

**BOARD OF ZONING ADJUSTMENT  
STAFF REPORT**

**Date: November 2, 2020**

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<b><u>CASE NUMBER</u></b>	6358
<b><u>APPLICANT NAME</u></b>	Natasha Hill
<b><u>LOCATION</u></b>	7160 Old Military Road (South side of Old Military Road; 204'± East of Gipson Road).
<b><u>VARIANCE REQUEST</u></b>	<b>USE:</b> Use Variance to allow up to 10 children in a home-based child day care business in an R-1, Single-Family Residential District.
<b><u>ZONING ORDINANCE REQUIREMENT</u></b>	<b>USE:</b> The Zoning Ordinance does not allow more than six (6) children in a home-based childcare business in an R-1, Single-Family Residential District.
<b><u>ZONING</u></b>	R-1, Single-Family Residential District
<b><u>AREA OF PROPERTY</u></b>	146,801± square feet / 3.3± Acres
<b><u>CITY COUNCIL DISTRICT</u></b>	District 4
<b><u>ENGINEERING COMMENTS</u></b>	No comment.
<b><u>TRAFFIC ENGINEERING COMMENTS</u></b>	No traffic impacts anticipated based on the specific details of this variance request.
<b><u>URBAN FORESTRY COMMENTS</u></b>	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).

Residential daycares are not allowed to provide for more than 5 children. If a daycare is providing custodial care for more than 5 children it will be consider a commercial daycare. The daycare would then have an occupancy classification of an I-4.

I-4 facilities providing care for 5 or more persons are required to be sprinkled. The facility is required to have a fire hydrant within 400' of the farthest point if not sprinkled and 600' if sprinkled. There is an exception for smaller daycares that allow them to be classified as an E occupancy which would not require sprinklers. This exception requires the daycare be at the level of exit and each classroom have an exterior exit door. The facility is required to have emergency egress lighting and exit signs with battery power back-up. The facility is also required to have a ventilation hood with fire suppression over any cooking appliance emitting grease vapors. Fire extinguishers are required for every 75' of travel. Fire apparatus access is required to allow hose streams to be within 150' of the farthest point of the building. A Knox Box is also a requirement.

The most significant requirement of our office is that this is an occupancy classification change from an R occupancy to a I-4 or E. We will require plans and permit approval.

**ANALYSIS**

The applicant is requesting a Use Variance to allow up to 10 children in a home-based child day care business in an R-1, Single-Family Residential District; The Zoning Ordinance does not allow more than six (6) children in a home-based child daycare business in an R-1, Single-Family Residential District.

The site has been given a Low Density Residential (LDR) 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 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.

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:

*Hi, my name is Natasha Hill and I am located at 7160 Old Military Road in Theodore, AL 36582. I have been an existing daycare for the past 12 years. I have been operating as a Group Childcare Home for a total of 7 years taking care of 12 or less children. I am currently a Family Childcare Home taking care of 5 children. I am applying for zoning so I can be able to take care of more than 5 children in my home. I have been living in Theodore, AL for a total of 26 years taking care of family's children for the last 12 years. I have ample space for families to park and to host events for the children that attends my childcare. Noise is very limited and the children does not disturb the neighbors when they are outdoors playing because of the distant between our homes. I do not use loud machinery or tools which might cause disturbance.*

As stated, the applicant is requesting a Use Variance to allow the maximum number of children enrolled be increased from six (6) up to 10 children for a home daycare in an R-1, Residential Single-Family District. The Zoning Ordinance limits home occupation daycares to a maximum of six (6) children.

It should be noted that per the submitted site plan, the size of the subject property is approximately 146,328 square feet, the existing house is approximately 2,300 square feet, and approximately 5,477 square feet of the rear yard is fenced in to provide an outdoor play area for children.

It should also be noted that the expansion in the number of children above six (6) may trigger additional compliance requirements with Building, Mechanical, Plumbing, Electrical, and Fire Codes. As noted in Fire Department comments, if the daycare will have more than five (5)

children, the residence will be required to be sprinkled, in addition to other improvements to the home that will require plans to be submitted, and permits to be obtained to make sure the structure meets minimum requirements.

