

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: June 7, 2021****CASE NUMBER**

6393

APPLICANT NAME

Pendarius Kidd

LOCATION2810 Harper Avenue
(North side of Harper Avenue, 176'± East of Butler Street).**VARIANCE REQUEST****USE:** To allow a hot dog shop in an R-1, Single-Family Residential District.**SURFACING:** To allow no paved parking in an R-1, Single-Family Residential District.**PARKING RATIO:** To allow no designated parking spaces in an R-1, Single-Family Residential District.**LANDSCAPING AND TREE PLANTING:** To allow no landscaping or tree plantings in an R-1, Single-Family Residential District.**ZONING ORDINANCE
REQUIREMENT****USE:** The Zoning Ordinance does not allow hot dog shops in an R-1, Single-Family Residential District**SURFACING:** The Zoning Ordinance does not allow compliant parking surfaces in an R-1, Single-Family Residential District.**PARKING RATIO:** The Zoning Ordinance requires sufficient parking spaces in an R-1, Single-Family Residential District.**LANDSCAPING AND TREE PLANTING:** The Zoning Ordinance requires full compliance with landscaping and tree plantings in an R-1, Single-Family Residential District.**ZONING**

R-1, Single-Family Residential District

AREA OF PROPERTY

0.16± Acres

**CITY COUNCIL
DISTRICT**

District 1

**ENGINEERING
COMMENTS**

USE VARIANCE: NO COMMENT

SURFACING VARIANCE:

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

1. Submit and receive a Land Disturbance Permit through Central Permitting for any and all proposed site development.
2. Aggregate surfacing will NOT be allowed within the public ROW.
3. Designated handicapped accessible spaces and routes must be paved (i.e. concrete, asphalt).

PARKING RATIO VARIANCE: NO COMMENT

TREE & LANDSCAPING VARIANCE: NO COMMENTS

**TRAFFIC ENGINEERING
COMMENTS**

With no proposed or designated parking for this use, on-street parking could become an issue on Harper Avenue. Traffic Engineering may have to restrict parking on the street in the future. Without an improved parking surface, ADA accessibility is not provided.

**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
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 buildings and 600' of sprinkled buildings.

ANALYSIS

The applicant is requesting Use, Surfacing, Parking Ratio, Landscaping and Tree Planting, and Residential Buffering Variances to allow a hot dog shop without paved parking, no designated parking spaces, no landscaping or tree plantings, and no residential buffering in an R-1, Single-Family Residential District; the Zoning Ordinance does not allow hot dog shops in R-1, Single-Family Residential Districts, and requires compliant

parking surfaces, sufficient parking spaces, full compliance with landscaping and tree planting ratios, and compliant residential buffering.

The site has been given a Mixed Density Residential (MxDR) land use designation per the 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 acknowledges existing commercial development that is spread along Mobile's transportation corridors in a conventional strip pattern or concentrated into shorter segments of a corridor.

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.

It should also 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 site came to staff's attention in June 2020 when an electrical permit application was submitted in the attempt to have new service established for the structure that was placed on site without permits.

The applicant states:

I am asking to change 2810 Harper Ave. Mobile AL 36617 from residential to commercial property, because I want to enhance the community while providing quality food throughout the neighborhood. I was raised in Trinity Gardens so I want to give back to the community that help mold me into the woman I am today. What better place to continue my growth into a businesswoman? By developing strong ties with the people through my hotdogs. Growing up my mother always had a candy store in our home for the neighborhood children. By doing so she knew all the people in the neighborhood and developed strong ties to the community. She was an inspiration which made me want to become a business owner. A dream I want to make a reality. I also remember walking with my cousin to Sweets Snack Shop to buy burgers and fries before going to the park. Doing so it got us out the house walking the neighborhood meeting new people in the community. I have always seen strong businesswomen influencing me through my life. Making this a commercial property will not only be the first step in making my dream a reality, but I hope it will inspire someone else to do the same.

The applicant placed a prefabricated storage building on the site without permits or approvals, and is asking for permission to operate a commercial business from the location without making any improvements to the site. It should be noted that even if the Board grants the applicant relief from Zoning Ordinance requirements, the structure will need to be brought into compliance with all Building Code and Health Department regulations, etc.

Within a 1/3 mile radius of the subject site, the predominant use is single-family residential, with the exception of several churches and non-conforming businesses that have been in operation in their current locations since the late 50s and 60s.

