Agenda Item # 1 - HOLDOVER

BOA-003876-2026

View additional details on this proposal and all application materials using the following link:

Applicant Materials for Consideration

DETAILS

Location:
2460 Third Avenue

Applicant / Agent:
The Comforter Heating & Air Conditioning

Property Owner:
Adric Bush

Current Zoning:
R-1, Single-Family Residential Urban District

Future Land Use:
Mixed Density Residential

Case Number:
6786/6647

Unified Development Code (UDC) Requirement:

- The Unified Development Code (UDC) does not allow an HVAC contractor in an R-1, Single-Family Residential Urban District, requires full compliance with access and maneuvering areas, compliant residential buffers, and full compliance with tree planting and landscape area requirements.

Board Consideration:

- Use Variance to allow an HVAC contractor with reduced access and maneuvering area, no residential buffer, and no tree planting and landscape area in an R-1, Single-Family Residential Urban District.

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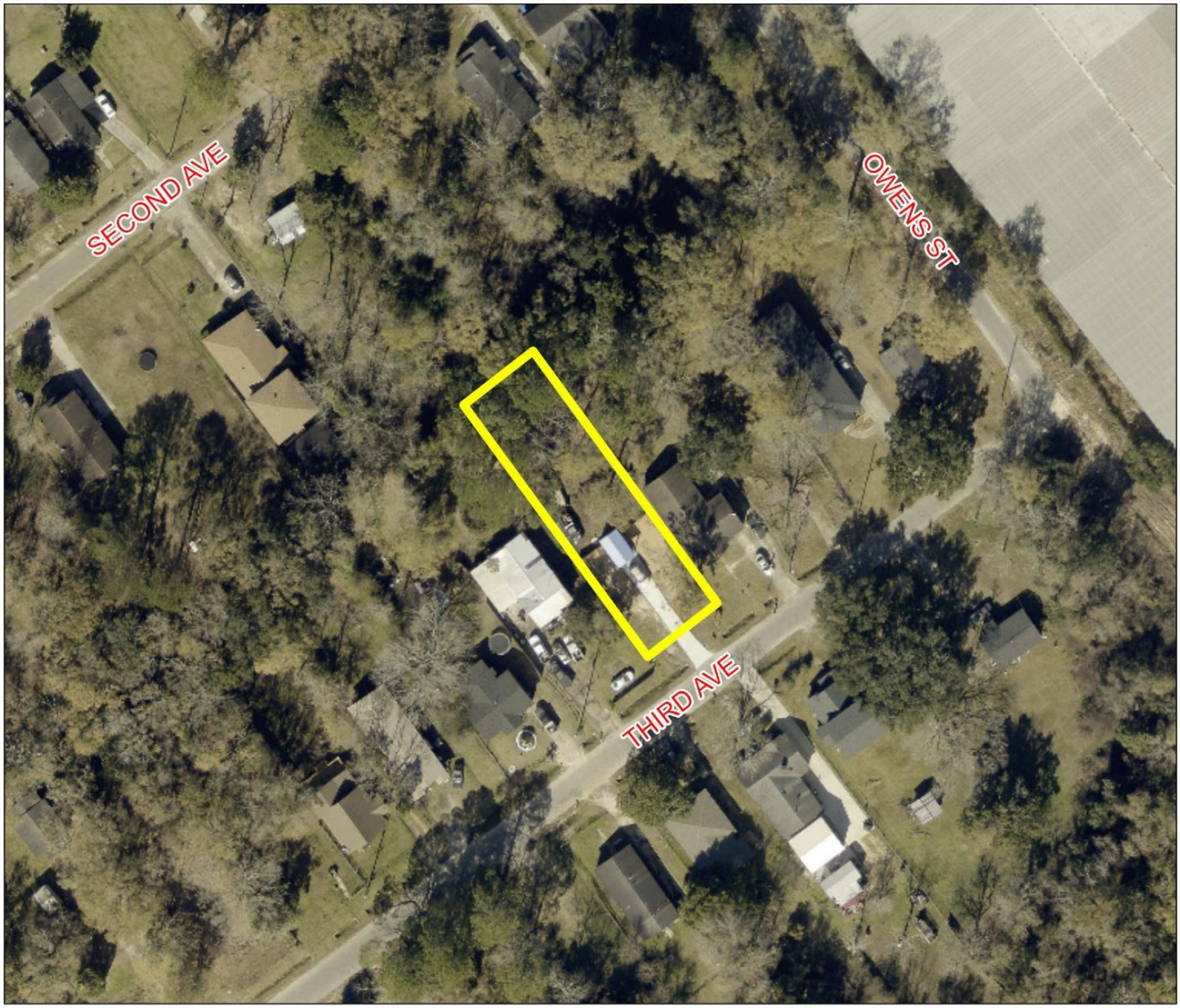
BOARD OF ADJUSTMENT
VICINITY MAP - EXISTING AERIAL



The site is surrounded by residential units.

