

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: December 3, 2018**

<u>CASE NUMBER</u>	6219/6048/3669/59
<u>APPLICANT NAME</u>	Central Presbyterian Church
<u>LOCATION</u>	1260 & 1262 Dauphin Street (Northeast corner of Dauphin Street and North Ann Street).
<u>VARIANCE REQUEST</u>	USE VARIANCE: Use Variance to amend a previously approved Use Variance to allow an art gallery with sales in a B-1, Buffer Business District.
<u>ZONING ORDINANCE REQUIREMENT</u>	USE VARIANCE: The Zoning Ordinance does not allow an art gallery with sales in a B-1, Buffer Business District.
<u>ZONING</u>	R-1, Single-Family Residential
<u>AREA OF PROPERTY</u>	2.15±-Acres
<u>CITY COUNCIL DISTRICT</u>	District 2
<u>ENGINEERING COMMENTS</u>	No comments.
<u>TRAFFIC ENGINEERING COMMENTS</u>	No comments.
<u>URBAN FORESTRY COMMENTS</u>	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). Private removal of trees in the right-of-way will require approval of the Mobile Tree Commission. Removal of heritage trees from a commercial site will require a tree removal permit.
<u>FIRE DEPARTMENT COMMENTS</u>	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).

ANALYSIS

The applicant is requesting a Use Variance to amend a previously approved Use Variance to allow an art gallery with sales in a B-1, Buffer Business District; the Zoning Ordinance does not allow an art gallery with sales in a B-1, Buffer Business District.

It should be noted that the site has not been the subject of Use Variance approval; rather, it received approval for Side and Rear Yard Setback Variances at the Board of Zoning Adjustment's (BOA) May 2, 1952 meeting, and at its November 6, 1962 meeting. Most recently, at its July 11, 2016 meeting, the BOA approved a Parking Variance to allow 104 parking spaces for an existing church with 700 seats, and for a proposed school with two (2) teaching stations. As such, there is an error in the description of the applicant's request in that they are not seeking to amend a Use Variance, with which BOA case number 3669 is associated; they are instead seeking Use Variance approval to allow an art gallery with sales in a B-1, Buffer Business District, as art galleries with sales is not a use permitted by right in a B-1, Buffer Business District.

The applicant states photography studios are allowed by right in a B-1, Buffer Business District, and art galleries with sales are a similar enough use to photography studios that they should also be permitted in a B-1, Buffer Business District, as justification for their request:

"Use Variance to amend a previously approved Use Variance to allow artist studios, along with their sales and services in a B1 designation, Buffer Business District.

Artist studios do not have a designation in the State of Alabama.

The artist studios involved have no plans for improvements.

Like most photographers studios hours, artist studio hours are based on project deadlines and commissions. No set hours are established. No plans to establish set hours. Most artwork from art studios are sold off-site either through a gallery or an online business.

The zoning ordinance, B1 does include photography studios which is a direct equivalent to an artist studio."

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.

Variances are site plan-specific; therefore, if approved, any proposed changes to the site layout of the request at hand will require an application to the Board to amend the approved site plan prior to any construction activities.

The site has been given a Traditional 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 applies mostly to transportation corridors east of Interstate 65, which serve as the primary commercial and mixed-use gateway to Downtown and the city's traditional neighborhoods (equivalent to Map for Mobile's Traditional Neighborhoods).

Traditional Corridor designations, depending on their location (and as allowed by specific zoning), incorporate a range of moderately scaled, single-use commercial buildings holding retail or services; buildings that combine housing units with retail and/or office; a mix of housing types, including low- or mid-rise multi-family structures ranging in density from 4 to 10 du/ac; and, attractive streetscapes and roadway designs that safely accommodate all types of transportation – transit, bicycling, walking and driving. In these areas, special emphasis is placed on the retention of existing historic structures, compatible infill development, and appropriate access management.

