

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: September 8, 2014****CASE NUMBER**

5911

APPLICANT NAME

Thompson Engineering

LOCATION120 Mobile Infirmary Boulevard
(East side of Mobile Infirmary Boulevard, 411' ± North of
Old Shell Road)**VARIANCE REQUEST****SITE:** Site Variance to allow an 8' high wall to be
constructed on the front property line in a B-2,
Neighborhood Business District (rezoning pending).**ZONING ORDINANCE
REQUIREMENT****SITE:** The Zoning Ordinance requires a minimum 25'
front setback for structures higher than 3' tall in a B-2,
Neighborhood Business District.**ZONING**

B-2, Neighborhood District (rezoning pending)

AREA OF PROPERTY

25,083 ± square feet

**ENGINEERING
COMMENTS**

An encroachment into a public drainage easement is governed by the Engineering Department under the Mobile Rights of Way Construction and Administration Ordinance. If the Variance Application is approved, the applicant will need to contact the Engineering Department and obtain written approval to allow the construction of the wall within the easement.

**TRAFFIC ENGINEERING
COMMENTS**

The construction of the proposed wall will not impact line of sight for the traveling public on Mobile Infirmary Boulevard. Based on the limited information provided, the location of the wall should not impact line of sight for the adjacent shared driveway north of this site (Lot 2 MIB Subdivision).

**CITY COUNCIL
DISTRICT**

District 2

ANALYSIS

The applicant is requesting a Site Variance to allow an 8' high wall to be constructed on the front property line in a B-2, Neighborhood Business District;

the Zoning Ordinance requires a minimum 25' front setback for structures higher than 3' tall in a B-2, Neighborhood Business District.

This site was most recently heard by the Planning Commission at its June 19, 2014 meeting to rezone the property from B-1, Buffer Business District and B-2, Neighborhood Business District to B-2, Neighborhood Business District to eliminate split zoning. Prior to the June 19 meeting, the site received approval for a 3-lot subdivision by the Planning Commission at the April 17, 2014 meeting. The applicant has since purchased Lot 3 of the MIB Subdivision, which happens to be adjacent to the property he currently owns.

The applicant states the following:

"James Donaghey, Inc purchased Lot 3 of the MIB Subdivision. It is requested that the existing 8'CMU fence that is existing on the Donaghey property be extended northward along the east side of the existing sidewalk 110 feet to the northwest corner of Lot 3 MIB Subdivision. Extending this fence provides continuity to the operations of Donaghey and most importantly maintains the same visual character along Mobile Infirmary Boulevard. Donaghey is proud of how they maintain the appearance of our property and looks forward to continuing it northward 110 feet. Donaghey anticipates removing the existing asphalt between the fence and the sidewalk and planting grass and bushes just as has occurred where out exiting CMU fence is located.

The proposed fence is to be constructed on the property line and is to be 8' tall CMU, painted and treated just like the existing fence. The proposed fence is an enhancement to the property and certainly improves the visual aspect of Mobile Infirmary Blvd. at this location. While other, frankly less costly, fence materials could be used — Donaghey is pleased to be able to continue the fence its improvement. Building the proposed fence goes beyond the normal limits of the ordinance and is an enhancement of the streetscape. A normal stockade fence could be built here, but Donaghey is seeking to go beyond the minimum requirements and it is a benefit to the streetscape.

There are no additional buildings proposed for the site, thus there are no floor plans or elevations of structures. The request is to extend the fence, install sod, and bushes in keeping with our existing fence treatments. The proposed fence will match the existing fence in material, color, character, and landscape treatments.

Construction of the fence will begin as soon as possible after variance approval."

The applicant states that he would like to extend the existing CMU wall from the adjacent property to the south of the subject site approximately 110' to provide continuity. However, there is a permanent drainage easement that is located between lots 2 and 3 of the MIB Subdivision that is approximately 36' wide. It appears that approximately 13' of the easement is

located on Lot 3 where the proposed 8' CMU wall would be located. Condition number 8 as listed on the Letter of Decision for the MIB Subdivision states "*placement of a note on the Final Plat stating no structures shall be constructed or placed in any easements*". Therefore the approval of the construction of the wall would clearly be a violation of one of the conditions of subdivision approval.

