

**BOARD OF ZONING ADJUSTMENT  
STAFF REPORT****Date: September 12, 2016**

<b><u>CASE NUMBER</u></b>	6054
<b><u>APPLICANT NAME</u></b>	Rick Twilley
<b><u>LOCATION</u></b>	3615 Riviere Du Chein Road (East side of Riviere Du Chien Road, 115'± South of Riviere Du Chein Court.)
<b><u>VARIANCE REQUEST</u></b>	<b>SIDE YARD SETBACK:</b> Side Yard Setback Variance to allow an HVAC unit taller than 3' less than 8' from the side property line in an R-1, Single- Family Residential District.
<b><u>ZONING ORDINANCE REQUIREMENT</u></b>	<b>SIDE YARD SETBACK:</b> The Zoning Ordinance requires any mechanical equipment 3' or higher to meet an 8' side yard setback in an R-1, Single- Family Residential District.
<b><u>ZONING</u></b>	R-1, Single Family Residential
<b><u>AREA OF PROPERTY</u></b>	1.5 ± Acres
<b><u>CITY COUNCIL DISTRICT</u></b>	District 4
<b><u>ENGINEERING COMMENTS</u></b>	No comments
<b><u>TRAFFIC ENGINEERING COMMENTS</u></b>	This request was not reviewed by Traffic Engineering.
<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 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). Projects outside the City Limits of Mobile, yet within the Planning Commission Jurisdiction fall under the State or County Fire Code (2012 IFC).

**ANALYSIS**

The applicant is requesting a Side Yard Setback Variance to allow an HVAC unit taller than 3' less than 8' from the side property line in an R-1, Single-Family Residential District; the Zoning Ordinance requires any mechanical equipment 3' or higher to meet an 8' side yard setback in 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:

***“DESCRIPTION OF PROPOSED IMPROVEMENTS  
FOR HEATING, VENTILATION AND AIR CONDITION UNITS  
RELOCATION. LOT 2 BRENDA PARKER SUBDIVISION***

*The purpose of this Site Variance is for the relocation of the Heating, Ventilation and Air Condition Units from their location as shown and approved on previously submitted plans. The previously approved location was in the front of the dwelling near it's Northwest corner and not within the minimum building side yard setback. It's location was near the entrance walk from the parking area to the Front Porch. For the reason of the HVAC Units closeness to the entrance walk and Front Porch is the reason for the Variance request. The proposed HVAC Units will be located on the North side of the Dwelling near it's Northwest corner, which increases the distance from the entrance walk to the HVAC Units and reduces visibility of the HVAC Units from Front Porch and entrances. This proposed location is within the minimum building side yard setback. The property is currently within a Flood Zone Area requiring the HVAC Units to be elevated, resulting in portions of the HVAC Units being more than three (3) feet above natural grade. For this reason a Variance is required. The Dwelling and Garage are currently under construction and due to be completed within six (6) months. No existing development exists on the adjoining lot near where the proposed HVAC Units are to be located.”*

It appears that the reason for the relocation of the HVAC units is to minimize their visibility from the front porch and parking area. In doing so, and with the requirement that the HVAC units must be elevated above the flood elevation, the applicant is creating the need for a variance request. However, the proposed location is the only side of the residence that will not have an outside porch, thus it will have the least impact to the homeowner's use of the outdoor space.

