

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT**

Date: August 1, 2022

CASE NUMBER 6464 / 4770

APPLICANT NAME Deborah May

LOCATION 5032 Government Boulevard
(East side of Government Boulevard, 566'± North of
Lansdowne Drive).

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

**ZONING ORDINANCE
REQUIREMENT** **USE VARIANCE:** 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 14,900± Square Feet

**CITY COUNCIL
DISTRICT** District 4

**ENGINEERING
COMMENTS** No comment.

**TRAFFIC ENGINEERING
COMMENTS** No traffic impacts anticipated by this variance request. If on-
street parking becomes an issue, Traffic Engineering could install parking restrictions on
Government Boulevard.

**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.

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 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 site has been given a Low Density Residential (LDR) 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 LDR 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 LDR 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.

LDR 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.

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 was previously the subject of variance review to allow a home-based day care for 12 children, which was denied by the Board of Zoning Adjustment at its July 13, 1998 meeting. Staff does not find any evidence the decision was appealed.

The same applicant is now requesting approval of a home-based day care for 10 children. The following narrative was provided with their request:

For USE VARIANCE applications provide a detailed description of the proposed use:

AT PRESENT DAY CARE IS PROVIDED FOR 5 CHILDREN. REQUEST DAYCARE BE ENLARGED TO INCLUDE 5 NEW CHILDREN

*IDENTIFY OPERATION: RESIDENTIAL CHILD DAY CARE BUISNESS
DAYS/HOURS OF OPERATION: MONDAY THRU FRIDAY 6AM-5PM
NUMBER OF EMPLOYEES: 2
NUMBER OF CUSTOMERS: 10 MAX.(REQUESED)
GROSS SQUARE FOOTAGE: 617 SQ. FT.
PARKING REQUIREMENT: NA*

NOTE: THIS PROPERTY IS RESIDENTIAL AND HAS BEEN FOR OVER 10 YEARS. THIS PROPERTY HAS WOOD AND SPECIAL CHAIN LINK FENCE AROUND THE EXTERIOR SITE. THIS PROPERTY HAS OPERATED OVER 10 YEARS WITH NO NEGATIVE IMPACT TO THE NEIGHBORING PROPERTIES.

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 will 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.

No plans were submitted with the request, 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.

A Zoning Clearance appears to have first been issued to the applicant in 1997 to operate a day care with no more than six (6) children. No additional Zoning Clearances have been issued since that time, but as the applicant mentions the day care has operated for over 10 years. As previously stated, the applicant requested a variance in 1998, which was denied. Moreover, they did not appeal the previous variance decision, demonstrating that compliance with the Zoning Ordinance does not cause a hardship.

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.

Revised for the August 1st meeting:

The application was heldover from the July 11th meeting at the applicant's request.