APPLICATION NUMBER 6786 DATE November 5, 2026

APPLICANT The Comforter Heating & Air Conditioning

REQUEST Use Variance

N

NTS

HOLDOVER COMMENTS

This application was heldover by the Board of Adjustment at its October 1, 2026 meeting to allow the applicant to submit a revised site plan depicting the property in compliance with the previously granted Court order, as well as photos of the site.

The applicant submitted a revised site plan showing the on-site storage area screened from street view by a six-foot (6') privacy fence. The previous Court order allows the existing chain link fencing on the property perimeter to remain as long as the privacy fence is maintained.

The Court order also specified that at least two (2) compliant parking spaces must be provided. Two (2) parking spaces are provided, however, they are not compliant in size or access and maneuvering area. The UDC requires parking spaces to be a minimum of nine (9) feet wide by eighteen (18) feet deep. The site plan indicates a compliant width, but a depth of only sixteen feet (16'). The access and maneuvering area behind the spaces would require a vehicle to cross over the landscaped area in front of the spaces in order to properly align with the spaces. If approved, the parking spaces should be a compliant size, with sufficient maneuvering to avoid landscaped areas.

Photos of the site provided indicate one (1) freestanding sign and two (2) wall signs installed without permits, and two (2) windsock signs which are not allowed under the UDC. The Court order specifically states that any signage must comply with applicable City sign regulations and may not be installed without first obtaining a sign permit. If approved, the applicant should obtain permits for the freestanding and wall signs, as well as remove the windsock signs.

No City-standard sidewalk is indicated on the site plan; however, the applicant has submitted a Sidewalk Waiver application which is scheduled to be heard at the Planning Commission's November 19th meeting. Should the Sidewalk Waiver be denied, the site plan must be revised to provide a public sidewalk and a Pedestrian Connection from the public sidewalk to the site's office building.

It should be noted that the January 2026 Court order specifically waived the landscaping and tree planting requirements for the site. The applicant wishes to maintain the previously approved Variance.

HOLDOVER CONSIDERATIONS

Standards of Review:

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.

Article 5 Section 10-E. 1. of the Unified Development Codes states that the Board of Adjustment may grant a variance if:

- The Applicant demonstrates that the variance shall not be contrary to the public interest;
- Where, owing to special conditions a literal enforcement of the provision of this Chapter will result in unnecessary hardship; and
- The spirit of this Chapter will be observed and substantial justice done.

Article 5 Section 10-E.2. states; No variance shall be granted:

(a) In order to relieve an owner of restrictive covenants that are recorded in Mobile County Probate Court and applicable to the property;
(b) Where economic loss is the sole basis for the required variance; or
(c) Where the variance is otherwise unlawful.

Considerations:

If the Board considers approval of the request, the following findings of fact must be present:

A. The variance will not be contrary to the public interest;
B. Special conditions exist such that a literal enforcement of the provisions of the chapter will result in unnecessary hardship; and
C. The spirit of the chapter shall be observed and substantial justice done to the applicant and the surrounding neighborhood by granting the variance.

If approved, the following conditions should apply:

1) The wooden privacy fence is to be maintained;
2) Revision of the site plan to provide a compliant 18-foot depth to the parking stalls, with compliant access and maneuvering area within the paved surface;
3) Obtaining of after-the-fact sign permits for the one (1) freestanding sign and two (2) wall signs;
4) Removal of the wind sock signs;
5) Revision of the site plan to provide a public sidewalk within the right-of-way and a Pedestrian Connection to the office building, should the Sidewalk Waiver be denied by the Planning Commission;
6) Submittal to and approval by Planning and Zoning of a revised site plan; and
7) Full compliance with all municipal codes and ordinances.

SITE HISTORY

The subject site was recorded in Probate Court as Lot 64, Block B of the Trinity Gardens Subdivision on April 21, 1938, prior to the Planning Commission being formed in 1944.

At its meeting in February 2025, the Board of Zoning Adjustment denied the applicant's request for Use, Parking Access and Maneuvering, Tree Planting, and Residential Buffer Variances to allow an HVAC contractor with sub-standard parking access and maneuvering, no tree plantings, and a chain link fence as a residential buffer in an R-1, Single Family Residential Urban District. The determination was appealed to Circuit Court, which granted the appeal in January 2026, with conditions.

In June 2026 the applicant submitted a building permit application to construct a storage building on the site, but that permit was denied, as it was discovered that an additional larger structure had also been constructed on the site without any permits.

The subject site has never been before the Planning Commission.

STAFF COMMENTS

Engineering Comments:

No comments on the proposed variance; however, according to the submitted plans, the proposed project will require a Land Disturbance Permit. The applicant will need to have the following conditions met:

1. The proposed site improvements will require that a Land Disturbance Permit be submitted through the CSS Portal.
2. The existing drainage patterns and surface flow characteristics should not be altered so as to have a negative impact on any adjoining properties or any public rights-of-way.
3. Any and all proposed land disturbing activity within the property will need to be in conformance with Mobile City Code, Chapter 17, Storm Water Management and Flood Control); the City of Mobile, Alabama Flood Plain Management Plan (1984); and, the Rules for Erosion and Sedimentation Control and Storm Water Runoff Control.
4. Applicant agrees to install adequate BMPs during construction to protect from sediment/pollutants leaving the site.

