

AGENDA  
ESCAMBIA COUNTY BOARD OF ADJUSTMENT  
November 18, 2020–8:30 a.m.  
Escambia County Central Office Complex  
3363 West Park Place, Room 104

1. Call to Order.
2. Swearing in of Staff and acceptance of staff as expert witness
3. Acceptance of the BOA Meeting Package with the Development Services Staff Findings-of-Fact, into evidence.
4. Proof of Publication and waive the reading of the legal advertisement.
5. Approval of Resume Minutes.
- A. Approval of Resume Meeting Minutes from the October 8, 2020, and October 21, 2020, Board of Adjustment Meetings.
6. **Consideration of the following cases:**
  - A. **Case No.: CU-2020-09**  
Address: 13170 Sorrento Rd  
Request: To allow a drive-thru adjacent to LDR zoning  
Requested by: Hammond Engineering Inc, gent for Simpson and Foley LLC, Owner
  - B. **CASE NO.:AP-2020-03**  
**ADDRESS:** 9511 Scenic Highway  
**REQUESTED APPEAL:** The Applicant is appealing the issuance of land use approval permit number 20103920PLU  
**REQUESTED BY:** Maria Fatima Luther and David D. Luther
7. Discussion Items.
8. Old/New Business.
9. Announcement.  

The next Board of Adjustment Meeting is scheduled for Wednesday, December 16, 2020, at 8:30 a.m., at the Escambia County Central Office Complex, Room 104, 3363 West Park Place.
10. Adjournment.

**Board of Adjustment**

**5. A.**

Meeting Date: 11/18/2020

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Agenda Item:

Approval of Resume Meeting Minutes from the October 8, 2020, and October 21, 2020, Board of Adjustment Meetings.

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Attachments

Draft October 8, 2020 BOA Minutes

Draft October 21, 2020 BOA Minutes

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# DRAFT

## RESUMÉ OF THE MEETING OF THE BOARD OF ADJUSTMENT HELD October 8, 2020

CENTRAL OFFICE COMPLEX  
3363 WEST PARK PLACE, BOARD CHAMBERS  
PENSACOLA, FLORIDA  
(8:30 A.M. – 12:48 P.M.)

Present: Auby Smith  
Jennifer Bass  
Michael Godwin  
Marty Schack

Absent: Judy Gund  
Willie Kirkland, Jr.  
Basil Kuloba

Staff Present: Andrew Holmer, Division Manager, Planning & Zoning  
Horace Jones, Director, Development Services  
John Fisher, Senior Urban Planner, Planning & Zoning  
Kayla Meador, Administrative Supervisor  
Kristin Hual, Assistant County Attorney  
Rachel Merlin, Administrative Assistant  
Brad Bane, Environmental Analyst  
Kia Johnson, Assistant County Attorney  
Christine Fanchi, Transportation Engineer

### REGULAR BOA AGENDA

1. Call to Order.
2. Swearing in of Staff and acceptance of staff as expert witness
3. Acceptance of the BOA Meeting Package with the Development Services Staff Findings-of-Fact, into evidence.  

Motion by Vice Chairman Michael Godwin, Seconded by Board Member Jennifer Bass

Motion was made to accept the October 8, 2020, BOA meeting packet.

**Vote:** 4 - 0 Approved
4. Proof of Publication and waive the reading of the legal advertisement.  

Motion by Vice Chairman Michael Godwin, Seconded by Board Member Jennifer Bass

Motion was made to waive the reading of the legal advertisement.

**Vote:** 4 - 0 Approved
5. **Consideration of the following cases:**
  - A. **CASE NO.:AP-2020-02**  
**ADDRESS:Monarch Ln.**  
**REQUESTED APPEAL:** The Applicant is appealing the issuance of Development Order 2001498PSD-PPCP for Monarch Place Subdivision.  
**REQUESTED BY:** Michelle Tyler  

Motion by Vice Chairman Michael Godwin, Seconded by Board Member Marty Schack

Motion was made to accept exhibit No. 1 A, 1 B, and 1 C into evidence.

**Vote:** 4 - 0 Approved

Motion by Board Member Jennifer Bass, Seconded by Vice Chairman Michael Godwin

Motion was made to accept exhibit No. 2 into evidence.

**Vote:** 4 - 0 Approved

Motion by Vice Chairman Michael Godwin, Seconded by Board Member Marty Schack

Motion was made to accept exhibit No. 3 into evidence.

**Vote:** 4 - 0 Approved

Motion by Vice Chairman Michael Godwin, Seconded by Board Member Marty Schack

Motion was made to accept exhibit No. 6 into evidence with the entire traffic study included.

**Vote:** 4 - 0 Approved

Motion by Board Member Marty Schack, Seconded by Vice Chairman Michael Godwin

Motion was made to accept exhibit 10 A - 10G into evidence.

**Vote:** 4 - 0 Approved

Motion by Vice Chairman Michael Godwin, Seconded by Board Member Marty Schack

Motion was made to accept exhibit No. 13 into evidence.

**Vote:** 3 - 1 Approved

Voted No: Board Member Jennifer Bass

Motion by Board Member Jennifer Bass, Seconded by Board Member Marty Schack

Motion was made to accept exhibit No. 16 into evidence.

**Vote:** 4 - 0 Approved

Motion by Vice Chairman Michael Godwin, Seconded by Board Member Marty Schack

Motion was made to accept remaining exhibits into evidence.

**Vote:** 4 - 0 Approved

Motion by Vice Chairman Michael Godwin, Seconded by Board Member Marty Schack

Motion was made to accept the construction plans into evidence.

**Vote:** 4 - 0 Approved

Motion by Board Member Jennifer Bass, Seconded by Vice Chairman Michael Godwin

Motion was made that the applicant did not prove her case and that the development order stands denying the appeal.

**Vote:** 3 - 1 Approved

Voted No: Board Member Marty Schack

6. Discussion Items.

7. Old/New Business.

8. Announcement.

The next Board of Adjustment Meeting is scheduled for Wednesday, October 21, 2020 at 8:30 a.m., at the Escambia County Central Office Complex, Room 104, 3363 West Park Place.

9. Adjournment.

# DRAFT

## RESUMÉ OF THE MEETING OF THE BOARD OF ADJUSTMENT HELD October 21, 2020

CENTRAL OFFICE COMPLEX  
3363 WEST PARK PLACE, BOARD CHAMBERS  
PENSACOLA, FLORIDA  
(8:31 A.M. – 9:06 A.M.)

Present: Auby Smith  
Judy Gund  
Michael Godwin  
Willie Kirkland, Jr.  
Marty Schack  
Basil Kuloba

Absent: Jennifer Bass

Staff Present: Andrew Holmer, Division Manager, Planning & Zoning  
Juan Lemos, Senior Planner, Planning & Zoning  
Kayla Meador, Administrative Supervisor  
Kristin Hual, Assistant County Attorney  
Rachel Merlin, Administrative Assistant

### REGULAR BOA AGENDA

1. Call to Order.
2. Swearing in of Staff and acceptance of staff as expert witness
3. Acceptance of the BOA Meeting Package with the Development Services Staff Findings-of-Fact, into evidence.  
  
Motion by Board Member Willie Kirkland, Jr., Seconded by Board Member Judy Gund  
  
Motion was made to accept the October 21, 2020, BOA meeting packet.  
**Vote:** 6 - 0 Approved
4. Proof of Publication and waive the reading of the legal advertisement.

Motion by Board Member Judy Gund, Seconded by Board Member Willie Kirkland, Jr.

Motion was made to waive the reading of the legal advertisement.

**Vote:** 6 - 0 Approved

5. Approval of Resume Minutes.

A. Approval of Resume Meeting Minutes from the August 26, 2020, Board of Adjustment Meeting.

Motion by Board Member Willie Kirkland, Jr., Seconded by Board Member Judy Gund

Motion was made to approve the August 26, 2020, BOA Resume Meeting minutes.

**Vote:** 6 - 0 Approved

6. **Consideration of the following cases:**

A. **Case No.: CU-2020-07**

Address: 2800 BLK BLUE ANGEL PKWY

Request: A 15,000 SF fenced outdoor display area, a 3,000 SF permanent trailer display area, and a permanent sidewalk display areas out in front of the building totaling to 2,980 SF

Requested by: HSC Pensacola South, LLC agent for Bullseye LLC/Mark Lyons III

No BOA member acknowledged any ex parte communication regarding this item.

No BOA member acknowledged visiting the site.

No BOA member refrained from voting on this matter due to any conflict of interest.

Motion by Board Member Judy Gund, Seconded by Board Member Willie Kirkland, Jr.

Motion was made to accept Staff's Findings of Fact and grant the conditional use.

**Vote:** 6 - 0 Approved

B. **Case No.:V-2020-03**

Address: 931 Fairway Drive, Pensacola, FL 32507

Request: An 8 foot variance to the 20 foot rear setback requirement, resulting in a rear setback of 12 feet.

Requested by: Clyde Jolly, Agent for Ted and Judy Gund, Owners

No BOA member acknowledged any ex parte communication regarding this item.

No BOA member acknowledged visiting the site.

Judy Gund refrained from voting on this matter due to any conflict of interest.

Motion by Vice Chairman Michael Godwin, Seconded by Board Member Willie Kirkland, Jr.

Motion was made to accept Staff's Findings of Fact and grant the variance.

**Vote:** 5 - 0 Approved

7. Discussion Items.

8. Old/New Business.

9. Announcement.

The next Board of Adjustment Meeting is scheduled for Wednesday, November 18, 2020 at 8:30 a.m., at the Escambia County Central Office Complex, Room 104, 3363 West Park Place.

10. Adjournment.

**Board of Adjustment**

**6. A.**

**Meeting Date:** 11/18/2020  
**CASE:** CU-2020-09  
**APPLICANT:** Hammond Engineering, Inc, Agent for Stimpson and Foley LLC, Owner  
**ADDRESS:** 13170 Sorrento Rd  
**PROPERTY REFERENCE NO.:** 14-3S-32-2000-003-006  
**ZONING DISTRICT:** Commercial (Com)  
**FUTURE LAND USE:** Mixed Use Suburban (MU-S)  
**OVERLAY DISTRICT:** N/A

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**SUBMISSION DATA:**

**REQUESTED CONDITIONAL USE:**

Conditional Use to allow for a drive-thru restaurant in commercial zoning within 200 feet of Low Density Residential (LDR) zoning.

**RELEVANT AUTHORITY:**

**Land Development Code of Escambia County, Florida (Ordinance 96-3 as amended), Section: Sec. 3-2.10(c)**

Conditional uses (3)a

a. Restaurants not among the permitted uses of the district.

**CRITERIA:**

**Land Development Code of Escambia County, Florida (Ordinance 96-3 as amended), Sec. 2-6.4**

**CRITERION (a)**

**General compatibility. The proposed use can be conducted and operated in a manner that is compatible with adjacent properties and other properties in the immediate area.**

**FINDINGS-OF-FACT**

The proposed use of a drive-thru restaurant is compatible with the surrounding uses including nearby restaurants with drive-thru service.

**CRITERION (b)**



**Facilities and services. Public facilities and services, especially those with adopted levels of service, will be available, will provide adequate capacity to serve the proposed use consistent with capacity requirements.**

#### **FINDINGS-OF-FACT**

The applicant will utilize the same public facilities and services which are available and adequate for the existing nearby restaurants.

#### **CRITERION (c)**

**On-site circulation. Ingress to and egress from the site and its structures will be sufficient, particularly regarding vehicle and pedestrian safety and convenience, efficient traffic flow and control, on-site parking and loading, and emergency vehicle access.**

#### **FINDINGS-OF-FACT**

On-site circulation will need to meet all of the LDC requirements imposed through the development/ site plan review process.

#### **CRITERION (d)**

**Nuisances and hazards. The scale, intensity, and operation of the use will not generate unreasonable noise, glare, dust, smoke, odor, vibration, electrical interference, or other nuisances or hazards for adjoining properties and other properties in the immediate area.**

#### **FINDINGS-OF-FACT**

The proposed use is not anticipated to provide any nuisance or hazard to the adjoining properties. The nearby LDR zoning is on a landlocked, majority wetlands parcel.

#### **CRITERION (e)**

**Solid waste. All on site solid waste containers will be appropriately located for functional access, limited off-site visibility and minimal odor and other nuisance impacts.**

#### **FINDINGS-OF-FACT**

Solid waste service will need to meet all of the LDC requirements imposed through the development/ site plan review process.

#### **CRITERION (f)**

**Screening and buffering. Where not otherwise required by the LDC, screening and buffering will be provided if appropriate to the proposed use and site.**

#### **FINDINGS-OF-FACT**

Screening and buffering will need to meet all of the LDC requirements imposed through the development/ site plan review process. Surrounding parcels are mostly undeveloped and wooded.

**CRITERION (g)**

**Signs and lighting.** All exterior signs and lights, whether attached or freestanding, will be compatible with adjoining properties and other properties in the immediate area, especially regarding glare and traffic safety.

**FINDINGS-OF-FACT**

Per the applicant, all signs and lighting will be compatible with all of the existing surrounding parcels and uses which will need to meet all of the LDC requirements imposed through the development/ site plan review process.

**CRITERION (h)**

**Site characteristics.** The size, shape, location and topography of the site appear adequate to accommodate the proposed use, including setbacks, intensity, bulk, height, open space and aesthetic considerations .

**FINDINGS-OF-FACT**

The proposed parcel appears adequate to accommodate the proposed Conditional Use and will need to meet all of the LDC requirements imposed through the development/ site plan review process.

**CRITERION (i)**

**Use requirements.** The proposed use complies with any additional conditional use requirements of the applicable zoning district, use, or other provisions of the LDC.

**FINDINGS-OF-FACT**

The specific use requirement for this case is the distance from residential zoning. That requirement is intended to reduce noise impacts from a drive-thru kiosk. Given that the LDR zoning is on a landlocked, majority wetlands parcel this isn't a concern for this case.

**STAFF FINDINGS**

Staff finds that the proposed use can meet all of the required criteria and approval is recommended.

