

**BOARD OF ZONING ADJUSTMENT  
STAFF REPORT**

**Date: May 6, 2019**

**CASE NUMBER**

6252

**APPLICANT NAME**

Katherine Zarzour

**LOCATION**

3456 Stein Avenue  
(Northeast corner of Dogwood Lane and Stein Avenue)

**VARIANCE REQUEST**

**SIDE YARD SETBACK:** Setback Variance to allow an existing 6' high privacy fence to remain on a side street side yard property line in an R-1, Single Family Residential District.

**ZONING ORDINANCE  
REQUIREMENT**

**SIDE YARD SETBACK:** The Zoning Ordinance requires all structures over 3' to be located outside of recorded setbacks in an R-1, Single Family Residential District.

**ZONING**

R-1, Single-Family Residential

**AREA OF PROPERTY**

0.3 ± Acres

**CITY COUNCIL  
DISTRICT**

District 7

**ENGINEERING  
COMMENTS**

No Comments.

**TRAFFIC ENGINEERING  
COMMENTS**

The fence as constructed does not impose a line of sight obstruction for either the intersection of Dogwood Lane and Stein Avenue, or the abutting neighbor to the north on Dogwood Lane. A line of sight does appear to exist from the property owners own driveway to see pedestrians or oncoming cars traveling from the north. The driveway is constructed such that, if the driveway is unobstructed, a vehicle could back out of the garage and pull forward through the driveway to exit onto Stein Avenue. There is no sidewalk on Dogwood Lane and any pedestrian traffic in this general area is utilizing the street because of landscaping, mailboxes and other fencing. It is very unlikely that a pedestrian would be walking on the grassed area adjacent to this fence.

**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 Side Yard Setback Variance to allow an existing 6' high privacy fence to remain on a side-street, side-yard property line in an R-1, Single Family Residential District.; the Zoning Ordinance requires all structures over 3' to be located outside of required setbacks in an R-1, Single Family Residential District.

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

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 applicant states:

*We are submitting a variance to allow a fence that is already constructed to remain in the first 25 foot of the setback as shown on the survey attached and pictures shown. The fence is aesthetically pleasing to the eye and abuts a minor street. We ask that a variance be allowed for the fence to remain as constructed so that we can get our C.O. for the home*

As stated, the applicant is seeking relief from the Zoning Ordinance to allow an existing 6' high privacy fence to remain on a side-street, side-yard property line, within the 25' setback requirement. Based on the statement from the applicant, this request is simply based on the applicant's desire; there is no hardship presented.

Section 64-4.D.6.a. of the Zoning Ordinance states: *"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."*

