

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT**

Date: June 1, 2020

CASE NUMBER

6326

APPLICANT NAME

Facethia Hogue

LOCATION

2012 Jones Avenue
(North side of Jones Avenue, 215'± East of Wellworth Street).

VARIANCE REQUEST

USE: Use Variance to allow up to 10 children with a non-resident employee in a daycare in an R-1, Single-Family Residential District.

**ZONING ORDINANCE
REQUIREMENT**

USE: The Zoning Ordinance does not allow more than 6 children in a home daycare in an R-1, Single-Family Residential District, and requires all employees to live at the address.

ZONING

R-1, Single-Family Residential District

AREA OF PROPERTY

12,000± square feet / 0.3±Acres

**CITY COUNCIL
DISTRICT**

District 1

**ENGINEERING
COMMENTS**

No comment.

**TRAFFIC ENGINEERING
COMMENTS**

Traffic Engineering has not received any complaints regarding the traffic to and from the home with the existing number of children. Considering the likelihood of more than five guest vehicles arriving simultaneously to pick-up or drop-off and the length of time it takes, a future problem with traffic is not anticipated at this location.

**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 (State Act 2015-116 and City Code Chapters 57 and 64). Private removal of trees in the right-of-way will require approval of the Mobile Tree Commission. Removal of heritage trees from a commercial site 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).

ANALYSIS

The applicant is requesting a Use Variance to allow up to 10 children with a non-resident employee in a daycare in an R-1, Single-Family Residential District; the Zoning Ordinance does not allow more than 6 children in a home daycare in an R-1, Single-Family Residential District, and requires all employees to live at the address.

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

This 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, 2- to 4-residential unit buildings, accessory dwellings, and low- and mid-rise multifamily apartment buildings. The density varies between 6 and 10 du/ac, depending on the mix, types, and locations of the housing as specified by zoning.

Like Low Density Residential (LDR) areas, MxDR 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.

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.

The applicant states:

Dear Planning and Zoning Board:

I am the owner and operator of Penny's Playhouse & Early Head Start, a licensed and accredited home day care program located at 2012 Jones Avenue. I have been licensed by the Alabama Department of Human Resources to offer childcare for families when I moved here in 2006. I have provided high quality day care at my current resident for over 13 years and for 17 years at another resident in the Toulminville Community before moving to my current address.

I am currently licensed for 5 children in my home daycare and I would like to propose an increase to that number to 10 children. The only way that I can increase the number of children from 5 to 10 is that the City of Mobile Zoning Department grant me a Use Variance. I have searched the City of Mobile website for an Ordinance for a large home day care in a residential area and I was unsuccessful. Although I was unable to find an ordinance for a large home day care in a residential area, I did discover that in 1992, 1993 and 1997 Rev. H.P. Williams and his wife Annie B. Williams were issued an approval to increase their number of children in their home day care from 6 to 12 children (see attachment).

I currently use 2 large rooms (floor area of 528 sq. ft) near the front door of my home for daily activities and the play area for the children. The combined space of the 2 rooms exceeds the required space of 32 sq. ft pre child according to the State of Alabama licensing. If I am approved for 10 children, I will have more than enough space per child.

The property cannot be used in compliance with the Zoning Ordinance because there is not an Ordinance in place for a large home daycare. My property is unique in the neighborhood because my home day care provides childcare services in a residential community so that parents can work and/or attend school. The parents believe that their child(ren) will adjust better in a home childcare environment because the provider/child ratio is smaller. They also believed that the setting for more one on one time with each child was available and it allows for more teachable moments.

My childcare program is here for the purpose of providing a healthy and safe learning environment for young children until they are ready to attend head start or pre-k programs in school without disrupting my neighbor's privacy. Six years ago, I became an Early Head Start program. In the past 3 years, when the children in my home childcare turns four, they must leave my program and transfer to a large child care program because some of their birthdays are in the middle of the school year, so they are unable to transition from my program to head start or pre-kin school. The parents have voiced

their concerns, especially those parents who don't want to transfer their children to another childcare program but want their children to leave my home day care and go directly to head start or a pre-k program in school.

