

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF JULY 10, 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
Barry Taylor*

*Arrived at 6:01 p.m.

Member Absent:

Billy Mayhand

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 June 5th 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 June 5, 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.**

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

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New Business:

Appeal #2008-05 - The Shoulders

The Chairman stated tonight we are going to change the order of the agenda. The Shoulders, Appeal #2008-05 has another engagement and needs to be the first order of business to be at that engagement of time, if nobody has any objections. If you would, please bear with us. Mr. Eady, if you would start us off, please.

Mr. Lamb stated may I make a statement before we begin this evening, please?

The Chairman stated yes.

Mr. Lamb stated thank you. Many of you probably have never been before a Board of Adjustment so allow me to explain how this works. The City of Daphne has established a Land Use and Development Ordinance for this City. The City Council cannot grant a variance to the City's ordinances that responsibility has been given to the Board of Zoning Adjustment by State Law.

The loyalty of this Board is to the City of Daphne and not to the any individual seeking to change a particular ordinance. It is our duty and our responsibility to be a protective role in preserving the very fine and delicate balance of zoning and design features of the ordinance.

Just because a citizen wants a variance to this ordinance is insufficient reason for this Board to automatically grant it. If that were so, there would be no need for this Board. That is not to say that we as a Board will not listen to and decide if the request for variance has merit. That is our job.

Bear in mind that a variance is a deviation from a design requirement of the Zoning Ordinance. That is why you are here, to request a deviation. It is our job to determine if that request has merit and to protect the sanctity of the City's Ordinance.

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

Ms. Houston stated Ms. Hargiss, Mr. Lamb, Mr. Swaney, you and Mr. Taylor.

Mr. Eady displayed color transparencies of a wooded lot off Roper Lane in the Park City area of Daphne. He also displayed the proposed site plan for the new Shoulders.

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Mr. Eady stated the Shoulders is requesting a special exception to be allowed to operate a drug and alcohol treatment facility off of Roper Lane. It is located in an R-3 High Density Single Family Residential zone with six point thirty six (6.36) acres and this type of facility is allowed in this zone with special exception approval by the Board and that is why we are here tonight. I have quite a few slides to show, and this is the location off Roper Lane for the proposed site. As you can see Roper Lane curves.

Mr. Swaney stated what is the area in red?

Mr. Eady stated that is the site.

Mr. Swaney stated according to your previous slide it is the lot closer to the right of that building. When I drove by it earlier it looked like the site was fairly clear.

Mr. Drane stated it is. The wooded area is not the correct lot.

Mr. Eady stated I apologize for the slide being incorrect, but that is what was given to me as the proposed site. Perhaps Mr. Drane can point out the correct area for their site on the site plan.

The Chairman stated if you would, please state your name for the record.

Mr. Drane stated my name is Phillip Drane. I am the Executive Director for the Shoulders, and I do have a drawing of the site to pass out to the Board showing the location. Roper Lane leads to the place where the site will eventually be off of Pinehill Road. Baldwin County Mental Health, Mobile Infirmary has recently purchased the old Albert Brewer building. They have gotten a certificate of need and in the near future they are going to renovate it to be a sixty-six bed mental health facility. They have got their certificate of need and are registered with the State.

The Chairman stated you are currently in the building there.

Mr. Drane stated yes, sir.

The Chairman stated was this the old Bradford building?

Mr. Drane stated yes, sir.

The Chairman stated was it also Searcy, a mental health facility and did they have patients there?

Mr. Drane stated yes, sir.

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Mr. Drane stated it was used as an admission unit for Searcy Hospital. It was used as a shelter for the mentally retarded before they shut down and cease to operate. We, the Shoulders had been on the Causeway for almost three years without any problems. (Mr. Drane displayed a large poster of the area on an easel) He stated this is an aerial shot we acquired from the Baldwin County Tax Assessors Office, which shows Pinehill Road, our lot and access to the existing building that will be turned into a mental health hospital. You enter Roper Lane from Pinehill Road here and there is a curve and kind of a hill and we are concerned about the safety of the whole neighborhood of having another entrance into this property. So we have an agreement with the partnership that has bought this property and that are going to turn it into a hospital for an easement where we can come into Roper Lane across this part of their property to access our property. So there will only be one entrance for all the programs that are going to be there. There will be a common border between the hospital and what we do. What we will be spending probably four and a half, perhaps five million dollars for is to build the building, buy the land and equipment. We have been in the treatment business for twenty years, well actually more than twenty years right now. We are non-profit and we meet the definition of non-profit. We exist on donations and a slight fee, but yet we have a waiting list and it is greater now than in the twenty years that we have ever been in existence. We will certainly meet all the codes for the State, the City and the Department of Mental Health for our building. Bruce Knodel is our Architect, and if I may I will get him to come up here to say a little bit about the site plan.

Mr. Knodel stated the site plan on the easel is very much like what is there. As shown we have fifty-six parking spaces provided, thirty-three required. So we have exceeded the parking requirements. The site is about six point three, six (6.36) acres. The building occupies approximately fourteen percent of the site. It is a large site, pretty much the size of a football field. The design will be residential in character. If you look on the second page it will give you an idea of the type of building design that we are expecting. A pitched roof, brick veneer and again very much of residential character. Are there any questions?

The Chairman stated does anyone have any questions?

Mr. Lamb stated how many rooms are in the building itself?

Mr. Drane stated right now in the building we are running almost forty people in residence everyday, seven days a week. We have built an expansion in here where we could probably handle more than that.

Mr. Knodel stated seventy-two beds.

