

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: April 7, 2014****CASE NUMBER**

5890/5740/5721

APPLICANT NAME

Patricia D. Jackson

LOCATION2667 Government Street
(South Side of Government Boulevard Service Road, 335'±
West of Kreitner Street)**VARIANCE REQUEST****USE:** Use Variance to allow automotive sales in an R-1, Single-Family Residential District and B-2, Neighborhood Business District.**PARKING RATIO:** Parking Ratio Variance to allow two (2) employee parking spaces for a 1,588 square-foot office building.**ZONING ORDINANCE
REQUIREMENT****USE:** The Zoning Ordinance requires a minimum B-3, Community Business District, for automotive sales.**PARKING RATIO:** The Zoning Ordinance requires 6 employee parking spaces for a 1,588 square-foot office building.**ZONING**R-1, Single-Family Residential District
B-2, Neighborhood Business District**AREA OF PROPERTY**

.31± Acres

**ENGINEERING
COMMENTS**

No Comments

**TRAFFIC ENGINEERING
COMMENTS**

The use variance is to allow automotive sales on this site. The frontage on Government Boulevard Service Road is lined with a fence, with access via a 20' gate. All excess asphalt between the fence and the roadway edge should be removed and landscaped, with a city standard driveway. This will remove any potential for vehicle display in the right-of-way.

**CITY COUNCIL
DISTRICT**

District 5

ANALYSIS

The applicant is requesting Use and Parking Ratio Variances to amend a previously approved variance to allow automotive sales with 2 employee parking spaces for a 1,588 square-foot office building on a lot split-zoned between B-2, Neighborhood Business District, and R-1, Single-Family Residential District; the Zoning Ordinance does not allow automotive sales in either B-2, Neighborhood Business Districts, or R-1, Single-Family Residential Districts, and 6 employee parking spaces are required for a 1,588 square-foot office building.

The site had legal non-conforming status that allowed B-3, Community Business District uses from 1957 until 2008. During this time, the site was occupied by a heating and air conditioning service, an automotive rental service, and an automotive detail and body shop. In 2008, a business license was issued at the location for an automobile accessories store, and in 2010, a businesses license was issued for tire sales and installation; both are B-2, Neighborhood Business District uses.

The applicant made a variance request at the Board of Zoning Adjustment's November 7, 2011 meeting to allow an automotive detail and body shop at the same location, which was denied. Another variance request at the Board's April 3, 2012 meeting to allow an automotive repair business with no tree plantings or landscaped area, which was approved. It should be noted that a condition of approval placed on the site with the previous variance application was the provision of a privacy fence along the rear of the property. While the submitted site plan does not illustrate the privacy fence, Urban Development staff took photographs of the site on April 27, 2012 showing that a privacy fence had been erected. Also of note is that the proposed site plan illustrates full compliance with tree plantings and landscaped area.

The applicant states that:

There is an existing building and parking lot which has historically been utilized for automotive related businesses. The schedule is immediate upon approval. The proposed use is an automotive sales facility. This property is being utilized as automotive sales, an automotive rental agency and business that sales and installs wheels and tires and other automotive related uses, so the continuing B-3 nonconforming use was established by the last tenant. Considering the character of the Highway 90 frontage, automotive sales (B-3 to the East and a nightclub to the West), it seems logical that a B-3 variance should be granted to this parcel. This property is to be used primarily for the display of automobiles for sale. The office is quite a bit larger than necessary for automobile sales. The request for a parking variance is based on the fact that there will only be three employees (two salesmen and one mechanic) at all times.

The site does indeed have a car sales lot to the North of the site, which is allowed by a variance received in 1967. There also was a lounge to the South of the site at one point, but this use is allowed by right in a B-2, Neighborhood Business District, and does not appear to have had an active business license in over 2 years.

The submitted site plan illustrates a total of 9 parking spaces. For a 1,588 square foot office, and repair shop with one employee, the site would be required to provide a total of 7 parking spaces,

leaving a total of two spaces for the display of cars for sale, hence the request to allow the site to use only 2 parking spaces for employees. The applicant has stated that the maximum number of employees at the site will be three individuals, therefore, if approved; the applicant should be required to keep a minimum of 3 parking spaces for use by employees, and 1 parking space for a prospective customer, leaving 5 parking spaces eligible to display vehicles for sale.

Per Traffic Engineering comments, the excess asphalt between the fence and the right-of-way should be removed, and the area landscaped, to reduce the possibility that vehicles for sale will be displayed in the right-of-way.

There is no dumpster illustrated on the site plan. If approved, a revised site plan with a note stating that curbside pickup will be used, or illustrating a dumpster, screened from view and in compliance with Section 64-4.D.9. of the Zoning Ordinance should be submitted.

