

BALDWIN COUNTY COMMISSION DISTRICT #4

BOARD OF ADJUSTMENT 08/08/2019

PROCEEDINGS HELD BEFORE THE

BALDWIN COUNTY COMMISSION #4

PLANNING (ZONING) DISTRICT BOARD OF ADJUSTMENT

AUGUST 8, 2019

The following proceedings were held on this the 8th day of August, 2019, at the Foley Satellite Courthouse, Large Meeting Hall, 201 East Section Avenue, Foley, Alabama, before Laurie G. Green, Certified Court reporter Number 384.

A P P E A R A N C E S

BOARD OF ADJUSTMENT MEMBERS PRESENT:

Stuart Arnold, Chairman, Planning District 24

John Hilderbrandt, Planning District 33

James Koeppen, Planning District 21

Robert Broseus, Planning District 23

Joanne Bodree, Planning District 29

Ernie Church, Planning District 25

Johanna Moloney, Planning District 32

Samuel Mitchell, III, Planning District 20

BALDWIN COUNTY PLANING AND ZONING DEPARTMENT

Linda Lee, Planner, Planning and Zoning
Department

Celena Boykin, Planner, Planning and Zoning

Crystal Bates, Planning Tech, Planning and
Zoning

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P R O C E E D I N G S

1 - CALL TO ORDER

BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

Good afternoon and thank you for being here.

4 - ANNOUNCEMENTS/REGISTRATION TO ADDRESS THE

BOARD OF ADJUSTMENT

BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

Before we get started, I'd like to ask that everyone to turn off your cell phones. If you plan to speak, make sure you've signed up on the sign-up sheets on the corner of the table up front. I hereby call the Baldwin County Commission Number 4 Board of Adjustments to order on this, the August -- 8th day of August, 2019 at 3:35.

2 - ROLL CALL

BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

Ms. Lee, could you please conduct the roll call.

MS. LINDA LEE:

Yes, sir. Mr. Mitchell.

BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

Here.

MS. LINDA LEE:

Mr. Koeppe.

BOARD OF ADJUSTMENT MEMBER JAMES KOEPPEN:

1 Here.

2 MS. LINDA LEE:

3 Mr. Broseus.

4 BOARD OF ADJUSTMENT MEMBER ROBERT BROSEUS:

5 Here.

6 MS. LINDA LEE:

7 Mr. Stuart. I'm sorry. Mr. Arnold.

8 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

9 Here.

10 MS. LINDA LEE:

11 Mr. Church.

12 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

13 Here.

14 MS. LINDA LEE:

15 Ms. Bodree.

16 BOARD OF ADJUSTMENT MEMBER JOANN BODREE:

17 Here.

18 MS. LINDA LEE:

19 Ms. Moloney.

20 BOARD OF ADJUSTMENT MEMBER JOHANNA MOLONEY:

21 Here.

22 MS. LINDA LEE:

23 Mr. Hilderbrandt.

24 BOARD OF ADJUSTMENT MEMBER JOHN HILDERBRANDT:

25 Here.

26 MS. LINDA LEE:

27 Mr. Chairman, you have a quorum.

28 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

1 Thank you, Ms. Lee.

2 MS. LINDA LEE:

3 You're welcome.

4 3 - APPROVAL OF PREVIOUS MEETING MINUTES (JULY
5 11, 2019)

6 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

7 Before I request a motion, I want to ask
8 a question of all the board members present.

9 Have each of you read in detail the minutes from
10 our meeting of July the 11th that were sent to
11 you by show of hands?

12 (Board members respond by raising hands.)

13 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

14 Everyone has read the minutes. Thank
15 you. I now entertain a motion to approve those
16 minutes you received in your packet of July the
17 11th, 2019.

18 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

19 So move.

20 BOARD OF ADJUSTMENT MEMBER JAMES KOEPPEN:

21 Second.

22 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

23 Second.

24 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

25 Mr. Church seconded. All those in favor
26 respond by saying aye.

27 (Board of Adjustment Members say aye in unison.)

28 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

1 All opposed by saying nay.

2 (No response.)

3 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

4 The minutes are hereby approved.

5 5 - CONSIDERATION OF APPLICATIONS AND REQUESTS

6 5-A - CASE NO. V-190027, COHEN PROPERTY

7 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

8 We'll now start our agenda with case
9 number V-190027 which is identified as the Cohen
10 property. Ms. Lee, are you ready?

11 MS. LINDA LEE:

12 Yes, sir. The applicant is requesting a
13 variance from the front and side yard setback
14 requirements to allow for a dwelling which was
15 built in 2017 to remain. The subject property is
16 located at 533 Brandt Lane in Planning District
17 25. On the screen is your locator map.

18 This is the aerial photograph for 2017
19 prior to the dwelling being constructed, and this
20 is Google Earth aerial photography showing the
21 dwelling on the property. The recorded plat for
22 Morgantown allows for a 20 foot front setback and
23 a 20 foot side setback on the corner line.

24 A land use certificate which indicated
25 the dwelling would meet all setback requirements
26 was approved by County staff in July of 2017. A
27 survey completed after construction, however,
28 revealed that the dwelling with stairs is 1.9

1 feet from the east property line, 10 feet from
2 the corner property line, and 14.5 feet from the
3 south property line.

4 As a result, the applicant is requesting
5 a variance to allow the existing structure to
6 remain in its current location. On the screen
7 are pictures of the dwelling in question. This
8 is the north side, east side. Another picture of
9 the north side, the south.

10 And this is the survey dated May 30th of
11 2019 showing the current location of the
12 structure. This is the plot plan that was
13 submitted with the land use certificate
14 application in 2017 showing that the dwelling
15 would meet all setback requirements. And this is
16 the Morgantown subdivision plat that just shows
17 what the setback requirements are.

18 The Fort Morgan Advisory Committee
19 recommendation is to not recommend approval. The
20 Morgantown Property Owners Association stated
21 they consent to the variance. Bill Lynn with US
22 Fish & Wildlife Service recommends allowing the
23 house to stay and grant a variance that moving or
24 rebuilding will cause more habitat disruption.

25 You have received a letter today from an
26 adjacent property owner that appears to be in
27 opposition to this request. Staff recommends
28 that the variance be denied based on the

1 applicant has not submitted any information
2 supporting a hardship on the land. I'll ask any
3 questions you may have for me.

4 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

5 Ms. Lee.

6 MS. LINDA LEE:

7 Yes, sir.

8 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

9 Is Brandt Lane the property abuts is a
10 private road?

11 MS. LINDA LEE:

12 Yes, sir.

13 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

14 Can the County establish setbacks on
15 private roads?

16 MS. LINDA LEE:

17 Yes, sir. You have a subdivision plat
18 that shows the setback requirements.

19 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

20 Thank you.

21 MS. LINDA LEE:

22 You're welcome.

23 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

24 Ms. Lee, can you please put back up the
25 170282.

26 MS. LINDA LEE:

27 Which one did you want?

28 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

1 The land use. That is the most uniquely
2 perfect document in this entire package. I'm not
3 sure where the construction altered the approved
4 plot plan of what was to be built. That's the
5 hardest part that I'm having a difficult time
6 with.

7 MS. LINDA LEE:

8 And the applicant probably can answer
9 those questions. You have in your staff report
10 his explanation of events as he knows of them.
11 I'm going to presume based on the information
12 submitted that the original builder that was
13 contracted to do this built the dwelling in the
14 wrong location.

15 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

16 Do any of the board members have any
17 questions or comments of Ms. Lee at this time?

18 (No response.)

19 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

20 Thank you, Ms. Lee.

21 MS. LINDA LEE:

22 You're welcome. I'm going to bring this
23 down and open up a presentation that Mr. Davis
24 has.

25 MR. RICK DAVIS:

26 Ms. Lee, Mr. Cohen would like to go
27 first.

28 MS. LINDA LEE:

1 Is he going to need the one I just took
2 down? That's fine.

3 MR. RICK DAVIS:

4 Yeah, you can go ahead and bring mine up.
5 Mr. Cohen won't need it, though.

6 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

7 So Mr. Cohen is going to speak instead of
8 Mr. Davis?

9 MR. RICK DAVIS:

10 He's going to speak first.

11 MS. LINDA LEE:

12 You may have to come show me what you
13 want pulled up.

14 MR. ORAN COHEN:

15 Basically I'll make it real brief.

16 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

17 Just a moment, please, sir.

18 MR. ORAN COHEN:

19 Certainly.

20 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

21 I now open the public portion of
22 V-1900237, Cohen property, and we have signed up
23 to speak Mr. Cohen.

24 MS. LINDA LEE:

25 And can I say one thing really quick?
26 Whenever you come up to speak, please state your
27 name for the court reporter so she can make sure
28 she has your name.

1 MR. ORAN COHEN:

2 My name is Oran Cohen. Most people call
3 me Rick obviously due to Oran. Basically my wife
4 and I designed through an architect our dream
5 house to retire in. We had a contractor, Houses
6 by Adams, which we contracted with to build the
7 house.

8 I'm from Atlanta. So I'm not from here.
9 He went ahead and staked it all out. Looked good
10 to me. He built the house. Well, half built the
11 house. The whole structure was done but the
12 plumbing and all that, and he started not showing
13 up to work, not related, but I had to take over
14 the contract.

15 So I came down every weekend to meet with
16 plumbers, electricians. Get the whole house
17 done. Wanted to get the certificate of
18 occupancy. So someone said you have to get
19 another survey. So I went back to the survey
20 company that they used to begin with.

21 I said, look, I need another survey so I
22 can get a certificate of occupancy, which I
23 didn't need I found out later. They do it. That
24 is when I found out that my house was not where
25 it was supposed to be.

26 I have like a double lot. They could
27 have moved it over 20 feet and it wouldn't have
28 mattered because the house is a fraction of the

1 size it could be for building and all that
2 environmentally. The house that was designed to
3 be there was a lot larger. So I followed
4 everything I could.

5 I saw that. I literally freaked out
6 because I didn't know what to do. Can't pick the
7 house up and move it. So I brought it to y'all's
8 attention. I want to make sure that's clear. No
9 one found out about it. I brought it and I
10 finally said, okay, who do I talk to.

11 Found an attorney. Maybe we could just
12 figure it out. I didn't know. This is my first
13 time building a house, and my last. And that's
14 what happened. I'm not denying the house is in
15 the wrong spot.

16 I didn't realize -- the private drive,
17 which I own a quarter of, seems to be not --
18 because the drawings are clear after I looked at
19 it at the end. But the private drive I think is
20 what -- he may have gone from the center of the
21 private drive because I can't figure out any
22 other thing that he did.

23 So I'm not denying it. All my neighbors
24 that I've talked to, everybody -- I had letters
25 from, you know, as many that would reply and said
26 it's no issue. Even the Morgantown Association.
27 But I don't know what to do.

28 And I do not want to have an instance --

1 the reason I'm here, if God forbid something
2 happens to me, I'm giving my wife something to
3 deal with that I don't want to. So I'm trying to
4 figure it out now instead of, God forbid,
5 whenever that day may be.

6 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

7 Board members have questions of Mr.
8 Cohen?

9 (No response.)

10 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

11 Mr. Cohen, thank you very much.
12 Appreciate your presentation. Next we have
13 signed up to speak Mr. Rick Davis. Is that
14 correct?

15 MR. RICK DAVIS:

16 Yes.

17 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

18 Come up on, please. If you would tell
19 the court reporter your name and your connection
20 to the property, please.

21 MR. RICK DAVIS:

22 My name is Rick Davis, Richard E. Davis,
23 Jr. I'm the attorney for the owner, Mr. Cohen.

24 (Discussion between Ms. Lee and Mr. Davis.)

25 MR. RICK DAVIS:

26 Okay. To orientate ourselves a little
27 bit here, I never miss an opportunity to use a
28 laser pointer. So Brandt -- this is the

1 cul-de-sac up here, and you see clearly here that
2 the western border of Brandt Lane, which is a
3 private drive, somewhat inexplicitly juts to the
4 west at 10 feet at Mr. Cohen's northern property
5 line.

6 That looks clear here. So you might be
7 saying to yourself how did this happen, why on
8 earth wasn't that recognized. And during the
9 advisory committee down in Fort Morgan, there
10 were comments made such as Mr. Cohen really
11 should have noticed this was happening during the
12 process.

13 One explanation is he's from out of town.
14 But as Mr. Cohen just said, he did visit
15 regularly. So he was on the ground. So why
16 didn't he notice? Well, I'll show you this
17 image, and it might explain to you why you may
18 not even notice if you were out there.

19 You see that this right here is 20 feet
20 wide. There is only a portion of it that's paved
21 on the ground. It's about half of the width of
22 the full private drive. It's about 10 feet on
23 the ground pavement.

24 You see it goes all the way down along
25 the western border of Brandt Lane where it's just
26 20 feet wide, and when it gets out to the west 10
27 feet, there's no change on the ground as to where
28 the pavement is.

1 So as you're driving southward along
2 Brandt Lane on the pavement, there is no
3 perceptible difference between the location of
4 the house directly to the north of Mr. Cohen's
5 property and the location of Mr. Cohen's house
6 relative to the pavement.

7 And I would suggest to you that this
8 pavement will never be any closer to Mr. Cohen's
9 house than it is right now. Number one, because
10 that's just not -- you can't utilize more space
11 along this border of what's there at the moment
12 on the ground because of this hard jut right
13 here.

14 Number two, Brandt Lane all the way from
15 the cul-de-sac is only 20 feet wide and they're
16 right up against the western border. So if they
17 were to expand that driveway any width-wise, it
18 would be to the east this other 10 feet that they
19 own here which is completely unaffected where Mr.
20 Cohen's house was placed.

21 I will suggest -- so why does that jut to
22 the west there? Well, from what I've
23 determined -- how many of you thought that you
24 were finished hearing about beach mice? I
25 certainly thought I was until this came back up.

26 Apparently the Corps of Engineers and
27 Fish & Wildlife required this subdivision to
28 include in its common area sufficient square

1 footage such that the overall footprint, the
2 enumerator, would result in a ratio that was
3 small enough to suit their purposes for wetlands
4 and beach mice.

5 So this jut right here had nothing to do
6 with turning radii like typically you see with
7 road width concerns down here. Had nothing to do
8 with fire access or anything like that.

9 This was to acquire an additional 10 foot
10 strip to increase the square footage of the
11 common area so that they could build houses that
12 they wanted without disturbing an appropriate, in
13 the Corps' mind, footprint on the ground for
14 beach mice habitat.

15 All right. At the committee, at the
16 board meeting, the advisory committee, I heard
17 statements such as it's nonconforming and it's
18 pretty bad. That was about the only basis I
19 heard for recommendation of denial to this board.

20 Well, we're in a variance application.
21 Ipso facto, we're nonconforming. That's a fact
22 of every single variance application. Mr. Cohen
23 here is standing at hand saying we are in
24 violation of the zoning ordinance. But there's
25 more to it than that.

26 Every parent out here knows that if you
27 lay the law down on your child and they ask you
28 why, a legitimate response is because I said so.

