

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: January 8, 2018**

CASE NUMBER	6148
APPLICANT NAME	Jeptha Blacksher White-Spunner, IV
LOCATION	149 Batre Lane (Southeast corner of Batre Lane and Avalon Street.)
VARIANCE REQUEST	SIDE STREET SIDE YARD: Side Street Side Yard Setback Variance to allow an existing masonry wall taller than 3' and the construction of an addition to an existing dwelling within the Side Street Side Yard setback of a corner lot in an R-1, Single-Family Residential District.
ZONING ORDINANCE REQUIREMENT	SIDE STREET SIDE YARD: The Zoning Ordinance does not allow masonry walls taller than 3' or any structures within the Side Street Side Yard setback of a corner lot in an R-1, Single-Family Residential District.
ZONING	R-1, Single-family Residential District
AREA OF PROPERTY	0.26 ± Acres
ENGINEERING COMMENTS	If the proposed variance is approved for use the applicant will need to have the following conditions met: 1. If the proposed fence is going to be located within the Batre Ln. ROW, a ROW Permit must be obtained from the City of Mobile Engineering Dept. 2. The fence should be designed so that it does not change the existing drainage patterns to the adjoining properties or the public ROW.
TRAFFIC ENGINEERING COMMENTS	No comments.
CITY COUNCIL DISTRICT	District 7
ANALYSIS	The applicant is requesting a Side Street Side Yard Setback Variance to allow an existing masonry wall taller than 3' and the construction of an addition to an existing dwelling within the Side Street, Side Yard setback of a corner lot in an R-1, Single-Family Residential District; the Zoning Ordinance does not allow masonry walls taller than 3' or

any structures within the Side Street Side Yard setback of a corner lot in an R-1, Single-Family Residential District.

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 **Low 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 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 Low Density Residential districts is residential development where 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 0 and 6 dwelling units per acre (du/ac.)

Low Density Residential 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, bike-able human scale.

The site plan illustrates an existing dwelling with a concrete carport, and a masonry wall taller than 3'. The applicant proposes to maintain the masonry wall and enclose the carport to extend the living area of the dwelling, stating the following as justification for the requests:

To whom it may concern,

I would like to request a zoning adjustment on the rear setback of my personal residence located at 149 Batre Ln. The physical residence I purchased at this location has a small

percentage shown on the site plan that was constructed within the minimum setback requirements. In order to make use of the triangular shaped lot and physical house, I need to make improvements to the house for living accommodations as well as increase the value. In order to achieve the engineered plans drawn, I need to extend further within the setback buffer area to build square off the house. The proposed site plan allows the house to be extending within the setback but not obstruct or encroach any utilities or other issues. The lot has a chain link fence established already separating the adjacent property. Please extend the approval of the proposed extension allowing me to move forward with permitting on my renovations project. I look forward to hearing from the board. Thank you,

Jeptha Blacksher White-Spunner IV

It should be noted that the existing house was constructed in 1957, per information obtained from the Mobile County Revenue Department. As such, the house was built under pre-1967 Zoning Ordinance standards.

The site is subject to a minimum Side Street Side Yard Setback of 12' at this location. The proposed extension of the dwelling would encroach on the setback by 5', and the existing masonry wall encroaches on the setback by a maximum of 11'. Staff became aware of the encroachments upon reviewing the building permit for the proposed structural addition(s), hence the application at hand. It should be noted, however, that review of the Variance site plan also shows mechanical equipment (a power generator) and brick steps within the minimum 8' Side Yard Setback and the 25' minimum building setback, respectively; also, a driveway is proposed to be constructed within the right-of-way. The dimensions of the mechanical equipment and brick steps are not provided on the site plan; therefore, Staff cannot determine if they meet setback requirements. Any additional equipment or structure on the property taller than 3' within a required setback will require additional Variance approval by the Board of Zoning Adjustment. Also, a right-of-way permit will need to be acquired for the proposed driveway.

Section 64-3.C.1.e. states that the minimum dimensions of yards in R-1, Single-Family Residential Districts, shall be: 25' for the front yard; 8' for the side yards, the sums of which shall be at least 20'; and, 8' for the rear yard.

