

APPLICATION NUMBER

5534

A REQUEST FOR

**SIGN VARIANCE TO ALLOW A TOTAL OF FOUR
FREESTANDING SIGN STRUCTURES, TWO OF WHICH
ARE LEGAL NONCONFORMING, WITH TENANT PANEL
SIGNS ON TWO PROPOSED SIGN STRUCTURES
PROJECTING 34"± INTO THE PUBLIC RIGHT-OF-WAY,
AND TWO RETAINER WALL SIGNS IN THE PUBLIC
RIGHT-OF-WAY, IN A B-2, NEIGHBORHOOD BUSINESS
DISTRICT; THE ZONING ORDINANCE ALLOWS ONE
FREESTANDING SIGN STRUCTURE WITH AN 18"
MINIMUM RIGHT-OF-WAY SETBACK, AND DOES NOT
ALLOW ANY SIGNS TO BE PLACED IN THE PUBLIC
RIGHT-OF-WAY IN A B-2, NEIGHBORHOOD BUSINESS
DISTRICT.**

LOCATED AT

4513 OLD SHELL RD

(South side of Old Shell Road, 660'± West of South McGregor Avenue)

APPLICANT

ESTELLE W. CROSBY

BOARD OF ZONING ADJUSTMENT

MAY 2009

The applicant is requesting a Sign Variance to allow a total of four freestanding sign structures, two of which are legal nonconforming, with tenant panel signs on two proposed sign structures projecting 34'± into the public right-of-way, and two retainer wall signs in the public right-of-way, in a B-2, Neighborhood Business District; the Zoning Ordinance allows one freestanding sign structure with an 18" minimum right-of-way setback, and does not allow any signs to be placed in the public right-of-way in a B-2, Neighborhood Business District.

On March 23, 2009, a zoning investigation was received via Mobile 311 reporting several signs at the entrance to the Holiday Place Shopping Center advertising several businesses at this location. An inspector responded and issued a notice of violation for the number and location of the signs. The applicant decided to apply for a variance instead of removing the illegal signs, as well as to apply for a variance to allow their proposed plan for signage.

Before illegal signs were placed, the site had three existing, non-conforming, freestanding signs constructed of wood. Two of the existing signs are readerboards with changeable copy, the other was a large sign denoting the address and group site name which also contained tenant panels for the several businesses located on the site.

The applicant has made some extensive changes to the front of the shopping center, including the addition of a large retaining wall, steps up the grade change from the street to the front of the building, and a large, brick-paver landing by the street. This construction necessitated the need to remove the existing non-conforming tenant panel structure. The Zoning Ordinance states in Chapter 64-11.3.b(4) & (5) states that nonconforming signs may be continued in operation and maintenance after the effective date of the section, provided that nonconforming signs shall not be: (4) Relocated or (5) Re-established after damage or destruction of more than 75% of the value of the structure at the time of damage or destruction. Under this stipulation, the non-conforming status was lost on the tenant panel sign when it was removed. It should be noted that the improvements were undertaken without permits or approvals from the Urban Development Department or Right-of-Way Section of the City Engineering Department.

The applicant now proposes to keep the two existing nonconforming readerboard signs and add a total of four more freestanding signs. Section 64-11.8.c(3) of the Zoning Ordinance allows only one freestanding sign for a group development with less than 600 linear feet of street frontage. Holiday Place, per the survey submitted, has only 185.4 linear feet of street frontage. The new signs are proposed to consist of two, 6-foot by 2-foot (12 square feet) panels on the retaining wall at the stairs advertising the name of the group development, which is Holiday Place; and two signs which are essentially 13.25-foot high lamp posts with four, 2 square-foot tenant panels attached to each lamp post.

Additionally, the two panels on the retaining wall are proposed to be located in the public right-of-way. As per Section 64-11.2.j of the Zoning Ordinance, signs in or over the public right-of-way must be attached to a building and not project more than 12 inches

from the front of a building. This section of the Zoning Ordinance is intended for businesses in downtown Mobile (B-4 zoning districts) where no minimum front-yard setback is required and where buildings frequently are built up to the front property line. This section is not intended for any district other than B-4. Further, the lamps post signs are proposed to be on the front property line and project approximately 34 inches into the public right-of-way. Section 64.11.8.c(1) of the Zoning Ordinance states that all signs and sign structures must be located at least 18 inches from the right-of-way. It should be noted that the westernmost sign of the two existing, nonconforming readerboard signs also projects into the right-of-way.

