

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: July 11, 2022**

<u>CASE NUMBER</u>	6468
<u>APPLICANT NAME</u>	Kimberly H. Rea
<u>LOCATION</u>	4519 Cypress Business Park Drive (West side of Cypress Business Park Drive, 346'± South of Crown Drive).
<u>VARIANCE REQUEST</u>	USE: Use Variance to allow operation of a day care in a B-5, Office-Distribution District.
<u>ZONING ORDINANCE REQUIREMENT</u>	USE: The Zoning Ordinance does not allow the operation of a day care in a B-5, Office-Distribution District.
<u>ZONING</u>	B-5, Office-Distribution
<u>AREA OF PROPERTY</u>	1.0± Acre
<u>ENGINEERING COMMENTS</u>	No comments.
<u>TRAFFIC ENGINEERING COMMENTS</u>	No adverse traffic impacts anticipated by this variance request.
<u>CITY COUNCIL DISTRICT</u>	District 4

ANALYSIS The applicant is requesting a Use Variance to allow operation of a day care in a B-5, Office-Distribution District; the Zoning Ordinance does not allow the operation of a day care in a B-5, Office-Distribution District.

The site has been given a Heavy Industry (HI) 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 HI land use designation applies to larger parcels primarily devoted to high-impact industrial activity which is preferably removed from residential and commercial uses. Light industry, industrial business or heavy commercial lands may separate heavy industry from other land uses.

Heavy industrial areas include collection, treatment, and manufacturing processes which use raw materials, are distinguished by the presence of noise, vibration, and/or odors, and benefit from easy access to a multimodal freight transportation network. Certain types of heavy industry are characterized by low building coverage and activities that rely on large areas of outdoor storage of raw material stockpiles and/or waste-product disposal areas, storage tanks, pipelines, and transportation yards to handle the transfer of heavy materials. The outdoor storage areas should be screened as much as possible by the nature of the stored materials.

Land designated as HI may be underdeveloped due to the presence of wetlands on portions of the parcel. In these cases, the wetlands may serve to buffer surrounding uses from the potential impacts of the heavy industrial use. Undeveloped areas of HI parcels that have tree cover may be used as buffering between the heavy industrial use and other uses. Where buffers do not exist naturally, they should be provided as spelled out in the zoning and subdivision regulations. Open areas reserved for dredge disposal are also designated as HI and may contain wetlands.

In Mobile, port terminal facilities, docks, shipyards, drydocks, etc., are mostly owned by the State of Alabama. Although not subject to local zoning, these facilities are shown as heavy industrial uses in the FULM.

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.

Rezoning of the site from R-1, Single-Family Residential District, to B-5, Office-Distribution District, was recommended for approval by the Planning Commission in August 1996. The City Council subsequently adopted the Rezoning in February 1997. The site is part of the 8-lot, Tenth Addition to Creekline Subdivision, approved by the Planning Commission in August 1999 and recorded in Mobile County Probate Court in September 1999.

The applicant is requesting to operate a day care at the site, a use which is not permitted in the B-5 zoning district, citing the fact that proper due diligence was not conducted prior to leasing the site as justification for the request:

Dear Board Members:

My name is Allen Reimer and I am leading a small professional team to develop alteration plans for our client, Ms. Kimberly H. Rea, Director of "Kimmy Care" daycare here in Mobile.

She has leased a building located at 4519 Cypress Business Park Drive (off of Rangeline Road) from CRE Mobile – apparently there was not a check performed to determine whether this business was approved to operate in a B5 Zone. Our client was caught a bit 'off guard.' The location, the building and the costs associated with relocating her business all seem to be perfect for her situation, and she would have no reason to question the realtor's selection of this building for her current and future needs.

As a result of this 'surprise' we are herewith approaching the Board of Zoning Adjustments to ask for a variance for her daycare business to operate at this location.

There will be no Site Work (other than a fence to surround a play yard for the children), the building is existing and requires very little alteration for her business use and the parking areas is sufficient for her business – no changes are proposed.

