

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: October 4, 2021**

<u>CASE NUMBER</u>	6419
<u>APPLICANT NAME</u>	Todd & Margaret Oliver
<u>LOCATION</u>	5 Demouy Avenue (East side of Demouy Avenue, 187'± South of Dauphin Street).
<u>VARIANCE REQUEST</u>	FENCE HEIGHT: To allow a wooden privacy fence more than eight (8) feet high in an R-1, Single-Family Residential District.
<u>ZONING ORDINANCE REQUIREMENT</u>	FENCE HEIGHT: The Zoning Ordinance limits wooden privacy fences to a maximum height of eight (8) feet in an R-1, Single-Family Residential District.
<u>ZONING</u>	R-1, Single-Family Residential District
<u>AREA OF PROPERTY</u>	0.3± Acre
<u>ENGINEERING COMMENTS</u>	No comments.
<u>TRAFFIC ENGINEERING COMMENTS</u>	No comments.
<u>URBAN FORESTRY COMMENTS</u>	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.
<u>FIRE DEPARTMENT COMMENTS</u>	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 a Fence Height Variance to allow a wooden privacy fence more than eight (8) feet high in an R-1, Single-Family Residential District; the Zoning Ordinance limits wooden privacy fences to a maximum height of eight (8) feet in an R-1, Single-Family Residential District.

The site has been given a Mixed Density Residential (MxDR) 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.

The MxDR 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, two- to four-residential unit buildings, accessory dwellings, and low- and mid-rise multi-family apartment buildings. The density varies between six and ten 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 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:

This adjustment request is in reference to complaint #013303-2021 made regarding our home on Demouy Ave. We received notice of a "possible violation" from Mr. LaMarcus Ware on 7/26/2021 for the height of our fence, which was currently under construction at the time. I spoke to Mr. Ware at the time of his visit and shared my understanding that a permit was obtained by our contractor. Unfortunately, I have since learned that was in fact not accurate. No permit was obtained prior to construction, and we are filing for this adjustment to resolve the issue.

Problem: desired fence height is 2 ft. over code.

Need for additional height/variance: our neighbor (who agreed to the construction) has a two-story home which provides a direct line of sight from both the first and second floor into our one-story home and our private living spaces. The 10 ft. fence height is to mitigate as much of that privacy issue as possible. To the best of our knowledge, the fence is constructed along the shared property line and in agreement with our neighbors.

In addition to height, the fence is set back approximately 10-15 ft. from the exterior of our home for the purpose of adding an automated iron security gate across our driveway.

Beyond protecting our personal privacy and security, we are aiming to protect our animals and prevent any unwanted interactions with neighbors who are not amenable to dogs.

The main part of the fence is complete. We anticipate adding the gate across the driveway within the next 3 months. The timeframe for gate install is ultimately dependent upon on production and delivery timelines, which is currently anticipated for mid to late August. In addition to the delivery timeline, installation will be dependent upon contractor's availability at the time the gate is delivered.

The subject site is within an older part of the City where narrow lots and reduced spacing between dwellings is common, and there are many instances where two-story dwellings are located fairly close to neighboring single-story dwellings. The applicant cites a privacy issue associated with the adjacent two-story dwelling as the main reason for the request for the extra height for the fence. However, the applicant has not illustrated that a literal enforcement of the Ordinance would result in an unnecessary hardship. It should be noted that the Board has not approved any height variances for fences over eight feet high within the area. The subject site

and the neighboring properties are developed in a similar manner and approval of the request could unravel the fabric of the neighborhood. Furthermore, the approval of the request could set a precedent to allow noncompliant fences in similar situations. Therefore, the Board should consider this request for Denial.

