

APPLICATION NUMBER

5575 / 4244 / 4226 / 3428

A REQUEST FOR

**USE VARIANCE TO ALLOW A PEDIATRIC MEDICAL
OFFICE IN AN R-1, SINGLE-FAMILY RESIDENTIAL
DISTRICT; THE ZONING ORDINANCE REQUIRES A
MINIMUM B-1, BUFFER BUSINESS DISTRICT FOR
PROFESSIONAL OFFICES.**

LOCATED AT

1835 OLD SHELL ROAD

(Southeast corner of Old Shell Road and North Carlen Street)

APPLICANT

GULF HEALTH PROPERTIES, INC.

BOARD OF ZONING ADJUSTMENT

NOVEMBER 2009

The applicant is requesting a use variance to allow a pediatric medical office in an R-1, Single-Family Residential District; the zoning ordinance requires a minimum B-1, Buffer Business District for professional offices.

The applicant is proposing to amend a previously approved use variance. This property has been the subject of several previous Board of Adjustment cases. The first case (#3428) was heard by the Board on October 2, 1978. This was a request for use of the site as professional offices for three cardiologists. The original variance was denied by the Board, but overturned by the Circuit Court of Mobile County. The Court approved the use with the following conditions: *“that the character of the building shall be kept generally consistent with the character of the present structure and that the same be used by not more than three physicians practicing cardiology. That all patient and employee parking shall be on the subject property and that a protective fence be built shielding the east line of subject property from adjoining owners.”* The Court’s order was further appealed to the Court of Civil Appeals of Alabama, and the decision was affirmed based on the fact that *“no more than twenty patients would be seen on any one day,” and that office operation would be limited to four days a week.”*

In October, 1989, a variance request was heard by the Board from applicants seeking to remove the limitation on the number of cardiologists practicing at the location, and allow an unrestricted number of physicians to practice psychiatry at this location. The Board approved the variance request with changes and conditions as follows: *“that the current office structure be used only as a psychiatric office, and the practitioners using the property be limited to a maximum of seven professionals licensed to provide psychiatric care; that the entire staff, including the seven licensed professionals, be limited to twenty people; that the hours of office operation be restricted to the hours of 8 a.m. and 6 p.m., Monday thru Friday; that no alterations be made to the existing structure’s exterior elevations, that no changes be made to the outside dimensions of the buildings, and that their residential character be maintained; that the garage apartment located on the site be restricted to residential use; and that a landscape plan be submitted to the Board for approval prior to making any landscape improvements.”* As no action was ever taken on this application, it expired in April, 1990.

Then, on September 10, 1990, the Board was approached again with the request to utilize the subject property as administrative offices only for Mercy Medical Home Health. The Board approved the application with the following restrictions: *“that the operation be limited to administrative use, with no client or patient traffic; that the total number of employees be limited to twenty five; that the hours of operation be limited to 8:00 a.m. to 6:00 p.m., Monday thru Friday; and that the residential character of the structures be maintained and the garage apartment located at the rear of the site be limited to residential use.”*

The applicant now coming before the Board wishes to modify the existing use variance by allowing the operation of a pediatric medical practice not to exceed 25 employees (including practitioners); to allow patient traffic; to allow office hours from 8 a.m. until 7 p.m. Monday thru Friday; and to allow academic tutoring on Saturdays from 10:00 a.m. until 12:30 p.m. on Saturdays with approximately 20 to 25 children and 20 volunteers.

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.

The applicant did not state any justification for the variance based on hardship. The applicant only stated his opinion that the proposed use was “non-intrusive” and did not “generate excessive noise, odors, air pollution or traffic.”

