

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: June 6, 2022**

<u>CASE NUMBER</u>	6453
<u>APPLICANT NAME</u>	Ashley Ellis
<u>LOCATION</u>	104 Colvin Street (West side of Colvin Street, 105'± South of Dauphinwood Drive).
<u>VARIANCE REQUEST</u>	USE: To allow an accessory structure to remain on a site without a dwelling in an R-1, Single-Family Residential District.
<u>ZONING ORDINANCE REQUIREMENT</u>	USE: The Zoning Ordinance requires a dwelling on a site in order to allow an accessory structure in an R-1, Single-Family Residential District.
<u>ZONING</u>	R-1, Single-Family Residential District
<u>AREA OF PROPERTY</u>	0.2± Acre
<u>ENGINEERING COMMENTS</u>	No comments.
<u>TRAFFIC ENGINEERING COMMENTS</u>	No comments.
<u>URBAN FORESTRY COMMENTS</u>	Property to be developed in compliance with state and local laws that pertain to tree preservation and protection on both city and private properties [Act 929 of the 1961 Regular Session of the Alabama Legislature (Acts 1961, p. 1487), as amended, and City Code Chapters 57 and 65]. Private removal of trees in the right-of-way will require approval of the Mobile Tree Commission. Removal of heritage trees from undeveloped residential sites, developed residential sites in historic districts, and all commercial sites will require a tree removal permit.
<u>FIRE DEPARTMENT COMMENTS</u>	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). Fire apparatus access is required to be within 150' of all commercial and residential buildings. A

fire hydrant is required to be within 400' of non-sprinkled commercial buildings and 600' of sprinkled commercial buildings.

CITY COUNCIL **DISTRICT**

District 1

ANALYSIS

The applicant is requesting a Use Variance to allow an accessory structure to remain on a site without a dwelling in an R-1, Single-Family Residential District; the Zoning Ordinance requires a dwelling on a site in order to allow an accessory structure in an R-1, Single-Family Residential District.

The site has been given a Low Density Residential (LDR) land use designation per the Future Land Use Plan and Map adopted by the Planning Commission. 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.

The LDR designation applies to existing residential neighborhoods found mostly west of the Beltline or immediately adjacent to the east side of the Beltline.

The primary land use in the LDR districts is residential, and the predominant housing type is the single-family housing unit, detached or semi-detached, typically placed within a street grid or a network of meandering suburban streets. The density in these districts ranges between zero (0) and six (6) dwelling units per acre.

LDR neighborhoods may also contain small-scale, low-rise multi-unit structures at appropriate locations; as well as complementary retail, parks and civic institutions such as schools, community centers, neighborhood playgrounds, and churches or other religious uses if those uses are designed and sited in a manner compatible with and connected to the surrounding context. The presence of individual ancillary uses should contribute to the fabric of a complete neighborhood, developed at a walkable, bikeable human scale.

It should also be noted that the Future Land Use Plan and Map components of the Map for Mobile Plan are meant to serve as a general guide, not a detailed lot and district plan. In many cases the designation on the new Future Land Use Map may match the existing use of land, but in others the designated land use may differ from what is on the ground today. As such, the Future Land Use Plan and Map allows the Planning Commission and City Council to consider individual cases based on additional information such as the classification request, the surrounding development, the timing of the request, and the appropriateness and compatibility of the proposed use and, where applicable, the zoning classification.

The Zoning Ordinance states that no variance shall be granted where economics is 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 with the request:

Hello, my name is Ashley Ellis. I am asking for a variance to use my garage. A recent hurricane destroyed my house and I need to use my garage to store furniture and personal effects while I rebuild my house. I cannot get a permit without a variance which renders my property useless unless I get a variance. As you will see from my deed there are no easements on the property. Please help me with this variance to use my garage so I may rebuild. Thank you for your time and consideration.

