

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: September 11, 2017****CASE NUMBER**

6129

APPLICANT NAME

Margaret M. McGovern

LOCATION117 Demouy Avenue
(Northeast corner of Demouy Avenue and Murray Street.)**VARIANCE REQUEST****FRONT AND SIDE YARD SIDE STREET
SETBACKS:** Front Yard and Side Yard Side Street
Setback Variances to allow the construction of a privacy
fence taller than 3' within 6.2'± of the front property line,
and within 5'± of the side yard, side street property line in
an R-1, Single-Family Residential District.**ZONING ORDINANCE
REQUIREMENT****FRONT AND SIDE YARD SIDE STREET
SETBACKS:** The Zoning Ordinance prohibits any
structures exceeding 3' in height within 25' of the front
property line and within 20' of the side yard, side street
property line in an R-1, Single-Family Residential District.**ZONING**

R-1, Single-Family Residential

AREA OF PROPERTY

0.11± Acres

ENGINEERING**COMMENTS****FRONT YARD AND SIDE STREET SIDE YARD****VARIANCE (3' +/- Fence Height, 19' +/- Front Yard, 15' +/- Side Yard):**

- a. The existing drainage patterns and surface flow characteristics should not be altered so as to have a negative impact on any public rights-of-way.
- b. Applicant agrees to install adequate BMPs during construction to protect from sediment/pollutants leaving the site.

TRAFFIC ENGINEERING**COMMENTS**

No comments.

**CITY COUNCIL
DISTRICT**

District 2

ANALYSISThe applicant is requesting Front Yard and Side Yard, Side
Street Setback Variances to allow the construction of a 6'± privacy fence within 6.2'± of the

front property line, and within 5'± of the side yard, side street property line in an R-1, Single-Family Residential District; the Zoning Ordinance prohibits any structures exceeding 3' in height within 25' of the front property line and within 20' of the side yard, side street property line in an R-1, Single-Family Residential District.

The Zoning Ordinance states no variance shall be granted 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; and, no variance shall be granted where economics are the basis for the application. 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.

It should be noted that the site has been given a **Mixed Density Residential** land use designation per the recently 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 land use 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, multi-family 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, convenient access to daily necessities.

With that being said, the subject site is developed with a single-family residence and has 100'± of frontage on Demouy Avenue, and 50'± of frontage on Murray Street. The site plan illustrates a 6' wooden privacy fence 6.2'± from the front property line along Demouy Avenue, and 5'± from the side yard, side street property line along Murray Street. Staff was made aware of the Zoning violation on June 5, 2017 upon inspection of a complaint made to Mobile 311 that a privacy fence was being built without permits too close to the property line on a corner lot. Consequently, a Notice of Violation was issued between June 6th and June 8th requesting that the fence be permitted, and that it be brought into compliance with the Zoning Ordinance regarding height requirements. However, the applicant wishes to maintain the fence's location and height

citing unawareness of the Zoning Ordinance regulations, and the large amounts of time and finances required for the construction of the fence as justification for their request, stating:

“A fence was built using the International Building Codes, not knowing the City of Mobile requires something different. After building the nice privacy fence we do not want to take it down. There has been a great deal of money and time to place a nice fence on the property.”

Regarding the applicant’s statement, in addition to complying with the International Building Code standards the applicant would also need to comply with Section 64-4.D.6.a. of the City of Mobile’s Zoning Ordinance, which states: *“No fence or wall that obstructs sight shall be erected or altered in any required front yard to exceed a height of three (3) feet, and no fence or wall shall be erected or altered in any required side or rear yard to exceed a height of eight (8) feet. On a corner building site not having to its rear a building site facing toward the intersecting or side street, no fence or wall that obstructs sight shall be erected in the required side yard to exceed a height of three (3) feet.”* A building permit was issued by the City on June 8, 2017, at which time Planning staff approved a 3’ tall fence, thus informing the applicant of the Zoning Ordinance requirement.