We are therefore asking the Board to grant a variance for her business at this location.

Section 64-12 of the Zoning Ordinance allows day cares by-right in B-2, Neighborhood Business District, B-3, Community Business District, and B-4, General Business District; and with Planning Approval by the Planning Commission in R-B, Residence-Business District, and B-1, Buffer Business District. Day cares with six (6) or fewer children are also allowed to operate by-right as a home occupation in the applicable residential zoning districts.

The site plan submitted with the request illustrates an existing commercial building and a parking lot with 13 off-street parking spaces, one (1) of which is van accessible per International Building Code requirements. Parking for day cares is calculated by the number of teaching positions (one (1) space per 1½ teaching positions), but no information regarding the number of teachers to be employed at the facility was provided, therefore staff cannot verify if the site will have adequate parking. If approved, the site plan should be revised to provide this information.

The parking lot appears to be adequately paved, and the width of drive aisles are wide enough to facilitate two-way, on-site traffic circulation. Curbing also appears to be provided to prevent vehicles from extending beyond the parking lot.

The site plan illustrates several tree plantings and, in comparing it against the tree plan approved during the site's development in 2002, is missing two (2) overstory trees; however, only one (1) additional overstory tree is required based on tree planting calculations provided in 2002. As such,

if approved, at least one (1) overstory tree should be required to be planted and illustrated on the revised site plan. Any required tree plantings should be coordinated with staff to insure the trees have sufficient room to grow and thrive.

A concrete pad with curbing is proposed to be constructed at the rear of the building, and a note states it is for washing garbage cans. An enclosure is depicted around the proposed pad, as well as two (2) existing HVAC units.

A playground is depicted on the site plan, to the South of the existing building, and illustrates play equipment and chain-link fencing. Any fence placed on the property is required to have a Building Permit.

Regarding the proposed use of the property, the site is surrounded by properties zoned B-5, Office-Distribution District, to the North, Southeast, South, and West; and property zoned I-1, Light Industry, to the Northeast. The use of each adjacent, developed property is compatible with the Zoning Ordinance, and it appears that no similar variance requests have been made or approved within the vicinity of the subject site.

As mentioned, the subject site was developed in 2002, and since that time has been used as a medical office, which is a use permitted by-right in the B-5 zoning district. While it is regrettable that the applicant was not made aware of the zoning requirements prior to leasing the site, reasonable steps could have been taken to verify the permitted uses in a B-5 zoning district. The misinformation provided by a realtor as justification for the request does not demonstrate a hardship associated with the property, especially considering there is nothing prohibiting the site from being used in compliance with the Zoning Ordinance, given its history.

Finally, the future land use designation of not just the subject site, but the surrounding neighborhood, is Heavy Industry, typically meaning the area is suitable for such development. Additionally, as the city grows, and as policies change and new ordinances adopted, the guidelines for developing the area will favor heavy industrial-type uses. As such, approving the request would result in a unique situation in which the surrounding area would not be affected by the proposed use, but the proposed use may be affected by the development of the surrounding area.

