

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: July 12, 2021****CASE NUMBER**

6396/583

APPLICANT NAME

Garden Design Solutions, Inc.

LOCATION

1004 Government Street
(West side of Common Street, extending from Government
Street to Conti Street).

VARIANCE REQUEST

FRONT YARD SETBACK: To allow a wall and fence over three (3) feet in height within the required setbacks in a B-1, Buffer Business District.

SIDE STREET SIDE YARD SETBACK: To allow a wall and fence over three (3) feet in height within the required setbacks in a B-1, Buffer Business District.

REAR YARD REAR STREET SETBACK: To allow a wall and fence over three (3) feet in height within the required setbacks in a B-1, Buffer Business District.

**ZONING ORDINANCE
REQUIREMENT**

FRONT YARD SETBACK: The Zoning Ordinance requires front yard setback compliance for walls and fences three (3) feet high or higher in a B-1, Buffer Business District.

SIDE STREET SIDE YARD SETBACK: The Zoning Ordinance requires side street side yard setback compliance for walls and fences three (3) feet high or higher in a B-1, Buffer Business District.

REAR YARD REAR STREET SETBACK: The Zoning Ordinance requires rear street rear yard setback compliance for walls and fences three (3) feet high or higher in a B-1, Buffer Business District.

ZONING

B-1, Buffer Business District

AREA OF PROPERTY

0.3± Acre

**ENGINEERING
COMMENTS****FRONT, REAR, & SIDE STREET SIDE YARD SETBACK VARIANCE (Wall and Fence):**

If the proposed variance is approved for use the applicant will need to have the following conditions met:

1. The proposed improvements shown on the submitted plans will require a Land Disturbance Permit be submitted through Central Permitting.
2. 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.
3. Any and all proposed land disturbing activity within the property will need to be in conformance with Mobile City Code, Chapter 17, Storm Water Management and Flood Control); the City of Mobile, Alabama Flood Plain Management Plan (1984); and, the Rules For Erosion and Sedimentation Control and Storm Water Runoff Control.

Applicant agrees to install adequate BMPs during construction to protect from sediment/pollutants leaving the site.

**TRAFFIC ENGINEERING
COMMENTS**

No adverse traffic impacts anticipated by this variance request. The taller wall is existing at the corner of Conti Street and Common Street, which is an all-way stop controlled intersection. The proposed gate near along the frontage area near the intersection of Government Street and Common Street is set back from the intersection and not a sight obstruction. The unusable curb cuts on Common Street and Conti Street should be removed and curbing restored to match the existing curb.

**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 [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 DEPARTMENT
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.

**CITY COUNCIL
DISTRICT**

District 2

ANALYSIS

The applicant is requesting Front Yard, Side Street Side Yard, and Rear Street Rear Yard Setback Variances to allow a wall and fence over three (3) feet in height within the required setbacks in a B-1, Buffer Business District; the Zoning Ordinance requires front yard, side street side yard, and rear street rear yard setback compliance for walls and fences three (3) feet high or higher in a B-1, Buffer Business District.

The site has been given a Traditional Corridor (TC) land use designation, per the Future Land Use Plan and Map, adopted on May 18, 2017 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 land use designation generally applies to transportation corridors east of I-65, which serve as the primary commercial and mixed-use gateway to Downtown and the City's traditional neighborhoods (equivalent to Map for Mobile's Traditional Neighborhoods).

Depending on their location (and as allowed by specific zoning), TC designations incorporate a range of moderately scaled single-use commercial buildings holding retail or services; buildings that combine housing units with retail and/or office; a mix of housing types including low- or mid-rise multifamily structures ranging in density from 4 to 10 du/ac; and attractive streetscapes and roadway designs that safely accommodate all types of transportation – transit, bicycling, walking, and driving. In these areas, special emphasis is placed on the retention of existing historic structures, compatible infill development, and appropriate access management.

