

APPLICATION NUMBER

5555

A REQUEST FOR

**SIDE YARD SETBACK AND COMBINED SIDE YARD
VARIANCES TO ALLOW THE CONSTRUCTION OF A
SINGLE-FAMILY DWELLING WITHIN 6.5' OF A SIDE
PROPERTY LINE WITH 15.09' OF COMBINED SIDE
YARDS ON A 48.92' WIDE LOT IN AN R-1, SINGLE-
FAMILY RESIDENTIAL DISTRICT; THE ZONING
ORDINANCE REQUIRES A MINIMUM SIDE YARD
SETBACK OF 7.0' WITH COMBINED SIDE YARDS OF
16.3' FOR A 48.92' WIDE LOT IN AN R-1, SINGLE-
FAMILY RESIDENTIAL DISTRICT**

LOCATED AT

West side of North Mobile Street, extending from Edgewood Street to Nall Street

APPLICANT / OWNER

FRANCES STANTON TATE

BOARD OF ZONING ADJUSTMENT

SEPTEMBER 2009

The applicant is requesting Side Yard Setback and Combined Side Yard Variances to allow the construction of a single-family dwelling within 6.5' of a side property line with 15.09' of combined side yards on a 48.92' wide lot in an R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum side yard setback of 7.0' with combined side yards of 16.3' for a 48.92' wide lot in an R-1, Single-Family Residential District.

The subject site is a legal lot of record, recorded in 1912, but it does not meet the current standards regarding lot size and width. The applicant states that, while the front setback will be met, the lot narrows toward its rear, preventing compliance with the sides. The applicant also states that other dwellings in the subdivision have substandard setbacks, with some being 4-5 feet from interior lot lines and one within 2' of a side street. With that said, the applicant feels that the request is in character with the neighborhood.

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.

With regard to other dwellings in the vicinity having substandard setbacks, no information has been provided to substantiate the applicant's argument. Nevertheless, many substandard setbacks in this area would enjoy a legal non-conforming status, as most of the neighborhood was developed prior to the adoption of the Zoning Ordinance. And while a few setback variances have been approved in the vicinity, two were for side *yard* setbacks, and one was for a *fence* on a side *street*; none allowed structures to be constructed within required setbacks from rights-of-way. The applicant is proposing an 8.69' setback from Mobile Street; 9.5' is required.

Furthermore, Mobile Street is a planned major street and required to have a minimum 80' of right-of-way; approximately 40' exists. Currently, the plan is for three lanes (with a potential for five), with right-of-way acquisition along the East side of Mobile Street only. However, this plan is tentative. If property is ever taken from the West, the subject site could be rendered unbuildable, especially since the setback is measured from the future Major Street right-of-way. While the applicant cannot necessarily be denied a

building permit (for a legal lot of record), approval here could exacerbate any future problems faced by both the applicant and the City of Mobile.

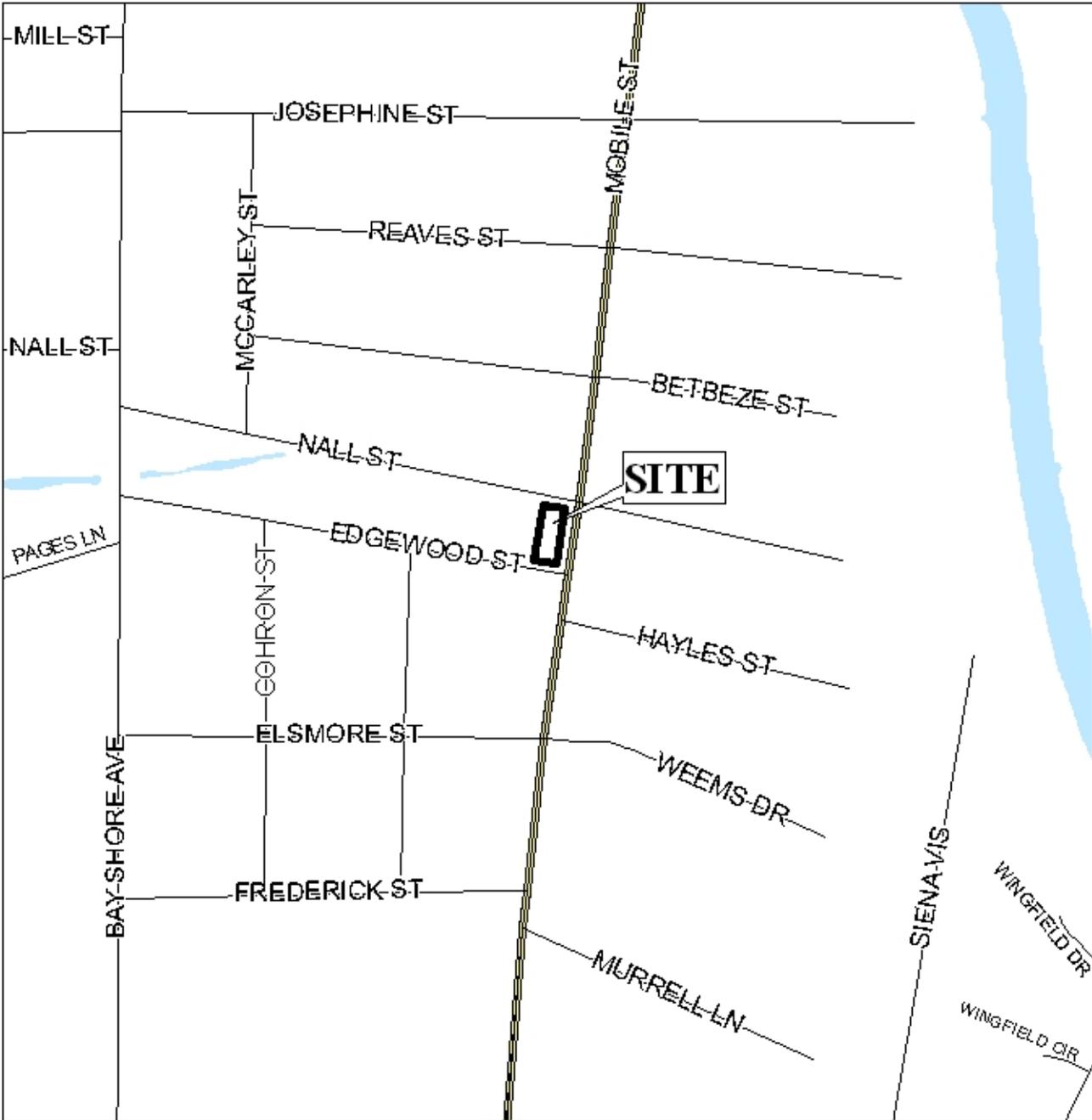
The applicant failed to illustrate that a literal enforcement of the Ordinance would result in an unnecessary hardship. Any problems faced by the applicant would be self-imposed.

