

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: December 7, 2015****CASE NUMBER**

6018/5891

APPLICANT NAME

Garden Design Solutions Inc.

LOCATION51 Oakland Avenue
(Southwest corner of Oakland Avenue and Marston Avenue.)**VARIANCE REQUEST****SIDE YARD SETBACK:** Side Yard Setback Variance to allow a 4' high aluminum fence within 1'± of the side street side yard, an 8' high privacy fence within 12' ± of the side street side yard, and a covered pavilion within 8.75' ± of the side street side yard in an R-1, Single-Family Residential District.**ZONING ORDINANCE
REQUIREMENT****SIDE YARD SETBACK:** The Zoning Ordinance requires all structures higher than 3' to be located a minimum of 20' from the side street side yard within an R-1, Single Family Residential District.**ZONING**

R-1, Single Family Residential

AREA OF PROPERTY

0.43 ± Acres

**ENGINEERING
COMMENTS****SIDE STREET YARD VARIANCE (4' Aluminum Fence w/I 1'):**

If the proposed variance is approved for use the applicant will need to have the following conditions met:

1. If the proposed fence is going to be located within the Ridgelawn Dr. E. or Oakland Ave. ROW a ROW Permit must be obtained from the City of Mobile Engineering Dept. The fence should not change the existing drainage patterns to the adjoining properties or the public ROW.

SIDE STREET YARD VARIANCE (8' Privacy Fence w/I 12'):

If the proposed variance is approved for use the applicant will need to have the following conditions met:

1. If the proposed fence is going to be located within the Ridgelawn Dr. E. or Oakland Ave. ROW a ROW Permit must be obtained from the City of Mobile Engineering Dept. The fence should not change the existing drainage patterns to the adjoining properties or the public ROW.

SIDE STREET YARD VARIANCE (Covered Pavilion w/I 8.75')

If the proposed variance is approved for use the applicant will need to have the following conditions met:

1. The proposed improvements shown on the submitted plans may require a Land Disturbance Permit. Any and all proposed land disturbing activity within the property will need to be submitted for review and be in conformance with Mobile City Code, Chapter 17, Storm Water Management and Flood Control; the City of Mobile, Alabama Flood Plain Management Plan (1984); and, the **Rules For Erosion and Sedimentation Control and Storm Water Runoff Control**.

**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 61-929 and City Code Chapters 57 and 64).

**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).

**CITY COUNCIL
DISTRICT**

District 7

ANALYSIS

The applicant is requesting a Side Yard Setback Variance to allow a 4' high aluminum fence within 1'± of the side street side yard, an 8' high privacy fence within 12'± of the side street side yard, and a covered pavilion within 8.75'± of the side street side yard in an R-1, Single-Family Residential District; the Zoning Ordinance requires all structures higher than 3' to be located a minimum of 20' from the side street side yard within an R-1, Single Family Residential District.

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:

“This application for a variance in the zoning ordinance has two parts. The first portion of the request is to allow a fence 1’ inside of the property line in the rear side yard (along Marston Avenue). This portion of the request is actually a re-application for a variance that has been previously approved by the Mobile Board of Zoning Adjustment (ZON2014-00523) on April 10, 2014. This variance approval expired after six months. The design of the rear yard landscape has changed over the last 12 months and the owner is now requesting a 48” Height Aluminum Black Rail Fence, instead of the original 8’ height wall that was approved. Because the new proposed fence is half the height and open picket style design, we feel that any concerns of visibility or sight lines are even less of an issue.

The second portion of this variance request is to build a small pavilion structure in the owner’s rear yard. The owners intend to build a small pool in their rear yard and this pavilion will be intended to provide a small covered outdoor space to enjoy their pool. This will be an open structure with columns and a roof (See attached drawings). Because of the very limited space in the owner’s rear yard, and the desire to preserve Oak Trees on the site, we feel that the current 20’ Setback required by the zoning code presents a hardship on the use of the owner’s rear yard property. Also, the pavilion will be set back a minimum of 8’ from the property line, and setback more than 26’ from Pavements edge on Martson Avenue. We feel that the 48” Aluminum Fence and the open air pavilion will be less of a visibility obstruction than the previous proposed and approved 8’ height masonry wall in the same area. Also, the tasteful style of the pavilion and fence will complement the character of the neighborhood and should cause no hardships on anyone in the neighborhood. We respectfully request your consideration for approval of both of these variances to allow Mr. and Mrs. Whigham the full use and enjoyment of their rear yard property.”

As stated per the applicant, this request is to allow the side street side yard setback to be reduced to measurements of 1’±, 12’±, and 8.75’± from the side yard property line in order to accommodate the construction of a 4’ high aluminum fence, an 8’ high wood privacy fence, and a covered pavilion respectively within an R-1, Single Family District. The applicant wishes to improve the rear yard by constructing a new covered pavilion to accommodate a pool, in addition to erecting aluminum and wooden fencing for privacy and security.