1 And everybody would go along with that for
2 parenting purposes. But in the context of
3 governmental restrictions on liberties of
4 citizens, there's got to be a purpose behind the
5 regulation. It's not just enforcement for
6 enforcement sake. Unfortunately for
7 us the zoning ordinance states its purposes in
8 the very first subsection of the very first
9 section of the very first article. And it states
10 that the zoning ordinance is to promote the
11 health, safety, morals, and general welfare for
12 the good and benefit of the citizens of Baldwin
13 County.

14 And I would suggest to you that this
15 nonconformance doesn't invoke or thwart a single
16 one of those purposes. The citizens most
17 affected by this nonconformance of the
18 neighboring property owners don't have any
19 objection. I hear that there may be a suggestion
20 of an objection that was submitted today.

21 But for the most part, there are letters
22 of consent and approval submitted by the
23 neighboring property owners. They appreciate the
24 increase in value associated with the beautiful
25 structure that Mr. Cohen has placed on this
26 property.

27 So what I would ask this board to do is
28 to analyze this particular nonconformity not in

1 the context of being nonconforming. That's why
2 we're here. It's a variance application. It's
3 got to be nonconforming.

4 But instead to look at this particular
5 nonconforming and ask -- and apply the concerns
6 associated with the purpose of the zoning
7 ordinance and ask yourself what is this violating
8 among those concerns.

9 And taking into consideration the lack of
10 objection, that the neighboring property owners,
11 the ones that are most affected, are on board
12 with this, the lack of any bad faith by the
13 property owner, I would respectfully ask the
14 board to consider approval of this variance. May
15 I remove this?

16 MS. LINDA LEE:

17 If you're done with it. Make sure they
18 don't have any questions for you.

19 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

20 Can you put your picture back up again,
21 please.

22 MR. RICK DAVIS:

23 The satellite image?

24 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

25 Yes, please.

26 MR. RICK DAVIS:

27 Certainly.

28 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

1 I'm just trying to get something clear in
2 my mind. The two houses north and south, Cohen's
3 and one to the north, appear that the edge line
4 of the residences are completely in line. How
5 can one be -- how can one be conforming and one
6 not?

7 MR. RICK DAVIS:

8 I was -- that's a great observation. I
9 would suggest that potentially this may explain
10 how it happened. Now it's not how builders are
11 supposed to go about doing things, but it makes
12 sense to me that this builder came in and lined
13 up his structure with the adjoining structure,
14 with the neighboring structure.

15 But the difference is whereas there's 10
16 feet of space between the driveway and this
17 structure and 10 feet of space between the
18 driveway and Mr. Cohen's structure, there's also
19 a 10 feet deviation to the west in the eastern
20 property lines of the two properties.

21 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

22 So the property lines are different?

23 MR. RICK DAVIS:

24 That's right. And, again, that's not
25 apparent at all driving down here, but it is what
26 it is. If you were to be driving down there
27 looking at land line, for instance, it would be
28 very apparent to you. But, otherwise, you're

1 just driving 10 feet away from the structures
2 that you're passing.

3 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

4 Thank you.

5 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

6 Thank you, Mr. Church. You made mention
7 of the fact that the first article, first
8 comment, first statement, whatever of the
9 planning and zoning guidelines, but you did not
10 mention the one thing that we are tasked with as
11 a board and for all the property owners
12 throughout the county, and that is whether or not
13 the use of the land has any hardships against it.

14 Variances are designed to be an item that
15 is processed before, before, for the third time
16 I'll say before, something is built to see if, in
17 fact, for the welfare of our community and all
18 the citizens of the county we can, in fact,
19 quote, variance the rules, which we do every
20 month.

21 The basic premise is the hardship on the
22 land which we have -- we have a case up today in
23 our list of cases that we're working on this
24 month, but nowhere in this entire manual that you
25 quoted earlier does it say what you're supposed
26 to do when somebody doesn't follow an approved
27 plan, and then you have to figure out what to do.

28 MR. RICK DAVIS:

1 I understand.

2 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

3 And that is not an easy task, and these
4 people here, which are all volunteers, are tasked
5 with trying to handle that difficult situation.

6 MR. RICK DAVIS:

7 I understand.

8 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

9 And it comes up more than you probably
10 would even like to know that it does. The facts
11 are -- there's facts on both sides, as it were.
12 Of course, an attorney you know that better than
13 I. But I just want to make sure you understand
14 that this is not an arbitrary board, and we're
15 not making a ruling just because it says
16 something in the book.

17 But we're trying to do what is the best
18 thing to do for owners, neighbors, the citizenry,
19 and the people that put us here. And I want to
20 make sure you understand we do believe what we're
21 doing for the good of the community.

22 MR. RICK DAVIS:

23 I wholeheartedly agree, and that's all
24 I'm asking. That's all I'm asking of the board.

25 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

26 Anybody else have a question of Mr.
27 Davis?

28 (No response.)

1 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

2 Thank you, Mr. Davis. Appreciate your
3 time. I will now close -- for public?

4 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

5 Sir?

6 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

7 You're for public session?

8 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

9 I'm not sure. I have a question for the
10 chair because I don't know to whom else to direct
11 it. And so --

12 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

13 I'll leave the public portion open, yes.

14 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

15 Okay. Without alluding to anybody who's
16 at fault or not at fault or responsible or not
17 responsible for this happening, I just have a
18 question of general curiosity.

19 What happens if this denial doesn't take
20 place or if the denial takes place, excuse me,
21 and Mr. Cohen goes to every extent that he can to
22 get approval by whomever to leave this, what
23 happens to this piece of property? I mean, it's
24 got a structure on it and the structure is
25 nonconforming. What happens in the end run here?

26 MS. LINDA LEE:

27 Is that a question for me?

28 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

1 You bring up a good point.

2 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

3 Thank you, sir.

4 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

5 And we'll leave it in the public sphere
6 for the time being.

7 MS. LINDA LEE:

8 I can answer a part of his question, I
9 believe, if you give me just a moment.

10 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

11 And I think I can answer part of it too,
12 but you go ahead.

13 MS. LINDA LEE:

14 Okay. First of all, you want to know
15 what happens -- trying get my thing to come back
16 up. There we go. You want to know what happens
17 if --

18 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

19 To the piece of real estate.

20 MS. LINDA LEE:

21 Hold on. If you all deny the variance,
22 is that what you asked?

23 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

24 Yes, ma'am.

25 MS. LINDA LEE:

26 Okay. He has two options. He can appeal
27 your decision to the circuit court and depending
28 on what the judge says he would either have to

1 remove it or the judge may allow it to stay.

2 If he decides not to appeal to circuit
3 court, then his option would be to move it to
4 come into compliance with the zoning ordinance.
5 Those would be pretty much his choices.

6 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

7 So I guess my question is a little more
8 specific than that. After he's gone through
9 every remedy that he can legally go through and
10 nobody says he can -- you know, his certificate
11 of occupancy and so forth, here's a piece of
12 property with a building on it that's
13 nonconforming and very expensive nice building --

14 MS. LINDA LEE:

15 Okay. I think that -- I don't mean to
16 interrupt, but if I'm not mistaken, he has a
17 certificate of occupancy.

18 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

19 Ma'am?

20 MS. LINDA LEE:

21 He has a certificate of occupancy.

22 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

23 In other words, if he can't use it
24 because it's nonconforming. I might not be
25 asking the question everything verbally correct,
26 but I think I'm being understood.

27 Is that if the gentleman can't get what
28 he's here to get today and he uses every remedy

1 that he can legally use and it ends up that he
2 says, well, the heck with this, I'm just going
3 back to Atlanta and I don't need a beach, what
4 happens to this piece of property?

5 If he sells it to me, now I have a house
6 that's nonconforming. I have a piece of real
7 estate. So I sell it to the next guy. Whoever
8 ends up with it has got the same problem that Mr.
9 Cohen has. I'm just wondering what ultimately at
10 the end of the line happens to this piece of real
11 estate.

12 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

13 In conjunction with your question, the
14 question I have for you, Ms. Lee, what portion of
15 the house is in violation and what portion of
16 stairs are in violation?

17 Reading and studying this to a certain
18 degree about the fifth or sixth or seventh time,
19 it dawned on me they may be talking about two
20 different animals.

21 And if we can figure out a way, which
22 you've seen us do many, many months and time
23 after time after time, of attempting to assuage
24 the facts to adjust what has been done to make
25 the property owner as happy as we can and make --
26 make it a property that is resellable.

27 MS. LINDA LEE:

28 All right. First of all, in order for

1 this property to be resellable, I'm going to
2 presume he would have to abide by whatever a
3 judge tells him to do. In saying that if a judge
4 says it can stay, then he legally can stay. He
5 has a court order and he's okay.

6 If the judge says he cannot, then he
7 would have to remove it or tear it down. One of
8 the two. So it's not like he would turn around
9 and sell it unless he violates court orders, you
10 know.

11 Okay. As to your question as to what is
12 and isn't across the setback lines, this portion
13 of the house, I think it's 10 feet from the
14 property line. So you see that line right there?
15 That's your setback line. Everything to the east
16 is across the setback line. That's the dwelling
17 as well as those stairs up here.

18 On this south portion, the dwelling is
19 within the required setbacks. I think that said
20 20 something feet. You're allowed 5 feet of
21 uncovered stairs to come across this setback
22 line.

23 So at this corner, he's only really half
24 a foot over. Over here you're looking at 5 feet
25 because he has a 20 setback. So this should be
26 15 feet. So basically, you know, we'll make
27 y'all happy and you can move these stairs, but
28 there's not much you can do about this side.

1 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

2 But if the board chose to -- I'm not
3 putting words in the board members' mouth, but it
4 would be possible -- hmm.

5 MS. LINDA LEE:

6 And I'm going to say a couple of things,
7 I guess. Mr. Cohen is correct. We didn't
8 receive any complaints about the house. He
9 brought it to staff last year. I have no idea
10 why it took a year to come and ask for this
11 variance. I was not involved in the meeting that
12 he had with County staff.

13 For me, you all basically need to decide
14 are you going to let this stay as it is or not.
15 I mean, you know, I don't know -- you have to
16 have exits. So he's going to need some stairs to
17 get out of the house. So I don't know what it
18 would accomplish having him remove part of those
19 stairs.

20 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

21 Do you understand what I was asking --

22 MS. LINDA LEE:

23 Yes.

24 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

25 -- in terms of a variance on the east
26 side and no variance on the south side --

27 MS. LINDA LEE:

28 Okay. So if you're --

1 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

2 -- which would require --

3 MS. LINDA LEE:

4 -- going to give a variance on the south
5 side, you're going to be requiring him to either
6 remove his stairs or they're going to be awful
7 small.

8 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

9 Which there is room underneath there with
10 all the car space, et cetera. That could be a
11 possible way to make it --

12 MS. LINDA LEE:

13 And it's possible, and I don't know
14 because I didn't design this, he might could put
15 his stairs here and meet the 15 feet -- I mean 5
16 feet over and --

17 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

18 As he said, he has a double lot, and he
19 could have positioned the house in a much better
20 location.

21 MS. LINDA LEE:

22 Well, I mean, the site plan he
23 submitted --

24 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

25 This notwithstanding.

26 MS. LINDA LEE:

27 Right. The site plan he submitted was
28 positioned. I mean, he was well inside the

1 setback requirements on what was submitted. So
2 basically what he's telling you is his builder
3 made a mistake. Whether or not you all are
4 willing to grant a variance based on that, that's
5 up to you. The staff's recommendation is based
6 on --

7 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

8 I understand the staff's recommendation
9 on the hardship. I hope I explained that to the
10 attorney well enough. But it goes to the point
11 of you did have one complaint today.

12 MS. LINDA LEE:

13 Yes. And the lady pretty much --

14 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

15 Yeah. And you don't know --

16 MS. LINDA LEE:

17 She questioned a lot of statements that
18 was in his letter.

19 BOARD OF ADJUSTMENT MEMBER JAMES KOEPPEN:

20 Mr. Chairman --

21 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

22 Let me close the public portion of the
23 190027. So the public portion is closed. Now
24 I'm opening the board up for comments and
25 discussion. Yes, sir.

26 BOARD OF ADJUSTMENT MEMBER JAMES KOEPPEN:

27 I feel this is identical to the case we
28 talked about last month where we're penalizing

1 the wrong person. If we deny the request, we're
2 penalizing the owner, and the mistake was made by
3 the builder.

4 And it goes back to our statement that we
5 would explore the laws or talk to whomever, that
6 we penalize the builder or the surveyor. I mean,
7 we're talking about denying the request costs the
8 man his house which is the same problem we had
9 last month.

10 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

11 Okay. Couple of things. Go ahead.
12 Excuse me.

13 BOARD OF ADJUSTMENT MEMBER JAMES KOEPPEN:

14 We're penalizing the wrong person. We
15 should be -- at the commission meeting, we should
16 change the rules that there's better inspection,
17 that we have a fine for the builders, that we go
18 back to the root cause of the problem and not
19 something like this. This is just wrong.

20 MS. LINDA LEE:

21 The problem between the owner and the
22 builder is between the owner and the builder.
23 The owner can take the builder to court because
24 the builder made a mistake. It's not going to be
25 the County's responsibility to fine that builder.
26 But as far as fines go, county commission levies
27 fines.

28 So this board would not levy any fines.

1 It would be the county commission. They would
2 have to approve any fines that anyone has to pay.
3 And, you know, there are fines associated with
4 violations of the zoning ordinance if they do not
5 come into compliance, but it's usually once you
6 go through a process.

7 You've gone to court. You know, you
8 pretty much have to go to the court to have the
9 judge initiate those fines. But that's a
10 discussion that Mr. Jackson would rather you all
11 have with the county attorney as far as fines go.
12 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

13 And I've already looked into that after
14 our meeting last month, and that's what we need
15 to do. We can't do anything without getting the
16 county's attorney involved and Mr. Jackson, Ms.
17 Lee, and get the commission involved. We can't
18 do it today, and we can't do it alone by
19 ourselves with this board. Okay?

20 BOARD OF ADJUSTMENT MEMBER JAMES KOEPPEN:

21 Okay.

22 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

23 On another topic, in instances from
24 personal experience, the surveyor will blame the
25 framers and the framers will blame the engineer
26 and the engineer will blame the architect and the
27 architect will blame the realty company and the
28 realty company will blame the owner.

1 The owner will go back to blaming
2 somebody else. It's a circular firing squad
3 because basically they're all kind of in cahoots
4 to begin with, but there's one final person who
5 the total responsibility rests upon out of all
6 those people I mentioned, the owner.

7 No one else but the owner. Not the
8 architect, not the attorneys, thank goodness, not
9 the engineers, not the builder, not the
10 craftsmen. It's the owner. That's part of the
11 answer to your question, though. We're not
12 trying to penalize anyone, but somebody knew this
13 wasn't right.

14 Now, you can say, yeah, that's the
15 builder, he didn't do it in the right place, how
16 it gets checked and followed up on, and Ms. Lee
17 could tell us we're strapped, we don't have
18 enough inspectors to go by there and see the week
19 after this -- you know, stakes are out there.