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:

We are requesting a variance to the height restriction of fences in the front setback for our project site located at 1004 Government Street. Per Planning and Zoning, this site has three (3) frontages. We are requesting a variance based on hardship of site zoning to allow a fence greater than three (3) feet in height to be constructed along the North (Conti Street), East (Common Street), and West (Neighboring Property) property lines. There is an existing masonry fence along a portion of the East property line, and a seven (7) foot approximate height wooden fence runs along the rest of the East, North, and West property lines. The existing masonry, wooden, and other fencing around the property is in a degraded state and does not carry a continuous theme throughout the property. This mix-match of materials combined with their state of disrepair are diminutive to the sites character as a corner lot within the historic Oakleigh Garden District. As a residential site nestled on the corner of a busy thoroughfare and side street (Government Street and Common Street) and across the street from a highly frequented restaurant (Aroy Thai), the privacy and protection that a fence greater than three (3) feet in height provides would greatly enhance the safety of the property owners and guests along with reducing the amount of noise and disturbance from passing vehicular traffic. We feel the construction of a fence that is of a consistent material (masonry block with stucco finish), complementary to the architecture and historic nature of both the project property and surrounding historic district, not exceeding the height of an already existing and dilapidated wooden fence (seven (7) feet in height) would not detract, but enhance the unique Mobilian character of the site, and provide adequate safety and buffering between the property owners and pedestrian and vehicular passersby.

The subject site is within an older portion of the City, and within the Old Dauphin Way Historic District, where fences and walls are not uncommon within required setbacks, or even along side and rear street property lines. Many were constructed prior to the adoption of the Zoning Ordinance and the requirement for setbacks along street frontages. The site currently has a masonry wall along a portion of the Common Street property line (East side), a wooden fence along the Conti Street property line (North side), and a concrete block wall along most of the interior (West side) property line. The dwelling and site are currently under renovation, and the applicant proposes to replace portions of the existing property line walls and extend the wall on the East side to be even with the front of the dwelling. As the replaced portions and extended portion would be along the side street and rear street property lines, and within the required setbacks, a variance is needed for such. It should be mentioned that the applicant has received approval from the Architectural Review Board for the proposed walls.

As the site is within an area of the City where walls and fences are not uncommon along street frontages, the allowance of the proposed walls would not be out of character with the neighborhood; therefore, the Board should consider the Side Street Side Yard and Rear Street Rear Yard Setback requests for approval.

The applicant also proposes to construct an iron fence three feet high extending forward from the front of the dwelling on both sides of the property and into the required 25-foot front setback where the fence will curve around a proposed semi-circular driveway. The fence itself would be compliant in that it is no more than three feet high. However, there are two brick columns over three feet high proposed within the 25-foot front setback for a double iron gate on the entry sidewalk. Normally, a Front Yard Setback Variance would be required for such. But when taking the Historic District Overlay of Section 64-3.G.a. of the Zoning Ordinance into consideration which states “*The front yard setback shall be no greater or lesser than the setback of those structures on the same side of the street within 150 feet of both sides (exclusive of right-of-way) of the proposed building site*”, it appears that the building 130 feet East of the subject site is closer to the front property line than the proposed brick columns. Therefore, the Front Yard Setback Variance would be a moot point.

RECOMMENDATION: Based upon the preceding, Staff recommends to the Board the following findings of fact for approval of requests for a Side Yard Side Street and Rear Yard Rear Street Setback Variance in a B-1, Buffer Business District:

- 1) Approving the variance request will not be contrary to the public interest due to the fact that similar structures are not uncommon within this part of the City;
- 2) Special conditions exist, such as the fact that other properties within older historic districts have fences and walls close to or on the side street and rear street property lines, 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 be observed and substantial justice shall be done to the applicant and the surrounding neighborhood by granting the variance because the request is similar to and not uncommon for other properties within the Old Dauphin Way Historic District.

