

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: December 6, 2021**

<u>CASE NUMBER</u>	6429/6368
<u>APPLICANT NAME</u>	Janael Moguel
<u>LOCATION</u>	1409 Greenbrier Drive (East side of Greenbrier Drive, 270'± South of Halls Mill Road).
<u>VARIANCE REQUEST</u>	USE: Use Variance to allow commercial child daycare center in an R-1, Single-Family Residential District.
<u>ZONING ORDINANCE REQUIREMENT</u>	USE: The Zoning Ordinance does not allow a commercial child daycare center in an R-1, Single-Family Residential District.
<u>ZONING</u>	R-1, Single-Family Residential District
<u>AREA OF PROPERTY</u>	0.3± Acres
<u>CITY COUNCIL DISTRICT</u>	District 4
<u>ENGINEERING COMMENTS</u>	No comments.
<u>TRAFFIC ENGINEERING COMMENTS</u>	Driveway number, size, location, and design to be approved by Traffic Engineering and conform to AASHTO standards. Any required on-site parking, including ADA handicap spaces, shall meet the minimum standards as defined in Section 64-6 of the City's Zoning Ordinance.
<u>URBAN FORESTRY COMMENTS</u>	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 DEPARTMENT

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 commercial buildings and 600' of sprinkled commercial buildings.

ANALYSIS The applicant is requesting a Use Variance to allow a commercial child daycare center in an R-1, Single-Family Residential District; the Zoning Ordinance does not allow a commercial child day care center in an R-1, Single-Family Residential District.

The site has been given a Low Density Residential land use designation per the Future Land Use Plan and Map adopted by the Planning Commission. 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.

The Low Density Residential 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, and 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 zero (0) and six (6) dwelling units per acre.

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, bikeable human scale.

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 is 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 was most recently before the Board of Zoning Adjustment at its February 1, 2021 meeting requesting approval for a home-based child daycare with a maximum of twelve (12) children. That application was approved, but has now expired as no permits or business licenses were issued. The applicant now wishes to use the existing residence as a commercial child daycare. The applicant states:

This letter of Intent is in support of my request for a variance of use of my current residential property. The intention is to convert from a Family Home Daycare to a Group Home Daycare in my single-family residence. My current zoning permit allows me to provide for a maximum of 5 children whereas the variance would allow me to provide for a maximum of 10- 12 children. What is perhaps most relevant here, and what I would ask the board to consider, is with the approval of this variance I would be able to provide care and nurture to more children that are now struggling to find a placement in daycare facilities due to the current pandemic and restrictions that are being place at this time. I am not only requesting this variance as an increase to my income but as advance daycare director with 11 plus years in childcare under my belt and very passionate about educating and providing. I hope you agree that my request would produce and aesthetically proper addition to the neighborhood.

It should be noted that allowing the subject site to be used commercially, the structure will need to be renovated to comply with Building, Mechanical, Plumbing, Electrical, and Fire Codes. Such alterations will require the applicant to submit construction plans for review and approval before permits can be obtained.

