

**BOARD OF ZONING ADJUSTMENT  
STAFF REPORT****Date: November 5, 2018****CASE NUMBER**

6217/5068/580

**APPLICANT NAME**

David Shumer

**LOCATION**

1451 and 1459 Government Street and 1458 Church Street  
(Southwest corner of Government Street and Stocking  
Street, extending to the North side of Church Street, 200'±  
West of Stocking Street)

**VARIANCE REQUEST**

**USE:** To allow a plant and garden nursery in a B-1, Buffer  
Business District, and an R-3, Multi-Family Residential  
District.

**USE ACROSS MULTIPLE BUILDING SITES:** To allow  
a business to operate across multiple building sites.

**MULTIPLE BUILDINGS:** To allow multiple buildings  
on a single building site.

**FENCE HEIGHT:** To allow a 5' high fence within the 25'  
minimum building setback.

**QUEUING SPACE:** To allow 15' of queuing space out of  
the right-of-way for gates.

**MANUEVERING SURFACE:** To allow aggregate  
maneuvering surfaces.

**ZONING ORDINANCE  
REQUIREMENT**

**USE:** The Zoning Ordinance requires a minimum of a B-3,  
Community Business District zoning for a plant and garden  
nursery.

**USE ACROSS MULTIPLE BUILDING SITES:** The  
Zoning Ordinance requires a business to be located on a  
single building site.

**MULTIPLE BUILDINGS:** The Zoning Ordinance  
requires one building per site.

**FENCE HEIGHT:** The Zoning Ordinance requires fences  
higher than 3' to meet the 25' minimum building setback.

**QUEUING SPACE:** The Zoning Ordinance requires a minimum vehicle queuing spaces of 60' out of the right-of-way for gates

**MANUEVERING SURFACE:** The Zoning Ordinance requires maneuvering surfaces to be paved with asphalt, concrete or an approved alternative paving surface.

## **ZONING**

B-1, Buffer Business District and R-3 Multi-Family Residential District

## **AREA OF PROPERTY**

1.27±Acres

## **ENGINEERING COMMENTS**

**USE VARIANCE:** NO COMMENT

**USE ACROSS MULTIPLE BUILDING SITES VARIANCE:** NO COMMENT

**MULTIPLE BUILDINGS VARIANCE:** NO COMMENT

**FENCE HEIGHT VARIANCE:** NO COMMENT

**QUEUING SPACE VARIANCE:** NO COMMENT

**MANEUVERING SURFACE VARIANCE:** If the aggregate surfacing is approved for use the applicant will need to have the following conditions met:

1. Submit and receive a Land Disturbance Permit for the proposed site development through Central Permitting.
2. Submit a ROW Permit to ALDOT for the work within the Government St. ROW that is located between the backs of curb.
3. Submit a ROW Permit to the City of Mobile for the work within the Church St. ROW AND for any work between the back of curb and property line within the Government St. ROW)
4. Aggregate surfacing will NOT be allowed within the public ROW.
5. Designated handicapped accessible spaces and routes must be paved (i.e. concrete, asphalt).

## **TRAFFIC ENGINEERING COMMENTS**

Government Street (U.S. Highway 90) is an ALDOT maintained roadway. Driveway number, size, location and design to be approved by ALDOT (where applicable) and the City and conform to AASHTO Standards. Aggregate surface, if approved, may not extend into the right-of-way. Any required on-site parking, including ADA

handicap spaces, shall meet the minimum standards as defined in Section 64-6 of the City's Zoning Ordinance.

## **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 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).

## **CITY COUNCIL**

### **DISTRICT**

District 2

### **ANALYSIS**

The applicant is requesting Use, Use Across Multiple Building Sites, Multiple Buildings, Fence Height, Queuing Space, and Maneuvering Surface Variances to allow a plant and garden nursery to operate across multiple building sites with multiple buildings on a single building site, a 5' high fence within the 25' minimum building setback, a vehicle queuing space for gates of 15' from the right-of-way, and aggregate maneuvering surfaces in a B-1, Buffer Business District, and R-3, Multi-Family Residential District; the Zoning Ordinance requires a minimum B-3, Community Business District, for a plant and garden nursery and requires a business to be located on a single building site with one building per building site, fences higher than 3' to meet the 25' minimum building setback, a minimum vehicle queuing space of 60' out of the public right-of-way for gates, and requires maneuvering surfaces to be paved with asphalt, concrete or an approved alternative paving surface in a B-1, Buffer Business District, and R-3, Multi-Family Residential District.

