

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: July 12, 2021****CASE NUMBER**

6400

APPLICANT NAME

Jarrod White

LOCATION1069 State Street
(South side of State Street, 120'± East of Kennedy Street).**VARIANCE REQUEST****SIDE YARD SETBACK:** To allow reduced side yard setbacks in an R-2, Two-Family Residential District.**COMBINED SIDE YARDS SETBACK:** To allow reduced combined side yard setbacks in an R-2, Two-Family Residential District.**ACCESSORY STRUCTURE:** To allow an accessory structure to be built on a vacant site prior to constructing a dwelling in an R-2, Two-Family Residential District.**ZONING ORDINANCE
REQUIREMENT****SIDE YARD SETBACK:** The Zoning Ordinance requires compliance with side yard setbacks in an R-2, Two-Family Residential District.**COMBINED SIDE YARDS SETBACK:** The Zoning Ordinance requires compliance with combined side yard setbacks in an R-2, Two-Family Residential District.**ACCESSORY STRUCTURE:** The Zoning Ordinance does not allow an accessory structure to be constructed on a vacant site prior to constructing a dwelling in an R-2, Two-Family Residential District.**ZONING**

R-2, Two-Family Residential District

AREA OF PROPERTY

0.1± Acre

ENGINEERING**COMMENTS****SIDE YARD SETBACK, COMBINED SIDE YARD SETBACK, ACCESSORY STRUCTURE VARIANCE and ALLOW ACCESSORY STRUCTURE:**

If the proposed variance is approved for use the applicant will need to have the following conditions met:

1. The proposed improvements for the accessory structure will require a Land Disturbance Permit be submitted through Central Permitting.
2. 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.
3. Any and all proposed land disturbing activity within the property will need to be in conformance with Mobile City Code, Chapter 17, Storm Water Management and Flood Control; the City of Mobile, Alabama Flood Plain Management Plan (1984); and, the Rules For Erosion and Sedimentation Control and Storm Water Runoff Control.
4. Applicant agrees to install adequate BMPs during construction to protect from sediment/pollutants leaving the site.

TRAFFIC ENGINEERING

COMMENTS

No comments.

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 [Act 929 of the 1961 Regular Session of the Alabama Legislature (Acts 1961, p. 1487), as amended, and City Code Chapters 57 and 65]. Private removal of trees in the right-of-way will require approval of the Mobile Tree Commission. Removal of heritage trees from undeveloped residential sites, developed residential sites in historic districts, and all commercial sites 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). Fire apparatus access is required to be within 150' of all commercial and residential buildings. A fire hydrant is required to be within 400' of non-sprinkled commercial buildings and 600' of sprinkled commercial buildings.

CITY COUNCIL

DISTRICT

District 2

ANALYSIS

The applicant is requesting Side Yard Setback, Combined Side Yards Setback, and Accessory Structure Variances to allow reduced side yard and combined side yards setbacks, and to allow an accessory structure to be built on a vacant site prior to constructing a dwelling in an R-2, Two-Family Residential District; the Zoning Ordinance requires compliance with side yard and combined side yard setbacks, and does not allow an accessory structure to be constructed on a vacant site prior to constructing a dwelling in an R-2, Two-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 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 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 the following concerning the request:

I seek a variance of the standard side yard setbacks due to the narrow width of this lot. This lot is only 30 feet wide. I propose 2-foot side yard setbacks at rear of lot and a 3-foot setback on west side of house. The setback is needed to allow for reasonable development on this very narrow lot. The drive will also be located within the setback. If needed, a variance on the east side setback is requested to allow the drive to be located within it.

I also seek a variance to allow construction of a garage at the rear of the property before construction of the residential structure. I plan to use the garage to store classic cars. It will be metal so current lumber prices do not affect construction of it. I am hoping lumber prices will decrease before the house is constructed. Constructing the garage first will also provide a location to securely store materials and equipment while the house is being constructed.