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 [Act 929 of the 1961 Regular Session of the Alabama Legislature (Acts 1961, p. 1487), as amended, and City Code Chapters 57 and 65]. Private removal of trees in the right-of-way will require approval of the Mobile Tree Commission. Removal of heritage trees from undeveloped residential sites, developed residential sites in historic districts, and all commercial sites will require a tree removal permit.

Fire Department Comments:

All projects located within the City Limits of Mobile shall comply with the provisions of the City of Mobile Fire Code Ordinance, which adopts the 2021 edition of the International Fire Code (IFC).

Fire apparatus access roads shall be provided to within 150 feet of all non-sprinklered commercial buildings and within 300 feet of all sprinklered commercial buildings, as measured along an approved route around the exterior of the facility.

An approved fire water supply capable of meeting the requirements set forth in Appendices B and C of the 2021 IFC shall be provided for all commercial buildings.

Fire hydrant placement shall comply with the following minimum standards:

- Within 400 feet of non-sprinklered commercial buildings
- Within 600 feet of sprinklered commercial buildings
- Within 100 feet of fire department connections (FDCs) serving standpipe or sprinkler systems

Although the International Residential Code (IRC) functions as a stand-alone document for the construction of one- and two-family dwellings and townhouses, it does not govern the design or layout of emergency access or community-level fire protection infrastructure. Therefore, residential developments must also comply with the applicable requirements of the International Fire Code, including, but not limited to, those listed above

concerning the design, construction, regulation, and maintenance of fire apparatus access roads and fire protection water supplies.

Planning Comments:

The applicant is requesting a Use Variance to allow an HVAC contractor with reduced access and maneuvering area, no residential buffer, and no tree planting and landscape area in an R-1, Single-Family Residential Urban District; the Unified Development Code (UDC) does not allow an HVAC contractor in an R-1, Single-Family Residential Urban District, requires full compliance with access and maneuvering areas, compliant residential buffers, and full compliance with tree planting and landscape area requirements.

A detailed description of the proposed Use Variance request is available via the link on Page 1 of this report.

The subject site is located within an established single-family residential neighborhood, and is adjacent to the Prichard City limits along its East boundary. It should be noted that there have not been any similar Use Variance requests approved within the immediate area.

The applicant owns The Comforter Heating and Air Conditioning Company LLC with the license held at his parents' residence directly across Third Avenue from the subject site. The applicant purchased the subject site in October 2024 and placed a 100 square-foot metal building on the site, along with a concrete driveway. The property was also partially fenced along the side property lines with a chain link fence, and with a wood board fence along the rear and approximately 80 feet back from the front property line. The metal storage building was placed about 70 feet back from the front property line in front of the wood board fence. No permits were obtained for the improvements to the site. Following the denial of the previous Use Variance for the site, the applicant constructed a shop/storage shed on the site without permits. The applicant uses the site for storage of equipment and supplies related to his home-based HVAC business.

Home-based businesses have certain conditions under which they must operate: The applicant must live at the residence, and persons not living at the residence cannot work at the location. The business activity shall be incidental to the residential use of the premises and shall not: (a) take place in the yard or in a detached building; (b) occupy more than 25% of the floor area of the dwelling; (c) employ anyone who does not live in the dwelling; (d) include selling or storage of items for sale from this address that are made elsewhere; (e) include the storage of materials or heavy equipment such as bulldozers, dump trucks, etc.; and (f) clients cannot be seen at residence.

In this instance, the business activity is located on the subject site and not at the applicant's residence, and takes place in the yard and two (2) detached buildings, both of which were constructed without permits. As the Court's granting of the applicant's appeal of the Board's decision was based on the site plan presented for the February 2025 meeting, and as that site plan was altered by the applicant's construction of the additional building without permits, the applicant must again seek relief for the aspects of the site not in compliance with the commercial site standards of Section 64-3 of the UDC.

The Court order approving the previous Variance requests had the following conditions attached:

1. The twelve-foot (12') driveway was allowed to remain in lieu of a compliant 24-foot wide driveway, subject to compliance with Traffic Engineering and Engineering standards, including AASHTO standards, required concrete apron, minimum width in the right-of-way, and necessary permits.
2. The residential buffer fence requirement was waived, but on-site storage areas were required to remain screened by a six-foot (6') privacy fence. Existing fencing could remain as long as screening around storage areas is fully maintained.

3. Due to the presence of an existing large tree and limited frontage area, the tree planting and landscaping requirements were waived.
4. At least two (2) compliant parking spaces must be provided in accordance with Section 64-3-12 of the UDC.
5. Any signage must comply with the City signage regulations and installed with a sign permit.
6. If no public sidewalk is provided, a Sidewalk Waiver must be granted by the Planning Commission.

The site plan submitted indicates that the driveway is still proposed to be twelve feet (12') wide, not allowing for two-way traffic. Two (2) parking spaces are provided, although not of compliant size and lacking adequate maneuvering area. No public sidewalk is provided in the right-of-way, and no application to the Planning Commission for a Sidewalk Waiver has been submitted. No tree plantings are proposed, and no compliant residential buffer is provided. It should be noted that several signs have been added to the site without any permits.

