

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: April 4, 2022****CASE NUMBER**

6448

APPLICANT NAME

Qui Le (Gerald Byrd, Agent)

LOCATION

1458 Duval Street
(Block bounded by Duval Street, Michigan Avenue, Grove Street and Partridge Street).

VARIANCE REQUEST

REAR STREET REAR YARD SETBACK: To allow a dumpster over three feet high within the required 25-foot rear street, rear yard setback in an R-1, Single-Family Residential District.

**ZONING ORDINANCE
REQUIREMENT**

REAR STREET REAR YARD SETBACK: The Zoning Ordinance does not allow structures over three feet high within the required 25-foot rear street, rear property line in an R-1, Single-Family Residential District.

ZONING

R-1, Single-Family Residential District

AREA OF PROPERTY

3,774± square feet / 0.1± Acres

**CITY COUNCIL
DISTRICT**

District 2

**ENGINEERING
COMMENTS**

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

1. The proposed improvements will require a Land Disturbance Permit.
2. Any and all proposed land disturbing activity within the property will need to be submitted for review and be in conformance with Mobile City Code, Chapter 17, Storm Water Management and Flood Control; the City of Mobile, Alabama Flood Plain Management Plan (1984); and, the Rules For Erosion and Sedimentation Control and Storm Water Runoff Control.

**TRAFFIC ENGINEERING
COMMENTS**

No comments.

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 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 Rear Street, Rear Yard Setback Variance to allow a dumpster over three feet high within the required 25-foot rear street, rear yard setback in an R-1, Single-Family Residential District; the Zoning Ordinance does not allow structures over three feet high within the required 25-foot rear street rear yard setback in an R-1, Single-Family Residential District.

The site has been given a Traditional Corridor (TC) 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.

This land use designation generally applies to transportation corridors east of I-65, which serve as the primary commercial and mixed-use gateway to Downtown and the City's traditional neighborhoods (equivalent to Map for Mobile's Traditional Neighborhoods).

Depending on their location (and as allowed by specific zoning), TC designations incorporate a range of moderately scaled single-use commercial buildings holding retail or services; buildings that combine housing units with retail and/or office; a mix of housing types including low- or mid-rise multifamily structures ranging in density from 4 to 10 du/ac; and attractive streetscapes and roadway designs that safely accommodate all types of transportation – transit, bicycling, walking, and driving. In these areas, special emphasis is placed on the retention of existing historic structures, compatible infill development, and appropriate access management.

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 site is developed with an existing non-conforming restaurant in an R-1, Single-Family Residential District, that has existed since at least 1985. The applicant wishes to place a dumpster on the site, however due to the site having four street frontages on a small parcel of land, if standard setbacks are applied to the site, it would be undevelopable.

The applicant states:

THE OWNER OF THIS PROPERTY IS REQUESTING A VARIANCE TO ALLOW THE PLACEMENT OF THE DUMPSTER PAD AND ENCLOSURE WITHIN THE 25' BUILDING SETBACK AREA OF GROVE STREET. THIS AREA WAS CHOSEN BECAUSE THE KITCHEN IS LOCATED IN THAT END OF THE BUILDING AND THERE IS AN EXISTING DOOR THAT WOULD ALLOW EASY ACCESS FROM THE KITCHEN TO THE DUMPSTER. ADDITIONALLY, THE EXISTING GREASE TRAP IS LOCATED WITHIN 4' OF THE PROPOSED DUMPSTER WHICH ALLOWS ANY WATER OR FOOD GREASE TO ENTER THE TRAP BEFORE DISCHARGING INTO THE SANITARY SEWER SYSTEM.

THE RESTAURANT BUILDING IS LOCATED APPROXIMATELY 14' FROM THE GROVE STREET RIGHT OF WAY LINE AND HAS EXISTED FOR MANY YEARS. THE OWNER STATES THAT THERE HAS BEEN A FOOD SERVICE BUSINESS IN THE BUILDING FOR THE LAST 40 YEARS AND THEY WERE NOT THE OWNER WHEN THE BUILDING WAS CONSTRUCTED.

