

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: February 5, 2018****CASE NUMBER**

6155

APPLICANT NAME

Branch Towers III, LLC

LOCATION

Southwest corner of South Sage Avenue and Eslava Creek Parkway.

VARIANCE REQUEST**HEIGHT:** Height Variance to allow a 140' tall telecommunications tower in a B-1, Buffer Business District.**SETBACK:** Setback Variance to allow the tower 26.25' from the property line.**LANDSCAPING:** Landscaping Variance to allow no tree plantings.**ACCESS/MANEUVERING:** Access/Maneuvering Variance to allow a gravel access road.**ZONING ORDINANCE
REQUIREMENT****HEIGHT:** The Zoning Ordinance limits structures to a 45' height in a B-1, Buffer Business District.**SETBACK:** The Zoning Ordinance requires telecommunications towers to be setback the height of the tower (140') from the property line.**LANDSCAPING:** The Zoning Ordinance requires compliance with all tree and landscaping requirements.**ACCESS/MANEUVERING:** The Zoning Ordinance requires all access and maneuvering areas to be paved with concrete, asphaltic concrete, asphalt, or approved alternative surfaces in a B-1, Buffer Business District.**ZONING**

B-1, Buffer Business

AREA OF PROPERTY

3.44± Acres

**TRAFFIC ENGINEERING
COMMENTS**

If a surface variance is approved, aggregate cannot extend into the right-of-way.

**ENGINEERING
COMMENTS**

HEIGHT VARIANCE No comments.

SETBACK VARIANCE No comments.

LANDSCAPING VARIANCE No comments.

**ACCESS/MANEUVERING
VARIANCE**

If the aggregate surfacing is approved for use the applicant will need to have the following conditions met:

- a. Submit and receive a TIER 2 Land Disturbance Permit for the proposed site development through Central Permitting.
- b. Submit a ROW Permit (City of Mobile) for the work within the Public ROW. Aggregate surfacing will NOT be allowed within the public ROW.

**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 2015-116 and City Code Chapters 57 and 64).

**CITY COUNCIL
DISTRICT**

District 5

ANALYSIS

The applicant is requesting Height, Setback, Landscaping and Access/Maneuvering Variances to allow a 140' tall telecommunications tower 26.25' from the property line with a gravel access road and no tree planting in a B-1, Buffer Business District; the Zoning Ordinance limits the structures to a 45' height, requires telecommunications towers to be setback a distance equal to the height of the tower, requires compliance with all tree and landscaping requirements, and requires all access and maneuvering areas to be paved in concrete, asphaltic concrete, asphalt, or approved alternative surfaces in a B-1, Buffer Business District.

The applicant has also submitted a Planning Approval application to allow the proposed tower in a B-1 district, and a two-lot Subdivision application to separate the tower lease site from the parent parcel and create two legal lots of record, scheduled to be heard at the February 1st Planning Commission meeting. If the variance requests are approved, they should be subject to the approval of those two requests.

The Telecommunications Towers and Facilities Ordinance establishes specific criteria for granting setback and height variances. The Ordinance states that a modification to the setback requirement should be considered in situations where “the only alternative is to locate the tower at another site which poses a greater threat to the public health, safety or welfare or is closer in proximity to a residentially zoned land.”

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 site has been given a District Center land use designation, per the recently adopted Future Land Use Plan and Map. The Future Land Use Plan and Map complements and provides additional detail to the Development Framework Maps in the Map for Mobile, adopted by the Planning Commission at its November 5, 2015 meeting.

This designation applies across the city to larger areas of existing mixed-use character or where such character is encouraged. These areas will include moderate to high-density residential (minimum densities of 6 du/ac) in dynamic, horizontal or vertical mixed use environments, to provide a balance of housing and employment.

District Centers generally serve several surrounding neighborhoods and may even have a city-wide or region-wide reach. As such, they are often anchored by a major commercial or institutional employer such as a shopping mall or a medical center.

Depending on location and assigned zoning, residential areas in District Centers may incorporate a mix of housing types, ranging from mid-rise multifamily buildings containing apartments and lofts, to townhouses and detached single-family homes. Major civic cultural institutions and public spaces provide regional and neighborhood destinations.

District Centers should be designed to induce pedestrian activity, with high quality streetscapes connecting the different components of a center as well as the center to its surrounding area. DC districts may be served by transit and include development of an intensity and design that supports transit use.

It should be noted that the Future Land Use Plan and Map components of the Map for Mobile Plan are meant to serve as a general guide, not a detailed lot and district plan. In many cases the designation on the new Future Land Use Map may match the existing use of land, but in others the designated land use may differ from what is on the ground today. As such, the Future Land

Use Plan and Map allows the Planning Commission and City Council to consider individual cases based on additional information such as the classification request, the surrounding development, the timing of the request, and the appropriateness and compatibility of the proposed use and, where applicable, the zoning classification.

