

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: December 3, 2018**

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| <u>CASE NUMBER</u> | 6226 |
| <u>APPLICANT NAME</u> | Keith Knizley |
| <u>LOCATION</u> | 259 Cherokee Street (East side of Cherokee Street, 160'± North of La Salle Street). |
| <u>VARIANCE REQUEST</u> | USE: Use Variance to allow a four-unit apartment complex in an R-1, Single-Family Residential District. |
| <u>ZONING ORDINANCE REQUIREMENT</u> | USE: The Zoning Ordinance does not allow apartment complexes in an R-1, Single-Family Residential District. |
| <u>ZONING</u> | R-1, Single-Family Residential |
| <u>AREA OF PROPERTY</u> | 0.24± 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 four-unit apartment complex in an R-1, Single-Family Residential District; the Zoning Ordinance does not allow apartment complexes in an R-1, Single-Family Residential District.

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

“259 Cherokee Street will be used as a multi-family dwelling. The building design is currently set up as a 4-plex and was last used as such. However, as it has now set vacant for several years, the “Multi-family” zoning status has expired.

It will not be cost efficient to convert this property back to a single family dwelling, whether the proposed use was owner occupancy, flip, or rental.

Property has a large parking lot in the rear of the house which can accommodate eight to ten cars. It also has a city street lamp for lighting."

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 structure that appears to be a single-family dwelling, per a survey of the property and recent Google Street View images. Floor plans provided by the applicant illustrate the layout of four separate apartments, but no dimensions are indicated and no scale is provided with which staff could measure such dimensions. Also, photographs provided by the applicant show the interior of the structure, which is evidently in need of repairs.

If approved, the applicant proposes to renovate the structure with: a new roof; a new HVAC system in each apartment; new exterior caulk and paint; new interior paint; new wood finishes

replacing rotten wood; new flooring; and new kitchen and bathroom fixtures. Additionally, the applicant proposes to have electrical components brought into compliance with current National Electrical Code (NEC) standards.

With respect to the applicant's statement regarding off-street parking, the survey does not illustrate such parking, and no parking is visible in recent aerial photographs, or in recent Google Street View images.

The Polk City Directory confirms use of the structure as apartments since at least 1985, and previous permits and Geographic Information Systems (GIS) data indicate there were four (4) apartments within the structure; however, Alabama Power Company has stated that no power has been utilized by at least two (2) of the apartments since 2009, and no history of use of the two (2) additional apartments can be confirmed after 2008.

While there are many apartments in R-1, Single-Family Residential Districts 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 a four-unit apartment complex is on file; and, a note from a permit inspection in 2008 states that the structure is now a single-family residence. As such, while previous use of the structure as a four-unit apartment complex may have been considered non-conforming, its vacancy for longer than two (2) years, and its possible retrogression into a single-family residence, requires compliance with current regulations.

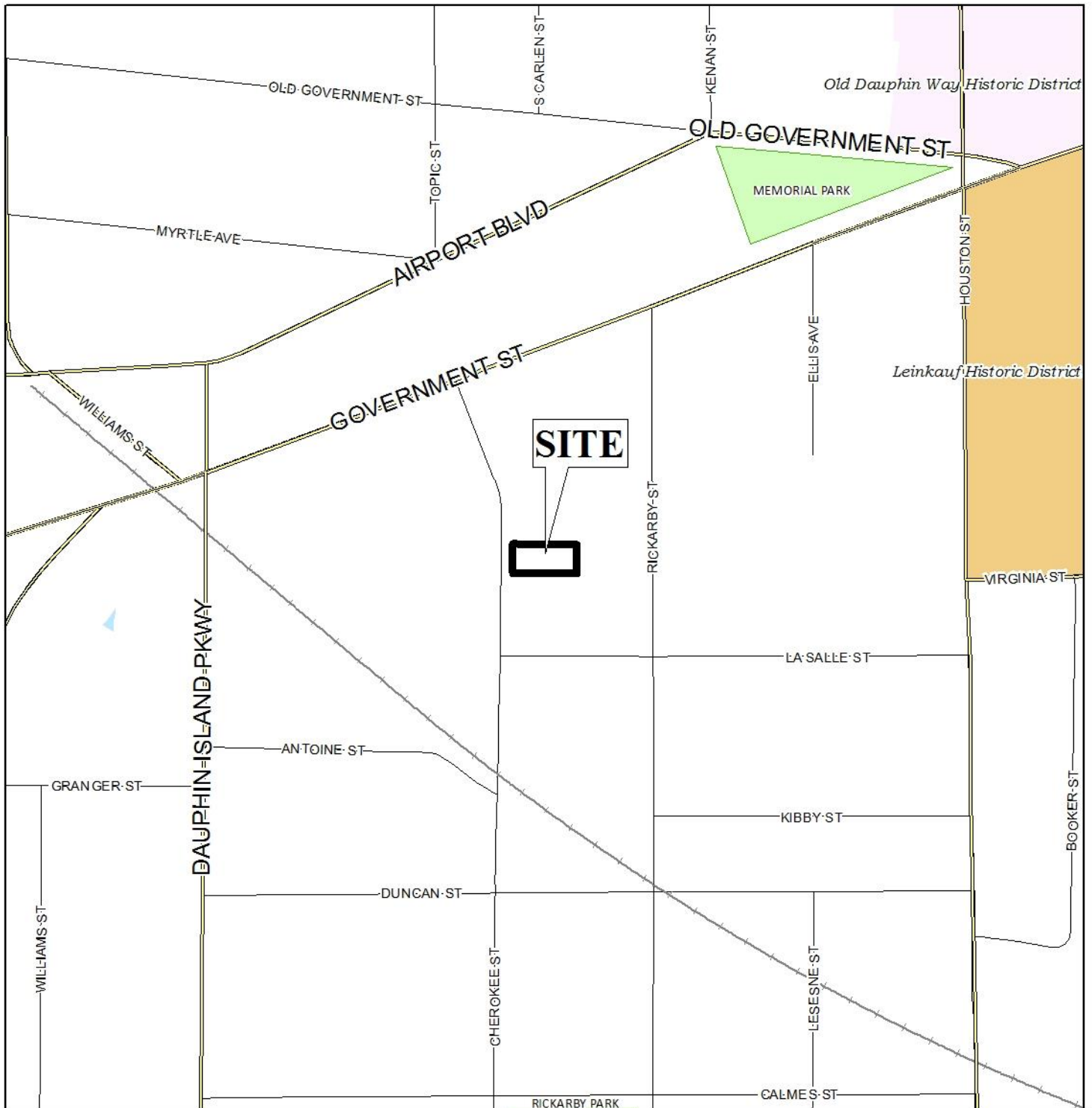
It should be noted that the Board has approved a similar Use Variance across the street from the subject site, at 254 Cherokee Street, at its December 4, 1962 meeting. The approval was subject to the condition that all off-street parking is in accordance with the provisions of the Zoning Ordinance. There are, however, mostly single-family dwellings within the vicinity of the subject site, with no additional requests for apartment complexes.

