

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: December 4, 2017**

<u>CASE NUMBER</u>	6145
<u>APPLICANT NAME</u>	Chris and Ellen Alves
<u>LOCATION</u>	4670 Old Shell Road (Northeast corner of Marston Lane and Old Shell Road.)
<u>VARIANCE REQUEST</u>	FENCE: Fence Variance to allow an 8' privacy fence/wall to be constructed within the 25' front minimum building setback area in an R-1, Single-Family Residential District.
<u>ZONING ORDINANCE REQUIREMENT</u>	FENCE: The Zoning Ordinance prohibits any fence or wall to exceed a height of 3' within any required front yard setback in an R-1, Single-Family Residential District.
<u>ZONING</u>	R-1, Single-family Residential District
<u>AREA OF PROPERTY</u>	0.58 ± Acres
<u>ENGINEERING COMMENTS</u>	No comments.
<u>TRAFFIC ENGINEERING COMMENTS</u>	No comments.
<u>CITY COUNCIL DISTRICT</u>	District 7

ANALYSIS The applicant is requesting a Fence Variance to allow an 8' privacy fence/wall to be constructed within the 25' front minimum building setback area in an R-1, Single-Family Residential District; the Zoning Ordinance prohibits any fence or wall to exceed a height of 3' within any required front yard setback in an R-1, Single-Family Residential District.

It should be noted that, upon review of the provided site plan, the request is also for a Side Yard, Side Street Setback Variance to allow the proposed fence to exceed the maximum height requirements for structures within a side street, side yard setback.

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.

Variances are site-plan specific; therefore, if approved, any proposed changes to the site layout of the request at hand will require an application to the Board to amend the approved site plan prior to any construction activities.

The site has been given a **Low Density Residential** land use designation per the recently 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 Low Density Residential districts is residential development where 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 0 and 6 dwelling units per acre (du/ac.)

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, bike-able human scale.

Located at the Northeast corner of Old Shell Road and Marston Lane the subject site is subject, respectively, to a 25' minimum front yard building setback and a 20' minimum side street, side yard setback. The applicants propose the construction of an 8' masonry wall within each of these setbacks, citing traffic safety concerns along Old Shell Road, the proposed wall's consistency with the design of the neighborhood, and previous approval of a similar Variance at a neighboring property as justification for the request:

We are requesting a variance at our residence at 4670 Old Shell Road to construct a garden fence or privacy wall along our property line on Old Shell Road and along a portion of our property line on Marston Lane. The purpose of the proposed wall is to provide a safe environment for our children, currently 10 and 5 years old, and to provide protection and a residential atmosphere from the heavy traffic on Old Shell Road, as well as the added foot traffic associated with the new sidewalk recently installed along Old

Shell Road. A wall or fence is needed along our property line on Old Shell Road to provide a play and recreational yard area for our family and to provide safety from the heavy fast traffic on Old Shell Road. Our property is located at the northeast corner of the intersection of Old Shell Road and Marston Lane. Along Old Shell Road immediately to the east of, and contiguous to, our property, there currently exists a 12' masonry wall which was constructed by our neighbors who reside on Taylor Place. This existing wall extends eastwardly along Old Shell Road for approximately 545' to the corner of Oakland Avenue and Old Shell Road. The portion of our proposed wall along Old Shell Road would essentially be a 151' extension of the existing wall, although it will step down to an 8' height. The design and construction of material for our wall would be equal to the existing wall. We believe that our proposed wall is consistent with other neighboring homes along Old Shell Road and Marston Lane, as well as the broader surrounding neighborhood in this area of Spring Hill. We anticipate a timeline for construction to start within the next three months and approximately sixty days for actual construction of the wall. We have attached to our application a cross section drawing of the wall and a plat of our residential lot and the location of the proposed wall and gates. The construction of the wall will be of materials and appearance equal to the existing 12' wall to the east, but the height of our wall will be 8'. We believe that this will present a visually pleasing and aesthetic appearance along Old Shell Road and a short distance on Marston Lane.

