

**BOARD OF ZONING ADJUSTMENT  
STAFF REPORT****Date: July 11, 2022****CASE NUMBER** 6466 / 6374**APPLICANT NAME** Sheridan Construction**LOCATION** 116 Myrtlewood Lane  
(East side of Myrtlewood Lane at the East terminus of Stein Avenue.)**VARIANCE REQUEST** **SIDE AND REAR YARD SETBACKS:** Side and Rear Yard Setback Variances to allow an HVAC unit taller than three (3) feet within the side yard setback and stairs taller than three (3) feet within the rear yard setback in an R-1, Single-Family residential district.**ZONING ORDINANCE REQUIREMENT** **SIDE AND REAR YARD SETBACKS:** The Zoning Ordinance requires all structures taller than three (3) feet to meet the minimum side and rear yard setbacks in an R-1, Single-Family Residential District.**ZONING** R-1, Single-family Residential District**AREA OF PROPERTY** 0.46 ± Acres**ENGINEERING COMMENTS** No comment.**TRAFFIC ENGINEERING COMMENTS** No comment.**CITY COUNCIL DISTRICT** District 4**ANALYSIS** The applicant is requesting Side and Rear Yard Setback Variances to allow an HVAC unit taller than three (3) feet within the side yard setback and stairs taller than three (3) feet within the rear yard setback in an R-1, Single-Family Residential District; the Zoning Ordinance requires all structures taller than three (3) feet to meet the minimum side and rear yard setbacks 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.

The MxDR 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, two- to four-residential unit buildings, accessory dwellings, and low- and mid-rise multi-family apartment buildings. The density varies between six and ten 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 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.

Recently, at its May 3, 2021 meeting, the Board of Zoning Adjustment denied a request for a 10-foot front yard setback. The request received substantial neighborhood opposition. Since that time, the property has been developed with a single-family residence; however, upon inspection for a Certificate of Occupancy, it was determined that the HVAC unit and rear stairs, both of which are taller than three (3) feet, encroached on the side and rear yard setbacks, respectively. The applicant is requesting relief from the Zoning Ordinance to allow the encroachments to obtain final approval for a Certificate of Occupancy.

The following narrative was provided with the request:

*We are submitting a Variance application on Lot 2A, Resub of Lot 1 Roe Properties to address the condenser (A/C) unit in setback, along with landing/stairs that are in the setback and have a height conditions on both that restrict placement. We are submitting and asking for relief and a variance for both of these items to remain as constructed and placed. Please review the survey and pictures to verify placement and ask that a variance be granted to allow these to remain so that we can obtain our CO.*

Section 64-3.C.e. of the Zoning Ordinance requires a minimum eight (8)-foot side yard and eight (8)-foot rear yard setback for all structures taller than three (3) feet placed/constructed on a property in the R-1, Single-Family Residential District. Section 64-4.D.11. of the Zoning Ordinance requires side or rear yard setbacks for any mechanical equipment taller than three (3) feet above grade to be equal to the setbacks of the underlying zoning district; which, as mentioned, is eight (8) feet in the R-1 zoning district.

The site plan illustrates that the HVAC unit and stairs were both placed/constructed 5.4-feet from the side and rear property lines, respectively. It should be noted, however, that both the original and revised site plans approved during the permitting process illustrate full compliance with the Zoning Ordinance requirements.

