

**BOARD OF ZONING ADJUSTMENT  
STAFF REPORT****Date: July 8, 2019****CASE NUMBER**

6260

**APPLICANT NAME**

Branch Towers III, LLC (David Wilkins, Agent)

**LOCATION**3168 Midtown Park South  
(North side of Midtown Park South, 335'± East of  
Midtown Park West).**VARIANCE REQUEST****HEIGHT:** Height Variance to allow a 150' high  
monopole telecommunications tower with a 10' lightning  
rod in a B-3, Community Business District.**SETBACK:** Lease Parcel Setback Variance to allow the  
tower within 25' from the lease parcel line.**LANDSCAPING:** Landscaping and Tree Planting  
Variances to allow no landscaping or tree plantings.**ZONING ORDINANCE  
REQUIREMENT****HEIGHT:** The Zoning Ordinance limits structures to a 45'  
height in a B-3, Community Business District.**SETBACK:** The Zoning Ordinance requires  
telecommunications towers to be setback at least the height  
of the tower (150') from the lease parcel line.**LANDSCAPING AND TREE PLANTING:** The Zoning  
Ordinance requires full compliance with the landscape and  
tree planting requirements.**ZONING**

B-3, Community Business

**AREA OF PROPERTY**

0.89± Acres

**TRAFFIC ENGINEERING  
COMMENTS**

No comments.

**ENGINEERING  
COMMENTS**

Please attach the following CONDITIONS to any approval:

1. Submit and receive a Land Disturbance Permit for the proposed site development.

2. Submit a ROW Permit (City of Mobile) for any work within the public ROW. Aggregate surfacing is NOT allowed within the public ROW; only pavement will be allowed.

## **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 DEPARTMENT**

### **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).

## **CITY COUNCIL**

### **DISTRICT**

District 1

### **ANALYSIS**

The applicant is requesting Height, Setback, Landscape and Tree Planting Variances to allow a 150' high monopole telecommunications tower with a 10' lightning rod, setback 25' from the lease parcel line with no landscaping and tree planting in a B-3, Community Business District; the Zoning Ordinance limits structures to 45' tall in a B-3, Community Business District, requires telecommunications towers to be setback a distance equal to the height of the tower from the lease parcel line, and requires full compliance with the landscape area and tree planting requirements.

The Telecommunications Towers and Facilities Ordinance establishes specific criteria for granting setback and height variances. The Ordinance states that a modification to the setback requirement should be considered in situations where "the only alternative is to locate the tower at another site which poses a greater threat to the public health, safety or welfare or is closer in proximity to a residentially zoned land."

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 site has been given a Mixed Commercial Corridor (MCC) 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.

This land use designation mostly applies to transportation corridors west of I-65 serving primarily the low-density (suburban) residential neighborhoods. MCC includes a wide variety of retail, services and entertainment uses.

This designation acknowledges existing commercial development that is spread along Mobile's transportation corridors in a conventional strip pattern or concentrated into shorter segments of a corridor.

Over time, new development and redevelopment in Mixed Commercial Corridors is encouraged to raise design quality, improve connectivity to surrounding neighborhoods; improved streetscapes; and improve mobility and accessibility for all users of the corridor.

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.

In conjunction with the Variance requests, the applicant also submitted a Planning Approval request to allow the proposed tower in a B-3 District, which was heard at the June 20<sup>th</sup> Planning Commission meeting. The request was heldover to the August 1<sup>st</sup> Planning Commission meeting. If the variance requests are approved, they should be subject to the approval of the Planning Approval request.

The subject site is bordered by B-3 to the East, North and West, and by B-1, Buffer Business, to the South across Midtown Park South.

The applicant states:

***DESCRIPTION OF IMPROVEMENTS:*** Existing improvements are commercial buildings and paved parking with 2 curb cuts from Midtown Park South. The north part of the parcel, where the proposed tower site will be, is a storage yard with wood fence across the south side. Proposed improvements are a 150' monopole tower with a 10' lightning rod on top and a 50' x 50' fenced compound; time schedule for development is immediately after city approvals and building permit.

**VARIANCES:** *Height variance to allow 150' monopole with 10' lightning rod; setback variance to allow 25' setback from lease parcel line; landscape variance to waive landscape requirements. The height/setback situation occurred because of the necessary height of the structure required for the proposed use, but 50' x 50' lease area is plenty of area for required ground space for the proposed use; and the landscape variance is requested because the proposed site is screened from view by wood fence to the south, trees and brush to the west, building to the east and proposed wood compound fence to the south; this property is different from other parcels in the search ring because it was the best property where there was room and the owner was agreeable to lease.*

Concerning the Height Variance request, the applicant has submitted written evidence that there is no other tower or usable structure within ½ mile of the subject site. Propagation maps illustrating the need for the tower in the area have also been submitted. The maps indicate the in-fill coverage of the proposed tower within the area. Engineering data indicates the tower will accommodate the primary carrier and two additional carriers. Also submitted was evidence that the tower meets the structural requirements of Section 64-4.J.8. of the Zoning Ordinance and current building code as certified by a letter from a Professional Engineer licensed in the State of Alabama.

Specific to the Height Variance request, the applicant states that the 150' height is required for the proposed use. In light of the technical data submitted, and the illustration of a hardship imposed by the lack of existing towers within the area on which to collocate, the Height Variance request would seem reasonable.

With regard to the Setback request, the applicant basically states that the height of the tower is what triggers the need for the Variance since the 50' x 50' equipment compound provides ample area for the required ground space. The tower is proposed at the center of the compound lease parcel placing it 25' from the nearest point of the lease parcel line. As the lease parcel would be completely surrounded by the parent parcel, and as the technical data submitted supports this site selection, a hardship may exist in meeting the required lease parcel setbacks, and the Setback Variance request could be justified.

The applicant does not propose any landscaping or tree plantings for the site and bases the Variance request for such on the fact that the site is screened from view by a wood fence to the South, trees and brush to the West, building to the East and proposed wood compound fence to the South. The location of the proposed tower is adjacent to the rear of all abutting properties, and those rear yards are used as either laydown, storage, delivery or parking areas, and a portion of the lease area is within the Alabama Power Company right-of-way. Also, the lease compound is of a minimal size with the capability of accommodating additional carriers' equipment, and little area would be available to provide the required landscaping and tree plantings. Therefore, staff is of the opinion that the Landscaping and Tree Planting Variance request would be justified.

