

**CITY OF DAPHNE
BOARD OF ZONING ADJUSTMENT MINUTES
REGULAR MEETING OF MAY 6, 2019 - 6:00 P.M.
COUNCIL CHAMBERS, CITY HALL**

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:

Thomas Warner, Vice Chairman
Herb Cole
Derek Wolstenholme
Willie Robison, Chairman

Members Absent:

Carolyn Courson
Billy Mayhand

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 March 7, 2019 meeting. There were no corrections, additions or deletions.

The Minutes were approved unanimously.

Chairman called the next item on the agenda, **Appeal #2019-02 Mobile Volleyball, LLC**, an administrative review request to the City of Daphne Board of Zoning Adjustment has been filed by Mobile Volleyball, LLC, alleging an error in the determination by the Director of Community Development with regard to the applicable land use category of the Land Use and Development Ordinance, Article 35-4 in the Table of Permitted Uses. The applicant alleges that the proposed use is not an outdoor amusement use, but rather a restaurant. The appeal is in accordance with the provisions of Land Use and Development Ordinance Section 21-1(f)(1). He stated there would be no discussion of ingress and egress, parking, noise or lighting that this would strictly be about the administrative review of their disagreement with Ms. Jones' decision.

Ms. Jones displayed a Power Point Presentation of the event timeline of Mobile Volleyball LLC application prior to the appeal. She cited per Code of Alabama Section 11-52-80 appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. The aggrieved person in this case was Weston Hawkins, a member of Mobile Volleyball, LLC. Code goes on to say, such appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with an officer from whom the appeal is taken upon to the Board of Adjustment a notice of appeal specifying the grounds thereof".

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Notice of appeal was appropriately filed. The application for Administrative Review was filed in Community Development on April 1, 2019. The Code of Alabama provides the powers of the Board of Adjustment. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this article or of any ordinance adopted pursuant thereto. In this case, the alleged error by an Administrative Official was made by, Adrienne Jones, as Planning Director/Director of Community Development. The determination she made was that Tropics Volleyball's proposed operation was classified as an outdoor amusement use, similar to a park, playground including recreation centers, which need not be enclosed within a structure or to outdoor tennis courts or club. Code of Alabama states that when exercising the powers mentioned in subsection (d) which was just described, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made and, to that end shall have all the powers of the Officer from whom the appeal is taken. A concurring vote of four members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official or to decide in favor of the applicant. Tonight the BZA's goal is to either affirm wholly that Tropics Volleyball's proposed operation is an outdoor amusement use that is similar to a park, playground including recreation centers, which need not be enclosed within a structure or to outdoor tennis courts or club; or to reverse Ms. Jones determination. Again, a reversal requires a concurring vote of four members. The Land Use & Development Ordinance gives specific provisions for the C-2 Outdoor Amusement District. In Section 12-6, it states that a C-2 is intended to provide locations for outdoor amusement and recreational activities, which serve the needs of the community. Section 13-10 provides a definition as being a public, private, or semi-private property that is used exclusively for recreational and amusement purposes, generally these activities are not enclosed within a building. It also indicates that Permitted Outdoor Amusement uses are listed in Article 35 in the Table of Permitted Uses. Performance standards and parking requirements also are provide in Section 13-10. She displayed the site plan presented to the Planning Commission for Tropic's Volleyball, which included nine volleyball courts, reviewed in accordance with section 35-4, permitted outdoor amusement uses and conditions and the 74 associated parking spaces as well as the bar, and grille, which falls under Section 35-3 Permitted Uses and Conditions. A bar and grille is permissible by right in B-2, but volleyball courts are not specifically listed in the Table of Permitted Uses; however, the most similar category was either a park, playground, recreation center or tennis courts or club, outdoor. Each of these outdoor uses are permissible upon approval of the Planning Commission, not by right.

