

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF JULY 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 6:00 p.m. Let us have roll call.

Call of Roll:

Members Present:

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

Members Absent:

Billy Mayhand, Vice Chairman
Barry Taylor

Staff Present:

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

The Chairman stated there are five members present tonight so who will be voting? The vote must be made in the affirmative and it will take four affirmative votes for the appeal to pass. Is that correct?

Ms. Houston stated that is correct.

The Chairman stated next item on the agenda is the approval of the May 6th, 2010 meeting minutes. If you all have read the minutes, the Chair will entertain a motion to approve the minutes as written.

Approval of Minutes:

The minutes of the May 6, 2010 meeting were considered for approval.

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

Upon roll call vote.

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

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Due to the absence of the fourth Board member present at this meeting the approval of the May 6, 2010 minutes will be carried over to the next meeting.

The Chairman stated next is the approval of the May 17th, 2010 Special Call meeting minutes.

Due to the absence of the fourth Board member present at this meeting the approval of the May 17, 2010 minutes will be carried over to the next meeting.

New Business:

Appeal #2010-07 J. Wayne & Carole S. Jones

The Chairman stated next is new business on the agenda, Appeal #2010-07 J. Wayne & Carole S. Jones a variance to allow the construction of a roof over an existing deck creating an encroachment of 10.5 feet into the established 35 feet rear yard setback. The property is located at 501 Cedar Circle in The Cedars Subdivision and it is in an R-1, Low Density Single Family Residential Zone. Ms. Jones, if you would please take us through this?

Ms. Jones displayed a Power Point Presentation of 501 Cedar Circle showing the existing rear deck and the front, side and rear of the house. Ms. Jones stated the subject property is located at the intersection of Cedar Circle and Santa Rosa in the Cedars Subdivision. This view shows you the existing deck with what I call a canopy. This shows Lot 2, 9 and 11 are all corner lots in this subdivision. The application states that the fact that this is a corner lot creates an inherent hardship. I wanted to show you that there are other lots in the subdivision that would also be encumbered by setbacks similar to Lot 9. This is the plot plan for the subject property. It shows you that the front setback is thirty five-feet, the side from Santa Rosa is thirty five-feet, the rear adjacent to Lot 10 is forty-feet, and the north side is fifteen-feet adjacent to Lot 8. This is a rendering that I prepared hopefully trying to show you highlighting the area of the existing variance that was approved in 1987. It allowed a three-foot encroachment into the rear setback. It also highlights, if you can see, the area where the current deck is, and that area already encroaches into the rear setback, but a patio can encroach into the setback as long as it is not covered. This is a chart that I prepared showing the comparable lots, 2, 9 and 11 and also the far right column shows you the buildable areas that I calculated after the setbacks were taken. Lot 2 has 11,625 square feet of buildable area, Lot 9 as it was originally designed had 11,200 square feet of buildable area, Lot 9 after the 1987 variance buildable area was increased to 11,620 square feet, and Lot 11 which is the corner lot, I think on Old County Road and Santa Rosa, has 13,125 square feet of buildable area. Like the applicant stated Lot 9 in its original configuration did have a difference in buildable area than the others.

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Ms. Jones stated but once the variance was approved in 1987 that difference was basically eliminated. So in conclusion as I already stated the applicant states that the corner lot is inherently adversely affected by the setbacks that are imposed. The three-foot variance approved in 1987 sought to cure that hardship and that inadequacy between the corner lots. Currently I cannot see where a hardship exists with the property, and that is my presentation.

The Chairman stated okay. I notice when you were talking you said Santa Rosa and Old County Road. There are one or two lots or if you want to say there is a house directly behind them on Santa Rosa and then I think it is a little bit farther down to Old County Road to where you turn to go into Mercy Medical or back into Bayhill Subdivision.

Ms. Jones stated that is Lot 11.

The Chairman stated that is directly behind them.

Ms. Jones stated this is directly adjacent to them headed towards Old County Road. So Lot 11 is the corner lot at the intersection of Santa Rosa and Old County Road. It has the largest buildable area of the three corner lots and I think that it is currently undeveloped.

The Chairman stated okay.

Mr. Swaney stated there are about four lots on Old County Road still undeveloped by the original Bayhill Incorporated Group. Sold but not developed. I make the point that the variance you mentioned earlier was really granted by the Bayhill Incorporated Architectural Board rather than the City.

