

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT**

Date: February 5, 2018

CASE NUMBER 6156

APPLICANT NAME Daniel Buckley

LOCATION 3535 Spring Hill Avenue
(South side of Spring Hill Avenue, extending to the West terminus of Irene Street).

VARIANCE REQUEST **SIDE STREET SIDE YARD:** Side Street Side Yard Setback Variance to allow a 12’ reduced Side Street Side Yard setback in an R-1, Single-Family Residential District.

ZONING ORDINANCE REQUIREMENT **SIDE STREET SIDE YARD:** The Zoning Ordinance requires a 20’ Side Street Side Yard setback in an R-1, Single-Family Residential District.

ZONING R-1, Single-family Residential District

AREA OF PROPERTY 1.3± Acres

ENGINEERING COMMENTS A comment on the 12-21-2017 Planning Commission subdivision required that the applicant provide a City Engineer approved drainage easement along the west property line and the existing ditch. Additional width may be required to allow vehicular and equipment access.

TRAFFIC ENGINEERING COMMENTS No comments.

CITY COUNCIL DISTRICT District 7

ANALYSIS The applicant is requesting a Side Street Side Yard Setback Variance to allow a 12’ reduced Side Street Side Yard setback in an R-1, Single-Family Residential District; the Zoning Ordinance requires a 20’ Side Street Side Yard setback in an R-1, Single-Family Residential District.

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.

Variations 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.

Variations 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.

The site was the subject of Subdivision Approval at the December 21, 2017 meeting of the Planning Commission combining two (2) metes-and-bounds parcels into one (1) legal lot, a condition of which was approval from the Board of Zoning Adjustment for a reduced 12' minimum building setback line along the unopened right-of-way of Dogwood Lane should the applicant not wish to retain the 25' minimum building setback line required by the Subdivision Regulations. The site plan does not illustrate any site improvements, but the proposed 12' minimum building setback line along the unopened right-of-way is depicted along the West property line, hence the application at hand. The applicant references the unopened status of the right-of-way of Dogwood Lane, the city's use of the right-of-way for drainage, and a lack of precedence requiring the 25' minimum building setback for neighboring properties abutting the right-of-way as justification for the request:

THERE IS A 33' RIGHT OF WAY ADJOINING THE WEST LINE OF THIS PROPOSED SUBDIVISION AND THE RIGHT OF WAY HAS NEVER BEEN OPENED OR USED AS

A ROADWAY. THE CITY IS USING THE RIGHT OF WAY AS A DRAINAGE EASEMENT AS EVIDENCED BY THE CONCRETE DITCH THAT IS CURRENTLY IN EXISTENCE.

THERE IS A SUBDIVISION ON THE WEST SIDE OF THE 33' RIGHT OF WAY AND WHEN IT WAS APPROVED AND RECORDED THERE WAS NOT A REQUIREMENT FOR DEDICATION OF ADDITIONAL RIGHT OF WAY NOR A REQUIREMENT FOR A 25' MINIMUM SETBACK.

THEREFORE, SINCE THERE IS A PRECEDENCE ESTABLISHED FOR NOT CONSIDERING THIS LAND AS A "CITY STREET," WE ARE REQUESTING THAT THE BUILDING SETBACK ALONG OUR WEST LINE BE A MINIMUM OF 12'.

Section 64-3.C.1.e. states that the minimum dimensions of yards in R-1, Single-Family Residential Districts, shall be: 25' for the front yard; 8' for the side yards, the sums of which shall be at least 20'; and, 8' for the rear yard.

Section 64-4.D.3. provides an exception to side yards for corner building sites, stating that *"In any district a corner building site having to its rear a building site facing toward the intersecting or side street shall have provided on the intersecting or side street side of the corner building site a yard having a width equal at least the depth of the front yard required for a structure on the building site to the rear of the corner building site; provided, however, that this regulation shall not be applied to reduce the buildable width of the corner building site to less than thirty (30) feet nor require a side yard of more than twenty (20) feet"*; the exception being the 25' minimum building setback line along all frontages required by the Subdivision Regulations, for which a waiver has been provided on the condition of approval of the Variance request.