Staff is aware that there may be limitations on where a 6’± privacy fence could legally be constructed on the property given the relative narrowness of the lot and the fact that the existing house potentially exceeds 50% site coverage. A potential additional limitation of the property is that it is a corner lot whose dimensions restrict fence heights differently than for lots without two street frontages. Nevertheless, a fence can be constructed within the constraints of the Zoning Ordinance as long as it does not exceed 3’ in height; a fact perhaps supported by a lack of incidence of similar Variance requests from neighboring properties.

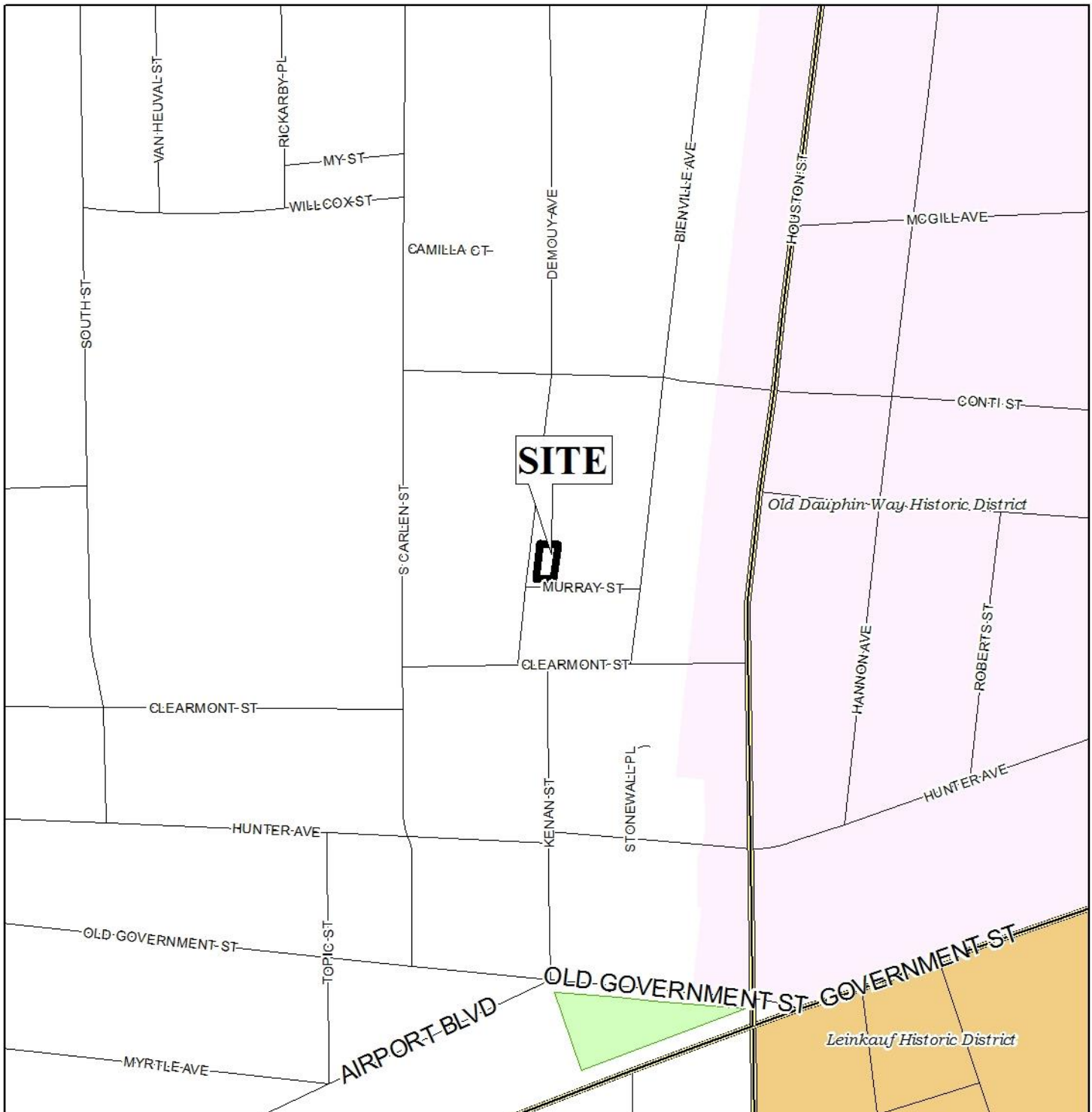
Finally, regarding the costs associated with the construction of the fence, Variance applications cannot be based on financial hardship; rather, they must be based on a hardship associated with the property. However, in considering the preceding, the applicant has not presented sufficient evidence demonstrating a hardship as required in Section 64-8.B.6.f.(3).(d). of the Zoning Ordinance. Denial of the request may, therefore, be appropriate.

