

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

**AGENDA**

**January 9, 2020**

**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 Transcript (December 12, 2019)
4. Announcements/Registration to Address the Board of Adjustment
5. Consideration of Applications and Requests

**ITEMS:**

**a.) Case No. V-200001, Property Owners Association of Ono Island Property**

*Request:* Approval of a variance from the east side setback and rear setback requirements to allow for an addition to a nonconforming structure

*Location:* The subject property is located at 31696 River Road in Planning District 24

*Attachments:* *Within Report*

**b.) Case No. V-200002, Sedrak Property**

*Request:* Approval of a variance from section 2.3.25.3(e) of the Baldwin County Zoning Ordinance to allow for the construction of a single-family dwelling with three (3) habitable stories

*Location:* The subject property is located at 2360 Ponce de Leon Court in Planning District 25

*Attachments:* *Within Report*

6. Old Business
7. New Business
8. Adjournment

## **Baldwin County Commission District 4, Board of Adjustment**

**December 12, 2019**

### **Regular Meeting Minutes**

#### **Foley Satellite Courthouse**

#### **Large Meeting Room**

The Board of Adjustment for Baldwin County Commission District 4 met in a regular session on December 12, 2019 at 3:30 p.m., in the Baldwin County Foley Satellite Courthouse Large Meeting Room. Chairman, Stuart Arnold called the meeting to order. Members present included: Samuel Mitchell, James Koeppen, Jack Danley, Robert Broseus, Ernie Church and Johanna Moloney. Staff members present were Vince Jackson, Planning Director and Linda Lee, Planner. Also present was Wayne Dyess, County Administrator, Eddie Harper, Building Official and Shawn Alves, County Attorney.

The first order of business was approval of the minutes from the October 10, 2019 meeting. Mr. Mitchell made a motion to approve the meeting minutes. The motion received a second from Mr. Church and carried unanimously.

Ms. Lee introduced county staff members present and the county attorney.

#### **AD-19003 Breezy Shores LLC Property**

Mr. Jackson presented the applicant's request for an appeal to an administrative decision as it pertains to the maximum height in habitable stories for a proposed Two-Family (Duplex) dwelling. Mr. Jackson stated that when the original Land Use Certificate Application was submitted in March 2019, the proposed duplex was proposed to be built to three (3) stories. At that time, under zoning, we didn't have a limit on the number of habitable stories, only a limit in terms of height which was 35 feet. Prior to 2009 the height limit was 2 ½ habitable stories. That was changed in 2009 to only have a height limit in feet.

Mr. Jackson gave the following time line of events leading up to the current appeal:

- On March 27, 2019, the applicant submitted a Land Use Certificate application (LU-190197) for a proposed duplex. The Land Use Certificate was not approved at that time due to the absence of the required ADEM permit. The applicant for the property owner was also informed that required parking spaces should be shown on the submitted site plan.
- Upon receipt of the ADEM permit, the Land Use Certificate was issued on July 17, 2019, and a Building Permit was issued on July 23, 2019. The Land Use Certificate was issued in error due to issues with the required off-street parking.
- After being made aware that construction had commenced, staff revoked the Land Use Certificate and issued a Stop Work Order on July 31, 2019. The owner did not appeal the issuance of the Stop Work Order or the denial of the Land Use Certificate.
- The property owner applied for a revised Incidental Take Permit from the U.S. Fish and Wildlife Service in order to obtain approval for the additional disturbance necessary to meet the off-street parking requirements.
- In the meantime, staff was working on text amendments to the Zoning Ordinance a number of those text amendments were specific to Planning District 25. One was a height limitation for two (2) habitable stories relevant to single family and two-family dwellings in Planning District 25. That was

considered by the Planning Commission in September and was unanimously recommended for approval.

- It was approved by the County Commission on October 15, 2019.
- A revised Incidental Take Permit was issued by the U.S. Fish and Wildlife Service on October 25, 2019, with an effective date of October 28, 2019. At that time, it was brought to staff's attention that the proposed dwelling was proposed to be three (3) habitable stories in height. When the Planning Director was made aware of the proposed dwelling height he immediately contacted the County Administrator who in turn consulted with the County Attorney and they determined that the applicant would have to meet the new height limitations which had recently been adopted by the County Commission.
- Because the Land Use Certificate had been rescinded, there was no pending Land Use Certificate. Also, it had been six (6) months since the original submission and Land Use Certificates are only good for six months so we needed a new Land Use Certificate but we informed the attorney for the property owner that we could not approve a dwelling that would be three (3) habitable stories, it would have to meet the requirement of two (2) habitable stories and that is what has brought us to where we are today. Our determination that the dwelling has to be limited to two habitable stories instead of three habitable stories has been appealed to the board.

Mr. Arnold asked what is the basis of the complaint against the ruling. Mr. Jackson stated the attorney for the appellant would be able to address that during the public hearing. Mr. Jackson stated that it is his understanding that because of when they originally submitted for Land Use Certificate approval back in March, they feel they should be entitled to construct three (3) habitable stories but it's our position that there was no pending Land Use approval and because of that and the amendment was approved on October 15<sup>th</sup> before the revised incidental take permit, it's our position that they would need to meet the two (2) habitable stories limit. We've never told them they can't build on the property.

Mr. Alves reviewed section 18.2.5 of the Baldwin County Zoning Ordinance pertaining to revocation of land use certificate.

*18.2.5 Revocation of land use certificate.* The Zoning Administrator may revoke a land use certificate issued in a case where there has been a false statement or misrepresentation in the application or on the site plan for which the Certificate was issued or if after a documented warning has been issued the applicant has failed to comply with the requirements of these zoning ordinances. **Revocation of the land use certificate shall also cause suspension of the building permit until such time as in the judgment of the Zoning Administrator, the applicant is in compliance with the requirements of these zoning ordinances.**

When the Planning Department revoked the Land Use Certificate, they were unable to build. During the interim, the County changed the regulations in connection to height of duplexes. When they came back to request a new Land Use permit, and Planning & Zoning checked to see if they meet the requirements of the

Zoning Ordinance, the plans do not meet the requirements of the Zoning Ordinance. Their plans do not meet the requirements of the Zoning Ordinance, they exceed the Zoning Ordinance for District 25.

Mr. Koeppen asked if the construction was started. Mr. Jackson answered that there were two or three pilings put in the ground. Mr. Mitchell asked if the pilings should have been put in. Mr. Jackson responded that they briefly had a permit and that was their commencement of construction.

Chairman Arnold opened the public hearing. Mr. Kris Anderson, attorney for the property owner, addressed the board. He stated that what they are asking the board for today is straight forward. They ask that the board lift the stop work order and afford their client the due process rights and the vested rights he has in the permits he was originally issued as mandated by Alabama law. The facts and timeline as submitted by Mr. Jackson are not in dispute.