The applicant states:

VARIANCES: *Height variance to allow 140' monopole and setback variance to allow 26.25' setback from lease parcel line; variance to allow gravel access road; landscape variance to waive landscape requirements. The height/setback situation occurred because of the necessary height of the structure required for the proposed use, but 52.5' x 60' is plenty of area for required ground space for the proposed use. The access road variance will greatly reduce storm water runoff in this flood prone area and the landscape variance is requested because the proposed site is already surrounded by trees. This property is different from other parcels in the search ring because it was the best property where the owner was agreeable and it provided the buffer and separation required by the ordinance.*

Concerning the Height Variance request, as required by Section 64-4.J.4.4 of the Zoning Ordinance, the applicant has submitted written, technical evidence from an engineer that the proposed Tower or Telecommunications Facilities cannot be installed or collocated on another tower or usable Antennae Support Structure in order to meet the coverage requirements of the applicant's wireless communications system. Propagation maps illustrating the need for the tower in the area have also been submitted. The applicant has submitted propagation maps indicating the in-fill coverage of the proposed tower within the area, and information indicating that the tower will be capable of accommodating two additional cellular carriers. Also submitted was evidence that the tower meets the structural requirements of Section 64-4.J.6 of the Zoning Ordinance.

Documentation submitted indicates that the applicant attempted to collocate on the WKRG broadcast tower a short distance to the West of the subject site, but a structural analysis of that tower determined that it was not usable. A proposal to replace that tower ("drop and swap") with a structurally suitable tower was not accepted. It should be noted that another existing tower at the Westlawn Elementary School is limited by a 2001 Variance to Mobile County School Board use only.

Specific to the Height Variance request, the applicant states that the 140' height is required for the proposed use. In light of the technical data submitted and the illustration of a hardship imposed by the lack of existing towers within the area on which to collocate, the Height Variance request would seem reasonable.

With regard to the Setback request, the applicant basically states that the height of the tower is what triggers the need for the Variance since the 52.5' by 60' equipment compound provides ample area for the required ground space. It should be noted that the applicant erroneously calculated the tower setback from the edge of the equipment compound instead of the edge of the proposed lease parcel/property line, and the actual setback will be greater, approximately 37.5'

off the property line. As the lease parcel will be completely surrounded by the parent parcel from which it is being separated via the two-lot Subdivision, and as the technical data submitted supports this site selection, a hardship is illustrated in meeting the required lease parcel setbacks and the Setback Variance request would be justified. It should be pointed out that the tower will be located approximately 320' from the nearest residentially-zoned property and, therefore, no Residential Buffer Separation Variance request is required.

The applicant does not propose any landscaping or tree plantings for the site and bases the Variance request for such on the fact that site is already surrounded by trees. However, some trees would have to be removed to develop the tower site and no hardship has been illustrated to justify the granting of the Tree Planting Variance request, especially in light of the fact that sufficient area would be provided by the clearing for the tower lease parcel to provide the required number of trees.

The site plan submitted indicates a 6' chain link fence around the tower compound. However, the Chart of Permitted Uses of the Zoning Ordinance specifies communications towers must be enclosed by an 8' high fence. Therefore, the site plan should be revised to indicate an 8' high wooden privacy fence around the equipment compound. Although none is indicated on the site plan, it should be noted that no barbed wire or similar is allowed in B-1 districts.

The request for the Access/Maneuvering Variance is based on the assertion that the proposed gravel drive will greatly reduce storm water runoff in a flood prone area. It should be noted that the surface area required to provide a compliant paved drive is minimal compared to the total site area and that no hardship has been shown to justify a gravel access/maneuvering surface.

The applicant has demonstrated that hardships would be imposed by a literal interpretation of the Zoning Ordinance with respect to the height limitations and setback requirements for telecommunications towers and the Board should consider those requests for approval. However, the applicant has not demonstrated a hardship would be imposed with respect to the landscaping and access/maneuvering requirements and the Board should consider those requests for denial.

In light of the fact that there is an associated Planning Approval to allow the tower in the B-1 District and a two-lot Subdivision, and should the Commission deny the Planning Approval request, then the need for the requested variances would become a moot point.

RECOMMENDATION: Staff recommends to the Board the following findings of facts for Approval of the **Height** and **Setback** Variance requests:

- 1) Based on the fact that site selection was limited by non-availability of other larger sites, the variance will not be contrary to the public interest;
- 2) These special conditions (no sites in the area allow a for a 140' high structure and the site is of limited space) exist such that a literal enforcement of the provisions of the chapter will result in unnecessary hardship; and

- 3) That the spirit of the chapter shall be observed and substantial justice done to the applicant and the surrounding neighborhood by granting the variances in that no other tower sites were available for collocation or new construction within the area.

