

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF NOVEMBER 3, 2011 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

Chairman: the number of members present constitutes a quorum and the regular meeting of the Board of Zoning Adjustment 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, Vice Chairman
Tony Felts
Frank Lamb
Billy Mayhand

Members Absent:

Jim Moss

Staff Present:

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

Chairman: next item on the agenda is the approval of the October 6th, 2011 meeting minutes. The Chair will entertain a motion to approve the minutes as written.

Approval of Minutes:

The minutes of the October 6th, 2011 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.

New Business:

Appeal #2011-06 Cynthia McMeans

Chairman: next item for business on the agenda is Appeal #2011-06 Cynthia McMeans, a variance to allow an existing home to encroach into the side yard setbacks four-feet on the west side and five-feet on the east side. The property is located at 202 Potter's Mill Avenue, and it is in an R-1, Low Density, Single Family Residential Zone. Ms. Jones, if you would take us through this please.

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Ms. Jones: [displayed a Power Point Presentation of 202 Potter's Mill Avenue, Lot 10, Unit 1, Potter's Mill Subdivision.] The property is currently zoned R-1, Low Density, Single Family Residential. The required minimum setbacks are forty-feet on the front and rear and fifteen-feet on the sides. What is being requested tonight is, in lieu of the fifteen-feet side on both sides they are asking for twelve-feet on the west side and eleven-feet on the east side. This is an existing residence built in 1997, and the slide here shows the areas of encroachment. One area is the covered porch on the west side of the house and the other is the east side of the house. This is a picture from Potter's Mill Avenue and I tried to show you the areas of encroachment, but on the west side the trees are so thick you really cannot see where that area of encroachment is. On the east side there is a utility easement and if you look at the picture at the bottom of the page you will see a transformer box or a utility box, so the encroachment, on the upper picture, is shown where that window is, that area is encroaching into the setback. The key point here is that this encroachment has taken place for about fourteen years, and it has not caused any problems. Since it is the intent of the Zoning Ordinance to allow minor variances to accommodate extraordinary and exceptional conditions, I would call the fact that this has existed for fourteen years extraordinary. It is not where we would ask them to remove part of the house. So the thing for us to do would be to approve them. With that my recommendation is to approve it with a three-foot encroachment on the west side, which will leave a twelve-feet as the setback and to allow a four-foot encroachment on the east side, which will leave an eleven-feet setback, and that is all.

Chairman: is Mr. McMeans here tonight?

Ms. McMeans: yes, sir.

Chairman: would you like to address the Board? If you will, step to the podium and state your name and address for the record, please.

Ms. McMeans: good evening, I am Cynthia McMeans. The home at 202 Potter's Mill Avenue, in Daphne, was my former residence for fourteen years. My husband and I built the house in 1997 and a couple of years ago he died. It is a big house. I had to move. I could not keep it up, and I found a lovely family to buy it, and I want to go ahead and allow them to purchase the home and I have now moved to a smaller home in Daphne also, but that is the motivation for this at this time. My understanding was, as well, was that in 1997 when the house was built there were not any side setback lines at all. It was not like we overlooked something or did not do what we were supposed to do. I could not find any survey or the builder or anyone else that said that we were in violation of anything. Of course, we had a mortgage and everything too. I think that the law must have changed after we built the house. It is just the porch part of the west side that is more of an encroachment I think, but that is my motivation.

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Ms. McMeans: that is why I am trying to do what I am doing. Does anyone have any questions they want to ask me about it?

Mr. Felts: I just wanted to ask staff how we got here. Has the Ordinance changed? Was this annexed at a later date? Or how did we end up with nonconformity?

Ms. Jones: the Ordinance was actually established in 1987, ten years before this house was built. So it was a mistake on someone's behalf, and I do not who. I cannot verify who, but it was mistake on someone's behalf.

Mr. Felts: it is just being caught?

Ms. Jones: that is correct.

Ms. Swaney: but the house was probably built within the confines of the original subdivision plot plan I would guess, which would probably be ten-foot side setbacks. Do you recall?

