

**BOARD OF ZONING ADJUSTMENT  
STAFF REPORT**

**Date: November 2, 2015**

**CASE NUMBER**

6012

**APPLICANT NAME**

Brenda L. Stricklin

**LOCATION**

563-B Seminole Street  
(East side of Seminole Street, 192'+ North of Senator Street).

**VARIANCE REQUEST**

**SIDE AND REAR YARD SETBACK:** Side and Rear Yard Setback Variances to allow a structure within 3.3 feet of a side property line and 6.2 feet of a rear property line, and to allow a structure within 0.7 feet of a side property line on a 50' wide lot in an R-1, Single-Family Residential District.

**ZONING ORDINANCE REQUIREMENT**

**SIDE AND REAR YARD SETBACK:** The Zoning Ordinance requires a minimum 7.1' setback for all structures from side property lines and a minimum 8' setback for all structures from rear property lines on a 50' wide lot in an R-1, Single-Family Residential District.

**ZONING**

R-1, Single-Family Residential District

**AREA OF PROPERTY**

0.15+Acres

**CITY COUNCIL DISTRICT**

District 5

**ENGINEERING COMMENTS**

No easements were shown; however, no structures are allowed to be constructed within a City of Mobile drainage easement.

**TRAFFIC ENGINEERING COMMENTS**

No Comments

**URBAN FORESTRY COMMENTS**

Property to be developed in compliance with state and local laws that pertain to tree preservation and protection on both city and private properties (State Act 61-929 and City Code Chapters 57 and 64).

**ANALYSIS**

The applicant is requesting Side and Rear Yard Setback Variances to allow a structure within 3.3 feet of a side property line and 6.2 feet of a rear property line, and to allow a structure within 0.7 feet of a side property line on a 50' wide lot in an R-1, Single-Family Residential District. The Zoning Ordinance requires a minimum 7.1' setback for all structures from side property lines and a minimum 8' setback for all structures from rear property lines on a 50' wide lot in an R-1, Single-Family Residential District.

The Zoning Ordinance further 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 applicant states the following regarding the variance requests:

*The 10 x 30 attached carport and 12 x 24 outbuilding at 563-B Seminole St, Mobile AL 36606 are the structures in question of side yard setback lines.*

*The 12x 24 (288 square foot) outbuilding was bought at Southern Building Structures, March 5, 2007, according to my bill of sale. It is wood frame, with metal exterior, and metal roof. It was placed on the property about a few weeks later at the most. My next door neighbor (Betty Wallace, 563-A Seminole St) let me remove her chain link fence to have access for the building to be delivered, since it would have to go in-between our homes to get in the back yard. I replaced her chain link fence with a wood privacy fence.*

*From what I have been told this past week, Southern Building Structures didn't get the required building permits that were needed for delivery March 2007. They did deliver, set up, and at my request 4 tie down anchors were put on the corners of the building to make sure it could withstand hurricanes.*

*The outbuilding is used for yard tools and a storage shed only. It replaced a smaller shed that is now on my neighbors yard at 563-A Seminole St.*

*I was never told I was responsible for obtaining the permit from Southern Building Structures on Govt Blvd. I was also never even asked to see a permit when they delivered and set the building up, and tied it down.*

*The out building has been on my property for over eight years, with no complaints, just compliments. I purchased colors that would match my existing home.*

*It sits further away from the property side line setback, than most of the unattached carports and garage apartments that were built on the properties when Bon Air Estates was developed, somewhere in the 1920s.*

*The 10 x 30 attached Carport (300 square foot) was also installed from Southern Building Structures on Government Blvd. I purchased it July 22, 2011. Again, I was not told I would be responsible to get a building permit, nor was I asked to see one when they installed it.*

*Southern Building Structures installed the carport its somewhere around 2 weeks after purchase.*

*It was used for the sole purpose of parking my car under, to stay out of the rain, coming in my side door, as well as shelter from heat and sun.*

*The carport was also bought to match the colors of my home. I've got many compliments from my neighbors on how nice it looks.*

*I'd even asked my next door neighbor, Betty Wallace if she mind me putting my carport of the side of my house, by hers. She said she had no problem with it at all.*

*The attached carport has been here 4 years, with no complaints, only compliments.*

*Both of these structures are no closer to the property lines, than the garages and garage apartments in this subdivision that were built when the subdivision was put here somewhere around 1920. There were a very nice improvement to the property, and compliment my home.*

