

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: April 7, 2014****CASE NUMBER**

5883

APPLICANT NAME

Thomas G. & Susan W. Thomas

LOCATION1744 Hunter Avenue
(Northeast corner of Hunter Avenue and Hannon Avenue)**VARIANCE REQUEST****SETBACK:** Side Street Yard Setback Variance to allow the construction of a 6' high privacy fence setback 2' from the side street property line in an R-1, Single-Family Residential District; the Zoning Ordinance requires a 20' side street yard setback for a 6' high privacy fence in an R-1, Single-Family Residential District.**ZONING ORDINANCE
REQUIREMENT****SETBACK:** The Zoning Ordinance requires a 20' side street yard setback for a 6' high privacy fence in an R-1, Single-Family Residential District.**ZONING**

R-1, Single Family Residential

AREA OF PROPERTY

0.29 ±Acres

**TRAFFIC ENGINEERING
COMMENTS**

The construction of the proposed 6' fence will not impact line of sight for the traveling public on either Hannon Avenue or Hunter Avenue. The location of the wall will not impact line of sight for the adjacent neighbor at 173 Hannon Avenue.

**CITY COUNCIL
DISTRICT**

District 2

ANALYSIS

The applicant is requesting a Side Street Yard Setback Variance to allow the construction of a 6' high privacy fence setback 2' from the side street property line in an R-1, Single-Family Residential District; a 20' side yard setback is required for a privacy fence over 3' high in an R-1 Single-Family Residential District.

The applicant states the following:

“The attached application is a Board of Zoning Adjustment for a site variance. Specifically, a variance is requested to construct a 6-ft privacy fence with a 2-ft setback from the city sidewalk to replace an existing 4-ft white picket fence with a 2-ft setback from the city sidewalk along a portion of Hannon Avenue

The location of the property is near the intersection of Houston St. and Government St., one block East of Houston St. and one block North of Government St. The lot is a corner lot at the intersection of Hunter Ave. and Hannon Ave. The front of the property faces Hunter Ave., the driveway opens onto Hannon Ave. The owners want to construct a 6-ft. privacy fence enclosing a portion of the backyard.

The proposed 6- ft. privacy fence was designed by Douglas Kearly and plans were accepted by the owners on October 18th, 2013. Copies of the plans are included in this application.

- *An application was made to the City of Mobile Architectural Review Board for approval of the plans. A Certificate of Appropriateness was issued on November 6th 2013. A copy is attached.*
- *A quote for construction was obtained from Mobile Fence Co. on November 13, 2013. A copy is attached.*
- *An application for a building permit on November 15th, 2013 was denied.*

The owners visited the City of Mobile Urban Development Department on December 18th, 2013 and spoke with Marie Cross. She stated that a 6-ft privacy fence on the proposed location could be built directly adjacent to a sidewalk only if a fence directly adjacent to a sidewalk has already been built within 100 feet of the proposed construction site. The nearest privacy fence to 1744 Hunter Ave that is directly adjacent to a sidewalk is 136 feet away, enclosing the backyard of the corner lot at 1736 Hunter Ave.

A Board of Zoning Adjustment is requested to construct a privacy fence adjacent to the sidewalk along Hannon Ave as shown in the attached plans. The requested setback between the fence and the city sidewalk is 2 feet. The reasons for requesting the variance are as follows:

- *The owners have large dogs. The existing 4-ft. picket fence, which is set back 2 feet from the city sidewalk, is insufficient to prevent potential contact between the dogs and passersby. A solid privacy fence would provide a buffer and would cut down on barking.*
- *Since the house is on a corner lot, there is no area of the property that cannot be seen from either Hunter Ave. or Hannon Ave. The owners would like to have an enclosed private backyard.*
- *The Architectural Review Board has already approved the plans.*

- *There are many examples of corner lots in Midtown that have 6-ft. privacy fences that enclose backyards and that are also directly adjacent to the city sidewalk. A number of examples are shown in the attached pictures (in addition to the required seven (7) to ten (10) photographs of the site).*

The owners respectfully request that this application be approved. The Board of Zoning Adjustment application is attached, as are the materials requested on the Board of Zoning Adjustment checklist.

The fence will be constructed immediately upon obtaining approval, if this application is successful. Construction is expected to take approximately two to three working days. The approximate cost will be \$4000 dollars. "

The applicant states that the reason for the variance is because they have large dogs and the existing 4' picket fence is insufficient to prevent potential contact between the dogs and passerby. The applicant also states that because the house is a corner lot there is no area of the property that cannot be seen from the street, and they would like to have an enclosed private backyard. Although the owner's privacy is a valid concern there are other concerns that should also be taken into consideration. The Zoning Ordinance establishes setbacks along street frontage in order to maintain a consistent streetscape and allow adequate visibility to enter and exit properties. The entering and exiting of vehicles at the site may be a concern, since the fence would be 2' from the property line, and may make it difficult to see pedestrians on the sidewalk at the applicants' driveway.

