

**BOARD OF ZONING ADJUSTMENT  
STAFF REPORT****Date: September 20, 2021**

<b><u>CASE NUMBER</u></b>	6411
<b><u>APPLICANT NAME</u></b>	Brenda J. Godfrey
<b><u>LOCATION</u></b>	2669 Faure Drive South (South side of Faure Drive South at the South terminus of Penicault Drive).
<b><u>VARIANCE REQUEST</u></b>	<b>USE:</b> Use Variance to allow more than five (5) children in a home-based daycare in an R-1, Single-Family Residential District.
<b><u>ZONING ORDINANCE REQUIREMENT</u></b>	<b>USE:</b> The Zoning Ordinance limits a home-based daycare to no more than five (5) children in an R-1, Single-Family Residential District.
<b><u>ZONING</u></b>	R-1, Single-Family Residential District
<b><u>AREA OF PROPERTY</u></b>	10,488 ± square feet / 0.2± Acres
<b><u>CITY COUNCIL DISTRICT</u></b>	District 4
<b><u>ENGINEERING COMMENTS</u></b>	No comments.
<b><u>TRAFFIC ENGINEERING COMMENTS</u></b>	If on street parking becomes an issue during pick-up/drop-off at the daycare, on street parking restrictions may have to be installed based on the width of Faure Drive.
<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 [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 more than five (5) children in a home-based daycare in an R-1, Single-Family Residential District; the Zoning Ordinance limits a home-based daycare to no more than five (5) children in an R-1, Single-Family Residential District.

The site has been given a Low-Density Residential 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 Low-Density Residential 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 Low-Density Residential 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.

Low-Density Residential 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.

Regarding the Use Variance, in their narrative the applicant does not provide any justification for the request beyond a desire to grow the existing business. However, it should be noted that in 2020 the Board approved a total of four (4) Use Variances similar to this one. The primary justification for each being that the COVID-19 pandemic caused a shortage of day care facilities and an increase in restrictions on existing day care facilities, resulting from public health concerns.

The applicant's narrative states:

*Dear Planning and Zoning Board:*

*My name is Brenda Godfrey, and I am the owner and operator of Annie's Childcare, a licensed and accredited home childcare program located at 2669 South Faure Drive. I have been licensed by the Alabama Department of Human Resources for 20 plus years offering families of this community and surrounding areas quality childcare services.*

*I am currently licensed for only five children in my home childcare, and I would like to propose an increase in the number of children to 10. The only way this request can be granted is if the City of Mobile Zoning Department grants me a Use Variance. I have researched the City of Mobile website for an Ordinance for a larger home childcare facility in a residential area and was unsuccessful in doing so.*

*I currently occupy two large rooms (floor area approximately 628 sq.ft), which are located near the side door of my home for daily activities and a play area for the children. The combined space is more than enough room and exceeds the required amount of space of 32 sq. ft per child, according to the State of Alabama licensing. If I am approved for ten children, I will provide more than enough space per child.*

*The property cannot be used in compliance with the Zoning Ordinance, because there are no ordinances in place for a large home daycare. My property is uniquely addressed in the neighborhood because, I offer parents in the community high-quality childcare services, in an effort for parents to attend school or work. Because of my hard work and dedication, parents believe that their child(ren) receives a better education because the provider-child ratio is smaller and the on-on-one teaching experience is provided.*

*My childcare program offers a clean, healthy, and safe learning environment for young children of various ages. I strive to provide my parents with my undivided attention and adhere to their concerns about their children whose birthdays are in the middle of the school year. Because of this issue, children cannot transition from my program to head start or pre-K in the schools' system. Many parents' concern is that they, do not want to uproot their children from my program, but want their children to leave my home daycare and go directly to a head start or a pre-K program.*

*My current traffic flow with five children does not disrupt my neighbor's privacy. It is set up to where, parents are able to park in the front of my home or in my driveway. I have more than enough parking spaces, if more than one parent arrives at the same time. Parents are in and out within 5 minutes, which includes parents bringing their child(ren) into the home, signing, and swiping them in, and returning to their vehicles. Once I am approved for ten children, the new parents and I will discuss a plan for their arrival and departure times that will not interfere with my neighbors' home, driveways, or the flow of traffic.*