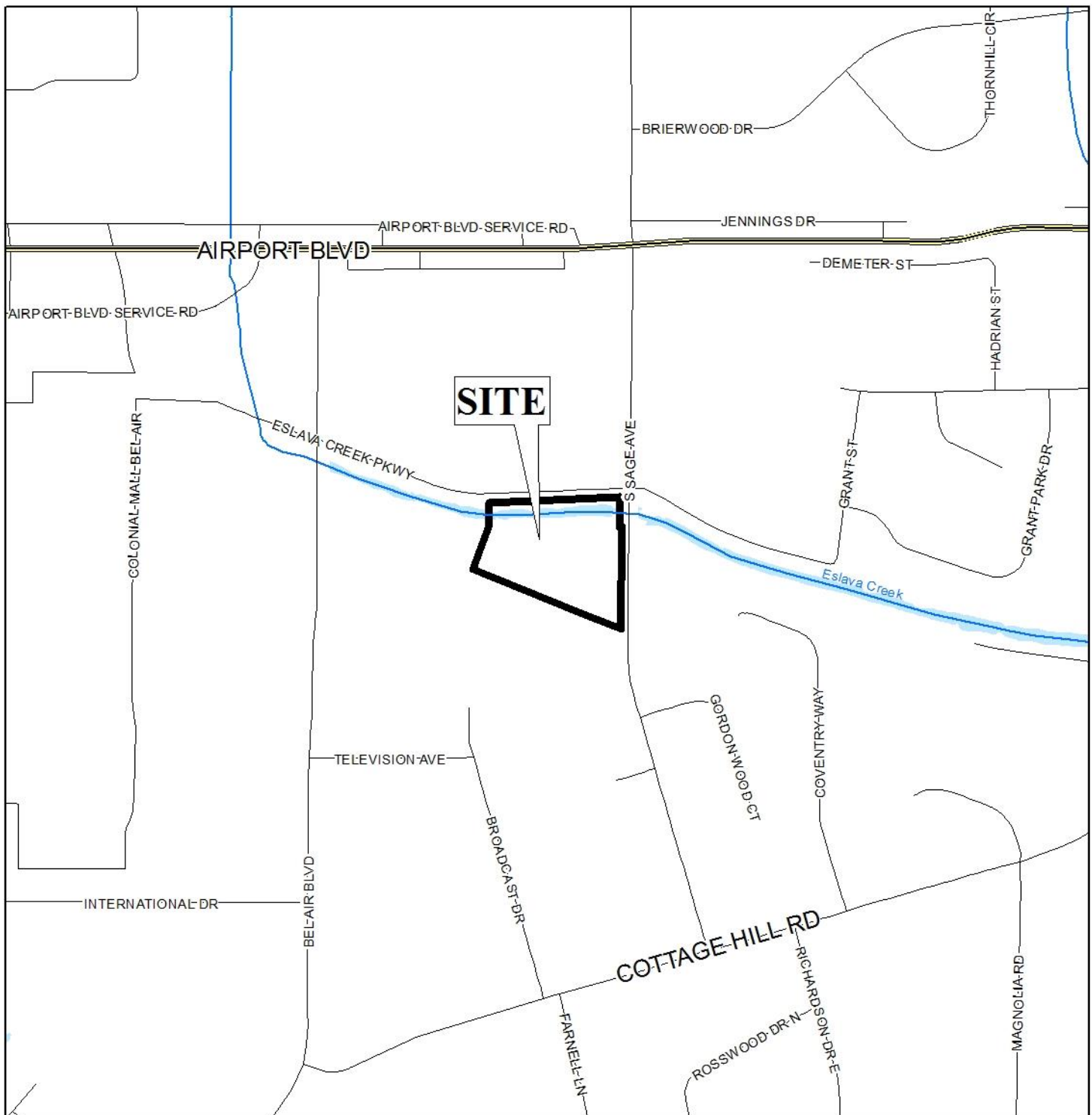
Therefore, the Height and Setback Variances are recommended for Approval, subject to the following conditions:

- 1) the tower is limited to a monopole design with an over-all structure height of 140', including antennae;
- 2) subject to the Planning Commission approval of the Planning Approval and Subdivision applications for the proposed tower and site;
- 3) revision of the site plan to provide compliant tree plantings, to be coordinated with the Planning and Zoning Department;
- 4) revision of the site plan to indicate a compliant access/maneuvering paving surface;
- 5) revision of the site plan to indicate an 8' high wooden privacy fence enclosing the equipment compound;
- 6) placement of a note on the site plan stating that no barbed wire or similar fencing is allowed on the site;
- 7) subject to the Engineering comments: *[If the aggregate surfacing is approved for use the applicant will need to have the following conditions met: a. Submit and receive a TIER 2 Land Disturbance Permit for the proposed site development through Central Permitting. b. Submit a ROW Permit (City of Mobile) for the work within the Public ROW. Aggregate surfacing will NOT be allowed within the public ROW.];*
- 8) subject to the 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 2015-116 and City Code Chapters 57 and 64).];* and
- 4) full compliance with all municipal codes and ordinances..

Staff recommends to the Board the following findings of fact for Denial of the **Landscaping** and **Access/Maneuvering** Variance requests:

- 1) Approving the variance will be contrary to the public interest in that some trees would have to be removed from the site for the tower and compound construction and no hardship is illustrated to justify not providing compliant landscaping; and no hardship is illustrated by requiring compliant surfacing for the access/maneuvering areas;
- 2) Special conditions do not exist and there are no hardships which exist that make the approvals necessary; 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 no hardship is illustrated with respect to complying with the landscaping and access/maneuvering surface requirements of the Zoning Ordinance.

