

**FINAL ORDER**  
**VARIANCE DENIAL**


The purpose of this Final Order (Order) is to memorialize the City of Apalachicola's Board of Adjustment Board's (BOA) DENIAL of the Variance Application submitted and as presented to the BOA on November 20, 2023 by Sarah Polow.

Specifically, the application by Sarah Polow - Owner of the parcel located at the corner of Bay Ave and 7<sup>th</sup> Street, Block 193, Lots 1-5, also known as 94 Bay Ave., Apalachicola, FL for a Variance to allow proposed new construction of a home on the parcel zoned, R-1 Single Family Residential. The Applicant requested a variance to the Front setback of 15'. Specifically a variance to the front 15' set back of 7'. i.e. the Front setback from Bay Avenue would be reduced to 8' to allow for the proposed home design due to wetlands at the rear of the property.

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 DENIED. All relevant testimony and documentation relied upon by the BOA to reach its decision are as described in the Minutes. The BOA Minutes are incorporated herein by reference.

The Motion to Deny was based upon findings that the parcel contained reasonable area to build a home in compliance with City Code and that Applicant had failed to establish a hardship as defined in the Code. The Motion to Deny passed unanimously.

  
\_\_\_\_\_  
Chairman Carrie Kienzle  
Board of Adjustment  
Apalachicola, Florida

Date: 12-11-23

**RIGHT TO APPEAL:**

This Denial of an application for Variance may be appealed as set forth in Section 101-61(7) of the Code which states that decisions of the board of adjustment shall be final and reviewable as provided by law. Specifically, within 30 days of rendition by appeal to the Franklin County Circuit Court.

**CITY OF APALACHICOLA**  
BOARD OF ADJUSTMENT  
QUASI-JUDICIAL PUBLIC HEARING  
MONDAY, NOVEMBER 20<sup>th</sup>, 2023  
Community Center - 1 Bay Avenue  
Minutes

**Attendance:**

- BOA: Chair – Carrie Kienzle, Dennis Winterringer, Dodie Alber, Anna Maria Cannatella, Diane Brewer
- 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 7<sup>th</sup> 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 8' 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 was 1 in support and 6 against. The comments from the letters are available within the agenda packet.
- Board members disclaimed any ex-parte information received – no one submitted any ex-parte information. One email was circulated among staff and was sent by the applicant, referenced in the meeting, and is included as an attachment.
- 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 8' 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 the 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. George Coon noted that at the prior meeting it was mentioned by BOA members that a compromise might be reached with a lesser request. He showed drawings of the current request along with all prior requests, including a P&Z denial, and made it clear his is asking for an 8' setback, so a 7' variance. City Attorney chimed in and explained the City code that guides the BOA on their decision and special circumstances – provided in the agenda packet. Dan Garlick



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commented that the design George presented is trying to be compatible with the neighborhood – he went on to explain how the lot is hindered by wetlands and has always been a platted lot by the City. He emphasized focusing on the site plan and the buildable area opposed to the renderings of the homes. He stated that the goal was to build a reasonable house, protect the wetlands, be compatible with the neighborhood, and not create a scenario where wetlands would ever be filled in, which could be possible with a permit.

- The Board was offered an opportunity for questions – Dodie Alber asked if it is legal to fill in wetlands and Dan Garlick answered that with a permit it is legal, not a desire but an option. Dennis W. questioned how the wetlands delineation was performed and asked why the lines look different on the survey v the wetland delineation – applicant representative, Dan G., explained the process of a wetland delineation, which does involve field work and also reminded the board that the survey is an estimated wetland line and the delineation is the actual. Anna Maria Cannatella asked if this is R-1, then what is the minimum buildable dwelling size – City Planner answered 800SF.
- The public was offered an opportunity to ask questions – there were none at this time.
- 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. The applicant's requests would allow for around 20% lot coverage, opposed to the standard 40% allowance. She mentioned the LDC in R-1 as the minimum buildable size is 800SF, which this option does surpass. 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 finished up by stating it was up to the BOA to determine if there is a hardship with the wetland's proximity on this lot and that they would also need to consider reasonable use of the property. She explained that the setbacks are still on the applicant's property and within their own property regardless. The full planner report is available in the agenda packet.
- The BOA Chair asked what the purpose of the 15' front setback is – the City Attorney answered that setbacks are standard for fire code, aesthetics, and establishing a sense of conformity among the neighborhood. The City Planner also mentioned that a front setback allows for on-site parking instead of cars parking in the ROW. Dennis Winterringer asked if the planner's report insinuates that the wetlands are a hardship - City Planner stated she does not believe the applicant is trying to claim that the wetlands alone are a hardship, but that the buildability of the lot is severely diminished due to the proximity to the wetlands.
- 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 opposed the



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granting of the variance based on the Code and judicial precedent. She brought up the Code on hardship and asked the BOA to consider what hardship exists. In her opinion, no hardship had been presented as the lot is already buildable. She stated that a variance is granted for use and not for looks. Bonnie Davis stated she felt it was important to go over the history of this lot. (The packet of information she passed out is attached to these minutes and the statement of facts derive from this attachment.) In summary, she stated 3 points. 1.) 4/5 of the lots owned have been submerged since their original plat. Wetlands were plainly visible at the time of purchase. 2.) She mentioned that the 40% lot coverage code is for stormwater protection and should not be a standard to lean on for reasonable use. The question she asked is can you build something reasonable within the setbacks? 3.) The staff report stated that granting a variance would not be a detriment to the public welfare – Bonnie stated that HAPPI disagrees. In final thought, she speaks to a time limit for decisions by the BOA as allowed and stated by City code. Ultimately, on behalf of HAPPI, she asked the board to deny this request on the basis of no hardship.

- The public were allowed to comment at this time – a homeowner of a neighboring property, 98 Bay Avenue, came forward and stated that their house is smaller than what is being proposed by the applicant and that they would love a 8' setback, but they would not ask for that as the Code is the law. The neighbor continued to question why someone would challenge the City setbacks as established. The City Planner asked if the homeowner knew what their front setback was and the owner stated that they had just had a survey completed and it was extremely close to the line. Another neighbor across the street asked the BOA to deny the request and that they did not appreciate some of the applicant representative remarks. The City Planner asked to circle back to the neighboring home at 98 Bay Avenue and explained that the 15' front setback is supposed to be from an owner's property line and not the edge of the street – she stated that Franklin County Property Appraiser shows that the neighboring home does not meet setback requirements and the variance request presented is asking for less intrusion into the setback than the neighbor already has. She also noted that the square footage shown is higher than what the applicant is seeking as well, so in this case the neighboring property has a near 2' front setback and a larger home than the current applicant is seeking. She asked for the BOA to take this into account when listening to public comments.
- 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. The applicant representative stated that if no variance is granted that the landscape of the street will inevitably change. He asked if the request was denied if they could come back for a different request and the City Attorney stated that if it was denied then they would not be able to apply for another year. He explained that if approved, a timeline for approval would be established. If not granted, the applicant could not apply again for one year or could appeal. The City attorney explained that the BOA just needs to make a legally defensible decision.



