

**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.

**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 re port 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

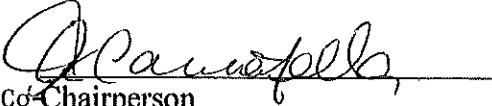
111.A.3.b”. “Existing nonconformities of a structure shall not be used as grounds for adding other structures prohibited elsewhere in the same district”. (February 2, 2018 Staff Report Analysis). Staff recommendation was that the Variance should be denied due to failure to meet the hardship requirements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

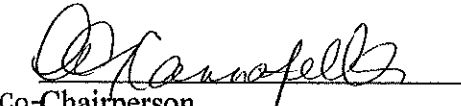
However, after consideration of the evidence, the Board finds and concludes by majority vote that the preservation of the historic building and return to historic features as much as possible during the course of the development outweighs the extension of the nonconformity for the present screened porch 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

**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.<sup>1</sup> 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. 3<sup>rd</sup> DCA, 1981, affirmed 41 So.2d 1041, Fla. 1982; Bernard v. Town Council of Palm Beach, 569 So2d 853, Fla. 4<sup>th</sup> DCA 1990; Albright v.

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<sup>1</sup> 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. 5<sup>th</sup> 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. 3<sup>rd</sup> DCA, 2006; Herrera v. City of Miami, 600 So.2d 561, Fla. 3<sup>rd</sup> 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. 3<sup>rd</sup> DCA 1986, rev. denied 494 So. 2d, 1152, Fla. 1986); Thompson v. Planning Commission of City of Jacksonville, 464 So.2d 1231, Fla. 1<sup>st</sup> 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.

**CITY OF APALACHICOLA**  
**BOARD OF ADJUSTMENT**  
**QUASI-JUDICIAL PUBLIC HEARING & SPECIAL MEETING**  
**WEDNESDAY SEPTEMBER 18<sup>th</sup>, 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 18<sup>th</sup>, 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](mailto: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](http://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, [cortmibankston@cityofapalachicola.com](mailto:cortmibankston@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 5<sup>th</sup> 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

5<sup>th</sup> day of September, 2019

By Robin Hoxie, who is

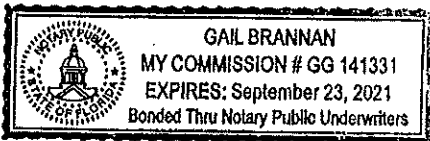
personally known to me or \_\_\_\_\_ who has produced

\_\_\_\_\_ (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**

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**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.

.....

**CITY OF APALACHICOLA**  
**BOARD OF ADJUSTMENT**  
**QUASI-JUDICIAL PUBLIC HEARING & SPECIAL MEETING**  
**MONDAY, MAY 21<sup>st</sup>, 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 21<sup>st</sup>, 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](http://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](mailto: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 21<sup>st</sup>, 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 on April 19<sup>th</sup>, 1994 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. 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 (14<sup>th</sup> Street) Apalachicola, Florida at (850) 653-1522 or emailed to [cortnibankston@cityofapalachicola.com](mailto: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 17<sup>th</sup>, 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 10<sup>th</sup>, 2018 & Thursday, May 17<sup>th</sup>, 2018.

# 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 McEmore 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.

City of Apalachicola

1 Ave E

Apalachicola, FL 32320

850-653-9319 / 850-653-2205 Fax

QUASI-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# 01-095-08W 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

We/I, Patricia McLeone, being first duly sworn, depose and say that we/I am/are 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.

As property owner(s) We/I further authorize George Cain to act as our/my representative in any matters regarding this Petition.

[Signature]  
Signature of Property Owner

[Signature]  
Signature of Property Owner

Patricia McLeone  
Typed or Printed Name of Owner

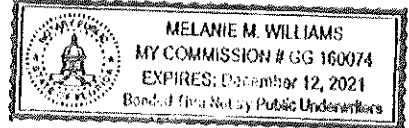
[Signature]  
Typed or Printed Name of Owner

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 [Signature] 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 18'; when property owner purchased property; when existing principal structure was built (including building permit numbers 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 Mercy) to the building's original height by removing a recently added wood framed upper floor. The buildings, 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. 8fr469. 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 façade 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 unnecessary 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 and not 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 2<sup>nd</sup> floor addition and the pseudo-palladian windows.

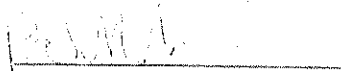


7. How will granting the variance be consistent with the Land Development Code?

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 09S 06W 0330 0036 0010  
 Location Address 101 BAY AVE  
 32320  
 Brief Tax Description\* BL 36 LOTS 1, 2, 3, 4 & 5 OR 205/440 232/10 278/289 448/262  
 \*The Description above is not to be used on legal documents  
 Property Use Code SINGLE FAM (000100)  
 Sec/Twp/Rng 1-9S-06W  
 District Apalachicola (District 13)  
 Millage Rate 22.1985  
 Acreage 0.600  
 Homestead Y

View Map

**Owner Information**

Primary Owner  
 McIntore Lee & Patricia M  
 P.O. Box 183  
 Apalachicola, FL 32320

**Land Information**

| Code  | Land Use | Number of Units | Unit Type | Frontage | Depth |
|-------|----------|-----------------|-----------|----------|-------|
| 00000 | VAC RES  | 24000           | 1F        | 0        | 0     |
| 00000 | VAC RES  | 6000            | UT        | 0        | 0     |

**Residential Buildings**

Building 1  
 Type SINGLE FAM  
 Total Area 9,000  
 Heated Area 6,778  
 Exterior Walls COMMON BRK  
 Roof Cover COMPSHNGI  
 Interior Walls DRYWALL  
 Frame Type MASONRY  
 Floor Cover PINE WOOD  
 Heat AIR DUCTED  
 Air Conditioning CENTRAL  
 Bathrooms 0  
 Bedrooms 0  
 Stories 2  
 Effective Year Built 1930

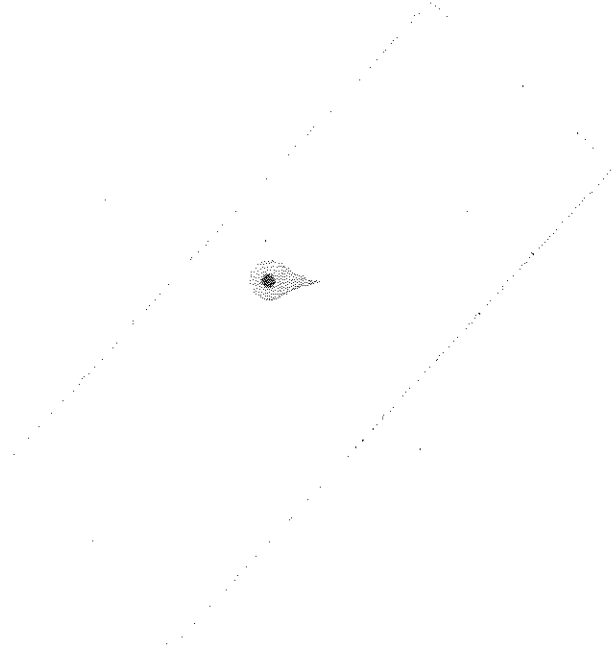
Building 2  
 Type SINGLE FAM  
 Total Area 2,425  
 Heated Area 1,000  
 Exterior Walls COMMON BRK - AVERAGE  
 Roof Cover ASB SHNGI  
 Interior Walls DRYWALL  
 Frame Type N/A  
 Floor Cover CLAY TILE CARPET  
 Heat AIR DUCTED  
 Air Conditioning CENTRAL  
 Bathrooms 0  
 Bedrooms 0  
 Stories 0  
 Effective Year Built 1930

NWFWMD Flood Information Report. Effective FIRM Issue Date: 2/5/2014 [Close this report window to get back to the information portal]

Effective Flood Map, Has been effective since 2/5/2014

Geographical Information

Latitude/Longitude: 29.721792 / -84.984886  
Address: ALLEY APALACHICOLA FL 32320  
Parcel ID: 01-09S-08W-8330-0036-0010  
Firm Panel: 12037C0526F (Effective)



Flood Information

Flood Zone Information

Geographic Entity  
Location of Interest

Effective Flood Zone  
X

X:90% AE:10%

Base Flood Elevation\*

13.0ft  
(Effective BFE)

\*The computed elevation to which floodwater is anticipated to during the base flood (100 Year Flood). Base Flood Elevations are shown on Flood Insurance Rate Maps (FIRMs) and on the profiles. The BFE is the regulatory requirement for the elevat floodproofing of structures. The relationship between the BFE structure's elevation determines the flood insurance premium. of measurement is NAVD1988.

Legend



Location of Interest



Parcel Outline

FLORIDA MASTER SITE FILE  
Site Inventory Form

FDAHRM 802 = =

Site Name: St. Mary, Star of the Sea Site No. 85 969  
Convent of Mercy 830 = = Survey Date 7906 820 = =  
 Address of Site: Eighth Street 905 = =  
 Instruction for locating NW corner at intersection of Bay Ave. & 8th St. 813 = =  
 Location: Original City 56 858 = =  
 County: Franklin INC. 808 = =  
 Owner of Site: Name: Gracida, Rene H, Bishop of Diocese of  
 Address: Pensacola-Tallahassee  
P. O. Drawer 17329, Pensacola, FL 32522 902 = =  
 Type of Ownership: Institutional 848 = = Recording Date 7207 832 = =  
 Recorder: Name & Title: Dan G. Deibler, Historic Sites Specialist 818 = =  
 Address: FDAHRM 838 = =

Condition of Site: Integrity of Site: Original Use convent 818 = =  
 Check One: Check One or More: Present Use 850 = =  
 Excellent 852 = =  Altered 855 = = Dates: Beginning 1901/1930 844 = =  
 Good 853 = =  Unaltered 858 = = Cultural/Phase 840 = =  
 Fair 854 = =  Original Site 858 = = Period 845 = =  
 Deteriorated 855 = =  Restored ( ) Date: ( ) 858 = =  
 Moved ( ) Date: ( ) 858 = =  
 NR Classification Category: building 916 = =

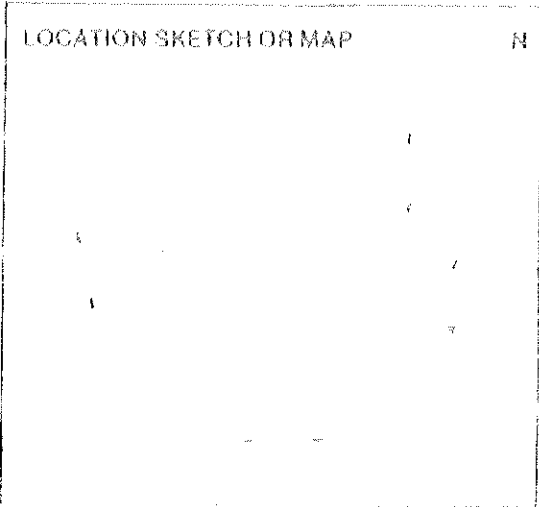
Threats to Site: Check One or More:  
 Zoning ( ) X 1878 = =  Inappropriate ( ) X 1878 = =  
 Development ( ) X 1878 = =  Theft ( ) X 1878 = =  
 Deterioration ( ) X 1878 = =  Dredging ( ) X 1878 = =  
 Borrowing ( ) X 1878 = =  
 Other (See Remarks Below) 878 = =  
 Areas of Significance: architecture 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. Louvered cupola with cross; entrance, north segmented pediment.

