

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: June 7, 2021**

<u>CASE NUMBER</u>	6385
<u>APPLICANT NAME</u>	Chelsea McCormick
<u>LOCATION</u>	52 Westwood Street (West side of Westwood Street, 20'± South of the West terminus of Homewood Street).
<u>VARIANCE REQUEST</u>	USE: Use Variance to allow a home occupation catering/charcuterie business to operate in a detached building in an R-1, Single-Family Residential District.
<u>ZONING ORDINANCE REQUIREMENT</u>	USE: The Zoning Ordinance does not allow a catering/charcuterie business as a home occupation, and home occupations cannot operate in a detached building in an R-1, Single-Family Residential District
<u>ZONING</u>	R-1, Single-Family Residential District
<u>AREA OF PROPERTY</u>	0.3± Acres
<u>CITY COUNCIL DISTRICT</u>	District 1
<u>ENGINEERING COMMENTS</u>	No comments
<u>TRAFFIC ENGINEERING COMMENTS</u>	No traffic impacts anticipated by this variance request.
<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 [Act 929 of the 1961 Regular Session of the Alabama Legislature (Acts 1961, p. 1487), as amended, and City Code Chapters 57 and 65]. Private removal of trees in the right-of-way will require approval of the Mobile Tree Commission. Removal of heritage trees from undeveloped residential sites, developed residential sites in historic districts, and all commercial sites 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 buildings and 600' of sprinkled buildings.

ANALYSIS

The applicant is requesting a Use Variance to allow a home occupation catering/charcuterie business to operate in a detached building in an R-1, Single-Family Residential District; the Zoning Ordinance does not allow a catering/charcuterie business as a home occupation, and home occupations cannot operate in a detached building in an R-1, Single-Family Residential District. It should be noted that the business is currently in operation, without Zoning approvals.

The site has been given a Mixed Density Residential (MxDR) land use designation per the 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 acknowledges existing commercial development that is spread along Mobile's transportation corridors in a conventional strip pattern or concentrated into shorter segments of a corridor.

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 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 and convenient access to daily necessities.

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.

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 applied for a business license, at which time, staff advised them for the need of the current application. The applicant states:

The purpose of this application to allow my business, Board to Death LLC which is a Limited Food Supply catering/charcuterie company, to operate in a detached kitchenette. I am unable to comply with the requirements of the Zoning Ordinance because as a Limited Food Supply Company, I am unable to operate out of my home environment due to the nature of my ingredients. My business cannot be classified under Cottage Law because I handle excluded items, charcuterie items, including meats and cheese. The detached kitchenette was developed to allow me to run my business from my home premises until I am financially independent enough to purchase a brick-and-mortar location. This property will differ from surrounding properties due to its kitchenette-style nature. The building currently contains a small kitchen equipped with 2 sinks and fridge. No signs will be displayed. This building will not have public access to customers, as all transfer of goods are done offsite.

The Alabama Cottage Food Law, adopted in June 2014, allows for individuals to produce certain nonhazardous foods in their homes for sale. Items allowed by-right include: candies, jams, cookies, and other goods that do not require refrigeration. Meats, milk products, and baked goods that require refrigeration, are specifically prohibited.

The Zoning Ordinance requires that, home occupations occur in the primary residence on a site, and the applicant is wishing to run their business out of an existing detached structure in the backyard of the property. The applicant states that they cannot “operate out of my home environment due to the nature of my ingredients”, but no mention is made of what specific ingredients cause a concern. If the applicant will be dealing with pungent ingredients that they are concerned about being in the residence, it is reasonable to assume there may be bothersome odors affecting neighboring properties. More information should be provided regarding concerning ingredients.

The applicant states that there is an existing kitchenette in the detached building, which was developed to accommodate the proposed business. It should be noted that the subject site is zoned R-1, Single-Family Residential, and as such, is only allowed to have one kitchen on site. If the applicant had applied for the appropriate permits, they would have been advised of the Zoning Requirements at that time.

The applicant has not provided any hardships specific to the property as to why the variance request should be approved. It seems that it is simply the applicant's desire to operate a commercial business out of their residential property, thus creating a self-imposed hardship.

