

**BOARD OF ZONING ADJUSTMENT  
STAFF REPORT****Date: August 1, 2022****CASE NUMBER**

6467

**APPLICANT NAME**

Jordan Kent Johns

**LOCATION**1315 Creekway Drive  
(Northwest corner of Creekway Drive and Pinehaven Drive).**VARIANCE REQUEST****USE VARIANCE:** ~~Use variance to allow two (2) residential dwellings on a single lot in an R-1, Single Family Residential District.~~**SETBACK VARIANCE:** *Setback Variance to allow reduced side yard setbacks for two dwellings in an R-1, Single-Family Residential District.***ZONING ORDINANCE  
REQUIREMENT****USE VARIANCE:** ~~The Zoning Ordinance only allows one (1) residential dwelling per lot in an R-1, Single Family Residential District.~~**SETBACK VARIANCE:** *The Zoning Ordinance requires a minimum side yard setback of eight (8)-feet in an R-1, Single-Family Residential District.***ZONING**

R-1, Single-Family Residential

**AREA OF PROPERTY**

0.32± Acres

**CITY COUNCIL  
DISTRICT**

District 3

**ENGINEERING  
COMMENTS**

No comments.

**TRAFFIC ENGINEERING  
COMMENTS**

No comments.

**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 buildings and 600' of sprinkled buildings.

### **ANALYSIS**

The applicant is requesting a Use Variance to allow two (2) residential dwellings on a single lot in an R-1, Single-Family Residential District; the Zoning Ordinance only allows one (1) residential dwelling per lot in an R-1, Single-Family Residential District.

The site has been given a Low Density Residential (LDR) land use designation, per the adopted Future Land Use Plan and Map. 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 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 semidetached, typically placed within a street grid or a network of meandering suburban streets. The density in these districts ranges between 0 and 6 dwelling units per acre (du/ac).

These 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 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 site was initially developed with the residence closer to Creekway Drive, which was severely damaged in Hurricane Katrina in 2005, and a FEMA trailer was placed on the property for a year. In 2009, two building permits were issued: the first, for the placement of a modular home (the existing structure further from Creekway Drive), and the second, for interior demolition and conversion of the initial residence into a garage/workshop. It appears that while a permit was obtained to convert the initial residence, no work was done, and two residences have existed on-site since that time.

The applicant states:

*We are submitting a variance for 2 dwellings being located on one piece of property. The owner purchased the property a number of years ago and the site existed in this condition with two dwellings at that time. He is now in the process of selling the property and has been made aware that this is a zoning issue. He asked us to submit a variance to allow the 2 dwellings to remain and then provide the ability to sell the property. We would like to get a variance so that the property would now be in compliance as we know a rezoning is not an appropriate course of action. Please consider allowing the 2 dwellings to remain as presented in an R-1 zoning district since it appears that this has been a condition of the site for many, many years.*

The applicant was recently made aware of the problem when preparing to sell the property, and appraisers called Planning & Zoning to determine the status of the two dwellings on the property. There are other options than a use variance that the applicant has to correct this issue:

1. Remove one of the dwellings from the property;
2. Convert the initial dwelling on the property to a garage/workshop; or
3. Subdivide the property, so that each dwelling resides on a separate property.

It should be noted that of the options available, resubdivision of the property would result in non-compliant setbacks for the structures, as well as potentially create a lot with a smaller square footage than allowed by the Subdivision Regulations.

The previous property owner was made aware of the fact that two residences were not allowed to remain on the site, and obtained permits to make the improvements necessary for the site to comply with Zoning Ordinance standards. However, they instead chose to maintain two residences, when only one is allowed. As mentioned above, the applicant does have options to bring the site into

compliance which do not require a variance to be approved. It is simply the applicant's desire to maintain the property in its existing non-conforming configuration.

**RECOMMENDATION:** Staff recommends to the Board the following findings of fact for Denial:

- 1) Granting the variance will be contrary to the public interest in that because it will be contrary to the Zoning Ordinance requirement regarding the maximum allowable dwellings on a R-1, Single-Family Residential site;
- 2) Special conditions and hardships do not exist in such a way that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship, as the site can be brought into compliance without the need for a variance; 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 as there are no other properties with multiple residences in the area.