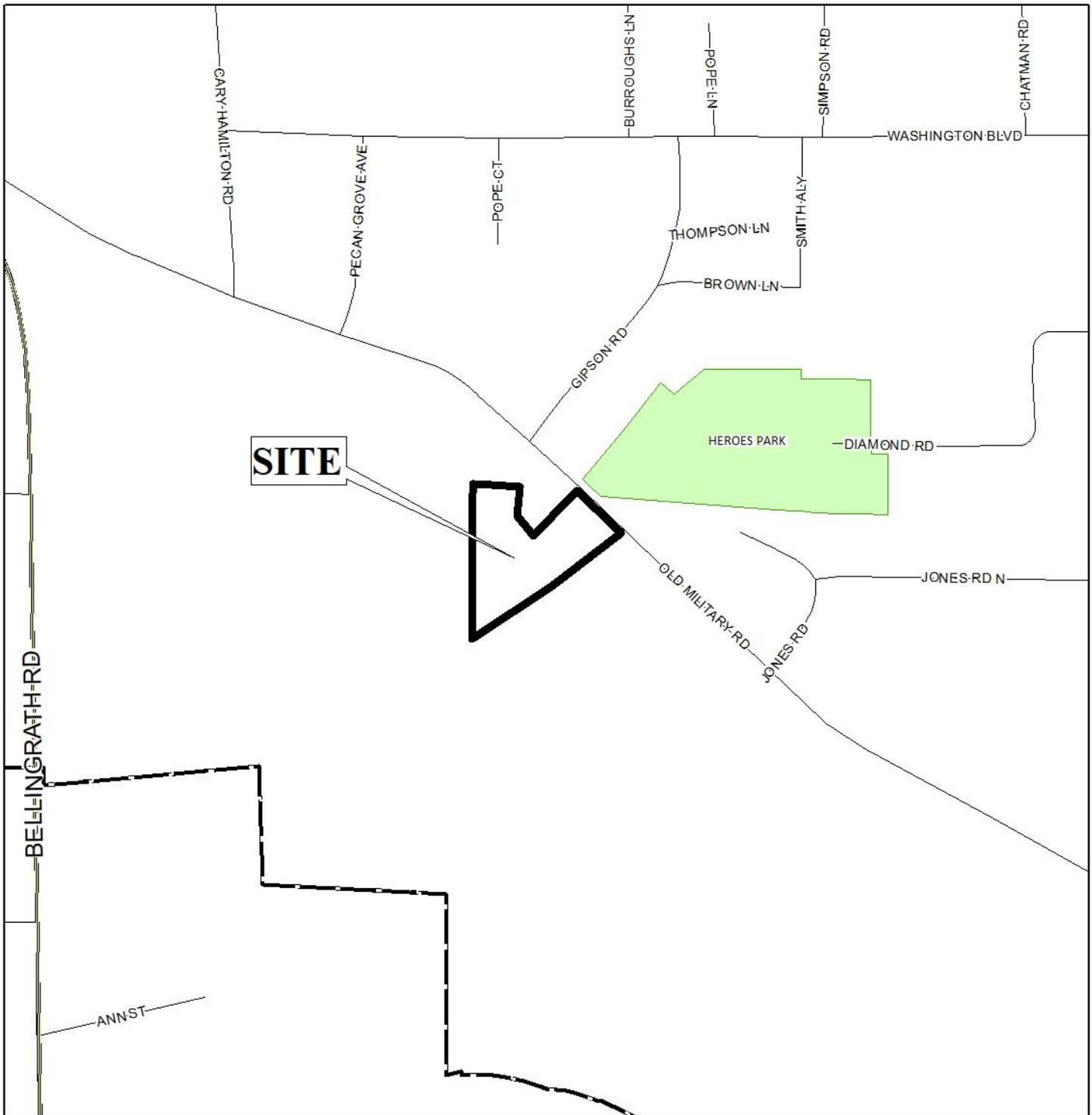
Staff reached out to the Alabama Department of Human Resources to determine if there are other requirements the State may have that would impact a home-based daycare for up to ten (10) children. Staff was informed that for home-based daycares caring for between seven (7) and twelve (12) children that the following caregivers must be available: the licensee, the assistance caregiver, and a least two (2) substitutes. This may result in individuals who do not live at the location working there.

