

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

6321

APPLICANT NAMERanita Smith
Walt Reinhaus**LOCATION**103 Michael Donald Avenue
(West side of Michael Donald Avenue, 63'± North of the
intersection of Michael Donald Avenue and Old Shell
Road)**VARIANCE REQUEST****ADMINISTRATIVE APPEAL:** Administrative Appeal
of a staff decision granting “reasonable accommodation” to
allow up to 8 unrelated people to live in a recovery
residence as a family.**ZONING ORDINANCE
REQUIREMENT****ADMINISTRATIVE APPEAL:** The Zoning Ordinance
states that the Board has the authority to hear and decide
appeals where it is alleged by the appellant that there is
error in any order, requirement, permit, decision or refusal
made by the zoning administrator or other administrative
office in the enforcement of this chapter or of Article 4,
Section 11-52-70 et seq., of the 1975 Code of Alabama, as
amended.**ZONING**

R-1, Single Family Residential

AREA OF PROPERTY

5,200 ± square feet / 0.12±Acres

**CITY COUNCIL
DISTRICT**

District 2

**ENGINEERING
COMMENTS**

No comments.

**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 (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 an Administrative Appeal of a staff decision granting “reasonable accommodation” to allow up to 8 unrelated people to live in a recovery residence as a family. The Zoning Ordinance states that the Board has the authority to hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, permit, decision or refusal made by the zoning administrator or other administrative office in the enforcement of this chapter or of Article 4, Section 11-52-70 et seq., of the 1975 Code of Alabama, as amended.

The City developed a Reasonable Accommodation policy in May 2019. This policy was developed to ensure compliance with federal regulations, including the Federal Fair Housing Amendments Act (42 U.S.C. 3601, et seq.) (“FHA”) and Title II of the Americans with Disabilities Act (42 U.S.C. Section 12131, et seq.) (“ADA”). For purposes of this policy, a “disabled” individual or person is an individual who qualifies as disabled and/or handicapped under the FHA and/or ADA. Any person who is disabled (or qualifying entities) may request a reasonable accommodation with respect to the city’s land use or zoning laws, rules, policies, practices and/or procedures as provided by the FHA and the ADA pursuant to the procedures set out in this policy.

The Door to Serenity submitted a request for reasonable accommodation for 103 Michael McDonald Avenue, to allow up to 8 unrelated people to live together as a “family” as part of a recovery residence. The accommodation request specifically addresses the definition of “family” found within the Zoning Ordinance:

Family: One (1) or more persons living together as a single housekeeping unit, which may include not more than four (4) lodgers or boarders.

The city policy set the standards for submitting a reasonable accommodation request as well as the criteria to be used by staff in rendering a decision. In determining whether the reasonable accommodation request shall be granted or denied, the requesting party shall be required to establish that they are protected under the FHA and/or ADA by demonstrating that they are handicapped or disabled, as defined in the FHA and/or ADA. Although the definition of disability is subject to judicial interpretation, for purposes of this policy the disabled individual must show: (i) a physical or mental impairment which substantially limits one or major life activities; (ii) a record of having such impairment; or (iii) that they are regarded as having such impairment.

For requests related to housing, the Director (of Build Mobile) must make a finding that;

- a. The accommodation request will provide direct or meaningful therapeutic amelioration of the effects of the particular disability or handicap, and is necessary to afford handicapped or disabled persons equal opportunity to enjoy and use housing in residential districts in the city.
- b. That the requested accommodation would not impose an undue financial or administrative burden on the city; and
- c. That the requested accommodation would not fundamentally alter the city's zoning scheme;

The information submitted by the Door to Serenity was determined by staff to satisfy the “protected class” requirements, because recovering alcoholics and drug addicts are considered to be disabled or handicap under the federal acts. Review of the additional information regarding the therapeutic benefit of allowing up to 8 people to live together as a family unit was also determined to be meaningful and necessary to allow for the equal opportunity to housing in residential districts. Finally, it was determined that approval of the reasonable accommodation request would not impose an undue financial or administrative burden on the city, and that it would not fundamentally alter the city’s zoning scheme.

