

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: May 4, 2020****CASE NUMBER**

6319

APPLICANT NAME

Bret Webb

LOCATION3721 The Cedars
(Southeast corner of The Cedars and Tuthill Lane)**VARIANCE REQUEST****SETBACK:** Setback Variance to allow the construction of a 6-foot privacy fence within a required front yard setback in an R-1, Single-Family Residential District.**ZONING ORDINANCE
REQUIREMENT****SETBACK:** The Zoning Ordinance limits fences within a required front yard to a maximum height of three (3) feet in an R-1, Single-Family Residential District.**ZONING**

R-1, Single-Family Residential District

AREA OF PROPERTY

17,270± square feet / 0.39±Acres

**CITY COUNCIL
DISTRICT**

District 7

**ENGINEERING
COMMENTS**

No comments.

**TRAFFIC ENGINEERING
COMMENTS**

Location of fence and columns is acceptable to COM Traffic Engineering. A site visit indicated there would be no, or minimal, apparent line of site issues for adjacent property owners due to the fence. It is located on the private property side of the sidewalk.

**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 Setback Variance to allow the construction of a 6-foot privacy fence within a required front yard setback in an R-1, Single-Family Residential District; the Zoning Ordinance limits fences within a required front yard to a maximum height of three (3) feet in an R-1, Single-Family Residential District.

The site has been given 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.

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 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 seeking a variance on the height of a fence inside of the 25-foot setback. We are seeking approval for a six-foot privacy fence along our newly extended property boundary (65 feet along The Cedars Avenue). The reason we are seeking this variance is to allow us to extend our existing six-foot privacy fence (and brick columns) along our newly established property line. Our original residential lot is situated at the corner of Tuthill and The Cedars. Last year we purchased the property directly behind ours (on The Cedars). We recently combined the two properties through the subdivision application process (approved and recorded). Since our house faces Tuthill, this new property will serve as our backyard.

We already have a six-foot privacy fence and brick columns on The Cedars and are seeking approval to extend said fence and columns another 65 feet to enclose our backyard. The six-foot fence height is desired for both privacy and safety. We are currently building a pool in our new backyard, so some fence will be mandatory. Extending our existing fence along our new property line will not pose an obstruction to traffic sight lines nor will it obstruct or obscure any driveways. The nearest driveway on The Cedars is more than 80 feet from the corner of where the extended fence would terminate. The property adjoining our new parcel was recently acquired by the neighboring property owner and used as their "side yard" and is landscaped with a pool. The east boundary of their property contains a six-foot wood privacy fence.

The proposed fence will consist of wood panels separated by brick columns. The materials of the proposed fence will match those of the existing fence, as shown in the property photos provided in a separate attachment.

At its meeting on November 21, 2019 the Planning Commission approved a subdivision request creating one (1) legal lot of record from two (2) legal lots of record.

It is important to note that at their April 2, 2018 meeting the Board approved a similar setback variance to allow the construction of a 6-foot privacy fence within the 25-foot front setback for 3713 The Cedars Avenue. This property directly abuts the subject property to the East. As part of this variance approval the Board saw fit to attach the following conditions: 1) *The fence is to be setback 10 feet from the front property line; and 2) The applicant is required to obtain all necessary permits prior to construction.* If approved, in order to remain consistent, staff recommends the Board utilize the same conditions for the requested variance.

The applicant states, that a 6-foot wood privacy fence with brick columns is already present on a portion of the property adjacent to The Cedars, a fact confirmed by city GIS imagery. As such, it is important to note that city records indicate building permits being issued for a single-family

dwelling on September 1, 2017, a swimming pool on February 12, 2020, and an accessory structure on April 6, 2020. However, records do not indicate that the appropriate building permits were obtained for the construction of said fencing or that the applicant received the necessary setback variance required for the proposed fencing at the time. If the necessary building permits were obtained, the applicant would have been advised of these requirements prior to installing the columns and fencing.

