

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: August 4, 2014****CASE NUMBER**

5909

APPLICANT NAME

Francisco and Pamela Codina

LOCATION4702 Old Shell Road
(Northwest corner of Old Shell Road and Marston Lane)**VARIANCE REQUEST****SIDE STREET SIDE YARD SETBACK:** To allow a 5' tall wrought iron fence with five (5) 6' tall free-standing brick columns within 1' of the side street side yard property line in an R-1, Single-Family Residential District.**ZONING ORDINANCE
REQUIREMENT****SIDE STREET SIDE YARD SETBACK:** The Zoning Ordinance requires a minimum 20' Side Street Side Yard setback for all structures over 3' tall in an R-1, Single-Family Residential District.**ZONING**

R-1, Single-family Residential District

AREA OF PROPERTY

0.69 ± Acres

**ENGINEERING
COMMENTS**

No comments received.

**TRAFFIC ENGINEERING
COMMENTS**

The construction of the proposed fence will not impact line of sight for the traveling public on either Old Shell Road or Marston Lane. The location of the fence and columns will not impact line of sight for the adjacent neighbor at 67 Marston Lane.

**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 7

ANALYSIS

The applicant is requesting a Side Street Side Yard Setback Variance to allow a 5' tall wrought iron fence with five (5) 6' tall free-standing brick columns within 1' of the side street side yard property line in an R-1, Single-family Residential District; the Zoning Ordinance requires a minimum 20' Side Street Side Yard setback for all structures over 3' tall 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.

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.

Applicant's statement: *The house and grounds were extensively remodeled within the last few years. The rear yard is currently fenced with existing 6' high wood privacy fence and 4' high chain link fence. We would like to replace the rear yard chain link fence with 5' wrought iron fencing. We would like to place wrought iron fencing, free-standing brick columns and 5' to 7' high stuccoed concrete block wall to enclose the front yards (corner lot). Some of the proposed fencing will be placed within the front yard setbacks.*

We would like to make 3 requests of the Board.

- 1. Allow shrubs and low trees exceeding 3' height to remain within Marston Lane right of way and Old Shell Road/ Marston Lane front setbacks.*
- 2. Allow placement of 5' high wrought iron fence (4" clear spacing between pickets) within Marston Lane front setback. Allow wrought iron gates at right of way line.*
- 3. Allow placement of (5) 6' high, free-standing, brick columns within Marston Lane front setback.*

We believe the requested fence would be hidden by the existing shrubs and low trees for most of its length. We believe the wrought iron fence, being see-through, would be allowed at the Marston Lane right of way line. We believe the 24" x 24" brick columns would not impede roadway sight distance. We believe the remote controlled gates would prevent cars from impeding traffic on low-volume Marston Lane. We believe the tradition of fences along right of way lines is well established within the Spring Hill area (reference ZON2014-00523 for 51 Oakland Avenue from April of this year). We believe the Board findings in ZON2014-00523 apply directly for our corner lot.

It should be pointed out that the Board has no authority to approve or disapprove anything within in the public right-of-way and, as such, cannot consider the first request by the applicant. Staff