917 = =

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

ARCHITECT ..... 872 = =  
 BUILDER ..... 874 = =  
 STYLE AND/OR PERIOD Georgian Revival ..... 964 = =  
 PLAN TYPE L-shape ..... 968 = =  
 EXTERIOR FABRIC(S) brick, cement, modern Flemish bond ..... 854 = =  
 STRUCTURAL SYSTEM(S) ..... 858 = =  
 PORCHES west/ 2nd story gallery, screen enclosed ..... 942 = =  
 FOUNDATION: brick ..... 942 = =  
 ROOF TYPE: hip; gable; flat ..... 942 = =  
 SECONDARY ROOF STRUCTURE(S): ..... 942 = =  
 CHIMNEY LOCATION: 10' from NW corner ..... 942 = =  
 WINDOW TYPE: DWS 1/1/1 (1st); DWS 2/1 (2nd) ..... 942 = =  
 CHIMNEY: brick ..... 882 = =  
 ROOF SURFACING: composition shingles ..... 882 = =  
 ORNAMENT EXTERIOR: cement; wood ..... 882 = =  
 NO. OF CHIMNEYS 1 ..... 952 = = NO. OF STORIES 2 ..... 950 = =  
 NO. OF DORMERS 0 ..... 954 = =  
 Map Reference (incl. scale & date) ..... 809 = =  
 Latitude and Longitude ..... 800 = =  
 Site Size (Approx. Acreage of Property) ..... 833 = =



| Township | Range | Section |
|----------|-------|---------|
|          |       |         |

812 = =

UTM Coordinates:

890 = =

Zone Easting Northing

Photographic Records Numbers 79K08381P5 (7)

860 = =

Contact Print

# Couple is happy to find home in heart of Apalachicola

By Dorothy Clifton  
Special Staff Writer

APALACHICOLA — The elegant St. Mary Street house in the heart of Apalachicola, Fla., which sits on five city lots in a neighborhood known as "the heart of Apalachicola's finest homes," has been bought by a couple planning to retire in Franklin County.

For Ann Davolis, 47, a real-estate agent, the town was her home in 20 years ago. For her husband, Michael, an insurance executive in Jacksonville, it's a weekend retreat to a small town with "warm and friendly people."

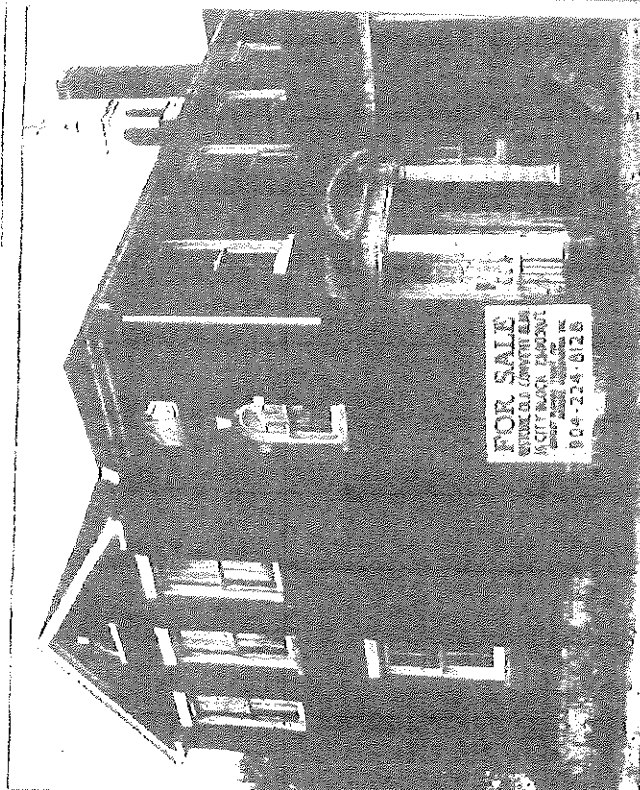
The Davolis paid \$130,000 for the 1,500-sq-ft building, which was owned by the Florida Trust for Historic Preservation.

The new owners signed an agreement with the Florida Trust to ensure that renovations would maintain the building's architectural integrity.

"We are very pleased the Davolis have bought it," said Charles D. Olson, executive vice president for the Florida Trust. "They have a real respect for the building and they're local people with a real interest in Apalachicola."

The Davolis say they have no specific plans for

Please save HOME 20



Historic downtown home has for-sale sign on to learn more, the Davolis are "travelling home."

## Home

From 10

using the imposing Columbia Revival building to have hired a company to study the possibilities.

They also have hired George Island architect George Surran to prepare the subdivision as their residence, Michael Davolis said.

The Florida Trust has given the Davolis permission, he said, to add a second floor to the house, which originally served as a store and restaurant.

It was in 1901 that the Sisters of Mercy of Mobile, Ala., constructed a convent school in Apalachicola. The original burned in 1928, and the existing convent was built a year later for \$30,000. Five years later and built here until 1957, when dwindling attendance forced the convent to close. The Catholic Diocese of Pensacola-Tallahassee owned the building until 1966, when the Florida Trust bought it.

"We absolutely fell madly in love with the place," Ann Davolis said. "We tried to do whatever the building will allow."

About five months ago she joined Alice Lutz of an operator of the Pied Piper, a dress boutique in an annex of the Gibson Inn. Considered by many to be a rival for Apalachicola's revitalization, the Victorian inn was restored three years ago.

"When I first came across the brick just search and saw the Gibson standing there in blue and white, I knew I wanted to come home again," Ann Davolis said. "Two years ago when I visited Apalachicola again, I think I spent the night in the Gibson and I was for some night of my life. Now, the Gibson is bringing the joy back to life."

About the convent, her husband said, "It is a tremendous job and has tremendous prospects. We're going to work closely with the city fathers to do the best thing for the property."

Michael Davolis is commuting from Jacksonville, Fla. He expects to move to Apalachicola full-time once he begins early retirement in about two years.

FMSF FR 469

Map 1400 Bay City  
Map No 0720 17 1997  
Scale 1:31,250 (at center)

