

**BOARD OF ZONING ADJUSTMENT  
STAFF REPORT****Date: April 6, 2020**

|  |   |
|--|---|
| <b><u>CASE NUMBER</u></b>                  | 6317  |
| <b><u>APPLICANT NAME</u></b>               | Casey Pipes   |
| <b><u>LOCATION</u></b>                     | 1500 Government Street<br>(North side of Government Street, 300'± East of South Catherine Street, extending to the East side of Catherine Street, 175'± North of Government Street)   |
| <b><u>VARIANCE REQUEST</u></b>             | <b>USE:</b> Use Variance to allow a liquor store in an LB-2, Limited Neighborhood Business District.  |
| <b><u>ZONING ORDINANCE REQUIREMENT</u></b> | <b>USE:</b> The Zoning Ordinance does not allow a liquor store in an LB-2, Limited Neighborhood Business District.  |
| <b><u>ZONING</u></b>                       | LB-2, Limited Neighborhood Business District  |
| <b><u>AREA OF PROPERTY</u></b>             | 4.9± Acres  |
| <b><u>CITY COUNCIL DISTRICT</u></b>        | District 2  |
| <b><u>ENGINEERING COMMENTS</u></b>         | No Comment.   |
| <b><u>TRAFFIC ENGINEERING COMMENTS</u></b> | No Comment.   |
| <b><u>URBAN FORESTRY COMMENTS</u></b>      | 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. |
| <b><u>FIRE COMMENTS</u></b>                | 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 Use Variance to allow a liquor store in an LB-2, Limited Neighborhood Business District; the Zoning Ordinance does not allow a liquor store in an LB-2, Limited Neighborhood Business District.

The subject site appeared before the Planning Commission at its February 20, 2020 meeting for consideration to rezone the site from LB-2, Limited Neighborhood Business District to B-3, Community Business District with voluntary use restrictions limited the site to those uses allowed in LB-2 with the addition of a state run liquor store. After discussion, the Planning Commission decided to holdover that rezoning application to the April 16, 2020 meeting to allow the applicant an opportunity to submit the current application to the Board of Zoning Adjustment for consideration.

The site has been given a Traditional Corridor 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 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 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 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.

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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:

Detailed Description of Use and Character of Improvements:

*The property is currently improved with a multi-tenant structure along with parking facilities and related amenities. No new improvements are contemplated as part of this application. The building has a gross square foot of 42,600 SF and is currently divided into multiple different tenant spaces. Three tenant spaces are currently vacant and have been so for over three years. The intent is to lease two of these vacant spaces to the State ABC Board for use as a State ABC Package Store. The time schedule for development is immediate upon approval.*

Detailed Description of Proposed Use:

*The Use Variance is to allow a State ABC Package Store to occupy a portion of the existing improvements.*

*The space proposed to be leased to the State ABC Board is 3,400 SF (Suites C and D in the existing building). Based on the other tenants in this shopping center and the existing parking, there would be adequate parking to meet this new use and the existing uses.*

*This property was converted from an old hotel site and neighboring property into the current retail shopping center. At that time a rezoning was requested to eliminate split zoning and to make the site suitable for the retail shopping center. Due to extensive feedback from the neighborhood the site was zoned LB-2 even though property at the corner of this quadrant, property across Government Street, and property across Catherine Street are all zoned B-2. This was a highly negotiated rezoning, but it has resulted in an inadequate number of uses to support this shopping center. Three of the tenant spaces have been vacant for over three years. The large tenants are Office Depot and Dollar Tree. In 2019 Office Depot gave notice of its non-renewal of the lease, and the landlord had to go to extraordinary measures in terms of rent reduction to keep Office Depot as a tenant. Dollar Tree also received a rent reduction to keep them in*

*place. The shopping center is in serious danger of becoming over 50% vacant. No new tenants were interested in taking over the vacant spaces or the spaces which would have been vacated by Office Depot or Dollar Tree. Rents have been decreasing, not increasing. The property does not generate sufficient revenue to maintain the exterior amenities and parking areas to the level that the neighbors, the City, or the Owner would prefer. Without broadening the uses allowed on this site to match what little market demand there is for this shopping center, there is a serious risk that this shopping center will continue to lose more tenants than it adds and become a blight on the neighborhood. Allowing the use variance does more to eliminate negative impacts on the surrounding properties than denying the use variance. The previous tenant for this commercial space was a check cashing operation which closed over three years ago.*

