

**BOARD OF ZONING ADJUSTMENT  
STAFF REPORT****Date: June 1, 2020****CASE NUMBER**

6327

**APPLICANT NAME**

Don Williams

**LOCATION**

3600 Springhill Memorial Drive North  
(Northwest corner of Springhill Memorial Drive North and  
West I-65 Service Road South)

**VARIANCE REQUEST**

**FRONT YARD SETBACK:** To allow the construction of an eight (8) foot high metal picket fence within the required front yard setback in a B-3, Community Business District.

**SIDE STREET SIDE YARD SETBACK:** To allow the construction of an eight (8) foot high metal picket fence within the required side street side yard setback in a B-3, Community Business District.

**ZONING ORDINANCE  
REQUIREMENT**

**FRONT YARD SETBACK:** The Zoning Ordinance limits fences within a required front yard setback to a maximum height of three (3) feet in a B-3, Community Business District

**SIDE STREET SIDE YARD SETBACK:** The Zoning Ordinance limits fences within a required side street side yard setback to a maximum height of three (3) feet in a B-3, Community Business District

**ZONING**

B-3, Community Business District

**AREA OF PROPERTY**

28,893± square feet / 0.7±Acres

**CITY COUNCIL  
DISTRICT**

District 5

**ENGINEERING  
COMMENTS**

Please attach the following CONDITIONS to any approval:

1. The proposed improvements shown on the submitted plan drawing will be required to be included in a resubmittal of the approved Land Disturbance Permit plan set.

2. Any and all proposed land disturbing activity within the property will need to 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.

*Revised for the July 6<sup>th</sup> meeting:*

FRONT YARD AND SIDE STREET SIDE YARD VARIANCE (7' Fence within setback):

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

1. *The proposed improvements shown on the submitted plans for the fence and related equipment will be required to be included in the As-Built submittal for the current Land Disturbance Permit – ENG-025622-2018.*
2. *The existing drainage patterns and surface flow characteristics should not be altered so as to have a negative impact on any adjoining properties or any public rights-of-way.*

*Applicant agrees to install adequate BMPs during construction to protect from sediment/pollutants leaving the site.*

## **TRAFFIC ENGINEERING**

### **COMMENTS**

A typical vehicle should be able to exit the gated parking and remain within the driveway apron to navigate right or left from the site. No line of sight obstruction is anticipated with the construction of the fence as requested. This applies for both the site driveways and the intersection of Springhill Memorial Dr N and West I-65 Service S. ALDOT has also been consulted as the driveway on the Service Rd is subject to their approval. So long as the gates remain open during business hours, there is no objection to the gate on either driveway.

## **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 and Side Street Yard Setback Variances to allow the construction of an eight (8) foot high metal picket fence within the required front yard and side street side yard setbacks in a B-3, Community Business District; the Zoning Ordinance limits fences within a required front yard setback and side street side yard setback to a maximum height of three (3) feet in a B-3, Community Business District.

The site has been given a District Center (DC) 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 designation applies across the city to larger areas of existing mixed-use character or where such character is encouraged. These areas will include moderate to high-density residential (minimum densities of 6 du/ac) in dynamic, horizontal or vertical mixed use environments, to provide a balance of housing and employment.

District Centers generally serve several surrounding neighborhoods and may even have a city-wide or region-wide reach. As such, they are often anchored by a major commercial or institutional employer such as a shopping mall or a medical center.

Depending on location and assigned zoning, residential areas in District Centers may incorporate a mix of housing types, ranging from midrise multifamily buildings containing apartments and lofts, to townhouses and detached single-family homes. Major civic cultural institutions and public spaces provide regional and neighborhood destinations.

District Centers should be designed to induce pedestrian activity, with high quality streetscapes connecting the different components of a center as well as the center to its surrounding area. DC districts may be served by transit and include development of an intensity and design that supports transit use.

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:

*Long & Long, Attorneys is currently constructing a two-story office building at the corner of Springhill Memorial Drive N. and West I-65 Service Road South. The construction site appears to be a target of break-ins. They are concerned about the future safety of employees and clients as they begin to conduct business at the site. They would like to place an 8' high metal, picket-style fence with two, 30' wide, rolling gates at the driveway entrances. The gates would be open at all business hours and closed nights/weekends. We would coordinate with the Mobile Fire Department regarding their ability to open the gates at all times. The application (landscaping) site plan shows fence setback from 18' to 20' off the Springhill Memorial Drive N. right of way line, with possible bump-out to incorporate the electronic sign base, which is on our property, and 7' off the I-65 Service Road right of way line. Note that the required roadway sidewalk will be placed on our side of the Service Road right of way line, so the fence will fall at the back side of the roadway sidewalk. Upon approval by the Board, the fence shall be constructed as part of building construction and will be operational upon occupancy of the building.*

The subject site has been under construction since February of 2019 for a new two-story 7,546± square foot office building. The subject site is still under active construction and is proceeding through the inspection process.

The applicant is proposing to build an 8-foot high metal, picket-style fence with two 30-foot wide rolling gates at the driveway entrances to the property. As designed, approximately 332 linear feet of fencing would be installed within the required 25-foot front yard setbacks. As stated in the applicant's narrative, the gate proposed for the Springhill Memorial Drive North entrance would be set back approximately 18 to 20 feet from that property line. The gate proposed gate for the West I-65 Service Road South entrance would be set back approximately seven (7) feet from the front property line. Additionally, the applicant has stated that the proposed gates would remain open at all times during normal business hours and close during nights and weekends.

Regarding the proposed fencing, it is important to note that Section 64-4.D.6. of the Zoning Ordinance limits the height of fences or walls constructed within a required front yard to a maximum height of three (3) feet. This restriction is meant to limit the potential for passing vehicles as well as vehicles which may be entering or exiting the subject site from having their line-of-site hindered by these structures.

The applicant does provide rationale for why the Variances are needed stating that a series of thefts from the construction site necessitates the proposed fencing, however it is the applicants intent to continue to utilize the fencing for security purposes once construction has been completed. It is important to note that there have not been any similar variance requests approved in the area, nor does there appear to be any other business in the area which has implemented similar security features.

Lastly, it is important to note that per Zoning Ordinance standards, should the applicants intent change and the proposed gates remain closed during business hours, 60 feet of queuing space

would be required between each gate and the property line along both Springhill Memorial Drive North and West I-65 Service Road South.

