

**BALDWIN COUNTY COMMISSION DISTRICT 2
BOARD OF ADJUSTMENT**

AGENDA

July 8, 2019

Regular Meeting

4:00 p.m.

Central Annex Auditorium

22251 Palmer Street

Robertsdale, Alabama

1. Call to Order
2. Roll Call
3. Approval of Previous Meeting Transcript (June 10, 2019)
4. Announcements/Registration to Address the Board of Adjustment
5. Consideration of Applications and Requests

ITEMS:

a.) Case No. V-190026 McTaggart Property

Request: Approval of a variance from jurisdictional wetlands setback requirements to allow for the construction of a single-family dwelling

Location: The subject property is located at 14622 Scenic Highway 98 in Planning District 26

Attachments: *Within Report*

6. Old Business
7. New Business
8. Adjournment



Baldwin County Planning & Zoning Department

County Commission District #2

Board of Adjustment Staff Report

V-190026

McTaggart Property

Variance from Jurisdictional Wetlands Setback Requirements

July 8, 2019

Subject Property Information

Planning District: 26
General Location: Lots 301 and 302 Eastern Shore Parkway #1
Physical Address: 14622 Scenic Highway 98
PID: 05-56-04-18-0-000-108.000
Zoning: RSF-2, Single Family Residential
Acreage: .38± acres
Applicant: Cameron Reehl
24190 US Highway 98, Suite B
Fairhope, AL 36532
Owner: Patrick and Katherine McTaggart
20770 Lowry Drive
Fairhope, AL 36532
Lead Staff: Linda Lee, Planner
Attachments: Within Report

	Adjacent Land Use	Adjacent Zoning
North	Vacant	RSF-2
South	Vacant	RSF-2
East	Vacant	RA
West	Residential	RSF-2

Summary and Recommendation

The applicant is requesting a variance from jurisdictional wetlands setback requirements to allow for the construction of a single-family dwelling less than 30 feet from said wetlands as submitted on site plan. Staff recommends that Case V-190026 McTaggart Property, be **APPROVED**, based on the comments contained herein.

Variance Request

The applicant is requesting a variance from jurisdictional wetlands setback requirements to allow for the construction of a single-family dwelling less than 30 feet from said wetlands as submitted on site plan.

The following sections from the *Baldwin County Zoning Ordinance* are relevant to this application:

Section 10.4 Wetland Protection Overlay District

10.4.1 *Purpose.* The wetlands within Baldwin County, Alabama are indispensable and fragile natural resources with significant development constraints due to flooding, erosion and soils limitations. In their natural state, wetlands serve man and nature. They provide habitat areas for fish, wildlife and vegetation; water quality maintenance and pollution control; flood control; erosion control; natural resource education; scientific study; and open space and recreational opportunities. In addition, wise use of forested wetlands is essential to the economic well-being of Baldwin County. **A considerable number of these important natural resources have been lost or impaired by draining, dredging, filling, excavating, building, pollution and other acts.** Piecemeal or cumulative losses will, over time, destroy additional wetlands. Damaging or destroying wetlands threatens public safety and the general welfare. **It is therefore necessary for Baldwin County to ensure maximum protection for wetlands by discouraging development activities that may adversely affect wetlands.**

The purpose of the wetland protection overlay district is to promote wetland protection, while taking into account varying ecological, economic development, recreational and aesthetic values and to protect wetlands from alterations that will significantly affect or reduce their primary functions for water quality, floodplain and erosion control, groundwater recharge and wildlife habitat.

10.4.2 *Area of application.* The wetland protection overlay district applies to wetlands under the planning and zoning jurisdiction of Baldwin County. The Generalized Wetland Map adopted as part of these zoning ordinances shows the general location of wetlands and should be consulted by persons contemplating activities in or near wetlands. The Generalized Wetland Map, together with all explanatory matter thereon and attached thereto, is hereby adopted by reference and declared to be a part of these zoning ordinances. The Generalized Wetland Map shall be kept on file in the offices of the Planning & Zoning Department.

