

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF FEBRUARY 5, 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 a roll call.

Call of Roll:

Members Present:

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

Member Absent:

Barry Taylor

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 August 7th 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 August 7, 2008 meeting were considered for approval.

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

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

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

New Business:

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Appeal #2009-01 - Andrew Gearhart

The Chairman stated the first item on the agenda is Appeal #2009-01, Andrew Gearhart, a variance to allow the existing attached carport located at 1618 Sixth Street, a residence, to remain and continue as an encroachment to the side setback line by three point eighty eight-feet on the northeast corner and three point eighty-feet on the northwest corner. Is there anyone here representing this appeal? If so, would you please step up to the microphone and state your name and address.

Ms. Gearhart stated my name is Lori Gearhart. I live in Monroeville, Alabama. I am the wife of the owner and I have his Power of Attorney. My mother-in-law lived in this house for years and she passed away. Since we do not live here in town we are trying to sell the house. When they surveyed it they realized this problem with the line and so we are asking for this to be corrected in order to be able to sell the home.

The Chairman stated have you ever heard the old expression putting the cart before the horse? Well, that is kind of what I have done tonight. It has been a long time since we have had a meeting. If you do not mind we need Ms. Jones to walk us through the aspects of this variance first and then we may need you again.

Ms. Jones stated actually I need to make the applicant aware of my findings because we have discovered information that you may not have knowledge of, which are, there are several other encroachments on the property. On the survey I show the area highlighted in yellow to the north is where the carport is extended over the property line. Also if you look closer at the setback lines you will see that the front porch is over the setback line by one point seventy one feet, and the storage shed is over the side yard setback line of ten-feet. This is a corner lot and the side setbacks are twenty-feet.

Ms. Gearhart stated I have a question to ask. Are you saying that when the company built the house those restrictions were in place? Fifty years ago.

Ms. Jones stated I am not sure, but the current setback requirements are for R-2, thirty-five on the front and rear, twenty-feet on the corner side of the lot and ten-feet on the other. The structure is grandfathered in as it currently exists. However, if for any reason this structure is destroyed by fifty percent it cannot be built back as is. It would have to adhere to the R-2 setback requirements, and it loses grandfather status.

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Mr. Swaney stated I noticed the deed was dated 2003. Was the property survey at that time?

Ms. Gearhart stated no, we did not have a survey. That was what I understood.

Mr. Rudicell stated my name is Pat Rudicell, and my house is next door to this house. The same person that built her house built my house. So if you lived there longer than thirty years you knew the couple. They were a pretty nice couple. The thing is back then it did not matter and that is why I believe your mother-in-law did not need the variance. My concern when you brought this up is that my letter does not state this situation. Should we have gotten an additional letter, so we could have been prepared?

Ms. Jones stated no, I can only advertise and send out what is requested, according to the information given to me in the application.

Ms. Gearhart stated was this new information obtained by you measuring by the new updated rules. I mean because we did not see that on our survey.

Ms. Jones stated when the City of Daphne adopted the Land Use Ordinance all property within the city limits fell under these regulations. The minimum setback requirement for an R-2 zone is as such.

The Chairman stated how would this property ever be sold as is if they are not allowed the variance?

Ms. Jones stated I am not in real estate and I have no idea how they would do it, but what I do know is that it is grandfathered as it is and once you change anything on this property it loses grandfather status, and also if it is ever destroyed more than fifty percent it loses grandfather status.

Ms. Gearhart stated I can understand that, but what I am more concerned about is the fact that this home was built before all of these restrictions were put in place, that is my understanding. Is that correct?

Ms. Jones stated correct, it is grandfathered as is.

Ms. Gearhart stated okay. Then these restrictions are put in place by the City and the home is right in the middle of these restrictions. I mean what is the general protocol?

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Mr. Pat Rudicell spoke in favor of the variance as an adjacent property owner. He stated he was very interested because in a manner of speaking his property will probably need the same type variance if he ever decided to sell.

The Chairman explained to Ms. Gearhart that the Board could not give away City property and that she needed to contact the City about purchasing a small amount of property from them to become compliant. He told Ms. Gearhart that if they voted on her appeal tonight and it was denied she could not come before the Board again for one year, but if she withdrew it and purchased the land needed then she would be able to come back for a variance, if needed, when the land had been purchased from the City.

Ms. Gearhart stated to the Board that she wished to withdraw her appeal.

The Chairman instructed Ms. Gearhart to go speak with the Council and Mayor concerning the purchase of the property.

Mr. Lamb asked the attorney if he had researched the issue of penalizing builders for building over the setback line on residential structure.

Mr. Hoffman stated that he indeed had found that such penalty is already included in our Land Use Ordinance.

Mr. Swaney asked Ms. Jones if she had any further information on the drug treatment center.

Ms. Jones advised Mr. Swaney that she did not and that the matter was out of her hands.

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 6:49 p.m.

CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF APRIL 6, 2006 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL

Respectfully submitted by:



Pat Houston, Recording Secretary

APPROVED: May 7, 2009



Willie Robison, Chairman

/ph