

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: December 7, 2015****CASE NUMBER**

6019/4947

APPLICANT NAME

Angela's Academic Academy Childcare

LOCATION2800 Dauphin Island Parkway
(Southwest corner of Mackie Avenue and Dauphin Island Parkway).**VARIANCE REQUEST****USE VARIANCE:** Use Variance to allow a daycare facility to operate in an R-1, Single-Family Residential District.**ZONING ORDINANCE
REQUIREMENT****USE VARIANCE:** The Zoning Ordinance requires a minimum B-2, Neighborhood Business District for the operation of a daycare.**ZONING**

R-1, Single-Family Residential District

AREA OF PROPERTY

0.16 ± Acres

**CITY COUNCIL
DISTRICT**

District 3

**ENGINEERING
COMMENTS**

No Comments

TRAFFIC ENGINEERING**COMMENTS**

If on street parking becomes an issue during pick-up/drop-off, on street parking restrictions may have to be installed based on the width of Mackie Avenue. Based on the number of parking spaces provided, only one is required to be accessible.

**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 (State Act 61-929 and City Code Chapters 57 and 64).

ANALYSIS

The applicant is requesting a Use Variance to allow a daycare facility to operate in an R-1, Single Family District. The Zoning Ordinance requires a minimum B-2, Neighborhood Business District for the operation of a daycare.

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.

A Use Variance was granted the Board of Zoning Adjustment at its July 10, 2000 meeting to allow the residential property to be used as a chiropractic clinic.

The applicant mentions:

The facility hours will be 6am through 6pm. We will accept ages 0-12 both male and female. We will have before and after care along with transportation back and forth to school. We will have programs for the holidays for the children who attend year round. We have a kitchen which has a stove and refrigerator in it. We will have a staff of 4 which will be 3 teachers and a director. The only staff that is responsible to be there all day is the 3 teachers. There is a preschool class ages 3 and 4 a toddler class that will age from the ages 1 and 2 and a infants room that goes from 6 weeks through 1. Each employee will be certified and take the proper classes to maintain their class room. Each employee will also go through the process of getting a tb skin test and a cpr license and a first aid license along with a background check. We will keep all of our certifications posted for the parents and public to see at all times. We will keep emergency cards available for all the children records for all emergencies. We have 6 sinks one in each classroom, 1 in each bathroom, and one in the kitchen. We will also have 2 bathrooms one in the infant room and one in the hallway. We will also have a playground and a time sheet for each class to go out at their appropriate times. We will also have smoke detectors and fire extinguishers in each room and one of each in the kitchen. We have appropriate parking with 2 handicap for the customers and staff.

The site plan illustrates an existing building, proposed parking with existing asphalt surfacing, and a proposed playground. The proposed parking lot meets the minimum off-street parking requirements regarding number of parking spaces, which are based upon the number of proposed teaching stations for an elementary school, and stall length and width; one required space is designated as handicap accessible, and a van accessible space is also provided, each of which meet the minimum requirements for stall and access aisle length and width. It should be noted, however, that, based on the number of parking spaces provided, only one is required to be

accessible. It should also be noted that Staff cannot determine the existence of curbing, bumper stops, or wheel stops for any of the proposed parking spaces where vehicles could potentially extend beyond the parking facility; as such, revision of the site plan to provide curbing, bumper stops, or wheel stops for said parking spaces would be required, if approved.

While the proposed parking spaces meet the minimum requirements of the Zoning Ordinance, there is concern over inadequate maneuvering on the lot and an inadequate curb cut width, the minimum of which should be 24'. There is also concern over the distance from which each of the handicap and van accessible parking spaces is from an accessible building ramp. The separation of the building and the proposed playground by the proposed parking lot is also of concern regarding pedestrian safety.

A photometric plan is not required due to the limited scope of the project, however any new site lighting is to comply with Section 64-4.A.2. and 64-6.A.3.c. of the Zoning Ordinance.

Since the site was previously developed for commercial use due to the aforementioned Use Variance from July 10, 2000, and the total gross floor area of the existing structure on the site is neither increasing nor decreasing by fifty (50) percent, full compliance with landscaping is not required.

A dumpster is not depicted on the site plan and one is not visible in recent aerial photos. Any dumpster placed on the property must be in compliance with the current enclosure and sanitary sewer connection requirements of Section 64-4.D.9. of the Zoning Ordinance and must be illustrated on any revised site plan(s), or placement of a note on the site plan stating that curbside pickup will be utilized, if approved.

