

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: April 2, 2012****CASE NUMBER**

5745

APPLICANT NAME

Hossein Ali Mohandessi

LOCATION

2600 Government Boulevard
(Northeast corner of Government Boulevard Service Road
and Merwina Avenue extending to the Southwest corner of
Government Boulevard Service Road and Kreitner Street)

VARIANCE REQUEST

USE: Use variance an automobile sales business in a B-2,
Neighborhood Business District

FRONT SETBACK: Front setback variance construction
of a building within 5 feet of both the Kreitner Street
property line and the Merwina Avenue property line

**ZONING ORDINANCE
REQUIREMENT**

USE: The Zoning Ordinance requires a minimum of a B-3,
Community Business District for automobile sales

FRONT SETBACK: The Zoning Ordinance requires a
setback of at least 20 feet along secondary street frontages

ZONING

B-2, Neighborhood Business

AREA OF PROPERTY

0.2 ±Acres

**TRAFFIC ENGINEERING
COMMENTS**

Driveway number, size, location, and design to be
approved by Traffic Engineering and conform to AASHTO standards.

Revised for the May 7th meeting:

This site is too small to accommodate the traffic and storage of cars. Regarding the latest proposal:

- 1. The two southern most marked stalls and the one northern most stall cannot accommodate cars unless they drive in the ROW*
- 2. The cars appear to have approximately 6'' between them. That can't work. Even if you intend to park and shuffle you own cars w/o letting the public move them, they can't be viewed very well and the employees will be tempted to park the cars in a different manner that the one proposed.*

3. *The only way this concept will be considered by Traffic Engineering is if you surround the property line with curbing or some other approved permanent barrier that will prevent cars from entering the property any way other than using the driveway.*
4. *If approved, the ROW surrounding the site must be posted in a manner to be approved by Traffic Engineering with No Parking signs.*

CITY COUNCIL **DISTRICT**

District 5

ANALYSIS

The applicant is requesting a Use and Front Setback Variances to allow an automobile sales business in a B-2, Neighborhood Business District and construction of a building within 5 feet of both the Kreitner Street property line and the Merwina Avenue property line; the Zoning Ordinance requires a minimum of a B-3, Community Business District for automobile sales, and setback of at least 20 feet along secondary street frontages.

The applicant proposes to demolish the existing restaurant building on the site, erect a new portable office building, and pave and landscape the site to allow auto sales. The applicant proposes to place the new building five feet from the Merwina Avenue and Kreitner Street property lines.

The applicant states that the presence of other car dealerships along Government Boulevard is adequate justification to allow auto sales to occur at this site; that the existing condition on adjacent properties should allow the use on the property under consideration.

Regarding the setbacks, the applicant states that the site has endured right-of-way acquisition from the expansion of Government Boulevard to allow construction of the service road. As such, the size and shape of the property has been so reduced as to leave a minimal buildable area, once all setbacks are taken into consideration.

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 was the subject of Zoning, Planned Unit Development and Subdivision applications, heard by the Planning Commission at its February 16, 2012 meeting. The Subdivision request was approved, however, the Zoning and Planned Unit Development applications were denied by the Commission for the following reasons:

Zoning:

- 1) The request did not indicate which of the four conditions for amendment apply.

Planned Unit Development:

- 1) Dedication of right-of-way for Government Boulevard (US Highway 90) will additionally reduce the size of the site, negating the site plan submitted;
- 2) The use and design of the site, as proposed, will not provide adequate paved area for the proposed quantity of vehicles for sale; and
- 3) Delivery or removal of vehicles for sale by truck will appear to require the use of adjacent rights-of-way, rather than being contained on-site.

The applicant has appealed the Zoning and Planned Unit Development requests to the City Council.

Regarding the proposed use of the site for auto sales, the applicant did not include any information regarding the number of auto inventory that would be maintained on site, nor how the vehicles will be delivered to the site. Due to the size of the property, there is limited room for vehicular parking, and as 4 parking spaces are depicted on the site, staff questions where there will be adequate room for inventory while still maintaining access to the parking spaces provided for customers and employees. As for delivery of vehicles, it appears that there is not sufficient room for a truck to pull onto the site to off-load vehicles, thus it would appear to necessitate parking in the right-of-way – and blocking the right-of-way – to deliver vehicles to the site: such a delivery could block the service road or impair other businesses located adjacent to the site. Staff does not believe, therefore, that the site is of an adequate size for use as auto sales. There are other B-2 zoning district uses that may be suitable for the site, due to the limited size of the site.

