

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: February 1, 2021**

<u>CASE NUMBER</u>	6368
<u>APPLICANT NAME</u>	Janael Moguel
<u>LOCATION</u>	1409 Greenbrier Drive (East side of Greenbrier Drive, 270'± South of Halls Mill Road).
<u>VARIANCE REQUEST</u>	USE: Use Variance to allow a maximum of twelve (12) children in a home-based child day care business in an R-1, Single-Family Residential District.
<u>ZONING ORDINANCE REQUIREMENT</u>	USE: The Zoning Ordinance does not allow more than six (6) children in a home-based child day care business in an R-1, Single-Family Residential District.
<u>ZONING</u>	R-1, Single-Family Residential District
<u>AREA OF PROPERTY</u>	13,600± square feet / 0.3± Acres
<u>CITY COUNCIL DISTRICT</u>	District 4
<u>ENGINEERING COMMENTS</u>	No comments.
<u>TRAFFIC ENGINEERING COMMENTS</u>	If on street parking becomes an issue during pick-up/drop-off at the daycare, on street parking restrictions may have to be installed based on the width of Greenbrier Street.
<u>URBAN FORESTRY COMMENTS</u>	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). 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.

The fire code adopted by the City of Mobile does not allow for a residential daycare providing care for more than 5 children. If more than 5 children are being provided non-custodial care all code requirements of a commercial daycare shall be adhered to. The owner will be required to submit for a change of occupancy permit.

ANALYSIS

The applicant is requesting a Use Variance to allow a maximum of twelve (12) children in a home-based 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 day care business in an R-1, Single-Family Residential District.

The Zoning Ordinance states that no variance shall be granted where economics is 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 has been given a Low Density Residential 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.

The Low Density Residential designation applies to existing residential neighborhoods found mostly west of the Beltline or immediately adjacent to the east side of the Beltline.

The primary land use in the Low Density Residential districts is residential, and the predominant housing type is the single-family housing unit, detached or semi-detached, typically placed within a street grid or a network of meandering suburban streets. The density in these districts ranges between zero (0) and six (6) dwelling units per acre.

Low Density Residential neighborhoods may also contain small-scale, low-rise multi-unit structures at appropriate locations; as well as complementary retail, parks and civic institutions such as schools, community centers, neighborhood playgrounds, and churches or other religious uses if those uses are designed and sited in a manner compatible with and connected to the

surrounding context. The presence of individual ancillary uses should contribute to the fabric of a complete neighborhood, developed at a walkable, bikeable human scale.

It should also 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.

Regarding the Use Variance, the applicant cites a shortage of day care facilities and increased restrictions on day care facilities resulting from public health concerns as justification for the request, stating:

This letter of Intent is in support of my request for a variance of use of my current residential property. The intention is to convert from a Family Home Daycare to a Group Home Daycare in my single-family residence. My current zoning permit allows me to provide for a maximum of 5 children whereas the variance would allow me to provide for a maximum of 10- 12 children. What is perhaps most relevant here, and what I would ask the board to consider, is with the approval of this variance I would be able to provide care and nurture to more children that are now struggling to find a placement in daycare facilities due to the current pandemic and restrictions that are being place at this time. I am not only requesting this variance as an increase to my income but as advance daycare director with 11 plus years in childcare under my belt and very passionate about educating and providing. I hope you agree that my request would produce and aesthetically proper addition to the neighborhood.

Section 64-12 of the Zoning Ordinance limits home occupation day care businesses to a maximum of six (6) children.

It should be noted that allowing more than six (6) children in a home-based day care may prompt compliance with Building, Mechanical, Plumbing, and Electrical Codes. Moreover, the Fire Department requires day cares with more than five (5) children to be sprinkled along with additional building alterations. Such alterations will require the applicant to submit construction plans for review and approval before permits can be obtained, which are required to ensure the structure meets minimum safety requirements.

Furthermore, the Alabama Department of Human Resources requires the following caregivers to be available for home-based day cares caring for between seven (7) and twelve (12) children: 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, thus requiring an amendment to the request at hand since residency is a requirement for employees of home-based businesses.

A recent land survey was provided by the applicant and illustrates the subject site is 13,600± square feet in size and is developed with a single-family dwelling. No other plans were provided, such as a site plan illustrating compliance with the off-street parking provisions for State-required personnel, or any floorplan(s) depicting compliance with safety requirements. Also, no description of the proposed businesses activities or hours of operation was provided.

