

December 8, 2021 Board of Adjustment Hearing

WEDNESDAY, DECEMBER 8, 2021

5:30 PM

- 1. CALL TO ORDER**
- 2. ROLL CALL/PLEDGE OF ALLEGIANCE**
- 3. AGENDA APPROVAL** - (Matters not specifically listed on the agenda may be added and acted upon with a super-majority vote of the Council members present and eligible to vote on the matter)
- 4. APPROVAL OF MINUTES**
 - A. November 3, 2021**
- 5. SPECIAL PRESENTATIONS**
- 6. PUBLIC COMMENTS**
- 7. NEW BUSINESS**
 - A. 21-32-VR – 531 Mountain Drive Variance Request**
- 8. OLD BUSINESS**
- 9. NEXT MEETING DATE: January 5, 2022**
- 10. ADJOURNMENT**

If a person decides to appeal any decision made by the City Council, committee, board, panel, or agency with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she will may need to ensure that a record of the verbatim record of the proceedings is made, which record includes the testimony and evidence upon the appeal is to be based. "Persons with disabilities who require assistance to participate in this meeting are requested to notify the City Clerk's Office 850.837.4242 at least 48 hours in advance".

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**BOARD OF ADJUSTMENT
DESTIN CITY HALL BOARDROOM
WEDNESDAY, NOVEMBER 3, 2021
5:30 P.M.**

1. CALL TO ORDER:

Chairman Weidenhamer called the Board of Adjustment Meeting to order at 5:30 p.m., on Wednesday, November 3, 2021, at Destin City Hall Boardroom.

2. ROLL CALL & PLEDGE OF ALLIGENCE:

Present:

Tom Weidenhamer
David Emerson
Daniella Piper
Bobby Wagner

Staff Present:

Kim Montgomery, Deputy City Clerk
Noell Bell Building Official
Louis Zunguze Community Dev. Director
Kyle Bauman, City Attorney
Kimberly Kopp, Land Use Attorney

3. APPROVAL OF MINUTES:

A. July 1, 2020

Board member Piper moved to approve the minutes of the July 1, 2020 meeting as written. Chairman Emerson Weidenhamer provided the second to the motion and the passed 4-0.

4. NEW BUSINESS:

A. 21-218-AA, Administrative Appeal - 355 Gulf Shore Dr

The City Attorney swore in the following individuals for possible testimony:

Noell Bell Building Official
Louis Zunguze Community Dev. Director
Ms. Jill Crew
Victoria McCraw
Trey McCraw
Stephen Tatum
Marcie Bell
Guy Tadlock

According to the LUA, she spoke with the applicant, and they agree to allow them to present first, since it is their case.

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Ms. Jill Crew representing Trey and Victoria McCraw, applicants for the Administrative Appeal explained she submitted an appeal application on behalf of her clients for an amended administrative decision for the adjacent neighbor's property, which consists of a cover letter dated August 30, 2021, and eight exhibits. Noting the importance of the eight exhibits, as they are relevant with technical details that they believe are very persuasive in the Board's determination. She then provided the Board information how the McGraw's are the adjacent property owners, the background of the case where the construction was in 2019 through 2020 and what seemed to be a progressive trend to convert this house into a very profitable vacation rental. She explained why they filed the appeal, emphasizing that in their opinion, the repairs and remodeling of the home far exceeds the 50% rules deemed by FEMA, for substantial improvements, which would trigger the new construction requirements by the Florida Building Code. She spoke of how in 2020 extensive renovations were done on the interior of the structure converting it to a 10-bedroom 14-bathroom home to accommodate an upwards of 24 people. And how the reported cost was \$245k, in her opinion, is unrealistic how anyone could believe that extensive amount of work could be done for that amount of money, in these days of inflated costs for construction. And how they believe it was to circumvent the 50% rule. Additionally, she informed the Board members that the conversion of the garage to livable space for bunk rooms is below the 6-foot base flood elevation and should have never been allowed. She spoke of how they tried several times unsuccessfully, to contact the city to put a stop to the construction, but nothing was ever done.

Mrs. Victoria McCraw spoke to the board and explained how she believes that there is no way that the amount of construction that took place could be for the low sum of costs that were submitted to the city. She expressed concern of converted garage to livable space is below the required base flood elevation and for anyone that may be living in there if it would flood. She is also very concerned for her property and how these renovations may cause adverse flooding to her home. And lastly, she is concerned that if the property ever did flood, that it would cause the city's flood designation with FEMA to be changed. She also testified that she hired an expert to review the renovations and invoices and how he informed her that she was correct in her assumption of how the repairs and the upgrades would be significantly more costly and challenged the board members to hire their own professional to investigate this as well.

Ms. Kopp, the Land Use Attorney (LUA) advised the board that there are not any specific provisions in the Code that would allow the board itself to go out and procure expert witnesses such as mentioned. And, since the opposing applicants professionals were not available for this hearing, the code states that after deliberation of the application is closed, a motion may be made to grant or deny the application tonight. Emphasizing that they must proceed based on the evidence before you tonight. Adding how, if the Building Official had different evidence, she may or may not have made a different determination, but this is an appeal of her determination.

