



**City of Fairhope  
Board of Adjustment and Appeals  
5:00 PM  
City Council Chambers  
August 20, 2018**

Karin Wilson  
*Mayor*

*Council Members*

Kevin G. Boone

Robert A. Brown

Jack Burrell, ACOMO

Jimmy Conyers

Jay Robinson

Lisa A. Hanks, MMC  
*City Clerk*

Michael V. Hinson, CPA  
*City Treasurer*

1. Call to Order
2. Approval of the July 16, 2018 minutes
3. Consideration of Agenda Items:
  - A. BOA 18.10 Public hearing to consider the request of Doyle and Jo Ellen Porter for a Special Exception to allow a restaurant for property located on the north side of Porter Lane between Ingleside Street and US Hwy. 98.  
**PPIN #: 18341**
  - B. BOA 18.11 Public hearing to consider the request of Magnolia Church, LLC for a Special Exception to allow parking in the front for property located at 301 Magnolia Avenue.  
**PPIN #: 15164**
4. Old/New Business
5. Adjourn

161 North Section Street

P O. Drawer 429

Fairhope, Alabama 36533

251-928-2136

251-928-6776 Fax

[www.fairhopeal.gov](http://www.fairhopeal.gov)

*Printed on recycled paper*

**The City of Fairhope Board of Adjustments and Appeals met on Monday, July 16, 2018 at 5:00 PM in the City Council Chambers at the City Administration Building, located at 161 N. Section Street.**

**Members Present: Anil Vira, Chairman; Harry Kohler; Christina Stankoski; John Avent; Cathy Slagle; Wayne Dyess, Director of Planning; Buford King, Planner; and Emily Boyett, Secretary.**

**Absent: Troy Strunk, Vice-Chair and Dick Schneider**

The meeting was called to order at 5:00 PM by Chairman Vira.

The minutes of the June 18, 2018 meeting were considered. Cathy Slagle moved to accept the minutes as corrected and was 2<sup>nd</sup> by John Avent. Motion carried unanimously.

**BOA 18.09 Public hearing to consider the request of A&A Corte Family Limited Partnership for a Special Exception to allow a clinic for property located on the north side of Fairhope Avenue directly across from Hoffern Drive.**

Mr. King gave the staff report.

**Summary of Request:**

A & A Corte, FLP and A & D Corte, FLP, are requesting a clinic use, allowed on appeal, for Lot 1B of the resubdivision of Lot 1 Planters Plaza consisting of 8.82 acres, located on Fairhope Avenue. The subject property is zoned in B-2 General Business District which is designed to accommodate the following:

***B-2 General Business District: This district is intended to provide opportunity for activities causing noise and heavy traffic, not considered compatible in the more restrictive business district. These uses also serve a regional as well as a local market and require location in proximity to major transportation routes. Recreational vehicle parks, very light production and processing activities are included.***

The term “clinic” is defined by the Fairhope Zoning Ordinance in Article IX. Section B.5. as follows:

***5. Service Use Category***

***The Service Use category is for businesses that offer clients, customers, or patrons goods for consumption on the premises, or offer services for performance and delivery on the premises.***

***b. Clinic – a place used for the care, diagnosis and treatment of ailing, infirm, or injured persons, and those who are in need of medical and surgical attention, but who are not provided with board.***

The table of permitted uses Table 3-1 provides that a clinic in the B-2 District is only allowed on appeal.

The Comprehensive Plan does not mention medical uses from a land use planning perspective. However, on page 5, Stakeholder Interview Summarization says “The largest economic engine in Fairhope is medical. The city needs to support the hospital and doctors as much as possible.” The development of appropriate medical office uses will further this goal.

The Fairhope Zoning Ordinance does have a medical overlay district (Article V Section H. Medical Overlay District). The boundaries of the overlay are near and around Thomas Hospital. The intent of the overlay is as follows: “The MO District is also intended to establish and accommodate highly specialized, unique uses and development types related to the medical field and to accommodate additional specialized needs and growth of the medical field and community.”

The subject property **is not** in the Medical Overlay District. However, it is adjacent to the new USA Mitchell Cancer Institute Kilborn Clinic and located near the Baldwin County Satellite Courthouse. After reviewing the current Medical Overlay District, it appears that there is not sufficient and available lot area within the overlay boundaries to accommodate the proposed medical use. Therefore, additional sites should be explored. The proposed medical is anticipated to have limited hours of operation consistent with a medical office. It should be noted that the medical use is less intense than most of the allowable uses in the B-2 General Business District. The proposed use would serve medical needs of growing community as well support the economic aspect of community development. The proposed use is consistent with the existing development pattern and does not pose a threat to sound planning principles.

**Recommendation:**

Staff recommends **APPROVAL** of the appeal to establish a medical clinic on the subject property.

Mr. Avent stated this location makes sense with the existing cancer center next door and Mr. Dyess agreed. Mr. Kohler asked if the cancer center also received a variance and Mr. Avent responded it is a State facility and it was not required.

Arthur Corte address the Board saying when the property was originally annexed, a medical office was allowed by right in the B-2 zoning district. Mrs. Stankoski asked if it will be a hospital or medical office and Mr. Dyess clarified it will not be a hospital.

Mr. Vira opened the public hearing. Having no one present to speak, Mr. Vira closed the public hearing.

Ms. Slagle stated the site is 8.2 acres and asked what other uses will be allowed on the property. Mr. Dyess responded all allowable uses listed in the B-2 zoning district will be allowed.

Cathy Slagle made a motion to accept the staff recommendation to approve the special exception to allow a medical clinic on property PPIN# 63508. Christina Stankoski 2<sup>nd</sup> the motion and the motion carried unanimously with the following vote: AYE – Harry Kohler, Christina Stankoski, John Avent, Anil Vira, and Cathy Slagle. NAY – none.

Having no further business, Cathy Slagle made a motion to adjourn. Christina Stankoski 2<sup>nd</sup> the motion and the motion carried unanimously. The meeting was adjourned at 5:11 PM.





# Board of Adjustment

August 20, 2018

Case: BOA 18.10 Porter Property

**Project Location:**

North side of Porter Lane just east of Ingleside Street (address not yet assigned)

**Request:**

Special Exception approval to allow a restaurant pursuant to use appeal provisions in Article V.H.3.C. Medical Overlay District