Regarding setbacks, staff agrees that the size of the site and the setback requirements from the rights-of-way on all sides of the property presents something of a hardship as it relates to the creation of buildable area. Therefore, some accommodation of a reduced setback along Merwina Avenue and Kreitner Street appears to be of merit (as the existing building actually encroaches into the right-of-way), however, a 10-foot setback might be a preferred minimum setback instead of the requested 5-feet. As this specific setback request is related to the use variance request, however, a denial of the setback request may be appropriate.

RECOMMENDATION:

USE: Based upon the preceding, the Use Variance is recommended for denial for the following reasons:

- 1) The applicant has failed to show that the proposed auto sales use is based upon a hardship: that there are no uses allowed in a B-2 zoning district that can operate on the site;
- 2) The variance will be contrary to the public interest due to the potential to encumber adjacent rights-of-way with vehicle loading/unloading activities, or the parking of customers or employees in the rights-of-way; and
- 3) Special conditions do not exist that a literal enforcement of the use provisions of the Zoning Ordinance will result in an unnecessary hardship.

FRONT SETBACK: Based upon the preceding, the Front Setback Variance is recommended for denial, as it specifically related to the requested Use Variance.

Revised for the May 7th meeting:

The application was heldover from the April meeting to allow the applicant to address the following item:

1) revision of the site plan to indicate the parking/display area for vehicles for sale.

A revised site plan was submitted by the applicant, depicting the required parking area as well as delineating the area for vehicle inventory. A total of 20 locations are shown for vehicle inventory.

The revisions to the site plan also result in an apparent reduction in total landscape area, however, no calculations were provided with the revisions, the original application, or when the site was being considered by the Planning Commission for rezoning and Planning Unit Development approvals (the landscape area deficiency was pointed out in the Planning Commission report recommendations, but were never addressed in any revisions). Thus, if the site falls below the minimum landscape area requirements, a new application for a landscape area variance may be required.

Regarding the revised site plan and the proposed use, the applicant shows 20 tightly packed spaces for vehicle inventory, and 2 to 3 parking spaces and maneuvering area dedicated for customers and employees. As depicted, it would appear that vehicle inventory may have to traverse landscape area and/or right-of-way area to be placed in locations depicted on the site plan. Furthermore, a portion of the proposed display and landscape area will be located in what may become future right-of-way for US Highway 90, as the existing right-of-way of 233 feet is less than the 250 feet required by the Major Street Plan component of the Comprehensive Plan (although it should be pointed out that the approved Subdivision only required the building setback line to reflect the future right-of-way width, rather than actual dedication).

While the revised site plan depicts the placement of auto inventory, the demonstration of a hardship as it relates to the requested use variance is still not evident: the applicant merely wishes to utilize the B-2 site for a use that is simply not allowed in the zoning district. There are still unanswered concerns relating to the delivery or removal of vehicle inventory, and the impacts that they may have on abutting right-of-ways, and of course the previously mentioned landscape area compliance. As such, the previous recommendations stand.

