

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: August 4, 2014**

<u>CASE NUMBER</u>	5910
<u>APPLICANT NAME</u>	Don Williams
<u>LOCATION</u>	4436 Government Boulevard (West side of Government Boulevard extending to the East side of Demetropolis Road, 500' ± North of Government Boulevard)
<u>VARIANCE REQUEST</u>	USE: To allow a retail business to have outside vehicle and boat storage in a B-2, Neighborhood Business District.
<u>ZONING ORDINANCE REQUIREMENT</u>	USE: The Zoning Ordinance does not allow outside vehicle or boat storage in a B-2, Neighborhood Business District.
<u>ZONING</u>	B-2, Neighborhood Business District
<u>AREA OF PROPERTY</u>	0.53 ± Acres
<u>ENGINEERING COMMENTS</u>	No comments received.
<u>TRAFFIC ENGINEERING COMMENTS</u>	Government Blvd (Highway 90) is an ALDOT maintained roadway. Driveway number, size, location and design to be approved by ALDOT (where applicable) and Traffic Engineering and conform to AASHTO standards. Confirmation of ALDOT approval of the driveway on Highway 90 will need to be provided, prior to the issuance of any permits for land disturbing activities. A "Do Not Enter" sign should be included at the point on the southern driving aisle where it narrows from 24' to 15'.
<u>FIRE DEPARTMENT COMMENTS</u>	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.
<u>URBAN FORESTRY COMMENTS</u>	No comments received.

CITY COUNCIL
DISTRICT

District 4

ANALYSIS

The applicant is requesting a Use Variance to allow a retail business to have outside vehicle and boat storage in a B-2, Neighborhood Business District; the Zoning Ordinance does not allow outside vehicle or boat storage in a B-2, Neighborhood Business District.

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.

Applicant's statement: *The existing site and building were last used many years ago for a Dairy Queen restaurant. We propose to use the existing building for showroom (3000 sf) and outside storage (1300 sf existing with 2500 sf proposed) for a pawn shop. We propose to provide 4,700 sf of outside storage, surrounded by building and 6' high wood privacy fence. We propose to create a "one way" traffic loop around the building to utilize the current parking configuration. We plan to provide 13 on-site parking spaces. We propose to comply with landscaping and tree planting requirements for new construction, although we will need permission to plant some trees on service road and Government Boulevard rights of way.*

The site contains a full service road along Demetropolis Road frontage and a partial service road along ALDOT-maintained Government Boulevard. We plan to keep both existing curb cuts along Demetropolis Road and close one of the two existing curb cuts along Government Boulevard,

The City of Mobile Planning Commission, on June 5, 2014, denied our request for rezoning from B-2 to B-3 to allow outside storage for our proposed pawn shop. We request permission for 4,700 sf, fenced outside storage, on existing asphalt pavement, in association with a pawn shop, within a B-2 zoning district. The nature of the pawn shop business sometimes requires cars, boats, trailers and other larger items to be stored on site. State law governing pawn shops requires pledged merchandise to be kept on the premises. Our hardship is our current inability to provide outside storage for cars, boats, trailers and other items, and the Planning Commission's denial of upgraded zoning.

As mentioned by the applicant, this site most recently appeared before the Planning Commission at its June 5, 2014 meeting where the Commission considered a proposed rezoning from B-2, Neighborhood Business District to B-3, Community Business District for this site. A B-3 zoning classification would allow outside storage by right; but, as the rezoning was denied by the Commission, variance approval from the Board of Adjustment would appear to be the only option to allow the applicant to use this property for its intended purpose.

It is important to note that the establishment of the zoning districts in Section 64-3. of the Zoning Ordinance, is within the jurisdiction of the Planning Commission and the purpose of the Board of Zoning Adjustment is to grant relief in the case of a hardship associated with a property, not to undermine the powers of the Planning Commission by granting a variance if a rezoning is not approved. The denial of a rezoning does not constitute a hardship to the property, but rather reinforces that the site is not appropriate for the use that is proposed. The site can be used as a conforming B-2, Neighborhood Business District as illustrated by the fact that a pawn shop without outside storage is allowed by-right.

Thus, in accordance with Section 64-12. of the Zoning Ordinance, a pawn shop can be operated at this location, as long as no items requiring outside storage are accepted. Further, the applicant **has not** clearly identified any hardships for this site nor presented sufficient evidence as listed above and required in Section 64-8.B.6.f.(3).(d). of the Zoning Ordinance, and it appears it is simply the applicant's desire to not comply with the Zoning Ordinance. The approval of this variance may set a precedent with the granting of variances when no hardship exists.