This should be a "non-confirming lot", but to the extent there is any question, I also seek a variance to allow construction on a lot smaller than 7200 square feet.

Section 64-4.D.7. of the Zoning Ordinance states the following: "Side yard exception for small lots. Where side yards are required and a lot of record is less than sixty (60) feet in width, the sum of the widths of the two (2) side yards shall be not less than one-third the width of the lot, and neither side yard shall have a width of less than one-seventh the width of the lot; provided, however, that in no case shall either yard have a width of less than five (5) feet." The subject site is 30 feet wide, which requires a minimum side yard setback of five feet on each side yard, with a combined side yards setback total of ten feet. The applicant proposes a two-foot side yard setback on each side of the proposed storage building, with a combined side yards setback total of four feet. For the proposed dwelling, the applicant proposes a side yard setback of three feet on the West side. The combined side yards setback would be over the ten-foot minimum requirement for the dwelling. The applicant proposes to construct the storage building prior to constructing the dwelling on the site. The Zoning Ordinance does not allow an accessory structure to be constructed prior to the construction of a dwelling, the primary use, in residential districts; hence, the variances requested.

Records indicate that the previous dwelling on the site was demolished at some time after 2001 without the required demolition permit. Google Maps indicate that the dwelling was removed prior to November 2007. Therefore, should this application be approved, and if the applicant owned the property at the time of demolition, an after-the-fact demolition permit should be obtained prior to the issuance of any permits for site development.

Pertaining to the requested three-foot side yard setback on the West side of the property for the proposed dwelling, the site plan seems to indicate ample area on the East side of the property in which to locate the dwelling to meet the West side yard setback requirement and still allow the proposed ten-foot wide driveway, as a driveway can be located within a required setback. As no hardship has been illustrated with respect to a literal interpretation of the setback requirements, the requested three-foot side yard setback for the dwelling should be denied.

Pertaining to the requested two-foot side yard setbacks on both sides of the proposed storage building, three of the primary concerns relating to side yard setbacks are:

- the potential of the spread of fire from one property to another;
- water run-off onto adjacent properties; and
- the ability to properly maintain the proposed structure.

Other concerns relate to privacy and adequate circulation of light and air. The Board has been sympathetic to granting variances in older urban areas of the city when the structure is within five feet of the side property, but a two-foot setback would cause concerns as mentioned, and no genuine hardship has been illustrated to justify the reduced setback request. Additional concerns relate to Building Code compliance. Therefore, the Board should consider the Reduced Side Yards Setback request for the storage building for denial. The request for a Combined Side Yards Setback Variance would be moot if the Side Yard Setback Variance is denied.

As to the request to construct the storage building, an accessory structure, prior to the construction of the primary use building, the dwelling, the allowance of such, except under extreme circumstances, could set a precedent for other such allowances with the possibility of creating noncompliant situations in which the primary use structure is never constructed. This would also be out of character with residential neighborhoods. Because of this possibility, and the fact that no hardship associated with the property was illustrated to justify the request, this request should be considered for denial by the Board.