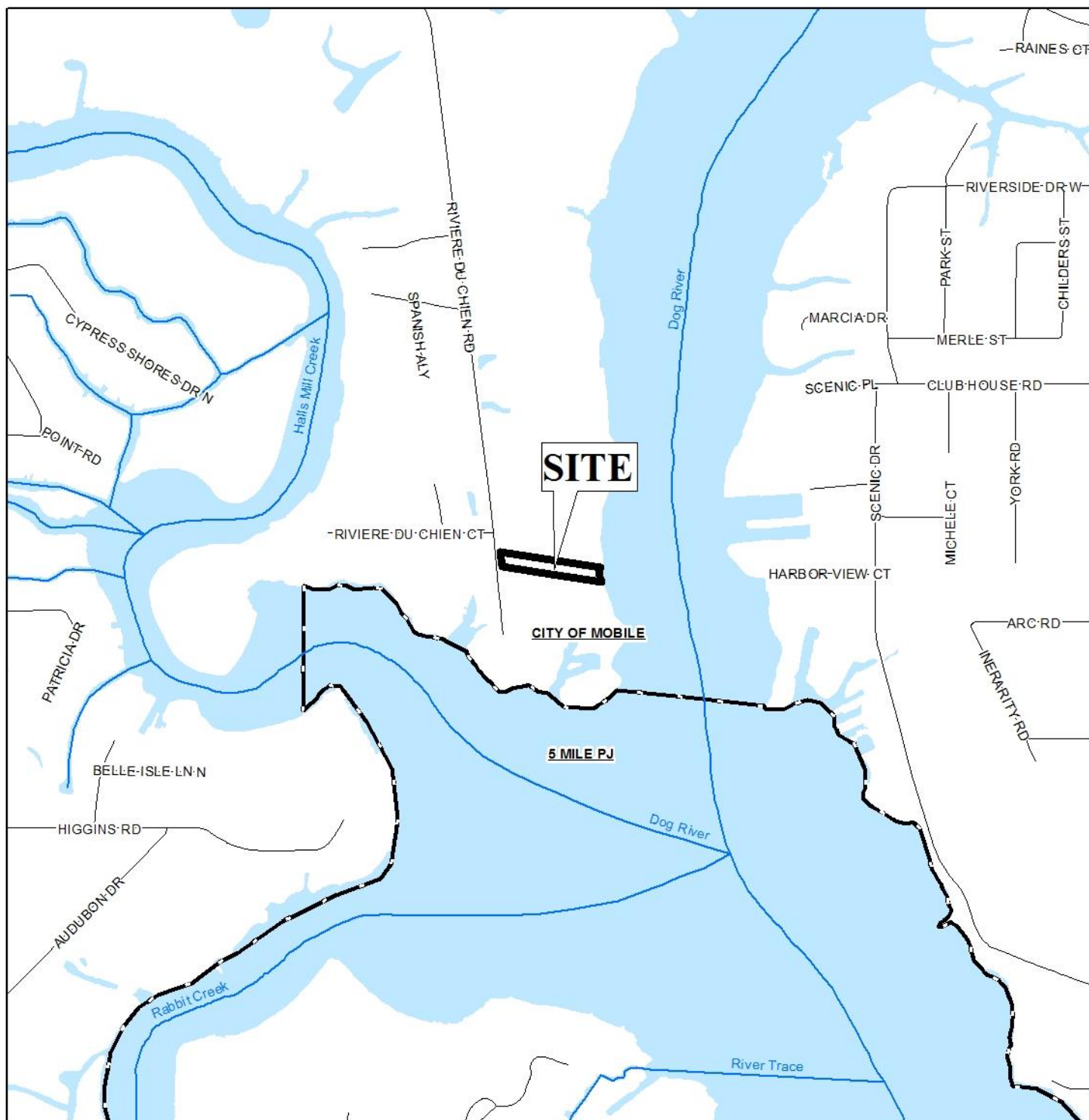
It should be noted that there have been several setback variance requests in the nearby vicinity, however, all cases are more than 30 years old. On December 2, 1974, the Board of Zoning Adjustment approved a side yard variance to permit the construction of a tool storage building within 3' of the side property line at 3521 Riviere Du Chein Court. At its May 2, 1976 meeting, the Board denied an applicant's request for a side yard variance to allow a utility building at 3530 Riviere Du Chein Court. In 1974, the Board denied a side yard variance to allow the construction of a boathouse over an existing boat slip at its November 4 meeting. The Board then approved the request the following year.

The submitted site plan shows that there is potential space in both the front and rear of the development to accommodate the HVAC unit while staying within the minimum setback requirements per the Zoning Ordinance. It is duly noted that the property is currently located in a Flood Zone. FEMA code requires that HVAC units be elevated one foot above base flood elevation. Should visibility be a factor if the HVAC unit is located in the front of the development, the applicant should consider a green buffer or relocate the unit to another compliant location. This could potentially reduce visibility while remaining within the required side yard setbacks.

**RECOMMENDATION:** 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 will be contrary to Section 64-3.C.1.e. of the Zoning Ordinance regarding side yard setbacks within an R-1, Single-Family Residential District;
- 2) Special conditions may exist such as visible aesthetics or proximity to the front walkway, but not in such a way that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship, as the site can be developed without the requirement for variances; 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 appears that the site has space in both the front and rear of the development for the HVAC unit to meet setback requirements.

