

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: October 5, 2015****CASE NUMBER**

6002

APPLICANT NAME

David & Tiffany England

LOCATION1608 Hidden Court
(West side of Hidden Court, 235'± North of Sugar Creek
Drive South).**VARIANCE REQUEST****SIDE & REAR YARD SETBACK:** Side and Rear Yard Setback Variance to allow a structure within 6.7' of a side yard property line and within 6.8' of a rear yard property line in an R-1, Single-Family Residential District.**ZONING ORDINANCE
REQUIREMENT****SIDE & REAR YARD SETBACK:** The Zoning Ordinance requires a minimum 8' setback for all structures from side and rear property lines in an R-1, Single-Family Residential District.**ZONING**

R-1, Single-Family Residential

AREA OF PROPERTY

16,500± Square Feet / 0.38± Acre

**TRAFFIC ENGINEERING
COMMENTS**

This request was not reviewed by Traffic Engineering.

**ENGINEERING
COMMENTS:**

No drawing was received to review; however, the Subdivision Plat for Sugar Creek Unit 1 indicates a 7.5 foot wide drainage easement along the rear of this property. No structure will be allowed within the drainage easement.

**CITY COUNCIL
DISTRICT**

District 6

ANALYSIS

The applicants are requesting a Side and Rear Yard Setback Variance to allow a structure within 6.7' of a side property line and within 6.8' of a rear property line in an R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum 8' setback for all structures from side and rear property lines in an R-1, Single-Family Residential District.

The site plan illustrates that a partially covered wooden deck currently exists on the property and infringes upon the minimum 8' side and rear yard setback requirement by 1.24' and 1.17', respectively. Staff was made aware of the violation on May 21, 2015 upon inspection of a complaint made to Mobile 311 that construction of a deck was occurring on the subject site, and again on May 29, 2015 upon inspection of a complaint that it was too close to the property line. Consequently one Notice of Violation was issued requesting that the structure be permitted, and another Notice of Violation was issued requesting that it be moved to meet the aforementioned setback requirements. The applicants wish to keep the structure in its current location citing the large amounts of time, effort and finances required for the construction of the deck as justification for approval of the variance application by the Board of Zoning Adjustment.

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.

The applicants state the reasons for the structure's current location:

- 1. To be able to utilize the shade provided by the oak tree in my yard and the surrounding green canopy from the neighbor's trees that are located in this area of the yard. We built the structure around our oak tree in order to save it. Moving over anymore would cause the tree to be right in the middle of the covered area.*
- 2. The slope of the yard is such that we have already put in two retaining walls, one for the pool and one for the remainder of the yard. If we moved the deck over any further it would have been too far off the ground on one side and much harder to level. The additional height of the structure would have also given us a clear view of our other neighbor's back yard and diminish their privacy from us. We currently cannot see in anyone's back yard from the current location of the structure.*
- 3. Because we had the adjoining neighbor's permission to do so.*

Regarding the shade provided by what the applicants mention is an oak tree, approximately 350 s.f. of the structure is partially covered, and the remaining approximately 200 s.f., deck space is uncovered; therefore the trees are convenient only for the uncovered portion of the deck. Also, while it is admirable that the applicants wish to preserve what are two oak trees by incorporating them into the design of the structure, staff cannot substantiate the applicants' statement that altering the placement of the covered portion of the structure would be detrimental to the trees; especially when it appears that a smaller or redesigned deck could meet the requirements of the Zoning Ordinance.

With regards to the elevation of the yard, it should be noted that the structure is built within what the Engineering Department has confirmed is a 7.5' drainage easement. As such, any portion of any structure encroaching upon the easement is required to be removed, unless the applicants can successfully obtain approval of a vacation of said easement from the City Clerk's Office.

The applicants go on to state the reasons why they do not want to move the structure:

- 1. It took a year to complete because I did the majority of the work by myself. I am a person with a disability; I only have the use of my left arm. My right arm was paralyzed in a motorcycle wreck 20 some years ago due to a City of Mobile Garbage Truck. I have spent a lot of time and money for this project. I intended to stay 8 feet from the back of our property and was granted permission from the other adjoining neighbors for the side closest to them. The rain run off does not enter their property at all and it is well hidden in the back of the lot and can only be seen in a few areas. We are working hard to grow our shrubs to create a natural privacy fence to further obstruct its view from anyone else.*
- 2. I concreted the 12'x6' posts and all other support posts three feet in the ground to make sure the structure was strong and secured.*
- 3. Removing or moving will be incredibly laborious for us to do on our own due to certain circumstances, and we financially cannot afford to pay someone to move it in order to not jeopardize strength and stability.*

As the applicants mention, the existing structure was constructed over the course of one year; however it should be noted that a building permit was not obtained until May 22, 2015, and only in response to the aforementioned Notices of Violation. The building permit was approved after the applicants indicated that the structure meets the side and rear yard setback requirements. Unfortunately this is not the case and suggests a disregard for City of Mobile ordinances, thus resulting in a self-imposed hardship.

