

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT**

Date: July 7, 2014

CASE NUMBER

5897

APPLICANT NAME

Donald and Sabrina Hinton

LOCATION

5350 Todd Boulevard
(West side of Todd Boulevard, 550' ± North of the terminus of Todd Boulevard)

VARIANCE REQUEST

SIDE YARD SETBACK: To allow a shed within 6'± of the side property line, and a shed within .75'± of the side property line on a 100'± wide lot in an R-1, Single-Family Residential District

ZONING ORDINANCE REQUIREMENT

SIDE YARD SETBACK: The Zoning Ordinance requires a minimum of an 8' side yard setback on a 100'± wide lot in an R-1, Single-Family Residential District.

ZONING

R-1, Single Family Residential

AREA OF PROPERTY

22,103 ± Square Feet

ENGINEERING COMMENTS

There does not appear to be any existing underground or surface drainage system located within the 5' wide drainage easement. The area within the easement appears to sheet-flow to the north and east towards the Todd Bayou canal.

TRAFFIC ENGINEERING COMMENTS

This request was not reviewed by Traffic Engineering.

FIRE DEPARTMENT COMMENTS

All projects within the City of Mobile Fire Jurisdiction must comply with the requirements of the 2009 International Fire Code, as adopted by the City of Mobile.

URBAN FORESTRY COMMENTS

No comments received.

CITY COUNCIL DISTRICT

District 4

ANALYSIS The applicant is requesting a Side Setback Variance to allow a shed within 6'± of the side property line, and a shed within .75'± of the side property line on a 100'± wide lot in an R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum of an 8' side yard setback on a 100'± wide lot in an R-1, Single-Family Residential District.

The Zoning Ordinance states that no variance shall be granted where economics are the basis for the application; and, unless the Board is presented with 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.

Variance 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.

Applicant's statement: *Installed pre-built shed on property to have a storage that was above flood level to prevent loss of valuables in future.*

At this time, we are asking for a Variance for the pre-built shed to remain at its current location, rather than moving it further toward the canal, which floods our backyard when there is a severe rainfall. Moving it laterally would hinder the driveway access to the back.

Previous flooding came over our pool, also our older, attached shed which is on the SW side of property in back of home. (Pictures Provided). The new unattached shed (Pictures Provided) is up at the NE side of back yard that is out of flood area.

We placed it here, not to only protect our future valuables from flooding, but also so it would not hinder neighboring property. (Pictures Provided)

As you see in our pictures, the shed does not block our neighbors view to the water and is on their garage side.

The slope of the yard (Pictures Provided) shows that most of the drainage from water is on our side of the property – hence our putting boards under fence to defray some of the water.

At no time does this shed interfere with neighboring property nor does the shed block or devalue the look or usage of anyone's property.

The site has two sheds. One appears to have existed prior to annexation (the older, attached one), while the other was recently located on the property without appropriate permits (the prebuilt, unattached one).

There appears to be hardships associated with this property: the entire site is located within the AE flood zone and a portion of the property is within a wetlands area. Also, there is an existing 5' wide drainage easement located along the entire northern property line, where the current shed is positioned.

Typically, a hardship to a property due to unusual characteristics of the property may be basis for the approval of a variance request as mentioned above; however, the prevailing issue of the existing drainage easement at this site should not be over looked. Furthermore, it appears that residentially zoned lots in the immediate vicinity appear to have not encroached within any easement and have been developed in observance of Section 64-3.C.1.e. (regarding side yard setbacks) of the Zoning Ordinance.

Although this property may contain hardships, Staff has identified an alternate area - directly north and adjacent to the existing pool - with a similar elevation which may be suitable for the applicant's proposed shed and, as such, the applicant has not presented sufficient evidence to demonstrate a hardship as listed above and required in Section 64-8.B.6.f.(3).(d). of the Zoning Ordinance.

It should be pointed out that there has been neighborhood concern that the shed may have a negative impact in the neighborhood as time progresses, if allowed to remain within 1' from the northern property line.