The Zoning Ordinance states that no variance shall be granted where economics are the basis for the application. Furthermore, the applicant must present 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.

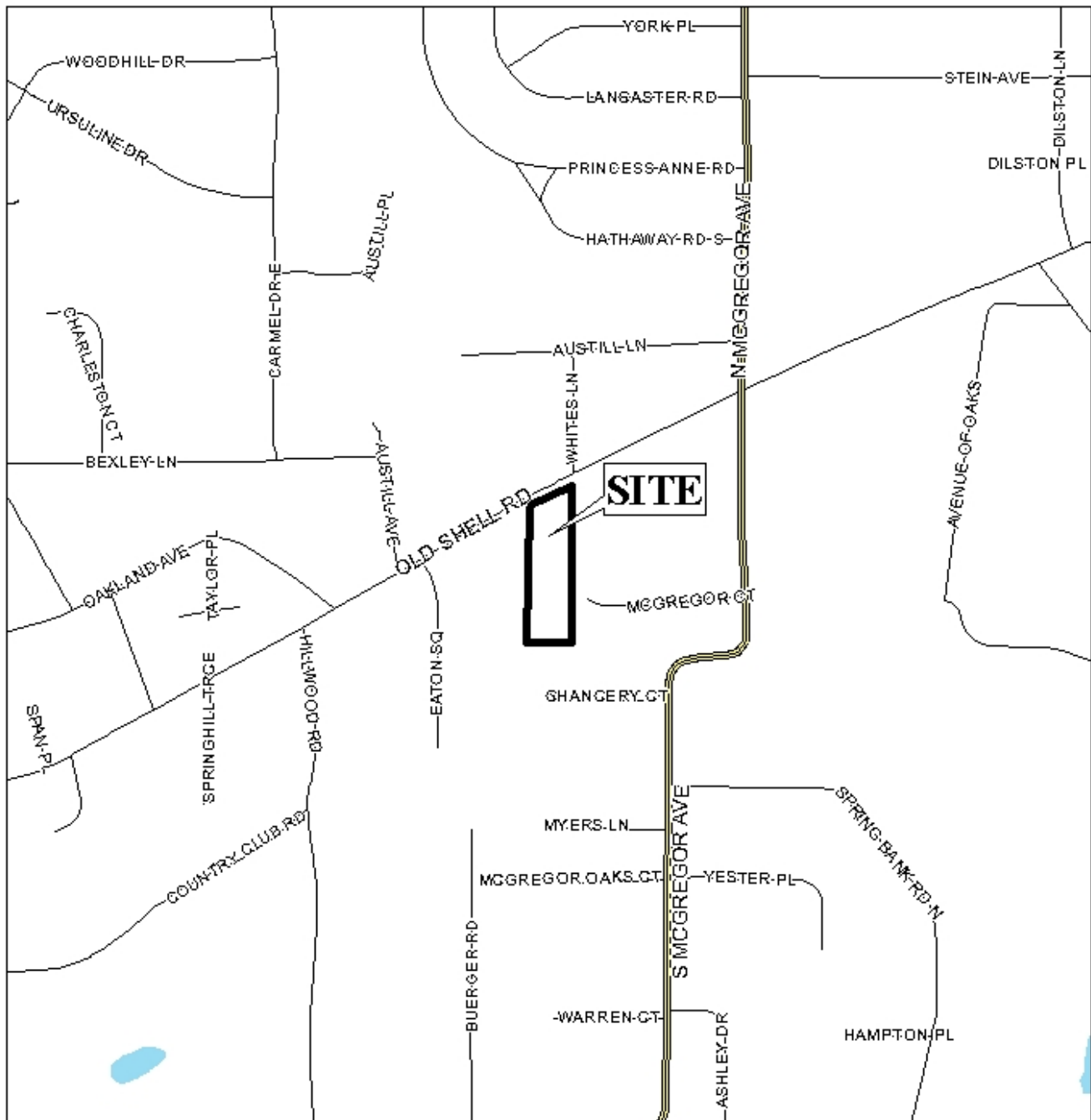
The applicant states that the construction of the retaining wall and other improvements have spurred the need for a variance, stating that “the complete redesign and re-landscaping of [the site], including the change of topography, required the removal of [the] main large entranceway sign.” The applicant further states that a new sign of the same size would not “fit the topography or overall theme of the newly conceived community presentation.” Additionally, the applicant states that “all of the businesses for which sign variances are intended are retail businesses and therefore are heavily dependent upon visibility from the street for their business practice.” Addressing this issue, this site is located within an approved district allowing Sandwich Board signs, and the applicant has obtained Sandwich Board permits for all or most of the businesses on the site. These sandwich board signs, with some restrictions, can be placed in the right-of-way, with full view to passing traffic and pedestrians; thus, the street visibility argument is negated.

