

**HOLDOVER**

APPLICATION NUMBER

**5547**

A REQUEST FOR

**SCREENING AND SIGN VARIANCES TO ALLOW A  
COMMERCIAL GRADE ALUMINUM “WROUGHT IRON”  
STYLE FENCE ALONG THE SIDE PROPERTY LINES OF  
A CAR WASH, TO ALLOW 126.38 SQUARE FEET OF  
TOTAL SIGNAGE AND TO ALLOW TWO  
FREESTANDING SIGNS ON A SINGLE-TENANT SITE;  
THE ZONING ORDINANCE REQUIRES VEHICLES TO  
BE SCREENED FROM VIEW WITH A 3’-5’ TALL  
EVERGREEN HEDGE AND/OR LANDSCAPE BERM IN B-  
2 OR B-3 DISTRICTS (PRIVACY FENCE MAY BE USED  
ALONG THE SIDE AND REAR PROPERTY LINES), THE  
MAXIMUM OF 64 SQUARE FEET IS ALLOWED ALONG  
THE GOVERNMENT STREET CORRIDOR AND ALLOWS  
ONLY ONE FREESTANDING SIGN FOR A SINGLE-  
TENANT DEVELOPMENT**

LOCATED AT

**1862 GOVERNMENT STREET**

(North side of Government Street, 564’ West of Old Government Street, extending North  
to Airport Boulevard)

APPLICANT/OWNER

**ULTRA CAR WASH – MOBILE MIDTOWN, LLC**

**BOARD OF ZONING ADJUSTMENT**

AUGUST 2009

The applicant is requesting Screening and Sign Variances to allow a commercial grade aluminum “wrought iron” style fence along the side property lines of a car wash, to allow 126.38 square feet of total signage and to allow two freestanding signs on a single-tenant site; the Zoning Ordinance requires vehicles to be screened from view with a 3’-5’ tall evergreen hedge and/or landscape berm in B-2 or B-3 districts (privacy fence may be used along the side and rear property lines), the maximum of 64 square feet is allowed along the government street corridor and allows only one freestanding sign for a single-tenant development.

Instead of a wooden privacy fence, the applicant is requesting to erect an iron fence for three reasons. First, both adjacent property owners have expressed concern that a solid wooden fence would obstruct the visibility of their locations. Secondly, the applicant has expressed concern for the appearance of a wooden fence after it ages. Finally, the site is in an area that has been subject to various burglary crimes. Property owners, including the applicant, are concerned that a solid fence would create a potential hiding place for criminals. The applicant states that, during construction, burglars were able to hide between the two adjacent building walls and robbed an adjacent property owner. The applicant has also submitted letters from the adjacent property owners supporting the proposed iron fence, in place of the wooden privacy fence, for the same reasons.

The applicant is also asking for a sign variance. The site has frontage on Airport Boulevard and Government Street, and the applicant wishes to advertise on both; however, the size restrictions of the Government Street Corridor, with regard to signage limits the site to a total of 64 square feet. The applicant also wishes to have freestanding signage on both frontages. The applicant states that, as they are a retail business relying largely on impulse purchases, the signage limitation places a considerable hardship on the life expectancy of the business.

The Zoning Ordinance states that no variance shall be granted where economics are the basis for the application. Furthermore, the applicant must present 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 purpose of the Sign Regulation Provisions is to promote the economic well-being of the entire Mobile community by creating a favorable physical image, to afford the business community an equal and fair opportunity to advertise and promote products and services, and to protect the right of the citizens to enjoy Mobile's natural scenic beauty.

With regard to the applicant's request, no information/evidence was provided substantiating that the alleged crimes ever took place. Additionally, the dilemma faced by the applicant regarding burglars hiding between two building walls is one that should have been considered during design. Nevertheless, the purpose of screening is to protect not only the adjacent properties from encroaching business activity, but also to preserve the aesthetics of the immediate vicinity. Furthermore, arguing that the privacy fence would block visibility of the business does not illustrate a justifiable hardship, but rather an economic disadvantage. In any event, however, the privacy fence would be no higher than 3' within the 25' setback from the rights-of-way, which should more than provide enough visibility for "impulse purchases."

With regard to signage, the site, indeed, fronts both Airport Boulevard and Government Street; however, the site is part of the Government Street Corridor, which is strictly regulated by the Mobile Historic District Overlay and limited to a maximum of 64 square feet (the applicant is requesting approximately 126 square feet). More so, the applicant is also requesting an additional freestanding sign, which exceeds the sign allowance of any site in the city, regardless of location. As stated previously, the sign ordinance is in place, not only to protect aesthetics, but also to afford businesses equal and fair opportunities to advertise and promote products and services. In 1995, the Board denied a similar request at the corner of Dauphin Island Parkway and Government Street (also within the Government Street Corridor), which is less than a quarter mile from the subject site. Thus, the Board should be careful in making any decision that could be considered arbitrating or capricious.

The applicant failed to illustrate that a literal enforcement of the Ordinance would result in an unnecessary hardship.

***Revised for the August 3<sup>rd</sup> meeting:***

*This application was held over from the Board's scheduled July meeting due to a lack of quorum.*

**RECOMMENDATION 5547****Date: August 3, 2009**

Based on the preceding, this application is recommended for denial.