

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
SPECIAL CALLED MEETING OF APRIL 1, 2010 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

The Chairman stated the number of members present constituted a quorum and the special called meeting of the Board of Zoning Adjustment was called to order at 6:03 p.m. Let us have roll call.

Call of Roll:

Members Present:

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

Staff Present:

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

The Chairman stated next item on the agenda is the approval of the January 14th, 2010 Special Call meeting minutes. If the four members that were present have read those minutes the Chair will entertain a motion to approve the minutes as written.

Approval of Minutes:

The minutes of the January 14, 2010 Special Call meeting were considered for approval.

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

The Motion carried unanimously.

The Acting Chairman stated next item on the agenda is the approval of the March 4th, 2010 Special Call meeting minutes. Has everyone read the minutes? If so, the Acting Chair will entertain a motion to approve the minutes as written.

The minutes of the March 4, 2010 regular meeting were considered for approval.

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

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

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

The Chairman stated at this time the Chair will entertain a motion to suspend the rules to hear Appeal #2010-04 before Appeal #2010-03 for the purpose of there is no need for the gentlemen to have to sit here and listen to the appeal for Lake Forest because it could take a while.

A **Motion** was made by **Mr. Moss** and **Seconded** by **Mr. Swaney** to **suspend the rules to adjust the agenda.**

The Motion carried unanimously.

The Chairman stated Mr. Vegas you will move ahead of the Lake Forest appeal.

New Business:

Appeal #2010-02 Mitchell Company/Erik Perrin

The Chairman stated next is new business on the agenda, Appeal #2010-02, Mitchell Company - Erik Perrin, a variance request to allow a new house being built upon an existing slab to encroach the front setback line by one-foot at 29883 Gregor Street in the Historic Malbis Subdivision, which is an R-3, High Density Single Family Residential Zone. Ms. Jones, would you walk us through this?

Ms. Jones displayed a Power Point Presentation of 29883 Gregor Street in Historic Malbis. Ms. Jones stated good evening. I will not repeat what you have just given us. Essentially what Mr. Perrin is asking for is to have his front setback to be nine-feet in lieu of ten-feet. Here is an aerial view of the property. It is an older aerial because many of the lots have already been developed on the other side of the property and this aerial shows it in its undeveloped state. As you see the property does have some development on it and this is the foundation for the building. The building permit was issued in April 2007. This shows basically the front lawn area. My writing is not very clear on the slide here, but my question is, is it reasonable to require the encroachment to be removed? With the size of this foundation I would not think so. Because this was a foundation that was misplaced due to a contractor error it is my recommendation that the Board grant a favorable approval for a nine-foot setback in lieu of ten-feet.

The Chairman stated any questions?

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Mr. Swaney stated question. I noticed that in the write up they talk about an encroachment in addition to one-foot because of a brick facing. Is that correct? Is anybody here that can address that?

The Chairman stated sir, if you would please step up, state your name and address for the record and speak directly into the microphone.

Mr. Perrin stated I am Erik Perrin and I am here to answer any question you have.

Mr. Swaney stated what will the actual encroachment be considering that the brick work or whatever is part of the house?

Mr. Perrin stated the actual encroachment and I paid for the survey to be done will be within an inch of that if the nine-foot setback is granted because the foundation as it exists now, by the time you put the brick veneer around it, and the brick is approximately seven inches it will be within an inch on the right hand corner. On the left-hand corner it will be within three inches because it is right at the setback now. So it would be within three inches of the nine-foot setback request.

Mr. Swaney stated okay. Thank you very much.

The Chairman stated any other questions for Mr. Perrin?

Mr. Moss stated Ms. Jones is not this very similar to one we had recently due to the topographical condition of this area?

Ms. Jones stated the next one on the agenda is going to be similar to the Agnostinelli property that we talked about last month. This is the first time, since I have been working with you, that we have had an existing slab misplaced, but I am pretty sure that you guys have granted some approvals on contractor errors before.

Mr. Swaney stated yes.

The Chairman stated okay. Anyone else have any questions? Is there anyone that would like to address the Board in opposition to this appeal? Thank you, Mr. Perrin. If not, the Chair will entertain a motion and it must be in the affirmative.

A Motion was made by Mr. Swaney and Seconded by Mr. Lamb to approve Appeal #2010-02, The Mitchell Company/Erik Perrin, for a variance to allow a home to be built upon an existing slab at 29883 Gregor Street to encroach the front setback line by one-foot.

