

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: December 7, 2015****CASE NUMBER**

6020 / 1870 / 3149

APPLICANT NAME

McDowell Knight Roedder & Sledge, LLC

LOCATION501 & 581 Cochrane Causeway
(West side of Cochrane Causeway, 3/4 ± North of the
Bankhead Tunnel)**VARIANCE REQUEST****APPEAL:** Administrative Appeal of a staff determination that the handling and storage of coal in an I-2, Heavy Industry District requires Planning Approval. The applicant contends that coal is not a hazardous material, and therefore should not require Planning Approval.**ZONING ORDINANCE
REQUIREMENT****APPEAL:** Staff has determined that coal is considered a “hazardous material” and that the handling and storage of coal in an I-2, Heavy Industry District requires Planning Approval.**ZONING**

I-2, Heavy Industry District

AREA OF PROPERTY

37.2 ± Acres

**CITY COUNCIL
DISTRICT**

District 2

**ENGINEERING
COMMENTS**

No comments

**TRAFFIC ENGINEERING
COMMENTS**

No comments

**URBAN FORESTRY
COMMENTS**

No comments

**FIRE
COMMENTS**

No comments

ANALYSIS

The applicant has submitted an Administrative Appeal of a staff determination that the handling and storage of coal in an I-2, Heavy Industry District requires Planning Approval. The applicant contends that coal is not a hazardous material, and therefore should not require Planning Approval.

A request for Planning Approval to allow coal handling has been heard by the Planning Commission for this location, and was approved by the Planning Commission at its November 19, 2015 meeting. Appeals have been filed against this decision to the City Council, however, a date has not been set regarding when the appeals will be heard.

Regarding the Administrative Appeal, the Zoning Ordinance states that the Board has the authority to hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, permit, decision or refusal made by the zoning administrator or other administrative office in the enforcement of this chapter or of Article 4, Section 11-52-70 et seq., of the 1975 Code of Alabama, as amended.

The applicant states:

The property is currently used by the owner of the property Cooper Marine & Timberlands Corp ("Owner") as a marine-dry bulk cargo handling/stevedoring facility, and has been in operation for many years. Owner previously received planning approval for this facility and in 2013 received further planning approval for an expansion of the facility.

On or about October 5, 2015, the City of Mobile issued a citation (copy attached) to Owner for operating a "coal handling facility" without planning approval. Owner was not aware the City required specific and separate approval for the handling of coal. The property is zoned I-2, and under the zoning ordinance's "chart of permitted uses" marine cargo handling/stevedoring is a permitted use (by right) and does not require planning approval (see attached). The handling/storage of coal is not listed on the chart. The City has informed Owner that planning approval is required because (i) coal is a hazardous substance and/or (ii) the handling/storage of coal falls under the chart classification "coal mining", both of which do require planning approval for property zoned I-2. Owner disputes that coal is a hazardous substance, and Owner is certainly not coal mining. Owner disputes and appeals from the City officer's decision/ruling that (i) coal is a hazardous substance, and (ii) the handling/storage of coal falls within the chart classification "coal mining". Owner seeks a ruling from the Board of Adjustment that (i) the handling of coal falls within the chart's classification "marine cargo handling/stevedoring", and (ii) Owner may continue the handling and storage of coal under its existing I-2 zoning without planning approval.

The Planning Approval previously granted for this site by the Planning Commission at its February 7, 2013 meeting was for a "wood chipping" facility. While coal handling was, apparently, already occurring on the site at the time (since 2010), no mention was made in the information provided with the application of this fact.

Previous requests for coal handling facilities at other locations have been subject to the same Planning Approval process, as staff has determined, and legal counsel has concurred, that coal is a “hazardous material” due to the fact that it is flammable.