*The property is different from neighboring properties because there is no LB-2 adjacent to this property. All of the other commercial property at this corner is B-2. A liquor store would be allowed by right in a B-2 district. We believe that the ABC Package Store would be better located back in the shopping center instead on one of the buildings fronting on Government Street. We are limiting our variance request to allow for only a State ABC Package Store and not a private liquor store due to differences in hours of operation and other factors which the neighboring property owners perceive as more positive or less negative.*

*The hardship that is suffered which is unique to this property is the lack of LB-2 uses which find this existing shopping center appealing. The shopping center is really a B-2 type of improvement, but by only allowing it the LB-2 uses it is being choked and at risk of becoming a blight on the neighborhood.*

*Variances may be granted to avoid an unnecessary hardship, and they can also be granted in constructive situations which would enhance the design or utilization of the property. The unnecessary hardship in this case pertains to the land itself and the improvement of a retail shopping center with limited market appeal considering the LB-2 uses. The cause of this is the accommodation to the neighborhood organization's request to not allow this site to be zoned B-2 when it was first redeveloped. The conditions imposed by the zoning ordinance here deprive the property owner of the development rights enjoyed by other property owners. We are not required to prove that the property "cannot be put reasonably to a conforming use" or that it is "unfit for conforming use" in order to obtain a variance. Ferraro v. Board of Zoning Adjustment of City of Birmingham, 970 So. 2d 299, 307 (Ala. Civ. App. 2007). In this case, the hardship is that without the use variance the shopping center will be deprived of a quality tenant and will continue to decline and become a blight on the neighborhood. The owner has significant investment in the property in reliance upon the City's actions which allowed the shopping center to be built, but restricted the use to LB-2 such that the owner would now suffer a hardship not common to that of other property owners in the district if the variance was refused. See Board of Zoning Adjustment of Huntsville v. Mill Bakery and Eatery, Inc., 587 SO. 2d 390 (Ala. 1991).*

*When considering a variance request the members of the Zoning Board of Adjustment should decide whether the variance, if granted, would maintain adequate levels of health, safety, and general public welfare for the community and the neighborhood involved. We have broad community support for this application, and we*

*believe granting the variance would improve the situation and denying the variance would damage the situation in and around this shopping center.*

*Photos of the Existing Facilities are attached.*

*Survey is attached along with site plan showing existing improvements.*

*Neighborhood Involvement:*

*Representatives of the Owner have met with various neighborhood groups and neighboring property owners along with their proposed tenant representative. This was done to try to address concerns the neighboring property owners had concerning the application to rezone the property to B-2 with numerous use restrictions. The neighboring property owners prefer to have a use variance issued to allow the State ABC Store instead of having a rezoning to B-2. We have asked for the Planning Commission to holdover the rezoning request until this application can be heard by the Zoning Board of Adjustment and Appeals. From the owner's perspective, the rezoning to B-2 with voluntary use restrictions or the use variance to allow the ABC Store both achieve the same objective, and we are happy to accommodate the neighborhood organizations' request to pursue this as a zoning variance instead of as a rezoning. We expect support for this application from the neighborhood organizations with whom we have previously met. If this application is unsuccessful then we will have no choice but to continue to pursue the rezoning to B-2 which may be a contested matter involving these same neighborhood organizations we are currently aligned with. We hope that the City Staff and the Zoning Board of Adjustment and Appeals members will reward the effort and the spirit of compromise that both the Owner and the neighborhood organizations have displayed in getting to this application. Everyone is interested in this shopping center not becoming a blight on the community.*