The site itself is on a minor residential street, with no sidewalks. To the West of the site is a church and parking lot, while to the North, East, and South are single-family homes. The applicant has not demonstrated that a hardship exists with the property that would prevent it from being used in a compliant, single-family manner. It is simply the applicant's desire to have a commercial use, on a residentially zoned property, without making any attempts at bringing the site into compliance.

RECOMMENDATION: Based on the preceding, staff recommends to the Board the following findings of fact for Denial for the Variance requests:

- 1) The variance will be contrary to the public interest, as the site is predominately single-family residential in nature;
- 2) Special conditions do not appear to exist, such that a literal enforcement of the provisions of the chapter will result in unnecessary hardship as no attempt has been

- made to use the site in a compliant manner; and
- 3) The spirit of the chapter shall not be observed, and substantial justice shall not be done to the applicant and the surrounding neighborhood by granting the requested variance, as the proposed commercial operation would not be in keeping with the existing character of the neighborhood.

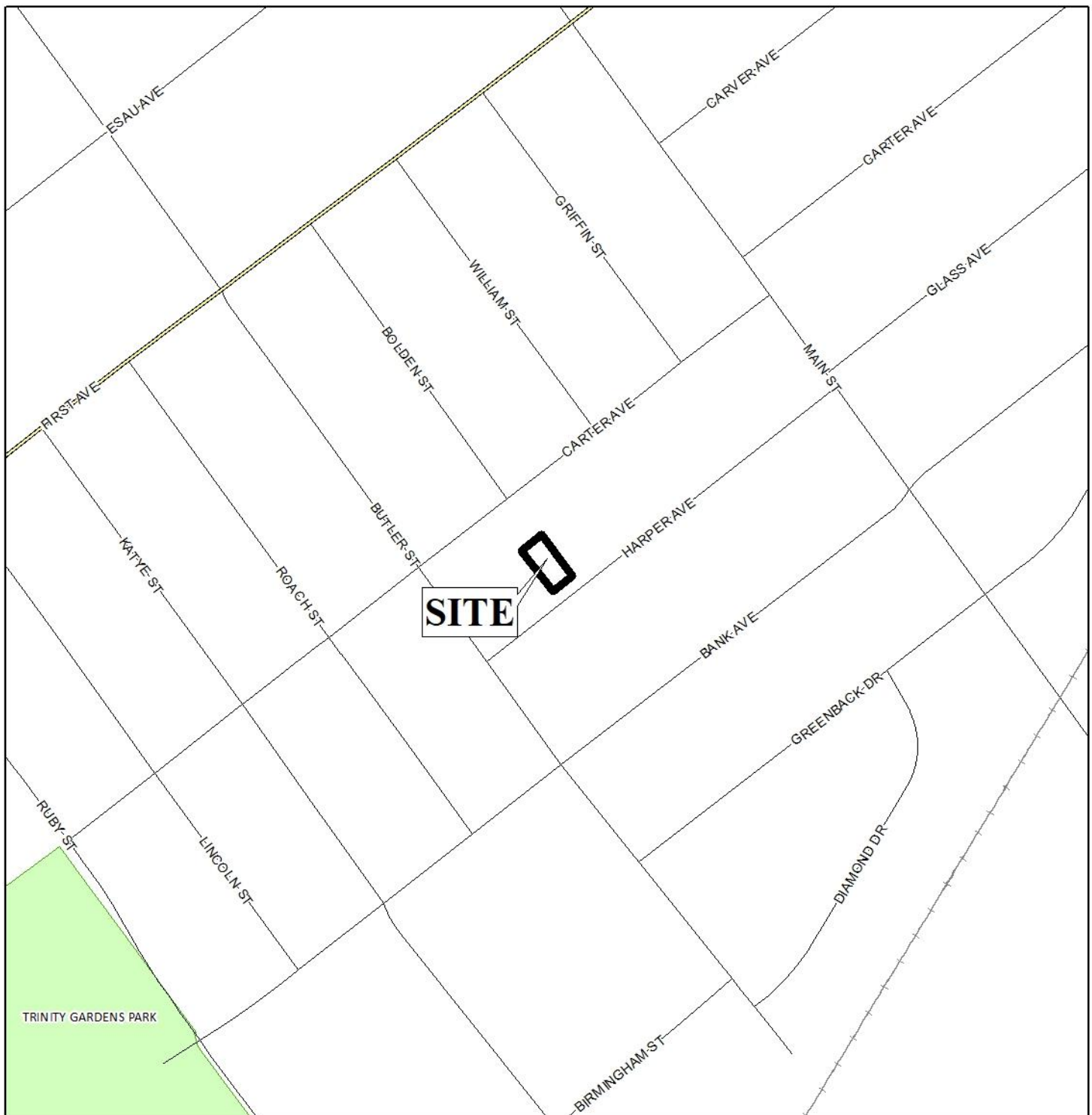
Revised for the August 2, 2021 meeting:

The application was heldover by the Board of Zoning Adjustment to allow the applicant time to meet with neighbors. The applicant was also advised to schedule a pre-development meeting to gain an understanding of all other codes and ordinances that will be applicable, should the current request be approved. No pre-development meeting has occurred, nor has any additional information been submitted by the applicant, therefore the previous recommendation stands.

RECOMMENDATION: *Based on the preceding, staff recommends to the Board the following findings of fact for Denial for the Variance requests:*

- 1) The variance will be contrary to the public interest, as the site is predominately single-family residential in nature;*
- 2) Special conditions do not appear to exist, such that a literal enforcement of the provisions of the chapter will result in unnecessary hardship as no attempt has been made to use the site in a compliant manner; and*
- 3) The spirit of the chapter shall not be observed, and substantial justice shall not be done to the applicant and the surrounding neighborhood by granting the requested variance, as the proposed commercial operation would not be in keeping with the existing character of the neighborhood.*

LOCATOR MAP



APPLICATION NUMBER 6393 DATE August 2, 2021

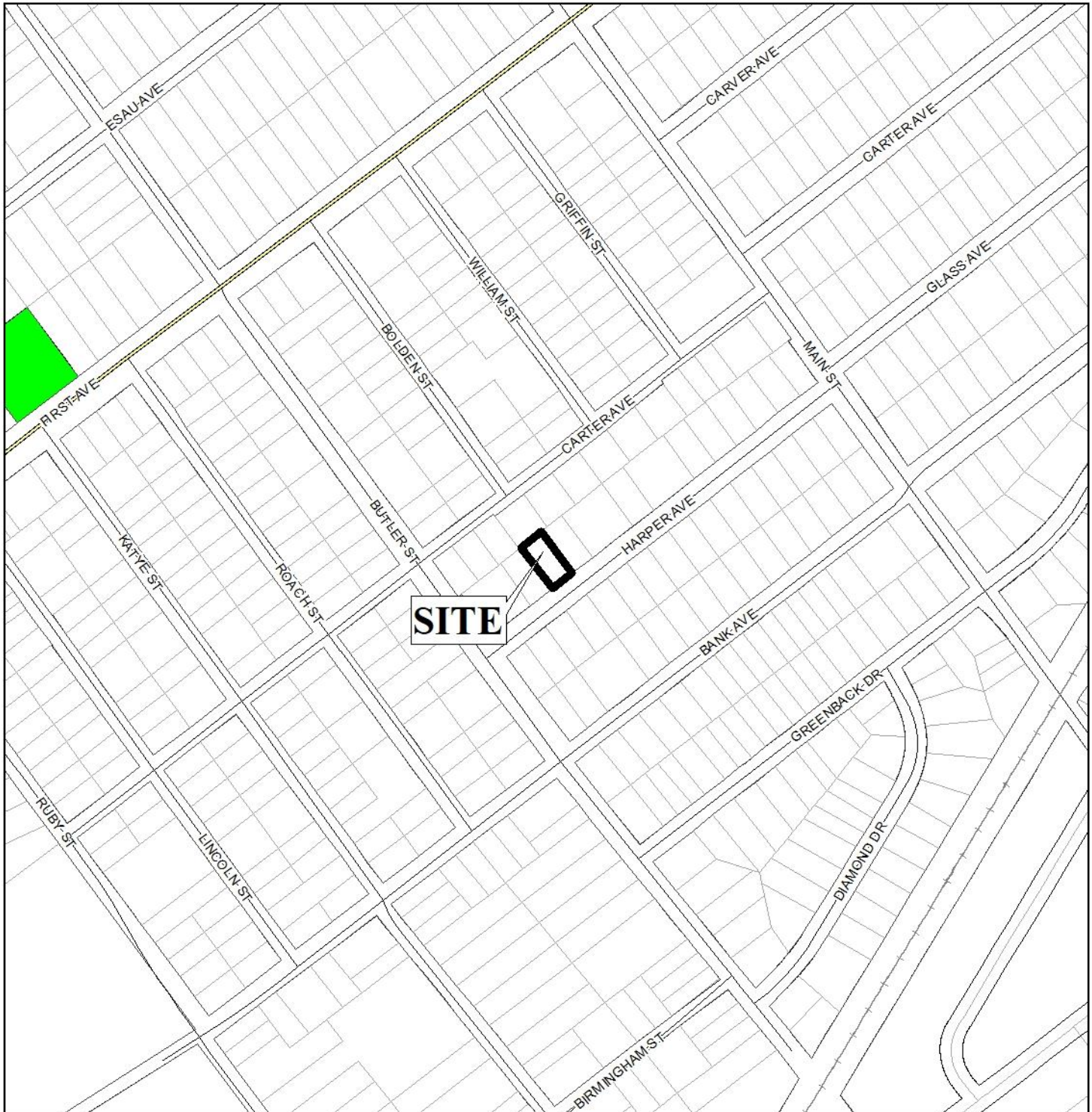
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REQUEST Use, Surfacing, Parking Ratio, Landscaping and Tree Planting,
and Residential Buffering Variances



