

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT**

Date: October 5, 2020

CASE NUMBER 6349 / 4564

APPLICANT NAME Lynn M. Jackson

LOCATION 4170 Bay Front Road
(Southwest corner of Bay Front Road and Terrell Road).

VARIANCE REQUEST **FRONT YARD SETBACK:** To allow a wooden privacy fence to exceed three (3) feet in height within the 25-foot front yard setback in a B-2, Neighborhood Business District.

ZONING ORDINANCE REQUIREMENT **FRONT YARD SETBACK:** The Zoning Ordinance does not allow a wooden privacy fence to exceed three (3) feet in height within a required front yard setback in a B-2, Neighborhood Business District.

ZONING B-2, Neighborhood Business District

AREA OF PROPERTY 1.1± Acres

ENGINEERING COMMENTS **FRONT YARD SETBACK VARIANCE** (fence within the Front Yard Setback):

1. The existing drainage patterns and surface flow characteristics should not be altered so as to have a negative impact on any adjoining properties or any public rights-of-way.
2. Applicant agrees to install adequate BMPs during construction to protect from sediment/pollutants leaving the site.
3. Submit and receive a Land Disturbance Permit for the proposed site development through Central Permitting.

TRAFFIC ENGINEERING COMMENTS No traffic impacts anticipated by this variance request.

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 3

ANALYSIS

The applicant is requesting a Front Yard Setback Variance to allow a wooden privacy fence to exceed three (3) feet in height within the 25-foot front yard setback in a B-2, Neighborhood Business District; the Zoning Ordinance does not allow a wooden privacy fence to exceed three (3) feet in height within a required front yard setback in a B-2, Neighborhood Business District.

The site has been given a Low Density Residential land use designation per the Future Land Use Plan and Map, adopted by the Planning Commission at its May 18, 2017 meeting. 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 acknowledges existing commercial development that is spread along Mobile’s transportation corridors in a conventional strip pattern or concentrated into shorter segments of a corridor.

This designation applies to existing residential neighborhoods found mostly west of the Beltline or immediately adjacent to the east side of the Beltline.

The primary land use in the LDR districts is residential and the predominant housing type is the single-family housing unit, detached or semi-detached, typically placed within a street grid or a network of meandering suburban streets. The density in these districts ranges between 0 and 6 dwelling units per acre (du/ac).

These neighborhoods may also contain small-scale, low-rise multi-unit structures at appropriate locations, as well as complementary retail, parks and civic institutions such as schools, community centers, neighborhood playgrounds, and churches or other religious uses if those uses are designed and sited in a manner compatible with and connected to the surrounding context. The presence of individual ancillary uses should contribute to the fabric of a complete neighborhood, developed at a walkable, bikeable human scale.

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.

A 311 complaint was received by Planning & Zoning staff resulting in the issuance of a Notice of Violation upon the verification that a six (6) foot tall wooden privacy fence was erected less than 25-feet from the front property line along Terrell Road. In July 2016, a building permit was issued for the erection of a six (6) foot tall wooden privacy fence along Terrell Road, where it was noted that the fence would need to meet the required minimum 25-foot front setback. Planning & Zoning staff has measured the fence as being approximately 14-feet from the edge of pavement (not the property line).

The applicant provided the following narrative regarding the request:

Please accept our apologies for misinterpreting the Ordinance wording. We simply are trying to find a logical and fair way to translate the 'reality' of our unique situation within the confines of the necessarily 'limited' wording and definitions created to accommodate 'most situations', but, of course, cannot possibly cover 100% of 'all possible situations' in the whole jurisdiction.

We now understand that, indeed, the Inspector misspoke when he mentioned 'Setback' regarding our Side Fence facing Terrell Road in the Notice of Violation. The word 'Setback' had thrown us and our advisors off base. We now understand the issue is Primarily the interpretation of the English words, Front, Frontage, Primary Frontage, Secondary Frontage, and Primary Facade.