We have attached to our application a cross section drawing of the wall and a plat our residential lot and the location of the proposed wall and gates. The construction of the wall will be of materials and appearance equal to the existing 12' wall to the east, but the height of our wall will be 8'. At our location on Old Shell Road, there exists a green space, a new wide sidewalk and another green space between our property line and the street itself. Accordingly, construction of our proposed wall along our property line will not affect the walkability of this section of Old Shell Road and will also leave a space for landscaping. The existing 12' wall to the east in fact abuts the sidewalk without any green space between the wall the sidewalk. Using the current setback in the zoning code to construct the wall would push the wall well into the interior of our site and would severely restrict our family's use of our yard space. It would also cause a large section of our property to be isolated from the rest of our property. The requested variance will avoid these negatives.

In the immediate area of our property, Old Shell Road is a straight roadway, and our proposed wall will therefore not affect or restrict the roadway sight distance. As shown on our submitted plat and photographs our property, the corner area at the intersection of Old Shell Road and Marston Lane is occupied by an old large live oak tree, a palm tree and various other plants. Our proposed wall will be located behind those plants and equal 35' distance on each side from the point of the intersection. Marston Lane is a very short street and is virtually one lane, and it experiences very little traffic. Most vehicles wanting to access Shell Road from our area use the path of Oakland Avenue to Ridgelawn Drive E and then to the stop light at Ridgelawn and Old Shell. Accordingly, we do not believe that our wall will have any significant visibility impact at the intersection of Old Shell Road and Marston Lane. Finally, we believe the tradition of

walls and fences along the right of way lines is well established within this area of Spring Hill. In addition to the existing 12' wall to the east of us, we refer you to ZON2014-00523 for 51 Oakland Avenue from April 2014 and the attached photographs of similar wall in our neighborhood. We believe that the Board's findings in ZON2014-00523 supporting that approved variance and the numerous other walls in our area apply directly to our property. We respectfully request your approval of the zoning variance to allow us to construct the wall in a manner allowing our family to fully enjoy our yard and establish a sense of privacy and safety.

The site plan provided by the applicants indicates the proposed 8' masonry wall would be constructed along Old Shell Road 125'± before extending diagonally to Marston Lane, along which the wall would continue for an additional 48'± before arcing toward, and terminating at, an existing single-family residence. Two wooden gates would provide access to the property: one from Marston Lane and the other from an existing driveway.

Section 64-4.D.6.a. of the Zoning Ordinance iterates that *"No fence or wall that obstructs sight shall be erected or altered in any required front yard to exceed a height of three (3) feet, and no fence or wall shall be erected or altered in any required side or rear yard to exceed a height of eight (8) feet. On a corner building site not having to its rear a building site facing toward the intersecting or side street, no fence or wall that obstructs sight shall be erected in the required side yard to exceed a height of three (3) feet."*