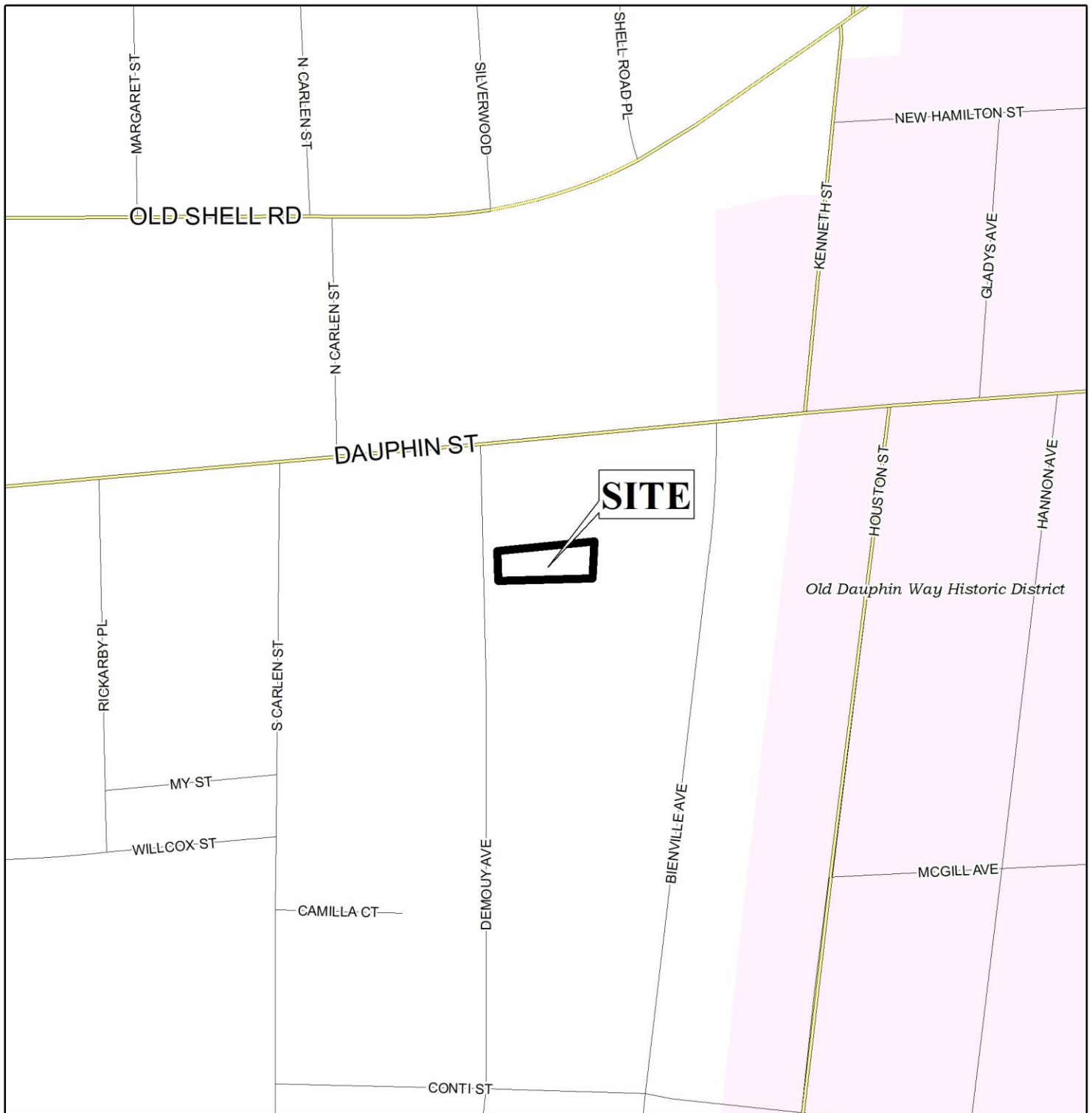
RECOMMENDATION: Based upon the preceding, Staff recommends to the Board the following findings of fact for denial of a Fence Height Variance to allow a wooden privacy fence more than eight (8) feet high in an R-1, Single-Family Residential District:

- 1) Approving the variance request will be contrary to the public interest due to the fact that no very unusual characteristics of the property have been shown to exist;
- 2) No special conditions exist, such as the fact that other properties within the neighborhood have similar noncompliant fences, 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 not be observed and substantial justice shall not be done to the applicant and the surrounding neighborhood by granting the variance because the request could set a precedent to allow further noncompliant fences within the City in similar circumstances.

