

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: April 2, 2018****CASE NUMBER**

6168/5045

APPLICANT NAME

Garden Design Solutions, Inc.

LOCATION3709 & 3713 The Cedars Avenue
(South side of The Cedars Avenue, 135'± West of College Lane.)**VARIANCE REQUEST****FENCE VARIANCE:** Fence Variance to allow a 6' privacy fence/wall to be constructed within the 25' front minimum building setback line in an R-1, Single-Family Residential District.**ZONING ORDINANCE
REQUIREMENT****FENCE VARIANCE:** The Zoning Ordinance prohibits any fence or wall to exceed a height of 3' within any required front yard setback in an R-1, Single Family Residential District.**ZONING**

R-1, Single-Family Residential

AREA OF PROPERTY

0.2 ± Acres

**CITY COUNCIL
DISTRICT**

District 7

**ENGINEERING
COMMENTS****FRONT YARD SETBACK VARIANCE** (6' Privacy fence/wall):

- a. 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.
- b. Applicant agrees to install adequate BMPs during construction to protect from sediment/pollutants leaving the site.
- c. Submit and receive a Land Disturbance Permit for the proposed site development through Central Permitting.

**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 (State Act 61-929 and City Code Chapters 57 and 64).

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 Fence Variance to allow a 6' privacy fence/wall to be constructed within the 25' front minimum building setback line in an R-1, Single-Family Residential District; the Zoning Ordinance prohibits any fence or wall to exceed a height of 3' within any required front yard setback in an R-1, Single Family Residential District.

The site has been given a Mixed Density Residential (MxDr) 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 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:

“Description of Proposed Work:

To Whom it May Concern,

Dr. Chris Walton and Mrs. Holly Walton are owners of the house and property at 3709 The Cedars. The Waltons purchased the existing house at this site in 2012. A few years later the Waltons purchased the empty lot to the west of their home site. The vacant lot was purchased to serve as the Waltons ‘backyard’ because of the siting of their primary homesite so close to the rear property line created a very small backyard space at the house.

The work that is proposed is for the vacant lot west of the Walton’s homesite. The Walton’s seek to construct a 6’ height wood and masonry fence at the front of the property along the R.O.W. of the The Cedars. The current zoning only allows for a 3’ height fence for any areas of fence projecting in front of the house, in this case this would be the 25’ building setback along The Cedars. The Walton’s are seeking a variance in the existing code to allow for the construction of the proposed 6’ height fence to be built along the north property on at The Cedars R.O.W. Line, as well as along the east and west property lines in the 25’ setback in the areas indicated in the enclosed site plans.

Because this yard will be used as the Walton’s backyard, the limitation of a 3’ height fence does not offer safety or privacy from the street for the area where the Walton’s Children play. Building a taller fence behind the 25’ setback would significantly decrease the usable area for the owner’s property. Because there are many other examples of fences taller than 3’ height built adjacent to R.O.W. lines in the immediate neighborhood, we feel that allowing this variance for a 6’ height fence will not be out of character with the neighborhood, nor will it be counter to the spirit of the ordinance.”

As stated, the applicant is seeking relief, from the Zoning Ordinance to allow a fence that exceeds the required height in a front yard setback. The applicant notes that the safety of his children and overall privacy is the purpose of the variance request.

Section 64-4.D.6.a. of the Zoning Ordinance 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.”

The abutting property was purchased in 2016 and serves as a backyard for the single family home at 3709 The Cedars Avenue. Their residence was the subject of variance requests in 2001, which resulted in the approval of 41% coverage and reduced sideyard setbacks: the residence was sited on the property in a manner that essentially eliminated a usable rear yard. It appears that the vacant lot was cleared soon after purchase by the applicant, as a permit was issued for the work in April 2016.

The applicant argues that there are several fences in the immediate vicinity that appear to exceed the required height. According to the Zoning Ordinance, “open air” fences or fences that do not obstruct view can exceed 3’ in height in the front yard setback. One of the examples submitted was a brick fence or wall at the intersection of Tuthill Lane and Calderwood Drive. Aerials show that this wall has existed since at least 1984 and this example is several blocks away from the site in question.

