

APPLICATION NUMBER

**5459**

A REQUEST FOR

**USE VARIANCE TO ALLOW A REAL ESTATE OFFICE IN  
AN R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT;  
REAL ESTATE OFFICES REQUIRE A MINIMUM B-1,  
BUFFER BUSINESS DISTRICT**

LOCATED AT

**9 UPHAM STREET**

(West side of Upham Street, 125'+ North of Dauphin Street)

APPLICANT

**TARA COX**

OWNER

**TARA COX**

**BOARD OF ZONING ADJUSTMENT**

FEBRUARY/2008

The applicant is requesting a use variance to allow a real estate office in an R-1, Single-Family Residential District; real estate offices require a minimum B-1, Buffer Business District.

The site is located just North of Dauphin Street on Upham Street. It is zoned R-1, Single-Family Residential and has been operating as an office space. According to the applicant, the business activity is limited to mainly computer, fax, FedEx, and e-mail. Recently, a Notice of Violation was issued, hence this application.

The applicant states that Upham Street is not the best location for residential use due to all the business uses and traffic currently in the area. The property was listed on the market as a residential property for over two years, but because of all the commercial use on the street, it would be hard for a family with children to have any interest. The applicant further states that the subject property is the only location between Dauphin and Old Shell Road that is **NOT** zoned for commercial use.

With regard to the applicant's request for a use variance, it should be noted that a Zoning Certificate was issued for the subject property in December 2007, but for a **Home Occupation** as a Realtor's office. The conditions for a Home Occupation include: **THE APPLICANT MUST LIVE AT THE RESIDENCE, AND PERSONS NOT LIVING AT THE RESIDENCE CANNOT WORK AT THE LOCATION.** The business activity shall be incidental to the residential use of the premises and shall not: (a) take place in the yard or in a detached building; (b) occupy more than 25% of the floor area of the dwelling; (c) employ anyone who does not live in the dwelling; (d) include selling or storage of items for sale from this address that are made elsewhere; and (e) clients cannot be seen at residence. However, it appears that the applicant applied for the recent Zoning Certificate as a Home Occupation fully aware of the conditions, as they are specifically stated on the certificate, but with **NO** intentions of living at the location. Furthermore, with regard to the applicant's statement of being the only location between Dauphin Street and Old Shell Road **NOT** zoned for commercial use, both adjacent properties to the North and South **are also** zoned for residential use. Also, all properties expansively adjacent to the East of the property are residential in character. To allow a B-1 use at this location could establish a detrimental precedent for further commercialization of an established R-1 neighborhood. It should also be noted that the submitted site plan does not indicate any improvements to the property, such as paved parking and access and landscaping. The property is residential in character and has always been used as such.

It should also be noted that the property adjacent to the South (2150 Dauphin Street) was the subject of a similar variance request (#4508). In the said case, the applicant's claim hinged primarily upon the argument that the property was not inviting for a residential use, noting that the highest and best use of the property would be commercial. The Board denied the request and was backed by the court system. Indeed, the court system upheld

previous decisions by the Alabama Supreme Court in that neither depreciated value nor financial loss is determinative in a variance case. Furthermore, the court felt that if a variance was to be granted on such grounds, then “other property owners desiring to sell their property in a use zone at a premium for nonconforming purposes would frequently seek use variances, [and] the granting of which would tend to destroy or greatly impair the whole system of zoning.” Currently, it should be pointed out, the property at 2150 Dauphin Street is now being used as a residence.

The Zoning Ordinance states that no variance shall be granted where economics are the basis for the application. Furthermore, the applicant must present 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.

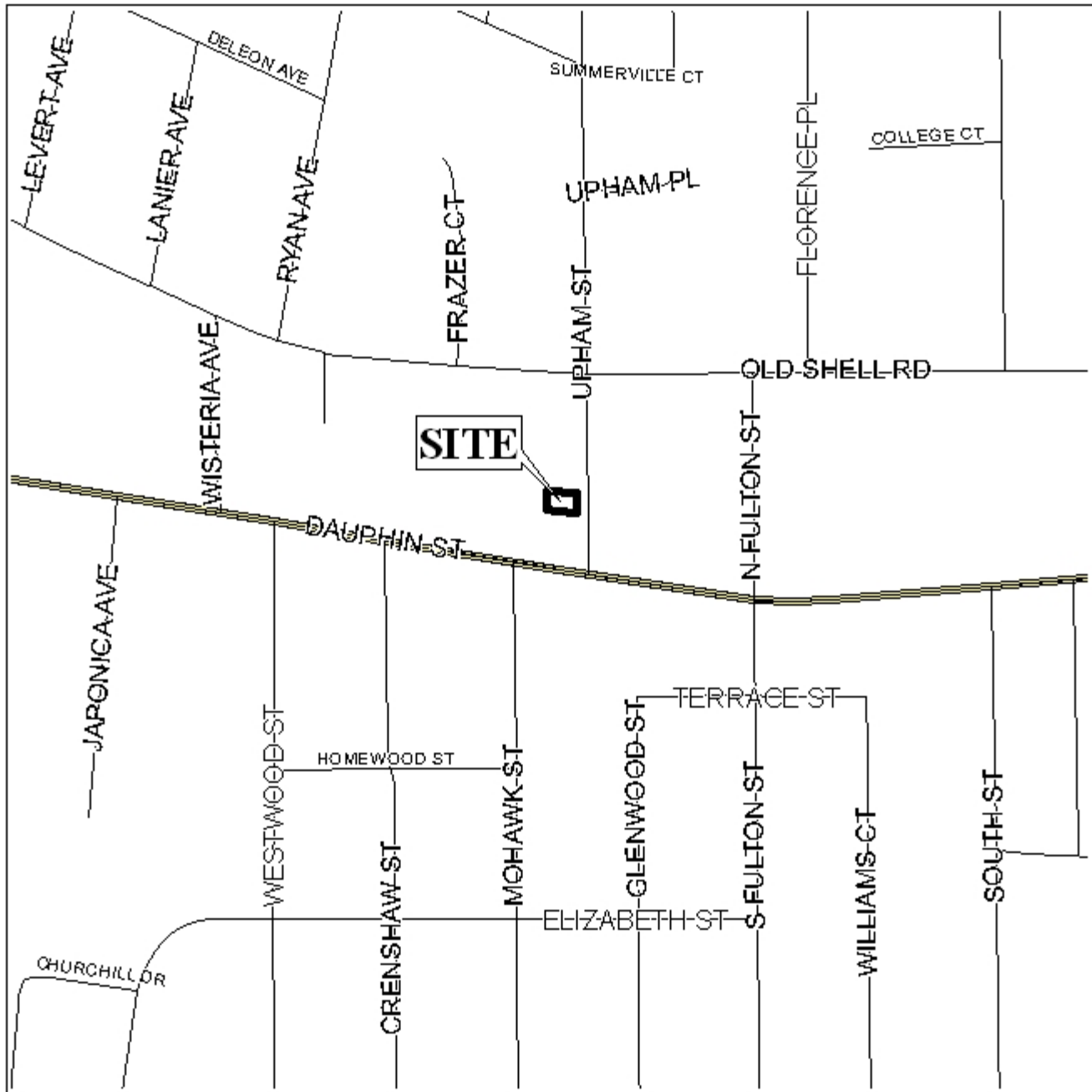
Variances are not intended to be granted frequently. The applicant must clearly show the Board that the request is due to very unusual characteristics of the property and that it satisfies the variance standards. What constitutes unnecessary hardship and substantial justice is a matter to be determined from the facts and circumstances of each application.