Being that the subject site is located at the corner of Oakland Avenue and Marston Lane, Section 64-4.D.3. of the Zoning Ordinance requires, at minimum, a 20’ side yard setback for all structures taller than 3’. The site plan currently depicts each fence type and the covered pavilion as extending beyond the 20’ minimum requirement set in place for side street side yard setbacks, and as such, does not reflect compliance with the Zoning Ordinance.

The Board of Zoning Adjustment approved the construction of a 8’ high stucco finished concrete block wall and 8’ high wooden privacy gates within 1’ of the side street side yard setback at this location at its April 7, 2014 meeting; however, as stated by the applicant, the wall and gates were never constructed due to the applicant’s desire to attend to other landscaping improvements and

the variance expired six months after its approval. The Board of Zoning Adjustment also approved a similar request to erect a 6' high wrought iron fence with intermittent brick columns within 1' of the side street side yard property line of a nearby property at its August 4, 2014 meeting.

Due to the previous variance approval at this site, the current application will provide for better line of sight for traffic than the previously approved wall, and as such, it may be appropriate to approve the applicant's request.

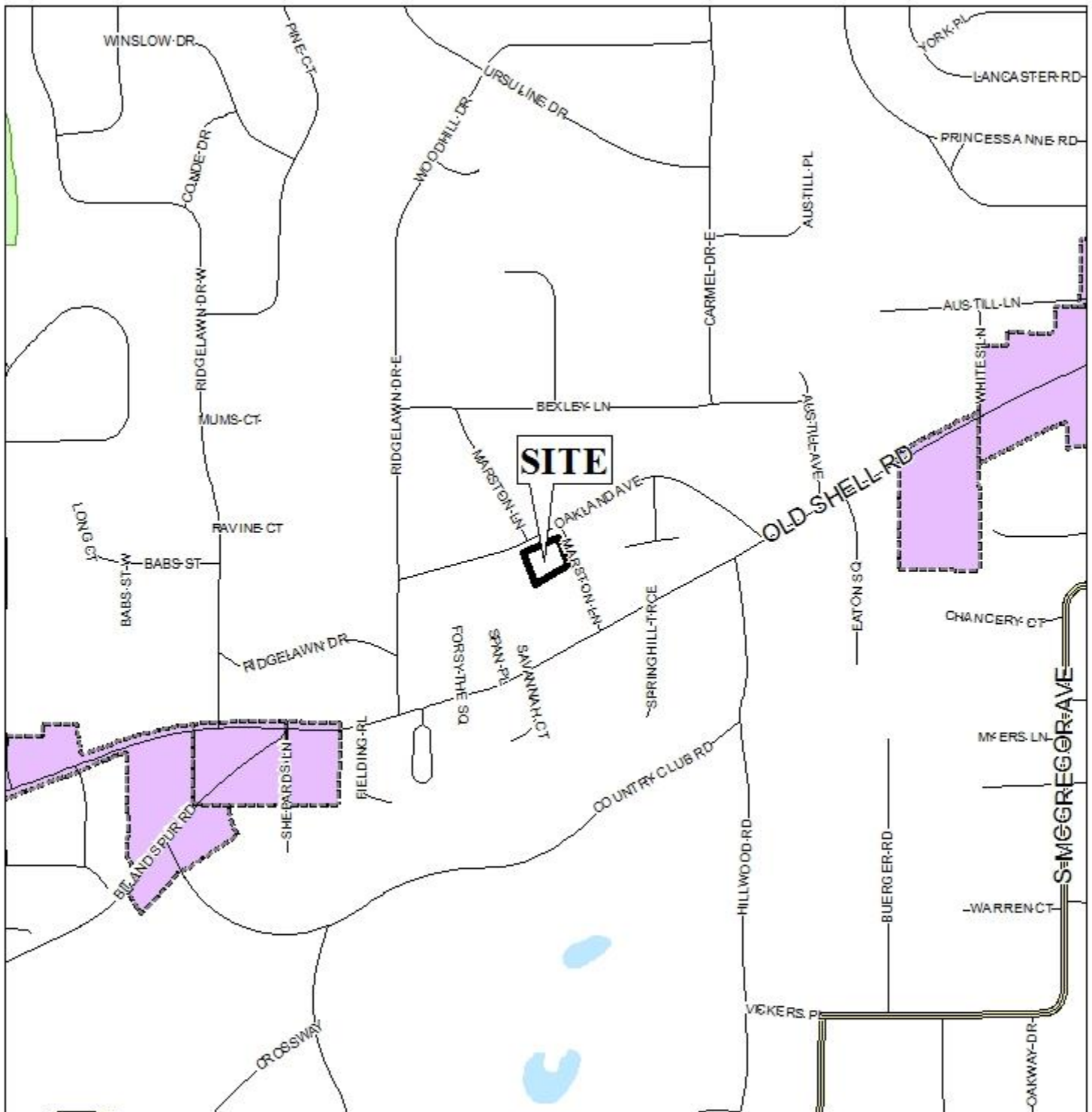
RECOMMENDATION: Staff recommends to the Board the following findings of fact for Approval:

