

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: October 2, 2017****CASE NUMBER**

6131

APPLICANT NAME

Donald E. Scholebo

LOCATION1558 & 1560 West Avenue
(Northeast corner of West Avenue and Adler Avenue.)**VARIANCE REQUEST****USE VARIANCE:** Use Variance to allow a duplex in an R-1, Single-Family Residential District.**FRONT AND REAR YARD SETBACK VARIANCES:**
Front and Rear Yard Setback Variances to allow a duplex within 13' of the front property line and 6.1' from the rear property line in an R-1, Single-Family Residential District.**ZONING ORDINANCE
REQUIREMENT****USE VARIANCE:** The Zoning Ordinance does not allow multiple-family housing in an R-1, Single-Family Residential District.**FRONT AND REAR YARD SETBACK VARIANCES:**
The Zoning Ordinance prohibits any structures exceeding 3' in height within 25' of the front property line and within 8' of the rear property line in an R-1, Single-Family Residential District.**ZONING**

R-1, Single-Family Residential

AREA OF PROPERTY

0.30± Acres

**ENGINEERING
COMMENTS**

No comments.

**TRAFFIC ENGINEERING
COMMENTS**

No comments.

**CITY COUNCIL
DISTRICT**

District 2

ANALYSIS

The applicant is requesting Use, Front and Rear Yard Setback Variances to allow a duplex within 13' of the front property line and 6.1' from the rear

property line in an R-1, Single-Family Residential District; the Zoning Ordinance prohibits any structures exceeding 3' in height within 25' of the front property line and within 8' of the rear property line, and does not allow multiple-family housing in an R-1, Single-Family Residential District.

It should be noted that a concrete slab is depicted on the site plan and encroaches on a 10' alley. Aerial photos indicate a garage as recently as 2014; however, it appears that the structure has been removed. No structure is proposed to be constructed on the slab, and is therefore not included with these Variance requests. As such, any proposed structure would need to meet setbacks for a side yard within an R-1, Single-Family Residential District; or, provide evidence of Historic District Overlay compliance.

Variances are site-plan specific; therefore, any proposed structure will require an application to the Board to amend an approved site plan prior to any construction activities.

The Zoning Ordinance states no variance shall be granted 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; and, no variance shall be granted where economics are the basis for the application. 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 site is within the Leinkauf Historic District; therefore, any changes to the exterior of the existing structure may be subject to review by the Architectural Review Board.

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.

The subject site is developed with a single-family residence that, per Google Street View images from November, 2016, appears to be a duplex with two front doors, a driveway and an additional curb cut. The applicant wishes to convert the residence into a duplex and preserve its existing setbacks, citing the property's previous non-conformance as a duplex as justification for the request:

"The property was built in 1948 as a Duplex, as noted in the Mobile County Revenue Commission Report (attached), but has been maintained as a single-family residence by the former owners since 2002."

Mobile County Revenue Commission information does state the property is a duplex, but there is a discrepancy between when the applicant and the Revenue Commission believe the structure was built: 1948 and 1982, respectively. No documentation to confirm either date was provided, but aerial photographs from 1938 and Sanborn maps from 1954 depict a structure on the site. As such, use of the property as a duplex may be considered nonconforming, the exception being that Section 64-7.A.4. of the Zoning Ordinance states a nonconforming use that has been abandoned or discontinued for a period of two years shall not thereafter be re-established. A complaint to the Inspection Services Department in 2001 alleged two apartments on the property were using a single electric meter, which may have proven non-conformance; however, no inspector comments were provided to verify the non-conformity. Also, there are no permits on record to substantiate the applicant's claim that the supposed duplex was converted to a single-family residence.

Regarding the structure's setbacks, aerial photos from 1984 clearly indicate its configuration on the lot. Continuance of nonconforming structures is permitted under Section 64-7.B.1. of the Zoning Ordinance, provided it is operated and maintained in a state of good repair. Any enlargements, extensions or restorations of any damaged nonconforming structures are also permitted under Sections 64-7.B.2. and 64-7.B.3. if they meet current regulations, or are restored in their current footprint within two years of the date of damage. It should also be noted that being in an historic district, the site benefits from flexible development requirements via the Historic District Overlay. With respect to yard dimensions, Section 64-3.G.3. allows setbacks no greater or lesser than the setback of those structures on the same side of the street within 150 feet of both sides of a proposed building site. While the site is already developed, it appears it would enjoy such yard exemptions were it a proposed construction.

