

**BOARD OF ZONING ADJUSTMENT  
STAFF REPORT****Date: December 1, 2014****CASE NUMBER**

5935

**APPLICANT NAME**

Angela Nicholson

**LOCATION**1300 Dr. Martin Luther King Jr. Avenue  
(Northwest corner of Live Oak Street and Dr. Martin  
Luther King Jr. Avenue)**VARIANCE REQUEST****PARKING RATIO:** To allow no parking spaces.**TREE PLANTING AND LANDSCAPING AREA:** To  
allow no tree plantings or landscaping.**ZONING ORDINANCE  
REQUIREMENT****PARKING RATIO:** The Zoning Ordinance requires 24  
parking spaces.**TREE PLANTING AND LANDSCAPE AREA:** The  
Zoning Ordinance requires 12% of the site being  
landscaped with 60% of that along street frontages, 4  
frontage trees, and 4 perimeter trees and one parking tree.**ZONING**

B-2, Neighborhood Business District

**AREA OF PROPERTY**

4,258± Square Feet

**ENGINEERING  
COMMENTS**

No comments.

**TRAFFIC ENGINEERING  
COMMENTS**

Although parking currently takes place within the outside travel lane of Dr. Martin Luther King Jr Ave in this area, it is not marked or signed as legal parking. Regarding the parking on a side street, Live Oak Street appears to be approximately 24 feet in width. According to City Code Sec. 61-264 (a), the City Traffic Engineering is authorized to restrict parking upon one side of a street as indicated by such signs when the width of the roadway does not exceed 30 feet. In addition, parking prohibitions can also be enforced without signage within 30 feet of an approach to a stop sign or traffic signal (City Code Sec. 61-273 (a)(7)).

**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.

**CITY COUNCIL****DISTRICT**

District 3

**ANALYSIS**

The applicant is requesting Parking Ratio, Tree Planting and Landscaping Area Variances to allow a 3,232 square foot commercial/restaurant building with no parking spaces and no tree plantings or landscaping in a B-2, Neighborhood Business District; the Zoning Ordinance requires 24 parking spaces, and 12% of the site being landscaped with 60% of that along street frontages, 4 frontage trees, and 4 perimeter trees and one parking tree.

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 purpose of this letter is to request a parking, landscape, and tree planting variance due to hardship. The existing property, at the above referenced address, does not provide sufficient space for parking on site. However, on street parking is available on a side street. Also, the existing property does not allow for landscaping or trees as well.*

It should be pointed out that it appears that the existing 3,232 sf building has been on the site since at least the 1960s and that the property has had commercial uses with a parking ratio of 1:300 (*requiring 11 parking spaces*), for which there is documented history of non-conforming parking due to the lack of available space for onsite parking as the existing building nearly encompasses the entire lot. A B-2 district allows up to 50% site coverage; however, it appears that the site currently has 76%± site coverage. Nevertheless, this could be perceived as a genuine hardship to the property.

The applicant proposes a 1,708 sf billiard hall with on premise alcohol and food consumption, which would change the parking ratio for this portion of the building from 1:300 sf to 1:100 sf, thus requiring a combined total of 24 onsite parking spaces and subsequently increasing the number of required spaces. As a billiard hall is allowed by-right within a B-2 district, the applicant was advised that a pool hall with no food or alcohol consumption would not require

variance approval to operate as the ratio could remain 1:300, given the small size of the suite and limited number of proposed billiard tables.

It should be noted that although the site is zoned B-2 and abuts other commercially zoned properties, the site is adjacent to three (3) churches along the eastern lot line and across Live Oak Street and Dr. Martin Luther King Jr. Avenue, and Franklin Primary Health Clinic is also located across Dr. Martin Luther King Jr. Avenue. With this in mind, Staff has concern that the operation of a billiard hall with on premise alcohol consumption and the lack of available parking may have an adverse effect on the surrounding area.

With regards to the Tree Planting and Landscape Area Variance request, the site is roughly 4,258± sf and would require 12% of the site being landscaped, with 60% of that along street frontages, 4 frontage trees, 4 perimeter trees and one parking tree. As the site is already built-out with 76%± building site coverage, plus other impervious paved areas, the provision of any trees and landscaping would not appear to be reasonable due to a lack of available green space.

There are special conditions which exist with this property that would make the literal enforcement of the B-2 district regulations a hardship, namely that the site is developed with a commercial building that encompasses nearly the entire lot. However, the site has operated with a non-conforming parking situation for years, but only with uses that required a 1:300 sf parking ratio. As stated in the Traffic Engineering comments, parking is already occurring in a travel lane of Dr. Martin Luther King, Jr. Avenue, and on-street parking should also not be allowed to occur on Live Oak Street within 30 feet of its intersection with Dr. Martin Luther King, Jr. Avenue. The proposed use will increase the demand of parking, yet no additional parking will be provided, thus on-street parking issues may be exacerbated if the parking ratio request is granted.