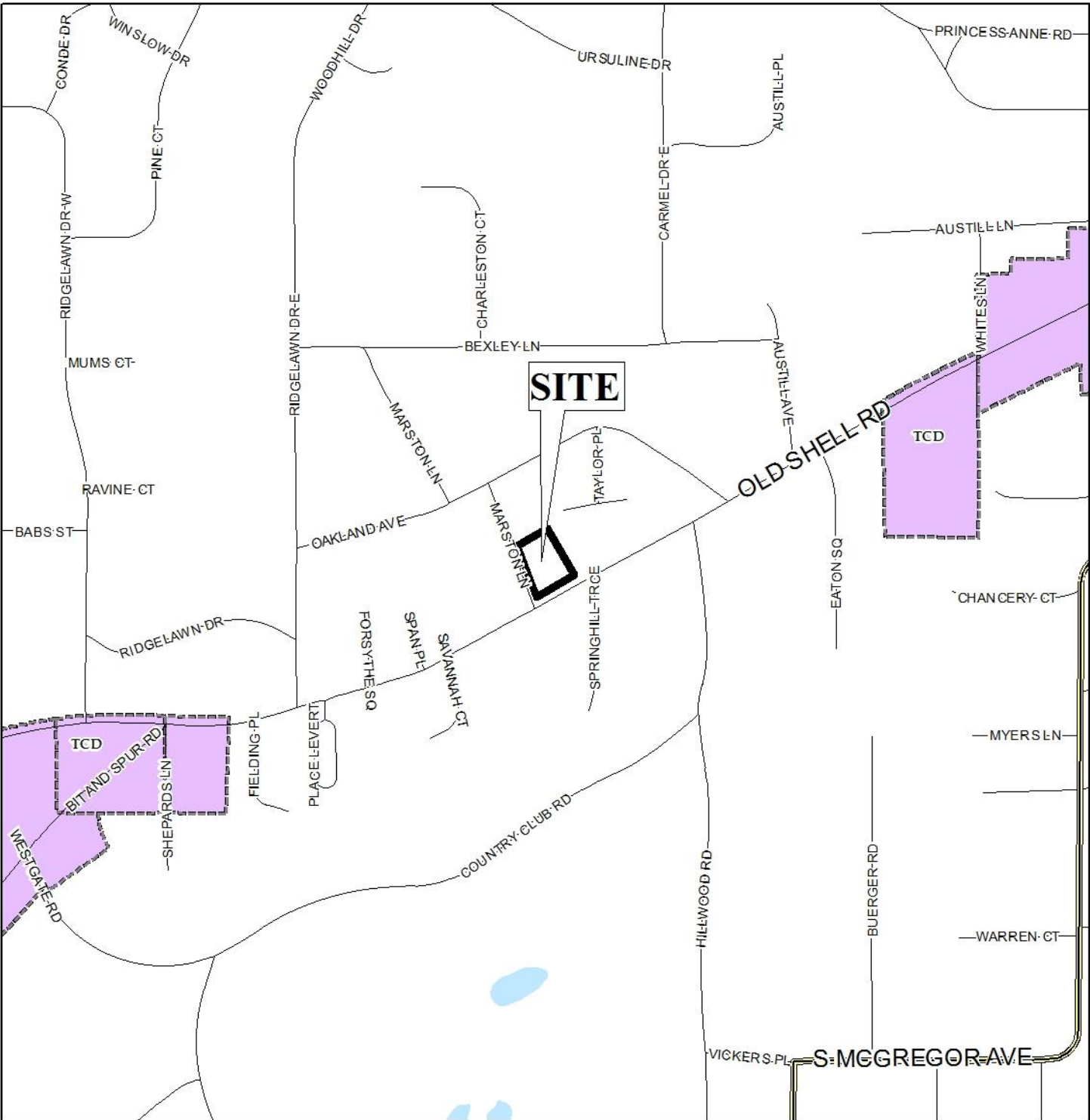
As the applicants mention, masonry walls similar to the one proposed are increasingly typical within the vicinity of the subject site, whether in violation of the Zoning Ordinance, by non-conforming history of the neighborhood, by Planned Unit Development, or by Board of Zoning Adjustment approval. At least five (5) properties within 2,500'± of the subject site have been approved by the Board for similar Variance requests within the last 15 years, perhaps facilitating approval of this request; however, the applicant has not clearly identified any hardships for this site or presented sufficient evidence to justify the Variance request as required in Section 64-8.B.6.f.(3).(d). of the Zoning Ordinance. While admirable, maintaining the character of the surrounding neighborhood is not in fact a hardship with which the applicants could justify relief from the requirements of the Zoning Ordinance. Traffic safety may be an exception, but no evidence was presented to support that the proposed masonry wall would indeed provide adequate safety from traffic along Old Shell Road; or, that a masonry wall in compliance with the afore-referenced height requirements would *not* provide adequate safety. As such, it would seem that the applicants simply prefer not to comply with the Zoning Ordinance.

While the Board has approved similar Variance requests within the vicinity of the subject site, few, if any, findings of fact emphasized hardships associated with the properties; rather, approvals were based prominently on privacy, neighborhood design and precedence. Whereas justification for approving the Variance request at hand might be derived from these interpretations of the Zoning Ordinance, it should be reiterated that Variances are not intended to be granted frequently. Approving the Variance request would be contrary to Section 64-4.D.6. of the Zoning Ordinance and may very well establish not just a design precedence within the neighborhood, but a precedence with which the approval of future, less desirable Variances could also be facilitated if no special conditions or hardships to an individual property exist.