*My hours of operation are Mondays through Fridays, 6:00 am to 5:00 pm. There are two employees, which will consist of myself and another qualified adult. The extensive square footage of my home is more than enough to accommodate the children for their daily scheduled activities during the day. (See attachment) Most of the activities are inside; however, we engage in outdoor play for 30 minutes in the mornings and 30 minutes in the evenings. When we are outside, I am mindful of the noise level, and I have not had any complaints from my neighbors about the expected noise level of children playing. When I am approved for ten children, I will uphold the level of noise at a minimum volume. My backyard is large enough to accommodate ten children without being a nuisance to my neighbors. My track record of maintaining a home childcare property has been superb for 20 plus years without disturbing my surrounding neighbors.*

It should be noted that allowing more than five (5) children in a home-based day care may prompt compliance with Building, Mechanical, Plumbing, and Electrical Codes. Moreover, as noted in the Fire Department comments, day cares with more than five (5) children must 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 would result in individuals who do not live at the location working there, a further disruption to the residential neighborhood.

A recent land survey was provided by the applicant and illustrates the subject site is 10,488 ± 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 home occupation standards which limit the business to occupying no more than 25% of the dwellings floor area. A description of the

proposed businesses activities was provided which details numerous play and learning activities throughout the day from 6:00 AM to 5:00 PM.

A Zoning Clearance was issued to the applicant in March, 2008 to operate a day care with no more than six (6) children. Since that time the applicant has not made a request to care for additional children, perhaps demonstrating that compliance with the Zoning Ordinance does not cause a hardship. Furthermore, while the need for additional childcare facilities may be necessary within the community, there are locations in the city appropriately zoned for such facilities from which the applicant could provide day care services for more than six (6) children.

It should be reiterated that variances are not intended to be granted frequently and approving the request may establish a precedent for future Use Variance requests which would negatively impact the 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 allow commercial intrusion into an established residential neighborhood;
- 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 and utilized residentially.

**In order for any concerns to be considered by the Board you must email your concerns to [planning@cityofmobile.org](mailto:planning@cityofmobile.org) or they may be uploaded to the website via the portal under the meeting date and case. Comments must be entered by 2:00 PM on Friday, September 17<sup>th</sup>, before the meeting, in order to be considered by the Board.**

**If you wish to participate in the meeting, you must email [planning@cityofmobile.org](mailto:planning@cityofmobile.org) by 2:00 PM on Friday, September 17<sup>th</sup>, before the meeting. In accordance with the Rules of the Board of Zoning Adjustment, no more than four (4) speakers are allowed to speak for or against an application. Speaking time is limited to five (5) minutes per speaker.**