The site was previously developed with a single-family dwelling and an accessory structure. A Building Permit was issued in March 2021 for repairs to the dwelling following hurricane damage and numerous complaints regarding the state of the structure at that time. An additional Building Permit request was made in March 2022 for similar repairs, but also included a request for power to what was described by the permit applicant as a garage. Upon review of the request and subsequent inspections by Building and Electrical Inspectors, it was determined that the dwelling had been demolished and unpermitted work was being done to the aforementioned garage. As such, Zoning denied the request with the following comments:

The garage is an accessory structure now located on a lot by itself, without a principal structure. The Zoning Ordinance does not allow accessory structures to be located on lots without a principal structure. As such, permits for a new dwelling need to be obtained, or a demolition permit for the garage needs to be obtained.

The applicant wishes to retain the accessory structure without building a single-family dwelling at this time, hence the variance request. A permit was issued for repairs to the dwelling, perhaps highlighting the fact that the applicant created a self-imposed hardship by instead demolishing the dwelling, thus rendering the site incompatible with the applicable provisions of the Zoning Ordinance. Moreover, there is nothing preventing a new dwelling from being constructed on the property, thus bringing the site back into compliance with the Zoning Ordinance.

Section 64-1.D.5. of the Zoning Ordinance requires every structure, *other than an accessory structure*, to be maintained on a separate building site. As such, accessory structures are not permitted on separate building sites by themselves. Moreover, Section 64-2 of the Zoning Ordinance defines an accessory structure as “*a detached subordinate, located on the same building site with the main structure, the use of which is incidental to that of the main structure.*” This further supports that the use of an accessory structure is limited to that as one subordinate and incidental to a principle structure. Without a principle structure, use of an accessory structure is therefore not permitted by right.

It should be noted that a request for a similar use at a different location was denied by the Board at its July 12, 2021 meeting. One of the main concerns highlighted by the Board at that time

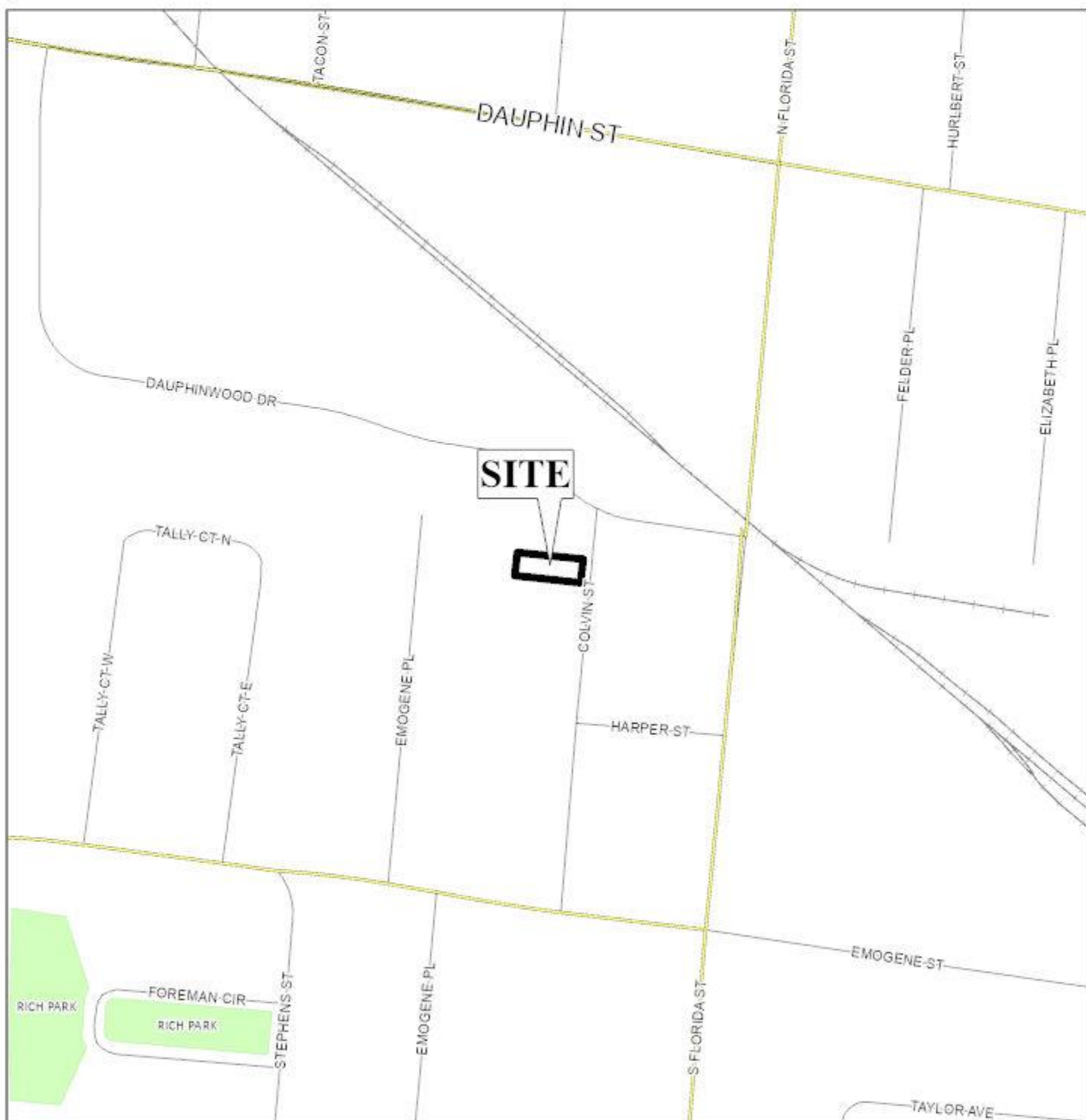
centered on approving the use of an accessory structure without the ability to enforce any condition of approval that would require a principle structure to be developed on the property in the future. Doing so would perhaps result in a situation where the accessory structure would remain out of compliance, thus impacting the surrounding neighborhood. The same concern can be made for the subject site considering the surrounding neighborhood appears to be predominantly in compliance with the applicable zoning regulations.