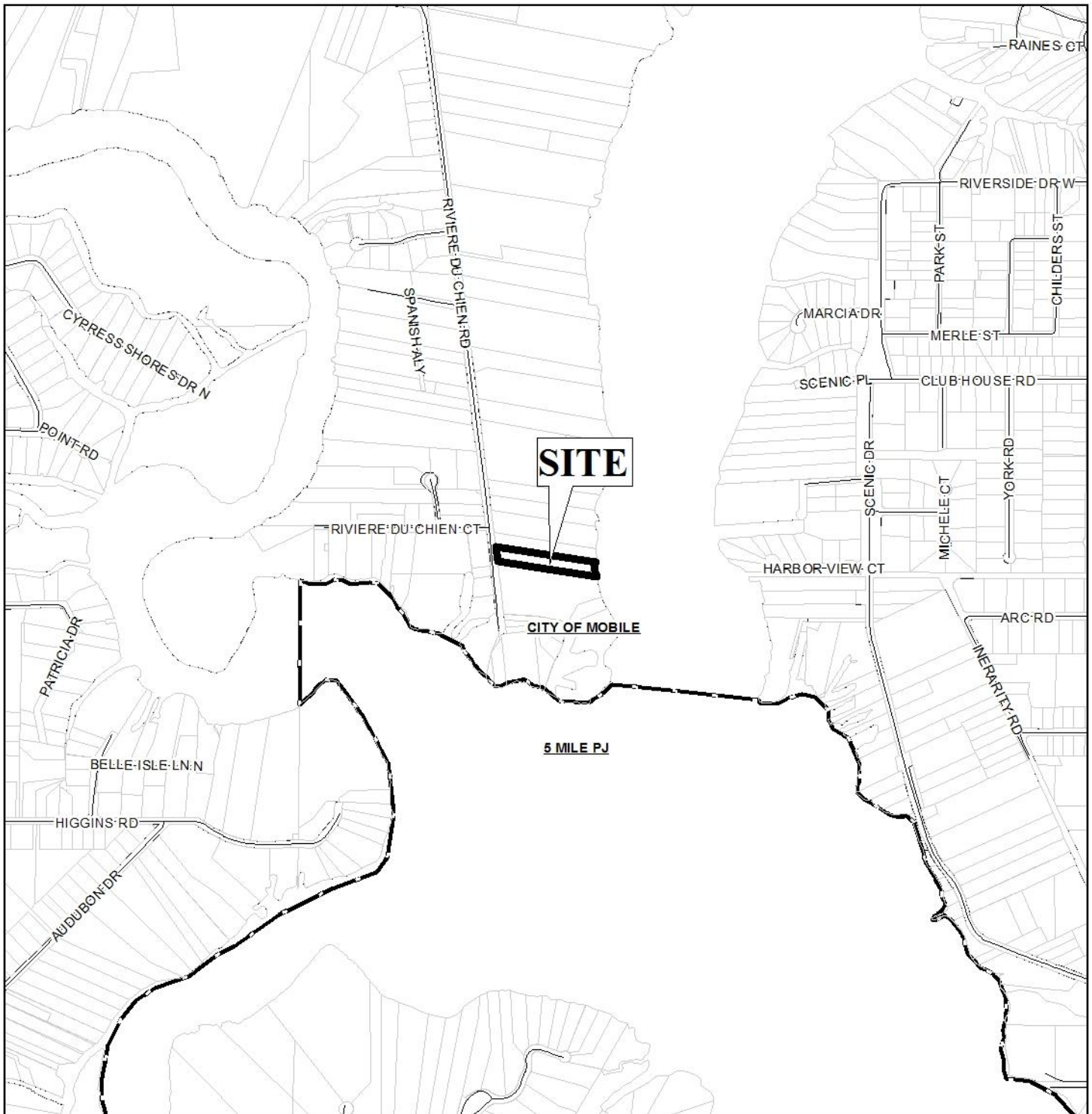
# LOCATOR MAP



APPLICATION NUMBER 6054 DATE September 12, 2016  
 APPLICANT Rick Twilley  
 REQUEST Side Yard Variance