# LOCATOR MAP



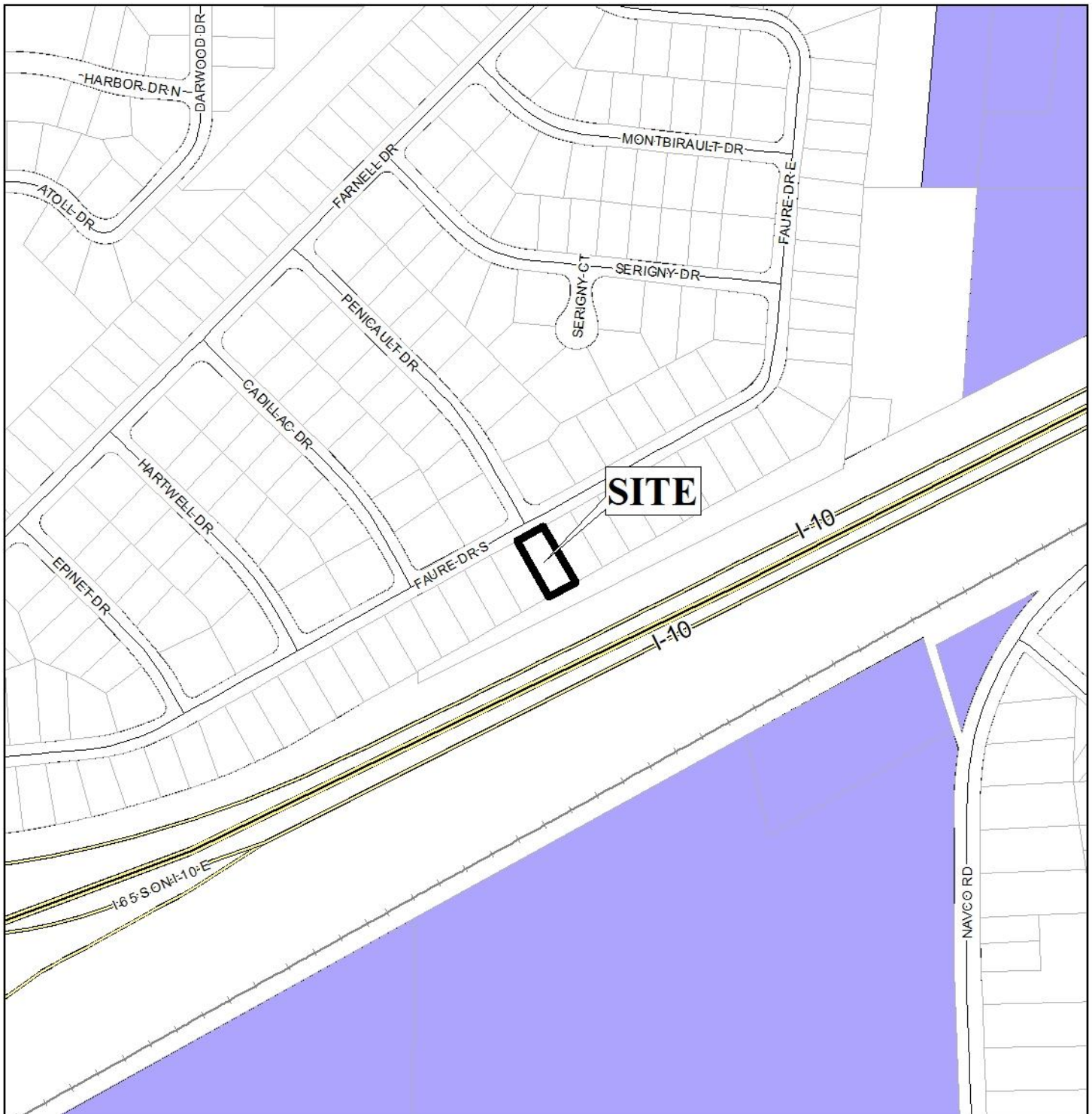
APPLICATION NUMBER 6411 DATE September 20, 2021