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Mr. Drane stated yes, sir. Up to seventy-two beds, but I have to be quite honest with you as a non-profit we would not have that many unless we could get the money to appropriately handle them. We figured while we were building it we might as well build it large enough for expansion in the future.

Mr. Lamb stated will an individual room house one person?

Mr. Drane stated two per room. Speaking of that, all of our programs are certified by the Department of Mental Health and we have just received a renewal of our certification that runs until June, 2010. It is a one page report of the site where we received a ninety seven percentile of all of our treatment programs that we typically have. I do not know if you are interested in this, but I did bring it along, a news release from All Points Health Systems, which is part of the Gulf Coast Psychiatric, who has bought the building, and it explains what they will be doing and how many beds they will have. It is just for information purposes.

Mr. Swaney stated I see on the plot plan an area indicating an existing fence. How much of the area will be fenced?

Mr. Drane stated that is an existing fence that you see. We will certainly be secured as you can see from this photograph. This portion of the property is very heavily wooded and we would like to keep that. We will have about thirty-one feet from the property edge to the building and we would like to keep as much of that greenery as we can, as on the east side over here and part of the north. We will certainly secure the area for all to be protected and the protection of the neighborhood. Whether we do it with shrubs or fences at this point we are still in the planning stage, but it will be secure.

Mr. Taylor stated will you have security personnel?

Mr. Drane stated we have staff on duty seven days a week, twenty-four hours a day. Two men awake all hours Monday through Sunday right now. We always have. That is a part of our restrictions.

The Chairman stated would anyone who lives there be free to come and go at will?

Mr. Drane stated our program is a little bit different and always has been for about half of the twenty years we have been in existence. They live there seven days a week and at night they are restricted there. We found from a therapeutic point of view that it is very advantageous, therapeutically for our men that are in treatment to work during the day rather than being in a secluded protected environment.

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Mr. Drane stated because what we have found is that while they work they are experiencing some of the things that they are going to experience when they get out so then they can come back at night with our counselors in groups and deal with those issues so that they learn how to deal with them. Frankly, it helps us financially too, because our fees are on a sliding scale, so they can help pay some of their treatment costs.

Mr. Moss stated when you say that they work. Are they working for public entities? Where they are registered and you know where they are?

Mr. Drane stated yes, sir. We are required to have releases to talk or communicate with anybody about somebody at the Shoulders. When a person gets a job we have a release signed by them allowing us to talk to their employer. We do check, not every day, but we do check fairly regular to make sure they are at work, and we ask the employer to report to us if on a given day we do not check and they do not show up, we ask the employer to call us, and we have found that they do. In fact, we have, well I cannot mention names because of confidentiality, we have a man that works for the City of Daphne that came to us there. I cannot mention his name, but we have people that work construction, landscaping, some in restaurants, some work in retail stores. We have had lawyers, engineers, school teachers come for treatment there. We also make available GED training for those who do not have high school diplomas, literacy programs, and we work with the State Vocational Rehab for training people who want to learn a trade. If I could I would like for all of the staff to stand up. We have a nurse practitioner, and all of our staff is certified substance abuse counselors, and we have some of our Board members here. Would the Board members please stand? Well, we have about half of them. While I am doing this would everyone here to support the Shoulders please stand. We have a Municipal Judge here with us. We will be cooperatively working with the Gulf Coast Psychiatric people, who have that certificate of need, and will be by this time next year operating this hospital.

Mr. Moss stated I am real happy you do not exclude doctors, attorneys and such because there are more derelict PhD's than regular folk.

Mr. Drane stated speaking of who we accept. Let me assure you that we do not accept people who have been convicted of any violent crimes or any with sexual crime background. We do not accept them.

The Chairman stated you will not be having, quote, the work release program that you have on the Causeway?

Mr. Drane stated no, sir. We did not run that.

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Mr. Drane stated we leased our part of the building there and it is still there. We will not do that again, at least not at this location anyway.

Mr. Lamb stated did I understand you to say that the old Brewer building was going to be renovated by Mobile Infirmary Systems?

Mr. Drane stated it is the Coalition of Baldwin County Mental Health, Mobile Mental Health and the Mobile Infirmary. Gulf Coast Psychiatric.

Mr. Lamb stated what are they going to do with it? Renovate it?

Mr. Drane stated yes, sir and use it as a hospital. A sixty-six bed psychiatric hospital at this point.

Mr. Lamb stated Mr. Eady, just for a quick question that I have. The Brewer Center would not have to come before us as a special exception would it?

Mr. Eady stated no. It is existing.

Mr. Lamb stated it would not have to come before us.

Mr. Eady stated no.

Mr. Drane stated we basically are doing the same thing we are just a different population. They would be our neighbors. I can bring some of our staff up if you like. I do not want to take too much of your time, but Judge Wilters is here.

The Chairman stated is there anyone here that would like to speak in favor of this appeal? We ask that you be brief and if it gets to a point that it is becoming repetitive then we will cut it off and move forward.

Ms. Johnson stated my name is Susan Johnson and my brother is currently involved in the Shoulders. One of the things that I have not heard yet tonight is that the Shoulders offers support for families. I have been able to attend some of the family classes and we actually are included in with the client. I cannot tell you how much that has helped me understand my brothers' addiction because it does not just affect the one person. It affects the entire family. It affects your church community, and your work community. Just knowing that we have a place like the Shoulders for folks that did not pass their drug exam here in Baldwin County is just such a relief because it keeps these people close to home. Family is a part of their recovery process. My brother, and this is not his first rodeo, and I guess I just wanted to point out that family is included in this.