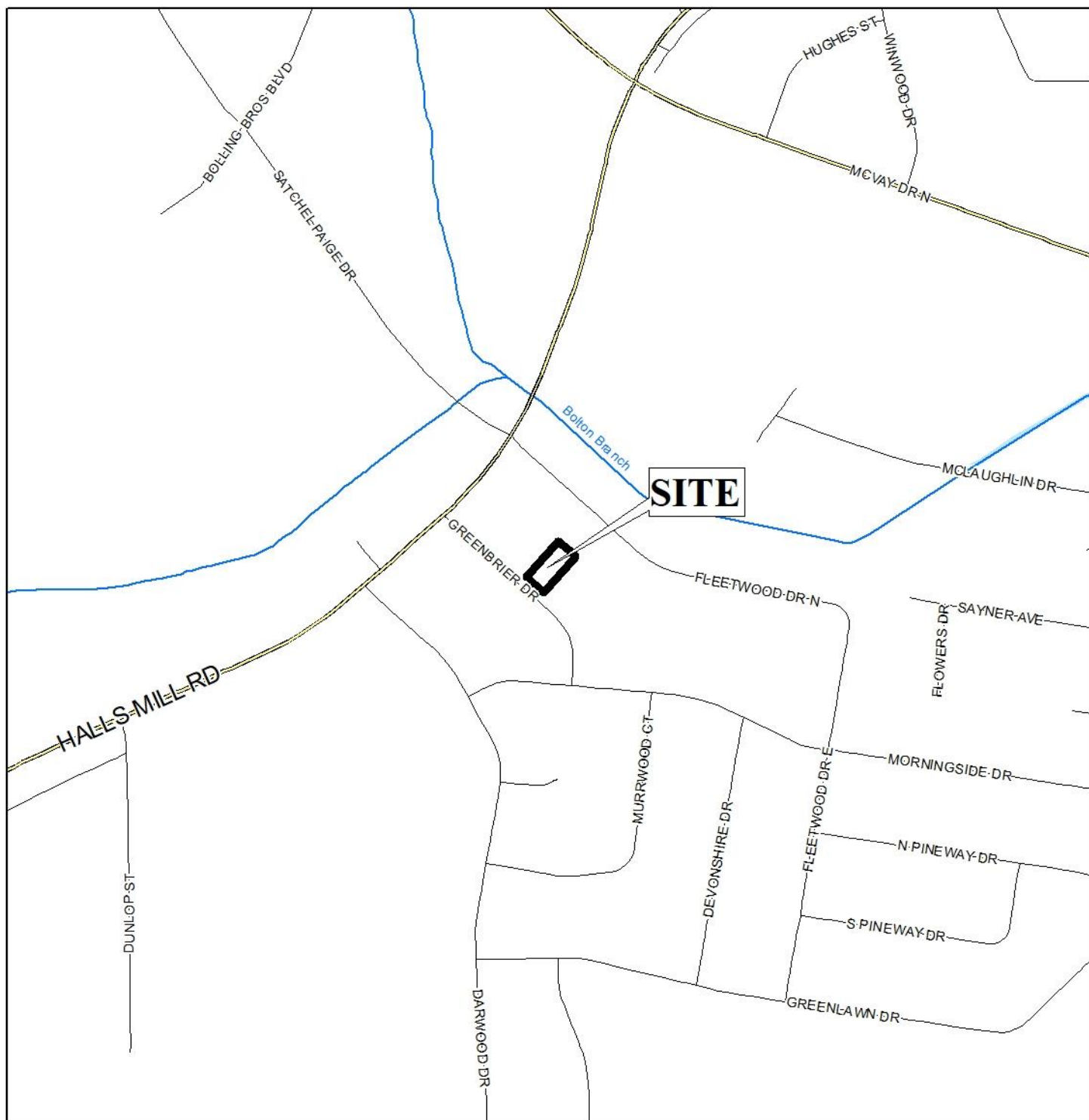
A Zoning Clearance was issued to the applicant in May, 2019 to operate a day care with no more than six (6) children. Since that time the applicant has not made a request to care for additional children, perhaps demonstrating that compliance with the Zoning Ordinance does not cause a hardship. Furthermore, while the need for additional childcare facilities may be necessary within the community, there are locations in the city appropriately zoned for such facilities from which the applicant could provide day care services for more than six (6) children.