**BOA DECISION**

**BOARD OF ADJUSTMENT FINDINGS**

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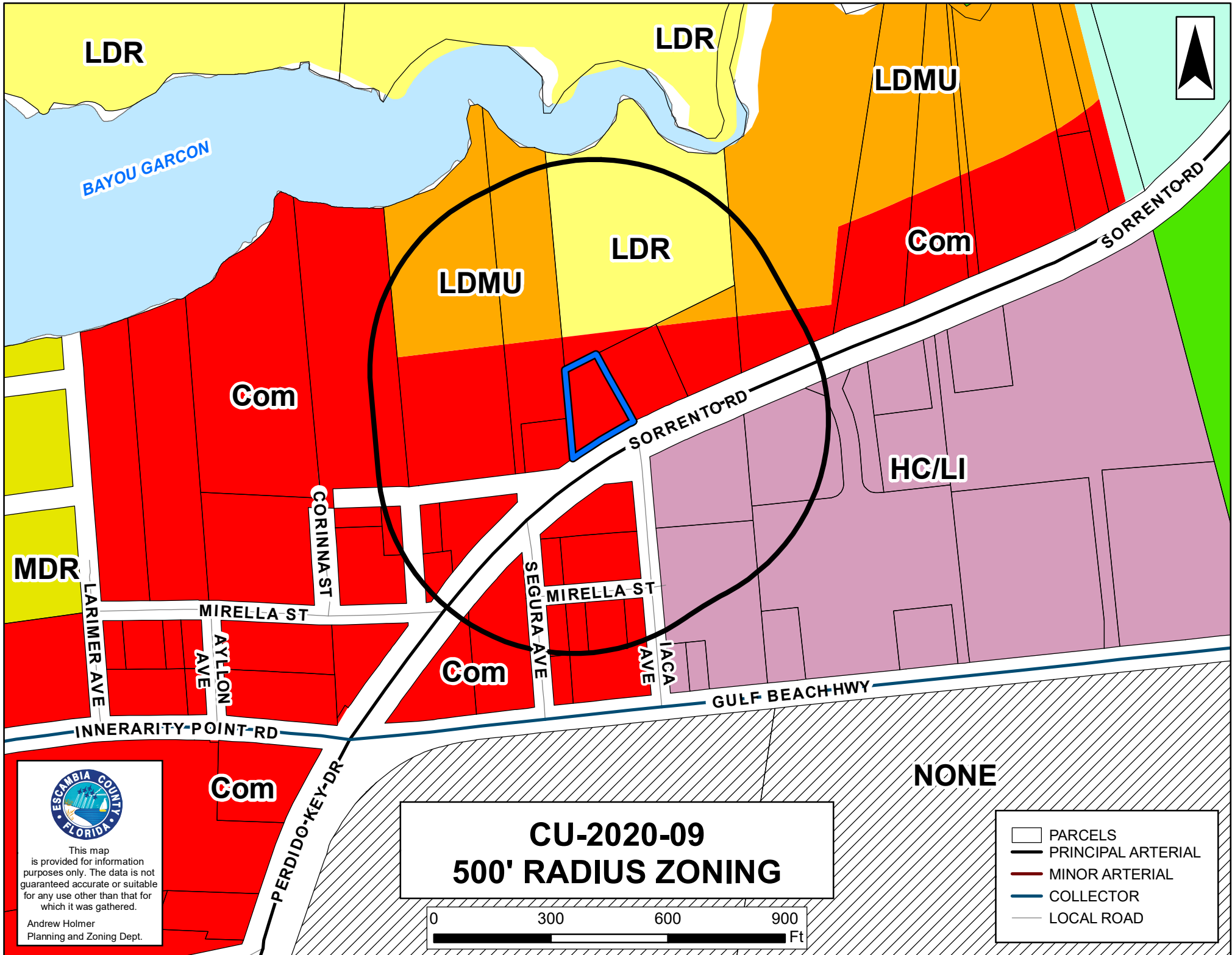
**Attachments**

[Working Case File](#)

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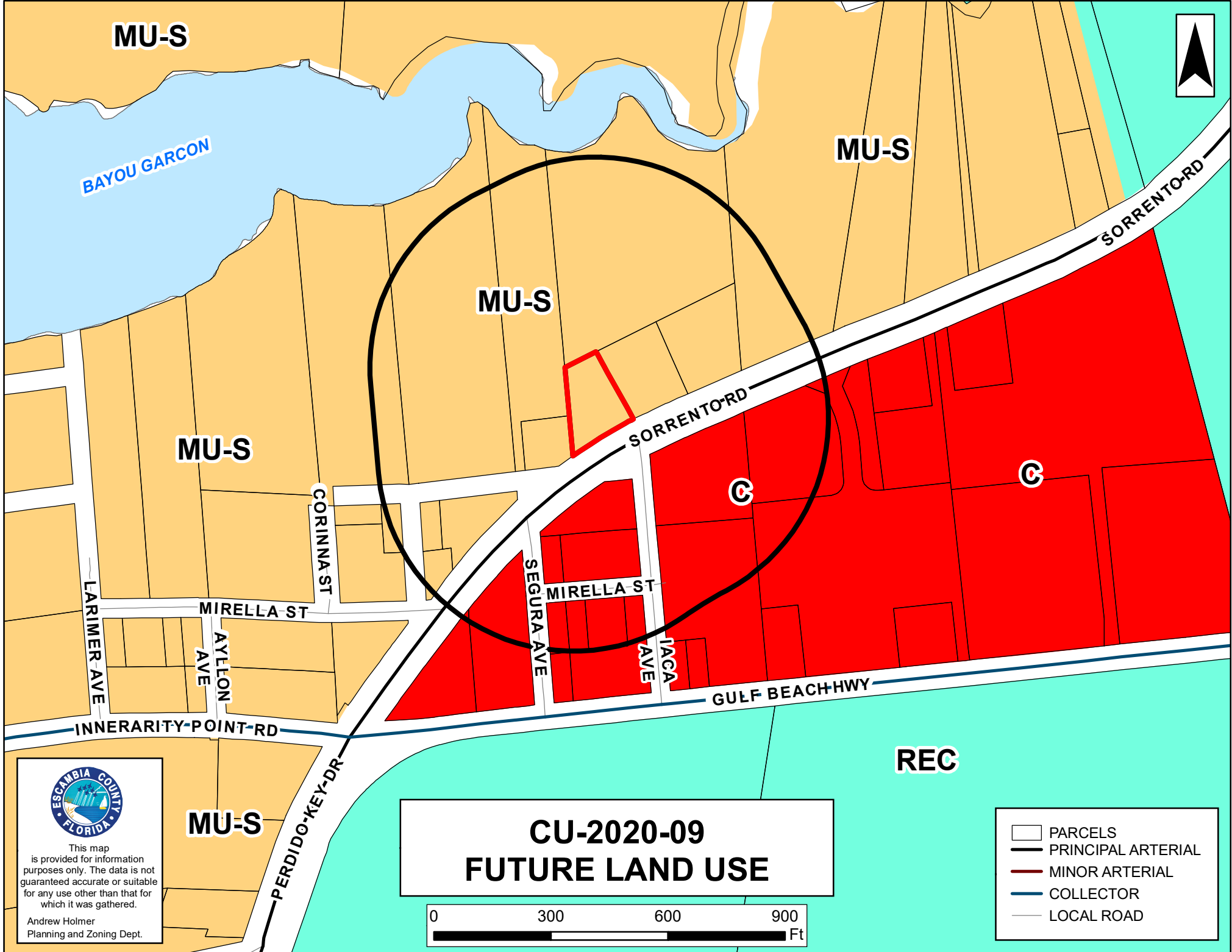
**CU-2020-09**





This map is provided for information purposes only. The data is not guaranteed accurate or suitable for any use other than that for which it was gathered.

Andrew Holmer  
Planning and Zoning Dept.



MU-S

BAYOU GARCON

MU-S

SORRENTO RD

MU-S

MU-S

CORINNA ST

SORRENTO RD

C

C

LARIMER AVE

MIRELLA ST

SEGURA AVE

MIRELLA ST

JAGA AVE

GULF BEACH HWY

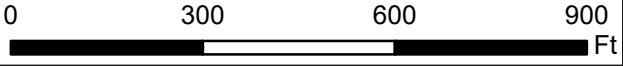
INNERARITY POINT RD

PERDIDO KEY DR

REC

MU-S

**CU-2020-09  
FUTURE LAND USE**

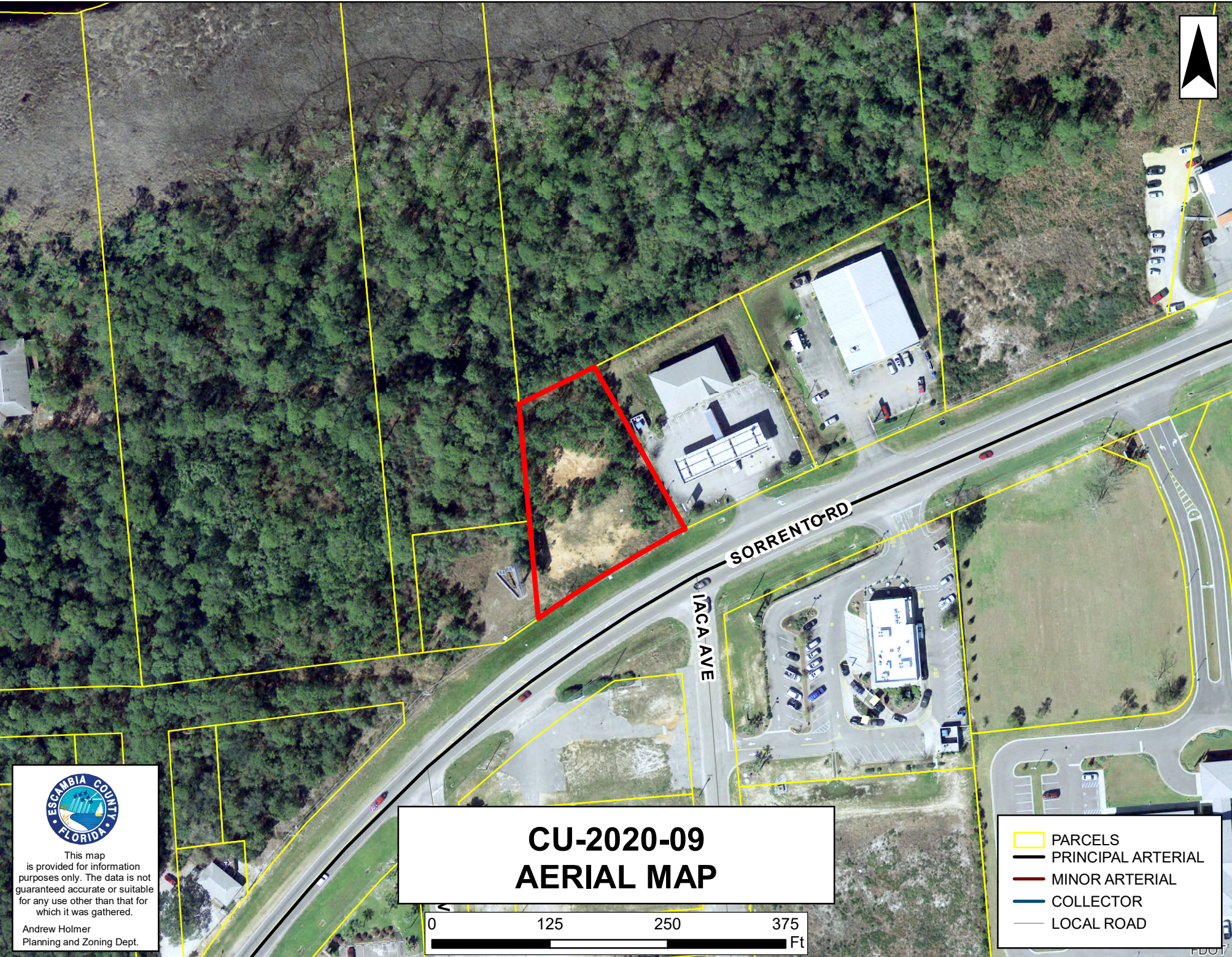


- PARCELS
- PRINCIPAL ARTERIAL
- MINOR ARTERIAL
- COLLECTOR
- LOCAL ROAD

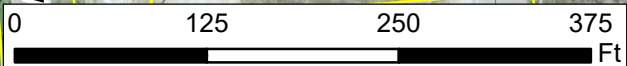


This map is provided for information purposes only. The data is not guaranteed accurate or suitable for any use other than that for which it was gathered.

Andrew Holmer  
Planning and Zoning Dept.



# CU-2020-09 AERIAL MAP



- PARCELS
- PRINCIPAL ARTERIAL
- MINOR ARTERIAL
- COLLECTOR
- LOCAL ROAD



This map is provided for information purposes only. The data is not guaranteed accurate or suitable for any use other than that for which it was gathered.

Andrew Holmer  
Planning and Zoning Dept.