- 1) Based on the fact that a substantial hardship regarding the need to encroach beyond the side street side yard setback and structure height requirements of the Zoning Ordinance was substantiated by the hardships presented in the applicant's narrative, granting the variance will not be contrary to the public interest;
- 2) Special conditions do appear to exist such that the literal enforcement of the provisions of the chapter will result in an unnecessary hardship; and
- 3) The spirit of the chapter shall be observed and substantial justice shall be done to the applicant and the surrounding neighborhood by granting the variance, as a similar request was previously approved by the Board for this site.

The approval is subject to the following conditions:

- 1) The obtaining of permits for all improvements; and
- 2) Full compliance with all other municipal codes and ordinances.

LOCATOR MAP

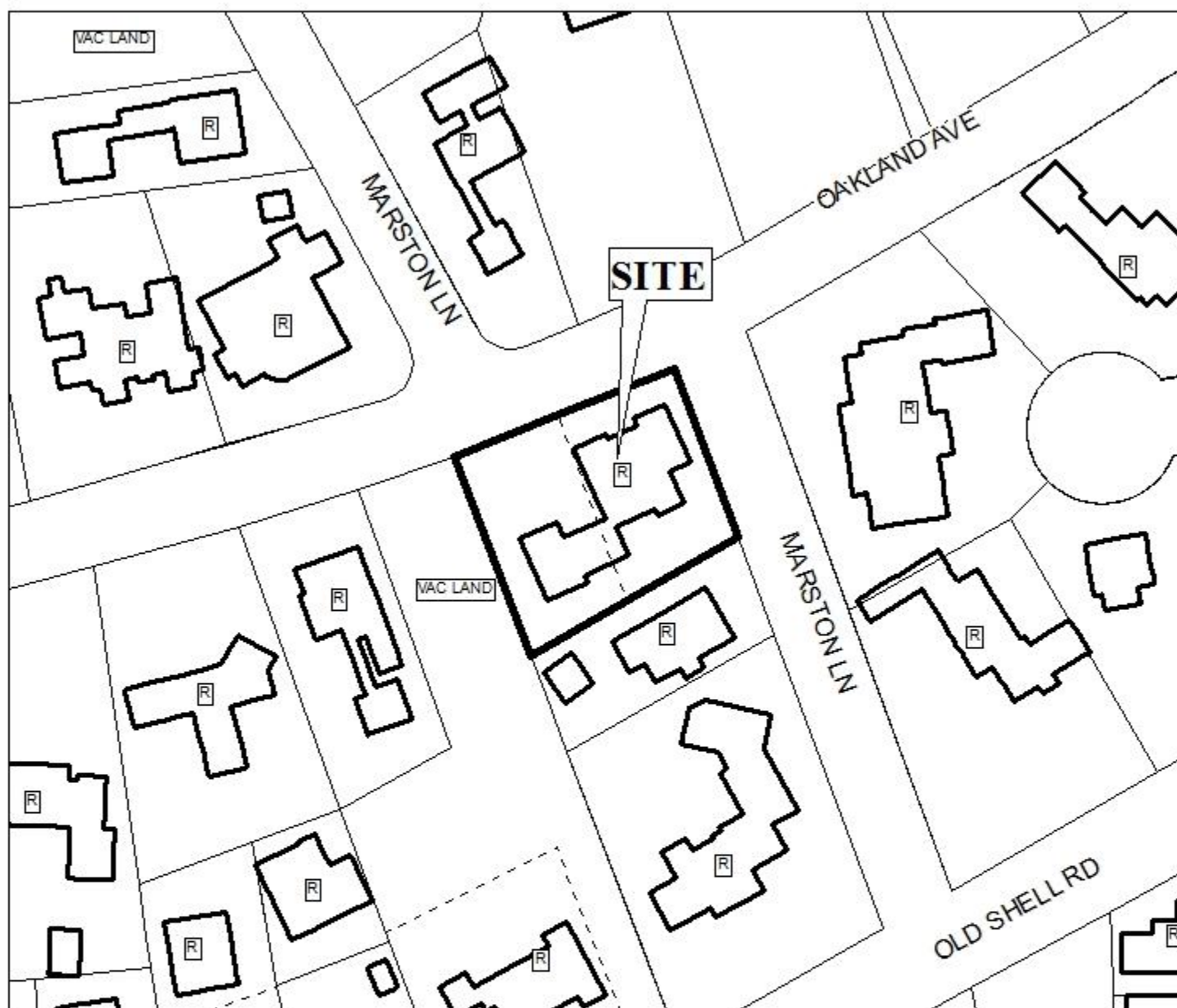


APPLICATION NUMBER 6018 DATE December 7, 2015
 APPLICANT Garden Design Solutions Inc
 REQUEST Side Street Side Yard Variance



BOARD OF ADJUSTMENT

VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units.