In order for any concerns to be considered by the Board you must email your concerns to 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, October 1st, 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 by 2:00 PM on Friday, October 1st, 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



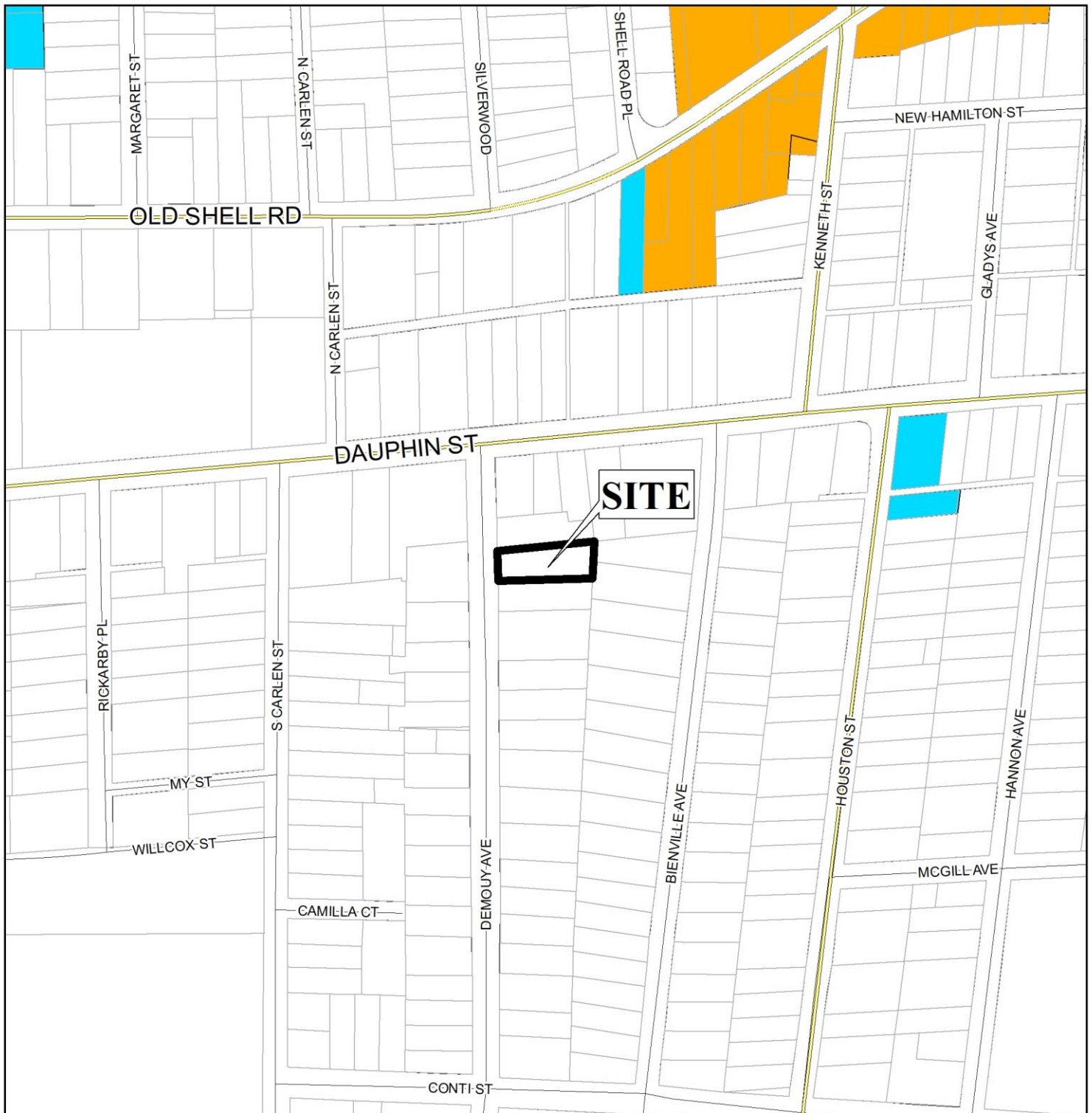
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APPLICANT Todd & Margaret Oliver