The city's use of the right-of-way for drainage is perhaps evidenced by the concrete drainage ditch referenced by the applicant. Additionally, Staff confirms that neither dedication nor a setback greater than 8' along the unopened right-of-way for previous building sites was required by the Planning Commission; however, access to the right-of-way was denied when the adjacent Subdivision was approved in 1992. The applicant is not proposing access to the right-of-way, thus should not be a concern for either the Board of Zoning Adjustment or the Planning Commission.

The site plan provided by the applicant does not illustrate any site improvements, but recent Land Disturbance and Building permit reviews indicate that the request at hand is to accommodate the proposed garage with a second floor dwelling. The reduced setback is not justified in this regard as a result of the size of the approved 1-Lot Subdivision, which provides sufficient room to comply with the applicable setback requirements. Nevertheless, not requiring lots abutting the Dogwood Lane right-of-way to maintain the 25' minimum building setback may facilitate approval of the permit requests. Additionally, the City currently has no plans on improving the right-of-way other than for drainage and, as such, may also facilitate approval of the request.

Regarding Engineering comments, Subdivision of the subject site requires a drainage easement along the West property line, which may require additional width to allow vehicular and

equipment access. Such configuration of the easement may affect the approval of this request and, as such, a note should be placed on the site plan stating no structures shall be constructed in any easement, if approved.

If right-of-way dedication would have been required, 8.5 feet would have been the minimum dedication, from which a setback of 12 to 25 feet would have been required. Given the Engineering comments, the applicant may wish to consider a 20' setback instead of the requested 12' setback.

It should be noted that completion of the Subdivision process, through which the aforementioned easement shall be recorded, should be completed prior to any requests for Land Disturbance or Building permits.

Demolition of the existing structures is required for the construction of the proposed single-family dwelling and garage with a second floor dwelling. As such, demolition permits should be obtained prior to the demolition of any structures on the property.

