

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 7, 2009 - 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 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:

Adrienne D. Jones, Director of Community Development
Pat Houston, Recording Secretary
Tony Hoffman, BZA Attorney

The Chairman stated the next item on the agenda is the approval of the February 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 February 5, 2009 meeting were considered for approval.

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

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

New Business:

Appeal #2009-02 - AHEPA 310-XII, Inc.

The Chairman stated the first item on the agenda is Appeal #2009-02, AHEPA, a parking variance to allow the proposed senior apartment complex to be built to provide thirty-nine (39) parking spaces in lieu of the required fifty-two (52) which is located on south Pollard Road southwest of the intersection of County Road 64.

CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 7, 2009 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL

The Chairman stated I am not going to put the cart before the horse tonight, Ms. Jones will you take us through this appeal.

Ms. Jones displayed a Power Point Presentation showing the proposed site and the property adjacent to the north, south and east as well as Pollard Road and AHEPA sites already built in Mobile. She stated before I began I would like to remind everyone to speak into their microphone. We have AHEPA, which is the American Hellenic Educational Progressive Association that is proposing an apartment complex on Pollard Road. Right now the property is zoned R-4, Multi-Family. Per the Land Use Ordinance what is required is one point five (1.5) parking spaces per unit and the applicant is requesting one parking space per unit, which gives a requirement of fifty-eight point five (58.5), and they are requesting to be allowed to do only thirty-nine (39) parking spaces. They also had a site plan application for consideration before the Planning Commission on April 23rd where the Commission tabled their application pending the outcome of your actions on tonight before proceeding any further. Approval would allow them to move forward, but denial would mean either the reduction in the size of their building, the reduction in the number of units or adding the number of parking spaces that are required. On screen is a copy of the site plan that was considered for approval and I also brought the big paper version in case anyone needed to take a look at them. This is a view of the building elevation. It is going to be a three story facility, again thirty-nine units.

Mr. Swaney stated what is the approximate square footage of those units?

Ms. Jones stated thirty-eight thousand four hundred and ninety two total.

Mr. Swaney stated of each unit.

Ms. Jones stated unit. I am sorry, that was the total of the building. We will have to ask them because I do not have that. This is the first floor, second floor and third floor. I also have information that was provided by the applicant and I will just flip through it. It is just mainly for your information and they will be able to explain more of it when they come up. This is a survey of parking spaces for AHEPA-310 apartments. I think you also have this in your packets. This information is from the City of Hoover, the applicant provided this to show you that some city ordinances allow one space per unit. These are seven AHEPA sites they have compiled which all assume reduced parking. I am not sure if they were by variance or whether by Ordinance. This one is in Mobile on Hillcrest Road, this one is in Saraland, another in Mobile, Bayou Batre, Semmes and I am not sure where this one is located, they will have to explain that one, I could not figure it out.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 7, 2009 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Ms. Jones stated here is another on Demetropolis Road and Olympic Lane, which is another question mark as to the location or what city it is. This is what I am calling the findings table and I will not get into it right now, I will allow the applicants to make their presentation and afterwards we can start with the table if that is okay. That is all.

The Chairman stated is there anyone here to speak on behalf of the land developer and if you would state your name for the record?

Mr. Rigas stated my name is Art Rigas. I am with BES Engineers out of Fairhope. I did most of the engineering work on this project. I have with me two of the Architects from Tag Architects out of Mobile. They are the main architect designers on the project. The project as you know has thirty-nine units. It is a housing unit for the elderly. Their experience, as you can see by the table that was flashed before you a few minutes ago, is that ten similar projects have got the one to one or less parking ratio, either by variance or by actual approval of the local code. The site is a difficult site in that it is quite severely sloped from Pollard Road back to the drain about two thirds of the way back. There is quite a difference in elevation, and we took that into consideration in design by the layout of the parking to have the parking somewhat serpentine or wind down and parallel the main drives and the building with the existing contours. We took some special consideration because of the erosion potential on this site by, of course, designing an oversized detention pond on the downstream side, and also requiring the contractor to use solid sod to cover all the disturbed areas instead of planting seed and waiting for it to grow and planting more seed and more seed. Usually you can pay for sod after the second seeding and most all of the time you have to second seed. We also called for the parking in driveway to have an asphalt base, which is a three-inch thick asphalt base that you will build the project on so that you do not have material trucks and subcontractors coming in and rutting up the driveway after an enduring big rain. You will basically be able to build the project on an asphalt surface where the vehicles will be. Then pretty much after the project is complete you put a wearing surface on top of that about an inch and a half asphalt wearing surface on top of the black base, which gives you a smooth finished look without the nicks, bumps and cuts that you get during construction. The request is two-fold, I guess, in the sense that we are asking for it for two different reasons. One is the severity on the site. There is only so much space available for parking with the building. The back one third is really not usable because it is separated by that drain. The other is the experience factor the Architects and AHEPA have on the number of spaces they typically need. A number of their tenants do not require automobiles, and you may have noticed in mostly every one of the pictures there were an awful lot of empty spaces.

CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 7, 2009 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL

Mr. Rigas stated we have got an alternate revision to add some places, if you are not willing to go along with the one to one. We can talk about that, but I want to answer any questions you might have before we got into that.

Mr. Swaney stated I have a question for you Mr. Rigas. You are showing a very sharp slope topographically in back of the unit. Is that a retention pond we see there?

Mr. Rigas stated the retention pond is right back in here. We put a double boxed culvert back here, and just off to one side of it is where the retention pond will be so that we can capture the run-off from the building and the parking lot totally.

Mr. Swaney stated does the retention pond pretty much follow the existing slope of the ground?

Mr. Rigas stated yes, sir. It runs north and south in this long dimension. Again the only place we could put a detention pond and still capture all of the building and parking lot run off was to put it on that side of the building.

Mr. Swaney stated the reason I asked the question was I am wondering can you get additional parking in the back.

Mr. Rigas stated the slopes pretty much prevent that. I do not know if you noticed, but you can see the contours right back there. This is a fire truck drawn in on a fire lane that the Fire Department asked for. You might get some overflow parking there, but you try not to block a fire lane. The slopes over here are quite severe and the slopes over here are quite severe so there is really no way to get back there to get much parking. We can tuck a few in here and there, but the site is heavily landscaped and of course, the more parking you put in the more run off you have and the less landscaping space you have. We would like to kind of keep the space open and still heavily landscape that area between the road and the building.

The Chairman stated Mr. Rigas I noticed from on your one and half to one survey that you had done that it has been proven that normally there is basically one vehicle per senior adult so only one parking space is needed.

Mr. Rigas stated Adrienne will you pop that table back up, please.

Mr. Mayhand stated when you say senior adult what age are you referring to? The minimum age.

Mr. Barr stated sixty two minimum. I am David Barr with The Architect Group.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 7, 2009 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

The Chairman stated could you speak into the microphone. This is being recorded and it is hard to pick it up sometimes. Thank you.

Mr. Barr stated minimum sixty two, but if you can see the bottom of the chart there, it says that ninety-seven percent of the tenants existing in the projects are over sixty-five. In fact, most of them are seventy and even eighty. The whole concept is that they will move there and be able to age in place. We want to keep them there as long as we can unless they have to go, and even of the ones that have cars there are very few that drive anymore. AHEPA provides transportation services. They are a non-profit group. They have a van that serves the project, which takes them to shopping and things like that and that is even less of a need for them to have a car.

Mr. Swaney stated going back to my original question. What is your average square footage of a unit?

Mr. Barr stated they are five hundred and forty square feet, they are one bedroom units and that is another thing, nobody can live with the tenants. They cannot have an adult child living with them, it is not allowed. There is only one tenant per apartment.

Mr. Swaney stated one tenant or one pair of tenants?

Mr. Barr stated there are almost no pairs because you know us guys we do not usually make it that long. I bet that they are ninety-five percent women in our apartments.

Mr. Swaney stated thank you.

Mr. Barr stated Adrienne can you pull back up, if it is okay, the Google Earths. I want to make sure that you realized that those are all projects with barely one space per unit, and you can see, especially with the one on the right that there is no parking dilemma at all. These are Google earth shots and they were probably taken at different times of the day, so I do not know when they were taken. I have been to the projects at different times of the morning, evening and even at holidays, and you would be amazed at how quiet it is, very little activity.

Mr. Swaney stated are there parking spaces dedicated to the employees?

Mr. Barr stated no sir, they have one manager per apartment and one maintenance person, and the maintenance person is not full-time, so there is not a staff.

Mr. Swaney stated okay.

The Chairman stated Mr. Lamb do you have a question?

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 7, 2009 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Lamb stated no, Ms. Jeri does.

Ms. Hargiss stated how many employees are basically on the property?
Is there someone there at all times?

Mr. Barr stated there is a manager there during the day.

Ms. Hargiss stated during the day.

Mr. Barr stated she leaves in the evening and then there is one
maintenance person.

Ms. Hargiss stated how many employees? Such as the varied maintenance
persons and housekeepers.

Mr. Barr stated no, madam that is it because these are self
sufficient. I mean you have to be self sufficient to be able to live
here.

Ms Hargiss stated I visited one. I had an employee live in one of the
properties over in Mobile and the people seemed very happy in there.
In fact, I very impressed with it.

Mr. Barr stated thank you. It is a great program. It really is.

Ms. Hargiss stated I am concerned regarding parking for that many
units as to what would be established. I noticed on all your
properties it looks like you have gone down from what the original
number was, and with that I can understand older people, but a sixty-
two year old on up still drive quite a bit.

Mr. Barr stated oh yeah, the younger ones will drive quite a bit, but
as they age in place they will not.