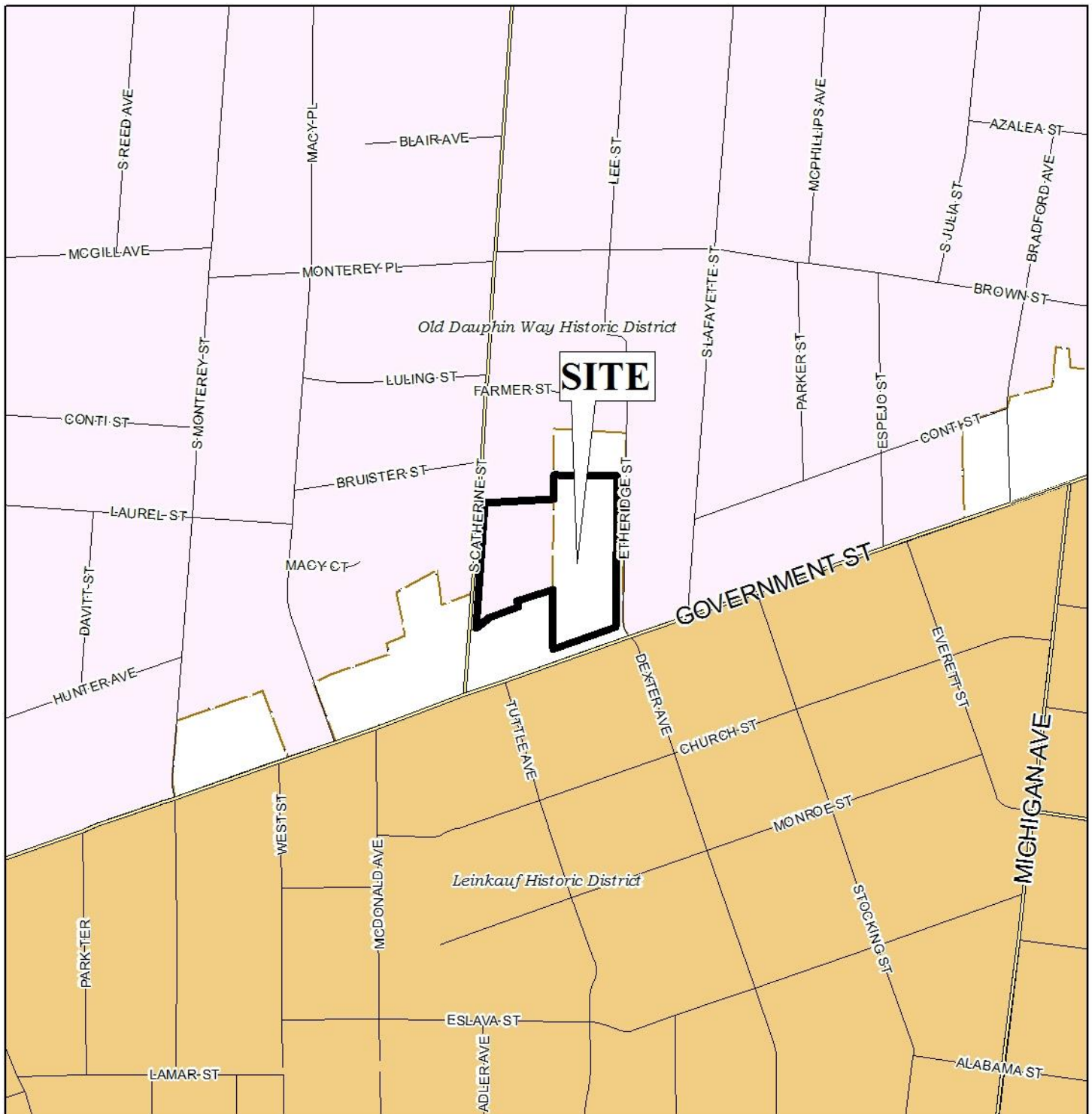
**RECOMMENDATION:** Based on the preceding, staff recommends that the Board consider all relevant facts prior to making a decision.

***Revised for the May 4, 2020 meeting:***

*This application was heldover from the April 6, 2020 Board of Zoning Adjustment meeting, after a lack of quorum caused the meeting to be cancelled. No new information has been submitted, therefore, the recommendation remains unchanged.*

**RECOMMENDATION:** Based on the preceding, staff recommends that the Board consider all relevant facts prior to making a decision.