It should also be noted that there are additional Building Code and Mobile County Health Department regulations that must be addressed in order for the use to be allowed to continue operation.

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

- 1) The variance will be contrary to the public interest, as the applicant could operate a compliant home occupation in the primary residence;
- 2) Special conditions 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 not be observed, and substantial justice shall not be done to the applicant and the surrounding neighborhood by granting the requested variance, as there may be less than desirable impacts on neighboring residents, and the business is not in compliance with Mobile County Health Department requirements and City of Mobile Building Codes.

LOCATOR MAP



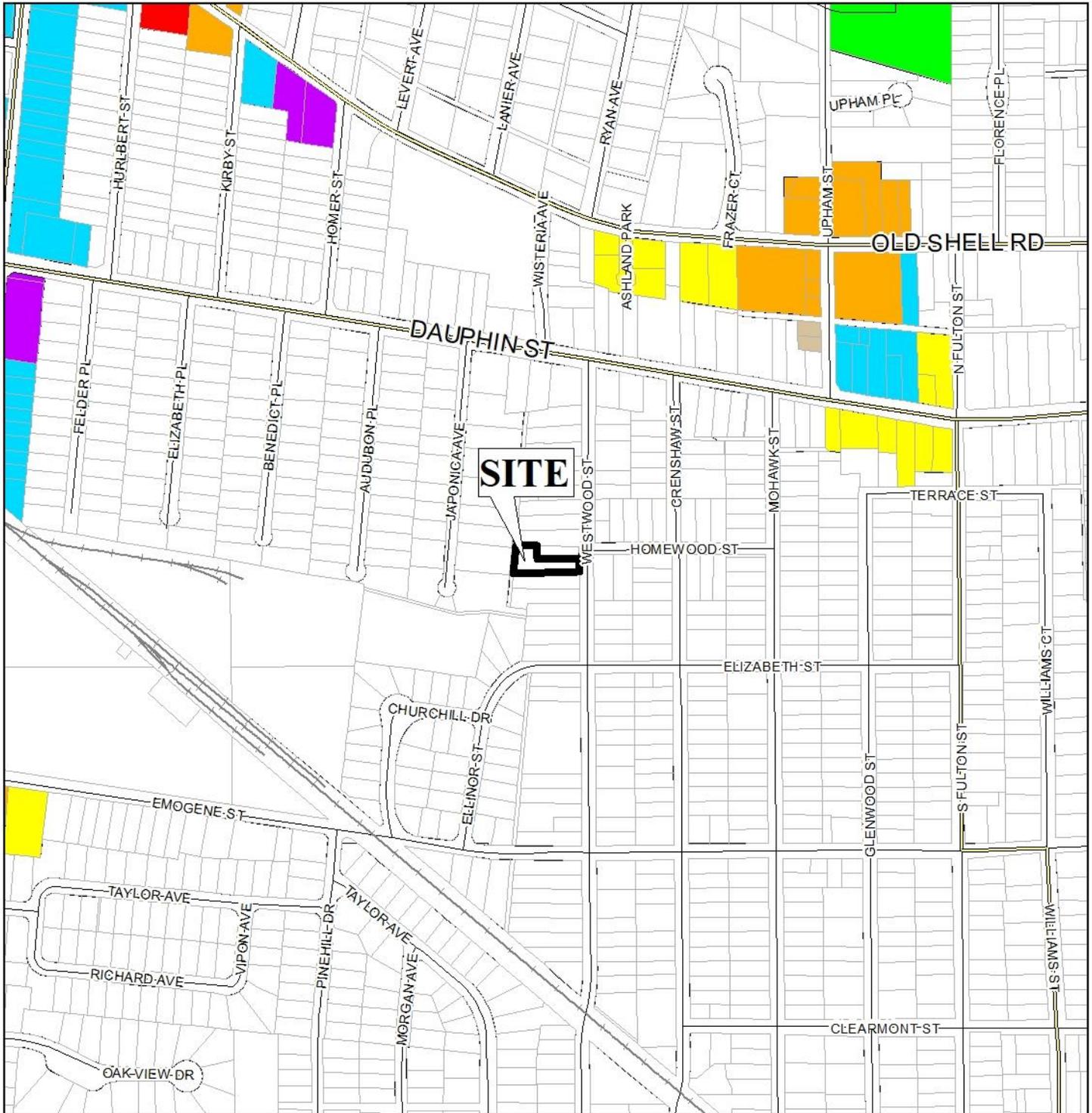
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LOCATOR ZONING MAP