The applicant has not provided any justification as to why the requested variance is required. Furthermore, the subject site is being used as a compliant home daycare currently demonstrating that a hardship does not exist. The applicant could find an appropriately zoned location that would allow more than six (6) children, without the need for variances. It is simply the applicant's desire to have a home daycare larger than allowed, resulting in a self-imposed hardship.

**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 as the proposed commercial use could potentially increase traffic within a residentially zoned neighborhood;
- 2) Special conditions were not illustrated such that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship; 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 area is zoned for residential development.

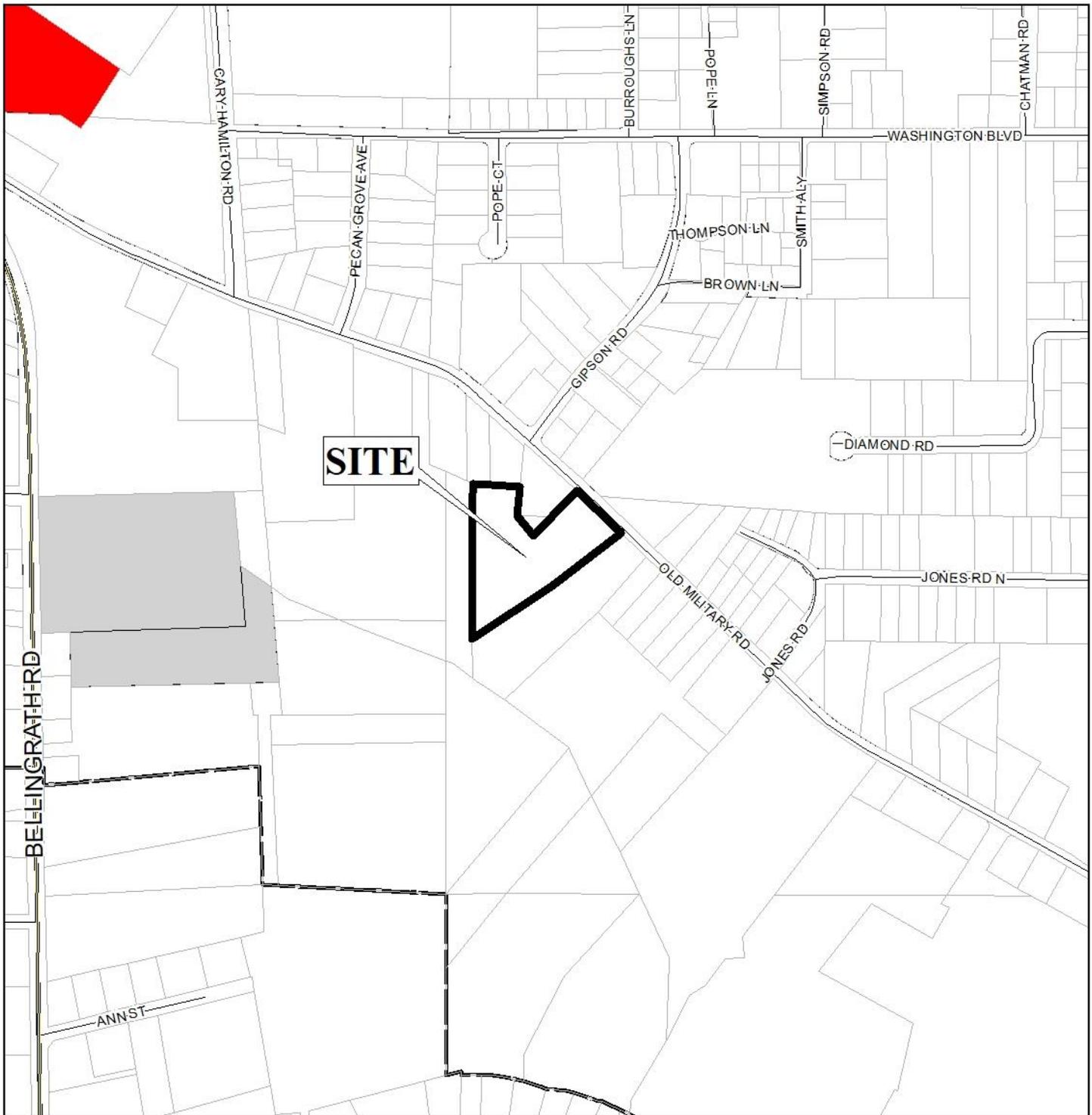
# LOCATOR MAP



APPLICATION NUMBER	6358	DATE	November 2, 2020
APPLICANT	Natasha Hill		
REQUEST	Use Variance		



# LOCATOR ZONING MAP



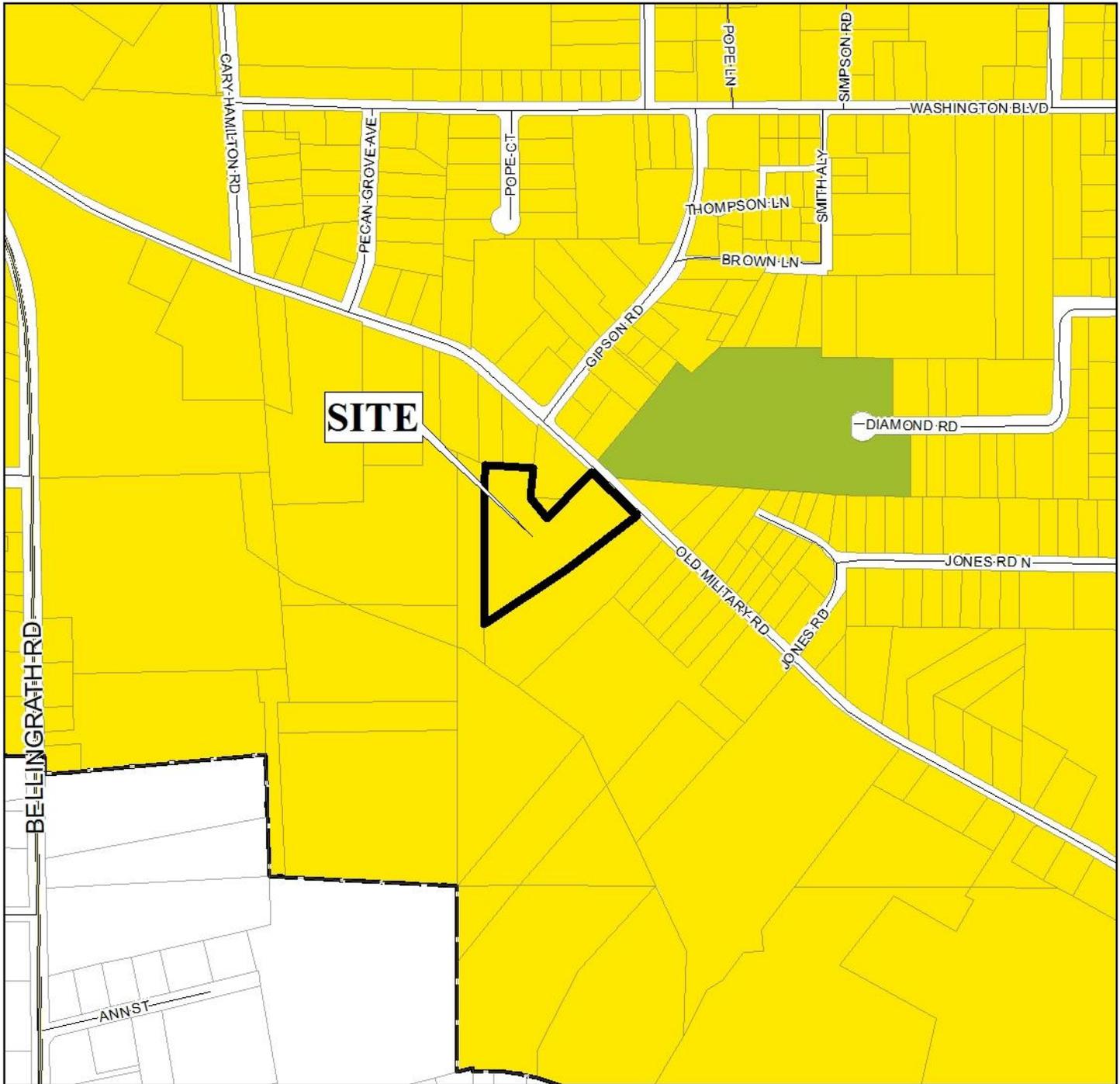
APPLICATION NUMBER 6358 DATE November 2, 2020