The site has a 2-lot Subdivision on the November 15, 2018 Planning Commission agenda to create two legal lots of record (one zoned B-1, Buffer Business District, and the other R-3, Multi-Family Residential).

The site has been given a Traditional Corridor (TC) and a Mixed Density Residential (MxDR) land use designation, per the Future Land Use Plan and Map, adopted on May 18, 2017 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.

**Traditional Corridor (TC):** This land use designation generally applies to transportation corridors east of I-65, which serve as the primary commercial and mixed-use gateway to Downtown and the City's traditional neighborhoods (equivalent to Map for Mobile's Traditional Neighborhoods).

Depending on their location (and as allowed by specific zoning), TC designations incorporate a range of moderately scaled single-use commercial buildings holding retail or services; buildings that combine housing units with retail and/or office; a mix of housing types including low- or mid-rise multifamily structures ranging in density from 4 to 10 du/ac; and attractive streetscapes and roadway designs that safely accommodate all types of transportation – transit, bicycling, walking, and driving. In these areas, special emphasis is placed on the retention of existing historic structures, compatible infill development, and appropriate access management.

**Mixed Density Residential (MxDR):** 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 dwelling units per acre, depending on the mix, types, and locations of the housing as specified by zoning.

Like Low Density Residential areas, Mixed Density Residential 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 B-1, Buffer Business District portion of the site was most recently used as a recycling center by the City of Mobile. The R-3, Multi-Family Residential District portion of the site has been vacant for many years.

The applicant states:

**Existing Conditions**

*This project is located at 1451 Government Street. The site consists of two separate parcels (022910223002019. & 022910223002011.) that are directly adjacent to each other. The parcel on the corner of Government and Stocking Street is currently developed and the second parcel that is to the west is currently vacant. The western parcel has double frontage on Government and Church Streets and is approximately 50 feet wide. The corner lot has multiple access points on both Government Stocking Street and the western lot has an existing residential curb cut from Church Street. The corner lot has*

*functioned in the past as an auto service station and recycling center and the improvements from the previous uses are still present.*

**Proposed Project**

*This project is to repurpose the existing site as a plant and garden nursery. This location will function as a retail center with some on-site storage for surplus inventory of plants that are to be. The site, existing structures, and improvements are being renovated to be repurposed as a nursery. Additional improvements are proposed for storage and staging of inventory. The site will have enclosed and covered space for retail with greenhouse and exterior space for additional inventory. There are existing live oak trees on site and within the right-of-way that will not be affected by the improvements.*

*Access to the front of the site will be through an existing turnout on Government and Stocking Streets. The eastern most access proposed to be removed. Due to the periodic one-way operation of Stocking Street the access to government will remain two-way. Gated access is proposed from Church Street for vehicles to service and restock the outside plant storage area that will be located on the western lot. The owner does not anticipate use (up to one vehicle per day) at the Church Street entrance and the gate will be opened and closed for each vehicle. Vehicles using this entrance will only access the site between the hours of 7:00 am and 5:00 pm.*

**Request for use variance:**

*This request is to protect the surrounding community from future development that does not match the character of the area. A plant and garden nursery requires a B-3 zoning that also permits uses that may not be desirable by the surrounding community. A use variance will require the property to revert to the R-3 and B-1 zoning should the use as a nursery stop at some point in the future. The owners have met with members of the community and the greatest fear is what will happen if the nursery closes.*

**Request for use across multiple properties:**

*This request is to protect the surrounding community from future development that does not match the character of the area. The lots have separate zoning R-3 and B-1 and the desire is to allow the existing zoning to remain which also requires the lots to remain separate to avoid multiple zoning designations on a single property.*

**Request for multiple buildings:**

*A greenhouse is proposed to be located behind the existing structure. The greenhouse will be a soft sided structure on a rigid frame and be connected by a covered walk. The floor will be paved with anchors for the frame. The accessory structures with this project are unique to this type of use and will be removed if the use changes or reverts back to the zoning of B-1.*