The applicant provided drawings of the proposed fence which will consist of 6’ fencing with stucco columns and wooden fence panels along The Cedars Avenue.

It should also be noted that the next lot to the west of the site is vacant, and should a home be built, the proposed wall may impair visibility for a future neighbor when exiting the driveway.

There are no conditions which exist at this site that would require the applicant to have a fence that exceeds the allowed maximum height requirement in the front yard setback. This application seems to be the merely the applicant’s desire. Also, it appears that no other home fronting onto The Cedars has a fence or wall within the front setback area along the street; two homes have walls or fences in their side yards along The Cedars, but these appear to have been in existence for over 30 years. The applicant has the option to erect fencing along the property line that is compliant with the Zoning Ordinance requirements. The applicant could erect an open-air fence in the front yard setback which exceeds 3’ but would be no greater than 6’ and remain compliant. If the fence were built at the 25’ minimum building setback line, approximately 1950 square feet of that 9,111 square feet lot would be outside of the fenced area. There has not been any hardship presented associated with the property or its configuration that would necessitate the approval of this request. It should be noted that there have been several variance requests in the nearby vicinity for setbacks and site coverage but none of which directly address fences.

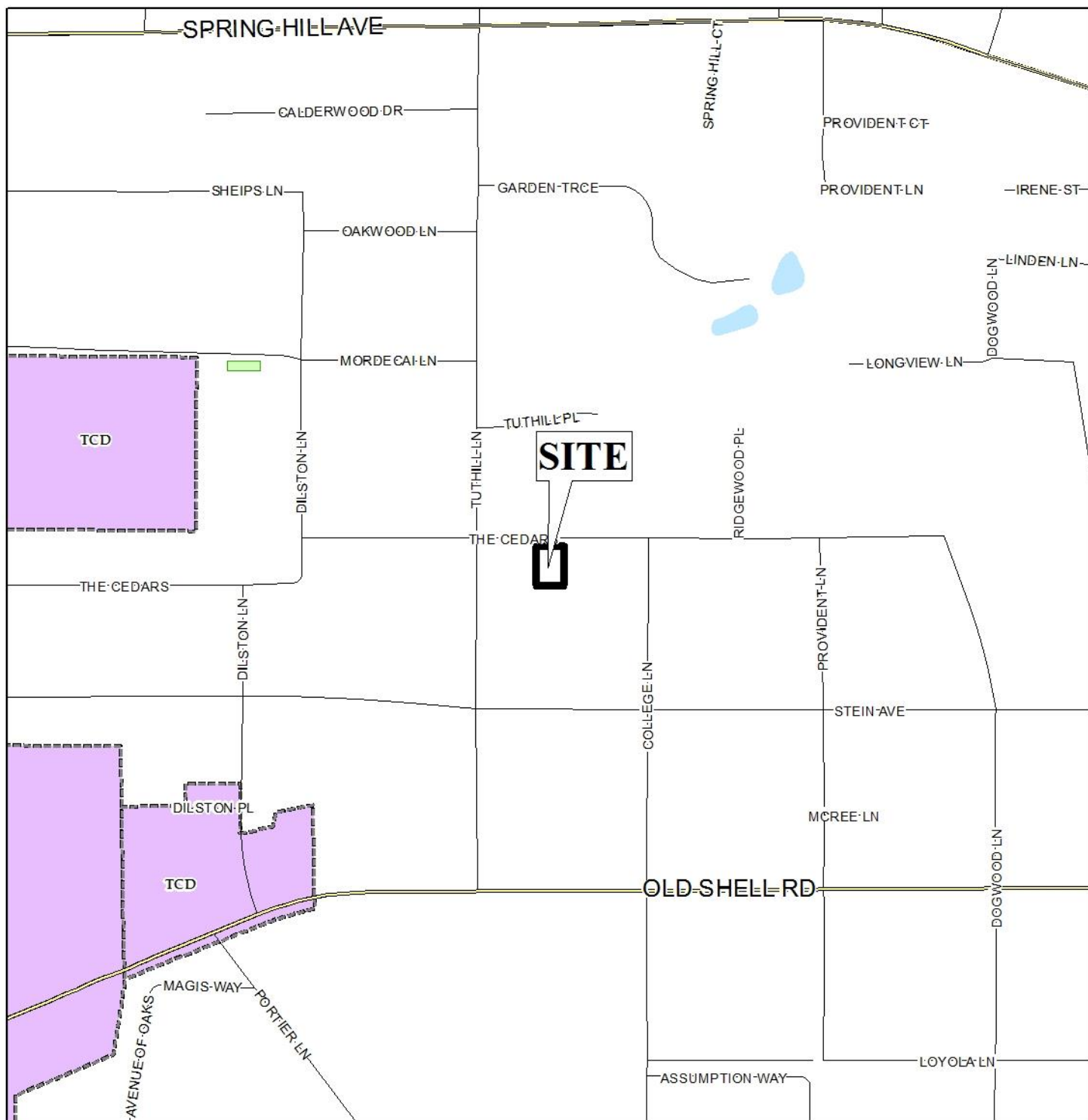
RECOMMENDATION: Staff recommends to the Board the following findings of fact for Denial:

- 1) Granting the variance will be contrary to the public interest in that because it will be contrary to Section 64-4.6.a. of the Zoning Ordinance regarding the maximum allowable

fence height R-1, Single-Family Residential District and may impair driveway visibility for the adjacent lot, when it is developed;

- 2) Special conditions and hardships do not exist in such a way that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship, as the site can be developed without the requirement for a variance ; 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 site can be developed in such a way that the proposed fence would not extend beyond 3' in height in the required setbacks.

LOCATOR MAP



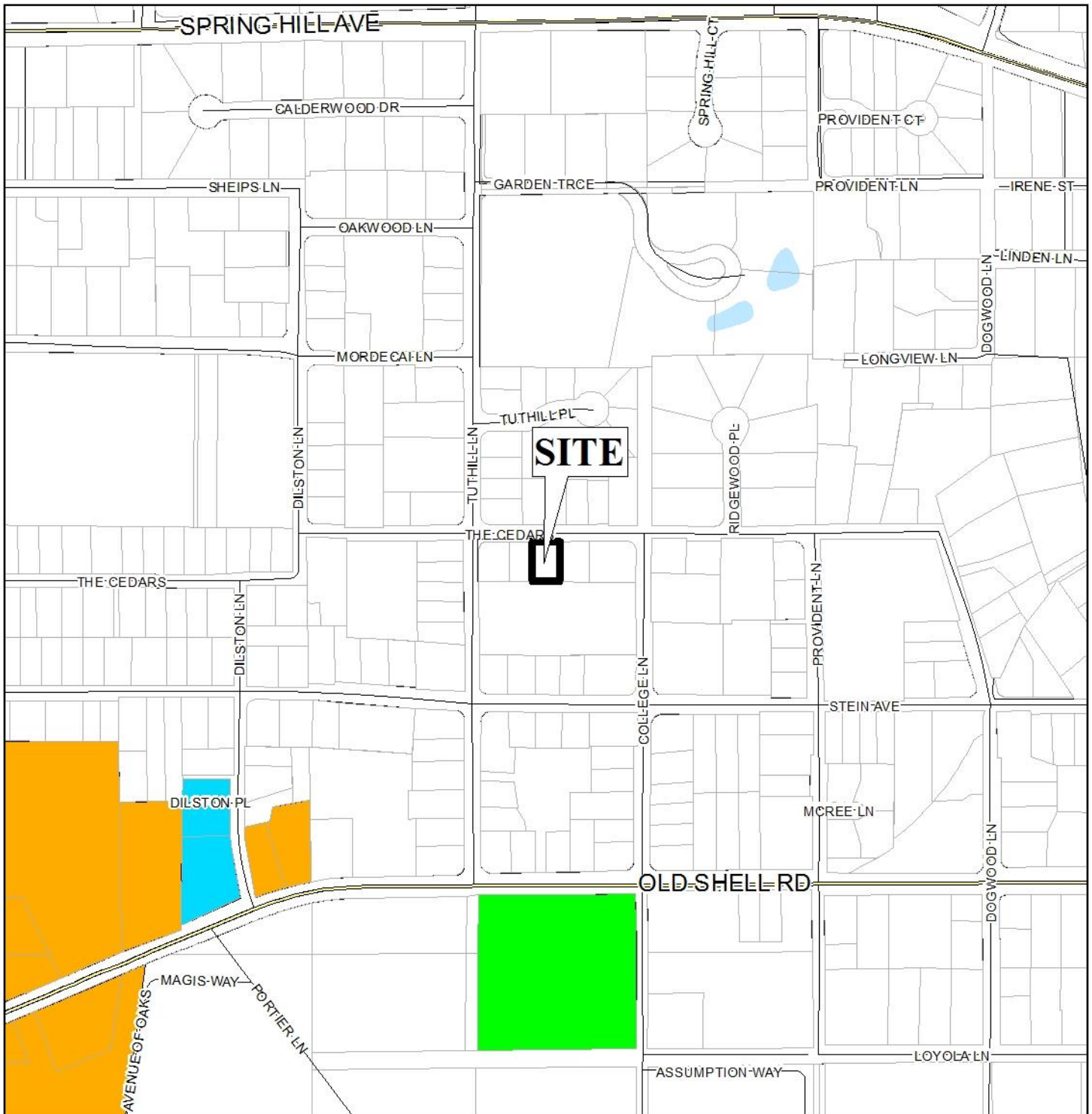
APPLICATION NUMBER 6168 DATE April 2, 2018