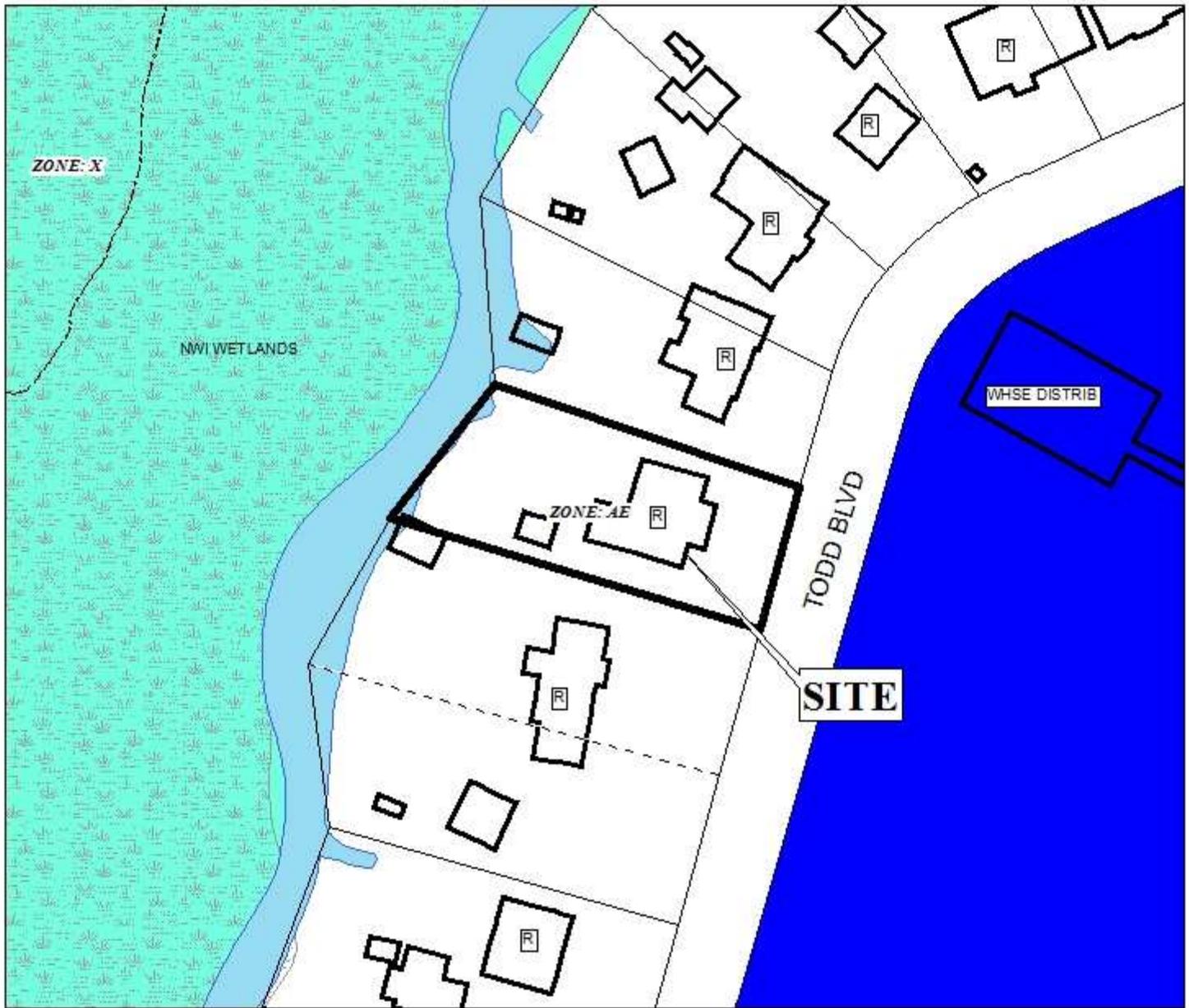
In regards to the existing shed located within 6' from the southern property line, it appears that this structure was placed on the property prior to the site being annexed into the City. As such, the shed would be considered non-conforming and would not require a variance to remain in its current location.

RECOMMENDATION: Based upon the preceding, Staff recommends to the Board the following findings of fact for denial:

- 1) Approving the variance will be contrary to the public interest in that the approval of the variance will be contrary to Section 64-3.C.1.e. of the Zoning Ordinance regarding setbacks within an R-1, Single-Family Residential zoning district;
- 2) Although special conditions exist, such as a hardship to the property due to the lot's proximity to a canal and location within a flood zone, a literal enforcement of the provisions of the chapter will not appear to result in an unnecessary hardship; and
- 3) The spirit of the chapter shall not be observed and substantial justice shall not be done to the surrounding neighborhood by granting the variance for the unpermitted shed since there may be other areas on the property which may be appropriate for the shed that would meet all setback requirements in upholding the spirit of Section 64-3.C.1.e. of the Zoning Ordinance.