Mr. Anderson stated his client applied for and received a Land Use Certificate on July 17, 2019. That date is important because the six months window has not yet run. That's December 17, 2019. The Building Permit was issued on July 23, 2019, both issued correctly by the Baldwin County Planning Department. Immediately after those permits issued, his client began construction of a three-story residential duplex consistent with the zoning regulations and immediately began spending tens of thousands of dollars on that construction plans, engineering, all of it.

Below is an approximate transcript of Mr. Anderson's comments:

*Now right of way, certain neighbors with short term rental businesses of their own, began opposing construction in order to stifle competition. On July 31, 2019, the Planning Department issued a stop work order declaring that the Land Use Certificate had been issued in error relative to a parking issue. Now it's important to note that the zoning ordinance 18.2.5 provides the exclusive mechanism to revoke a Land Use Certificate. That section was not followed here. So, the Land Use Certificate was not revoked, rather a stop work order was issued. Those are two very different things, and very important for this analysis. But in truth with respect to parking, there was no error. At the urging of certain competing rental owners, the Planning Department adopted a newly invented interpretation of zoning ordinance 15.3.1 pertaining to parking. That section provides off-street parking spaces must be connected with a street or alley by a driveway which affords unobstructed ingress/egress to each space. For two years that section was interpreted to allow stacked parking. Stacked parking because there are no static or unmovable obstructions between each space and the road. It was only in an effort to target my client that that interpretation was changed this summer. But as you heard, our client didn't want to dispute and that's not really what we're here about today. Our client has a bigger lot than most in Fort Morgan, so he went back and said okay I'll fix this parking issue. He didn't really want a problem with the county. He revised his site plan, went back and had to get an amended Incidental Take Permit from US Fish and Wildlife. As soon as he received that amended take permit, he forwarded it to the Planning Department in order to have the stop work order lifted. In response, the Planning Department rejected his request based on a newly passed amendment to Zoning Ordinance 2.3.25.3(e). The new pertinent part of that section provides that "the maximum height of single family and two-family structures shall be limited to two (2) habitable stories". The rationale discussed by the County Commission for this amendment was all about safety. The county heard that the Fort Morgan Volunteer Fire Department didn't have a ladder*



*truck high enough to reach three stories above pilings. The problem is, the county did not adopt a height ordinance, this amendment does not address height, it's a story ordinance. Anyone could still build a one or two-story house that's too high for that ladder truck to reach. Still go to thirty-five feet, it can have vaulted ceilings, have higher pilings, etc. This is a story ordinance, it did not resolve the problem that this rationale was all about. If we actually want to affect fire safety, we would pass a height ordinance, or a sprinkler ordinance or a fire escape ordinance. That didn't happen, it was a story ordinance. What we think this was done was to affect our client. It was done at the behest of competing renters to stop my client from building another rental property. This board is part of the packet you received, there was a coordinated email campaign from many of these same rental owners. I'm here to tell you that at least ninety percent of those emails that you received were from VRBO and Airbnb renters. They weren't voicing good faith concerns about the neighborhood. They're trying to stop additional rentals from coming on and competing with what they already got. I've mentioned fundamental problems with the newly invented interpretation of the parking ordinance and a story ordinance that does nothing to affect safety. If we have to, and we don't want to, we'll litigate those issues in circuit court at further expense to my client as well as the tax payers of the county. But our client pays a lot of money in lodging taxes and property taxes already. He doesn't want to do that. The board doesn't need to decide on any of those issues I have mentioned today, because our client's situation is unique relative to the timing of these permits. Alabama law on this is clear, once our client received permits in July 2019 and began construction our client had vested rights. According to Alabama law he had vested rights in those permits to finish what he started. The Alabama Supreme Court has said the county "may not simply divest a property owner of a vested right without compensation and any attempt to do so violates the most fundamental principles of due process". Our client has not been compensated for the Planning Department's revocation of his vested rights. So, under Alabama law this revocation violates our most fundamental principles of due process. In sum, all we're asking for today, is that the board afford my client the due process he is entitled to as a matter of law. Mr. Bordelon has vested property rights in the original permits that the Corp issued him in July 2019 to build a three-story residential property. We only ask that you uphold those rights by lifting this stop work order and allowing our client to finish what he started. We don't need to resolve the issues of problems with the ordinance or the interpretation of parking we just need to get to where we can finish what we started.*

Mr. Church asked Mr. Anderson if he agrees that the County has a right to pass ordinances to which Mr. Anderson responded of course. He followed with do you think people ought to comply with those ordinances. Mr. Anderson responded yes and his client has complied strictly with that ordinance. He doesn't think that there is anything that shows that his client has violated anything. His client isn't asking for a special exception, he's asking for due process be afforded based on the rights he had at the time he started spending a lot of money to build a home on this piece of property. Mr. Church stated we were told that the Land Use Certificate was issued in error and was revoked. Mr. Anderson stated he believes it was the County's position that it was issued in error because of that parking interpretation. *That parking interpretation was a brand new one targeted at my client so that's a characterization that it was in error but if you look at section 18.2.5 and the reasons why a revocation can occur, their error or their new interpretation is not one of them. It's if the applicant defrauds the Planning Department that's a reason to revoke it. Everything my client told the planning department was true, he told them exactly what the parking layout was going to be which was*

*stacked parking. It was only after they issued it they said wait a minute let's change our interpretation to prevent stacked parking and we're going to apply it to this so that's what they are characterizing as an error but truly in my view not an error.*

Mr. Royce Massey spoke in opposition to the appeal. He discussed issues involving traffic and safety. He stated that during construction of the structure on the adjacent property, the construction crew parked their vehicles half way in the road causing county trucks to have to get off the road in order to bypass them and damaged other people's property in the process. He also stated that the last time the current structure was full, people parked in his driveway because they didn't have enough on-site parking.

Ms. Sue Gross spoke in opposition to the appeal. She expressed concerns about parking and safety issues.

Chairman Arnold closed the public hearing.

Mr. Alves stated that nothing in the Zoning Administrators decision is going to stop rentals or stop the building of a residential structure. This doesn't prevent rentals on this property. Mr. Alves also pointed out that although they are two different LLCs the address is the same so he assumes the same person owns those two LLCs. This decision by the Zoning Administrator based on the County's enactment of this new zoning regulation doesn't prevent them from building a two-story duplex and renting it. Vested rights, if the Land Use permit was issued together with the building permit, and it should not have been due to a mistake or it was illegal, there are zero vested rights. If they issue the building permit and the zoning regs change and the county pulls then there is a determination on whether or not there are vested rights. You have to look and see what the applicant has done. If his client had framed out a three-story building he'd have a pretty good argument that his client had some vested rights. I don't believe two pilings in the ground is going to amount to enough for him to have a vested right in that previously issued building permit. Following some discussion of the parking situation witnessed by Mr. Alves he went on to address the issue involving the revocation of the Land Use Certificate because of the parking interpretation. They did not build that and they couldn't have built that. You're only here today to determine if the Zoning Official acted appropriately in denying their new Land Use Permit and building permit to build a three-story duplex in violation of the now existing zoning regulations that only allow two habitable stories.