The Letter of Decision for the Subdivision and the Rezoning both state in the conditions that "*Lots 1-3 are limited to a total of two curb cuts, with size, location and design to be approved by Traffic Engineering and conform to AASHTO standards. Any additional development will require modifications to existing +/- 125' curb cut along the proposed Lots 2 & 3 to meet City standards.*". The construction of the wall, as proposed, will extend the entire 110' of the front property line of Lot 3. If the wall is constructed there will be no way to directly access Lot 3 from Mobile Infirmary Boulevard. This could also eliminate or affect the accessibility for the existing parking spaces. Staff is of the opinion that access to Lot 3 would be provided via Lot 2 of the MIB Subdivision or from the applicant's adjacent property, in which case a Planned Unit Development would be required for either option. It also appears that the adjacent property that is owned by the applicant is not a legal lot of record and would need to go through the subdivision process as well.

Also, condition number 1 and 5 from the pending Rezoning approval state the following in the Letter of Decision, "(1) full compliance with the use, site design, and signage regulations of the Zoning Ordinance" and "(5) full compliance with all municipal codes and ordinances.". The applicant's request for a site variance for the construction of an 8' CMU wall does not demonstrate full compliance.

The applicant states that "*the proposed fence is to be constructed on the property line and is to be 8' tall CMU, painted and treated just like the existing fence*". Staff has researched the adjacent property where the existing 8' wall is located and based on aerial photos it appears that the wall was constructed somewhere between 1984 and 1997. A permit was recently issued in June 2014 for the construction of an 8' wooden privacy fence along Mobile Infirmary Boulevard for the adjacent property, but there is no record of any permits associated with the existing 8' wall located along Mobile Infirmary Boulevard.

As proposed, it appears that the wall would be located along the western property line and extend the entire portion of the lot. It should be pointed out that the existing wall on the adjacent lot appears to be set back approximately 5' from the western property line. If the applicant intends for the proposed wall to connect with the existing wall on the adjacent lot, the narrative and illustration should be revised to depict the exact location and distance from the property line.

It should also be pointed out the boundary surveys submitted with the application do not reflect the recently recorded subdivision plat.

If the applicant's intent is to expand their existing business onto this site, information regarding this should be provided. Any association of this site and the applicant's business may require other approvals by the Board or the Planning Commission, thus additional information and a more detailed site plan showing parking, access, and other improvements should be provided.

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.

Staff can substantiate the applicant's claim in reference to the existing 8' CMU wall in the vicinity; however, the applicant **has not** clearly identified any hardships for this site nor presented sufficient evidence as listed above and required in Section 64-8.B.6.f.(3).(d). of the Zoning Ordinance and, it is simply the applicant's desire to not comply with the Zoning Ordinance.

Given the character of the existing properties within the vicinity of this site, the applicant's request would not seem completely out of character in this neighborhood; however, it is important to note that as mentioned previously in this report, variances **are not** intended to be granted frequently and the approval of this variance request would be contrary to Section 64-4.D.6. of the Zoning Ordinance and may set an irreversible precedence in this and surrounding neighborhoods if no special conditions or hardships to an individual property exist.

RECOMMENDATION: Based upon the preceding, Staff recommends to the Board the following findings of fact for denial:

- 1) Granting the variance will be contrary to the public interest in that it is contrary to Section 64-4.D.6. of the Zoning Ordinance regarding fence height and location within an B-2, Neighborhood Business zoning district;
- 2) The applicant has not clearly presented any special conditions as required in Section 64-8.B.6.f.(3).(d). of the Zoning Ordinance, such as a hardship to the property which may exist, and a literal enforcement of the provisions of the chapter will not appear to 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 it is not consistent with conditions of the approved subdivision and will not be developed in accordance with the Zoning Ordinance. The approval of this request may set an irreversible precedence in this and surrounding neighborhoods if no special conditions or hardships to an individual property exist and may require a Subdivision and Planned Unit Development.

