

**BOARD OF ZONING ADJUSTMENT  
STAFF REPORT****Date: March 6, 2017****CASE NUMBER**

6095

**APPLICANT NAME**

Allen R. Bush

**LOCATION**

1625 Union Street  
(West side of Union Street, 350'± South of Rochester  
Street, extending to the East side of James Street)

**VARIANCE REQUEST**

**USE:** Use Variance to allow a domiciliary care facility (assisted living facility) in an R-1, Single-Family Residential District.

**SITE:** Site Variance to allow off-site parking.

**ZONING ORDINANCE  
REQUIREMENT**

**USE:** The Zoning Ordinance requires at least an R-3, Multi-Family Residential District, with Planning Approval, for a domiciliary care facility.

**SITE:** The Zoning Ordinance requires all parking to be on site.

**ZONING**

R-1, Single-Family Residential

**AREA OF PROPERTY**

1.26± Acres

**ENGINEERING  
COMMENTS**

If the USE AND SITE Variances are approved the applicant will need to have the following conditions met:

- a. Submit and receive a Land Disturbance Permit for the proposed site development from Central Permitting.
- b. Submit a ROW Permit (City of Mobile) for any proposed work within the Public ROW.

**TRAFFIC ENGINEERING  
COMMENTS**

Owner/developer is responsible for providing required handicap parking and an accessible route to the building. The handicap space may be required to be on the property of the facility and may not be considered accessible if it is across the street.

**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).

**CITY COUNCIL****DISTRICT**

District 1

**ANALYSIS**

The applicant is requesting Use and Site Variances to allow a domiciliary care facility (assisted living facility) in an R-1, Single-Family Residential District, with off-site parking; the Zoning Ordinance requires at least an R-3, Multi-Family Residential District, with Planning Approval, for a domiciliary care facility, and all parking must be on site for such.

The site was the subject of a Rezoning before the Planning Commission at its August 6, 2015 meeting. The applicant then proposed to rezone the property on which the existing dwelling is located from R-1 to R-3 to allow a special needs facility. That application was recommended for denial due to the following:

- 1) *the applicant has failed to show that any of the four conditions prevail to justify rezoning according to Section 64-9 of the Zoning Ordinance;*
- 2) *the subject site was built as a single-family residence and does not lend itself to being able to meet the compliance standards for commercial development with regard to traffic flow, parking and maneuvering, or dumpster access;*
- 3) *the site area does not meet the minimum size recommended by Section 64-9.A.2. of the Zoning Ordinance; and*
- 4) *the proposed use would not be in character with the existing single-family residential use of the surrounding neighborhood.*

The application was heldover until the September 3<sup>rd</sup> meeting to allow the applicant to meet with the Planning staff to discuss viable options for the project. The applicant subsequently conversed with staff via telephone, as did members of the applicant's family, and all were advised that further applications would be required to either combine adjacent properties with the dwelling site into one lot or submit a Planned Unit Development (PUD) to allow shared access and parking between multiple sites.. The applicant was also advised that Rezoning would be required for any other sites to be used in conjunction with the subject site. Due to the fact that the applicant did not coordinate with his professional to meet with all reviewing entities on the project, staff recommended an additional holdover to the October 15<sup>th</sup> meeting to allow more time for meeting with staff and preparing further applications required. However, the applicant withdrew the Rezoning application at the September 3<sup>rd</sup> Planning Commission meeting.

The applicant's narrative states:

*"Without this facility elderly people and their families in the neighborhood will suffer a hardship to travel long distances to receive assisted living care. Without the parking*

*located across from the facility it will not be able to operate and the elderly and their families will suffer hardship to travel long distances to receive assisted living care.”*

The site plan submitted indicates the site of the existing dwelling which was the subject of the 2015 proposed Rezoning and the proposed off-site parking lot across Union Street on its East side. All properties within the area between Union Street and James Street and along the East side of Union Street are zoned R-1. Properties along the West side of James Street are zoned I-1, Light Industry, with a mix of single-family residential and commercial use. The site of the proposed parking lot is a vacant legal lot of record which backs up to R-1 zoning and use on the West side of Richardson Way.

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.

