

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: May 5, 2014**

<u>CASE NUMBER</u>	5892/4262/3864
<u>APPLICANT NAME</u>	Antwan's Exquisite Hair Designs
<u>LOCATION</u>	1801 South Mott Drive (Northeast corner of South Mott Drive and St. Stephens Road)
<u>VARIANCE REQUEST</u>	USE: To amend a previously approved Use Variance to allow an accessory carwash with an existing beauty salon/barbershop in an R-1, Single-Family Residential District.
<u>ZONING ORDINANCE REQUIREMENT</u>	USE: The Zoning Ordinance requires a minimum of a B-2, Neighborhood Business District to allow a beauty salon/barbershop and carwash.
<u>ZONING</u>	R-1, Single-Family Residential District
<u>AREA OF PROPERTY</u>	0.22 ± Acres
<u>ENGINEERING COMMENTS</u>	No comments received
<u>TRAFFIC ENGINEERING COMMENTS</u>	The angled parking spaces illustrated are only 16' deep, four feet less than the 20' city standard depth measured perpendicular to the aisle. The actual aisle width is not illustrated, only the dimension from the building to the spaces. The aisle width may be substandard adjacent to the steps of the building. Two of the parallel spaces are only 21' long, two feet less than the 23' city standard length. The two 90 degree spaces, which include the handicap space, are illustrated off the paved surface and may conflict with an existing tree that is not illustrated on the proposed plan. A scale was not illustrated on the provided site plan; please provide a scaled drawing with any future submittals.
<u>FIRE DEPARTMENT COMMENTS</u>	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.

URBAN FORESTRY**COMMENTS**

Property to be developed in compliance with state and local laws that pertain to tree preservation and protection on both city and private properties (State Act 61-929 and City Code Chapters 57 and 64).

CITY COUNCIL**DISTRICT**

District 1

ANALYSIS

The applicant is requesting a Use Variance to amend a previously approved Use Variance to allow an accessory carwash with an existing beauty salon/barbershop in an R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum of a B-2, Neighborhood Business District to allow a beauty salon/barbershop and carwash.

It should be pointed out that the previously approved variance in 1991 was **only** for the use of a beauty salon and, it appears, that a barbershop and carwash were added to this site without Zoning Clearances or city business licenses.

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.

Applicant's statement: *As stated before Antwan's Exquisite Hair Design has been a part of the community for over 20 years as a hair salon and barber shop. The car wash came to be simply by Mrs. Johnson wanting to help the community by providing work for the young men who would come to her for financial assistance. Not one to give a hand out, Mr. and Mrs. Johnson knew without any training a car wash would provide this.*

Mr. and Mrs. Johnson the owner of the property located at 1801 S Mott Dr. were not aware of the zoning when the property was purchased over 20 years ago, prior to their ownership it had been a business, and at one time a church. Sometime after buying the property an addition was added to separate the barber shop from the salon, the final property expansion was the outside structure for the carwash and proper drainage. It was never their intention to violate the Zoning Ordinance.

Antwan's Exquisite Hair Design and The Blessed Car Wash are different from the neighboring properties as that is the only one of two hair salon located on the with in a two block radius of the intersections of South Mott and St. Stephens Rd. It was also

different from other residential lots of the Richland Place Subdivision, as the frontage is 110' along St. Stephens Rd.

Mr. and Mrs. Johnson are well respected business owners in the community; there have not been any negative impacts on the surrounding neighborhood that have ever come from their barber shop or car wash.

9. *The following description is of the existing and proposed improvements of 1801 Mott Dr. as of 02FEB14, the building is approximately 1450 SQFT , wood framed set approx. 20 ft. from the NE corner of St. Stephens Rd and South Mott DR. , of the Richland Place Subdivision. The building is currently is and has been exclusively operated as a barber shop and hair salon known as Antwan's Exquisite Hair Designs.*

The metal structure (18'x20'15' covered carport) located to the left and immediately adjacent to the building is and will be operated as a car wash under The Blessed Car Wash. The metal structure, covering and drainage were approved by City of Mobile inspectors and are currently in compliance of the city codes.

A wood privacy fence has been erected along the property line (running behind and along the left side). Access to the property is either via South Mott Dr. or St. Stephens Rd.