**NOTICE OF  
PUBLIC HEARING  
BOARD OF ADJUSTMENT**

**TYPE OF REQUEST: CONDITIONAL  
USE**

**CASE NO: CU-2020-09 JPA**

**DATE: 11/18/20 TIME: 08:30 A.M.**

**LOCATION OF HEARING**

**ESCAMBIA COUNTY CENTRAL OFFICE COMPLEX  
3363 WEST PARK PLACE  
BOARD MEETING ROOM**

**FOR MORE INFORMATION CALL:  
DEVELOPMENT SERVICES AT 595-3475 OR VISIT  
WWW.MYESCAMBIA.COM**

**PLEASE DO NOT REMOVE THIS SIGN  
PROPERTY OF ESCAMBIA COUNTY**

Public Hearing Sign





Looking Southeast across the street from  
parcel



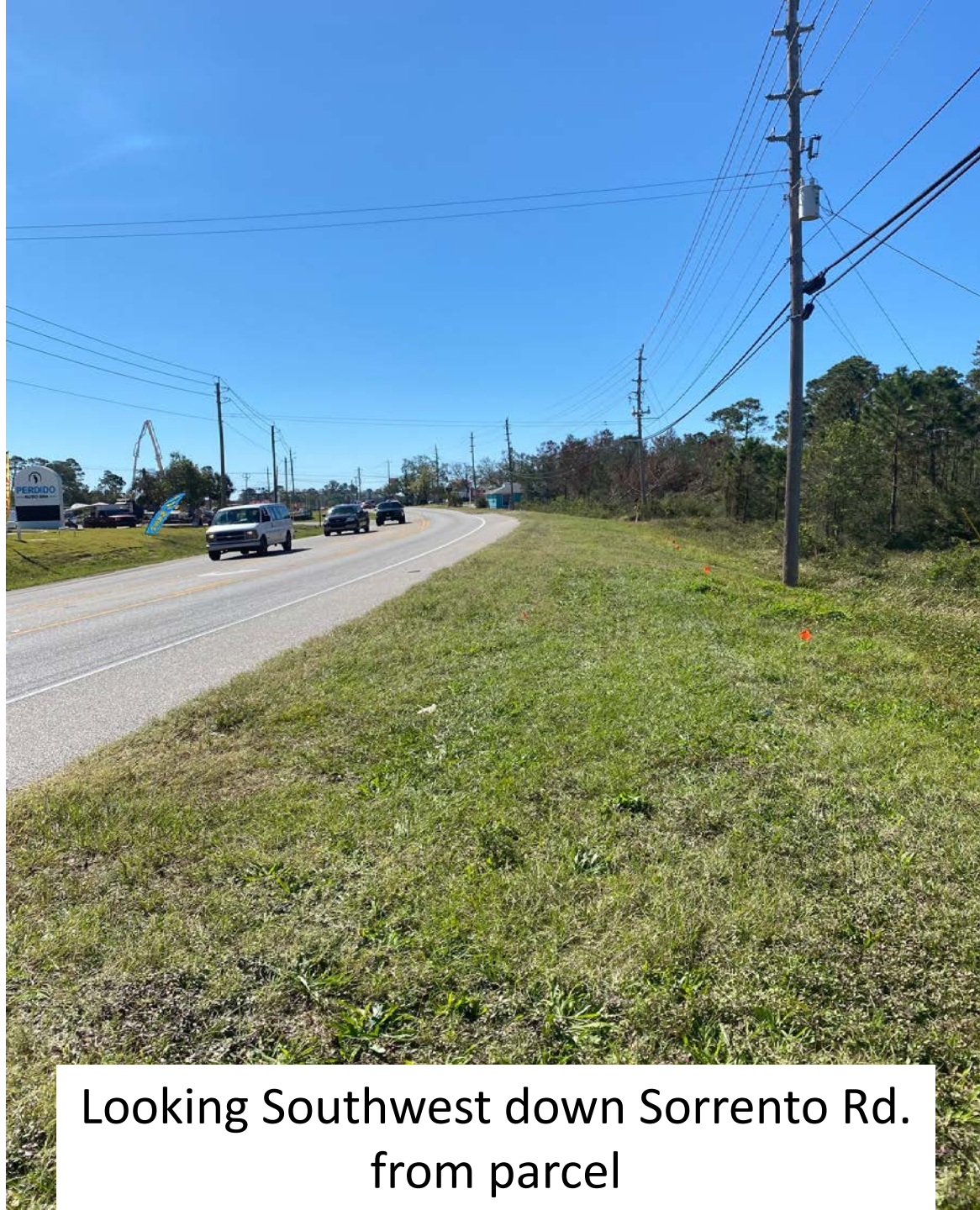
Looking North onto parcel



Looking South from parcel



Looking Southeast down Sorrento Rd.  
from parcel



Looking Southwest down Sorrento Rd.  
from parcel



**HAMMOND ENGINEERING, INC.**

Florida Certificate of Authorization No. 9130  
Alabama Certificate of Authorization No. 3277

October 09, 2020

Ms. Allyson Lindsay  
Escambia County Development Services  
3363 West Park Place  
Pensacola, Florida 32505

**Reference: Drowsy Poet – Sorrento Road  
HEI Project No. 20-057  
Conditional Use Request - Application**

Dear Allyson:

Please find the following attached for DRC review:

1. One (1) copy of the executed BOA Conditional Use application.
2. One (1) copy of the Contract to Purchase/Vacant Land Contract & applicable warranty deed for *current* owner.
3. One (1) check in the amount of \$1275.50 for submittal fee.
4. One (1) copy of the certified boundary survey.

Please feel free to contact this office should you have any questions or need additional information. Thank you for your assistance.

Sincerely,

**HAMMOND ENGINEERING, INC.**

A handwritten signature in blue ink, appearing to read 'Thomas G. Hammond, Jr.', written over a light blue circular scribble.

Thomas G. Hammond, Jr., PE  
Principal

Escambia County Planning and Zoning  
Development Services Department  
3363 West Park Place  
Pensacola, FL 32505  
Phone: (850) 595-3475 • Fax: (850) 595-3481  
<http://myescambia.com/business/ds>

**Board of Adjustment Application**

FOR OFFICE USE ONLY - Case Number: \_\_\_\_\_ Accepted by: \_\_\_\_\_ BOA Meeting: \_\_\_\_\_

**Conditional Use** Request for: Drive- thru restaurant in COM district within 200LF of an LDR zoned parcel

**Variance** Request for: \_\_\_\_\_

**1. Contact Information:**

**A. Property Owner/Applicant:** Stimpson and Foley LLC

Mailing Address: PO Box 1047 Foley, Al 36536

Business Phone: \_\_\_\_\_ Cell: \_\_\_\_\_

Email: johnbfoley4@yahoo.com

**B. Authorized Agent (if applicable):** Hammond Engineering, Inc.

Mailing Address: 3802 North S Street Pensacola, Fl 32505

Business Phone: 850-434-2603 Cell: 850-554-9389

Email: tom@selanddesign.com

*Note: Owner must complete the attached Agent Affidavit. If there is more than one owner, each owner must complete an Agent Affidavit. Application will be voided if changes to this application are found.*

**2. Property Information:**

**A. Existing Street Address:** 13170 Sorrento Road Pensacola, Fl 32507

Parcel ID (s): 14-3S-32-2000-003-006

\_\_\_\_\_  
\_\_\_\_\_

**B. Total acreage of the subject property:** .62

**C. Existing Zoning:** COM

FLU Category: MU-S

**D. Is the subject property developed (if yes, explain):** N/A

\_\_\_\_\_

**E. Sanitary Sewer:** X **Septic:** \_\_\_\_\_

**3. Amendment Request**

- A. Please provide a general description of the proposed request, explaining why it is necessary and/or appropriate.

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N/A

- B. For Variance Request – Please address **ALL** the following approval conditions for your Variance request. (use supplement sheets as needed)

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

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N/A

2. The special conditions and circumstances do not result from the actions of the applicant.

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N/A



3. Granting the variance requested will not confer on the applicant any special privilege that is denied by this land development code to other lands, buildings or structures in the same zoning district.

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

N/A

4. Strict application of the provisions of the land development code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the land development code and would create an unnecessary and undue hardship on the applicant.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

N/A

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

N/A

6. The granting of the variance will be consistent with the general intent and purpose of the land development code and that such variance will not be injurious to the area or otherwise detrimental to the public welfare.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

N/A

**C. For Conditional Use Request** – Please address **ALL** the following approval conditions for your Conditional Use request. (use supplement sheets as needed)

1. **General compatibility.** The proposed use can be conducted and operated in a manner that is compatible with adjacent properties and other properties in the immediate area. *If this is for the sale of alcohol within a 1000 ft of a place of worship or child care facility; please explain a-e below: a.) The existing times of use of the places of worship or child care facilities coincide with the hours of operation of the subject business b.) The 1000-foot minimum distance is not achieved. c.) The conflicting uses are visible to each other. d.) Any on-premises consumption is outdoors. e.) Any conditions or circumstances mitigate any incompatibility.*

The proposed use of a a drive thru type restaurant on this parcel is compatible with the surrounding uses such as the McDonalds restaurant directly across the street.

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2. **Facilities and services.** Public facilities and services, especially those with adopted levels of service, will be available, will provide adequate capacity to serve the proposed use consistent with capacity requirements.

The same public facilities and services that are available and adequate enough for the existing McDonalds across the street from the subject parcel are available for the proposed project.

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- 3. On-site circulation.** Ingress to and egress from the site and its structures will be sufficient, particularly regarding vehicle and pedestrian safety and convenience, efficient traffic flow and control, on-site parking and loading, and emergency vehicle access.

ONSITE CIRCULATION, VEHICLE AND PEDESTRIAN ACCESS, AND PARKING AND LOADING WILL ALL BE ADDRESSED IN THE DRC PROCESS AND WILL MEET THE ESCAMBIA COUNTY LDC REQUIREMENTS.

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- 4. Nuisances and hazards.** The scale, intensity, and operation of the use will not generate unreasonable noise, glare, dust, smoke, odor, vibration, electrical interference, or other nuisances or hazards for adjoining properties and other properties in the immediate area.

The proposed use will not provide any nuisance or hazard to the adjoining properties.

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- 5. Solid waste.** All on-site solid waste containers will be appropriately located for functional access, limited off-site visibility and minimal odor and other nuisance impacts.

THE PROPOSED BUSINESS WILL REQUIRE SOLID WASTE SERVICE IN THE FORM OF A RESIDENTIAL CONTAINER OR COMMERCIAL DUMPSTER.

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- 6. Screening and buffering.** Where not otherwise required by the LDC, screening and buffering will be provided if appropriate to the proposed use and site.

SCREENING AND BUFFERING WILL BE ADDRESSED IN DRC AND WILL MEET THE LDC; SURROUNDING PARCELS ARE MOSTLY UNDEVELOPED AND ARE WOODED.

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- 7. Signs and lighting.** All exterior signs and lights, whether attached or freestanding, will be compatible with adjoining properties and other properties in the immediate area, especially regarding glare and traffic safety.

All signs and lighting will be compatible with all the existing surrounding parcels and uses.

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- 8. Site characteristics.** The size, shape, location and topography of the site appear adequate to accommodate the proposed use, including setbacks, intensity, bulk, height, open space and aesthetic considerations.

The site characteristics are adequate for the proposed use and will be reviewed and approved thus thru the DRC process.

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- 9. Use requirements.** The proposed use complies with any additional conditional use requirements of the applicable zoning district, use, or other provisions of the LDC.

THE PROPOSED USE COMPLIES WITH ALL OTHER PROVISIONS OF THE LDC.

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4. Please complete the following form (if applicable): Affidavit of Owner/Limited Power of Attorney

**AFFIDAVIT OF OWNER AND LIMITED POWER OF ATTORNEY**  
(if applicable)

As owner of the property located at 13170 SORRENTO ROAD PENSACOLA (32507), Florida, property reference number(s) 14-3S-32-2000-003-006 I hereby designate HAMMOND ENGINEERING, INC. for the sole purpose of completing this application and making a presentation to the Board of Adjustment on the above referenced property. This Limited Power of Attorney is granted on this 28 day of Sept. the year of 2020, and is effective until the Board of Adjustment has rendered a decision on this request and any appeal period has expired. The owner reserves the right to rescind this Limited Power of Attorney at any time with a written, notarized notice to the Development Services Department.

Agent Name: HAMMOND ENGINEERING, INC. - THOMAS G. HAMMOND, JR., PE  
Email: TOM@SELANDDESIGN.COM

Address: 3802 NORTH S ST. PENSACOLA, FL 32505 Phone: 850-434-2603  
[Signature] John Foster  
Signature of Property Owner Printed Name of Property Owner Date

STATE OF Alabama COUNTY OF Mobile  
The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of September 20 20,  
by means of  physical presence or  online notarization \_\_\_\_\_ Type of  
Identification Produced: Drivers license

[Signature]  
Signature of Notary

Leslie Fowlkes  
Printed Name of Notary

(Notary Seal)



**5. Submittal Requirements**

- A.  X  Completed application: All applicable areas of the application shall be filled in and submitted to the Planning and Zoning Department, 3363 West Park Place, Pensacola, FL 32505.
- B.  x  Application Fees: To view fees visit the website: <http://myescambia.com/business/board-adjustment> or contact us at 595-3475.

**Note: Fees include all notices and advertisements required for the public hearing and a \$5 technical fee. Payments must be submitted prior to 3 pm of the closing date of acceptance of application. Please make checks payable to Escambia County. MasterCard and Visa are also accepted.**

- C.  X  Legal Proof of Ownership (ex: copy of Tax Notice or Warranty Deed) **AND**
- D.  X  A **Certified Boundary Survey** (Include Corporation/LLC documentation if applicable.)
- E.  X  Signed and Notarized Affidavit of Owner/Limited Power of Attorney **AND** Concurrence Determination Acknowledgement (pages 4 and 5).

**By my signature, I hereby certify that:**

- 1) I am duly qualified as owner(s) or authorized agent to make such application, this application is of my own choosing, and staff has explained all procedures relating to this request; and
- 2) All information given is accurate to the best of my knowledge and belief, and I understand that deliberate misrepresentation of such information will be grounds for denial or reversal of this application and/or revocation of any approval based upon this application; and
- 3) I understand that there are no guarantees as to the outcome of this request, and that the application fee is non-refundable; and
- 4) I authorize County staff to place a public notice sign(s) on the property referenced herein.; and
- 5) I am aware that Public Hearing notices (legal ad and/or postcards) for the request shall be provided by the Development Services Department.

Signature of Owner/Agent

Printed Name of Owner/Agent

*THOMAS G. DAMONIS JR*

STATE OF FLORIDA

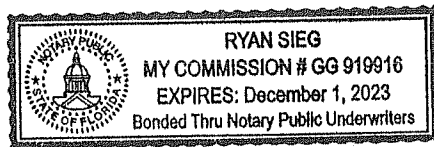
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this 27th day of October 2020 by means of  physical presence or  online notarization \_\_\_\_\_ Type of Identification Produced: \_\_\_\_\_

Signature of Notary

Printed Name of Notary

(Notary Seal)



Prepared by and return to:

**Matthew C. Hoffman**  
Carver Darden Koretzky Tessier Finn Blossman & Areaux, LLC  
801 W. Romana St., Suite A  
Pensacola, FL 32502  
850-266-2300  
File Number: 4997.43745

[Space Above This Line For Recording Data]

## Warranty Deed

**This Warranty Deed** made this **6th** day of **October, 2017** between **INT Properties, LLC, a Florida limited liability company**, whose post office address is **7873 Sandhill Ct, Palm Beach, FL 33412** ("Grantor"), and **Warren Virgets, III, a married man**, whose post office address is **11203 Proverbs Ave, Baton Rouge, LA 70816** ("Grantee"):

(Whenever used herein the terms "Grantor" and "Grantee" include all the parties to this instrument and the heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, companies, trusts and trustees)

**Witnesseth**, that said Grantor, for and in consideration of the sum of **TEN AND NO/100 DOLLARS (\$10.00)** and other good and valuable considerations to said Grantor in hand paid by said Grantee, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to said Grantee, and Grantee's heirs and assigns forever, the following described land, situate, lying and being in **Escambia County, Florida** to-wit:

**SEE ATTACHED EXHIBIT A**

**Together** with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

**To Have and to Hold**, the same in fee simple forever.

**And** subject to taxes for the current year and later years and all valid easements and restrictions or record, if any, which are not hereby reimposed; and also subject to any claim, right, title, or interest arising from any recorded instrument reserving, conveying, leasing, or otherwise alienating any interest in the oil, gas and other minerals. And Grantor does warrant the title to said land and will defend the same against the lawful claims of all persons whomsoever, subject only to the exceptions set forth herein.

