

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT**

Date: February 4, 2013

CASE NUMBER 5812

APPLICANT NAME Angela Myrant

LOCATION 1005 Donald Street
(West side of Donald Street, 105'± North of Balthrop Street)

VARIANCE REQUEST **USE:** Use Variance to allow the operation of a domiciliary care facility in an R-1, Single-Family Residential District

ZONING ORDINANCE REQUIREMENT **USE:** the Zoning Ordinance requires a minimum of a B-1, Buffer Business District for a domiciliary care facility

ZONING R-1, Single Family Residential

AREA OF PROPERTY 0.16±Acres

ENGINEERING COMMENTS No comments.

TRAFFIC ENGINEERING COMMENTS It doesn't appear that you have off street parking. You cannot have a facility that will create on-street parking.

Revised for the March 4, 2013 meeting: We are waiting on a parking design plan to review. Ms Myrant said that one will be provided.

CITY COUNCIL DISTRICT District 1

ANALYSIS The applicant is requesting a Use Variance to allow the operation of a domiciliary care facility in an R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum of a B-1, Buffer Business District for a domiciliary care facility.

The applicant proposes to utilize an existing 1,767 ± square foot, four bedroom house as a domiciliary care facility for people with mental/developmental disabilities and limited skills. The applicant states that the facility will operate 24 hours a day, 7 days a week, and will be staffed by two mental health workers and a cook. The narrative does not include any indication of the number of proposed persons to live at the facility.

The applicant intends to make improvements to the residence to comply with the Alabama Department of Mental Health / Mental Retardation Life Safety Standards.

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.

Variations 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 narrative submitted with the application does not indicate that there are any hardships associated with the property to substantiate the use variance request: that is, why the residential structure cannot be used as a single-family residence, and why there is a need to use it as a residential facility for persons with mental/developmental disabilities and limited skills. Instead, it appears that the applicant's desire is to provide housing opportunities for persons with mental/developmental disabilities and limited skills, a worthy, but not necessarily hardship-based request.

In the past, the Planning Section has, with legal guidance, determined that Alabama Department of Mental Health / Mental Retardation certified providers with no more than three clients in a single-family residence do not require special zoning-related approvals due to overarching federal Fair Housing and Americans with Disabilities Act regulations. This is also based upon the fact that the Alabama Department of Mental Health / Mental Retardation administrative code (Chapter 580-3-22) has different requirements for facilities with three beds and less, and four beds and more.

It should be pointed out that the applicant additionally states in the narrative that they are negotiating to provide parking for employees, family and visitors on an adjacent residential lot. As such, a variance for off-site non-compliant parking relating to requested use variance is necessary.

Finally, staff needs additional information regarding the type of facility that is planned, specifically which of the following ADMH/MR Administrative Code uses are proposed for the site in question:

- 580-3-22-.08 Three Beds or Less Residential Facility; or
- 580-3-22-.09 Four to Sixteen Bed Residential Facility.

RECOMMENDATION: Based on the preceding, this application is recommended for Holdover until the March meeting so that the following revisions can be made and submitted by February 13th:

- 1) explanation of the hardship associated with the request – why the structure cannot be used as a single family residence, and what is the need for the use of this site as proposed;
- 2) provision of information regarding the number of people to be accommodated at the facility;
- 3) selection of which type of facility will be operated, according to the Alabama Department of Mental Health / Mental Retardation Administrative Code (Chapter 580-3-22);
- 4) depiction on the site plan of parking area adequate for all employees and visitors for the facility, or if the adjacent property will be used for parking, revision of the Variance application to include the adjacent property as part of the request, including additional property owner authorization, application fees, mailing labels and postage fees.

Revised for the March 4, 2013 meeting:

The applicant submitted a revised narrative regarding the application.

The applicant states that the hardship is that the State of Alabama, through the closing of various state facilities, has created an increased need in the community for housing for persons with intellectual/development disabilities. The applicant, a mental health professional, wishes to provide support to those affected by the closure of state facilities by converting an existing single-family residence into a maximum of a 4 person (children or adults) facility with supervised 24-hour care and support. In addition to physical improvements to the existing residential structure, the applicant and her staff will provide transportation services to doctor appointments, day programs, activity centers, sheltered workshops and supported employment facilities.

The applicant also states that parking will be provided on site, behind the existing residence, and will include a marked, handicapped accessible space. The applicant additionally states that no parking will occur on Donald Street, in association with the proposed use.

The hardship stated by the applicant is not associated with the residential structure or the site located at 1005 Donald Street. Instead, it appears that the hardship is a general, community-wide one associated with the elimination of services by the State of Alabama due to budgetary constraints and/or program streamlining.