Staff is aware that there may be limitations on where the structure may be relocated with regards to the size of the backyard, thus suggesting a possible hardship; especially since the addition of a swimming pool on the property in 2014 and because of the existing drainage easement. However, it appears that residentially zoned lots in the immediate vicinity appear not to have encroached within any easement and have been developed in observance of Section 64-3.C.1.e. of the Zoning Ordinance regarding side and rear yard setback requirements.

With regards to the costs associated with the redesign and relocation of the structure, variance applications cannot be based on financial hardship; rather, they must be based on a hardship associated with the property. Considering the preceding, and the fact that no side or rear yard setback variances exist within the immediate neighborhood, the applicant has not presented sufficient evidence demonstrating a hardship as required in Section 64-8.B.6.f.(3).(d). of the Zoning Ordinance.

RECOMMENDATION: Based on 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 will be contrary to Section 64-3.C.1.e. of the Zoning Ordinance regarding side and rear yard setbacks within an R-1, Single-Family Residential District;
- 2) Special conditions may exist, including the limited property size, the existence of a pool, and the existing trees and the slope of the property, but not in such a way that a literal enforcement of the provisions of the chapter will 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 structure since it appears that a smaller, redesigned deck could be located to meet the requirements of the Zoning Ordinance.

LOCATOR MAP



APPLICATION NUMBER 6002 DATE October 5, 2015

APPLICANT David and Tiffany England

REQUEST Side & Rear Yard Setback Variances



BOARD OF ADJUSTMENT

VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units.

APPLICATION NUMBER 6002 DATE October 5, 2015

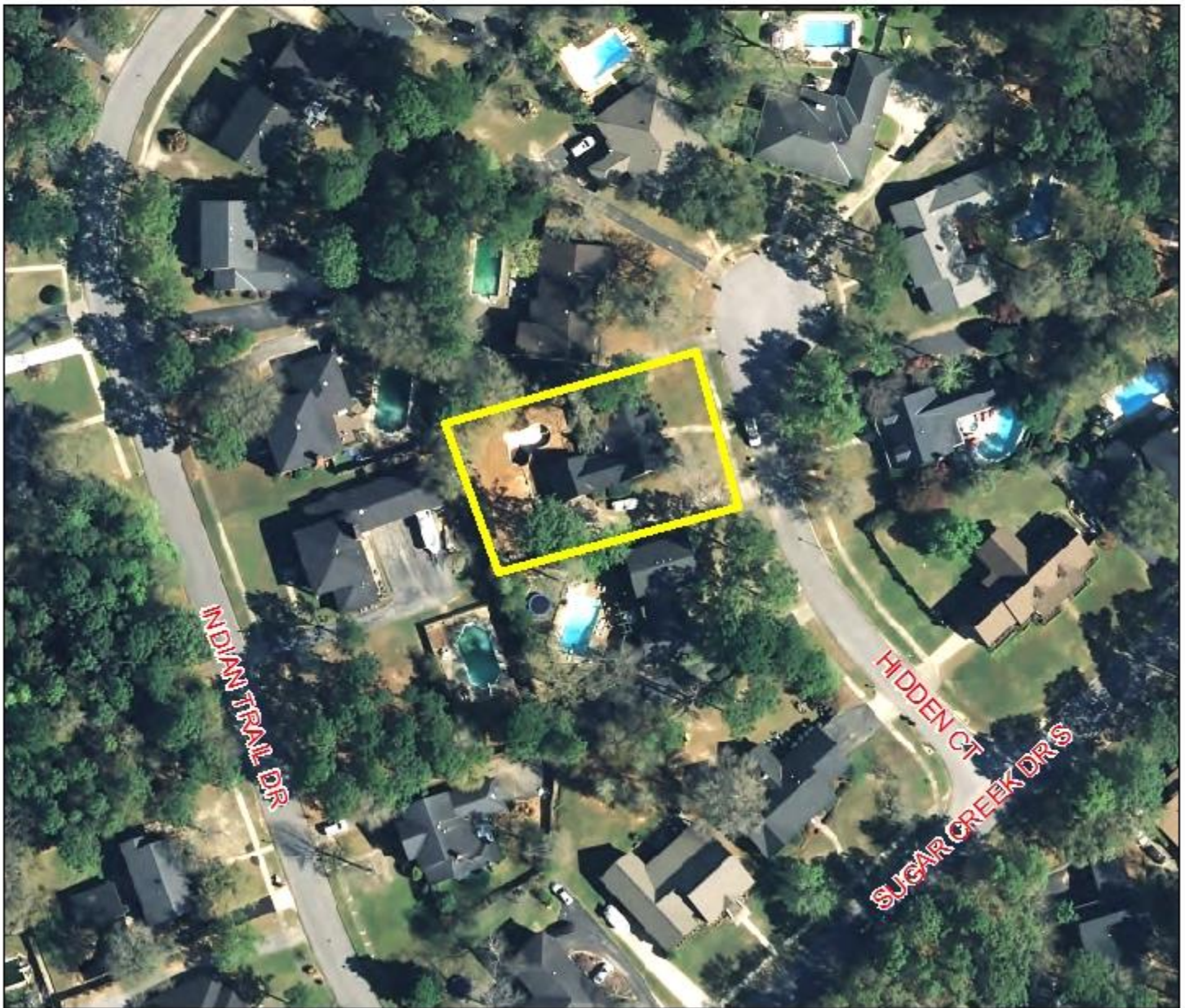
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R-A	R-3	T-B	B-2	B-5	MUN	SD-WH	T5.1
R-1	R-B	B-1	B-3	I-1	OPEN	T3	T5.2
R-2	H-B	LB-2	B-4	I-2	SD	T4	T6