**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 due to the precedent set by approving the request without a hardship on the land;
- 2) Special conditions were not illustrated such that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship; 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 as no hardship has been demonstrated which would necessitate the proposed.

***Revised for the July 6<sup>th</sup> meeting:***

*This application was heldover from the June 1<sup>st</sup> meeting at the applicant's request, and the Board requested images of the proposed fence to be provided for the July meeting.*

*The applicant submitted several renderings of the subject site showing the proposed fence as requested by the Board, a revised site plan and a revised narrative.*

*The revised narrative states:*

*In response to negative Staff comments to the original variance request, we have amended and greatly reduced our variance request. The new request is for only a seven-foot (7') high fence, rather than an eight-foot (8') high fence. The new request also greatly reduces the area where the fence encroaches into the building setbacks. We have removed the fence entirely from the 25' building "side" yard setback along the Springhill Memorial Drive frontage, so we no longer need a Side Street Side Yard Setback variance. Also, on the West I-65 "front" yard frontage, we now are only requesting a variance for the northernmost 84 feet or so rather than the entire frontage. The attached drawings show the locations of the reduced fencing in relation to the roadways, setbacks and other improvements. Also, three attachments show a conceptual landscape plan based on this proposed fence location.*

*In further support of the justification for the fence height variance, we submit that the safety of the employees and guests of the business is paramount. The area immediately surrounding the subject property supports a pervasive criminal presence. There are several motels in walking distance and in close proximity which have traditionally attracted or been the site of criminal activity. In security camera footage we have seen people who have trespassed on the subject property (and broken into the building) leave to a waiting car that is parked in the neighboring motel parking lot. There is also a homeless population in Mobile that lives in the wooded area immediately to the West of this property which adds to the foot traffic, crimes of opportunity, and unique safety concerns.*

*The site is being developed as a professional law office. While most clients and guests would interact with the office during normal business hours, the lawyers and some of the staff will regularly work past dark and into the night, as well as working on weekends. This is different from the regular office hours kept by the medical offices in the area. Without adequate physical security surrounding the building, it will make it unsafe for the lawyers and staff to work late or outside of normal days and times at this facility. Even during weekday daylight hours, the contractors and one of the owners have been solicited for money and been propositioned by different drug dealers and prostitutes. At night there is a near certainty that you will witness some criminal activity taking place from this property. There is a near constant flow of foot traffic by the property of people walking to and from the nearby motels and the wooded area to the West of this property where additional criminal activity occurs and where a large homeless community reside. At nights and on weekends, when the security system is activated, there is a steady stream of alarms caused by trespassers either in the building currently under construction or on the grounds. There is no reason to believe that any of this criminal activity will lessen once construction is complete in August of 2020. Attached is a report from the security company of the tenant which shows the incidents which have triggered various alarms over the past six or so weeks. The Police have been called so many times, that we have seen their response times get slower and slower. We fear that the repetitive alarms over trespassing and criminal mischief may be tiring the Police which may leave the site less protected when a more serious crime is being committed.*

*This property is unique, and it faces unique safety and security issues due to its location near the interstate motels and the homeless community. Further, the nature of the work being performed at the law office often requires after hours work and weekend work by the lawyers, paralegals, and staff in order to effectively represent their clients. The proposed fence would not stop all criminal activity, but it would certainly be a positive step towards cutting down on the trespassing and the crimes of opportunity. The fence would also relieve some burden from the police who would not need to be called as often since the security system would not be going off as often. The police do a good job, but they generally must wait until a criminal act is being committed before they can intervene and make an arrest. We do not want any of our employees, clients or guests to be the victim of a crime which could have been prevented by the installation of an adequate fence. A three-foot-high fence is simply not sufficient for any type of security situation.*

*The point of the restriction on fence height in a front yard setback is a line-of-sight issue for motorists traveling on the abutting road and for motorists entering and exiting the property. The proposed fence will be approximately 36'-3" from the edge of the pavement of the West I-65 Service Road (as shown on one of the attached drawings), which puts it well outside of any line-of-sight concerns. Also, the revised fencing plan does not call for any fencing in the building setback on the South side of the building, which is closest to the intersection of the two public roads. The City's Traffic Engineering Department did not oppose the original variance request, so we presume they will also not oppose this greatly reduced request. Overall safety would certainly be increased, not decreased, by the installation of the fence as requested.*

*The original Staff Report said there were no other fence variances in the area which were approved and no similar security measures in place in the area. We would like to point out that there is a five or six foot tall white vinyl fence separating the U-Haul site from the Comfort Inn and Edwin Watts properties just to the South of the subject property. The white vinyl fence appears to extend into the building setback line along West I-65 Service Road, and it also appears to be in the Springdale Memorial Drive South building setback line. Attached are pictures of the fence and a map showing the area in question. This is in the immediate vicinity of the subject property, was clearly put up at some expense, and likely was erected to control or contain similar criminal activity. Also, a solid fence like this white vinyl one creates more of a line of sight issue for motorists than the metal picket fence we are requesting.*

*In light of the unique security challenges facing this property, a seven foot high metal picket fence that only runs about 84 feet through the front yard setback is a very modest request. The safety and security of the professional office users is paramount to the line of sight concerns that underlie the fence height regulations. If Traffic Engineering does not have a traffic related concern with the fence height in the setback, then the City's Board of Zoning Adjustment should approve this variance.*

*The revised site plan submitted indicates that the proposed fence is now to be at the 25' side street minimum building setback line along Springhill Memorial Drive North. This places it out of the required setback. Thus, the Side Street Side Yard Setback request is a moot point. The fence is still proposed to be within approximately 7' of the West I-65 Service Road South right-of-way line, but the frontage length of the fence has been reduced to approximately 84' from the originally-proposed 160'±. The fence style in the graphics provided appears to be an open vertical bar style, and the stated height has been reduced to 7' tall instead of the originally-stated 8' tall.*

*Although the applicant has expanded upon the reasoning for the variance request in the revised narrative focusing on the criminal and potentially dangerous elements within the immediate area, there has still not been any hardship illustrated such that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship with respect to the use of the site or its physical plan. Staff is of the opinion that the applicant does have very valid points with respect to site and personnel safety.*

