

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT**

Date: July 10, 2017

CASE NUMBER

6119/ 6063

APPLICANT NAME

5054 OSR, LLC

LOCATION

5070 and 5054 Old Shell Road
(Northeast corner of Old Shell Road and Border Drive North and the West side of Border Drive North, extending to the East side of Parkway East, 220'± North of Old Shell Road.)

VARIANCE REQUEST

USE: To allow a restaurant in an R-1, Single Family Residential District.

MULTIPLE STRUCTURES: To allow multiple buildings on a single building site.

SETBACK: Side Street Side Yard Setback to allow a 6'-8' high masonry wall within 7.5'± of a side street side yard.

OFF SITE PARKING: To allow off-site parking on an adjacent property.

SURFACING: To allow aggregate surfacing for a parking area.

LANDSCAPE AREA: To allow reduced front landscape area.

**ZONING ORDINANCE
REQUIREMENT**

USE: The Zoning Ordinance requires a minimum of a B-2, Neighborhood Business District zoning for a restaurant.

MULTIPLE STRUCTURES: The Zoning Ordinance requires a single structure per building site.

SETBACK: The Zoning Ordinance requires a 20' side street side yard setback for walls taller than 3'.

OFF SITE PARKING: The Zoning Ordinance requires all parking to be provided on one business site.

SURFACING: The Zoning Ordinance requires all parking be paved with concrete, asphaltic concrete, or asphalt.

LANDSCAPE AREA: The Zoning Ordinance requires full compliance with landscape area requirements.

ZONING

R-1, Single-Family Residential District

AREA OF PROPERTY

39,623 ± square feet/0.91±Acres

ENGINEERING

COMMENTS

USE VARIANCE: NO COMMENT

MULTIPLE STRUCTURES VARIANCE:

If the Multiple Structures Variance is approved the applicant will need to have the following conditions met:

- a. Submit and receive a Land Disturbance Permit for the proposed site development through Central Permitting.
- b. Submit a ROW Permit (City of Mobile Eng. Dept.) for the work within the Public ROW. Aggregate surfacing will NOT be allowed within the public ROW.

SIDE STREET SIDE YARD VARIANCE (6’ – 8’ Masonry Wall): NO COMMENT

OFF-SITE PARKING VARIANCE:

If the Off-Site Parking Variance is approved the applicant will need to have the following conditions met:

- a. Submit and receive a Land Disturbance Permit for the proposed site development through Central Permitting.
- b. Submit a ROW Permit (City of Mobile Eng. Dept.) for the work within the Public ROW. Aggregate surfacing will NOT be allowed within the public ROW.

SURFACING VARIANCE:

If the aggregate surfacing is approved for use the applicant will need to have the following conditions met:

- a. Submit and receive a Land Disturbance Permit for the proposed site development through Central Permitting.
- b. Submit a ROW Permit (City of Mobile Eng. Dept.) for the work within the Public ROW. Aggregate surfacing will NOT be allowed within the public ROW.

REDUCED LANDSCAPE AREA VARIANCE: NO COMMENT

TRAFFIC ENGINEERING

COMMENTS

A non-utility right-of-way use agreement should be required to allow for the parking and maneuvering that is proposed to take place within the right-of-way. This includes the drop-off/loading zone on Old Shell Road and the angled parking on Border Drive North. Any additional features to be constructed in the right-of-way (i.e. bollards along the drop-off zone) should also be included in the agreement. The existing sidewalk approaching the site has been constructed at 5' width therefore the clear path to be considered the extension of the sidewalk should be 5' in width unobstructed. The applicant's design professional is responsible for confirming the need for accessible parking. The inclusion of a drop-off area does not appear to be sufficient enough to meet ADA requirements as a handicapped person may also be a single occupant in a vehicle. This may impact the number of parking spaces that are proposed. If a surface variance is approved, the aggregate cannot extend into the right-of-way and cannot be used in the areas designated as the accessible path from any required handicap space to the building. The location of a proposed mid-block crosswalk for access to the parking lot across the street must be approved by the Traffic Engineering Director. Any striping to be place in the right-of-way must be a thermoplastic material.

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 2015-116 and City Code Chapters 57 and 64).

FIRE DEPARTMENT

COMMENTS

830 All projects within the City Limits of Mobile shall comply with the requirements of the City of Mobile Fire Code Ordinance. (2012 International Fire Code).

CITY COUNCIL

DISTRICT

District 7

ANALYSIS

The applicant is requesting Use, Multiple Structures, Side Street Side Yard Setback, Off-Site Parking, Surfacing, and Reduced Landscaping Area Variances to allow a restaurant in an R-1, Single-Family Residential District with multiple structures on a single building site, a 6'-8' high masonry wall within 7.5' of a side street side yard, off-site parking surfaced with crushed stone, and reduced landscaping area; the Zoning Ordinance requires a minimum of a B-2, Neighborhood Business District for a restaurant, a single structure per building site, a 20' side street side yard setback for walls taller than 3', all required parking to be provided on-site and surfaced with either asphalt, concrete, or asphaltic concrete, and full compliance with landscape area requirements.

This site most recently appeared before the Board at its November 7, 2016 meeting where use, surfacing, and front landscape area variances were approved to allow a clinical psychologist office. Since the previous approvals granted by the Board, the proposed development for the site has changed to a restaurant; thus the reason for the new variance requests.

It should be noted, while staff has no non-conforming documentation on this site, it has been used as a mechanic (a B-3 use) as far back as 1980 according to the Polk Directory, and aerial photographs show that this building has existed as far back as 1960. The applicant wishes to utilize the building for a casual restaurant with inside and outside dining (a minimum B-2 use).