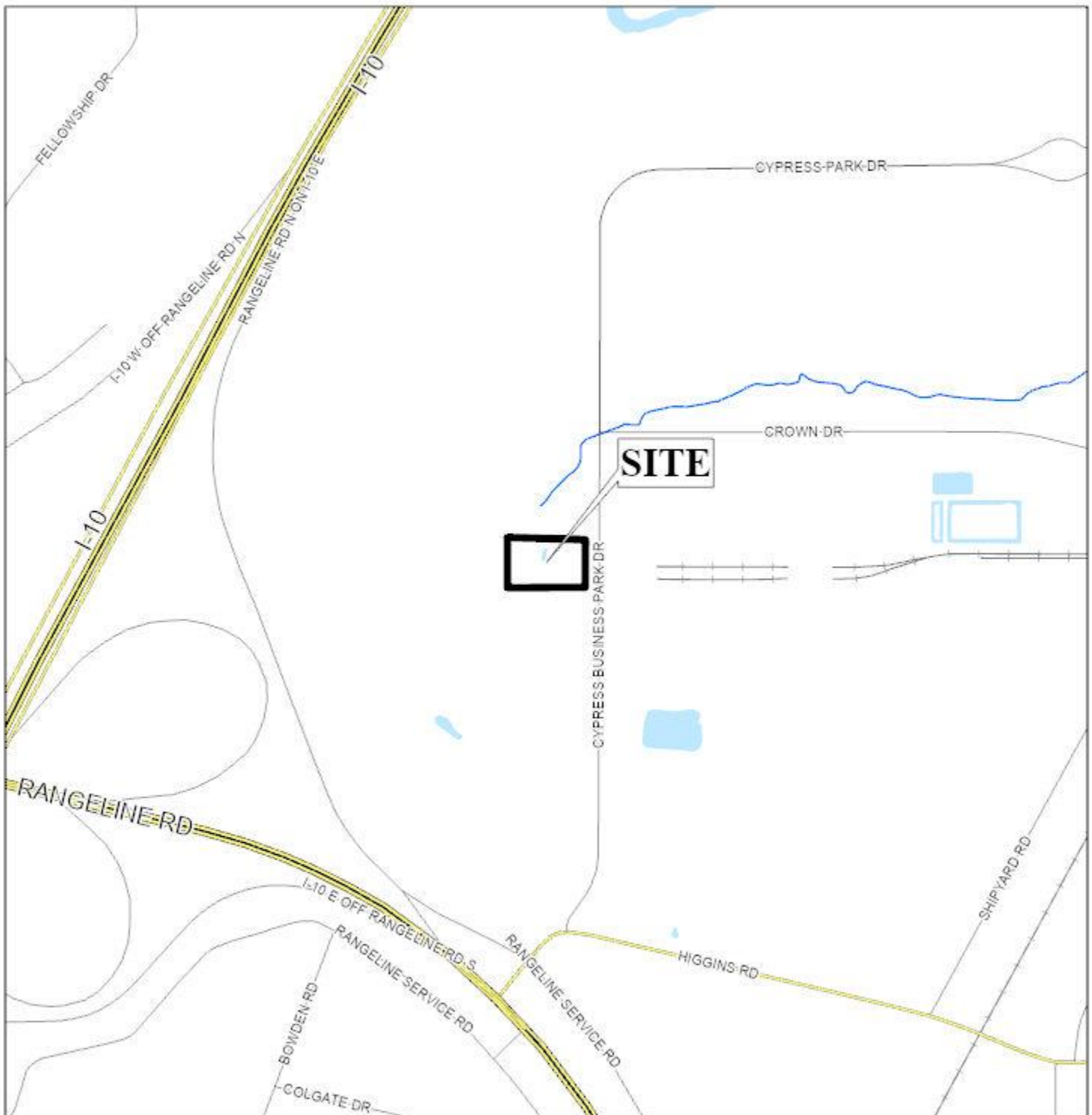
Again, variances are not intended to be granted frequently, and while variances have been granted to properties within the vicinity of the subject site, none were to allow a use that is otherwise incompatible with the requirements of the underlying zoning district.

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 will be contrary to at least Section 64-12 of the Zoning Ordinance regarding land use;
- 2) Special conditions do not appear to exist in such a way that a literal enforcement of the provisions of the chapter will result in unnecessary hardship since reasonable steps could have been taken to verify the permitted uses in a B-5 zoning district; 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 developed predominantly in compliance with applicable zoning regulations, including the subject site.