The applicant has not provided evidence that the subject site was not converted into a single-family residence, nor have they provided evidence of a non-financial hardship that would preclude use of the structure as a single-family dwelling, especially since the proposed improvements could incorporate efforts to restore it as a single-family dwelling. Additionally, 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, especially 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 be used as a single-family dwelling; 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.

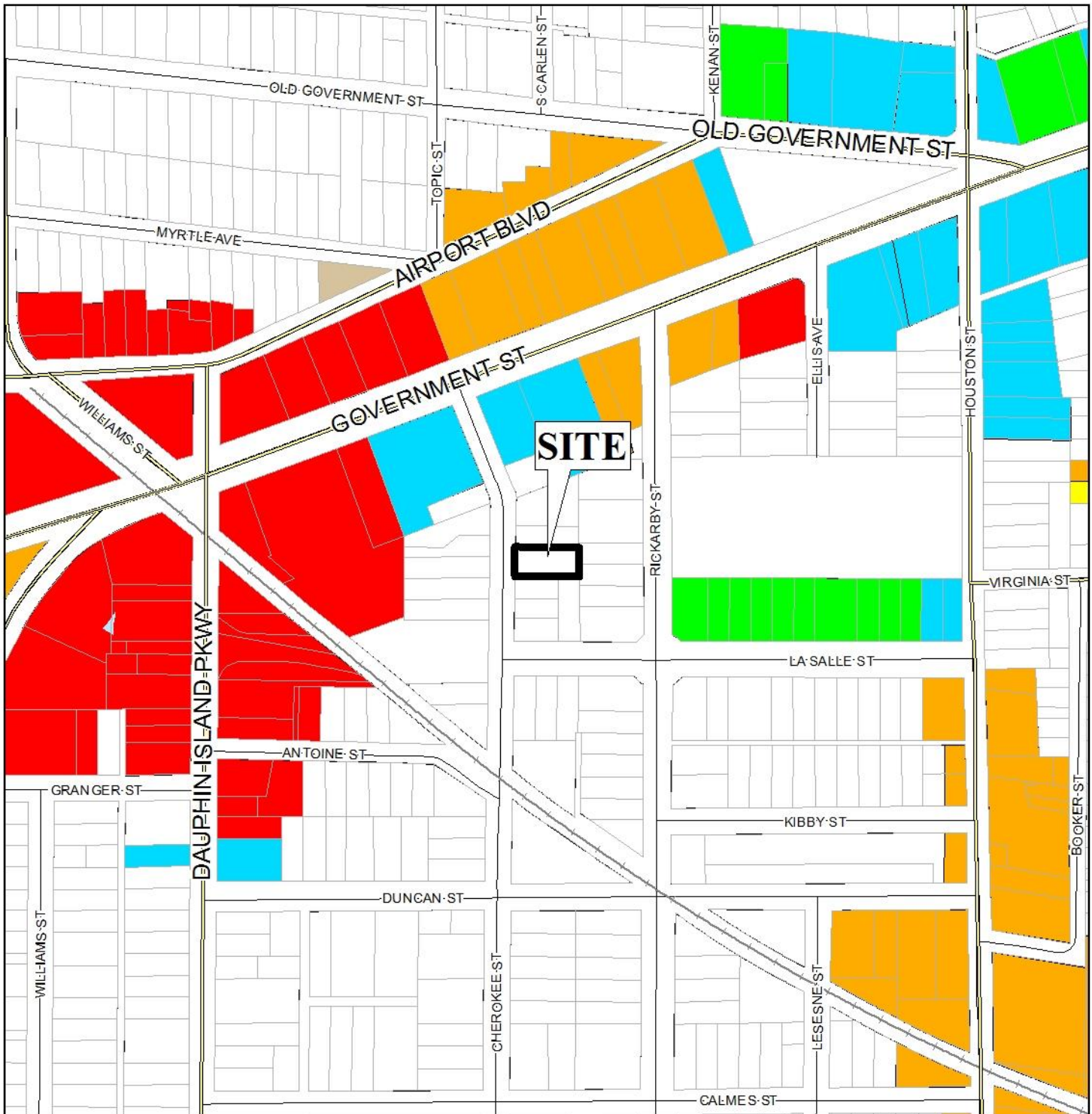
LOCATOR MAP



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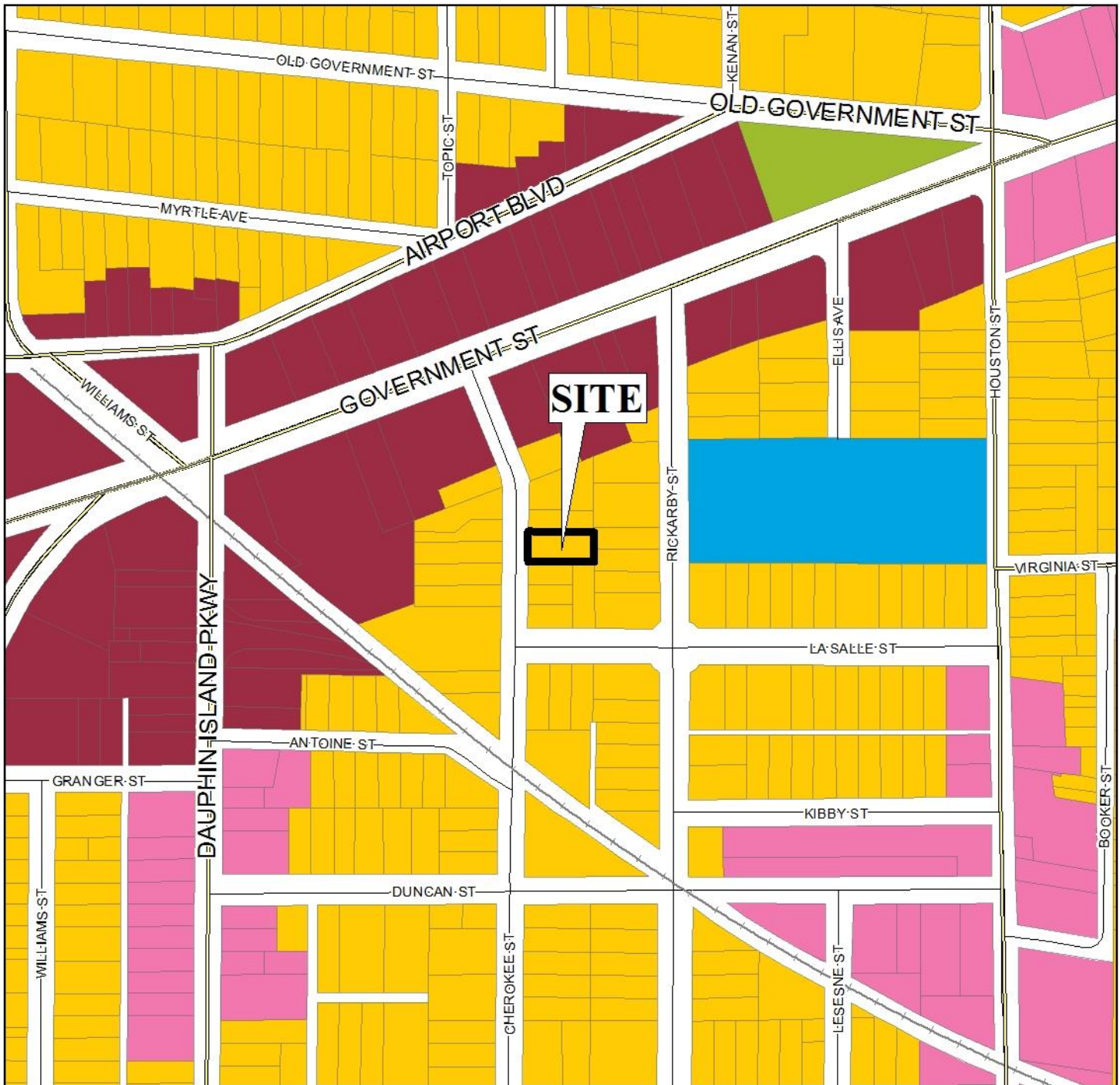
LOCATOR ZONING MAP