***Revised for the August 1<sup>st</sup> meeting:***

*This application was heldover from the July 11, 2022 meeting at the applicant's request, to alter the variance request. Instead of requesting for two (2) existing dwellings to remain on a single lot, the applicant has submitted a 2-lot subdivision application, to create a lot for each dwelling. The Subdivision application is scheduled to be heard by the Planning Commission at the August 18<sup>th</sup> meeting. Therefore, the applicant has amended the variance application to request a Setback Variance to allow reduced side yard setbacks for two dwellings in an R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum side yard setback of eight (8)-feet in an R-1, Single-Family Residential District.*

*The applicant states:*

*We are submitting a variance for 2 dwellings being located on one piece of property. The owner purchased the property in February of 2022 and the site existed in this condition with two dwellings at that time. He is now in the process of selling the property and has been made aware that this is a zoning issue. We are submitting a 2 lot subdivision to correct a zoning violation that our client inherited. As part of this request we are also submitting a variance request to allow a reduced setback as shown on the proposed plat/variance request. We have done our best to divide the property based on possession lines (fences) and existing structures. We would like to get a variance and 2 lot sub to allow the homes to remain in the current configuration so that the owner can move forward with the sell of the property.*

*Also, it should be noted based on comments from adjoining owner (written statement) in previous meeting that the height of the structures, is due to the fact the property is in a flood zone. Because of the topography the structures were built at a sufficient height necessary to meet Fema requirements.*

*As depicted, the proposed lot line would be approximately 2.1±-feet from each dwelling. There is sufficient room where the dwelling on the proposed Lot 10-A could be placed on the site with compliant setbacks, but the dwelling has existed in its current location for 13 years, making relocation of the structure not feasible.*

*Staff has reached out to Fire Department and Building Code officials, and have been advised that if the structures were to be either extensively remodeled or rebuilt, that fire rated walls would be required at such a time, due to the proximity of the dwellings to each other.*

*It should be noted that any approval by the Board for the reduced setbacks proposed as a result of the pending Subdivision application are contingent upon approval of the Subdivision by the Planning Commission.*

*The proposal by the applicant to create separate lots to accommodate the existing dwellings seems to be more in keeping with the character of the area, as every other property in the vicinity appears to only have one dwelling each.*