*We were basing our interpretation on Mobile, Alabama - Code of Ordinances / Chapter 52 - REAL PROPERTY MAINTENANCE AND ENFORCEMENT / ARTICLE IV. - ABATEMENT OF GENERAL REAL PROPERTY NUISANCES AND LOT MAINTENANCE. To wit, FRONT YARD...the front yard shall be considered the **side on which the majority of lots front in the block**. Since ALL of the Houses on our 'block' FRONT toward the Mobile Bay, you can see our understanding why we all consider our bayfront yards as our Front Yards. The management at POLY Surveying insists that is the 'accepted and traditional interpretation of almost all homes facing a waterfront such as Mobile Bay'.*

*Therefore, our **Primary Facade, the front plane** of our house, has faced the Mobile Bay since it was built in 1904. That fact determines it as our **Primary Frontage**. Chapter 64 -*

Zoning. There obviously is No Street, whatsoever, along our Primary Frontage / Front Yard, and therefore No Front Fence Ordinances apply to the unique situation of all of our Bay Front Properties.

*Therefore, neither can Terrell Road be considered a 'front' street line of the building site as it is not considered our Primary Frontage. Terrell Road is not considered a **Walkable Street**, ie 'A street that provides amenities for pedestrians as well as vehicles. Common amenities include sidewalks...and on-street parking'. **Since there is no Pedestrian environment on Terrell Road, just deep ditches alongside a narrow 2 lane road, it is a Secondary Frontage.***

*In other words, we do not agree that Terrell Road is the 'front' street line of the building site, however, we do accept it as a **Secondary Frontage, along our Side Yard. Therefore, we would like to ask that you also re-consider that our Six (6) foot Side Fence along our Secondary Footage is entirely within Code and requires no Variance Application.***

Again, we thank you for your time and effort on our behalf, and plea once again that you adjudicate that the Status of this Complaint to be 'Passed' or 'Unfounded'. Please help us get past this situation without further stress, as neither my wife nor I can imagine going back to the very dangerous episodes of having dozens of people drinking and aggressively driving across our yard, setting off fireworks, threatening us, etc., thinking they were in McNally Park 24 hours/day.

As the applicant states, there seems to be some confusion over the definition of terms. First, the terms cited by the applicant are from Chapter 52 of the City Code; the Zoning Ordinance is Chapter 64. Chapter 64 (the Zoning Ordinance) defines the following:

Building frontage: The width of a building facade that faces a street.

Building setback line: The line indicating the minimum horizontal distance between the street right-of-way line and the face of the buildings.

Frontage: The portion of a lot which coincides with a street right-of-way or civic space.

Primary frontage: Frontages are identified as either "primary" or "secondary" on the regulating plan, based on hierarchy of the quality of the pedestrian environment along the street networks. Primary frontages shall be held to the highest standards of this code.

Primary facade: The front plane of a building that faces a primary street or civic space.

Secondary frontage: Frontages are identified as either "primary" or "secondary" on the regulating plan, based on hierarchy of the quality of the pedestrian environment along the street networks.

Using the definitions of these terms as found in the Zoning Ordinance, the subject site only has one "frontage", as there is only one street frontage, Terrell Road, making it the "primary frontage". The Zoning Ordinance does not recognize the waterfront as site frontages. Furthermore, the subject site received Subdivision approved from the Planning Commission at its December 15, 2016 meeting. The recorded plat (signed by the applicant) shows the standard 25' minimum building setback along Terrell Road.

The applicant argues the point that Mobile Bay should be considered the “front yard”, with Terrell Road being considered a “secondary frontage”, or side street side yard. It should be noted that if this logic is applied to the subject site, that Terrell Road would have a 20’ setback instead of the recorded 25’ setback, and the fence would still be located within the required setback.

It is difficult to say what the exact setback between the fence and the property line is, as the site plan submitted indicating the fence is not drawn to-scale. A second site plan was submitted to-scale, but does not include the subject fence, or other improvements made to the site. However, as previously stated, the fence is located 14-feet from the pavement of Terrell Road, thus indicating it is well within the required setbacks.

It seems as if it is simply the applicant’s desire to maintain the fence in its current location, without any hardships specific to the property preventing it from either being relocated to a compliant setback distance or replaced with a chain link fence, thus illustrating a self-imposed hardship.