Besides the structure's historical configuration on the lot, Staff cannot determine a hardship associated with the property to justify its use as a duplex, and the applicant has not provided information that would do so, either. Also, no similar Variances have been approved by the Board within the vicinity of the subject site to establish any precedence in favor of multi-family residences. As such, approval of the request to maintain the structure's existing setbacks while denying the proposed duplex use may be appropriate. The Board could consider, however, that the property's location within a Mixed Density Residential district may facilitate approval of the Use Variance request, especially with respect to the district's intent to "...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.”

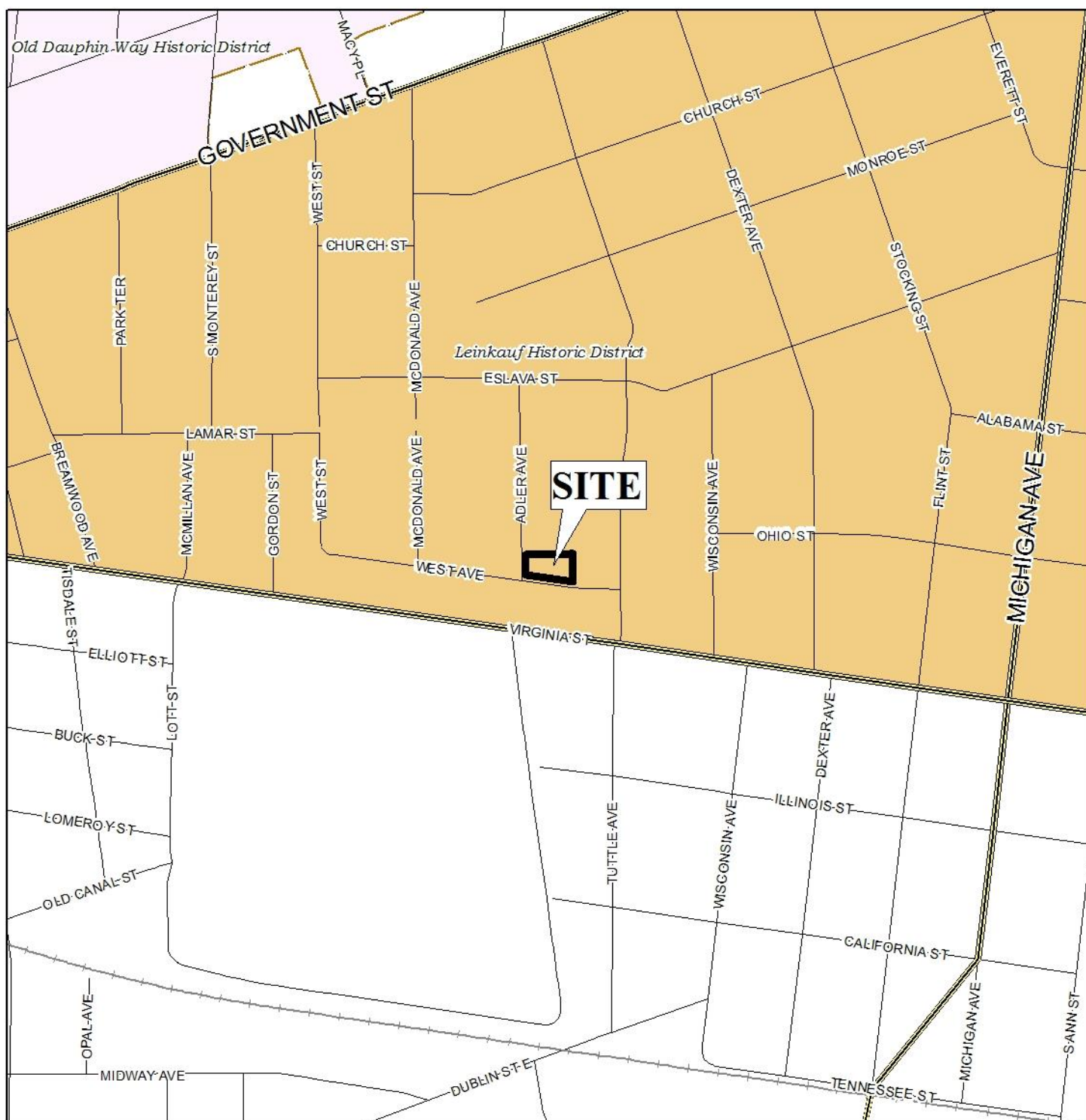
RECOMMENDATION: Based on the preceding, staff recommends to the Board the following findings of fact for Approval of the Front and Rear Yard Setback Variances:

- 1) Granting the Variances will not be contrary to the public interest since the structure would benefit from flexible yard requirements of the Historic District Overlay, if newly proposed;
- 2) Special conditions associated with the site exist, to include verification of its configuration since at least 1984, such that a literal enforcement of the provision of the chapter will result in an unnecessary hardship; and,
- 3) The spirit of the chapter shall be observed and substantial justice done to the surrounding neighborhood by granting the Variances since the purpose of the Historic District Overlay is to preserve and maintain the existing character of similar historically significant areas.

Staff recommends to the Board the following findings of fact for Denial of the Use Variance:

- 1) Granting the Variance will be contrary to the public interest since previous nonconforming use of the property as a duplex cannot be verified;
- 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 structure can, without hardship, be used as a single-family residence; 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 no similar requests have been granted by the Board to neighboring properties.

LOCATOR MAP



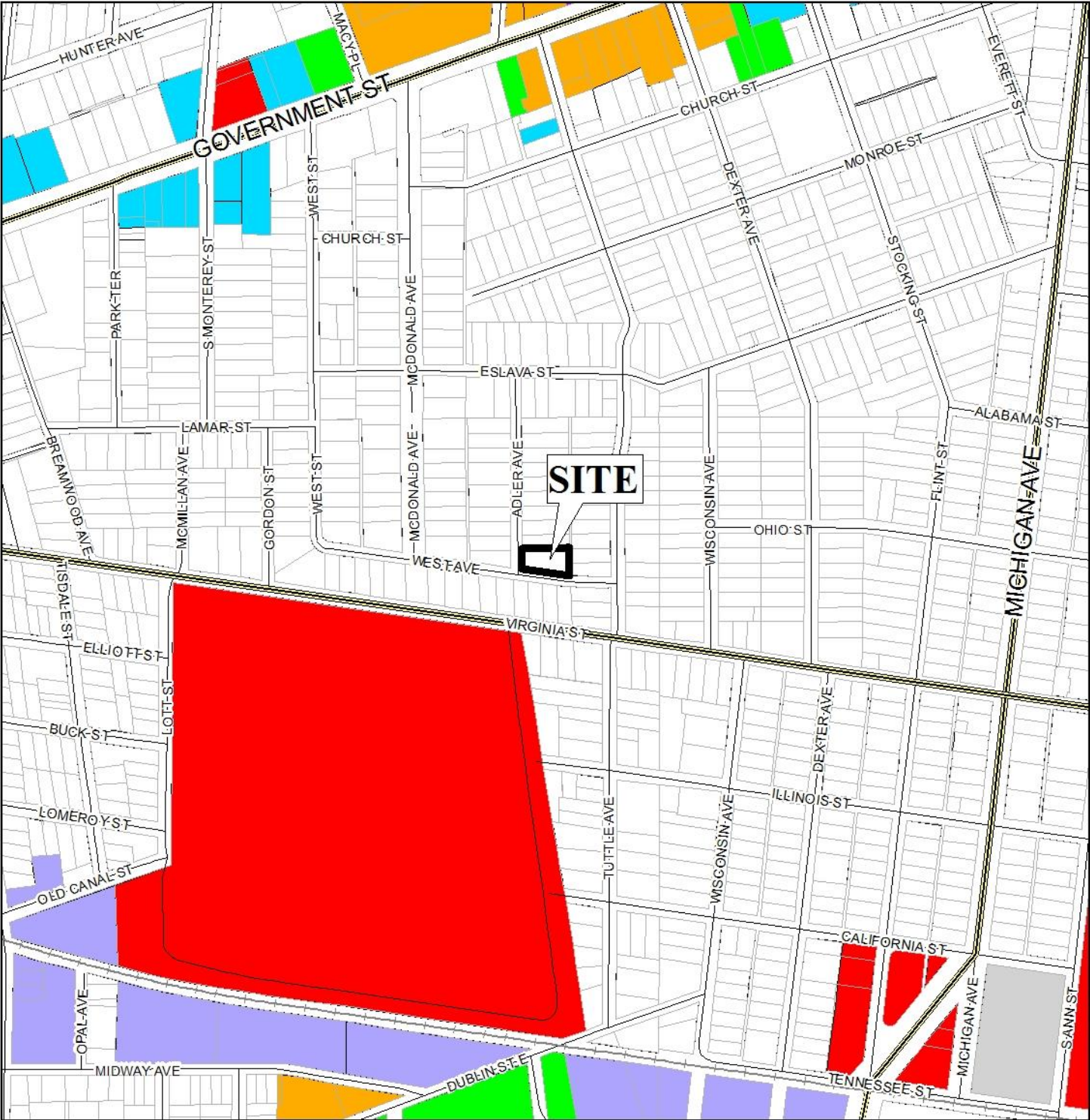
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REQUEST Use, Front and Rear Yard Setback Variances