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Ms. Johnson stated I have taken my son to be a part of it because he could potentially lose an uncle. It has helped him understand what is wrong with his uncle. It is not something that he can cure tonight or tomorrow. It is an ongoing process. He was in a treatment facility in Baton Rouge, Louisiana, Center Court, away from our family. He worked in their community and I have not heard any reports about problems in their facility, but the problem for him was that he was away from his family, and we are his number one. So now that he can encompass his family in his treatment we have seen such a change in him, and he works just like any of the other guys. Everyday he reports for his classes and on the weekend if he has followed the rules, the strict policies that they have in place, he is allowed to come visit his family six to eight hours on the weekend. We cook out and we fellowship with him. I just wanted to let you guys know that.

The Chairman stated thank you, madam.

Mr. Drane stated one of our charter members, Glen Boone.

Mr. Boone stated just briefly. I did help start the Shoulders. I started working on this twenty-five years ago with Dr. Paul Fellers, who was the first Chairman and I was the second. I help raise the funds needed to acquire the facility on the Causeway that is no longer there. Two quick things that are very important. I appreciate the comments that she made and we also have other programs, church service on Sunday by a volunteer among many other things, and a place for AA and NA to meet. Above all I want to emphasis the award we got, Phillip and the staff received, which was an honor not only for us, but also for the City of Daphne, because from what we have heard and in my opinion it is the finest drug and alcohol recovery facility in the State of Alabama and the Gulf Coast region. It is important to note the comments and I want to emphasis what Phillip said. We are at a limit and basically for the moment it is financial, but it is also facility. There is a need that is unfilled in this area and we need to have this facility to maintain it. We need to move forward with this and I appreciate your attention.

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

Mr. Phillip stated Judge Wilters I believe.

The Chairman stated here comes the Judge.

Judge Wilters stated Bob Wilters, and I am a Circuit Court Judge, currently presiding over the Baldwin County Drug Court. It was started in Baldwin County through efforts with the District Attorney's office, Baldwin County Bar Association and the Judges of Baldwin County.

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Judge Wilters stated and Mr. Drane and some of our other treatment providers. I would like to let you know that Phillip is on the Chief Justice of the Alabama Supreme Court Committee on Drug Court. A lot of his input on that Committee went to getting Drug Court started in Baldwin County and probably fifty or more County's in the State of Alabama now. Without having a treatment facility near by Drug Court would be severely hampered. One of the great things that we have, and I order people to go to treatment, and one of the facilities, and the only one I have in Baldwin County is the Shoulders, and the Shoulders works well with me. Drug Court is more of a treatment oriented program. We do use incarceration in our program, but for the most part it is treatment driven. We send people to the Shoulders. I order them there. If they do not follow the rules of the Shoulders the staff will let me know that day or the next day and we will have the person picked up and put back in the County jail. There are people that have drug problem that are working through those drug problems but without the help of the people at the Shoulder's and Baldwin County Mental Health and some of our other facilities, our treatment providers in this County, we would not be able to. It is a benefit not just to the people of Daphne, but to all of Baldwin County. When I took the Drug Force Program and had all of the drug cases assigned to me my docket went from about seven hundred cases up to eleven hundred cases. There are a lot of drug cases in Baldwin County. It is a big problem, and I appreciate the work that Phillip and his staff from the Shoulders has provided to not only my Court but to the other courts in Baldwin County and to the people of Baldwin County. Do you all have any questions that I might be able to answer?

The Chairman stated yes, sir I have one. I do not want to put you on the spot, but prior to the Drug Court can you just off the top of your head recall the number of repeater that have come back before you and since you have gone the drug treatment has it sort of dropped off.

Judge Wilters stated I will do my best. Before October 1st, 2007 when we started Drug Force, if you were arrested and plead guilty or was found guilty of a drug offense, ninety five percent of the time you would have been given a suspended sentence and probation. You would be ordered to a treatment facility. I would not see you again for maybe three, four, five, six months. You would not be drug tested except on dates that you knew about six months in advance. Now waiting six months before I get to see that person again to find out if they are doing what they have been ordered to do was not working real well. We probably had forty percent recidivism, if not more. It was the best we could do with what we had. Now with Drug Force they are seen every week by someone. If they are in the extensive outpatient program they are going to class three times a week, AA three times a week, attending prayer altar one time a week, Court every week or every two, three or four weeks depending on how well they are doing.

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Judge Wilters stated they are randomly drug screened anywhere from six to ten times a month and we get them into treatment quick. We try to get them in treatment within one month from the date of arrest. We found out in treatment that when they are at what they think is their lowest level is when they are ready to be treated. Usually the lowest level that they get is when they have been arrested and they are in jail and they want help at that point, prior to that it might be a year before we could get them into a treatment program. Now we are running about a month to six week before we can get them in. We have got a lot of success stories and we have got some failures. There are some people who wish to plead in just to get out of jail and they did not want to have anything to do with treatment. Some of those people are still on the lamb now and some are in the State Penitentiary now because they did not want help. The Shoulders has a great staff in that they let me know what is going on quick and we do not let thing go on for two or three months before we bring them in and get them back on that straight and narrow path. Baldwin County Mental Health does another tremendous job for us. It is great having these resources. Other County's have had to try and start drug forces without having the resources we have in Baldwin County and they are struggling. We were about to start October 1 and we probably have eighty to ninety people in Drug Court now, who are actually participating in the program and not all of them are at the Shoulders. Four people in Drug Court now are in-patient at the Shoulders. It is a great asset to Daphne, Baldwin County, for all of south Alabama to have a facility and the staff like the Shoulders. We are the envy of the rest of the State with what we have. I certainly hope that we can continue to have that because without that facility you will hamstring the Court tremendously on what we can provide through our Court to the people that come before us. Mr. Robison I hope I have answered your question.