The applicant states the following reasons to explain the need for the variances:

"This application includes two adjacent properties. For the purposes of this application, we will refer to these as the "Rester Brothers Garage" and the "Vacant Commercial Lot".

The Rester Brothers Garage property is located at 5054 Old Shell Road, Mobile, AL, 36608.

The Vacant Commercial Lot is located directly across Border Drive E from the Rester Brothers Auto Repair, and sits directly to the North of the existing public parking lot for Lavretta Park.

Description of Use & Character of Improvements, & Schedule (Item #9)

Existing Use

Rester Brothers Garage Lot

This property's current use is for automobile repair. The existing structure is a single story, cinder block building with three garage bays, and a metal canopy overhang. The entire frontage is paved in concrete, with a wooden post business sign existing on the property. The interior of the building consists of a small office area in addition to the garage area. There are typically a few cars consistently parked on-site.

Vacant Commercial Lot

This property is currently vacant. The lot features a number of heritage trees, many larger than 24". The groundcover consists of generally light undergrowth.

Proposed Use

Rester Brothers Garage Lot to Restaurant

We are proposing that the Rester Brothers garage site be converted to a fast-casual restaurant serving sophisticated cuisine. We plan to turn the garage into an indoor dining room with large bay doors with the ability to open as desired. Through the back of the garage, additional bay doors will lead to a covered patio area, and beyond the patio, a courtyard with additional seating and special features.

Vacant Commercial Lot to Parking

We are proposing that the vacant commercial lot across E Border Drive be made into a pervious parking lot. We plan to keep as many heritage trees as possible, clean up the dense undergrowth, and maintain the lot in keeping with the natural feel of the adjacent public park.

Character of Improvements

To the Rester Brothers Garage Lot

The existing garage lot appears junky. The improvements we are proposing will not only improve the façade of the structure, but also the entire lot.

The portion of the building which faces Old Shell Road, will be upgraded from an old filling station, to a clean, modern restaurant facade. Our frontage will feature outdoor dining tables surrounded by above ground planters full of beautiful landscaping. Our design also includes an ADA accessible drop-off zone with clear points of entry and exit for vehicular traffic. We feel this is a much safer traffic alternative to the existing concrete frontage with no clear direction for travel.

The rear of the lot behind the garage will be converted to a covered patio and open courtyard, completely surrounded by a brick wall and buffering vegetative landscaping. We aspire to include such special features as shade structures, lawn games, and a fire pit.

To the Vacant Commercial Lot

The existing vacant lot is overgrown and appears messy. Our proposal will remove the undergrowth, preserve the heritage trees, and introduce a pervious parking surface with ribbon curb. The lot will appear cleaner from Old Shell Road and the nearby Lavretta Park. The lot will be kept maintained to a natural, but tailored state, in keeping with the natural elements of the surrounding park and public parking lot.

Bonus Improvements to the Nearby Intersection

We are also offering several improvements to the nearby intersection of Old Shell Road and Border Drive E. We believe that the restaurant will bring a modern presence to the corner of this intersection, making it appear to be outdated and in a state of disrepair. We are offering to install a new crosswalk across Border Drive E, as well as new sidewalks leading from the intersection to the proposed parking lot. We also plan to continue the existing row of street lights, adding three identical lights along Old Shell Road and in front of the proposed restaurant. We have been informed by many neighbors of the drainage problem that exists at this intersection, specifically on Border Drive E. We can confidently state that our total improvements will not, under any circumstances, contribute to the existing runoff. Although we are not able, nor is it our obligation, to solve the larger drainage problems for this area, we expect that the mandated onsite drainage improvements will ease some of the concerns in the vicinity.

Time Schedule for Development

Pending variance approval, we would like to begin construction in late Fall or early Winter of 2017, with the goal of being fully operational by Spring of 2018.

Use Variance - Proposed Use Variance Detailed Description (Item #10)

Proposed Use Details

Expected activities of this site include typical uses expected of a restaurant with indoor and outdoor seating, and a full bar. Lunch and dinner will be served seven (7) days per week, with anticipated hours of 11 am to 10 pm on weekdays, and 11 am to 11 pm on weekends.

The restaurant is expected to employ a staff of 30, daily, and is expecting to serve an estimated 375 customers per day, across all hours of operation.

Noise generated by the establishment will include ambient restaurant noise, and will not exceed the limits set forth in the noise ordinance. No equipment or machinery is expected to produce excessive noise, odors, or air pollution. The site is likely to generate more traffic under the proposed use than the current use.

The building itself has a total gross square footage of 3900 SF, with 80 seats indoors and 80 seats outdoors. The parking requirements for an establishment of this size are 39 parking spaces. Our site is providing 41 total parking spaces: 9 on-street angled parking, and 32 off-street parking spaces in the proposed lot.

The Need for Variance

The property cannot currently be used in compliance with the zoning ordinance because a restaurant is not a permitted use in the R-1 district. The property has historically been a service station, and its current use as an automobile repair shop is also not a permitted use in the R-1 district.

The property has historically held a non-conforming B-3 status. While the non-conforming status will remain, the property will be greatly improved and revitalized, including but not limited to, environmental remediation, right of way improvements, and building improvements.

To eliminate the impacts of a commercial use property in a residential district, we are proposing several improvements. A solid wall, six to eight feet in height, will separate the outdoor dining area from the contiguous neighbors to the east and north of the Rester Brothers property. An enhanced landscape buffer will be added on the north side of the proposed parking lot to separate the lot from those neighbors to the north. A low-impact parking surface will be installed in the lot. All heritage trees on both sites will be preserved, and all onsite stormwater created by the improvements will be properly detained or retained.