The approval is subject to the following conditions:

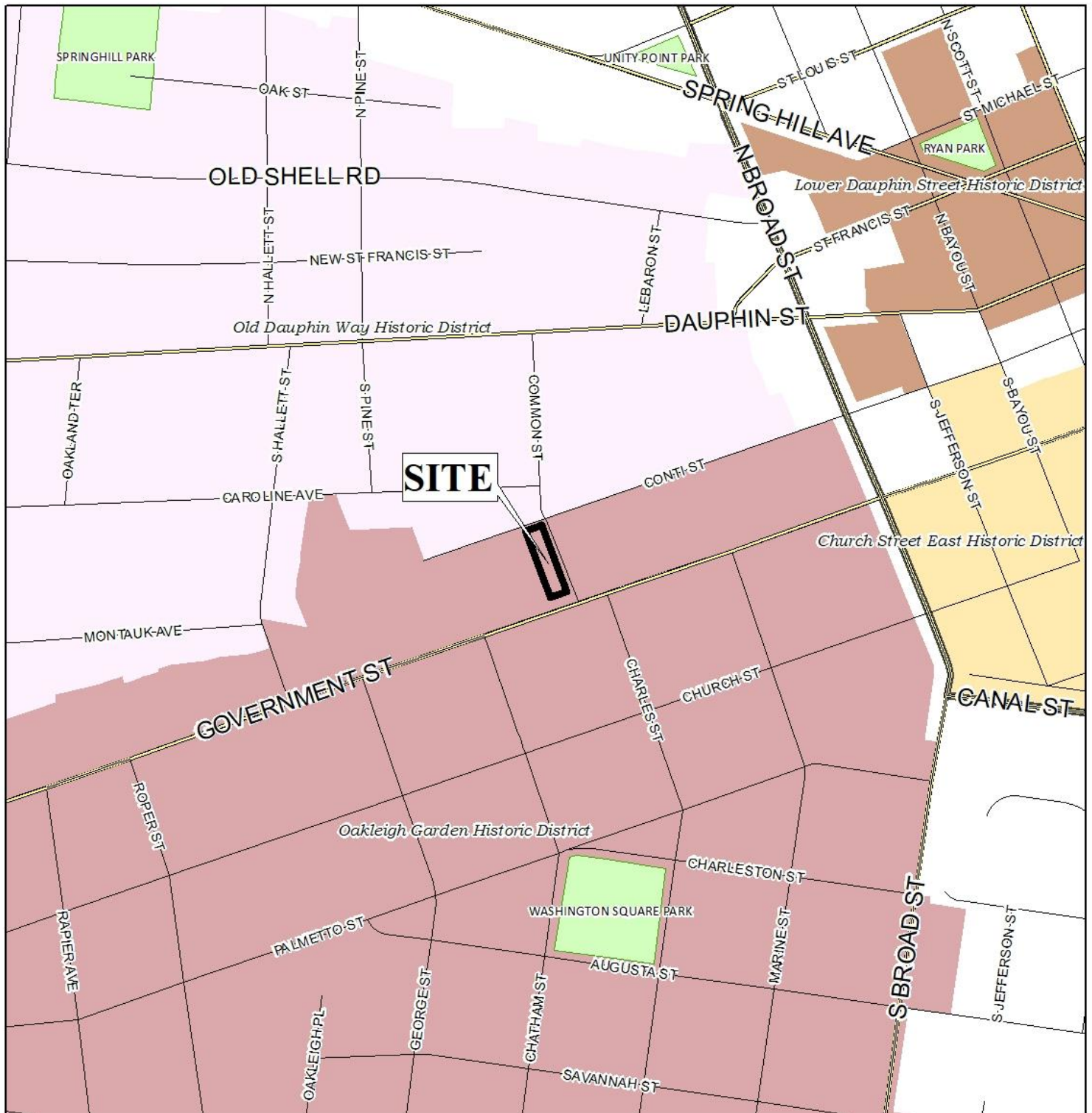
- 1) the obtaining of the proper permit(s) for the construction of the walls;
- 2) subject to the Engineering comments: *[If the proposed variance is approved for use the applicant will need to have the following conditions met: 1. The proposed improvements shown on the submitted plans will require a Land Disturbance Permit be submitted through Central Permitting. 2. 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. 3. Any and all proposed land disturbing activity within the property will need to be in conformance with Mobile City Code, Chapter 17, Storm Water Management and Flood Control); the City of Mobile, Alabama Flood Plain Management Plan (1984); and, the Rules For Erosion and Sedimentation Control and Storm Water Runoff Control. 4. Applicant agrees to install adequate BMPs during construction to protect from sediment/pollutants leaving the site.];*
- 3) subject to the Traffic Engineering comments: *(No adverse traffic impacts anticipated by this variance request. The taller wall is existing at the corner of Conti Street and Common Street, which is an all-way stop controlled intersection. The proposed gate*

near along the frontage area near the intersection of Government Street and Common Street is set back from the intersection and not a sight obstruction. The unusable curb cuts on Common Street and Conti Street should be removed and curbing restored to match the existing curb.); and

- 4) full compliance with all municipal codes and ordinances.

