

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: February 4, 2013**

<u>CASE NUMBER</u>	5812
<u>APPLICANT NAME</u>	Angela Myrant
<u>LOCATION</u>	1005 Donald Street (West side of Donald Street, 105'± North of Balthrop Street)
<u>VARIANCE REQUEST</u>	USE: Use Variance to allow the operation of a domiciliary care facility in an R-1, Single-Family Residential District
<u>ZONING ORDINANCE REQUIREMENT</u>	USE: the Zoning Ordinance requires a minimum of a B-1, Buffer Business District for a domiciliary care facility
<u>ZONING</u>	R-1, Single Family Residential
<u>AREA OF PROPERTY</u>	0.16±Acres
<u>ENGINEERING COMMENTS</u>	No comments.
<u>TRAFFIC ENGINEERING COMMENTS</u>	It doesn't appear that you have off street parking. You cannot have a facility that will create on-street parking
<u>CITY COUNCIL DISTRICT</u>	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.

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 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.

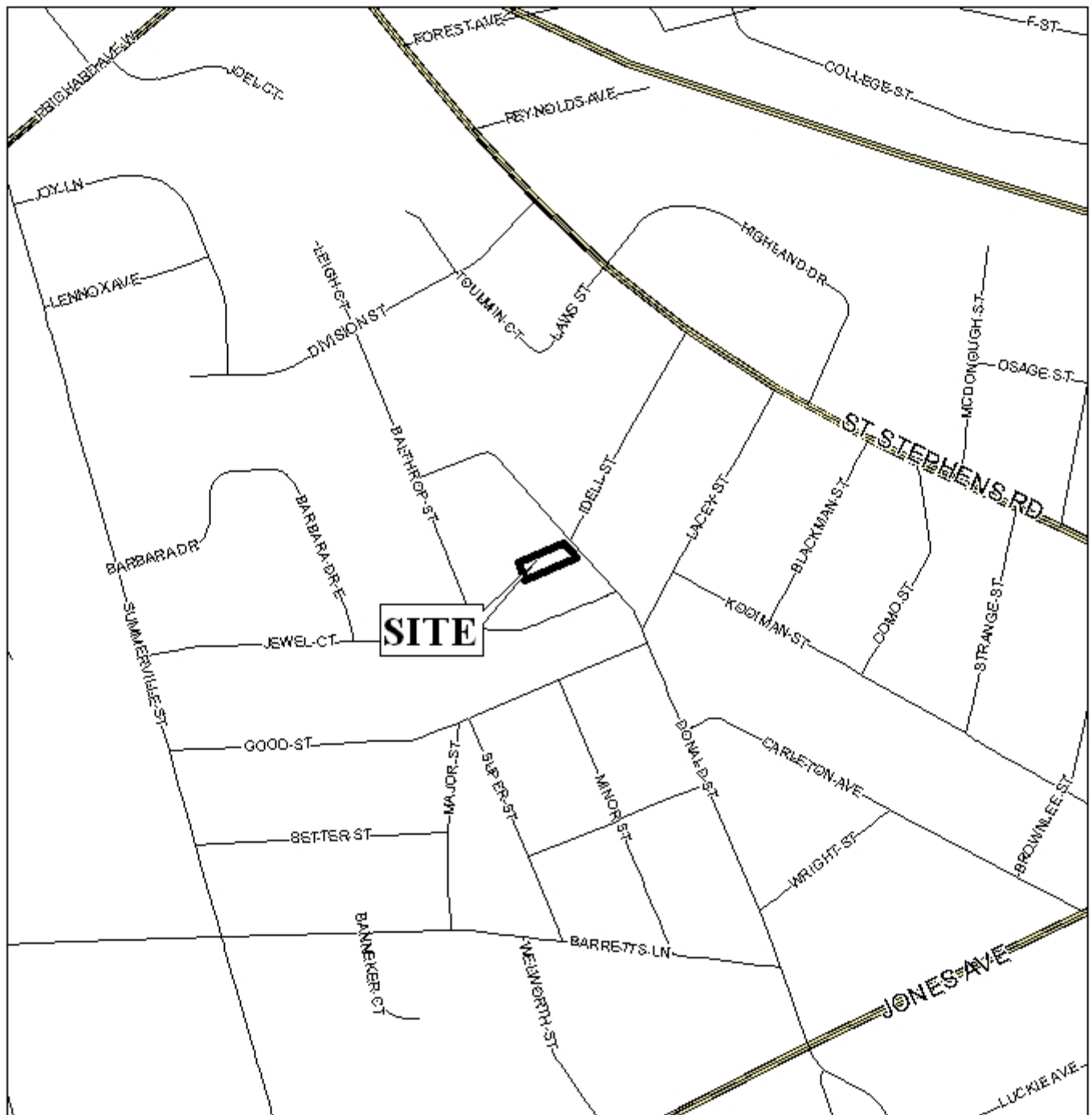
RECOMMENDATION:

