

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF OCTOBER 6, 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
Tony Felts
Frank Lamb
Billy Mayhand, Vice Chairman

Members Absent:
Jim Moss

Staff Present:

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

Chairman: we have a quorum.

Ms. Houston: may I ask the Board to please speak into your microphones.

Chairman: yes, you may.

Ms. Houston: thank you.

Chairman: next item on the agenda is the approval of the August 4th, 2011 meeting minutes. The Chair will entertain a motion to approve the minutes as corrected.

Approval of Minutes:

The minutes of the April 7th, 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:

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

Appeal #2011-05 Sangyoung Kim

Chairman: next is new business on the agenda, Appeal #2011-05 Sangyoung Kim, a variance to allow an attached patio to be built to encroach twelve-feet into the rear setback line. The property is located at 9381 Marchand Avenue, and it is in an R-3, High Density Single Family Residential Zone.

Mr. Lamb: before we get started I want to recuse myself from this appeal due to the fact that I am a member of Sehoy's POA Board.

Chairman: let the record reflect that Mr. Lamb recused himself. Ms. Jones, if you would please take us through this.

Ms. Jones: [displayed a Power Point Presentation of 9381 Marchand Avenue, Lot 55, Phase 3, Sehoy Subdivision.] The subject property is located at the southwest corner of Tecumseh Court and Marchand Avenue in the Sehoy Subdivision. As you mentioned it is 9381 Marchand Avenue and it is Lot 55, of Sehoy, in Phase 3, and that phase is zoned R-3, High Density, Single Family Residential. The setback for the subject property is thirty-feet on the front and rear, twenty-feet on the corner side and ten-feet on the west side. This is a photo of the Kim's property from the street, and as you have mentioned they are requesting to encroach into the rear setback twelve-feet. The picture at the bottom shows the flag on the right side and that is where the corner is staked for the purposed patio. According to the drawings that were submitted the patio will be fourteen-feet deep and twenty four-feet wide. What I have here are questions to consider with this request. What is the unnecessary hardship? There are not any hardships with this lot in particular. Are there any extraordinary conditions peculiar to this lot that is different from any other lot in the Sehoy Subdivision? I have not found any. Will this encroachment cause detriment to the public good? In general, probably not, but it would set a bad precedent for granting variances, a major variance or a major encroachment where there is no hardship. So the key points that I want to bring up, and again this is information that was submitted in the application, the applicant desires to cover the rear back door to prevent weatherization and water damage. The purposed patio is approximately three hundred and thirty-six square feet, which is 14' x 24', in lieu of the 11' x 14' uncovered patio that is shown in the appraisal documents that are also included in the report. I think one thing that I should mention is that the fact that this will be a covered patio attached with a roof, it is required to meet the minimum setbacks for the lot. The twelve-foot rear yard encroachment will leave eighteen-feet between the patio and the rear fence. I see no inherent hardship on the land due to shape, topo, size or etc. So my recommendation would be unfavorable and it would also be my recommendation that the applicant seek other options that will satisfy and prevent future weatherization of the door that fit within the setbacks. Mr. Malcolm Zellner, agent for Mr. Kim, is present tonight.

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

Chairman: thank you, Ms. Jones. Mr. Zellner, do you have anything that you would like to say?

Mr. Swaney: before you do that, question: I may have missed this. How large can the patio be without encroaching on the setbacks?

Ms. Jones: let us ask Mr. Zellner that question.

Mr. Swaney: oh, okay.

Mr. Felts: I also wanted to ask staff a question. I noted in the staff report that they had visited and did note that there was some damage to the rear door as was stated by the applicant. Can you give us an idea of what the level of damage was and did it look as if it was caused by water or some other damage, maybe termites or something like that?

Ms. Jones: I will have to pass that question on to Ms. Pat Houston she actually did my photos and onsite survey.

Ms. Houston: actually in my view it looked as if it was rain damage. It was not on the top part of the door, only the bottom.

Mr. Felts: like it was from the splashing?

Ms. Houston: yes, sir.

Mr. Felts: thank you, Ms. Pat.

Chairman: Mr. Zellner, if you would speak into the microphone this is being recorded.

Mr. Zellner: I am Malcolm Zellner, a licensed contractor here in the City of Daphne, and also parishioner and fellow church member of the Kim's. I would like to ask on behalf of Sean & Rachel Kim that you approve this variance request because it will in no way adversely affect any of the neighboring property owners of the Sehoj Subdivision, as is evident by the already acquired permission of the Sehoj Architectural Board, and I believe that permission is on file. Also, none of the contiguous property owners have voiced any objection to the purposed project and we have one of the neighbors, the nearest neighbor here with us this evening to attest to that. After completion of this project there will still be some eighteen-feet from the property line, and this property will be hardly visible from the street or from the neighbors. This project will protect the rear door of this house from the elements and enhance the ambiance of the Kim's backyard and allow them to more fully enjoy life here in Daphne. The damage to the rear door is the lack of overhang on the building and splash off of the little concrete patio that is there now. In

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

discussion with the people at the Building Department here in Daphne, I understand that the problem comes in when I attach a roof to a roof.

