

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: June 5, 2017****CASE NUMBER**

6110/3467/2957/2436/548

APPLICANT NAME

David Domingue

LOCATION2513 Dauphin Street
(Southeast corner of Dauphin Street and South Florida Street).**VARIANCE REQUEST****FENCE HEIGHT VARIANCE:** Fence Height Variance to allow a privacy fence taller than 3' in the side yard setback of a corner lot and barbed wire in an LB-2, Limited Neighborhood Business District.**ZONING ORDINANCE
REQUIREMENT****FENCE HEIGHT VARIANCE:** The Zoning Ordinance does not allow privacy fences taller than 3' in side yard setbacks of corner lots and prohibits barbed wire in an LB-2, Limited-Neighborhood Business District.**ZONING**

LB-2, Limited-Neighborhood Business District

AREA OF PROPERTY

0.86± Acres

**ENGINEERING
COMMENTS**

No comments.

**TRAFFIC ENGINEERING
COMMENTS**

The installation of a fence in the proposed location around the mechanical units is not anticipated to create a line of site for the nearby intersection of Dauphin St and Florida Street or for the driveway at the rear of the building.

**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).

**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). Projects outside the City Limits of Mobile, yet within the Planning Commission Jurisdiction fall under the State or County Fire Code (2012 IFC).

CITY COUNCIL
DISTRICT

District 1

ANALYSIS

The applicant is requesting a Fence Height Variance to allow a privacy fence taller than 3' in the side yard setback of a corner lot and barbed wire in an LB-2, Limited Neighborhood Business District; the Zoning Ordinance does not allow privacy fences taller than 3' in side yard setbacks of corner lots and prohibits barbed wire in an LB-2, Limited-Neighborhood Business 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.

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 subject property is located in an LB-2, Limited-Neighborhood Business District, and is surrounded by R-1, Single Family Residential to the East, B-1, Buffer Business District to the Northeast, South, and West, as well as LB-2, Limited-Neighborhood Business District to the Northwest.

This site has been the subject of a number of variance application requests to the Board of Zoning Adjustment throughout the years; however, the requests have primarily pertained to changes in the use of the site, and were not all specifically related to site improvements. For instance, at the November 20, 1956 meeting, the Board denied a use variance request to convert a home to business and professional offices. Then at the February 2, 1970 meeting, the Board denied a request for a use variance to allow the operation of a service station. At its February 3, 1975 meeting, the Board denied a request for rear yard and use variances for a convenience food store. Similarly, at the January 8, 1979 meeting, a request for use variance to allow the operation of a convenience store was again denied by the Board.

The subject property was rezoned to B-1, Buffer Business District in June 1980. After the rezoning of the subject site, the property was used as a doctor's office at first, and then later as a law firm, where it operated in this capacity for several years. More recently, the Planning Commission, at its July 9, 2015 meeting, approved the re-subdivision of the property into one lot and rezoned the property from B-1, Buffer Business District to an LB-2, Limited Neighborhood Business District to allow the operation of a hair salon and day spa.

After the subdivision and rezoning approvals, the applicant obtained a building permit in 2016 to do interior and exterior renovations to the existing building and site in preparation of the new business use. On February 10, 2017, Zoning Officials, during a scheduled inspection of the site,

discovered the non-compliant privacy fence height and barbed wire. The applicant is seeking relief from the Zoning Ordinance in order to retain the recently erected privacy fence and barbed wire material, hence, the reason for today's application request.

The applicant states:

Do to vandalism and theft of our four brand new air conditioning units we took action to secure our investment. All four units were installed on a Monday and by Thursday they were vandalized and the copper stolen costing us about \$2700 in repairs before we even turned the units on. The previous owner had been vandalized and stolen from three separate times on his air conditioning units as well. We deemed it necessary to install a security camera and a security fence in the hope to discourage any future theft and vandalism. Note: There is a chain link fence around the units before we bought the property all we did was put the security fence around the existing chain link fence. Nouveau on Dauphin has great aspirations to beautify this property and the security fence is part of our beautification.