Revised for the April 6, 2015 meeting:

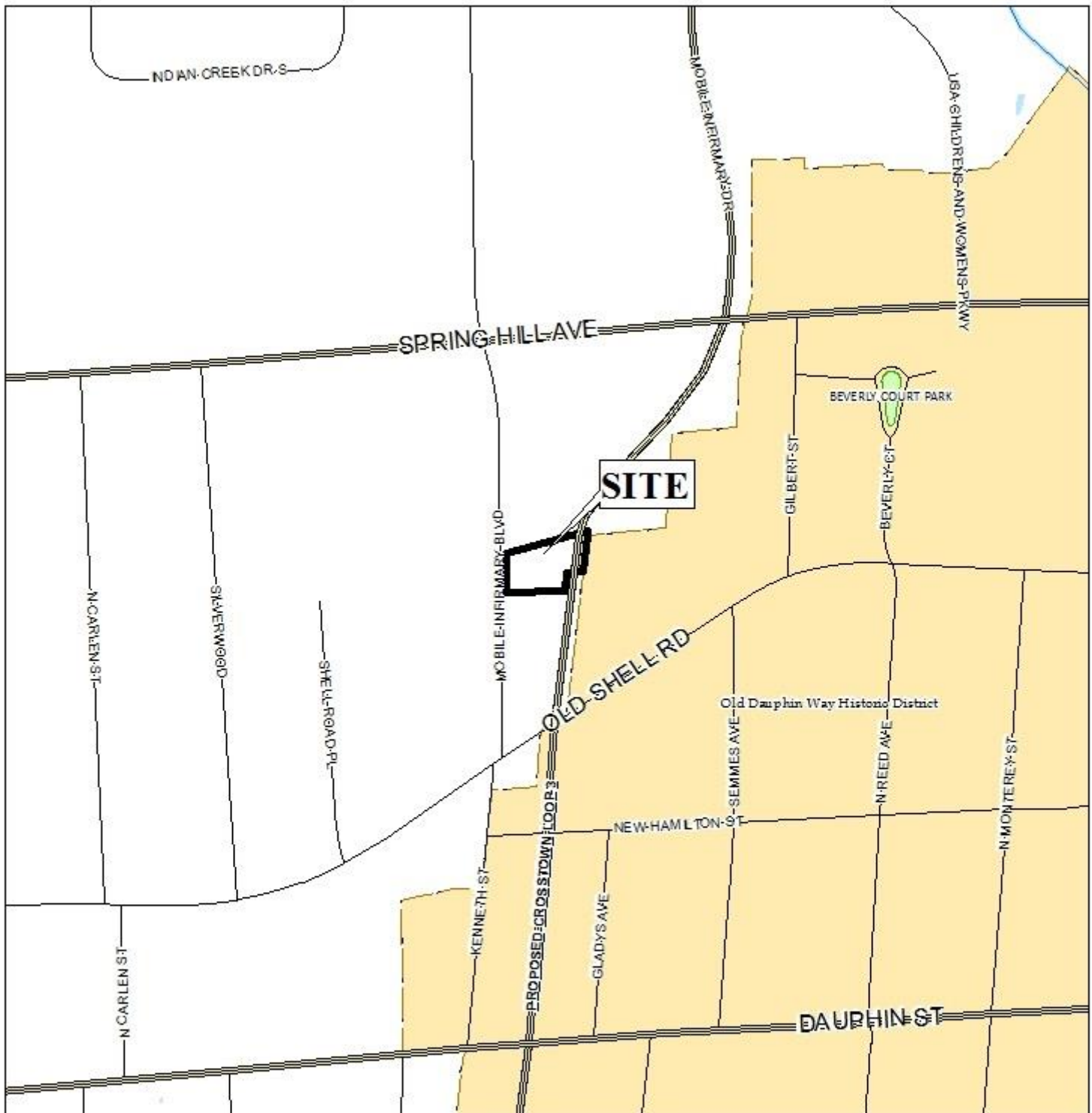
The application was heldover from the September 8, 2014 to allow the applicant to make the appropriate Planned Unit Development and Subdivision applications to the Planning Commission. No applications have been submitted.

It should also be pointed out that a fence with masonry columns has been built along the Northern boundary of the site without any permits. A sign has also been placed on the fence, without the appropriate permits. It also appears that the fence may be within a permanent drainage easement, however, the final plat for the Subdivision approved at the April 17, 2014 meeting of the Planning Commission has not been received.