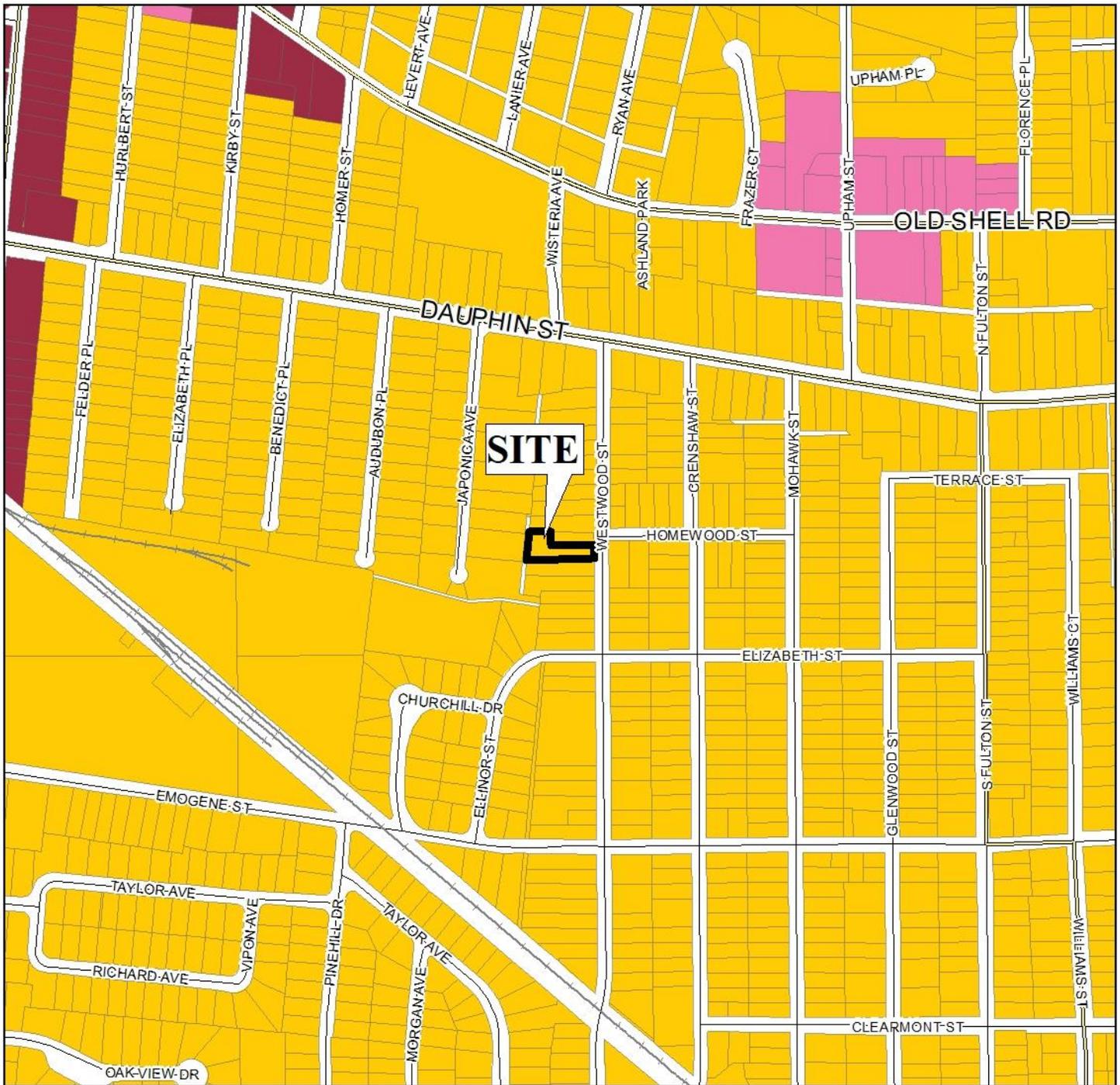
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FLUM LOCATOR MAP