APPLICANT Natasha Hill

REQUEST Use Variance



# FLUM LOCATOR MAP



APPLICATION NUMBER 6358 DATE November 2, 2020

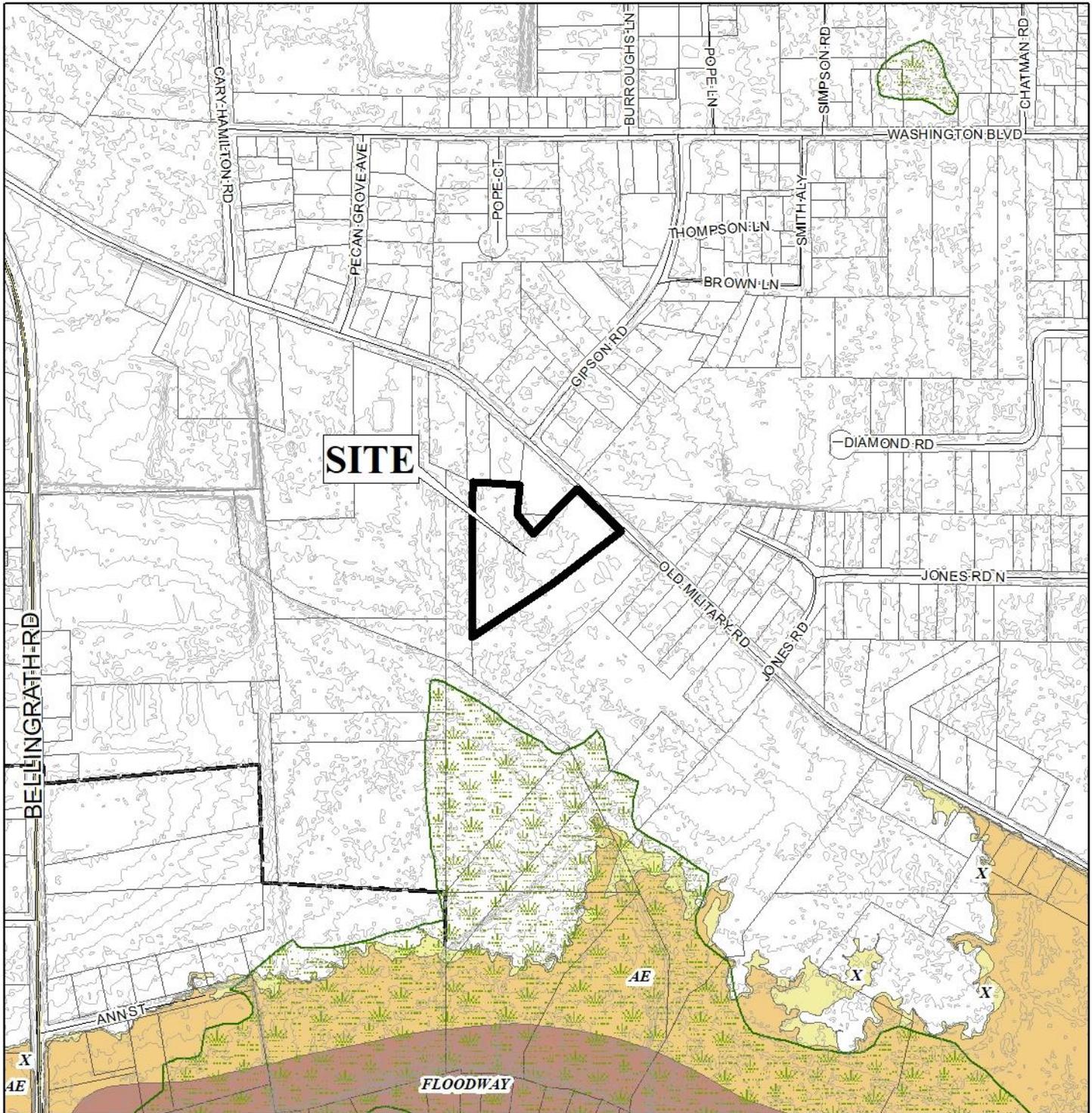
APPLICANT Natasha Hill

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       |                    |