RECOMMENDATION: Based upon the preceding, Staff recommends to the Board the following findings of fact for Denial of the Front Yard Setback Variance request:

- 1) Approving the variance request will be contrary to the public interest due to the fact that the subject fence is out of character with the area;
- 2) Special conditions do not appear to exist, as the existing non-compliant fence can either be relocated to a compliant setback distance or replaced with a chain link fence, such that a literal enforcement of the provisions of the Chapter will result in unnecessary hardship; and
- 3) That the spirit of the Chapter not shall be observed and substantial justice not done to the applicant and the surrounding neighborhood by granting the variance in that it will set a precedent for allowing non-compliant fences and/or structures within required front setbacks as defined by the Zoning Ordinance.

LOCATOR MAP



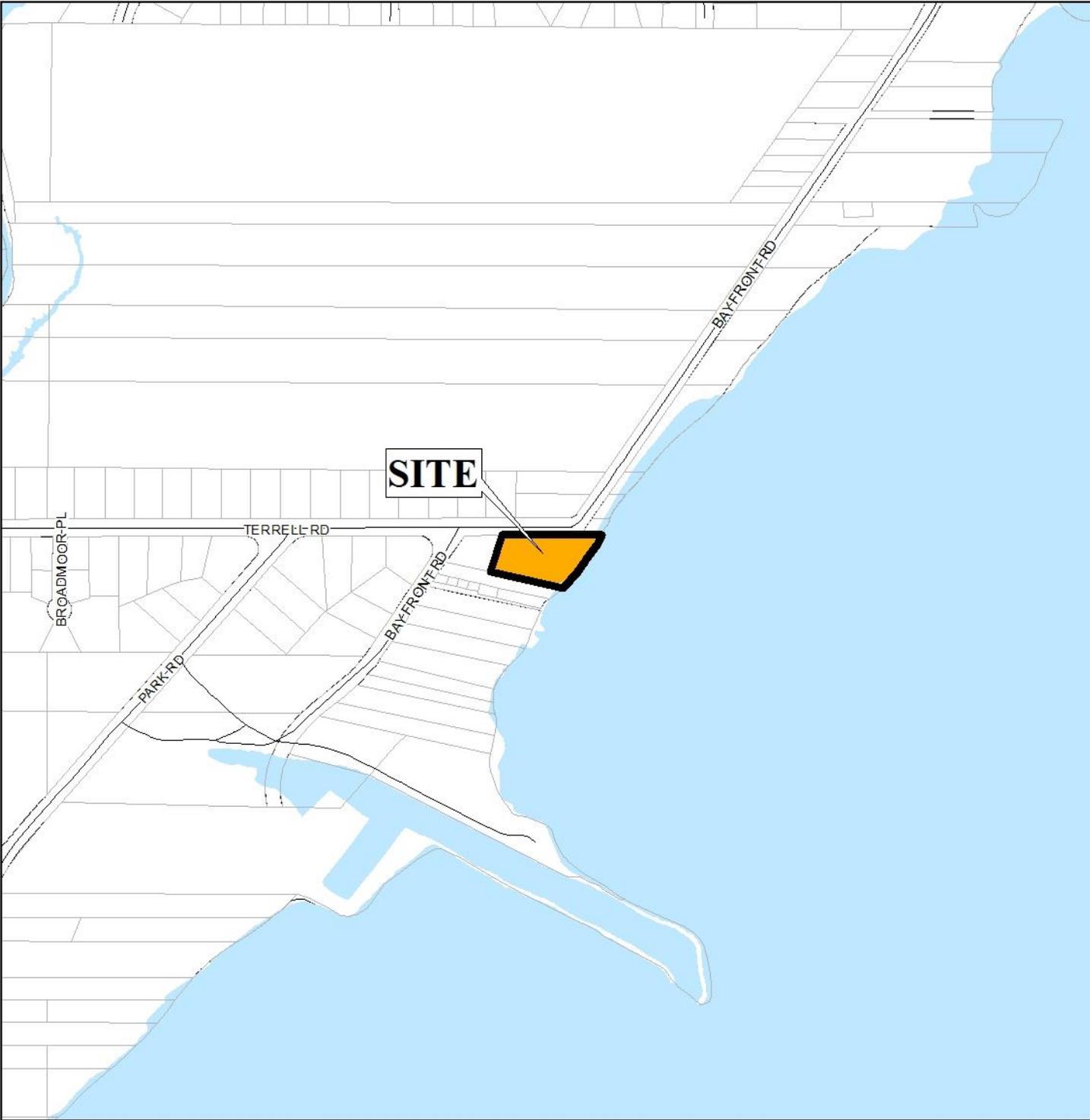
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REQUEST Front Yard Setback Variance