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

The Chairman stated the appeal is granted. You may pick up your paperwork after 9:00 a.m. in the morning in the Planning Department.

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New Business:

Appeal #2010-04 Brad Vegas

The Chairman stated next on the agenda is Appeal #2010-04, Brad Vegas, a variance request to allow a new house being built to encroach the front setback line by ten-foot. The property is Lot 65 & 66, located in the Timbercreek Subdivision, Phase 7, which is an R-3, High Density Single Family Residential Zone. Is there someone here to speak in favor of this? Okay, Ms. Jones, will take us through this while you are walking up here.

Ms. Jones displayed a Power Point Presentation of Lot 65 & 66 in Phase 7, of the Timbercreek Subdivision. They are requesting to establish their front setback to be forty-feet in lieu of fifty-feet. It is very similar to the request that was heard last month, which was approved. It is an undeveloped parcel south on Pine Run. This is a view of the property.

Mr. Vegas stated the property is actually to the right of that.

Ms. Jones stated that way.

Mr. Vegas stated that is correct. That is the beginning of the lot. The beginning of Lot 66.

Ms. Jones stated okay. You have some pictures in your book that may not be on the slide show and you also have the floor plan for the proposed building as well. This is being presented to you due to topographic. In the Agnostinelli appeal they found that after they started clearing the property that there were wetlands and springs as well. So I am not sure if you have gotten that far and I am not saying that is necessarily the case, but it is on the same side of the street in the same territory so it is likely that there will be other issues with the property that are natural and not man made.

Mr. Vegas stated there will have to be an environmental study done and that particular property I picked very carefully and there are no underwater springs on it.

The Chairman stated Ms. Jones, to kind of bring us up to speed this is well within the thirty-foot setback in the Daphne Land Use Ordinance. They are going from fifty-feet to forty-feet. So it is well within the thirty-feet.

Ms. Jones stated yes, sir.

The Chairman stated it will not be encroaching the thirty-feet.

Ms. Jones stated no, sir.

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Mr. Swaney stated are the adjacent properties setbacks forty-feet also?

Ms. Jones stated if they are not at this time they probably will be coming to ask for similar requests. We have another one coming next month.

Mr. Vegas stated currently the POA and the ARB Board in 2007 approved that setback particularly for these homes on this west side of Pine Run because the slope, and there is a drainage easement down there. So they did approve that in 2007. So there are quite a few homes, I will say three or four homes that are built on that setback.

Mr. Swaney stated okay.

Mr. Lamb stated does this property drop off as much as that one does?

Mr. Vegas stated no, sir.

Mr. Lamb stated that is a dramatic drop.

Mr. Vegas stated yes, sir. I was very careful on what I picked there and I also picked two properties and I had them platted under one property so the house could be built more like this verses back. At the time that was submitted that plan had not been approved by the zoning. So we had to submit both of those pieces of property for that ten-foot setback to move it from a front yard fifty-foot setback to a forty-foot setback.

Mr. Lamb stated I went out there and walked it. I thought that was it because it was all cleared.

Mr. Vegas stated I actually tried to buy that property too that was cleared and it had underwater springs on it. I really could not do anything with it. It kind of slipped away from me, and I was stunned when drove over there and that property was cleared.

Mr. Lamb stated it looks like that one is an unbuildable lot.

Mr. Vegas stated it is going to be very hard. Environmental ADEM went in there and they flagged the wetlands on that piece of property. I do not know what they are going to do on that piece of property to be honest with you.

The Chairman stated Pat I believe I read somewhere that there will be others as Mr. Swaney has said and we have an appeal next month on this.

Ms. Houston stated that particular lot is coming next month.

The Chairman stated any other questions? Just for the record Mr. Vegas would you state your name?

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Mr. Vegas stated my name is Brad Vegas and I own Lot 65 & 66 on Pine Run.

The Chairman stated thank you very much. I appreciate that.

Ms. Jones stated just as a final note the Planning Commission did approve that re-plat. So the name for the lot is 65A, Timbercreek Subdivision, Phase 7.

The Chairman stated is there anyone here in opposition to this appeal? If not, the Chair will entertain a motion.

A Motion was made by Mr. Lamb and Seconded by Mr. Swaney to approve Appeal #2010-04, Brad Vegas, for a variance to allow the home to be built at Lot 65 & 66 on Pine Run in Timbercreek, Phase 7, to encroach the front setback line by ten-feet.

The Motion carried unanimously.

