

**BOARD OF ZONING ADJUSTMENT  
STAFF REPORT****Date: November 2, 2020**

<b><u>CASE NUMBER</u></b>	6350
<b><u>APPLICANT NAME</u></b>	Sharon Pate
<b><u>LOCATION</u></b>	256 Oak Drive (South side of Oak Drive, 125'± East of St. Stephens Road).
<b><u>VARIANCE REQUEST</u></b>	<b>USE:</b> Use Variance to allow up to 10 children in a home-based child day care business in an R-1, Single-Family Residential District.
<b><u>ZONING ORDINANCE REQUIREMENT</u></b>	<b>USE:</b> The Zoning Ordinance does not allow more than six (6) children in a home-based child daycare business in an R-1, Single-Family Residential District.
<b><u>ZONING</u></b>	R-1, Single-Family Residential District
<b><u>AREA OF PROPERTY</u></b>	6,645± square feet / 0.2± Acres
<b><u>CITY COUNCIL DISTRICT</u></b>	District 2
<b><u>ENGINEERING COMMENTS</u></b>	No comment.
<b><u>TRAFFIC ENGINEERING COMMENTS</u></b>	If on street parking becomes an issue at the daycare, on street parking restrictions may have to be installed (or expanded) based on the width Oak Drive.
<b><u>URBAN FORESTRY COMMENTS</u></b>	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.
<b><u>FIRE COMMENTS</u></b>	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).

Residential daycares are not allowed to provide for more than 5 children. If a daycare is providing custodial care for more than 5 children it will be consider a commercial daycare. The daycare would then have an occupancy classification of an I-4.

I-4 facilities providing care for 5 or more persons are required to be sprinkled. The facility is required to have a fire hydrant within 400' of the farthest point if not sprinkled and 600' if sprinkled. There is an exception for smaller daycares that allow them to be classified as an E occupancy which would not require sprinklers. This exception requires the daycare be at the level of exit and each classroom have an exterior exit door. The facility is required to have emergency egress lighting and exit signs with battery power back-up. The facility is also required to have a ventilation hood with fire suppression over any cooking appliance emitting grease vapors. Fire extinguishers are required for every 75' of travel. Fire apparatus access is required to allow hose streams to be within 150' of the farthest point of the building. A Knox Box is also a requirement.

The most significant requirement of our office is that this is an occupancy classification change from an R occupancy to a I-4 or E. We will require plans and permit approval.

### **ANALYSIS**

The applicant is requesting a Use Variance to allow up to 10 children in a home-based child day care business in an R-1, Single-Family Residential District; The Zoning Ordinance does not allow more than six (6) children in a home-based child daycare business in an R-1, Single-Family Residential District.

The site has been given a Mixed Density Residential (MxDR) 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 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 du/ac, depending on the mix, types, and locations of the housing as specified by zoning.

Like Low Density Residential (LDR) areas, MxDR 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 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,*

*Greetings, my name is Sharon Pate. I am a family home childcare provider here in Mobile, AL where I have served families in the community with a home away from home for over 35 years. I have recently received my ASS in Early Childhood Education and I am currently pursuing my BSS in Early Childhood Education.*

*I have also made improvements to my childcare environment, inside and out, making the environment safer, healthier, and more child friendly.*

*Best Regards,  
S. Pate*

Polysurveying, the applicant's agent, states:

*Ms. Pate has been in business as an in-home childcare provider for over 35 years as illustrated in her letter. She is requesting a Variance to allow for her care of 5 children to be increased to 10 children. Her property abuts a commercially owned property and has been operating at this location for 33 years. The intention of the increase is to provide additional help and support to healthcare workers at the hospital. The proximity to those hospital workers gives more flexibility to those workers, specifically, in these challenging times. We ask that the property be allowed to increase the number of children allowed on the facility in order to support more of our local heroes.*

As stated, the applicant is requesting a Use Variance to allow the maximum number of children enrolled be increased from six (6) up to 10 children for a home daycare in an R-1, Residential Single-Family District. The Zoning Ordinance limits home occupation daycares to a maximum of six (6) children.

It should be noted that per the submitted site plan, the size of the subject property is approximately 6,889 square feet, the existing house is approximately 2,146 square feet, and approximately 1,098 square feet of the rear yard is fenced in to provide an outdoor play area for children.