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FLUM LOCATOR MAP



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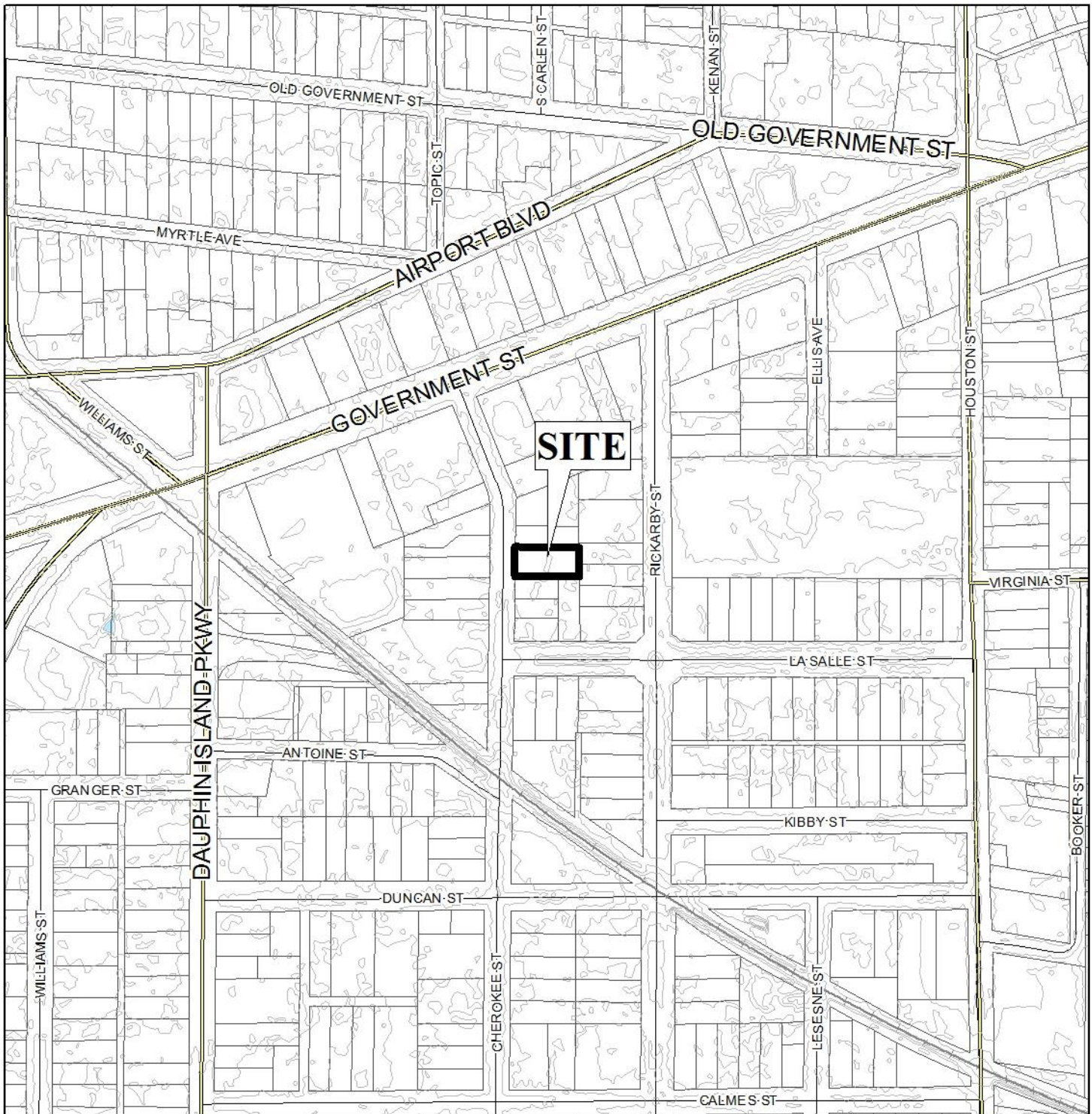
REQUEST Use Variance

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|--|---|--|---|
| 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 | |