RECOMMENDATION: Based upon the preceding, Staff recommends to the Board the following findings of fact for denial:

- 1) Granting the variance will be contrary to the public interest in that it is contrary to Sections 64-3.E.2. and 64-12. of the Zoning Ordinance regarding the permitted uses within a B-2, Neighborhood Business District;
- 2) The applicant has not clearly presented any special conditions as required in Section 64-8.B.6.f.(3).(d). of the Zoning Ordinance, such as a hardship to the property which may exist, and a literal enforcement of the provisions of the chapter will not appear to result in an unnecessary hardship as the basic use is allowed "by-right"; and
- 3) The spirit of the chapter shall not be observed and substantial justice shall not be done to the surrounding neighborhood by granting the variance because most of the near-by properties in the immediate vicinity appear to have been developed in accordance with the Zoning Ordinance as it relates to B-2 uses. The approval of this variance may set a precedent with the granting of variances when no hardship exists.

LOCATOR MAP



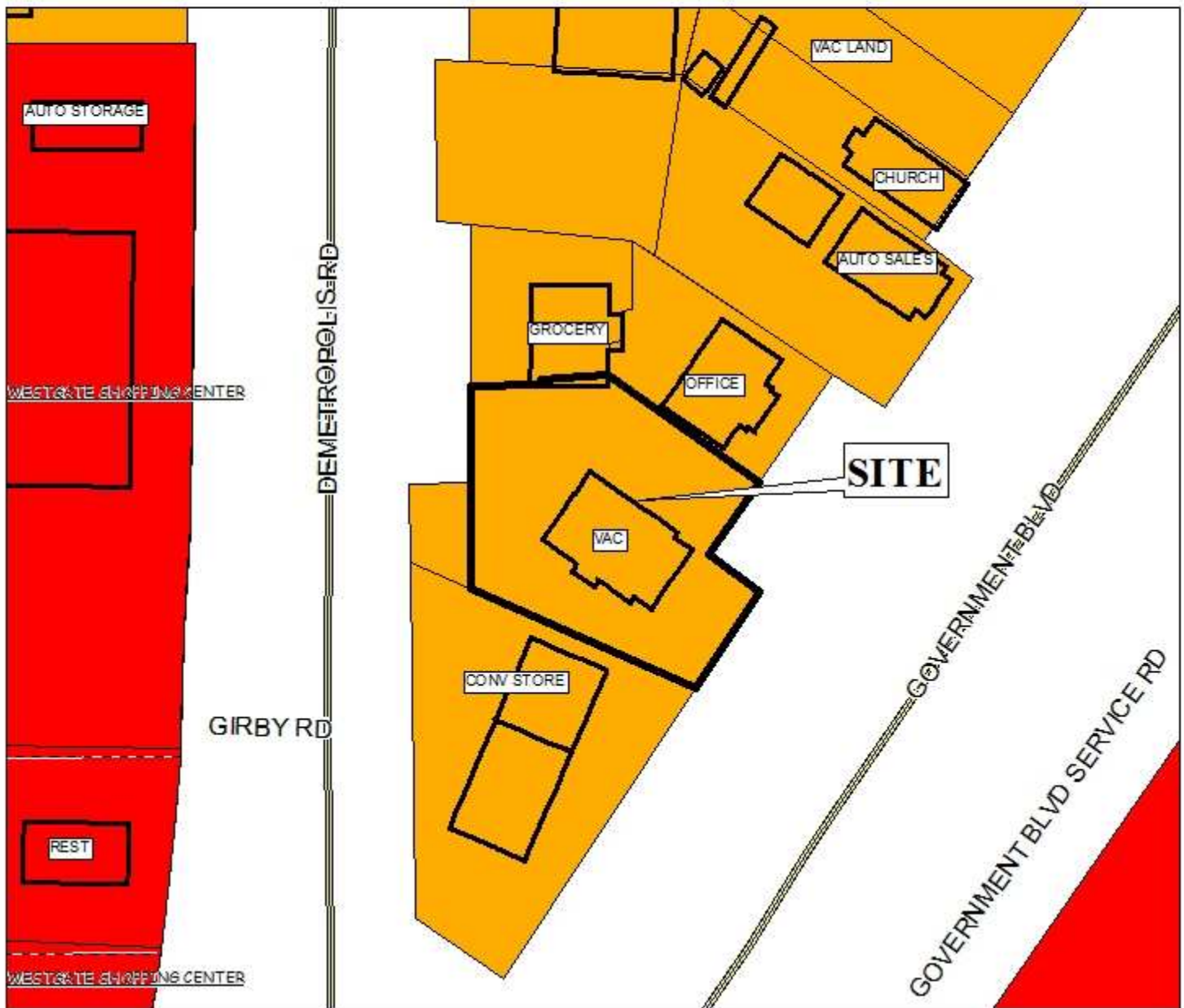
APPLICATION NUMBER 5910 DATE August 4, 2014

APPLICANT Don Williams

REQUEST Use Variance



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by 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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