

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: February 7, 2022****CASE NUMBER**

6441

APPLICANT NAME

Tonique Burns

LOCATION

870 Carleton Avenue
(North side of Carleton Avenue at the North terminus of
Wright Street).

VARIANCE REQUEST

USE: Use Variance to allow a maximum of ten (10) children
in a home-based child day care business in an R-1, Single-
Family Residential District.

**ZONING ORDINANCE
REQUIREMENT**

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.

ZONING

R-1, Single-Family Residential District

AREA OF PROPERTY

0.23± Acres

**CITY COUNCIL
DISTRICT**

District 1

**ENGINEERING
COMMENTS**

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

1. If any site improvements are proposed contact land.disturbance@cityofmobile.org to see what type of Land Disturbance Permit will be required.
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.
5. For any work within the public ROW - submit a ROW Permit Application form along with the Land Disturbance Permit submittal package.

TRAFFIC ENGINEERING**COMMENTS**

Driveway number, size, location, and design to be approved by Traffic Engineering and conform to AASHTO standards. Any required on-site parking, including ADA handicap spaces, shall meet the minimum standards as defined in Section 64-6 of the City's Zoning Ordinance.

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**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 ten (10) 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 Mixed Density Residential (MxDR) 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.

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.

Regarding the Use Variance, the applicant states:

I CURRENTLY PROVIDE FOR 5 CHILDREN SEEKING APPROVAL TO PROVIDE FOR 10 CHILDREN.

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 10,080± 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.

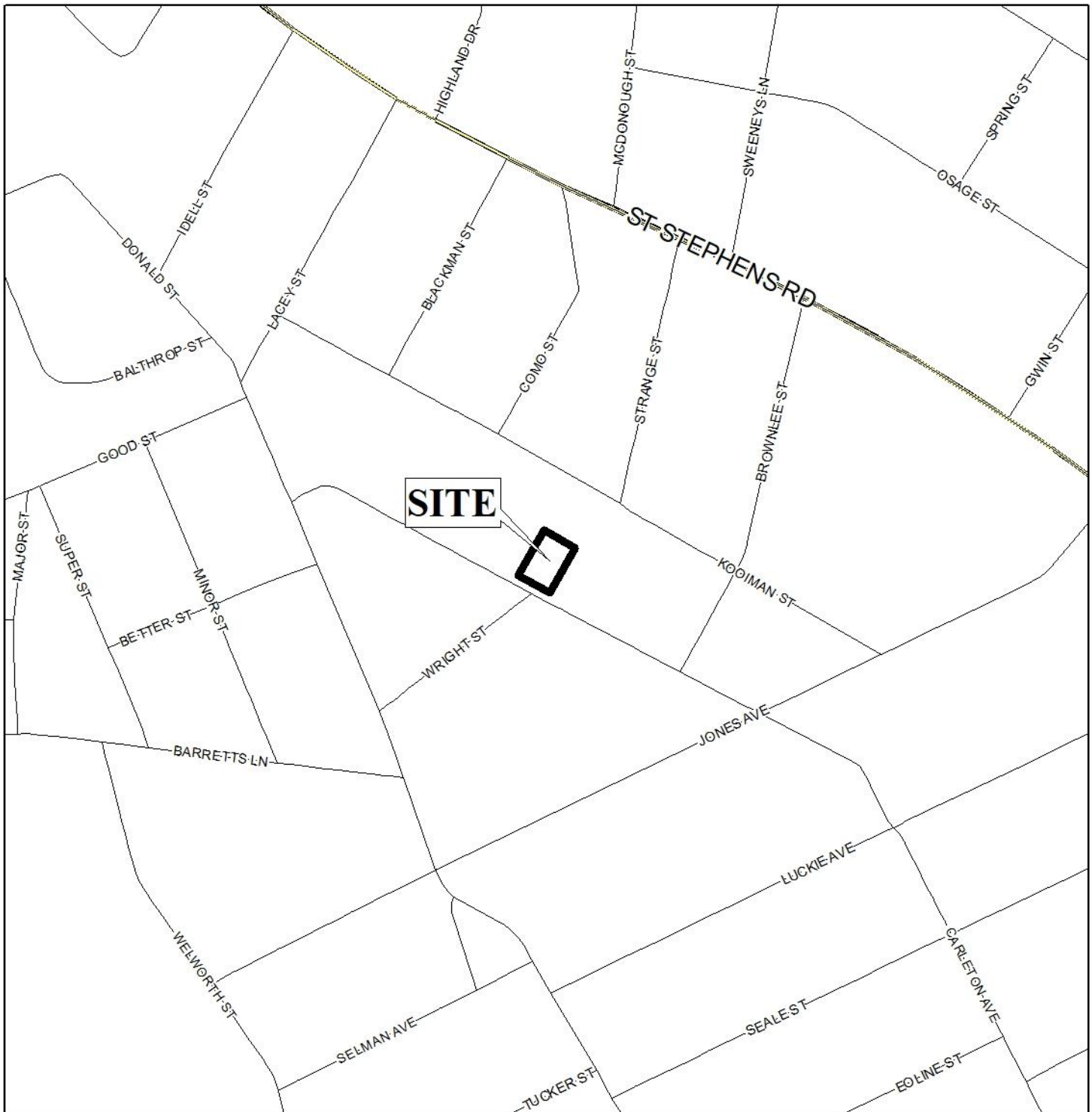
No Zoning Clearance requests have been submitted for a home daycare at this location previously, but the site has had inspections by the Fire Department in attempt to be approved for such a use.

