street and in ten steps you are going to be in the floor door. I looked at the unit next to Mister right here and you go out the door and you have got a twelve-foot embankment and you do not have view of the golf course you have got a twelve-foot embankment there. So you are going to build the property up where what the second or third floor you might be able to see the golf course. You are not going to have any back yard. There is not going to be any front yard. You are just cramming big townhomes in these little bitty lots and that is not adding value to the neighborhood, in my opinion, it is taking away from the value that has already been taken away, and the City keeps raising these taxes. I fought, I protested and went to Bay Minette they lowered the value of my townhouse six thousand dollars when it should have been lowered another fifteen. There is no way I can sell my property for what they have got it valued at and then the apartments come in and it lowers the value and these will come it and it is going to lower the value. I mean a new unit to build might cost two hundred and twenty thousand or two hundred thousand to build, but you are not going to get that. I can tell you right now you are not going to get it, and that is how I feel.

The Chairman stated thank you madam. This will be the last one because sometimes it seems that we are getting repetitive. We are going over the same things. We do not want to cut anyone off, but it is starting to be where the same things are being said.

CITY OF DAPHNE

BOARD OF ZONING ADJUSTMENT MINUTES

REGULAR MEETING OF AUGUST 7, 2008 - 6:00 P.M.

COUNCIL CHAMBERS, CITY HALL

Mr. Pikes stated I will not waste any more time. I just wanted to say that as far as the character of the neighborhood I think that you have heard that there are rental houses in the neighborhood, but the important thing is the small size of this house, anything smaller the Architectural Board is not going to approve because it is going to be too small to build in the existing space with the thirty-foot easement, and the twenty-five-foot setback. The only kind of structure that you can put in there would be, frankly, too small to be either habitable or to be approved. So in order to have any use at all on these lots a variance has to be granted.

Mr. Ziekle stated may I say something?

The Chairman stated yes, sir. One quick comment.

Mr. Ziekle stated one quick remark. They are asking you for a variance on something that has been there since 1984. Now I think they would have been smart enough to do a contract with Breland and say hey I have only got twenty five-feet to build a house and I cannot do it. So what they did was buy the property, like Mr. Lamb say before, we will just mess it all up and we will just get a variance. They will give it to me and I will build a house and that will be the end of it, and that is my take on it.

The Chairman stated the Chair will entertain a motion. Remember the motion must be made in the positive.

The appeal was denied due to the lack of a motion.

The Chairman stated since there is no motion the appeal is denied. Mr. Eady with the appeal being denied is there anything that has to be done to the property. How long do they have to appeal?

Mr. Eady stated they have fifteen days to notify us in writing of their plan to appeal with the Baldwin County Circuit Court.

The Chairman stated you have fifteen days to appeal and to notify Planning of your plans to appeal.

Mr. Eady stated since the property has been partly graded it will need to be graded and sloped, and leveled up with two inches of topsoil and grass.

The Chairman stated fifteen days to notify you if they appeal, and if it is not appealed they must do those things that you just said.

Mr. Eady stated yes, sir.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF AUGUST 7, 2008 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Lamb stated does this take care of both, Appeal 9 and 10? All four lots.

The Chairman stated there are four lots involved. Should they be handled separately since they were turned in separately?

Mr. Hoffman stated you need to vote on each appeal separately.

The Chairman stated each separately. Next is Appeal #2008-10 for a variance on the setback line on Lot 57 and 58. We have had much discussion tonight on Lot 55 and 56. Would you like to address the Board again after Mr. Eady goes through this?

Mr. Eady displayed color transparencies of Lot 57 and Lot 58 of the Lakeview Townhomes, Phase Three. He stated everything is the same Mr. Chairman except it is two different lots. Lots number 57 and 58. The structure is the same. As you can see this ground has also been disturbed.

The Chairman stated would anyone like to speak in favor of this? Yes, sir. Please state your name for the record.

Mr. Hamilton stated Danny Hamilton, manager of Metropol, #1 and also the builder. When you put these plot plans back up there showing the side setback of five or six-feet and the thirty-foot easement in the front and there is no where on that map book and page number that shows the twenty five-foot setback in the back. There is no where that says it. What has happened over a period of time the City has gone in there because this was developed prior to the City that being part of the City of Daphne, so it was developed one way and the City takes over and they go in there and they mandatorily put that setback in there. If you go to that map book and page number which my surveyor did there is no twenty five-foot setback in the back. It is just like it shows on that survey. So we are asking for a variance when actually there is nothing there in the original that had a setback.

The Chairman stated Mr. Hoffman because there was nothing there on the original plat it would not have a bearing on the Land Use Ordinance that was passed after this was developed would it?

Mr. Hoffman stated no. The Land Use Ordinance would go.