It should be reiterated that Variances are not intended to be granted frequently, and while Variances have been granted to properties within the vicinity of the subject site none were for uses not permitted by right in an R-1 zoning district. Approving the Variance would, therefore, be contrary to at least Section 64-12 of the Zoning Ordinance. As such, approving the request may establish a precedent by which less desirable Variance requests could be approved in the future, especially if no special conditions or hardships to an individual property exist.

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 in that it will be contrary to Section 64-12 of the Zoning Ordinance regarding permitted uses;
- 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 since a home-based day care business is operated from the property in compliance with the Zoning Ordinance; 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 properties are zoned for residential use.

LOCATOR MAP



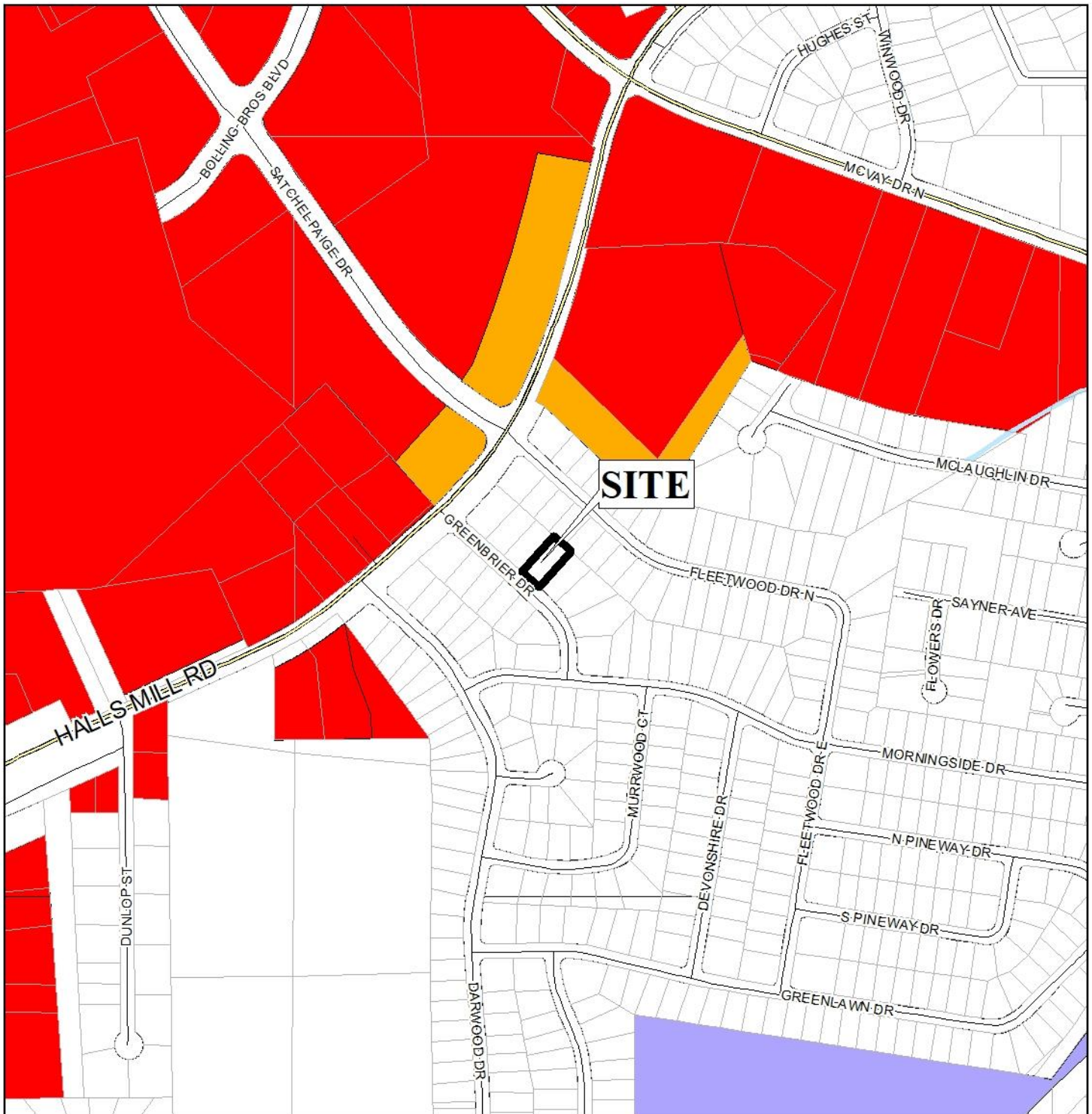
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APPLICANT Janael Moguel

