

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF APRIL 7, 2011 - 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
Billy Mayhand, Vice Chairman

Members Absent:

Barry Taylor

Staff Present:

Adrienne D. Jones, Director of Community Development
Jerry Speegle, BZA Attorney
Pat Houston, Recording Secretary

The Chairman stated next item on the agenda is the approval of the July 1st, 2010 meeting minutes. The Chairman stated 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 July 1st, 2010 meeting were considered for approval.

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

The Motion carried unanimously.

The Chairman stated next is the approval of the September 2nd, 2010 meeting minutes. The Chair will entertain a motion to approve the minutes as written.

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

The Motion carried unanimously.

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New Business:

Appeal #2011-02 TDG Lake Forest LLC

The Chairman stated next is new business on the agenda, Appeal #2011-02 TDG Lake Forest LLC, a variance to allow the reconstruction of an 8-unit apartment building. The property is located at 500 Jackson Street, and it is in an R-3, High Density Single Family Residential Zone and a B-1 Local Business Zone. Mr. Bullock will you be representing the applicant tonight?

Mr. Bullock stated yes, sir.

The Chairman stated fine, but first we will have Ms. Jones walk us through it. Also, I asked for the order of these appeals to be changed on the agenda to make it easier. Ms. Jones, if you would please take us through this.

Ms. Jones passed out a Power Point Presentation of 500 Jackson Street showing the site of the enclosed existing slab that remains from the burned apartment unit. Ms. Jones stated the subject property is located at 500 Jackson Street. If you look at the slide copies that I handed out you will see pictures of the empty slab on the location map. In 1979 the Lake Forest Apartments were constructed. In 1987 the City of Daphne zoning was established and in 1988 Daphne annexed Lake Forest and the apartments and they were grandfathered with a nonconforming use status. In 2007 the Lake Forest Apartments had a fire and one unit was completely destroyed. In 2010 the apartments were sold and came under new ownership and those new owners are seeking a zoning amendment and variance today.

Section 9-14 the Grandfather Clause states "any use of buildings or land existing prior to the enactment of the Lane Use and Development Ordinance, September 21, 1987, and does not conform to the provisions set forth by the Ordinance shall be allowed to continue as a nonconforming use". Article 9-2(b)(4) of the Land Use & Development Ordinance, "a NONCONFORMING BUILDING, structure or improvement which is hereafter damaged or destroyed to an extent exceeding 50% of the reasonable estimated replacement cost of the structure, building or improvement may not be reconstructed or restored to the same nonconforming use, except upon the approval of the Board of Zoning Adjustment". Currently the Lake Forest's fourteen apartment buildings are grandfathered with a B-1/R-3 zoning which is one hundred and twenty units or nineteen point zero one units per acre. As such under Article 9-2(b) Lake Forest Apartment needs BZA approval to rebuild one eight unit building resulting in one hundred and twenty eight units or twenty point twenty eight units per acre, which was its original layout when it was annexed into the City. The maximum density provision allowable for apartments in an R-4, Multi-Family Residential zone is fourteen units per acre.

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Ms. Jones stated aesthetically, reconstructing the building is a much better solution than the empty slab.

The Chairman stated Mr. Bullock if you would please step up to the podium and stand your name for the record.

Mr. Bullock stated my name is Joe Bullock and I am with Engineering Development Services and we are representing TDG Lake Forest Apartments LLC. Ms. Jones has summed up the matter perfectly; therefore, I will not repeat it. Basically, I am here with my client to answer any questions you may have.

Mr. Moss stated frankly, I would like to see the apartment building built back. It would be much better than an ugly empty slab just sitting there.

Mr. Lamb stated I am trying to wrap my mind around this. We are only talking about reconstructing the apartment building that burned down.

Mr. Bullock stated correct.

Ms. Jones stated yes, sir. Once the building burned down it was over 50% damaged and lost its grandfather status. In order to rebuild they must have a variance from the BZA to do so. It must be built according to whatever the Building Code is now. At this point we are only talking about rebuilding the apartment unit that burned down.

Mr. Swaney stated are we talking about one building are all of them?

Mr. Dobbins stated just one.

The Chairman state would you stated your name for the record?