The Chairman stated it would supersede it.

Mr. Hoffman stated yes, sir.

Mr. Swaney stated the Ordinance passed what year? 1988.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF AUGUST 7, 2008 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Hoffman stated 1987 or it might have been 1988.

Mr. Crimmins stated was this part of the land that came into Daphne in 1987 when Lake Forest was approved?

The Chairman stated all of that should have been annexed into the City of Daphne in 1988. All of it.

Mr. Crimmins stated then is it grandfathered?

The Chairman stated when was the book adopted by the City?

Mr. Hoffman stated September 21, 1987, is my understanding.

The Chairman stated when was this annexed in? Correct me if I am wrong, but anything that was already there would be grandfathered in, but anything that was built afterwards would not come under the grandfather clause. It would come under the new Land Use Ordinance. Am I correct on that?

Mr. Hoffman stated that is correct.

The Chairman stated so it would not have grandfathered in the land itself.

Mr. Hamilton stated so this is not a hardship case. You have four pieces of property that cannot be built on.

Mr. Mayhand stated the way that I look at it and that is just a common sense kind of a way to look at this is that all land cannot be built upon. Some land just cannot be built on at least not in a convenient way. I am not saying that you cannot, but it is going to be very difficult to put a house or something like that inside there small area.

Mr. Crimmins stated you know we have these small lots now because what was done in 1984 before the City got into business. These are like some of the old lots that are fifty-feet wide in Olde Towne Daphne and a hundred-feet long, but they are allowed to build on them. It is a different location, but it is the same situation. These lots are only so deep, that is the way it was meant to be developed under Lake Forest before this became part of Daphne.

Mr. Ziekle stated I have here the original plat that Breland had back in the late 70's or 80's when he developed that property and it says on here that it has a thirty-foot frontage and a twenty-foot rear, and that is from Unit 29 of Lake Forest. I guess I have to ask Mr. Robison this.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF AUGUST 7, 2008 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Ziekle stated if this was Unit 29 of Lake Forest was it recorded back over when it was private property?

The Chairman stated say that again please.

Mr. Ziekle stated okay. According to this and it was back in the 80's. It is thirty-foot frontage and twenty-foot rear. Now my unit was built in 1993 and I have got thirty-feet in the front and twenty-feet in the back. Everybody along that line on my side of the golf course is the same. The only thing that I am reading to you is what I read, and it says twenty-foot rear Unit 29, Lake Forest. If I go the Lake Forest by-laws or restrictions and regulations and I go to Unit 29 I find out that they have a twenty-foot setback in the rear. So I am assuming since everybody in that area is twenty-feet back, now you are saying that the City changed it to twenty five-feet. Am I right?

The Chairman stated no, sir.

Mr. Ziekle stated so you are saying that it was twenty-five way back. So you overrode the twenty-feet of Lake Forest?

The Chairman stated Mr. Eady.

Mr. Eady stated if you will look at the different units there is a list. I do not if you have one or not, but there are several places where the setbacks are different on different units all throughout Lake Forest. They are not all the same. So Unit 29, as I understand it, that this is not a part of the Lake Forest property. Is it not? It is not one of their units.

The Chairman stated it is not part of the Lake Forest Property Owners Association.

Mr. Eady stated they do not pay dues.

The Chairman stated no, they do not. It is a part of the Lake Forest Subdivision.

Mr. Eady stated does it have a unit number?

Mr. Ziekle stated excuse me, but if that would be the case and even if it would not be twenty five it would still be the twenty because Lake Forest, Section 29 still says it has to be twenty-foot in the rear.

The Chairman stated someone asked a question a while ago about hardship of the land. Somebody asked that question.

Mr. Hamilton stated I made that statement.

CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF AUGUST 7, 2008 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL

Mr. Pikes stated if I can. I would like to respond to something that was said. I would disagree that not all land can be built upon because people actually subdivided and the developer intended it to be built upon. I mean it has lots on it. They are not green space and they are not parks. They were clearly intended to be built on. So it is not impossible. Even if you take away the design of this particular home and do not think about the elevation or some of these patios or porches or whatever, it would still be impossible to build a reasonable size home on that lot and in my opinion that clearly shows that there is a hardship where in this case, this particular incident because of the circumstances and timing that everyone has heard about, it is just impossible to do it. In order to fill up the neighborhood to get the remaining houses in the neighborhood, if anyone is ever going to build on that lot there is going to have to be an easement, and the developer has said and he will say it again that he is willing to do whatever the Architectural Committee wants him to do with regards to the style, the house, the side porches, any of that stuff, but I do not think anyone can argue that it is impossible to build any kind of residential dwelling on it the way it is now.

Mr. Swaney stated does it have to be a multi-family dwelling or can you build a single family dwelling.