The way the traffic currently flows with 5 children is that the parents park in front of my home, bring their child and/or children into the home, sign and swipe them in and return to their vehicles (normally in less than 5 minutes). When two or three parents arrive at the same time, they do not park in front of the homes of my neighbors on either side or across the street. I have enough parking space in front of my home for 5 cars to park at one time. If I am approved for 10 children, the new parents and I will discuss a plan for arrival and departure times that will not block the front of my neighbor's homes, driveways, or the flow of traffic. Arrival times for children are 6:30 am- 8:30 am during the morning drop-offs and between 3:00 pm- 5:00 pm during evening pick-ups. Parking for the employee and myself will be in me driveway.

My daytime hours of operation are Mondays through Fridays, 6:00 am to 6:00 pm. I will have 2 employees which will consist of myself and another qualified adult. The gross square footage of my home is 12,000 sq. ft. My daily schedule outlines our daily activities during the run of a day (see attachment). Most of our activities are inside my home. We engage in outdoor play 1 hour per day from 9:40 - 10:40 (weather permitting). When we are outside in the backyard, I stay aware of the noise level and I have not had any complaints from my neighbors about the normal noise of children playing. With an increase in the number of children, I will continue to keep the noise level at a minimum volume. The backyard is large enough to easily accommodate 10 children without creating a nuisance to the neighbors. I have a great record of maintaining my home day care property for over 13 years without disturbing my neighbors.

I have been asked on several occasions by individuals to open a day care center, but I am not interested in opening a day center because I am content with offering daycare for children in my home. I can continue to offer a home day care service in my neighborhood that is a valuable access to families. I don't have any overhead and operating a day care center is expensive.

My Early Head Start program is in partnership with Auburn University's Family Child Care Partnerships. Dr. Jennifer Wells Marshall the Executive Director over the program has supported me in my effort to increase the number of children in my home child day care program. She has assured me that Family Child Care Partnerships is willing to help support me financial if there are any changes that need to be made to my property to get an approval from the Zoning Committee.

As stated, the applicant is requesting a Use Variance to allow up to 10 children and a non-resident employee for a home daycare in an R-1, Residential Single-Family District. The Zoning Ordinance limits home occupation daycares to a maximum of 6 children and requires that all employees reside at the property on which the daycare business takes place.

Regarding the Variances cited in the applicants narrative, it should be noted that on two (2) of the cited years, 1992 and 1993, a Use Variance request was made each year associated with the property located at 1051 Ross Street. However, records do not indicate any Variance associated with 1051 Ross Street being requested in the year of 1997. Records do show a Zoning Clearance being issued for the property subject to conditions detailed in the 1992 Use Variance. As such, it is important to note, that at the August 3, 1992 meeting, the Board of Adjustment approved a Use Variance request to allow a home daycare to be located at 1051 Ross Street with the following three (3) conditions: 1) the daycare would be limited to a maximum of 12 children; 2) any additional expansion or increase in children should require new application to the Board; and 3) compliance with all parking requirements. At the August 9, 1993 meeting the Board denied a Use Variance request from the same applicant requesting the removal of the condition which limited the number of children allowed.

It should also be noted that the applicant stated that “*The gross square footage of my home is 12,000 sq. ft.*” In fact, that is the size of the property, not the home. The house is approximately 3,300 square feet. Approximately 1,900 square feet of the rear yard is fenced in to provide an outdoor play area for children.

It should be noted that the expansion in the number of children above 6 may trigger additional compliance requirements with Building, Mechanical, Plumbing, Electrical and Fire Codes.

The applicant has not provided any justification as to why the requested variances are required. Furthermore, the subject site is being used as a compliant home daycare currently demonstrating that a hardship does not exist. The applicant could find an appropriately zoned location that would allow workers to help, without the need for variances. It is simply the applicant’s desire to have a home daycare larger than allowed, resulting in a self-imposed hardship.

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 as the proposed commercial use could potentially increase traffic within a residentially zoned neighborhood;
- 2) Special conditions were not illustrated 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 surrounding neighborhood by granting the variance because the surrounding area is zoned for residential development.