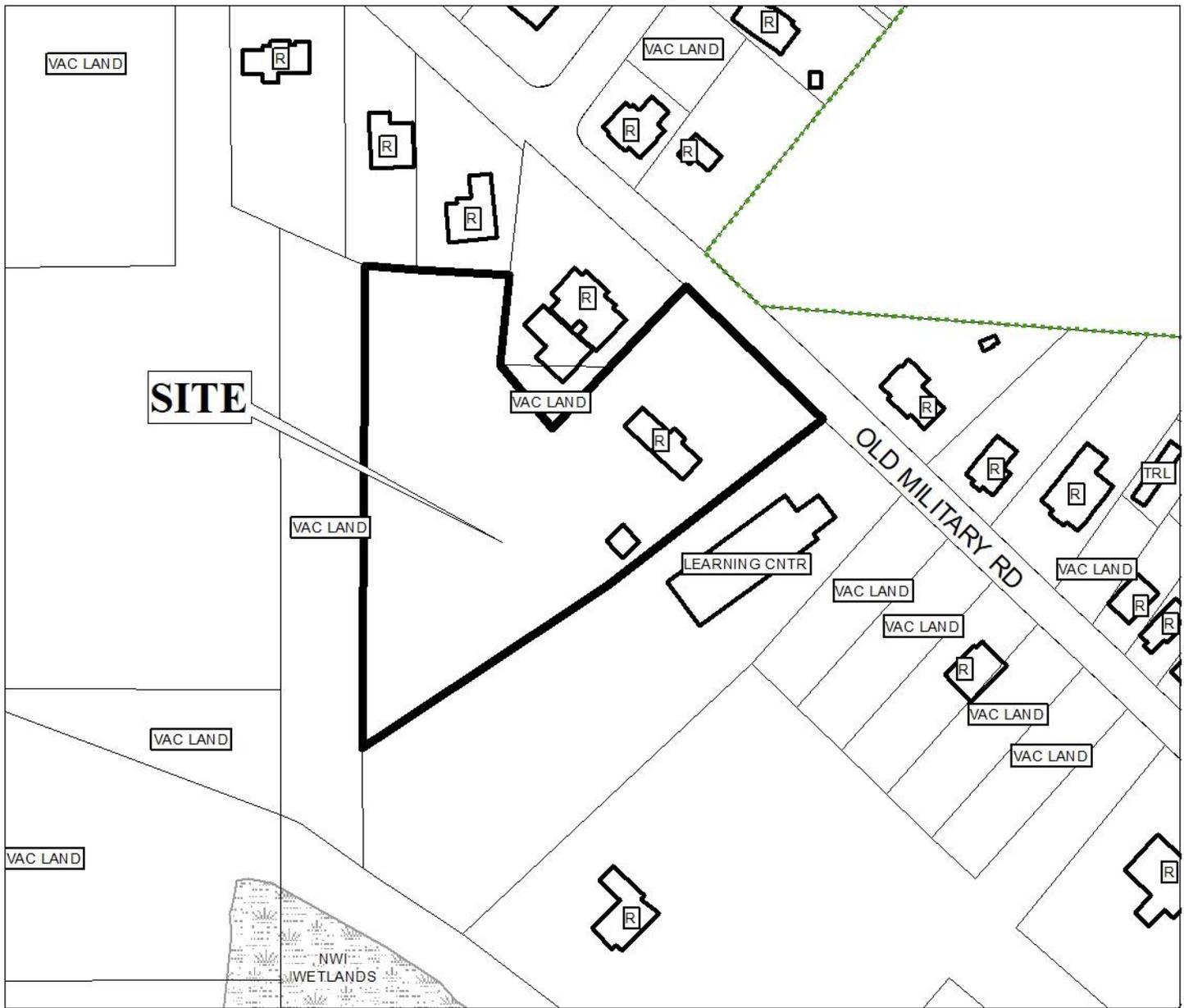
# ENVIRONMENTAL LOCATOR MAP



APPLICATION NUMBER 6358 DATE November 2, 2020  
APPLICANT Natasha Hill  
REQUEST Use Variance



# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units, vacant lands and a child care facility.

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APPLICANT Natasha Hill

REQUEST Use Variance

<span style="display: inline-block; width: 15px; height: 15px; background-color: cyan; border: 1px solid black;"></span> R-A	<span style="display: inline-block; width: 15px; height: 15px; background-color: green; border: 1px solid black;"></span> R-3	<span style="display: inline-block; width: 15px; height: 15px; background-color: tan; border: 1px solid black;"></span> T-B	<span style="display: inline-block; width: 15px; height: 15px; background-color: orange; border: 1px solid black;"></span> B-2	<span style="display: inline-block; width: 15px; height: 15px; background-color: blue; border: 1px solid black;"></span> B-5	<span style="display: inline-block; width: 15px; height: 15px; background-color: yellow; border: 1px solid black;"></span> MUN	<span style="display: inline-block; width: 15px; height: 15px; background-color: orange; border: 1px solid black;"></span> SD-WH	<span style="display: inline-block; width: 15px; height: 15px; background-color: purple; border: 1px solid black;"></span> T5.1
<span style="display: inline-block; width: 15px; height: 15px; background-color: white; border: 1px solid black;"></span> R-1	<span style="display: inline-block; width: 15px; height: 15px; background-color: pink; border: 1px solid black;"></span> R-B	<span style="display: inline-block; width: 15px; height: 15px; background-color: cyan; border: 1px solid black;"></span> B-1	<span style="display: inline-block; width: 15px; height: 15px; background-color: red; border: 1px solid black;"></span> B-3	<span style="display: inline-block; width: 15px; height: 15px; background-color: lightblue; border: 1px solid black;"></span> I-1	<span style="display: inline-block; width: 15px; height: 15px; background-color: lightgreen; border: 1px solid black;"></span> OPEN	<span style="display: inline-block; width: 15px; height: 15px; background-color: pink; border: 1px solid black;"></span> T3	<span style="display: inline-block; width: 15px; height: 15px; background-color: purple; border: 1px solid black;"></span> T5.2
<span style="display: inline-block; width: 15px; height: 15px; background-color: yellow; border: 1px solid black;"></span> R-2	<span style="display: inline-block; width: 15px; height: 15px; background-color: peachpuff; border: 1px solid black;"></span> H-B	<span style="display: inline-block; width: 15px; height: 15px; background-color: purple; border: 1px solid black;"></span> LB-2	<span style="display: inline-block; width: 15px; height: 15px; background-color: brown; border: 1px solid black;"></span> B-4	<span style="display: inline-block; width: 15px; height: 15px; background-color: gray; border: 1px solid black;"></span> I-2	<span style="display: inline-block; width: 15px; height: 15px; background-color: orange; border: 1px solid black;"></span> SD	<span style="display: inline-block; width: 15px; height: 15px; background-color: purple; border: 1px solid black;"></span> T4	<span style="display: inline-block; width: 15px; height: 15px; background-color: darkpurple; border: 1px solid black;"></span> T6



# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING AERIAL



The site is surrounded by residential units, vacant lands and a child care facility.