LOCATOR ZONING MAP



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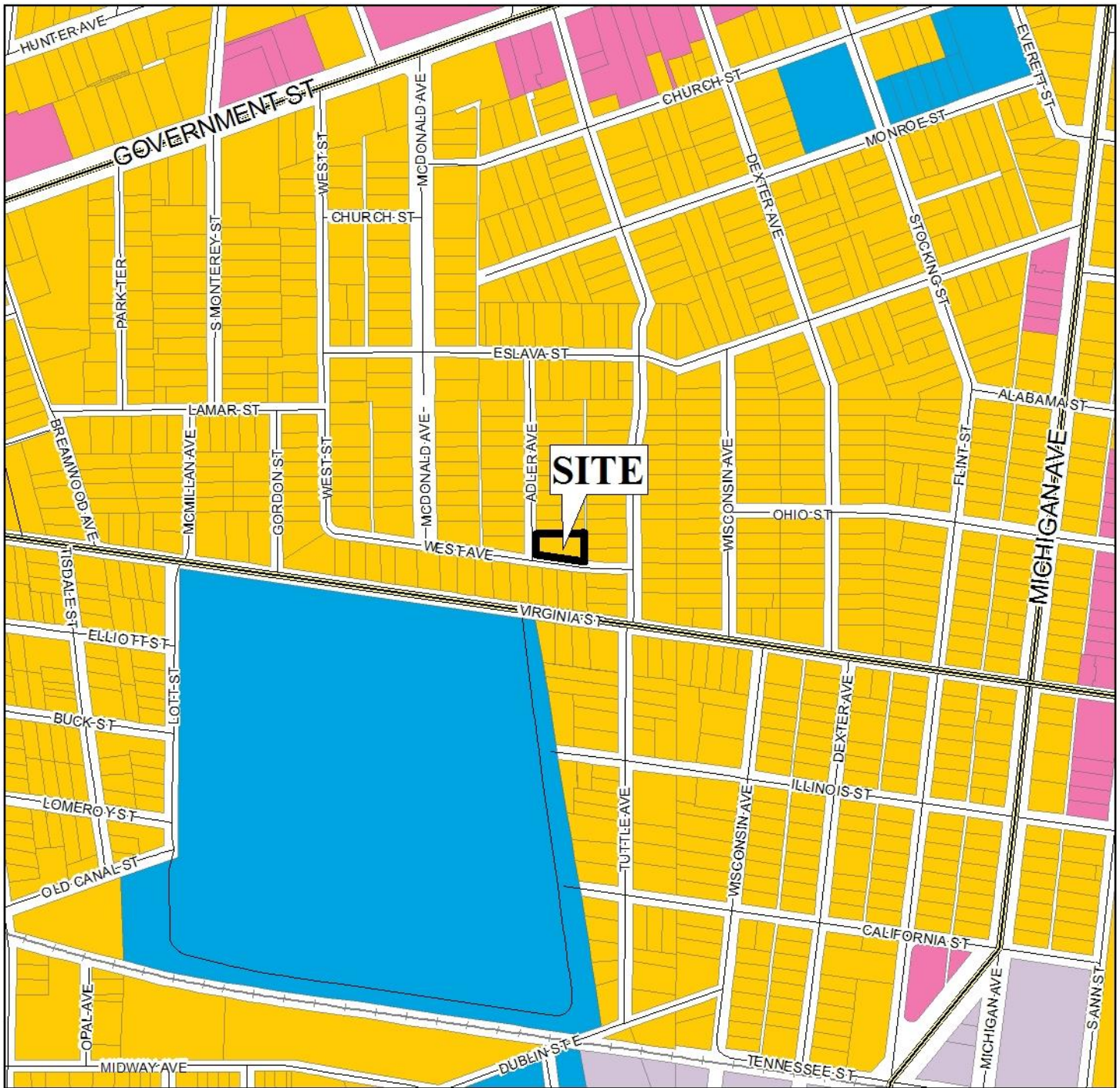
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FLUM LOCATOR MAP



