

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: July 7, 2014****CASE NUMBER**

5904

APPLICANT NAME

Melanie Friend

LOCATION1801 Old Shell Road
(Southwest corner of Old Shell Road and Kenneth Street)**VARIANCE REQUEST****APPEAL:** Administrative Appeal of a staff determination of food service as an accessory use to a retail business in a B-2, Neighborhood Business District. The applicant contends that the food service appears to now be an equal or primary use.**ZONING ORDINANCE
REQUIREMENT****APPEAL:** The Zoning Ordinance allows an accessory use to a retail business in a B-2, Neighborhood Business District.**ZONING**

B-2, Neighborhood Business

AREA OF PROPERTY

3 lots / 0.41±Acres

**CITY COUNCIL
DISTRICT**

District 1

**ENGINEERING
COMMENTS**

No comments.

**TRAFFIC ENGINEERING
COMMENTS**

If the land use intensity is changed or modified to increase parking requirements, a revised site plan will need to be provided to illustrate any changes or additions to the parking layout

**URBAN FORESTRY
COMMENTS**

No comments.

**FIRE
COMMENTS**

No comments

ANALYSIS

The applicant is requesting an Administrative Appeal of a staff determination of food service as an accessory use to a retail business in a B-2, Neighborhood Business District; the Zoning Ordinance allows an accessory use to a retail business in a B-2, Neighborhood Business District. The applicant contends that the food service appears to now be an equal or primary use.

The site was the subject of a three lot subdivision and Planned Unit Development review that was approved by the Planning Commission at its September 15, 2005 meeting. A rezoning request to B-2, necessary to eliminate a split zoning condition created by the subdivision, was approved by the City Council at its November 29, 2005 meeting. The Planned Unit Development site contains three lots, three buildings, and 22 total parking spaces. The PUD request was to allow shared access and parking between multiple sites. The following list shows the allocation of building size for each property, and the number of parking spaces available on each property:

- 1801 Old Shell Road – building is 2,250 ± sf – 6 existing parking spaces
- 1803 Old Shell Road – building is 1,900 ± sf – 0 existing parking spaces
- 51 Kenneth Street – building is 3,867 ± sf – 16 existing parking spaces

The PUD application included an assumption that the 51 Kenneth Street site would only have 500 square feet of office space, and that the rest of the building would be for storage. Thus the parking requirements provided for the PUD are as follows:

- Total office / retail: 4,650 sf
- Parking required: 16 spaces
- Warehouse employees: 2
- Parking required: 2
- Total parking required: 18 spaces
- Total parking provided: 22 spaces

The appellant purchased the property at 51 Kenneth Street in February 2006, according to Mobile County Revenue Department records. At that time, City of Mobile Revenue Department records show that the property at 1801 Old Shell Road was in use as a home furnishings store.

In 2006, the appellant obtained a fence permit to construct a fence around her property. The fence included a gate into the parking area for her property. In May 2007, the appellant obtained variances to allow the construction of an arbor and porch within the 25-foot setback along Kenneth Street, and to allow the construction of roof overhang within 2 feet 6 inches of the rear property line: these issues could have been addressed through the amending of the approved PUD.

In November 2007, the current tenant (Red or White) of the 1801 Old Shell Road location received a business license for the retail sale of wine and general merchandise. In September 2010, an additional code was added to the business license to also allow a restaurant.

The appellant submitted the following statement with the application:

The property at 51 Kenneth Street is part of a planned unit development that includes the properties at 1801 and 1803 Old Shell Road in which all 3 addresses share parking. These properties are zoned B-2 and by right are allowed to have bars, restaurants and other business uses within that designation; however, due to the limited number of overall parking spaces, neither bars nor restaurant-type facilities may operate at these locations.

Red & White Wine and Gourmet Center leases the premises at 1801 Old Shell Road and has a retail business license to sell table wine. When the business first opened approximately in late 2007, Red & White operated as a retail store with plenty of parking available at all times. Over the past 3 to 4 years, Red & White's business has dramatically changed from primarily a wine retail outlet into what is now primarily a restaurant and wine bar for on-premises consumption. At the present time, the staff of Urban Development has classified the food service and wine bar portions of the business as accessory uses to the principal use of retail wine sales; however, the traffic and use levels of the premises make it clear that the restaurant and wine bar aspects of the business have become the principal uses while the retail sale of wine is the accessory use.