**Applicant:**

Doyle and Jo Ellen Porter

**Zoning District:**

M-1 - Light Industrial District

**PPIN Number:**

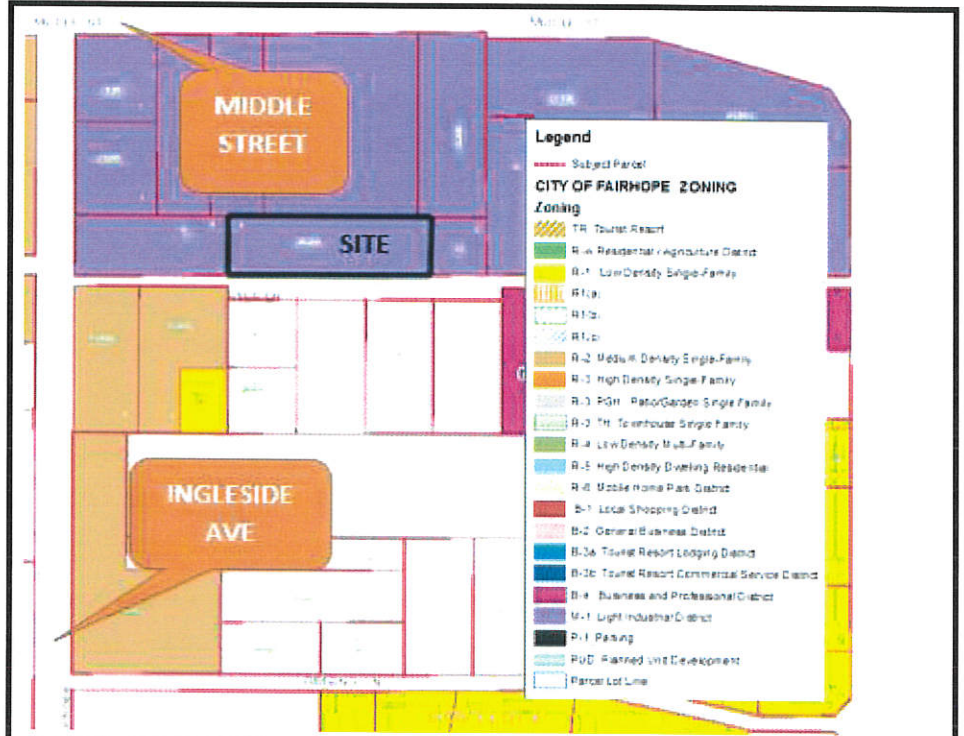
18341

**Prepared by:**

J. Buford King  
Planner

**Recommendation:**

APPROVAL





**Summary of Request:**

Doyle and Jo Ellen Porter are requesting via appeal and subject to conditions the allowance of retail, restaurant, and conference facilities as allowable uses for the property located along Porter Lane. The subject property is zoned in M-1 Light Industrial District and is also located in the Medical Overlay District.

**Comments:**

The subject property is zoned M-1 Light Industrial District which does not not allow a restaurant use pursuant to Article III. Section B. Table 3-1: Use table. However, the subject property is also located in the Medical Overlay District pursuant to Article V. Section H. Retail, restaurant, and conference facilities uses are allowed on appeal in the Medical Overlay District.

*Article V.H.3.C. Uses Permitted Subject to Appeal and with Conditions includes the following uses:*

- (1) Commercial communication towers
- (2) Detoxification centers and substance abuse centers associated primarily with the primary medical facility
- (3) Retail, restaurant, personal services, branch banks, offices, conference facilities, clinics and similar workplace support uses when within any individual structure, gross floor area shall be limited to 10 percent of the total gross floor area
- (4) Crematorium

**Analysis and Recommendation:**

The subject property is currently forested, undeveloped property located along Porter Lane, approximately 250 feet east of Ingleside Street. Subject property is located east of the adjoining Faith Temple Church of God in Christ property. A recorded plat is not on file with the Baldwin County Judge of Probate Office related to subject property, however slide number 2081-E, record June 5, 2002 for the nearby Bosby Subdivision (PPIN 247937 and 24699) describes Porter Lane as a narrow (20' wide) unpaved right-of-way immediately adjacent to Faith Temple Church of God in Christ which allows access to subject property. The City of Fairhope currently provides no maintenance of Porter Lane and Porter Lane appears to be privately maintained. The current application for appeal is the addition of retail, restaurant, and conference facility uses on the subject property. The applicant also indicated the desire for a catering use, which is a function of a restaurant as defined by the City of Fairhope Zoning Ordinance Article IX, Section B.o. Retail, restaurant, and conference facility uses are allowed in the Medical Overlay District on appeal pursuant to Article V.H.3.C.

The review criteria for a use appeal is as follows, pursuant to Article II Section C.3.e.(1) items (a) through (d) noting that an application for a variance shall be granted only on the concurring vote of four Board members; and

Article II Section C.3.e(2) items (a) through (n) indicate below with staff's response in bold text:

(a) Compliance with the Comprehensive Plan;

**Response: The Comprehensive Plan makes several references supporting Thomas Hospital due to its economic generator status. The subject property is slightly more than ½ mile south of the southernmost property line of Thomas Hospital. It is possible the addition of a restaurant/catering facility/conference facility may support the hospital and its related uses. The Comprehensive Plan**

provides no specific details or guidance for determining the level of support to the hospital of a proposed restaurant/catering/conference facility as a function of its proximity to the hospital site.

(b) Compliance with any other approved planning document;

**Response:** A specific development application has not been submitted for subject property at this time that would require evaluation of development of subject property above and beyond the zoning ordinance. However, the applicant is advised the right-of-way improvements likely necessary to Porter Lane to accommodate a retail/restaurant/conference facility must comply with the standards of the Baldwin County Highway Department and the necessary ROW permits must be submitted to and approved by the Baldwin County Highway Department.

(c) Compliance with the standards, goals, and intent of this ordinance;

**Response:** The subject property is located within the Medical Overlay District and the desired uses are a supporting use to the hospital and therefore maintains the intent of the ordinance.

(d) The character of the surrounding property, including any pending development activity;

**Response:** Adjoining properties west, north, and east of subject property are all zoned M-1 with uses consistent with M-1 and/or the Medical Overlay District. An existing fast food restaurant currently exists approximately 370' northeast of subject property, and an existing hotel is located approximately 170' east of subject property. The northern adjoining property appears to operate as a type of entertainment facility. An additional restaurant will not affect the character of the zoned areas north of Porter Lane.

(e) Adequacy of public infrastructure to support the proposed development;

**Response:** As stated previously, a number of existing facilities surround the subject property to the west, north, and east, and a single-family residence in unzoned Fairhope ETJ is located immediately south of subject property along Porter Lane. Though adequate infrastructure exists to support the existing facilities near subject property, the applicant is advised to contact Fairhope Public Utilities to determine the applicable aid to construction costs that may be required to provide adequate utilities for any development proposed for subject property.

(f) Impacts on natural resources, including existing conditions and ongoing post-development conditions;

**Response:** The subject property is undeveloped, forested land. Staff strongly recommends the applicant contact the City of Fairhope Building, Public Works, and Utilities departments to discuss the development activities for the site prior to the submission of building plans. Site access, rights of way, drainage, waste collection, and utilities for the site may require engineering and various pre-development activities prior to submission of building plans. Further, the applicant is advised the right-of-way improvements likely necessary to Porter Lane to accommodate a retail/restaurant/conference facility must comply with the standards of the Baldwin County Highway Department and the necessary ROW permits must be approved by the Baldwin County Highway Department.

(g) Compliance with other laws and regulations of the City;

**Response:** No issues noted.

(h) Compliance with other applicable laws and regulations of other jurisdictions;

**Response:** No issues noted.



(i) Impacts on adjacent property including noise, traffic, visible intrusions, potential physical impacts, and property values;

**Response:** Applicant is advised that development activities on the site may require a site plan review pursuant to Article II, Section C.2. of the City of Fairhope Zoning Ordinance which will require engineered plans describing site access, parking, drainage, screening and buffering, etc. If a site plan review is not required, a planning and zoning review will occur as a component of the building plans review of the site, including but not limited to a compatibility analysis of the proposed use.