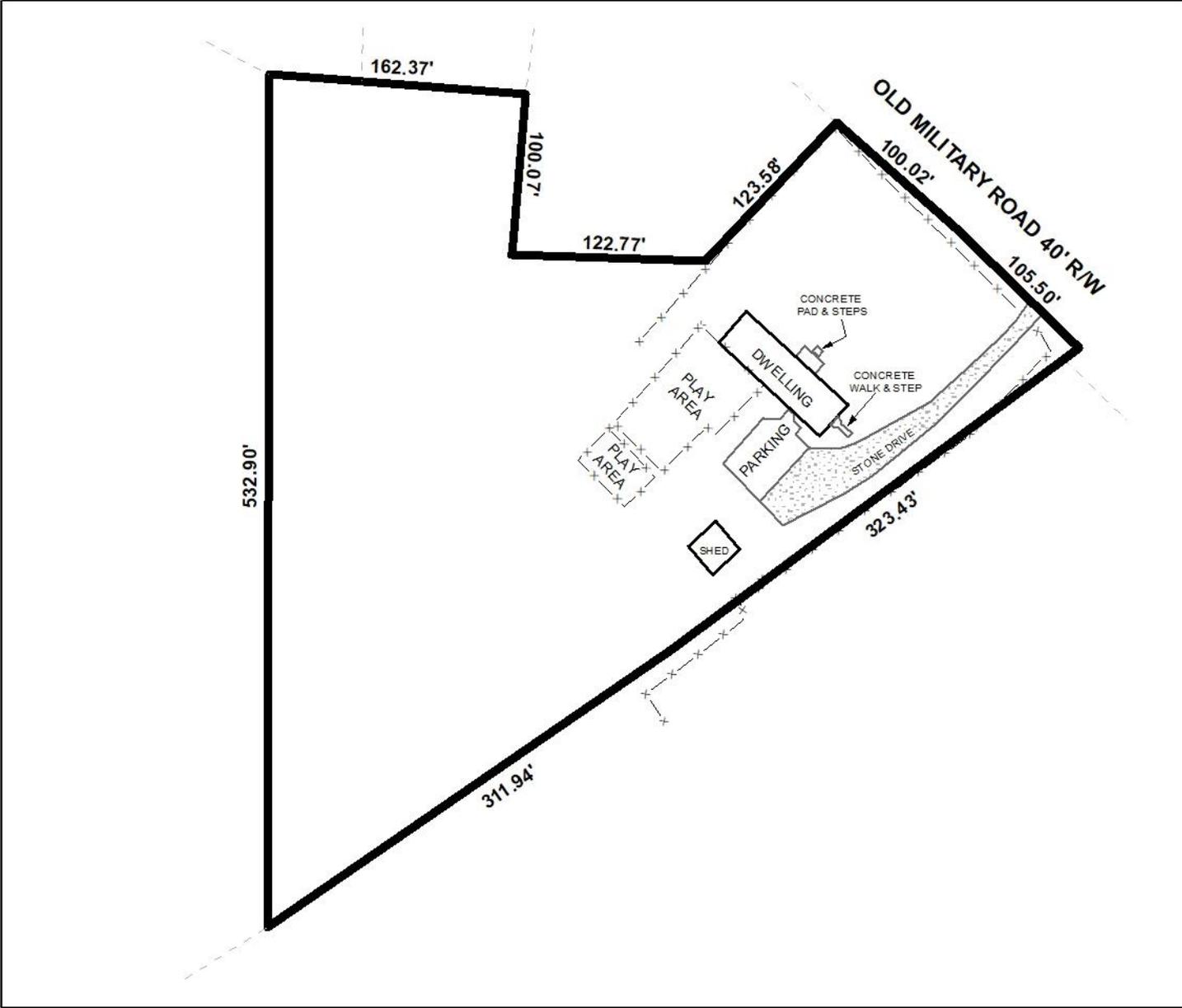
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# SITE PLAN



The site plan illustrates existing dwelling, parking, play areas and fencing.

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