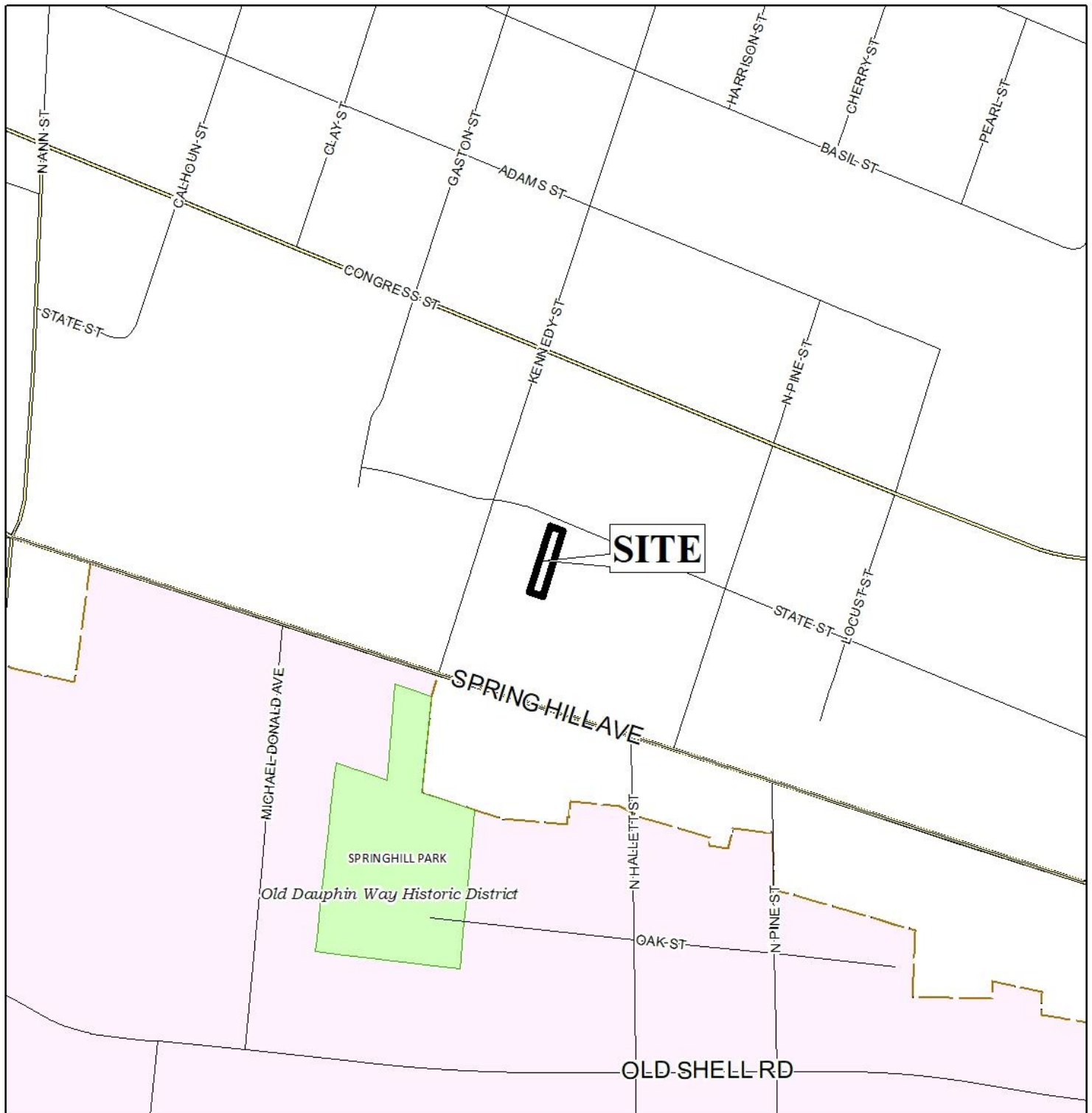
It should also be noted that the subject site is not a legal lot of record; therefore, either a deed from 1952 or earlier, or a one-lot subdivision will be required prior to issuance of construction permits.

Finally, as proposed, the garage will be larger than the dwelling. Historically, staff has required an affidavit in these instances, where the property owner attests that the accessory structure will not be used commercially.

RECOMMENDATION: Based upon the preceding, Staff recommends to the Board the following findings of fact for Denial:

- 1) Approving the variance request will be contrary to the public interest due to the fact that similar variances have not been approved within the vicinity of this site;
- 2) Special conditions do not appear to exist, primarily a necessity for reduced setbacks, such that a literal enforcement of the provisions of the chapter will result in unnecessary hardship; and
- 3) That the spirit of the chapter shall not be observed and substantial justice done to the applicant and the surrounding neighborhood by granting the variance in that it will not provide for the absolute minimum side yards and combined side yards required, and a precedent could be established by allowing the accessory structure to be constructed prior to the construction of the primary structure on the site.