**Request for fence above three (3) feet within building setback:**

*This request is for the fence along the Church Street frontage. The five (5) foot fence with a gate is proposed to be located within the 25 foot building setback. The height is proposed for increased security and better screening of residentially*

*zoned properties adjacent and across the street. The fence will be setback enough (10-15 feet) to not block the sight distance from the driveways of the adjacent properties when accessing Church Street. There will be no vehicles exiting from this site onto Church Street.*

***Request for gate without sufficient queuing space:***

*The request is to allow a gate to be located within 15 feet of the right-of-way line. To best utilize the inventory space on a narrow (50 foot wide) lot and provide the dumpster outside the setback line while also within the fenced area the gate needs to be positioned closer to the right-of-way line. Patrons will not be accessing the site from Church Street and the gate will be opened for vehicles to service and maintain the inventory and servicing of the dumpster. Due to the frequency of use (estimated at one vehicle per day) and low volumes on Church Street providing the queuing space.*

***Request for partial Aggregate Parking/Maneuvering Surface:***

*This request is based on the difficulty in connecting to the City's storm water drainage infrastructure on Church Street and the low volume of vehicles that will be utilizing the drive. The area in this request is entirely within the inventory area and will not be used by patrons. Allowing aggregate surfacing for the service vehicle drive will reduce the storm water runoff by providing increased permeable surfaces. There is a large live oak tree at the southwest corner of the property within the Church Street right-of-way and connecting to a storm drain to the west may cause damage to the tree. This access will act as an entrance and tracking of aggregate onto the right-of-way is not likely.*

*All of the above requests are directly connected to the type of use proposed for this site. If this site is no longer used as a plant and garden nursery the site requirements would return to the individual zoning of the lots and a change of use will require the site to be redeveloped in compliance with the zoning ordinance.*

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.

Regarding the requested Use Variance, the applicant states that they chose to seek a variance rather than a rezoning to protect the neighborhood from more incompatible uses, however, they could submit Voluntary Use Restrictions similar to those at other sites which would specifically

limit the site to the currently proposed use, and have the site revert to its current zoning upon cessation of the site for the use as a plant nursery. There is no hardship unique to the site that would prevent it from being used in a compliant manner under its current zoning district, or from seeking a rezoning rather than a variance.

Regarding the Use Across Multiple Properties Variance request, this is a necessity due to the applicant's unwillingness to combine the two parcels into a single legal lot of record with a rezoning to eliminate a split-zoned lot, or to allow the use to span two building sites via a Planned Unit Development. Due to the possibility of the applicant being able to combine these properties, this request is the result of a self-imposed hardship, and not one that lies with the property.

The Request for Multiple Buildings could be handled by the submittal of a Planned Unit Development application to the Planning Commission to be heard in conjunction with the above referenced subdivision and rezoning, thus making this request a result of a self-imposed hardship as well.

Looking at the request for both a fence higher than 3' within the 25' minimum building setback line, as well as the request to allow a provision of 15' of queueing space for a gate associated with said fence could both be eliminated if one of the 15 plant staging areas were eliminated. This would allow the proposed dumpster to be setback farther into the site, as well as the fence and corresponding gate to be located 60' from Church Street, thus both would be located out of the building setback and provide the required amount of queueing spaces as called for by Section 64-4.F.2. of the Zoning Ordinance.

In analyzing the applicant's request for aggregate surfacing for a portion of the site, the applicant references an existing tree and storm water runoff as concerns as to why this surfacing should be allowed. The portion of the site that is depicted as being aggregate is only 12' wide, which would only accommodate one-way traffic. Therefore, if this request is approved, the applicant should be required to place "do not enter" signs to prevent customer traffic from attempting to exit the site onto Church Street. It appears that the main use of the aggregate driveway would be the vehicle servicing of the dumpster. This request could also be addressed with a Planned Unit Development application to the Planning Commission.

The site plan submitted shows a 6' high privacy fence along the entire perimeter of the site, with the fence being reduced to 3' in height in the 25' minimum building setbacks (with the exception of the Church Street frontage). It appears that some of the fence is existing, but not all. The applicant should be aware that a fence permit will be required in addition to land disturbance permits for the improvements made to the site.

