

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: January 9, 2023****CASE NUMBER**

6488/3373/2960/2766/2733/2696/730

APPLICANT NAME

Berwyn 163 LLC (Gerald Byrd, Agent)

LOCATION

2 North Florida Street and 2504 Dauphin Street
(Northeast corner of North Florida Street and Dauphin Street, extending to the West side of Hurlbert Street, 145'± North of Dauphin Street).

VARIANCE REQUEST

USE: To allow off-site parking in an R-1, Single-Family Residential District for a commercial site in a B-1, Buffer Business District.

**ZONING ORDINANCE
REQUIREMENT**

USE: The Zoning Ordinance does not allow off-site parking in an R-1, Single-Family Residential District, and requires all parking to be on-site for a commercial site in a B-1, Buffer Business District.

ZONING

R-1, Single-Family Residential and B-2, Buffer Business District

AREA OF PROPERTY

0.2± Acre

**ENGINEERING
COMMENTS**

If this variance is approved for use the applicant will need to have the following conditions met:

1. Any proposed site improvements will require a Land Disturbance Permit be submitted for review and approval.
2. The existing drainage patterns and surface flow characteristics should not be altered so as to have a negative impact on any adjoining properties or any public rights-of-way.
3. Any and all proposed land disturbing activity within the property will need to be in conformance with Mobile City Code, Chapter 17, Storm Water Management and Flood Control); the City of Mobile, Alabama Flood Plain Management Plan (1984); and, the Rules For Erosion and Sedimentation Control and Storm Water Runoff Control.
4. Applicant agrees to install adequate BMPs during construction to protect from sediment/pollutants leaving the site.
5. Designated handicapped accessible spaces and routes must be paved (i.e. concrete, asphalt).

**TRAFFIC ENGINEERING
COMMENTS**

No comments.

**URBAN FORESTRY
COMMENTS**

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.

**FIRE-RESCUE 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). 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 off-site parking in an R-1, Single-Family Residential District for a commercial site in a B-1, Buffer Business District; the Zoning Ordinance does not allow off-site parking in an R-1, Single-Family Residential District, and requires all parking to be on-site for a commercial site in a B-1, Buffer Business District.

It has been brought to staff's attention that there are property owners within 300-feet of the subject site that did not receive notifications as legally required, therefore the application must be heldover to the January 9, 2023 meeting to allow corrected notices to be sent.

RECOMMENDATION: Staff recommends the application be heldover to the January 9, 2023 meeting, with revisions due by December 12th to address the following:

- 1) Provision of a complete list of mailing labels and associated fees.

Revised for the January 9th meeting:

The application was heldover by the Board from the December 5th meeting due to improper notifications. The applicant has provided the missing labels and associated fees; therefore, the Board may now consider the application.

The site has been given Traditional Center (TC) and Mixed Density Residential (MxDR) land use designations, per the Future Land Use Plan and Map, adopted on May 18, 2017 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.

MIXED DENSITY RESIDENTIAL (MxDR)

This 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.

These residential areas should offer a mix of single family homes, townhouses, 2- to 4- residential unit buildings, accessory dwellings, and low- and mid-rise multifamily 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 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 and convenient access to daily necessities

TRADITIONAL CORRIDOR (TC)

This land use designation generally applies to transportation corridors east of I-65, which serve as the primary commercial and mixed-use gateway to Downtown and the City's traditional neighborhoods (equivalent to Map for Mobile's Traditional Neighborhoods).

Depending on their location (and as allowed by specific zoning), TC designations incorporate a range of moderately scaled single-use commercial buildings holding retail or services; buildings that combine housing units with retail and/or office; a mix of housing types including low- or mid-rise multifamily structures ranging in density from 4 to 10 du/ac; and attractive streetscapes and roadway designs that safely accommodate all types of transportation – transit, bicycling, walking, and driving. In these areas, special emphasis is placed on the retention of existing historic structures, compatible infill development, and appropriate access management.