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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 that they would need to specify the reason and evidence of rejection.
2. Decision on Variance Request for 8' 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 the Chair discussed reasonable use and comparable use in relation to the neighboring lands. She asked if you could build a home that meets reasonable and comparable use for the neighborhood – in this case it is already buildable, but is it reasonable? The City Attorney spoke that if you cannot build something comparable equivalent to the use of neighboring lands then that can be a hardship. The Chair stated that she thinks it is reasonable use and they can already build a house that is comparable for the area – so it is reasonable use and that is her interpretation. Dennis Winterringer commented and referred to A0.1 and doesn't think precedent is set here and it is not pertinent to the conversation. City Attorney reminded the board to discuss facts and to make sure they justify any decisions they make through code.
  - Carrie stated again that a comparable home is already achievable without variance and she does not recognize hardship in this case.
  - Diane Brewer makes a motion based on the application, the testimony, for the following reasons – that the refutes the staff report saying that a variance would not be detrimental to the neighborhood and that the applicant knew that they bought a buildable lot as-is, so she makes a motion to deny the variance based on those 2 reasons. Dennis 2<sup>nd</sup> the motion and asks for discussion.
  - Dennis comments that the applicant has not established hardship, the lot is buildable by City code, and that the board should deny on these 2 reasons.
  - City Attorney gives direction on how to amend – he states they need a motion to amend the motion, they'd vote, and then a motion could be remade.
  - Dennis makes a motion to amend the motion – Anna Maria Cannatella 2<sup>nd</sup> the motion to amend. Vote called – all I's.
  - Dennis Winterringer makes a motion to deny the variance request based on the findings that the lot is already buildable for reasonable use in compliance with City Code and that the applicant failed to establish a hardship as defined in the Code. 2<sup>nd</sup> by Diane Brewer. Vote called – all in favor. Variance Denied.
3. Discussion & Decision on voting in new Chair & Vice-Chair for a 1-year term.
- Board discusses voting in a new Chair for a 1-year term. Staff clarifies that the same members can be voted in if nominated – this will be done every year or at the next meeting after a year passes as the meetings are not routine.

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- Anna Maria Cannatella nominates Carrie Kienzle for the Chair position. Diane Brewer seconds the motion. Vote called – all in favor. Carrie Kienzle remains as the Chair of the BOA for another 1-year term.
- Board discusses voting in a new Vice Chair for a 1-year term.
- Carrie nominates Dennis Winterringer. Dodie Alber seconds the motion. Vote called – all in favor. Dennis Winterringer remains as the Vice-Chair of the BOA for another 1-year term.

Other/New Business:

**There will be an alternate position available soon.**

Outstanding/Unresolved Issues:

**None**

**Carrie makes a motion to adjourn the meeting; 2<sup>nd</sup> by Dodie Alber. All in favor – meeting adjourned.**

**BOA Meeting Minutes Approved by:**

C. Kienzle

**Chair – Carrie Kienzle**

12-11-23

**Date**



Footprint	1,239 sf
Heated & cooled	<u>1,606 sf</u>

EDGE OF PAVEMENT

SITE BENCHMARK  
— MAIL & CAP #7160  
@ ELEV. 4.11'  
(NAVD 88)

Lorem ipsum

POWER  
POLE

100.00(RP)  
100.14(M)

(ASSUMED)  
(BEARING BASE)  
N50°00'00"E

$$\frac{49.5338^{\circ}}{30.15^{\circ}(M)}$$

101

8.

17

M2

FIRC (5/8)  
#7160

7TH STREET  
(NOT CONSTRUCTED)

30' ALLEY

20~~0~~ WETLAND  
SETBACK

Uplands  
Wetlands

SL 0055"11

99 7A(M)

# HOUSE SITE PLAN

SCALE: 1/16"

SCALE: 1/16"

project: **POLOW**

date: JULY 2023

## A1.1

george coon inc

(850) 227-6898

residential . planning . design







## Fwd: Variance Board meeting Monday night at 6pm

George Coon <[georgecoon@gmail.com](mailto:georgecoon@gmail.com)>

Mon 11/20/2023 9:27 AM

To: dan garlick office <[dan@garlickenv.com](mailto:dan@garlickenv.com)>

Cc: Sarah Polow <[spolow@gmail.com](mailto:spolow@gmail.com)>; Bree Robinson <[brobinson@cityofapalachicola.com](mailto:brobinson@cityofapalachicola.com)>; Daniel W. Hartman <[dan@fllegalteam.com](mailto:dan@fllegalteam.com)>

George Coon, ARB, LEED AP  
George Coon Inc.,  
**Residential**-Planning-Design  
(850) 227-6898 office mobile

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

From: **George Coon** <[georgecoon@gmail.com](mailto:georgecoon@gmail.com)>

Date: Sun, Nov 19, 2023 at 9:35 PM

Subject: Variance Board meeting Monday night at 6pm

To: Leslie Coon <[lawartist@hotmail.com](mailto:lawartist@hotmail.com)>, Deborah Miller <[apalach@yahoo.com](mailto:apalach@yahoo.com)>, Creighton Brown <[creightontbrown@gmail.com](mailto:creightontbrown@gmail.com)>, Dagenhart, Richard L <[richard.dagenhart@design.gatech.edu](mailto:richard.dagenhart@design.gatech.edu)>, Linda Buchanan <[lbuchanan1955@gmail.com](mailto:lbuchanan1955@gmail.com)>, Doug Rauscher <[rauscherdna@hotmail.com](mailto:rauscherdna@hotmail.com)>, David Peck <[dxspeck@yahoo.com](mailto:dxspeck@yahoo.com)>, Bonnie Davis <[bonnietedavis@gmail.com](mailto:bonnietedavis@gmail.com)>, Pamela and Terrance Corcoran <[pamelalwc@hotmail.com](mailto:pamelalwc@hotmail.com)>, Molly Hill <[mollie.hill718@gmail.com](mailto:mollie.hill718@gmail.com)>, Katharine Etchen <[katharine@whitesandsinvestment.com](mailto:katharine@whitesandsinvestment.com)>, Sophia Fonseca <[sophiacf619@gmail.com](mailto:sophiacf619@gmail.com)>  
Cc: Bonnie Davis <[bonnietedavis@gmail.com](mailto:bonnietedavis@gmail.com)>

Hello,

Monday is an important day for all concerned. The Variance Board presentation I am making is attempting to show that Apalachicola continues a tradition of good design. In my 3 previous presentations, there have been different plans with their respective possible facade resolutions.

Every time the Variance Board has denied my designs and have required a reduction of the requested setbacks. The designs have been adjusted each time to show these reductions accordingly and each time have been denied.

As the available buildable property size dwindles there simply is less to work with in order to provide the best possible design for my clients and for the City.

Here are a few of the hoped for designs. All shown here would have fit the requested Site Plans. I am showing just the facades because these are what one will see while driving or walking alone Bay Ave.

One of my favorites is this....I love the tower. Imagine the view!!! This faces the Bay.

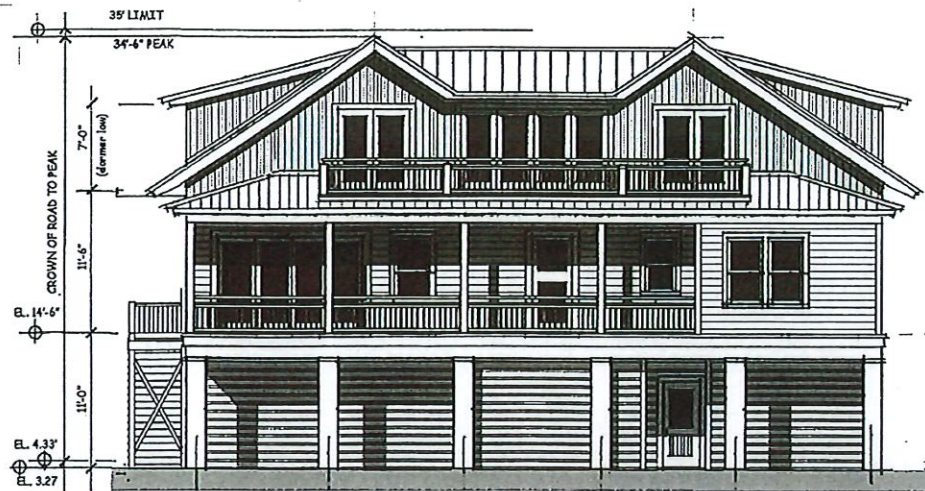


The following are designs previously presented. Although this meeting is about available areas to build rather than the way the house might look, the size of the buildable lot is extremely important for the process of design. All have site plans which work, and these facades fit their requested site plans.... They are presented in order of the presentation dates.