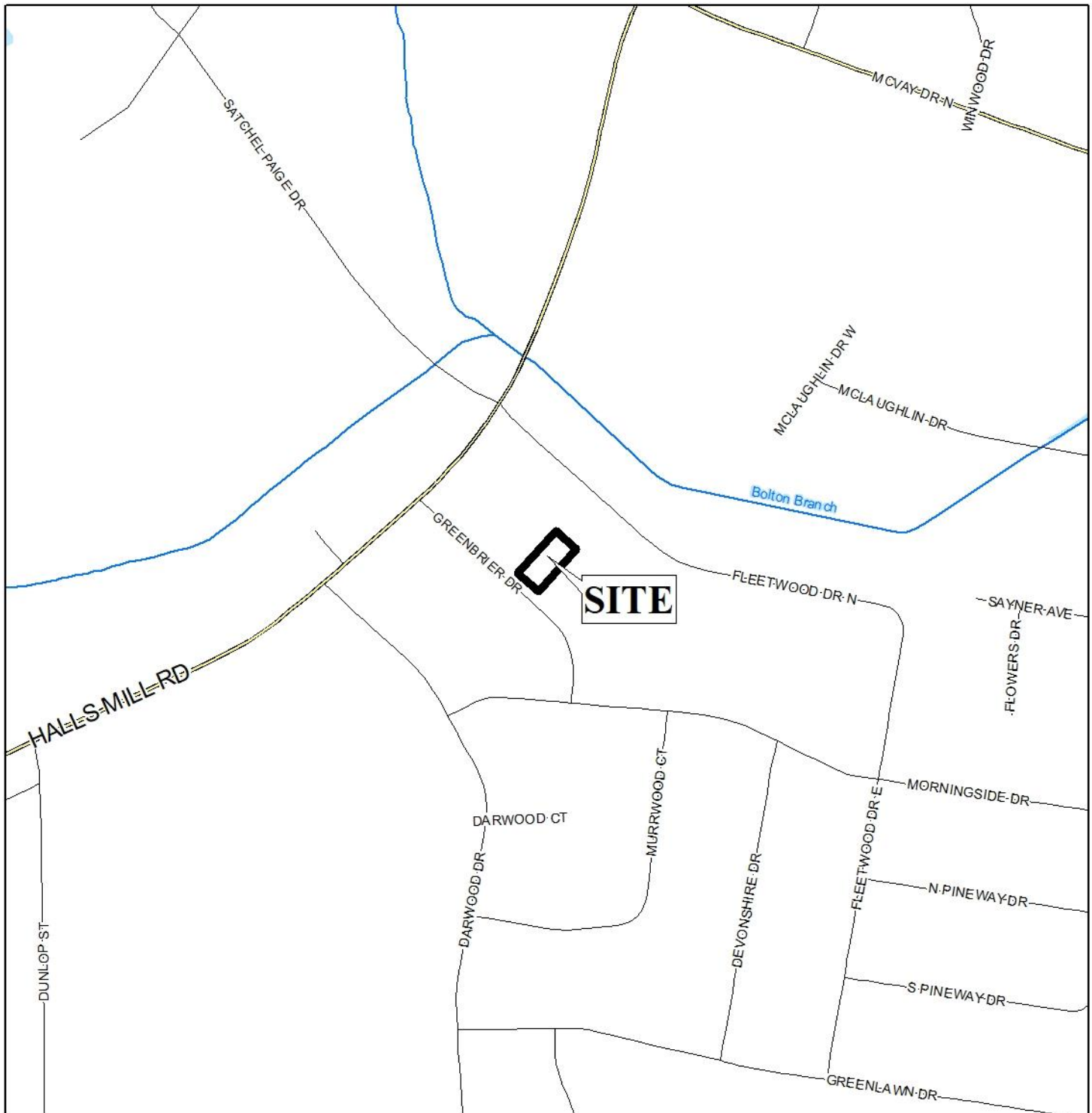
Furthermore, if the existing residence were to be converted to a commercial building, the site would need to be brought into full compliance with Zoning Ordinance requirements, such as residential buffers, parking, tree planting and landscape area, etc. The site plan submitted shows the site as it is currently developed, with no proposed alterations shown.

The applicant has not demonstrated a hardship associated with the property that prevents it from being used as it is currently; a residence and home-based child daycare. It is simply the applicant's request to establish a commercial business in a residential neighborhood, regardless of the impacts on the surrounding area, and without making any improvements required by the Zoning Ordinance.

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

- 1) Approving the variance will be contrary to the public interest in that it will be contrary to Section 64-12 of the Zoning Ordinance regarding permitted uses;
- 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 a home-based daycare business is operated from the property in compliance with 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 because the surrounding properties are zoned for residential use.

