

**BALDWIN COUNTY COMMISSION DISTRICT 4
BOARD OF ADJUSTMENT**

AGENDA

August 8, 2019

Regular Meeting 3:30 p.m.

Baldwin County Satellite Courthouse

Large Meeting Hall

201 East Section Avenue

Foley, Alabama

1. Call to Order
2. Roll Call
3. Approval of Previous Meeting Minutes (July 11, 2019)
4. Announcements/Registration to Address the Board of Adjustment
5. Consideration of Applications and Requests

ITEMS:

a.) Case No. V-190027, Cohen Property

Request: Approval of a variance from the front and side yard setback requirements to allow for an existing dwelling to remain

Location: The subject property is located at 533 Brandt Lane in Planning District 25

Attachments: *Within Report*

b.) Case No. V-190028, Fisher Property

Request: Approval of a variance from the rear yard setback requirement and the jurisdictional wetlands setback requirement to allow for the construction of a single-family dwelling

Location: The subject property is located at 11486 Council Lane in Planning District 25

Attachments: *Within Report*

c.) Case No. V-190029, Fendley Property

Request: Approval of a variance from the rear yard (road side) setback requirement to allow for a garage addition

Location: The subject property is located at 10446 Beaulieu Lane in Planning District 33

Attachments: *Within Report*

d.) Case No. V-190030, Johnie Henry Kulgar Revocable Trust Property

Request: Approval of a variance from the number of off street parking spaces required and a variance from the jurisdictional wetlands setback requirement from development to allow for the construction of a retail store

Location: The subject property is located at 9704 State Highway 180 in Planning District 25

Attachments: Within Report

6. Old Business
7. New Business
8. Adjournment

Baldwin County Commission District 4, Board of Adjustment

July 11, 2019

Regular Meeting Minutes

Foley Satellite Courthouse

Conference Room

The Board of Adjustment for Baldwin County Commission District 4 met in a regular session on July 11, 2019 at 3:30 p.m., in the Baldwin County Foley Satellite Courthouse Conference Room. Chairman, Stuart Arnold called the meeting to order. Members present included: Samuel Mitchell, James Koeppen, Ernie Church, Johanna Moloney, John Hilderbrandt and Younnie Veal. Staff member present was Crystal Bates Planning Technician.

The first order of business was approval of the transcript from the June 13, 2019 meeting. A motion to approve the meeting transcript was made by Mr. Church with a second by Mr. Mitchell and the motion passed unanimously.

Mr. Hilderbrandt arrived shortly after roll call during the approval of minutes from June 13, 2019

V-190025 Smith Clark, & Associates

Mrs. Bates presented the applicant's request for a variance to allow a 1.8 -foot encroachment over the 30-foot required setback for a dwelling which was already built to remain. Staff recommended that the Board of Adjustment should base its decision on information provided in the staff report and information provide at public hearing.

Discussion was started by Mr. Arnold about setting a precedent for builders to start coming in asking for forgiveness after instead of before. Why was the mistake made? The site plan submitted with the Land Use Certificate Application and approved by staff showed they were going to meet the setback.

They discussed fines and if we imposed a fine and/or if we could add it to the ordinance to impose a fine for citizens to pay if whatever they built wasn't what we approved in P&Z Dept.

They also had discussion about adding something to our review process that we would collect a letter from the POA stating the house and the design and site plan was ok with them.

Comments were made, And Mr. Arnold & Ms. Bates both agreed that, that would be something to Discuss with Mr. Vince Jackson and Ms. Linda Lee.

The applicant's representative, Daniel Clark, was present and explained the As Built Survey. He answered a few questions related to the survey. There was no one in opposition present.

More discussion took place about how it happens and ways to prevent it from happening.

Discussion was brought up about denying it, approving with conditions, discussion was brought up about a motion to table.

Then a motion to **Approve** was made by Mr. Hilderbrandt and second by Mr. Mitchell. With conditions that this variance to allow a 1.8 -foot encroachment over 30-foot required setback for a dwelling which was already built to remain, would not set a precedent, made by Mr. Arnold.

The motion passed unanimously. Mr. Arnold wanted to come back at August meeting and discuss penalties for infractions for whomever builds something outside of what the Planning Department approves.

Adjournment

There being no further business to come before the board the meeting was adjourned at 4:11 p.m.

Respectfully Submitted

Crystal Bates, Planning Technician

I hereby certify that the above minutes are true, correct and approved this _____ day of _____, 2019.

Stuart Arnold, Chairman



Baldwin County Planning & Zoning Department County Commission District # 4

Board of Adjustment Staff Report

Case No. V-190027

Cohen Property

Variance from the front and side setback requirements

August 8, 2019

Subject Property Information

Planning District: 25
General Location: Lot 72 Morgantown Phase 6
Physical Address: 533 Brandt Lane
Parcel Number: 05-68-09-30-0-002-051.000
Zoning: RSF-2, Single Family District
Lot Size: 0.35 +/- Acres
Applicant: Richard E. Davis, Jr.
P.O. Box 2925
Daphne, AL 36526
Owner: Oran E. Cohen
4532 Rutherford Drive
Marietta, GA 30062
Lead Staff: Linda Lee, Planner
Attachments: Within Report

	Adjacent Land Use	Adjacent Zoning
North	Residential	RSF-2, Single Family District
South	Vacant	RSF-2, Single Family District
East	Residential	RSF-1, Single Family District
West	Vacant	RSF-2, Single Family District

Summary and Recommendation

The applicant is requesting a variance from the front and side yard setback requirements in order to allow for a dwelling which was built in 2017 to remain. The recorded plat for Morgantown Phase 6 allows for a 20-foot setback from the east and south property lines. A land use certificate (LU-170382), which indicated that the dwelling would meet all setback requirements, was approved by County staff on July 10, 2017. A survey completed after construction, however revealed that the dwelling with stairs is 1.9 feet from the east property line, 10 feet from the corner property line and 14.5 feet from the south property line. As a result, the applicant is requesting a variance to allow the existing structure to remain in its current location. A copy of the survey is attached to the staff report.

Staff recommends that the variance be **DENIED** based on the applicant has not submitted any information supporting a hardship on the land.

2344-E

1. SITE ZONED R-1A PRD
BALDWIN COUNTY ZONING
DISTRICT 25 FORT MORGAN.
2. TOTAL AREA IS 55,700 SQ. FT.
OR 1.28 ACRES
3. SMALLEST LOT SIZE IS 11,814 SQ. FT. (LOT 74)
4. TOTAL NUMBER OF LOTS IS 3.
5. TOTAL LINEAR FEET OF STREETS IS 640'.

THIS PROPERTY IS IN ZONE AE(EL. 10-11), VE(EL.12), X
AS SCALED FROM THE FEDERAL EMERGENCY
MANAGEMENT AGENCY, FEDERAL INSURANCE
ADMINISTRATION COMMUNITY-PANEL NUMBER
01003C0906 K, BALDWIN COUNTY, ALABAMA PER
REVISED MAP DATED JUNE 17, 2002.

SANDBOX PROPERTIES, L.L.C.
SCOTT BRANDT
P.O. BOX 980369
HOUSTON, TX 77098

JEFFERSON MARSHALL SMITH, SR., PLS.
VOLKERT & ASSOCIATES, INC.
316 S. MONROE ST.
FOLEY, AL 36535

SEWER: SOUTH ALABAMA SEWER SERVICE
WATER: GULF SHORES UTILITIES
ELECTRIC: BALDWIN EMC
TELEPHONE: GULFTEL COMMUNICATIONS

LINE TABLE		
LINE	BEARING	LENGTH
L1(REQ)	N00°10'46"E	20.00
L1(ACI)	N00°03'10"E	20.01
L2(REQ)	S89°54'15"E	37.77
L2(ACI)	S89°44'52"E	37.78
L3(ACI)	S89°53'46"E	20.08
L3(REQ)	S89°54'48"E	20.00
L5	S00°16'43"W	9.92
L6	S89°34'15"E	30.00

CURVE
C1
C2
C3
C4
C5
C6

7. PROPERTY SHOWN HEREON LIES IN A DESIGNATED UNDEVELOPED COASTAL BARRIER AREA AS PER MAP BY FEDERAL INSURANCE ADMINISTRATION COMMUNITY PANEL NO. 01003C0906 K BALDWIN COUNTY, ALABAMA, AS PER PLAT REWSED 6/17/92.

9. THERE IS A 10' UTILITY EASEMENT ALONG THE R.O.W. OF ALL LOTS, A 5' UTILITY EASEMENT ALONG EACH SIDE OF EACH SIDE LOT LINE ON LOTS 73 & 74 AND A 10' UTILITY EASEMENT ON THE WEST SIDE OF LOT 72.

10. ALL ROADS AND RIGHT-OF-WAYS SHOWN ON THIS PLAT ARE PRIVATE, AND ARE NOT SUBJECT TO MAINTENANCE BY BALDWIN COUNTY.

11. ALL OF THE RIGHT-OF-WAY OF BRANDT LANE SHALL BE A UTILITY EASEMENT.

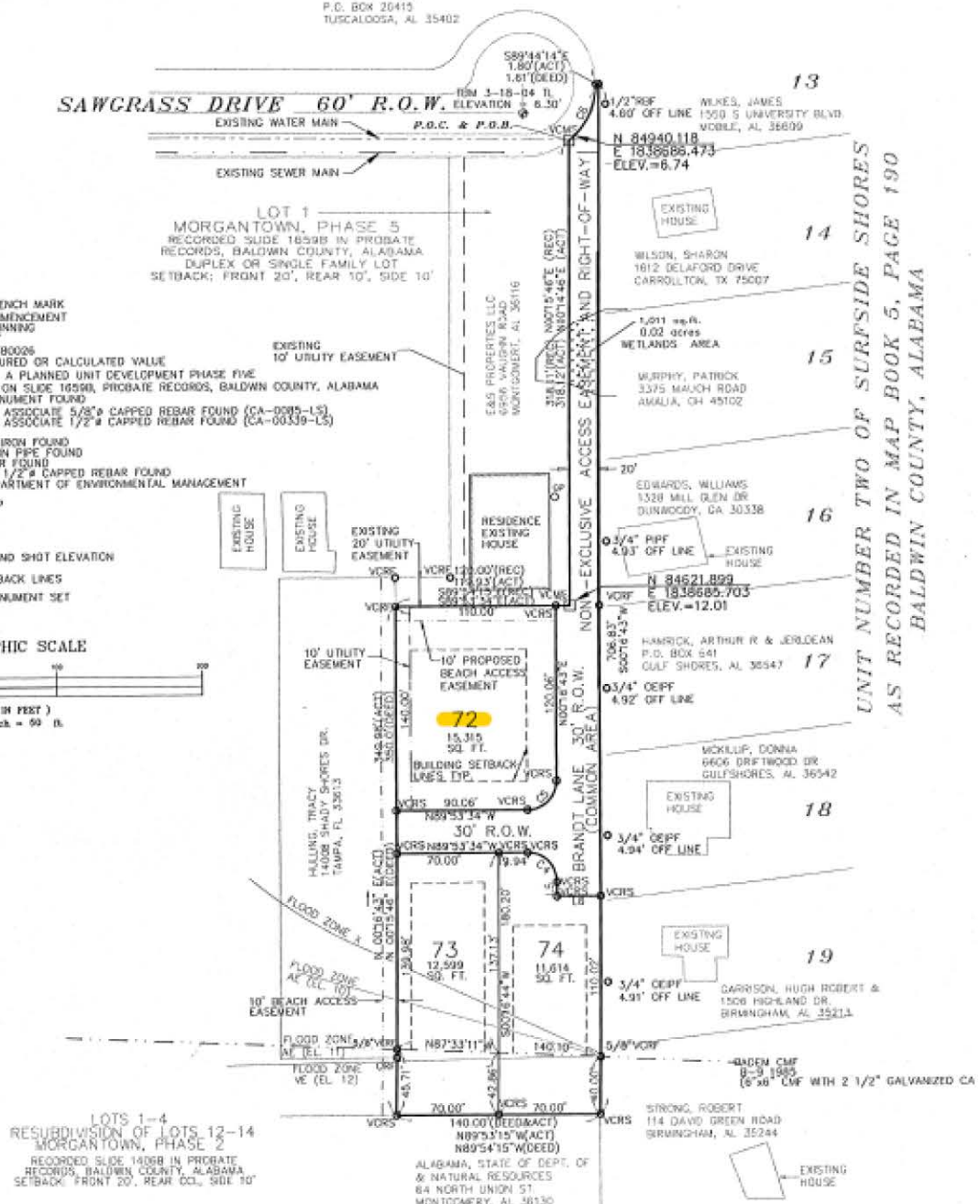
HARRIS STEWART
P.O. BOX 20415
TUSCALOOSA, AL 35402

2344-E

State of Alaska, Baldwin County
I certify this instrument was filed
and taxes collected on:

2007 May -01 11:50M
Instrument: Wisp 1001004 Pages
Recording: 15.00 Sample
Died: Run Fat 5.00
Index: 30
Archive: 5.00
African F. Johns, Judge of Probate

TBM - TEMPORARY BENCH MARK
 P.O.C. - POINT OF COMMENCEMENT
 P.O.B. - POINT OF BEGINNING
 ROW - RIGHT OF WAY
 INSURMENT 780026
 DEC'D - A FIELD MEASURED OR CALCULATED VALUE
 ACT - MORGANTOWN, A PLANNED UNIT DEVELOPMENT PHASE FIVE
 REC - AS RECORDED ON S.D.E. 16550, PROBATE RECORDS, BALDWIN COUNTY, ALABAMA
 CONCRETE MONUMENT FOUND
 CRF - VOLKERT AND ASSOCIATE 5/8" CAPPED REBAR FOUND (CA-0005-US)
 VCRF - VOLKERT AND ASSOCIATE 1/2" CAPPED REBAR FOUND (CA-0033-US)
 REBAR FOUND
 PIPF - PINCHED TOP IRON FOUND
 ODIRF - OPEN END IRON PIPE FOUND
 CRF - CAPPED REBAR FOUND
 CRF(GIVENS) - DAVID GIVENS 1/2" CAPPED REBAR FOUND
 ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
 ADEN - ALABAMA
 GR - GRINDER PUMP
 WETLANDS
 9.60 - ACTUAL GROUND SHOT ELEVATION
 BUILDING SETBACK LINES
 CONCRETE MONUMENT SET