Mr. Arnold asked about the number of bedrooms and baths in the adjacent duplex. Staff provided the approximate number of bedrooms in each unit. Mr. Anderson stated there are eight bedrooms in each unit of the proposed duplex.

Mr. Alves advised that the board could basically uphold the Zoning Officials determination or reverse it.

Mr. Jackson commented on the existing adjacent structure shown in the presentation with a number of cars parked in the driveway. In 2017 we adopted some additional parking requirements for planning district 25. In the past, the requirement for single-family and two-family residential dwellings was only two parking spaces per dwelling unit. At the time this was built, that's all they were required to have – four off-street parking spaces. In 2017 we adopted some additional parking requirements for planning district 25 based on the number of bedrooms. The provision that has been referenced in terms of the stacked parking has been part

of our zoning ordinance since 1999. It talks about unobstructed ingress and egress. When we adopted those new parking requirements people started submitting parking plans that did have their parking spaces stacked. And there was a point where we realized that you can't say that all of these parking spaces have unobstructed access. You could only say that those closest to the actual road had unobstructed access. So, it was nothing to target this applicant. It was something that had been on the books since at least 1999. You aren't here to decide on the parking issue. That could have been appealed back in August and it wasn't. We're only here to talk about the three habitable stories versus two habitable stories.

Mr. Arnold asked why was the two habitable stories changed to thirty-five feet. Mr. Jackson explained that we've had the thirty-five feet for a long time. *Prior to 2009, it was thirty-five feet and two and a half habitable stories. It's difficult to remember exactly why we made that change, but there were some issues with the half story definition, we were having some problems enforcing that or implementing that and we felt like maybe this would work better if we just left it at a height in feet. Fast forward ten years later and you're seeing some of these structures that are built to three stories and we started to think maybe that wasn't such a good idea after all. Our original intent was to bring back two and a half stories but there's a zoning advisory committee for planning district 25. We've been working on text amendments to their local provisions for about two years, we've attended meetings with citizens so we've been discussing the issues they've been facing. When we brought up two and a half stories then we hear from the volunteer fire department 'we really need to be limited to two stories' (in the information you were handed this afternoon there's a copy of the letter from the volunteer fire department where they ask that we consider that). So, in light of the safety concerns presented to us by the volunteer fire department we felt like that was something that we had to consider and so that was what we proposed. As I stated, this was part of a package of amendments. It was unanimously recommended for approval by the Planning Commission in September and unanimously approved by the County Commission on October 15<sup>th</sup>. As I stated we had several meetings with the advisory committee. There was one meeting back in the summer where we actually put together some packets of what we were considering and some supporting documentation. So, this was something that was being discussed quite a bit in the Fort Morgan community. It was because of input we received from citizens and the volunteer fire department about the issues they face in planning district 25 and ways that we through zoning could help them address those issues.*

There followed a discussion concerning the number of habitable stories for multi-family structures in planning district 25 and how the fire department handles those safety issues.

Mr. Danley asked when was the permit withdrawn? Mr. Jackson responded, July 31<sup>st</sup>. Mr. Danley stated so in essence they would have to reapply for a permit. Mr. Jackson responded that there were two parts. There was the stop work order and the revocation of the Land Use Certificate. With the revocation of the Land Use Certificate, they did not have a pending Land Use Certificate or building permit.

County Administrator Wayne Dyess spoke on the changes made to the height requirement in 2009. Obviously that change had some unintended consequences with the parking and safety issues. We look back now and see that was a mistake. Also, multi-family structures are required by the building code to have sprinklers and

other protective measures. Mr. Dyess expressed that safety issues were the primary concern on the Commissioners' minds when these changes were implemented.

Mr. Church made a motion to uphold the Administrative Decision of the Zoning Administrator and the stop work order be upheld and the appeal denied. The motion received a second from Mr. Mitchell and carried unanimously.

**Old Business – County Attorney to Discuss Cohen Appeal**

Mr. Alves, County Attorney requested the board meet in executive session to discuss pending litigation. Mr. Mitchell made a motion to go into executive session. The motion received a second from Mr. Danley and carried unanimously.

The Board adjourned into Executive Session at 4:28pm. The regular session resumed at 4:49pm.

**New Business – Approval of 2020 Meeting and Deadline Calendar**

Mr. Mitchell made a motion to approve the 2020 calendar. The motion received a second from Mr. Danley and carried unanimously.

**Adjournment**

There being no further business to come before the board the meeting was adjourned at 4:51 p.m.

Respectfully Submitted

Linda Lee, Planner

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I hereby certify that the above minutes are true, correct and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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Stuart Arnold, Chairman



# Baldwin County Planning & Zoning Department

## County Commission District #4

### Board of Adjustment Staff Report

Case No. V-200001

Property Owners Association of Ono Island Inc., Property  
January 9, 2020

### Subject Property Information

**Planning District:** 24  
**General Location:** Ono Island  
**Physical Address:** 31696 River Road  
**PID:** 05-64-03-05-0-000-001.068  
**Zoning:** OR, Outdoor Recreation District  
**Acreage:** 0.199 ± acres  
**Applicant:** Shannon Harrison, Administrator  
Property Owners Association of Ono Island Inc.  
28491 Ono Boulevard  
Orange Beach, AL 36561  
**Owner:** Property Owners Association of Ono Island Inc.  
28491 Ono Boulevard  
Orange Beach, AL 36561  
**Lead Staff:** Linda Lee, Planner  
**Attachments:** *Within Report*

	Adjacent Land Use	Adjacent Zoning
North	Vacant	OR, Outdoor Recreation District
South	Outdoor Recreation and Residential	OR, Outdoor Recreation District RSF-2, Residential Single Family
East	Utility (Water Tower)	OR, Outdoor Recreation District
West	Outdoor Recreation	OR, Outdoor Recreation District

### Summary and Recommendation

The applicant is requesting a variance from the east side setback and rear yard setback requirements to allow for an addition to the southeast side of the existing fire station. The purpose of this addition is to allow housing for a third fireman per Orange Beach requests. Staff recommends that Case V-200001, Property Owners Association of Ono Island Inc., Property be **APPROVED**.

### Variance Request

The applicant is requesting a variance from the east side setback and rear yard setback requirements to allow for an addition to the southeast side of the existing fire station. The purpose of this addition is to allow housing for a third fireman per Orange Beach requests.

## Section 6.2 OR, Outdoor Recreation District

6.2.1 *Generally.* This zoning district is intended to provide for outdoor recreation activities.

6.2.2 *Permitted uses.* Except as provided by *Section 2.3: Establishment of Zoning in Planning Districts*, the following uses and structures designed for such uses shall be permitted:

- (a) The following general industrial uses: extraction or removal of natural resources on or under land.
- (b) The following transportation, communication, and utility uses: water well (public or private).
- (c) Outdoor recreation uses.
- (d) The following institutional uses: church or similar religious facility.
- (e) The following agricultural uses: Silviculture.
- (f) Accessory structures and uses.