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

- 1) Granting the Variance will be contrary to the public interest since all fences are subject to compliance with Section 64-4.D.6.a. of the Zoning Ordinance regarding setback and height requirements;
- 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 due to the fact that a fence no greater than 3’ in height may be constructed within setbacks, afterwards being allowed to extend to 8’ in height; 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 since no similar requests have been granted by the Board to neighboring properties.

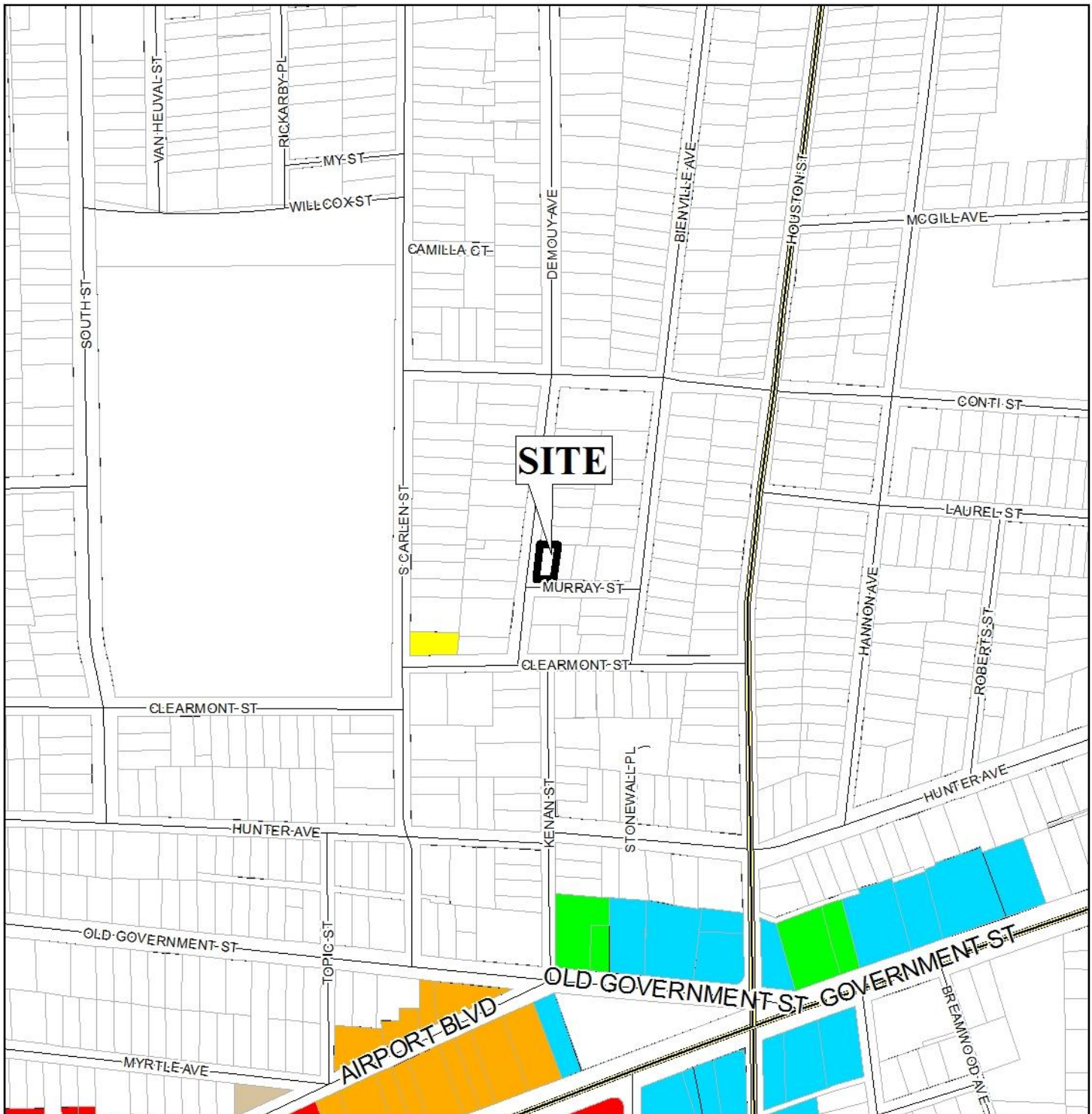
LOCATOR MAP



APPLICATION NUMBER 6129 DATE September 11, 2017
 APPLICANT Margaret M. McGovern
 REQUEST Front and Side Street Side Yard Setback Variances