2000 Feet

1000 Meters

Secondary SR/Road/Key Ramp

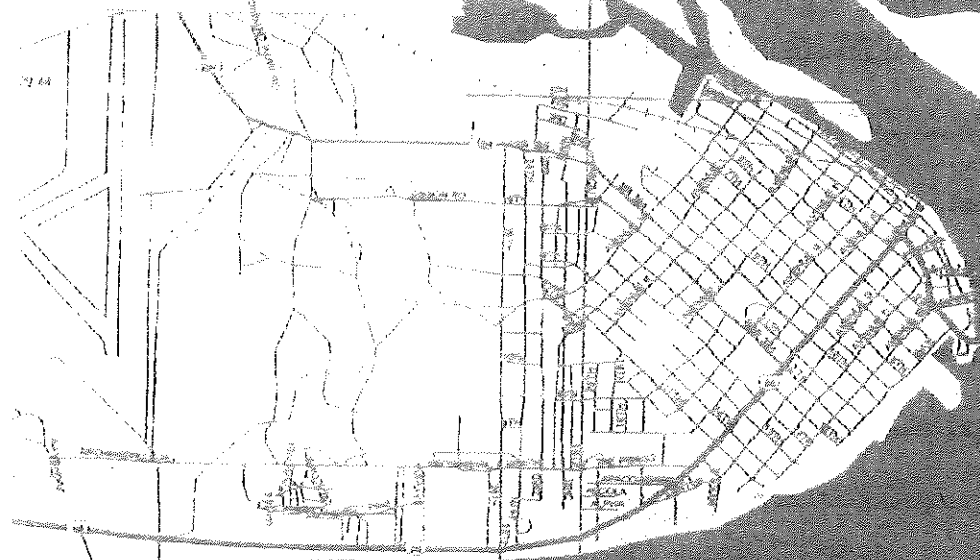
Major Connector

State Route

US Highway

Roadway

County Seat

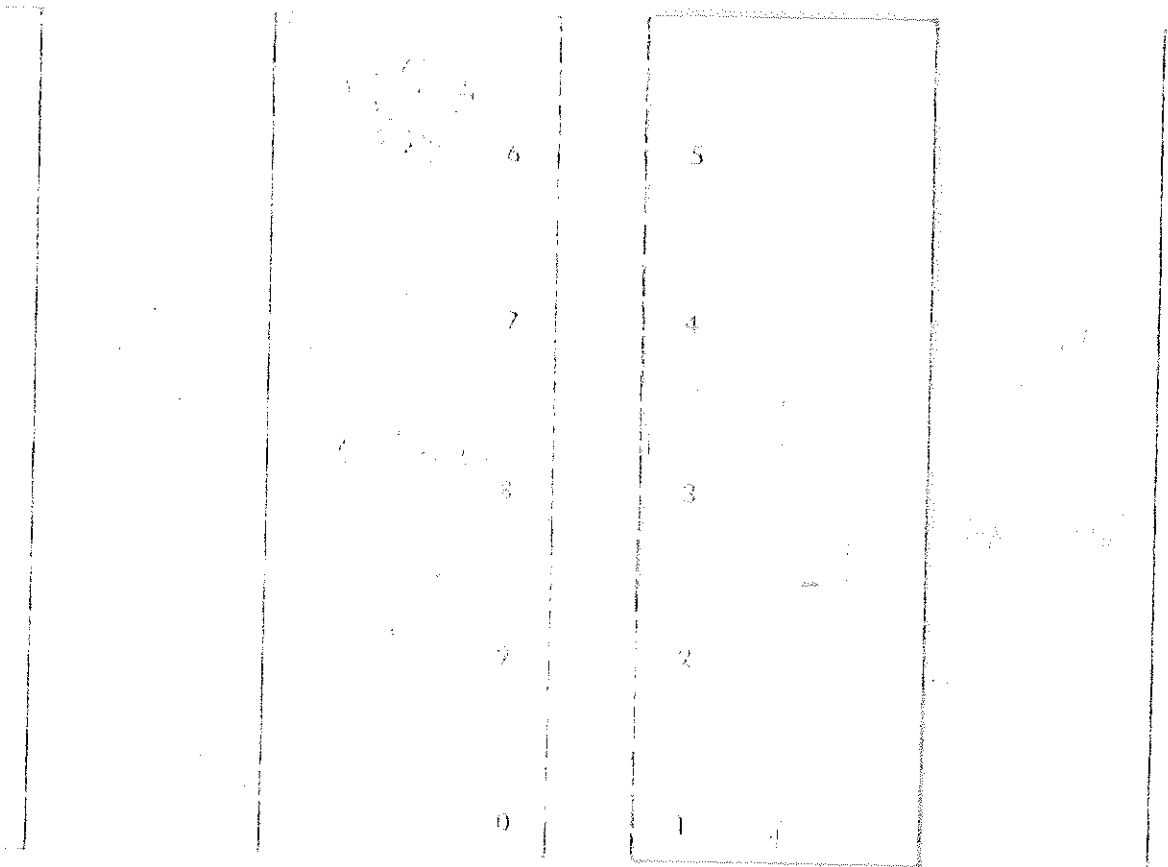


29 47

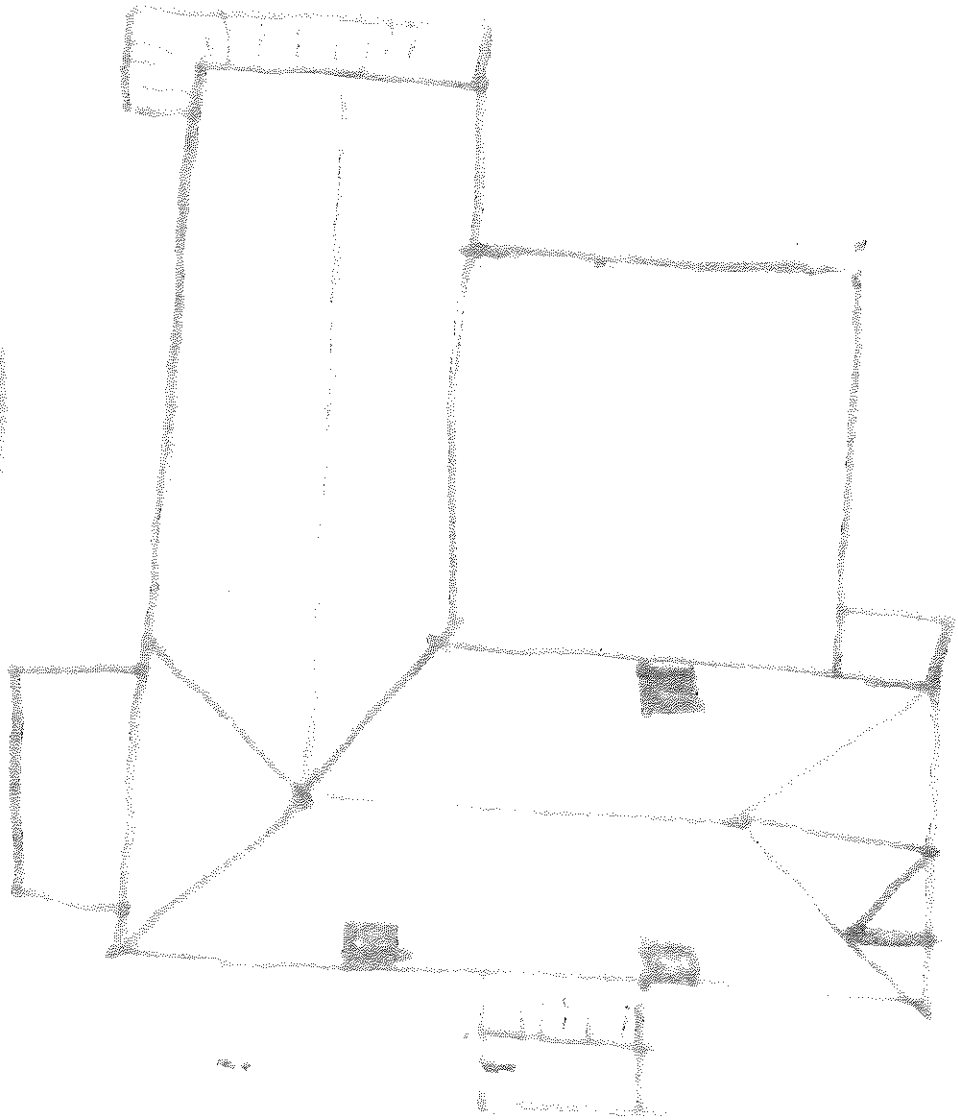
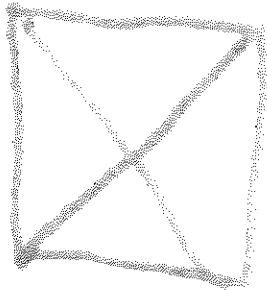
# APALACHICOLA ARCHITECTURAL SURVEY

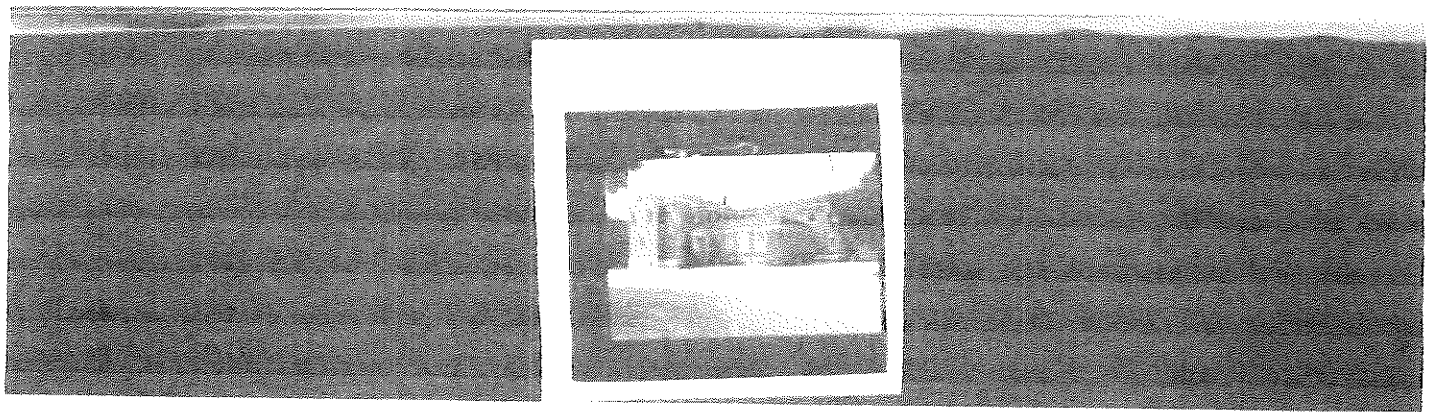
CLOCK NUMBER 6

SCALE: 1" = 40'







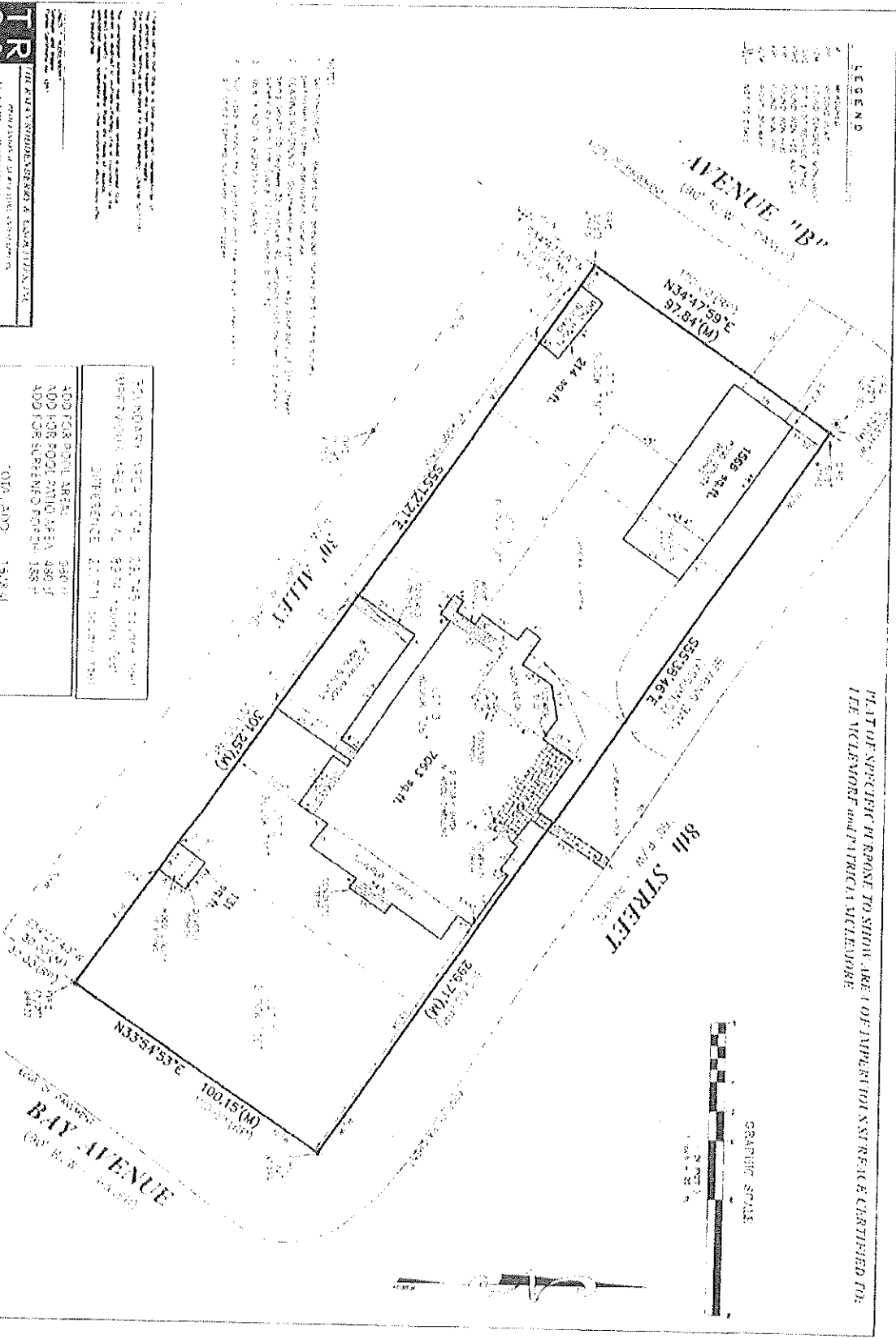
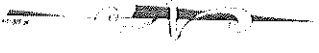