20 The plan has been set. They run the
21 strings up where they're going to pull the
22 pilings or pour the concrete or whatever they're
23 going to do. That is the most critical thing we
24 got. Somebody has got to see to it that is what
25 is done. Not what we see up here.

26 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

27 Can I ask a question, please?

28 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

1 Yes.

2 MS. LINDA LEE:

3 Yes, sir.

4 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

5 Have any of the cases from Baldwin County
6 ever gone to circuit court and what were the
7 results?

8 MS. LINDA LEE:

9 There have been cases that have gone to
10 circuit court. I can't necessarily remember what
11 the results are. I do know depending on the case
12 and what it was pertaining to the County usually
13 has won, but I also know that it's probably rare
14 that a judge will make someone tear down a house.

15 But I can't speak for a judge. So I
16 don't know for sure. My experience -- well, I do
17 know one. It's been a long time ago. I believe
18 they may have made someone remove a portion of
19 the house, not the entire house, but it wasn't
20 completely built. It was one that was started.
21 And so it wasn't at a stage where it was
22 completely built.

23 Like I said, you know, it's going to be
24 up to you all which way you decide to go. If
25 this board decides to deny the variance request,
26 then the applicant has the option to appeal to
27 circuit court --

28 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

1 Right.

2 MS. LINDA LEE:

3 -- and a judge will decide whether or not
4 the variance is granted, you know, whether or not
5 the dwelling can stay or not.

6 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

7 Thank you.

8 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

9 Ms. Lee, thank you. Do we have any other
10 discussion on this particular case by the board?
11 Yes, sir.

12 BOARD OF ADJUSTMENT MEMBER JOHN HILDERBRANDT:

13 My life, my job I've had has been this.
14 Things that go well are things that the
15 supervisor checks out. I know about the owner.
16 He should have been there to check things out.
17 However, I hate to leave here today and think I
18 kept somebody from moving in a house.

19 I know he has his options, but I try to
20 put myself in that person's position how I would
21 feel if I was in the same predicament. That's
22 something we all need to look at. I'm not trying
23 to change anybody's vote, but I'm just trying to
24 get a sense of realism. That's all I have to
25 say.

26 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

27 That was why I made the comment I did
28 about the possible alternative solutions to a

1 variance in one section or area and a revamping
2 or remodeling in another section and not have the
3 variance, if that were the board's choosing, that
4 it could be a way to bring about the best
5 solution we can in this. Because I don't think
6 anybody has got a big enough skill saw to saw 10
7 feet off this house, I don't think. Yes, sir.

8 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

9 I just want to say that I'm not without
10 empathy or sympathy for anybody's bad problem,
11 but I'm in complete accordance with what you said
12 a moment ago in the circular firing squad.
13 Ultimately when it finally gets down to everybody
14 stops placing blame, it's up to the owner.

15 And the fact of the matter is if the
16 owner went out there and the stakes were up and
17 everything was there and it had his house looking
18 like a jigsaw puzzle he'd be down somewhere in a
19 hurry to get that corrected.

20 Well, the same thing should apply to
21 this, and he can go -- no matter how short the
22 county is of inspectors, he can go down to the
23 office and say I want these things checked, I'm
24 spending hundreds of thousands of dollars here
25 and I would like an inspector to come out here
26 before they start pouring concrete and tell me
27 and everybody else in the world that this house
28 is in the right place.

1 MS. LINDA LEE:

2 I have a comment.

3 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

4 Yes, ma'am.

5 MS. LINDA LEE:

6 Building inspectors do not verify
7 setbacks. In order for a setback to be verified,
8 the property line pins would have to be where our
9 code enforcement officer can check it, and then
10 he would verify the setback if he is requested to
11 go out there and do so.

12 Mind you, we have one code enforcement
13 officer for all of Baldwin County, and you know
14 how large Baldwin County is. So if he's asked to
15 go and check one, he does, but he can only verify
16 and say for certain if there are property line
17 pins out there. Because, otherwise, he doesn't
18 know where the property line is.

19 Now, having said all that, I'm going to
20 presume that that plot plan was drawn up.
21 Someone should have had pins out there where the
22 property lines were. The builder looking at a
23 plot plan, start with the setback, what it's
24 supposed to be from the property lines, and he
25 should have done so accordingly.

26 No one here, the owner, no one can speak
27 for why that builder did what he did. So at this
28 point, this board has to decide, you know, what

1 are you all going to grant variance-wise. And
2 you do have options as Mr. Arnold said. If you
3 want to grant the variance on the east side and,
4 you know, have him remove the stairs on the south
5 side or make them conform, that's up to you all.

6 Those are options. The other option is
7 if this board does not approve this request in
8 any form the owner can appeal to circuit court.

9 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

10 Mr. Mitchell, I appreciate your question
11 and your comments, Mr. Hilderbrandt, everyone. I
12 think that we have talked this to death. Mr.
13 Cohen, I hope that you understand that this board
14 is trying its best to do the right thing by
15 everyone and everyone involved here.

16 So, board members, I now ask for a motion
17 from the board as to what do you do or do not
18 want to do on V-19 -- I'm sorry -- 190027 on the
19 variance request as presented by staff. Mr.
20 Mitchell.

21 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

22 Can a motion be made where we can make
23 this suggestion or whatever that you've been --

24 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

25 Yes, we can. We can make any motion we
26 want to make.

27 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

28 I don't speak those kind of motions as

1 well as you do, but I just wanted to make sure
2 that we can do that.

3 BOARD OF ADJUSTMENT MEMBER JOHANNA MOLONEY:

4 (Inaudible). There are no steps coming
5 out there.

6 THE COURT REPORTER:

7 I can't get that.

8 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

9 It's the south.

10 BOARD OF ADJUSTMENT MEMBER JOHANNA MOLONEY:

11 Well, south --

12 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

13 East is the -- east is part of the house.
14 That's inside the setback. The south where the
15 stairs are removable and architecturally can be
16 easily -- you can see the cars parked right
17 behind it underneath. That can be -- Ms. Lee, I
18 will ask for your help here.

19 MS. LINDA LEE:

20 Yes, sir.

21 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

22 I think you understand what we're trying
23 to accomplish. How do we say it in eight or ten
24 words for the court reporter that we all can
25 understand?

26 MS. LINDA LEE:

27 Okay. It sounds like you all want to
28 make a motion to approve the variance on the east

1 side and on the the south side bring those stairs
2 into compliance. So you're not going with what
3 is currently there. Like I said, compliance
4 would be five feet over the setback line.

5 I don't know if they will have to move
6 them or if they will have to cut them off, but
7 that is what it sounds like what you all want to
8 do. Or at least that's what it sounds like Mr.
9 Mitchell --

10 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

11 Mr. Mitchell wants to make a motion?

12 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

13 I think so, yes, sir.

14 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

15 All right.

16 BOARD OF ADJUSTMENT MEMBER SAMUEL ARNOLD:

17 In other words, I don't want to leave
18 this gentleman just out in the cold, but at the
19 same time, I think we have to conform to the law.

20 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

21 Well, we're doing the big issue, and that
22 is saving the house and also not forcing him to
23 go through circuit court. He's going to have to
24 spend some money to modify some stairwell.
25 That's really inconsequential.

26 But I think that might be the best
27 solution that we can come up to or come to as a
28 board for his benefit and benefits of his

1 neighbors and people buying the house later on.
2 And, of course, this is recorded. So it's going
3 to be public. I mean, the best we can do. So do
4 you want to restate your motion with as
5 succinctly few words as possible?

6 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

7 I'm sorry. The last part of that?

8 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

9 Do you want to restate your motion or
10 make a motion in as few words as possible in
11 accordance with what Ms. Lee has suggested?

12 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

13 Yes, sir. I would like to make a motion
14 that the request be granted provided we meet the
15 requirements as set forth by Ms. Lee.

16 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

17 That's not going to get it. I'm sorry.

18 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

19 It's on record. We've got a court
20 reporter.

21 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

22 All right. May I intercede?

23 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

24 Yes, sir, please.

25 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

26 May I suggest to you that we want to
27 approve the variance request on the east side --

28 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

1 Yes, sir.

2 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

3 -- and not approve the variance request
4 on the south, period?

5 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

6 Yes, sir, I move we do exactly what you
7 just said.

8 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

9 And do we have a second? Mr.
10 Hilderbrandt. Ms. Lee, do you feel that court
11 reporter has the motion as we have succinctly
12 stated it?

13 MS. LINDA LEE:

14 She thinks she does.

15 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

16 Ms. Lee, can we please have a roll call
17 vote?

18 MS. LINDA LEE:

19 Yes, sir. And I will state for the
20 record --

21 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

22 Thank you.

23 MS. LINDA LEE:

24 -- any motion requires six affirmative
25 votes. So it will take six affirmative votes for
26 this motion to pass. Okay? Mr. Mitchell.

27 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

28 Approve.

1 MS. LINDA LEE:

2 Mr. Koeppen.

3 BOARD OF ADJUSTMENT MEMBER JAMES KOEPPEN:

4 Approve.

5 MS. LINDA LEE:

6 Mr. Broseus.

7 BOARD OF ADJUSTMENT MEMBER ROBERT BROSEUS:

8 Approve.

9 MS. LINDA LEE:

10 Ms. Bodree.

11 BOARD OF ADJUSTMENT MEMBER JOANNE BODREE:

12 Approve.

13 MS. LINDA LEE:

14 Mr. Church.

15 BOARD ADJUSTMENT MEMBER ERNIE CHURCH:

16 Approve.

17 MR. LINDA LEE:

18 Ms. Moloney.

19 BOARD OF ADJUSTMENT MEMBER JOHANNA MOLONEY:

20 Approve.

21 MS. LINDA LEE:

22 Mr. Hilderbrandt.

23 BOARD OF ADJUSTMENT MEMBER JOHN HILDERBRANDT:

24 Approve.

25 MS. LINDA LEE:

26 Mr. Arnold.

27 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

28 Approve.

1 MS. LINDA LEE:

2 Motion carries. And I will say this for
3 the record. Any party aggrieved by a final
4 decision of the board may within 15 days after
5 the decision is made file an appeal to the
6 Circuit Court of Baldwin County and to the
7 Baldwin Planning and Zoning Department on behalf
8 of the Board of Adjustment for Baldwin County
9 Commission District 4.

10 That is 15 calendar days, not business
11 days. And said copy is to be in the Robertsdale
12 office of the Planning and Zoning Department.

13 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

14 Thank you, Ms. Lee, for --

15 MS. LINDA LEE:

16 You're welcome.

17 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

18 -- entering that in the record.

19 MS. LINDA LEE:

20 Ms. Boykin has the next case.

21 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

22 And I want to thank the board for an
23 excellent job done on V-190027. And I believe
24 that we made the best decision that we could
25 possibly make.

26 5-B - CASE NO. V-190028, FISHER PROPERTY

27 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

28 Now we move on to V-190028 as the Fisher

1 property. And we have Celena Boykin is going to
2 be presenting it; right?

3 MS. CELENA BOYKIN:

4 Correct.

5 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

6 Thank you.

7 MS. CELENA BOYKIN:

8 All right. This is a request for
9 approval of a variance from the rear yard setback
10 requirements and also a variance from the
11 jurisdictional wetland setback requirements to
12 allow for a construction of a single family home.
13 The subject property is located in Planning
14 District 25 on Council Lane.

15 The subject property is currently zoned
16 RSF-1, and here's the aerial photography. The
17 applicant is planning on building a new dwelling
18 that's probably 2,100 square feet. The living
19 space is about 1,575, and then the front porch
20 consists of 540 acres (sic).

21 Here's some pictures of the subject
22 property and adjoining property. Here's the site
23 plan that the applicant submitted. You can see
24 the green line. That is the wetlands. It is out
25 of the wetlands except for the front porch.

26 It does encroach on the wetlands. He's
27 asking for 10 feet from the rear setback. The
28 county requires 30 feet setback from the

1 wetlands. But he will be right there on them if
2 he builds this house. Staff recommended
3 approval. Staff also stated that he could
4 possibly build longer and stay out of the
5 wetlands.

6 Let's see. The Fort Morgan Planning and
7 Zoning Advisory Committee, they also recommended
8 approval for the variance for the rear yard
9 setback and the wetlands setback subject to no
10 construction in the wetland area is what they
11 suggested. There's also no active HOA.

12 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

13 Do you know or are you aware as to why
14 the applicant did not submit a survey and the
15 delineation of the actual structure and how it
16 would be placed? Because obviously the yellow
17 block can move left and right, up, down,
18 sideways.

19 That's, I assume, superimposed over the
20 area, but we don't have a signed plot plan of
21 what is going to be actually done like we
22 normally have, most of our presentations.

23 MS. CELENA BOYKIN:

24 Right, they didn't submit a building
25 plan. You can see the side. They have a side
26 that says 28 feet and 27 feet, 10 from the rear.

27 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

28 More questions of Ms. Boykin? Comments?

1 (No response.)

2 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

3 Thank you, Ms. Boykin. I now open the
4 public portion of V-190028 Fisher property, and
5 we have signed up to speak a Mr. Michael
6 Thompson. If you would come up, please. Share
7 your name, your connection with the property with
8 the court reporter, if you would.

9 MR. MICHAEL THOMPSON:

10 My name is Michael Thompson. I'm from
11 Prattville, Alabama, and I am buying the lot.
12 And that's why there's no plans yet, because I
13 don't want to close on a lot until I make sure I
14 can build a cabin on the lot.

15 After talking to the people at Fort
16 Morgan, the advisory board, I agreed that I would
17 move the house to one side, and I've got
18 something here that shows that. So on one side,
19 sideways would be 40 foot. On the other side
20 would be 15 feet. That would get almost all the
21 porch -- because none of the house is in the
22 wetlands at all.

23 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

24 And that would change the variance
25 request, would it not? Because 15 feet, that
26 would be into the setback?

27 MR. MICHAEL THOMPSON:

28 No. The setback is 10 foot on both

1 sides.

2 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

3 Oh, 10 foot.

4 MR. MICHAEL THOMPSON:

5 So 30 foot -- so I'm trying to get a
6 hardship there because the lot is so small that
7 you can't really get a structure, you know, in
8 there without having some type of hardship or
9 some type of variance.

10 MS. LINDA LEE:

11 How many copies do you have?

12 MR. MICHAEL THOMPSON:

13 I've got -- that's -- I got a bunch more.
14 Do you need some more?

15 MS. LINDA LEE:

16 For these board members.

17 MR. MICHAEL THOMPSON:

18 For each one of these board members. And
19 that is a -- I had my guy from EcoSolutions go
20 back and spot the trees. What I'm trying to do
21 is avoid cutting any trees. Matter of fact, I'm
22 going to have to build around some of the trees
23 on the street side of the --

24 MS. LINDA LEE:

25 Is this what you're building now?

26 BOARD ADJUSTMENT CHAIRMAN STUART ARNOLD:

27 Can you appreciate that we're a little in
28 wonderment as to exactly what we're trying to

1 accomplish here?

