

**BOARD OF ZONING ADJUSTMENT  
STAFF REPORT****Date: September 8, 2014****CASE NUMBER**

5915

**APPLICANT NAME**

Gary D.E. Cowles

**LOCATION**1757 Government Street  
(Southwest corner of Government Street and Weinacker Avenue)**VARIANCE REQUEST****USE:** To allow a banquet venue in a B-1, Buffer Business District.**Access/Maneuvering:** To allow access and maneuvering within a right-of-way.**Tree Planting:** To allow no additional tree plantings.**ZONING ORDINANCE  
REQUIREMENT****USE:** The Zoning Ordinance requires a minimum of a B-2, Neighborhood Business District for the operation of a banquet venue.**Access/Maneuvering:** The Zoning Ordinance requires all parking and maneuvering spaces on private property.**Tree Planting:** The Zoning Ordinance requires full compliance with tree planting requirements.**ZONING**

B-1, Buffer Business District

**AREA OF PROPERTY**

1 Acre

**ENGINEERING  
COMMENTS**

No objection to utilizing the existing alley for access/maneuvering for the handicapped parking spaces. If approved, a ROW Permit will need to be submitted to the Engineering Department for improvements to the alley where it intersects Weinacker Ave.

**TRAFFIC ENGINEERING  
COMMENTS**

Traffic Engineering has no objection to the access/maneuvering variance. If the alley were to be vacated in the future, the maneuvering for the handicap spaces could take place within the property limits. At that time, the parking aisles

and the driveway could be modified to also be contained within the site. Verify that ADA requirements for a van accessible space have been met as needed for this site.

## **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.

## **URBAN FORESTRY**

### **COMMENTS**

Full compliance with landscaping and tree requirements of the Zoning Ordinance to be coordinated with Urban Forestry.

## **CITY COUNCIL**

### **DISTRICT**

District 2

### **ANALYSIS**

The applicant is requesting Use, Access/Maneuvering, and Tree Planting Variances to allow a banquet venue with parking nose-in/back-out within a right-of-way, with no additional tree plantings in a B-1, Buffer Business District; the Zoning Ordinance requires a minimum of a B-2, Neighborhood Business District for the operation of a banquet venue with all parking and maneuvering spaces on private property, and full compliance with tree planting requirements.

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: **USE:** *The Pillars building located at 1757 Government Street Mobile, AL 36604 was previously used as a fine Dining facility. The property is zoned B-1. The owner requests a use variance so that the property can be utilized as a banquet venue (a B-3 use). The building is 5,897 SF and will have 60 onsite parking spaces. The property will employ 3-6 employees. The hours of operation will be dependent on the customer but the building will be available for use seven days a week.*

**Access/Maneuvering:** *The owner requests a site variance so that handicap parking will be allowed to back up into the alley for departure. The alley is a dead end alley and is located on the south side of the property (alley is shown in attached pictures and on site*

*plan). The use of the alley will provide for more green space on the site. The owner could add hardscape asphalt if required.*

**Tree Planting:** *The owner requests a tree variance so that no additional trees will be required. The existing trees on the property provide adequate shade and cover for the property. Since additional trees cannot be planted in the ROW, there is little space to plant the required additional trees and no green space along Weinacker Avenue or the alleyway. If additional trees are planted in the available green space, they will have to compete for canopy space with the much larger existing trees and likely won't survive.*

Given the preceding, it is important to note that the applicant **has not** clearly identified any hardships for this site nor presented sufficient evidence as listed previously in this report 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.

In regard to the Use Variance request, the site is within a B-1, Buffer Business District, and in accordance with Section 64-3.E.1 of the Zoning Ordinance, this district is designed to protect and encourage the buffer character of the districts by limiting the permitted uses to dwellings and uses of a semi-commercial nature. As such, the proposed use of a banquet venue would not be allowed by-right, according to Section 64-12. of the Zoning Ordinance; however, the Board has approved similar variances in the past associated with a restaurant-type use on this site.