RECOMMENDATION: Based upon the preceding, 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 it is contrary to Section 64-4.D.6.a. of the Zoning Ordinance regarding fence height and location within an R-1, Single-Family Residential zoning district;
- 2) The applicant has not clearly presented any special conditions as required in Section 64-8.B.6.f.(3).(d). of the Zoning Ordinance, such as a hardship to the property, and it does not appear 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 surrounding neighborhood by granting the variance because it may establish an unwanted precedence of permissiveness within the neighborhood.

LOCATOR MAP



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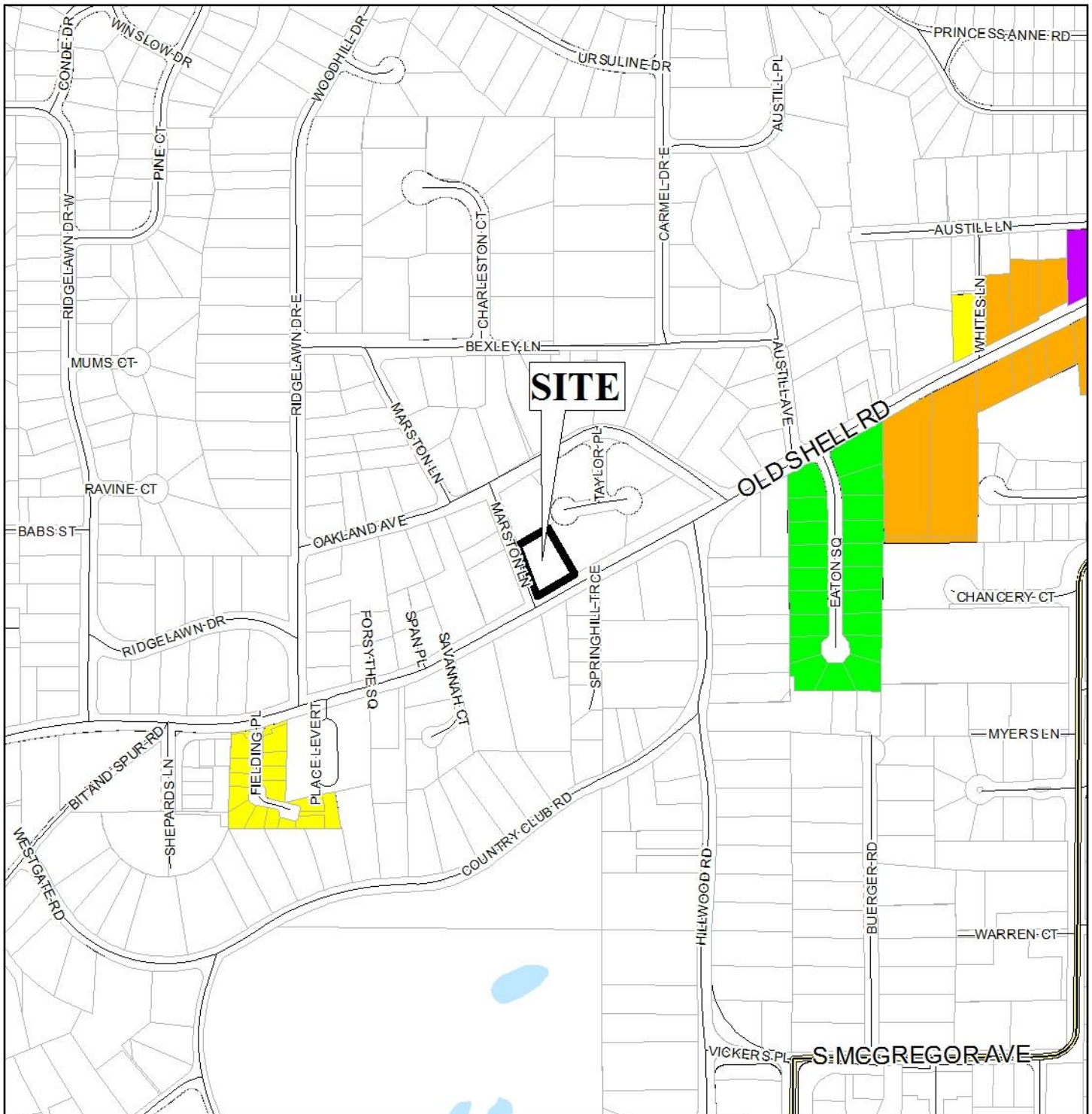
APPLICANT Chris and Ellen Alves