Ms. McMeans: I could not find any side setback lines at all on any of the original plans, surveys or anything which led me to believe that the enforcement effect of it all was done later on, but it could have been overlooked on our part or the builders part. I do not know actually.

Chairman: does anyone else have any questions?

Mr. Lamb: yes, just a point of interest. Do you know when the Planning Commission put together their Land Use & Development Ordinance?

Ms. Jones: in 1987 that is when zoning was established for the City of Daphne.

Mr. Lamb: at that time did it have the width, depth and all like we have now?

Ms. Jones: yes, sir, they were always there, R-1 zoning has been the same since it was originally established.

Mr. Lamb: the failure here is not with Ms. McMeans, the failure was in the system. Before he can record at the County you have to have sign-offs from the City and the engineers that everything is going to work, and everything is in compliance. Whoever signed off on that subdivision was derelict in their responsible duties. Sadly, whoever the Building Official was at the time the plans were approved for construction, he failed in his duties also. It is not Ms. McMeans fault. It is a failure of the system, which brings us here today, and cost her some money because at least two individuals did not do their job.

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Mr. Lamb: the Planning Commission is supposed to make sure that the setbacks are in order, but they rely on a city official to make sure of that. So I apologize that you had to spend this money, but that was an administrative failure in two areas. Last, but not least the developer failed and we see this over and over again, developers choosing, with a malice of forethought, to circumvent the City and then we have poor residents that have to spend money to get us to give them a variance. So I am always after these devious developers who knowingly and willingly cause our citizens money. I have made my speech. Thank you.

Ms. McMeans: anything else?

Chairman: thank you, Ms. McMeans.

Ms. McMeans: thank you.

Chairman: let the record show that there are no adjacent property owners here to speak in opposition to this variance. At the time the Chair will entertain a motion, and remember the motion must be made in the affirmative.

A Motion was made by **Mr. Swaney** and **Seconded** by **Mr. Felts** to approve **Appeal #2011-06, Cynthia McMeans, for a variance to allow an existing home to encroach into the side yard setbacks four-feet on the west side and five-feet on the east side. The property is located at 202 Potter's Mill Avenue, and it is in an R-1, Low Density, Single Family Residential Zone.**

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

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

Chairman: the appeal is granted unanimously. You may go by the Community Development office here in city hall in the morning around 9:00 a.m. and pick up your paperwork.

Chairman: next item on the agenda is **Appeal #2011-07 Victor & Elizabeth Schneider, a variance allowing road frontage of an existing lot of record to be eighty four-feet in lieu of ninety-feet wide. The property is Lot 2, William O'Neal Subdivision between 1207 and 1209 Lovette Lane, which is zoned R-2, Medium Density, Single Family Residential. Ms. Jones, if you would please take us through this.**

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Ms. Jones: [displayed a Power Point Presentation of Lot 2, William O'Neal Subdivision.] The slide showing is an aerial view of the subject property. You see north of the arrow it is adjacent to Mobile Bay and to the north and south is a residence. This is the existing zoning map shot and the subject property is zoned R-2, Medium Density, Single Family. The front and rear setback requirements are thirty five-feet, the sides are ten-feet and the lot width required is ninety-feet. This is a survey of the subject property and what I have is a comparison between what is required, as our minimum standards, and what is being requested. The minimum lot area required is fifteen thousand square feet and they actually have over twenty two thousand square feet. The width is required to be ninety-feet, and what we have today is eighty four point zero five-feet according to the survey, and the depth is two hundred and seventy two-feet, although the Ordinance does not require a minimum depth, we know that it has to be at least one hundred and sixty six-feet in order to meet the fifteen thousand square feet area. So the only area where they need any adjustment or variance is on the lot width, and this is an existing lot of record, Lot 2, William O'Neal Subdivision, which was recorded in 1920. What we have here are pictures of the subject property. The star shows that there is a fence that is on the outside of the subject property. The picture next to it shows kind of a pan to the right if you are standing on Lovette Lane, you will see a view of Mobile Bay. The picture in the bottom left corner pans a little bit farther to the right and the picture next to that shows the property that is located north. The question we have to consider here is whether there is an unnecessary hardship. Well the hardship in this case is that it is an existing lot of record that was developed prior to the development of zoning in the City of Daphne, and that would be counted as an extraordinary condition. Will approval of this proposal create a substantial detriment to the public good? The answer to this would be no and there is no other way for this lot to be brought into compliance because both the lots adjoining it are already developed. An inherent hardship does exist, and a little enforcement of the Ordinance would actually keep this lot from being developed as a residence, and that is something that we are not allowed to do. So the solution would be to allow the variance reducing the front lot width to match what they currently have. So with that, my recommendation is to approve the six-foot variance, allowing the lot width to be eighty four-feet in lieu of the required ninety-feet for this existing lot of record. Any questions?