While there may be an argument for sign *placement* into the right-of-way due to topographical and visibility reasons, the applicant has failed to illustrate the need for the excessive *number* of signs, as a wall sign indicating the Holiday Place name already exists on the wall of the building facing Old Shell Road, and there are already two legal nonconforming freestanding signs. The applicant failed to illustrate that a literal enforcement of the Ordinance would result in an unnecessary hardship. The applicant simply wishes to have more freestanding signs than are allowed by the zoning ordinance.

RECOMMENDATION 5534**Date: May 4, 2009**

Based on the preceding, the application is recommended for denial.

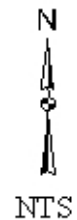
LOCATOR MAP



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APPLICANT Estelle W. Crosby

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BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



This site is surrounded by miscellaneous land use.

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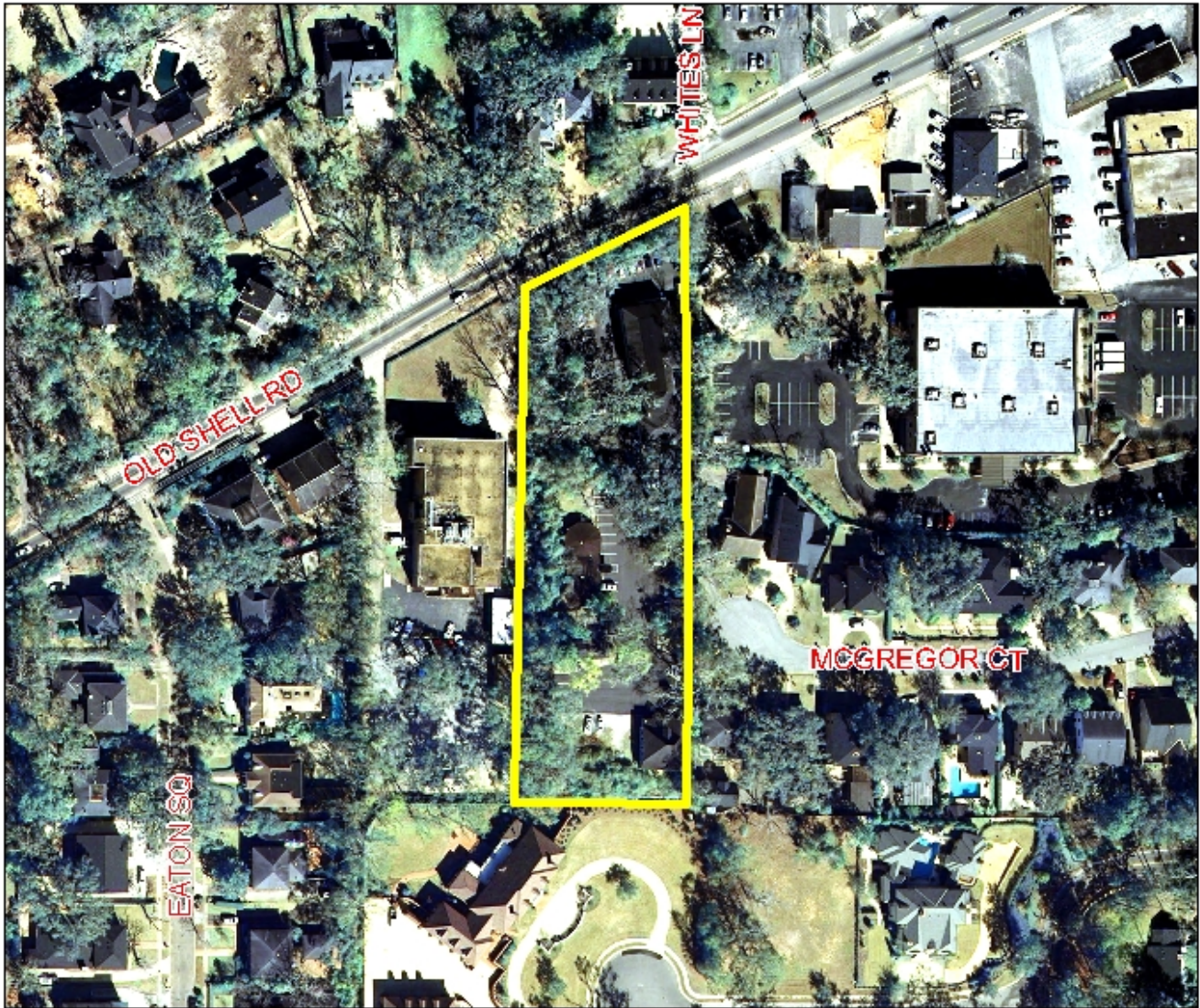
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LEGEND R-1 R-2 R-3 R-A R-B H-B T-B B-1 LB-2 B-2 B-3 B-4 B-5 I-1 I-2 NTS