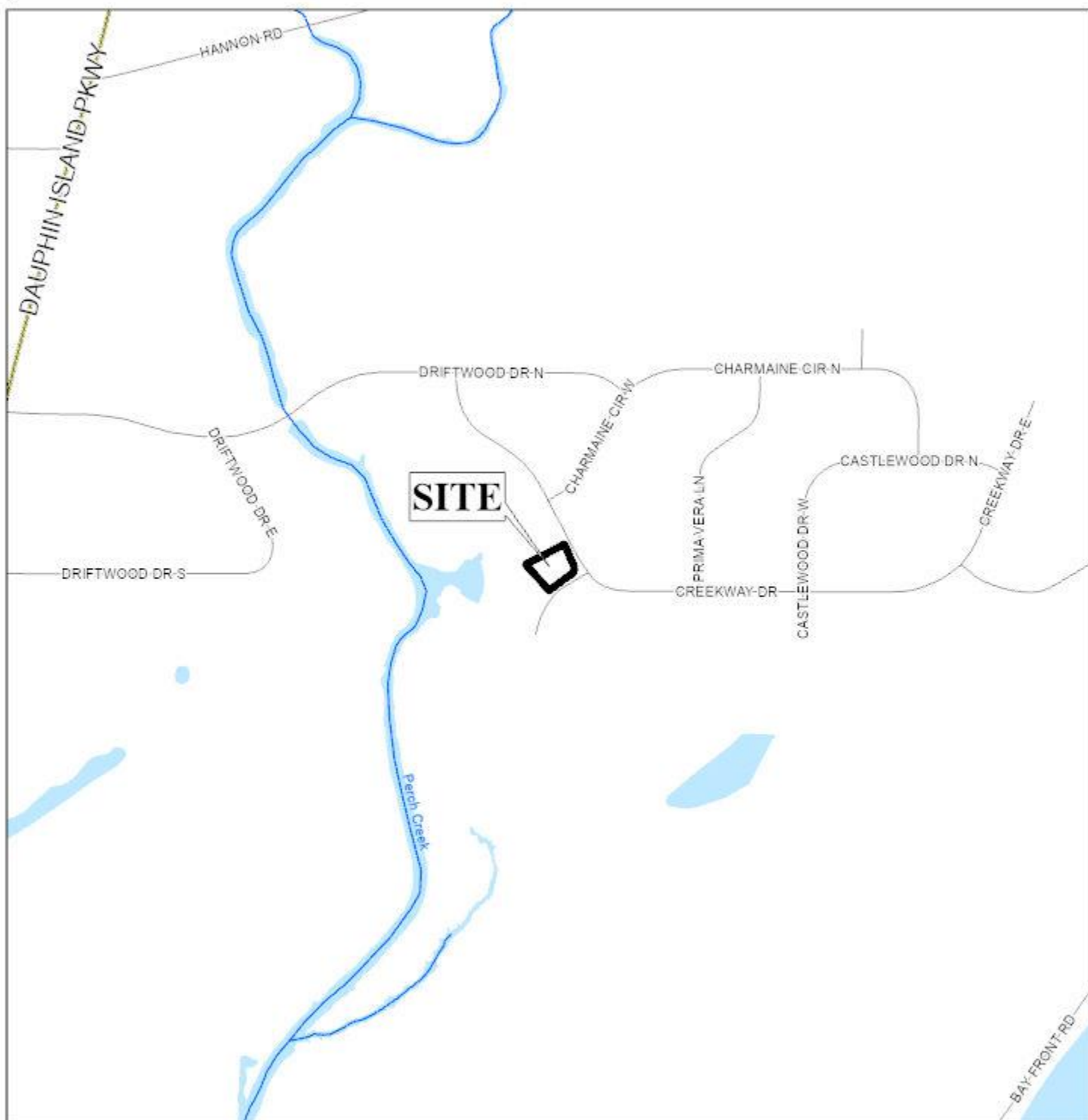
**RECOMMENDATION:**      *Staff recommends to the Board the following findings of fact for Approval:*

- 1) Granting the variance will not be contrary to the public interest in that it will bring the site into compliance with the Zoning Ordinance requirement regarding the maximum allowable dwellings on a R-1, Single-Family Residential site;*
- 2) Special conditions and hardships do exist in such a way that a literal enforcement of the provisions of the chapter may result in an unnecessary hardship, as the dwellings have existed in the current locations for at least 13 years with no complaints from neighbors; and*
- 3) The spirit of the chapter shall be observed and substantial justice shall be done to the surrounding neighborhood by granting the variance will help resolve a zoning violation created by previous property owners.*

*Approval of the request should be subject to the following conditions:*

- 1) Approval of the associated Subdivision by the Planning Commission; and*
- 2) Full compliance with all municipal codes and ordinances.*

