

REGULAR MEETING
APALACHICOLA CITY COMMISSION
TUESDAY, AUGUST 4, 2020 - 6PM
BATTERY PARK COMMUNITY CENTER
1 BAY AVE., APALACHICOLA, FLORIDA 32320

Agenda

You are welcome to comment on any matter under consideration by the Apalachicola City Commission when recognized to do so by the Mayor. Once recognized please rise to the podium, state your name for the record and adhere to the five minute time limit for public comment. Comments may also be sent by email to the City Manager or to Commissioners.

I. Call to Order

- Invocation
- Pledge of Allegiance

II. Agenda Adoption

III. Mayor and Commissioner Comments

- Historical Grants
- 14th Street Tennis Courts / resurfacing
- Gouras & Associates / possible CDBG-DR Grant Management

IV. City Manager Communications

- Budget Workshop & Hearing Dates: Tuesday, August 18, 6:00pm - Budget Workshop; Tuesday, September 15, 6:00pm - First Budget Hearing; Tuesday, September 29, 6:00pm - Final Budget Hearing for Adoption of Budget and Final Millage Rate.
- Code Enforcement hire
- FEMA projects update and RFP
- Oyster Harvest License refunds

V. Attorney Kristy Branch Banks Communications

VI. Finance Director Leo Bebeau Communications

VII. Public Comment

VIII. Consent Agenda

A. Meeting Minutes Adoption

March 3, 2020 Regular Meeting, June 10, 2020 Special Meeting, July 7, 2020 Regular Meeting, July 28, 2020 Special Meeting.

IX. Unfinished Business

- A. Quasi-Judicial Hearing: McLemore Variance

B. DEP Revolving Loan Amendment

X. New Business

A. Application for Battery Park Marina Committee / Tom Gray

B. Contract Award / Water Street Parking/Sidewalk grant

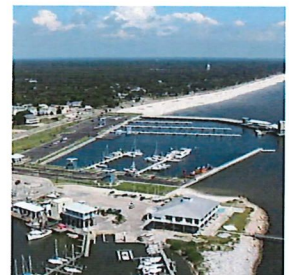
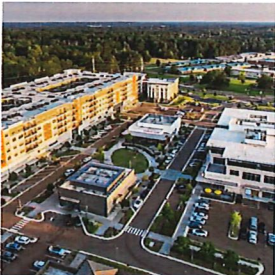
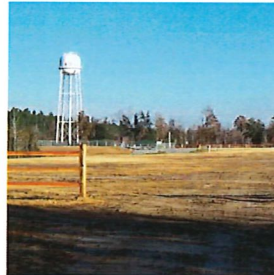
Grant Management

Each project is unique. It has a specific set of operations, agencies and individuals focused on a singular goal. At Gouras & Associates, LLC, our goal is to assist each client in completing its project on time and in compliance with the grant requirements. The team applies years of knowledge, skills, and proven techniques to press projects towards a successful closeout.

Economic Development

Innovation, adaptation, and collaboration are critical to competitiveness, job creation and economic development. Gouras & Associates, LLC works closely with clients to evaluate sites, development options, and, ultimately incentives. Gouras & Associates, LLC goes beyond helping clients apply for incentives: throughout the duration of the project the team assists clients with cataloging eligible project costs, facilitating communications with stakeholders, and closing out the incentives.

PROJECTS



About

Gouras & Associates, LLC is a financial consulting firm in Ridgeland, Mississippi. Chris G. Gouras, Jr., principal, has been securing and administering Community Development Block Grants (CDBG) as well as state and local incentives since January 1994. Most recently, Gouras & Associates has worked with disaster recovery grants for relief from Hurricane Katrina (KCDBG) and Hurricane Michael. The firm began working on KCDBG projects in 2006, and to date it has secured and administered over \$750MM in KCDBG funds for cities, counties, utility authorities, and private companies for training, economic development, and community revitalization purposes.

Gouras & Associates, LLC also helps developers obtain and leverage state and local incentives for real estate developments. These incentives range from \$150,000 grants for infrastructure to \$96MM in reimbursements for eligible project costs.

The Gouras & Associates, LLC team includes:

Chris G. Gouras, Jr., Gouras & Associates, Principal/Consultant

Christiana S. Sugg, In-House Counsel

Corinne Graham, Associate Consultant, Financial Management, Citizen Participation/Procurement, Acquisition

Mauree Gouras, Labor Standards Compliance

MINUTES OF THE REGULAR MEETING OF THE APLACHICOLA CITY COMMISSION HELD TUESDAY, MARCH 3, 2020, 6:00 PM AT THE APALACHICOLA COMMUNITY CENTER

PRESENT: Mayor Kevin Begos Chris Holley, Interim City Manager
Commissioner Brenda Ash Deborah Guillotte, City Clerk
Commissioner Anita Grove Kristy Banks, City Attorney
Commissioner Adrian Elliott
Commissioner Despina George

CALL TO ORDER

Mayor Begos called the meeting to order, and Pastor David Walker gave the invocation. Council members led the pledge of allegiance.

AGENDA ADOPTION

Mayor Begos requested that New Business Item "D", be moved to the front of the Agenda as Item "A", and Item "A" be moved to Item "D".

Commissioner Elliott made a motion to change the Agenda order as requested by Mayor Begos. Commissioner Grove seconded and the motion carried 5-0.

CONSENT AGENDA

A) Meeting Minutes Adoption - Adopt the October 14, 2019 Special Meeting, October 17, 2019 Special Meeting, November 19, 2019 Special Meeting, and February 4, 2020 Regular Meeting Minutes. Mr. Holley requested a correction in the February 4, 2020 minutes, under Mayor and Commissioners Reports, in Item "C", correcting 1:00 AM to 1:00 PM; and Attorney Banks sent a correction on Item "D" of the Agenda with an estimate cost of \$240.00. In the November 19, 2020 minutes, Attorney Banks expressed concerns about accepting donations, but it should have stated: Attorney Banks was asked to research if the public could give donations; **B) Street/Name Signs** – To request approval to purchase street signs from Safety Zone Specialists, Inc., in the amount of \$20,441, to replace signs that were destroyed during Hurricane Michael in October 2018. Discussion held on possibility of adding the historic street names above the numeric signage but it was decided that this couldn't be done since it is being replaced with FEMA monies; **C) Resolution 2020-04 – Rural Area of Opportunity (RAO) Re-Designation** – To adopt Resolution 2020-04 – City of Apalachicola Rural Area of Opportunity Re-Designation; **D) Resolution 2020-06 – USDA – State of Florida Community Facility Grant – Emergency Response Vehicle Purchase Project** – To approve the USDA Emergency Response Vehicle Project, to purchase a police vehicle and related equipment, and to authorize the Mayor/City Manager to execute the necessary documents.

Commissioner Ash made a motion to approve the Consent Agenda with the aforementioned corrections. Commissioner Elliott seconded and the motion carried 5-0.

MAYOR'S AND COMMISSIONER REPORTS AND COMMUNICATION

Discussion held on the following subjects: hiring and possibility of volunteers being used in helping with the writing of City grants, the training of those volunteer helpers and the City Committee Members; the insurance payment for Lafayette and Battery Park Piers was received for Hurricane Michael damage in 2018; USDA Sidewalk Grant approval and Engineering feedback; USDA – State of Florida Community Facility Grant – Police Car; Surplus Property sales and possibility of leasing out downstairs at old City Hall; FAMU and the Incubator Program; Legislative Stewardship Bill, Budget workshop/retreat; Ethics Training class; Philaco Club – Library lease rental agreement and the City Squares Resolution 2017-04 – Attorney Banks was requested to draft a proposed amendment on Resolution 2017-04, specifying the length of time considered for short term

rentals with specified years; and adhere to the restoration/green space/zoning requirements of old library property. Attorney Banks defined R1 admitted uses and special exception uses, stating that the under the current code, a non-profit organization would be allowed. Attorney Banks stated, in her opinion, that if the Commission wanted this type of non-profit lease use, they would have to modify the LDC, DEO – design work plan for area of critical state concern, street signs - historic names being added under official street names, State of Florida Legislative Bill on Short-term Rentals – taking away inspection and licensure rights of City Governments, Resolution 2019-25 – affirming the City’s support for inter-local agreement for a plan for health care and the penny sales tax, and keeping Weems Hospital in Apalachicola.

CITY MANAGER COMMUNICATION

1) City Manager Form of Government - Discussion held on Interim City Manager form of Government, the advertisement of the new position, and the City’s financial situation to be able to hire an experienced municipal City Manager.

Commissioner Elliott made a motion to authorize Mr. Holley to advertise for the City Manager position, with a disclaimer that the City can amend their Charter, and to schedule a workshop regarding this issue on Thursday, March 12, 2020, at 6:00 PM. Commissioner Grove seconded and the motion carried 5-0.

2) Finance update/AWWAD – Mr. Holley announced that Awwad’s services will be ending the end of March, but they will get the City’s September financials completed. They discussed Financial Director position – Budget amendment to hire a Finance Director, instead of a Planning Director; **3) Library Staffing Update** - Library Director resignation and the part time Assistant Library position interviews being held; **4) Grants Update** – CDBG-DR Disaster Recovery - Hazard Mitigation Grant Program Notice of Funding Availability Application and Approval for Resolution 2020-07, for Hurricane Michael Disaster Recovery Funding process to move forward.

Mayor Begos read Resolution 2020-07 by title:

A RESOLUTION BY THE CITY COMMISSION OF THE CITY OF APALACHICOLA, FLORIDA, IN UNANIMOUS SUPPORT FOR GOVERNOR DESANTIS AND THE FLORIDA STATE LEGISLATIVE DELEGATION REPRESENTING CITY OF APALACHICOLA TO STRUCTURE, DIRECT AND AUTHORIZE THE PROPER ALLOCATION AND PRIORITIES FOR THE HURRICANE MICHAEL DISASTER RECOVERY FUNDING TO THOSE MOST IMPACTED COMMUNITIES THROUGHOUT THE REGION

Commissioner Elliott made a motion to approve Resolution 2020-07 – For the State Legislative Delegation to represent the City of Apalachicola to structure, direct and authorize the proper allocation and priorities of the Hurricane Michael Disaster Recovery Funding. Commissioner George seconded and the motion carried 5-0.

Michael Langton Associates gave a brief background of their firm services and a brief review on the Hazard Mitigation Grant Program (HEMP). Commissioner Grove stated she serves on the local mitigation strategy committee and will be help in writing this grant for the City of Apalachicola.

ATTORNEY KRISTY BRANCH BANKS COMMUNICATIONS

No comments.

PUBLIC COMMENT

Citizens’ discussions held on the following subjects: signage of historical names on street signs, Big Bend Scenic By-Way Project, Request for Letter of Support for FWC Grant, and Planning and Zoning/Tree Ordinance procedures.

UNFINISHED BUSINESS
A. ORDINANCE 2020-01 AMENDING ARTICLE 17 – ELECTIONS OF THE CITY OF APALACHICOLA CHARTER

Mayor Begos gave a brief summary of the February meeting, stating the amount spent on the election in October was around \$24,000, which was in the past budgeted to be around \$7000. This is due to the printing of the ballots. Discussion held.

Commissioner Ash made a motion to approve and proceed with the adoption process of Ordinance 2020-01 – Amending Article 17 – Elections of the City of Apalachicola Charter. Motion dies for lack of second.

UNFINISHED BUSINESS
B. MCLEMORE VARIANCE DISCUSSION

Mayor Begos gave a brief update on the McLemore Variance, by the Board of Adjustment, who approved the variance of a porch encroaching into the alley, without the definition of a hardship case being justified. Discussion held on amending variance procedures. Attorney Banks stated that the City would resume the public hearing that was paused and bring back to the Commission for a vote at the April meeting.

NEW BUSINESS
A. APALACHICOLA MARGARET KEY LIBRARY ADVISORY BOARD APPOINTMENTS

Ginny Griner, Philaco Club President, gave a brief review of the Apalachicola Philaco Club history and her recommendations to appoint a minimum of five members to the AMKL Advisory Board, which include: Sondra Taylor-Furbee, Trinity Hardy, Luis “Ramon” Valenzuela-Lopez, Ralph Wagoner, Jerry Hurley, Audie Pieper and Isabelle Nichols as the alternate. Discussion held of current members not being active any longer if haven’t attended and if there are current By-Laws. Commissioner Elliott requested that Attorney Banks research these issues.

Commissioner Elliott made a motion to appoint four of the recommendations by the Apalachicola Philaco Club as follows: Sondra Taylor-Furbee, Trinity Hardy, Jerry Hurley, and Audie Pieper. Commissioner Grove seconded and discussion was held.

Commissioner Elliott amended the previous motion to include an alternate and appoint four of the recommendations by the Apalachicola Philaco Club as follows: Sondra Taylor-Furbee, Trinity Hardy, Jerry Hurley, Audie Pieper and Isabelle Pateritsas as the alternate. Commissioner Grove seconded and the motion carried 5-0.

Commissioner Elliott made a motion to appoint Sondra Taylor-Furbee as Chair of the Apalachicola Margaret Key Library Committee. Commission Grove seconded and the motion carried 5-0.

NEW BUSINESS
B. APALACHICOLA HISTORIC CITY SQUARES UPDATE

Diane Brewer, with the Historic Apalachicola Foundation, announced that TV Channel WFSU will be doing a program on the Apalachicola Historic Squares, Thursday, March 19, 2020, at 8:00 PM, on their show Local Roots. Ms. Brewer stated that FAMU – FSU College of Engineering has chosen the project to restore the squares for their senior design project, for 2020-21, and requests the approval of the Commission to apply for a grant from the State of Florida Department of Historic Resources for a planning grant for \$50,000. Discussion held and the Commission requested more information on the grant in pdf form.

NEW BUSINESS

C. RESOLUTION 2020-05 – APALACHICOLA MARGARET KEY LIBRARY/LIBRARY ADVISORY BOARD AMENDMENT

Mr. Holley gave a brief review of the amendment change to Resolution 2017-11, stating that the librarians and the library staff would be under the direct management of the City of Apalachicola.

Commissioner George made a motion to adopt Resolution 2020-05 – amending the old Resolution 2017-11. Commissioner Grove seconded and the motion carried 5-0.

NEW BUSINESS

D. COMMITTEE MEMBER APPOINTMENTS AND DISCUSSION

Discussion held on the policies of member appointments, amount of members on boards, term of years served, the staggering of years when one goes off the boards, ethics training of the Sunshine Law by committee members, and committee minutes. Commissioner Ash requested that Commissioner Elliott review and make amendments to the City Commission Rules of Procedures – Rule 28 and bring back to the Commission for approval.

Battery Park Marine Committee – Commissioner Elliott made a motion to appoint Jim Brown, Larry Covell, Grayson Shephard and William Avery. Commissioner George seconded and the motion carried 4-1. Commissioner Ash opposed.

Planning and Zoning Committee – Commissioner Elliott made a motion to appoint Heath Galloway to the vacancy position and Bob Lauther to the alternate position. Commissioner Grove seconded and the motion carried 3-2. Mayor Begos and Commissioner George opposed.

Tree Committee - No motion made.

Recreation Committee – Commissioner Elliott made a motion to appoint Dolores Hayward-Croom to the alternate position. Commissioner Grove seconded and the motion carried 5-0.

Board of Adjustment Committee – Commissioner Grove made a motion to appoint Delores “Dodie” Alber to the alternate position. Commissioner George seconded and the motion carried 5-0.

NEW BUSINESS

E. COMMITTEE REDEVELOPMENT AGENCY – CITIZENS BOARD APPOINTMENTS

Commissioner Elliott made a motion to appoint Jeff Lockley and Leslie Coon to the CRA Committee and to approve the CRA Budget Amendment as discussed. Commissioner Grove seconded and the motion carried 5-0.

ADJOURNMENT

With no further business, Commissioner Elliott made a motion to adjourn the meeting. Commissioner Grove seconded and the motion carried 5-0.

Kevin Begos, Mayor

Deborah Guillotte, City Clerk

**MINUTES OF THE SPECIAL MEETING OF THE APALACHICOLA CITY COMMISSION HELD
MONDAY, JUNE 10, 2020, 5:00 PM AT THE APALACHICOLA COMMUNITY CENTER.**

PRESENT: Mayor Kevin Begos Travis Wade, Manager
Commissioner Anita Grove Janelle Paul, Deputy Clerk
Commissioner Adriane Elliott Bobby Varnes, Chief of Police
Commissioner Despina George Kristy Branch-Banks, Attorney

ABSENT: Commissioner Brenda Ash

CALL TO ORDER

Mayor Begos called the meeting to order and gave the invocation and pledge.

AGENDA ADOPTION

Commissioner Elliott made a motion to approve the Agenda. Commissioner Grove seconded and the motion carried 4-0.

UNFINISHED BUSINESS
A. CONSENT ORDERS

Mayor Begos stated that the City had received their second Consent Order for the Waste Water and that staff had come up with a general plan of action, which was reviewed to the Commission. Mayor Begos also gave a brief update of the drinking water Consent Order, the possibility of a land swap, and also the peroxide study versus the filtration system. Mr. Gary Williams, with the Florida Rural Water Development, recommends that the City begin making repairs, so that DEP can see that we are moving forward. Discussion held on the City's current financial situation. Mr. Williams discussed the Consent Orders and the City's proposal for their in kind match on the default, the cross connection control program to prevent backflow back into the City water system and that the City's current policy needs to be updated, the head works/structure of the Waste Water Plant and non-working pumps, the digital diamond mapping system, and the upgrading of the City's equipment. Discussion held on maintaining an Engineer to help the City on these Consent Order issues.

NEW BUSINESS
A. FINANCE DIRECTOR POSITION DISCUSSION

Mr. Wade stated that currently two applicants have been interviewed and that one more interview is scheduled at this time for the Finance Director position. Discussion held.

ADJOURN THE MEETING

Commissioner Grove made a motion to adjourn the meeting at 5:55 pm. Commissioner Elliott seconded and the motion carried 4-0.

Kevin Begos, Mayor

Janelle C. Paul, Deputy Clerk

MINUTES OF THE REGULAR MEETING OF THE APALACHICOLACITY COMMISSION
HELD TUESDAY, JULY 7, 2020, 6:00 PM AT THE APALACHICOLA COMMUNITY
CENTER.

PRESENT: Mayor Kevin Begos
Commissioner Brenda Ash
Commissioner Anita Grove
Commissioner Adrian Elliott
Commissioner Despina George
Travis Wade, City Manager
Deborah Guillotte, City Clerk
Kristy Branch-Banks, Attorney

CALL TO ORDER

Mayor Begos called the meeting to order and also gave the invocation. Council Members led the pledge of allegiance.

APPROVE THE AGENDA

Commissioner George made a motion to approve the Agenda, stating that Unfinished Business “A” McLemore – QJH would be tabled until the August meeting. Commissioner Grove seconded and the motion carried 5-0.

MAYOR’S AND COMMISSIONERS REPORTS AND COMMENTS

Mayor and Commissioners discussed the following: FWC Proposal to Close Apalachicola Bay Oyster Harvesting (Hearing July 22nd), Consent Orders Update with DEP and possible land swap, Water System Peroxide Pilot Program (tthms) update, Awwad Accounting Bill, Retaining of Nabors, Giblin and Nickerson Attorneys for specialized projects, Zoom website notifications, Audit report issues for 2019-2020, Face Mask Proclamation is an automatic update unless rescinded, RFP for website, Water bills outstanding cut-off list update, and the CARES Act.

CITY MANAGER COMMUNICATIONS

1) Recommendation to confirm Leo Bebeau as Finance Director

Commissioner Elliott made a motion to recommend Leo Bebeau as the Finance Director. Commissioner Grove seconded and the motion carried 5-0.

2) Proposed Revised Water Bill Adjustment Policy 2020-001 – Mr. Wade was requested to incorporate into the proposed 2020-001 Revised Water Bill Adjustment Policy, some of the language from Policy#2004-001 and that the new Water Bill Adjustment Policy 2020-001 would be an amendment to old policy, and bring back to the Commission for approval.

3) Mr. Wade discussed the Budget Workshop Dates and it was decided to have this on July 21, 2020 at 6:00 PM, and to set Tentative Budget Hearing Dates of August 11th and September 15th, 2020 at 6:00 PM. Mr. Wade also stated that we will have current financial updates of revenues at the July 21st meeting.

ATTORNEY KRISTY BRANCH COMMUNICATIONS

Attorney Banks gave notification to the City Commission and read announcement of same during the meeting, that there will be a Shade Meeting for consultation for the litigation of Ashley Grieg (Bacon Me Crazy LLC), for July 9, 2020, at 4:30 PM, at City Hall, and stated that this will be posted on the City website.

Commissioner Elliott made a motion to approve the Shade Meeting to be held at City Hall on Thursday, July 9, 2020, at 4:30 PM. Commissioner Grove seconded and the motion carried 5-0.

Commissioners and Attorney Banks held discussion on Denton Cove project, the City's obligations after the Insurance settlement, and also the Smith, Smith and Nall case.

PUBLIC COMMENT

Citizens discussed concerns of trees being cut down without permits and the contractors not disposing of the trees once removed, Lafayette Park repairs of the piers and lights, the Food Truck Ordinance's upcoming changes, the City's 10th Street property, and the buildings on the property.

CONSENT AGENDA

Mayor Begos presented the Consent Agenda and asked if any items should be removed before consideration of a motion.

Meeting Minutes Adoption – To Adopt the January 15, 2020 Special Meeting, January 21, 2020 Special Meeting, February 10, 2020 Special Meeting, and the June 2, 2020 Regular Meeting Minutes.

Commissioner Elliott made a motion to approve the Consent Agenda. Commissioner George seconded and the motion carried 5-0.

UNFINISHED BUSINESS

A. QUASI-JUDICIAL HEARING: B. MCLEMORE VARIANCE

Mayor Begos stated that the Quasi-Judicial Hearing B. McLemore Variance – Tabled by Consent of both parties.

UNFINISHED BUSINESS
B. CITY WEBSITE UPDATE - MUNICODE

City Website update – Municode – Commissioner Elliott gave a brief update with getting a bundle package with Municode, but has since been told about another Company that may benefit the City better. Commissioner Elliott suggests that the City should develop a Request For

Proposal for website services to better serve the City’s needs. Commissioner Grove suggests each Commissioner get a list of components needed before developing a RFP.

UNFINISHED BUSINESS
C. CONFIRMATION OF INTERIM LIBRARY DIRECTOR – CAROLINE KIENZLE

Commissioner George made a motion to approve Interim Library Director Caroline Kienzle. Commissioner Grove seconded and the motion carried 5-0.

NEW BUSINESS
A. DEP REVOLVING LOAN AMENDMENT

Mayor Begos gave a brief update of the DEP Revolving Loan Amendment, stating the City has reached an Agreement to resolve the City Revolving Loan default, and the City proposes to repair, maintain and upgrade the Water and Sewer System under detailed asset management plans developed by the Florida Rural Water Association. DEP is drawing up an amendment to the existing Loan for the Commission’s approval.

NEW BUSINESS
B. 10TH STREET BUILDING REPAIRS AND RENTALS

10th Street Building repairs and rentals – Discussion held on numerous options of moving forward with repairs/sale of the existing buildings on the property and the insurance monies received from the insurance company after Hurricane Michael. Commissioner Elliott gave a brief background from a set of minutes from 2017 on how the City obtained this property. Discussion held and it was suggested to have Attorney Banks do further research into this matter and the City’s options.

NEW BUSINESS
C. SCIPIO BOAT YARD LEASE TERMINATION – NEW LEASEHOLDERS

Scipio Boat Yard Lease Termination – New Leaseholders – Mayor Begos gave a brief update of the current Leaseholder’s agreement and status to date, and Mr. Thrasher’s default of Agreement.

Discussion held of entering into good faith negotiations of termination with Mr. Thrasher, as his contract is up in August, and developing a RFP for new leaseholders.

Commissioner Grove made a motion to negotiate with Mike Thrasher on his current Agreement, and develop a Termination Proposal, and also to develop a RFP for new leaseholders. Commissioner Elliott seconded and the motion carried 5-0.

NEW BUSINESS

D. CITY PROPERTY – OFFER FOR SALE OF PROPERTY (FROST)

City Property – Offer for sale of property (Frost) – Mayor Begos stated that Mr. Frost offered the City \$995 for BL D-1, Lot 1, Cottage Hill property, and Attorney Banks estimated the property at \$5000, with a difference of opinion as to whether it is a buildable lot. There was also another proposal for this property for \$7500, received at a later date. Attorney Banks stated the Commission can make a decision they deem is acceptable if agreed upon. Discussion held if property had been listed to the public, and it was confirmed by Attorney Banks that it was included in the 2017 surplus property list to be sold by the City. The offer for \$7500 was withdrawn during discussion at meeting until further research. Mr. Frost stated that this lot is not a buildable lot, and that it is adjacent to his property, and that he is interested in obtaining it.

Commissioner Grove made a motion to table this issue for further research until the City can confirm if it is a buildable lot or not. Commissioner George seconded and the motion carried 5-0.

ADJOURNMENT

With no further business, Commissioner Elliott made a motion to adjourn the meeting at 8:45 PM. Commissioner George seconded and the motion carried 5-0.

Kevin Begos, Mayor

Deborah Guillotte, City Clerk

**MINUTES OF THE SPECIAL MEETING OF THE APALACHICOLA CITY COMMISSION HELD TUESDAY,
JULY 28, 2020, 6:00 PM AT THE APALACHICOLA COMMUNITY CENTER.**

PRESENT: Commissioner Anita Grove Leo Bebeau, Finance Director
Deborah Guillotte, City Clerk

VIA PHONE: Mayor Kevin Begos Commissioner Adriane Elliott
Commissioner Despina George Commissioner Brenda Ash
Travis Wade, City Manager

CALL TO ORDER

Mayor Begos called the meeting to order at 6:00 PM.

AGENDA ADOPTION

Commissioner Ash made a motion to approve the agenda. Commissioner Elliott seconded and the motion carried 5-0.

NEW BUSINESS
**A. TO TENTATIVELY ADOPT A PROPOSED MILLAGE RATE FOR FISCAL YEAR 2020-2021 AND
SETTING A TENTATIVE BUDGET HEARING**

Commissioner Ash made a motion to tentatively adopt a proposed Millage Rate of ten percent (10%) for Fiscal Year 2020-2021 and to set a tentative Budget Hearing date for August 18th and September 15th, 2020. Commissioner Elliott seconded and the motion carried 5-0.

ADJOURNMENT

With no further business, Commissioner Elliott made a motion to adjourn the meeting at 6:05 PM. Commissioner George seconded and the motion carried 5-0.

Kevin Begos, Mayor

Deborah Guillotte, City Clerk

**APALACHICOLA CITY COMMISSION
REQUEST FOR BOARD ACTION
Meeting Date: August 4, 2020**

SUBJECT: Quasi-Judicial Hearing: McLemore Variance

AGENDA INFORMATION:

Agenda Location: Old Business, Item A

Presenter: Mayor Begos, Attorneys for Historic Apalachicola Foundation and McLemore

BRIEF SUMMARY:

The Board of Adjustment approved a variance for alley encroachment on the McLemore property. Because of an appeal from the Historic Apalachicola Foundation the City Commission must make a final decision on whether to uphold the variance.

Ordinance 1991-7 provides that "*Variance from the terms of this code shall be granted only if the Variance is not contrary to the public interest.*"

City Code also contains this passage: "*The board shall find that the granting of the variance will be in harmony with the general purpose and intent of this Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.*"

FUNDING SOURCE: n/a

ATTACHMENTS: Board of Adjustment ruling; Historic Apalachicola Foundation brief and Appendix.