As proposed, the site plan does not comply with some conditions of the Court order, specifically screening around the storage area; obtaining of sign permits; and the granting of a Sidewalk Waiver if no public sidewalk is provided. As proposed, the use and site improvements would not be in keeping with the residential character of the neighborhood.

VARIANCE CONSIDERATIONS

Standards of Review:

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.

Article 5 Section 10-E. 1. of the Unified Development Codes states that the Board of Adjustment may grant a variance if:

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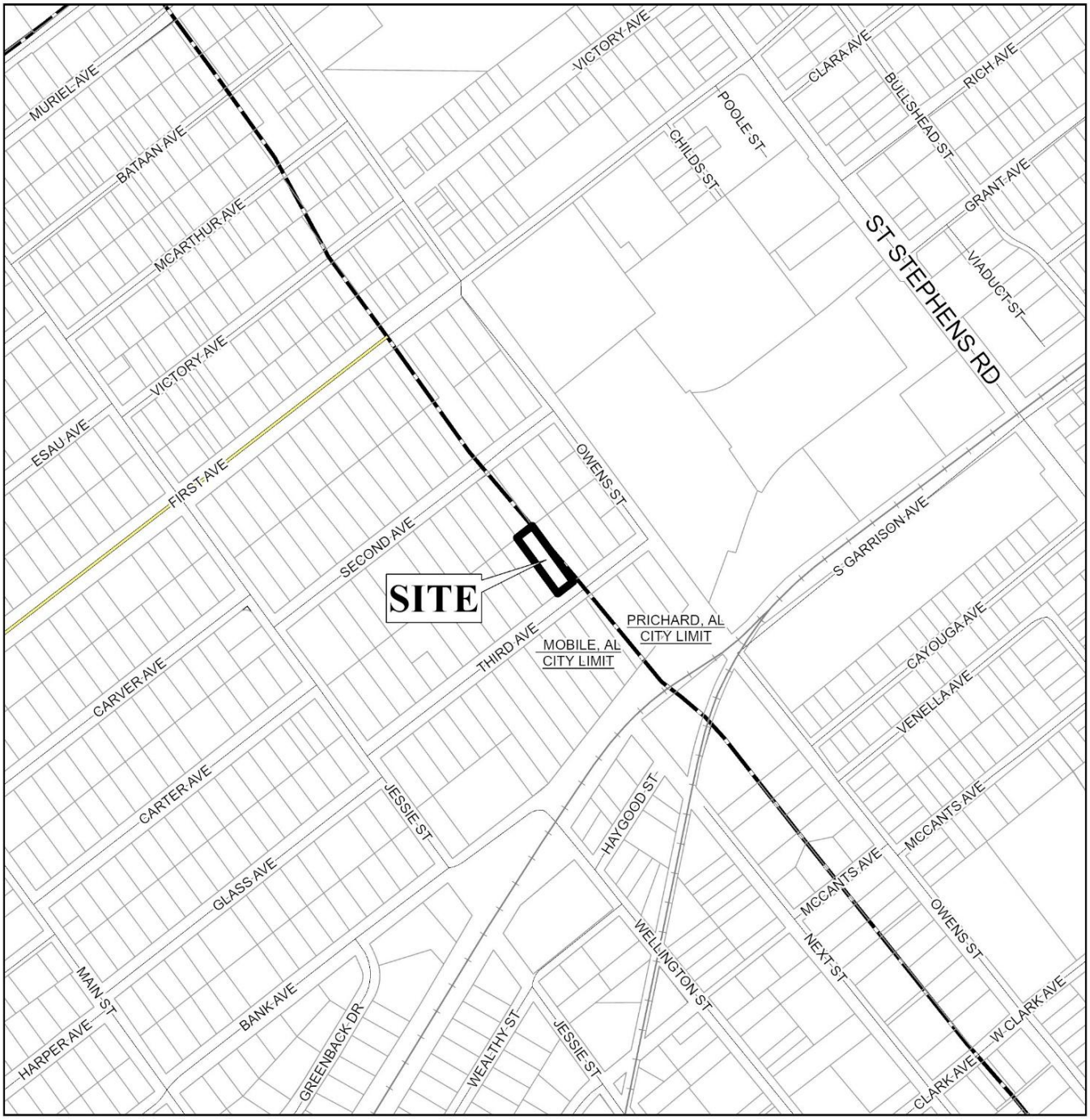
Considerations:

If the Board considers approval of the request, the following findings of fact must be present:

1) The variance **will not** be contrary to the public interest;

2) Special conditions **exist** such that a literal enforcement of the provisions of the chapter **will** result in 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.