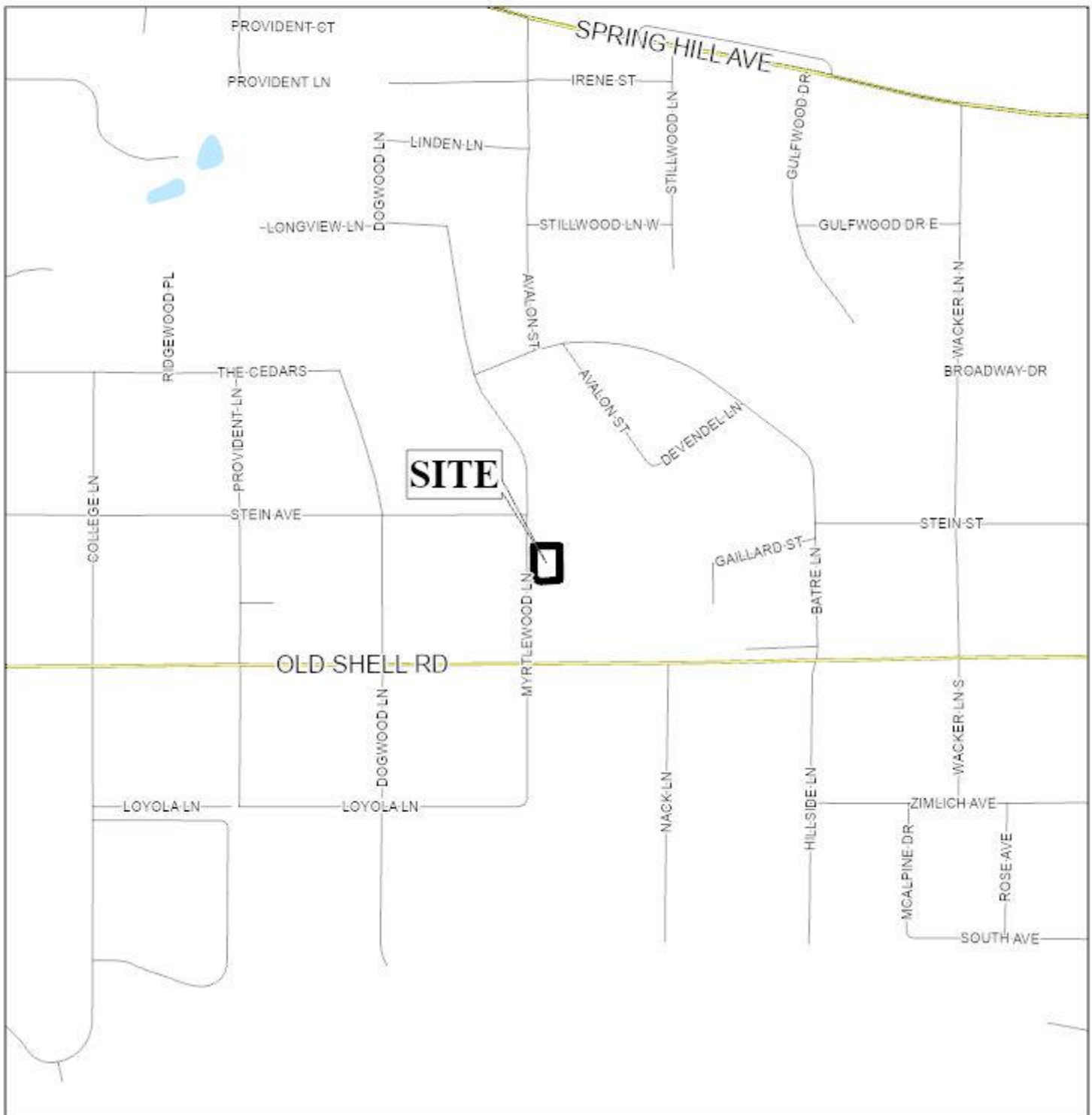
The primary concerns regarding side and rear yard setbacks are: 1) the potential for fire to spread easier from one property to another; 2) water run-off onto adjacent properties; and, 3) the ability to properly maintain the proposed structure, especially in cases with incredibly minimum setbacks. While these may not necessarily be cause for concern with respect to the subject site, the fact that plans submitted for permitting illustrate compliance with the Zoning Ordinance would indicate a self-imposed hardship. Furthermore, the applicant's previous request for reduced setbacks indicates their awareness of the Zoning Ordinance requirements regarding setbacks.

In reviewing variance requests within the vicinity of the subject site it appears the Board has been sympathetic to those for reduced side and rear yard setbacks, as well as privacy walls and fences. However, while the Board has approved similar variance requests within the vicinity of the subject site, few, if any, findings of fact emphasized hardships associated with the properties; rather, approvals were based predominantly on privacy, neighborhood design and precedence. In this instance, the stairs may create privacy issues for neighboring properties, and in terms of hardship the application simply states the Zoning Ordinance requirements restrict the placement of the HVAC unit and stairs, as built. No hardship related to the property was provided. Approving the variance request would, therefore, be contrary to at least Sections 64-3.C.e. and 64-4.D.11. of the Zoning Ordinance and may very well establish not just a design precedent within the neighborhood, but a precedent by which future, less desirable variances could be approved, especially if no special conditions or hardships to an individual property exist. The request should, therefore, be considered for denial.