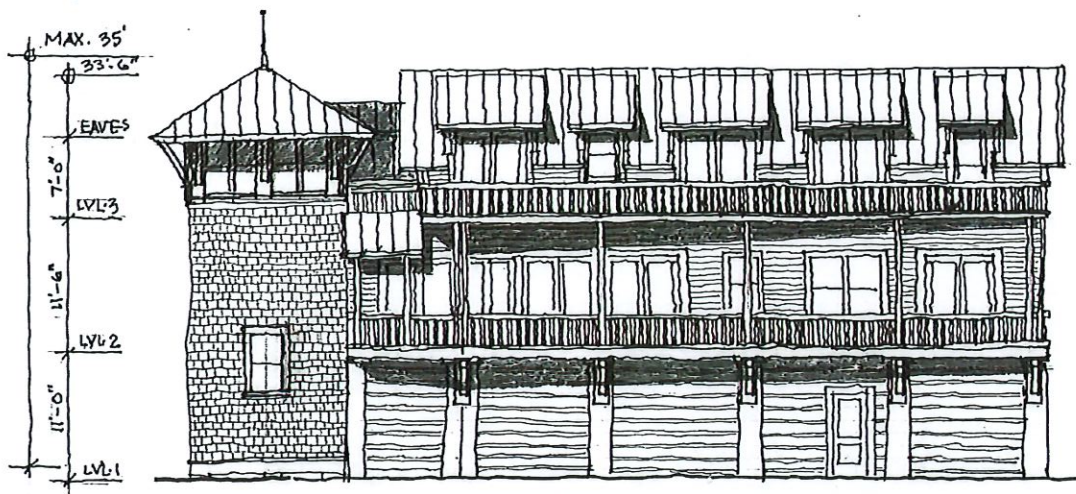


**WATER ELEVATION**  
FIRST PRESENTATION 8 AUGUST 2022





**WATER ELEVATION**  
SECOND PRESENTATION 15 MARCH 2023



**WATER ELEVATION**  
THIRD PRESENTATION 28 JUNE 2023

And this Monday night at 6 pm... Only slightly larger than the buildable lot, but still think will complement the area.



## WATER ELEVATION

FOURTH PRESENTATION 20 NOVEMBER 2023

I actually agree with much of what Bonnie Davis, a prominent detractor, has expressed. It is certainly true that there exist rules to help ensure that designers don't abuse good design.

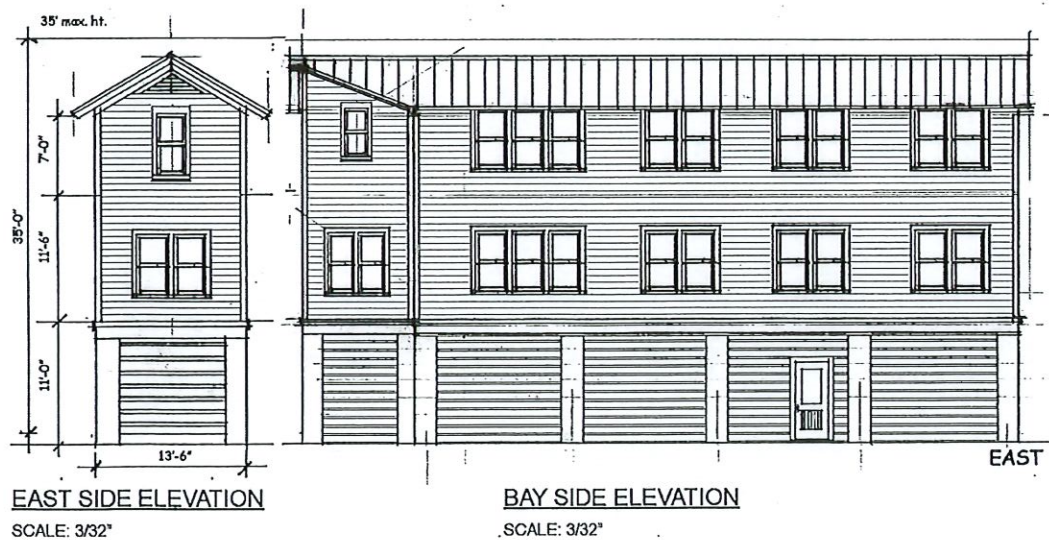
In this case, following the precise rules will do just what they are meant to protect.

If not approved, my clients are left with the original small buildable lot on which to place a small house.

The design works but is only about 14 feet wide. Also, the house is very tall because the first floor must be at 13 feet above grade.

Because this house is so small, they won't be living here but will sell it.

The following image is the project that can be built without any special approvals, although some revisions to the design certainly will occur.



Hopefully you will come to the meeting and agree with me that we avoid this (I live here too).

Following City rules certainly does not represent standards of good design, in fact in this case the rules can inhibit good design as this will do.

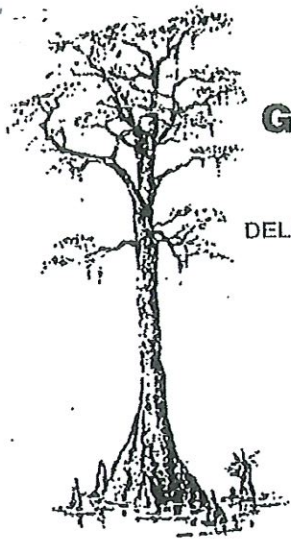


I assure you that the house will be built. Which one chosen is the question for Monday night. (Again, I wish it was the first image).  
See you there.

George Coon

p.s. Bonnie, could you please send this to your group?  
Thanks

George Coon, ARB, LEED AP  
George Coon Inc.,  
**Residential**-Planning-Design  
(850) 227-6898 office mobile



## **GARLICK ENVIRONMENTAL ASSOCIATES, INC.**

SPECIALIZING IN REGULATORY ISSUES INCLUDING  
REGULATORY PERMITS • WETLANDS/UPLANDS JURISDICTIONAL  
DELINEATIONS • SUBMERGED LAND LEASES • ECOLOGICAL INVENTORY/ASSESSMENTS

May 11, 2004

William Cook  
98 Bay Ave/ P.O. Box 396  
Apalachicola, FL 32329

Re: Blk 193; Lots 1-5  
City of Apalachicola  
GEA#04-211/DFA

Dear Mr. Cook:

As requested, GEA conducted an onsite investigation to conduct a development feasibility assessment for the referenced site. The assessment considered the site's biophysical features and the regulatory issues affecting the site's development. Below is a summary of our findings and conclusions.

### **PROJECT LOCATION**

The lots are located in Section 12 of Township 9 South and Range 8 West on Bay Ave in the incorporated City of Apalachicola in Franklin County. The project fronts Apalachicola Bay, an aquatic preserve designated an Outstanding Florida Water, not in shellfish harvesting waters. See Attachment 1/3. Lot was staked by the owner.

### **METHODOLOGY**

The methodology employed in the assessment included a pre field compilation of location, review of the Apalachicola quadrangle topographic map, Franklin County NRCS soils atlas and the city's zoning map. The field investigation included a preliminary determination of the site's boundaries, as well as a compilation of features adjacent to the site.

