

APPLICATION NUMBER

5614

A REQUEST FOR

**USE, ACCESS/MANEUVERING, AND PARKING
SURFACE VARIANCES TO ALLOW A TATTOO PARLOR
IN A B-2, NEIGHBORHOOD BUSINESS DISTRICT, WITH
LESS THAN 24' OF ACCESS/MANEUVERING AREA, AND
GRAVEL PARKING SURFACE; THE ZONING
ORDINANCE REQUIRES A MINIMUM B-3, COMMUNITY
BUSINESS DISTRICT FOR A TATTOO PARLOR, WITH
24' OF ACCESS/MANEUVERING AREA AND PARKING
SURFACE OF ASPHALT, CONCRETE, OR AN
APPROVED ALTERNATIVE PAVING SURFACE.**

LOCATED AT

3808 DAUPHIN ISLAND PARKWAY

(West side of Dauphin Island Parkway, 600'± South of Boykin Boulevard)

APPLICANT/AGENT

JOHN LUNSTRUM

OWNER

SAMMIE WILLIAMS

BOARD OF ZONING ADJUSTMENT

MAY 2010

The applicant is requesting a Use, Access/Maneuvering, and Parking Surface Variances to allow a tattoo parlor in a B-2, Neighborhood Business District, with less than 24' of access/maneuvering area, and gravel parking surface; the Zoning Ordinance requires a minimum B-3, Community Business District for a tattoo parlor, with 24' of access/maneuvering area and parking surface of asphalt, concrete, or an approved alternative paving surface.

The subject property has been used in the past as an auto repair shop, used tire sales and a fishing retail establishment but the last business license activity was in 2007 for a fishing retail business which is a B-2 use, and the right for it to be used in a legal nonconforming status has expired. The applicant states that he is a very talented artist who uses media to complete his art pieces, and has been to school and trained under the famous Craig Fraiser and Jeff Styles. He also states that since he has completed school he has moved into the building under question and has remodeled one side of his studio to be able to do body art in the state of Alabama. The applicant further states that he is under the impression that he needs to rezone the property to do body art. The applicant also states that the body art funds his art work and schooling to better himself and become more known in the art world. It is further stated that he has been told that he needs to be zoned B-3 instead of the surrounding B-2 in the area, and that there was a business at the subject site operating under legal nonconforming status due to the grandfather clause that needed B-3, but operated under B-2 (service station with auto repair).

The applicant states that the business will operate from 12:00 a.m. to 10:00 p.m. Monday-Saturday, and closed on Sunday. The applicant also states that the business will not be open after 11:00 p.m. more that two days a week. The applicant further states that the tattoo parlor would not be as loud as the previous establishments such as mechanic and auto body shops. The operation will include two body artists at all times, including the applicant, and states that there will be no body piercer as of official opening. The applicant states that everything he does artistically can be covered under B-2 zoning except for the tattoo portion, and that he will not be selling retail, just custom art work and designs. The applicant acknowledges that he is around a few churches and will retain their trust by being closed on Sunday. The applicant also states that he has designated the workspace next to the body art section for his personal art venues such as; glass etching, airbrushing, custom paintings and mural designs. The applicant points out that he is 29 years old, very talented and just needs a shot at this business because he has worked so hard at it and has exhausted his savings to make his dreams come true. The applicant further states that he would comply with any regulation the Board requires him to meet.

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.

With regard to the use variance request, the site obviously has been developed as a commercial site, and does have use history of both B-2 (auto repair shop and tire sales from 1994-2006) and B-3 (service station with auto repair in 1993) history. It should be noted that the B-3 nonconforming use was lost long ago when every use there after was a B-2 use. It should be noted that the renovations to the building were done with out proper permits. It should be further noted that the applicant gave conflicting information in regards to the hours of operation; he states that closing time is 10:00 p.m. and that he will not be open after 11:00 p.m. more than two days a week. The applicant most definitely needs to provide his exact hours of operation.