It should be mentioned that the site plan indicates compliance with the requirement for paved access and parking for the tower compound. The site plan indicates a compliant 8' high wooden privacy fence surrounding the tower facility with two 8'-wide access gates at the end of the

turnaround area. No barbed wire fencing is indicated on the site plan and there is a note on the site plan stating that, if barbed wire fencing is proposed, it must be approved by the Director of Build Mobile. This note should be retained on the site plan. A note on the site plan references tower illumination. Illumination is prohibited by Section 64-4.J.11. of the Zoning Ordinance unless required by the Federal Aviation Administration (FAA). The applicant should either submit documentation verifying that a tower illumination beacon is required by the FAA, or a note should be placed on the site plan stating that no tower light beacon is allowed.

The applicant has demonstrated that hardships may be imposed by a literal interpretation of the Zoning Ordinance with respect to the height limitations, lease parcel setback requirements and landscaping and tree planting requirements for telecommunications towers and the Board should consider those requests for approval.

In light of the fact that the associated Planning Approval was heldover by the Planning Commission, if that application is subsequently denied, then the need for the requested variances would become a moot point.

**RECOMMENDATION:** Staff recommends to the Board the following findings of facts for Approval of the **Height, Lease Parcel Setback and Tree and Landscaping** Variance requests:

- 1) Based on the fact that site selection was limited by non-availability of other larger sites, the variances will not be contrary to the public interest;
- 2) Special conditions (no sites in the area allow a for a 150' high structure and the site is of limited space) exist such that a literal enforcement of the provisions of the chapter will result in unnecessary hardship; and
- 3) That the spirit of the chapter shall be observed and substantial justice done to the applicant and the surrounding neighborhood by granting the variances in that no other tower sites were available for collocation or new construction within the area.

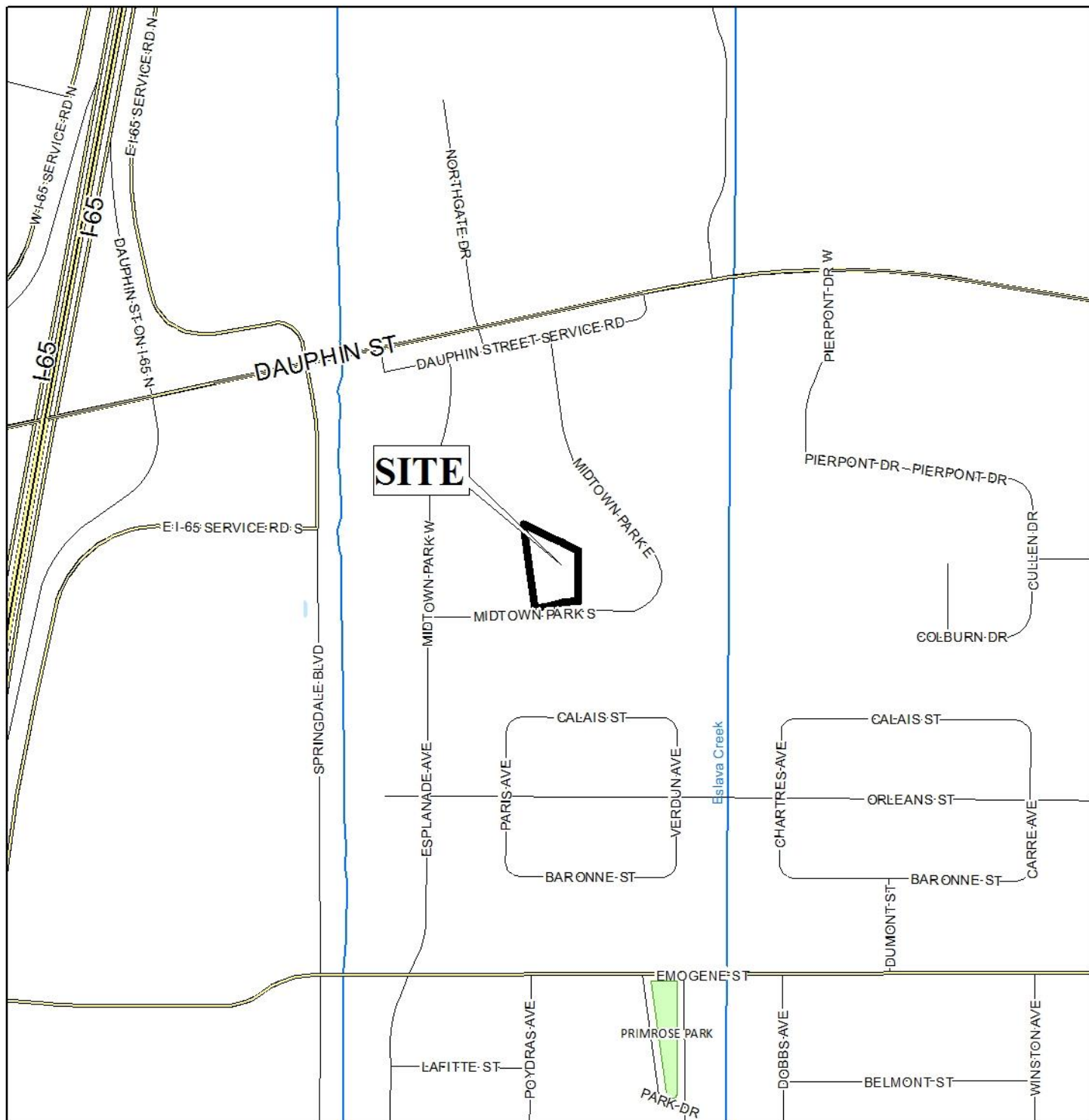
Therefore, the Height, Lease Parcel Setback and Tree and Landscaping Variances are recommended for Approval, subject to the following conditions:

- 1) the tower is limited to a monopole design with an over-all structure height of 150', including antennae, with a 10' lighting rod atop;
- 2) subject to the approval of the Planning Approval application by the Planning Commission for the proposed tower and site;
- 3) retention of the note on the site plan stating that, if barbed wire fencing is proposed, it must be approved by the Director of Build Mobile;
- 4) submission of documentation verifying that a tower illumination beacon is required by the Federal Aviation Administration (FAA), or placement of a note on the site plan stating that no tower light beacon is allowed;
- 5) retention of the note on the site plan stating that no shelters or equipment pads are to be placed within the Alabama Power Company easement;
- 6) subject to the Engineering comments: *[Please attach the following CONDITIONS to any approval: 1. Submit and receive a Land Disturbance Permit for the proposed site*

*development. 2. Submit a ROW Permit (City of Mobile) for any work within the public ROW. Aggregate surfacing is NOT allowed within the public ROW; only pavement will be allowed.];*

- 7) subject to the 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).];*
- 8) subject to the Fire Department 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).];* and
- 9) full compliance with all municipal codes and ordinances.