LOCATOR MAP



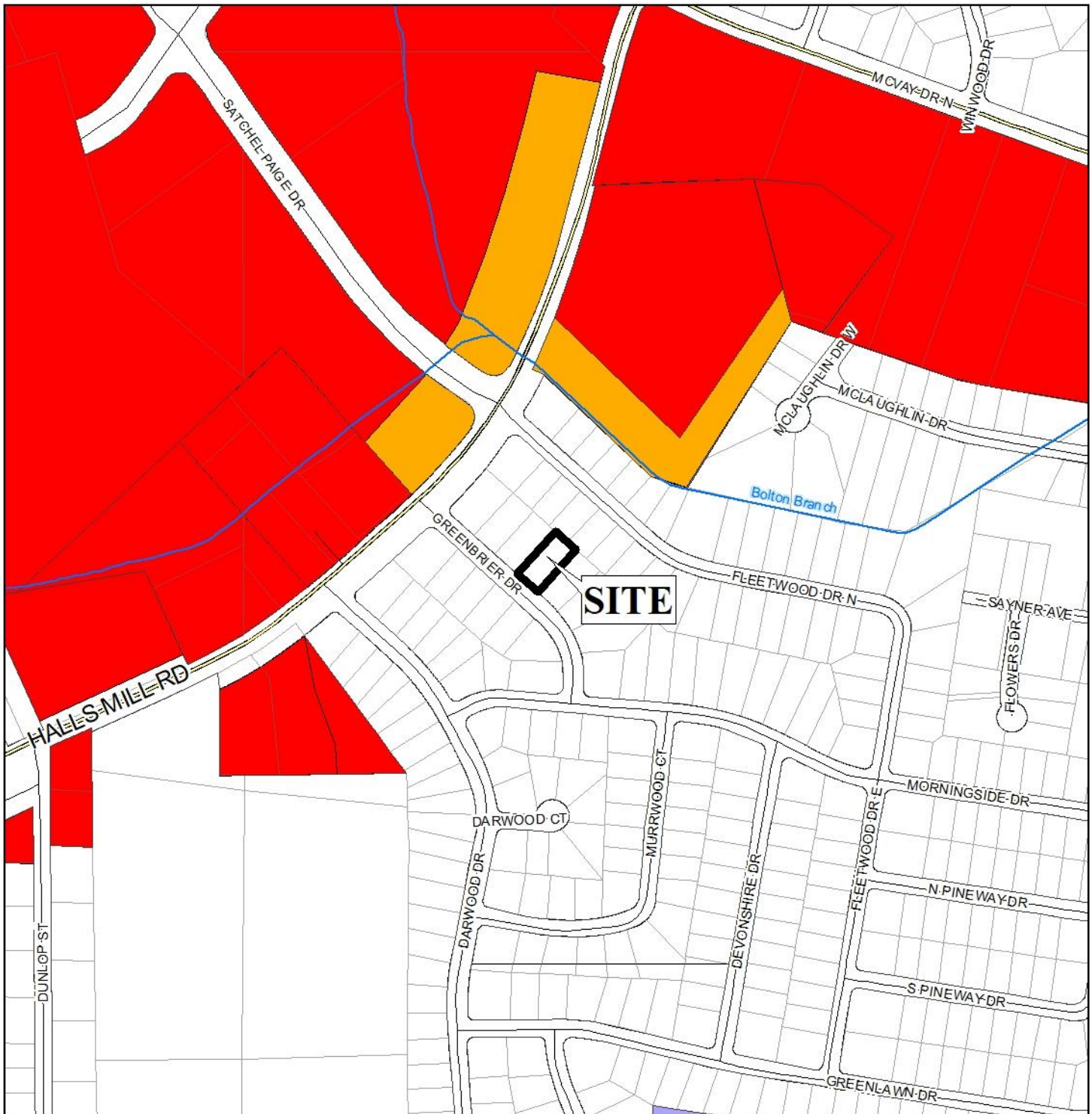
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APPLICANT Janael Moguel