REQUEST _____ Fence Variance



NTS

LOCATOR ZONING MAP



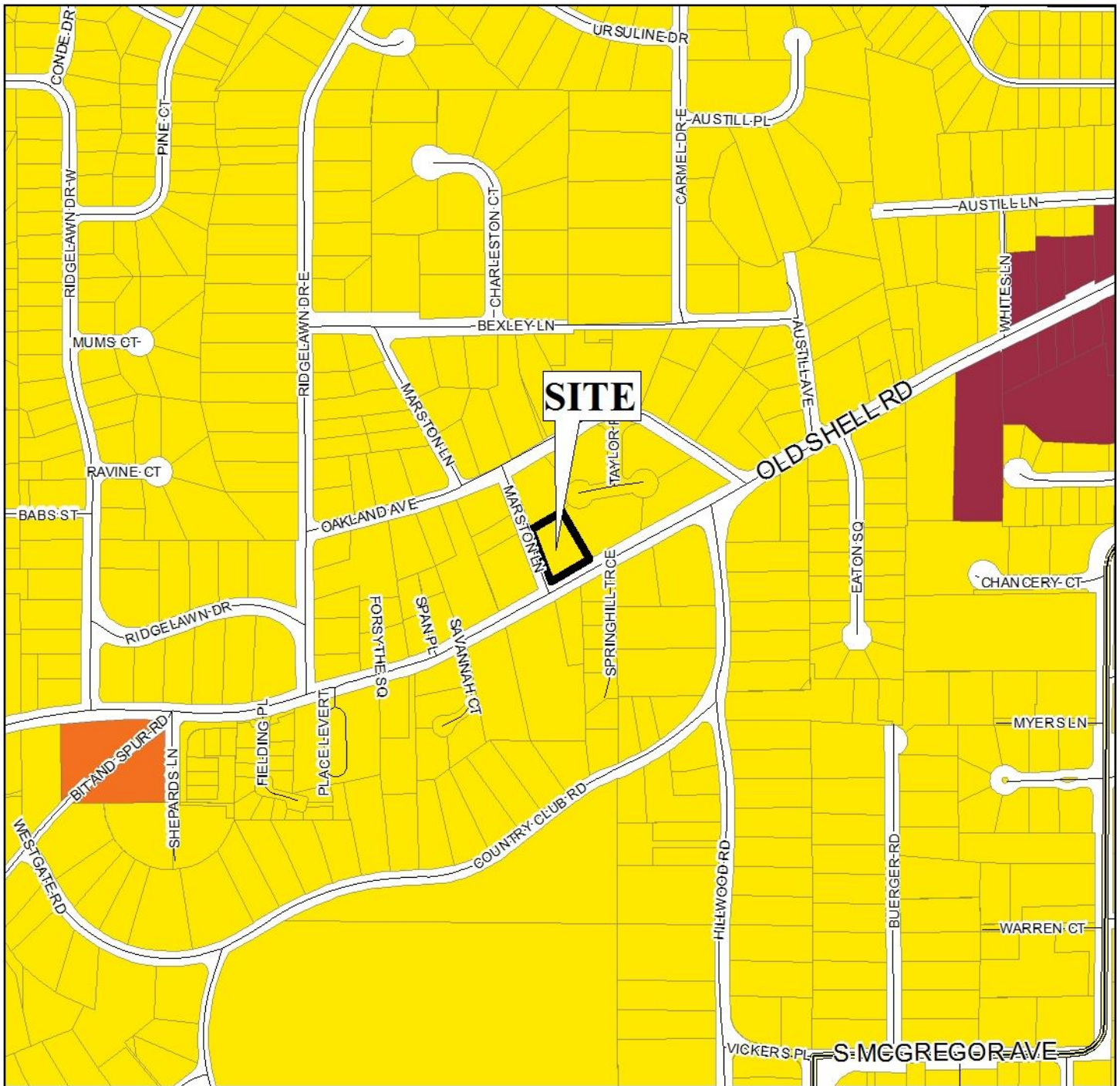
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REQUEST Fence Variance