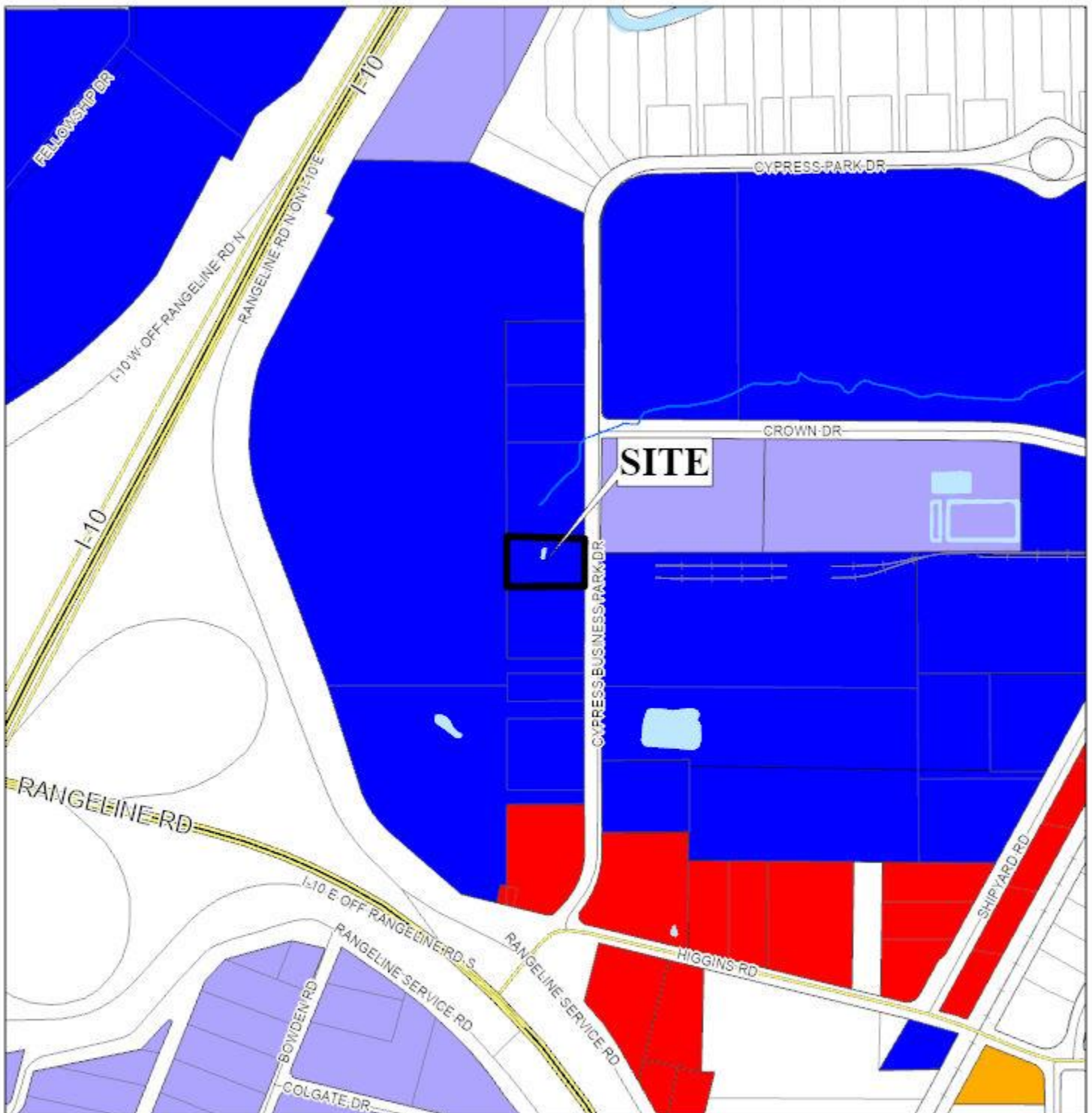
LOCATOR MAP



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