It should be reiterated that Variances are not intended to be granted frequently. A Use Variance was granted for 901 Carleton Avenue by the Board at its December 6, 1982 meeting to allow the operation of a neighborhood grocery store, however, it does not appear that the store ever operated, and thus the approval expired. 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. Furthermore, it should be noted that the Board has approved four (4) other home daycares to have either ten or twelve children since June 2020, and so far none have been able to comply with the conditions of approval as set forth by the Board, illustrating how inappropriate the subject request is in a single-family neighborhood.

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



APPLICATION NUMBER 6441 DATE February 7, 2022

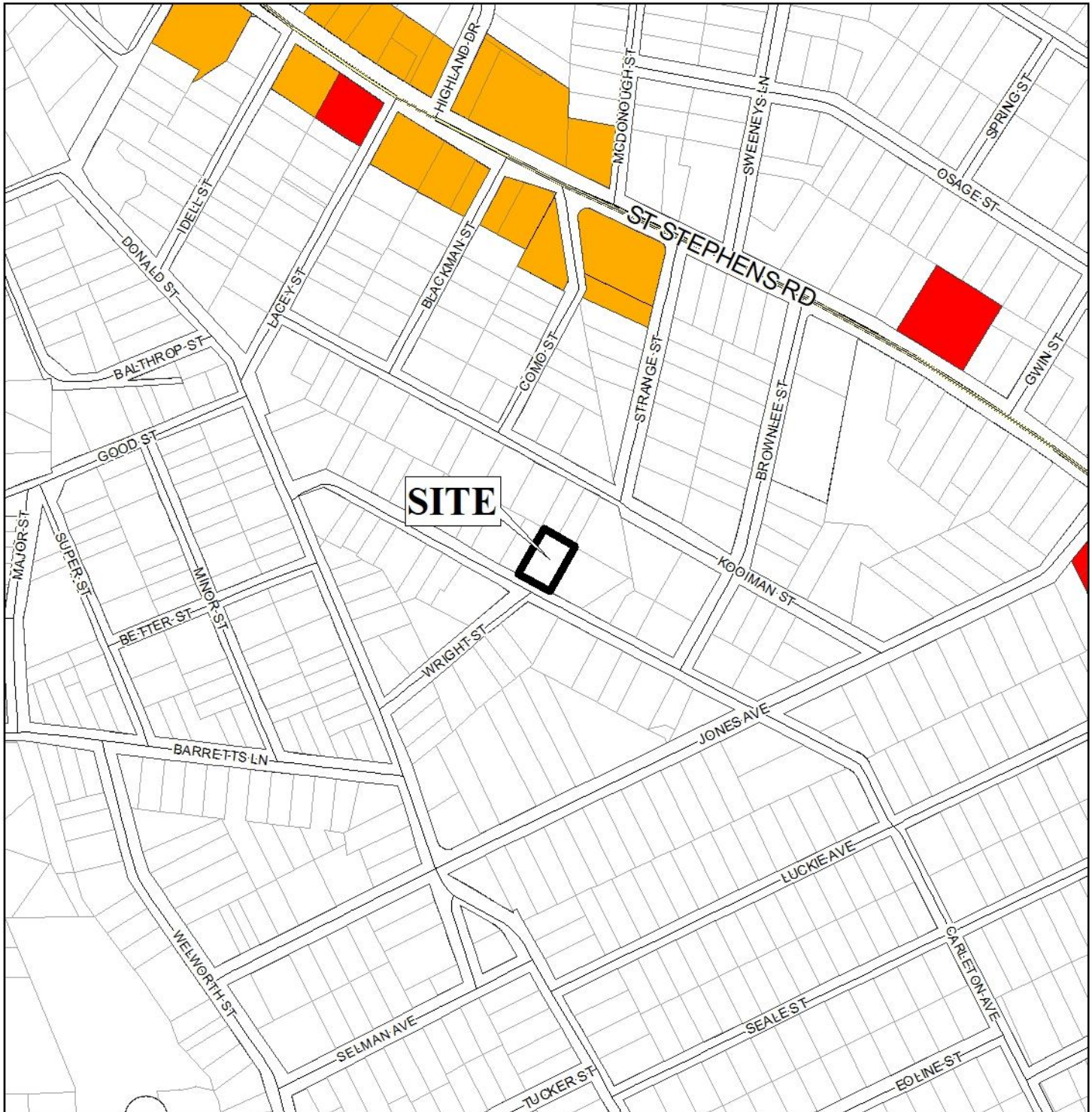
APPLICANT Tonique Gunn Burns

REQUEST Use Variance



NTS

LOCATOR ZONING MAP



APPLICATION NUMBER 6441 DATE February 7, 2022

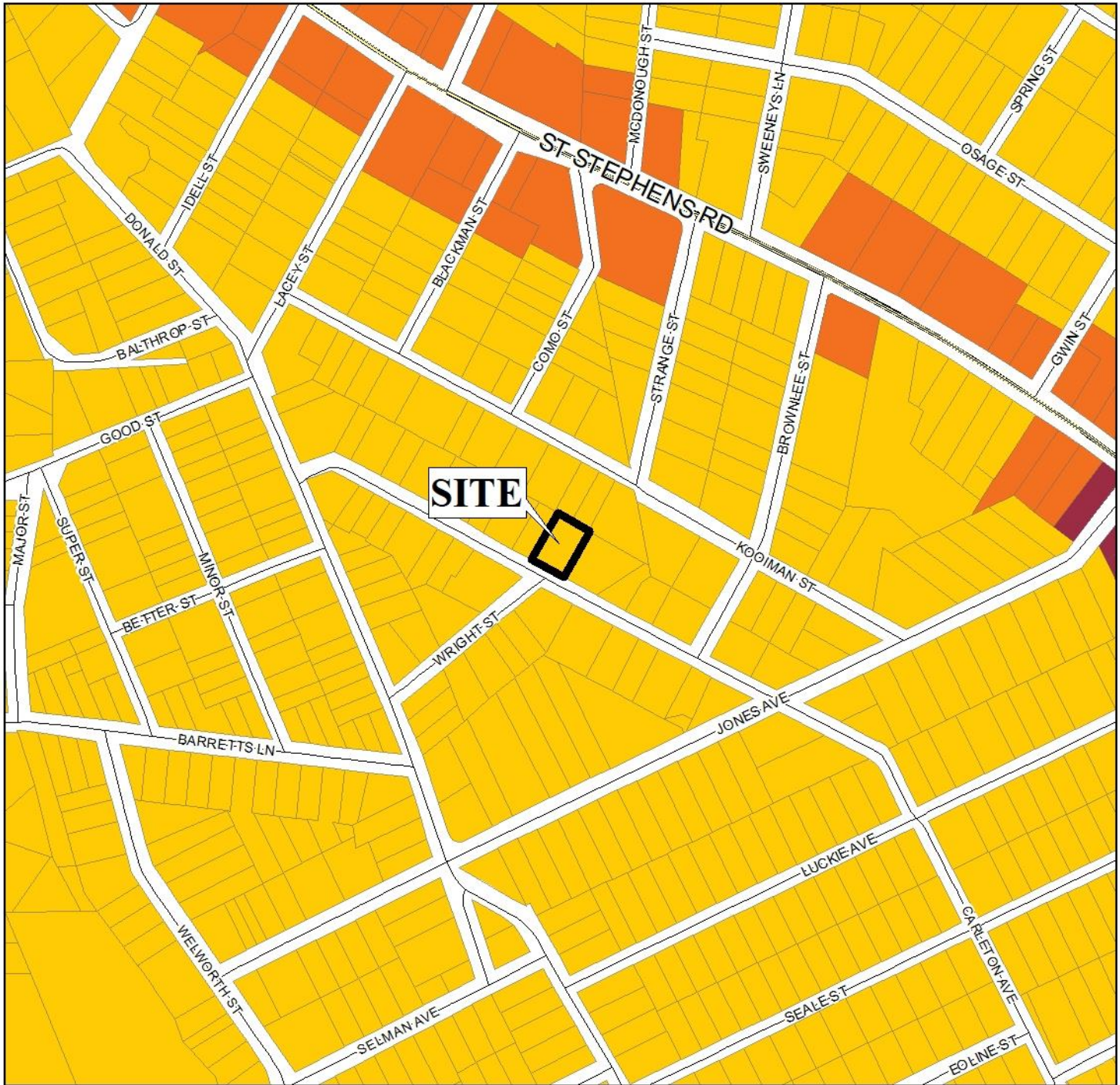