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The LUA continued explaining that staff does not agree with the appellants description of the 50% rule or what a substantial improvement is. Emphasizing that's not what tonight's hearing is about. We all agree on what that rule is and what it means, but of what the interpretation of what the Building Official, that she will describe herself, momentarily is the issue. And with respect to how she made her determination and the evidence she was provided to get to that determination. As well, with respect to the allegations by the appellant as to the intent of the property owner. The property, owner's representative is here, so we'll let him speak to that himself, but with respect to the city's intent. Any allegations by Ms. Crew that the city is seeking to evade the 50% Rule in order to encourage construction of a short-term rental is blatantly false and unsubstantiated. And in fact, the city has multiple times, explained the building permit issued on February 23rd, prohibits short-term, rentals of less than 30-days. And if you understand anything about the short term rental business in Destin, you can't be renting for less than 30-days if you want to be maximizing your profits. Adding that I think it is probably safe to say that short term rentals here are mostly for weekends - - and less than 30 days. Although the code defines a short-term rental of less than six months. She explained that the building permit issued in 2000, the city then advised the appellant that the code would be enforced and there would be no short-term rentals for less than less than 30-days. So, I think it's not even reasonable to say that the city is doing anything with a wrongful intentionally. The Building Official will testify that she received invoices and receipts. However, she was unable to discern from those receipts and invoices what the money was used for. I will let her testify to what she saw and how she evaluated them, but again, they did not provide her with specifics as to what that money was spent on. So how would she know if it was spent construction for this substantial improvement or unsubstantial improvement, or even landscaping or pavers or other items. She couldn't tell by looking at it. And the city cannot just assume that someone is acting fraudulently because someone else us accusing them of it. She had to look at what she had and that's how she made her evaluation. So, that is the city's position and I'll turn it over to Mrs. Noelle Bell, to give you a brief analysis of how we got to this in the first place.

The Building Official introduced herself to the Board and how she has been with the city now for 21 years. She provided them a definition of flooding and how projects are reviewed based on that definition. Any improvements to existing structures that lie within Special Flood Hazard areas must be reviewed for flood compliance of the Land Development Code, Section, 11.04 and the Code of Ordinances section 6-47, Section 2, which is a technical amendment to the Florida Building Code, related to flood. Any applications for permits for improvements must be reviewed to determine whether one, the existing structure meets current flood regulations, or does not. Do the proposed improvements meet current flood regulations? And also, what was the flood regulations at the time of original construction, and do the improvements meet for the regulations based on existing regulations at that time.

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In speaking of the 50% rule, if this structure does not meet current flood regulations, what must be determined is if the value of the proposed improvements to the structure exceed, 50% of the market value of the structure. If it does exceed the 50% market value of the structure, and then the structure must be brought into current flood regulation compliance and is considered a Substantial Improvement as stated by their attorney.

She explained that substantial Improvement is based on cost of improvements, divided, by the value of the building, not the property as a whole. Just the structure only, because that's what you're going to lose, not the property. You're going to have to file against a structure to repair it. It's an accumulative and consecutive 10-year period and that cost is carried through. She explained FEMA guidelines provides a list of items which must be included. And the cost estimate of those items are required to be listed. She explained that in Exhibit 1, there is the itemized list that says, if you make improvements, these are the items that you're improving, and a cost for those items has to be listed. If the improvements do not exceed, 50% of the market value of the structure, then they can proceed with the improvements without having to make current flood regulations and flood compliance. However, they will still have to meet the flood regulations at the time of original construction, and this includes additions. So, regarding Garage B, when it comes to reviewing the regulations at the time of construction, for Exhibit 3, there's an elevation certificate from the original construction, which was constructed and in CO'd in 2001, and in that flood elevation certificate, it states that the garage was at 6-feet. This certificate is what we used, and is what FEMA uses to ensure compliance with regulations. They don't use the survey, they use the FEMA flood elevation certificates. And that is what we use to review for compliance. So that is why the "Garage B" was able to be converted to a habitable space because it was in compliance with floods at the time of construction. And the base flood, for that area is was at a 6 for flood elevation and the garage was at 6 and at that time, there wasn't the free board requirements that we have today, where you had to be 2-foot or more, you just had to be at or above flood for your living space. So, they could proceed to convert Garage B. Regarding the substantial improvements, the value of this building was taken from the 2021 Okaloosa County Property Appraisers website. And that appraised value of the structure, according to Property Appraisers, which is Exhibit 4 and your packet was \$813,553. I'm fairly certain that's probably a low number for those structure, but we used it and the contractor didn't mind that we used that number. Sometimes they feel that's not a good number to use, and they would provide their own appraised value of the structure by a certified appraiser, but they didn't move forward with that. So, we just used the property appraisers value for the structure.

She further explained the itemized house list of improvements provided by the contractor, which is \$260 rounded up as is your exhibit 5 in the packet. And based on these, staff determined, that \$260k is a reasonable cost. And divided by the building value of 850 came to 32 percent improvement to the home. We compared this as cost estimate provided to five other similar permitted renovation projects within the city that were fairly consistent. And that

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methodology was based on the cost of square-foot per area being renovated. Since they didn't renovate the whole building we made a determination for the general area of what was being renovated. And they provided documentation via canceled checks and invoice receipts for money issued to the contractor in 2019. And there being no description of work provided on these itemized invoices that was provided to me. So, there was no way to determine what that work was for and how that money was spent.

The LUA asked Mrs. Bell, if at the time she reviewed the invoices and receipts and checks provided your testifying, if I understood you correctly, that you could not determine what exactly the money was spent on only that it was paid to a contractor. Is that correct?

According to Mrs. Bell, that's correct.