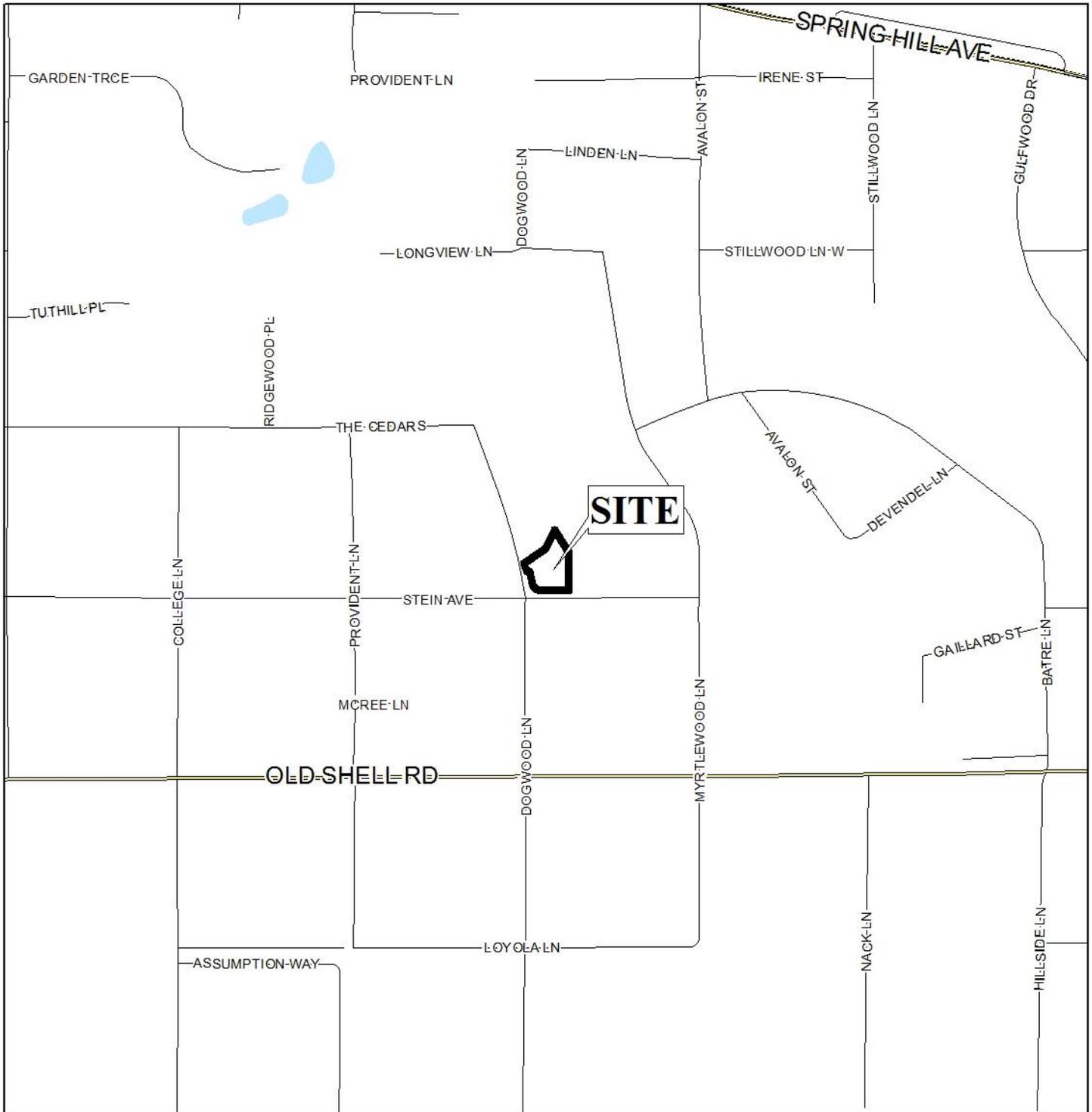
On February 27, 2019 the applicant applied for a building permit to construct a 6' high wooden privacy fence. The initial site plan illustrated the fence as non-compliant with side yard setbacks and was then changed by the applicant to meet all requirements. Upon submitting a compliant site plan, the application was approved. Staff included in their comments on the application the need to meet the 25' setback requirement citing Section 64-4.D.6. of the Zoning Ordinance.

With the approval of the February building permit the applicant has acknowledged requirements of the Zoning Ordinance and has shown it is possible to erect fencing along the property that is compliant with the Zoning Ordinance requirements. The applicant has not presented any hardship associated with the property, or its configuration, that would necessitate the approval of this request.

**RECOMMENDATION:** 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 will be contrary to Section 64-4.D.6.a. of the Zoning Ordinance regarding the setback and maximum allowable fence height in R-1, Single-Family Residential District;
- 2) Special conditions and hardships do not exist in such a way that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship, as the site can be developed without the requirement for a variance ; 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 site can be developed in such a way that the proposed fence would not extend within the 25' setback requirement.

