

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: October 1, 2018**

<u>CASE NUMBER</u>	6211
<u>APPLICANT NAME</u>	S. Cole Kennedy
<u>LOCATION</u>	453 Williams Street (East side of Williams Street, 100'± South of Granger Street.)
<u>VARIANCE REQUEST</u>	USE VARIANCE: Use Variance to allow a secondary structure on a residential lot to be used for a garage apartment in an R-1, Single-Family Residential District.
<u>ZONING ORDINANCE REQUIREMENT</u>	USE VARIANCE: The Zoning Ordinance allows one (1) dwelling per lot in an R-1, Single-Family Residential District.
<u>ZONING</u>	R-1, Single-Family Residential
<u>AREA OF PROPERTY</u>	0.17± Acres
<u>ENGINEERING COMMENTS</u>	No comments.
<u>TRAFFIC ENGINEERING COMMENTS</u>	No comments.
<u>CITY COUNCIL DISTRICT</u>	District 2

ANALYSIS The applicant is requesting a Use Variance to allow a secondary structure on a residential lot to be used for a garage apartment in an R-1, Single-Family Residential District; the Zoning Ordinance allows one (1) dwelling per lot in an R-1, Single-Family Residential District.

The applicant references the previous use of the garage as an apartment as justification for the request, stating:

"THE OWNER RECENTLY PURCHASED THIS PROPERTY AT 453 WILLIAMS STREET THAT HAS AN EXISTING DWELLING AND GARAGE APARTMENT. THE

APARTMENT HAS BEEN VACANT FOR SEVERAL YEARS BUT THE NEW OWNER IS PROPOSING TO RENOVATE IT AND RETURN IT TO THE RENTAL MARKET."

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.

Variances are site-plan specific; therefore, if approved, any proposed changes to the site layout of the request at hand will require an application to the Board to amend the approved site plan prior to any construction activities.

The site has been given a Mixed Density Residential land use designation per the recently adopted Future Land Use Plan and Map. The Future Land Use Plan and Map complements and provides additional detail to the Development Framework Maps in the Map for Mobile, adopted by the Planning Commission at its November 5, 2015 meeting. This land use designation applies mostly to residential areas located between Downtown and the Beltline, where the predominant character is that of a traditional neighborhood laid out on an urban street grid.

Mixed Density Residential areas should offer a mix of single-family homes, townhouses, 2- to 4-residential unit buildings, accessory dwellings, and low- to mid-rise, multi-family apartment buildings. The density varies between 6 and 10 dwelling units per acre, depending on the mix, types, and locations of the housing as specified by zoning.

Like Low Density Residential areas, Mixed Density Residential areas may also incorporate compatibly scaled and sited complementary uses, such as: neighborhood retail and office uses; schools, playgrounds and parks; and, churches and other amenities that create a complete neighborhood fabric and provide safe, convenient access to daily necessities.

Section 64-12 allows only one (1) dwelling per site in an R-1, Single-Family Residential District.

The subject site is developed with a single-family residence and a garage that, per photos provided by the applicant, appears to have a dwelling above the ground floor. Polk City Directories confirm that a second residence, 453 ½ Williams Street, was in use since at least 1980, but no history of a second dwelling can be confirmed after 1998.

While many garage apartments exist within the City, most are non-conforming, having been in use prior to current regulations. Section 64-7.A.1. of the Zoning Ordinance allows the lawful operation of a non-conforming use as such use existed: 1) at any time within two (2) years prior

to the effective date of the ordinance; 2) on the effective date of any amendment hereto by which the use became a non-conforming use; or, 3) on the effective date of annexation of the territory in which the use is located. However, Section 64-7.A.4. of the Zoning Ordinance states that, “a non-conforming use that has been abandoned or discontinued for a period of two (2) years shall not thereafter be re-established.”