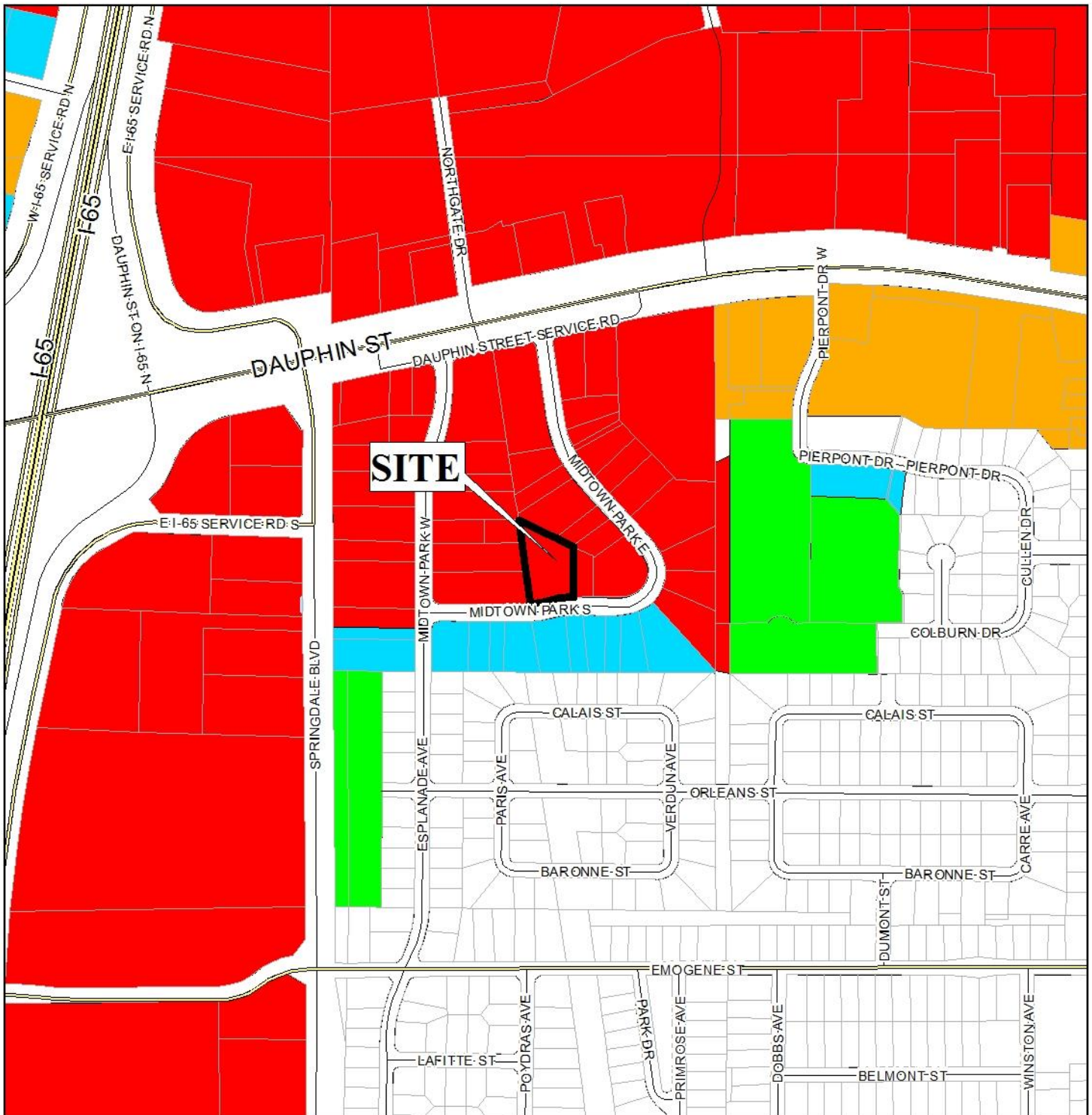
# LOCATOR MAP



APPLICATION NUMBER 6260 DATE July 8, 2019  
 APPLICANT Branch Towers III, LLC (David Wilkins, Agent)  
 REQUEST Height, Setback, Landscape, and Tree Planting Variance