THIS PROPERTY IS MINIMAL IN SIZE AND WAS CREATED BY THE CITY OF MOBILE WHEN THE RIGHT OF WAY FOR MICHIGAN AVENUE WAS ACQUIRED IN THE 1940'S FOR EASIER ACCESS TO BROOKLEY FIELD. IF A 25' BUILDING SETBACK IS APPLIED ON ALL SIDES OF THE PROPERTY, THERE IS NO AREA LEFT TO BUILD. THE EXISTING BUILDING WAS POSSIBLY CONSTRUCTED PRIOR TO THE FORMATION OF THE MOBILE PLANNING COMMISSION IN 1952.

GRANTING A VARIANCE TO CONSTRUCT THE PAD AND ENCLOSURE APPROXIMATELY 1.5' FROM THE RIGHT OF WAY LINE IS NOT PRECEDENT-SETTING IN THIS AREA. I HAVE PROVIDED THREE PICTURES OF A BUILDING LOCATED AT 1301 MICHIGAN AVENUE WHICH IS ACROSS FROM MOBILE CHOP SUEY. THE BUILDING (PAINTED BLACK) IS CONSTRUCTED ON THE RIGHT OF WAY LINE OF GROVE STREET AND IS ALSO TWO STORIES TALL, MUCH HIGHER THAN THE REQUIRED 6' DUMPSTER ENCLOSURE.

YOUR CONSIDERATION TO APPROVE THIS VARIANCE REQUEST IS APPRECIATED.

Due to the unique size and shape of the property, combined with street frontages on all sides, the applicant does appear to suffer an associated with the property. There is no place on the subject site that any structure taller than three feet can be placed outside of setbacks, therefore, approval of the request may be appropriate.

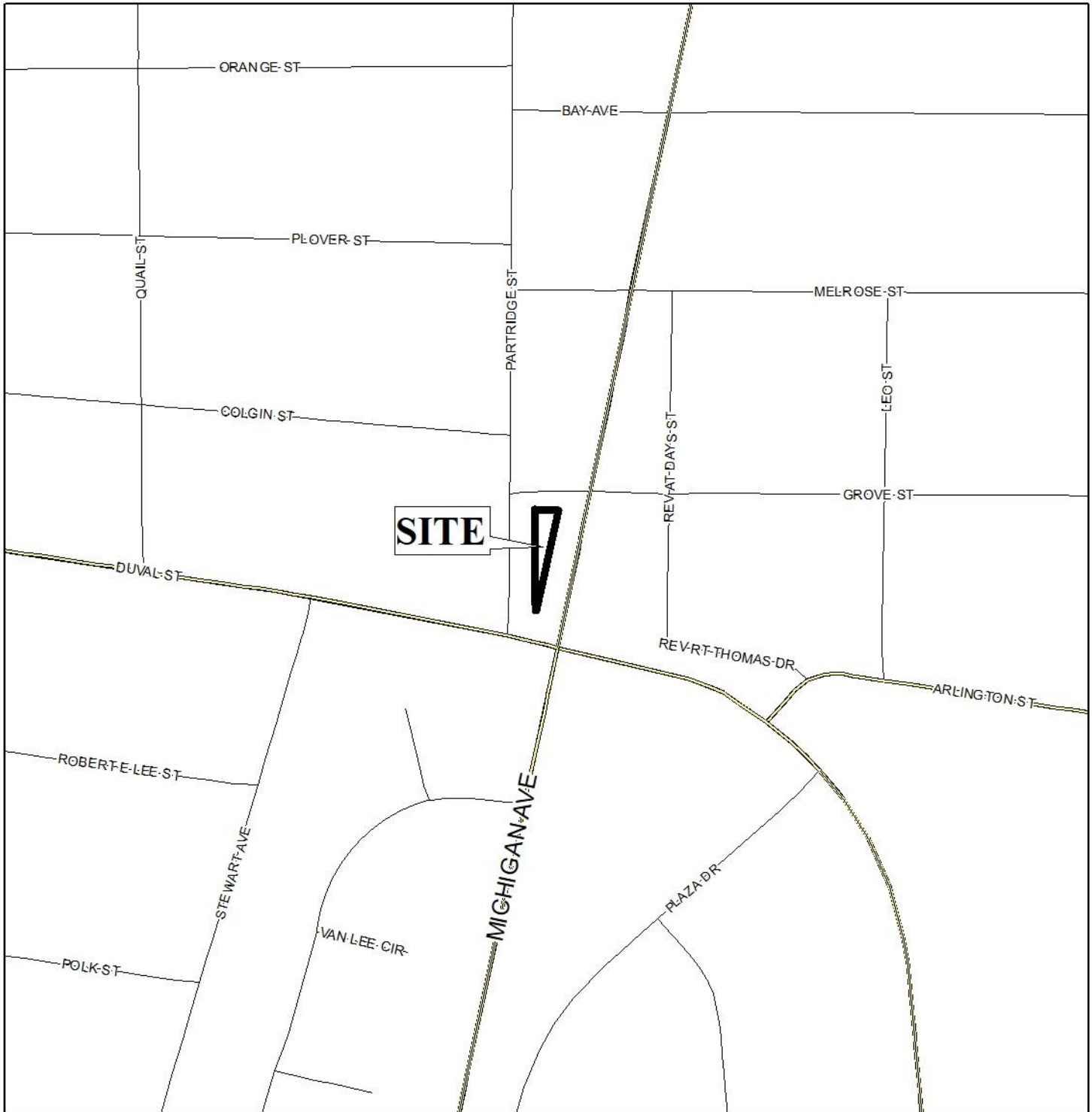
RECOMMENDATION: Based on the preceding, staff recommends to the Board the following findings of fact for Approval:

- 1) Approving the variance will not be contrary to the public interest because the existing restaurant has been there for over 35 years with no complaints from the neighborhood;
- 2) Special conditions were illustrated such that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship as there is no part of the site that is located outside of required setbacks; and
- 3) The spirit of the chapter shall be observed, and substantial justice shall be done to the surrounding neighborhood by granting the variance.

The approval should be subject to the following conditions:

- 1) Obtain associated building permits; and
- 2) Full compliance with all municipal codes and ordinances.

LOCATOR MAP



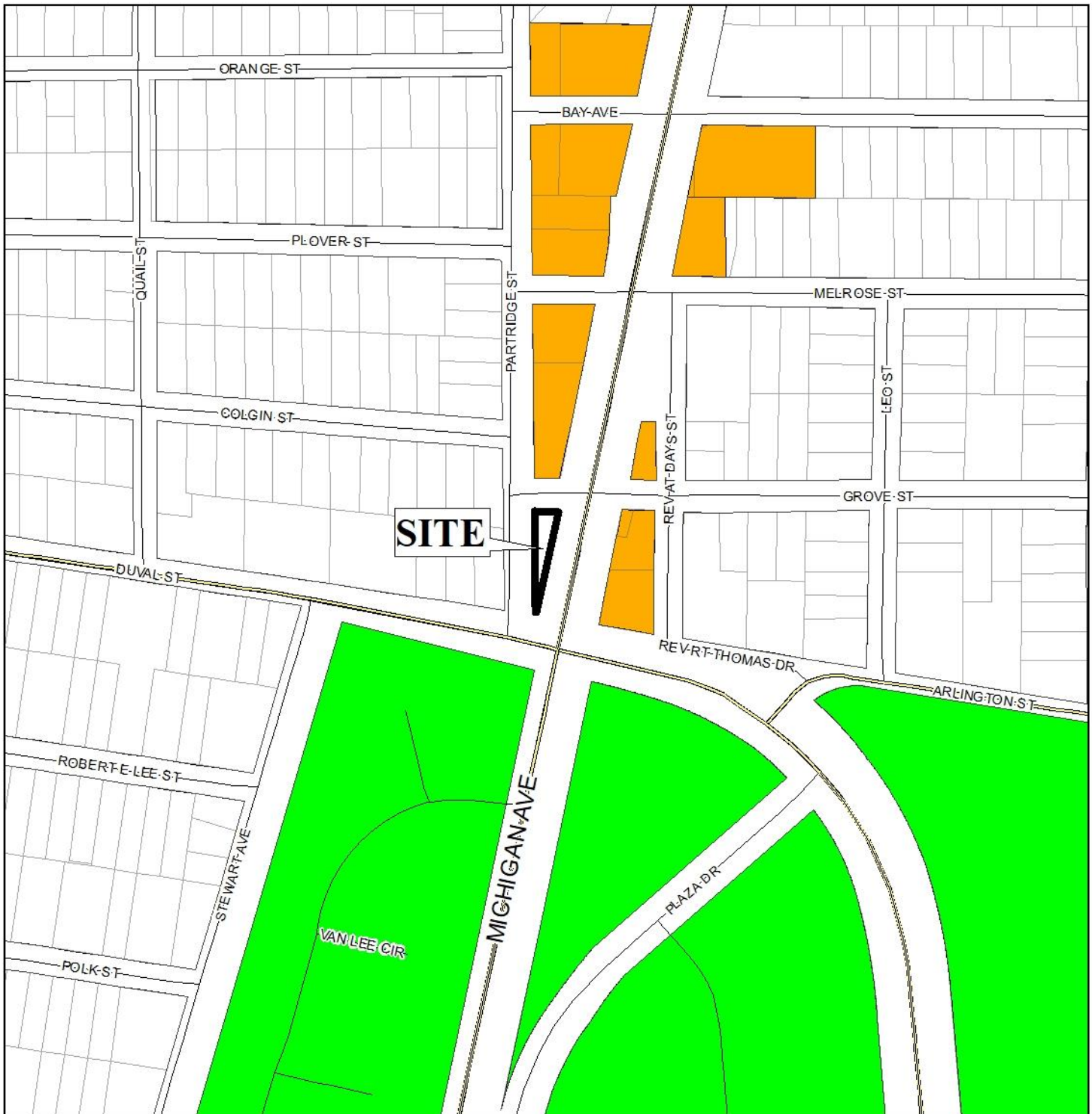
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APPLICANT Qui Le (Gerald Byrd, Agent)

