

**CITY OF DAPHNE  
BOARD OF ZONING ADJUSTMENT MINUTES  
REGULAR MEETING OF MARCH 4, 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  
Carolyn Courson, Vice Chair  
Clay Covert  
Derek Wolstenholme

Members Absent:

Herb Cole  
Billy Mayhand

Staff Present:

Troy Strunk, Executive Director City Development  
Pat Johnson, Recording Secretary  
Shawn Alves, BZA Attorney

Staff Absent:

Adrienne D. Jones, Director of Community Development

Chairman called for the **Approval of Minutes** of the February 4, 2021 meeting. There were no corrections, additions or deletions.

**The Minutes were approved unanimously.**

Chairman called the item under old business on the agenda, **Appeal #2021-01, Restoration Place Church/Redsouth, LLC**, a request for a special exception to the Daphne Land Use & Development Ordinance filed with the City of Daphne Board of Zoning Adjustment carried over from the February 4, 2021 regular meeting. The request, if granted, proposes to allow the operation of a church on PPIN #31245, Lot 7, Daphne Business Park, Unit III, a 14.0 acre undeveloped parcel on Stanton Road. The property is zoned C/I, Commercial/Industrial.

Mr. Strunk displayed a Power Point Presentation showing the plat of Lot 7, Unit III, Daphne Business Park, and read excerpts from Article 12.5, 13.1, and 35 of the LUDO citing that this appeal was continued from last month due to a site plan not accompanying the application for the Board to review parking and an entrance onto the property. He referenced the letters of opposition received and displayed staff's recommendation that read as follows: *"The church has provided a basic site plan that meets the standard enumerated for a special exception application. The site is encumbered by several challenges which will limit the church's ability to fully realize its growth potential. Nevertheless, the church is accepting the challenges that have been identified. I would not advise the church to settle for this location; however, if the church is adamant about this parcel I will not stand in the way. I will state for the record that the site conditions will not be accepted as justification for any future variance requests. Requesting the special exception is full acknowledge-ment that the church accepts the site limitations and will work within those limitations."*

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The Board questioned where Daphne Business Park starts on Stanton Road, and that the staff recommendation for any variance applied for would be denial.

Chairman opened the floor for public participation.

Pastor Tim Conaway, Restoration Place Church stated his excitement to continue as a safe community partner as they have for the last 10 years, and he believes the actual membership to be 400.

The Board questioned the church's active membership and what is their plan for growth since they are close to maxing out a building now, and questioned whether any wetland delineation had been done on the lot.

Pastor Conaway stated they started in 2011 at the Lake Forest Yacht Club and moved to the skating rink, and that they love their city and wish to continue serving it with their book bag, toy, turkey and gas give-a-ways to renew hope and restore lives. COVID-19 has changed a lot, and they do online services because everyone is not comfortable coming into a building, and they have some out of state members, so all their members are not actually in seats. Their growth goal is to extent to Foley and Mobile, not necessarily everybody in one space. Jeff Jordan, the Architect will answer any site questions the Board.

Mr. Jordan stated his name as Jeff Jordan, a local commercial Architect with Forest, Daniell & Associates who has designed a few local jobs, City Hope, Eastern Shore Baptist, and 3 Circle Church. His intention so far was to go through the process for a special exception for the use. They are trying to save their client money by not going down the path of a site plan just yet. He cited the first item on our checklist is to see if the client can actually use the property as intended, and second, before we would even make a recommendation for them to purchase the property after that step, it would be to get a wetlands survey, then some technical borings would be taken to be sure that they would not run into any unusal foundation conditions that would cost a lot of money. After three or four steps like that they would then design civil plans for any flood plains that may be out there to may sure that they will be successful before any recommendations to purchase. The design will be a metal type building to hold 300 people for multiple services. Then another building, an administration building will be put up in the future. They will build towards the high property line draining down to the detention pond. A large manufacturing building is not feasible for the lot. He is designing around the existing topography. He stated they would be allowed to build another building as long as they adhere to the zoning regulations, if granted the special exception and no variance is requested, correct, in addition to the worship building they desire now.

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Mr. Strunk stated yes as long as it meets the LUDO standards.