**LEGEND**

- 1. LOT AREA
- 2. LOT PERCENTAGE
- 3. LOT COVER
- 4. LOT AREA
- 5. LOT PERCENTAGE
- 6. LOT COVER
- 7. LOT AREA
- 8. LOT PERCENTAGE
- 9. LOT COVER
- 10. LOT AREA
- 11. LOT PERCENTAGE
- 12. LOT COVER

PLAT OF SPECIFIC PROPOSE TO SHOW AREA OF IMPROVED STREET & CERTIFIED TO:  
LEE WICKMONT and PATRICIA MCLENNOR



1. IMPROVED STREET SHALL BE PAVED WITH 4" CONC. ON 8" SAND AND 4" GRAVEL.
2. CURBS SHALL BE 18" HIGH AND 12" WIDE.
3. SIDEWALKS SHALL BE 4' WIDE AND 4" CONC. ON 4" SAND AND 4" GRAVEL.
4. ALL UTILITIES SHALL BE DEEPENED TO 48" BELOW FINISHED GRADE.
5. ALL UTILITIES SHALL BE COVERED WITH 12" CONC. ON 4" SAND AND 4" GRAVEL.
6. ALL UTILITIES SHALL BE MARKED WITH RED PAINT AND 2" X 4" WOOD POSTS.
7. ALL UTILITIES SHALL BE MARKED WITH RED PAINT AND 2" X 4" WOOD POSTS.

FORWARD COST OF 100% IMPROVED STREET SHALL BE PAID BY THE APPLICANT.  
FORWARD COST OF 100% IMPROVED SIDEWALKS SHALL BE PAID BY THE APPLICANT.  
DIFFERENCE BETWEEN 100% IMPROVED STREET AND 100% IMPROVED SIDEWALKS SHALL BE PAID BY THE APPLICANT.

ADD FOR SIDE AREA: 35.65%  
ADD FOR FOOT PATH AREA: 35.65%  
ADD FOR SIDEWALK: 35.65%

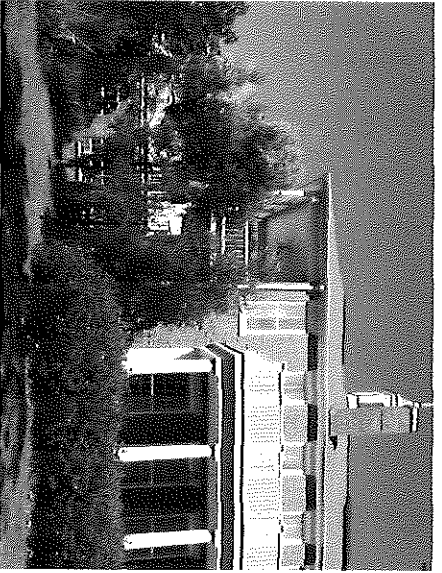
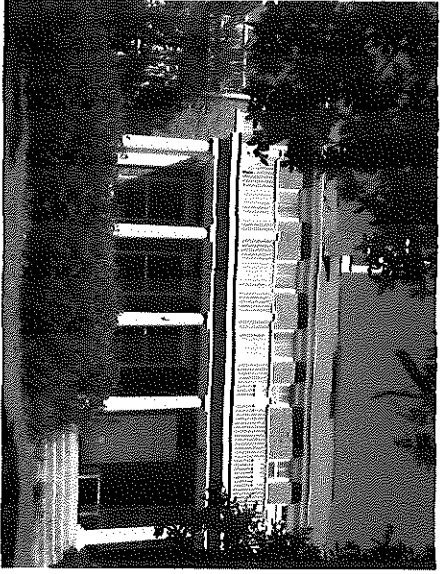
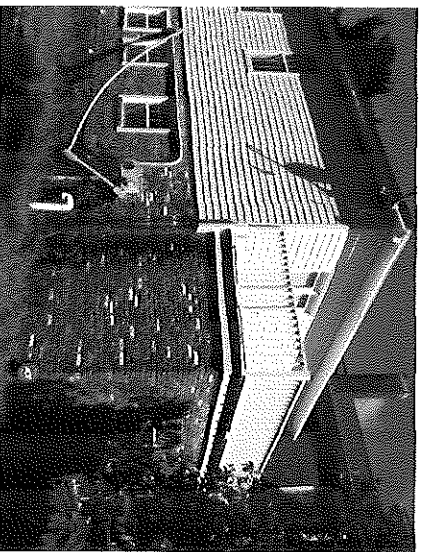
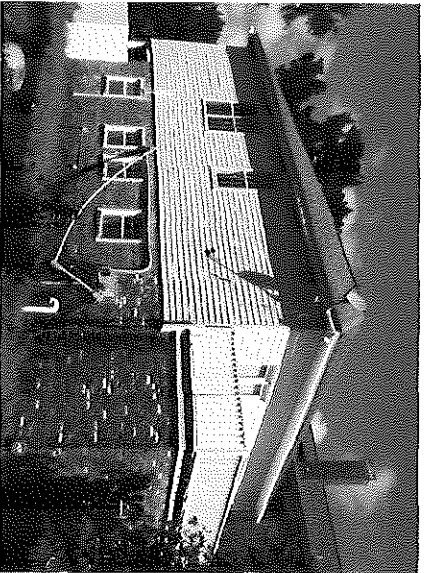
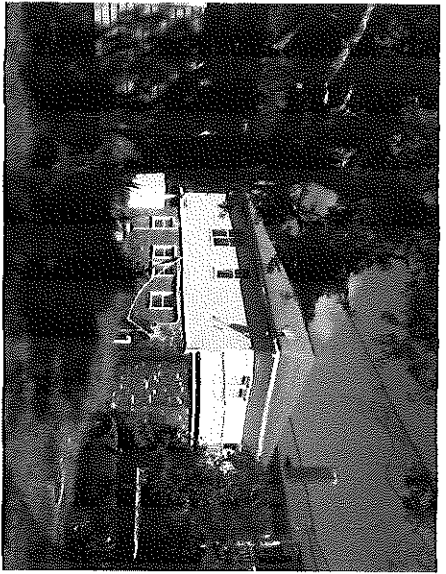
TOTAL ADD: 100.15'  
NEW TOTAL: 100.15' + 100.15' = 200.30'  
PERCENT LOT COVERAGE: 35.65%

**TR & A**

THE REALTY TRADING COMPANY & ASSOCIATES, INC.

1000 BAY AVENUE, SUITE 100, OAKLAND, CA 94612

DATE: 11/20/00  
DRAWN BY: JH  
CHECKED BY: JH  
SCALE: AS SHOWN  
JOB NUMBER: 1000



**Mc LEMORE / REVISIONS**

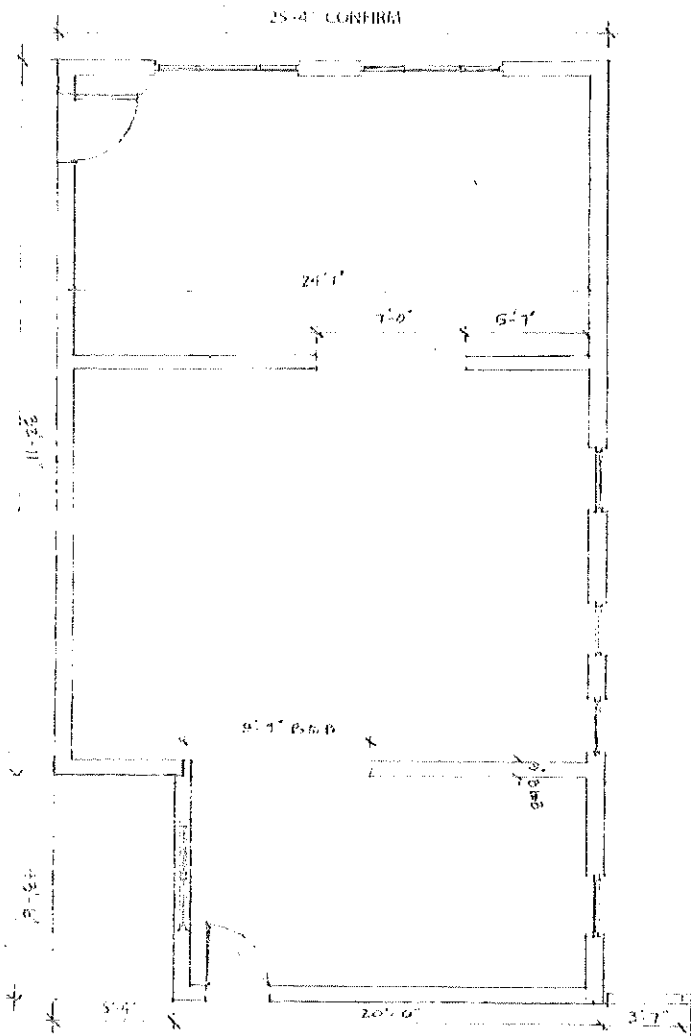
DATE: 30 NOVEMBER 2017

**george coon inc**

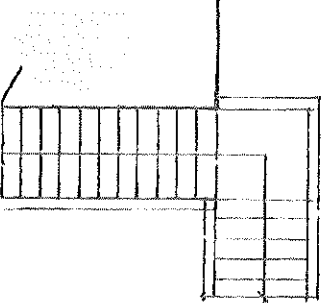
residential · planning · design

252 Sixth Street - Annapolis, MD 21403 - (410) 293-6898 - georgecoon@gmail.com

**A0**



MEASURED EXISTING BUILDING  
SCALE: 3/16"