LOCATOR MAP



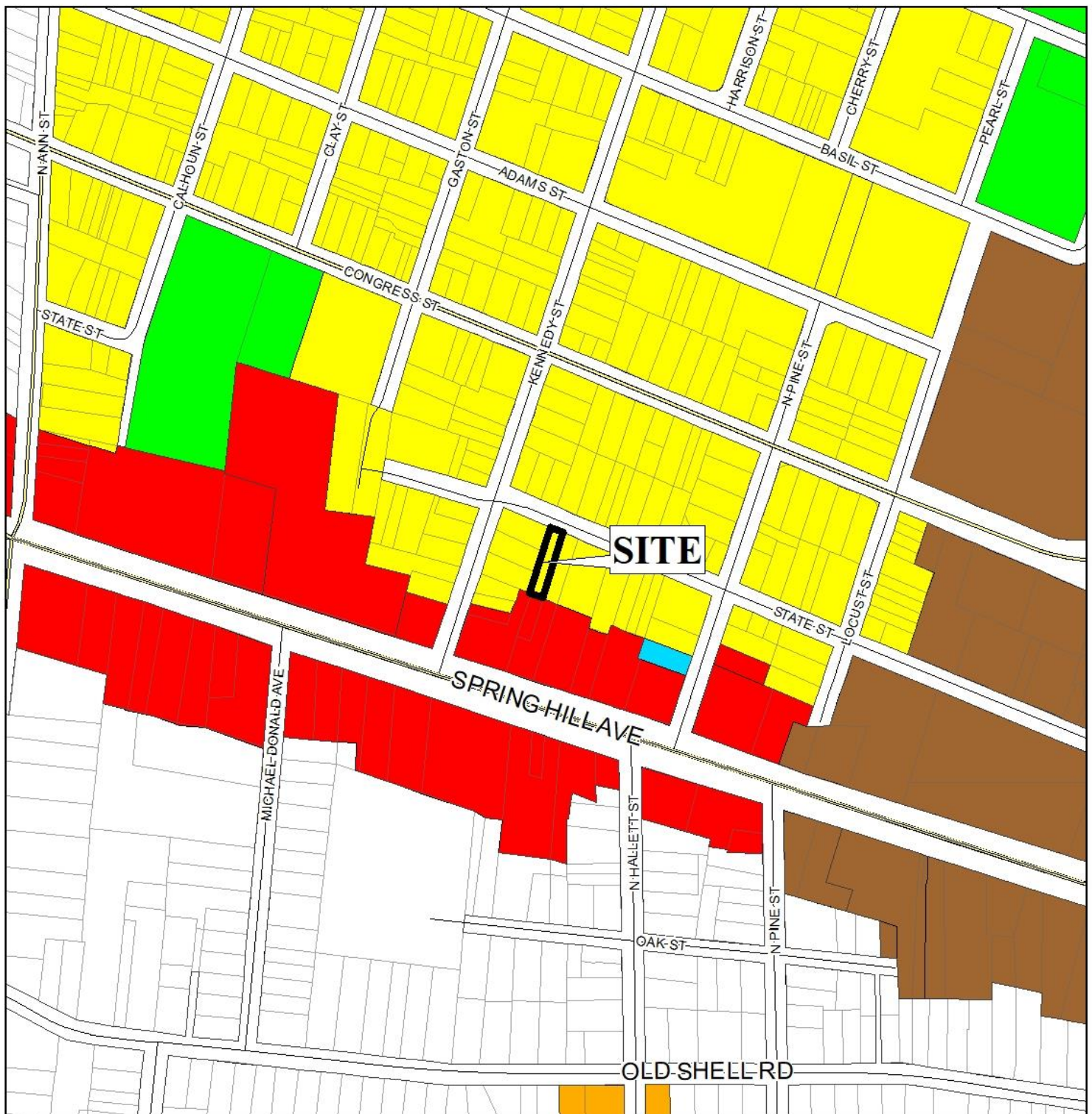
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APPLICANT Jarrold White