STAFF'S COMMENTS AND RECOMMENDATIONS:

QUASI JUDICIAL VARIANCE DECISION
BOARD OF ADJUSTMENT – MCLEMORE
MAY 21, 2018

This Variance came on before the Board of Adjustment of the City of Apalachicola on May 21, 2018 at 5:00 P.M. as properly noticed and advertised. After the introduction of the subject matter, Anna Maria Cannatella agreed to perform the chairperson duties in light of the absence of chairperson Carrie Kienzle. Other members present were Atul Patel, Dennis Wintorringer and Fonda Davis.

There was no objection to the Board Members hearing this matter after discussion of all extra judicial communication or inspection. The staff report with notices and communication on this subject was accepted into evidence and marked as Exhibit 1. The applicant/property owner presented the Variance request. There were no persons present during the evidentiary portion of the hearing who gave testimony or evidence in opposition to the Variance request.

The building is accepted as an Historic structure through documentation received from the Florida Master Site Plan. It is also uncontested that the building is nonconforming- extending into and beyond the required 15 feet side set back and into the City of Apalachicola, alley easement by approximately 2 feet for a total square foot of existing nonconformity of approximately 360 square feet. It is proposed through the Variance requested that the addition would extend the present nonconformity by an additional approximately 60 square feet to the nonconforming structure within the side set back and City alleyway.

The applicant advised that the applicant will, if the Variance requested is granted by the Board of Adjustment of the City of Apalachicola, (although not involved in the Variance process), return a smaller brick side building to original historic height (a one-story brick restroom facility) by removing a more recently added wood framed upper floor. Furthermore, the more recently added arched windows would be replaced with simple neo-Georgian rectangular windows, more in keeping with the original style of the original historic structure and represented on the adjacent house. The applicant would extend the length of the building by adding 8.5 feet as a screened porch addition to the rear of the building which building will be used as a small dressing area/studio for a proposed back yard swimming pool.

The staff planner notes and provides by testimonial evidence that Section 111.A.3.b. of Ordinance 1991-7 (as amended 2017-05) provides for a Variance "if there is sufficient grounds to determine that reasonable use of property would be denied without such Variance". "Variance from the terms of this code shall be granted only if the Variance is not contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this Code would result in unnecessary hardship." 111.A.3.b.

Furthermore, staff report notes that Ordinance 2017-05 amends Ordinance 91-7 and provides for limited relief for the restoration and renovation of historic and non-historic non-conforming structures. However, it is further stated in the staff report that the intent of this Ordinance is "not to permit either historic or nonhistoric, nonconforming structures to be enlarged upon, expanded, or extended, except as allowed through the Variance process at section

111.A.3.b". "Existing nonconformities of a structure shall not be used as grounds for adding other structures prohibited elsewhere in the same district". (February 2, 2018 Staff Report Analysis). Staff recommendation was that the Variance should be denied due to failure to meet the hardship requirements for the expansion.

The question of whether the Variance should be granted under Ordinance 91-7 (as amended 2017-05) is determined by whether "there is sufficient grounds to determine that reasonable use of property would be denied without such Variance". Section 111.A.3.b, "Variance from the terms of this code shall be granted only if the Variance is not contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this Code would result in unnecessary hardship".

However, after consideration of the evidence, the Board finds and concludes by majority vote that the preservation of the historic building and return to historic features as much as possible during the course of the development outweighs the extension of the nonconformity for the present screened porch addition. It has been unconditionally stated by applicant at the hearing that the renovation of the building to return to its historic height and window appearance will not be possible and will not be done without the Variance allowing the additional screen porch extension of the nonconformity. The resulting expansion will continue the building footprint encroachment over the five foot set back and 2 feet into the alleyway for the additional 8.5 feet being added onto the length of the building and will not be seen from Bay Avenue. The across the alley closest neighbor was supportive and in favor of the variance being granted.

Board member, Dennis Winterringer voted no to the Variance stating that the evidence did not meet the requirements for establishment of a Variance citing in particular the failure to establish a hardship by the evidence submitted; that the denying of the Variance application would not deny reasonable use of the property; and, that the development proposal by the Variance would extend and enlarge the present nonconformity in the set back and alleyway.

Wherefore, the Variance is hereby granted by the Board of Adjustment. It should be noted that the additional encroachment into the City right of way (alleyway) must be approved by the City Commission as this is outside of the jurisdiction of the Board of Adjustment.

Acting Chair Person

Order approved by the Board of Adjustment of the City of Apalachicola, this ____ day of _____, 2019.

Hopping Green & Sams

Attorneys and Counselors

July 23, 2020

VIA ELECTRONIC MAIL

Mayor Kevin Begos
kbegos@cityofapalachicola.com

Commissioner Despina George
dgeorge@cityofapalachicola.com

Commissioner Adriane Elliott
aelliott@cityofapalachicola.com

Commissioner Anita Grove
agrove@cityofapalachicola.com

Mayor Pro-Tem/Commissioner Brenda Ash
bash@cityofapalachicola.com

City of Apalachicola
192 Coach Wagoner Boulevard
Apalachicola, Florida 32320

Re: Appeal of Variance Hearing for 101 Bay Avenue, Apalachicola

Dear Mr. Mayor and Commissioners:

On behalf of the Historic Apalachicola Foundation (the “Foundation”), I write regarding the appeal of a variance to set back requirements on a property located at 101 Bay Avenue, which was improperly granted by the Board of Adjustment (“BOA”) on May 21, 2018. After several subsequent hearings and three interim decisions, the Commission will finally hear and decide on this appeal on August 4, 2020. The City Attorney requested the petitioner and applicant to file briefs 10 days prior to the hearing of this appeal. The Foundation therefore respectfully submits this letter to re-assert our basis for appeal, provide additional analysis to assist the Commission in its decision, and to request relief. The Exhibits to this letter contains evidence in support of this appeal.

The criteria for a variance are plainly laid out in the City of Apalachicola Land Development Code, Section II.A.3.b. The BOA’s decision violates the essential requirements of law by ignoring the requirements of the land development code. Further, the BOA’s decision is not supported by competent substantial evidence. There is no evidence, either in the application itself or presented at any one of the subsequent hearings, of a special condition requiring a variance, or of a substantial hardship, which is a necessary condition for variance approval. The Foundation therefore asks that you quash the decision of the Board of Adjustment and issue a decision denying the variance request.

The Historic Apalachicola Foundation, Inc. (the “Foundation”), is a group of dedicated citizens charged with enhancing the City of Apalachicola by protecting the unique and valuable historic character of the City. Chief among the unique and valuable aspects of the City is the Historic Plat which was adopted in 1831, designating the blocks, streets, alleys and squares. This Plat is historically relevant to the City and the public interest of Apalachicola. The recent approval of a setback variance for 101 Bay Avenue potentially allows for encroachment into public lands, adversely impacting the Historic Plat and the Foundation’s interest.

PRIOR PROCEEDINGS

1. On May 21, 2018, the Board of Adjustment voted on a request for a variance of the City's setback requirements, allowing for expansion of a non-conforming structure at 101 Bay Avenue into the adjacent alley. The original notice of hearing, staff report, application, and BOA decision are attached as **Exhibits 1 - 4**.

2. The Foundation properly appealed the BOA decision on May 25, 2018 per section III.A.1.g. of the City Land Development Code ("LDC") and submitted the required fee.¹ See **Exhibit 5 & 6**.

3. On September 24, 2019, the Foundation re-affirmed its appeal to the City Commission. **Exhibit 9**.

4. On October 7, 2019, the City Commission held a hearing on the appeal. The City found that according to the plain language of the land development code, a factual finding of a hardship was required in order to grant a variance; and that there was no evidence of hardship on the record. Ultimately the City Commission remanded a specific question and directive to the BOA: define what the actual hardship is and then make a decision based on the hardship finding. **Exhibit 10 & Exhibit 11**.

5. On January 24, 2020 the BOA met to consider the Commission's direction on remand. After discussion the BOA held that there were no further findings of hardship, and the document stands from the meeting on May 21, 2018. **Exhibit 12 & 13**.

ARGUMENT

The Board of Adjustment Improperly Granted the Variance Request

6. The property that is subject of this appeal is located in the R-1 land use district. Within that district, there is a minimum 5-foot setback requirement. See **Exhibit 15, pages from Land Use Code**. The applicant sought a variance from the setback requirements with an additional 2-foot encroachment into the City-owned alley and to expand the nonconformity of an already nonconforming historic structure. See **Exhibit 2, Staff Report**.

7. Section III(A)(3)(b) of the Apalachicola Land Development Code allows a variance if "a literal enforcement of the provisions of this Code would result in unnecessary hardship." A hardship exists only if "strict application of the provisions of this Code would provide the applicant with *no means for reasonable use of the land*, building or other structure equivalent to the use made of neighboring lands, buildings or other structures in the same district; and the peculiar conditions and circumstances existing are not the result of actions of the applicant." **Exhibit 14, Section III(A)(3)(b)(4), LDC** (emphasis added).

8. The hardship criteria found in the Apalachicola LDC variance provisions has a long line of

¹ The Foundation's original appeal included a claim that the decision was improper for lack of affirmative votes. While this appeal was pending before the City Commission, the BOA held a subsequent meeting on September 18, 2019 to reconsider their previous decision. The reconsideration received four (4) affirmative votes, purportedly curing the original improper decision, however, the BOA made no additional findings. See **Exhibits 7-8**.

cases and has been strictly construed by the courts. *Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957).

9. The owner's preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance, nor does mere economic disadvantage. *Burger King v. Metropolitan Dade County*, 349 So.2d 210 (3d DCA 1977); *Metropolitan Dade County v. Reineng*, 399 So.2d 379 (3d DCA 1981). A variance hardship cannot be self-created. *In Re Kellogg*, 197 F. 3rd 1116, 1121 (11th Cir. 1999). *Josephson v. Autrey*, 96 So.2d 784 (Fla. 1957).

10. The hardship must be such that it "renders it virtually impossible to use that land for the purpose or in the manner for which it is zoned." *Hemisphere Equity v. Key Biscayne*, 369 So.2d 996 (3d DCA 1979).

11. There is no evidence in the record demonstrating a hardship. This is supported by decisions of the Apalachicola City staff, Board of Adjustments, and the prior hearing before this City Commission.

12. The City's staff report found: "the applicant does not speak directly to the hardship issue as required in Section III.A.3.b. for the expansion work. It is not evident that the applicant has successfully documented the required evidence of hardship associated with not being able to expand the nonconforming footprint to accommodate the aesthetics of an accessory structure." **Exhibit 2.**

13. At the October 9, 2019 hearing on this appeal, the City Commission remanded this issue to the Board of Adjustment with a narrow factual question: "define what the actual hardship is and then make a decision based on the hardship finding." **Exhibit 11**, Audio recording of October 7, 2019 City Commission Hearing at 1:08:47. This is a factual question, not an interpretation of law. "We have a definition of a hardship, that's not in dispute." Audio at 1:11:25.

14. The City Commissioners stated that there was no evidence in the record of a hardship:

- "How do we get around the fact that no evidence of a hardship was presented?" Audio at 15:25.
- "Would the use of the property be prohibited if this was not granted? There is no evidence of that in this case." Audio at 19:44.
- "Based on the information that we have before us on hardship, it does not appear that hardship has been met based on the information that has been provided." Audio at 23:50.

15. The Board of Adjustment had three attempts to find even a sliver of evidence demonstrating a hardship. They found none. On January 24, 2020, the BOA reconsidered this issue, their determination: "there are *no* further *findings of hardship*, and the document stands from the meeting on May 21, 2018." Exhibit 13, Audio recording on January 24, 2020 Board of Adjustment Meeting at 32:44.

16. There is no room for additional fact-finding in this matter. The City Commission stated unequivocally that there was no hardship, as did the BOA and City staff.

17. In a recent Commission meeting there was discussion about alternative approaches to encroachments. I remind the Commission that this is an appeal of a variance only, and that the appeal is based on the existing facts and law. Also, a variance request must be reviewed on its own

Mayor Begos, et al.
July 23, 2020
Page 4 of 4

merits, rather than on the basis of previously approved variances in the jurisdiction. *See City of Jacksonville v. Taylor*, 721 So. 2d 1212 (Fla. 1st DCA 1998). Previously issued variances or encroachments do not establish controlling precedent or constitute a basis to sustain other variance applications.

18. On a final point, the size of the variance has absolutely no impact on the necessary evidence required. Even the most miniscule variance violates the requirements of law if competent substantial evidence is not presented of compliance with the hardship requirement. In a 2014 case, *Harris v. T. C. Brown Ins. Grp., Inc.*, 137 So. 3d 461 (Fla. 4th DCA 2014), the court found that a residence could not remain in its current location for lack of competent substantial evidence supporting the variance. The size of the encroachment in that case? Three inches.

Based on the requirements of the Land Development Code and the lack of competent substantial evidence in the record as stated above, we ask this Commission to quash the decision of the Board of Adjustment and enter a decision denying the variance request.

Sincerely,



Robert Volpe
Counsel for the Historic Apalachicola Foundation, Inc.

cc: Travis Wade, City Manager
Kristy Branch Banks, City Attorney
Diane Brewer, Historic Apalachicola Foundation, Inc.
Marie Marshall, President, Historic Apalachicola Foundation, Inc.
Enclosure: Appendix in Support of Appeal

APPENDIX IN SUPPORT OF APPEAL

Appeal of Variance Hearing for 101 Bay Avenue, Apalachicola

Submitted by:

Robert Volpe

Counsel for the Historic Apalachicola Foundation, Inc.

EXHIBIT 1 - MAY 21, 2018 BOARD OF ADJUSTMENT
NOTICE OF HEARING

CITY OF APALACHICOLA
BOARD OF ADJUSTMENT
QUASI-JUDICIAL PUBLIC HEARING & SPECIAL MEETING
MONDAY, MAY 21st, 2018
Community Center/City Hall - 1 Bay Avenue

AGENDA

I. Quasi-Judicial Public Hearing & Special Meeting- 5:00 PM

1. The Apalachicola Board of Adjustment will hold a Quasi-Judicial Public Hearing at its Special Meeting called for that purpose on Wednesday, February 21st, 2018 at 5:00 P.M. at the Community Center Meeting Room, 1 Bay Avenue, Apalachicola, Florida to consider and decide upon the Variance Request application of Patricia McLemore (Applicant) relating to proposed expansion of a nonconformity of an already nonconforming historic structure by increasing the size of the building that currently sits within the required setback and beyond the property line into the City alley, on the parcel(s) of property Warranty Deeded to Lee & Patricia M McLemore, Franklin County Public Records, located at 101 Bay Avenue with legal descriptions being as follows: Parcel ID# 01-09S-08W-8330-0036-0010, Block 36, Lot(s) 1 through 5 pursuant to the official zoning map of the City of Apalachicola said parcel being in Zoning R-1 Single Family Residential of the City of Apalachicola.

In our continuing effort to keep the citizens of Apalachicola informed, this agenda is posted on our website at www.cityofapalachicola.com prior to the scheduled meeting for public review. Additional information such as the City's Land Development Code and zoning related maps, along with other development information is also available on the site for your convenience. Please direct any questions concerning items on this agenda or the Apalachicola Building Department to Cortni Bankston, (850)653-9319, cortnibankston@cityofapalachicola.com

SPECIAL MEETING
NOTICE OF QUASI JUDICIAL PUBLIC HEARING
APALACHICOLA BOARD OF ADJUSTMENT
CITY OF APALACHICOLA, FLORIDA

The Apalachicola Board of Adjustment will hold a Quasi-Judicial Public Hearing at its Special Meeting called for that purpose on Monday, May 21st, 2018 at 5:00 P.M. at the Community Center Meeting Room, 1 Bay Avenue, Apalachicola, Florida to consider and decide upon the Variance Request application of Patricia McLenore (Applicant) relating to proposed expansion of a nonconformity of an already nonconforming historic structure by increasing the size of the building that currently sits within the required setback and beyond the property line into the City alley, on the parcel(s) of property Warranty Deeded on April 19th, 1994 to Lee & Patricia M McLenore, Franklin County Public Records, located at 101 Bay Avenue with legal descriptions being as follows: Parcel ID# 01-09S-08W-8330-0036-0010, Block 36, Lot(s) 1 through 5 pursuant to the official zoning map of the City of Apalachicola said parcel being in Zoning R-1 Single Family Residential of the City of Apalachicola. The City of Apalachicola Land Development Code does not specifically allow for such and there has been application for a Variance. At the conclusion of the hearing any final decision of the Board of Adjustment may be appealed as provided by the Apalachicola Land Development Code and Ordinances.

Any person who desires his or her testimony to be considered as potential competent, substantial evidence, such person shall be placed under oath and subject to cross-examination. All testimony presented by the Applicant, an Adversely Affected Person, any witness for a party or the staff (other than legal advice given by the City Attorney) shall be given under oath and subject to cross examination by the City of Apalachicola and Applicant. The Board, following the conclusion of the Quasi-Judicial hearing shall finalize a written statement memorializing the Board's decision and final findings as well as supporting conditions and evidence with their findings and provide a copy to the parties.

Further information on this item may be obtained from or sent to Cortni Bankston at the City of Apalachicola Building Department, 192 Coach Wagner (14th Street) Apalachicola, Florida at (850) 653-1522 or emailed to cortnibankston@cityofapalachicola.com. All interested persons are invited to attend and present information for the consideration of the Board of Adjustment in accordance with the Policy for Quasi-Judicial Hearings. To ensure written or e-mailed information is provided to the Board in a timely manner, they are encouraged to be received in the above referenced office by 3:00 p.m. Thursday, May 17th, 2018. All written and/or e-mailed materials as well as the staff report of the City shall be sent to the Board of Adjustment and available to the general public at the above office at least 1 day prior to the hearing on the application.

The City of Apalachicola adheres to the Americans with Disabilities Act and will make reasonable modifications for access to this meeting upon request. Please call the City Hall of the City of Apalachicola (653-9319) to make a request of this nature. Requests must be received at least three (3) days in advance of the meeting in order to allow time to provide the requested service.

Any person wishing to appeal any final decision made by the City of Apalachicola Board of Adjustment on this issue will need a record of the proceedings resulting from this public hearing and for that purpose, such person may need to ensure that a verbatim record of the proceeding is made, which record includes the testimony and evidence upon which the appeal is to be based. Additionally, any person wishing to seek review of any decision made regarding this application will need to acquire standing.

Ad will run in the Apalachicola Times on Thursday, May 10th, 2018 & Thursday, May 17th, 2018.

EXHIBIT 2 - STAFF REPORT



CITY OF APALACHICOLA

1 Bay Avenue • Apalachicola Florida 32320 • 850-653-9319 • Fax 850-653-2205
www.cityofapalachicola.com

Mayor

Van W. Johnson, Sr February 2, 2018

Commissioners

Brenda Ash Quasi Judicial Application Review
John M. Bartley, Sr. Project: Patricia McLemore renovation
James L. Elliott Reviewer: C. Clark
Anita Grove Site address: 101 Bay Avenue, Apalachicola

City Administrator

Lee Mathes

City Clerk

Deborah Guillotte

City Attorney

J. Patrick Floyd

Summary: The applicant is seeking to expand the nonconformity of an already nonconforming historic structure by requesting permission to increase the size of a building that currently sits within the required setback and beyond the property line into the City alley. Historic eligibility of original nonconforming structure has been confirmed through documentation received from Florida Master Site File.

Nature of Existing Nonconformity: The structure is already nonconforming in that the footprint is currently encroaching into the required setback and even into the City alley easement by approximately 2 feet for a total square foot of existing nonconformity of approximately 100 square feet. (est. 2' encroachment x 52.1 length of existing building)

Nature of Proposed Nonconforming Expansion: The proposed addition would add an additional estimated 60 square feet to the nonconforming structure within the City alley and the required five foot setback. (7 x 8.5 = 59.5 - est. 2' city alley encroachment plus 5 foot setback encroachment x 8.5 additional building length)

Application of Ordinance 91-7 (as amended 2017-05) Section III.A.3.b. of ordinance 1991-7 provides for a variance if there is sufficient grounds to determine that reasonable use of property would be denied without such variance. "Variance from the terms of this code shall be granted only if the variance is not contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this Code would result in unnecessary hardship."

Application of Ordinance 2017-05. This ordinance amends 91-7 and provides for limited relief for the restoration and renovation of historic and non-historic nonconforming structures.

"Expansion of Historic and Nonhistoric, Nonconforming Structures (Chapter IV.C.2.) The intent of this section is not to permit either historic or nonhistoric, nonconforming structures to be enlarged upon, expanded, or extended, except as allowed through the variance process at section III.A.3.b. Existing nonconformities of a structure shall not be used as grounds for adding other structures prohibited elsewhere in the same district."

Finding: The applicant states that granting the variance will both return the scale of a structure to its original size/look and be more in keeping with the City's Historic Guidelines and U.S. Secretary of the Interior's Standards for Rehabilitation. While Staff agrees that proposed renovation involving removal of 2nd story and façade treatment would be an improvement, the applicant does not speak directly to the hardship issue as required in Section III.A.3.b. for the expansion work. It is not evident that the applicant has successfully documented the required evidence of hardship associated with not being able to expand the nonconforming footprint to accommodate the aesthetics of an accessory structure.

EXHIBIT 3 - APPLICATION FOR VARIANCE

City of Apalachicola
1 Ave E
Apalachicola, FL 32320
850-653-9319 / 850-653-2205 Fax

QUART-JUDICIAL
VARIANCE REQUEST

Name: Patricia McLemore Telephone: (850) 653-7110

Address: 101 Bay Ave. Apalachicola, FL 32320

Agent: George Coon, Inc. Telephone: (850) 227-6898

Address: 252 6th Street, Apalachicola, FL 32320

PROPERTY DESCRIPTION: Legal description of property

Subdivision: NONE Block(s) 36 Lot(s) 1,2,3,4&5

Parcel ID# 01-09S-08W-8330-0036-0010

Address of Property: 101 Bay Ave. Apalachicola, FL 32320

Current Zoning and Land Use: R1, Residential

Corner Lot: Yes No Waterfront Lot: Yes No Historic District: Yes No

AFFIDAVIT

Wak. Patricia McLeone, being first duly sworn, depose and say that well onto the owners of the property described herein and which is the subject matter of the proposed hearing; that all the answers to the questions in this application, including the disclosure of interest information, all sketches, data, and other supplementary matter attached to and made a part of this application, are honest and true to the best of my/our knowledge and belief. We/I understand that the information requested on this application must be complete and accurate and that the content of this form, whether computer generated or City printed shall not be altered. Public hearings will not be advertised until this application is deemed complete, and all required information has been submitted.

An property owner(s) We/I further authorize George Coan to act as our/ourly representative in any matters regarding this Partition.

[Signature]
Signature of Property Owner

Signature of Property Owner

Patricia McLeone
Typed or Printed Name of Owner

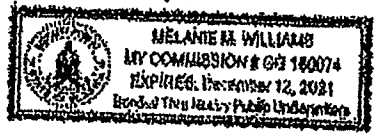
Typed or Printed Name of Owner

STATE OF FLORIDA
COUNTY OF Franklin

The foregoing instrument was acknowledged before me this 9th day of January, 2018, by Patricia McLeone, who is personally known to me or has produced as identification.

(NOTARIAL SEAL)

[Signature]
NOTARY PUBLIC
Printed Name:
Commission Number:
Commission Expires:



NATURE OF PETITION

Provide a detailed explanation of the request including what structures are existing and what is proposed; the amount of the encroachment proposed using number, i.e. reduce front setback from 2' to 38'; when property owner purchased property; when existing principal structure was built (including building permit number if possible), why encroachment is necessary; how existing encroachment came to be; etc.

We wish to return a smaller brick side building (originally a rest-room facility for the original St. Mary Star of the Sea Convent of Marcy) to the building's original height by removing a recently added wood framed upper floor. The building including the small subject building, are "Historic" as recorded by the State of Florida Department of State, Division of Archives, History and Records Management; Site No. Bfr459. We plan to return the smaller side building to 1 story from an existing 2 story height. Also, there would be some revisions to the front facade by replacing recently added "pseudo-Palladian" arched windows, replacing with simple neo-Georgian rectangular windows, more in keeping with the original intent and style of the original Convent and represented on the house immediately next to this structure.

This historic side building was originally built into the Alley along its length by an average of 2 feet (see survey). We wish to add to the length of this building by adding 8.5 feet as screened porch addition to the rear of the building which won't be seen from Bay Ave. The added length would follow the footprint and it too would be in the Alley by about 2 feet. This building is to be used as a small dressing area/studio for a proposed back yard swimming pool

Granting this variance will both return the scale of a structure to its original size and changing the front arched windows will assist in bringing this important Apalachicola building in line with the intent of the Land Development code, and the suggestions of the of the Historic Apalachicola Design Guidelines including The U.S. Secretary of the Interior's Standards for Rehabilitation.

Please note that the Board of Adjustment shall be guided in its determination to approve or deny a variance request by the below listed criteria. Please address these criteria using additional pages if necessary.

1. Are there existing special conditions and circumstances which are peculiar to the location, size and characteristics of the lot, structure or building involved and which are not applicable to other lots, structures or buildings in the same zoning district?

The existing main house is unique in its historic neo-Georgian appeal and large scale. The side building planned for renovation is set back from the façade, but is presently visible from Bay Ave. because of the 2 stories. It would be a great improvement to the entire historic composition, if the upper floor were removed and the side building was returned to its original historic scale.

The addition will be a small extrusion of the original footprint by only 8.5 feet, important to the owner to make the screened porch feasible. Importantly what is proposed will add to the beauty of the view from Bay Avenue and will not be visible from other streets.

2. Are there special conditions and circumstances which do not result from the action of the applicant such as pre-existing conditions relative to the property which is subject of the variance request?

The existing conditions have a side building originally built slightly into the Alley. Because the owner wishes to remove the non-historic upper floor of that building, the owner is planning to remove a large amount of poorly designed construction. The small addition proposed to the rear will not be seen from Bay Avenue or affect the alley use negatively.

- 3 How will literal interpretation of the provisions of the Land Development Code work unnecessarily and undue hardship on the applicant or deprive the applicant of rights commonly enjoyed by other properties in the same zoning district?

If not approved, the added 8.5 foot screen porch will not be built by the owner, nor will the poorly designed upper floor be removed. The owner feels that as-is, this existing building detracts from the coherence of their property. They desire to improve the design both for them and for the historic nature of the composition.

Other properties in the neighborhood would be allowed the opportunity to assist in this regard. The only point in question is that the convent had originally built the restroom building slightly into the alley.

- 4 What is the minimum variance that will make possible the reasonable use of the lot, building or structure and which promote standards of health, safety or welfare?

Adding the short screened porch component only adds 8.5' which makes the porch usable.

5 How will granting the variance request not confer on the petitioner any special privilege that is denied by these zoning regulations to other lots, buildings or structures in the same zoning district?

Given the circumstances of this Historic property, granting this variance would be expected to be approved on other lots, buildings or structures in this zoning district due to the special situation of the buildings built many years ago (the Convent was built in 1901)

6 How will granting the variance be in harmony with the intent and purpose of the Land Development Code a non-injurious to the neighborhood or otherwise detrimental to the public welfare?

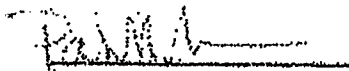
The owner will remove a non-Historic second floor from a Historic building, (which most likely was added without any review process) This action would definitely be in harmony with the intent and purpose of the Land Development Code. If granting this variance was denied the owner will do nothing which will extend the detrimental effect of this poorly designed non-historic 2nd floor addition and the pseudo-palladian windows

7 How will granting the variance be consistent with the Land Development Code?

Granting this variance will return the scale of a structure to its original size and changing the front arched windows will assist in bringing this important Apalachicola building in line with the intent of the Land Development code, and with the suggestions of the of the Historic Apalachicola Design Guidelines, The U.S. Secretary of the Interior's Standards for Rehabilitation.

