

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: December 5, 2016****CASE NUMBER**

6069/6027 / 5706 / 1048

APPLICANT NAME

E Square. LLC (Ernest W. Whitestone, Manager)

LOCATION2724 Old Shell Road
(Northeast corner of Old Shell Road and Bay Shore Avenue)**VARIANCE REQUEST****FRONT SETBACK:** Front Setback Variance to allow an existing structure that is within 22 feet from the front property line**SIDE STREET SIDE YARD SETBACK:** Side Street Side Yard Setback Variance to allow an existing structure that is within zero feet (and extends into the right-of-way) of the side property line**PARKING RATIO:** Parking Ratio Variance to allow 64 parking spaces for a 12,641 square-foot retail business and restaurant**TREE PLANTING:** Tree Planting Variance to allow a reduced number of frontage trees**ZONING ORDINANCE
REQUIREMENT****FRONT SETBACK:** the Zoning Ordinance requires at least a 25-foot front yard setback**SIDE STREET SIDE YARD SETBACK:** the Zoning Ordinance requires at least a 20-foot street side side-yard setback**PARKING RATIO:** the Zoning Ordinance requires at least 68 on-site parking spaces for a 12,641 square-foot retail business and restaurant**TREE PLANTING:** the Zoning Ordinance requires full compliance with tree planting requirements**ZONING**

B-2, Neighborhood Business District

AREA OF PROPERTY

1.2 ±Acres

CITY COUNCIL**DISTRICT**

District 1

ENGINEERING**COMMENTS**

Parking Ratio Variance: No comments

Front Setback Variance: If the proposed variance is approved for use the applicant will need to have the following conditions met:

1. Submit and receive a ROW Use Agreement from the Engineering Department for the proposed structures and parking spaces located within the ROW.

Side Street Side Yard Setback Variance: If the proposed variance is approved for use the applicant will need to have the following conditions met:

1. Submit and receive a Land Disturbance Permit for the proposed site development through Central Permitting. Any and all proposed land disturbing activity within the property will need to be submitted for review and be in conformance with Mobile City Code, Chapter 17, Storm Water Management and Flood Control; the City of Mobile, Alabama Flood Plain Management Plan (1984); and, the Rules For Erosion and Sedimentation Control and Storm Water Runoff Control.

Tree Planting Variance: No comments.

TRAFFIC ENGINEERING**COMMENTS**

Each lot is limited to one curb cut per street frontage, with size, location and design to be approved by Traffic Engineering and conform to AASHTO standards. The existing parking area in the right-of-way, if approved, would be excluded from the curb cut restriction and may remain as approved. Approval will include the retention of paving in the aisle to the south of the southern most parking space to allow for backing in the parking area with little impact on the adjacent travel lane. Any new on-site parking, including ADA handicap spaces, shall meet the minimum standards as defined in Section 64-6 of the City's Zoning Ordinance.

URBAN FORESTRY**COMMENTS**

Due to the lack of greenspace, if variance is approved, Tree requirements of the Zoning Ordinance to be coordinated with Urban Forestry.

FIRE DEPARTMENT**COMMENTS**

All projects within the City Limits of Mobile shall comply with the requirements of the City of Mobile Fire Code Ordinance. (2012 International Fire Code).

ANALYSIS

The applicant is requesting Parking Ratio, Front Setback, Side Street Side Yard Setback, and Tree Planting Variances to allow an existing 12,641 square-foot structure that is within 22 feet from the front property line and within zero feet (and extends into the right-of-way) of the side property line, to be converted into a retail business and restaurant and construction of 64 new parking spaces with reduced frontage tree plantings in a B-2, Neighborhood Business District; the Zoning Ordinance requires at least a 25-foot front yard setback and a 20-foot side street side yard setback, at least 68 on-site parking spaces for retail business and restaurant, and full compliance with tree planting requirements in a B-2, Neighborhood Business District.