APPLICANT Brenda J. Godfrey

REQUEST Use Variance



# LOCATOR ZONING MAP



APPLICATION NUMBER 6411 DATE September 20, 2021

APPLICANT Brenda J. Godfrey

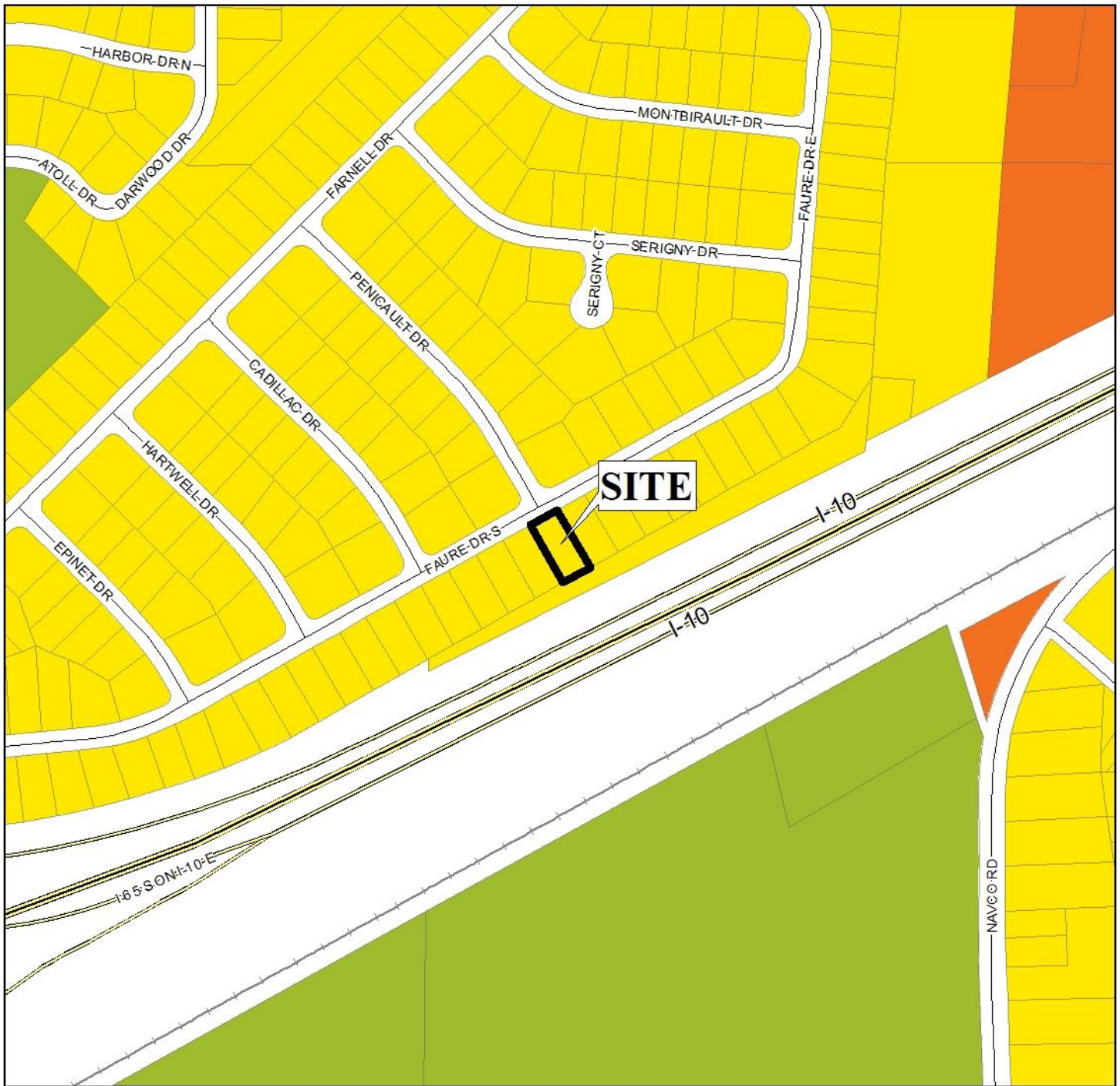
REQUEST Use Variance



NTS



# FLUM LOCATOR MAP



APPLICATION NUMBER 6411 DATE September 20, 2021

APPLICANT Brenda J. Godfrey

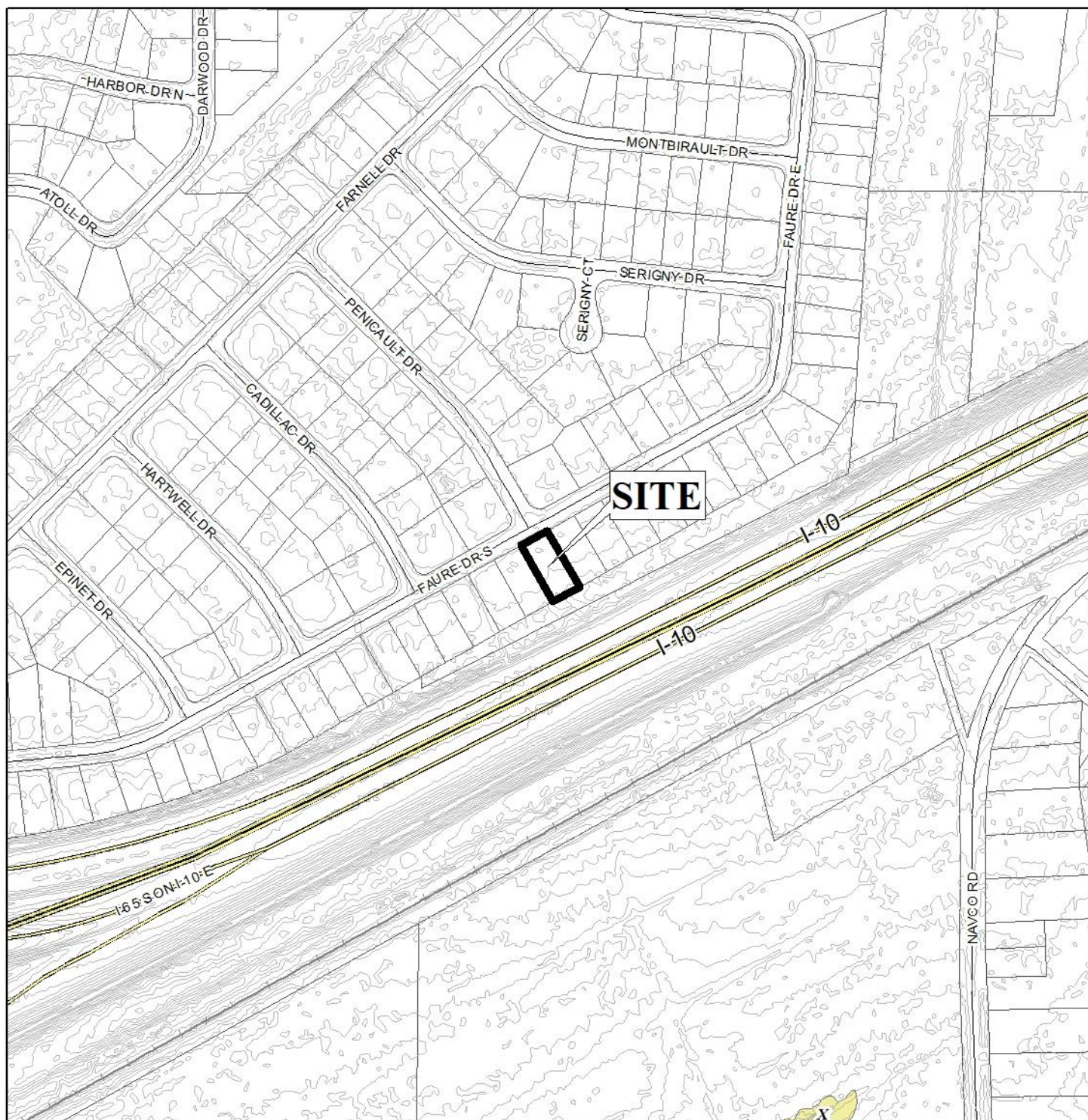
REQUEST Use Variance

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 6411 DATE September 20, 2021

APPLICANT Brenda J. Godfrey

REQUEST Use Variance



# BOARD OF ADJUSTMENT

## VICINITY MAP - EXISTING ZONING



The site is surrounded by single family residential units.

APPLICATION NUMBER 6410 DATE September 20, 2021

APPLICANT Pete J. Vallas, A.I.A Architect

REQUEST Setback Variance

<span style="display: inline-block; width: 15px; height: 15px; background-color: cyan; border: 1px solid black;"></span> R-A	<span style="display: inline-block; width: 15px; height: 15px; background-color: green; border: 1px solid black;"></span> R-3	<span style="display: inline-block; width: 15px; height: 15px; background-color: tan; border: 1px solid black;"></span> T-B	<span style="display: inline-block; width: 15px; height: 15px; background-color: orange; border: 1px solid black;"></span> B-2	<span style="display: inline-block; width: 15px; height: 15px; background-color: blue; border: 1px solid black;"></span> B-5	<span style="display: inline-block; width: 15px; height: 15px; background-color: yellow; border: 1px solid black;"></span> MUN	<span style="display: inline-block; width: 15px; height: 15px; background-color: orange; border: 1px solid black;"></span> SD-WH	<span style="display: inline-block; width: 15px; height: 15px; background-color: purple; border: 1px solid black;"></span> T5.1