LOCATOR MAP



APPLICATION NUMBER 6326 DATE June 1, 2020

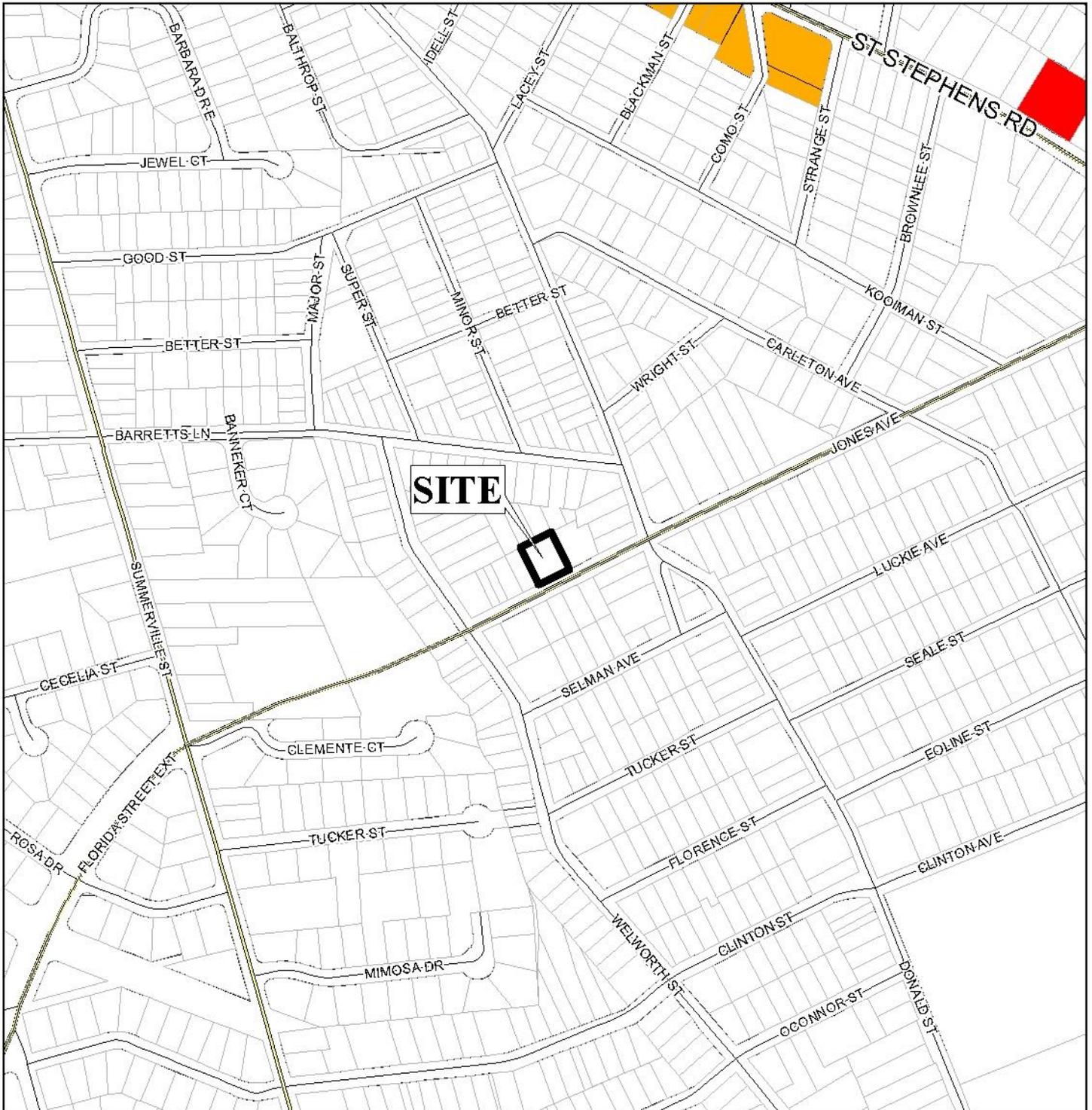
APPLICANT Facethia Hogue

REQUEST Use Variance