The Chairman stated the appeal is granted and same as before you can pick up your paperwork in Planning after 9:00 a.m.

New Business:

Appeal #2010-03 Lake Forest POA

The Chairman stated the next item on the agenda is Appeal #2010-03, Lake Forest Property Owners Association. An Administrative Appeal request to allow a Certificate of Occupancy to be issued for a maintenance building on the Lake Forest Golf Course in lieu of denial to issue by the Building Official. I am going to say this up front. I will be recusing myself and Mr. Moss will be recusing himself from this hearing because I was on the Board when the maintenance facility burned and he is presently on the Board and we both feel that it would not be ethically or morally right for us to participate in this as we have had many, many ex-parte discussions on this situation. So we will be recusing ourselves from it. Pat, I believe we have five others here and what will be the necessary vote to pass or deny this appeal.

Ms. Houston stated all five can vote, but it will take four aye votes to approve.

The Chairman state it will take four of the five.

Mr. Hoffman stated Mr. Chairman, I also need to let the Board know that my firm represents the Lake Forest Property Owners Association in general matters. I have not received a waiver of conflict of interest from Lake Forest, although we are not representing them in this matter Mr. Collins is. I wanted to make the Board aware of that fact because we do represent the Lake Forest Property Owners Association.

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The Chairman stated thank you sir. I will say this before I step down from the Chair. I am very disappointed that no City officials are here. They are the ones that denied the request and I am disappointed that, other than Ms. Jones, there are no other City Officials here. I will at this time step down and turn the meeting over to the Vice Chairman, Mr. Mayhand.

The Vice Chairman stated thank you.

Ms. Jones stated Mr. Merchant was not able to come to the meeting tonight because he had another engagement, a pre-existing engagement to go to. We were hoping that the letter that you have in your packet would be sufficient, actually letters, not only from Mr. Merchant, but also from Mr. Martin. So I will go ahead and get started.

The Vice Chairman stated okay, Ms. Jones take us through it please.

Ms. Jones displayed a Power Point Presentation of the Lake Forest POA maintenance shed. Ms. Jones stated in the case the Board of Zoning Adjustment has the power and the duty to hear and decide an appeal that has been alleged that there is an error in the order, requirement, decision made by, in this case, the administrative official involved in the enforcement of this Ordinance, which in this case would be the Building Official. The petition that we received basically said that the Building Official did not a Certificate of Occupancy, which I will call a CO, for their maintenance facility. The Land Use & Development Ordinance in Article 7-2 (f) says essentially that no building can be erected, moved, or altered or shall not be used until the Building Official shall have issued a CO. This is sample of what the Certificate of Occupancy looks like. As you can see there are four signatures required to pass for the Building Official to issue the CO. In this case there were three signatures, maybe there were two signatures, I am not sure. I will say that Utilities and I signed off on it, but the Fire Marshal did not. The Building Official's decision was based upon the Fire Marshal's inability to approve the project. You have in your packet the information that the Fire Marshal requested in regards to the maintenance facility. There was a hearing held by the Fire Board in regards to the Fire Marshal's decision and that Board upheld the Fire Marshal's standing. What we would be looking to do tonight is to either reverse the Building Official's decision wholly or in part, affirm it or modify the order, requirements, decisions or determination. It is my recommendation that you wholly affirm the Building Official decision based upon the information that has been provided to you in your report.

The Vice Chairman stated thank you. Is there anyone in the audience that wishes to speak in for of the Lake Forest POA?

Mr. Collins stated thank you, Mr. Chairman and Ms. Jones. I do not know what you all have in your packet I would have liked to have had a copy of it. The other issue I think is, besides what Ms. Jones said is whether the City through its actions.

