

**CITY OF DAPHNE  
BOARD OF ZONING ADJUSTMENT MINUTES  
REGULAR MEETING OF JANUARY 7, 2021 - 6:00 P.M.  
COUNCIL CHAMBERS, CITY HALL**

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Chairman called to order the regular meeting of the Board of Zoning Adjustment at 6:00 p.m. Roll was called thereafter and the number of members present constituted a quorum.

Members Present:

Willie Robison, Chairman  
Billy Mayhand  
Carolyn Courson, Vice Chair  
Thomas Warner  
Derek Wolstenholme

Members Absent:

Clay Covert  
Herb Cole

Staff Present:

Adrienne D. Jones, Director of Community Development  
Pat Johnson, Recording Secretary  
Shawn Alves, BZA Attorney

Chairman called for the **Approval of Minutes** of the July 2, 2020 meeting. There were no corrections, additions or deletions.

**The Minutes were approved unanimously.**

Chairman called the next item on the agenda, **Appeal #2020-06 Albert McCreary/John Kim**, a request for a special exception to the Daphne Land Use & Development Ordinance has been filed with the City of Daphne Board of Zoning Adjustment. The request proposes to allow the operation of a home daycare for infants only. The property is 1709 Pollard Road, which is zoned R-2, Medium Density Single Family Residential.

Ms. Jones displayed a Power Point Presentation noting that 1709 Pollard Road is zoned R-2 and the 800 square foot house abuts other R-2 dwellings on 2 sides, Pollard Road and County Road 64. She cited that Article XXXI of the Land Use & Development Ordinance allows 20 listed home occupations and defines and outlines the criteria for such. She stated according to the applicant's application he wants to "add a one on one home environment for infants". Ms. Jones also cited if the special exception is approved for a home-based daycare for infants, then no further review of a site plan would be required and the area used shall not exceed 20% of the gross floor area of the principal building and it shall be confined to said building. Accessory building or outside storage also apply to the 20% of gross floor area. Employment is permitted only to members of the family residing in the dwelling.

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Furthermore, in no case shall more than 2 persons be engaged in the home occupation. Also, favorable recommendations from the Building Official and Public Works Director are required. Ms. Jones recommended approval contingent upon there being no more than 4 infants or less as mandated by the State of Alabama with the operating hours from 7:00 a.m. to 6:00 p.m. Monday thru Friday, and all employees shall dwell in the house, with absolutely no outside employees permitted.

Chairman opened the floor for public participation.

Mr. Albert McCreary stated that he and his fiancé reside at 1709 Pollard Road and they wanted to open a daycare for infants only since there were a lot of people at their church who did not have childcare because they do not take infants. He stated that they were trying to add to the community in the area of infant care intending to use the one room closest to the road and dwelling in the remaining three.

The Board discussed the 800 square footage of the house, the 20% gross floor area usage, Mr. McCreary's 0 to 18 months definition for an infant, would the infants be going outside, the number of cars parked in the yard in the daytime, the basic ingress/egress off of Pollard Road, and a maximum of 4 infants that the applicants desires to have.

Ms. Jones questioned how many people actually live in the home and who would be operating the daycare, and had they started the application process with DHR.

Mr. McCreary answered he and his fiancé lived in the house, and she would be operating the daycare, and that they had applied with the City first and not DHR.

Ms. Jones stated Mr. McCreary your lease shows 600 Jackson Street as your address is that accurate?

Mr. McCreary answered that is where we were prior to moving to 1709.

The Board discussed Mr. McCreary residing at 1709 Pollard Road since November 2020, and asked if he understood failing to adhere to any of the rules set forth in the Ordinance, would result in forfeiture if granted approval.

Mr. McCreary answered yes, he understood, but his fiancé does have a 25 year old daughter who will come by to help sometimes because I work for Baldwin County and will be gone.

