

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT**

Date: June 3, 2013

CASE NUMBER

5837

APPLICANT NAME

5414 Old Shell Road LLC

LOCATION

5414 Old Shell Road
(North side of Old Shell Road, 120'± East of Cosgrove Drive)

VARIANCE REQUEST

PARKING SURFACE: Parking Surface Variance to allow gravel surfacing for parking and maneuvering area in a B-1, Buffer Business District.

**ZONING ORDINANCE
REQUIREMENT**

PARKING SURFACE: the Zoning Ordinance requires all parking and maneuvering areas to be paved with concrete or asphalt in B-1, Buffer Business Districts.

ZONING

B-1, Buffer Business District

AREA OF PROPERTY

26,000 square feet / 0.6± Acres

**CITY COUNCIL
DISTRICT**

District 7

**ENGINEERING
COMMENTS**

1. The proposed parking area will need to be surfaced as required by Mobile City Code, Chapter 64, Section 64-4. Any request for an Alternative Parking Surface shall be approved by the City Engineer and the Director of the Urban Development Department.
2. If the variance is approved for use as requested the applicant will be required to submit a Land Disturbance Permit Application package for the previous work that was not properly permitted.

**TRAFFIC ENGINEERING
COMMENTS**

No comments.

**URBAN FORESTRY
COMMENTS**

No comments.

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.

ANALYSIS

The applicant is requesting a Parking Surface Variance to allow gravel surfacing for parking and maneuvering area in a B-1, Buffer Business District; the Zoning Ordinance requires all parking and maneuvering areas to be paved with concrete or asphalt in B-1, Buffer Business Districts.

The applicant is requesting the parking surface variance to allow aggregate parking placed on the site prior to August 2006, when the current owner purchased the site, to remain. The applicant states that the aggregate parking is only used for overflow parking, when the paved parking area is full. The applicant additionally states that they were not aware that the existing gravel parking was placed without the appropriate approvals or permits on the site by the previous owner.

The applicant states that adjacent businesses to the West, along Old Shell Road, have gravel parking. This includes a real estate office, a retail store and a restaurant. They also state that the gravel on their site is not noticeable from Old Shell Road, and that it allows for better drainage of storm water, as the property slopes towards adjacent residences: paving the parking would increase the amount of water draining onto adjacent residential properties.

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 site was rezoned from R-1, Single Family, to B-1, Buffer Business, in 1986, however, it appears to have remained vacant until the site was developed in 1996-1997 for a new 4,192 square foot doctor's office with a paved parking lot with 14 parking spaces. According to the approved tree plan on file, the site appears to have originally been developed in compliance with the Zoning Ordinance, providing the minimum number of required parking spaces, and the minimum amount of trees and landscape area.

The applicant states that the aggregate parking area is used as "overflow" parking only, yet observations by staff and aerial photos show that the gravel parking area is used even when the paved parking area is empty. It would appear, therefore, that the gravel parking area is used by employees as their normal parking location.

Regarding storm water runoff if the aggregate parking area were to be paved, the site should have provided some level of storm water detention when originally developed. Since aggregate is also considered a partially impervious area, additional storm water detention may be required in order to comply with Engineering Department regulations. Thus storm water detention compliance will be required for the existing aggregate surface or for any paving, if approved by the Board.

The applicant states that adjacent businesses to the West, along Old Shell Road, also have aggregate parking. Each of these properties, however, were existing single family homes that were converted to commercial uses, versus new construction on a vacant lot, as is the case with the site in question.

The adjacent real estate site was converted from a residence after a variance was approved in 1977. In 1987, the current office owners rezoned the site from R-1 to B-1. In 1989, they applied for a surface variance, but the request was denied by the Board. Additional pavement has been added to the site since the surface variance request was denied.

The next business to the West with aggregate parking, across Cosgrove Drive, was converted from a residence after a variance was approved in 1973. The property was finally rezoned from R-1 to B-2, Neighborhood Business, in 1980.

The final business with aggregate parking referenced by the applicant, the barbecue restaurant, was converted from a residence after a variance was approved in 1973. The property was finally rezoned from R-1 to B-2 in 1980.