Bulk/Site Variances -Proposed Variance Detailed Descriptions (Item #10)

List of Requested Variances

Variance to 64-6.A.2 Location of Off-Street Parking Facilities

Due to the restrictive size of the Rester Brothers site, and given the proposed building footprint, we formally request a variance to allow a portion of the off-street parking spaces provided to be located on a site other than the building site on which the structure is located.

Variance to 64-4.A.3.a Surface of Off Street Parking Facilities

Due to the existing drainage problems of the area, and in an effort to minimize impact, we formally request a variance to allow an alternative parking surface of gravel for the portion of parking spaces to be provided on the separate parking lot. On-street parking spaces will be paved with asphalt, according to buildup requirements.

Variance to 64-6.A.3.i Screen and Landscaping of Off-Street Facilities

Due to the existing right-of-way to the north of the proposed parking lot, we formally request a variance to allow this right-of-way to be considered a "street separation" from the residential properties, so that the required buffer may be five feet. This variance is necessary for us to be able to save every heritage tree on the proposed lot site."

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.

The site has been given a Mixed Commercial Corridor land use designation, per the recently adopted Future Land Use Plan and Map. The Future Land Use Plan and Map complements and provides additional detail to the Development Framework Maps in the Map for Mobile, adopted by the Planning Commission at its November 5, 2015 meeting.

This land use designation mostly applies to transportation corridors west of I-65 serving primarily the low-density (suburban) residential neighborhoods. MCC includes a wide variety of retail, services and entertainment uses.

This designation acknowledges existing commercial development that is spread along Mobile's transportation corridors in a conventional strip pattern or concentrated into shorter segments of a corridor.

Over time, new development and redevelopment in Mixed Commercial Corridors is encouraged to raise design quality, improve connectivity to surrounding neighborhoods; improved streetscapes; and improve mobility and accessibility for all users of the corridor.

The applicant is proposing a casual restaurant with indoor and outdoor seating. The restaurant will be open for lunch and dinner, 7 days a week from 11 am to 10 pm on the weekdays and 11 am to 11 pm on the weekends. The restaurant plans to employ a staff of 30 with expectations of serving an estimated 375 customers per day. The applicant also plans to have a covered patio and courtyard where customers will have access to lawn games, a fire pit, and other outdoor activities. Due to the possible increase in traffic, staff is of the opinion a meeting with the neighborhood and developers would be beneficial to discuss any concerns the community may have within the area regarding the proposed development.

The existing structure on the site is 1,420 ± square feet, and the applicant is proposing to add an addition of 1,650 square feet along with a separate office building that will be 830 square feet. The applicant states that there is a total gross square footage of 3,900 square footage and they plan to provide 80 indoor seats and 80 outdoors seats (suggesting that they need to provide a minimum of 39 parking spaces). However the applicant failed to include the total square footage including the outside dining area which should be included in the calculation to determine the required number of parking spaces. There also appears to be a larger area of concrete in the front of the building, if the applicant plans to include outdoor seating in front of the restaurant, square

footage information should also be included in the parking calculations as well. A revised site plan providing the total square footage calculations for both indoor and outdoor dining is required so staff can determine if adequate parking will be provided.

With regards to the request for the use, the applicant states that the property cannot be used in compliance with the zoning ordinance because a restaurant is not a permitted use in the R-1 district. The applicant also makes reference to the site having historically a non-conforming B-3 status. Based on the narrative provided by the applicant there has been no indication of a hardship provided explaining why this specific site can only be used for a restaurant. While the applicant may be correct in stating that the site has held a non-conforming use historically, it was solely for the use of the automobile repair shop and similar uses to be located at 5054 Old Shell Road. The fact that the applicant is proposing to expand the footprint of the building as well as add off-site parking to an adjacent property is well beyond the scope of what would be allowed to be classified as continuing to operate as a “non-conforming” site.

The applicant is requesting a variance for multiple structures on a single business site to allow a newly proposed 830 square foot standalone office building to be developed along with improvements and additions to an existing building on the site. The request for multiple buildings on a single business site are typically reviewed through Planned Unit Developments which are presented before the Planning Commission or completed administratively, which is done by staff. However, staff advised the applicant that proceeding with a variance request for multiple structures would be more appropriate considering the variance process was required to address other compliance issues on the site.

With regards to the request for a surfacing variance, the applicant would like to provide crushed stone for the adjacent lot which will be utilized as a parking lot for offsite parking for the restaurant. The lot is currently undeveloped and consists of trees and shrubs. The applicant wishes to provide gravel/crushed stone as a parking surface due to the fact the area has existing drainage problems and the applicants believes that gravel will minimum drainage issues in the area. However, during inclement weather crushed stone/ gravel is far worse than asphalt as crushed rocks/ stone has the tendency to be displaced and removed from the site. While staff understands it is important to minimize possible concerns of flooding and runoff there are various impervious surfacing options, while more expensive are beneficial and approvable. The applicant also states that by providing gravel/ crushed stone surfacing it will help with keeping the natural elements of the surrounding park and public parking lot that is adjacent to the proposed development. However, the adjacent parking lot is paved with an approvable surface, striped, and has bumper stops. The adjacent parking lot meets the requirements of a compliant parking lot so in keeping with the character of the area it would seem appropriate to have the adjacent parking lot compliant as well. Furthermore, there is no hardship presented on the property that will prohibit the parking lot from being compliant.

The site abuts residentially zoned and utilized property to the North and East. The applicant is requesting a setback variance to allow a 6'-8' high masonry wall within 7.5' of the side street side yard setback. The applicant does not provide any justification for the need to install the wall within the setbacks along Border Drive North. The narrative provided simply states *“the wall will separate the outdoor dining area from the contiguous neighbors to the east and north of the*

Rester Brothers property. An enhanced landscape buffer will be added on the north side of the proposed parking lot to separate the lot from those neighbors to the north". It should also be pointed out that based on the site plan; the rear yard setback does not appear to meet setback compliance either. When evidence is not provided to support the alleged hardship associated with the property staff can only determine that it is merely the applicant's personal desire not to comply, and not that compliance is unobtainable.