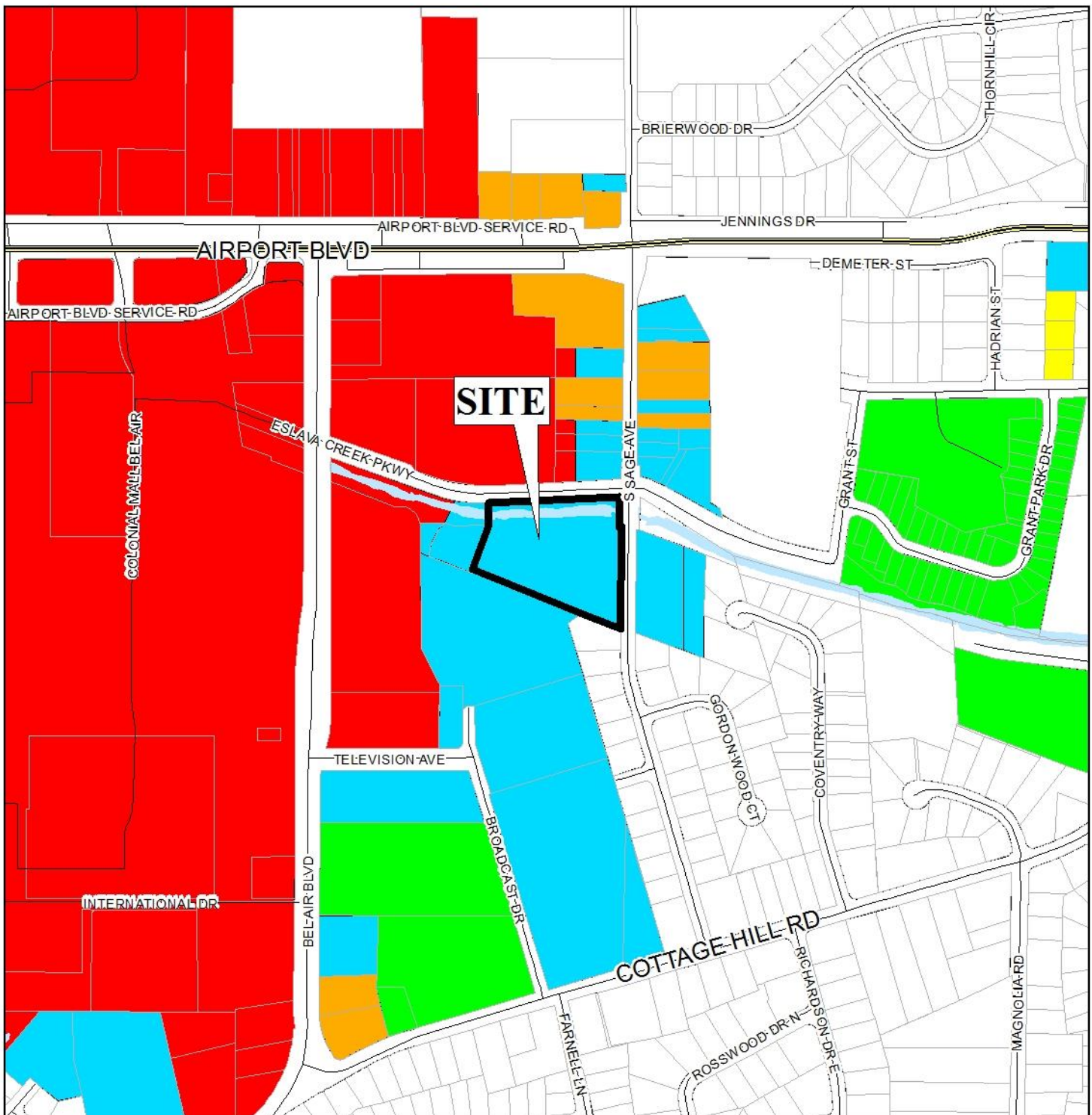
LOCATOR MAP



APPLICATION NUMBER 6155 DATE February 5, 2018
APPLICANT Branch Towers III, LLC
REQUEST Height, Setback, Landscape, and Access and Maneuvering Variances