The LUA announced that she neglected to enter into the record, the city's agenda item and all of the exhibits for the Board of Adjustment, which includes 1 through 7, the itemized list, the certificate of occupancy, the elevation certificate, the property appraiser's website, the CCI itemized construction costs and the substantial Improvement calculation, and the appellants appeal application. As well as she just confirmed for the record, Mr. Tatum's career description.

With no objection from Ms. Crew, the items were entered into the record by Chairman Weidenhamer.

The City Attorney announced that the applicant's entire application for the Appeal, which would consist of the August 30th cover letter along with eight exhibits. Plus, the request for Board of Adjustment Administrative Appeal application are also submitted and admitted into the record. He then stipulated that he does not see everything in the staff reports. And confirmed with staff, that it's not all in there. According to Mrs. Crew, it is not and they would need copies to be made for everyone. The Clerk was asked to make the necessary copies for everyone so it could be entered into the record.

Chairman Weidenhamer called for a 10-minute break after the break for the necessary copied to be made.

****10- minute break****

The Chairman called the meeting to resume after the necessary copies were made and provided to everyone involved.

The City Attorney announced that at this time, we were addressing a procedural issue related to the exhibits to be accepted into evidence. I think we were addressing whether Ms.

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Crew's exhibits that were just produced for the board and attorneys and asked if there any objection to these being entered into evidence into the record?

According to the LUA, the city has no objection to the entering into the record of Ms. Crew's exhibits.

Mr. Tatum on behalf of the owner voiced an objection to exhibit 5, noting the pictures that included are unauthenticated, undated, and he has no idea where they came from.

According to the City Attorney's recommendation to the board, we do not follow the formal Rules of Evidence here and recommended that they be accepted into evidence and give it the weight that they feel it deserves with the noted objection for the record. And stated since there is an objection to one of the exhibits coming into evidence; I would recommend that the board make a motion to either accept or deny the specific exhibits into evidence.

Motion by Chairman Weidenhamer, seconded by Board member Emerson to accept Ms. Crew's exhibits into the record with the noted objection by Mr. Tatum for exhibit 5. The motion passed 4-0.

Mr. Steve Tatum, attorney for the managing member/property owner of 355 Gulf Shore Drive, Steve Mosley, explained how since there was not any itemized invoices provided to the city, they cannot know the actual cost of the improvements. Emphasizing that the 50% improvements determination is only related to the actual structure, not the land nor does it include items such as landscaping, patio or dock improvements. He then pointed out that the invoices that were provided as exhibits by Ms. Crew from C Sharp for stucco repair were made to a William Mitchell, who is not associated with this property and never owned it. He spoke of how he questions if it was a mistake by C Sharp and put the wrong job on them for this address. He then handed out to everyone the property card for the address in question from the Okaloosa County Property Appraisers website, which was entered into the record, with an objection by Ms. Crew, as Effective Property Owner Exhibit 1 that clearly shows, there was never an owner by that name.

Motion by Chairman Weidenhamer, seconded by Board member Wagner to accept Mr. Tatum's exhibit as Effective Property Owner Exhibit 1, into the record with Ms. Crew's noted objection. The motion passed 4-0.

Mr. Tatum spoke how a lot of emphasis is being placed on the 2019 and the 2020 building evaluations. But pointed out that his client's building permit was not pulled until 2021 and the evaluation of the building in 2021 was \$890,975. Adding that if they're going to be making a determination based on whether or not there were substantial improvements to the

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property, it needs to be based on that number and nothing else. He then informed the members that just two days before this hearing, there was an appraisal done on the property for a contract to purchase that came in at \$1.5M. Which makes the square footage value at \$300 a square foot, which is almost twice of what the property appraiser has the building valued. And in calculating the value of the home from the current appraisal, based on the square footage, to replace the building, if completely destroyed, would be at 28 percent of the appraised value, which is nowhere close to the 50% threshold, he then handed out a copy of the appraisal to everyone.

The City Attorney asked if there were any objections to the entering of the appraisal report into the record. Seeing none, the Chairman officially entered the appraisal report into the record as Affected Property Owner Exhibit 2. (There was no official motion for this exhibit).

For clarification, Mr. Tatum spoke of how there was a lot of other inaccuracies mentioned about how the home would cause flooding on the neighbors because of new walls being constructed. But stipulated to the fact that there were not any new walls constructed on the outside of the house and, the original footprint of the house stayed the same with the same walls.

Chairman Weidenhamer opened the hearing for public comment.

Ms. Marcie Bell of 3 Gulf Breeze Court testified that she lives within 300-feet of the subject property. She spoke of how just this past September she had to have the city come pump her street from all the standing water as a result of downpours. And how she is mostly concerned over flooding because of the loss of permeable surface at the property in question. She spoke of how if the garage is now being used for living space, the additional bedrooms would mean additional cars now allowed and those cars would be parked outside, which is where her concern for flooding problems comes from, because of lack of permeable surface. She also spoke of witnessing substantial amount of lumber and drywall delivered to the property during construction. And lastly, she spoke of the two flood ordinances that are to be workshopped by Council and how in her opinion, the reasoning for them is contributed to properties that would appear in this same situation as this, and moving forward, if they were already in place, that they would not have been given a green light to move forward.

Mr. Guy Tadlock, 502 Norriego Road spoke of how this particular house has a history with the city since it has been built. He provided background on how the house, when built, was too high and how the roof had to be installed flat as well as there were stormwater issues and how swales had to be installed under the decking, which have now been filled in. And lastly, he agrees with what was said earlier that if approved, this would set a precedence in the city for others to circumvent the codes. He also spoke of the flood ordinance that will be workshopped by Council and how it's going to be even more stricter relative to the flood plain than as it is now, if approved.

