

**BOARD OF ZONING ADJUSTMENT  
STAFF REPORT**

**Date: June 2, 2014**

**CASE NUMBER** 5896/4741/4717/4648/4063

**APPLICANT NAME** Ben Cummings, Cummings Architecture

**LOCATION** 3280 Dauphin Street  
(East I-65 Service Road North at the Northeast corner of  
Dauphin Street and Interstate 65)

**VARIANCE REQUEST** **SETBACK:** Setback Variance to enclose an existing covered drive-thru teller structure within a side-street side yard setback, 17'± from the property line, in a B-3, Commercial Business District.

**ZONING ORDINANCE REQUIREMENT** **SETBACK:** The Zoning Ordinance requires a 20' side-street side yard setback in a B-3, Community Business District.

**ZONING** B-3, Community Business District.

**AREA OF PROPERTY** 5.06± Acres

**ENGINEERING COMMENTS** No comments

**TRAFFIC ENGINEERING COMMENTS** If approved, the existing asphalt and curbing in the drive-thru area should be removed and grassed, as stated in the applicant's narrative.

**CITY COUNCIL DISTRICT** District 1

**ANALYSIS** The applicant is requesting Setback Variance to enclose an existing covered drive-thru teller structure within a side-street yard setback, 17' ± from the property line, in a B-3, Commercial Business District; the Zoning Ordinance requires a 20' side-street yard setback in a B-3, Community Business District.

The site has received several variances from the Board of Adjustment. At the Board's March 3, 1986 meeting, the site received approval to allow a four-lane drive-up teller station 13' from the side-street property line, thus encroaching into the side yard setback. The site also received sign variances at the Board's June 3, 1997; March 3, 1998; and May 6, 1998 meetings.

The applicant states that:

*The three buildings on this property were constructed in 1978. In 1987 a variance was granted for "The Bank of Mobile", a tenant at that time, to construct a covered drive-thru teller structure within the front setback. The bank vacated the building many years ago and the drive-thru has not been used for its intended purpose since then. The current tenant is a neurology office which has an MRI machine. The most logical location to place the new machine that works with the flow of patients is the area of the old drive-thru. Only one column of the existing structure encroaches into the right-of-way. The majority of the structure that is in the right-of-way is the roof overhang. The new walls for the new MRI machine room will be placed at the column line. So, only a small portion of the proposed room will fall within the setback line. The structure is existing and has been there 27 years with out a problem or incident. Enclosing the space under the roof does not adversely affect the property or create a site visibility issue. The current asphalt drive for the drive-thru will be removed and converted into green space.*

Because the applicant proposes to enclose the existing structure, the parking ratio for the site will increase. The current site plan does not provide any information on the size of the existing structures, nor does it illustrate an parking spaces or information on the number of parking spaces provided. However, based on the site plan submitted with the March 3, 1986 application, the site has approximately 230 parking spaces, which would be sufficient for the approximately 64,925± square feet of office space. If approved, the site plan should be revised to provide the total square footage as well as the parking spaces to insure that the minimum amount of required parking spaces are provided.

The applicant does propose to remove the asphalt drive associated with the existing drive-thru area, and convert it to landscaped area. It appears that the site may have a non-conforming amount of landscaped area, so the proposed addition of green space will help to bring the site into a more compliant state.

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.

Based on the previous approval of the canopy for the drive-up teller station within 13' of the side-street side-property line, it may be appropriate to approve the enclosure of the actually built structure within 16'± of the side-street side-property line.