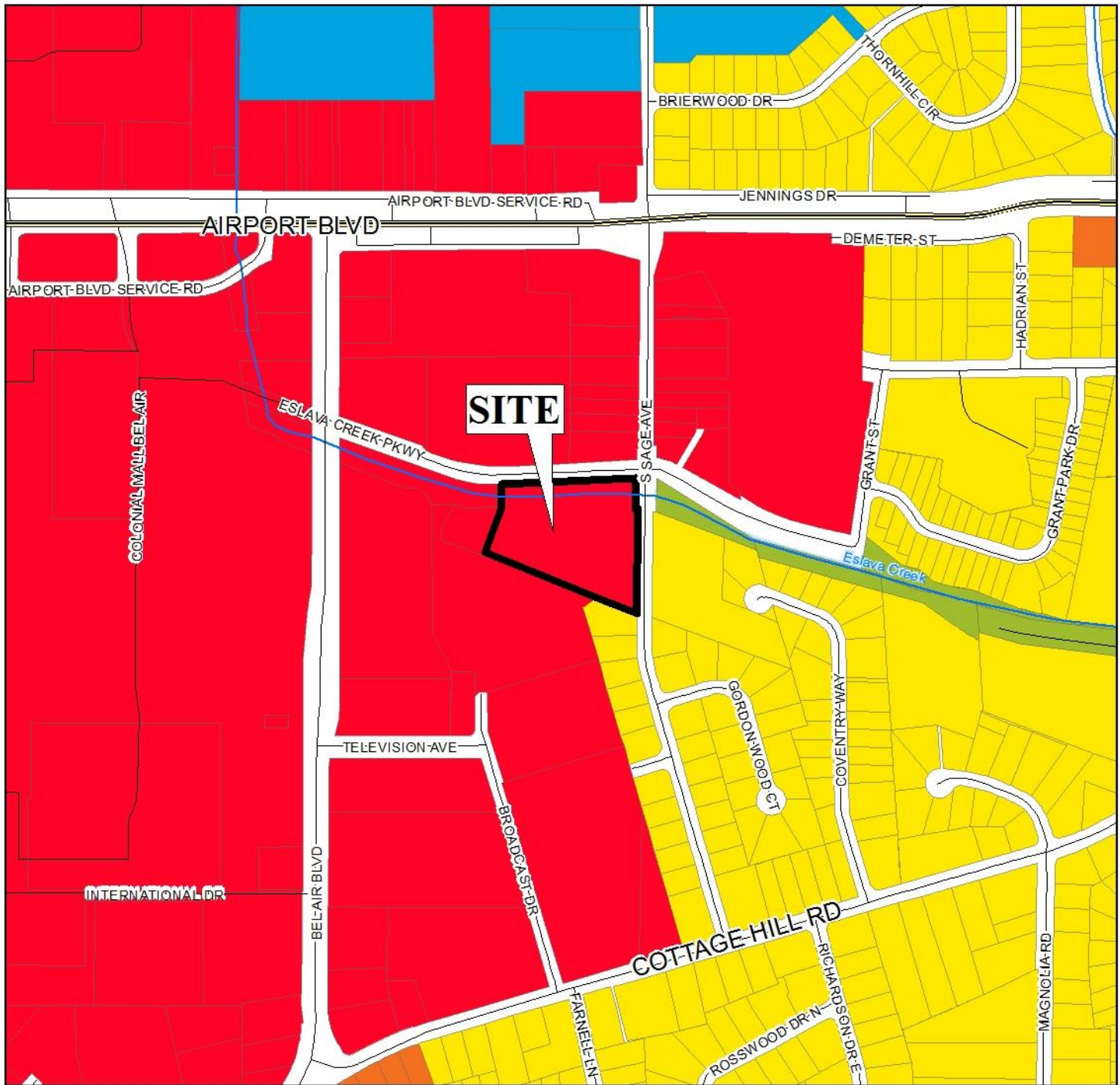
LOCATOR ZONING MAP



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FLUM LOCATOR MAP

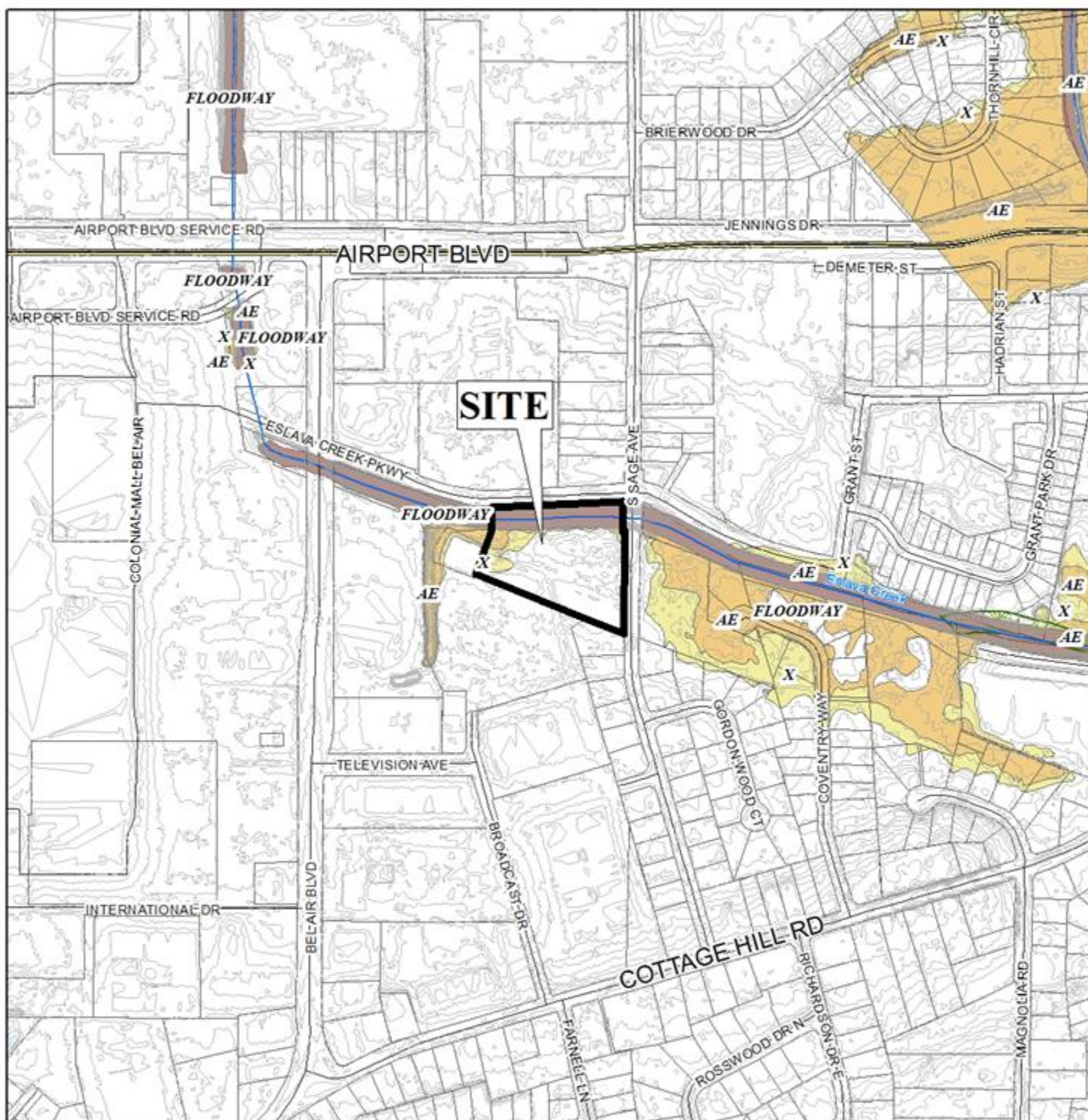


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|---------------------------|-----------------------------------|---------------------|--------------------|
| Low Density Residential | Neighborhood Center - Traditional | Downtown Waterfront | Parks & Open Space |
| Mixed Density Residential | Neighborhood Center - Suburban | Light Industry | Water Dependent |
| Downtown | Traditional Corridor | Heavy Industry | |
| District Center | Mixed Commercial Corridor | Institutional | |