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 applicant has failed to illustrate that a literal enforcement of the Zoning Ordinance would result in an unnecessary hardship. Previous uses of the site illustrate it can be used for a conforming use, it is simply the applicant's desire to increase the concentration of B-3, Community Business District uses in an R-1, Single-Family District and B-2, Neighborhood Business District.

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

- 1) approving the variance requests will be contrary to the public interest in that it is contrary to Section 64-3.E.2. of the Zoning Regulations in that B-2, Neighborhood Business Districts are intended to serve nearby residential areas, and the proposed use would serve a larger scope of individuals;
- 2) special conditions such as the site is unusable as a conforming, B-2, Neighborhood Business District use do not exist such that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship; 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 because most of the near-by businesses appear to be in compliance with the uses allowed by right in a B-2, Neighborhood Business District.

Revised for the May 5, 2014 meeting:

The Board heldover the request to allow the applicant to consult with their engineer regarding the proposed site plan submitted with the application, versus the applicant's intent regarding site improvements. No additional information was submitted; therefore the original recommendation remains the same.

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

- 1) approving the variance requests will be contrary to the public interest in that it is contrary to Section 64-3.E.2. of the Zoning Regulations in that B-2, Neighborhood Business Districts are intended to serve nearby residential areas, and the proposed use would serve a larger scope of individuals;*
- 2) special conditions such as the site is unusable as a conforming, B-2, Neighborhood Business District use do not exist such that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship; 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 because most of the near-by businesses appear to be in compliance with the uses allowed by right in a B-2, Neighborhood Business District.*

LOCATOR MAP



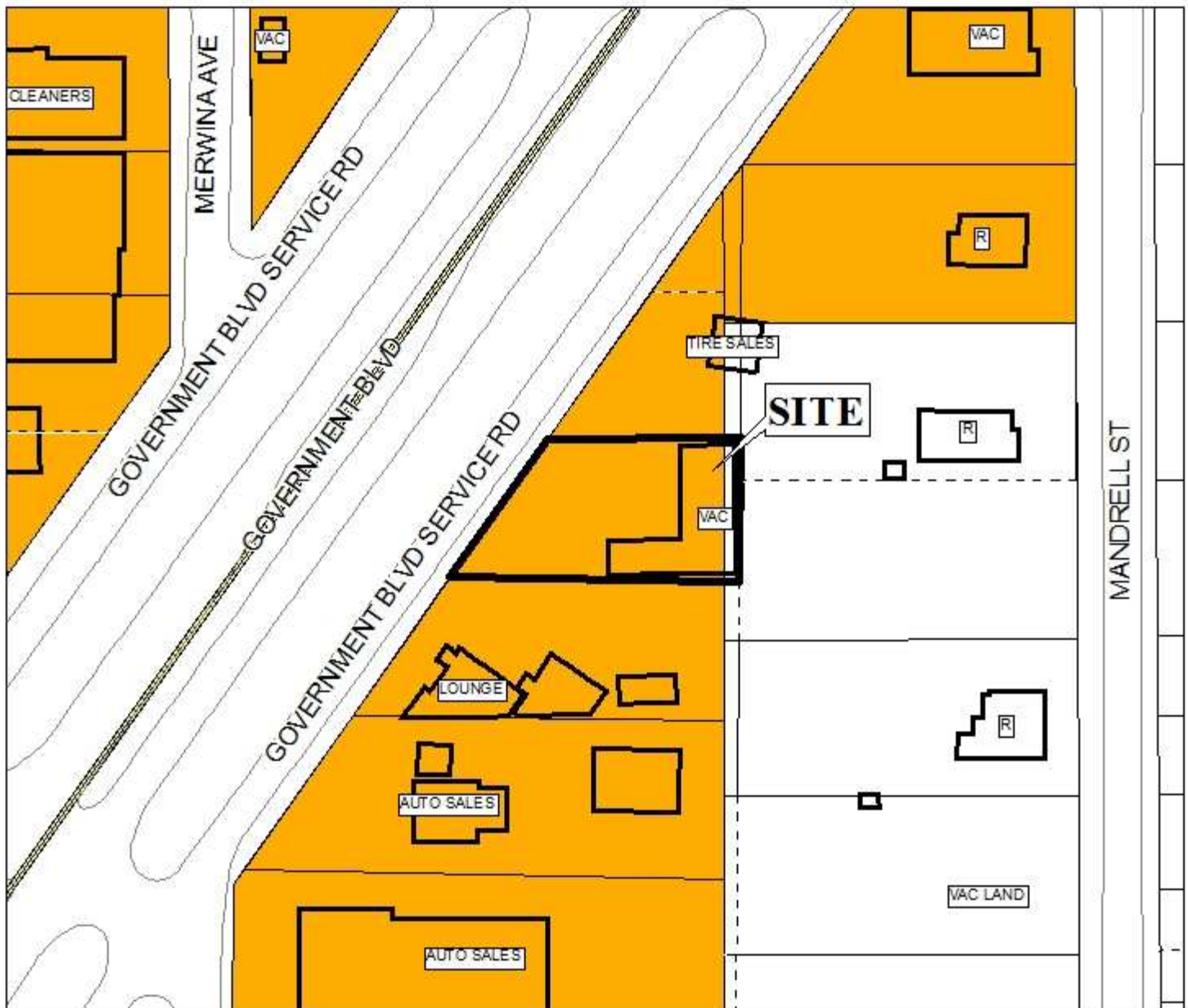
APPLICATION NUMBER 5890 DATE May 5, 2014

APPLICANT Patricia D. Jackson

REQUEST Use and Parking Ratio Variances



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



Commercial land use is located to the west, north, and south of the site. Single family residences are located to the east.