Thereafter, several transects were walked to provide optimum analysis of the site's features to determine the extent of the habitat inventoried, as well as the relative form and function. The Lot

P.O. BOX 385  
APALACHICOLA, FL 32329-0385  
(850) 653-8899  
FAX (850) 653-9656

948 JENKS AVENUE  
PANAMA CITY, FL 32401  
(850) 873-7728  
FAX (850) 873-7731

2414 MAHAN DRIVE  
TALLAHASSEE, FL 32308  
(850) 402-9886  
FAX (850) 402-9887

①



5 corners, determined by the owner and the wetlands were positioned by a Trimble Pro XR GPS system and later mapped in the lab which are attached as sheets 2/3 and 3/3.

### **BIOPHYSICAL FEATURES**

The project site is located in an area that is residential in nature. Bay Ave flanks and is adjacent to the site's northwest while a salt marsh connected to the bay is located to the south. Generally the terrain is flat with a slight elevation decrease from northwest to southeast.

The specific site consists of about 100 ft of road and bay front in a residential area. The lots are platted 100' X 60'. The bayfront is bordered by a tidal marsh. Lot 5 is vegetated by two cypress trees and grasses. The underlying soils of the tidal marsh are muck; a hydric soil. Lots 1-4 are located in the saltmarsh. However, Lot 5 is represented by clean white medium grained sand over muck. The fill was measured to be 30" geotechnical method. The NRCS soil survey maps the area as Aquents indicating that the land was filled at an indeterminate time in the past. An aerial infrared photo is attached as 2/3.

### **REGULATORY ISSUES**

The filled lands are under the jurisdiction of the city while the wetlands are regulated by the state FDEP and the federal USACE. Any development activity in wetlands is expected to require state and federal permits. A wetland delineation is illustrated as Attachment 2/3 and 3/3.

The city's zoning code designates this area as R-1 allowing for single family residential as a principal use. The code requires that at least 6000 sq ft/ lot is available. The city also requires a 20 ft setback from wetlands that restricts impervious areas such as roofs or paved areas with the intention of maintaining good water quality by creating a buffer between stormwater runoff from uplands and the more saturated areas. Traditional setbacks for building include 15 ft from the road front and 7.5 (or 15 ft combined) from the sides.

Although potable water is available, the city's sewer system is under moratorium by the state while improvements are being completed for an upgrade. As I understand the interim policy, a case by case approval can be considered. The site is expected to allow one single family dwelling

In my opinion, and supported by the attached site plan, lots 1-4 do not appear to meet the criteria for development as they are located in wetlands. Lot 5 can be developed as the fill placed over the wetlands is historic based upon the soil survey and as such could be waived from state and federal jurisdiction. The City setback of 25' from the street side and 20' from wetlands leaves 25' +/- unencumbered for building.

Page 3  
Cook  
March 11, 2004

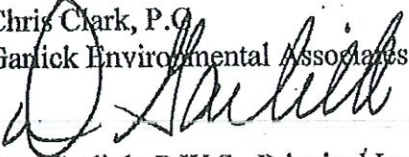
Should you consider to build a wider structure, then a hardship for a variance would have to be established and considered at a public hearing required for the city's approval. A substantial dwelling could be constructed without a variance, which saves the site's trees. Therefore a variance would not be expected to be granted.

This assessment should aid you in your planning efforts. The opinion rendered in this assessment may be affected by revisions in local, state or federal law and policy. Therefore, if a significant delay in your activity occurs, it is advisable to notify GEA. The assessment does not provide authorization for any activity requiring a permit. However, GEA can provide professional assistance in obtaining permits or additional work as requested.

If you have any questions, or need additional information, please do not hesitate to call me at the Apalachicola office.

Sincerely,

Chris Clark, P.O.  
Garlick Environmental Associates



Dan Garlick, P.W.S., Principal Investigator  
Garlick Environmental Associates, Inc.

Attachments

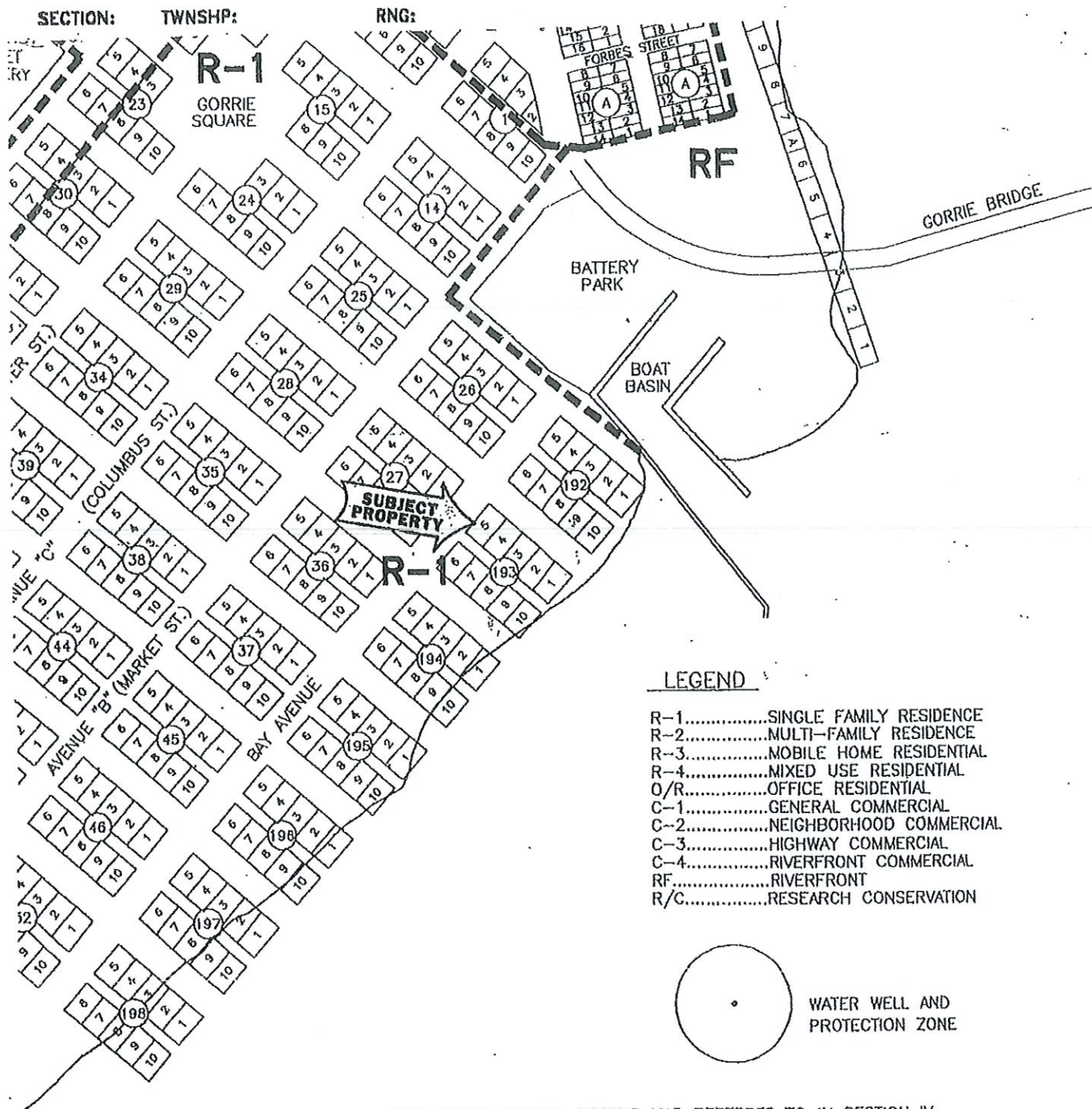


# PREPARED BY: GARLICK ENVIRONMENTAL ASSOCIATES, INC.



APPLICANT/CLIENT:  
WATERBODY/CLASS:  
PURPOSE:  
PROJECT LOCATION / USGS:  
LATITUDE:  
LONGITUDE:

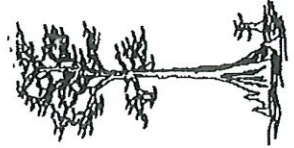
JOB:  
DEP:  
COE:  
OTHER:  
DATE:  
SHEET: 1 / 3



THIS IS THE OFFICIAL ZONING MAP REFERRED TO IN SECTION IV  
OF THE LAND DEVELOPMENT CODE OF THE CITY OF APALACHICOLA,  
DATED: DECEMBER 3, 1991.