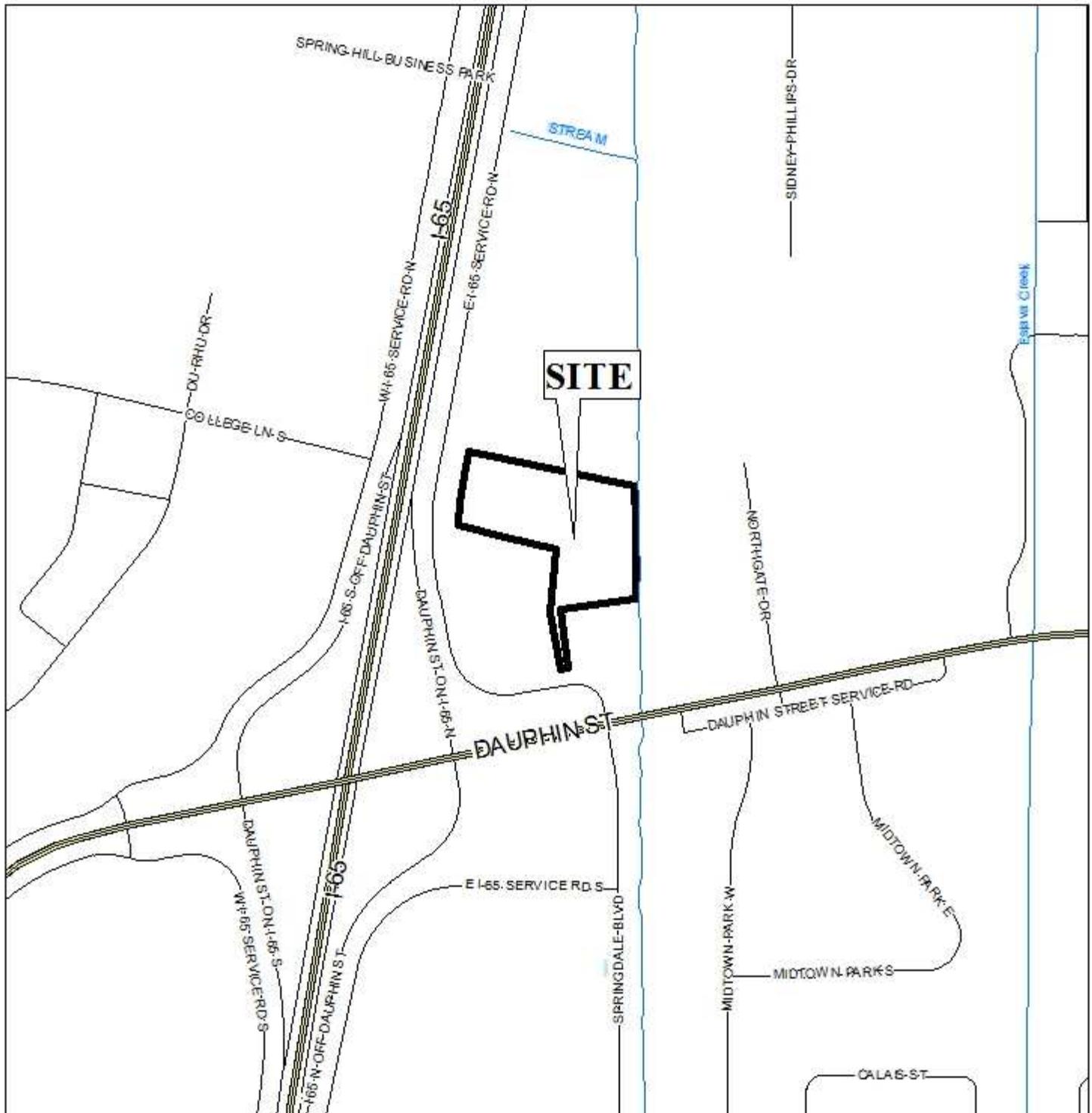
**RECOMMENDATION:** Based on the preceding, staff recommends to the Board the following findings of fact for Approval:

- 1) approving the variance request will not be contrary to the public interest in that a previous variance allowed the existing canopy within 13' of the side-street side-yard property line;
- 2) special conditions, such as the interior layout of the structure which makes the proposed location of the new MRI optimal, exist such that a literal enforcement of the provisions of the chapter will result in unnecessary hardship; and
- 3) the spirit of the chapter shall not be observed and substantial justice shall be done in that no further encroachment into the side-street side-yard setback will be occurring, and additional landscaped area will be provided.

Therefore, this application is recommended for approval, subject to the following conditions:

- 1) submittal of a revised site plan providing the total proposed square footage for the site as well as the number of parking spaces; and
- 2) full compliance with all municipal codes and ordinances.