In Witness Whereof, Grantor has hereunto set Grantor's hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

INT Properties, LLC,  
a Florida limited liability company

By: Anthony Trimboli  
Anthony Trimboli, Managing Member

Andrea Phillips  
Witness Name: Andrea Phillips

Pamela Picoli  
Witness Name: Pamela Picoli

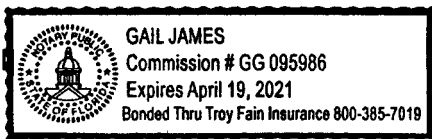
(Corporate Seal)

State of Florida

County of Palm Beach

The foregoing Warranty Deed was sworn to, subscribed and acknowledged before me this 4<sup>th</sup> day of October, 2017 by Anthony Trimboli, Managing Member of INT Properties, LLC, a Florida limited liability company, on behalf of the company. He  is personally known to me or  has produced a driver's license as identification.

[Notary Seal



Gail James  
Notary Public

Printed Name: Gail James

My Commission Expires: April 19, 2021



### Exhibit "A"

A Parcel of land lying in Section 14, Township 3 South, Range 32 West, Escambia County, Florida, being a portion of Parcel 3 as described in Official Records Book 5018, Page 145 of the Public Records of Escambia County, Florida, and a portion of Parcel 4 as described in Official Records Book 5018, Page 147, of said Public Records, of an unrecorded plat known as Sorrento Road commercial subdivision, and being more particularly described as follows:

A portion of Parcel 3:

That portion of Innerarity Heights subdivision, a subdivision of a portion of Section 14, Township 3 South, Range 32 West, Escambia County, Florida, as recorded in Deed Book 102 at Page 196 and 197 of the Public Records of said County described as follows:

Commence at the Southwest corner of Section 12, Township 3 South, Range 32 West, Escambia County, Florida; thence run Northerly along the West line of said Section 12, being also the East line of said Section 14, a distance of 1468.67 feet to a One-Half inch iron rod at an intersection with the Northerly right-of-way of State Road S-292 (100 foot right-of-way); thence deflect 122 degrees 48 minutes 00 seconds left and run South 71 degrees 09 minutes 00 seconds West along said right-of-way a distance of 252.41 feet to a One-Half inch capped iron rod (#4655) at an intersection with the East line of said Innerarity Heights subdivision; thence continue South 71 degrees 09 minutes 00 seconds West along said right-of-way a distance of 191.44 feet (191.84 feet per deed) to a One-Half inch capped iron rod (#4655); thence run Southwesterly along said right-of-way on the arc of a curve to the left a distance of 6124 feet (62.74 feet per deed) to a One-Half inch capped iron rod (#4655). Said curve having a radius of 1482.69 feet (1432.39 feet per deed), a central angle of 02 degrees 26 minutes 38 seconds (02 degrees 30 minutes 35 seconds per deed), a chord of 63.24 feet (62.74 feet per deed) and a chord bearing of South 69 degrees 55 minutes 41 seconds West (South 70 degrees 09 minutes 16 seconds West per deed) to the Southeasterly corner of said Parcel 3; thence continue Southwesterly along said right-of-way line and curve with a radius of 1482.69 feet and an arc length of 53.32 feet through a central angle of 02 degrees 03 minutes 37 seconds (chord of 53.31 feet bears South 67 degrees 40 minutes 33 seconds West) to the Point of Beginning.

From said Point of Beginning thence continue Southwesterly along said right-of-way and curve with a radius of 1482.69 feet and an arc length of 63.56 feet through a central angle of 02 degrees 27 minutes 21 seconds (chord of 63.55 feet bears South 65 degrees 25 minutes 04 seconds West) to the Westerly boundary line of said Parcel 3; thence run North 00 degrees 35 minutes 05 seconds East along said Westerly boundary line a distance of 156.59 feet; thence run South 23 degrees 21 minutes 15 seconds East a distance of 141.75 feet to the Point of Beginning.

And also

A portion of Parcel 4:

That portion of Innerarity Heights subdivision, a subdivision of a portion of Section 14, Township 3 South, Range 32 West, Escambia County, Florida, as recorded in Deed Book 102 at Page 196 and 197 of the Public Records of said County described as follows:

Commence at the Southwest corner of Section 12, Township 3 South, Range 32 West, Escambia County, Florida; thence run Northerly along the West line of said Section 12, being also the East line of said Section 14, a distance of 1468.67 feet to a One-Half inch iron rod at an intersection with the Northerly right-of-way of State Road S-292 (100 foot right-of-way); thence deflect 122 degrees 48 minutes 00 seconds left and run South 71 degrees 09 minutes 00 seconds West along said right-of-way a distance of 252.41 feet to a One-Half inch capped iron rod (#4655) at an intersection with the East line of said Innerarity Heights subdivision; thence continue South 71 degrees 09 minutes 00 seconds West along said right-of-way a distance of 191.44 feet (191.84 feet per deed) to a One-Half inch capped iron rod (#4655); thence run Southwesterly along said right-of-way on the arc of a curve to the

left a distance of 180.11 feet (179.50 feet per deed) to a One-Half inch capped iron rod (#4655), said curve having a radius of 1482.69 feet (1432.39 feet per deed), a central angle of 06 degrees 57 minutes 36 seconds (07 degrees 10 minutes 49 seconds per deed), a Chord of 180.00 feet (179.39 feet per deed) and a chord bearing of South 67 degrees 40 minutes 41 seconds West (South 67 degrees 49 minutes 09 seconds West per deed) to the Southeasterly corner of said Parcel 4 and the Point of Beginning.

From said Point of Beginning thence continue Southwesterly along said right-of-way and curve with a radius of 1482.69 feet (1432.39 feet per deed) and an arc length of 116.50 feet (116.76 feet per deed) through a central angle of 04 degrees 30 minutes 07 seconds (04 degrees 40 minutes 14 seconds per deed), chord of 116.47 feet (116.73 feet per deed) bears South 61 degrees 56 minutes 20 seconds (South 61 degrees 53 minutes 38 seconds West per deed) to a one inch iron pipe on the Westerly boundary line of Lot 3, Block 6, of said Innerarity Heights subdivision; thence run North 00 degrees 08 minutes 02 seconds West (North 00 degrees 39 minutes 48 seconds West per deed) along said Westerly boundary line a distance of 226.22 feet (224.97 feet per deed) to a 5/8 inch capped iron rod (#7124); thence run North 67 degrees 43 minutes 25 seconds East a distance of 90.44 feet to a 5/8 inch capped iron rod (#7124); thence run South 23 degrees 21 minutes 15 seconds East a distance of 53.52 feet to a point on the Easterly boundary line of said Parcel 4; thence run South 00 degrees 35 minutes 05 seconds West along said Easterly boundary line a distance of 156.59 feet to the Point of Beginning.

4849-1732-4625, v. 1

# Residential Sales Abutting Roadway Maintenance Disclosure

ATTENTION: Pursuant to Escambia Code of Ordinances Chapter 1-29.2, Article V, sellers of residential lots are required to disclose to buyers whether abutting roadways will be maintained by Escambia County. The disclosure must additionally provide that Escambia County does not accept roads from maintenance that have not been built or improved to meet county standards. Escambia County Code of Ordinances Chapter 1-29.2, Article V requires this disclosure be attached along with other attachments to the deed or other method of conveyance required to be made part of the public records of Escambia County, Florida. Note: Acceptance for filing by County employees of this disclosure shall in no way be construed as an acknowledgment by the County of the veracity of any disclosure statement.

Name of Roadway:

Legal Address of Property: 13170 Sorrento Road Pensacola, FL 32507

The County ( ) has accepted, or ( X ) has not accepted the abutting roadway for maintenance.  
Roadway is maintained by the State of Florida – SR292

This form completed by:  
Matthew C. Hoffman  
Carver Darden Koretzky Tessier Finn Blossman & Areaux, LLC  
801 W. Romana St., Suite A  
Pensacola, FL 32502

Signed, sealed and delivered in our presence:

Witness Name: \_\_\_\_\_

\_\_\_\_\_  
Warren Virgets, III (Seal)

Witness Name: \_\_\_\_\_

*[Signature]*  
Witness Name: Andrea Phillips

INT Properties, LLC,  
a Florida limited liability company  
By: *[Signature]*  
Anthony Trimboli, Managing Member

*[Signature]*  
Witness Name: Paule Picoti

(Corporate Seal)



## Residential Sales Abutting Roadway Maintenance Disclosure

ATTENTION: Pursuant to Escambia Code of Ordinances Chapter 1-29.2, Article V, sellers of residential lots are required to disclose to buyers whether abutting roadways will be maintained by Escambia County. The disclosure must additionally provide that Escambia County does not accept roads from maintenance that have not been built or improved to meet county standards. Escambia County Code of Ordinances Chapter 1-29.2, Article V requires this disclosure be attached along with other attachments to the deed or other method of conveyance required to be made part of the public records of Escambia County, Florida. Note: Acceptance for filing by County employees of this disclosure shall in no way be construed as an acknowledgment by the County of the veracity of any disclosure statement.



Name of Roadway:

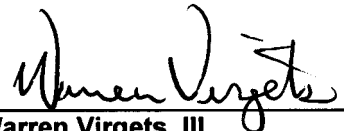
Legal Address of Property: 13170 Sorrento Road Pensacola, FL 32507

The County ( ) has accepted, or ( X ) has not accepted the abutting roadway for maintenance.  
Roadway is maintained by the State of Florida – SR292

This form completed by:  
Matthew C. Hoffman  
Carver Darden Koretzky Tessier Finn Blossman & Areaux, LLC  
801 W. Romana St., Suite A  
Pensacola, FL 32502

Signed, sealed and delivered in our presence:

  
\_\_\_\_\_  
Witness Name: Hensley F Hayer  
  
\_\_\_\_\_  
Witness Name: Sheila Bardin

 (Seal)  
\_\_\_\_\_  
Warren Virgets, III

**INT Properties, LLC,**  
a Florida limited liability company

By: \_\_\_\_\_  
Anthony Trimboli, Managing Member

\_\_\_\_\_  
Witness Name: \_\_\_\_\_

\_\_\_\_\_  
Witness Name: \_\_\_\_\_

(Corporate Seal)



## REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT (this "**Agreement**") is made and entered into, effective on the date that both parties have executed this Agreement (the "**Effective Date**"), by and between **Warren Virgets, III**, a Louisiana resident ("**Seller**"), and **Stimpson and Foley, LLC** an Alabama limited liability company and or assigns ("**Buyer**").

### ARTICLE I PURCHASE AND SALE OF PROPERTY

1.01 Agreement. On the terms and conditions set forth below, and in consideration of Buyer's delivery of \$5,000.00 (which, together with interest accrued thereon, is referred to as the "**Earnest Money**"), within 10 days after the Effective Date, to an agreed upon title company ("**Escrow Agent**"), Seller hereby agrees to sell the Property to Buyer and Buyer hereby agrees to purchase the Property from Seller.

### ARTICLE II PURCHASE PRICE

2.01 Amount of Purchase Price. The purchase price for the Property shall be \$100,000.00 (the "**Purchase Price**"), payable to Seller at Closing (as hereinafter defined), in immediately available funds, adjusted by all prorations, credits, allowances and other adjustments specifically provided for herein.

### ARTICLE III CONTINGENCIES

3.01 Contingent Agreement. This Agreement shall be completely contingent upon Buyer's satisfaction of or Buyer's waiver (at Buyer's sole discretion) of (a) the inspection and rezoning contingencies set forth in Section 3.02 (a) & (b) below (the "**Inspection Contingencies**" and "**Approvals Contingency**"), within 90 days after the Effective Date (the "**Contingency Period**"). The date upon which all Contingencies are either satisfied or waived, pursuant to Section 3.03 or otherwise, shall be referred to as the "**Contingency Date**".

3.02 Contingencies. The Contingencies are as follows:

- (a) Inspection Contingencies:
  - (i) Determination that the Property is not located within a flood plain and that the Property has drainage conditions acceptable to Buyer for the Property;

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- (ii) Determination that all utilities are available at, or within the right-of-way adjacent to, the boundary lines of the Property, in locations acceptable to Buyer, with sufficient capacity, pressure and depth to service the Property;
- (iii) Receive a report, prepared by a certified environmental engineer engaged by Buyer, indicating that the Property is free of underground storage tanks and all hazardous wastes, substances and materials which may require remediation or which may result in penalties under applicable laws, rules or regulations;
- (iv) Determination that the Property is suitable for Buyer's intended use, construction and development and that there are no other conditions or restrictions on Buyer's intended use and development thereof;
- (v) Determination that the Property has soil conditions which without substantial corrective measures permit construction of the proposed improvements.

(b) Approvals Contingency: Contingent upon buyer obtaining preliminary site plan approval from the Escambia County and Florida Department of Transportation for its intended project.

3.03 Notice of Satisfaction or Waiver. The Contingencies above shall be deemed to have been satisfied or waived, unless on or before the expiration of the Contingency Period, Buyer delivers to Seller notice of Buyer's failure to satisfy the Contingencies and, consequently, termination of this Agreement (a "**Termination Notice**").

3.04 Earnest Money. The Earnest Money shall be held by Escrow Agent in accordance with the provisions of this Section 3.04:

- (a) If Buyer timely delivers a Termination Notice, this Agreement shall terminate, in which case both parties shall be fully released from all further liability and obligations hereunder, and the Earnest Money shall be returned to Buyer;
- (b) If the transaction contemplated hereby is closed, the Earnest Money shall be paid to Seller and credited to Buyer against the Purchase Price at Closing;

*JH* *WNV*


- (c) If the transaction contemplated hereby fails to close due to a Defect in title (Article V hereof) or due to a taking pursuant to eminent domain (Article X hereof), the Earnest Money shall be returned to Buyer and neither party shall have any further liability hereunder, except as may be set forth in Section 3.04 hereof;
- (d) If the transaction contemplated hereby fails to close due to a default by Buyer, the Earnest Money shall be paid to Seller as and liquidated damages hereunder (and not as a penalty); and Seller may elect to pursue specific performance of this Agreement against Buyer
- (e) If the transaction contemplated hereby fails to close due to the default of Seller, the Earnest Money shall be returned to Buyer and (i) Buyer may elect to pursue specific performance of this Agreement against Seller, and (ii) Seller shall reimburse Buyer for Buyer's out-of-pocket costs and expenses incurred in connection with this Agreement.