6.2.3 *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
Maximum Height of Structure in Habitable Stories	2½
Minimum Front Yard	40-Feet
Minimum Rear Yard	40-Feet
Minimum Side Yards	20-Feet
Minimum Lot Area	3 Acres
Maximum Impervious Surface Ratio	.80
Minimum Lot Width at Building Line	210-Feet
Minimum Lot Width at Street Line	No Minimum

## 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 consists of approximately 9,632 square feet and is currently occupied with the Ono Island Fire Station. The parcel is zoned OR, Outdoor Recreation District. The parcel is substantially smaller than the required minimum lot size of 3 acres. Due to the size of the lot and the OR setback requirements the existing structure already encroaches into the rear yard setback and only meets the east side setback requirement.

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

No topographic conditions.

**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 use of this property was established in the 1980s prior to the enactment of zoning in Planning District 24.

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

No adverse impacts.

**5.) Other matters which may be appropriate.**

#### **Staff Comments and Recommendation**

As stated previously, the applicant is requesting a variance from the east side setback and rear yard setback requirements to allow for an addition to the southeast side of the existing fire station. The purpose of this addition is to allow housing for a third fireman per Orange Beach requests.

Staff recommends that Case V-200001, Property Owners Association of Ono Island Inc., Property be **APPROVED**.

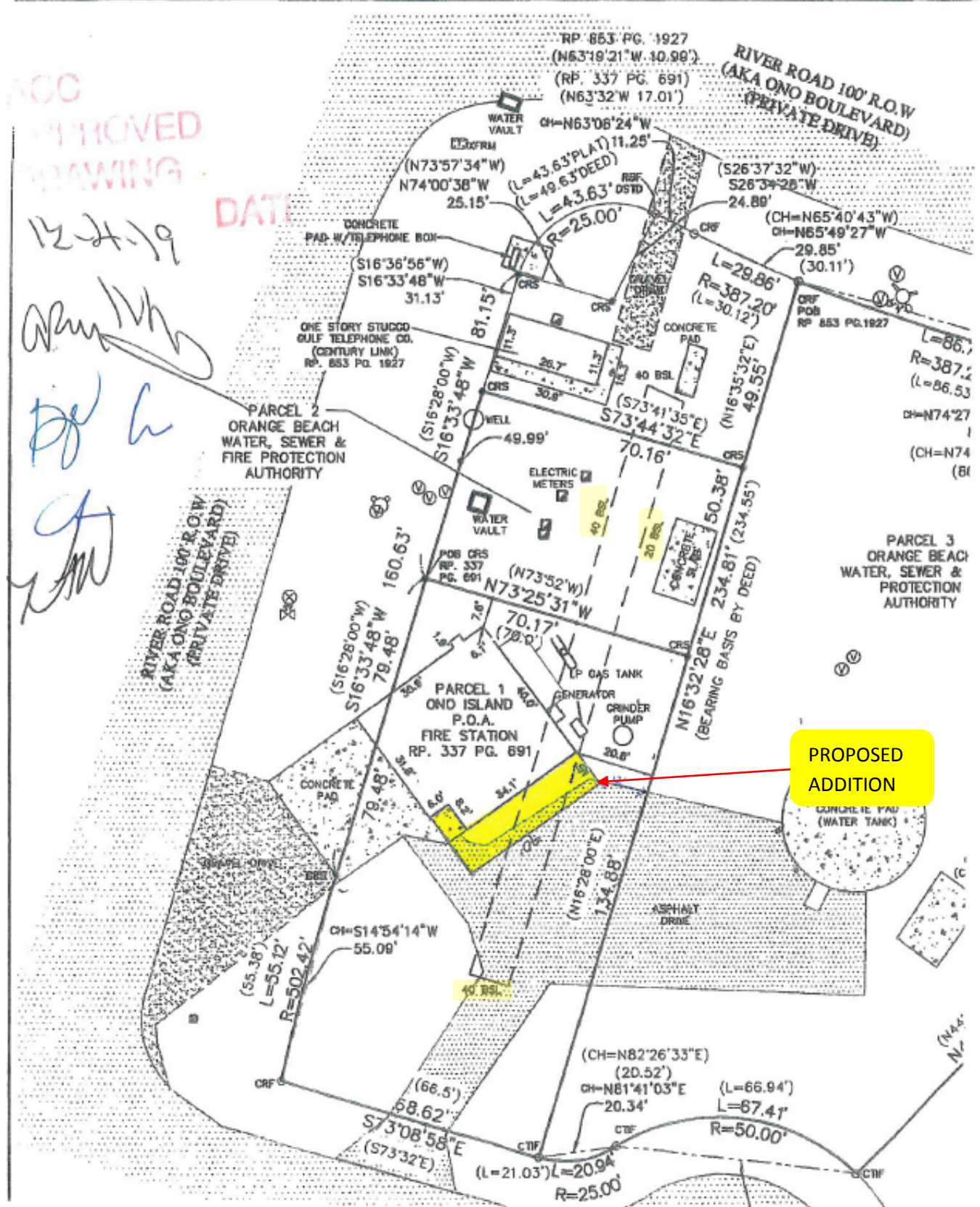
#### **GENERAL NOTES {By-laws}**

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.