It should 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 subject site has been the subject of several variance applications over the years, with the majority being for the portion of the site fronting Dauphin Street; rezonings and redevelopment have made these previous variances moot. In 1973, an application was submitted to allow a piece of property fronting Hurlbert Street to be utilized as off-site parking for a dentist office, which the Board denied.

At the Board's May 1, 1978 meeting, an application was considered to allow construction of the existing structure at 2504 Dauphin Street in an R-1 district, with a reduced side yard setback. The site plan submitted with this application specifically labeled the residential lot fronting Hurlbert Street as "not included", and did not depict any improvements on that property. The property at 2504 Dauphin Street was later rezoned from R-1 to B-1 in 1980.

Based on aerial photographs and the 1978 variance, it appears the rear portion of the site fronting Hurlbert Street was developed into a parking lot sometime between 1978 and 1984 without any documented approvals. The commercial development at 2 North Florida Street and 2504 Dauphin Street is under contract to be sold, and the prospective owner wishes to obtain official approval for the non-conforming, non-compliant parking area.

The lot fronting Hurlbert Street is 8,117± square feet, with the portion being utilized as parking being approximately 2,910± square feet, or 35.8% of the total lot. The portion used as parking contains six (6) marked parking spaces and maneuvering area, and is separated from the remainder of the lot with an existing privacy fence, and no access to Hurlbert Street. The applicant is not proposing to enlarge the existing parking area, or make any other changes to the existing conditions on the site, including how the site is accessed.

The applicant states the following:

THE OWNERS ARE UNDER CONTRACT TO SELL THIS PROPERTY AND THE PURCHASERS ARE PROPOSING TO RECONDITION THE EXISTING ASPHALT PARKING WHICH HAS EXISTED SINCE 1977. A SMALL PORTION (50' X 59') OF THE PARKING IS CONSTRUCTED ON THE REAR OF A LOT THAT IS ZONED R-1 AND THE PURCHASERS WISH TO HAVE THIS AREA APPROVED BY THE CITY.

YOUR CONSIDERATION FOR APPROVAL OF THIS REQUEST IS APPRECIATED.

The existing commercial structure located at 2504 Dauphin Street is approximately 9,121± square feet, thus requires 31 parking spaces. The site plan submitted depicts 36 parking spaces on the