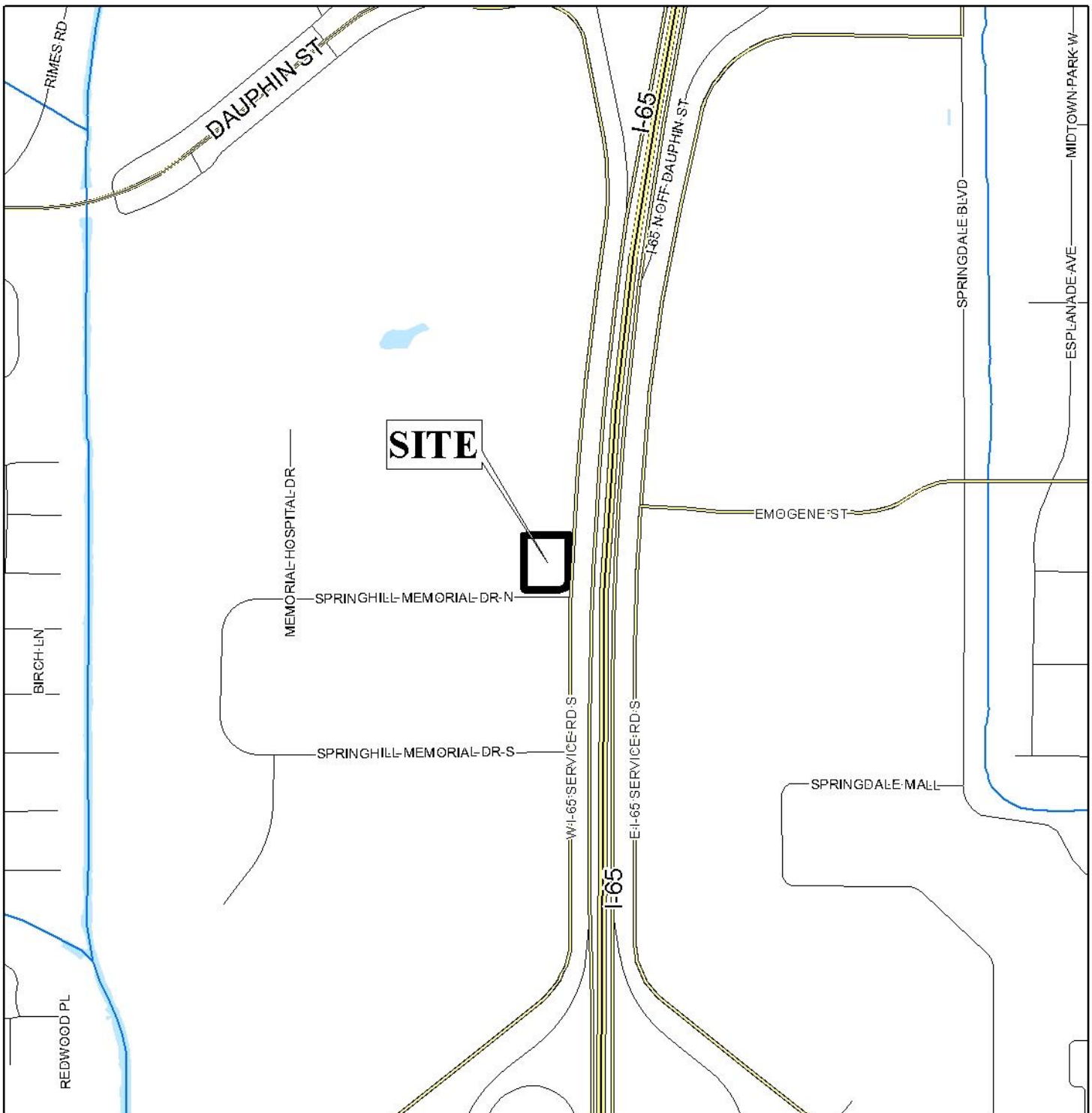
*In making any decision regarding the request, the Board must determine "findings of fact" based upon the following:*

- 1. Approving the variance requests will or will not be contrary to the public interest;*
- 2. Special conditions do or do not appear to exist, such that a literal enforcement of the provisions of the chapter will result in unnecessary hardship; and*
- 3. The spirit of the chapter shall or shall not be observed and substantial justice done to the applicant and the surrounding neighborhood by granting the variance.*

**RECOMMENDATION** *Based upon the preceding, staff recommends that the Board consider all relevant aspects of the applicant's concerns, and determine if the proposed Front Yard Setback Variance request merits approval or denial, based upon the findings of fact.*