It should be pointed out that as the building appears to have existed since the 1960s, there may be building and/or fire code-related issues present. The conversion of the store use to a different occupancy may require variety of building and fire code improvements.

## **RECOMMENDATION:**

### **PARKING RATIO**

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

- 1) Approving the variance request will be contrary to the public interest due to the fact that not providing the additional off-street parking needed to address the increased parking required by the proposed use will exacerbate existing on-street parking issues and congestion, and may affect the provision of emergency services in the area due to increased on-street parking;
- 2) While special conditions exist, in that the site has no room for off-street parking, the applicant has not shown that maintaining a use that will not require additional parking beyond the existing non-conforming status would result in unnecessary hardship; and

- 3) That the spirit of the chapter shall not be observed and substantial justice shall not be done to the surrounding neighborhood by granting the variance as the increased on-street parking that would none the less occur would in fact increase congestion and possibly reduce the ability of emergency vehicles to access the immediate vicinity.

#### **TREE PLANTING AND LANDSCAPE AREA**

Based upon the preceding, Staff recommends to the Board the following findings of fact for approval of the Tree planting and Landscape area variance:

- 1) Based on the fact that the building has existed on the site since at least the 1960s and there is little to no existing green space available due to the existing building and sidewalks, the variance will not be contrary to the public interest;
- 2) These special conditions exist, including the fact that the site is nearly entirely covered by the existing building and sidewalks, such that a literal enforcement of the provisions of the chapter will result in unnecessary hardship; and
- 3) That the spirit of the chapter shall be observed and substantial justice done to the applicant and the surrounding neighborhood by granting the variance as it will allow an existing building that has been part of the fabric of the community to continue to be available for commercial use.

The approval is subject to the following conditions:

- 1) Full compliance with all other municipal codes and ordinances, including any applicable building and fire codes.

# LOCATOR MAP



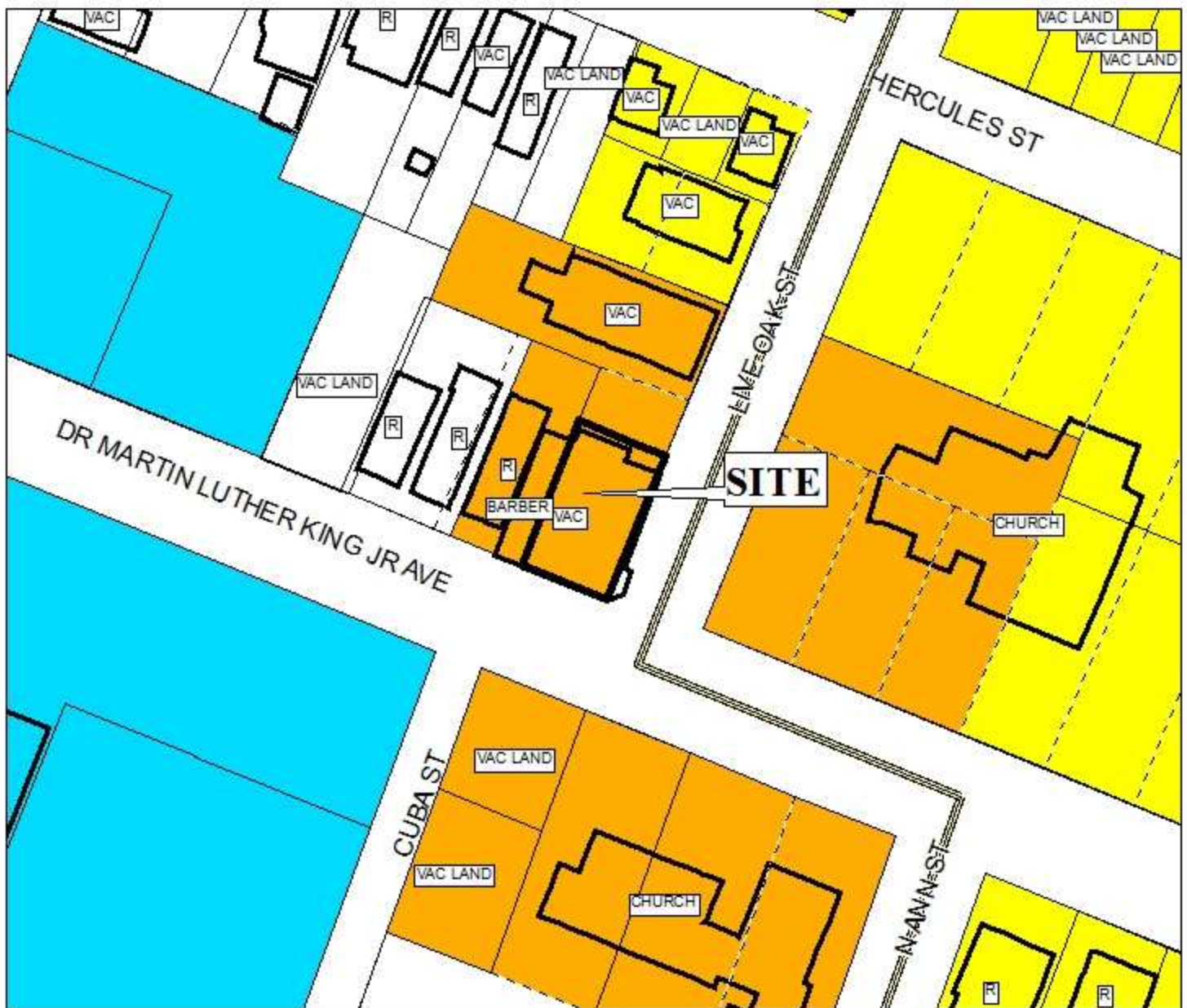
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APPLICANT Angela Nicholson