NTS

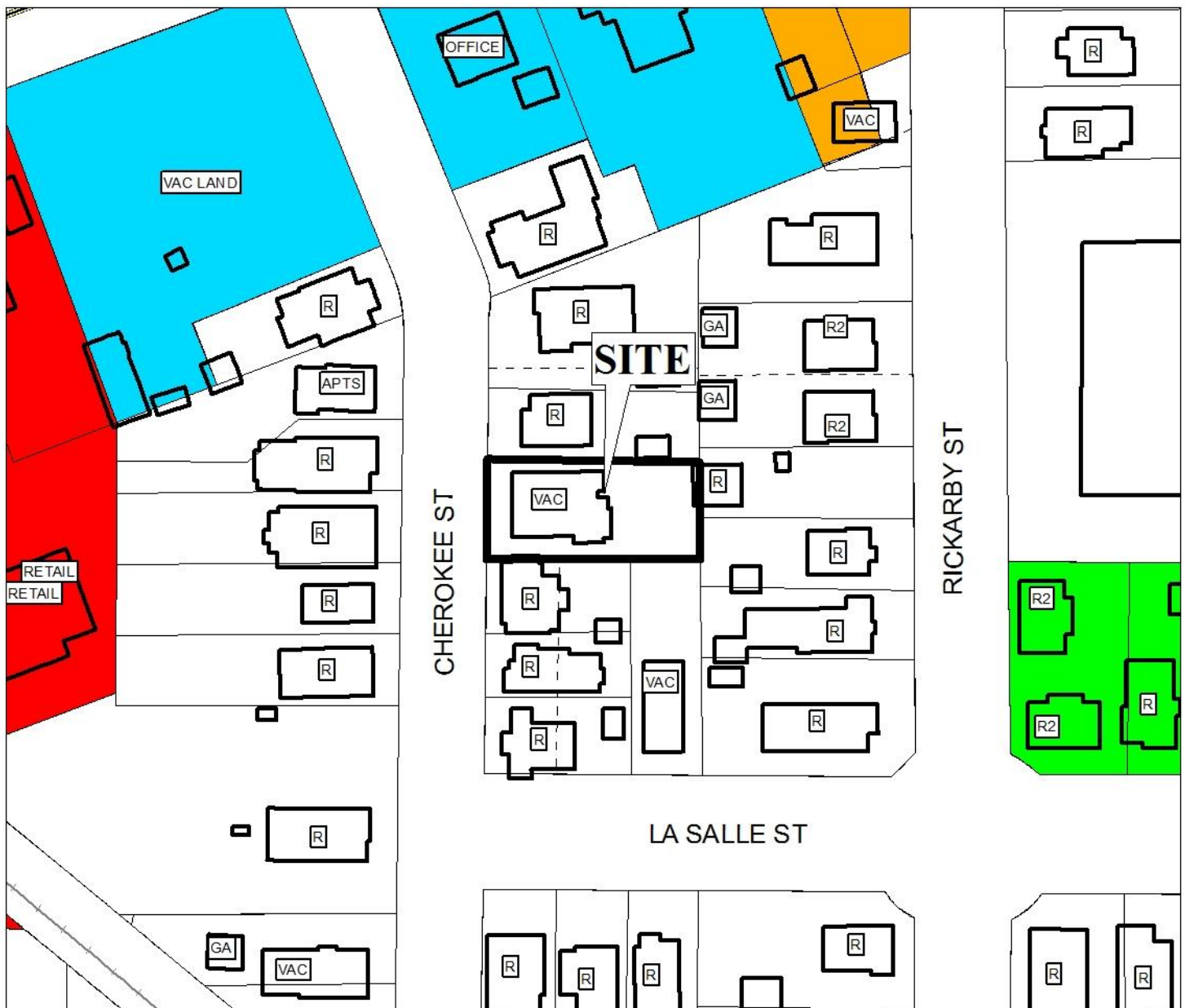
ENVIRONMENTAL LOCATOR MAP



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BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units.

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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

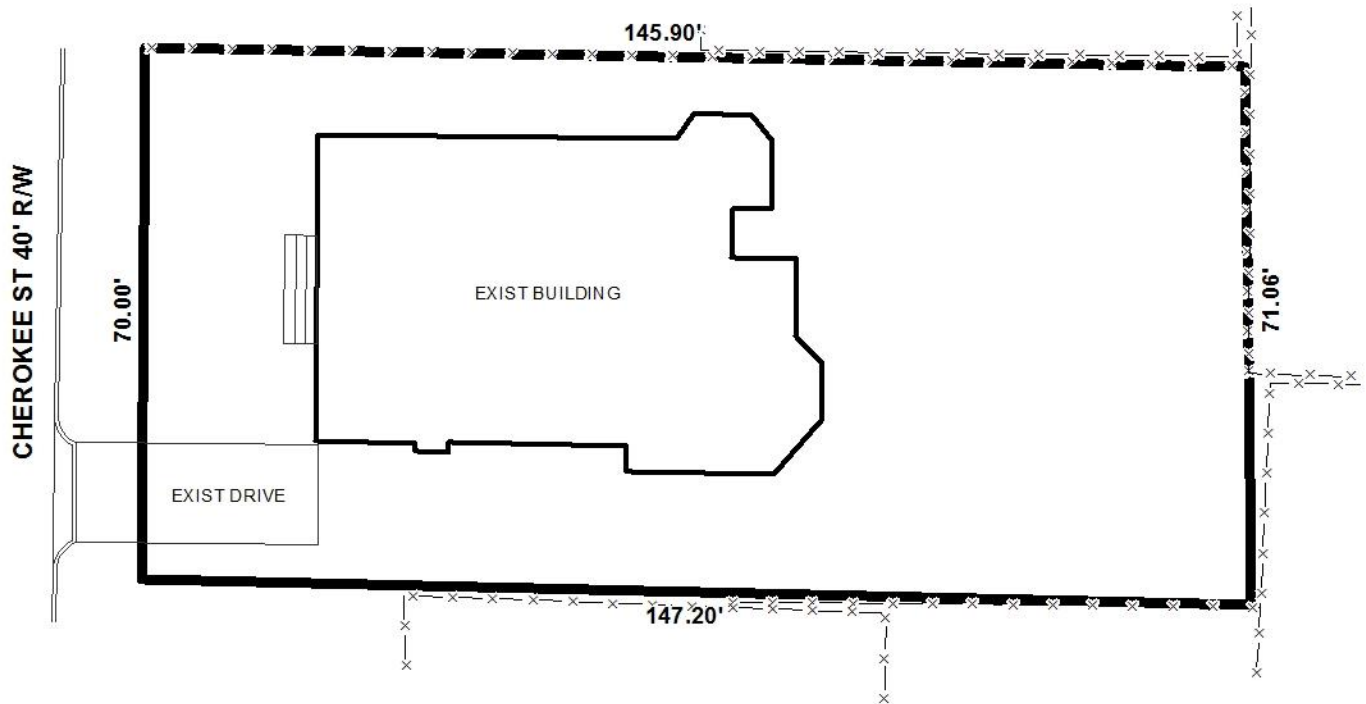


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SITE PLAN



The site plan illustrates the existing building and existing drive.