The Chairman stated yes, sir. You sure did. Thank you. I appreciate it.

Mr. Swaney stated I would just like to say that my wife speaks very highly of the Shoulders. I hasten to add that she was a volunteer there for two or three years. Anyway, she does have nice things to say about it.

Mr. Drane stated thank you both. If I may respond to a couple of things that I thought of as he was speaking. All of the people in treatment at the Shoulders is not Court ordered. About sixty percent is Court ordered. The other forty is voluntary admissions and talking about drug testing through urine screening. We do those ourselves regardless to what the Court does. We have random drug testing and believe me it is random. It is amazing, you do the drug test one day, and they think I am okay the next day.

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Mr. Drane stated then we drug test them the next day. After a while word gets around and they say do not use when you go to the Shoulders because you do not know when they are going to test you so they get to a point where they will not do it. I hope I have not taken up too much of your time.

Mr. Julian stated I am Travis Julian. I am the co-manager with David Buckingham of Suncoast Realty and I support this cause. Thank you.

The Chairman stated anyone else that would like to address the Board? Is there anyone that is in opposition of this project that would like to address the BZA? If you would step to the microphone and state your name and address please sir.

Mr. Marino stated my name is Robert C. Marino. I live at 28085 Japonica Lane. The facility that they are going to build. Well, first of all I want to ask is it going to be male and female in this facility?

Mr. Drane stated no, sir. It is all male.

Mr. Marino stated okay, and the second thing I want to ask is, you have got Eufaula and you have got Searcy that are out of the city limits. The main facilities are out of the city limits and you are going to put this facility right in Park City, which is just a residential area. If you like at it the line that is drawn is between Park City and Lake Forest. It is just one step over the line and you are in Lake Forest. Now can you guarantee us, the citizens that live in Park City, that these people will not get out and I am not saying all of them because probably ninety percent of them are good people, you know they just got on the wrong track at one time, but can you guarantee that they will not get out and go through our community pillaging and ripping us off to support their habits. Can you guarantee they will not go into Lake Forest, where you have hard working families and decent people ripping them off to support their habits?

Mr. Swaney stated excuse me just a second. If you would could you please address your questions to the Board.

Mr. Marino stated okay. I am sorry. No problem. In other words I am just wondering if all of you people live around this would you be willing to have this facility around you if faced with the same predicament.

Mr. Drane stated would you like a response?

Mr. Marino stated yes.

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Mr. Drane stated sir, if I could guarantee you anything I would not be here. I would be a lot further up than I am now. We have been at this facility for three years this September and we have had none of that happen since we have been in the Brewer Center. The Brewer Center is actually adjoined to Lake Forest up here and we will be on the other side and this is all vacant land here, vacant land here and there are some houses here. No, sir, I can not guarantee you anything, but we have not had any problems in the three years that we have been there nor did we have problems with the eighteen years we were on the Causeway with anything like that happening. In the twenty years that I have been there and I have been there since we started, there has only been one occasion where we had to have the police come, and it was for a gentleman who was seeking admission, but was drunk, and he wanted to get back in his car and we could not let him get back into his car. We had to call the Sheriff's Department before we were annexed into Spanish Fort to get him someone who could drive. To my knowledge we have had no problem what so ever of that nature.

Mr. Marino stated would not it be better.

The Chairman stated please address the Board.

Mr. Marino stated I am sorry. Would not it be better to buy land outside of the City limits to assure that it will be a lot safer on Lake Forest and our community in general as far as being broke into? Because just like I said you may have that ninety five percent that may be good people, but you have got that other five percent that might not be so good and then our community and Lake Forest is going to pay the price for it.

The Chairman stated I believe there has been a facility of some type there for probably the last twenty years. As Mr. Drane said it started off with the Bradford Center having an adolescent in-house where they lived there for thirty days or how many ever days were required.

Mr. Drane stated ninety days.

The Chairman stated then Searcy's with mental health patients there. So there has been a facility there for twenty something odd years and I do not recall hearing, seeing or reading of a lot of bad activity at that facility. I just do not recall any. You say with the ninety-five percent and the five percent. Well I guess that would be the same thing as ninety-five percent of the people that live on my street are nice and there could be five percent that are not very nice. I guess that could be true anywhere, but looking at the Shoulders and knowing the reputation of it they do meet and in my opinion, and I am one of the BZA here.

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The Chairman stated they do meet the criteria for the special exception laid out there for the ingress, egress and the neighborhood that it is in. They are meeting those specifications and that is what we need to look at tonight. I can understand your concern with it being there, but you have lived there for over twenty years and I do not know of anybody from that facility that has broken into your house. Has anyone ever broken into your house from that facility?

Mr. Marino stated no.

The Chairman stated well I just had to go on the record about the twenty something years that there has been a facility there and for them meeting the specifications for a special exception.

Mr. Marino stated you are talking about a different ratio. You are talking about just a hand full of people compared to what this gentleman is trying to build, which is going to be a lot more density as far as people coming into that facility. Just like I said there are going to be a few rotten apples in there that may want to go through the neighborhood. I realize you cannot put a fence around it like a jailhouse because it is a different ball game, but something has got to be done if it is going to work to secure and guarantee the people in our community and Lake Forest that we will not be broken in on.

The Chairman stated unfortunately, Mr. Marino, there is no guarantee in life of anything. We cannot guarantee anything.

Mr. Marino stated I know it.

The Chairman stated like Mr. Drane said, if we could guarantee it I would not be sitting here if I could. I would be like him I would be a little higher up.

Mr. Marino stated all right. Thank you.