Section 64-4.D.3. provides an exception to side yards for corner building sites, stating that "*In any district a corner building site having to its rear a building site facing toward the intersecting or side street shall have provided on the intersecting or side street side of the corner building site a yard having a width equal at least the depth of the front yard required for a structure on the building site to the rear of the corner building site; provided, however, that this regulation shall not be applied to reduce the buildable width of the corner building site to less than thirty (30) feet nor require a side yard of more than twenty (20) feet.*"

Section 64-4.D.6.a. of the Zoning Ordinance states that "*No fence or wall that obstructs sight shall be erected or altered in any required front yard to exceed a height of three (3) feet, and no fence or wall shall be erected or altered in any required side or rear yard to exceed a height of eight (8) feet. On a corner building site not having to its rear a building site facing toward the*

intersecting or side street, no fence or wall that obstructs sight shall be erected in the required side yard to exceed a height of three (3) feet.”

With respect to the triangle shape of the lot as a means of justifying the proposed addition encroaching on the Side Street Side Yard Setback, it may be irregularly shaped, but nevertheless meets the minimum lot size standards for lots served by public water and sewer systems. Additionally, aerial photos clearly show the lot has been developed with a single-family dwelling since at least 1960 and does not appear to have been expanded since that time. The applicant has not submitted evidence as to how encroaching on a Side Street Side Yard Setback is necessary to accommodate appropriate living conditions on the lot when it seems a smaller or redesigned addition could meet the requirements of the Zoning Ordinance. As such, approving the request may facilitate a self-imposed hardship. It should be noted, however, that multiple requests for reduced side yards have been approved by the Board of Zoning Adjustment for properties within the immediate vicinity of the subject site, the most recent being 143 Batre Lane at the January 9, 2017 meeting of the Board. Providing a proposed floor plan may, therefore, help the Board determine a hardship for the subject site.

The applicant does not address the existing masonry wall, but aerial photos indicate it may have been constructed between 1984 and 1997, if not earlier. Also, masonry walls are increasingly typical within the vicinity of the subject site, either in violation of the Zoning Ordinance, by non-conforming history of the neighborhood, by Planned Unit Development, or by Board of Zoning Adjustment approval, perhaps facilitating approval of this request. It should be noted that the existing masonry wall is not as extensive in length and height as other masonry walls approved by the Board have been; however, the applicant has not identified a hardship for this site or provided sufficient evidence to justify the Variance request as required by Section 64-8.B.6.f.(3).(d). of the Zoning Ordinance.

Regarding the value of the property, Variance approval(s) cannot be based on financial hardship; rather, they must be based on a hardship associated with the property.

While the Board has approved similar Variance requests within the vicinity of the subject site, few, if any, findings of fact emphasized hardships associated with the properties; rather, approvals were based prominently on privacy, neighborhood design and precedence. Whereas justification for approving the Variance request at hand might be derived from these interpretations of the Zoning Ordinance, it should be reiterated that Variances are not intended to be granted frequently. Approving the Variance request would be contrary to Section 64-4.D.6. of the Zoning Ordinance and may very well establish not just a design precedence within the neighborhood, but a precedence with which the approval of future, less desirable Variances could also be facilitated if no special conditions or hardships to an individual property exist.

RECOMMENDATION: Based upon the preceding, Staff recommends to the Board the following findings of fact for Approval of the Side Street Side Yard Setback Variance for the masonry wall taller than 3':

- 1) Granting the Variance will not be contrary to the public interest since the structure is not as extensive in length and height as other masonry walls approved by the Board;

- 2) Special conditions associated with the masonry wall exist, to include verification of its configuration on the site since at least 1997, such that a literal enforcement of the provision of the chapter will result in an unnecessary hardship by having to remove the wall; and,
- 3) The spirit of the chapter shall be observed and substantial justice done to the surrounding neighborhood by granting the Variances since there is a precedent for such walls within the vicinity of the subject site.

Based on the preceding, Staff recommend to the Board the following findings of fact for Denial of the Side Street Side Yard Setback Variance for the construction of an addition to an existing dwelling:

- 1) Granting the variance will be contrary to the public interest in that it is contrary to Sections 64-4.C.1.e. and 64-4.D.3. of the Zoning Ordinance regarding minimum yard dimensions in an R-1, Single-Family Residential zoning district;
- 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, especially when a smaller or redesigned addition could meet setback requirements of the Zoning Ordinance; 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 for the structure since the house could be enlarged while maintaining all setbacks, and encroaching on the Side Street Side Yard Setback would represent a self-imposed hardship.