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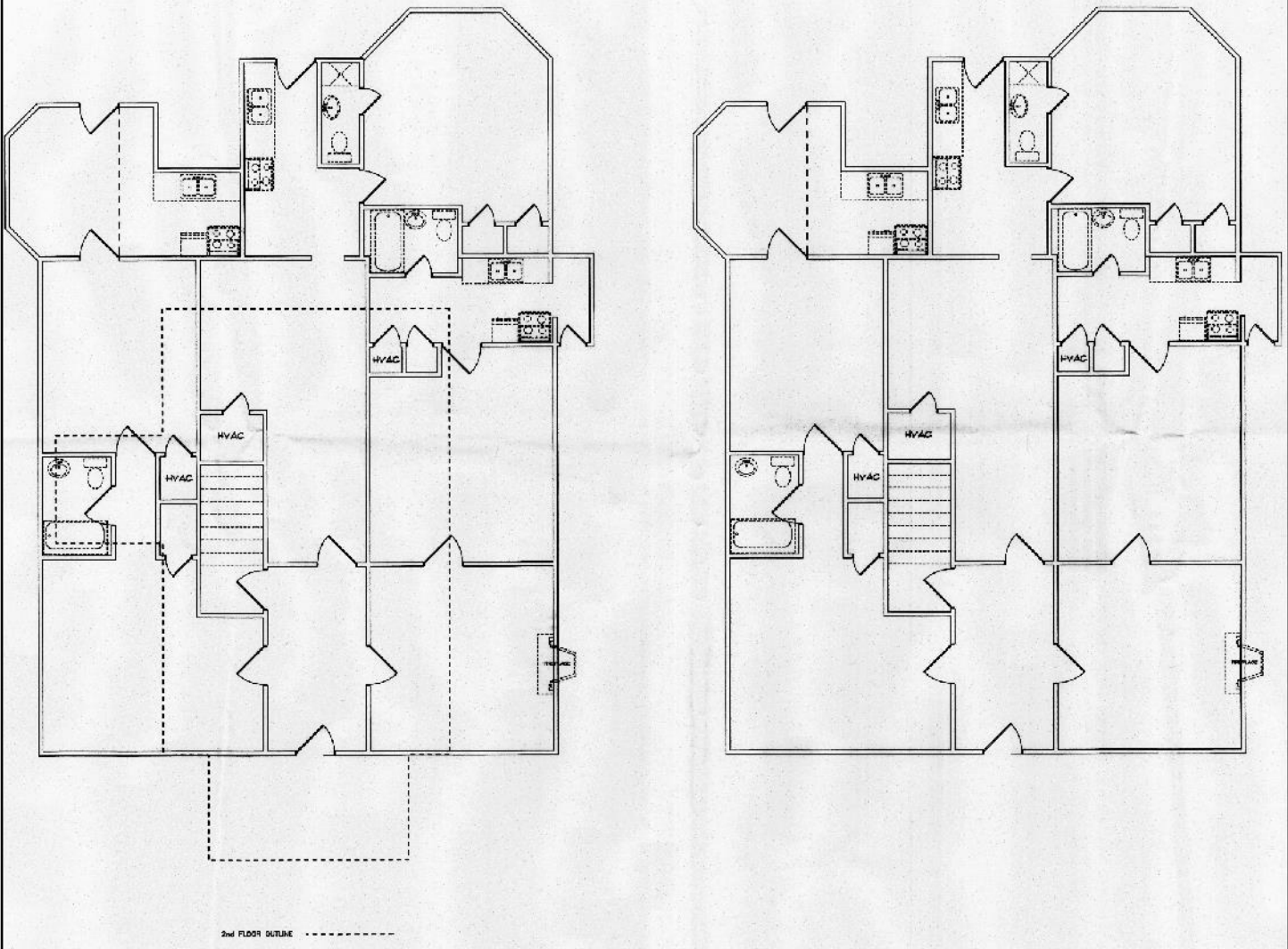
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DETAIL SITE PLAN