The applicant also requested a reduced landscape area variance because the site as proposed would not be able to provide compliance with front landscape area. Based on the landscape calculations provided by the applicant, the site would in fact be in compliance if the calculations were correct; however staff has determined that there are some discrepancies with the landscape plan. For clarification purposes the tree and landscape plan should be revised to separate and clearly depict the tree and landscape calculations for the restaurant property as well as the calculations for the parking lot. The frontage tree and perimeter tree calculations are incorrect and should be revised. Based on staff's calculations the proposed restaurant property should have 8 frontage trees and 8 perimeter trees. The proposed parking lot property should have 3 frontage trees, 15 perimeter trees, and 3 parking trees (parking tree calculations are subject to change based on outdoor seating square footage calculations). Staff is aware that there are many existing trees on site and applicant may have intentions on using some of the existing trees for credits; however those trees should be specifically identified on the tree and landscape plan. There also appear to be several large heritage trees depicted on a separate site plan that are located on private property that are not shown on the tree and landscape plan. Please note private property tree removal applications will be required for the removal of each tree. Staff also has some concern regarding the placement and close proximity of the 3 live oak trees that are proposed in front of the restaurant property and would recommend spacing the trees to allow more room for each tree to grow.

A dumpster is depicted on the site plan (although not clearly identified) however staff is concerned about the location and the accessibility of the dumpster. A statement explaining how the dumpster will be accessed should be included in a revised narrative.

Lastly, almost the entire portion of the site between the building and Old Shell Road is paved with concrete with a continuous curb cut. Per Traffic Engineering, this continuous curb cut should be eliminated, with the site being limited to one curb cut to Border Drive East. The site plan indicates a new sidewalk and crosswalk will be installed along Border Drive East and along Old Shell Road.

RECOMMENDATION: Based upon the preceding, the applications are recommended for Holdover until the August 7, 2017 meeting with revisions due by July 17, 2017 to address the following:

- 1) Revised narrative explaining in detail the hardship for the use, side street side yard setback, surfacing, reduced landscape and multiple structure variance request;
- 2) Revised narrative explaining accessibility to the dumpster;
- 3) Revised tree and landscape plan separately depicting the tree planting and landscape calculations for the property with the proposed restaurant and the proposed parking lot;

- 4) Revise the tree and landscape plan to space out the 3 live oak trees in front of the proposed restaurant;
- 5) Revise tree and landscape plan to specifically depict what trees if any will be used for tree credits;
- 6) Revised site plan providing the total square footage calculations for both indoor and outdoor dining is required so staff can determine if adequate parking will be provided; and
- 7) Meeting with the neighborhood to discuss possible traffic concerns.

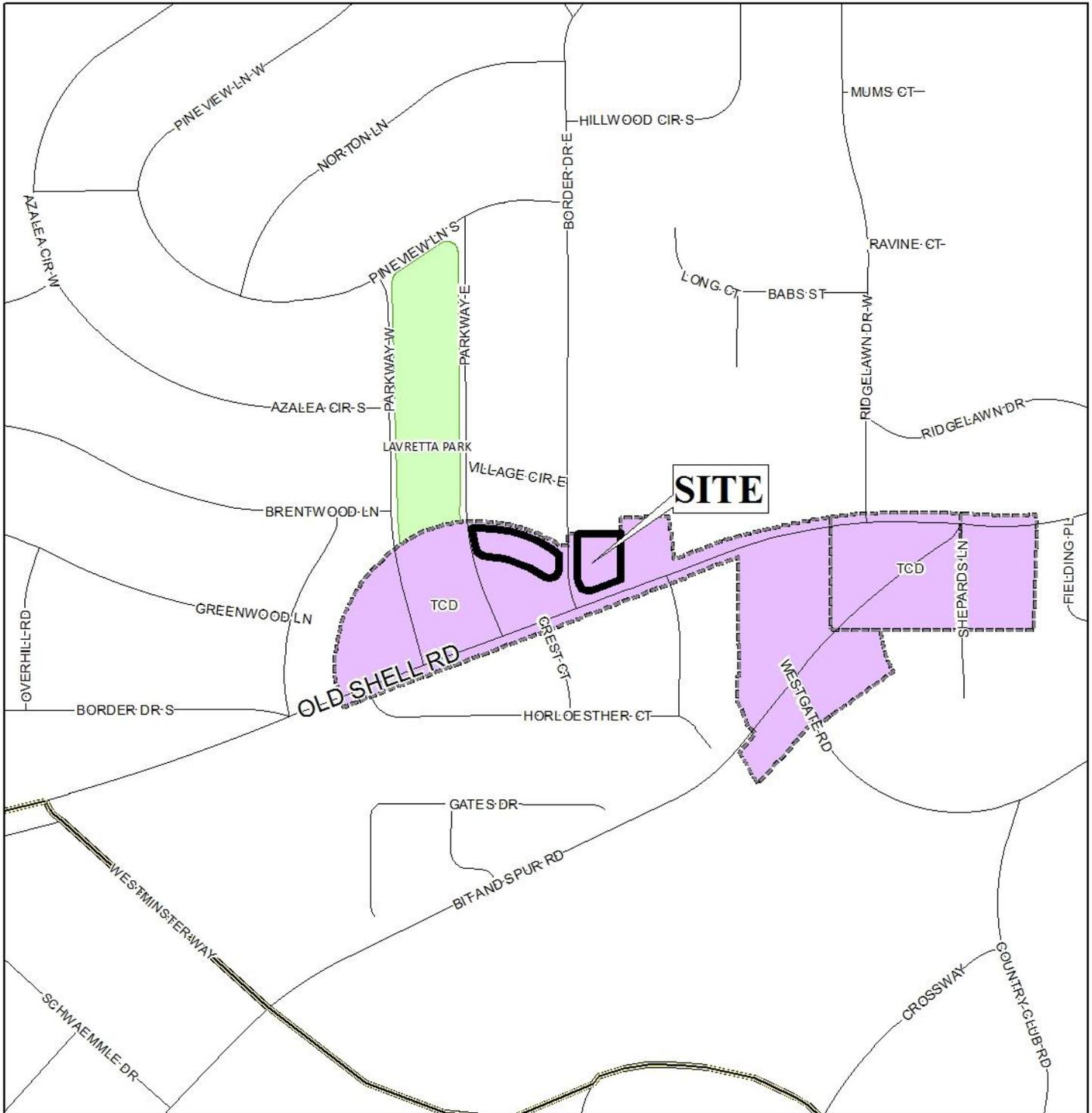
Revised for the August 7th meeting:

This application was heldover from the July 10th meeting to allow the applicant to consider modifications to the proposal to address concerns expressed during the previous BOA meeting, and to meet with neighbors again, if necessary, to gather support for the proposal. Staff did receive an email stating that the owner has agreed to end outside operations by 10:00 PM each night, and plan to install a gate on the west end of the parking lot to close access during park hours.

RECOMMENDATION

It is recommended that the Board consider all relevant facts, review the request based upon its own merits, as well as any additional information that may be presented at the meeting to determine what, if any, hardship may exist when rendering a decision.

LOCATOR MAP



APPLICATION NUMBER 6119 DATE August 7, 2017

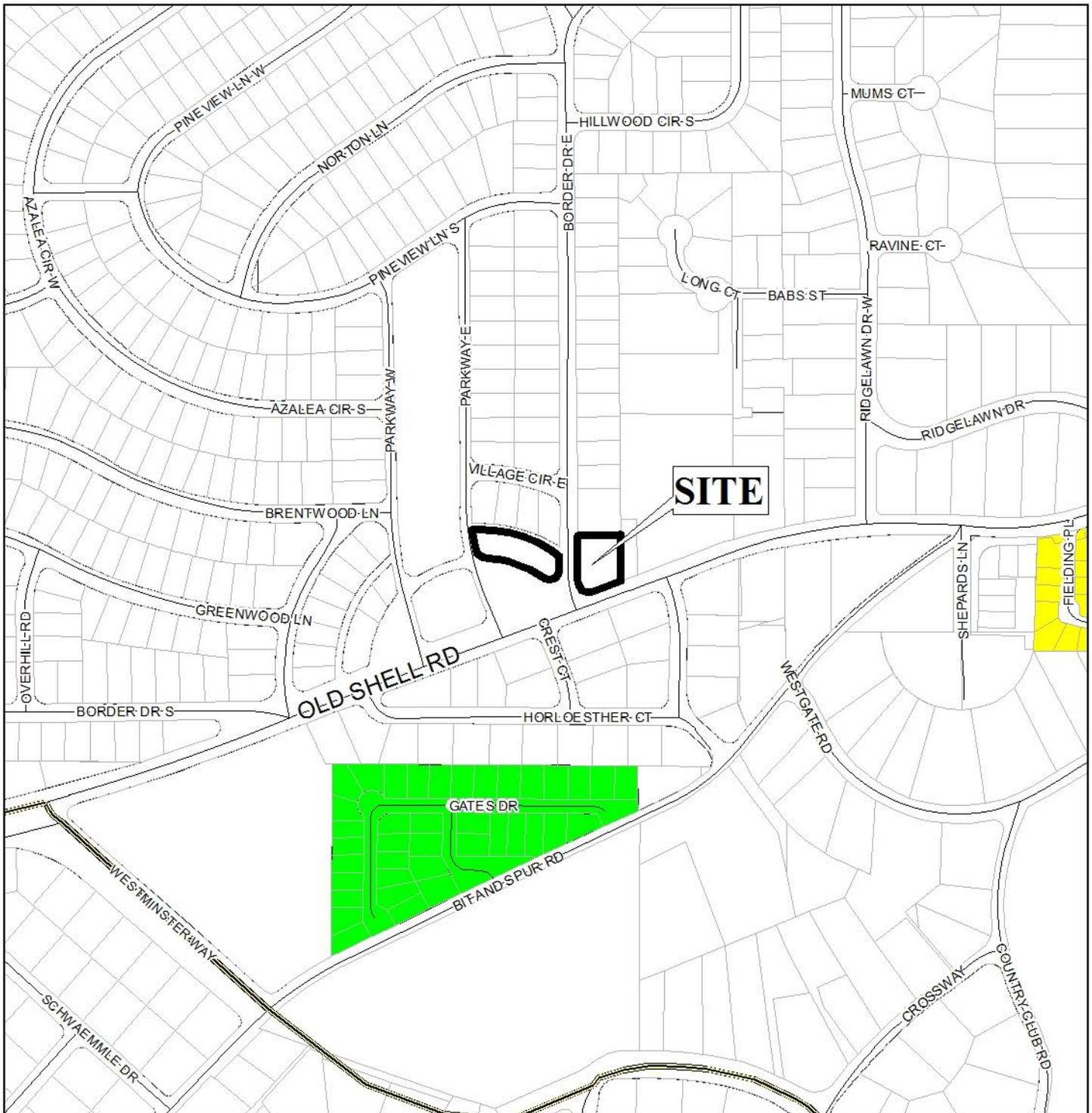
APPLICANT 5054 OSR, LLC

REQUEST Use, Multiple Structures, Side Street Side Yard Setback, Off-Site Parking, Surfacing, and Reduced Landscape Area Variances