# LOCATOR ZONING MAP



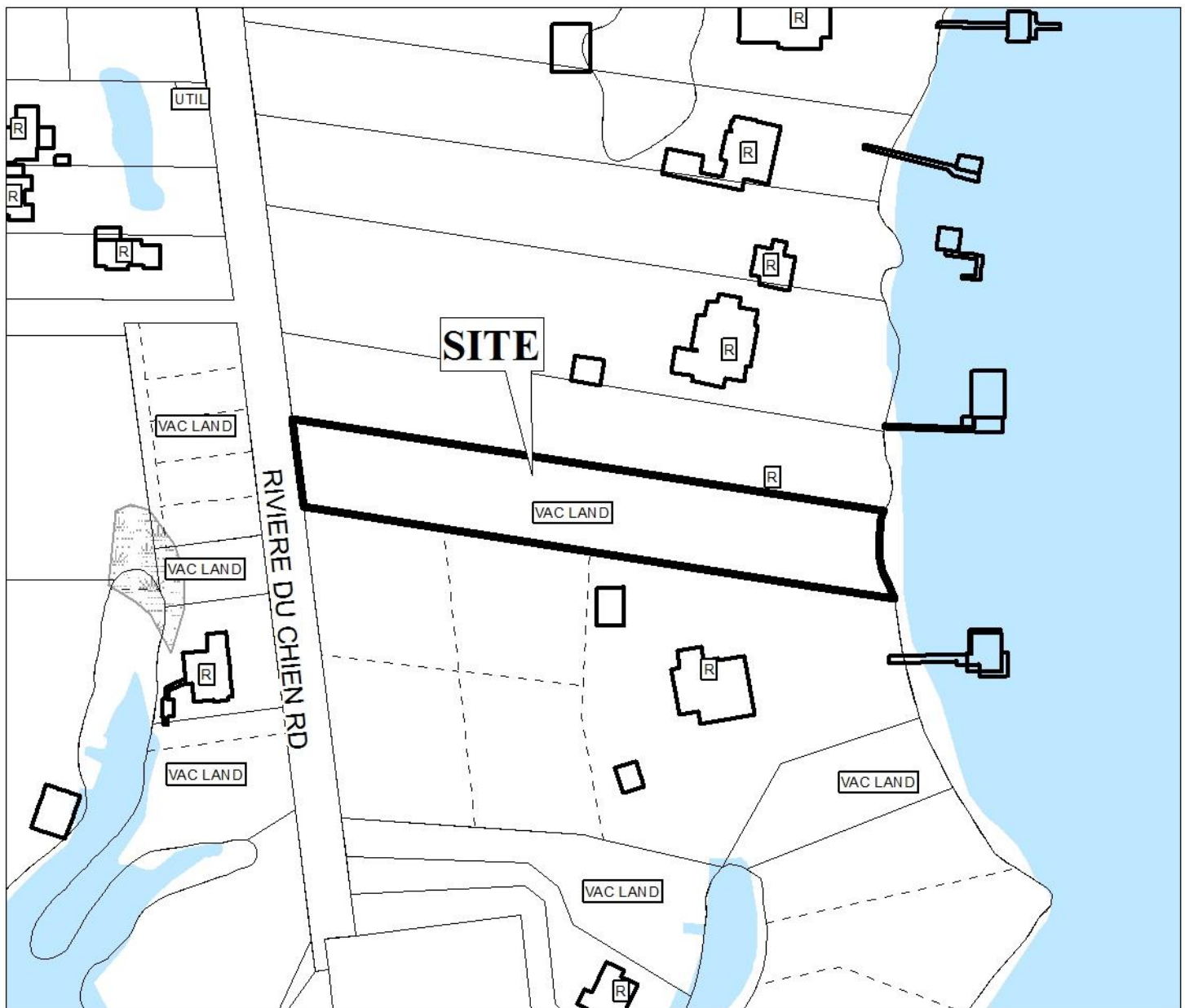
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# BOARD OF ADJUSTMENT

## VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units.

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<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: brown; 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: darkblue; 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: grey; 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: lightpurple; 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

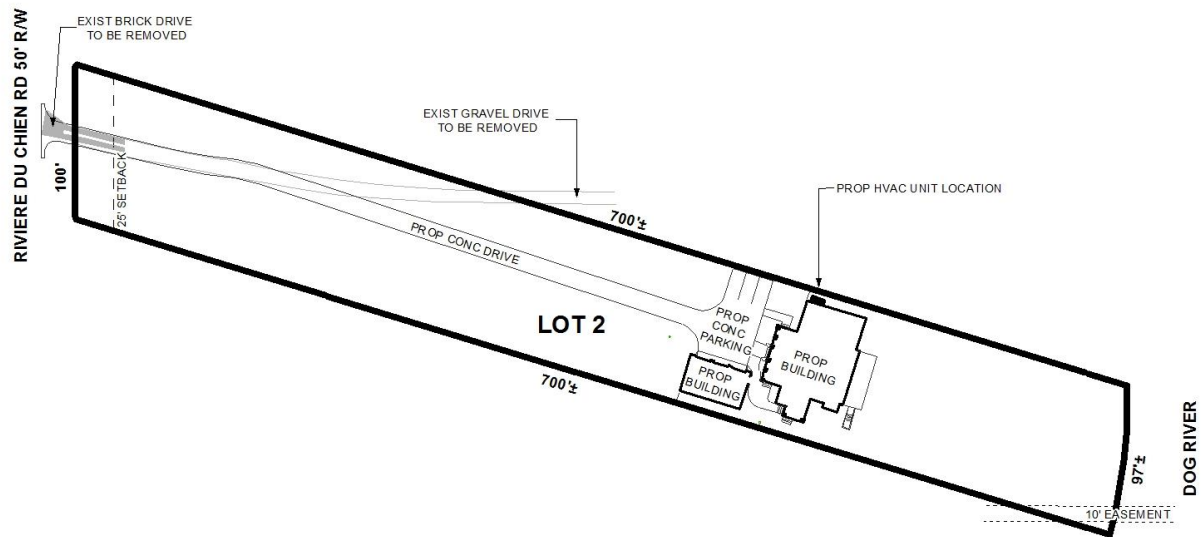


The site is surrounded by residential units.

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# SITE PLAN



The site plan illustrates the proposed drive, proposed buildings, proposed HVAC unit location, setback, and easements.

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N  
 NTS