As stated previously, the privacy fence currently exceeds a height of 3' and is located between 3'-4'± from the side yard property line along Florida Street. Section 64-4.D.6.a. of the Zoning Ordinance states 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 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." Additionally, Section 64-4.D.b. of the Zoning Ordinance specifically states that "Fences composed of barbed wire, or other dangerous materials, may be permitted in R-A, B-3, B-5, I-1, or I-2 districts upon approval of the Deputy Director of the Planning and Zoning Department, or his/her designee. Applications for fences composed of barbed wire, or other dangerous materials, will not be approved in any other district, nor within the Henry Aaron Loop. Provided, however, that if a determination is made by the Chief of Police per 21.1 of the Mobile City Code, the fence will be allowed, subject to permits." As stated earlier, the subject property is located in an LB-2, Neighborhood Business District, and therefore, the use of barbed wire is prohibited within this district. The applicant did not seek the approval of the Deputy Director of the Planning and Zoning Department, nor the Chief of Police, prior to adding the barbed wire.

It should be noted that the Zoning Ordinance was put in to place in order to protect the health, safety, and welfare of the citizens of Mobile. It should be mentioned that the purpose of fence height limitations, especially for those properties located at the intersection of two street frontages, is to aid in reducing hazards related to line of sight as vehicles enter and exit the subject property, as well as vehicles traveling along the adjacent thoroughfares. In addition to concerns of safety, the regulation of fence heights and dangerous material also aid in providing a favorable aesthetic quality to residential and commercial districts.

The applicant is correct in that a chain link, barbed wire fence existed prior to the rezoning and acquisition of the property by the current owner; however, the previous owner did not obtain a permit for the fence or special provisions for the barbed wire, and were therefore illegally

installed. Subsequently, the current owner did not apply for a building permit to erect the privacy fence and add barbed wire, nor was the privacy fence and use of barbed wire indicated on the Planning Commission approved site plan from 2015. Neither the past owner, nor the current owner, obtained a building permit prior to the construction of either fence type. If the proper steps had initially been taken, the applicant, or a fence contractor, would have been aware of the Zoning Ordinance requirements for fence heights on a corner lot and the prohibition of barbed wire material in an LB-2, Neighborhood Business District.

