

**BOARD OF ZONING ADJUSTMENT  
STAFF REPORT****Date: June 1, 2015**

<b><u>CASE NUMBER</u></b>	5975
<b><u>APPLICANT NAME</u></b>	Steven Mouton
<b><u>LOCATION</u></b>	5414 River Landing Drive (Northwest corner of River Landing Drive and Henning Drive West)
<b><u>VARIANCE REQUEST</u></b>	<b>SIDE STREET SIDE YARD SETBACK:</b> To allow a 6' high wooden privacy fence within 10' of the side street side yard property line in an R-1, Single-Family Residential District.
<b><u>ZONING ORDINANCE REQUIREMENT</u></b>	<b>SIDE STREET SIDE YARD SETBACK:</b> The Ordinance requires a 20' side street side yard setback in an R-1, Single-Family Residential District.
<b><u>ZONING</u></b>	R-1, Single-family Residential District
<b><u>AREA OF PROPERTY</u></b>	0.46 ± Acres
<b><u>CITY COUNCIL DISTRICT</u></b>	District 4
<b><u>ENGINEERING COMMENTS</u></b>	No comments.
<b><u>TRAFFIC ENGINEERING COMMENTS</u></b>	This request was not reviewed by Traffic Engineering.
<b><u>FIRE DEPARTMENT COMMENTS</u></b>	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.
<b><u>ANALYSIS</u></b>	The applicant is requesting a Side Street Yard Setback Variance to allow a 6' high wooden privacy fence within 10' of the side street side yard property line in an R-1, Single-Family Residential District; the Zoning Ordinance requires a 20' side street side yard setback 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: *It is being proposed to decrease the frontage setback of this property which is parallel to River landing drive from the current 20 feet from the property line to 10 feet from the property line. Along the proposed setback a 6 ft standard wood privacy fence is desired. If approved by the Board, the fence would be erected per the attached drawings within two weeks of being notified of decision.*

1. *This variance will not be in conflict of public interest. As shown in pictures there is sufficient area for right of way and vision for traffic. The site in question is of a residential home recently constructed on a corner lot. The Certificate of Occupancy was granted on 4/15/2015. I have spoken with the majority of the neighboring property owners, and there is overwhelming acceptance of the lot. The neighbor across the street at 5411 river landing, also president of HOA has voiced concern stating the fence will be an eyesore. Upon learning of this concern I planted 5 bald cypress trees along the proposed sidewalk which will almost entirely cover the fence upon maturity. Regardless of the fence setback it will be in plain view of the neighbor. Oddly enough the same neighbor voicing distaste over the setback also has a fence line that is less than three feet from the sidewalk, a more egregious violation of setback that was not permitted at time of construction.*
2. *Hardship. This property is unique from neighboring properties in that it is a corner lot. The corner lot arrangement poses a unique challenge in being able to properly store a utility trailer and recreational fishing boat so that it is out of the line of site from neighboring properties. Per a communication with Charles Finkley of the City of Mobile, we were granted 5 feet of additional setback along River Landing Drive, for a total setback of 20 ft. That communication is attached in this application package. After applying that setback I found that it would be impossible to back in both my fishing boat or utility trailer next to the house via the driveway. Both trailers measure at least 8 feet wide. Finally, my wife and I currently have two children, a dog, and are pregnant with a third child on the way. The additional space in the back yard would be tremendous in allowing our family to grow.*
3. *Justice to Applicant. The corner lot across the street, the three houses at the entrance of the neighborhood (5411 river landing Dr, 5513 River Landing Dr, 5460 Henning Dr. West, 5466 Henning Dr west) have unpermitted setbacks much closer to the street*

*than what I am proposing, so a precedent has been set. Unlike, those property owners I am going through the fair process of obtaining a lesser setback. I am open to additional landscaping along fence line to help ease the eyesore.*

As proposed, the 6' high privacy fence would be constructed a distance of 10' from the right-of-way of River Landing Drive. The location of the proposed fence would not appear to cause visibility issues for the intersection of Henning Drive West and River Landing Drive; however, visibility regarding ingress/egress via the driveway for the adjacent lot to the north at 5410 River Landing Drive, may be affected. In addition, the majority of the homes in the vicinity appear to have been developed in compliance with Section 64-3.C.1. of the Zoning Ordinance regarding development of building sites located within R-1, Single-Family Residential Districts.

The applicant noted that the property is a corner lot. While the lot is fairly large at approximately 27,000 square feet, about 442 feet of the 658 foot perimeter of the property (67%) is road frontage. Furthermore, the lot is oddly shaped due to the curvature of Henning Drive.

As mentioned by the applicant, there has been ongoing discussion between the applicant and the president of the neighborhood's homeowners association regarding this site's development. The president of the association has been advised that the City does not enforce neighborhood covenants. Although the applicant has provided justification sufficient to demonstrate special conditions with this corner lot, it is important to note that public input is a crucial part of a public hearing process.