Ms. Jones stated actually you have two letters in your packet. One is from Bayhill, but the other is from the City of Daphne Board of Adjustment at that time.

Mr. Swaney stated I stand correct. I did not see that one.

Ms. Jones stated they are right next to one another in the packet.

The Chairman stated anyone else have any questions for Ms. Jones? Are Mr. & Mrs. Jones here?

Ms. Jones stated yes they are.

The Chairman stated would you like to address the Board on the issue? If you would, please come to the microphone, state your name, and speak clearly because this is being recorded.

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Ms. Jones stated I am Carole Jones and my husband is not here. Due to a recent spinal fusion he is unable to be here tonight. We have talked to everybody on our street, the people behind us.

Ms. Jones stated the people across the street and everybody thought it actually would improve our property and thereby improve their property. I told them that this meeting would be here tonight if anybody had any objections and they could certainly come and voice those. All we are seeking to do is just to extend our roof out exactly like it is over the part that you can see. There is sort of a little open thing that we have tried to block and that west sun is just real bright into our great room. We would just like to extend the roof out and it would just help us with cooling that room and just making it a little bit more usable. The deck is really not very usable because it is so hot out there most of the time.

The Chairman stated okay. Does anyone have any questions for Ms. Jones?

Mr. Swaney stated you just plan to put a roof over it? You do not plan to enclose it?

Ms. Jones stated we thought that we would just put mesh screen up just because of mosquitoes and stuff, but not like a room, room. Not like glass or wood or anything like that.

Mr. Swaney stated I understand. Thank you.

Ms. Jones stated any other questions for me?

The Chairman stated thank you. Ms. Jones. Adrienne. I noticed in your report that you were talking that it could not be seen, but the roof can be seen from the street. I was out there and that is the only place where I could see the roof, and that was across from on the school property, Daphne Elementary property, looking across Santa Rosa, that was the only place I could see because behind them on Santa Rosa there are bushes and trees. A kind of buffer type. So as far as I could tell it would basically only be seen from Santa Rosa and it looked as if the crepe myrtle went a little high so you would not be able to see it at all from Santa Rosa.

Ms. Jones stated that is correct.

The Chairman stated I noticed that in your report you said there is not a hardship, a land hardship. I understand that, but you left some wiggle room in your staff report as to the encroachment. The only reason why it comes under that setback is by adding a roof on it makes it part of the structure.

Ms. Jones stated that is correct.

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The Chairman stated okay. Anyone else have any questions or comments?

Mr. Lamb stated it slipped by mind. What is the rear setback?

Ms. Jones stated thirty seven-feet.

Ms. Jones stated it is thirty seven-feet as approved in 1987 in the Board of Zoning Adjustment action.

Mr. Lamb stated in an R-1 what is the rear setback?

Mr. Moss stated it is forty. A three-foot variance.

Ms. Jones stated right.

Mr. Moss stated that is to the edge of the deck right?

Mr. Swaney stated actually.

Mr. Moss stated the three-foot variance was for this deck we are talking about.

Ms. Jones stated no. I think, and Ms. Jones you will have to correct me if I am wrong or right, you did an expansion that already went across the three-foot setback, it was a part of the house and not the deck?

Ms. Jones stated we have not done an expansion, but the original house was three-feet because the lot of only one hundred and ten-feet deep so we had to change our house plans somewhat anyway to accommodate on the lot, but then so we have not done any kind of expansion, that is original what is built there now is original.

Ms. Jones stated right. So this would be the three-feet.

Mr. Swaney stated the plot plan clearly shows that the thirty seven-feet goes to the back of the existing house, I believe, and not the deck.

Ms. Jones stated that is right. Correct. The deck can encroach into the setback as long as it is not covered. So what they have here in their plot plan from 1987 is consistent with the variance that was already approved.

Mr. Lamb stated I know it is not their intention to enclose, but sometimes in the future if they ever sell the property then the next owners might enclose it. Then that becomes part of the entire house and now you have a non-conforming structure in an R-1 because they can enclose and not come for a building permit.

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Ms. Jones stated that is true.

Mr. Lamb stated it already has got a roof on it so oh well why do not we just enclose it. So they go out there and start enclosing it and if nobody says anything, and they do not want to apply for a building permit then the next thing you have a non-conforming structure in an R-1.

