

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: February 3, 2014****CASE NUMBER**

5876/4812/4709

APPLICANT NAME

Jerry Ward

LOCATION1981 St. Stephens Road
(Northwest corner of St. Stephens Road and St. Stephens Court)**VARIANCE REQUEST****USE:** To allow a 2,251 square-foot restaurant and a car wash in an R-1, Single-Family Residential District.**PARKING RATIO:** To allow 8 parking spaces.**ACCESS/MANEUVERING:** To allow sub-standard access and maneuvering areas.**TREE AND LANDSCAPE:** To allow no tree plantings or landscaped area.**SIDE AND REAR SETBACK:** To allow a structure 6' ± from the side street side yard property line and within 6' ± of the rear property line.**ZONING ORDINANCE
REQUIREMENT****USE:** The Zoning Ordinance requires a minimum of a B-2, Neighborhood Business District to allow a restaurant and carwash.**PARKING RATIO:** The Zoning Ordinance requires 23 parking spaces.**ACCESS/MANEUVERING:** The Zoning Ordinance requires a 12' wide access aisle for one-way traffic.**TREE AND LANDSCAPE:** The Zoning Ordinance requires full compliance with tree planting and landscaped areas.**SIDE AND REAR SETBACK:** The Zoning Ordinance requires all structures be a minimum of 20' from a side street side yard property line and a minimum of 10' from a

rear property line adjacent to an R-1, Single-Family Residential District.

ZONING

R-1, Single-Family Residential District

AREA OF PROPERTY

0.16 ± Acres

ENGINEERING**COMMENTS**

According to an Engineering Dept. Policy Letter dated 05/13/2009 the runoff from a car wash operation is supposed to be isolated, collected, and drained into the sanitary sewer system. A Land Disturbance Permit will need to be submitted for this proposed work.

TRAFFIC ENGINEERING**COMMENTS**

The parking spaces illustrated are only 7' wide, two feet less than the 9' city standard width. The spaces are also only 15' deep, three feet less than the 18' city standard depth. If striped parking is required, angled parking is suggested, with the "driveway" north of the power pole designated as the entrance, and the "driveway" south of the power pole designated as the exit. This should minimize the impact of vehicles backing and maneuvering in the right of way. (Site plan does not illustrate small grassed area surrounding power pole.).

CITY COUNCIL**DISTRICT**

District 1

ANALYSIS

The applicant is requesting Use, Parking Ratio, Access/Maneuvering, Tree and Landscape, and Side and Rear Setback Variances to allow a 2,251 square foot restaurant and a car wash with 8 parking spaces, with sub-standard access and maneuvering areas, no tree plantings or landscaped area, and to allow a structure 6'± from side street side yard property line and within 6'± of the rear property line in an R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum of a B-2, Neighborhood Business District to allow a restaurant and carwash, 23 parking spaces, 12' wide access aisles for one-way traffic, full compliance with tree planting and landscaped areas, and structures to be a minimum of 25' from a side street side yard property line and a minimum of 10' from a rear property line adjacent to an R-1, Single-Family Residential District.

It should be pointed out that this site is a corner lot with two street frontages and, as such, the side yard setback would be 20'. As a result, the proposed carwash structure would actually be within the required 20' minimum side street yard setback for a corner lot with two frontages.

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.

Applicant's statement: *Mr. Ward states that his restaurant business was issued a business permit at this location for a restaurant which he currently operates. Within this building he has an internet café for his clientele to use while they are eating or stopping by. This site has also been used for the last 6-7 years as a small carwash site. The carport located partly on the property is where this operation takes place. Mr. Ward was unaware until he saw the survey that his carport was located partly in the right of way. We are proposing to move the carport onto his property in order to allow his operation to continue. We currently have 8 parking spots out front along St. Stephens Road being used for his carwash and food customers. The idea behind his business is to have someone come in, order some food while waiting to get their car washed or use the internet café to pass the time. In the same sense they will have customers come in order food and see that they have time to get their car washed as well.*

We understand there are limitations to this site based on its size and configuration. We are limited with parking, maneuvering, landscaping ability, ect. for this site and it will not meet any of the cities requirements. We are trying to comply by moving the carport onto our site so that the carwash operation is contained on his property.