UNIT NUMBER TWO OF SURFSIDE SHORES
AS RECORDED IN MAP BOOK 5, PAGE 190
BALDWIN COUNTY, ALABAMA

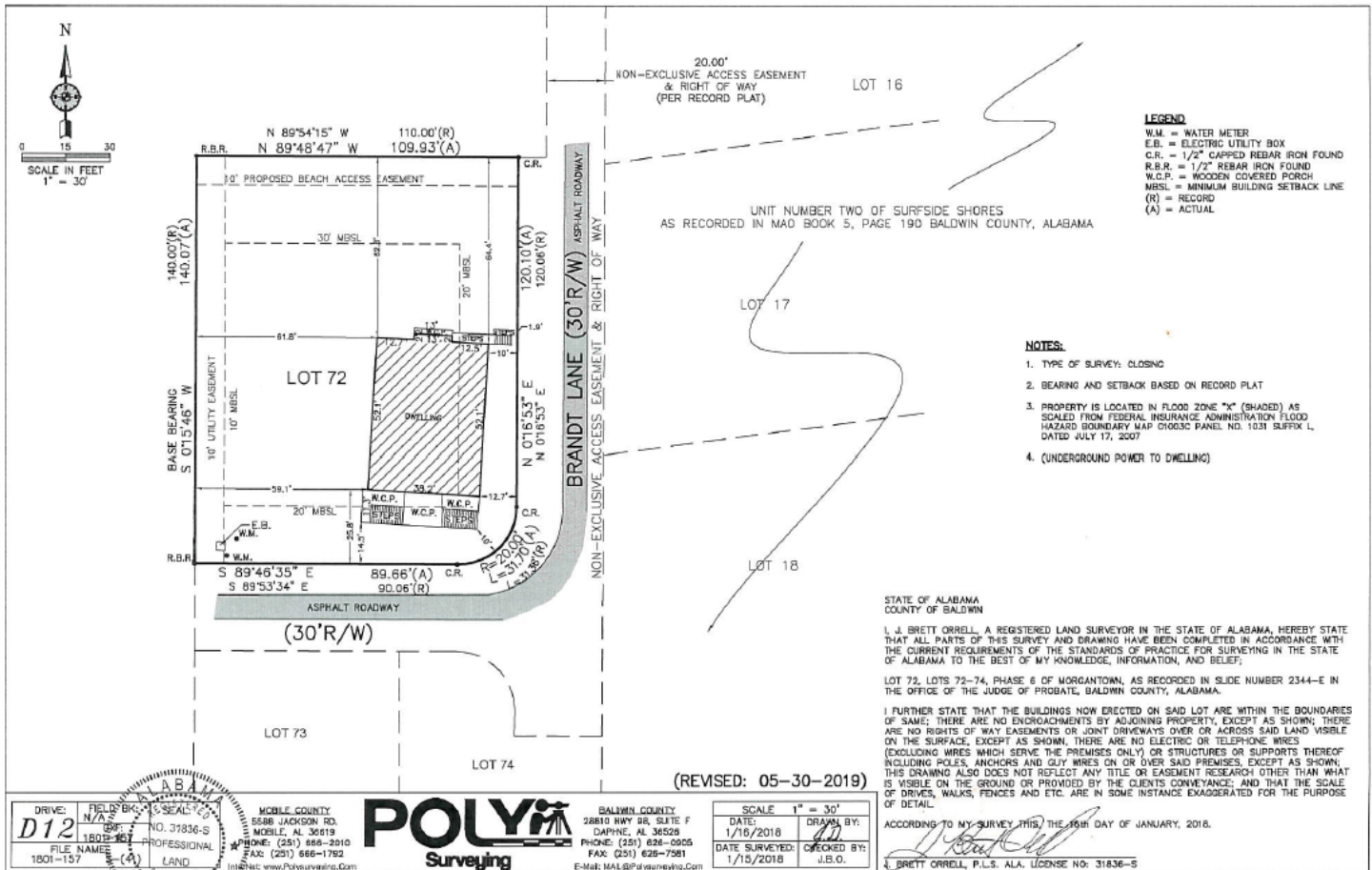
RECORDED SLIDE 1406B IN PROBATE
RECORDS, BALDWIN COUNTY, ALABAMA
SETBACK FRONT 20' REAR 00' SIDE 10'

ALABAMA, STATE OF DEPT. OF
& NATURAL RESOURCES
84 NORTH UNION ST.
MONTGOMERY, AL 36130

Variance Request

As stated above the applicant is requesting a variance from the front and side yard setback requirements in order to allow for a dwelling which was built in 2017 to remain.

Survey dated 5/30/2019



Fort Morgan Advisory Committee Recommendation

The Fort Morgan Planning and Zoning Advisory Committee Meeting, July 15, 2019

A regular meeting of the FM P & Z Advisory Committee was held on July 15, 2019 at the Shell Banks Baptist Church Fellowship Hall at 9 a.m. The following members were in attendance: Chan West, Chair; Bonnie Lowry, Thelma Strong, Ernie Church and Randy Ulrich and B C Planning & Zoning Director, Vince Jackson.

Case No V-190027 Cohen Property: Rick Davis, attorney for the Cohen property owners, spoke on their behalf asking for a variance from the front side and corner side yard setback requirements to allow a recently constructed dwelling to remain.

Members voted 4-1 (Ernie Church- no vote) **to not recommend approval** of the variance request. The majority felt that the MSL plans were approve in 2017 and the structure was overbuilt from the original plans, therefore, it is non-conforming.

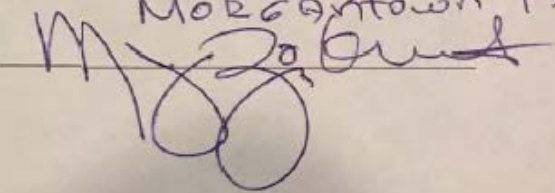
POA APPROVAL

Rick Davis
Davis & Fields, PC
P.O. Box 2925
Daphne, Alabama 36526

RE: COHEN / BRANDT LANE VARIANCE
REQUEST

Dear Mr. Davis,

The Board of Directors of Morgantown Home Owners Association to which this property is a member do hereby consent to the variance being sought by Oran E. Cohen (Rick Cohen) as shown by the attached variance request.

Yours, M I Zobrist
Secretary/Treasurer
Morgantown Property Owners Assn


Richard E. (Rick) Davis, Jr.
Davis & Fields, P.C.
P.O. Box 2925
Daphne, AL 36526
T: (251) 621-1555 ext. 25
F: (251) 621-1520
www.davis-fields.com

Comments from Bill Lynn (USFWS)

I would recommend allowing the house to stay in place and grant a variance. It will cause more habitat destruction moving or rebuilding than allowing it to stay.

Thanks,

Bill Lynn

Section 4.3 RSF-2, Single Family District

4.3.5 *Area and dimensional ordinances.* Except as provided by *Section 2.3: Establishment of Zoning in Planning Districts, Section 12.4: Height Modifications, Section 12.5: Yard Requirements, Section 12.6: Coastal Areas, Section 12.8: Highway Construction Setbacks, Section 18.6 Variances, and Article 20: Nonconformities*, the area and dimensional ordinances set forth below shall be observed.

Maximum Height of Structure in Feet	35-Feet
Minimum Front Yard	30-Feet
Minimum Rear Yard	30-Feet
Minimum Side Yards	10-Feet
Minimum Lot Area	15,000 Square Feet

Section 12.5 Yard Requirements

(c) Uncovered steps and handicap ramps may project into a required front, or side yard for a distance not to exceed 5-feet and a rear yard not to exceed 10-feet.

(e) Where a subdivision has been approved by the Planning Commission in accordance with the *Baldwin County Subdivision Regulations* prior to the enacting of zoning ordinances with front, rear or side yard setbacks different than the minimums required herein, the setbacks as recorded on the plat shall apply.

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 approximately 110' x 140' according to survey submitted. The subject property is identified as Lot 6 of Morgantown Phase 6 Subdivision.

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

There are no exceptional topographic conditions or other situations affecting 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 property is zoned for single family use and will be used for that purpose, the dwelling is currently completed.

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.

The granting of this application should not have any adverse impact on adjacent property owners and would make this non- conforming dwelling legal.

As stated above, a land use certificate (LU-170382), which indicated that the dwelling would meet all setback requirements, was approved by County staff on July 10, 2017.

BRANDT LANE (COMMON AREA)

30' R.O.W. NON-EXCLUSIVE ACCESS EASEMENT AND RIGHT OF WAY

APPROVED PLANS
AS REVIEWED BY THE
BALDWIN COUNTY
PLANNING & ZONING DEPARTMENT
7/19/17

Staff Comments and Recommendation

Staff recommends that the variance be **DENIED** based on the applicant has not submitted any information supporting a hardship on the land.

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

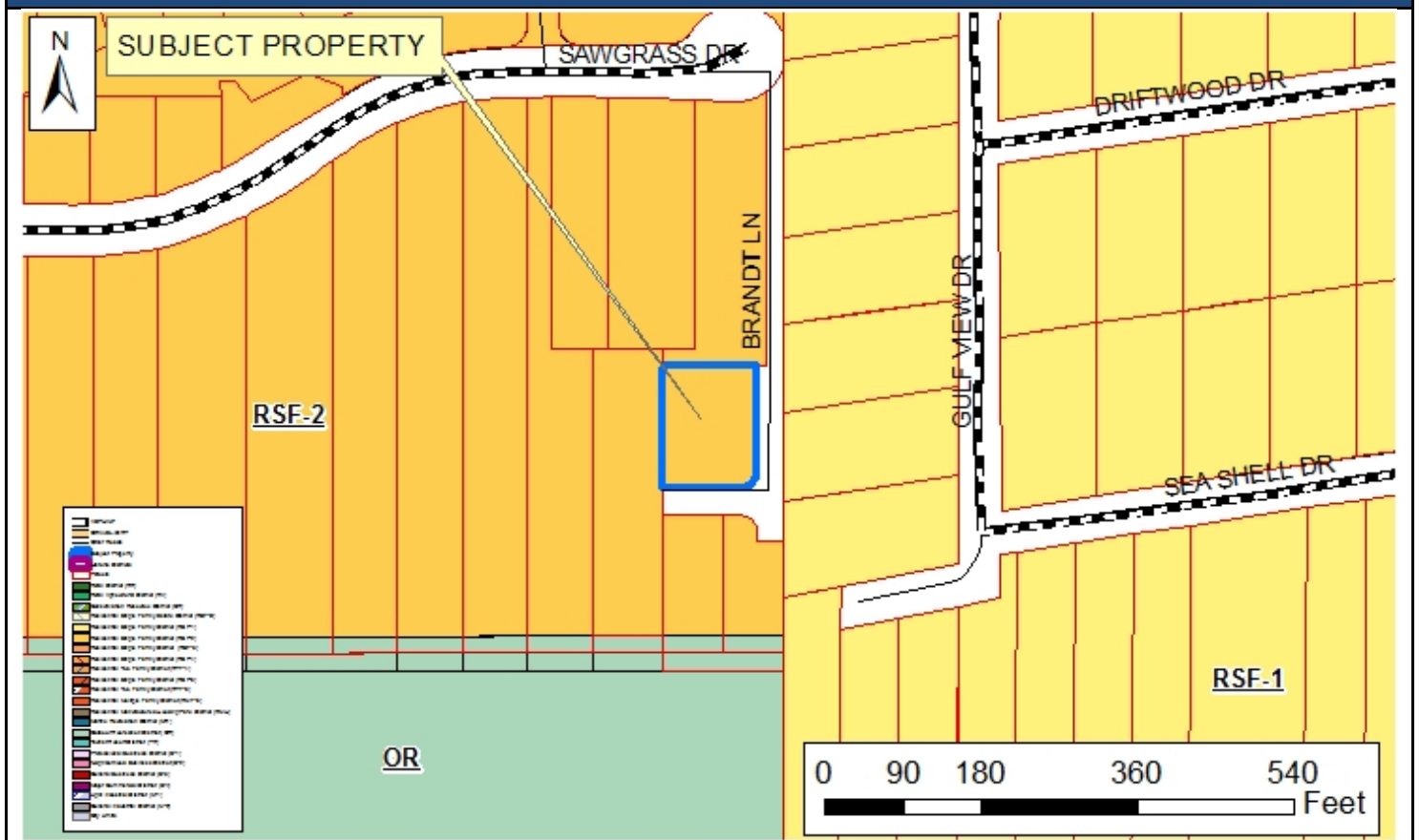




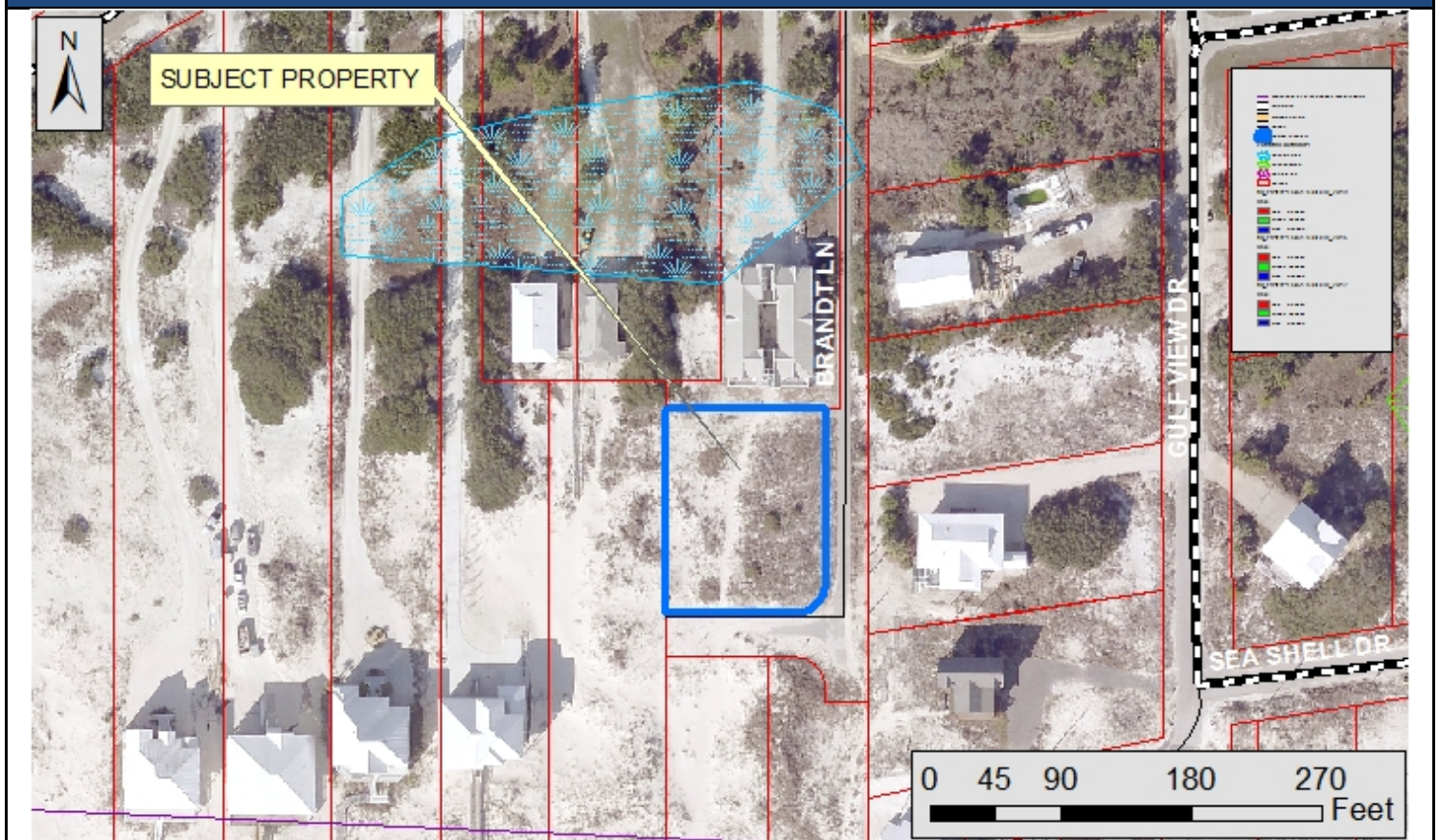




Locator Map



Site Map 2017 Aerial Photography



Google Earth Aerial Photography



Information Submitted by Owner

Foley Satellite Court House

201 E. Section Avenue

Foley, AL 36535

Attention: Mrs. Linda Lee

Re: Variance Request for 533 Brandt Lane, Gulf Shores, AL

Parcel ID# 05-68-0930-0-002-051-000

August 8th, 2019 Meeting

Dear Mrs. Lee, Members of the Board and Staff Members,

I am enclosing information pertinent to my variance request. Before discussing the enclosures, I want to provide a brief explanation of the facts so everyone understands my position.

On 12/2/16 I purchased Lot 72 in Phase 6 of Morgantown from C&M Land Company. On this lot I planned to build my dream house where my wife and I would hopefully retire one day. In the meantime the plan was to rent the house.

(Note: C&M Land Company is the company who subdivided his property into four lots many years before I came along. He built and paid for the private drive of which each of the four lot owners own $\frac{1}{4}$ of the private drive and are responsible for maintaining same.)

On July 14th, 2017 I contracted with Mike Adams (working under Duke General Contractors) and they were responsible for all permits, building the house, etc.. The builder ran into hard times and stopped showing up to work so on 1/20/18 he was thrown off the job. He had been overpaid at the time. I was forced to find subcontractors to finish the house.

On 1/16/18 I hired Polysurveying of Mobile to do a final survey as I thought I needed it to get Certificate of Occupancy.

On 2/8/18 I reviewed the Survey and contacted Polysurveying of Mobile and asked if needed the survey to get Certificate of Occupancy. They said no. They then pointed out about the set back. They said that this is not an issue unless you have a survey and want to sell. I am a very conservative person and I would never burden my wife or kids with a potential problem upon my demise so I needed to get this solved immediately.

On 2/18/19 After freaking out and calling everyone I knew in Gulf Shores, I was advised to meet with Mr. Rich Davis with Davis & Fields as I was told they could help me. He immediately met me out at the house.