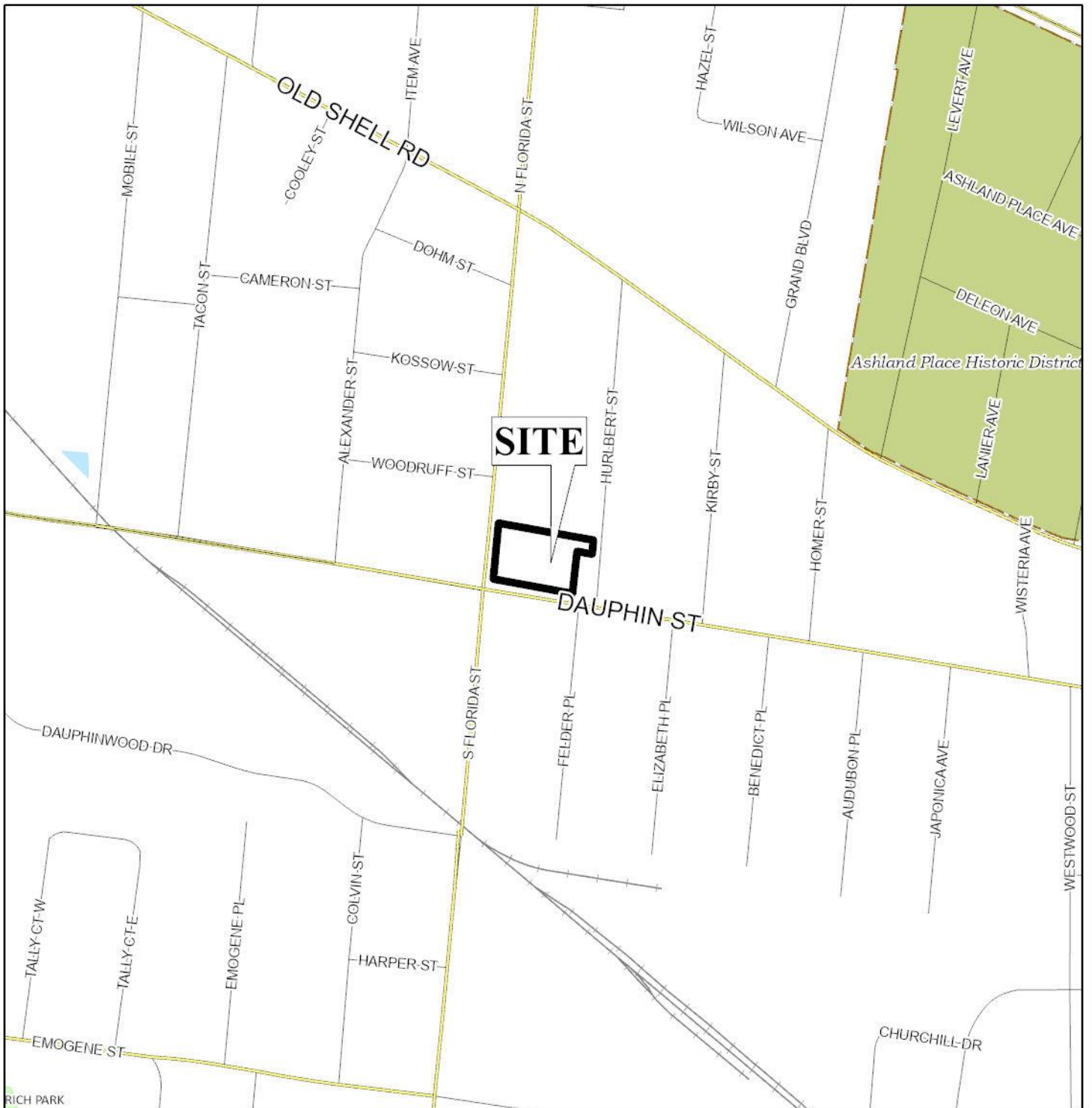
commercially zoned portion of the site, therefore sufficient parking is available without the use of the residentially zoned area. It should be noted however, that if the applicant were to be required to remove the non-conforming parking area, the remaining parking would have to be reconfigured to allow for compliant access, however the site will maintain parking compliance if said reconfiguration requires the loss of no more than five (5) parking spaces.

The encroachment of a commercial parking lot onto a residentially zoned property is not desired, as demonstrated by the Board's previous denial of the use of the subject site as use for parking in 1973. Furthermore, if approved, there will be a remainder of the residential lot fronting Hurlbert Street that would no longer be available to build a house. It is unfortunate that the applicant has inherited a parking situation that is a zoning violation, but it is not the result of a unique hardship associated with the property.

RECOMMENDATION: *Based upon the application as submitted, 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 approval of the request will result in an unbuildable residential lot;*
- 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 to residents in the surrounding area; 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, as it will be granting legitimacy to a parking lot built after expressly being denied by the Board of Zoning Adjustment.*