While the referenced sites may have aggregate parking, some level of non-conforming surfacing could be considered expected given the original date that their respective variances were granted, and given the lack of any site improvements that have been made to two of the three sites since their conversion to commercial uses. Additionally, as previously stated, each of the referenced sites were single family residences that were converted to commercial uses, versus the site at hand, which was purposely built as a commercial use on an undeveloped site in 1996-1997.

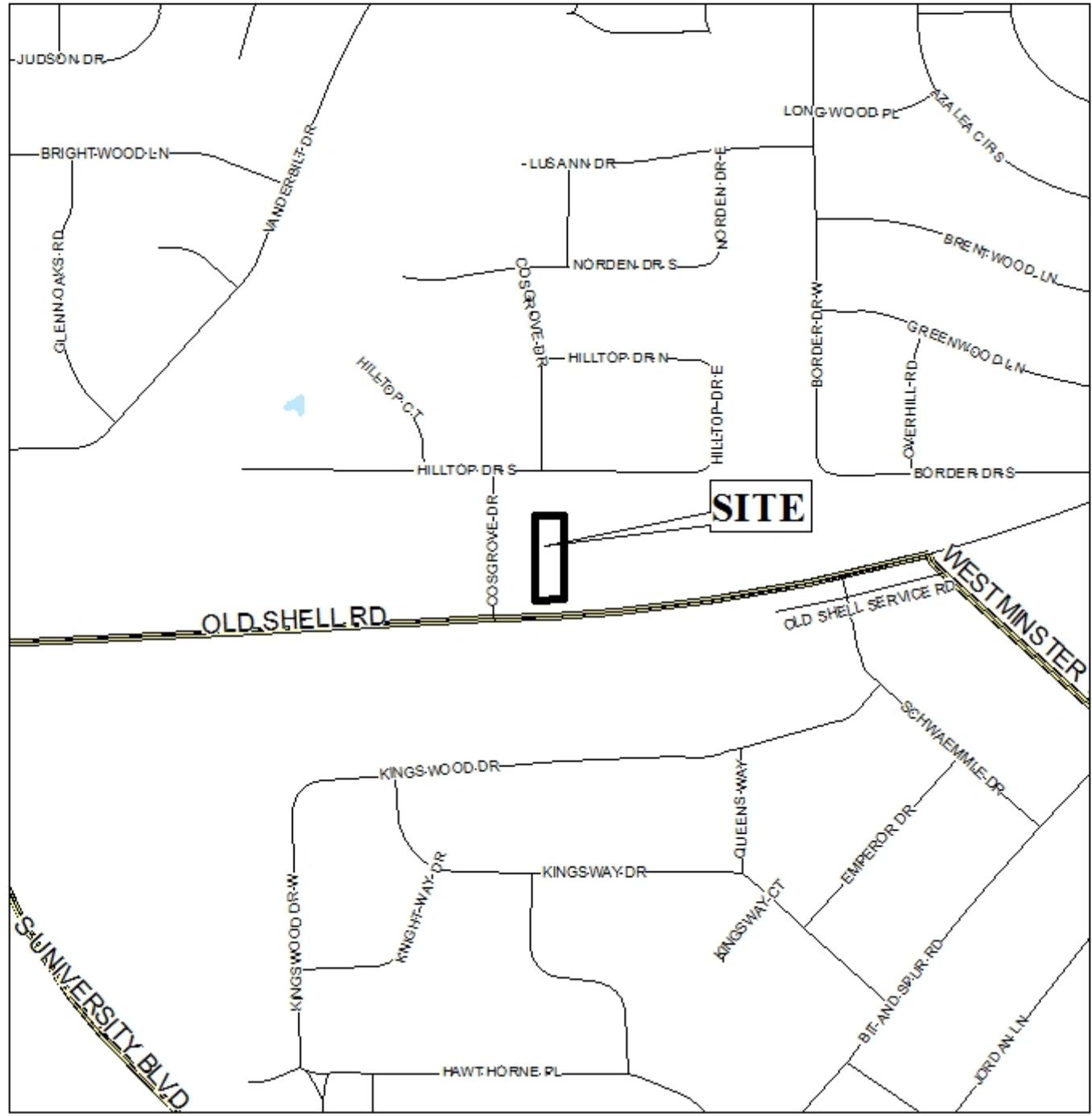
Access to the aggregate parking area is by a 10-foot wide drive. The parking area itself is 30 feet wide, thus leaving room for a 12-foot wide access aisle and 18-foot long parking spaces; access is substandard, and allows only for one way traffic. If all of the aggregate parking spaces are full, the only option for a vehicle entering the area is either to back out, or to continue to the grassy area behind the building to turn around. Aerials from 2010 clearly show vehicles parked on the grassy area behind the building and on the aggregate surface.