Staff has determined that the Front Yard Setback Variance request is not needed.

LOCATOR MAP



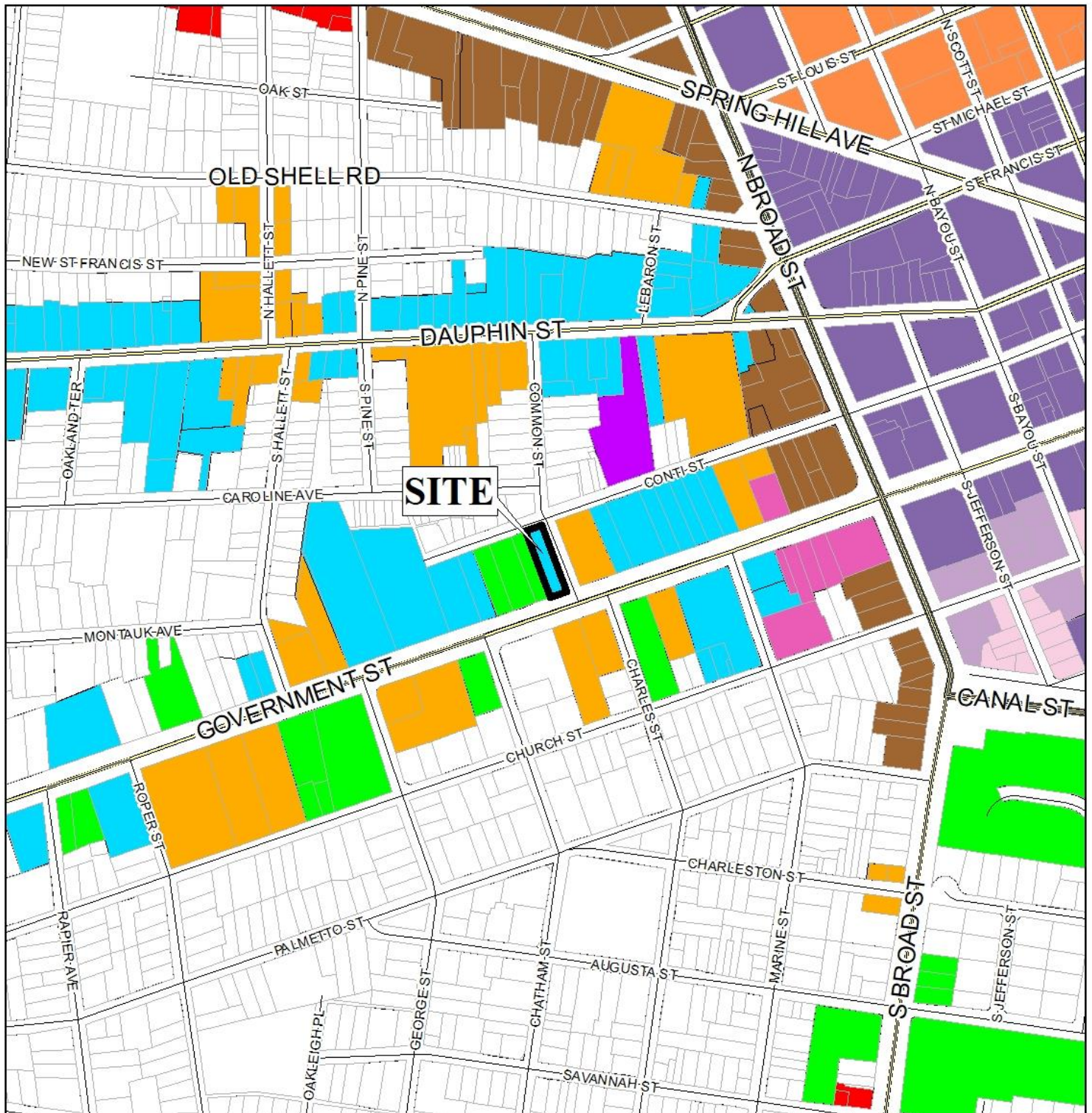
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APPLICANT Garden Design Solutions, Inc.