REQUEST Fence Height Variance



LOCATOR ZONING MAP



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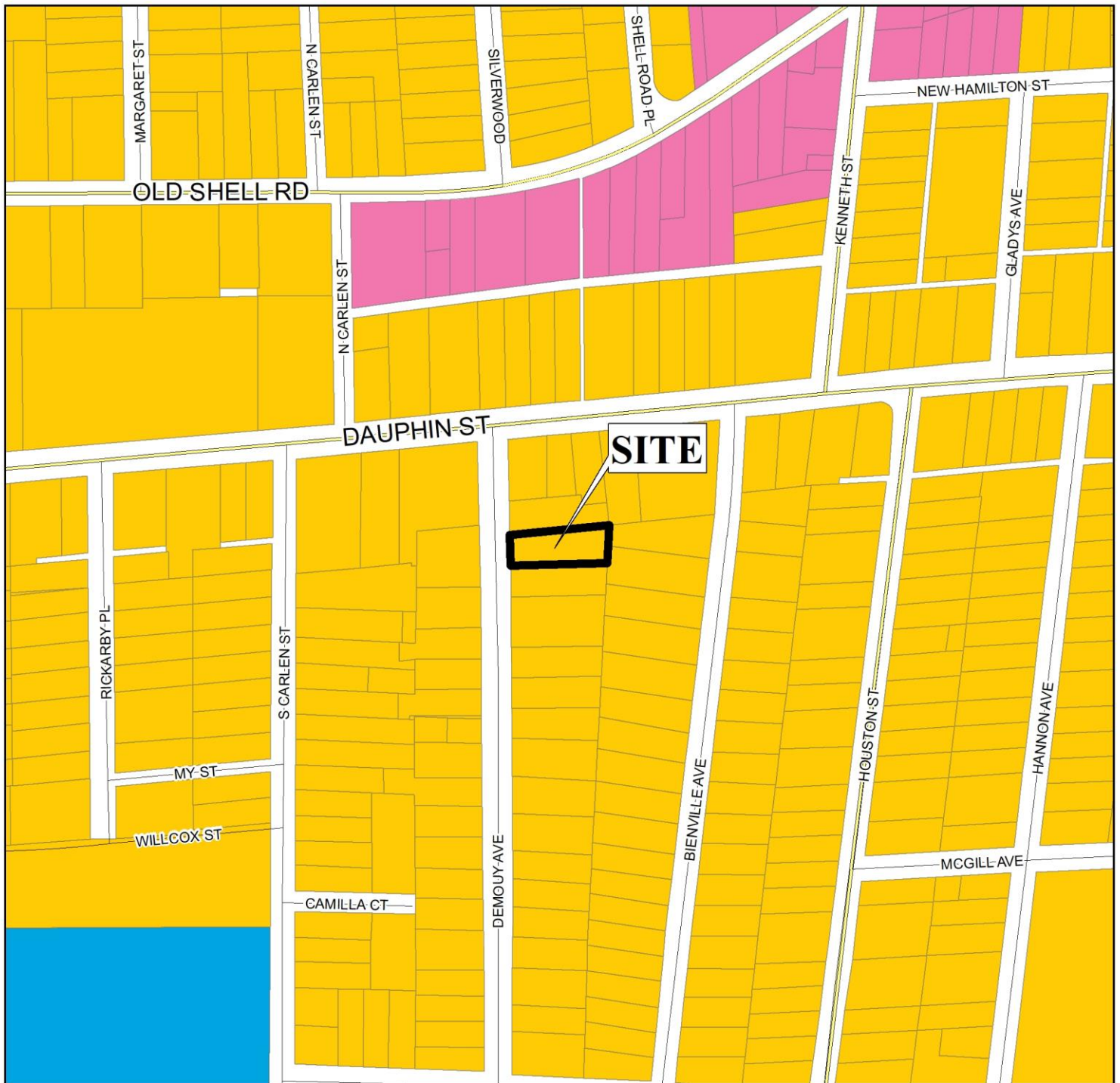
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FLUM LOCATOR MAP



