

APPLICATION NUMBER

5464/2163

A REQUEST FOR
USE VARIANCE TO ALLOW AUTOMOTIVE SALES IN AN R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT; THE ZONING ORDINANCE REQUIRES A MINIMUM OF B-3, COMMUNITY BUSINESS DISTRICT FOR AUTOMOTIVE SALES.

LOCATED AT

1520 TERRELL ROAD

(Northeast corner of Terrell Road and Dauphin Island Parkway)

APPLICANT/OWNER

JOHN DAVID HELLAND

AGENT

JOHN DAVID HELLAND

BOARD OF ZONING ADJUSTMENT

MARCH 2008

The applicant is requesting a Use Variance to allow automotive sales in an R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum of B-3, Community Business District for automotive sales.

The applicant had requested rezoning from R-1, Single-Family Residential, to B-3, Community Business, to allow auto sales, and the request was recommended for approval at the December 6, 2007 Planning Commission meeting. However, at the City Council meeting of January 22, 2008, the rezoning request was tabled due to Council concerns over allowed uses in B-3 that are not appropriate for a residential area. The applicant was encouraged to seek a Use Variance, instead, hence this application.

A previous Use Variance was granted for this site in 1967 to allow an appliance repair and service company in an existing garage, and another Use Variance was granted in 1968 for the adjacent residential property to the East to allow the construction of a cabinet shop. In 1972, a Use Variance was denied for residential property on the South side of Terrell Road approximately 500 feet East of Dauphin Island Parkway to be used for auto sales. None of the properties have had any commercial use in many years and have been used exclusively for single-family residential purposes.

The applicant states that the property fronts on heavily traveled Dauphin Island Parkway, that the property to the North is zoned B-3, and that the site to the South across Terrell Road is a nonconforming commercial use. Indeed, this area of Dauphin Island Parkway is mixed-use of residential, commercial, and churches.

With regard to the Use Variance request, the proposed use may not be out of character due to the changing conditions along Dauphin Island Parkway. However, there is nothing to prevent the property from being used as zoned, for single-family residential purposes. All other properties in the applicant's immediate area along Terrell Road are used for such. In light of the fact that the property was not rezoned and remained R-1, its potential use must be evaluated on an R-1 basis. It should be noted that the applicant did not submit any justification for a hardship imposed by the property to prevent it from being used residentially, and the fact that the City Council denied the B-3 rezoning does not constitute a hardship. The applicant purchased the property in late 2007 ostensibly for commercial purposes since rezoning was applied for within a month of the purchase. The fact that the rezoning was not ultimately approved and the applicant could not use the property for the intended commercial purposes would constitute a self-imposed hardship.

The Zoning Ordinance states that no variance shall be granted where economics are the basis for the application. Furthermore, the applicant must present 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.

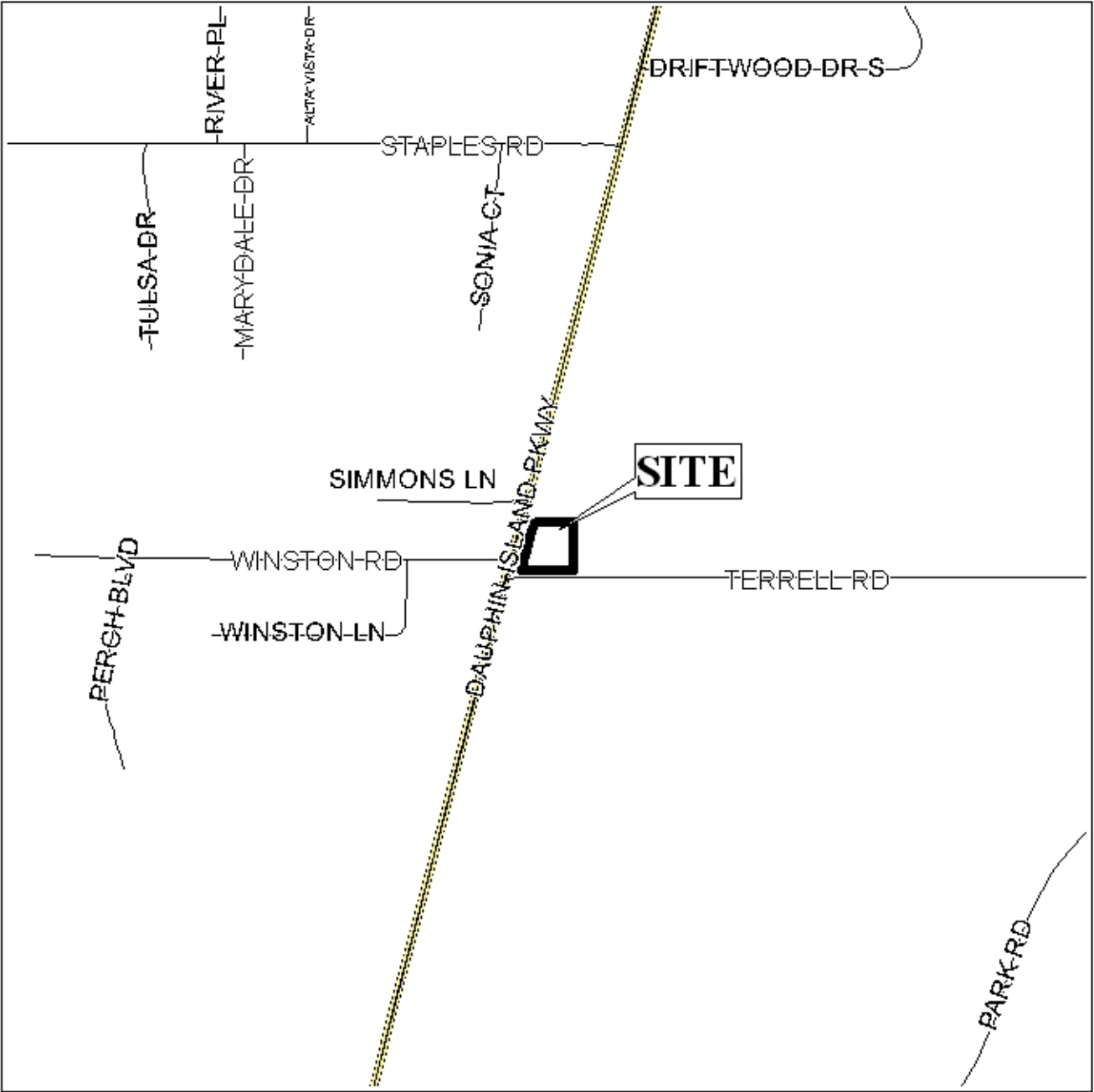
In this instance, the applicant has failed to illustrate that a hardship imposed by the property exists. It is simply the applicant's desire to use R-1 zoning for automotive sales.

