

**BOARD OF ZONING ADJUSTMENT  
STAFF REPORT****Date: November 5, 2012****CASE NUMBER**

5790 / 4193

**APPLICANT NAME**

Joe Walvis (M. Don Williams, Agent)

**LOCATION**4114 Moffett Road  
(Northeast corner of Moffett Road and Wolf Ridge Road)**VARIANCE REQUEST****SURFACE:** Surface Variance to allow vehicle and boat parking and storage on a grass surface in a B-3, Community Business District**ZONING ORDINANCE  
REQUIREMENT****SURFACE:** The Zoning Ordinance requires vehicle and boat parking and storage surfaces to be paved with asphalt, concrete, or an approved alternative paving surface in a B-3, Community Business District**ZONING**

B-3, Community Business District

**AREA OF PROPERTY**

1.85±Acres

**TRAFFIC ENGINEERING  
COMMENTS**

Public parking in the rear not allowed if surface remains unimproved.

**CITY COUNCIL  
DISTRICT**

District 1

**ANALYSIS**

The applicant is requesting a Surface Variance to allow vehicle and boat parking and storage on a grass surface in a B-3, Community Business District; the Zoning Ordinance requires vehicle and boat parking and storage surfaces to be paved with asphalt, concrete, or an approved alternative paving surface in a B-3, Community Business District.

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 brought to the attention of staff after a complaint was filed via the 311 system regarding auto sales on the site. Upon investigation, it was determined that the auto sales were occurring with a business license, but without appropriate Zoning Clearance. It was additionally discovered that an addition had been made to one of the two existing buildings without permits, that vehicles and boats were being parked behind an unpermitted barbed-wire fence on grass surfacing, and that the site no longer complied with the 1995 approved tree and landscape plan due to the removal of numerous (approximately 13) trees.

The applicant is requesting that the storage of boats and vehicles be allowed to continue on the grass surfacing. The applicant states the following:

*Our off-street parking requirements for the buildings on the site are satisfied by the asphalt parking lot in the front yard. The rear yard is completely fenced, and is not open to the public. Section 64-6.A.3.a of the Zoning Ordinance requires hard surfaced parking for off-street parking facilities. We maintain that the cars and boats parking in the rear yard are pledged or repossessed property, in the same fashion as wheelbarrows or other items able to weather outside conditions, and should not be subject to off-street parking status. I can not find a passage within the Zoning Ordinance which requires hard surfacing for storage yards. The cars and boats will be typically placed within the rear yard, and will not be moved, except for grass cutting, until they leave the property. Keeping the rain-soaking ability of grass surfacing will reduce storm water flow downstream. Grass surfacing will also moderate air temperature in the local area. We believe grass surfacing is environmentally responsible and adequate for the business needs of this pawn shop.*

In the definitions section of the Zoning Ordinance one can find the following definitions:

*Alternative parking surface:* Pervious or semi-pervious parking surface, having a design acceptable to the city engineer and the director of the urban development department, or her or his designee, capable of accommodating vehicles up to five thousand (5,000) pounds gross vehicle weight and maintained free of weeds, dust, trash and debris; an example of such a material being interlocking grass paving blocks, porous asphalt or grasscrete. Crushed limestone, gravel, shell or sod shall not be considered an acceptable alternative paving surface. Alternative paving surface design shall be appropriate to the intended use. Alternative parking surfaces may only be required as a condition of application approval for spaces requested in excess of the minimum ratio requirements of this chapter.

*Vehicular use area:* All areas used by any and all types of vehicles, boats, trailers, or other equipment, whether such vehicles, boats, trailers, or equipment are self-propelled or not for the purpose of, including but not limited to, driving, parking, loading, unloading,

storage, or display, such as, but not limited to, new and used car lots, and activities of a drive-in nature in connection with banks, restaurants, gas stations, grocery and dairy stores, and the like.

Furthermore, in Section 64-4.A.3. of the Zoning Ordinance, the following can be found:

3. **Maintenance.** Except for one-family and two-family dwellings, permitted uses in I-2 districts, and parking lots within the Hank Aaron Loop which are not paved with concrete, asphaltic concrete, or asphalt, off-street parking facilities shall be constructed, maintained and operated in accordance with the following specifications:
  - a. *Drainage and surfacing.* They shall be properly graded for drainage, surfaced with concrete, asphaltic concrete, asphalt or alternative parking surface as defined in section 64-2, and maintained in proper condition, free of weeds, dust, trash and debris.