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

- 1) Approving the variance request will not be contrary to the public interest due to the fact that other homes within the development have fences up to the side street property lines, and the applicant will be setting their fence at least 10 feet back from the property line;
- 2) Special conditions appear to exist, namely the odd shape of the lot, and the fact that approximately 67% of the lot is frontage, that a literal enforcement of the provisions of the chapter will appear to result in an unnecessary hardship; and
- 3) The spirit of the chapter shall be observed and substantial justice done to the applicant and the surrounding neighborhood by granting the variance since the fence will be set back 10 feet from the property line, allowing for traffic visibility, and will also allow some use of the applicant's back property.

The approval should be limited to the following conditions:

- 1) Obtain the appropriate building permits; and
- 2) Full compliance with all other municipal codes and ordinances.

# LOCATOR MAP



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REQUEST Side Street Yard Setback Variance



# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by sigle family residential units.

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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 single family residential units.

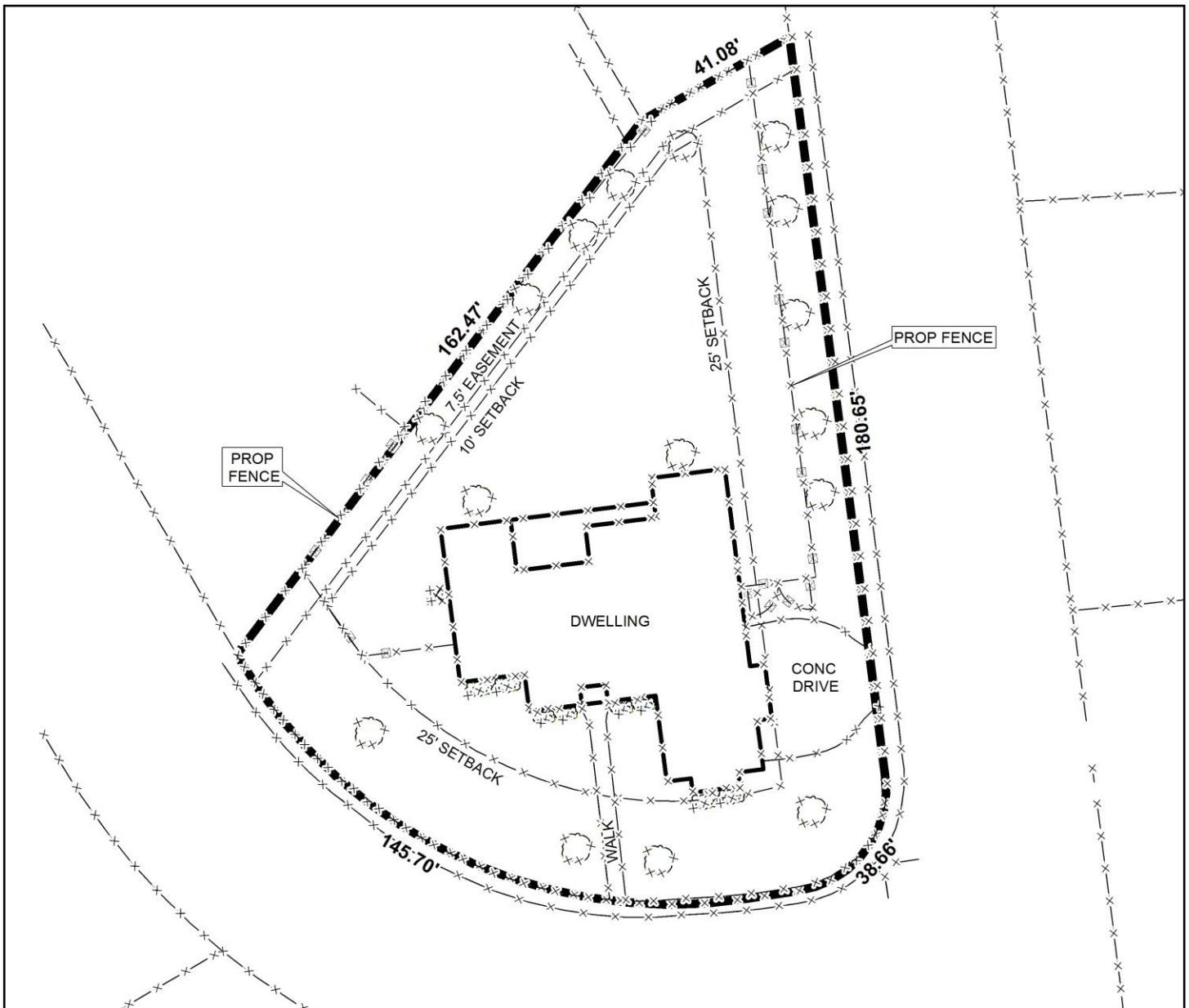
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# SITE PLAN



The site plan illustrates the existing dwelling, proposed fences, setbacks, and easements.

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