8. Please provide any other information which may be necessary for the Board of Adjustment to make an informed decision on this matter

The owner, Tricia McLemore, and designer, George Coon, will work to accommodate suggestions made by the Variance Board.

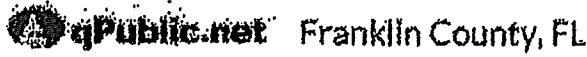

Signature of Property Owner

Patricia McLemore
Printed Name of Property Owner

Signature of Property Owner

Printed Name of Property Owner

December 22, 2017
Date



Parcel Summary

Parcel ID: 01-025-000-0230-0036-0010
 Location Address: 101 BAN AVE
 ZIP: 32320
 Brief Description: 36.36 LOT 7 1.23 A C S GS 202/440 232/50 278/289 604/407
 *The description above is not to be used as legal documents
 Property Use Code: SINGLE FAM (000100)
 Rec/Tax Map: 1-94-BW
 District: Northside District 31
 Millage Rate: 22.1786
 Assessed Value: 2000
 Homestead: *

[View Map](#)

Owner Information

Primary Owner:
 MARRIAGE LEY & PATRICK M
 P.O. Box 189
 Apalachicola, FL 32320

Land Information

Code	Land Use	Number of Units	Unit Type	Frontage	Depth
00000	VAC RES	24210	FF	0	0
00000	VAC RES	5000	UT	0	0

Residential Buildings

Building 1
 Type: SINGLE FAM
 Total Area: 2000
 Heated Area: 1775
 Exterior Walls: COMMON BRK
 Roof Cover: COMP SHED
 Interior Walls: DRYWALL
 Frame Type: MASONRY
 Floor Cover: BRICKWOODS
 Heat: AIR DUCTED
 Air Conditioning: CENTRAL
 Bathrooms: 0
 Bedrooms: 0
 Stories: 1
 Effective Year Built: 1930

Building 2
 Type: SINGLE FAM
 Total Area: 2425
 Heated Area: 1000
 Exterior Walls: COMMON BRK AVERAGE
 Roof Cover: ASB SHINGL
 Interior Walls: DRYWALL
 Frame Type: N/A
 Floor Cover: CLAY TILE CARPET
 Heat: AIR DUCTED
 Air Conditioning: CENTRAL
 Bathrooms: 0
 Bedrooms: 0
 Stories: 1
 Effective Year Built: 1936

Effective Flood Map has been effective since 2/5/2014

Effective Flood Map has been effective since 2/5/2014

Geographic Information

Latitude/Longitude: 29.721752 / -84.984886
Address: ALLEY APALACHICOLA FL 32320
Parcel ID: 01-005-0000-0334-0036-0010
Firm Parcel: 1205700525F (Effective)

Flood Information

Flood Zone Information

Geographic Entity

Location of Interest

Parcel

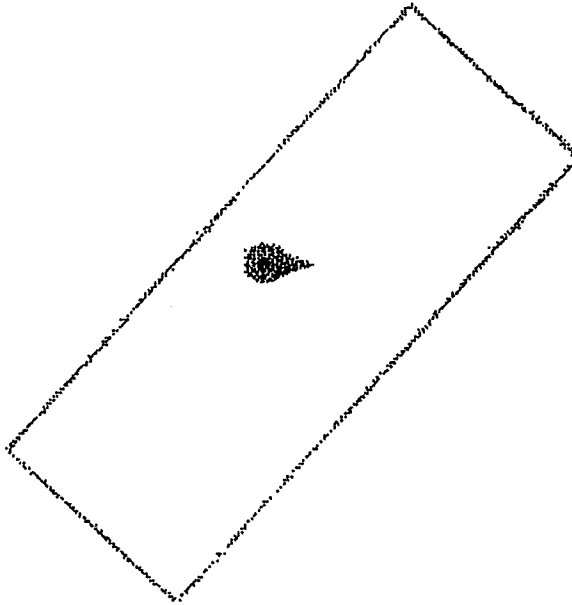
Base Flood Elevation*

13.0FT
(Effective BFE)

Effective Flood Zone

X

X198% AE:16%



*The computed elevation to which floodwater is anticipated to reach during the Base Flood (100 Year Flood). Base Flood Elevations are shown on Flood Insurance Rate Maps (FIRMs) and in the profiles. The BFE is the regulatory requirement for the structural occupancy of structures. The relationship between the BFE and structure's elevation determines the flood damage potential. If measurement is NAVD83.

Legend



Location of Interest



Parcel Outline

FLORIDA MASTER SITE FILE
Site Inventory Form

FDAMHM 802
1000

Site No. 555-969
Survey Date 7/9/6
Site Name Convent of Mercy
Address of Site Eighth Street
Instructions for locating site corner of intersection of Bay Ave. & 8th St.
Location Orlando, Fla.
County Orange
Owner of Site: Name St. Mary, Star of the Sea
Address Panacula, Tallahassee
Type of Ownership P.O. Drawer 17329, Panacula, FL 32322
Recorder Don G. Deibler, Historic Sites Specialist
Address FDAMHM

Condition of Site: Integrity of Site: Original Use comment: 810
836

<input type="checkbox"/> Existing <input type="checkbox"/> Good <input type="checkbox"/> Fair <input type="checkbox"/> Poor	<input type="checkbox"/> Altered <input type="checkbox"/> Unaltered <input type="checkbox"/> Impaired <input type="checkbox"/> Destroyed	<input type="checkbox"/> Present Use <input type="checkbox"/> Dates: Beginning <u>1901/1930</u> <input type="checkbox"/> Cultural/Phase <input type="checkbox"/> Period
--	---	--

NR Classification Category: building 816

Threats to Site:

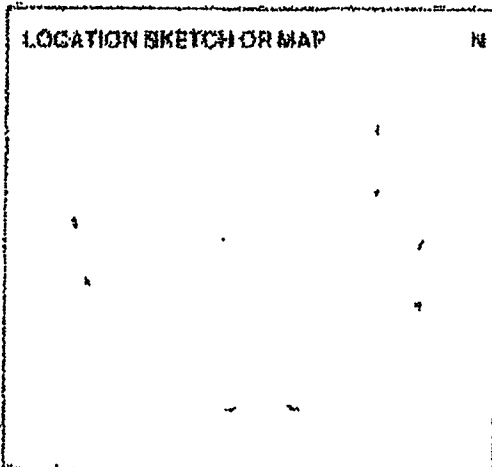
<input type="checkbox"/> Zoning	<input checked="" type="checkbox"/> 1978	<input type="checkbox"/> Transportation	<input checked="" type="checkbox"/> 1978
<input type="checkbox"/> Development	<input type="checkbox"/> 1978	<input type="checkbox"/> Pollution	<input checked="" type="checkbox"/> 1978
<input type="checkbox"/> Urbanization	<input checked="" type="checkbox"/> 1978	<input type="checkbox"/> Disaster	<input checked="" type="checkbox"/> 1978
<input type="checkbox"/> Highways	<input checked="" type="checkbox"/> 1978		

Area of Significance: architecture 910

Significance: Building appears to be an earlier structure, possibly from circa 1900 which was altered and added to circa 1930 brick work may date from 1930 renovation. no seams; building may actually be frame. Lowered cupola with cross; entrance, northern segmented pediment.

SEE SITE FILE STAFF FOR ORIGINAL PHOTO(S) OR MAP(S)

ARCHITECT 872 # #
 BUILDER 874 # #
 STYLE AND/OR PERIOD Georgian Revival 804 # #
 PLAN TYPE L-shape 800 # #
 EXTERIOR FABRIC(S) brick, cement, modern Flemish bond 854 # #
 STRUCTURAL SYSTEM(S) 858 # #
 PORCHES West/ 2nd story gallery, screen enclosed 842 # #
 FOUNDATION: brick 842 # #
 ROOF TYPE hip; gable; flat 842 # #
 SECONDARY ROOF STRUCTURE(S) 842 # #
 CHIMNEY LOCATION: exterior, no. 1 & 2 842 # #
 WINDOW TYPE: DHS 12/12 (1st); DHS 2/2 (2nd) 842 # #
 CHIMNEY: brick 802 # #
 ROOF SURFACING: composition shingles 802 # #
 ORNAMENT EXTERIOR: cement; wood 854 # #
 NO. OF CHIMNEYS 1 852 # # NO. OF STORIES 2 800 # #
 NO. OF BOWERS 0 854 # #
 Map Reference (incl. scale & date) 800 # #
 Latitude and Longitude: 800 # #
 Site Size (Approx. Acreage of Property): 850 # #



Township	Range	Section

UTM Coordinates:

240 4500 12000

Photographic Records Numbers 79N08381PS (17) 800 # #

Contact Print

FMSF Ex 469

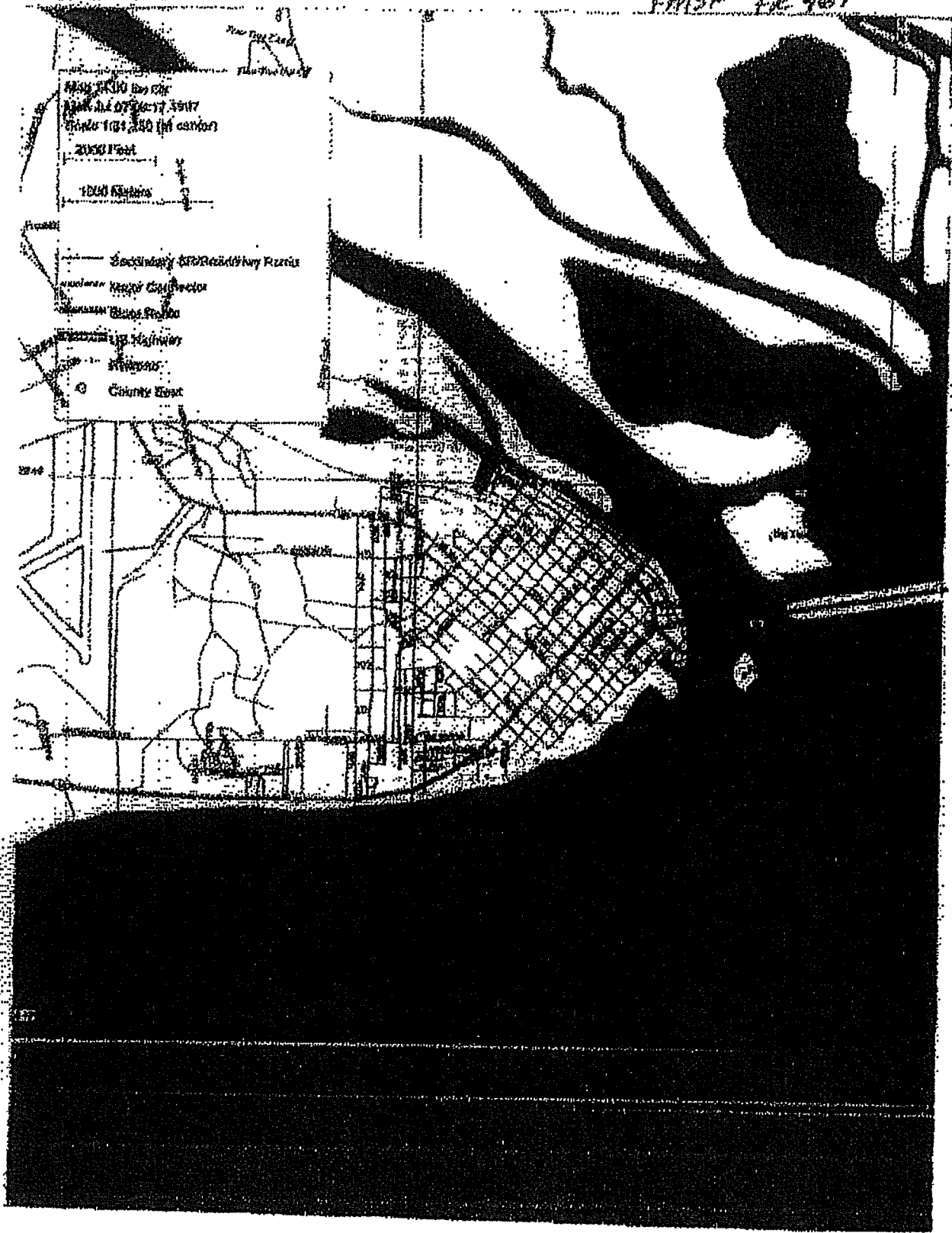
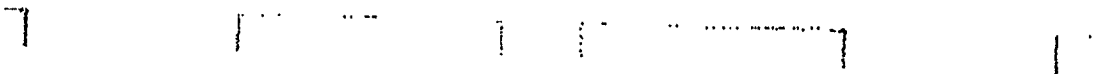
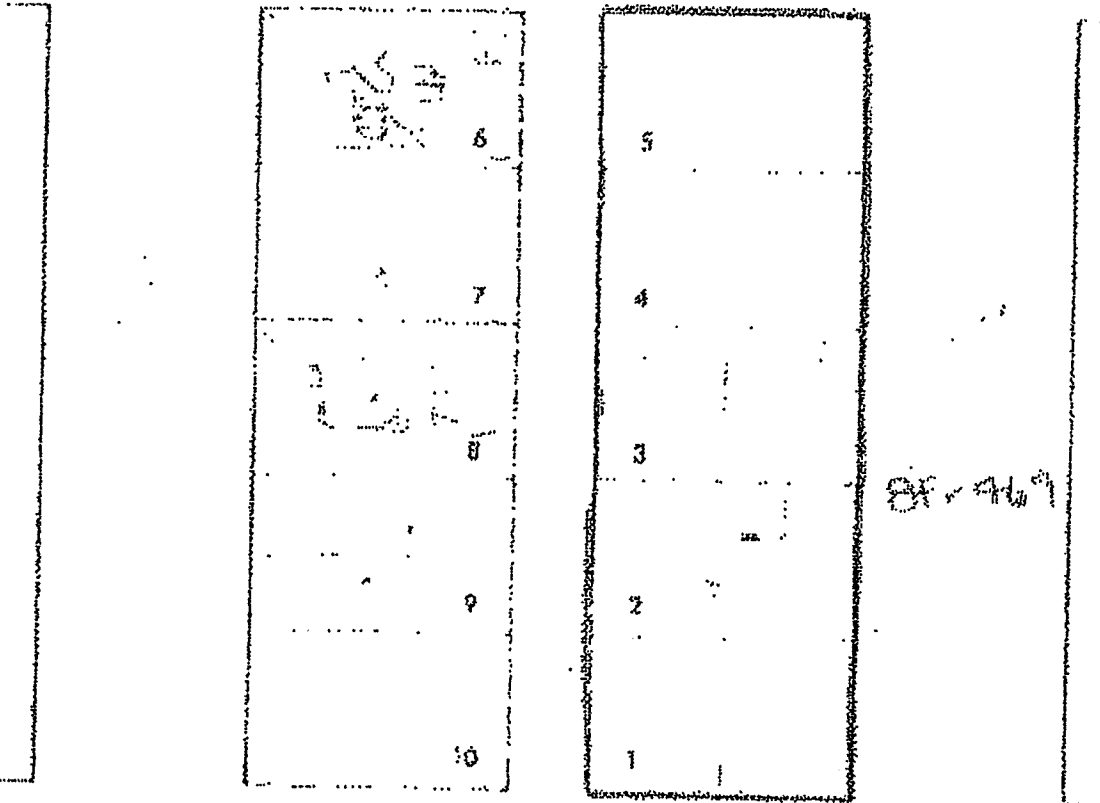
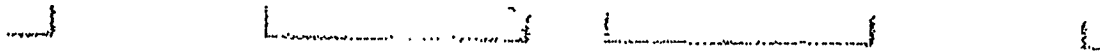


EXHIBIT 3

APPALACHICOLA ARCHITECTURAL SURVEY

BLOCK NUMBER ... 36 ...

SCALE: 1" = 60'



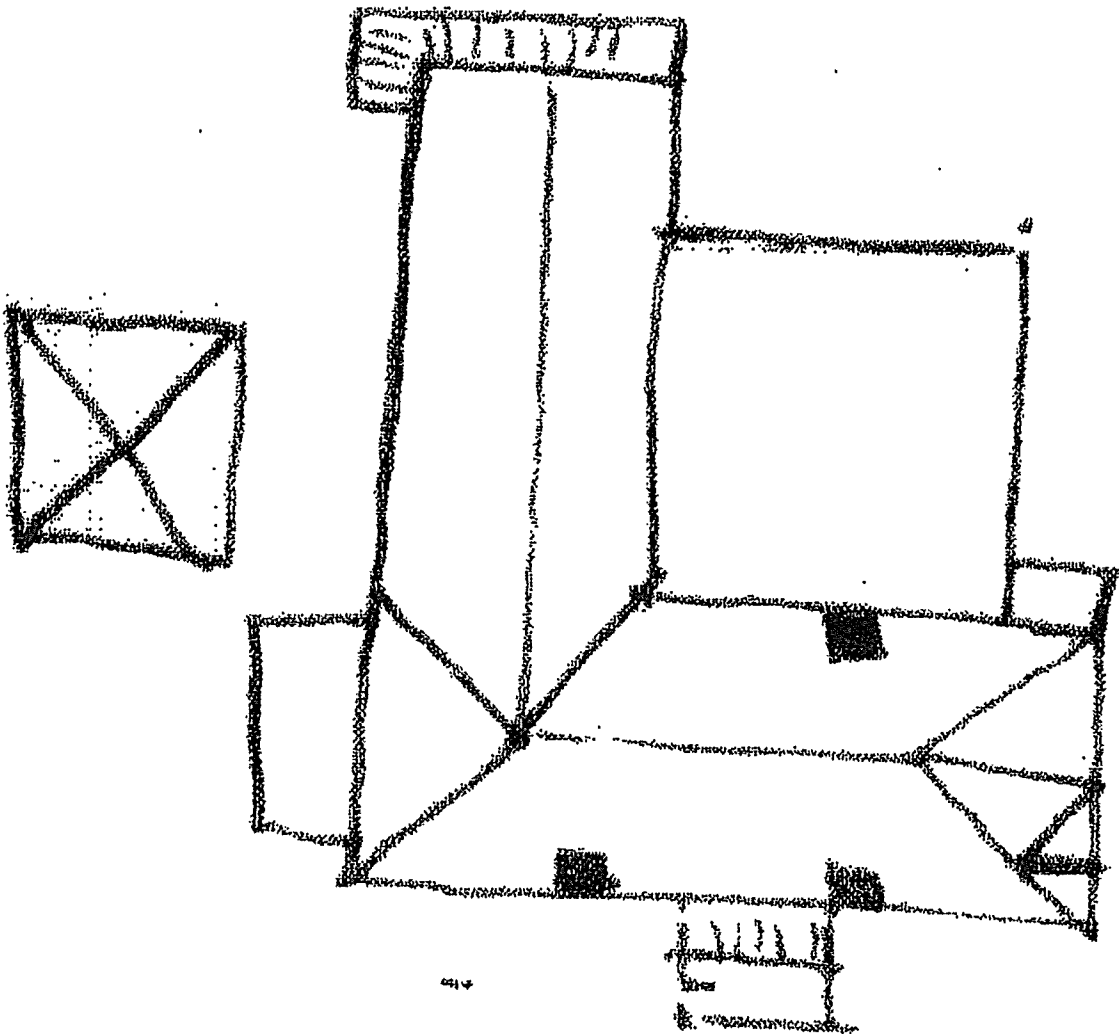
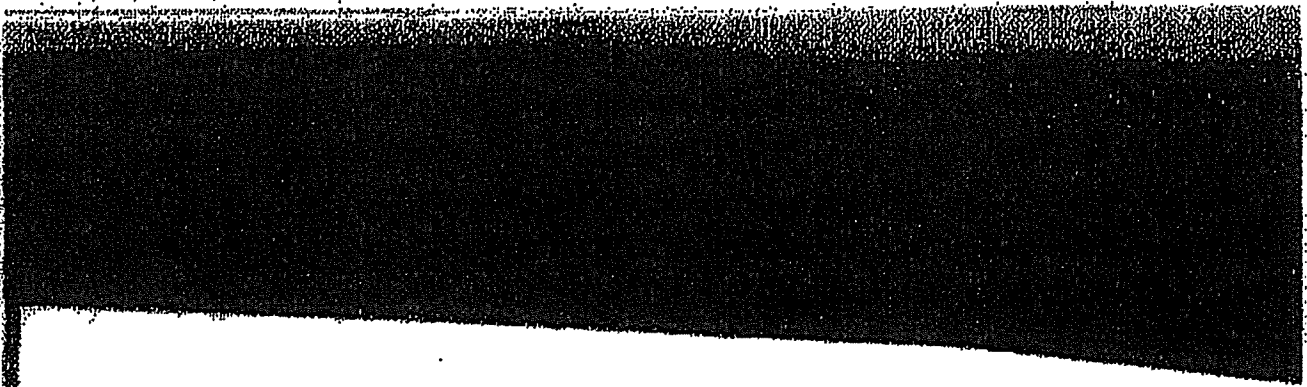
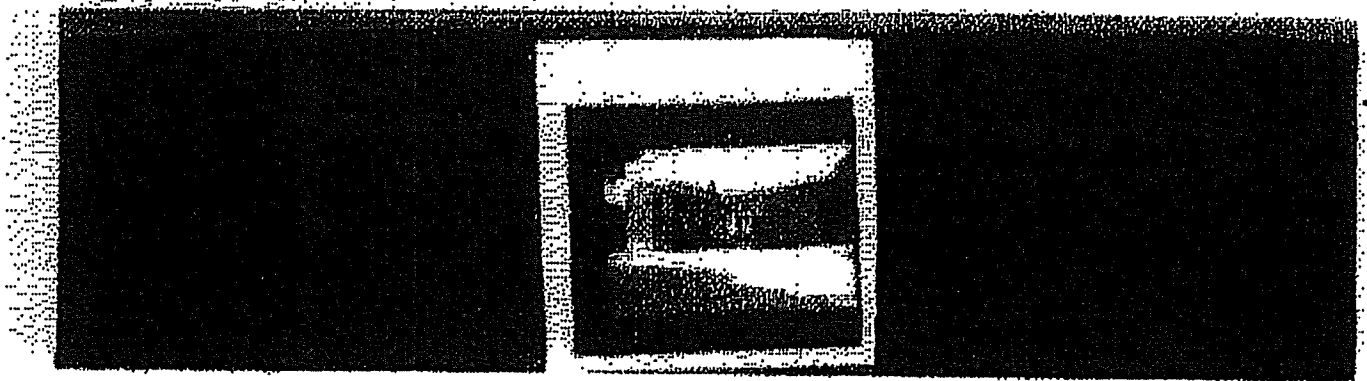
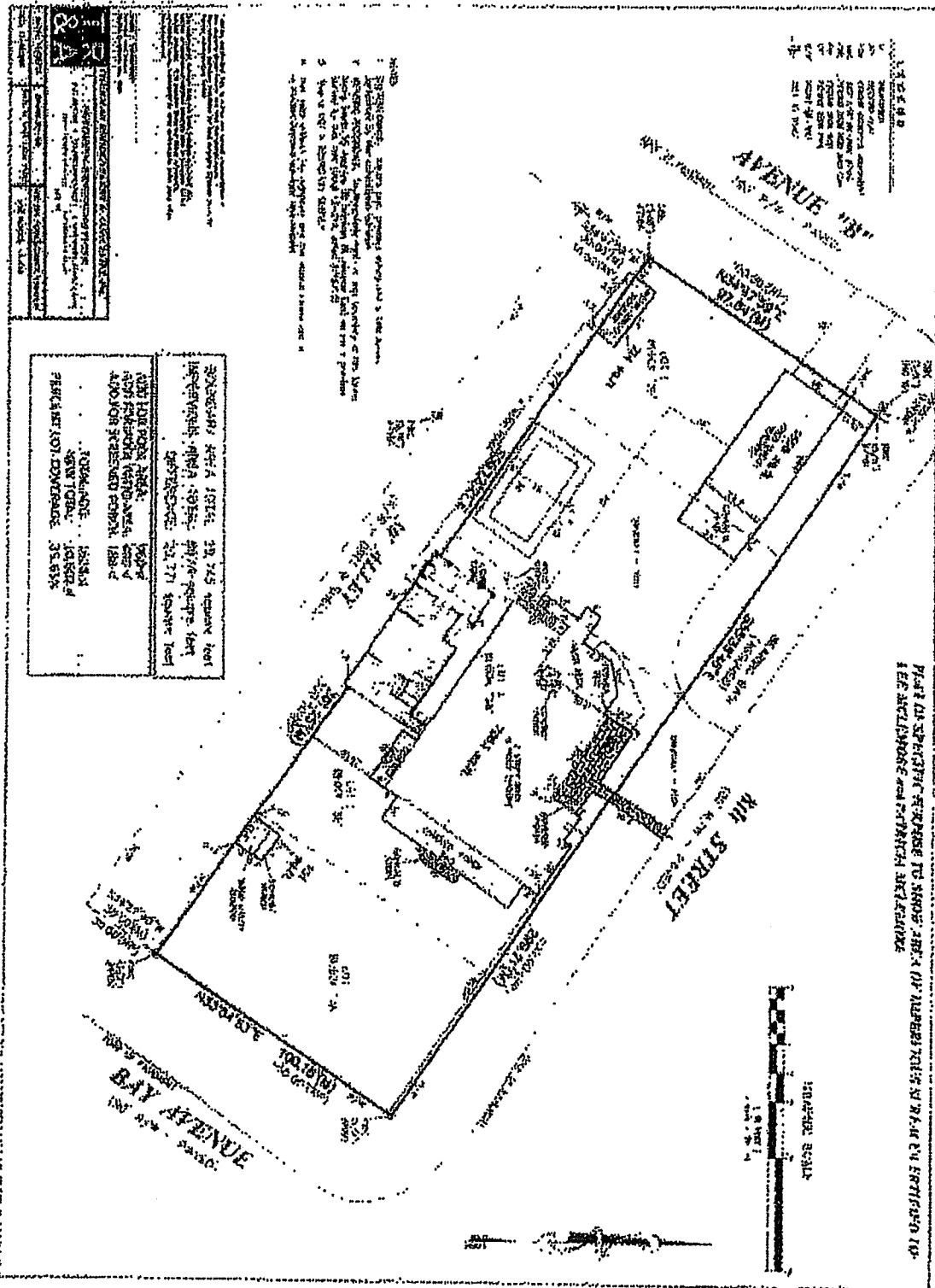
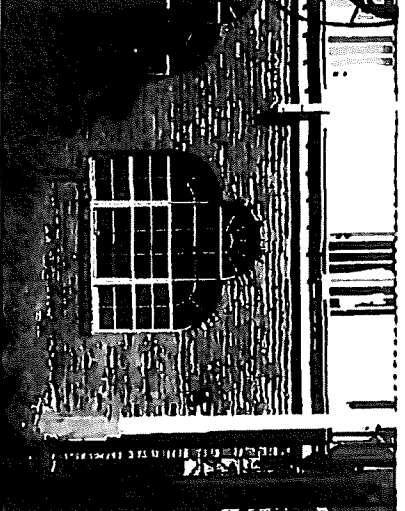
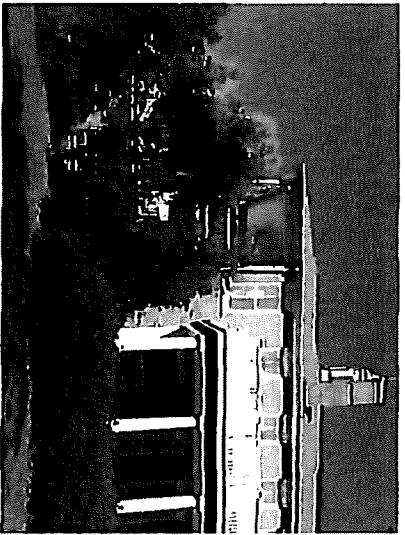
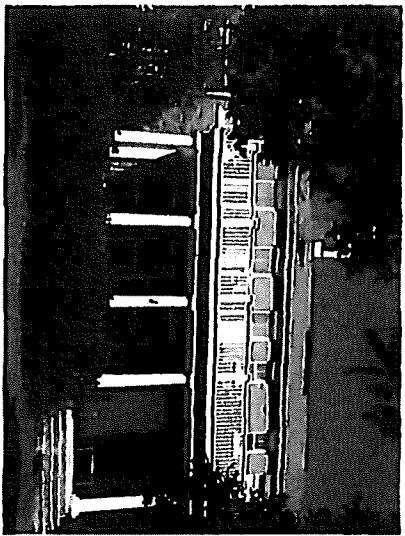
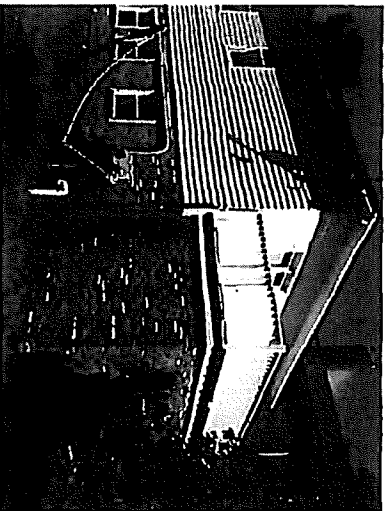
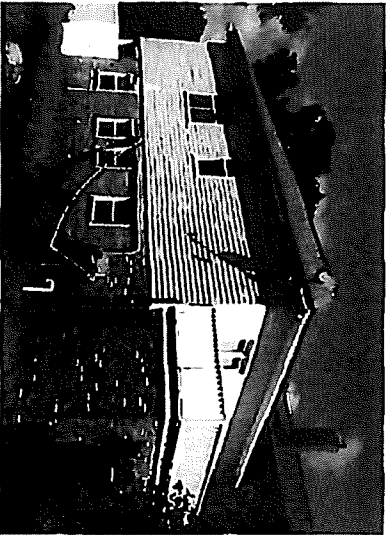
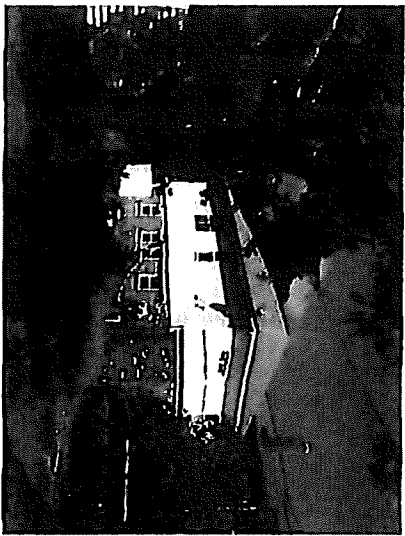