REQUEST Use Variance



LOCATOR ZONING MAP



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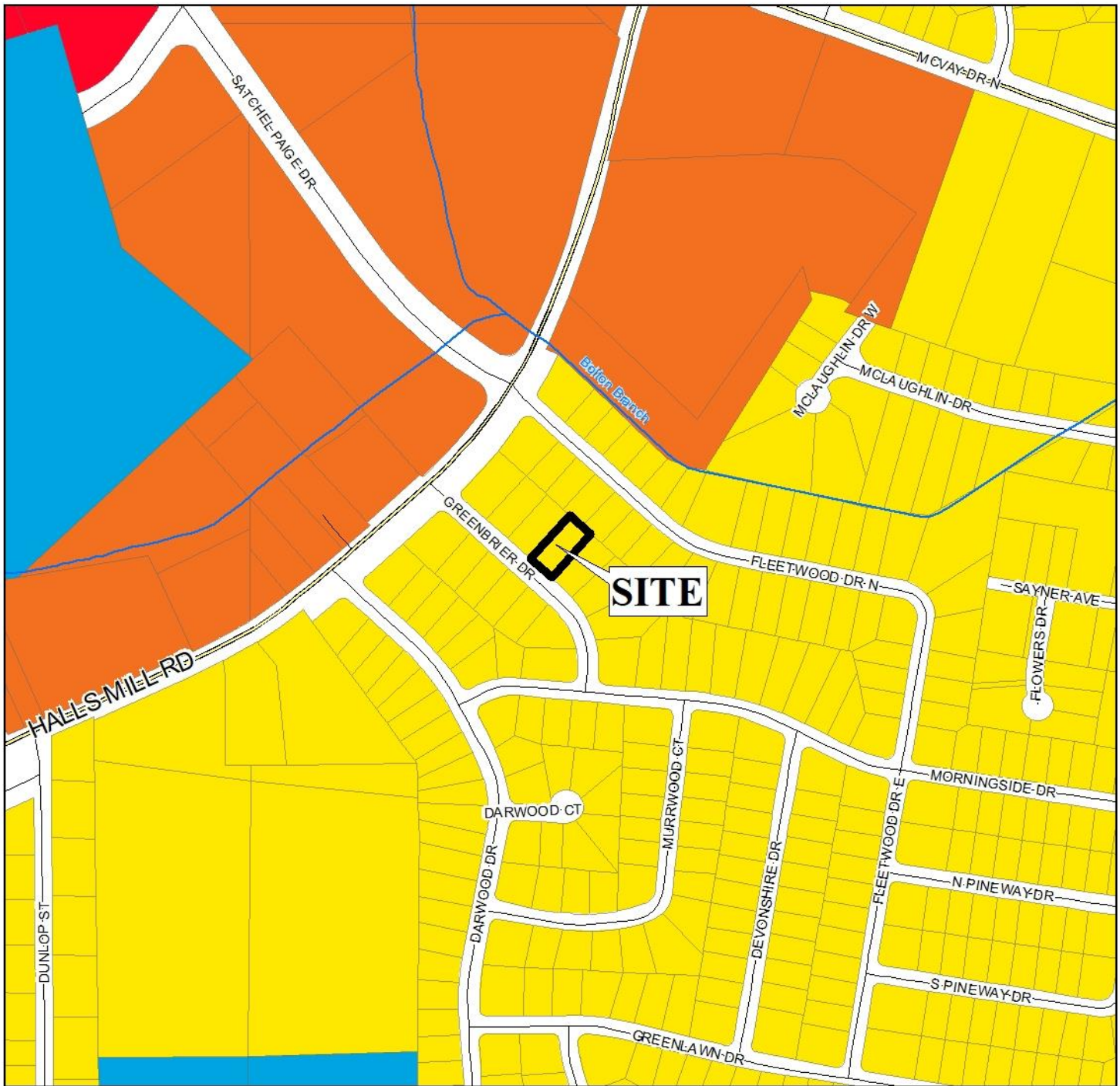
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NTS

