

**BOARD OF ZONING ADJUSTMENT  
STAFF REPORT****Date: January 7, 2019****CASE NUMBER**

6232

**APPLICANT NAME**

PH Building and Design

**LOCATION**

152 & 156 South McGregor Avenue  
(East side of South McGregor Avenue, 125'± South of  
Dunleith Court [private street].)

**VARIANCE REQUEST**

**FRONT YARD SETBACK:** Front Yard Setback Variance to allow a 6'-tall masonry wall to encroach 15' within the Front Yard Setback in an R-1, Single-Family Residential District.

**ZONING ORDINANCE  
REQUIREMENT**

**FRONT YARD SETBACK:** The Zoning Ordinance does not allow masonry walls taller than 3' within 25' of the front property line in an R-1, Single Family Residential District.

**ZONING**

R-1, Single-Family Residential

**AREA OF PROPERTY**

0.6 ± Acres

**CITY COUNCIL  
DISTRICT**

District 5

**ENGINEERING  
COMMENTS**

No Comments.

**TRAFFIC ENGINEERING  
COMMENTS**

This request was not reviewed by Traffic Engineering..

**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). Private removal of trees in the right-of-way will require approval of the Mobile Tree Commission. Removal of heritage trees from a commercial site will require a tree removal permit.

**FIRE**  
**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).

**ANALYSIS**

The applicant is requesting a Front Yard Setback Variance to allow a 6'-tall masonry wall to encroach 15' within the Front Yard Setback in an R-1, Single-Family Residential District; the Zoning Ordinance does not allow masonry walls taller than 3' within 25' of the front property line in an R-1, Single Family Residential District.

The site has been given a Low Density Residential (LDR) 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 LDR districts is residential and the predominant housing type is the single-family housing unit, detached or semidetached, 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).

These 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 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 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.

The applicant states:

*“To Whom It May Concern:*

*We are respectfully requesting that the minimum setback line of twenty-five feet be reduced to fifteen feet. We have no intentions of putting any future building/house any closer than the twenty-five foot setback. The request of fifteen foot setback is for a six foot privacy wall that will be landscaped on the McGregor Avenue frontage. As you will see in the provided pictures, three of the McGregor Avenue properties have privacy wall ranging from three feet to fifteen feet off the property line. ”*

As stated, the applicant is seeking relief, from the Zoning Ordinance to allow a masonry wall that exceeds the required height in a front yard setback. Based on the statement from the applicant, this request is simply based on the applicant's desire. There is no hardship presented.

Section 64-4.D.6.a. of the Zoning Ordinance states: *“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.”*

The applicant states in the narrative that there are several properties in the near vicinity with privacy walls that exceed the required height within the 25' front yard minimum building setback.

The applicant provided a site plan which identifies adjacent properties that are believed to have privacy walls that are not compliant with the Zoning Regulations. The applicant has referenced the abutting property to the North, 140 Dunleith Court; however the privacy wall is associated with a Planned Unit Development (PUD) approved in 2001 and is for a “side” yard rather than a “front” yard. There is a masonry entryway located at 130 South McGregor Avenue that is within the front yard setback, however, it is not a continuous wall or fence.

There are no conditions which exist at this site that would require the applicant to have a masonry wall that exceeds the allowed maximum height requirement. This application seems to be the merely the applicant's desire to aid in the aesthetic character of their property but does not appear to be a necessity. The applicant has the option to erect fencing along the property that is compliant with the Zoning Ordinance requirements. The applicant could erect an open-air (open metal or wooden [allowing visibility]) fence in the front setback which exceeds 3' but would be no greater than 6' and remain compliant. The applicant has not presented any hardship associated with the property or its configuration that would necessitate the approval of this

request. However, the Board set a precedent for approving the request at hand when it approved a similar request in 2004 for the property located 80 feet to the Northwest, also on South McGregor Avenue: it appears, however that this wall was never built.

**RECOMMENDATION:** 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, although it will be contrary to Section 64-4.6.a. of the Zoning Ordinance regarding the maximum allowable fence height R-1, Single-Family Residential District;
- 2) Special conditions and hardships do not exist in such a way that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship, as the site can be developed without the requirement for a variance ; 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 site can be developed in such a way that the proposed fence would not extend beyond 3' in height in the required setbacks.