EXHIBIT 3

EXHIBIT 3







McLEMORE / REVISIONS

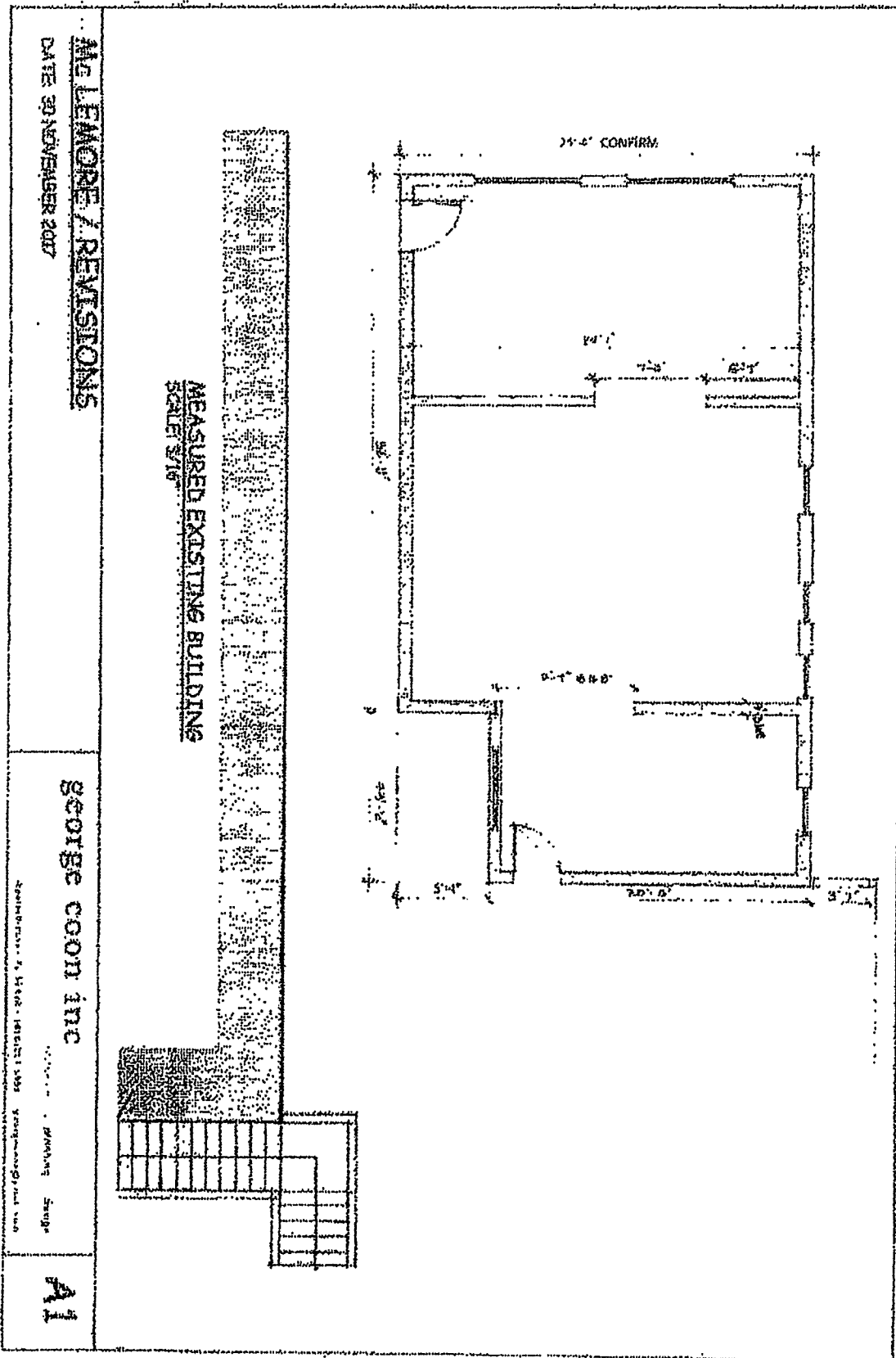
DATE: 30 NOVEMBER 2017

George coon inc

232 Sixth Street - Apalachicola - FL 32320 • (850)227 6398 • georgecoon@gmail.com

residential • planning • design

AO



MEASURED EXISTING BUILDING
SCALE 3/16"

McLEMORE / REVISIONS

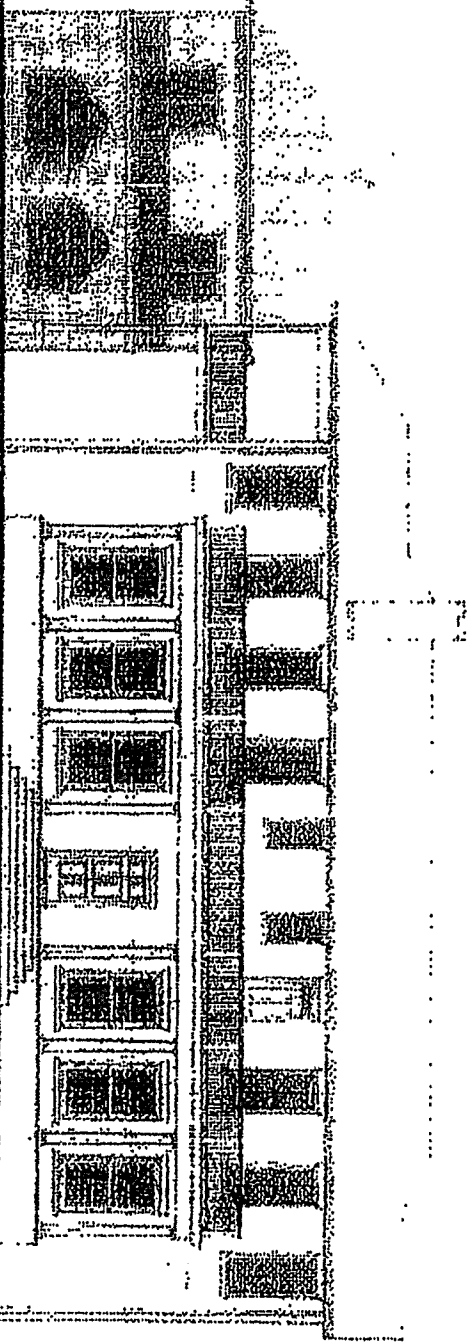
DATE: 30 NOVEMBER 2017

George Coon inc

2000 Highway 25, St. Catharines, Ontario L2R 6K8
Phone: 905.462.1555 Fax: 905.462.1555

A1

EXHIBIT 3

 <p>EXISTING 2 STORY BUILDING</p> <p>EXISTING RESIDENCE</p>	<p>McLENNANE / REVISIONS</p> <p>DATE: 30 NOVEMBER 2017</p> <p>GEORGE COON, INC.</p> <p>ARCHITECTURE • INTERIOR DESIGN • LANDSCAPE ARCHITECTURE</p> <p>PHONE: 254.850.7333 FAX: 254.850.7334</p> <p>1000 W. UNIVERSITY AVENUE, SUITE 1000, DALLAS, TEXAS 75201</p> <p>A3</p>
--	--

NEW ROOF RAFTERS
SECOND FLOOR

POOL SIDE PROPOSED "A"
SCALE: 1/4"

McLEMORE / REVISTONS
DATE: 30 NOVEMBER 2017

GEORGE COON INC
P.O. BOX 114102 - CHICAGO, IL 60611-4102
PHONE: 773-334-1100

A7

EXHIBIT 4 - BOA QUASI-JUDICIAL VARIANCE DECISION

QUASI JUDICIAL VARIANCE DECISION
BOARD OF ADJUSTMENT-MCLEMORE
May 22, 2018

This Variance came on before the Board of Adjustment of the City of Apalachicola on May 22, 2018 at 5:00 P.M. as properly noticed and advertised. After introduction of the subject matter, Anna Maria Cannatella agreed to perform the chairperson duties in light of the absence of chairperson Carrie Kienzle. Other members present were Atul Patel, Dennis Winterringer and Fonda Davis.

There was no objection to the Board Members hearing this matter after discussion of all extra judicial communication or inspection. The staff report with notices and communications on this subject was accepted into evidence and marked as Exhibit 1. The applicant/property owner presented the Variance request. There were no persons present during the evidentiary portion of the hearing who gave testimony or evidence in opposition to the Variance request.

The building is accepted as an Historic structure through documentation received from the Florida Master Site Plan. It is also uncontested that the building is nonconforming—extending into and beyond the required set back and into the City of Apalachicola, alley easement by approximately 2 feet for a total square foot of existing nonconformity of approximately 100 square feet. It is proposed through the Variance requested that the addition would extend the present nonconformity by an additional approximately 60 square feet to the nonconforming structure within the City alleyway (additional 2 feet into the City alleyway).

The applicant advised that the applicant will, if the Variance requested is granted by the Board of Adjustment of the City of Apalachicola, (although not involved in the Variance process) return a smaller brick side building to original historic height (a one-story brick restroom facility) by removing a more recently added wood framed upper floor. Furthermore, the more recently added arched windows would be replaced with simple neo-Georgian rectangular windows, more in keeping with the original style of the original historic structure and represented on the adjacent house. The applicant would extend the length of the building by adding 8.5 feet as a screened porch addition to the rear of the building which building will be used as a small dressing area/studio for a proposed back yard swimming pool.

The staff planner notes and provides by testimonial evidence that Section 111.A.3.b of ordinance 1991-7 (as amended 2017-05) provides for a Variance “if there is sufficient grounds to determine that reasonable use of property would be denied without such Variance”. “Variance from the terms of this code shall be granted only if the Variance is not contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this Code would result in unnecessary hardship”. 111.A.3.b.

Furthermore, staff report notes that Ordinance 2017-05 amends Ordinance 91-7 and provides for limited relief for the restoration and renovation of historic and non-historic non-conforming structures. However, it is further stated in the staff report that the intent of this

Ordinance is “not to permit either historic or nonhistoric, nonconforming structures to be enlarged upon, expanded, or extended, except as allowed through the Variance process at section 111.A.3.b”. “Existing nonconformities of a structure shall not be used as grounds for adding other structures prohibited elsewhere in the same district”. (February 2, 2018 Staff Report Analysis). Staff recommendation was that the Variance should be denied due to failure to meet the hardship requirements for the expansion.

The question of whether the Variance should be granted under Ordinance 91-7 (as amended 2017-05) is determined by whether “there is sufficient grounds to determine that reasonable use of property would be denied without such Variance”. Section 111.A.3.b. “Variance from the terms of this code shall be granted only if the Variance is not contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this Code would result in unnecessary hardship”.

However, after consideration of the evidence, the Board finds and concludes by majority vote that the preservation of the historic building and return to historic features as much as possible during the course of the development outweighs the extension of the nonconformity for the present screened porch addition. It has been unconditionally stated by applicant at the hearing that the renovation of the building to return to its historic height and window appearance will not be possible and will not be done without the Variance allowing the additional screen porch extension of the nonconformity. The resulting expansion will continue the building footprint encroachment over the five foot set back and 2 feet into the alleyway for the additional 8.5 feet being added onto the length of the building and will not be seen from Bay Avenue. The across the alley closest neighbor was supportive and in favor of the variance being granted.

Board member, Dennis Winterringer voted no to the Variance stating that the evidence did not meet the requirements for establishment of a Variance citing in particular the failure to establish a hardship by the evidence submitted; that the denying of the Variance application would not deny reasonable use of the property; and, that the development proposal by the Variance would extend and enlarge the present nonconformity in the set back and alleyway.

Wherefore, the Variance is hereby granted by the Board of Adjustment. It should be noted that the additional encroachment into the City right of way (alleyway) must be approved by the City Commission as this is outside of the jurisdiction of the Board of Adjustment.

Acting Chair Person

Order approved by the Board of Adjustment of the City of Apalachicola, this ____ day of _____, 2018.

EXHIBIT 5 - FOUNDATION APPEAL

Historic Apalachicola Foundation, Inc.
66 Avenue D
Apalachicola, Fl. 32320

May 25, 2018

Mayor Van D. Johnson, Sr.
Commissioner Brenda Ash
Commissioner Mitchell Bartley
Commissioner Jimmy Elliott
Commissioner Anita Grove
City of Apalachicola
192 Coach Wagoner Blvd.
Apalachicola, Fl. 32320

RE: Correction of Record and Appeal of McLemore Variance

Ladies & Gentlemen,

This is a request by the Historic Apalachicola Foundation to correct the record and, in the alternative, give notice of appeal of the Board of Adjustment's decision to approve a variance at the quasi-judicial hearing of May 21, 2018 in which the applicants seek a further expansion of a non-conforming structure already encroaching into the alley of Block 36 at their residence, 101 Bay Avenue.

At the conclusion of the quasi-judicial hearing a motion was made to grant the variance. The vote on the motion was three members in favor and one opposed. It was then announced that the variance was granted. Based on the recorded vote, granting a variance on a three - one vote does not comply with the Apalachicola Land Use Code, Part III, Enforcement and Administration, Section A (3) (c) which provides in relevant part:

c. Decisions of the Board of Adjustment. In exercising its authority the Board may, provided that such action is in conformity with the terms of this Code, reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as sought to be made and to that end shall have the powers of the building inspector from whom the appeal is taken. The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision or determination of the building inspector or to decide in favor of the applicant on any matter upon which it is required to pass under this code, or to effect any variation in the application of this Code. The granting of a variance by the

Board shall not confer upon the applicant any expressed authority to proceed with any development not specifically permitted or for which no permit has been issued pursuant to Section III B of this Code. (Emphasis added).

As provided in the Land Use Code, an application for a variance that does not receive four affirmative votes is denied by operation of the above quoted section. Therefore we respectfully request that the Board's announced decision be corrected without delay to reflect the legal effect of the vote taken upon the record.

In the alternative, the Historic Apalachicola Foundation appeals the decision to grant the variance. The grounds for appeal will be provided in supplemental correspondence.

Enclosed is a check for the \$500 fee.

Sincerely,

Diane K. Brewer

Cc: Lee Mathes, City Administrator
Cortni Bankston, City Building Department
Wilbur Bellew, City Code Inspector
Marie Marshall, Director, Historic Apalachicola Foundation, Inc.

Enclosure

Memorandum

Re: Appeal of the final order of the Board of Adjustment Granting An Application for a Variance by P. McLemore

Date: July 10, 2018

By: Bonnie E. Davis

This memorandum is in support of an appeal of a final order of the Board of Adjustment of the City of Apalachicola purporting to grant a variance to P. McLemore for a nonconforming structure located at 101 Bay Avenue. Applicant wishes to change the structure in a way that would not comply with the set back requirements of the zoning district in which it is located. The non-conforming structure encroaches on the alley adjacent to the property and if granted, the variance would permit further encroachment of the structure into the alley. The decision by the BOA must be reversed for two distinct reasons. First, the variance was granted on the affirmative votes of three members of the BOA, not four as required by the Land Use Code. The correct result of the vote under the Code is to deny, not grant, Applicant's request. Second, the record contains no competent, substantial evidence of hardship that would support the granting of a variance. For either or both of these reasons the decision of the BOA should be reversed and the application denied.

Discussion

The Application Did Not Receive Four Affirmative Votes and Is Therefore Denied.

The BOA conducted a quasi-judicial hearing on the Application with four members present on May 21, 2018. At the conclusion of the quasi-judicial hearing, a motion was made to grant the variance. The vote on the motion was three members in favor and one opposed. It was then announced that the variance was granted. Based on the recorded vote, granting a variance on a three – one vote does not comply with the Apalachicola Land Use Code, Part III, Enforcement and Administration, Section A (3) (c) which provides in relevant part:

c. Decisions of the Board of Adjustment. In exercising its authority the Board may, provided that such action is in conformity with the terms of this Code, reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as sought to be made and to that end shall have the powers of the building inspector from whom the appeal is taken. The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision or determination of the building inspector or to decide in favor of the applicant on any matter upon which it is required to pass under this code, or to effect any variation in the application of this Code. The granting of a variance by the Board shall not confer upon the applicant any expressed authority to proceed with any development not specifically permitted or for which no permit has been issued pursuant to Section III B of this Code. (Emphasis added).

As provided in the Land Use Code, an application for a variance that does not receive four affirmative votes is denied by operation of the above quoted section. Simply put, the Board is not empowered to depart from the Code's requirements and one of those requirements is four concurring votes to grant a variance. The Foundation is unaware of

the extent of the Board's adherence to this provision of the Code in the past but prior noncompliance does not furnish a legal basis to violate the Code in this instance. It is regrettable that the Applicant was left with the impression that the request was granted, but that does not negate the legal requirement of four affirmative votes. Therefore the Commission should reverse the Board's announced decision to reflect the legal effect of the vote taken upon the record.

The Application Does Not Meet the Code's Standards for Granting a Variance
Because There Is No Evidence of Hardship

The BOA is an administrative body solely created by the Land Development Code and therefore has no inherent authority or power to grant relief beyond that which falls within the scope of its specific, enumerated powers. The Board has the power to grant a variance, defined as "granting of relief by the Board of Adjustment from the requirements of this Code..." Section II, #204.¹ However, the type of variance the Board is authorized to grant is expressly limited: "... a variance may be authorized only for height, area, setback, size of structure, or size of yards and open space requirements." Section III (A) (3) (b).

The standards for granting a variance of any type are the same. A variance can only be granted upon a showing of hardship. Section III (A) (3) (b) (1) states in part..." The application shall further demonstrate that the existing conditions and circumstances are such that the strict application of the provisions of this Code would deprive the applicant of reasonable use of said land, building, or structure in the same district and permitted under the terms of this Code, and that the peculiar conditions and circumstances are not the result of the actions of the applicant."

Section III (A) (4) (b) (4) requires the Board to make factual findings that "that special circumstances or conditions exist which are peculiar to the lands buildings or structures for which the variance is sought", that the unique circumstances and conditions would mean that compliance with Code regulations would leave the applicant "with no means for reasonable use of the land, buildings, or other structures equivalent" to the uses made in that zoning district and that the unique circumstances are not the result of the actions of the applicant. This is consistent with case law that requires competent, substantial evidence to support a finding that a variance is justified. Nance v. Town of Indialantic, 400 So.2d 1041, Fla. 3rd DCA, 1981, affirmed 41 So.2d 1041, Fla. 1982; Bernard v. Town Council of Palm Beach, 569 So2d 853, Fla. 4th DCA 1990; Albright v.

¹ All citations, unless otherwise indicated, are to the Land Development Code of Apalachicola. By the adoption of Ordinance 2017-05 "Variance" is broadly defined in Section II, Language and Definitions of the Land Development Code and expressly limited as quoted above in Section III, Enforcement and Administration. Prior to the adoption of Ordinance 2017-005 the definition of variance in Section II stated the same limitations.

Hensley, 492 So.2d 852, Fla. 5th DCA 1986. Case law makes clear that the hardship must be a condition unique to the property, that, in the absence of a variance would render the property unfit for any reasonable use consistent with the use permitted in its zoning district. Note that the hardship must block any reasonable use, and is not just limited to the change that the owner desires to make. In this case Applicant sought to justify the variance on the ground that it would result in an aesthetic improvement that Applicant would not otherwise make. Crucially missing is any evidence in the record to show that Applicant would be deprived of the use of her property in the absence of a variance. Aesthetic improvement is not evidence of hardship. The Code does not authorize the Board to substitute aesthetic improvement for hardship. Exhibit 1, the Staff Analysis, is competent, substantial evidence that no hardship exists in this case.

Case law is also clear that a variance cannot be granted because of a self-created hardship. Courts have emphasized that restrictions and conditions for land use that existed at the time of purchase of the land cannot thereafter become a hardship that justifies a variance. Auerbach v. City of Miami, 929 So.2d 693, Fla. 3rd DCA, 2006; Herrera v. City of Miami, 600 So.2d 561, Fla. 3rd DCA, 1992 (no hardship where proposed building size and required parking will not fit on land parcel); Town of Indialantic v. Nance, 485 So.2d 1318, Fla. 3rd DCA 1986, rev. denied 494 So. 2d, 1152, Fla. 1986); Thompson v. Planning Commission of City of Jacksonville, 464 So.2d 1231, Fla. 1st DCA 1985 (no hardship where proposed building size and required parking will not fit on land parcel). Simply put, the non-conforming structure that Applicant wishes to change in a way that requires a variance was present on the property at the time Applicant purchased it. Applicant cannot now assert that it is a hardship not to be able to change the structure in a way not permitted by the Code.

The Code establishes hardship as the standard for granting a variance for a reason. Hardship, from an evidentiary standpoint, is relatively easy to ascertain. Aesthetic improvement is not. Granting a variance in the absence of hardship creates a dangerous precedent. Doesn't everyone believe their desired changes are aesthetic improvements? Applicant sought to justify their proposed changes as aesthetic improvements that would bring the structure to a more historically appropriate appearance. HAF would point out that there are competing values at stake here. Where variances would permit an encroachment on public spaces, as this one would, the integrity of the town's historic plat is diminished.

Nowhere does the Code authorize the Board to waive specific provisions of the Code upon an offer of evidence that does not address standards contained in the Code for granting a variance. Because there is no competent, substantial evidence to support a finding of hardship the Board of Adjustment's decision to grant the variance must be reversed.

HISTORIC APALACHICOLA FOUNDATION, INC.
P.O. BOX 41
APALACHICOLA, FL. 32329

July 13, 2018

Acting Chairman Anna Maria Cannatella
Board of Adjustment
City of Apalachicola

Re: McLemore Variance Decision

By Electronic Delivery

Dear Chairman Cannatella,

The Historic Apalachicola Foundation respectfully requests that the Board of Adjustment correct the decision announced at the conclusion of the quasi-judicial hearing conducted on May 21, 2018 regarding the application for a variance from the Apalachicola Land Use Code for an expansion of a non-conforming structure at 101 Bay Avenue. HAF has reviewed the draft order to be considered by the Board at its July 16 2018 meeting. We respectfully request that the draft order be revised to state that the Board's vote on the application results in a denial of the variance request.

At the conclusion of the quasi-judicial hearing on this matter, a motion was made to grant the variance. The vote on the motion was three members in favor and one opposed. It was then announced that the variance was granted. Based on the recorded vote, granting a variance on a three - one vote does not comply with the Apalachicola Land Use Code, Part III, Enforcement and Administration, Section A (3) (c) which provides in relevant part:

c. Decisions of the Board of Adjustment. In exercising its authority the Board may, provided that such action is in conformity with the terms of this Code, reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as sought to be made and to that end shall have the powers of the building inspector from whom the appeal is taken. The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision or determination of the building inspector or to decide in favor of the applicant on any matter upon which it is required to pass under this code, or to effect any variation in the application of this Code. The granting of a variance by the Board shall not confer upon the applicant any expressed authority to proceed with any development not specifically permitted or for which no permit has been issued pursuant to Section III B of this Code. (Emphasis added).

As provided in the Land Use Code, an application for a variance that does not receive four affirmative votes is denied by operation of the above quoted section. Simply put, the Board is not empowered to depart from the Code's requirements and one of those requirements is four concurring votes to grant a variance. The Foundation is unaware of the extent of the Board's adherence to this provision of the Code in the past but prior noncompliance does not furnish a legal basis to violate the Code in this instance. It is regrettable that the Applicant was left with the impression that the request was granted, but that does not negate the legal requirement of four affirmative votes. Therefore we respectfully request that the Board's announced decision be corrected without delay to reflect the legal effect of the vote taken upon the record.

Sincerely,

Diane Brewer
Historic Apalachicola Foundation, Inc.

CC: Board of Adjustment members
J. Patrick Floyd, Esq.

EXHIBIT 6 - APPLICATION FEE

HISTORIC APALACHICOLA FOUNDATION INC. 81-275/828
 1006
 APALACHICOLA HISTORIC PLAN WITH SQUARES
 PO BOX 41
 APALACHICOLA, FL 32329

DATE 5/27/15

PAY TO THE ORDER OF City of Apalachicola \$ 500.00 / XX
Five hundred DOLLARS

Heat Reactive Ink



www.my100bank.com

MEMO Appeal BGA Alvair B...

ACTIVE INK DETAILS ON BACK

ENDORSE HERE

For Deposit Only
 City of Apalachicola REMOTE DEPOSIT
 General Fund Account

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
 RESERVED FOR FINANCIAL INSTITUTION USE *

118-74

The security features listed below, as well as those not listed, exceed industry guidelines.

Security Features:	Results of document alteration:
Security Square	Cannot be reproduced by copiers or scanners.
Heat Reactive Ink	Hold over image with fingers or breathe on it. The image will fade and reappear.
Personalized Micropoint	MP Date line is your name and the check number in small type. Appears as a dotted line when photocopied.
Chemically Sensitive Paper	Stains or spots may appear with chemical alteration.
Micropoint Line	MP Small type in line appears as dotted line when photocopied.
Chemical Wash Detection Area	White Padlock on the back side. Stains or discolorations in this area may indicate alteration attempts.
Original Document Back Path	Deletes cut-and-paste alteration attempts.