Our building has 2,251 sq ft. of usable space and we are currently providing 8 spaces @ .1-300 sq ft. We are simply trying to continue the operation as it has been functioning for several years and ask that the carwash and restaurant be allowed to continue to operate despite the limitations.

We understand that a carwash may have some draw back from the conversation my client has had with the city. We would like the opportunity to provide some sort of retail space if the carwash is denied. Keep in mind our main objective is to get the carwash & restaurant site approved, but if not we would like to discuss this option with the board under this application.

The property has a history of non-conforming uses, however, the last restaurant/bar use was in 2003; it is not known if the current restaurant use complies with applicable building and fire codes. At some point after the beginning of 2010, the applicant added a freestanding carport structure to the site for the car washing business; the structure was not appropriately permitted, and is partially located within the right-of-way of St. Stephens Court.

Based upon the available records, it appears that a business license to operate the existing restaurant was issued by the City's Revenue Department in August 2012, without Zoning

Clearance review. The last approved uses, according to zoning records, were a car wash and CD sales, issued in November 2010.

Typically, when a customer applies for a city business license, Revenue sends a Zoning Clearance request form to the Zoning Department for review and to either grant or deny clearance for the proposed business. In this instance, no Zoning Clearance was requested from the Revenue Department as required and proves to be an error on the City's behalf. If the Zoning Clearance request form had been sent to the Zoning Department for review, staff would have originally denied the request due to multiple issues to the site, although the applicant may have been able to apply for a Variance or to Rezone the property to a more favorable zoning district.

The site is adjacent to B-2, Neighborhood Business across St. Stephens Road and 210' ± to the south of this property. Property to the west, south, and north of this site are all Zoned R-1, Single-Family Residential; however, the property to the north is also commercially used, by use variance.

With regards to the Use Variance request, the applicant wishes to continue the operations of a restaurant with an internet café and carwash, which have been in operation for several years. The restaurant use was re-established 9 years after the previously licensed restaurant use. The size of the existing building and the limited availability of parking indicate that the most appropriate use of the building would be for a use only requiring a parking ratio of 1:300, such as an office or retail shop.

Although the applicant has provided nonconforming documentation for the operation of the carwash, the carwash is not in compliance with the revised carwash requirements of the Zoning Ordinance and the existing carwash structure was placed on the site without any permits and is not enclosed on at least 2 sides as required. Also, the carwash does not appear to have an oil separator and water run-off from washing is not connected to sanitary sewer, as is now required in order to comply with federal water quality laws. Finally, vehicles are not screened from view with a 3' – 5' tall evergreen hedge and/or landscaped berm as required. If the use of a carwash is approved to continue operations, the applicant will have to bring the carwash into full compliance, which may be a difficult given the property's size and layout.

As the existing building is noticeably commercial in nature, the re-use as a dwelling unit or any type of residential purpose is highly unlikely. The continued commercial use would appear to be logical; however, the intent of non-conforming regulations is to eventually phase out uses not in compliance with the underlying zoning district. The continued restaurant and internet café use, without the carwash, maybe an appropriate option to consider.

In reference to the Parking Ratio Variance request, the restaurant use requires 23 parking spaces; however, as the site is already developed and due to its size and layout, the applicant proposes only 8 substandard parking spaces, 15 short of the required number of spaces. It should be pointed out that the site plan depicts the proposed spaces with a dimension of only 7' x 15' and the applicant has not requested an additional variance for the substandard dimensions of the proposed parking spaces. If the carwash use is discontinued and the unpermitted structure

removed, the applicant may be able to accommodate 2 or 3 additional parking spaces on the south side of the property where the carwash structure is located. It should be pointed out that the site plan does not illustrate any handicapped parking.