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.

It should be noted, in 2002 a building permit for a picket fence was approved for this site with stipulations that the fence could only be 36" maximum height within the 25' front yard setback and 20' within the side street yard setback". The applicant states that the existing picket fence is "4 feet high" which exceeds the initial approved building permit of 36".

The applicant also states that "there are many examples of corner lots in Midtown that have 6-ft privacy fences that enclose backyards and that are also directly adjacent to the city sidewalk". Numerous images were submitted showing a privacy fence on a corner lot, some where located in the Old Dauphin Way and Leinkauf Historic District. However, not all of the locations were within the historic District, nor were all of the fences legally installed or approved by the Board.

The site is located in the Old Dauphin Way Historic District and although the applicant has not demonstrated that a hardship would be imposed by a literal interpretation of the Zoning Ordinance, the Board has approved similar request in this area. If there were existing fences with the same conditions within 150 feet of the site, the Historic District Overlay would have allowed construction of the fence without the need for an application to the Board.

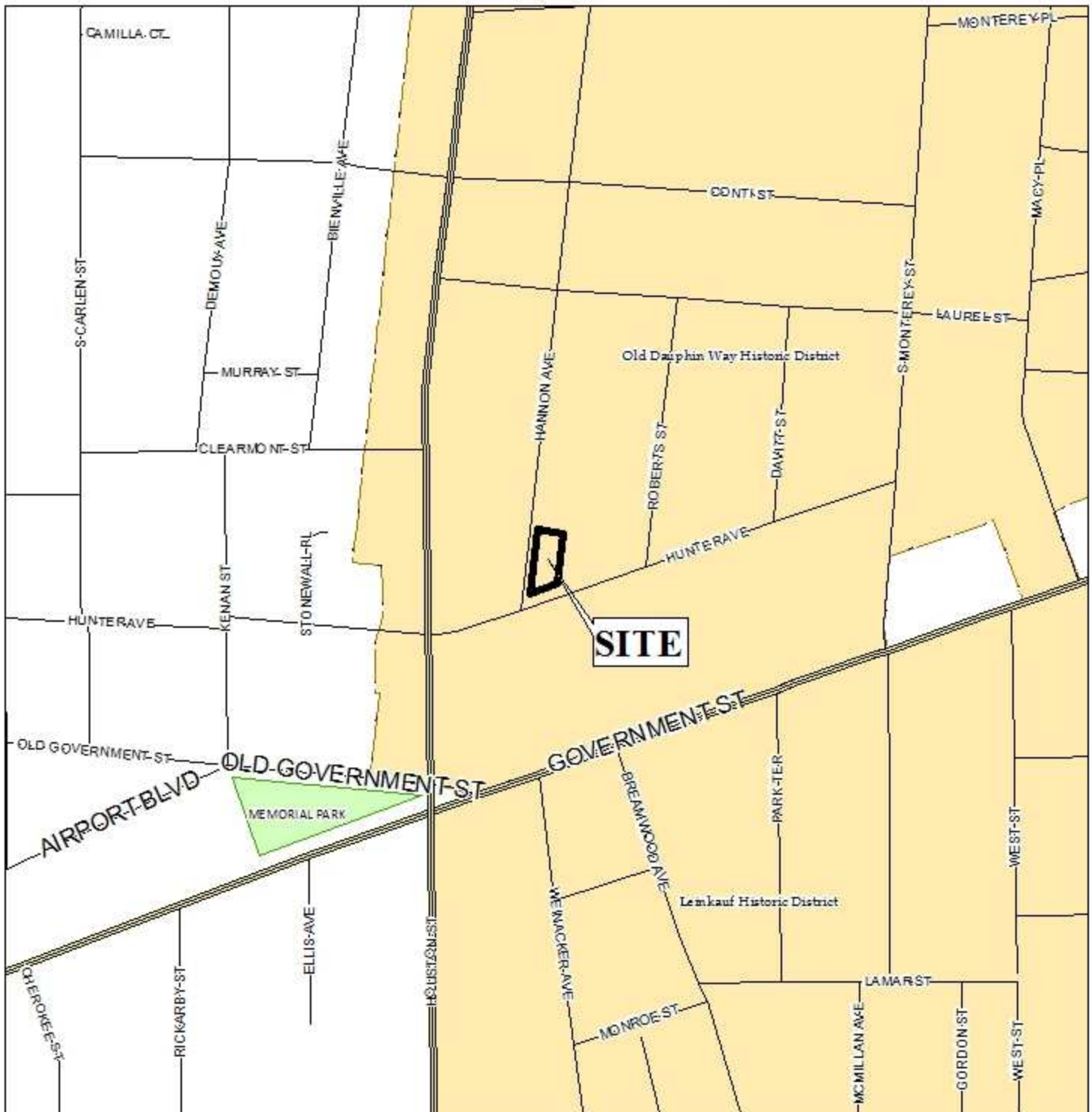
Traffic Engineering has stated that the construction of the proposed 6' fence will not impact line of sight for the traveling public on either Hannon Avenue or Hunter Avenue.