# LOCATOR MAP



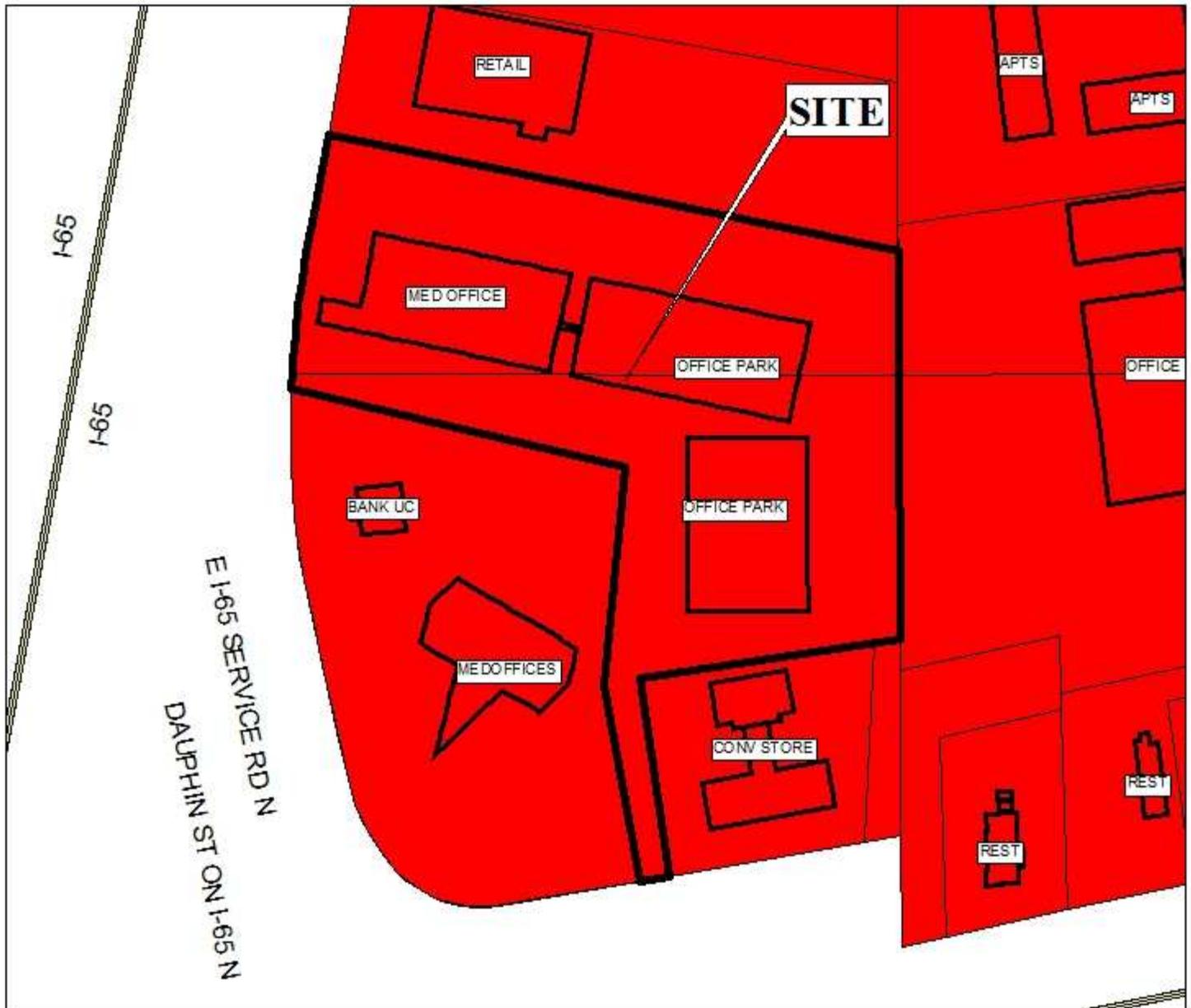
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REQUEST Setback Variance



# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING

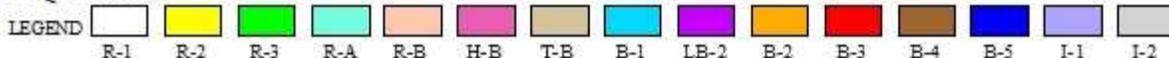


The site is surrounded by commercial units.