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LOCATOR ZONING MAP



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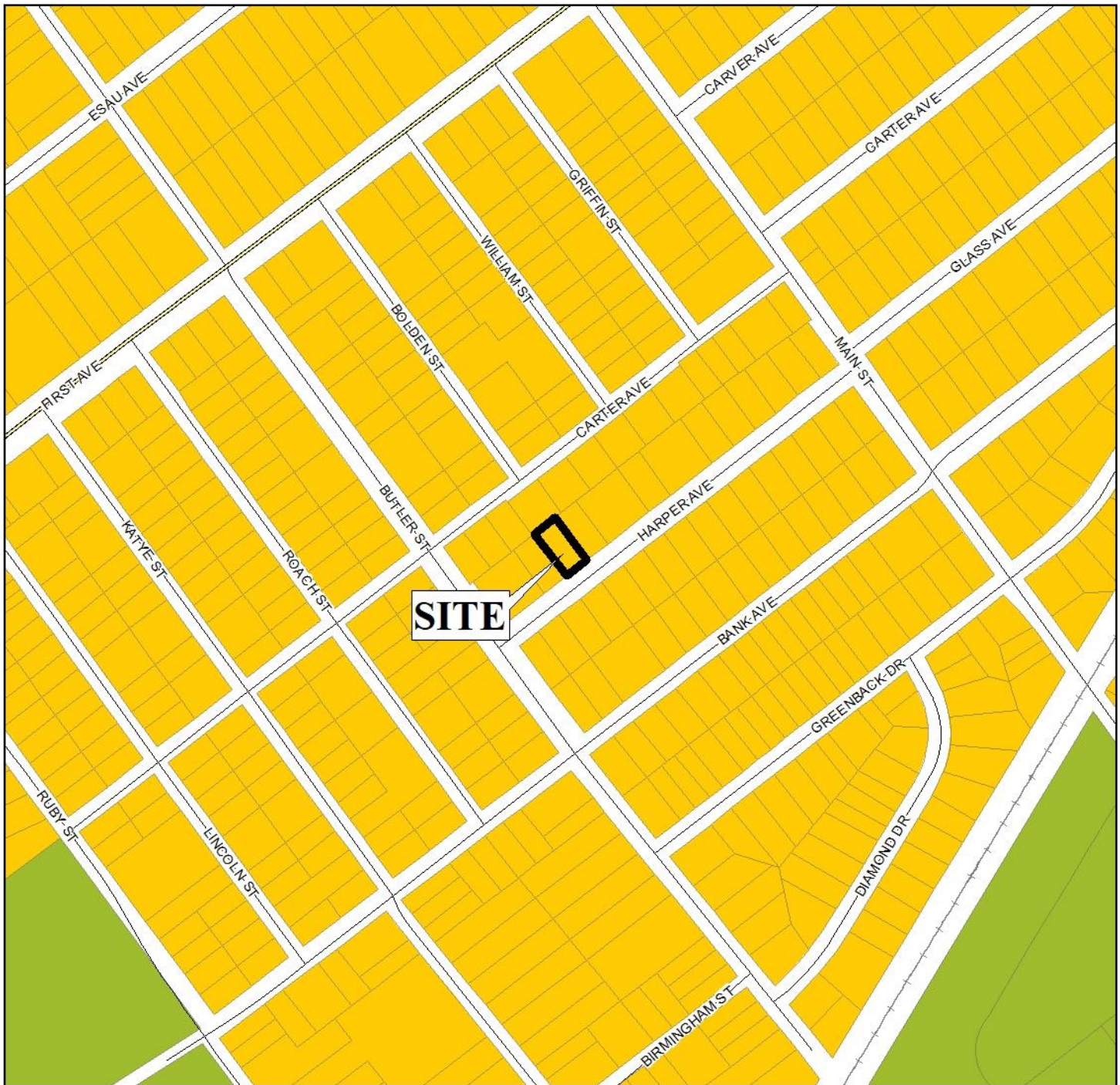
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FLUM LOCATOR MAP