In fact, the conversion of this property from administrative offices with no patient traffic to a full-fledged medical office serving as many patients as employees throughout the day represents a significant increase in use for the property. The use would generate more traffic, both vehicular and foot in the area. This property has not ever been used for such a heavy use, and the Board has been mindful of this by placing limitations on the number of practitioners in the past. Further, the applicant wishes to extend business hours to 7 p.m., and such a late hour has never been permitted in the past. Additionally, lighting of the parking area for night use is required by the Zoning Ordinance, and the existing lighting may not be adequate, while additional lighting might negatively impact adjacent residents. Further, the main structure, based upon information from the variance application in 1990, is approximately 5,200 square feet. Based upon the standard parking ratio of 1 space per 300 square feet of gross floor area (as per the Zoning Ordinance), a minimum of eighteen parking spaces are required. The site indicates that 35 parking spaces are provided. While this number of parking spaces is legally adequate, staff has concerns over whether this amount of parking spaces is truly adequate based upon the proposed number of employees and patients.

While the use as a pediatric clinic is a heavier use in and of itself, the applicants also wish to have a tutoring center operating at the location. The tutoring center is proposed to operate on Saturdays, which would also significantly affect the surrounding properties, as the location has never in the past 31 years been able to operate business at the location on Saturday.

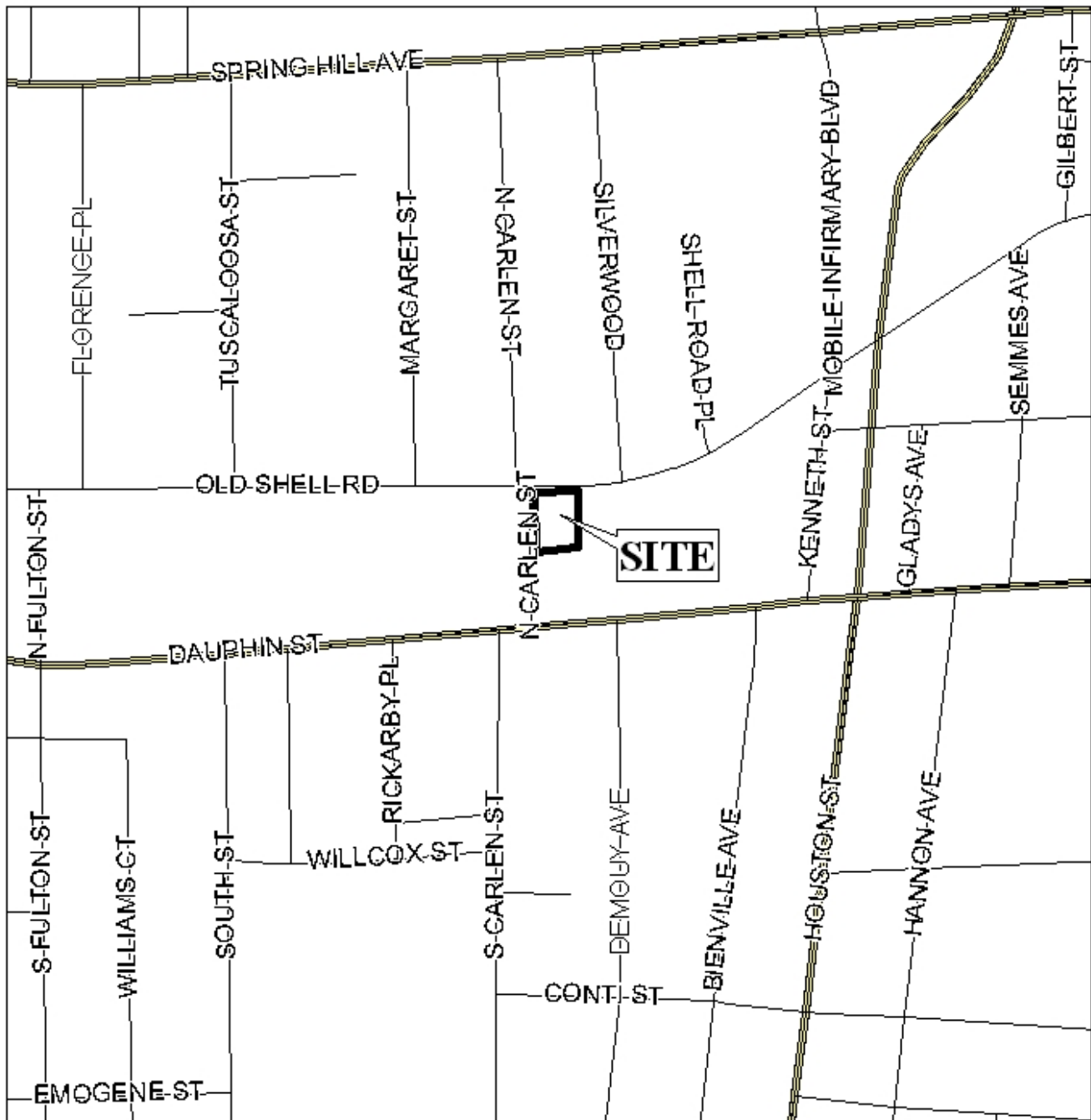
The applicant has failed to illustrate that a literal enforcement of the ordinance would result in an unnecessary hardship. It is simply the applicant's wish to utilize the property for a heavier use than is already in operation at the location.