Chairman: would you explain to them how you did to me, a little while ago, how this would be classified as a vacant lot?

Ms. Jones: you asked me earlier why this would not be considered a grandfathered use. If we are looking at the use of the property at this time it is grandfathered as a vacant lot, and not as a lot with a house on it, so that is the reason. In order to have a building permit issued we have to have compliance with the zoning requirements.

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Ms. Jones: since we have the lot width as being deficient we have to have it varied in order for them to obtain a building permit, and meet all the minimum standards of the zoning regulations.

Chairman: thank you. I believe Mr. Hitson you are here representing the Schneider's. If you would, state your name and address, and you are out of your flock tonight are you not. You are just here as their representative.

Mr. Hitson: yes. I am not here on my part-time job for the City of Daphne. Ken Hitson and Mr. & Mrs. Schneider were sitting beside me in the second row. My first job as a lawyer was to Clerk for a Judge in Montgomery, and one of the first things he taught me was the Warren Reese Rule of Law, and I will tell you what that is. It is when you are winning shut-up, so I have nothing to say unless you guys have any questions. Warren Reese use to talk himself out of winning. He just kept talking, so I am not going to do that.

Mr. Swaney: would you restate the request for the appeal?

Ms. Jones: the request we have is to allow, and this is my short version, it is to allow an existing lot of record to remain as eighty four-feet in width, in lieu of ninety-feet, as per the Land Use and Development Ordinance.

Mr. Swaney: in other words what we are requested to do is qualify the lot as an R-2 lot.

Ms. Jones: we want to qualify it as meeting all of the standards for a typical R-2 lot. Yes.

Mr. Swaney: okay, but this really does not influence at all the setbacks that would be required for any property or house that is built on said lot?

Ms. Jones: it does not, but we do have provisions for substandard lots of record, which would apply to this.

Mr. Swaney: okay, thank you.

Ms. Jones: you are welcome.

Mr. Lamb: would you clarify something for me? Nine point six, lots of record, where the owner of a lot of record or his successor to the title thereto does not own sufficient land to enable him to conform to the dimensional requirements of this Ordinance, the following exceptions may be allowed. Now, he does not own sufficient land for the frontage? Is that correct? He is six-feet short.

Ms. Jones: correct.

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Mr. Lamb: (a) Where a lot, tract, or parcel of land has an area or width which does not conform to the requirements of the district in which it is located, said lot may be used for a single family dwelling in any residential district, provided the lot to be used has a minimum area of four thousand square feet, and this exceeds that, and a minimum lot width at the building line of forty-feet and is connected to public sewer. In Commercial/Industrial Districts uses does not apply. So my question is it is a lot of record and he is going to build a single family dwelling, and the area exceeds four thousand square feet, so my question is why do we have the petition?

Ms. Jones: you have the petition without going into a lot on the background of how the property was previously incorporated or considered to be one with Lot 1 by the tax record. At that time, it was the same single owner.

Mr. Lamb: it was one single ownership.

Ms. Jones: that is right, and now it is being separated and it has a new owner. So this lot needs to have its own compliance, in order to move forward.

