

APPLICATION NUMBER

5399

A REQUEST FOR

**PARKING AND ACCESS/MANEUVERING SURFACE
VARIANCES TO ALLOW AGGREGATE PARKING AND
ACCESS/MANEUVERING AREAS IN A B-3, COMMUNITY
BUSINESS, DISTRICT; PARKING AND
ACCESS/MANEUVERING AREAS MUST BE ASPHALT,
CONCRETE, OR AN APPROVED ALTERNATIVE PAVING
SURFACE IN B-3, COMMUNITY BUSINESS DISTRICTS.**

LOCATED AT

3221 HALLS MILL ROAD

(South side of Halls Mill Road, 120'± West of Darwood Drive)

APPLICANT

R.D. LOWE'S PAINTING

AGENT

M. DON WILLIAMS ENGINEERING

OWNER

ROBERT DENNIS LOWE

BOARD OF ZONING ADJUSTMENT

JANUARY 2007

The applicant is requesting Parking and Access/Maneuvering Surface Variances to allow aggregate parking and access/maneuvering areas in a B-3, Community Business District; parking and access/maneuvering areas must be asphalt, concrete, or an approved alternative paving surface in B-3, Community Business Districts.

The applicant is a painting contractor and purchased the subject property about six months ago to be used for paint and van storage and as a crew staging site. It is stated that there are no offices located in the existing building as the business is located outside the city limits; however, the City Revenue Department data base indicates the business is a home occupation based at the applicant's residence within the City Limits. There is no customer traffic at the site, but painting crew activity occurs on the site between 7:00 AM and 9:00 AM in the morning, and 4:00PM and 7:00 PM in the afternoon/evening, Monday through Friday. To accommodate the crew parking, the applicant placed approximately 7/10 acre of limestone on the site without permits, stating that he was unaware of storm water and land use regulations regarding paved surfaces. It is now requested that the limestone be allowed to remain as it is stated that it is sufficient to meet the needs of the owner and no further site development is planned at this time. At some time in the future, the site will be developed and will be brought into compliance, but no time frame is furnished. There is currently a two-lot subdivision application pending for the site and is scheduled to be heard at the December 7 Planning Commission meeting. One lot is proposed for the existing building and parking area, and the other lot is proposed for the excess portion and is to remain vacant with respect to this variance application.

The subject site was originally part of the drive-in theater which operated on what is now the Christ Anglican Church site adjacent to the West. The existing building on the site was apparently associated with the theater maintenance and has apparently been vacant since the theater ceased operations in the 1970's since no record of business activity can be found on the City's database. Activities associated with this application would constitute a first-time commercial use of the property requiring full site compliance beyond just paving and access/maneuvering surfaces compliance. It is clearly stated by the applicant "The owners do not plan to develop the site further, and consider the site as undeveloped". Inasmuch as the applicant did not fully recognize the storm water and land use regulations regarding paved surfaces, it is incumbent upon property owners and users to become familiar with what is allowed and required on any property, not just where zoning is enforced, and especially when a change in use of property is involved. The proposed property development must be reviewed by several disciplines to ensure proper compliance is met with regard to storm water management, paving surfaces, landscaping, buffering, and neighborhood impact, among other things.

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.