FLUM LOCATOR MAP



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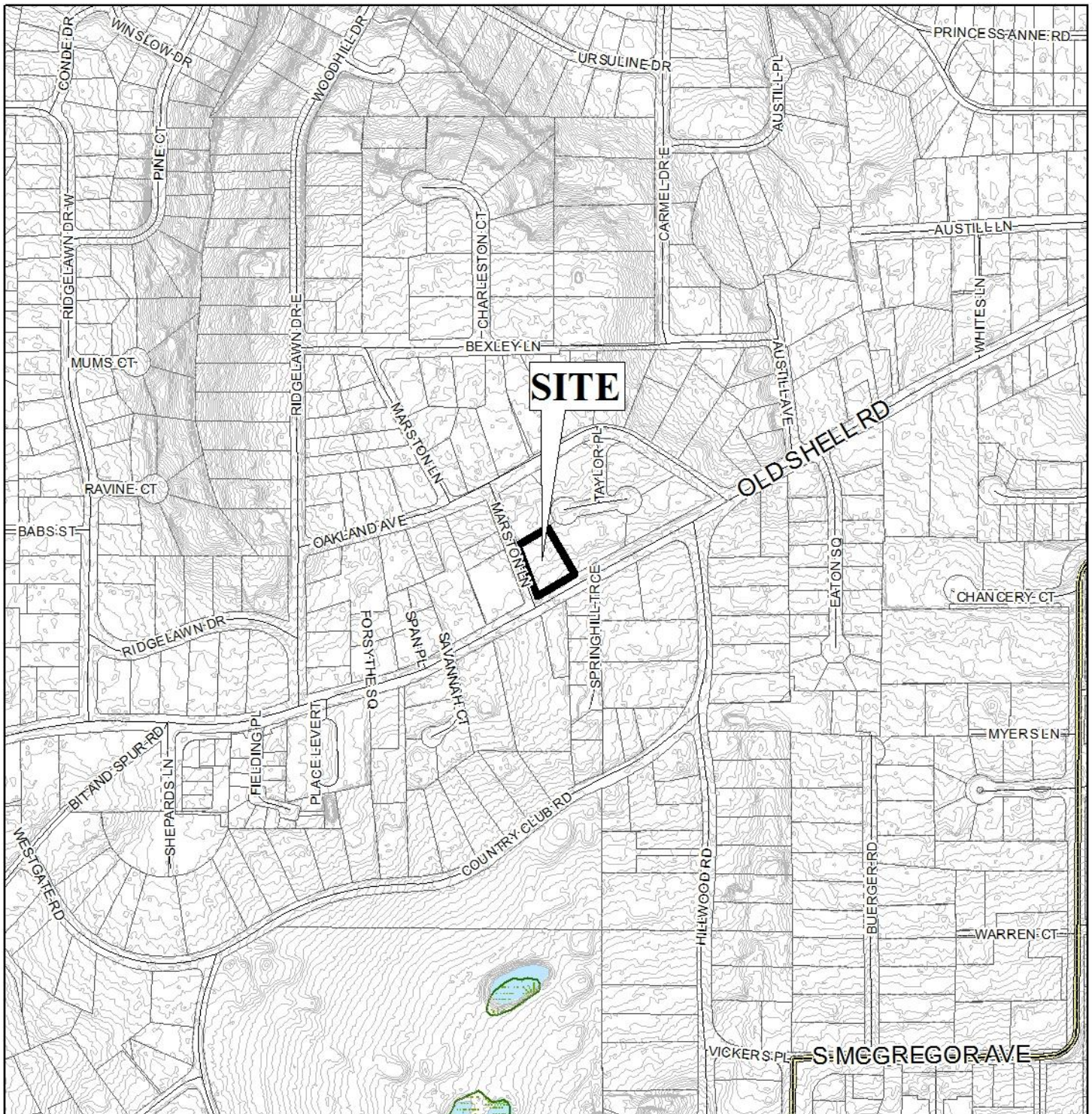
APPLICANT Chris and Ellen Alves

REQUEST Fence 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



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BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units.