Hazardous materials are defined in the Zoning Ordinance as follows:

Hazardous material or substance: *A substance is considered hazardous when it has one of the following characteristics: flammable, explosive, corrosive, toxic, radioactive, or if it readily decomposes into oxygen at elevated temperatures.*

As previously noted, the Planning Commission has approved the most recent Planning Approval request to allow coal handling. It should also be noted that the company has submitted documentation as part of the Planning Commission application showing that they have all relevant and necessary permits from the Alabama Department of Environmental Management for the operations at the facility regarding all state and federal laws applicable to air and water quality.

RECOMMENDATION: The Board should consider all aspects regarding the Administrative Appeal request, however, given that there is an unchallenged precedent of coal as a hazardous material established by a previous Planning Approval application for a coal handling facility at a different location, and given the fact that legal counsel concurs with staff’s interpretation, it is recommended that the appeal be denied.

Revised for the February 1, 2016 meeting:

The application was heldover from the December 7, 2015 meeting, at the applicant’s request.

Since that time, appeals were filed regarding the Planning Approval by the Planning Commission to the City Council. During its meeting on January 5, 2016, the appeal failed due to a lack of Councilmember votes to support a motion to approve the appeal. Thus the Planning Commission’s approval of the use remains in force.

No additional information has been provided by the applicant.

RECOMMENDATION: The Board should consider all aspects regarding the Administrative Appeal request, however, given that there is an unchallenged precedent of coal as a hazardous material established by a previous Planning Approval application for a coal handling facility at a different location, and given the fact that legal counsel concurs with staff’s interpretation, it is recommended that the appeal be denied.

Revised for the May 2, 2016 meeting:

The application was heldover from the February 1, 2016 meeting, at the applicant's request.

Since that time, an appeal has been filed to court, and no hearings have as of yet occurred.

No additional information has been provided by the applicant.

RECOMMENDATION: *Given that the Planning Commission and City Council decisions have been appealed to court, the Board should postpone any decision regarding the Administrative Appeal until after the court has rendered a decision regarding the appeals. A holdover of the case until the November 2016 meeting of the Board may be appropriate.*

Revised for the December 5, 2016 meeting:

The application was heldover from the May 2, 2016 meeting to allow the court to make a decision regarding appeals of the Planning Commission and the City Council decisions. Staff has been informed that the court case is still ongoing, therefore another holdover may be appropriate to allow more time for the court to make a decision.

RECOMMENDATION: *Given that the Planning Commission and City Council decisions have been appealed to court, the Board should postpone any decision regarding the Administrative Appeal until after the court has rendered a decision regarding the appeals. A holdover of the case until the May 2017 meeting of the Board may be appropriate.*

Revised for the June 5, 2017 meeting:

The application was heldover from the December 5, 2016 meeting to allow the court to make a decision regarding appeals of the Planning Commission and the City Council decisions. Staff has been informed that the court case is still ongoing, therefore another holdover may be appropriate to allow more time for the court to make a decision.