*I have the bills of sales for both the outbuilding and carport. They will be attached.*

*The way the carport was built, attached to the side of the house, would not be usable at all anywhere but the side of the house. Pictures will be enclosed with this application. I'm quite sure Southern Building Structures aren't going to be willing to move either structure. I live alone, am battling Breast Cancer, and can't afford to have the outbuilding moved to comply with City guidelines. Honestly, with all the old carports and garage apartments sitting on property lines in this subdivision, I thought where they are now sitting would be ok, and in compliance with City of Mobile's guidelines.*

*Seems the situation occurred because Southern Building Structures did not get the required permits they were supposed to get, nor did they verbally tell me I need to get a permit. I now see under #4 of my receipt, I was supposed to supply said permit. They did not ask to see a permit when they delivered and set up both. Both receipts will be included.*

As stated, the applicant wishes to maintain the 10' x 30' carport and the 12' x 24' outbuilding on her property as she was not aware of her responsibility to obtain the required permits prior to the

erection of the structures. The applicant stated that she presumed that the company that erected both the carport and the outbuilding had obtained all necessary permits prior to the erection and siting of both structures, and did not ask to see a permit prior to the delivery and installation of each structure. The structures have existed on the site for some time now. The outbuilding has resided on the site for approximately eight years and the carport has been on the site for about four years.

At its December 18, 1962 meeting, the Board of Zoning Adjustment reviewed an applicant's request for side and rear yard variances to construct a dwelling within 5' of the side property line and within 5' of the rear property line of a nearby property on Seminole Street. The Board approved the construction of the residence on the condition that the side property line provided a distance of 5' from the residence and that the setback distance in the rear of the property provided a distance of 8' from the property line to the proposed dwelling.

In another nearby case, the Board of Zoning Adjustment approved a similar request for a side yard variance at its January 8, 1979 meeting to allow the construction of a carport within close proximity to the side yard property line of a nearby property.

It should be mentioned that the primary purpose for side and rear yard setbacks is to provide a sufficient distance between the structure and property lines in order to allow for proper maintenance of the structure, to allow access by emergency vehicles and personnel, to minimize the destruction of adjacent properties by fire, and to allow for proper site drainage by keeping run-off from the structure from inhibiting neighboring properties.

As the applicant stated, this is an older neighborhood in which many of the residences and ancillary structures are sited within close proximity to side and rear property lines; however, it should be pointed out that most of the homes and ancillary structures within the Bon Air Estates Subdivision were constructed prior to the adoption of the current Zoning Ordinance, adopted in 1967.

Also, upon further inspection of the applicant's sales receipts from the building erector, note four (4) under the *Terms of Agreement* clearly states that the purchaser is responsible for obtaining any permits and/or licenses necessary or required for installation of the building. The document further states that "*the purchaser warrants that there is no violations of any building code or other codes, ordinances, statutes, or regulations whether federal, state, or local which would prohibit the installation of the said building, and that the purchaser agrees to obtain inspection by state, local, or other authorities as necessary.*"

It seems that there may have been a misunderstanding on the applicant's behalf as to who was responsible for obtaining the proper permits as mentioned previously; however, the structures are located very close to side and rear property lines. It should also be pointed out that the Board has not approved many reductions in side and rear yard setbacks for distances less than 5' within the subdivision. If the Board is to approve the applicant's request for side and rear yard variances, it will be required that the applicant obtain an after-the-fact building permit for each structure.

It should also be noted, that any site and/or building improvements proposed by the applicant in the future will require the obtainment of all necessary permits and approvals prior to construction. It should be further noted that the applicant has reached the maximum 35% allowance for site coverage for property located within an R-1, Single Family Residential District; therefore, no other structures can be erected on this site that would exceed the maximum amount allowed in an R-1, Single Family Residential District.

**RECOMMENDATION:** Staff recommends to the Board the following findings of fact for Denial:

- 1) Approving the variance will be contrary to the public interest in that the Board has not approved many reductions in side and rear yard setbacks for distances less than 5' within the subdivision;
- 2) Special conditions do not exist and there are no hardships which exist such that the literal enforcement of the provisions of the chapter will result in an unnecessary hardship as the outbuilding can be relocated in the rear yard, and the carport can be removed and/or minimized to meet the side and rear setback requirements of the Zoning Ordinance; and
- 3) The spirit of the chapter shall be not observed and substantial justice shall not be done to the surrounding neighborhood by granting the variance because the Zoning Ordinance requires a minimum 7.1' setback for all structures from side property lines and a minimum 8' setback for all structures from rear property lines on a 50' wide lot in an R-1, Single-Family Residential District.