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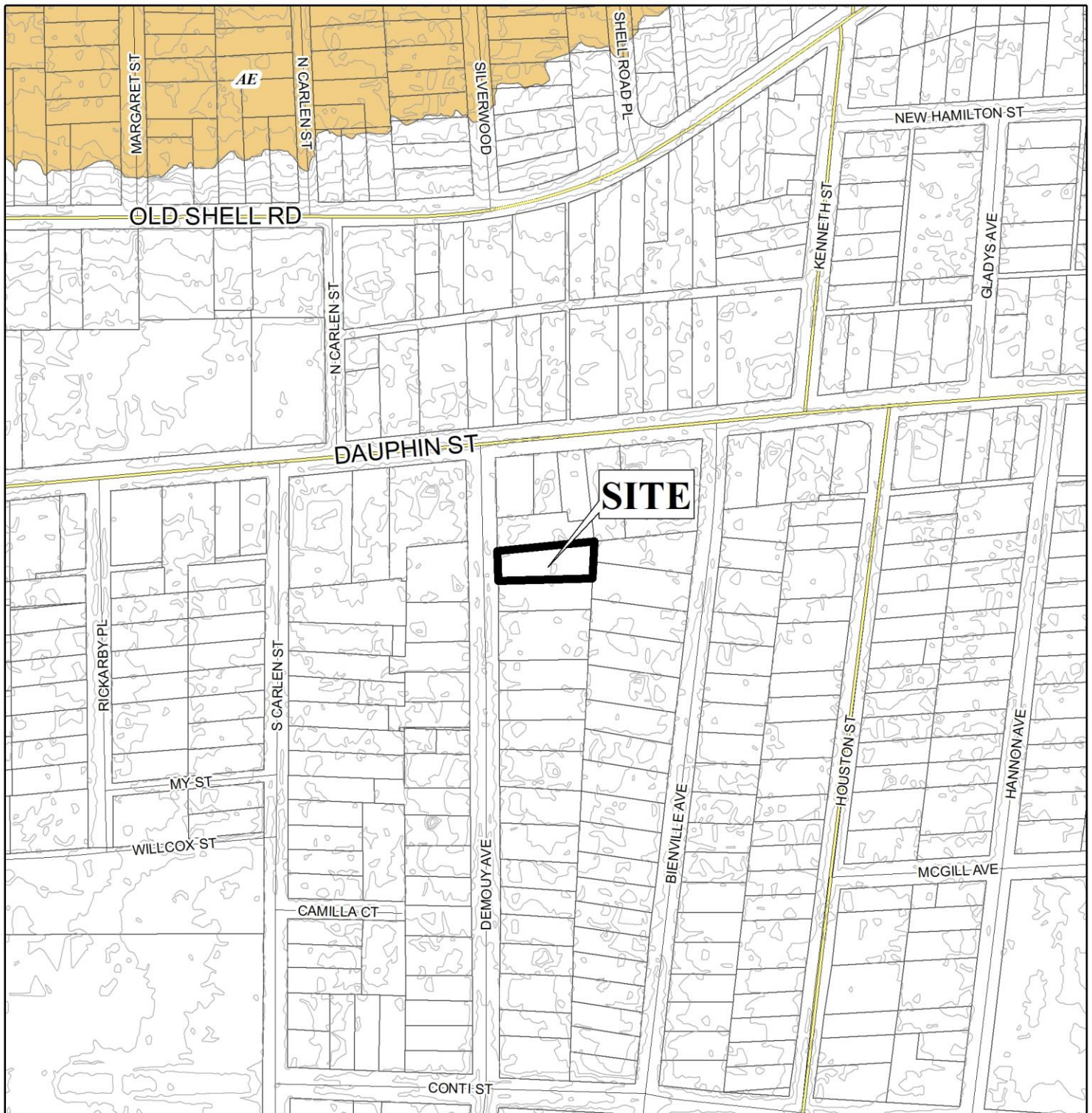
REQUEST Fence Height Variance