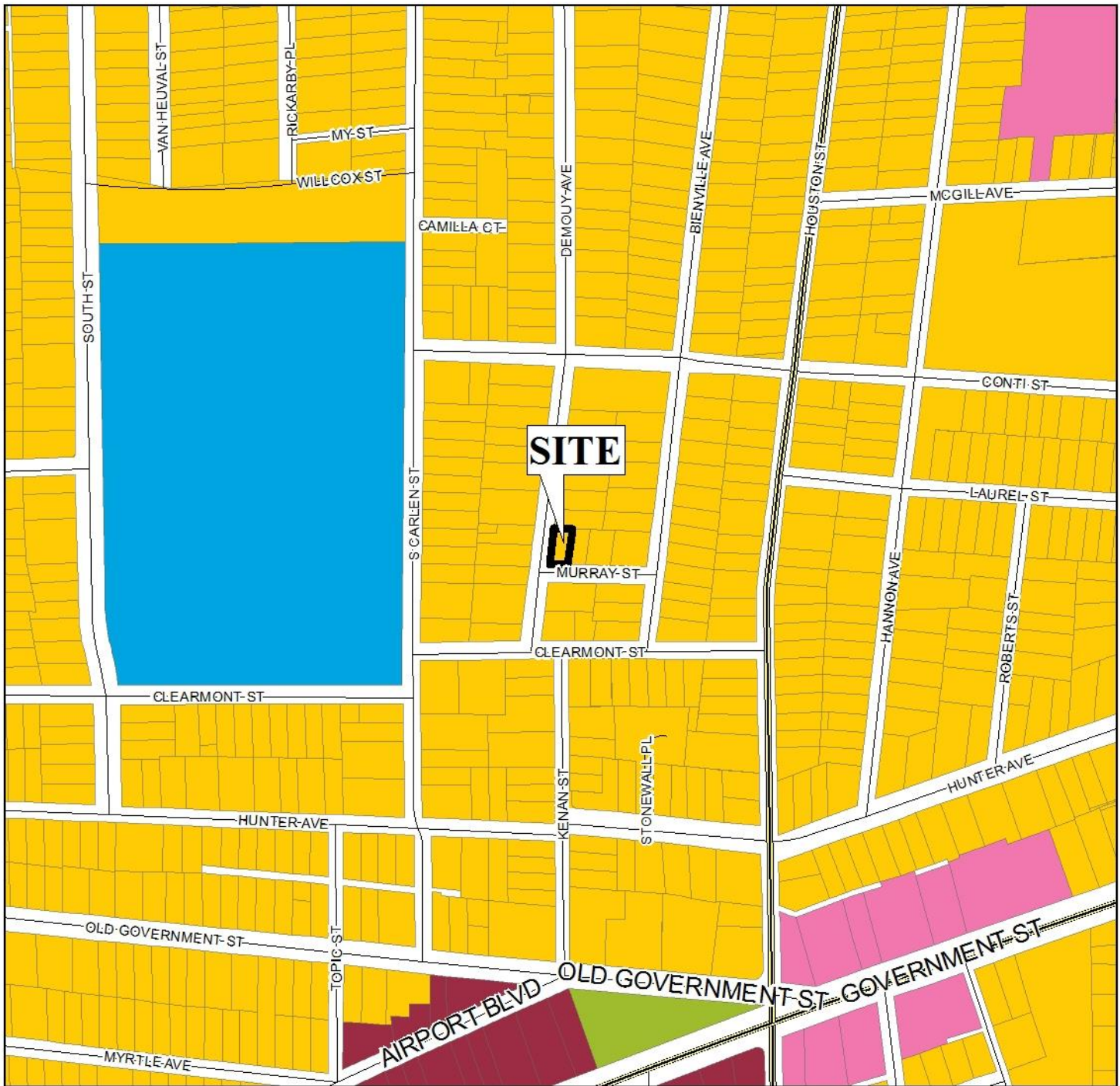
LOCATOR ZONING MAP



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FLUM LOCATOR MAP