# LOCATOR ZONING MAP

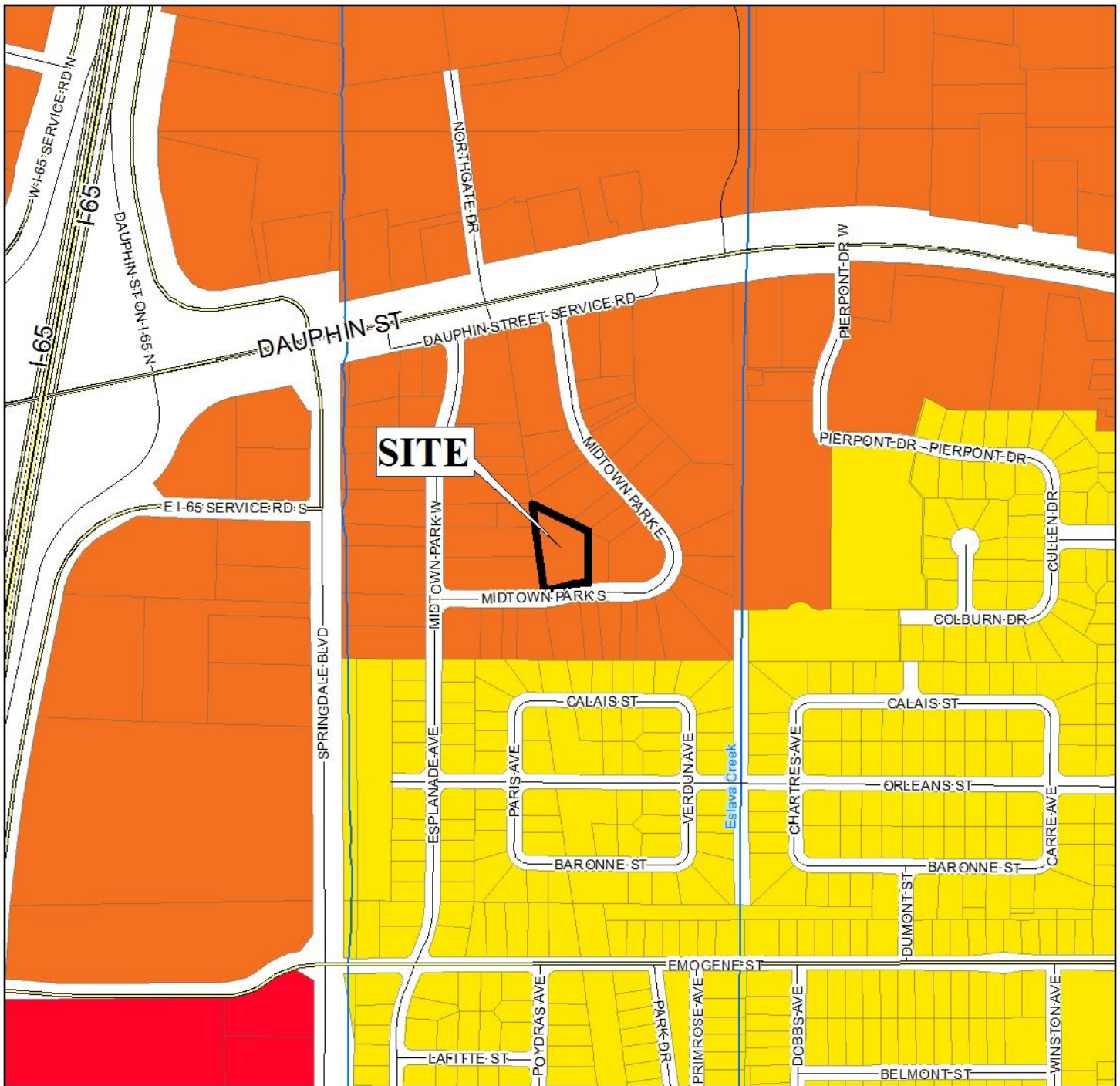


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# FLUM LOCATOR MAP



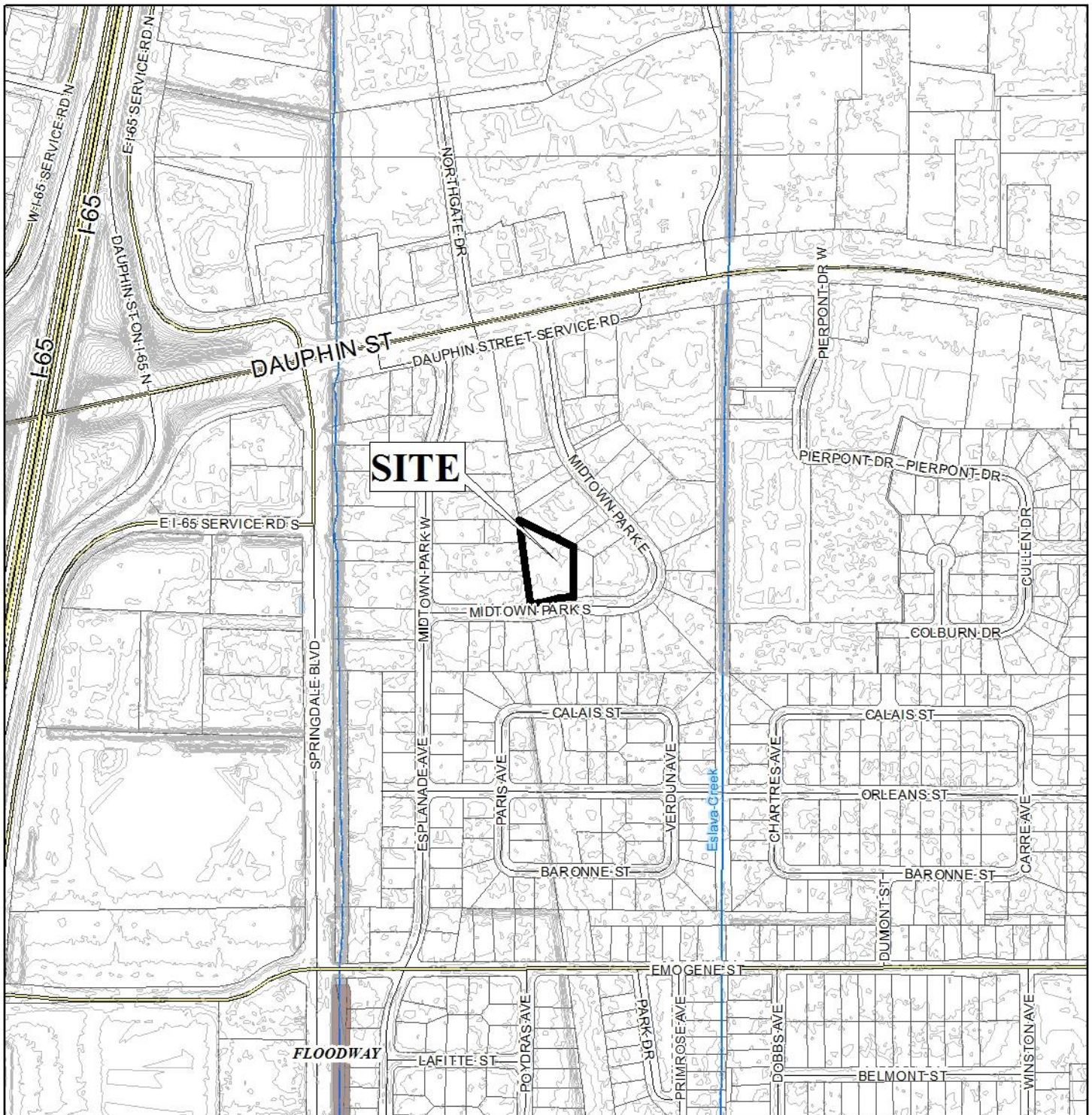
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Low Density Residential	Neighborhood Center - Traditional	Downtown Waterfront	Parks & Open Space
Mixed Density Residential	Neighborhood Center - Suburban	Light Industry	Water Dependent
Downtown	Traditional Corridor	Heavy Industry	
District Center	Mixed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





