

APPLICATION NUMBER

5467

A REQUEST FOR

SIDE AND REAR YARD SETBACK VARIANCES TO ALLOW TWO STORAGE SHEDS WITHIN 0.4' AND 2.5' OF A SIDE PROPERTY LINE, AND TO ALLOW ONE OF THE SHEDS TO WITHIN 4.4' OF THE REAR PROPERTY LINE; THE ZONING ORDINANCE REQUIRES AN 8' SIDE YARD SETBACK AND AN 8' REAR SETBACK FOR STRUCTURES IN R-1, SINGLE-FAMILY RESIDENTIAL DISTRICTS.

LOCATED AT

6505 LIGHTHOUSE COURT

(South side of Lighthouse Court at its East terminus)

APPLICANT/OWNER

CHARLES F. HALL

AGENT

CHARLES F. HALL

BOARD OF ZONING ADJUSTMENT

MAY 2008

The applicant is requesting Side and Rear Yard Setback Variances to allow two storage sheds within 0.4' and 2.5' of a side property line, and to allow one of the sheds to within 4.4' of the rear property line; the Zoning Ordinance requires an 8' side yard setback and an 8' rear setback for structures in R-1, Single-Family Residential Districts.

The applicant purchased the subject property in March, 2007, with an existing storage shed encroaching into the required 8' side yard setback to within 0.4' of the East property line. In January, 2008, the applicant purchased a second storage shed from a retail building supply/home improvement center with installation to be done by the center's contractor. The contractor instructed the applicant to apply for the required building permit, but the permit was denied due to the proposed shed not meeting the required side and rear setbacks. Installation was begun, but a zoning inspector issued a Stop Work Order due to the setback encroachments as the shed was positioned 2.5' off the side property line and 4.4 feet off the rear property line. The applicant wishes to retain both structures where located, hence this variance request.

With regard to the shed that was existing at the time of the applicant's purchase of the property, the applicant assumed responsibility/liability for the setback encroachment upon purchase. Since the property was developed in 1987, well after the adoption of the Zoning Ordinance, all structures on site should meet the required setbacks. It appears that a building permit was never applied for to construct the shed. With regard to the second shed, research indicates that the home improvement center's contractor is licensed to operate in the City of Mobile, but is not bonded to do so, and therefore, is not able to obtain building permits. If that contractor had been properly bonded and had obtained a building permit, setback issues for the second shed would not have resulted, assuming the contractor's compliance with required setbacks. To compound issues with the second shed, it encroaches into a recorded 5' drainage and utility easement along the rear property line and relief for such encroachment cannot be granted via a variance.

The applicant does not present any basis for a hardship imposed by the property which prevents the sheds from meeting required setbacks. The site plan furnished does not indicate any trees or topographic features in areas where setback compliance can be met. In this instance, any hardships would be considered self-imposed, both in the purchase of the non-compliant existing shed, and the installation of the second shed. It is incumbent upon a property purchaser to be aware of encroachments which may impact the property, and it is the responsibility of a property owner to ensure that planned improvements to the property meet required setbacks. In this instance, neither of those was tended to.

The Zoning Ordinance states that no variance shall be granted where economics are the basis for the application. Furthermore, the applicant must present sufficient evidence to find that the variance will not be contrary to the public interest, and that special conditions exist such that a literal enforcement of the Ordinance will result in an

unnecessary hardship. The Ordinance also states that a variance should not be approved unless the spirit and intent of the Ordinance is observed and substantial justice done to the applicant and the surrounding neighborhood.

Variances are not intended to be granted frequently. The applicant must clearly show the Board that the request is due to very unusual characteristics of the property and that it satisfies the variance standards. What constitutes unnecessary hardship and substantial justice is a matter to be determined from the facts and circumstances of each application.