On 3/23/18 received Certificate of Occupancy Permit#115766. The house still needed painted inside but was complete.

From this point on, Rich and Rick Davis have made many phone calls on my behalf, We had a meeting on 4/11/18 with Mr. Vince Jackson and Mr. David Conner and they understood my position and were going to direct us in the right direction to get this resolved.

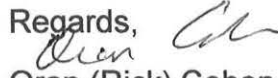
Oran (Rick) Cohen's Point of View:

I want the Board Members and Staff Members to know that I had no idea my house was being built in the set-back area. As soon as I realized it, I freaked out and approached an attorney to hopefully resolve this quickly. I have traveled numerous times to Gulf Shores to meet with officials and I will be at the meeting on August 8th. I want it known that no one complained and that I realized this myself and I am the one who brought it to your attention. I live in Atlanta and I have spent my entire retirement money and tons of sweat and tears into this house. I relied 100% on my builder Mike Adams with Houses by Adams and Duke General Contractors. I did visit the home frequently but never realized the house was not where it should be. In fact, the house location was nicely located and looked great from all aspects (visually). I have complied with all of Bill Lynn's request without issue and I am confident that everyone will agree that I have done everything in my power to abide by all of the formal and informal rules. As you can see above, I acted immediately on this issue as soon as I knew it was a problem. My lot is large and the house could have easily been placed in the correct spot. In fact, the house is permitted to have been 25% larger footprint than what I built.

Thank you for your consideration.

Letters enclosed:

- 1) Letter from John P. Chism – Original Developer and owner of Lot #73 and Lot #74.
- 2) Letter from Trice Hulling and other letters – Owner of Lot #C
- 3) Letter from Morgantown Home Owners Association

Regards,

Oran (Rick) Cohen

Letter #1

From: Rick Cohen
Subject: Re: My House on Brandt Lane
Date: Jul 19, 2019 at 9:19:41 PM
To: Pat Chism patchism@hotmail.com

Thank you.

Rick Cohen
[770-433-2440](tel:770-433-2440)
screenusa.net

On Jul 19, 2019, at 10:05 PM, Pat Chism <patchism@hotmail.com> wrote:

Rick I am at my place in gulf shores and cannot get the printer to work I will be back home tomorrow night and will print it out and sign and email to you then

Sent from my iPad

On Jul 19, 2019, at 12:39 PM, Rick Cohen <rick@screenusa.net> wrote:

To Whom It May Concern:

Re: Variance for 533 Brandt Lane

My name is John Chism and I own the two lots south of 533 Brandt Lane. My lot numbers are: #73 and #74. I am 100% in support of a variance to assist Oran Cohen on his lot #72. His house looks great and is located to where it looks in proportion with the private drive. I want to place my support behind Mr. Cohen's request.

Regards,


John P. Chism
C & M LLC

Thank you.

Rick Cohen

From: Pat Chism <patchism@hotmail.com>
Sent: Saturday, July 20, 2019 5:48 PM
To: rick@screenusa.net
Subject: Fwd:

Sent from my iPad

Begin forwarded message:

From: Kathy Chism <kathychism@hotmail.com>
Date: July 20, 2019 at 4:27:14 PM CDT
To: pat chism <patchism@hotmail.com>

Kathy Chism

Rick Cohen

Letter #2

3 Parts

From: triceyricee <triceyricee@aol.com>
Sent: Tuesday, July 23, 2019 11:26 AM
To: rick@screenusa.net
Cc: Don Huling
Subject: Rick Cohen Variance request
Attachments: 6. Easement Brandt Lane Sandbox Agreement.pdf; county maint letter Brandt Lane.pdf

To Baldwin County & Rick Cohen:

This is a letter to Baldwin County to address Rick Cohen's variance request. Mr. Cohen has mentioned that the county has stated this is not a private road.

Please see my enclosed attachments and the below explanation.

Brandt Lane was built as a single lane road at a cost which included permitting, plans, development and construction of such and was agreed to and paid for at a cost of **\$180,000**. by the 4 Brandt Lane Lot Owners

Please see my Comments below related to the 1st enclosed attachment

#1 - Roadway Easement – Defining in part, for purpose of the road to service the 4 Lots including our Lot C.

#4 - Subdivision of Sandbox Lots for use of the Roadway – Defining non-exclusive as specifically to the 4 property owners **only** and their shared use of Brandt Lane. **“Nothing contained, grants any general rights to the public”**.

#6 - Maintenance of Roadway – to be preformed by the 4 Lot Owners.

Comment on enclosed Attachment 2 Enclosed is additional communication showing that this is a private road for use by the 4 Lot members located on Brandt Lane.

I believe this looks like because this is on Mr. Cohen's own property it should not have any impact on our take permit with Fish and Wildlife. If this is so, we will have no issues with the variance requested. Mr. Cohen is a good neighbor and was the first to build in our community. We believe that the home is attractive and adds a positive look to our 4 Lot Brandt lane Community.

We hereby agree to Mr. Cohens requested variance.

Please feel free to contact us on any request for additional information you my desire.

Thank you to All,

Trice Huling

Mgr.Lazy Shores LLC

813-335-2159



BALDWIN COUNTY
HIGHWAY DEPARTMENT
22220 WEST BOULEVARD
SILVERHILL, ALABAMA 36576
TELEPHONE: (251) 937-0371
FAX (251) 937-0201

JOEY NUNNALLY, P.E.
COUNTY ENGINEER

CERTIFICATE OF MAINTENANCE

REQUESTED BY:


REFERENCED ROAD: Brandt Lane

LOCATION: Gulf Shores

DISTANCE OF MAINTENANCE: 0.0 MILES

This is to certify that the road listed is **NOT** presently part of the County Maintained Road System.

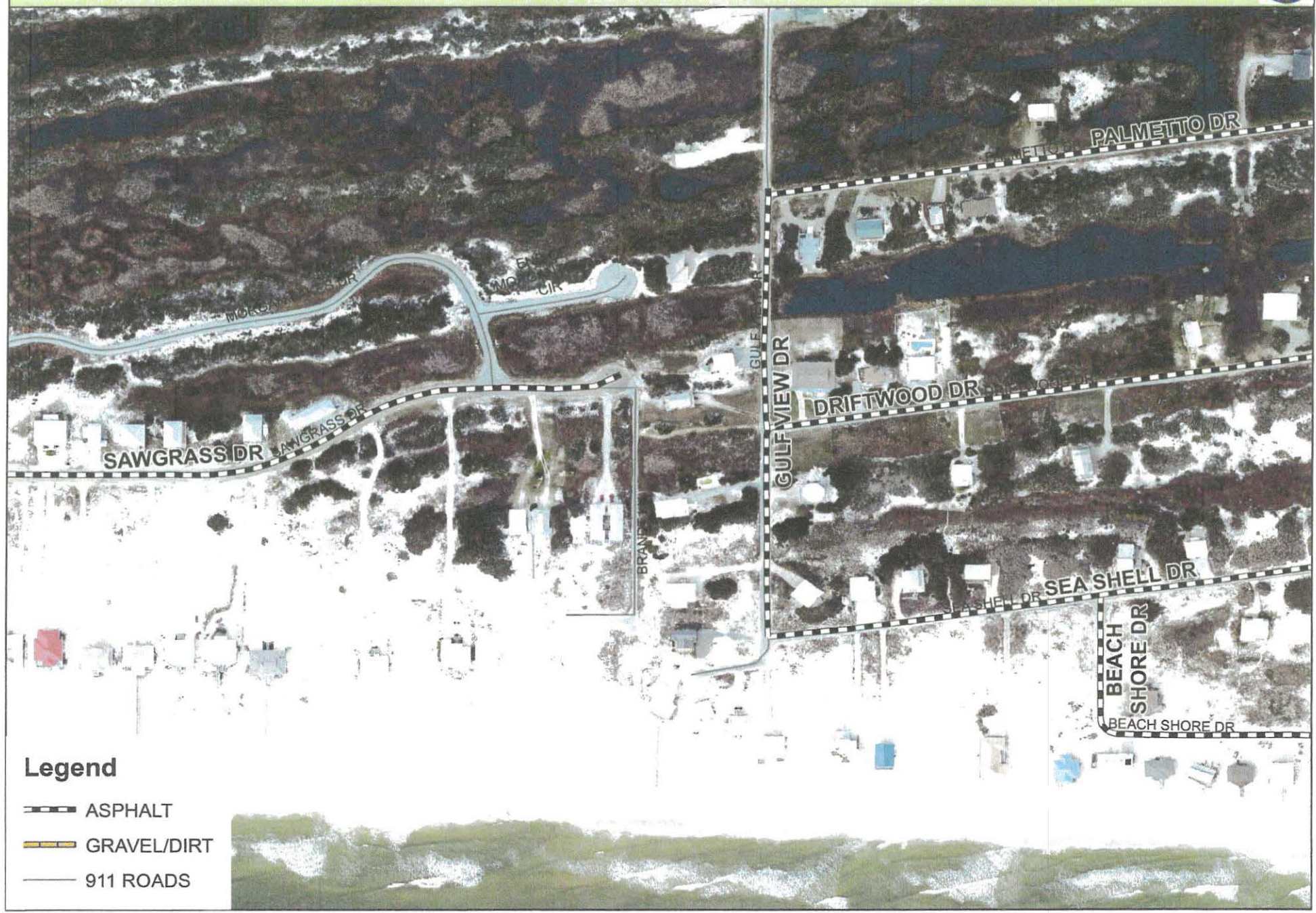
Done this 28 day of March 2018



Frank Lundy, P.E.
Operations Manager

c: Highway Department Road File
Certificate Forwarded to: kris@larrypowell.com

BRANDT LANE



Legend

- ASPHALT
- GRAVEL/DIRT
- 911 ROADS

This instrument prepared by
and upon recording return to:

Joe F. Lassiter III
Maynard, Cooper & Gale, P.C.
1901 6th Avenue North
2400 AmSouth/Harbert Plaza
Birmingham, AL 35203-2618
205.254.1181

STATE OF ALABAMA)
BALDWIN COUNTY)

State of Alabama, Baldwin County
I certify this instrument was filed
and taxes collected on:
2007 June -28 8:30AM
Instrument Number 1058897 Pages 10
Recording 38.00 Mortgage
Deed .50 Min Tax 5.00
Index
Archive 5.00
Adrian T. Johns, Judge of Probate

ACCESS AND UTILITIES EASEMENT AGREEMENT

THIS ACCESS AND UTILITIES EASEMENT AGREEMENT (this "Agreement") is dated January 5th, 2007, by and among **TRICE D. HULLING**, an individual resident of the State of Florida ("Hulling") and **EVELYN D. MARTIN**, an individual resident of the State of Florida, as tenants-in-common, their heirs and assigns (Hulling and Martin, collectively, the "Adjacent Lot Owner"), and **SANDBOX PROPERTIES, LLC**, an Alabama limited liability company, its successors and assigns ("Sandbox").

RECITALS

A. Sandbox owns that certain real property described on Exhibit A attached hereto and made a part hereof (as same may be subdivided at a future date, the "Sandbox Lots").

B. The Adjacent Lot Owner owns that certain real property described on Exhibit B attached hereto and made a part hereof (the "Adjacent Lot").

C. The Sandbox Lots and the Adjacent Lot are sometimes referred to herein collectively as the "Lots". Sandbox and the Adjacent Lot Owner are sometimes referred to herein collectively as the "Lot Owners."

D. The Lot Owners have determined that it is in their mutual best interest to enter into certain agreements related to access and utilities for the Lots and have executed this Agreement and that certain Site Work Escrow Agreement dated January 5th, 2007 (the "Escrow Agreement") to reflect the terms of their agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, herein and in the Escrow Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Adjacent Lot Owner and Sandbox hereby agree as follows:

1. Roadway Easement. Sandbox does hereby grant, bargain, sell and convey unto the Adjacent Lot Owner, its successors, heirs, assigns, guests, invitees and licensees of the Adjacent Lot,

Adjacent Lot Owner Initials EM 2H

Sandbox Initials M

01338627.5

1058897

a perpetual non-exclusive easement (the "Roadway Easement") for both pedestrian and vehicular ingress and egress over and across that portion of the Sandbox Lots more particularly described on Exhibit C attached hereto and made a part hereof (the "Roadway Easement Property"), for the purpose of servicing the Adjacent Lot, subject to the terms and conditions set forth in this Agreement.

2. **Utility Easement.** Sandbox does hereby grant, bargain, sell and convey unto the Adjacent Lot Owner, its successors, heirs, assigns of the Adjacent Lot, a perpetual non-exclusive easement (the "Utility Easement") to install and maintain a connection to the Utilities (as defined in the Escrow Agreement) over that portion of the Sandbox Lots more particularly described on Exhibit D attached hereto and made a part hereof (the "Utility Easement Property") for the purpose of servicing the Adjacent Lot, subject to the terms and conditions set forth in this Agreement.

3. **Construction Easement.** The Lot Owners hereby grant to one another a non-exclusive and temporary easement (the "Construction Easement") over, under and on those portions of the Lots as reasonably necessary to perform the construction and maintenance activities necessary or desirable in connection with the rights and obligations of the parties hereunder and under the Escrow Agreement.

4. **Subdivision of Sandbox Lots.** Sandbox shall have the right to subdivide the Sandbox Lots into three (3) separate lots. Sandbox agrees that the subdivision plat creating the Sandbox Lots shall expressly reference the easement rights created hereby and that such rights shall survive the recording of any such subdivision plat. The Adjacent Lot Owner acknowledges and agrees that all of the Sandbox Lots will be created and conveyed with non-exclusive perpetual rights in and to the Roadway and the Utilities and that the Adjacent Lot Owner's use of the Roadway and Utilities shall be shared in accordance therewith. As used in this Agreement, the term "non-exclusive" when used in connection with the rights and easements granted herein, shall be interpreted to permit the shared use of the easement areas by the Lot Owners and their respective Lots. Nothing contained herein shall be deemed to grant any general rights to the public.

5. **Construction.** The performance of and payment for all activities related to the design, permitting, installation, construction of the Roadway and the Utilities shall be as set forth in the Escrow Agreement. All activities of the Adjacent Lot Owner related to the connection of the Adjacent Lot to the Roadway and the Utilities shall be performed and paid for exclusively by the Adjacent Lot Owner.

6. **Maintenance of Roadway.** The Lot Owners agree that the maintenance of the Roadway shall be in accordance with this Section 6 unless and until such time as the Roadway is dedicated for public use and the maintenance of the Roadway is assumed by the applicable governmental authority or any homeowner's association (other than a Sandbox Association (as defined below)):

(a) **Performance.** The Lot Owners agree that the Roadway will be maintained in a manner commensurate with other similar private drives in the Morgantown Subdivision and in accordance with all restrictive covenants and governmental regulations applicable to the Lots. Any decision made by a majority of the Lot Owners to perform maintenance shall be binding upon all Lot Owners. In the event that Roadway Easement Property is owned by a non-profit association consisting only of the owners of the Sandbox Lots (a "Sandbox Association"), the affirmative vote of a majority of the Lot Owners to perform maintenance shall continue to be made by and binding upon all Lot Owners.

Adjacent Lot Owner Initials LM / JH

Sandbox Initials B

01338627.5

(b) **Payment.** All costs and expenses related to the maintenance of the Roadway (the "Maintenance Costs") shall be allocated as follows: (i) Adjacent Lot: 25%; and (ii) Sandbox Lots: 75%. Costs may be further allocated amongst the owners of the Sandbox Lots at the discretion of Sandbox at the time of the initial conveyance of each Sandbox Lot.

(c) **Invoice.** The Lot Owner (or the Sandbox Association, if applicable) actually performing such maintenance on behalf of the Lot Owners (the "Performing Lot Owner") shall provide an invoice including an itemization of each Lot Owner's allocation of the Maintenance Costs when submitting for reimbursement for the maintenance of the Roadway to the Lot Owners and the Lot Owners shall submit payment to the Performing Lot Owner within ten (10) business days after receipt thereof.

(d) **Default.** If the Defaulting Lot Owner fails to pay to the Performing Lot Owner any amount due hereunder (a "Defaulting Lot Owner"), such amount due shall constitute an equitable charge and a continuing lien upon the Defaulting Lot Owner's Lot and any improvements located thereon, and shall be a personal obligation of the Defaulting Lot Owner. The foregoing remedy of Performing Lot Owner shall not be deemed to limit any other rights and remedies that the Performing Lot Owner may have at law or in equity.