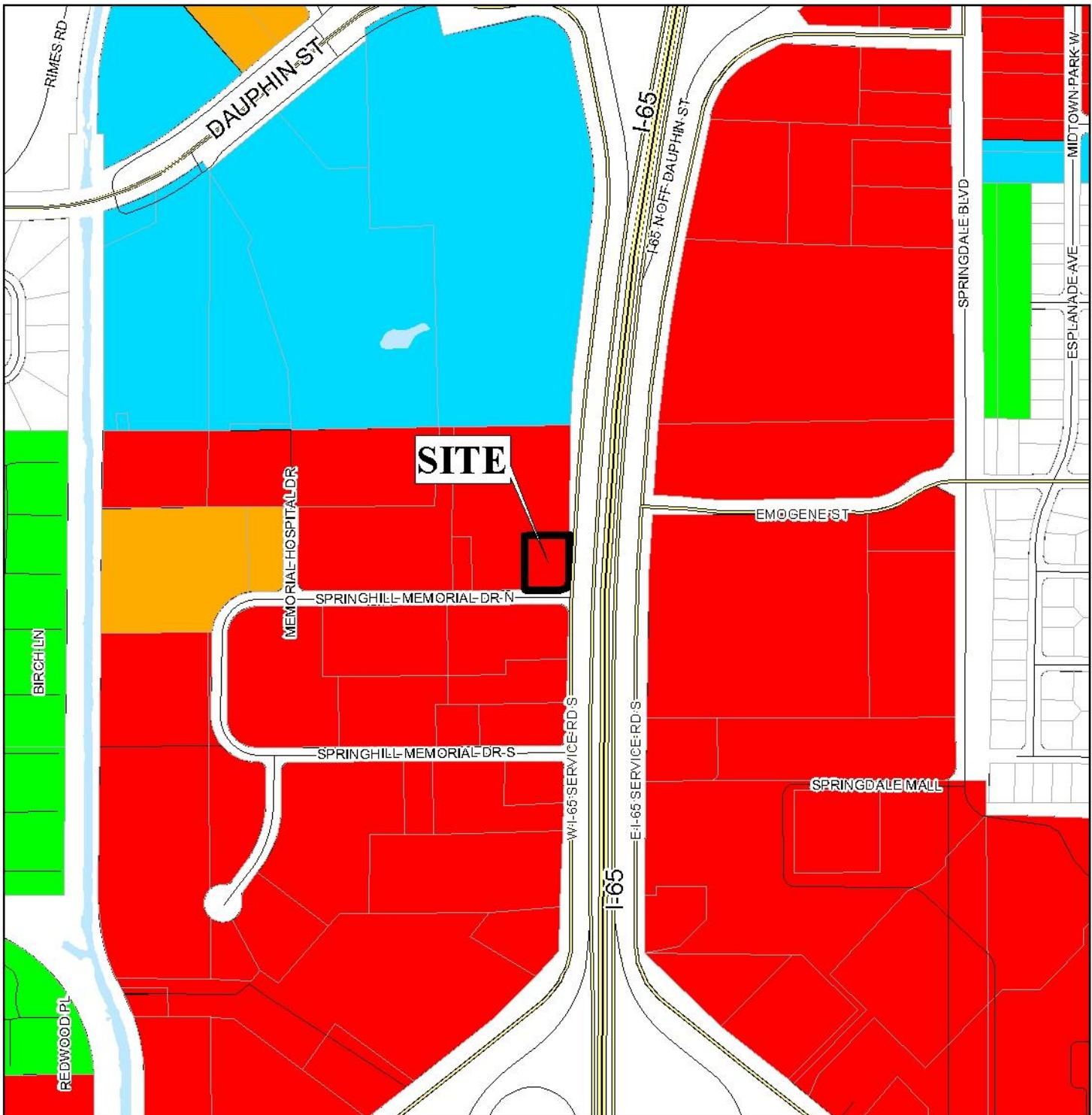
# LOCATOR MAP



APPLICATION NUMBER 6327 DATE July 6, 2020  
APPLICANT Don Williams  
REQUEST Front Yard and Side Street Yard Setback Variances