The appellants provided the following statements regarding the decision by staff:

First appellant (Smith)

The City of Mobile's Approval for Reasonable Accommodation surpasses the ability of a neighborhood plagued with drugs alcohol and crime. The city's zoning board discretion places current residents in direct physical threat and that of personal property. The city has granted double occupancy (per city code) in a residential neighborhood for various residents recovering in the early stages of recovery. This primary stage of recovery merits the idea of relapses that would facilitate the imminent threats posed. The city cited two acts to solidify their approval. Neither act proposed notions to alter codes deemed by the city such as increasing allotted individuals. It only stipulated fair housing and reasonable accommodations to an existing infrastructure. It should be duly noted that the Federal Fair Housing Act doesn't protect individuals whose tenancy could pose a direct threat to the health and safety of other individuals or to property unless the threat can be eliminated significantly. That determination is based on reliable objective evidence on an individual basis per the reasonable accommodation. The threat which is known can't be reduced or assessed because no individuals are present. Even moreover to render Eight unknown revolvable threats without knowledge of individuals on a regular basis. One noted discrepancy with the Americans with disabilities act is that it also gives qualified individuals rights per their individual basis. The traditional family intels four unrelated individuals with the expected individual requesting a variance to reside in the residence. That's only three unknown possible residents which may be manageable with proposed persons on site for accountability. Without necessary measures this approval warrants threats.

Second appellant (Reinhaus)

Having received assurance from Mr. Rogers(planning staff) that already an appeal has been filed, and so there is no need to file a separate appeal in order for an appeal to be scheduled, I offer the following comments in opposition to the Director of Build Mobile's approval of accommodation for 103 Michael Donald's 8 person recovery residence.

This neighborhood block is not just known for being part of the Dauphin Way Historic District, but also for formerly being Herndon Avenue, where, not that long ago, a homeowner, a member of the KKK, targeted, killed, and hung an innocent, unsuspecting, young African American named Michael Donald. This was particularly shocking because of its occurrence in recent decades when society as a whole thought we had progressed beyond such a heinous crime, considered to be maybe the last known lynching in the U.S.

There are many parts of the story that continue to be dwelled upon, including the fact that the klansman decided to hang the unfortunate victim in a large old live oak tree across the street from his house, in the front yard of his neighbor, where an unrelated woman lived. So in addition to the primary story of notoriety, there is this part about how the neighbor was affected by another neighbor's actions, which led to her tree being cut down, and her house being burned to the ground. So, there was an added effect, as the block has been associated with this shocking, shameful history.

After the persistent effort of Chris Bowen, the klansman's house was sold to him by the State of Alabama, many years after it had been acquired following the conclusion of the related court cases. The neighbor's vacant lot was also acquired by the state and later sold to Mr. Bowen as well.

City council renamed the street Michael Donald Avenue, which has been inhabited in recent decades almost completely by African Americans. Notably, in recent years, African Americans have also become not just residents but homeowners on the block.

African Americans were intentionally displaced and refused mortgage financing over many decades with the creation of zoning laws throughout the United States, denying them wealth-building opportunities. Half of recent African American new owners on the block are women, another demographic that has suffered from unfair government-backed policies relating to homeownership.

Government-backed decisions adversely affecting the environment and the quality of life enjoyed by African American neighborhoods have also taken their toll, including cities' decisions placing toxic waste near poor people and failing to implement HUD's scattered-site policy, continuing to keep generations segregated in blighted areas.

Michael Donald Avenue has a large number of vacant homes needing new owners who want to build equity while fixing up the houses. Some residents of color would like to become homeowners, and are negotiating terms of purchase with their landlords.

Speculators have purchased other properties, leaving the boarded-up shells to further deteriorate. After neighbors testified in front of city council, following the murder of a drug patron, an effort was made to reduce the number of drug houses on the block, which has resulted in increasingly orchestrated transactions managed on the street.

There is a real sense of community among those who live and frequent the block, noticeably around the northern half centered on the common space within the Oaks apartment complex, spilling out onto Michael Donald Avenue, connecting to several rental houses. This sub-area crosses the flow of traffic, including those who drive by to purchase drugs, prostitutes; the community vibe becomes mixed with the illicit trade.

If 103 Michael Donald Av becomes a group home for recovering addicts, those residents will undoubtedly walk through the gauntlet of the northern half on their way to the nearest corner store, open 24 hours, selling all types of alcohol, smokes, a variety of sundries and prepared meals. Past experience has shown previous users who graduate rehabilitation programs, then move onto the block, have slid back into using, as the temptations, offered in full view with easy acceptance, persuade and dominate.