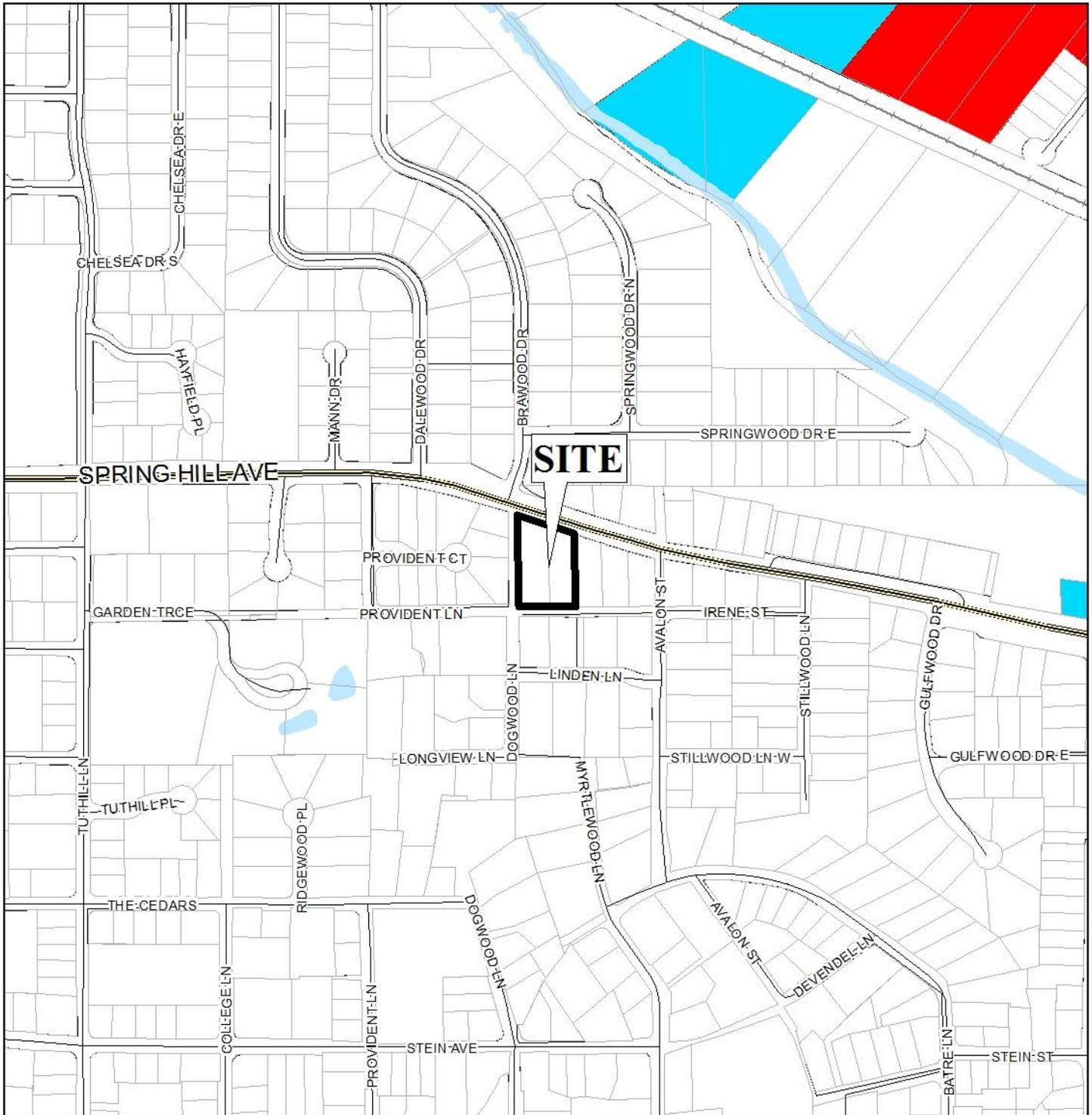
The applicant should be aware that the subject site is zoned R-1, Single-Family Residential District and only one (1) single-family dwelling is permitted by right on the property. As such, the approval of any Land Disturbance or Building permits requires compliance with all applicable Codes and Ordinances, or approval of a Variance from the Board of Zoning Adjustment to allow an additional dwelling on the site with regards to the proposed garage.

The applicant has not identified a hardship for this site or provided sufficient evidence to justify the Variance request as required by Section 64-8.B.6.f.(3).(d). of the Zoning Ordinance. With no precedence for requiring an increased setback along the unopened right-of-way, the exception being Section V.D.9. of the Subdivision Regulations for which the Planning Commission made conditions to facilitate the request at hand, approval of the request may be appropriate. However, since the adjacent Subdivision was approved in 1992 there has been additional development upstream of the drainage facility within the right-of-way. Encouraging a reduced setback next to a drainage facility that may not be adequately sized to accommodate upstream runoff may be ill-advised.

RECOMMENDATION: Based upon the preceding, Staff recommends to the Board the following findings of fact for Denial of the Side Street Side Yard Setback Variance:

- 1) Granting the variance will be contrary to the public interest in that it is contrary to Section 64-4.D.3. of the Zoning Ordinance regarding minimum yard dimensions for a corner lot in an R-1, Single-Family Residential zoning district;
- 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, especially when there is ample room on the lot on which the proposed structures could meet the setback requirements of 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 since encroaching on the Side Street Side Yard Setback would represent a self-imposed hardship.