**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 in that it would be contrary to Sections 64-3.C.e. and 64-4.D.11. of the Zoning Ordinance;
- 2) Special conditions do not appear to exist such that a literal enforcement of the provisions of the chapter will result in unnecessary hardship, especially since the applicant demonstrated during the permitting process that the site can comply with the Zoning Ordinance; 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 due to the fact that all setbacks can be maintained on the property, and encroaching on the side and rear yard setbacks represents a self-imposed hardship.

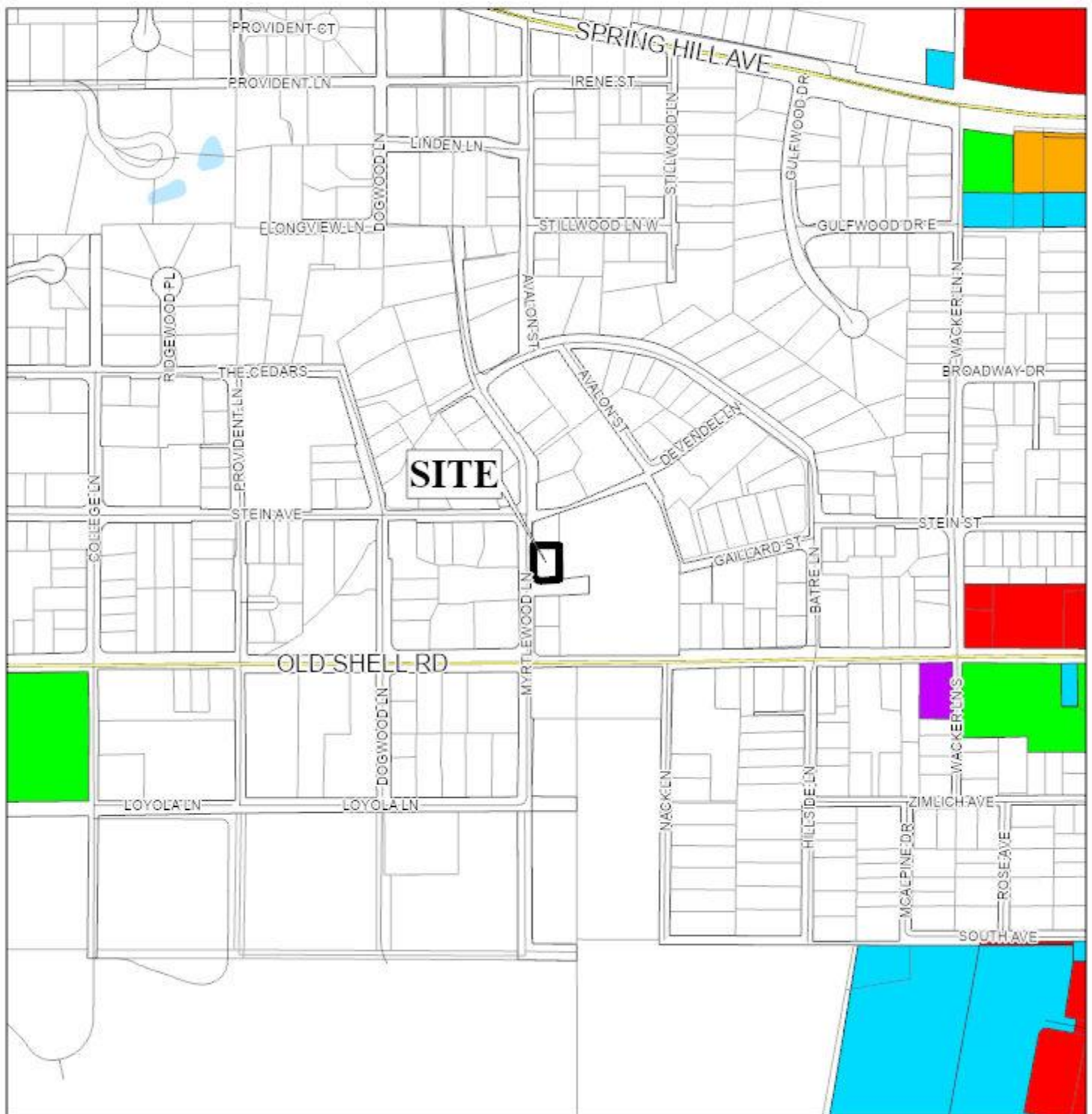
# LOCATOR MAP



APPLICATION NUMBER 6466 DATE July 11, 2022  
APPLICANT Sheridan Construction  
REQUEST Side And Rear Yard Setback Variances