APPLICANT Garden Design Solutions, Inc.

REQUEST Fence Variance



LOCATOR ZONING MAP



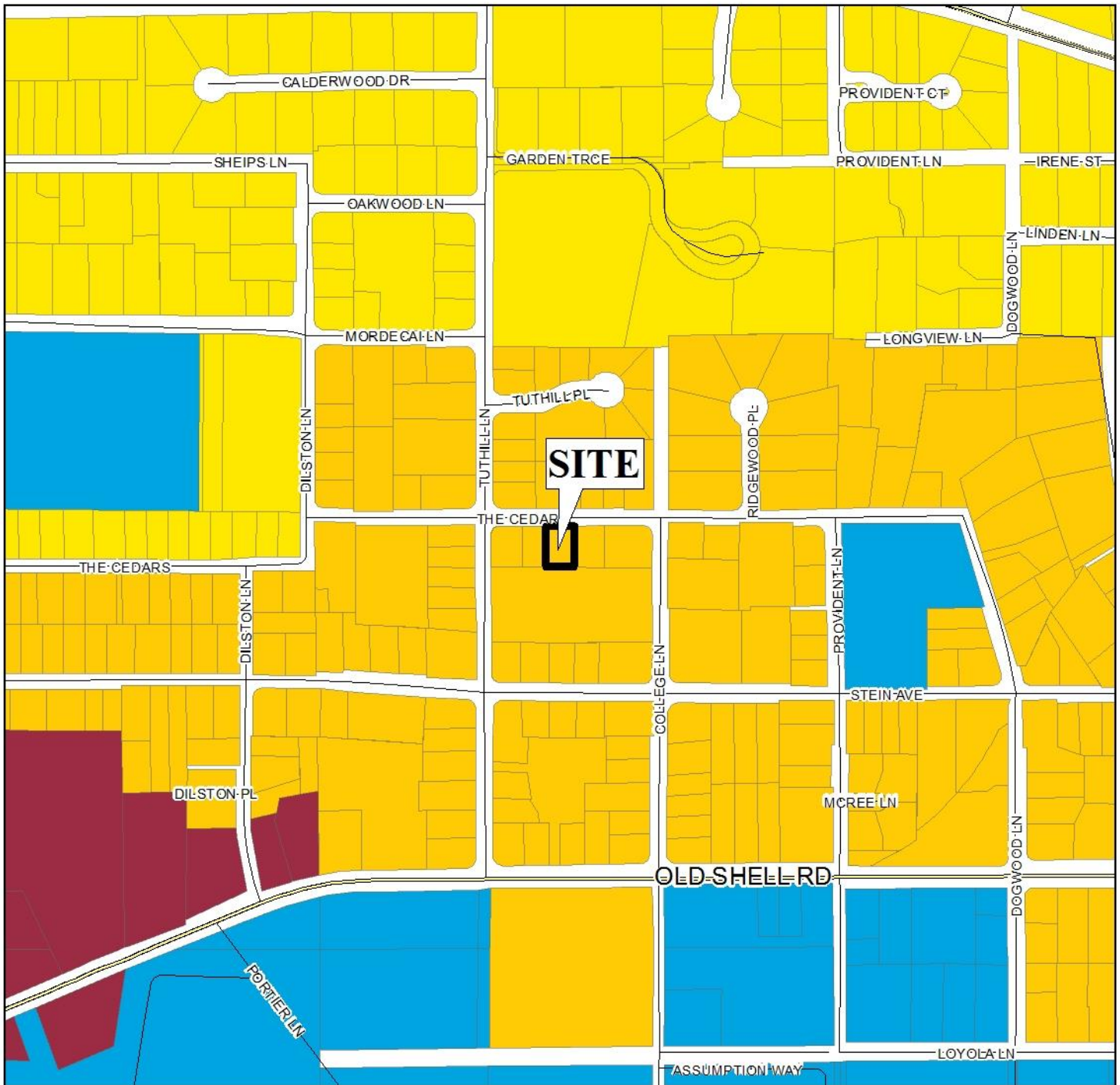
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FLUM LOCATOR MAP