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LOCATOR ZONING MAP



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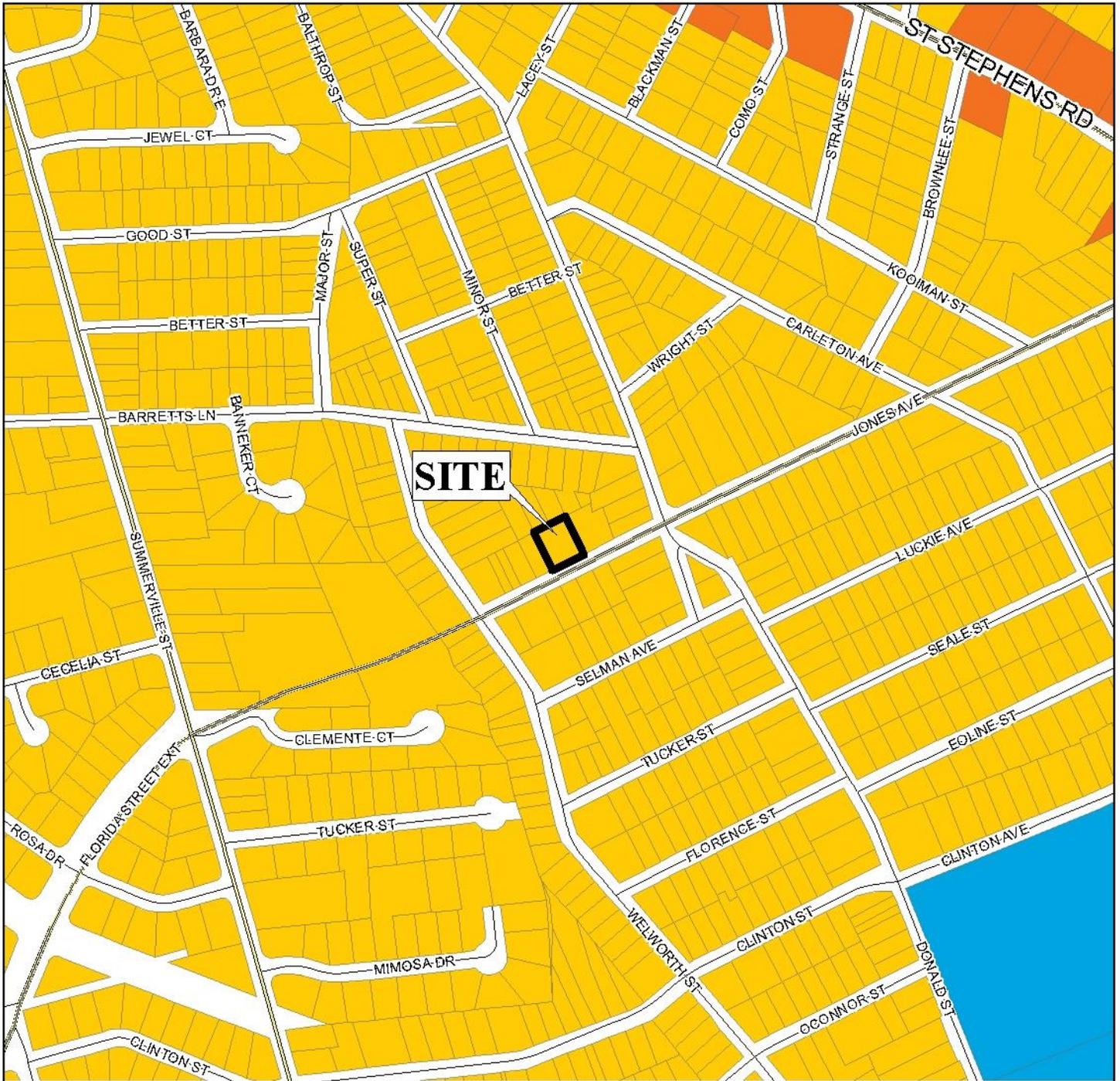
APPLICANT Facethia Hogue