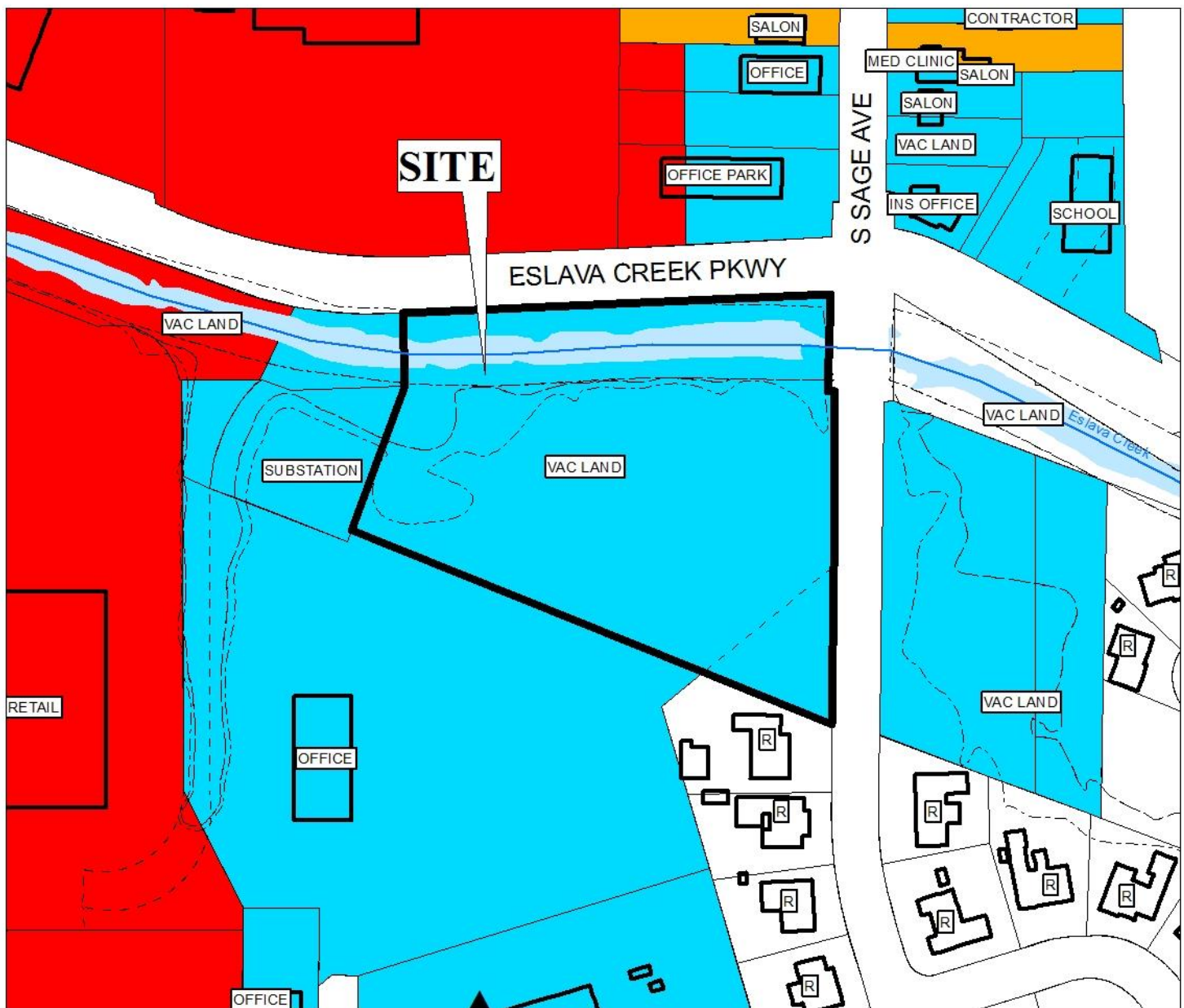
ENVIRONMENTAL LOCATOR MAP



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BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by commercial units. Residential units are located to the southeast.

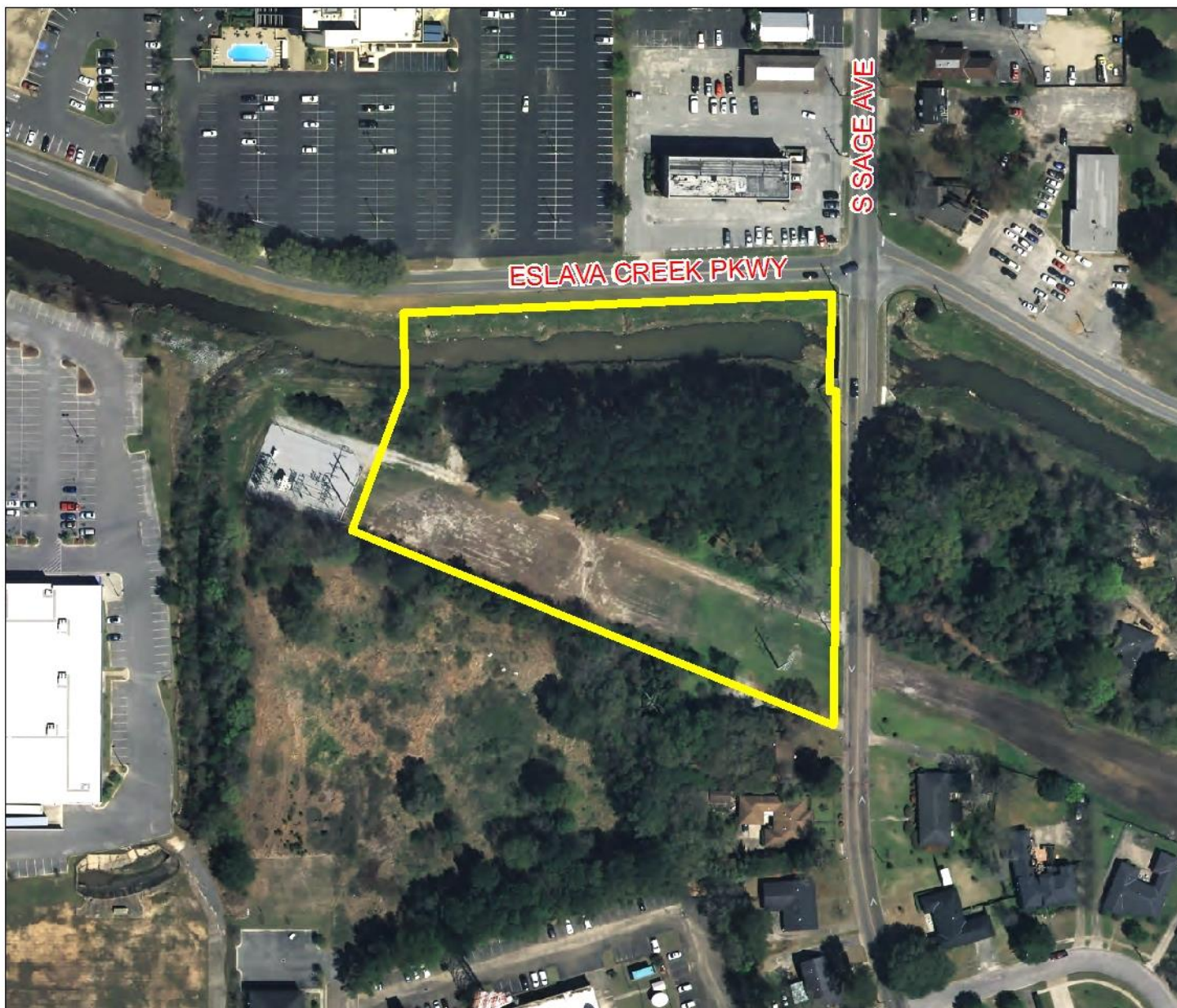
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 R-A	 R-3	 T-B	 B-2	 B-5	 MUN	 SD-WH	 T5.1
 R-1	 R-B	 B-1	 B-3	 I-1	 OPEN	 T3	 T5.2
 R-2	 H-B	 LB-2	 B-4	 I-2	 SD	 T4	 T6



