



**City of Fairhope  
Board of Adjustments Agenda  
5:00 PM  
Council Chambers  
July 17, 2023**

Sherry Sullivan  
*Mayor*

*Council Members*

Kevin G. Boone

Jack Burrell, ACO

Jimmy Conyers

Corey Martin

Jay Robinson

Lisa A. Hanks, MMC  
*City Clerk*

Kimberly Creech  
*City Treasurer*

1. Call to Order
2. Approval of Minutes
  - June 19, 2023
3. Consideration of Agenda Items
  - A. BOA 23.07** Public hearing to consider the request of the Applicant, Aloha Made LLC, on behalf of the owner, VFW Post 5660, for a Special Exception – Use on Appeal, to operate a restaurant in the M1, Light Industrial District. The property is approximately 1.23 acres and is located at 950 Nichols Avenue. **PPIN#: 92512**
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 Board of Adjustments met Monday, June 19, 2023, at 5:00 PM at the City Municipal Complex, 161 N. Section Street in the Council Chambers.

Present: Anil Vira, Chairman; Cathy Slagle, Vice-Chair; Frank Lamia; Donna Cook; Ryan Baker; Hunter Simmons, Planning and Zoning Director; Mike Jeffries, Development Services Manager; and Cindy Beaudreau, Planning Clerk.

Chairman Vira called the meeting to order at 5:02 PM.

**Approval of Minutes**

Ryan Baker made a motion to approve the minutes from the May 15, 2023, meeting.

Donna Cook seconded the motion and the motion carried with the following vote:

Aye: Chairman Vira, Cathy Slagle, Frank Lamia, Ryan Baker, and Donna Cook.

Nay: None.

**BOA 23.03 Public hearing to consider the request of the Owner, William Wiggins, for a front setback variance for principal structures for property zoned R-2, Medium Density Single-Family Residential District. The property is approximately 12,600 SF and is located at 358 Kumquat Street. PPIN#: 44288**

Hunter Simmons, Planning and Zoning Director, explained that this is a case of existing non-conforming structures and a legal one. A pergola is different from a front porch. Today, you can build a pergola if it is open air, at the ground and not elevated. That is a legal structure. Some of the interpretation in the case is that the pergola is a porch which needs to be replaced. Staff does not have a survey of the property to determine where the dimensions are. Mr. Simmons presented the case summary. The lot is 70' wide instead of the required 75'. The square footage is larger than that required in R-2. This lot is in the Fruit and Nut area where many of the lots are 66' wide. The site plan shows the legal non-conforming home which is approximately 29' front the front property line. The required front setback is 35'. There is a pergola which extends further into the front setback which is not shown on the site plan. The site plan shows a proposed covered front porch which places it approximately 14' from the front property line. Mr. Simmons showed pictures of the existing structure, which includes the porch which can be repaired but not replaced. The pergola is separate from that. Mr. Simmons stated that there is no hardship based on the definitions listed in the Zoning Ordinance. Mr. Simmons explained the option available to the Applicant that the front porch can be repaired which does not require a front setback variance; however, the existing front porch does not extend 15' beyond the primary structure, whereas the proposed new porch does. The pergola can be torn down and replaced with a permit or remove it and add pavers.

Ryan Baker asked if the pergola had a roof. Mr. Simmons stated no. Mr. Baker then asked about the house to the south being closer to the street than the project house. Mr. Simmons answered that the house on the south has a side setback, and the project house has the front setback.

**Recommendation:**

Staff recommends denial of Case BOA 23.03; however, the Applicant may replace the existing pergola and/or repair the existing covered porch.

William Wiggins discussed just replacing the pergola, but the slope of the front yard creates a standing water issue under the pergola which rots the wood on the deck. He is concerned that just replacing the pergola and the decking would only last about five to ten years if that. Mr. Wiggins requested the ability to install a concrete porch to prevent the standing water and rot and divert the water around the home.

Frank Lamia asked if Mr. Wiggins was suggesting replacing the pergola and instead of a wood deck place a concrete slab. Mr. Wiggins answered yes. Mr. Simmons suggested using a pervious material, but that concrete would be allowed and that a building permit would be required.

Chairman Vira opened the public hearing at 5:11pm. Having no one present to speak, the public hearing was closed at 5:11pm.

**Motion:**

Ryan Baker made a motion to deny Case BOA 23.03.