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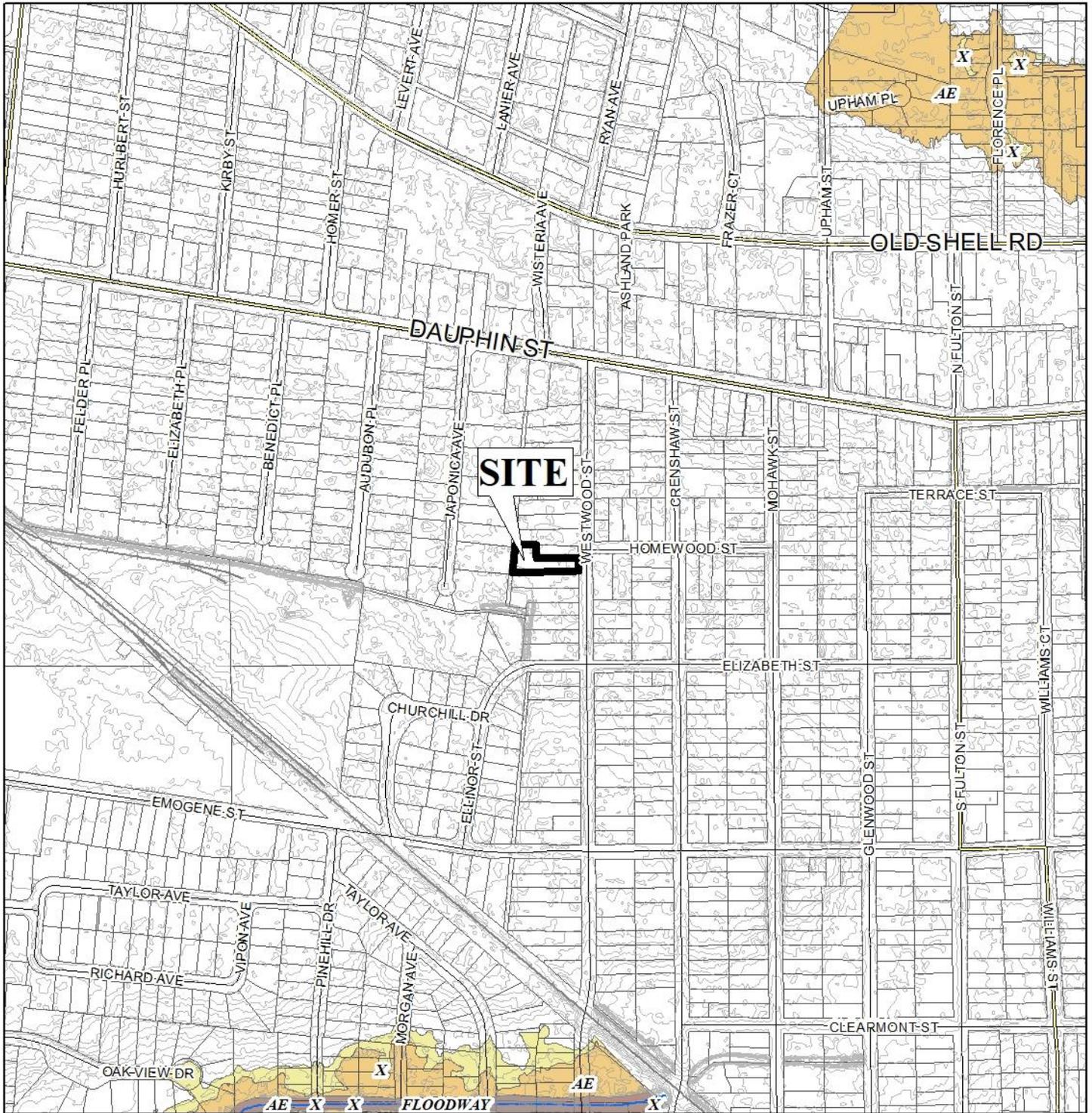
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|---------------------------|-----------------------------------|---------------------|--------------------|
| Low Density Residential | Neighborhood Center - Traditional | Downtown Waterfront | Parks & Open Space |
| Mixed Density Residential | Neighborhood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



ENVIRONMENTAL LOCATOR MAP



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BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by single family residential units and vacant lands.