# LOCATOR ZONING MAP



APPLICATION NUMBER 6327 DATE July 6, 2020

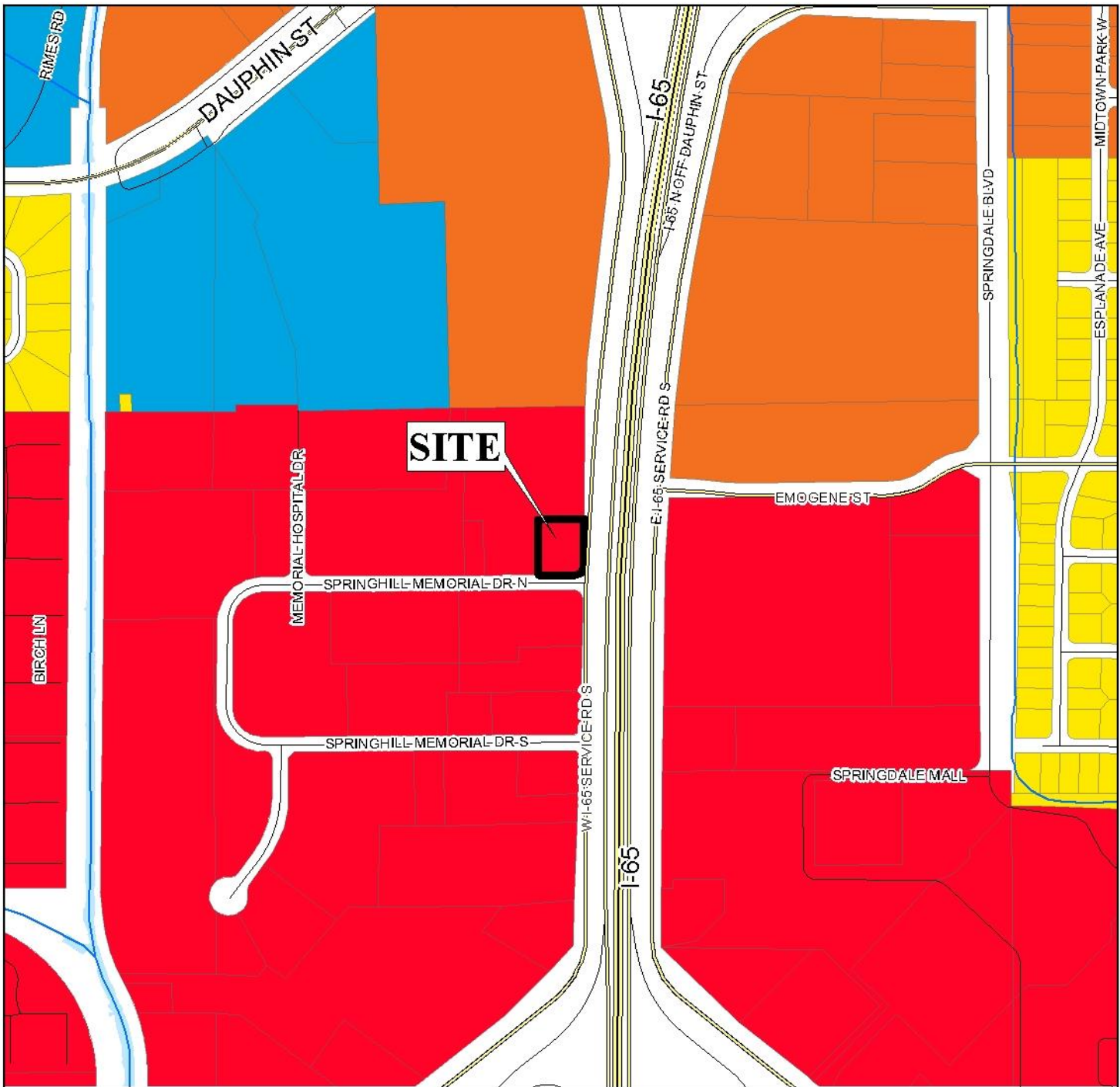
APPLICANT Don Williams

REQUEST Front Yard and Side Street Yard Setback Variances



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# FLUM LOCATOR MAP



APPLICATION NUMBER 6327 DATE July 6, 2020

APPLICANT Don Williams

REQUEST Front Yard and Side Street Yard Setback Variances

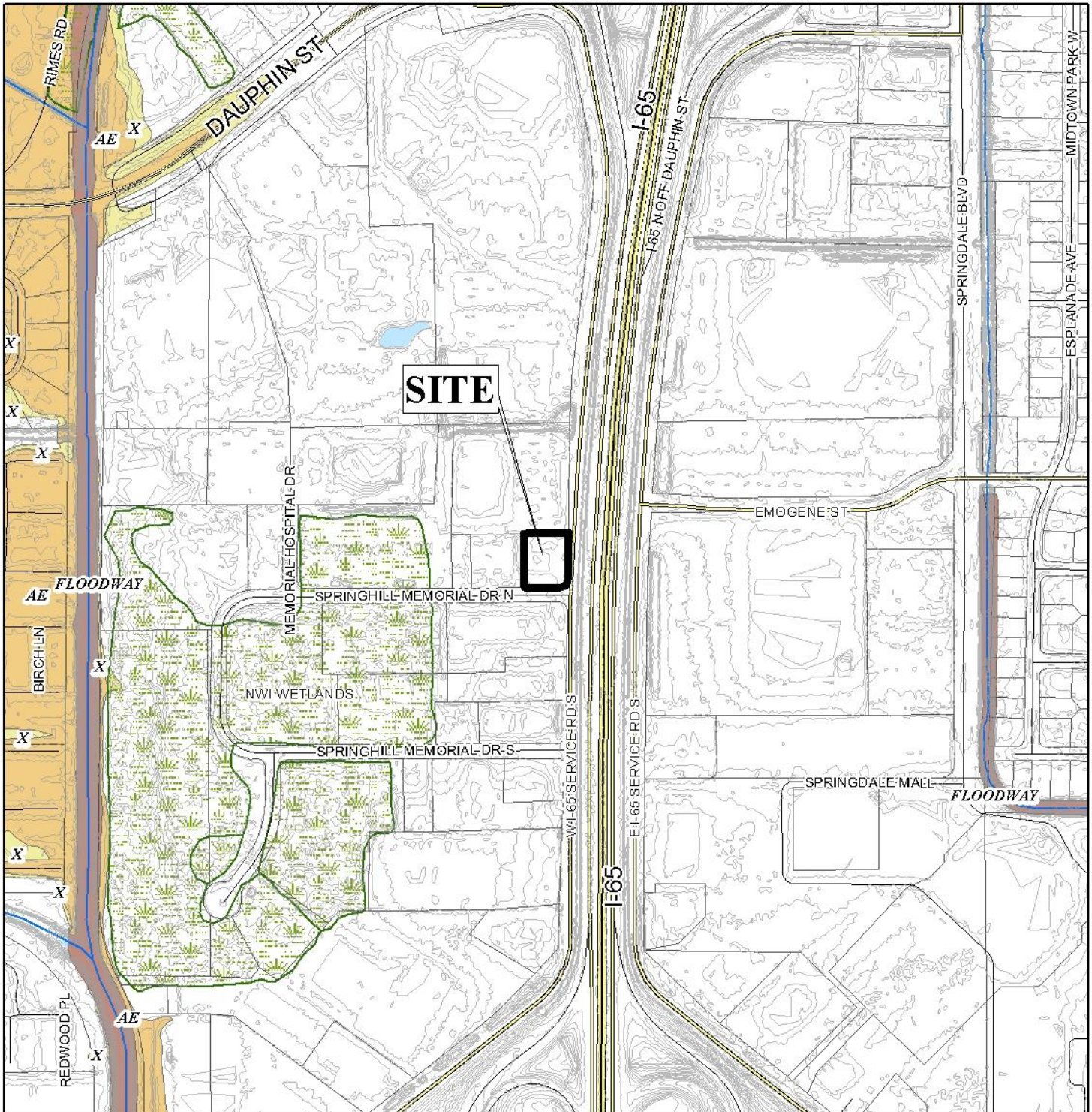
Low Density Residential	Neighborhood Center - Traditional	Downtown Waterfront	Parks & Open Space
Mixed Density Residential	Neighborhood Center - Suburban	Light Industry	Water Dependent
Downtown	Traditional Corridor	Heavy Industry	
District Center	Mixed Commercial Corridor	Institutional	