# LOCATOR MAP



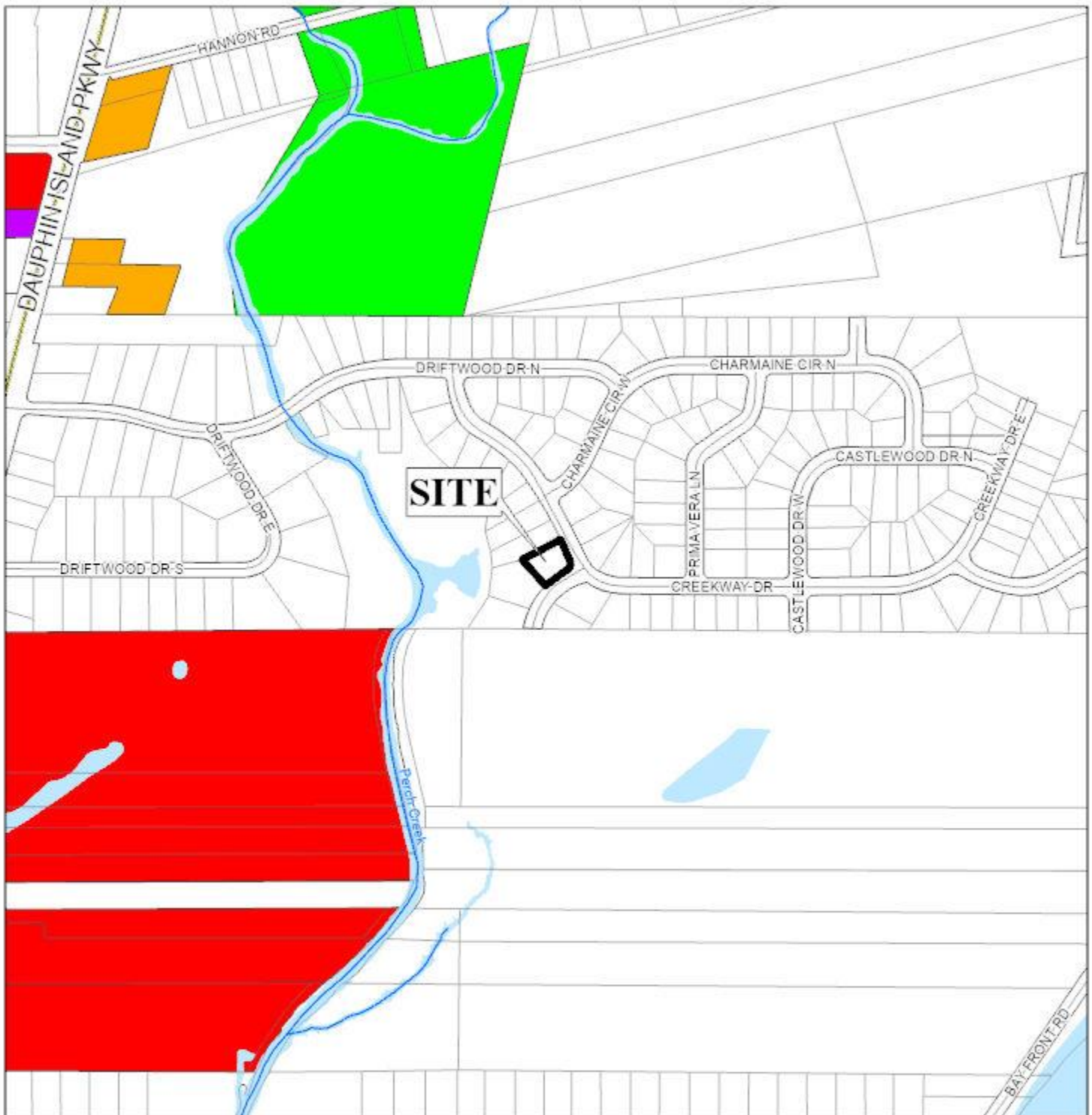
APPLICATION NUMBER 6467 DATE August 1, 2022