Besides the Polk City Directory, no documentation confirming non-conforming use of the site for two (2), single-family dwellings after 1998 is on file. As such, while previous use of the garage as a second dwelling unit may have been considered non-conforming, its vacancy for longer than two (2) years requires compliance with current regulations; thus limiting the site to one (1) single-family dwelling.

It should be noted that accessory structures which are habitable are permitted on single-family residential property, as long as their use is an extension of the single-family dwelling and not a secondary dwelling; in most cases this includes a guest house, or “mother-in-law suite.” What separates the use as an accessory structure from a use as a dwelling is the construction of a kitchen. Therefore, it is not unreasonable for the applicant to continue to use the garage as a habitable accessory use of the property, as long as any kitchen which may exist in the accessory structure is removed.

Finally, it should be noted that a Variance allowing a three-unit residential dwelling in an R-1, Single-Family Residential District, at 450 Williams Street, was approved at the June 02, 2003 meeting of the Board. There are, however, mostly single-family dwellings within the vicinity of the subject site, with no additional requests for multiple dwellings.

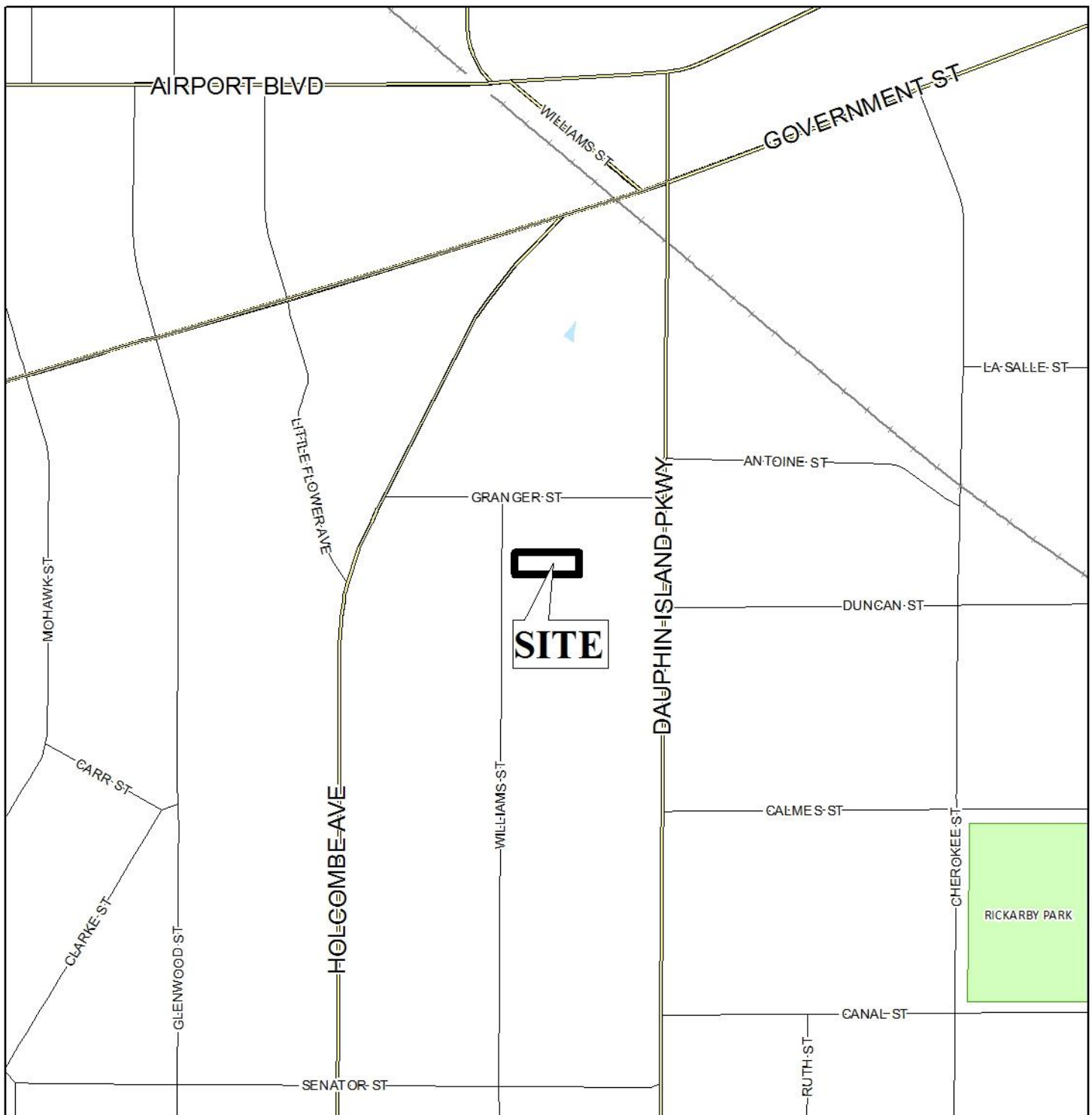
No hardship associated with the subject site has been identified by the applicant, especially when the garage can continue to be used as a guest house or other habitable accessory use to the single-family dwelling on the property, as long as no kitchen has been constructed (or is removed); and, it should be reiterated that Variances are not intended to be granted frequently. Approving the Variance would, therefore, be contrary to at least Sections 64-12 and 64-7.A.4. of the Zoning Ordinance and, as such, may establish a precedence by which future, less desirable Variance requests could be approved if no special conditions or hardships to an individual property exist.

