

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: March 14, 2011****CASE NUMBER**

5666

APPLICANT NAME

O'Charley's, Inc. / Store No. 402

LOCATION3649 Airport Boulevard
(Southeast corner of West I-65 Service Road South and
Western America Drive).**VARIANCE REQUEST****TREE PLANTING:** Tree Planting Variance to allow 0
overstory and 12 understory trees for an existing
commercial site in a B-3, Community Business District.**ZONING ORDINANCE
REQUIREMENT****TREE PLANTING:** The Zoning Ordinance requires a
minimum of 25 overstory trees (18 frontage and 7
perimeter) and 13 understory trees (7 perimeter and 6
parking) for a commercial site in a B-3, Community
Business District.**ZONING**

B-3, Community Business

AREA OF PROPERTY

1.4± Acre

**TRAFFIC ENGINEERING
COMMENTS**

No comments.

**CITY COUNCIL
DISTRICT**

District 5

ANALYSIS

The applicant is requesting a Tree Planting Variance to allow 0 overstory and 12 understory trees for an existing commercial site in a B-3, Community Business District; the Zoning Ordinance requires a minimum of 25 overstory trees (18 frontage and 7 perimeter) and 13 understory trees (7 perimeter and 6 parking) for a commercial site in a B-3, Community Business District.

The site was developed in 1996 with 16 overstory frontage and 7 overstory perimeter trees planted, and a total of 20 understory trees planted. Two overstory trees were donated to the Tree Bank to make up for the frontage overstory tree shortage. Since that time all overstory trees except one frontage tree have been removed from the site either by storm damage or by deliberate act.

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.

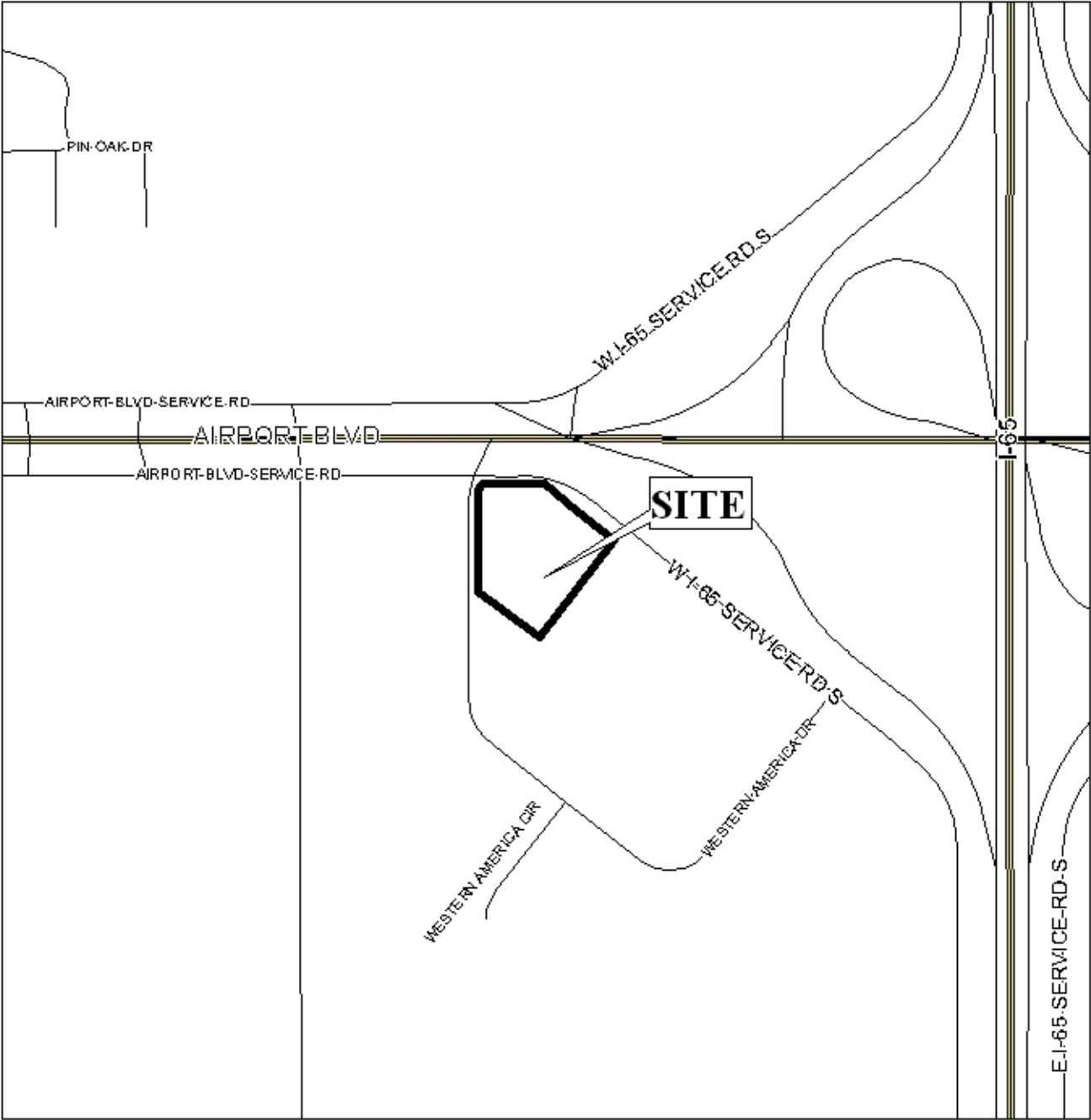
The landscaping and tree planting requirements of the Zoning Ordinance are meant to, among other things, enhance the ecological and aesthetic environments of the City of Mobile by promoting a pleasant appearance and character, provide shade, and reduce the effects of noise, glare and other objectionable activities generated by some land uses, with emphasis on vehicular use areas. Due to this site's close proximity to Airport Boulevard and Interstate 65, the applicability of that reasoning is obvious. The site was originally developed with a tree planting schedule approved by Urban Forestry, and the Ordinance states that all landscaped areas shall be maintained by the owner of the property at all times and this shall include the prompt replacement of all dead or damaged landscaped material so as to ensure continued compliance with the Ordinance. Further, trees planted as required by the Ordinance become heritage trees and are protected.