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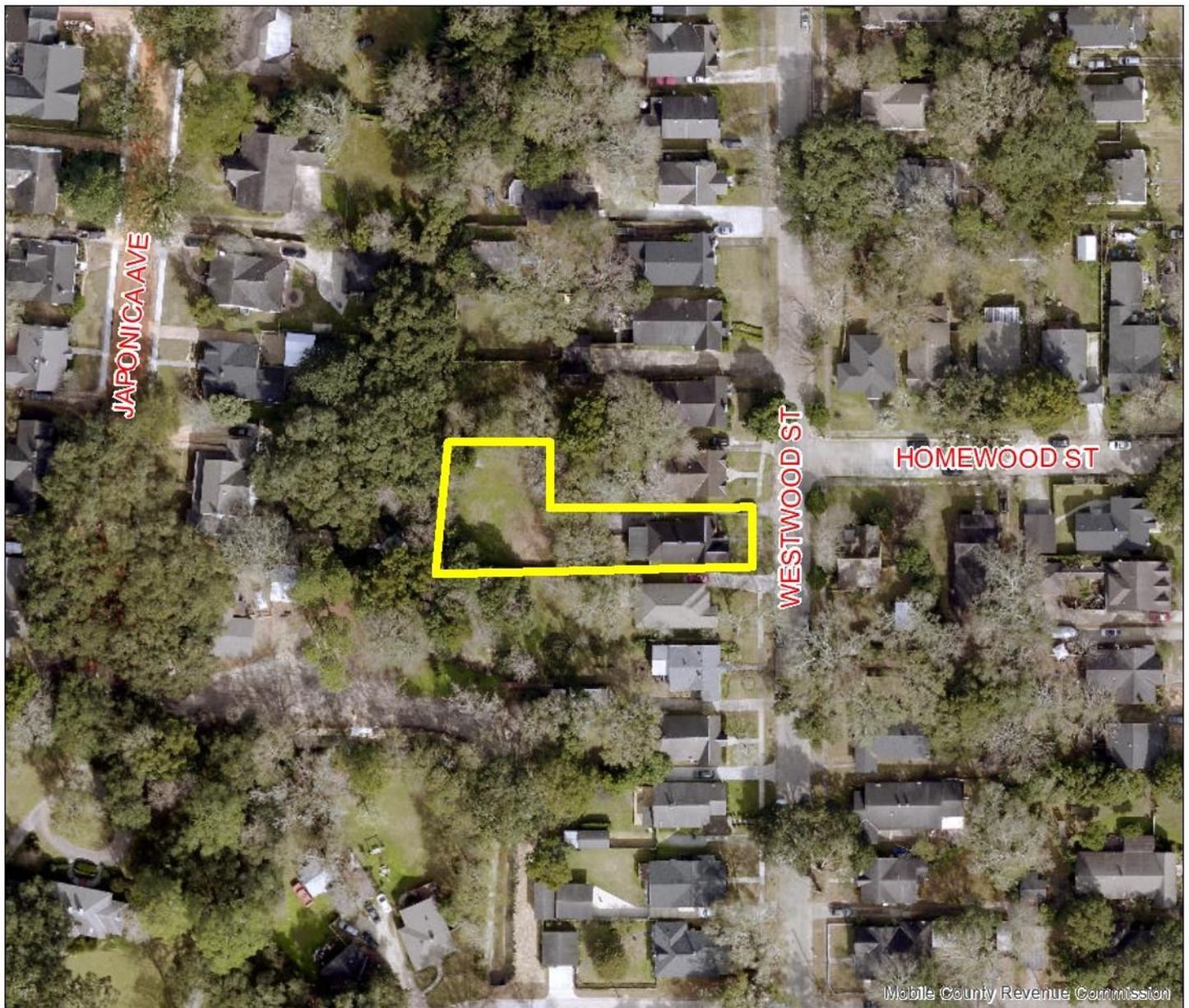
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 R-A	 R-3	 T-B	 B-2	 B-5	 MUN	 SD-WH	 T5.1
 R-1	 R-B	 B-1	 B-3	 I-1	 OPEN	 T3	 T5.2
 R-2	 H-B	 LB-2	 B-4	 I-2	 SD	 T4	 T6