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

- 1) Granting the Variance will be contrary to the public interest in that it will be contrary to Sections 64-12 and 64-7.A.4. of the Zoning Ordinance regarding permitted uses and the provisions of non-conforming uses;
- 2) Special conditions do not exist in such a way that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship since the structure can, without hardship, be used as an extension of the single-family dwelling as long as no kitchen is constructed, or an existing kitchen is removed; 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 since the neighborhood is predominantly composed of single-family dwellings.

LOCATOR MAP



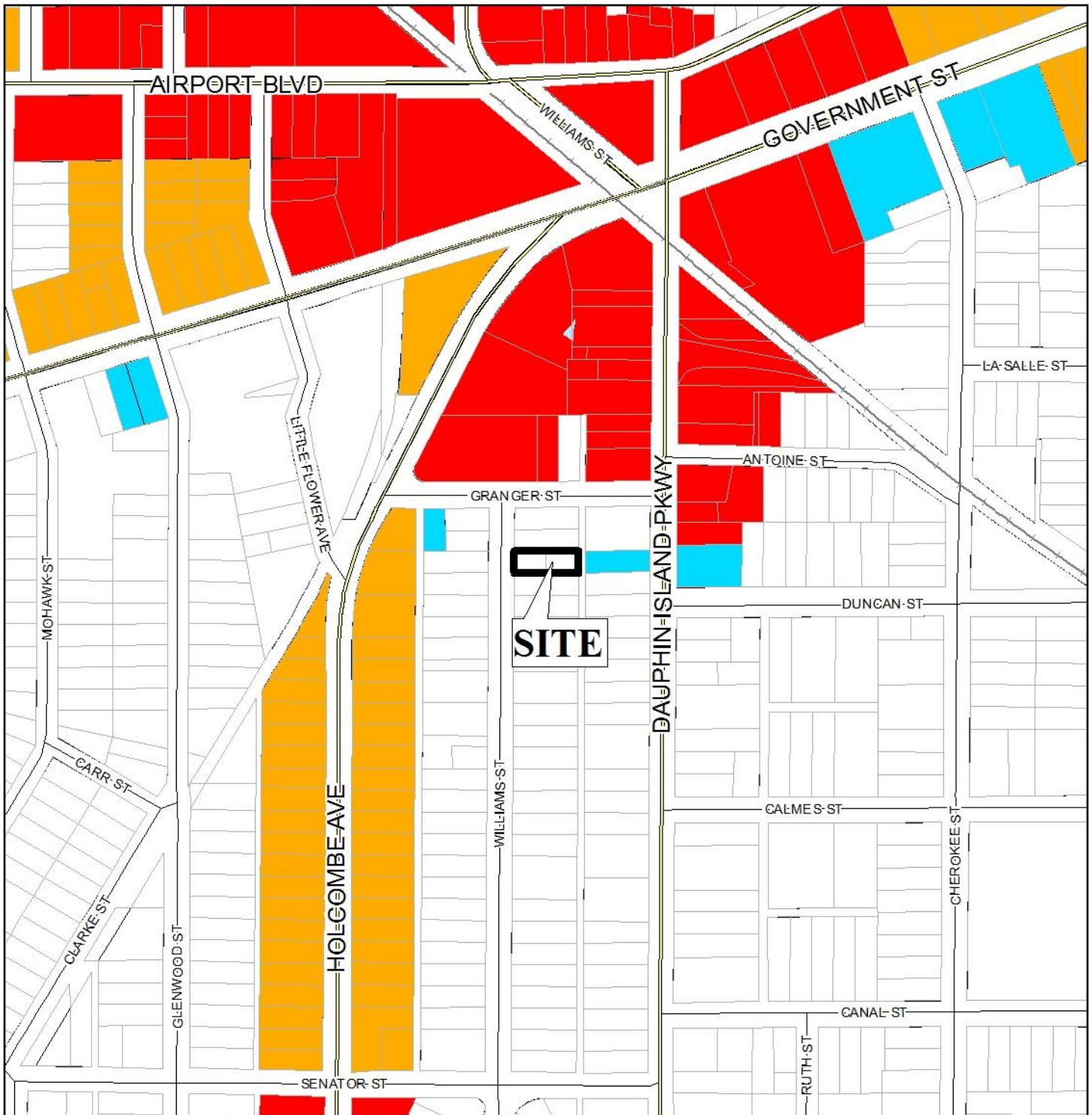
APPLICATION NUMBER 6211 DATE October 1, 2018