The Chairman stated anyone else? If not, the Chair will entertain a motion. The motion must be made in the affirmative. It has to be done in the affirmative and it might sound silly, whether you vote yes or whether you vote no. The motion must be made in the affirmative.

A Motion was made by Mr. Swaney and Seconded by Mr. Taylor to approve Appeal #2008-05 The Shoulders, for a special exception to allow the operation of a drug and alcohol treatment facility on Parcel ID # 43-03-71-0-006-014.000 & 43-03-05-0-008-004.000 off Roper Lane.

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

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

Mr. Drane stated thank you very much.

The Chairman stated Mr. Drane you may pick that up from Pat in the morning.

Mr. Eady stated Mr. Chairman I want to apologize to Mr. Drane and his group for the incorrect photos. I had been given that sheet with the red square around it and I do not know where it came from, but I do apologize to you, your group and the Board for it.

New Business:

Appeal #2008-04 - Marvin Hall

The Chairman stated the next item on our agenda is Appeal #2008-04, Marvin Hall, a variance to allow an addition to encroach the front setback line by ten-feet at 506 Pine Street.

Mr. Eady displayed color transparencies outlining the house and front porch at 506 Pine Street. He stated Mr. Hall was requesting to encroach the front setback line by ten-feet.

Mr. Swaney stated where does that leave the setback line at on that?

Mr. Eady stated the setback is R-1 about forty feet. I know it says sixty-feet on there, but they measured that from the wrong point. They measured from the centerline of the road. It is forty feet. In fact it is a little bit more than that it was about forty-two feet when Pat and I measured it.

Mr. Swaney stated so now it would be thirty.

Mr. Eady stated yes, sir. This will encroach the setback line by ten-feet. If you look at the little red arrow you will see the requested ten-feet encroachment. Pat is on the ten-foot line. Ten-feet from the porch. The porch is six-feet wide. So from the main wall to where she is standing is sixteen-feet and that is all I have.

The Chairman stated is there anyone that would like to address the issue in favor of it? Is the Hall family here? Would you like to address the BZA sir?

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Mr. Hall stated I am Marvin Hall. I live at 506 Pine Street.

The Chairman stated I hate to do this to you, but would you repeat your name for us because it is being recorded.

Mr. Hall stated my name is Marvin H. Hall. I live at 506 Pine Street in Daphne. We run a home daycare center at the house and we are running out of space so we need a room on the front that is the reason why we need to ask you to add onto the front of the house because we need an extra bathroom.

Mr. Lamb stated what limits you from adding to the back of the house?

Mr. Hall stated you have got the playground and the carport and everything that is already in the back yard. We do not have any room to add on to the back part of the house. If we did we would.

Mr. Merchant stated I can verify that. I have been on that property and there is no where in the back to add on.

The Chairman stated anyone have any questions for Mr. Hall.

Mr. Taylor stated what will it look like on the addition?

Mr. Hall stated on the addition. We are going to come out with an A-frame facing the street. It will be stucco on the front and it is going to have windows on the front part it. It looks like a good addition onto the house. It will be a total upgrade.

Mr. Swaney stated so that it will be part of the record the gentleman who just spoke that he could verify about the lot needs to give us his name.

Mr. Merchant stated I am Richard Merchant I am the Building Official. I met with them about six months ago on this same thing, and there is no room in the back that will accommodate it.

The Chairman stated thank you very much.

Mr. Merchant stated you are welcome.

Mr. Taylor stated I have one more question for Mr. Hall or Mrs. Hall, either one. I just wondered what kind of impact will this have on you if it is not granted? What would that mean to your daycare center?

Mr. Hall stated it limits us to the amount of kids that we can keep. We run a daycare center and pretty much take care of a lot of single parent's kids. Like I said we need an extra bathroom.

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Mr. Hall stated what we have now is a bath and a half in the house and we had to designate the full bath to the daycare center and we need an extra one for us, for the family.

Mr. Taylor stated thank you.

The Chairman stated do not sit down yet. You said it limits you to the number of children that you can keep there.

Mr. Hall stated right.

The Chairman stated what is the maximum number that is allowed by law now for you to keep there?

Mr. Hall stated twelve.

The Chairman stated twelve. So you have less than twelve now?

Mr. Hall stated we have got the limit now, it is seven.

The Chairman stated you have got the seven now. So with the new addition you can go up to five more because you are allowed twelve.

Mr. Hall stated plus we will have somewhere to stay.

The Chairman stated plus you will have a little more room. Thank you.

Mr. Hall stated thank you

The Chairman stated any other question? Do we have anyone that would like to speak in opposition of this appeal? If not, the Chair will entertain a motion which once again must be made in the affirmative.

A Motion was made by Mr. Taylor and Seconded by Mr. Swaney to approve Appeal #2008-04, Marvin Hall, for a variance to allow an addition to encroach the front setback line by ten-feet at 506 Pine Street.

The Chairman stated any discussion?

Mr. Lamb stated I am a great believer in the sanctity of the residential zones, R-1, R-2, R-3, and R-4. The sanctity of those setbacks is important to me. I drove down your street, watching all houses, and everybody is right in a row. This request for a variance to the Ordinance is to violate that setback. Now when you begin to violate, when you get approval for setback violation, it is difficult for this Board to justify the next door neighbor, the guy five doors down.