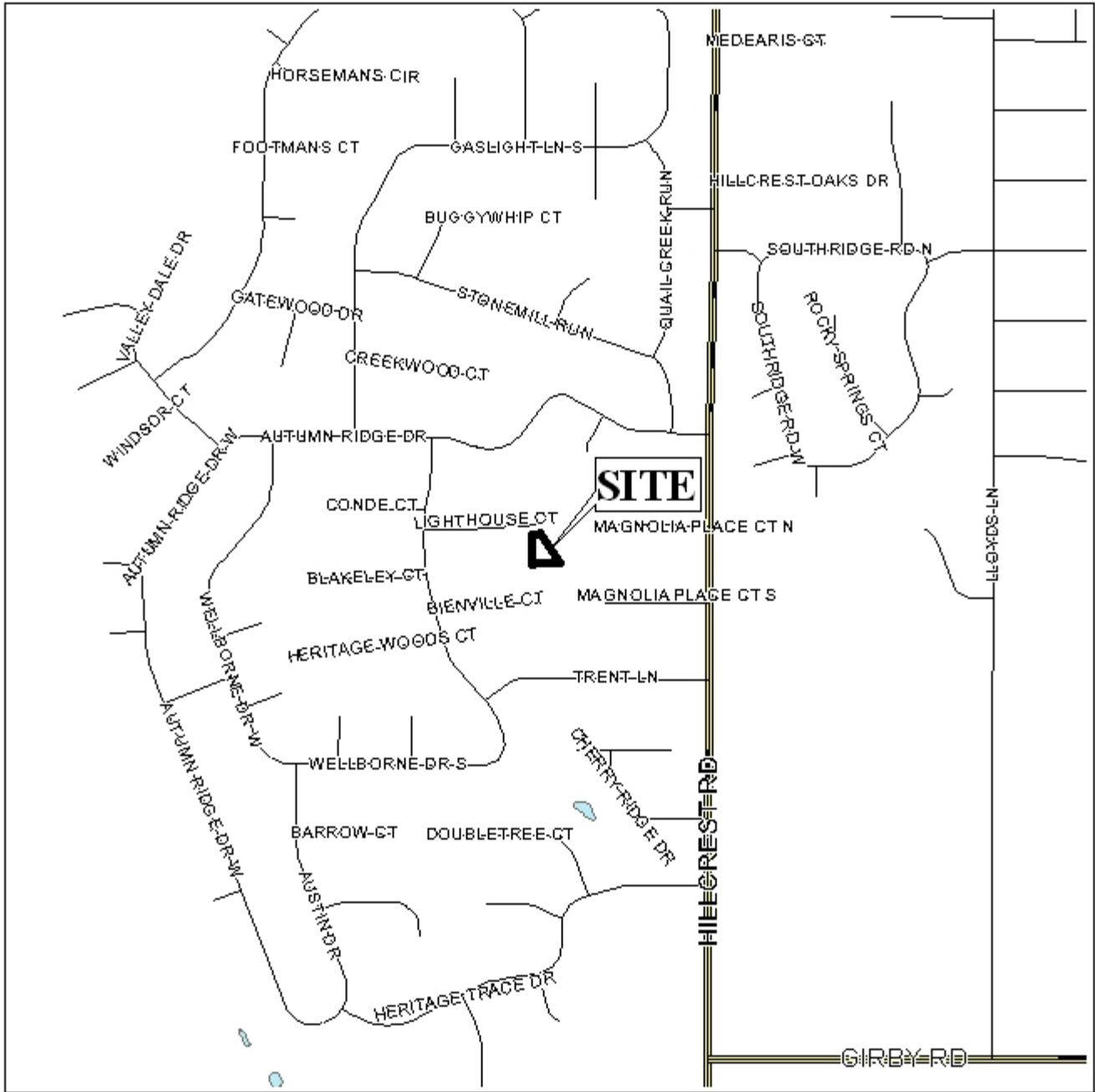
The applicant failed to illustrate that a literal enforcement of the Ordinance would result in an unnecessary hardship. It is simply the applicant's desire to allow two storage sheds within 0.4' and 2.5' of a side property line, and to allow one of the sheds to within 4.4' of the rear property line. Further, one of the sheds was constructed after a building permit was denied because of the setback issue. Although the Board may have the authority to grant some relief with regard to the side setback issues, the Board cannot grant any relief within the 5' recorded drainage and utility easement along the rear property line.