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



ENVIRONMENTAL LOCATOR MAP



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BOARD OF ADJUSTMENT

VICINITY MAP - EXISTING ZONING



The site is surrounded by 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 ZONING

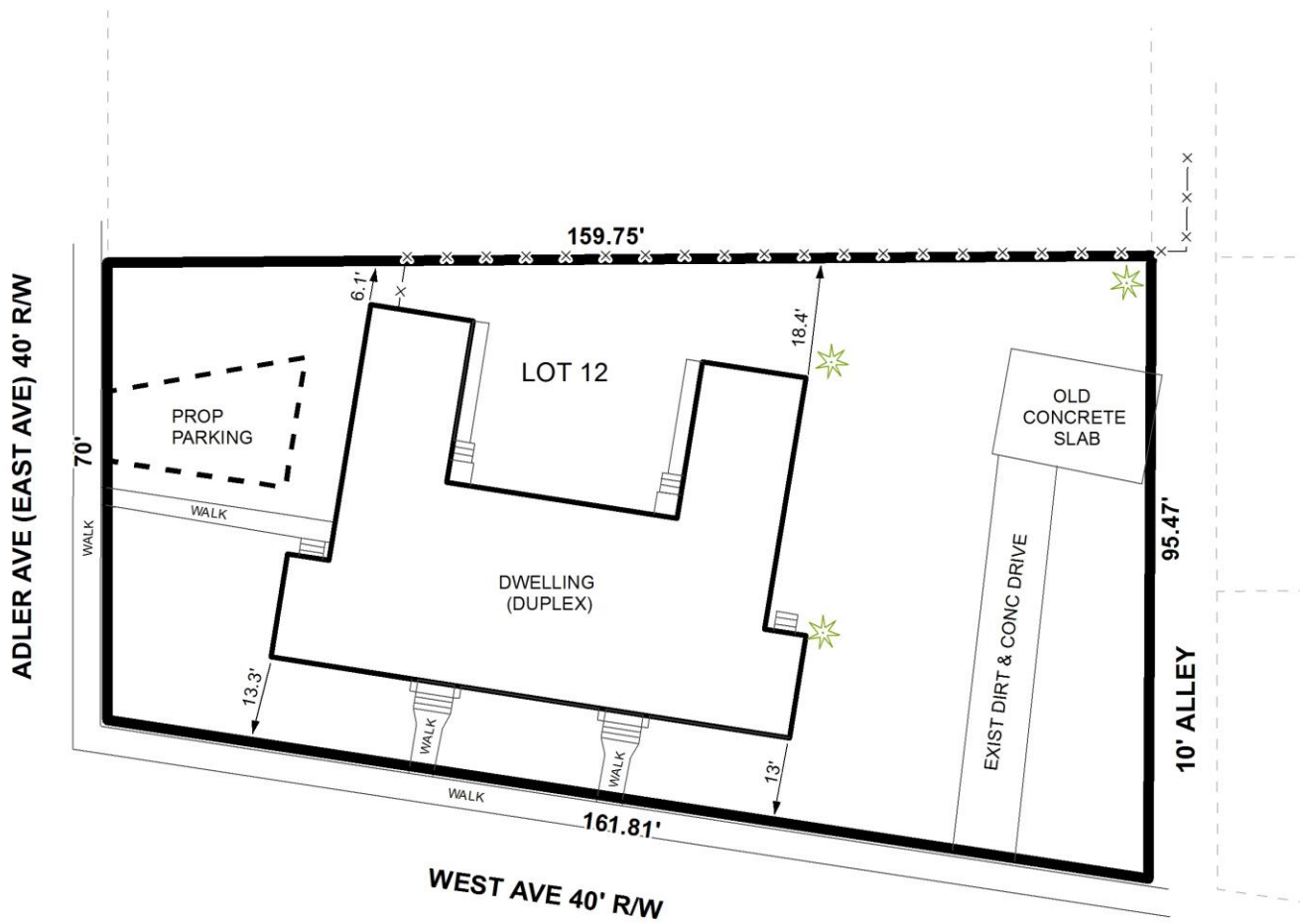


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SITE PLAN



The site plan illustrates the existing dwelling, proposed parking, and concrete slab.