Mr. Dobbins stated my name is Bill Dobbins of the Dobbins Group.

Mr. Swaney stated do you own just this one unit or all of them?

Mr. Dobbins stated they are all under common ownership.

The Chairman stated thank you. Does the Board have any other questions or comments? If not, the Chair will entertain a motion and the motion must be made in the affirmative.

Mr. Spriggs stated may I say something?

The Chairman stated I am sorry. Let me do this correctly please. Are there any adjacent property owners wishing to speak against this appeal? Are there any wishing to speak in favor of it? Okay. Mr. Spriggs if you would state your name for the record please.

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Mr. Spriggs stated my name is Kevin Spriggs and I own several businesses in the City of Daphne and I have for many years. I would just like to say that as a business owner I would like to see that unit rebuilt as a source of jobs to boost the economy here in Daphne. It does not help anyone for the slab to sit there empty when the City has the opportunity to let it be rebuilt to serve the community more efficiently as the living unit it was meant to be. Thank you.

The Chairman stated thank you, Mr. Spriggs. Are there any other questions or comments? If not, the Chair will entertain a motion and the motion must be made in the affirmative and it takes four affirmative votes for the appeal to pass.

Mr. Swaney stated approval will only affect the one unit?

Ms. Jones stated yes, sir. The Lake Forest complex is a well-established use in the City of Daphne. The property was annexed into the city and zoning was applied which precludes redevelopment or any expansion unless first receiving approval from the BZA. This is a unique situation for this particular property. Rebuilding the 8 unit building would not be detrimental to the surrounding area and would not usurp the intent of the Zoning Regulations. If considered for approval, such should be contingent upon the City Council's approval of an ordinance to establish R-4, High Density Multi-Family Residential Zoning for the entire site is my recommendation. There are extraordinary and exceptional conditions pertaining to the property in question because of its size, shape and topography.

The Chairman stated any other comments or questions. If not, the Chair will entertain a motion and the motion must be made in the affirmative and it takes four affirmative votes for the appeal to pass.

A Motion was made by Mr. Mayhand and Seconded by Mr. Moss to approve Appeal #2011-02, TDG Lake Forest, LLC, for a variance to allow the reconstruction of an 8-unit apartment building at 500 Jackson Street destroyed by fire and it is in an R-3, High Density Single Family Residential Zone and a B-1, Local Business Zone.

Upon roll call vote, the motion carried.

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

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

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New Business:

Appeal #2011-01: TDG Lake Forest, LLC

The Chairman stated next on the agenda is Appeal #2011-01, a variance to allow an extension to the grandfather status regarding existing structures, setbacks, and density. The property is located at 500 Jackson Street, and it is in an R-3, High Density Single Family Residential Zone, and a B-1, Local Business Zone. Ms. Jones, if you would take us through this please.

Ms. Jones stated the Lake Forest Apartment complex is currently zoned R-3 and B-1, neither of which would allow a multi-family apartment development under the current regulations of the Land Use Ordinance. The use was constructed in 1979 under the jurisdiction of unincorporated Baldwin County. Zoning for the city was established eight years later in 1987. In 1988 the property was annexed into the City of Daphne and grandfathered as a legal nonconforming use. Although the apartment is zoned R-3 and B-1, the petitioner has presented a request to the City Council to rezone the property R-4. An R-4 Multi Family allows apartment development with a maximum density of 14 units per acre. If the site had been developed under the City's R-4 provisions then only 88 units would be allowed. If the Council approves R-4 Zoning, the development loses its grandfather status. The petitioners are here tonight to request the BZA to grant them a variance to be grandfathered henceforth forever. They request the BZA to grant the right and an entitlement to achieve a density of 20.2 units per acre in lieu of the 14 units per acre and to establish the side setback to eight feet to the main structure and of five feet to the porches as the minimum required setback. This would allow reconstruction and alterations without any additional BZA requests in the future to be in accordance with the plans submitted. The apartment complex now consists of fourteen two-story apartment buildings and one concrete slab. There are currently 120 units. The density equals 19.01 units per acre. With the approval of the reconstruction of the unit that was destroyed by fire it brings the total unit count back to its original state of 128 units or 20.28 units per acre with two-story apartment buildings. According to Article 9-2(b)(4) of the Land Use & Development Ordinance, "a nonconforming building, structure, or improvement which is hereafter damaged or destroyed to an extent exceeding fifty percent (50%) of the reasonable estimated replacement cost of the structure, building or improvement may not be reconstructed or restored to the same nonconforming use, except upon the approval of the Board of Zoning Adjustment. Such damaged or destroyed structures that are no longer in use shall be removed and the site cleared at the owner's expense." It is my recommendation that since the property was annexed into the city and zoning was applied at that time the R-3 and B-1 zoning restricts redevelopment or any expansion by making it subject to the BZA's approval.