It should be noted that the Future Land Use Plan and Map components of the Map for Mobile Plan are meant to serve as a general guide, not a detailed lot and district plan. In many cases the designation on the new Future Land Use Map may match the existing use of land, but in others the designated land use may differ from what is on the ground today. As such, the Future Land Use Plan and Map allows the Planning Commission and City Council to consider individual cases based on additional information such as the classification request, the surrounding development, the timing of the request, and the appropriateness and compatibility of the proposed use and, where applicable, the zoning classification.

The site is developed with a structure currently utilized as a church and a Montessori school. The site plan illustrates 104 existing, paved parking spaces, each of which appears to be equipped with wheel stops or curbing where vehicles could potentially extend beyond the parking lot.

Regarding the applicant's statement that they are proposing to use the subject site for artist studios, Staff has been able to clarify with photos from the applicant that individuals will utilize one or more rooms within an existing church as studio space in which to create art using different mediums and techniques. Such art may be displayed for sale within the rooms, in addition to being displayed for sale elsewhere. As such, Staff considers the proposed use most similar to an art gallery since, as the applicant mentions, "artist studios" are not referenced within the Zoning Ordinance. However, as previously mentioned, a "studio" is primarily for the production of art, while a "gallery" is primarily for the display and sale of art.

The Chart of Permitted Uses of Section 64-12 allows art galleries in R-B, Residence-Business, T-B, Transitional-Business, H-B, Historic-Business, B-2, Neighborhood Business, LB-2,

Limited-Neighborhood Business, B-3, Community Business, and B-4, General Business, districts.

The site has conformed to uses permitted by right in a B-1 zoning district, with respect to the existing church, and to uses permitted with Planning Approval, with respect to the Montessori school. The applicant does not indicate a hardship associated with the property that would preclude them from operating within a zoning district appropriate for an art gallery. Instead, the applicant emphasizes a use comparable to an artist gallery with sales as justification for their request, which may be suitable had the applicant provided more detail about their request. However, art constitutes a diverse range of activities that utilizes many more mediums of expression and production (e.g. ceramics, glass blowing, sculpting, etc.) than perhaps photography distinctly does; and is perhaps the distinguishing factor in a photography studio being a use permitted by right in a B-1 zoning district and not an art gallery. This is also evidenced perhaps by the fact that, while photography studios are a use permitted by right in a B-1 zoning district, more diverse commercial photography services are not.

Additionally, the applicant does not propose any voluntary restrictions on the use of the property, such as definite hours of operation, limitations on the amount of artists allowed to work at the site, limitations on customers, restrictions on artistic mediums, etc. Without such restrictions, the proposed use of the property has the potential to be a nuisance to the surrounding neighborhood, which is predominately residential per current land use maps, as well as to the subject site since there are limited parking spaces to accommodate an additional use of the property. Furthermore, there are multiple properties appropriately zoned for art galleries within the vicinity of the subject site.