LOCATOR MAP



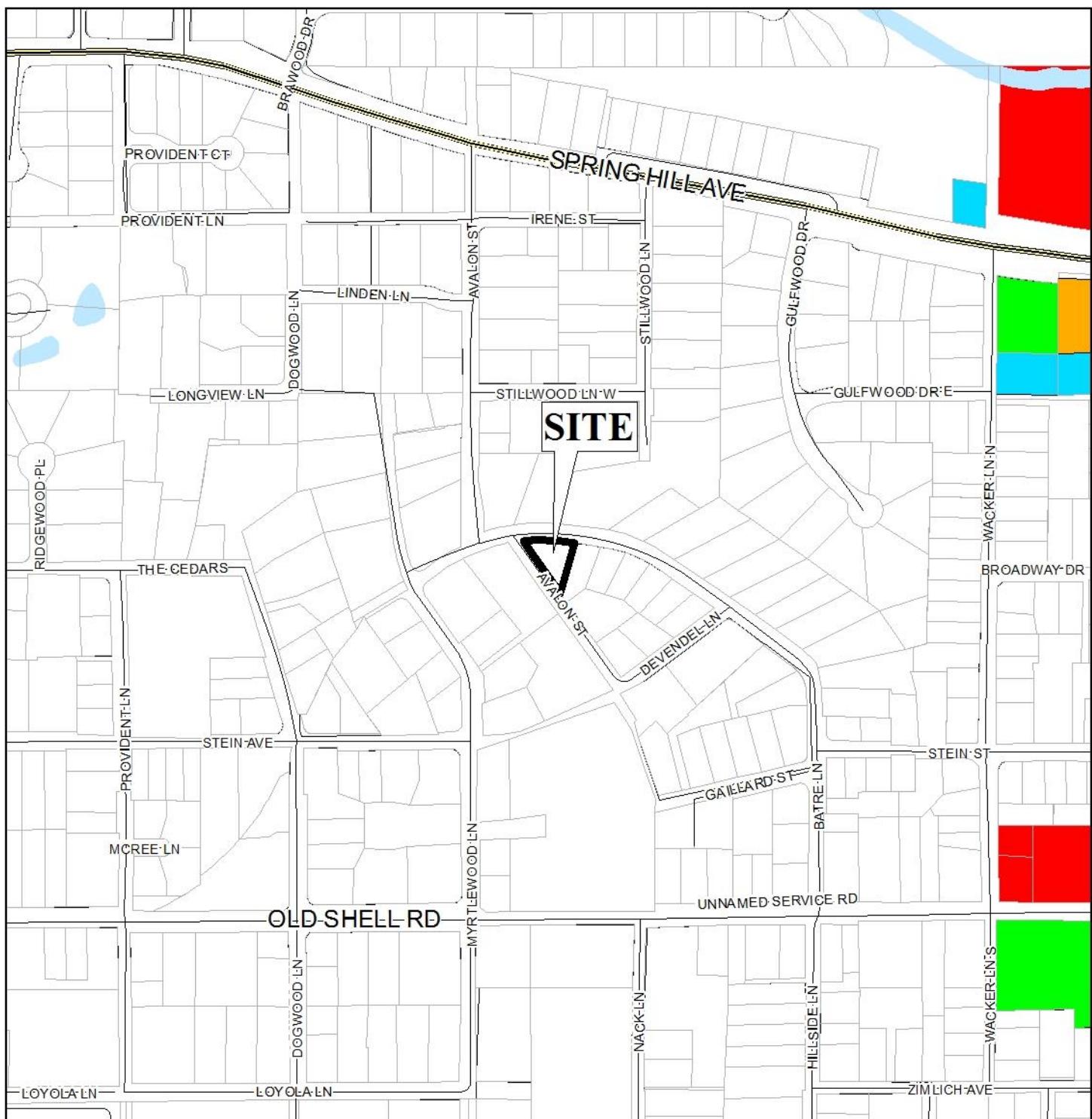
APPLICATION NUMBER 6148 DATE January 8, 2018

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REQUEST Side Street Side Yard Setback Variance