5

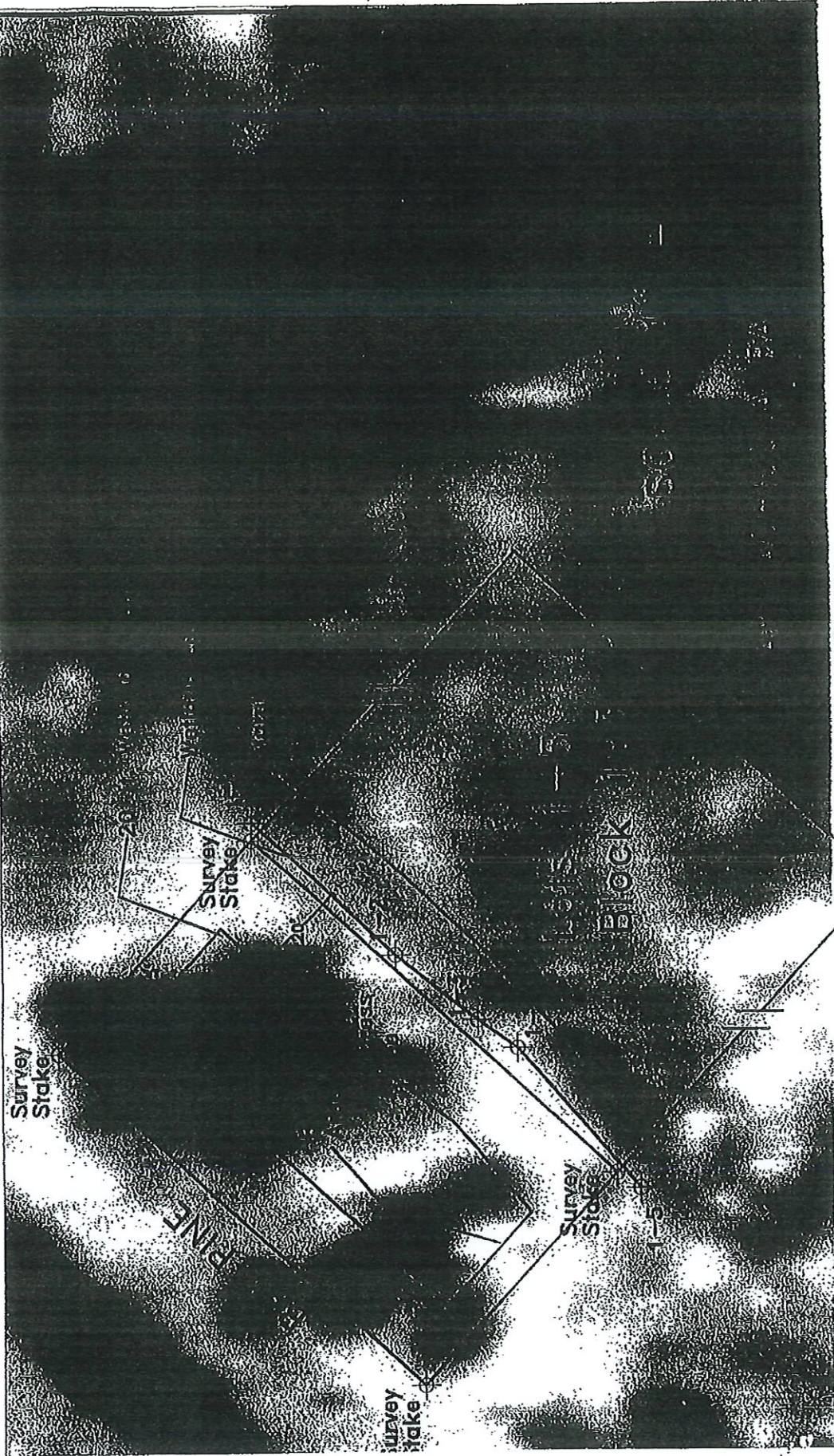


# PREPARED BY: GARLICK ENVIRONMENTAL ASSOCIATES, INC.

APPLICANT/CLIENT: William L. Cook  
WATERBODY/CLASS: Apalachicola Bay  
PURPOSE: DFA  
PROJECT LOCATION / USGS: Apalachicola  
LATITUDE:  
LONGITUDE:

JOB: 04-211  
DEP:  
COE:  
OTHER:  
DATE: May 10, 2004  
SHEET: 2/3

SECTION: 6 TOWNSHIP: 9 South RANG: 7 West



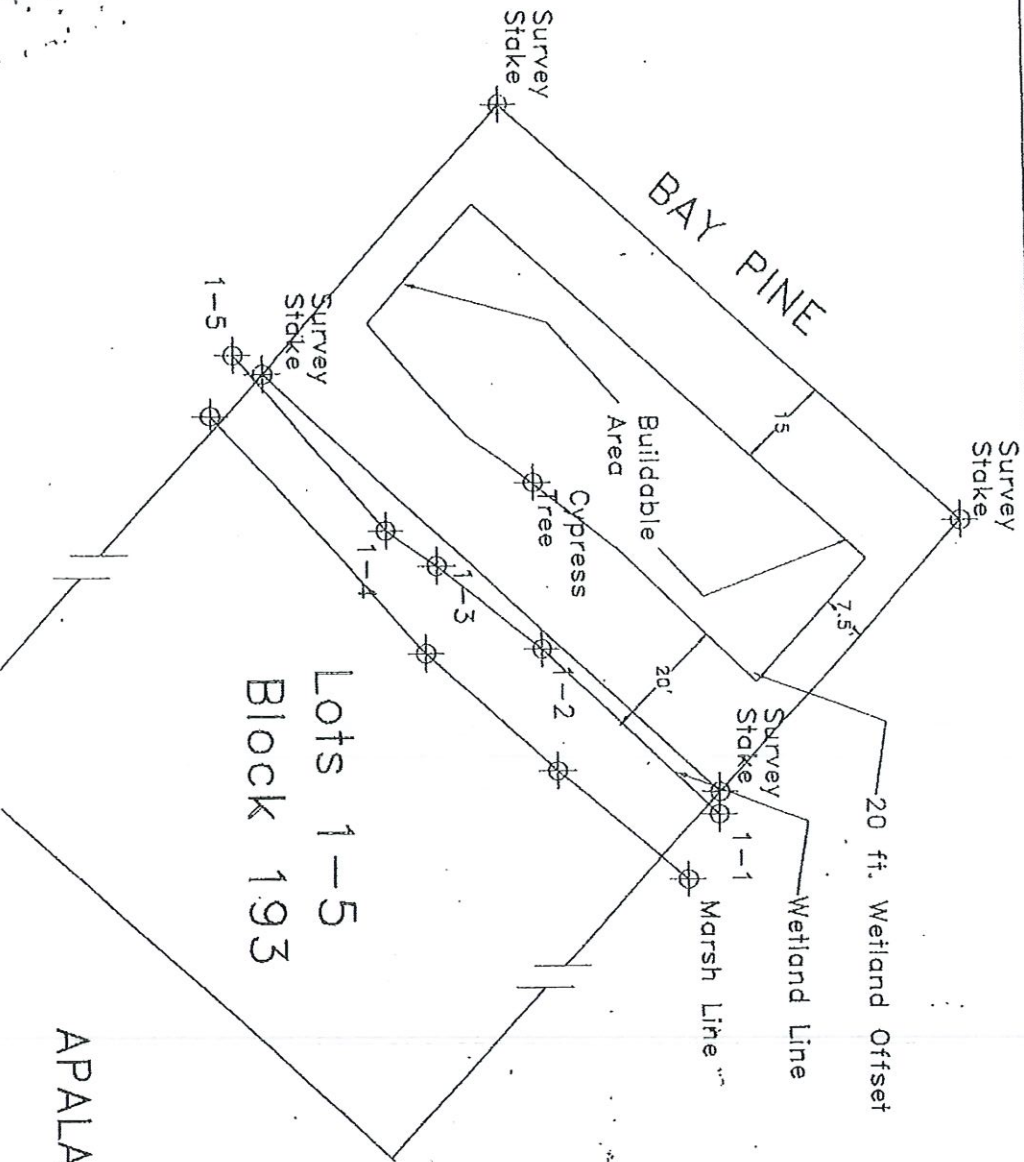
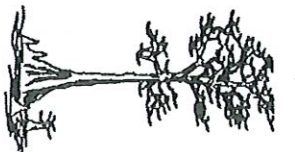


