

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: May 2, 2022****CASE NUMBER**

6455

APPLICANT NAME

Puddles & Percys Properties LLC (Mark Gacek, Agent)

720 Hilcrest Road
(West side of Hillcrest Road, 153'± South of Airport
Boulevard)**VARIANCE REQUEST****FENCE HEIGHT:** To allow a twelve (12)-foot high
security fence in a B-3, Community Business District.**ZONING ORDINANCE
REQUIREMENT****FENCE HEIGHT:** The Zoning Ordinance limits fence
heights to eight (8) feet in a B-3, Community Business
District.**ZONING**

B-3, Community Business District

AREA OF PROPERTY

1.9± Acres

**CITY COUNCIL
DISTRICT**

District 6

**ENGINEERING
COMMENTS**

No comments.

**TRAFFIC ENGINEERING
COMMENTS**

No comments.

**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 [Act 929 of the 1961 Regular Session of the Alabama Legislature (Acts 1961, p. 1487), as amended, and City Code Chapters 57 and 65]. Private removal of trees in the right-of-way will require approval of the Mobile Tree Commission. Removal of heritage trees from undeveloped residential sites, developed residential sites in historic districts, and all commercial sites will require a tree removal permit.

FIRE DEPARTMENT**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). Fire apparatus access is required to be within 150' of all commercial and residential buildings. A fire hydrant is required to be within 400' of non-sprinkled commercial buildings and 600' of sprinkled commercial buildings.

ANALYSIS

The applicant is requesting a Fence Height Variance to allow a twelve (12)-foot high security fence in a B-3, Community Business District; the Zoning Ordinance limits fence heights to eight (8) feet in a B-3, Community Business District.

The site has been given a Neighborhood Center – Suburban 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 land use designation applies to smaller hubs of mixed commercial, community, and recreational activity that cater to adjacent residential areas. Many of these centers exist today in some form. Therefore, the following common principles apply not just to the future development of new centers, but also to the redevelopment (wholesale or incremental) of existing centers.

The following are General Principles for Neighborhood Centers (NC): NC should support a limited amount of commercial employment. NC should incorporate some residential use, which may vary in type from detached single family, townhouse, accessory and live-work units in mixed use and low-rise multifamily structures. The residential density in NC designations –ranging from 4 to 10 du/ac— must be compatible in character with that of surrounding residential development, providing appropriate transitions in height, massing and other buffering from one land use district to the next. The retail and housing uses should merge around vibrant, compact, accessible nodes, located at key neighborhood intersections or along short road segments. The NC nodes should be connected to the surrounding neighborhood and nearby public uses (e.g., schools, parks, etc.) via well-designed sidewalks and complete streets.

While the above-listed principles are common to all NC districts, the design attributes of neighborhood centers generally vary depending on whether a center is in a more “traditional” or more “suburban” context.

Additional Attributes of Neighborhood Centers:

NC in traditional contexts: These tend to be in those areas east of the Beltline and correspond to MxDR neighborhoods. In these NCs, buildings should orient to the street, with on-site parking typically pushed to the back of the site. The design qualities of the public realm are emphasized, including the provision of continuous sidewalks, tree canopy, pedestrian amenities, on-street parking and bicycle facilities where appropriate.

NC in suburban contexts: These generally are located among the LDR land use designations in the areas west of the Beltline. Where they exist, these centers currently have a more pronounced

vehicular orientation. Therefore, the emphasis is on retrofitting to improve internal walkability (e.g., through the addition of sidewalks, tree canopy, protection from the elements) and external connectivity to the surrounding areas (via sidewalks, paths and trails, street crossings, transit stops, etc.) and to increase the mix and density of uses (e.g., infill of outparcels, addition of housing, etc.).

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 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:

Plans are currently being developed for an interior modification/renovation of the existing building at 720 Hillcrest Road, formerly occupied by PNC Bank. It will be the future home of the Gacek Ear & Sinus Clinic and will also include an "in house" compounding pharmacy. It is Dr. Gacek's intent to secure the site from a stream of people currently cutting through the property before renovation construction begins and also to secure the property and building from unwanted trespassers once the clinic and pharmacy are in operation.

Dr. Gacek would like to install a 12' iron security fence (please see attached fence specifications) as shown on the attached site plan; however, City of Mobile Zoning Ordinance only allows an 8' maximum fence height.