LOCATOR ZONING MAP



APPLICATION NUMBER 6786 DATE November 5, 2026

APPLICANT The Comforter Heating & Air Conditioning

REQUEST Use Variance

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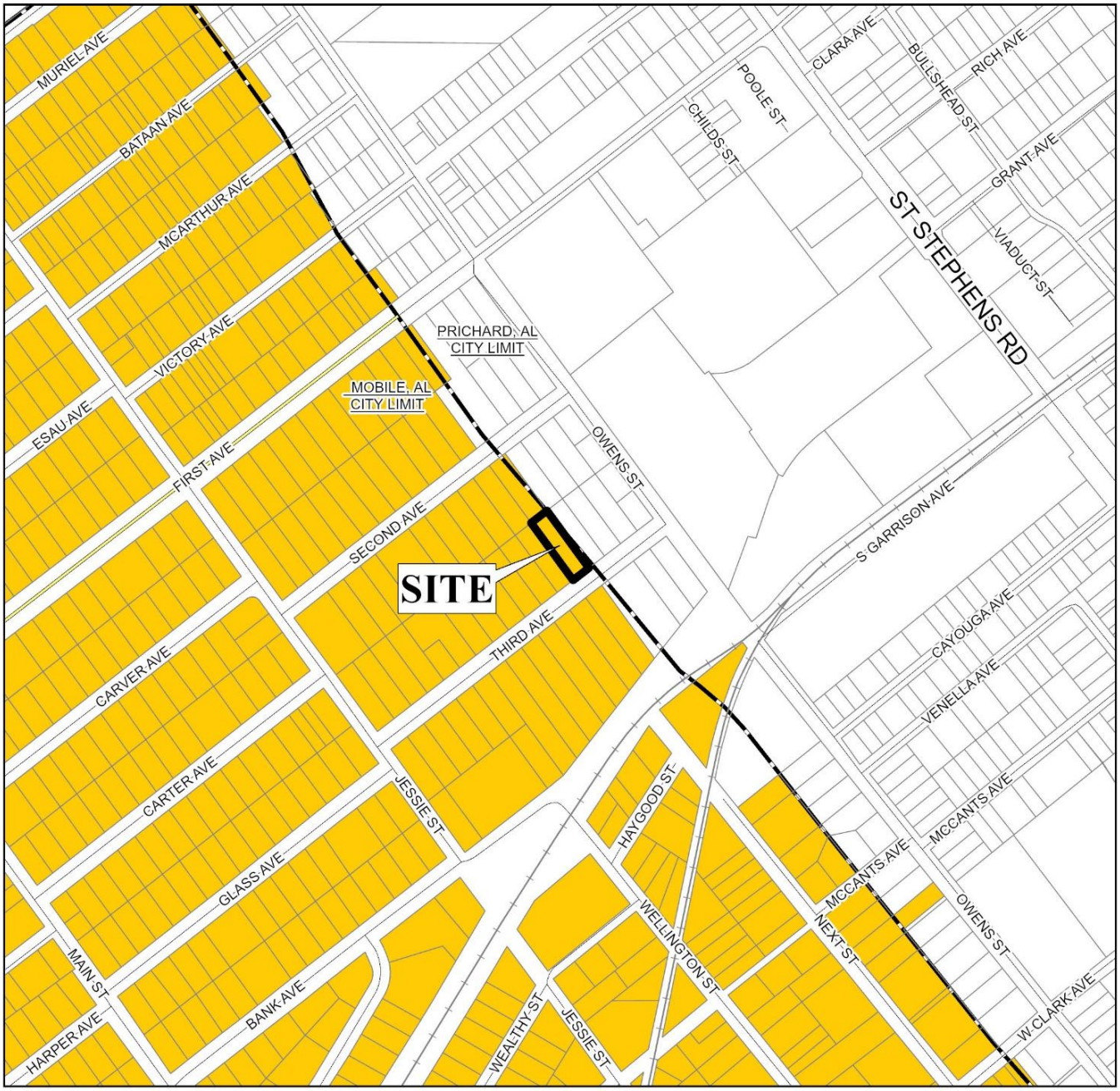
NTS

FLUM LOCATOR MAP



APPLICATION NUMBER 6786 DATE November 5, 2026

APPLICANT The Comforter Heating & Air Conditioning

REQUEST Use Variance

- Low Density Residential
- Mixed Density Residential
- Downtown
- District Center
- Neighborhood Center - Traditional
- Neighborhood Center - Suburban
- Traditional Corridor
- Mixed Commercial Corridor
- Light Industry
- Heavy Industry
- Institutional
- Parks, Open Space
- Water Dependent