A similar request was approved by the Board at its February 1, 2016 meeting. An associated one-lot Subdivision and Rezoning from R-1, Single-Family Residential, and LB-2, Limited Business District, to B-2, Neighborhood Business District, were approved by the Planning Commission at the January 7, 2016 meeting. The Rezoning was subsequently approved by the City Council and the Subdivision plat was recently signed. But no permits for site development or licenses for the proposed businesses were issued within the 6-month period following the Variance approvals, no extension of approval was requested, and the approved Variances expired; hence this current application, with site plan modifications.

The applicant proposes to renovate an existing 12,641 square-foot building that was the former location of the Blue Bird Hardware store to allow 8,675 square feet of new retail and 3,900 square feet of new restaurant uses. As part of the renovation, a portion of the existing building will be removed, a drive-thru added, and a new parking lot containing 55 on-site spaces constructed, with an additional 6 spaces in the right-of-way.

It should be noted that the City Council recently renamed Bay Shore Avenue to New Shiloh Avenue along the portion from Old Shell Road to Spring Hill Avenue. Therefore, all references to Bay Shore Avenue actually pertain to New Shiloh Avenue.

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 applicant provided the following narrative:

Previous variance was applied for and approved for this site in February 2016 (Case Number 6027 / 5706 / 1048 - #AZON2016-00024), but has since expired. Copies of the BOA Letter of Decision and BOA Staff Report are attached hereto, for sake of convenience. This application is for renewal of variances with updated site plan.

Previous variance was for approval to maintain and use eight existing parking spaces located along the west side of the building (Bay Shore Avenue). Also requested in previous application was for a minimum building setback requirement at Old Shell Road and Bay Shore Avenue along with a waiver for a portion of the existing building which encroaches into the right-of-way adjacent to Bay Shore Avenue.

A right-of-way use agreement will be submitted for the building encroachment into the right-of-way. Therefore, this application is for approval to maintain and use the eight existing parking spaces along Bay Shore Avenue and that these spaces be counted in the number of spaces provided. Also, a variance is requested to maintain existing setbacks along Old Shell Road and Bay Shore Avenue.

Additionally requested is a Parking Ratio Variance to allow 64 Parking spaces for a 12,641 square-foot retail business and restaurant.

Also, a variance is requested to allow a reduction in the required number of frontage trees. Approximately 152 feet along Bay Shore Avenue is already paved and is occupied by the existing parking and building encroachment; therefore, planting of frontage trees in this area is not practical. Variance request is to reduce the number of required frontage trees by 5 to account for this area.

Since this property is already developed it is our opinion that special conditions exist such that literal enforcement of the Ordinance will result in an unnecessary hardship. The existing parking spaces along Bay Shore Avenue are essential in providing proper access to the building and removal of these would create a hardship with respect to applicable uses for the existing building.

Parking for the site has historically been partially or completely located in the rights-of-way of Old Shell Road and New Shiloh Avenue. The site plan provided by the applicant has been revised since the original Variance approval and now depicts 6 spaces in the right-of-way along New Shiloh Avenue, and when added to the other proposed 55 on-site parking spaces, the site will have 61 parking spaces, instead of the 68 spaces required by the Zoning Ordinance for the proposed uses. The areas for the uses have been revised since the original application was approved and now propose 8,675 square feet (29 parking spaces) for the office/retail instead of the original 9,706 square feet proposed and 3,900 square feet (39 parking spaces) for the restaurant instead of the original 1,975 square feet. Therefore, the site would now be short by 7 parking spaces as opposed to being short 8 spaces as in the original approval. It should be noted that the site plan submitted had an erroneous count of 64 parking spaces calculated as being provided versus the 61 spaces actually indicated graphically.

The Board of Zoning Adjustment cannot consider for approval the use of parking in the right-of-way. The applicant is aware of this, and as such will make the necessary applications to the City Council to request permission to continue to use the parking spaces within the right-of-way of Bay Shore Avenue.

