

CITY OF APALACHICOLA
BOARD OF ADJUSTMENT
QUASI-JUDICIAL PUBLIC HEARING
WEDNESDAY, MARCH 15th, 2023
Community Center - 1 Bay Avenue
Minutes

Attendance:

- Board of Adjustment: Chair – Carrie Kienzle, Dennis Winterringer, Tricia McLemore, Lois Swodoba, Dodie Alber
- Staff – City Attorney Dan Hartman, City Planner Bree Robinson

Quasi-Judicial Public Hearing: 5:30PM

- The attached Quasi-Judicial Rules of Procedure were followed for both variance requests. The Chair, Carrie Kienzle, gave a summary of both variances being requested and the meeting and called the meeting to order.
1. Review & Discussion for proposed new construction of a home on the parcel located at the corner of 6th Street and Bay Avenue (R-1 Single Family Residential), more specifically described as Block 26 Lot 1 or 10 6th Street, into the required 15' front setback from 6th Street. Applicant is requesting approval of a 0' front setback.
 - City Planner, Bree Robinson, referenced the proof of notice for both variances as found in the City Staff Findings section of the agenda packet. She also noted that the letters received back from the public notice were tallied and for the first variance, there were 6 in support and 3 against. The comments of the letters were included in the City Staff Findings.
 - Board members disclaimed any ex-parte communications they received before the meeting – Dennis Winterringer submitted an email he had received from a citizen for the record.
 - City Attorney, Dan Hartman, provided a brief description of all documentation being entered into the record. (Written evidence that the board is making their decisions based upon.) This included: the agenda packet and applications, the staff findings report, letters received, and any ex-parte communications presented. Dan also noted that this includes public comments made in the meeting.
 - The applicant presented the application for a variance request of a 0' front setback, opposed to the required 15' front setback, on 6th Street at address 10 6th Street. The arborist that the applicant consulted with on this application also presented his findings. Application and arborist findings are all in the agenda packet – the arborist stated he agreed that the 15' shift up from the rear setback was necessary to preserve the health of the 150 year old Oak tree. The BOA Chair, Carrie, allowed time for board members to ask questions and for citizen members to ask questions of the applicant.

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- Board member, Lois, asked if the current home would be moved if the new construction with the variance were to be approved and the applicant answered yes, it would be relocated to another lot in city limits.
- Board member, Dodie, asked if there was any way they could build a home within the setback requirements while also having the space to save the tree. The applicant stated that if he were to move his house design back 15' that major trimming of the patriarch Oak tree would occur and the tree might suffer. Dodie followed up and asked if it would be possible to build a smaller house while saving the tree. The applicant stated that it would be possible, but that their living space was already around 1,300SqFt on the bottom floor and they desire to have porches, which do add some more square footage and are necessary for views of the park and marina.
- Board member, Dennis, stated he is sympathetic to the patriarch tree and the square footage of the home was reiterated. Dennis asked if a redesign to achieve setbacks was possible. The applicant discussed the root system of the tree and how he did not want to drive over the roots habitually, so he had laid out the home and driveway as far from the bulk of the root system as possible.
- The Chair, Carrie, asked the public if they had any questions of the applicant. There were no questions at this time.
- At this time, the City Planner, Bree, went over her findings report and noted that there was a minimum variance option where we could ask the applicant to redesign if not granted the full variance and still have a sizable home, but that the COA Code does allow the BOA to grant variances to save patriarch trees and understands that they are asking for the 15' of front setback, due to having to push their design 15' up from the rear setback. Her recommendation was to take the minimum variance into consideration, but also referenced that the Code allows for variance in this situation. There were no questions asked of staff at this time.
- Public testimony in support or opposition of granting this variance began. A very nearby neighbor presented that he had no issue with the variance – he stated that having the McLeod house in line with theirs on the street would be a great thing and he was in high favor of saving the patriarch Oak. A representative from the HAPPI citizen group offered public comment and stated they didn't see a hardship with this case, but that the tree ordinance is effective in this instance. HAPPI believes that the applicant should get a like swap of footage for saving the tree not past the property line, as a blend of the variance code and tree ordinance. Another direct neighbor spoke and stated that he was in support of this request. He stated that if the house was moved back to be within proper setbacks that they could lose the shade from the tree and he felt it would infringe upon him more than if the variance was granted.