# PREPARED BY: GARLICK ENVIRONMENTAL ASSOCIATES, INC.

APPLICANT/CLIENT: William L. Cook  
WATERBODY/CLASS: Apalachicola Bay  
PURPOSE: DFA  
PROJECT LOCATION / USGS: Apalachicola  
LATITUDE:  
LONGITUDE:

JOB: 04-211  
DEP:  
COE:  
OTHER:  
DATE: May 10, 2004  
SHEET: 3/3

SECTION: 6 TOWNSHIP: 9 South RANG: 7 West



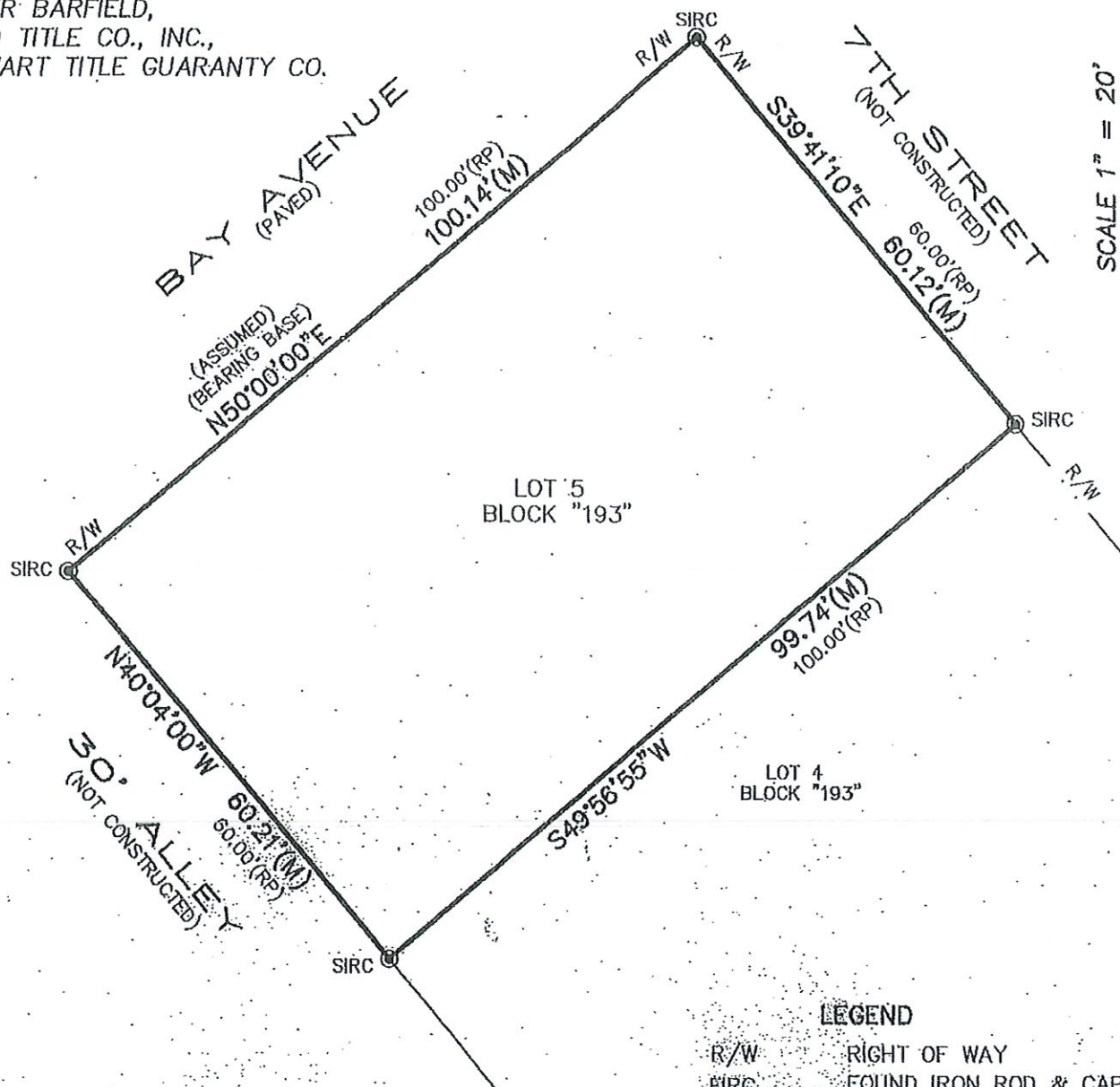
Lots 1-5  
Block 193

SCALE 1" = 30'

APALACHICOLA BAY



PLAT OF BOUNDARY SURVEY CERTIFIED TO:  
 ROGER BARFIELD,  
 DODD TITLE CO., INC.,  
 STEWART TITLE GUARANTY CO.



SCALE 1" = 20'



LEGAL DESCRIPTION:  
 Lot 5 Block 193, of the CITY of  
 APALACHICOLA, as per map or plat in common  
 use on file at the Clerk of the Circuit Office in  
 Franklin County, Florida

**LEGEND**

R/W	RIGHT OF WAY
FIRC	FOUND IRON ROD & CAP
FCM	FOUND CONCRETE MONUMENT
SIRC	SET IRON ROD AND CAP #7160
△	NOT TO SCALE
△	POINT NOT SET OR FOUND
FIR	FOUND IRON ROD

**NOTES:**

7



1. SURVEY SOURCE: Record plat and a field survey performed by the undersigned surveyor.
2. BEARING REFERENCE: Southeasterly right-of-way boundary of Bay Avenue having an assumed bearing of North 50 degrees 00 minutes 00 seconds East.
3. NO IMPROVEMENTS have been located in this survey other than shown hereon.
4. There are NO VISIBLE ENCROACHMENTS other than those shown hereon.
5. This survey is dependent upon EXISTING MONUMENTATION.
6. Not valid without the signature and the original raised seal of a Florida licensed surveyor and mapper.

FLOOD ZONE INFORMATION:  
 Subject property is located in  
 Zone VE(EL13) as per Flood  
 Insurance Rate Map Community  
 Panel Number: 120089 0526E,  
 Index Date: June 17, 2002,  
 Franklin County, Florida.