APPLICANT S. Cole Kennedy

REQUEST Use Variance



LOCATOR ZONING MAP



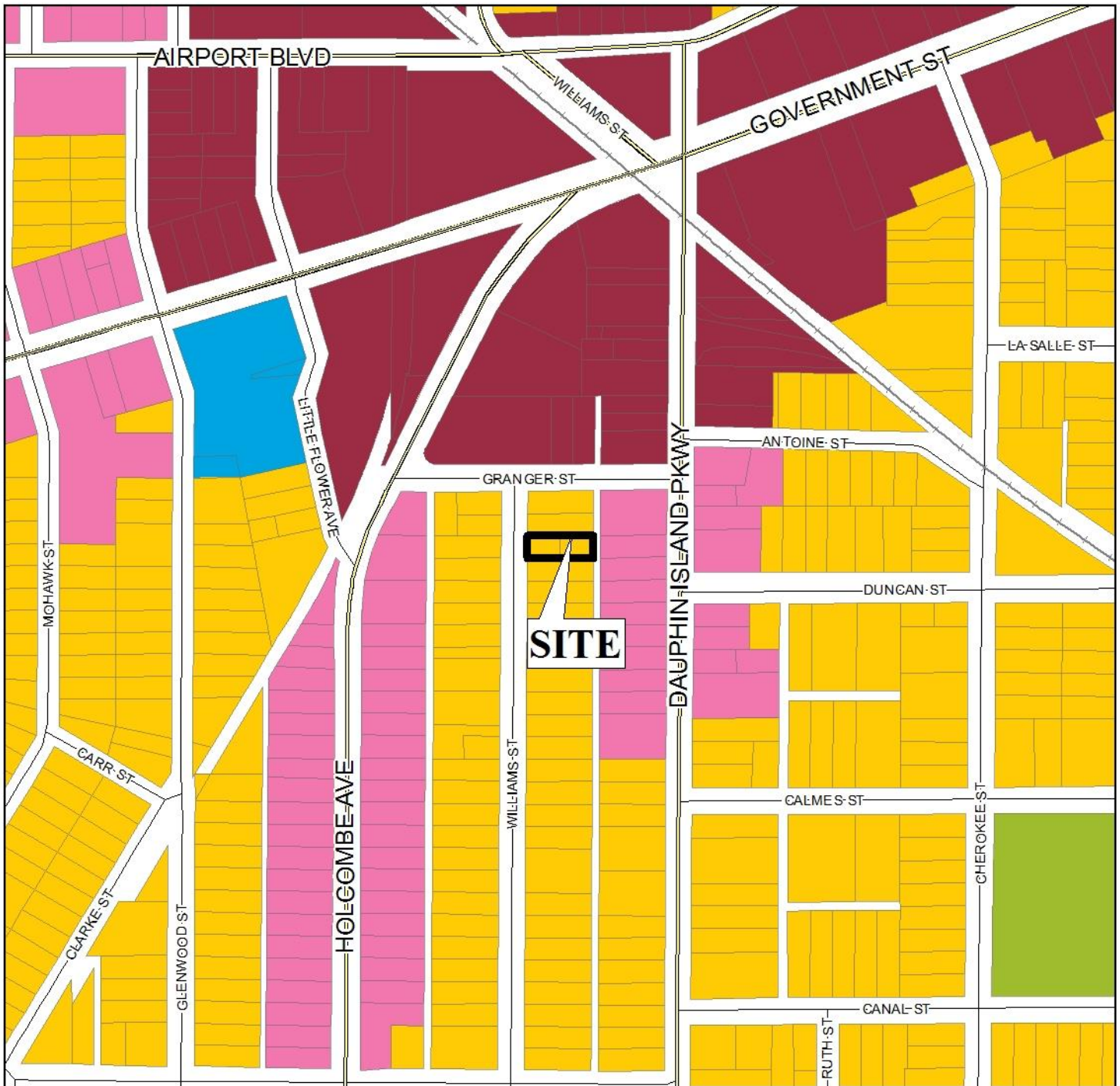
APPLICATION NUMBER 6211 DATE October 1, 2018