10.4.3 *Wetland protection district boundaries.* The Generalized Wetland Map is a general reference document and wetland boundaries indicated on the map are approximations. The Generalized Wetland Map is to alert developers/landowners if they are within proximity to a wetland, which means that there is a high likelihood of the presence of a jurisdictional wetland and a need for the developer/landowner to seek U.S. Army Corps of Engineers guidance as to whether a Section 404 permit will be required prior to any activity. The Generalized Wetland Map does not represent the boundaries of jurisdictional wetlands within the jurisdiction of Baldwin County and cannot serve as a substitute for a delineation of wetland boundaries by the U.S. Army Corps of Engineers, as required by Section 404 of the Clean Water Act, as amended. Any local government action under this section does not relieve the land owner from federal or state permitting requirements.

10.4.4 *Permit requirements.* A U.S. Army Corps of Engineers wetlands jurisdictional determination if the proposed planned development contains wetlands or if the Zoning Administrator or his/her designee determines potential wetlands from the Generalized Wetland map as defined herein, or through a site visit by County Staff. **The setback for development from a wetland must be a minimum of 30 feet.**

If the area proposed for development is located in or within the wetland protection district boundary, as determined from the Generalized Wetland Map, a U.S. Army Corps of Engineers jurisdictional determination shall be required prior to the issuance of a Land Use Certificate. If the Corps determines that wetlands are present on the proposed development site and that a Section 404 Permit or Letter of Permission is required, a

Land Use Certificate will be issued only following issuance of the Section 404 Permit or Letter of Permission. Any application for subdivision approval on property which contains wetlands or if the Zoning Administrator or his/her designee determines potential wetlands from the Generalized Wetland map defined herein through a site visit by County Staff, will have to obtain a U.S. Army Corps of Engineers wetlands jurisdictional determination. If the Corps determines that wetlands are present and that a Section 404 Permit or Letter of Permission is required, development may not proceed until the Section 404 Permit or Letter of Permission is issued.

10.4.5 Subdivisions in the Wetland Protection Overlay District. Where a parcel of land proposed to be subdivided contains an area of wetlands delineated as jurisdictional by the Army Corps of Engineers, said wetlands shall be subject to Section 404(b)(1) guidelines concerning fill material disposal into wetlands. Lots may be platted where sufficient upland areas exist to provide a building site for the principal structure and necessary ancillary facilities. Fill may be used where necessary to provide access to lots where approval for such fill has been received from the Army Corps of Engineers and other appropriate governmental agencies.

Wetlands delineated as jurisdictional by the Army Corps of Engineers and not permitted for fill shall be set aside as common area or shall be contained within an easement dedicated to protect the wetland. Said common area or maintenance easement shall extend a minimum of 30-feet beyond the limits of the wetland. Maintenance responsibility shall be vested in the trustees of the subdivision, by virtue of the trust indenture.

Staff Analysis and Findings

The following standards for approval are found in Section 18.6, Variances of the *Baldwin County Zoning Ordinance*. These standards are to be considered when a variance request is being reviewed.

1.) Exceptional narrowness, shallowness or shape of a specific piece of property existing at the time of the enactment of these zoning regulations

The subject property is lots 301 and 302 of Eastern Shore Parkway #1. The property dimensions are 100' x 160'.

2.) Exceptional topographic conditions or other extraordinary situations or conditions of a specific piece of property.

According to the submitted site plan jurisdictional wetlands cover approximately one third of the subject property.

3.) The granting of the application is necessary for the preservation of a property right and not merely to serve as a convenience to the applicant or based solely upon economic loss.

The subject property was platted prior to the enactment of zoning in planning district 26. The purpose of this variance request is to allow for a single-family dwelling to be constructed on the lot with minimal disturbance to the jurisdictional wetlands.

4.) The granting of this application will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets, or increase the danger of fire, or imperil the public safety, or unreasonably diminish or impair established property values within the surrounding areas, or in any other respect impair the health, safety, comfort, morals, or general welfare of the inhabitants of Baldwin County.

No adverse impacts.

5.) Other matters which may be appropriate.

Scenic Highway 98 is subject to a 100-foot Highway Construction Setback which decreases the amount of buildable area.

Staff Comments and Recommendation

Staff recommends that Case V-190026 McTaggart Property, be **APPROVED**, based on the comments contained herein.

GENERAL NOTES {By-laws}

Any party aggrieved by a final judgment or decision of the Board may within fifteen (15) days thereafter appeal therefrom to the Circuit Court, but without expense to the Board of Adjustment, appear in person or by attorney in the Circuit Court or any other court, in defense of said order of the Board or in a trial de novo.