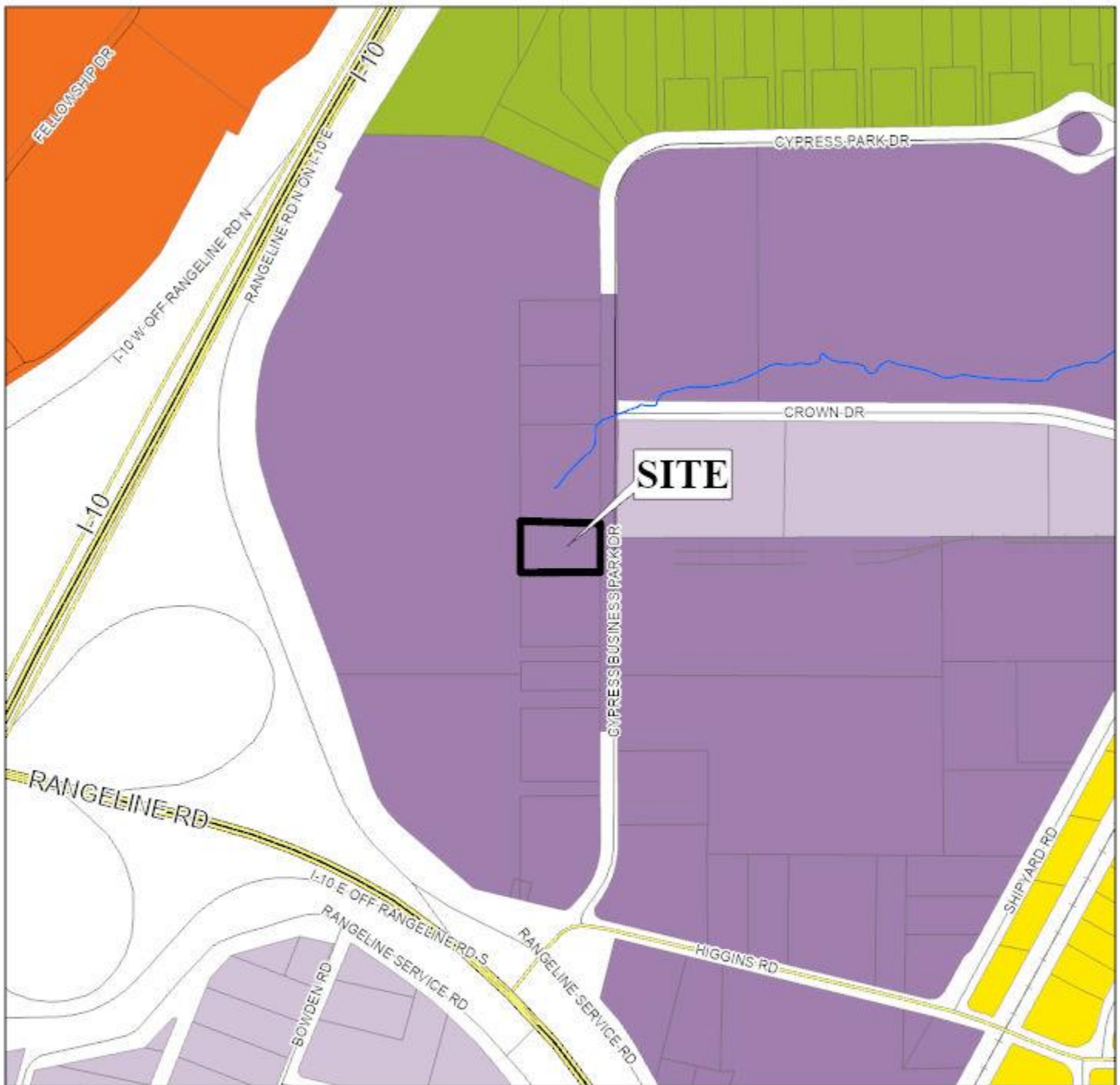
LOCATOR ZONING MAP