Full Floor Plan

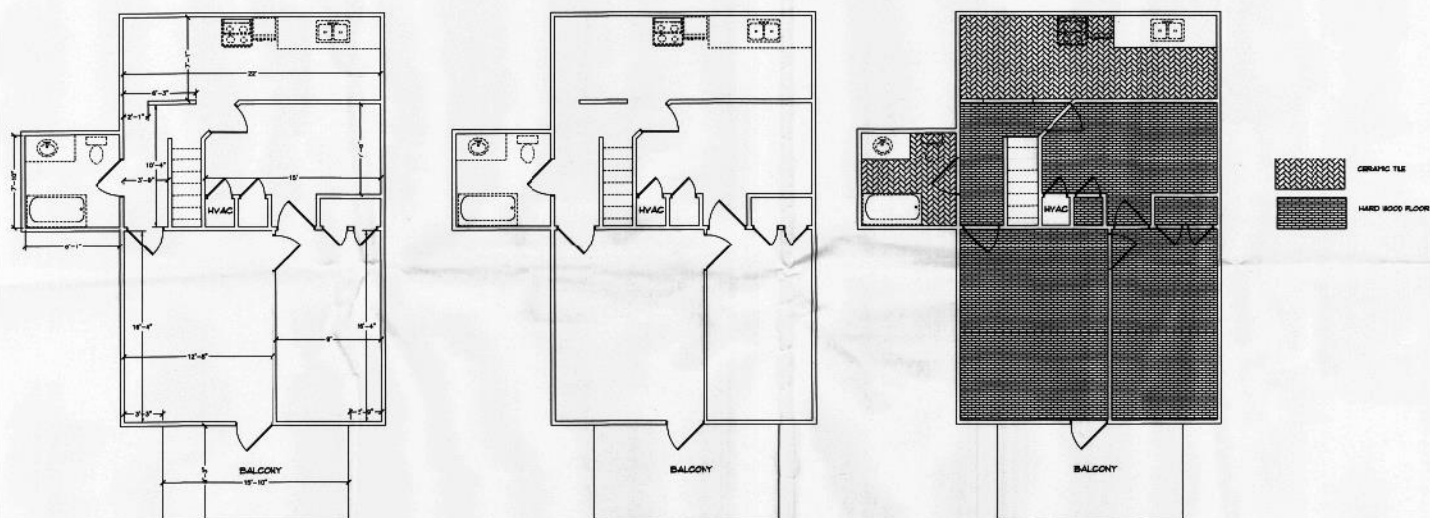


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DETAIL SITE PLAN

Apartment A

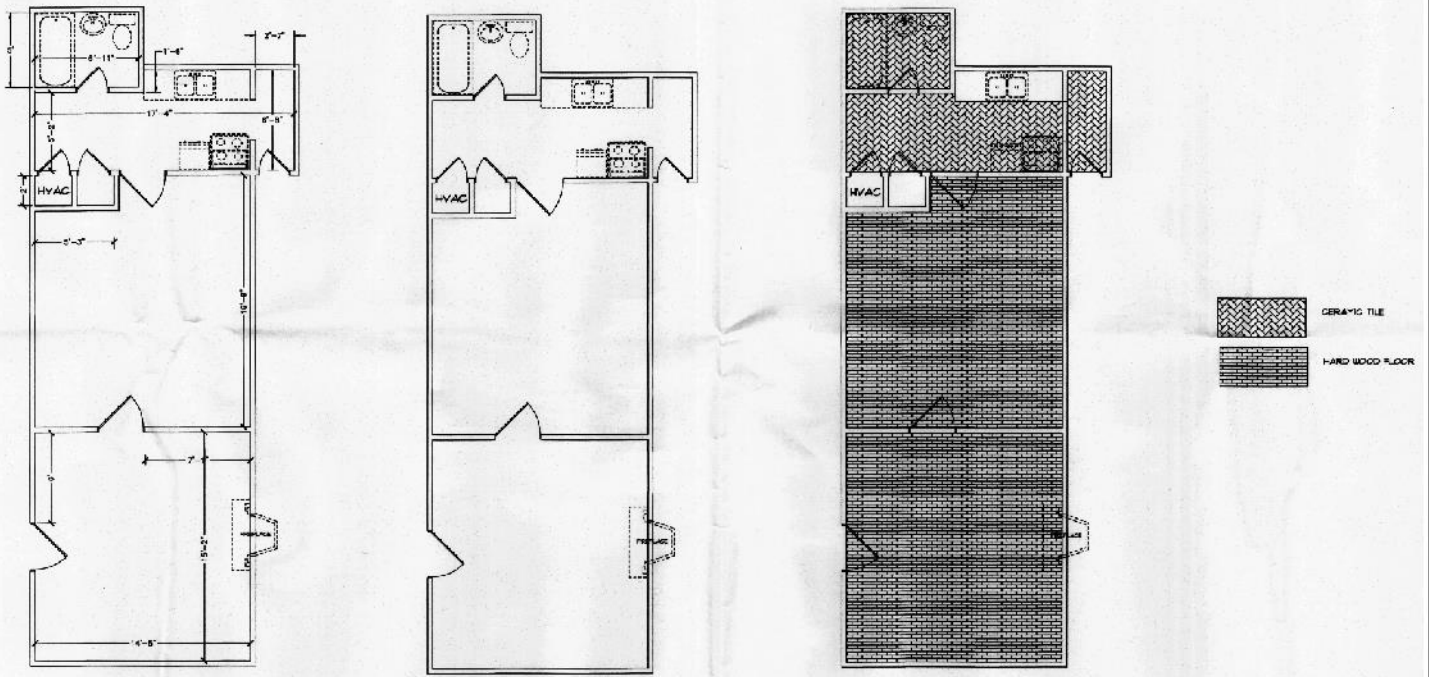