10. *At the present time there are no proposed improvements that would include any activities that would involve the use of equipment of machinery that would generate any noise, odors, or air pollution or effects on traffic.*

Antwan's Exquisite Hair Designs

Hours of operation: Tuesday thru Saturday 8am-6pm and Sundays (by appointment only).

Closed on Mondays

Number of employees: 4

Number of customers per day: 10-15

Gross Square Footage: 1450-sqft

Parking spots: 10

The Blessed Car Wash

Hours of operation: hours of operation are Monday thru Friday 10am to 5pm, Saturday 9am-6pm, fair weather permitting and depending on Day Light Savings Time sundown.

Number of employees: 2

Number of customers per day: 8-10

Gross Square Footage: 160 sqft

Parking spots: 10 shared with barber shop, when needed

The Board most recently approved a Use Variance for this site in 1991 for the operation of a salon in an R-1, Single-family Residential District. The current applicant was also one of the applicants in 1991, thus, she was aware of Zoning Ordinance requirements and conditions placed on that approval. With regards to the addition which “was added to separate the barber shop from the salon,” as stated by the applicant, the 1996 addition was permitted by the City as a residential addition for a living area, not for a commercial use.

It should be pointed out that in August 2013 the applicant applied for a building permit to construct a 25’ x 35’ detached carport; however, the permit was **not issued** (pending an approved variance), contrary to the applicant’s claim. Although the applicant attempted to permit a detached carport, a prefabricated metal structure was placed on the site without any permits and operated as a carwash, and is not currently in compliance.

Any new business should have requested a Use Variance prior to operation, and because the applicant did not seek the proper approvals, a Notice of Violation was issued by the City in February 2014. It is important to note that a month later in March 2014, a Final NOV was issued as the carwash was still operational. Public input has also stated that the carwash is still in operation “after hours (including weekends)” when City inspectors are off duty, which if confirmed, is another direct and, apparently **deliberate** violation of the NOVs issued.

Furthermore, the carwash is not in compliance with the revised carwash requirements of the Zoning Ordinance in that the existing carwash structure is not enclosed on at least 2 sides, as required. It appears, however, the applicant did obtain a permit to install an oil separator in 2011, as required in order to comply with federal water quality laws; however, if the oil separator has not been installed, the previously issued permit should be considered null and void. If the use of a carwash is approved, the applicant will have to bring the carwash into full compliance, to include permitting and installing an oil separator.

In September 2013 the applicant obtained a fence permit to construct a wooden privacy fence along the western and southern property lines, to restore a fence required by the 1991 variance. As such, Staff can verify the applicant’s claim of fence construction since a permit was issued; however, a double gate was installed along the western fence, directly adjacent to the unpermitted carwash structure. This is significant because neighbors have stated that “after

hours" and on weekends when the carwash is in operation (illegally), the applicant opens the double gate to utilize the adjacent residentially zoned property to the west for carwash activities. If confirmed, it would appear the use of the carwash has negatively impacted the surrounding area in that the activity has expanded onto the adjacent residential lot. Staff is unaware whether or not permission was granted by the adjacent property owner for the carwash-related activities.

The site is adjacent to B-2, Neighborhood Business directly across St. Stephens Road. Property to the west, north, and south of this site are all Zoned R-1, Single-family Residential; however, the property to the south is also commercially used, by Use Variance (and also had requested a use variance to operate a carwash, which was denied by the Board at its February 3, 2014 meeting).

It should be pointed out that there appears to be several errors on the site plan submitted. Currently, the site plan:

- 1) Is not to scale;
- 2) Is not in full compliance with Section 64-6.A. of the Zoning Ordinance as it relates to off-street parking requirements and parking lot lighting (required for 10+ parking spaces);
- 3) Does not depict a van accessible parking space;
- 4) Incorrectly depicts the travel aisle width to the building,
- 5) Does not depict proper circulation of the proposed spaces labeled 1-3, and one-way circulation for spaces 4-10;
- 6) Does not illustrate trees and landscaping in compliance with Section 64-4.E. of the Zoning Ordinance;
- 7) Does not illustrate a dumpster in compliance with Section 64-4.D.9. of the Zoning Ordinance to include being enclosed on at least three sides and connected to sanitary sewer or provide a note stating that garbage collection will be via curbside pick-up; and
- 8) Does not depict the previously permitted fencing around the western and southern lot lines.