## PROPOSED SITE PLAN











**SUBJECT PROPERTY  
SOUTH EAST SIDE**

**12/26/2019**

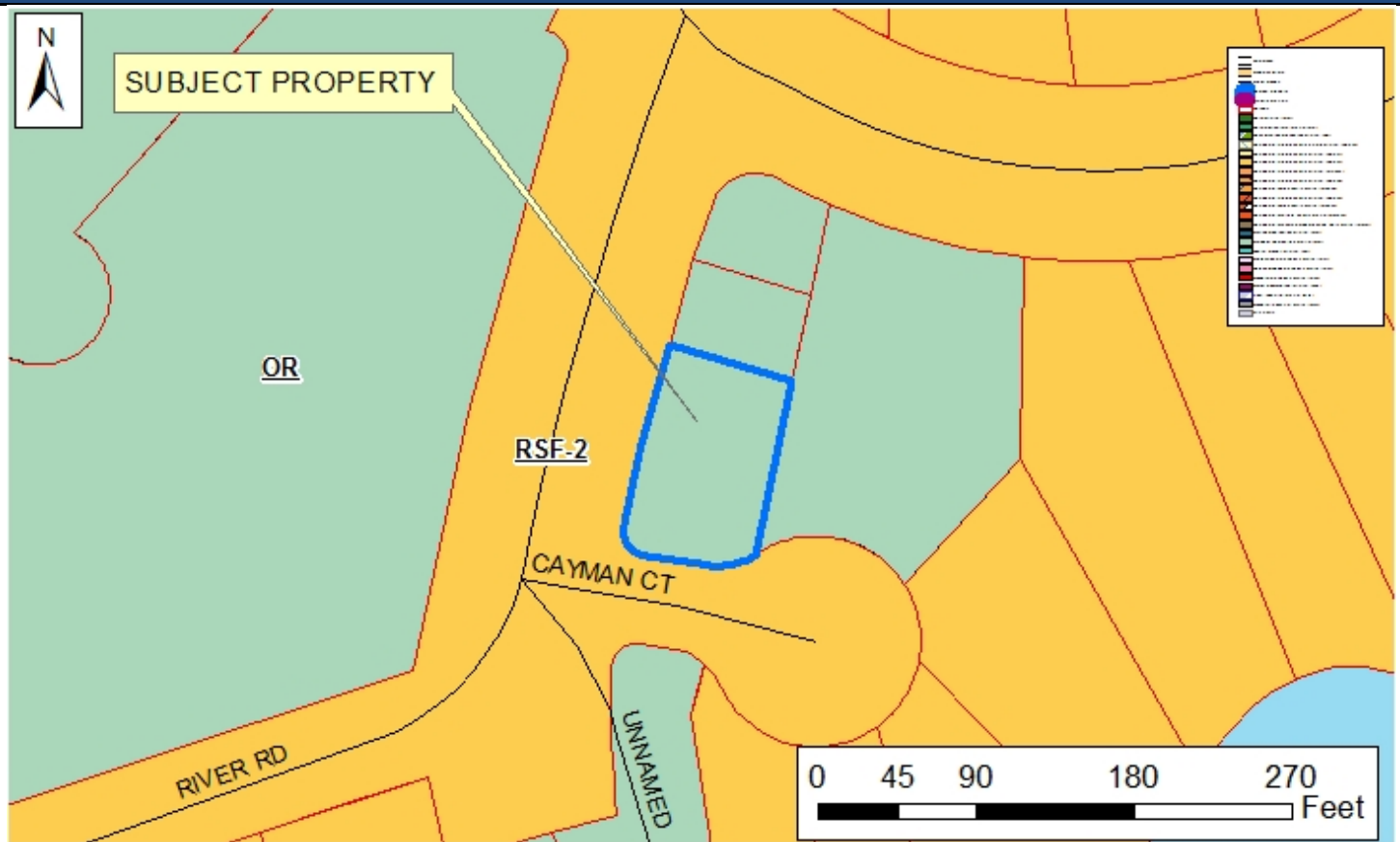


**SUBJECT PROPERTY  
SOUTH EAST SIDE**

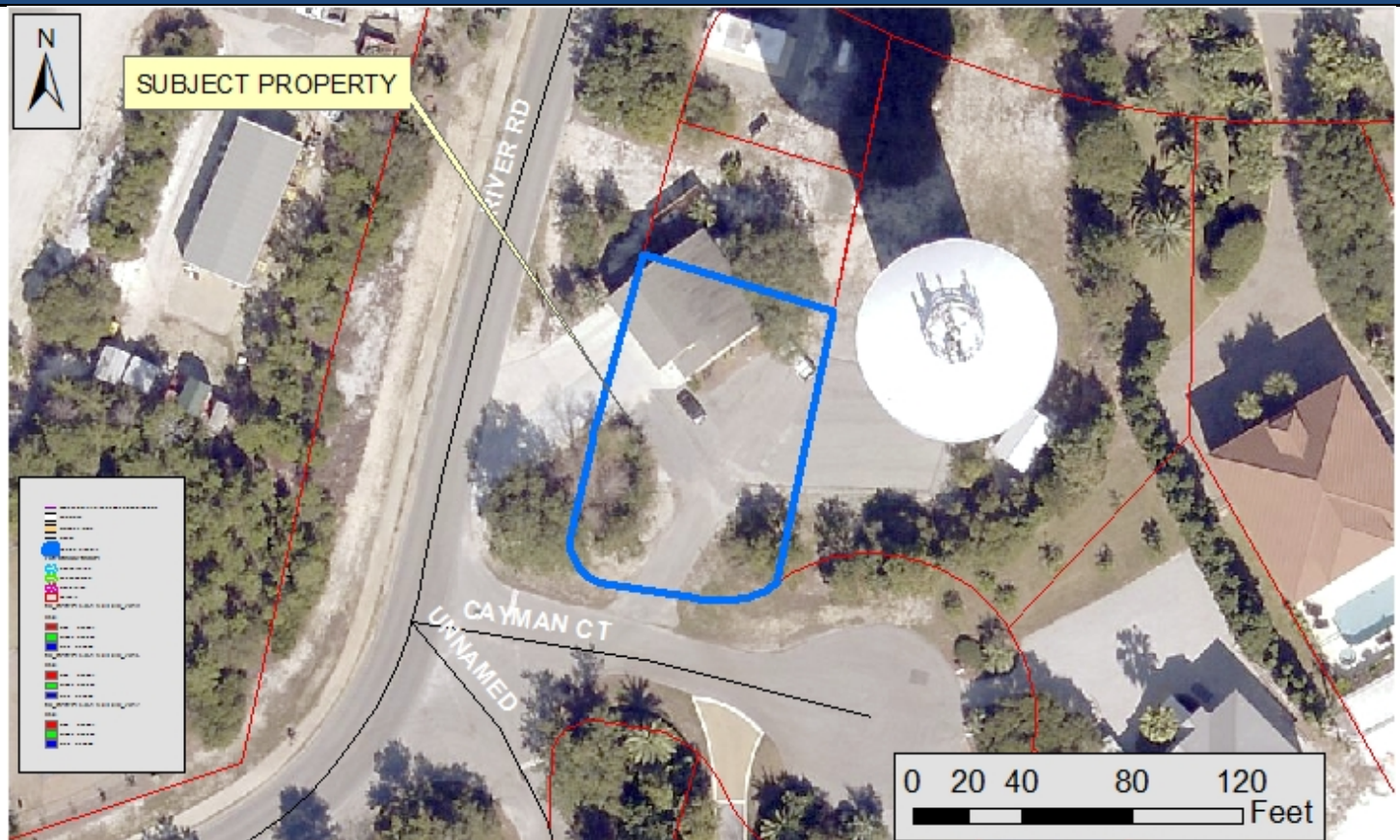
**12/26/2019**



## Locator Map



## Site Map





PROPERTY OWNER'S ASSOCIATION OF ONO ISLAND, INC.  
28491 Ono Boulevard - Orange Beach, AL 36561  
Office: 251-980-5152 / Fax: 251-980-5146

**ONO ISLAND  
ARCHITECTURAL CONTROL COMMITTEE**

**NOTICE OF ACTION TAKEN  
VARIANCE V-19-026**

DATE OF MEETING: December 03, 2019

HOMEOWNER: Ono Island POA/FPA

MAILING ADDRESS: 28491 Ono Boulevard – Orange Beach, AL 36561

WORKSITE ADDRESS: 31696 River Road – Orange Beach, AL 36561

REVIEW: Construct A 15'x40' Addition to The Southwest Side of The Existing Fire Station Built Prior To Zoning for District 24