LOCATOR MAP



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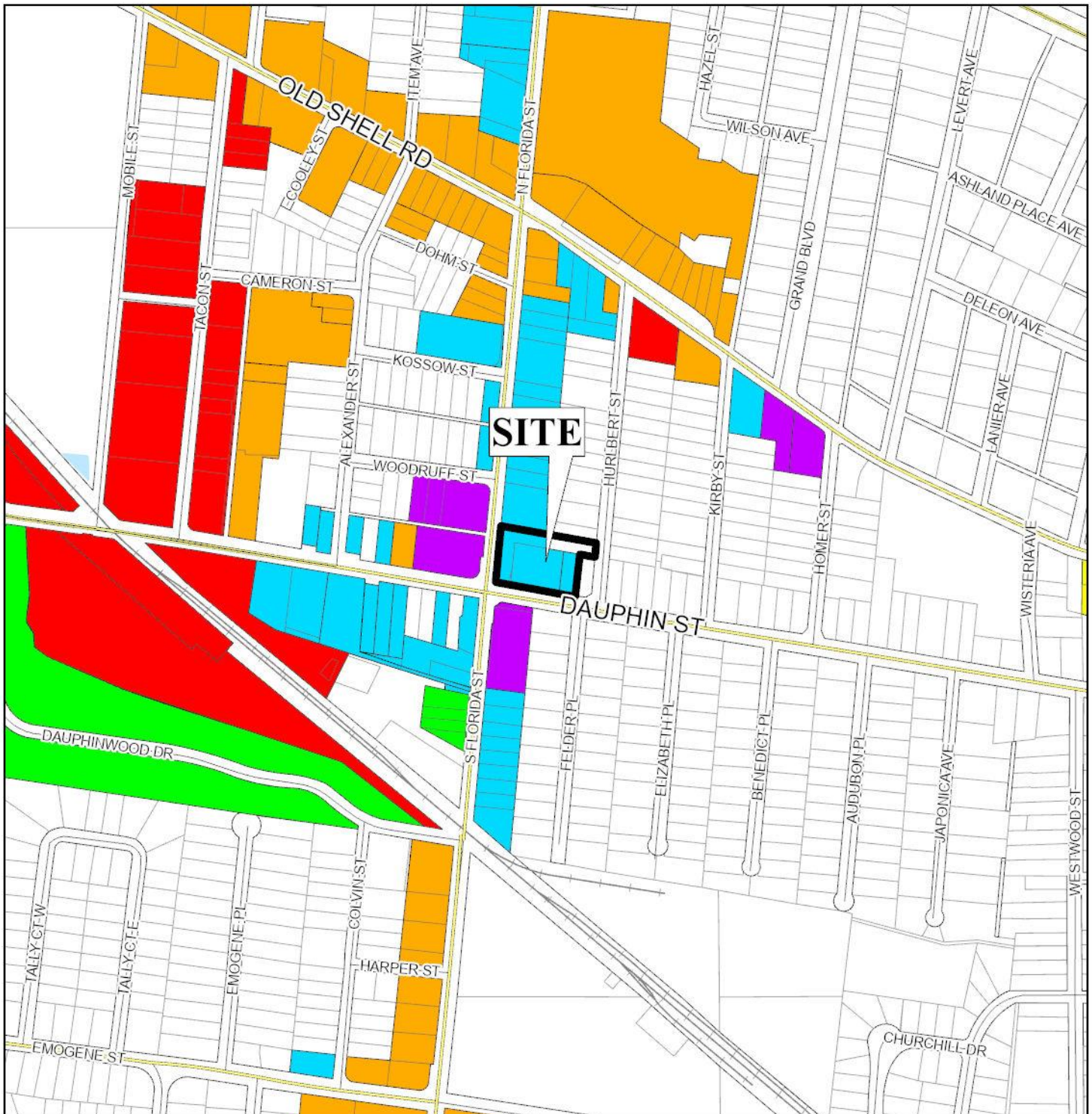
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REQUEST Use Variance