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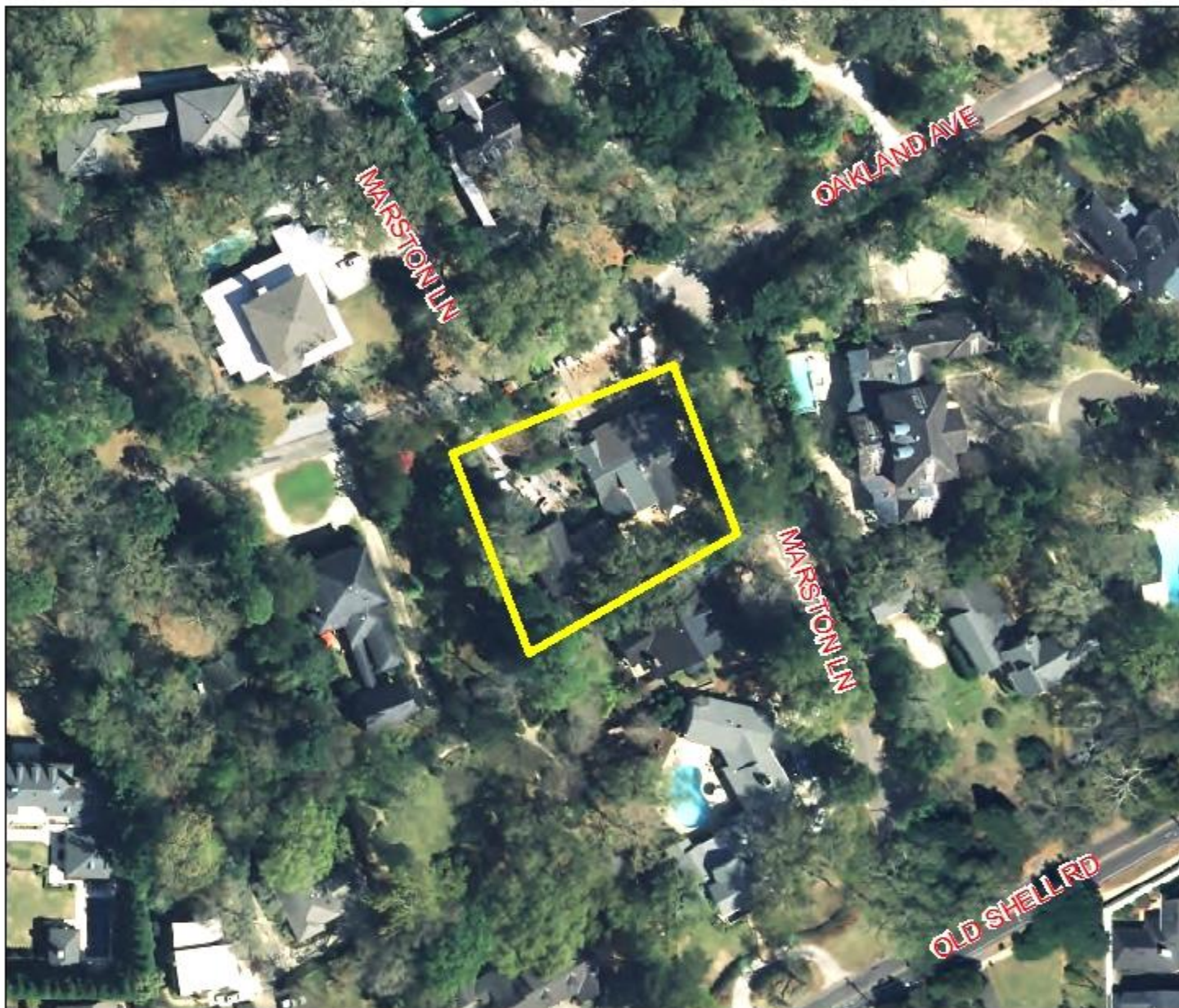
REQUEST Side Street Side Yard Variance

 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



The site is surrounded by residential units.