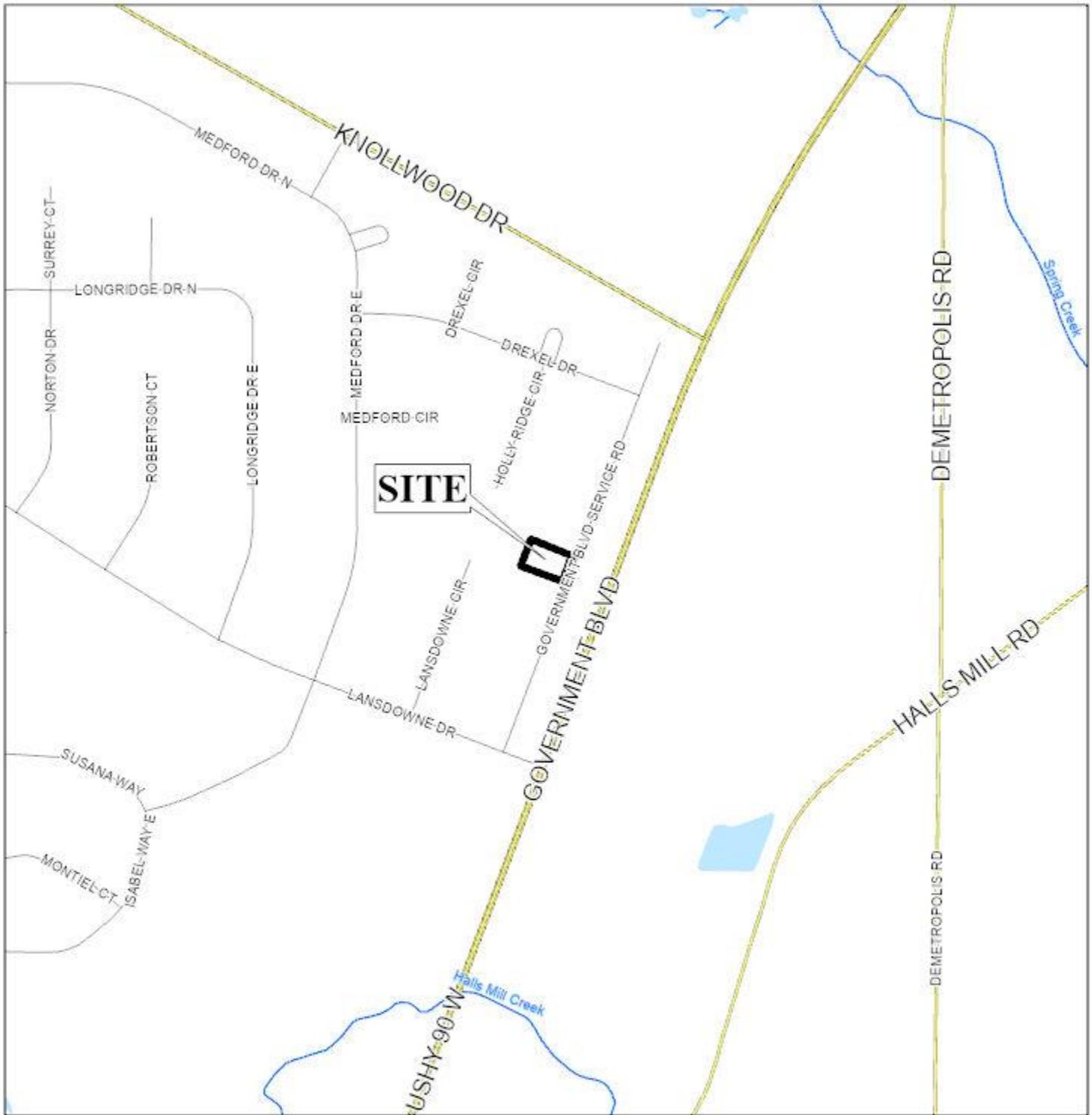
*During discussion at the July 11th meeting the applicant stated that a full set of plans, drawn by an architect, was required by city staff for the Variance application. Upon review of video from a February 22, 2022 pre-development meeting between Build Mobile staff and the applicant, no such requirement was expressed by Planning Staff with regard to the **Variance** application. Building Inspection staff did, however, express the need for an architect when the applicant reached the point of preparing to submit plans for **development permits**. To ensure compliance with building code, building plans prepared by a licensed design professional is a standard requirement whenever a change of occupancy is being proposed, as with the subject application.*

No additional information was received by staff which would necessitate a change in staff recommendation.