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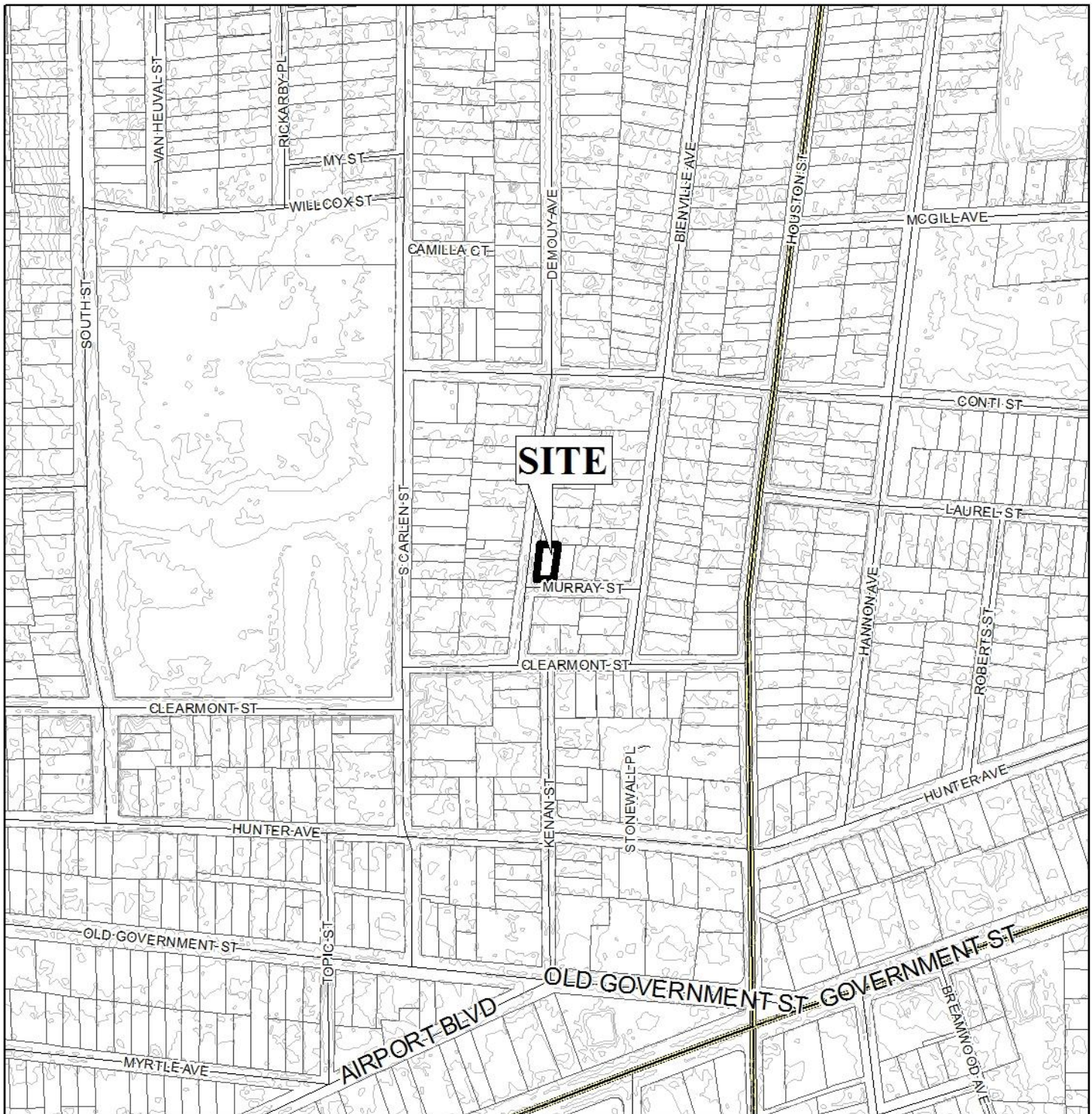
APPLICANT Margaret M. McGovern