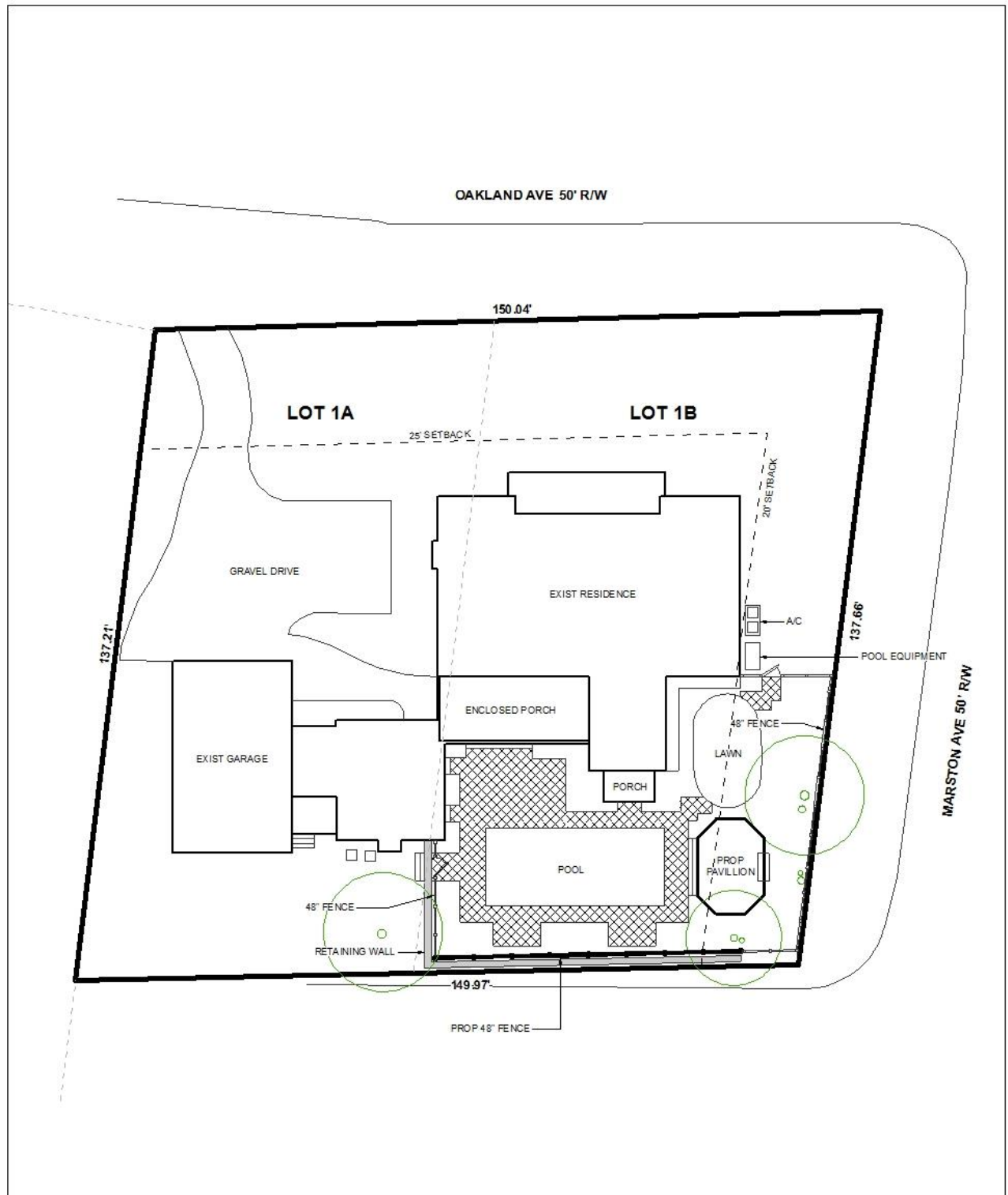
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SITE PLAN



The site plan illustrates the existing residence, proposed fence, proposed pavillion, and setbacks.

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NTS

DETAIL SITE PLAN



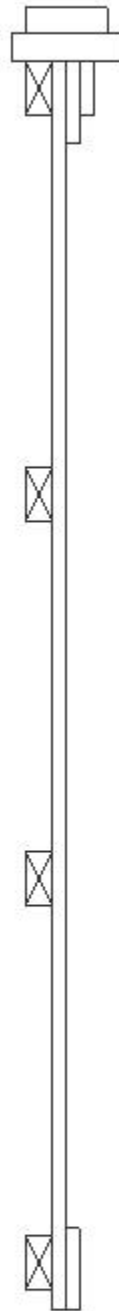
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DETAIL SITE PLAN