(j) Impacts on the surrounding neighborhood including noise, traffic, visible intrusions, potential physical impacts, and property values.

**Response:** Applicant is advised that development activities on the site may require a site plan review pursuant to Article II, Section C.2. of the City of Fairhope Zoning Ordinance which will require engineered plans describing site access, parking, drainage, screening and buffering, etc. If a site plan review is not required, a planning and zoning review will occur as a component of the building plans review of the site, including but not limited to a compatibility analysis of the proposed use.

(k) Overall benefit to the community;

**Response:** It is likely the addition of a restaurant/catering facility/conference facility will support the hospital and its related uses.

(l) Compliance with sound planning principles;

**Response:** Staff believes the proposed use is consistent with sound planning principles.

(m) Compliance with the terms and conditions of any zoning approval; and

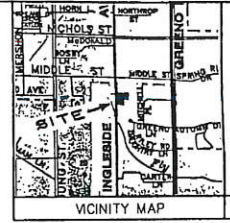
**Response:** No issues noted.

(n) Any other matter relating to the health, safety, and welfare of the community.

**Response:** No issues noted.

**Recommendation:**

Staff recommends **APPROVAL** of the appeal to allow retail, restaurant, and conference facility uses at PPIN 18341 located along Porter Lane.

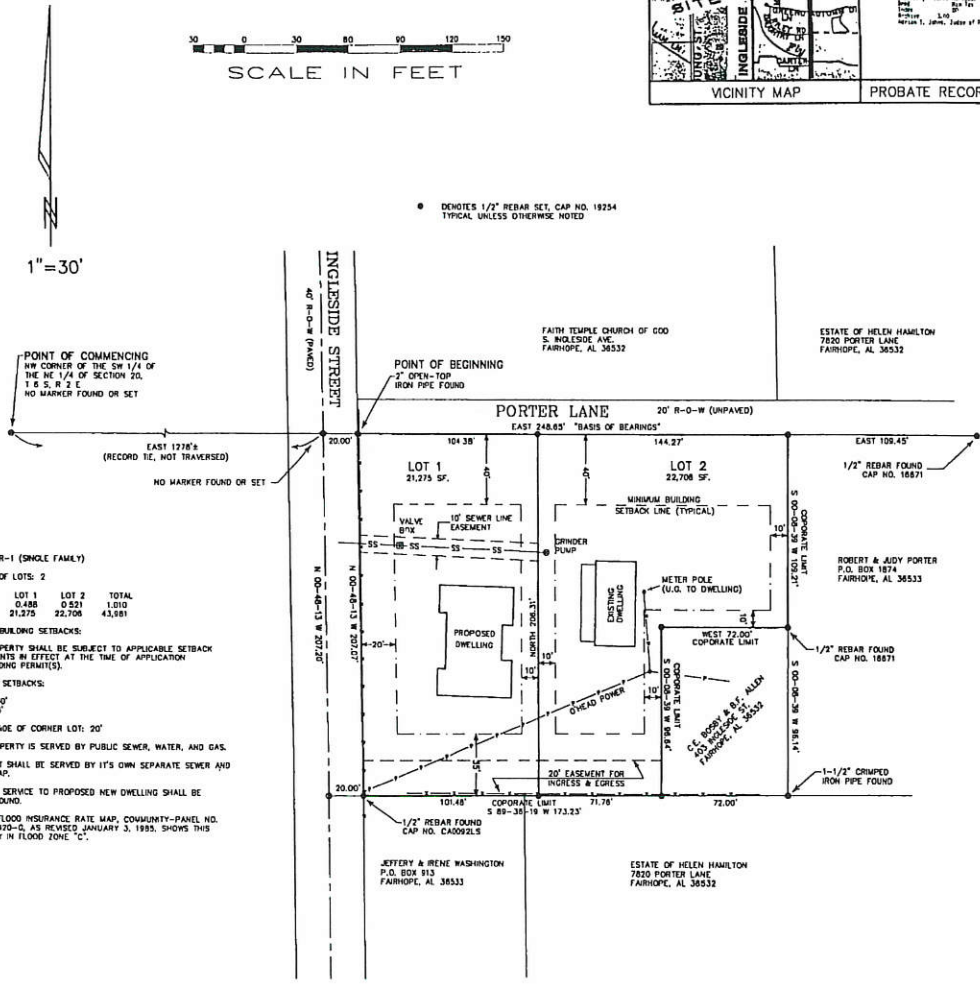


2081-E  
State of Alabama, Baldwin County  
1 parcel subdivision map was filed  
and 1/4th collected was  
2002 June 15 11:30AM  
Instrument Number: 46317 Page: 1  
Recording Date: 06/15/02  
Recorder: L. G. Garsed  
Scale: 1" = 30'  
Author: T. J. Jones, Justice of the Peace



1" = 30'

**NOTES:**  
ZONING: R-1 (SINGLE FAMILY)  
NUMBER OF LOTS: 2  
AREAS: LOT 1 21,275 SF. LOT 2 22,708 SF. TOTAL 43,983  
SQ. FT. 21,275 22,708 43,983  
MINIMUM BUILDING SETBACKS:  
THIS PROPERTY SHALL BE SUBJECT TO APPLICABLE SETBACK CONSTRAINTS IN EFFECT AT THE TIME OF APPLICATION FOR BUILDING PERMITS(S).  
CURRENT SETBACKS:  
FRONT: 40'  
REAR: 35'  
SIDE: 10'  
STREET SIDE OF CORNER LOT: 20'  
THIS PROPERTY IS SERVED BY PUBLIC SEWER, WATER, AND GAS. EACH LOT SHALL BE SERVED BY ITS OWN SEPARATE SEWER AND WATER TAP.  
ELECTRIC SERVICE TO PROPOSED NEW DWELLING SHALL BE UNDERGROUND.  
F.E.M.A. FLOOD INSURANCE RATE MAP, COMMUNITY-PANEL NO. 015000-470-D, AS REVISED JANUARY 3, 1995, SHOWS THIS PROPERTY IN FLOOD ZONE "C".



APPROVAL OF THE FAIRHOPE PLANNING AND ZONING COMMISSION  
THIS SUBDIVISION PLAT IS HEREBY APPROVED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF FAIRHOPE, ALABAMA,  
THIS THE 4th DAY OF June, 2002.

*Christina D. B...*  
AUTHORIZED REPRESENTATIVE OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF FAIRHOPE.