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With no one else coming forward from the public to speak, the Chairman closed the public comments.

The Building Official then spoke to the Board informing them that that she wanted to relay that the appraisal that Mr. Tatum provided to them earlier was not the numbers she used. Explaining she has three options to base her calculations; one being the property appraisers value, two being a certified appraisal report showing the structures value, and three being a certified general contractors cost estimate of the replacement. And, she chose the Property Appraiser report to base her calculations.

The LUA spoke to the members how the Building Official has testified regarding how she based her decision on the receipts and invoices presented her at the time. And how she could not tell from those invoices and receipts how exactly the money was spent. She again spoke of how short-term rentals are not allowed, and that was communicated to them by staff that nothing any less than 30-days at a time.

The City Attorney asked Mr. Tatum if he had any follow up comments.

Mr. Tatum, reiterated to the Board that this hearing is not about short-term rentals, it's about, were there substantial improvements done to the property in order to qualify with FEMA guidelines for the base-flood elevation and for the city's flood program. He spoke of how the comments directed to short term rental of the house has nothing to do with this case. Adding that it's the city's position is that we can't rent the home for anything less than 30 days. However, that's not what the determination is about at all. It's about whether or not there was substantial improvements done to the property in order to make it have to qualify with FEMA guidelines for your base flood elevation. He spoke of how but FEMA and the city code allowed the renovations. And according to the Building Officials determination, we are allowed to do it because it did not meet the substantial improvements definition. And in his opinion, they have to uphold what the Building Officials determination.

Board member Piper asked for verification that they are tasked to determine whether the information that was provided to Mrs. Bell was accurate. And whether Miss Bell made a good decision, based on what she knew. Or, we are determining whether it was a fair decision because there were things she didn't know.

According to the LUA, this is an appeal of her interpretation. Her position is that she could not determine, based on that evidence, anything other than what she came up with. That's her position. The appellant clearly disagrees with that, but that is staff's position, and it is in your discretion as the board to agree or not.

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According to Chairman Weidenhamer, the purpose of this hearing is to determine if the correct decision was made at that point in time, that it did not exceed the 50% rule and that the city code allowed, the conversion of the RV garage into habitable space.

Mr. Trey McCraw spoke to the Board members emphasizing how there is no way that this property could have been repaired and renovated for the amount that was presented to the Building Official at \$41 a square foot. And stated that the Building Official used the numbers incorrectly to come up with this assessment.

The Chairman replied that it is his understanding that Building Official did not initially come up with a number, and that the number was taken from the submission to the City by Coastal Construction that says the total project cost will be \$259,237. And, he stated that it also was his understanding that her calculations verified that was a close estimate by a formula she used to verify that the amount.

According to the Building Official affirmed his statement.

Board member Emerson asked if the amount of \$259k for the construction was for the entire house or was it for the conversion of garage B?

According to the Building Official, it was for garage B and conversion from the four bedrooms to a 10 bedroom house. With the itemized list submitted, that had kitchen cabinets, bathroom cabinets, and other supplies.

Mr. McCraw asked the Building Official didn't they mislead her from what they originally filed for the first building permit and lied about what they were doing?

According to the Building Official, she did request for them to modify their permit because the permit was vague on what they were actually doing. And the contractor informed her their scope of work changed based on the owner's request.

Board member Emerson stated that his reasoning for asking the question is because discussions have been based on 6,000 square feet, but work was not done on 6,000 square feet. There was a thousand square feet of the garage plus, an unknown amount of square feet within the house itself. He emphasized that it's not logical to judge the \$259k on the entire 6,000 square feet to come up with a figure of \$41 per square foot.

Board member Piper asked if the renovation was specific to the garage or were there were renovations done throughout the house.

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The Building Official reiterated that there was renovations to the garage, they put in built-in bunks but the garage of walls themselves were already there. They just improved it and made it a habitable area, like the rest of the house. They did site some flooring, bathroom renovations, added some bathrooms to accommodate for adding the additional bedrooms. So, there was work throughout the house, but not every square inch.

Motion by Chairman Weidenhamer that the BOA upholds the Building Official's determination that:

- 1. Garage B may be converted into Habitable Living Quarters.**
- 2. The construction activities conducted in 2019, 2020 and 2021 do not constitute a substantial Improvement as defined by FEMA and the City's Ordinance. Board member Emerson provided the second.**

The City Attorney advised the Chairman that he needed to base his motion of facts and suggested to amend the motion as such.

Chairman Weidenhamer amended his motion to add, **based on the recommendation report and evidence prepared by City Staff. With Board member Emerson accepting and seconded the amended motion. A roll call vote of 2-2 was taken with Chairman Weidenhamer and Board member Emerson voting yes and Board members Piper and Wagner voting no.**

The City Attorney announced that in a deadlock vote such as this, the Code language reads that for Administrative Appeals, a concurring vote of a majority of all members of the Board shall be necessary to reverse any order requirements decision or determination of such Administrative Official. Effectively, a deadlock is the equivalent of the Administrative Officials decision being upheld. And according to 2.25.11 of the City Code, any person, or persons, jointly or separately aggrieved by any decision of the Board of Adjustment or any officer Department, Board, Commission or Bureau of the city may apply to the Circuit Court for judicial relief, within 30 days of the rendition of the decision of the Board of Adjustment. Review in the Circuit Court shall be by petition, for writ of certiorari, which will be governed by the Florida appellate rules.

