

**BOARD OF ZONING ADJUSTMENT  
STAFF REPORT****Date: September 10, 2018****CASE NUMBER**

6191

**APPLICANT NAME**

J.F. Weston, Jr.

**LOCATION**

111 Levert Avenue  
(West side of Levert Avenue, 40'± South of Deleon Avenue).

**VARIANCE REQUEST**

**SWIMMING POOL SETBACK VARIANCE:** To allow a 6'-deep swimming pool to be constructed 5.5' from a rear property line in an R-1, Single-Family Residential District.

**ZONING ORDINANCE  
REQUIREMENT**

**SWIMMING POOL SETBACK VARIANCE:** The Zoning Ordinance requires swimming pools be constructed a distance equal to at least one (1) foot greater than the maximum depth of the swimming pool from any side or rear property line in an R-1, Single-Family Residential District.

**ZONING**

R-1, Single-Family Residential District

**AREA OF PROPERTY**

0.5± Acres

**CITY COUNCIL  
DISTRICT**

District 1

**ENGINEERING  
COMMENTS**

No comments.

**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 (State Act 2015-116 and City Code Chapters 57 and 64).

**ANALYSIS**

The applicant is requesting a Swimming Pool Setback Variance to allow a 6'-deep pool to be constructed 5.5' from a rear property line in an R-1,

Single-Family Residential District; the Zoning Ordinance requires swimming pools be constructed a distance equal to at least one (1) foot greater than the maximum depth of the swimming pool from any side or rear property line in an R-1, Single-Family Residential District.

It should be noted that revised drawings were provided by the applicant after publication of the agenda for the September 10, 2018 meeting of the Board of Zoning Adjustment, thus the description of the request is different. The applicant is requesting to allow a 6'-deep pool to be constructed 2.0' from a rear property line instead of 5.5,' citing their desire to not disturb the root system of a 36" cedar tree on the property as justification for their request:

*"THE OWNER IS REQUESTING PERMISSION TO INSTALL A SWIMMING POOL BETWEEN THE REAR PORCH OF THEIR DWELLING AND THE REAR PROPERTY LINE. THE CITY CODE REQUIRES A SETBACK OF 'DEPTH OF POOL PLUS ONE FOOT.' THE DESIRED LOCATION FOR THE POOL IS PLACING THE CORNER OF THE SHALLOW END 2.0' FROM THE PROPERTY LINE AND HAVE THE POOL PARALLEL TO THE HOUSE. THIS PLACES THE CORNER OF THE DEEP END 3.7' FROM THE PROPERTY LINE. THE TOP OF THE POOL WILL BE CONSTRUCTED 1.0' ABOVE THE LEVEL OF THE EXISTING GROUND THUS MAKING THE POOL ON 2.0' DEEP AT THE SHALLOW END AND 5.0' AT THE DEEP END. THERE IS AN OPEN, BUT UNIMPROVED ALLEY THAT ADJOINS THE REAR PROPERTY LINE THAT IS A BUFER FOR THE NEIGHBORS ON THE WEST SIDE OF THE ALLEY.*

*THE OWNERS DO NOT WANT TO REMOVE OR DISTURB THE ROOT SYSTEM OF THE 36" CEDAR TREE ON THE NORTH SIDE OF THE DWELLING OR THAT AREA COULD BE CONSIDERED FOR THE POOL. DIAGRAM 'A' ON ATTACHMENT ILLUSTRATES THE CITY CODE FOR A 6.0' DEEP POOL. DIAGRAM 'B' ILLUSTRATES THE LOCATION OF THE POOL IN THIS VARIANCE REQUEST.*

*YOUR CONSIDERATION OF THIS REQUEST IS APPRECIATED."*

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.

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.

It should also be noted that the site is within the Ashland Place Historic District, therefore this request is also subject to review by the Architectural Review Board. A Certificate of Appropriateness for construction of the pool will be required, if approved.

Section 64-4.D.12.a. of the Zoning Ordinance requires a swimming pool to be located from any side or rear property line a distance equal to at least one (1) foot greater than the maximum depth of the swimming pool. The site plan illustrates a proposed pool 3.7' from the rear property line of the subject site, extending South to rest within 2' of the rear property line. The maximum depth of the proposed pool is six (6) feet, thus the pool, and the area around the pool, is required to be set back a minimum of seven (7) feet from the rear property line.

Regarding the applicant's wish to preserve the existing 36" cedar tree as justification for the request, staff cannot substantiate that a pool with a compliant setback would be detrimental to the tree's root system. Staff is aware that there may be limitations on where the pool may be placed with regards to the size of the subject site's rear yard, thus suggesting a possible hardship; however, the applicant has not presented evidence that a smaller or redesigned pool could not meet the requirements of the Zoning Ordinance while also maintaining the existing tree's roots. The applicant, instead, simply wishes to have a pool constructed too close to the property line.