7. **Rights Appurtenant.** The rights, privileges and benefits created or granted under this Agreement and each provision hereof shall be enforceable by the parties by injunction, or by specific performance, and shall be deemed a covenant running with the title to the applicable Lots, forever. This Agreement shall be binding upon, and inure to the benefit of, the respective heirs, legal representatives, successors and assigns of Sandbox and the Adjacent Lot Owner to the Lots.

8. **Subordination: Mortgage Protection.** All mortgages encumbering the Lots shall be subordinate to the rights granted hereunder, which rights shall survive foreclosure of any such mortgage.

9. **No Public Dedication.** This Agreement is not intended, and shall not be construed, to dedicate any easements to the general public or to grant to the general public any rights whatsoever.

10. **Miscellaneous.**

(a) If any term, covenant or restriction established by this Agreement shall be invalid or unenforceable, the remainder of this Agreement shall not be effected thereby, and each term, covenant and restriction shall be valid and enforceable to the fullest extent permitted by law.

(b) This Agreement shall be binding on and inure to the benefit of, the parties to this Agreement and their respective distributees, personal representatives, successors and assigns. The covenants contained in this Agreement, the easement rights granted by this Agreement, and the restrictions, imposed by this Agreement shall be covenants and restrictions running with and binding upon the Lots.

(c) This Agreement shall not be modified or amended other than by the written agreement of all of the Lot Owners.

Adjacent Lot Owner Initials Emy St
Sandbox Initials JS

01338627.5

(d) This Agreement, if so desired, may be executed in multiple counterparts, each of which, when so executed, shall be deemed to be an original, and such counterparts, when taken together, shall constitute one and the same instrument.

(e) All notices given in connection with this Agreement shall be deemed completed on the date same is either personally delivered or deposited with a recognized national overnight courier (such as FedEx, UPS, DHL) for overnight delivery at the address set forth below or at such other address as has been provided in accordance with this Agreement:

If to Sandbox:

Sandbox Properties, LLC
1741 South Boulevard
Houston, Texas 77098

If to the Adjacent Lot Owner:

Trice Huling
14008 Shady Shores Drive
Tampa, Florida 33613

Evelyn Martin
6700 Hatteras Drive
Lake Worth, Florida 33467

(f) This Agreement shall be construed in accordance with the internal laws of the State of Alabama, including all matters of construction, validity and performance, without regard to its principles of conflicts of laws. The prevailing party shall be entitled to recover any and all attorney's fees incurred in the prosecution or defense of any action.

(g) A waiver by either of the parties of this Agreement of any of the covenants, conditions or agreements contained in this Agreement to be performed by the other party shall not be construed to be a waiver of any subsequent breach of same or of any other covenant, condition or agreement contained in this Agreement.

(h) The property rights granted hereunder shall not be extinguished by operation of law or otherwise due to the common ownership by Sandbox of certain dominant and servient tenements created under this Agreement.

[Signatures to Follow]

Adjacent Lot Owner Initials Em/ JH

Sandbox Initials JS

01338627.5

IN WITNESS WHEREOF, Sandbox and the Adjacent Lot Owner have caused their signatures to be affixed to this Agreement as of the date first set forth above.

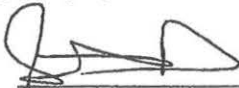
WITNESS:

SANDBOX:

SANDBOX PROPERTIES, LLC, an Alabama limited liability company

Print Name: Scott Brandt

By:



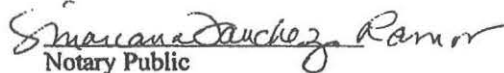
Scott Brandt
Its Authorized Member

STATE OF Texas)

Harris COUNTY)

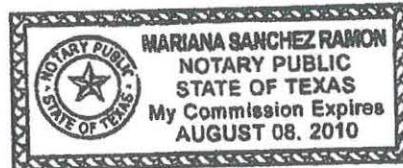
I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Scott Brandt whose name as the Authorized Member of Sandbox, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said Agreement, he as such Authorized Member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this the 5th day of Jan, 2007.


Notary Public

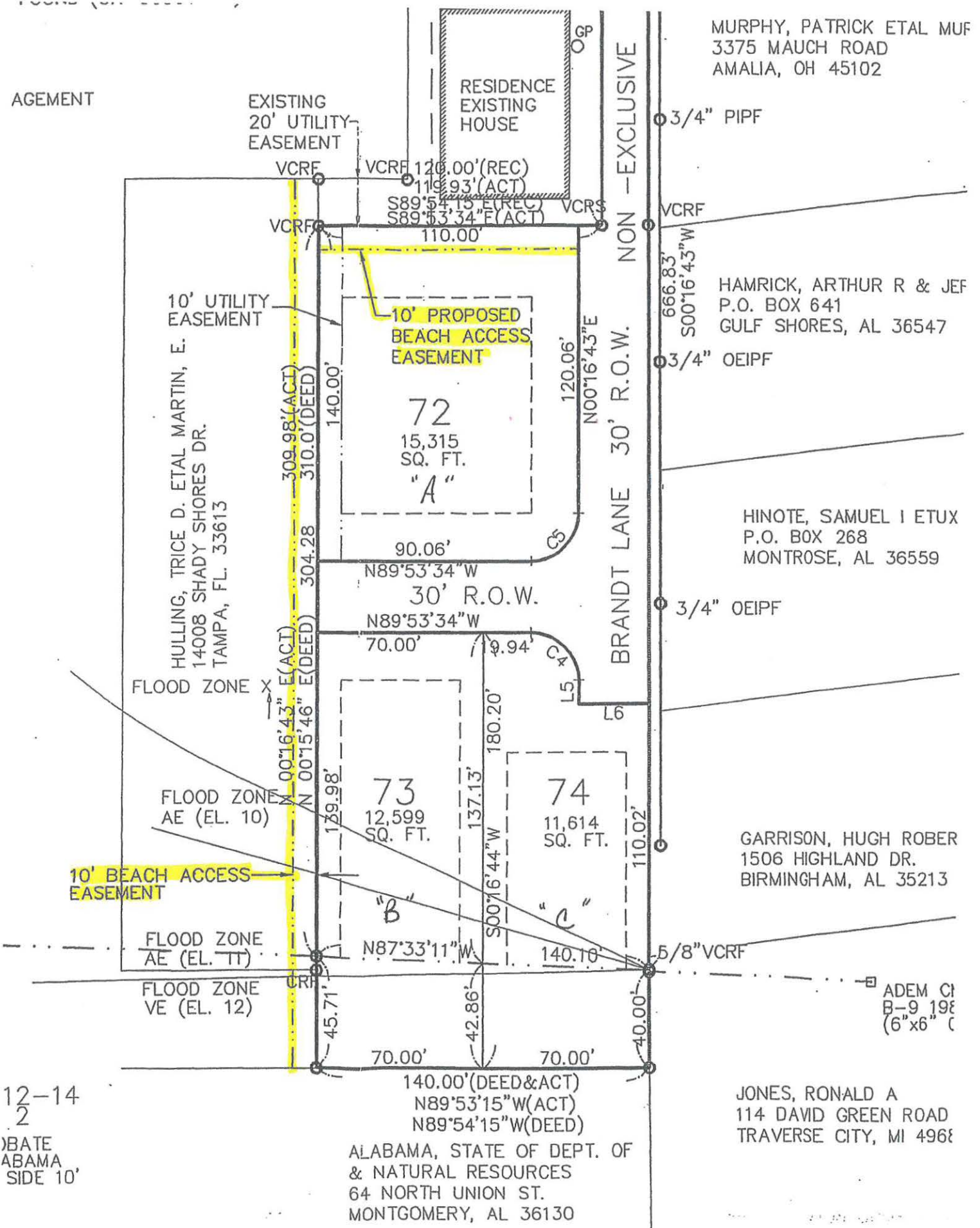
AFFIX SEAL

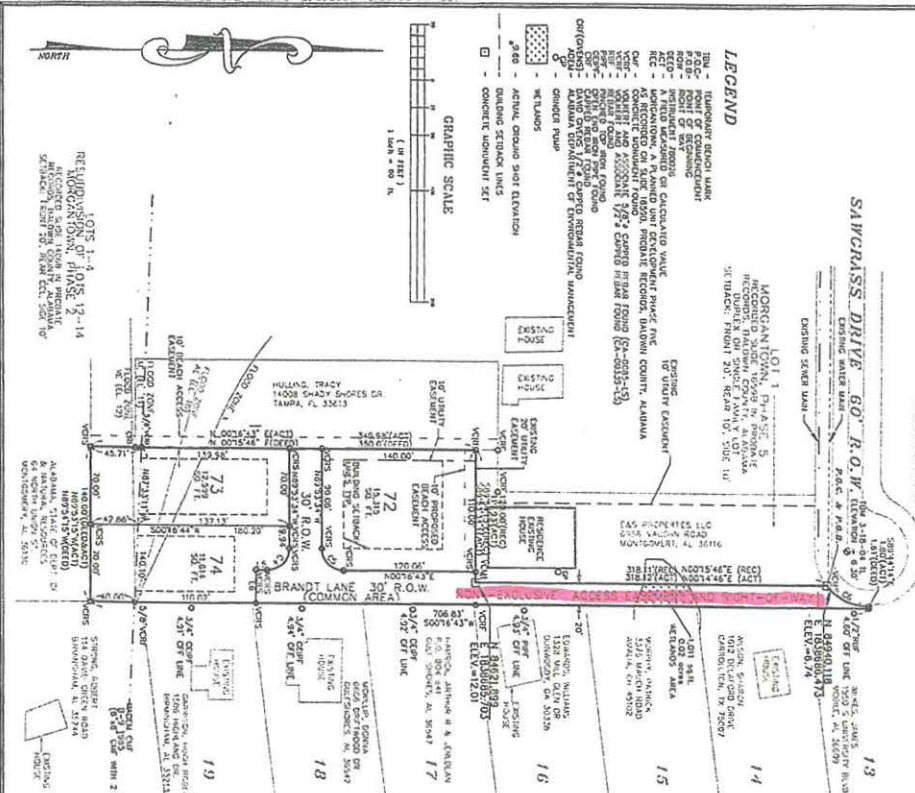
My commission expires: Aug. 8 2010



01338627.5

AGEMENT





UNIT NUMBER TWO OF SURFSIDE SHORES
AS RECORDED IN MAP BOOK 5, PAGE 190
BALDWIN COUNTY, ALABAMA

1. DISCOVERY AS THUSFOOT OF CENT.
2. ALL RECORDATIONS WERE MADE IN ACCORDANCE WITH U.S. STANDARDS.
3. THE RECORDS WERE MADE BY THE FOLLOWING PERSONS: JAMES H. AND
4. NO OTHER PERSONS. THE RECORDS WERE MADE BY THE FOLLOWING PERSONS:
5. THE RECORDS WERE MADE BY THE FOLLOWING PERSONS: JAMES H. AND
6. THE RECORDS WERE MADE BY THE FOLLOWING PERSONS: JAMES H. AND
7. THE RECORDS WERE MADE BY THE FOLLOWING PERSONS: JAMES H. AND
8. THE RECORDS WERE MADE BY THE FOLLOWING PERSONS: JAMES H. AND
9. THE RECORDS WERE MADE BY THE FOLLOWING PERSONS: JAMES H. AND
10. THE RECORDS WERE MADE BY THE FOLLOWING PERSONS: JAMES H. AND

[illegible][illegible]

1. GROUND SITE AND THE NAME OF THE SCENE AND PLACING THE SITE
DOWNTOWN ACCORDING WITH THE REQUIREMENTS OF THE
OF THE NATIONAL ORGANIZATION AND THE STATE OF ALABAMA TO THE ECLIP
THIS MAY 12, 1961 IN DAY OF APRIL 1961

William Marshall Smith 201

WILLIAM MARSHALL SMITH, JR.
14505 WOODBURN, SMITH, TX.

14505 WOODBURN, SMITH, TX.

[illegible]

**CERTIFICATE OF APPROVAL BY
SOLITIL COMMUNICATIONS**

The undersigned, in accordance with SOLITIL COMMUNICATIONS, hereby affirms the authorship of the manuscript titled **THE MURDER OF AFRICA**, submitted for publication to the **Journal of AFRI**.

G.A. Williams
Approved Signature (Full Legal Name)

**CERTIFICATE OF APPROVAL BY
SOLITIL COMMUNICATIONS**

The undersigned, in accordance with SOLITIL COMMUNICATIONS, hereby affirms the authorship of the manuscript titled **THE MURDER OF AFRICA**, submitted for publication to the **Journal of AFRI**.

G.A. Williams
Approved Signature (Full Legal Name)

[illegible][illegible][illegible][illegible]NOTARY PUBLIC *Bellevue* COUNTY

507400.50	PROJECT NO.	PROJEC ^{NAME}
		LOTS 72-74, PHASE 6 OF MORGANTOWN A PLANNED RESIDENTIAL DEVELOPMENT
1	SHEET NO.	SHEET DESCRIPTION
		FINAL PLAT
1	DATE	CLIENT
		SCOTT BRANDT

VOLKERT
& ASSOCIATES, INC.
Engineers • Surveyors • Planners

DESIGNED BY	NSP
DRAWN BY	CLW
CHECKED BY	NSP
DATE	2-13-07

© 2007 VOLKERT & ASSOCIATES, INC.
CONSULTING ENGINEERS-FOLEY, ALA.
316 SOUTH MCKENZIE STREET
251-868-7551

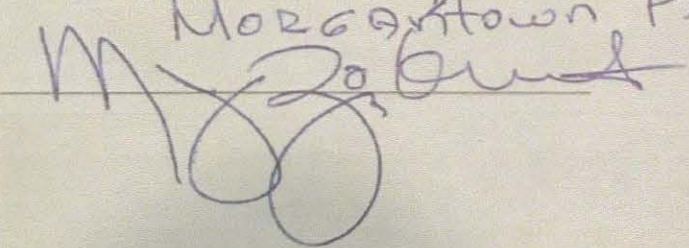
Rick Davis
Davis & Fields, PC
P.O. Box 2925
Daphne, Alabama 36526

Letter #3

RE: COHEN / BRANDT LANE VARIANCE
REQUEST

Dear Mr. Davis,

The Board of Directors of Morgantown Home Owners Association to which this property is a member do hereby consent to the variance being sought by Oran E. Cohen (Rick Cohen) as shown by the attached variance request.