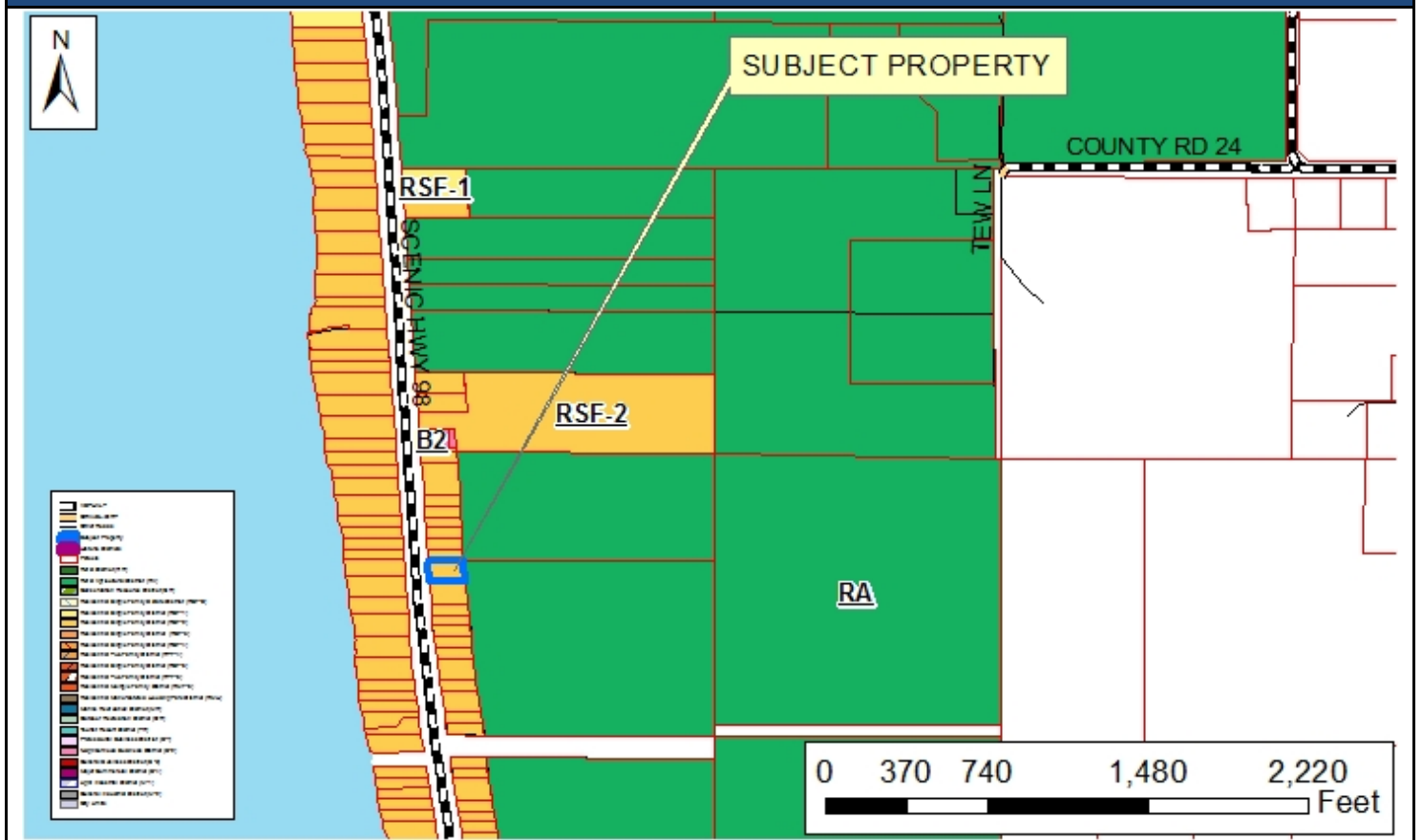
Whenever the Board imposes conditions with respect to a project or variance, such conditions must be stated in the Board Order and in the permit(s) issued, pursuant thereto by the Administrative Officer. Such permits shall remain valid only as long as the conditions upon which it is granted and the conditions imposed by the Zoning Ordinance are adhered to.