Frank Lamia seconded the motion and the motion carried unanimously with the following vote:

Aye: Anil Vira, Cathy Slagle, Frank Lamia, Ryan Baker, and Donna Cook.

Nay: None.

**B. BOA 23.05 Public hearing to consider the request of the Applicant, Paul Marcinko, on behalf of the Owners, Emily and Klyce Hansen et al, for a 15' side setback variance for principal structures for property zoned R-2, Medium Density Single-Family Residential District. The property is approximately 12,400 SF and is located at 686 Greenwood Avenue. PPIN#: 61116**

Mike Jeffries, Development Services Manager, presented the case summary stating that the property is on the southeast corner of Patlynn Drive and Greenwood Avenue. Mr. Jeffries continued that the recorded plat reflects a 35' setback along Patlynn Drive and Greenwood Avenue. Corner lots are allowed a 20' side street setback on the lot line with the greatest dimension per the Zoning Ordinance. The subject property is square having two lot lines with equal distance abutting a street. The variance request is to establish the front line and the side street lot line. The request matches the current orientation of the existing home. Mr. Jeffries shared an image showing six properties in the neighborhood that comply with the 20' Zoning Ordinance requirement. The variance request of the applicant for a 15' street side setback is compliant with the requirements of the Zoning Ordinance. The proposed setback relief also establishes the front lot line as being adjacent to Greenwood Avenue.

**Recommendation:**

Staff recommends approval of Case BOA 23.05, with a 15' setback variance on the western property line abutting Patlynn Drive.

Chairman Vira asked for confirmation that the front of the house faces Greenwood Avenue. Mr. Jeffries confirmed. Mr. Baker asked if that was typical of the others that were done. Mr. Jeffries explained that they are not all the corner of Greenwood Avenue, but they all follow the front setback on Greenwood Avenue.

Paul Marcinko spoke on behalf of the owners, stating that he and the owners are available for any questions.

Chairman Vira opened the public hearing at 5:16pm. Having no one present to speak, the public hearing was closed at 5:16pm.

**Motion:**

Donna Cook made a motion to approve Case BOA 23.05.

Cathy Slagle seconded the motion and the motion carried unanimously with the following vote:

Aye: Anil Vira, Cathy Slagle, Frank Lamia, Ryan Baker, and Donna Cook.

Nay: None.

**C. BOA 23.06 Public hearing to consider the request of the Applicant, S.E. Civil, on behalf of the Owners, Stoic Equity Partners, LLC, for a special exception for indoor kennels on property zoned M-1, Light Industrial District. The property is approximately 23,061 SF and is located east of Greeno Road S and south of Nichols Ave Ext. PPIN#: 276903**

Hunter Simmons, Planning and Zoning Director, presented the case summary showing the aerial of the vacant lot. A site plan of that property was approved a few years ago for storage that was never built. Mr. Simmons shared a zoning map depicting the areas all around this lot being residential. The proposed property is zoned M-1 which is intended to provide a suitable protected environment for manufacturing, research and wholesale establishments which are clean, quiet and free of hazardous or objectionable emissions, and general little industrial traffic. Industrial parks should be encouraged. Locations should be in accordance with comprehensive plans. On July 25, 2022, the City Council amended the Zoning Ordinance to allow a Kennel or Animal Hospital in the M-1 Zoning District as a use “Permitted only on appeal and subject to special conditions.” This was not allowed ‘by right’ because some M-1 locations would not be suitable for a dog kennel, especially those adjacent to residential zoned property. Restaurants have been allowed in the M-1 Zoning District, but also must appear at the Board of Adjustments meeting for approval. Mr. Simmons shared the conceptual site plan for the kennels along with the City of Fairhope Municipal Code that covers noise in residential districts and sound thresholds. The daytime threshold is 85 db(a) and the evening threshold is 50 db(a). Staff, working to be unbiased, used a 2018 article titled, *A Barking Matter: Reducing Noise in Pet Boarding and Daycare Centers*, which states that “A single dog barking can reach 80-90 decibels (there are dogs that can reach over 100dB). When you have a group of dogs such as those in a kennel or daycare center, the typical noise level can reach an alarming 115 decibels.” Georgia State created a calculator for estimating sound levels with the inverse square law. When using that calculator, 320 feet was needed to drop 115 decibels below 85 decibels. The City of Fairhope ordinances do not address a specific separation distance, but Fort Worth, TX, requires a dog kennel to be at least 100’ from any residentially zoned property and 300’ from any residential habitat. Staff used a 300’ buffer between the proposed dog kennel

location and neighboring residential zoned property. There are 18 homes and 5 apartment buildings within the buffer. Mr. Simmons stated that he spoke with the police department who field complaint calls for The Haven.