2 MR. MICHAEL THOMPSON:

3 Can I get some of the copies I may have
4 made and let y'all look at what I'm talking
5 about? Would that be okay?

6 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

7 That's fine. Whatever you'd like to do,
8 sir. This is your public portion of your
9 variance request.

10 MR. MICHAEL THOMPSON:

11 Let me get some more of these.

12 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

13 Ms. Lee, Ms. Boykin --

14 MS. CELENA BOYKIN:

15 Yes.

16 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

17 Either one. If he moves it, does he
18 still need a variance request?

19 MS. CELENA BOYKIN:

20 Yes.

21 MS. LINDA LEE:

22 Will need a variance.

23 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

24 Huh?

25 MS. LINDA LEE:

26 He's going to need a variance no matter
27 what. It's not going to be 30 feet and he needs
28 that rear setback. He just may not be over the

1 wetlands where he was before.

2 MR. MICHAEL THOMPSON:

3 See if I can find --

4 MS. LINDA LEE:

5 If you don't have enough, they can pass
6 it around. I was just going to give --

7 MR. MICHAEL THOMPSON:

8 Yeah. I've got some more.

9 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

10 All we need is one copy. We can look at
11 one copy and pass it around.

12 MR. MICHAEL THOMPSON:

13 I've got -- I've got two requests. One
14 is having a little portion of the porch over the
15 wetlands. My house will be -- the cabin will be
16 45 foot long, 45 by 35. And I can cut the porch
17 back to 35 feet, and that way it will just be one
18 one piling -- will be the only one piling in the
19 wetlands.

20 The rest will be out of the wetlands and
21 there won't be any -- if I can't do that, then
22 I'll cut it back to 25 feet, but I'd like to have
23 a 35 foot porch, if I could. Okay. Let me --
24 I'm trying to find some more.

25 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

26 I'm sure that you can appreciate how
27 difficult it is for us --

28 MR. MICHAEL THOMPSON:

1 I understand.

2 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

3 -- without having the specific request.

4 MR. MICHAEL THOMPSON:

5 Yeah, that's what I'd like to do
6 (pointing). That's what I'll do if I have to to
7 get everything out of the wetlands altogether.
8 That's just a 25 foot porch, and that's a 35 foot
9 porch instead of 45.

10 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

11 Everybody understand what he's saying?
12 Okay.

13 MR. MICHAEL THOMPSON:

14 Would you like me to --

15 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

16 He's moved it over and he's in the
17 wetlands.

18 MS. CELENA BOYKIN:

19 Yes.

20 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

21 And here is cut the porch off.

22 MR. MICHAEL THOMPSON:

23 The reason it was going to be 27 foot on
24 one side and 28 on the other side --

25 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

26 We're still going to need the variance on
27 the rear setback.

28 MR. MICHAEL THOMPSON:

1 Correct.

2 MS. CELENA BOYKIN:

3 And from the wetlands. He has to be 30
4 feet from the wetlands. So he'll need a
5 variance --

6 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

7 That's right.

8 MS. CELENA BOYKIN:

9 -- from the wetlands.

10 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

11 That's right. But we're just trying to
12 protect the wetlands as far as the porch is
13 concerned.

14 MR. MICHAEL THOMPSON:

15 I understand.

16 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

17 Okay?

18 MR. MICHAEL THOMPSON:

19 I understand. That's why I want this
20 lot, because it's on the wetlands and I want
21 to -- my thing, I don't want to disturb the
22 trees. On the street side of the cottage I'm
23 going to have to cut out both corners of the
24 house to build around the trees.

25 So I want to leave the two -- there's
26 live oaks and hickories already there. I don't
27 want to disturb them, you know, obviously. If
28 the lot was bigger, I would -- we wouldn't be

1 having this conversation. If I put the house or
2 the cabin somewhere else.

3 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

4 We don't ever get any easy lots.

5 MR. MICHAEL THOMPSON:

6 I understand. I understand. But I'll do
7 whatever it takes to get it like y'all want it.
8 But I'm just trying -- I'm hoping I can just do
9 and have one piling in the wetlands. We'll have
10 a pier next to it. Obviously I'll have a new
11 pier.

12 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

13 Oh, sure.

14 MR. MICHAEL THOMPSON:

15 But I'm going to be -- I think the zoning
16 is an AE, I think it was called. It has to be 8
17 foot high off the mean high tide. I believe
18 that's what it is.

19 MS. LINDA LEE:

20 That's your flood elevation. That's not
21 zoning.

22 MR. MICHAEL THOMPSON:

23 Okay. That will be 6 foot tall. So I
24 mean, I'm going to be 8 foot tall, 9 foot,
25 whatever it is. But, you know, if I can, I want
26 to do that. If I can't, I won't.

27 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

28 Let me clarify something in my mind.

1 That particular original drawing, the east west
2 is 35 and the north south 45; is that correct?

3 MR. MICHAEL THOMPSON:

4 It's 30 -- it's 45 foot east west and 35
5 foot north south.

6 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

7 In that one where you --

8 MR. MICHAEL THOMPSON:

9 Yes.

10 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

11 This is the porch.

12 MR. MICHAEL THOMPSON:

13 Yeah. The porch is 12 by --

14 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

15 You said you changed it to 45 by 35.

16 What --

17 MR. MICHAEL THOMPSON:

18 No, no. No. The house is still 45 by
19 35, but the porch, instead of being the full
20 length of the house, the 45, I can cut it back to
21 35.

22 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

23 So it stays the same?

24 MR. MICHAEL THOMPSON:

25 By moving the house closer to the
26 property line, it will be very little in the
27 wetlands, but it will be one piling in the
28 wetland.

1 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

2 Either you're going to lose some trees or
3 you're going to lose some porch. It's kind of a
4 decision that you're going to have to make
5 because --

6 MR. MICHAEL THOMPSON:

7 No. I'm not going to -- I'm going --
8 I've got -- do you have the one with the spot of
9 the trees? I had my guy go out.

10 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

11 No, I don't think you gave us that.

12 MR. MICHAEL THOMPSON:

13 I had him go out and spot all the trees.
14 I wanted to know exactly where the trees were.

15 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

16 Oak, oak, oak and hickory on the corner
17 of the house.

18 MR. MICHAEL THOMPSON:

19 Hickory on the front.

20 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

21 On the setback? The back setback?

22 MR. MICHAEL THOMPSON:

23 I'm going to build around that. I'm
24 going to put the house right there, but I'm going
25 to cut back the house here and here to save some
26 trees. Live oaks are right here. There's trees
27 all -- it's small trees all along here.

28 That's why we want to get it closer

1 (inaudible) move the trees and get closer. But
2 that's why I moved it over from -- we moved the
3 lot over here. That way that's 45 foot. If I
4 cut back to 35 foot, the corner of this right
5 here will be one piling.

6 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

7 Okay. Okay. Let me send this back the
8 other way. That's showing the trees. Any other
9 questions of Mr. Thompson? Board members?

10 (No response.)

11 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

12 Mr. Thompson, I think we understand what
13 you want to do, and if we're not, I'll come back
14 to you outside the public session. Yes, sir,
15 thank you.

16 MR. MICHAEL THOMPSON:

17 Thank y'all. Appreciate it.

18 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

19 Now also signed up to speak in V-190028
20 is Martha Howard. Martha, if you would, please,
21 come up. Give us your name and your connection
22 and involvement with the property.

23 MS. MARTHA HOWARD:

24 My name is Martha Howard, and my daughter
25 and I own a home on Council Lane that actually
26 happens to be exactly across the street from this
27 property.

28 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

1 On the --

2 MS. MARTHA HOWARD:

3 Directly across on the bay side. I am
4 opposed to both setbacks, both approvals. Since
5 2000 I've watched the water rise in that bayou to
6 cover a good portion of that lot. So I've seen
7 it be pretty soggy and pretty wet.

8 If we're talking about a normally -- a
9 setback normally 30 feet from the wetlands and
10 his house is only 35 feet wide, then in
11 actuality, it would be 5 feet from the edge, and
12 the 10 foot setback, if it were the regular
13 setback, you'd end up at zero house.

14 There's really just not room to build a
15 home on that property. The other thing about it
16 is Council Lane, if any of you have ever been
17 down that street, is a very narrow one car wide
18 lane. One car. In fact, when we go up and down
19 the street, if you meet someone, you have no
20 choice but to pull over basically in someone
21 else's yard in order to let that car pass.

22 And I don't think anybody is ever going
23 to widen that street to tell you the truth. So I
24 think that's always going to be an issue. In
25 this case if he's only 10 feet, then that's going
26 to be a little difficult. And I imagine if I
27 have to pull over to let Linda Hutchison by, I
28 don't know, you may get tired of us driving in

1 his yard like that just as the neighborhood goes.

2 But the other thing that concerns me is
3 the precedent the 10 foot setback would set.

4 Because there are three other lots, larger lots,
5 on that street on the south side that are for
6 sale, and I feel like if we approve a 10 foot
7 setback that that sets a precedent for whoever
8 might buy those others as well, and then we have
9 four homes that could conceivably be just right
10 there.

11 I think it's a bad precedent. And for
12 the wetlands, too, in that area. I think it's a
13 sensitive wetland area in that little bayou.
14 Lots and lots of beautiful wildlife there, which
15 I understand one of the reasons he wants to be on
16 Council Lane. It's a beautiful, beautiful place.
17 But I don't think a building of that size is good
18 for that property at all, and those are my
19 objections.

20 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

21 Any questions of Ms. Howard by any board
22 members? Comments?

23 (No response.)

24 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

25 Ms. Howard, thank you for your time. We
26 appreciate you coming.

27 MS. MARTHA HOWARD:

28 Thank you.

1 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

2 Thank you very much. I'll now close the
3 public portion of V-190028, the Fisher property,
4 and I'll open the discussion with board members
5 on what they're trying to do. I believe that we
6 did hear at least one comment that board members
7 may want to consider, and that's if you approve
8 the variance request on what's he attempting to
9 do, you have to decide what you want to do with
10 the porch, whether it's 35, and obviously moving
11 over the -- we don't have a drawing. We don't
12 have a map. We don't have --

13 BOARD ADJUSTMENT MEMBER ERNIE CHURCH:

14 There's one with the porch cut out.

15 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

16 Yeah, the porch is cut out on one of
17 them. But the precedent of not having this
18 happen again on future lots might be something
19 worth considering. Depends on what the board
20 wants to do. Comments?

21 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

22 My comment is it's a very, very unique
23 lot. It's hard to place given the size and shape
24 of the lot a home on it without causing some
25 issue with the wetlands or setbacks for any
26 reasonably sized home. Really his home is only
27 1,500 square foot plus another 500.

28 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

1 Yeah.

2 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

3 It seems to me that would qualify as some
4 sort of hardship, am I right, Ms. Lee, the land
5 and the lot itself being shaped the way it is?

6 MS. LINDA LEE:

7 The shape of a lot as well as the
8 wetlands, yes, sir.

9 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

10 Both of them. It's two hardships
11 basically. Well, I guess you could take it a
12 step further and say the trees, too, because he's
13 trying to save the trees too. We don't want to
14 cut down trees. So there are some hardship
15 issues here for sure.

16 Are the board members understanding what
17 he's trying to do in terms of moving the house
18 back and forth and trying to accommodate not only
19 the impact of the wetlands with the porch? Mr.
20 Mitchell.

21 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

22 I think I understand the wider porch
23 vis-a-vis the narrower one, but I don't know
24 where the house -- I don't see where the house is
25 changing position. I don't understand that.

26 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

27 Move 12 feet to the --

28 BOARD ADJUSTMENT MEMBER SAMUEL MITCHELL:

1 Sir?

2 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

3 -- east.

4 MS. JOHANNA MOLONEY:

5 Where it says 27 feet over 15.

6 BOARD ADJUSTMENT MEMBER SAMUEL MITCHELL:

7 I understand the cutting up of -- thank
8 you.

9 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

10 Did that answer your question?

11 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

12 Yes, sir.

13 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

14 Yeah, the 28 becomes 40 and the 27
15 becomes 15.

16 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

17 Now the issue is going to be for the
18 board on how to make a motion without having a
19 drawing or a plot plan. Ms. Lee, do you have any
20 suggestions?

21 MS. LINDA LEE:

22 Your motion would be to approve the
23 revised site plan that he submitted based on
24 whichever one of those two you're wanting to
25 approve. And you can always state exactly what
26 setbacks you're granting.

27 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

28 That's the revised. All right.

1 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

2 Mr. Chairman, I have a question. I'm not
3 sure why we need any revision if we just approved
4 it the way that the staff has recommended. Does
5 that cause any cut down of trees or any such of
6 that on page 33 of 69? Staff recommends the case
7 of Fisher property --

8 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

9 You mean 44?

10 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

11 -- based on comments contained herein.
12 That's what you just showed me a moment ago and
13 what I have here. The staff approval seems to me
14 to be just fine.

15 MS. LINDA LEE:

16 Okay. Mr. Chairman, do you want me to
17 answer?

18 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

19 Please.

20 MS. LINDA LEE:

21 The applicant is asking to move it
22 because when he went to the Fort Morgan Advisory
23 Committee and their recommendation was not to
24 construct anything in the wetlands. So he was
25 trying to appease them and move the house farther
26 to the east and -- well, pretty much that's all
27 he could do.

28 And then the question came on whether or

1 not y'all would allow him to have one piling of
2 the porch in the wetlands or would he have to cut
3 his porch off in order to be completely -- the
4 structure to be completely out of the wetlands.
5 He's going to need a variance from our wetlands
6 setback requirement as well as the rear setback,
7 but the revised site plan moves the house to the
8 east.

9 And just so we're clear, this is a pile
10 supported structure. There is no fill being
11 brought in, is my understanding. Because if he
12 was bringing fill, the Corps would be required.
13 But the Corps will allow a possible structure
14 over the wetlands. So his porch was going to
15 be -- I believe he said one piling with this
16 new --

17 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

18 One piling.

19 MS. LINDA LEE:

20 -- site plan. One piling would be in the
21 wetlands unless you all say nothing can be over
22 the wetlands and you tell him to cut that porch
23 off. So he gave you two options, I believe, as
24 to which way to go.

25 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

26 This is -- what we're saying, we
27 understand that we would be making a motion on --

28 MS. LINDA LEE:

1 Well, you have that one and the other
2 one. I don't know which one you all want to --
3 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

4 This is the one --

5 MS. CELENA BOYKIN:

6 With one piling in the wetlands.

7 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

8 One piling in the wetlands.

9 MS. LINDA LEE:

10 Yes, if you all are okay with it.

11 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

12 All right. This is what we're going to
13 check. Any issues with this one right here?

14 (Inaudible discussion between board members.)

15 BOARD OF ADJUSTMENT MEMBER JOHANNA MOLONEY:

16 No.

17 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

18 Okay?

19 BOARD OF ADJUSTMENT MEMBER ROBERT BROSEUS:

20 That's good.

21 BOARD OF ADJUSTMENT MEMBER JOHN HILDERBRANDT:

22 I'm good.

23 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

24 And this is the one with not more than
25 one piling?

26 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

27 That's right.

28 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

1 Yes, sir. Okay.

2 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

3 Okay. Then I will entertain a motion
4 from the board to approve the variance request
5 based on the revised layout that the board agreed
6 to.