Ms. Hargiss stated I would still be concerned about enough parking
especially for holidays and all because the highway there is very busy
and dangerous. I certainly would not want to have to park on Pollard
Road at a holiday time.

Mr. Barr stated yes, madam I understand your concern. My experience is
that I have never been to a project where there was not one of the
major bays empty. You can see on here as you get away from the front
door it is almost empty. Everyone tends to want to get as close to the
front door as they can, but this is just not even close to being a
crowded situation. You know even if we had a perfectly flat site we
would be asking you to do this because we hate to build an empty
parking lot and that is what it will be. Right now we have got it
landscaped and I would rather not have the run-off, and all of the
other things that are related when you start paving things.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 7, 2009 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Ms. Hargiss stated thank you.

Mr. Lamb stated the question that I have is that you have three plus acres of property and apparently there is a big drop off at the back. In the design of the project you have to take in many, many factors and I understand that, and one of those factors is parking. I do not know, but did it enter into your thinking that well we cannot get the parking in so we will just get a variance? You are asking for a thirty-three percent reduction in our requirement and that is an awful lot of reduction and also we have to look at it from the standpoint of precedent setting. Anytime you grant a variance the next person says well you granted them one why not us.

Mr. Barr stated well again I would refer you back to the Hoover Zoning Ordinance that we copied up there. I guess from experience they do not require but one space per unit for parking in these elderly projects. I do not want you to think that we are asking to do something that you would be the guinea pig because we do it all the time. Mobile has granted us variances and some of the projects we have done here were in the County so we did not have to request a variance.

Mr. Swaney stated I noticed that in your list of other properties only one has one parking space per unit. Is that correct?

Mr. Barr stated one actually had less than one. We generally put in another four or five more, but the more we do that the more we realize they are not being used and we can certainly do that here.

Mr. Swaney stated did I understand you to say that you could throw in another five parking spaces or so?

Mr. Barr stated I think we can. Art might know better.

Mr. Rigas stated yes, we could work in another five parking spaces fairly easy. It might push it a little bit to start getting crowded.

Mr. Swaney stated okay.

Mr. Barr stated that is what we can certainly do if it would help you feel better about it. We will do whatever we need to do.

The Chairman stated thank you. Does anyone else have any more questions for Mr. Rigas or Mr. Barr?

Ms. Jones stated I do. The depiction that we have in the book here shows that it could possibly be nine spaces. Have you looked at that again and reduced the number? If so, is there a reason why you think that you would not be able to do at least nine?

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 7, 2009 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Barr stated that is how many I thought we could get in. Sometimes the Civil Engineers do not go along with what I think.

Ms. Jones stated okay.

Mr. Rigas stated we could squeeze nine in, but it cuts down on the landscaping. If you say do it then we will have to do, but we would rather not.

Mr. Swaney stated what assurance would there be that this property would always remain or that these apartments would always remain AHEPA?

Mr. Barr stated these are actually funded by a grant by HUD and part of that grant is that for forty years they cannot transfer the property and even after that HUD will have to keep it sanctioned as such.

Mr. Lamb stated Adrienne, where is the setback line? I noticed the setback goes straight through the parking. Is that okay?

Ms. Jones stated the parking can be within the setbacks.

The Chairman stated I want to go back to the beginning when you said this originally went to the Planning Commission and they ping ponged it back around the net to us. What was their exact reason for it? It was my understanding that it would go to the Planning Commission and they would either approve it based on the fact of saying you either add nine additional parking or you only reduce it down by five spaces so forth and so on is my understanding.

Ms. Jones stated what the Planning did was, well first let us back up a little bit. The apartment development is allowed by right in the R-4 zoning district. So the Planning Commission unless there are some extremely unusual circumstances does not have grounds to deny them. Basically, they are going to be approved one way or another, so in order for them to make their final decision and on the decision of the layout of the property because parking has such a big impact on this design. If they get this approved they are fine and they can go forth with the plans that we have, but if you deny them they are going to have to reduce the size of the building and that will change the site plan. The Planning Commission wants to make their decision when that is final and not based on a condition or contingency. So it was not that they were against the project it was just that they wanted to have a final approval on the parking before they granted approval.

Mr. Swaney stated in our recent seminar that your group presented it was stated that we could add conditions to our approval. So if this group wanted more parking spaces they could specify it, right?

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 7, 2009 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Ms. Jones stated yes.

Mr. Swaney stated I just wanted to make certain everybody knew that.

The Chairman stated if you added these additional parking spaces would you have to reduce the building or will the building still be the same? Will you have to reconfigure?

Mr. Rigas stated no, sir. The nine spaces or thereby somewhere in between will not effect the building. It will stay the same. I can understand the Planning Commission's position. They want to see a final site plan and the site plan cannot be finalized until we either get a variance or do not or some modification.

Mr. Barr stated we do not have the option to reduce the apartment count because HUD funded thirty-nine units and if we do not do thirty-nine units they will not finish the grant out.

Mr. Swaney stated okay.