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- Board Deliberation – Dodie noted that the applicant had made a request for a 0’ setback and had another suggestion in the application for a 7’ setback. The applicant stated that this was just added for a question in the application on if there was a second less intrusive option, but this is not in line with the arborist opinion on what it needed to save the patriarch tree. Lois stated that the applicant is very right to be concerned about the tree and she has seen a large patriarch oak tree killed from root damage. Carrie agreed. Carrie explained what options were before them and asked if there was a motion to make. Dennis reiterated that there is an option to redesign and obtain fair square footage while following the standard setbacks and that moving the garage or parking area might help the tree. The applicant stated that the parking garage will be built on the same spot as a structure that has been there for 40 years and that the tree has grown around. He also remarked that a lot of time had been spent on the designs and that utmost caution has been taken to preserve the oak tree and if he were to redesign that he would not be able to use the driveway. Carrie asked if there would be less cement present on the site after construction and the applicant said that there would be less.
 - Carrie stated she was pleased that the cement was going to be less and that she does not make motions, but she feels they are within the guidelines to give the applicant the requested variance.
2. Decision on Variance Request for a 0’ front setback. (R-1) @ 10 6th Street, Block 26 Lot 1. For Roderick McLeod. – Owner
- Tricia McLemore made a motion to approve the 0’ front setback on the variance and the following was stated: the setback is the minimum reasonable encroachment into the setback for reasonable use of the property, as the applicant is exchanging 15’ from the rear buildable area with the 15’ front setback in order to preserve the patriarch tree. The ROW being larger than normal in City limits, 100’, was also noted. The timeline for this variance to be permitted in construction is 2 years and not grandfathered in if the applicant were to sell the property before construction. Lois Swoboda seconded the motion.
 - Carrie, Tricia, Lois, and Dodie in support – Dennis opposed. 4 I’s and 1 Opposed. Motion carried.
3. Review & Discussion for proposed new construction of a home on the parcel located at the corner of Bay Avenue and 7th Street (Not Constructed) (R-1 Single Family Residential), more specifically described as Block 193 Lots 1-5 or 94 Bay Avenue, into the required 15’ front setback from Bay Avenue, the required 15’ corner side setback from 7th Street, and the required 20’ setback from the wetlands. Applicant is requesting approval of a 3’ front setback, a 0’ side corner setback, and a 5’ wetlands setback.

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- City Planner, Bree Robinson, referenced the proof of notice for both variances again as found in the City Staff Findings section of the agenda packet. She also noted that the letters received back from the public notice were tallied and for the second variance, there were 2 in support and 8 against. The comments of the letters were included in the City Staff Findings and she stated that the bulk of the comments referenced the wetlands setback request in a negative manner, with only one mentioning the road safety aspect in reference to the front setback request.
- Board members disclaimed any ex-parte communications they received before the meeting – Dennis submitted an email he had received from a citizen for the record that asked that the wetlands setback not be granted. Dodie Alber stated she also received the same email. Carried stated she also received a lengthy email from a citizen against the wetland setback request.
- City Attorney, Dan Hartman, provided a brief description of all documentation being entered into the record. (Written evidence that the board is making their decisions based upon.) This included: the agenda packet and applications, the staff findings report, letters received, and any ex-parte communications presented. Dan also noted that this includes public comments made in the meeting.
- The applicant presentation began with the applicant, Mark Heidt, stating that their request for the 0' side setback and the 5' wetlands setback variances were being withdrawn, after seeing the outlook from the public noted in the Staff Findings report was overall negative. The applicant stated they were only moving forward with the request for a variance from the front setback, which had been requested for a 3' setback, but with their redesign efforts they were requesting the board to consider a 0' front setback on Bay Avenue at this moment.
- George Coon, architect and representative for the project, presented a visual of the revised site plan with only the 0' front setback variance request on Bay Avenue. This visual is attached for the record. The home design would have to be altered to meet the rear and side setbacks, but they would like to take the home footprint and move it over the center of the site. This would remove the need for the wetland setback and would not effect a nearby large cypress tree that was a concern. The project architect stated that the footprint of the home would not be big and they were looking at around 1,800 SqFt ground floor footprint – they are trying to follow the visual design of the neighborhood for the architectural compatibility aspect. The same arborist from the first variance presented on behalf of the second variance and stated that the house design would not have a negative effect on the cypress tree within the wetlands of this property. Project architect stated that new redesign have not been created yet, but a variance would allow for them to design a reasonable size use home while meeting the other standard setback

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requirements. At this time, the BOA Chair, Carrie, allowed time for board members to ask questions and for citizen members to ask questions of the applicant.