The Board reiterated that only family members residing in the dwelling could be employees, the 20% square footage floor area usage for the daycare, and that the Building Official, Eric Butler and Acting Public Works Director, William Eringman, had both signed and sent their approval documentation.

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The Chairman closed public participation for those in favor of this appeal due to there being none. He then asked for all opposed to the request.

Mr. Willie Williams, 1513 Pollard Road, a neighbor representing his wife, Sabrina, Ms. Macy O. Brazelton and Ms. Mary Thomas stated that they were in opposition to the daycare because it is zoned R-2 residential and we desire that it stay residential only, and he asked for all opposed to the special exception to stand, and 15 people stood in opposition. He cited the square footage of the house limiting 32 square feet for each child per DHR regulations, which meant Mr. McCreary would only be allowed one infant excluding the bathroom, kitchen, isolation area, cubby area, and a separate diapering area. DHR also requires a play area of less than sixty feet, a reception area for the parents to enter in and out, and he observed the horrible traffic flow along Pollard Road, concluding that a daycare is not feasible. He also mentioned that the Council had also opposed changing the zoning of this property. Mr. Steve Olen cited after measuring the diagram submitted by his calculation 24 to 30 percent was the total gross floor area being used with the bathroom and kitchen if it was to scale. He also noted the definition of family is not a fiancé and after his reviewing the lease it appeared to be a business contract because it was in the done in a business name, which circumvents the zoning of the property.

Ms. Jones cited she does not think the kitchen and bathroom should be considered as part of the business in the total percentage of gross floor area.

Mr. McCreary cited that they do live there and that the area for the infants is set-up with its own fridge and microwave. He also cited that the 20% gross floor area is okay by DHR rules for 4 infants and the number of cars in and out for those infants should not cause any harm.

The Chairman closed public participation of the appeal.

The Chairman called for an affirmatively stated motion.

**A Motion was made by Ms. Courson and Seconded by Mr. Wolstenholme to approve Appeal #2020-06, Albert McCreary/John Kim, a request for a special exception to the Daphne Land Use & Development Ordinance has been filed with the City of Daphne Board of Zoning Adjustment. The request proposes to allow the operation of a home daycare for infants only. The property is 1709 Pollard Road, which is zoned R-2, Medium Density Single Family Residential.**

The Chairman called for a roll call vote.

<b>Mr. Warner</b>	<b>Nay</b>
<b>Mr. Mayhand</b>	<b>Nay</b>
<b>Mr. Courson</b>	<b>Nay</b>
<b>Mr. Wolstenholme</b>	<b>Nay</b>
<b>Mr. Robison</b>	<b>Nay</b>

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

The Chairman stated your special exception is denied. You have fifteen days from today to notify Community Development in writing if you plan to appeal this decision in Baldwin County Circuit Court. You can pick up your paperwork in the morning in the Community Development office.

Mr. Warner stated as of January 8, 2021, he was resigning as a member of the Board and that he was thankful to have served with everyone.

**Election of Officers**

The Chair stated next on the agenda is the election of officers and he opened the floor for the nominations for Chairman.

Mr. Mayhand nominated Mr. Robison for Chairman. The nominations were closed with no other nominations, Mr. Willie Robison is Chairman.

The Chair opened the floor for the nominations for Vice Chairman.

Mr. Wolstenholme nominated Ms. Courson for Vice Chairman. The nominations were closed with no other nominations; Ms. Carolyn Courson is Vice Chairman.

The Chairman stated Ms. Pat Johnson is our Recording Secretary.

There being no other business the Chairman called for a **Motion to Adjourn.**

A **Motion** was made by **Ms. Courson** and **Seconded** by **Mr. Warner** to **adjourn. There was no discussion of the motion.**

**The Motion carried unanimously.**

The meeting adjourned at 6:44 p.m.

**Respectfully submitted by:**

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Pat Johnson, Recording Secretary

**APPROVED:** February 4, 2021

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Willie Robison, Chairman