# LOCATOR MAP



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REQUEST Side & Rear Yard Setback Variances



# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units, apartments to the north, and a daycare to the south.

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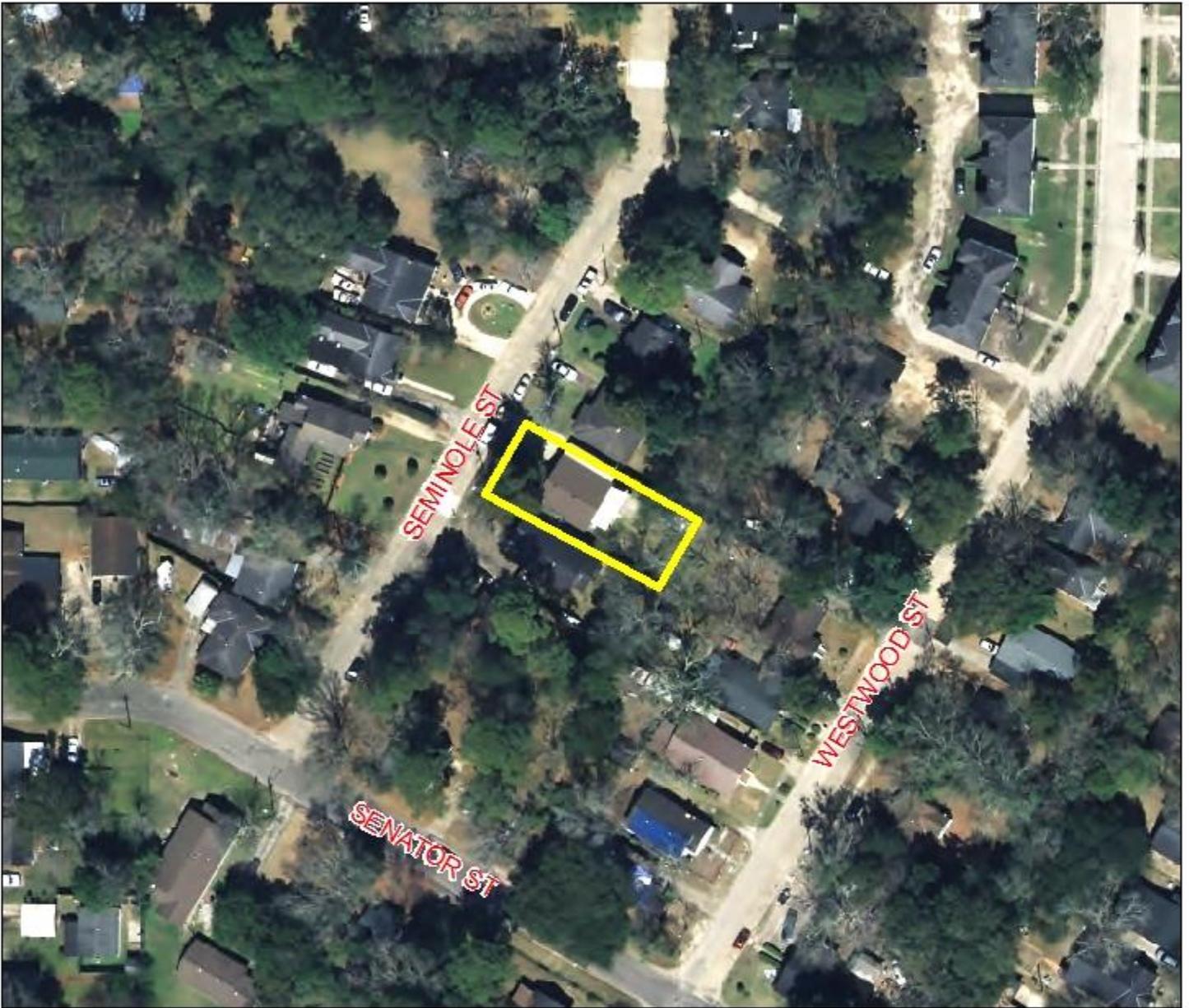
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R-A	R-3	T-B	B-2	B-5	MUN	SD-WH	T5.1
R-1	R-B	B-1	B-3	I-1	OPEN	T3	T5.2
R-2	H-B	LB-2	B-4	I-2	SD	T4	T6



