

CITY OF APALACHICOLA
BOARD OF ADJUSTMENT
QUASI-JUDICIAL PUBLIC HEARING
WEDNESDAY, JUNE 28th, 2023
Community Center - 1 Bay Avenue
Minutes

Attendance:

- BOA: Chair – Carrie Kienzle, Dennis Winterringer, Tricia McLemore, Lois Swoboda, Fonda Davis
- Staff – City Attorney Dan Hartman, City Planner Bree Robinson

Quasi-Judicial Public Hearing: 6:00PM

- The attached Quasi-Judicial Rules of Procedure were followed. The Chair, Carrie Kienzle, gave a summary of the below variance request, the past application, and the meeting was called to order.
-
1. 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. Applicant is requesting approval of a 3' front setback.
 - City Planner referenced the proof of notice for the request as found in the agenda packet. She also noted that the letters received back from the public notice were tallied and there were 2 in support and 2 against. The comments from the letters are available within the agenda packet.
 - Board members disclaimed any ex-parte information received – Dennis Winterringer sent in an email that he was forwarded by the applicant representative George Coon. The writer of the original email, Bonnie Davis, was present and commented that it was not her intent that the email be distributed to BOA members. It was accepted into the record and is attached.
 - City attorney provided a brief description of all documentation being entered into the record. (Written evidence that the board is making their decision 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 representative, George Coon, presented the application for a variance request of 3' front setback, opposed to the standard front 15' setback on Bay Avenue. George Coon was joined by Dan Garlick in presentation. The applicant based their application on reasonable use and that the wetlands create a hardship in following the setbacks. The applicant provided a new wetland delineation and renderings of what could be built with no variance and what could be built with variance. It was noted that when the applicant bought the property, they knew it was buildable but to a limited extent – they did not realize how limited. All images presented are within the agenda packet.

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- The Board were offered an opportunity for questions – Lois S. mentioned that this area is prone to flooding and nearby homes have lost items in storms past. Fonda D. questioned the current buildability of the lot – the applicant representative explained that it would be possible to build a home on the lot as-is, but that the setbacks would only allow for it to be 13.5' wide, which would make for an unsightly home and be unreasonable in the Bay Avenue area. Dennis W. questioned how the wetlands delineation was performed – applicant representative, Dan G., explained the process of a wetland delineation, which does involve field work. Dan G. also mentioned that a narrow width home on Bay Avenue could be more dangerous in high winds.
- The public was offered an opportunity to ask questions – there were none at this time, but a citizen did offer public comment. Elizabeth Milliken, member of P&Z, commented that the buyer and realtor both had to know the situation and they bought it at their own risk. She also mentioned that the standard setbacks should be taken seriously and she was concerned on the precedence this could set concerning setbacks. Bonnie Davis, representing the HAPPI group, commented on the Moon variance and asked if it was setting precedence in this request – City Planner stated that the Moon case was a different scenario and this was covered in the last meeting.
- At this time, the City Planner presented her report. She started by stating that the requested materials from the last BOA meeting had all been provided. She mentioned that the property was bought in January 2022 and that they were aware of the buildability at that time of purchase. She noted that the lot is buildable currently for a 951SF footprint home, but that would only allow for 16% lot coverage of the 1 lot out of the 5 they own that is buildable. She mentioned the LDC in R-1 as the minimum buildable size is 800SF, which this option does surpass. She also noted that if variance were granted, the applicant would be able to build a 1,331SF footprint home, which would up their lot coverage to 22%, still almost half of the standard 40%. She mentioned that several other homes on Bay Avenue have been built close to their front property line and this is nothing new being requested. It was noted that there is 35' of ROW space from the edge of Bay Avenue to the applicant's property line, which means there is no hazard for pedestrians. She mentioned that allowing for a 3' front variance would help the applicant be able to build a complementary home on the lot, opposed to a shotgun/mobile home size home that has to be elevated. She mentioned it could be a spectacle in the neighborhood, as the current buildable shape could be seen as odd. She finished up by stating it was up to the BOA to determine if there is a hardship noted with the wetland's proximity on this lot and that they would also need to consider reasonable use of the property.
- The BOA board had no questions at this time of staff. The public had no questions of staff at this time.
- At this time any private attorneys were offered an opportunity to comment or ask any questions they may have. Bonnie Davis, representing the HAPPI group, came forward and began to question the applicant. She brought up case law and the state's definition of a hardship. She mentioned that