01 42010002720545>082902757< 07131

* Federal Reserve Board of Governors REG. CC

EXHIBIT 6

EXHIBIT 7 - SEPTEMBER 18, 2019 BOA AGENDA

CITY OF APALACHICOLA
BOARD OF ADJUSTMENT
QUASI-JUDICIAL PUBLIC HEARING & SPECIAL MEETING
WEDNESDAY SEPTEMBER 18th, 2019
Community Center/City Hall - 1 Bay Avenue

AGENDA

I. Quasi-Judicial Public Hearing & Special Meeting- 6:00 PM

1. The Apalachicola Board of Adjustment will hold a Quasi-Judicial Public Hearing at its Special Meeting called for that purpose on Wednesday, September 18th, 2019 at 6:00 P.M. at the Community Center Meeting Room, 1 Bay Avenue, Apalachicola, Florida for Consideration of the Entry of the Order on the previous Quasi-Judicial hearing decision of May 21, 2018 of the Variance Request application of Patricia McLemore (Applicant) relating expansion of a nonconformity of an already nonconforming historic structure by increasing the size of the building that currently sits within the required setback and beyond the property line into the City alley, on the parcel(s) of property Warranty Deeded to Lee & Patricia M McLemore, Franklin County Public Records, located at 101 Bay Avenue with legal descriptions being as follows: Parcel ID# 01-09S-08W-8330-0036-0010, Block 36, Lot(s) 1 through 5 pursuant to the official zoning map of the City of Apalachicola said parcel being in Zoning R-1 Single Family Residential of the City of Apalachicola.

Any person who desires his or her testimony to be considered as potential competent, substantial evidence, such personal shall be placed under oath and subject to cross-examination. All testimony presented by the Applicant, an Adversely Affected Person, any witness for a party or the staff (other than legal advice given by the City Attorney) shall be given under oath and subject to cross examination by the City of Apalachicola and Applicant. The Board, following the conclusion of the Quasi-Judicial hearing shall finalize a written statement memorializing the Board's decision and final findings as well as supporting conditions and evidence with their findings and provide a copy to the parties.

Further information on these items may be obtained from or sent to Kelly Simpson at the City of Apalachicola Community & Development Administration Office, 1 Avenue E. Apalachicola, Florida at (850) 653-1522 or emailed to CityofApalachicola@gmail.com All interested persons are invited to attend and present information for the consideration of the Board of Adjustment in accordance with the Policy for Quasi-Judicial Hearings..

The City of Apalachicola adheres to the Americans with Disabilities Act and will make reasonable modifications for access to this meeting upon request. Please call the City Hall of the City of Apalachicola (653-9319) to make a request of this nature. Requests must be received at least seven (7) days in advance of the meeting in order to allow time to provide the requested service.

Any person wishing to appeal any final decision made by the City of Apalachicola Board of Adjustment on this issue will need a record of the proceedings resulting from this public hearing and for that purpose, such person may need to ensure that a verbatim record of the proceeding is made, which record includes the testimony and evidence upon which the appeal is to be based.

In our continuing effort to keep the citizens of Apalachicola informed, this agenda is posted on our website at www.cityofapalachicola.com prior to the scheduled meeting for public review. Additional information such as the City's Land Development Code and zoning related maps, along with other development information is also available on the site for your convenience. Please direct any questions concerning items on this agenda or the Apalachicola Building Department to Kelly Simpson, (850)653-9319, cortnibankston@cityofapalachicola.com

BOARD OF ADJUSTMENT
CONSIDERATION OF ORDER

The Board of Adjustment for the City of Apalachicola will hold a Special Meeting on Wednesday, September 18, 2019 at 6:00 P.M., at the Community Center Meeting Room, 1 Bay Avenue, Apalachicola, Florida. The purpose of the meeting is for the Consideration of Order of the Patricia McLemore Variance Hearing, 101 Bay Avenue, Apalachicola, FL 32320.

The City of Apalachicola adheres to the Americans with Disabilities Act and will make reasonable modifications for access to this meeting upon request. Please call the City Hall of the City of Apalachicola (653-9319) to make a request of this nature. Requests must be received at least three (3) business days in advance of the meeting in order to allow time to provide the requested service.

Further information about this meeting may be obtained from Kelly Simpson at the City of Apalachicola Community & Development Administrative Office, 192 Coach Wagoner Blvd. Apalachicola, Florida at (850) 653-9319.

AFFIDAVIT OF
PROOF OF PUBLICATION
(S.50.051, FS)

THE TIMES

Published Weekly

Apalachicola, Franklin County, Florida

**STATE OF FLORIDA
COUNTY OF FRANKLIN**

Before the undersigned authority personally appeared

Robin Hoxie

who on oath says that he/she is Advertising Sales Rep of the The Times, a weekly newspaper published at 129 Commerce Street Franklin County, Florida; that the attached copy of advertisement, being in the matter of

SEE ATTACHED

was published in said newspaper in the

Issue(s) of September 5th 2019

Affiant further says *The Times* is a newspaper published at 129 Commerce Street, in said Franklin County Florida, and that said newspaper has heretofore been continuously published in said Franklin County, Florida, and each Thursday and has been entered as second class mail matter at the post office in Apalachicola, Franklin County, for a period of 1 year next preceding the First publication of the attached copy of advertisement; And Affiant further says that he or she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Sworn to and subscribed before me this

5th day of September, 2019

By Robin Hoxie, who is

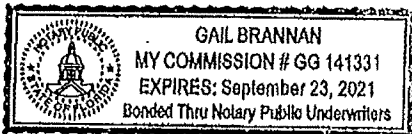
personally known to me or who has produced

(type of identification),

as Identification.

Gail Brannan

Signature of Notary



Print, Type, or Stamp Commissioned
Name of Notary Public

BOARD OF ADJUSTMENT CONSIDERATION OF ORDER

The Board of Adjustment for the City of Apalachicola will hold a Special Meeting on Wednesday, September 18, 2019 at 6:00 P.M. at the Community Center Meeting Room, 1 Bay Avenue, Apalachicola, Florida. The purpose of the meeting is for the Consideration of Order of the Patricia MoLemore Variance Hearing, 101 Bay Avenue, Apalachicola, FL 32320.

The City of Apalachicola adheres to the Americans with Disabilities Act and will make reasonable modifications for access to this meeting upon request. Please call the City Hall of the City of Apalachicola (653-9319) to make a request of this nature. Requests must be received at least three (3) business days in advance of the meeting in order to allow time to provide the requested service.

Further information about this meeting may be obtained from Kelly Simpson at the City of Apalachicola Community & Development Administrative Office, 192 Coach Wagoner Blvd. Apalachicola, Florida at (850) 653-9319.

EXHIBIT 8 - MAY 21, 2018 BOA QUASI-JUDICIAL VARIANCE DECISION

QUASI JUDICIAL VARIANCE DECISION
BOARD OF ADJUSTMENT – MCLEMORE
MAY 21, 2018

This Variance came on before the Board of Adjustment of the City of Apalachicola on May 21, 2018 at 5:00 P.M. as properly noticed and advertised. After the introduction of the subject matter, Anna Maria Cannatella agreed to perform the chairperson duties in light of the absence of chairperson Carrie Kienzle. Other members present were Atul Patel, Dennis Winterringer and Fonda Davis.

There was no objection to the Board Members hearing this matter after discussion of all extra judicial communication or inspection. The staff report with notices and communication on this subject was accepted into evidence and marked as Exhibit 1. The applicant/property owner presented the Variance request. There were no persons present during the evidentiary portion of the hearing who gave testimony or evidence in opposition to the Variance request.

The building is accepted as an Historic structure through documentation received from the Florida Master Site Plan. It is also uncontested that the building is nonconforming-extending into and beyond the required 5 feet side set back and into the City of Apalachicola, alley easement by approximately 2 feet for a total square foot of existing nonconformity of approximately 360 square feet. It is proposed through the Variance requested that the addition would extend the present nonconformity by an additional approximately 60 square feet to the nonconforming structure within the side set back and City alleyway.

The applicant advised that the applicant will, if the Variance requested is granted by the Board of Adjustment of the City of Apalachicola, (although not involved in the Variance process), return a smaller brick side building to original historic height (a one-story brick restroom facility) by removing a more recently added wood framed upper floor. Furthermore, the more recently added arched windows would be replaced with simple neo-Georgian rectangular windows, more in keeping with the original style of the original historic structure and represented on the adjacent house. The applicant would extend the length of the building by adding 8.5 feet as a screened porch addition to the rear of the building which building will be used as a small dressing area/studio for a proposed back yard swimming pool.

The staff planner notes and provides by testimonial evidence that Section 111.A.3.b. of Ordinance 1991-7 (as amended 2017-05) provides for a Variance “if there is sufficient grounds to determine that reasonable use of property would be denied without such Variance”, “Variance from the terms of this code shall be granted only if the Variance is not contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this Code would result in unnecessary hardship.” 111.A.3.b.

Furthermore, staff report notes that Ordinance 2017-05 amends Ordinance 91-7 and provides for limited relief for the restoration and renovation of historic and non-historic non-conforming structures. However, it is further stated in the staff report that the intent of this Ordinance is “not to permit either historic or nonhistoric, nonconforming structures to be enlarged upon, expanded, or extended, except as allowed through the Variance process at section

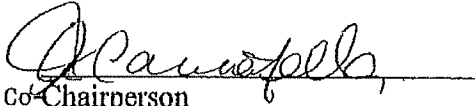
111.A.3.b". "Existing nonconformities of a structure shall not be used as grounds for adding other structures prohibited elsewhere in the same district". (February 2, 2018 Staff Report Analysis). Staff recommendation was that the Variance should be denied due to failure to meet the hardship requirements for the expansion.

The question of whether the Variance should be granted under Ordinance 91-7 (as amended 2017-05) is determined by whether "there is sufficient grounds to determine that reasonable use of property would be denied without such Variance". Section 111.A.3.b. "Variance from the terms of this code shall be granted only if the Variance is not contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this Code would result in unnecessary hardship".

However, after consideration of the evidence, the Board finds and concludes by majority vote that the preservation of the historic building and return to historic features as much as possible during the course of the development outweighs the extension of the nonconformity for the present screened porch addition. It has been unconditionally stated by applicant at the hearing that the renovation of the building to return to its historic height and window appearance will not be possible and will not be done without the Variance allowing the additional screen porch extension of the nonconformity. The resulting expansion will continue the building footprint encroachment over the five foot set back and 2 feet into the alleyway for the additional 8.5 feet being added onto the length of the building and will not be seen from Bay Avenue. The across the alley closest neighbor was supportive and in favor of the variance being granted.

Board member, Dennis Winterringer voted no to the Variance stating that the evidence did not meet the requirements for establishment of a Variance citing in particular the failure to establish a hardship by the evidence submitted; that the denying of the Variance application would not deny reasonable use of the property; and, that the development proposal by the Variance would extend and enlarge the present nonconformity in the set back and alleyway.

Wherefore, the Variance is hereby granted by the Board of Adjustment. It should be noted that the additional encroachment into the City right of way (alleyway) must be approved by the City Commission as this is outside of the jurisdiction of the Board of Adjustment.


Co-Chairperson

Order approved by the Board of Adjustment of the City of Apalachicola, this 18th day of September, 2019.

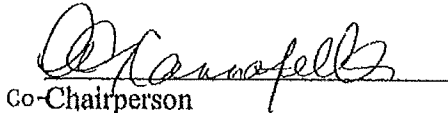

Co-Chairperson

EXHIBIT 9 - REAFFIRMING APPEAL OF VARIANCE APPROVAL
SEPTEMBER 24, 2019

Hopping Green & Sams

Attorneys and Counselors

September 24, 2019

Mr. Ron Nalley
City of Apalachicola
192 Coach Wagoner Boulevard
Apalachicola, Florida 32320

Re: Re-affirming appeal of variance approval for 101 Bay Avenue, Apalachicola

Dear Mr. Nalley:

As you know, I represent the Historic Apalachicola Foundation, Inc. (the Foundation), a group of dedicated citizens charged with enhancing the City of Apalachicola by protecting the unique and valuable historic character of the City. One of the primary concerns of the Foundation is maintaining historic properties and the character of Apalachicola, including the Historic Plat which was adopted in 1836, designating the blocks, streets, alleys and squares. This Plat is historically relevant to the City and the public interest of Apalachicola. The recent approval of a setback variance for 101 Bay Avenue potentially allows for encroachment into public lands, adversely impacting the Historic Plat.

On May 21, 2018, the Board of Adjustment voted on a request for a variance of the City's setback requirements, allowing for expansion of a non-conforming structure at 101 Bay Avenue into the adjacent alley. The Foundation appealed the vote to the City Commission on May 25, 2018. Attached to this letter is the original appeal letter, supporting materials, and a copy of the check confirming payment of the appeal fee. The City never heard the Foundation's appeal.

Due to procedural errors in the original vote, on September 18, 2019, the Board of Adjustment re-considered the May 21, 2018 order approving the variance decision. The Board voted to approve the order. A copy of the draft "Quasi Judicial Variance Decision" is attached to this letter.

The Foundation now re-affirms its appeal of the variance decision and asks the City Commission to hear the appeal as required under section III.A.1.g. of the City Land Development Code (LDC). The basis for appeal remains unchanged - the Board of Adjustment violated section III.A.3.b. of the LDC by approving a variance without any evidence of special circumstances or a hardship that necessitate the variance.

Mr. Ron Nalley
September 24, 2019
Page Two

I appreciate your attention to this matter. Please confirm that an appeal before the City Commission will be scheduled in accordance with the procedural requirements of section III.A.1.g. of the LDC.

Sincerely,



Robert Volpe
Counsel for the Historic Apalachicola Foundation, Inc.

cc: J. Patrick Floyd, City Attorney
Diane Brewer
Marie Marshall

QUASI JUDICIAL VARIANCE DECISION
BOARD OF ADJUSTMENT-MCLEMORE

May 22, 2018

This Variance came on before the Board of Adjustment of the City of Apalachicola on May 22, 2018 at 5:00 P.M. as properly noticed and advertised. After introduction of the subject matter, Anna Maria Cannatella agreed to perform the chairperson duties in light of the absence of chairperson Carrie Kienzle. Other members present were Atul Patel, Dennis Winterringer and Fonda Davis.

There was no objection to the Board Members hearing this matter after discussion of all extra judicial communication or inspection. The staff report with notices and communications on this subject was accepted into evidence and marked as Exhibit 1. The applicant/property owner presented the Variance request. There were no persons present during the evidentiary portion of the hearing who gave testimony or evidence in opposition to the Variance request.

The building is accepted as an Historic structure through documentation received from the Florida Master Site Plan. It is also uncontested that the building is nonconforming—extending into and beyond the required set back and into the City of Apalachicola, alley easement by approximately 2 feet for a total square foot of existing nonconformity of approximately 100 square feet. It is proposed through the Variance requested that the addition would extend the present nonconformity by an additional approximately 60 square feet to the nonconforming structure within the City alleyway (additional 2 feet into the City alleyway).

The applicant advised that the applicant will, if the Variance requested is granted by the Board of Adjustment of the City of Apalachicola, (although not involved in the Variance process) return a smaller brick side building to original historic height (a one-story brick restroom facility) by removing a more recently added wood framed upper floor. Furthermore, the more recently added arched windows would be replaced with simple neo-Georgian rectangular windows, more in keeping with the original style of the original historic structure and represented on the adjacent house. The applicant would extend the length of the building by adding 8.5 feet as a screened porch addition to the rear of the building which building will be used as a small dressing area/studio for a proposed back yard swimming pool.

The staff planner notes and provides by testimonial evidence that Section 111.A.3.b of ordinance 1991-7 (as amended 2017-05) provides for a Variance “if there is sufficient grounds to determine that reasonable use of property would be denied without such Variance”. “Variance from the terms of this code shall be granted only if the Variance is not contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this Code would result in unnecessary hardship”. 111.A.3.b.

Furthermore, staff report notes that Ordinance 2017-05 amends Ordinance 91-7 and provides for limited relief for the restoration and renovation of historic and non-historic non-conforming structures. However, it is further stated in the staff report that the intent of this

Ordinance is “not to permit either historic or nonhistoric, nonconforming structures to be enlarged upon, expanded, or extended, except as allowed through the Variance process at section 111.A.3.b”. “Existing nonconformities of a structure shall not be used as grounds for adding other structures prohibited elsewhere in the same district”. (February 2, 2018 Staff Report Analysis). Staff recommendation was that the Variance should be denied due to failure to meet the hardship requirements for the expansion.

The question of whether the Variance should be granted under Ordinance 91-7 (as amended 2017-05) is determined by whether “there is sufficient grounds to determine that reasonable use of property would be denied without such Variance”. Section 111.A.3.b. “Variance from the terms of this code shall be granted only if the Variance is not contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this Code would result in unnecessary hardship”.

However, after consideration of the evidence, the Board finds and concludes by majority vote that the preservation of the historic building and return to historic features as much as possible during the course of the development outweighs the extension of the nonconformity for the present screened porch addition. It has been unconditionally stated by applicant at the hearing that the renovation of the building to return to its historic height and window appearance will not be possible and will not be done without the Variance allowing the additional screen porch extension of the nonconformity. The resulting expansion will continue the building footprint encroachment over the five foot set back and 2 feet into the alleyway for the additional 8.5 feet being added onto the length of the building and will not be seen from Bay Avenue. The across the alley closest neighbor was supportive and in favor of the variance being granted.

Board member, Dennis Winterringer voted no to the Variance stating that the evidence did not meet the requirements for establishment of a Variance citing in particular the failure to establish a hardship by the evidence submitted; that the denying of the Variance application would not deny reasonable use of the property; and, that the development proposal by the Variance would extend and enlarge the present nonconformity in the set back and alleyway.

Wherefore, the Variance is hereby granted by the Board of Adjustment. It should be noted that the additional encroachment into the City right of way (alleyway) must be approved by the City Commission as this is outside of the jurisdiction of the Board of Adjustment.

Acting Chair Person

Order approved by the Board of Adjustment of the City of Apalachicola, this ____ day of _____, 2018.

EXHIBIT 10 - OCTOBER 7, 2019

BOARD OF COUNTY COMMISSIONERS MEETING AGENDA

**SPECIAL MEETING
CITY COMMISSION
CITY OF APALACHICOLA, FLORIDA
MONDAY, OCTOBER 7, 2019 – 6:00 PM
APALACHICOLA COMMUNITY CENTER
#1 BAY AVENUE
APALACHICOLA, FLORIDA**

AGENDA

- I. Call to Order
- II. Agenda Adoption
- III. Quasi-Judicial Hearing & Special Meeting
 - A. Appeal of McLemore Variance Decision - Historic Apalachicola Foundation, Inc- 101 Bay Avenue held on May 21, 2018 by the Board of Adjustment, regarding the application for a variance from the Apalachicola Land Use Code for an expansion of a non-conforming structure at 101 Bay Avenue.
- IV. Adjournment

A **quasi-judicial public hearing** is much like a courtroom proceeding, in that testimony and evidence is presented, as well as having expert witnesses testify and allowing cross-examination of those witnesses. These hearings involve land use matter including requests for zoning's, site plan approvals, variances and conditional uses. The decisions made at the hearing are based upon and supported by the testimony and evidence presented.

EXHIBIT 11 - AUDIO OF CITY COMMISSION
MEETING 10-7-2019

EXHIBIT 11 can be accessed at the link below:

<http://www.cityofapalachicola.com/calendar.cfm>

EXHIBIT 12 - BOARD OF ADJUSTMENT AGENDA JANUARY 23, 2020

CITY OF APALACHICOLA
BOARD OF ADJUSTMENT
SPECIAL MEETING
Thursday, JANUARY 23rd, 2020
The Holy Family Center- 203 7th St.

AGENDA

I. Public Hearing & Special Meeting- 6:00 P.M.

1. The Apalachicola Board of Adjustment for the City of Apalachicola will hold a Special Meeting on Thursday, January 23rd, 2020 a 6:00 P.M. at The Holy Family Center, 203 7th St. (Dr. Frederick Humphries St.), Apalachicola, Florida. The purpose of this meeting is for making a clear statement of findings of "hardship" at the request of the City Commission regarding the Patricia McLeMore Varlance Hearing, for 101 Bay Avenue Apalachicola, FL 32320.

In our continuing effort to keep the citizens of Apalachicola informed, this agenda is posted on our website at www.cityofapalachicola.com prior to the scheduled meeting for public review. Additional information such as the City's Land Development Code and related zoning maps, along with other development information is also available on the site for your convenience. Please direct any questions concerning items on this agenda or the Apalachicola Building Department to Kelly Simpson, (850) 653-1522, CityofApalachicola@gmail.com.

QUASI JUDICIAL VARIANCE DECISION
BOARD OF ADJUSTMENT – MCLEMORE
MAY 21, 2018

This Variance came on before the Board of Adjustment of the City of Apalachicola on May 21, 2018 at 5:00 P.M. as properly noticed and advertised. After the introduction of the subject matter, Anna Maria Cannatella agreed to perform the chairperson duties in light of the absence of chairperson Carrie Kienzle. Other members present were Atul Patel, Dennis Winterringer and Fonda Davis.

There was no objection to the Board Members hearing this matter after discussion of all extra judicial communication or inspection. The staff report with notices and communication on this subject was accepted into evidence and marked as Exhibit 1. The applicant/property owner presented the Variance request. There were no persons present during the evidentiary portion of the hearing who gave testimony or evidence in opposition to the Variance request.

The building is accepted as an Historic structure through documentation received from the Florida Master Site Plan. It is also uncontested that the building is nonconforming- extending into and beyond the required 15 feet side set back and into the City of Apalachicola, alley easement by approximately 2 feet for a total square foot of existing nonconformity of approximately 360 square feet. It is proposed through the Variance requested that the addition would extend the present nonconformity by an additional approximately 60 square feet to the nonconforming structure within the side set back and City alleyway.

The applicant advised that the applicant will, if the Variance requested is granted by the Board of Adjustment of the City of Apalachicola, (although not involved in the Variance process), return a smaller brick side building to original historic height (a one-story brick restroom facility) by removing a more recently added wood framed upper floor. Furthermore, the more recently added arched windows would be replaced with simple neo-Georgian rectangular windows, more in keeping with the original style of the original historic structure and represented on the adjacent house. The applicant would extend the length of the building by adding 8.5 feet as a screened porch addition to the rear of the building which building will be used as a small dressing area/studio for a proposed back yard swimming pool.

The staff planner notes and provides by testimonial evidence that Section 111.A.3.b. of Ordinance 1991-7 (as amended 2017-05) provides for a Variance “if there is sufficient grounds to determine that reasonable use of property would be denied without such Variance”. “Variance from the terms of this code shall be granted only if the Variance is not contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this Code would result in unnecessary hardship.” 111.A.3.b.

Furthermore, staff report notes that Ordinance 2017-05 amends Ordinance 91-7 and provides for limited relief for the restoration and renovation of historic and non-historic non-conforming structures. However, it is further stated in the staff report that the intent of this Ordinance is “not to permit either historic or nonhistoric, nonconforming structures to be enlarged upon, expanded, or extended, except as allowed through the Variance process at section

111.A.3.b”. “Existing nonconformities of a structure shall not be used as grounds for adding other structures prohibited elsewhere in the same district”. (February 2, 2018 Staff Report Analysis). Staff recommendation was that the Variance should be denied due to failure to meet the hardship requirements for the expansion.

The question of whether the Variance should be granted under Ordinance 91-7 (as amended 2017-05) is determined by whether “there is sufficient grounds to determine that reasonable use of property would be denied without such Variance”. Section 111.A.3.b, “Variance from the terms of this code shall be granted only if the Variance is not contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this Code would result in unnecessary hardship”.

However, after consideration of the evidence, the Board finds and concludes by majority vote that the preservation of the historic building and return to historic features as much as possible during the course of the development outweighs the extension of the nonconformity for the present screened porch addition. It has been uncategorically stated by applicant at the hearing that the renovation of the building to return to its historic height and window appearance will not be possible and will not be done without the Variance allowing the additional screen porch extension of the nonconformity. The resulting expansion will continue the building footprint encroachment over the five foot set back and 2 feet into the alleyway for the additional 8.5 feet being added onto the length of the building and will not be seen from Bay Avenue. The across the alley closest neighbor was supportive and in favor of the variance being granted.

Board member, Dennis Winterringer voted no to the Variance stating that the evidence did not meet the requirements for establishment of a Variance citing in particular the failure to establish a hardship by the evidence submitted; that the denying of the Variance application would not deny reasonable use of the property; and, that the development proposal by the Variance would extend and enlarge the present nonconformity in the set back and alleyway.

Wherefore, the Variance is hereby granted by the Board of Adjustment. It should be noted that the additional encroachment into the City right of way (alleyway) must be approved by the City Commission as this is outside of the jurisdiction of the Board of Adjustment.

Acting Chair Person

Order approved by the Board of Adjustment of the City of Apalachicola, this ____ day of _____, 2019.

**BOARD OF ADJUSTMENT
SPECIAL MEETING
THURSDAY, JANUARY 23rd, 2020**

The Board of Adjustment for the City of Apalachicola will hold a Special Meeting on Thursday, January 23rd, 2020 at 6:00 P.M. at The Holy Family Center, 203 7th St. (Dr. Frederick Humphries St.), Apalachicola, Florida. The purpose of the meeting is for making a clear statement of findings of "hardship" at the request of the City Commission of the Patricia McLemore Variance Hearing, 101 Bay Avenue. Apalachicola, FL 32320.

The City of Apalachicola adheres to the Americans with Disabilities Act and will make reasonable modifications for access to this meeting upon request. Please call the City Hall of the City of Apalachicola (653-9319) to make a request of this nature. Requests must be received at least three (3) business days in advance of the meeting in order to allow time to provide the requested service.

Further information about this meeting may be obtained from Kelly Simpson at the City of Apalachicola Community & Development Administration Office, 192 Coach Wagoner Blvd. Apalachicola, Florida at (850) 653-1522.

NF-11076282

PROOF O.K. BY: _____ **O.K. WITH CORRECTIONS BY:** _____

PLEASE READ CAREFULLY • SUBMIT CORRECTIONS ONLINE

NF-11076282 (100%)

ADVERTISER: CITY OF APALACHICOLA

SALES PERSON: NF825

SIZE: 3X4

PUBLICATION: NF-APALACHICOLA TIMES

PROOF CREATED AT: 1/3/2020 6:21:37 PM

NEXT RUN DATE: 01/09/20

PROOF DUE: 01/08/20 07:59:55

EXHIBIT 13 - AUDIO OF BOA MEETING JANUARY 23, 2020

EXHIBIT 13 can be accessed at the link below:

<http://www.cityofapalachicola.com/calendar.cfm>

EXHIBIT 14 - SECTION III(A)(3)(b)(4),
APALACHICOLA LAND DEVELOPMENT CODE

III. ENFORCEMENT AND ADMINISTRATION

A. ADMINISTRATION: POWERS AND DUTIES

1. City Commission- The City Commission, as the Governing Body for the City of Apalachicola and pursuant to the powers provided to the City under Section 7, Article II of the Charter of the City of Apalachicola, shall act in the interest of the public health, safety, order, convenience, comfort, prosperity, and general welfare, to adopt by ordinance a plan for the districting or zoning of the lands subject to its jurisdiction for the purpose of regulating existing and future land use and to impose such pains, penalties, and forfeitures as may be required to carry the same into effect as provided at Section 156, Article XIX of the Charter. Pursuant to these authorities, it shall be the responsibility of the Governing Body to perform the following duties and functions:
 - a. To adopt this plan or Land Development Code of the City of Apalachicola, Florida and its accompanying “Schedule of District Regulations” developed in accordance with the Comprehensive Plan adopted for the City of Apalachicola.
 - b. To amend the “Schedule of District Regulations” and “Official Zoning Map” or any other provisions prescribed in this code. If, because of an error or omission in the “Official Zoning Map” any property within the jurisdiction of the Local Government is not shown as being in a zoning district, the classification of such property shall be established by the Governing Body in consultation with the Planning and Zoning Commission.
 - c. To serve as the Chief Administrative and enforcement agent for the local government, the responsibilities of which shall include the consideration of appeals and recommendations from various local governmental entities and officers acting in their official capacity pursuant to this code and the rendering of such decisions as required, provided that such is consistent with the provisions of this code and shall include hearing and passing on disputed questions which may arise in connection with the interpretation of zoning standards or variances and special exceptions thereto. The duties of the Governing Body pursuant to this code shall be only that of considering and passing on any proposed amendment or repeal, as provided and/or pursue other local remedies as necessary to ensure the proper enforcement of this code, and of establishing fees and charges as prudent and necessary in the administration of this code.
 - d. The City Commission will address final appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Planning and Zoning Board in the enforcement of this code or the Board of Adjustment as it relates to variances.
 1. Filing of Official Appeal. Appellant must file an official appeal to the City Commission along with \$500 fee.
 2. Notice of Appeal will be advertised in paper of local record at least 2 weeks prior to scheduled appeals hearing.