REQUEST Front Yard, Side Street Side Yard,
and Rear Street Rear Yard Setback Variances



LOCATOR ZONING MAP



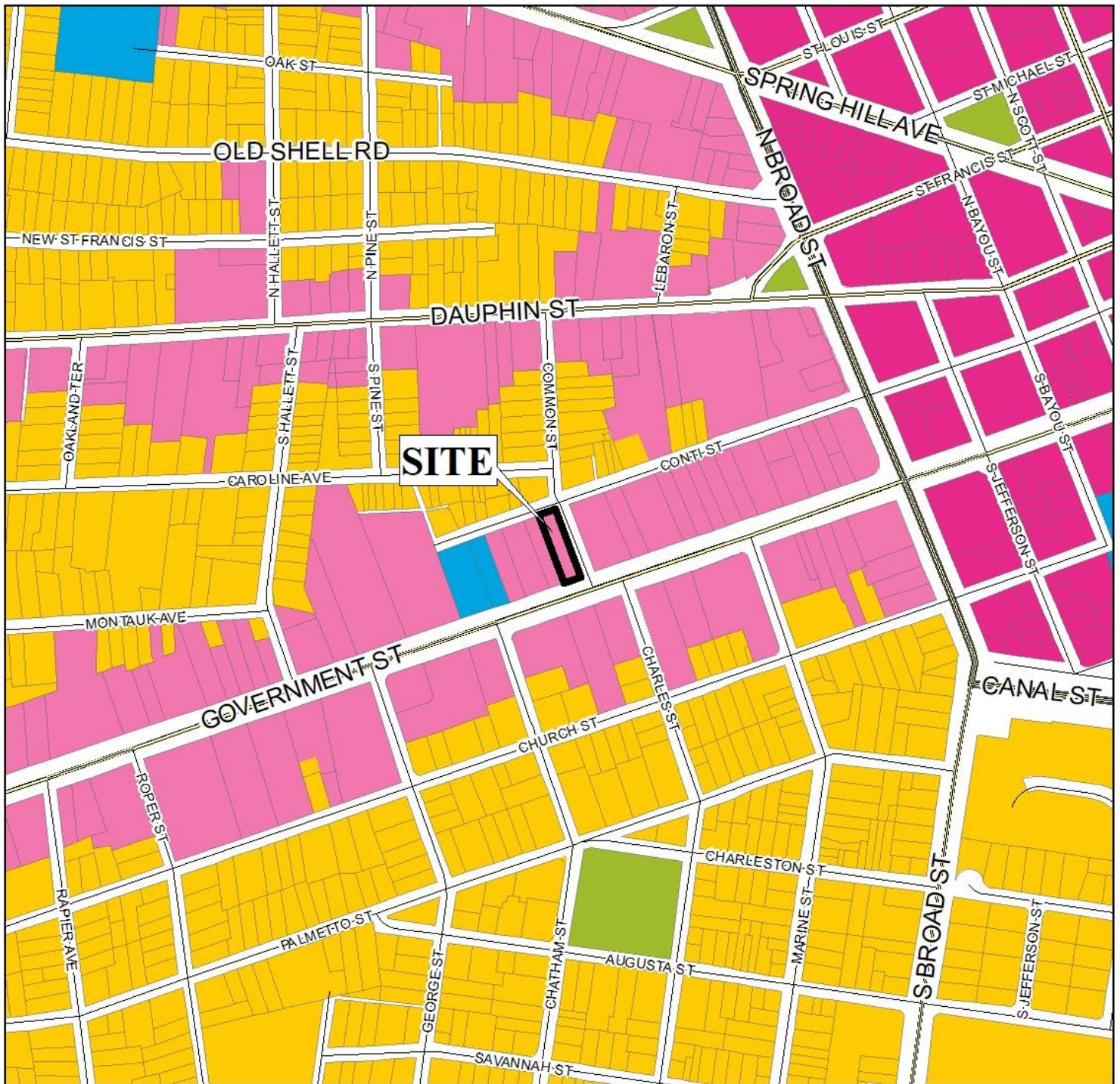
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FLUM LOCATOR MAP