# LOCATOR MAP



APPLICATION NUMBER 6317 DATE April 6, 2020

APPLICANT Casey Pipes

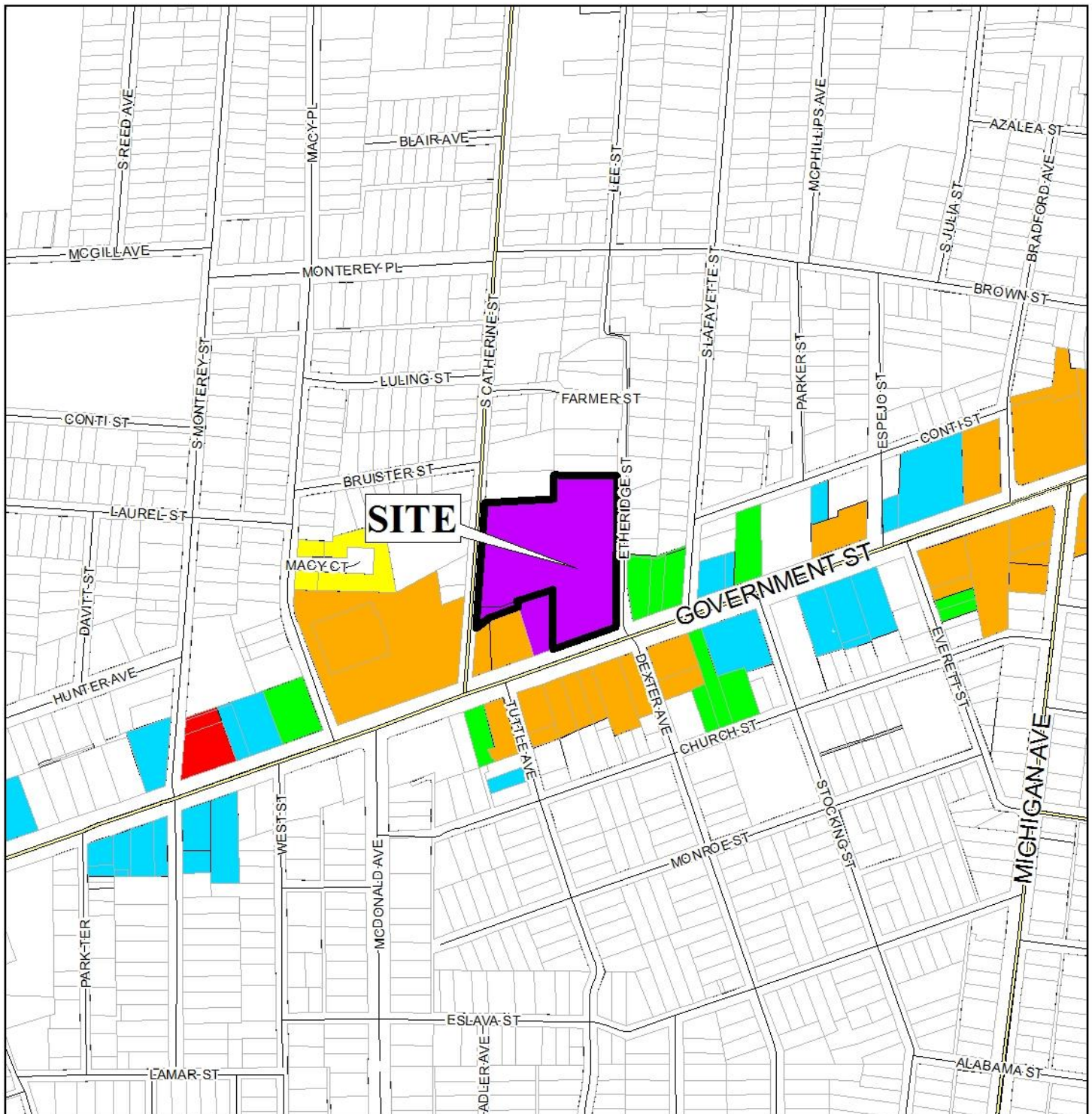
REQUEST Use Variance



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# LOCATOR ZONING MAP

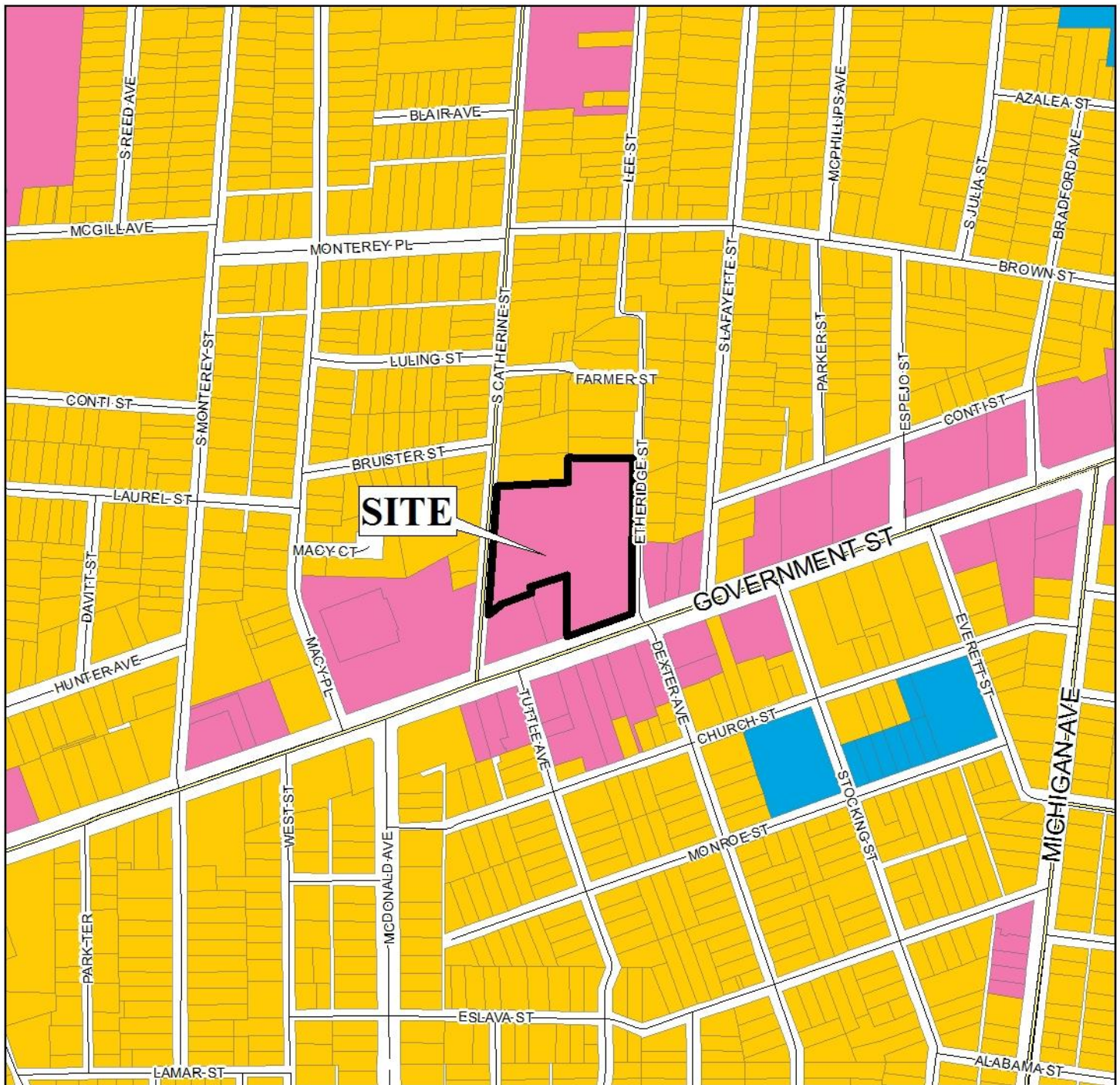