Mr. Mayhand stated my concern is the forty years. I will not be here in forty years, but forty years is not a long time. If by chance this reverted back to HUD they would have an opportunity to make this just a regular apartment complex for low income housing or whatever which would change the age limit and the amount of people that would live there and quite a few other things.

Mr. Barr stated it actually will not revert back to HUD. It would become AHEPA without HUD. I do not totally understand how that works but I know we built some projects in Mobile in the early 80's when I was first, a little architect, and they were talking about they are getting ready to hit that forty year mark in about fifteen years and they were saying what they are planning to do with those is keep them just like they are. They are going to refinance them and what they will do with that is major improvement, but they will maintain the elderly. AHEPA is very committed to this project. AHEPA is a group of men within the Greek Church. It will always be something for the good of people or the elderly.

Mr. Mayhand stated okay.

The Chairman state the one that is out on Hillcrest you said was built in the early 80's.

Mr. Barr stated yes, sir early 80's.

The Chairman stated of course, nothing is forever. I mean you can put all kind of hoops to jump through on something, but still nothing is forever. Somewhere down the line somebody can change something.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 7, 2009 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Barr stated sure. I tell you though if you go out to that project you would be amazed that they do an extremely good job of maintenance and upkeep. I mean the project looks as good today as it did the day it opened. I go out there from time to time. I am just amazed at how well they take care of their properties.

Mr. Mayhand stated will they have security?

Mr. Barr stated they have security in the sense that there is an electronic entrance system, cameras and things like that. There is not a security guard.

Mr. Mayhand stated so there is not a person that monitors the property or anything like that.

Mr. Barr stated no, sir.

The Chairman stated any other questions? Thank you, Mr. Barr. Thank you, Mr. Rigas. The Chairman opened the floor for public participation stating is there anyone here in opposition to or for this project. If so, please step forward and state you name and address for the record.

Ms. Brazelton stated my name is Hilda Brazelton and my house is north of this project. You spoke of a run-off, I live north.

The Chairman stated if you would madam, please address the Board.

Ms. Brazelton stated okay. My house is just north of this property, as a matter of fact, it adjoins it. At one time it was all owned by one person, my father-in-law. You spoke of a run-off. How is that going to affect my property?

Mr. Rigas stated the drainage in that area is from north to south. So it drains away from the property to the north. None of the water from this site will drain unto your property.

Ms. Brazelton stated I have another question. In times of high volume visitations, say Christmas, Mother's Day when occupants are more likely to have visitors and your parking lot fills up where is that overflow going?

The Chairman stated your house.

Ms. Brazelton stated well that is what we are trying to prevent you know, their parking in front of my house.

Mr. Lamb stated point well taken.

Mr. Barr stated in my experience we have never had that happen.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 7, 2009 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Barr stated even on Mother's Day they have never had the problem. I would love to say that every sixty year old goes to visit their eighty-five year old mother, but it is not the problem that you think it might be. Believe me if there was a problem AHEPA would address it because they do not want to be the problem. They want to be the solution to housing the elderly.

The Chairman stated Ms. Brazelton, does that answer your question.

Mr. Rigas stated it is likely, if I might add that the people who live here will go to visit the younger relatives, as opposed to them coming to visit them here because of space.

Mr. Williams stated my name is Willie Williams. I am married to Sabrina Brazelton, part of the family who owns all of that. As I spoke with her and I am very familiar with this issue. If you all agree to do that I think the family, including her, wants a letter, a hard core letter because I had a similar situation in Fairhope. Like I told Mr. Rigas before goody, goody, I went through that and I had a hard core letter going over these issues. When the issue rose up I presented this letter and said I was going to court. The issue that brought about that the City came in there and fixed it. I think what the family wants, we do not want words, we want a hard core letter because I totally agree that thirty-eight spaces in that vicinity is totally wrong, that is a curb going around there. We already have a daycare center, Ms. Pat down the street that has that. If you are very familiar that, even in your own research that will become a public nuisance and even with their figures and they could be correct or whatever and that is good, I take folks at face value, but we want a letter from the owners that we do not want her family to come out there and see cars parked in front of their house or parked down the street. Because we are going to take pictures and go to court. We just want a firm written assurance that that is what it is going to be. Not no words, not nothing, but something in letter form. I think as you say that the Board is given that perimeter with conditions to give to the property owner and that is what Fairhope gave to me. I think the Mayor told me that was a good, smart move because people come in here and make findings and all kind of stuff and whatever this will take. All we are looking at is your concerns too which this is an awful small amount of spaces. I am very familiar, this is a fine group. I am done HUD Housing complaints. I went to one in Fairhope on Bishop Road. As a matter of fact the day I went there they did not have any parking. So we some hard fact conditions from the owners that we do not want the manager to come out here talking about I am sorry. I do not believe in sorry I believe in if you are going to keep it at thirty-nine parking spaces that is it. We do not want someone out there on that road parking. We do not want them pulling up in their driveway. If you have ever lived in that type of situation it is terrible.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 7, 2009 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Swaney stated your total objection, I am trying to understand, or concern goes to the number of parking spaces.