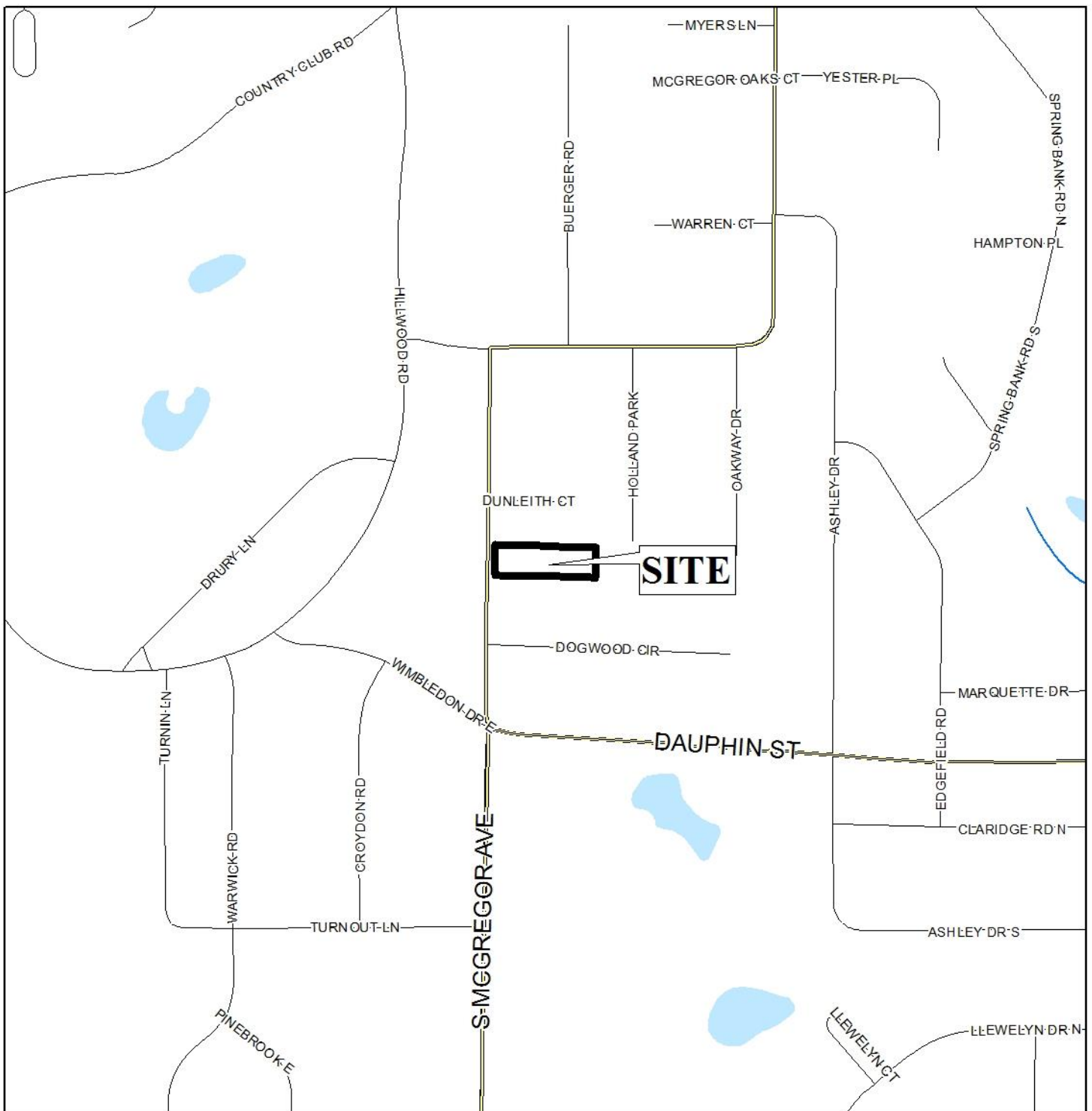
***Revised for February 4, 2019 meeting:***

*The application was heldover to allow the applicant to be present. Staff received no additional information. Therefore the recommendation remains the same.*