What will such a placement also mean for the burgeoning growth of homeownership by African American and single woman homeowners? Their potential for equity appreciation will shrink, even evaporate, as government again supports actions that consequently manifest being against their, and the community's interest.

Placing yet another group home in this part of the city will further segregate an area already containing much more of their share of a variety of services compared to the city at large, adversely impacting group home residents and their neighbors alike.

This is not the NIMBY argument, as neighbors are already willingly hosting their share of facilities, but recognize the consequences of segregating too many in the same area.

Those who enjoy the community spirit of Michael Donald Avenue exemplify an at-risk youth dynamic like Michael Donald at the time of his death; and want more done to honor that demographic, as a focus for the revitalization of this block.

For years, we've asked for the vacant lot bearing the historical marker to be used as a neighborhood entry to the Springhill Recreation Center, for safer travel by children, and further the evolution of the building and grounds as a community center.

More help is needed to assist existing residents to be able to purchase a home on the block. We have residents who are ready to negotiate purchase terms with their owners.

Until government has acted to honor and lift up vulnerable African Americans by fulfilling promises to transform Michael Donald Avenue inherent with street naming, by ending government policies that deny African Americans wealth-building opportunities with homeownership, and by no longer segregating in the same communities services that

should be scattered throughout a metropolitan area, our residents don't support more of the same.

For this to succeed as a rehabilitation facility, it must be recognized that with this location comes the greatest challenge, given the pervasive drug culture, that will provide a very welcoming, developed community geared toward the new residents becoming once again users. There would be no chance of succeeding without intensive on-site case management. How could so many clients be accommodated in the one modest-sized house, especially given the need for live-in staff? The plan for accommodating eight clients, for as little as we know about it, makes no sense.

Unintentionally creating what probably will become another user's house will insure the struggling homeowners, including those of color, will lose equity: government once again approving actions that deprive wealth-building opportunity for African Americans.

How is this serving the promise of Michael Donald Avenue? How is this creating a better life forward for the newer generations of youth that live and play on our street?

Help provide partnerships assisting existing residents who want to stay and become homeowners. Help us create a new connection with the recreation center, to serve not only the street but the greater community along Old Shell, even past Ann Street. Help us improve everyone's quality of life by doing right by the memory of Michael Donald, not just for who he was specifically, yet also for whom he represents, those young persons with similar challenges and aspirations.

Help the women who want to join those who are already homeowners, listen to the long-time elderly residents who understand what is going on here and where the potential lies. Help us better connect our children to existing resources just a stone's throw away.

Mobile needs rehabilitation facilities, we know this and see the ones that already exist in this part of the city as doing good work. But let's keep it real; this is the most challenging location imaginable.

Being informed as much as possible before reaching any conclusion is the preferred strategy. So, I responded to Build Mobile's Notice of Determination offering additional information by contacting the Planning and Zoning Department through their website Friday, March 20, 2020, requesting to view any information relating to the approved accommodation. Not receiving a reply, I contacted the department by phone Tuesday, March 24th, and spoke with Mr. Rodgers about the notice, noting my March 20th submission requesting additional information. As he advised, I submitted a Request for Public Records that day.

Why isn't additional information made available at the time the Notice of Determination letters are sent to adjacent property owners? It seems reasonable to anticipate there will be interest in response to their letters, and prepare any needed approvals to release information in advance of the notice. Given today's deadline for submission, I'm writing

this letter without the benefit of a fuller understanding of the proposal, since the city still hasn't approved the release of additional information.

I believe the opinions found in this letter are shared with at least several of my neighbors on the block in close proximity to 103 Michael Donald, based on discussions they initiated after the notice of determination letters were received. Given the current state of things, we are not able to easily connect with each other, but I'm hoping there will be communication as the hearing date approaches.

