

**BOARD OF ZONING ADJUSTMENT  
STAFF REPORT****Date: October 3, 2011****CASE NUMBER**

5706 / 1048

**APPLICANT NAME**

Harkness Properties, Inc.

**LOCATION**2724 Old Shell Road  
(Northeast corner of Old Shell Road and Bay Shore Avenue)**VARIANCE REQUEST****FRONT SETBACK:** Front Setback Variance to allow an existing structure that is within 22 feet from the front property line**SIDE STREET SIDE YARD SETBACK:** Side Street Side Yard Setback Variance to allow an existing structure that is within zero feet (and extends into the right-of-way) of the side property line**PARKING RATIO:** Parking Ratio Variance to allow 40 parking spaces for a 12,641 square-foot medical office**ZONING ORDINANCE  
REQUIREMENT****FRONT SETBACK:** the Zoning Ordinance requires at least a 25-foot front yard setback**SIDE STREET SIDE YARD SETBACK:** the Zoning Ordinance requires at least a 20-foot street side side-yard setback**PARKING RATIO:** the Zoning Ordinance requires at least 42 on site parking spaces for a 12,641 square-foot medical office**ZONING**R-1, Single Family Residential and B-2, Neighborhood Business District (*rezoning to LB-2, Limited Neighborhood Business District is pending*)**AREA OF PROPERTY**

1.0 ± Acres

**TRAFFIC ENGINEERING  
COMMENTS**

If motorists don't have sufficient room to turn around and exit the site headlights first, remove the existing head in parking on Bay Shore to eliminate

backing out conflicts. If there is sufficient room to maneuver without backing into the street, please install something to prevent motorists from entering or exiting the property except at one point, preferably at the new parking lot driveway. During construction, you will be working in the roadway or performing any activities that will affect traffic; you must submit a Traffic Control Plan at least two working days prior to proceeding.

## **CITY COUNCIL**

### **DISTRICT**

District 1

### **ANALYSIS**

The applicant is requesting a Parking Ratio, Front Setback, Side Street Side Yard Setback Variances to allow an existing 12,641 square-foot structure that is within 22 feet from the front property line and within zero feet (and extends into the right-of-way) of the side property line, to be converted into a medical office and construction of 40 new parking spaces in a B-2, Neighborhood Business District (rezoning pending); the Zoning Ordinance requires at least a 25-foot front yard setback and a 20-foot side street side yard setback, and at least 42 on site parking spaces for a medical office in an B-2, Neighborhood Business District (*the Planning Commission has recommended approval of a rezoning to LB-2, Limited Neighborhood Business District, which is now pending for final City Council approval*).

The applicant proposes to renovate an existing 12,641 square-foot building that was the former location of the Blue Bird Hardware store, to allow a new medical office and clinic. As part of the renovation, a new parking lot containing 40 spaces is proposed to the North of the existing building. Applications for rezoning and subdivision have been approved by the Planning Commission, but the rezoning aspect for the site is awaiting City Council approval.

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.

Parking for the site has historically been partially or completely located in the rights-of-way of Old Shell Road and Bay Shore Avenue. The applicant states that with the 8 existing spaces, when added to the proposed 40 new parking spaces, the site will exceed the 43 (not 42 spaces) required by the Zoning Ordinance for the proposed use. The Board of Zoning Adjustment cannot consider for approval the use of parking in the right-of-way, and the applicant was informed during the Planning Commission process that the proper venue for such consideration is the City Council. Regarding the parking ratio request, it appears that adequate room is available to construct the proposed parking lot to provide 43 parking spaces, as required.

Regarding the Front Setback Variance request along Old Shell Road, no changes are proposed to the building on this side. The building is as close as 21-feet to the right-of-way edge, and as it is existing, it enjoys non-conforming structure status. Staff believes that a variance at this location is unnecessary.

For the Street Side Side Yard Setback Variance, a portion of the building actually crosses 14.7 feet into the Bay Shore Avenue right-of-way, while the bulk of the building is at least 5 feet from the right-of-way. Bay Shore Avenue has an 80-foot right-of-way in this area due to the fact that a railroad line previously extended down the center of the street: Bay Shore is a minor street, thus only a 50-foot right-of-way is required. As with the parking in the right-of-way, the Board of Zoning Adjustment cannot consider for approval a structure to remain in the public right-of-way: instead the proper venue is via a non-utility right-of-way use agreement with the City of Mobile. The remainder of the building not meeting the setback enjoys a non-conforming structure status.