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Mr. Collins stated whether the City through its actions has created an unnecessary hardship for Lake Forest and I want to get to that in just a minute and what that means to this particular case and what Alabama law says about that because there is another issue. I think other than that it is pretty well said by Ms. Jones. The City and I have some documents, I do not know if I have enough copies, I do not know if this is in your packet because I do not know what is in your packet, but the building permit itself and I marked these as exhibit A, A1, A2, A3, A4 etc. This is the building permit that was issued to Lake Forest, what had happened out there was the maintenance building, I think you can see it up here, and it is right in the middle of the golf course and near the Country Club. A lot of you make be familiar with where it is, but that building has been there since well Lake Forest was in the City. It probably has been there thirty or forty years, back when Diamondhead had that project up there. I do not think there is any question about that. That it was grandfathered in as a building until it burned and it burned down. So Lake Forest came to the City and asked this City for a permit, submitted plans and had its engineers, and I think there is a letter in your packet about what the engineers did exhibit 4, and the engineers came. Lake Forest hired a contractor, I should say that, contractor hired an engineer and the engineer came down and brought their plans down to the City and the Building Inspector went over the plans, issued the building permit, Lake Forest spent over a hundred thousand dollars building this building back on the same slab that was already in existence. When the building was complete the Building Official, Richard Merchant, and I spoke to him about this a couple of times now, he signed off on it. I mean he was fine with what they had built. There is no problem with the building. There is no problem with any of the structural integrity of the building or anything like that. The problem came up with the Fire Marshal as Ms. Jones said. So just to be clear the Building Official did not have a problem with it and I do not think there is any question about that. When he came to do that there was apparently a mistake at the City and the City has admitted the mistake. The Mayor came to my clients' office and said we messed up and we did not tell you all about the other requirements that you had to have. So they, Lake Forest, not knowing that put the building back in the same place, and I am going to get the Lake Forest Manager to step up here in a minute and tell you about what they would have done had they been told about this. Essentially, what happened was is that they got the building built, everything was ready to go and they came to the City for the CO and the City said no, you cannot have it you have got to do all of these other things. You have got to improve the road on somebody else's property, to get to it. You have got to put in a fire hydrant closer to the building and although they did not say this at first, the Fire Marshal did not say this in his letter they also want the building to be addressed, which is not really a problem, but that is sort of a requirement that came up later after all of this started. So we are sitting here with a building we can not get into to. Now Alabama Law provides and I have got some law for you, because I found a case that really speaks to this. (Mr. Collins passes out case law document.)

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Mr. Swaney stated can I ask a question, Mr. Collins?

Mr. Collins stated sure.

Mr. Swaney stated I could not help but notice in the plot diagram that the building appears to sat fairly close to the end of the street, but that street it mentions in here about access having to provided across somebody else's property. Why could not that street be extended?

Mr. Collins stated that street is one of Friday Construction. They are the owners of that property now. You are talking about that road that leads up to it.

Mr. Swaney stated yes.

Mr. Collins stated that street is what the City says Lake Forest has to improve and make an access road out of it.

Mr. Swaney stated oh, okay.

Mr. Collins stated it is there. You can drive it now. In fact the fire trucks, I am glad you brought that up because I did not mention it, the fire trucks when we had the fire they used that road and came out there. They also came across the golf course to get to the building, which is fine with us, and that is one of the reasons why I put these overheads up here. If you will look and you can not see it that well, but see the yellow line running up from Bayview Drive, you can see the fire trucks can drive that way. We have got no problem with that. The fire trucks can also drive from the clubhouse if you can see the purple line coming down they can also drive that way. It is easy access. This is not an isolated building that nobody can get to. This right up here is the clubhouse and this is just a Google earth drawing so it is not a straight line, but as straight as I can get it. That right there is one way in and this is another way in. I put this red line in here as a possible, but that is kind of steep there and it probably is not realistic. What you are talking about Mr. Swaney is up this way, and that road goes all the way across, that is an undeveloped unit of Lake Forest right there, that is what that is.

Mr. Swaney stated okay.

Mr. Collins stated this is the way the fire trucks came in. They also did come up that way too, and they could come this way. The big problem I think that they had is that they could not find it because they did not know that it was there. So when they got the fire alarm and they were looking for it, I think trucks went all over the place. I think some of them may have gone down to the Yacht Club and different places looking for it. Now they know it is there. We will not have that problem again. I think that was the biggest thing that caused such an interest in it, but this is an easy access this way. Lake Forest has no problem in an emergency with them coming across the golf course at all. So that is a one of the things there.

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Mr. Collins stated I want to give you all, and I just copied a page of this case, the name of the case for Mr. Hoffman, it is an old 1950's case. It is BZA for the City of Lynette verses Boykin (92 Southern second 906) (Mr. Collins passes out this page). I just marked it and I have got a copy of the whole thing. The relevant part is in this case a man went to the city and applied for a building permit in an area where he was not allowed to do what he was proposing to do. He went and built, based on that permit, he went and built what he said he was going to build. The city figured out later that you can not do that there and after he had put all of his money into it and all this improvement into it the city came back and said no and tried to pull the permit. They ended up in front of the BZA of Lynette and the BZA allowed him to do what he was doing and the Court said, because he had improved the property, he had spent a lot of money doing it and the Court said to deny at this time and upon the facts here in presented a permit would result, we conclude, in unnecessary hardship, and that is a key legal term, to the appellee. His financial loss if the permit were now denied is not of a kind now common to all the property owners in the same use district. So we would submit that this is an unnecessary hardship that because of the error by the City that my client now has to bear or we are just trying to seek relieve. We are just trying to get some way how to do this without this going any farther because we just want to be able to get into the building and there is plenty access to it because it has been shown that the City has access because they got there that day. So it is not really an issue about whether the trucks can get there because they can and it has been shown through actual us. I want to let Steve come up here. Steve Jernudd the General Manager, and he is the hands on guy out there, he knows a lot about this. He was there and you all may have questions for him and I will have a couple of questions for him.