Therefore, the shed should be removed and relocated to a compliant location, with the appropriate building permits.

BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING

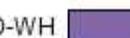


The site is surrounded by single family residential units.

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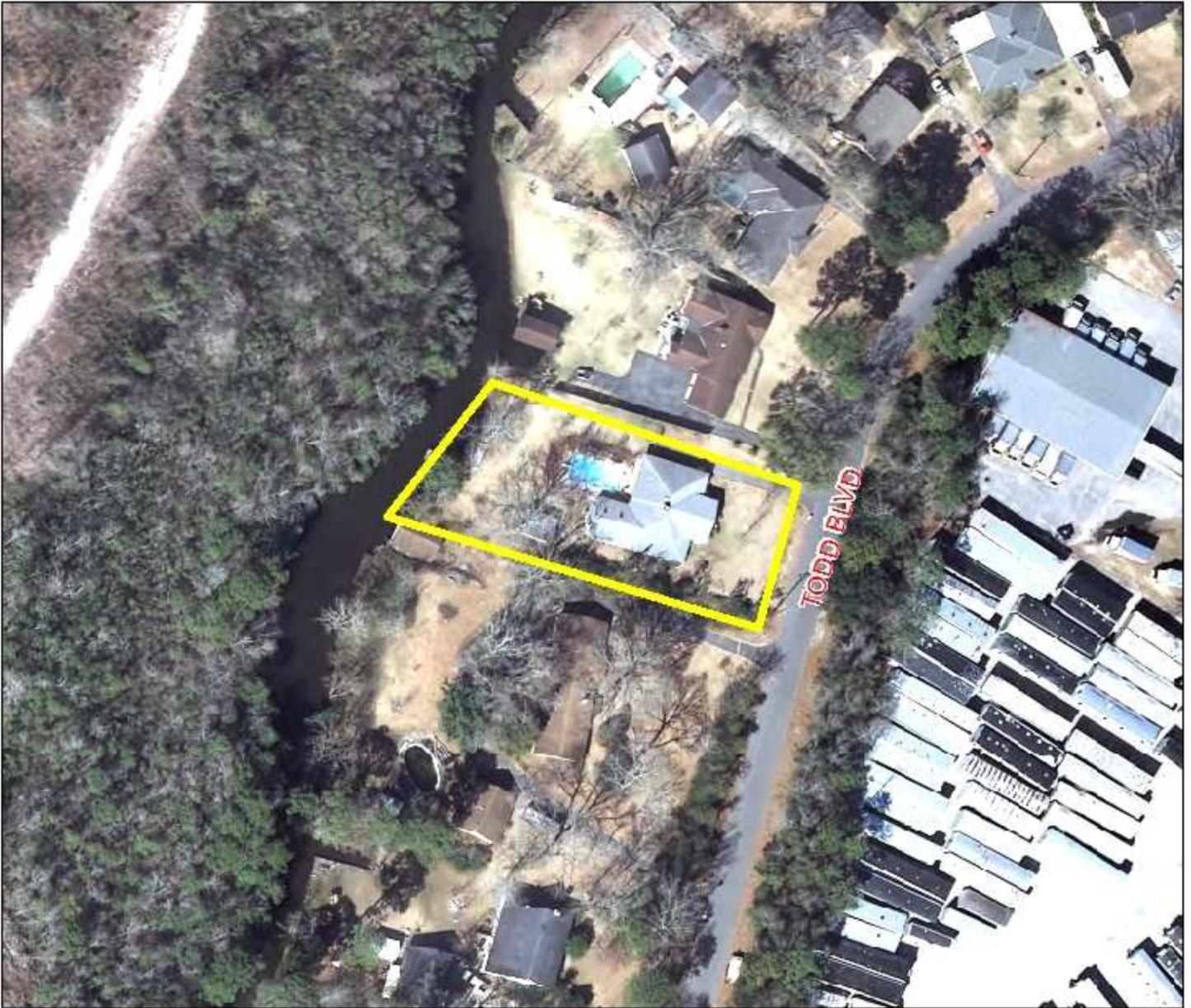
APPLICANT Donald and Sabina Hinton