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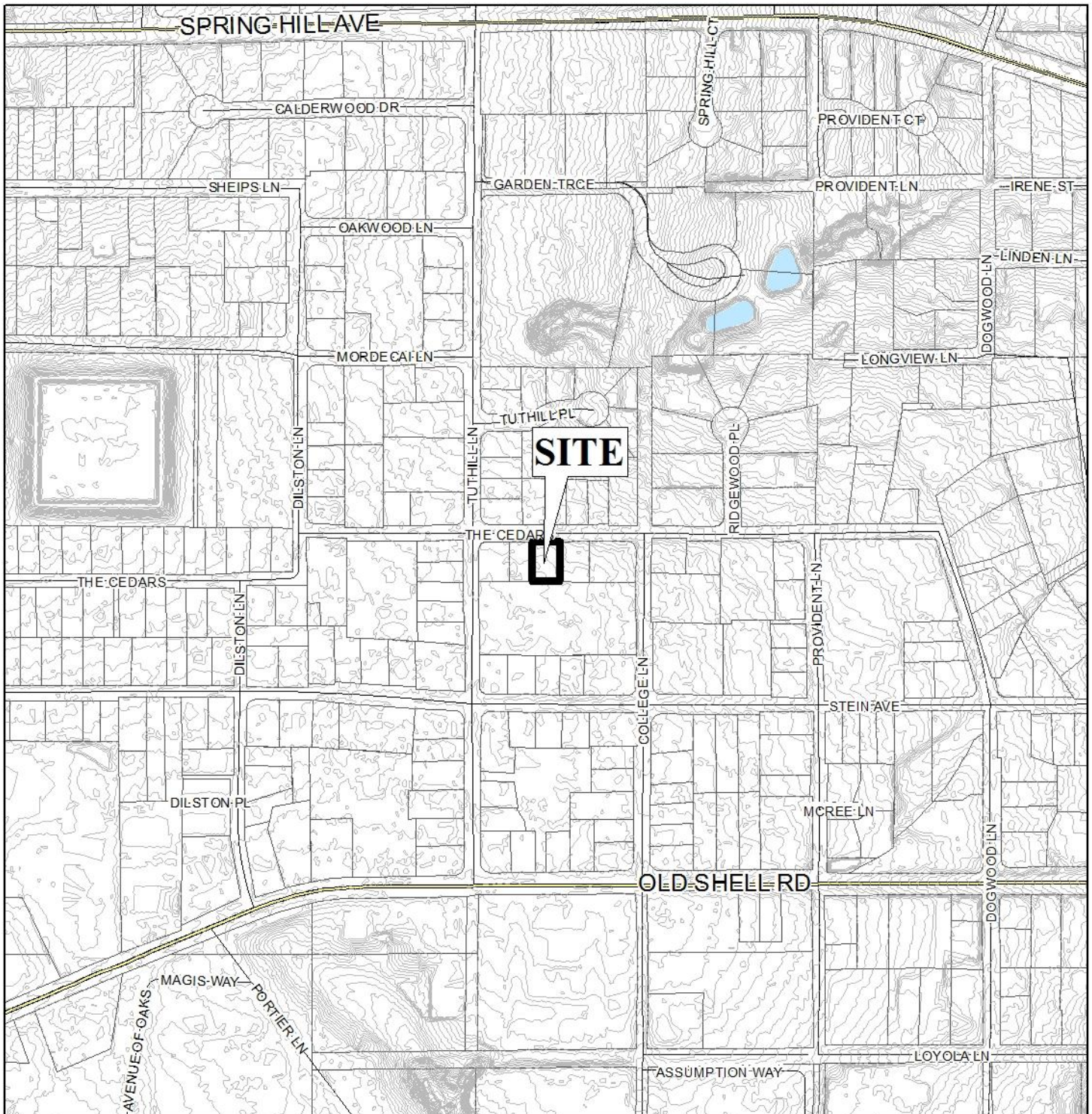
APPLICANT Garden Design Solutions, Inc.