# ENVIRONMENTAL LOCATOR MAP

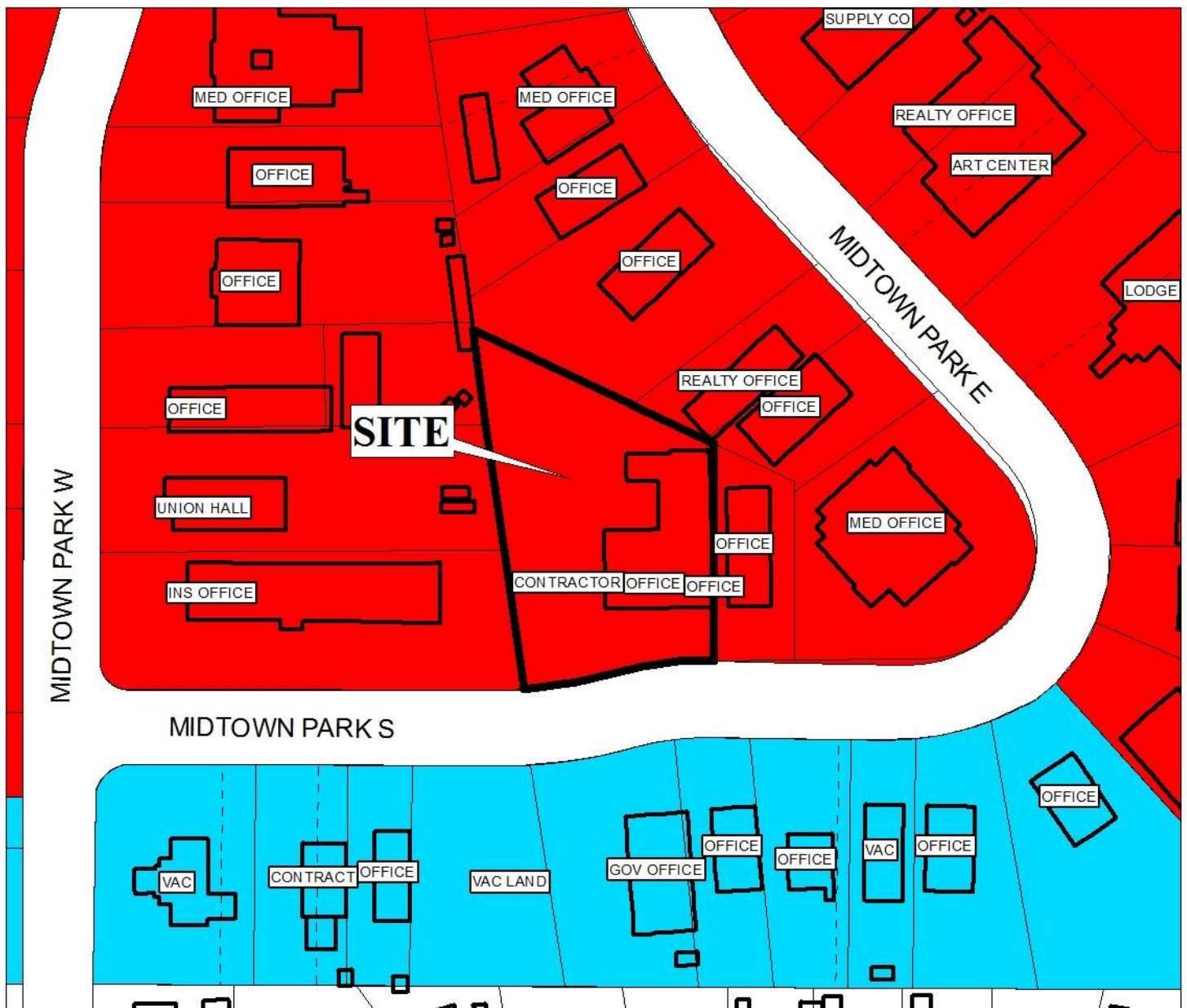


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# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by commercial units.

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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



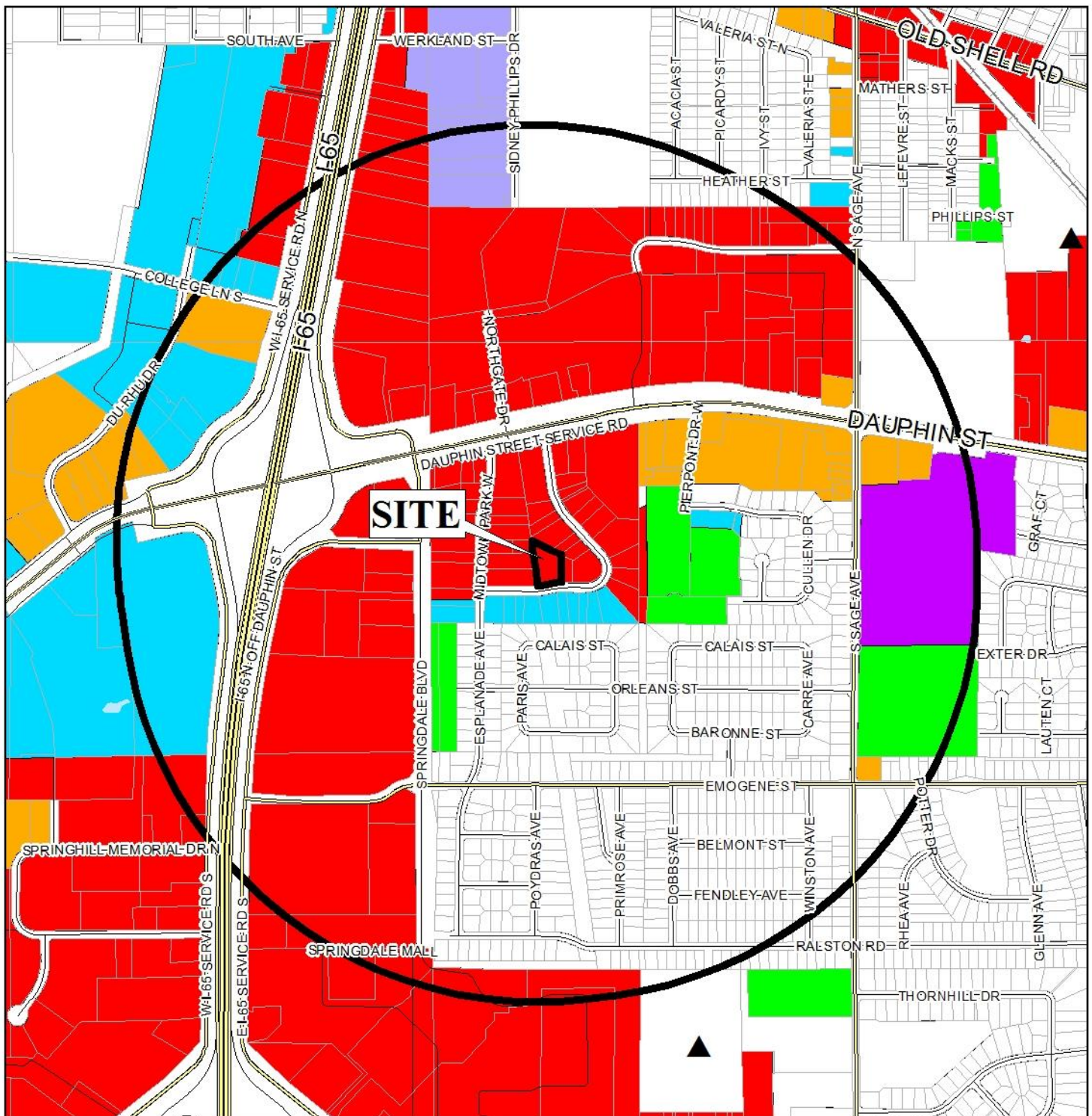
The site is surrounded by commercial units.