Ms. Jones stated well technically if the Board approves the variance that is requested tonight someone could come in and get a building permit to enclose the whole area off as a room. They could do that because your variance would have allowed the encroachment.

The Chairman stated I have a question and I probably am just thinking out loud. Ms. Jones you said to block the sun out. It is so hot out on the deck that it really is not enjoyable. What about if a canopy comes out over it? Would that be enclosing the roof or would that just be a semi-umbrella type?

Mr. Moss stated a roll out canopy. Is that what you are talking about?

The Chairman stated yes, the roll out type canopy where you roll it out and roll it back.

Ms. Jones stated I do not think so. It would not be attached to the structure.

Mr. Moss stated I do not think that would be considered a structure.

Ms. Jones stated now an extension of the roof would be a permanent extension.

The Chairman stated right. It would bring the roof out over it. It would not just be laying a roof over the top of the trellis that is there.

Ms. Jones stated that is correct.

The Chairman stated okay.

Mr. Moss stated our Ms. Jones. When you said however if this is considered the following conditions would be appropriate, no other variances shall be allowed. The encroachment should be as per the staff rendering only. However, if it is allowed she could not enclose it, but the next owner possibly could.

Ms. Jones stated actually she could enclose it if she wanted to. Anybody subsequent to your action could enclose it.

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Mr. Moss stated could we not put conditions on this. Can we make a conditional variance?

Ms. Jones stated but why would you?

Mr. Moss stated that is what it looks like you might be saying here. If considered, there would be some conditions. Is that what you are saying?

Ms. Jones stated what I am saying is covering a deck seems to be a minor issue. It does not create any impact on the neighbors.

Ms. Jones stated there is already a fence up. The only place you would see it would be from Santa Rosa, as Mr. Robison said. So if you wanted to allow the roof to be extended what difference would it make if it was extended for just the patio or for another room. The impact would still be the same.

The Chairman stated in your report you said cannot come back before us and that would be for a variance on the encroachment only.

Ms. Jones stated on the entire lot.

The Chairman stated on the entire lot of being an encroachment of the setback.

Ms. Jones stated right. Because the lot would be pretty much built to maximum capacity. There is already a pool out there and you have the driveways and the front yard is being protected and that is what you can see from the larger viewing area. I think that and the side from Santa Rosa would be the two areas that you would want to protect. So an encroachment in the rear you can consider if you want to.

Mr. Swaney stated I have to admit to being a little bit confused. In answer to the question, can we approve this subject to no enclosure of the roofed deck?

Ms. Jones stated I do not think so. I think that if you wanted to approve it then it would not matter if they wanted it to be for a deck or for another room. I do not think that it would be substantially any different. So you could if you wanted to, but I do not think that would amount to much in protecting the rest of the area.

Mr. Swaney stated well actually what we would be doing then is improving on the variance instead of a thirty seven-foot rear setback variance we would be approving something like a twenty seven-foot setback variance I would guess.

Mr. Lamb stated twenty five-foot. You have reduced it from forty to twenty five, reduced it fifteen-feet.

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Ms. Jones stated if you consider the conditions that I listed then it would only be for that deck area. It would only be for this deck area, not the full extent of the back of the house, only for this area.

The Chairman stated Ms. Jones do you have a power point of the conditions that you say are in our book?

Mr. Lamb stated that is the rendering.

Ms. Jones stated correct, it is the rendering in your book. If approved tonight the condition that you would possibly place would be for an encroachment for this area to be covered only, not saying that you would give a ten-foot variance that would run all the way up here. Mr. Cowart stated can I say something?

The Chairman stated if you would let Ms. Jones finish.

Ms. Jones stated I know there is a pool in this area, but in the event that the pool was removed then you would not be able to expand any farther than the deck.

Mr. Moss stated it would be restrained to the deck area only. Is that correct?

Ms. Jones stated that is correct.

The Chairman stated okay. Yes sir, please state your name.

Mr. Cowart stated Bart Cowart. I have been friends with them for all of twenty three, twenty four years or something like that. Originally I built the house years ago. Could not the condition be that the roof can be allowed with non-heating and cooled and pretty well cure the deal of, as far as, windows? If windows and things were put in at a later date even without a building permit it would be illegal and the City could make them remove it could they not?