It should be reiterated that variances are not intended to be granted frequently; and while variances have been granted to properties within the vicinity of the subject site, none were for an accessory structure to remain on a site without a principle structure, in this case a single-family dwelling. Approving the variance would, therefore, be contrary to at least Sections 64-1.D.5. and 64-2 of the Zoning Ordinance. As such, approving the request may establish a precedent by which less desirable variance requests could be approved in the future, especially if no special conditions or hardship to an individual property exist. The variance should, therefore, be considered for denial.

RECOMMENDATION: Based upon the preceding, Staff recommends to the Board the following findings of fact for Denial:

- 1) Approving the variance will be contrary to the public interest in that it will be contrary to at least Section 64-1.D.5. and Section 64-2 of the Zoning Ordinance regarding accessory structures;
- 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 applicant was issued a Building Permit to repair the principle structure, but instead demolished it, and also because there is nothing preventing the construction of a new dwelling to bring the site back into compliance with the Zoning Ordinance yet no application for new construction of a single-family residence has been received; 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 surrounding properties are developed predominantly in compliance with applicable zoning regulations.

LOCATOR MAP



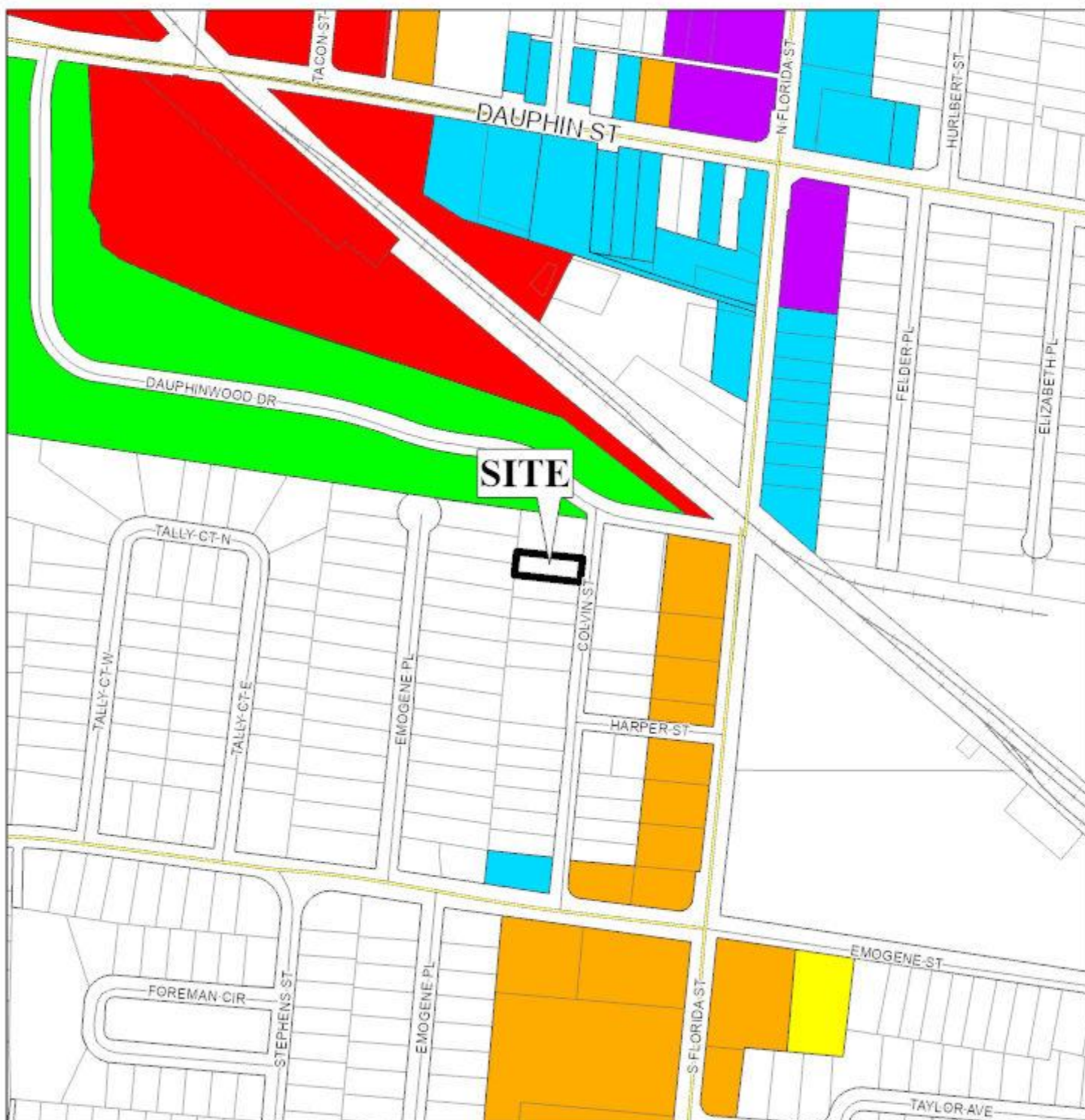
APPLICATION NUMBER 6453 DATE June 6, 2022