The Vice Chairman stated Mr. Collins before you leave I would like to ask the Board if they have any questions for you before you leave the podium.

Ms. Jones stated I have one comment in regard to the information just provided about the permit. You have a letter in your packet from Ross, Jordan & Grey about the maintenance building and on the second page it speaks to the issue of permitting and the validity of permitting. It is highlighted stating that the Building Official is also authorized to prevent occupancy or use of a structure where in violation of this code or of any other ordinances of this jurisdiction. So just wanted to try and keep the points together.

Mr. Collins stated you are correct, and this case speaks to that. Lake Forest can not argue that the City ought not be able to claim, we could claim a stopple would be the term, but it does state and this case clearly that because of the circumstances the permit being issued that becomes an unnecessary hardship, which is one of the grounds under which you can grant this relieve that we seek and the other of course being that the Building Official made a mistake. The Building Official I think is trying to enforce the Fire Code.

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Mr. Collins stated the City Ordinances actually calls for the Building Official to enforce the Land Use Code not the Fire Code, which is another issue all together and for the record I will state that is an issue here too, that he is required to, if we comply with the Land Use Code to issue the CO and he says we have. So I think he should issue it. As to asking you to reverse his decision, if there is some requirements then we do not have a problem with getting an address for the building because that would be prudent for us because we want to make sure it is easily findable. Although I do not think that is the problem again, and that is not a real expensive item to do and we can handle that. We would ask you to allow us to continue to use this building and issue a CO.

The Vice Chairman stated thank you. Yes, sir. Step forward state your name and address for the record please.

Mr. Jernudd stated my name is Steven Jernudd I live at 38 Summer Oaks. I am the General Manager of the LFPOA, Yacht and Country Club. I think he brought me up here just because of the fact that obviously I was involved from the start process of this and yes I did go through and contact a contractor, Commander Steel, they hired Frank Dagley & Associates. They came up and talked to Richard Merchant, said hey we are doing this building and we want to get some plans approved. We want to make sure everything is good and the letter I think, do they have a copy of the letter from Frank Dagley, obviously he stated he asked is there anything else that we need to do and obviously the answer was no. So obviously we went through the process of assuming that we could use this building when it was complete. Well the building gets ninety five percent complete and we call for the last inspection and then all of a sudden we hit this road block. I mean we have already spent a hundred thousand dollars, and we have got five more thousand to spend with the contractor and they are saying we can not use it. Well the hardship is the fact that we are budgeted just like everybody else in a tight constraint. Now there are other requirements that are going to take us beyond the monies allocated to get this scope of work done. Because we had plenty of land, we could have put that up at the clubhouse. We are in the process of tearing it down so I have a lot of room, which would have gave that access road, but I think from the standpoint is that we did not have any information. In fact, I had brought Chip Martin out and we walked around, we looked at things and I asked a direct question, is there anyway that we should have known about this with a contractor, and he said I do not know how you could have. Okay, and like I said now Fred Small, the Mayor came up and said hey there was a mistake made, we understand that, but of course their response was that the engineer should have known the Code and that is where we are at.

The Vice Chairman stated alright.

Mr. Collins stated may I ask him a couple of questions? Is that appropriate?

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The Vice Chairman stated sure. Ask him a couple of couple of questions.

Mr. Collins stated it is just to get him to tell us about a couple of things.

The Vice Chairman stated you can remind him what you want him to say.

Mr. Collins stated did you all rely on the building permit to build this building that you were issued?

Mr. Jernudd stated sure.

Mr. Collins stated is the appearance of the property been improved by this building? Both from what you had before the fire and obviously from when it burned? It looks better than that right?

Mr. Jernudd stated correct.

Mr. Collins stated can the building be moved?

Mr. Jernudd stated no.