REQUEST Rear Street Rear Yard Setback Variance



LOCATOR ZONING MAP



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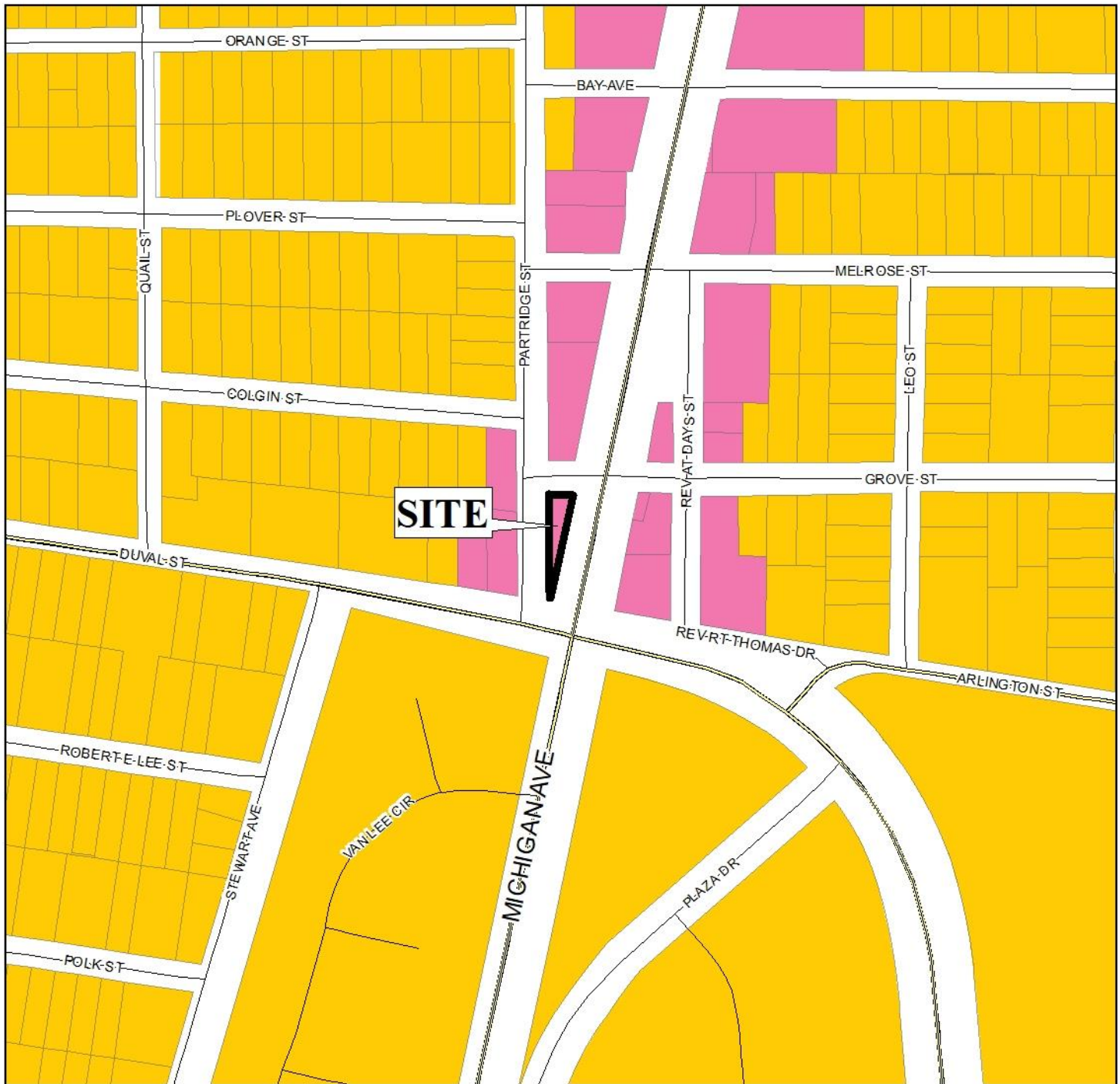
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NTS