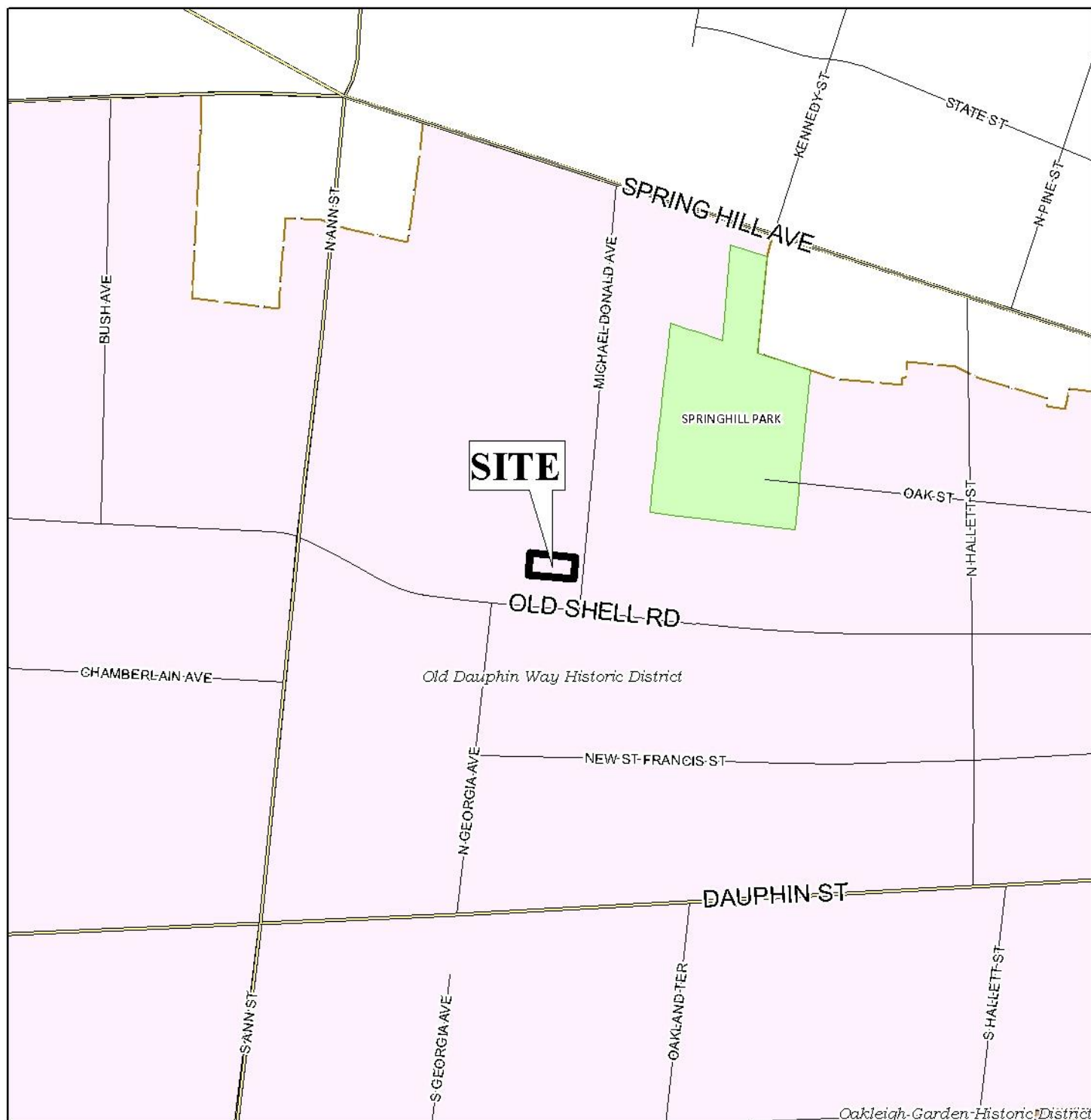
I can say we all want to see the young man from Seattle succeed with his flipping of 103 Michael Donald. We look after the security of his vacant house, pick up trash in his yard as well as ours, and have undertaken other exterior improvement projects with surrounding houses, reflecting our care and concern for our neighborhood. We have a long tradition of getting to know each other, and taking time to get involved with each other's lives, helping each other as needed. This is a front porch community, and on this block, we use our porches as a place to notice and meet with each other (although not so much right now due to social distancing).

The city's policy allows the Director to impose conditions upon the grant of the reasonable accommodation request as he/she deems necessary and appropriate to mitigate any public safety concerns which pose a significant risk to children under age 18 or neighboring residential communities or the residential character of those communities. In this case, it was determined that such conditions were not required.