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LOCATOR ZONING MAP



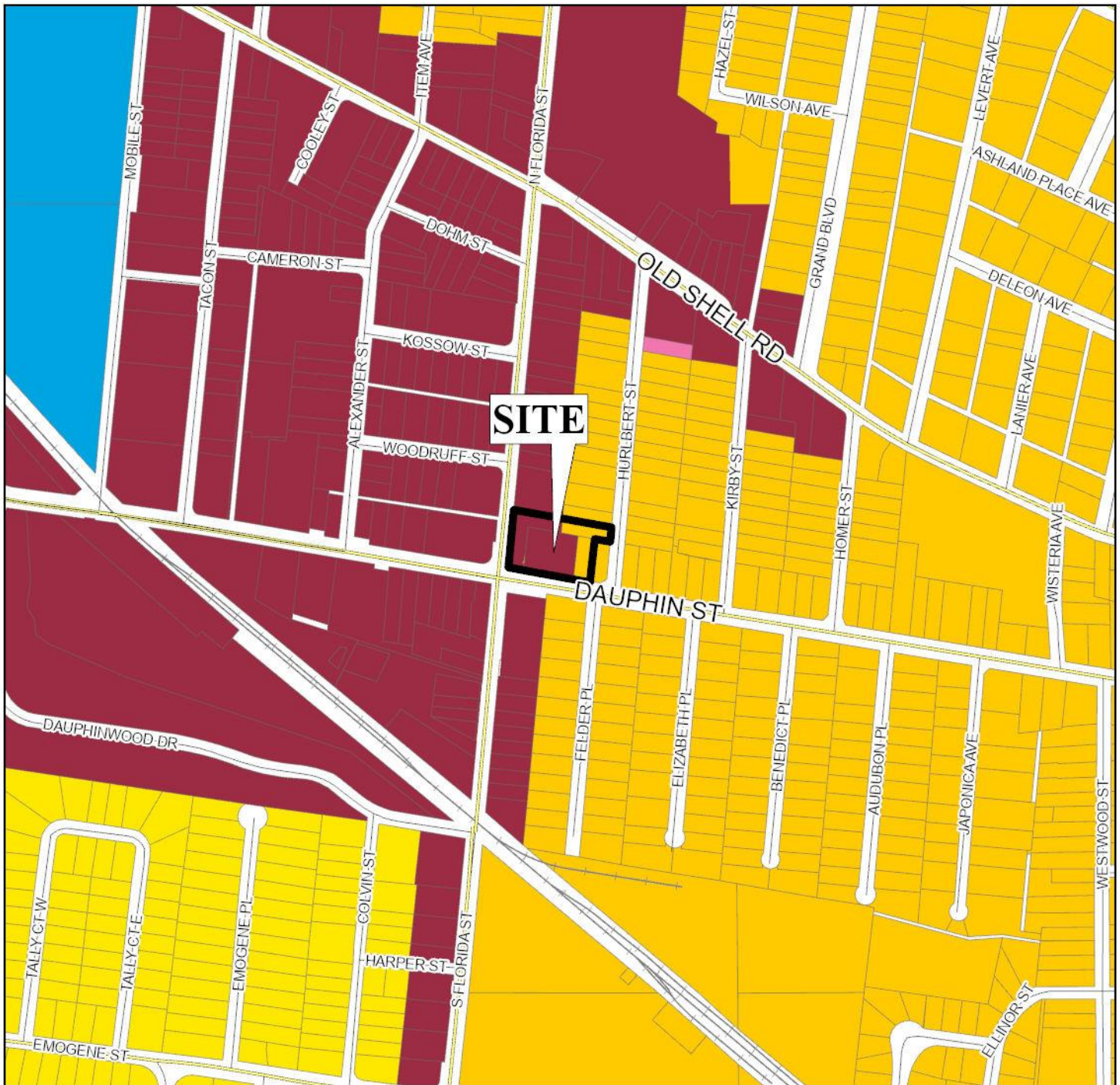
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FLUM LOCATOR MAP