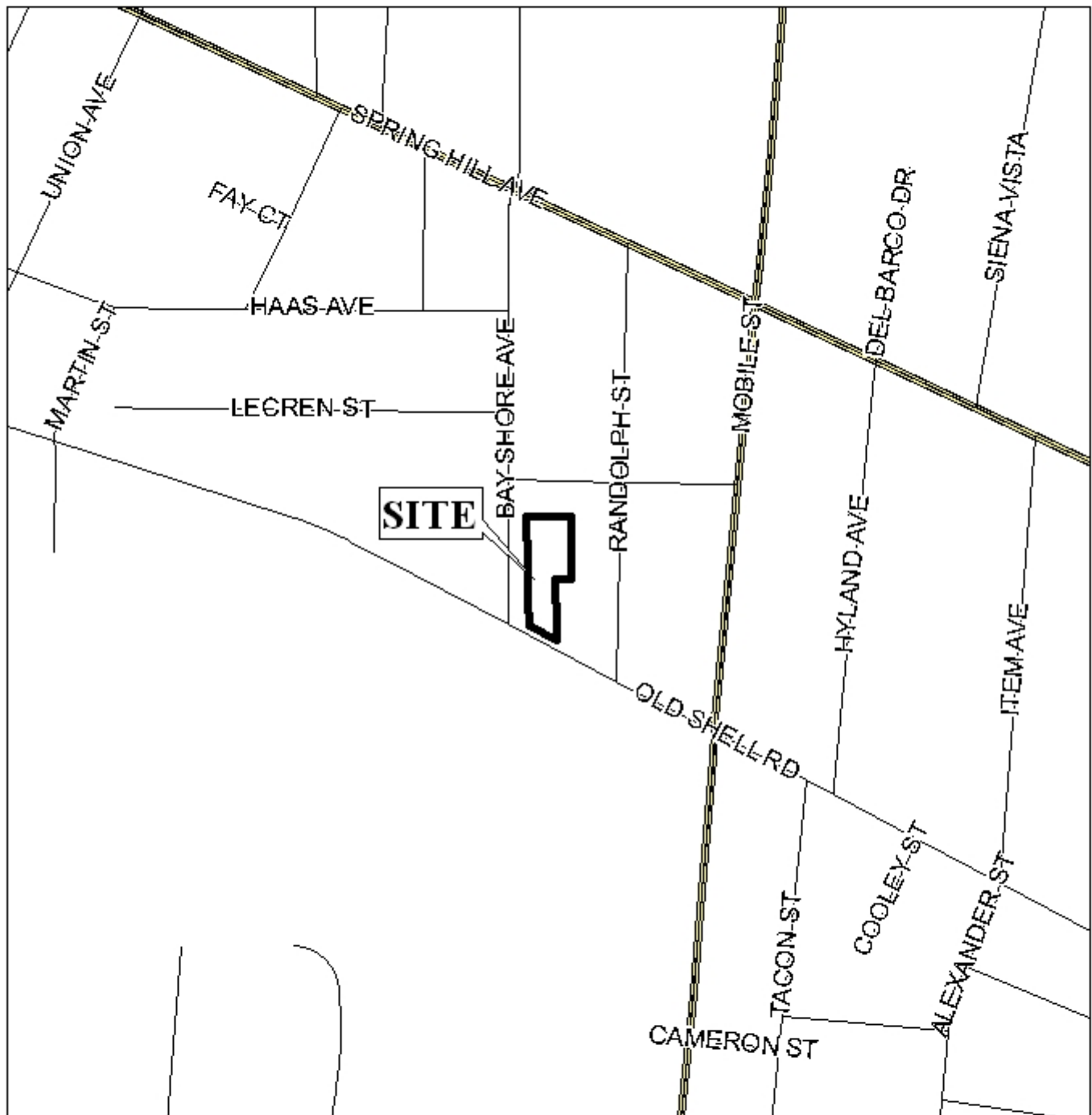
It should be noted that the applicant was advised by the Planning Commission that the portion of the building extending into the right-of-way should either be removed, that approval should be obtained via a non-utility right-of-way use agreement, or the right-of-way in excess of 50-feet should be vacated (which would result in the building being fully on private property, and would allow its continued existence as a non-conforming structure).