LOCATOR ZONING MAP



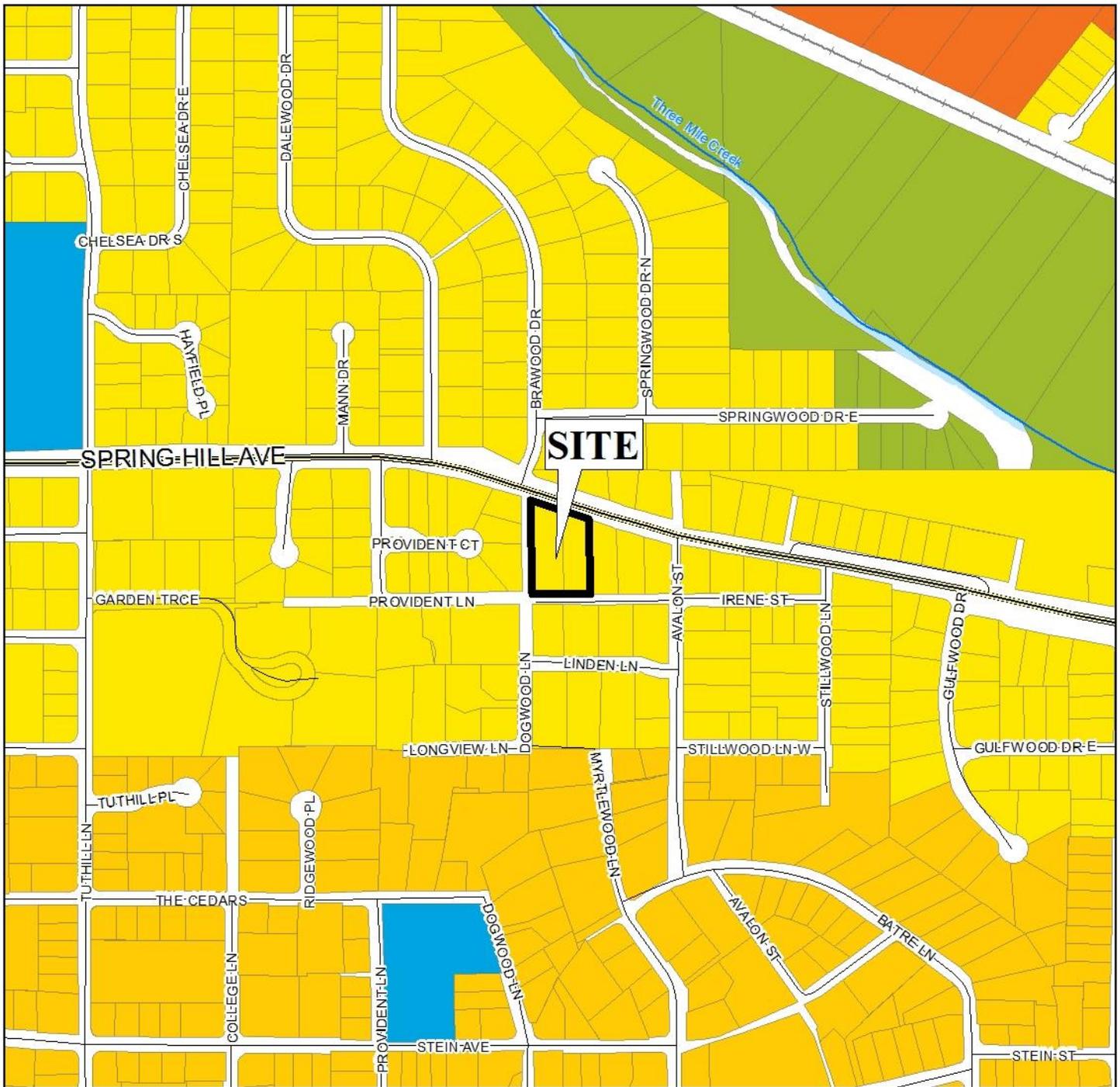
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REQUEST Side Street Side Yard Variance