APPLICANT Ashley Ellis

REQUEST Use Variance



LOCATOR ZONING MAP



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FLUM LOCATOR MAP



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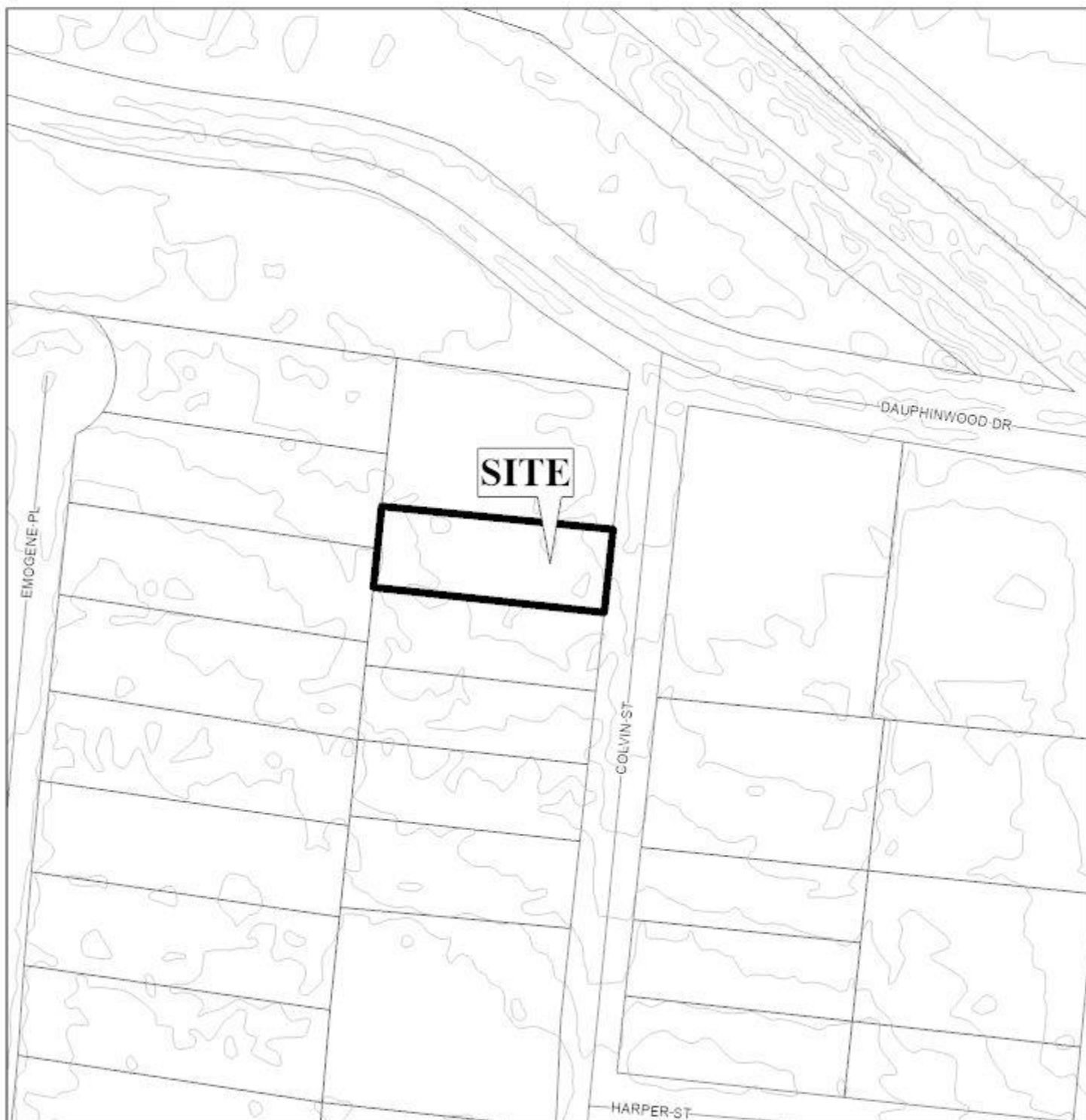
REQUEST Use Variance

Layer2

- | | | | |
|--|--|--|--|
| Low Density Residential | Neighborhood Center - Traditional | Traditional Corridor | Heavy Industry |
| Mixed Density Residential | Neighborhood Center - Suburban | Downtown Waterfront | Institutional |
| | Light Industry | | Parks & Open Space |
| | | | Water Dependent |



ENVIRONMENTAL LOCATOR MAP



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APPLICANT Ashley Ellis

REQUEST Use Variance



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units and commercial units.