#### **ARTICLE IV** **EVIDENCE OF TITLE**

4.01 Title Commitment. Seller shall, at its sole cost and expense, obtain from a title insurance company chosen by Seller, a commitment (the "**Title Commitment**") to issue an American Land Title Association Owner's Title Insurance Policy (ALTA Form B, Rev. 2006) (the "**Title Policy**"), certified to at least the Effective Date of this Agreement, in the full amount of the Purchase Price. To be acceptable to Buyer, the Title Commitment shall show in Seller good and marketable title to the Property, and shall commit to insure said title free and clear of the standard printed exceptions contained in Schedule B of the Title Commitment and Title Policy and free and clear of all liens, charges, encumbrances and clouds of title, whatsoever, except the following:

- (a) Those created or assumed by Buyer;
- (b) Zoning ordinances, legal highways and public rights-of-way which do not interfere with Buyer's proposed development;
- (c) Real estate taxes which are a lien on the Property but which are not yet due and payable; and
- (d) Easements and restrictions of record acceptable to Buyer which do not interfere with the Buyer's proposed development.

For title to the Property to be acceptable to Buyer, the Title Commitment must (i) commit to insure that all parcels of land are contiguous, if the legal description for the

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Property includes more than one parcel, and that there are no gaps nor gores among them; (ii) commit to insure that on the Closing Date (iii) fully and completely disclose all easements, negative or affirmative, rights-of-way, ingress or egress or any other appurtenances to the Property and provide insurance coverage in respect to all of such appurtenant rights; and (iv) include the results of a special tax search and examination for any financing statements filed of record which may affect the Property.


4.02 Endorsement at Closing. At the Closing and as a condition of Closing, Buyer shall obtain an endorsement to the Title Commitment updating the Title Commitment to the Closing Date and showing no change in the state of the title to the Property. After Closing, a final Title Policy that comports with the foregoing terms and conditions shall be issued in the amount of the Purchase Price. The entire cost of all commitments and final title insurance policies provided in accordance with this Agreement shall be paid for by Buyer.

4.03 Survey. Buyer may, at its sole cost and expense, obtain a current survey of the Property (the "**Survey**"), prepared by a surveyor registered in the State of Florida. The Survey shall comport with the depiction of the Property set forth on **Exhibit B**, shall include a legal description of the Property and shall be certified by the surveyor to Buyer and the title insurance company. Subject to the approval of the title insurance company, the legal description included in the Survey shall be used in the Title Commitment and Title Policy and in all documents of transfer contemplated hereby, and it shall be inserted herein as **Exhibit A**.

4.04 Defects. In the event that an examination of either the Title Commitment (including any endorsements) or the Survey obtained hereunder discloses any matter adversely affecting title to the Property, or if title to the Property is not marketable, or if the Property is subject to liens, encumbrances, easements, conditions, restrictions, reservations or other matters not specifically excepted by the terms of this Agreement, or in the event of any encroachment or other defect shown by the Survey (the foregoing collectively referred to as "**Defects**"), Seller shall have a reasonable time, not to exceed 30 days after written notice thereof, within which to cure or remove any such Defects. In the event Seller is unable to cure or remove the Defects within said 30-day period, Seller shall immediately give notice of Seller's inability to Buyer and thereafter, Buyer shall have 10 days after receipt of such notice within which to make its election either:

- (a) To accept title to the Property subject to such Defects; or
- (b) To withdraw from this transaction and terminate this Agreement, without prejudice, however, to any rights or remedies which Buyer may have at law or in equity.

**ARTICLE V**  
**DEED AND OTHER DOCUMENTS**

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THIS REAL ESTATE PURCHASE AGREEMENT (this "**Agreement**") is made and entered into, effective on the date that both parties have executed this Agreement (the "**Effective Date**"), by and between **Warren Virgets, III**, a Louisiana resident ("**Seller**"), and **Stimpson and Foley, LLC** an Alabama limited liability company and or assigns ("**Buyer**").

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- (a) Inspection Contingencies:
  - (i) Determination that the Property is not located within a flood plain and that the Property has drainage conditions acceptable to Buyer for the Property;

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- (ii) Determination that all utilities are available at, or within the right-of-way adjacent to, the boundary lines of the Property, in locations acceptable to Buyer, with sufficient capacity, pressure and depth to service the Property;
- (iii) Receive a report, prepared by a certified environmental engineer engaged by Buyer, indicating that the Property is free of underground storage tanks and all hazardous wastes, substances and materials which may require remediation or which may result in penalties under applicable laws, rules or regulations;
- (iv) Determination that the Property is suitable for Buyer's intended use, construction and development and that there are no other conditions or restrictions on Buyer's intended use and development thereof;
- (v) Determination that the Property has soil conditions which without substantial corrective measures permit construction of the proposed improvements.

(b) Approvals Contingency: Contingent upon buyer obtaining preliminary site plan approval from the Escambia County and Florida Department of Transportation for its intended project.

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3.04 Earnest Money. The Earnest Money shall be held by Escrow Agent in accordance with the provisions of this Section 3.04:

- (a) If Buyer timely delivers a Termination Notice, this Agreement shall terminate, in which case both parties shall be fully released from all further liability and obligations hereunder, and the Earnest Money shall be returned to Buyer;
- (b) If the transaction contemplated hereby is closed, the Earnest Money shall be paid to Seller and credited to Buyer against the Purchase Price at Closing;

*JH* *WNV*


- (c) If the transaction contemplated hereby fails to close due to a Defect in title (Article V hereof) or due to a taking pursuant to eminent domain (Article X hereof), the Earnest Money shall be returned to Buyer and neither party shall have any further liability hereunder, except as may be set forth in Section 3.04 hereof;
- (d) If the transaction contemplated hereby fails to close due to a default by Buyer, the Earnest Money shall be paid to Seller as and liquidated damages hereunder (and not as a penalty); and Seller may elect to pursue specific performance of this Agreement against Buyer
- (e) If the transaction contemplated hereby fails to close due to the default of Seller, the Earnest Money shall be returned to Buyer and (i) Buyer may elect to pursue specific performance of this Agreement against Seller, and (ii) Seller shall reimburse Buyer for Buyer's out-of-pocket costs and expenses incurred in connection with this Agreement.

**ARTICLE IV**  
**EVIDENCE OF TITLE**

4.01 Title Commitment. Seller shall, at its sole cost and expense, obtain from a title insurance company chosen by Seller, a commitment (the "**Title Commitment**") to issue an American Land Title Association Owner's Title Insurance Policy (ALTA Form B, Rev. 2006) (the "**Title Policy**"), certified to at least the Effective Date of this Agreement, in the full amount of the Purchase Price. To be acceptable to Buyer, the Title Commitment shall show in Seller good and marketable title to the Property, and shall commit to insure said title free and clear of the standard printed exceptions contained in Schedule B of the Title Commitment and Title Policy and free and clear of all liens, charges, encumbrances and clouds of title, whatsoever, except the following:

- (a) Those created or assumed by Buyer;
- (b) Zoning ordinances, legal highways and public rights-of-way which do not interfere with Buyer's proposed development;
- (c) Real estate taxes which are a lien on the Property but which are not yet due and payable; and
- (d) Easements and restrictions of record acceptable to Buyer which do not interfere with the Buyer's proposed development.

For title to the Property to be acceptable to Buyer, the Title Commitment must (i) commit to insure that all parcels of land are contiguous, if the legal description for the

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Property includes more than one parcel, and that there are no gaps nor gores among them; (ii) commit to insure that on the Closing Date (iii) fully and completely disclose all easements, negative or affirmative, rights-of-way, ingress or egress or any other appurtenances to the Property and provide insurance coverage in respect to all of such appurtenant rights; and (iv) include the results of a special tax search and examination for any financing statements filed of record which may affect the Property.


4.02 Endorsement at Closing. At the Closing and as a condition of Closing, Buyer shall obtain an endorsement to the Title Commitment updating the Title Commitment to the Closing Date and showing no change in the state of the title to the Property. After Closing, a final Title Policy that comports with the foregoing terms and conditions shall be issued in the amount of the Purchase Price. The entire cost of all commitments and final title insurance policies provided in accordance with this Agreement shall be paid for by Buyer.

4.03 Survey. Buyer may, at its sole cost and expense, obtain a current survey of the Property (the "**Survey**"), prepared by a surveyor registered in the State of Florida. The Survey shall comport with the depiction of the Property set forth on **Exhibit B**, shall include a legal description of the Property and shall be certified by the surveyor to Buyer and the title insurance company. Subject to the approval of the title insurance company, the legal description included in the Survey shall be used in the Title Commitment and Title Policy and in all documents of transfer contemplated hereby, and it shall be inserted herein as **Exhibit A**.

4.04 Defects. In the event that an examination of either the Title Commitment (including any endorsements) or the Survey obtained hereunder discloses any matter adversely affecting title to the Property, or if title to the Property is not marketable, or if the Property is subject to liens, encumbrances, easements, conditions, restrictions, reservations or other matters not specifically excepted by the terms of this Agreement, or in the event of any encroachment or other defect shown by the Survey (the foregoing collectively referred to as "**Defects**"), Seller shall have a reasonable time, not to exceed 30 days after written notice thereof, within which to cure or remove any such Defects. In the event Seller is unable to cure or remove the Defects within said 30-day period, Seller shall immediately give notice of Seller's inability to Buyer and thereafter, Buyer shall have 10 days after receipt of such notice within which to make its election either:

- (a) To accept title to the Property subject to such Defects; or
- (b) To withdraw from this transaction and terminate this Agreement, without prejudice, however, to any rights or remedies which Buyer may have at law or in equity.

**ARTICLE V**  
**DEED AND OTHER DOCUMENTS**

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5.01 Limited Warranty Deed. Seller shall, at the Closing, convey fee simple title to the Property to Buyer by a duly and validly executed, recordable limited warranty deed, free and clear of all liens and encumbrances, except those permitted pursuant to the provisions of Section 5.01 hereof.

5.02 Other Documents. Buyer and Seller agree that such other documents as may be legally necessary or appropriate to carry out the terms of this Agreement shall be executed and delivered by the appropriate party at Closing. Such documents shall include, but not be limited to, a closing statement, the most recent real estate tax bill(s), a certificate as to Seller's status under the Foreign Investment in Real Property Tax Act, Seller's affidavit regarding liens (mechanics' or other), unrecorded matters and parties in possession and, if requested, Seller's affidavit regarding the warranties and representations set forth in Article XI hereof.

## **ARTICLE VI** **POSSESSION AND INSPECTION**


6.01 Possession at Closing. Buyer shall be entitled to full and exclusive possession of the Property as of the Closing Date.

6.02 Inspection. For and during the continuance of this Agreement, Seller shall afford all representatives of Buyer free and full access to the Property, for inspection and examination, at reasonable times. This privilege shall include the right to make surveys, site plans, renderings, soil tests, environmental inspections, borings, percolation tests and other tests to obtain any relevant information necessary to determine subsurface, topographic and drainage conditions and the suitability of the Property for use and development by Buyer. Buyer shall indemnify and hold harmless Seller for any loss, cost or liability incurred by Seller due to Buyer's entry onto the Property pursuant to this Section 6.02.

## **ARTICLE VII** **CLOSING**

7.01 Closing Date. The purchase and sale of the Property shall be closed (the "**Closing**") within 30 days after the Contingency Date, which Closing date may be extended by agreement of the parties and shall be extended by such time, if any, as is necessary to cure Defects, as set forth in Section 4.04 hereof (the "**Closing Date**"). The Closing shall be at such time and place as Buyer and Seller may mutually agree upon.

## **ARTICLE VIII** **APPORTIONMENTS AND ADJUSTMENTS**

 WNV

5.01 Limited Warranty Deed. Seller shall, at the Closing, convey fee simple title to the Property to Buyer by a duly and validly executed, recordable limited warranty deed, free and clear of all liens and encumbrances, except those permitted pursuant to the provisions of Section 5.01 hereof.

5.02 Other Documents. Buyer and Seller agree that such other documents as may be legally necessary or appropriate to carry out the terms of this Agreement shall be executed and delivered by the appropriate party at Closing. Such documents shall include, but not be limited to, a closing statement, the most recent real estate tax bill(s), a certificate as to Seller's status under the Foreign Investment in Real Property Tax Act, Seller's affidavit regarding liens (mechanics' or other), unrecorded matters and parties in possession and, if requested, Seller's affidavit regarding the warranties and representations set forth in Article XI hereof.

## **ARTICLE VI** **POSSESSION AND INSPECTION**


6.01 Possession at Closing. Buyer shall be entitled to full and exclusive possession of the Property as of the Closing Date.

6.02 Inspection. For and during the continuance of this Agreement, Seller shall afford all representatives of Buyer free and full access to the Property, for inspection and examination, at reasonable times. This privilege shall include the right to make surveys, site plans, renderings, soil tests, environmental inspections, borings, percolation tests and other tests to obtain any relevant information necessary to determine subsurface, topographic and drainage conditions and the suitability of the Property for use and development by Buyer. Buyer shall indemnify and hold harmless Seller for any loss, cost or liability incurred by Seller due to Buyer's entry onto the Property pursuant to this Section 6.02.

## **ARTICLE VII** **CLOSING**

7.01 Closing Date. The purchase and sale of the Property shall be closed (the "**Closing**") within 30 days after the Contingency Date, which Closing date may be extended by agreement of the parties and shall be extended by such time, if any, as is necessary to cure Defects, as set forth in Section 4.04 hereof (the "**Closing Date**"). The Closing shall be at such time and place as Buyer and Seller may mutually agree upon.