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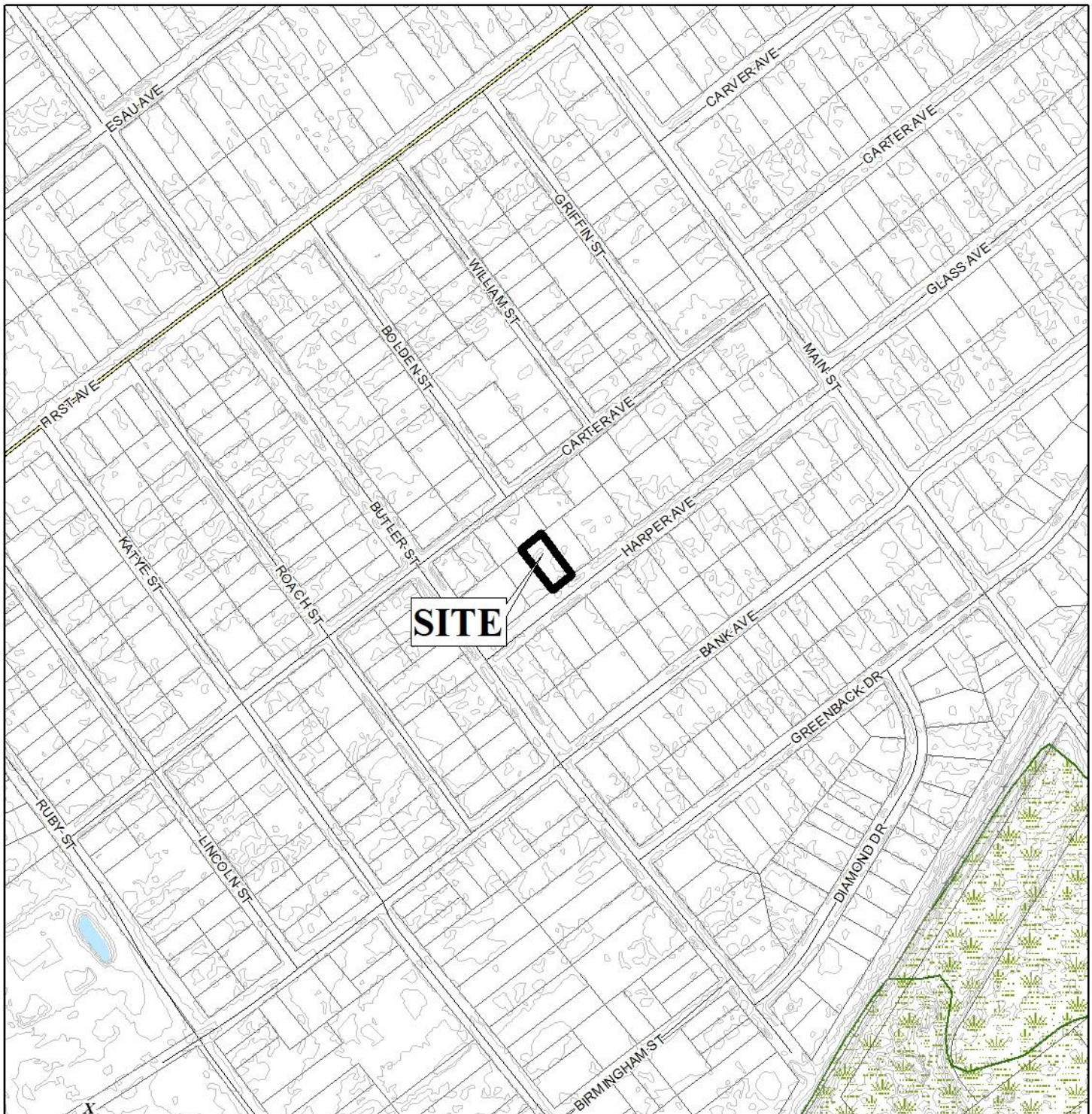
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|---------------------------|-----------------------------------|---------------------|--------------------|
| Low Density Residential | Neighborhood Center - Traditional | Downtown Waterfront | Parks & Open Space |
| Mixed Density Residential | Neighborhood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



