

Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date:</b> January 9, 2024	<b>Budgeted Amount:</b> N/A
<b>Department:</b> Admin	<b>Prepared By:</b> Dave McCorquodale

**Subject**

Consideration and possible action by the Montgomery City Council acting as the Zoning Board of Adjustment regarding a requested appeal of a denial of the use of the property at 502 Louisa Street, currently zoned R1-Single Family Residential, for commercial use.

**Recommendation**

Consider the information and uphold or overturn the staff decision denying the use of the property for commercial use.

**Discussion**

Issue:

As you will recall, this item was on the December 2023 agenda. At that meeting, the City Council serving as the Zoning Board of Adjustment voted 3-2 to allow the applicant's requested use of the single-family property as a professional office.

As with any other zoning variance or Board of Adjustment action, the concurring vote of 75% of the members of the Board of Adjustment is needed to decide in favor of an applicant. The previous vote of 3-2 did not reach the 75% required by Section 98-29(h)(6), meaning the applicant cannot use the property as requested. To ensure the City Council/Board of Adjustment has all relevant information when acting on a matter, the item is being re-presented tonight.

*PREVIOUS AGENDA ITEM INFORMATION:*

The owner of 502 Louisa Street began using the existing single-family home for a professional office for a commercial trucking company. No one resides on the property. City staff contacted the property owner and business owner occupying the property denying the commercial use and providing information of the right of the property owner to appeal the decision to the Board of Adjustment based on the current zoning of the property.

Regulations:

Section 98-121 of the City Code of Ordinances [Single Family Residential Use Regulations]:

Buildings or premises in District R-1 shall be used only for the following purposes:

- (1) Uses permitted in an R-1 district in the table in section 98-88.
- (2) Single-family dwellings, including structures which also house immediate relatives of the family (including their parents, adult children, brothers, sisters, uncles, aunts, nephews and nieces) who are living together and sharing expenses for convenience or necessity and not as commercial renters.
- (3) Existing churches.
- (4) Existing parks, playgrounds, community buildings and other public recreational facilities owned and/or operated by the city or other public agency.
- (5) Existing public buildings, including libraries, museums, police stations and fire stations.

Montgomery City Council  
**AGENDA REPORT**

- (6) Existing schools, such as public elementary, intermediate or high schools.
- (7) Water supply reservoirs, pumping plants and towers.
- (8) Accessory uses customarily incident to the uses listed in this section and located on the same lot therewith, not involving the conduct of a retail business, and as defined in this subsection. The term "accessory use" shall include all home occupations which shall comply with the following standards and criteria in addition to any other standards imposed by the city council when such use is permitted by specific use permit:
  - a. The home occupation shall be conducted only within the principal dwelling.
  - b. No more than one additional person other than the residents residing on the premises shall be employed or engaged in the home occupation at the premises.
  - c. There shall be no alteration or change to the outside appearance, character or use of the dwelling or premises, or other visible evidence of the conduct of such home occupation, other than one sign not exceeding two square feet in area, non-illuminated, and mounted flat against the wall of the principal building.
  - d. No home occupation shall occupy more space than 25 percent of the total floor area of a residence, exclusive of any open porch, attached garage, or similar space not suited for or intended to be occupied as living quarters; provided, however, that in no event shall such home occupation occupy more than 600 square feet.
  - e. No equipment or process shall be used in such home occupation which creates noise, vibrations, glare, fumes, odors or electrical interference detectable to the normal senses outside the dwelling unit. No equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises.
  - f. No articles or materials used in connection with such home occupation shall be stored outside on the premises.
  - g. No more than one automobile or truck, whose size shall not be larger than a stock one-ton panel or pickup truck, used in connection with such home occupation, shall be permitted to park on the premises in question, or off the premises in question and within view from surrounding properties.

Section 98-29(h)(3) of the City Code of Ordinances [Powers of Board of Adjustment]:

(3) Special exceptions. The board of adjustment shall have the power to hear and decide special exceptions to the terms of this chapter upon which the board of adjustment is required to pass as follows or elsewhere in this chapter:

- a. Permit a public utility or public service use or structure in any district, or a public utility or public service building of a ground area and of a height at variance with those provided for in the district in which such public utility or public service building is permitted to be located, when found reasonably necessary for the public health, convenience, safety, or general welfare.
- b. Permit a transitional use between a business or residential district where the side of a lot in the R-1 district abuts upon a lot zoned for business or industrial purposes. The transitional use granted to a property is transferable to a subsequent property owner, provided that the property conveyed is the same identical property holding the grant of transitional use.
- c. Grant a permit for the extension of a use, height or area regulation into an adjoining district, where the boundary line of the district divides a lot in a single ownership on the effective date of the ordinance from which this chapter is derived.
- d. Permit the reconstruction of a nonconforming building which has been damaged by explosion, fire, acts of God, or the public enemy, to the extent of more than 50 percent of its fair market value, where the board of adjustment finds some compelling necessity requiring a continuance of the nonconforming use is not to continue a monopoly.
- e. Waive or reduce the parking requirements in any of the districts whenever the character of the building is such as to make unnecessary the full provision of parking facilities, or where such

Montgomery City Council  
**AGENDA REPORT**

regulations would impose an unreasonable hardship upon the use of the lot, as contrasted with merely granting an advantage or a convenience.

Analysis:

The attached exhibit shows the current zoning in the area of Louisa Street and the property. As shown, the B-Commercial district extends into the rear portion of 502 Louisa Street, and the Board of Adjustment may permit the extension of the Commercial district to the rest of the property.

Recommendation:

While commercial development lies to the north and east of Louisa Street, the overall character, zoning, and use of the street is residential. Extension of the commercial district to the rest of the property for only professional will likely be difficult to enforce—B-Commercial zoning allows for a wide range of uses and limiting the use to professional would require continued monitoring by city staff. Staff recommends denial of the request to use the property for commercial use.

<b>Approved By</b>		
Assistant City Administrator & Planning & Development Director	Dave McCorquodale	Date: 01/03/2024
City Administrator	Gary Palmer	Date: 01/03/2024