Mr. Williams stated yes because it is zoned R-4 multi-family and I think the only situation this Board is dealing tonight is backing off the City rule. As a client of mine stated today this Board did his business like that. I am not going to name the business, and the same thing happened to his business, that they gave a variance to his next door occupant and he has been a constant bickering agreement with his next door neighbor because they are taking all his parking spaces at his business. His words were Willie explain it to them and I am going to explain it to them. When I first looked at the plans the other day after getting a certified letter, I looked at it and I consulted with a number of people and as you say that is something that you came up with as your rule. I do not care about Hoover, that is your rule and either you are going to go by your rule. If you are not because of some extenuating circumstances you want to reduce it I think the family, the property owner need to have a letter from the owners that this will not be a problem. Because of forty cars, if one, two or three park out there on the public right-of-way, or park in front of their house or park in their driveway or park in their yard they will have something that they were informed through the administrative process that this what they have, and no more. No excuses and no I am going to correct this. It is that they have a right to pursue financial gain. Now let us put it on the table because that is the only way to get anybody attention. Financial. So if you approve it at nine spaces or whatever below fifty eight they are to have a written letter, from the owner, stating that there will be no problems, that none of the high traffic times will not interfere with the neighbors, with the adjacent property owners nor with the traffic. I think that is fair.

The Chairman stated Mr. Williams I think the City of Daphne Police Department would have to handle that issue. Whatever it is that have to do. No parking signs and things of that nature on the right-of way, but to me personally I think that it would come under the City of Daphne Police Department.

Mr. Williams stated but that is a long ways around. Like I said if they have a letter they will have a lawsuit and get a court order. They will have to pay some money for the inconvenience of these folks. They do have that, but I am talking about that they will not have to deal with that because of the owner. If that becomes a problem they can get a lawyer. I know quite a bit of them that would definitely make a person pay for violating this and this is what we are looking at. These people, my in-laws, moved over here from Mobile and they have got a nice house there and they had to do a whole lot. It is zoned multi-family and they can move in, but we are hoping to deal with that.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 7, 2009 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Williams stated but we are dealing with the backing off of the City rules and if they are going to back off the City rules then they need to have some written assurances that this will not infringe upon their property rights and this is a property right issue, and this is why we are all here, and I think they need to have that. The City of Fairhope gave one for my case and it turned out what I spoke about came true and the City of Fairhope pounded up and came in there and fixed the problem. Because they knew they were over the loggerhead because they approved the site plan. So this is what I am asking them for in the same conditions in this situation. It is up to them whether they want to go with the original fifty-eight that is the rule. We are talking about the rules or backing off the rules. If you are going to back off the rule let them get some written assurances because when you go to court before Judge Partin he is going to say did not you have this explained to you that you thirty-eight, thirty-nine or forty-two parking spaces. That is it. Pay these folks their lawyer fees, their time and money and do not do this anymore. This is what we are looking at.

The Chairman stated Mr. Hoffman, with what Mr. Swaney said, you must have it in there that you have the caveat in there that you must have the additional nine spaces instead of wanting thirty-nine you would have to have forty-seven, but we do not have the authority to tell someone that they cannot park on the street, do we?

Mr. Hoffman stated I do not believe that this Board would have the authority to add a caveat to what third parties would. They would have the ability to condition the granting of the variance upon the terms that they deem fit.

The Chairman stated okay.

Mr. Barr stated we would be happy to if it would help. We could ask AHEPA or tell AHEPA that they need to write a letter to the City, you know, asking the City to enforce the no street parking. We also would be happy to put a sign up at the entrance to our property saying do not park on the street, if something like that would be of help. Sure.

Mr. Williams stated my situation again is like I said I have gone through this before. The City did it. It could be a law enforcement issue, but that is too long. I am just telling you the only thing that works is that the property owners are here and if that is not the case we are asking this Board to enforce their City rule. If there is going to be any kind of compromise, which I think that is a compromise to have some assurances for my family and for the property owners then we are asking that this Board enforce their rules. Simply put as that. We do not want the police, we do not want anyone, we would rather take it to court ourselves and enforce it. The police would come over there and all that is going to be is just paper shuffling.

CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 7, 2009 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL

Mr. Williams stated if you were aware like the client I have who has been dealing with this type of stuff and the police for years every since this Board approved his neighbor. So we just want something that we can have as action, to me this is just a condition, and that is what they did. They required the owner of the property to provide a letter to the property owners stating that because of their reduction in the City property rules that we ask that they be allowed thirty-eight or whatever number of parking spaces you pick out, but that is it.

The Chairman stated Mr. Williams do you believe that if they were to have fifty-two parking spaces there would not be anyone parking on the street? Or would it still be a concern?

Mr. Williams stated I think the rules say fifty-eight. Yeah, I think it would end up not being a problem.