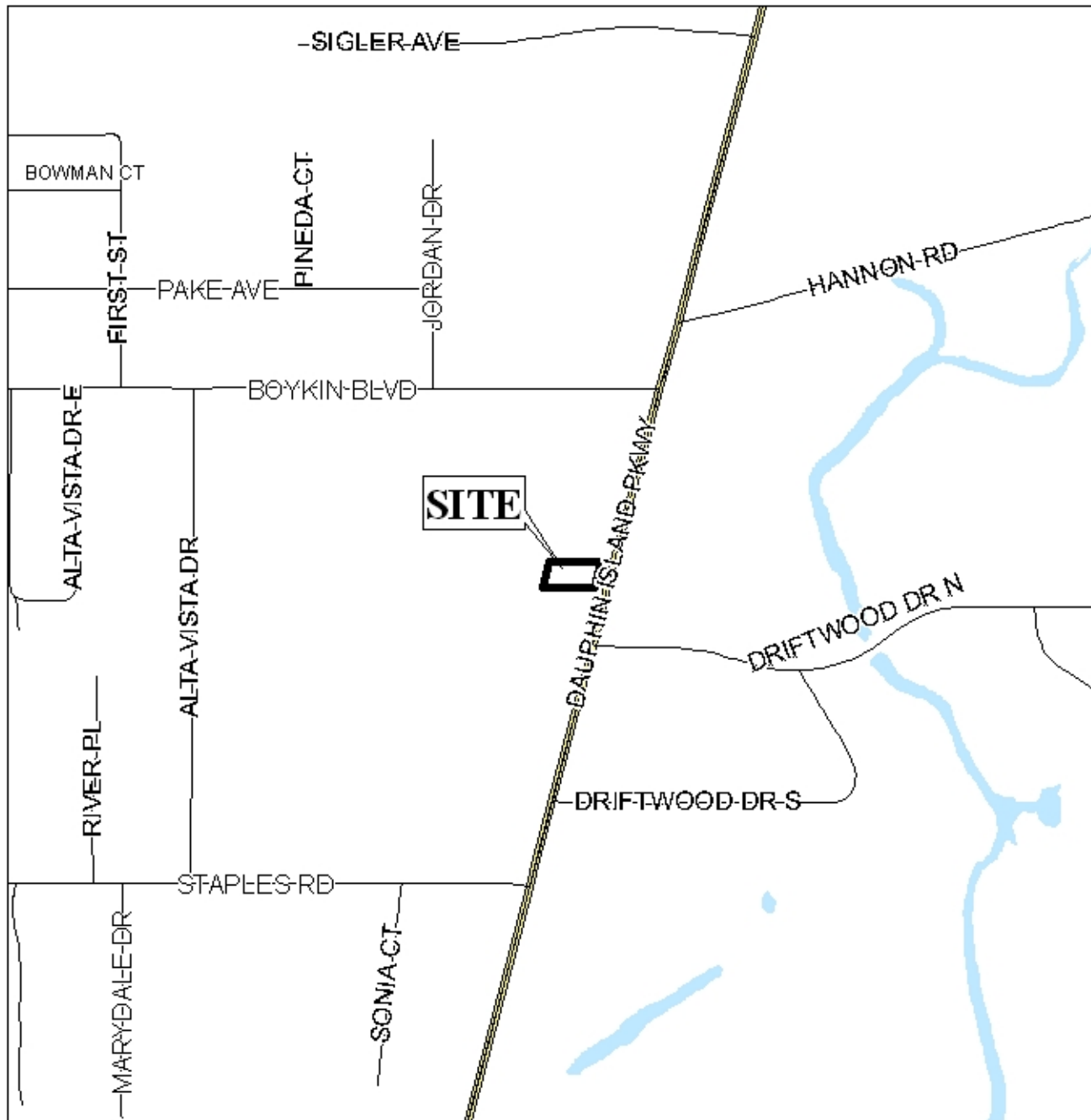
With regard to the access maneuvering and parking surface variance requests, it is proposed that the site would again be used as in the past with unstriped parking, gravel parking surface and substandard maneuvering area. Whereas the site was apparently developed commercially prior to the current parking surface/maneuvering standards, there is adequate undeveloped open area on the site where compliant parking surface and maneuvering could be provided. In variance cases where there is no hardship imposed by the property impacting the possibility of site improvements to comply with the Ordinance, the site improvements are preferred. In this instance, no hardship is illustrated; therefore, modification of the parking surface and access maneuvering area would be desired. In instances where commercial legal nonconforming statuses have expired and reuse is sought, policy is to obtain as much site compliance as possible beyond any illustrated hardship.