Finally, it should be noted that no Variance has been granted for any similar request within the Vicinity of the subject site, the exceptions being requests for reduced fence and masonry wall setbacks. Additionally, no hardship associated with the property has been identified by the applicant, and it should be reiterated that Variances are not intended to be granted frequently. As such, approving the Variance request would be contrary to at least Section 64-4.D.12.a. of the Zoning Ordinance and may set a precedent by which future, less desirable Variance requests could be approved 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 Section 64-4.D.12.a. of the Zoning Ordinance regarding swimming pool setbacks in an R-1, Single-Family Residential District;
- 2) Special conditions may exist, such as a rear yard with minimal space in which to construct a pool, but not in such a way that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship since a smaller or redesigned pool could meet the requirements of the Zoning Ordinance while preserving the cedar tree; 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 it may establish a precedent by which future, less desirable Use Variance requests could be approved if no special conditions or hardships to an individual property exist.

***Revised for the October 1<sup>st</sup> meeting:***

*The request was heldover from the September 10<sup>th</sup> meeting so that proper notification could be given for the change in requested setbacks from 5.5-feet to 2.0-feet.*

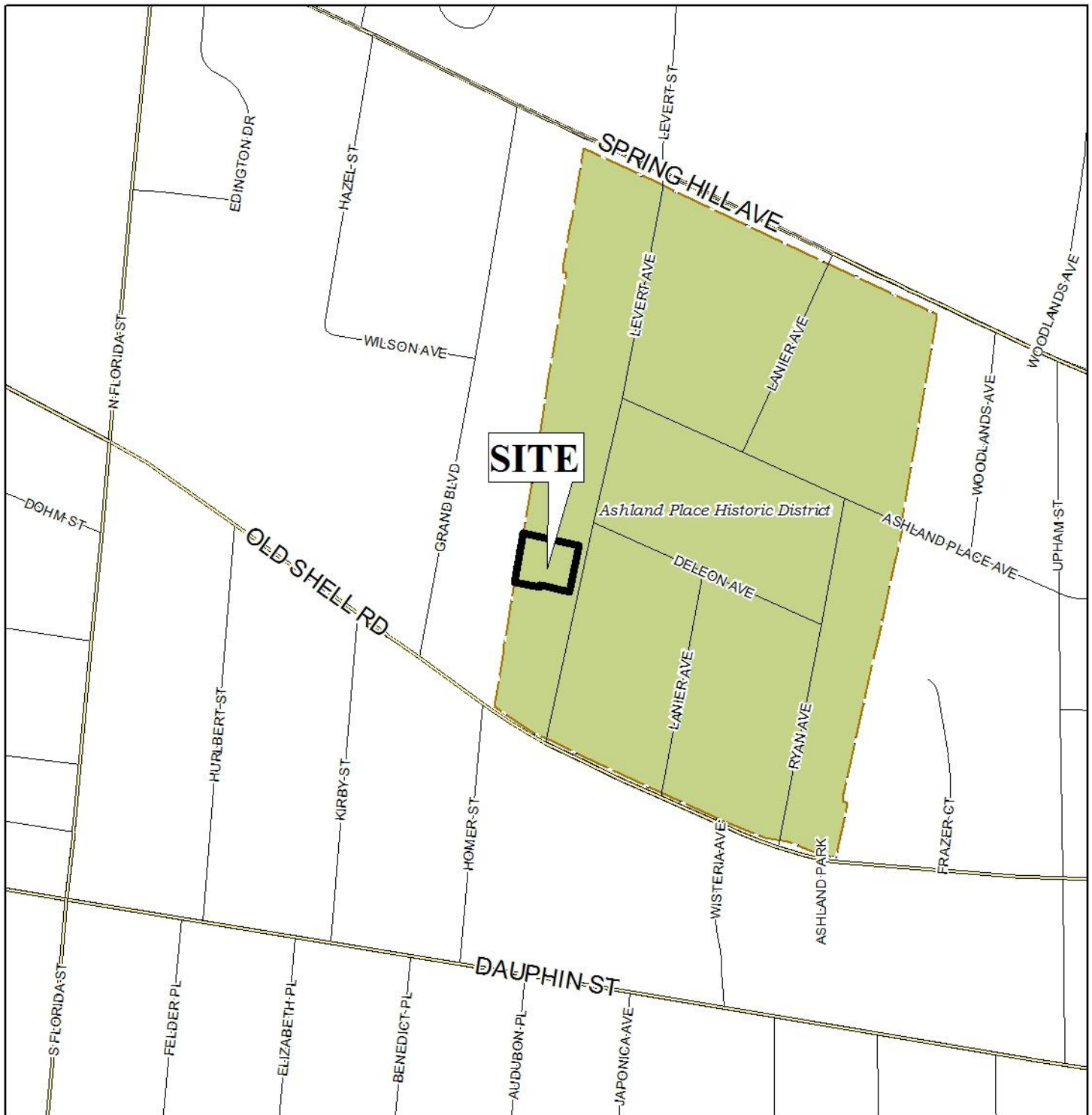
*Updated notifications have been sent by the Planning and Zoning Department, but no additional information was provided by the applicant justifying the request; therefore the original findings of fact and recommendation for denial still stand.*