**Recommendation:**

Staff recommends denial of Case BOA 23.06 due to the incompatibility with adjacent properties.

Larry Smith, S.E. Civil, spoke on behalf of the Applicant. Mr. Smith stated that he and the Applicant were looking for a property for the kennels and asked where it could be placed in the City. He believes that the M-1 district is the proper place. Mr. Smith stated that his neighbor's dog barks all the time which should put them in violation of the ordinance. Mr. Smith continued that the Applicant is cognizant of the surrounding homes and will have indoor kennels with an outside play area for the dogs to use the bathroom. The kennel will have overnight boarding, but all the dogs will be back inside by 7:00pm. Mr. Smith shared a proposal, that was prepared by the Applicant, with the Board. Mr. Smith asked the Board if they are going to deny this proposal, to please put some thought into where a kennel may be located within the City because there is a need for one.

Frank Lamia stated that there is a big difference between one dog in a yard and a whole kennel. Mr. Lamia stated that an appropriate place for a kennel is not in a neighborhood.

Mr. Simmons stated that Staff met with the Applicant to discuss some more appropriate locations.

Mr. Smith stated that the City of Fairhope has a very limited light industrial sector. He had a very hard time finding a property that did not fall within the 300' proximity to residential.

Ryan Baker asked whether the City had received any complaints about Bay Animal Hospital since there is residential in that area also. He asked about how many decibels would get through the walls of an indoor kennel. Mr. Simmons stated that there was a possible site that was discussed with the Applicants within the same M-1 district which was a larger site that had some woods nearby. There is also a property down by the airport. Mr. Simmons stated that a B-2 zoned area would also work. Mr. Smith acknowledged the other properties, but with the kennel also being a daycare, it may not be as good of a business model for it to be so far away. The Applicant is working towards being more centralized.

Mr. Baker asked if the Board had to approve or deny today. Mr. Simmons stated yes. Staff has also looked at ways to soundproof a building, but the outside portion of this application, causes the noise level to be addressed. Mr. Lamia stated that since the property butts right up to residential, he does not believe that there is a way to acoustically solve the problem.

Chairman Vira opened the public hearing at 5:35pm.

Eugene Levert, 116 Spring Park Drive, Vice-President of the HOA, stated that his neighborhood backs up to the proposed project. He has a petition signed by 26 of the residents. He read a paragraph from his petition. They are very concerned that the facility is being considered for this space. They are opposed to the project and ask the Board to deny.

Anthony Wonsick, 219 Hawthorne Circle, is on the Board of Hawthorne Glen. He stated that everyone is his development is opposed to the project.

Randy Niemeyer, 216 Hawthorne Circle, represents the other portion of Hawthorne Glen. He stated that there are 11 properties within 100' of the project. He and the residents do not believe this is the right spot and that there are other spots that could be used.

Frank Leatherberry, 12744 River Creek Drive, Belle Shain Kennels, stated that he has been in Fairhope all his life. This Board did not approve his request several years ago. He was forced to go out into the ETJ. His kennel does boarding, training and daycare, but his application was denied for the same reasons that have been listed.

Ken Graves, 120 Reilly Circle, lives within 75' of the property. This project is not suited for the area. The brewery is the next street over and Hope Farms is across the street. These businesses crank the music up very loud, and it is not suitable for dogs who can hear a pin drop. Some of the properties are 15' from an 8' fence. He requests denial.

Bob Tarabella, 212 Grants Way, is the owner of the 2-story building immediately to the west of the subject property. His office is approximately 10' from this property. He loves the location that his building is on and the zoning. His business does assembly and light manufacturing and had to find an area that would be suitable. He took special consideration when building his business to be good neighbors. The restaurants have invested money to make them look nice. He makes sure that his work is complete by 3:30pm. He stated that just because you can put something in a certain zone does not mean you should. He thinks that the City should be respectful of the residents that are nearby, and he encourages the Board to deny the application.