FLUM LOCATOR MAP



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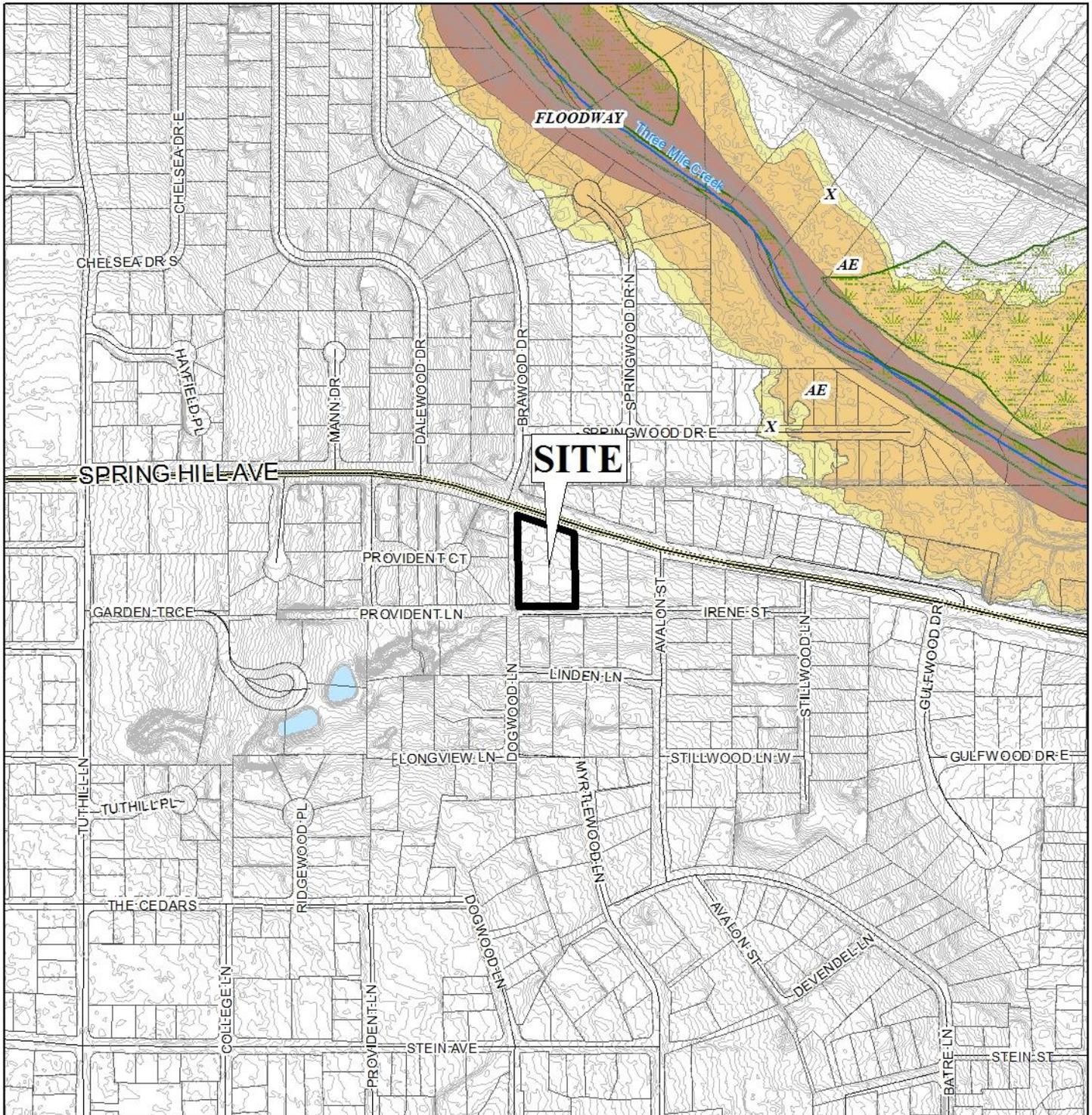
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| Low Density Residential | Neighborhood Center - Traditional | Downtown Waterfront | Parks & Open Space |
| Mixed Density Residential | Neighborhood Center - Suburban | Light Industry | Water Dependent |
| Downtown | Traditional Corridor | Heavy Industry | |
| 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 single family residential units.

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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



The site is surrounded by single family residential units.