# LOCATOR ZONING MAP

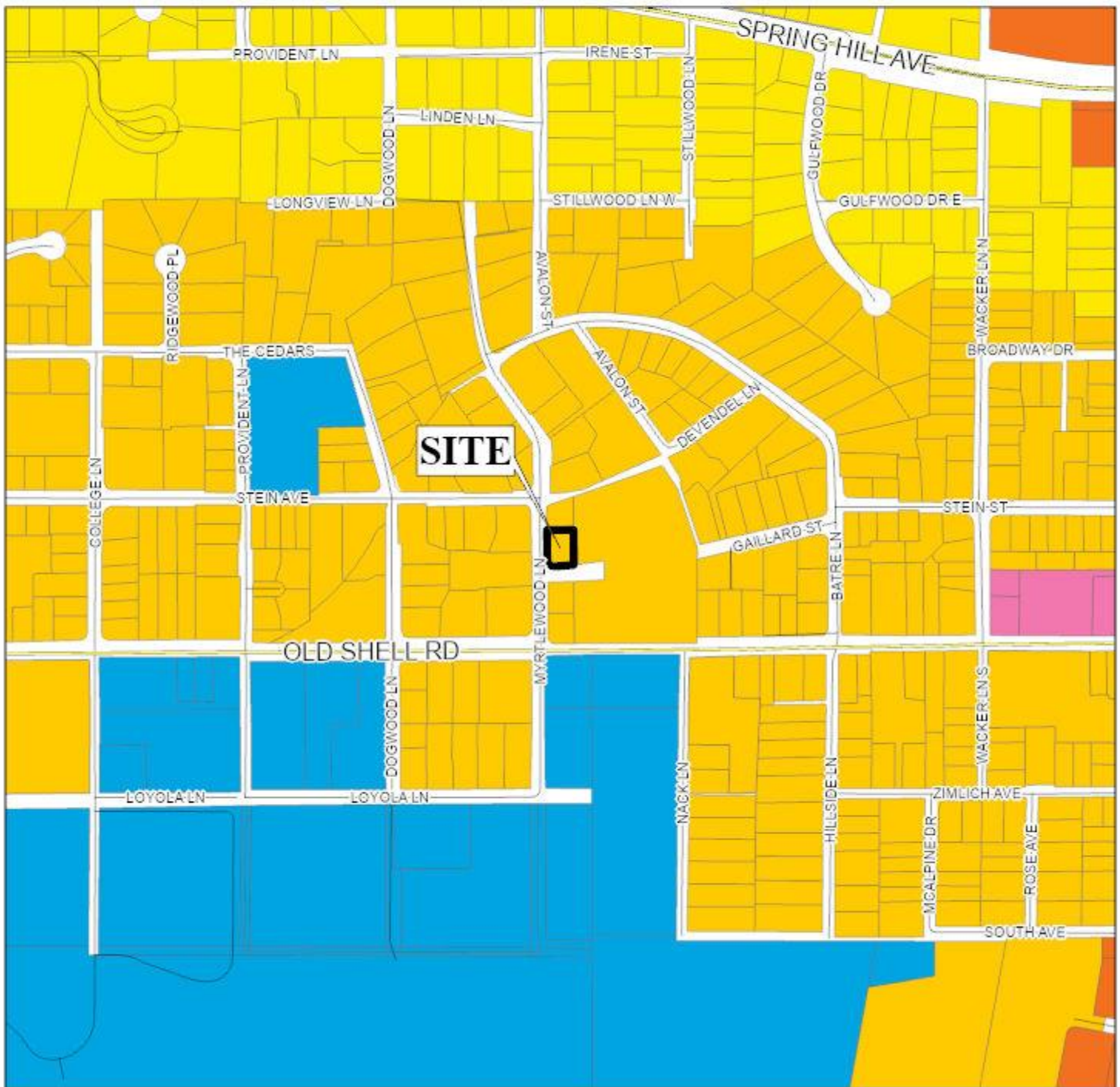


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# FLUM LOCATOR MAP



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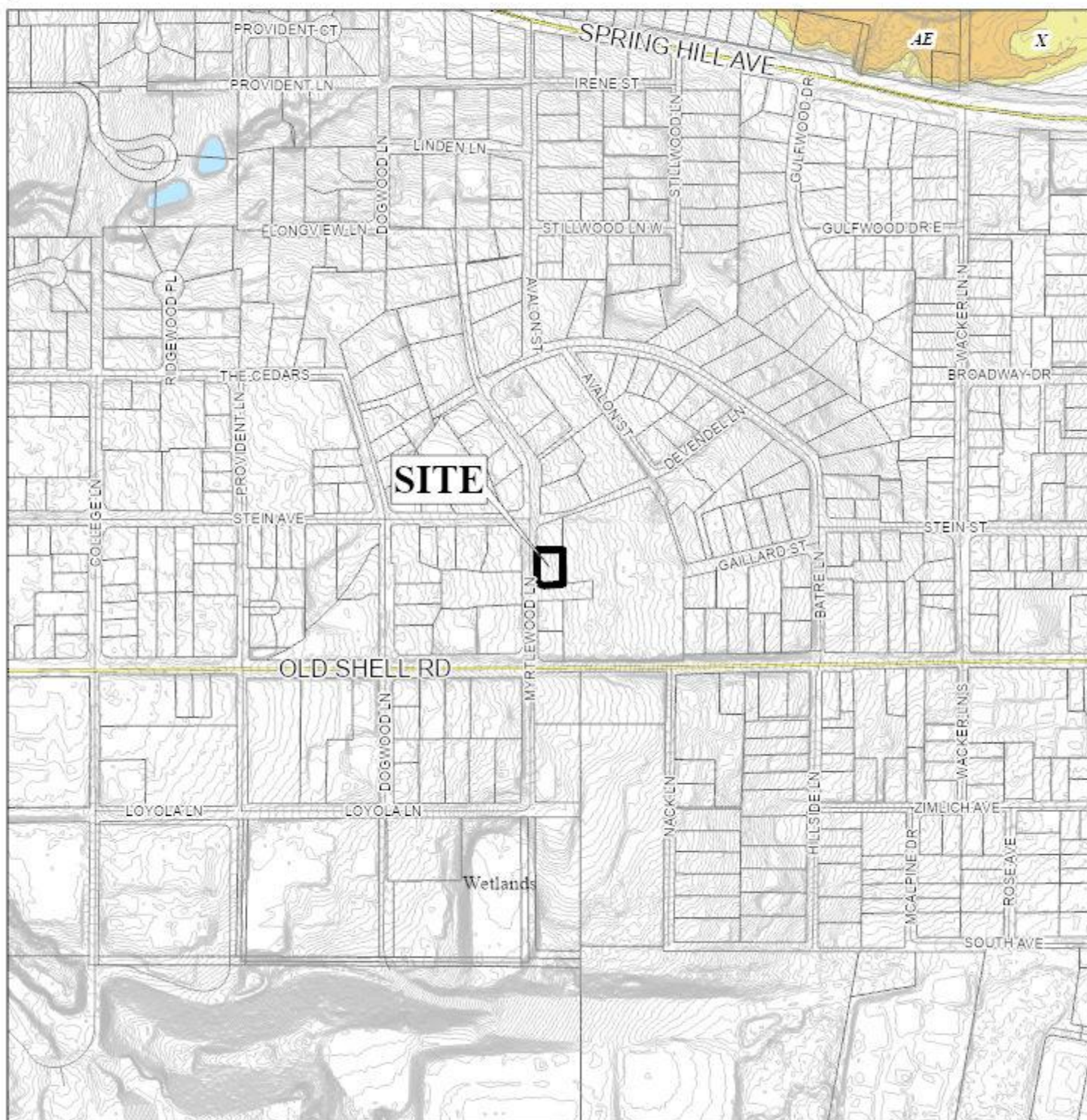
## Layer2

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





# ENVIRONMENTAL LOCATOR MAP



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This site is surrounded by residential units.