Regarding the Front Setback Variance request along Old Shell Road, no changes are proposed to the building on this side. The building is as close as 21-feet to the right-of-way edge, and as it is existing, it enjoys non-conforming structure status. Staff believes that a variance at this location is unnecessary.

For the Side Street Side Yard Setback Variance, a portion of the building actually crosses 14.7 feet into the New Shiloh Avenue right-of-way, while the bulk of the building is at least 5 feet from the right-of-way. New Shiloh Avenue has an 80-foot right-of-way in this area due to the fact that a railroad line previously extended down the center of the street. New Shiloh Avenue is a minor street, thus only a 50-foot right-of-way is required. As with the parking in the right-of-way, the Board of Zoning Adjustment cannot consider for approval a structure to remain in the public right-of-way: instead the proper venue is via a non-utility right-of-way use agreement with the City of Mobile. The remainder of the building not meeting the setback enjoys a non-conforming structure status.

Finally, Urban Forestry supports the applicant's request to remove the frontage portion of the site (*152 feet or 5 trees, per the applicant*) where the existing building and parking are up to or within the right-of-way along New Shiloh Avenue from consideration for frontage tree calculations. As per the Urban Forestry comments, frontage tree plantings should be coordinated with that department.

Given the fact that the Board approved similar requests for this site at its October 2011 and February 1016 meetings, approving the request at hand would seem consistent with the previous action by the Board.

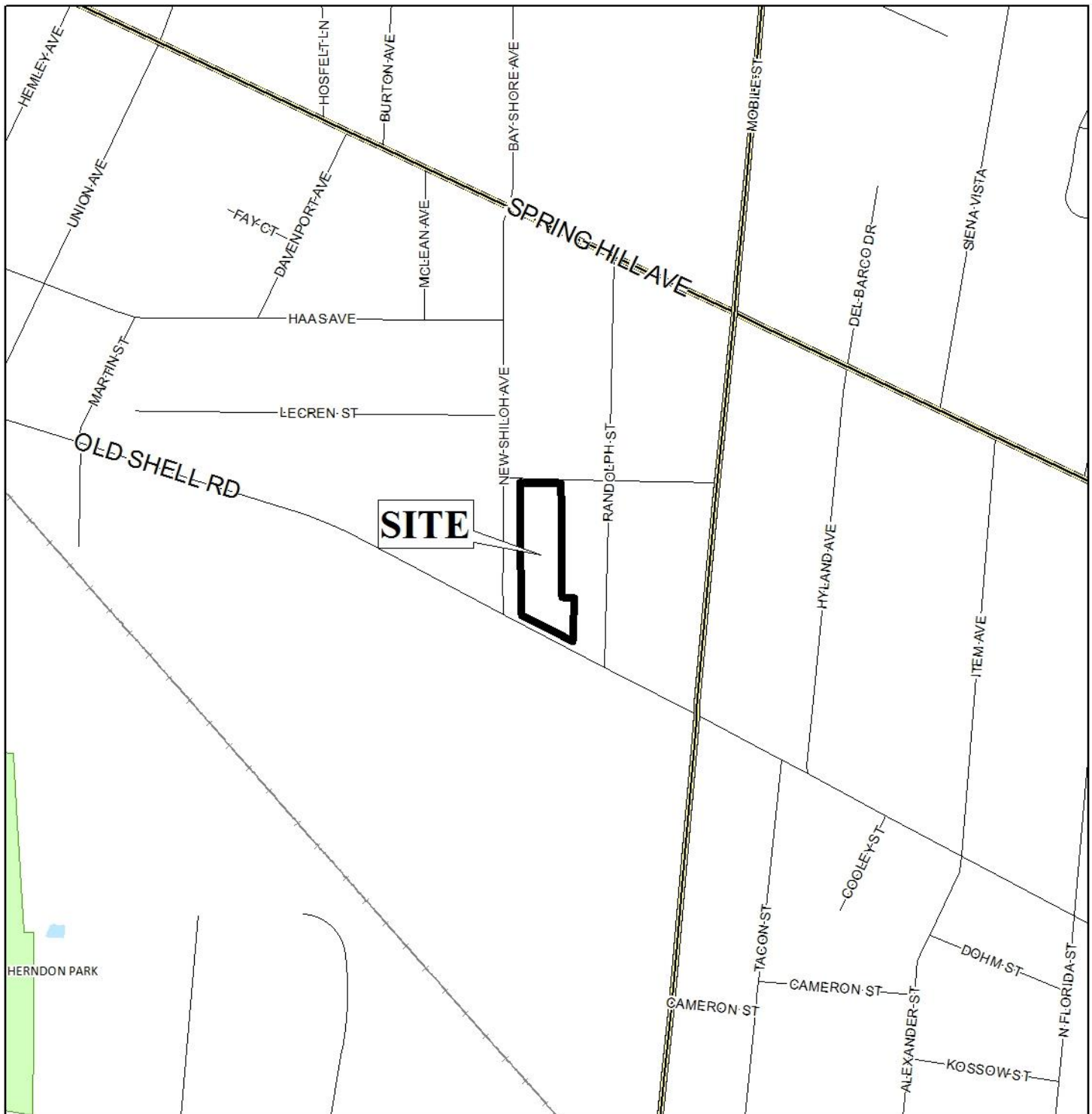
RECOMMENDATION: Based on the preceding, staff recommends to the Board the following findings of fact for Approval:

- 1) Granting the variances will not be contrary to the public interest because the proposed reuse of a long vacant building will reduce the potential for blight within the adjacent community, and will be consistent with the Board's previous decision for this site;
- 2) Special conditions exist with the property itself, including the existence of the building up to and across the property line along Bay Shore Avenue and the existing parking within the right-of-way, that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship; and
- 3) The spirit of the chapter shall be observed and substantial justice shall be done to the applicant and the surrounding neighborhood by granting the requested variances, as the other improvements to the site, including the construction of a new parking lot, will comply with all other City requirements.

The Approval should be subject to the following conditions:

- 1) subject to obtaining a Right-of-Way Use Agreement with the City of Mobile for the parking within the New Shiloh Avenue right-of-way;
- 2) subject to obtaining a Non-Utility Right-of-Way Use Agreement with the City of Mobile for the structure within the New Shiloh Avenue right-of-way;
- 3) compliance with Engineering comments *[FRONT SETBACK VARIANCE: If the proposed variance is approved for use the applicant will need to have the following conditions met: Submit and receive a ROW Use Agreement from the Engineering Department for the proposed structures and parking spaces located within the ROW. SIDE STREET SIDE YARD VARIANCE: If the proposed variance is approved for use the applicant will need to have the following conditions met: Submit and receive a Land Disturbance Permit for the proposed site development through Central Permitting. Any and all proposed land disturbing activity within the property will need to be submitted for review and be in conformance with Mobile City Code, Chapter 17, Storm Water Management and Flood Control); the City of Mobile, Alabama Flood Plain Management Plan (1984); and, the Rules For Erosion and Sedimentation Control and Storm Water Runoff Control.];*
- 4) compliance with the Traffic Engineering comments *(Each lot is limited to one curb cut per street frontage, with size, location and design to be approved by Traffic Engineering and conform to AASHTO standards. The existing parking area in the right-of-way, if approved, would be excluded from the curb cut restriction and may remain as approved. Approval will include the retention of paving in the aisle to the south of the southern most parking space to allow for backing in the parking area with little impact on the adjacent travel lane. Any new on-site parking, including ADA handicap spaces, shall meet the minimum standards as defined in Section 64-6 of the City's Zoning Ordinance.);*
- 5) compliance with the Fire Department comments: *[All projects within the City Limits of Mobile shall comply with the requirements of the City of Mobile Fire Code Ordinance. (2012 International Fire Code).]*
- 6) compliance with the Urban Forestry comments: *(Due to the lack of greenspace, if variance is approved, Tree requirements of the Zoning Ordinance to be coordinated with Urban Forestry.);* and
- 7) full compliance with all other municipal codes and ordinances.