**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 Section 64-4.D.12.a. of the Zoning Ordinance regarding swimming pool setbacks in an R-1, Single-Family Residential District;*
- 2) *Special conditions may exist, such as a rear yard with minimal space in which to construct a pool, but not in such a way that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship since a smaller or redesigned pool could meet the requirements of the Zoning Ordinance while preserving the cedar tree; 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 it may establish a precedent by which future, less desirable Use Variance requests could be approved if no special conditions or hardships to an individual property exist.*

# LOCATOR MAP



APPLICATION NUMBER 6191 DATE October 1, 2018

APPLICANT J. F. Weston, Jr.

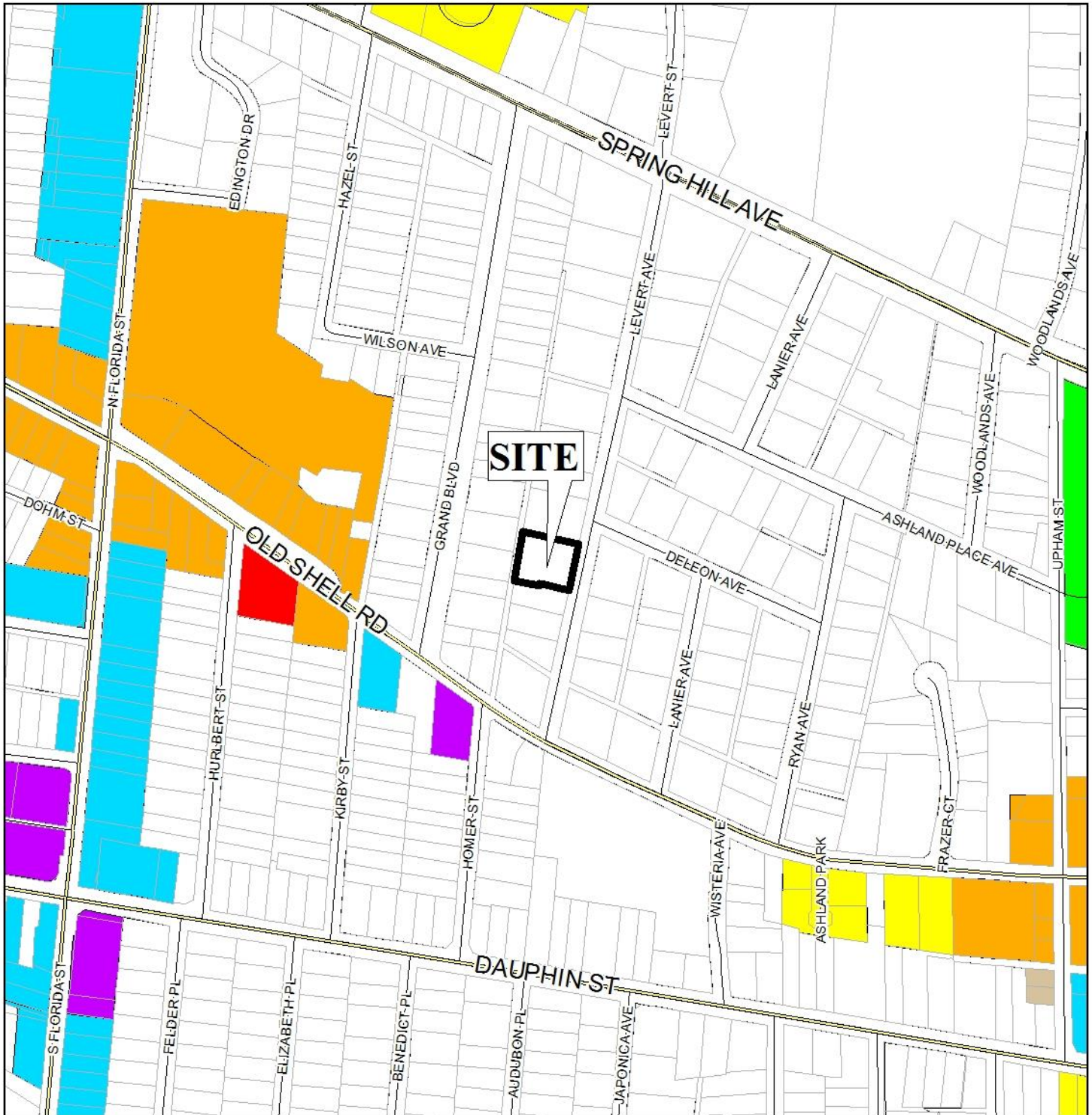
REQUEST Swimming Pool Setback Variance



NTS



# LOCATOR ZONING MAP



APPLICATION NUMBER 6191 DATE October 1, 2018

APPLICANT J. F. Weston, Jr.