REQUEST Use Variance



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FLUM LOCATOR MAP



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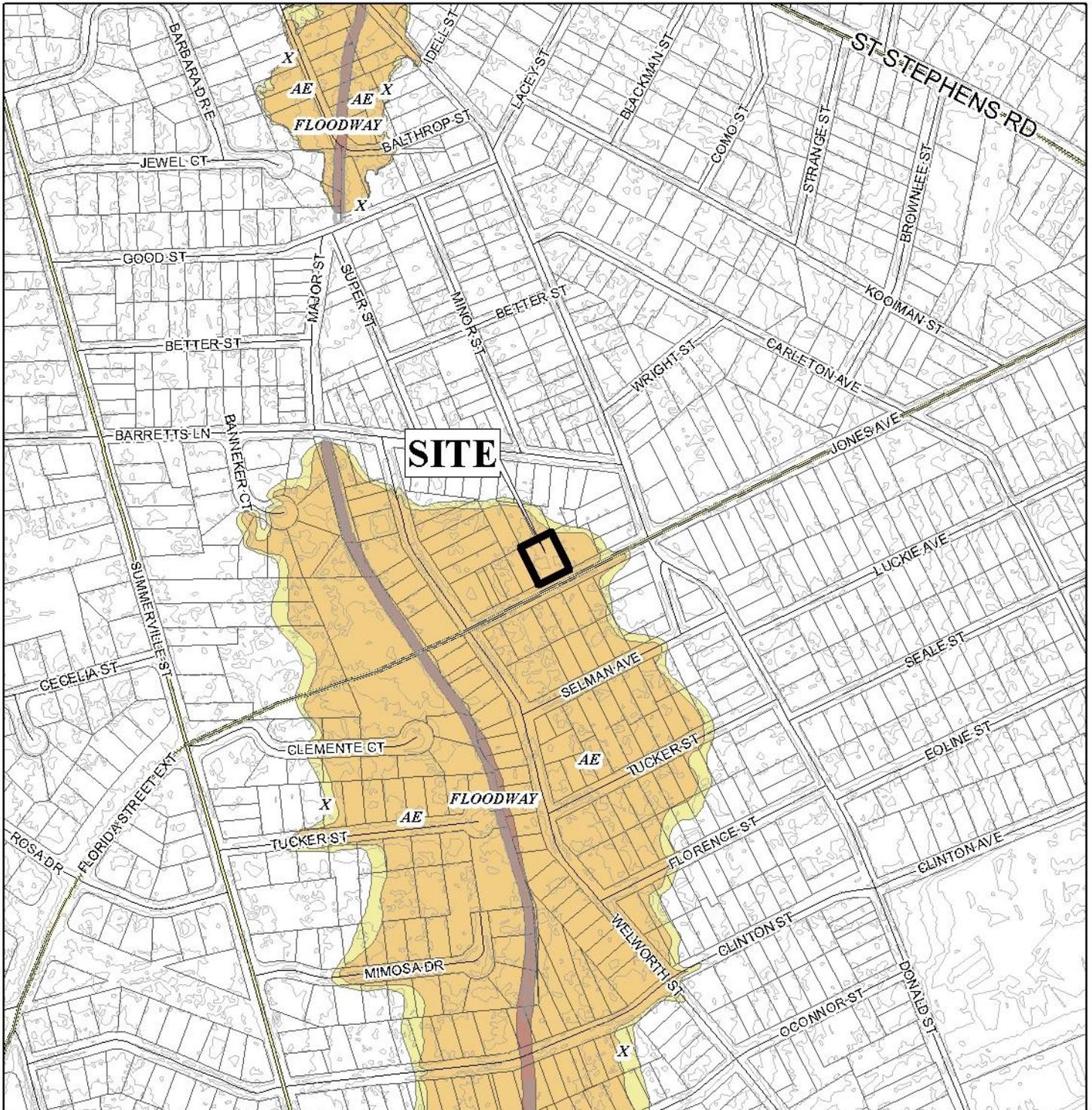
REQUEST Use Variance

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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 | |



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ENVIRONMENTAL LOCATOR MAP



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REQUEST Use Variance



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BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units.