LOCATOR MAP



APPLICATION NUMBER 6069 DATE December 5, 2016

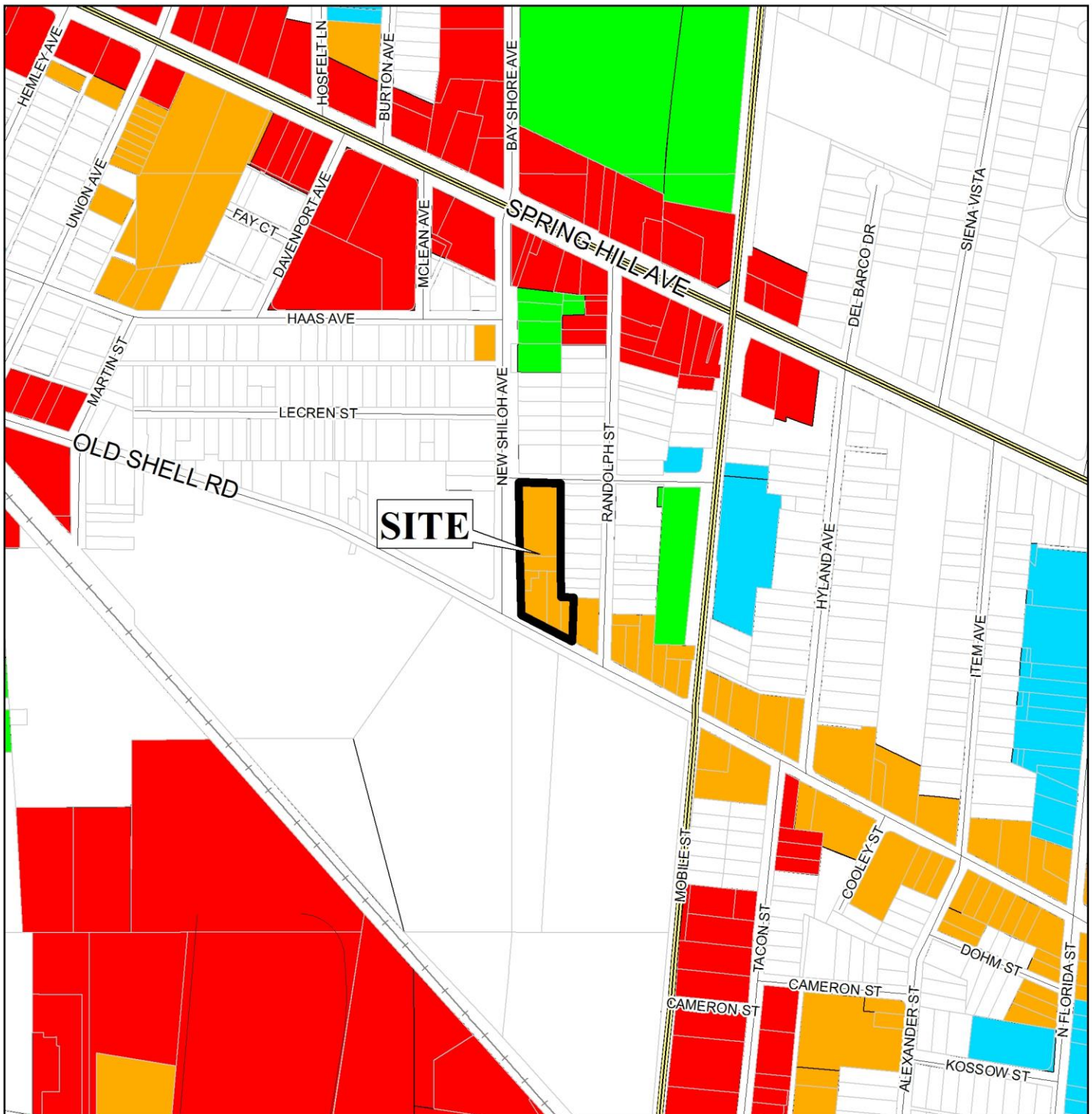
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REQUEST Parking Ratio, Front Setback, Side Street Side Yard Setback, and Tree Planting Variances



NTS

LOCATOR ZONING MAP



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BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by residential and commercial units.

