

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: September 13, 2021**

<u>CASE NUMBER</u>	6416
<u>APPLICANT NAME</u>	Betty Bush
<u>LOCATION</u>	1615 Union Street (West side of Union Street, 500'± South of Rochester Street).
<u>VARIANCE REQUEST</u>	USE: Use Variance to allow more than five (5) children in a home-based daycare in an R-1, Single-Family Residential District.
<u>ZONING ORDINANCE REQUIREMENT</u>	USE: The Zoning Ordinance limits a home-based daycare to no more than five (5) children in an R-1, Single-Family Residential District.
<u>ZONING</u>	R-1, Single-Family Residential District
<u>AREA OF PROPERTY</u>	15,000 ± square feet / 0.3± Acres
<u>CITY COUNCIL DISTRICT</u>	District 1
<u>ENGINEERING COMMENTS</u>	No comments.
<u>TRAFFIC ENGINEERING COMMENTS</u>	If on street parking becomes an issue during pick-up/drop-off at the daycare, on street parking restrictions may have to be installed based on the width of Greenbrier Street.
<u>URBAN FORESTRY COMMENTS</u>	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**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.

The fire code adopted by the City of Mobile does not allow for a residential daycare providing care for more than 5 children. If more than 5 children are being provided non-custodial care all code requirements of a commercial daycare shall be adhered to. The owner will be required to submit for a change of occupancy permit.

ANALYSIS

The applicant is requesting a Use Variance to allow more than five (5) children in a home-based daycare in an R-1, Single-Family Residential District; the Zoning Ordinance limits a home-based daycare to no more than five (5) children in an R-1, Single-Family Residential District.

The site has been given a Mixed-Density Residential land use designation per the Future Land Use Plan and Map adopted 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 also 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 is 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 Use Variance, in their narrative the applicant does not provide any justification for the request beyond a desire to grow the existing business. However, it should be noted that in 2020 the Board approved a total of four (4) Use Variances similar to this one. The primary justification for each being that the COVID-19 pandemic caused a shortage of day care facilities and an increase in restrictions on existing day care facilities, resulting from public health concerns.

The applicant's narrative states:

Dear Planning and Zoning Board:

I am the owner and operator of The Bush Tot Spot Daycare and Learning Daycare Home, a licensed and accredited home daycare program located at 1615 Union Street. I have been licensed by the Alabama Department of Human Resources to offer childcare for families since April 2010 - November 2014 and again from September 2019 - Present. I have provided high quality daycare at my current residence for over 7 years and for 4 years in a Licensed Daycare Center.

I am currently licensed for 5 children in my home daycare and I would like to propose an increase in that number to 10 children, because Healthcare workers contact me on an everyday basis needing a spot for their child(ren) and I have to turn them away because I have no available space. The only way that I can increase the number of children from 5 to 10 is that The City of Mobile Zoning Department grant me a Use Variance.

I currently use 2 large rooms near the front and back door of my home for daily activities and the play area for the children. The combined space of the 2 rooms exceeds the required space of 32 sq ft per child according to the State of Alabama licensing. If I am approved for 10 children, I will have more than enough space per child.

My property is unique in the neighborhood, because my home daycare provides childcare services in my community, so that parents can work and/or attend school. The parents believe that their child(ren) will adjust better in a home childcare environment because the provider/child ratio is smaller. They also believed that the setting for more one on one time with each child was available and it allows for more teachable moments.

My childcare program is here for the purpose of providing a healthy and safe learning environment for young children until they are ready to attend head start or pre-k programs in school without disrupting my neighbor's privacy.

The way the traffic currently flows with 5 children is that the parents park in front of my home, bring their child and/or children into the home, sign and swipe them in and return to their vehicles (normally in less than 5 minutes). When 2 or 3 parents arrive at the same time, they do not park in front of the homes of my neighbors on either side or across the street. I have enough parking space in front of my home for 5 cars to park at one time. If I am approved for 10 children, the new parents and I will discuss a plan for arrival and departure times that will not block the front of my neighbor's home, driveways or the flow of traffic. Parking for the employee and myself will be in my driveway.

