

**BOARD OF ZONING ADJUSTMENT  
STAFF REPORT****Date: May 4, 2015****CASE NUMBER**

5962

**APPLICANT NAME**

Russell Holland, Real Estate Representative of Waffle House, Inc.

**LOCATION**4959 Moffett Road  
(South side of Moffett Road extending to the North side of Overlook Road)**VARIANCE REQUEST****SETBACK:** Front yard setback variance to allow construction of a restaurant within 12.7 feet of front yard setback and dumpster pad approximately 18 feet within the front 25 feet yard setback in a B-2, Neighborhood Business District.**ZONING ORDINANCE  
REQUIREMENT****SETBACK:** The Zoning Ordinance requires a minimum 25' front setback for structures higher than 3 feet tall in a B-2, Neighborhood Business District.**ZONING**

B-2, Neighborhood Business

**AREA OF PROPERTY**21,431 square feet / 0.5 $\pm$  Acres**CITY COUNCIL  
DISTRICT**

District 1

**ENGINEERING  
COMMENTS**

If the variances are approved the applicant will be required to receive an approved land disturbance permit prior to beginning any site work.

**TRAFFIC ENGINEERING  
COMMENTS**

Moffett Road (US Highway 98) is an ALDOT maintained roadway, and thus requires approval for any changes proposed in the right-of-way of Moffett Road. Based on the provided site plan, it does appear that ALDOT design standards have been considered. The placement of the driveways appear to be the suitable solution for this site, based on its size and location limitations.

**URBAN FORESTRY  
COMMENTS**

No comments.

**FIRE**  
**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 a Front Yard Setback Variance to allow construction of a restaurant within 12.7 feet of front yard setback and dumpster pad approximately 18 feet within the front 25 feet yard setback in a B-2, Neighborhood Business District; the Zoning Ordinance requires a minimum 25' front setback for structures higher than 3 feet tall in a B-2, Neighborhood Business District.

The site was the subject of a setback variance request at the December 2, 1958 meeting of the Board of Zoning Adjustment: the request for a 10-foot front yard setback along both Moffett and Overlook Road was approved by the Board.

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.

Since the 1958 approval by the Board, the site has been cleared of all development, and there have been various widening and circulation improvements made to Moffett Road and the connection with Overlook Road, leaving a somewhat odd-shaped parcel.

The applicant stated the following:

*The subject property is approximately .5 acres and located in the southwest corner of Moffett Road and Overlook Road in Mobile, AL. It is bordered by McDonald's to the west, a dry cleaner to the east, Moffett Road/single family residential to the north, and Overlook Road/single family residential to the south. The subject property was once a gas station/convenience store that has since been demolished and given "No Further Action" status by Alabama Department of Environmental Management. The plan is to develop the subject property into a Waffle House restaurant with 26 parking spaces. The proposed use will fit in well with the area that already features restaurants and local services.*

*The subject property will be redeveloped into a Waffle House restaurant. The restaurant will feature 38 seats. 26 parking spaces are proposed. 17 parking spaces are required. Historical aerials indicate that the lot was 100% impervious in 1984. Our plan is to meet*

*the required open space requirement of 12%. Because this is a corner lot with 2 frontages, a 25' building setback is required from both Moffett Road and Overlook Road. Parking spaces and driveways have a required size of 9'x18' and 24', respectively. Because the Waffle House building has glass on 2 elevations (north and east), all parking needs to be in front of the building. Our desire to keep our associates and customers safe necessitates unobstructed visibility to the parking area. Additionally, ROW takings over the years and dual frontages have diminished the buildable area of the site. Because of our unique building footprint, Waffle House represents one of the best opportunities for this site to become a tax revenue producing location for the City. While a 25' setback from Moffett Road can easily be accomplished, a 25' setback from Overlook Road cannot. We are requesting a variance that will allow the building corners to be 23.34' and 12.7' from Overlook Road.*

The applicant proposes to build a 1,825 square foot restaurant, approximately 24 by 75 feet, which will require a minimum of 19 parking spaces (not 17, as stated in the narrative). The site plan shows that 26 parking spaces will be provided.