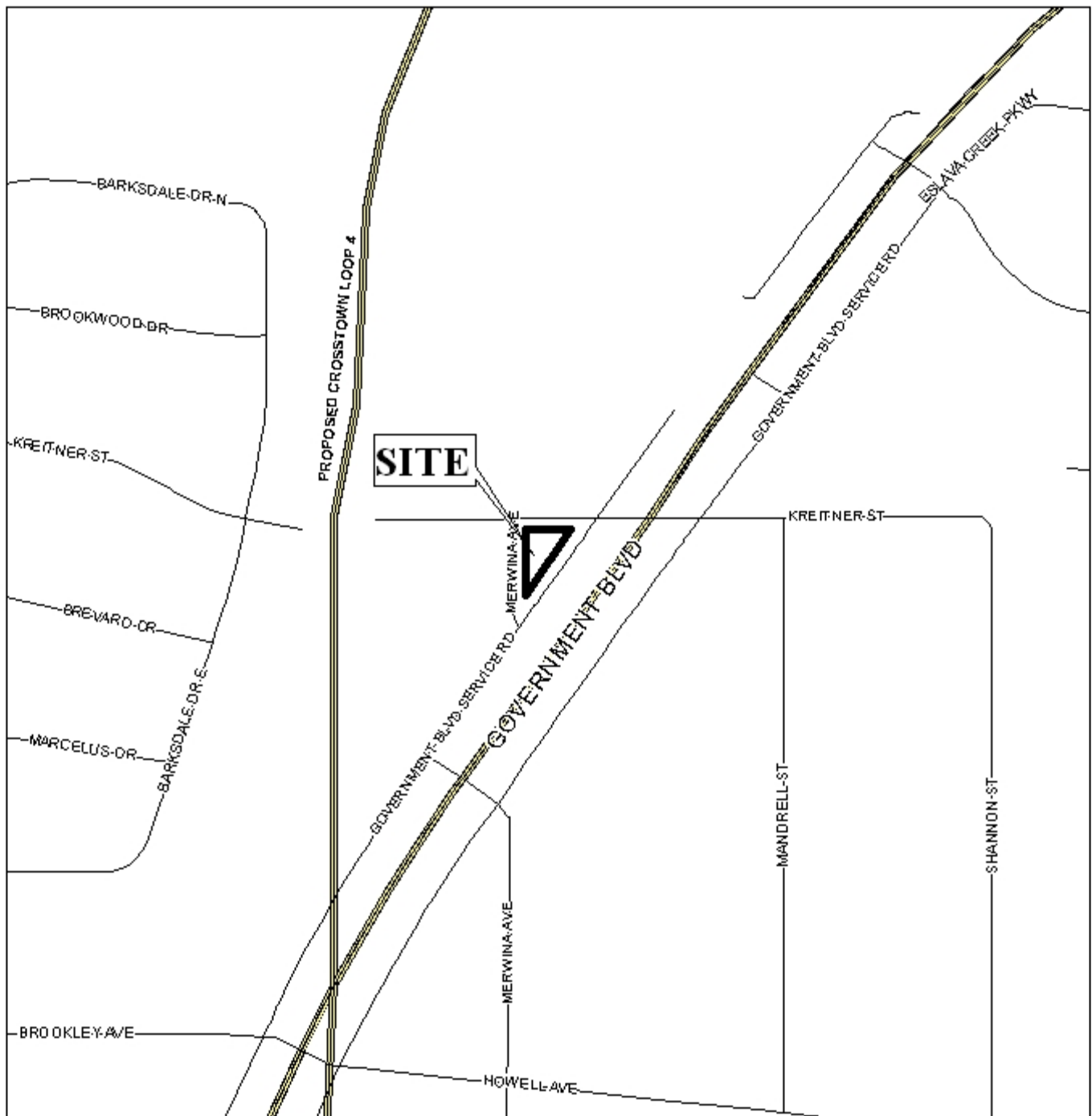
RECOMMENDATION:

USE: *Based upon the preceding, the Use Variance is recommended for denial for the following reasons:*

- 1) The applicant has failed to show that the proposed auto sales use is based upon a hardship: that there are no uses allowed in a B-2 zoning district that can operate on the site;*
- 2) The variance will be contrary to the public interest due to the potential to encumber adjacent rights-of-way with vehicle loading/unloading activities, or the parking of customers or employees in the rights-of-way;*
- 3) The revised site plan indicates the possibility of inventory vehicles having to traverse landscape area or right-of-way to be positioned as proposed;*
- 4) There is no evidence that the site will fully comply with the landscape and tree requirements of the Zoning Ordinance, thus possibly requiring another variance; and*
- 5) Special conditions do not exist that a literal enforcement of the use provisions of the Zoning Ordinance will result in an unnecessary hardship.*

FRONT SETBACK: *Based upon the preceding, the Front Setback Variance is recommended for denial, as it specifically related to the requested Use Variance.*