APPLICANT Jordan Kent Johns

REQUEST Setback Variance



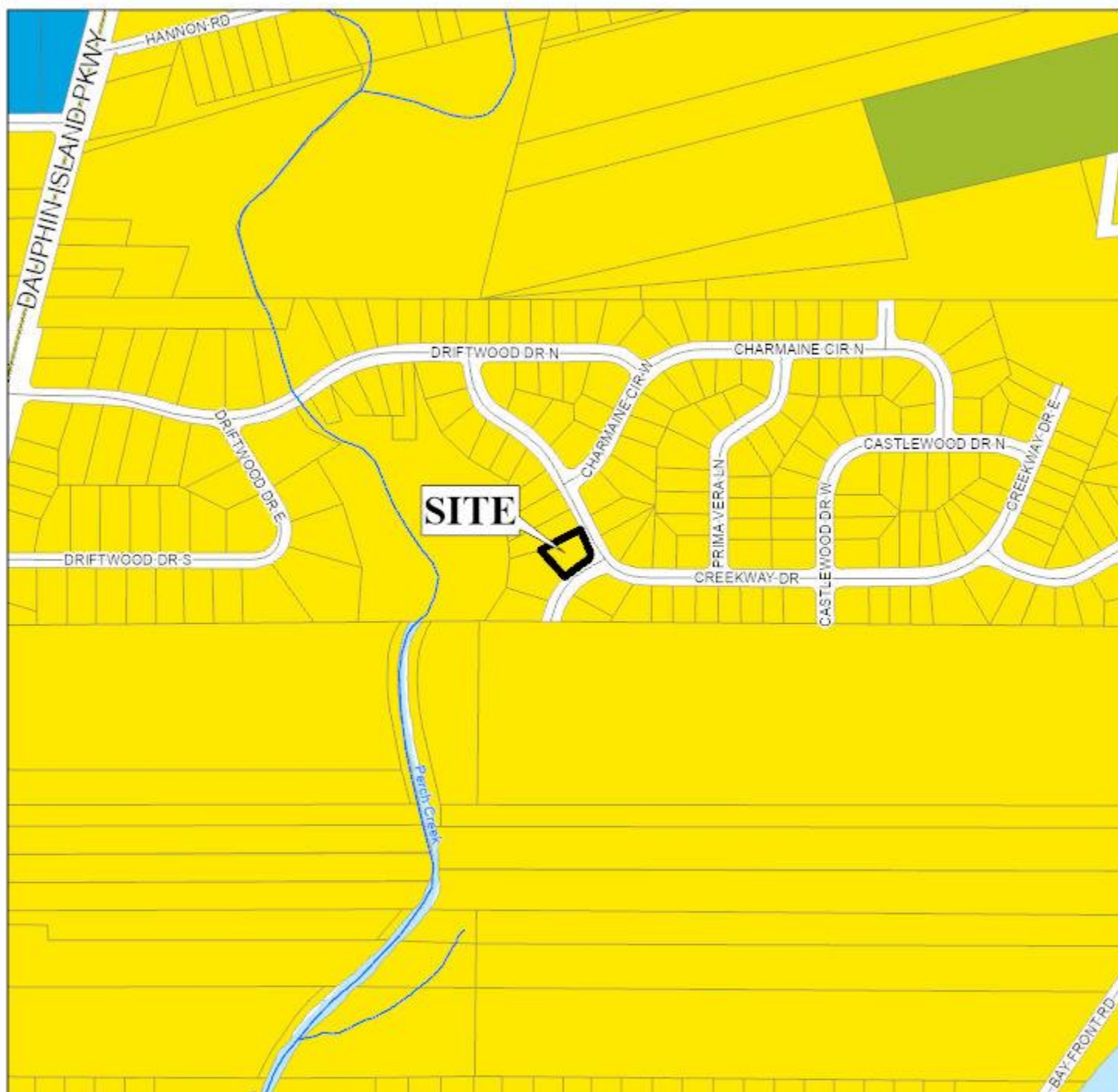
# LOCATOR ZONING MAP



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APPLICANT Jordan Kent Johns  
REQUEST Setback Variance