APPLICANT S. Cole Kennedy

REQUEST Use Variance



FLUM LOCATOR MAP



APPLICATION NUMBER 6211 DATE October 1, 2018

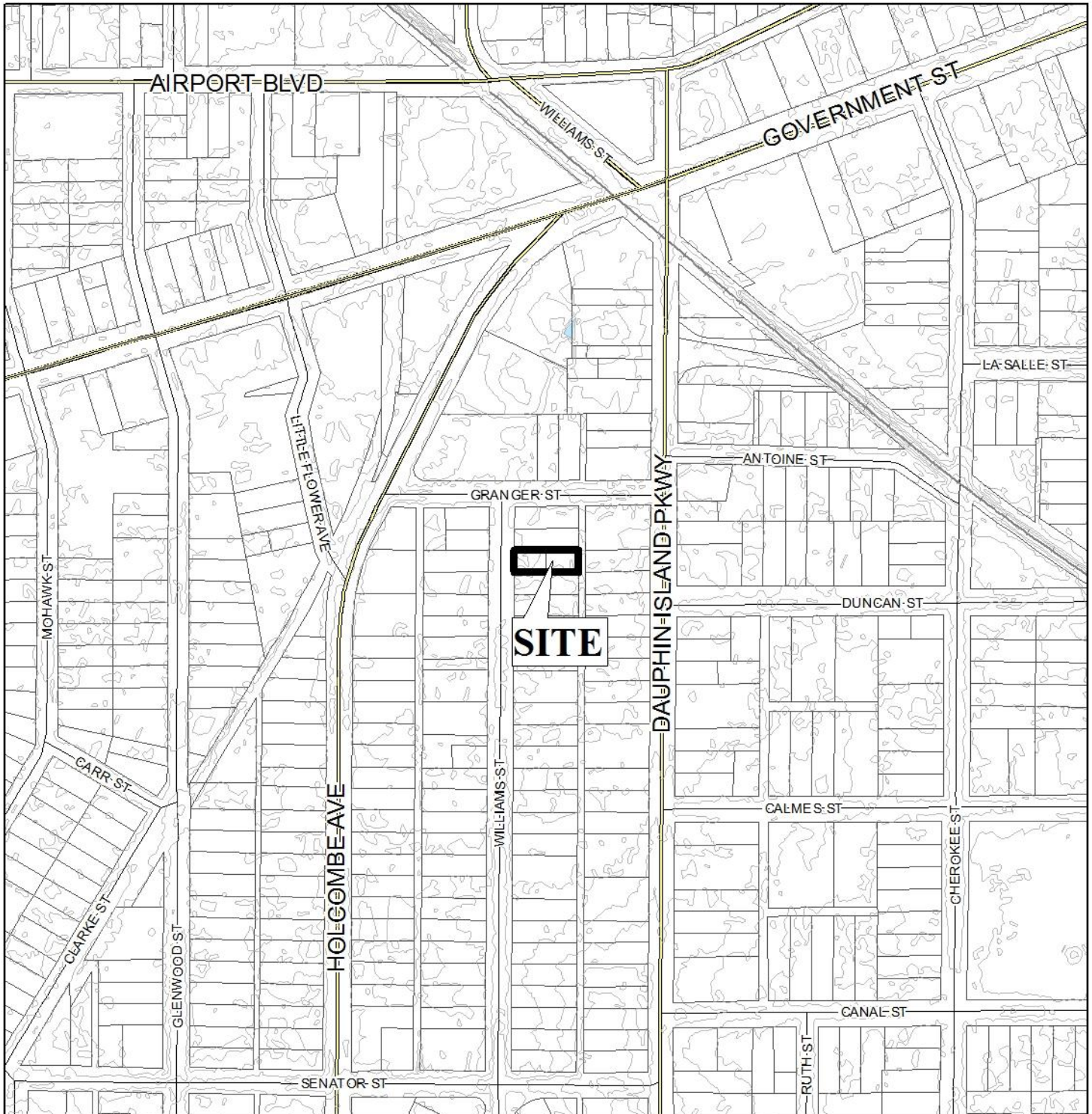
APPLICANT S. Cole Kennedy

REQUEST Use Variance

Low Density Residential	Neighborhood Center - Traditional	Downtown Waterfront	Parks & Open Space
Mixed Density Residential	Neighborhood Center - Suburban	Light Industry	Water Dependent
Downtown	Traditional Corridor	Heavy Industry	
District Center	Mixed Commercial Corridor	Institutional	