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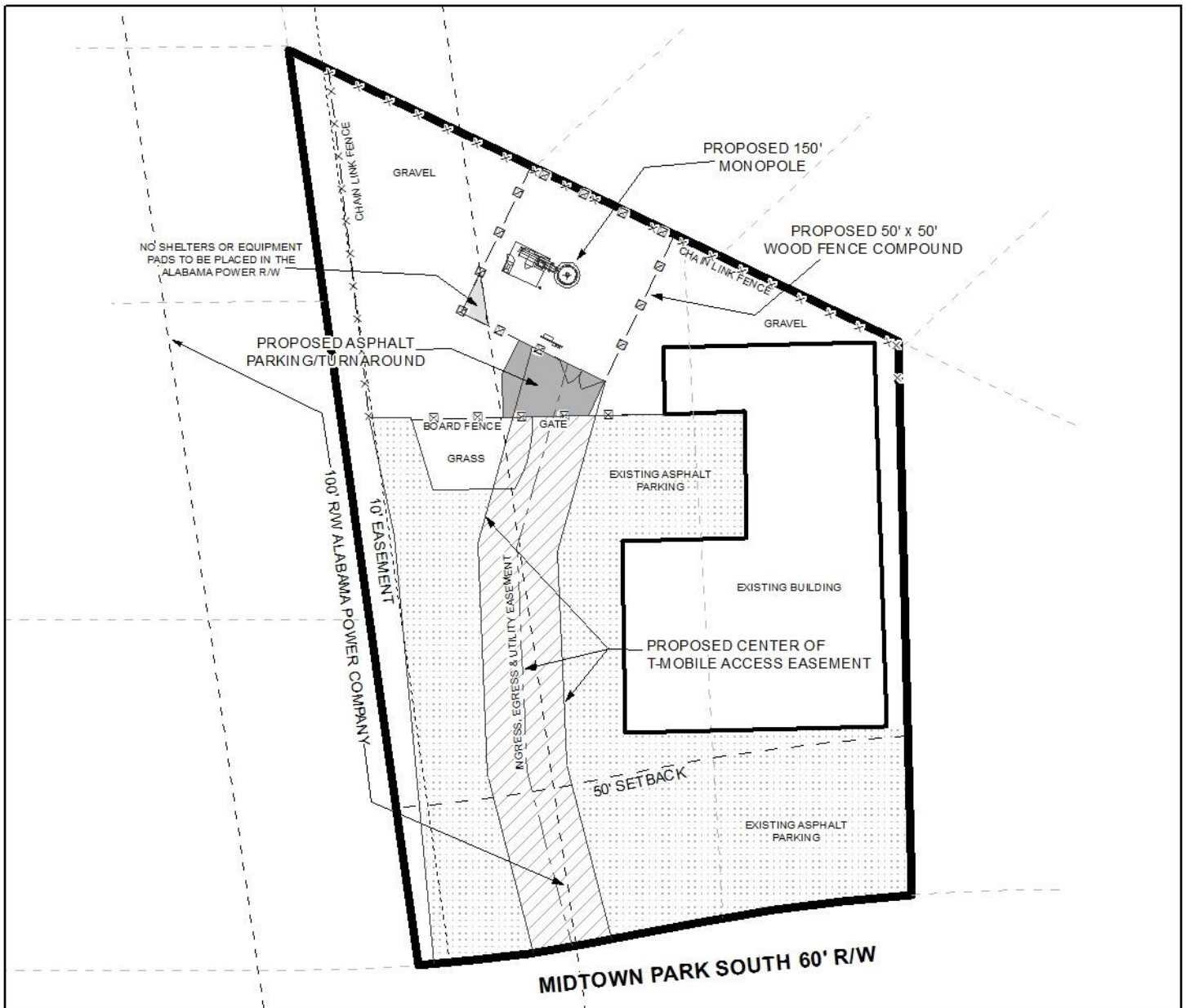
# LOCATOR ZONING MAP HALF MILE FROM PROPOSED TOWER SITE



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# SITE PLAN



The site plan illustrates the proposed monopole, the proposed fences, proposed parking, the existing building, setbacks and easements.

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## VICINITY MAP - EXISTING AERIAL PROPOSED TOWER HEIGHT RADIUS



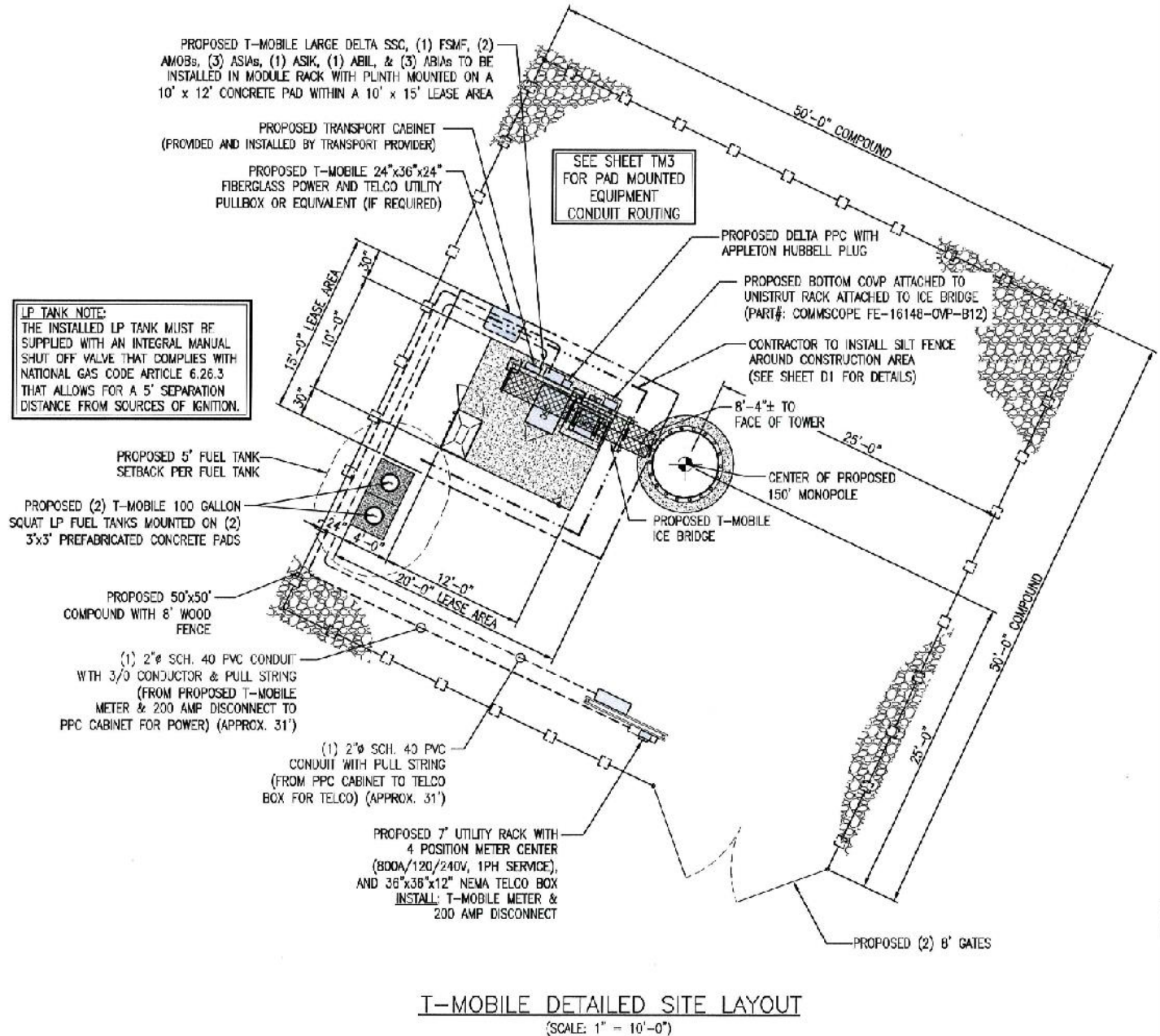
The site is surrounded by commercial units.