- Board member, Dennis Winterringer, asked George Coon to speak on the wetlands line shown on the survey and asked if it was approximate. George Coon stated that a wetlands delineation would need to be performed to determine the exact line and points, but the shown line was the surveyors discretion. Dennis stated that it seemed like the key determination on this request would be the site specific evaluation that needs to be performed. City Planner, Bree, agreed and stated that the wetlands delineation would need to be performed by an environmental professional and that would be the standard that the Planning & Zoning board would take into account for this property to meet the 20' required wetland setback. City Attorney, Dan Hartman, commented that if the wetlands delineation comes back much higher on the property than assumed that the reason for variance might have increased and that the applicant might come back for the variance if it is turned down at the current meeting. Dennis stated he would hesitate to make a decision on the reasonable use based on a not exact line shown on the survey. Applicant stated they agree to meet the 20' setback wherever it is after wetland delineation is performed and it is just a matter of how close they can get to Bay Avenue within their property lines.
- Board member, Dodie Alber, asked what the square footage of the revised house plan would be and if it is two-story. George Coon stated that he does not know yet, as the redesign would be based on the variance allowance if granted and the visual he handed out isn't the final and they would be removing decking, etc., but it would be 2-story. Applicant is seeking to build the nicest looking house possible for the neighborhood, meet the required side and wetlands setback, and wants the front variance considered for size of the home.
- George Coon stated that a variance for this property was granted by the BOA in 1991 allowing for a 0' front setback and a 10' wetlands setback for Lots 1-10 of Block 193– the variance was affirmed by City Staff and City Attorney in 2004. City Attorney, Dan Hartman, stated that it was a 1991 approval and 2004 ratification and it is recorded in the Franklin County Courthouse records. City Planner, Bree, states that the wetlands approximation line has changed since even 2004 and appears to have risen on this property when comparing the surveys from then and now. She clarified that this means that at the time of approval and ratification of the former variance that buildable area of this property was actually larger than it is now and it was still granted a variance – the applicant/owner currently has less buildable space and is asking for just the front variance to be able to build a reasonable sized home. The referenced variance from 1991 is not applicable in this request.

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- George Coon stated that the applicant could build a home without variance that could be around 15' wide, but this would be a shotgun house on stilts and would not likely visually fit in with the neighborhood.
- Chair, Carrie, asks what is the hardship? On behalf of the applicant, George Coon states that it would be the cypress tree and not being able to build a reasonably sized and visually appealing home without the variance.
- A representative from the HAPPI group asked if shifting the home design from side to side more would alleviate the need for the variance on the front street side? George Coon stated no, as they have already shifted it to the widest buildable section in the middle to avoid encroaching into the wetlands.
- At this time, the City Planner, Bree, went over her findings report and noted that since the variance request has changed that there are sections of her report that are no longer applicable. She did note that in this particular case, the applicant was aware of the building constraints present on this lot at the time of purchase in January 25, 2022. She also noted that from the edge of the property line to Bay Avenue there is still going to be at least 30' and 35' of vacant ROW space even if the applicant did receive a variance to build all the way up to their property line – she referenced a citizen comment from the letters that was concerned about pedestrian safety along Bay Avenue. She referenced the applicant's hardship of there being very little buildable area to build a reasonable size home and stated that from her own measuring, if the applicant were to obey all setbacks with no variance, that the potential build could only be an estimated 10' wide and the other side could be around 12' and the center might reach 20', but that they would be looking at a very, very narrow house on stilts on Bay Avenue. With all of this taken into account, staff opinion was for the BOA to consider granting a front variance for the applicant to build a reasonably sized and visually appealing home. There were no questions asked of staff at this time from the board or the public.
- Public testimony in support or opposition of granting this variance began. A representative from HAPPI stated that they did not originally see a hardship in this variance request and that their original suggestion on the side setback was to treat this lot as an internal lot, since 7th would likely never be constructed next to this property. They also stated that the LDC states to not consider neighboring lands for variances, but then mentioned past precedence that a variance had been denied a couple of lots down on Bay Avenue for similar reasons and states that HAPPI is concerned about the precedent that could be set at this current meeting. (reference to the Moon case in 2018.) Chair, Carrie, stated that the BOA is not considering decisions of the past and was just pointing out that had happened and that this is a separate decision. City Planner, Bree, commented that we are to treat variance request as single issues and they are all

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different - the past denied request was a variance so the lot could accommodate a large house for a large family and the applicant was not willing to take less than requested and wanted a definite yes or no. She also mentioned that the lot from that case was already buildable for a reasonable home without variance and the board did not see a hardship in that instance to grant one.

- Another citizen commented, a nearby neighbor, and asked that as the variance request for the front setback has shifted from 3' to a 0' request, if the public notice aspect of the request was still valid? City Attorney, Dan Hartman, stated that the public notice was still valid and adequate notice was given that an applicant was presenting requests for a variance to the BOA – It is up to the BOA to determine if a hardship is present, if a variance is necessary, and to what extent is necessary for reasonable use. This can change during the BOA process, so the public notice is valid. The citizen then asked if there was a stormwater aspect and if adding the impervious area to the lot would make the stormwater issues worse? City Planner, Bree, stated that this is an aspect covered through the Planning & Zoning process and assuming that the applicant does come back with a design to build, variance or not, that they would still be held to the standard 40% lot coverage and would have a residential stormwater plan. George Coon commented and stated that when the house plans are engineered and designed that stormwater would be taken into account and there will be a plan in place.
- A citizen stated that she is an architect and that she agreed that George Coon did a good job on the home design. She mentioned the original nature of Bay Avenue, as it was open views, and that considering the visual aspect of the neighborhood as a hardship is not a true hardship, as allowing them to build any bigger home with variance is a bigger disconnect for the citizens of Apalachicola from the bay. She mentioned that the design of the home would build up as high as possible according to the height ordinance (35') and while it is buildable as-is with no variance that she is in favor of keeping Apalachicola and Bay Avenue as it is. She also stated she was in favor of the board waiting to decide on this item until a full redesign could be done, as in her opinion there were questions and confusion. Attorney Dan Hartman commented that citizens are encouraged to apply for a variance before doing all of the costly work to design something, as they're not certain on what footprint they'll be allowed – the applicant is bound to design a home within the setbacks granted by the Code and/or the BOA through variance. Board member, Dennis, commented that the BOA is just for variances and that P&Z handles the responsibilities of the architectural review board.
- Board Deliberation – Dennis stated that he was struggling to make a decision since the wetlands line seems to be in question until a wetland delineation could be properly performed – the wetland line will be a factor in establishing if there is a need for variance