The Chairman stated yes.

Mr. Cowart stated if it was just a condition that allowed the roof non-heated and cooled or worded right, I do not know exactly how to word it, but conditioned as non-heated or cooled.

Mr. Moss stated that what I was getting at when I asked her and she said if considered there would be conditions to be appropriate and that is when it could be appropriate. No climate control.

Mr. Cowart stated yea.

Mr. Moss stated no HVAC, climate control or whatever. It is kind of foolish to enclose it if you cannot heat it or cool it.

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Mr. Coward stated yea. I mean all they are wanting is to be able to set out there and enjoy it in the evenings without getting eaten up by mosquitoes and all. That would be one condition that would keep somebody from it or at least without ever coming back before you again.

Mr. Lamb stated the main issue I have is trying to maintain the integrity of an R-1 zone. If we continue to grant variances pretty soon we do not have R-1 anymore. You have everybody can come get a variance and what was R-1 is now really R-3 because we have allowed so many variances in the depth of a lot. So I do not want to derogate the integrity of an R-1 classification that is the main issue I have. It is not forty-feet it is twenty two-feet now.

The Chairman stated the part about the heat and the sun in the afternoon there are things that can be put on your doors that will keep the heat out, but you would still have the light that comes in and would be able to enjoy the afternoon light or whatever and not be extremely hot in there. I have the same concern as Mr. Lamb. We are either going to be a City that governs variances or we are going to be a City that is governed by variances. We have to be very careful when variances are granted, especially this much of a setback going from forty-feet all the way down to twenty five now. Any other questions?

Mr. Moss stated it is still permissible for a roll out awning that is not considered a roof?

Ms. Jones stated I do not think that is considered to be attached to the structure.

Ms. Jones stated is it not twenty seven that it would be considered to be now? It was forty and we set it back three so that made it thirty seven and so we are asking for ten.

Ms. Jones stated that would be twenty seven-feet as opposed to forty.

Ms. Jones stated right.

The Chairman stated maybe I am wrong, but I am looking at the rendering and it is showing twenty five-feet from the deck to back there.

Ms. Jones stated right. That is my rendering of it.

Ms. Jones stated up to the fence.

The Chairman stated so originally it was forty-feet.

Ms. Jones stated originally forty.

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The Chairman stated and as Mr. Swaney stated Bayhill granted the original three-feet.

Mr. Swaney stated I guess, but according to Adrienne both Bayhill and the City granted three-feet.

Mr. Moss stated there is a letter in here from the City.

The Chairman stated okay. Any other comments? Any other questions?

Ms. Jones stated the measurement is to the fence. The fence is inside the property line. It is not on line.

Ms. Jones stated I used the plot plan that you guys gave us and I kind of did measurements. Rough measurements on my own.

Mr. Hoffman stated Mr. Chairman would you have the gentleman state his name again for the record I do not think Ms. Houston got it.

The Chairman stated sir, if you do not mind state your name again.

Mr. Cowart stated Bart Cowart. B-a-r-t C-o-w-a-r-t.

The Chairman stated thank you, Ms. Jones. The Chair will entertain a motion and the motion must be made in the affirmative.

A Motion was made by Mr. Moss and Seconded by Ms. Hargiss to approve Appeal #2010-07, J. Wayne & Carole S. Jones, for a variance to allow the construction of a roof over an existing deck creating an encroachment of 10.5 feet into the established thirty five-foot rear yard setback line.

Upon roll call vote, the motion carried.

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

The Chairman stated the appeal is granted you can go by the Community Development Department in the morning around 9:00 a.m. and pick up your paperwork.

Ms. Jones stated at that time may I pick up the building permit?

Ms. Houston stated yes.

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Adjournment:

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

The Motion carried unanimously.

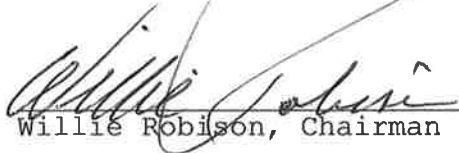
There being no further business the meeting was adjourned at 6:25 p.m.

Respectfully submitted by:



Pat Houston, Recording Secretary

APPROVED: April 7, 2011



Willie Robison, Chairman

/ph