The site is located in the Leinkauf Historic District, thus review for a Certificate of Appropriateness will be required by the Architectural Review Board prior to any exterior changes being made.

The applicant has failed to demonstrate that there exist hardships with the site that prevent it from being used in a manner compliant with the current zoning. Furthermore, with the submittal

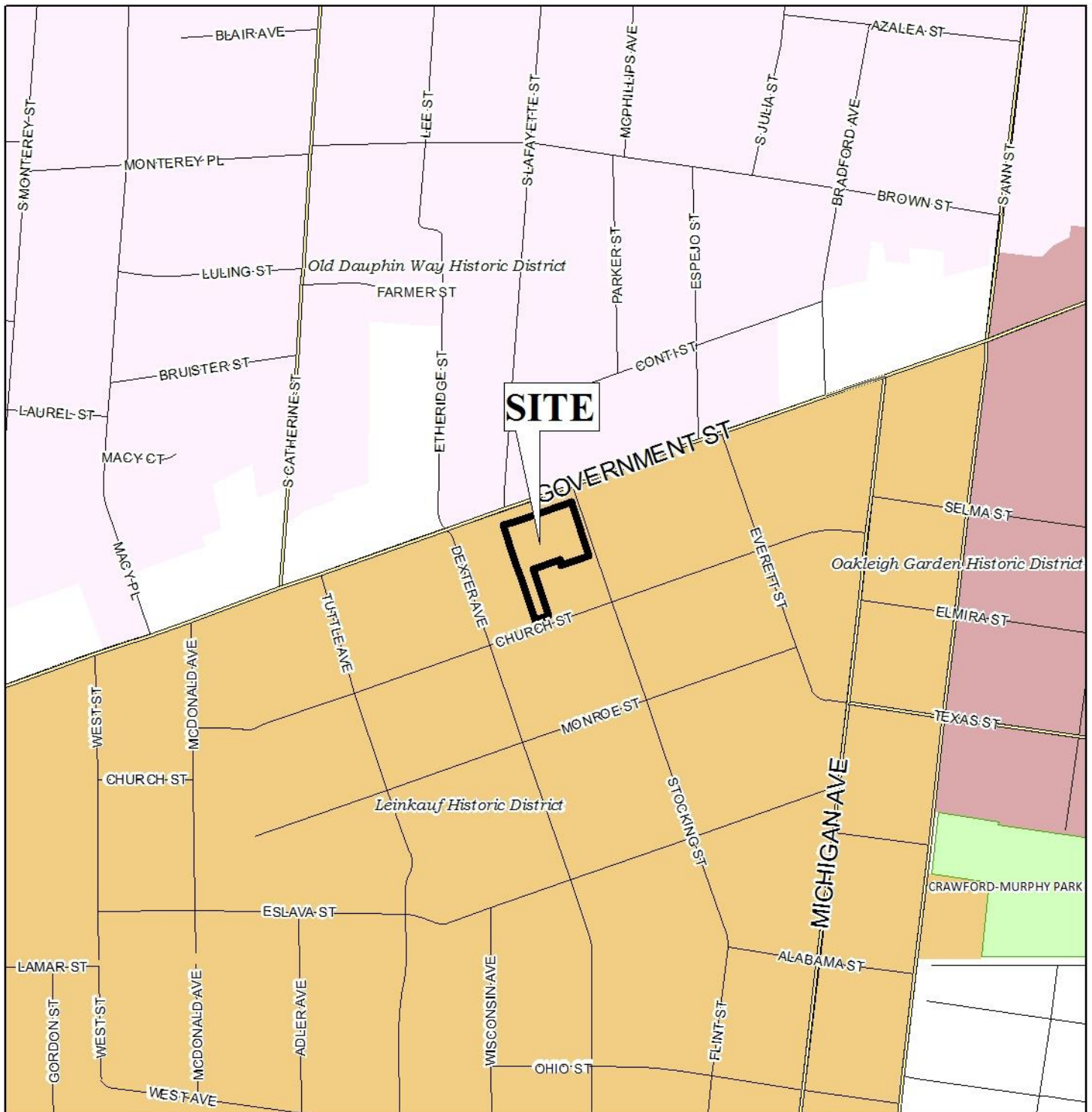
of 1-lot Subdivision, Rezoning, and Planned Unit Development applications to the Planning Commission, the majority of the requests at hand would not be needed, and a few alterations of the proposed site plan would eliminate the need for the others.