REQUEST Side Yard Setback, Combined Side Yards Setback, and Accessory Structure Variances



LOCATOR ZONING MAP



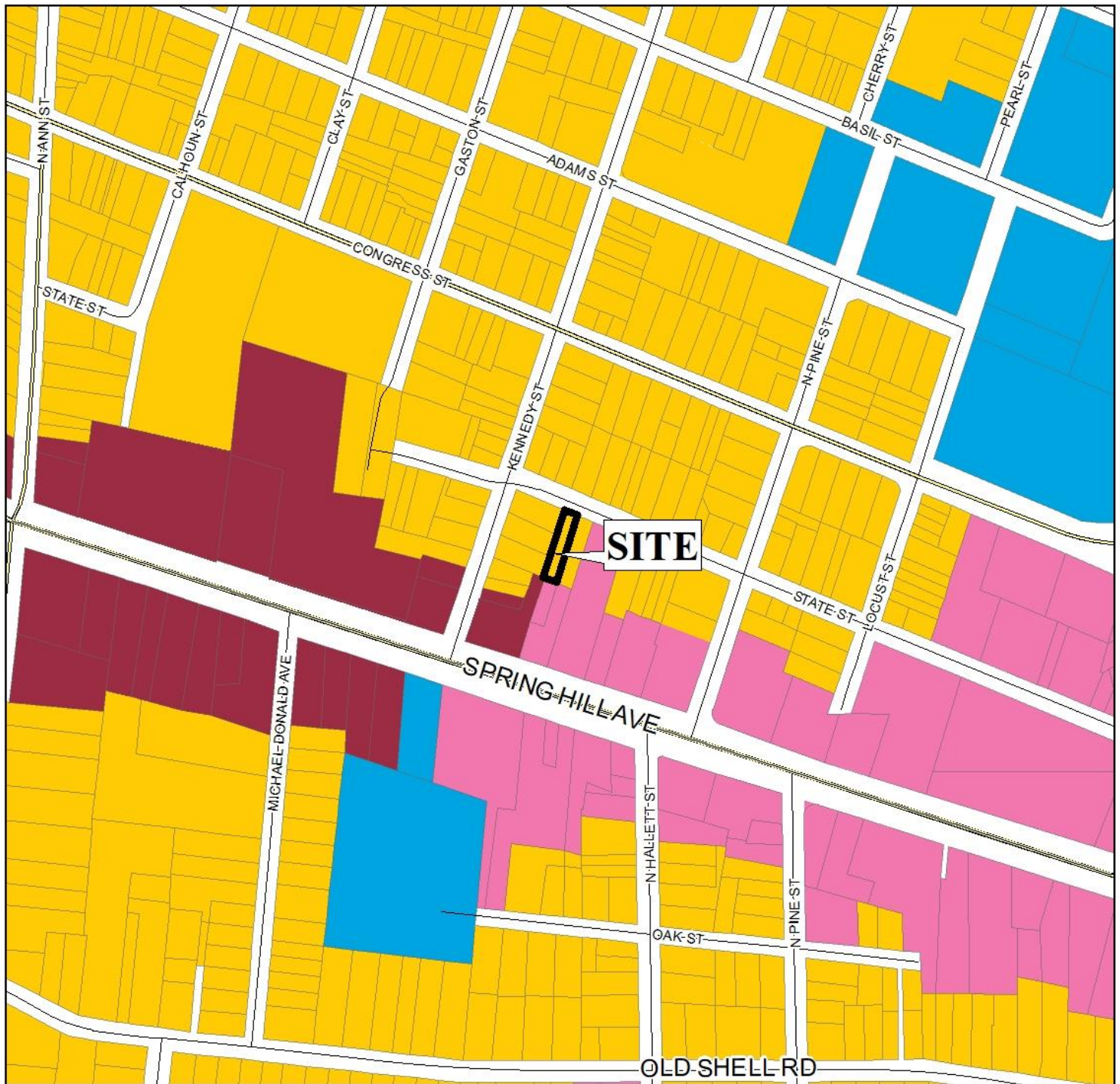
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FLUM LOCATOR MAP