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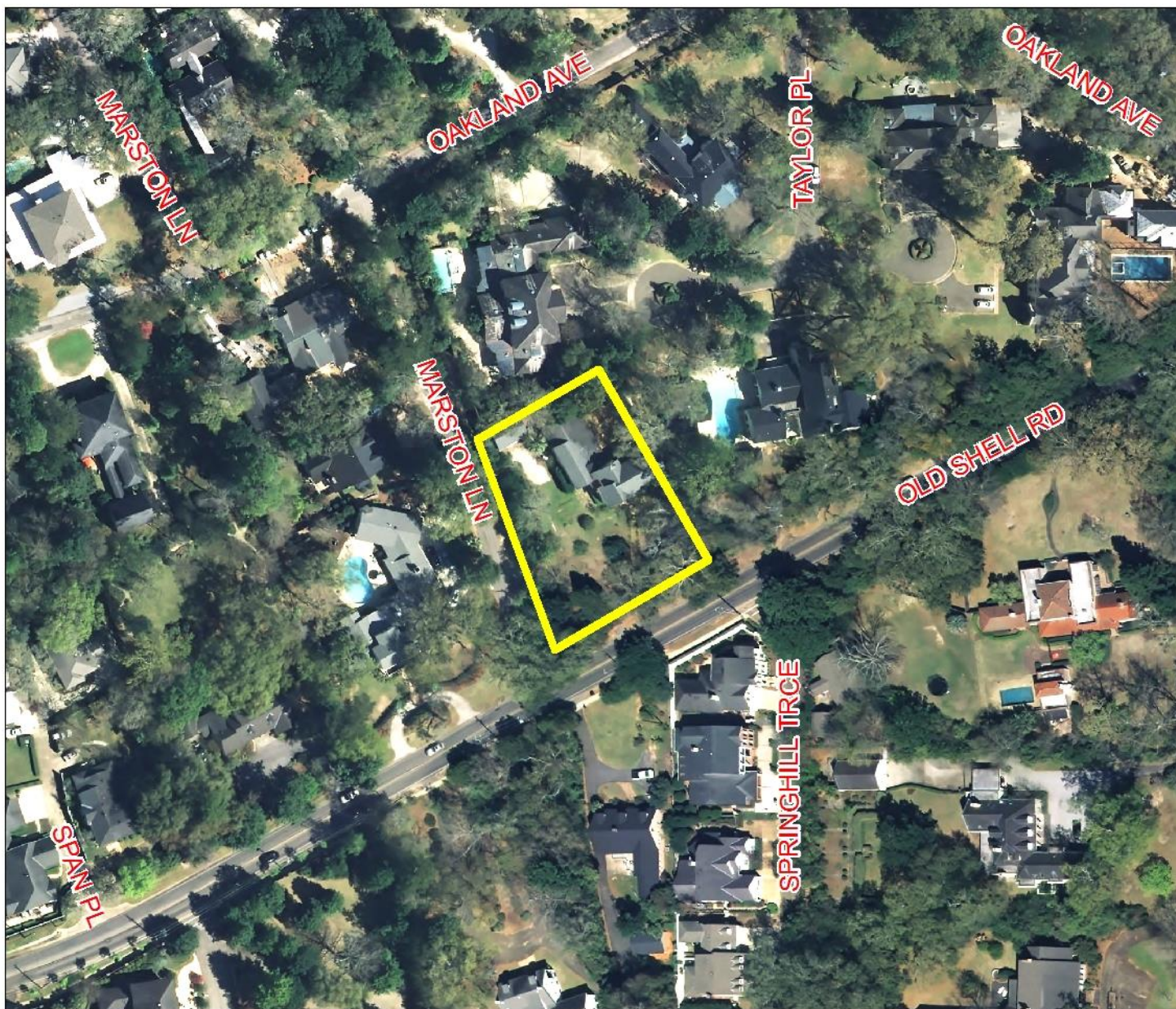
REQUEST Fence Variance

 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.