Yours, M I Zobrist
Secretary/Treasurer
Morgantown Property Owners Assn


Richard E. (Rick) Davis, Jr.
Davis & Fields, P.C.
P.O. Box 2925
Daphne, AL 36526
T: (251) 621-1555 ext. 25
F: (251) 621-1520
www.davis-fields.com



Baldwin County Planning & Zoning Department

County Commission District #4

Board of Adjustment Staff Report

Case No. V-190028

Fisher Property

Variance from the Rear Yard Setback and Jurisdictional Wetlands Setback

August 8, 2019

Subject Property Information

Planning District: 25
General Area: North side of St Hwy 180
Physical Address: 11486 Council Ln
PID: 05-69-06-13-0-000-024.003
Zoning: RSF-1, Single Family District
Acreage: 0.38± acres,
Applicant: Michael Thompson
136 W Main St
Prattville, AL 36067
Owner: Michael Fisher
382 Firewood Dr.
Wetumpka, AL 36093
Lead Staff: Celena Boykin, Planner
Attachments: *Within Report and Attached*

	Adjacent Land Use	Adjacent Zoning
North	Residential	RSF-1, Single Family District
South	Water	N/A
East	Residential	RSF-1, Single Family District
West	Vacant	RSF-1, Single Family District

Summary and Recommendation

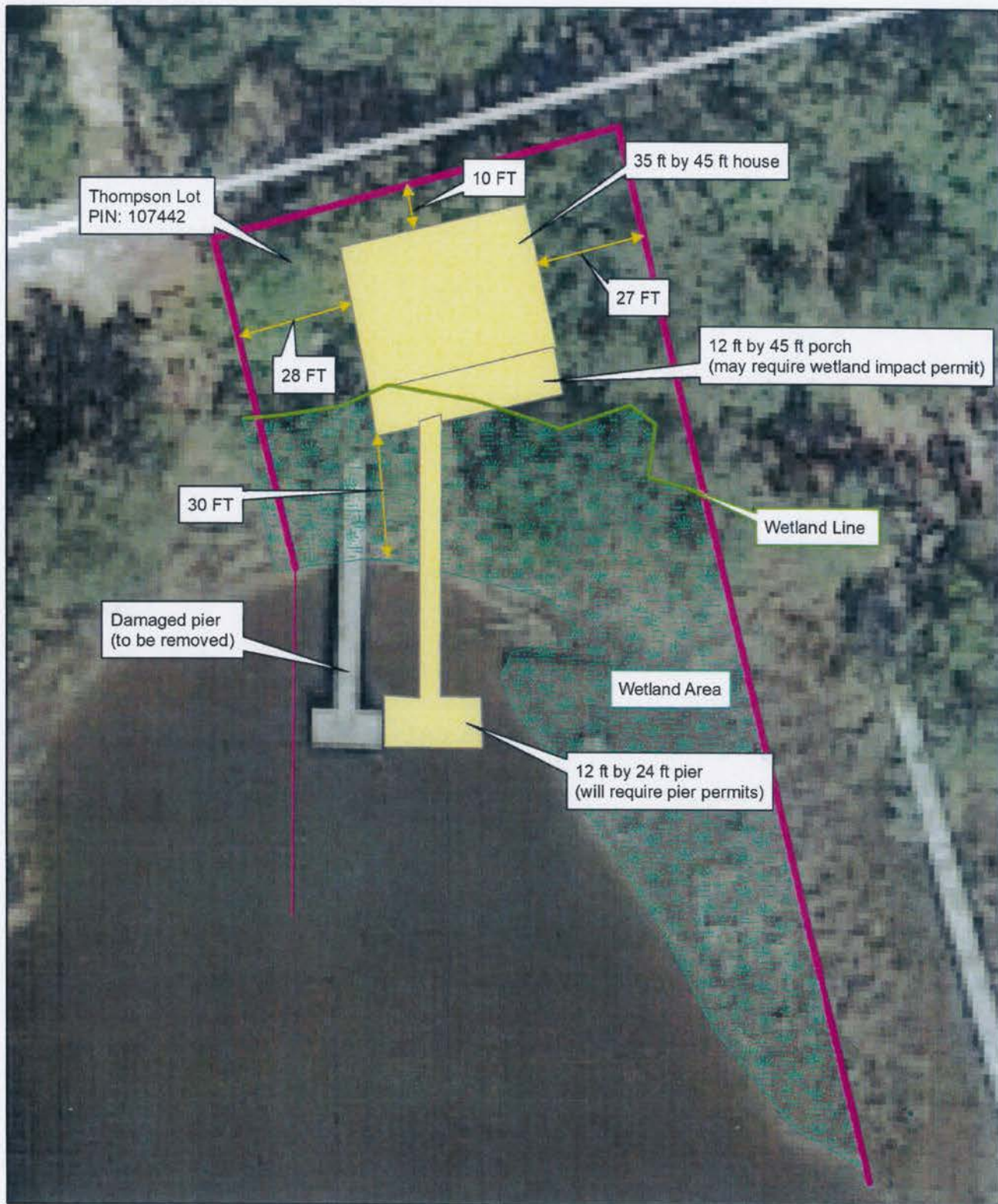
The applicant is requesting a variance from the rear yard setback requirement and jurisdictional wetlands setback requirements to allow for the construction of a new single family dwelling. The proposed footprint of the new dwelling is approximately 2,115 square feet (the living space is 1,575 sq ft. and the front porch 540 sq ft.)

Staff recommends that Case No. V-190028, Fisher Property be **APPROVED**, based on comments contained herein.

Variance Request

As stated above the applicant is requesting a variance from the rear yard setback requirement and jurisdictional wetlands setback requirements to allow for the construction of a new single family dwelling. The proposed footprint of the new dwelling is approximately 2,115 square feet (the living space is 1,575 sq ft. and the front porch 540 sq ft.)

Proposed Site Plan Submitted with Variance Application



EcoSolutions
ENVIRONMENTAL MEDIATION, MANAGEMENT & PLANNING
P.O. Box 361 Montrose, AL 36559
Phone: 251-621-5006 Fax: 251-621-5058

Project: Thompson Council Rd
Applicant: MA Thompson
1 inch = 30 feet

T-9-S, R-2-E, Sect. 13
Gulf Shores, AL

0 15 30 60 90 120 Feet



Section 4.2 RSF-1, Single Family District

4.2.5 *Area and dimensional ordinances.* Except as provided by Section 2.3: *Establishment of Zoning in Planning Districts*, Section 12.4: *Height Modifications*, Section 12.5: *Yard Requirements*, Section 12.6: *Coastal Areas*, Section 12.8: *Highway Construction Setbacks*, Section 18.6 *Variances*, and Article 20: *Nonconformities*, the area and dimensional ordinances set forth below shall be observed.

Maximum Height of Structure in Feet	35-Feet
Minimum Front Yard	30-Feet
Minimum Rear Yard	30-Feet
Minimum Side Yards	10-Feet
Minimum Lot Area	30,000 Square Feet
Minimum Lot Width at Building Line	100-Feet
Minimum Lot Width at Street Line	50-Feet
Maximum Ground Coverage Ratio	.35

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 currently vacant. The property adjoins Council Lane to the north. the adjoining properties are vacant and residential.

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

Per the site plan submitted wetlands are on the south half of the property. The applicant is proposing to build a single family dwelling in the uplands with the front porch extending into the wetlands.

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 applicant is proposing to build a single family dwelling with the front porch extending into the wetlands and 10 feet from the rear property line. The submitted site plan also shows the side setbacks at 27 feet and 28 feet. The side setbacks for RSF-1 zoning is 10 feet. The applicant could extend their home towards the sides and avoid building in the 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.

The granting of this application should not have any impact on adjacent property owners.

5.) Other matters which may be appropriate.

Per the applicant, there isn't an active Property Owners Association.

Staff Comments and Recommendation

The applicant is requesting a variance from the rear yard setback requirement and jurisdictional wetlands setback requirements to allow for the construction of a new single family dwelling. Staff feels that the applicant could avoid building in the wetlands but would still need a variance from the rear setback requirements and the jurisdictional wetland setback requirements therefore staff recommends that Case No. V-190028, Fisher Property be **APPROVED**.

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.





ADJOINING VACANT
PROPERTY TO THE WEST

07/10/2019

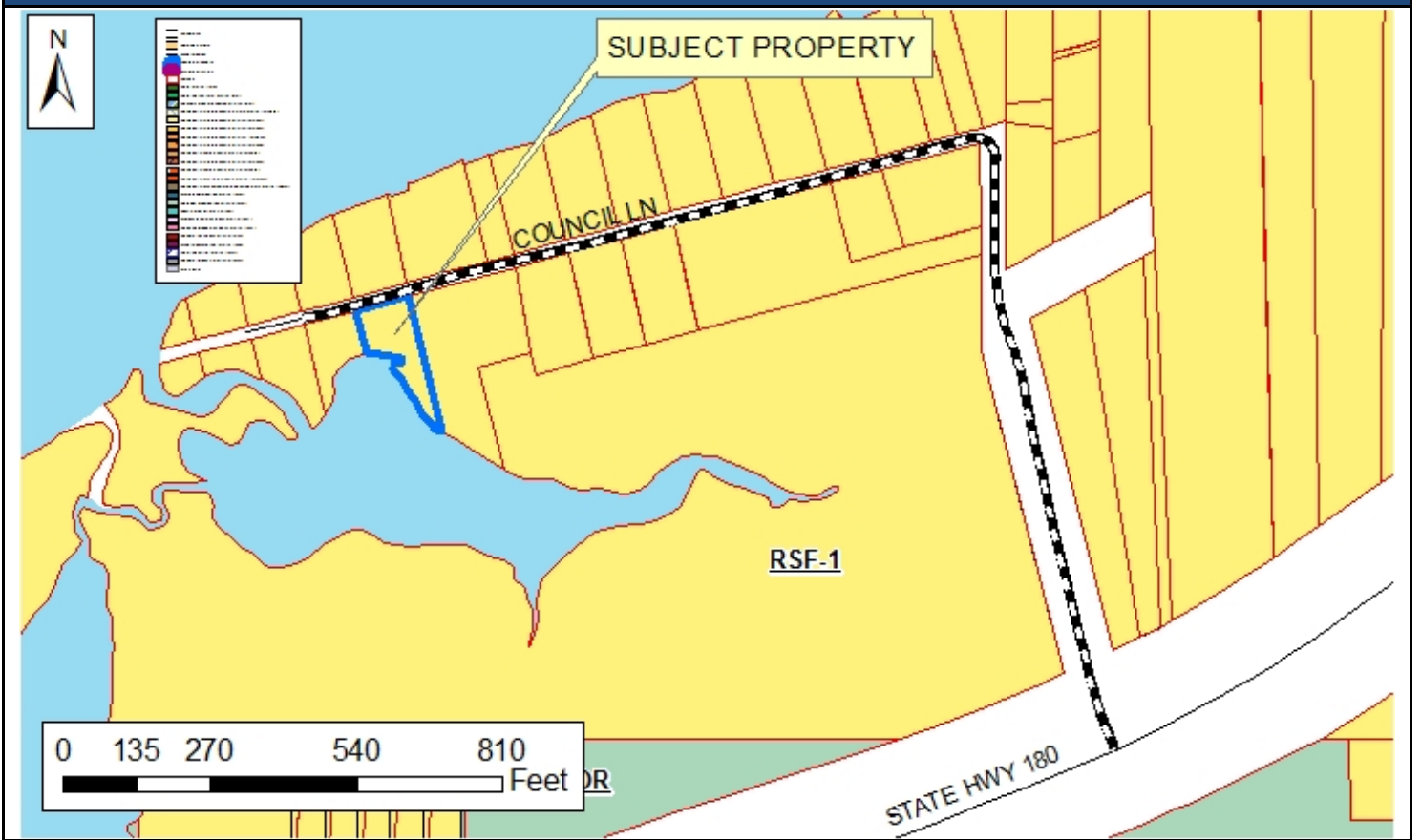


ADJOINING RESIDENCE
TO THE NORTH

07/10/2019



Locator Map



Site Map



Planning District 25 Advisory Committee Recommendation

July 16, 2019

VIA Email

TO: DJ Hart CFM
Planning Technician
Linda Lee, Planner
BC Planning & Zoning

From: Carol N. Kittrell, Recording Secretary
FM Planning & Zoning Advisory Committee

The Fort Morgan Planning and Zoning Advisory Committee
Meeting, July 15, 2019

A regular meeting of the FM P & Z Advisory Committee was held on July 15, 2019 at the Shell Banks Baptist Church Fellowship Hall at 9 a.m. The following members were in attendance: Chan West, Chair; Bonnie Lowry, Thelma Strong, Ernie Church and Randy Ulrich and B C Planning & Zoning Director, Vince Jackson.

Case No V-190027 Cohen Property: Rick Davis, attorney for the Cohen property owners, spoke on their behalf asking for a variance from the front side and corner side yard setback requirements to allow a recently constructed dwelling to remain.

Members voted 4-1 (Ernie Church- no vote) to not recommend approval of the variance request. The majority felt that the MSL plans were approved in 2017 and the structure was overbuilt from the original plans, therefore, it is non-conforming.

Case No. V-190028 Fisher Property: The request was reviewed with owner Michael Thompson addressing the committee.

The membership voted unanimously to approve recommendation of the variance for the rear-yard setback and approval of the wetland setback subject to no construction in the wetlands area.

Case No. Z-19033 McNeil Property: Property owner Walter McNeil addressed the committee regarding his request for approval to rezone approximately 1 acre from RTF-4 to MR to allow fishing charters and a single-family residence on the parcel.

The committee voted unanimously to recommend approval of the rezoning request for MR zoning.

Email Copy: Chan West, Chair



Baldwin County Planning & Zoning Department

County Commission District #4

Board of Adjustment Staff Report

Case No. V-190029

Fendley Property

Variance from the rear yard setback requirement

August 8, 2019

Subject Property Information

Planning District: 33
General Location: Lillian
Physical Address: 10446 Beaulieu Ln
PID: 05-63-02-03-0-000-069.000
Zoning: RSF-1, Single Family District
Acreage: 0.718
Applicant: Jeff Fendley
10446 Beaulieu Ln
Lillian, AL 36549
Owner: Jeff Fendley
Lead Staff: Crystal Bates, Planning Technician
Attachments: Within Report

	Adjacent Land Use	Adjacent Zoning
North	Residential	RSF-1 Single Family District
South	Perdido Bay	N/A
East	Residential	RSF-1 Single Family District
West	Residential	RSF-1 Single Family District

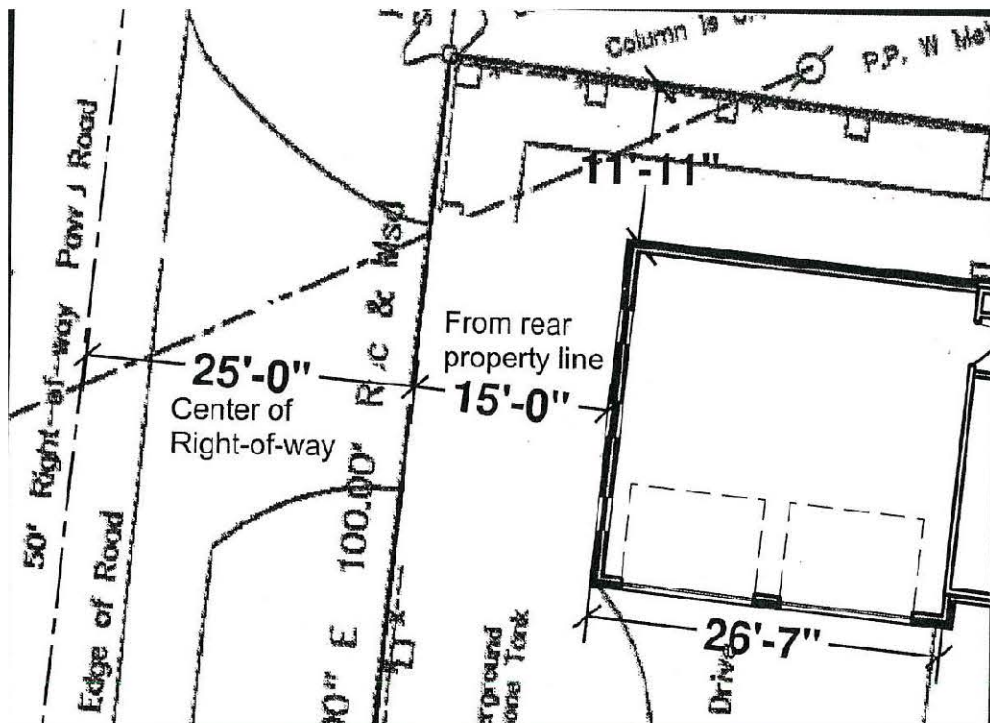
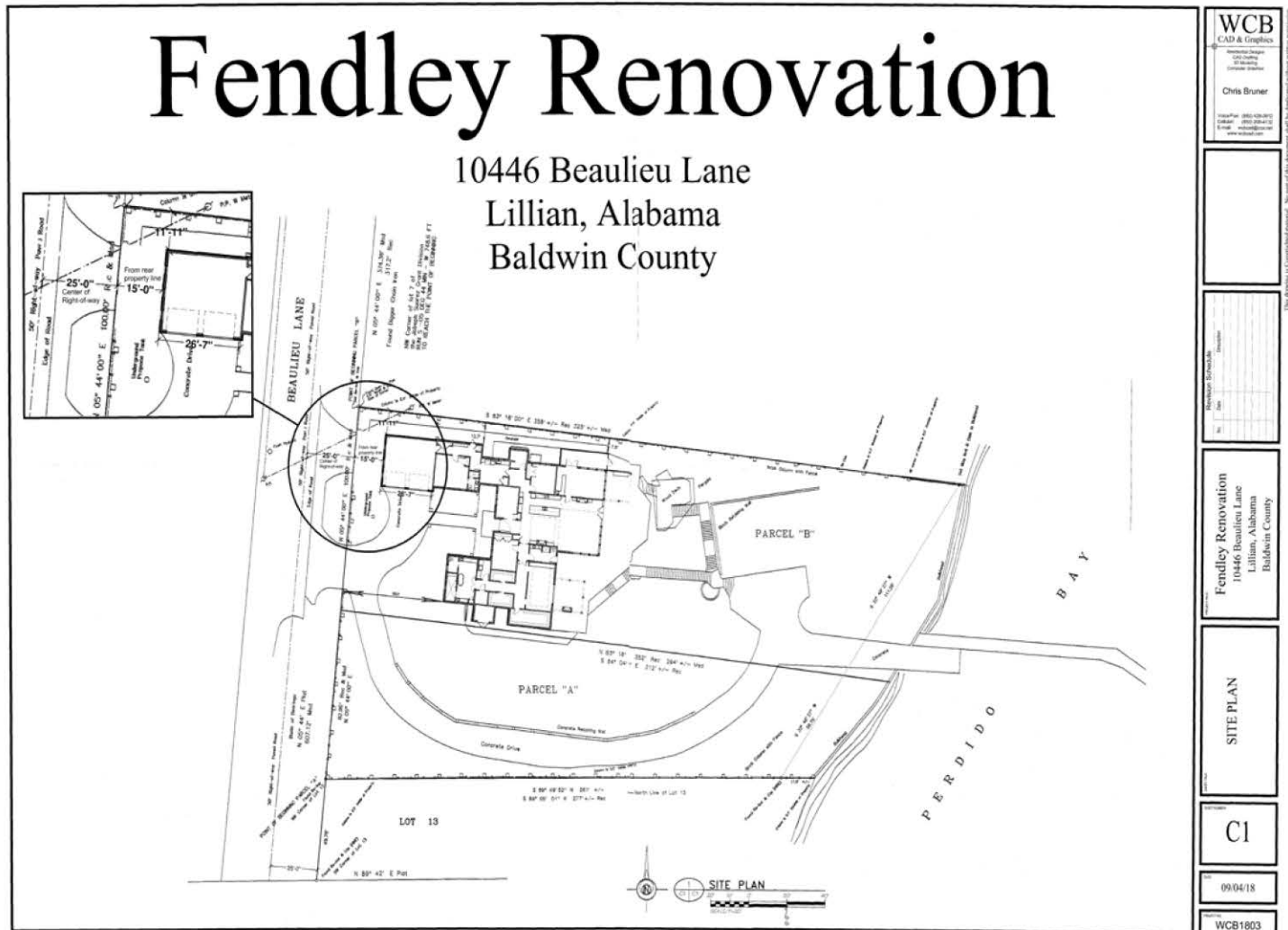
Summary and Recommendation