My hours of operation are Monday - Fridays, 6:00 am - 6:00 pm and 6:00 pm - Midnight. I will have 2 employees, which will consist of myself and another qualified adult, at all times. The gross square footage of my home is 1,848 sq ft. My daily schedule outlines our daily activities during the run of a day (see attachment). Most of our activities are inside my home. We engage in outdoor play for 1 hour per day from 9:00 am - 10:00 am (if the weather permits). When we are outside in the backyard, I stay aware of the noise level and I have not had any complaints from my neighbors about the normal noise of children playing. With an increase in the number of children, I will continue to keep the noise level at a minimum volume. The backyard is large enough to easily accommodate 10 children without being a nuisance to the neighbors. I have a great record of maintaining my home daycare property for over 11 years without disturbing my neighbors.

It should be noted that allowing more than six (6) children in a home-based day care may prompt compliance with Building, Mechanical, Plumbing, and Electrical Codes. Moreover, the Fire Department requires day cares with more than five (5) children to be sprinkled along with additional building alterations. Such alterations will require the applicant to submit construction plans for review and approval before permits can be obtained, which are required to ensure the structure meets minimum safety requirements.

Furthermore, the Alabama Department of Human Resources requires the following caregivers to be available for home-based day cares caring for between seven (7) and twelve (12) children: the licensee, the assistance caregiver, and a least two (2) substitutes. This would result in individuals who do not live at the location working there, a further disruption to the residential neighborhood.

A recent land survey was provided by the applicant and illustrates the subject site is 15,000 ± square feet in size and is developed with a single-family dwelling. No other plans were provided, such as a site plan illustrating compliance with the off-street parking provisions for State-required personnel, or any floorplan(s) depicting compliance with home occupation standards which limit the business to occupying no more than 25% of the dwellings floor area.

A Zoning Clearance was issued to the applicant in July, 2018 to operate a day care with no more than six (6) children. Since that time the applicant has not made a request to care for additional children, perhaps demonstrating that compliance with the Zoning Ordinance does not cause a

hardship. Furthermore, while the need for additional childcare facilities may be necessary within the community, there are locations in the city appropriately zoned for such facilities from which the applicant could provide day care services for more than six (6) children.

It is important to note that in addition to the home-based daycare located at 1615 Union Street; the applicant also operates a commercial daycare located on the East side of Union Street, 50'± South of the subject site. In September of 2017 the applicant submitted requests for a Subdivision, Planned Unit Development, Planning Approval, and Rezoning all of the applications were approved by the Planning Commission with the Rezoning later being adopted by the City Council, thus rezoning the property from R-1 to B-1 to allow for the operation of a commercial daycare.

It should be reiterated that Variances are not intended to be granted frequently, and while Variances have been granted to properties within the vicinity of the subject site none were for uses not permitted by right in an R-1 zoning district. As such, approving the request may establish a precedent by which other use variance requests could be considered in the future.