I hereby certify that this is a true and correct representation of  
 a property shown hereon, and that this survey meets  
 the minimum technical standards for land surveying (Chapter 61G17--  
 Florida Administrative Code).

The undersigned surveyor has not been provided a current title  
 plan or abstract of matters affecting title or boundary to the  
 subject property. It is possible there are deeds of records,  
 recorded deeds, easements or other instruments which could affect  
 boundaries.

THURMAN RODDENBERRY  
 Surveyor and Mapper  
 Florida Certificate No: 4281

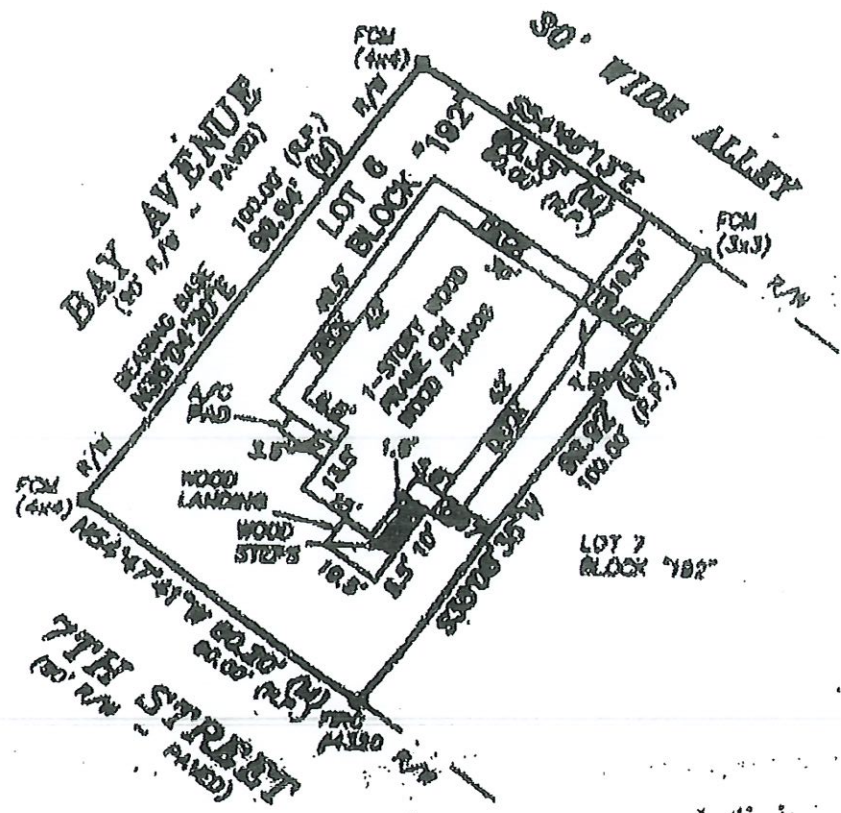
<b>THURMAN RODDENBERRY &amp; ASSOCIATES, INC.</b>			
Professional Surveyors & Mappers			
LB NO 7160			
P.O. Box 100 • 125 Sheldon Street • Sopchoppy, FL 32358-0100 • (850) 962-2538			
DATE: 05/21/04	DRAWN BY: JHR	N.B. 403 pg 52	COUNTY: FRANKLIN
FILE: 04434.DWG	DATE OF LAST FIELD WORK: 05/19/04	JOB NUMBER: 04-434	

To Julia From Rhonda  
 850-653-1111 2347 Mil...  
 Call... 7148

CONTRACT

PLAT OF BOUNDARY SURVEY CERTIFIED TO:  
 ROBERT BOONE and RHONDA BOONE,  
 WASHINGTON COUNTY ABSTRACT  
 FIRST AMERICAN TITLE INSURANCE COMPANY,  
 UNION ONE MORTGAGE

SCALE 1" = 30'





## LEGEND

**LEGAL DESCRIPTION:**

Lot 6, Block "192" of the CITY OF APALACHICOLA,  
a subdivision as per map or plat thereof  
on file at the Clerk of the Circuit Office of  
Franklin County, Florida

R/W  
M  
R.P.  
FCM  
FIRC

RIGHT OF WAY  
MEASURED  
RECORD. PLAY  
FOUND CONCRETE MONUMENT  
FOUND IRON ROD & CAP

NOTES:

1. **SURVEY SOURCE:** Record plat and a field survey performed by the undersigned surveyor.
2. **BEARING REFERENCE:** Southeastery right-of-way boundary of Bay Avenue being North 35 degrees 04 minutes 20 seconds East as per State Road Department Right-Of-Way Map
3. **NO IMPROVEMENTS** have been located in this survey other than shown hereon.
4. There are **NO VISIBLE ENCROACHMENTS** other than those shown hereon.
5. This survey is dependant upon **EXISTING MONUMENTATION**.
6. Not valid without the signature and the original raised seal of a Florida licensed surveyor and mapper.

I hereby certify that this is a true and correct representation of the property shown herein and that this survey meets the minimum technical standards for land surveying (Chapter 61A, Florida Administrative Code).

## FLOOD ZONE INFORMATION:

Subject property is located in Zone "VII" (E1-13) on the Flood Insurance Rate Map Community Panel No: 120000 00012.  
Index date: July 20, 1980, Franklin County, Florida.

The undersigned Surveyor has not been provided a warrant, final opinion or abstract of matters affecting title or boundary, or any subject property. It is possible there are deeds of record or other unrecorded deeds, easements or other instruments which could affect the boundaries.

JAMES T. MOOREHEAD  
Surveyor and Mapper  
Florida Certified No. 4081

James "Thurman" Roddenberry

Professional Land Surveyor

Harvey Karpman, MD

P.L. No 100 • THE NATIONAL BUREAU OF STANDARDS • PUBLISHED BY THE NATIONAL BUREAU OF STANDARDS • (NBS) GPO-1967

DATE 12/1/71 PAGE 01 OF 02

FILE # 100-3741	DATE OF BIRTH 12/21/46	AGE 18	SEX M	RACE W	HT 5-10	WT 140	HAIR BRN	EYES GRN	SKN FLESH	DOB 12/21/46	SSN 1-234-5678
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Apalachicola  
Board of Adjustment Meeting May 17, 2007  
6:00 P.M.

I am here on behalf of Roger and Kathleen Barfield, the owners of vacant lots 1-5 of Block 193...ie..84 Bay Avenue. At the time of purchase in 2004, they were under the impression that the variances acquired by Mr. Jenkins in 1991 and reaffirmed in 2004, applied to lots 1-5 of Block 93.

They are seeking a declaration that states the variance issued in 1991 and reaffirmed in 2004 applies to Lots 1-5 Block 193.


This variance which would effect lots 1-5 allows:

1. A -0- foot set back on Bay Avenue(a 90 foot roadway)
2. A 10 foot encroachment of the Critical Habitat Zone.

Attached you will find the minutes of the meeting issuing the variance in 1991.

Reaffirmation issued in 2004 which is recorded with the transfer of deed from Billy and Sally Cook to Roger and Kathleen Barfield.

City Map indicating property location.