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REQUEST Use Variance





# FLUM LOCATOR MAP



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APPLICANT Casey Pipes

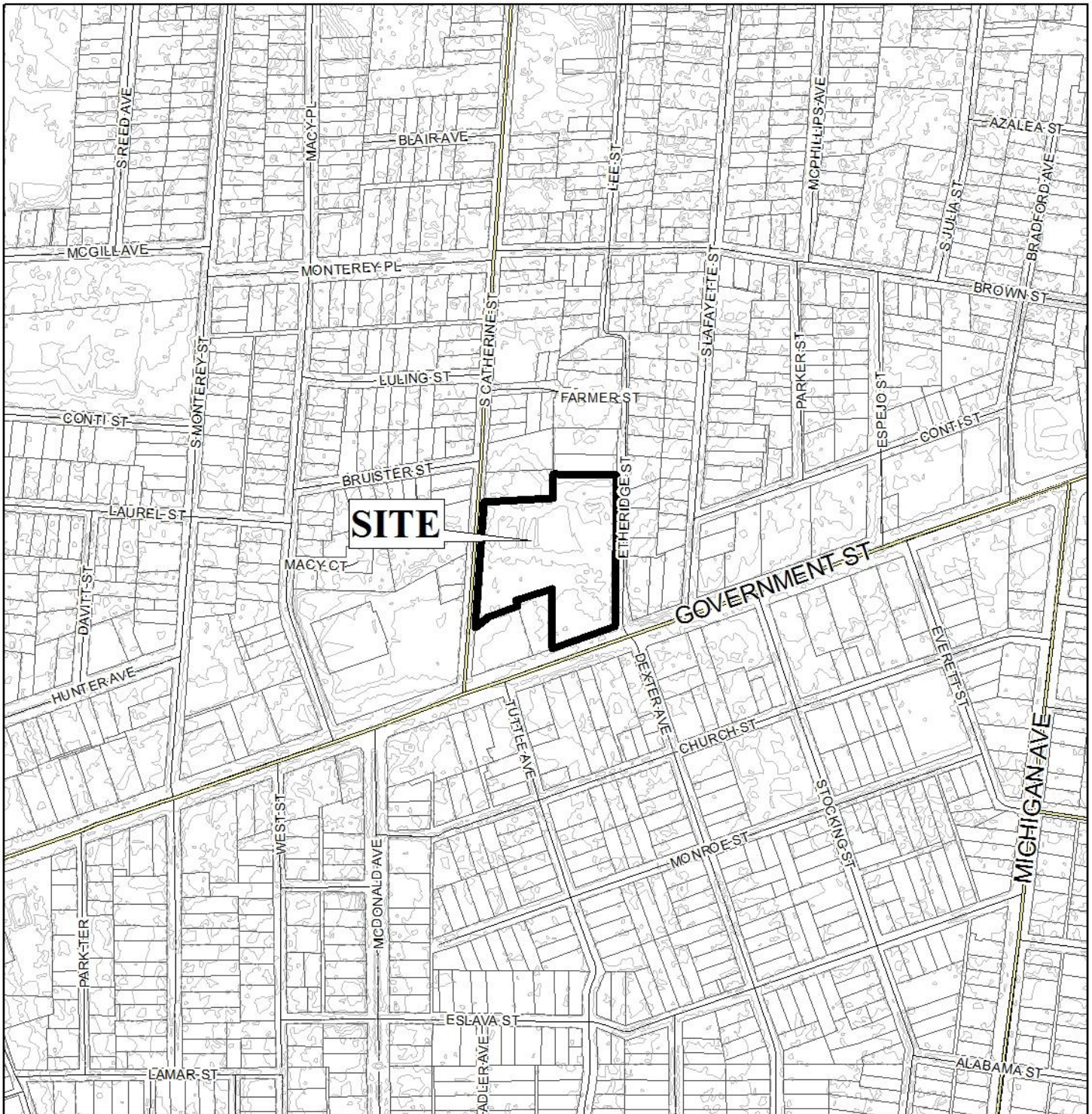
REQUEST Use Variance

|                           |                                   |                     |                    |
|---------------------------|-----------------------------------|---------------------|--------------------|
| 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 6317 DATE April 6, 2020