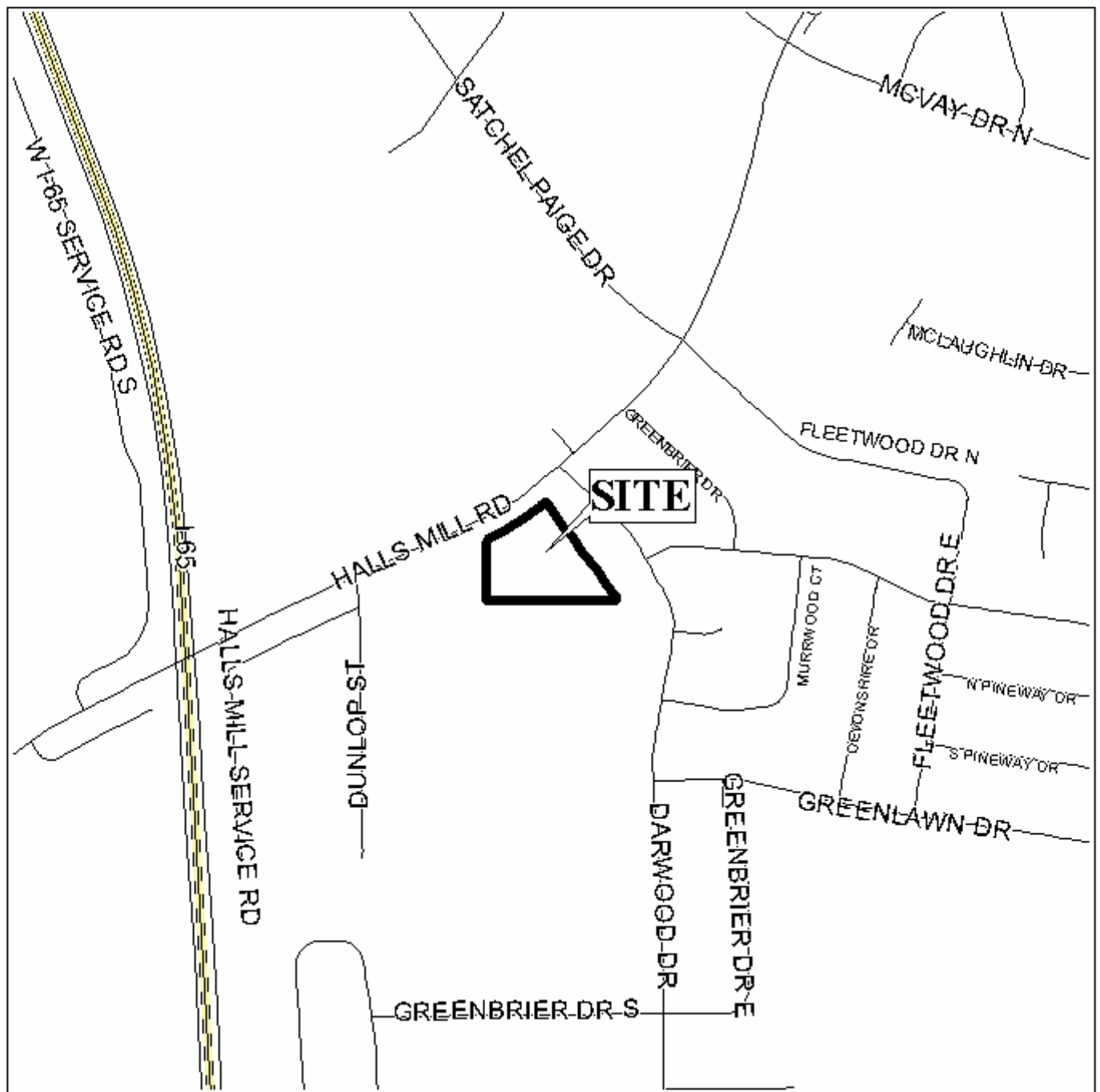
Variances are not intended to be granted frequently. The applicant must clearly show the Board that the request is due to very unusual characteristics of the property and that it satisfies the variance standards. What constitutes unnecessary hardship and substantial justice is a matter to be determined from the facts and circumstances of each application.

The applicant has failed to illustrate that a literal enforcement of the ordinance would result in an unnecessary hardship and has not furnished any plans or proposals to indicate that the variance request would be in conjunction with a phased development of the site. It is simply the applicant's desire to establish a first-time commercial use without meeting any of the required site compliance standards.

RECOMMENDATION 5399**Date: January 8, 2007**

Based on the preceding, it is recommended that this application be denied.