CERTIFICATE OF ACCEPTANCE OF OWNERS  
THIS IS TO CERTIFY THAT MR. CLARENCE EUGENE BOSSBY AND BRENDA FAYE ALLEN, ARE THE OWNERS OF THE PROPERTY SHOWN HEREON AND DO HEREBY ACCEPT AND APPROVE THIS SURVEY AND DIVISION

*Clarence Eugene Bossby 6-4-02*  
CLARENCE EUGENE BOSSBY  
*Brenda Faye Allen 6-4-02*  
BRENDA FAYE ALLEN

STATE OF ALABAMA  
COUNTY OF BALDWIN  
I, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR SAID STATE AND COUNTY, HEREBY CERTIFY THAT CLARENCE EUGENE BOSSBY, WHOSE NAME IS SIGNED TO THE FOREGOING INSTRUMENT AND WHO IS KNOWN TO ME, ACKNOWLEDGED TO ME ON THIS DAY THAT, BEING INFORMED OF THE CONTENTS OF THE INSTRUMENT, HE EXECUTED THE SAME VOLUNTARILY AND OF HIS OWN FREE WILL.  
GIVEN UNDER MY HAND AND SEAL THIS 4th DAY OF June, 2002.

*Stephen Strawn Jones 6/15/02*  
NOTARY PUBLIC  
MY COMMISSION EXPIRES: 06/15/06

STATE OF ALABAMA  
COUNTY OF BALDWIN  
I, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR SAID STATE AND COUNTY, HEREBY CERTIFY THAT BRENDA FAYE ALLEN, WHOSE NAME IS SIGNED TO THE FOREGOING INSTRUMENT AND WHO IS KNOWN TO ME, ACKNOWLEDGED TO ME ON THIS DAY THAT, BEING INFORMED OF THE CONTENTS OF THE INSTRUMENT, SHE EXECUTED THE SAME VOLUNTARILY AND OF HER OWN FREE WILL.  
GIVEN UNDER MY HAND AND SEAL THIS 4th DAY OF June, 2002.

*Stephen Strawn Jones 6/15/02*  
NOTARY PUBLIC  
MY COMMISSION EXPIRES: 06/15/06

SURVEYOR'S CERTIFICATE  
STATE OF ALABAMA  
COUNTY OF BALDWIN  
I, PETER G. GARSEED, A LICENSED PROFESSIONAL LAND SURVEYOR IN THE STATE OF ALABAMA, HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT PLAT OF MY SURVEY AND SUBDIVISION OF THE FOLLOWING DESCRIBED PROPERTY:  
COMMENCE AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 20, TOWNSHIP 8 SOUTH, RANGE 2 EAST, BALDWIN COUNTY, ALABAMA, RUN THENCE EAST 127.8 FEET, MORE OR LESS, TO A POINT IN THE CENTERLINE OF INGLESDALE STREET; CONTINUE THENCE EAST 20.00 FEET TO AN IRON PIPE MARKER ON THE EAST RIGHT-OF-WAY LINE OF INGLESDALE STREET (APPROXIMATE 40 FOOT WIDE RIGHT-OF-WAY) FOR THE POINT OF BEGINNING OF THE PROPERTY HEREIN DESCRIBED; CONTINUE THENCE EAST 248.85 FEET TO A CAPPED REBAR MARKER; RUN THENCE SOUTH 00-08-18 WEST 109.21 FEET TO A CAPPED REBAR MARKER; RUN THENCE WEST 72.00 FEET TO A CAPPED REBAR MARKER; RUN THENCE SOUTH 00-08-39 WEST 88.84 FEET TO A CAPPED REBAR MARKER; RUN THENCE SOUTH 00-39-18 WEST 173.23 FEET TO A CAPPED REBAR MARKER ON THE EAST RIGHT-OF-WAY LINE OF INGLESDALE STREET; RUN THENCE NORTH 00-16-13 WEST, ALONG SAID RIGHT-OF-WAY LINE, 207.00 FEET TO THE POINT OF BEGINNING, CONTAINING 1.216 ACRES, MORE OR LESS.  
I FURTHER CERTIFY THAT ALL PARTS OF THIS SURVEY AND DRAWING HAVE BEEN COMPLETED IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM TECHNICAL STANDARDS FOR THE PRACTICE OF LAND SURVEYING IN THE STATE OF ALABAMA, IN EFFECT AT THE TIME OF THIS SURVEY, TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.  
ACCORDING TO THE SURVEY COMPLETED BY ME ON THE 11TH DAY OF FEBRUARY, 2002.

*Peter G. Garsed 6/15/02*  
PETER G. GARSEED, P.L.S.  
ALABAMA LICENSE NO. 19254



GARSEED LAND SURVEY 31423 CO. HIGHWAY NO. 27 P.O. BOX 1283 FAIRHOPE, AL 36533 (251) 928-8867	FINAL PLAT FOR RECORDING <b>BOSSBY SUBDIVISION</b> SECTION 20, TOWNSHIP 8 SOUTH, RANGE 2 EAST FAIRHOPE, ALABAMA	SURVEY DATE: FEBRUARY 11, 2002 SCALE: 1" = 30' REVISIONS: NONE	PLAT DATE: MAY 27, 2002 DRAWN BY: P.G. GARSEED DRAWING NO.: 002-108-F
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**APPLICATION FOR BOARD OF ADJUSTMENTS**

Application Type:  Administrative Appeal  Special Exception  Variance

**Property Owner / Leaseholder Information**

Name: Doyle and Jo Ellen Porter Phone Number: 251-928-3440  
 Street Address: Not Developed PPIN # 18341  
 City: FAIRHOPE State: AL Zip: 36532

**Applicant / Agent Information**

If different from above.  
 Notarized letter from property owner is required if an agent is used for representation.

Name: Doyle and Jo Ellen Porter Phone Number: 251-928-3440  
 Street Address: P.O. Box 1874  
 City: FAIRHOPE, State: AL Zip: 36533

Site Plan with Existing Conditions Attached: YES NO  
 Site Plan with Proposed Conditions Attached: YES NO  
 Variance Request Information Complete: (YES) NO  
 Names and Address of all Real Property Owners within 300 Feet of Above Described Property Attached: (YES) NO

**Applications for Administrative Appeal or Special Exception:**

Please attach as a separate sheet(s) information regarding the administrative decision made or information regarding the use seeking approval. Please feel free to be as specific or as general as you wish in your description. This information will be provided to the Board before the actual meeting date. It is to your benefit to explain as much as possible your position or proposal.

I certify that I am the property owner/leaseholder of the above described property and hereby submit this application to the City for review. \*If property is owned by Fairhope Single Tax Corp. an authorized Single Tax representative shall sign this application.

Doyle R. Porter  
 Property Owner/Leaseholder Printed Name  
6-28-18  
 Date

Doyle R. Porter  
 Signature  
 Fairhope Single Tax Corp. (If Applicable)

**RECEIVED**  
 JUN 29 2018  
 BY: EB



**VARIANCE REQUEST INFORMATION**

What characteristics of the property prevent / preclude its development?:

- Too Narrow
- Too Small
- Too Shallow
- Elevation
- Slope
- Shape
- Soil
- Subsurface
- Other (specify)

Describe the indicated conditions: This area is zoned light industrial, but in the M-1 Medical Overlay which allows for a retail restaurant, catering, coffeeshop, food trucks & conference, event center  
 How do the above indicated characteristics preclude reasonable use of your land? \_\_\_\_\_

What type of variance are you requesting (be as specific as possible)?  
allow retail restaurant, catering, food trucks w/ permit & license event & conference facility as be what we want to use our property for

Hardship (taken from Code of Alabama 1975 Section 11-52-80):  
 "To authorize upon appeal in specific cases such variance from the terms of the (zoning) ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provision of the (zoning) ordinance will result in unnecessary hardship and so that the spirit of the (zoning) ordinance shall be observed and substantial justice done."