No narrative was furnished to explain the reason for not replacing naturally damaged or destroyed trees or why other trees were deliberately removed. Also, there was no attempt to demonstrate that a literal enforcement of the Ordinance would create an undue hardship, and since the site was originally developed in compliance, a lack of hardship is clearly illustrated. The Board should consider this application for denial and the applicant should be required to restore the site to its originally-approved tree planting plan.

RECOMMENDATION:
for denial.

Based on the preceding, this application is recommended

LOCATOR MAP



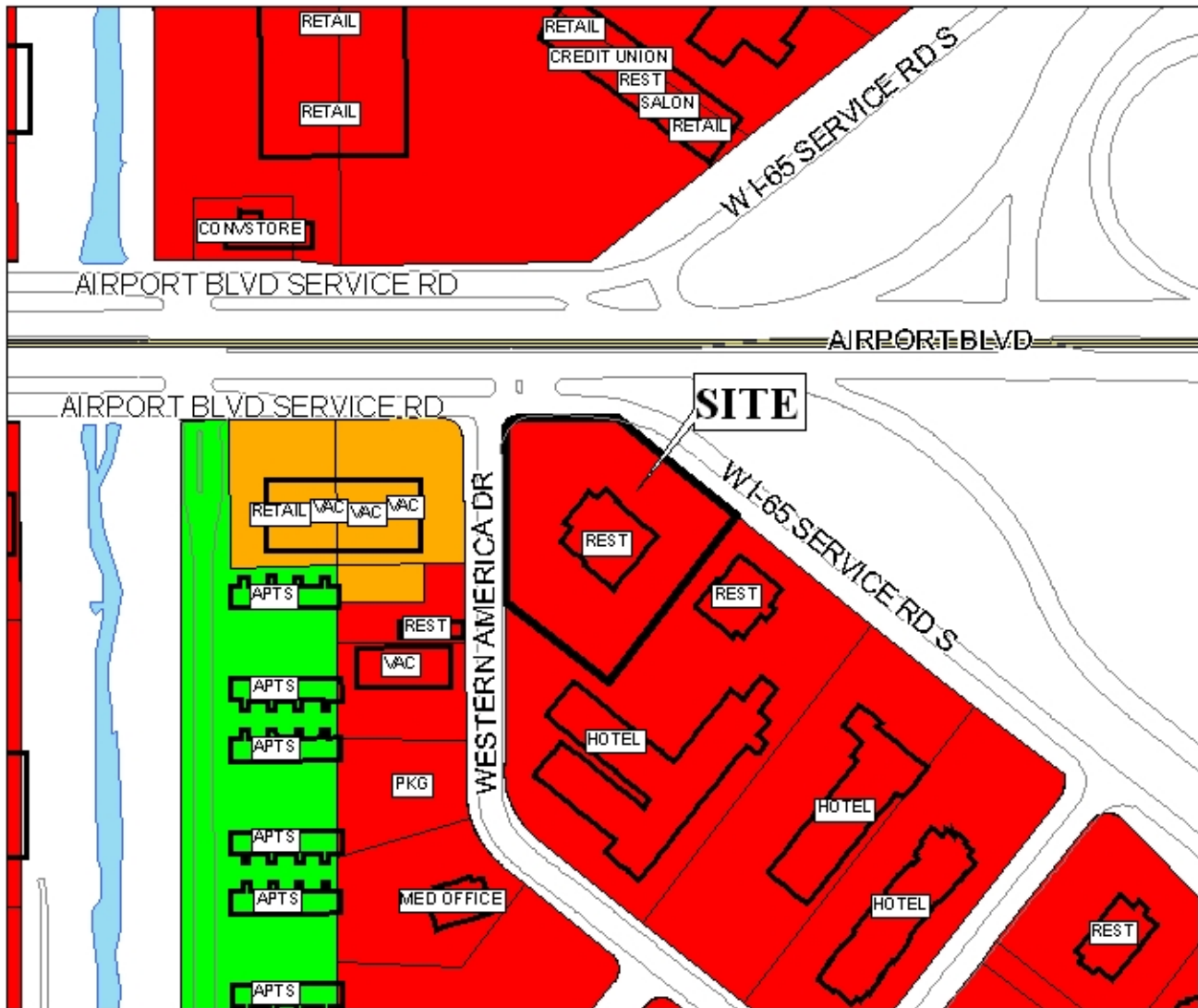
APPLICATION NUMBER 5666 DATE March 14, 2011