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



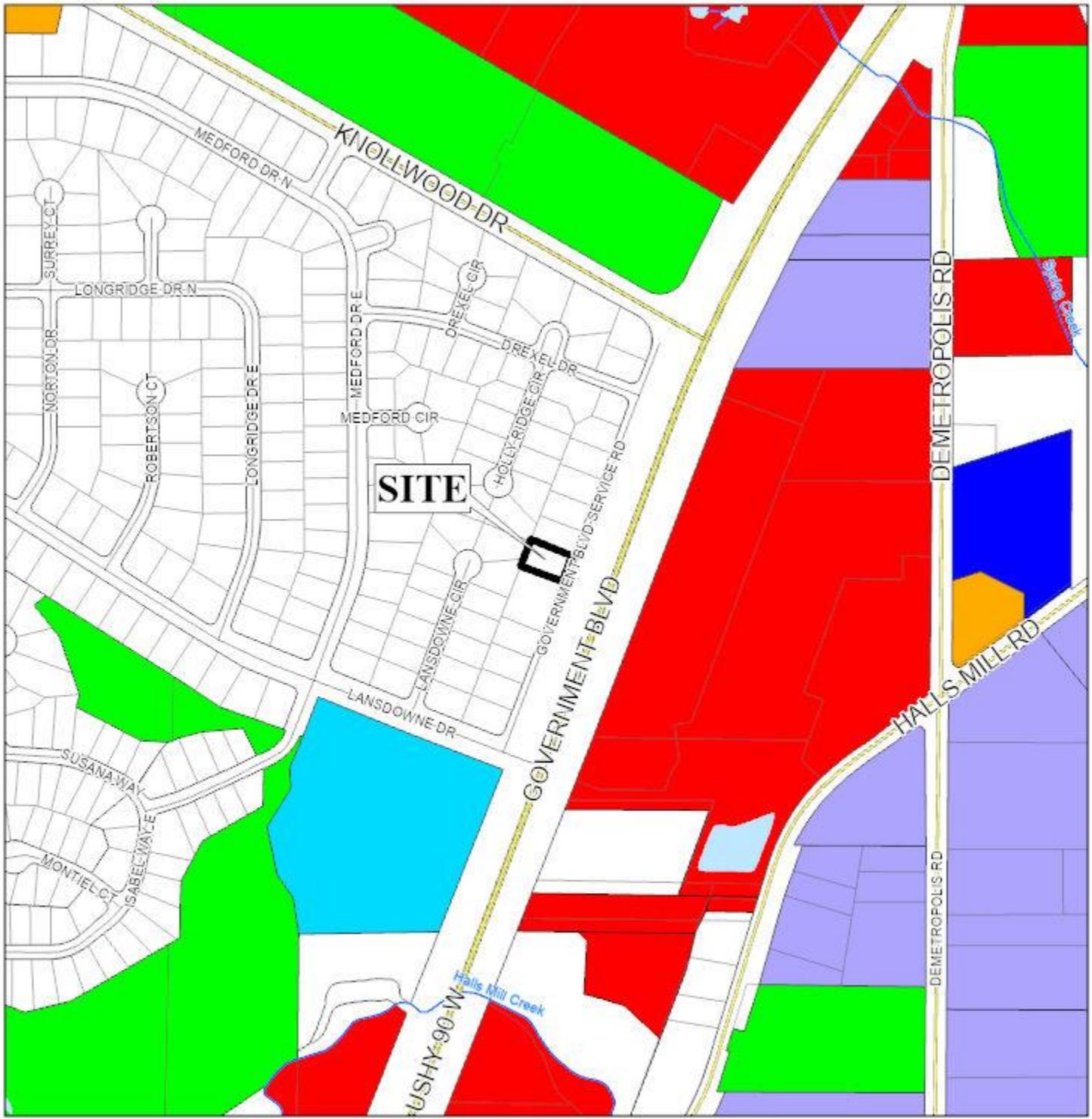
APPLICATION NUMBER 6464 DATE August 1, 2022