LOCATOR MAP



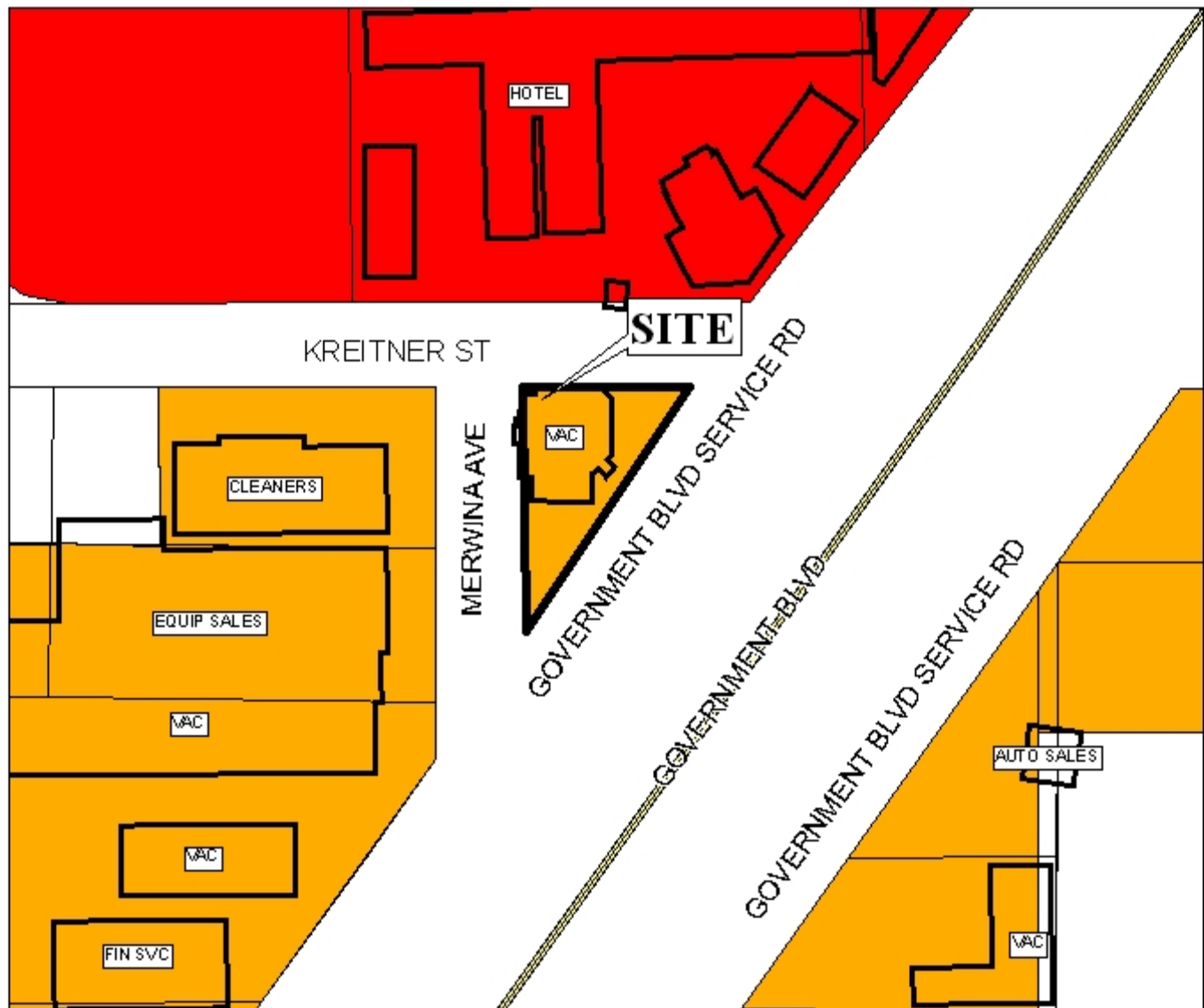
APPLICATION NUMBER 5745 DATE May 7, 2012

APPLICANT Hossein Ali Mohandessi

REQUEST Use and Front Setback Variances



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING
















The site is surrounded by commercial land use.