REQUEST Use Variance



LOCATOR ZONING MAP



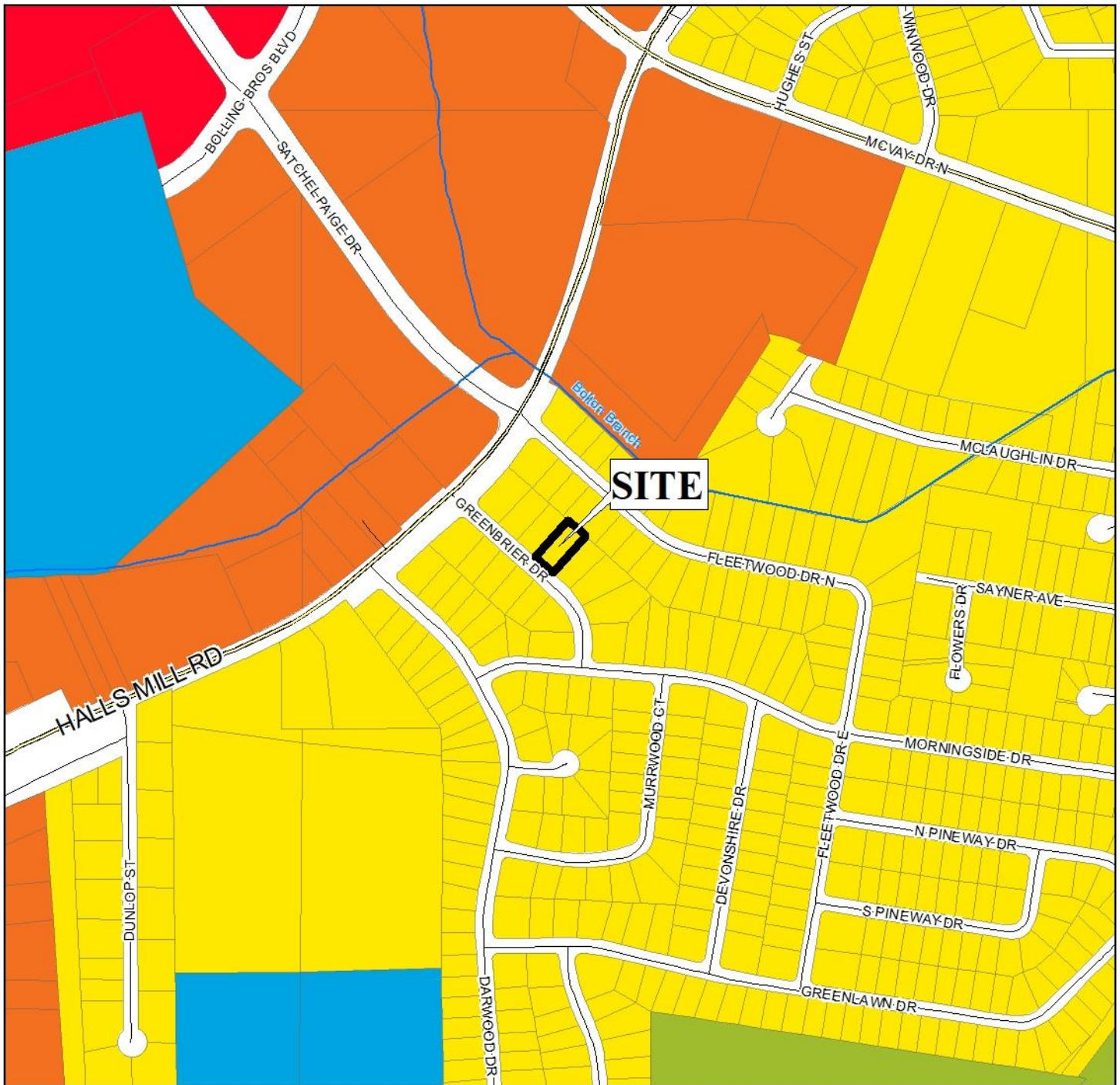
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FLUM LOCATOR MAP