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If the Planning Commission grants approval of the proposed use, then the site plan can be considered. Conversely, if the Planning Commission does not grant approval of the proposed use, then the site plan application cannot be considered. She also displayed the table of permitted uses with conditions, highlighting that a bar is permitted in a B-1 and B-2. Then showed the table for outdoor amusement permitted uses and conditions highlighting the park, playground, recreation centers or tennis courts or club, outdoor are permitted by right in C-2 and residential and business zones with the Planning Commission's approval. She reviewed past communications with Mr. Hawkins, the first email dated January 28, 2019, which stated "I am working with Chas Broughton to construct a new sports complex/restaurant in Daphne on Highway 98 near Walmart." She then showed the certificate of formation for the Mobile Volleyball LLC which stated "the purpose of the business as organizing beach volleyball leagues, tournaments and junior clinics and lastly, their ADEM application stated that they would be clearing the lot, installing a concession stand, volleyball courts and associated parking." The information provided by Mr. Hawkins in a meeting on January, 29 2019 in the Community Development office where he explained his proposal to construct volleyball courts with gravel parking and have shipping containers for a bar/grille for concessions as a convenience for the volleyball players and guests. Based on the facts presented by Mr. Hawkins, it was Ms. Jones finding that the proposed volleyball courts, though not specifically listed in the Table of Permitted Uses, is most similarly categorized with either a park, playground, recreation center or tennis courts or club, outdoor. Her staff recommendation to the Board was to affirm her finding that Tropics Volleyball's proposed operation is an outdoor amusement use that is similar to a park, playground including recreation centers, which need not be enclosed within a structure or to outdoor tennis courts or club.

Chairman opened the floor for public participation.

Mr. Hawkins stated his name as Weston Hawkins, owner of Mobile Volleyball, LLC. He cited before he proceeded any further because of public outcry two to three weeks after the first meeting has really garnered a great deal of attention and community debate. Many of the residents here, through social media, gave support for our volleyball program. We got 2500 signatures in a matter of two weeks, which has garnered some great opportunities and I would like to propose that we table this appeal until next month. If the opportunities that have been presented come through, I think it will be copacetic to everybody to move past this issue.

The Board discussed tabling the appeal with the Attorney and decided that it was in the best interest of all to move forward with the appeal and asked Mr. Hawkins was he changing his mind in his decision to disagree with Ms. Jones determination.

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Mr. Hawkins stated as a revenue contributor, Mobile Volleyball, LLC, in comparison with a restaurant establishment earns a matter of 1/12 of the revenue that is produced by a restaurant. I think the primary use of the facility is as a restaurant and the volleyball itself operates as a club program, very similar to USA Volleyball Club, and that is allowable under a B-2 setting. It does not matter. The issue is going to be decided tonight. Correct? I am not being allowed to table.

Chairman stated yes sir only the Board can table an appeal, therefore it will be decided tonight one way or the other.

Mr. Hawkins stated if that is the case then I would like to withdraw my appeal.

The Chairman closed public participation.

The Board briefly discussed the withdrawal of the appeal.

A Motion was made by Mr. Cole and Seconded by Mr. Warner to allow Mr. Westin Hawkins to withdraw Appeal #2019-02, Mobile Volleyball, LLC, an administrative review request to the City of Daphne Board of Zoning Adjustment has been filed by Mobile Volleyball, LLC, alleging an error in the determination by the Director of Community Development with regard to the applicable land use category of the Land Use and Development Ordinance, Article 35-4 in the Table of Permitted Uses. The applicant alleges that the proposed use is not an outdoor amusement use, but rather a restaurant. The appeal is in accordance with the provisions of Land Use and Development Ordinance Section 21-1(f)(1). He stated there would be no discussion of ingress and egress, parking, noise or lighting that this would strictly be about the administrative review of their disagreement with Ms. Jones' decision.

Upon roll call vote, the Motion carried unanimously.

Mr. Warner	Aye
Mr. Cole	Aye
Mr. Wolstenholme	Aye
Ms. Robison	Aye

The Chairman stated the appeal is withdrawn. There being no other business the Chairman called for a Motion to Adjourn.

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

The Motion carried unanimously.

The meeting was adjourned at 6:20 p.m.

Respectfully submitted by:



Pat Johnson, Recording Secretary

APPROVED: September 5, 2019



Willie Robison, Chairman