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units.

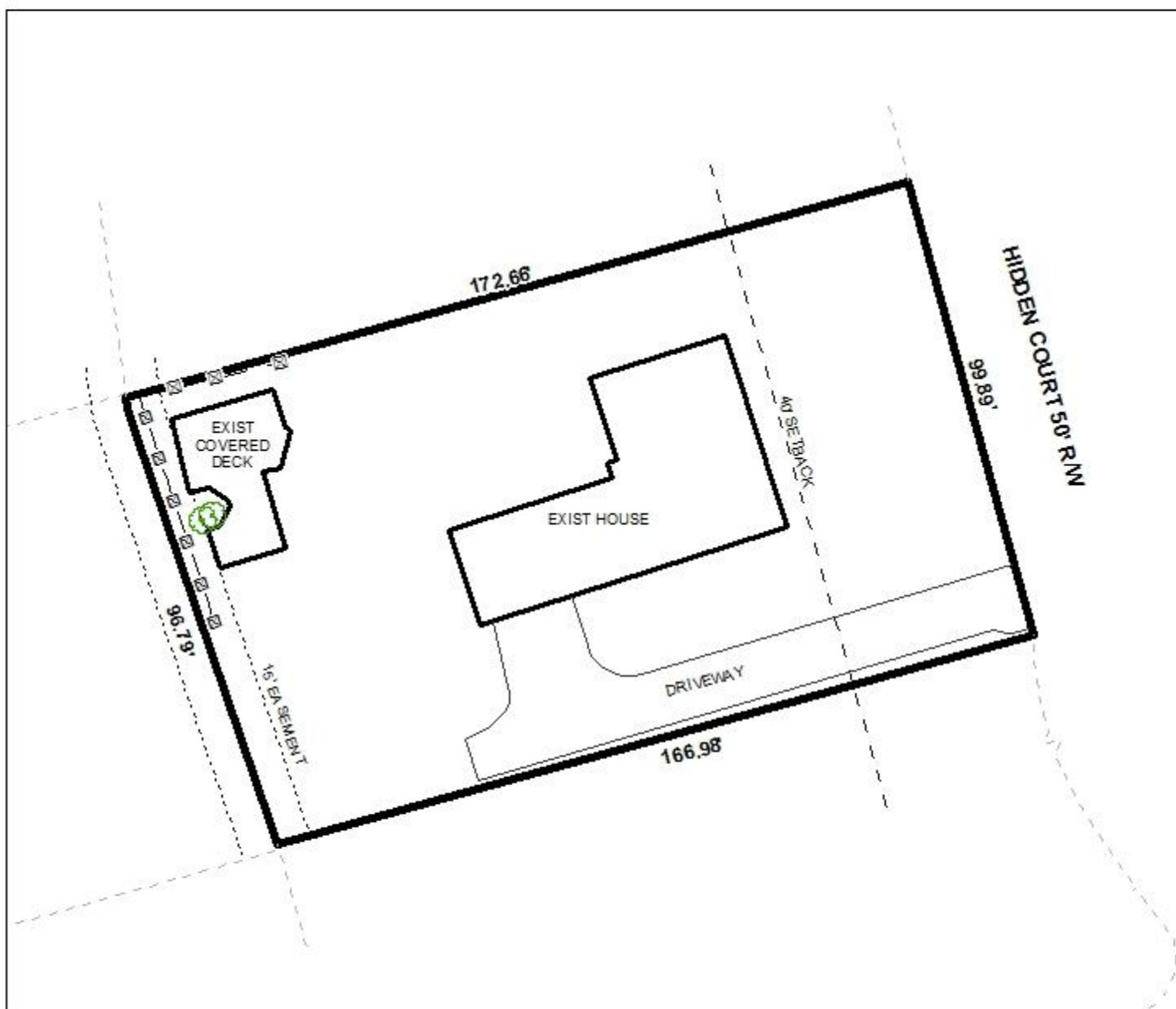
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SITE PLAN



The site plan illustrates the existing buildings, driveway, and setback lines.

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