WOOD FENCE SECTION

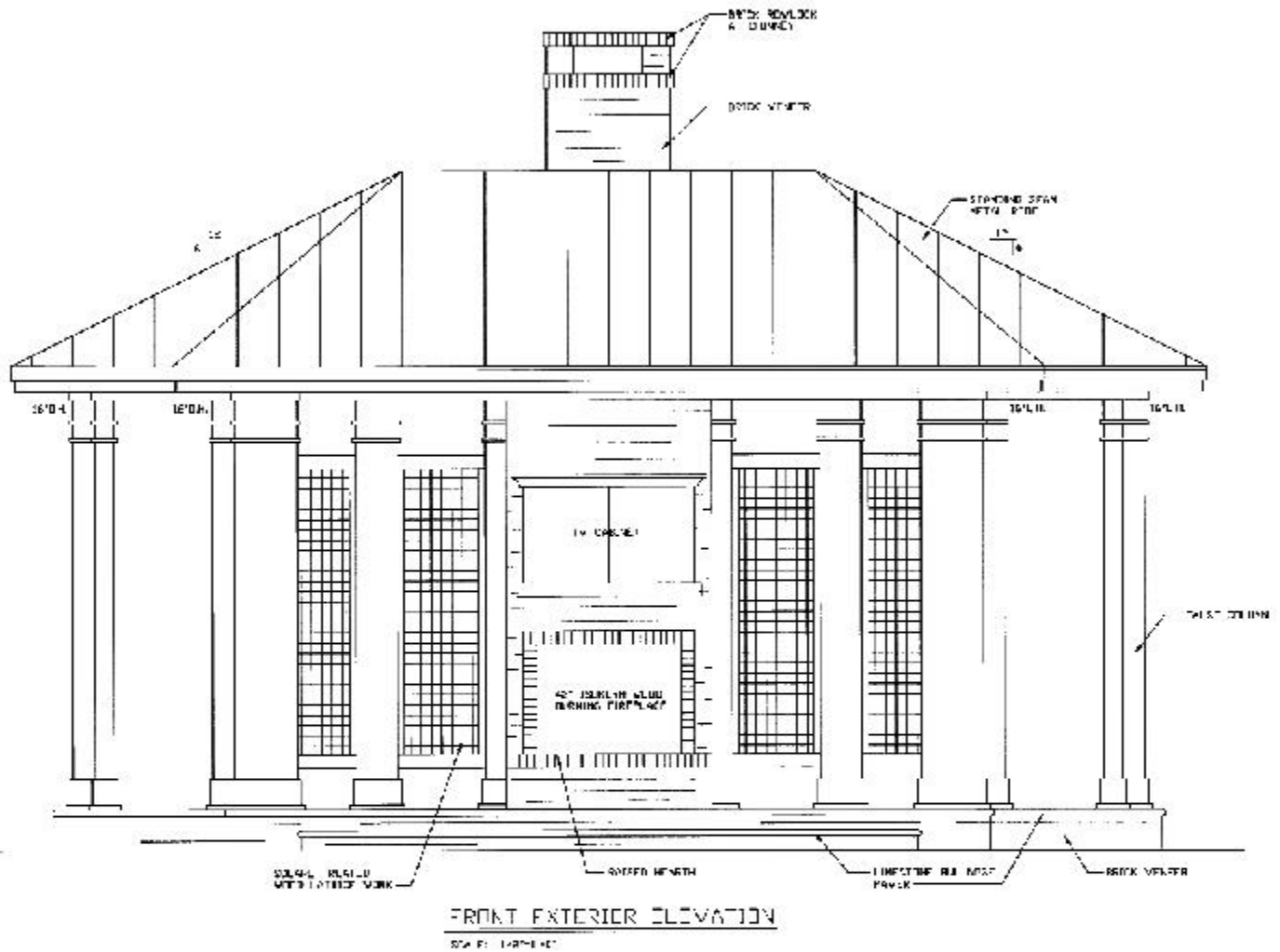
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