The Chairman stated if it got overcrowded and they parked on the street. All we are hearing tonight is a variance from the fifty-eight to thirty-nine or adding an additional nine making it forty-seven parking spaces there. Once again I would say that that would be a legal matter, and that is just strictly me speaking, that it would be a legal matter. They have already said that they would be willing to write a letter stating they would put signs out there, no parking on the streets, and they would write a letter to the City. I believe that is what Mr. Barr said that they would not have a problem writing a letter to the City. No matter what kind of laws you have some people feel like they are for everybody else except them. For some reason they feel like they apply to everybody else but them and you can have all kind of letters you want, but there may be someone that violates that. I think what Mr. Barr has said is that they are willing to write the letter. You have asked to have a letter written and he has said they are willing to write a letter and they are willing to put signs up out there that says no parking between the signs or whatever. I think that is what he has said.

Mr. Williams stated yeah, but as I stated I have went through this before with the City of Fairhope.

The Chairman stated yes, sir. You went through it in Fairhope.

Mr. Williams stated Fairhope said that they cannot get involved once they make their ruling and this is between adjacent property owners, this is a property right issue. All we are asking for is if this happens is that we can enforce our property rights. If the City is not going to go by their own rules and regulations then in the event of a compromise, and we have to exercise our property rights, that a letter be written to us so we can keep it in our file cabinet for any violations so we can just hand it over to our legal representation.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 7, 2009 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Williams stated I have talked with them and they said this is the most acceptable way because the City is not involved. The only thing the City is involved with is enforcing the parking violation out on the street, but this is a property right matter dealing with neighbors and adjacent property owners that need it to be between them.

The Chairman stated yes, sir. Well my understanding is that they are asking for a variance tonight and not asking for off street or on street parking. They have already said would do exactly what you have asked to have done. I do not know whether they can do any more than exactly what you have asked to have done. They have said yes we will do that.

Mr. Williams stated I mean it is not going to the property owners, but to the City which is not involved in it. They do not own property in that area. They only deal with the right-of-way and like I said this is a property right issue. Ms. Brazelton lives next door, my wife and them have got an interest on the back side and like I say that needs to be addressed to us so our lawyers can look over it and it takes care of everything we need to have taken care of so we do not have any problems down the road.

The Chairman stated yes, sir, but that is not what we are here for tonight. We are here for the variance. Would they not have to address that to the Planning Commission when it goes before them?

Ms. Jones stated as our attorney has advised us a third party issue is not something that the Planning Commission or the Board of Zoning Adjustment has anything to do with.

The Chairman stated we have no jurisdiction over that. We do not. Property right issues are totally different.

Mr. Williams stated I mean.

The Chairman stated Mr. Williams to keep from bouncing this back and forth and going over it we have already gone over it about five times exactly. They have already said that they are willing to write the letter, they are willing to write it to the City. I do not know what more they can do should it be granted. I appreciate your time and we discussed this about five times and I appreciate your effort, but we do not have any jurisdiction over that. Is there anyone else that would like to address the Board?

Mr. Lamb stated I think what he is saying is if in the event the BZA granted a variance to the Ordinance that because there was a reduction in requirement for the parking spaces and in the event that because of an event happening at this certain facility if all the parking spaces were taken that the overflow then spilled into the street.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 7, 2009 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Lamb stated then parking became an issue with an adjacent property owner that these owners want certain assurances from the developer that they would seek some just compensation for their inconvenience. Is that basically what you are saying?

Mr. Williams stated not just compensation. Like I said I have done this for a living. I have found out that letters, written agreements work better than words. Just plain and simple. I am in about three or four disagreements with HUD and different ones, and as I have gone to different seminars and things, as you have gone to, letters do better because when you can go back to the manager or whatever and tell them hey you agreed to this for them to get their release from additional parking we want to hold them to that. That will be up to them to say well we give you a free pass this time, but if there is another time then we have a right under Alabama law to sue them in case this gets to be a nuisance to us. Then we would use the Police record of the number of calls to say that this has become a nuisance and this is stipulated and that is what I got. My situation was about drainage and the City asked the developer next door to give me a letter about the drainage. So when it started raining and my property flooded I went back to the City with this letter and the City said oops we made a mistake and they went and got the money from somewhere and put in drainage to correct the problem because we had a letter stating from the folks. We went through the same mess about saying all of these goody, goody things but we had a letter in our hands stating to the fact to what they were doing. I do not think it would be no sweat off anybody back, if they are going to keep their word, we want it in writing.

Mr. Lamb stated I just want to make sure that you understand that if a car broke down and there are plenty of parking spaces available and somebody's car broke down and they parked in front of her house and a friend came and parked behind them and they called somebody else and she looks out and these cars are parked out there. Well those people are not even visiting this facility and there are plenty of parking spaces available I would not want that to enter into the difficulty she might have because they did not cause that because they are not visiting this facility. It is somebody else. I would see that this would come into play when every parking space is taken how ever many that is and then people begin to park down the street and that is the only time this would come into play.