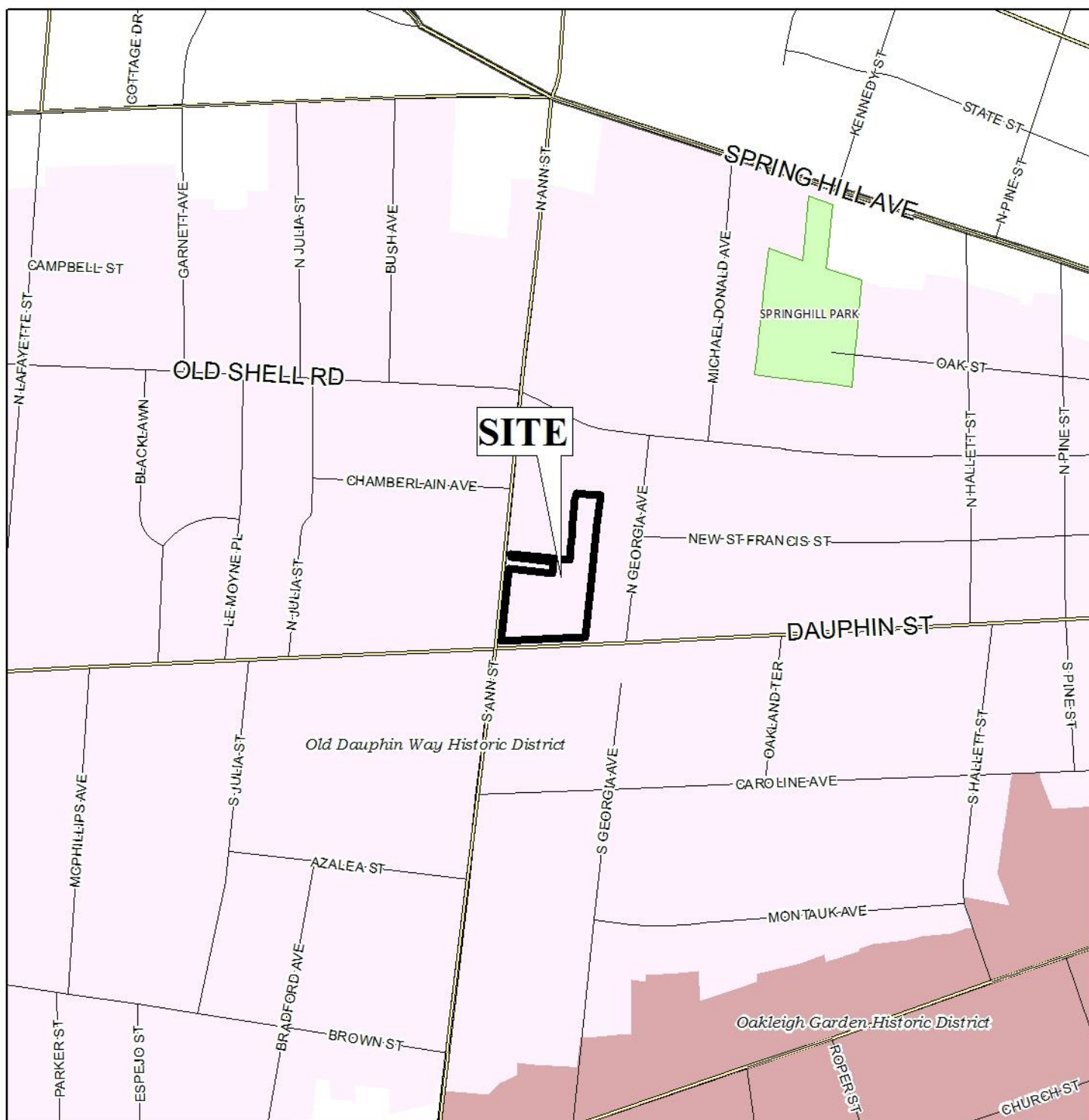
While Use Variances have been granted within the vicinity of the subject site, most were for office and residential uses. No hardship associated with the property has been identified by the applicant, and it should be reiterated that Variances are not intended to be granted frequently. An art gallery may be a suitable use of the subject site, but without additional information regarding its scope of operations or any use restrictions that could mitigate any potential nuisances, Staff cannot verify such a sentiment; especially when there are properties within the vicinity of the subject site zoned appropriately for such a use. As such, approving the Variance request would be contrary to at least Section 64-12 of the Zoning Ordinance and may set a precedent by which future, less desirable Variance requests could be approved, especially if no special conditions or hardships to an individual property exist.

RECOMMENDATION: Based on the preceding, staff recommends to the Board the following findings of fact for Denial:

- 1) Granting the Variance will be contrary to the public interest in that it will be contrary to Section 64-12 of the Zoning Ordinance regarding permitted uses;
- 2) Special conditions do not exist in such a way that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship since multiple properties appropriately zoned for art galleries with sales are located within the vicinity of the subject site; 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 since it may establish a precedent by which future, less desirable Use Variance requests could be approved if no special conditions or hardships to an individual property exist.