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

- 1) approving the variance will be contrary to the public interest in that the subject site could be used in a compliant fashion without the need for variances;
- 2) special conditions do not exist and there are not hardships which exist in that the applicant could submit Subdivision, Rezoning, and Planned Unit Development applications to the Planning Commission, along with some minor adjustments to the site plan, eliminating the need for variances; 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 is simply the applicant's desire to seek multiple variances instead of either making applications to the Planning Commission, or finding a location that may already have the appropriate zoning, etc., to accommodate the proposed business.



# LOCATOR MAP



APPLICATION NUMBER 6217 DATE November 5, 2018

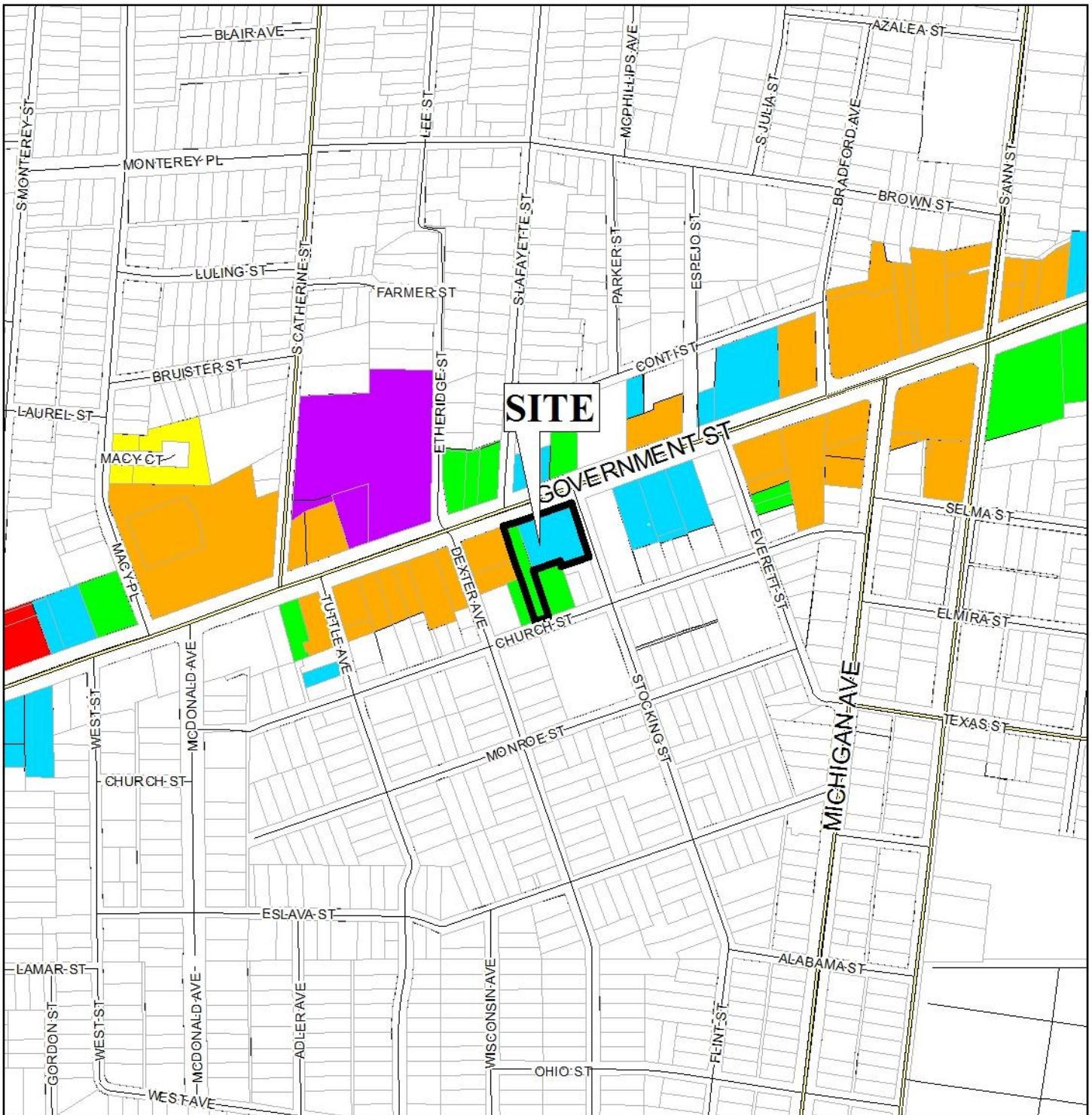
APPLICANT David Shumer

REQUEST Use, Use Across Multiple Building Sites, Multiple Buildings, Fence Height, Queuing Space, and Maneuvering Surface Variances



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# LOCATOR ZONING MAP



APPLICATION NUMBER 6217 DATE November 5, 2018

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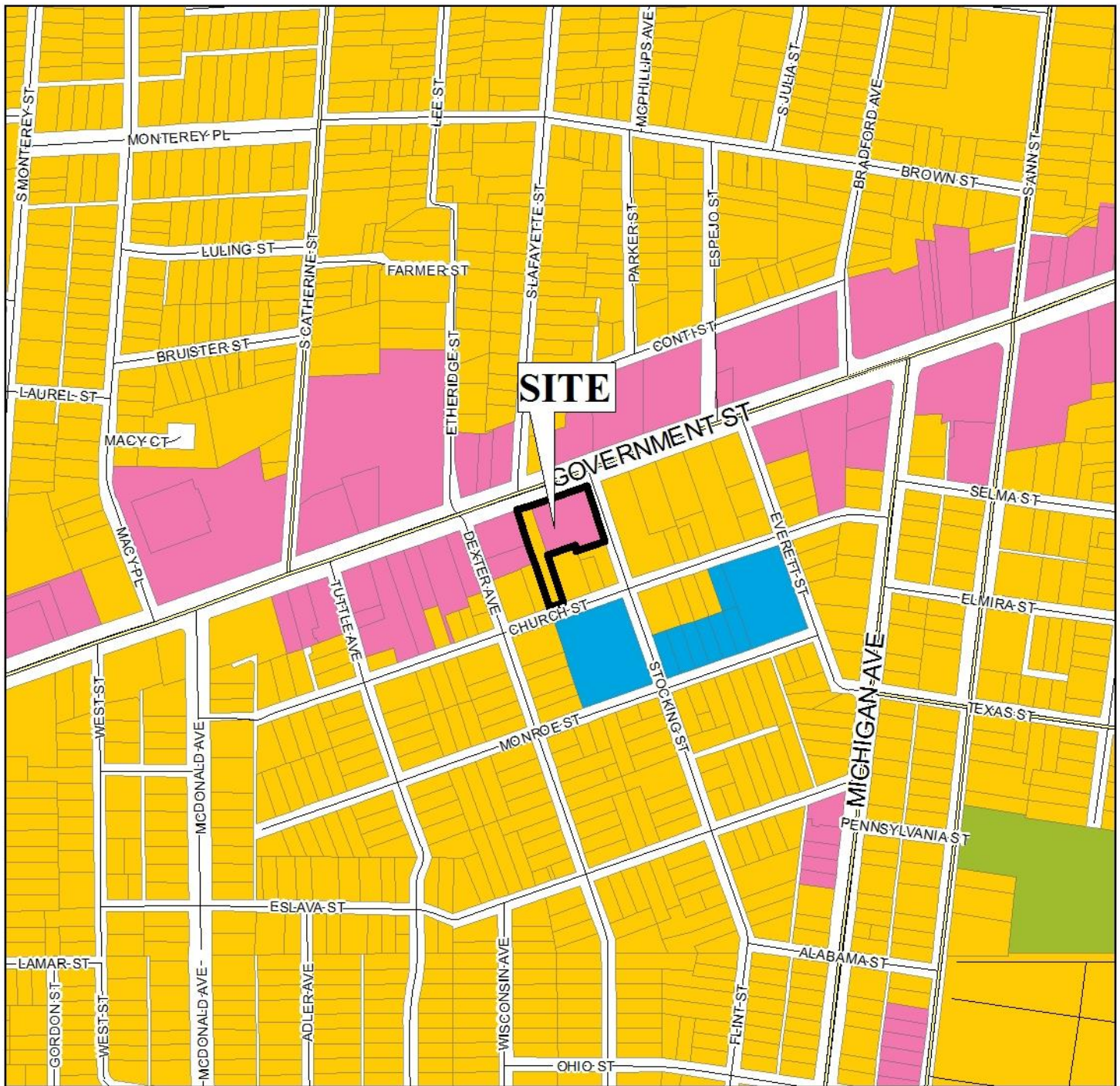
REQUEST Use, Use Across Multiple Building Sites, Multiple Buildings, Fence Height, Queuing Space, and Maneuvering Surface Variances