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LOCATOR ZONING MAP



APPLICATION NUMBER 6119 DATE August 7, 2017

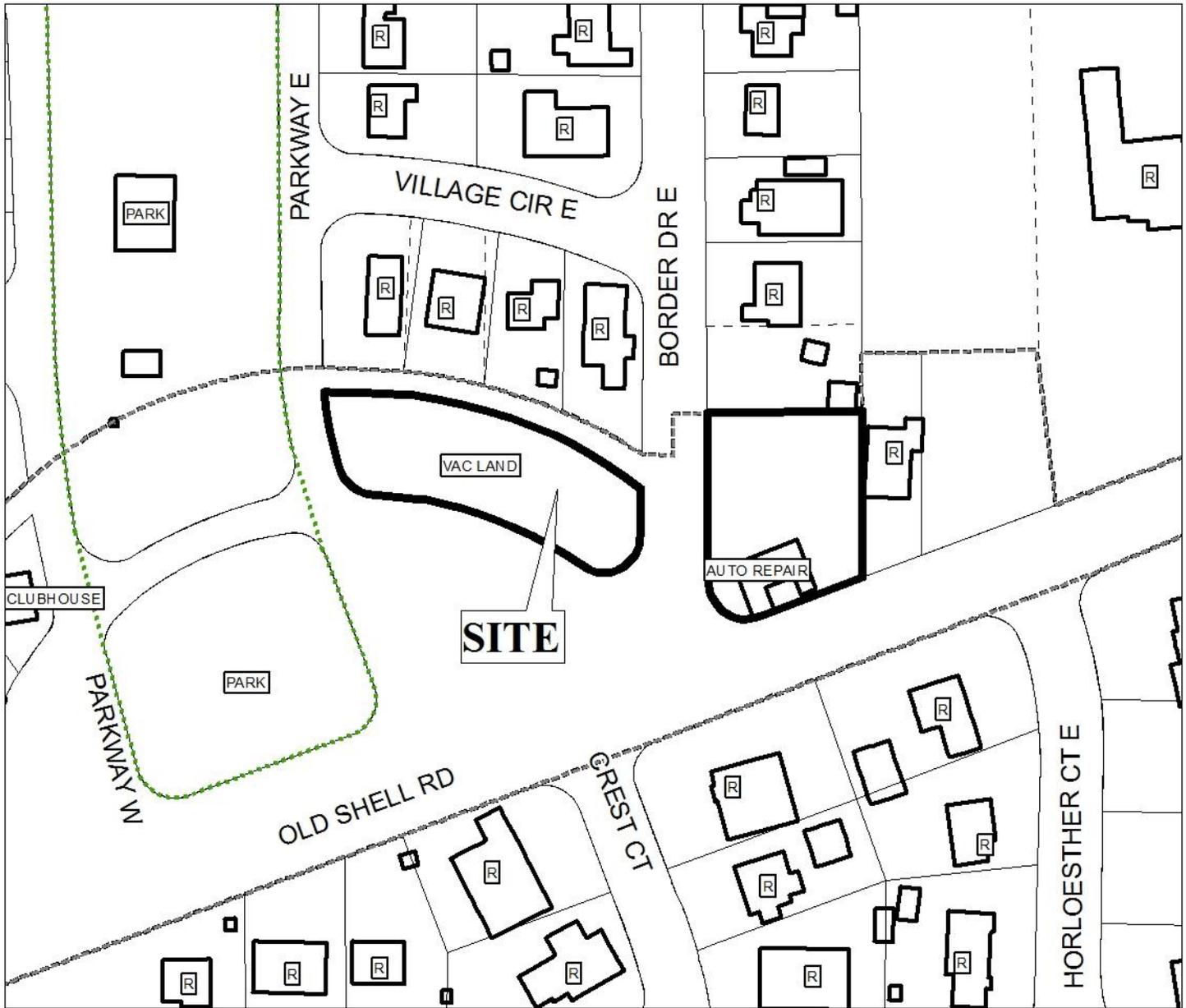
APPLICANT 5054 OSR, LLC
 Use, Multiple Structures, Side Street Side Yard Setback, Off-Site

REQUEST Parking, Surfacing, and Reduced Landscape Area Variances



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BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by single family residential units. A park lies west of the site.