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FLUM LOCATOR MAP



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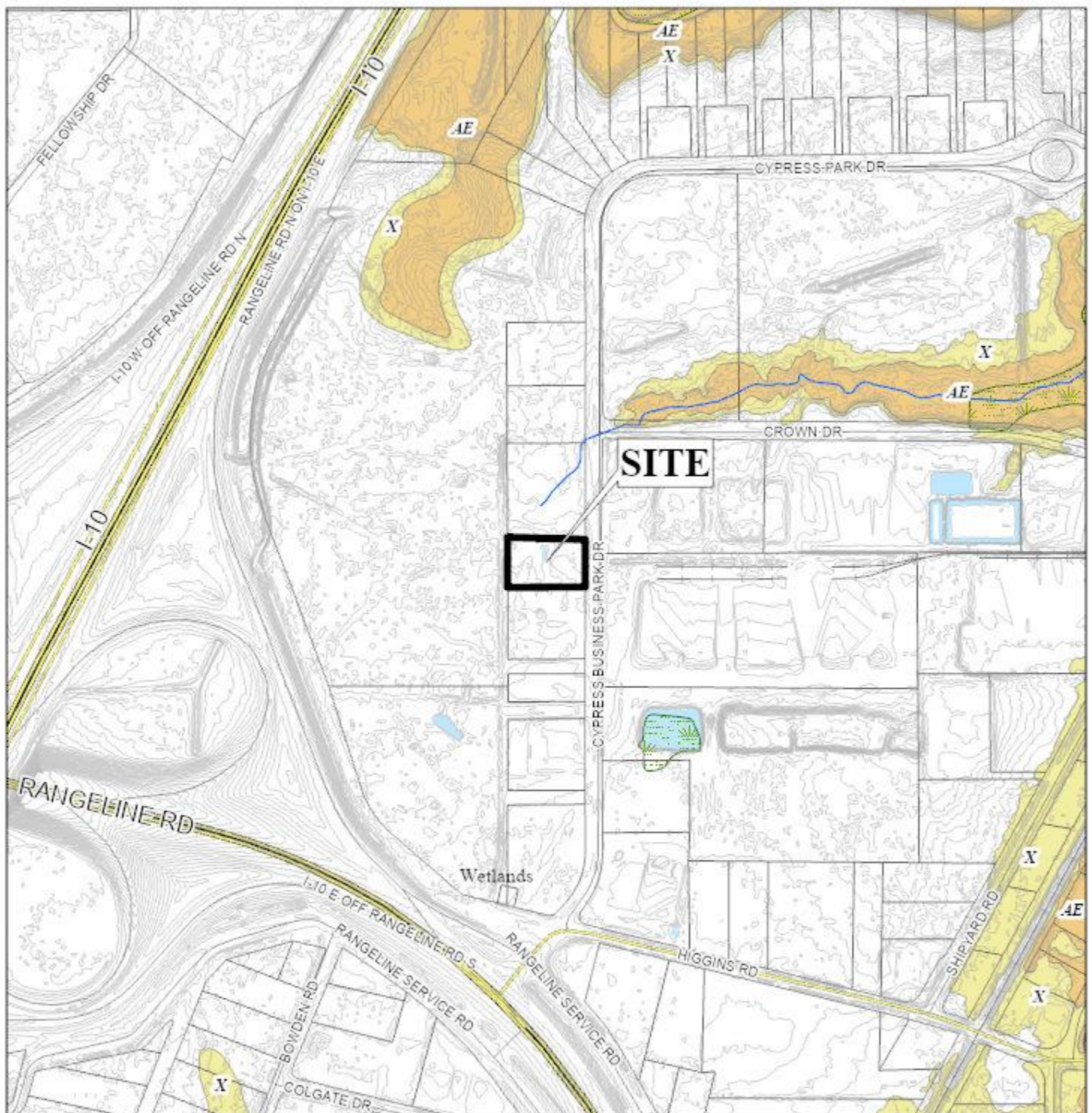
REQUEST Use Variance