LOCATOR MAP

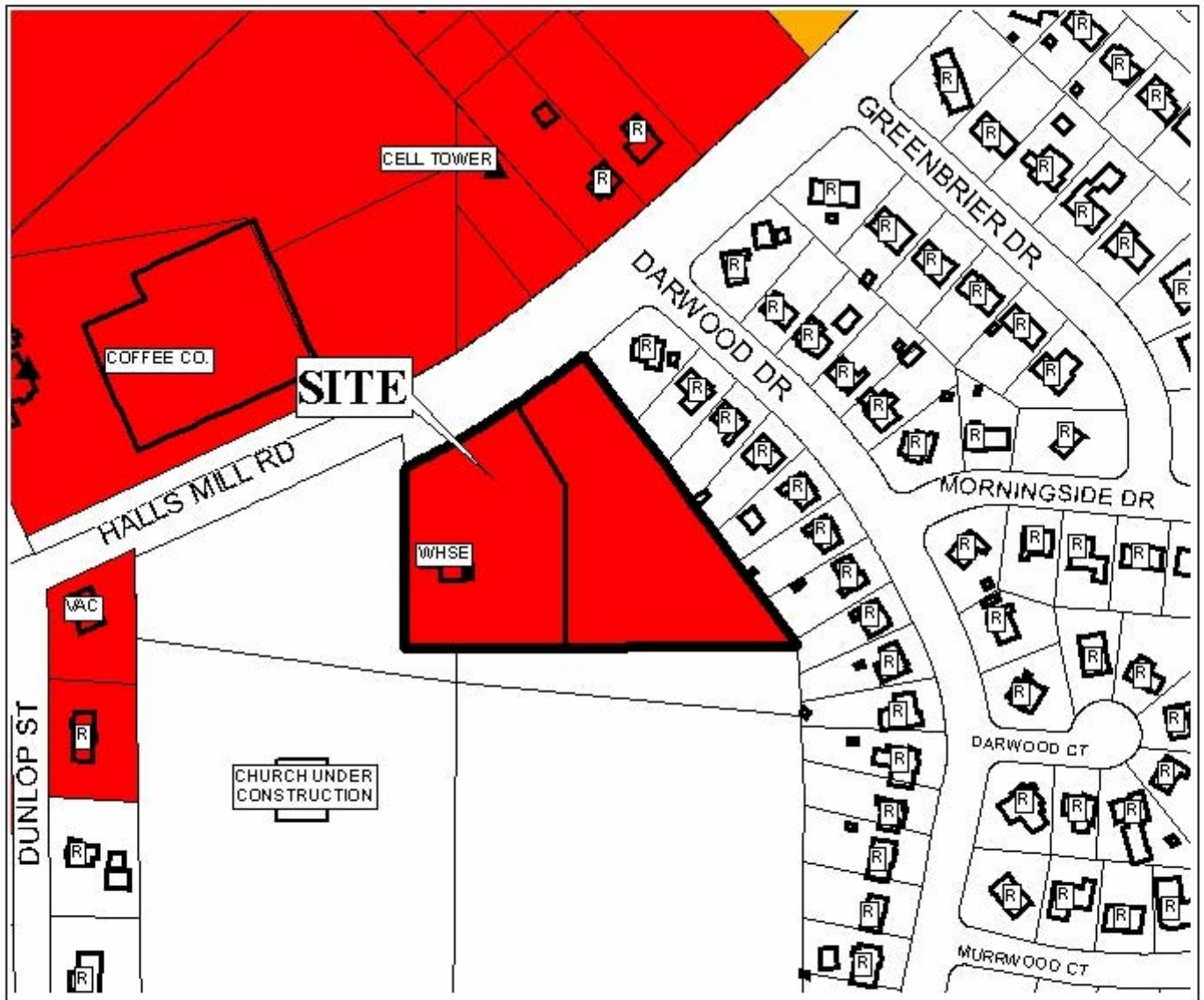


APPLICATION NUMBER 5399 DATE January 8, 2007
APPLICANT R. D. Lowe's Painting
REQUEST Parking, Access/Maneuvering Variance



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BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by single-family residential units.
A coffee company is located to the north of the site.