REQUEST Front and Side Street Side Yard Setback Variances

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



ENVIRONMENTAL LOCATOR MAP



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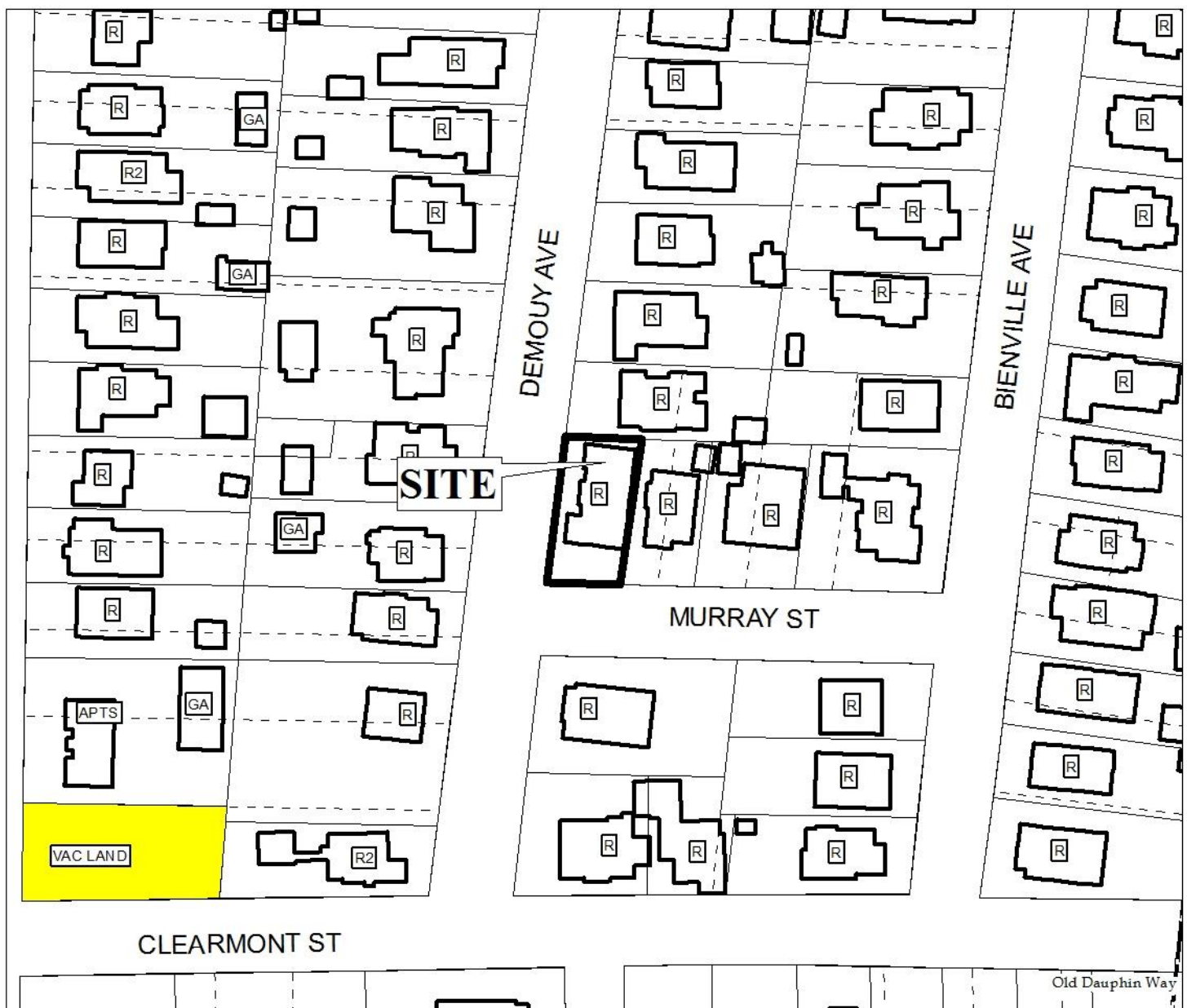
APPLICANT Margaret M. McGovern