Because the site is adjacent to other R-1, Single-Family Residential, properties, but its proposed use is commercial, it should be noted that a residential buffer would be required, if approved. A fence is illustrated on the site plan and Staff confirms that it has existed since at least 2007 and appears to meet the minimum requirements of Section 64-4.D.1 of the Zoning Ordinance.

The applicant states their reasoning for purchasing a property in a zoning district incompatible with the proposed use as a daycare:

My Name is Angela E Mills and I purchased a property 2800 dauphin island parkway. When I purchased the building on 09/25/2015 the lady I was purchasing it from told me that she had called prior and that it was already a commercial building for a chiropractor. I few days later my daughter called for an explanation on the zoning process. When they answer the phone they didn't transfer her. She was just told zoning cost 8 dollars and can be done at any time. We didn't know that it would take longer because it was only applied for chiropractic uses. We immediately started to work on the building and everything it needed to have to get our permits for the daycare. When we went into the office we were told that we had to file for our own variances for it to be a commercial building for a daycare. We decided to make that decision based on the fact we already purchased the building and made some steps to get certified for that exact building. We were told that next time to make sure we come there first to make sure its

zoned for the right business. Since this our first business we understand we need to learn from our mistakes, and in the future come to zoning first.

As stated, the applicant purchased the property to establish a day care facility on what was assumed to be commercial property. It should be noted that the site was the subject of previous use variance approval to allow the operation of a chiropractic office in an R-1, Single-Family Residential District, a use that requires a minimum R-B, Residence-Business District. However, because a daycare requires a minimum B-2, Neighborhood Business District, an R-B District, with the exception of Planning Approval by the Planning Commission, would still be incompatible with the applicant's proposed use of the property.

The applicant goes on to state why their proposed use of the property as a daycare facility would be appropriate:

My Child Care Facility will not be contrary to the public interest because it will provide daycare services and transportation for the children around the community. The daycare will allow ages up to 12 years of age both male and female. We will provide before and after care for the school age children who parents can't get them to school. We will have all permits and certifications posted for the community to see and allow all of the community to come to our grand opening to see what we have done to help provide great childcare to the community. We weren't able to provide chiropractic service in the building because of its condition and the hardship of not having any degree in that area. Before we purchased the building we were told it was already a commercial zoning for a chiropractor. Because this is our first business we didn't know we had to do another variance to make it into a daycare. When we came into the office that's when we were told about this but we already done construction work in the building. We had already set everything up for a daycare. We already paid the contractor to come in and paint and put in new flooring for the daycare. We have already got the labels to allow the community a chance to state their opinion on the daycare being in that zoning area. We have also already sent out the letters and we have spoken to the neighbors behind the building and they were happy about the daycare coming closer to their community.

With regards to the applicant's desire to offer before and after school care to school-aged children in addition to daily transportation and care services, use as a day care facility at this location may be appropriate considering Dr. Robert W. Gilliard Elementary School is located directly across the street. However, the site is surrounded by properties also zoned R-1, Single-Family Residential, and they appear to be used as such; and while neighboring property owners may embrace the proposed use of the property, no evidence of such support has been submitted to Staff for review. Furthermore, it should be noted that there are several properties within one mile of the proposed site that are appropriately zoned for use as a day care.

Regarding the construction work being completed prior to any approvals to operate a daycare facility, no permits for such work have been issued by the City of Mobile, thus resulting in a self-imposed hardship. It should also be noted that, while monies have been paid to purchase the property and to complete building improvements, variance applications cannot be based on financial hardship; rather, they must be based on a hardship associated with the property.

Since the site is now commercial in nature, especially due to the parking area and previous Use Variance approval, and the fact that a daycare may operate with Planning Approval in an R-B, Residence-Business District, a district in which the site's previous use as a chiropractic clinic is allowed, by right, precedence may validate the proposed use of the site in question. Therefore, coupled with the preceding information, the applicant appears to have presented sufficient evidence demonstrating a hardship as required in Section 64-8.B.6.f.(3).(d). of the Zoning Ordinance.

RECOMMENDATION:

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

- 1) Granting the variance will not be contrary to the public interest due to previous Use Variance approval as a commercial site;
- 2) Special conditions exist in such a way that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship due to the existing commercial site improvements resulting from previous Use Variance approval as a commercial site; and
- 3) The spirit of the chapter shall be observed and substantial justice shall be done to the surrounding neighborhood by granting the variance since use as a day care facility at this location may be appropriate considering Dr. Robert W. Gilliard Elementary School is located directly across the street.