Mr. Zellner: as I understand it, we can build a pergola or free standing gazebo, pergola type or out building on the property without violating the setback rules.

Chairman: yes, sir. Once you attach it to the house it becomes part of the structure, and the structure must be within the setbacks.

Mr. Zellner: right, yeah and that is the problem, and for the stated reason there is no real harm to the neighborhood or to the neighbors. I think the request is reasonable and that they should be allowed to build this covered patio. I also understand from the Building Department that the size of the slab, which is under the patio, is irrelevant to the setback dimensions. So it is the roof over part of the patio, which is approximately a 12' x 20' covered area coming off of that back door, and those all my statements.

Mr. Swaney: again, how large will the patio be or how great can the width be and still remain within the setback lines?

Mr. Zellner: about two-feet. Right now the slab, and the drawing that you have in the files is a little bit confusing, because it says right here it is a dotted line that says fifteen-feet back set line and I do not know what that means, but the distance from the nearest corner of the slab to the property line is some thirty two-feet. So are you all looking at this? This is pretty much to scale what I sketched on here, the thing back there, and you can see how it fits in the back yard, and that is the covered area, not the slab area. By the way, Ms. Kim speaks limited English. They are Korean and have even smaller dealings with officials than I do, so that is why I am speaking for them.

Mr. Felts: the staff report seems to indicate that a five-foot roofed patio would satisfy the setback requirement. Is that accurate?

Ms. Jones: that is based on the drawing that was submitted. It is not anything that we had to scale. So that was an estimate or an approximation.

Mr. Felts: in your view Mr. Zellner, in your opinion, what would be the minimum covered area that the house would need to protect the door from weather damage?

Mr. Zellner: you would have to get a good six-feet away from the wall with some sort of roof to keep all the water off the door.

Mr. Felts: because I can tell you I have a patio in the back of my house that is not covered and we have not had any weather damage and our house is about thirty years old, but I understand each house is

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

different, but you do not think that even a two-foot cover would satisfy the problem?

Mr. Zellner: no, I do not think that coming out two-feet would. The other thing we ran into with the Building Department was they said, if you cantilever two-feet out it means that you have got to cantilever four-feet in the other direction, and by the time, even if you came out four-feet, and by the time you put columns down you are encroaching. So you see that is the problem we are dealing with.

Mr. Swaney: you indicated I believe earlier that the roof, the covered portion, is the same width as the slab?

Mr. Zellner: no, the slab width is sixteen-feet, and the roof goes out only twelve-feet, and the slab width in the other direction is like twenty-four, oh wait it is more than that. Anyway, the roof only covers less than half of the patio slab.

Chairman: anything else?

Mr. Zellner: no, I have told you all everything I needed to say. I sure appreciate your consideration.

Chairman: any other questions or comments? Ms. Jones, you were saying the 5' x 24' is based upon there drawing?

Ms. Jones: right and it was not to scale.

Chairman: it is not to scale.

Ms. Jones: no, it was me trying to give an estimate of what is remaining between the existing property line and the patio.

Chairman: I have a problem with a twelve-foot encroachment. It is kind of going a long ways out and it is really changing the intent of the Ordinance. I know you have a fence around it, a privacy fence, I went by there and looked at it. You have the privacy fence, and others around you really will not see it, but at my house we have an overhang that comes off the roof. It is down and it protects our door back on the patio and we really have not had any problems and our house is forty something years old, and we really have not had any problems with it. Now it is up a little higher than what this is and still we do not have that, but I do have a problem with a twelve-foot encroachment. Three or four feet or whatever, there are certain pieces of property that you do have to do those kinds of things.

Mr. Swaney: I do too. That is a rather massive encroachment on a thirty-foot setback.

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

Mr. Felts: I concur with that. I think that is too far to encroach. I think if there was some encroachment, perhaps maybe we should get a scale drawing to see what the minimum would be to protect the door.

Mr. Felts: if there is an encroachment after we get that drawing then maybe we can take it on that kind of a case by case basis, but I agree with you all a twelve-foot encroachment is just too much.

Chairman: let me see if the Board agrees with me on this, on what I am about to say. If we vote tonight and I cannot say which way the Board will vote, but if your appeal is denied you cannot come back in front of the Board again for a year on this. Is that correct? With the same scale?

Mr. Hoffman: that is correct.

Chairman: or if you withdrew it tonight you could come back at a later date with a different scale and different drawing. Now I cannot tell you what to do as to how this Board will vote, but if you withdraw it tonight you can come back at a later date, if not, it is at least a year with the same idea or scale.

Mr. Zellner: can I ask a question.

Chairman: yes, sir.

Mr. Zellner: what sort of encroachment are we talking about? We could go back to the drawing board and redesign something that will suit it. Can you give me some hint about what sort of encroachment you will allow?

Chairman: no, sir. We cannot tell you what to do.

Ms. Swaney: unfortunately I do not know how our compadre' will vote.

Chairman: no, sir. I could say one thing and somebody else may have a different opinion as to what you might do.

Mr. Felts: instead of them withdrawing we can do a request for them to bring in a scaled drawing.