**RECOMMENDATION:** 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, although it will be contrary to Section 64-4.6.a. of the Zoning Ordinance regarding the maximum allowable fence height R-1, Single-Family Residential District;*
- 2) *Special conditions and hardships do not exist in such a way that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship, as the site can be developed without the requirement for a variance ; 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 site can be developed in such a way that the proposed fence would not extend beyond 3' in height in the required setbacks.*

# LOCATOR MAP



APPLICATION NUMBER 6232 DATE February 4, 2019

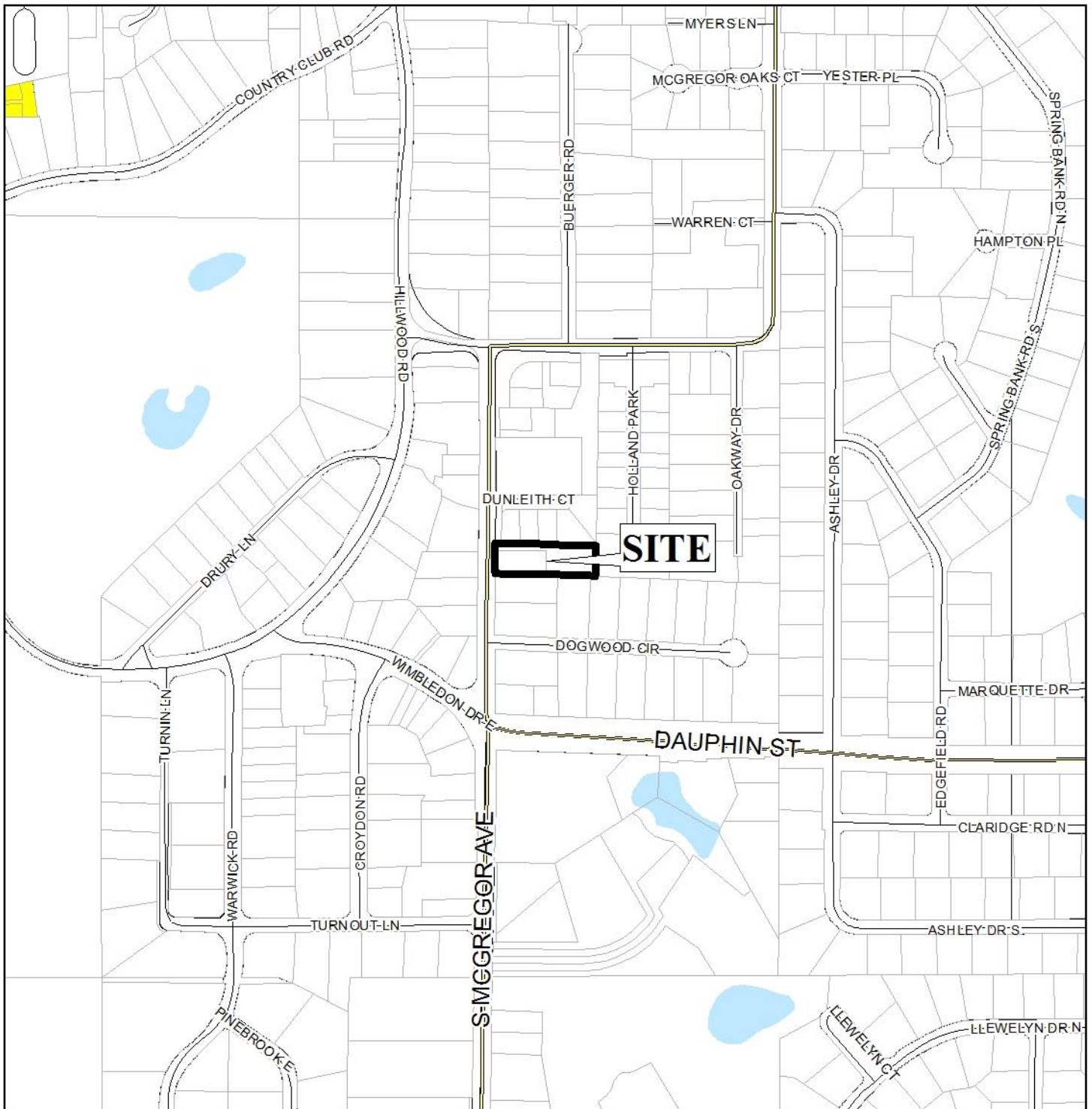
APPLICANT PH Building and Design

REQUEST Front Yard Setback Variance



NTS

# LOCATOR ZONING MAP



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APPLICANT PH Building and Design