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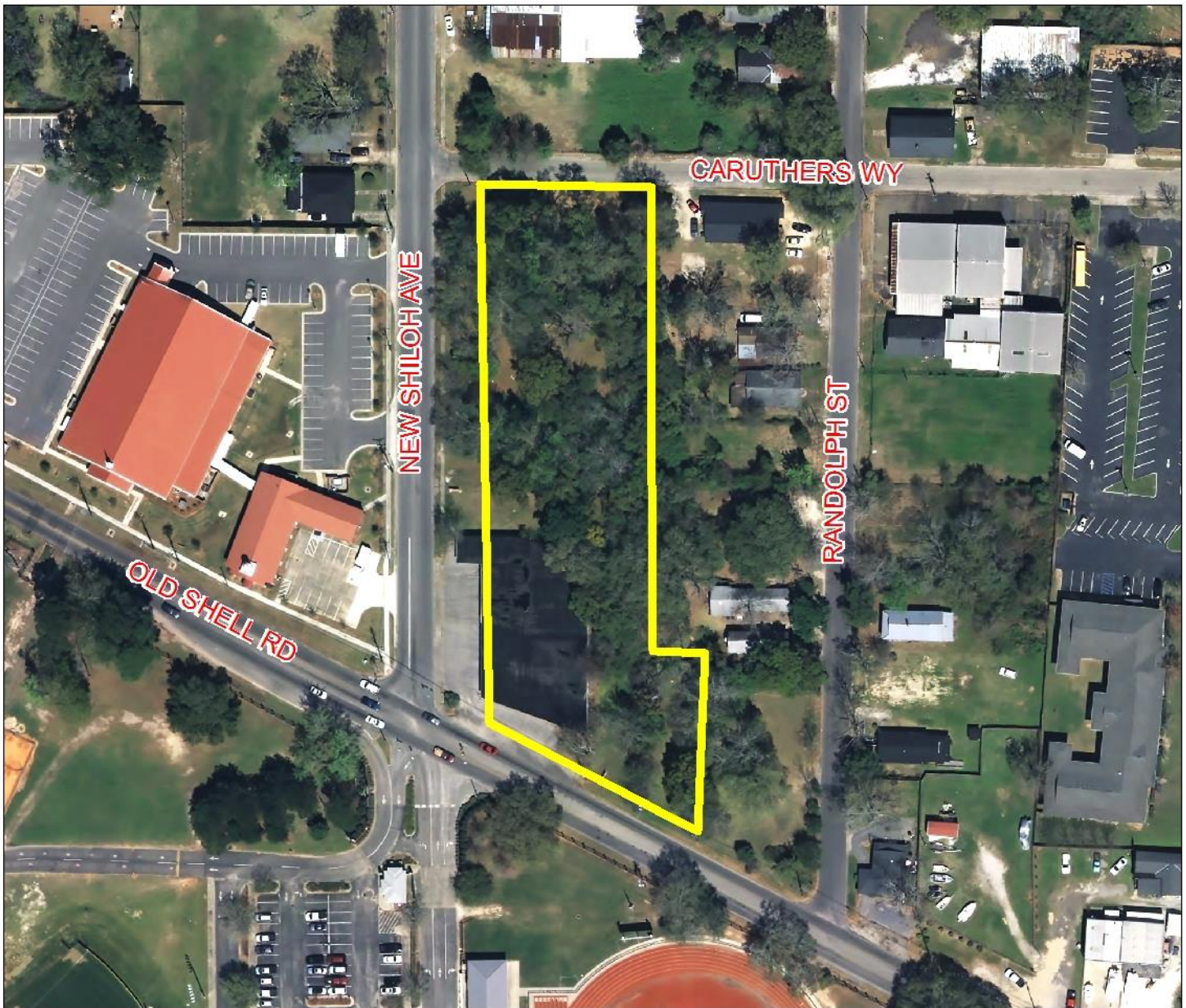
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R-A	R-3	T-B	B-2	B-5	MUN	SD-WH	T5.1
R-1	R-B	B-1	B-3	I-1	OPEN	T3	T5.2
R-2	H-B	LB-2	B-4	I-2	SD	T4	T6