Mr. Williams stated yes, I agree totally. I think they know the traffic pattern over there and this will not be about someone breaking down. What we are talking about is their making a request to reduce from your rules and we are saying okay if you grant them thirty-nine or forty-two and we have a Christmas and sixty cars show up over there well yes we have a right to call the police department, but we also have a right to keep down this back and forth.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 7, 2009 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Williams stated you give us written assurance that this will not happen again. It will probably get a pass the first time because nobody is trying to be mean, but we want assurance that the second time we will take our legal remedy as in the case of any property owner to stop this because they asked to be reduced. If you passed fifty-eight parking spaces I can sit down right now because they are following the rules. Am I correct? But they are asking you to grant a variance and the property owners and the neighbors are saying no unless we have some written assurances that there are not going to be any problems. We do not want anything verbal. If I come back in two years I will not be able to find a recording of this. I want a letter addressed to the property owner so that they have got something in their file to come back with so in case the manager has gotten amnesia, hey, we do not want this to happen again then you know how this happen and they will get out there and make sure that once the thirty-nine are full then you need to go elsewhere and park. It will not be a problem.

The Chairman stated yes, sir Mr. Williams that is between you and the developer. We have no control over that. That is between you and the developer. I believe Mr. Barr has said that they would ask them to do that.

Mr. Swaney stated I believe has stated that AHEPA, he would ask AHEPA to do that.

The Chairman stated that is right, and AHEPA is the owner.

Mr. Swaney stated after the project is over the developer is out of it. Is he not?

Mr. Rigas stated that is correct.

The Chairman stated ask AHEPA to do that. That is all we can do.

Mr. Williams stated I totally understand Mr. Robison. They were talking to the City. I do not work for the City. My family is there and we want the letter written to us so we have it for our files and I think the City is going to say that they are not involved. Only thing they are involved with is up on the public right-of-way.

The Chairman stated yes, sir, but I believe Mr. Swaney has said that Mr. Barr has said that he would ask AHEPA to do that and AHEPA will be the owner. They will be the same as your next door neighbor being the owner of a house writing you a letter stating they would not do that. AHEPA is the same thing, they are the owner of the apartments. Thank you. We appreciate it.

Mr. Mayhand stated I would like to see a picture of this overhead.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 7, 2009 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Mayhand stated do we have a picture of this? I believe there is on of the curvature of the street.

Mr. Lamb stated that is a ninety degree curve.

Ms. Hargiss stated that is right.

Mr. Mayhand stated that is not it. It is close, but that is not the one. The one at the top where the house is.

Ms. Jones stated I did not insert that one in here.

Mr. Mayhand stated you in the audience cannot see this, but if you can take a look at how narrow the street is already I have a concern that if we reduce the number of parking spaces, and I am not saying that they are or are not going to have an overflow, and I am just going on what I see, but if we reduce the number of parking spaces, and we have this small street, they are not going to park on the street. They are going to park in the yard of those people.

Mr. Lamb stated there is not much room in there.

Mr. Mayhand stated there is not much room at all, so if we reduce the number of spaces required we are inviting some potential issues. We are not just talking next week or next year, but forty years down the road as he so stated earlier. I would be a little hesitant in reducing it just because of that.

Mr. Lamb stated I would not want to live there.

Mr. Mayhand stated now if this street was wider and you had a parking area on the street I could see it, but right now I just have a problem with reducing it and knowing these people feel the way they do about an overflow.

The Chairman stated thank you. Anyone else?

Ms. Hargiss stated I am just concerned with what we will end up with as to how many spaces there will be for cars. You know that is a small property in a way. I do not know if they would reduce the amount of apartments or what.

A Motion was made by Mr. Swaney to approve the appeal as requested with the following caveats. Fifty parking spaces are provided and that the requested letter to the adjacent property owner be written by AHEPA indicating that there will be no problems parking and that there will also be extensive traffic signs installed limiting parking to the lot inside their property.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 7, 2009 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Hoffman stated the City would be in charge of placing the street signs on the street. I do not know if we would be able to impose a condition on the City to post signs on the street.

Mr. Swaney stated I am sorry I did not hear you.

Mr. Hoffman stated this Board cannot impose conditions on the City as to them having to place certain signs in certain areas that would be something the City would have to determine on a safety basis.

Mr. Swaney stated I understand. So we can add the caveat that the letter is written by AHEPA and the fifty parking spaces be provided? Would you concur?

Mr. Hoffman stated well I do believe we can impose a caveat on the number of spaces.

Mr. Swaney stated well I believe actually we can according to the expert we just had in our recent seminar last week. He said it was backed up by legal opinion as I recall.

Mr. Hoffman stated no I said we can, but I do not believe that we can impose a property owner to write a separate letter that would create an issue of legality between the property owners outside of this forum.

Mr. Swaney stated okay.