APPLICATION NUMBER 5745 DATE May 7, 2012

APPLICANT Hossein Ali Mohandessi

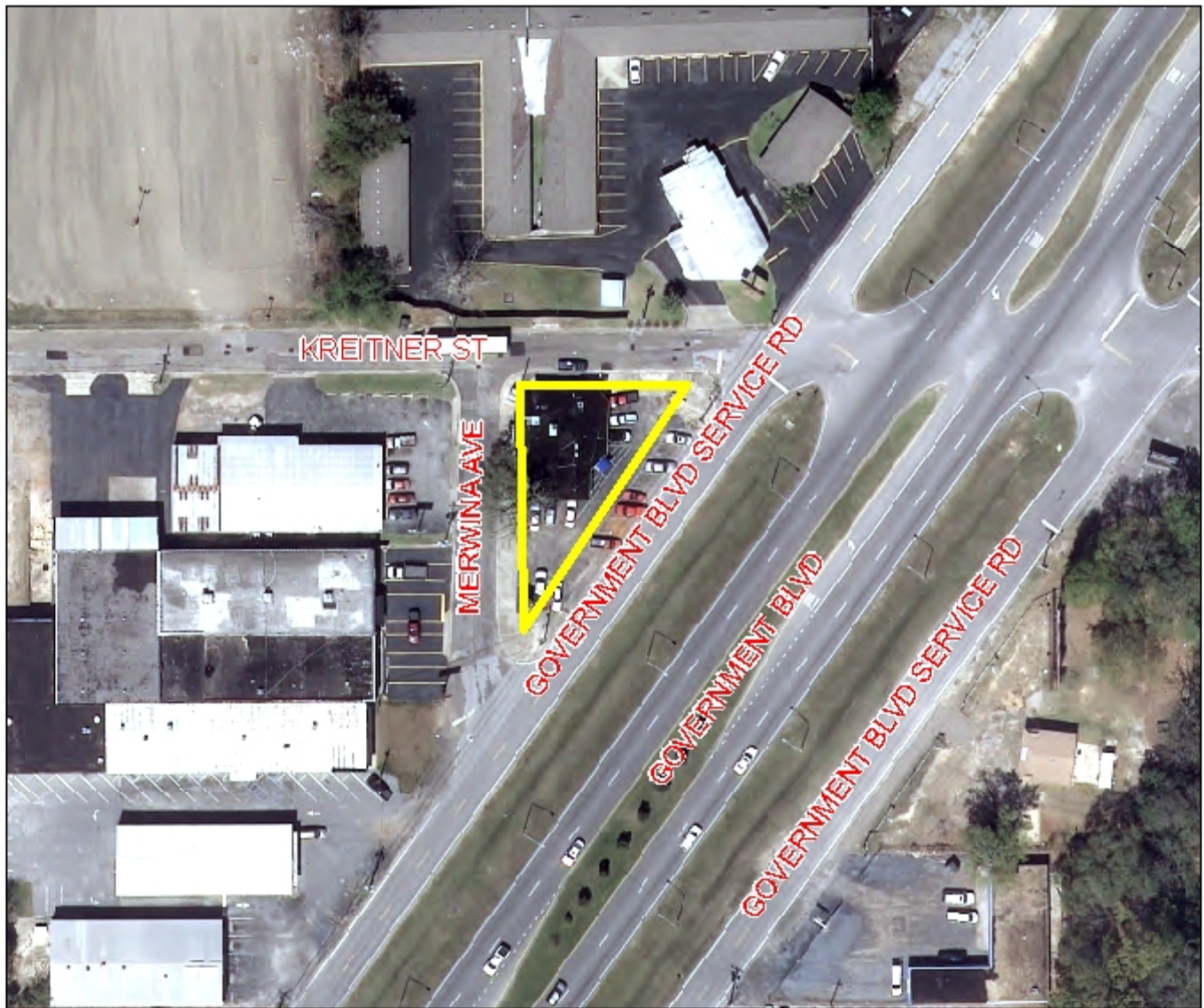
REQUEST Use and Front Setback Variances