5. ADJOURNMENT:

There being no further business the meeting was adjourned at 7:00 p.m.

Adopted and approved this _____ day of _____ 2019.

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Tom Weidenhamer, Chairman

Kim Montgomery, Deputy City Clerk

CITY OF DESTIN – COMMUNITY DEVELOPMENT



AGENDA ITEM

MEETING DATE: December 8, 2021
BOARD/COMMITTEE: Board of Adjustment
TYPE OF AGENDA ITEM: Action Item
OUTLINE NUMBER: 7.A.

TO: Board of Adjustment

THRU: Lance Johnson, City Manager
Louis Zunguze, Community Development Director
Kimberly Kopp, Land Use Attorney

FROM: Daniel Butler, City Planner

DATE: December 1, 2021

SUBJECT: 21-32-VR – 531 Mountain Drive Variance Request

I. BACKGROUND: The applicant, Stephen Tatum, Matthews & Jones, LLP, on behalf of ABC Amusement Co., is requesting variance request approval for relief from **Land Development Code Section 8.09.03.A.4.c**, which provides that the parking standards listed in **Section 8.06.10** are considered parking maximums and not the minimum parking required. Parking minimums are eliminated within the Old Destin MMTD sub-area.

Applicant: Stephen Tatum, Matthews & Jones, LLP

Location: 531 Mountain

Size of Property: 0.90 acres

Current Zoning: Commercial Trades and Services (CTS)

Future Land Use Map Classification: Commercial Trades and Services (CTS)

Comprehensive Plan Policy: Policy 2-1.3.5: Design Development to be Supportive of Multimodal Transportation and Reductions in Vehicle Miles Traveled (VMT)

Legal Notice: The legal notice for the proposed variance request was submitted for publication in the Northwest Florida Daily News with publication dates of November 17, 2021 and November 21, 2021.

Request: The applicant is requesting variance approval for relief from **Land Development Code Section 8.09.03.A.4.c**, which provides that the parking standards listed in **Section 8.06.10** are considered parking maximums and not the minimum parking required. Parking minimums are eliminated within the Old Destin MMTD sub-area.

The applicant is requesting a variance from the following (in bold font) provisions from the Land Development Code (LDC):

Article 8, Section 8.09.03.A.4.c ON-SITE PARKING:

c. On-Site parking maximum - Providing parking in excess of the standards indicated in Section 8.06.10 Number of vehicle and bicycle parking spaces required of this Code is not permitted. The parking standards listed in Section 8.06.10 are considered parking maximums and not the minimum parking required. Parking minimums are eliminated within the Old Destin MMTD sub-area.

II. DISCUSSION: The applicant wishes to construct a boat storage and maintenance facility on the subject property, which will service and store boats associated with the owner's livery business located at 530 Harbor Boulevard. Because of the relatively small footprint of the structure associated with boat storage and maintenance, which affects the maximum parking count, the project would only be allowed to construct four (4) parking spaces maximum. The applicant wishes to utilize the remainder of the site to construct 20 additional parking spaces, for a total of 24 parking spaces.

FINDINGS:

According to the **Land Development Code (LDC) Section 2.25.03(C)**, to authorize upon appeal such variance from the terms of any zoning ordinance as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions of such ordinance would result in unnecessary and undue hardship. In order to authorize any variance from the terms of the conditions, the board of adjustment must find:

A. That special conditions or circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district.

Applicant's response: The MMTD provides for a maximum number of parking spaces. The owner would like to construct a parking lot along with his allowed boat storage and maintenance site which will provide 20 more spaces than allowed by the code.

Staff Findings: There are no special conditions that exist in relation to the property. However, special conditions do exist when applying the MMTD against the proposed use given that sizable warehouse/office space is not needed for a boat storage and maintenance shop, which are peculiar to the structure. Due to the MMTD parking allowance, the use to square footage ratio, allowed parking is severely limited.

B. That special conditions and circumstances do not result from the actions of the applicant.

Applicant response: The maximum number of parking spaces allowed is beyond the control of the owner. Allowing more spaces will help alleviate the parking shortage in the Destin Harbor area and provide overflow parking for the owner's primary business located within 1200 feet of the subject parcel.

Staff Findings: The parking requirements within the City are based on the square footage of the gross floor area of the proposed structure. While the applicant does determine the size of the proposed structure, this type of business/use does not require a

sizable structure/office to perform daily job duties/tasks, thus the parking requirement is minimal and further limited by the MMTD.

C. That granting the requested variance will not confer on the Applicant any special privileges denied by any zoning ordinance to other lands, buildings or structures in the same zoning district.

Applicant Response: The applicant did not provide a response to Staff for this criteria.

Staff Findings: Granting this variance would provide the applicant relief from **LDC Section 8.09.03.A.4.c. - On-site parking maximum**. This LDC language sets a maximum amount of parking allowed rather than a minimum as seen elsewhere in the City of Destin.

D. That literal interpretation of the provisions of any zoning ordinance would deprive the Applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of any zoning ordinance, and would it result in unnecessary and undue hardship on the Applicant.

Applicant Response: The MMTD's parking maximum deprives the owner of his ability to provide additional parking within 1,200 feet of his primary business located at 530 Harbor Blvd.

