

5354

**SIDE YARD SETBACK AND COMBINED SIDE YARD
VARIANCES TO ALLOW AN EXISTING (20.13' X 20.13')
GARAGE TO REMAIN WITHIN 0.39 FEET OF A SIDE
PROPERTY WITHIN 5.2 FEET. A 7.5' SIDE YARD
ALLOWANCE IS REQUESTED. A 15.98' SIDE YARD
FEET. A 7.5' SIDE YARD SETBACK IS REQUIRED
REQUIRE A TOTAL SIDE YARD SETBACK OF 15.98'
TOTAL SIDE YARD SETBACK OF 15.98' IS
REQUIRED FOR STRUCTURES ON A LOT 50 FEET WIDE
IN AN R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT.**

LOCATED AT

1000 WILDWOOD AVENUE

(Southwest corner of Wildwood Avenue and Chandler Street)

APPLICANT

TIM & SUSAN FULLER

AGENT

RESTER AND COLEMAN ENGINEERS, INC.

OWNER

TIM & SUSAN FULLERNAME

BOARD OF ZONING ADJUSTMENT

JUNE 5, 2006

The applicant is requesting two side yard setback variances and a combined side yard variance. The side yard setback variances are to allow an existing 20.13' x 20.13' garage to remain 0.39 feet off a side (South) property line and to allow an existing dwelling within 5.27 feet of a side (South) property line. The combined side yard variance is to allow a total combined side yard of 15.98 feet. A 7.2-foot minimum side yard setback is required from a side property line, and a total combined side yard of 16.6 feet is required for structures on a lot 50 feet wide in an R-1, Single-Family Residential District.

The subject site is a legal lot of record, Lot 1, Block 72, Pinehurst Delaney's Addition to Springhill, and is part of an overall tax parcel of four lots, Lots 1-4, Pinehurst Delaney's Addition to Springhill. Lots 2, 3, and 4 to the South are effectively one lot due to an existing single-family dwelling spanning across the common interior lot lines. Lot 1, the subject lot, remains intact as one separate lot. Building permit records within the Urban Development Department indicate that the structure spanning Lots 2, 3, and 4 was built in 1996. That structure meets all setback requirements of the Zoning Ordinance. At some point in time, the subject garage was built on Lot 1 in association with the residence on Lots 2, 3, and 4, but no building permit records exist on the Department database. It is assumed that the garage was built after the residence on Lots 2, 3, and 4 was constructed.

There are three problems associated with the construction of the garage. First, the structure was apparently built without a building permit. Second, the structure was built on a separate, vacant, R-1, Single-Family Residential lot as an accessory structure. And third, the structure was built in violation of side yard setbacks and with eave encroachment along the South property line. A building permit would not have been issued for an accessory structure on a vacant lot. Assuming the garage did qualify for a permit, it would have been required to meet property line setbacks. The applicant purchased the four-lot parcel and is constructing the existing residence on Lot 1 with a building permit. The site plan submitted for the permitting of the residence on Lot 1 did not indicate any other structures on the lot, i.e. the garage. Also, the permit was submitted with a South property line side yard setback of 7.1 feet and approved as such. The combined side yard setback was indicated as 19.0 feet, sufficient for this site.

The applicant mistook the required side yard setback to be five feet and submitted this application asking relief from such off the South property line to allow the garage to remain. Upon examining the site plan submitted for this application, problems with the South side yard setback and combined side yard setback of the dwelling under construction were also discovered. In purchasing the property, the applicant acquired a nonconforming situation with regard to the garage. To compound the nonconforming aspects of the property, it appears that the house was not situated properly on the lot with regard to the approved permit site plan and setbacks. As being built, the structure is situated 5.27 feet off the South property line (7.1 feet is required), and the side yard

setback along the street (North) property line is 10.71 feet, thus reducing the combined side yard total to 15.98 feet instead of the required 16.6 feet for a 50-foot wide lot.

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.

The applicant failed to illustrate that a literal enforcement of the Zoning Ordinance would result in an unnecessary hardship. It is simply the applicant's desire to retain a nonconforming structure on the property. A simple solution suggested to the applicant was the submission of a two-lot Subdivision application to the Mobile City Planning Commission to shift the South property line further South enough to meet the required setbacks off the garage and dwelling. That suggestion was rejected by the applicant because the intent is to remove the existing dwelling on Lots 2, 3, and 4, and sell each lot in its originally platted configuration as a buildable residential site.

RECOMMENDATION 5354**Date: June 5, 2006**

Base upon the preceding, this application is recommended for denial. It is further recommended that, due to the compounding of problems noted on the site plan submitted, the applicant submit a Subdivision application to the Mobile City Planning Commission to correct the setback and encroachment problems.

LOCATOR MAP



APPLICATION NUMBER 5354 DATE June 5, 2006

APPLICANT Rester and Coleman Engineers, Inc. (agent for Tim & Susan Fuller)

REQUEST Side Yard Setback and Combined Side Yard Variances



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by single family residential dwellings.

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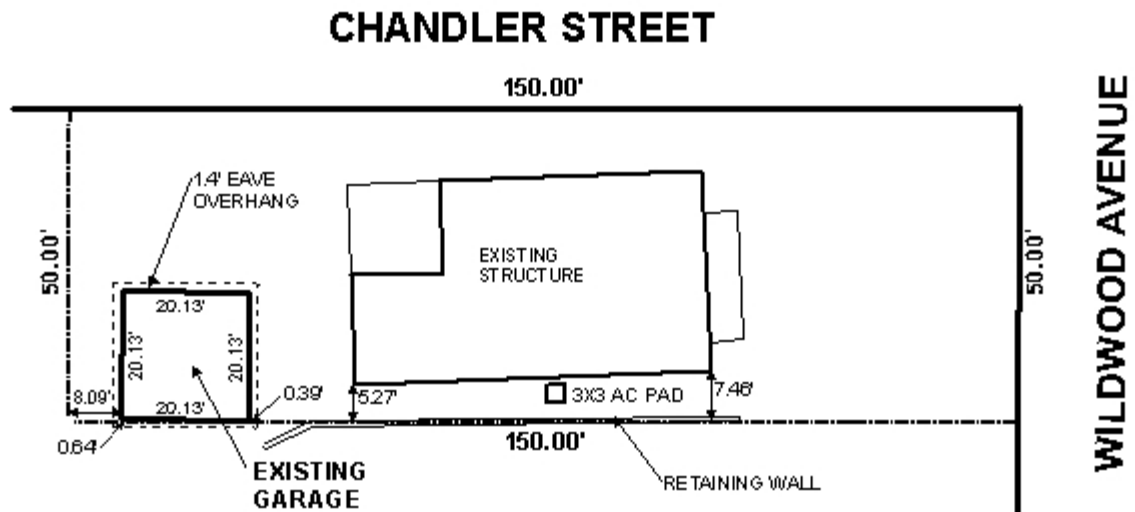
REQUEST Side Yard Setback and Combined Side Yard Variances

LEGEND

R-1	R-2	R-3	R-A	R-B	H-B	B-1	LB-2	B-2	B-3	B-4	B-5	I-1	I-2



SITE PLAN



The site is located on the Southwest corner of Wildwood Avenue and Chandler Street. The plan illustrates the existing structures.

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