

**CITY OF DAPHNE  
BOARD OF ZONING ADJUSTMENT MINUTES  
REGULAR MEETING OF JANUARY 3, 2008 - 6:00 P.M.  
COUNCIL CHAMBERS, CITY HALL**

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The Chairman stated the number of members present constituted a quorum and the regular meeting of the Board of Zoning Adjustment was called to order at 6:00 p.m.

Call of Roll:

Members Present:

Barry Taylor  
Glen Swaney, Chairman  
Frank Lamb  
Jeri Hargiss  
Willie Robison  
Billy Mayhand, Vice Chairman

Staff Present:

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

The Chairman stated the first order of business is the approval of the October 4<sup>th</sup> minutes. If everyone has had an opportunity to read the minutes, the Chair will entertain a motion to approve or modify them.

**Approval of Minutes:**

The minutes of the October 4, 2007 meeting were considered for approval.

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

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

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

The Chairman stated the November 1, 2007 minutes cannot be approved at this time because Mr. Taylor was a participant at that meeting and he is not here. Is that correct?

Mr. Speegle stated I believe that is correct.

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**New Business:**

**Appeal #2007-16 - Otis & Harriet Brunson**

The Chairman stated let us proceed on to the new business, Appeal #2007-16, Otis & Harriet Brunson. Mr. Eady, if you would, please take us through this.

Mr. Eady displayed color transparencies of the house located at 408 Dryer Avenue fronting Old County Road. He stated Mr. Otis & Harriet Brunson are proposing to add an addition onto their residential structure located at 408 Dryer Avenue. They live in an R-2 Medium Density Single Family Residential Zone. Their request, if granted, would allow the addition to encroach the rear yard setback line by twenty-feet on the east side. It is not known when this structure was originally built, but according to the deed Mr. & Mrs. Brunson bought it in May, 1992. In making several phone calls I found out that they purchased it from Ms. Gladys Northcutt, who received the property in January, 1964. The dark shaded line show the addition onto the home. The new setback line will be fifteen-feet from the existing rear setback line. There will be fifteen-feet from the new structure to the setback line. The setbacks for this zone are thirty-five feet in the front, thirty-five feet in the rear, ten-feet on the side, and twenty-feet on the side for a corner lot. The existing home meets all of the required setbacks except for the Dryer Avenue side yard, which renders the home nonconforming. However, since it was built in the 60's it is grandfathered permitting it to continue as such. These pictures show you a little bit of the relationship between the back yard and the house.

The Chairman stated excuse me Mr. Eady, was that carport part of the original structure?

Ms. Brunson stated yes.

Mr. Brunson stated yes.

Mr. Eady stated they say it was. I did not go inside the fence in the back yard because I did not know if they had a dog or not and I did not want to find out. It appears that power pole there is fairly close to the rear property line. Is that correct?

Mr. Brunson stated yes it is.

Mr. Nelson stated yes sir, it is.

Mr. Eady stated they answered yes.

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Mr. Eady stated I have given you some information out of the Land Use Ordinance. The property as it is now is an R-2 Medium Density Single Family Residential Zone. The reason it is grandfathered is because it was built prior to 1987. However, Section 9-2 Non-Conformance, Item (b) Alterations, paragraph (1) states that the building cannot be structurally altered of which I have give you a copy as well. If you choose to approve the applicant request, I recommend that the nonconforming side yard be included in the approval of the variance to clear this whole matter up.

The Chairman stated thank you, Mr. Eady. Does anyone have any questions for Mr. Eady? If not, who would like to speak in favor of this appeal?

Mr. Nelson stated I will be the contractor on this job.

The Chairman stated would you state your name and address for the record?

Mr. Nelson stated Jeff Nelson, company name is JAK Nelson Construction. Address is 11176 Olive Court, Fairhope, Alabama, 36532. The addition should improve the look of the home and the area greatly. The setback is not going to encroach on any other home. There is a drive that goes into, I guess that is what you would call it, a side property, it kind of goes behind their property line to a house next door. It would be on the south side of their property I believe. Then there is quite a bit of yard between that drive and the next house. So it would not be encroaching directly into the back yard of anybody right next to their existing home.

Mr. Eady stated that drive is right about here behind this power pole.

Mr. Nelson stated that is correct. I was planning to leave that hedge along that drive. I have got no plans at all to take that out. Do you have any questions for me that may help you understand this more?