7 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

8 So moved.

9 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

10 Do we have a second?

11 BOARD OF ADJUSTMENT MEMBER JAMES KOEPPEN:

12 Second.

13 BOARD OF ADJUSTMENT MEMBER JOHANNA MOLONEY:

14 I second.

15 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

16 Okay. Any other discussion?

17 (No response.)

18 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

19 I think that we have done the best that
20 we can do. Ms. Lee, do you have anything to add?

21 MS. LINDA LEE:

22 No, sir.

23 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

24 All right. I'll submit this as the
25 revised plan per the board, and I'll ask for you
26 to please -- any other discussion or questions?

27 MS. LINDA LEE:

28 I apologize --

1 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

2 Do we need to put not more than one
3 piling in the wetland?

4 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

5 I think that's the way he wants to build.
6 That's what he wants to do.

7 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

8 Okay.

9 MS. LINDA LEE:

10 Mr. Chairman.

11 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

12 Yes, ma'am.

13 MS. LINDA LEE:

14 Did anyone make a second?

15 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

16 Yes.

17 MS. LINDA LEE:

18 Mr. Koeppen.

19 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

20 Now the only other question that I have
21 is does the board want to amend the motion to
22 limit any further setbacks for the other lots
23 that are --

24 MS. LINDA LEE:

25 The board can't make any motion as far as
26 other lots in that subdivision. Those --

27 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

28 That's right.

1 MS. LINDA LEE:

2 -- would have to come and ask for their
3 own variances.

4 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

5 We'll fight that fight another day.

6 MS. LINDA LEE:

7 Each case is heard on its own merits.

8 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

9 All right. Ms. Lee, could we please have
10 a roll call vote.

11 MS. LINDA LEE:

12 Yes, sir. Mr. Mitchell.

13 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

14 Approve.

15 MS. LINDA LEE:

16 Mr. Koeppe.

17 BOARD OF ADJUSTMENT MEMBER JAMES KOEPPEN:

18 Approve.

19 MS. LINDA LEE:

20 Mr. Broseus.

21 BOARD OF ADJUSTMENT MEMBER ROBERT BROSEUS:

22 Approve.

23 MS. LINDA LEE:

24 Ms. Bodree.

25 BOARD OF ADJUSTMENT MEMBER JOANNE BODREE:

26 Approve.

27 MS. LINDA LEE:

28 Mr. Church.

1 BOARD ADJUSTMENT MEMBER ERNIE CHURCH:

2 Approve.

3 MS. LINDA LEE:

4 Ms. Moloney.

5 BOARD OF ADJUSTMENT MEMBER JOHANNA MOLONEY:

6 Approve.

7 MS. LINDA LEE:

8 Mr. Hilderbrandt.

9 BOARD OF ADJUSTMENT MEMBER JOHN HILDERBRANDT:

10 Approve.

11 MS. LINDA LEE:

12 Mr. Arnold.

13 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

14 Approve.

15 MS. LINDA LEE:

16 Motion carries.

17 5-C CASE NO. V-190029, FENDLEY PROPERTY

18 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

19 All right. Now we'll move to the next
20 agenda item which is V-190029, Fendley property,
21 and Ms. Bates will be making that presentation.

22 MS. CRYSTAL BATES:

23 The applicant is requesting approval of a
24 variance from the rear setback requirement for a
25 garage addition which is going to be the road
26 side. The subject property is located at 10446
27 Beaulieu Lane Planning District 33. The subject
28 property is zoned residential single family one.

1 Here's a picture of the aerial
2 photography. The applicant is requesting a 15
3 foot rear property line variance to allow for an
4 addition of an attached car garage to the house.

5 Per the submitted survey, the proposed
6 attached garage will be 15 foot to the rear
7 property line and would meet the 40 foot highway
8 construction setback from the center line of the
9 right-of-way and will meet the 10 foot side
10 setback.

11 Here's the site plan showing they want to
12 be 15 foot to the rear property line, and the
13 setback is 30 feet, so they can build a two car
14 attached garage to the house. It's going to be
15 26.7 feet in width. Here it is zoomed in a
16 little bit so you can read it. Picture of the
17 subject property.

18 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

19 Go back to one slide back, please.

20 MS. CRYSTAL BATES:

21 They're wanting to come out right there
22 where the --

23 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

24 I'm seeing the little four-wheeler and
25 the white SUV actually being what they're going
26 to be calling a garage if it's approved?

27 MS. CRYSTAL BATES:

28 Yes, sir.

1 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

2 Thank you.

3 MS. CRYSTAL BATES:

4 There's several pictures of the --

5 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

6 Right.

7 MS. CRYSTAL BATES:

8 -- rear side in the report. Here's the
9 property adjoining to the south which is owned by
10 them as well. The adjoining property to the
11 north. The applicant hasn't submitted any
12 information supporting a hardship on the land.
13 Therefore, staff recommends case number V-910029,
14 Fendley property, to be denied.

15 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

16 Ask you a question. This may be a
17 question for Ms. Lee. I don't remember from some
18 of my reading. Is there such a thing as a
19 reverse hardship on the land? Because if you're
20 so close to the road and you're blocked in by a
21 structure, how in the world do you get in and
22 out? That would actually be a reverse hardship.
23 Because right now it's wide open. You can see.
24 But if you --

25 MS. LINDA LEE:

26 I need a better understanding of what you
27 mean by reverse hardship.

28 MS. CRYSTAL BATES:

1 Right now it meets zoning. It's 41.7
2 foot to the rear property line.

3 MS. LINDA LEE:

4 Seems no matter how hard I try, I have to
5 speak on just about every case we have, but I'm
6 going to say this.

7 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

8 That's my fault for not being more
9 knowledgeable.

10 MS. LINDA LEE:

11 Okay. There is a dwelling there. So his
12 property rights are there. The dwelling is
13 there. Wanting to add a garage in my opinion is
14 more of a convenience. There is a highway
15 construction setback of 40 feet from the center
16 of the right-of-way.

17 So anything he adds would basically have
18 to stop right there. Because normally he could
19 have in his rear yard a detached garage 5 feet
20 from his property.

21 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

22 That's right.

23 MS. LINDA LEE:

24 But he would have to meet the highway
25 construction setback. And in this particular
26 case, he would not be able to meet that. So
27 either way if he gets this garage it would be
28 touching that house. So it's going to be

1 attached. I'm not sure if I understood a reverse
2 hardship.

3 Basically you have a hardship on the
4 land. And you've seen the standards in your
5 zoning ordinance as to whether or not, you know,
6 this request meets it. It would be different if
7 there was not a dwelling already there and they
8 were trying to build something --

9 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

10 Right.

11 MS. LINDA LEE:

12 -- and they could not meet, you know,
13 setbacks.

14 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

15 Right.

16 MS. LINDA LEE:

17 But an addition of a garage is not
18 necessarily a necessity because they have a house
19 there. I mean, I'm sure he wants it for a
20 reason. Wants to park his cars in it, but it's
21 not something that can't do without because cars
22 are currently parked outside.

23 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

24 Thank you. Any questions of Ms. Bates?

25 (No response.)

26 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

27 Ms. Bates, thank you for your
28 presentation. And we have signed up to speak --

1 I'm going to open the public portion on V-190029,
2 Fendley property. Signed to speak is Jeff
3 Fendley. Mr. Fendley, if you could come up
4 front, please, and tell the reporter your name
5 and your connection to the property.

6 MR. JEFF FENDLEY:

7 My name is Jeff Fendley, and I'm the
8 owner of the property. I guess it's my
9 understanding that I can build a garage there
10 without a variance as long as it's not touching
11 the house in the same location. Is that the way
12 that I'm understanding that? Because it was 5
13 foot setback from either side.

14 MS. LINDA LEE:

15 Well, like I just said, if you detach it,
16 you would have to meet the highway construction
17 setback, and from what I've seen, you're just
18 exactly meeting that.

19 MR. JEFF FENDLEY:

20 I am.

21 MS. LINDA LEE:

22 So you don't really have any room to
23 detach it from the look of things.

24 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

25 Unless it was smaller.

26 MS. LINDA LEE:

27 Well, if it was smaller.

28 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

1 If it was smaller, then you would be --

2 MS. LINDA LEE:

3 Then he would be.

4 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

5 You could be detachable.

6 MR. JEFF FENDLEY:

7 Well, how far is detachable? A foot?

8 Six inches?

9 MS. LINDA LEE:

10 Well, you know, that comes up all the
11 time, and I have, you know, told the planning
12 director I think we need to amend the zoning
13 order to state. Because you do have safety
14 issues. But as of today, there is nothing in the
15 zoning ordinance that says how far it has to be.

16 Now building code may require it to be a
17 certain amount of feet from the dwelling. I
18 don't know. That's, you know, a building
19 official question. But I can say this. In other
20 districts we have had architects detach it one
21 foot and they have had a high roof and a low roof
22 and technically it was detached.

23 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

24 Is that possibly a consideration? Now
25 this is the public portion. So it's your
26 opportunity to speak, but I'm --

27 MR. JEFF FENDLEY:

28 It is. It just would make it look really

1 (inaudible) with three sided and built
2 (inaudible) the other property or the dwelling
3 that's there.

4 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

5 Well, there's a strong possibility, you
6 stick with what you've got here, that you're not
7 going to get it at all because of no hardship on
8 the land.

9 MR. JEFF FENDLEY:

10 Yeah, I guess I don't follow the hardship
11 thing but --

12 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

13 Right.

14 MR. JEFF FENDLEY:

15 -- that's -- it's convenience. I'm
16 trying to beautify the place. It's an older
17 home. Trying to make it look a little better and
18 I'm trying to add some things to it to make it
19 look better. So I guess I wouldn't need the
20 variance if I detach it by a foot. So I could
21 put it in the same exact place because I can meet
22 all the setbacks.

23 MS. LINDA LEE:

24 You could probably make it a foot smaller
25 in order to be --

26 MR. JEFF FENDLEY:

27 Well, I could just bring it off the edge
28 of the house a foot, because I still meet

1 everything going the other way.

2 MS. LINDA LEE:

3 I'm just saying the dimensions you
4 currently show you're exactly meeting it. So if
5 you bring it out a foot then maybe you could go
6 up to that small. That's all I'm saying.

7 MR. JEFF FENDLEY:

8 That's correct.

9 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

10 Right. That's what I was saying. Didn't
11 you understand that you would have to change the
12 dimensions of the construction?

13 MR. JEFF FENDLEY:

14 I would just have to separate the -- I
15 guess it wouldn't change -- it would still be
16 that dimension off the house to the outside wall.
17 I would just be cutting off a foot of the walk
18 from the house out to the edge of the garage. So
19 basically -- it's hard to see --

20 MS. LINDA LEE:

21 I was going to try to find --

22 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

23 Put back the other one, please. I
24 think -- I think we both understand.

25 MS. LINDA LEE:

26 You want that?

27 MR. JEFF FENDLEY:

28 That's fine.

1 MS. LINDA LEE:

2 You don't want that one?

3 (Unintelligible discussion.)

4 MS. LINDA LEE:

5 The complete thing would be detached.

6 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

7 Right. It would --

8 MS. LINDA LEE:

9 It would have a wall. It would have a
10 separate wall.

11 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

12 Basically be free-standing.

13 MS. LINDA LEE:

14 And the only thing I went back to show
15 you all was --

16 MR. JEFF FENDLEY:

17 Basically three sided basically is what
18 it would be.

19 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

20 And two doors.

21 MS. LINDA LEE:

22 No. You would have -- well, yeah, three
23 sides. Yeah, because you've to put a wall there
24 when you detach that. Am I making sense?

25 MR. JEFF FENDLEY:

26 Wouldn't that be like an open carport as
27 well? I don't think you would have to put that
28 third wall.

1 MS. LINDA LEE:

2 That's up to you, I guess. I'm --

3 MR. JEFF FENDLEY:

4 The building code doesn't --

5 MS. LINDA LEE:

6 Mr. Fendley owns this parcel and this
7 parcel. You can see his driveway curves around
8 there. So he does have -- he cannot put that
9 garage on that separate parcel by itself. You
10 would have to combine them. But he does have
11 some other areas of his property he might --

12 MR. JEFF FENDLEY:

13 I guess the only -- my kitchen and
14 everything else is on that side of the house. So
15 parking there is just like we're parking now.
16 We're toting --

17 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

18 Basically that's what I said earlier.
19 Where the four-wheeler and white SUV is parked,
20 that's where they're planning on putting the
21 garage.

22 MR. JEFF FENDLEY:

23 That's correct.

24 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

25 Okay. If you just change it, then this
26 entire process today is a moot point, if you
27 change to a detached --

28 MR. JEFF FENDLEY:

1 That's correct.

2 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

3 -- structure. So that's your choice to
4 tell us.

5 MS. LINDA LEE:

6 Okay. Just for the record, you all need
7 to vote. If you decide to deny him, then he has
8 the option to detach. But there has been a
9 variance application submitted. You all need to
10 vote on it.

11 MR. JEFF FENDLEY:

12 Everybody in the neighborhood says fine.
13 There ain't nobody here today to say --

14 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

15 Okay. Do you understand what we're
16 getting ready to do?

17 MR. JEFF FENDLEY:

18 I understand you're getting ready to
19 vote.

20 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

21 Vote to deny your request which would
22 give you an opportunity just to turn around and
23 make it a detached one foot from the house.

24 MS. LINDA LEE:

25 With all due respect, Mr. Chairman --

26 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

27 Yes, ma'am.

28 MS. LINDA LEE:

1 -- you cannot say that you all are going
2 to vote to deny because you cannot speak for the
3 rest of the board.

4 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

5 I'm sorry. I apologize.

6 MS. LINDA LEE:

7 No problem.

8 MR. JEFF FENDLEY:

9 I guess that makes sense. I can build it
10 in the same location and detached, not attached.

11 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

12 You have to be detached.

13 MR. JEFF FENDLEY:

14 By what it says without a variance, I
15 have to be detached.

16 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

17 That's right.

18 MR. JEFF FENDLEY:

19 With a variance I can be attached. I can
20 put the blocks over to the edge of the house and
21 be --

22 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

23 If it's approved.

24 MR. JEFF FENDLEY:

25 If it's approved. And I'm on the end of
26 the cul-de-sac. There's nobody else there. I
27 mean, I guess I don't understand why it would
28 have to be detached or not.

1 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

2 Got you. Any other questions of Mr.
3 Fendley?

4 (No response.)

5 BOARD OF ADJUSTMENT CHAIRMAN STUART FENDLEY:

6 Thank you, Mr. Fendley. I hereby close
7 the public portion of V-190029. I'll ask the
8 board if you have any further discussion on this
9 case, or, if not, then I'll ask for a motion.

10 BOARD OF ADJUSTMENT MEMBER JOHANNA MOLONEY:

11 I make --

12 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

13 Hello?

14 BOARD OF ADJUSTMENT MEMBER JOHANNA MOLONEY:

15 I make a motion we deny the request.

16 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

17 Ms. Moloney makes a motion we deny the
18 request.

19 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

20 Second.

21 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

22 Mr. Mitchell seconds it. Do we have any
23 further discussion on this garage?

24 (No response.)