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

BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING

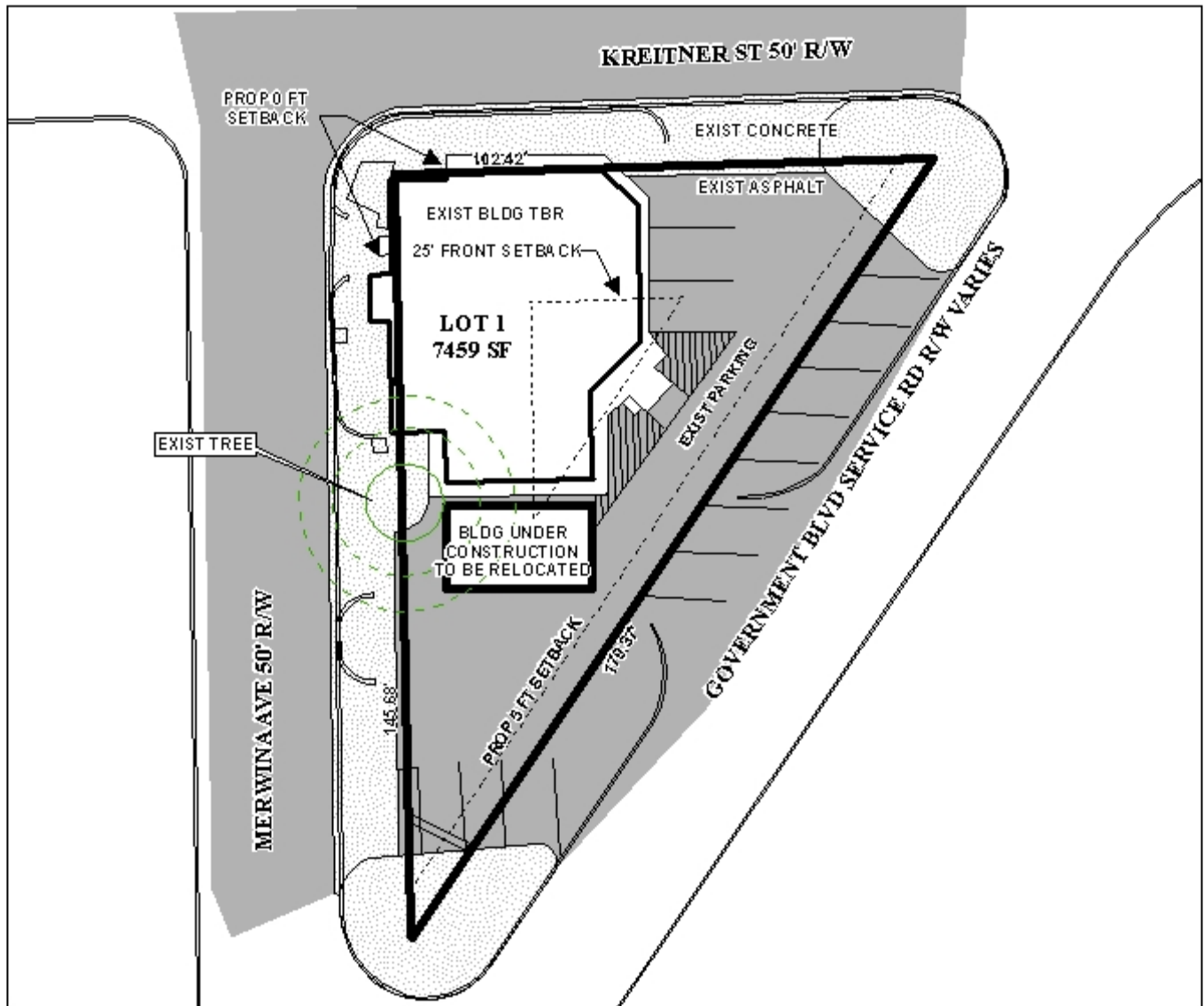


The site is surrounded by commercial land use.