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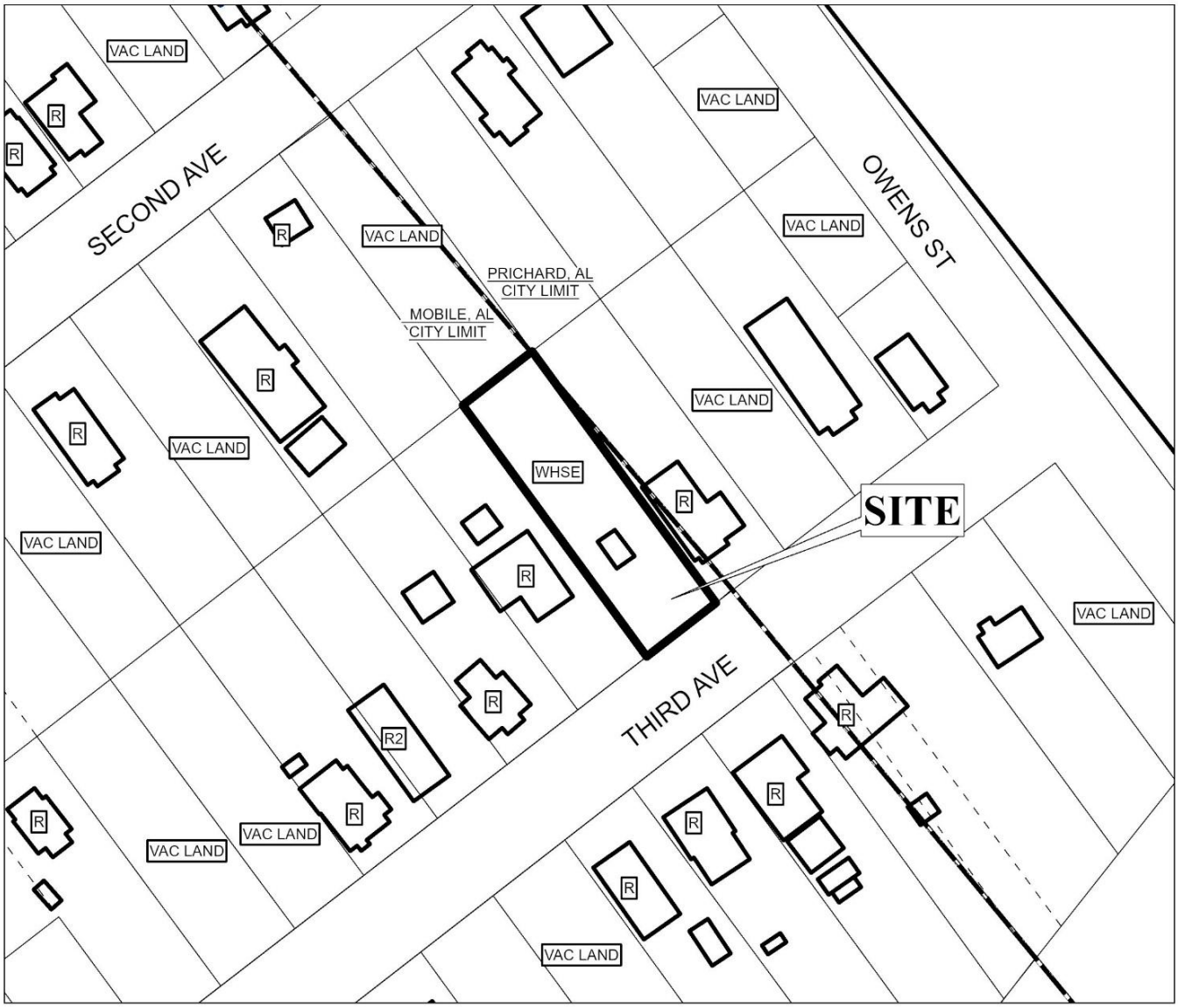
NTS

BOARD OF ADJUSTMENT
VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units.