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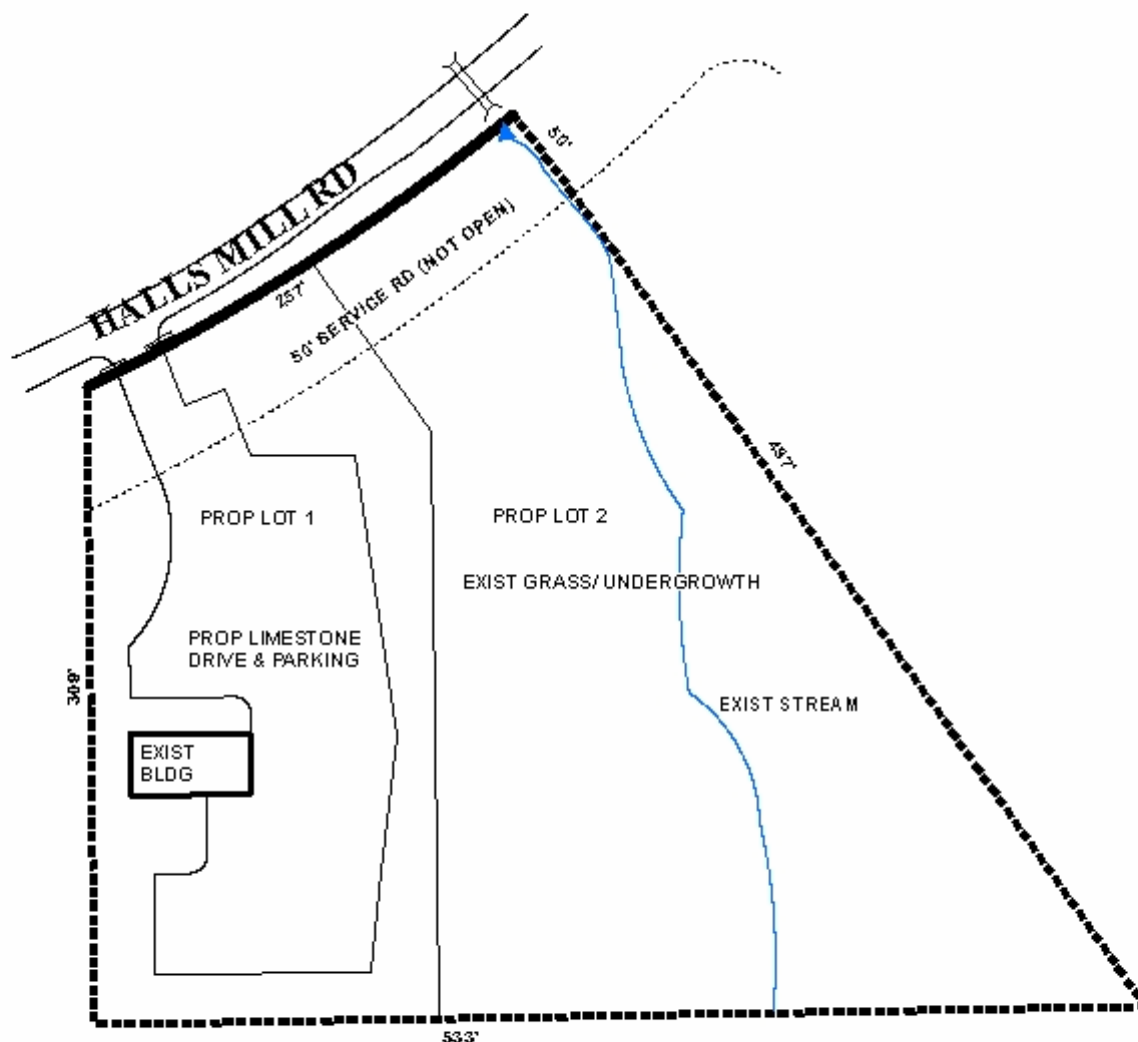
LEGEND

R-1	R-2	R-3	R-A	R-B	H-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 building and parking

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