# FLUM LOCATOR MAP



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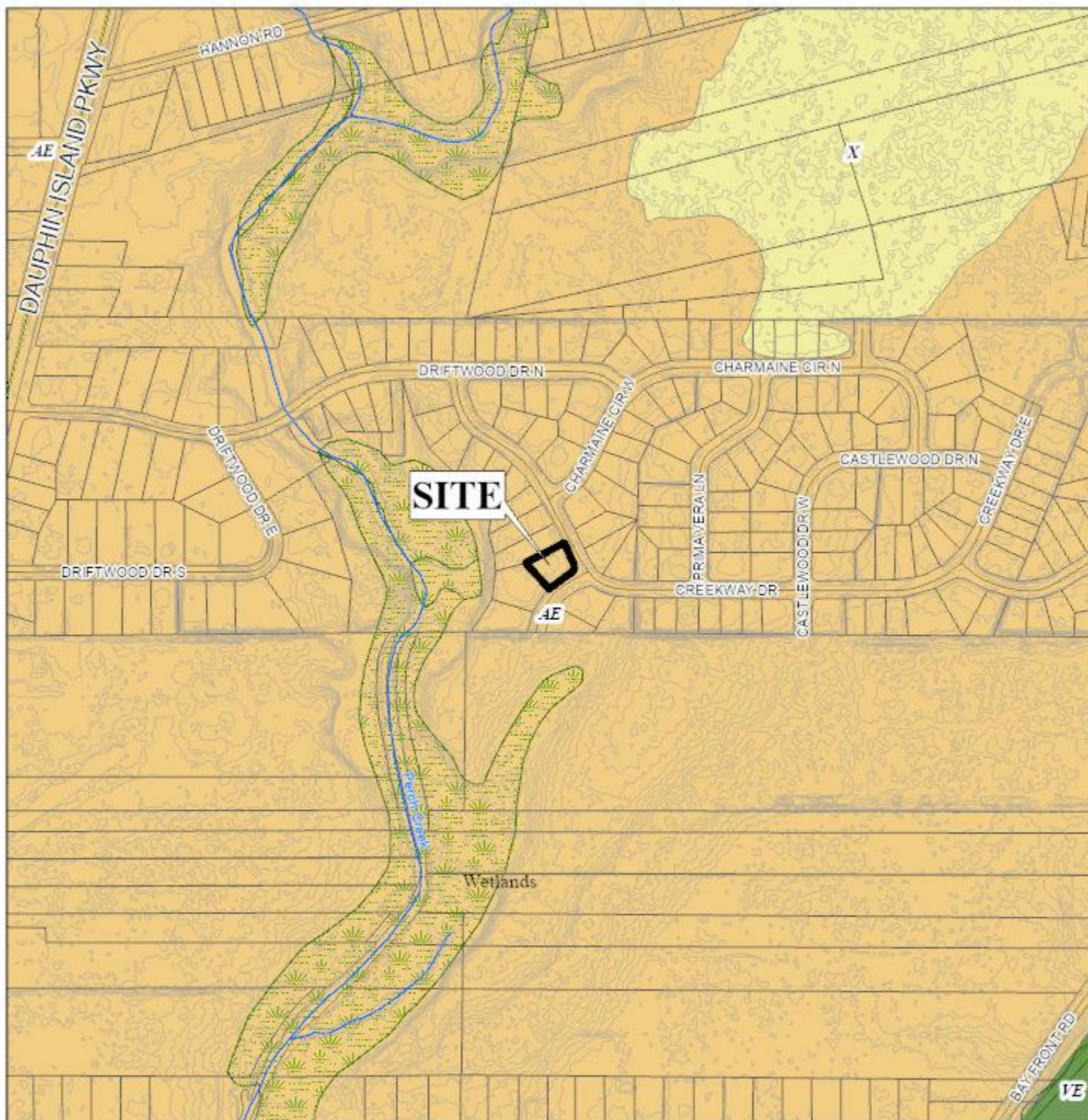
REQUEST Setback Variance

## Layer2

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



# ENVIRONMENTAL LOCATOR MAP



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APPLICANT Jordan Kent Johns

REQUEST Setback Variance



# BOARD OF ADJUSTMENT

## VICINITY MAP - EXISTING ZONING



This site is surrounded by residential units.