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# FLUM LOCATOR MAP



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APPLICANT David Shumer

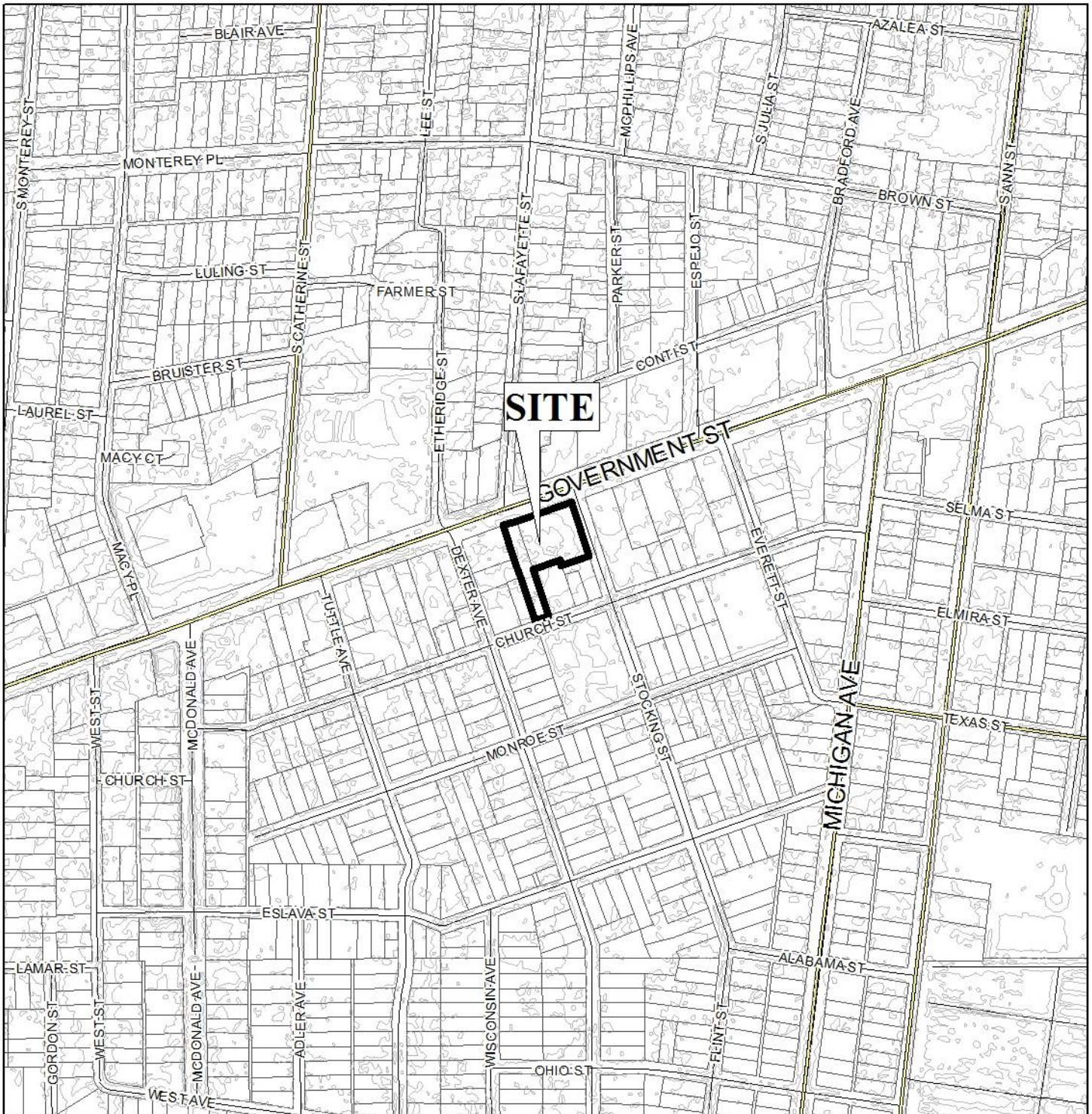
REQUEST Use, Use Across Multiple Building Sites, Multiple Buildings, Fence Height, Queuing Space, and Maneuvering Surface Variances