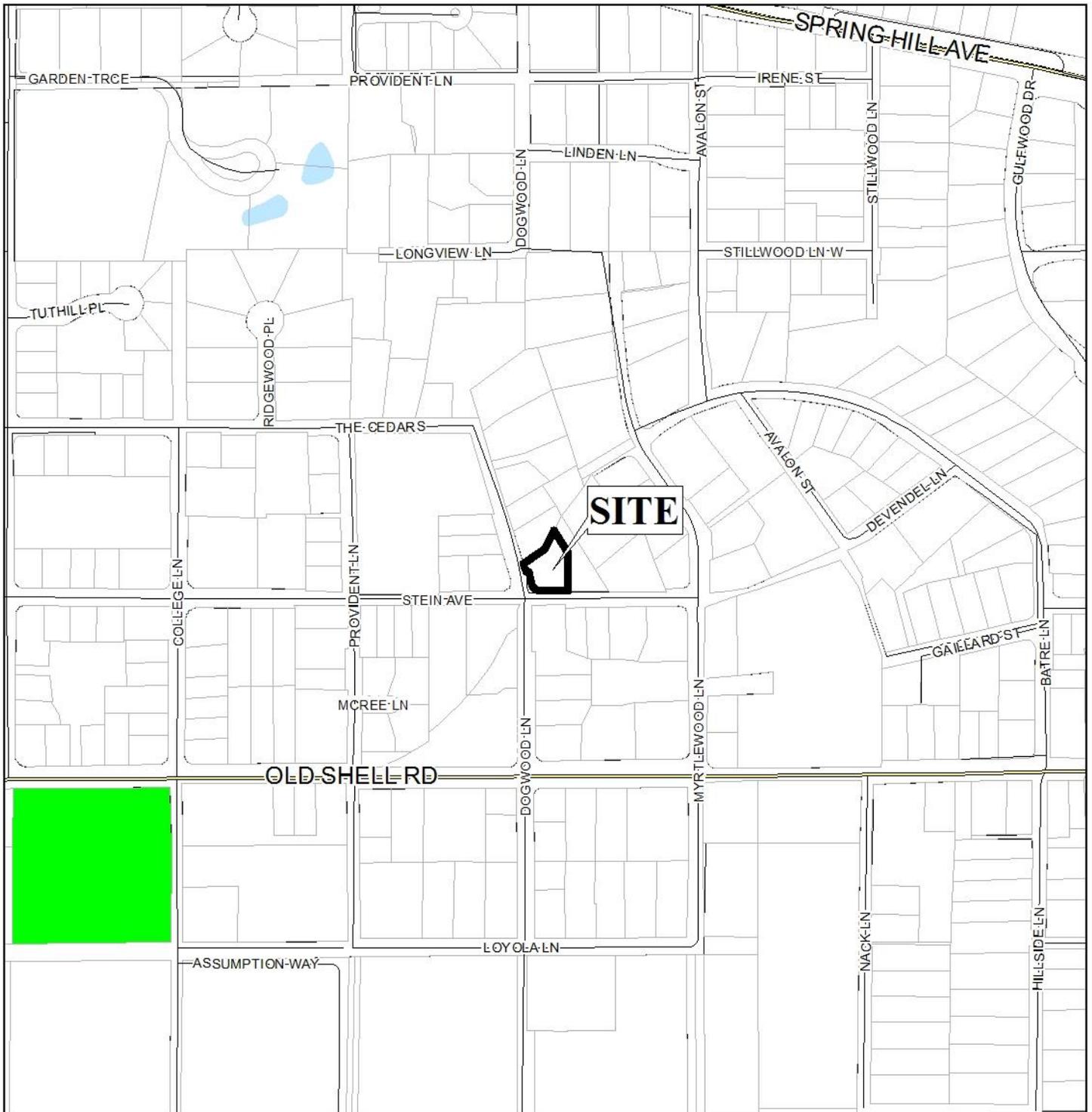
# LOCATOR MAP



APPLICATION NUMBER	6252	DATE	May 6, 2019
APPLICANT	Katherine Zarzour		
REQUEST	Setback Variance		