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or not, how much of one, and where. Chair, Carrie, asked the board for their thoughts on this currently and offered up her own. She stated she really appreciated the applicant respecting the wetlands and changing their request, but that the applicant was aware when buying the lot that it is very wet land and "buyer beware" is factor in this – she does not believe this area should be built on and she does not see a hardship when the applicant knows what they're buying. City Attorney, Dan Hartman, stated that the question is whether the proposed use of the property is a reasonable use and that the BOA cannot tell the applicant that their lot is unbuildable, but that their decision should only be if the use is going to be reasonable and that is subjective to the BOA decision. Chair, Carrie, commented that there is enough land to build something on this lot, but they are deciding if the variance is necessary for reasonable use or not and she feels they cannot determine the reasonable use or not without knowing exactly where the wetlands end and begin. City Attorney, Dan, commented that the BOA is in a situation where they are having to make a decision based off of only what information they have currently and that the applicant is taking a risk by presenting the approximation and not exact lines. City Planner, Bree, stated that she was just reiterating that the applicant could still build here without variance if the approximation is correct, but that the house would just be extremely narrow, 10-15' wide, and that the BOA will just have to determine if that is reasonable. George Coon commented that yes, they could build a narrow home, but they are seeking the variance to build something more suitable for the area and that they are taking a risk that the wetland line are higher up on the property than shown, as they'll still have to follow the 20'. Dodie Alber stated that variances should not be granted if they are contrary to the public interest and if enforcement would result in unnecessary hardship and that the purchase of the property with restrictions in mind are not considered unnecessary hardship and she has some issues with granting the variance. Chair, Carrie, referred back to attorney comments about allowing for reasonable use and questioned that by not granting a variance is the BOA putting them in a situation of not being able to have reasonable use of their property? She deliberated that if they grant the variance is it within reasonable use or if they don't grant the variance are they denying the reasonable use of the property. Lois stated that she believes reasonable use of this land is building within what is currently available and allowed – she also stated she is familiar with this property and is concerned that the wetland line, once delineated, was going to higher than precedented. George Coon commented that when the line is delineated they may find that the line is closer to Bay Avenue, in which case they still have to be 20' from the wetlands and 15' from the front property line, so they will not have enough buildable area left to build a reasonable home – they already feel the constraints on the width is not reasonable and worthy of a variance. Chair, Carrie, asked

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the attorney if not having a motion is an option – attorney, Dan Hartman, commented that if the applicant asks for a decision today that it is required for the board to make a final decision one way or the other. He went on to say that since the request has changed and with the board not knowing the exact wetland line, it would certainly be okay for the board to ask the applicant for a determination of the wetland delineation and for the variance request to be continued at a later date to better determine how much buildable area is there really and if there a reasonable use possible, all if the applicant is willing for the request to be tabled. At that point, the board could make a clear decision on what is reasonable and what they are approving or denying. Chair, Carrie, asked how wide the applicant would want to build and the applicant answered 30' with a 0' setback, but they also agreed to redesign the home, so they are willing to redesign dependent on what variance might be allowed, whether it be a 5' or 10' front setback, etc. Chair, Carrie, asks the board what their thoughts are on asking the applicant to have a wetland delineation performed and then continue the variance request at a future date (table) to determine the reasonable use of the property and width of the home if the applicant is willing or if they would rather make a decision today. Tricia stated she would prefer to come back to it when the applicant has more information and all of the facts for the board to consider. Dennis is in favor of seeing the issue tabled until more information on the wetland line is available – he stated that if they need to come to a decision today that he can't approve it. Attorney, Dan Hartman, stated that the item could be tabled and the board could continue this again once the applicant has submitted the updated information – the public notice requirements will be met before the next meeting for the tabled item is set. Chair, Carrie, stated that along with the wetland delineation she would like to see two options at the next continued meeting: (1) an option of what the house dimensions would look like with no variance and (2) an option of what variance is requested and what that design and dimensions would look like. The applicant, Mr. Heidt, and his representative, George Coon, both agreed this was possible and stated it would be helpful to see what the reasonable use will look like – Mr. Heidt requested it be tabled pending the wetlands delineation and the possible designs. Chair, Carrie, thanked the applicant for their flexibility and asked the board for a motion to table.