APPLICANT Deborah May

REQUEST Use Variance



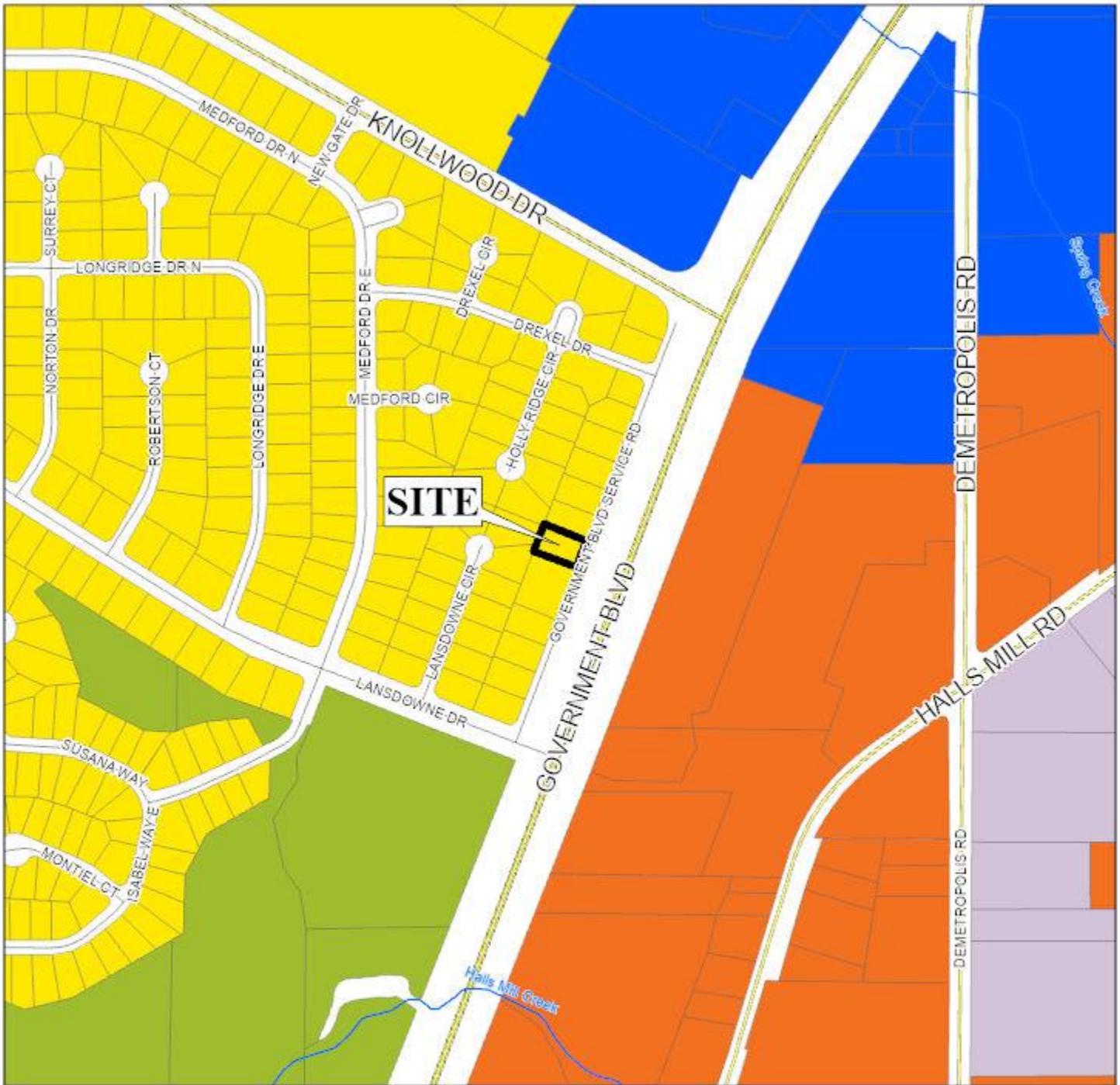
LOCATOR ZONING MAP



APPLICATION NUMBER 6464 DATE August 1, 2022
APPLICANT Deborah May
REQUEST Use Variance