## **ARTICLE VIII** **APPORTIONMENTS AND ADJUSTMENTS**

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8.01 Adjustments at Closing. On the Closing Date, Buyer and Seller shall apportion, adjust, prorate and pay the following items in the manner hereinafter set forth:

- (a) Real Estate Taxes and Assessments. Seller shall pay all delinquent real estate taxes, together with penalties and interest thereon; all assessments which are a lien against the Property as of the Closing Date (both current and reassessed, whether due or to become due and not yet payable); all real estate taxes for years prior to the Closing Date; real estate taxes for the year of Closing, prorated through the Closing Date. The proration of undetermined taxes shall be based upon a 365-day year and on the last available tax rate, giving due regard to applicable exemptions, recently voted millage, change in tax rate or valuation (as a result of this transaction or otherwise), etc., whether or not the same have been certified. It is the intention of the parties in making this tax proration to give Buyer a credit as close in amount as possible to the amount which Buyer will be required to remit to the County Treasurer (or other applicable government agency or body) for the period of time preceding the Closing Date hereof. Seller and Buyer agree that the amount so computed shall be subject to later adjustment should the amount credited at Closing be incorrect based upon actual tax bills received by Buyer after Closing. Seller warrants and represents that all assessments now a lien are shown on the County Treasurer's (or other applicable government agency or body) records and that to the best of Seller's knowledge, no site or area improvement has been installed by any public authority, the cost of which is to be assessed against the Property in the future. Seller further warrants and represents that neither Seller nor any of its agents, employees or representatives have received notice, oral or written, or have knowledge of any proposed improvement, any part of the cost of which would or might be assessed against the Property;
- (b) Seller's Expenses. Seller shall, at the Closing (unless previously paid), pay by credit against the Purchase Price the following:
- (i) The cost of furnishing the Title Commitment and Title Policy;
  - (ii)  $\frac{1}{2}$  of the cost of any deed stamps or conveyance fee required to be paid in connection with the recording of the limited warranty deed from Seller to Buyer;
  - (iii) The cost of all municipal services and public utility charges (if any) due through the Closing Date; and
  - (iv)  $\frac{1}{2}$  of the fee charged by Escrow Agent for conducting the Closing.
- (c) Buyer's Expenses. Buyer shall, at the Closing (unless previously paid), pay the following:

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- (i) The recording fees required for recording the limited warranty deed;
  - (iii) ½ of the cost of any deed stamps or conveyance fee required to be paid in connection with the recording of the limited warranty deed from Seller to Buyer; and
  - (iv) ½ of the fee charged by Escrow Agent for conducting the Closing.
- (d) Brokers. Buyer is represented by Foley and Company, LLC. Seller is represented by Berkshire Hathaway PenFed Realty. Seller and Buyer each hereby warrants and represents to the other that it has not, engaged or dealt with any other brokers or agents in regard to this Agreement. Member of Stimpson and Foley, LLC is a licensed Real Estate Broker in the State of Alabama.

#### **ARTICLE IX** **EMINENT DOMAIN**

9.01 Taking By Eminent Domain. If, prior to the Closing, eminent domain proceedings shall be threatened or commenced against the Property, or any part or portion thereof, Buyer shall have the option (a) to elect to proceed with this transaction, in which event any compensation award paid or payable as a result of such eminent domain proceedings shall be the sole property of Buyer, or (b) to terminate this Agreement, in which event Seller shall retain such award. Seller agrees that it shall give to Buyer written notice of any such threatened or actual eminent domain proceedings within 10 days after Seller first becomes aware thereof, and upon the giving of such notice, Buyer shall then have 30 days within which to exercise the options granted in this Section 9.01. If Buyer fails to exercise such options within said 30-day period, this Agreement shall terminate, the Earnest Money shall be returned to Buyer and thereafter both parties shall be released from further liability or obligation hereunder.

#### **ARTICLE X** **WARRANTIES AND REPRESENTATIONS OF SELLER**

10.01 Warranties and Representations. In addition to any other representation or warranty contained in this Agreement, Seller hereby represents and warrants as follows:

- (a) Through and until the Closing Date, Seller shall not enter into any covenant, restriction, encumbrance, right of lien, easement, lease or other contract pertaining to the property.

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- (b) Seller is not a "Foreign Person" as that term is defined in the Foreign Investment in Real Property Tax Act.

The warranties, representations, covenants and agreements set forth in this Agreement shall not be cancelled by performance under this Agreement, but shall survive the Closing and the delivery of the deed of conveyance hereunder. All representations and warranties set forth in this Article X shall be true and correct as of the date hereof and as of the Closing Date, and at Closing, if requested by Buyer, Seller shall so certify, in writing, in form reasonably requested by Buyer. Seller hereby agrees to indemnify and hold Buyer harmless from and against any and all claims, demands, liabilities, costs and expenses of every nature and kind (including attorneys' fees) which Buyer may sustain at any time (i) as a result of, arising out of or in any way connected with the operation, ownership, custody or control of the Property prior to the Closing Date; or (ii) by reason of the untruth, breach, misrepresentation or nonfulfillment of any of the covenants, representations, warranties or agreements made by Seller in this Agreement or in any documents or agreements delivered in connection with this Agreement or with the closing of the transaction contemplated hereby.

10.02 Breach of Warranties Prior to Closing. If, during the pendency of this Agreement, Buyer determines that any warranty or representation given by Seller to Buyer under this Agreement shall be untrue, incorrect or misleading, in whole or in part, the same shall constitute a default by Seller hereunder. In such event, the buyer has the right to terminate this Agreement and to have the Earnest Money returned to Buyer.


#### ARTICLE XI NOTICES

11.01 Notice Procedure. Any notices required hereunder shall be in writing, shall be deemed effective upon transmittal, may be transmitted by the parties' respective legal counsel, and shall be transmitted by (a) personal service, (b) reputable overnight delivery service, (c) facsimile (confirmed receipt), (d) email transmission, or (e) certified mail, postage prepaid, return receipt requested, and shall be addressed to the parties as follows:

- (a) If intended for Seller, to:

Warren Virgets, III  
14317 McDougal Street  
Walker, LA 70785

- (b) If intended for Buyer, to:

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Foley and Company, LLC  
P.O. Box 1047  
Foley, AL 36536  
Email: johnbfoley4@yahoo.com

## **ARTICLE XII** **GENERAL PROVISIONS**

12.01 Governing Law. This Agreement is being executed and delivered in the State of Alabama and shall be construed and enforced in accordance with the laws of the State of Alabama. For all litigation, disputes and controversies which may arise out of or in connection with this Agreement, the undersigned hereby waive the right to trial by jury and consent to the jurisdiction of the courts in the State of Alabama.

12.02 Entire Agreement. This Agreement constitutes the entire contract between the parties hereto, and may not be modified except by an instrument in writing signed by the parties hereto, and supersedes all previous agreements, written or oral, if any, of the parties. Exhibits referred to in this Agreement are attached hereto and incorporated herein by reference.

12.03 Time of Essence. Time is of the essence of this Agreement in all respects. Any time period providing for the performance of the parties' obligations herein which would otherwise end on a Saturday, Sunday or national holiday shall be extended to the next succeeding business day. This offer shall expire on 7/13/20 at 4:00 PM Central.

12.04 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors and assigns.

12.05 Invalidity. In the event that any provision of this Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of this Agreement.

12.06 Waiver. No waiver of any of the provisions of this Agreement shall be deemed, nor shall the same constitute a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing waiver. No waiver shall be binding, unless executed, in writing, by the party making the waiver.

12.07 Headings. The section headings contained in this Agreement are for convenience only and shall not be considered for any purpose in construing this

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Agreement. As used in this Agreement, the masculine, feminine and neuter genders, and the singular and plural numbers shall be each deemed to include the other whenever the context so requires.

12.08 Seller's and Buyer's TIN. Intentionally left blank.

12.09 Counterparts. This Agreement may be executed in counterparts, each of which when executed and delivered shall be deemed an original, but such counterparts together shall constitute but one and the same document.

12.10 Assignment. Buyer hereby reserves the right to assign this Agreement to its nominee. Buyer shall notify Seller of any such assignment at least 5 days prior to the Closing Date by delivery of notice in the manner otherwise required hereunder.

12.11 Attorney Fees. In the event either party hereto brings or commences legal proceedings to enforce any of the terms of this Agreement, the successful party shall then be entitled to receive from the other of said parties, in every such action commenced, a reasonable sum as attorneys' fees and costs, including all fees and costs incurred upon any appeals, to be fixed by the court in the same action.

**[Signatures on following pages]**



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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the dates set forth below, respectively.

**SELLER:**

Warren Virgets, III

By: Warren Virgets III  
Its:

Dated: 7/8/20

**BUYERS:**

Stimpson and Foley, LLC

By: John Foley  
Its: Manager

Dated: 7/8/20

**EXHIBIT A**

**Legal Description of Property**

**[to be attached]**

**Parcel 143S322000003006**

**13170 Sorrento Rd. Perdido Key, FL 32507**

*JF* *WNV*



## DEVELOPMENT SERVICES ADMINISTRATIVE APPEAL WORKSHEET

**Board of Adjustment**

**6. B.**

**Meeting Date:** 11/18/2020

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### **I. SUBMISSION DATA:**

<b>APPLICANT:</b>	Maria Fatima Luther and David D. Luther
<b>DATE OF ADMINISTRATIVE DECISION:</b>	October 2, 2020
<b>DATE OF APPEAL APPLICATION:</b>	October 7, 2020
<b>PROJECT ADDRESS:</b>	9511 Scenic Highway
<b>PROPERTY REFERENCE NO.:</b>	02-1S-29-3001-000-009
<b>ZONING DISTRICT:</b>	MDR, Medium Density Residential
<b>FUTURE LAND USE:</b>	MU-U, Mixed Use, Urban

### **III. REQUESTED APPEAL:**

The Applicant is appealing the issuance of land use approval for an accessory structure, permit number 20103920PLU.

Land use approval for the accessory structure was granted by Escambia County on October 2, 2020, and this appeal was filed on October 7, 2020, within the 15 day deadline.

The appeal was scheduled to be heard by the Board of Adjustment on November 18, 2020, in conformance with the Land Development Code (LDC) requirement for scheduling.

### **III. RELEVANT APPEAL AUTHORITY:**

**Land Development Code of Escambia County, Florida (Ordinance 96-3 as amended),  
Section: 2-6.10**

Sections 2-6.10, Appeal of Administrative Decisions provides the relevant authority for the BOA's review of administrative decisions.

**Compliance review.** The BOA shall conduct the quasi-judicial public hearing to consider the appeal of an administrative decision. The applicant has the burden of presenting competent substantial evidence to the board that establishes each of the following conditions with regard to the decision being appealed:

- a. **Arbitrary or capricious.** The decision of the administrative official was neither required nor supported by the Comprehensive Plan or the LDC and was therefore arbitrary or capricious.
  
- b. **LDC noncompliance.** The specific LDC provisions identified in the appeal application are appropriate to the decision and the decision was not in compliance with those provisions.
  
- c. **Adverse impact.** The applicant's property will suffer an adverse impact as a result of the decision if it is not modified.
  
- d. **Protected interest.** The adverse impact is to a specific interest protected or furthered by the LDC or Comprehensive Plan.
  
- e. **Greater impact.** The adverse impact adversely affects the applicant in a greater degree than any adverse impact shared by the community at large; and, if the applicant is a third party to the decision, the adverse impact peculiar to the applicant differs in kind (as opposed to degree) to any suffered by the community as a whole.

#### **IV. BACKGROUND INFORMATION**

In September of 2020, Escambia County Code Enforcement was notified of unpermitted construction in the rear yard of 9511 Scenic Hwy. Upon inspection, it was documented that a second story was being added to an existing accessory structure in the rear yard. No permits had been issued for this addition and the owner was told to seek land use approval and the necessary permits.

On October 2, 2020, the owner of 9511 Scenic Hwy received land use approval for the addition along with the necessary building permit.

The Luther's filed an appeal of that land use approval, contending that the accessory structure should meet the building setback instead of the accessory structure setback as called for in the LDC.

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#### **Attachments**

Working Case File

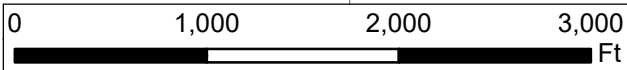
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**AP-2020-03**



# AP-2020-03 LOCATION MAP

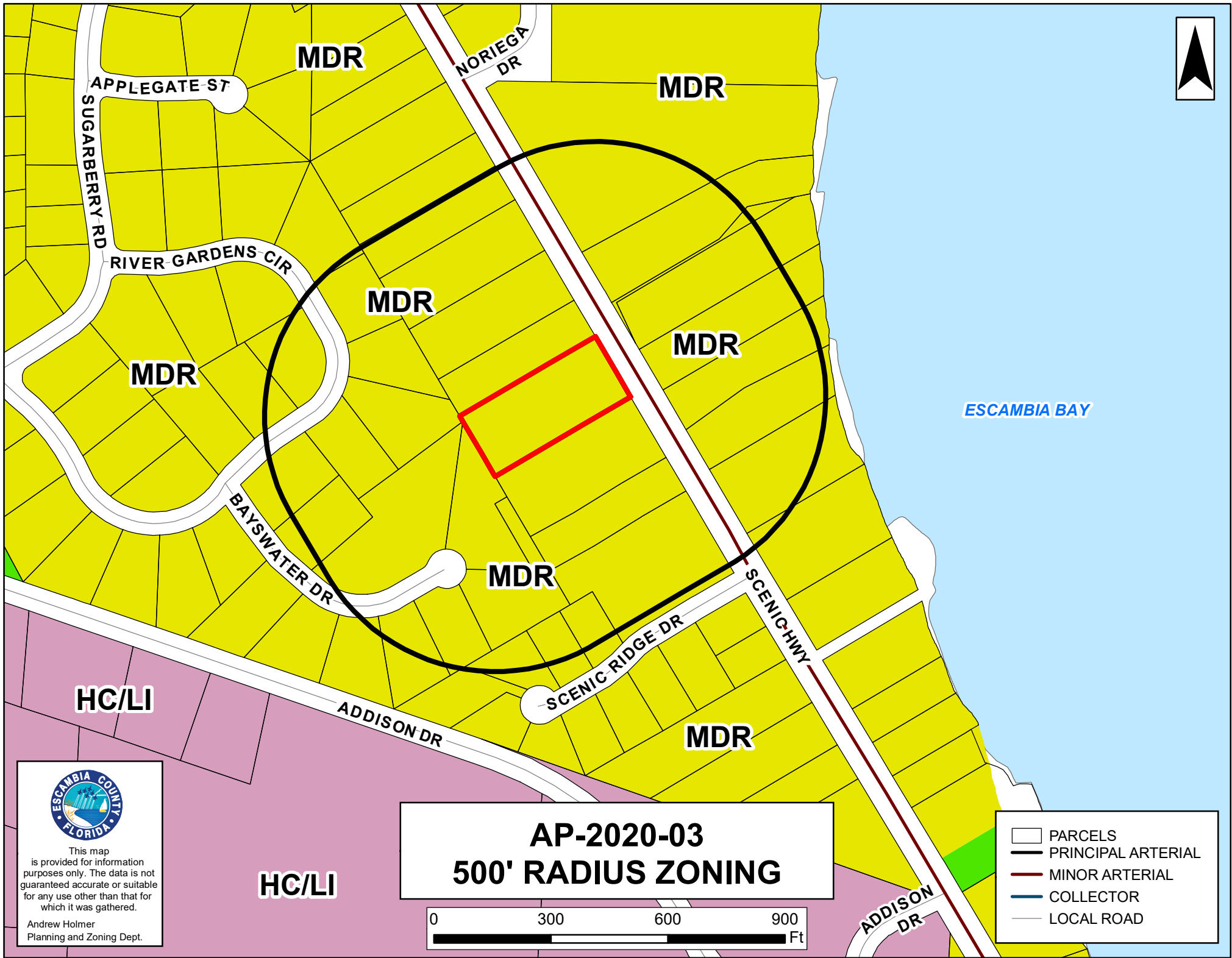


-  PRINCIPAL ARTERIAL
-  MINOR ARTERIAL
-  COLLECTOR
-  LOCAL ROAD



This map is provided for information purposes only. The data is not guaranteed accurate or suitable for any use other than that for which it was gathered.

