

APPLICATION NUMBER

5096

A REQUEST FOR

**ADMINISTRATIVE APPEAL TO DETERMINE IF THE
USE OF ADDITIONAL EQUIPMENT AND ACTIVITIES
ARE AN EXPANSION OF A LEGAL NON-CONFORMING
USE**

LOCATED AT

3959 HIGGINS ROAD

(South side of Higgins Road, 178' ± East of Clemson Drive)

APPLICANT/AGENT

DOUGLAS L. ANDERSON

OWNER

RONALD J. WAHL

BOARD OF ZONING ADJUSTMENT

FEBRUARY 2002

The applicant is requesting an Administrative Appeal to determine if the use of additional equipment and activities are an expansion of a legal non-conforming use.

The applicant states the permanent improvements on the subject property include a one story, concrete block, rectangle shaped building used as an office and classrooms, and behind that building, a one story, metal storage building. The other improvements are not permanent, consist of items such as a platform/deck, hoist, boat, and covered picnic area. The applicant further states that the improvements are used by the Sea School of Mobile, which is a Coast Guard approved training facility for crew boat personnel. The applicant states that the property has been used in the same manner for over 20 years.

The applicant also states that the Urban Development Department has issued a citation claiming the new additions to the property violate the non-conforming status of the property as it relates to the Zoning Ordinance of the City of Mobile, and the additions to the property do not increase the size or use of the property, and does not extend the life of the non-conforming use. The school will continue to operate exactly as it has over the last 20 years, teaching the same type of classes, however, now using different types of equipment. As the applicant states the size of the school will not increase as Coast Guard regulations restrict each class to 73 students, no additional classes will be added and the number of students will not be increased.

The applicant was issued a Notice of Violation in December 2001 for an expansion of a nonconforming use in an R-1, Single-Family Residential District. The applicant moved additional equipment to the site that was not originally included in the nonconforming use.

This office has received several complains from adjacent residential property owners stating that at certain times of the week the residents can not enjoy the peacefulness of their homes because of excessive smoke and noise from the industrial activities taking place at this site. The smoke and noise are from the setting of a fire so as the students can practice putting this fire out. We can imagine how much noise can come from several students running around and screaming orders on how to successfully put a fire out.

The purpose of allowing non-conforming use to continue is not to exempt uses from the Zoning Ordinance but to bring them into compliance over time. As this particular site has been allowed nonconforming use status, this allows the property to be used at the same level as it was used prior to the annexation of this property into the City of Mobile. The right that allows a nonconforming use to continue it based on the premise of at some point in time this property will not be able to sustain this continued nonconforming use without expansion or additions to this same property. In addition, if equipment is continually added and replaced how will these non-conforming uses ever amortized in this R-1, Single-Family Residential District.

While the applicant has stated several reasons for the expansion of this non-conforming use, the Zoning Ordinance states in Section VII.A.2. "Expansion or Enlargement of Nonconforming Uses – A nonconforming use may be extended only within the premises on which such nonconforming use was located on the effective date of this ordinance or on the effective date of any amendment hereto by which the use became a nonconforming use. Premises as used in this subsection shall mean the building in which the use is being carried on and the accessory buildings, appurtenances, driveways, parking and loading spaces, and the curtilage thereof."

Several issues concerning this site should be brought up. First, that the applicant states the improvements are not permanent does not have any basis for allowing this expansion. The addition of the platform/deck, hoist, and boat does reflect an addition to this nonconforming use, which is not allowed under the Zoning Ordinance. Second, the applicant states that the expansion does not extend the life of the nonconforming use, the addition would allow the continuance and enhancement of services, hence the extension of the nonconforming use that would not be allowed otherwise. Third, as the applicant states the Coast Guard restricts each class to 73 students, the City was not informed of this restriction when this nonconforming use was recorded.

If this appeal is approved just think of the implications for all nonconforming uses Citywide. This would allow any expansion or additions to nonconforming uses that are presently not allowed.

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.