That applicant has failed to show that there is a hardship in the provision of 43 parking spaces in the proposed parking lot. As for the setback variances, the Board cannot consider a variance for that portion of the building in the public right-of-way, and staff asserts that variances are unnecessary for the remainder of the building, as it enjoys a non-conforming structure status.

**RECOMMENDATION:**  
recommended for denial.

Based on the preceding, the requested variances are

## LOCATOR MAP



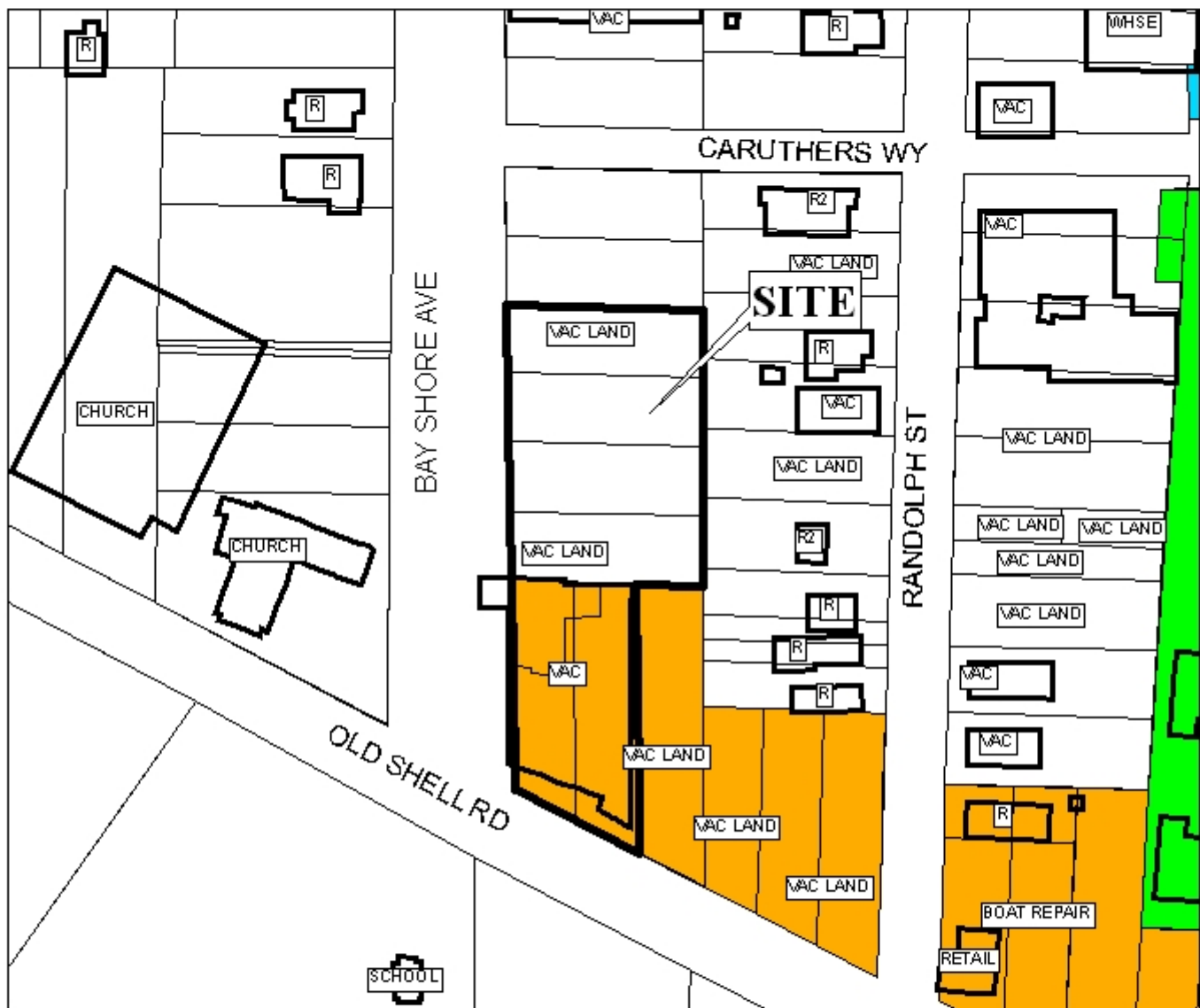
APPLICATION NUMBER 5706/1048 DATE October 2011

APPLICANT Harkness Properties, Inc.