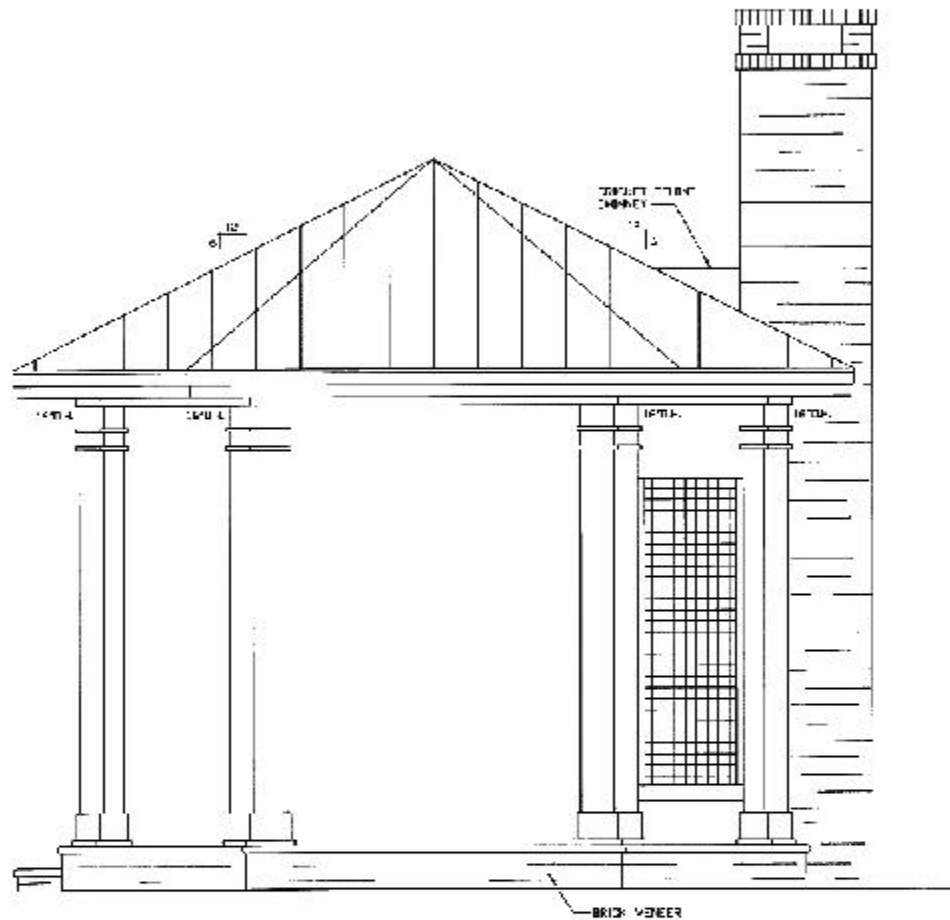
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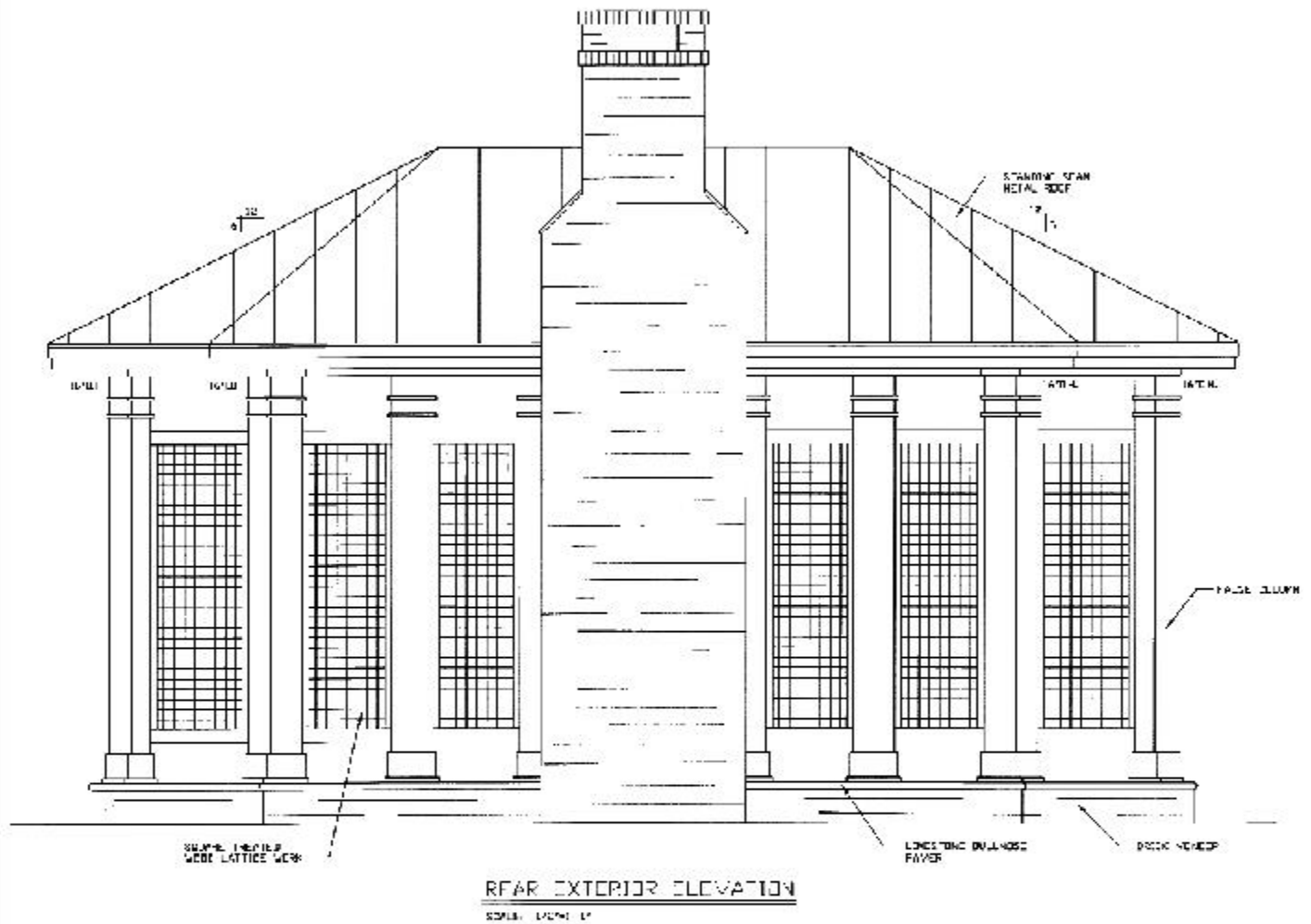


