

APPLICATION NUMBER

5618

A REQUEST FOR

**ADMINISTRATIVE APPEAL OF A STAFF DECISION TO
ISSUE A BUILDING PERMIT BASED ON
NONCONFORMING STATUS RATHER THAN AN
APPROVED VARIANCE**

LOCATED AT

3525 RIVIERE DU CHIEN COURT

(South side of Riviere du Chien Court, 100'± East of its West terminus)

APPLICANT/OWNER

M. B. CANTON CO., INC.

BOARD OF ZONING ADJUSTMENT

MAY 2010

The applicant is requesting an administrative appeal of a staff decision to issue a building permit based on nonconforming status rather than an approved variance.

The applicant states that building permit BLD2009-00471 was issued on March 19, 2010 “in violation of the zoning ordinance, applicable FEMA regulations, and the flood plan [*sic*] ordinance, and without notice despite a specific request, therefore in violation of the due process clause of the state and federal constitutions, among other deficiencies.”

The site in question is located on a property with frontage onto Dog River. The permit in question is for a nonconforming pool/guest house, which is to be elevated so that it will comply with FEMA regulations.

Until February 1998, the site was owned by the Canton family heirs, and included Lots 12, 13 and a portion of Lot 11 of Block 4 of Riverview Subdivision. The site contained a main house and pool on Lot 11/12, and a pool/guest house that encroached into Lot 13 approximately 17 feet.

In February 1998, the residence site was sold to Elizabeth Billingsley, and the deed included a temporary dwelling easement for the pool/guest house. Repairs to the pool/guest house were made by Ms. Billingsley after damages by Hurricane Georges in 1998.

In August 2002, the Canton heirs subdivided Lot 13 to exclude the easement parcel, in order to allow construction of a house on the new lot. The Canton heirs retained ownership, however, of the easement parcel.

In September 2003, the heirs of Elizabeth Billingsley sold the Lot 11/12 residence site with pool/guest house to Scott and Jacqui Callahan, the current owners. The deed included reference to the temporary dwelling easement.

In April 2006, after Hurricane Katrina (August, 2005), Kenneth Canton requested that the Callahans remove the encroaching portion of the pool/guest house as damage from Katrina rendered the temporary easement terminated. The Callahans refused the request and applied for a building permit to make repairs: litigation was filed in July 2006 by legal representatives of the M. B. Canton Company.

On October 17, 2008, Mobile County Circuit Court Judge R. Stout determined that the temporary easement was still valid if the Callahans continued to use the structure as a guest/pool house. The decision was appealed by Canton to the Alabama Supreme Court, and the court denied the appeal on January 15, 2010.

On March 3, 2009, an application was received by the Permitting Section of Urban Development to renovate the existing guest/pool house, and to add a second floor: the ground floor would be for storage and access to the second floor, which would contain habitable rooms. The addition of a second floor was considered by staff a vertical structural alteration necessary to comply with FEMA requirements associated with the extent of damage to the structure caused by Hurricane Katrina. Permits were issued for the work on March 19, 2010, after the final decision was rendered by the Alabama Supreme Court.