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# DETAIL SITE PLAN



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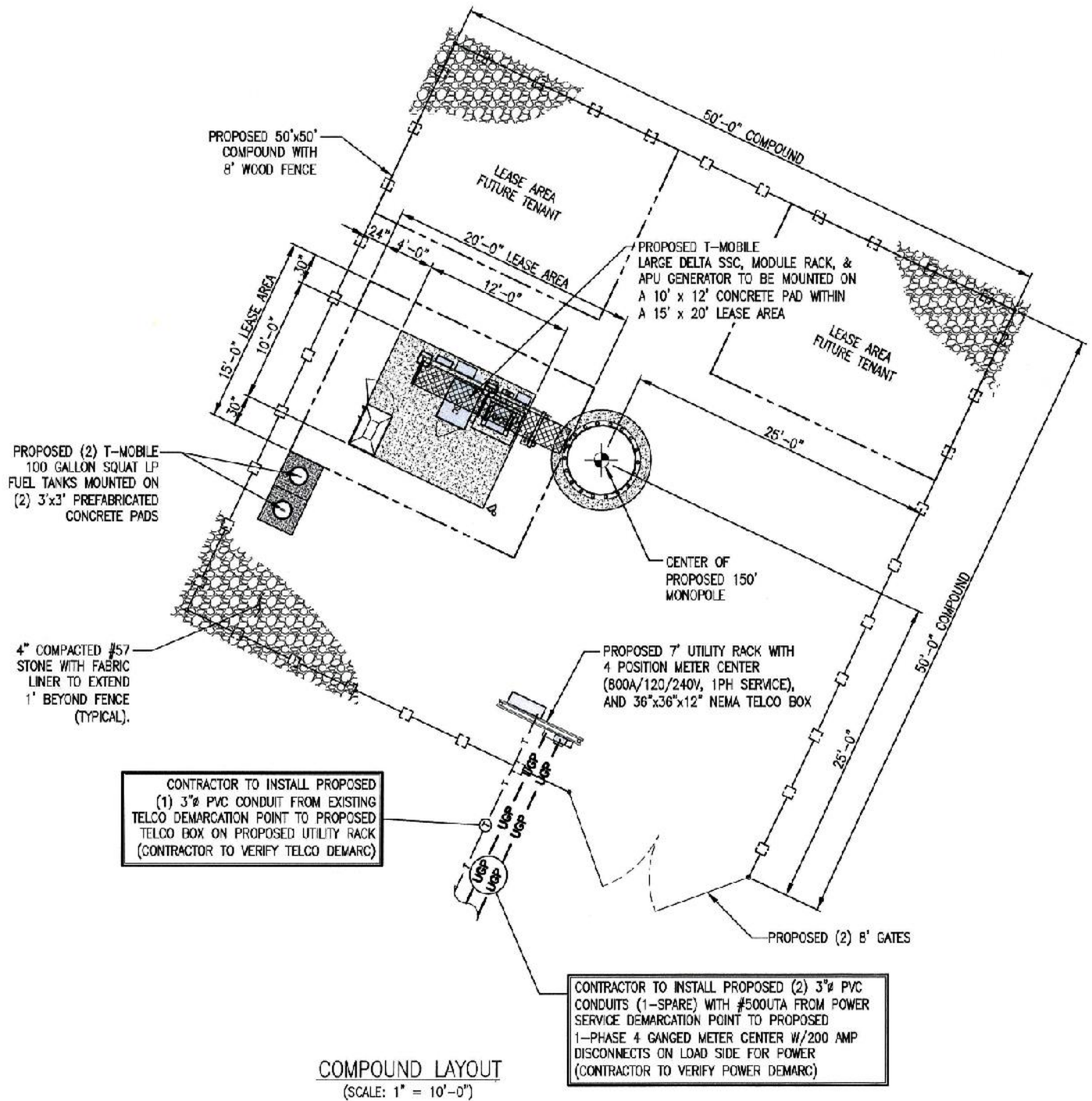
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# DETAIL SITE PLAN