Pertaining to the requests, the applicant has not provided justification as to what hardships would prevent the properties from being used in compliance with their current R-1 zoning classification. As the dwelling received a Certificate of Occupancy in August 2014 as a single-family residence, it would stand that it is suitable for that use and has no existing legal nonconforming uses which could justify a Use Variance. Basically the same argument can be made for the proposed parking lot site as it is a buildable residential lot, albeit of legal nonconforming size as it pre-dates the 7,200 square-foot minimum lot size established by the Subdivision Regulations in 1952. But the primary reason for not granting the Variances would be the fact that this would create a spot-commercial infiltration within a residential neighborhood and would be out of character with the surrounding single-family residential uses.

The applicant has not illustrated that a literal enforcement of the Ordinance would result in an unnecessary hardship. As the dwelling site was developed as a single-family residence by the applicant, and as the site of the proposed parking lot is a buildable residential site, there are no unusual characteristics of the properties that satisfy variance standards. Furthermore, the primary proposed use as a domiciliary care facility with off-site parking would be out of character for an R-1, Single-Family Residential District. The Board should consider the Use and Off-Site Parking Variance requests for denial.

**RECOMMENDATION:** Staff recommends to the Board the following findings of facts for Denial of the Use and Off-Site Parking requests:

- 1) Approving the variances will be contrary to the public interest in that the use would be contrary to the established zoning classification and use, and the site was developed recently as a single-family dwelling;
- 2) Special conditions were not illustrated such that the literal enforcement of the provisions of the chapter will result in an unnecessary hardship; 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 because the use would be incompatible to an established R-1 District, and the subject properties can be utilized for single-family dwelling purposes.

# LOCATOR MAP



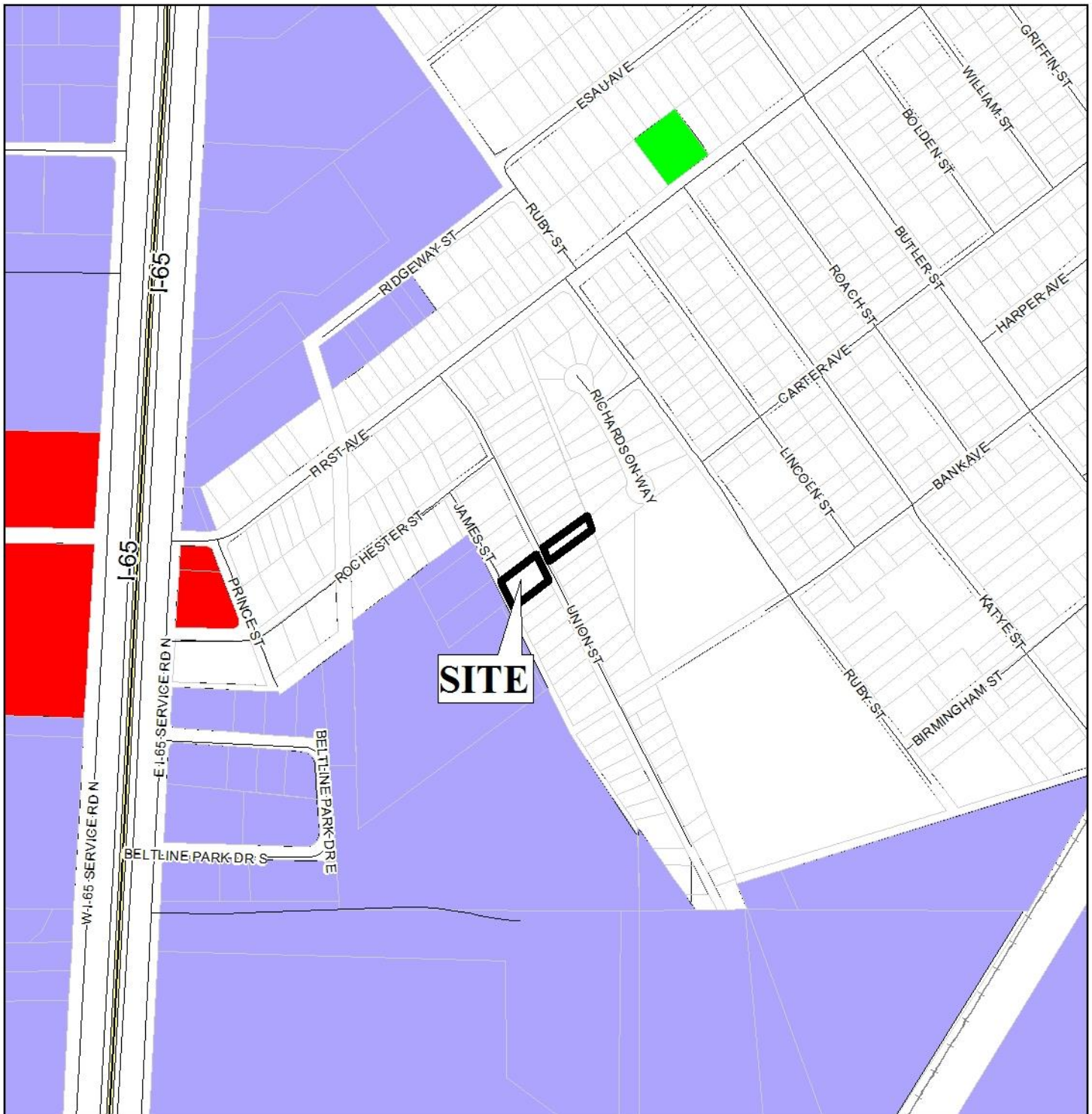
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APPLICANT Allen R. Bush