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING AERIAL



The site is surrounded by single family residential units and vacant lands.

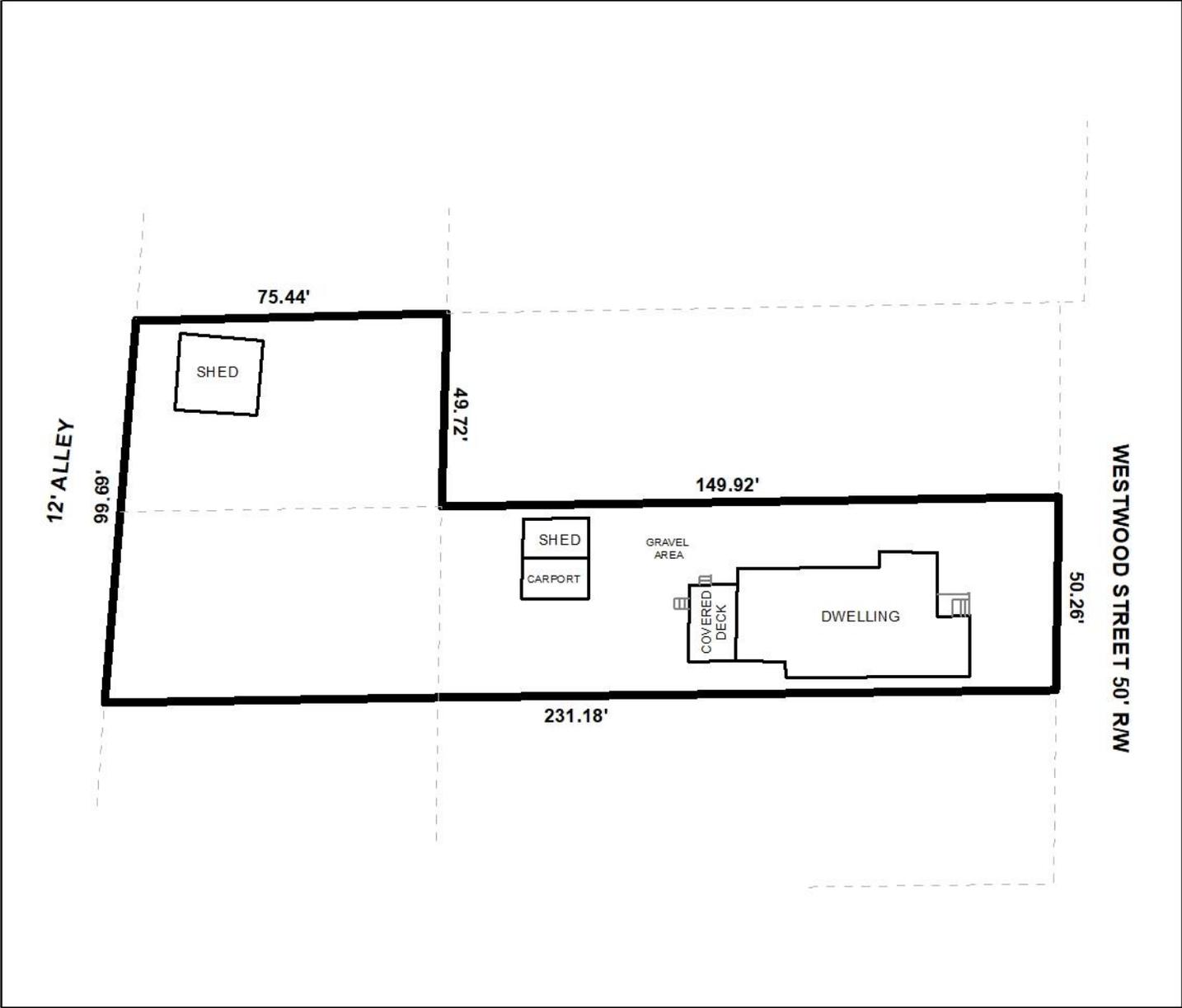
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SITE PLAN