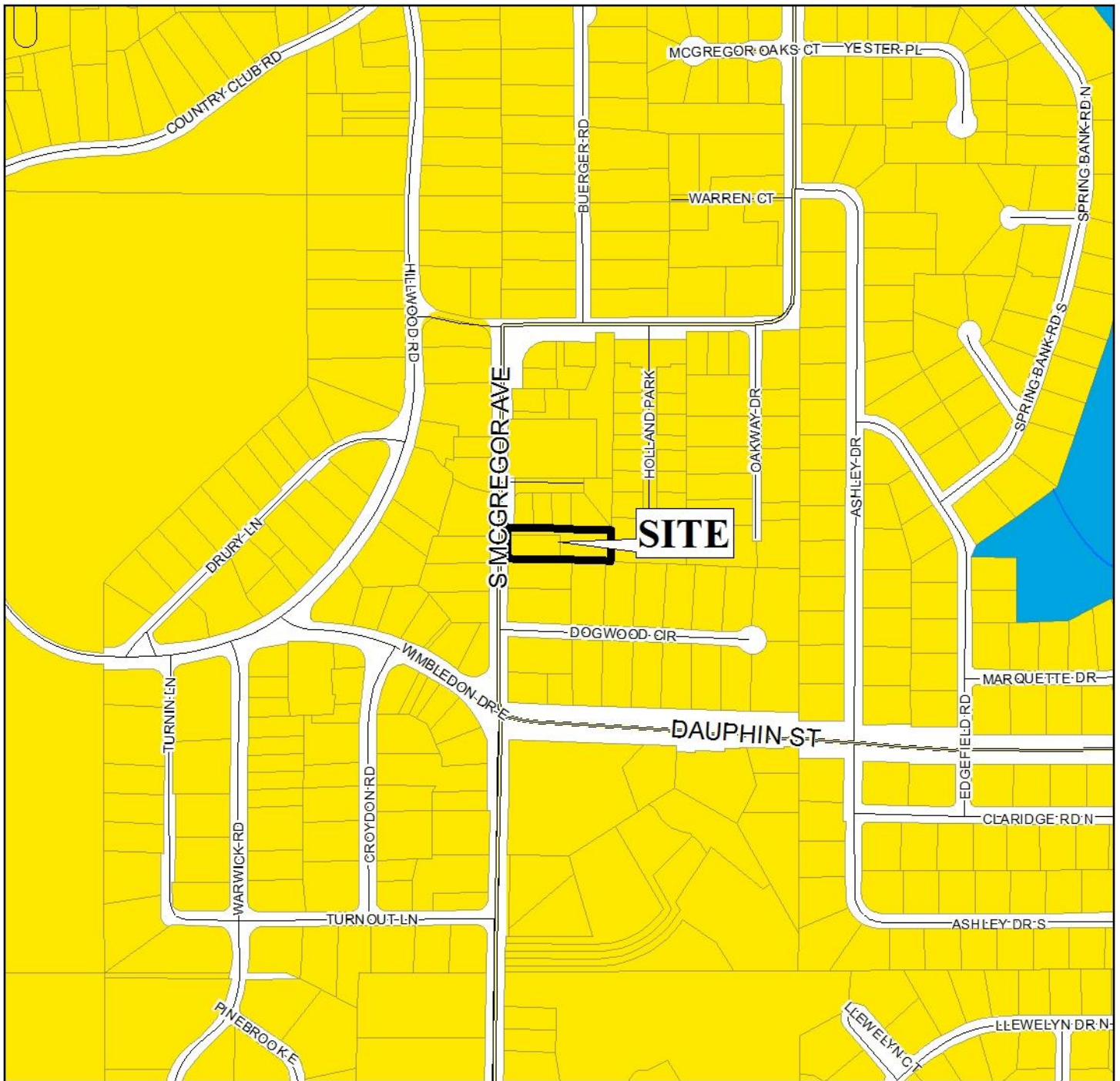
REQUEST Front Yard Setback Variance



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# FLUM LOCATOR MAP



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APPLICANT PH Building and Design