APPLICANT Tonique Gunn Burns

REQUEST Use Variance



NTS

FLUM LOCATOR MAP



APPLICATION NUMBER 6441 DATE February 7, 2022

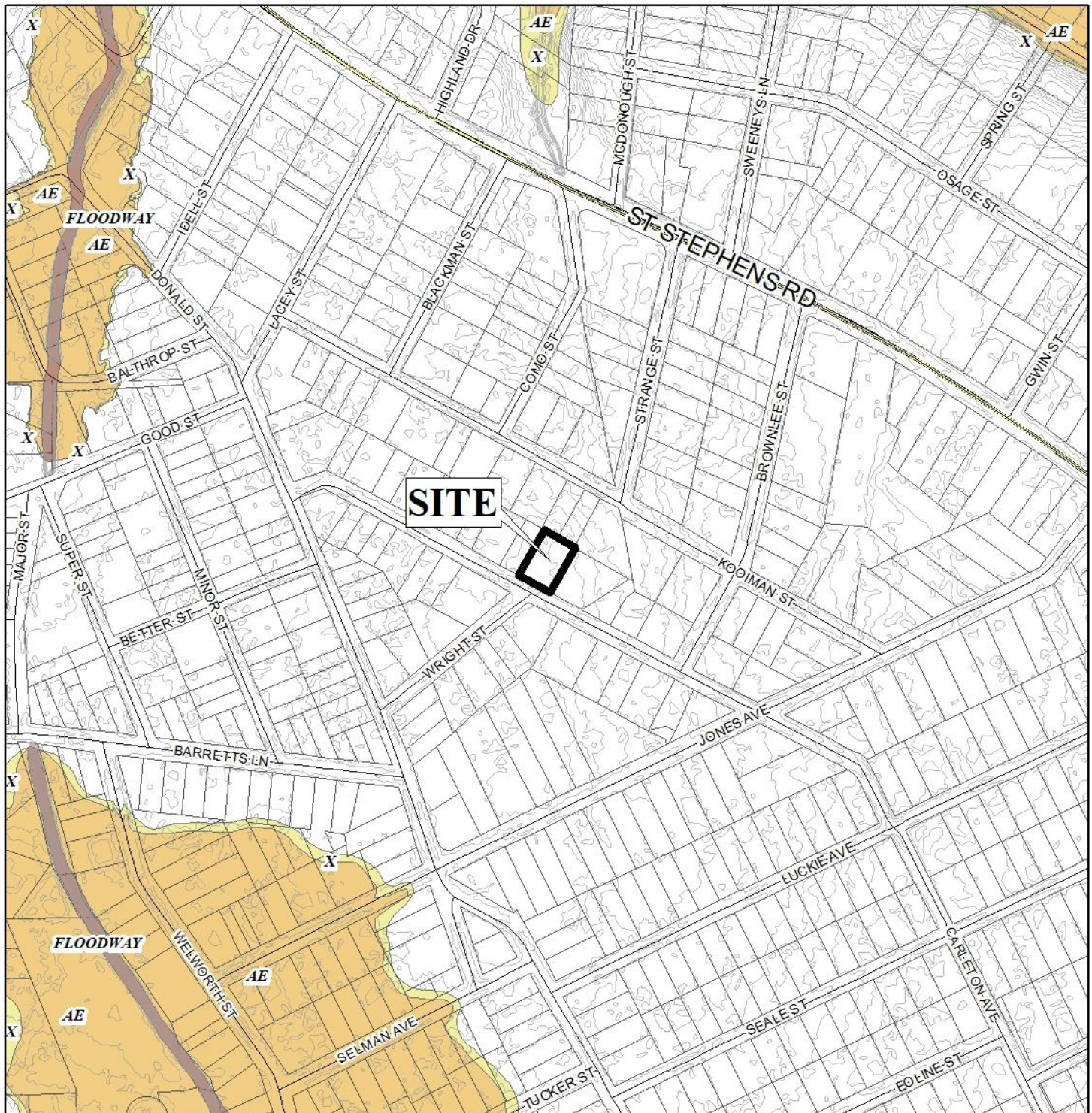
APPLICANT Tonique Gunn Burns

REQUEST Use 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



APPLICATION NUMBER 6441 DATE February 7, 2022

APPLICANT Tonique Gunn Burns

REQUEST Use Variance



BOARD OF ADJUSTMENT

VICINITY MAP - EXISTING ZONING



The site is surrounded by single family residential units.

