

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: September 10, 2012****CASE NUMBER**

5779

APPLICANT NAME

Brooks Towing

LOCATION3940 Moffett Road
(North side of Moffett Road, 80' ± East of Oaklane Drive).**VARIANCE REQUEST****PARKING SURFACE:** Parking Surfacing Variance to allow inventory of an automotive towing service on an unpaved surface in a B-3, Community Business District.**ZONING ORDINANCE
REQUIREMENT****PARKING SURFACE:** The Zoning Ordinance requires all inventory for automotive towing services to be paved with either concrete, asphaltic concrete, or asphalt, in a B-3, Community Business District.**ZONING**

B-3, Community Business District

AREA OF PROPERTY

1.3± Acre

**ENGINEERING
COMMENTS**

No comments

**TRAFFIC ENGINEERING
COMMENTS**

No comments.

**URBAN FORESTRY
COMMENTS**

No comments

**FIRE DEPARTMENT
COMMENTS**

No comments

**CITY COUNCIL
DISTRICT**

District 1

ANALYSIS

The applicant is requesting a Parking Surface Variance to allow parking and storage of inventory for an automotive towing service on an unpaved surface in a B-3, Community Business District; the Zoning Ordinance requires parking and storage areas

for equipment and vehicles to be paved with asphalt, concrete, or an approved alternative paving surface in an I-1, Light Industry District.

The applicant states proposes the storage of vehicles for a towing company within a grassy area in the rear of an existing commercial portable building with existing asphalt parking in the front of the building. The applicant states that the site was previously used as portable building sales. It is further stated that at no time was there any discussion of pavement being required in the rear of the lot for the storage of inventory.

The applicant points out that the grassed rear portion of the lot is perfect for this use and it is pointed out that the applicant has other locations around town and other towing companies store vehicles on grass, dirt or gravel. The argument made by the applicant that the creation of an asphalt parking area for the storage of vehicles would create an unnecessary hardship and is excessive when the daily operation of a towing company is temporary in nature. The applicant alleges that providing such an excessive amount of pavement would result in an enormous amount of storm water run-off onto adjacent properties

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 reason grassed areas are not an approved surface is because of the possibility of the contamination of the soil due to the frequent leakage of automotive fluids such as gasoline, oil , antifreeze and other hazardous materials leeching into the ecosystem. Another factor is with the constant movement of tow trucks within the grassed area would degrade the grass into a barren surface which would eventually create an area of deep ruts and a possible erosion problem for the applicant and other adjacent properties. In cases where the basis for a Parking Surface Variance has been the fact that tracked or large off-the-road-tired construction equipment could adversely impact the surface due to crushing and/or chipping, a surface variance has been justified and usually those areas are some type of aggregate. Further, such vehicles are towed vehicles that are usually damaged and/or inoperable, thereby increases the possibility of contaminants leaking into the soil. In this instance, a Parking Surface Variance would not be justified and the Board should consider it for denial.

The applicant stated the site was developed in 2006 in full compliance with all municipal codes and ordinances. As the site was originally designed and constructed as an auto sales lot, and complied with all requirements of this use as confirmed with the final inspection approved in December 2006. It should be noted that the site exceeded the required amount of asphalt parking spaces and storage area, within the approved asphalt area. Since then, the modular office