FLUM LOCATOR MAP



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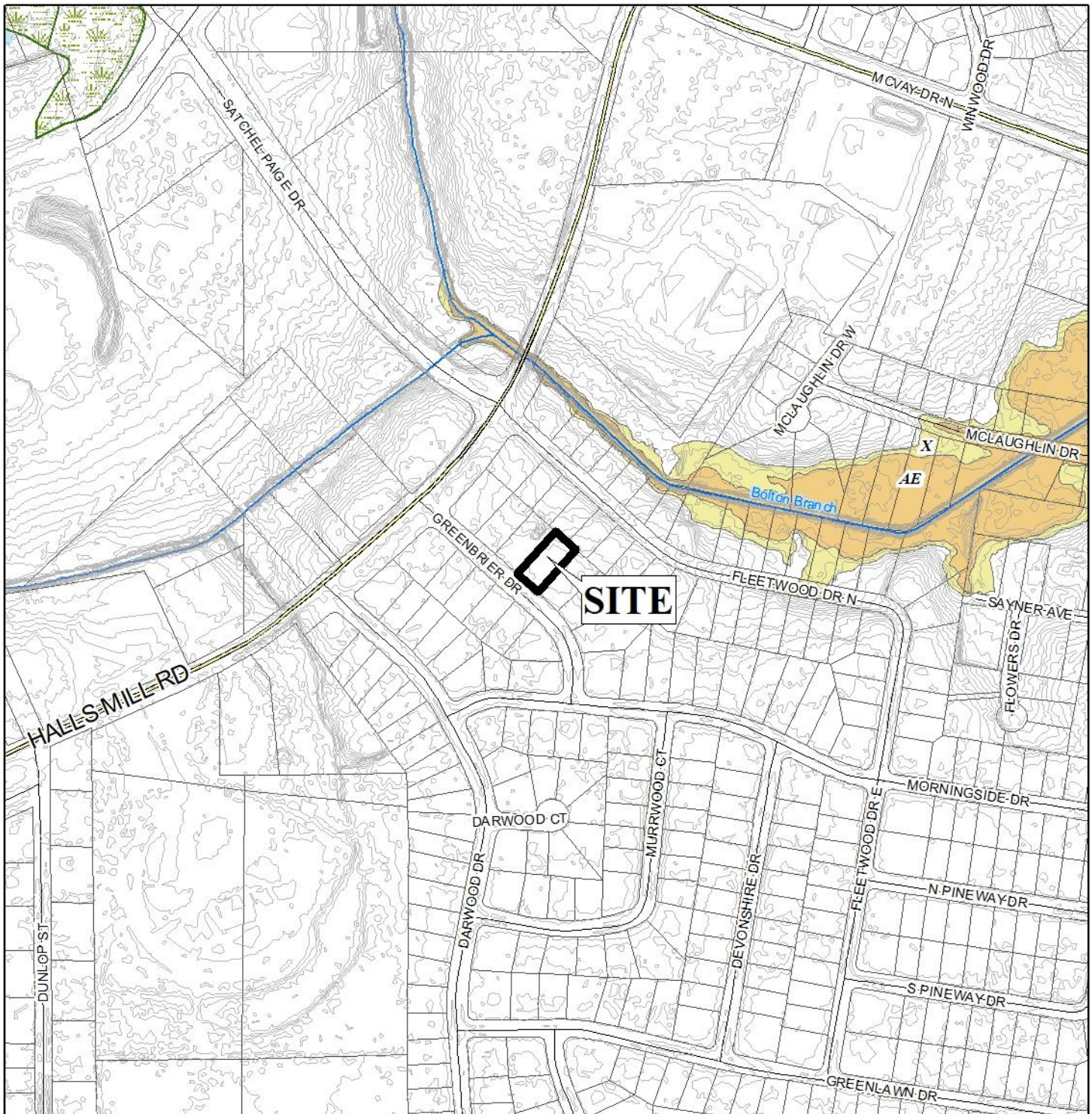
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Low Density Residential	Neighborhood Center - Traditional	Downtown Waterfront	Parks & Open Space
Mixed Density Residential	Neighborhood Center - Suburban	Light Industry	Water Dependent
Downtown	Traditional Corridor	Heavy Industry	
District Center	Mixed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



ENVIRONMENTAL LOCATOR MAP



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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