The public hearing was closed at 5:43pm.

Chairman Vira stated that there were additional comments in the packages.

**Motion:**

Cathy Slagle made a motion to deny Case BOA 23.06.

Donna Cook seconded the motion and the motion carried unanimously with the following vote:

Aye: Anil Vira, Cathy Slagle, Frank Lamia, Ryan Baker, and Donna Cook.

Nay: None.

**Old/New Business**

Chairman Vira asked if there were any items for the next meeting. Mr. Simmons answered that there is one case.

**Adjournment**

Ryan Baker made a motion to adjourn.

The motion carried unanimously with the following vote:

Aye: Anil Vira, Cathy Slagle, Frank Lamia, Ryan Baker, and Donna Cook.  
Nay: None.

Adjourned at 5:44 p.m.

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Anil Vira, Chairman

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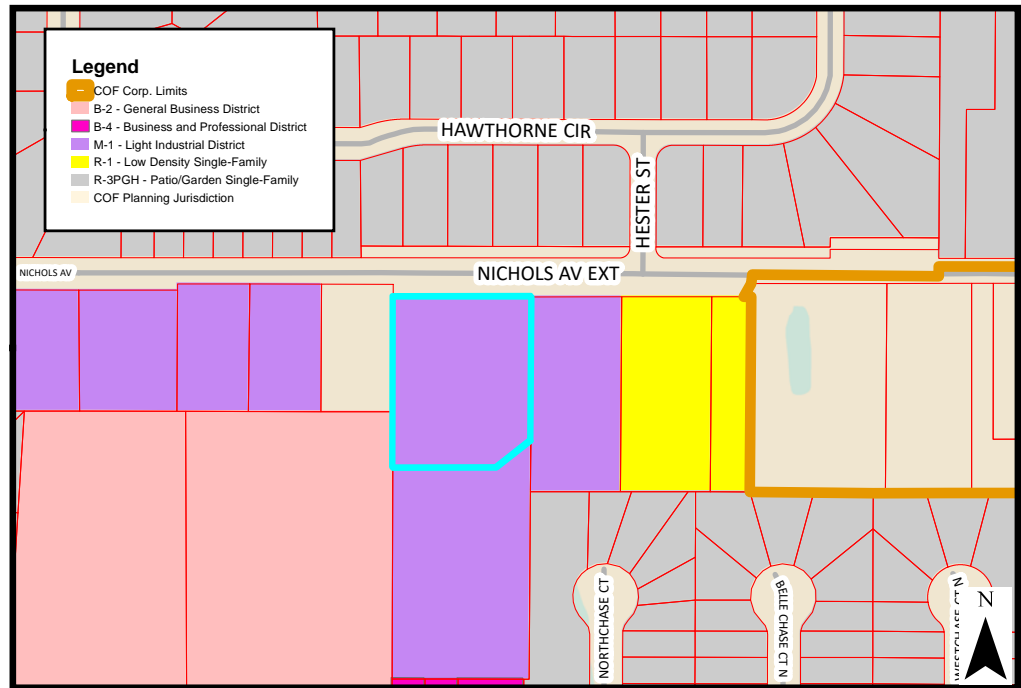
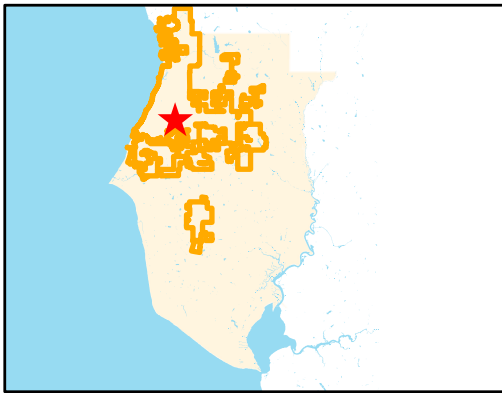
Cindy Beaudreau, Secretary