Finally, any approved reasonable accommodation request shall be subject to revocation or modification by the Director if the holder of the reasonable accommodation or the property upon which the accommodation is granted is found in violation of any provision of the decision granting the reasonable accommodation, and the holder of the reasonable accommodation has failed to correct such violation.

RECOMMENDATION: Based upon the preceding, staff recommends that the Board consider all relevant aspects of the Administrative Appeal, and determine if there is error in any order, requirement, permit, decision or refusal made by the zoning administrator or other administrative office in the enforcement of this chapter.

LOCATOR MAP



APPLICATION NUMBER 6321 DATE May 4, 2020

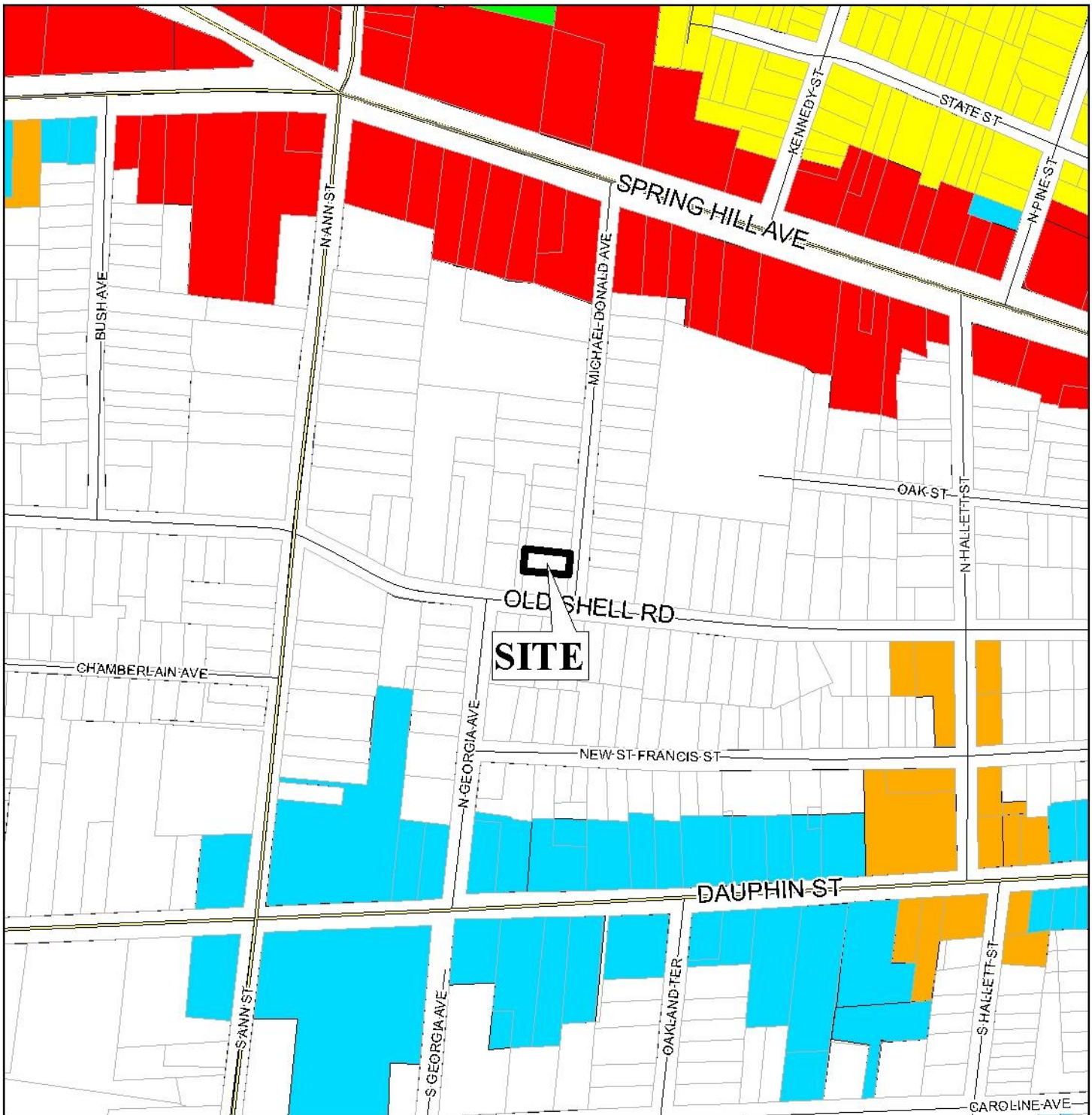
APPLICANT Ranita Smith

REQUEST Administrative Appeal



NTS

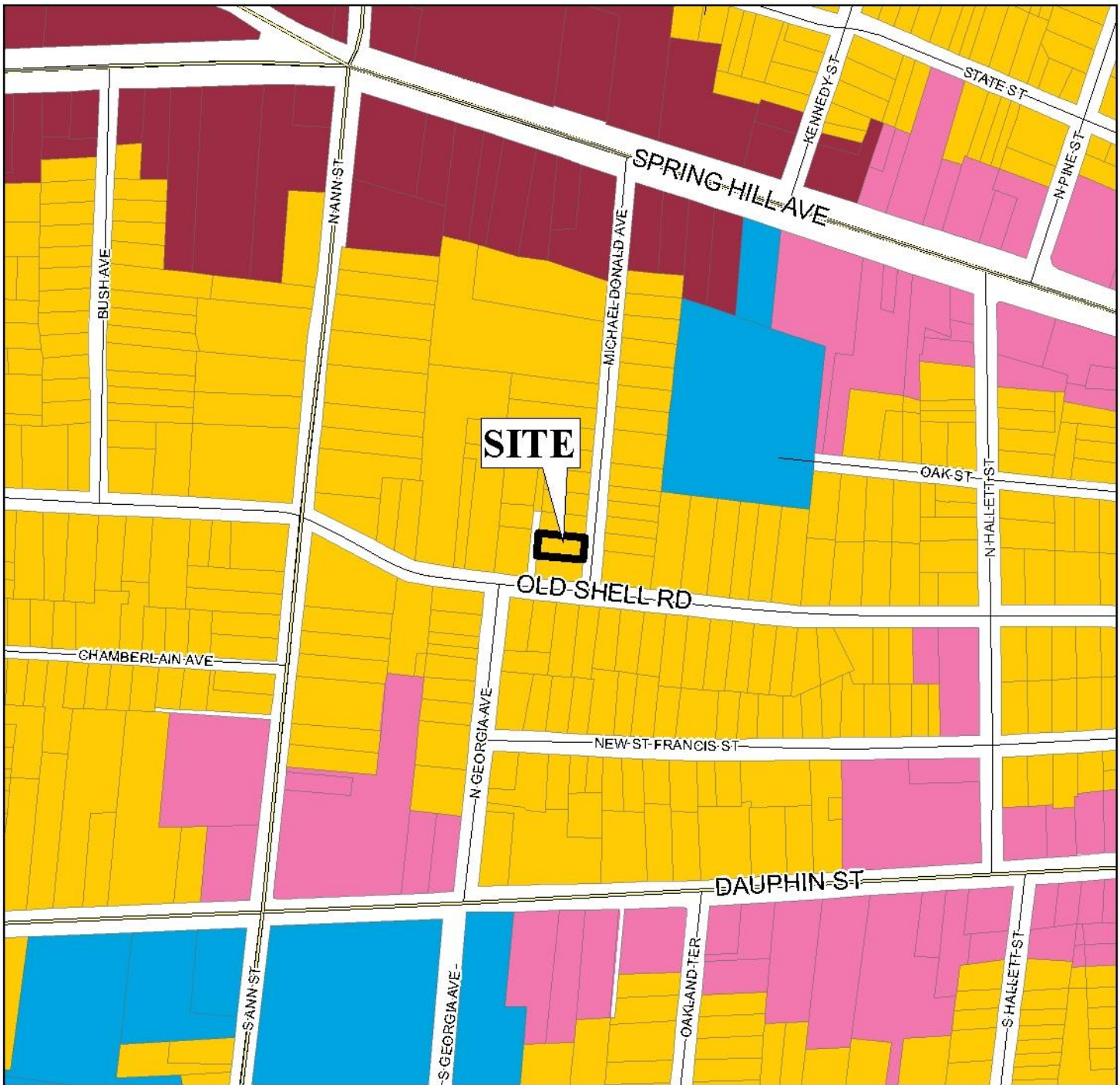
LOCATOR ZONING MAP



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REQUEST Administrative Appeal