ACTION TAKEN BY: Approved

*This variance application was submitted by the Island Administrator (Shannon Harrison) on behalf of Ono Island FPA to construct a 15'x40' addition to the southwest side of the existing fire station. After further discussion and by unanimous consent that application was approved as presented.*

*ADDITION INFORMATION: If you have any question please feel free to contact Emily Ignots at Ono House – [admin1@onoislandpoa.com](mailto:admin1@onoislandpoa.com)*



# Baldwin County Planning & Zoning Department

## County Commission District #4

### Board of Adjustment Staff Report

**Case No. V-200002**

**Sedrak Property**

**January 9, 2020**

### Subject Property Information

**Planning District:** 25  
**General Location:** Lot 22 Pamela Court Subdivision  
**Physical Address:** 2360 Ponce de Leon Court  
**PID:** 05-69-08-01-0-004-056.000  
**Zoning:** RTF-4, Two-Family District  
**Acreage:** 0.615 ± acres  
**Applicant:** Kristopher Anderson  
4725 Main Street, Suite F-222  
Orange Beach, AL 36561  
**Owner:** Fawzy Sedrak  
2424 W Pioneer Parkway, Suite F  
Pantego, TX 76013  
**Lead Staff:** Linda Lee, Planner  
**Attachments:** *Within Report*

	Adjacent Land Use	Adjacent Zoning
North	Residential	RSF-1, Single Family District
South	Gulf of Mexico	N/A
East	Residential	RTF-4, Two Family District
West	Residential	RTF-4, Two Family District

### Summary and Recommendation

The applicant is requesting a variance from section 2.3.25.3(e) of the Baldwin County Zoning Ordinance as it pertains to the maximum height of single family and two-family structures being limited to two (2) habitable stories. The purpose of the variance request is to allow for the construction of a single-family dwelling with three (3) habitable stories. Staff recommends that Case V-200002, Sedrak Property variance request be **DENIED** based on the applicant has not submitted any information supporting a hardship on the land.

### Variance Request

The applicant is requesting a variance from section 2.3.25.3(e) of the Baldwin County Zoning Ordinance as it pertains to the maximum height of single family and two-family structures being limited to two (2) habitable stories. The purpose of the variance request is to allow for the construction of a single-family dwelling with three (3) habitable stories.

## **Section 4.6 RTF-4, Two Family District**

**4.6.1 Generally.** The intent of this zoning designation is to provide the opportunity for two family residential development.

**4.6.2 Permitted uses.** Except as provided by *Section 2.3: Establishment of Zoning in Planning Districts*, the following uses and structures designed for such uses shall be permitted:

- (a) The following general industrial uses: extraction or removal of natural resources on or under land.
- (b) The following transportation, communication, and utility uses: water well (public or private).
- (c) The following agricultural uses: Silviculture.
- (d) Two family dwellings.
- (e) Single family dwellings including manufactured housing and mobile homes.
- (f) Accessory structures and uses.
- (g) The following institutional use: church or similar religious facility.

**4.6.3 Conditional uses.** Except as provided by *Section 2.3: Establishment of Zoning in Planning Districts*, the following uses and structures designed for such uses may be allowed as conditional uses:

- (a) Outdoor recreation uses.
- (b) The following institutional uses: day care home; fire station; school (public or private).
- (c) The following general commercial uses: country club.

**4.6.4 Special exception.** Except as provided by *Section 2.3: Establishment of Zoning in Planning Districts*, the following use and structures designed for such use may be allowed as a special exception:

The following local commercial use: bed and breakfast or tourist home (see *Section 13.11: Bed and Breakfast Establishments*).

**4.6.5 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
Maximum Height in Habitable Stories	2 1/2
Minimum Front Yard	30-Feet
Minimum Rear Yard	30-Feet
Minimum Side Yards	10-Feet
Maximum Density	4 Dwelling Units per Acre
Minimum Lot Area/Dwelling Unit	7,500 Square Feet
Minimum Lot Width at Building Line	60-Feet
Minimum Lot Width at Street Line	30-Feet
Ground Coverage Ratio	.35



### 2.3.25.3 Local Provisions for Planning District 25

- (a) Multiple family buildings in the “RMF-6, Multiple Family” district may be erected to a maximum height or seven (7) habitable stories. The required side yards shall be increased by 4-feet for each additional story over two (2) habitable stories. The maximum impervious surface ratio shall not exceed .50.
- (b) No PRD development is allowed to exceed maximum height requirements by more than 10-feet or 1 story.
- (c) Off-street Parking.

As a supplement to Section 15.2, Parking Schedule, the following off-street parking requirements shall be applicable to single family dwellings and two-family dwellings:

- 1. Up to Four (4) Bedrooms: Two (2) spaces per dwelling unit.
  - 2. Up to Six (6) Bedrooms: Three (3) spaces per dwelling unit.
  - 3. Seven (7) Bedrooms and more: Four (4) spaces per dwelling unit, plus one (1) additional space per dwelling unit for every bedroom over eight (8).
- (d) HDR, High Density Residential District, shall not be available in Planning District 25.
  - (e) The maximum height of single family and two-family structures shall be limited to two (2) habitable stories.

#### 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 consists of approximately 26,824 square feet and is currently vacant. The property dimensions are approximately 70.6’x374 which exceeds the minimum lot width requirement for property zoned RTF-4. The property adjoins Ponce de Leon Court to the north. The adjoining properties are residential.

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

There is a CCL line bisecting the subject property approximately 95’ from the road side (rear) property line.

**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.**

Currently the property sits vacant and no principal use of the property has been established. The proposed residential use is permitted by right under the RTF-4 zoning designation.

**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.**

Per a letter received from the Fort Morgan Volunteer Fire Department, the proposed structure could conceivably imperil public safety as their current ladder capability is only to two stories.

**5.) Other matters which may be appropriate.**

The Baldwin County Commission approved the text amendment limiting the maximum number of habitable stories in Planning District 25 to two on October 15, 2019.

**Staff Comments and Recommendation**

As stated previously, the applicant is requesting a variance from section 2.3.25.3(e) of the Baldwin County Zoning Ordinance as it pertains to the maximum height of single family and two-family structures being limited to two (2) habitable stories. The purpose of the variance request is to allow for the construction of a single-family dwelling with three (3) habitable stories.

Staff recommends that Case V-200002, Sedrak Property be **DENIED** based on the applicant has not submitted any information supporting a hardship on the land.