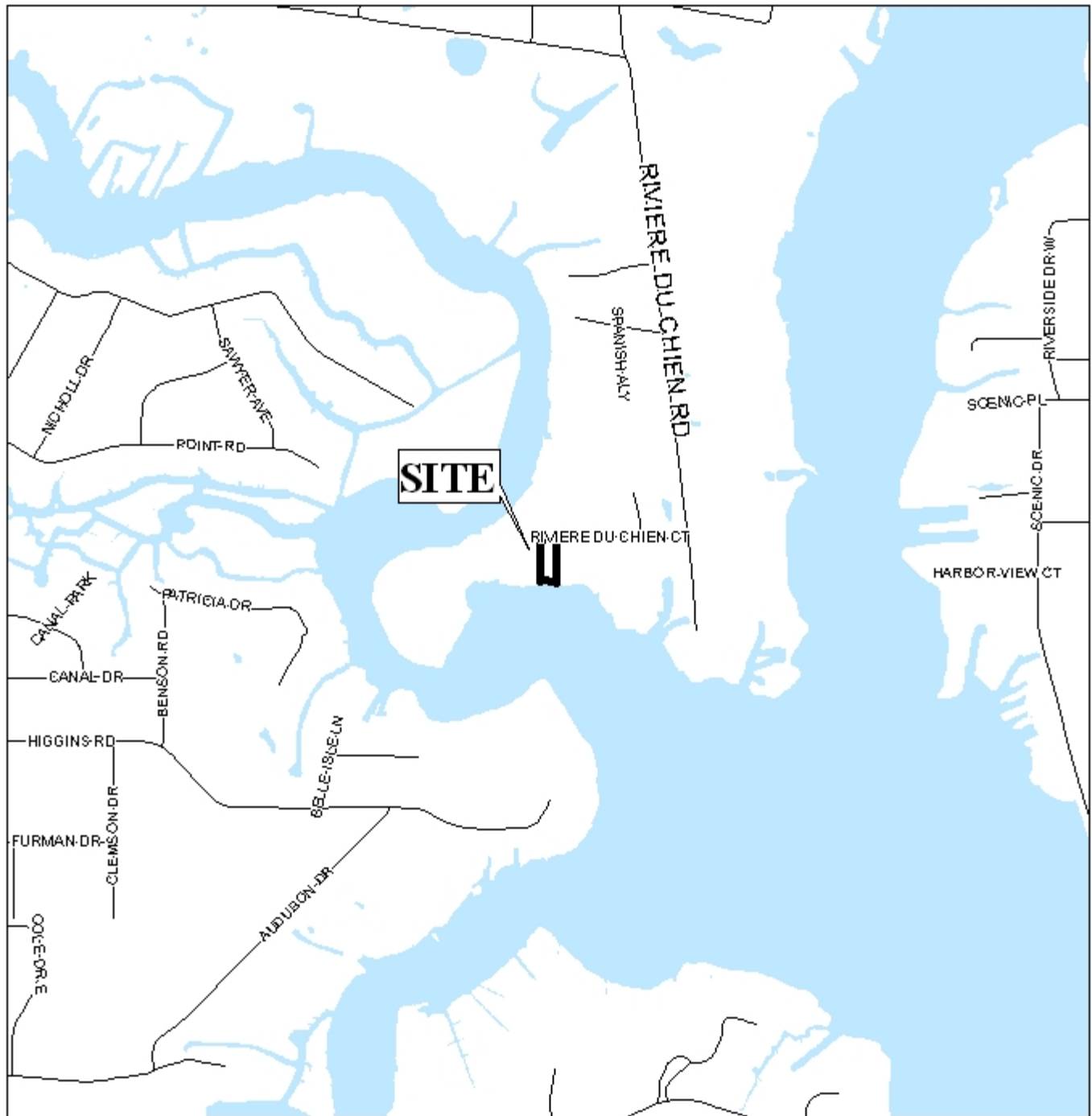
While a permit would not be issued for a new structure that crossed a property line, the structure in question is nonconforming. Courts have previously held that a vertical addition to an existing nonconforming structure did not increase the nonconformity, and was thus allowable. Therefore, as the permit in question is not for an expansion of the foot print (which would increase the nonconformity) but for a vertical addition, the permit was issued.

With regard to the appellant's claim that the permit was issued without notice despite a specific request, the code does not require notification of neighboring properties when a permit is requested or issued. Further, the appellant was advised that the information is available on the City's website, and that an individual can check on a regular basis to determine if a request has been made; and if so, the status of any request.