Mr. Pikes stated I do not think you can because it would only be, you would have thirty-feet in the front and twenty-five in the back, so you are talking about only twenty five-feet.

Mr. Swaney stated with the side setbacks that is a buildable width.

Mr. Pikes stated but when you take each lot into account with the setback, all of a sudden it is not, in other words.

Mr. Swaney stated on each lot.

Mr. Pikes stated yes, sir.

Mr. Hamilton stated you are correct. We can come in there and redesign this plan which gives us twenty five-foot eight inches in the front to the back, and make each unit eighty-feet wide, being within all of the perimeters of the setback lines, and we would not have to come back to this Board again. So that is the next step, to build exactly inside that setback all the way around and go with this same concept. Then that way we have got everything handled, we have got a retaining wall back there, and we are as far back as that retaining wall and this gentleman here is. When you walk out of the back door you are probably going to be able to look half way up that wall. You are not going to be able walk out and see him over here, but this will be redesigned and it will be within the perimeters of everything we have to do.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF AUGUST 7, 2008 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Hamilton stated that is it.

Mr. Swaney stated you will redesign it.

Mr. Hamilton stated yes.

Mr. Crimmins stated will they be townhomes?

Mr. Hamilton stated sure. It is going to be wider and narrower.

The Chairman stated can they do that? Maybe he should table it.

Mr. Eady stated go ahead and make a decision on this. If they come back with a different style then we will do it again. If you table it and do not have a meeting within thirty days it is automatically approved.

The Chairman stated Mr. Hamilton did I hear you say that you would come back with a different style?

Mr. Hamilton stated the style will be the same.

The Chairman stated I mean smaller so that when you reconfigured you would meet all the setback standards.

Mr. Hamilton stated yes, sir.

Mr. Eady stated if he meets all of the standards he would not have to come back here. He needs to withdraw it.

Mr. Lamb stated if he meets all the standards he will not have to come back to us.

Mr. Hoffman stated he would have to withdraw it tonight.

Mr. Lamb stated this appeal could be denied, but if he decides to redesign within the setbacks then he would not have to come back to us at all.

Mr. Hoffman stated if it is denied tonight then he cannot come back for one year.

Mr. Eady stated if he meets the setbacks he will not have to come back to this Board.

The Chairman stated he would not have to come back, but if he came back to ask for anything before the Board on this concerning a variance he could not for a year.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF AUGUST 7, 2008 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Eady stated if denied, not for one year.

The Chairman stated Mr. Hamilton should you not withdraw this appeal and you go through with it, I do not know how it will be ruled, but should you be denied you cannot come back for a year. However, if you withdraw this appeal on Lot 57 and 58 you would not come back in front of the BZA, but if you can reconfigure 55 and 56 then you would not need to come back.

Mr. Eady stated if he builds within the setback limits he does not need to come back on either one.

Mr. Hoffman stated as long as he does not require a variance he can do it. If it required a variance he would have to wait a year to request the variance.

Mr. Swaney stated I guess that we are trying to make is that if you withdrew your appeal tonight you could come back again requesting a variance of a lesser amount on the setback line.

Mr. Hamilton stated on 57 and 58?

The Chairman stated Lot 57 and 58, yes, sir.

Mr. Pikes stated does it have to be withdrawn tonight? Is there a time period?

Mr. Hoffman stated you can ask the Board to hold it over. It has been done before.

The Chairman stated we can vote to table it until the next meeting.

Mr. Pikes stated when is the next meeting?

The Chairman stated it would be the first Thursday in September.

Mr. Eady stated be careful. If we do not get it done within thirty days it is automatically approved. You have to be careful with your time.

Mr. Hoffman stated unless he agrees.

The Chairman stated to table it.

Mr. Hoffman stated if he requests to table it. It can be tabled. Otherwise the Board has to make a decision.

Mr. Hamilton stated on Lot 57 and 58 I request that it be tabled.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF AUGUST 7, 2008 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Lamb stated on the thirty days. We meet on the first Thursday of every month. The law goes by calendar days.

Mr. Hoffman stated he would have to withdraw it. Then he can resubmit it to Planning and go through the whole process again.

Mr. Pikes stated if you would give us a moment.

Mr. Crimmins stated the next meeting date would be twenty-nine days.

Mr. Lamb stated I am not comfortable with tabling it.

Mr. Eady stated if you table it you have to come back with the same thing.

Mr. Hamilton stated I withdraw it.

Mr. Swaney stated you would like to withdraw?

Mr. Hamilton stated right.

The Chairman stated Lot 57 and 58 are withdrawn.

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 7:30 p.m.

Respectfully submitted by:



Pat Houston, Recording Secretary

APPROVED: February 5, 2009



Willie Robison, Chairman

/ph