McLEMORE / REVISIONS

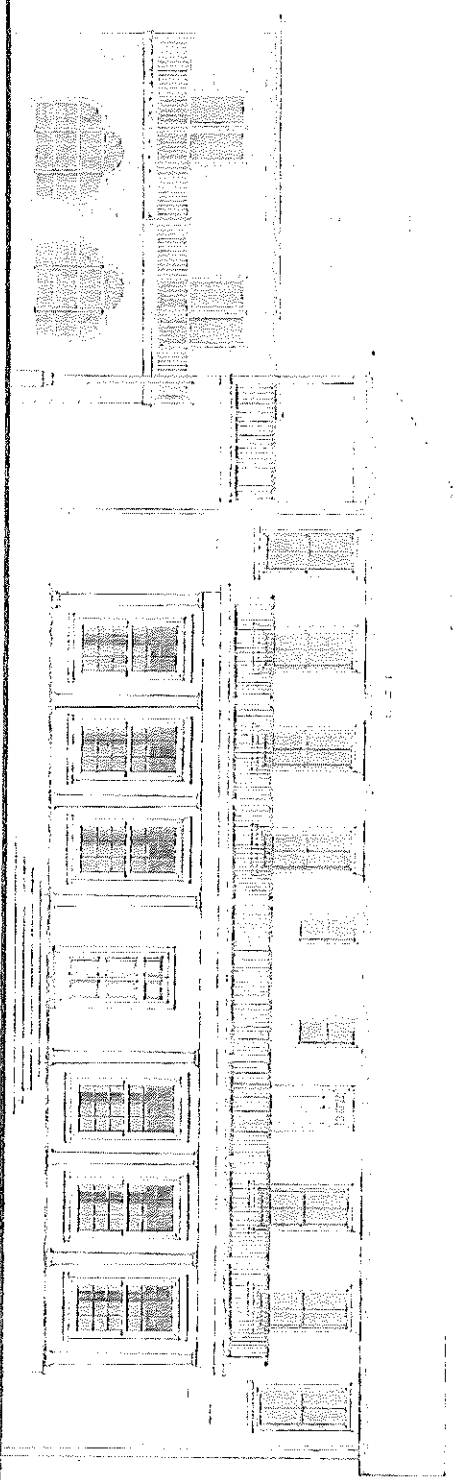
DATE: 30 NOVEMBER 2017

george coon inc

interior design

1000 W. 10th St. Suite 1000, Vancouver, BC V6H 2G6

A1



EXISTING 2 STORY BUILDING

EXISTING RESIDENCE

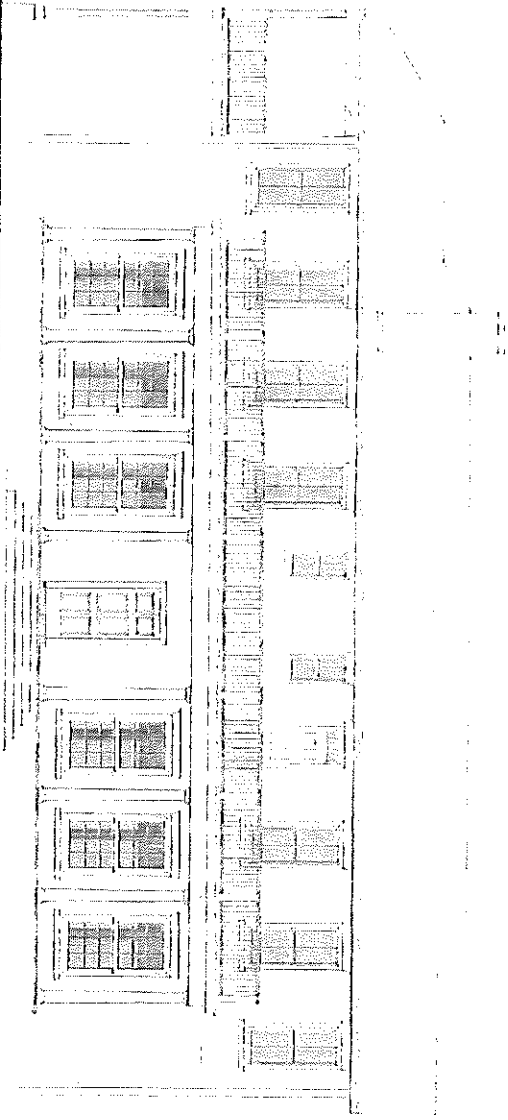
McLEMORE / REVISIONS

DATE: 30 NOVEMBER 2017

george coon inc

interior design

A3



McLEMORE / REVISIONS

DATE: 30 NOVEMBER 2017

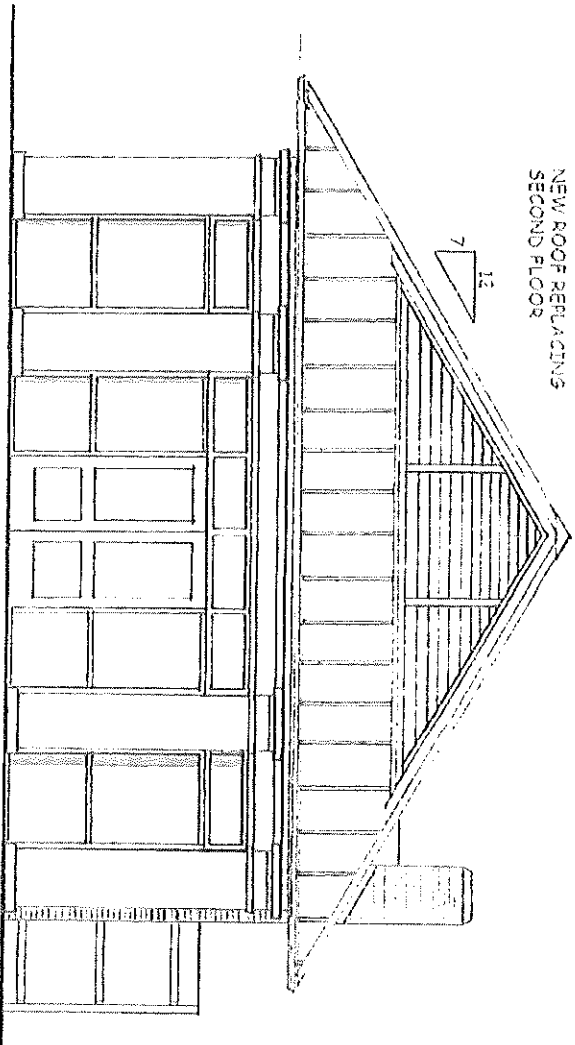
George coon inc

phone no 20 1271

A4



NEW ROOF REPLACING  
SECOND FLOOR



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

**MCLEMORE / REVISIONS**

DATE: 30 NOVEMBER 2017

George coon inc

owner's design

A7

GEORGE COON INC. 1501 1/2 AVENUE, SUITE 100, GEORGETOWN, ONTARIO, CANADA

## Cortni Bankston

---

**From:** Caroline Kienzle <caroline.kienzle@gmail.com>  
**Sent:** Sunday, May 20, 2018 5:08 PM  
**To:** Anna-Maria Cannatella; Cortni Bankston  
**Subject:** McLemore Request BOA

Dear BOA:

We are neighbors of the McLemore's. We have discussed their plans to enhance the historic structure on their property with a screened in porch. We support their plans.

We encourage you to consider the positive effects this will have on this historic property.

Sincerely,  
Charley and Carrie Kirnzle  
15 8th Street  
Apalachicola, Fl

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**To:** cortnibankston@cityofapalachicola.com; bridgessouth@gtcom.net;  
caroline.kienzle@gmail.com  
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Thank you in advance for your attention to this matter.

Sincerely,

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115 Avenue B  
Apalachicola, Florida

Sent from my iPhone

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**Sent:** Sunday, May 20, 2018 2:57 PM  
**To:** cortnibankston@cityofapalachicola.com; caroline.kienzle@gmail.com; bridgessouth7@gmail.com  
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I appreciate your consideration of my opinion. Thank you.

Sincerely,  
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## Cortni Bankston

---

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**Sent:** Sunday, May 20, 2018 2:06 PM  
**To:** cortnibankston@cityofapalachicola.com; Caroline Kienzle  
**Cc:** Bridgessouth7@gmail.com; Mark and Elizabeth Milliken  
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Mark and Elizabeth Milliken  
11 9th Street  
Apalachicola

## Cortni Bankston

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**From:** Diane Brewer <dianekbrewer@yahoo.com>  
**Sent:** Friday, May 18, 2018 7:05 PM  
**To:** Caroline Kienzle; Cortni Bankston  
**Subject:** Variance application of Mc:Lemores  
**Attachments:** BOA variance app McLemore0001.pdf

Please see the attached documents.

**Diane Brewer**  
[dianekbrewer@yahoo.com](mailto:dianekbrewer@yahoo.com)  
954-258-5834

May 16, 2018

Ms. Cortni Bankston  
Building Department  
City of Apalachicola  
192 Coach Wagoner Street  
Apalachicola, Fl. 32320

RE: Variance application of Lee & Patricia McLemore, 101 Bay Avenue

Dear Cortni,

I represent the Historic Apalachicola Foundation Inc., a local not-for-profit founded by Marie Marshall and others in 1988 whose mission is to protect and preserve the unique and precious features of Apalachicola.

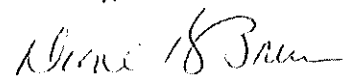
The application for a variance to expand a non-conforming structure which already encroaches into the alley should be DENIED for several reasons. The alleys are fundamental to the 1831 plat of this City and pre-date the "historic structure" the McLemores seek to expand. The alleys belong to the citizens of Apalachicola which the City holds in trust for the public (Roney Inv. Co. v. City of Miami Beach, 174 So.26,29 (Fla, 1937) copy attached) thus requests to build or expand anything into them should be DENIED as a matter of City policy and practice. In fact, these applicants should be made to remove the existing encroachments, not expand them. Further, the City's Land Development Code definition #204 states "expansion of a use otherwise prohibited shall not be allowed by a variance, nor shall a variance be granted because of the presence of non-conformities..." and Section III Enforcement and Administration states "no non-conforming... structures...shall be considered as grounds for issuance of a variance..."

The Board of Adjustment may grant applications when the applicants sufficiently document a hardship. This is not the situation of these applicants. They own all five lots on the east side of their block and could easily redesign and relocate what they wish to build entirely within the boundaries of the property they own.

For these reasons, I am asking the City and its Board of Adjustment to DENY this application. Please provide copies of this letter to each member of the Board.

For the good of the City,

Sincerely,



Diane K. Brewer  
159 Avenue B

Court exclude the admission into evidence of any and all documentary and testimonial evidence related to ECF No. 39-39, ECF No.39-40, ECF No. 39-41, ECF No. 38-8, ECF No.42-2 and ECF No. 39-17.