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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: 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: purple; 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: orange; 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: purple; border: 1px solid black;"></span> T4	<span style="display: inline-block; width: 15px; height: 15px; background-color: darkpurple; border: 1px solid black;"></span> T6



# BOARD OF ADJUSTMENT

## VICINITY MAP - EXISTING AERIAL

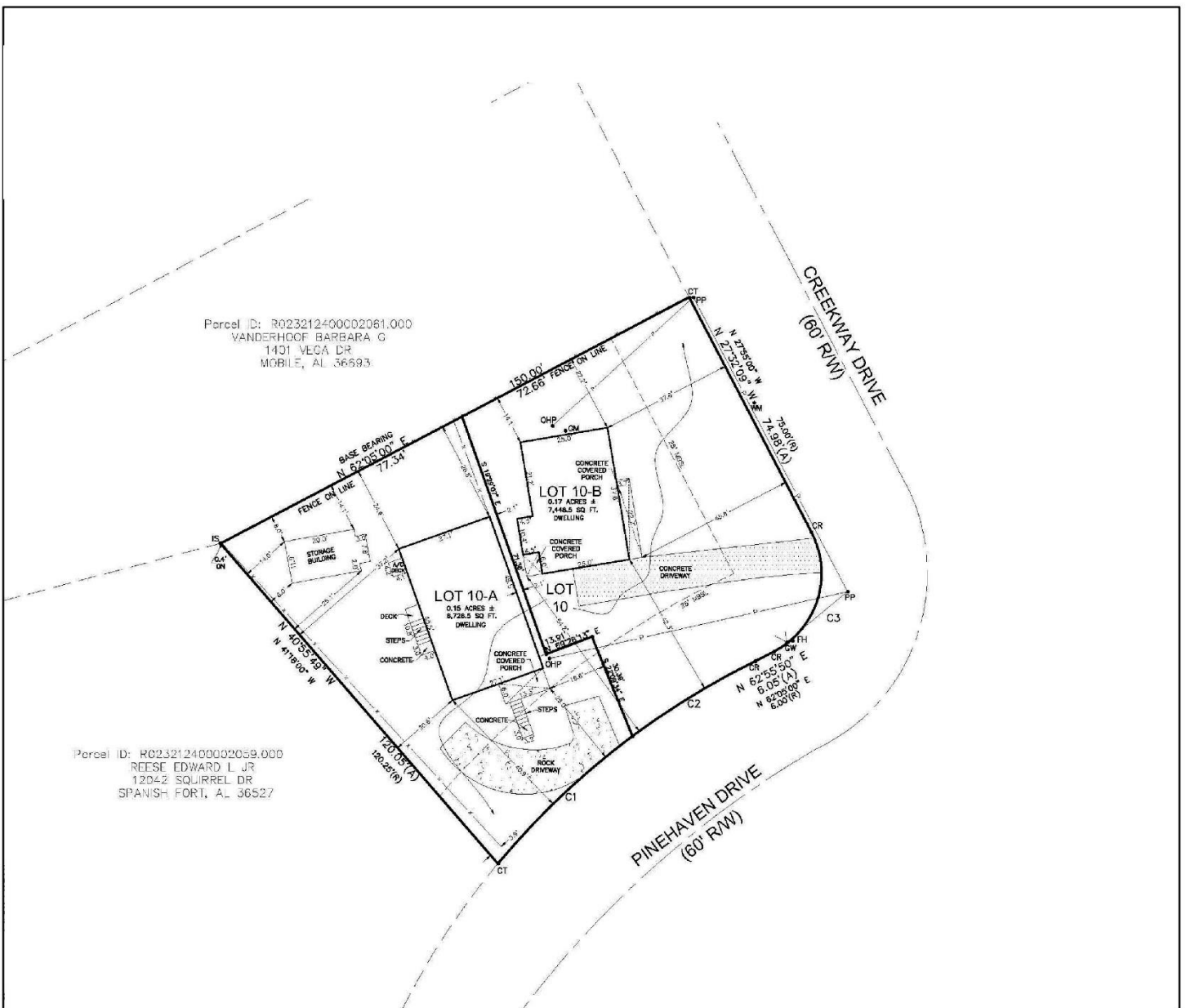


This site is surrounded by residential units.

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 APPLICANT Jordan Kent Johns  
 REQUEST Setback Variance



# SITE PLAN



This site plan illustrates the existing buildings.

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 REQUEST Setback Variance