FLUM LOCATOR MAP



APPLICATION NUMBER 6464 DATE August 1, 2022

APPLICANT Deborah May

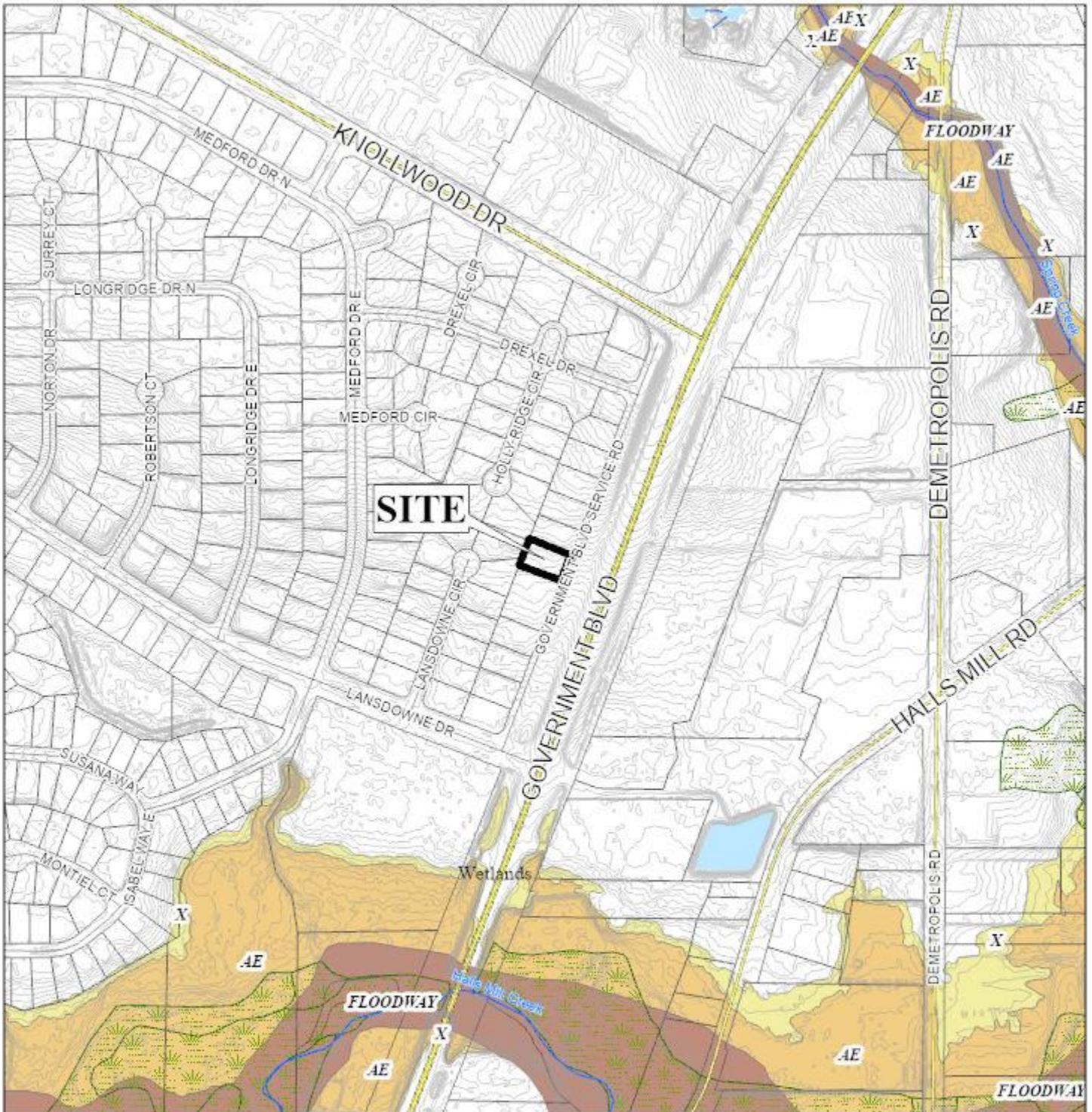
REQUEST Use Variance

Layer2

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



ENVIRONMENTAL LOCATOR MAP



APPLICATION NUMBER 6464 DATE August 1, 2022
APPLICANT Deborah May
REQUEST Use Variance



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



This site is surrounded by residential units, and commercial units to the east.

APPLICATION NUMBER 6464 DATE August 1, 2022

APPLICANT Deborah May

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



NTS

BOARD OF ADJUSTMENT VICINITY MAP - EXISTING AERIAL



This site is surrounded by residential units, and commercial units to the east.

APPLICATION NUMBER 6464 DATE August 1, 2022

APPLICANT Deborah May

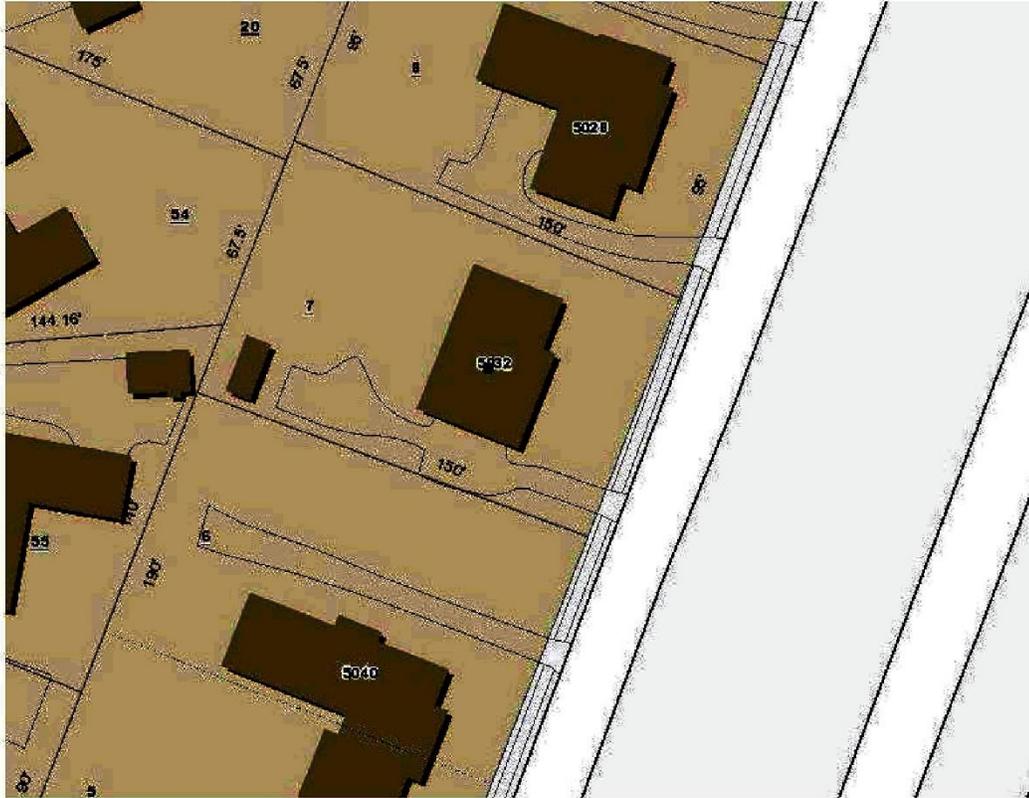
REQUEST Use Variance



SITE PLAN

MRS DEBORAH MAY

SITE PLAN



5032 GOVERNMENT BLVD

MOBILE, AL 36693

This site plan illustrates the site and surrounding areas.