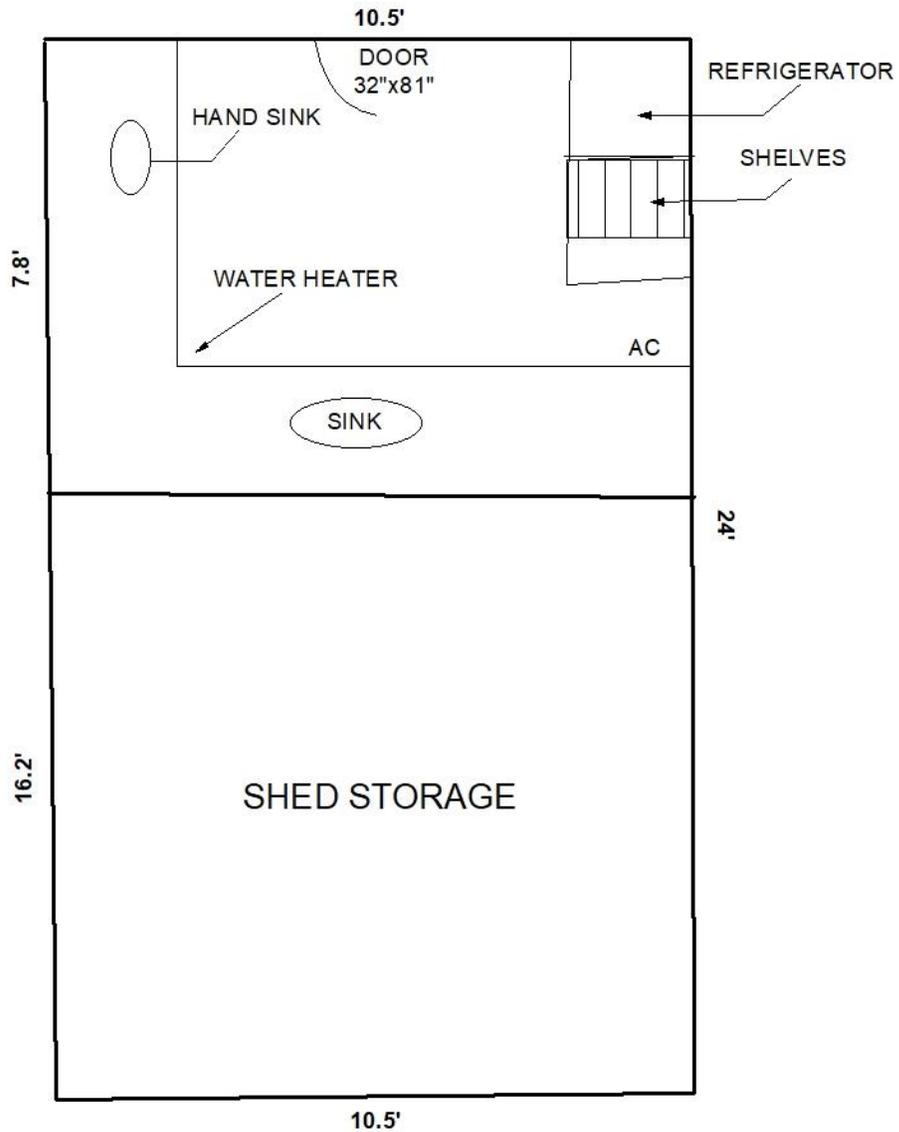
The site plan illustrates existing structures and right of ways.

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DETAIL SITE PLAN



7' CEILING
10.5' CEILING
17 X 19 FOOD SINK
15 X 15 HAND SINK

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