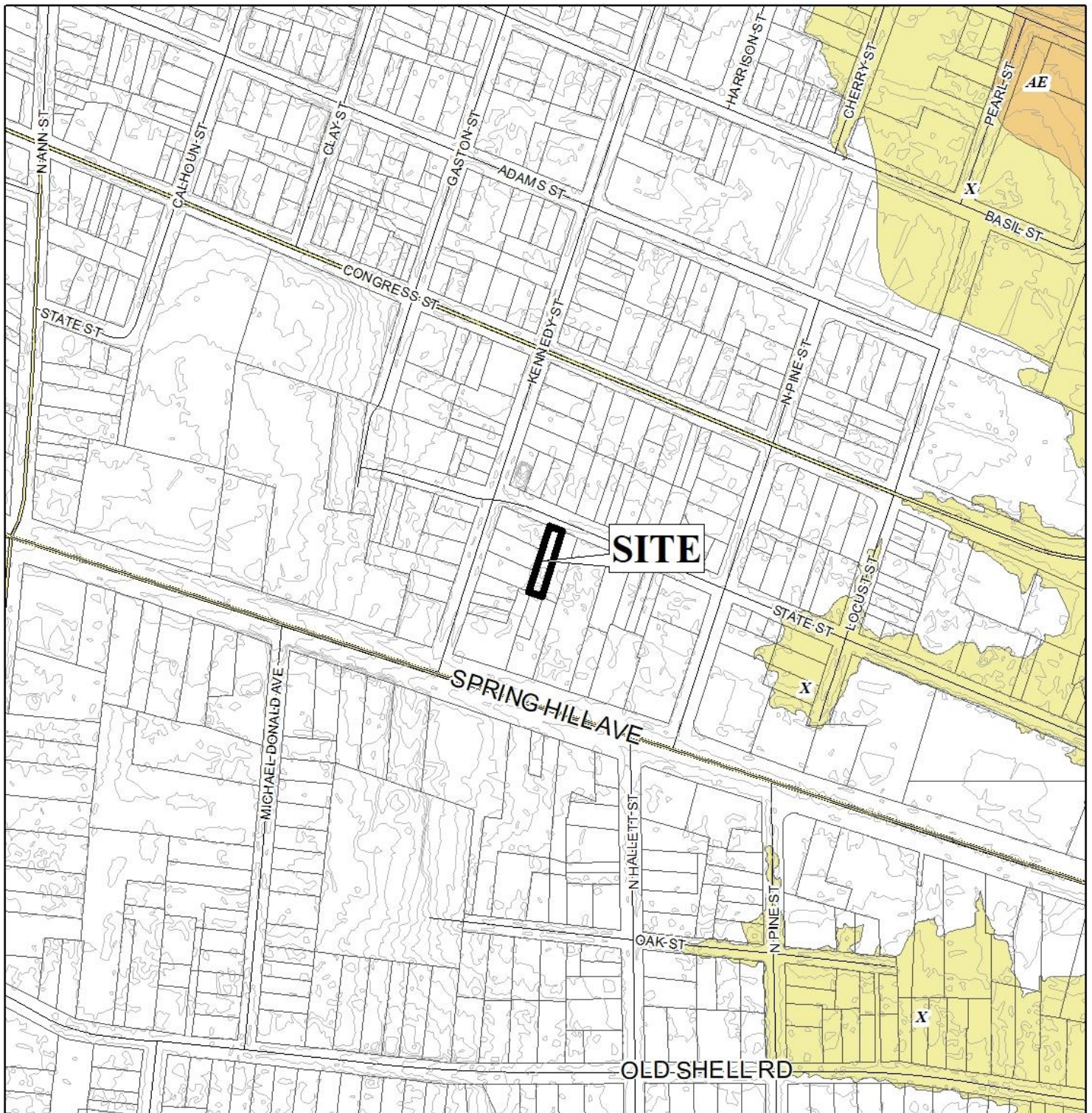
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| Low Density Residential | Neighborhood Center - Traditional | Downtown Waterfront | Parks & Open Space |
| Mixed Density Residential | Neighborhood Center - Suburban | Light Industry | Water Dependent |
| Downtown | Traditional Corridor | Heavy Industry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