RECOMMENDATION 5575/4244/4226/3428

Date: November 2, 2009

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

LOCATOR MAP



APPLICATION NUMBER 5575 DATE November 2, 2009

APPLICANT Gulf Health Properties, Inc

REQUEST Use Variance



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



There are single family residential units to the north, west, and south of the site, and an apartment building to the east.

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BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING

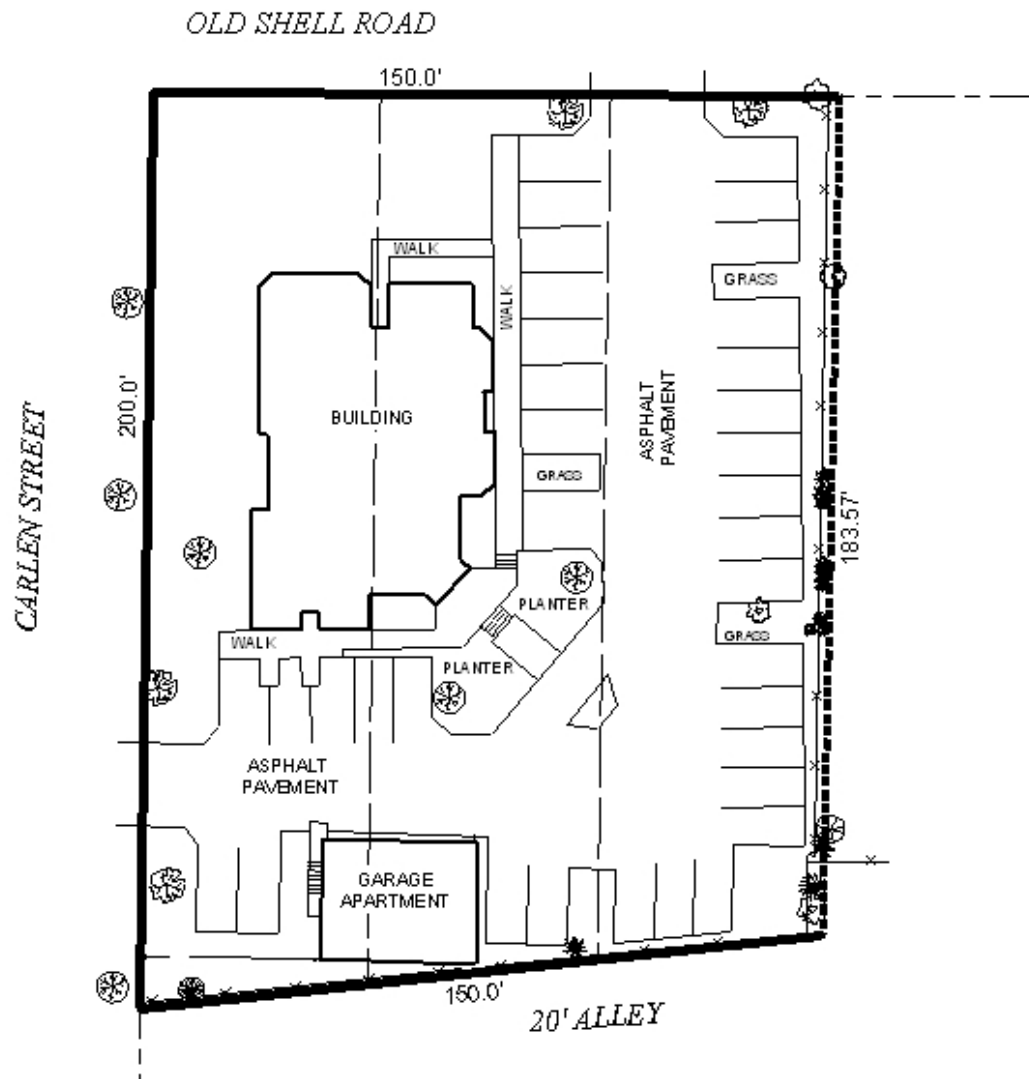


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SITE PLAN



The site plan illustrates the buildings, parking, landscaping, and walks.

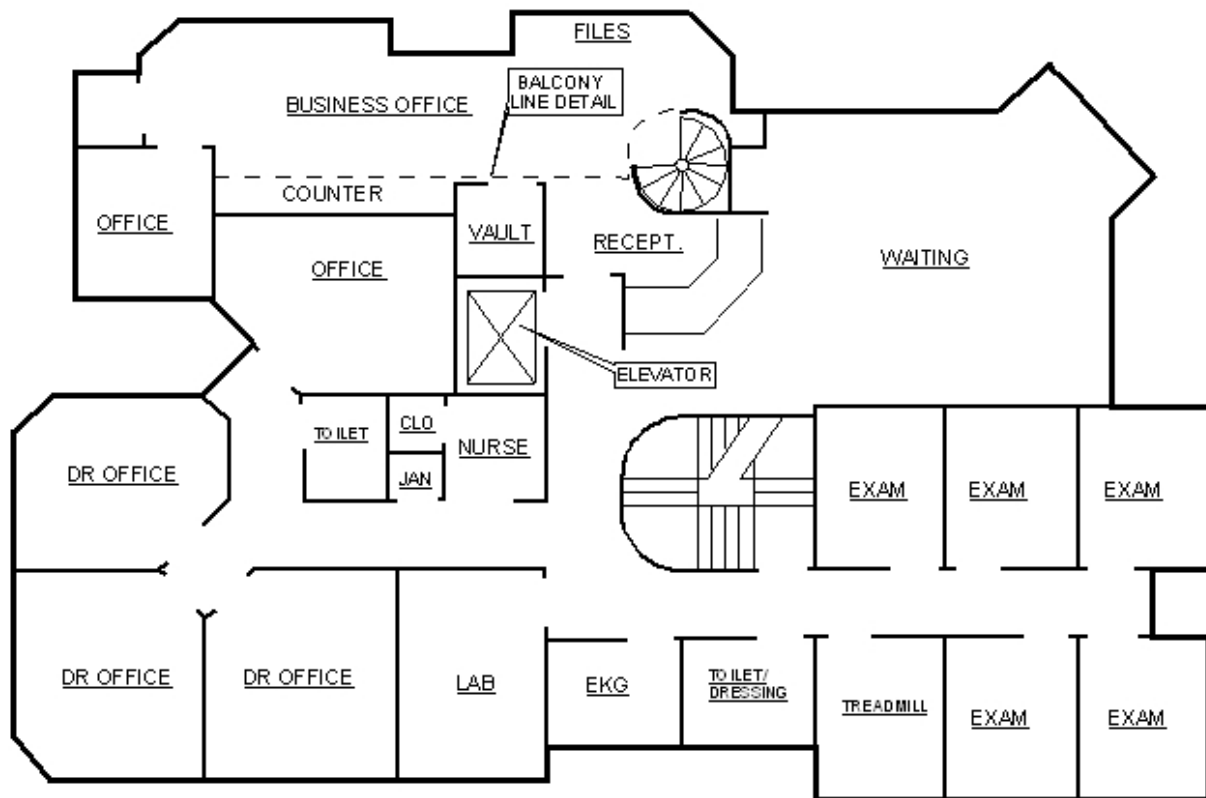
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FIRST FLOOR DETAIL