APPLICATION NUMBER 5745 DATE May 7, 2012
APPLICANT Hossein Ali Mohandessi
REQUEST Use and Front Setback Variances

N
NTS

EXISTING SITE PLAN

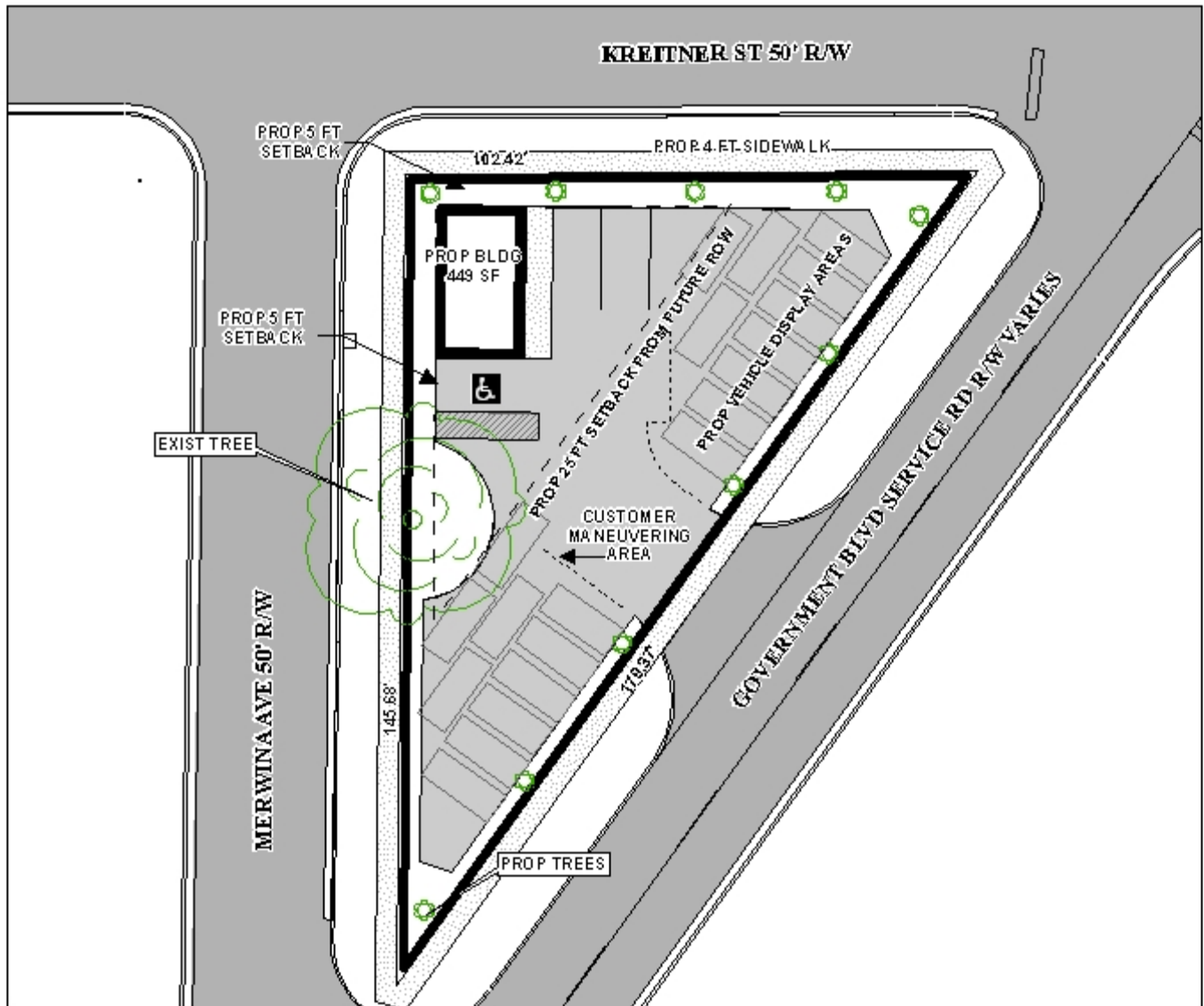


The site plan illustrates the proposed building under construction, existing parking, and existing structures.

APPLICATION NUMBER 5745 DATE May 7, 2012
 APPLICANT Hossein Ali Mohandessi
 REQUEST Use and Front Setback Variances

N
 NTS

PROPOSED SITE PLAN



The site plan illustrates the proposed building, parking, and landscaping.

APPLICATION NUMBER 5745 DATE May 7, 2012
 APPLICANT Hossein Ali Mohandessi
 REQUEST Use and Front Setback Variances

N
 NTS