3. Appeals from final appeal decisions of the City Commission. Unless superseded by other provisions of state and local laws, a person or persons, jointly or severally, aggrieved by an appeal decision of the City Commission may file an appeal to the circuit court within 30 days of decision by Commission. Review by the court shall be whether by trial de novo, which shall be governed by the Florida Rules of Civil Procedure, or by petition for writ of certiorari, which shall be governed by the Florida Appellant Rules. The election of remedies shall lie with the appellant.
- e. Decisions of the City Commission- In exercising its authority, the City Commission may, provided that such action is in conformity with the terms of this code, reverse or affirm, wholly or partly, or modify the order, requirement decision or determination appealed from and may make such order, requirement, decision or determination as sought to be made and to that end shall have the powers of the building inspector from whom the appeal is taken.

The concurring vote of four (4) members of the City Commission shall be necessary to reverse any order, requirement, decision or determination of the building inspector or to decide in favor of the applicant on any matter upon which it is required to pass under this code or to effect any variation in the application of this code. The granting of a variance of the City Commission shall not confer upon the applicant any expressed authority to proceed with any development not specifically permitted or for which no permit has been issued pursuant to Section IIIB of this code.

- f. Appeals to the City Commission. Appeals to the City Commission may be taken by any person aggrieved or by any officer, or bureau of the Governing Body affected by any decision of the building inspector. Such appeals shall be taken within a reasonable time, not to exceed sixty (60) days or lesser period as may be provided by the rules of the Board, by filing with the City Commission a notice of appeal specifying the grounds thereof. The building inspector from whom the appeal is taken, shall upon notification of the filing of the appeal, forthwith transmit to the City Commission all documents constituting the record upon which the action appealed from was taken.
- g. Hearing of Appeals. The City Commission shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. Any interested party may appear at the hearing in person or through an agent or attorney. Appellants may be required to assume such reasonable costs in connection with their petitions as may be determined by the City Commission.

Section III. A.2. is amended to read as follows:

2. Planning and Zoning Board- The Planning and Zoning Board of the City of Apalachicola, established and organized pursuant to the provisions of City Ordinance 76-2, codified at Chapter 2 Sections 2-33 to 2-34, Code of Ordinances, shall act to guide and control future development in the City of Apalachicola through its review and implementation of the comprehensive plan adopted for the City, and where necessary, shall act to recommend to the Governing Body such changes in the plan as may from time to time be required. The power and duties of the Board, in addition to those contained in the references authority shall also provide for the following:
 - a. Review and approve plans for construction, alteration and demolition of all development located or to be located within the City limits.
 - b. The intake of documents which require the recommendation of the Board.
 - c. The review of those matters referred to the Board and scheduling of public meetings for the purpose of reviewing such documents.
 - d. The review at each monthly meeting of the Board of all development permits and Certificates of Occupancy issued during the previous month.
 - e. The transmittal to appropriate governmental agencies and entities, the recommendations of either the City's planning staff or the Board where such is required by this Code.
 - f. Internal procedures required to carry out the intent of this Code.
 - g. The role and responsibilities of the Board as the Architectural Review Board for the City.
 - h. The review and approval of site plans where required by this Code.
 - i. The review and approval of storm water management plans where required by this Code.
 - j. The review and disposition of requests for special exceptions consistent with the provisions of the "Schedule of District Regulations" and in harmony with the purpose and intent served by this Code. IN deciding such questions as are involved in the determination of when special exceptions should be granted and any appropriate conditions and safeguards attached thereto, the Board:
 1. Shall find that such grant will not adversely affect the public interest.
 2. May prescribe appropriate conditions and safeguards in conformity with the standards set forth in this Code, the Code of Ordinances, Comprehensive Plan adopted for the City of Apalachicola, and any other applicable land development regulation adopted by the Governing Board.
 3. May prescribe a reasonable time limit within which the action for which the special exception was granted shall be commenced, completed or both.
 4. Shall confer with the City Commission prior to permit approval on all impact developments.

Requests for special exceptions shall be made in writing to the building inspector, stating fully the nature of the use or structure for which the exception is being sought. Such application, along with all documentation and support material necessary in the consideration of the requests, shall be presented to the Board staff for preliminary review and recommendations.

Public notice shall be given of a public hearing and written notice thereof shall be given to the owner or his/her authorized agent and, insofar as practicable, to owners of abutting properties and other properties directly affected by the request. In cases where property in question is adjacent to the City limits, the Franklin County Planning Department shall be notified of the proposed special exception. All hearings shall be open to the public and provide opportunity to any party who may wish to appear in person, or by agent or attorney. Applicants may be required to assume such reasonable costs in connection with requests as may be determined by the Board through action in setting of fees to be charged.

When, in the finding of the Board the granting of a special exception is consistent with the intent and purpose served by the particular zoning district for which the exception is sought and all other applicable provisions of this code, the Board shall notify the applicant in writing by certified mail of the decision and of any questions and safeguards attached thereto. The granting of a special exception by the Board shall not confer upon the applicant any expressed authority to proceed with any development not specifically permitted or for which no permit has been issued pursuant to Section III B of this Code.

- k. The discharge of any requirements or responsibility assigned or deemed necessary by the Governing Body for the proper administration of this Code, the Code of Ordinances, or Comprehensive Plan adopted for the City of Apalachicola including the procedures to be used in the consideration of any proposed changes in the status of nonconforming uses and structures, were permitted by the Code.
3. Board of Adjustment- The Board of Adjustment of the City of Apalachicola, established and organized pursuant to the enabling provisions of City Ordinance 59-7, codified at Chapter 6, Section 6-2 and Section 8 Appendix A, Code of Ordinances, City of Apalachicola, shall act to consider appeals to any administrative order, requirement, decision, or determination made by the Local Government in the enforcement of this Code and requests for Variances from its terms. The power and duties of the Board of Adjustment shall provide for the following:
 - a. Administrative Review: To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement of this code. Such appeals shall include appeals from decisions of the building inspector to refuse permits for structures or uses on grounds that the intended structure or use would be dangerous or offensive because of odor, smoke, noise, glare, fumes, gas, fire or vibration, or hazardous because of danger of fire or explosion. In deciding

appeals on such classes of cases, the Board shall not reverse the decisions of the building inspector unless it finds that the proposed structure or use will be no more dangerous, hazardous or offensive in its operation than permitted principal structures and uses (other than nonconforming structures and uses) of all similar nature in the same district.

- b. Variances: Conditions covering applications and procedures, to authorize upon appeal in specific case such variance from the terms of this Code as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Code would result in unnecessary hardship; provided however, that the Board shall not issue a variance from the terms of this Code unless and until:
 1. An application for such variance has been received by the Board, stating fully the special conditions and circumstances applying to the building or other structure or land for which such variance is sought, which conditions and circumstances must be peculiar to such land, structure or building and not apply generally to neighboring lands, structures or buildings in the same district. The application shall further demonstrate that the existing conditions and circumstances are such that the strict application of the provisions of this Code would deprive the applicant of reasonable use of said land, building or structure in the same district and permitted under the terms of this Code, and that the peculiar conditions and circumstances are not the result of the actions of the applicant. No nonconforming use of neighboring lands, buildings or structures legal or illegal in the same district and not permitted use of lands, buildings or other structures in adjacent districts shall be considered as grounds for issuance of a variance permitting similar uses.
 2. Public notice shall be given of a public hearing and in addition, written notice shall be given to the owner or his/her agent and insofar as practicable, to owners of abutting properties and other persons directly affected by the variance request.
 3. All hearings shall be open to the public and provide opportunities to any party who may wish to appear in person, or by agent or by attorney.
 4. The board shall find that special circumstances or conditions exist which are peculiar to the land, building or other structure for which the variance is sought and do not generally apply to neighboring lands, buildings or other structures in the same district; that strict application of the provisions of this Code would provide the applicant with no means for reasonable use of the land, building or other structure equivalent to the use made of neighboring lands, buildings or other structures in the same district; and that the peculiar conditions and circumstances existing are not the result of the actions of the applicant.
 5. The Board shall find that the reasons set forth in the application justify the granting of a variance, and that the variance proposed to be granted is the minimum variance that will make possible use of the land, building or structure.

6. The Board shall find that the granting of the variance will be in harmony with the general purpose and intent of this Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
 7. In granting any variance, the Board shall prescribe any conditions and safeguards it deems necessary or desirable to ensure conformance with the standards of this Code and the Code of Ordinances and Comprehensive Plan adopted for the City of Apalachicola. Violation of such conditions and safeguards, when made a part of the terms under which such variances was granted shall be deemed a violation of this Code.
 8. The Board may prescribe, as a condition to its granting of a variance, a reasonable time limit within which the action for which the variance was granted shall be commenced and/or completed.
 9. Under no circumstances shall the Board issue a variance to permit a use not generally or provisionally permitted in the district involved in the request, or any use expressly or by implication prohibited by the terms of this Code in the referenced district. The Board shall not issue a variance that would in any way increase the density upon a parcel of land if not generally or provisionally permitted in the district in which the parcel is located. The Board shall not issue a variance which would permit the reduction of the required setback requirements along arterial and collector roads as defined in the Traffic Circulation Element of the City of Apalachicola Comprehensive Plan.
 10. The Board shall find that the granting of the variance will not confer on the applicant any special privilege that is denied by this Code to other lands, buildings or structures in the same district.
- c. Decisions of the Board of Adjustment. In exercising its authority the Board may, provided that such action is in conformity with the terms of this Code, reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as sought to be made and to that end shall have the powers of the building inspector from whom the appeal is taken.

The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision or determination of the building inspector or to decide in favor of the applicant on any matter upon which it is required to pass under this code, or to effect any variation in the application of this Code. The granting of a variance by the Board shall not confer upon the applicant any expressed authority to proceed with any development not specifically permitted or for which no permit has been issued pursuant to Section III B of this Code.

- d. Appeals to the Board of Adjustment. Appeals to the Board may be taken by any person aggrieved or by any officer, or bureau of the Governing Body affected by any decision of the building inspector. Such appeals shall be taken within a reasonable time, not to exceed sixty (60) days or lesser period

as may be provided by the rules of the Board, by filing with the Board a notice of appeal specifying the grounds thereof. The building inspector from whom the appeal is taken, shall upon notification of the filing of the appeal, forthwith transmit to the Board all documents constituting the record upon which the action appealed from was taken.

- e. Hearing of appeals. The Board shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. Any interested party may appear at the hearing in person or through an agent or attorney. Appellants may be required to assume such reasonable costs in connection with their petitions as may be determined by the Board and Governing Body.
 - f. Stay of proceedings. An appeal to the Board stays all work on the premises and all proceedings in furtherance of the action appealed from, unless the official from whom the appeal was taken shall certify to the Board that, be reason of facts stated in the certificate, a stay would cause imminent peril to life and property. In such case, work or proceedings shall not be stayed except by restraining order which may be granted by the Board or by a court of record on application, on notice to the official from whom the appeal is taken and on due cause shown.
 - g. Appeals from decisions of the Board of Adjustment. Unless superceded by other provisions of state and local laws, a person or persons, jointly or severally, aggrieved by any decision to the circuit court within 30 days of decision by the Board. Review by the court shall be wither by trial de novo, which shall be governed by the Florida Rules of Civil Procedure, or by petition for writ of certiorari, which shall be governed by the Florida Appellant Rules. The election of remedies shall lie with the appellant.
4. Building Inspector- In addition to the authority provided in and requirement of Chapter 6, Code of Ordinances, City of Apalachicola, the building inspector shall act as the principal permitting and enforcement official in carrying out the provisions of this code. The building inspector, unless otherwise ordered by the Governing Body, shall have the following powers and duties:
- a. To accomplish all administrative actions required by this Code, including: the issuance of notices as specified in this Code or as otherwise required; the receiving and processing of all applications for development permits, zoning changes, variances, special exceptions and certificates of occupancy as required by this Code; and the acceptance and accounting for fees authorized by and required in the administration of this Code. All fees collected in the administration of this Code shall be turned over to appropriate fiscal officer and maybe allocated by the Governing Body to the budget of the building inspector.
 - b. To review and decide on all applications for any permits and certificates as required by this Code and find that said permits and certificates conform to the applicable provisions of this Code and the Code of Ordinances and Comprehensive Plan adopted for the City of Apalachicola.

- c. To undertake preliminary negotiations with and provide advice to all applicants for zoning changes, variances, special exceptions, and certificates of occupancy regarding the provisions of this Code and refer where required such applications to Planning and Zoning Commission and Board of Adjustment or other involved agencies of state and local government.
- d. To refer to other involved agencies, departments or governmental bodies for review, all applications for which such reviews are specified in this Code; serve as point of contact for the City with other agencies as required; and provide copies of all documents requested by other agencies or required by this Code.
- e. To advise the Planning and Zoning Commission and/or Governing Body, regarding modifications of this Code, the Official Zoning Map, and Comprehensive Plan. Where such modifications are proposed the building inspector shall also submit a written report outlining the need for such changes.
- f. To act on or refer to the proper department, agency or government, within 3 calendar weeks of the date of filing or within such longer period as may be agreed upon by the building inspector and applicant, any matter brought before the building inspector.
- g. To make all required inspections necessary to make decisions on matters on which the building inspector is empowered to render such decisions or, subject to the approval of the Governing Body, to enlist such expert opinion as deemed necessary to report upon any technical issues that may arise.
- h. To enforce all applicable provisions set forth in this Code and to cooperate with other governmental agencies, departments, and branches of government in such ways as may be required to accomplish this end.

B. ADMINISTRATION: RULES OF PROCEDURE

- 1. Development Permits- No building or other structure shall be erected, moved, enlarged or structurally altered (to include demolition) without a valid permit issued therefor by the city building inspector. All applications for a development permit shall be completed and submitted by the owner or his/her authorized agent to the building inspector in accordance with the provisions of this Code. Unless upon written order from the Board of Adjustment authorizing otherwise, no permit shall be issued except in complete conformity with the provisions of this Code. A permit shall carry with it the right to engage in any activity or perform any work as shown on the drawings and set forth in the specifications filed with the application for the permit. Where such specification is not given, the activity or work is not authorized by the permit; a separate permit shall be required.

Minor repairs to an existing conforming structure not affecting its structural integrity, floor area ration (FAR), or change in the configuration of the basic floor plan, may be made with the approval and written consent of the building inspector, provided that such repairs do not violate any of the provisions of the

Standard Building Code, National Electrical Code, Standard Plumbing Code or the provisions of this or other applicable ordinances.

2. Permit Application/Review- Each application for a development permit and, where required, with the appropriate fee shall be filed with the building inspector on a form furnished for such purpose which shall contain, at a minimum, the following information:
 - a. A location map and conceptual site plan of appropriate scale indicating the lot or property lines and physical description of the parcel with respect to:
 - 1) General topography including highest elevation above mean or ordinary high water and slope contours.
 - 2) The proposed development's distance from mean or ordinary high water and vegetated wetlands under the jurisdiction of the state.
 - 3) The number and size(s) of structures existing on the parcel.
 - 4) The proposed development's proximity to lot lines, setbacks, right of way, or easements and, where applicable, with respect to septic tank location and potable water supplies.

Where required by Section IV I of this ordinance a more detailed site plan shall be required, as per Section IV E (7)

- b. Where required, a current septic tank installation permit (for new on-site sewage disposal systems) or a current inspection of an existing system or other wastewater authorization approved by the County Environmental Health Director for compliance with Florida Department of Health and Rehabilitative Services rules and regulations.
- c. For all new construction, including any enlargement or alteration of an existing structure that changes its area of enclosed heated floor space, the applicant shall be required to submit, in duplicate, drawings and plans showing:
 - 1) the basic floor plan
 - 2) foundation details
 - 3) elevation of floor level above the grade
 - 4) structural details
 - 5) All electrical, plumbing, heating and air conditioning equipment and service outlets.

The application shall also include such other information as may be required by the building inspector to determine conformance with and provide for the enforcement of this code. Such additional requirements may include information deemed necessary for the issuance of the certificate of occupancy such as that pertaining to the existing or proposed uses of the structure and land, the number of families, housekeeping and/or rental units the structure is designed to accommodate, or conditions existing on the lot which might affect its use.

The completed application shall be signed by the owner or his/her authorized agent and submitted to the building inspector along with all drawings and plans for review and consideration by the appropriate approving authority. When and if the proposed development is approved and a decision has been made to issue the permit, one copy of the drawings and plans submitted with the application shall be so marked and returned to the applicant by the building inspector advising of his/her decision any of any terms or conditions attached thereto. The second set of drawings and plans shall be retained by the building inspector in the file of the City Clerk.

If, in the finding of the building inspector, the application submitted for a development permit is incomplete with respect to the requirements listed in Section III B of this Code, the building inspector may deny the permit or suspend review subject to the receipt of additional information from the applicant or the applicant's authorized agent.

A written checklist completed and signed by the building inspector and certifying the proposed development's conformance with this Code and other applicable land development regulations adopted for the City of Apalachicola shall accompany all completed permit applications and become part of the permanent record for each development order rendered by the City. Where development is permitted as a special exception or in variance to the applicable standards of this Code, the record shall include the proceedings of and the findings of fact made by the respective Commission and Board.

3. Certificates of Occupancy- A certificate of occupancy required to occupy or permit the use of any enclosed structure designed as a full or part-time, temporary or permanent, living area or work space or for any alteration or enlargement thereto involving heated floor space. Under no circumstances shall electrical service be authorized without a certificate of occupancy issued by the building inspector attesting to the conformity of the structure and proposed use of the premises to the requirements of this Code and other applicable standards designed to protect the safety of the occupants and the public.
4. Application for Certificates of Occupancy- an application for a certificate of occupancy shall have been deemed made when the owner or his/her authorized agent submits a completed application for a development permit pursuant to Section III B (1) of this Code. Upon completion of the proposed development activity, and a final electrical inspection and connection to a municipal sewer line or system as required in Section III B (2) b of this Code, the building inspector shall issue the certificate of occupancy.

A certificate of occupancy shall be held valid indefinitely, provided that the structure or the use of land for which it is issued is not altered so as to require the issuance of a development permit pursuant to Section III B of this Code and that the use of the subject structure remains unchanged. The building inspector shall maintain a record of all certificates of occupancy on file in the City Clerk's office

and copies shall be furnished upon request to any person having an interest as proprietor or tenant of the affected structure or use.

No nonconforming structure or use shall be allowed to continue until a certificate of occupancy has been issued by the building inspector stating specifically the matters wherein the nonconforming use differs from the provisions of this Code. Upon the enactment of or amendment to this Code the owners or their authorized agents of nonconforming uses or structures shall have three (3) months to apply for certificates of occupancy, after which time failure to have made such application shall be presumptive evidence that the property was not a nonconforming use at the time of adoption of this Code.

C. ENFORCEMENT

1. Expiration of Development Permits- If the work authorized by the development permit has not commenced within 180 days from the date of issuance, said permit shall expire and deemed no longer valid and notice thereof shall be given in writing to the person affected. The permitted is required to notify the building inspector upon commencement of the work pursuant to the permit; failure to do so shall be deemed a violation of this Code and may result in the issuance of a stop work order by the building inspector or the revocation of this development permit as provided in Section III C 2 of this Code.
Development permits issued in accordance with provisions of this Code shall be held valid for a period not to exceed one (1) year from the date of issuance or, where in the finding of the building inspector that construction is occurring on an uninterrupted basis, until such permitted development is complete. Exceeding the time to act limitation of the permit, or where it has been determined that construction has not occurred on an uninterrupted basis within 90 days following a scheduled inspection, shall be grounds for revoking a permit.
2. Suspension of Work and Permit Revocation. Where a finding has been made by the building inspector that development has occurred or is occurring without the issuance of valid development violates or exceeds the conditions and terms of the permit, the Standard Building Code, or any other provision of this Code, the building inspector shall post stop work orders and, at the direction of the Governing Body, revoke development permits.
 - a. A stop work order shall be considered issued when a notice is posted at the construction site and a notification of such action is sent by certified mail to the permitted or his/her authorized agent.
 - b. If the issuance of a stop work order does not result in a suspension of the activity found to be in noncompliance with the provisions of this code, or where the permitted has failed to act pursuant to Section III C2 c of this Code, the building inspector, based upon a finding that such conditions still exist, shall act to make a recommendation to the Governing Body to revoke the permit and notify the permitted by certified mail of the recommended action.

The act of revoking a development permit shall be construed as a permanent invalidation of the permit.

- c. In order to lift the suspension imposed by the stop work order, or in the case where a permit is held no longer valid pursuant to Section III C 1 of this code, the permitted must act within 30 days of the notice of violation to file an appeal with the Board of Adjustment. The Board of Adjustment shall act in accordance with Section IIIA3 of this Code to schedule a public hearing at which time the permitted or his/her authorized agent may present any evidentiary material demonstrating that the activity cited in violation is, in fact, in compliance with all applicable provisions of this code including, but not limited to, conditions prescribed in the permit and the permit's validity pursuant to Section IIIA3 of this Code and any other authority created by the Governing body to:
 - 1) uphold the building inspector's issuance of a stop work order or recommendation to revoke the permit;
 - 2) Find for the permitted and set aside the stop work order or recommend to the Governing Body to revoke the permit; or
 - 3) Prescribe corrective actions as necessary to ensure the permitted activity's conformance with the provisions of this Code including fixing a reasonable time within which to make the prescribed corrections or satisfy such conditions and safeguards as deemed prudent by the Board of Adjustment to eliminate or reasonably mitigate the permitted activity's adverse impact and detriment to the area and to the public interest.

 - d. The building inspector may act within the 30 day period prescribed in the preceding section to rescind the stop work order or to withdraw his/her recommendation to the Governing Body to revoke the permit if in his/her finding the permittee has demonstrated that the activity cited in violation of this Code has, since the finding of noncompliance been brought into compliance. If the permittee fails to act within the prescribed period of time to file an appeal with the Board of Adjustment or to prove to the building inspector that the violation has been corrected or, where applicable, to produce documented evidence of compliance with the provisions of this Code, the building inspector shall act to revoke the permit in accordance with its provisions at Section III C2b. The act of permit revocation shall constitute a finding of guilt and such parties responsible for the activity against which such finding is brought shall be subject to such fines and penalties prescribed in this Code, the Code of Ordinances adopted for the City and Chapter 125.69, Florida Statutes.
3. Administrative Enforcement- Where a finding has been made and a recommendation accepted from the building inspector to revoke a permit, and where the permittee has chosen not to appeal to the Board of Adjustment or where the decision of the Board upholds the finding and recommendation of the building inspector, the Governing Body shall act to direct the building inspector to serve notice in writing by certified mail and command the Chief of Police to aid in the

timely execution of such enforcement order. Where an appeal is taken from a decision of the Board of Adjustment to uphold the recommended action of the building inspector in accordance with Section III A3g of this Code, the Governing Body shall stay its ministerial powers to act in carrying out the provisions of this section.

D. PENALTIES

1. Any person who shall violate any of the provisions of this Code or fail to comply with any of its requirements including those set forth in Section IIIC3, or build or alter any building or structure contrary to intent expressed or approved, or without obtaining the required permits and certificates, or use any land, building or other structure in a manner prohibited by this Code, shall, upon conviction thereof, be fined not more than five hundred dollars (\$500.00) or imprisoned for not more than sixty (60) days, or both and in addition shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.
2. The owner or tenant of any building, structure, premises or part thereof and any architect, builder, contractor, agent or other person who commits, takes part in, assists in, or maintains such violation shall each be guilty of a separate offense and suffer the penalties provided herein.
3. Every violation of this ordinance shall constitute a misdemeanor and be punishable as such, but nothing herein contained shall prevent the City of Apalachicola from taking such other action as is necessary to prevent or remedy any violation.

EXHIBIT 15 - SECTION IV, APALACHICOLA LAND DEVELOPMENT CODE

IV ZONING DISTRICTS AND REGULATIONS

A. ESTABLISHING DISTRICT

The City of Apalachicola is hereby divided into zones, or districts, as shown on the official zoning map which, together with all explanatory matter thereon, is hereby declared to be part of this code.

The official zoning map shall be identified by the signature of the mayor, attested by the City Clerk, and bearing the seal of the City of Apalachicola under the following words: "This is to certify that this is the official zoning map referred to in Section IV of the Land Development Code of the City of Apalachicola, Florida," with the date of adoption of this development code.

If, in accordance with the provisions of this Code and Chapter 163, Florida Statutes, changes made in district boundaries or other matter portrayed on the official zoning map shall be made promptly after amendments have been approved by the city commission, together with an entry as follows: "On (date), by official action of the City Commission the following changes were made in the Official Zoning Map: (brief description of nature of change): which entry shall be signed by the mayor and attested by the City Clerk. No amendment to the code, which involves matter portrayed on the official zoning map, shall become effective until after such change and entry has been made on said map.

No changes shall be made in the official zoning map or in any matter shown thereon in any manner or by any person or persons except pursuant to the procedures set forth in this code, and any unauthorized change by any person or persons whatever shall be considered to be a violation of this code, punishable by a fine of not more than one hundred dollars (\$100.00) or imprisonment of not more than thirty (30) days, or both.

Regardless of the existence of purported copies of the official zoning map, which may from time to time be made or published, the official zoning map in the office of the City Clerk shall be the final authority as to current zoning status of lands, buildings and other structures in the City of Apalachicola.

B. RULES FOR INTERPRETING BOUNDARIES

Where uncertainty exists as to the boundaries of districts as shown on the official zoning map, the following rules shall apply:

1. Boundaries indicated, as approximately following centerlines of streets, highways or alleys shall be construed to follow such centerlines.
2. Boundaries indicated, as approximately following platted lot lines shall be construed as following lot lines.
3. Boundaries indicated, as approximately following city limits shall be construed as following city limits.

4. Boundaries indicated as parallel to or extensions of features indicated in items (1) through (3) above shall be so construed. Distances not specifically indicated on the official zoning map shall be determined by the scale of the map.
5. Where the street or property layout existing on the ground is at variance with that shown on the official zoning map, or in other circumstances not covered by the rules above, the Board of Adjustment shall interpret the district boundaries.

C. Nonconforming lots, nonconforming uses of land, nonconforming structures, and nonconforming uses of structures and premises.

Within the districts established by this code or amendments hereof there exist lots, structures, and uses of land and structures which would be prohibited under the terms of this code or amendment hereof.