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Mr. Lamb stated suddenly the whole neighborhood wants a variance to their setbacks, particularly on the front. This is an R-1 subdivision. The value of your home is based on the fact that this is in R-1, single family dwelling, and that is it, and the setbacks protect that, and that is what the Ordinance is all about, the protection of setbacks. Now if you begin to allow variances to the setback then you begin to change the nature of the district. Eventually it will no longer be an R-1 district it will now bump itself into an R-2 district. The R-2 districts begin to bump it up to more things that can be allowed and if you go to an R-3 or R-4 you have totally destroyed the reason for the Ordinance and the land use. So I am really strict on setbacks, the purpose and intent. I believe in the sanctity of that R-1 or whatever the setback for that district so that essentially it will not change. The fact is your property is more valuable because it is R-1 whether you know it or not, R-1 is more valuable. It carries way more weight than an R-2.

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

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

The Chairman stated Mr. Eady it is a year before they can come back again, right.

Mr. Eady stated yes, sir.

The Chairman stated once it is denied. Thank you.

New Business:

Appeal #2008-06 - Ritchie & Virginia MacPherson

The Chairman stated the next item on our agenda is Appeal #2008-06, Ritchie & Virginia MacPherson, a variance to allow a proposed garage to encroach the side yard setback line by four point two-feet on the south side at 313 Woodbridge Drive.

Mr. Eady displayed color transparencies of the existing garage and house located at 313 Woodbridge Drive. He stated I am going to show you a series of pictures of the existing garage, house and lot at 313 Woodbridge Drive. This shot is on the side of the house and it shows where Pat is standing the approximate five-foot encroachment. It was difficult to show exactly five-feet because of all the shrubs.

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Mr. Eady stated I think it is the intent of the property owners to add a library onto the garage, but she can explain that better.

The Chairman stated is Ms. Barr here? I believe, Ms. Barr that you are going to speak for Mr. & Mrs. MacPherson.

Mr. Swaney stated before you get started. Is there any intrusion now for the existing garage? Is the house intruding?

Ms. Barr stated no, sir. The only thing that extends over into the setback is the existing garage.

Mr. Swaney stated the garage. Thank you.

Ms. Barr stated the rest of the house is actually on the setback line. What we are trying to do is connect the house to the library and then enhance the garage. Make it better, larger with some living area above the garage. If I can give you a little history on the house, it is probably close to thirty years old when it was originally built. At that time there was not setbacks. There were no setback requirements. The Land Use Ordinance had not been encroached on this area from what we can understand. What you are not seeing in this photograph, and you really do not see it here, but the one that has the survey, Mr. Eady. The one where you can see where the street encroaches deeply into the front setback of the site. The front of the existing house and the location of the garage are original to this site for these people. They have done one addition remodel which took the house out toward the water a little bit more, but what you are not seeing in any of this is that we are a little confined because immediately behind the house there is almost a twelve foot grade difference. It drops off pretty fast right behind the patio. So even if we wanted to move the garage to the rear we could do that because it would be an imposition. Then on the front side we are pushed by that tree and it really limits what we can do. So that is why we are asking to encroach the setback so we can have room for the turn around at the front of this garage. What we are asking for is to take the footprint of the garage and keep our grandfathered turnaround so the driveway can still function.

Mr. Swaney stated what is the width of the proposed garage? It appears here to be mighty deep.

Ms. Barr stated the existing garage now is about twenty-eight feet.

The Chairman stated is it going to be back behind those trees or the landscaped area?

Ms. Barr stated it is heavily landscaped along that south property line.

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Mr. Lamb stated I am unclear as to why you cannot move the line forward and be in compliance with the setback.

Ms. Barr stated well the garage if we moved it forward would be in front of the house and we were trying to hold back so that we would not be pinned just because it tightens up that turnaround as well.

Mr. Lamb stated our Ordinance says that anything that is grandfathered can not be altered because it already violates the Ordinance. It can stand as long as it is as it is, but once you alter it you lose that grandfather status. You have to understand that if you move this garage the Ordinance says that you have to now comply. Your request is to vary from that Ordinance and that is what we have to decide.

Ms. Barr stated this garage has been sitting in that spot for almost thirty years. So it is not a new encroachment to the neighbors or the neighborhood.

Mr. Lamb stated you want to tear it down and build a new one and the Ordinance says you will lose your status as such. I just want to make sure you understand it because I understand it.

The Chairman stated any other questions? I have a problem myself with wanting to build outside the setbacks. I understand that it was built prior to 1976 and there were no setback restrictions, but it is grandfathered in as is, and if you take it down it must comply. You said you want to tear it down to make more room.

Ms. Barr stated yes, and because it would enhance the addition we are trying to make of the library. It would make it more aesthetically pleasing to the neighborhood, the property, to the house itself.

The Chairman stated I tried to find this today, but I think I may have turned off too quick.

Mr. Swaney stated you go on down to the last street turn right and proceed on across the wooden bridge.

The Chairman stated any other questions? Is there anyone that would like to speak in opposition of this appeal? If not, the Chair will entertain a motion and once again it must be made in the affirmative.

A Motion was made by Mr. Lamb and Seconded by Ms. Hargiss to approve Appeal #2008-06 Ritchie & Virginia MacPherson, for a variance to allow the existing garage at 313 Woodbridge Drive to be torn down and then rebuilt to encroach the south side yard setback line by four point two-feet.

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

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

The Chairman stated your request has been denied. How many days do they have to appeal?

Ms. Houston stated fifteen.

The Chairman stated you have fifteen days to appeal with the Baldwin County Circuit Court. Thank you.

New Business:

Appeal #2008-07 - Karl Gustafson

The Chairman stated next on the agenda is Appeal #2008-07, Karl Gustafson, a variance to allow an 18' x 18' detached garage to be built in front of the house at 805 Captain O'Neal Drive.

Mr. Eady displayed color transparencies of the front and rear of the house and gravel driveway at 805 Captain O'Neal Drive. He stated Mr. Gustafson is requesting a variance to be allowed to construct an 18' x 18' detached carport in front of the existing house located at 805 Captain O'Neal Drive. The lot is twenty-five feet wide and it has been before in the past asking to add an addition onto the house and it was denied.