NTS

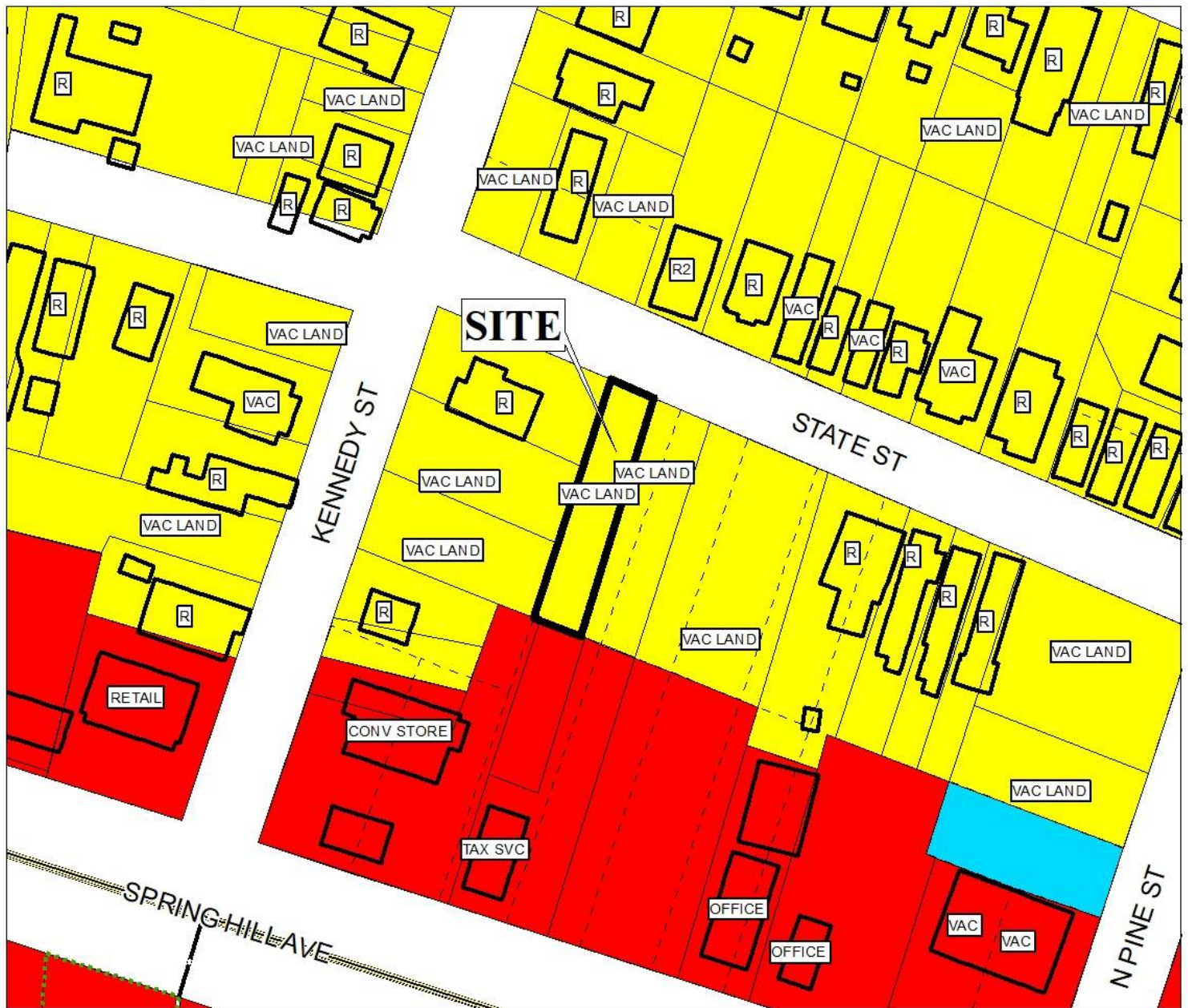
ENVIRONMENTAL LOCATOR MAP



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BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units to the north, and commercial units to the south.