It is the intent of this code to permit these nonconformities to continue until they are removed by economic forces or otherwise, but not to encourage their survival, since it has been determined that such uses are not compatible with other uses in the districts involved. It is not the intent of this code to permit nonconformities to be enlarged upon, expanded or extended, nor shall existing nonconformities be used a grounds for adding other structures or uses prohibited elsewhere in the same district. Nonconforming uses applies to structures and uses of structures and land as they apply to zoning districts and standards stated in the zoning element of this code; and is not to be interpreted as being subject to Section V, Historic Preservation Element of this code.

Thus a nonconforming use of a structure and/or land shall not be extended or enlarged after passage of this code by attachment of additional signs to a building, or by the addition of the other uses, if such additions are of nature which would be prohibited generally in this district involved.

To avoid undue hardship, nothing in this code shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date of this code or amendment hereto and upon which actual building construction has been diligently carried on. Actual construction materials in their permanent position, fastened in a permanent manner; except that where demolition or removal of an existing structure has been substantially begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction work shall be diligently carried on until the completion of the building involved.

Notwithstanding limitations imposed by other provisions of this code in any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory building may be erected on a single lot of record at the time of passage or amendment of this code, if such lot is in separate ownership and not of continuous frontage with other lots in the same ownership, even though such lot fails to meet the requirements for area and/or with generally applicable in the district, provided that yard dimensions and other requirements not involving area and/or width of lot shall conform to the regulations for the district in which such lot is located.

If two (2) or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this code, and if all or part of the lots do not meet the requirements for lot width and area as established by this code, the lands involved shall be considered to be an undivided parcel for the purposes of this code, and no portion of said parcel shall be used or sold for the purpose of development which does not meet lot width and area requirements established by this code nor shall any division of the parcel be made which leaves remaining any lot with width or area below the requirements herein.

Where use of land exists at the time of passage or amendment of this code, which is made no longer permissible under the terms of this code as enacted or amended, such use may be continued so long it remains otherwise lawful to the following provisions:

1. No such nonconforming use of land shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the time of adoption or amendment of this code.
2. No such nonconforming use of land shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the time of adoption or amendment of this code.
3. If any such nonconforming use of land ceases for any reason for a period of more than thirty (30) days, any subsequent use of such land shall conform to the regulations specified by the code for the district in which such land is located.

If a use of a structure, or of structure and premises in combination, exists at time of passage or amendment of this code, the use may be continued so long as it remains otherwise subject to the following provisions:

1. No existing structure devoted to a use not permitted by this code in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in district in which it is located.
2. Any nonconforming use of a structure may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this code, but no such use shall be extended to occupy any land outside such building.
3. If no structure alterations are made, any nonconforming use of a structure, or structure and premises, may be changed to another nonconforming use provided that the Board of Adjustment, either by general rule or on findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the District than the existing nonconforming use. In permitting such change, the Board of Adjustment may require appropriate conditions and safeguards.
4. Any structure or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform

to the regulations for the district in which the structure is located, and the nonconforming use may not thereafter be resumed.

5. When a nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for six (6) consecutive months or for eighteen (18) months during any three-year period, the structure, or structure and premises in combination, shall not thereafter be used except in conformance with the regulations of the district in which located.
6. Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

Repairs and maintenance on any building devoted in whole or in part to any nonconforming use may be done in any period of twelve (12) consecutive months on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing, to an extent not exceeding ten (10) per cent of the latest assessed valuation of the building, providing that the cubical contents of the building as it existed at the time of passage or amendment of this code shall not be increased.

Uses under special exception provisions are not nonconforming uses. Any uses for which a special exception is required, or for which a special permit may be granted as provided in this code in any district in which such use is provisionally permitted subject to special permits, shall not be deemed a nonconforming use, but shall without further action be deemed a conforming use in such district.

D. District Regulations

District regulations comprise those in the schedule of district regulations, hereby declared to be part of this code, and in paragraph E of the code, entitled "Supplementary Regulations."

E. Supplementary Regulations

1. Corner lots in residential districts are platted in such a manner as to change the normal yard pattern along either of the intersecting streets, the required front yard shall be provided across the end of the lot fronting on the street, and a yard measuring not less than fifteen (15) feet from the street line, shall be provided along the full length of the lot on the side toward the intersecting street. No portion of any main or accessory building shall encroach upon the latter yard.
2. Visibility at intersections in residential districts. On a corner lot in any residential district, nothing shall be erected, placed, planted or allowed to grow in such manner as materially to impede vision between a height of two and a half (2 ½) and ten (10) feet above the center line grade of the intersecting street in

the area bounded by the street lines of such corner lots and a line joining points along said street lines fifty (50) feet from the point of the intersection.

3. Garages for sales, storage, repairs, and/or services: Service Stations: Sales lot for new or used motor vehicles: Parking lots and similar uses. The following limitations shall apply to commercial structures and uses involving the sale, storage, service, or repair of motor vehicles:
 - a. No public street, parking, sidewalk or way shall be used for the storage or parking of motor vehicles in connection with the activities of such establishments, except for normal permitted parking by individual private owners or operators of such vehicles.
 - b. No operation in connection with such establishments shall be conducted in a manner, which impedes free flow of vehicular or pedestrian traffic in normal courses on public ways.
 - c. All motor vehicles being handles, stored or repaired by such operations shall be maintained in such conditions that they may be moved under their own power at any time except such vehicles as may be stored or under repair in garages or other buildings as provided below.
 - d. No repair of motor vehicles or parts thereof shall be made except within garages, service stations, body shop, or other enclosed buildings, provided for such purposes, and no storage of parts of motor vehicles shall be other than in an enclosed building.
 - e. No permit shall be issued for the erection of a garage for storage of more than five (5) motor vehicles, or for service stations, or for conversion to such purposes of any premises not so used, on any portion of any lot portion of any lot or plot on which is located a school, a church, a theater or auditorium containing one hundred (100) or more seats, a public library, or a hospital or sanitarium.
4. Fences walls and hedges. Notwithstanding other provisions of this code, fences, walls, and hedges may be permitted in any required yard, or along the edge of any wall; provided however, that no fence, wall or hedge along the sides or front edge of any front yard shall be of such type and/or heights as to block vision required for safety of traffic over two and one-half (2 ½) feet in height.
5. No permit shall be issued for any tavern, bar, lounge, or package store not associated with an eating establishment as defined in Florida Statues; Chapter 561.20 (3), where such a tavern, bar, lounge or package store will be located within five hundred (500) feet of any portion of any lot or plot on which is located a school or church. No tavern, bar, lounge, or package store shall be located within two hundred (200) feet of any residential district, R-1, R-2, or R-3 except as an approved special exception by the Planning and Zoning Commission after one (1) public hearing.

6. District Overlay – In the event that two or more separate provisions of this code indicate conflicting regulations or standards (Historic District, Zoning District, Waterfront Review Zone), the highest and most restrictive regulation and/or standard shall govern.
7. Waterfront and adjacent area special review requirements. Special requirements for structures, facilities, and uses of land adjacent to the waterfront. (River and Bay including creeks and waterways joining these – See map entitled: Special Waterfront Area).
 - a. All housing and other structures within this Waterfront Area shall be connected to the City’s Central Sewer System.
 - b. All plans for development within the “Waterfront Area” shall assure:
 - i. That the basic functions and productivity of the Apalachicola Bay Area’s natural land and water systems will be conserved to reduce or avoid health, safety, and economic problems for present and future residents of the Apalachicola Bay Area.
 1. Wetlands will be preserved and protected.
 2. Where alterations of wetlands are necessary in order to allow reasonable use of property, either the restoration of the disturbed wetlands will be provided or additional wetlands will be created at a 4:1 ratio to mitigate any wetland destruction. All approved mitigation shall be required to demonstrate, through appropriate monitoring and reporting by the project’s developer, at least an 85% planting survival rate for wetland areas created/augmented during mitigation, for a period at least two years for herbaceous wetland communities, and for at least five years for forested wetland communities.
 - ii. Land development shall be consistent with a safe environment, adequate community facilities, and a desire to minimize environmental hazards.
 - iii. No wastes shall be discharged into any waters of the Apalachicola Bay Area without first being given the degree of treatment necessary to fully protect, and/or improve the present water quality adjoining this area.
 - c. All development within the Special Waterfront District shall comply with Section VII, Site Plan Approval, and Section VIII, Storm water Management Plans, of this code. The storm water management plan will prohibit the use of herbicides in the Special Waterfront District.
 - d. The bulk storage of hazardous materials, as defined by the Federal Environmental Protection Agency (EPA) Schedule 40 CFR Part 261, Subparts C and D, is a specifically excluded use within the “Waterfront Area.” For the purposes of this section, bulk storage is defined as more than 100 kilograms (220 pounds) of EPA listed hazardous materials, and more than one kilogram (2.2 pounds), or EPA listed acutely hazardous materials. In general, every effort should

be made to secure small amounts of these materials, as well as common, less hazardous, chemicals and substances, from release into the environment.

- e. The storage and dispensing of petroleum products with the “Waterfront District” is a permitted use under applicable Department of Environmental Regulation (DER) Rules pursuant to Chapter 17.61 Florida Statutes, and applicable Federal regulations.
- f. The use of natural vegetation erosion control structures is encouraged and preferred to the construction of rigid shore protection structures (seawalls, bulkheads, revetments, etc.) The construction of vertical seawalls, bulkheads, revetments, etc.) The constructions of vertical seawalls without armoring (rip rap, sandbags) on the water ward face are prohibited on natural water bodies.
- g. The alteration, other than approved maintenance, of mosquito ditches is prohibited.

8. Parking Requirements

- a. Off-Street Parking – Required off-street parking facilities shall be primarily for the parking of private passenger automobiles of occupants, patrons or employees of the principal use served. Parking for disabled persons shall be provided pursuant to s.316.1956 F.S.
- b. Definition of Off-Street Parking – There shall be provided at the time of the erection of any principal building or structure parking space with adequate provisions for ingress and egress no less than the following space requirements (when calculating the required number of parking spaces, fractional numbers of spaces go to the next whole number):
 - 1. Dwelling – One (1) parking space for each dwelling unit or room for rent.
 - 2. Offices, Studios, and Financial Institutions: One (1) off-street parking space for each 2 persons at work on peak shifts, plus one (1) for each 500 sq. ft. of floor space open to the public.
 - 3. Retail Establishments – One (1) off-street parking space for each two persons at work on peak shifts, plus two (2) for the first 1,000 sq. ft. of floor space devoted to merchandising plus two (2) for each additional 300 sq. ft. used.
 - 4. Eating and/or Drinking Establishments – (1) offshore parking space for each 2 persons at work on peak shifts, plus one (1) for each 2 tables for service, plus one (1) for each 4 stools at service counter.
 - 5. Child Care Centers – One (1) off-street parking space for each 2 persons at work on peak shifts, plus one (1) for each 500 sq. ft. of floor space, plus adequate provisions for the loading and unloading of children off of the public right-of-way, subject to site plan approval.
 - 6. Marinas – One (1) off-street parking space for each wet slip, plus one (1) off-street parking space for every 3 dry slips.
 - 7. All Other Permitted Uses and Structures – One (1) off-street parking space for each 2 persons at work on peak shifts, plus

additional spaces as determined by the Planning and Zoning Commission.

- c. Location of Off-Street parking – Required off-street parking will be provided either on the same parcel of land as the principal building or structure or on a separate parcel located within 500 feet of the principal building or structure.
- d. On-Street Parking – For businesses in the downtown area existing at the time of enactment of this ordinance, on street parking equivalent to the schedule above will be provided. Where necessary, parking arrangements may be made on an intermittent basis with other, neighboring businesses.
- e. Where a parking lot does not abut on a public or private street, alley, or easement of access, there shall be provided an access drive not less than ten (10) feet in width in the case of a dwelling and not less than eighteen (18) feet in width in all other cases, leading to the loading or unloading spaces and parking or storage areas required hereunder in such a manner as to secure the most appropriate development of the property in question. Parking spaces shall be a minimum of 10 ft. by 20 ft. and access aisles shall be a minimum of 18 ft. in width.
- f. Every parcel of land used as a public or private parking area, including a commercial parking lot, shall be developed and maintained in accordance with the following requirements: L
 1. No part of any parking area shall be closer than five feet to any established road right-of-way or alley line. In case the parking area adjoins a residential district, it shall be set back at least five (5) feet from the residential district boundary and shall be effectively screened with landscaping, fence, wall or other approved materials.
 2. Any off-street parking area, including any commercial parking lot, for more than five vehicles shall be so gaddled and drained as to dispose of all surface water accumulation within the area and shall be so arranged and marked as to provide for orderly and safe loading or unloading and parking and storage of vehicles.
 3. Any lighting used to illuminate any off-street parking area, including any commercial parking lot, shall be so arranged as to reflect the light away from adjoining premises in any residential district as well as to eliminate driving nuisance and highway safety hazards.
 4. Any commercial parking area shall require a Department of Environmental Regulation storm water permit before a city development permit can be issued.
- g. Off-Street Loading and Unload – In addition to the required off-street parking spaces, adequate off-street loading space, as determined by the Building Inspector, shall be provided so that no part of any commercial vehicle shall encroach or park upon any street, alley, sidewalk or public way during loading, unloading or servicing operations.

9. Endangered, threatened, or species of special concern's habitats and nesting areas shall not be altered or disturbed. Appropriate state and federal guidelines concerning regulations, setbacks, lighting, etc. will be followed at all times.
10. All development shall be required to connect to the city water and sewer system where and when it is available.
11. All septic tanks and drain fields shall be set back at least 75 feet from waters or wetlands of the state of Florida.

F. SCHEDULE OF FEES, CHARGE AND EXPENSES.

The City Commission has established a schedule for fees, charges and expenses, and a collection procedure, for building permits, appeals, rezoning requests, site plan review, storm water management plan review and similar matters. This schedule of fees shall be available in the City Building Inspectors Office and may be altered or amended only by the City Commission.

The building permit fee schedule is found on page 372, Section 6-2 Code of Ordinance for the City of Apalachicola. All other fees are as follows:

1. Requests for Rezoning \$100.00
2. Requests for Variance & Special Exceptions \$75
(\$100.00 amended)
3. Site Plan Review
4. Sign Permit \$500. (Amended – See Sign regulations)

No permit, certificate, exception or variance shall be issued unless or until such costs, charges, fees, or expenses have been paid in full, nor shall any action be taken on proceedings before the Board of Adjustment unless or until preliminary charges and fees have been paid in full.

G. PENALTIES

Any person who shall violate any of the provisions of this code or fail to comply with any of its requirements, or build or alter any building or structure contrary to intent expressed or approved, or without obtaining the required permits and certificates, or use any land, building or other structure in a manner prohibited by this code, shall upon conviction thereof, be fined not more than five hundred (\$500.00) dollars, or imprisoned for not more than sixty (60) days, or both and in addition shall pay all costs and expenses involved in the case. Each day such violation continued shall be considered a separate offense.

The owner or tenant of any building, structure, premises, or part thereof, any architect, building, contractor, agent, or other person who commits, takes part in, assists in, or maintains such violation shall each be guilty of a separate offense and suffer the penalties herein provided.

Every violation of this code shall constitute a misdemeanor and be punishable as such, but nothing herein contained shall prevent or remedy any violation.

H. INTERPRETTION AND VALIDITY

In their interpretation and application, the provisions of this code shall be held to be minimum requirements, adopted for the promotion of public health, safety, morals or general welfare. Wherever the requirements of this code are at variance with the requirements of any other lawfully adopted rules, regulations, codes, restrictions, or covenants, the most restrictive or that imposing the higher standards, shall govern.

I. AMENDMENTS

The regulations, restrictions and boundaries set forth in this code may from time to time be amended, supplemented, changed or repealed; provided however that no such action may be taken until after a public hearing with due notice as defined in Chapter 163.170 (3). The amendment and its effect on the Comprehensive Plan shall be discussed as well as the concerns of the public and property holders about the proposed change.

In case, however, of a protest against such change signed by the owners of twenty (20) percent or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending five hundred (500) feet from the street frontage of such, opposite lots, such amendments shall not become effective except by the favorable vote of four-fifths of the governing body of the City of Apalachicola.

Zoning Districts and Regulations

SCHEDULE OF DISTRICT REGULATIONS

List of Districts

R-1 Single Family Residential

R-2 Multi-Family Residential

R-3 Mobile Home Residential

R-4 Mixed Use Residential

O/R Office Residential

C-1 General Commercial

C-2 Neighborhood Commercial

C-3 Highway Commercial

C-4 Riverfront Commercial

RF Riverfront

R/C Research Conservation

R-1 SINGLE FAMILY RESIDENTIAL

DISTRICT INTENT

To provide for the accommodation of low density residential development in area's predominately occupied by single family detached dwellings. And where appropriate, to allow certain educational, religious, recreational and public activities compatible with the general characteristics of the District.

PERMITTED USES AND STRUCTURES:

PRINCIPAL

1. Single family residential

ACCESSORY

Accessory uses and structures customarily incidental and subordinate to permitted principal uses and structures and not of a commercial nature, including private garages, tool sheds, kitchen gardens and the like. Accessory structures may not be used for residential purposes.

SPECIAL EXCEPTIONS: After public notice and hearing and appropriate conditions and safeguards, the Planning and Zoning Board may permit as special exceptions, subject to referenced development standards:

1. Utilities Substations
2. Churches
3. Schools
4. Hospitals & Clinics (Prohibited in Velocity zones as shown on the Flood Insurance Rate Maps)
5. Two Family Residential
6. Parks and Playgrounds
7. Residential Apartment Units in existing single family structures (See Applicable Regulations No. 5)
8. Public Facilities & Structures
9. Home Occupations

PROHIBITED USES AND STRUCTURES

1. Mobile homes and house trailers
2. Establishments for the conduct of retail trade
3. Storage yards or warehouses
4. Travel trailers
5. Any structure or use of a nature not specifically or provisionally permitted herein.

DEVELOPMENT STANDARDS

MINIMUM LOT OR SITE SIZE

Single Family and Home Occupations

Area: 6,000 sq. ft.

Width: 60 ft.

Depth: 100 ft.

Two Family

Area: 9,000 sq. ft.

Width: 90 ft.

Depth: 100 ft.

Special Exceptions except for Two Family and Home Occupations

Area: 12,000 sq. ft.

Width: 120 ft.

Depth: 100 ft.

MINIMUM BUILDING SETBACKS

Front: 15 ft.

Side - Interior Lot: 7 1/2 feet each side, or any combination of setbacks on each side that equals at least 15 feet, provided that no such setback shall be less than 5 feet.

Side - Corner Lot: 15 feet

Rear: 25 feet for principal structures

5 feet for accessory structures

MAXIMUM BUILDING RESTRICTIONS

Lot Coverage: 40%

Building Height: 35 feet

APPLICABLE REGULATIONS

1. Location of accessory structures:

Location of accessory structures in residential districts:

In residential districts, and on any lot used for residential purposes, no accessory structure shall be located in required front yards.

2. Parking Regulations

See Section IV E (8) Parking Regulations

3. Special Exceptions:

Unless otherwise specified, special exceptions must comply with development standards As referenced. If deemed appropriate by the Planning and Zoning Commission in order to grant a special exception, certain more stringent standards may be imposed.

4. Submerged Lands:

In case where building lots are adjacent to and contiguous with wetlands, a setback of 20 feet from jurisdictional wetlands shall replace conflicting lot line setbacks. This setback shall consist of a vegetative buffer.

5. Residential Apartment Units:

When approved as a special exception, up to a maximum of three (3) residential apartment units may be allowed per existing single family structure provided that the lot upon which the structure is located has a front lot line of at least 60 feet and a depth of at least 100 feet and provided that at least one parking space per apartment unit is provided onsite; however, up to a maximum of four (4) residential apartment units may be allowed when approved as a special exception provided that the lot upon which the structure is located has a front lot line of at least 90 feet and depth of 100 feet and provided that at least one parking space per apartment unit is provided onsite.

6. Supplemental Regulations:

Provisions of Section VII, Site Plan Review, and Section VIII, Storm water Management Plans shall be applicable to certain lands within this district.

R-2 MULTI-FAMILY RESIDENTIAL

DISTRICT INTENT:

To provide for the accommodation of medium to high density, multi-family dwelling units. And where appropriate, to allow for certain educational, religious, recreational and public needs compatible with the general characteristics of the District.

PERMITTED USES AND STRUCTURE:

PRINCIPAL

**APALACHICOLA CITY COMMISSION
REQUEST FOR BOARD ACTION
Meeting Date: August 4, 2020**

SUBJECT: DEP Revolving Loan Amendment

AGENDA INFORMATION:

Agenda Location: Old Business, Item B

Presenter: Mayor Begos

BRIEF SUMMARY:

Mayor Begos has reached an agreement with DEP to resolve the City's Revolving Loan default. Under the proposal the City commits to repairing, maintaining and upgrading the Water and Sewer systems under detailed Asset Management Plans developed by the Florida Rural Water Association.

In return, DEP will lower the loan interest rate to -0- percent and remove the City from default status when the agreement is signed. The new loan package will save Apalachicola approximately \$61,000 per year over the next six years, and the City agrees to use those savings for Water and Sewer maintenance and Capital Improvements.

The first payment will not be due until Dec. 15, 2020. The City will no longer have to make extra payments to pay down the default.

Removing the default status from City finances will be a major step forward and allow for many other low-interest grant and financing options.

FUNDING SOURCE: n/a

ATTACHMENTS: Proposed Loan Amendment

STAFF'S COMMENTS AND RECOMMENDATIONS:

Support

**STATE REVOLVING FUND
AMENDMENT 9 TO DEBT PURCHASE AGREEMENT DP42709P
CITY OF APALACHICOLA**

This amendment is executed by the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (Department) and the CITY OF APALACHICOLA, FLORIDA, (Local Government) existing as a local governmental entity under the laws of the State of Florida. Collectively, the Department and the Local Government shall be referred to as “Parties” or individually as “Party”.

The Department and the Local Government entered into a State Revolving Fund Debt Purchase Agreement, Number DP42709P, as amended; and

The Local Government has requested, and the Department has agreed to loan revisions to allow the Local Government to address current default conditions of the Loan; and

Certain provisions of the Agreement need revision and several provisions need to be added to the Agreement.

The Parties hereto agree as follows:

1. Section 1.01 of the Agreement is amended to include the following definitions:

“Asset Management Plan” shall mean a systematic management technique for utility systems that focuses on the long-term life cycle of the assets and their sustained performance, rather than on short-term, day-to-day aspects of the assets. This plan includes the identification of all assets and the estimated costs associated with operating and maintaining the facilities, rehabilitating, repairing, upgrading, or replacing all assets in a timely manner. Utilizing these costs and schedule for incurring these costs, the plan shall also include a rate analysis to determine the rates necessary to adequately fund this work. The requirements for asset management plans are in Subsection 62-503.700(7), Florida Administrative Code.

2. Section 8.12 is added to the Agreement as follows:

8.12. ASSET MANAGEMENT PLAN.

An Asset Management Plan must be adopted by ordinance or resolution and written procedures must be in place to implement the plan.

The plan must include each of the following elements: i) identification of all assets within the Local Government’s system; ii) an evaluation of the current age, condition, and anticipated useful life of each asset; iii) the current value of the assets; iv) the cost to operate and maintain all assets; v) a capital improvement plan based on a survey of industry standards, life expectancy, life cycle analysis, and remaining useful life; vi) an analysis of funding needs; vii) an analysis of population growth and wastewater or stormwater flow projections, as applicable, for the Local Government’s planning area, and a model, if applicable, for impact fees; commercial, industrial

and residential rate structures; and industrial pretreatment fees and parameters; viii) the establishment of an adequate funding rate structure; ix) a threshold rate set to ensure the proper operation of the utility, if the Local Government transfers any of the utility proceeds to other funds, the rates must be set higher than the threshold rate to facilitate the transfer and proper operation of the utility; and x) a plan to preserve the assets, as well as the renewal, replacement, and repair of the assets as necessary, and a risk-benefit analysis to determine the optimum renewal or replacement time.

3. The funding under this Loan number will be transferred to State Revolving Fund Loan Agreement, Number WW427090 and repayments will restart at number 1, for the remaining 15 payments.

4. The total amount of unpaid principal is \$2,785,281.49, which accounts for the Department's receipt of 35 Semiannual Payments received to date. The remaining amount owed will be at 0% interest.

5. The Semiannual Payment amount, adjusted to account for repayments received to date, is revised and shall be in the amount of \$185,685.43. Such payments shall be received by the Department on December 15, 2020 and semiannually thereafter on June 15 and December 15 of each year until all amounts due hereunder have been fully paid.

6. The Local Government agrees to adopt and implement the Asset Management Plan, and any agreed on subsequent amendments, including the rate structures in those plans, as recommended by the Florida Rural Water Association for Apalachicola's Drinking Water and Wastewater systems, with the initial adoption by September 30, 2020. Any substantive changes to the Plan, including rate structures, must be concurred with by the Department prior to such change, in order to provide reasonable assurance that the other conditions of this Loan Agreement will be met.

7. The Local Government agrees that Pledged Revenues may only be applied towards operations, maintenance, capital improvements and administration expenses. The Local Government further agrees that pledged revenue funds may not be transferred to any other account for any purpose not directly related to the Water and Sewer Systems.

8. The Local Government further agrees that all proceeds from the sale of sale of the Old City Hall and the Old Fire Station, both located on Water Street, shall only be used for Water and Sewer System capital improvements, system repairs or payments on this Loan.

9. If any of the above provisions are not met and maintained, this Amendment will be null and void, the Loan will be considered in default and the provisions and repayment schedule contained in Amendment 8 will apply.

10. All other terms and provisions of the Loan Agreement shall remain in effect.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

This Amendment 9 to Debt Purchase Agreement DP42709P may be executed in two or more counterparts, any of which shall be regarded as an original and all of which constitute but one and the same instrument.

IN WITNESS WHEREOF, the Department has caused this amendment to the Loan Agreement to be executed on its behalf by the Secretary or Designee and the Local Government has caused this amendment to be executed on its behalf by its Authorized Representative and by its affixed seal. The effective date of this amendment shall be as set forth below by the Department.

for
CITY OF APALACHICOLA

Mayor

Attest:

Approved as to form and legal sufficiency:

City Clerk

SEAL

City Attorney

for
STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Secretary or Designee

Date

**APALACHICOLA CITY COMMISSION
REQUEST FOR BOARD ACTION
Meeting Date: August 4, 2020**

SUBJECT: Battery Park Marina Committee Application

AGENDA INFORMATION:

Agenda Location: New Business, Item A
Presenter: Commissioner Elliott

BRIEF SUMMARY:

Tom Gray has applied to be on the Battery Park Marina Committee. He was a former member of the group that stopped meeting several years ago.

FUNDING SOURCE: n/a

ATTACHMENTS: Tom Gray application

STAFF'S COMMENTS AND RECOMMENDATIONS:

BOARD/COMMITTEE CANDIDATE QUESTIONNAIRE

REQUESTED BOARD/COMMITTEE APPOINTMENT Marina Advisory Committee

APPLICATION DATE 6-1-20

DATE APPOINTED _____

NAME: Thomas C. Gray
MAILING ADDRESS: 64 Avenue C
PHYSICAL ADDRESS: 64 Avenue C
CELL#: 8506943971 HOME#: -
EMAIL: Jackcat+63@gmail.com

PLACE OF EMPLOYMENT: Retired
WORK#: -

1. HOW LONG HAVE YOU BEEN A RESIDENT OF THE CITY OF APALACHICOLA?

33 Years

2. WHY ARE YOU INTERESTED IN SERVING ON THIS BOARD/COMMITTEE?

I want to participate in community gov-
ernment and restore full function
to the Battery Park Marina.