The approval is subject to the following conditions:

- 1) Revision of the site plan to provide curbing, bumper stops, or wheel stops for parking spaces where vehicles could potentially extend beyond the parking facility;
- 2) Revision of the site plan to provide adequate curb cut width, the minimum of which should be 24';
- 3) Revision of the site plan to provide a dumpster in compliance with the current enclosure and sanitary sewer connection requirements of Section 64-4.D.9. of the Zoning Ordinance, or placement of a note on the site plan stating that curbside pickup will be utilized;
- 4) Completion of inspections by all building trades and the Fire Department;
- 5) Attainment of all necessary permits prior to the issuance of Zoning Clearance;
- 6) Provision of two revised site plans to the Planning and Zoning Department prior to the issuance of permits; and
- 7) Full compliance with all municipal codes and ordinances.

LOCATOR MAP



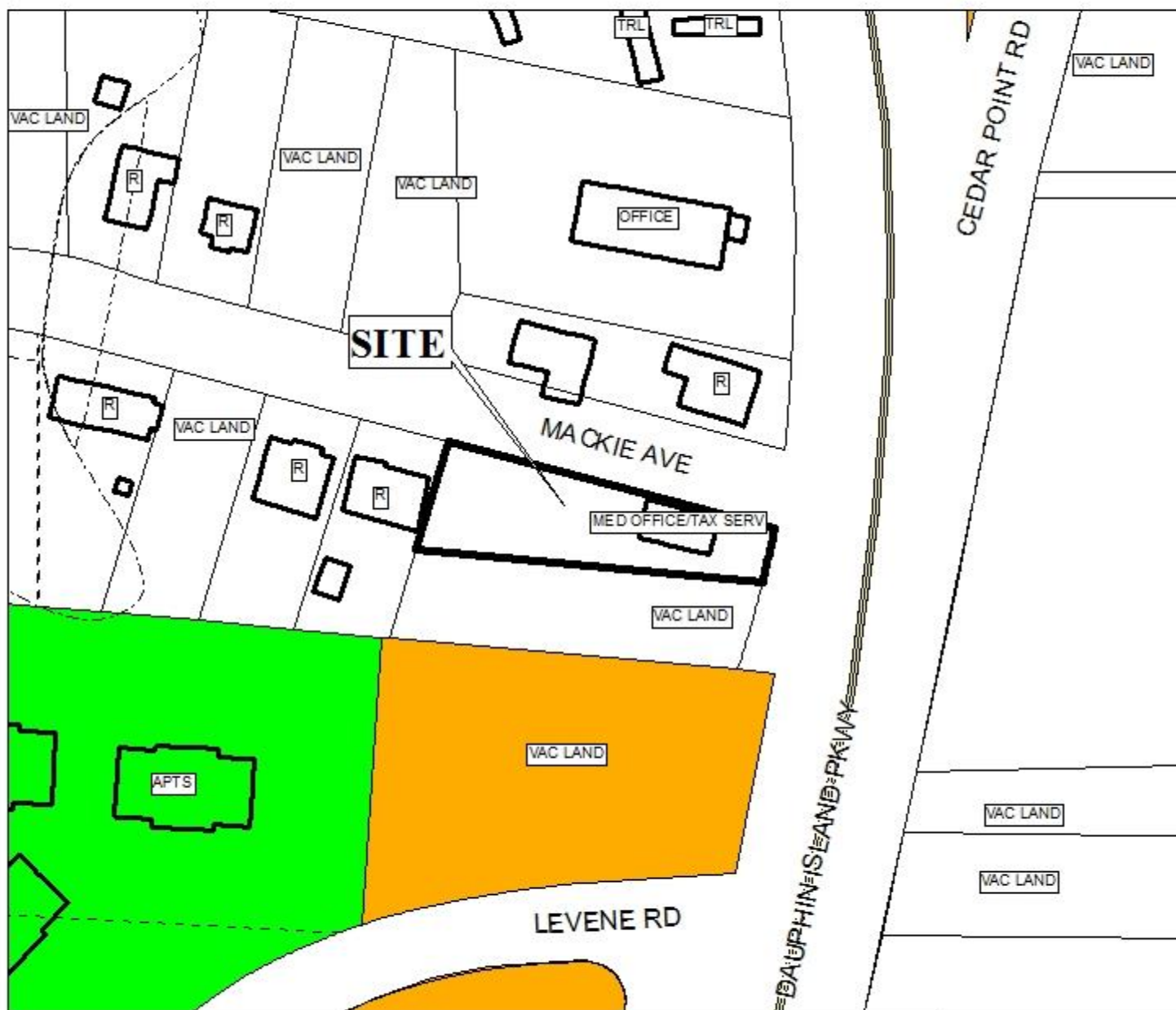
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REQUEST Use Variance



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units to the west, vacant land to the east, and a medical clinic is located to the north.