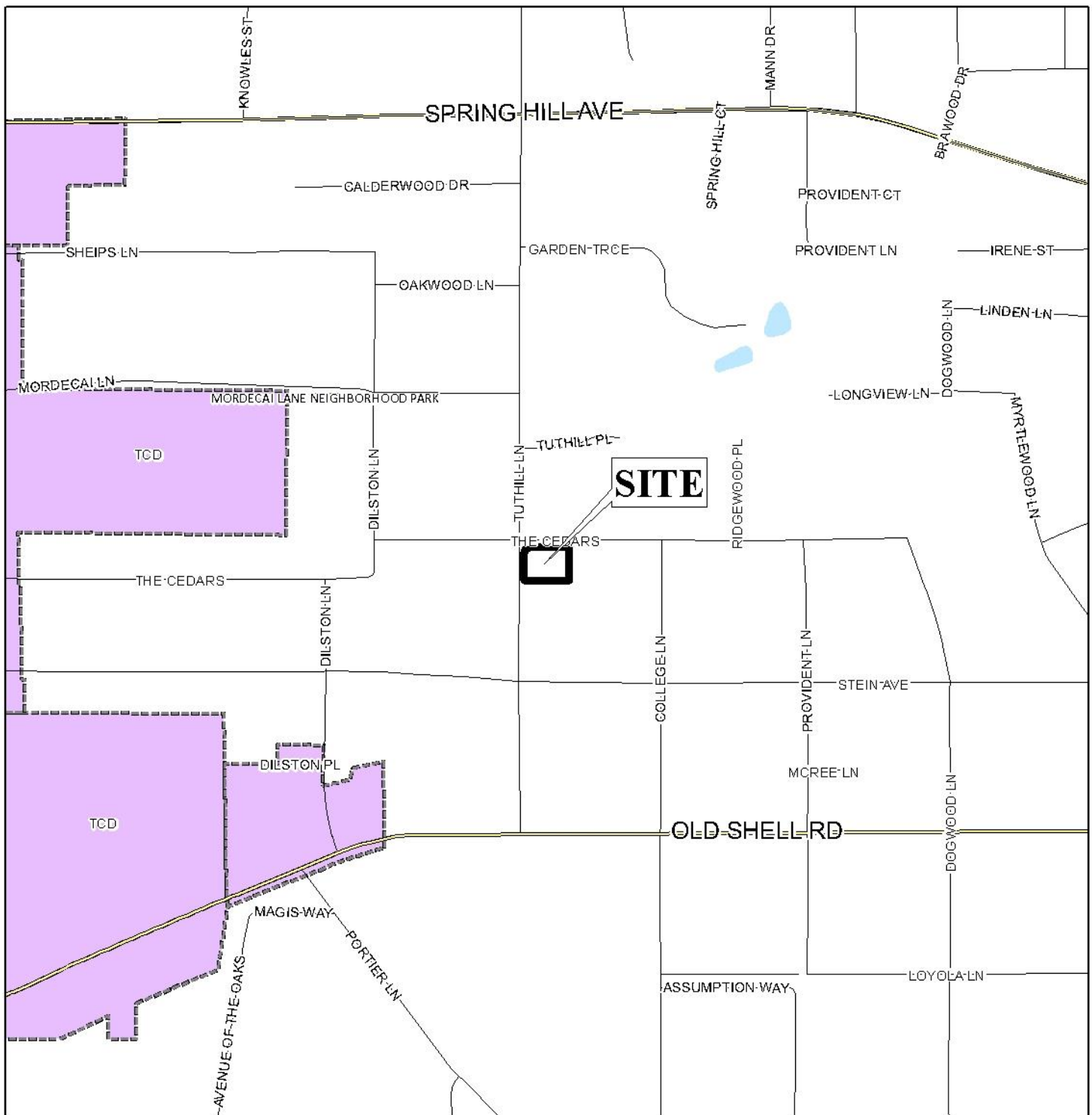
RECOMMENDATION: Based on the preceding, staff recommends to the Board the following findings of fact for Approval:

- 1) Granting the variance will not be contrary to the public interest in that there are other fences and walls exceeding three feet in height along street property lines within the vicinity;
- 2) Special conditions and hardships do exist in such a way that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship, as there is a need to provide for safety, security, and privacy for a family; 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 similar variances have been approved in the area.

The approval is subject to the following conditions:

- 1) The fence is to be setback 10 feet from the front property line;
- 2) The obtaining of necessary permits prior to construction; and
- 3) Full compliance with all other municipal codes and ordinances.