The applicant did not state what, if any, hardship exists on the property, and none is readily apparent. As such, there is no basis for granting a use variance, and the site has adequate area to provide compliant parking surface and access maneuvering; thus, the applicant failed to illustrate that a literal enforcement of the Ordinance would result in an unnecessary hardship.

RECOMMENDATION 5614**Date: May 3, 2010**

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

LOCATOR MAP



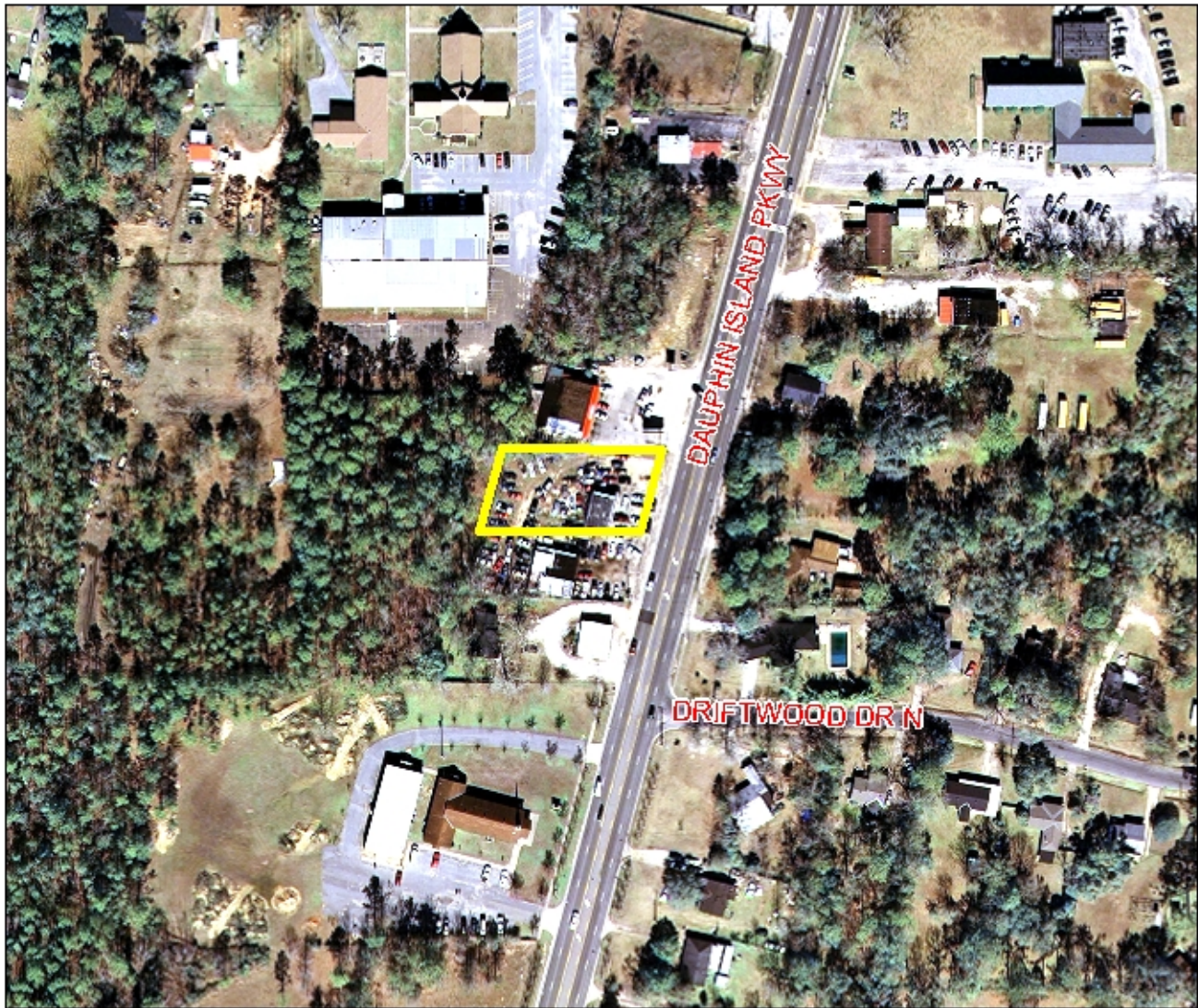
APPLICATION NUMBER 5614 DATE May 3, 2010

APPLICANT John Lunstrum

REQUEST Use, Access/Maneuvering, and Parking Surface Variances



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



There is an auto repair to the south of the site, single family residential units are to the east, and a convenience store is located to the north.