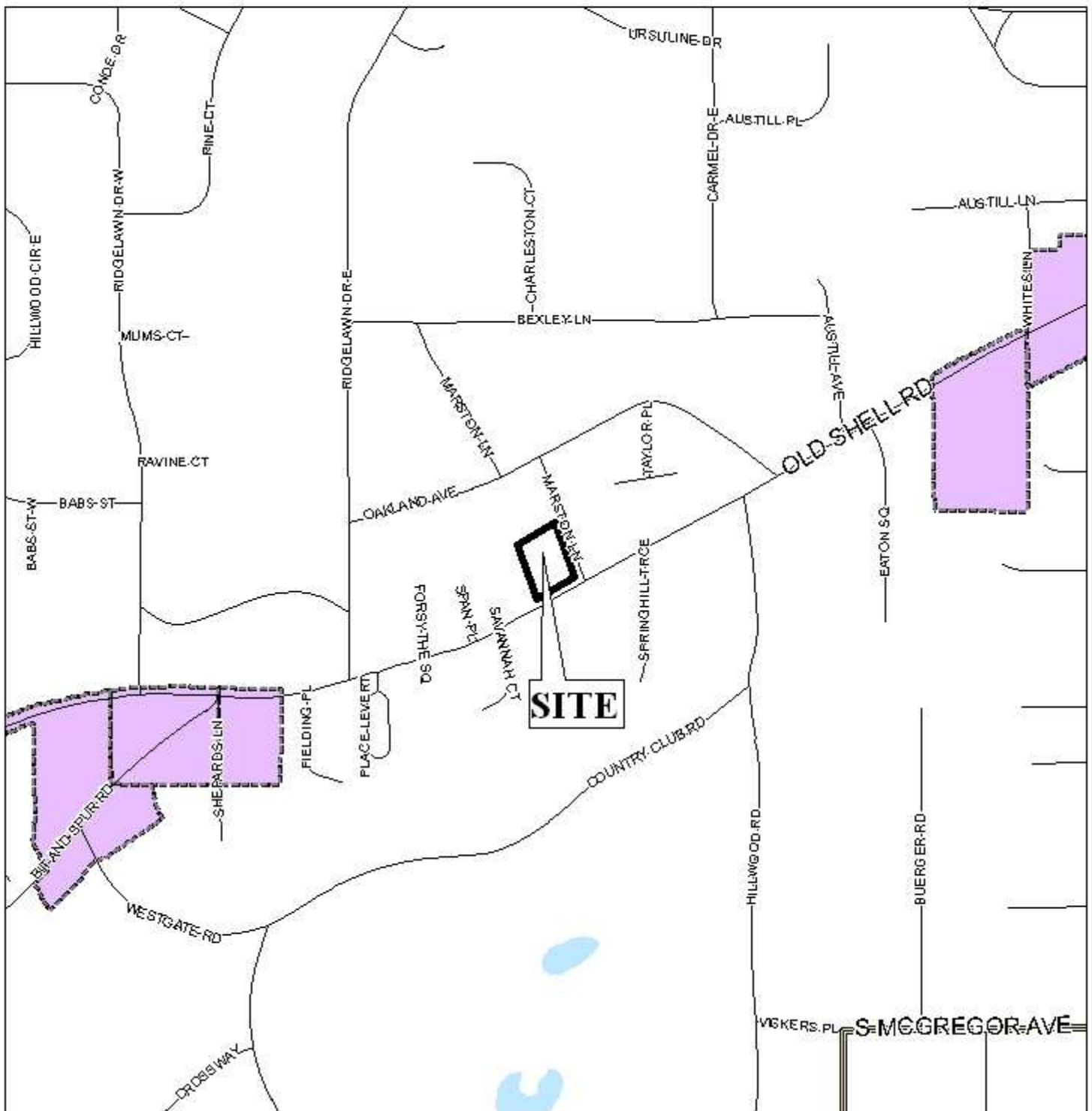
can substantiate the applicant's claim in reference to the previous variance approval in the vicinity; however, the applicant **has not** clearly identified any hardships for this site nor presented sufficient evidence as listed above and required in Section 64-8.B.6.f.(3).(d). of the Zoning Ordinance and, it is simply the applicant's desire to not comply with the Zoning Ordinance. As such, Staff's recommendation of denial would also seem appropriate in this case as in the previously approved variance for the neighboring property mentioned in the applicant's statement.

It is important to note that although the Board approved the previously mentioned variance for a neighboring property, the findings of fact by the Board for that request did not present any hardships to the property but instead put emphasis on privacy and neighborhood harmony as basis for approval. Further, given the character of the existing properties within the vicinity of this site, the applicant's request would not seem to be out of character in this neighborhood; however, it is important to note that as mentioned previously in this report, variances **are not** intended to be granted frequently and the approval of this variance request would be contrary to Section 64-4.D.6. of the Zoning Ordinance and may set an irreversible precedence in this and surrounding neighborhoods if no special conditions or hardships to an individual property exist.

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

- 1) Granting the variance will be contrary to the public interest in that it is contrary to Section 64-4.D.6. of the Zoning Ordinance regarding fence height and location within an R-1, Single-Family Residential zoning district;
- 2) The applicant has not clearly presented any special conditions as required in Section 64-8.B.6.f.(3).(d). of the Zoning Ordinance, such as a hardship to the property which may exist, and 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 because most of the near-by properties in the immediate vicinity appear to have been developed in accordance with the Zoning Ordinance. The approval of this request may set an irreversible precedence in this and surrounding neighborhoods if no special conditions or hardships to an individual property exist.