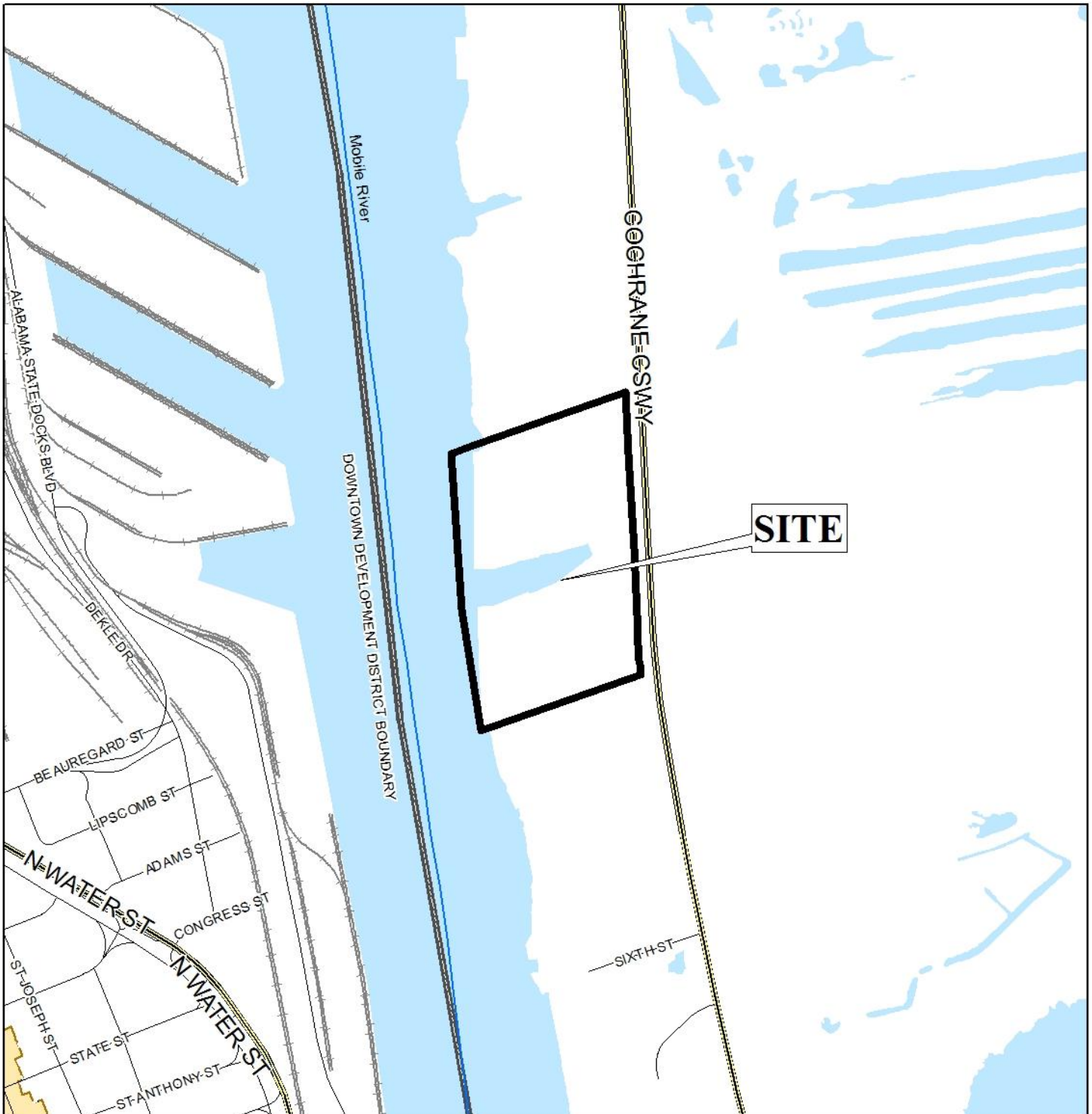
RECOMMENDATION: *Given that the Planning Commission and City Council decisions have been appealed to court, the Board should postpone any decision regarding the Administrative Appeal until after the court has rendered a decision regarding the appeals. A holdover of the case until the December 2017 meeting of the Board may be appropriate.*

Revised for the August 7, 2017 meeting:

The application was heldover for two months from the June 5, 2017 meeting at the applicant's request. The applicant indicated at the June meeting that they wanted the Board of Zoning Adjustment to make a decision without waiting for the court case to be finalized. No new information has been submitted to staff.

RECOMMENDATION: *There is no formal recommendation, other than the Board considers all relevant facts and review the request based upon its own merits.*

LOCATOR MAP



APPLICATION NUMBER 6020 DATE August 7, 2017

APPLICANT McDowell Knight Roedder & Sledge, LLC

REQUEST Administrative Appeal



LOCATOR ZONING MAP



APPLICATION NUMBER 6020 DATE August 7, 2017

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REQUEST Administrative Appeal



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by industrial units.