Property Images

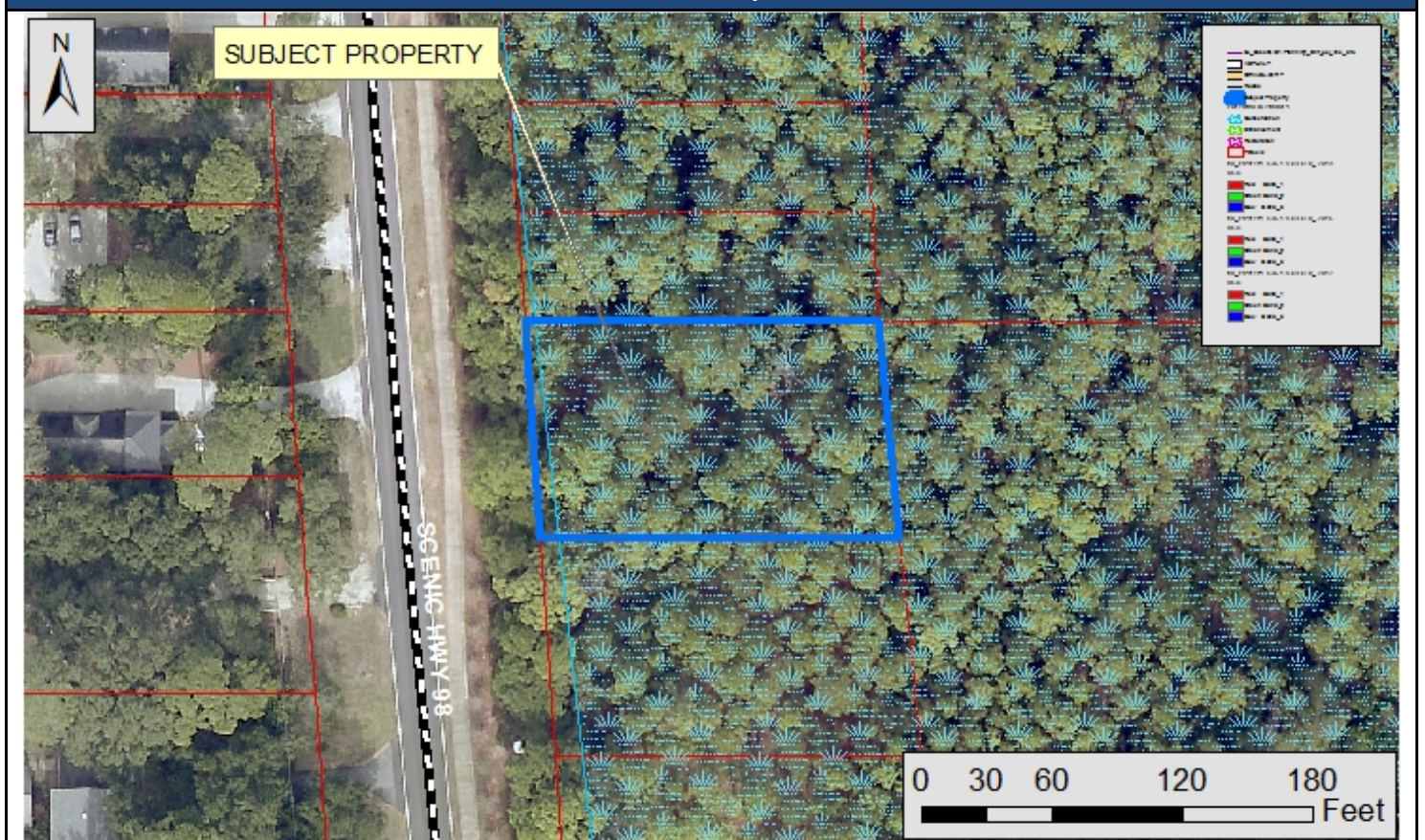




Locator Map



Site Map

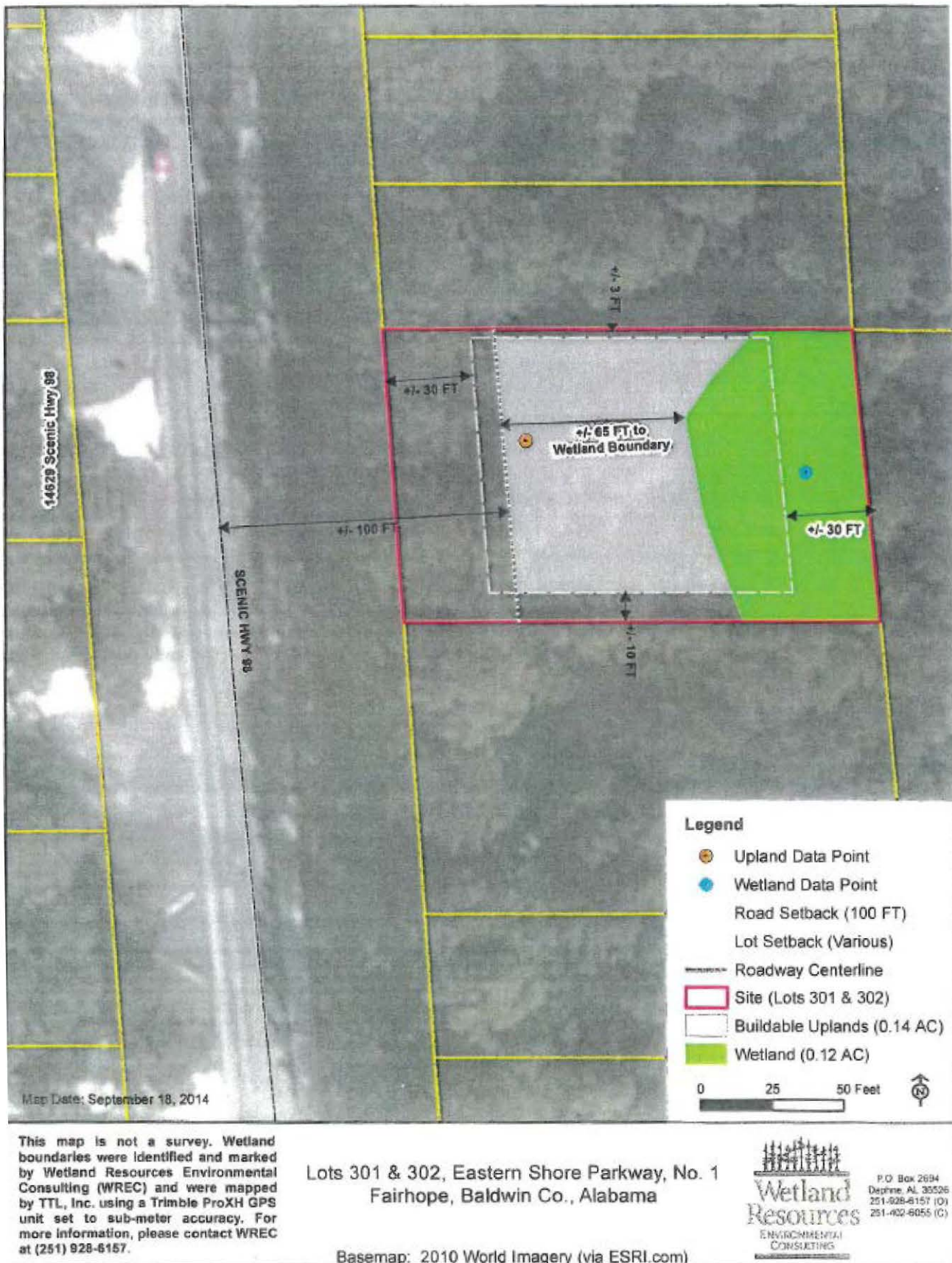


Site Plan



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Wetlands Delineation by Wetland Resources



Letter in Opposition

From: [Frank C. Feagin](#)
To: pointclearpropertyownersassoc@gmail.com; [Linda Lee](#)
Cc: [Burton Craige](#); [Allan R. Chason](#)
Subject: <EXTERNAL> Re: V-190026
Date: Thursday, June 27, 2019 11:23:11 AM

Ms Lee,

I would like to oppose the variance request V-190026. The owner can build on the lot without a variance, but just not the size house shown in the request. This is a self imposed "hardship" which, by the ordinance, is not a reason to grant a variance. There are two houses just south of this property that built with regard to the wetlands issue so there is precedent for building around the wetlands, not on them.

I plan to attend the hearing on July 8.

Thank you for notifying the Point Clear Property Owners Association of this important request.

Frank C. Feagin
14651 Scenic Highway 98
Point Clear, AL 36564
251-928-9775
June 27, 2019

Sent from my iPad