Finally, since development of the medical office in 1997, it appears that a dumpster has been placed in a required parking space, and trees counted for credit on the approved tree plan have been removed. The site, therefore, does not appear to now comply with the requirements of the Zoning Ordinance as it relates to trees nor as it relates to the location and screening of dumpsters. Thus, if the Board were to consider approving the surface variance as requested, the applicant would still be required to bring the site back into compliance for tree, dumpster and storm water detention issues.

RECOMMENDATION: Based on the preceding, this application is recommended for Denial for the following reasons:

- 1) The variance is contrary to the public interest, in that new commercial development is expected to comply with the requirements of the Zoning Ordinance;
- 2) There are no special conditions that exist such that a literal enforcement of the Ordinance will result in an unnecessary hardship; and
- 3) The variance request does not observe the spirit and intent of the Ordinance, as the site appears to no longer be in compliance with other aspects of the Zoning Ordinance.

LOCATOR MAP



APPLICATION NUMBER 5837 DATE June 3, 2013
APPLICANT 5414 Old Shell Road LLC
REQUEST Parking Surface Variance



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is primarily surrounded by residential units.

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LEGEND																NTS
	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	



**BOARD OF ADJUSTMENT
VICINITY MAP - EXISTING ZONING**

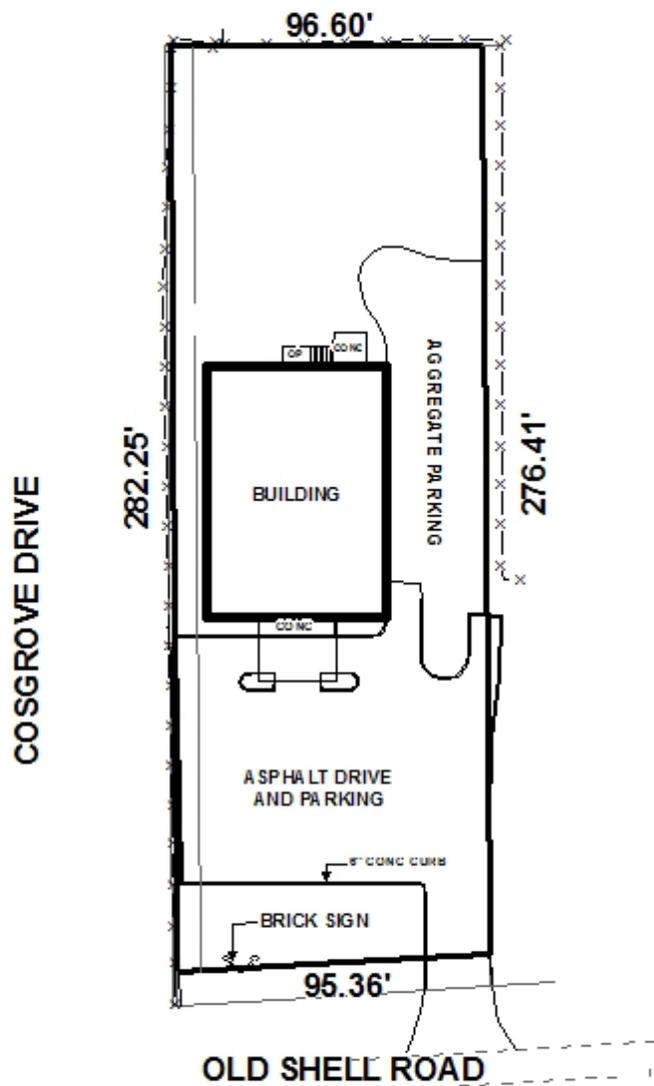


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SITE PLAN



The site plan illustrates the building and aggregate parking.

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