The site itself has a maximum width of 220 feet and a maximum depth of 107 feet, but accounting for the 25-foot minimum building setback, the resulting building footprint area would be substantially reduced due to the 25-foot setback being taken from three sides of the property. That being said, it is possible to fit a restaurant of the desired size in square feet that would meet setbacks, but that might also require a loss of parking spaces and a change in the design of the entries to the property. Also, a non-restaurant use would have less of a site design issue with the property due the reduction in the amount of required parking.

It should be noted that the site plan provided with the application, while drawn to scale, was provided as a not to scale copy. Thus the requested setback of 18 feet estimated for the dumpster is actually around 9 feet. Therefore, it appears that a portion of the dumpster enclosure will fall within a recorded 10-foot wide landscape easement that is along the Overlook Road side of the property: the proposed building, however, will be outside of this easement.

While there is some hardship associated with the shape of the property and the fact that it has frontage on three streets, the applicant has not sufficiently show that there is a hardship with the property. Instead, it appears that either the applicant is using an “off the shelf” corporate design and requesting that our regulations accommodate it, or that the site is being over-developed.

**RECOMMENDATION:**

Based on the preceding, staff recommends to the Board the following findings of fact for Denial:

- 1) Based on the fact that the hardship is due to the use of a standard corporate building design rather than a building design taking into account the challenges of the site, granting the variance will be contrary to the public interest;
- 2) While special conditions do exist with the property itself, the literal enforcement of the provisions of the chapter will not result in an unnecessary hardship as the site can be developed without the requirement for variances; and

- 3) The spirit of the chapter shall not be observed and substantial justice shall not be done to the applicant and the surrounding neighborhood by granting the requested variances, as the site can be developed with either a non-restaurant use, or with a building that is custom designed for this site.