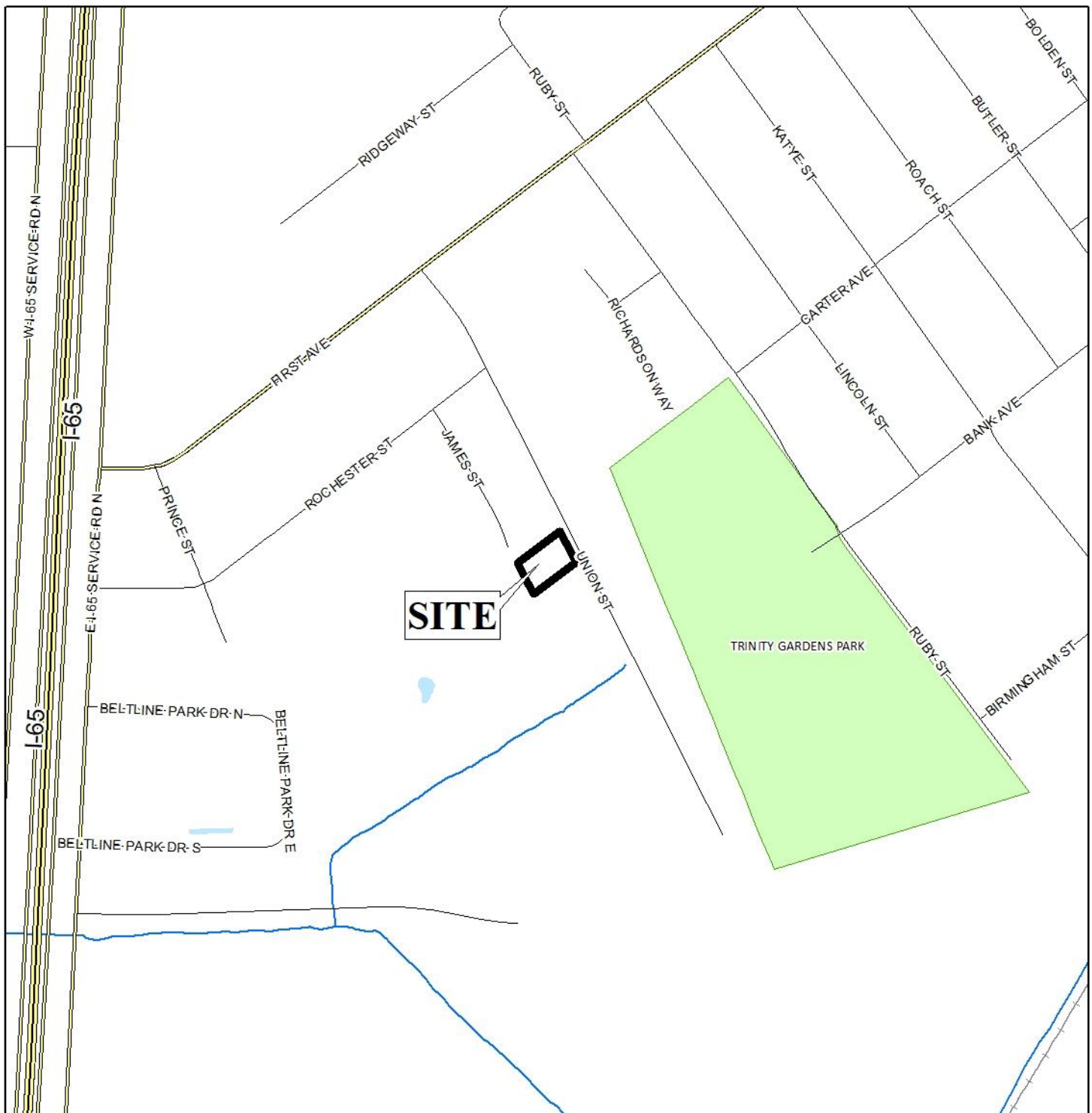
RECOMMENDATION: Based on the preceding, staff recommends to the Board the following findings of fact for Denial:

- 1) Approving the variance will be contrary to the public interest in that it will allow commercial intrusion into an established residential neighborhood;
- 2) Special conditions do not exist in such a way that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship since a home-based day care business is operated from the property in compliance with the Zoning Ordinance; 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 surrounding properties are zoned and utilized residentially.

In order for any concerns to be considered by the Board you must email your concerns to planning@cityofmobile.org or they may be uploaded to the website via the portal under the meeting date and case. Comments must be entered by 2:00 PM on Friday, September 10th, before the meeting, in order to be considered by the Board.

If you wish to participate in the meeting, you must email planning@cityofmobile.org by 2:00 PM on Friday, September 10th, before the meeting. In accordance with the Rules of the Board of Zoning Adjustment, no more than four (4) speakers are allowed to speak for or against an application. Speaking time is limited to five (5) minutes per speaker.

