

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: June 3, 2013****CASE NUMBER**

5833

APPLICANT NAME

Cynthia Johnson

LOCATION

115 North Catherine Street
(West side of North Catherine Street, 290'± North of Old Shell Road)

VARIANCE REQUEST

USE: Use variance to allow a salon in a B-1, Buffer Business District.

SURFACING: Surfacing variance to allow gravel surfacing in a B-1, Buffer Business District.

BUFFER: Buffer variance to not require a residential buffer to the North in a B-1, Buffer Business District.

**ZONING ORDINANCE
REQUIREMENT**

USE: the Zoning Ordinance requires a minimum of a B-2, Neighborhood Business District to allow a salon.

SURFACING: the Zoning Ordinance requires all required parking to be concrete or asphalt surfacing.

BUFFER: the Zoning Ordinance requires full compliance with all residential buffer requirements.

ZONING

B-1, Buffer Business District

AREA OF PROPERTY

6,166 square feet / 0.14± Acres

**CITY COUNCIL
DISTRICT**

District 2

ENGINEERING**COMMENTS**

1. The proposed parking area will need to be surfaced as required by Mobile City Code, Chapter 64, Section 64-4. Any request for an Alternative Parking Surface shall be approved by the City Engineer and the Director of the Urban Development Department.

2. If the variance is approved for use as requested the applicant will be required to submit a Land Disturbance Permit Application package for the proposed work.

**TRAFFIC ENGINEERING
COMMENTS**

No comments.

**URBAN FORESTRY
COMMENTS**

No comments.

**FIRE DEPARTMENT
COMMENTS**

All projects within the City of Mobile Fire Jurisdiction must comply with the requirements of the 2009 International Fire Code, as adopted by the City of Mobile.

ANALYSIS

The applicant is requesting Use, Surfacing, and Buffer Variances to allow a salon with gravel surfacing and no residential buffer to the North in an B-1, Buffer Business District; the Zoning Ordinance requires a minimum of a B-2, Neighborhood Business District to allow a salon, all required parking to be concrete or asphalt surfacing, and full compliance with all residential buffer requirements.

The applicant proposes to utilize an existing 1,040 square foot building as a salon. The applicant purchased the property in February 2013, after their location on Holcombe Avenue was damaged during the December 25, 2012 tornado. The property was marketed in real estate advertisements as suitable for a salon, thus the applicant purchased the property without independent due diligence to verify that their desired use would, in fact, be allowed. The applicant now owns a property which they cannot use as intended, hence their use variance application.

In addition to the use variance to allow a salon, the applicant wishes to leave the parking area unpaved, with only a refreshing of the existing gravel/aggregate surface. The applicant states that the existing live oak and sycamore trees on the site, with extensive exposed root systems, would be negatively impacted by any required asphalt or concrete paving. The applicant states that a meeting with a representative from Urban Forestry supported the determination that paving would harm the existing trees.

The final variance request is to not require a buffer on the North side of the property, due to the existing structure's 4-foot setback from the property line. The applicant believes that the provision of a 6-foot high wooden privacy fence would create an area next to the structure that may harbor persons with less than honorable intentions.

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.

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 site located in Old Dauphin Way Historic District, thus certain improvements to the building or site may require approval by the Mobile Historic Development Commission or the Architectural Review Board.

The property was rezoned from R-1 to B-1 in 1982. Since that time, the site has been used for various office or educational counseling services. The site can continue to be used for any approved B-1 use without any additional review or approvals from the Board of Zoning Adjustment or the Planning Commission. As the applicant desires to use the site for a use not allowed in a B-1 district, the present application to the Board is required.

The applicant's use hardship is due to misleading real estate marketing and a lack of due diligence verification. The hardship is self imposed and not a result of the property or its unique qualities.

Given the fact that the proposed salon use will likely require some level of building and / or fire code related compliance, approval of the use variance will not automatically ensure that the applicant can use the structure as desired. Furthermore, the structure may require site and internal modifications to make it accessible per Building Code and federal Americans with Disability Act requirements.