Section 26 of the City's alleged agreement with Denton Cove (ECF No.39-40, ECF No. 39-41, ECF No. 38-8, and ECF No.42-2) is void based upon public policy.

Even if the City's alleged contracts were not void based upon a violation of Florida Sunshine Law and the doctrine of sovereign immunity, Section 26 of these contracts, relating to the obligation to abandon streets and alleys, is void based upon public policy.

"That the Legislature exercises plenary control over public highways, whether they be public state or county roads or streets in municipalities, is established beyond question in this state." Roney Inv. Co. v. City of Miami Beach, 174 So. 26, 29 (Fla. 1937). "Also, it has been recognized that a city has not power to sell or barter the streets and alleys which it holds in trust for the benefit of the public and cannot vacate a street for the benefit of a purely private interest." Id. at 29. See also, AGO 078-125 [recognizing that "[i]t would be beyond the power of a city to grant or



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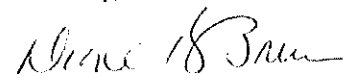
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Sincerely,  
Eloise V. Nichols

**Permit Application Review/C. Bankston**  
**April 29, 2019**

**Project:** Patricia McLemore  
**Address:** 101 Bay Avenue  
**Overview:** Pool

**Zoning:** R-1 (Consistent)

**Lot Size:** 5 Lots (Consistent)

**Flood Zone:** X

**Setbacks:** Proposed pool is 5' from rear property line (Consistent)

**Height:**

**Lot Coverage:** 38.8% (Consistent)

**CITY OF APALACHICOLA  
CERTIFICATE OF APPROPRIATENESS APPLICATION**

**-HISTORIC DISTRICT ONLY-**

Official Use Only

Application # \_\_\_\_\_  
City Representative \_\_\_\_\_  
Date Received \_\_\_\_\_

**OWNER INFORMATION**

**CONTRACTOR INFORMATION**

Owner Patricia Lee Mc Lemore  
Address 101 Bay Ave  
City Apalachicola State FL Zip 32320  
Phone (850) 653-7160

State License # @PCD 56661  
City License # \_\_\_\_\_ County License # \_\_\_\_\_  
Email Address TDHOLMES2@comcast.net  
Phone (850) 832 3232

Approval Type: [ ] Staff Approval Date: \_\_\_\_\_ [ ] Board Approval [ ] Board Denial Date \_\_\_\_\_

\*Reason for Denial \_\_\_\_\_

**PROJECT TYPE**

- New Construction
- Addition
- Alteration/Renovation
- Relocation
- Demolition

- Fence
- Repair (Extensive)
- Variance

Other: Swimming Pool

**PROPERTY INFORMATION:**

Street Address: 101 Bay Ave City & State Apalachicola FL Zip 32320

Historic District [ ] Non-Historic District Zoning District R-1

Parcel #: 01-09S-08W-8330-0036-0010 Block(s) 36 Lot(s) 12, 3, 4 & 5

FEMA Flood Zone/Panel #: X  
(For AE, AO, AH or VE Please complete attached Flood Application)

**OFFICIAL USE ONLY**

**Setback requirement of Property:**

Front: \_\_\_\_\_ Rear: 5 Side: 10 Lot Coverage: 38.84%

Water Available: \_\_\_\_\_ Sewer Available: \_\_\_\_\_ Taps Paid \_\_\_\_\_

This development request has been approved for zoning, land use, and development review by the City of Apalachicola and a building permit is authorized to be issued.

Certificate of Appropriateness Approval:

\_\_\_\_\_  
Chairperson, Apalachicola Planning & Zoning Board

**NOTE:** This is a conceptual approval through the City based on our Land Development Code (LDC). Please be aware that other documentation may be required by the Building Official contracted to handle the City of Apalachicola Building Permits, EPCI.

Cortni Bankston  
Permitting and Development Coordinator  
(850) 658-1522 (ext 205) Phone  
(850)658-5028 Cell  
cortnibankston@cityofapalachicola.com



Describe The Proposed Project and Materials. Describe the proposed project in terms of size, affected architectural elements, materials, and relationship to the existing structure(s).

Construction of 18x36 pool + deck

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| Project Scope       | Manufacturer | Product Description | FL Product Approval # |
|---------------------|--------------|---------------------|-----------------------|
| Siding              |              |                     |                       |
|                     |              |                     |                       |
| Doors               |              |                     |                       |
|                     |              |                     |                       |
| Windows             |              |                     |                       |
|                     |              |                     |                       |
| Roofing             |              |                     |                       |
|                     |              |                     |                       |
| Trim                |              |                     |                       |
|                     |              |                     |                       |
| Foundation          |              |                     |                       |
|                     |              |                     |                       |
| Shutters            |              |                     |                       |
|                     |              |                     |                       |
| Porch/Deck          |              | pavers              |                       |
|                     |              |                     |                       |
| Fencing             |              |                     |                       |
|                     |              |                     |                       |
| Driveways/Sidewalks |              |                     |                       |
|                     |              |                     |                       |
| Other               |              |                     |                       |
|                     |              |                     |                       |

## CERTIFICATION

By Signing below, I certify that the information contained in this application is true and correct to the best of my knowledge at the time of application. I acknowledge that I understand and have complied with all of the submittal requirements and procedures and have read and understand the following:

1. I/We hereby attest to the fact that the above supplied property address(es), parcel number(s), and legal description(s) is(are) the true and proper identification of the area of this petition.
2. I/We authorize staff from the City of Apalachicola and the Permitting and Community and Economic Development Office to enter onto the property in question during regular city business hours in order to take photos which will be placed in the permanent file.
3. I/We understand that the COA review time period will not commence until the application is deemed complete by staff and may take up to 10 days to process. I further understand that an incomplete application submittal may cause my application to be deferred to the next posted deadline date.
4. I/We understand that, for Board review cases, an agenda and staff report (if applicable) will be available on the City's website approximately one week before the schedule Planning and Zoning Board Meeting.
5. I/We understand that the approval of this application by the Planning and Zoning Board or staff in no way constitutes approval of a Building Permit for construction from the City of Apalachicola Community and Economic Development Office.
6. I/We understand that all changes to the approved scope of work stated in a COA have to be approved by the PZB before work commences on those changes. There will be no charge for the revision to a COA. Making changes that have not been approved can result in a Stop Work Order being placed on the entire project and additional fees/penalties.
7. I/We understand that any decision of the PZB may be appealed to the City Commission. Petitions to appeal shall be presented within thirty (30) days after the decision of the PZB; otherwise the decision of the PZB will be final.
8. I/We understand that a Certificate of Appropriateness is only valid for one year from issuance. They are renewable for six months without cause, and for an additional six months, upon showing of good cause by the applicant. The applicant must submit all requests for extensions in writing and provide appropriate support documentation, if needed.
9. I/We understand that the COA is hereby made to obtain a permit to do work and installation as indicated. I certify that all work will be performed to meet standards of all laws regulating construction in this jurisdiction.
10. I/We understand that separate permits are required for Electrical, Plumbing, Mechanical, and Roofing Work.
11. I/We understand that there will be no issuance of a COA without the property owner obtaining Homeowner's Association approval (if required) prior to the PZB Meeting and/or before the beginning of any work and in no way authorizes work that is in violation of any association rule or regulation.

25 April 2019  
DATE

  
SIGNATURE OF APPLICANT

**EPCI**  
**APALACHICOLA BUILDING DEPARTMENT**

APPLICATION FOR BUILDING PERMIT

Official Use Only

DATE: \_\_\_\_\_ Permit # \_\_\_\_\_ Permit Fee \_\_\_\_\_

OWNER'S NAME: Patricia d Lee McNamee

ADDRESS: 101 Bay Ave

CITY, STATE & ZIP CODE: Apalachicola Fl. 32820 PHONE # 850 653-7110

FEE SIMPLE TITLE HOLDER (IF OTHER THAN OWNER): \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY, STATE & ZIP CODE: \_\_\_\_\_ PHONE # \_\_\_\_\_

CONTRACTOR'S NAME: Cox Pools

ADDRESS: 12216 Panacea City Beach PK WAY

CITY, STATE & ZIP CODE: PCB FL 32407 PHONE # 850 235-7957

STATE LICENSE NUMBER: CPC05661 COMPETENCY CARD # \_\_\_\_\_

ADDRESS OF PROJECT: 101 Bay Ave

PROPOSED USE OF SITE: Swimming Pool

WILL THE STRUCTURE BE LOCATED AT LEAST 30 FEET FROM ANY BODY OF WATER?  YES  
 NO

PROPERTY PARCEL ID # 01-095-08W-8330-0036-0010

LEGAL DESCRIPTION OF PROPERTY: BL 36 Lots 1,2,3,4 and 5 or 205/440

IF THE APPLICATION IS FOR A COMMERCIAL PROJECT PLEASE LIST THE NAME OF THE BUSINESS:

BONDING COMPANY: \_\_\_\_\_

ADDRESS: \_\_\_\_\_ CITY, STATE & ZIP: \_\_\_\_\_

ARCHITECT'S/ENGINEER'S NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_ CITY, STATE & ZIP: \_\_\_\_\_

MORTGAGE LENDER'S NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_ CITY, STATE & ZIP: \_\_\_\_\_

WATER SYSTEM PROVIDER: \_\_\_\_\_ SEWER SYSTEM PROVIDER: \_\_\_\_\_

PRIVATE WATER WELL: \_\_\_\_\_ SEPTIC TANK PERMIT NUMBER: \_\_\_\_\_

pool 18x36

Application is hereby made to obtain a permit to do the work and installations as indicated. I certify that NO WORK or installation has commenced prior to the issuance of a permit and that all work will be performed to meet the standards of all laws regulating construction in this jurisdiction. I understand that a separate permit must be secured for electrical work, plumbing, signs, roofing, pools, furnaces, boilers, heaters, tanks, and air conditioners, etc.

**PURPOSE OF BUILDING:**

Single Family       Townhouse       Commercial       Industrial  
 Duplex       Swimming Pool       Storage       Sign  
 Multi-Family       Demolition       Other  
 Addition, Alteration or Renovation to building.