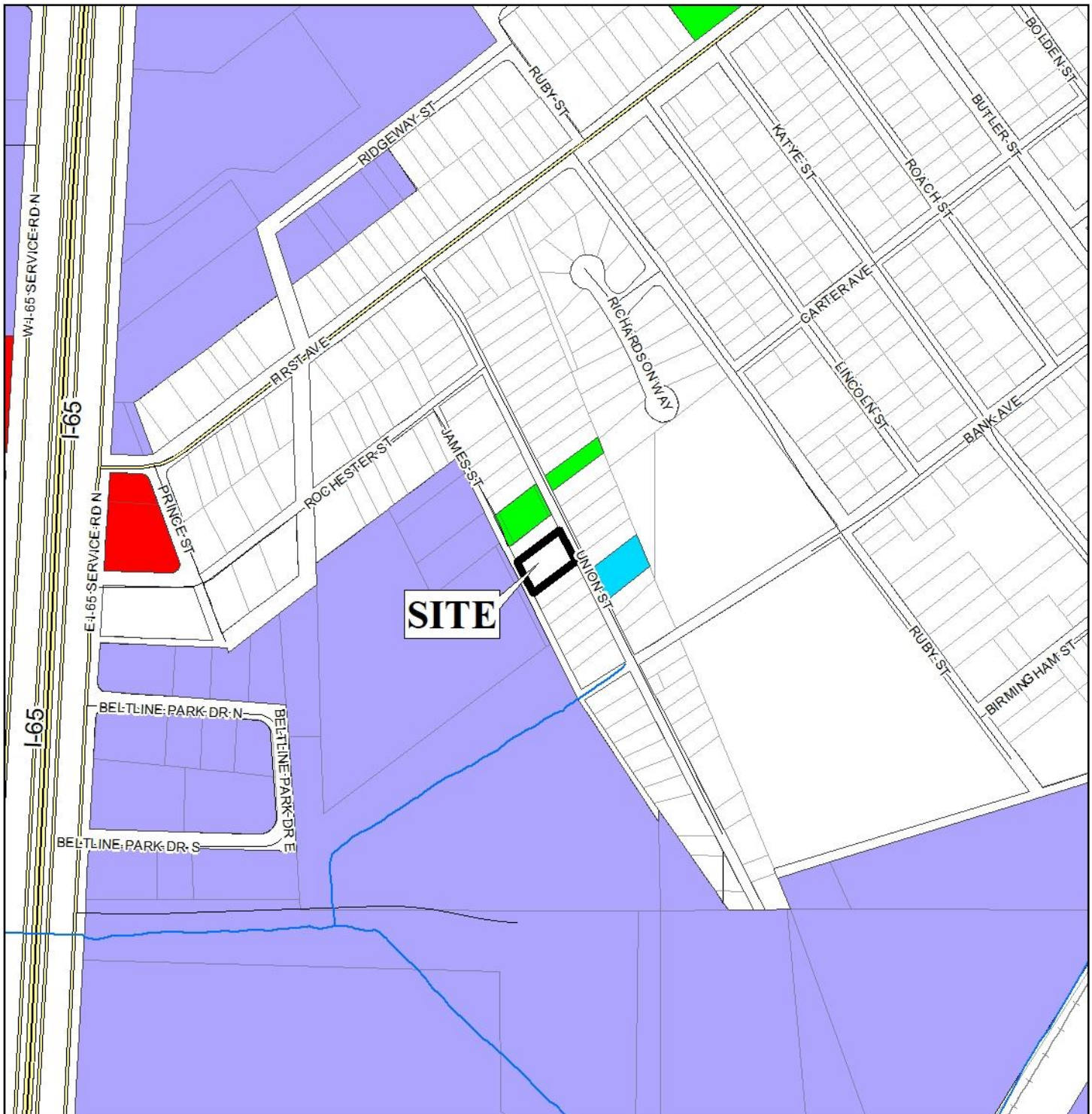
LOCATOR MAP



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APPLICANT Betty Bush
REQUEST Use Variance