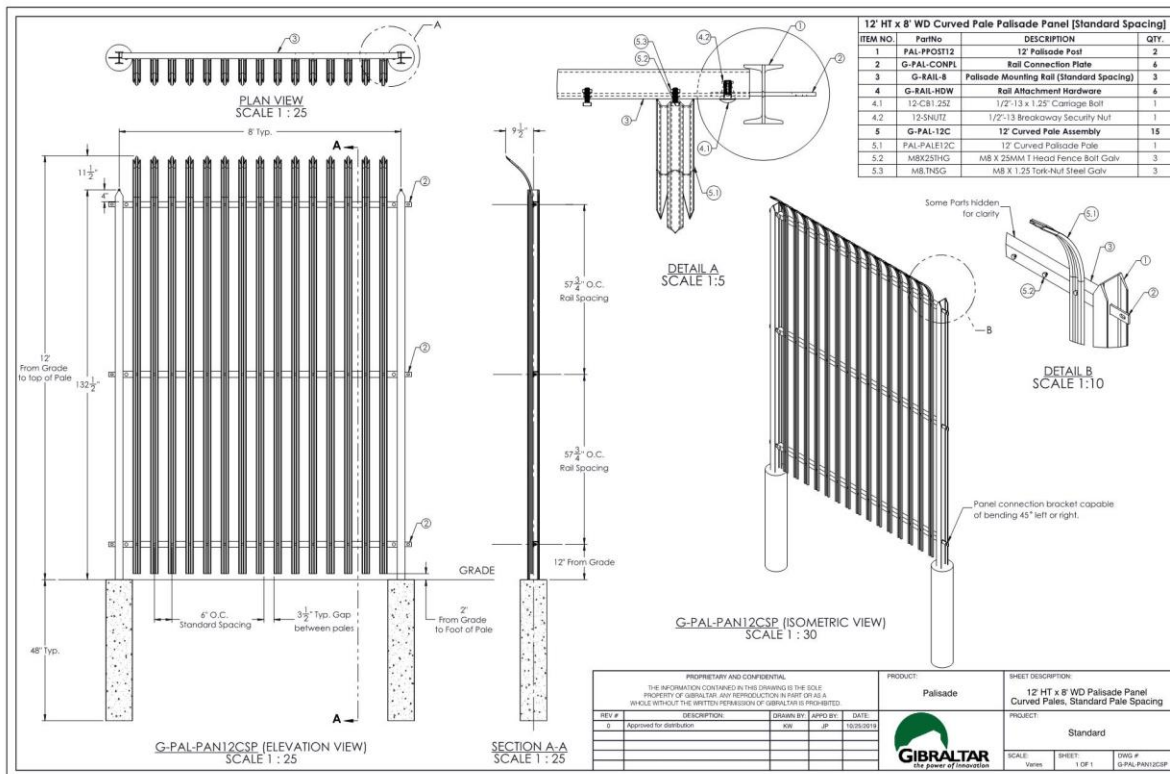
A variance is requested for North rear of property due to the elevation difference unique to the land itself in the rear portions of the property. The rear North side property is meet with a retaining wall with a variation in height form 3' to 8', which makes an 8' fence ineffective for the safety of individuals, as currently there are numerous individuals cutting through the property utilizing the retaining wall, trees/tree limbs, and existing fencing to

hop the sides and the corners of the property. In addition, trash and hazardous materials such as tires are being thrown onto the property. Mobile Police Department has been contacted on numerous occasions, and one police report has been filed (please see attached). The police officer even noted that a tall fence extending over the current retaining wall from our property would help these issues. The rearmost West section of the property has a similar issue where the elevation changes from the curb to the existing fence. The rearmost South section has similar elevation change issues as well as some shrubbery that would make intruding on an 8' fence readily accessible.

As shown in the attached fence specifications, the proposed fence has 3.5" spacing between the narrow slats which makes for easy viewing through the fence and gives the fence a pleasant "eye appeal" and it would not be an "eye sore" for the surrounding properties.

Where the security fence is going to be installed by the existing retaining wall along the north side of the property the tallest part is 8'-0" from the existing grade on our property. The smallest difference between the top of the wall and the existing grade is 5'-4".





The applicant proposes to convert an existing bank building into a medical clinic and compounding pharmacy. Due to trespassers passing across the property, and debris being deposited on the property, the applicant proposes to install a twelve-foot high, curved-top, palisade fence along the rear and portions of the sides of the property. The site plan submitted indicates that the proposed fence would be no closer than approximately 140 feet from the front property line. As Section 64-4.D.6. of the Zoning Ordinance restricts fence heights along required side and rear yards to a maximum of eight (8) feet along property lines, a Fence Height Variance is required; hence this application.

The applicant states that the Variance request is needed to prevent people who are currently cutting through the property from doing so before construction renovations begin, and to also secure the property and building from unwanted trespassers once the clinic and pharmacy are in operation. There have not been any similar variance requests approved in the area, nor does there appear to be any other business in the area which have implemented similar security features.

The subject site varies in elevation from an average of 180 feet in the rear, to 191 feet along Hillcrest Road, for an average elevation change of eleven feet. Along the North side of the site, the elevation rises sharply from approximately 183 feet to 186 feet on the adjacent property to the North. A retaining wall along that side rises above the elevation of the subject site by a height varying from 5'-4" to eight (8) feet above the subject site elevation. The applicant contends that a compliant eight (8)-foot fence along this area would not be sufficient to deter trespassers since the top of the fence would only average slightly more than two feet above the adjacent site's grade.