BOA Fee Calculation:	Residential	Commercial
Filing Fee:	\$100	\$500
Publication:	\$20	\$20
<b>TOTAL:</b>	<b>\$</b>	<b>520.00</b>

I certify that I am the property owner/leaseholder of the above described property and hereby submit this application to the City for review. \*If property is owned by Fairhope Single Tax Corp. an authorized Single Tax representative shall sign this application.

Doyle R. Porter  
 Property Owner/Leaseholder Printed Name  
6-28-18  
 Date

Doyle R. Porter  
 Signature  
 Fairhope Single Tax Corp. (If Applicable)

**RECEIVED**  
 JUN 29 2018  
 BY: EB





# City of Fairhope Board of Adjustment

August 20, 2018

Case: BOA 18.11 301 Magnolia Avenue

**Project Name:**

Magnolia Church

**Property Owner / Applicant:**

Magnolia Church, LLC  
(T. Vance McCown)

**General Location:**

NE quadrant of the intersection  
Of Magnolia Avenue and  
Church Street

**Request:**

Parking requirement variance

**Project Acreage:**

½ acre approximately

**Zoning District:**

B-2 General Business District  
Within the Central Business  
District

**PPIN Number:**

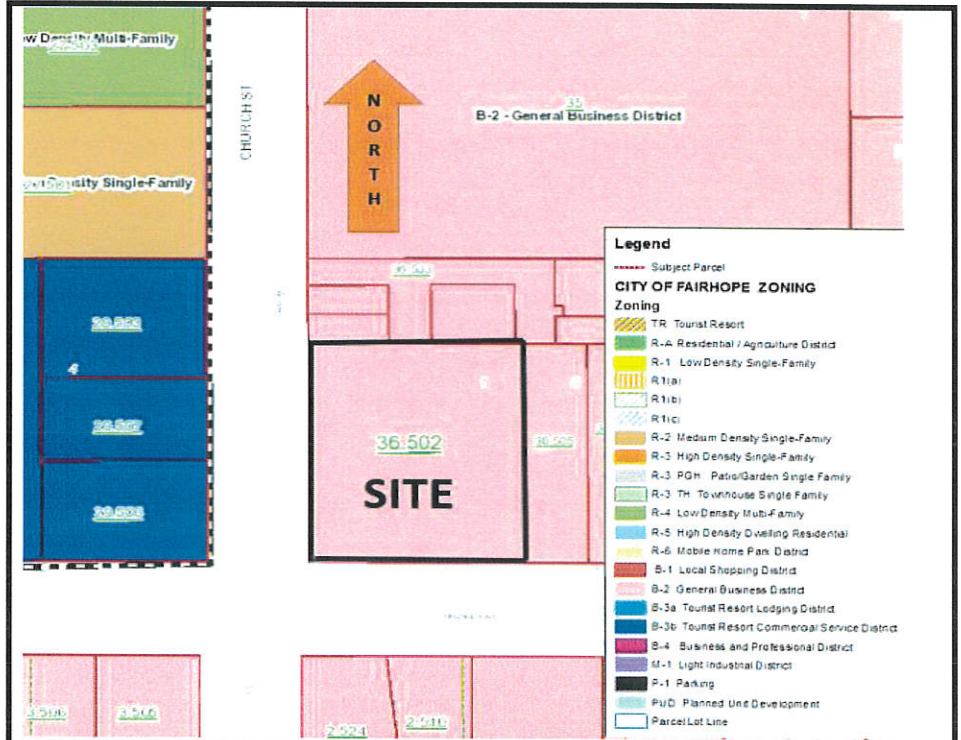
15164

**Report prepared by:**

J. Buford King  
City Planner

**Recommendation:**

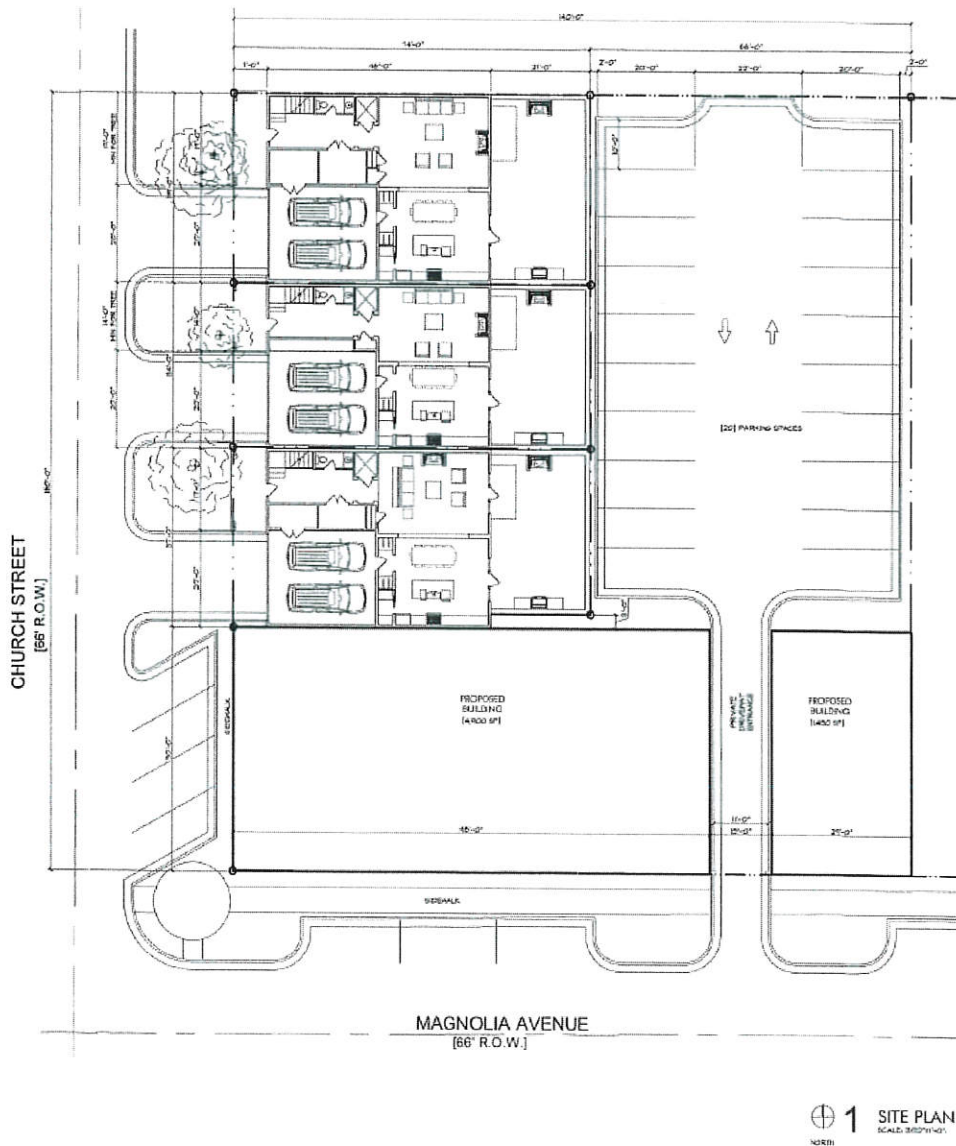
Table for further study



**Summary of Request:**

The applicant is requesting a variance from the parking requirements of City of Fairhope Zoning Ordinance *Article V, Section B.4.d.(2)* to allow “front screened parking on the Church St. frontage only”. The subject property is zoned B-2 General Business District and is located within the Central Business District.