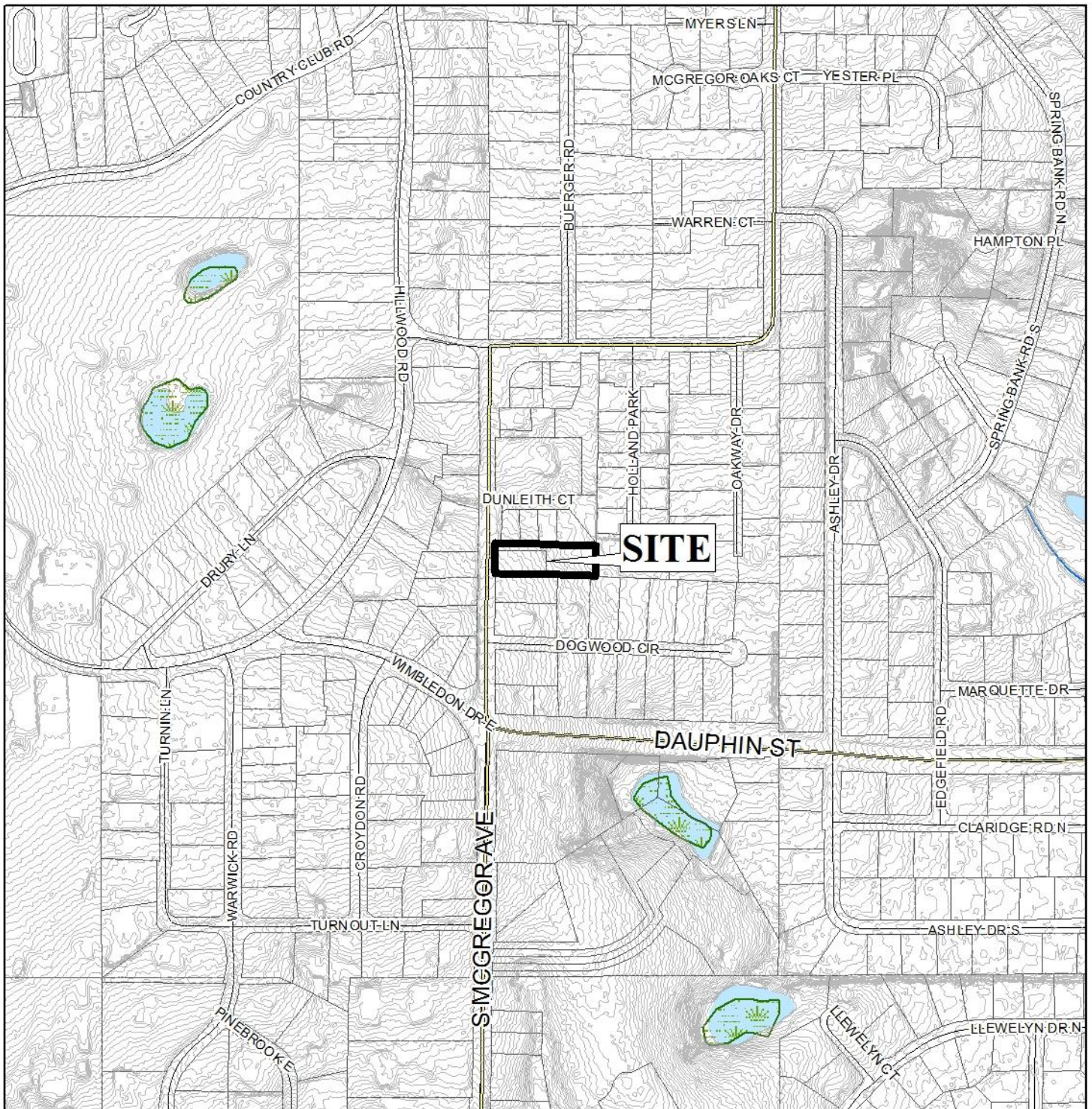
REQUEST Front Yard Setback Variance

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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APPLICANT PH Building and Design