Mr. Collins stated what were your other options? You mentioned to the Board that you would have done something had you known about these additional requirements. What would you have done differently?

Mr. Jernudd stated actually we spent close to three or four months looking at other contractors moving the building because of the fact that we thought that it could be beneficial for the land, but because of the fact that the cost factor became involved we obviously went back to the contractor and put it back on the slab that was there. Like I said the clubhouse parking lot is huge there is a lot of room. There is about nine and a half acres and we could have put it at the one end of there, which is an access. Golf Terrace is a plotted road for the City. So there were other opportunities we could have done if we would have been stopped and said whoa, red flag. This is where we are at.

The Vice Chairman stated very good. Is there anyone else that needs to voice an opinion at this time in favor of this appeal? We have a question from the Board.

Mr. Taylor stated I am just curious. Have you looked into the cost most involved in this sprinkler system for the building?

Mr. Jernudd stated we have and the sprinkler system inside the building is close to thirty thousand, but it ultimately comes back to the access road and we are looking at about twenty one, twenty two thousand there plus the installation of a pipe across to a fire hydrant. We are approaching thirty to thirty-five, forty thousand dollars, which is almost half.

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The Vice Chairman stated anyone else? Any of the Board members?

Mr. Lamb stated do you know where the nearest fire plug is anywhere along Bayview Drive?

Mr. Jernudd stated there are a couple of them. There is a fire hydrant inside what is called the Golf Terrace Apartments. They have a fire hydrant right across, which is probably close to about four hundred yards. They did run twelve hundred feet of hose the way the came in from Bayview when they put the last fire out.

Ms. Jones stated I have a couple of questions for you as well. The original building that was destroyed. How much of that building was destroyed fire? And when was the fire?

Mr. Jernudd stated the fire was February 1st, 2009.

Ms. Jones stated was it completely destroyed or what percentage would you say?

Mr. Jernudd stated well I, I mean that is an argument depending on what you consider the building. The slab, the basement was still in tact. Basically it was the metal siding and the roof that destroyed.

The Vice Chairman stated I have a point I want to make. Did you know that even if we approve this that you still would have to deal with the Fire Department because we have no authority over the Fire Department as in their zoning and their enforcement thereof? So even if we approved this that still does not mean that the CO would be issued.

Mr. Collins stated that is okay. We just want you all to rule within your authority that you do have. That is a different issue, but I think there are a couple of issues here that you can rule on. Whether or not there is an unnecessary hardship issue and whether or not under the Land Use Code the Building Official should have issued this because if it is a fire issue then it is not going to be in the Land Use Code as I understand it. The Building Official should have issued this under the Code because it complies with the Land Use Code.

The Vice Chairman stated okay. According to the requested appeal it says this appeal of the Building Official's none issuance of the CO. So that is what this request is about right.

Mr. Collins stated right. That is correct.

Mr. Lamb stated we are being asked to override the Building Official's decision not to sign the CO. I understand it takes four signatures. My question, even though we override the Building Official's action not to sign and say you must sign it now, it takes four signatures, is if the Fire Department still does not sign it no certificate can be issued?

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Ms. Jones stated it is a mute point. Right. Well the Fire Code Board of Appeals. Can you give us a little bit of information on what happened in those proceedings?

Mr. Collins stated yes and hopefully we wont ever get this far, but we met back here in the Council conference room. We discussed the different options about getting there across the golf course, what the cost would be, we went into more detail about fixing the problem than we did here because it was more relevant there than here. Then essentially the Board met with the Fire Marshal and the Fire Chief without us being in the room issued an order that was first reviewed by the City attorney. We just do not really think that was a fair forum and we would challenge that later, that is not the place to do it here, but just to be clear we just don't feel like that was a fair forum to go through. We did go through it and we were able to enunciate our position on these other ways to fix the problem and we offered different solutions to them and they did not accept any of the solutions that we had. We offered, of course, golf course access, which they did not like that idea. We offered a solution to the fire hydrant issue. They did not address each one specifically in their order, they did not mention the proposals that we had, but we did make some proposals to resolve it, and we said we would take care of the address situation too. We also told them we would take care of the hydrant situation that we would get that taken care of. It was the access road that was the big issue there really.

Mr. Swaney stated are the two options that were being considered, one was the sprinkler system, the second was the road improvement to provide easier access. Is that correct?