APPLICATION NUMBER 6119 DATE August 7, 2017

APPLICANT 5054 OSR, LLC

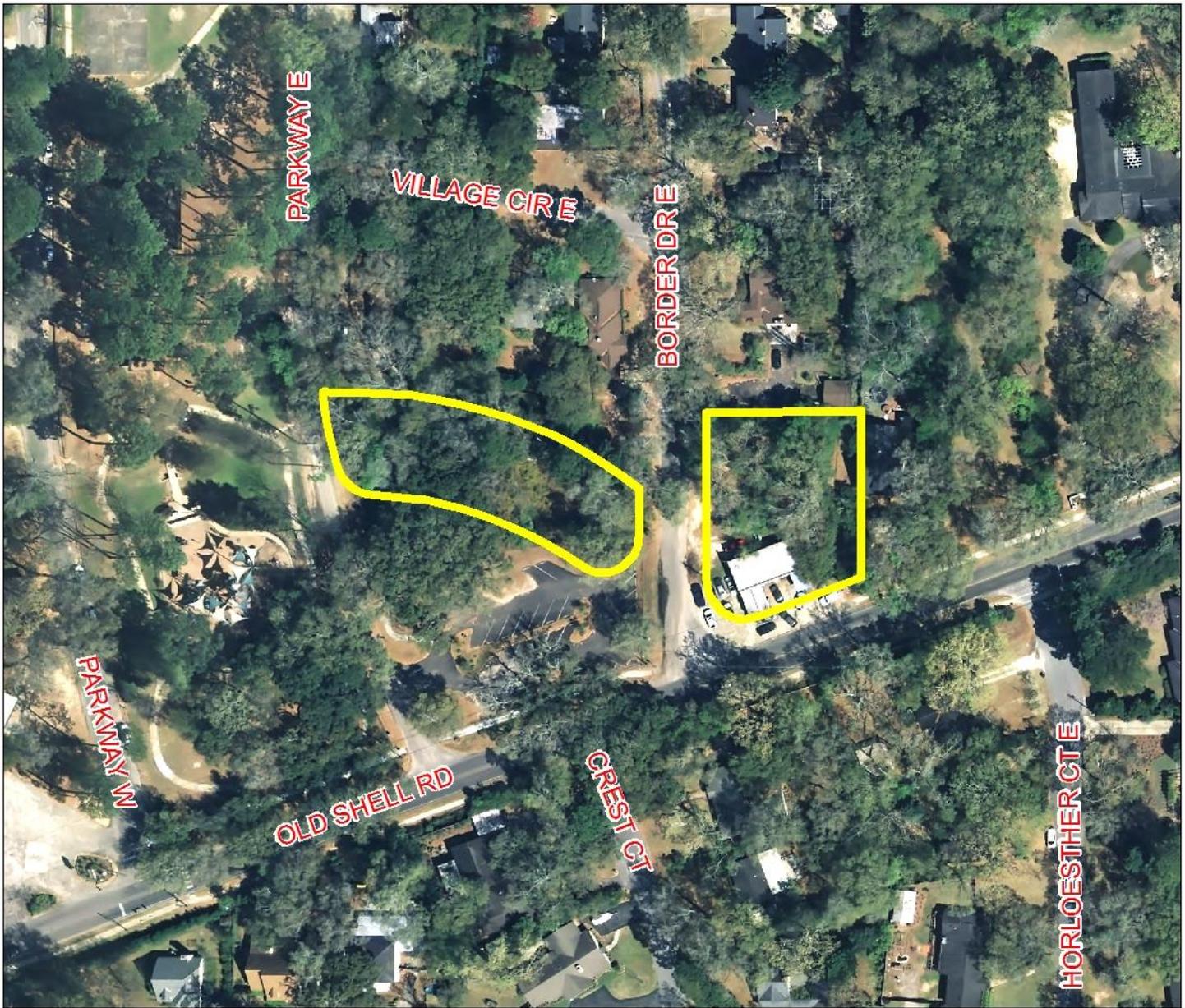
REQUEST Use, Multiple Structures, Side Street Side Yard Setback, Off-Site Parking, Surfacing, and Reduced Landscape Area Variances

R-A	R-3	T-B	B-2	B-5	MUN	SD-WH	T5.1
R-1	R-B	B-1	B-3	I-1	OPEN	T3	T5.2
R-2	H-B	LB-2	B-4	I-2	SD	T4	T6



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BOARD OF ADJUSTMENT VICINITY MAP - EXISTING AERIAL



The site is surrounded by single family residential units. A park lies west of the site.

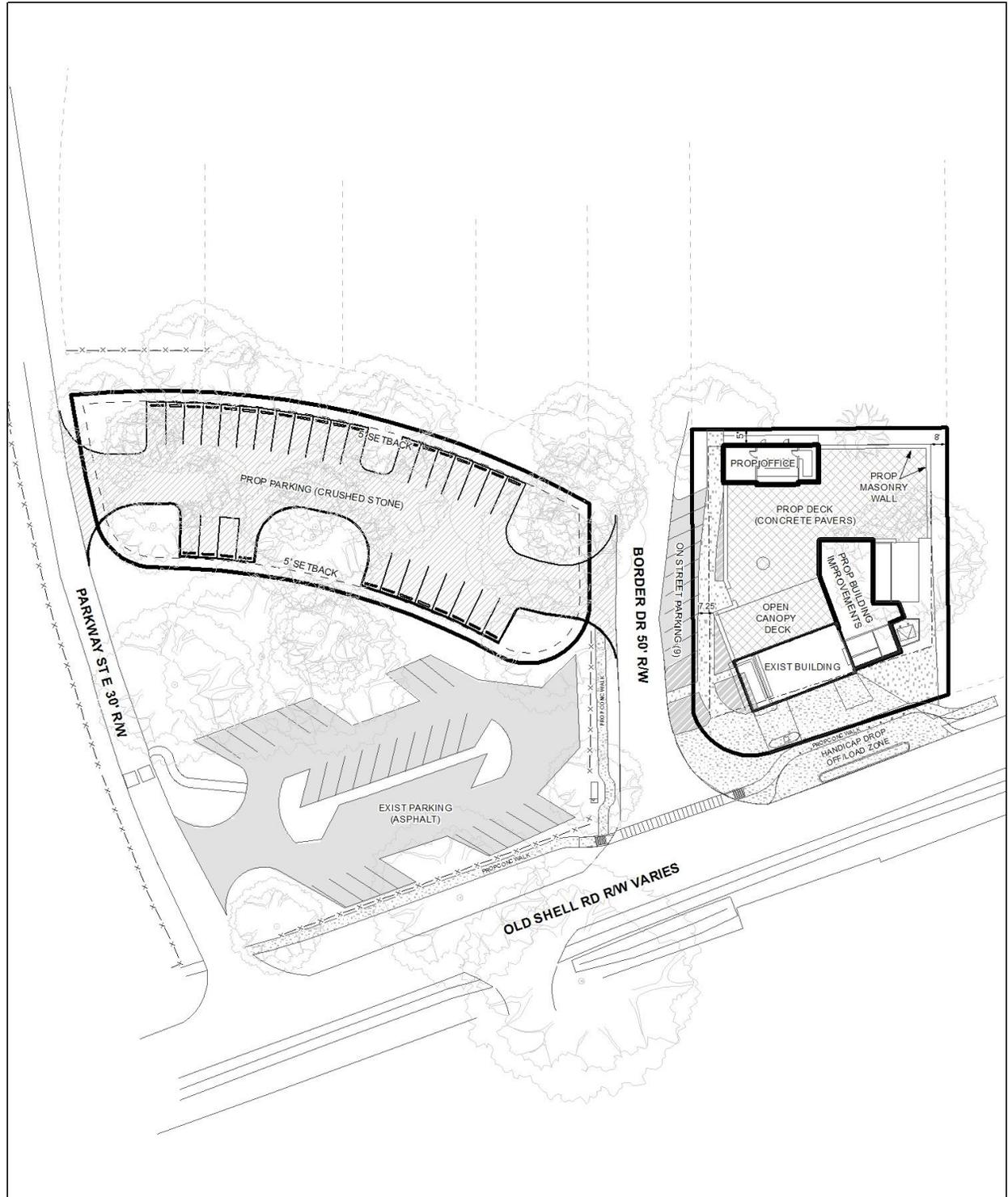
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APPLICANT 5054 OSR, LLC