REQUEST Use and Site Variance



# LOCATOR ZONING MAP

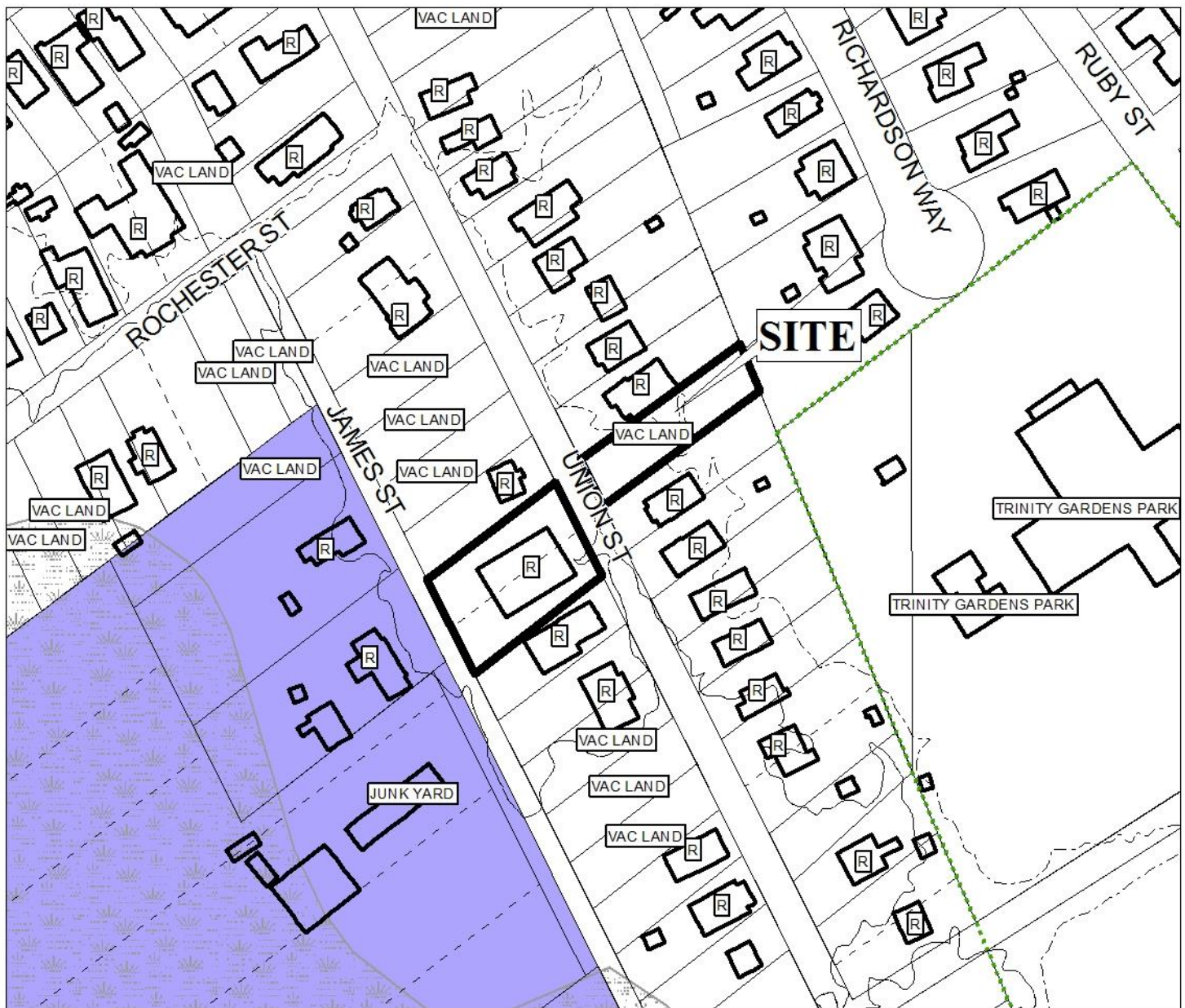


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# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units. A junk yard is located to the south.

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<span style="display: inline-block; width: 15px; height: 15px; background-color: cyan; border: 1px solid black;"></span> R-A	<span style="display: inline-block; width: 15px; height: 15px; background-color: green; border: 1px solid black;"></span> R-3	<span style="display: inline-block; width: 15px; height: 15px; background-color: brown; border: 1px solid black;"></span> T-B	<span style="display: inline-block; width: 15px; height: 15px; background-color: orange; border: 1px solid black;"></span> B-2	<span style="display: inline-block; width: 15px; height: 15px; background-color: blue; border: 1px solid black;"></span> B-5	<span style="display: inline-block; width: 15px; height: 15px; background-color: yellow; border: 1px solid black;"></span> MUN	<span style="display: inline-block; width: 15px; height: 15px; background-color: orange; border: 1px solid black;"></span> SD-WH	<span style="display: inline-block; width: 15px; height: 15px; background-color: purple; border: 1px solid black;"></span> T5.1
<span style="display: inline-block; width: 15px; height: 15px; background-color: white; border: 1px solid black;"></span> R-1	<span style="display: inline-block; width: 15px; height: 15px; background-color: pink; border: 1px solid black;"></span> R-B	<span style="display: inline-block; width: 15px; height: 15px; background-color: cyan; border: 1px solid