The applicant is requesting a variance from section 4.3.5 of the Baldwin County Zoning Ordinance as it pertains to the rear yard setback requirement which is 30 feet.

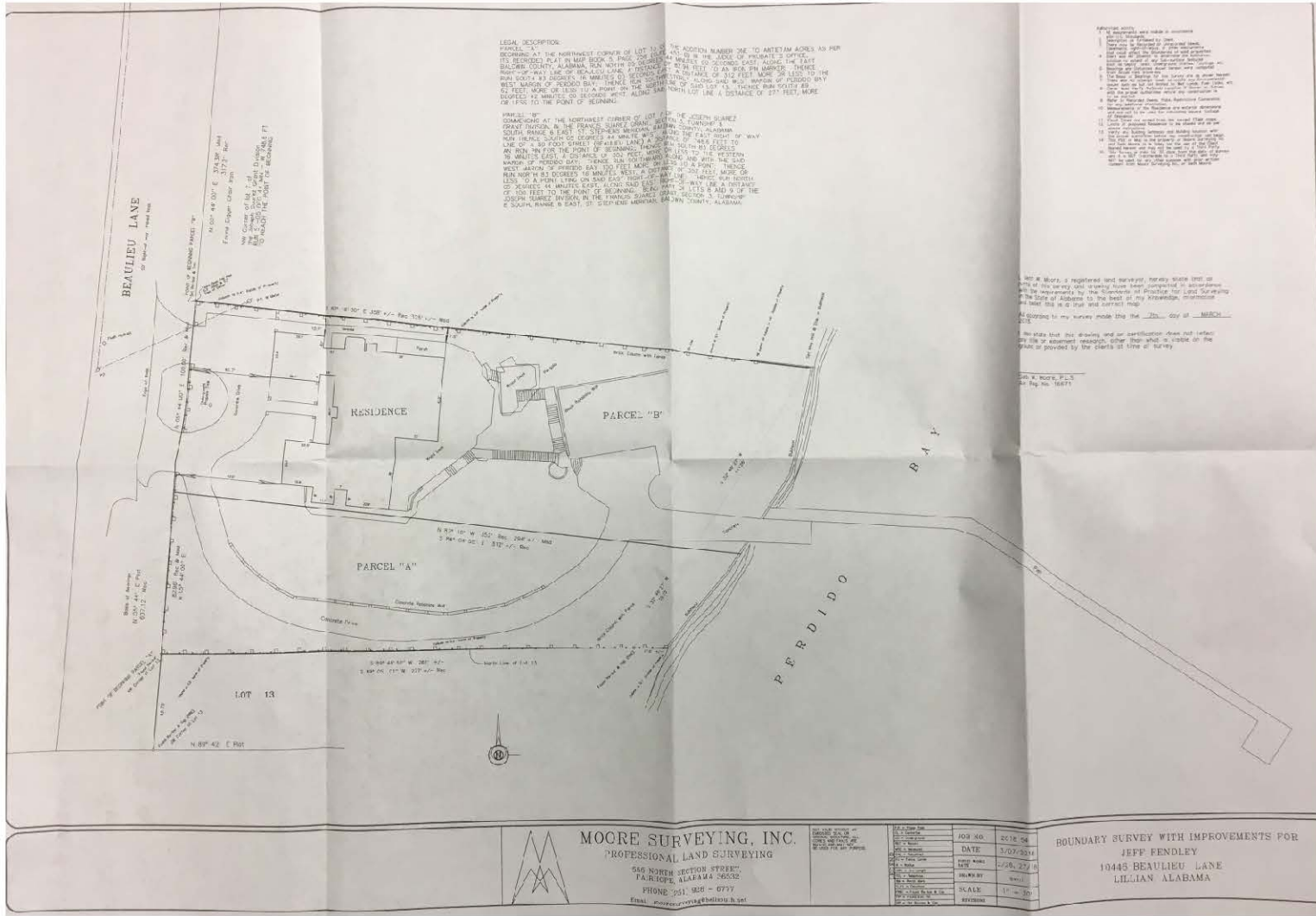
Staff recommends that Case V-190025 be DENIED.

Variance Request

The applicant is requesting a 15-foot rear property line variance to allow for an addition of an attach car garage to the house. Per the submitted survey the proposed attached garage will be 15 foot to the rear property line and would meet the 40 -foot highway construction setback from the center of the right a way and will meet the 10-foot side setback. Staff feels there is not a hardship on the land and request Case No V-190029, Fendley Property to be DENIED.



Current Survey



Section 4.2 RSF-1, Single Family District

4.2.5 *Area and dimensional ordinances.* Except as provided by *Section 2.3: Establishment of Zoning in Planning Districts*, *Section 12.4: Height Modifications*, *Section 12.5: Yard Requirements*, *Section 12.6: Coastal Areas*, *Section 12.8: Highway Construction Setbacks*, *Section 18.6 Variances*, and *Article 20: Nonconformities*, the area and dimensional ordinances set forth below shall be observed.

Maximum Height of Structure in Feet	35-Feet
Minimum Front Yard	30-Feet
Minimum Rear Yard	30-Feet
Minimum Side Yards	10-Feet
Minimum Lot Area	30,000 Square Feet
Minimum Lot Width at Building Line	100-Feet
Minimum Lot Width at Street Line	50-Feet
Maximum Ground Coverage Ratio	.35

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 100-foot-wide by 352 foot in length, with an existing dwelling located on the property. The property fronts Perdido Bay. Adjoining properties to the North and West are residential, adjoining properties to South is vacant and to the East is Perdido Bay. The owner purchased the property in June 2017. Zoning was implemented in Planning District 33 in August 2002.

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

The property slopes to the Bay.

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 applicant states that the purpose of this request is to have an attached garage rather than a detached garage.

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.

The granting of this application should not unduly impact the adjacent property owners.

5.) Other matters which may be appropriate.

The applicant hasn't submitted any information supporting a hardship on the land. Therefore, staff recommends that case number V-190029, Fendley Property, be **DENIED**.

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.

Unless otherwise specifically stated by the Board, a variance authorized by the Board shall expire if the applicant fails to obtain all necessary permits pursuant thereto within six (6) months of the date of the subject vote taken.

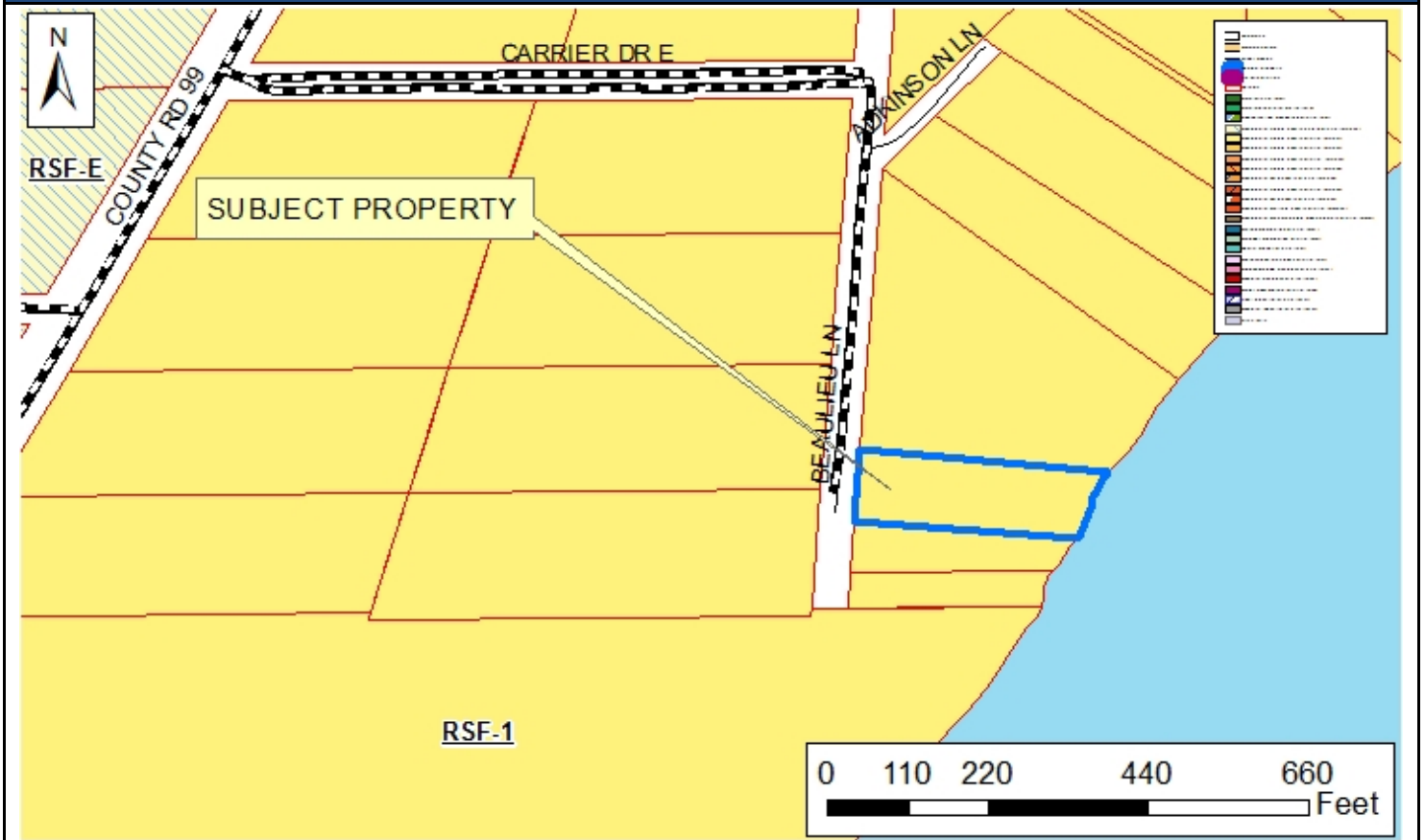








Locator Map



Site Map





Baldwin County Planning & Zoning Department County Commission District #4

Board of Adjustment Staff Report

Agenda Item

Case No. V-190030

Variance From Off-Street Parking Requirements and Jurisdictional Wetlands Setback Requirements
August 8, 2019

Subject Property Information

Planning District: 25
General Location: South side of State Highway 180, east of Boulevard Martinique
Physical Address: N/A
Parcel Number: 05-68-05-22-0-000-011.003
Current Zoning: B-3, General Business District
Existing Land Use: Vacant
Requested Variance: Reduction in Off-Street parking requirements from 54 spaces to 36 spaces for a proposed discount/variety store and a variance from jurisdictional wetlands setback requirements
Acreage: 3.05 acres, more or less of a 6.69 acre tract
Applicant: The Broadway Group, LLC
PO Box 18968
Huntsville, AL 35804
Owner: Johnie Henry Kulgar Revocable Trust
126 Rolling Hills Drive
Daphne, AL 36526
Lead Staff: Linda Lee, Planner
Attachments: *Within Report*

	Adjacent Land Use	Adjacent Zoning
North	Residential and Vacant	RSF-1, Single Family District
South	Vacant	B3, General Business District OR. Outdoor Recreation District
East	Vacant	B3, General Business District
West	Vacant	B3, General Business District

The applicant is requesting a variance from off-street parking requirements in order to reduce the required number of parking spaces from 54 to 36. The applicant is also requesting a variance from jurisdictional wetlands setback requirements.

Section 5.3 B-3, General Business District

5.3.1 Purpose and intent. The purpose of this district is to provide for a variety of retail uses and services in free-standing parcels or shopping centers to serve the community's general commercial needs. This district shall only be applied at appropriate locations: to conveniently meet these needs; in conformance with the goals, objectives and policies and location criteria of the Comprehensive Plan; compatible with the surrounding land uses and zoning districts; where it will not adversely impact the facilities and services of the County; where it will not set a precedent for the introduction of inappropriate uses into an area; and so as not to encourage non-residential strip development along streets

5.3.2 Permitted uses. The following uses are permitted as of right, or as uses accessory to permitted uses in the B-3, General Business District:

- | | |
|--|--|
| (a) All uses permitted by right under the B-2 zoning designation | (dd) Golf course |
| (b) Air conditioning sales and service | (ee) Golf driving range |
| (c) Amusement arcade | (ff) Grocery store |
| (d) Animal clinic/kennel | (gg) Landscape sales |
| (e) Arboretum | (hh) Marine store and supplies |
| (f) Auto convenience market | (ii) Miniature golf |
| (g) Automobile service station | (jj) Mini-warehouse |
| (h) Bakery, wholesale | (kk) Night club, bar, tavern |
| (i) Ball field | (ll) Nursery |
| (j) Bicycle sales and service | (mm) Office equipment and supplies sales |
| (k) Bowling alley | (nn) Park or playground |
| (l) Business machine sales and service | (oo) Pawn shop |
| (m) Business school or college | (pp) Pet shop |
| (n) Butane gas sales | (qq) Plumbing shop |
| (o) Cemetery | (rr) Printing/publishing establishment |
| (p) City hall or courthouse | (ss) Restaurant sales and supplies |
| (q) Country club | (tt) Riding academy |
| (r) Department store | (uu) Rug and/or drapery cleaning service |
| (s) Discount/variety store | (vv) Seafood store |
| (t) Drug store | (ww) Sign shop |
| (u) Elevator maintenance service | (xx) Skating rink |
| (v) Exterminator service office | (yy) Stone monument sales |
| (w) Farmer's market/truck crops | (zz) Swimming pool (outdoor) |
| (x) Firing range | (aaa) Taxidermy |
| (y) Fitness center or gym | (bbb) Teen club or youth center |
| (z) Florist | (ccc) Tennis court (outdoor) |
| (aa) Fraternity or sorority house | (ddd) Wildlife sanctuary |
| (bb) Fruit and produce store | (eee) YMCA, YWCA |
| (cc) Funeral home | |