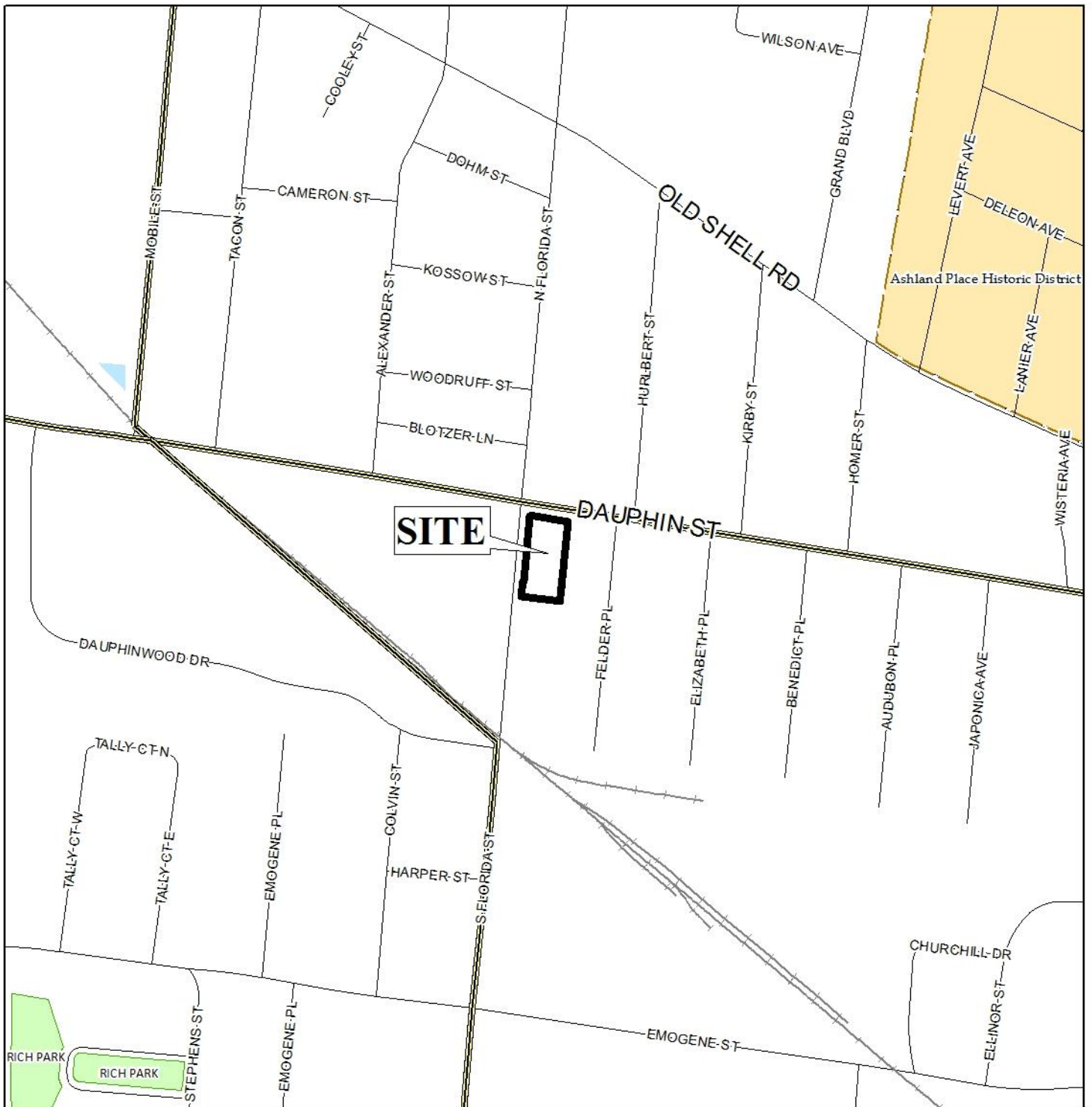
Although the protection of one's property is a matter of importance, staff must look at the overall safety and welfare of the general public as a whole. The barbed wire is not a permissible material in LB-2 zoned districts. The chain link fencing, which is still in place on the site according to photographs provided with the application, is an acceptable material for fencing on corner lots. The addition of security cameras to the subject site, as provided in the narrative, should also aid in minimizing theft and future acts of vandalism. It also appears, based upon photos from 2011-2013, that there was much more vegetation along Florida Street, which was screening the HVAC units and the old fencing from easy view. With the "cleaning up" of the property for the new use, the visibility of the HVAC units and fenced enclosure was substantially increased.

It appears that there are no special conditions that exist such that a literal enforcement of the Ordinance will result in an unnecessary hardship as the applicant stated that the property is now equipped with surveillance cameras. The applicant may want to supplement the surveillance cameras with motion detection lights, and place a "No Trespassing" sign on the chain link fence. Essentially, the barbed wire should be removed from the chain link fence, and the privacy fence should be taken down to 3' or removed in its entirety. Also, each unit can be secured with individual metal security straps.

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

- 1) Granting the variance will be contrary to the public interest because the Zoning Ordinance limits privacy fences on a corner lot to a 3'-0" maximum height within a side yard, side street setback along property lines in an LB-2, Limited Neighborhood Business District;
- 2) Special conditions do not appear to exist and there is no justification of hardship which exist such that the literal enforcement of the provisions of the chapter will result in an unnecessary hardship, as the air conditioning units are currently enclosed in a chain link fence and the owner has provided surveillance cameras to prevent future theft and vandalism; and
- 3) The spirit of the chapter shall be observed and substantial justice shall be done to the surrounding neighborhood by granting the variance because the privacy fence was erected and the barbed wire was added without the obtainment of a building fence permit.