Mr. Jordan stated they would be building backed up towards the high property line draining down to the retention pond. A large manufacturing building is not feasible on this property so they are designing around the existing topography, purposing to leave a two-lane wooded access road to feel like they are separating as much as they can from the roadway and other buildings already there, leaving woods along the property lines where you drive in just so for the separation. The building will sit about the only way that they think that it can sit on the site, up on the high land and parking pitched towards the detention pond. Everything is slipping down towards the ravine or trench towards the flood plains. They feel the land is not useable for many other facilities. If you try to do something larger on this property he does not think the room is there, and the topography is not very good to try and do a large development on this land, but it is suited for what they are trying to do there.

The Board discussed the location of the building, parking lot and the detention pond.

Mr. Jordan stated everything is slipping down towards the ravine that you see. So, it is just natural that the building would be high, parking next, then the pond to intercept all the water before it goes into the ravine. We are basically designing around the existing topography for the least amount of work, and therefore cost.

Mr. Haygood stated Dane Haygood, Manager of the entity that owns this property asked for clarification on the slide put up earlier on the statement by Ms. Jones because of the discussion he felt there was some confusion based on remarks to that affect. He stated there was some conjecture whether the language was appropriate or not, a recommendation, and that might be debatable, but he cited any future variance requests, from his vantage point means not this request, and there would not be any subsequent requests. The way he interpreted Ms. Jones statement was that any future variance requests because of site conditions such as setbacks would not be granted, but any applicant wants use approval before spending a lot of funds. He also cited that Pastor Tim is a great steward over the resources entrusted to him, but before they spent the money for a site plan they wanted to know whether the site was useable, a site plan will be submitted to the Planning Commission for full approval of the site, wetlands, and stormwater regulations are met. He cited the church may not need 14 acres, but this unique property at the end of a cul-de-sac leaves them room for growth despite some limiting issues, which prevent full use of the property and he asked legal to interpret Ms. Jones statement for clarification because it concerns him she would give a denial recommendation for a variance request especially if this sale does not go through.

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The Chairman asked Mr. Haygood if he had advised Pastor Conaway not to submit the necessary site plan from the previous month and he stated yes, he had, because he determined that an actual site plan would not be needed until it went before the Planning Commission, and he stated the architect submitted an adequate building footprint area because a site plan is not defined in the LUDO, it would be highly unusual for a fully engineered site plan to be done before they purchase the property and they knew whether or not they could use it for their intended use. Mr. Haygood agreed that there are some things set forth under a different set of circumstances, but nonetheless these are rules that everyone has to play by, and he hoped the Board would give some consideration in the future about if it is not an Alabama Code issue and it is just something coming from a city department or Council decision then maybe they would be considered before an applicant has to spend a sufficient sum of money, because he thinks there is a question of appropriateness and compatibility. He also cited certainly there is a zoning issue in this park, but there is a lot more office use prevalent, and he knows that the Pastor wants to build something that is attractive and have made an effort to find something that sets back and does not disturb neighbors. He said he could assure them that it would be less impactful than D. R. Horton, less traffic and a nice driveway at the end of a cul-de-sac with maybe 50 to 60 participants with multiple services, Pastor Tim can better attest to that, but he wanted clarification on Ms. Jones statement as to the church's future growth on the property.

Mr. Alves stated on the slide is the recommendation of the staff. He thought it was safe to say that staff would not recommend another variance on the property, and it was the only clarification he could give, and it does not prevent an applicant from applying because the Board makes the decisions. Next, he stated site plan is defined in the LUDO on page 30, referenced to Article 15, Procedures for Site Plan Review, and Mr. Strunk had answered already about any future buildings as long as they met the LUDO regulations. Variances are issues with setback and buffer requirements and such. The Chairman asked Mr. Haygood if Mr. Alves statement helped and he answered yes.

The Chair closed public participation for those in favor of the appeal and asked for those in opposition.

Mr. Steve Olen, 439 Village Drive, stated on a special exception application the language states "No Special Exception may be granted which may adversely affect the surrounding properties or the character of the neighborhood." In addition, Article 13-2 in the LUDO points out that the use must be in harmony with the orderly and appropriate development of the district in which the development is to occur. His thoughts are that a church is not doable here because of protective covenants standards which are very specific and limited and come into play here.