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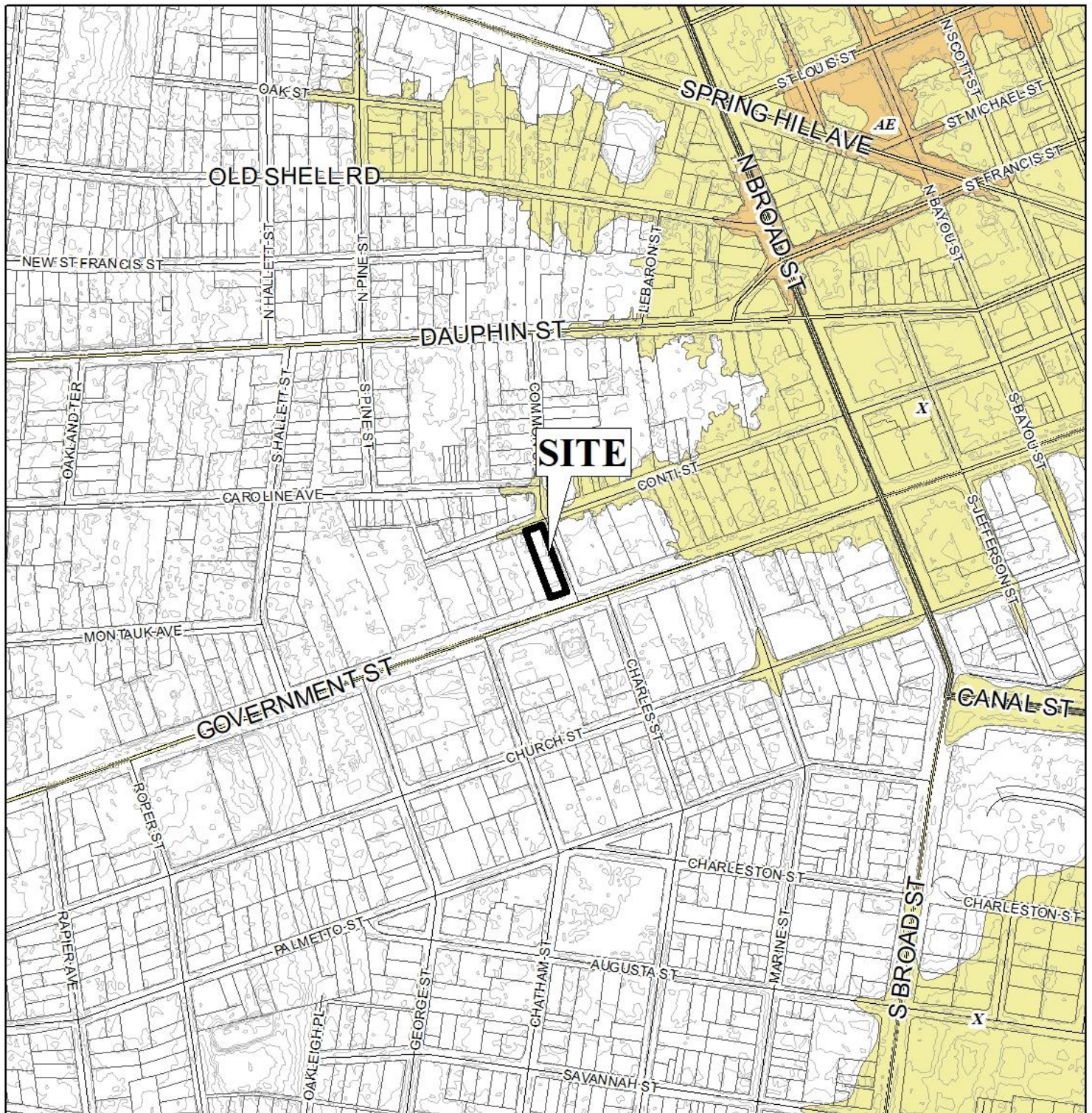
APPLICANT Garden Design Solutions, Inc.
Front Yard, Side Street Side Yard, and Rear

REQUEST Street Rear Yard Setback Variances

- | | | | |
|---------------------------|-----------------------------------|---------------------|--------------------|
| 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, a school, commercial sites and vacant lands.