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING

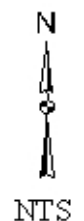


This site is surrounded by miscellaneous land use.

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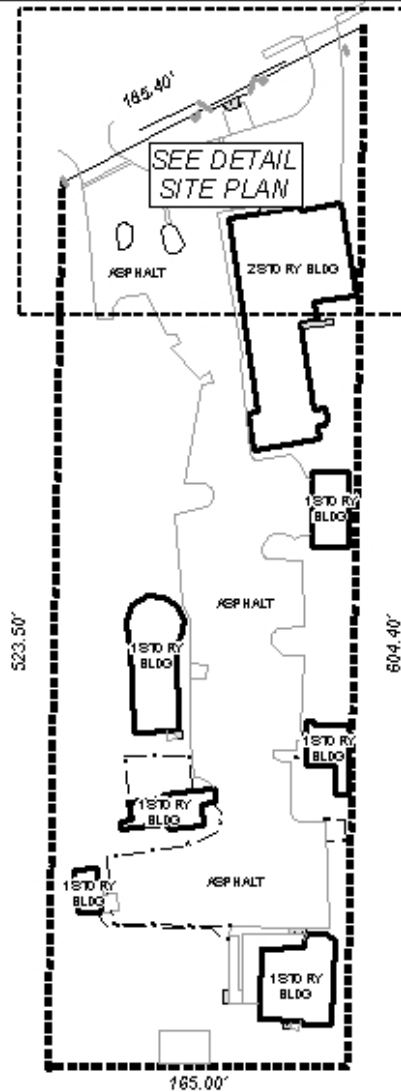
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SITE PLAN

OLD SHELL RD (60' R/W)