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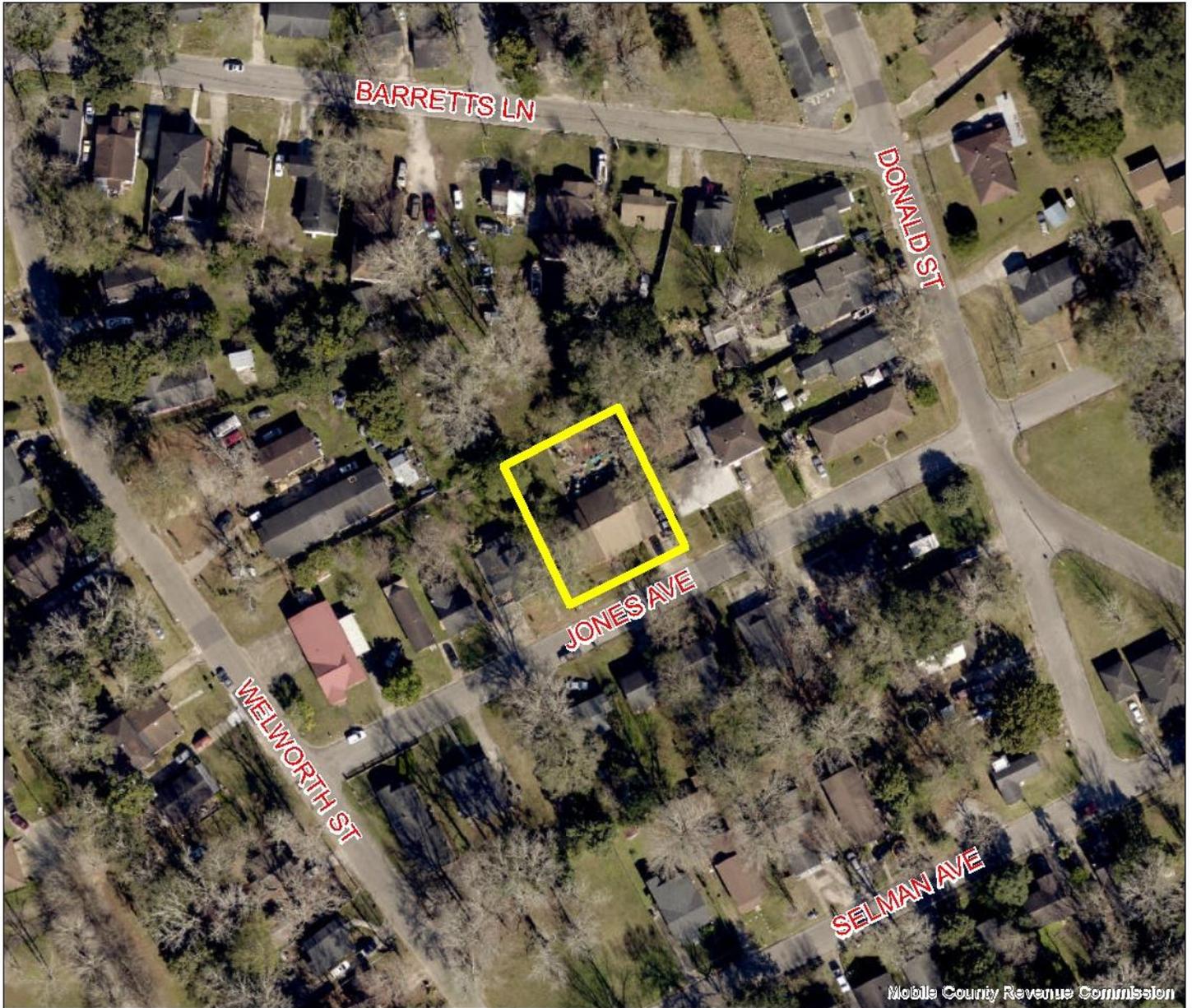
APPLICANT Facethia Hogue

REQUEST Use 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 ZONING**



The site is surrounded by residential units.