LOCATOR MAP



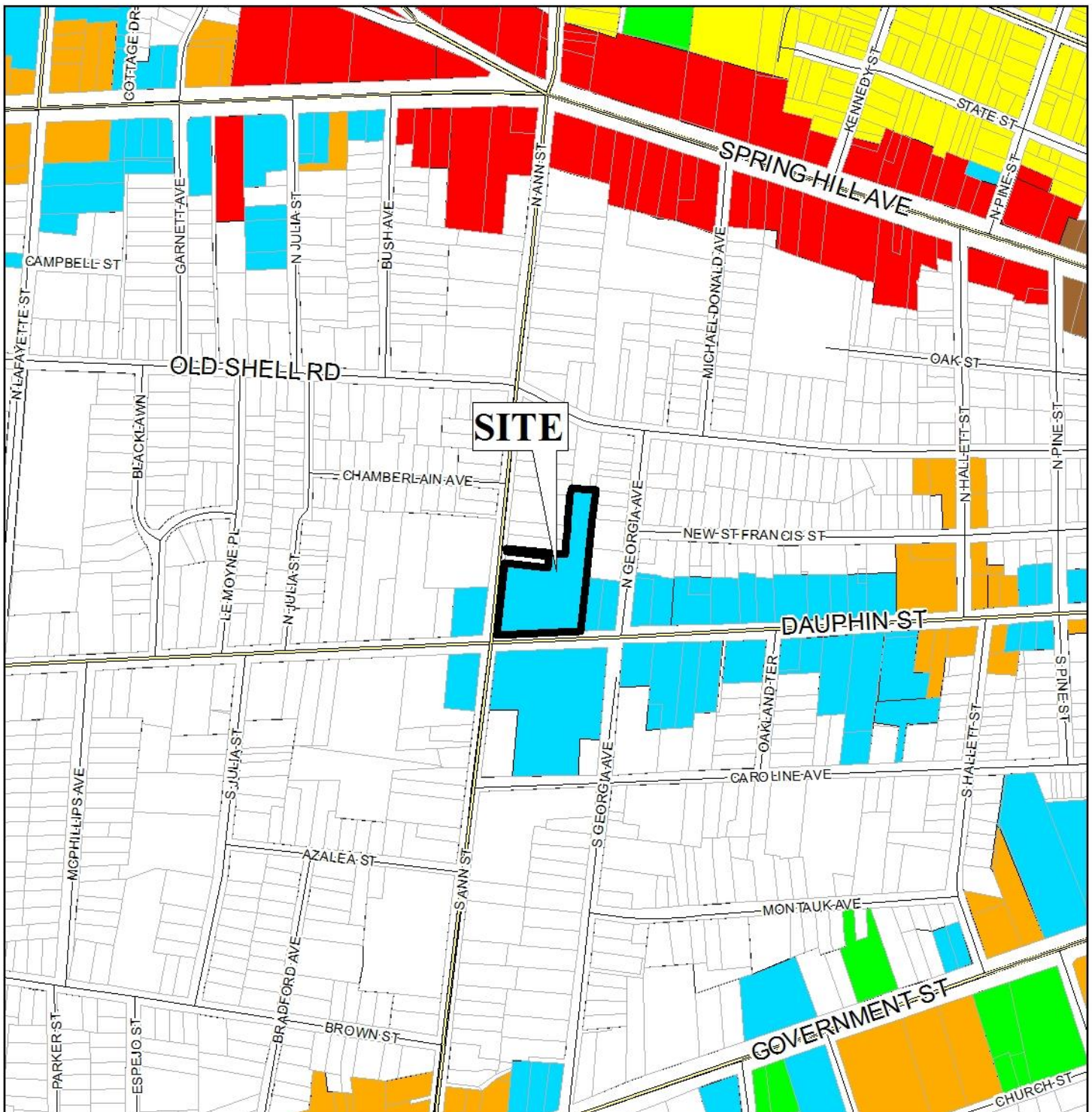
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REQUEST Use Variance