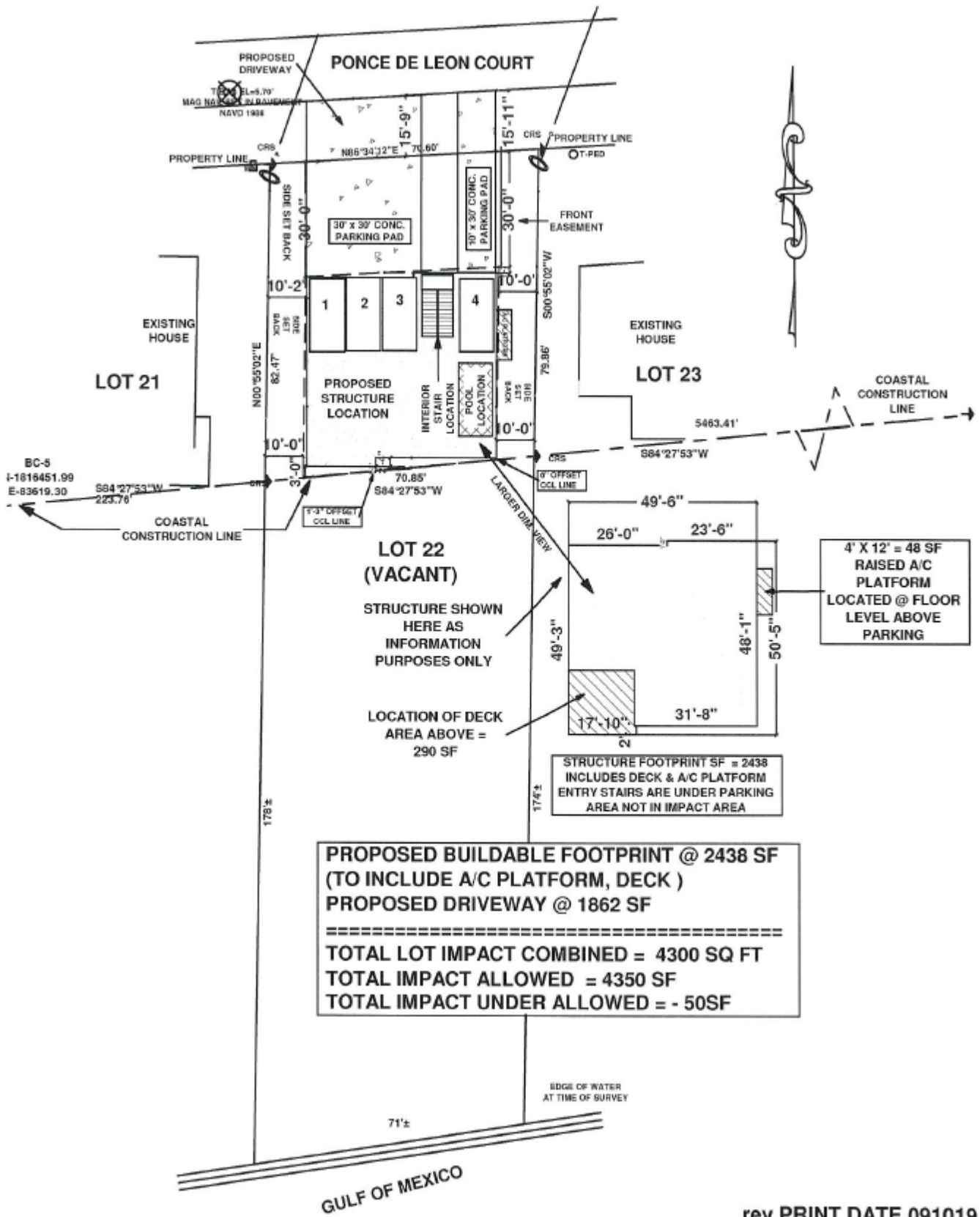
**GENERAL NOTES {By-laws}**

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.