BOARD OF ADJUSTMENT

VICINITY MAP - EXISTING AERIAL

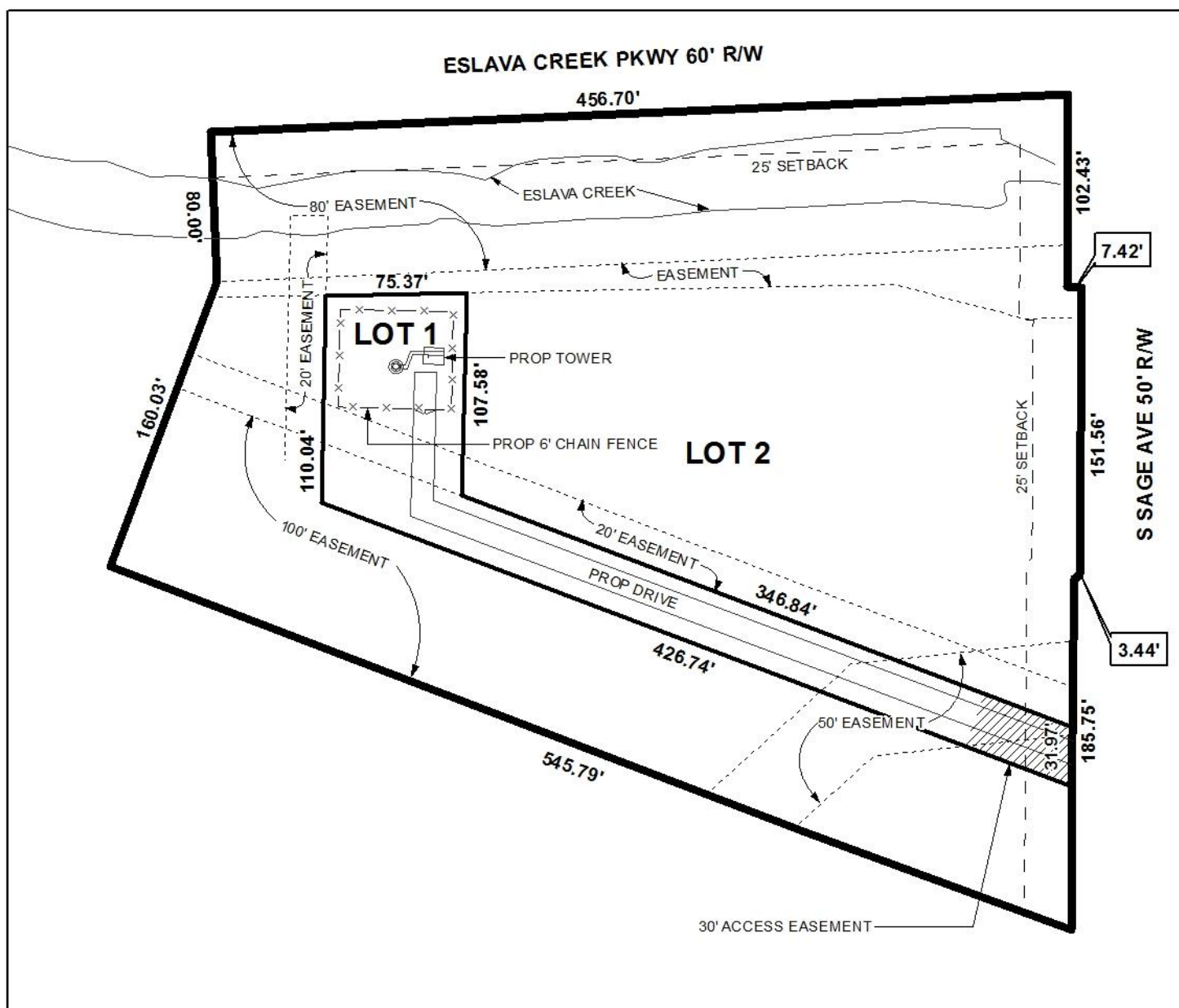


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SITE PLAN



The site plan illustrates the easements, setbacks, proposed lots, proposed drive, and proposed tower location.

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