The site is a corner lot and fronts two streets. Given the property's size and proximity to the adjacent streets, access and maneuvering is a concern. Traffic Engineering recommends a one-way access aisle with angled parking, in compliance with Section 64-6.2. of the Zoning Ordinance, to improve access and maneuvering. Something else to consider is the proximity of the existing sidewalk which runs the entire length of the eastern property line along the frontage of St. Stephens Road and an existing utility pole. A substandard access aisle may result in customers backing into the sidewalk or utility pole. Also, whether the applicant desires compliant angled or standard 90° parking, the resulting access aisle will be approximately 8.5' ± from the existing sidewalk, however, staff would need a revised site plan that shows compliant parking to determine exactly how many feet the site will be short of the required 12'.

With regards to the Tree and Landscape Variance request, the site is roughly 7,000 ± square feet and would require a total landscaped area of 840 ± square feet, with 504 ± square feet being frontage landscaping, along with 5 frontage trees and 5 perimeter trees. As the property is already developed, the amount of existing impervious surfaces would make the frontage tree and landscaping requirement difficult to comply with because the proposed landscaping and frontage trees would be placed in existing areas already designated as either parking or access aisles and which have already been paved. The only area on the property that is not paved is a 1,200 ± square feet area which runs between the building's northern and eastern side and its respective property line; however, the area which is not paved may be large enough to provide perimeter trees and landscaping, if required. It should be pointed out that aerial photos depict a large tree near the center of the northern property line which is located on the property to the north. As the northern property line is only 90', 3 perimeter trees would be required along that property line; however, due to the proximity of the large tree on the adjacent property owner's property, it is recommended that only the provision of 2 understory trees along the western property line between the building and the privacy fence be required.

Finally, in reference to the Side and Rear Setback Variance, the proposed relocation of the carwash would place it entirely on the property, outside of the right-of-way for St. Stephens Court; however, it would still be within the required side street and rear yard setbacks of 20 feet and 10 feet, respectively. While this would be an improvement over existing conditions, it would still be problematic.

It should be noted that it appears the applicant is simply overusing the site and recommends discontinuing the carwash use and removing the associated structure. As such, if the Board only approves the Use Variance for the restaurant use only, the Side and Rear Setback Variance would not be applicable anymore as the structure would be removed from the site entirely.

It should be pointed out that the site plan does not illustrate the location of a dumpster or a note referencing curb-side pickup. Use of a dumpster will require the construction of a dumpster pad with enclosure connected to sanitary sewer, and the location of the pad must meet all side and rear yard setbacks. The site plan should be revised to illustrate the location of a dumpster in

compliance with Section 64-4.D.9. of the Zoning Ordinance, or depict a note stating that garbage will be collected via curb-side pickup.

Lastly, there is existing 6' high privacy fencing around the northern and western property line. If approved, the fencing should be retained.

There are special conditions which exist with this property that would make the literal enforcement of the R-1 district regulations a hardship, namely that the site is developed with a commercial building.

Granting a variance to allow the (continuation of) carwash use **would be** contrary to the public interest due to setback, building code, and federal water quality issues.

Granting a variance to allow the (continued) commercial use of the existing building may not be contrary to the public interest if certain precautions are undertaken, such as compliance with building and fire codes, and provision of an adequate number of parking spaces for the commercial use. Whether use as a restaurant is appropriate, however, is questionable due to known parking deficiencies. Should the Board wish to consider approval of the restaurant/internet café use, it is recommended that it be subject to conditions regarding hours of operation, obtaining of appropriate inspections for building and fire code compliance (with necessary modifications), the prohibition of the selling or consumption of alcoholic beverages on premise, and the provision of necessary waste disposal facilities; such conditions would protect the public interest and maintain the spirit of the Zoning Ordinance.

The variance request for reduced setbacks would be unnecessary due to the denial of the use variance request for the carwash.