3. WHAT DO YOU FEEL YOU CAN CONTRIBUTE BY SERVING ON BOARD/COMMITTEE?

I have over 20 years experience of what
has or has not worked, experience as a
professional mariner/tour operator,
and knowledge of various levels of Marinas

4. DO YOU HAVE ANY EXPERIENCE BY PREVIOUSLY SERVING ON ANY CITY, COUNTY, OR
OTHER GOVERNMENTAL BOARDS? IF SO, WHICH BOARDS AND HOW LONG?

Marina Advisory Committee 15 years

5. HAVE YOU ATTENDED ANY CITY MEETINGS? IF SO, WHICH ONES?

Yes. Intermittently on matters
pertaining to Marina and Benton
Cove.

6. WILL YOU BE ABLE TO CONTRIBUTE THE NECESSARY TIME TO PROPERLY RESEARCH ISSUES AND BE AVAILABLE TO ATTEND SCHEDULED MEETINGS?

Yes

7. HAVE YOU READ AND/OR FAMILIAR WITH THE CITY'S LAND DEVELOPMENT CODE?

In Part

8. HAVE YOU READ AND/OR FAMILIAR WITH THE CITY'S COMPREHENSIVE PLAN?

In Part

9. HAVE YOU READ AND/OR FAMILIAR WITH THE CITY'S HISTORIC GUIDELINES?

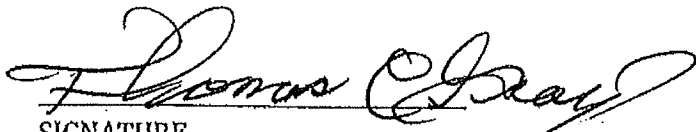
Yes

10. DO YOU HAVE ANY EXPERIENCE IN CONSTRUCTION, PLANNING, LAND USE, OR ARCHITECTURE? IF SO, HOW LONG?

Construction - 15 years. 100 Ton
U.S.C.G. Captain 30 years Marine Committee
15 years!

11. IF APPOINTED, YOU WILL BE REQUIRED BY LAW TO FOLLOW THE SUNSHINE LAW. HAVE YOU READ AND/OR FAMILIAR WITH THE SUNSHINE LAW?

Yes. All pertinent parts


SIGNATURE

Thomas C Gray
PRINTED NAME

**APALACHICOLA CITY COMMISSION
REQUEST FOR BOARD ACTION
Meeting Date: August 4, 2020**

SUBJECT: CDBG Contract Award for Avenue G and Water Street Site Improvements

AGENDA INFORMATION:

Agenda Location: New Business, Item B

Department: Administration

Presenter: Deji Ajose-Adeogun, PE, Senior Project Manager, Dewberry Engineers

BRIEF SUMMARY:

Notice to receive sealed bids was advertised in the *Apalachicola Times* on June 25th and July 2nd, 2020. One bid was received from North Florida Construction, Inc. (subcontractor Jason White Construction). The base-bid project includes improvements to the south side of Avenue G and Water Street for the construction of brick paver parking areas between Commerce Street and Water Street. There are two alternate bids included in the bid response for site improvements on the north side of Avenue G for the construction of paver parking and adjacent sidewalk, and paver parking with adjacent sidewalk along Water Street from Avenue G to Avenue I.

RECOMMENDED MOTION AND REQUESTED ACTIONS:

To award construction contract to North Florida Construction, Inc.

FUNDING SOURCE:

Northwest Florida Water Management District Grant "Construction of Stormwater Retrofit Facilities" Grant Agreement No. 18-048 – \$329,927 construction funds available.
100% funding, no match requirement.

ATTACHMENTS:

Copy of North Florida Construction, Inc. bid proposal and Engineers Letter of Recommendation

STAFF'S COMMENTS AND RECOMMENDATIONS:

Support



Dewberry Engineers Inc. | 850.674.3300
 20684 Central Avenue East | 850.644.3330 fax
 Blountstown, FL 32424 | www.dewberry.com

July 29th, 2020

City of Apalachicola
 192 Coach Wagoner Blvd.
 Apalachicola, FL 32320

**RE: Avenue G & Water Street Site Improvements– Award Recommendation
 Dewberry Project No. 50105885**

To whom it may concern:

On July 22nd, 2020 the City of Apalachicola received sealed bids for the above referenced project. A total of one (1) bid was received, the base project was bid at \$180,972, Bid Alt. 1 was bid at \$171,944, and Bid Alt. 2 was bid at \$532,004. North Florida Construction was the apparent low bidder as shown in the attached Detailed Bid Tabulation. Based on a review of the provided bids, it appears that the base bid falls within the available budget. The bid documents have been reviewed by Dewberry Engineers Inc. and North Florida Construction has been contacted to confirm accuracy of the bid.

Based on our review it appears that the bid submittal will meet all of the requirements of the solicitation. **Therefore, it is our recommendation that the City move forward with the contract award to North Florida Construction in the amount of \$180,972.00** Dewberry Rish recognizes that the project has come in under the grant budget amount and recommends based on the bid to also use the contractor if funds are available to complete Alternate 1

If you have any questions, please give me a call at 850.354.5181

Sincerely,

Ayodeji Ajose-Adeogun
 Digitally signed by Ayodeji Ajose-Adeogun
 DN: CN=Ayodeji Ajose-Adeogun,
 OU=A01410C000001720DFB7ED00000EF01,
 O=Dewberry, C=US
 Reason: I am approving this document
 Date: 2020.07.29 11:28:45-04'00'

Ayodeji Ajose-Adeogun, P.E.
 Senior Project Manager

NOTICE OF AWARD

Date of Issuance:

Owner: City of Apalachicola
192 Coach Wagoner Blvd.
Apalachicola, FL 32320
Dewberry Engineers Inc.
Engineer: 324 Marina Drive
Port St. Joe, FL 32456
Project: Ave. G & Water St. Site
Improvements
Bidder:
Bidder's Address:

Owner's
Contract No.:

Engineer's
Project No.: 50105885

Contract
Name:

TO BIDDER:

You are notified that Owner has accepted your Bid dated _____ for the above Contract, and that you are the Successful Bidder and are awarded a Contract for: Avenue G & Water Street Site Improvements.

This project will include improvements to the Water Street and Avenue G in Apalachicola, Florida. The proposed improvements will include the construction of brick paver parallel parking areas as well as an adjacent sidewalk.

The Contract Price of the awarded Contract is: _____

Two (2) unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award or has been transmitted or made available to Bidder electronically. *Revise if multiple copies accompany the Notice of Award*

A set of the Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 15 days of the date of receipt of this Notice of Award:

1. Deliver to Owner two (2) counterparts of the Agreement, fully executed by Bidder.
2. Deliver with the executed Agreement(s) the Contract security *e.g., performance and payment bonds* and insurance documentation as specified in the Instructions to Bidders and General Conditions, Articles 2 and 6.
3. Other conditions precedent (if any):

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within ten days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner: City of Apalachicola

Authorized Signature

By: _____

Title: _____

Copy: Dewberry Engineers Inc.

NOTICE TO PROCEED

Owner:	City of Apalachicola 192 Coach Wagoner Blvd. Apalachicola, FL 32320	Owner's Contract No.:	
Contractor:		Contractor's Project No.:	
Engineer:	Dewberry Engineers Inc. 324 Marina Drive Port St. Joe, FL 32045	Engineer's Project No.:	50105885
Project:	Avenue G & Water St. Site Improvements	Contract Name: Effective Date of Contract:	

TO CONTRACTOR:

Owner hereby notifies Contractor that the Contract Times under the above Contract will commence to run on _____ . See Paragraph 4.01 of the General Conditions

On that date, Contractor shall start performing its obligations under the Contract Documents. No Work shall be done at the Site prior to such date. In accordance with the Agreement, [the date of Substantial Completion is _____ and the date of readiness for final payment is _____ .

Before starting any Work at the Site, Contractor must comply with the following:
Note any access limitations, security procedures, or other restrictions

Owner: City of Apalachicola
324 Marina Drive
Port St. Joe, FL 32320

Authorized Signature

By: _____

Title: _____

Date Issued: _____

Copy: Dewberry Engineers Inc.
324 Marina Drive
Port St. Joe, FL 32456

ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted to:

Mailing Address:

***City of Apalachicola
192 Coach Wagoner Blvd.
Apalachicola, FL 32320***

Physical Address:

***City of Apalachicola
192 Coach Wagoner Blvd.
Apalachicola, FL 32320***

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 – BIDDER’S ACKNOWLEDGEMENTS

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 – BIDDER’S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following Addenda:

<u>Addendum No.</u>	<u>Addendum Date</u>
_____	_____
_____	_____
_____	_____

- B. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if

any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

- E. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs.
- F. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and confirms that the written resolution thereof by Engineer is acceptable to Bidder.
- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.
- J. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

ARTICLE 4 – BIDDER'S CERTIFICATION

4.01 Bidder certifies that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

ARTICLE 5 – BASIS OF BID

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

Avenue G & Water Street					
Item	Item Description	Quantity	Unit	Unit Price	Total
GENERAL COSTS					
1	Mobilization (10% of max. bid)	1	LS	10,000. ⁰⁰	10,000. ⁰⁰
2	Bonds and Insurance	1	LS	5,000. ⁰⁰	5,000. ⁰⁰
3	Maintenance of Traffic (MOT)	1	LS	3,000. ⁰⁰	3,000. ⁰⁰
4	Construction Stakeout	1	LS	2,000. ⁰⁰	2,000. ⁰⁰
5	As-Built Survey	1	LS	3,000. ⁰⁰	3,000. ⁰⁰
SUBTOTAL					\$23,000. ⁰⁰
CONSTRUCTION					
6	Clear and Grub	1	LS	5,000. ⁰⁰	5,000. ⁰⁰
7	Asphalt Demo	178	SY	40. ⁰⁰	7,120. ⁰⁰
8	Inlet Protection	4	EA	300. ⁰⁰	1,200. ⁰⁰
9	Silt Fencing	170	LF	3. ⁰⁰	510. ⁰⁰
10	Earthwork	1	LS	35,000. ⁰⁰	35,000. ⁰⁰
11	12" Ribbon Curb	342	LF	40. ⁰⁰	13,680. ⁰⁰
12	Thermoplastic Pavement Markings	1	LS	3,000. ⁰⁰	3,000. ⁰⁰
13	ADA Ramp	3	EA	1,000. ⁰⁰	3,000. ⁰⁰
14	6" Perforated Pipe	158	LF	70. ⁰⁰	11,060. ⁰⁰
15	6" HDPE Pipe	45	LF	60. ⁰⁰	2,700. ⁰⁰
16	Bold & Gold Filter Media	1	LS	15,000. ⁰⁰	15,000. ⁰⁰
17	Brick Pavers & Base	147	SY	250. ⁰⁰	36,750. ⁰⁰
18	Asphalt Patch	15	TN	500. ⁰⁰	7,500. ⁰⁰
SUBTOTAL					\$141,520. ⁰⁰
BASE BID					\$164,520. ⁰⁰
CONTINGENCY (10% OF BASE BID)					\$ 16,452. ⁰⁰
GRAND TOTAL (BASE BID PLUS CONTINGENCY)					\$ 180,972. ⁰⁰

Avenue G & Water Street					
Bid Alt. 1 - Avenue G Parking and Sidewalk (North)					
Item	Item Description	Quantity	Unit	Unit Price	Total
GENERAL COSTS					
1	Mobilization (10% of max. bid)	1	LS	10,000 ⁰⁰	10,000 ⁰⁰
2	Bonds and Insurance	1	LS	5,000 ⁰⁰	5,000 ⁰⁰
3	Maintenance of Traffic (MOT)	1	LS	3,000 ⁰⁰	3,000 ⁰⁰
4	Construction Stakeout	1	LS	2,000 ⁰⁰	2,000 ⁰⁰
5	As-Built Survey	1	LS	3,000 ⁰⁰	3,000 ⁰⁰
SUBTOTAL					23,000 ⁰⁰
CONSTRUCTION					
6	Clear and Grub	1	LS	6,000 ⁰⁰	6,000 ⁰⁰
7	Inlet Protection	1	EA	300 ⁰⁰	300 ⁰⁰
8	Silt Fencing	201	LF	3 ⁰⁰	603 ⁰⁰
9	Utility Relocation	1	LS	7,000 ⁰⁰	7,000 ⁰⁰
10	Earthwork	1	LS	30,000 ⁰⁰	30,000 ⁰⁰
11	12" Ribbon Curb	140	LF	40 ⁰⁰	5,600 ⁰⁰
12	6" Raised Curb	136	LF	30 ⁰⁰	4,080 ⁰⁰
13	6" Perforated Pipe	148	LF	60 ⁰⁰	8,880 ⁰⁰
14	Thermoplastic Pavement Markings	1	LS	3,000 ⁰⁰	3,000 ⁰⁰
15	ADA Ramp	1	EA	2,000 ⁰⁰	2,000 ⁰⁰
16	Concrete Sidewalk	110	SY	150 ⁰⁰	16,500 ⁰⁰
17	Bold & Gold Filter Media	1	LS	15,000 ⁰⁰	15,000 ⁰⁰
18	Brick Pavers & Base	137	SY	250 ⁰⁰	34,250 ⁰⁰
SUBTOTAL					133,313 ⁰⁰
BASE BID					156,313 ⁰⁰
CONTINGENCY (10% OF BASE BID)					15,631 ⁰⁰
GRAND TOTAL (BASE BID PLUS CONTINGENCY)					171,944 ³⁰

Avenue G & Water Street					
Bid Alt. 2 - Water Street Parking & Sidewalk					
Item	Item Description	Quantity	Unit	Unit Price	Total
GENERAL COSTS					
1	Mobilization (10% of max. bid)	1	LS	30,000 ⁰⁰	30,000 ⁰⁰
2	Bonds and Insurance	1	LS	10,000 ⁰⁰	10,000 ⁰⁰
3	Maintenance of Traffic (MOT)	1	LS	7,000 ⁰⁰	7,000 ⁰⁰
4	Construction Stakeout	1	LS	4,000 ⁰⁰	4,000 ⁰⁰
5	As-Built Survey	1	LS	4,000 ⁰⁰	4,000 ⁰⁰
SUBTOTAL					\$59,000 ⁰⁰
CONSTRUCTION					
6	Clear and Grub	1	LS	12,000 ⁰⁰	12,000 ⁰⁰
7	Inlet Protection	1	EA	300 ⁰⁰	300 ⁰⁰
8	Silt Fencing	730	LF	3 ⁰⁰	2,190 ⁰⁰
9	Utility Relocation	1	LS	40,000⁰⁰	40,000⁰⁰
10	Earthwork	1	LS	40,000 ⁰⁰	40,000 ⁰⁰
11	12" Ribbon Curb	574	LF	40 ⁰⁰	22,960 ⁰⁰
12	6" Raised Curb	533	LF	40 ⁰⁰	21,320 ⁰⁰
13	6" Perforated Pipe w/ Cleanouts	592	LF	60 ⁰⁰	35,520 ⁰⁰
14	Concrete Sidewalk	430	SY	150 ⁰⁰	64,500 ⁰⁰
15	Bold & Gold Filter Media	1	LS	30,000 ⁰⁰	30,000 ⁰⁰
16	Brick Pavers & Base	551	SY	350 ⁰⁰	192,850 ⁰⁰
SUBTOTAL					\$458,640 ⁰⁰
BASE BID					\$483,640 ⁰⁰
CONTINGENCY (10% OF BASE BID)					\$ 48,364 ⁰⁰
GRAND TOTAL (BASE BID PLUS CONTINGENCY)					\$532,004 ⁰⁰

ARTICLE 6 – TIME OF COMPLETION

- 6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.
- 6.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

ARTICLE 7 – ATTACHMENTS TO THIS BID

- 7.01 The following documents are submitted with and made a condition of this Bid:
- Required Bid security;
 - List of Proposed Subcontractors;
 - List of Proposed Suppliers;
 - Evidence of authority to do business in the state of the Project; or a written covenant to obtain such license within the time for acceptance of Bids;
 - Contractor's License No.: CG-CO56658; CU-CO56716

- F. Public Entity Crimes
- G. Anti-Collusion
- H. Conflict of Interest
- I. Drug-Free Workplace

ARTICLE 8 – DEFINED TERMS

8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 9 – BID SUBMITTAL

BIDDER: *Indicate correct name of bidding entity*

North Florida Construction, Inc.

By:

Signature



Printed name

Clifford Newsome

(If Bidder is a corporation, a limited liability company, partnerships, or a joint venture, attach evidence of authority to sign.)

Attest:

Signature



Printed name

Stacy Newsome Miller

Title:

V-P, Secretary

Submittal Date:

7/22/2020

Address for giving notices:

PO Box 129 Clarksville, FL 32430

Telephone Number:

850-674-5730

Fax Number:

850-674-4712

Contact Name and e-mail address:

Jamie Miller

jamie@northfloridaconst.com

Bidder's License No.:

CG-CO56658; CU-CO56716

(where applicable)

**SECTION 00262- SWORN STATEMENT UNDER SECTION 287.133(3)(a),
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES**

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY
PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS

- 1. This sworn statement is submitted to City of Apalachicola
by Clifford Newsome
For North Florida Construction, Inc.
Whose business address is PO Box 129 Clarksville, FL 32430

and (if applicable) its Federal Employer Identification Number (FEIN) is 59-2664214
(if the entity has no FEIN, include the Social Security Number of the individual signing this
sworn statement): _____

- 2. I understand that a "public entity crime" as defined in Section 287.133 (1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency of political subdivision of any other state or with the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or such an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
- 3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133 (1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.
- 4. I understand that "affiliate" as defined in Paragraph 287.133 (1)(a) , Florida Statutes, means:
 - (a.) A predecessor or successor of a person or a corporation convicted of a public entity crime, or
 - (b.) An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate"

includes officers, directors, executives, partners, shareholders, employees, members and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling agreement of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

5. I understand that a "person" as defined in Paragraph 287.133 (1)(e), Florida Statute, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter in to a binding contract and which bids or applied to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "persons" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.
6. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. [Indicate which statement applies.]

 X Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

 The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, share holders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

 The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Office of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vender list. [Attach a copy of the final order]

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1(ONE) ABOVE IS FOR THE PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH

DECEMBER 31 OF THE CALENDAR YEAR WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

[Handwritten Signature]
Signature

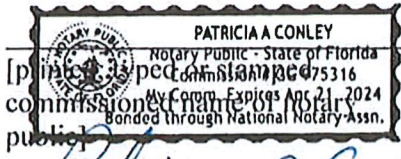
Sworn to and subscribed before me this 22nd day of July, 2020.

Personally known X

OR Produced identification _____

Notary Public- State of Florida

My commission expires 4/21/24



[Handwritten Signature: Patricia A. Conley]

END OF SECTION 00262

SECTION 00302-

ANTI-COLLUSION STATEMENT


I hereby attest that I am the person responsible within my company for the final decision as to the price(s) and amount of this bid or, if not, that I have written authorization, enclosed herewith, from that person to make the statements set out below on his or her behalf and on behalf of my company.

I further attest that:

1. The price(s) and amount of this bid have been arrived at independently, without consultation, communication or agreement for the purpose or with the effect of restricting competition with any other company or person who is a bidder or potential prime bidder.
2. Neither the price(s) nor the amount of this bid have been disclosed to any other company or person who is a bidder or potential prime bidder on this project, and will not be so disclosed prior to bid opening.
3. Neither the prices nor the amount of the bid of any other company or person who is a bidder or potential prime bidder on this project have been disclosed to me or my company.
4. No attempt has been made to solicit, cause or induce any company or person who is a bidder or potential prime bidder to refrain from bidding on this project, or to submit a bid higher than the bid of this company, or any intentionally high or noncompetitive bid or other form of complementary bid.
5. No agreement has been promised or solicited for any other company or person who is a bidder or potential prime bidder on this project to submit an intentionally high, noncompetitive or other form of complementary bid on this project.
6. The bid of my company is made in good faith and not pursuant to any consultation, communication, agreement or discussion with, or inducement or solicitation by or from any company or person to submit any intentionally high, noncompetitive or other form of complementary bid.
7. My company has not offered or entered into a subcontract or agreement regarding the purchase or sale of materials or services from any company or person, or offered, promised or paid cash or anything of value to any company or person, whether in connection with this or any other project, in consideration for an agreement or promise by any company or person to refrain from bidding or to submit any intentionally high, noncompetitive or other form of complementary bid or agreeing or promising to do so on this project.
8. My company has not accepted or been promised any subcontract or agreement regarding the sale of materials or services to any company or person, and has not been promised or paid cash or anything of value by any company or person, whether in connection with this or any other project, in consideration for my company's submitting any intentionally high, noncompetitive or other form of complementary bid, or agreeing or promising to do so, on this project.

9. I have made a diligent inquiry of all members, officers, employees, and agents of my company with responsibilities relating to the preparation, approval or submission of my company's bid on this project and have been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, or other conduct inconsistent with any of the statements and representations made in this affidavit.
10. I understand and my company understands that any misstatement in this affidavit is and shall be treated as a fraudulent concealment from the Florida Department of Transportation, of the true facts relating to submission of bids for this contract.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS, THAT THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

<u></u>	<u>North Florida Construction, Inc.</u>
Signature	Company Name
<u>President</u>	<u>PO Box 129 Clarksville, FL 32430</u>
Title	Address
<u>7/22/2020</u>	<u>850-674-5730</u>
Date	Phone Number

END OF SECTION 00302

SECTION 000303-

CONFLICT OF INTEREST DISCLOSURE FORM

Please mark which of the following applies to you/your company:

 X I hereby attest that no City of Apalachicola (City) employee(s), elected officials(s), or any of its agencies is also an owner, corporate officer, agency, employee, etc., of their corporation/partnership/individual business.

_____ The following person(s) name(s) and position(s) with your business.

NAME(S)	POSITION(S)
---------	-------------

_____	_____
_____	_____
_____	_____
_____	_____



(Signature)

Title / Date: President 7/22/2020

Business Name: North Florida Construction, Inc.

END OF SECTION 00303

SECTION 00304-

**STATEMENT UNDER SECTION 287.087
FLORIDA STATUTES, ON PREFERENCE TO BUSINESSES WITH
DRUG-FREE WORKPLACE PROGRAMS**

IDENTICAL TIE BIDS: Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids which are equal with respect to price, quality and service are received by the State or by any political subdivision for the procurement of commodities or contractual services, a bid received by the State or by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors have a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business' policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace not later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program is such is available in the employee's community, by an employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign this statement, I certify that this firm complies fully with the above requirements.



Bidder's Signature Clifford Newsome, President

END OF SECTION 00304

State of Florida

Department of State

I certify from the records of this office that NORTH FLORIDA CONSTRUCTION, INC. is a corporation organized under the laws of the State of Florida, filed on September 13, 1985.

The document number of this corporation is H75879.

I further certify that said corporation has paid all fees due this office through December 31, 2020, that its most recent annual report/uniform business report was filed on January 6, 2020, and that its status is active.

I further certify that said corporation has not filed Articles of Dissolution.

*Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capital, this
the Sixth day of January, 2020*



Randy R. ...
Secretary of State

Tracking Number: 0489564166CC

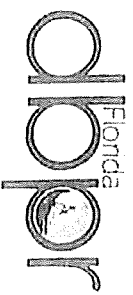
To authenticate this certificate, visit the following site, enter this number, and then follow the instructions displayed.

<https://services.sunbiz.org/Filings/CertificateOfStatus/CertificateAuthentication>



RICK SCOTT, GOVERNOR

JONATHAN ZACHEM, SECRETARY



STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
CONSTRUCTION INDUSTRY LICENSING BOARD

THE GENERAL CONTRACTOR HEREIN IS CERTIFIED UNDER THE
PROVISIONS OF CHAPTER 489, FLORIDA STATUTES

NEWSOME, CLIFFORD ALVIE

NORTH FLORIDA CONSTRUCTION INC
ROUTE 1 BOX 47-A
ALTHA FL 32421

LICENSE NUMBER: CGC056658

EXPIRATION DATE: AUGUST 31, 2020

Always verify licenses online at MyFloridaLicense.com

Do not alter this document in any form.

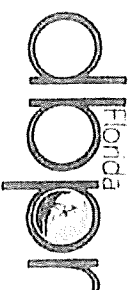
This is your license. It is unlawful for anyone other than the licensee to use this document.





RICK SCOTT, GOVERNOR

JONATHAN ZACHEM, SECRETARY



**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
CONSTRUCTION INDUSTRY LICENSING BOARD**

THE UNDERGROUND UTILITY & EXCAVATION CO HEREIN IS CERTIFIED UNDER THE
PROVISIONS OF CHAPTER 489, FLORIDA STATUTES

NEWSOME, CLIFFORD ALVIE

NORTH FLORIDA CONST INC
ROUTE 1 BOX 47-A
ALTHA FL 32421

LICENSE NUMBER: CUC056716

EXPIRATION DATE: AUGUST 31, 2020

Always verify licenses online at MyFloridaLicense.com

Do not alter this document in any form.

This is your license. It is unlawful for anyone other than the licensee to use this document.



LIST OF SUBCONTRACTORS

Jason White Const.

LIST OF SUPPLIERS

Environment Cons. Solutions
Lanier Supply

BID BOND

Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.

BIDDER (Name and Address):

North Florida Construction, Inc.
P.O. Box 129
Clarksville, FL 32430

SURETY (Name, and Address of Principal Place of Business):

Fidelity and Deposit Company of Maryland
1299 Zurich Way
Schaumburg, IL 60196

OWNER: City of Apalachicola
192 Coach Wagoner Blvd.
Apalachicola, FL 32320

BID

Bid Due Date:
July 22nd, 2020
Description: Ave. G & Water Street Site Improvements

BOND

Bond Number: N/A
Date: 7/22/2020
Penal sum _____

5% of Total Bid

\$

(Words)

(Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

BIDDER

SURETY

North Florida Construction, Inc. _____ (Seal)
Bidder's Name and Corporate Seal

Fidelity and Deposit Company of Maryland _____ (Seal)
Surety's Name and Corporate Seal

By: [Signature]
Signature

By: [Signature]
Signature (Attach Power of Attorney)

Clifford Newsome
Print Name

Michael W Brown
Print Name

President
Title

Attorney-in-Fact
Title

Attest: [Signature]
Signature

Attest: [Signature]
Signature

Title

Title

Note: Addresses are to be used for giving any required notice.

Provide execution by any additional parties, such as joint venturers, if necessary.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
 - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
 - 3.2 All Bids are rejected by Owner, or
 - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after the Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.

11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

**ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Illinois, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Illinois (herein collectively called the "Companies"), by **Robert D. Murray, Vice President**, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Michael W. BROWN and Jo M. CHONKO, both of Panama City, Florida**, its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said **ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND**, this 23rd day of January, A.D. 2020.



**ATTEST:
ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

By: *Robert D. Murray*
Vice President

By: *Dawn E. Brown*
Secretary

**State of Maryland
County of Baltimore**

On this 23rd day of January, A.D. 2020, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **Robert D. Murray, Vice President and Dawn E. Brown, Secretary** of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, deposed and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Constance A. Dunn

Constance A. Dunn, Notary Public
My Commission Expires: July 9, 2023

EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-in-Fact, The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify or revoke any such appointment or authority at any time."

CERTIFICATE

I, the undersigned, Secretary of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 22nd day of July, 2020.



Brian M. Hodges

By: Brian M. Hodges
Vice President

TO REPORT A CLAIM WITH REGARD TO A SURETY BOND, PLEASE SUBMIT A COMPLETE DESCRIPTION OF THE CLAIM INCLUDING THE PRINCIPAL ON THE BOND, THE BOND NUMBER, AND YOUR CONTACT INFORMATION TO:

Zurich Surety Claims
1299 Zurich Way
Schaumburg, IL 60196-1056
www.reportsclaims@zurichna.com
800-626-4577