The Board approved a Use Variance to allow a restaurant in a B-1, Buffer Business district in July, 1976. In May, 1978, the Board approved Use and Side Yard Variances to allow the expansion of the restaurant within 5-feet of the side property line. Most recently in November, 2004, the Board approved Use, Front Yard Setback and Parking Ratio Variances to allow the expansion (1,330 square foot courtyard) of the existing restaurant, 19' from the front property line with 59 parking spaces, contingent upon the provision of frontage trees along Weinacker Avenue and Government Street (taking into account the existing tree canopy along Government Street).

It is important to note that although the site is zoned B-1 and has a commercial history dating back to at least 1976, permits were requested in 2011 and 2012 which appears to have resulted in the conversion of the existing commercial building into a single-family residence. As such, proper permits would be **required** to convert the "single-family residence" into a commercial, code-compliant building, if the current variance request is approved.

As it relates to the Access/Maneuvering Variance request, the applicant states that the existing alley is a "dead end alley"; however, vehicular access is not fully obstructed from Houston Street as there is an existing, although substandard, curb-cut which could allow for potential access and utilization of the alley. It should be noted, however, that the alley is illegally blocked on the subject site with a cable and post to prevent access from Houston Street. Thus the cable should be removed from the public right-of-way of the alley.

No van accessible space or accessible route is depicted from the accessible parking spaces to the building and, although the Planning Division does not enforce accessible parking or the

Americans with Disability Act, certain aspects of ADA do impact site design. As such, any revised site plan or building plan should depict design compliance with the requirements of the ADA, in accordance to the applicable building code section 1106 (and 2010 ADA Standards for Accessible Design), at the time of permitting.