Staff Findings: Given the MMTD parking requirement is applied to the entire Old Destin MMTD, the applicant is not being deprived of any rights commonly enjoyed by other properties within the zoning district. However, strict application of **LDC 8.09.03.A.4.c. - On-site parking maximum** does hinder the applicant from developing the property in a reasonable manner.

E. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.

Applicant Response: Yes. The variance is the minimum necessary for the reasonable use of the property as overflow parking for the owner's primary business.

Staff Findings: The requested variance would allow the applicant to develop additional/overflow parking in the North Harbor to support uses in the South Harbor. The site could likely fit more parking on-site, however the applicant is requesting to construct 24 parking spaces, which is a reasonable use of the land. While the site is able to be developed in a number of other ways, the granting of this variance would simply allow the applicant to provide more parking than allowed by the LDC.

F. That the granting of the variance will be in harmony with the general intent and purpose of any zoning ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

Applicant Response: Yes. The variance will grant no special rights not already contemplated in the CTS zoning district.

Staff Findings: The CTS zone permits boat storage and maintenance and the use is consistent with the **Comprehensive Plan Policy 1-2.3.3: Commercial Trades and Services (CTS)**. Parking is a required element of any use or development within all zoning district within the City and therefore the request is not in conflict with the CTS zoning district or the Comprehensive Plan. The request would provide more parking in an area of the City that continually sees parking issues due to the many attractions and services afforded to residents and visitors in the Harbor District.

- A. **Link to Strategic Goals / Objectives:** 1) Economic Development and Revitalization
- B. **Effect on Budget (EOB):** There is no anticipated effect on the City budget.
- C. **Level of Service (LOS):** There is no anticipated effect on LOS.

III. CONCLUSION:

- Per **Land Development Code (LDC), Section 2.25.03(C)**, to authorize a variance request, the Board of Adjustment (BOA) must find that all six (6) of the aforementioned criteria must be satisfied. After performing a review of the proposed variance request, Staff's recommendation is to approve the request. Approval of the variance would not afford privileges to the applicant not afforded to other properties within the same zoning district or within the MMTD. Approval of the requested variance would allow the applicant to develop the subject property in a manner consistent with the underlying zoning district and in conformance with the Comprehensive Plan.

IV. RECOMMENDED MOTION: I recommend that the Board of Adjustments approve the proposed Variance Request 21-32-VR.

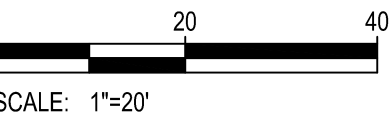
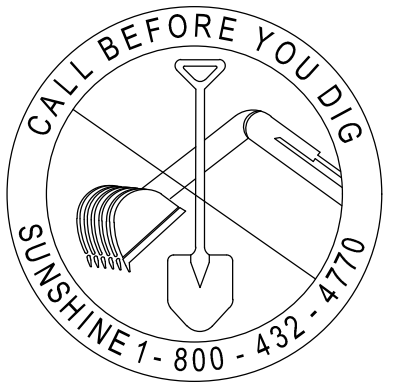
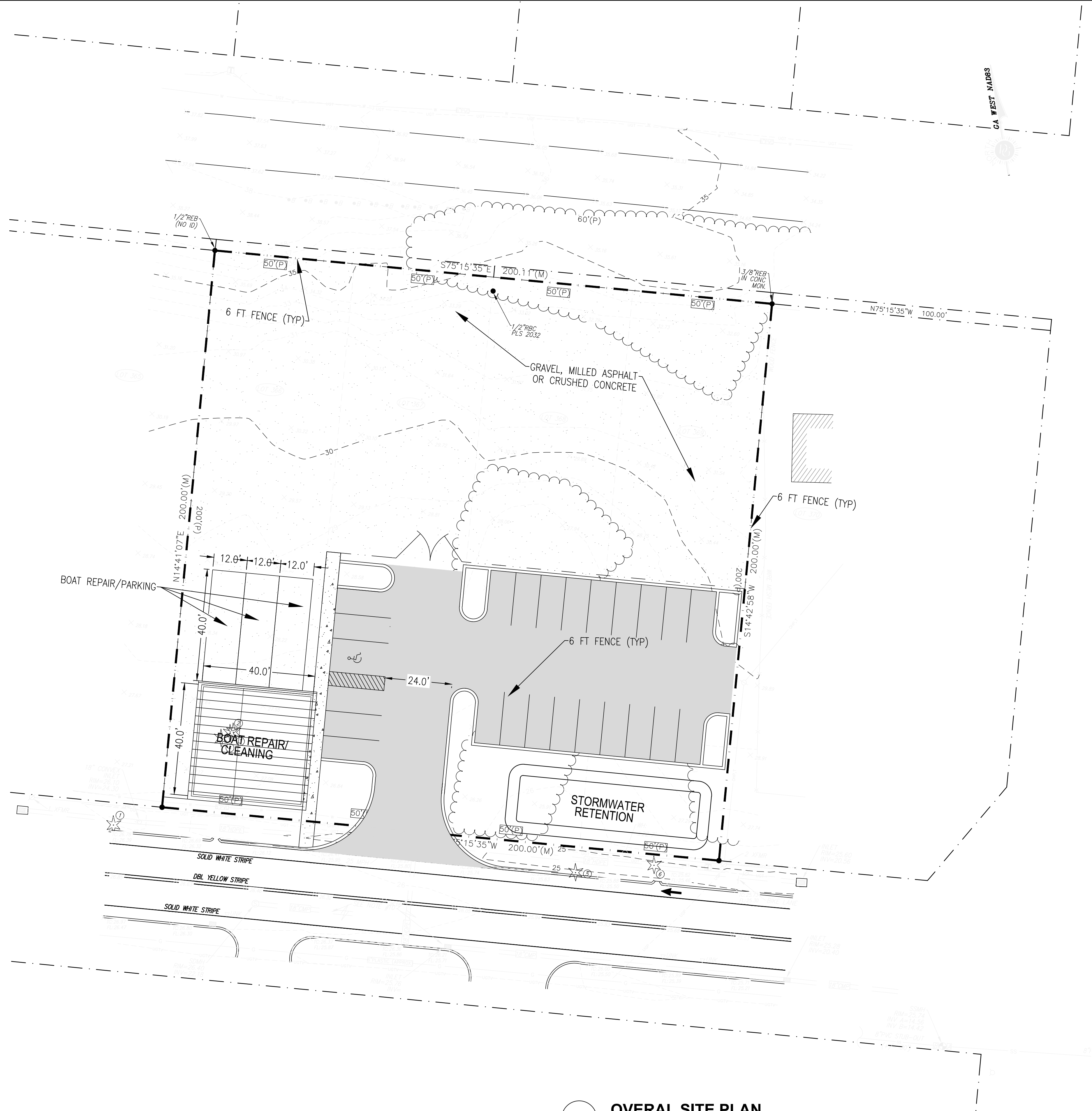
ALTERNATIVE MOTION:

I recommend that the Board of Adjustments approve proposed Variance Request 21-32-VR with conditions.

Attachments:

1. Proposed Site Plan
2. Warranty Deed
3. Agent Authorization
4. Variance Request Letter

Z:\Civil\0620 - Mike Abadie\0620.21.001 - Mountain Drive\4-0 Production\Drawing CAD\C-NC-SITE ALL REV3.dwg



REVISIONS:

REV	DATE	DESCRIPTION

MOUNTAIN DRIVE
BOAT REPAIR AND STORAGE

531 MOUNTAIN DRIVE
DESTIN, FLORIDA 32541

SITE PLAN

Not valid unless bearing Engineer's seal & original signature

Job: 0620.21.001

Date: 10/09/19

Designed: ELS

Drawn By: ZDB

Checked: ELS

DRAWING NUMBER
C1.01

SHEET NUMBER
3 OF 11

CORE ENGINEERING & CONSULTING, INC.

CIVIL & ENVIRONMENTAL ENGINEERING

3997 COMMONS DRIVE W., SUITE F

DESTIN, FLORIDA 32541

PH. 850.650.2646

FAX. 850.837.1576

CORECONSULTING.COM

CERTIFICATE OF AUTHORIZATION NO. 28155

THIS DRAWING IS THE PROPERTY OF CORE ENGINEERING & CONSULTING, INC. & IS NOT TO BE REPRODUCED WITHOUT EXPRESSED WRITTEN CONSENT.

Prepared by:
Kacie Larock, Esq.
Rodgers-Kiefer Title
327 S. Co. Hwy. 393, Unit 202
Santa Rosa Beach, Florida 32459

File Number: 21-0204

Special Warranty Deed

THIS SPECIAL WARRANTY DEED, is made May 26, 2021 between **O'Reilly Automotive Stores, Inc., a Missouri corporation**, whose post office address is: 233 S. Patterson Avenue, Springfield, Missouri 65802, Grantor, and **ABC Amusement Company, a Florida corporation**, whose post office address is: PO Box 5436, Destin, Florida 32540, Grantee,

Witnesseth, that the said Grantor, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), and other valuable considerations, receipt and sufficiency of which is hereby acknowledged, granted, bargained, sold, remised, released, conveyed and confirmed unto said Grantee, its successors and assigns forever, the following described land, situate, lying and being in the County of Okaloosa, State of Florida, to wit:

Lots 366, 367, 368 and 369, Block E, SECOND REVISION OF CALHOUN'S SUBDIVISION OF ADDITION TO TOWN OF DESTIN, according to the Plat thereof as recorded in Plat Book 2, Page 43A, Public Records Of Okaloosa County, Florida.

Parcel Identification Number: **00-2S-22-0310-000E-3660**

The subject property is hereby conveyed in "where is, as is" condition subject to all latent and patent defects or conditions and, except as otherwise provided by law, without warranty, express or implied, regarding its condition or fitness for a particular purpose.

SUBJECT, however, to all reservations, covenants, conditions, restrictions and easements of record, and to all applicable zoning ordinances and/or restrictions or requirements imposed by governmental authorities, if any, none of which are to be reimposed.

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in otherwise appertaining.

TO HAVE AND TO HOLD the same in fee simple forever.

AND Grantor hereby covenants with said Grantee that the Grantor is lawfully seized of said land in fee simple; that it has good right and lawful authority to sell and convey said land; that the land is free and clear of all encumbrances except taxes accruing subsequent to December 31, 2020; that it hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons claiming by, through or under Grantor, but against none other.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed in its name by its duly authorized officer and caused its corporate seal to be affixed the day and year first above written.