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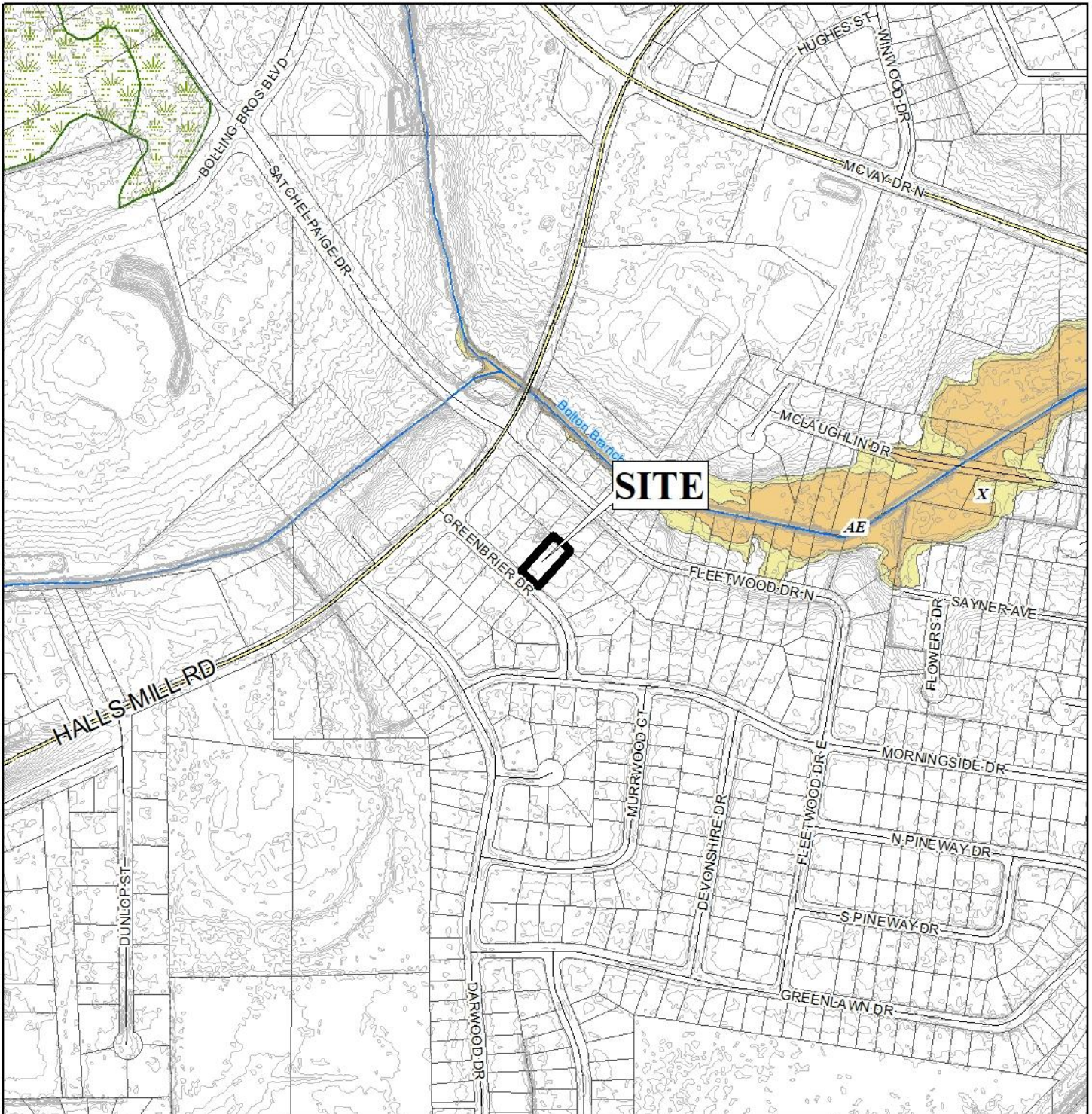
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Low Density Residential	Neighborhood Center - Traditional	Downtown Waterfront	Parks & Open Space
Mixed Density Residential	Neighborhood Center - Suburban	Light Industry	Water Dependent
Downtown	Traditional Corridor	Heavy Industry	
District Center	Mixed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