RECOMMENDATION: *Based upon the preceding, Staff recommends to the Board the following findings of fact for denial:*

- 1) Granting the variance will be contrary to the public interest in that it is contrary to Section 64-4.D.6. of the Zoning Ordinance regarding fence height and location within an B-2, Neighborhood Business zoning district;*
- 2) The applicant has not clearly presented any special conditions as required in Section 64-8.B.6.f.(3).(d). of the Zoning Ordinance, such as a hardship to the property which may exist, and a literal enforcement of the provisions of the chapter will not appear to result in an unnecessary hardship;*
- 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 it is not consistent with conditions of the approved subdivision and will not be developed in accordance with the Zoning Ordinance. The approval of this request may set an irreversible precedence in this and surrounding neighborhoods if no special conditions or hardships to an individual property exist and may require a Subdivision and Planned Unit Development; and*
- 4) The applicant has, since the case was heldover by the Board, built a fence and placed a sign, both without permits, in a recorded drainage easement. As such, the applicant has exhibited a disregard of the legal requirements of the Zoning Ordinance and associated Building and Engineering Codes.*

LOCATOR MAP



APPLICATION NUMBER 5911 DATE April 6, 2015

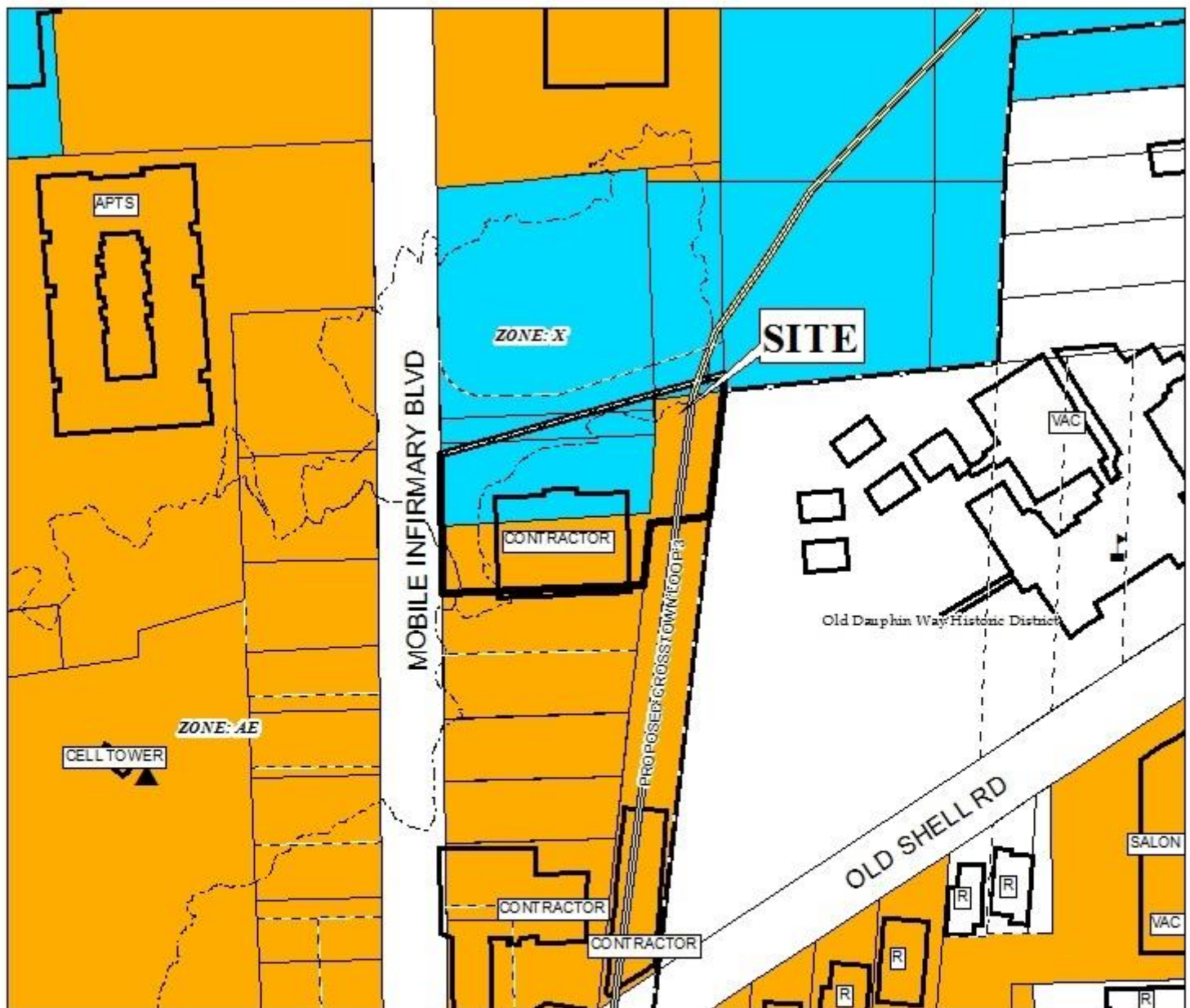
APPLICANT Thompson Engineering

REQUEST Site Variance



BOARD OF ADJUSTMENT

VICINITY MAP - EXISTING ZONING



A contractor is located to the south of the site.
A vacant school is located to the east of the site.