REQUEST Front and Side Street Side Yard Setback Variances



NTS

BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units.

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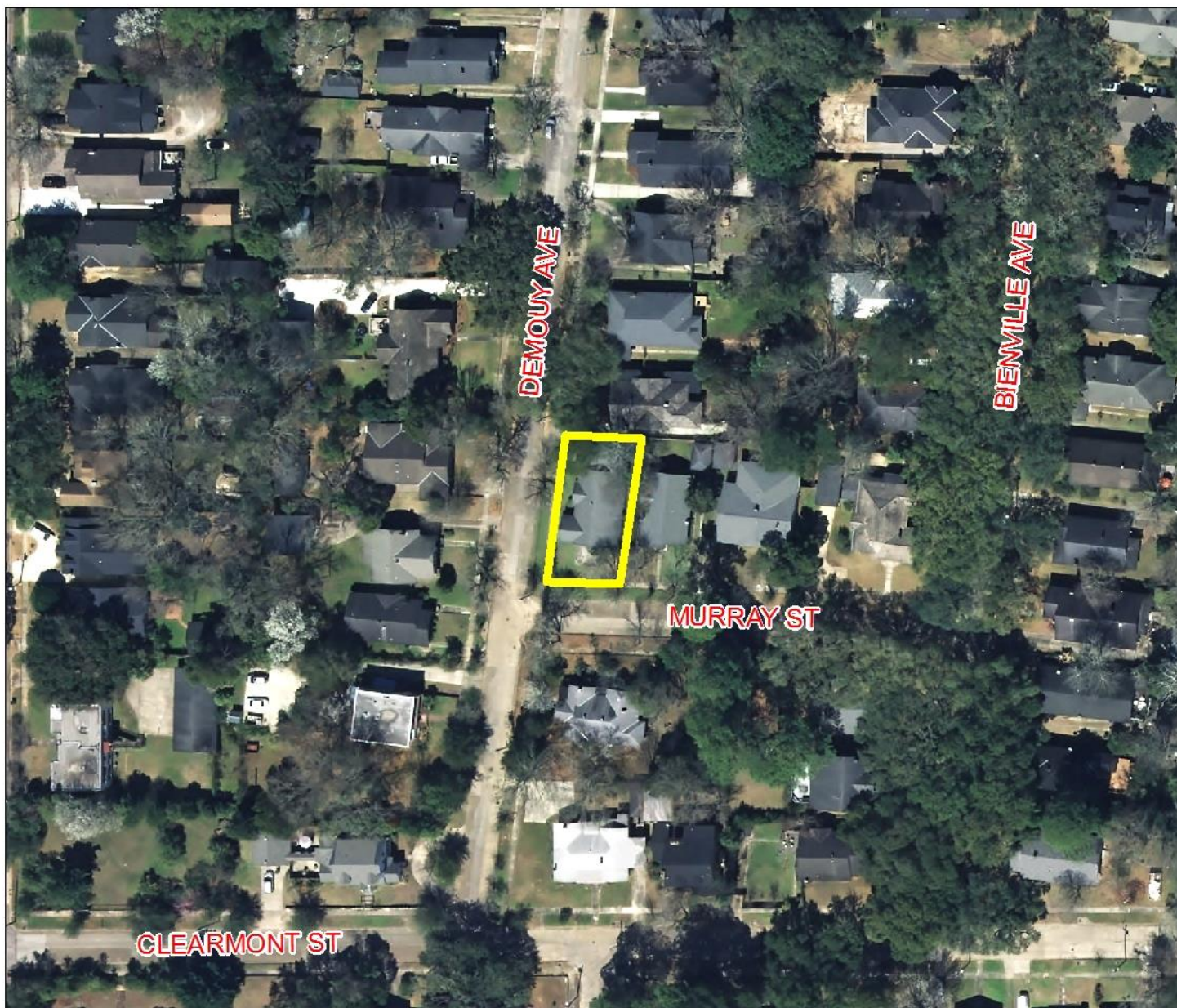
APPLICANT Margaret M. McGovern