Mr. Lamb: I did not know that it was single ownership.

Ms. Jones: yes it was.

Mr. Lamb: that is (b). Now it has to be platted and re-parceled. Do they know that?

Ms. Jones: that is if Lot 1 and Lot 2 were considered as one. We do not have that as being the case now. It has never been re-parceled to start with. It was always two separate lots of record, but through the Tax Assessors office it was considered to be one, as it was under one ownership.

Chairman: this has nothing to do with it, but I noticed that you put in your report that across the street from it there are two similar lots so in the future something may come up.

Ms. Jones: absolutely.

Chairman: anyone else?

Mr. Swaney: are both Lot's 1 & 2, in this particular area, each eighty four-foot wide or there about?

Ms. Jones: I think Lot 1 is a little bit bigger than eighty four-feet. I think it may have been closer to ninety, but not quite ninety.

Mr. Lamb: I think it is eighty-six or eighty-seven.

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Ms. Jones: but that one would be considered grandfathered because it has a structure on it already.

Chairman: thank you, Mr. Hitson.

Mr. Hitson: okay, thank you.

Chairman: would anyone else like to address the Board?

Mr. Hitson: I would like to say one other thing just for the purpose of your consideration in the future. I think and I do not know if it is for convenient sake or whatever, the Land Use Department here uses the tax records and that is because they are easily accessible and that kind of thing I suspect. I do not know that for sure.

Mr. Swaney: can you speak up? I cannot quite hear you.

Mr. Hitson: I said Ms. Jones and her staff uses the tax records in determining lots of record and I suspect that has something to do with convenience, although I do not want to put words in your mouth. I am not sure about that, but just for the future in the definition section of the Ordinance, Section 8, Lot of Record is defined as a description, excuse me, a lot which is part of a record plat or a plot described in metes and bounds, the map and or a description of which has been recorded according to Alabama Law, and as you know, if you had a deed you cannot record a deed in the Tax Assessors Office. That is recorded in the Probate Office, in the County's Probate Office, and of course, that is where this was originally plotted in 1902 and it was recorded. So how we determine lot of record might want to be kind of amended so that you can look at the Tax Assessors record so it is technically legal, and that is just something I came across, but your lawyer might disagree with me about that. Anyway, just a little future problem that the City might want to consider, that is all. It has nothing to do with us obviously.

Chairman: thank you, sir.

Mr. Hitson: thank you.

Mr. Swaney: just for my information, what are the side setbacks for R-2?

Ms. Jones: ten-feet on each side are required for a typical R-2, but for a substandard lot of record we would consider the properties that are two hundred-feet, one hundred-feet on each side and do an average of the setbacks that they use and allow that to be the setback for side yards and front.

Mr. Lamb: would that be more than ten-feet?

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Ms. Jones: not more than ten-feet.

Mr. Felts: so you can reduce it, but not make it larger.

Ms. Jones: that is correct. It can be reduced, but not increased.

Chairman: is there anyone here to speak in opposition of this appeal? Let the record show that there are no adjacent property owners here to speak in opposition to this variance. Public participation is closed. At this time the Chair will entertain a motion, and remember the motion must be made in the affirmative.

A Motion was made by **Mr. Mayhand** and **Seconded** by **Ms. Hargiss** to approve Appeal #2011-07, Victor & Elizabeth Schneider, for a variance allowing road frontage of an existing lot of record to be eighty four-feet in lieu of ninety-feet wide. The property is Lot 2, William O'Neal Subdivision between 1207 and 1209 Lovette Lane, which is zoned R-2, Medium Density, Single Family Residential.

Upon roll call vote, the motion carried unanimously.

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

Chairman: the appeal is granted unanimously, and if you were here earlier when I told Ms. McMeans where to go to pick up her paperwork you may also go by the Community Development office here in city hall any time after 9:15 a.m. in the morning to pick up yours. Thank you.

Mr. Lamb: we do not often make everybody happy.