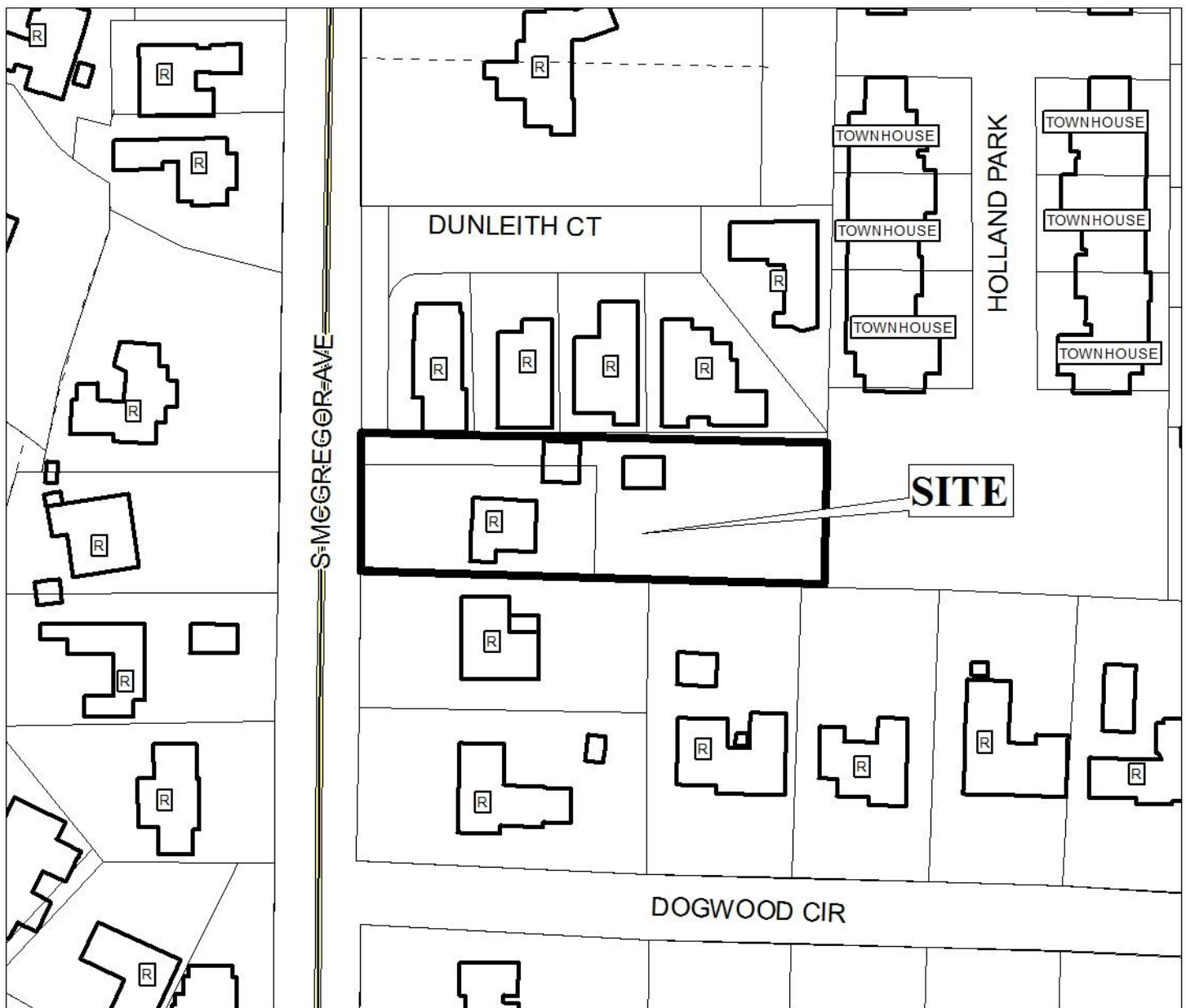
REQUEST Front Yard Setback Variance





# BOARD OF ADJUSTMENT

## VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units.