LOCATOR ZONING MAP



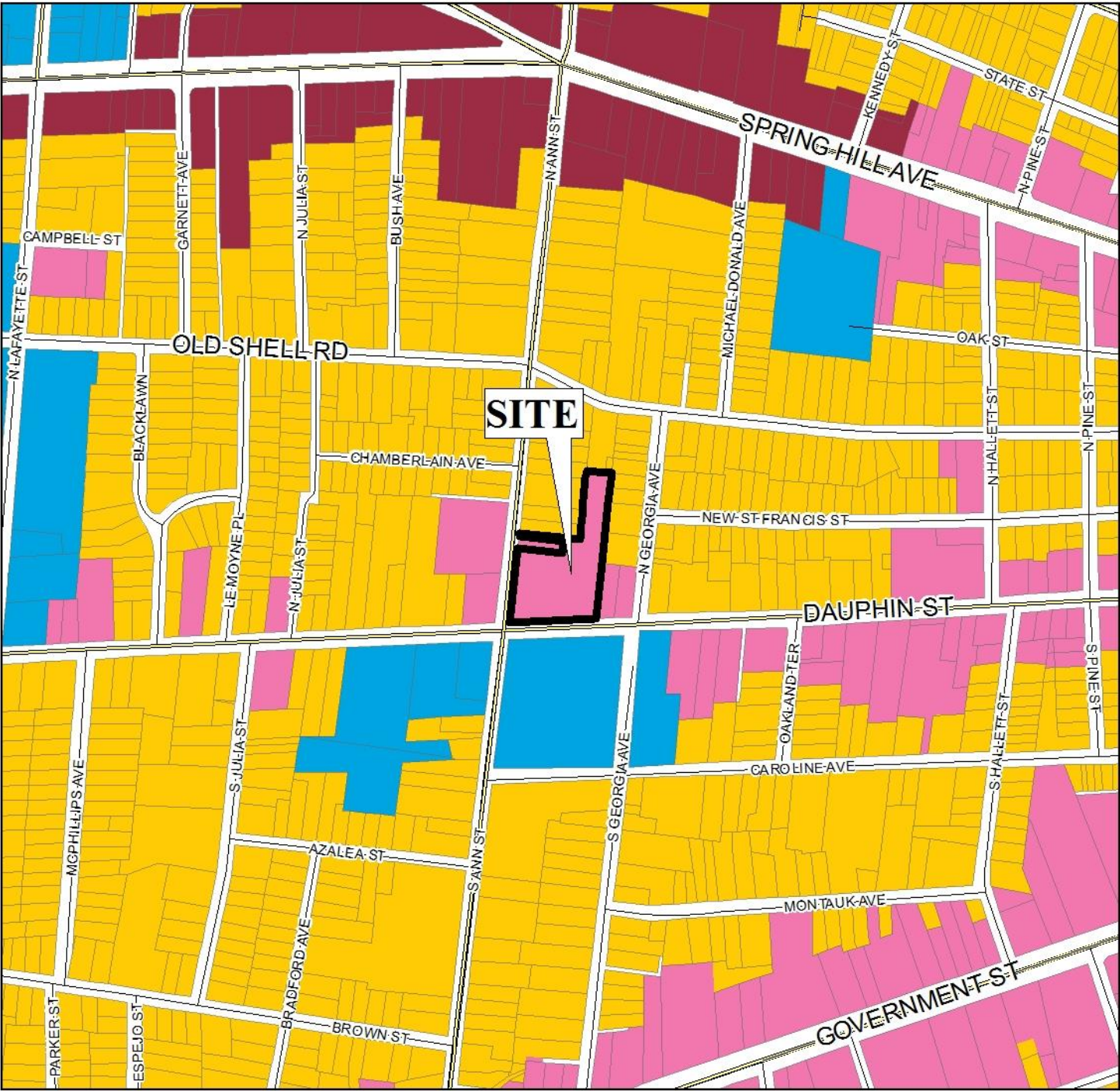
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FLUM LOCATOR MAP