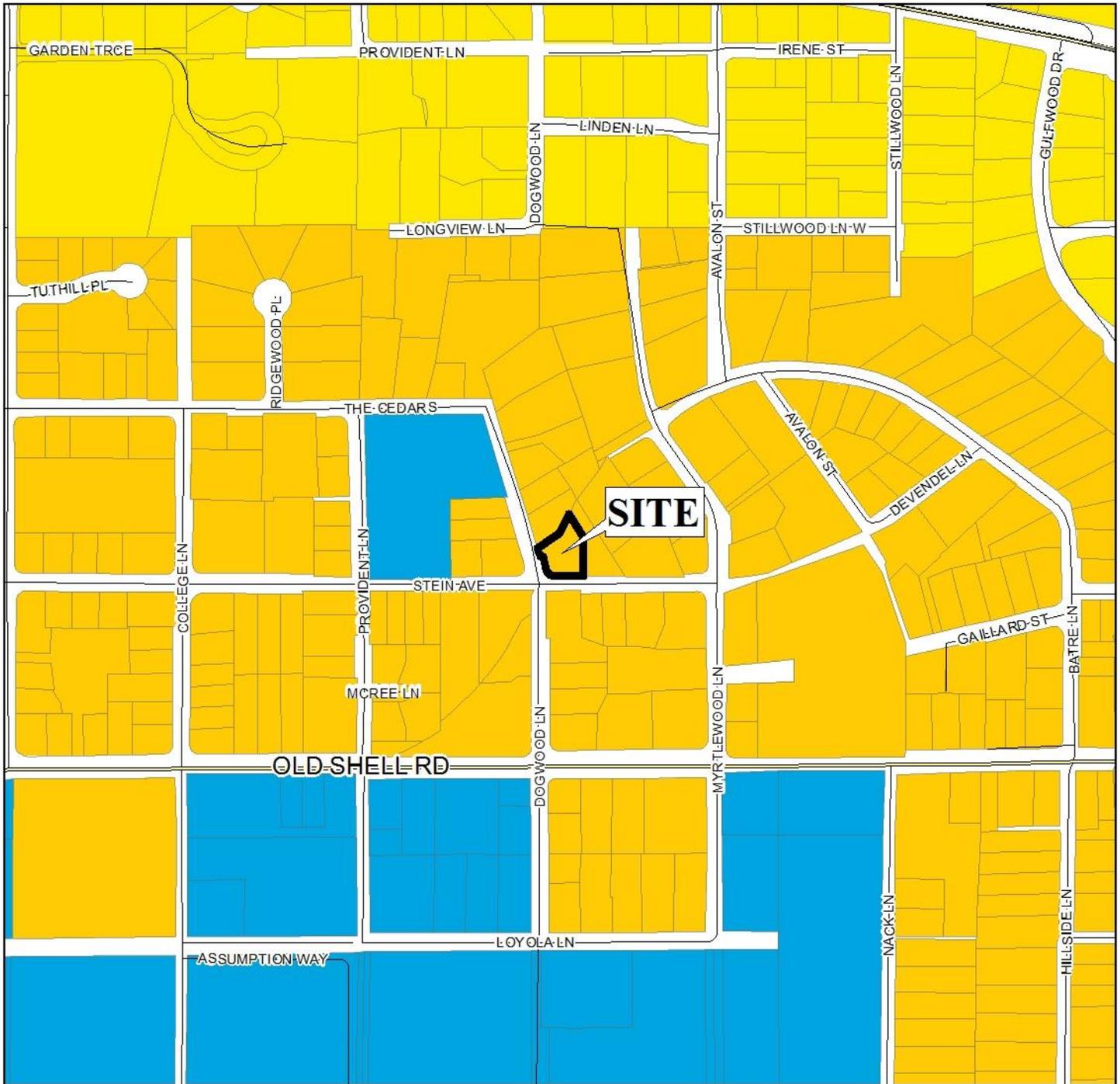
# LOCATOR ZONING MAP



APPLICATION NUMBER 6252 DATE May 6, 2019  
APPLICANT Katherine Zarzour  
REQUEST Setback Variance