RECOMMENDATION 5464/2163

Date: March 3, 2008

Based on the preceding, this application is recommended for denial.

LOCATOR MAP



APPLICATION NUMBER 5464 DATE March 3, 2008

APPLICANT John David Helland

REQUEST Use Variance



NTS

BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by single-family residential units. A retail store is located to the south of the site. Churches are located to the west of the site.

APPLICATION NUMBER 5464 DATE March 3, 2008

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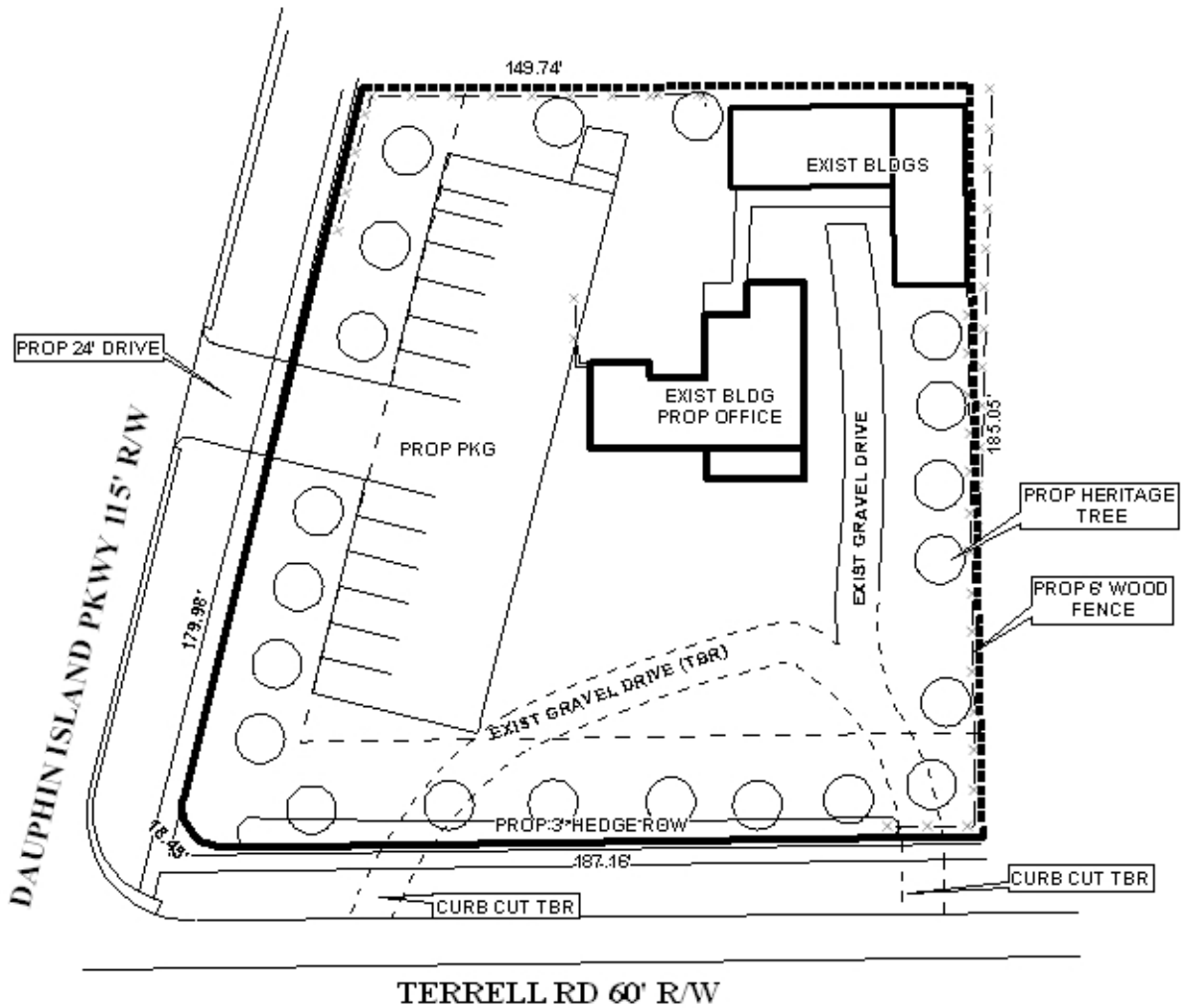
REQUEST Use Variance

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 N



NTS

SITE PLAN



The site plan illustrates the existing buildings, driveways, proposed parking and proposed office

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