LOCATOR MAP



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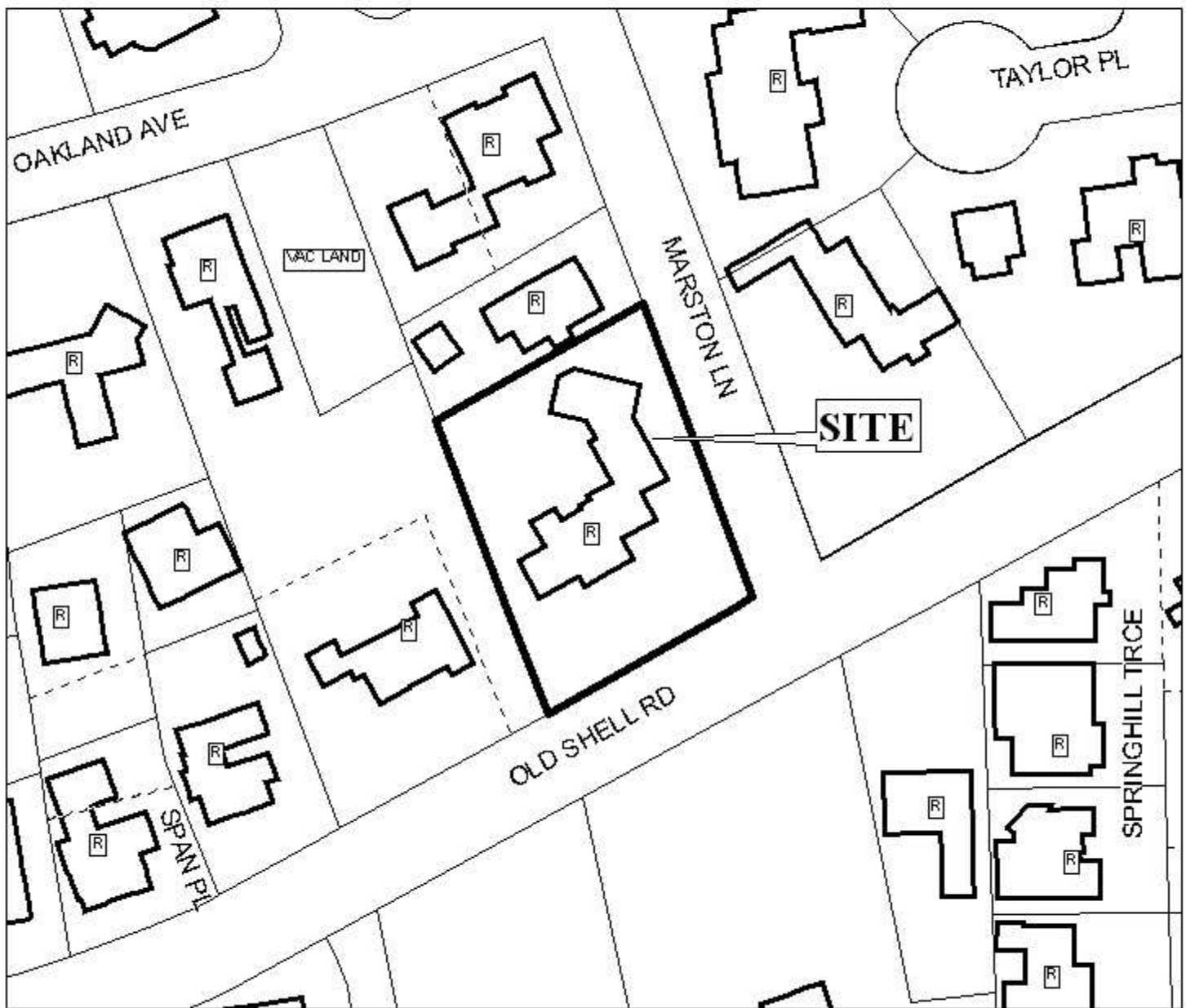
APPLICANT Francisco & Pamela Codina

REQUEST Side Street Side Yard Setback Variance



BOARD OF ADJUSTMENT

VICINITY MAP - EXISTING ZONING



This site is surrounded by residential land use.