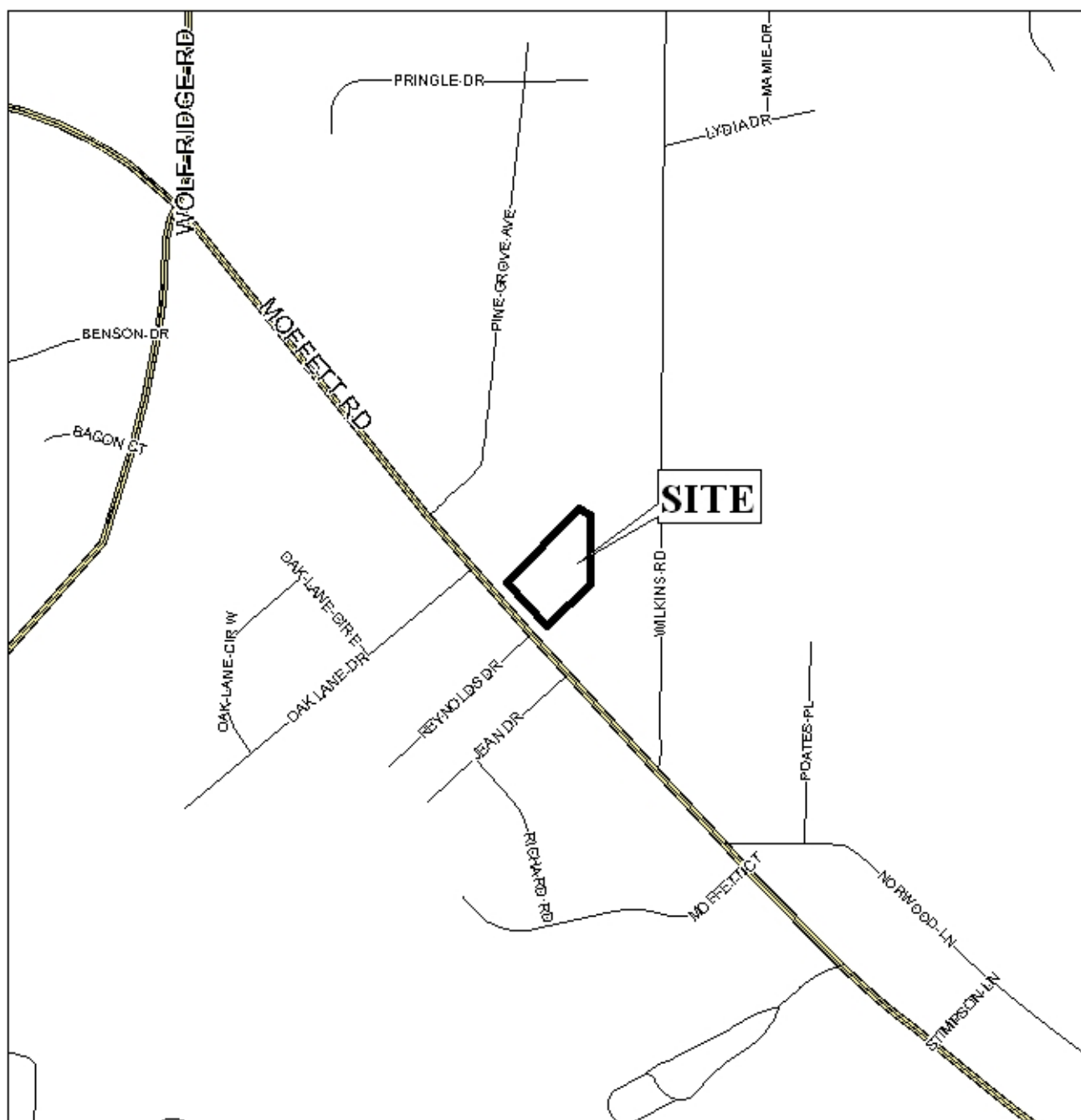
building and asphalt parking has remained and the site has been used as portable building sales and did receive approvals for both a business license and zoning clearance in September 2008 for CMB Rentals LLC. Since portable buildings and automotive sales are allowed by-right in a B-3, Community Business District there was no inspection required; however, the applicant didn't inquire if storage of portable buildings would be allowed on a grass surface or what specific use the site was designed for. Therefore, the present tenant may be in violation of the Ordinance as well. That, combined with the fact that a new tenant is proposed or may in fact be operating at this location without a business license and zoning clearance is clearly in violation of the City of Mobile's Zoning Ordinance. The applicant has submitted a site plan for Land Disturbance and building permitting review from the approved 2006 plan including the revision made by another engineer and not illustrating the proposed use and changes to the site since 2006, such as the location of a required frontage tree not located within the 25-foot minimum building setback.

The applicant did not state what, if any, hardship exists on the property, other than the property is already developed in a manner in which meets the requirements of the Ordinance. There are no hardships or other factors relating to the property that would prevent the applicant from bringing the property into compliance with the Ordinance; therefore, the Board should consider this application for denial.