APPLICATION NUMBER 6441 DATE February 7, 2022

APPLICANT Tonique Gunn Burns

REQUEST Use Variance

 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

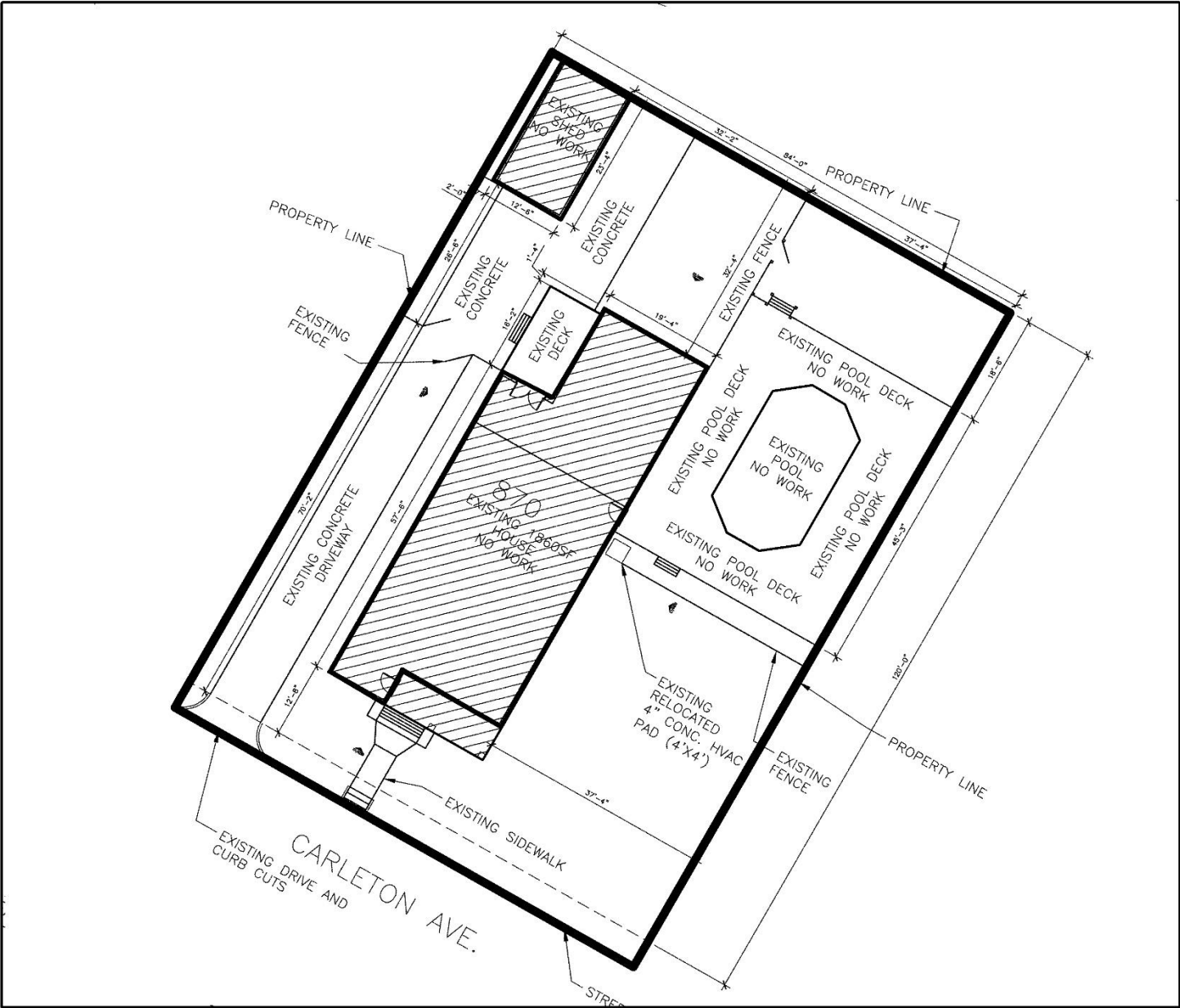


The site is surrounded by single family residential units.

APPLICATION NUMBER	6441	DATE	February 7, 2022
APPLICANT	Tonique Gunn Burns		
REQUEST	Use Variance		



SITE PLAN

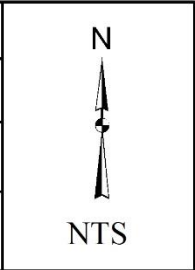


The site plan illustrates the existing building, shed, pool, fences, and driveway.

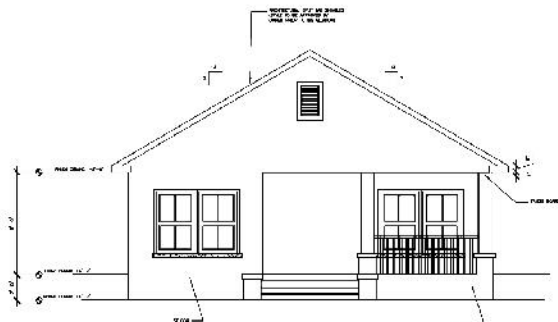
APPLICATION NUMBER 6441 DATE February 7, 2022
 APPLICANT Tonique Gunn Burns
 REQUEST Use Variance