Mr. Collins stated the sprinkler system, as I understand from the Fire Marshal the sprinkler system is not really an issue that is just something that he proposed. The two big issues are the access road, the access to the property to get the trucks there and the hydrant, getting the hydrant closer to the building, within four hundred feet of the building. We offered at that hearing to do that, to get a fire hydrant within four hundred feet of the building to allow them to carte blanche use of the golf course if they needed to get across the golf course, which they could do and they said no we are not going to do either one of those things. I think they were probably okay with the hydrant because we were going to comply with that if that is what you are getting at. I am not sure.

Ms. Jones state the point I am trying to make is that you are aware of the issues of the Fire Marshal. The issues that he finds to be relevant and that you have addressed it or that you are willing to address it or at what point are you willing to try to address it.

Mr. Collins stated we are to address it. The problem that we are having is that we think that the access is the big issue. Improving somebody else's road is just not feasible nor do we have the funding to do it. The fire hydrant is less of a problem for Lake Forest.

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Mr. Collins stated we are talking about in that hearing. That was less of a problem than the access road, and that was the big sticking point and we said come across the golf course and they did not think that was adequate access they wanted the road or they wanted us to build a road across the golf course and those things just were not realistic for where we were at the time or still are. So that was the big issue there in that hearing.

Ms. Jones states well here is last question. If there are issues that you are willing to resolve why not go ahead and move forward with those things that the Fire Marshal has asked for that you are in agreeable with?

Mr. Collins stated I think we have tried to. I think that Mr. Jernudd called you recently and asked to address the addressing issue and you said wait until after this hearing.

Ms. Jones stated right. I cannot because it will depend upon the decision of this Board, but still the issues about sprinklers and fire hydrants do you have a date that you guys are proposing to put those things in.

Mr. Collins stated we would ask the Board to approve without those things, but it is not sprinklers. Be real careful, a sprinkler system is not something the Fire Marshal requiring. It is the fire hydrant that he is requiring, getting a fire hydrant closer. It is a lot different. It is a lot more realistic for us to do. Am I correct?

Mr. Jernudd stated correct.

Mr. Collins stated the sprinkler system in the building is not something being required, that is something that he suggested as a possible solution. A very expensive solution probably would be the most expensive way to go. Steve could probably speak to the question of where he is. I know he has done some homework trying to get together some facts and figures on putting in a fire hydrant. I know he has done that.

Mr. Lamb stated each department has responsibilities. The Utility Department went out to this facility and satisfied to themselves that their requirements were all met. They could care less if the roof was hanging half way off, that is not their job. Their job is to ensure if you had gas or water out there that it was all properly installed with the appropriate safety features, that is their sphere of responsibility. The Utility Department said, in this particular instance, that you met all of requirements and they signed it. Okay, now Ms. Jones in her responsibility as Community Development surveyed this situation, and was satisfied at that time in her area of her sphere of responsibility that this building met all the requirements and she signed off. Now the Building Official has a sphere of responsibility of whatever is entailed in the Building Inspector sphere.

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Mr. Lamb stated I guess structurally built according to whatever the building codes are now and he was satisfied that it met that requirement. However, and I do not know how he knew it, but the Fire Marshal, who unfortunately was never ever involved in getting the information when he came out he would not sign off. Since he did not sign off, the way I understand it, the Building Inspector said well since he did not sign off I am not going to sign off. I have got a problem with that. Whatever these other three people do or think that their area of responsibility. It is not for the Fire Marshal to tell the Utility Department you are not doing your job. It is not for the Utility Department to tell the Fire Marshal you are not doing your job or the Building Inspector you are not doing your job or the Community Development and so forth and so on. Each person has a sphere of responsibility to exercise that as though it were blinders. Do they meet all the building requirements? If that answer is yes, then that Building Official has to sign the CO, even though the Fire Marshal has a lot of problems. Now when you get over to the Fire Marshal end of it if he has problems in his sphere responsibility and I am not going to sign it, which he did not then that is his responsibility and that is his within his jurisdiction and he does not have to sign it. So I am saying that I am looking at spheres of responsibility and I am having a hard time with the Building Inspector not exercising his due responsibility in insuring that if the building met all the requirements, then I have a problem that he did not sign it regardless of what the other did. Am I not right? Where did I go wrong?

Ms. Jones stated I am not absolutely sure that Mr. Merchant did not sign it. He may have reviewed it and it may have been in compliance with the Building Code. It is just that he could not issue it to them because they did not have the signature of the Fire Marshal.

Mr. Lamb stated so the issue before us is an administrative review of the decision made not to issue it, and the reason he could not issue it is because he required four signatures and one of the signatures is missing. Is that correct?