25 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

26 All right. Ms. Lee, could you please
27 give us a roll call vote.

28 MS. LINDA LEE:

1 Yes, sir. Please remember a vote of yes
2 is to deny. A vote of no is not to deny. And it
3 takes six affirmative votes on the motion for it
4 to carry. Mr. Mitchell.

5 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

6 Yes.

7 MS. LINDA LEE:

8 Mr. Koeppen.

9 BOARD OF ADJUSTMENT MEMBER JAMES KOEPPEN:

10 Yes.

11 MS. LINDA LEE:

12 Mr. Broseus.

13 BOARD OF ADJUSTMENT MEMBER ROBERT BROSEUS:

14 Yes.

15 MS. LINDA LEE:

16 Ms. Bodree.

17 BOARD OF ADJUSTMENT MEMBER JOANNE BODREE:

18 Yes.

19 MS. LINDA LEE:

20 Mr. Church.

21 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

22 Yes.

23 MS. LINDA LEE:

24 Ms. Moloney.

25 BOARD OF ADJUSTMENT MEMBER JOHANNA MOLONEY:

26 Yes.

27 MS. LINDA LEE:

28 Mr. Hilderbrandt.

1 BOARD OF ADJUSTMENT MEMBER JOHN HILDERBRANDT:

2 Yes.

3 MS. LINDA LEE:

4 Mr. Arnold.

5 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

6 Yes.

7 MS. LINDA LEE:

8 Motion carries to deny.

9 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

10 Thank you.

11 MS. LINDA LEE:

12 I will for the record state any party
13 aggrieved by a final decision of the board may
14 within 15 days after the decision is made file an
15 appeal to the Circuit Court of Baldwin County and
16 to the Baldwin County Planning and Zoning
17 Department on behalf of the Board of Adjustment
18 for Baldwin County Commission District 4. Said
19 copy must be submitted to our Robertsedale office
20 no later than 4:30 on that 15th day.

21 5-D CASE NO. V-190030, JOHNIE HENRY KUGLAR

22 REVOCABLE TRUST PROPERTY

23 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

24 Moving right along. Move on to case
25 number V-190030, the Johnie Henry Kuglar
26 property. And, Ms. Lee, are you doing this one?

27 MS. LINDA LEE:

28 Yes, sir. You know I always get the fun

1 ones.

2 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

3 Yes, you do.

4 MS. LINDA LEE:

5 All right. The applicant is requesting a
6 variance from off-street parking requirements in
7 order to reduce the required number of parking
8 spaces from 54 to 36. The applicant is
9 also requesting a variance from jurisdictional
10 wetlands setback requirements.

11 The subject property is located 9704
12 State Highway 180 in Planning District 25. The
13 property is zoned B3, general business district.
14 This is your aerial photography from 2017.

15 This is the proposed site plan that was
16 submitted, and it says with the variance but it
17 was actually a revised site plan submitted after
18 the Fort Morgan Advisory Committee met and we
19 determined that the wetlands setback variance was
20 going to be necessary.

21 The current required parking ratio for
22 commercial establishments is one space for each
23 200 square feet of gross floor area. This will
24 result in a requirement of 54 off-street parking
25 spaces for the proposed discount variety store.
26 According to the information provided, the
27 proposed tenant is not considered a destination
28 store.

1 And by that I mean someone in Gulf Shores
2 is not going to get in their car and drive all
3 the way down to Fort Morgan to go to the store.
4 People going to the store will be the ones that
5 are already there in the area. Customers
6 typically spend small amounts of time within
7 these stores, and the parking lots are rarely, if
8 ever, full.

9 As a result the applicant has proposed
10 constructing 36 spaces which would represent a
11 ratio of one space for each 300 square feet of
12 gross floor area. This appears to be consistent
13 with the applicant's experience regarding the
14 parking needs for different store formats and
15 store sizes.

16 According to the submitted site plan,
17 jurisdictional wetlands cover the southern
18 portion of the proposed site and two areas in the
19 north portion. The purpose of this request is to
20 reduce the impact to wetlands and for the Alabama
21 beach mouse habitat of the proposed retail
22 development. The Fort Morgan Advisory Committee
23 recommended approval of the reduction in parking
24 spaces.

25 From the information received since that
26 meeting, the vote for the wetland setback
27 variance appears to be two in favor, two against,
28 and one absentia. And you all received packages

1 today showing you that information. In your
2 packets today are comments from the Corps of
3 Engineers, ADEM, and US Fish & Wildlife.

4 And I must apologize. I was coming back
5 from vacation finding a lot in a short period of
6 time, and I left the Corps of Engineers and ADEM
7 comments out of your staff report. Fish &
8 Wildlife comments came in afterwards.

9 In the staff report is a copy of comments
10 from the Strategiers. They are residents in the
11 Fort Morgan area. There's also an e-mail
12 containing comments from adjacent property owner
13 stating he was not opposed to the variance for
14 parking but doesn't want a store across the
15 street.

16 This site plan is the site plan that was
17 originally submitted, and it shows the parking
18 area, and it shows the wetlands pretty much on
19 the parking area. So staff contacted the
20 applicant, and they submitted this site plan
21 showing the wetlands and the 30 foot setback
22 around the wetlands that are on the property.

23 These wetlands, they're going to be 30
24 feet from these wetlands -- the parking area.
25 Those -- that one over there is 30 feet. This
26 one, there's a very tiny little portion that goes
27 into that 30 foot setback requirement.

28 And on this one, as you can see, the

1 parking lot touches wetlands. So they would need
2 a complete variance from that wetland setback
3 requirement. It is my understanding, and the
4 applicant can speak to this, this is what the
5 Corps of Engineers wants them to do as far as
6 they want to limit the impact to the wetlands.

7 And so they did not want them to fill
8 that portion that was not going to be in the
9 parking area. They wanted to leave them as they
10 are. This is the survey of the property, and it
11 just shows the two areas of wetlands on the north
12 side and wetlands on the south side.

13 These are pictures of the subject
14 property, the adjoining property to the east,
15 adjoining property to the west. Staff does feel
16 that the wetlands and the Alabama beach mouse are
17 hardships on the land, and staff recommends
18 approval of both requested variances. And I'll
19 answer any questions you may have for me.

20 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

21 Was there a reason why we did not have
22 the original and the survey in our packets?

23 MS. LINDA LEE:

24 Because it's a big survey, and, once
25 again, staff was in a hurry and forgot.

26 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

27 Okay. I was thinking more of the
28 original application to compare what we did have.

1 MS. LINDA LEE:

2 This is what was in the application
3 originally. This is what they have --

4 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

5 Right.

6 MS. LINDA LEE:

7 -- submitted since.

8 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

9 Right.

10 MS. LINDA LEE:

11 And that came in -- I think that's what
12 y'all have in your packet.

13 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

14 That's what we got. We don't have the
15 original.

16 MS. LINDA LEE:

17 So I apologize.

18 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

19 We didn't have this one. So we --

20 MS. LINDA LEE:

21 I'm not making excuses with you all. I
22 was gone for two weeks, and I basically had four
23 days to meet, send out certified mail, do staff
24 reports, and I just forgot. That's the only
25 reason.

26 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

27 Any other questions of Ms. Lee?

28 (No response.)

1 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

2 Thank you, Ms. Lee.

3 MS. LINDA LEE:

4 You're welcome.

5 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

6 And before we -- before I open up the
7 public portion, I do want to ask a question of
8 one of our board members. And that is that we
9 have a board member who was at the meeting of the
10 group on Fort Morgan and has asked that all the
11 board members read the comments that were
12 presented by the Strategiers, and that's --

13 MS. LINDA LEE:

14 That was in your staff report.

15 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

16 Excuse me?

17 MS. LINDA LEE:

18 That was in your staff report.

19 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

20 Yes, it it. But I want to ask Mr. Church
21 why he requested that we make sure that we
22 read --

23 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

24 I just felt it was appropriate because
25 they were in opposition to the variance request.
26 I wanted to make sure that the opposition was
27 known.

28 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

1 Okay. Thank you. I now open the public
2 portion of V-190030, Johnnie Henry Kuglar
3 property. And we have signed up to speak Alyssa
4 Carter.

5 MS. ALYSSA CARTER:

6 Alyssa.

7 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

8 Alyssa. I'm sorry, Alyssa.

9 MS. ALYSSA CARTER:

10 It's okay.

11 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

12 You come up and share with the reporter
13 your name and your connection to the property,
14 please.

15 MS. ALYSSA CARTER:

16 My name is Alyssa Carter, and I am the
17 applicant with the Broadway Group. I did before
18 y'all got here passed out a little presentation
19 that I made in connection to our variance
20 request. As you know, we have a really hardship
21 here with the beach mice and the wetlands
22 covering this property.

23 We've done the best that we can to fit
24 the needs of the residents and the traveling
25 people coming down to Fort Morgan to build this
26 store. I have also in the packet included a
27 letter from our tenant who for this size store we
28 typically only need 35 parking spaces.

1 And in that letter, they, you know, give
2 why we only need 35. They said this store
3 averages 15 to 20 transactions per hour and that
4 35 spaces will accommodate the customer flow. So
5 we've seen that in previous stores.

6 And, too, with the wetlands, we've been
7 working with ADEM, Army Corps, and this is kind
8 of what they want us to do. They would like us
9 to drain toward that top wetland and then what we
10 don't fill in with the wetland that goes in the
11 drive aisle they want us to leave available.

12 So we have been working very hard with
13 everyone on this. We are also working with Gulf
14 State Park to get the driveway easement because
15 they do own part of the right-of-way right there,
16 and we also have been in contact with ALDOT
17 because I know that there are some traffic
18 concerns.

19 But like Ms. Lee stated, this isn't a
20 destination store. It is just to accommodate the
21 people that are already out there. So the people
22 who are normally driving by, they will just stop
23 at this store and shop. That's all.

24 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

25 Was this your only site purchase
26 consideration?

27 MS. ALYSSA CARTER:

28 No. We looked at other areas around this

1 subject property, but we found that this one was
2 the best for what we're trying to do.

3 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

4 We did have one comment that one of the
5 board members had, and that is that there is a
6 fire issue and would it be reasonable to assume
7 or request that the Broadway Group would, in
8 fact, put in a hydrant so that the distance,
9 which is currently a pretty good piece to the
10 closest hydrant -- I don't know how the fire
11 district works in that particular area, but that
12 would be a consideration that we could obviously
13 want to explore.

14 MS. ALYSSA CARTER:

15 Yes, we can consider that for sure. You
16 know, we want to make it safe for everyone as
17 well.

18 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

19 Any comments or questions of -- I'm
20 sorry.

21 MS. ALYSSA CARTER:

22 Alyssa.

23 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

24 Alyssa.

25 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

26 Just a clarification. The total package
27 you're purchasing is 13 acres; is that correct?

28 MS. ALYSSA CARTER:

1 No. We are going to be subdividing this
2 property once we get done dealing with Fish &
3 Wildlife and ADEM and Army Corps. Just because
4 right now with Fish & Wildlife, our disturbed
5 footprint, the whole development including
6 parking and detention and everything, we got to
7 see what they would like us to mitigate for the
8 beach mouse.

9 Right now we have planned for the trees
10 and some of the brush on the right-of-way to be
11 kind of cleaned up a little bit, not destroying
12 it completely but cleaned up. And we will have
13 to be doing some mitigation there for a period of
14 five years trapping and releasing the beach
15 mouse.

16 So we are in lots of conversations with
17 them right now, and it's very -- an interesting
18 subject that I'm learning about as well.

19 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

20 Very well put, Ms. Carter. Very well
21 put. Did that answer your question?

22 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

23 Some of the unused acreage may be for
24 mitigation?

25 MS. ALYSSA CARTER:

26 Yes. So we will -- in our talks with
27 Fish & Wildlife as well, they wanted us to, you
28 know, scoot close to the property line as

1 possible. So the area below where the number
2 seven is could be foot traffic for the beach
3 mouse, and we will have areas roped off with
4 signs that that say protected habitat Alabama
5 beach mice.

6 So we're not trying to, you know,
7 instigate people to park in the sand dunes
8 because we can't develop that. We're trying to,
9 you know, conserve it and make it okay for the
10 beach mouse.

11 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

12 I don't know how to ask this question.
13 So I'm going to ask it oddly.

14 MS. ALYSSA CARTER:

15 Okay.

16 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

17 And hopefully you can answer it. But
18 obviously you would not be doing this if there
19 weren't a marketing study done. And how far is
20 the closest similar facility to the one y'all are
21 wanting to build?

22 MS. ALYSSA CARTER:

23 I think the -- and my engineer is here,
24 and he can correct me if I'm wrong. I think the
25 closest one in size is actually in Gulf Shores
26 right there by the Hangout. I do believe that's
27 the closest one similar in size.

28 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

1 There's one at Fort Morgan Road.

2 MS. ALYSSA CARTER:

3 I think that one is a smaller -- a little
4 bit smaller.

5 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

6 Oh, I see. May be smaller ones of Dollar
7 General.

8 MS. ALYSSA CARTER:

9 Yes. Yes.

10 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

11 Any other questions of Ms. Carter?

12 (No response.)

13 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

14 Thank you, Ms. Carter. We have now next
15 signed up to speak Joel Garrett. Joel, if you
16 could please come up front and share your name
17 with the recorder and your connection with the
18 property, please.

19 MR. JOEL GARRETT:

20 I'm Joel Garrett, civil engineer for the
21 Broadway Group. And I've -- this is one of the
22 many I was tasked to do on this lot. You can
23 imagine a lot of constraints. The beach mouse
24 was a new one for me. So that was kind of thrown
25 in the mix later.

26 But I was aware of the flood zone. The
27 wetlands were delineated. They were there. And
28 I was aware of the 30 foot setbacks and, of

1 course, the normal zoning setbacks. This layout
2 was -- as Alyssa said, the drainage from the
3 side, ADEM requested that we direct drainage to
4 the side to that wetland for replenishment.

5 So when it rained -- because it was --
6 from what I understand, the concern was that he
7 was wanting some more water flowing into that
8 wetland, keep it full of water so it stayed --
9 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

10 Going to always be a wetland.

11 MR. JOEL GARRETT:

12 Exactly. In addition to -- well, what
13 you see here is reducing the number of parking.
14 The parking stalls themselves are reduced in
15 Baldwin County 9 by 19. Again, just in a further
16 way to reduce the development footprint of
17 this development.

18 Also, the driveway width, typically the
19 tenant allots a 36 foot wide driveway, but here
20 we shrank it down to 24. That's the minimal
21 allowed by ALDOT, and it still functions for the
22 delivery truck. Let's see what else.

23 We have talked to -- I actually talked to
24 Michael Smith, the area permit manager out of
25 Mobile regarding this a couple of weeks ago here
26 in Foley in a separate meeting for another site,
27 but we discussed the driveway location, and he's
28 actually seen this site for almost a year now,

1 and his only concern was, you know, make sure
2 that meets their dimensional requirements for
3 commercial driveways.