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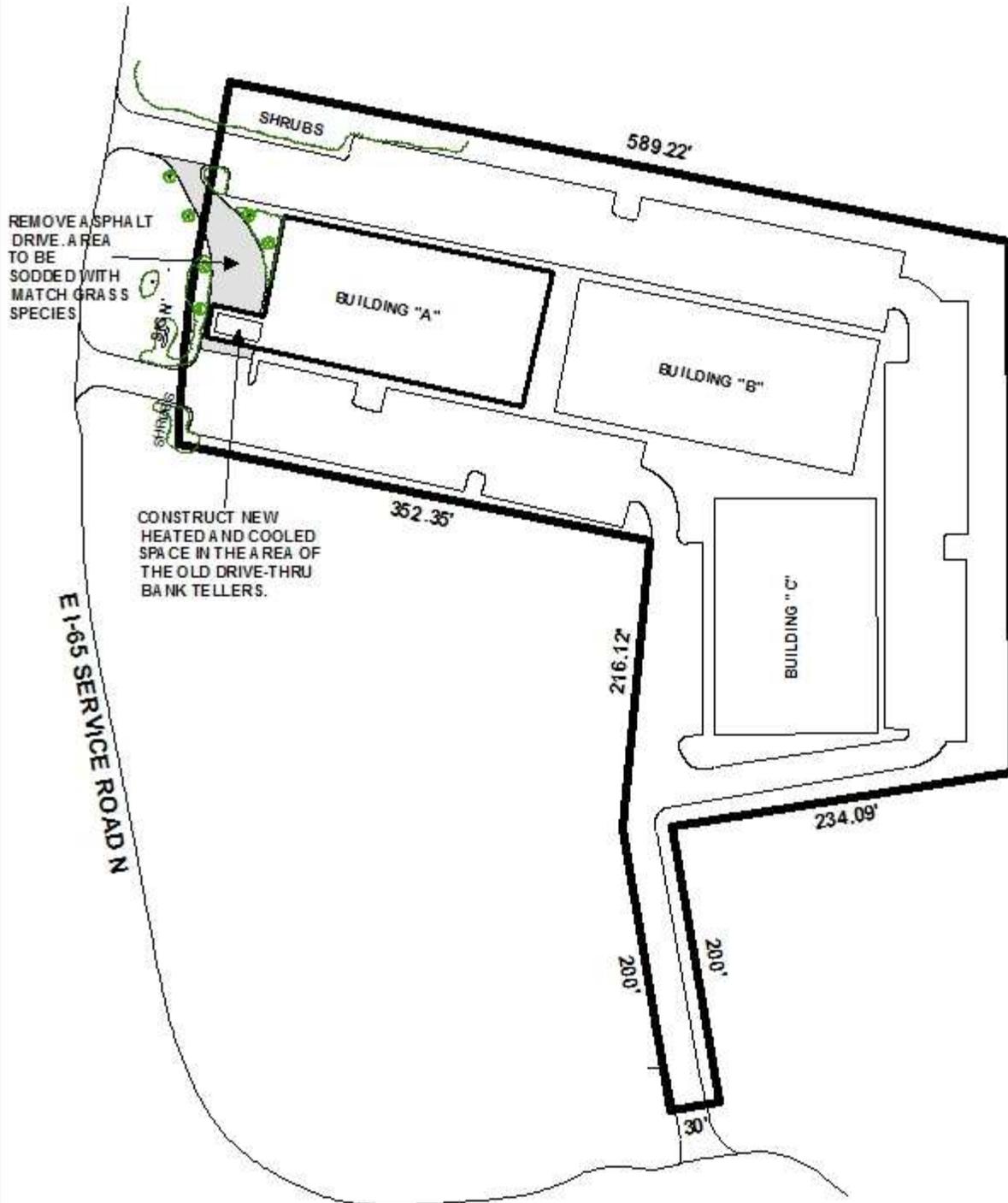