Staff and the Planning Commission have consistently required that all parking and vehicular storage areas be paved with concrete or asphalt in accordance with the requirements of the Zoning Ordinance. Storage areas, such as “lay down yards” or storage yards that utilize tracked equipment can, when located in appropriately zoned districts, be surfaced in gravel. Vehicular parking on gravel (but not grass) would be allowed “by right” in an I-2, Heavy Industrial District.

The Board, at its September 2012 meeting, denied a request of a towing service further east on Moffett Road (Brooks Towing, Case #5779) to allow the storage of vehicles on a grassy, unpaved area in a B-3 district.

If the Board agrees with the applicant’s statement that grass surfacing is adequate for the needs the pawn shop, there is little to prevent new and used auto dealers, other pawn shops, boat stores and other places which store vehicles and boats from requesting similar treatment – to allow unimproved surfacing for the parking of cars and boats. Such a decision in support of the applicant’s request would not be in the spirit of the Zoning Ordinance, would not be in keeping with specific requirements of the Ordinance, and would not be consistent with years of policy decisions.

The applicant has not shown a hardship related to the unique nature of the site. In fact, the rear storage area is now easier to pave due to the fact that all of the existing trees in the storage area have been removed.

### **RECOMMENDATION:**

Based on the preceding, the surface variance request is recommended for denial.

# LOCATOR MAP



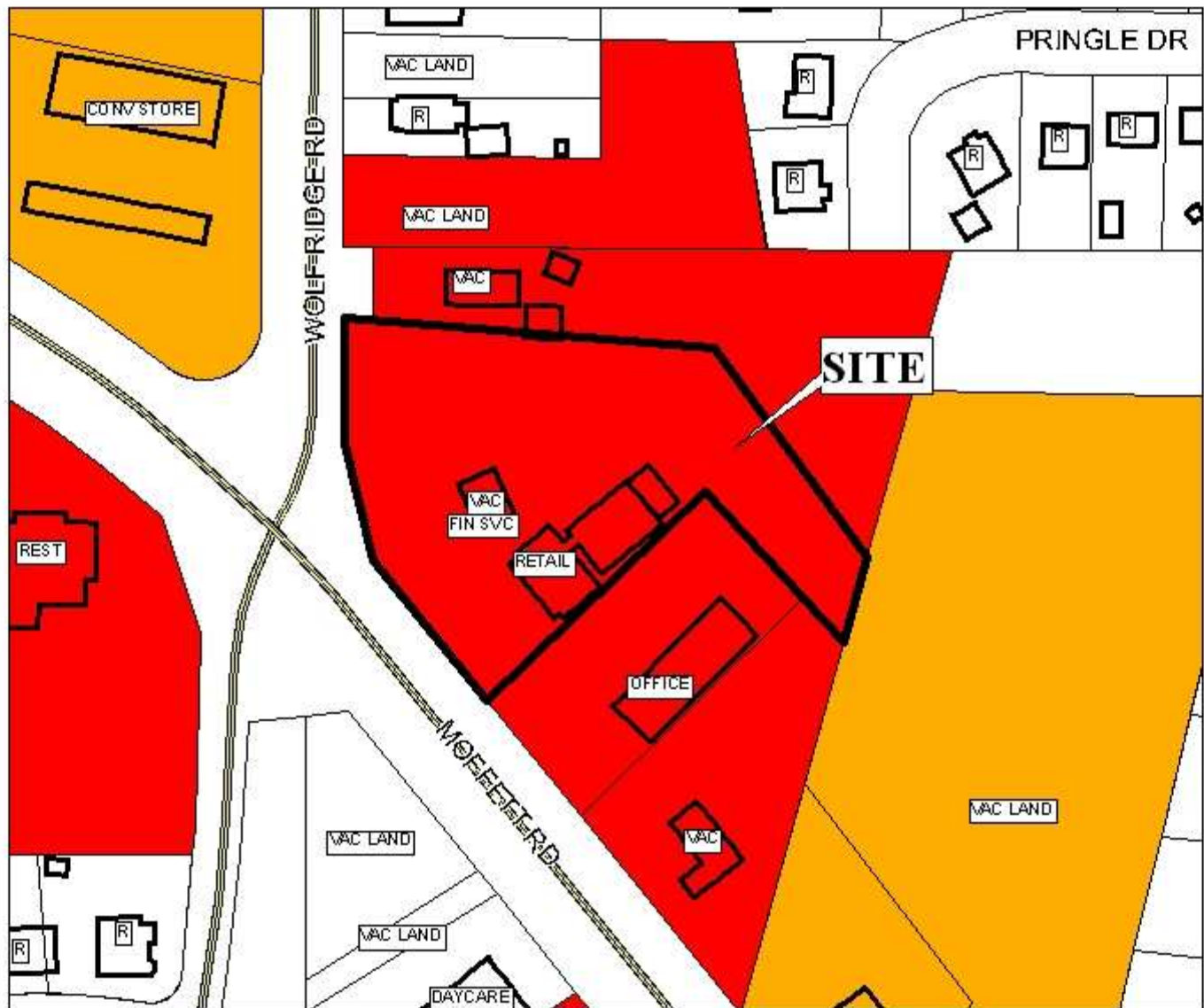
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REQUEST Surface Variance



# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING

















The site is surrounded by commercial land use.

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LEGEND															
	R-1	R-2	R-3	R-4	R-5	H-B	T-B	B-1	LB-2	B-2	B-3	B-4	B-5	I-1	I-2

N  
NTS



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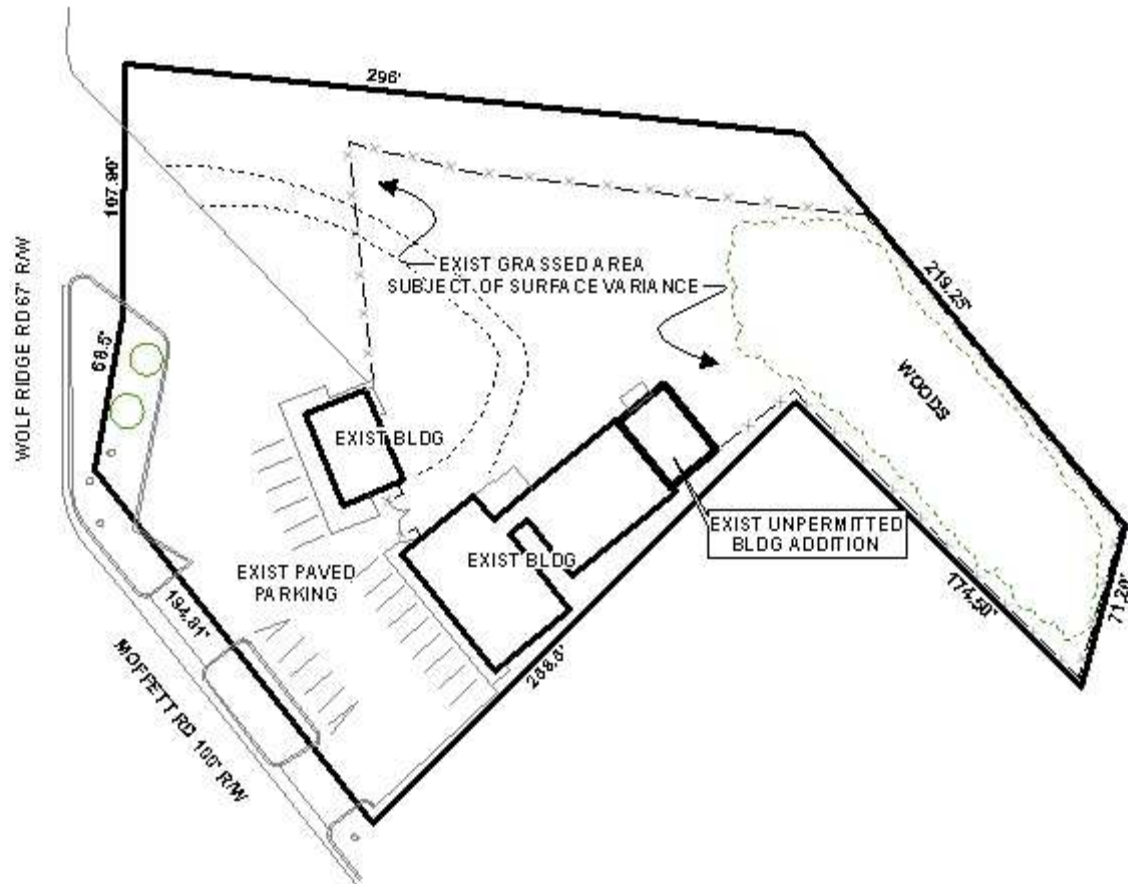


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N  
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# SITE PLAN



The site plan illustrates the existing improvements.

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N  
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