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



APPLICATION NUMBER 6217 DATE November 5, 2018

APPLICANT David Shumer

REQUEST Use, Use Across Multiple Building Sites, Multiple Buildings, Fence Height, Queuing Space, and Maneuvering Surface Variances



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# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by miscellaneous units.

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REQUEST Use, Use Across Multiple Building Sites, Multiple Buildings, Fence Height, Queuing Space, and Maneuvering Surface Variances

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 units.

APPLICATION NUMBER 6217 DATE November 5, 2018

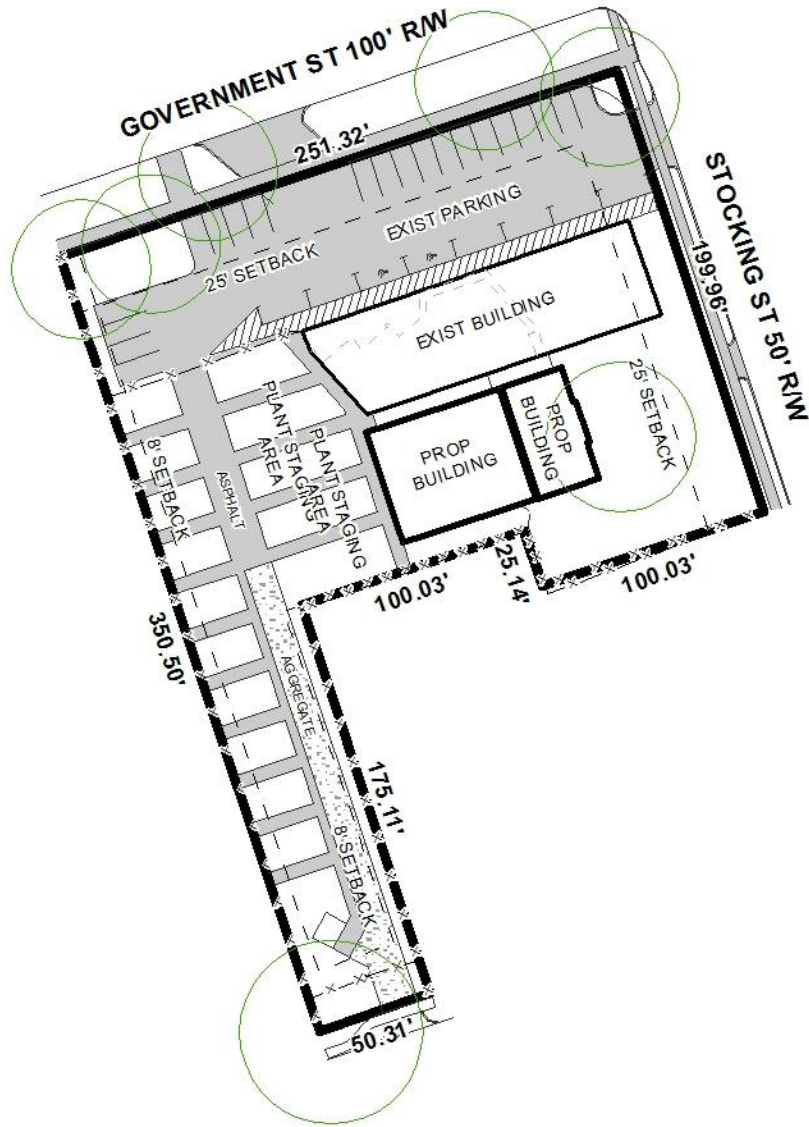
APPLICANT David Shumer

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# SITE PLAN



The site plan illustrates the existing building, existing parking, setbacks, and proposed buildings.

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