APPLICATION NUMBER 6020 DATE August 7, 2017

APPLICANT McDowell Knight Roedder & Sledge, LLC

REQUEST Administrative Appeal

 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 AERIAL

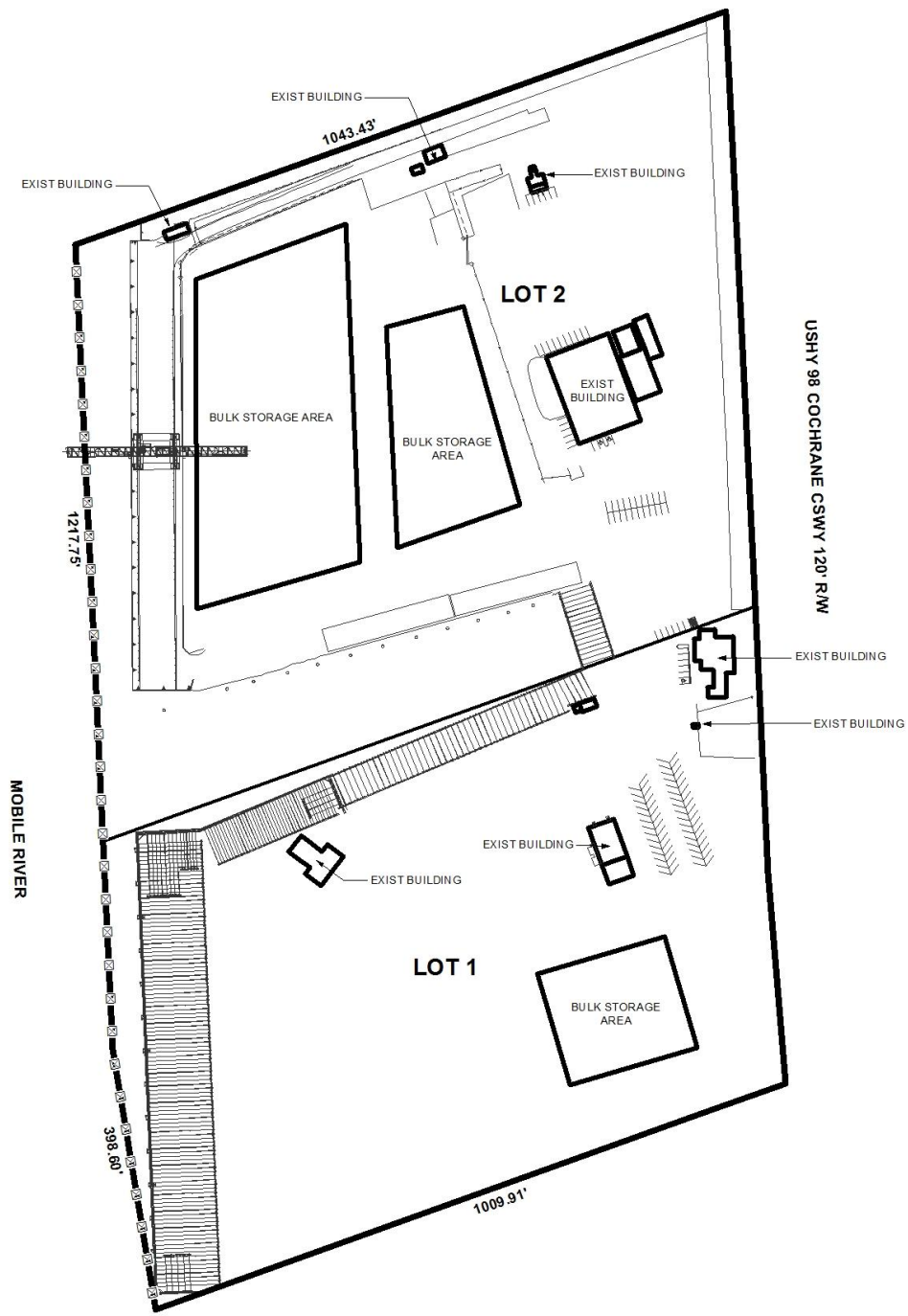


The site is surrounded by industrial units.

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REQUEST Administrative Appeal



SITE PLAN



The site plan illustrates the existing buildings, conveyer location, and pierhead.

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