LOCATOR ZONING MAP



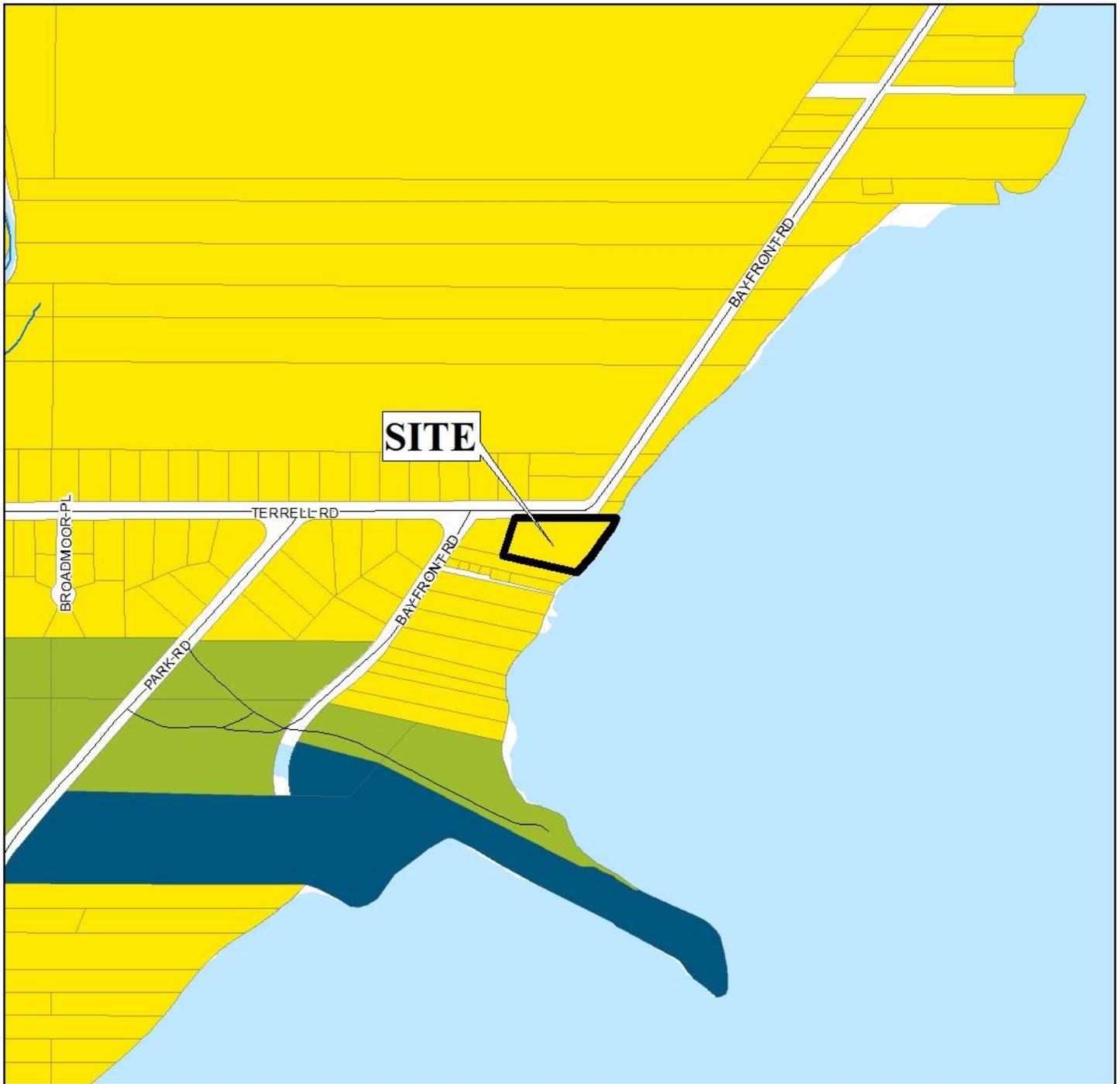
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FLUM LOCATOR MAP