LOCATOR MAP



APPLICATION NUMBER 6110 DATE June 5, 2017

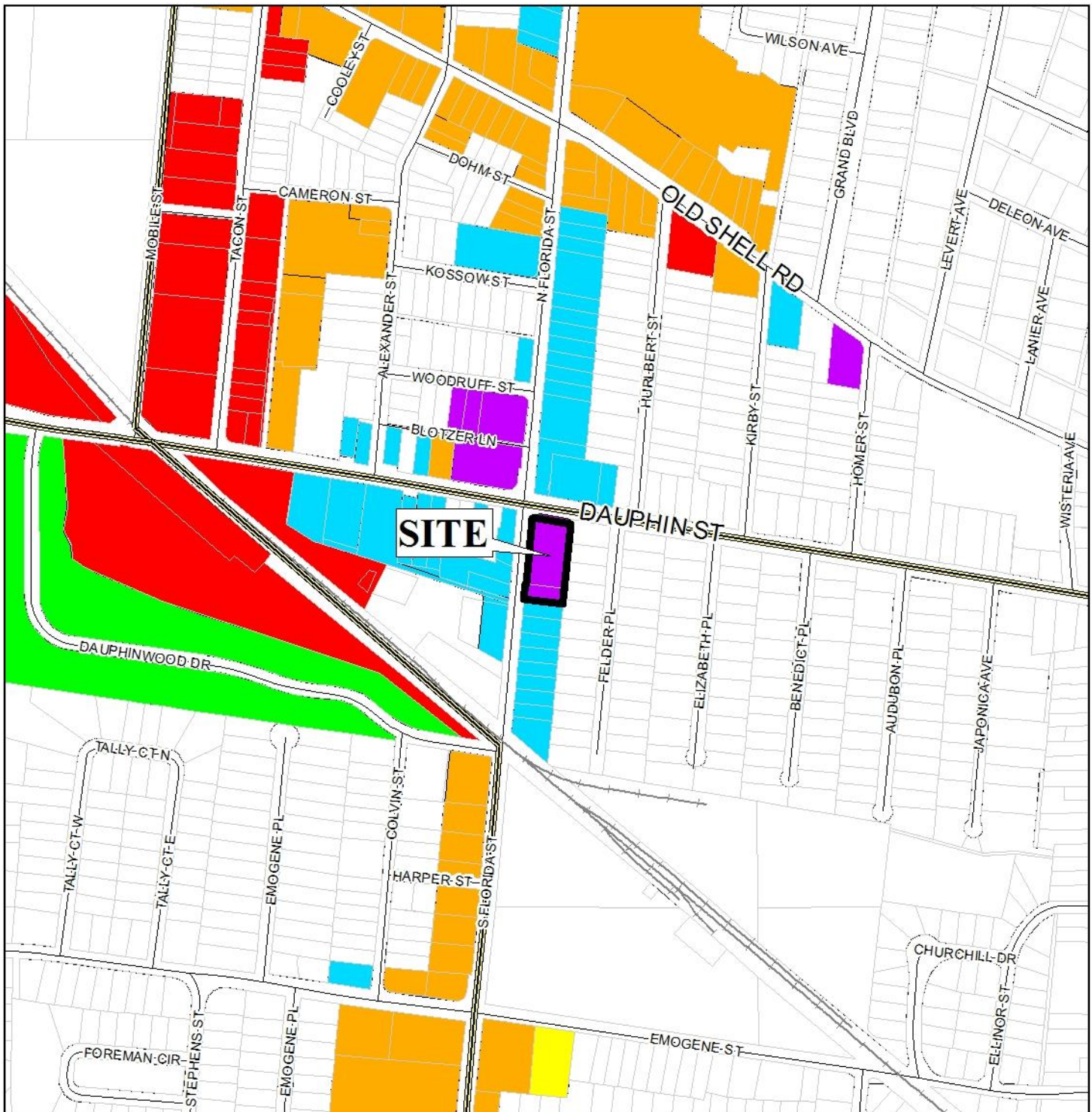
APPLICANT David Domingue

REQUEST Height Variance



NTS

LOCATOR ZONING MAP



APPLICATION NUMBER 6110 DATE June 5, 2017
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REQUEST Height Variance



BOARD OF ADJUSTMENT

VICINITY MAP - EXISTING ZONING



The site is surrounded by miscellaneous offices and residential units.

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REQUEST Height 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 miscellaneous offices and residential units.

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