LOCATOR ZONING MAP



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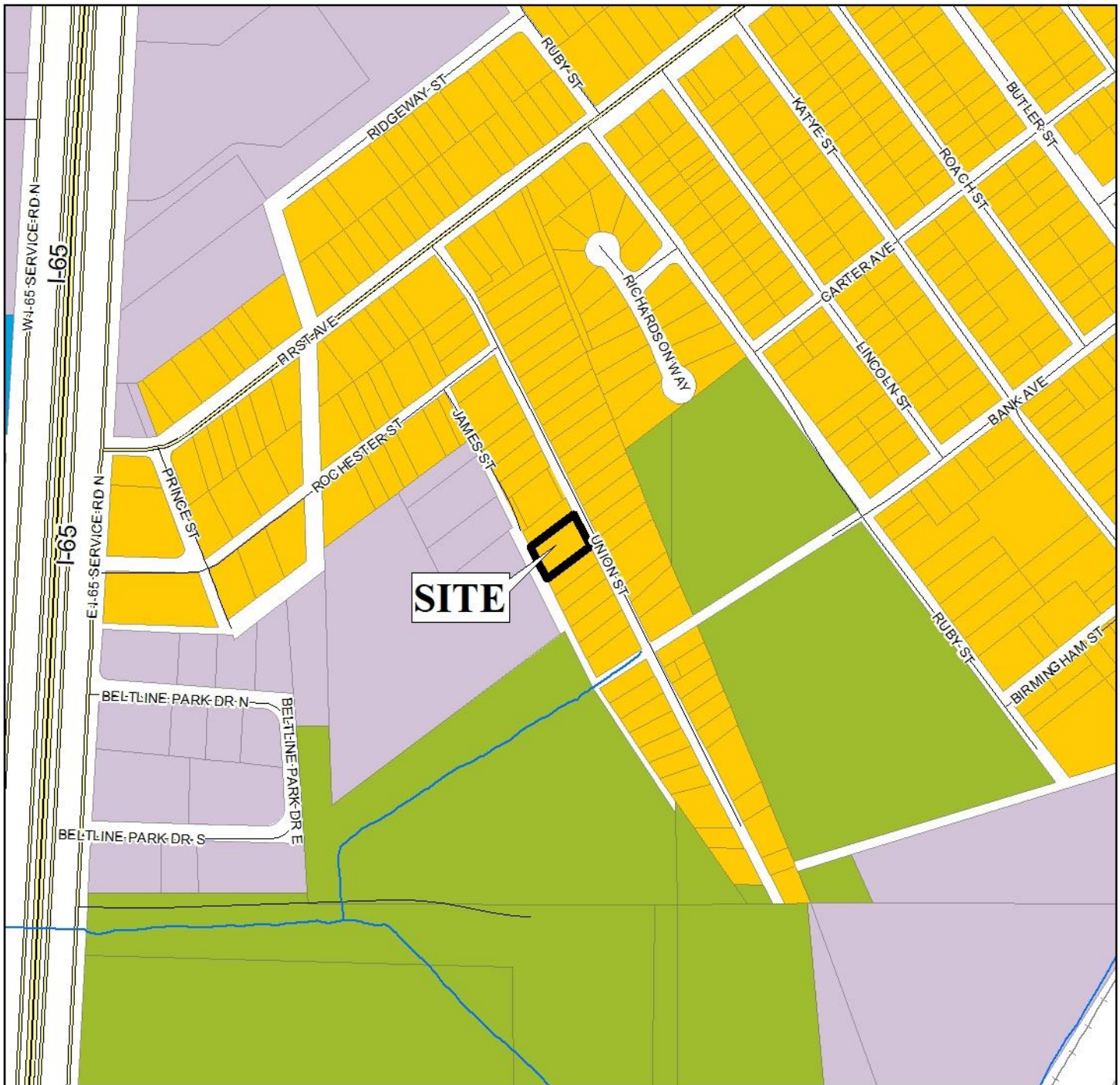
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NTS