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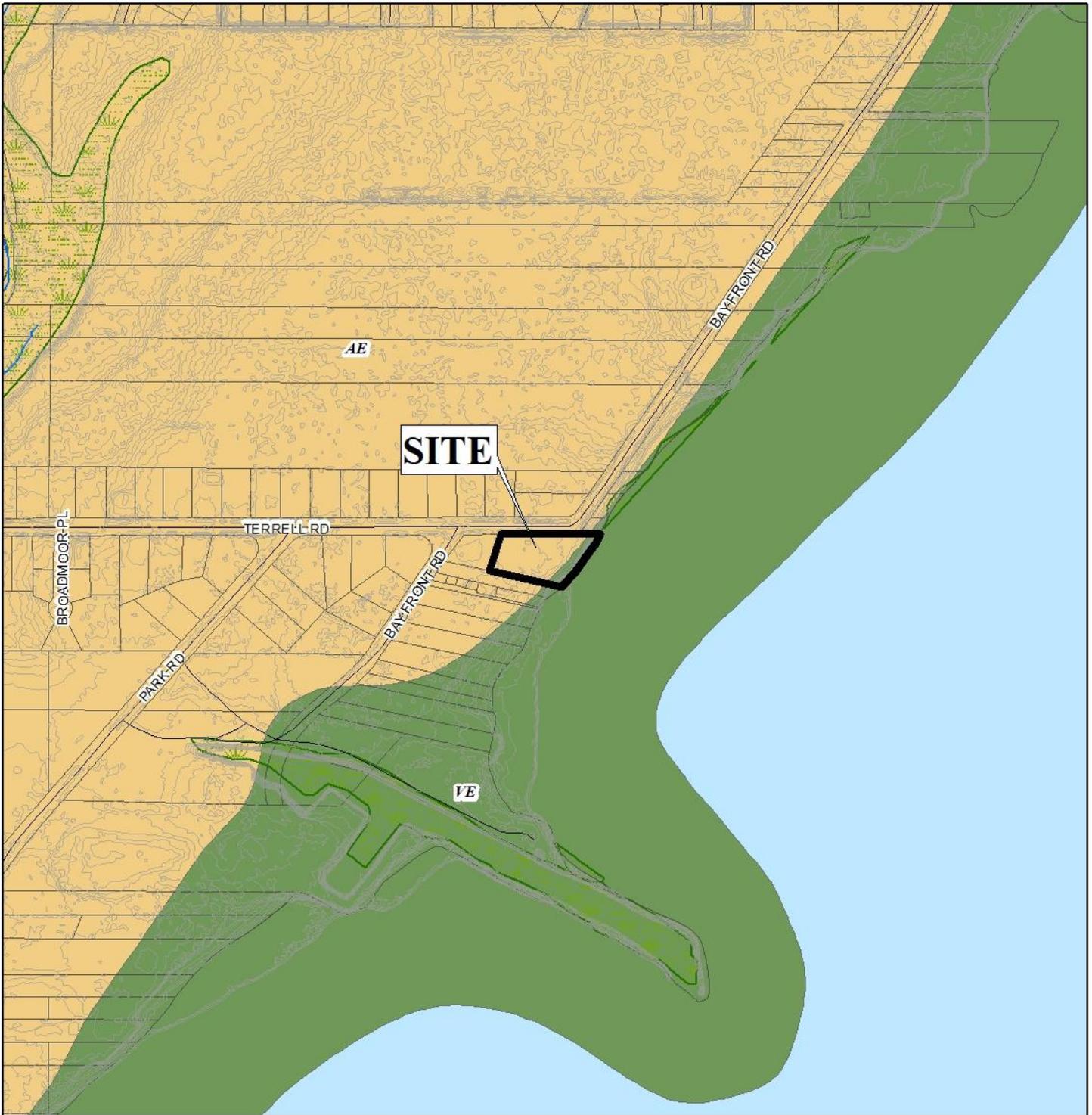
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|---------------------------|-----------------------------------|---------------------|--------------------|
| Low Density Residential | Neighborhood Center - Traditional | Downtown Waterfront | Parks & Open Space |
| Mixed Density Residential | Neighborhood Center - Suburban | Light Industry | Water Dependent |
| Downtown | Traditional Corridor | Heavy Industry | |
| District Center | Mixed Commercial Corridor | Institutional | |