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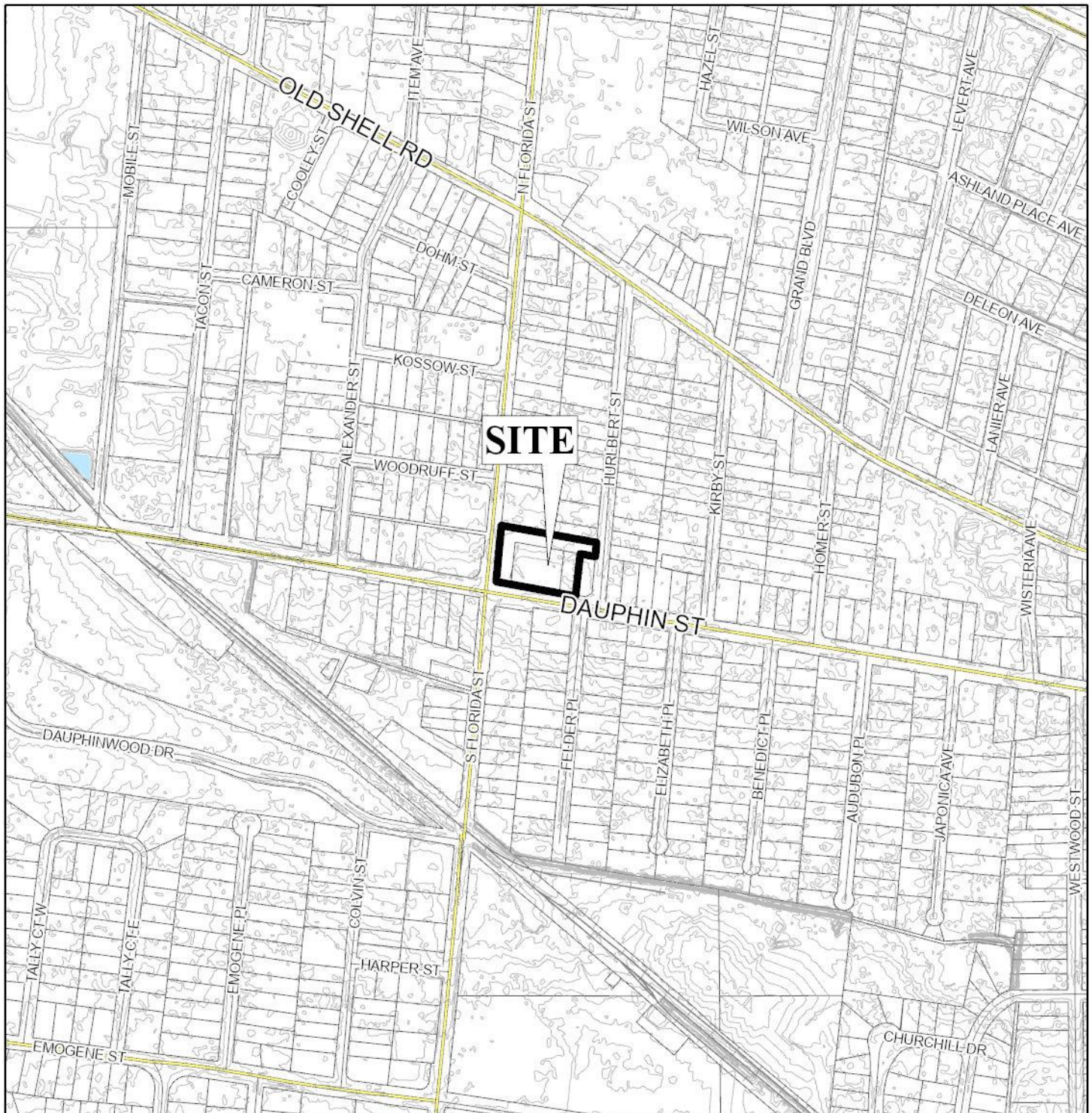
FLUM

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



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ENVIRONMENTAL LOCATOR MAP



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BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by commercial and 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