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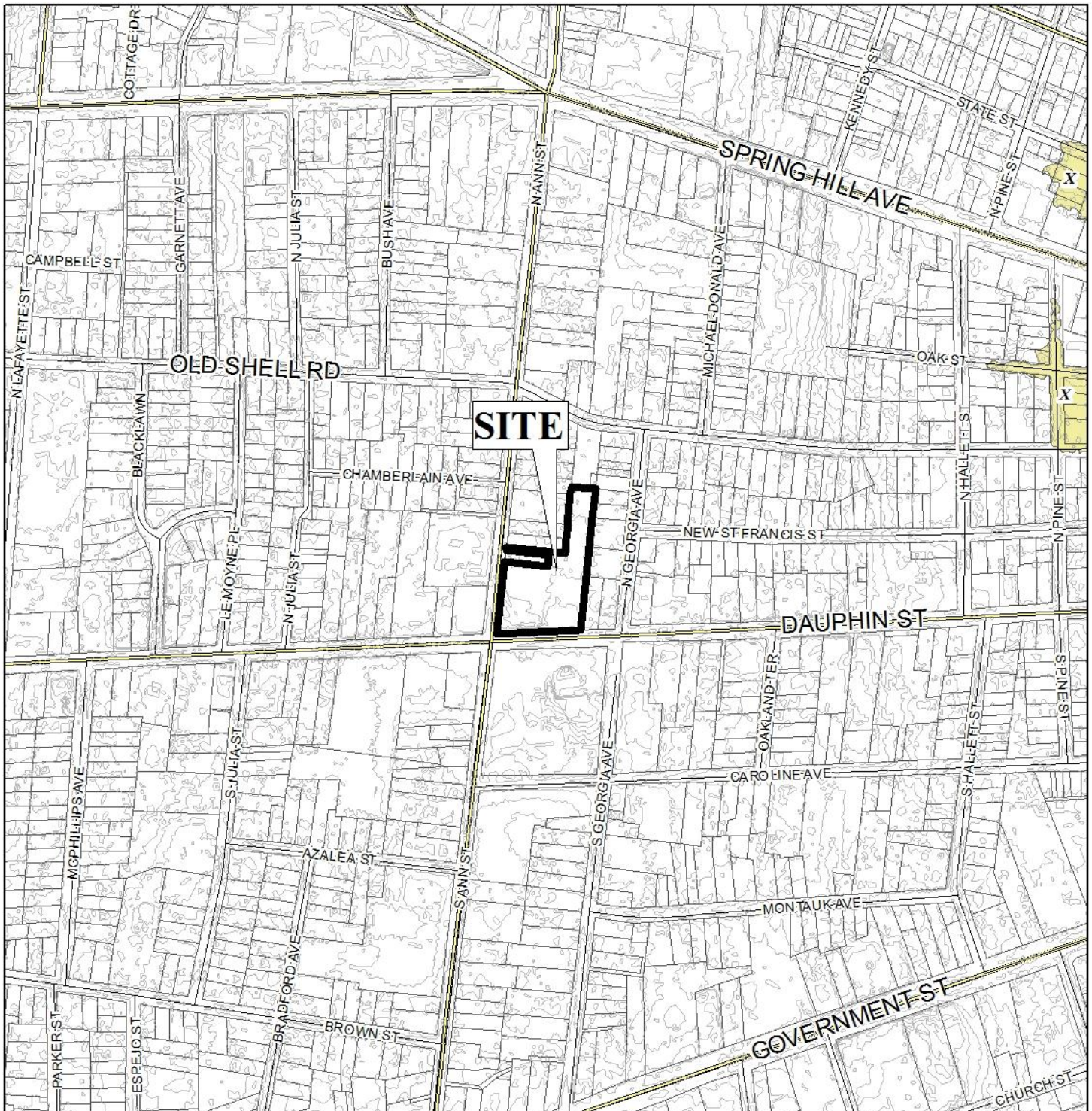
APPLICANT Central Presbyterian Church