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the 40% lot coverage code is for stormwater protection and should not be a standard to lean on for reasonable use. The main questions and topic of conversation became about whether the applicant knew about the buildability situation at this time or not and this created their own hardship. Tricia M. asked staff if the applicant knew as stated in the staff report – City planner stated you can look at the lot and tell it is very narrow when you look at it, so it is assumed that at purchase they were aware. Dan G. ultimately stated that they were aware and were hopeful for a variance, which had been extended to several neighboring properties. A variance granted by the BOA in 1992 for the same parcel was brought into question – the particular variance was for front setbacks and 10' into the wetland setback and was ratified in 2004 by the current City Manager and City Attorney. As a considerable amount of time has passed and the property was never built on or changed hands, the old variance was no longer applicable. The City Planner commented that the current variance request is for less than was originally granted in 1992, so if precedence is taken into account, then it seems to be set by a prior variance. The house next door was mentioned by Dan Garlick, as the original variance had covered the build of that parcel as well. It was granted and the home was built. (Attached document presented by Dan Garlick.) Bonnie Davis finished her questioning of the applicant by asking and referencing the application materials that this lot is already buildable and they should not be granted a variance to build a larger home when they are already able to build one currently.

- The public were allowed to comment at this time and Elizabeth Milliken's previous comments were reaffirmed by the board Chair.
- The applicant was offered an opportunity for rebuttal at this time – the applicant representatives reaffirmed that they are seeking a variance based on hardship, being the location of the lot on wetlands, and upon reasonable use with the shape and size of the home.
- City Planner stated as a rebuttal that if we are going to bring case law and precedent into the conversation that we need to note that a variance was issued for this property in years past and other neighboring properties as well. She also mentioned that while this is P&Z jurisdiction and not BOA, but a very narrow shaped home in this area of Bay Avenue would not be very compatible, which P&Z will determine when they review it as the Architectural Review Board. She noted BOA shouldn't consider the looks in their decision, but the actual footprint, hardship stated, and reasonable use should be considered.
- Dennis W. questioned why should be able to receive a variance when the lot is already possible for use and able to build a 951SF footprint home on? He also mentioned that the plan was for 2 stories, so the home really would be double that square footage. The other board members agreed that it is already buildable, so there is a possible use noted. They deliberated on reasonable use and possible size of the home and then the with-variance option. The chair mentioned that the smaller home could be designed to fit in with the neighborhood better ultimately, but she did not see hardship in this instance, and she does not consider the wetland to be a hardship.

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- City Attorney went over the COA LDC where variances are discussed and reminded the board that if they were to accept the variance they could based on evidence in the agenda packet, but if they were to reject the request they would need to specify the reason and evidence of rejection.
2. Decision on Variance Request for 3' front setback. (R-1) @ 94 Bay Avenue, Block 193 Lots 1-5. For Sarah Polow – Owner; Represented By: George Coon
- The board deliberated their options and Dennis W. and Chair both spoke to the fact that the applicant knew what they were buying and that it is already buildable, so they did not see hardship in this case. Tricia M. agreed. Lois S. stated that the request might could have been lessened and been more allowable?
 - Fonda D. made a motion to approve the variance request for a 3' front setback. The motion failed.
 - Dennis made a motion to opposed the variance request, based on Section 101-61 (2) e. (that the board shall find that the reasons set forth in the application justify the granting of a variance, and that the variance proposed to be granted is the minimum variance that will make possible use of the land, building or structure.) and in this case there is already possible use of the land, it can be reasonably used, and is over 800SF.
 - Attorney Dan Hartman clarified the motion and stated that there would have to be a motion to amend it if it would like to be rephrased.
 - Lois S. made a motion to amend the motion; Tricia M. 2nd the motion to amend the previous motion. Carrie, Dennis, Tricia, Lois – I's, Fonda D – opposed. Motion passes to amend previous motion.
 - Dennis makes a motion to deny the variance request based on Section 101-61 (2)e. and the evidence is that the lot is buildable, the wetlands are not a hardship, and the possible building is over the minimum buildable standard for R-1.
 - Applicant representatives approach the mic and say that that are withdrawing the application. They state they are withdrawing and they want the opportunity to redesign for a lesser variance request based on Lois. S suggestion earlier in the meeting.
 - City Attorney states they have the right to withdraw the applicant before any decisions are final.
 - Chair, Carrie, asks the City Attorney if this is legal as the motion has already been made. HAPPI representative, Bonnie Davis, echoes her concern and mentions dismissal without prejudice and she stated she did not understand why the decision could not be made as the motion was made. She continued to state that the public in attendance and the applicant deserve a decision at this meeting.
 - City Attorney stated that they have the right to withdraw and the motion was not completed. He also stated that the public does not have a role in deserving an answer, but the applicant deserved a decision up until they withdrew. City attorney stated the applicant would have had the option to appeal decisions, if one were to have been made, and they now have the option to re-apply if desired, but will have to start over in the application process.
 - Applicant withdrew request.