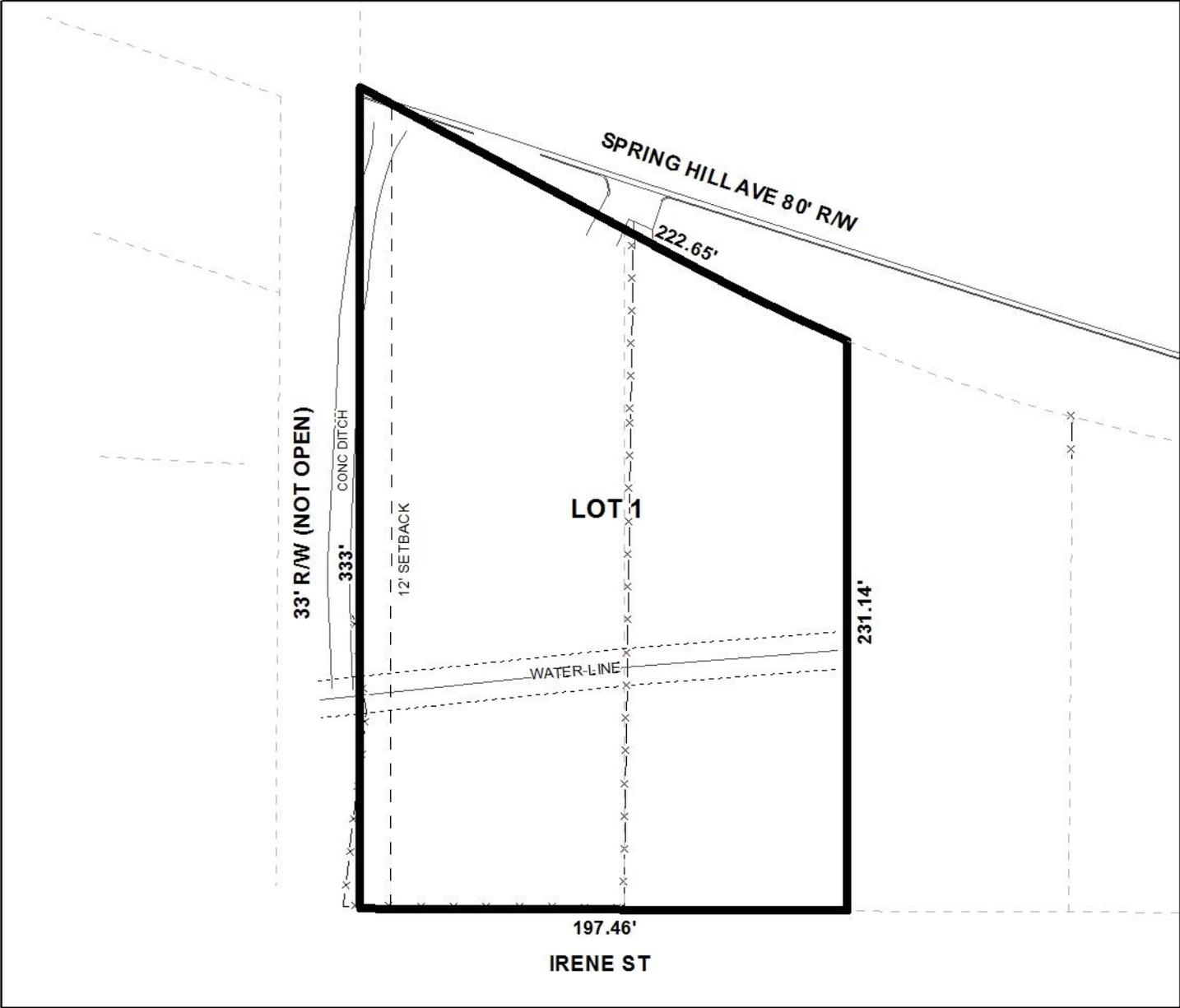
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SITE PLAN



The site plan illustrates the proposed setback, ditch, and fences.

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