4. Decision on Variance Request for 3' front setback, 0' side corner setback, and a 5' wetlands setback. (R-1) @ 94 Bay Avenue, Block 193 Lots 1-5. For Sarah Polow – Owner; Represented By: George Coon
 - Dodie made a motion to table the variance request pending a wetlands delineation and redesign from the applicant; Dennis Winterringer seconded the motion.
 - Carrie, Tricia, Lois, Dennis, and Dodie in support – 5 I's and 0 Opposed. Motion carried.

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Other/New Business: N/A

Outstanding/Unresolved Issues: N/A

Motion to adjourn by Lois Swodoba; 2nd by Tricia McLemore. All in favor – meeting adjourned.

Attachments:

- Rule of Procedures for BOA
- Ex-Parte Communications
- Revised Visual by George Coon

(Letter Responses are available in City Hall by Public Records Request.)

BOA Meeting Minutes Approved by:

C. Kinzle
Chair – Carrie Kinzle

4-12-23
Date

QUASI-JUDICIAL RULES OF PROCEDURES

SUMMARY

Chair - CALL QJ/Public Hearing to Order

A. Order of Proceeding with Public Hearing.

1. **Proof of Notice.** Staff will advise how notice was provided. Announced at prior public meetings; posted; notice sent directly to interested parties with all attachments.
2. **Ex Parte Communications.** All Board members will have an opportunity to disclose any Ex Parte communications regarding this application.

Attny – will ask public and Pvt attorney(s) whether they have any opinion contrary to the opinion/content of the ex parte communications disclosed or questions.

3. **Enter Record of Application and Related Information.** Attny will provide a brief description of documentation being entered into the record.
 1. Application
 2. Staff Report
 3. Any other materials submitted prior for or against.

4. **Applicant's Testimony.** The Chairperson shall then call upon the applicant. The applicant shall then be given an opportunity to make a statement and present any additional testimony, information and supporting documents.

- A. Board members can ask questions of Applicant
- B. Public or other interested parties can ask questions of Applicant

5. **Staff's Testimony.** The Chairperson shall then call upon the staff. Staff shall then be given an opportunity to make a statement and present any additional testimony, information and supporting documents.

- A. Board members can ask questions of Staff
- B. Public or other interested parties can ask questions of Staff

6. **Private attorneys Supporting or Opposing Application.** The Chairperson shall call upon parties represented by Counsel for any comments, testimony, information and documents in support of granting the application. Must state who they represent and whether they are advocating for or against the Application.
7. **Public Testimony Supporting or Opposing Application.** The Chairperson shall then call upon the public for any comments, testimony, information and documents in support of granting the application.

8. **Applicant's Rebuttal.** The Chairperson shall then call upon the Applicant for any rebuttal.
 9. **Staff's Rebuttal.** The Chairperson shall then call upon the staff for any rebuttal.
 10. **Private Attorney Rebuttal.** Call Upon Private Attorney Representing Parties for any rebuttal.
 11. **Public's Rebuttal.** The Chairperson shall then call upon the public for any rebuttal.
- B. **BOARD Deliberation.** The BOARD shall deliberate upon the application and testimony and other evidence of the applicant, staff and members of the public. The BOARD during deliberation may call upon the applicant, staff or members of the public to answer questions which the BOARD may have regarding the application.

Standards to be Observed

D. Evidence at the Hearing.

1. **Variance; Burden of Proof.** The burden of proof shall be upon the applicant to establish the standards required in the LDC for the granting of the requested variance have been met.
2. **True and Correct Testimony.** Testimony commonly is not under oath; however, by filing the application, preparing the comments or participating in the public hearing, the applicant, staff and members of the public certify the testimony or evidence which they give or proffer is true and correct to the best of their knowledge and belief. However, the Chairperson, in the exercise of his or her discretion, or on a majority vote of the BOARD, reserves the right to swear in any witness.
3. **Formal Rules Generally Do Not Apply.** Formal rules of evidence shall not apply, but fundamental due process shall be observed and govern the proceedings. The members of the BOARD, applicant, staff or public shall be free to challenge the testimony or evidence of any party presenting the same. The BOARD shall be free to disregard testimony or evidence that it feels is without merit.
4. **Admissible Evidence.** All evidence of a type commonly relied upon by a reasonable, prudent person in the conduct of his affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of this state.
5. **Irrelevant, Immaterial or Unduly Repetitious Evidence.** Irrelevant, immaterial or unduly repetitious evidence shall be excluded by the Chairperson.
6. **Questions by BOARD.** Any member of the BOARD may question any person presenting evidence or testimony to the BOARD.
7. **Questions or Challenges to Evidence/Rulings.** All questions or challenges to evidence shall be presented to the Chairperson. The Chairperson may, in the exercise of his discretion, allow questions directly to the person whose testimony or evidence is being challenged. Any ruling by the Chairperson may be challenged and overturned by a majority vote of the BOARD. The BOARD may consult with the legal advisor to determine if any additional requirements must be met in order to grant or deny the application. The motion shall state the following:
 - a. The objective findings of fact, prescribed in the LDC, upon which the BOARD bases its decision;
 - b. The evidence that was relied upon in making the findings of fact. (The record at the hearing.)
 - c. The motion may contain other factors which the BOARD considered in making its decision, such as, but not limited to: commencing construction without a permit, defective plans, other deficiencies, unlawful acts, or similar acts.
 - d. The motion may also contain safeguards or conditions which are required to assure conformity with the ordinances and protect the public health, safety and welfare.