Andrew Holmer  
Planning and Zoning Dept.



MDR

MDR

MDR

MDR

MDR

MDR

MDR


HC/LI

HC/LI

**AP-2020-03  
500' RADIUS ZONING**

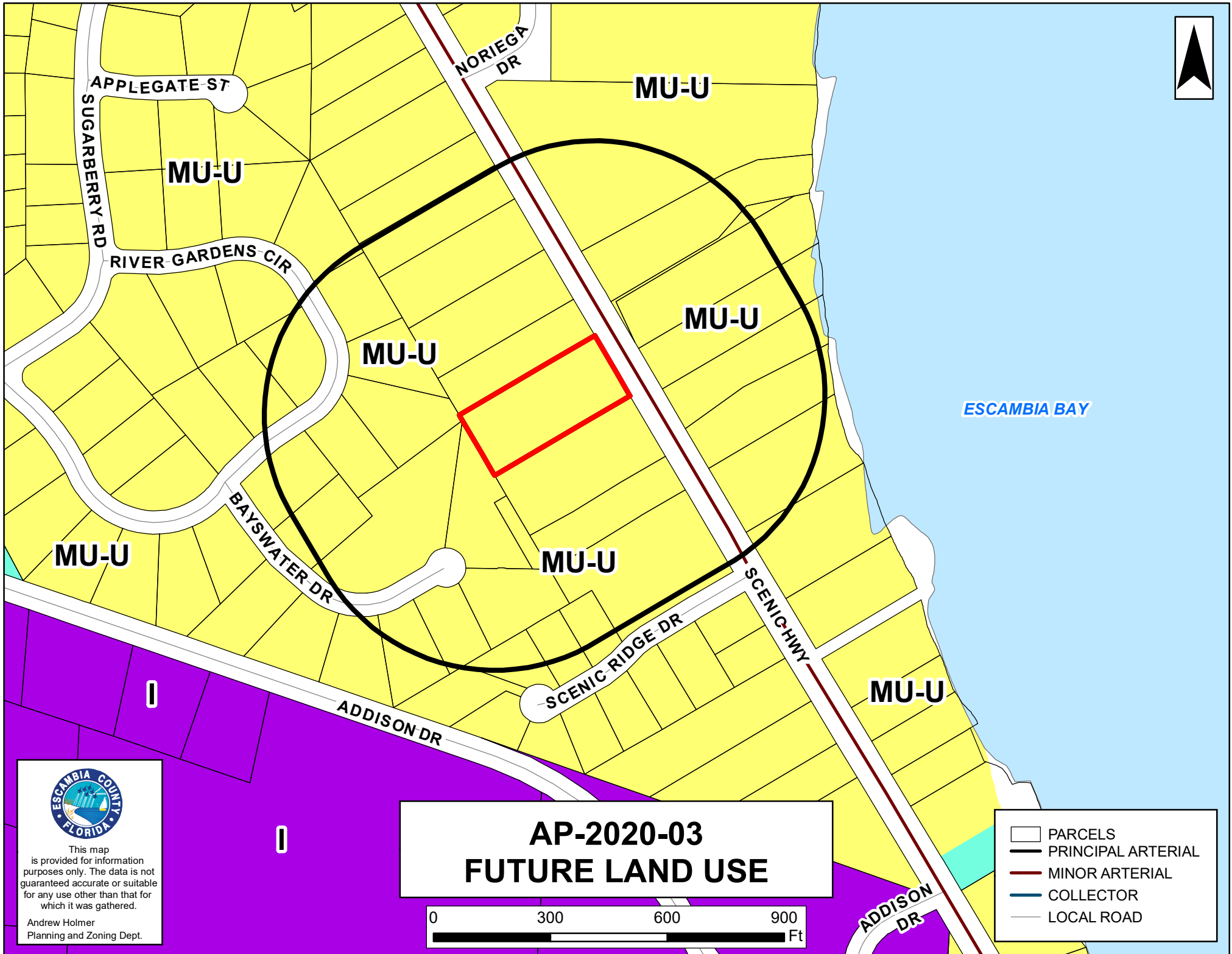


- PARCELS
- PRINCIPAL ARTERIAL
- MINOR ARTERIAL
- COLLECTOR
- LOCAL ROAD

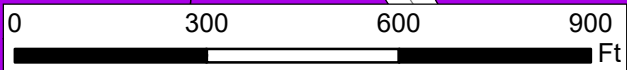


This map is provided for information purposes only. The data is not guaranteed accurate or suitable for any use other than that for which it was gathered.

Andrew Holmer  
Planning and Zoning Dept.



**AP-2020-03  
FUTURE LAND USE**

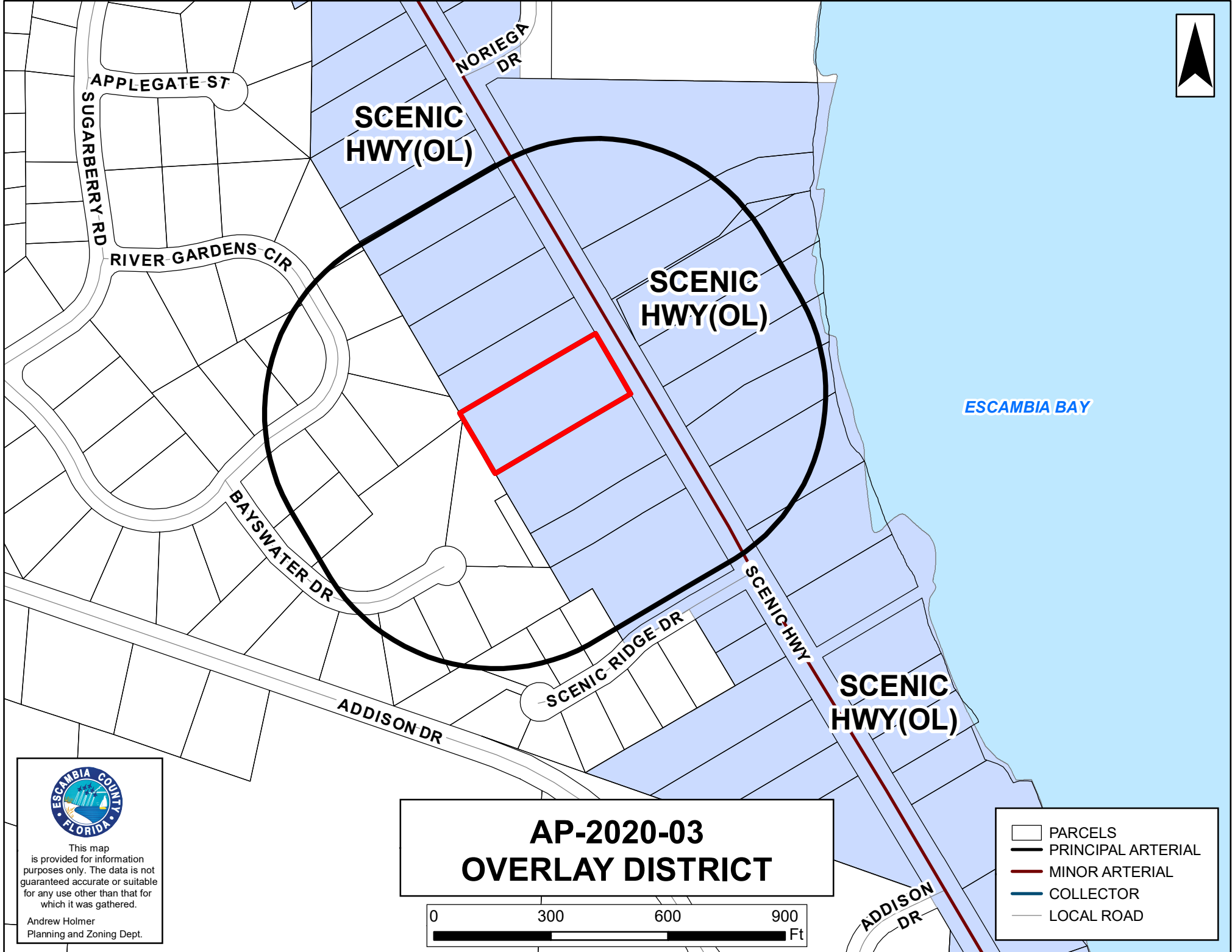


- PARCELS
- PRINCIPAL ARTERIAL
- MINOR ARTERIAL
- COLLECTOR
- LOCAL ROAD



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Andrew Holmer  
Planning and Zoning Dept.



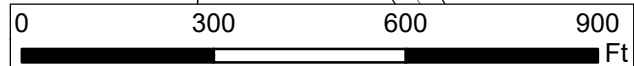
**SCENIC HWY(OL)**






**SCENIC HWY(OL)**

*ESCAMBIA BAY*

**SCENIC HWY(OL)**

**AP-2020-03  
OVERLAY DISTRICT**

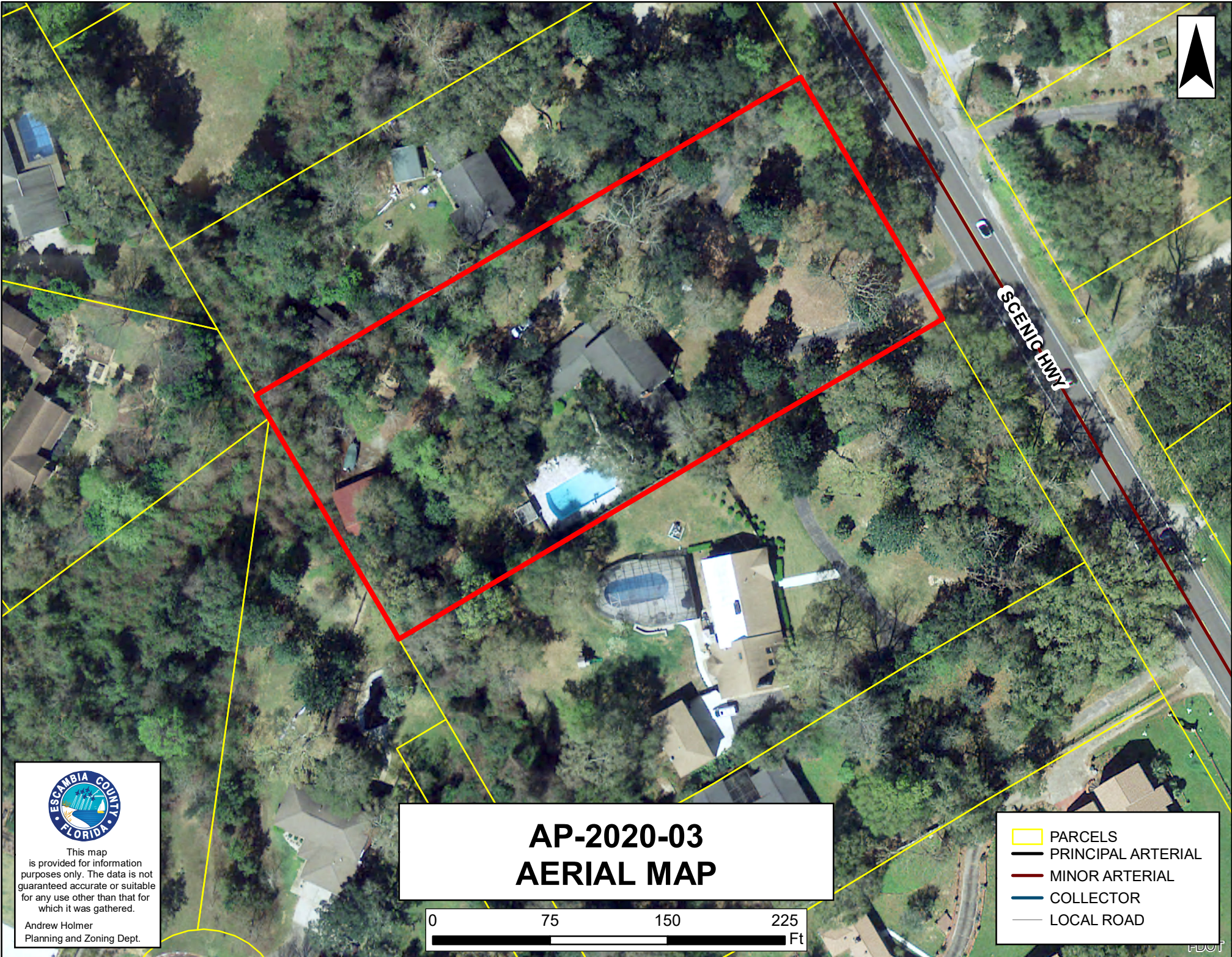


-  PARCELS
-  PRINCIPAL ARTERIAL
-  MINOR ARTERIAL
-  COLLECTOR
-  LOCAL ROAD

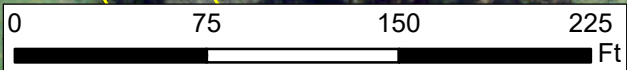


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Andrew Holmer  
Planning and Zoning Dept.



# AP-2020-03 AERIAL MAP



- PARCELS
- PRINCIPAL ARTERIAL
- MINOR ARTERIAL
- COLLECTOR
- LOCAL ROAD



This map is provided for information purposes only. The data is not guaranteed accurate or suitable for any use other than that for which it was gathered.

Andrew Holmer  
Planning and Zoning Dept.



Public Hearing Sign



Looking onto site from  
Scenic Hwy



PLU Permit: 20103920 PLU  
9511 SCENIC HWY  
Last Updated: 03/25/2020

See attached sheets



## Escambia County Planning and Zoning

Development Services Department

3363 West Park Place

Pensacola, FL 32505

Phone: (850) 595-3475 • Fax: (850) 595-3481

<http://myescambia.com/business/ds>

**DO NOT SUBMIT INFORMATION BELOW WITH APPLICATION**

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### BOARD OF ADJUSTMENT APPLICATION FOR DEVELOPMENT ORDER EXTENSION/ADMINISTRATIVE APPEAL

#### A. Prior to Application Submittal

Please contact the Development Services Department located at 3363 West Park Place (595-3475) to make an appointment with a Planner to personally discuss your request and/or any possible alternatives.