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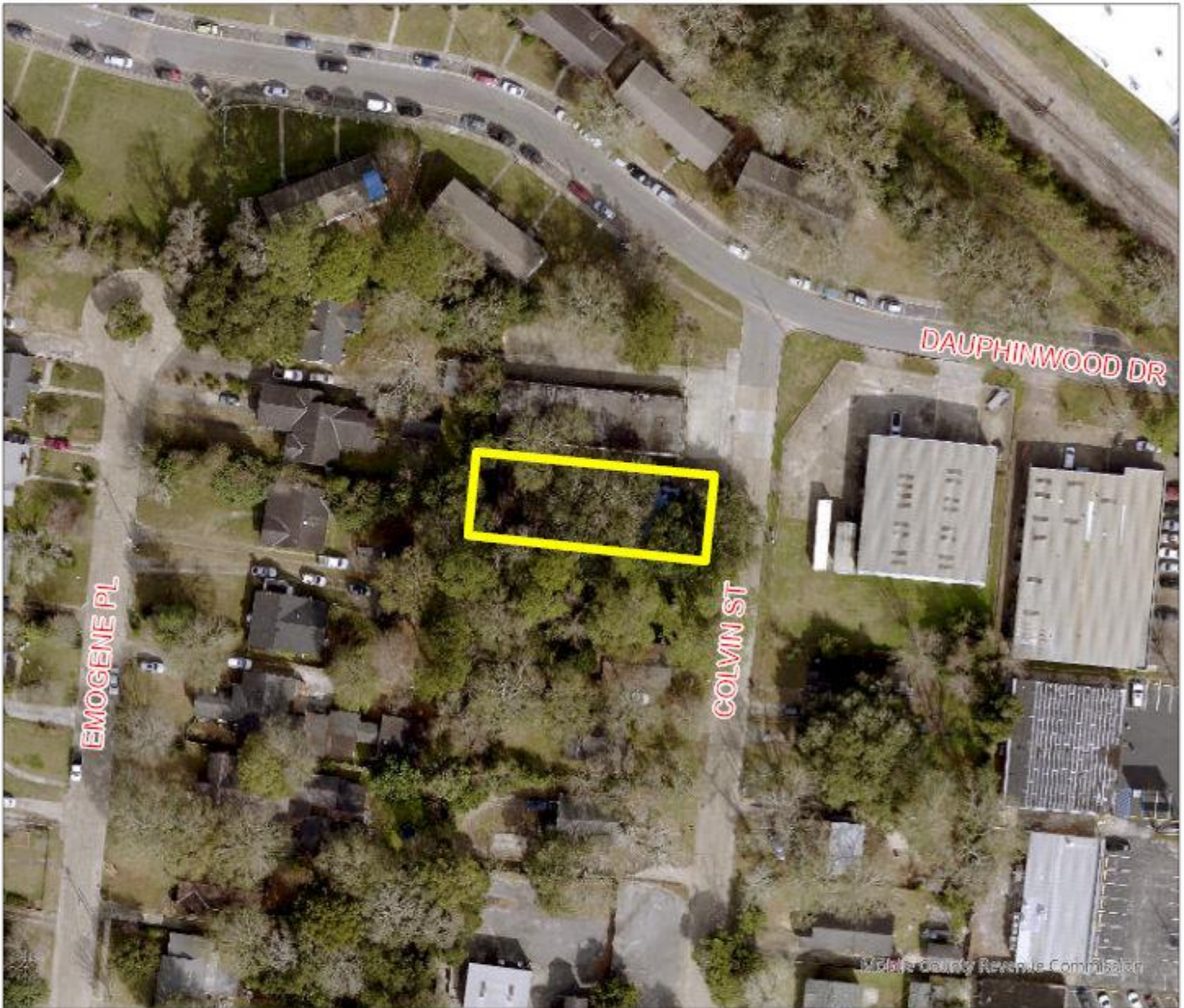
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R-A	R-3	T-B	B-2	B-5	MUN	SD-WH	T5.1
R-1	R-B	B-1	B-3	I-1	OPEN	T3	T5.2
R-2	H-B	LB-2	B-4	I-2	SD	T4	T6