- e. The motion may also contain time frames within which any activity, pursuant to a LDC must be commenced and completed. A variance approval should contain an effective date and a termination date.
- f. The motion may also make the granting of the application contingent upon the applicant complying with certain conditions and safeguards.

Fwd: Input, variance request, 15 Mar 23 Board of Adjustment meeting

Anna Maria Cannatella <anna-maria@apalachicolahomes.net>

Tue 3/14/2023 4:33 AM

To: Bree Robinson <brobins@cityofapalachicola.com>

Forwarding in case you didn't receive, thank you, Anna-Maria

----- Forwarded message -----

From: **Patrick Balthrop Sr.** <pjbalthropsr@outlook.com>

Date: Fri, Mar 10, 2023 at 4:10 PM

Subject: Input, variance request, 15 Mar 23 Board of Adjustment meeting

To: anna-maria@apalachicolahomes.net <anna-maria@apalachicolahomes.net>, caroline_kienzle@gmail.com <caroline_kienzle@gmail.com>, carolinekienzle@gmail.com <carolinekienzle@gmail.com>, caroline.kienzle@gmail.com <caroline.kienzle@gmail.com>

Cc: Mariterese Balthrop <mgbalthrop@gmail.com>

Dear Carrie and Anna Maria,

Thank you for your community service as members of the Board of Adjustment for the City of Apalachicola.

We are writing you to express our serious concern about the variance request pending for the property at Bay Avenue and 7th Street, 94 Bay Avenue, which is on the agenda and scheduled for review at the Board of Adjustment meeting on March 15th, 2023.

We are opposed to this variance request. Today's approved variance is tomorrow's precedent.

As citizens of Apalachicola, we are opposed to any additional damage that could be done to our fragile ecosystem. Any residence that is built in or adjacent to a salt marsh, as this home would be, would certainly bring further damage. The fragility of Apalachicola Bay is clear to us all, and as citizens of Apalachicola, we all need to do what we can to limit any further damage, as we strive to protect and restore the Bay.

As you know, salt marshes are ecologically important habitats for countless species of plants, especially fish and shellfish like oysters. Salt marshes are critical breeding, feeding and nursery grounds for many species that are important economically and ecologically for Apalachicola Bay and therefore to everyone in Apalachicola. As the Bay (hopefully) recovers, we all need to do our part.

Salt marshes provide protection against storm surges since they act as natural barriers that protect coastal communities like ours from flooding. They help to absorb and dissipate the energy of incoming waves in the event of a storm. Building homes in or adjacent to a salt marsh can remove or compromise this natural protection.

Salt marshes are sensitive to disturbance. As salt marshes serve a critical role in holding the soil together, any additional home building close to or in a salt marsh will cause farther erosion and damage the salt marsh root systems.

Salt marshes are crucial in our fight against the damage of climate change. Their root systems store more carbon on a relative basis than rain forests. Any disruption to the salt marsh will exacerbate and destabilize

the ecosystem, locally and globally.

Finally, the cost to the rest of the community could be increased. All the issues listed above will cause incremental increases in risk from storm surges and flooding, thereby increasing the risk of insurance rates for the community at large.

We encourage you to deny this variance request and do all that you can to prevent further damage to the jewel that is Apalachicola Bay.

Respectfully,

Mariterese and Pat Balthrop

Mariterese and Patrick Balthrop
133 Avenue B
Apalachicola, FL 32320

Bay Avenue

From : Karen Kessel <karen_kessel@yahoo.com>

Mon, Mar 13, 2023 09:26 AM

Subject : Bay Avenue

To : Lois Swoboda <apalachhistoricalsociety@gmail.com>,
Celia Winterringer <dwinterringer@mediacombb.net>,
Dodie Alber <dodiealber@gmail.com>,
fcshmwest@gmail.com

Thank you for your community service as members of the Board of Adjustment for the City of Apalachicola.