It should also be noted that the expansion in the number of children above six (6) may trigger additional compliance requirements with Building, Mechanical, Plumbing, Electrical, and Fire Codes. As noted in Fire Department comments, if the daycare will have more than five (5) children, the residence will be required to be sprinkled, in addition to other improvements to the home that will require plans to be submitted, and permits to be obtained to make sure the structure meets minimum requirements.

Staff reached out to the Alabama Department of Human Resources to determine if there are other requirements the State may have that would impact a home-based daycare for up to ten (10) children. Staff was informed that for home-based daycares caring for between seven (7) and twelve (12) children that the following caregivers must be available: the licensee, the assistance caregiver, and a least two (2) substitutes. This may result in individuals who do not live at the location working there.

The applicant has not provided any justification as to why the requested variance are required. Furthermore, the subject site is being used as a compliant home daycare currently demonstrating that a hardship does not exist. The applicant could find an appropriately zoned location that would allow more than six (6) children, without the need for variances. It is simply the applicant's desire to have a home daycare larger than allowed, resulting in a self-imposed hardship.

**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 as the proposed commercial use could potentially increase traffic within a residentially zoned neighborhood;
- 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 because the surrounding area is zoned for residential development.

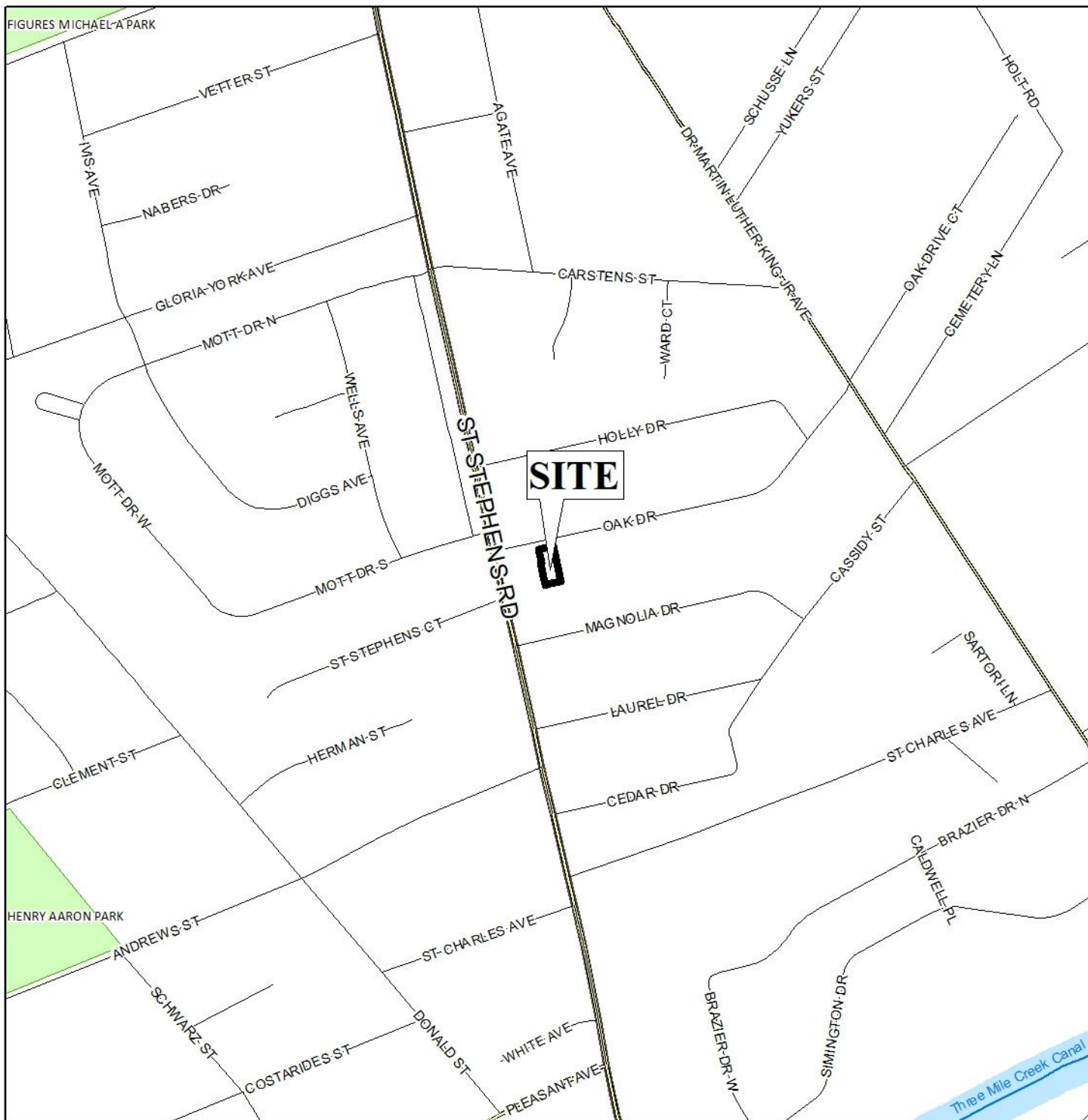
***Revised for the November meeting:***

*After discussion, the Board of Adjustments heldover the application until the November 2<sup>nd</sup> meeting, at the request of the applicant. No additional information or revised documents were provided to staff. As such, staff recommendation remains the same. It should be noted that should the Board be inclined to approve the subject request, the applicant will still be required to bring the site into compliance with Alabama Department of Human Resources and Fire Department requirements.*

*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 as the proposed commercial use could potentially increase traffic within a residentially zoned neighborhood;*
- 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 because the surrounding area is zoned for residential development.*