LOCATOR MAP



APPLICATION NUMBER 6319 DATE May 4, 2020

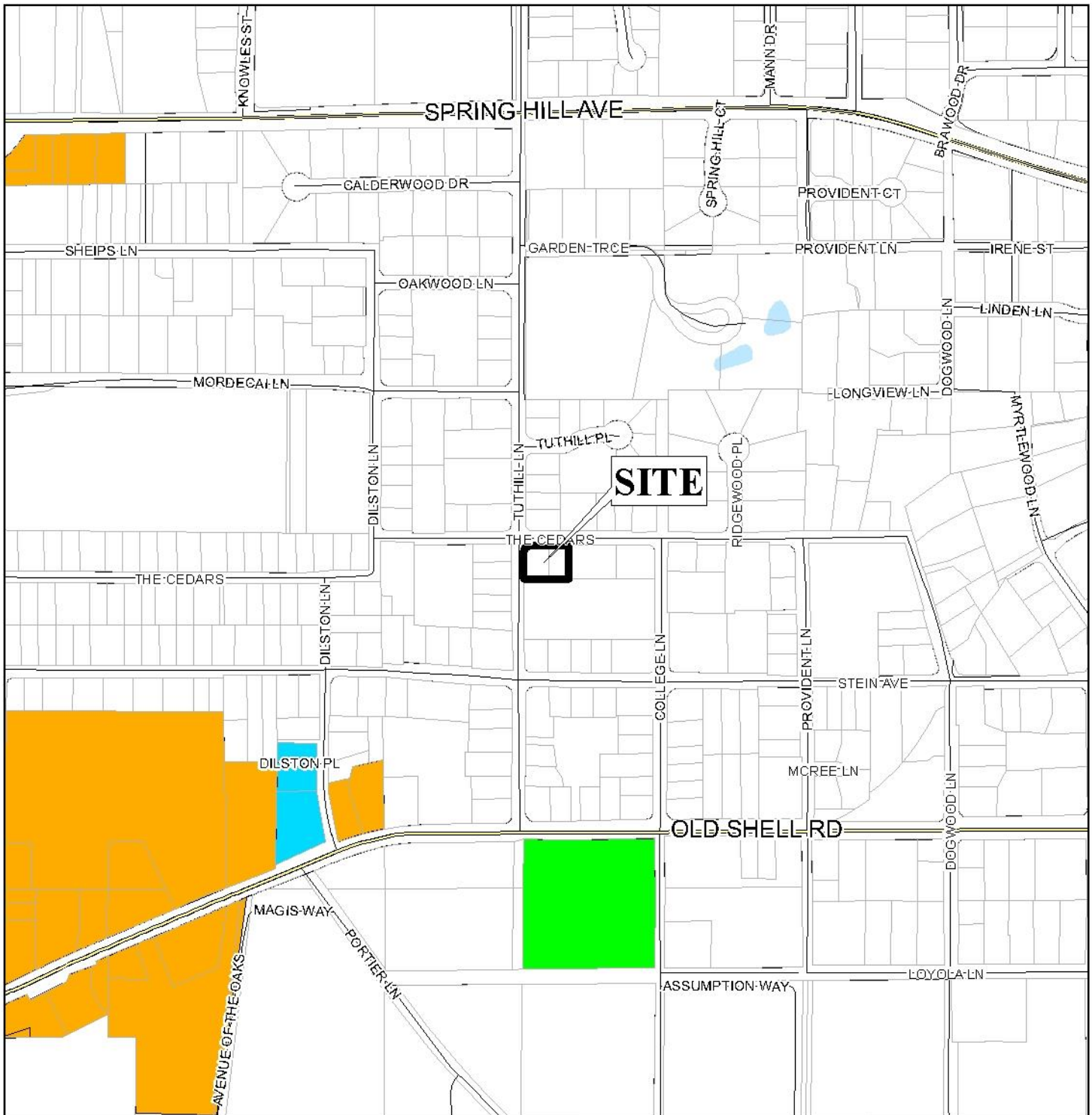
APPLICANT Bret Webb

REQUEST Setback Variance



NTS

LOCATOR ZONING MAP



APPLICATION NUMBER 6319 DATE May 4, 2020

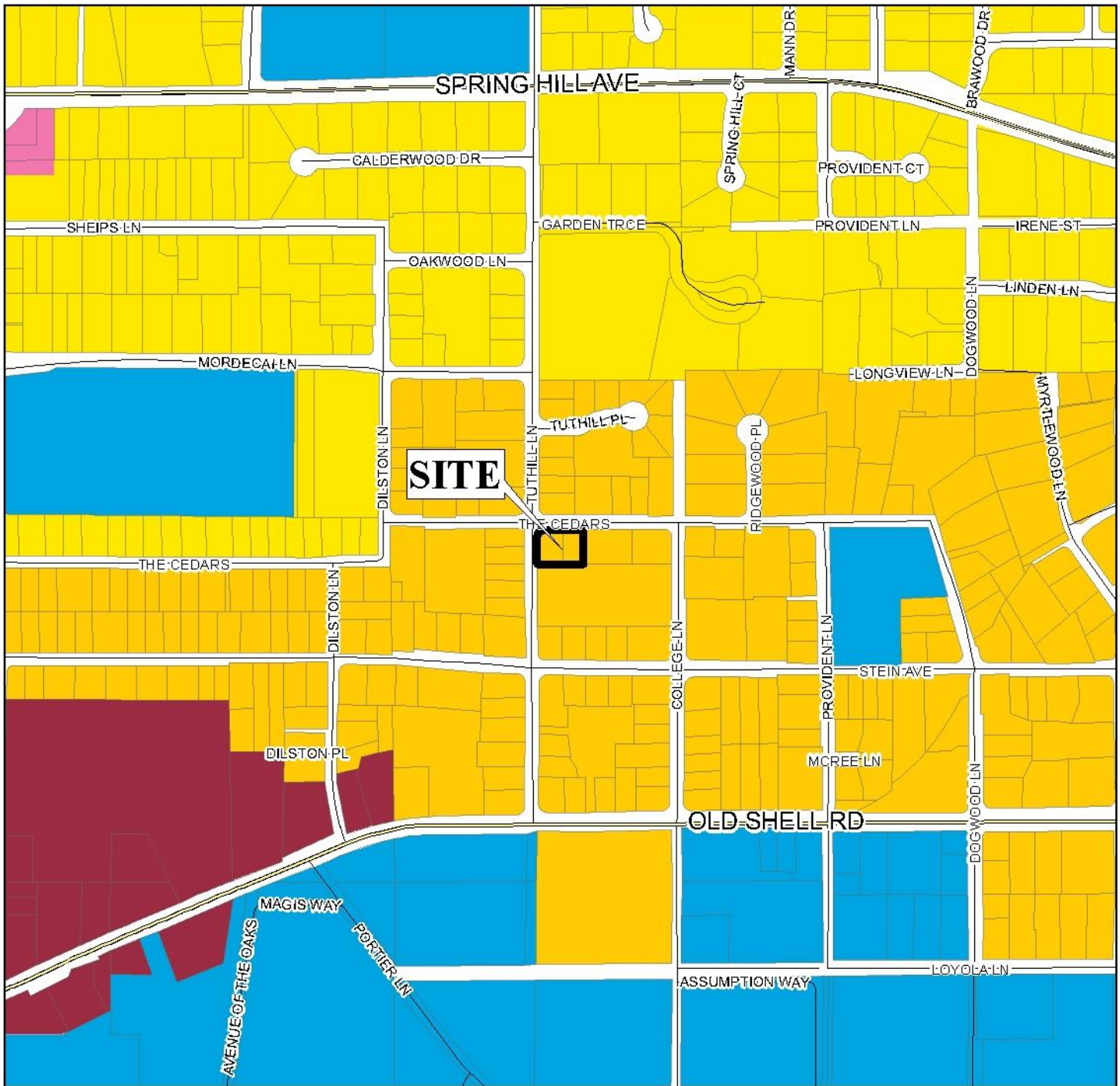