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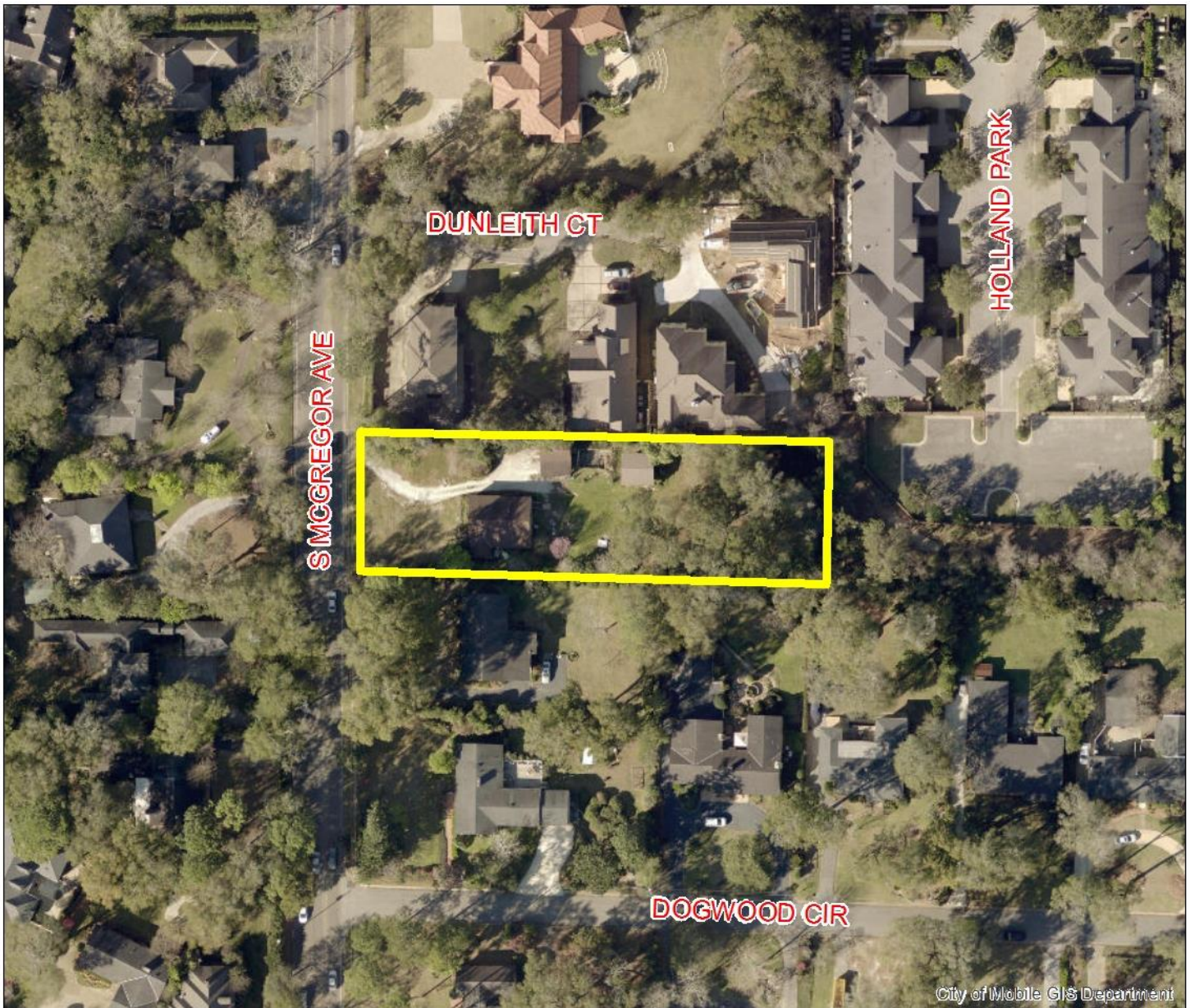
REQUEST Front Yard Setback Variance