Distance from property lines: Front 201 Rear 63 L. Side 9 to Pool  
 R. Side 70  
 Cost of Construction \$ 46,400.00 Square Footage 648' Pool  
 EPI \_\_\_\_\_ Flood Zone X Lowest Floor Elevation \_\_\_\_\_  
 Area Heated/Cooled \_\_\_\_\_ # Of Stories \_\_\_\_\_ # Of Units \_\_\_\_\_  
 Type of Roof \_\_\_\_\_ Type of Walls \_\_\_\_\_ Type of Floor \_\_\_\_\_  
 Extreme Dimensions of: Length 36' Height \_\_\_\_\_ Width 18'

**WARNING TO OWNER:** YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOU PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT. For improvements to real property with a construction cost of \$2,500 or more, a certified copy of the Notice of Commencement is required to be submitted to this Department when application is made for a permit or the applicant may submit a copy of the Notice of Commencement along with an affidavit attesting to its recording. A certified copy of the Notice of Commencement must be provided to this Department before the second or any subsequent inspection can be performed. Filing of the documents that have been certified may be done by mail, facsimile or hand delivery.

**NOTICE:** EPC/C The EPC/City of Apalachicola Building Department does not have the authority to enforce DEED RESTRICTIONS or COVENANTS on properties.

**OWNER'S AFFIDAVIT:** I hereby certify that the information contained in this application is true and correct to the best of my knowledge. And that all work will be done in compliance with all applicable laws regulating construction and zoning.

[Signature]  
Signature of Owner or Agent


[Signature]  
Signature of Contractor

Date: 22 April 2019


Date: 23 April 2019

[Signature]  
Notary as to Owner or Agent

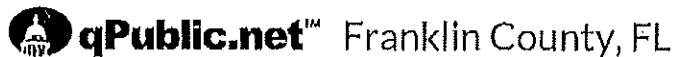
[Signature]  
Notary as to Contractor


 THOMAS R. HOLMES  
 Commission # GG 734534  
 Expires December 16, 2021  
 APPROVED BY: \_\_\_\_\_

My Commission expires 3-31-21


 TAMI TAYLOR  
 MY COMMISSION # GG81266  
 EXPIRES: March 31, 2021

BUILDING OFFICE



**Parcel Summary**

Parcel ID 01-095-08W-8330-0036-0010  
 Location Address 101 BAY AVE  
 32320  
 Brief Tax Description\* BL 36 LOTS 1,2,3,4, & 5 OR 205/440 232/10 278/289 448/262  
 \*The Description above is not to be used on legal documents.  
 Property Use Code SINGLE FAM (000100)  
 Sec/Twp/Rng 1-9S-8W  
 Tax District Apalachicola (District 3)  
 Millage Rate 21.853  
 Acreage 0.000  
 Homestead Y

[View Map](#)

**Owner Information**

Primary Owner  
 Mclemore Lee & Patricia M  
 P.O. Box 183  
 Apalachicola, FL 32320

**Land Information**

| Code   | Land Use | Number of Units | Unit Type | Frontage | Depth |
|--------|----------|-----------------|-----------|----------|-------|
| 000000 | VAC RES  | 240.00          | FF        | 0        | 0     |
| 000000 | VAC RES  | 60.00           | UT        | 0        | 0     |

**Residential Buildings**

Building 1  
 Type SINGLE FAM  
 Total Area 9,000  
 Heated Area 6,778  
 Exterior Walls COMMON BRK  
 Roof Cover COMP SHINGL  
 Interior Walls DRYWALL  
 Frame Type MASONRY  
 Floor Cover PINE WOOD  
 Heat AIR DUCTED  
 Air Conditioning CENTRAL  
 Bathrooms 0  
 Bedrooms 0  
 Stories 2  
 Effective Year Built 1930

Building 2  
 Type SINGLE FAM  
 Total Area 2,425  
 Heated Area 1,000  
 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 0  
 Effective Year Built 1930

**Extra Features**

| Code | Description    | Number of Items | Length x Width x Height | Units | Unit Type | Effective Year Built |
|------|----------------|-----------------|-------------------------|-------|-----------|----------------------|
| 0620 | SHED MT        | 1               | 24x12x0                 | 288   | SF        | 1996                 |
| 0040 | BARN,POLE      | 1               | 25x49x0                 | 1,225 | SF        | 2007                 |
| 1037 | CONCRETE STEPS | 1               | 4x6x0                   | 24    | SF        | 1930                 |
| 0300 | STEPS          | 1               | 23x4x0                  | 92    | SF        | 1930                 |

**Sales**

| Mult Parcel | Sale Date  | Sale Price | Instrument | Book | Page | Qualification | Vacant/Improved | Grantor            | Grantee  |
|-------------|------------|------------|------------|------|------|---------------|-----------------|--------------------|----------|
| N           | 04/18/1994 | \$160,000  | WD         | 448  | 262  | Qualified (Q) | Improved        | DAVOLI             | MCLEMORE |
| N           | 08/08/1988 | \$109,905  | WD         | 278  | 259  | Qualified (Q) | Improved        | FLA TRUST FOR HIST | DAVOLI   |

**Valuation**

|                                    | 2018 Preliminary<br>Certified | 2018 Certified | 2017 Certified | 2016 Certified | 2015 Certified |
|------------------------------------|-------------------------------|----------------|----------------|----------------|----------------|
| Building Value                     | \$194,430                     | \$189,145      | \$194,430      | \$199,714      | \$199,714      |
| Extra Features Value               | \$14,298                      | \$14,298       | \$14,298       | \$14,298       | \$14,298       |
| Land Value                         | \$366,000                     | \$540,000      | \$366,000      | \$366,000      | \$318,000      |
| Land Agricultural Value            | \$0                           | \$0            | \$0            | \$0            | \$0            |
| Agricultural (Market) Value        | \$0                           | \$0            | \$0            | \$0            | \$0            |
| Just (Market) Value                | \$574,728                     | \$743,443      | \$574,728      | \$580,012      | \$532,012      |
| Assessed Value                     | \$134,994                     | \$137,559      | \$132,217      | \$129,498      | \$128,598      |
| Exempt Value                       | \$50,000                      | \$50,000       | \$50,000       | \$50,000       | \$50,000       |
| Taxable Value                      | \$84,994                      | \$87,559       | \$82,217       | \$79,498       | \$78,598       |
| Maximum Save Our Homes Portability | \$439,734                     | \$605,884      | \$442,511      | \$450,514      | \$403,414      |

"Just (Market) Value" description - This is the value established by the Property Appraiser for ad valorem purposes. This value does not represent anticipated selling price.

**Sketches**









Cortni Bankston <cityofapalachicola@gmail.com>

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**FW: Appeal of Board of Adjustment Variance Decision and Records Request**

2 messages

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Deborah Guillotte <deborahguillotte@cityofapalachicola.com>

Thu, Jul 25, 2019 at 8:07 AM

To: Cortni Bankston <cityofapalachicola@gmail.com>

Hey Cortni – Can you get this information together for me so I can get the public records request to me by Friday. Thanks

---

**From:** Ron Nalley [mailto:rnalley@cityofapalachicola.com]  
**Sent:** Wednesday, July 24, 2019 6:11 PM  
**To:** deborahguillotte@cityofapalachicola.com; 'Cortni Bankston'  
**Cc:** Pat Floyd  
**Subject:** FW: Appeal of Board of Adjustment Variance Decision and Records Request

Deborah and Cortni,

Please see the attached letter from Mr. Volpe regarding the McLemore Variance decision. There are several requests contained in the letter (e.g. public records request, public notice request). Please make sure that we comply with those requests.

Thank you,

Ron Nalley

City Manager

**City of Apalachicola**

1 Avenue E

Apalachicola, FL 32320

Telephone (850) 653-9319

Fax (850) 653-2205

rnalley@cityofapalachicola.com

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**From:** Kenda Baxter [mailto:KendaB@hgslaw.com]  
**Sent:** Wednesday, July 24, 2019 3:12 PM  
**To:** rnalley@cityofapalachicola.com  
**Cc:** j.patrickfloyd@jpatrickfloyd.com; dianekbrewer@yahoo.com; mariewib67@gmail.com; Robert Volpe  
**Subject:** Appeal of Board of Adjustment Variance Decision and Records Request

Dear Mr. Nalley:

Please see attached letter from Robert C. Volpe of Hopping Green & Sams.

Thank you,

***Kenda B. Baxter,***

*Legal Assistant to Vinette D. Godelia, David L. Powell, Robert C. Volpe, and Valerie Chartier*

*Recruiting Coordinator*

**Hopping Green & Sams, P.A.**

119 South Monroe Street, Suite 300

Tallahassee, FL 32301

850.425.3461

850.521.2861 Fax | hgslaw.com |

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 Letter\_to\_Apalachicola\_City\_Manager\_Ron\_Nalley.pdf  
117K

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**Cortni Bankston** <cityofapalachicola@gmail.com>  
To: Deborah Guillotte <deborahguillotte@cityofapalachicola.com>

Fri, Jul 26, 2019 at 7:31 AM

If you should have any questions and/or concerns please feel free to contact me.

Sincerely,


Cortni Bankston  
Permitting and Development Coordinator  
& Building Manager @ The Mayor Van W. Johnson Sr. Recreation & Community Service Complex  
192 Coach Wagoner Blvd  
Apalachicola, FL 32320  
(850)653-1522 Phone


[Quoted text hidden]


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**4 attachments**

 Email & Mail Correspondence for McLemore.pdf  
1138K

 **Letter.pdf**  
472K

 **5-21-2018 QJ Agenda Packet.pdf**  
4818K

 **Email Correspondence.pdf**  
105K

**Lee Mathes**

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**From:** Cindy Clark <cclark@cityofapalachicola.com>  
**Sent:** Friday, July 13, 2018 10:50 AM  
**To:** Pat Floyd; Lee Mathes  
**Subject:** FW: McLemore swimming pool.

---

**From:** Frederick Vogt <maryfred51@sbcglobal.net>  
**Date:** Friday, July 13, 2018 at 10:39 AM  
**To:** <dwinterringer@mediacombb.net>  
**Cc:** Cindy Clark <cclark@cityofapalachicola.com>  
**Subject:** Re: McLemore swimming pool.

Greetings Dennis & Cindy,

Yes Dennis, given the documentation you have found, I agree with your interpretation and concern that swimming pools should not be allowed within the setbacks. At least we should explore this subject of swimming pools (in ground & above ground) in the near future for possible revisions to the LDC.

In the case of the proposed McLemore pool, I'm surprised to see they decided to place it so close to the Alley. I would think they would want to move it more to the east to gain some more privacy- leave room for dense foliage between the pool and the Alley property line.

While we are on the subject of the McLemore site; Cindy, will you inform Wilbur that the McLemore's have a very large metal shipping container well within their 8th St. setback ? It's along side of their large garage in the northeast corner. An obvious code violation - right?