ENVIRONMENTAL LOCATOR MAP



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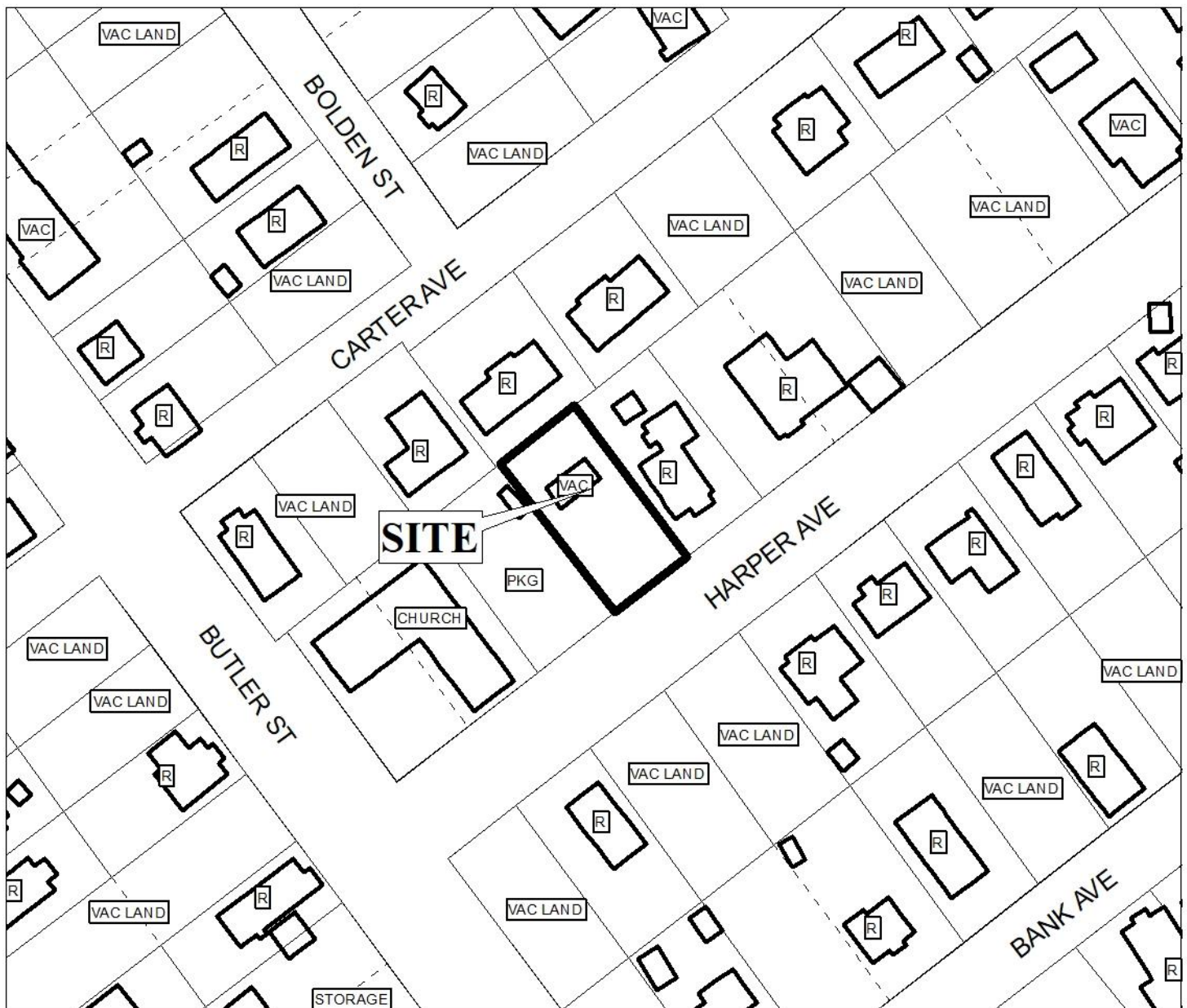
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BOARD OF ADJUSTMENT

VICINITY MAP - EXISTING ZONING



The site is surrounded by single family 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



The site is surrounded by single family residential units.