black;"></span> B-1	<span style="display: inline-block; width: 15px; height: 15px; background-color: red; border: 1px solid black;"></span> B-3	<span style="display: inline-block; width: 15px; height: 15px; background-color: lightblue; border: 1px solid black;"></span> I-1	<span style="display: inline-block; width: 15px; height: 15px; background-color: lightgreen; border: 1px solid black;"></span> OPEN	<span style="display: inline-block; width: 15px; height: 15px; background-color: pink; border: 1px solid black;"></span> T3	<span style="display: inline-block; width: 15px; height: 15px; background-color: darkpurple; border: 1px solid black;"></span> T5.2
<span style="display: inline-block; width: 15px; height: 15px; background-color: yellow; border: 1px solid black;"></span> R-2	<span style="display: inline-block; width: 15px; height: 15px; background-color: peachpuff; border: 1px solid black;"></span> H-B	<span style="display: inline-block; width: 15px; height: 15px; background-color: purple; border: 1px solid black;"></span> LB-2	<span style="display: inline-block; width: 15px; height: 15px; background-color: brown; border: 1px solid black;"></span> B-4	<span style="display: inline-block; width: 15px; height: 15px; background-color: gray; border: 1px solid black;"></span> I-2	<span style="display: inline-block; width: 15px; height: 15px; background-color: orange; border: 1px solid black;"></span> SD	<span style="display: inline-block; width: 15px; height: 15px; background-color: lightpurple; border: 1px solid black;"></span> T4	<span style="display: inline-block; width: 15px; height: 15px; background-color: darkblue; border: 1px solid black;"></span> T6