Mr. Hitson: at least tonight you did. Thank you.

Chairman: I am with Mr. Lamb on these things where we have quite a few in which the citizenry has to spend their hard earned money on something that they really should not have to be coming in front of the BZA for.

Mr. Felts: I agree with my colleagues.

Ms. Jones: I do not have the power to make those determinations on my own.

Mr. Felts: perhaps that may be something that needs to be looked at in our Land Use Ordinance.

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Mr. Lamb: out of all the variances we have done we have never had a side setback issue in Potter's Mill. This is the first one and there are houses turned over in that subdivision all the time.

Ms. Jones: well is someone calls and ask for a zoning letter or certification that everything is in order and they submit a survey that does not meet the requirements I cannot issue a letter to say that they are in compliance with the zoning regulations. So I agree and I would rather there be a different way to do it, but at this time we do not have any other way to do it.

Mr. Lamb: that is right you are just doing your job.

Chairman: Mr. Terry, are you just here listening or do you have anything to say?

Mr. Terry: I am here for the pep rally.

Chairman: okay, great. Now since you are on the Planning Commission some of the things that we have said you may want to go back to your compadres with.

Mr. Terry: sure thing.

Mr. Swaney: I do want to applaud your new signage and so forth.

Ms. Jones: thank you.

Chairman: the first time I saw one I thought the neighbors had put it out to say, hey, come help us fight this, but I found out later that Ms. Pat had indeed put it up. Ms. Jones, you have the submittal applications that you want to discuss.

Ms. Jones: yes. I also have included the upcoming calendar for 2012. Ms. Pat had already sent you a copy earlier to take a peek at. I just wanted you to have it because there is one meeting, at least, in July where we would not meet on the first Thursday because of the holiday. We would instead meet on July 10th, which would be the second Tuesday.

Mr. Swaney: the second Tuesday instead of the 5th of July.

Chairman: meet on that Tuesday where you have that little asterisk there.

Ms. Jones: meet of the 10th rather than on the 5th.

Chairman: should we have an appeal we would meet then.

Ms. Jones: that is right.

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Mr. Swaney: okay.

Ms. Jones: but hopefully you had a chance to review the supplemental application material. We are revamping all of our applications trying to get organized, more streamlined and more efficient. So I wanted you to take a peek at them to see if there was anything blatant that you thought was out of place and needed to be changed or whether I missed anything. It is not anything necessarily that you have to vote on it is just me extending a courtesy to you.

Chairman: that is for our information. Is it more streamlined?

Ms. Jones: I think so.

Chairman: well if it is more streamlined and it easier to do I am all for it.

Mr. Lamb: I was a little confused on submissions. It said you have to be submitted no later than 4:30 p.m. in accordance with the 2012 Board of Adjustment meeting schedule and application deadline calendar. First time I read that I did not know when that was, but in a closer reading it is actually thirty days in advance. I mean if you want it on the calendar next month you have to do it thirty days in advance. I got it.

Ms. Jones: essentially yes, but we will also have a copy of the calendar included with each one of the packets, so that reference will be to this document.

Mr. Lamb: okay. It took me a minute. That was the only thing that I saw that I was a little confused about. Now are you increasing the fees?

Ms. Jones: the Council already increased the fees.

Mr. Lamb: okay, they did.

Ms. Jones: yes, the fees have been increased.

Mr. Lamb: I know a few years ago they had not even looked at it and everybody around us, Foley, and everybody else was way more money than the City of Daphne was asking. So we are up to snuff on that.

Ms. Jones: I think so.

Chairman: is that it Ms. Jones?

Ms. Jones: yes, sir.

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Chairman: if there is no other business, the Chair will entertain a motion to adjourn.

Adjournment:

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

The Motion carried unanimously.

There being no further business the meeting was adjourned at 6:34 p.m.

Respectfully submitted by:



Pat Houston, Recording Secretary

APPROVED: December 1, 2011



Glen Swaney, Vice Chairman

/ph