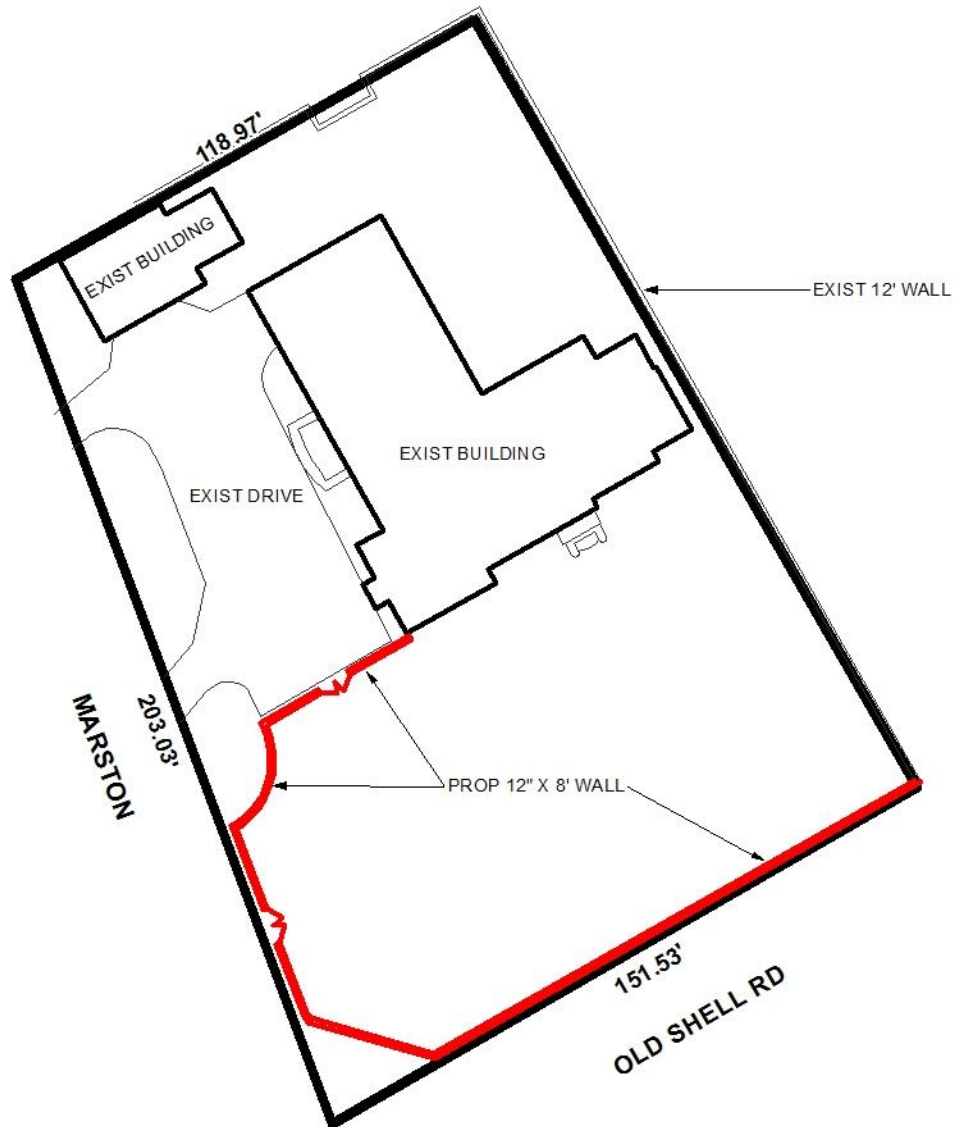
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REQUEST Fence Variance



SITE PLAN



The site plan illustrates the existing buildings, existing drive, existing walls, and proposed walls.

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