5.3.3 Conditional uses. The following uses are permissible as conditional uses in the B-3: General Commercial District, subject to the standards and procedures established in *Section 18.11: Conditional Use*:

- (a) Airport
- (b) Ambulance/EMS service
- (c) Amusement park
- (d) Armory
- (e) Auditorium, stadium, coliseum
- (f) Automobile parts sales
- (g) Automobile repair (mechanical and body)
- (h) Automobile storage (parking lot, parking garage)
- (i) Barge docking
- (j) Boat sales and service
- (k) Broadcasting station
- (l) Building materials
- (m) Bus and railroad terminal facility
- (n) College or university
- (o) Convalescent or nursing home
- (p) Correctional or penal institution
- (q) Dog pound
- (r) Electric power substations
- (s) Farm implements
- (t) Flea market
- (u) Freight depot, rail or truck
- (v) Home improvement center
- (w) Hotel or motel
- (x) Hospital
- (y) Landfill
- (z) Maintenance facility/storage yard for schools, government agencies, and telephone and cable companies
- (aa) Manufactured housing sales, service and repair
- (bb) Marina
- (cc) Motorcycle sales service and repair
- (dd) Movie theatre
- (ee) Radio/television tower
- (ff) Railroad facility
- (gg) Recreational vehicle park
- (hh) Recreational vehicle sales service, and repair
- (ii) Restaurant, drive-in
- (jj) Restaurant, fast-food
- (kk) Sewage treatment plant
- (ll) Taxi dispatching station
- (mm) Taxi terminal
- (nn) Telephone exchange
- (oo) Water or sewage pumping station
- (pp) Water storage tank
- (qq) Wireless telecommunication facility
- (rr) Zoo

5.3.4 *Area and dimensional ordinances.*

Maximum Height of Structure in Feet	40
Maximum Height of Structure in Habitable Stories	3
Minimum Front Yard	40-Feet
Minimum Rear Yard	25-Feet
Minimum Side Yards	15-Feet
Minimum Lot Area	20,000 Square Feet
Maximum Impervious Surface Ratio	.70
Minimum Lot Width at Building Line	80-Feet
Minimum Lot Width at Street Line	60-Feet

5.3.5 *Lighting standards.* The maximum height of exterior lights shall be 25-feet. The intensity, location, and design of lighting shall be such that not more than one foot candle of light is cast upon adjacent property or public rights-of-way. Light fixtures shall be designed to cast light downward. Where necessary, cut-off devices shall be used to minimize glare off premises. No light shall be aimed directly toward a property designated residential, which is located within 200-feet of the source of the light.

5.3.6 *Distance between structures.* If there is a separation between any two principal structures on the same parcel, said separation shall be a minimum of 15-feet or a distance equal to one-half the sum of their heights, whichever is the greater.

5.3.7 *Landscaping and buffering.* All B-3, General Business District, uses shall meet the requirements of *Article 17: Landscaping and Buffers.*

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

As stated above, applicant is requesting a variance from off-street parking requirements in order to reduce the required number of parking spaces from 54 to 36. The applicant is also requesting a variance from jurisdictional wetlands setback requirements.

The subject property is currently vacant. The property adjoins State Highway 180 to the north. The adjoining properties to the west, south, and east are vacant.

The following standards for approval are found in Section 18.6, Variances of the *Baldwin County Zoning Ordinance*. These standards are to be considered and should serve as guidelines when a variance 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.
- 2.) Exceptional topographic conditions or other extraordinary situations or conditions of a specific piece of 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.
- 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.

The current required parking ratio for commercial establishments is one space for each 200 square-feet of gross floor area (Section 15.2.4, *Baldwin County Zoning Ordinance*). This would result in a requirement of 54 off-street parking spaces for the proposed discount/variety store. According to the information provided, the proposed tenant is not considered a destination store. Customers typically spend small amounts of time within these stores, and the parking lots are rarely, if ever, full. As a result, the applicant has proposed constructing 36 spaces, which would represent a ratio of one space for each 300 square feet of gross floor area. This appears to be consistent with the applicant's experience regarding the parking needs for different store formats and store sizes. In addition, the ratio appears to be consistent with the parking provisions at discount/variety stores throughout Baldwin County. Many of these stores previously received variances.

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

The proposed site is approximately 475 feet wide, 288.47 feet deep on the east side and 264.63 feet deep on the west side.

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 the southern portion of the proposed site and two areas in the north portion.

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 purpose of this request is to reduce the impact to wetlands and the Alabama Beach Mouse habitat of the proposed retail development.

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.

As stated previously, the proposed tenant is not considered a destination store. Customers typically spend small amounts of time within these stores, and the parking lots are rarely, if ever, full. Therefore it is staff's opinion that there shouldn't be any adverse effects by the granting of this application.

5.) Other matters which may be appropriate.

July 30, 2019

VIA EMAIL

To: Linda Lee, Planner
BC Planning & Zoning

FROM: Carol N. Kittrell
Recording Secretary
FM Planning & Zoning Advisory Committee

All FM committee members were present along with Vince Jackson and Linda Lee of the BC Planning & Zoning Department.

The committee reviewed the V-190030, Johnie Henry Kruger Revocable Trust Property. After discussion and shared concerns of the committee, there was a vote of 4 members for recommendation for approval of the requested number of parking spaces, but the members are concerned about the intrusion into the wetlands. Member Ulrich abstained.

Committee member Ernie Church requested that emailed input from FM residents Greg and Jamie Strategier be forwarded to the Board of Adjustments.

Staff Comments and Recommendation

Staff feels that this is a reasonable request which meets the standards for approval of variances. Unless information to the contrary is revealed at the public hearing, Case V-190030 should be **APPROVED***.

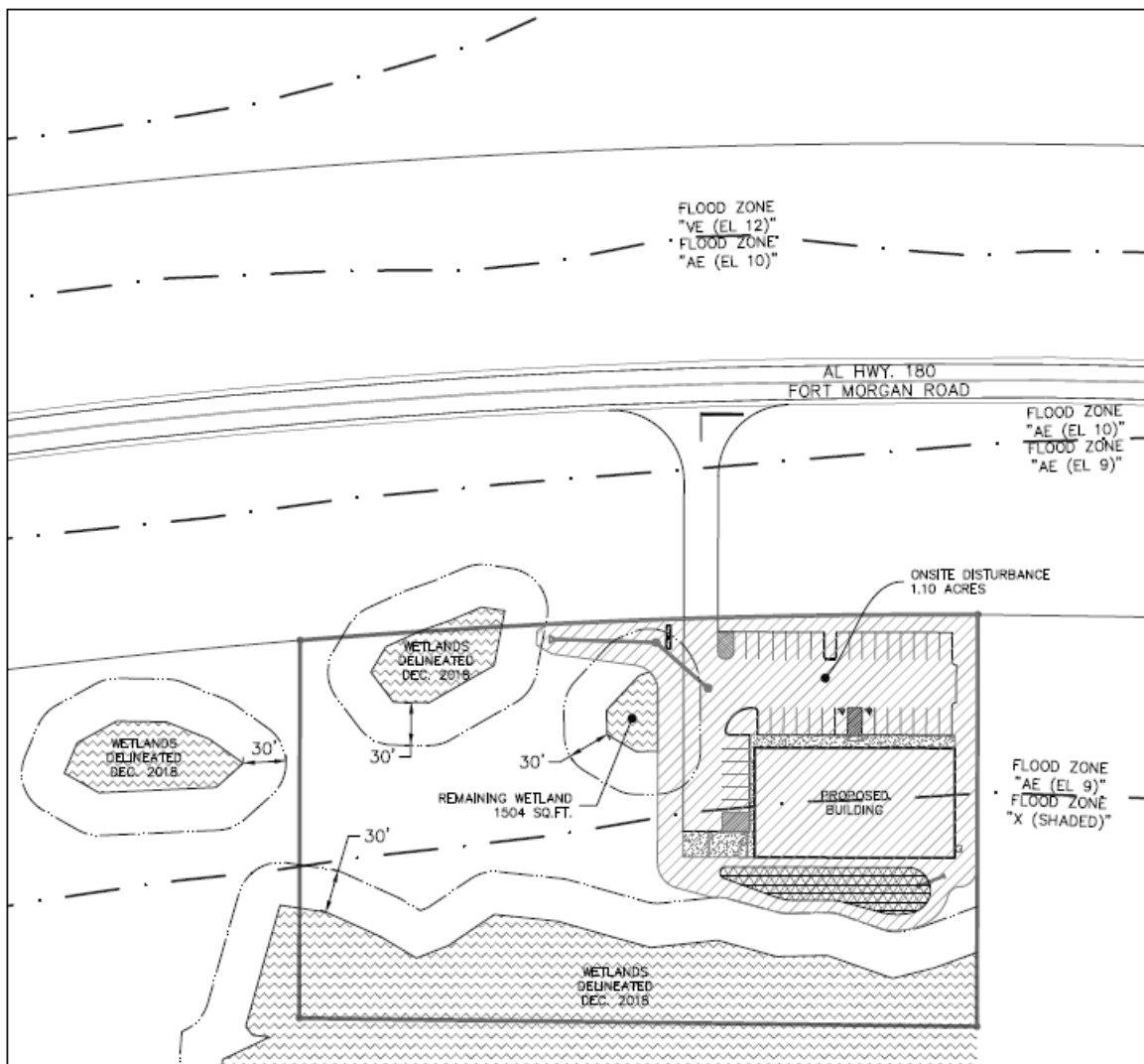
** A majority vote of the board members will be necessary to approve this request.*

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.

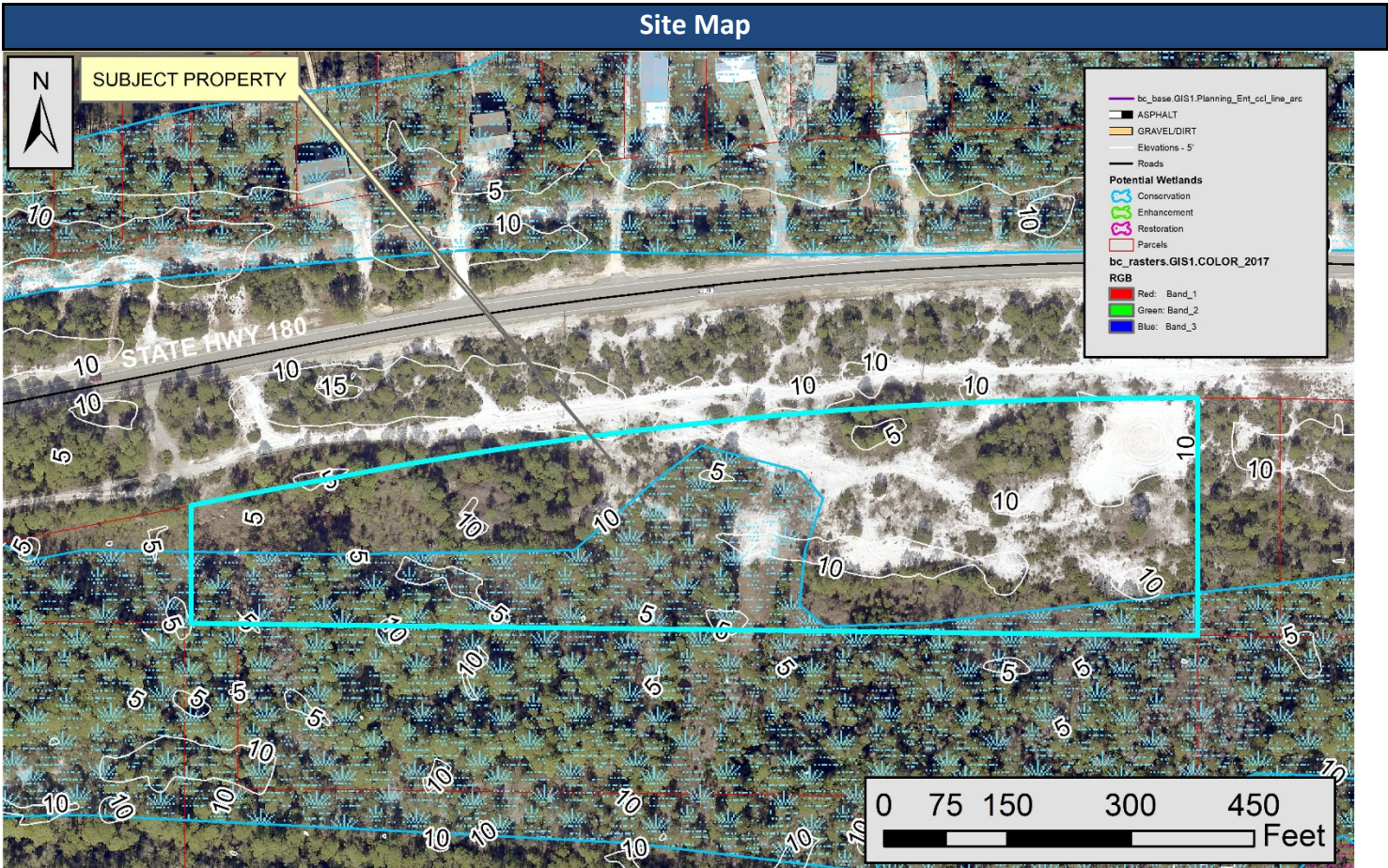
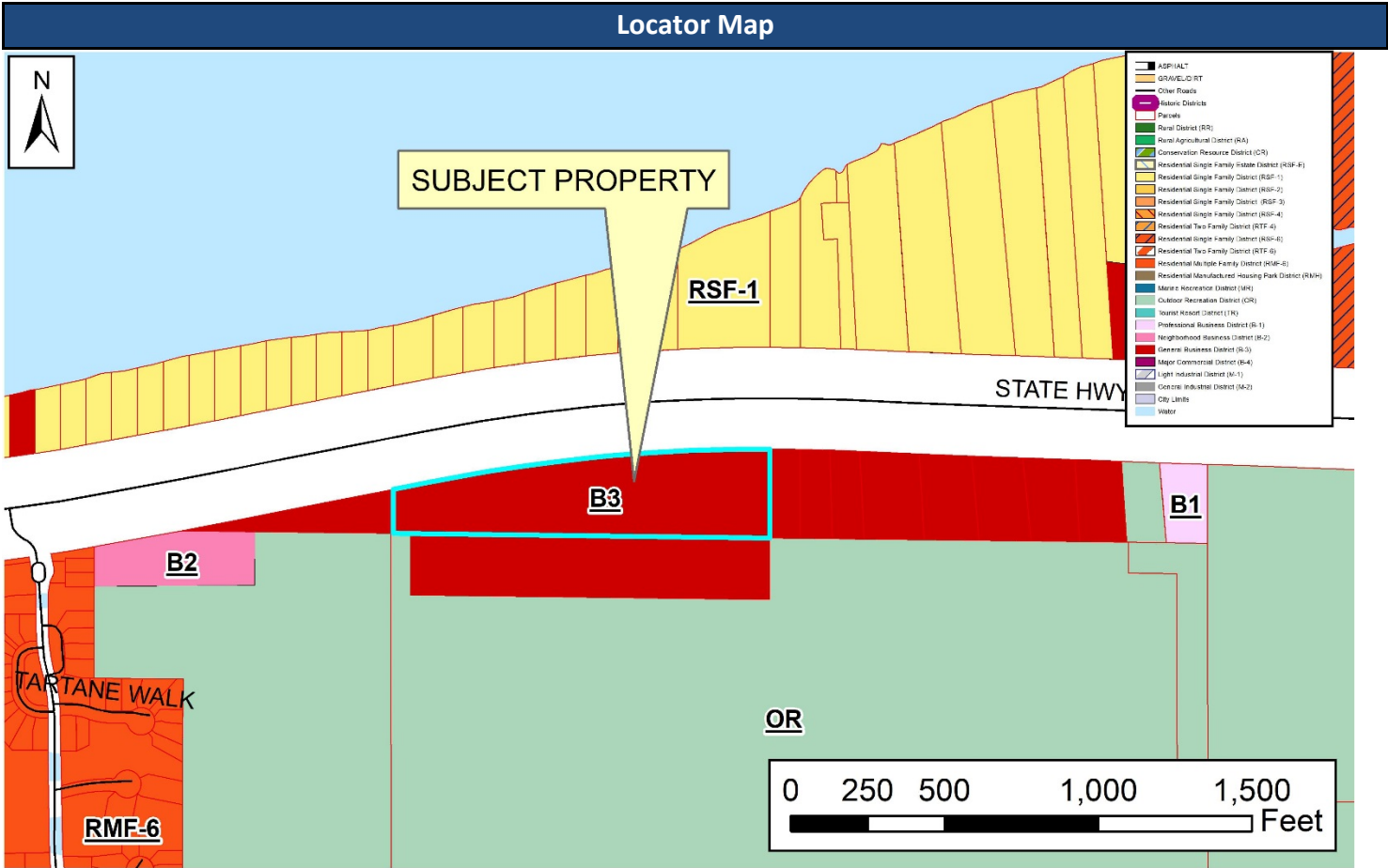
Site Plan