FLUM LOCATOR MAP



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APPLICANT Ranita Smith

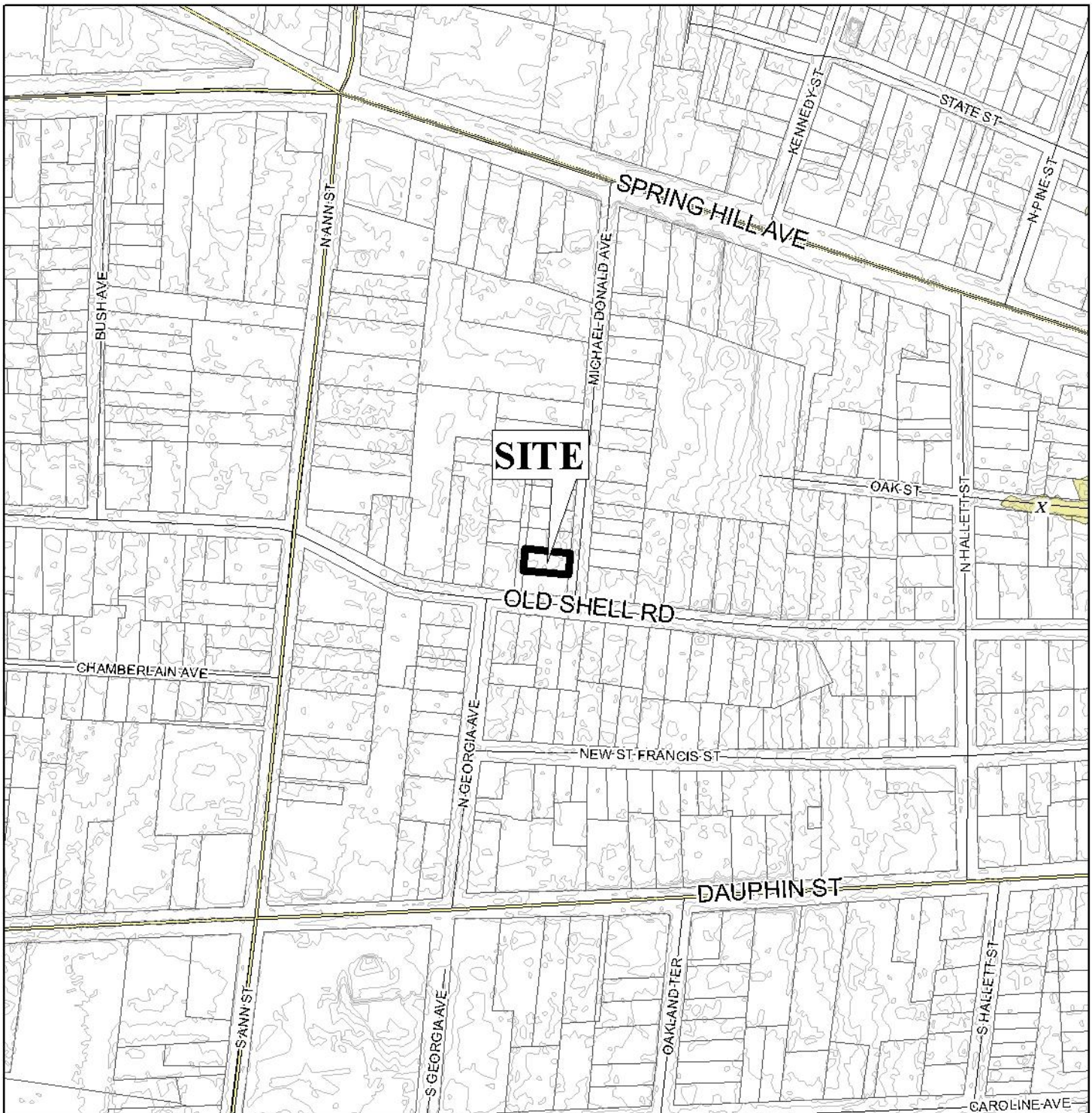
REQUEST Administrative Appeal

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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APPLICANT Ranita Smith

REQUEST Administrative Appeal



NTS

BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units.