REQUEST Fence 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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BOARD OF ADJUSTMENT

VICINITY MAP - EXISTING ZONING



The site is surrounded by 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



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING AERIAL



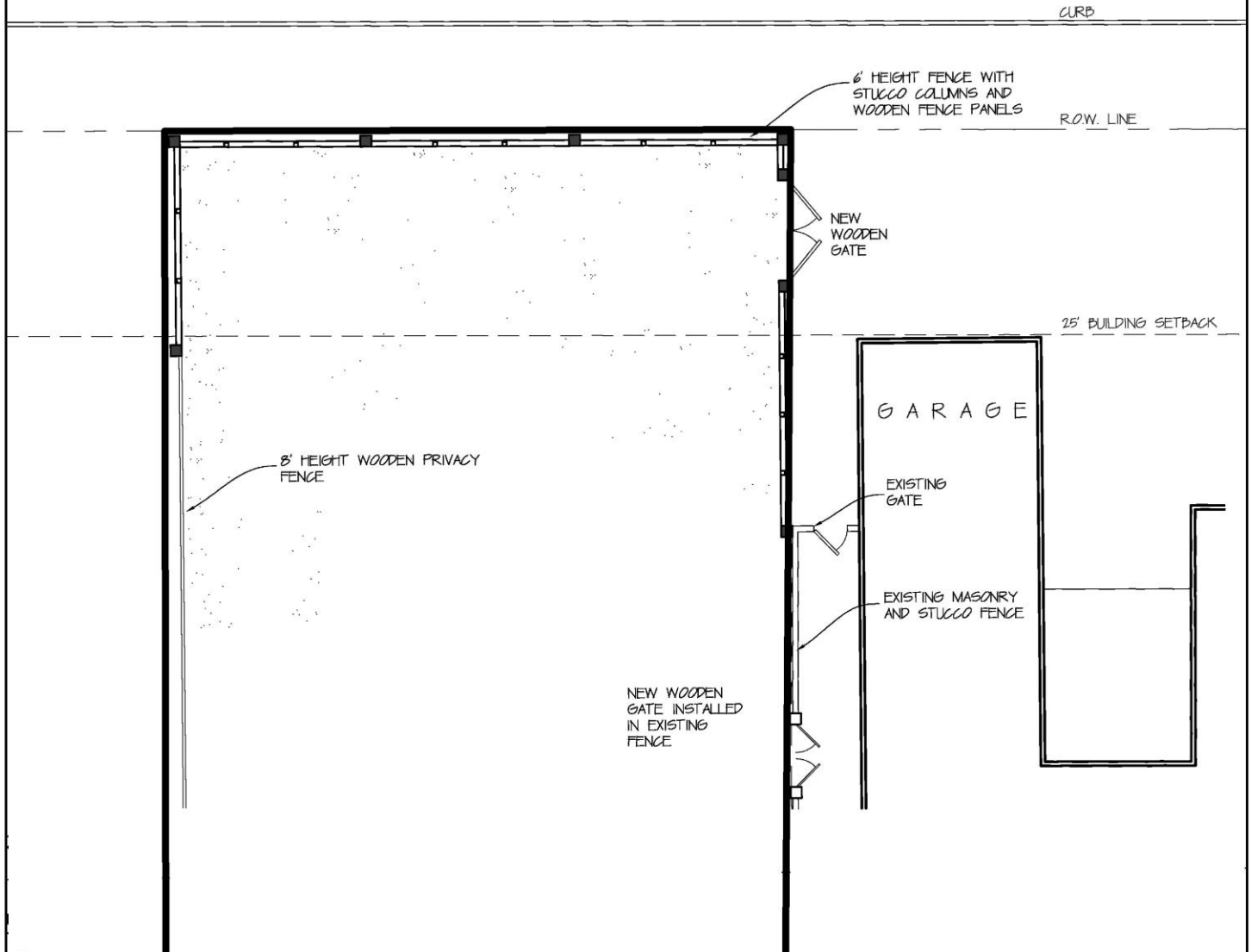
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SITE PLAN