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.

LOCATOR MAP



APPLICATION NUMBER 5812 DATE February 4, 2013
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REQUEST Use Variance



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by single-family residences.

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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



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING

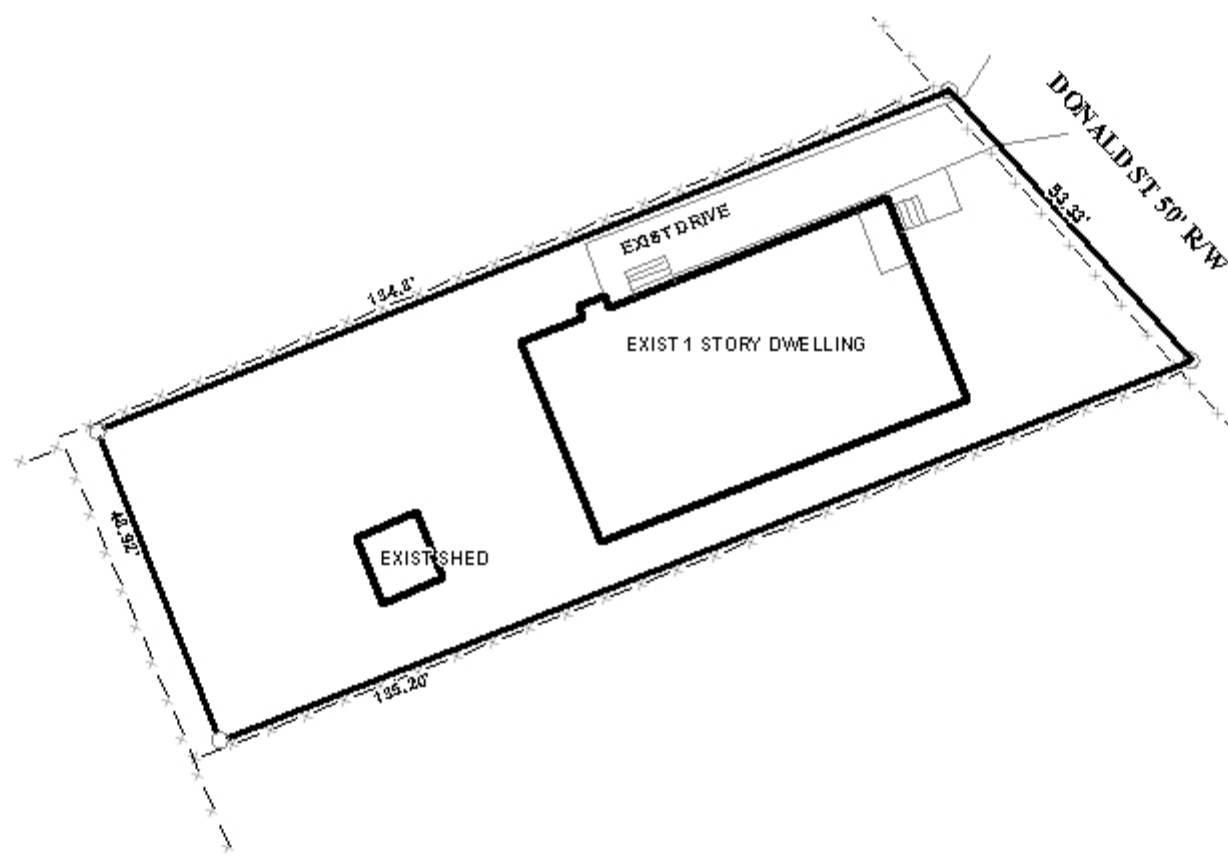


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SITE PLAN



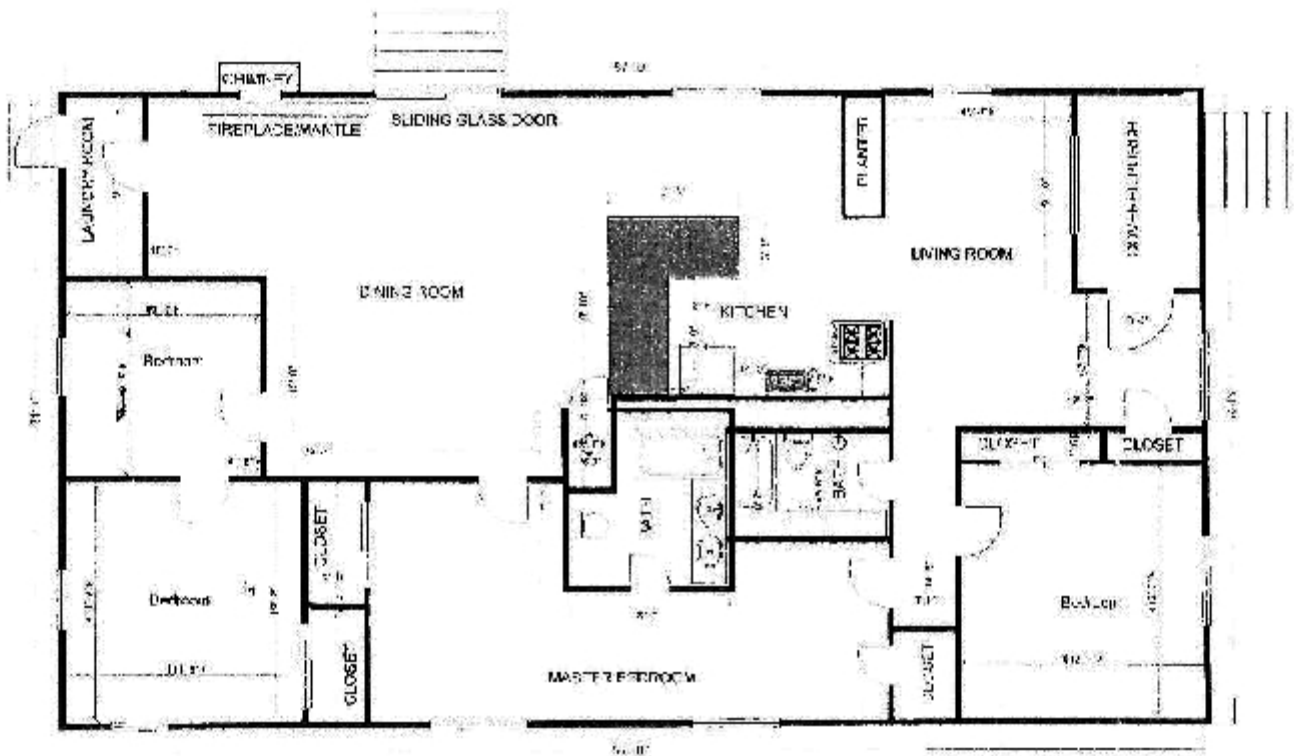
The site plan illustrates the existing single-family residence.

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DETAIL SITE PLAN



1005 Donald Street

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