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DETAIL SITE PLAN

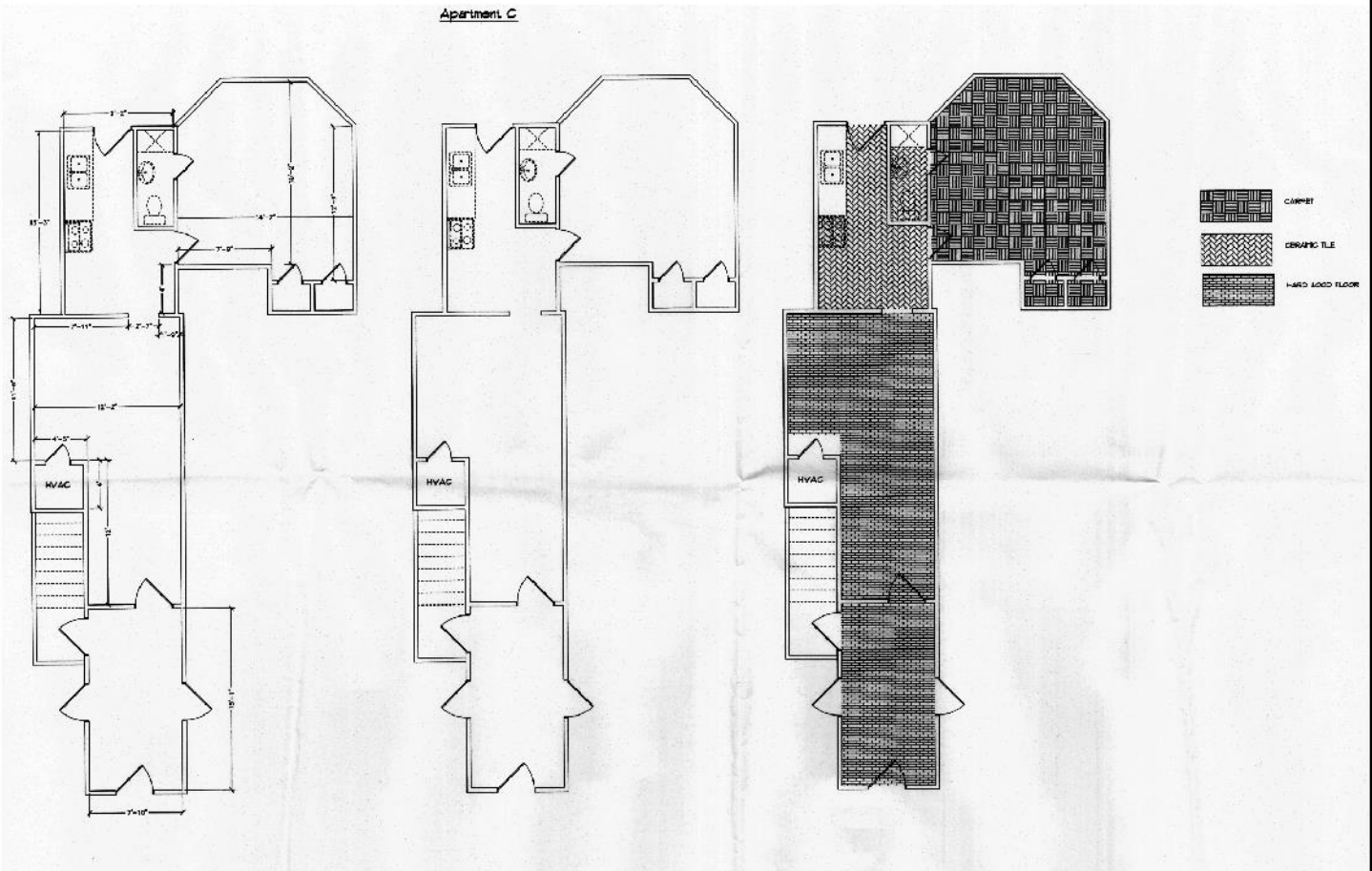
Apartment B



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DETAIL SITE PLAN



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