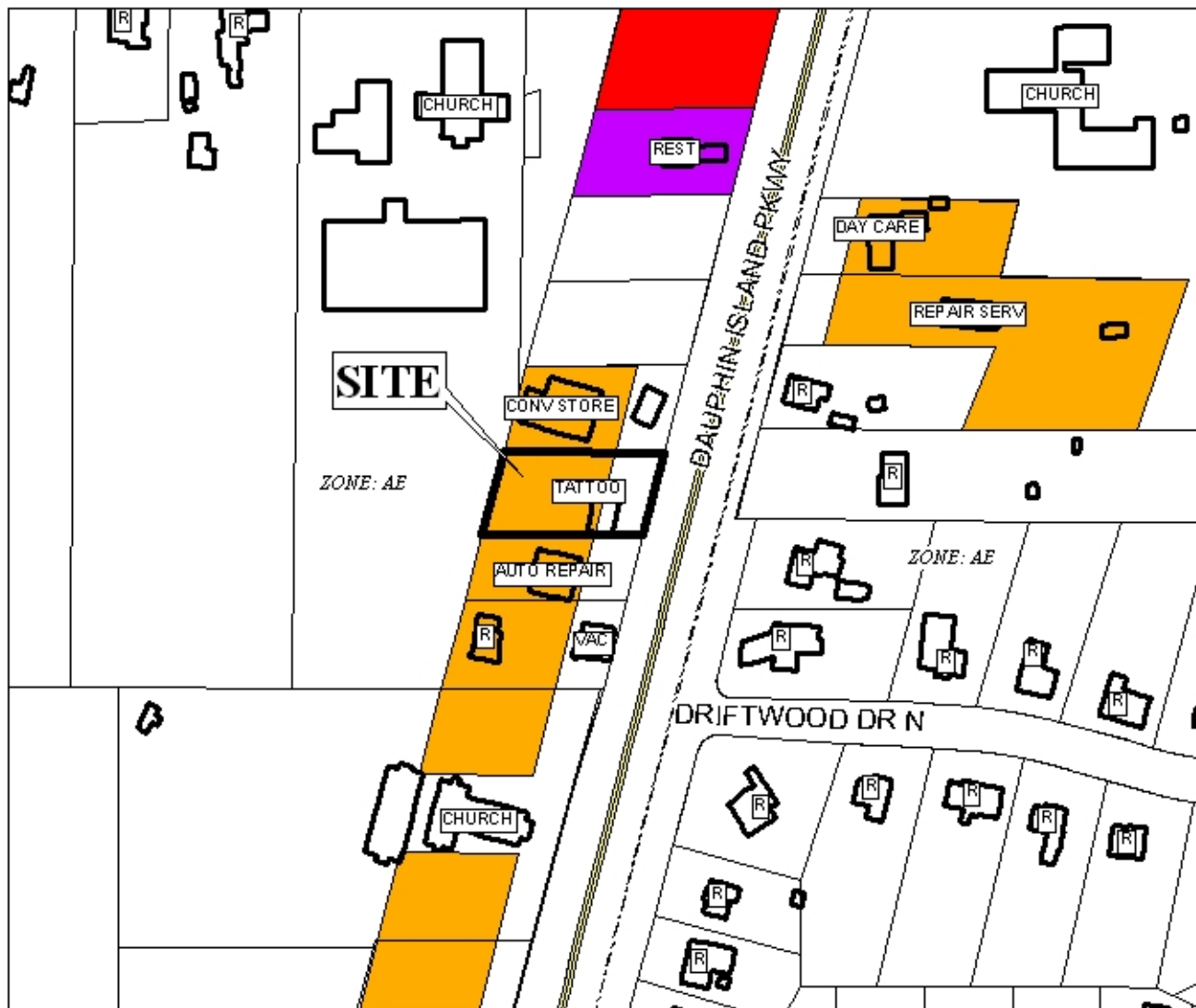
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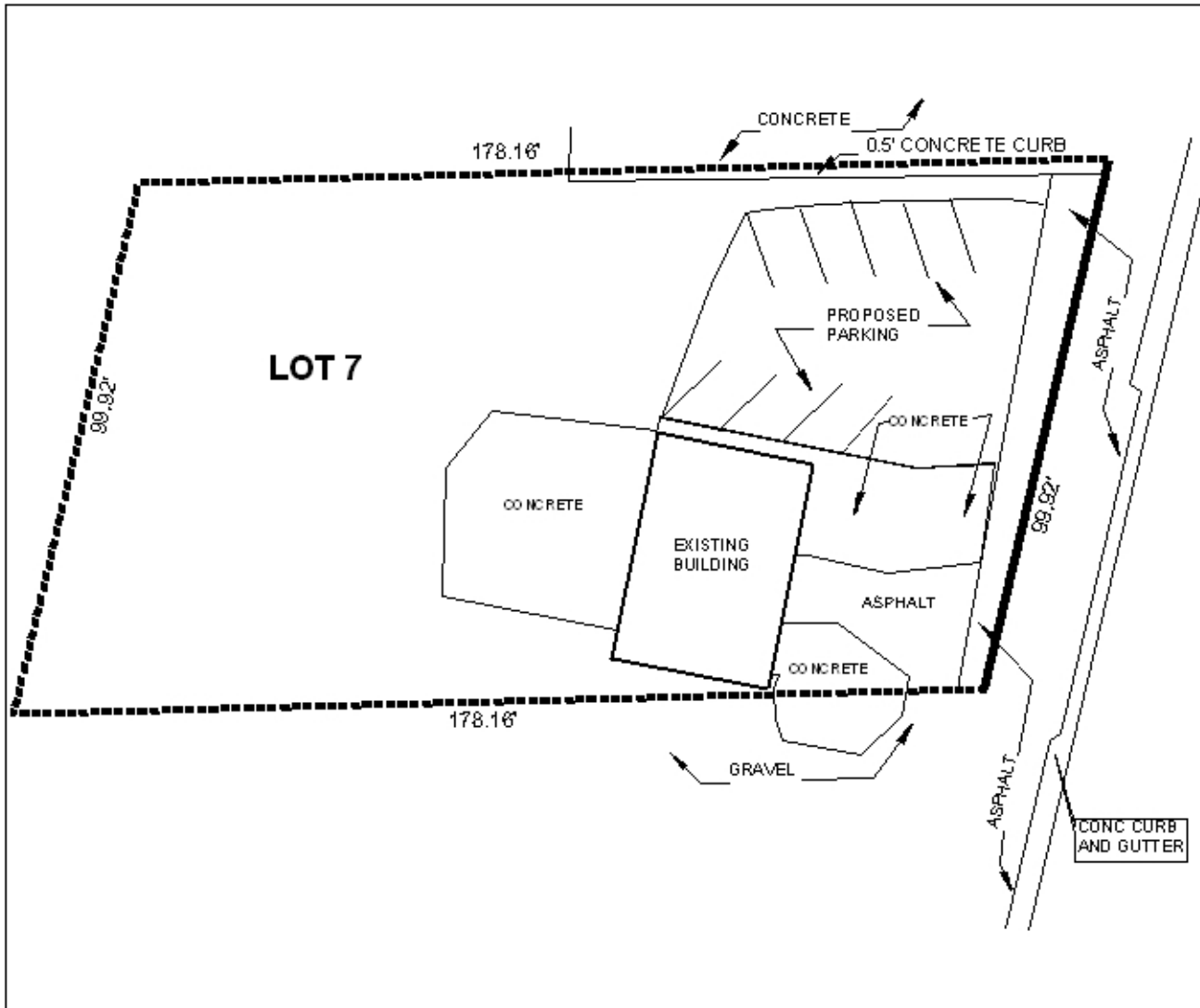
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LEGEND

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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SITE PLAN



The site plan illustrates the proposed parking and existing building.

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