FLUM LOCATOR MAP



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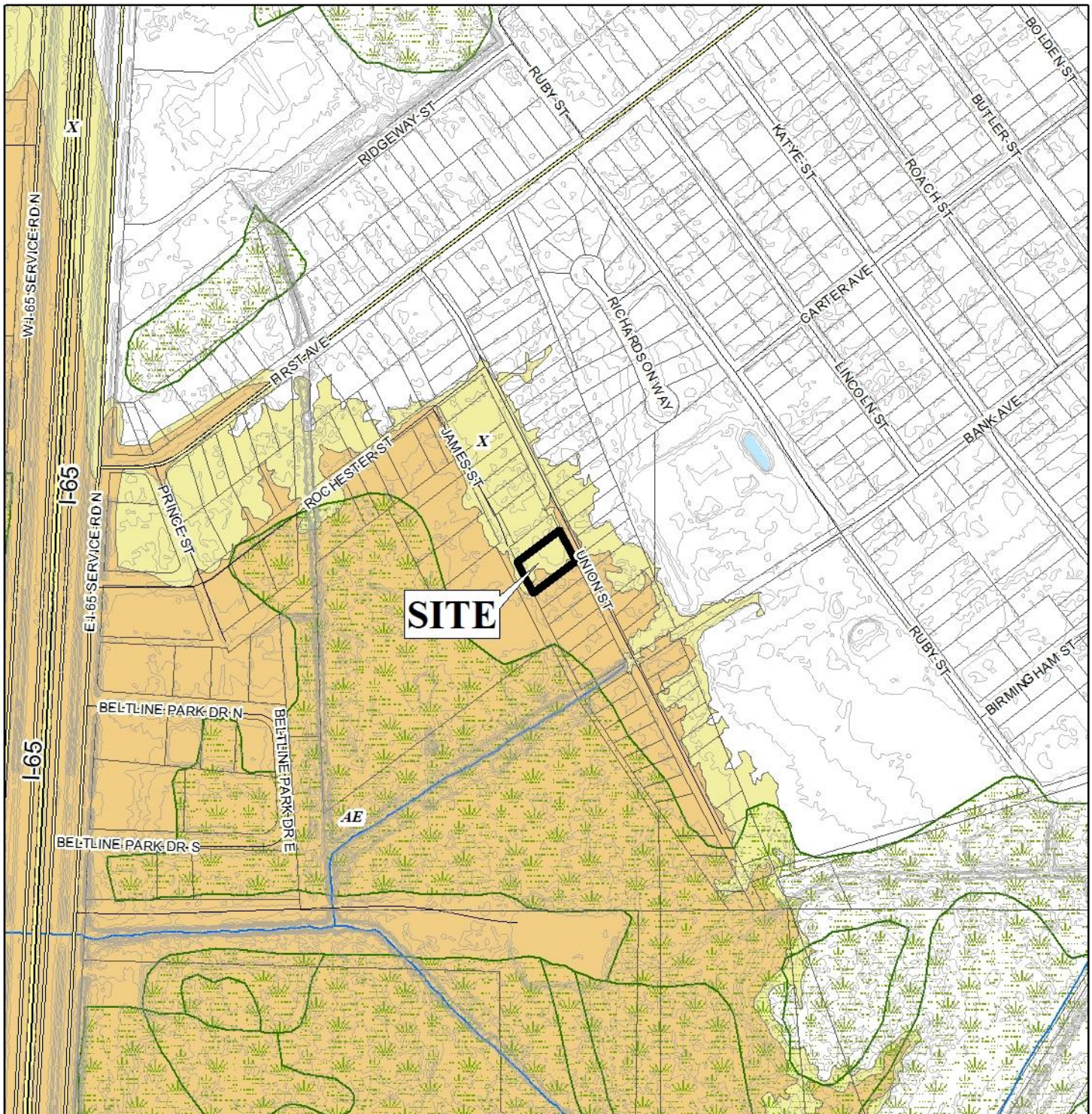
APPLICANT Betty Bush

REQUEST Use 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



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BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by single family residential units. A junk yard lies directly across from the site.