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APPLICANT \_\_\_\_\_ Sheridan Construction

REQUEST \_\_\_\_\_ Side And Rear Yard Setback Variances

 R-A
  R-3
  T-B
  B-2
  B-5
  MUN
  SD-WH
  T5.1

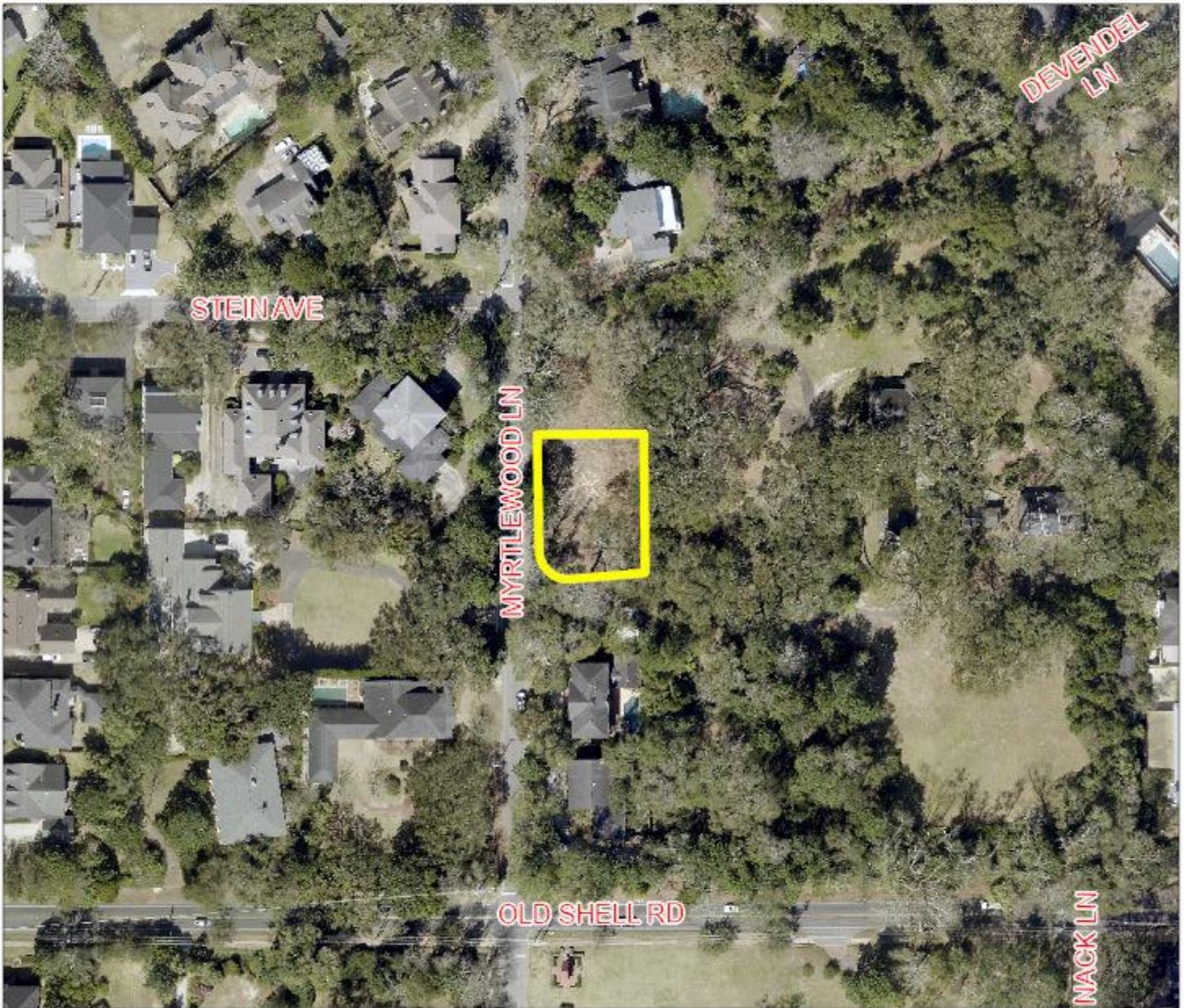
 R-1
  R-B
  B-1
  B-3
  I-1
  OPEN
  T3
  T5.2