<span style="display: inline-block; width: 15px; height: 15px; background-color: white; border: 1px solid black;"></span> R-1	<span style="display: inline-block; width: 15px; height: 15px; background-color: magenta; border: 1px solid black;"></span> R-B	<span style="display: inline-block; width: 15px; height: 15px; background-color: cyan; border: 1px solid black;"></span> B-1	<span style="display: inline-block; width: 15px; height: 15px; background-color: red; border: 1px solid black;"></span> B-3	<span style="display: inline-block; width: 15px; height: 15px; background-color: lightblue; border: 1px solid black;"></span> I-1	<span style="display: inline-block; width: 15px; height: 15px; background-color: lightgreen; border: 1px solid black;"></span> OPEN	<span style="display: inline-block; width: 15px; height: 15px; background-color: pink; border: 1px solid black;"></span> T3	<span style="display: inline-block; width: 15px; height: 15px; background-color: darkpurple; border: 1px solid black;"></span> T5.2
<span style="display: inline-block; width: 15px; height: 15px; background-color: yellow; border: 1px solid black;"></span> R-2	<span style="display: inline-block; width: 15px; height: 15px; background-color: peachpuff; border: 1px solid black;"></span> H-B	<span style="display: inline-block; width: 15px; height: 15px; background-color: purple; border: 1px solid black;"></span> LB-2	<span style="display: inline-block; width: 15px; height: 15px; background-color: brown; border: 1px solid black;"></span> B-4	<span style="display: inline-block; width: 15px; height: 15px; background-color: gray; border: 1px solid black;"></span> I-2	<span style="display: inline-block; width: 15px; height: 15px; background-color: orange; border: 1px solid black;"></span> SD	<span style="display: inline-block; width: 15px; height: 15px; background-color: lightpurple; border: 1px solid black;"></span> T4	<span style="display: inline-block; width: 15px; height: 15px; background-color: darkblue; border: 1px solid black;"></span> T6