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 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



This site is surrounded by residential land use.

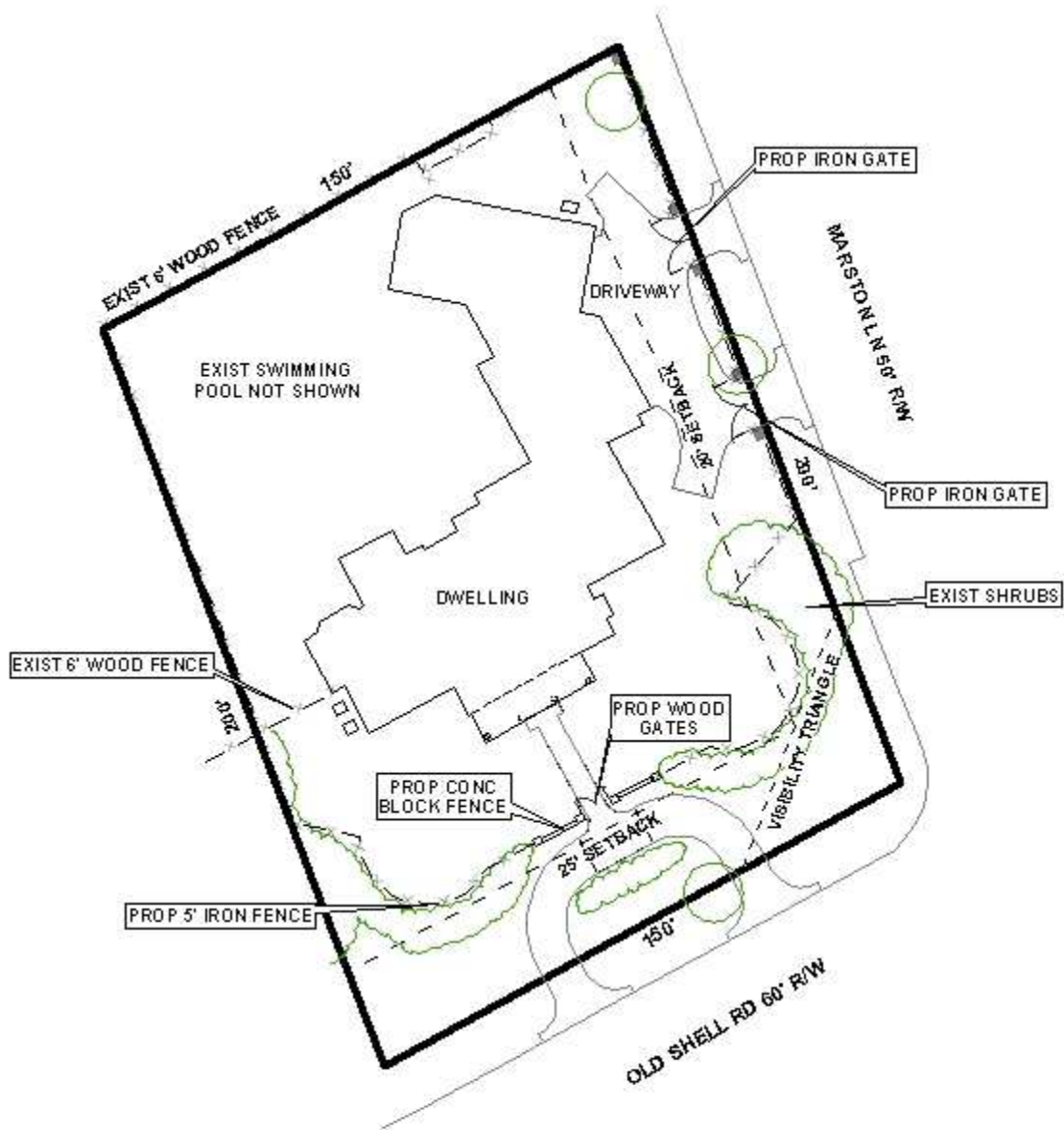
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SITE PLAN



The site plan illustrates existing dwelling, driveway, shrubs, and proposed fencing.

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