Mr. Zellner: what I am hearing is that the twelve-foot is not going to fly, but I am trying to get some notion. I think we would be better off with withdrawing this, and rethinking it. Do you understand what I am saying?

Chairman: Ms. Jones if they do withdraw it and come back to you and you sit down and look at their scaled drawing.

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

Ms. Jones: yes, I think what Mr. Felts said was in proper order. What the Board needs to know is what is the minimum encroachment or the minimum amount of land area that you need to protect that rear door, and that is something that you are going to have to determine by staking out the area.

Ms. Jones: it may be that one-foot or two-feet, but they cannot tell you how many feet they would allow. They just need to know that it is the least amount in order to fix whatever the problem would be. Hopefully I said that properly.

Mr. Zellner: one other question. Am I right, in that the Building Department says that the slab out back can be installed and paved without a roof?

Ms. Jones: as long as it is not covered.

Mr. Zellner: as long as it is not covered.

Ms. Jones: yes, sir.

Chairman: yes, sir. Once you cover it, it brings your setback into play.

Mr. Zellner: right. Now is the setback the drip of the eaves or is it the supporting structure?

Ms. Jones: I think you get two-feet off of the eave. I will look that up.

Mr. Zellner: so if the setback is thirty-feet the eaves could go two-feet past the thirty-feet and still would be okay?

Ms. Jones: I am not sure, but we can talk about that in my office at a later time if you want to do that.

Mr. Zellner: okay. Can I go make a phone call to Mr. Kim and see what he wants to do?

Ms. Jones: would you like to take a five minute for him to go call Mr. Kim.

Chairman: sure. The Chair will entertain a motion to take a five minute recess.

A Motion was made by Mr. Swaney and Seconded by Mr. Mayhand to recess at 6:25 p.m. and reconvene at 6:30 p.m.

The Motion carried unanimously.

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

Chairman: let us come to order, and if you would state your name again for the record please.

Mr. Zellner: Malcolm Zellner speaking for Sean Kim and his wife, Rachel. In a brief conversation with Mr. Kim he has chosen to let you vote and will go from there with whatever you decide.

Chairman: okay.

Mr. Zellner: if we have to go back to the drawing board, we will go back to the drawing board and take it from there.

Chairman: okay. Thank you, sir. 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. Swaney** and **Seconded** by **Mr. Mayhand** to approve **Appeal #2011-05, Sangyoung Kim, for a variance to allow an attached patio to encroach twelve-feet into the thirty-foot rear setback line at 9381 Marchand Avenue. The property is located in an R-3, High Density Single Family Residential Zone.**

Upon roll call vote, the motion failed.

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

Chairman: the appeal is denied. Thank you. (Mr. Zellner & Ms. Kim departed abruptly, but Chair went outside after them to let them know that they have the right to appeal this decision with the Circuit Court of Baldwin County and if they planned to do so they needed to let the Community Development Department know in writing within fifteen days from this decision).

Election of Officers

Chairman: we have under new business tonight the Election of Officers. The Chair will entertain a motion.

Mr. Lamb: if Mr. Robison will continue to lead us with his brilliant leadership of this organization I move that he remain Chairman. He has done an outstanding job as Chairman.

Mr. Mayhand: I second.

Chairman: any other nominations. If not, nominations are closed.

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

A Motion was made by Mr. Lamb and Seconded by Mr. Mayhand for Mr. Willie Robison as Chairman.

The Motion carried unanimously.

Chairman: nominations for Vice Chairman.

Mr. Mayhand: I nominate Mr. Felts.

Chairman: we have Mr. Felts nominated. Any other nominations?

Mr. Felts: point of order. Can I be nominated if I am an Alternate Member?

Mr. Hoffman: it has to be a Board member.

Ms. Houston: he is an Alternate member he cannot be Vice Chairman.

Chairman: he cannot be nominated because it has to be a Board member.

Mr. Lamb: I nominate Mr. Swaney.

Mr. Mayhand: I second.

Chairman: any other nominations. If not, nominations are closed.

A Motion was made by Mr. Lamb and Seconded by Mr. Mayhand for Mr. Glen Swaney Robison for Vice Chairman.

The Motion carried unanimously.

Chairman: Secretary.

Mr. Felts: I nominate Ms. Hargiss.

Mr. Lamb: I second.

Chairman: any other nominations. If not, nominations are closed.

A Motion was made by Mr. Felts and Seconded by Mr. Lamb for Ms. Jeri Hargiss for Secretary.

The Motion carried unanimously.

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

Adjournment:

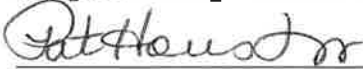
CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF OCTOBER 6, 2011 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL

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

The Motion carried unanimously.

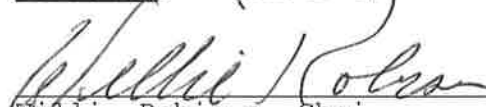
There being no further business the meeting was adjourned at 6:40 p.m.

Respectfully submitted by:



Pat Houston, Recording Secretary

APPROVED: November 3, 2011



Willie Robison, Chairman

/ph