APPLICANT Bret Webb

REQUEST Setback Variance



NTS

FLUM LOCATOR MAP



APPLICATION NUMBER 6319 DATE May 4, 2020

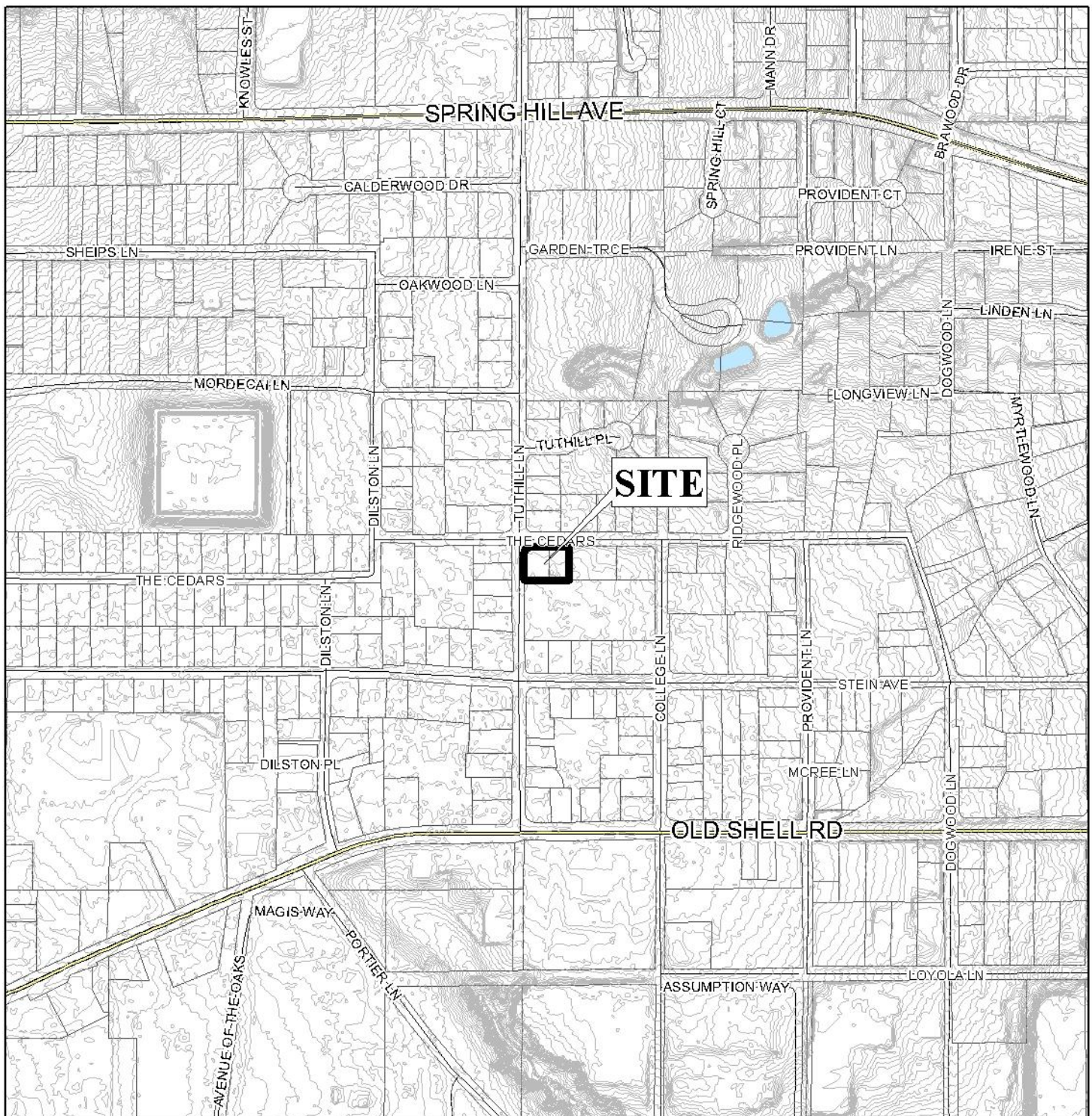
APPLICANT Bret Webb

REQUEST Setback Variance

- | | | | |
|---------------------------|-----------------------------------|---------------------|--------------------|
| 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 6319 DATE May 4, 2020

APPLICANT Bret Webb

REQUEST Setback Variance



NTS

BOARD OF ADJUSTMENT

VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units.