# BOARD OF ADJUSTMENT

## VICINITY MAP - EXISTING AERIAL



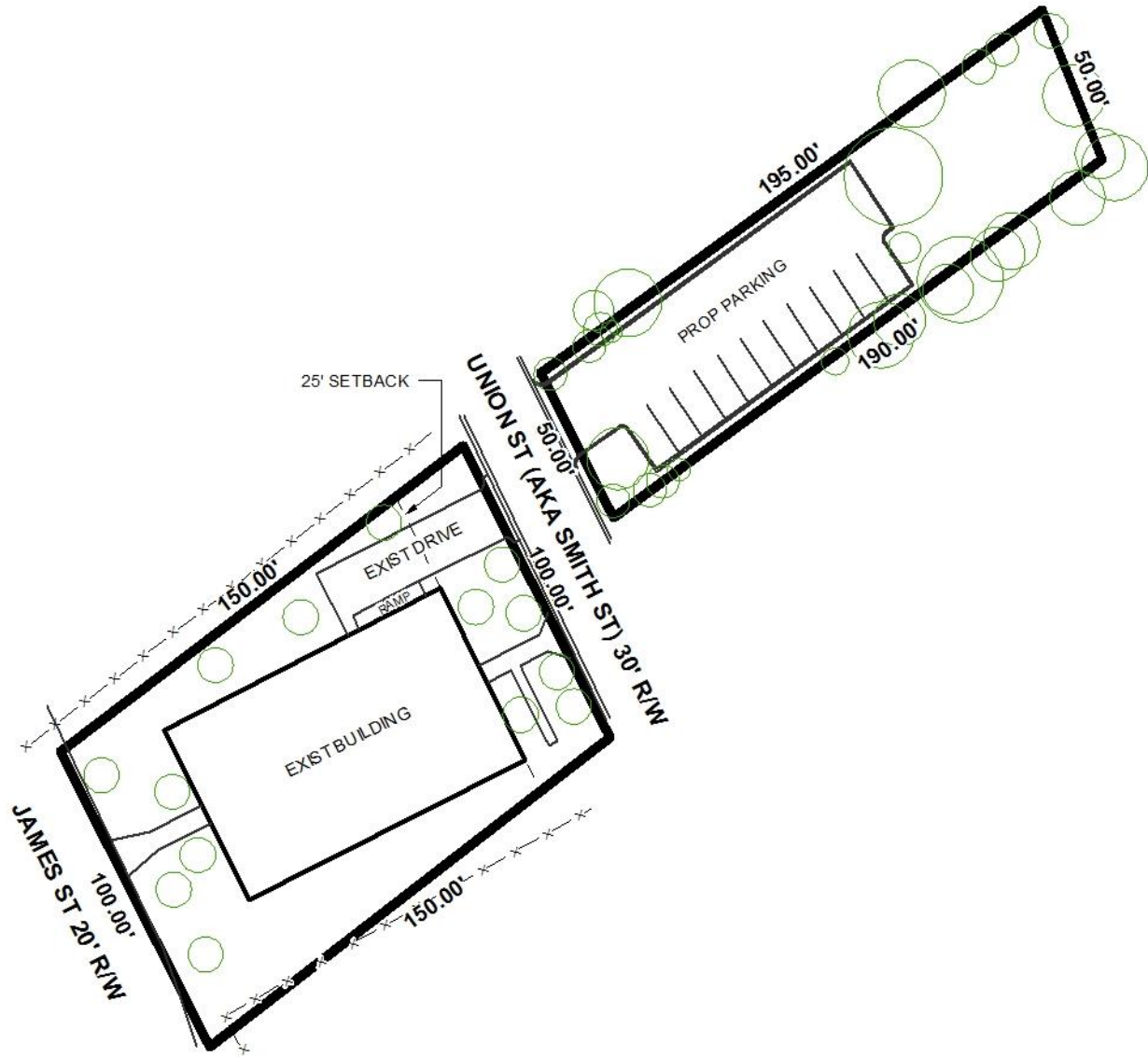
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# SITE PLAN



The site plan illustrates the existing building, existing drive, setback, and proposed parking.

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NTS