LOCATOR ZONING MAP



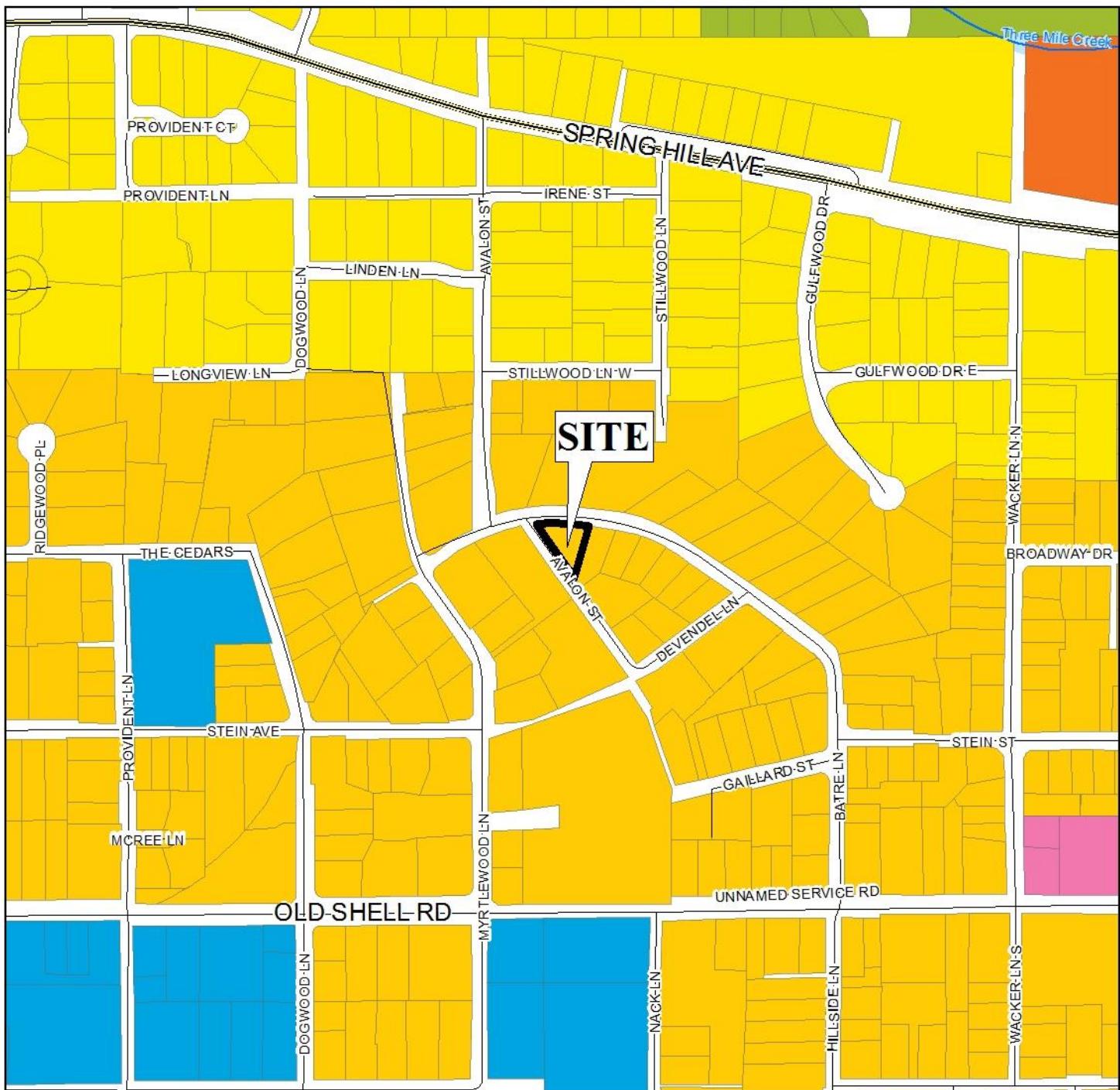
APPLICATION NUMBER 6148 DATE January 8, 2018