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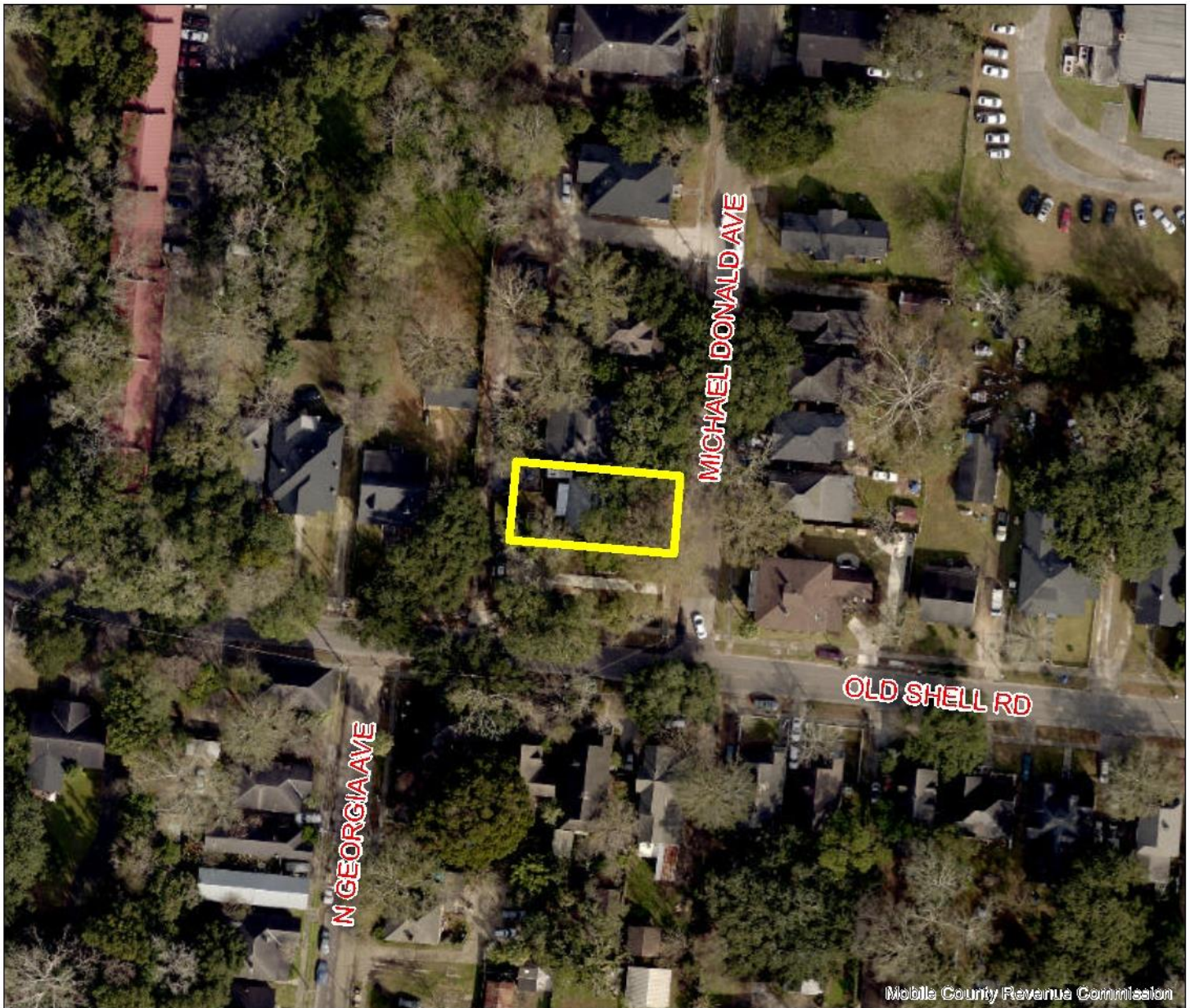
APPLICANT Ranita Smith

REQUEST Administrative Appeal

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



Mobile County Revenue Commission

The site is surrounded by residential units.

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REQUEST Administrative Appeal



NTS