Previous requests for supportive housing for persons with intellectual/developmental disabilities, where an applicant proposed 3 individuals (the minimum number for a state licensed operator), were determined by legal counsel to be protected by the Fair Housing Act and the Americans with Disabilities Act, thus not subject to the Board of Zoning Adjustment process. For clarification, supportive housing in this case includes the presence of employees on-site, who do not live on-site.

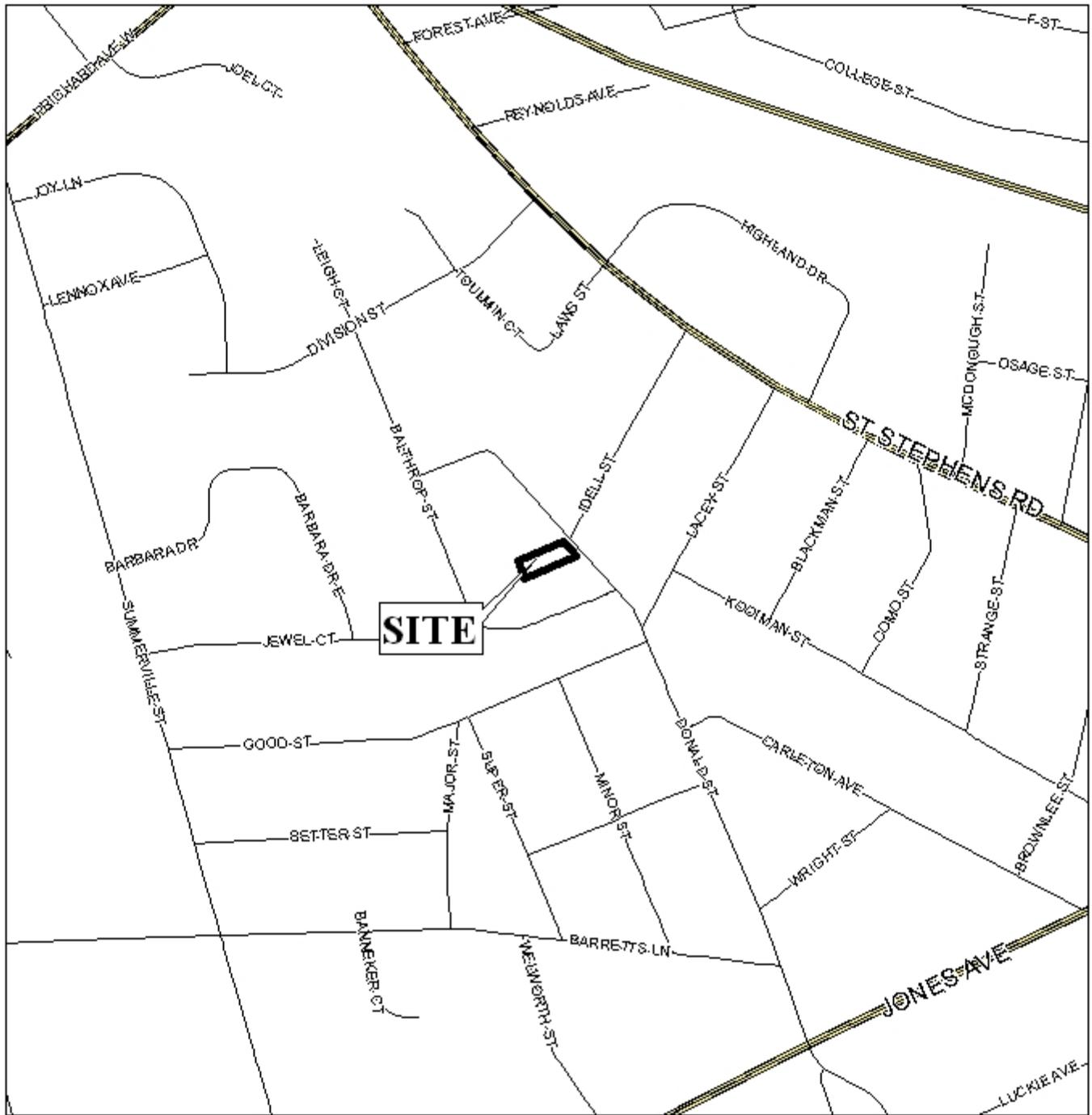
As the current applicant is proposing a maximum of 4 individuals, it exceeds what staff considers to be a reasonable fit for a single-family residential area. This is based upon the fact that the facility will be staffed, that the staff will change shifts, and that up to 4 residents will be in need of transport, family visitation, or other activities not necessarily in keeping with the existing residential neighborhood.