REQUEST Parking Ratio, Front Setback, Side Street Side Yard Setback Variances



# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



Residential and business land use is located to the east of the site. A church is located to the west of the site. A school is located to the south of the site.

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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	NTS
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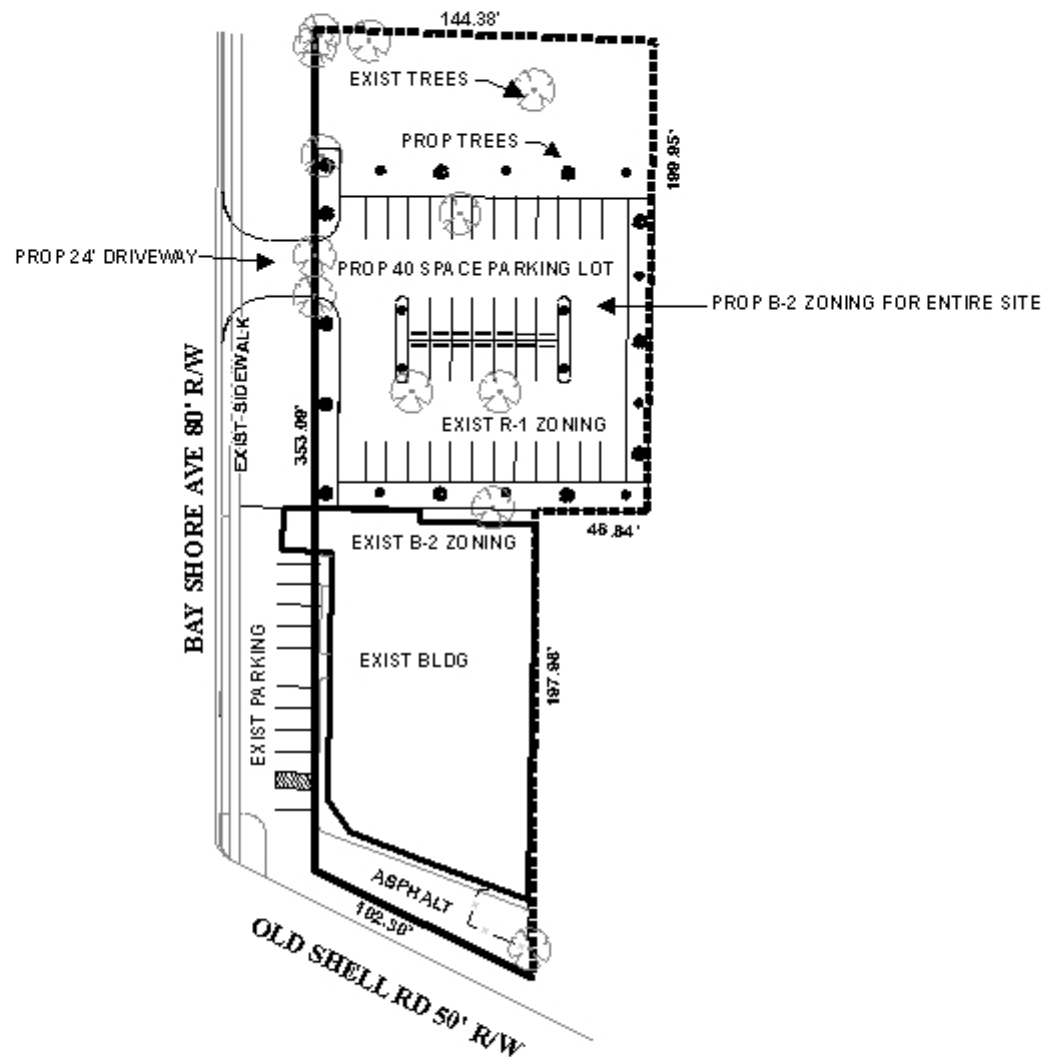


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N  
NTS

# SITE PLAN



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

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N  
  
 NTS