# FLUM LOCATOR MAP



APPLICATION NUMBER 6252 DATE May 6, 2019

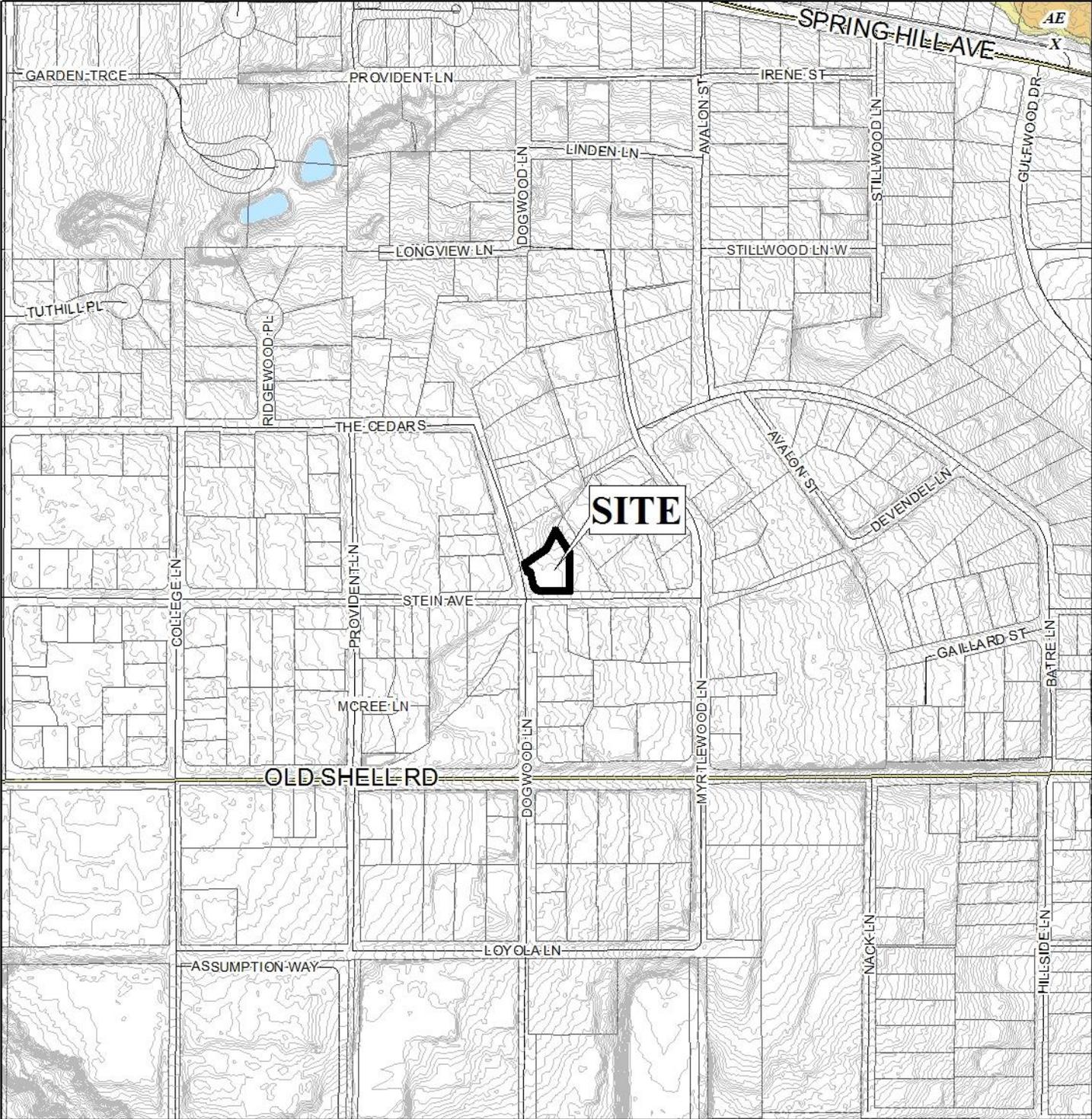
APPLICANT Katherine Zarzour

REQUEST Setback Variance

- |  |   |   |   |
|--|---|---|---|
| <span style="display: inline-block; width: 15px; height: 10px; background-color: yellow; border: 1px solid black;"></span> Low Density Residential   | <span style="display: inline-block; width: 15px; height: 10px; background-color: darkred; border: 1px solid black;"></span> Neighborhood Center - Traditional | <span style="display: inline-block; width: 15px; height: 10px; background-color: brown; border: 1px solid black;"></span> Downtown Waterfront | <span style="display: inline-block; width: 15px; height: 10px; background-color: lightgreen; border: 1px solid black;"></span> Parks & Open Space |
| <span style="display: inline-block; width: 15px; height: 10px; background-color: orange; border: 1px solid black;"></span> Mixed Density Residential | <span style="display: inline-block; width: 15px; height: 10px; background-color: blue; border: 1px solid black;"></span> Neighborhood Center - Suburban       | <span style="display: inline-block; width: 15px; height: 10px; background-color: lightgrey; border: 1px solid black;"></span> Light Industry  | <span style="display: inline-block; width: 15px; height: 10px; background-color: darkblue; border: 1px solid black;"></span> Water Dependent      |
| <span style="display: inline-block; width: 15px; height: 10px; background-color: pink; border: 1px solid black;"></span> Downtown                    | <span style="display: inline-block; width: 15px; height: 10px; background-color: lightpink; border: 1px solid black;"></span> Traditional Corridor            | <span style="display: inline-block; width: 15px; height: 10px; background-color: purple; border: 1px solid black;"></span> Heavy Industry     |   |
| <span style="display: inline-block; width: 15px; height: 10px; background-color: red; border: 1px solid black;"></span> District Center              | <span style="display: inline-block; width: 15px; height: 10px; background-color: orange; border: 1px solid black;"></span> Mixed Commercial Corridor          | <span style="display: inline-block; width: 15px; height: 10px; background-color: cyan; border: 1px solid black;"></span> Institutional        |   |



# ENVIRONMENTAL LOCATOR MAP



APPLICATION NUMBER 6252 DATE May 6, 2019  
APPLICANT Katherine Zarzour  
REQUEST Setback Variance



# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by single family residential units.  
A school lies west of the site.

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APPLICANT Katherine Zarzour