Regarding the parking issues, the applicant did not submit a revised site plan depicting parking on the site. The applicant states that parking will be provided to the rear of the residence. As the driveway to the rear is only wide enough to allow one-way traffic, and as the rear of the property is not paved and portions are in a flood zone, it would seem that additional variances are required to fulfill the envisioned parking plan.

RECOMMENDATION: *Based on the preceding, this Use Variance request is recommended for Denial, for the following reasons:*

- 1) The applicant did not clearly show that the request is due to very unusual characteristics of the property; and*
- 2) The variance application does not sufficiently address parking, access and maneuvering issues for the site.*

LOCATOR MAP



APPLICATION NUMBER 5812 DATE March 4, 2013
APPLICANT Angela Myrant
REQUEST Use Variance



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by single-family residences.

APPLICATION NUMBER 5812 DATE March 4, 2013
 APPLICANT Angela Myrant
 REQUEST Use Variance



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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**BOARD OF ADJUSTMENT
VICINITY MAP - EXISTING ZONING**

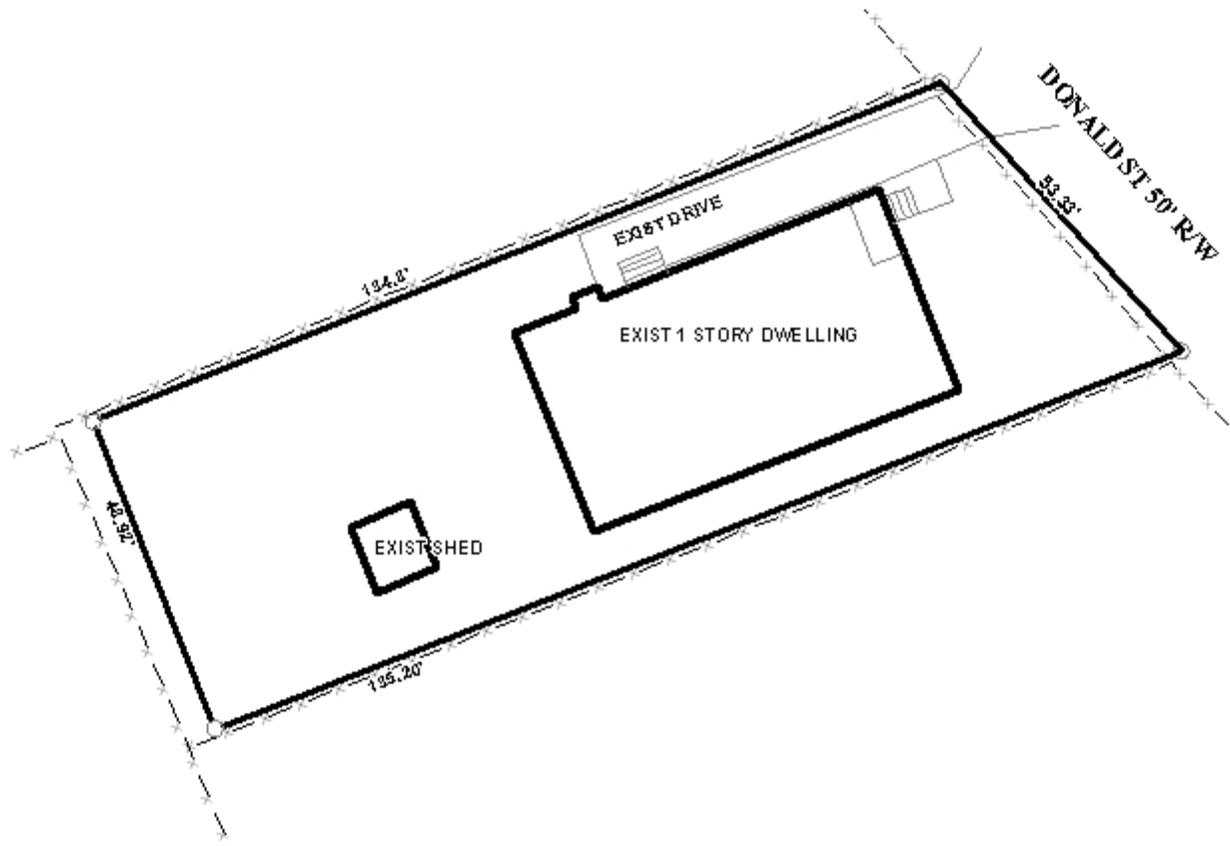


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SITE PLAN



The site plan illustrates the existing single-family residence.

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