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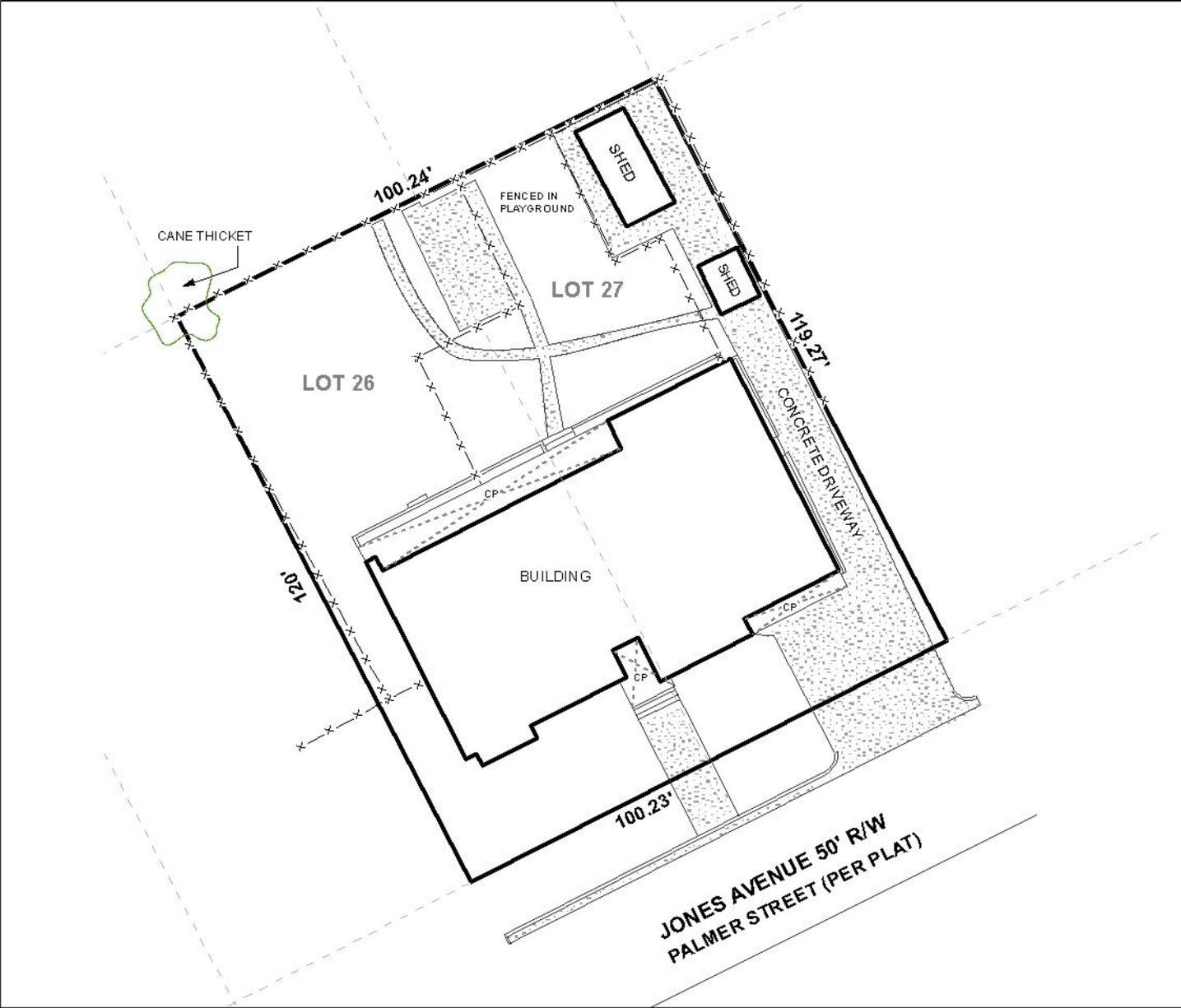
APPLICANT Facethia Hogue

REQUEST Use Variance



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SITE PLAN



The site plan illustrates existing buildings, existing playground and fences.

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