4 Just trying to think of any other
5 features. Alyssa said we're going to be
6 dedicating a conservation easement on whatever we
7 do not disturb. We were trying to minimize
8 disturbing the surface as much as possible, of
9 course. Anything that is not disturbed will be
10 dedicated as a conservation easement so that
11 nothing else will ever be developed on this lot.

12 Also incorporated a pervious pavement to
13 help infiltrate rainwater into the ground. We've
14 gotten geotech results actually back this
15 morning, and it was very favorable for
16 infiltration.

17 So that was a relief to me because we're
18 going to infiltrate the parking lot water in the
19 front, and in the back, I'll be actually
20 detaining the roof, drainage for the roof, in the
21 pond that's labeled number seven.

22 It will discharge there to the east, and
23 that will be toward the BLM land, federal land.
24 So it will meet the beach requirements as well.

25 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

26 May seem to be a very insignificant
27 question. Where do the trucks unload?

28 MR. JOEL GARRETT:

1 Here's the dumpster pad. Here's the
2 delivery pad. The trucks would back in and
3 deliver right here. Back in the door right
4 there, the back of the trailer on the delivery
5 pad. And then with loading right there in the
6 back door of the store.

7 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

8 Thank you. Do you understand our request
9 being an engineer about the hydrant situation
10 with potentially being a good neighbor to the
11 water authority -- I mean the fire authority?

12 MR. JOEL GARRETT:

13 Understood.

14 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

15 Any more questions of Mr. Garrett?

16 (No response.)

17 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

18 Mr. Garrett, thank you for your time and
19 your presentation.

20 MR. JOEL GARRETT:

21 Thank you.

22 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

23 Next we have signed up to speak a John
24 Kuglar. John.

25 MR. JOHN KUGLAR:

26 I would like to reserve that for later,
27 please, if I think it's necessary. At this point
28 I don't think it is.

1 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

2 Thank you, sir. Next we have Gail Cole.
3 Ms. Cole, if you could come up front, please, and
4 share with the stenographer your name and your
5 connection to the property, we'd appreciate it.

6 MS. GAIL COLE:

7 My name is Gail Cole, and I'm an adjacent
8 property owner. From where this property is
9 going to be developed, I'm right across the
10 street. So --

11 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

12 Excuse me, Ms. Cole. Can you put the
13 aerial back up, please, just so we have a
14 reference for her. Do you mind?

15 MS. GAIL COLE:

16 No, not at all.

17 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

18 There we go.

19 MS. GAIL COLE:

20 Okay. That's my house right there
21 sharing the driveway with our neighbor.

22 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

23 This splits into a drive?

24 MS. GAIL COLE:

25 Yes. I'm at 9627 State Highway 180. So
26 this property is going to be built at mile marker
27 ten. That's where our turn is into our driveway.
28 Okay? So as any of you know, parking at any

1 retail facility is pretty cramped. There is a
2 Dollar General retail store on State Highway 180
3 right now in Gulf Shores.

4 It does not have 54 slots. It is packed.
5 It is the closest one to me at this time if I was
6 to go there. This one, convenience, yes, but
7 let's consider this is at mile marker ten. You
8 have ten miles from the site of this building,
9 you're going to have ten miles of not only
10 residents but renters.

11 Beach Club alone has four buildings
12 sixteen stories high, and they stay packed all
13 summer. The traffic impact is a very big concern
14 of mine. You're saying you're going to have
15 eighteen wheelers backing into the drive. Okay.
16 This is a two lane road, 55 miles an hour. May
17 to September the traffic is horrendous.

18 I can tell you from personal experience
19 just today coming home at 10:30 in the morning I
20 have to put my blinker on and brakes and keep
21 tapping my brakes a quarter of a mile from my
22 driveway, and trucks, cars, anybody is still
23 right there tailgating me.

24 So as an adjacent resident, I'm not
25 opposed to retail sites. I am very concerned of
26 the traffic. If you limit the parking spaces,
27 like I said, you have ten miles just from this
28 building to the end of Fort Morgan of residents

1 and renters that has no retail site like this
2 except for The Pines and Sassy Bass that has
3 convenience items.

4 So during the summer months, this place
5 is going to be packed. The fire hydrant thing
6 would be very good. I am very concerned about
7 the parking spaces allotted for this site.

8 I have seen the impact of the Dollar
9 General that is in Gulf Shores on Highway 180,
10 and during the summertime, they do have an
11 adjacent gas station and a three or four
12 building -- three or four door strip mall beside
13 them. They are lined up from Highway 180 into
14 the parking lot around the gas station.

15 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

16 In the strip mall?

17 MS. GAIL COLE:

18 Yes. So it automatically shows they
19 don't have enough parking. Like I said, I am the
20 adjacent property owner directly affected by this
21 across the street, and I do not want people
22 parking on the side of the highway, number one.
23 That would be very life-threatening for anyone if
24 there's not enough parking there.

25 The only question I do have -- and I know
26 this is not for the County. This would be a
27 State thing. But one thing that would, you know,
28 help alleviate that is adding maybe a quarter

1 mile stretch, a quarter mile lane on the other
2 side of the property so there would a center turn
3 lane coming both ways for this property. I know
4 that's not for y'all. But, you know, that's all
5 I have. I appreciate your time.

6 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

7 Do you --

8 MS. GAIL COLE:

9 But I do have concerns about the traffic.

10 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

11 Any questions or comments of Ms. Cole?
12 Board members?

13 (No response.)

14 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

15 Ms. Cole, thank you for your time. And
16 we have next signed up to speak Judy Wells. Ms.
17 Wells, if you could come up to the podium,
18 please, and share your name with the stenographer
19 and your connection with the property. And thank
20 you for being here today.

21 MS. JUDY WELLS:

22 I'm Judy Wells. I have a residence at
23 9753 Highway 180 which is underneath that little
24 white square. So I, too, am an adjacent property
25 owner. I'm told that my property had the first
26 electrical box on that side of the road. There's
27 actually little concrete blocks underneath the
28 manmade house dated 1952.

1 I can remember when my parents bought
2 this property that we'd walk to the end of the
3 driveway and, my God, it was an event if a car
4 came down the road. So you can imagine the
5 change that has really occurred in the last 45
6 years since this property has been in my family.

7 I echo what my neighbor has said about
8 the traffic concern. 50 mile an hour traffic --
9 55 mile per hour traffic is what it's supposed to
10 be, but it's also more than that on many
11 occasions. I, too, have been tailgated and I
12 start putting my blinkers on way before you get
13 to the pizza place.

14 I am not at all interested in having a
15 grocery store or a store of this nature across
16 the road from my property and my residence. I
17 feel that that area across the road where we all
18 live as single family residences really merit a
19 little bit higher grade construction.

20 Also, has there been an archaeological
21 survey requested in this instance? As I
22 understand for so much of the building now being
23 done that there is an archaeological survey
24 requested for most. Has there been in this
25 instance?

26 BOARD OF ADJUSTMENT CHAIRMAN STUART LEE:

27 Ms. Lee, can you answer that?

28 MS. JUDY WELLS:

1 If not, I would like to request one.

2 MS. ALYSSA CARTER:

3 I can answer it.

4 MS. LINDA LEE:

5 That may be a question for the applicant.

6 Zoning does not require it. But there are times
7 when, I think -- I know when they have to apply
8 for a CCL it's required. I don't know if Fish &
9 Wildlife normally requires it or not, but it's
10 not a zoning requirement.

11 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

12 Ms. Cole (sic), may I beg your
13 forgiveness, this is a public forum now, to ask
14 someone who was speaking earlier to speak at this
15 point?

16 MS. JUDY WELLS:

17 Oh, sure. Sure.

18 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

19 We had someone who said they can answer
20 the question.

21 MS. ALYSSA CARTER:

22 I can.

23 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

24 Ms. Carter, if you can please answer her
25 question.

26 MS. ALYSSA CARTER:

27 Yeah, so Fish & Wildlife, Army Corps, all
28 of them, they have all required it, and it has

1 been done and submitted to them. There was no
2 findings --

3 MS. JUDY WELLS:

4 Thank you.

5 MS. ALYSSA CARTER:

6 -- of any sort, and so that's been
7 submitted.

8 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

9 So that answers your question, Ms. Wells?

10 MS. JUDY WELLS:

11 Yes. Thank you.

12 MS. ALYSSA CARTER:

13 You're welcome.

14 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

15 Thank you, Ms. Carter.

16 MS. JUDY WELLS:

17 Again, I would like to say this is virgin
18 property as we all know, and I just think there
19 could be better usage of it than this type of
20 thing. And also I'm very familiar with that
21 little store five miles down the road. And it
22 is.

23 It is jammed packed with cars all the
24 time, traffic backed up for people getting in
25 there from both directions, and I just really
26 don't think that this is in our best interest in
27 this particular location. Thank you.

28 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

1 The board, do you have any questions or
2 comments of Ms. Wells? Board members?

3 (No response.)

4 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

5 Thank you, Ms. Wells.

6 MS. JUDY WELLS:

7 Thank you.

8 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

9 Appreciate your time and thank you for
10 coming in today. Next we have signed up to speak
11 Chris Reilly. Chris, if you could come up,
12 please, and give your name to the stenographer
13 and your connection to the property in this case.

14 MR. CHRIS REILLY:

15 Good afternoon. My name is Chris Reilly.
16 I am also an adjoining neighbor of the property.
17 I actually would be the first house which would
18 be located here, right in that first house. So
19 Ms. Cole and Ms. Wells certainly communicated my
20 feelings as well. I believe the variance should
21 be denied.

22 The County has certain laws and rules
23 that have been set forth, and they have -- they
24 need 54 spots. Well, that's what they need. So
25 if you choke down the parking, I am concerned
26 that it would be a bottleneck coming into that
27 new store.

28 And obviously it is going to be very

1 difficult for me to turn left or, you know, to
2 exit my property if there's consistently cars
3 pulling in and can't access the lot. So that's
4 simply my stand on it. Also, just some concerns,
5 you know, this was all given to us at a last
6 minute -- we were notified of this -- only had a
7 week to be notified of this.

8 And just today I finally could find the
9 actual location. The sign that the County put
10 out for the variance is hidden. It is off the
11 road. And I don't understand why. But you
12 cannot see it from the road. You actually have
13 to walk approximately 75 feet into the woods to
14 find where this site was going to be.

15 And I just would like, you know,
16 everybody to know that. It should have been on
17 the road where there could have been more
18 neighbors notified of what was going on. So my
19 request is that I believe that it -- the variance
20 should be denied.

21 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

22 Any board member, questions or comments
23 of Mr. Reilly?

24 (No response)

25 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

26 Mr. Reilly, thank you for your time.

27 MR. CHRIS REILLY:

28 Thank you.

1 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

2 Thank you for coming in. Next we have
3 signed up to speak Michael Ludvicason. Mr.
4 Ludvicason, if you could come up, please, and
5 give your name to the stenographer and your
6 connection to the property, we would appreciate
7 it. Thank you for coming in.

8 MR. MICHAEL LUDVICASON:

9 Thank you, Mr. Chairman. My name is
10 Michael Ludvivason. I also reside on 180 a few
11 miles down the road back to the east. I'm also a
12 member of the Fort Morgan Civic Association, and
13 I function as the government affairs liaison. So
14 I know you've heard from the adjacent property
15 owners and the folks directly across the street.

16 So I don't need to kind of reflect what
17 they already have, but I do want to kind of
18 engage on some other issues that other members
19 and other folks up and down the road have voiced.
20 But, first, let me say in regards to Mr. Reilly's
21 comment regarding placement of the sign, it's 165
22 feet off the center line way back in the woods.

23 I don't know if that was the County
24 placed it or if the applicant placed it. But
25 just FYI going forward, there's your photographs.
26 I mean, I don't know.

27 MS. LINDA LEE:

28 Would you like me to address that right

1 now?

2 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

3 Please, Ms. Lee.

4 MS. LINDA LEE:

5 We are not allowed to put the sign in the
6 right-of-way. It has to go on the property. So
7 that is why the sign is not on the road, because
8 it has to go on the property.

9 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

10 Wasn't the property line very deep
11 because of mitigation of the --

12 MS. LINDA LEE:

13 Well, we have a right-of-way. So --

14 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

15 It's a right-of-way. The right-of-way --

16 MR. MICHAEL LUDVICASON:

17 At 335 feet wide --

18 MS. LINDA LEE:

19 Right. So if the right-of-way is 335
20 feet wide, 165 feet would be right on the
21 property line.

22 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

23 That is -- hopefully you'll see that as a
24 reasonable answer to the question.

25 MR. MICHAEL LUDVICASON:

26 Well, no. Don't get me wrong. I
27 understand why the County had to do it the way
28 they did. My comment is just to get it on the

1 record so that it can be addressed going forward.

2 There's no reason that if we can work
3 with Department of Conservation to put a driveway
4 in that we can't work with them to get a sign or
5 with DOT depending on whose jurisdiction it's
6 going to be this week. And I understand the --

7 MS. LINDA LEE:

8 The only thing I can say is we have to
9 put that sign on the property. We cannot put
10 that sign in the right-of-way.

11 MR. MICHAEL LUDVICASON:

12 I understand where it comes from. I just
13 think there needs to be --

14 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

15 I certainly think that you or any citizen
16 is entitled to an answer.

17 MR. MICHAEL LUDVICASON:

18 I appreciate it.

19 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

20 And Ms. Lee does an outstanding job and
21 she has --

22 MR. MICHAEL LUDVICASON:

23 She does.

24 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

25 I have yet to have her faced with a
26 question she could not answer.

27 MS. LINDA LEE:

28 Oh, there's plenty I can't answer.

1 MR. MICHAEL LUDVICASON:

2 And that certainly wasn't a jab at Ms.
3 Lee. You do a good job. Some of the things we
4 want to take note of, I don't know -- and now I'm
5 kind of pushing this out there and y'all can
6 answer or not answer. But since we talked fire
7 hydrants, I'm going to talk some things.

8 Was there traffic analysis done? Was a
9 traffic or transportation analysis done? I know
10 you guys wouldn't see that, but I'm going to put
11 it out there anyway because one of the biggest
12 concerns obviously is traffic.

13 Not just the generation of the traffic by
14 this retail facility but the fact that it's going
15 to cause people to make turns into there that
16 don't typically make it now and the impact not
17 just for the adjacent property owners but another
18 situation where we've got a lot of people
19 stopping short.

20 And we've already got Department of
21 Transportation working on another site where we
22 have some problems. So we're trying to, you
23 know, mitigate for that before it occurs and
24 somebody has to come back and take care of it --
25 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

26 Sure.

27 MR. MICHAEL LUDVICASON:

28 -- later on. Obviously it's been brought

1 up that this is virgin -- kind of a virgin spot.
2 We'd really not like to see any clearing of the
3 right-of-way whatsoever. You know, minimalist is
4 kind of what we're after.

5 Anything that -- any retailer that comes
6 in -- because obviously there's been a strong
7 feeling for a number of years that this should
8 have never been allowed to be B3 across the
9 street from our 1.

10 So you guys are where you are now where
11 it is a B3, and there's nobody in violation of
12 anything, and you're doing stuff well within your
13 property rights, but what we're asking is to try
14 to work with the community, put the signs
15 smaller, lower, mitigate what you do on the
16 right-of-way, be a minimalist.