FLUM LOCATOR MAP



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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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BOARD OF ADJUSTMENT

VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units to the west, and commercial units to the east.

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REQUEST Rear Street Rear Yard Setback Variance

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

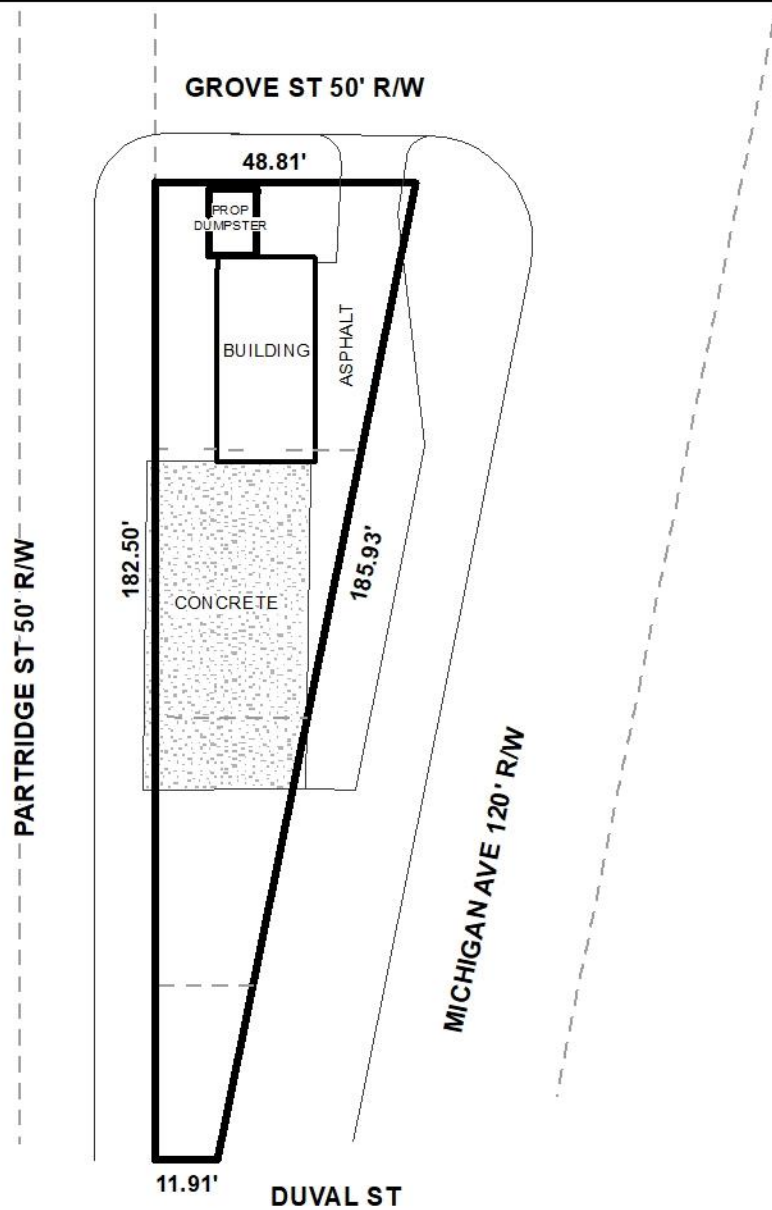


The site is surrounded by residential units to the west, and commercial units to the east.