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REQUEST Use 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

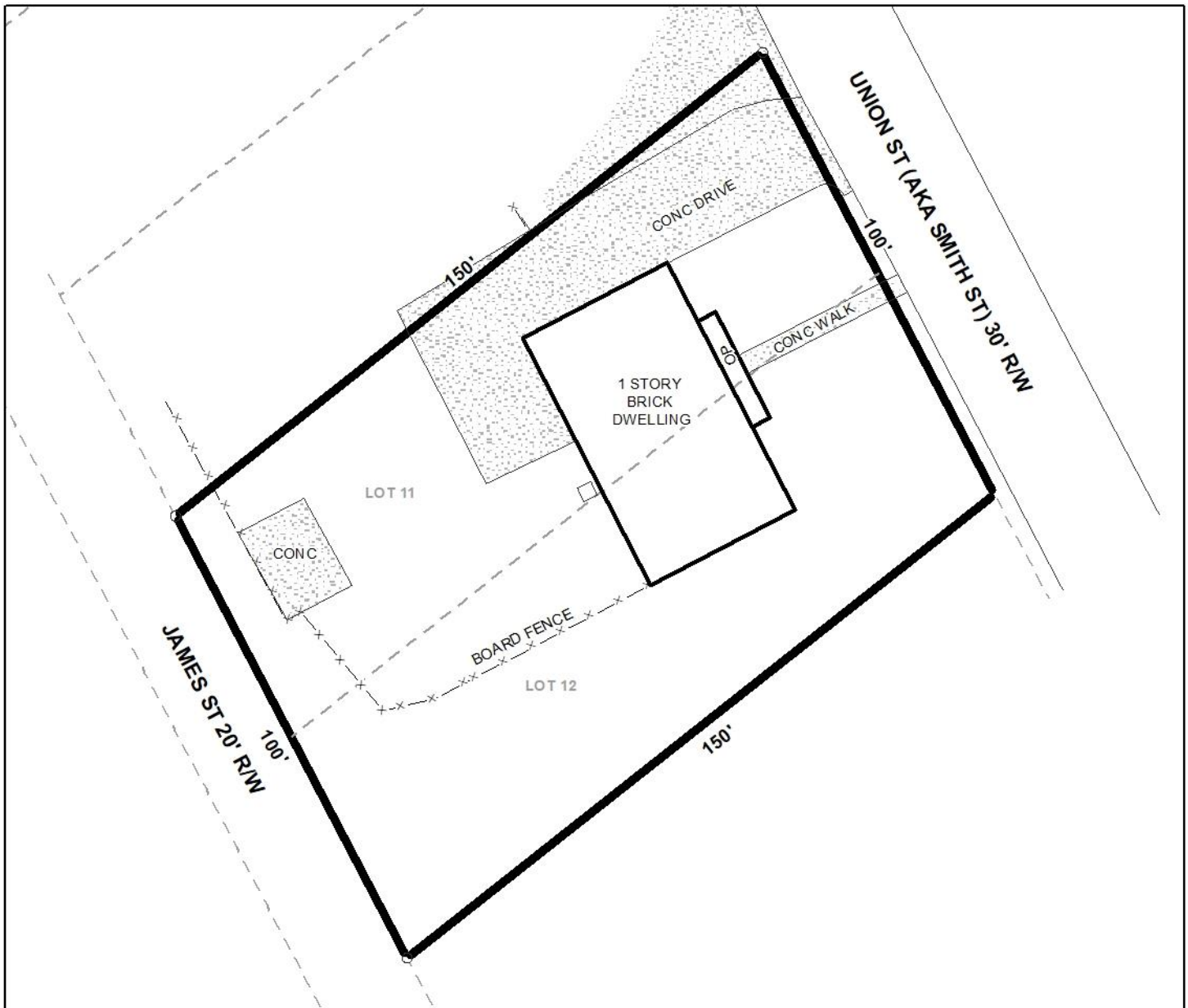


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SITE PLAN



The site plan illustrates the existing dwelling, concrete drive, and board fence.

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