The applicant provided a supporting drawing depicting a future development on subject property containing three (3) residential units, two buildings with an unspecified unit count that are likely to be mixed-use commercial/residential, a 20-space onsite parking area, additional on-street parking along North Church Street, and reconfigurations of existing on-street parking along Magnolia Avenue. The residential units reflect 20’ front building setbacks as required by Table 3-2, Dimension table, and the mixed-use buildings are shown at the right-of-way line as required by Article V, Section B.4.a. An excerpt of the proposed site plan is shown below:



As shown on the site plan above it appears the intent of the development is to create individual lots for each residential unit, likely in a future subdivision application, as well as construct parking and an unknown number of mixed-use units likely in a future Multiple Occupancy Project (MOP) application.



The applicant states the indicated conditions of the subject property include a “grade differential across the site (that) is approximately 15’. The use of retaining walls and terraced building areas makes it difficult to have vehicle access to the rear of the Church St. frontage lots”. The applicant states the indicated conditions preclude reasonable use of the land because the “rear parking as required for residential use presents an extraordinary use of land for circulation”.

City of Fairhope Zoning Ordinance *Article V, Section B.4.d.* states the following regarding parking requirements within the Central Business District (CBD):

*d. Parking -*

*(1) No parking is required for non-residential uses in the CBD. If parking is provided, it shall be located behind the building, screened from public rights-of-way, and have a direct pedestrian connection to the primary building entrance of the public right-of-way.*

*(2) Dwelling units in the CBD shall provide the required parking. It shall be located behind the building, screened from public rights-of-way, and have a direct pedestrian connection to the primary building entrance of the public right-of-way.*

*(3) Residential and office is encouraged on the upper floors of buildings; lower floors are encouraged to be retail or restaurants.*

The 20-space off-street parking area located behind (north) of the two apparent commercial units is not required in the CBD as explained in the zoning ordinance excerpt above, and parking for the residential units is required, also as described above. However, Article IV, Section E.2. states “businesses in the CBD Overlay are encouraged to provide off-street parking facilities” for commercial uses. It appears the rear parking area satisfies the parking loading of the two proposed mixed-use units based upon the square footage of the commercial units, as if onsite parking was required for those commercial units, and that parking is located behind the mixed-use buildings as required by *Article V, Section B.4.d.(1)* shown above.

**Comments:**

The City of Fairhope Zoning Ordinance defines a variance as follows:

***Variances: A modification of the strict terms of the relevant regulations in a district with regard to placement of structures, developmental criteria or provision facilities. Examples would be: allowing smaller yard dimensions because an existing lot of record is of substandard size; waiving a portion of required parking and/or loading space due to some unusual circumstances; allowing fencing and/or plant material buffering different from that required due to some unusual circumstances. Variances are available only on appeal to the Board of Adjustment and subject to satisfaction of the standards specified in this ordinance.***

The Board of Adjustments is authorized to grant variance through Article II.A.d(3) which says the following:

***d. Duties and Powers: The Board shall have the following duties and powers:***

***(3) Variances - To authorize upon appeal in specific cases variance from the terms of this ordinance not contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance will, in an individual case, result in unnecessary hardship, so that the spirit of this ordinance shall be observed, public safety and welfare secured, and substantial justice done.***

***Prior to granting a variance, the Board shall find that:***

***(a) There are extraordinary and exceptional conditions pertaining to the particular piece of***

- property in question because of its size, shape, or topography;*  
*(b) The application of this ordinance to the particular piece of property would create an unnecessary hardship;*  
*(c) Such conditions are peculiar to the particular piece of property involved; and,*  
*(d) Relief, if granted, would not cause substantial detriment to the public good or impair the purpose and intent of this ordinance; provided however, that no variance may be granted for a use of land or building or structure that is prohibited by this ordinance.*

The Ordinance provides guidance for variance requests through the following criteria:  
Article II.C.3.e.

***Criteria – (1) An application for a variance shall be granted only on the concurring vote of four Board members finding that:***

- (a) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography;*  
*(b) The application of the ordinance to this particular piece of property would create an unnecessary hardship. Personal financial hardship is not a justification for a variance.*  
*(c) Such conditions are peculiar to the particular piece of property involved; and*  
*(d) Relief, if granted, would not cause substantial detriment to the public good and impair the purpose and intent of this ordinance; provided however, that no variance may be granted for a use of land or building or structure that is prohibited by this ordinance.*

When a variance is granted by the Zoning Board of Adjustment it has the following effect:

Article II.C.3.g.

***Effect of Variance - Any variance granted according to this section and which is not challenged on appeal shall run with the land provided that:***

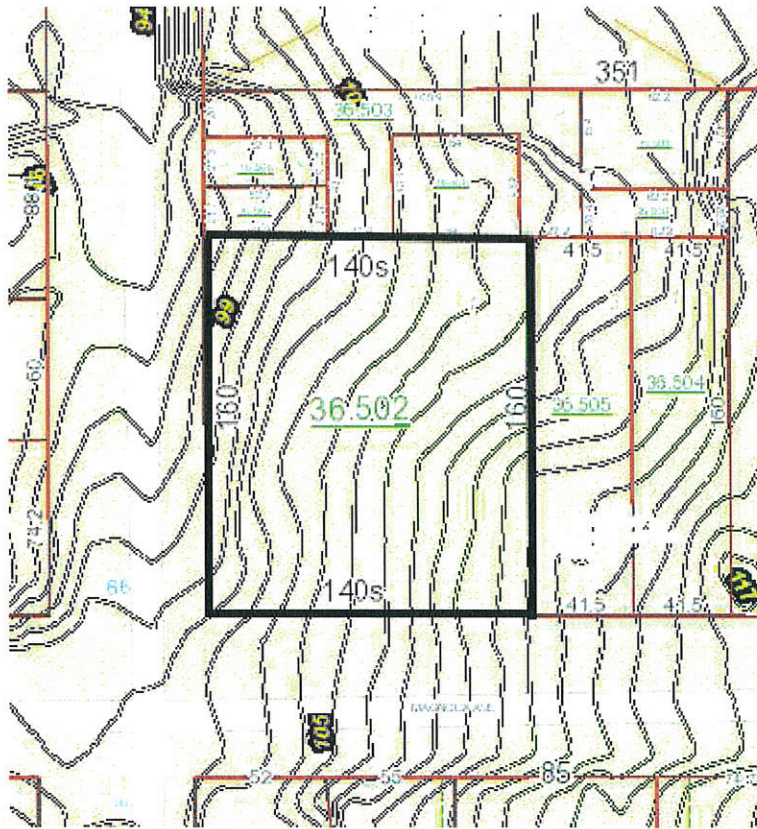
- (1) The variance is acted upon according to the application and subject to any conditions of approval within 365 days of the granting of the variance or final decision of appeal, whichever is later; and***
- (2) The variance is recorded with the Judge of Probate.***