Property Images







Letter in Opposition

From: Greg Strategier <samsplace41805@gmail.com>

Sent: Sunday, July 28, 2019 1:01 PM

To: Chan West <chan@goefish.com>; Ernie Church <ecaces4@gmail.com>; Joseph Emerson <captjoesells@gmail.com>; Carol Kittrell <ckittrell@southalabama.edu>; Randy Ulrich <rulrich1982@gmail.com>; Miss Thelma Strong <twstrong@gulftel.com>

Subject: Variance request #V-190030

Date: July 28, 2019

To: Fort Morgan Planning & Zoning Advisory Committee and
Baldwin County Planning & Zoning Board of Adjustment, District 4

Re: Case Number V-190030: Johnie Henry Kulgar Revocable Trust Property
Located at 9704 State Hwy. 180

Dear Committee & Board Members:

We are writing to respectfully request Fort Morgan Planning & Zoning Advisory Committee and Baldwin County Planning & Zoning District 4 Board of Adjustments **DENY** the variance request for case # V-190030. The applicant is requesting a variance from the number of off-street parking spaces required from 54 spaces to 36 spaces. From the supportive documents, it appears the proposed commercial building will be approximately 10,800 square feet (based on the required parking spaces). In accordance with Baldwin County Zoning Ordinance Article 15 Parking & Loading Requirements, section 15.2.4 (a) "Commercial establishments and offices including but not limited to food stores, banks, furniture stores or personal service establishments. One space for each 200 square feet of gross floor area." This calculates to 54 Required Parking Spaces to accommodate customers and workers of the proposed commercial

business. The 54 Required Parking Spaces must be at least 171 square feet per parking space. The Applicant is requesting a variance from the Required 54 parking spaces down to 36 parking spaces which is a difference of 18 Required Parking Spaces. The 18 parking spaces equates to 3,600 square feet.

The Applicant is requesting the variance in order to reduce their footprint impacting the Alabama Beach Mouse Habitat, impacting the Protected Wetlands, instigating Illegal Parking, and triggering Traffic Congestion and Safety Issues on Alabama State Hwy. 180. While we agree in reducing the impacts to the Alabama Beach Mice and Wetlands, the Applicant should reduce the square footage of the retail store/commercial building NOT reduce the Required number of parking spaces! The applicant must remain in accordance with Baldwin County's Current Zoning Ordinance and include the required 54 parking spaces to accommodate their customers and workers of the proposed commercial business which is calculated by size and capacity. Zoning Ordinance Article 15 was established by Baldwin County to prevent problems not to cause problems. The applicant should follow Baldwin County's regulations, so they do not encourage any illegal parking in sand or on sand dunes; instigate illegal parking on Alabama Beach Mice Habitat or the Protected Wetlands; and trigger traffic congestion and accidents located at 9704 State Hwy. 180.

If the Applicant is permitted a variance to provide 18 (3,600 sq.ft.) less parking spaces for the reason of reducing the disturbed acreage for the Alabama Beach Mouse and The Wetlands, then they will only be encouraging their customers and workers to park illegally in areas outside of the paved parking space which is the Alabama Beach Mouse Habitat & the Wetlands. So, the variance request reducing the parking spaces from 54 to 36 makes absolutely no sense! If the Applicant does not provide all 54 Required parking spaces, then they are in fact just taking the responsibility of impacting the Alabama Beach Mouse Habitat and the Wetlands off of themselves and forcing it onto the residents, customers, delivery workers, employees, visitors, and their own clientele.

Our reasons for requesting to DENY Case #V-190030 are:

1. Baldwin County Zoning Ordinance Article 5.3 General Commercial District B-3 states: "purpose and intent ... to serve the community's general commercial needs." The proposed commercial business will be similar to a Dollar General Store. The location of the proposed commercial business will be serving a large community of nearly 13 miles of residents, visitors and workers. The proposed commercial business will significantly increase traffic and congestion on Alabama State Hwy. 180 where tragic and fatal accidents continue to happen each year as a result of commercial businesses and increased traffic along State Hwy. 180. Prior to any permitting, all safety precautions and traffic control plans should be made when planning for this new commercial business development including sufficient parking to accommodate their customers as required by Baldwin County Zoning Ordinance Article 15.
2. EXAMPLE (less than 2 minutes away from proposed development): Intersection of Alabama State Hwy. 180 & Plantation Road (Kiva Dunes) has recently been the site of several tragic traffic accidents including fatalities (reference February 2018 Auto Accident resulting in Fatality & other accidents on record). Some of the reasons why traffic accidents occurring on Hwy. 180 (especially at Plantation Road aka Kiva Dunes) have intensified are due to:

- Increased Traffic on Alabama State Hwy. 180 (two lanes of traffic in opposite directions);
- Increased Traffic to Commercial Businesses along Alabama State Hwy. 180;
- High Speed Traffic (55mph) on Hwy. 180 Abruptly Slowing & Stopping to Turn;
- No Turning Lanes Provided;
- Insufficient Paved Shoulders on the two lanes of traffic in opposite directions;
- No Yield or Caution Signage;
- An Oversized Advertisement Signage and cement base ("Plantation Road" located at Kiva Dunes) blocking driver's view;
- Long, Narrow, Winding State Hwy. 180 merges with Shoreline of Mobile Bay in several areas;
- Accumulation of Flooding Waters covering State Hwy. 180;
- Insufficient Drainage for State Hwy. 180.

Baldwin County & ALDOT should address the increase in traffic problems and safety hazards causing the automobile accidents on Alabama State Highway 180 and prepare a safe plan to address the increased traffic that comes with adding a large commercial business along Hwy. 180. specifically, at the proposed development location: 9704 State Hwy. 180. Without sufficient parking allotted, customers of the proposed commercial business will be forced to park illegally. The parking lot and parking problems will back up congested traffic onto State Hwy. 180 possibly triggering more traffic accidents. Without sufficient parking allotted for customers of the proposed commercial business, then public parking will be forced to park **ILLEGALLY** along the already dangerous Alabama State Hwy. 180. Without sufficient parking spaces, the customers of the proposed commercial business will be forced to park **ILLEGALLY** in Alabama Beach Mouse Habitat, the Protected Wetlands, Sand, Sand Dunes, and impact the Waters of United States. **THIS RESULT IS THE EXACT "REASON" WHY THE APPLICANT IS REQUESTING A VARIANCE.**

3. In Accordance with Baldwin County Zoning Ordinance Article 15.3.7, Off-Street Loading/Unloading spaces shall be provided for the proposed commercial business. A commercial building 10,800 sq. ft is required to provide 2 off-street loading/unloading spaces. Each loading/unloading space shall be 14 feet high by 12 feet wide by 55 feet in length. Each loading/unloading space shall be so located as not to hinder the free movement of pedestrians and vehicles over a sidewalk, street or alley. In addition to public parking for customers of the proposed commercial business located at 9704 State Hwy. 180, the proposed commercial business is required at least two (2) Off-Street Loading & Unloading Spaces for large commercial tractor trailers delivering product to the business. These large commercial tractor trailers add to the traffic congestion on State Hwy. 180 and will increase traffic accidents when they are stopped on the one lane highway making the turn to enter the commercial business or when they are blocking traffic as they exit the commercial business. **Large tractor trailers**

delivering products to the business require specific parking spaces so that they are not blocking public automobiles attempting to park in the parking lot. We fear that any large tractor trailers may block the parking lot or required parking spaces so that traffic is backed up, congested and blocking any traffic on State Hwy. 180 and/or possibly causing traffic accidents at 9704 State Hwy. 180. While this variance request does include any request for variance in the number of loading/unloading spaces, we want to remind all governing board, commissions and governing agencies of the necessity for these spaces and ensure that they do not hinder the 54 required parking spaces. Again, any deviation could result in traffic backing up onto State highway 180, encourage illegal parking, impact wetlands, impact Alabama beach mice habitat and increase traffic congestion resulting in automobile accidents.

4. **EXAMPLE:** The nearest established similar pre-existing commercial business zoned B-2 is "Sassy Bass Market" & "Sassy Bass Amazin' Grill" located 5160 State Hwy. 180. "Sassy Bass" was established prior to many of the current Baldwin County Zoning Ordinances, but it is still an example of the problems and safety concerns when variance reduces the number of parking spots can cause. "Sassy Bass" is an example of how congested the parking may be for the proposed commercial business at 9704 State Hwy. 180. A commercial business similar to a general market store in this location will draw large crowds of traveling visitors which requires significant parking spaces. From time to time, customers of Sassy Bass do not have sufficient parking spaces and therefore, patrons are parking in the sand, on wetlands, even along Alabama State Hwy. 180 or in the Fort Morgan Volunteer Fire Department parking lot (adjacent to the commercial business). There should be a full investigation of required parking spaces for the "Proposed Commercial Business located at 9704 State Hwy. 180 including open safe space and turning lanes for automobiles to enter and exit the parking lot. There should be a complete plan developed out-lining how to safely direct the increased traffic on Alabama State Hwy. 180 traveling at high speeds to safely slowdown in order to make a turn into the proposed new commercial business and ensure there is sufficient parking so it doesn't encourage illegal parking. There should be a plan to direct traffic exactly to the safest route in order to make the slow turn into the parking lot of the proposed commercial business. The plan should include the safest way for public automobiles exiting the proposed commercial business onto Alabama State Highway 180, so that it does not develop into more traffic accidents located at 9704 State Hwy. 180 with the fast-moving traffic. Without sufficient parking, there will be a domino effect encouraging illegal parking triggering parking along State Hwy. 180; instigating traffic congestion; causing parking on protected Wetlands & Alabama Beach Mice Habitat. This also results in dangerous traffic accidents located at 9704 State Hwy. 180.

5. On the Baldwin County Zoning Variance Application, the application asks the question: "What are the conditions which **PREVENT** you from using this property **IN ACCORDANCE WITH ITS CURRENT ZONING CLASSIFICATIONS?**" The Applicant is requesting 18 less parking spaces for their customers and employee of the proposed commercial building the size of over 10,800 square feet of Retail Space as a **REASON TO PREVENT THEM FROM USING THE PROPERTY IN**

ACCORDANCE WITH ITS CURRENT ZONING CLASSIFICATIONS, so that they can reduce the disturbed acreage for the Alabama Beach Mice and The Wetlands. This Variance Request puts the burden of reducing the impacts to the Alabama Beach Mice Habitat and Wetlands on Baldwin County, the Residents of Fort Morgan, Visitors to Fort Morgan, and future commercial customers instead of the applicant accepting the Responsibility of providing the Required 54 Parking Spaces. The Applicant should look elsewhere for ways to reduce the disturbed acreage for the Alabama Beach Mouse, The Wetlands and Impacting Waters of United States; for example: Reducing the footprint of the proposed retail development.

Reducing the footprint size of their retail development and commercial building will achieve their goal "reduce the disturbed acreage for the Alabama Beach Mouse and The Wetlands" AND it could also decrease the Required number of Parking Spaces from 54 to 38 or 39 at the same time. Reducing the commercial building footprint by the same square footage equal to 18 parking spaces is a total of 3,078 square feet. This could bring the total retail development footprint from 10,800 sq. ft. down to 7,722 sq.ft. which according to Zoning Ordinance Article 15 (one parking space for each 200 sq.ft. of gross floor area) would only require 38 or 39 parking spaces. The Applicant should adjust their footprint of commercial building and lower their number of parking spaces, so the Applicant does not Impact the Alabama Beach Mice & the Wetlands and cause traffic problems.

Baldwin County established Article 15 of the current Zoning Ordinances in order to address problems that they have identified with regards to parking space requirements for residential and commercial properties. If Baldwin County allows the commercial property to reduce the number of their parking spaces by 18 (each parking space = 171 square feet), then there is a total of 3,078 square feet of parking spaces not provided to customers and employees of the commercial business and it will become a parking nightmare which will back up traffic into State Hwy. 180 instigating traffic accidents and illegal parking. Baldwin County would be setting a precedence for other commercial properties to basically ignore Baldwin County Parking Zoning Ordinance Article 15 and the established parking schedule. The APPLICANT, not the County nor the Residents of Fort Morgan or Visitors to Fort Morgan, should be responsible for the 3,078 square feet of parking spaces. The only SOLUTION should be for the Applicant to reduce the footprint size of the retail development/commercial building by 3,078 square feet. Reducing the commercial building footprint could bring the total square footage down to 7,722 sq.ft. which requires 38 or 39 parking spaces instead of 54 parking spaces. The Applicant should adjust their footprint of commercial building and lower their number of parking spaces, so the Applicant does not Impact the Alabama Beach Mice and Wetlands and cause traffic problems any further.

6. The applicant listed the conditions which prevent them from using their property in accordance with Baldwin County's current Zoning Classification: "We are trying to reduce the disturbed acreage for the Alabama Beach Mice & Wetlands. We are currently working with USACD, ADEM & USFWS to permit this development." We agree there should be a smaller footprint, so the Alabama Beach Mouse Habitat, Protected Wetlands, and U.S. Waters are Not Impacted any more than necessary by the proposed commercial business. However, the proposed new commercial development should reduce the square footage of the building NOT reduce the required number of parking spaces to serve their customers and employees! The applicant must remain in accordance with Baldwin County's current zoning

ordinance requiring parking spaces for the proposed commercial business size and capacity, so the applicant does not impact Alabama Beach Mouse or Wetlands; encourage illegal parking; trigger traffic congestion and instigate accidents located at 9704 State Hwy. 180.

7. The proposed commercial business to be located at 9704 State Hwy. 180 will be in the middle of largely undeveloped dense area consisting of Protected Wetlands and Alabama Beach Mouse Habitat. U.S. Army Corps of Engineers, Alabama Department of Environmental Management, and U.S. Fish & Wildlife Services have all requested the applicant to reduce the project footprint. *In a letter dated June 25, 2019, S. Brad Crosson, (Team Leader U.S. Army Corps of Engineers, Mobile District, South Alabama Branch, Regulatory Division) writes: "U.S. Army Corps of Engineers, Mobile District strongly encourages all applicants to avoid and minimize any potential impacts to waters of the United States, as well as to any identified threatened and endangered species and their critical habitat where possible. In a recent meeting with your (applicant's) consulting agents, we requested they modify the initially proposed draft site plans for the subject retail development by reducing or re-configuring the footprint of the project, and avoid and minimize impacts to waters of the United States to the greatest extent possible."*

In an email dated June 25, 2019, J. Scott Brown, Chief (Mobile Field Office Alabama Department of Environmental Management) writes: "The ADEM has encouraged reduction in the project footprint so as to reduce wetland and beach mouse habitat impacts."

We do not believe the governing agencies wish for Baldwin County to ignore their established Zoning Ordinance and Parking Schedule Article 15. We doubt the governing agencies are referring to reduction of Baldwin County's required zoning classification regarding number of parking spaces for the applicant's commercial business. **The applicant should reduce the size of their retail development footprint as directed by U.S. Army Corps of Engineers. The applicant should comply with all governing agencies while maintaining Baldwin County's required number of parking spaces necessary to accommodate enough parking for their customers and employees as outlined in Article 15 of the Zoning Ordinance.**

All of these issues should have been taken into consideration during the planning process by the applicant prior to requesting any variances.

For all the reasons listed above, we respectfully request Fort Morgan Advisory Board & Baldwin County Planning/Zoning Commission DENY the applicant's variance request Case Number V-190030. Please forward our comments to all board members and committee members reviewing Case Number V-190030.

We are available to meet and discuss the issues and concerns outlined in this communication. Please feel free to contact us at the email address or phone numbers below.

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