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING AERIAL

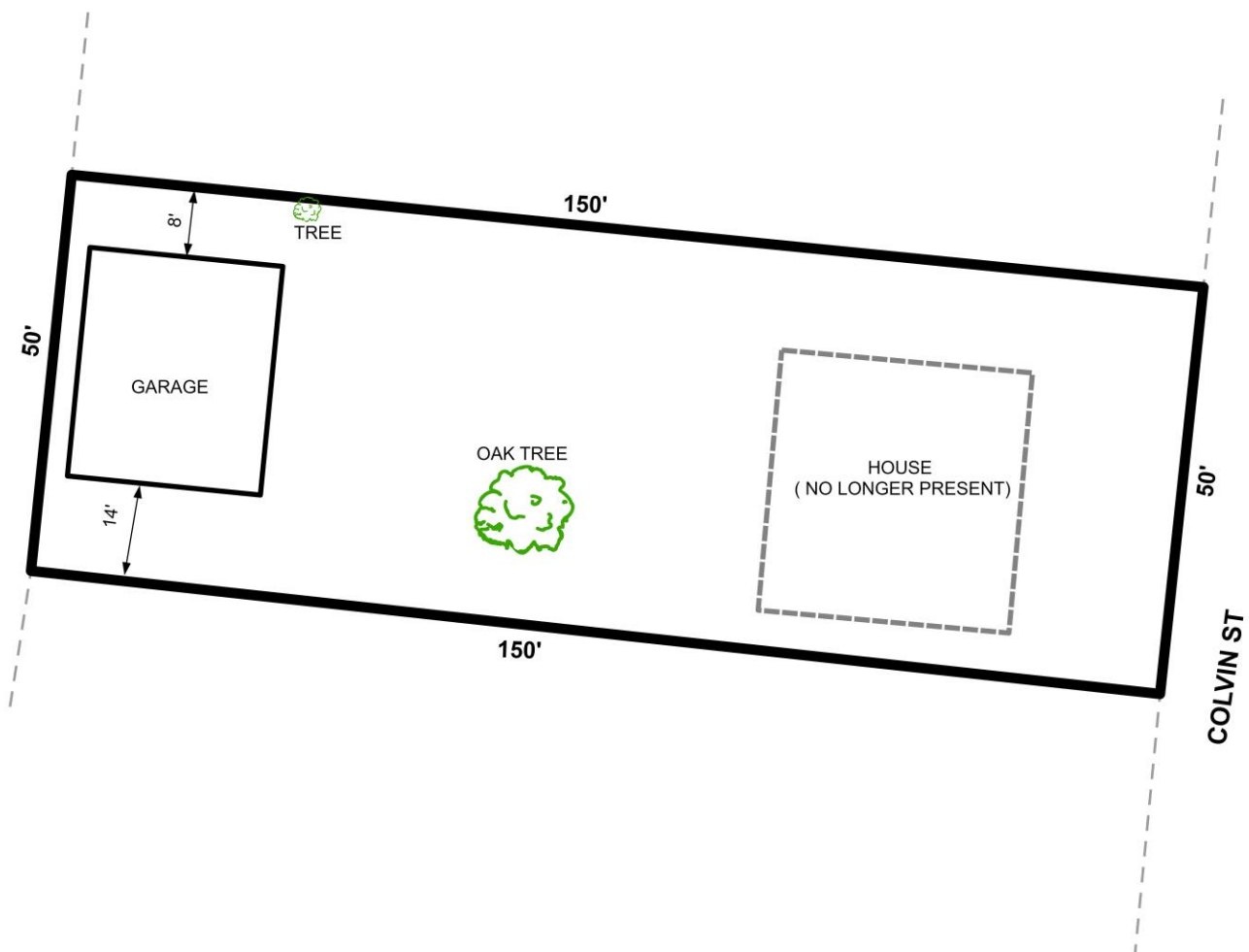


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SITE PLAN



The site plan illustrates the existing garage, trees, and demoed house.

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