REQUEST _____ Use Variance _____

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|---------------------------|-----------------------------------|---------------------|--------------------|
| Low Density Residential | Neighborhood Center - Traditional | Downtown Waterfront | Parks & Open Space |
| Mixed Density Residential | Neighborhood Center - Suburban | Light Industry | Water Dependent |
| Downtown | Traditional Corridor | Heavy Industry | |
| District Center | Mixed Commercial Corridor | Institutional | |



ENVIRONMENTAL LOCATOR MAP



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BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units. A school is located to the south.

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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



BOARD OF ADJUSTMENT

VICINITY MAP - EXISTING AERIAL



The site is surrounded by residential units. A school is located to the south.

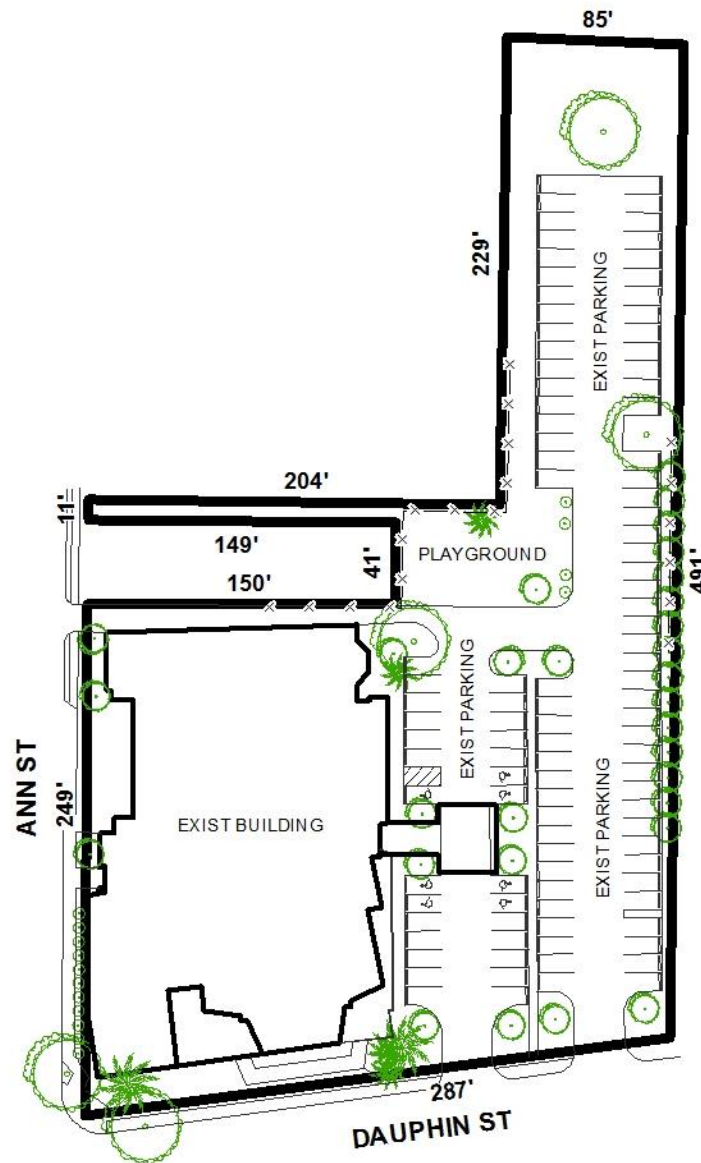
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SITE PLAN



The site plan illustrates the existing building and the existing parking.

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REQUEST Use Variance



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