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	



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ENVIRONMENTAL LOCATOR MAP



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BOARD OF ADJUSTMENT

VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units.

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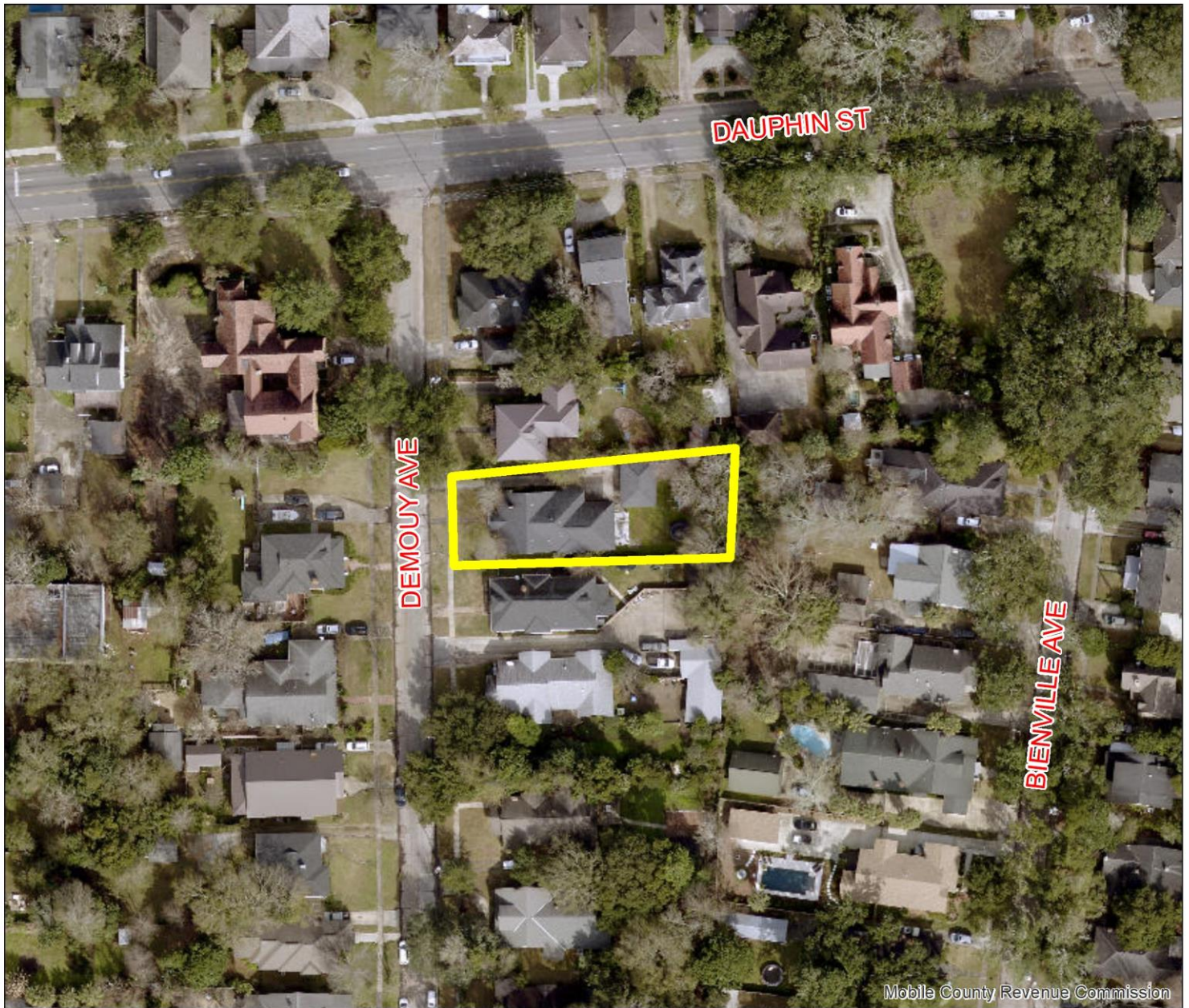
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R-A	R-3	T-B	B-2	B-5	MUN	SD-WH	T5.1
R-1	R-B	B-1	B-3	I-1	OPEN	T3	T5.2
R-2	H-B	LB-2	B-4	I-2	SD	T4	T6