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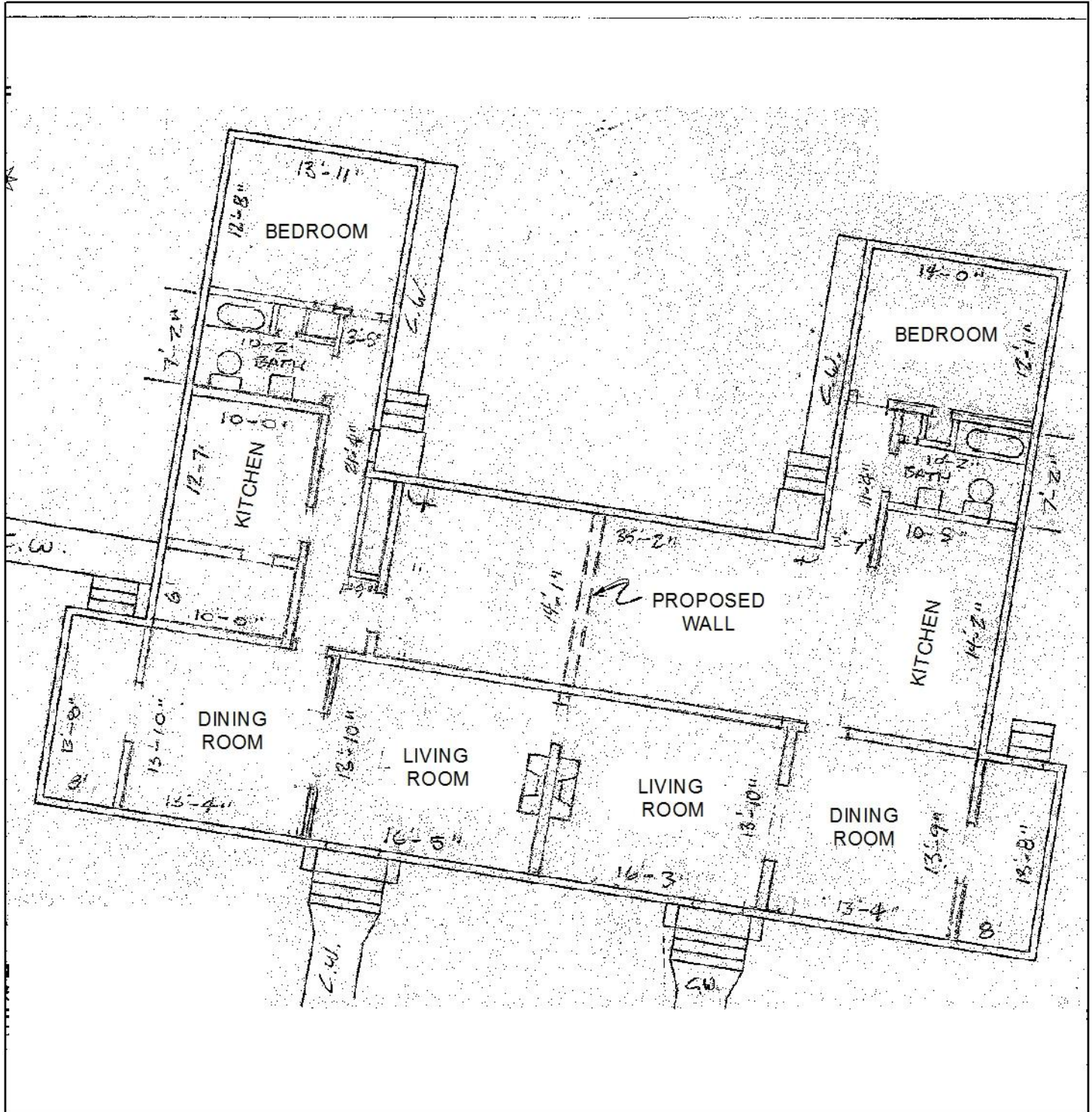
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DETAIL SITE PLAN



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