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# ENVIRONMENTAL LOCATOR MAP

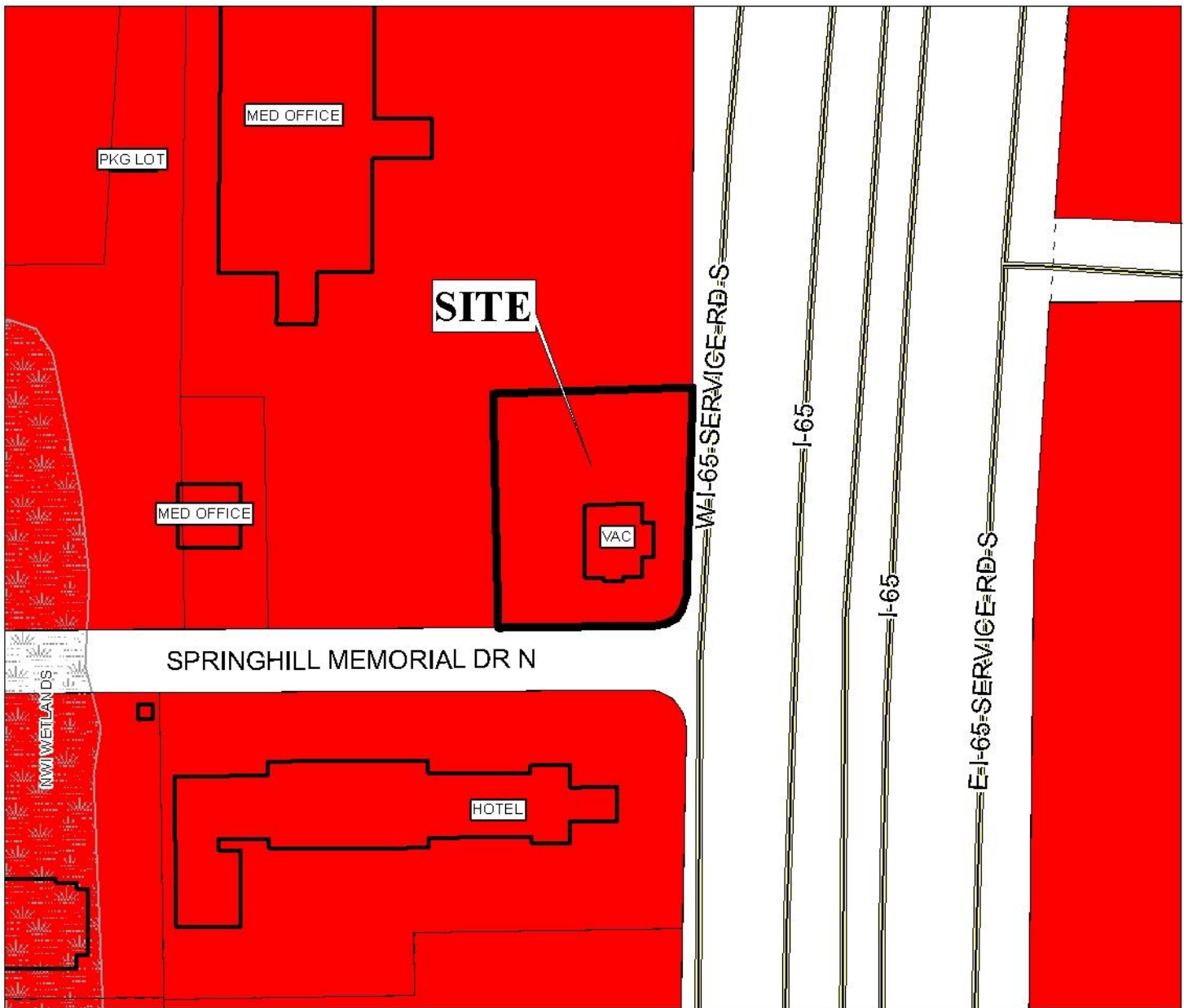


APPLICATION NUMBER 6327 DATE July 6, 2020  
APPLICANT Don Williams  
REQUEST Front Yard and Side Street Yard Setback Variances





# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by commerical units.

APPLICATION NUMBER 6327 DATE July 6, 2020

APPLICANT Don Williams

REQUEST Front Yard and Side Street Yard Setback Variances

<span style="background-color: cyan; border: 1px solid black; display: inline-block; width: 15px; height: 15px;"></span> R-A	<span style="background-color: green; border: 1px solid black; display: inline-block; width: 15px; height: 15px;"></span> R-3	<span style="background-color: brown; border: 1px solid black; display: inline-block; width: 15px; height: 15px;"></span> T-B	<span style="background-color: orange; border: 1px solid black; display: inline-block; width: 15px; height: 15px;"></span> B-2	<span style="background-color: blue; border: 1px solid black; display: inline-block; width: 15px; height: 15px;"></span> B-5	<span style="background-color: yellow; border: 1px solid black; display: inline-block; width: 15px; height: 15px;"></span> MUN	<span style="background-color: orange; border: 1px solid black; display: inline-block; width: 15px; height: 15px;"></span> SD-WH	<span style="background-color: purple; border: 1px solid black; display: inline-block; width: 15px; height: 15px;"></span> T5.1
<span style="background-color: white; border: 1px solid black; display: inline-block; width: 15px; height: 15px;"></span> R-1	<span style="background-color: pink; border: 1px solid black; display: inline-block; width: 15px; height: 15px;"></span> R-B	<span style="background-color: cyan; border: 1px solid black; display: inline-block; width: 15px; height: 15px;"></span> B-1	<span style="background-color: red; border: 1px solid black; display: inline-block; width: 15px; height: 15px;"></span> B-3	<span style="background-color: lightblue; border: 1px solid black; display: inline-block; width: 15px; height: 15px;"></span> I-1	<span style="background-color: lightgreen; border: 1px solid black; display: inline-block; width: 15px; height: 15px;"></span> OPEN	<span style="background-color: lightpink; border: 1px solid black; display: inline-block; width: 15px; height: 15px;"></span> T3	<span style="background-color: darkpurple; border: 1px solid black; display: inline-block; width: 15px; height: 15px;"></span> T5.2
<span style="background-color: yellow; border: 1px solid black; display: inline-block; width: 15px; height: 15px;"></span> R-2	<span style="background-color: peachpuff; border: 1px solid black; display: inline-block; width: 15px; height: 15px;"></span> H-B	<span style="background-color: purple; border: 1px solid black; display: inline-block; width: 15px; height: 15px;"></span> LB-2	<span style="background-color: brown; border: 1px solid black; display: inline-block; width: 15px; height: 15px;"></span> B-4	<span style="background-color: gray; border: 1px solid black; display: inline-block; width: 15px; height: 15px;"></span> I-2	<span style="background-color: orange; border: 1px solid black; display: inline-block; width: 15px; height: 15px;"></span> SD	<span style="background-color: lightpurple; border: 1px solid black; display: inline-block; width: 15px; height: 15px;"></span> T4	<span style="background-color: darkblue; border: 1px solid black; display: inline-block; width: 15px; height: 15px;"></span> T6



# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING AERIAL



The site is surrounded by commerical units.