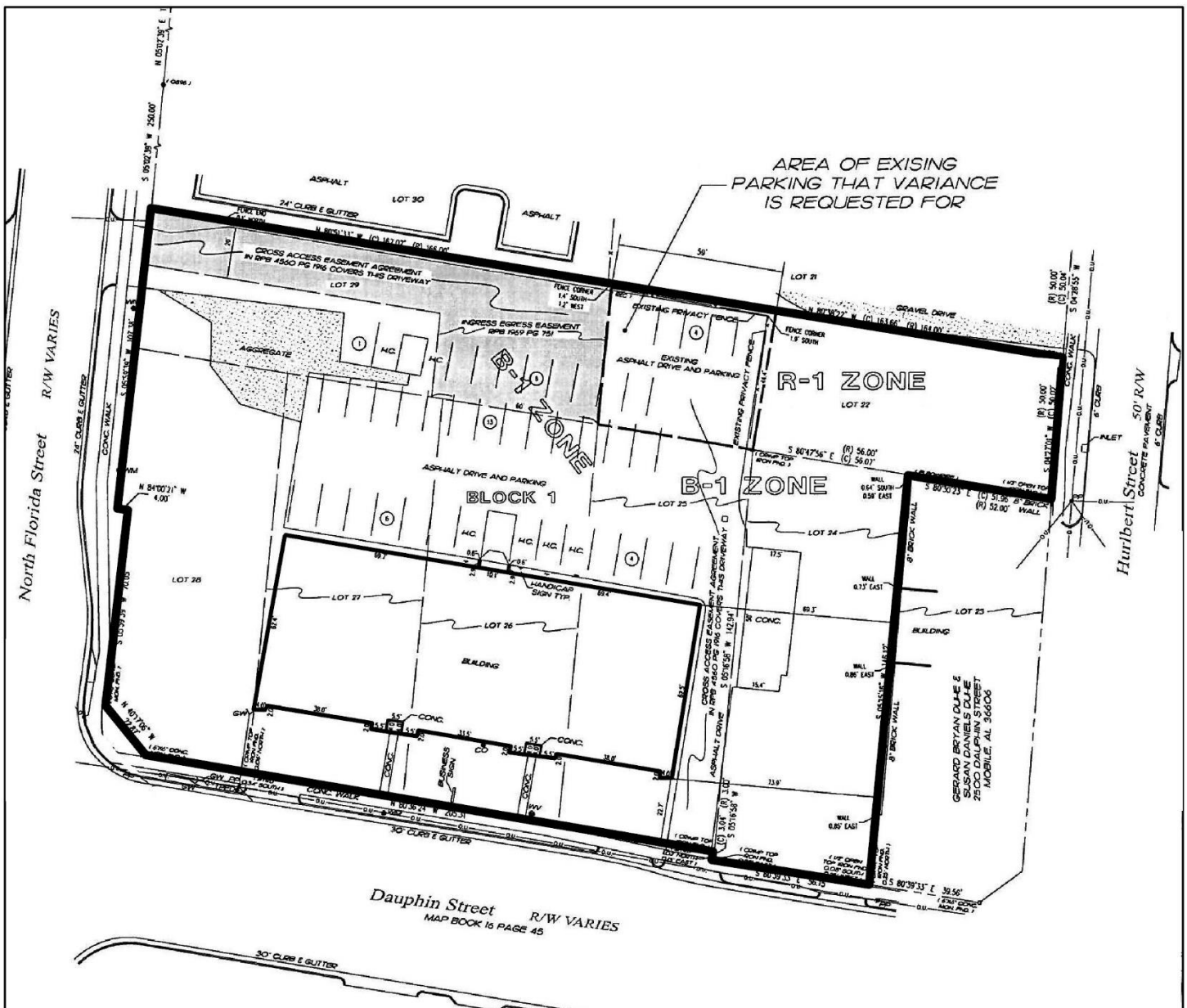


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SITE PLAN



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

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