# City of Fairhope Board of Adjustment

July 17, 2023



## BOA 23.07 - 950 Nichols Avenue, VFW Post 5660



**Project Name:**

Aloho Made LLC

**Site Data:**

1.23 Acres

**Project Type:**

Special Exception - Use on Appeal

**Jurisdiction:**

Fairhope

**Zoning District:**

M-1

**PPIN Number:**

92512

**General Location:**

South side of Nichols Avenue, East of Greeno Road

**Surveyor of Record:**

**Engineer of Record:**

**Owner / Developer:**

VFW Post 5660

**School District:**

Fairhope Elementary School  
Fairhope Middle and High Schools

**Recommendation:**

Approve with conditions

**Prepared by:**

Mike Jeffries





APPLICATION FOR BOARD OF ADJUSTMENTS

Application Type: [ ] Administrative Appeal [X] Special Exception [ ] Variance

Property Owner / Leaseholder Information
Name: VFW Post 5660 Phone Number: 251-928-8259
Street Address: 950 Nichols Avenue
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: Aloha Made LLC dba Aloha Made BBQ Phone Number: (251) 880-8810
Street Address: 10552 County Road 32
City: Fairhope State: AL Zip: 36532

Site Plan with Existing Conditions Attached: YES NO
Site Plan with Proposed Conditions Attached: YES NO
Variance Request Information Complete: Not Applicable 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.

TIMOTHY E. BROWN QM.
Property Owner/Leaseholder Printed Name

[Signature]
Signature

13 June 2023
Date

Fairhope Single Tax Corp. (If Applicable)



**VARIANCE REQUEST INFORMATION**

What characteristics of the property prevent / preclude its development?: **Not Applicable**

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

Describe the indicated conditions: \_\_\_\_\_

How do the above indicated characteristics preclude reasonable use of your land?  
 \_\_\_\_\_  
 \_\_\_\_\_

What type of variance are you requesting (be as specific as possible)?  
 \_\_\_\_\_  
 \_\_\_\_\_

**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 (Provided two separate checks)</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.

TIMOTHY E. BROWN QM.  
 Property Owner/Leaseholder Printed Name

[Signature]  
 Signature

13 June 2023  
 Date

\_\_\_\_\_  
 Fairhope Single Tax Corp. (If Applicable)

Veterans of Foreign Wars  
Post 5660  
950 Nichols Avenue  
Fairhope, Alabama 36532

1. I, Tim Brown, Quartermaster at VFW Post 5660 agree to authorize Aloha Made LLC dba Aloha Made BBQ (EIN: 87-4272460) an agent able to apply for an application for consideration.

2. The VFW Post 5660 is agreeing to allow full use of the post commercial kitchen (currently the Aloha made commissary) to cook in and serve out of the hall for their customer seating and entertainment, utilize public restrooms both male and female, have outdoor seating area, and use post parking lot during the below listed hours of operation, in addition Aloha Made LLC preparation and clean up.

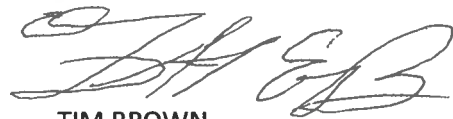
3. Functioning/operating hours are as follows, unless otherwise changed, which will be listed on Facebook:

Current Summertime hours: Tuesday – Saturday, 10am – 4pm

Current Schoolltime hours: Wednesday – Friday, 11am– 2pm and Saturday, 11am – 4pm

Effective immediately, upon conditions set by the Fairhope Board of Adjustments.

4. The point of contact for this letter is Quartermaster, Tim Brown, [timbrowment@gmail.com](mailto:timbrowment@gmail.com), 251-550-8431 or Facility Manager, Kerry Lambert, [kcopeland80@gmail.com](mailto:kcopeland80@gmail.com), 251-928-8259.



TIM BROWN  
VFW Post 5660  
Quartermaster

NOTARY:

STATE OF:

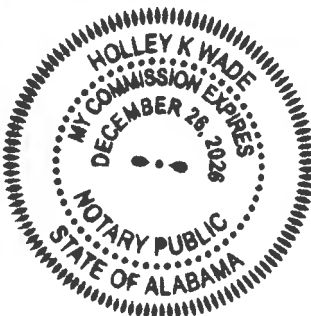
COUNTY OF:

Acknowledged before me this 13 day of June, 2023.



(Notary Public)

My Commission Expires:



The applicant, Aloha Made, LLC, is requesting a special exception to allow a restaurant at the property located at 950 Nichols Avenue. The property is zoned M-1 Light Industrial District. According to the Zoning Ordinance this district is *“intended to provide a suitable protected environment for manufacturing, research and wholesale establishments which are clean, quiet and free of hazardous or objectionable emissions, and generate little industrial traffic. Industrial parks should be encouraged. Locations should be in accordance with comprehensive plans.”* Restaurant use is permitted on appeal and subject to special conditions.