#### B. Application Submittal

It is important for the application packet to be **complete** and **on time** in order to process and schedule your request for the required public hearing(s). The submittal for an extension is to be prior to the expiration of the development order. The deadline to submit for an appeal is within 15 days after the date of the decision being appealed. In order for the application request to proceed in a timely manner, all items on the application forms and checklist (attached herein) must be completed and submitted prior to the deadline. Any incomplete application will not be accepted by Staff and any application submitted after the deadline will be processed for the next available meeting.

The owner and/or agent acting in his/her behalf, **must** sign the certification(s) where indicated on the application. If an agent is handling the request, the owner **must** submit an Affidavit of Ownership & Limited Power of Attorney (attached herein) authorizing said agent to act in his/her behalf. Signatures must be properly notarized and dated **no more than sixty (60) days** prior to application submittal.

*No guarantee is made for the approval of any petition. Fees are **non-refundable** regardless of the decision.*

#### C. Public Hearing(s)

It is the **Applicant's burden** to show consistency with all applicable criteria. **NOTE:** The applicant, or his/her agent, must be present at the BOA.

#### D. Public Notice

Per the Land Development Code Chapter 2, Article 7: Adequate public notice/advertisement will be consistent with Florida Statutes and the Comprehensive Plan prior to the hearing.



# Escambia County Planning and Zoning

Development Services Department

3363 West Park Place

Pensacola, FL 32505

Phone: (850) 595-3475 • Fax: (850) 595-3481

<http://myescambia.com/business/ds>

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## Board of Adjustment Application

FOR OFFICE USE ONLY - Case Number: \_\_\_\_\_ Accepted by: \_\_\_\_\_ BOA Meeting: \_\_\_\_\_

\_\_\_\_\_ Development Order Extension

Administrative Appeal

### 1. Contact Information:

A. Property Owner/Applicant: Maria de Fatima Oliveira Luther

Mailing Address: 3536 Baywater Drive

Business Phone: \_\_\_\_\_ Cell: 850-449-6262

Email: marialuther1002@gmail.com

B. Authorized Agent (if applicable): \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Business Phone: \_\_\_\_\_ Cell: \_\_\_\_\_

Email: \_\_\_\_\_

*Note: Owner must complete the attached Agent Affidavit. If there is more than one owner, each owner must complete an Agent Affidavit. Application will be voided if changes to this application are found.*

### 2. Property Information:

A. Project Name & Development Order Number (if applicable): PLU Permit: 20103920 PLU  
9511 Scenic Hwy Property Ref. # 0215293001000009

B. Existing Street Address: 9511 Scenic Hwy Pensacola, FL

Parcel ID (s): PLU Permit: 20103920 PLU

Reference # 0215293001000009

C. Total acreage of the subject property: 1.7

**3. Reason for Request**

A. Please explain why the extension or administrative appeal is necessary.

Owners of 9511 scenic Hwy has a PLU (201039 20P60) to build a two-story building (2 accesseries) as an accessory structure. The two-story building is only 5 feet away from property line.

(MOR states:

Height 35ft  
front 35ft  
back 20ft

County is using only the height, not rear setback.

B. **Development Order Extension**

NO where in the LDC you find a 2-story building/apartment as an accessory structure

The LDC requires good faith efforts in adhering to its established periods, but extension of an eligible LDC time limit may be requested according to the provisions of this section whereby a landowner asserts that the limit does not anticipate legitimate delays in compliance. However, no applicant is automatically entitled to any extension. Short-term (6 month) extensions are evaluated by the Planning Official, and longer extensions (one year) shall be evaluated through a quasi-judicial public hearing review by the BOA. These extension processes allow additional time for concluding the compliance review, developing an approved use, and continuing or reestablishing some uses.

**1. Limits on extensions.** Extensions to LDC periods are subject to the following limitations:

- a. **Availability.** Extensions are available and may be granted only for LDC periods that specifically provide that option, only if a complete application for the extension was submitted prior to the expiration of the period for which the extension is requested, and only as otherwise allowed by the provisions of the LDC.
- b. **Approving authority.** Extensions to any period not required by the LDC but imposed as a condition of approval by an approving authority cannot be granted by another approving authority.
- c. **Individual and multiple limits.** An extension can only be granted based on a specific review of an individual period. If an extension of more than one period is requested, the extension criteria shall be evaluated for each limit.

C. **Administrative Appeal**

Application for appeal of an administrative decision shall be submitted for compliance review within 15 days after the date of the decision being appealed. A quasi-judicial public hearing for the appeal shall be scheduled to occur within 30 business days after receipt of a complete application. The application shall provide information as required by the adopted appeal procedures, including the following:

- 1. **Decision appealed.** A copy of the written administrative decision to be reviewed on appeal.
- 2. **LDC reference.** Identification of the specific LDC provisions for which noncompliance is alleged.
- 3. **Alleged error.** A description of how the decision of the administrative official

is considered arbitrary or capricious.

**4. Conditions.** Documentation satisfying the conditions established in the compliance review provisions of this section.

**5. Remedy.** A description of the proposed remedy.

**6. Other information.** Any other pertinent information the applicant wishes to have considered.

**D. Medical Hardship**

Temporary placement of a manufactured (mobile) home or park trailer may be requested according to the provisions of this section when a landowner asserts that existing medical conditions require in-home care and an accessory dwelling to reasonably provide it. The manufactured home may be placed within any mainland zoning district to remedy a medical hardship according to the temporary use provisions of Chapter 4, regardless of the density limits of the applicable zoning. The requirements to grant the temporary use of a manufactured home or park trailer as an accessory dwelling to provide in-home medical care is considered by the BOA in a quasi-judicial hearing whether conditions warrant such use.

The BOA shall conduct a quasi-judicial public hearing as noticed to consider the requested medical hardship temporary use of a manufactured home or park trailer according to the provisions of this article. The applicant has the burden of presenting competent substantial evidence to the board that establishes each of the following conditions:

**1. Certified need.** A Florida-licensed physician certifies in writing the medical need, specifying the extent of the need for in-home medical care and the approximate length of time for such in-home medical care.

**2. Minimum necessary.** Conditions and circumstances make it difficult or impossible for the recipient and provider of medical care to reside in the same dwelling and the temporary accessory dwelling is the minimum necessary to provide relief of that medical hardship.

**3. Adequate public services.** The manufactured home or park trailer will have adequate water, sewer, solid waste removal, and electric services available.

**4. Compatibility.** The temporary use will not produce adverse impacts on the uses of surrounding properties.

**5. Standard conditions.** The temporary use can comply with the applicable standards of Chapter 4.

**4. Please complete the following form (if applicable): Affidavit of Owner/Limited Power of Attorney**

**AFFIDAVIT OF OWNER AND LIMITED POWER OF ATTORNEY  
(If applicable)**

As owner of the property located at \_\_\_\_\_  
\_\_\_\_\_, Florida, property reference number(s) \_\_\_\_\_

\_\_\_\_\_ I hereby designate \_\_\_\_\_

\_\_\_\_\_ for the sole purpose of completing this application and making a presentation to the Board of Adjustments on the above referenced property. This Limited Power of Attorney is granted on this \_\_\_ day of \_\_\_\_\_ the year of, \_\_\_\_\_, and is effective until the Board of Adjustment has rendered a decision on this request and any appeal period has expired. The owner reserves the right to rescind this Limited Power of Attorney at any time with a written, notarized notice to the Development Services Department.

Agent Name: \_\_\_\_\_ Email: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_  
Signature of Property Owner

\_\_\_\_\_  
Printed Name of Property Owner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Property Owner

\_\_\_\_\_  
Printed Name of Property Owner

\_\_\_\_\_  
Date

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_,  
by means of  physical presence or  online notarization \_\_\_\_\_

Type of Identification Produced: \_\_\_\_\_

\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
Printed Name of Notary

(Notary Seal)

5. Submittal Requirements

- A.  Completed application: All applicable areas of the application shall be filled in and submitted to the Planning and Zoning Department, 3363 West Park Place, Pensacola, FL 32505.
- B.  Application Fee: Application Fees: To view fees visit the website: <http://myescambia.com/business/board-adjustment> or contact us at 595-3448

Note: Fees include all notices and advertisements required for the public hearing and a \$5 technical fee. Payments must be submitted prior to 3 pm of the closing date of acceptance of application. Please make checks payable to Escambia County. MasterCard and Visa are also accepted.

By my signature, I hereby certify that:

- 1) I am duly qualified as owner(s) or authorized agent to make such application, this application is of my own choosing, and staff has explained all procedures relating to this request; and
- 2) All information given is accurate to the best of my knowledge and belief, and I understand that deliberate misrepresentation of such information will be grounds for denial or reversal of this application and/or revocation of any approval based upon this application; and
- 3) I understand that there are no guarantees as to the outcome of this request, and that the application fee is non-refundable; and
- 4) I authorize County staff to place a public notice sign(s) on the property referenced herein.

<u>M. Fatima Luther</u>	<u>Maria Fatima Luther</u>	<u>10/6/20</u>
Signature of Owner/Agent	Printed Name Owner/Agent	Date
<u>[Signature]</u>	<u>DAVID D. LUTHER</u>	<u>10/6/2020</u>
Signature of Owner	Printed Name of Owner	Date

STATE OF Florida COUNTY OF Escambia  
 The foregoing instrument was acknowledged before me this 6 day of October 2020,  
 by means of  physical presence or  online notarization \_\_\_\_\_ Type of  
 Identification Produced: FLDL

<u>Julie Putney</u>	_____	(notary seal)
Signature of Notary	Printed Name of Notary	

Julie C. Putney  
 Notary Public-State of Florida  
 Comm. Exp. September 8, 2023  
 Comm. Number- GG 366241

1. **Decision Appealed** PLU #: 20103920PLU

Property: 9511 Scenic HWY

Our back neighbor, 9511 Scenic HWY, is building a “2-story accessory building” near our swimming pool, with a 5 feet rear setback. The 2-story accessory building is tall, large (about 1600 sq. ft), invasive, and too close to our pool.

2. **LDC Reference:**

The county has told 9511 SHWY residents that the 2-story accessory building can be up to 35 feet high (3-story building) with a 5 feet rear setback. Yes, they can build a 3-story apartment complex.

I will try to explain how zoning/planning concluded the height and setback of the 2-story building, and how we think the decision is not correct.

Section 3-2.7 9511 Scenic HWY has an MDR (Medium Density Residential) Code for residential buildings (source: appraisal)

- Height: 45 feet
- Front/Back Setback: 20 feet

\*Note: MDR uses the term residential building/structure

Section 3-3.7 Scenic HWY Overlay (SL-OL) district created “supplemental land use regulations to support the Pensacola Scenic Bluffs HWY master plan.” It also states, “The intent of the additional land use controls is to further the objectives of the plan...”

SH-OL changed the MDR code:

Height: 35 ft

Front Setback: 35 ft.

Back Setback: 20 ft SH-OL does not mention rear setback because It did not change it.

\*Note: SL-OL uses the term structure.

The SL-OL is supplementing the MDR code for residential structures. As SL-OL uses the term “structures”, Mr. Jones believes that the 35 feet height is applicable to all structures including accessory structures.

Well, Mr. Horace Jones used this section (height of 35 feet) to allow residents of 9511 SHWY to build the 2-story building but did not use the 20 feet rear setback of the MDR/SL-OL. Instead Mr. Jones used the 5 feet accessory rear setback for the 2-story building.

3. **Alleged Error:**

There are 3 errors with the PLU Permit decision:

- The two-story building (up to 35 ft tall) needs to have a 20 ft setback. It is too large.
- There are two accessory structures in the 2-story building and not one: bottom storage, and top floor (residence). Nowhere in the LDC a 2-story building is cited as an example of an accessory structure. Examples of accessory structures in the LDC are carpool, garage, shed, storage, pool, etc. (never a 2-story building). The second floor should not exist
- According to the survey drawing documents provided by property owner, one of the stories will be used as residential structure/dwelling. According to Section 4-73, "The accessory dwelling complies with the setbacks applicable to the principal dwelling" which is 20 ft setback.

**Remedy:** Only one accessory structure (the bottom floor) can be used with the 5 feet setback.

If the owners insist keeping the second floor, a 20 ft setback needs to be established. Nowhere in the LDC a 2-story building is cited as an accessory structure.

A PLU Permit # 20103920PLU was given to the residents of 9511SH on 10/02/20 to continue building the second floor. Even though I requested Mr. Jones to let me know ASAP about his decision, sadly, he let me know on 10/05. My family does not have a lot of time. I am appealing this administrative decision. I emailed him a few times today and he has refused to answer some of my questions. Mr. Jones seems to be taking sides and seems to reflect bias on this matter.

Final thoughts:

**We are on the other side of the fence.**

My family knows and understand how invasive, large and close this 2-building with two windows on the top floor is to our backyard and swimming pool. If your office let them continue to build the second floor, our privacy will be gone.

We have lived in this house since 2010. Our back neighbors just moved in last year. I have been calling and emailing a lot of people from Escambia County since April about this matter. We will continue to fight for our privacy.

Please, read carefully our concerns.

*m. Darina Luther 10/5/20*

David and Maria Luther

Children: Michelle (19), Caden (17), and Ben (11)

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Appeal this

PLANNING LAND USE PERMIT  
FOR OFFICE USE ONLY

PLU PERMIT #: 20103920PLU

PERMIT TYPE: Accessory structure USAGE CLASS Res

ADDRESS: 9511 Scenic Hwy

PROPERTY REFERENCE #: D21S293001000009

ZONING: MPR FLU: MU-U LOT AREA: \_\_\_\_\_ LOT OF RECORD: \_\_\_\_\_ Y \_\_\_\_\_ N

OVERLAY DISTRICT: Scenic DSAP: NO

DRAINAGE BASIN: 1 FLOOD ZONE: X

AIPD1: 0 AIPD2: 0 AIRFIELD ENVIRON: \_\_\_\_\_ Y  N HEZ: 0

BEACH MOUSE HABITAT: \_\_\_\_\_ Y \_\_\_\_\_ N

SETBACKS:  
FRONT: 0 REAR: 5 LEFT: 5 RIGHT: 5

SUBDIVISION (NAME): \_\_\_\_\_ PLAT \_\_\_\_\_ BK \_\_\_\_\_

COMMENTS: \* 5' for rear + side yards for 2-story  
ldg in it's entirety \*

Other Building Code requirements  
may be necessary. This is Land Use only.  
A-genes

FOR DWELLING UNITS ONLY  
DRIVEWAY PERMIT APPLICATION REQUIRED  
LOT GRADING REVIEW

LAND USE APPROVAL BY: [Signature] DATE: 10/02/2020

Residential structure  
not Dwelling structure

accessory dwelling