As for the parking surface variance request, no comments were submitted by Urban Forestry regarding this site or the variance requests. It is certain that asphalt and concrete paving can damage tree roots and cause the trees themselves to decline over time, however, driving on tree roots and/or gravel causes damage to the roots as well as soil compaction which is damaging to the function of the tree roots. While any other B-1 use allowed by right would not necessarily be required to make improvements to the paving surface at this site, again, the local Building Code and federal Americans with Disability Act requirements regarding accessibility may dictate that at least one asphalt or concrete paved parking space and accessible aisle be provided on the site. Furthermore, if no parking area improvements to the site are required, there would be no protection provided for the existing trees on the site, thus employees and customers could park on the existing tree roots anywhere on the site.

Regarding the buffer variance request, it is agreed that the provision of a 6-foot high wooden privacy fence only 4-feet from the existing structure would create a very small area that could possibly harbor individuals. It would also create an area that would be difficult to maintain. That being said, any waiver of the required residential adjacency buffer should be subject to the wishes of any existing or future adjacent residential property owner (it appears that the property to the North may be foreclosed): should the adjacent residential property owner request the buffer fence, it should be required.

RECOMMENDATION: Based on the preceding, the Use variance is recommended for Denial, rendering the requested Surface and Buffer variances mute.

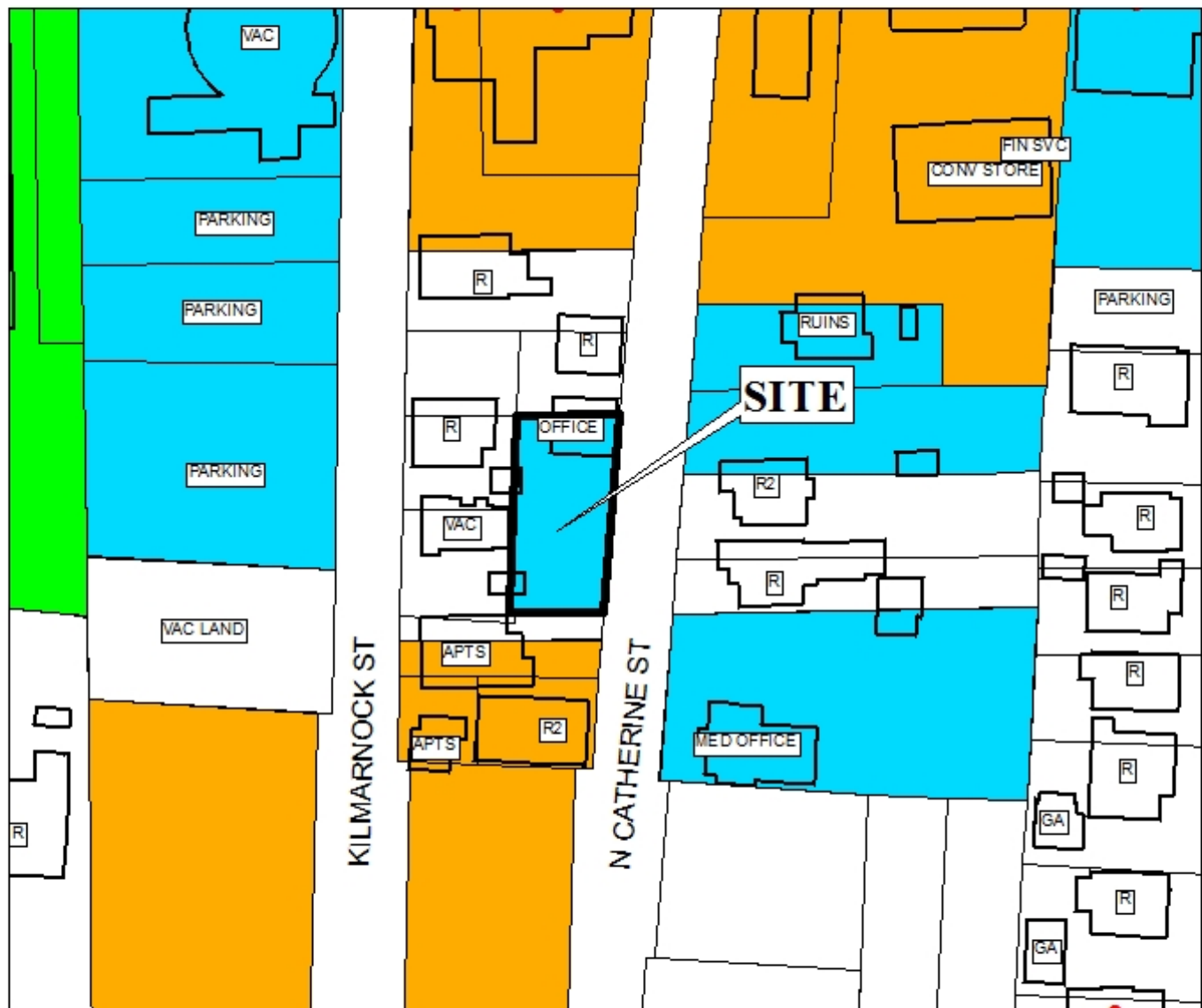
LOCATOR MAP



APPLICATION NUMBER 5833 DATE June 3, 2013
APPLICANT Cynthia Johnson
REQUEST Use, Surfacing, and Buffer Variances



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by miscellaneous land use.

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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 NTS



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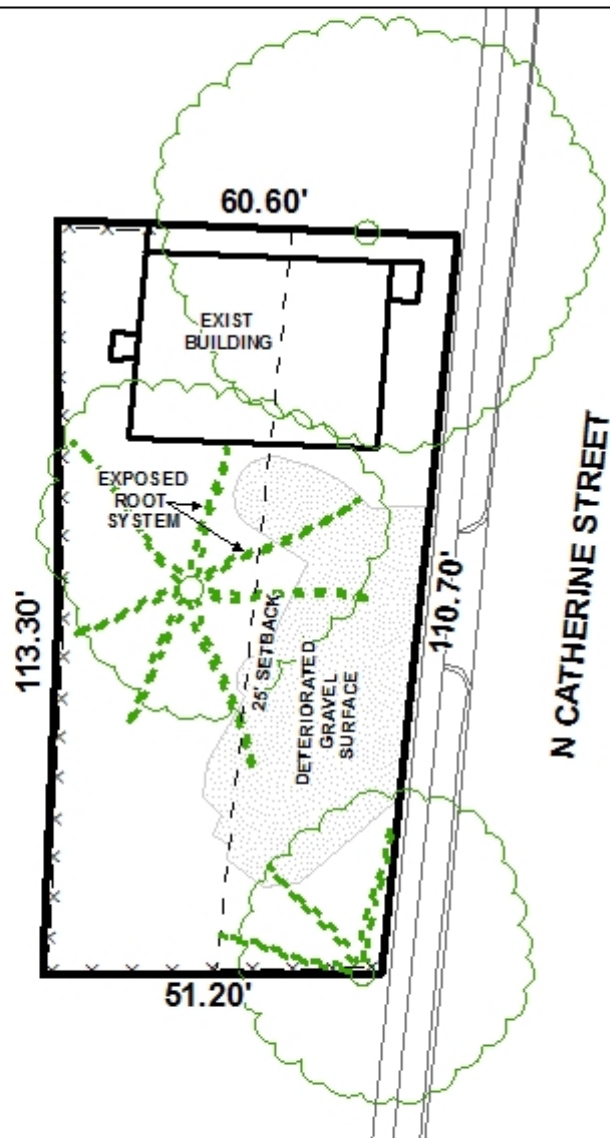
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LEGEND															
	R-1	R-2	R-3	R-A	R-B	H-B	T-B	B-1	LB-2	B-2	B-3	B-4	B-5	I-1	I-2



SITE PLAN



The site plan illustrates the existing building, exposed root systems, and the deteriorated gravel surface.

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