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Ms. Jones stated this is a situation unique to this property to allow them the ability to reconstruct on site without having to repeatedly make requests for BZA approval would be appropriate. However, I feel it would also be appropriate to make such approval contingent upon the City Council's approval of an ordinance to establish R-4 High Density Multi Family Residential Zoning for the entire site.

The Chairman stated thank you, Ms. Jones. Mr. Bullock.

Mr. Bullock stated once again Ms. Jones has done so nicely summing it up that I really do not have any more to add. I am here to answer any question the Board may have.

Mr. Lamb stated let me see if I understand you correctly. They want us to grant them a variance to always be legal nonconforming.

Mr. Bullock stated they want to keep their grandfather status and not have to come before this Board every time they need to do something to the apartments.

Mr. Speegle stated this is a quasi-judicial Board and I honestly do not think that you have the power to do that. I spoke with Mr. Pittman and Mr. Ross and we understand and agree that this is an area that has not been touched before.

Ms. Jones stated I think they can place a stipulation of the approval of the appeal so that it could be granted only if they are approved for the rezoning they have before the Council.

Mr. Mayhand stated I am not comfortable with granting them a nonconforming legal grandfather status. Twenty years from now I may not be on this Board or I may not even be around and I definitely do not want to take away the right of another Board member by granting them a grandfather status.

Mr. Lamb stated if we granted it would they have to go through the Planning Commission for any improvements?

Ms. Jones stated yes, and they would also have to comply with the latest building codes as well.

Mr. Lamb stated Mr. Dobbins why would you want us to grant this type of variance for you?

Mr. Dobbins stated it is easier to get financing if the lender knows that we can rebuild if something does happen to one of the units. They want some assurance that they will be able to rebuild. Plus it would make it easier rather than have to keep coming before you each time we wanted to make an improvement, and we certainly would have to adhere to the latest building codes.

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Mr. Swaney stated I can understand that, but to grant a continuing grandfather status for all of the units is a bit much.

The Chairman stated you understand if we vote of this tonight and it does not pass you cannot bring it before us for one year, but you certainly have the right to appeal to the Circuit Court of Baldwin County.

Mr. Robbins stated yes, sir. I understand and we just wanted to see could secure our grandfather status to go with the R-4 zoning we have requested. We have discussed this at lengths with our attorney and engineers. We may even contemplate withdrawing if the consensus is not in agreement with granting this appeal. At least withdraw it until after the Council has reviewed our zoning request.

The Chairman stated is that what you want to do, withdraw it?

Mr. Robbins stated yes, sir.

The Chairman stated the appeal is withdrawn.

Adjournment:

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

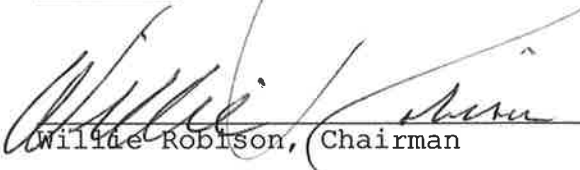
The Motion carried unanimously.

There being no further business the meeting was adjourned at 7:10 p.m.

Respectfully submitted by:

Pat Houston, Recording Secretary

APPROVED: August 4, 2011



Willie Robison, Chairman

/ph

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The Chairman stated is that what you want to do, withdraw it?

Mr. Dobbins stated yes, sir.

The Chairman stated the appeal is withdrawn.

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 7:10 p.m.

Respectfully submitted by:



Pat Houston, Recording Secretary

APPROVED: August 4, 2011



Willie Robison, Chairman

/ph