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<span style="display: inline-block; width: 15px; height: 10px; background-color: cyan; border: 1px solid black;"></span> R-A	<span style="display: inline-block; width: 15px; height: 10px; background-color: green; border: 1px solid black;"></span> R-3	<span style="display: inline-block; width: 15px; height: 10px; background-color: tan; border: 1px solid black;"></span> T-B	<span style="display: inline-block; width: 15px; height: 10px; background-color: orange; border: 1px solid black;"></span> B-2	<span style="display: inline-block; width: 15px; height: 10px; background-color: blue; border: 1px solid black;"></span> B-5	<span style="display: inline-block; width: 15px; height: 10px; background-color: yellow; border: 1px solid black;"></span> MUN	<span style="display: inline-block; width: 15px; height: 10px; background-color: orange; border: 1px solid black;"></span> SD-WH	<span style="display: inline-block; width: 15px; height: 10px; background-color: purple; border: 1px solid black;"></span> T5.1
<span style="display: inline-block; width: 15px; height: 10px; background-color: white; border: 1px solid black;"></span> R-1	<span style="display: inline-block; width: 15px; height: 10px; background-color: pink; border: 1px solid black;"></span> R-B	<span style="display: inline-block; width: 15px; height: 10px; background-color: cyan; border: 1px solid black;"></span> B-1	<span style="display: inline-block; width: 15px; height: 10px; background-color: red; border: 1px solid black;"></span> B-3	<span style="display: inline-block; width: 15px; height: 10px; background-color: lightblue; border: 1px solid black;"></span> I-1	<span style="display: inline-block; width: 15px; height: 10px; background-color: lightgreen; border: 1px solid black;"></span> OPEN	<span style="display: inline-block; width: 15px; height: 10px; background-color: lightpink; border: 1px solid black;"></span> T3	<span style="display: inline-block; width: 15px; height: 10px; background-color: darkpurple; border: 1px solid black;"></span> T5.2
<span style="display: inline-block; width: 15px; height: 10px; background-color: yellow; border: 1px solid black;"></span> R-2	<span style="display: inline-block; width: 15px; height: 10px; background-color: peachpuff; border: 1px solid black;"></span> H-B	<span style="display: inline-block; width: 15px; height: 10px; background-color: purple; border: 1px solid black;"></span> LB-2	<span style="display: inline-block; width: 15px; height: 10px; background-color: brown; border: 1px solid black;"></span> B-4	<span style="display: inline-block; width: 15px; height: 10px; background-color: gray; border: 1px solid black;"></span> I-2	<span style="display: inline-block; width: 15px; height: 10px; background-color: orange; border: 1px solid black;"></span> SD	<span style="display: inline-block; width: 15px; height: 10px; background-color: lightpurple; border: 1px solid black;"></span> T4	<span style="display: inline-block; width: 15px; height: 10px; background-color: darkblue; border: 1px solid black;"></span> T6



# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING AERIAL

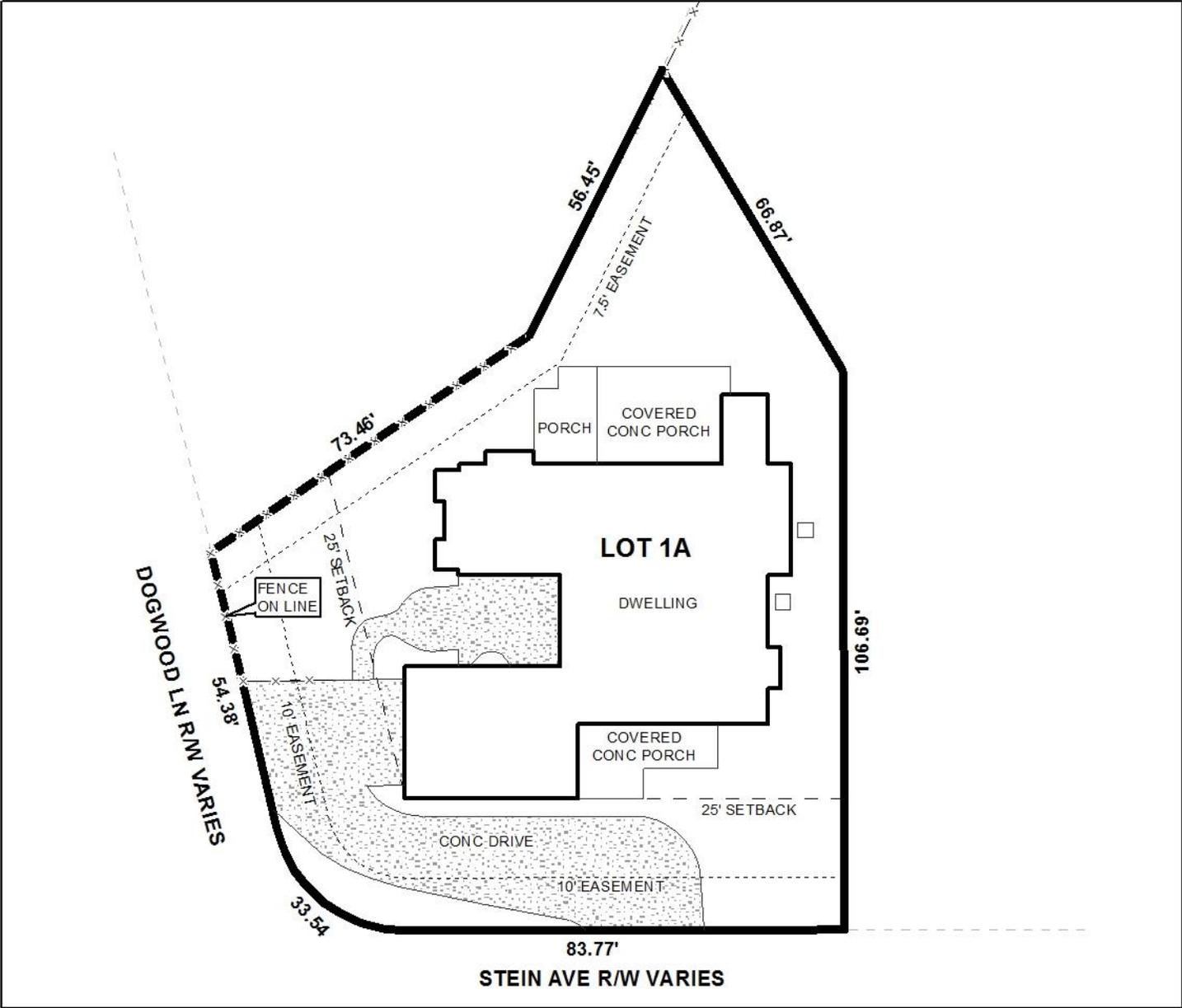


The site is surrounded by single family residential units.  
A school lies west of the site.