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REQUEST Use Variance

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



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units to the west, vacant land to the east, and a medical clinic is located to the north.

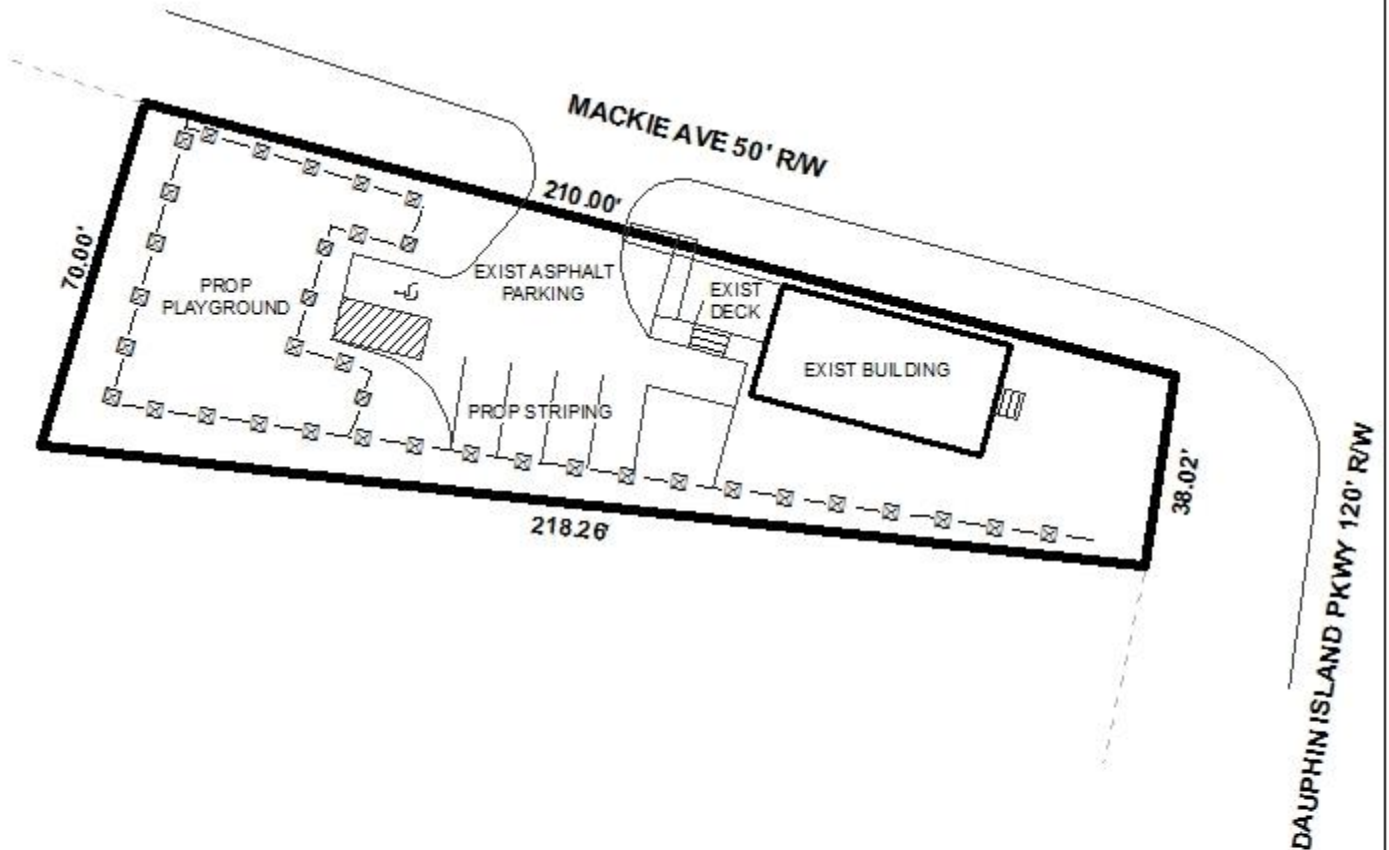
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SITE PLAN



The site plan illustrates the existing building, existing parking, proposed parking striping, and proposed playground.

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