REQUEST Use, Multiple Structures, Side Street Side Yard Setback, Off-Site
Parking, Surfacing, and Reduced Landscape Area Variances



SITE PLAN



The site plan illustrates the existing parking, existing building, proposed parking, proposed building improvements, and setbacks.

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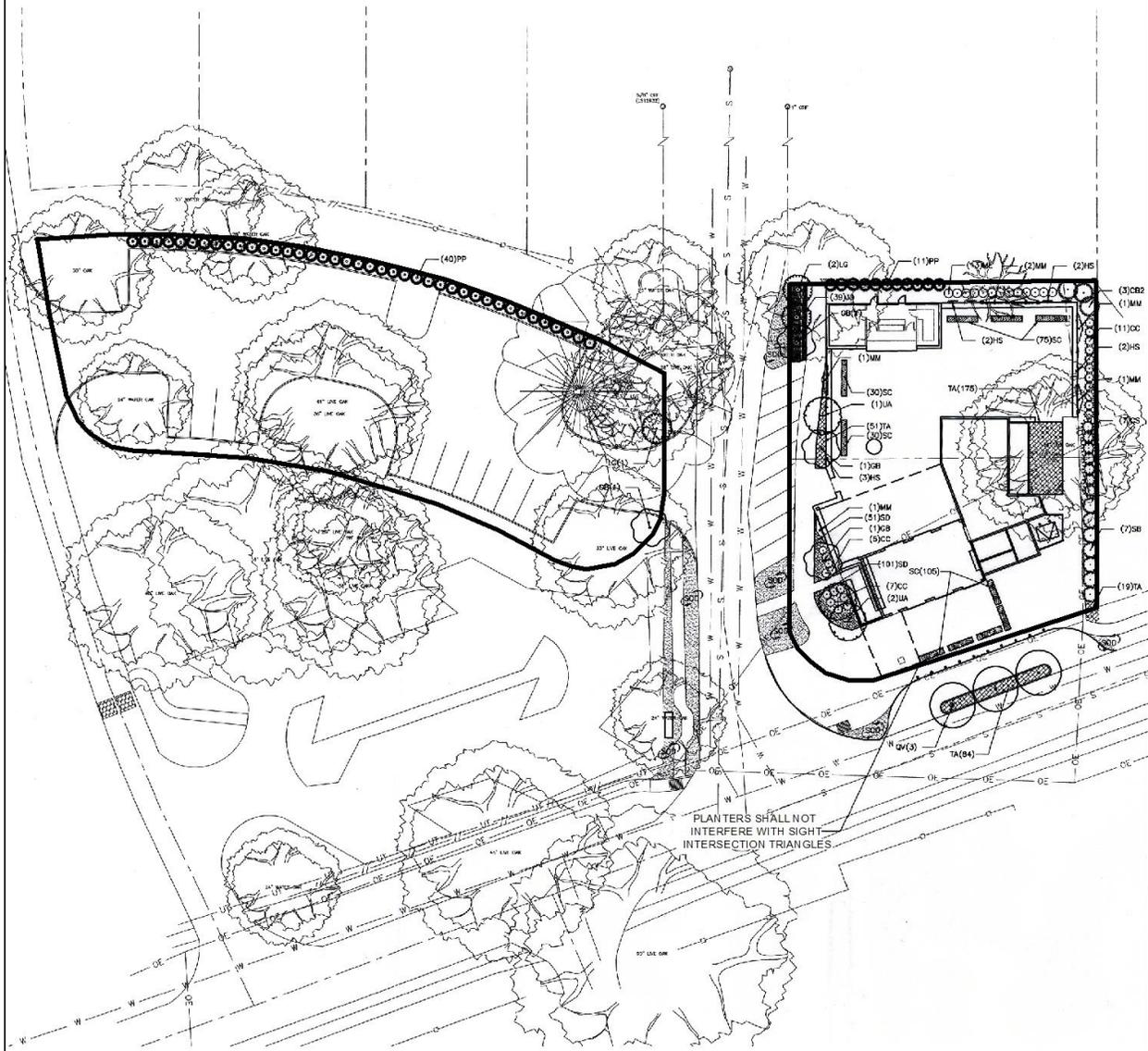
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LANDSCAPE SITE PLAN



The site plan illustrates the proposed landscaping, existing and proposed buildings, and parking.

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