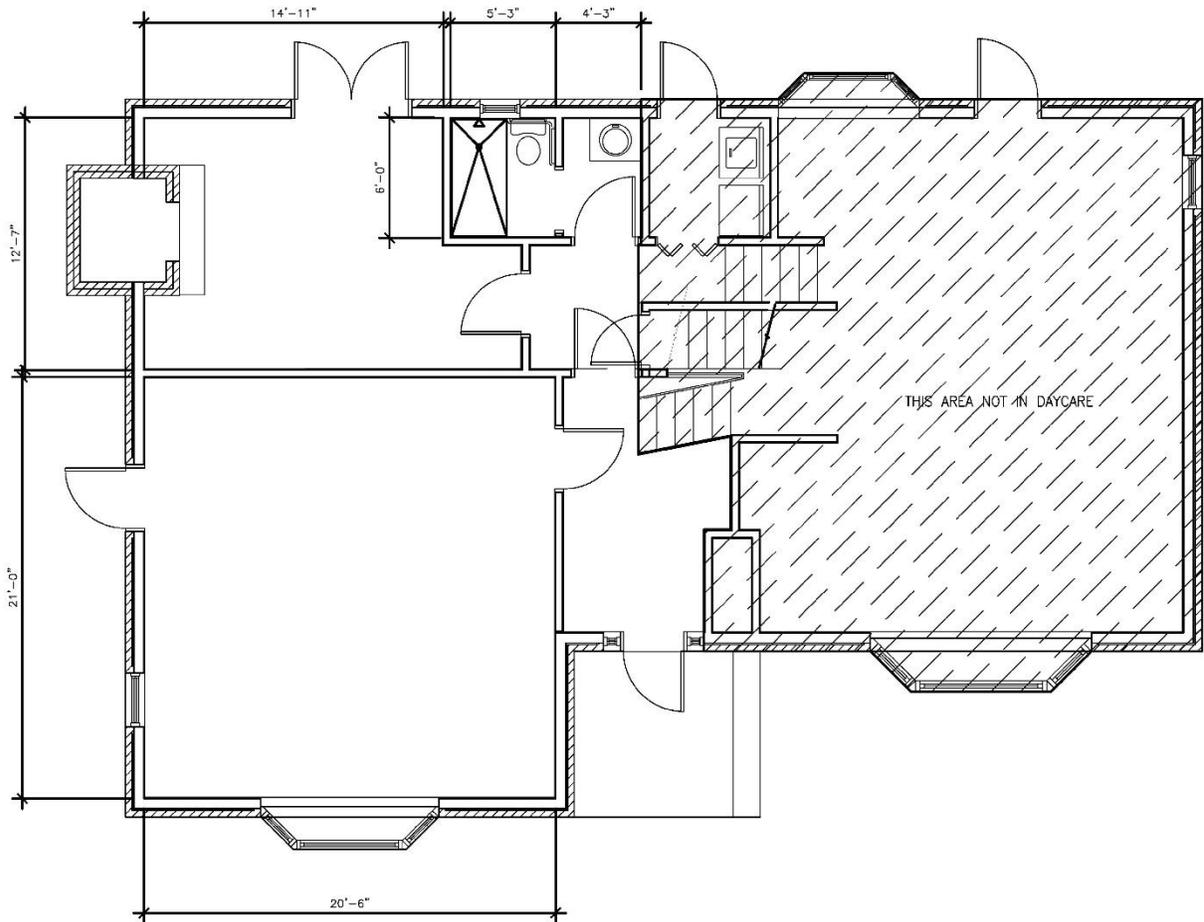
APPLICATION NUMBER 6464 DATE August 1, 2022

APPLICANT Deborah May

REQUEST Use Variance



DETAIL SITE PLAN



(E1) 1ST FLOOR PLAN
1/4"=1'-0"

APPLICATION NUMBER 6464 DATE August 1, 2022
APPLICANT Deborah May
REQUEST Use Variance