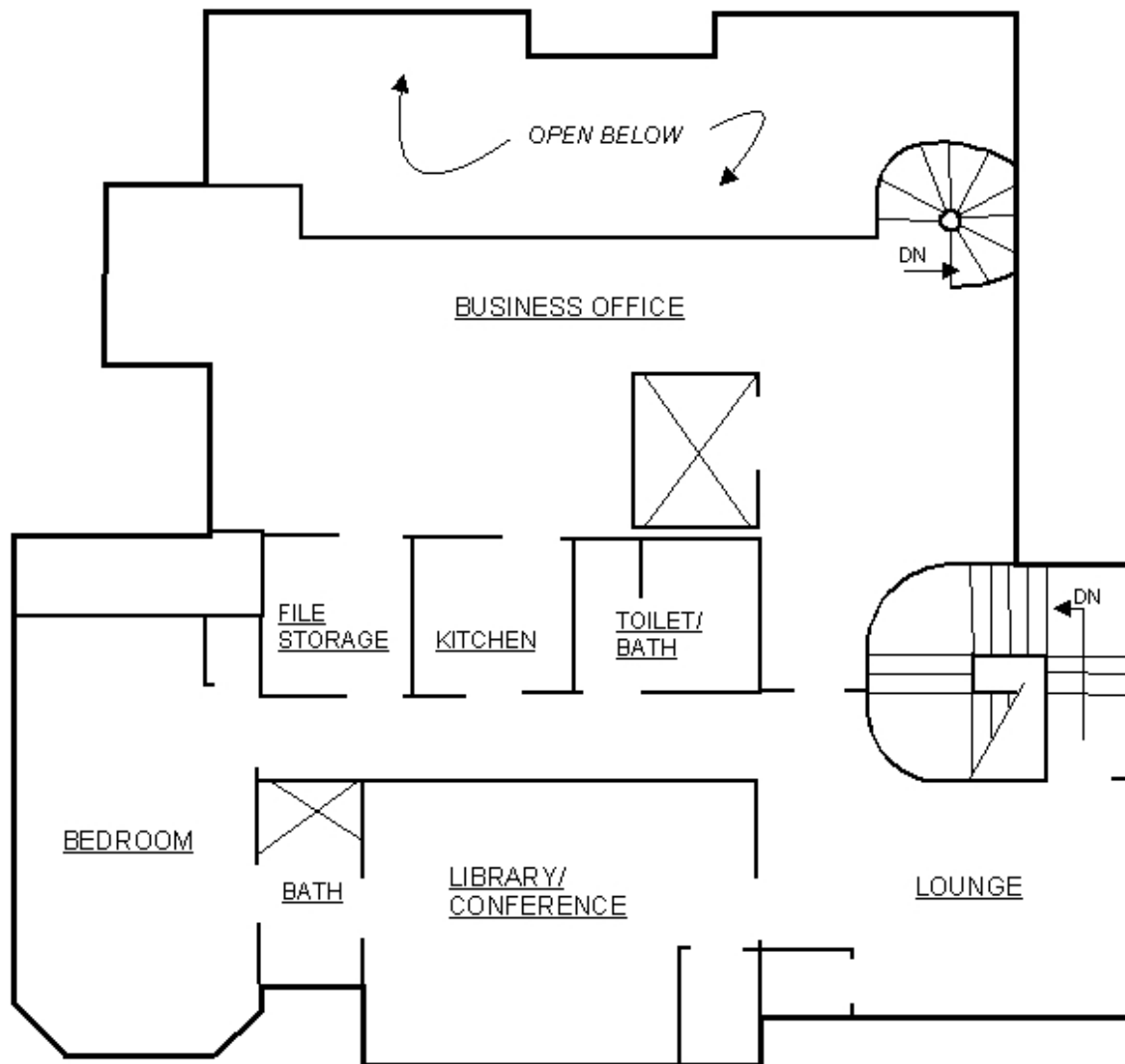
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SECOND FLOOR DETAIL



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