ENVIRONMENTAL LOCATOR MAP



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BOARD OF ADJUSTMENT VICINITY MAP - EXISTING AERIAL

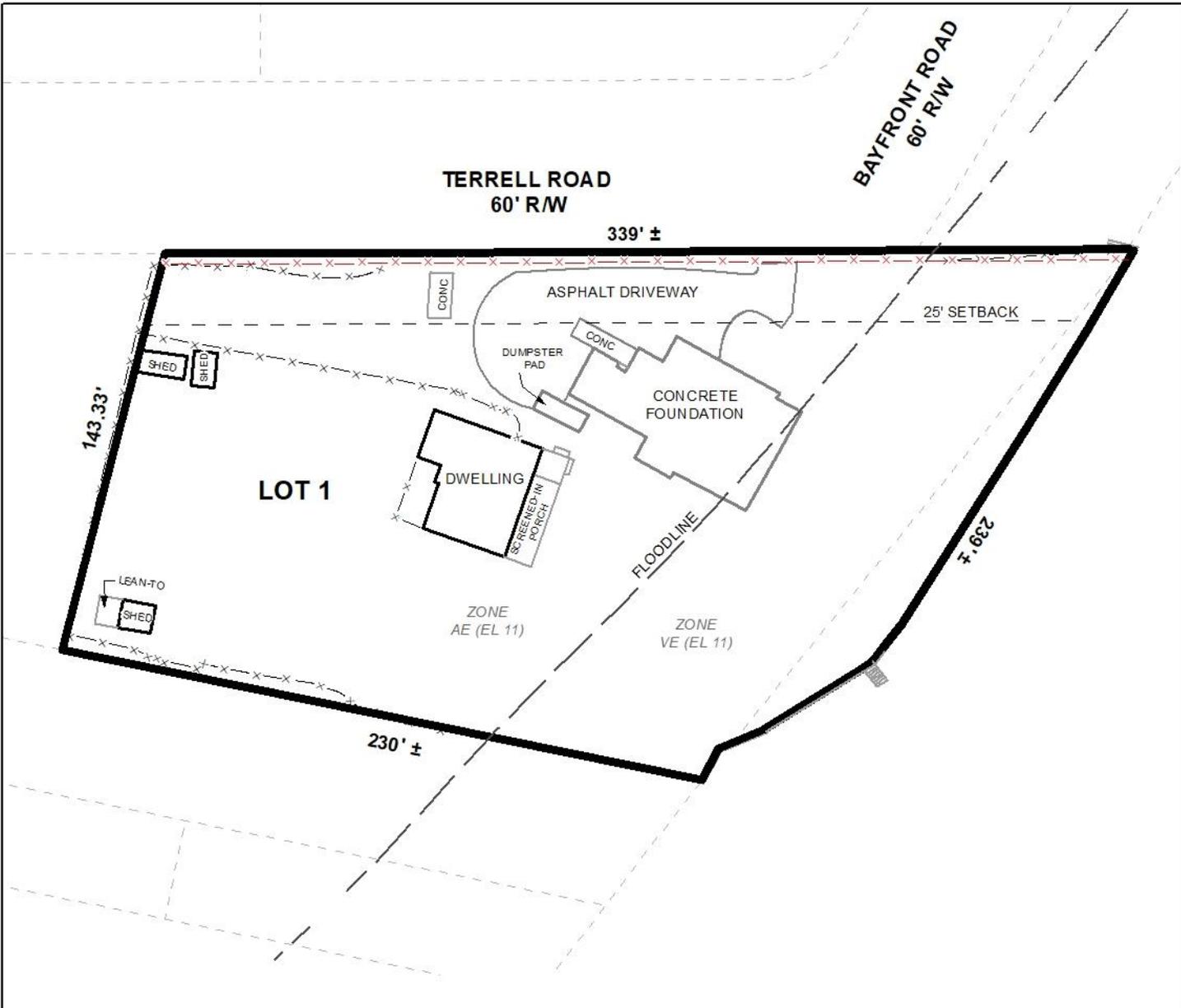


The site is surrounded by residential units and vacant land.

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SITE PLAN



The site plan illustrates existing buildings, setback, and floodline,
as well as existing and proposed fencing.

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