RECOMMENDATION: Based on the preceding, this application is recommended for denial, due to the following reasons.

- 1) the applicant did not illustrate to the Board that the request is due to very unusual characteristics of the property and that it satisfies the variance standards.

LOCATOR MAP



APPLICATION NUMBER 5779 DATE September 10, 2012

APPLICANT Brooks Towing

REQUEST Surfacing Variance



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by commercial and residential land use.

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



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

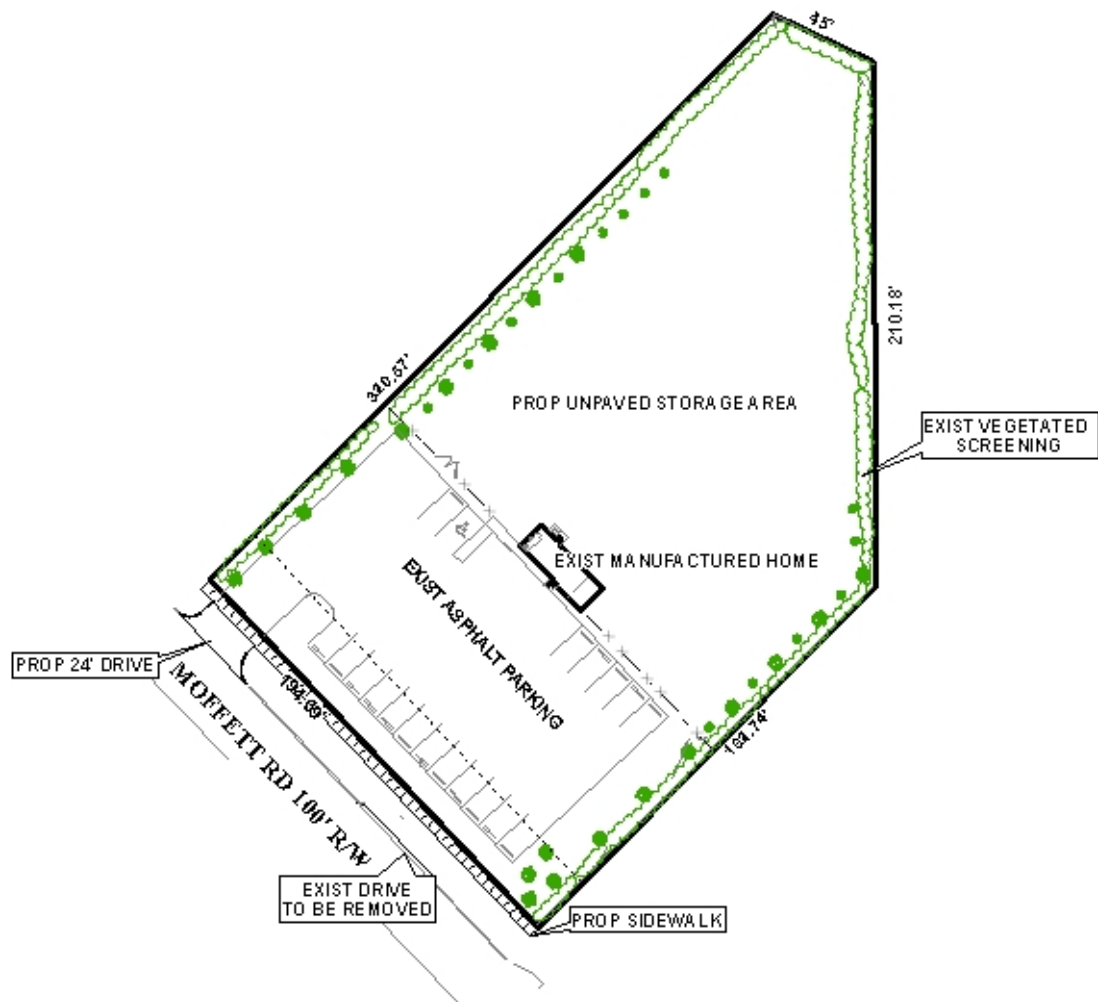


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SITE PLAN



The site plan illustrates the existing development and proposed storage area.

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