17 You know, if that means the building has
18 to shrink a little more -- and I do want to
19 address the size of the structure. You guys know
20 better than me. You've done some investigating,
21 I'm sure, but all 21 miles of that road now
22 passes your other store, and now you're going to
23 alleviate a lot of that, I would assume, so
24 people wouldn't go back to that store.

25 They're going to get it in the 10 miles
26 that are left. I'm not real sure why it's
27 actually bigger than the previous store unless
28 you're looking at future development. And I'm

1 sure that's part of it.

2 But, nevertheless, my thought is, one of
3 the things that never comes up at one of these
4 meetings that I've heard is when people talk
5 about the difficulty on the property because this
6 won't fit. Nobody ever talks about changing the
7 footprint.

8 I mean, they move it, but I don't see
9 footprints generally being reduced as part of the
10 solution. It's always we're going to give a
11 variance because it doesn't fit. Well, have we
12 looked at making it smaller? So just FYI going
13 forward, that's also a question and concern.

14 Whether it's a house or retail really
15 doesn't matter. We see it a lot, and there's
16 always that question, and I never hear it asked
17 or answered. So I just kind of wanted to put
18 that one out there, too. I do want to thank you
19 for your time and for all the efforts. I know
20 you guys do a great job. Yes, sir.

21 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

22 A few questions. Number one, did you say
23 that you were the governmental liaison for that
24 area?

25 MR. MICHAEL LUDVICASON:

26 The civic association.

27 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

28 Okay. Number two, how long have you

1 lived there?

2 MR. MICHAEL LUDVICASON:

3 I moved back six and a half years ago.

4 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

5 Number three, do you know how long it's
6 been zoned B2?

7 MS. LINDA LEE:

8 It's B3.

9 MR. MICHAEL LUDVICASON:

10 B3?

11 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

12 B3.

13 MR. MICHAEL LUDVICASON:

14 No, I couldn't tell you how long that's
15 been B3. It's been a long time. I would assume
16 almost from the beginning of the zoning.

17 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

18 If you were the liaison with the
19 government and you have been living there for six
20 years and you knew it was B3, would it ever have
21 occurred to anyone to try to get it rezoned?

22 MR. MICHAEL LUDVICASON:

23 Yes, it would. Typically when we discuss
24 this, what always comes out of a discussion, you
25 can't do that. That's blanketly the statement.
26 You cannot reduce somebody's zoning, which I know
27 isn't true. Because the property I live in has
28 been in my family since 1851.

BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

1 We're in public session. Want to save
2 that for when we get in private session?

3 BOARD OF ADJUSTMENT MEMBER JOHN HILDERBRANDT:

4 For a recall of a person.

5 BOARD ADJUSTMENT MEMBER JOHN HILDERBRANDT:

6 All right. And we have John Kuglar who
7 had requested to wait till later.

8 MR. JOHN KUGLAR:

9 Yeah, I have very little to add. My name
10 is John Kuglar. I'm a resident of Daphne,
11 Alabama. And this property has been in my family
12 for 20, 25 years, and it is a beautiful piece of
13 property. And, you know, I offered it to Fish &
14 Wildlife.

15 I said, you know, if you're so concerned
16 about it, why don't you buy it. It backs up to
17 property you already own. As a matter of fact,
18 they have a 40 foot easement across this property
19 to get to the wildlife area.

20 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

21 Really?

22 MR. JOHN KUGLAR:

23 Yes. And, you know, it's a perfect fit.
24 It's a bargain deal. It's a bargain price. No
25 takers. So, you know, and we're concerned about
26 beach mice and the whole nine yards. But, you
27 know, we also have a house down at the three mile
28 marker, and over the years, I've watched the

1 wildlife down there, and there's a lot of it.

2 But years ago there was tons of beach
3 mice. Tons and tons of beach mice. They were
4 everywhere. And then the coyotes, the foxes.
5 And the main thing was the snakes. Snakes were
6 everywhere. Snakes got so plentiful they were on
7 the deck. They were under the house. They were
8 under the steps. Snakes were everywhere.

9 And so now there are no beach mice.
10 There are no snakes. The foxes took care of the
11 snakes. The snakes took care of the beach mice.
12 And no back doors on those holes. You know, when
13 that snake crawls down that hole and dinner is
14 there, it's over. You know, it hurts being the
15 lowest thing on the food chain, but there's a lot
16 of things out there that eat things.

17 And I don't think it's got a whole lot to
18 do with the people out there because I know from
19 real experience how quickly mice can bring new
20 mice. It's probably about every two or three
21 weeks. It's really quick. And there's usually
22 six, seven, eight, ten of them. They're
23 prolific.

24 But, you know, they're the bottom of the
25 food chain, and I wish them luck, but, I mean,
26 there's Bobcats out there. There's big eagles,
27 hawks. They all feed on mice. So, you know,
28 it's a beautiful piece of property. I wish the

1 Corps had it or Fish & Wildlife had it, but they
2 didn't. And thank you for your time.

3 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

4 Any board questions of Mr. Kuglar?

5 (No response)

6 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

7 Thank you for your time, sir.

8 MR. JOHN KUGLAR:

9 Thank you.

10 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

11 I will close --

12 MS. LINDA LEE:

13 Excuse me.

14 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

15 Yes, ma'am.

16 MS. LINDA LEE:

17 I think Mr. Hilderbrandt wanted to ask
18 someone else to come back up.

19 BOARD OF ADJUSTMENT MEMBER JOHN HILDERBRANDT:

20 The young lady that's in charge of the
21 Broadway Group, I guess she's marketing.

22 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

23 Ms. Carter, we're still in public
24 session, Ms. Carter.

25 MS. ALYSSA CARTER:

26 Okay.

27 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

28 Yes, sir.

1 BOARD OF ADJUSTMENT MEMBER JOHN HILDERBRANDT:

2 Ms. Carter, I want to ask you: Do you
3 live in Fort Morgan?

4 MS. ALYSSA CARTER:

5 I do not. We are based out of
6 Huntsville, Alabama, but Mr. Broadway does have
7 several properties that he owns in the Baldwin
8 County area.

9 BOARD OF ADJUSTMENT MEMBER JOHN HILDERBRANDT:

10 Yes, ma'am. So you reside full-time in
11 Huntsville?

12 MS. ALYSSA CARTER:

13 Yes, I do.

14 BOARD OF ADJUSTMENT MEMBER JOHN HILDERBRANDT:

15 Thank you, ma'am. That's all.

16 MS. ALYSSA CARTER:

17 I guess I also wanted to answer some
18 questions about the traffic, if we've been having
19 any studies done. We have reached out to ALDOT
20 in the beginning phases before even getting under
21 sales contract for this property and showed them
22 our layout, and at the time, there was no -- they
23 said looks great, thanks.

24 So it's not all ALDOT that we're dealing
25 with for the entrance. It's also Gulf State
26 Park, because they own a majority of it. So we
27 are working with them. Once we have everything
28 finalized with Gulf State Park, Fish & Wildlife,

1 ADEM, and the Corps, then we will officially
2 apply for our ALDOT permit and do what they
3 seem -- deem necessary for us to do.

4 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

5 You said we will do whatever ALDOT
6 requests of us to do.

7 MS. ALYSSA CARTER:

8 Yeah, it's whatever they require from us,
9 you know, we will work to do that. We're not
10 just going to -- if they deny us, we can't build.
11 So we're going to do our best to work with them.

12 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

13 Can I ask a question just for my
14 edification? When you construct these buildings,
15 you're in an unincorporated area of the county,
16 what fire codes do you follow when you construct?
17 If there's no local fire code, what fire code do
18 you --

19 MS. ALYSSA CARTER:

20 So we'll have to get permits through
21 Baldwin County. So whatever Baldwin County
22 requires.

23 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

24 The unincorporated area of Baldwin County
25 does not have a fire code. Would you --

26 MS. ALYSSA CARTER:

27 So the State's.

28 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

1 So you would use the State of Alabama
2 code?

3 MS. ALYSSA CARTER:

4 Yes.

5 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

6 Thank you.

7 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

8 Thank you, Ms. Carter.

9 MS. ALYSSA CARTER:

10 Thank you.

11 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

12 I will now close V-190030, and I'll
13 entertain a motion --

14 MS. LINDA LEE:

15 Mr. Chairman.

16 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

17 -- from the board.

18 MS. LINDA LEE:

19 Mr. Chairman.

20 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

21 Yes, ma'am.

22 MS. LINDA LEE:

23 If I may, I would like to address a
24 couple of things, please.

25 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

26 Please.

27 MS. LINDA LEE:

28 Okay. The engineer stated -- someone

1 asked about the delivery trucks. The zoning
2 ordinance actually requires two off-street
3 loading and unloading spaces for that size
4 building. So that is something that will have to
5 be addressed prior to the issuance of a land use
6 certificate.

7 As far as the timing of the notices,
8 staff makes every effort to send out these
9 notices. I try to do it two weeks ahead of time.
10 The deadline is three weeks ahead of time. As I
11 stated earlier, I was on vacation.

12 But the zoning ordinance only requires
13 that notices are sent out five days before the
14 scheduled public hearing. Those notices were
15 sent out July 30th which would be more than five
16 days prior to the August the 8th meeting date.

17 So I just wanted to --

18 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

19 Thank you for clarifying the --

20 MS. LINDA LEE:

21 -- clarify that --

22 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

23 Thank you for answering my question about
24 the unloading of the trucks.

25 MS. LINDA LEE:

26 And as Ms. Carter stated, you know, ALDOT
27 will control access to the property. I strongly
28 encourage anyone that feels they need a turning

1 lane to call ALDOT and talk to them and ask them
2 to, you know, put in a turning lane or require
3 the builder to put in a turning lane.

4 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

5 I suspect the representative and the
6 engineer from Broadway probably got that message.

7 MS. LINDA LEE:

8 Just stating that's something --

9 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

10 Right.

11 MS. LINDA LEE:

12 -- I encourage them to. Because safety
13 is a concern, and, you know, the traffic is a
14 concern. So that's something that they would
15 need talk to them about.

16 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

17 Do we have a motion before the board?

18 Mr. Mitchell.

19 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

20 Yes, sir, I move this request be approved
21 as presented by the staff, sir.

22 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

23 Do we have a second?

24 MS. MOLONEY:

25 I'll second.

26 BOARD OF ADJUSTMENT STUART ARNOLD:

27 Ms. Moloney. Do we have any more
28 discussion on V -- I've already lost it --

1 190030?

2 (No response.)

3 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

4 Ms. Lee, could we have roll call vote,
5 please?

6 MS. LINDA LEE:

7 Yes, sir. Mr. Mitchell.

8 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

9 Approve.

10 MS. LINDA LEE:

11 Mr. Koeppe.

12 BOARD OF ADJUSTMENT MEMBER JAMES KOEPPEN:

13 No.

14 MS. LINDA LEE:

15 Mr. Broseus.

16 BOARD OF ADJUSTMENT MEMBER ROBERT BROSEUS:

17 No.

18 MS. LINDA LEE:

19 Ms. Bodree.

20 BOARD OF ADJUSTMENT MEMBER JOANNE BODREE:

21 Approve.

22 MS. LINDA LEE:

23 Ms. Moloney.

24 BOARD OF ADJUSTMENT MEMBER JOHANNA MOLONEY:

25 Approve.

26 MS. LINDA LEE:

27 Mr. Hilderbrandt.

28 BOARD OF ADJUSTMENT MEMBER JOHN HILDERBRANDT:

1 No.

2 MS. LINDA LEE:

3 Mr. Arnold.

4 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

5 Approve.

6 MS. LINDA LEE:

7 The motion does not carry because, as
8 I've told you all before, it takes six
9 affirmative votes for a motion to carry and this
10 vote is -- I'm --

11 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

12 Mr. Church.

13 MS. LINDA LEE:

14 Oh, Mr. Church. I'm sorry. Mr. Church,
15 what is your vote?

16 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

17 I vote to approve.

18 MS. LINDA LEE:

19 It doesn't matter. The vote is five to
20 three and so we do not have six affirmative
21 votes. So that motion will not carry, which
22 means basically it was denied.

23 That would be -- and I guess my question
24 is, make sure you all were voting -- the motion
25 was for both the variance setback and the
26 parking.

27 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

28 Correct. So it's all together.

1 MS. LINDA LEE:

2 All together, that's right.

3 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

4 Ms. Lee, do we have any old business?

5 MS. LINDA LEE:

6 Okay. Before we go there, as I stated
7 earlier, any party aggrieved by a final decision
8 of this board may within 15 days after the
9 decision is made file an appeal to the Circuit
10 Court of Baldwin County and to the Baldwin County
11 Planning and Zoning Department on behalf of the
12 Board of Adjustments for Baldwin County
13 Commission District 4.

14 Said copy of appeal must be submitted to
15 our Robertsdale office no later than 4:30 on that
16 15th day. And, no, sir, I do not have any old
17 business.

18 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

19 Do we have any new business?

20 MS. LINDA LEE:

21 No, sir.

22 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

23 Ms. Lee, then I'll entertain a motion to
24 adjourn.

25 BOARD OF ADJUSTMENT MEMBER SAMUEL MITCHELL:

26 So moved.

27 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

28 Mr. Mitchell. Second?

1 BOARD OF ADJUSTMENT MEMBER ERNIE CHURCH:

2 Second.

3 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

4 Mr. Church. All in favor of adjournment
5 say aye.

6 (Board of Adjustment members say aye in unison.)

7 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

8 Opposed nay.

9 (No response.)

10 BOARD OF ADJUSTMENT CHAIRMAN STUART ARNOLD:

11 We are adjourned. Thank you, everyone.

12 (PROCEEDINGS WERE ADJOURNED AT 5:48 P.M.)
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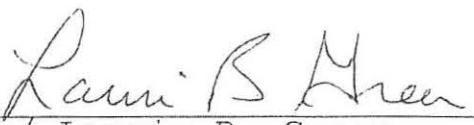
C E R T I F I C A T E

STATE OF ALABAMA)

COUNTY OF MOBILE)

I do hereby certify that the above and foregoing transcript of proceedings in the matter aforementioned was taken down by me in machine shorthand, and the questions and answers thereto were reduced to writing under my personal supervision, and that the foregoing represents a true and correct transcript of the proceedings given by said witness upon said hearing.


I further certify that I am neither of counsel nor of kin to the parties to the action, nor am I in anywise interested in the result of the said cause.


/s/ Laurie B. Green
Court Reporter and Notary
Public for the State of
Alabama at Large
CCR #384
Expiration Date 01/07/2023

C E R T I F I C A T E

I, Stuart Arnold, Chairperson of the
Baldwin County Commission of Board of Adjustment,
do hereby certify that the foregoing transcript
of the minutes of the August 8, 2019, Monthly
Meeting are a true and correct transcription of
the minutes as prepared by Laurie B. Green,
Alabama Certified Court Reporter, License No.
384.

I, Stuart Arnold, do hereby affix my
signature on this, the 12 day of September
2019.



Stuart Arnold, Chairperson
Baldwin County Commission #4
Board of Adjustment

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