REQUEST Front and Side Street Side Yard Setback Variances

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.

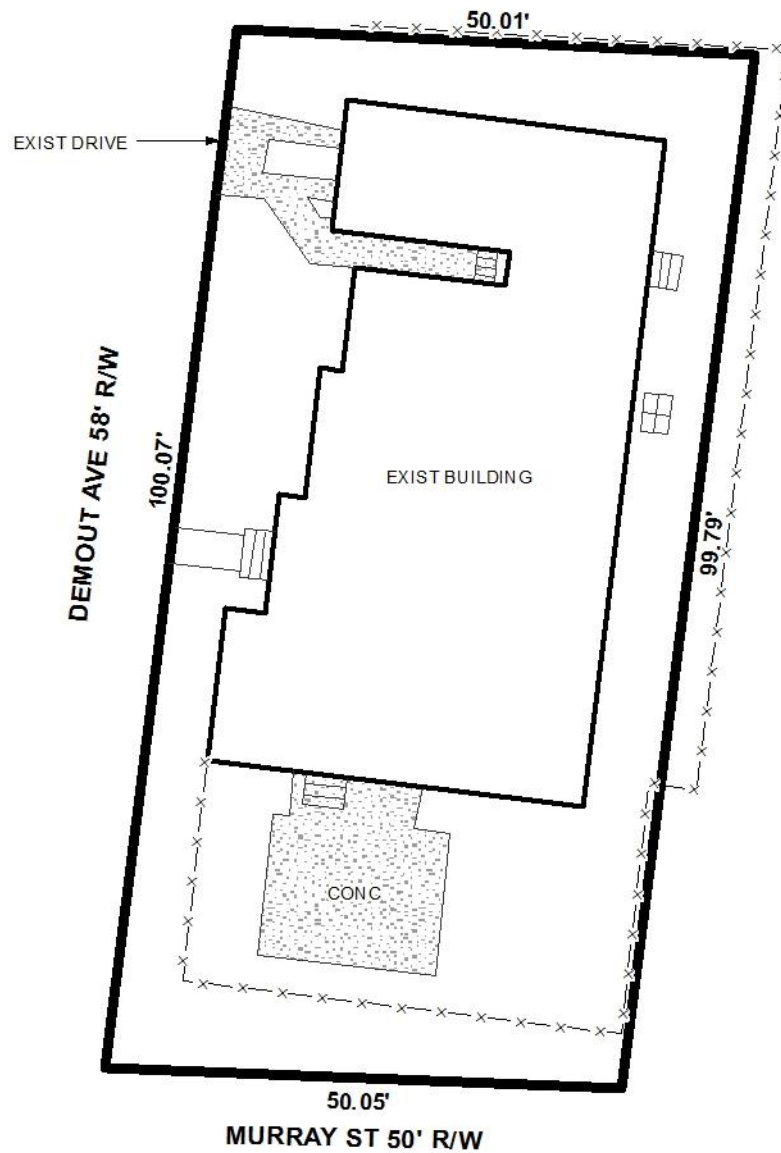
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SITE PLAN



The site plan illustrates the existing building and existing drive.

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