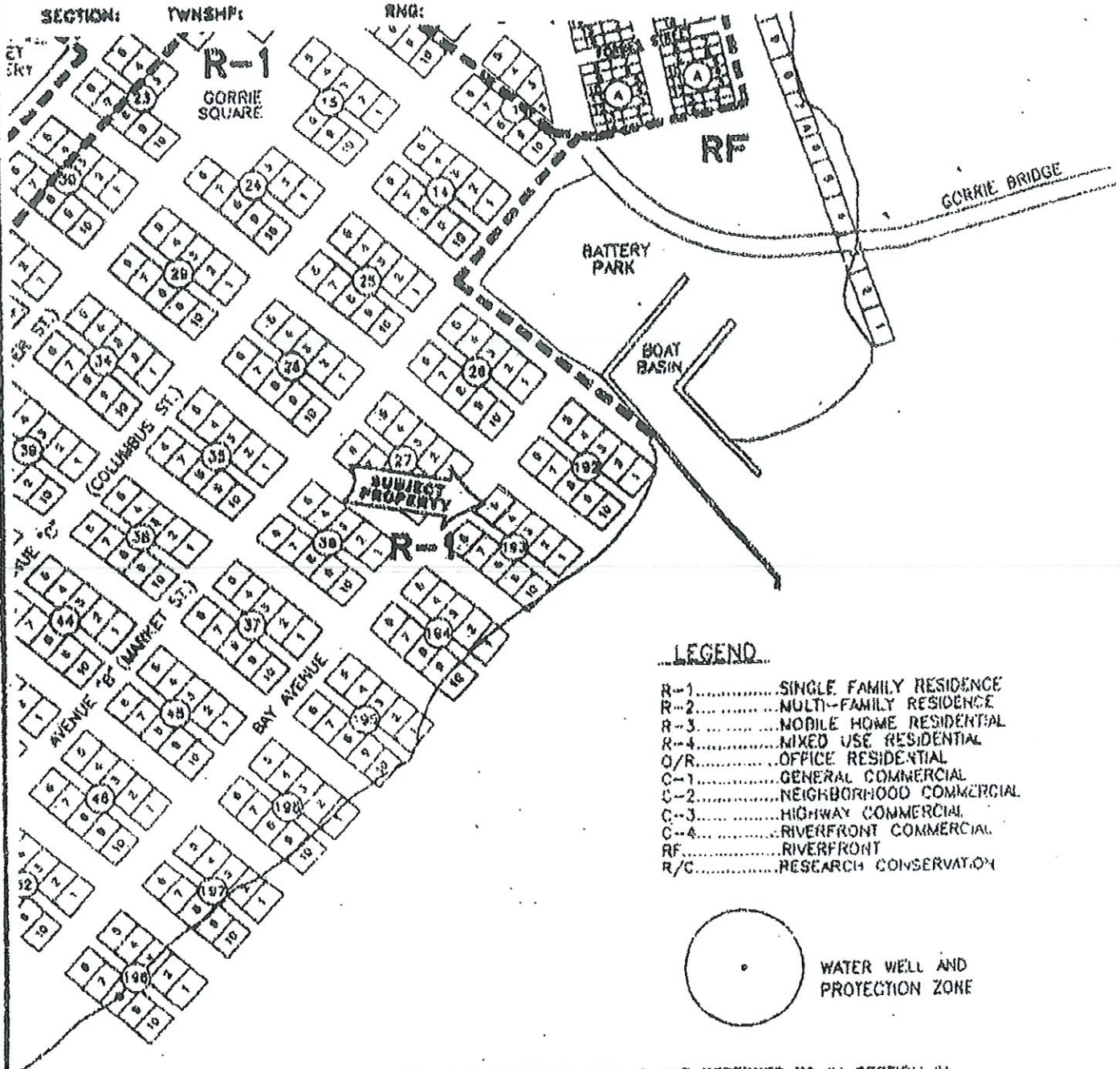




PREPARED BY: GARLICK ENVIRONMENTAL ASSOCIATES, INC.

APPLICANT/CLIENT:  
 WATERBODY/CLASS:  
 PURPOSE:  
 PROJECT LOCATION / USES:  
 LATITUDE:  
 LONGITUDE:  
 SECTION:  
 TOWNSHIP:

JOB:  
 DEP:  
 COE:  
 OTHER:  
 DATE:  
 SHEET: 1 / 3



THIS IS THE OFFICIAL ZONING MAP REFERRED TO IN SECTION IV  
 OF THE LAND DEVELOPMENT CODE OF THE CITY OF APALACHICOLA  
 DATED: DECEMBER 3, 1991.

CITY OF APALACHICOLA

BOYD 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

William & Sally Cook  
98 Bay Avenue  
Apalachicola, Florida 32320

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

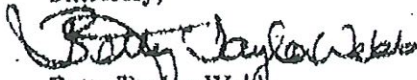
Dear Mr. and Mrs. Cook:

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 8<sup>th</sup> 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  
City Administrator

#1 Avenue E • Apalachicola, Florida 32320 • Phone: (850) 663-0310 • Fax: (850) 663-2205

10-2

04 01:50 2003-01-04

13



CITY OF APALACHICOLA

BOYD 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

Imp: 020010000 Date: 09/21/2004 Time: 11:04  
J. Patrick Floyd  
Sendall Hado, FRANKLIN County 8:413 P:204

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 8<sup>th</sup> 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*  
6/28/04

APALACHICOLA BOARD OF ADJUSTMENT  
MEETING/PUBLIC HEARING - MINUTES

A Meeting/Public Hearing of the Apalachicola Board of Adjustment was held on Friday, November 15, 1991 at 5:00 PM in the City Commission Meeting Room at City Hall, 61 Avenue E in Apalachicola, Florida.

Members Present: Roy Solomon, Betty Buzzett, Ethel Parish, Charles Galloway, Gary Cooper

Members Absent: Barbara Holmes, O.H. Walker

Visitors Present: Ruth Schoelles, Dan Garlick, Harold Jenkins, Rebecca Jetton, Billy Cook, Elizabeth Cook

This meeting called to consider a second request for a variance for Lots 1-10, Block 193, City of Apalachicola, for the following:

1. A 0-foot setback line on Bay Avenue and 8th Street.
2. A 10-foot encroachment of the Critical Habitat Zone.

Motion to officially appoint Roy Solomon as Chairman of the Apalachicola Board of Adjustment made by Charles Galloway, seconded by Betty Buzzett.

Motion carried 5 to 0.

Voting Ayes: Galloway, Parish, Cooper, Buzzett, Solomon  
Voting Nays: None

Chairman Solomon explained past action of the Board in reference to this property, stating that at a July 9, 1991 meeting variance approval was given for the following:

1. Maximum 18 foot encroachment in the 20 foot Critical Shoreline setback.
2. A 5 foot encroachment from the 8th Street right-of-way.
3. A 19 foot encroachment into the front setback from the Bay Avenue right-of-way.

Mr. Solomon explained that this variance was given upon the approval of the majority vote of the three members present. However, it was later learned that as outlined in the



Apalachicola Land Development Code, a favorable vote of four members is needed to approve a variance. Further, the Department of Community Affairs appealed the Board's decision. Therefore, previous approval should be rescinded.

Motion to rescind previous variance approval as outlined by Chairman Solomon made by Ethel Parish, seconded by Charles Galloway.

Motion carried 5 to 0.

Voting Aye: Galloway, Parish, Cooper, Buzzett, Solomon

Dan Garlick, representing property owner, explained that this second variance request has been discussed with DCA Representative Rebecca Jetton and she feels the Department will not appeal this variance if approved by the Board.

Dan Garlick held discussion with the Board, answering questions and commenting on their concerns.

Betty Taylor informed the board that no response was received from the five letters sent out to adjacent property owners, stating that no response is considered a yes vote for the variance.

Chairman Solomon asked the Board for a voice vote. All members present signified an Aye response in favor of the variance request.

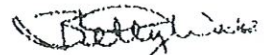
Variance granted as requested.

Meeting/Public Hearing Adjourned.

FOR THE APALACHICOLA  
BOARD OF ADJUSTMENT:

  
Roy Solomon, Chairman

To the best of my  
knowledge, this  
variance as approved  
is still in effect

  
6-21-04

## 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.