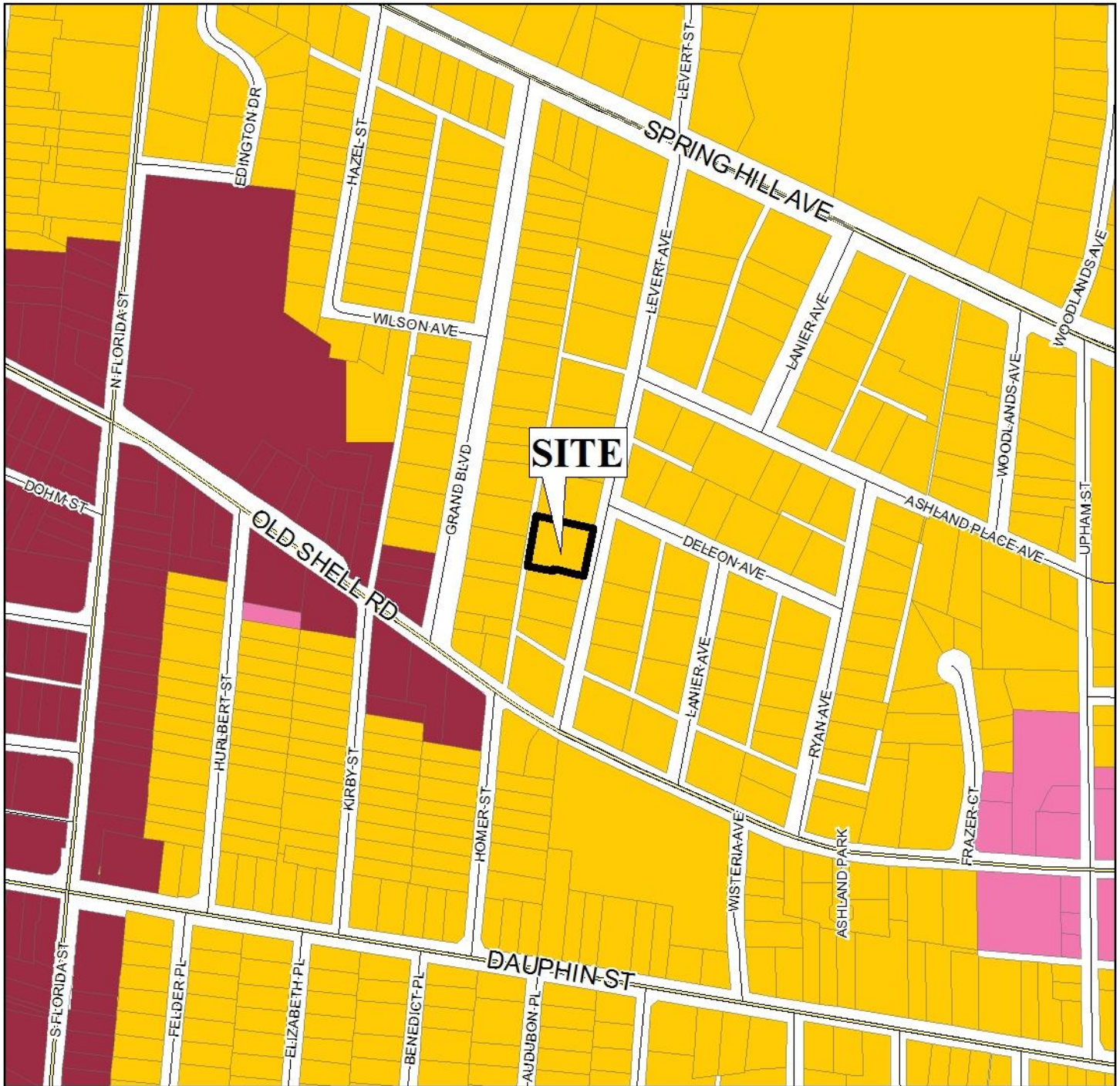
REQUEST Swimming Pool Setback Variance



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# FLUM LOCATOR MAP



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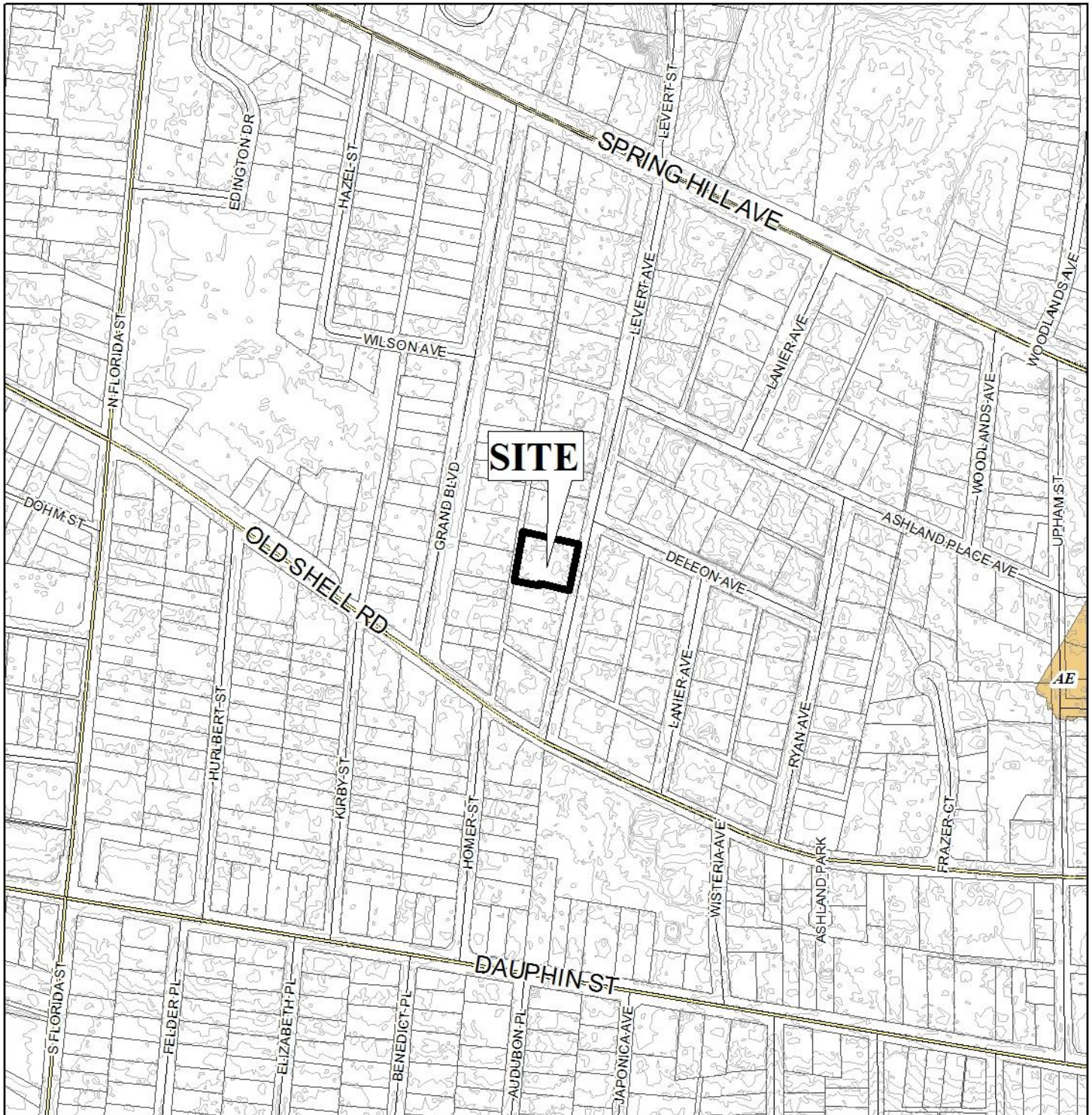
REQUEST Swimming Pool Setback Variance

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	





# ENVIRONMENTAL LOCATOR MAP



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REQUEST Swimming Pool Setback Variance



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# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units.