APPLICATION NUMBER 6441 DATE February 7, 2022
 APPLICANT Tonique Gunn Burns
 REQUEST Use Variance

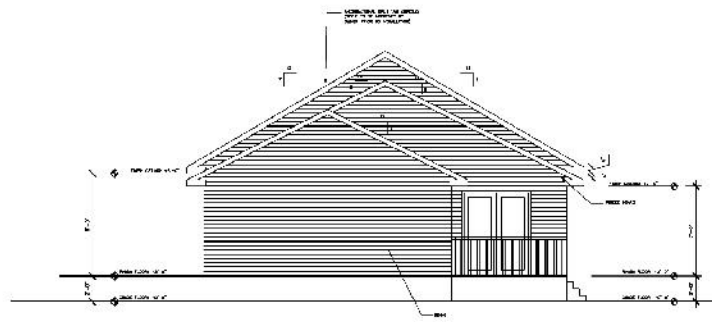
APPLICATION NUMBER 6441 DATE February 7, 2022
 APPLICANT Tonique Gunn Burns
 REQUEST Use Variance



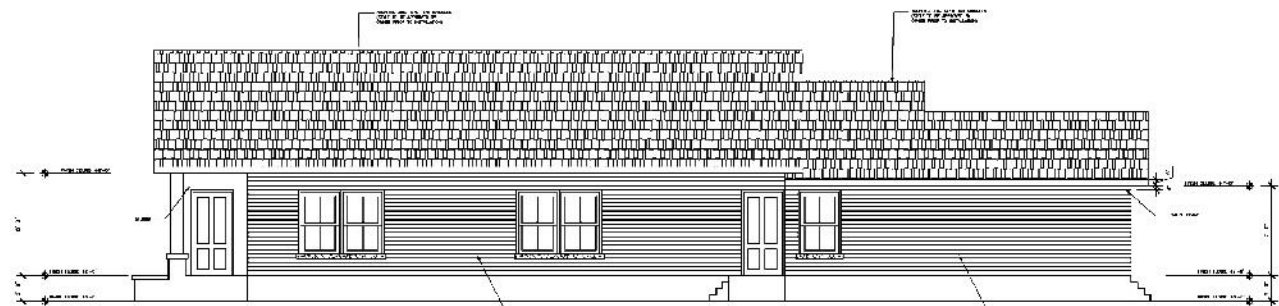
DETAIL SITE PLAN



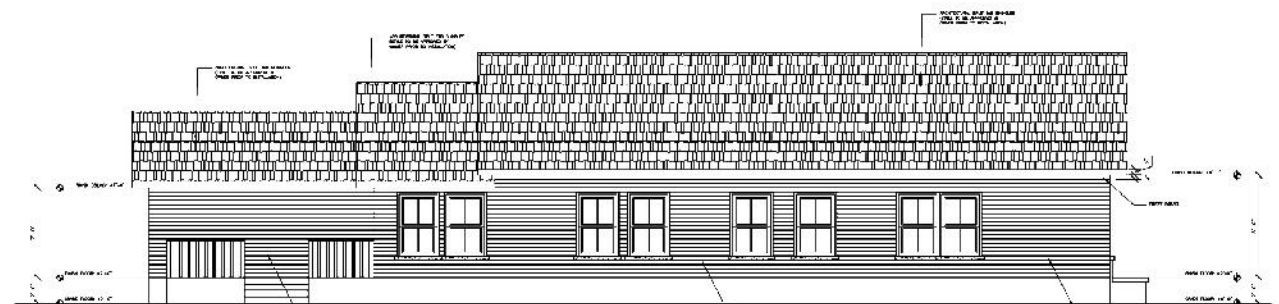
C1 ELEVATION
3/8" = 1'-0"



C2 ELEVATION
3/8" = 1'-0"



E1 ELEVATION
3/8" = 1'-0"



E2 ELEVATION
3/8" = 1'-0"

APPLICATION NUMBER 6441 DATE February 7, 2022

APPLICANT Tonique Gunn Burns

REQUEST Use Variance



NTS