# LOCATOR MAP

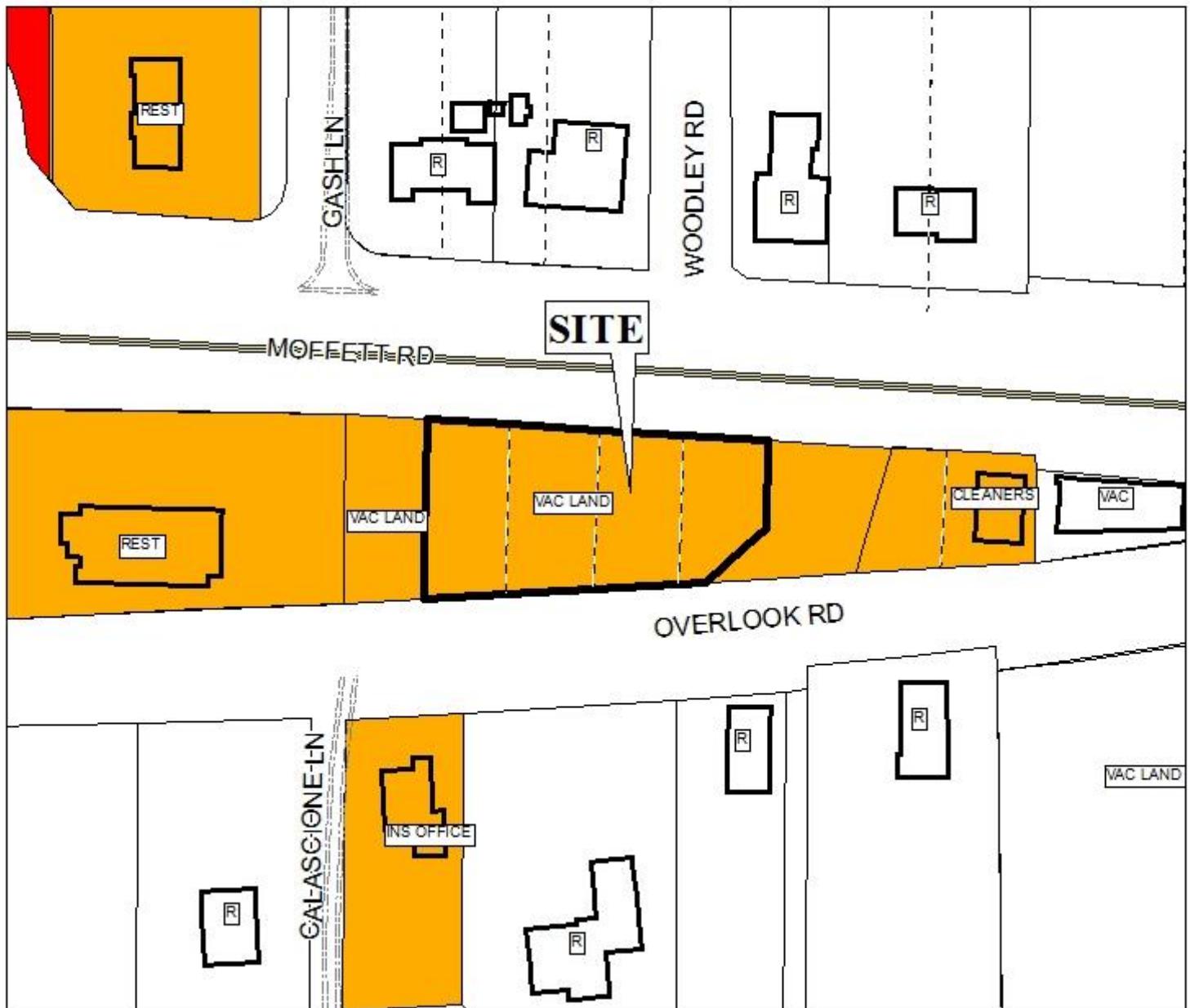


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REQUEST Front Yard Setback Variance



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## VICINITY MAP - EXISTING ZONING



The site is surrounded by miscellaneous residential and commercial units.