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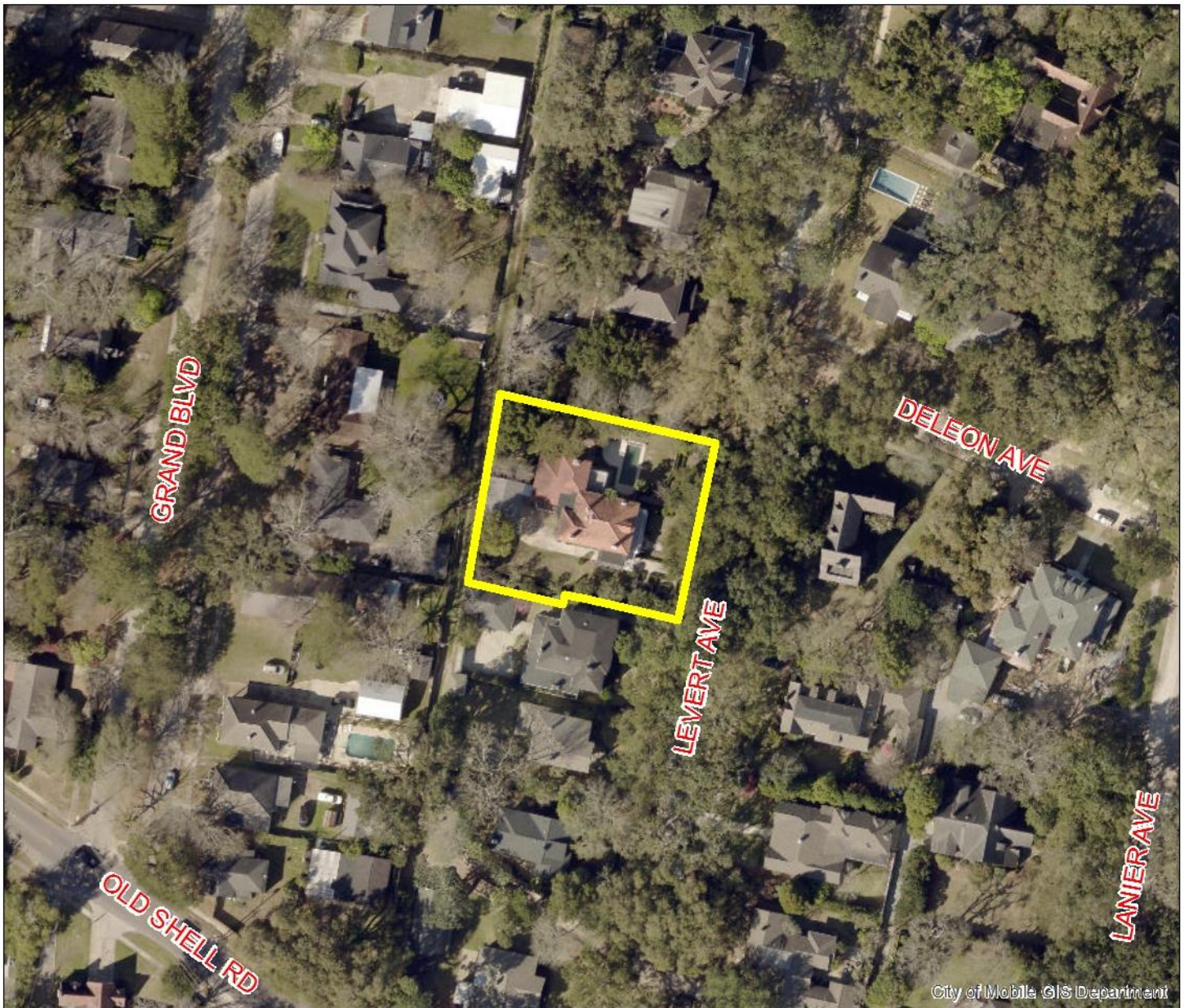
REQUEST Swimming Pool Setback Variance

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<span style="background-color: white; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> R-1	<span style="background-color: pink; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> R-B	<span style="background-color: lightblue; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> B-1	<span style="background-color: red; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> B-3	<span style="background-color: lightpurple; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> I-1	<span style="background-color: lightgreen; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> OPEN	<span style="background-color: lightpink; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> T3	<span style="background-color: darkpurple; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> T5.2
<span style="background-color: yellow; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> R-2	<span style="background-color: peachpuff; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> H-B	<span style="background-color: magenta; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> LB-2	<span style="background-color: brown; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> B-4	<span style="background-color: gray; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> I-2	<span style="background-color: orange; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> SD	<span style="background-color: lightpurple; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> T4	<span style="background-color: darkpurple; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> T6





# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING AERIAL

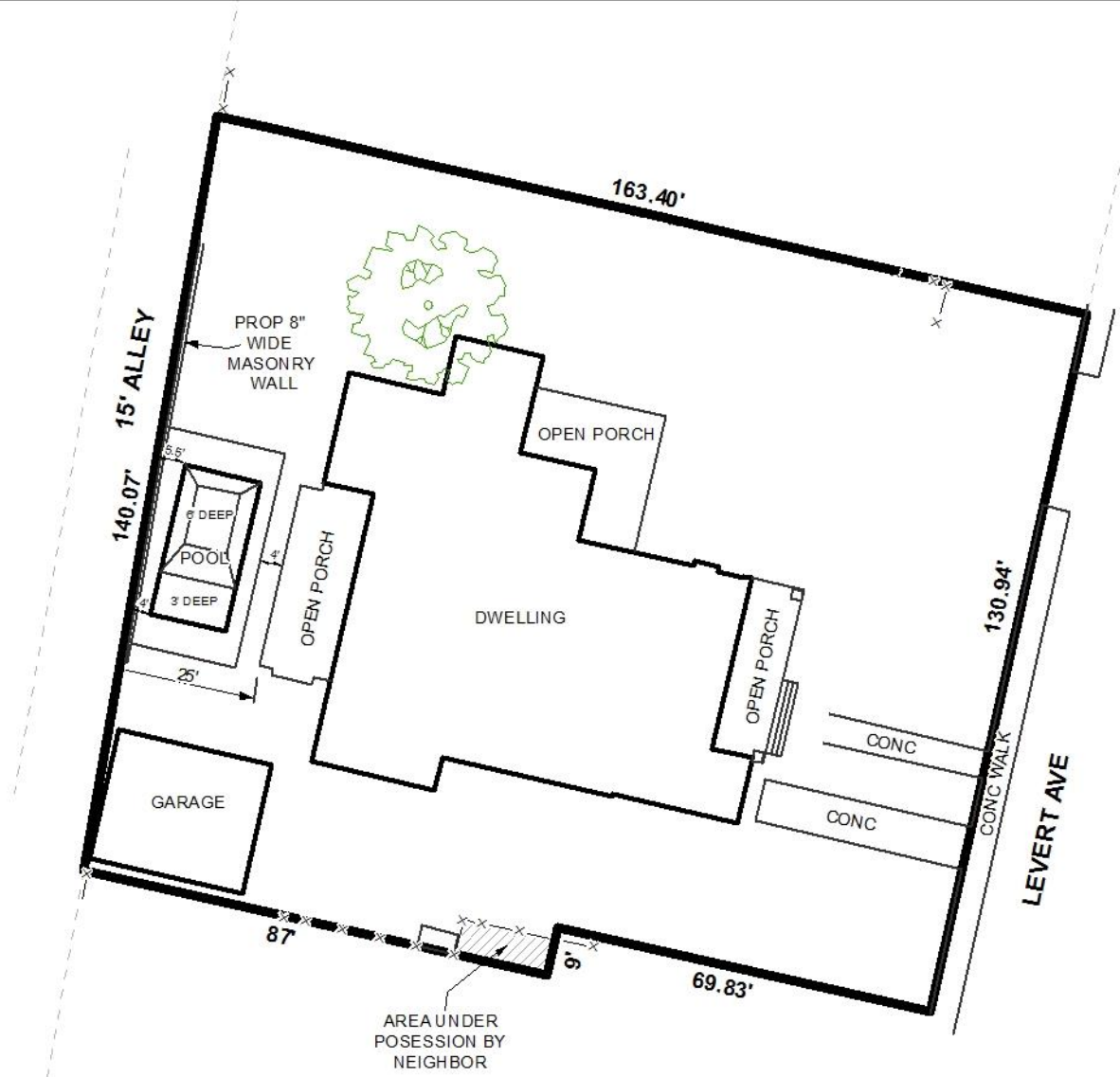


The site is surrounded by residential units.

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# SITE PLAN



The site plan illustrates the existing dwelling, proposed pool, and masonry wall.

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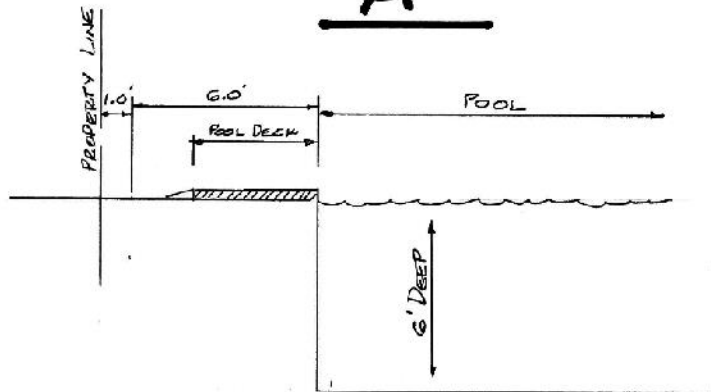
REQUEST Swimming Pool Setback Variance