It should be noted that the site plan illustrates the carwash structure only 5' from the side yard property line. Section 64-3.C.1. of the Zoning Ordinance states that a minimum of an 10' side yard setback is required within an R-1, Single-family Residential District and if the applicant desires a 5' setback, a Reduced Side Yard Setback Variance should be requested; otherwise, the carwash structure should be positioned a minimum of 10' from the western property line and the site plan should be revised to reflect compliance.

Parking does not appear to be compliant with Section 64-6.A. of the Zoning Ordinance and full compliance may not be possible; however, parking appears to have been modified without approvals or permits.

The single-family zoning classification appears to be the only special condition that exists with this property that would make the literal enforcement of the R-1 district regulations a hardship as the site has generally been used commercially and still contains one legal, commercial use (the hair salon). The applicant **has not**, however, clearly identified any other hardships.

Granting a variance to allow the (continued) commercial use of the barbershop may not be contrary to the public interest since the site contains a previously approved variance for a salon. Should the Board wish to consider approval of the barbershop use, it is recommended that it be subject to obtaining appropriate inspections for building and fire code compliance (with necessary modifications including wheel chair accessibility), and the provision of necessary waste disposal facilities; such conditions would protect the public interest and maintain the spirit of the Zoning Ordinance.

It is important to note that public notification is vital to any use variance case. The fact that the applicant's list of property owners appears to have not included 10 properties, and at least 6 notification letters have been returned due to incorrect addresses or incorrect ownership information, indicates that there has not been adequate notification for this case. Furthermore, as stated on the Board of Zoning Adjustment application, the applicant is responsible for obtaining the names and addresses (including zip codes) of the owners of every parcel, or portion of a parcel, that is within 300 feet of the property lines of the property involved in this appeal. This information may be obtained from the latest assessment records of the County Revenue Commissioner's Office located in the plat and map room. ALL property ownership information provided for notification MUST be verified through Probate Court records. Therefore, it is recommended that this application be heldover so that the applicant can submit a complete list of current property owners and labels for all properties within 300 feet, with new postage and label fees. This information should be submitted by May 12th.

RECOMMENDATION: Based upon the preceding, Staff recommends holdover to the Board until the June 2nd meeting, with revisions due by May 12th, to address the following:

- 1) Submission of a complete list of current property owners and labels for all properties within 300 feet, with new postage and label fees.

Revised for the June 2nd meeting:

The application was held over by the Board until the June 2nd meeting to allow the applicant to submit a complete list of current property owners and labels for all properties within 300 feet, with new postage and label fees.

Since that time, the applicant has submitted additional notification labels, but there are other prevailing issues, as previously discussed, which would make the approval of the variance requests contrary to the public interest.

RECOMMENDATION: *Staff recommends to the Board the following findings of fact for denial:*

- 1) *Approving the variance will be contrary to the public interest in that the site was approved for only 1 commercial use and that two additional commercial uses were added to the site, in addition to a residential addition which is being used commercially without commercial compliance to include accessibility requirements;*

- 2) *Special conditions do not exist and any apparent hardship appears to be self-imposed by making changes, additions and expansions without appropriate approvals or permits – and doing so after a denial of a permit; and*
- 3) *The spirit of the chapter shall not be observed and substantial justice shall not be done to the surrounding neighborhood by granting the variance because: the majority of the near-by residentially zoned lots in the immediate vicinity appear to have been developed in observance of Section 64-3.C.1.e of the Zoning Ordinance; the illegal operation of the carwash has negatively impacted the adjacent residential property; due to the fact that the Board recently denied a car wash use immediately next door; and that allowing additional commercial uses that occur outside of the existing salon structure would not be compatible with the residential character of the neighborhood. Furthermore, the expansion of uses and the corresponding change in parking would eliminate landscape areas and trees which maintain at least some level of residential compatibility of the site.*

LOCATOR MAP



APPLICATION NUMBER 5892 DATE June 2, 2014

APPLICANT Antwan's Exquisite Hair Designs

REQUEST Use Variance

N
S
NTS

BOARD OF ADJUSTMENT
VICINITY MAP - EXISTING ZONING



The site is surrounded by residential land use.
 Commercial sites are located to the east of the site.