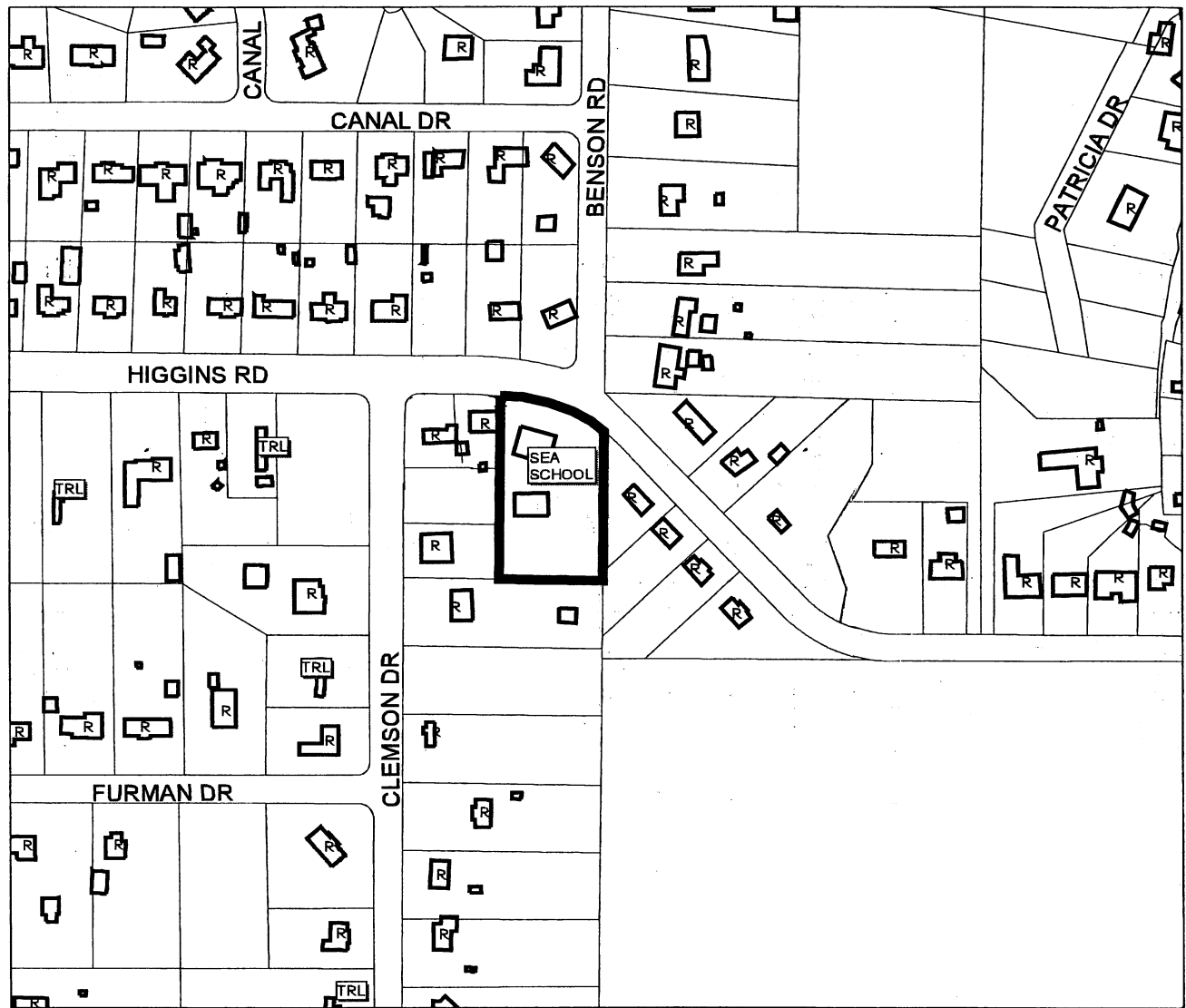
The applicant failed to illustrate that a literal enforcement of the Zoning Ordinance would result in an unnecessary hardship. It is simply the applicant's desire to expand a non-conforming use at this location.

RECOMMENDATION 5096

Date: February 4, 2002

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

BOARD OF ZONING ADJUSTMENT VICINITY MAP - EXISTING ZONING



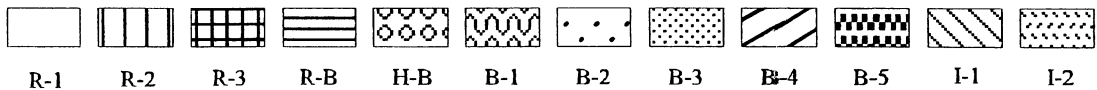
The site is surrounded by single family residential dwellings, with greenhouses to the West.

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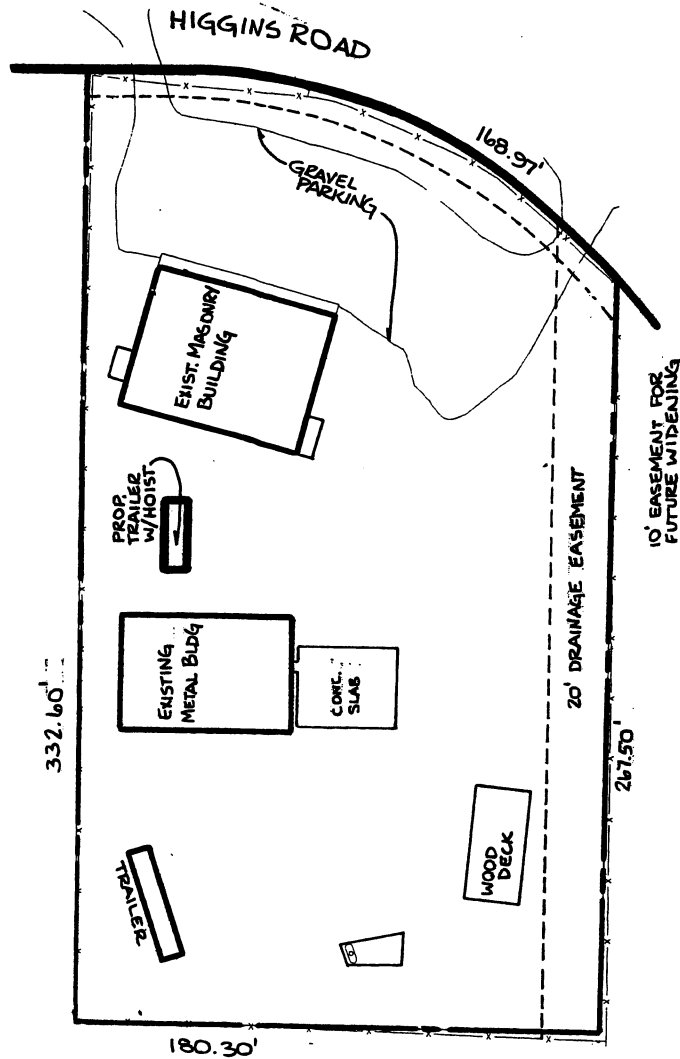
APPLICANT Ronald J. Wahl

REQUEST Administrative Appeal

LEGEND



SITE PLAN



The site is located on the South side of Higgins Road, 178' East of Clemson Drive. The plan illustrates the existing buildings and proposed trailer with hoists.

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 USE/REQUEST Administrative Appeal