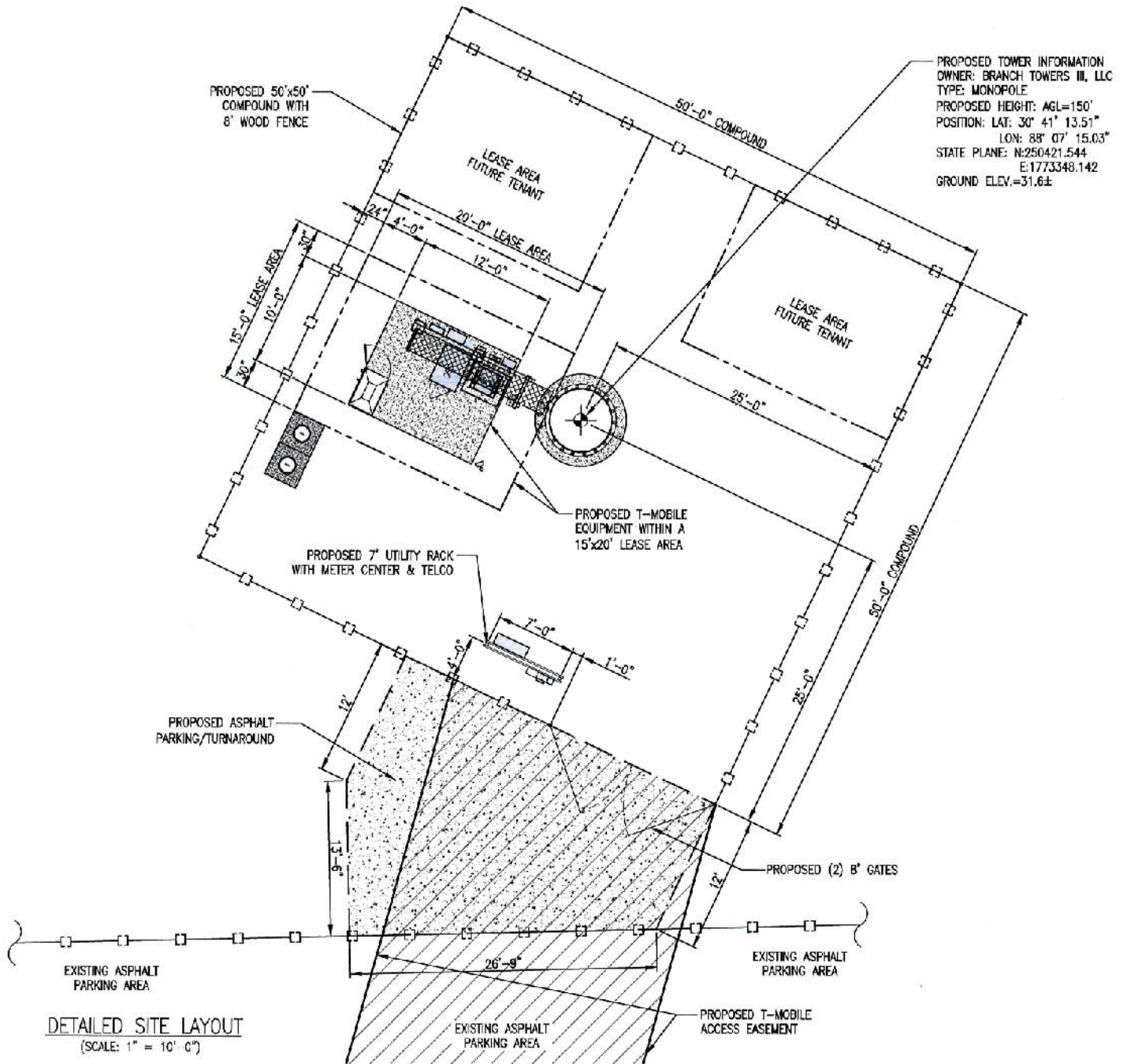
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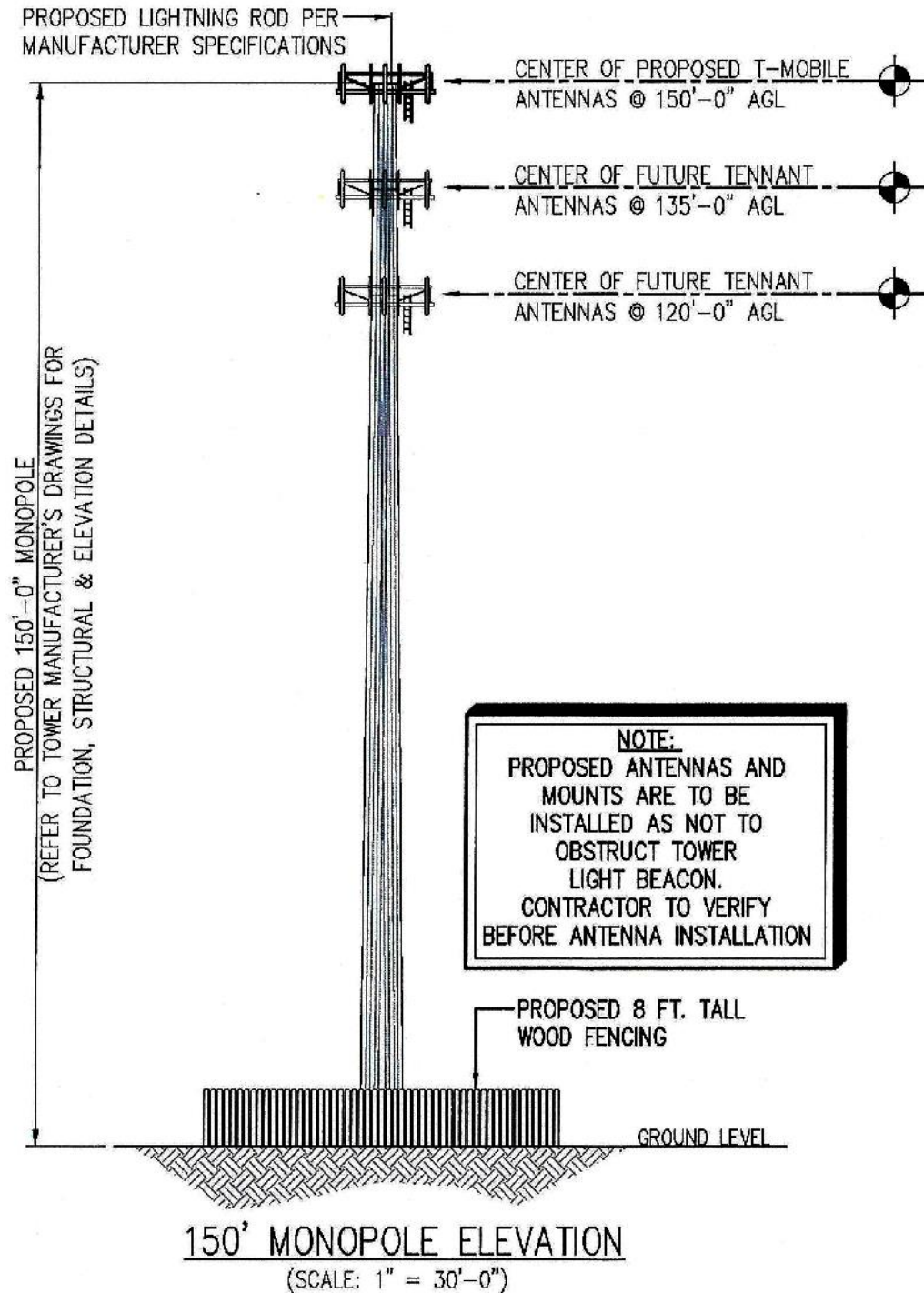
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