All the best, F.

Sent from my iPhone

On Jul 13, 2018, at 9:35 AM, [dwinterringer@mediacombb.net](mailto:dwinterringer@mediacombb.net) wrote:

In their attached variance application, the McLemore's included a drawing which shows that they want to locate a swimming pool 2 feet from their property line adjacent to the alley. They didn't ask for a variance to locate the pool in this location, and I don't think they need one based on my review of the LDC requirements (inserted after the row of asterisks below). I'm surprised that a pool can be built that close to the property line.

During my review of your draft encroachment LDC amendment, I searched Tallahassee's land development code requirements for the word "encroach." When I did so, I found that Tallahassee allows swimming pools only in side and rear yards and not in any required building setback.

In Apalachicola, I don't think swimming pools should be allowed to be built in any building setback and that the Land Development Code should accordingly be revised. Do you agree?

\*\*\*\*\*  
\*\*\*\*\*

McLemore swimming pool.

One of the surveyor's drawings shows the proposed location of the proposed 16-foot by 32-foot pool. The drawing apparently shows a 3-foot wide concrete apron around all sides of the pool.

The entire 3-foot width of the apron on the southwest side of the pool is within 5 feet of the property boundary next to the alley.

The LDC Chapter II definition of "building setback" is as follows.

"34. **Building Setback**- the minimum horizontal distance between the front, rear or side lines of the lot and the front, rear and sides of the building. When two (2) or more lots under one (1) ownership are used, the exterior property lines so grouped shall be used in determining building setback when the interior common lot line is straddled by the principal structure."

As further defined in LDC Chapter II, "building" and "structure" are defined as:

"29. **Building**- Any structure designed or built for support, enclosure, shelter, or protection of persons, animals, chattels or property of any kind. "Building" shall include "Structure". Any structure constructed or used for a residence, business, industry or other private or public purposes, including structures that are accessory to such uses, provided such structure are in compliance with the Southern Standard Building Code."

"193. **Structure**- Anything constructed, erected or placed, the use of which requires more or less permanent location the ground, or anything attached to something having a permanent location on the ground and used or intended for business or living quarters, excluding fences not over six (6) feet above the natural grade."

My interpretation of these definitions is that the proposed swimming pool is a "structure" but not a "building." Accordingly, the "building" setbacks do not apply to this structure. The pool may be located 2 feet from the lot line, providing the Planning and Zoning Board approves it.

LDC Chapter II defines "lot coverage" as:

"127. **Lot Coverage**- The area of the lot covered by the ground floor of all principal and accessory uses and structures, including all areas covered by the roof of such uses and structures, measured along the exterior faces of the walls, along the foundation wall line, between the exterior faces of supporting columns, from the center line of walls separating two (2) buildings or as a combination of the foregoing, whichever produces the greatest total ground coverage for such uses and structures. Lot coverage, shall also include all impervious surfaces such as drives, parking areas, walkways, swimming pools, patios, terraces and the like."

Therefore the lot coverage requirements do apply to this proposed pool.

<5-21-2018 QJ Agenda Packet.pdf>

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POLICY NO. 2015-008  
CITY OF APALACHICOLA PROCEDURES FOR  
CONDUCT OF QUASI-JUDICIAL HEARINGS

1. DEFINITIONS:

- A. Applicant – the owner of record, or owner’s agent, or any person with a legal or equitable interest in the property that is subject of the proceeding.
- B. Commission – the City Commission, Planning and Zoning Board, or any other board to which this policy is made applicable.
- C. Commissioners – Members of the City Commission, the Planning and Zoning Board or any other board to which this policy is made applicable.
- D. Ex parte communications – any written or oral communications with Commission members other than those made on the record at the time of the hearing.
- E. Participants – those members of the general public other than the applicant who attends a public hearing for the purpose of being heard on a particular application.
- F. Relevancy – in order to be relevant, the evidence submitted must strengthen or weaken the application by supporting or disproving factual assertions contained in the application or must relate directly to the application. The Commission shall determine the relevancy of evidence,
- G. Witnesses – City staff members, representatives of the applicant, and participants who testify at the hearing, including expert witnesses called on behalf of either the City, the applicant or an opposing party.

2. GENERAL STANDARDS:

- A. Ex parte Communications between Commission Members and Public. Applicants, participants and other members of the general public may communicate freely with Commission members regarding any issue which may be heard by the Commission.
- B. City Staff Report. The staff report on the case shall be sent to the Commission members and be available to the general public at least five (5) days prior to the hearing on the case.
- C. Appearances and Evidence:

ADOPTED BY CITY  
COMMISSION APRIL 7, 2015

1. Persons claiming to represent a group or organization must demonstrate proof of membership of that group and proof that the person representing the group has actual authority to do so.
  2. All participants must complete a public comment card, prior to the commencement of the agenda item on which they wish to speak.
3. COMMUNICATIONS BETWEEN COMMISSIONERS AND COUNTY STAFF.
- A. Communications between Commissioners and City staff are permitted subject to the disclosure requirements in these rules.
  - B. Attorneys for the Commission may render legal opinions when requested by the Commission members, but shall not advocate one party's position over another, except to the extent necessary to respond fully to a legal question.
4. EX-PARTE COMMUNICATIONS.
- A. Written Communications. A Commissioner may read a written communication from any person. However, a written communication that relates to quasi-judicial action that is pending before the Commission shall not be presumed prejudicial to the action and such written communication shall be made part of the record before final action on the matter.
  - B. Oral Communications. Oral communication is permitted. The substance of any ex-parte communication with a Commissioner is not presumed prejudicial to the action if the subject of the communication and the identity of the person, group or entity with whom the communication took place is disclosed and made part of the record prior to final action in this matter.
  - C. Investigations, Site Visits and Expert Opinions. Commissioners may conduct investigations and site visits and may receive expert opinions regarding quasi-judicial matters pending before them. Such activities shall not be presumed prejudicial to the action if the existence of the investigation, site visit, or expert opinion is made part of the record before final action on the matter.
5. CITY STAFF FILE.

All written communications shall be included in the file maintained by staff and available for public inspection. Any communication received by staff shall be reported as part of the oral staff report. The staff report, any petitions or other submissions from the public, and all other documents pertaining to the case shall also be kept in the file and available for public inspections. During its presentation, staff shall offer all such written communications from the public into evidence, subject to any objections interposed by participants.



6. DISCLOSURE.

At the public hearing on which a vote is to be taken on a matter, a Commissioner who has received an ex parte communication, conducted an investigation, received expert opinions or has physically inspected the property shall:

- A. disclose the subject of the oral communication and the identity of the person, group or entity with whom the communication took place;
- B. make written communications that were read by the Commissioner part of the record; and
- C. disclose the existence of investigation and site visits made by the Commissioner and expert opinions received by the Commissioner.

7. BASIS OF DECISION.

All decisions by the Commission shall be based on the record of the evidence presented to the Commission at the hearing on the case, which shall include testimony of all witnesses, and other evidence presented. Strict rules of evidence shall not apply, but evidence must be relevant to the issues before the Commission.

8. CONDUCT OF HEARING.

The procedure at the hearing shall be as follows:

- A. The Board adopts the agenda including staff reports which are attached to and referenced by page numbers on the agenda. Participants may raise objections to a staff report during the hearing for a particular item.
- B. The City staff presents its report and offers correspondence not attached to the agenda into evidence and offers any other documents from the staff file it deems appropriate into evidence.
- C. Commission members shall make disclosures per paragraph 6 a - c above.
- D. The applicant presents its case and/or responds to or refutes any ex parte communication.
- E. Participants present their case and/or respond to or refute any ex parte communications.

F. Upon request, City staff, the applicant or designated representatives of the participants may cross-examine witnesses.

G. Commission discusses and makes decision pursuant to step 12.

Commission members may interpose questions at any time during the conduct of the hearing.

9. TESTIMONY UNDER OATH OR AFFIRMATION.

The applicant, witnesses and all participants asking to speak shall be sworn collectively at the beginning of the hearing.

10. CROSS-EXAMINATION.

A. All witnesses are subject to cross-examination during the hearing.

B. Cross-examination of each witness shall be limited to five (5) minutes. The chairperson shall enlarge the time period allowed for cross-examination when necessary to ensure due process is provided.

C. The scope of the cross-examination shall be limited to the facts alleged by the witness in relation to the application.

D. The cross-examination cannot be designed to merely harass, intimidate or embarrass the witnesses.

E. The chairperson of the Commission will determine the scope of the cross-examination on his or her own initiative, or when the individual being questioned objects to the cross-examination for going beyond the scope of the facts alleged by the witness.

F. The chairperson of the Commission may defer to the City Attorney to determine the scope of the cross-examination.

G. The chairperson of the Commission may direct the party conducting the cross-examination to stop a particular line of questioning that is not relevant and beyond the scope of the facts alleged by the witness being cross-examined.

H. If the party conducting the cross-examination continuously violates directions from the chairperson to end a line of questioning deemed irrelevant and merely designed to harass intimidate or embarrass the witness, the chairperson may terminate the cross-examination.

11. TIME LIMITS.

- A. Applicant – up to thirty (30) minutes.
- B. Participants –
  - 1. Members of the public – three (3) minutes each.
  - 2. Speakers representing a group of six (6) or more in attendance at the meeting – five (5) minutes each.
  - 3. Speakers representing an organization -- five (5) minutes each.
- C. Expert witnesses – ten (10) minutes.
- D. At the discretion of the chairperson of the Commission, the time allowed for any testimony may be reduced or extended.

12. DECISION BY THE COMMISSION.

At the close of the public hearing, the Commission shall make a decision on the application. The Commission shall:

- 1. Approve.
- 2. Approve with conditions.
- 3. Deny-with or without prejudice.
- 4. Continue the hearing to another date and time.

In the event of a tie vote, the hearing shall be continued to the next hearing date.

13. RECORD OF THE CASE.

All evidence admitted at the hearing, City staff reports and the adopted resolution setting forth the decision of the Commission, shall be maintained in a separate file constituting the record of the case. The record shall be kept in the custody of the appropriate staff at all times during the pendency of the case, except that any member of the public may examine the file in the appropriate County staff office.

14. APPLICABILITY.

City Commission

These rules shall apply to all site specific rezoning, conditional use proceedings, Development Order Amendments, status reports and any time the City Commissioners sits in an appellate capacity.

Planning and Zoning Board

These rules shall apply to all site specific rezoning, conditional use proceedings, Development Order Amendments, status reports, variance requests and any time the Zoning Commission sits in an appellate capacity.