# BOARD OF ADJUSTMENT

## VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units.

APPLICATION NUMBER 6411 DATE September 20, 2021

APPLICANT Brenda J. Godfrey

REQUEST Use Variance

<span style="display: inline-block; width: 15px; height: 15px; background-color: cyan; border: 1px solid black;"></span> R-A	<span style="display: inline-block; width: 15px; height: 15px; background-color: green; border: 1px solid black;"></span> R-3	<span style="display: inline-block; width: 15px; height: 15px; background-color: brown; border: 1px solid black;"></span> T-B	<span style="display: inline-block; width: 15px; height: 15px; background-color: orange; border: 1px solid black;"></span> B-2	<span style="display: inline-block; width: 15px; height: 15px; background-color: blue; border: 1px solid black;"></span> B-5	<span style="display: inline-block; width: 15px; height: 15px; background-color: yellow; border: 1px solid black;"></span> MUN	<span style="display: inline-block; width: 15px; height: 15px; background-color: orange; border: 1px solid black;"></span> SD-WH	<span style="display: inline-block; width: 15px; height: 15px; background-color: purple; border: 1px solid black;"></span> T5.1
<span style="display: inline-block; width: 15px; height: 15px; background-color: white; border: 1px solid black;"></span> R-1	<span style="display: inline-block; width: 15px; height: 15px; background-color: pink; border: 1px solid black;"></span> R-B	<span style="display: inline-block; width: 15px; height: 15px; background-color: cyan; border: 1px solid black;"></span> B-1	<span style="display: inline-block; width: 15px; height: 15px; background-color: red; border: 1px solid black;"></span> B-3	<span style="display: inline-block; width: 15px; height: 15px; background-color: lightblue; border: 1px solid black;"></span> I-1	<span style="display: inline-block; width: 15px; height: 15px; background-color: lightgreen; border: 1px solid black;"></span> OPEN	<span style="display: inline-block; width: 15px; height: 15px; background-color: pink; border: 1px solid black;"></span> T3	<span style="display: inline-block; width: 15px; height: 15px; background-color: darkpurple; border: 1px solid black;"></span> T5.2
<span style="display: inline-block; width: 15px; height: 15px; background-color: yellow; border: 1px solid black;"></span> R-2	<span style="display: inline-block; width: 15px; height: 15px; background-color: peachpuff; border: 1px solid black;"></span> H-B	<span style="display: inline-block; width: 15px; height: 15px; background-color: purple; border: 1px solid black;"></span> LB-2	<span style="display: inline-block; width: 15px; height: 15px; background-color: brown; border: 1px solid black;"></span> B-4	<span style="display: inline-block; width: 15px; height: 15px; background-color: grey; border: 1px solid black;"></span> I-2	<span style="display: inline-block; width: 15px; height: 15px; background-color: orange; border: 1px solid black;"></span> SD	<span style="display: inline-block; width: 15px; height: 15px; background-color: lightpurple; border: 1px solid black;"></span> T4	<span style="display: inline-block; width: 15px; height: 15px; background-color: darkblue; border: 1px solid black;"></span> T6





# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING AERIAL



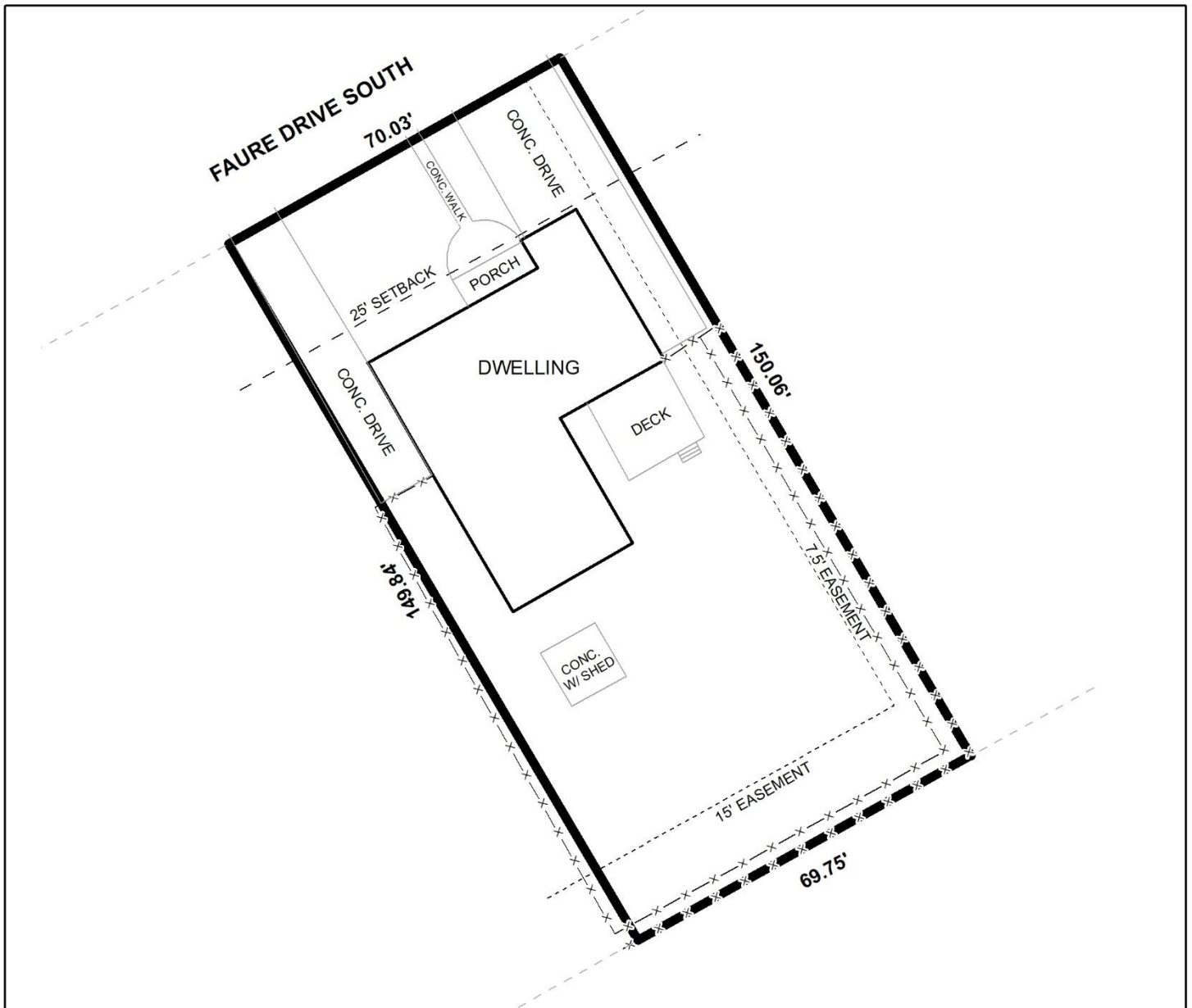
Mobile County Revenue Commission

The site is surrounded by residential units.

APPLICATION NUMBER	6411	DATE	September 20, 2021
APPLICANT	Brenda J. Godfrey		
REQUEST	Use Variance		



# SITE PLAN



The site plan illustrates existing dwelling, easements and setback.

APPLICATION NUMBER 6411 DATE September 20, 2021

APPLICANT Brenda J. Godfrey

REQUEST Use Variance