In 2010, Red & White added kitchen implements to assist in the heating up of and preparation of the food being provided. A full commercial kitchen was not installed, but the permit does not show any indication of the zoning section of Urban Development reviewing this work as should have been required under the applicable rules and regulations.

As of Sunday, June 1st, a substantial portion of the floor space was dedicated to restaurant service and the bar as evidenced by that fact that there are/were 7 chairs at the bar, 1 large rectangle table with 10 chairs, and 3 round tables with 4 chairs each - restaurant and bar seating for 29 persons.

During business days prior to the opening of the restaurant and bar in the late afternoon, there are plenty of parking spaces available in front of 1801 Old Shell Road. After 5pm, due to the restaurant and bar operation, the place fills up with people stopping to eat and drink. This is when parking becomes a problem, and cars are parked in the lots across the street and in front of the properties to the west of this location along Old Shell Road.

In addition, the Mobile location of Red & White's Facebook page, talks on and on about the food selections available each day in great detail, making it clear that the on premises consumption of food and wine is now the primary use for that business. There are few, if any entries about the wine being sold.

On the Red or White website located at <http://www.redorwhitewine.com> there is a detailed menu of all the regular food selections. I have attached a copy of this menu to this application. This does not include the special additions which are advertised on their Mobile location's Facebook page located at <https://facebook.com/pages/Red-or-White-Wine-Gourmet-Center/195089950652997> .

Also, there are reviews on several restaurant sites including Yelp at <http://www.yelp.com/biz/red-or-white-wine-and-gourmet-center-mobile> and Urban Spoon at <http://vwww.urbanspoon.com/r/223/1591593/restaurant/Mobile-Bay/Red-or-White-Wine-Gourmet-Center-Mobile#hours-base> talking about the wonderful food and

wine and how they loved stopping by this neighborhood location for a bite to eat and drink.

The Zoning Ordinance states that the Board has the authority to hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, permit, decision or refusal made by the zoning administrator or other administrative office in the enforcement of this chapter or of Article 4, Section 11-52-70 et seq., of the 1975 Code of Alabama, as amended.

Permitting records show that plumbing and electrical permits were obtained in early 2010 to add a kitchen sink, lavatory, grease trap, dishwasher and can wash facilities, as well as multiple electrical outlets to the 1801 Old Shell Road location. There was no review of these permit requests as it relates to zoning issues, thus there was nothing to alert Planning staff to possible parking ratio changes relating to a possible use of 1801 Old Shell Road for food service. An inspection of the cooking facilities on May 14, 2014 found that there was no commercial stove or hood in the cooking area, and that only a convection oven was in use for the warming of pizzas: it was this inspection, and the fact that around 2/3 of the floor space of the building is dedicated to the display of wine, which led to the determination that the on premise consumption of food and beverages was an accessory use to the main use of retail wine sales.

It should be pointed out that a retail wine store with occasional wine tastings and hors d'oeuvres versus a wine store that has a bar with seating and hot foods available and regular bar hours can create substantially different parking demands. The occasional wine tastings would result in occasional parking requirements in excess of a typical retail store, while a bar with regular hours and seating for approximately 30 people could result in parking requirements exceed a typical retail store nearly every evening that the business is open. The hours of operation of the 1801 Old Shell Road business are Monday – Saturday, 10:30 am to 8:00 pm, with the “wine bar” having hours of operation Tuesday – Saturday, 3:00 pm to 8 pm.

The staff report for the PUD did not address the parking requirements for various uses allowed in a B-2 district, thus there was no discussion of retail versus restaurant parking ratios, and the impacts that changing uses might have on the PUD.