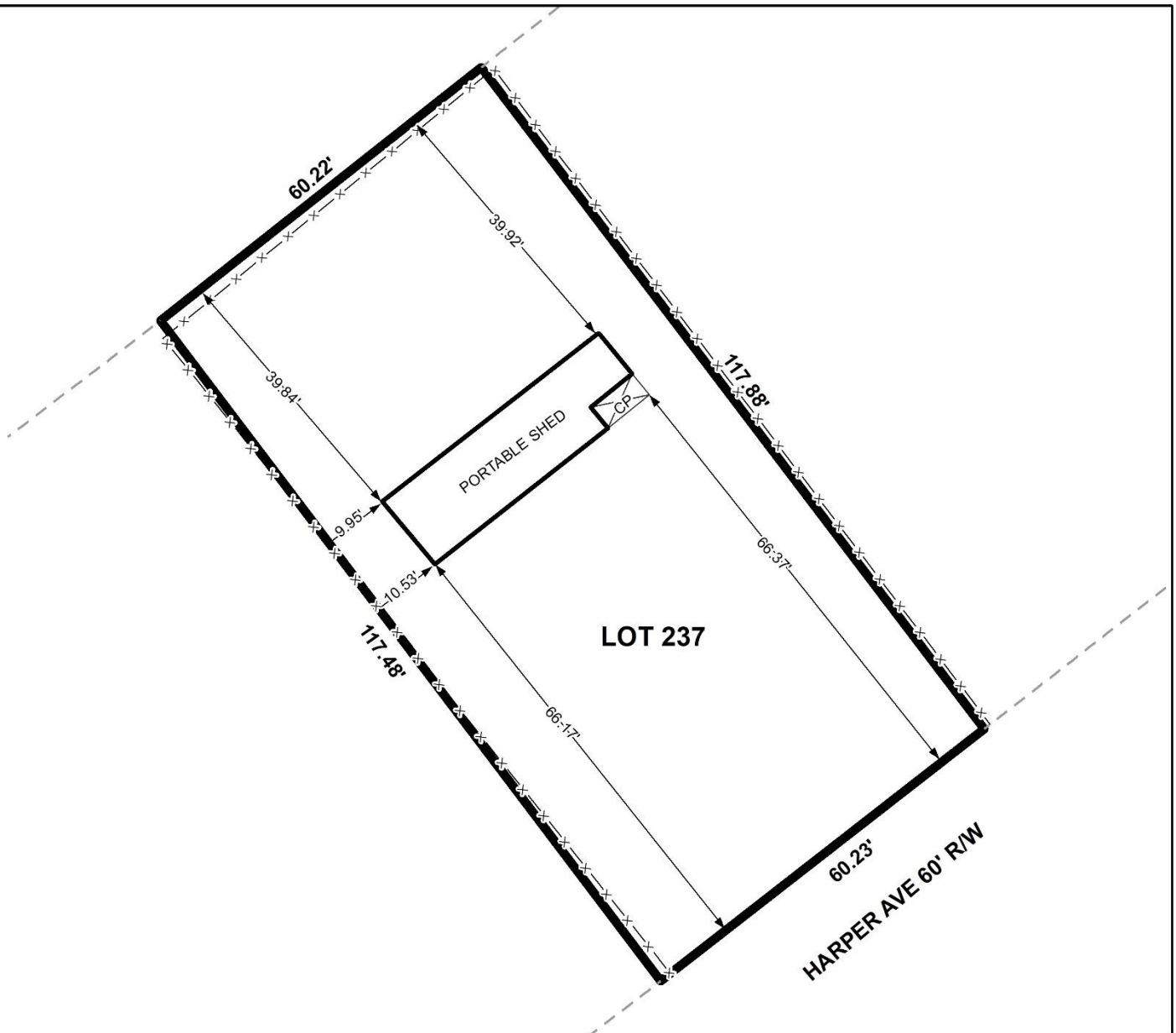
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SITE PLAN



The site plan illustrates the existing portable shed, and property fence.

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