RECOMMENDATION 5618**Date: May 3, 2010**

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

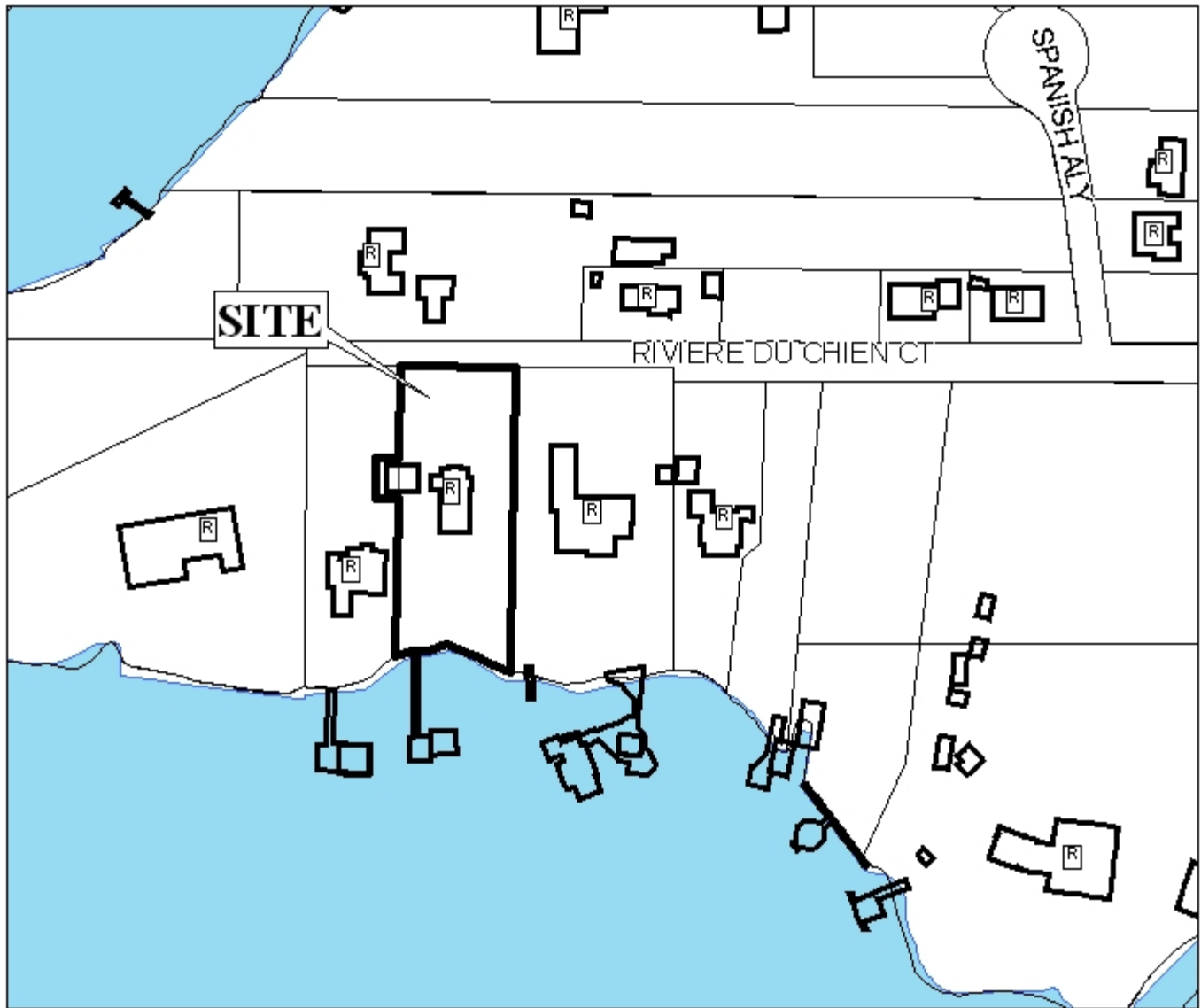
LOCATOR MAP



APPLICATION NUMBER 5618 DATE May 3, 2010
APPLICANT M. B. Canton Co., Inc.
REQUEST Administrative Appeal

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NTS

BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by residential land use

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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
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