APPLICANT O'Charley's, Inc./Store No. 402

REQUEST Tree Planting Variance



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by commercial land use.

APPLICATION NUMBER 5666 DATE March 14, 2011

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REQUEST Tree Planting Variance

LEGEND

R-1	R-2	R-3	R-A	R-B	H-B	T-B	B-1	LB-2	B-2	B-3	B-4	B-5	I-1	I-2
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NTS

BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING

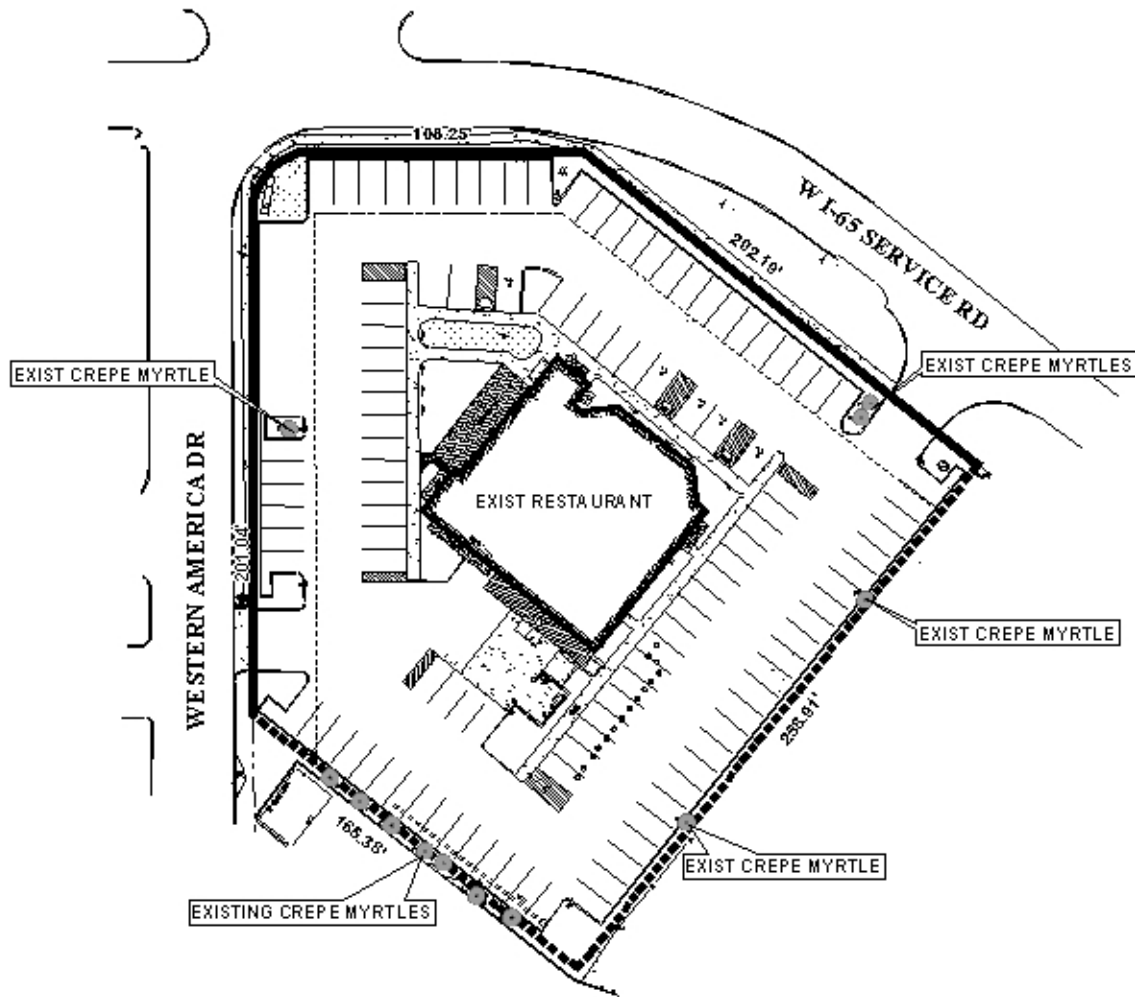


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SITE PLAN



The site plan illustrates the existing restaurant and existing trees.

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