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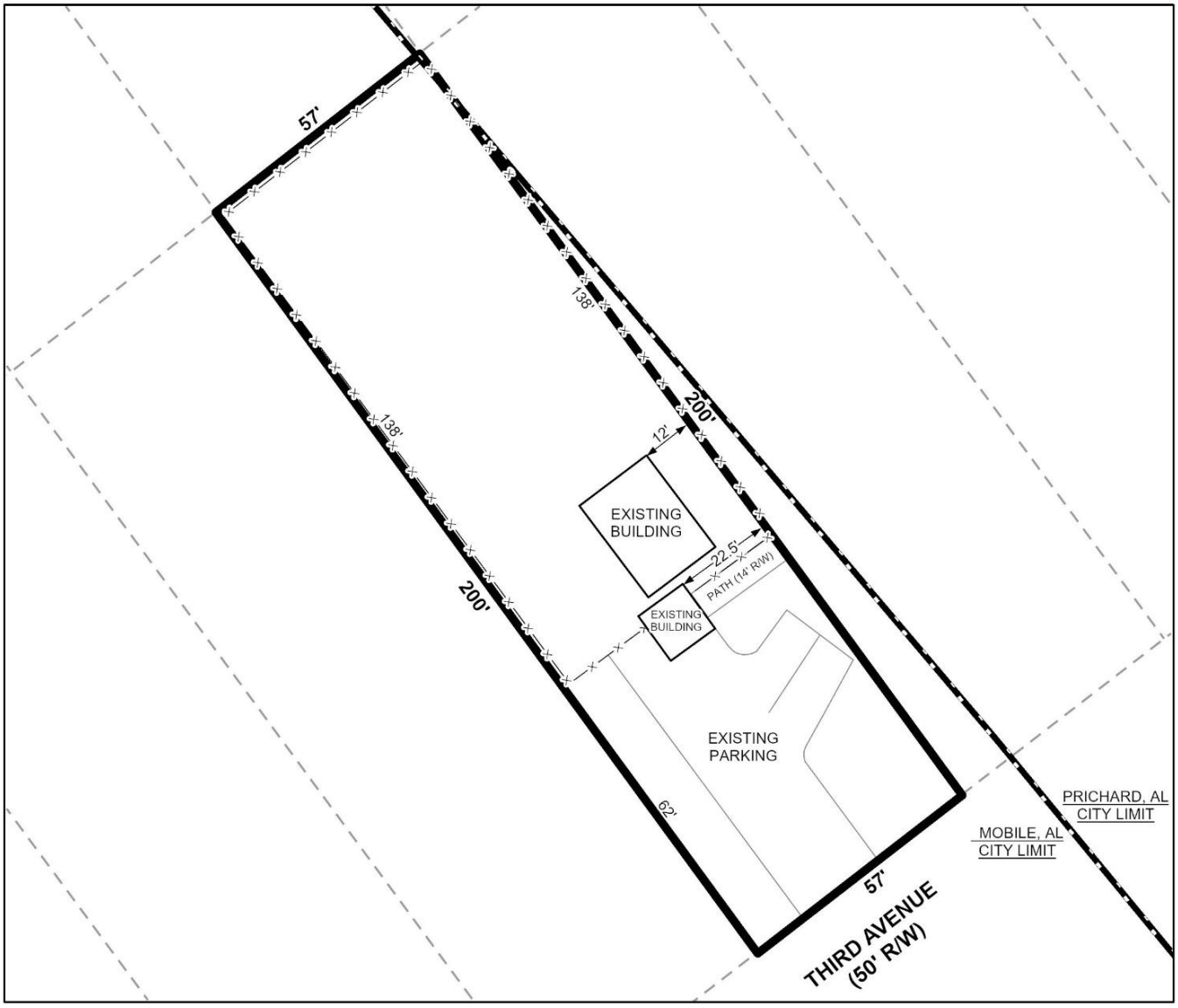
REQUEST Use Variance

R-A	R-3	B-1	B-2	B-5	ML	I-2	OPEN	T-3	T-5.2
R-1	R-B	T-B	B-3	CW	MH	PD	SD	T-4	T-6
R-2	H-B	LB-2	B-4	MM	I-1	MUN	SD-WH	T-5.1	

N

NTS

SITE PLAN



The site plan illustrates the current buildings and landscape features.

APPLICATION NUMBER 6786 DATE November 5, 2026

APPLICANT The Comforter Heating & Air Conditioning

REQUEST Use Variance

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NTS

FUTURE LAND USE MAP CORRESPONDENCE TO ZONING

A primary purpose of the Future Land Use Map is to guide zoning decisions. In many cases the designation on the FLUM may match the existing use of land, but in others the designated land use may differ from what is on the ground today. For example, a parcel that is in commercial use today but designated as any of the "mixed use" types on the map could redevelop with a mix of residential and commercial uses (such as retail, office, entertainment, etc., depending on the location).

Each future land use designation on the FLUM will have at least one corresponding zoning district, allowing a more precise application of the FLUM based on specific local conditions. In most cases, there are multiple combinations or types of zoning techniques that can accomplish the future land use designation's objectives.

The correspondence between the FLUM and the zoning district structure is described in the matrix below. This tool gives the City the flexibility over the long-term to determine appropriate changes to the zoning map based on various factors.

The designation of an area with a FLUM land use category does not mean that the most intense zoning district consistent with that category is "automatically" assigned to a property. Instead, an area retains its existing zoning category until it is changed through a landowner-initiated rezoning application, or a rezoning that follows an area plan. This is because the FLUM is a long-term designation, while a change in zoning considers current conditions – such as market demands, availability of infrastructure, or impacts on the immediate neighborhood.

Zoning correspondence matrix

■ Zoning district is appropriate to implement the future land use category.

U S Zoning district with Urban or Suburban subdistrict is appropriate to implement the future land use category.

○ Elements of the zoning district are related to the future land use category and may be appropriate with qualifications or conditions.

□ Zoning district is appropriate, but the district does not directly implement the category (e.g., open space in an industrial district)