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Other/New Business:

- Dennis W. mentioned the ethics training on 8/15/23 and asked if they needed to take the motion for the Chair seat at this meeting.
- City staff stated that the agenda for this meeting was set before the request for chairs to be voted on yearly was made by the City Manager, so it would be on the agenda for the next meeting. Staff stated the motion needed to be on the actual agenda and all BOA members notified to attend for this vote in advance.
- Dennis W. mentioned that he would like to see completed applications brought before the BOA to avoid any similar situations as the last 2 meetings again – he brought up the idea of a joint meeting between P&Z and the BOA for if this parcel were to apply again.
- City attorney stated he would look into this idea.

Outstanding/Unresolved Issues:

None

Chair – Carrie adjourned the meeting.

BOA Meeting Minutes Approved by:

Chair – Carrie Kienzle

Date



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Outstanding/Unresolved Issues:

None

Chair – Carrie adjourned the meeting.

BOA Meeting Minutes Approved by:

Carrie Kienzle
Chair – Carrie Kienzle

7.5.23
Date

Fwd: Important Updates for Tuesday City Commission Meeting

dwinteringer@mediacombb.net <dwinteringer@mediacombb.net>

Mon 6/26/2023 3:37 PM

To: Bree Robinson <brobinson@cityofapalachicola.com>

For this Wednesday's Board of Adjustment variance application hearing, I received the following e-mail message from George Coon, agent for the applicants Sarah Polow and Mark Heidt.

From: "George Coon" <georgecoon@gmail.com>

To: bonnietedavis@gmail.com

Cc: "Daniel W. Hartman" <dan@fllegalteam.com>, "agrove" <agrove@cityofapalachicola.com>, "Brenda Ash" <bash@cityofapalachicola.com>, "Despina George" <dgeorge@cityofapalachicola.com>, "Adriane Elliott" <aelliott@cityofapalachicola.com>, "Joe And Jeanette Taylor" <palme2blue@yahoo.com>, "Jim & Susan Bachrach" <shadow1@fairpoint.net>, "Bobby Miller" <bobby.miller@yahoo.com>, "Lee MclemoreTricia" <leemclemore@mchsi.com>, "Anna-Maria Cannatella" <anna-maria@apalachicolahomes.net>, "Lois E. Swoboda" <antbetty@alohabugspest.com>, "Tricia McLemore" <bridgessouth7@gmail.com>, "Atul Patel" <atul.patel85@gmail.com>, "Dennis Celia Winterringer" <dwinteringer@mediacombb.net>, "Dodie Alber John Penny" <dodiealber@gmail.com>, "George Watkins" <georgew@mchsi.com>, "dan garlick office" <dan@garlickenv.com>, "Sarah Polow" <spolow@gmail.com>, "Steven Etchen" <steven@whitesandsinvestment.com>

Sent: Monday, June 5, 2023 9:49:14 AM

Subject: Re: Important Updates for Tuesday City Commission Meeting

Bonnie,

Would you please share the recipients of your email with me?

Thanks

George Coon, ARB, LEED AP

George Coon Inc.,

Residential-Planning-Design

(850) 227-6898 office mobile

On Sun, Jun 4, 2023 at 10:42 AM <bonnietedavis@gmail.com> wrote:

June 4, 2023

Dear Apalachicola Friends and Neighbors,

The purpose of this letter is to alert you to two items that are on the agenda for the City Commission meeting this Tuesday, June 6th starting at 4 pm. I apologize for the late notice, but the agenda did not come out until Thursday afternoon and Friday was occupied by information gathering. If we get more information before the meeting, I will send out a supplemental email.