REQUEST Parking Ratio, Tree Planting and Landscaping Area Variances



# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by miscellaneous residential and commercial units.

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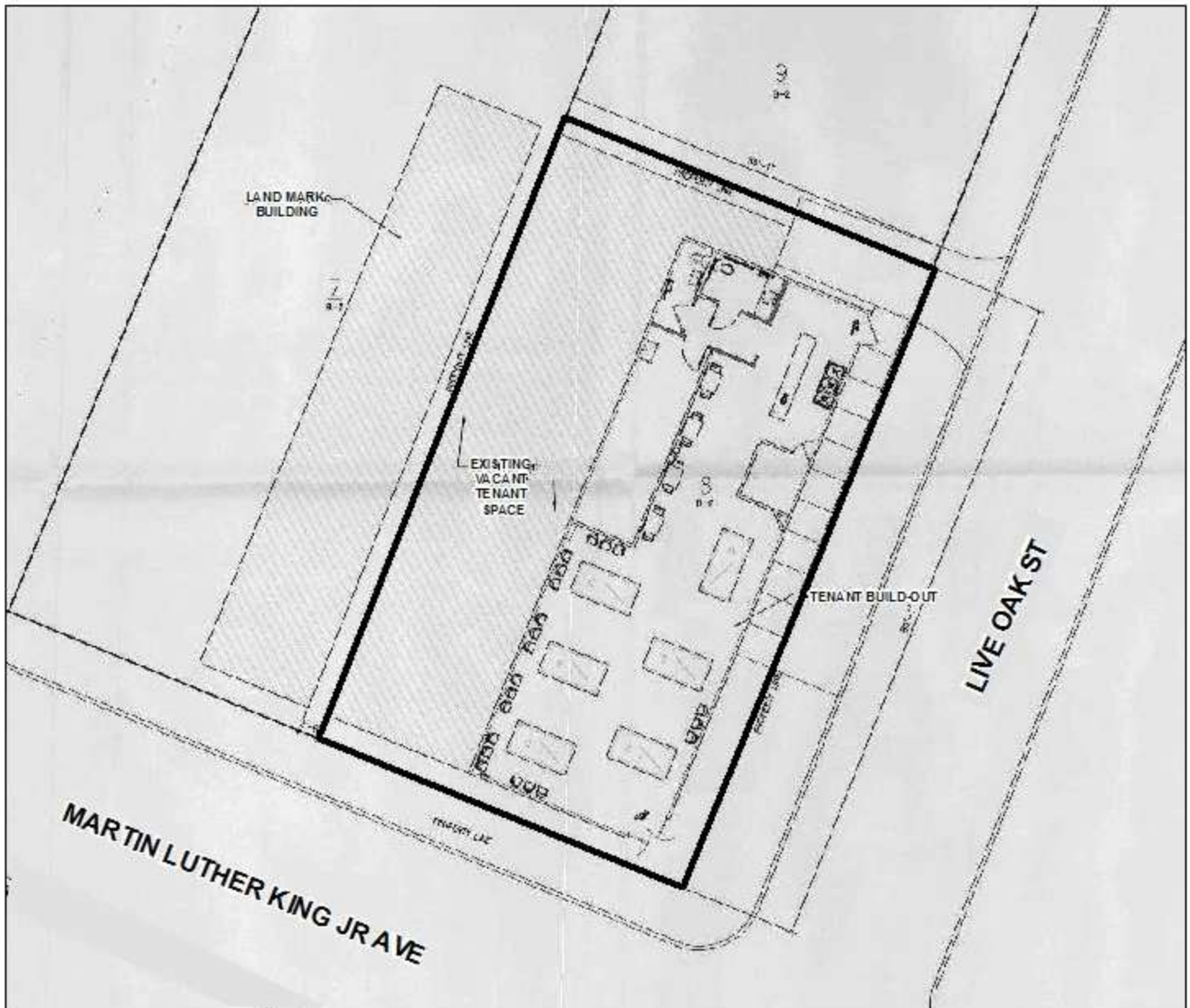
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## SITE PLAN



The site plan illustrates the existing building, and the vacant tenant space.

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