<span style="background-color: cyan; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> R-A	<span style="background-color: green; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> R-3	<span style="background-color: brown; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> T-B	<span style="background-color: orange; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> B-2	<span style="background-color: blue; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> B-5	<span style="background-color: yellow; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> MUN	<span style="background-color: red; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> SD-WH	<span style="background-color: purple; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> T5.1
<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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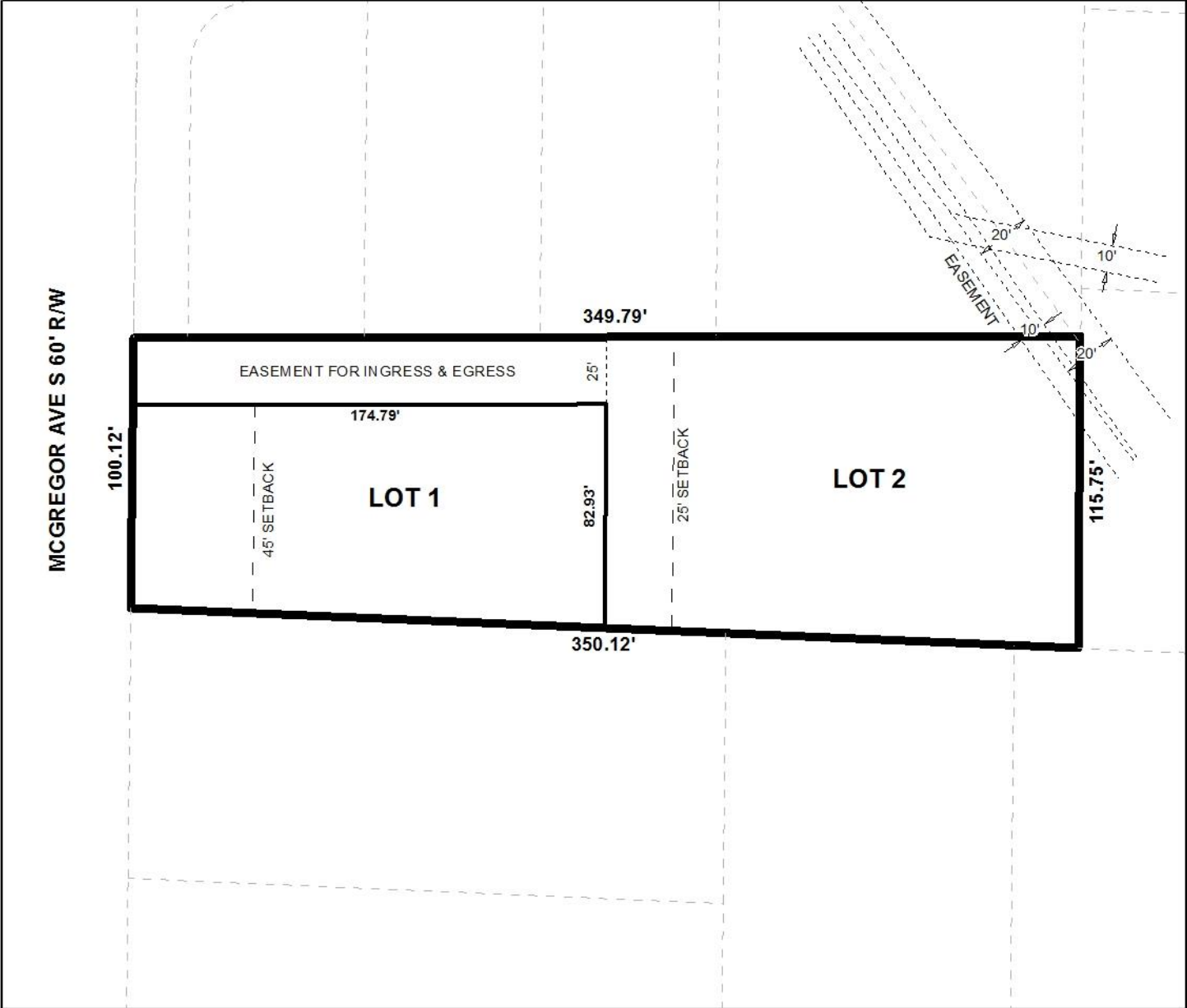
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# SITE PLAN



The site plan illustrates the easements, setbacks, and lots.

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APPLICANT <u>PH Building and Design</u>		
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