THE CEDARS



The site plan illustrates the existing building, existing fences, and proposed fence.

APPLICATION NUMBER 6168 DATE April 2, 2018

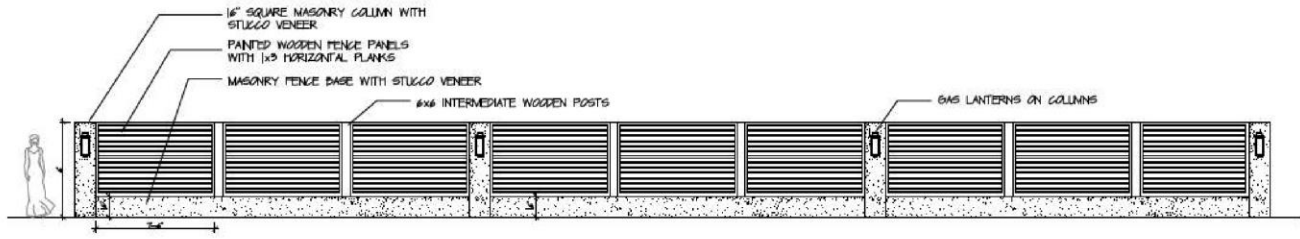
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REQUEST Fence Variance

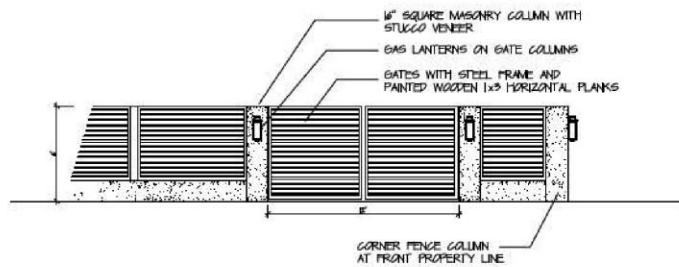
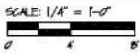


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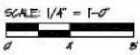
DETAIL SITE PLAN



Proposed Fence - Cedar Street Elevation



Proposed Gate Elevation



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NTS