APPLICATION NUMBER 6319 DATE May 4, 2020

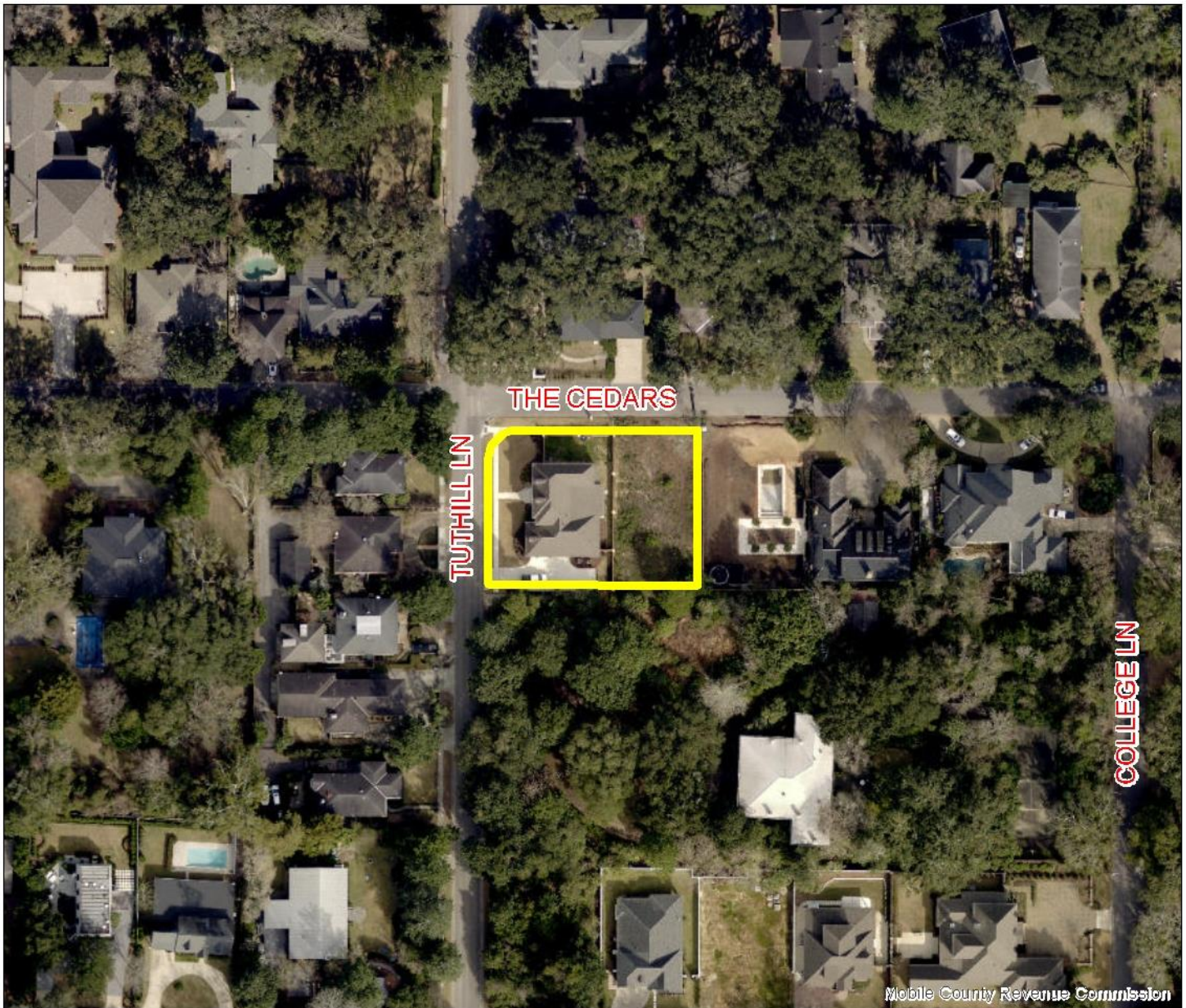
APPLICANT Bret Webb

REQUEST Setback 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

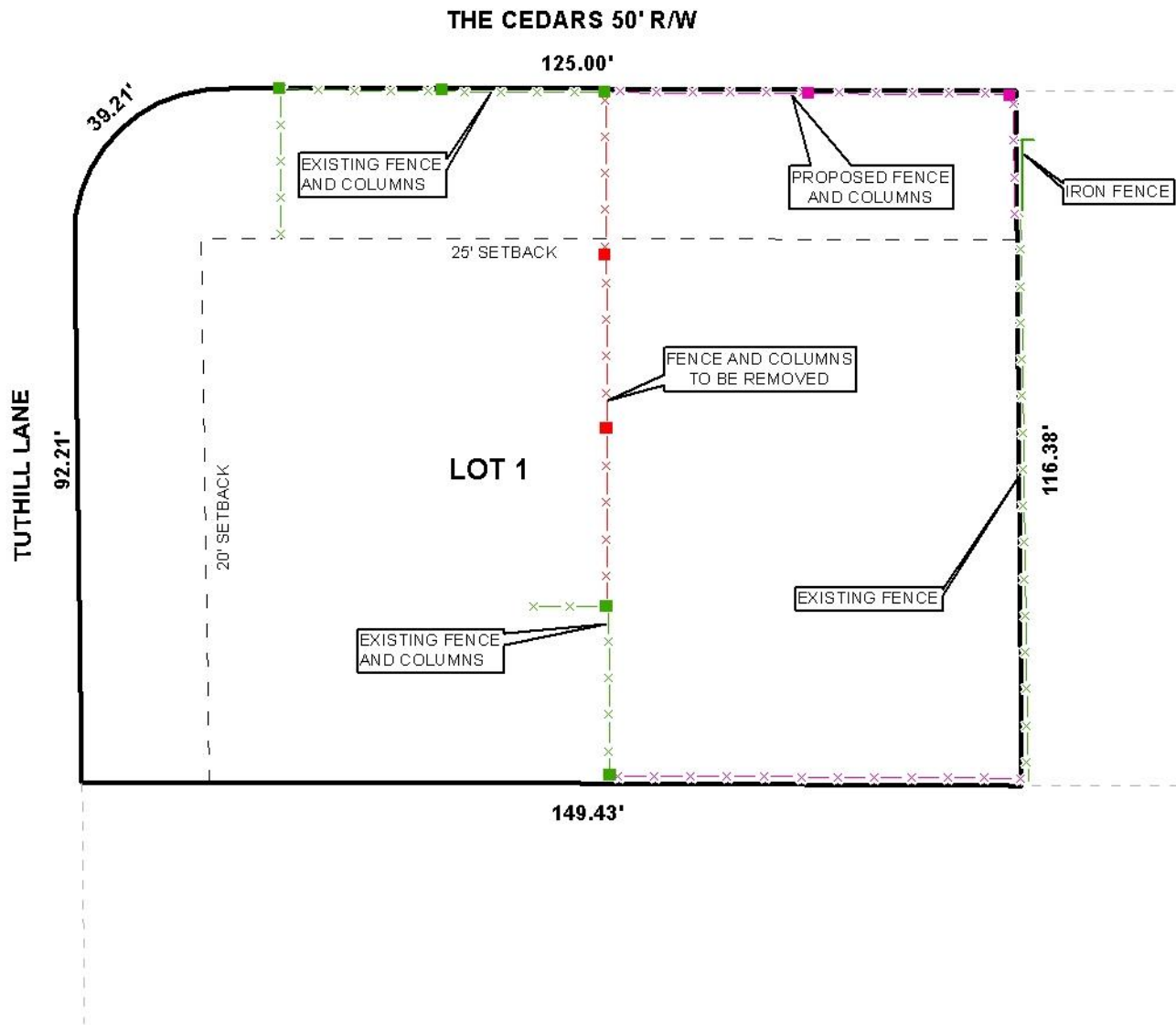


The site is surrounded by residential units.

APPLICATION NUMBER	6319	DATE	May 4, 2020
APPLICANT	Bret Webb		
REQUEST	Setback Variance		



SITE PLAN



The site plan illustrates a variance to extend a 6' wood privacy fence with brick columns around newly acquired property.

APPLICATION NUMBER 6319 DATE May 4, 2020

APPLICANT Bret Webb

REQUEST Setback Variance



NTS