APPLICATION NUMBER 5892 DATE June 2, 2014

APPLICANT Antwan's Exquisite Hair Designs

REQUEST Use Variance

LEGEND	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

N
 NTS

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



The site is surrounded by residential land use.
Commercial sites are located to the east of the site.

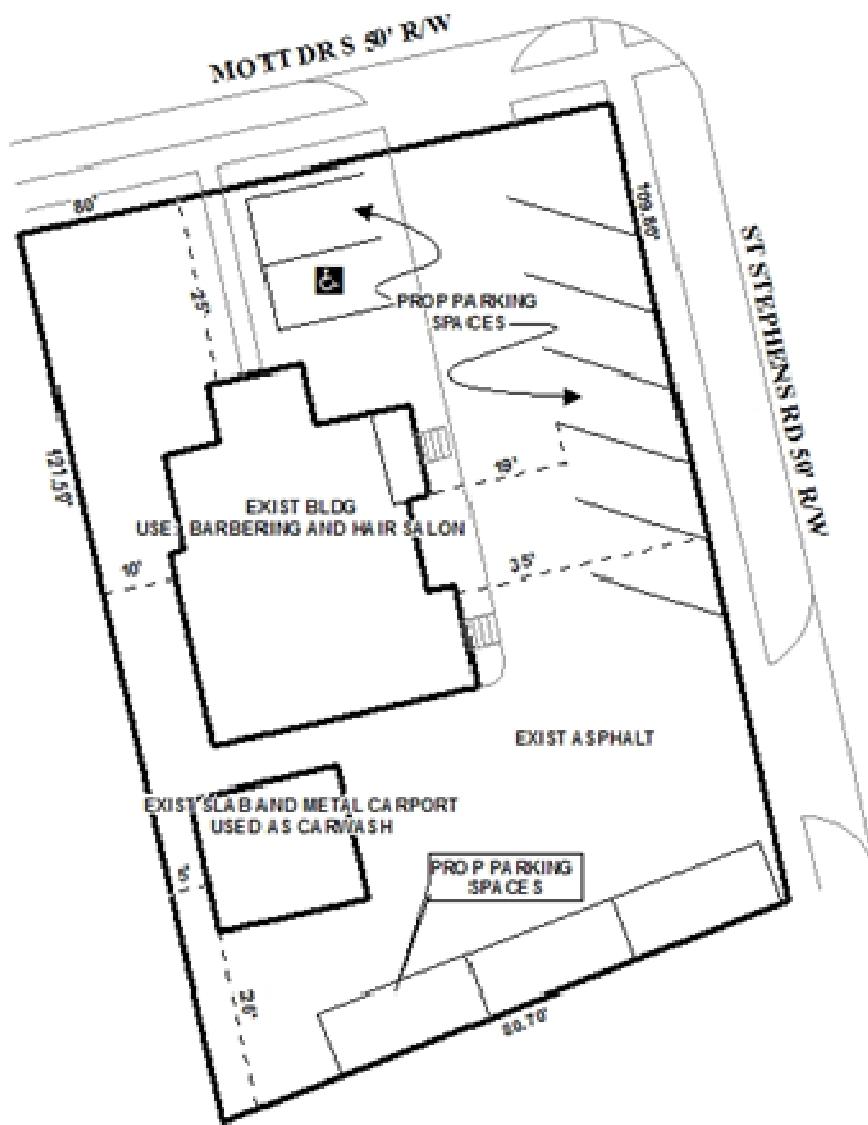
APPLICATION NUMBER 5892 DATE June 2, 2014

APPLICANT Antwan's Exquisite Hair Designs

REQUEST Use Variance

N
S
E
W
NTS

SITE PLAN



The site plan illustrates the existing improvements and proposed parking spaces.

APPLICATION NUMBER 5892 DATE June 2, 2014

APPLICANT Antwan's Exquisite Hair Designs

REQUEST Use Variance

N
E
S
W
NTS