## PROPOSED SITE PLAN











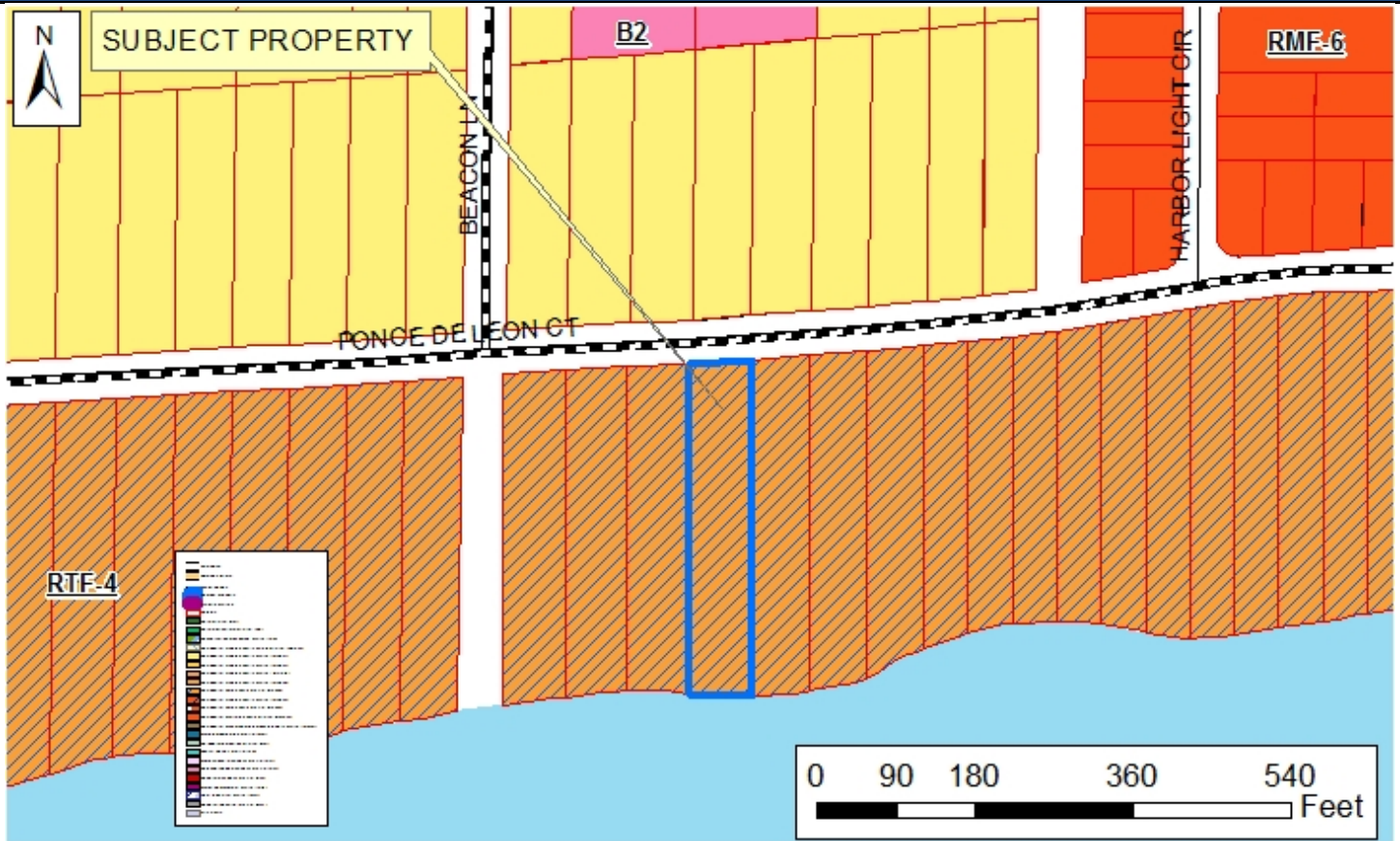




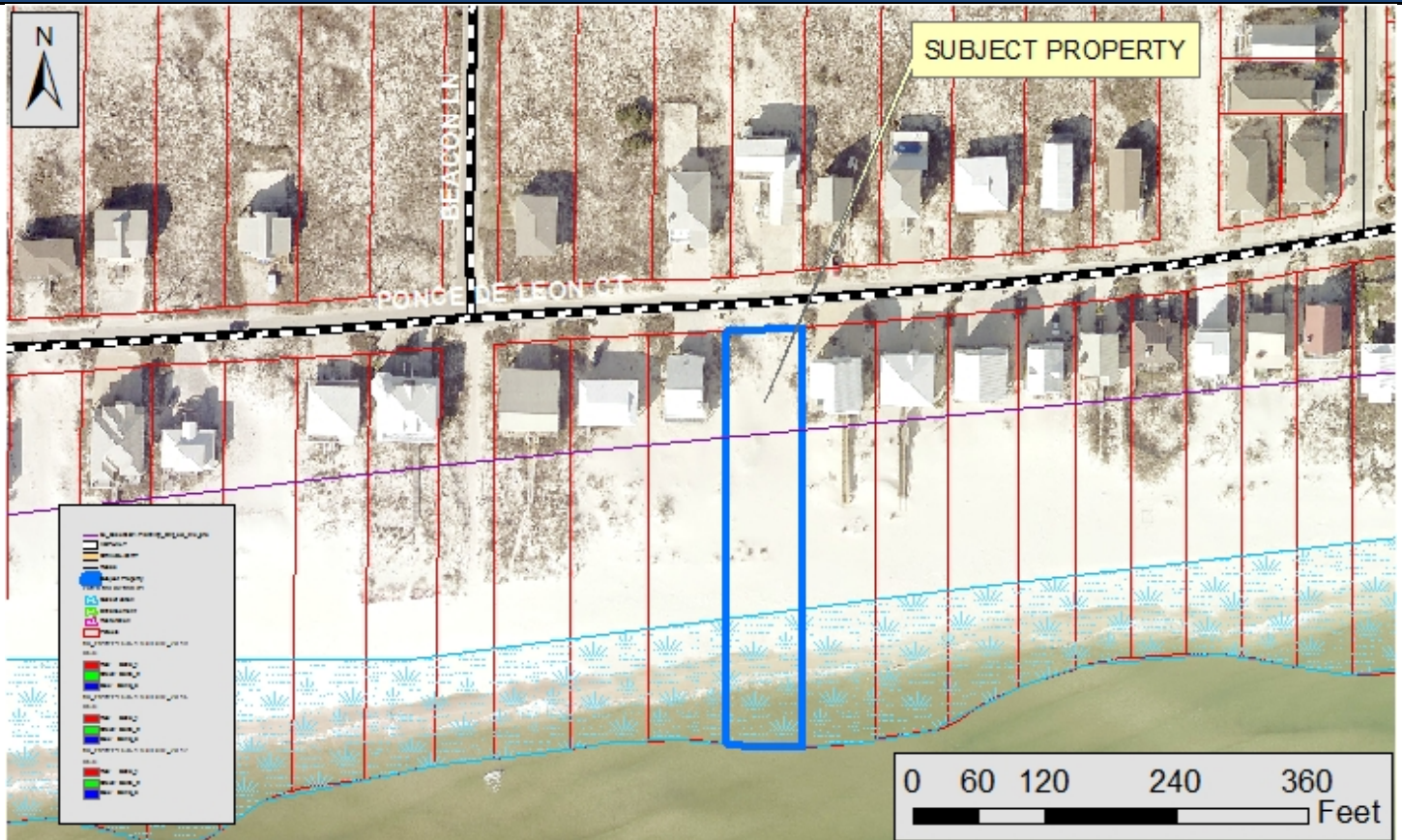




## Locator Map



## Site Map





**Kris Anderson**  
Direct (251) 225-4122  
kanderson@clarkpartington.com

December 17, 2019

**VIA EMAIL**  
Baldwin County  
Paula Bonner  
[Paula.bonner@baldwincountyal.gov](mailto:Paula.bonner@baldwincountyal.gov)

*RE: Variance for Fawzy Sedrak Property – Lot 2 Pamela Court Subdivision*

Dear Ms. Bonner,

To supplement the materials submitted today in support of a variance request relative to Tax Parcel ID 05-69-08-01-0-004-056.000, we submit that there is no property owners association related to the property.

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'Kristopher Anderson', is written over a horizontal line.

Kristopher Anderson

Fort Morgan Advisory Committee Recommendation

**From:** [Carol Kittrell](#)  
**To:** [Linda Lee](#)  
**Subject:** <EXTERNAL> V-20002  
**Date:** Monday, December 30, 2019 11:36:52 AM

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The FM P & Z met on Dec. 30 to consider above variance request. Unanimous decision to recommend denial of variance due to recent county ordinance setting a two story max. Members present were Church, West, and Ulrich. Strong voted via teleconference. Lowry did not attend.

Submitted by Carol N. Kittrell, recording secretary.  
Sent from my iPhone



Kerry Raynor  
2340 Ponce De Leon Court  
Gulf Shores, Al 36542

01/02/2020

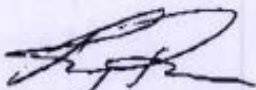
Baldwin County Planning and Zoning Dept  
201 East Section Ave  
Foley, Alabama 36535

Re: Variance for property located 2360 Ponce De Leon Court

I am adamantly opposed to the variance application submitted by Kristopher Anderson for property located at 2360 Ponce De Leon Ct. The application requests a variance to section 2.3.25.3 of the Baldwin County Zoning Ordinance to allow 3 habital stories in a single family dwelling. The variance application should not be approved.

2360 Ponce De Leon is beachfront property located in a residential area. The variance application is requesting a massive 4 story rental property (including the ground floor) in a dense housing community. Similar renta properties house 30 or more people in an already cramped space bringing many cars to park which causes traffic and congestion in a very tight space. In addition to parking issues, the renters have little respect for property owners, freely trespassing on nearby lots all through the rental season. I know this from personal experience. The massive structures found in the area operate as small hotels that block the views of all other residents nearby.

I urge the board to reject the application and enforce the zoning ordinance in this area.



Kerry Raynor

2340 Ponce De Leon Court  
Gulf Shores, Al. 36542