 R-2
  H-B
  LB-2
  B-4
  I-2
  SD
  T4
  T6





# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING AERIAL



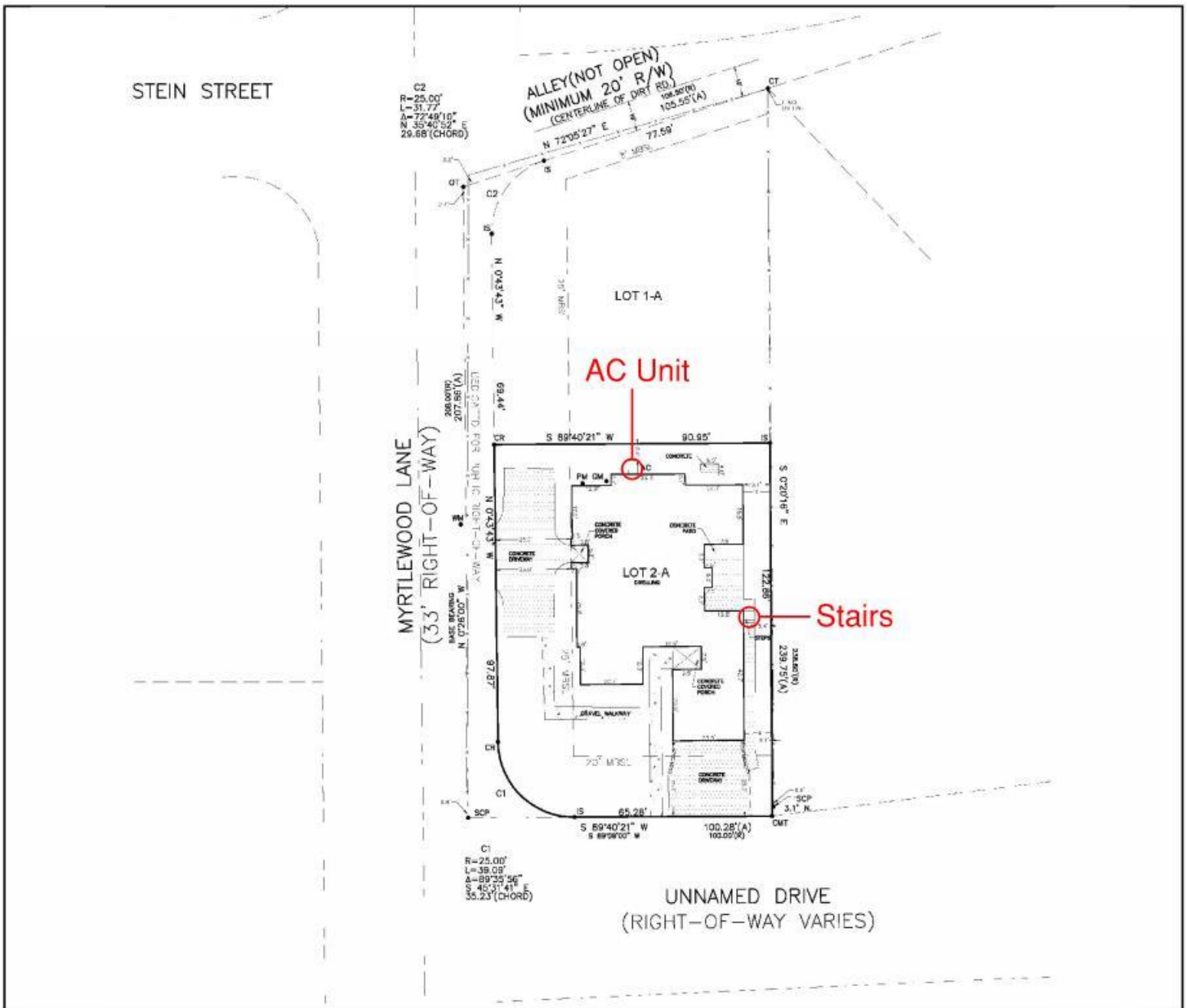
This site is surrounded by residential units.

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# SITE PLAN



This site plan illustrates the existing building and setbacks.

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