**Analysis and Recommendation:** Variance Criteria

***(a) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography.***

Response: The subject property is rectangular in shape and approximately 22,400 sf, or slightly more than ½ acre in size. The shape of the lot is not uncommon, and no minimum lot size is required for B-2 zoning. The lot has no visible extraordinary or exceptional topographical conditions. The applicant indicated grade differential on the lot is 15'. This grade differential may be seen in the map excerpt below from the Baldwin County Parcel viewer with subject property outlined in black:





The applicant clarified the hardship created by the topography of the subject property affects the grading necessary to develop the site. Specifically, the 20-space parking area will have a finished elevation of approximately 10' higher than the finished floor elevation of the residential unit fronting Church Street, complicating the drainage design of both areas. Staff understands the conceptual need to allow front, screened parking for the residential units along Church Street and does not necessarily object to the screened parking, but staff does not believe sufficient evidence has been submitted to fully demonstrate there are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography.

***(b) The application of the ordinance to this particular piece of property would create an unnecessary hardship. Personal financial hardship is not a justification for a variance.***

Response: The subject property's setbacks do not prevent the reasonable use of the property for residential purposes. The stakeout survey indicates the proposed home fits within the building setback lines.

***(c) Such conditions are peculiar to the particular piece of property involved.***

Response: As stated in section (b) above, staff understands the conceptual need for and does not necessarily object to the requested screened front parking, but staff does not believe sufficient evidence has been submitted to fully demonstrate there are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography. Staff requests the applicant provide follow-up information with additional engineering drawings better-describing the hardship caused by the topography of the subject property.

***(d) Relief, if granted, would not cause substantial detriment to the public good and impair the purpose and intent of this ordinance; provided however, that no variance may be granted for a use of land or building or structure that is prohibited by this ordinance.***

Response: Staff acknowledges the proposed development related to subject property is still in the design stage, and as a result sufficient data further-explaining the believed hardship created by the size, shape, and topography of subject property may not be available at this time. As stated in section “c” above, staff requests the applicant provide follow-up information with additional engineering drawings better-describing the how the hardship caused by the topography of the subject property is best mitigated by allowing front screened parking in lieu of grading operations necessary to allow rear parking as required by *Article V, Section B.4.d.(2)*.

**Staff Recommendation:**

Staff recommends this request for variance be **TABLED** for additional study. Staff understands the proposed development for subject property is still undergoing engineering design and detailed engineering data may not have been available at the time the variance request was submitted. Staff requests the applicant provide sufficient engineering data and drawings supporting the assertion the size, shape and specifically topography of the lot creates a hardship if Article V, Section B.4.d.(2) is enforced. The applicant is advised additional information supporting its request for variance shall be submitted to staff by the close of business on Monday, September 10, 2018 for inclusion on the September 17, 2018 Board of Adjustments meeting agenda. Staff will request the assistance of the public works director for review of the follow-up engineering drawings and data.

Prepared by:  
J. Buford King  
City Planner



Site Photos



Looking east toward subject property  
From west side of church street



Looking North from Magnolia Ave  
52 North Section Street development  
beyond



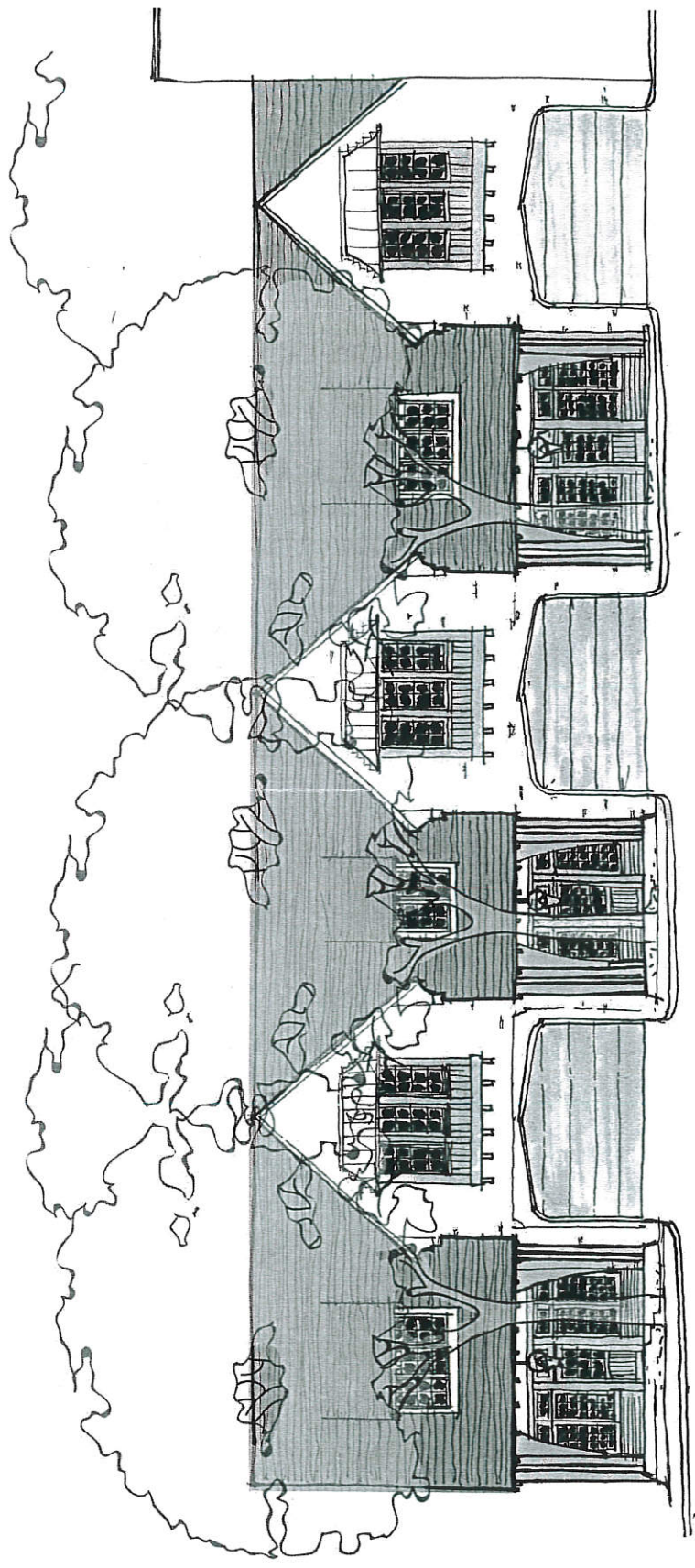
Looking northeast toward subject property  
from west side of church street



Looking northwest toward subject  
property from adjacent property along  
Magnolia Ave