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# SITE PLAN



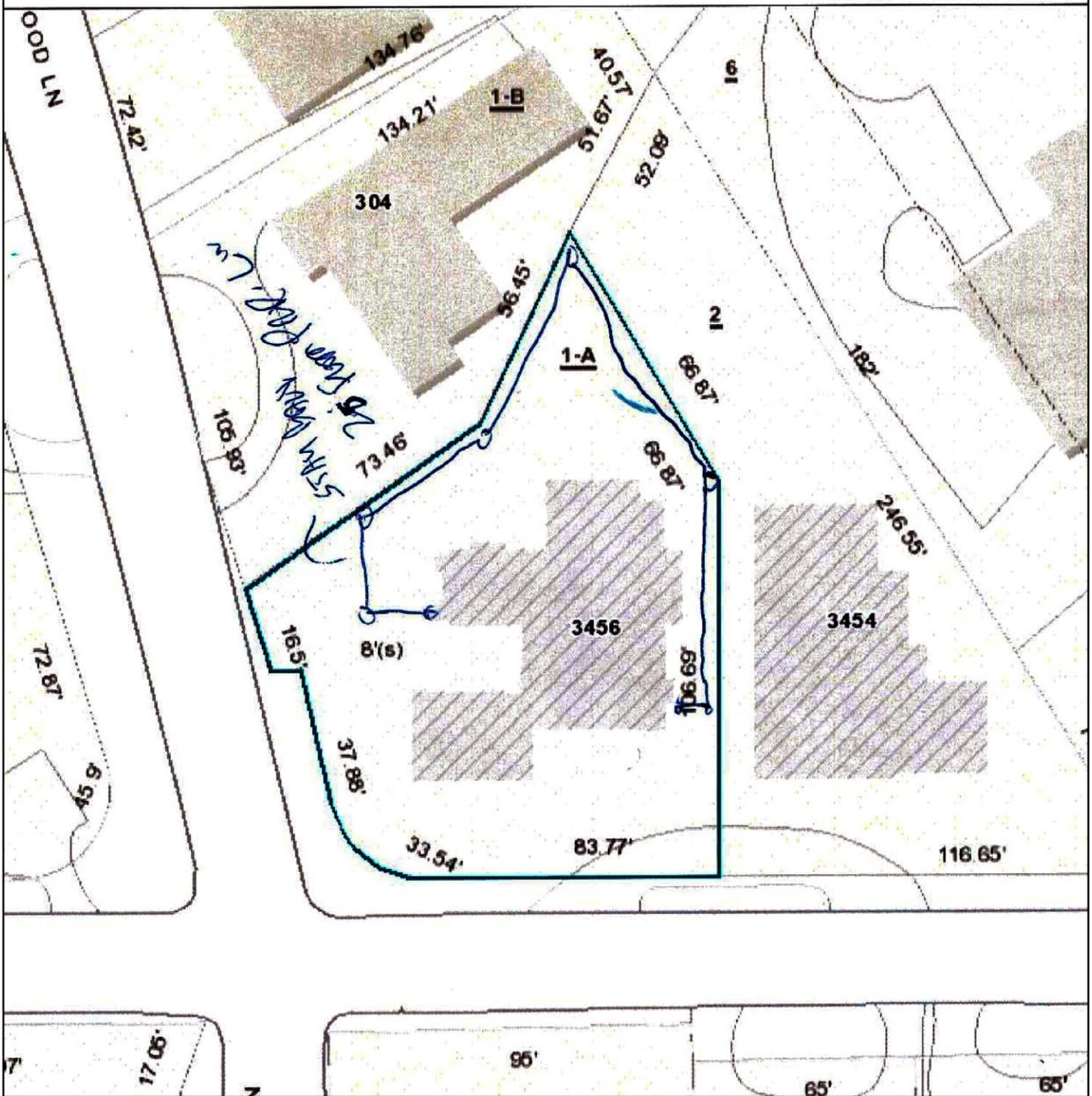
The site plan illustrates the existing dwelling, driveway, setbacks, easements, and fences.

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N

NTS

# DETAIL SITE PLAN



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REQUEST	Setback Variance		