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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



Mobile County Revenue Commission

The site is surrounded by residential units, a school, commercial sites and vacant lands.

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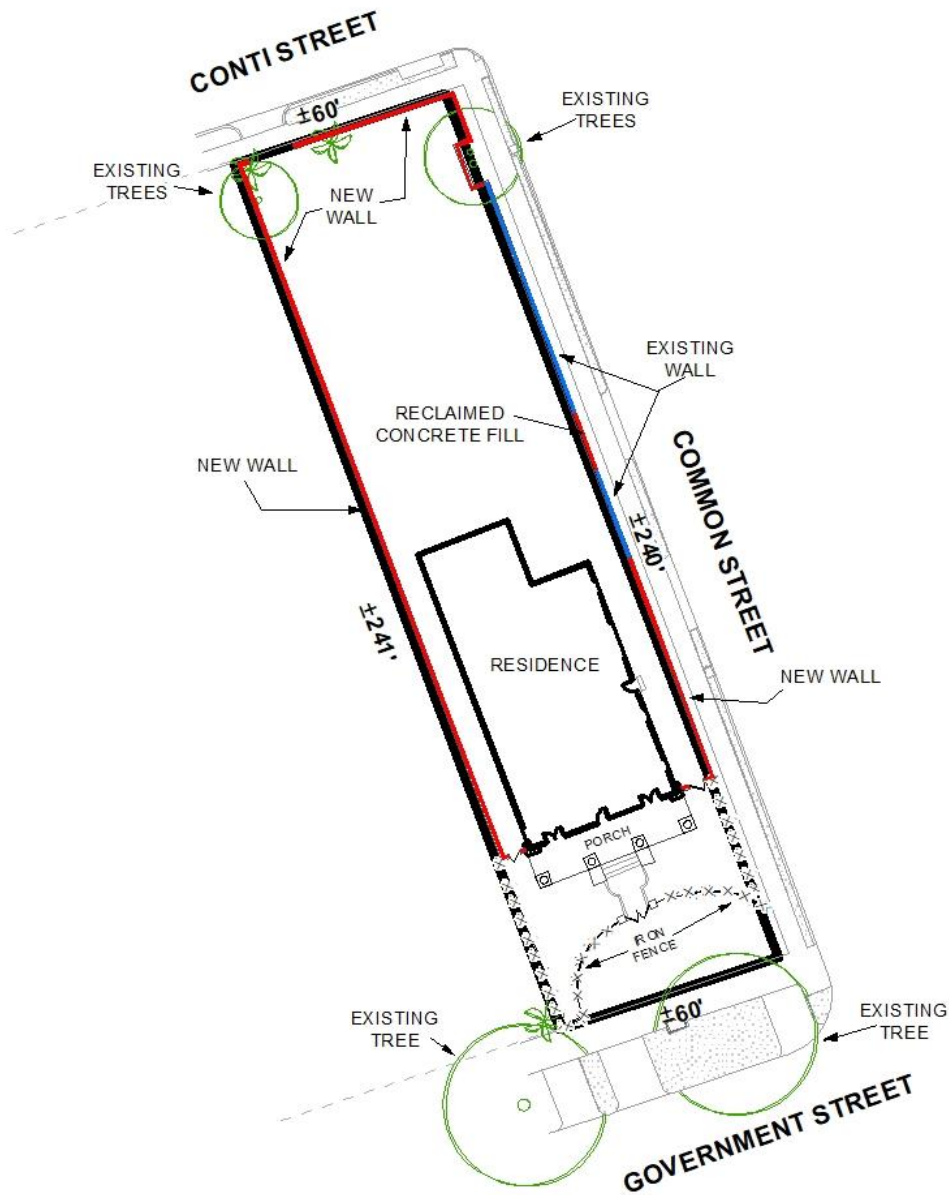
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NTS

SITE PLAN



The site plan illustrates existing dwelling, fencing and landscaping, as well as prosposed walls surrounding the property.

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