# MAGNOLIA

A V E N U E

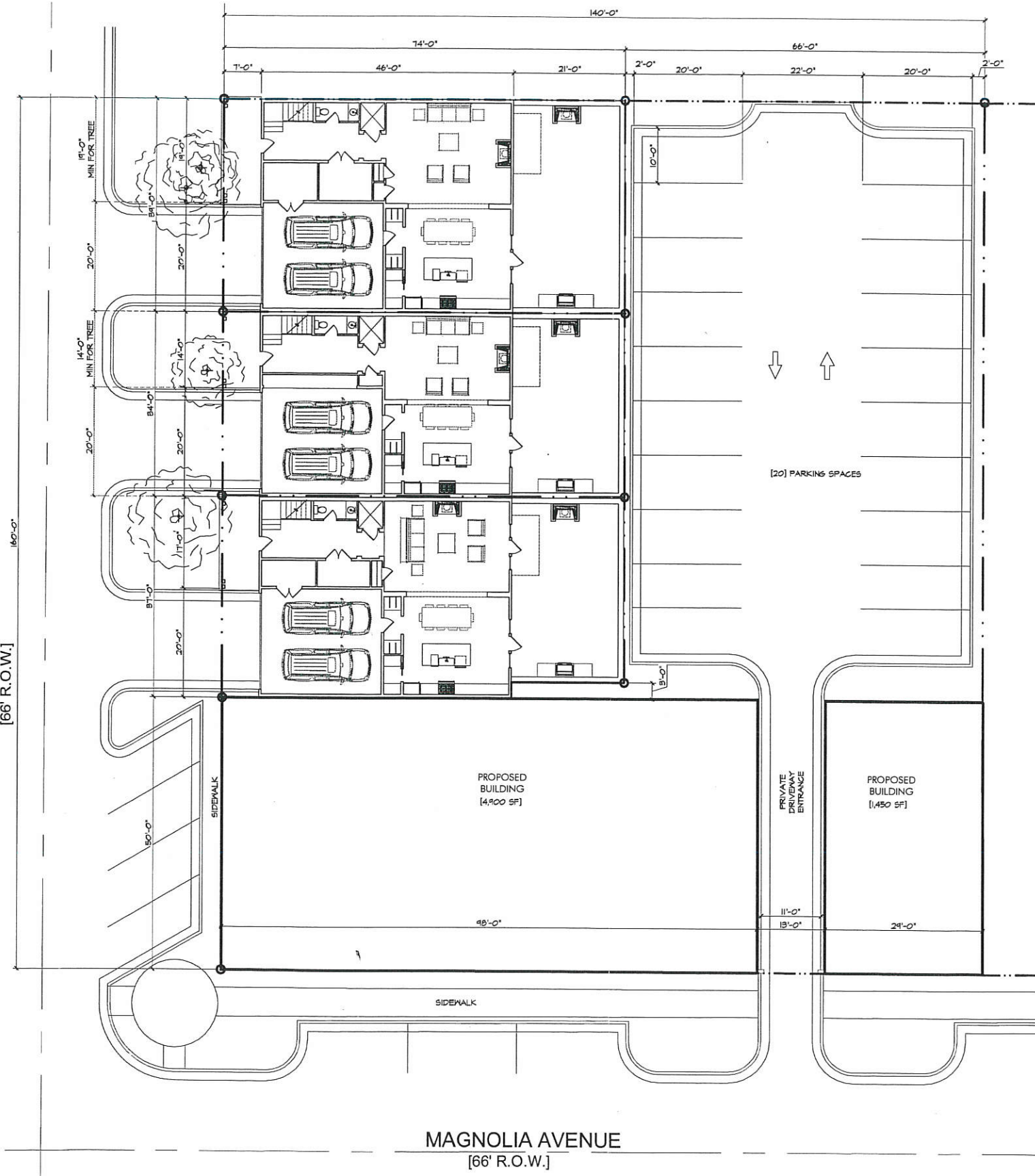


CHURCH ST. ELEV

**MD**  
McCOWN  
DESIGN  
mccowndesign.com



CHURCH STREET  
[66' R.O.W.]



MAGNOLIA AVENUE  
[66' R.O.W.]



**APPLICATION FOR BOARD OF ADJUSTMENTS**

Application Type:  Administrative Appeal  Special Exception  Variance

**Property Owner / Leaseholder Information**

Name: Magnolia Church LLC Phone Number: 251-478-4202, Ext 106  
 Street Address: 301 Magnolia Ave  
 City: Fairhope State: AL Zip: 36532

**Applicant / Agent Information**

If different from above.  
 Notarized letter from property owner is required if an agent is used for representation.

Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
 Street Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Site Plan with Existing Conditions Attached:  YES  NO  
 Site Plan with Proposed Conditions Attached:  YES  NO  
 Variance Request Information Complete:  YES  NO  
 Names and Address of all Real Property Owners within 300 Feet of Above Described Property Attached:  YES  NO

**Applications for Administrative Appeal or Special Exception:**

Please attach as a separate sheet(s) information regarding the administrative decision made or information regarding the use seeking approval. Please feel free to be as specific or as general as you wish in your description. This information will be provided to the Board before the actual meeting date. It is to your benefit to explain as much as possible your position or proposal.

I certify that I am the property owner/leaseholder of the above described property and hereby submit this application to the City for review. \*If property is owned by Fairhope Single Tax Corp. an authorized Single Tax representative shall sign this application.

Magnolia Church, LLC  
 Property Owner/Leaseholder Printed Name  
06-09-2018  
 Date

*J. Van...*  
 Signature  
 \_\_\_\_\_  
 Fairhope Single Tax Corp. (If Applicable)





**VARIANCE REQUEST INFORMATION**

What characteristics of the property prevent / preclude its development?:

- Too Narrow                       Elevation                       Soil
- Too Small                         Slope                               Subsurface
- Too Shallow                       Shape                               Other (specify)

Describe the indicated conditions: The grade differential across the site is approximately 15'. The use of retaining walls & terraced building areas makes it difficult to have vehicle access to the rear of the Church St frontage lots. (see attached site plan, elevation & topo)

How do the above indicated characteristics preclude reasonable use of your land?  
Rear parking as required for residential use presents an extraordinary use of land for circulation.

What type of variance are you requesting (be as specific as possible)?  
Front screened parking is requested. We are asking for this on the Church St frontage only. This is compatible with the existing parking across Church St (see attached photos)

Hardship (taken from Code of Alabama 1975 Section 11-52-80):

"To authorize upon appeal in specific cases such variance from the terms of the (zoning) ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provision of the (zoning) ordinance will result in unnecessary hardship and so that the spirit of the (zoning) ordinance shall be observed and substantial justice done."

BOA Fee Calculation:	Residential	Commercial
Filing Fee:	\$100	\$500
Publication:	\$20	\$20
<b>TOTAL: \$</b>		<b>\$ 520.00</b>

I certify that I am the property owner/leaseholder of the above described property and hereby submit this application to the City for review. \*If property is owned by Fairhope Single Tax Corp. an authorized Single Tax representative shall sign this application.

Magnolia Church, LLC  
 Property Owner/Leaseholder Printed Name  
06-09-2018  
 Date

*T. Van...*  
 Signature  
 Fairhope Single Tax Corp. (If Applicable)