APPLICATION NUMBER 5911 DATE April 6, 2015

APPLICANT Thompson Engineering

REQUEST Site 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 ZONING



A contractor is located to the south of the site.
A vacant school is located to the east of the site.

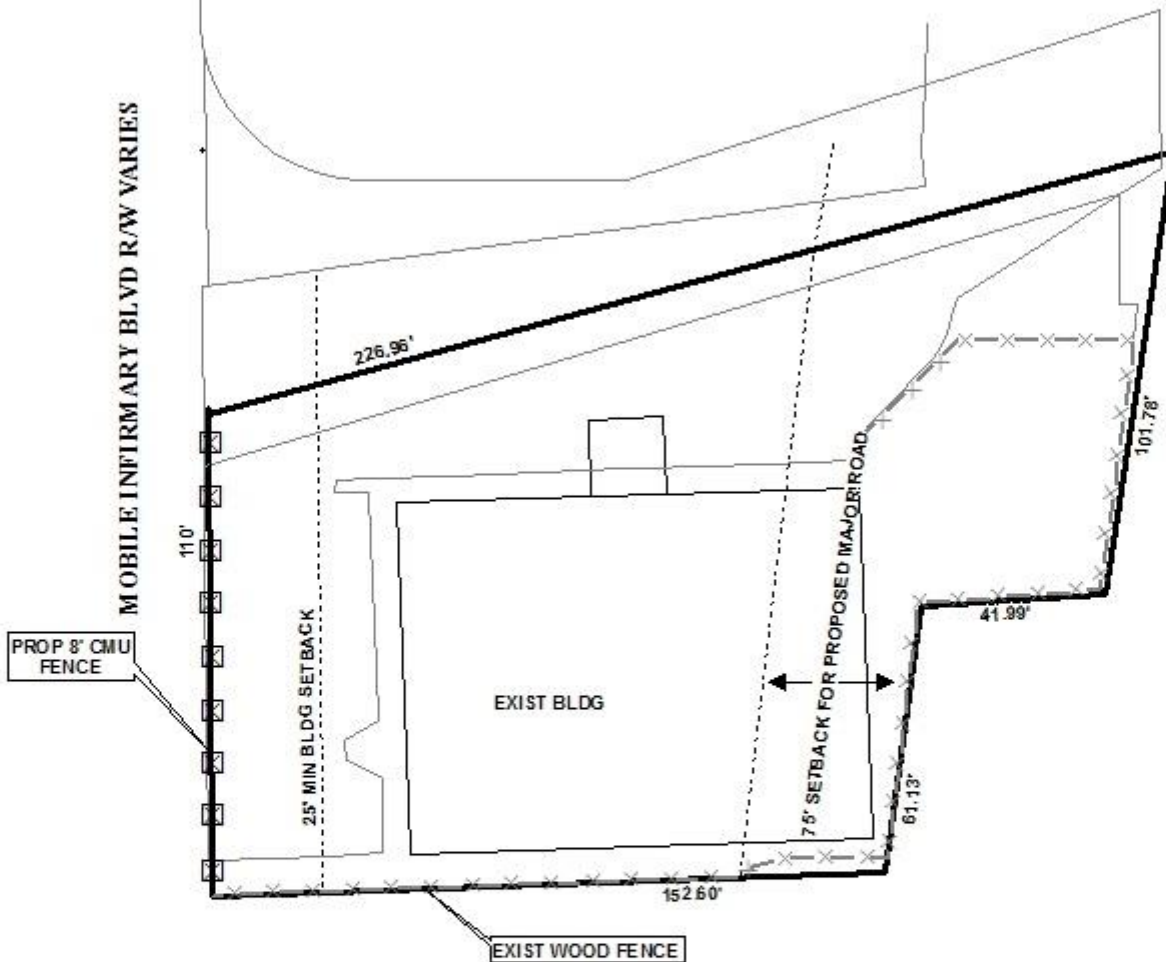
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SITE PLAN



The site plan illustrates the existing improvements and proposed fence.

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 APPLICANT Thompson Engineering
 REQUEST Site Variance