ENVIRONMENTAL LOCATOR MAP



APPLICATION NUMBER 6211 DATE October 1, 2018

APPLICANT S. Cole Kennedy

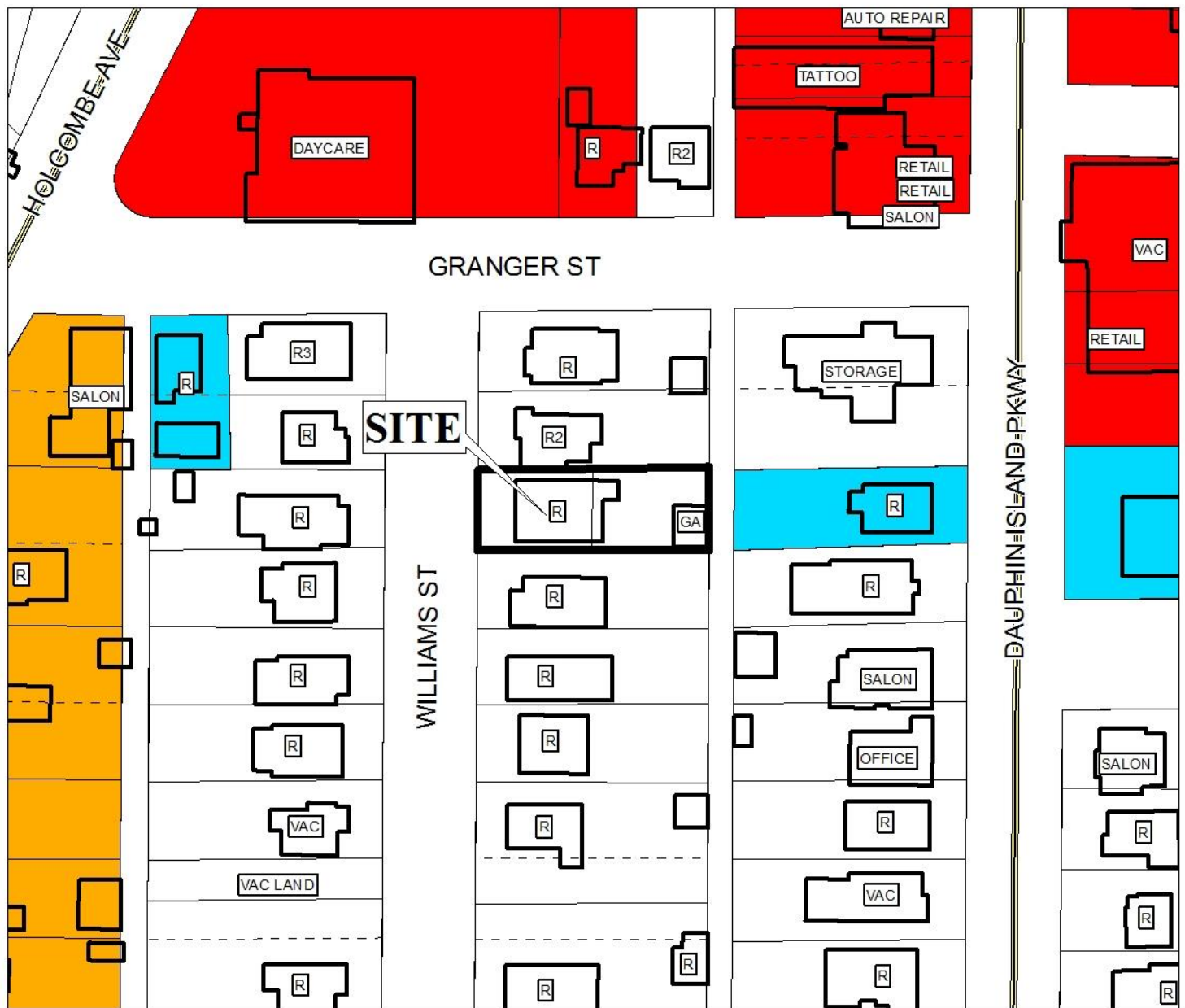
REQUEST Use Variance



NTS

BOARD OF ADJUSTMENT

VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units to the south, and commercial units to the north.