# LOCATOR MAP



APPLICATION NUMBER 6350 DATE November 2, 2020

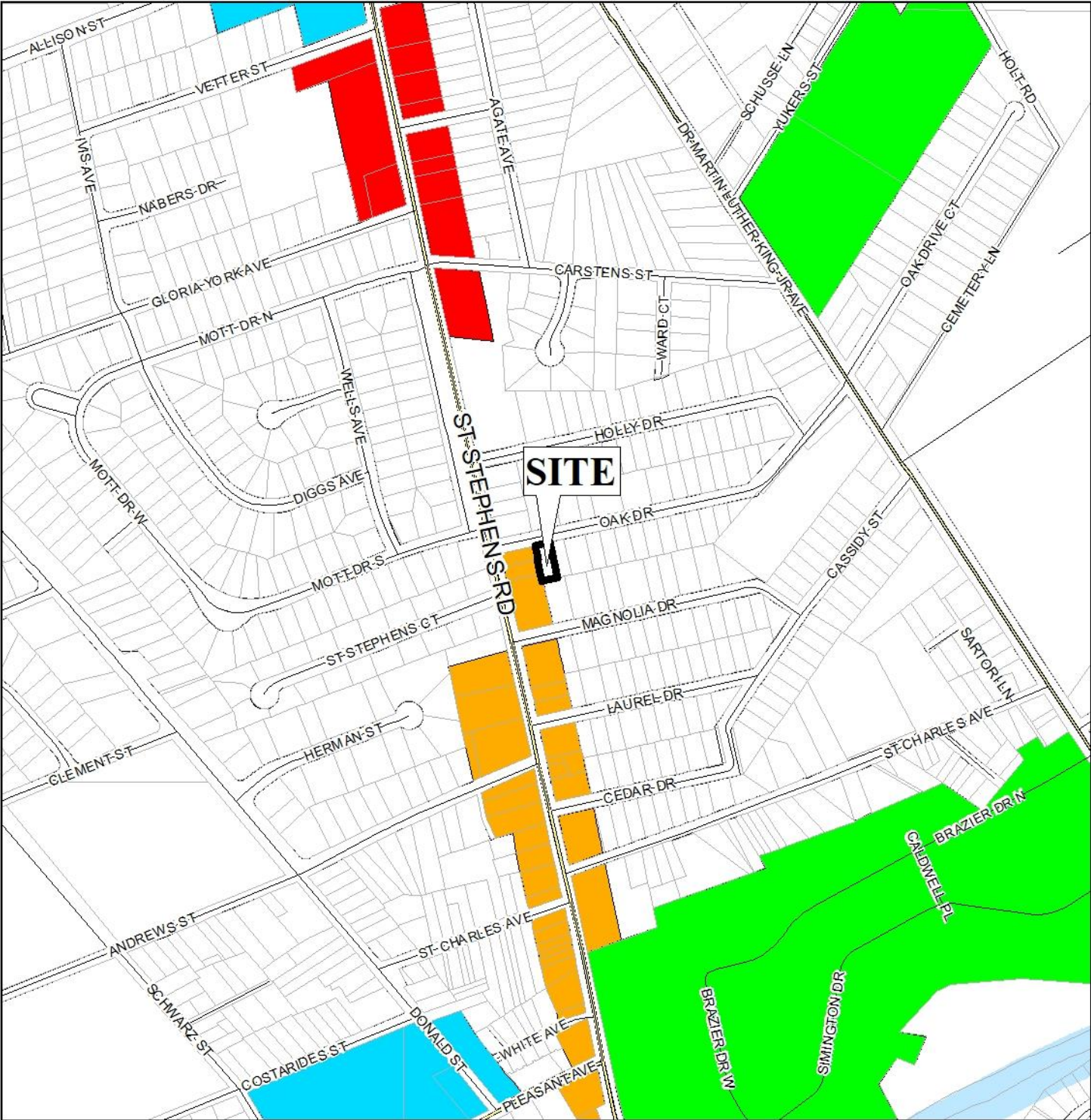
APPLICANT Sharon Pate

REQUEST Use Variance





# LOCATOR ZONING MAP

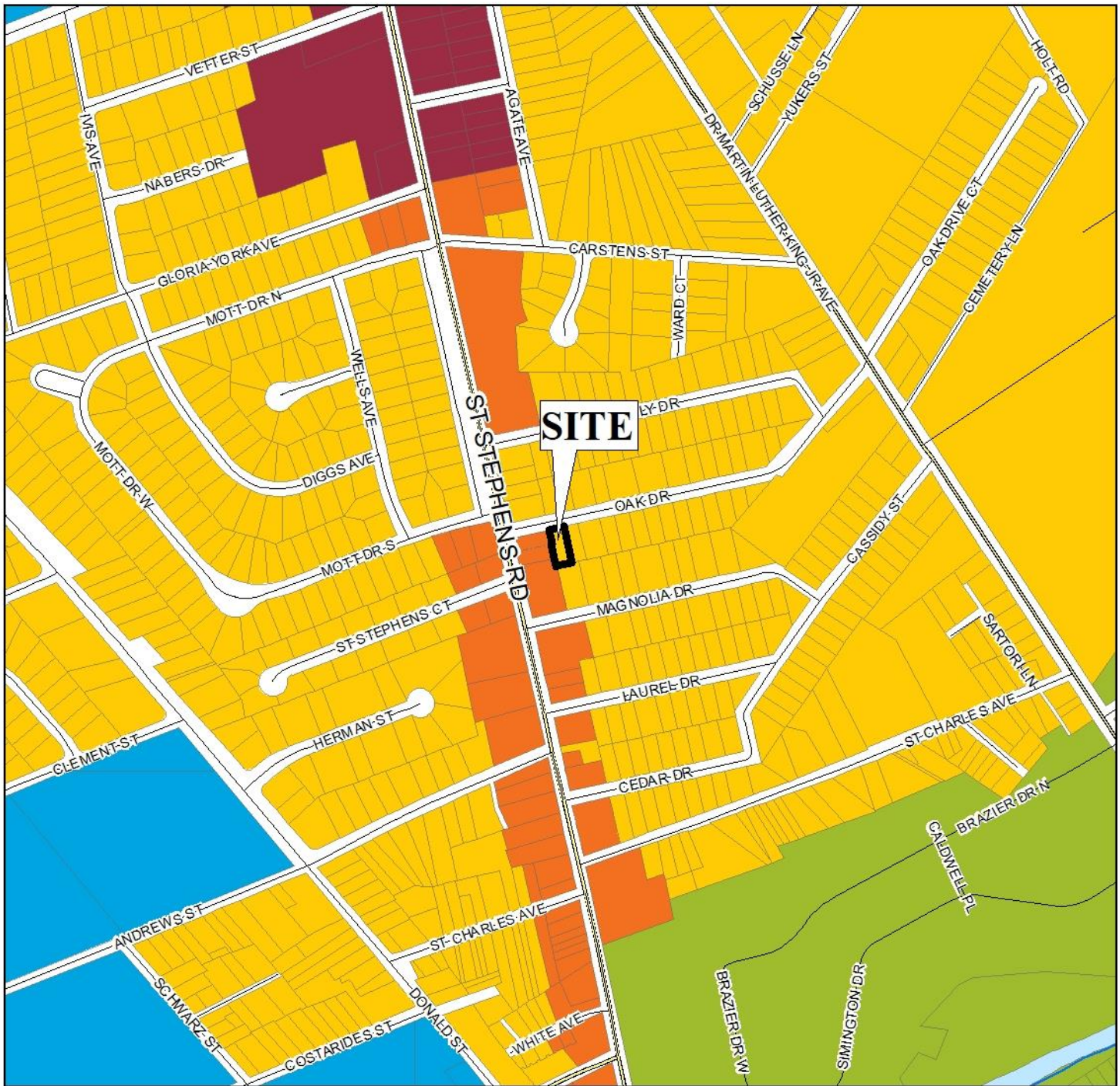