The variance requests for parking ratio and access/maneuvering would be appropriate subject to the provision of as many 9'x18' parking spaces with marked one way circulation as possible, to include one "van accessible" space with appropriate access aisle, to be coordinated with Traffic Engineering.

And finally, the approval of Tree and Landscaping Variances would be appropriate if a minimum of 840 ± square feet of landscape area is maintained, and two understory trees are placed along the western property line in the existing green space.

RECOMMENDATION: Based upon the preceding, the following recommendations are in observance of Section 64-8.B.6.f.(3).(d). of the Zoning Ordinance:

USE VARIANCE: The carwash use is recommended for denial with the carport structure to be removed within 30 days.

The restaurant and internet café use is recommended for approval, subject to the following conditions:

- 1) Compliance with building and Fire Code;
- 2) Prohibition of alcohol sales/consumption on premise;

- 3) Hours limited to 7am-10pm; and
- 4) Provision of appropriate waste disposal and revision of the site plan to illustrate the location of a dumpster in compliance with Section 64-4.D.9. of the Zoning Ordinance, or depict a note stating that garbage will be collected via curb-side pickup.

PARKING RATIO VARIANCE: The application is recommended for approval due to the existing layout and size of the property, subject to the following conditions:

- 1) Revision of the site plan to depict compliant angled or 90° parking; 9'x18' spaces;
- 2) Revision of the site plan to depict compliant parking along the southern side of the building;
- 3) Compliance with Traffic Engineering Comments: *(The parking spaces illustrated are only 7' wide, two feet less than the 9' city standard width. The spaces are also only 15' deep, three feet less than the 18' city standard depth. If striped parking is required, angled parking is suggested, with the "driveway" north of the power pole designated as the entrance, and the "driveway" south of the power pole designated as the exit. This should minimize the impact of vehicles backing and maneuvering in the right of way. (Site plan does not illustrate small grassed area surrounding power pole.); and*
- 4) Provide one "van accessible" compliant space with access aisle and revision of the site plan to illustrate a handicapped parking space compliant with the Americans with Disabilities act.

ACCESS/MANEUVERING VARIANCE: The application is recommended for approval to allow a reduced access/maneuvering area, subject to the following conditions:

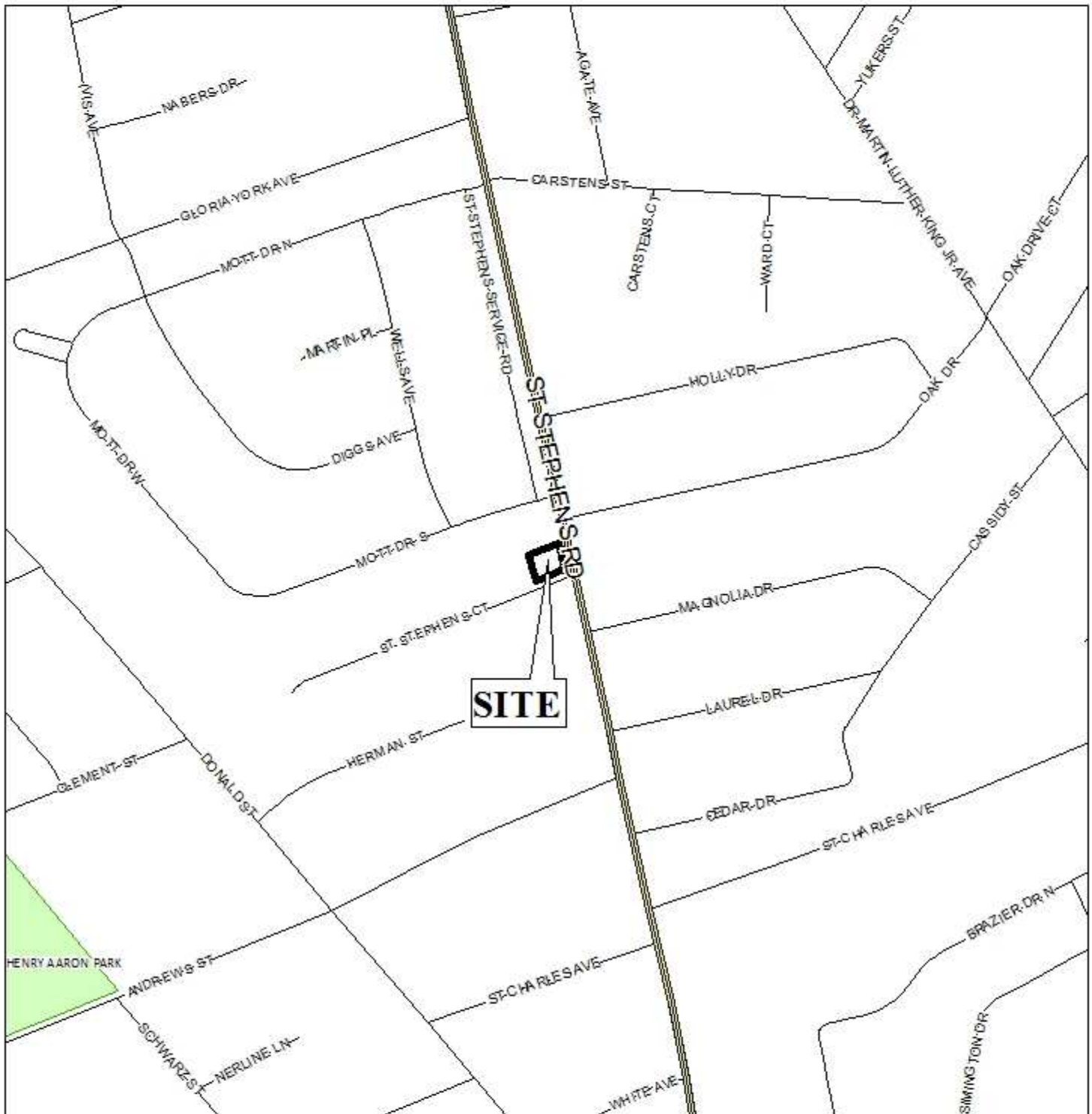
- 1) Revision of the site plan to depict compliant angled or 90° parking; 9'x18' spaces;
- 2) Revision of the site plan to illustrate a handicapped parking space compliant with the Americans with disabilities act; and
- 3) Revision of the site plan in coordination with Traffic Engineering Comments: *(The parking spaces illustrated are only 7' wide, two feet less than the 9' city standard width. The spaces are also only 15' deep, three feet less than the 18' city standard depth. If striped parking is required, angled parking is suggested, with the "driveway" north of the power pole designated as the entrance, and the "driveway" south of the power pole designated as the exit. This should minimize the impact of vehicles backing and maneuvering in the right of way. (Site plan does not illustrate small grassed area surrounding power pole.);).*

TREE AND LANDSCAPING VARIANCE: The application is recommended for approval to allow no frontage trees and frontage landscaping, subject to the following conditions:

- 1) Provision of two understory trees between the building and privacy fence along the western property line; and
- 2) Maintain a minimum of 840 ± square feet of landscaped area.

SIDE AND REAR SETBACK: The application is recommended for denial.

LOCATOR MAP



APPLICATION NUMBER 5876 DATE February 3, 2014

APPLICANT Jerry Ward

REQUEST Use, Parking Ratio, Access/Maneuvering, Tree and Landscape,
and Side and Rear Setback Variances



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by residential and commercial units. A church lies south of the site.

APPLICATION NUMBER 5876 DATE February 3, 2014

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REQUEST Use, Parking Ratio, Access/Maneuvering, Tree and Landscape,
and Side and Rear Setback Variances

LEGEND

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|-----|-----|-----|-----|-----|-----|-----|-----|------|-----|-----|-----|-----|-----|-----|
| 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 |
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BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by residential and commercial units. A church lies south of the site.