I am writing you to express our serious concern about the variance request pending for the property at Bay Avenue and 7th Street, 94 Bay Avenue, which is on the agenda and scheduled for review at the Board of Adjustment meeting on March 15th, 2023.

I am opposed to this variance request.

Please keep in mind that today's approved variance is tomorrow's precedent.

As a citizen of Apalachicola, I am opposed to any additional damage that could be done to our fragile ecosystem. Any residence that is built in or adjacent to a salt marsh, as this home would be, would certainly bring further damage. The fragility of Apalachicola Bay is clear to us all, and as citizens of Apalachicola, we all need to do

what we can to limit any further damage, as we strive to protect and restore the Bay.

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Finally, the cost to the rest of the community could be increased. All the issues listed above will cause incremental increases in risk from storm surges and flooding, thereby increasing the risk of insurance rates for the community at large.

I encourage you to deny this variance request and do all that you can to prevent further damage to the jewel that is Apalachicola Bay.

Respectfully,
Karen Kessel

Karen Kessel

Bring Me A Book Franklin,
Program Coordinator
Apalachicola, FL
214.883.3995

Sent from a mobile device. Please excuse brevity or spelling errors.

Re: LDC section 105-26.

From : Bonnie Davis <bonniedavis2@earthlink.net>

Mon, Feb 13, 2023 04:44 PM

Subject : Re: LDC section 105-26.

To : dwinterringer@mediacombb.net

Just read it While not exactly on point I think a broad reading would support board action to give a variance to spare tree. From standpoint of precedent I like that better than characterizing as hardship which is a much higher evidentiary standard. Going forward I suggest an addition to ordinance to give boa express authorization in this situation and I would also include it in the section enumerating board's powers

Sent from my iPhone

On Feb 13, 2023, at 4:34 PM, dwinterringer@mediacombb.net wrote:

See Land Development Code section 105-26.

"When the board [of adjustment] is the decision maker, approval or conditional approval to remove or substantially alter a patriarch tree on a privately-owned lot shall only be made when no principal structure could be legally built on the lot taking into consideration the location of the tree and such requirements as setbacks and minimum required size for single-family dwellings. Through the variance process the board of adjustment may consider reducing setbacks or minimum dwelling size if doing so would spare the tree."

The situation of the proposed variance isn't exactly this situation. The patriarch tree is on city property, but its large limbs extend out over the privately-owned lot.

Board of Adjustment

rindlergroup@aol.com <rindlergroup@aol.com>

Wed 3/15/2023 10:23 AM

To: Bree Robinson <brobenson@cityofapalachicola.com>

Dear Ms. Robinson and Board of Adjustment Members:

We urge you to deny all of the multiple variances requested by Ms. Polow at 94 Bay Avenue, at the corner of Bay Avenue and 7th Street. Five years ago you denied similar variances requested by Mr. Moon at 108 Bay Avenue, at the corner of Bay Avenue and 9th Street. This denial set the precedent of following the City's established zoning regulations, which should always be strictly adhered to.

Thank you for your consideration.