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VICINITY MAP - EXISTING ZONING**



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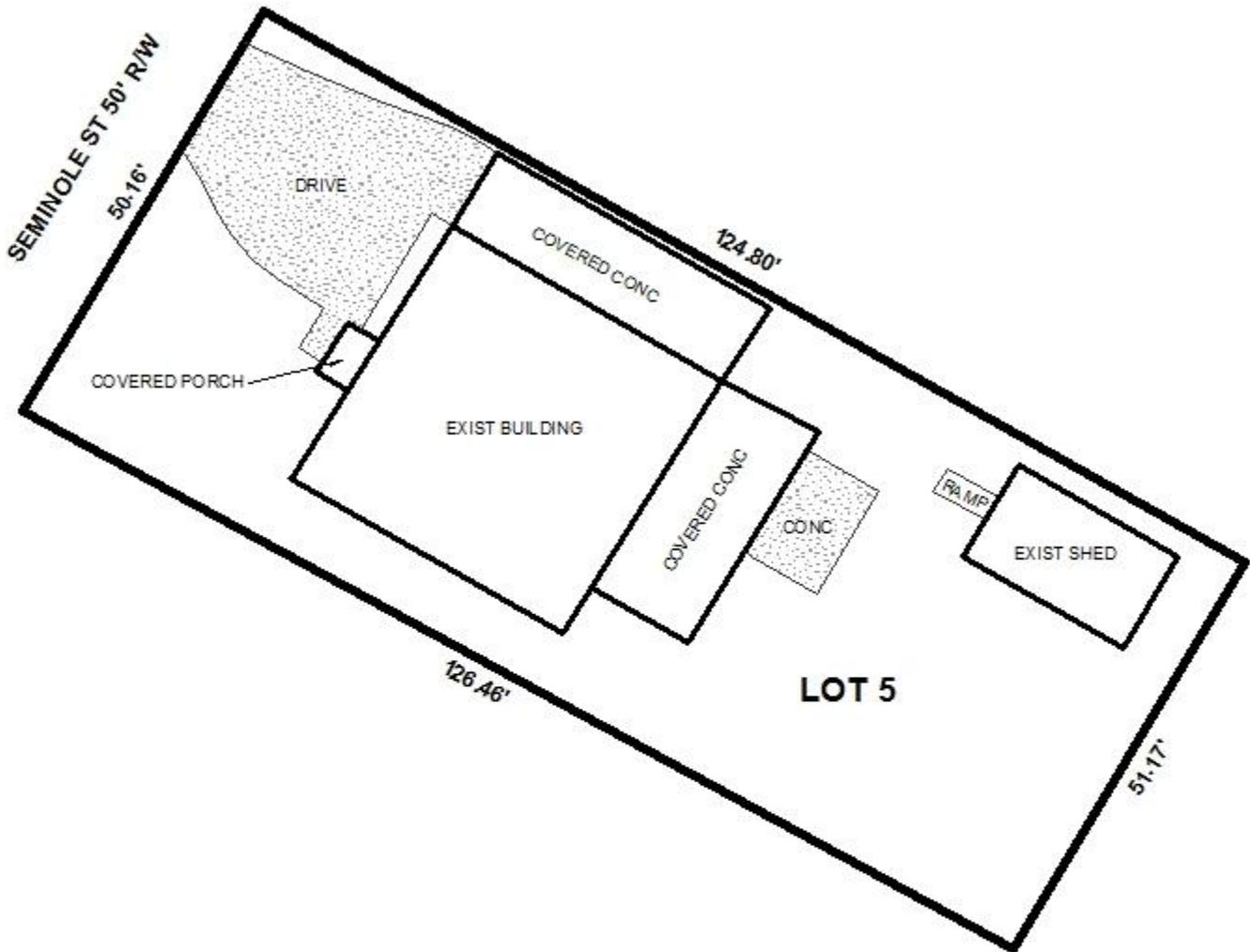
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# SITE PLAN



The site plan illustrates the existing building, shed, and driveway.

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