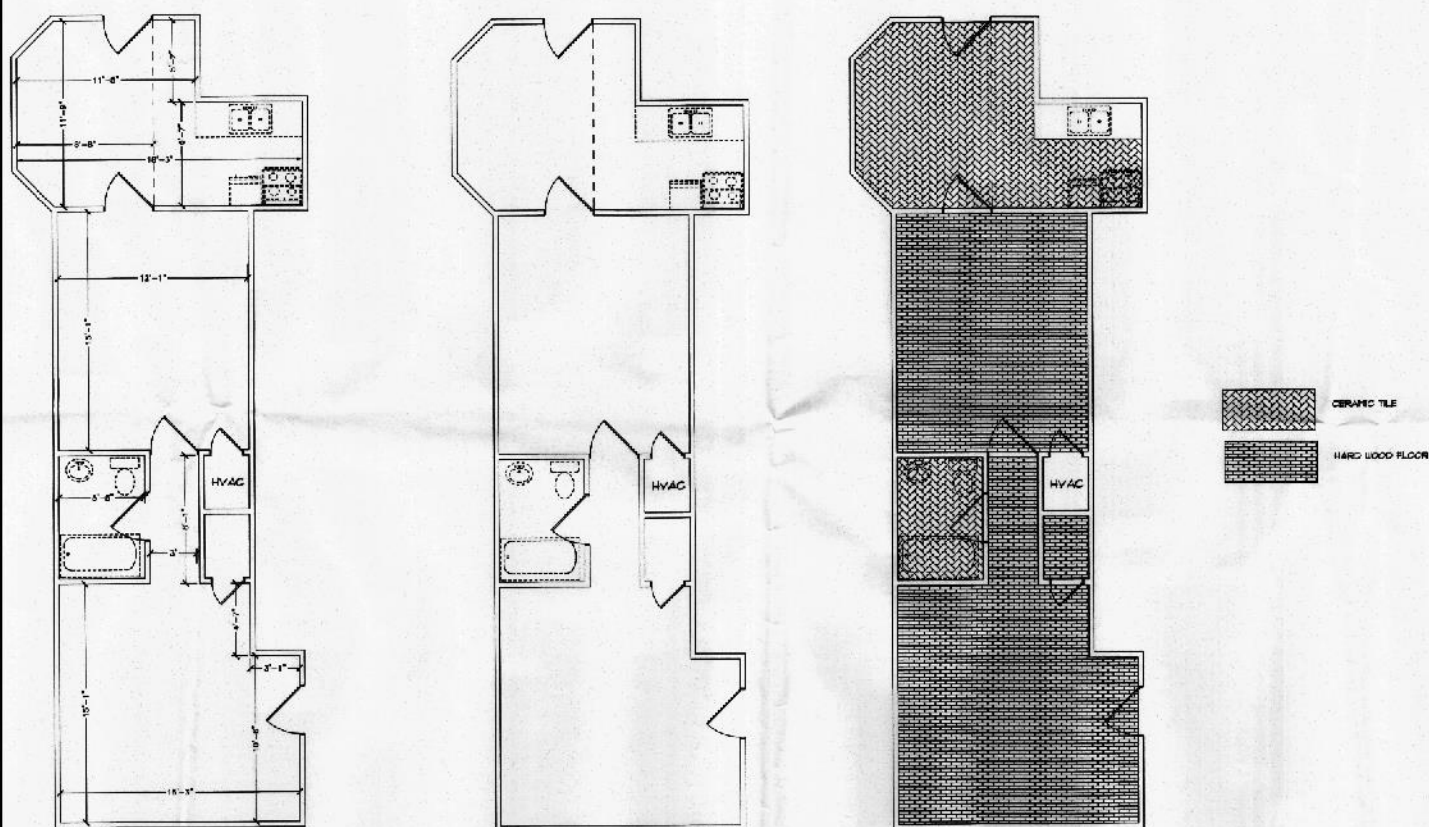
REQUEST Use Variance



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DETAIL SITE PLAN

Apartment D



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