ENVIRONMENTAL LOCATOR MAP



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VICINITY MAP - EXISTING ZONING



The site is surrounded by single family 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

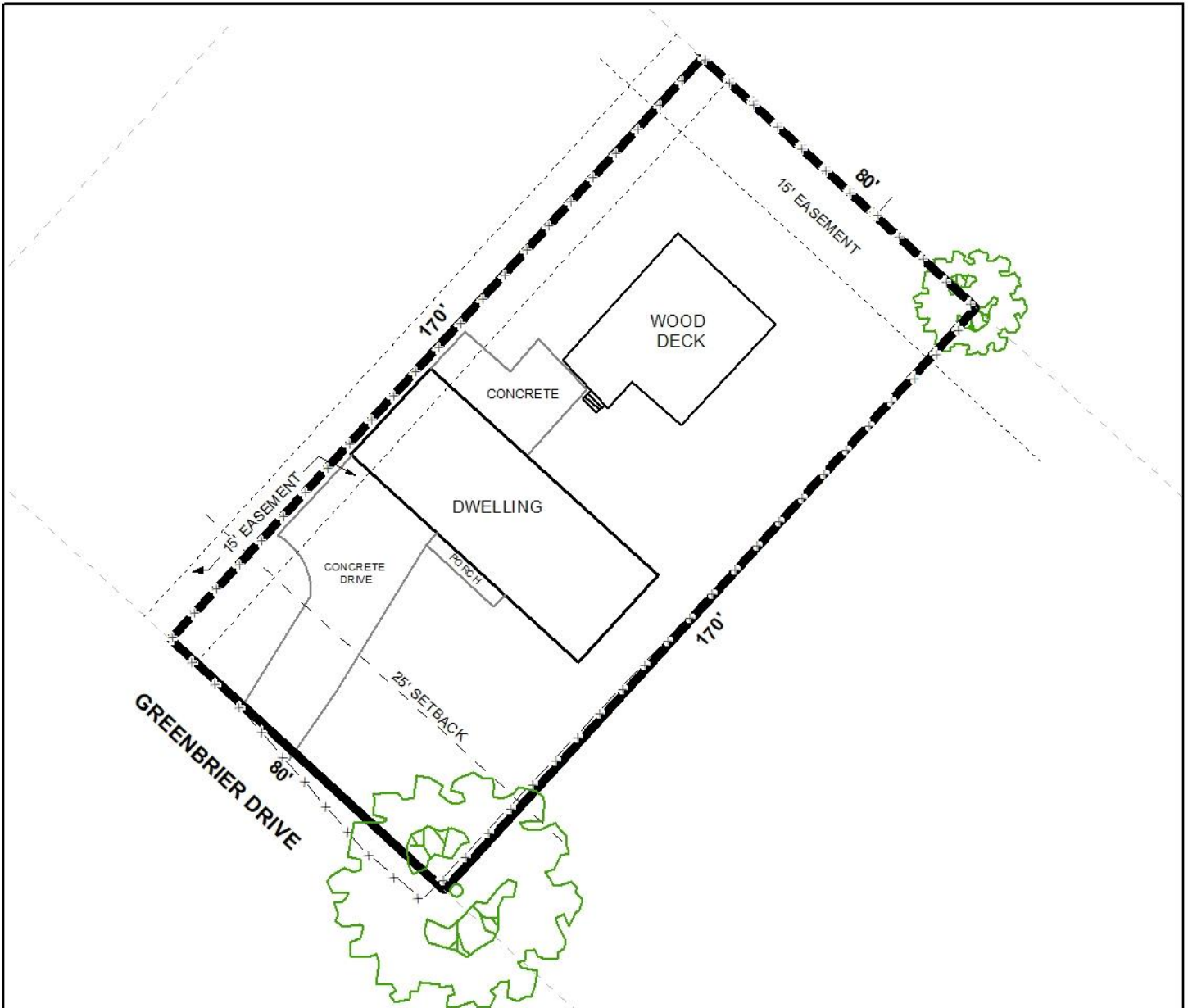


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SITE PLAN



The site plan illustrates existing surfaces, buildings and easements.

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