Signed and Sealed in Our Presence:

O'Reilly Automotive Stores, Inc., a Missouri corporation

[Signature]
 Witness Signature
 Printed Name: Matthew Sisson

[Signature]
 By: Scott Kraus
 Its: Senior Vice President
 (Corporate Seal)

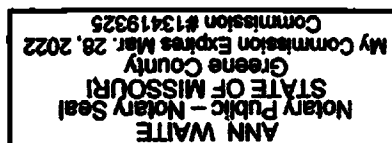
[Signature]
 Witness Signature
 Printed Name: Linda Parker

State of Missouri
 County of Greene

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 25th day of May, 2021, by Scott Kraus, as Senior Vice President of O'Reilly Automotive Stores, Inc., a Missouri corporation, on behalf of the corporation. He ☒ is personally known to me or ☒ has produced Legal Dept as identification.

[Signature] (Seal)
 Notary Public
 Notary Printed Name:
Ann Waite

My Commission Expires: _____



Agent Affidavit / Special Power of Attorney

STATE OF FLORIDA COUNTY OF OKALOOSA

KNOW ALL MEN BY THESE PRESENTS, that I, Mike Abadie, as president of ABC Amusement Company, am presently the owner of Okaloosa County Property ID 00-2S-22-0310-000E-3660, and desiring to execute a Special Power of Attorney, have made, constituted and appointed, and by these presents do make, constitute and appoint Stephen Tatum of Matthews & Jones, LLP whose address is 4475 Legendary Drive, Destin, FL 32541, Okaloosa County, my Attorney with full power to act as my agent in the process of obtaining a variance pertaining to parking at the above referenced property.

FURTHER, I do authorize the aforesaid Attorney-in-Fact to perform all necessary tasks in the execution of aforesaid authorization with the same validity as I could effect if personally present. Any act or thing lawfully done hereunder by the said attorney shall be binding on myself and my heirs, legal and personal representative, and assigns.

PROVIDED, however, that any and all transactions conducted hereunder for me or for my account shall be transacted in my name, and that all endorsements and instruments executed by the said Attorney for the purpose of carrying out the foregoing powers shall contain my name, followed by that of my said attorney and the designation "Attorney-in-Fact."

WITNESSES:

APPLICANT:

Signature: Blair Cooke

Signature: Mike Abadie

Printed Name: Blair Cooke

Printed Name: Mike Abadie

STATE OF Florida

COUNTY OF Okaloosa

BEFORE ME, the undersigned Notary Public in and for said County and State, appeared

Mike Abadie, who is personally known to me or who produced _____ as identification, and who executed the foregoing instrument. Given under my hand and seal this _____ day of

October 27th, 2021.

Signed Name of Notary Public

Adrienne Lynn Ashley

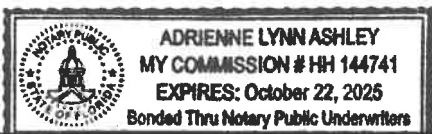
{Seal}

Printed Name of Notary Public

Adrienne Lynn Ashley

Commission Number: HH 144741

Expiration Date: Oct. 22, 2025



DANA C. MATTHEWS

MICHAEL A. JONES

KENNETH M. BORICK
Of Counsel

Also admitted in Georgia and South Carolina

DANA C. "D.C." MATTHEWS II

SAMUEL B. TAYLOR



INSIGHT | INTEGRITY | INNOVATION

DANIEL C. O'ROURKE
Florida Supreme Court Certified
Civil and Family Mediator

CHRISTA P. DIVINEY
Board Certified Criminal Trial Lawyer
Also admitted in Alabama

LAURA PENTEL-KLANG

C. STEPHEN TATUM

DAWN E. STUNTZ
Also admitted in Mississippi

September 29, 2021

City of Destin
Zoning Board of Adjustments
4200 Indian Bayou Trail
Destin, FL 32541

Dear BOA Board Members:

ABC Amusement Company and its owner Mike Abadie, are requesting a variance from City of Destin Land Development Code section 8.09.03 A. 4. c., which provides that the minimum parking space requirements located elsewhere in the code for a particular use will be the MAXIMUM allowed in the Multimodal Transportation District. Mr. Abadie wishes to construct on his lot, located at 531 Mountain Drive, a boat storage and maintenance facility, which will service and store boats associated with his livery vessel business located at 530 Harbor Boulevard. The two properties are within 1,200 feet of one another and the proposed use is allowed in the CTS Zoning District. However, because of the relatively small footprint of the office building associated with the boat storage and maintenance development, the LDC only allows four parking spaces to be constructed on the site. Mr. Abadie wishes to utilize a portion of the remainder of the lot (see site plan) for 20 additional parking spaces that will help alleviate parking concerns along the Destin Harbor by allowing the lot to be used as parking for his employees and overflow when necessary.

DESTIN 4475 LEGENDARY DRIVE | DESTIN, FL 32541 | 850.837.3662 PHONE | 850.654.1634 FAX

NICEVILLE 323 E. JOHN SIMS PARKWAY | NICEVILLE, FL 32578 | 850.729.7440 PHONE | 850.729.7871 FAX

SANTA ROSA BEACH 2930 W. COUNTY HWY 30A, STE 202 | SANTA ROSA BEACH, FL 32459 | 850.682.6211 PHONE | 850.622.0898 FAX

DESTINLAW.COM

I think we can all agree that the maximum number of parking space requirements found in the MMTD provisions, while possibly a good plan in theory, now provides additional burdens on developments and in reality decreases the available parking near the Harbor. A variance from this requirement will in no way negatively impact the areas surrounding the site and the site design will provide substantial buffering between the proposed additional parking and the residential uses to the north.

We appreciate your sincere consideration of this request and ask that you approve the proposed variance.

Sincerely,

/s/ C. Stephen Tatum.