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FLUM LOCATOR MAP



APPLICATION NUMBER 6148 DATE January 8, 2018

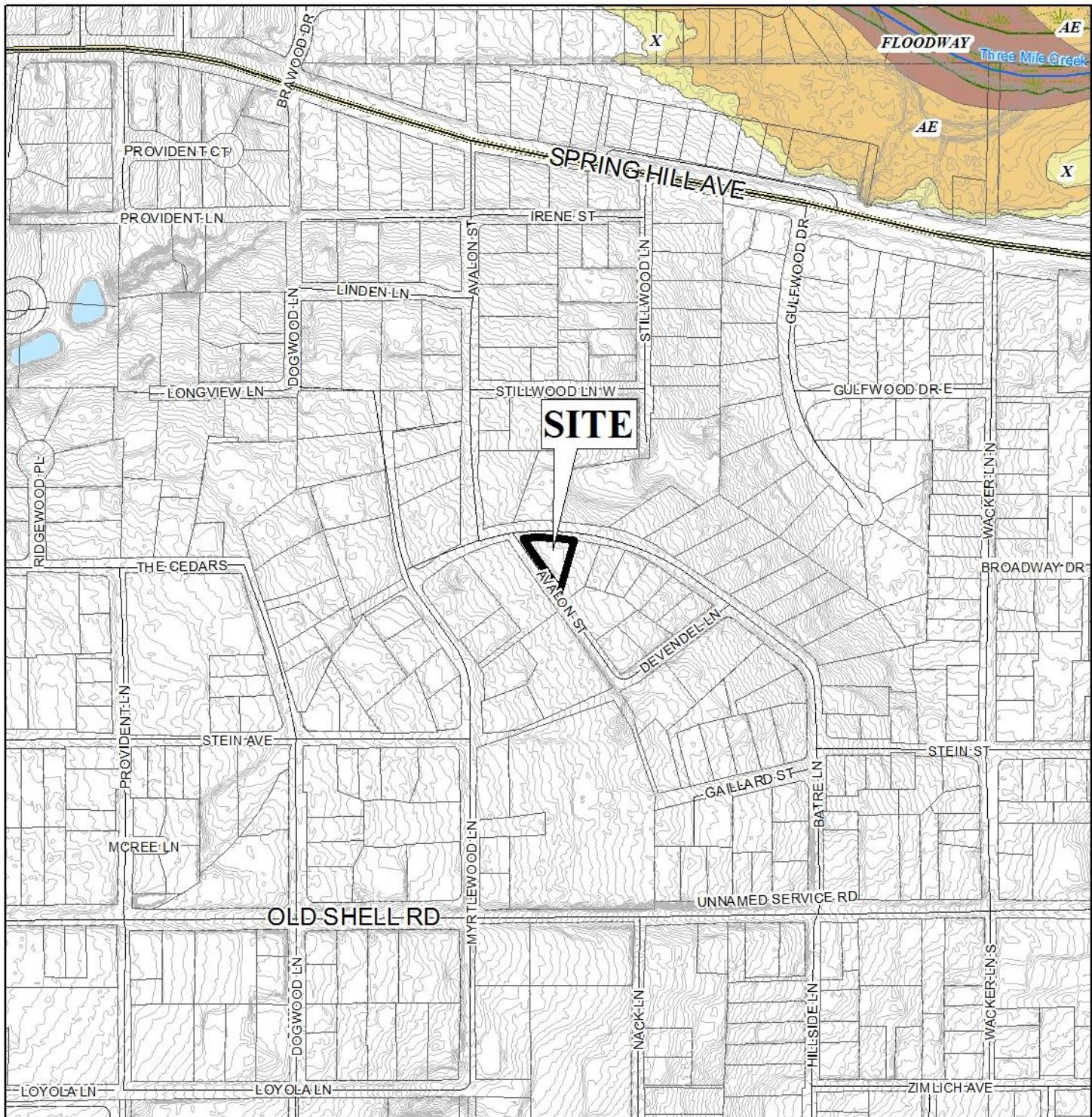
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REQUEST Side Street Side Yard Setback Variance

Yellow	Low Density Residential	Magenta	Neighborhood Center - Traditional	Brown	Downtown Waterfront	Light Green	Parks & Open Space
Yellow	Mixed Density Residential	Blue	Neighborhood Center - Suburban	Purple	Light Industry	Dark Blue	Water Dependent
Magenta	Downtown	Pink	Traditional Corridor	Purple	Heavy Industry		
Red	District Center	Orange	Mixed Commercial Corridor	Cyan	Institutional		

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ENVIRONMENTAL LOCATOR MAP



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REQUEST Side Street Side Yard Setback Variance



BOARD OF ADJUSTMENT

VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units.

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**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 building, existing drive, drive under construction, and proposed addition.

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