The Chairman stated you are actually planning to change the orientation of the house so that the front will face Dryer Avenue. I think that now it faces Old County Road.

Mr. Nelson stated the existing driveway is right here. They will still come in from here. It will not be changed it will just be brought up to date. On the driveway there will be landscaping. Right now they are having to enter the house through the garage, basically or the carport. We will have the driveway here coming off into a front porch area and a new entry. If you looked at the calibrations it should greatly improve the looks of the house and the lot. It could only improve the neighborhood property value.

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The Chairman stated one question. If you would go back to the site plan for a moment, please. The house sits back fairly far off of Old County Road at this point in time. I was wondering why you did not choose to expand towards Old County.

Mr. Nelson stated they are going to add a den and a bedroom and all new baths in there. If you go off past here then they would have to pass through an existing den to get back into the old part of the house. Plus that lot drops pretty hard towards Old County Road to be elevated out here. I have not shot a grade on the front, but I am going to say from here to here is five or six feet on the corner. It would give the house a big boxy structure, if we came out here. When we drew the plans we thought this would blend a little better.

Mr. Mayhand stated do you have a drawing that shows the way the addition will look?

Mr. Nelson stated yes, sir. I have a set of plans right here.

(Board takes a five minute pause to view and discuss the drawings.)

Mr. Robison stated I was out there yesterday and I walk down to the driveway that Mr. Nelson talked about. There is a house that sits back there approximately one-hundred and fifty-feet down the driveway. There is a big open space between that house and the other one, and with the addition going onto the back of this one there is one question I asked myself. Would the hedge row come down or will you have a buffer there? I do not think anybody is planning on building on that driveway. What do the neighbors to the south say about this? Do they have any objections?

Ms. Brunson stated not to my knowledge.

Mr. Robison stated I think right across the street is where Daphne Rudicell Robinson was granted a variance. We granted a variance on their piece of property where the museum is.

Mr. Lamb stated that was because of the trees.

The Chairman stated that was on account of the trees in the rear.

Mr. Robison stated that was the rear and this is the rear also.

The Chairman stated any additional questions?

Mr. Robison stated Mr. Eady, you stated if this is granted we should bring in that side setback also where it would be in compliance?

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Mr. Eady stated yes, sir. I think it should be included.

Mr. Robison stated in granting the variance this one time, go ahead and do the side yard.

Mr. Eady stated yes, sir. I think it would be best to go ahead and do it to clear the title so they do not have to come back later.

Mr. Robison stated this is just my personal observation, but I believe it was Mr. Nelson who said, that this would add to the aesthetics of the neighborhood.

Mr. Nelson stated on the front they show a little foot and a half bump out, which was put in the setback line. Actually we will be able to waive that foot and a half bump out, and that will put us behind the setback. It was no good way to tie that into the existing slab. So it will not change the appearance of anything. It will put us back behind that setback line or the existing setback line.

Mr. Eady stated it is the structural wall that we work with. The eve can stick out.

The Chairman stated just so we are all clear. Is there anyone here tonight speaking in opposition of this appeal?

Ms. Brunson stated we are Mr. and Mrs. Brunson. We are the owners.

The Chairman stated okay, thank you.

Mr. Lamb stated the whole purpose of the setback is to maintain the integrity in a zoning district. All of the property surrounding a district must comply with the standards of the zoning. When the Board grants a variance from those standards we start making exceptions. Once we make an exception it is difficult to know where to stop. I always have a problem with granting an exception. This is over fifty percent of the rear setback. Twenty-feet from the thirty-five leave only fifteen and that is a lot.

The Chairman stated the only additional comment I would make is before granting an exception it would have to be a hardship case not an economic hardship. Correct?

Mr. Speegle stated unnecessary hardship. Not that it would cost someone more to comply with the Ordinance. It is not an unnecessary hardship.

The Chairman stated any additional questions? If not, the Chair will entertain a motion. The motion must be in the affirmative.

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A Motion was made by Mr. Lamb and Seconded by Ms. Hargiss to approve Appeal #2007-16, for a variance to allow an addition to be added to the residential structure at 408 Dryer Avenue to encroach the rear setback line by twenty-feet on the east side.

Mr. Robison stated Mr. Eady, would it be at this time that we would granted the side yard violation. Or would we need a separate motion.

Mr. Eady stated you would have to do a separate motion.