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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



BOARD OF ADJUSTMENT

VICINITY MAP - EXISTING ZONING



Commercial land use is located to the west, north, and south of the site. Single family residences are located to the east.

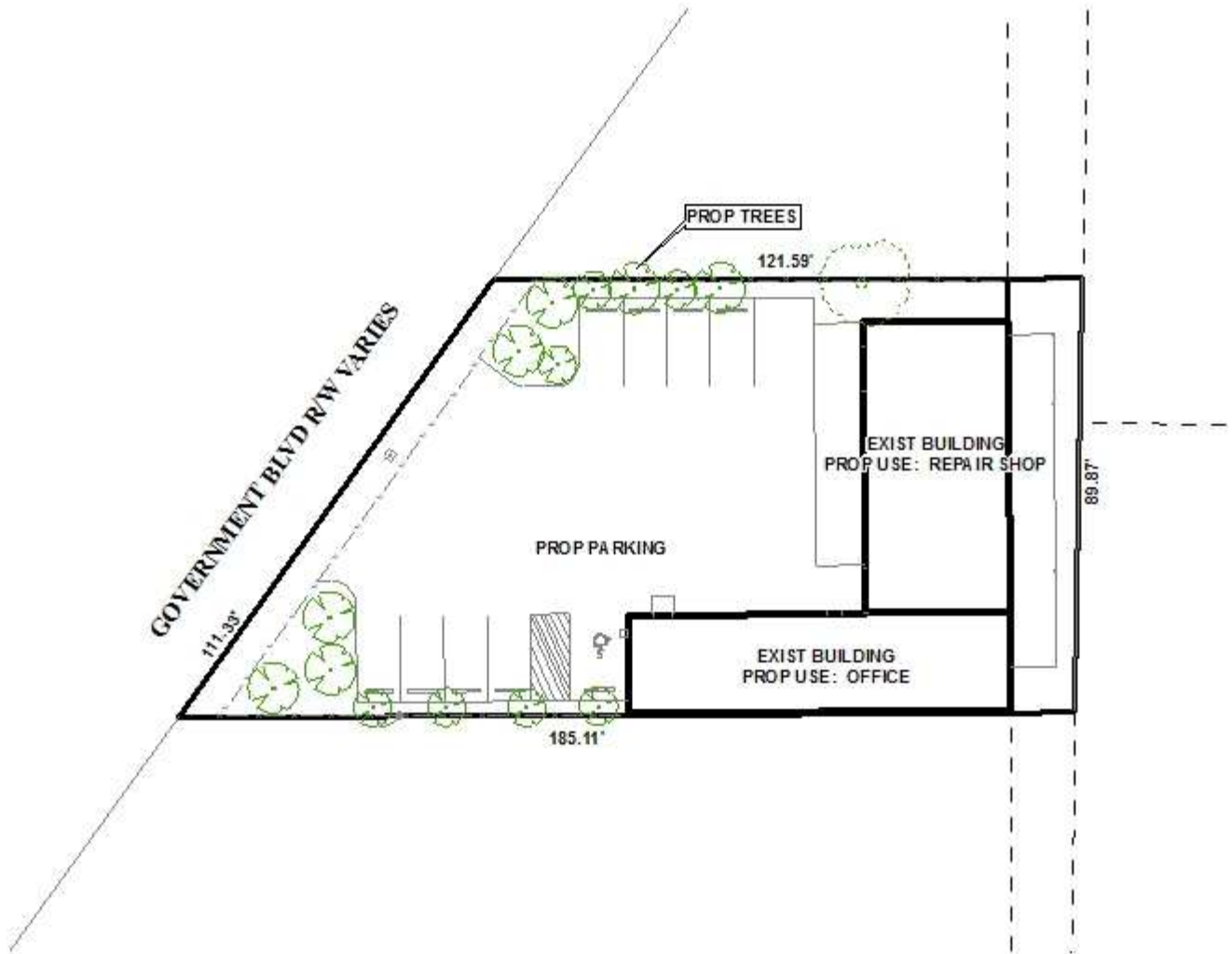
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SITE PLAN



The site plan illustrates the existing structures, proposed parking, and proposed tree plantings.

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