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Mr. Olen stated the applicant originally said there were not any protective covenants, but Ms. Jones found that there were. He cited the uses as only for general or public administration offices, light industrial manufacturing, assembling, processing, wholesaling, jobbing, warehousing, research and development, and or a combination of such uses and businesses. He stated it is noteworthy that the applicant who wants to streamline things has not come forth and presented any evidence that they have approval from the Property Owners Association for a use that is not within uses specified by these protective covenants because a church is not one of the permitted uses. It appeared to him that the applicant wanted to get approval from the BZA first and use it as some type of leverage to put pressure on the POA to approve it. It also seemed to him that they would have gone to the POA first to streamline this, but they have not put forth any evidence that they have. He cited that Em Johnson, widow of Joe Johnson, who developed Daphne Business Park, emailed the Board a letter in opposition, importantly stating breaking the covenants would hurt the character of the park established by her husband, when he himself kept it working hard to do so even if he lost the sale of lots doing so. He said he did not have anything against churches, he and his wife are members of one, but feels this would hurt the character of the neighborhood, it is zoned as a commercial industrial park. You have two business owners that have invested in operating businesses there, one, Mr. Pruitt, Fed Corp, has done so for eleven years says he adamantly opposes this use, and Mr. Bob Kemper, Kemper Industries, says he is also against the building of a church, and it is important to preserve their property rights of expecting this to be a business park as set forth in the narrowly written protective covenants. The Board might not consider private agreements under normal circumstances, but here if the Board grants the special exception would open the door for a type of operation that would adversely affect the surrounding properties in the neighborhood that these owners perceived it to be when they bought there, and that is why they oppose the use.

The Board discussed the uses listed in the protective covenants read by Mr. Olen, and his being opposed to any church being in this commercial industrial park, to make it clear that he was not picking on any denomination, and where the Daphne Business Park actually starts and stops, and the nature of the two businesses that oppose the appeal.

Mr. O'hara stated Tom O'hara, Lawyer a lawyer who lives on North Court, Timbercreek and he cited that he had read the covenants and restrictions and did not perceive them to restrict a church, and stated additionally it does explicitly exclude any retail use in that business park, but there is a title company and D. R. Horton, who conducts business on a retail basis to their customers, so to get up and say that the POA has diligently enforced the covenants is not accurate.

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Mr. O'hara also cited there are some questions about the validity of the POA and whether they are an ongoing entity and has not conducted its affairs as it is obligated to do. He felt that arguments had been made that were not established, and it is a matter between the POA and the applicant not the BZA. Does this have a negative impact on the special exception is the standard you are looking at for this lighter use and impact for the lot. He cited there are buffers with trees talked about in the existing neighborhood that we believe violate the covenants so the church would be a much lesser impact than businesses already there.

The Chairman agreed that Mr. O'hara was correct about the Board not getting into covenant restrictions and them being dealt with by the POA and the applicant Pastor Conaway and the church. He cited the Board base their decisions strictly on the LUDO and whether requests adversely affect a neighborhood and are detrimental to them, but Mr. O'hara felt that he had not heard anything that would be detrimental, but rather will the POA allow it, and again the Chairman assured him that issue was between the POA and the church. The Chairman asked Mr. Alves was there any adverse effects and detriment for the church being in a C/I and he answered there was none that he could see. Mr. Jordan clarified that the beginning boundary of the Daphne Business Park starts just east of the water tower. Mr. Haygood clarified for Mr. Olen that the POA provisions are not subject to this body, but he had contacted Mr. John Austin, a representative of the POA, for approval to allow the church and in his conversation with him it was found that some type of documentation had be sent out to some of the property owners not all, but some and it appeared that there was a bias against churches, which he found to be quite disturbing and he made Mr. Austin aware of his feelings and followed up with correspondence of same that evening. Mr. Haygood cited discrimination against churches or any use is uncalled for and for someone to say that no attempt has been made to get POA approval was completely inaccurate. The Chairman stated that the Board is not opposed to churches and he himself is not opposed to churches because he belongs to one and for what it matters he is a Christian, and he makes his decision based on the LUDO and the merits of the request.

The Chair closed public participation for those in favor of the appeal and those in opposition, and he called for an affirmatively stated motion.

**The request failed due to lack of a Motion.**

The Chairman stated you have fifteen days to notify Community Development in writing if you plan to appeal with the Circuit Court of Baldwin County.

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

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

**The Motion carried unanimously.**

The meeting adjourned at 7:10 p.m.

**Respectfully submitted by:**

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Pat Johnson, Recording Secretary

**APPROVED:** May 6, 2021

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Willie Robison, Chairman