Layer2

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



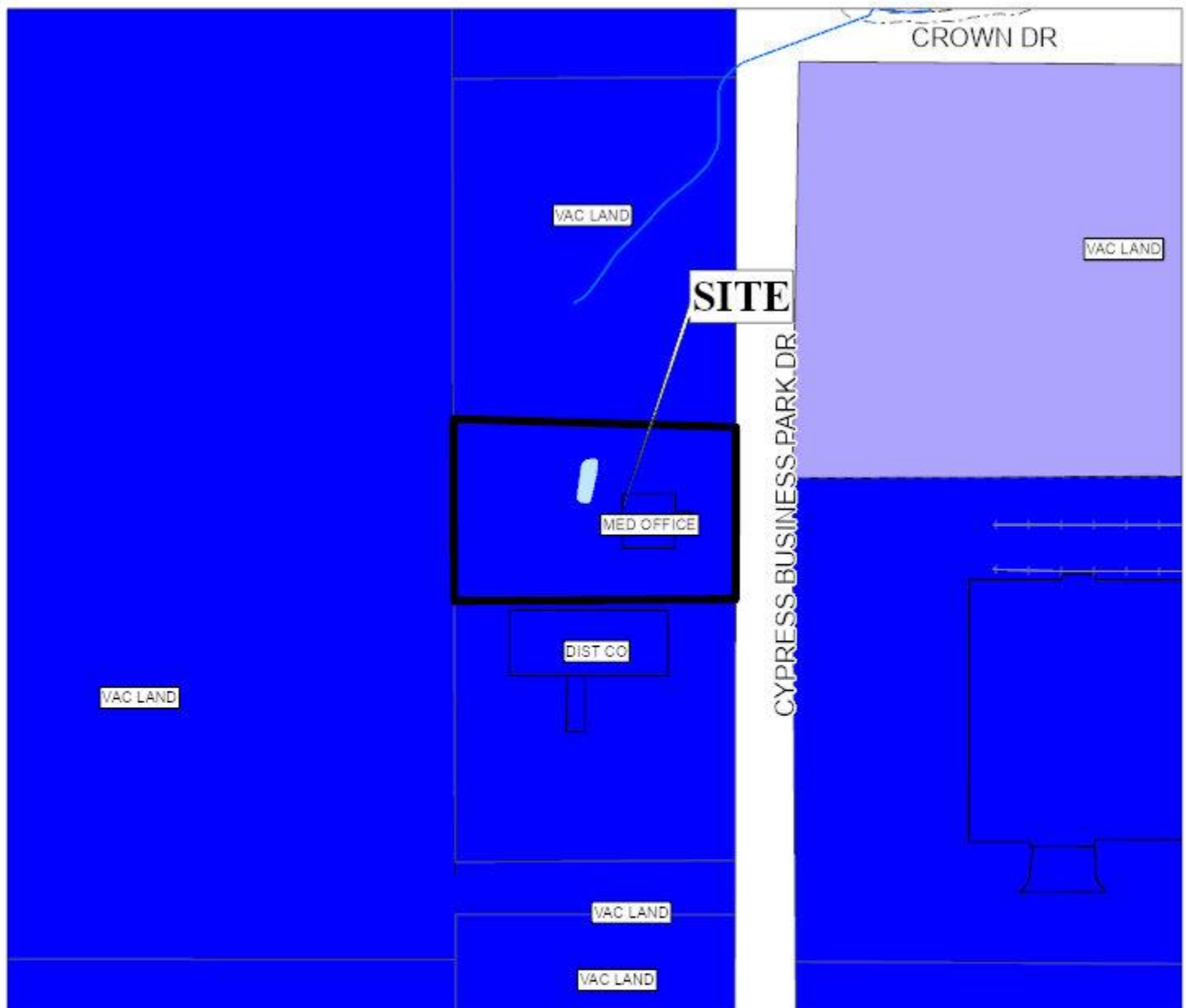
ENVIRONMENTAL LOCATOR MAP



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BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



This site is surrounded by commercial units, and industrial to the east.