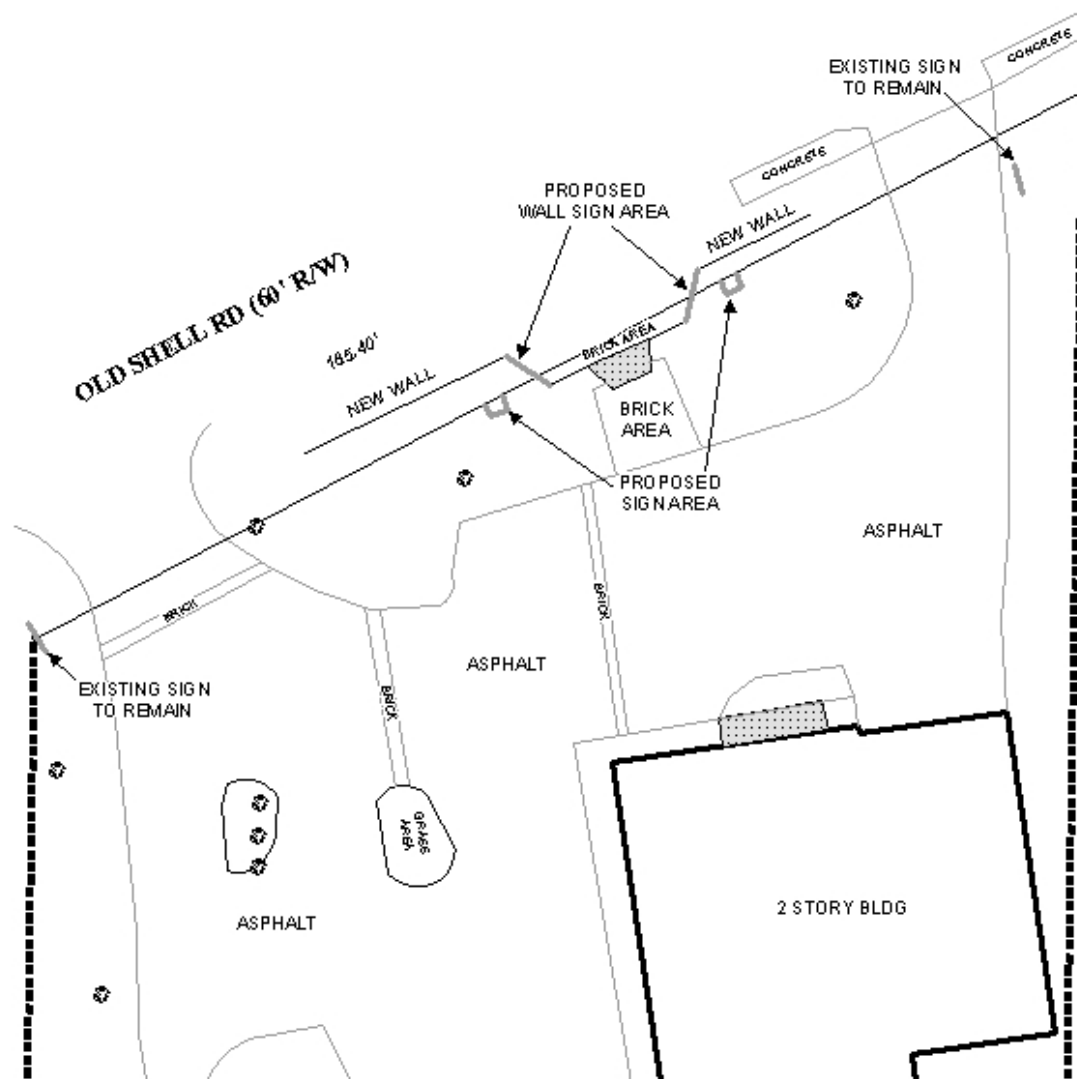


This site plan illustrates the existing lot configuration.
See detail site plan for sign locations.

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DETAIL SITE PLAN



This detail site plan illustrates the proposed and existing sign locations.

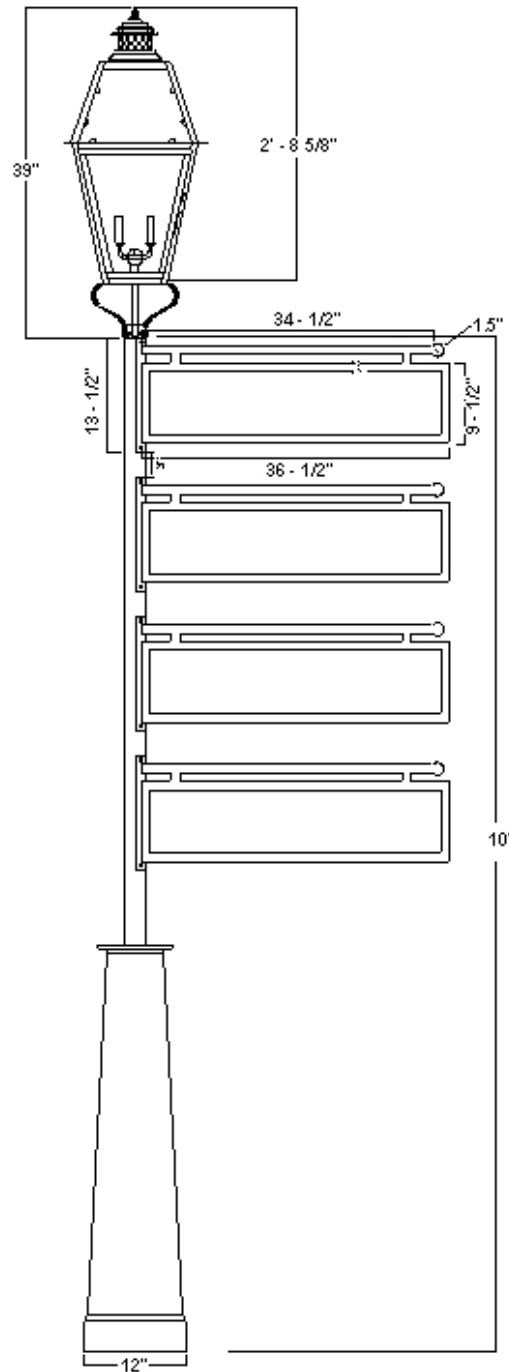
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DETAIL SITE PLAN



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REQUEST _____ Sign Variance _____



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