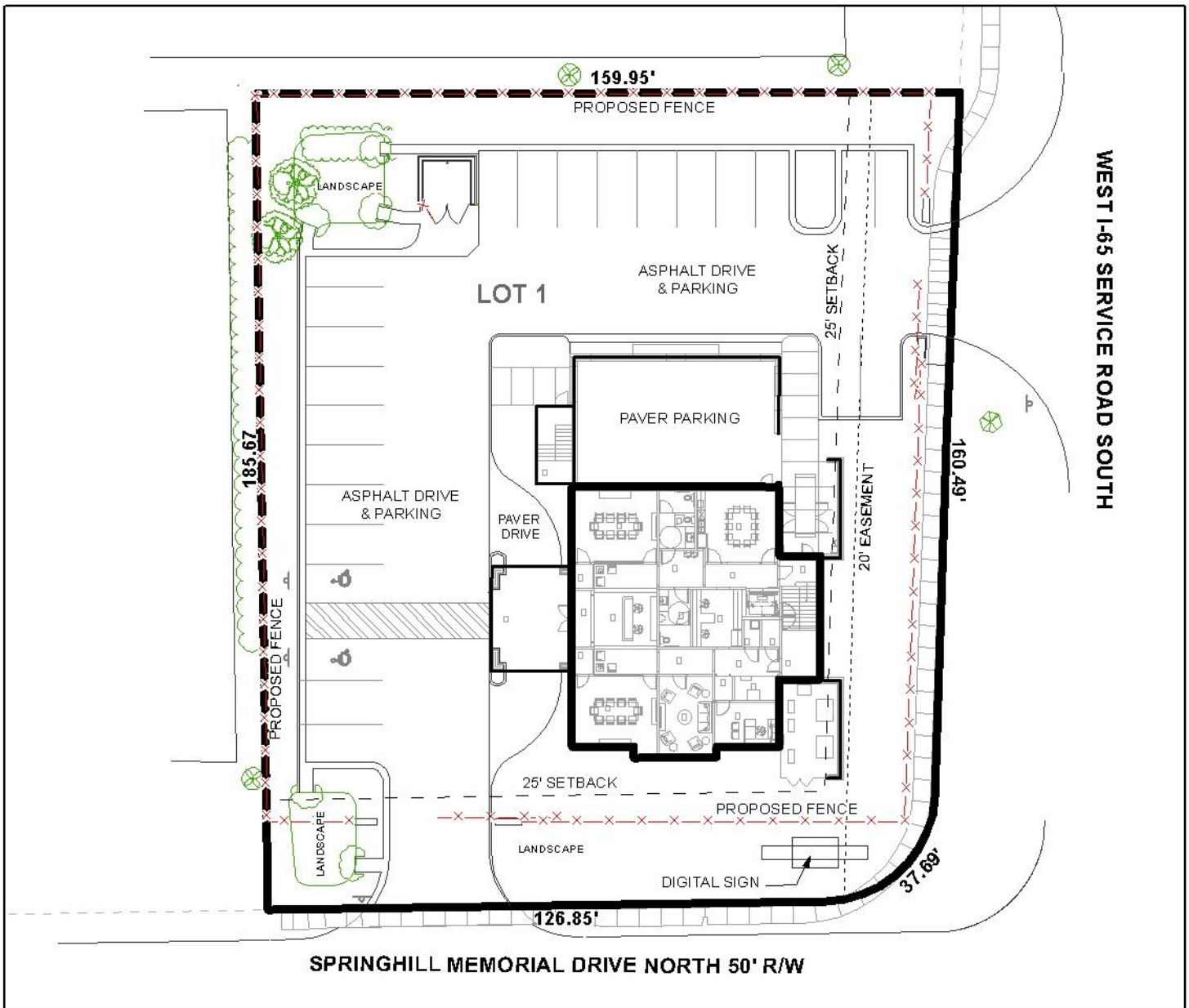
APPLICATION NUMBER 6327 DATE July 6, 2020  
 APPLICANT Don Williams  
 REQUEST Front Yard and Side Street Yard Setback Variances



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# SITE PLAN



The site plan illustrates existing easement, setback, building, parking and proposed fence.

APPLICATION NUMBER 6327 DATE July 6, 2020  
 APPLICANT Don Williams  
 REQUEST Fence Variance