Mr. Robison stated do a separate motion. Should this one is pass we have to do a separate motion for it.

Mr. Eady stated yes. Council is that correct?

Mr. Speegle stated I think you are right, Mr. Eady. I believe the way I understand it is as of right now it is as Mr. Eady has explained it. I think he is exactly right. It is a nonconforming use because of the violation of the setback, but it is not a violation because it is accepted in the Ordinance. So right now as we sit it is not a problem, but once, as Mr. Eady has explained, if the Board grants the variance to violate the rear setback then I think the whole property has to come into a conforming use, which means you have got to conform to the other setback. Did I explain it the right way Mr. Eady?

Mr. Eady stated to clear the title. Yes. However, it all depends on the granting of this setback.

Mr. Speegle stated if you do not grant the request then I do not think there is no need to address the other setback violation. Because it is not a violation, it is grandfathered, unless you change the structure.

Mr. Eady stated the side setback is not a part of the original request. I put that in there myself. One has no bearing on the other.

The Chairman stated before we vote by roll call, I should point out that five members will be voting tonight and it takes a super majority of four to approve this appeal. A motion has been made and seconded.

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

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| <b>Mr. Robison</b> | <b>Aye</b> |
| <b>Mr. Mayhand</b> | <b>Aye</b> |
| <b>Mr. Swaney</b>  | <b>Aye</b> |
| <b>Mr. Lamb</b>    | <b>Nay</b> |
| <b>Ms. Hargiss</b> | <b>Aye</b> |

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The Chairman stated your appeal has been granted and you can pick up the paperwork on tomorrow. Now I will entertain a motion for the second part of this appeal. Is that correct, Mr. Eady?

Mr. Eady stated yes. Keep in mind this has no effect on the first you just approved.

A **Motion** was made by **Mr. Lamb** and **Seconded** by **Ms. Hargiss** to **approve Appeal #2007-16, to allow the residential structure at 408 Dryer Avenue a nonconforming fifteen-foot side yard setback on the north side.**

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

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

The Chairman stated the motion has been approved. Now we are planning to go into a session on the election of officers and approval of the minutes. Let us do the minutes first since Mr. Taylor is now present.

Ms. Brunson stated thank you so much.

**Approval of Minutes:**

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

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

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

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

**Election of Officers:**

The Chairman stated on to the election of officers.

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Mr. Lamb stated I have a question. Has any action been taken by the City Council to replace Mr. Crimmins, Mr. Eady?

Mr. Eady stated not at this time. I did ask them to, but they have not done anything yet.

The Chairman stated on to the election of officers. Are there any nominations for Chairman?

Mr. Lamb stated I nominate Mr. Willie Robison for Chairman.

Ms. Hargiss stated I second that nomination.

**Upon roll call vote the nomination was approved for Mr. Willie Robison to be the Chairman of the Board of Zoning Adjustment.**

The Chairman stated are there any nominations for Vice Chairman?

Mr. Mayhand stated I nominate Mr. Lamb for Vice Chairman.

Mr. Robison stated I second that nomination.

**Upon roll call vote the nomination was approved for Mr. Frank Lamb to be the Vice Chairman of the Board of Zoning Adjustment.**

The Chairman stated are there any nominations for Secretary?

Mr. Lamb stated I nominate Ms. Jeri Hargiss for Secretary.

Mr. Robison stated I second that nomination.

**Upon roll call vote the nomination was approved for Ms. Jeri Hargiss to be the Secretary of the Board of Zoning Adjustment.**

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

**Adjournment:**

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

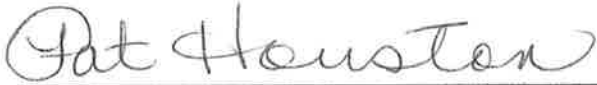
**The Motion carried unanimously.**

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

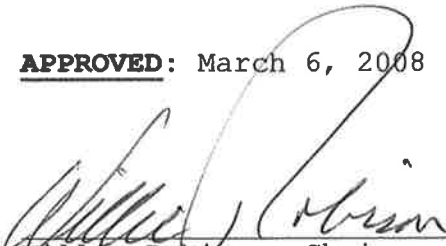
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Respectfully submitted by:

  
Pat Houston, Recording Secretary

**APPROVED:** March 6, 2008

  
Willie Robison, Chairman

/ph