The Chairman stated Mr. Eady I did not quite hear you. You said it came before us last year, but was it on the same issue?

Mr. Eady stated no, sir, this is not the same issue. They wanted to add a room onto the house last year. One problem is that the lot is only twenty-five feet wide and in this zone you need at least forty-feet. He is requesting the carport be nine-feet high and eighteen-feet wide. As you can see by the red line that is the ingress, egress into the property and just north of this is Warren West property. In fact, these are the same pictures we had last meeting.

Mr. Swaney stated was this at one time a dedicated Bay access since it is only twenty-five feet wide or do you know?

Mr. Eady stated it appears that it was at one time, I do not know.

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Mr. Eady stated at one time I understand it was a little fishing camp about where this home is. It may be the same building. Mr. Gustafson can tell you that. The Planning Commission back at that time, and the Council allowed it to be built and I do not know who got involved in having it raised off the ground. The lot is only twenty-five feet wide and it appears that at one time it was an access to the bay for the neighborhood, but I do not know that.

Mr. Swaney stated thank you very much.

Mr. Lamb stated for what it is worth I use to live down that way and I looked at old maps and looking at old Bay access areas that over the years have been for one reason or another abandoned, and my research shows that was a Bay access, but evidently someone built on it.

Mr. Eady stated the fence is on the property next door and this shot shows the rear of the house leading down to the Bay. The railroad tie is the other property line.

The Chairman stated Mr. Eady with this being a non-conforming structure they would be asking to have another non-conforming structure built.

Mr. Eady stated a non-conforming lot.

The Chairman stated excuse me. A non-conforming lot. A non-conforming structure built on a non-conforming lot.

Mr. Eady stated our Ordinance says you cannot add to a non-conforming structure or a non-conforming use of a lot. That is all I have.

Mr. Lamb stated so allowing this structure only compounds the problem. A non-conforming lot, a non-conforming structure and you want to put a non-conforming building on it which will add to the problem.

The Chairman stated would anyone like to speak in favor of this appeal?

Mr. Eady stated Mr. Gustafson is here.

The Chairman stated if you would, please state your name, sir.

Mr. Gustafson stated Karl Gustafson. It is good to see you all again. Yes, I did come before you when I wanted to add to the property. First of all before any other houses were there it was a camp on that road. It was not just an access to the water. There was a house that was used as a camp and that is how they ended up raising it. The railroad tie is not the property line.

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Mr. Gustafson stated when I came here before and I guess this is a little thing, but the railroad tie is not the property line. The fence is right on the property line. Bill was speaking hear say in talking to Warren. He does not really know exactly where the line is. There are three out of the four houses on this street that have variances and you are right there is already a variance problem. The question is do you stop it or do you let everybody live a more comfortable situation, like I said everybody else has got a variance. When you turn down the other house I understood what you all were talking about, and I know that the house came first with the property, and everybody else has been granted a variance over the course of time to encroach on their own setback. I talked to Warren West, my neighbor on the other side, and he support me putting in the carport, and to my knowledge Bill Eady is supportive of it, and Andy Citrin on the other side is supports me putting in the carport.

The Chairman stated the last time you were here Mr. West wrote us a letter in opposition of what you wanted to do at that particular time.

Mr. Gustafson stated right.

The Chairman stated are you saying at this time he is not opposed to it? He did not write a letter in support of it, but he did write a letter asking that it be denied.

Mr. Gustafson stated he was more against it then, but since then we have gotten to know each other as neighbors and before I even came down here I went and spoke to him because I was not going to waste my time coming before you all again if I did not have the support of the neighbors and if I did not have the support of part of the City in telling me that they felt like I could get a permit granted. One of the technicalities that came up was which is the front of the house and which is the rear. It states in the book that you cannot place a carport in front of the structure. We are not talking about setbacks here because the carport apparently does not affect the setbacks except for the minimal footage that is required. Whereas, if we were adding to the house, there would be an extreme setback. The question is where Bill has the front of the house and many people consider that the front of the house is the part that faces the water. You know waterfront.

The Chairman stated I know most people have the back of their houses facing the water. You go down north Mobile Street in Fairhope and the back of the house faces the water. I could be wrong on that, but all of the other houses along Captain O'Neal, I believe, the front of the house faces Captain O'Neal. I could be wrong on that, but I believe the front of the houses face Captain O'Neal and the back of the house faces the pier.

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Mr. Gustafson stated Andy considers the front of his house facing the Bay.

Mr. Eady stated our Ordinance says that the front of the lot is the narrow side facing the street. It does not matter how the house is oriented. It can be on there cross ways. The narrow side facing the street is the front. The narrow side facing Captain O'Neal is the front of that lot by our Ordinance.

Mr. Gustafson stated thank you. I appreciate your time.

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

Mr. Irvine stated may I say something?

The Chairman stated yes, sir. Please state your name.

Mr. Irvine stated I am Starke Irvine and I really do not want to get in the mix here. I am certainly not arguing about what the Ordinance may say. I have been in real estate here for quite a while and we have sold a lot of property along the Bay. In fact, we developed some of those along Village Drive and Woodbridge and we participated in the development just north of where Karl lives now. I do not know of a house that has a garage on the Bay side and we have never sold property on the Bay and considered the road side as the back yard. When we did Woodbridge we required the front door to be toward the street side to have a front door. There is no doubt about it, but like the young couple that was here earlier their drive is right there by the street. Where we use to live mine was on the street side, so to say that the Ordinance does not allow that is as you go up and down north Mobile Avenue, I do not know of any that are on the Bay side. I am not saying that there are not any, but I can just tell you that most of them are not.