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING AERIAL



The site is surrounded by residential and commercial units.

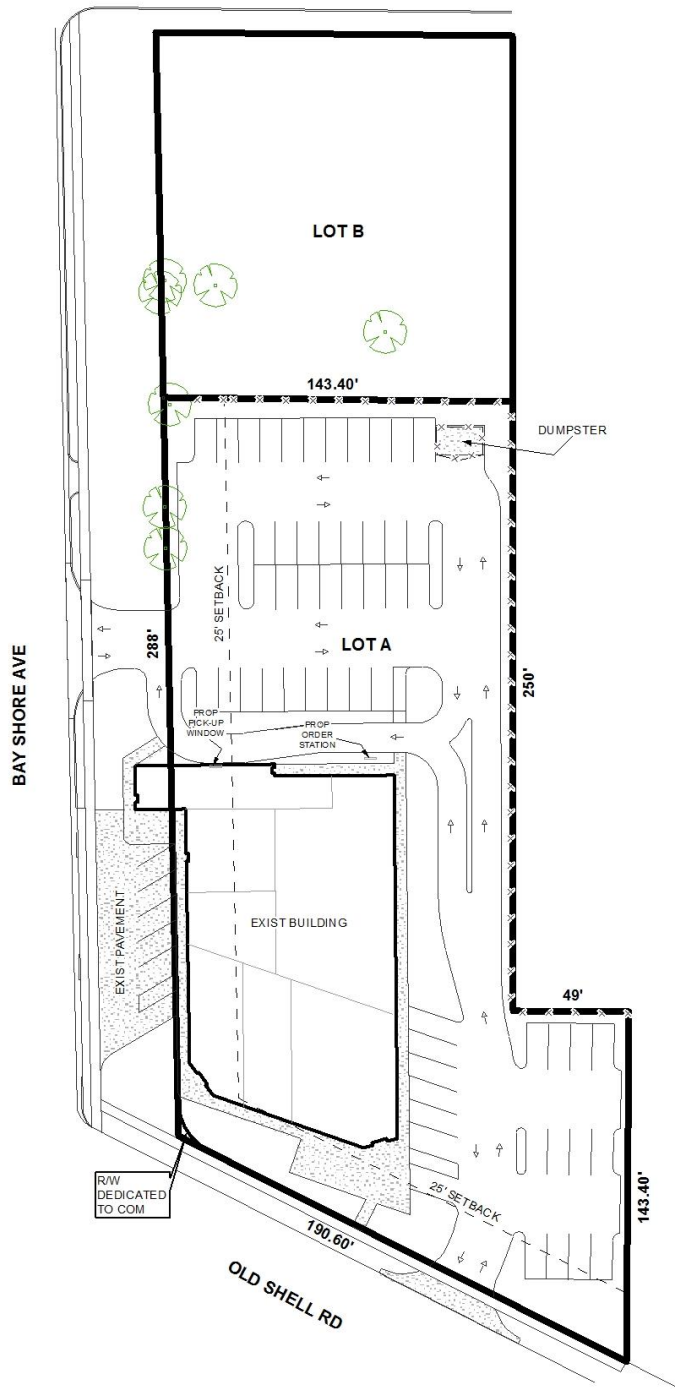
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SITE PLAN



The site plan illustrates the existing building, dumpster, parking, and setbacks.

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