Gibson Inn Expansion

The Gibson Inn has asked for an encroachment for second story balconies that would overhang the sidewalk on the Avenue D side of the expansion being built on the corner of Avenue D and Market Street. They appear to also be asking for an encroachment on the street side of the sidewalk on Avenue D for parking. I use the term "appear" because the absence of an appropriately detailed

survey and supporting documents in the narrative application creates some confusion about the extent of the encroachment sought by the Gibson. The timing of the application is also problematic since construction of the extension is well under way. The City recently voted to deny encroachments to land owners who built encroachments without first obtaining city commission. While the current state of construction is not complete, the timing does pressure the city. I hesitate to make further observations at this time in the absence of needed information, but I did want to let you all know this will be considered on Tuesday.

Accessory Buildings Used as Dwellings

Under the current Land Development Code accessory buildings (think sheds, outbuildings, garages, etc.) in residential zones 1 (single family), 2 (multifamily), and 3(multifamily) may not be used as dwellings. The City building inspector has become aware of violations of this ordinance. I have informally requested additional information about the number of violations at issue. Staff suggests a one-year moratorium on enforcement of this ordinance so as not to aggravate a workforce housing crisis. During that time there would be no evictions, no approvals for new accessory structures, and no approvals for retrofitting existing accessory buildings as dwellings. Code enforcement against use of dwellings as transient rentals (i.e., Air B B) would proceed.

While this is a topic that merits discussion, I do not believe ordinance enforcement can be suspended in the manner suggested by the Staff memo. That would require ordinance amendment or rescindment. Perhaps the best course of action would be scheduling of a workshop to explore the topic and allow for community in-put. I bring this item to your attention for that reason.

Request for Variance on Bay Avenue

You may recall that in March the owner of vacant property where 7th Street deadends into Bay Avenue requested several variances to build a new house on the parcel which would have permitted intrusion into the wetlands at the back of the parcel and reduced the front setback from 15 to 3 feet, as well as reduced one side set-back. The application was tabled pending a survey of the wetlands boundary line. It has now been rescheduled for June 28. The applicant is no longer seeking a variance for wetlands intrusion or to the side set-back, but the owner is still seeking a variance to reduce the front set-back from 15 to 3 feet. No hardship is alleged in the application, other than the existence of the wetlands. You may want to look at the application on the City's website under the agendas and minutes tab.

Comp Plan Update

I am happy to report that the City Commission voted to include a deadline of 2027, rather than the originally proposed 2040, for the adoption of cultural and historic preservation regulations in the update of the Comprehensive Plan. The next step in the process is state approval of the proposed changes and then the ordinance adoption process will begin. I personally hope we can roll up our sleeves and find common ground to get this done before 2027.

All of these issues have important consequences for the visual landscape of our community as well as its long -term sustainability. Please consider attending the meeting and expressing your opinions there or by email beforehand. If you are watching on Facebook, please let your commissioners know so they will have a sense of the degree of community interest. As always, thank you for your support and please feel free to forward this to anyone who may find it of interest.

Best regards,
Bonnie Davis

CITY OF APALACHICOLA

ROYD W. HOWZE, JR.
Mayor

Commissioners:
JAMES L. ELLIOTT
JOHN M. BARTLEY, SR.
VAN W. JOHNSON, SR.
ROBERT L. DAVIS



BETTY TAYLOR-WEBB
City Administrator

J. PATRICK FLOYD
City Attorney

June 23, 2004

In 010200408889 Date 09/21/2004 Time 11:04
X. J. Taylor Webb Randall Vado, FRANKLIN County D1013 P1204

William & Sally Cook
98 Bay Avenue
Apalachicola, Florida 32320

RE: Variance for Lots 1-10, Block 193, City of Apalachicola, Florida

Dear Mr. and Mrs. Cook:

This is to follow-up my written statement made on page two of the attached minutes of the Apalachicola Board of Adjustment (BOA) meeting of November 15, 1991.

I have reviewed these minutes and confirm that the BOA approved a variance for the above referenced property to allow a 0-foot setback line on Bay Avenue and 8th Street and a 10-foot encroachment of the Critical Habitat Zone. I am not aware of any other minutes or actions by the BOA that would change the effect of this approved variance. Consequently, it is my belief that this approval would still be in effect.

If you have any questions or need further information, please do not hesitate to contact me.

Sincerely,

Betty Taylor Webb
Betty Taylor-Webb
City Administrator

I have reviewed this letter and approve it as being correct,
Sincerely,

J. Patrick Floyd
City Attorney
City of Apalachicola

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.