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# FLUM LOCATOR MAP



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APPLICANT Sharon Pate

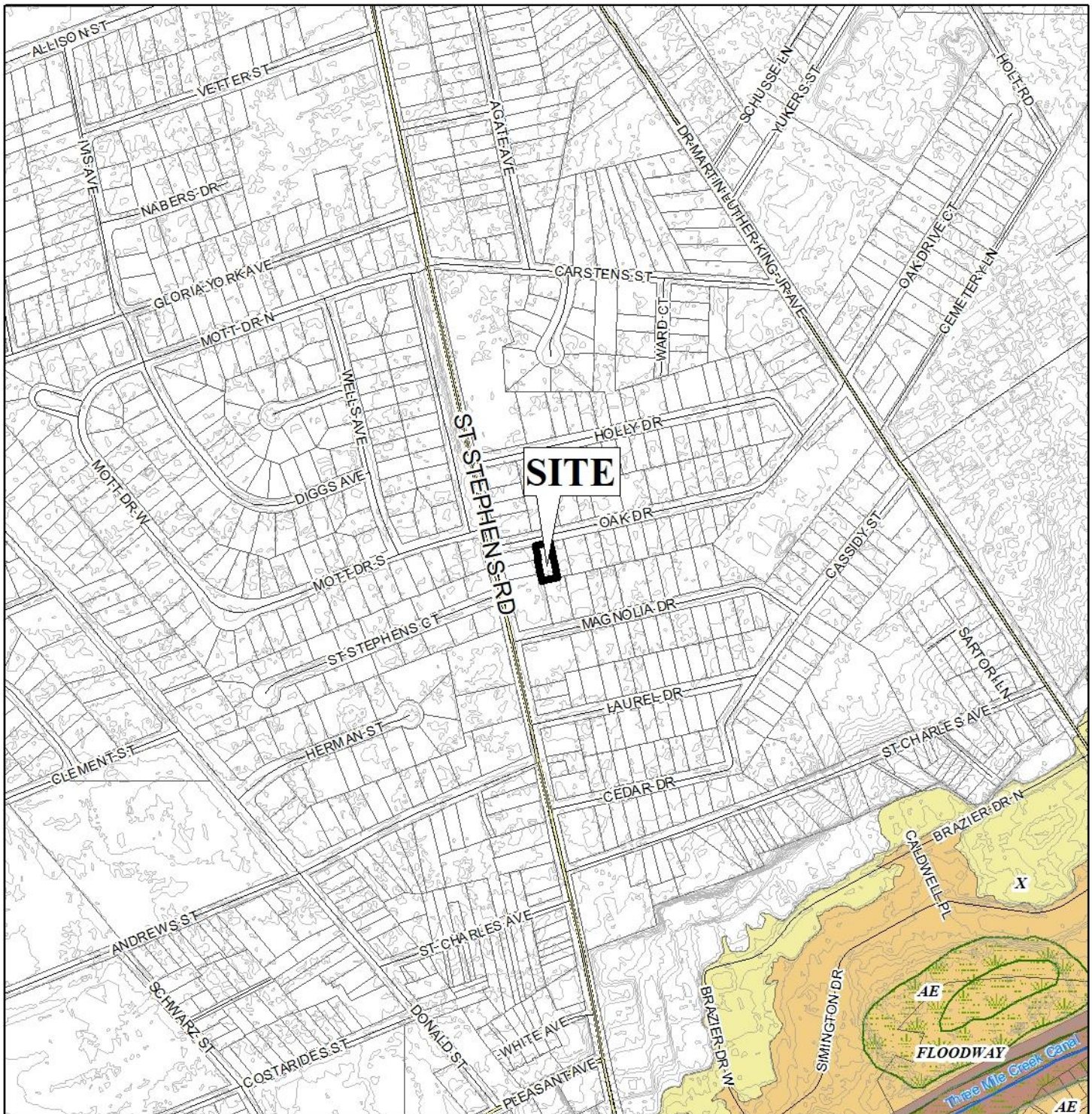
REQUEST Use Variance

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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REQUEST Use Variance





# BOARD OF ADJUSTMENT

## VICINITY MAP - EXISTING ZONING



The site is surrounded by residential and commercial units.