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# SITE PLAN



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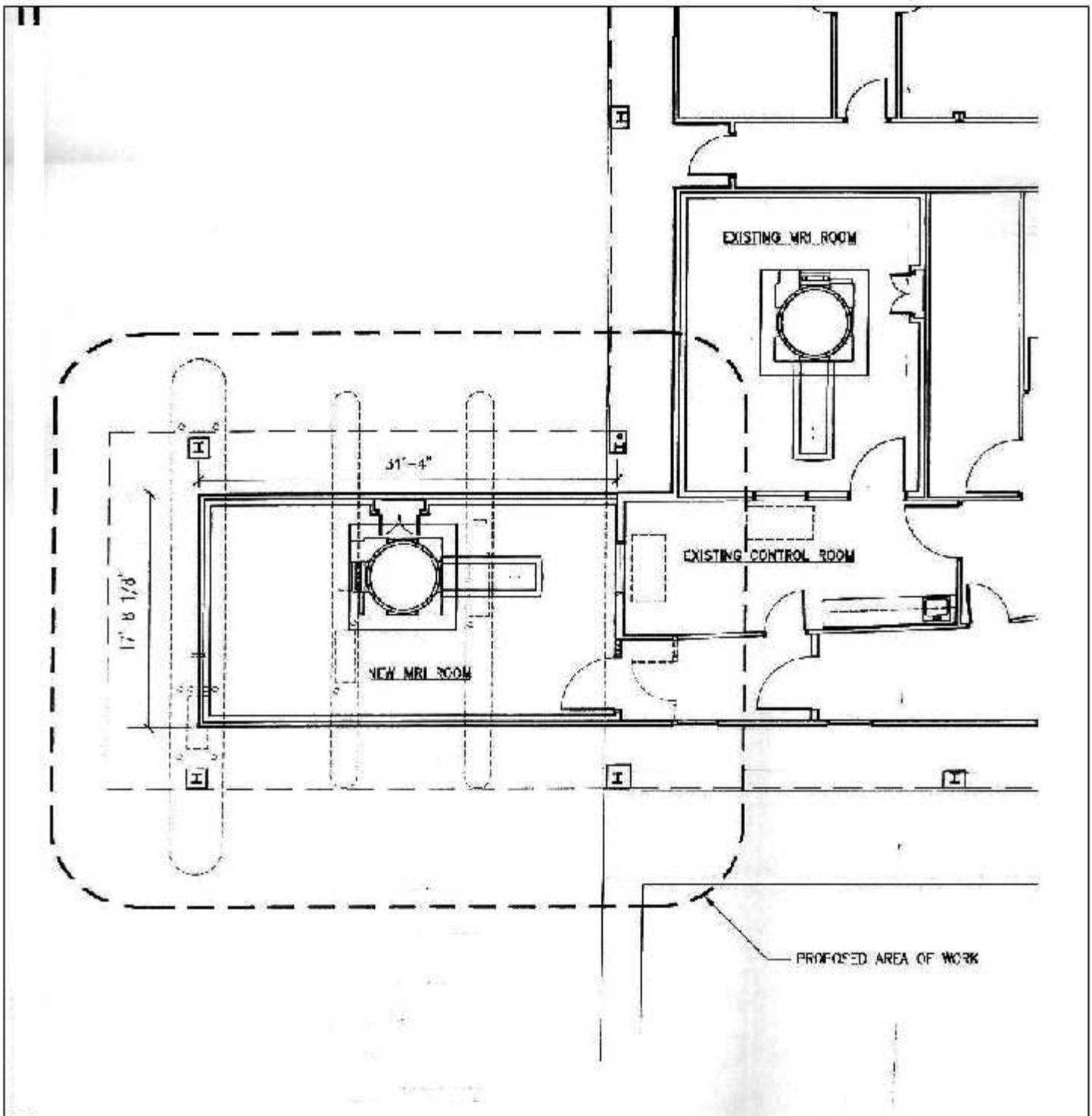
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# DETAIL SITE PLAN



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