APPLICATION NUMBER 6211 DATE October 1, 2018

APPLICANT S. Cole Kennedy

REQUEST Use Variance

 R-A	 R-3	 T-B	 B-2	 B-5	 MUN	 SD-WH	 T5.1
 R-1	 R-B	 B-1	 B-3	 I-1	 OPEN	 T3	 T5.2
 R-2	 H-B	 LB-2	 B-4	 I-2	 SD	 T4	 T6



BOARD OF ADJUSTMENT

VICINITY MAP - EXISTING AERIAL

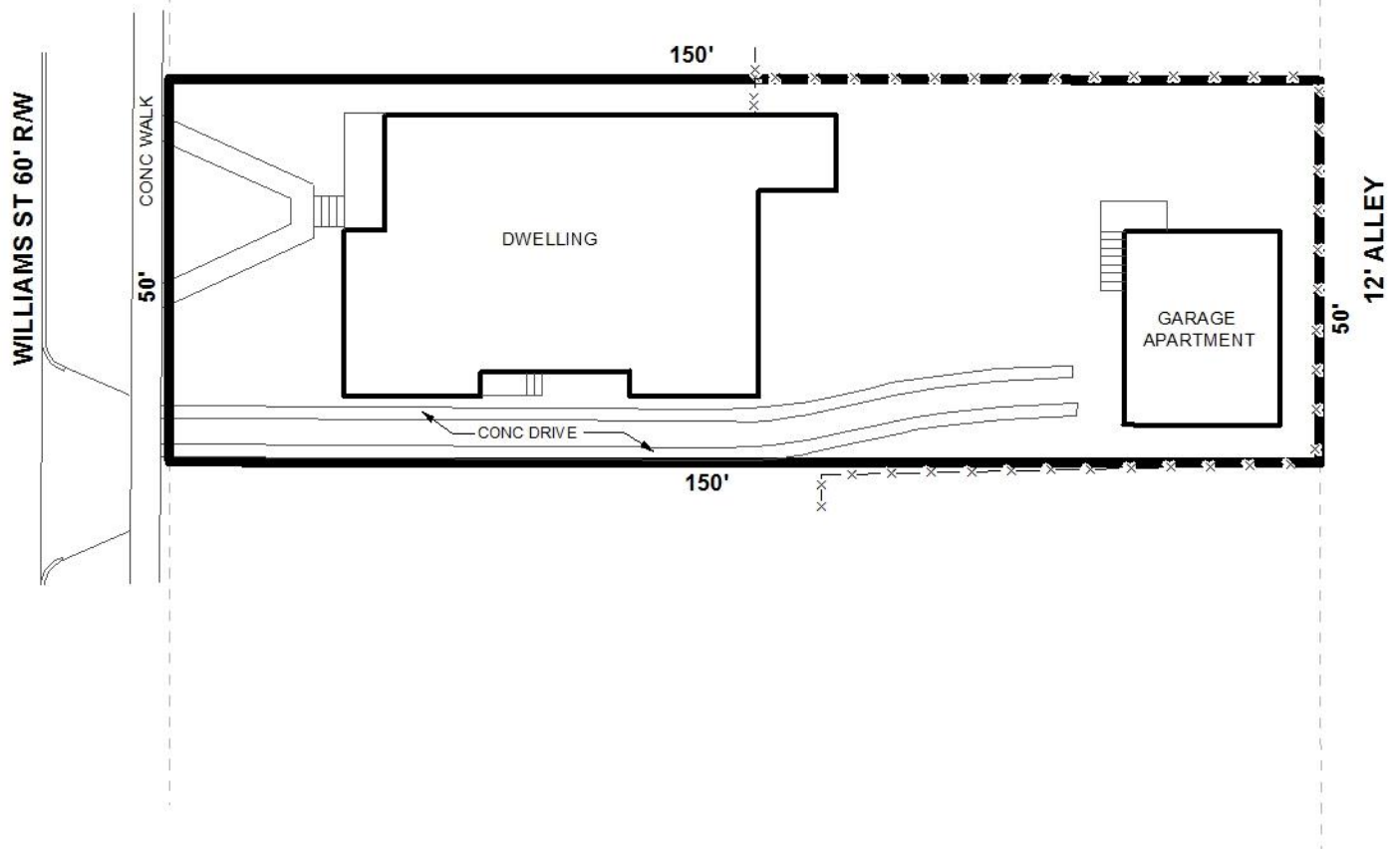


The site is surrounded by residential units to the south, and commercial units to the north.

APPLICATION NUMBER	6211	DATE	October 1, 2018
APPLICANT	S. Cole Kennedy		
REQUEST	Use Variance		



SITE PLAN



The site plan illustrates the existing dwelling, drive, garage apartment, and fences.

APPLICATION NUMBER 6211 DATE October 1, 2018
 APPLICANT S. Cole Kennedy
 REQUEST Use Variance