	RESIDENTIAL - AC (R-A)	ONE-FAMILY RESIDENCE (R-1)	TWO-FAMILY RESIDENCE (R-2)	MULTIPLE-FAMILY (R-3)	RESIDENTIAL BUSINESS (R-B)	HISTORIC BUSINESS (H-B)	BUFFER BUSINESS (B-1)	TRANSITIONAL BUSINESS (T-B)	LIMITED BUSINESS (LB-2)	NEIGHBORHOOD BUSINESS (B-2)	COMMUNITY BUSINESS (B-3)	GENERAL BUSINESS (B-4)	OFFICE-DISTRIBUTION (B-5)	COMMERCIAL WAREHOUSE (CW)	MARITIME MIXED (MM)	MARITIME LIGHT (ML)	MARITIME HEAVY (MH)	LIGHT INDUSTRY (I-1)	HEAVY INDUSTRY (I-2)	VILLAGE CENTER (TCD)	NEIGHBORHOOD CENTER (TCD)	NEIGHBORHOOD GENERAL (TCD)	DOWNTOWN DEV. DDD (T-6)	DOWNTOWN DEV. DDD (T-5.1)	DOWNTOWN DEV. DDD (T-5.2)	DOWNTOWN DEV. DDD (T-4)	DOWNTOWN DEV. DDD (T-3)	DOWNTOWN DEV. DDD (SD-WH)	DOWNTOWN DEV. DD (SD)
LOW DENSITY RESIDENTIAL (LDR)	■	S	S	S			○							○															○
MIXED DENSITY RESIDENTIAL (MDR)		U	U	■	■			■	■	■					■															○
DOWNTOWN (DT)						■					■													■	■	■	■	■	○	○
DISTRICT CENTER (DC)								■			U	○	○																	
NEIGHBORHOOD CENTER - TRADITIONAL (NC-T)		■	■	U	■	■	○	■	○	○	○										■	■	■							
NEIGHBORHOOD CENTER - SUBURBAN (NC-S)				S			S	■	S	S	○									■	■									○
TRADITIONAL CORRIDOR (TC)		■	■		■	■	U	■	U	U	○																			○
MIXED COMMERCIAL CORRIDOR (MCC)							■		■	■	■	■	■	■	■															
LIGHT INDUSTRIAL (LI)													■	■	■	■			■										○	○
HEAVY INDUSTRY (HI)																■	■	■	■										○	○
INSTITUTIONAL LAND USE (INS)											■	■		○	○				○											
PARKS & OPEN SPACE (POS)	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□
WATER DEPENDENT USES (WDWRU)	■					○								■	■	■		○												

MIXED DENSITY RESIDENTIAL (MDR)

This designation applies mostly to residential areas located between Downtown and I-65, where the predominant character is that of a traditional neighborhood laid out on an urban street grid. These areas should offer a variety of residential types in a compact pattern at the scale of a single family neighborhood. They typically have a walkable block pattern with integrated neighborhood amenities such as parks and schools. Small office, commercial, and civic uses may also exist in these areas near major thoroughfares. Residential density ranges between 6 and 30 dwelling units per acre (du/ac) depending on the mix, types, and locations of the housing as specified by zoning.

Development Intent

- Continue historic preservation efforts to maintain the existing neighborhood character within city-designated historic districts.
- Support residential infill that fits-in with neighboring homes (building scale, placement, etc.). Support more intense residential infill and redevelopment adjacent to commercial or mixed use centers.

Land use mix

Primary Uses

- Residential, Single family
- Residential, Attached

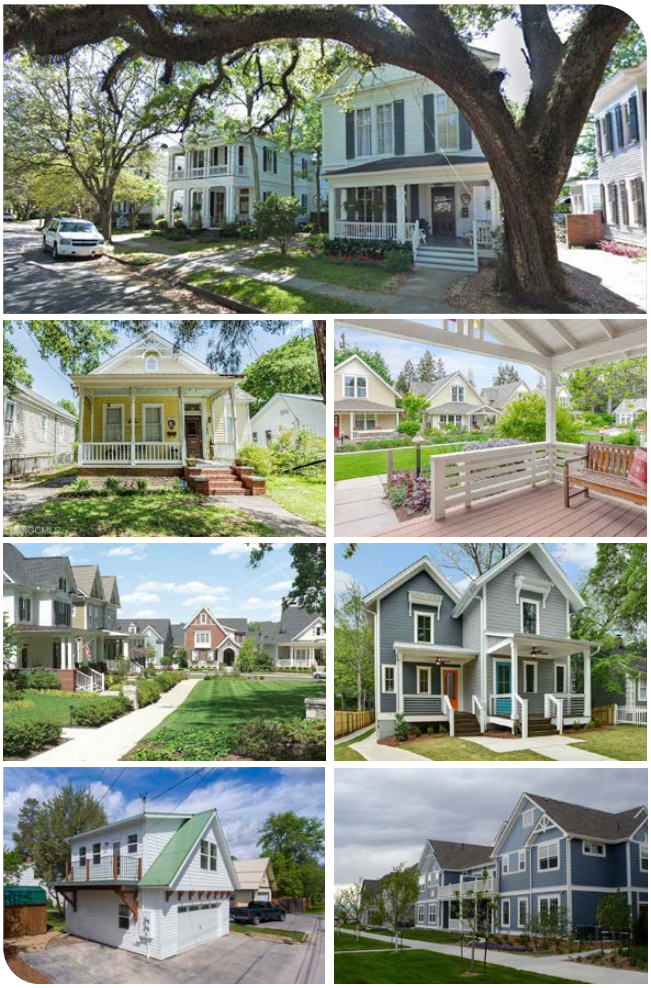
Secondary Uses

- Residential, Multifamily
- Commercial
- Civic
- Parks

Housing mix

- Single family on small to medium sized lots
- Attached residential such as duplexes, multiplexes, and townhomes
- Small scale multifamily buildings

Character Example





A mixed density neighborhood may include a range of housing types and densities at a similar scale.

Rendering: Dover Kohl