RECOMMENDATION 5467

Date: May 5, 2008

Based upon the preceding, this application is recommended for denial.

LOCATOR MAP



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BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING

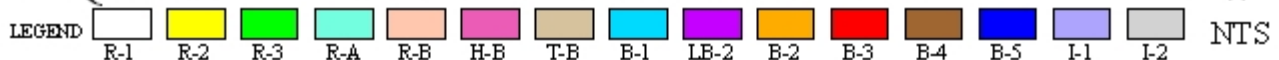


This site is surrounded by residential landuse with
business landuse to the northeast.

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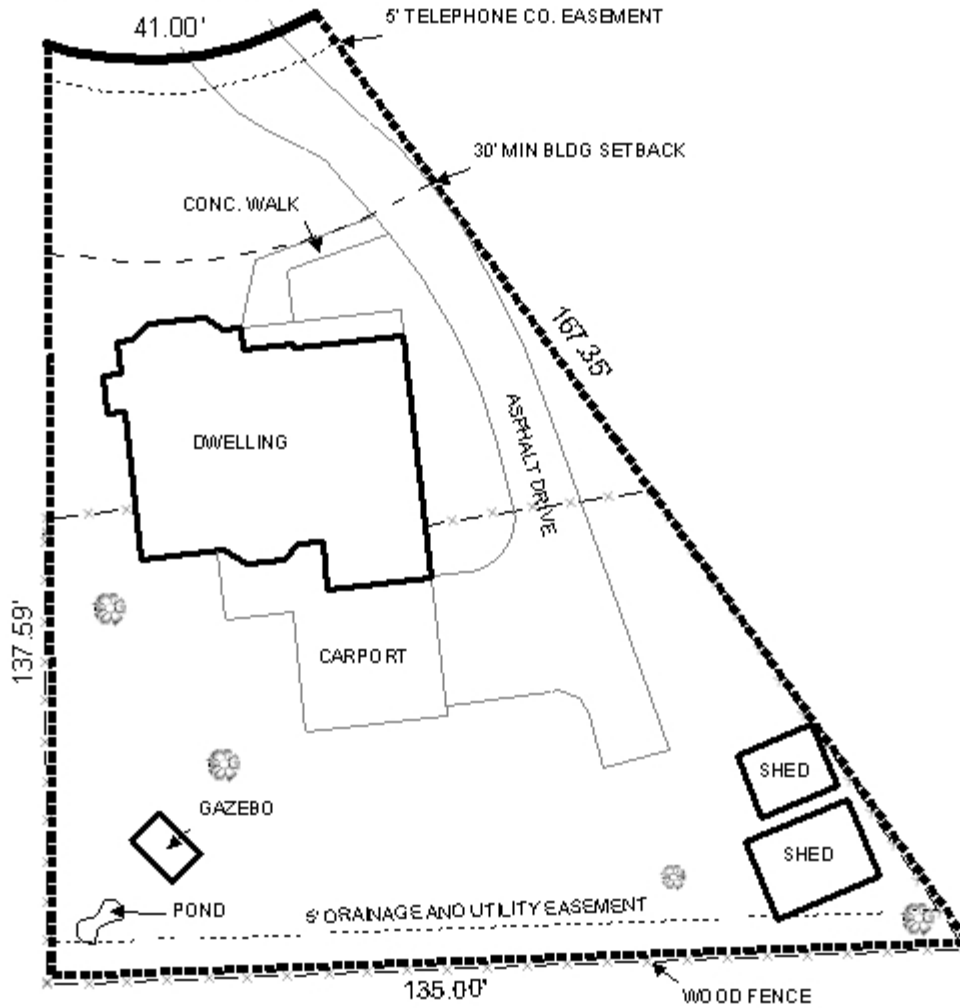
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SITE PLAN

LIGHTHOUSE COURT (50' R/W)



This site plan illustrates proposed and existing structures.

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