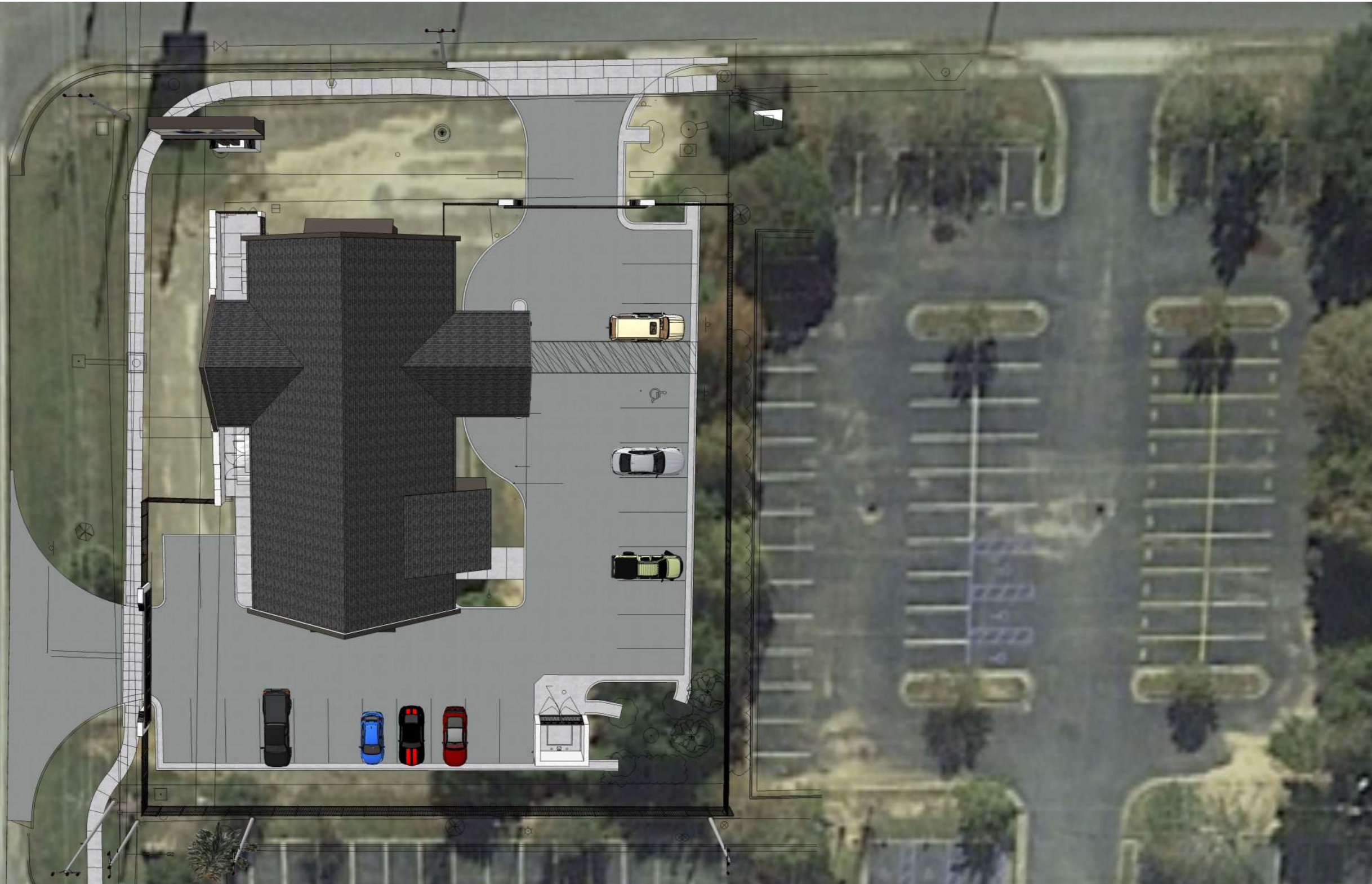


Applicant provided images

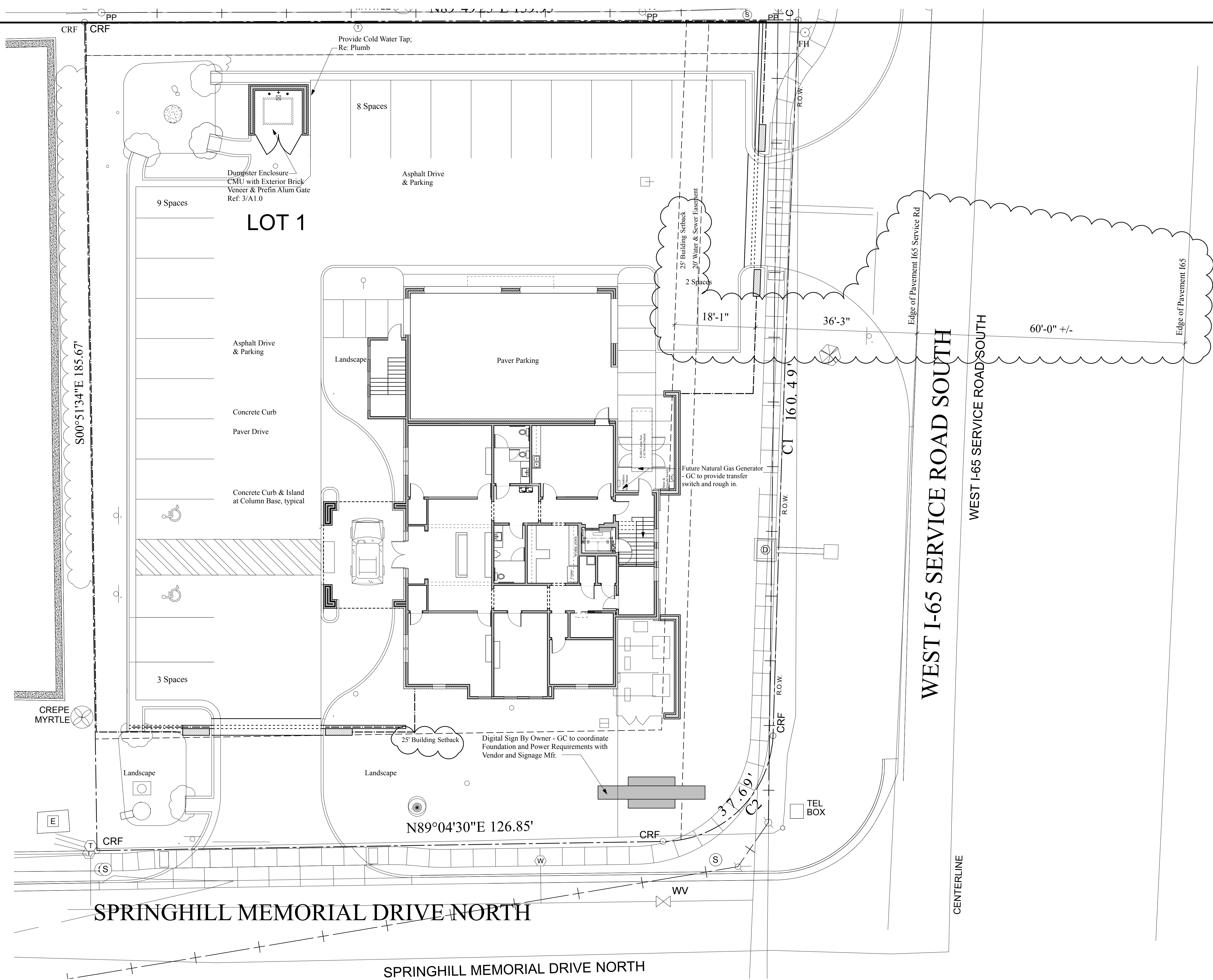




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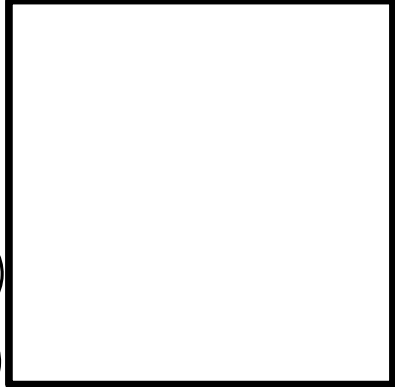






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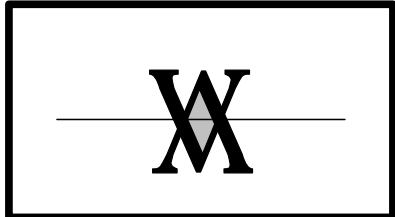


A New Office Building for  
**Long & Long Attorneys**  
Springhill Memorial Drive & I65 Service Road  
Mobile, Alabama

Date	August 5, 2019
Revised	June 15, 2020
Revised	
Revised	
Drawn	
Checked	Copyright 2019 Walcott Adams Verneuille Architects, Inc.

A1.04

Architectural Fence Plan



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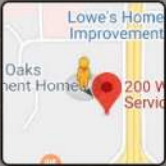




3625 Springhill Memorial Dr S  
Mobile, Alabama

Google

Street View



Google





200 S Beltline Hwy  
Mobile, Alabama

Google

Street View

Lowe's Home Improvement

Oaks Rent Homes

200 W Service

Google



## Incident Report Summary

Name of Account: Long and Long

Date of Report: 05.28.2020

Date of Incident	Time of Incident	Summary
04.08.2020	00:00:47	3 Suspects Apprehended by Police
04.12.2020	20:57:07	1 male on scene—police dispatched
04.12.2020	21:06:14	3 suspects—police dispatched
04.12.2020	21:07:09	1 suspect on site
04.21.2020	03:05:35	2 Suspects on Cameras Police Dispatched.
04.27.2020	23:38:23	
04.27.2020	05:26:47	Tan Small SUV in parking Lot dispatched police
04.29.2020	00:54:56	
05.10.2020	16:26:29	Black truck on site—police dispatched.
05.24.2020	07:45:34	1 man on site—police dispatched
05.26.2020	04:42:13	1 male on scene removed shop vac—black truck—dispatched police
05.26.2020	05:49:05	1 male on scene—police dispatched
06.12.2020	21:48:18	1 male on scene—1 adolescent female on scene