Leslie and Michael Rindler

109 Bay Avenue

patriarch oak variance application

Bonnie Davis <bonniedavis@gmail.com>

Tue 3/14/2023 4:02 PM

To: Dan Hartman <dan@fllegalteam.com>

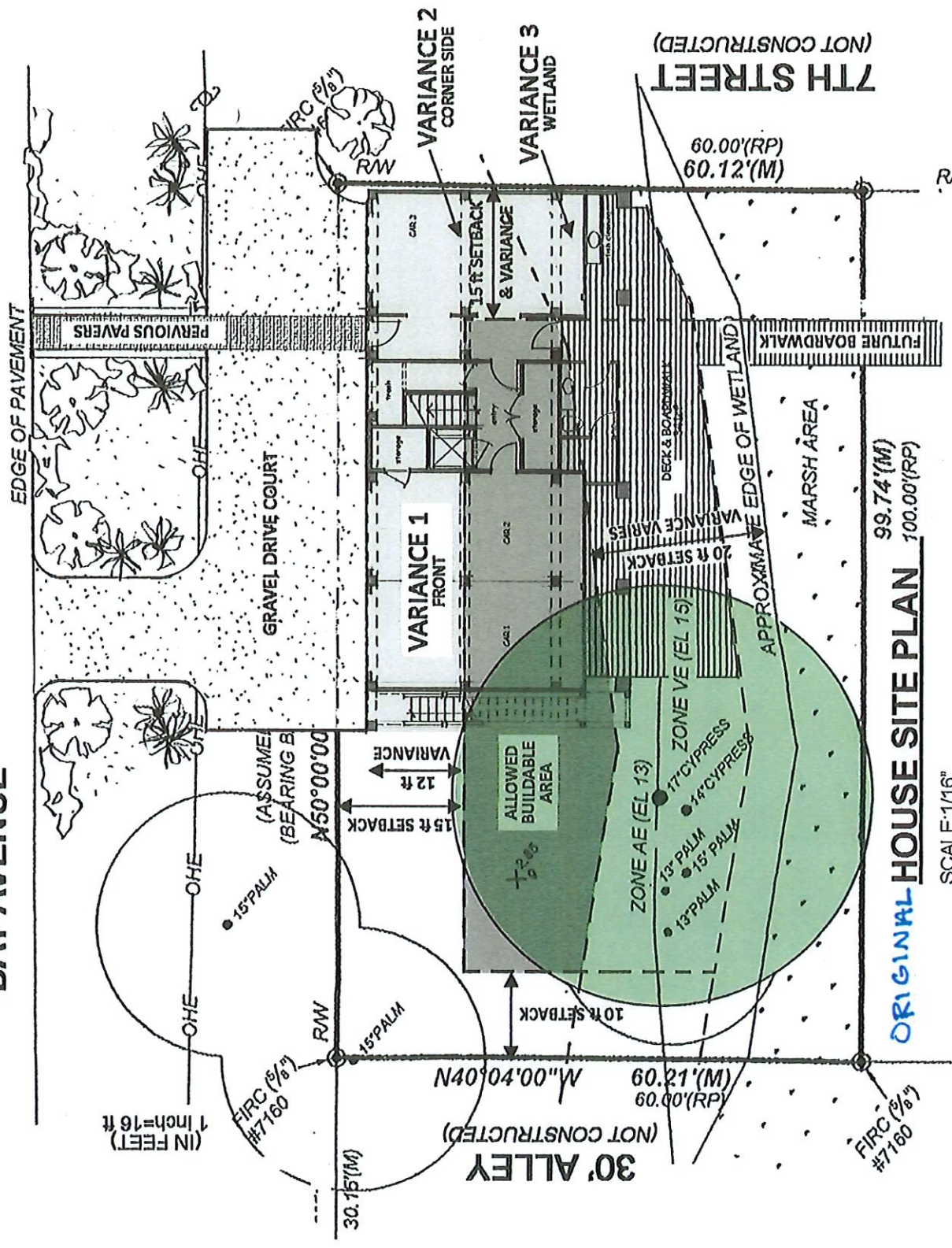
Cc: Bree Robinson <brobenson@cityofapalachicola.com>

Dan

After we talked this morning we worked closely through this variance app again. We continue to believe that there is no hardship within the meaning of Section 101-61 and reliance on hardship to grant the variance would be misplaced. However the tree ordinance authorizing variance to spare a tree, Section 105-26(1)(c), should be read to authorize a like for like swap between the back setback and the front setback. If the applicant establishes the need to come off the back setback of 25 feet an additional 15 feet to protect the tree, meaning the back of the structure would be located 40' deep into the lot, then the applicant should receive a variance of 15 feet in the front, pursuant to the tree ordinance. We continue to believe that nonconforming uses or structures of other houses on the street is not a basis for granting a variance, but in this case the tree ordinance is dispositive. I think this is a bit different than what we discussed this morning and I wanted to bring you up to date.

Best regards,
Bonnie

BAY AVENUE



ORIGINAL HOUSE SITE PLAN

SCALE: 1/16"

FINAL ORDER
VARIANCE APPROVAL

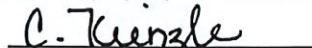
The purpose of this Final Order (Order) is to memorialize the City of Apalachicola's Board of Adjustment Board's (BOA) approval of the Variance Application submitted as presented to the VAB on March 15, 2023 with conditions.

Specifically, the application by Roderick D. Mcleod at 10 6th Street, Apalachicola, FL for a Variance to allow proposed new construction of a home on the parcel located at the corner of 6th Street and Bay Avenue (R-1 Single Family Residential), more specifically described as Block 26 Lot 1 or 10 6th Street, into the required 15' front setback from 6th Street and approval of a 0' front setback.

The City acknowledges that the current zoning and land use of the property are appropriate for the applicant's proposed use.

The BOA determined based on the competent substantial evidence in the form of testimony and documentation introduced at the Quasi-Judicial hearing that the Variance application should be approved. All relevant testimony and documentation relied upon by the BOA to reach its decision are as described in the Minutes attached hereto. The Minutes are incorporated herein by reference. As part of the City's final action approving the Variance certain condition(s) were attached. These condition(s) are as follows:

1. The Variance approval shall be effective for two (2) years from the date of this Order, and not grandfathered in if the applicant were to sell the property before construction.



Chairman Carrie Kenzle
Board of Adjustment
Apalachicola, Florida

Date: 4-12-23

DISCLAIMER:

The approval represented by this Variance does not create any right on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the City for issuance of any other development/building permit if applicant fails to obtain requisite code, regulations, approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of local, state or federal law.

NOTE:

Per section 166.033, F.S. this Order is expressly conditioned upon the Applicant obtaining all applicable state and federal permits before commencing development.