APPLICANT Casey Pipes

REQUEST Use Variance





# BOARD OF ADJUSTMENT

## VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units to the north and commercial units to the south.

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APPLICANT Casey Pipes

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

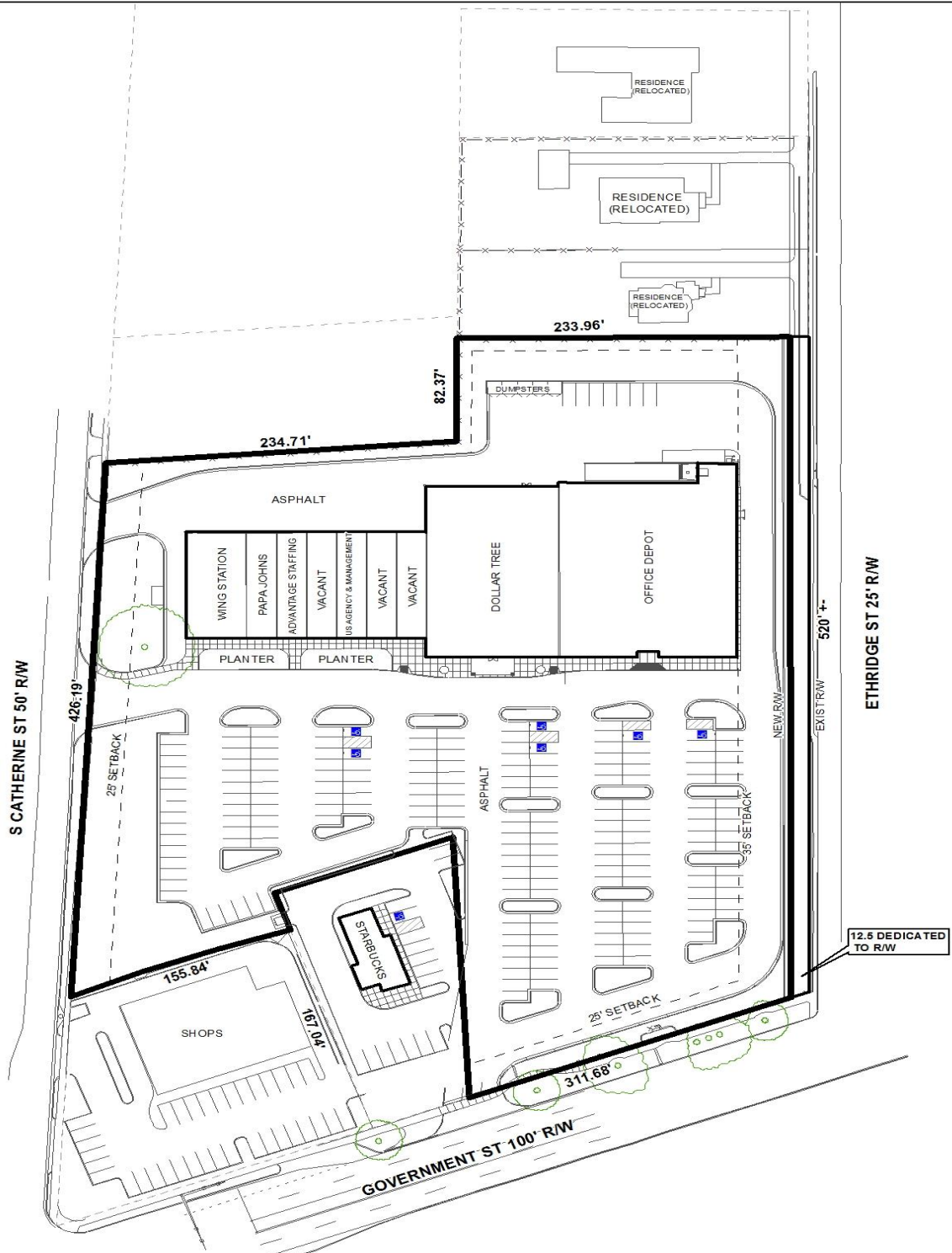


The site is surrounded by residential units to the north and commercial units to the south.

|                    |              |      |               |
|--------------------|--------------|------|---------------|
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| REQUEST            | Use Variance |      |               |



# SITE PLAN



The site plan illustrates the existing buildings, parking, and setbacks.

|                    |              |      |               |
|--------------------|--------------|------|---------------|
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