If a privacy fence were to be constructed outside of the required 20' side street setback, the fence would encroach into a third of the applicant's property and align with the side of the house. This would cause a loss of use for the side and rear yard closest to Hannon Avenue. However, the applicant has failed to illustrate a hardship associated with the property and its location.

RECOMMENDATION: Based upon the preceding, staff recommends to the Board the following findings of facts for denial:

- 1) Approving the variance will be contrary to the public interest in that it is contrary to Section 64-4.D.3 of the Zoning Ordinance regarding side street yard setbacks within an R-1, Single-Family Residential zoning district;
- 2) Special conditions, such as a hardship to the property, do not exist that a literal enforcement of the provisions of the chapter will 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 most of the nearby residentially zoned lots in the immediate vicinity appear to have been developed in accordance with the Zoning Ordinance.

LOCATOR MAP



APPLICATION NUMBER 5883 DATE April 7, 2014

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REQUEST Side Street Yard Setback Variance



BOARD OF ADJUSTMENT

VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units.

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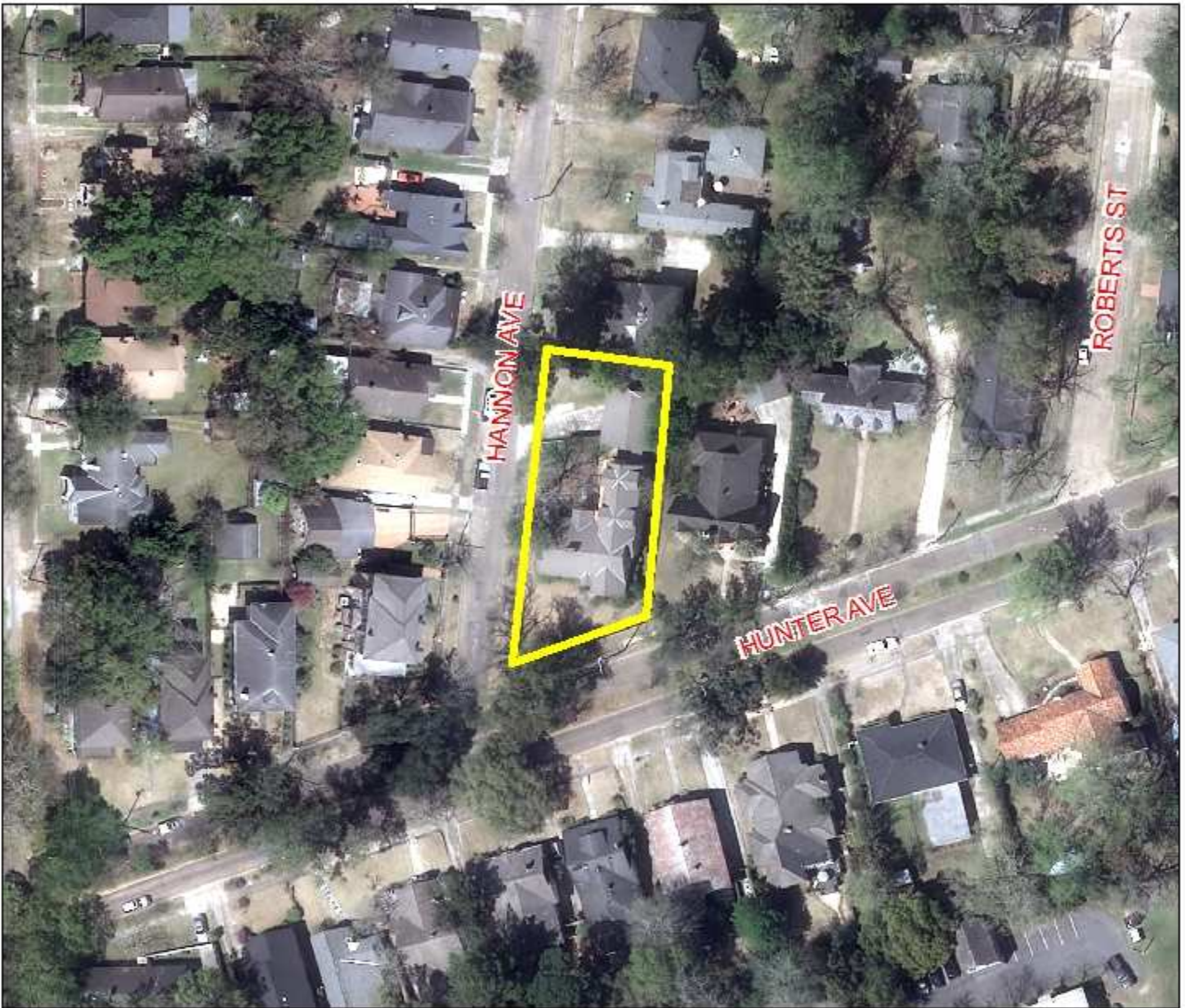
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LEGEND