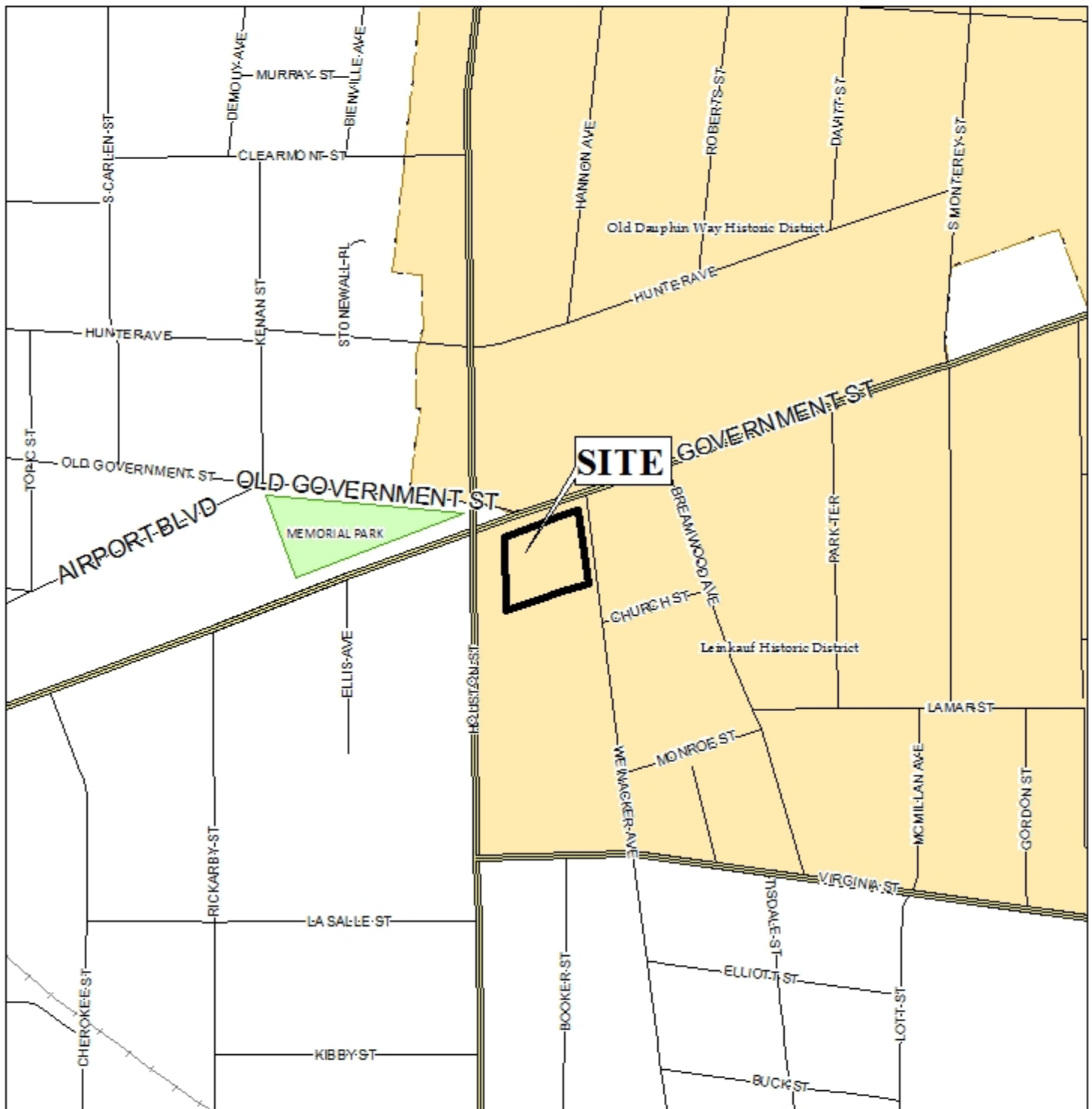
In reference to the Tree Planting Variance request, it does not appear that sufficient information regarding tree calculations were provided by the applicant. It should still be pointed out the Condition of Approval from the 2004 variance approval required the provision of frontage trees along Weinacker Avenue and Government Street and it appears that trees along Weinacker Avenue may have been planted on the site; however, the site plan does not depict these trees, which causes concern from Staff that the applicant may be proposing to remove the existing trees. In addition, it appears the applicant may also be proposing to remove an existing 30" Live Oak Tree near the southern lot line to make way for the widening of the existing alley way. The applicant should keep in mind that a Tree Removal permit may be needed if any 24" or larger Live Oak Tree has been or is proposed to be removed on the development site before Land Disturbance or Building permits can be issued.

Overall, the site plan does not appear to depict any residential buffering as required in Section 64-4.D.1. of the Zoning Ordinance where the site abuts residentially used property, specifically along the entire eastern lot line and a portion of the southern lot line. Also, it appears there are 2 proposed accessible spaces near the northern portion of the existing asphalt area which do not appear compliant with the design requirements of the ADA, as mentioned previously in this report. In addition, no curbing or bumper stops are depicted for the proposed parking spaces along the eastern lot line, as would typically be required. It appears the site plan lacks full commercial compliance and, therefore, any revised site plan or building plan should illustrate full commercial compliance with the Zoning Ordinance and applicable building codes in regards to site improvements.

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

- 1) Granting the requested variances will be contrary to the public interest in that it is contrary to Sections 64-3.E.1. and 64-12. of the Zoning Ordinance regarding the permitted uses within a B-1, Buffer 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, that a literal enforcement of the provisions of the chapter will not appear to result in an unnecessary hardship; 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 requested variances because there are no proposed site improvements regarding tree compliance, no proposed commercial buffering as required in Section 64-4.D.1. of the Zoning Ordinance where the site abuts residentially used property, the alley is illegally blocked, and the fact that most of the near-by properties in the immediate vicinity appear to have been developed in accordance with the Zoning Ordinance.

# LOCATOR MAP



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REQUEST Use, Access/Maneuvering, and Tree Planting Variances



# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by miscellaneous land use.