Ms. Jones stated correct.

Mr. Lamb stated I made a long lecture for nothing.

Ms. Jones stated no, you addressed the point very eloquently.

Mr. Swaney stated actually if we take your example and extend it just one more step, to my mind, it would require the BZA to actually violate what is considered the Fire Code at this point in time to void the Fire Marshal's decision.

Ms. Jones stated the City Council has adopted the International Fire Code and the Fire Marshal is responsible for implementation of the Fire Codes. So then the answer would be yes.

The Vice Chairman stated any other comments?

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Mr. Lamb stated let me get this straight. We are being asked to, if we voted in the affirmative on their appeal, we are being asked to make the Building Inspector issue the CO?

The Vice Chairman stated any other comments or questions? We have one behind you. Sir, please state your name and address for the record.

Mr. Fredo stated my name is Bryan Fredo, 145 Lakeview Loop in Lake Forest. On Mr. Lamb's point of view about spheres of responsibility, we came to the City's complex where everything is supposed to be all right here as a one shop place and apparently someone here did not go the way you thought because they directed us. We asked what do we need to do. We are just an innocent person and we went to the people with responsibility, who ought to know, and said this, this and this and we did those three things and then, you know, three months later someone said, oh by the way, we messed up, so you cannot, you wasted your hundred thousand dollars. Okay. Now I have personally talked to a couple of Council members just to see what our options were and I can understand, you know, a private citizen cannot come ask the City for money, is basically what that would amount to, but what I will relate is they did not understand why the City did not acknowledge any realm of responsibility. They were a gassed at that. They said well my God, you know, you as an innocent person went to the authority and followed their instructions. What more can you do and the City's response was well too bad, and he did not understand how the City could just wash their hands of that.

Mr. Swaney stated I thought somebody made the statement a while ago that the Mayor had stated that the City did make a mistake. Did not somebody say that?

Mr. Collins stated we did.

Mr. Fredo stated but that was after the fact. Way after the fact. He still does not understand, the Council person, does not understand. Well let me back up, the Mayor's position was this is an administrative operation and he is completely powerless. Okay. He has no control over anything so he has washed his hands also.

Mr. Swaney stated I understand.

Mr. Fredo stated thank you.

The Vice Chairman stated alright. Thank you, sir. Does the Board have any other comments or questions? If not, the Chair will entertain a motion and it has to be stated in the affirmative while it is being made.

There being no motion the appeal is denied.

The Vice Chairman stated you have fifteen days to notify us in writing if you plan to appeal with the Baldwin County Circuit Court.

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The Vice Chairman stated there was no motion made so the appeal died due to no motion being made here tonight and so if you want to appeal it you have fifteen days to do so with Baldwin County Circuit Court. Is there any other business before the Board?

Mr. Lamb stated yes.

The Vice Chairman stated I am going to turn the Chair back over to our Chairman at this time.

The Chairman stated thank you. You do not need to stay if you do not want to. We are just having the last part of our meeting, the election of officers. Thank you for your time.

Old Business:

Election of Officers

The Chairman stated under old business we have election of officers. The Chair will open the floor to dominations.

Mr. Lamb stated at the last meeting we discussed this some and if you are agreeable to continue as Chairman and if Mr. Mayhand will agree continue as Vice Chairman and if Ms. Hargiss will agree to continue as Secretary then we will have such an agreeable group.

A Motion was made by Mr. Lamb and Seconded by Mr. Swaney that by acclamation all of the above aforementioned officers will remain as such for the Board of Zoning Adjustment. Mr. Willie Robison as Chairman, Mr. Mayhand as Vice Chairman, and Ms. Hargiss as Secretary.

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

There being no other business the meeting was adjourned.

Adjournment:

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

The Motion carried unanimously.

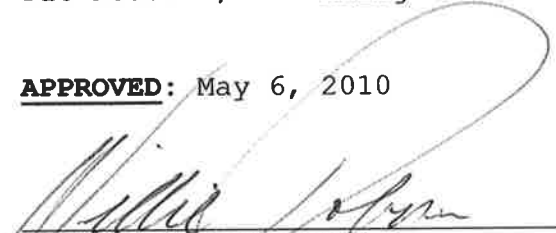
There being no further business the meeting was adjourned at 7:08p.m.

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Respectfully submitted by:


Pat Houston, Recording Secretary

APPROVED: May 6, 2010


Willie Robison, Chairman

/ph