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



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units.

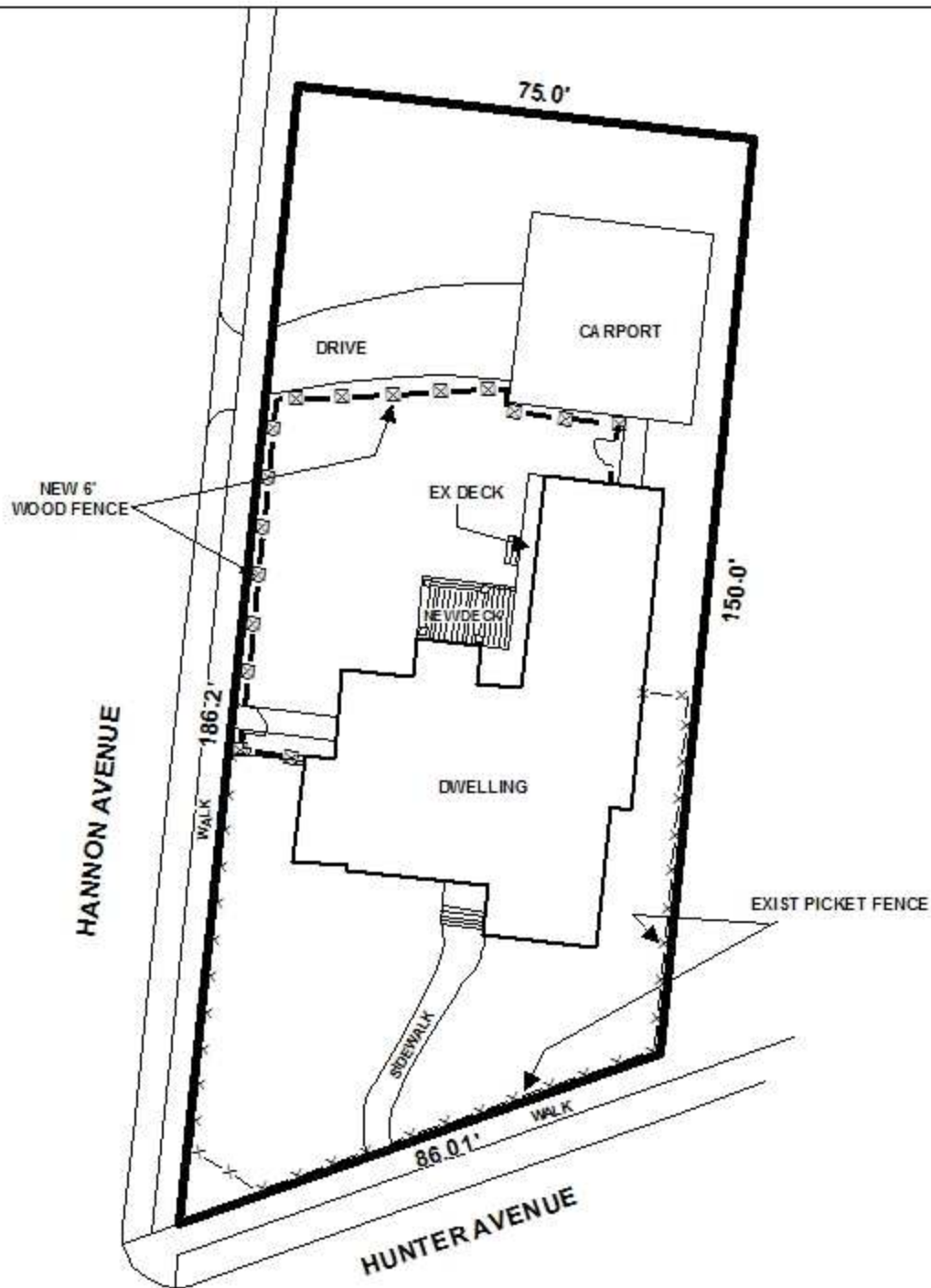
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SITE PLAN



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