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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





# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING

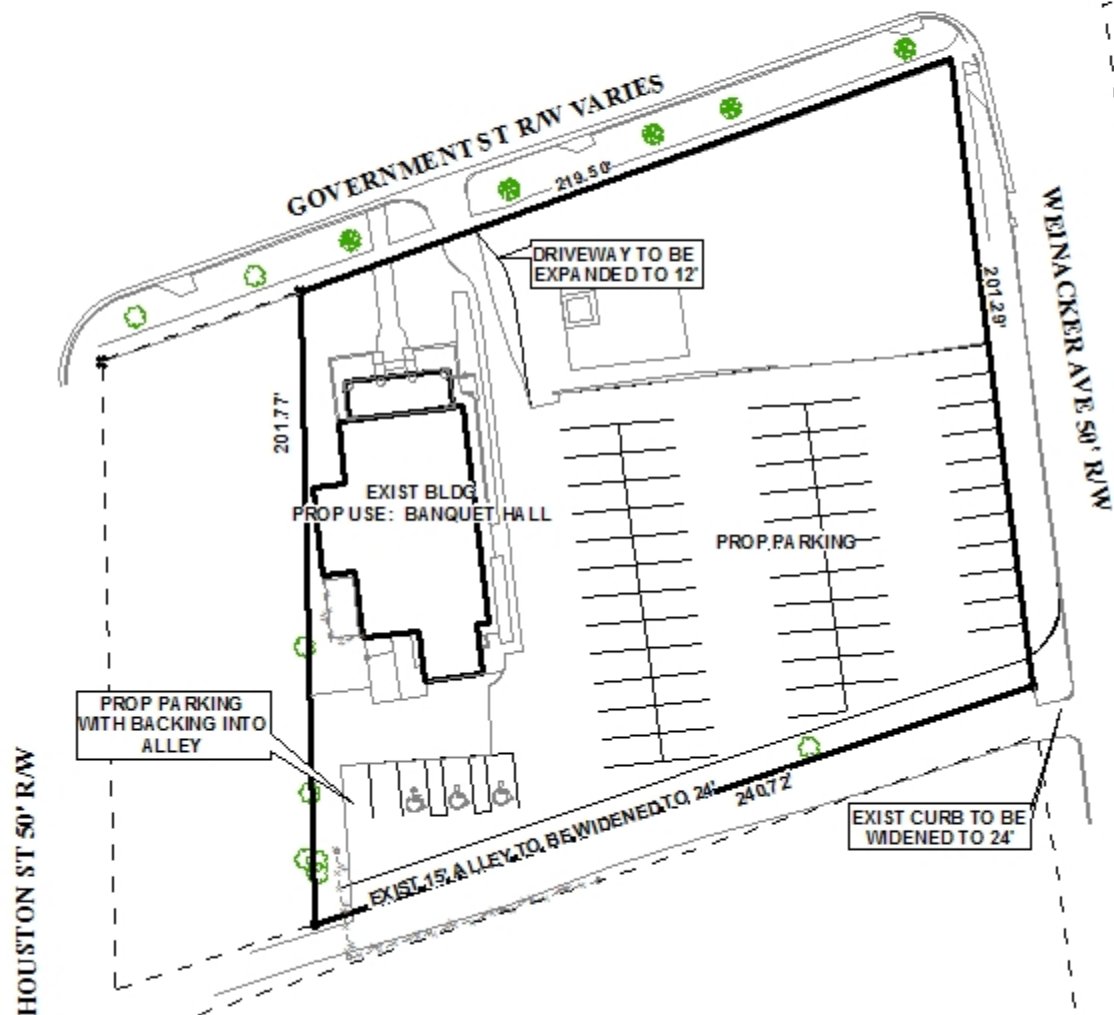


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# SITE PLAN



The site plan illustrates the existing building, proposed parking, and existing alley to be widened.

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