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING AERIAL

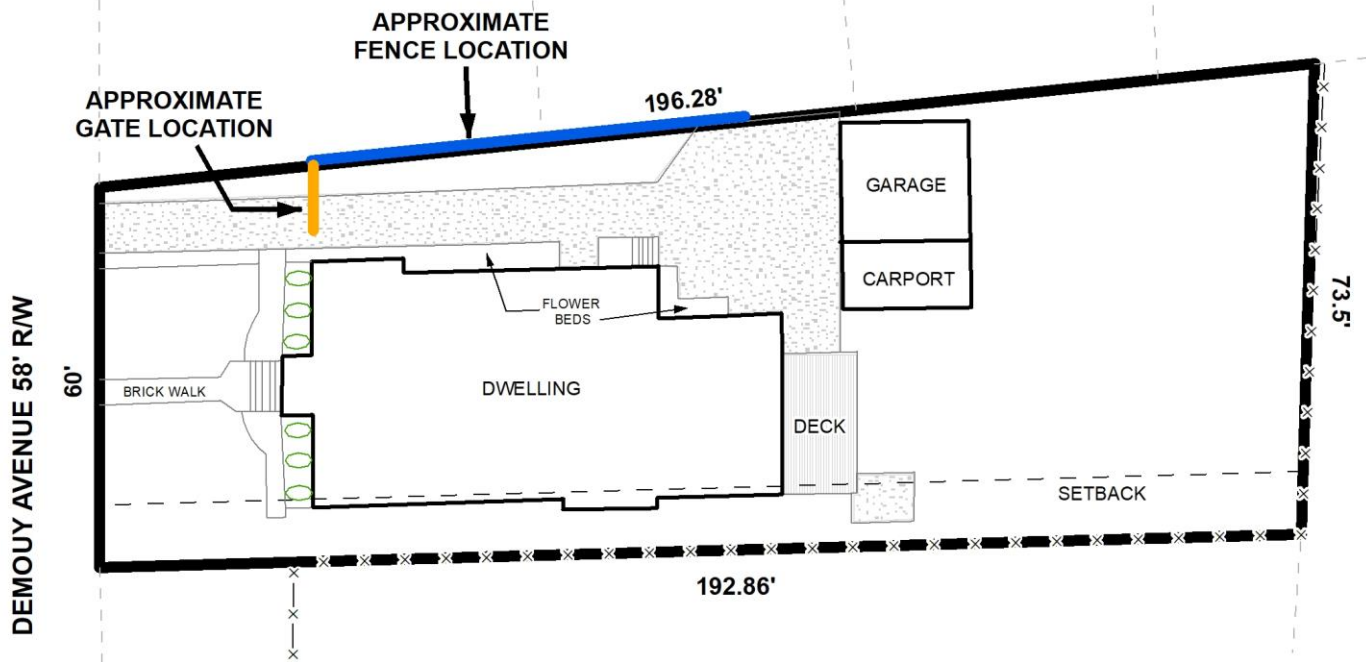


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SITE PLAN



The site plan illustrates existing structures and proposed fencing and gate.

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