APPLICATION NUMBER <u>6448</u> DATE <u>April 4, 2022</u>
APPLICANT <u>Qui Le (Gerald Byrd, Agent)</u>
REQUEST <u>Rear Street Rear Yard Setback Variance</u>



SITE PLAN

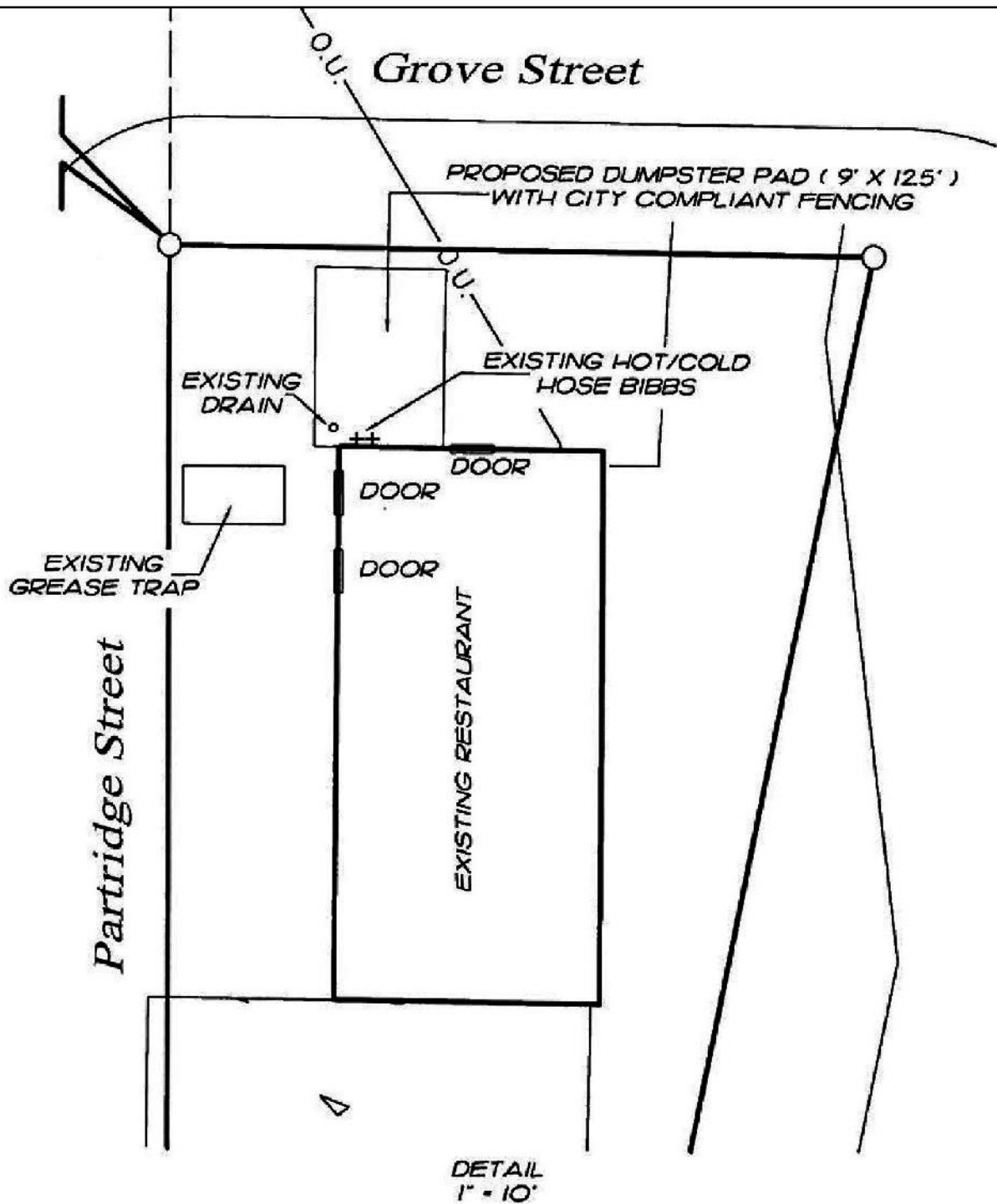


The site plan illustrates the existing building, proposed dumpster, and drive.

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DETAIL SITE PLAN



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REQUEST Rear Street Rear Yard Setback Variance