**Comments:**

The *City of Fairhope Zoning Ordinance* defines a special exception as follows:

***Special Exception: Permission granted by the Board of Adjustment for a use indicated in this ordinance as a use limited to a special exception procedure, subject to conditions specified in this ordinance and any conditions the Board deems necessary to ensure that community interests are furthered by permission of the use.***

The Board of Adjustments is authorized to grant special exceptions through Article II.A.d(2) which states the following:

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

***(2) Special Exceptions - To hear and decide special exceptions to the terms of this ordinance upon which the board is required to pass under this ordinance.***

The Ordinance provides guidance for special exception requests through the following criteria:

Article II.C.3.e.

**Criteria - (2) Any other application to the Board shall be reviewed under the following criteria and relief granted only upon the concurring vote of four Board members:**

- (a) Compliance with the Comprehensive Plan;**
- (b) Compliance with any other approved planning document;**
- (c) Compliance with the standards, goals, and intent of this ordinance;**
- (d) The character of the surrounding property, including any pending development activity;**
- (e) Adequacy of public infrastructure to support the proposed development;**
- (f) Impacts on natural resources, including existing conditions and ongoing post-development conditions;**
- (g) Compliance with other laws and regulations of the City;**
- (h) Compliance with other applicable laws and regulations of other jurisdictions;**
- (i) Impacts on adjacent property including noise, traffic, visible intrusions, potential physical impacts, and property values;**
- (j) Impacts on the surrounding neighborhood including noise, traffic, visible intrusions, potential physical impacts, and property values.**
- (k) Overall benefit to the community;**
- (l) Compliance with sound planning principles;**
- (m) Compliance with the terms and conditions of any zoning approval; and**

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

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

Article II.C.3.f.

***Effect of Appeal*** – An appeal to the Board stays all legal proceedings in furtherance of the application appealed from unless the Director certifies to the Board that a stay would cause imminent peril to life and property. In such cases, proceedings will not be stayed, unless by operation of a court of competent jurisdiction. If an appeal fails for any reason, the stay shall be lifted.

**Analysis and Recommendation:**

Special Exception Criteria:

**(b) Compliance with any other approved planning document**

Response:

“Restaurant” is an allowable use within the M-1 zoning classification as indicated in the City of Fairhope Zoning Ordinance Article III, Section B., Table 3-1 Use Table. However, “Restaurant” is not allowable by right and a special exception is required to allow the use. Further, Table 3-1 indicates the use is allowed “only on appeal and subject to special conditions”.

Staff has reviewed the application under the guidelines found in Article II.C.3.e. regarding special exceptions.

The current use of the property is the VFW Post 5660. The proposed restaurant currently uses the site as a commissary for a food truck. The VFW has agreed to allow the proposed restaurant to operate and use the commercial kitchen to cook in and serve out of the hall for seating. The restaurant will also utilize the VFW parking lot during the limited hours of operation. There is no expansion of the building being proposed. The restaurant will be occupying readily available space and entrance for patrons will be from the east side door.

Landscaping will be reviewed at time of review for business licensing and be required to come into compliance.

The proposed restaurant will have up to 36 seats available for outdoor seating on a patio on the side of the building and 36-48 seats available inside. The restaurant will not be using the bar area. This number of total seats requires 19 parking spaces. The VFW currently has 67+ spaces for parking. Staff does not see parking as a concern with the limited hours of operation.

Hours of operation are limited to:

Summer time: Tuesday-Saturday, 10AM-4PM

School time: Wednesday-Friday, 11AM-2PM Saturday, 11AM-4PM

**Recommendation:**

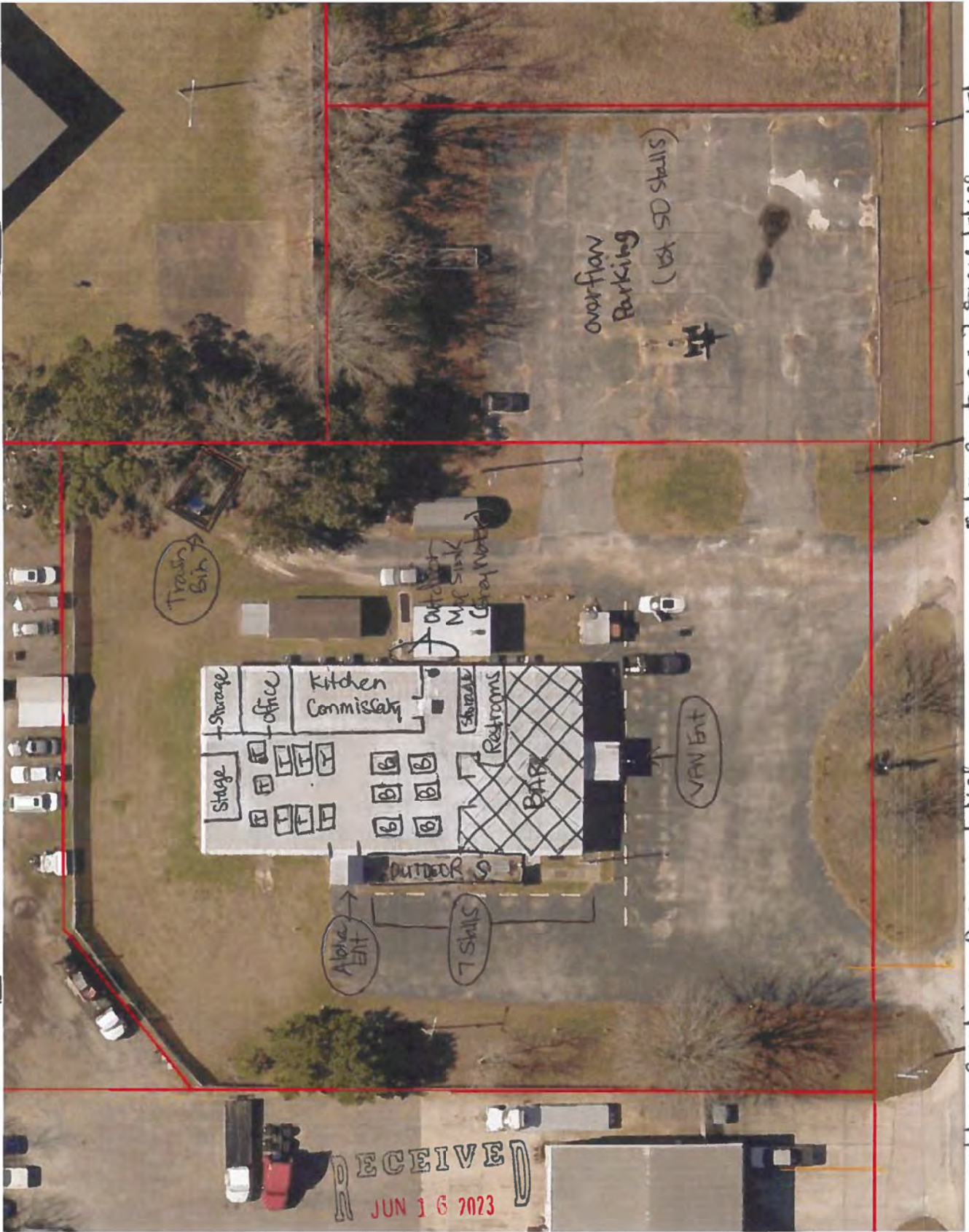
Staff recommends APPROVAL of BOA 23.07, subject to the following conditions:

1. Hours of operation are limited as shown above.



TABLE Billiards  
BAR will not use!

MAX CAPACITY (Indoor) = 155



Indoor Seating: 3 square tables <sup>est.</sup>  
4 1/2 tables  $\approx$  36 - 48

Outdoor Seating: 2 picnic tables  
3 square/interella tables  $\approx$  est. 340

BY: .....

**From:** [Randy Niemeyer](#)  
**To:** [Cindy Beaudreau](#)  
**Subject:** Aloha Made LLC  
**Date:** Monday, July 10, 2023 8:46:59 AM  
**Attachments:** [image001.png](#)

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I got your notice about Aloha Made and the special exemption, and have no problem with the City granting it. I actually had lunch there over the weekend. Great food!

**RANDALL C NIEMEYER**  
**ASSOCIATE BROKER, PROPERTY MANAGER**  
**CELL 251 232 2637**



# Ashurst Niemeyer