The following statement from the 2005 PUD staff report should be taken into consideration, with emphasis added for this Administrative Appeal:

*Regarding the Planned Unit Development (PUD), the applicant is requesting the PUD to permit shared parking and access between multiple sites. **Shared parking is necessary for the site due to the location of the existing buildings on the site, and the inability to provide adequate parking on-lot for existing buildings on proposed Lots 2 and 3; Lot 1 provides the bulk of the parking required for the entire site under consideration.** As no new construction is proposed, and as small lot commercial development within the neighborhood is typical of the area, the PUD is anticipated to be compatible with the area as proposed.*

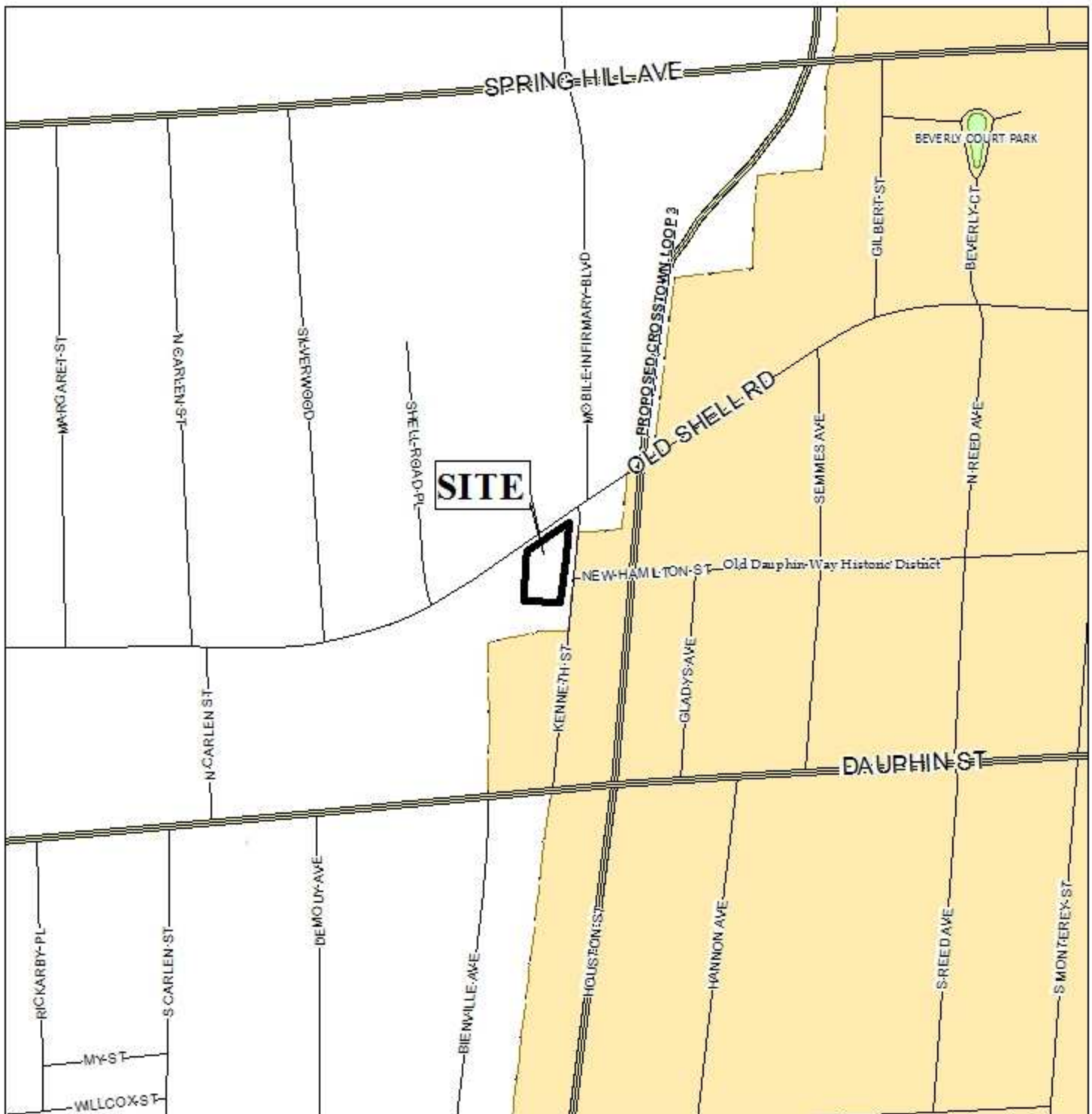
As Lot 1 is the lot of the appellant, it is designated as the primary location of parking for the other two lots composing the PUD. The appellant's placement of a gate on the lot, and the