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VICINITY MAP - EXISTING AERIAL

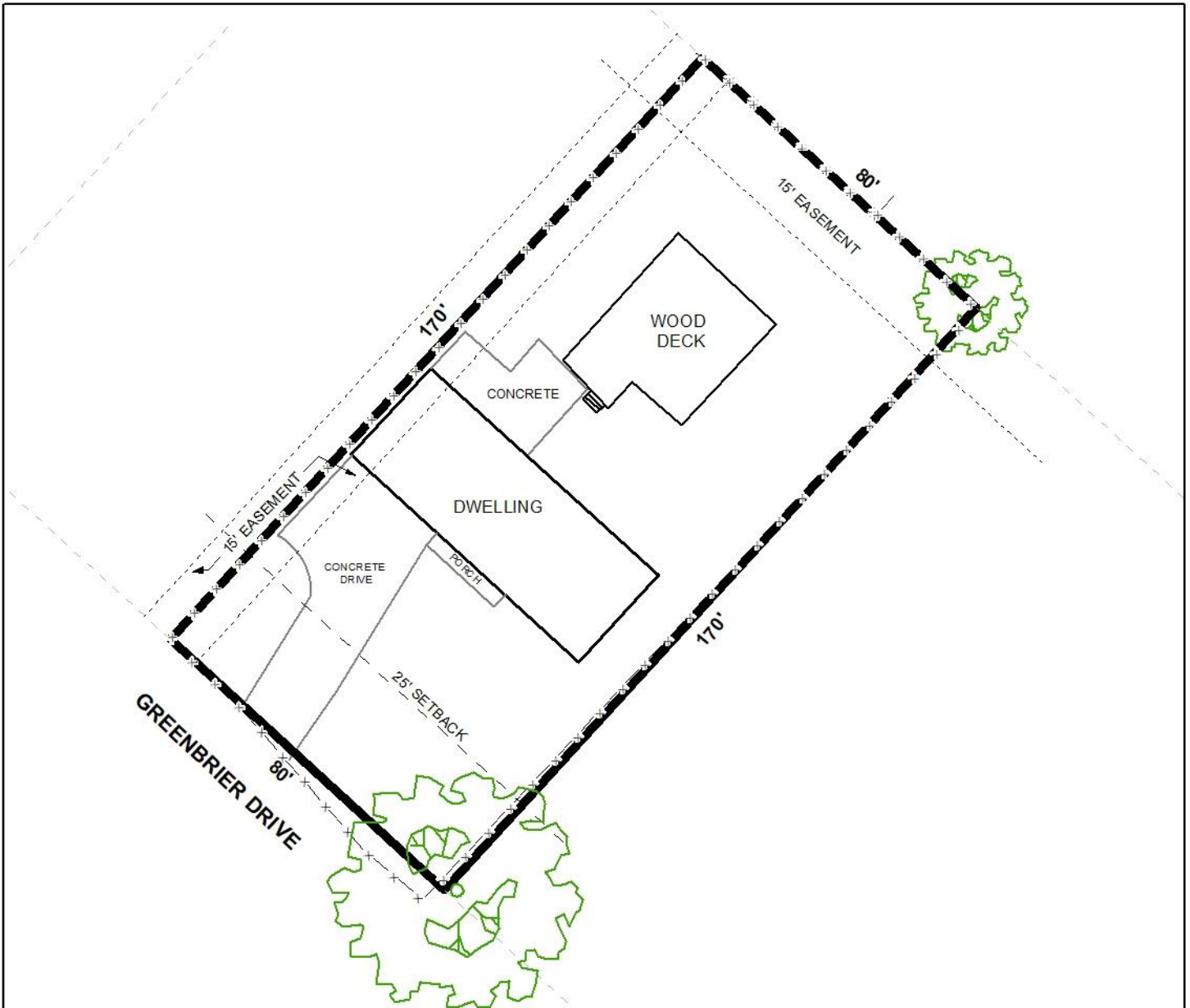


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SITE PLAN



The site plan illustrates existing surfaces, buildings and easements.

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