The Chairman stated going down into the Village in Montrose are you saying that every house that I looked at such as the Browns, the McKees, and the others that the back of the house faces the street.

Mr. Irvine stated that is correct.

The Chairman stated with the front door going in there.

Mr. Irvine stated well that is a part of their restricted covenants. People that live on the water do not consider the street side the front. I am just saying that sort of as a point of interest because the Ordinance may declare that is what it is, but there is a conflict there.

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Mr. Merchant stated also if we take the narrow side of the lot and call it the front on everything we are going to have houses with the garage on the side of it because I cannot go to the front without it being the rear. It throws me into a position where I have some that are odd.

Mr. Swaney stated I am not following you. Can you be specific?

Mr. Merchant stated I have got small house that fits in side ways, but if that house is facing the wide side it is going to make it interesting if you go trying to put that garage in the back yard, if the house is sitting side ways on a corner lot.

The Chairman stated Mr. Merchant if the Ordinance says that the front must face the street then what do we need to do. The Land Use Ordinance needs to be changed and state otherwise. As it stands right now according to Mr. Eady, and I am not going to dispute Mr. Eady, the front door must face the street.

Mr. Eady stated no. The Ordinance states that the narrow side of the lot facing the street is the front of the lot. It does not have anything to do with the orientation of the house on the lot. We have a lot of homes that are on corner lots that may face the side, but the front of the lot is the narrow side facing the street. According to the Ordinance this is the rear of the lot and they are calling it the front of the house and it is not according to the Ordinance.

Mr. Taylor stated is this your primary residence?

Mr. Gustafson stated yes, sir. For what it worth, bringing up the Warren thing, Warren is my step-daughters great uncle. He is related and I did not feel it necessary to bring him down here, but he would have come down here. I understand he wrote the letter before and he was against the addition to the house, but he is not against the carport being out there. He is supportive of it. I know you do not have the opportunity to go and talk with Warren and ask him about and maybe you did stop by and visit with him when you were in the neighborhood. We have come a long way since I first moved there. These old photos do not do justice to the way the house looks now. The house has been totally remodeled and there are a lot of changes that are not captured in these photos. Just like the house has been renovated my relationship with Warren is good. We fit into the neighborhood and there is harmony there. I do not know if that has anything to do with what you all jobs is because I heard Frank Lamb talk about, when I first came in, drawing a straight hard line, and I did hear what you said and I guess maybe that is a lesson for me. Still I do feel like there are exceptions to what does come along. There are three exceptions on my street and my house is the fourth.

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Mr. Gustafson stated Warren does not have a problem with the carport, which is not going to be part of the structure of the building as it stated in the letter. It is going to sit back. It is required to sit back twenty-feet from the front of the house.

The Chairman stated anyone else have any questions?

Mr. Lamb stated what is behind all of that lattice work under the house?

Mr. Gustafson stated columns and support systems under it. That is why there cannot be a parking facility or something put behind it.

Mr. Taylor stated perhaps Mr. Speegle can help me with this. Is this lot size common? Or when the City allowed this to be built was there any thought given to the lot size? Define a reason to grant a variance.

Mr. Speegle stated who knows what anybody thought when they allowed this house to be built on a twenty-five foot wide lot. I have certainly never seen anything like it before in any city. The requirement for a variance is an unnecessary hardship. You can look at the topographic of the lot. Simply to add for convenience the courts have said that it is not an unnecessary hardship. If the land is unusable you can violate the setback lines. You are presented with a set of facts that are very unique and I do not know if you will ever be presented with another house like this. We all have seen the lots over there on Captain O'Neal and they are odd, but they are all wider than this. I do not think an Urban Planner went in there and said this is the way we want this to look. I just cannot imagine. You have got a judgment call here, yes the property is usable.

Mr. Lamb stated there is the question of are you going to have a carport with just a roof and an open area or are you going to have deluxe carport with a room above it and the next thing you know there is a big structure that you park your car under but with two bedrooms and a bath.

Mr. Gustafson stated there will not be an apartment or anything above it. I am not planning on putting side on it because you will have to have room for the doors to open up and with the width it is going to narrow and tight enough as it is. I am just talking about the 6 x 6 columns and a roof on the top. It is higher toward the water that it is here. The roof line, the nine-feet will be at the bottom of the porch. The air-conditioner is not there anymore. Everything has been moved up on the porch to keep it out of the water if we have another Katrina. The roof line for the carport will be at the bottom of the porch. It will have a short pitched roof on it.

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Mr. Gustafson stated the lot itself is like four hundred and twenty feet long. It is a long way up the driveway. Basically it will start right here and stop here. The minimum that I can put in and there will not be any sides on it.

The Chairman stated anyone else have any questions? If not, the Chair will entertain a motion and once again it must be made in the affirmative.

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

The Chairman stated the appeal was denied due to the lack of a motion. You can appeal to the Baldwin County Circuit Court within fifteen days.

Adjournment:

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

The Motion carried unanimously.

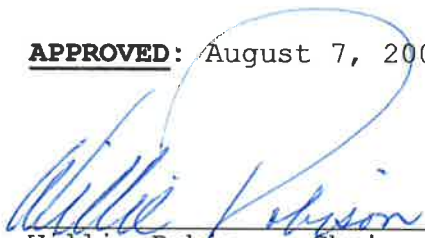
There being no further business the meeting was adjourned at 7:40 p.m.

Respectfully submitted by:



Pat Houston, Recording Secretary

APPROVED: August 7, 2008



Willie Robison, Chairman

/ph