RIGHT SIDE EXTERIOR ELEVATION
SCALE 1/8"=1'-0"

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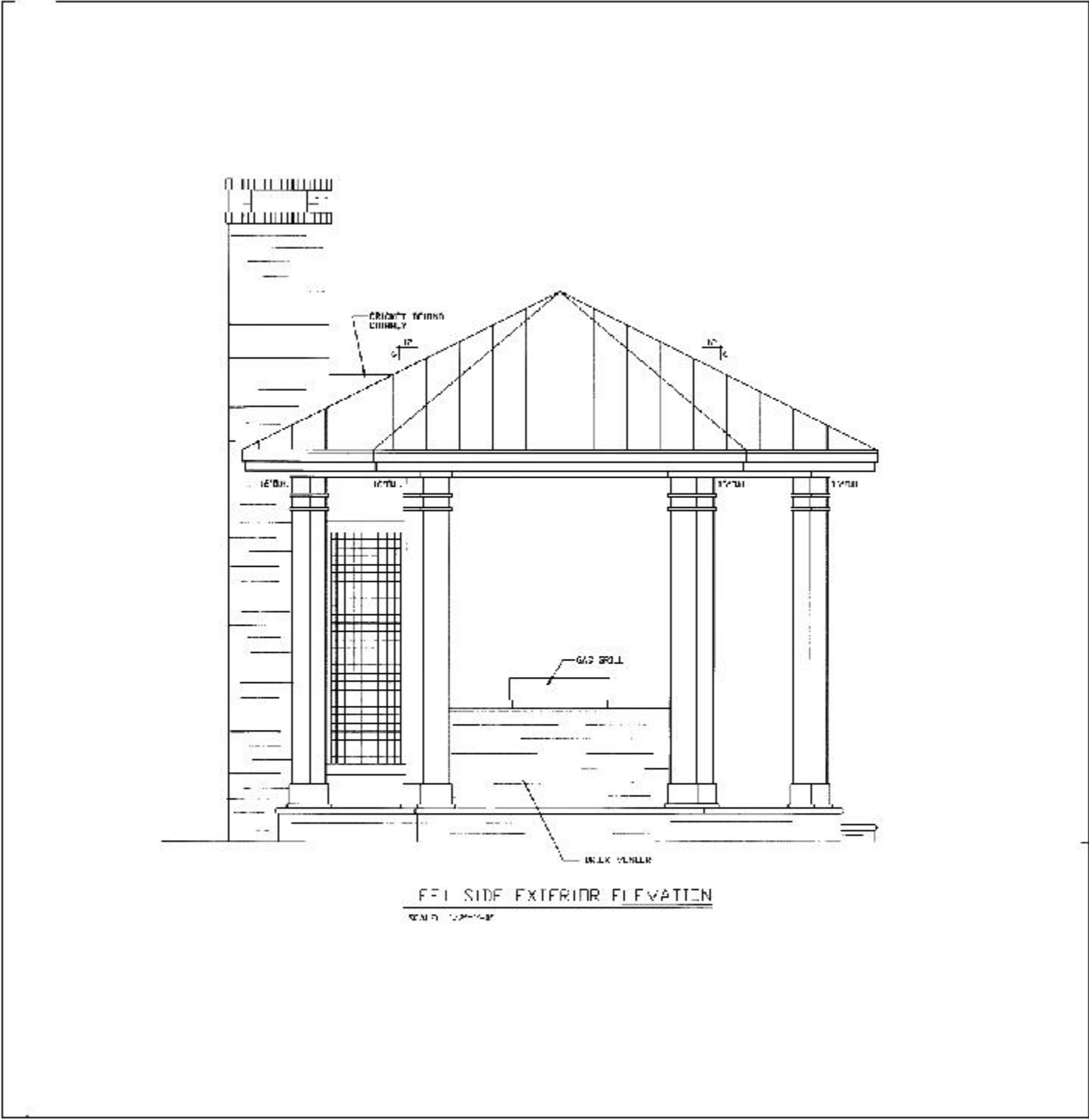
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DETAIL SITE PLAN



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