The applicant failed to illustrate that a literal enforcement of the Ordinance would result in an unnecessary hardship. It is simply the applicant’s desire to operate a B-1 type business in an established R-1 neighborhood.

**RECOMMENDATION 5459****Date: February 11, 2008**

Based on the preceding, it is recommended that this application be denied.

# LOCATOR MAP



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# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



Offices are north and east of the site. Single family residential units are located west and south of the site and one single family residential unit is to the northeast.

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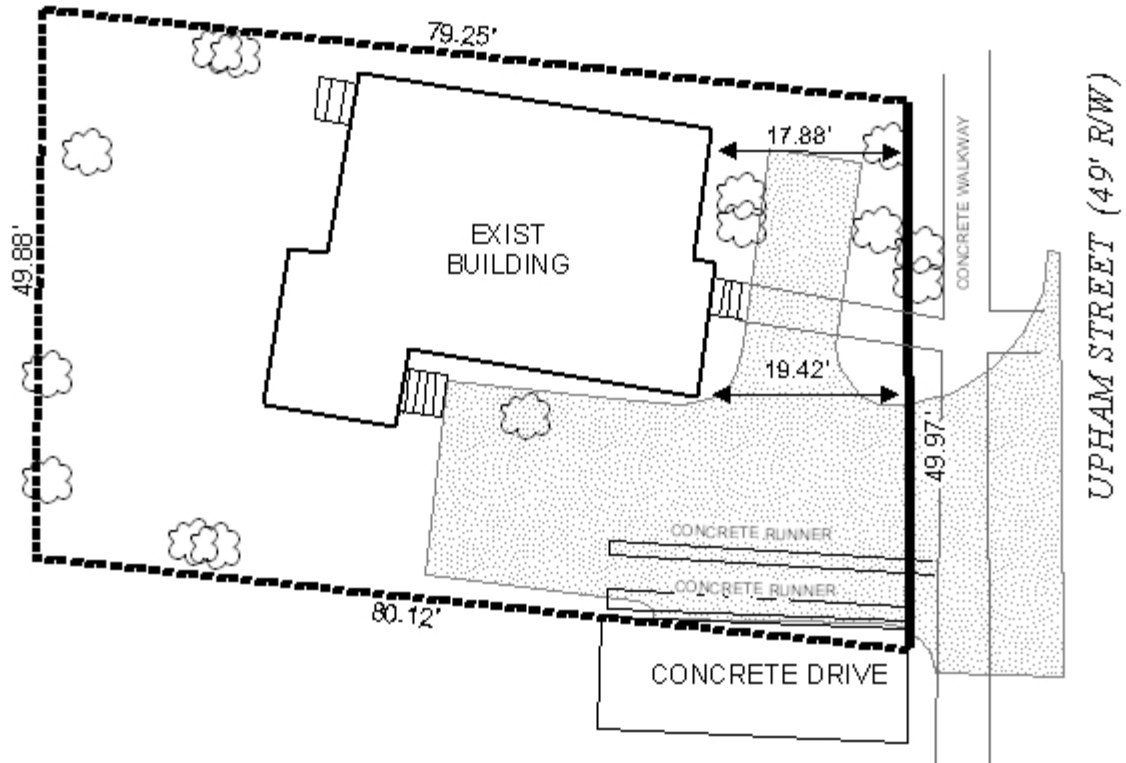
REQUEST Use Variance

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 |
|-----|-----|-----|-----|-----|-----|-----|-----|------|-----|-----|-----|-----|-----|-----|



# SITE PLAN



The site plan illustrates the existing building, drive, parking, and walkways.

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