RECOMMENDATION 5555

Date: September 14, 2009

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

LOCATOR MAP



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APPLICANT Frances Stanton Tate

REQUEST Side Yard Setback and Combined Side Yard Variances



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



There is an auto repair business to the north of the site and single family residential units to the south, east, and west.

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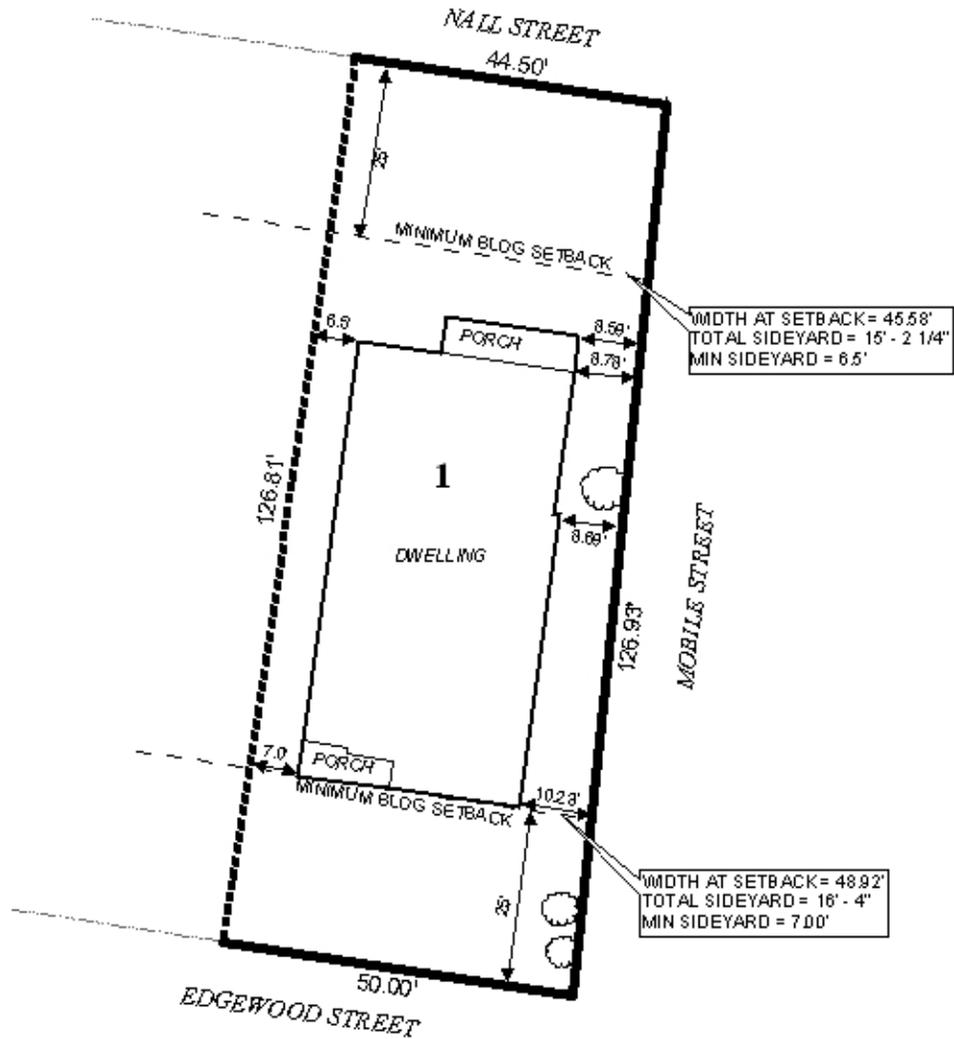
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LEGEND

R-1	R-2	R-3	R-A	R-B	H-B	T-B	B-1	LB-2	B-2	B-3	B-4	B-5	I-1	I-2



SITE PLAN



The dwelling and setbacks are illustrated in the site plan.

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