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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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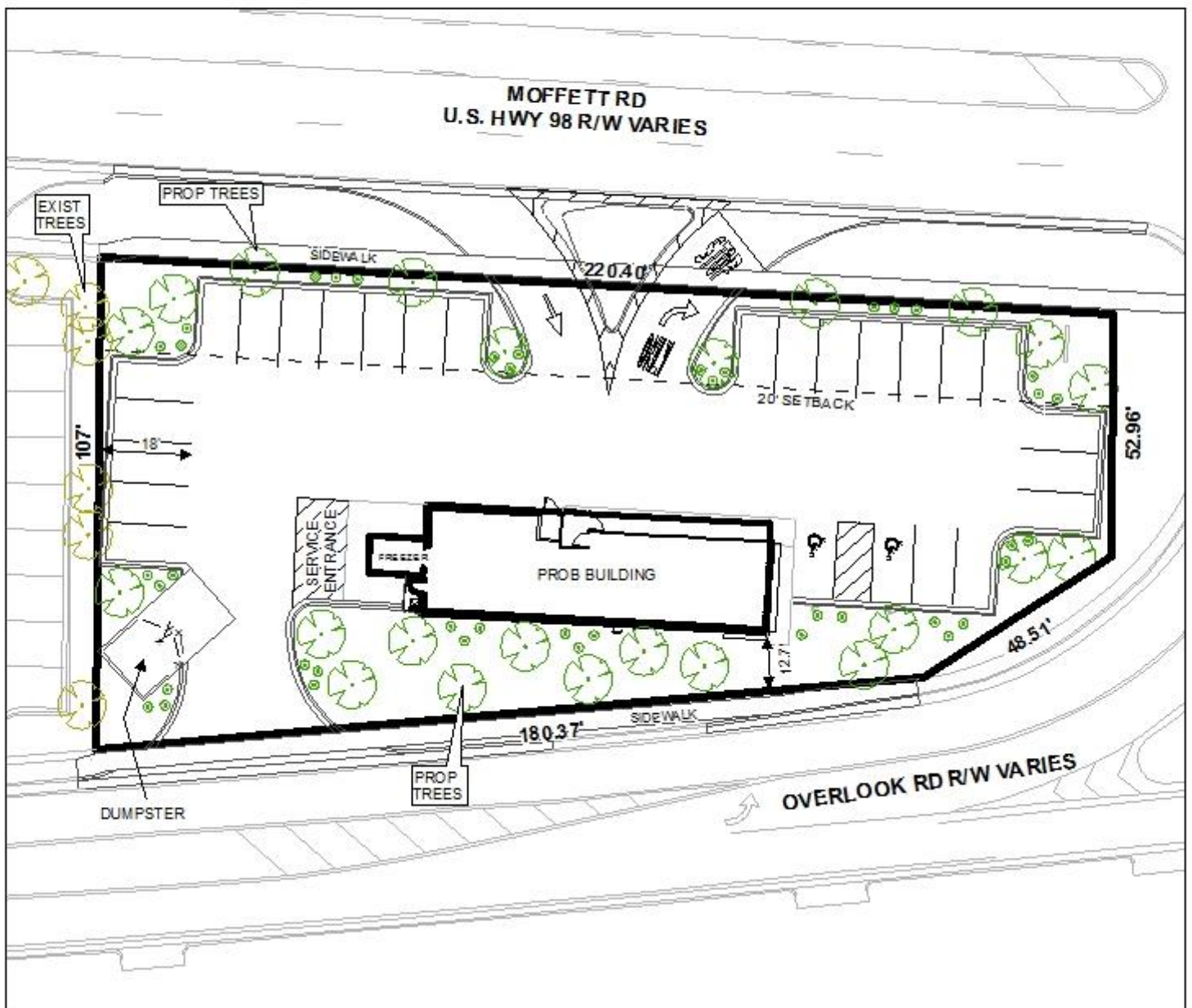


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# SITE PLAN



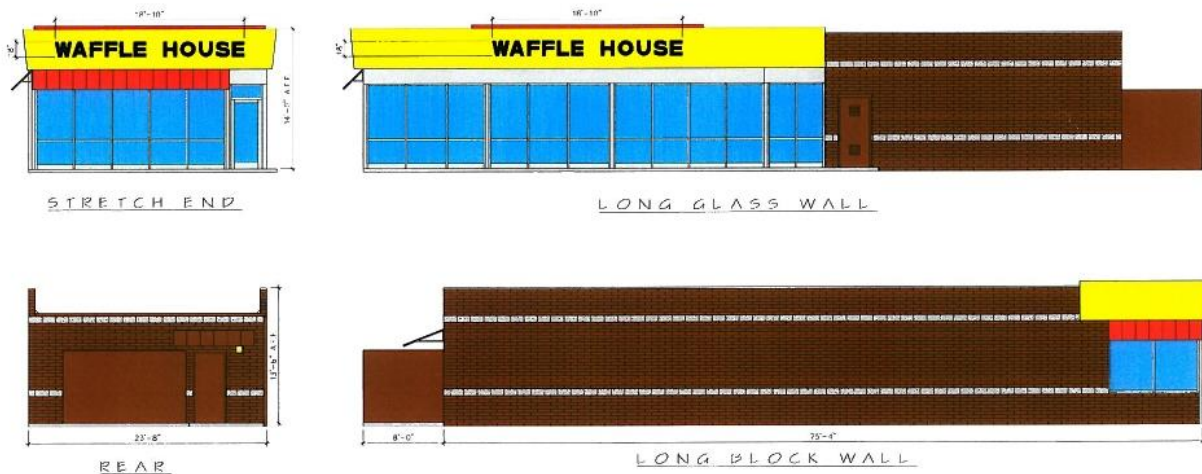
The site plan illustrates the proposed building, existing and proposed trees, parking, and setback.

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# DETAIL SITE PLAN



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NTS