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 R-1	 R-2	 R-3	 R-4	 R-5	 R-6	 R-7	 R-8	 R-9	 R-10
 R-11	 R-12	 R-13	 R-14	 R-15	 R-16	 R-17	 R-18	 R-19	 R-20
 R-21	 R-22	 R-23	 R-24	 R-25	 R-26	 R-27	 R-28	 R-29	 R-30



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING AERIAL

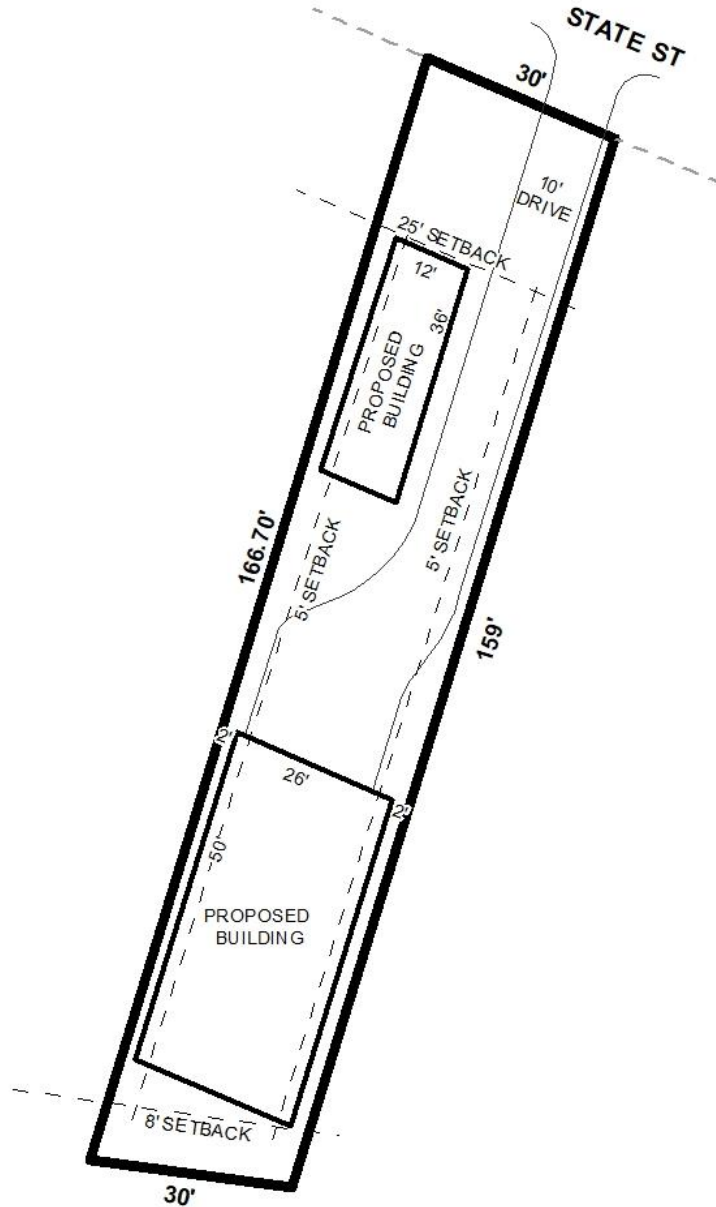


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SITE PLAN



The site plan illustrates the proposed buildings, setbacks, and drive.

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