REQUEST Side Setback Variances

 R-A	 R-3	 T-B	 B-2	 B-5	 MUN	 SD-WH	 T5.1
 R-1	 R-B	 B-1	 B-3	 I-1	 OPEN	 T3	 T5.2
 R-2	 H-B	 LB-2	 B-4	 I-2	 SD	 T4	 T6



**BOARD OF ADJUSTMENT
VICINITY MAP - EXISTING ZONING**



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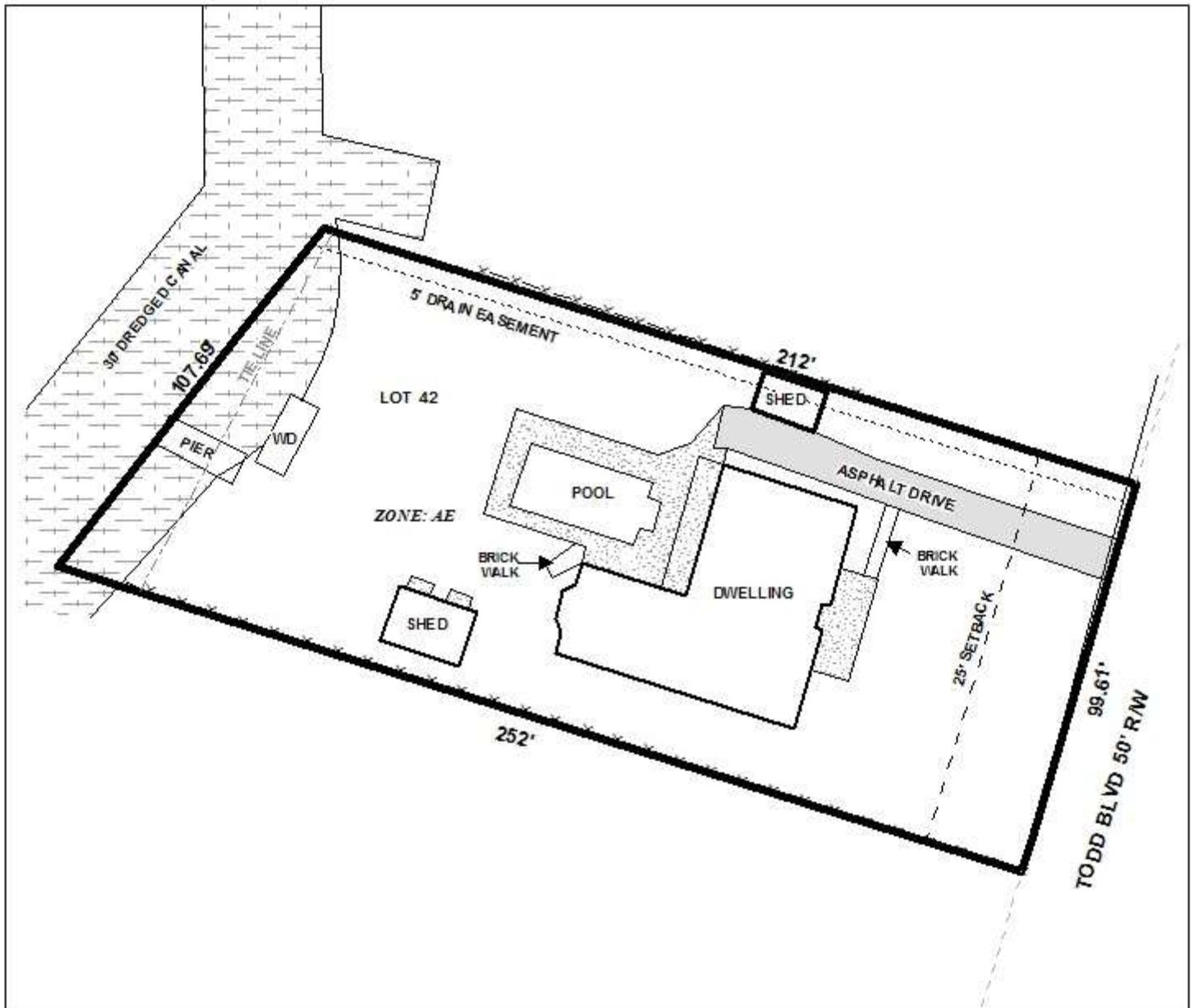
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SITE PLAN



The site plan illustrates the setback and easement, dwelling, sheds, and canal.

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