limited operation of the gate, denies the other participants of the PUD access to 16 of the 22 total parking spaces available: regardless of the use of 1801 Old Shell Road, the parking spaces at 51 Kenneth Street must be available to the two other properties per the approved PUD.

Finally, it should be noted that the tenant of 1801 Old Shell Road, Red or White, will be moving to a different location in late September of this year. In a news article on AL.com from June 19, 2014, the business owners noted that parking was an issue at the current location, and that the kitchen “*could never be what we wanted.*” The same article notes that dinner is served five nights a week, and that up to 40 people can be seated.

RECOMMENDATION: The Board should consider all aspects regarding the Administrative Appeal request. However, it should be noted that the granting or denying of the Appeal *cannot* relieve the appellant of any responsibility to make the parking spaces at 51 Kenneth Street available to the businesses located at 1801 and 1803 Old Shell Road, as part of the 2005 Planned Unit Development: thus the gate to the parking area at 51 Kenneth Street should either remain open, be removed, or be modified with a lock that can be opened by all three participants of the PUD.

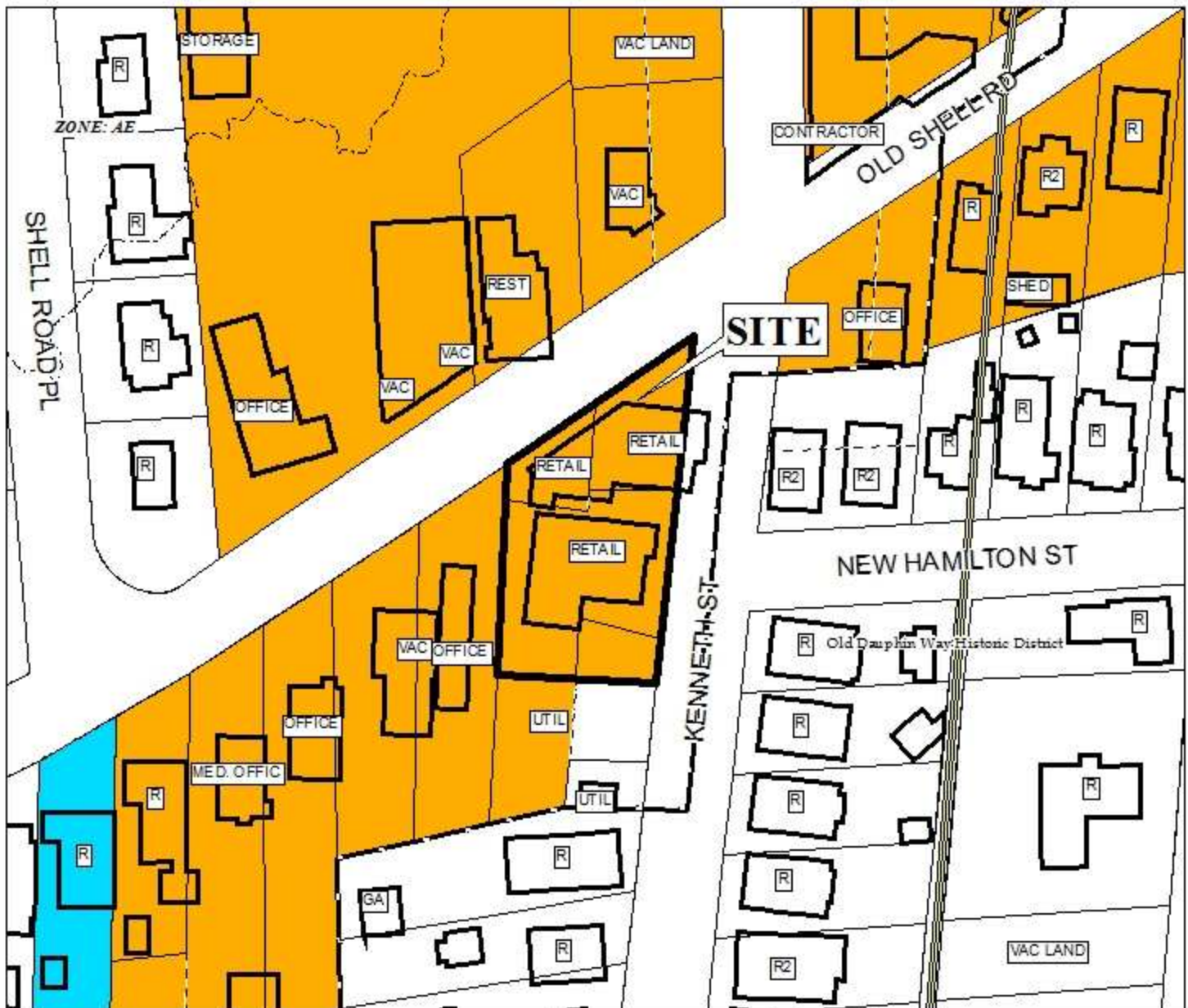
LOCATOR MAP



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BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



Businesses are located to the west, north, and east of the site.
Single family residences are located to the south and east of the site.

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REQUEST Administrative Appeal

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



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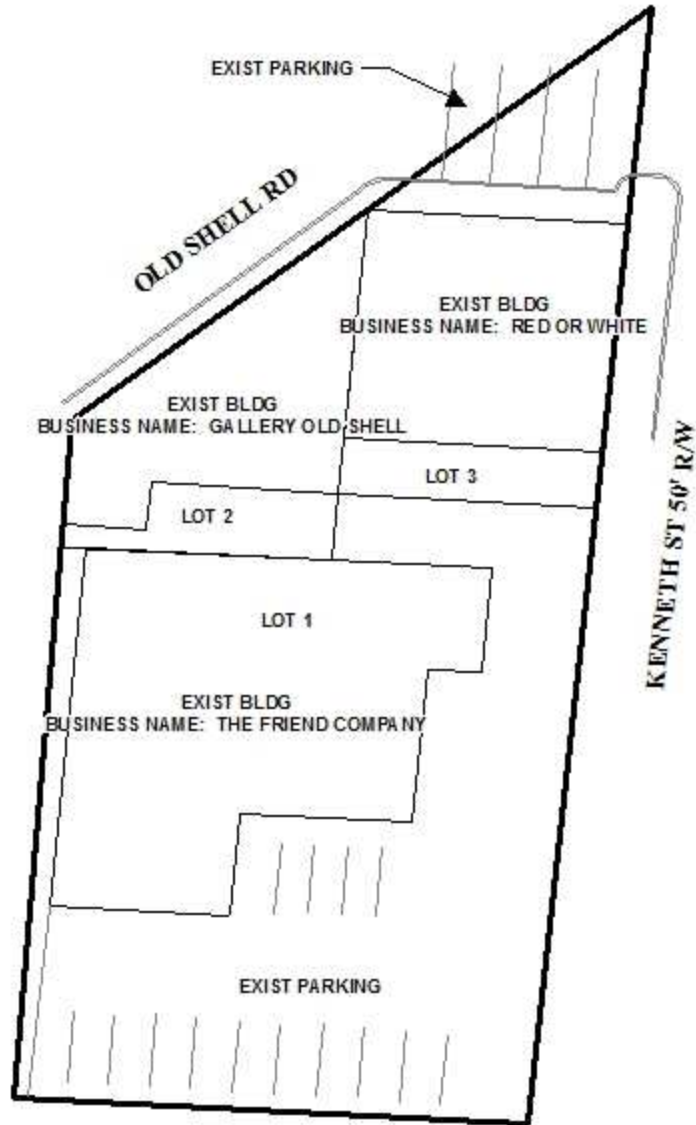
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SITE PLAN



The site plan illustrates the existing structures and parking areas.

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