Mr. Hoffman stated if that makes sense. In other word you would be requiring somebody to create something outside of this forum that would create a legal issue as between those parties.

Mr. Swaney stated I understand. So in your opinion we can add only the caveat on the number of parking spaces?

Mr. Hoffman stated the issue is the number of parking spaces, yes, in my opinion.

Mr. Swaney stated I will amend my motion.

An **Amended Motion** was made by **Mr. Swaney** and **Seconded** by **Ms. Hargiss** to **approve the appeal with the following caveat. A total number of fifty parking spaces are to be provided for this complex at a ratio of one point one seven parking spaces per unit with no dedicated parking for any employees in lieu of the fifty-eight point five at a ratio of one point five parking spaces per unit as required by the Ordinance.**

The Chairman stated can you read that back to us?

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 7, 2009 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Ms. Jones stated just for clarification. It sounds like you want to approve the variance for one point one seven spaces per unit in lieu of one point five per unit because fifty parking spaces would give you a ratio of one point one seven per unit.

Mr. Swaney stated if that is correct I will say yes.

Ms. Jones stated bottom line.

Mr. Swaney stated yes.

The Chairman stated the motion is that there will be fifty parking spaces instead of thirty-nine parking space. One point one seven per unit in lieu of one point five.

The Chairman stated Ms. Jones so that we have it exact would you read that back to us.

Ms. Jones stated I did not know I was going to have to read it back. Write this down.

Ms. Houston stated I have it on tape.

Ms. Jones stated you are proposing to approve fifty parking spaces in lieu of the required fifty-eight point five. In essence approving a ratio of one point one seven parking spaces per unit in lieu of the required one point five parking spaces per unit.

The Chairman stated we have a motion do I have a second.

Upon roll call vote, **the Motion is denied.**

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

The Chairman stated the appeal is denied because when you have five members it takes a super majority of four out of the five to approve.

Ms. Jones stated remember I am new at this so do we still need to make a motion on the original proposal.

Mr. Hoffman stated yes there still needs to be a motion as to the original appeal itself.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 7, 2009 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

The Chairman stated normally when there is a motion to amend you have to vote on the amended motion first which we just did. Now the original motion has to be voted upon.

Mr. Hoffman stated that is correct.

The Chairman stated so we just voted on the amended motion now we need to vote on the original motion.

Mr. Swaney stated that motions have to be made in a positive manner.

A **Motion** was made by **Mr. Swaney** and **Seconded** by **Mr. Mayhand** to **approve the appeal as requested.**

Upon roll call vote, **the Motion is denied.**

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

The Chairman stated the appeal fails and for a little clarification the reason the motion has to be presented in a positive manner is you always present a motion in the positive rather than the negative. I know it sounds funny where you make a motion to do something and then it is denied, but that is the way it must be done. I believe you have fifteen days to notify the Planning Department if you wish to appeal to the Circuit Court in writing. Notify the Planning Department within fifteen days in writing if you plan to appeal this decision. Thank you. We appreciate it.

Old Business

Election of Officers

The Chairman stated we have some old business to take care real quick. The election of officers. Do we have any nominations?

Mr. Lamb stated do we have a Vice Chairman?

The Chairman stated you are the Vice Chairman.

Mr. Lamb stated I just wanted to make sure you knew that.

The Chairman stated I will hear the nomination for the candidacy for Chairman.

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 7, 2009 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Mr. Lamb stated would you consider being reappointed Mr. Chairman.

The Chairman stated yes, if you would consider reappointing me.

Mr. Lamb stated if you agree would you agree to continue as Secretary?

Ms. Hargiss stated yes.

Mr. Lamb stated Mr. Mayhand would you agree to be the Vice Chairman?

Mr. Mayhand stated I agree.

A Motion was made by Mr. Lamb and **Seconded** by Mr. Swaney **that Mr. Robison remain as Chairman, Mr. Mayhand becomes Vice Chairman and Ms. Hargiss remain Secretary.**

The Motion carried unanimously.

There being no other business the meeting was adjourned.

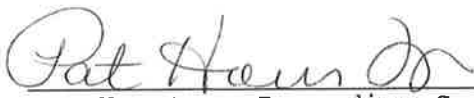
Adjournment:

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

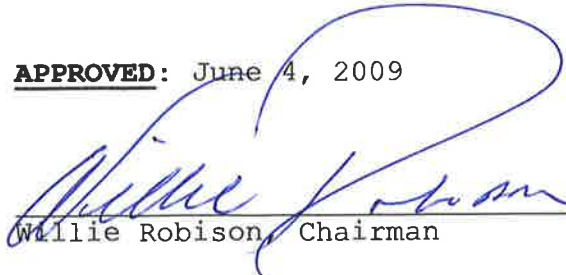
The Motion carried unanimously.

There being no further business the meeting was adjourned at 7:10 p.m.

Respectfully submitted by:


Pat Houston, Recording Secretary

APPROVED: June 4, 2009


Willie Robison, Chairman

/ph