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 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

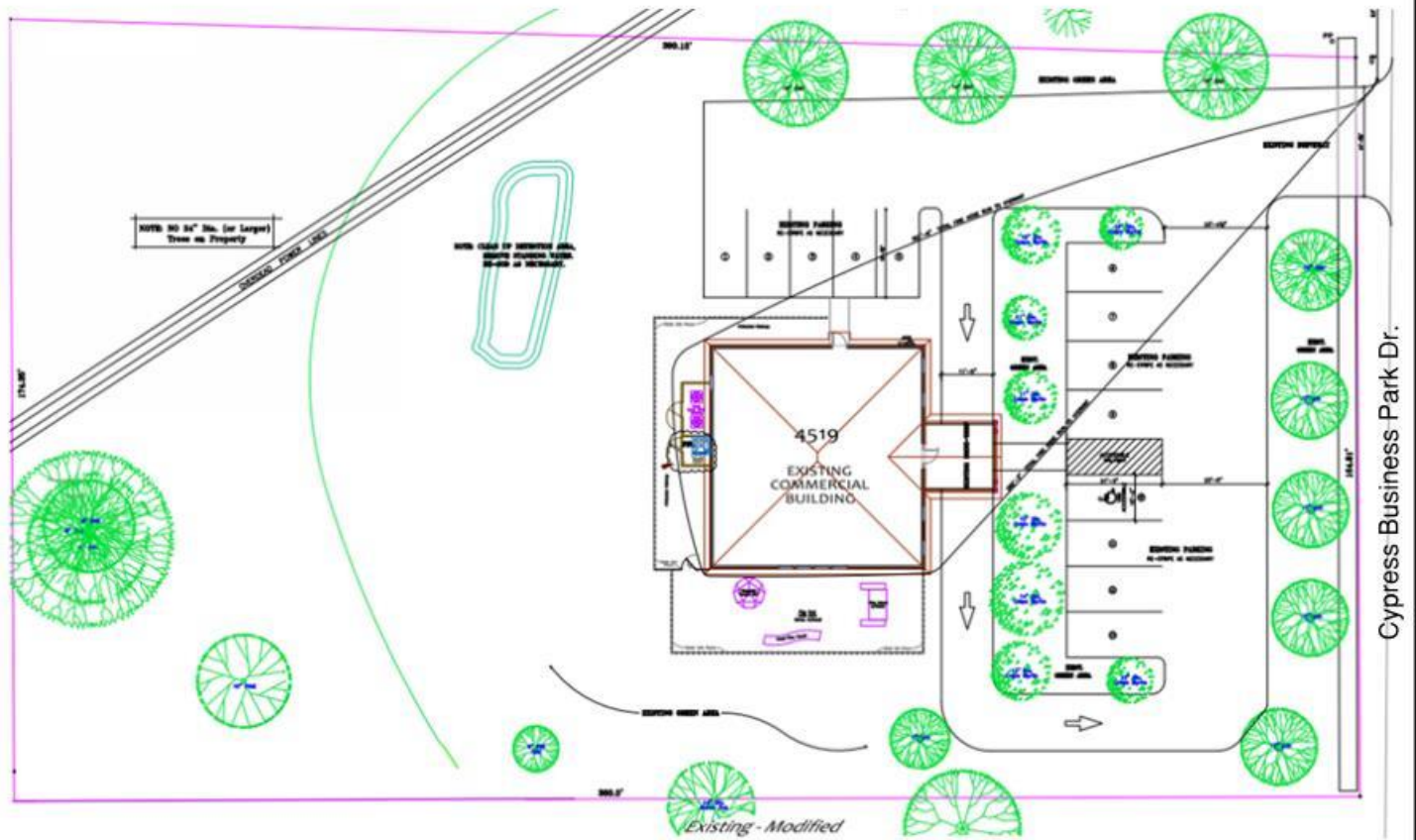


This site is surrounded by commercial units, and industrial to the east.

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SITE PLAN



This site plan illustrates the existing site layout.

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