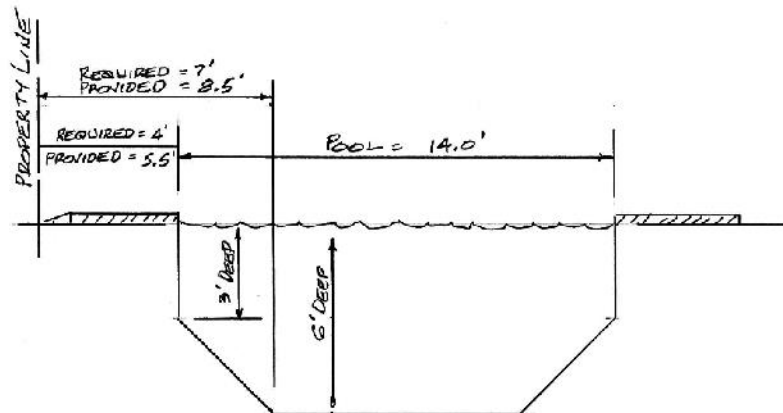
# DETAIL SITE PLAN

"A"



CITY CODE: POOL DEPTH + 1 FOOT

"B"



LOCATION OF POOL IN THIS VARIANCE REQUEST

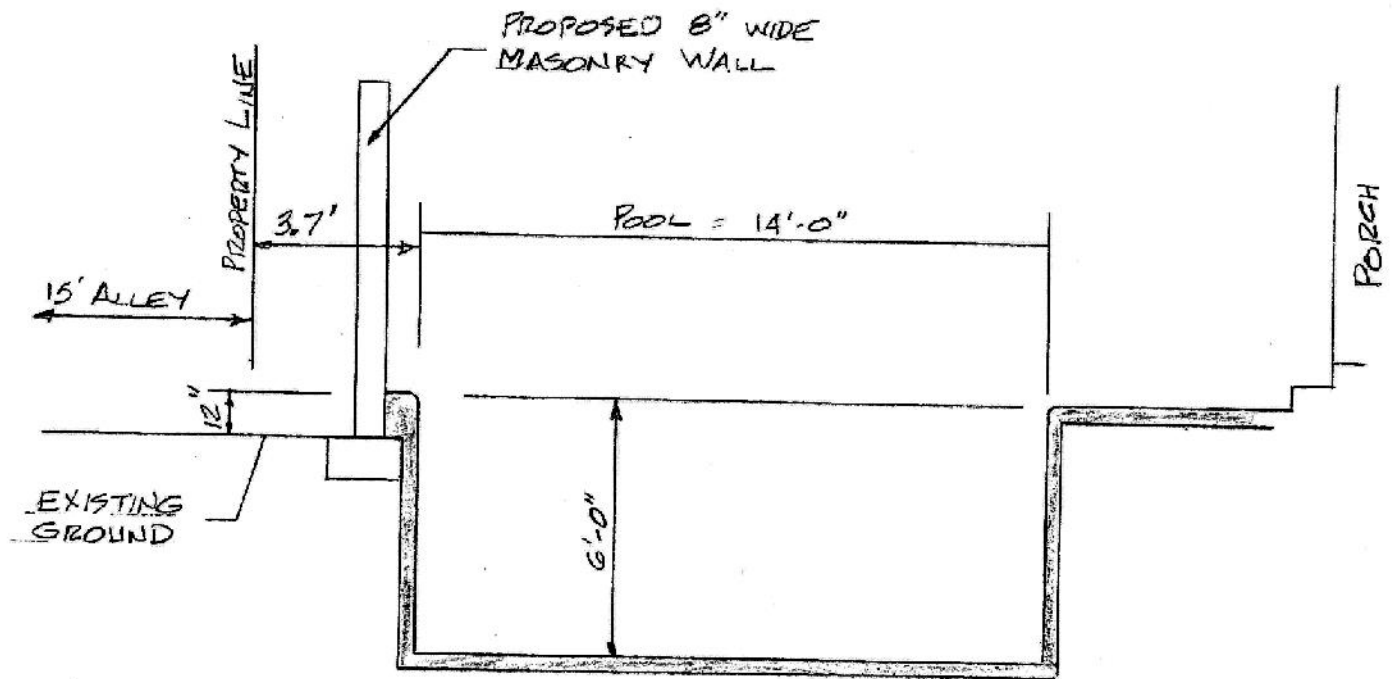
APPLICATION NUMBER 6191 DATE October 1, 2018

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# DETAIL SITE PLAN



PROPOSED LOCATION AT DEEP END

111 LEVERT AVE.

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