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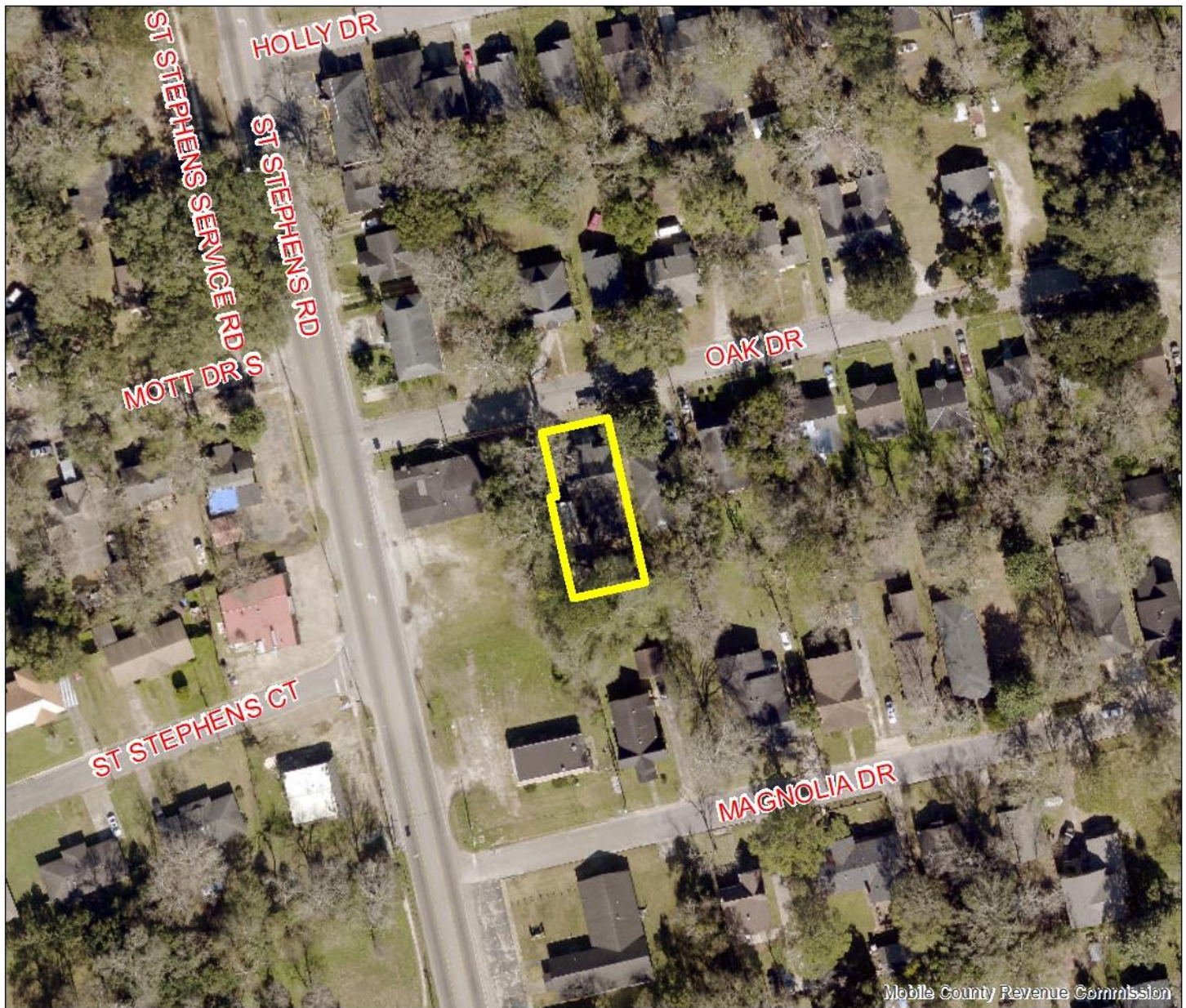
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<span style="background-color: white; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> R-1	<span style="background-color: pink; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> R-B	<span style="background-color: cyan; 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: lightblue; 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: grey; 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: darkblue; 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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# SITE PLAN



The site plan illustrates existing lots, buildings and playground.

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