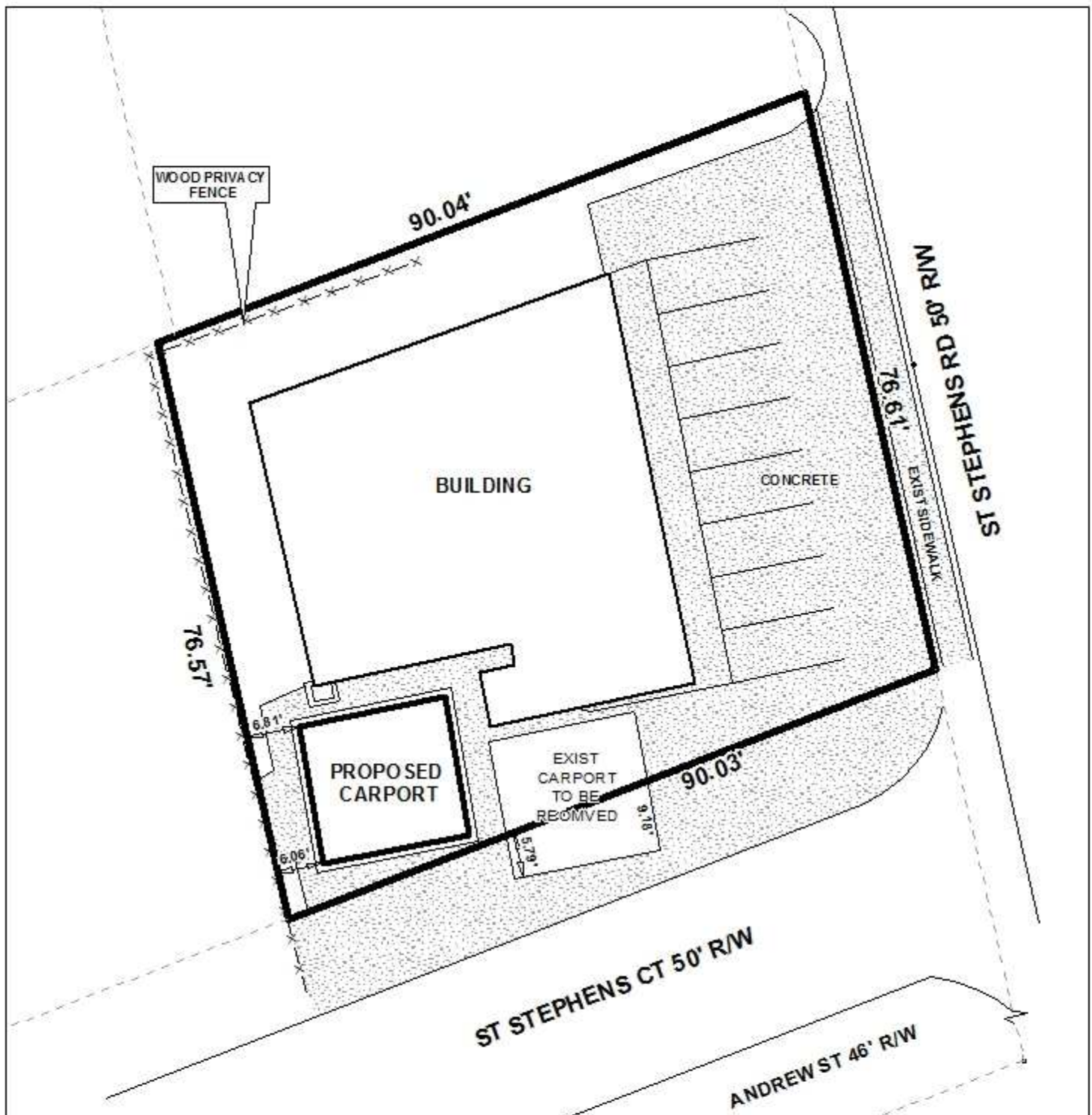
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SITE PLAN



APPLICATION NUMBER 5876 DATE February 3, 2014

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