The applicant has demonstrated that an unnecessary hardship could be considered to be imposed by a literal enforcement of the Ordinance, and the Board should consider this request for Approval.

RECOMMENDATION.

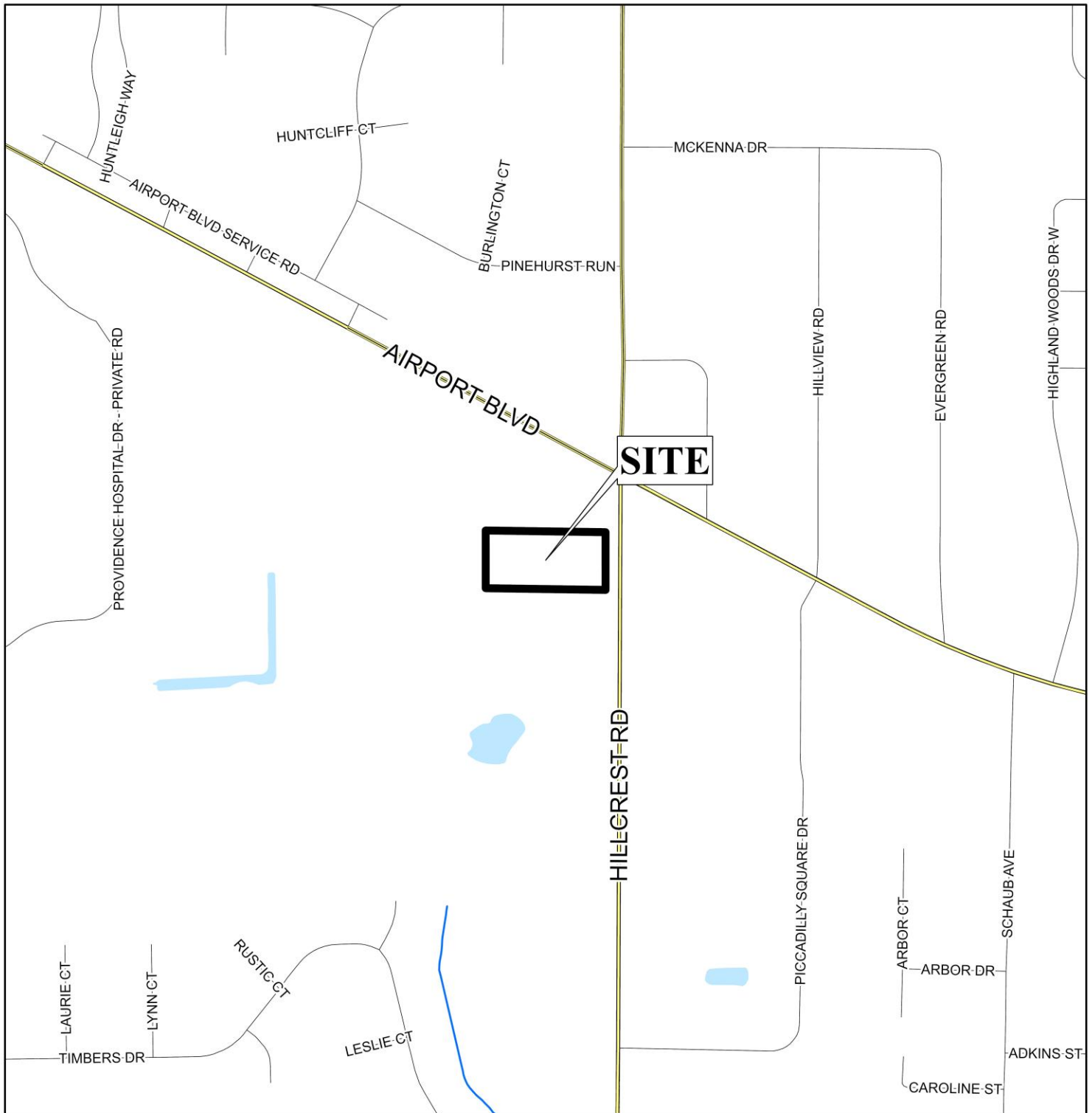
Based upon the preceding, staff recommends to the Board the following findings of fact for Approval of the Fence Height Variance request to allow a twelve (12)-foot high security fence in a B-3, Community Business District:

- 1) Approving the variance request will not be contrary to the public interest in that it will allow for site security which could not ordinarily be provided by a literal interpretation of the Ordinance;
- 2) Special conditions appear to exist, specifically higher terrain elevations along the adjacent property, such that a literal enforcement of the provisions of the chapter will result in unnecessary hardship; and
- 3) The spirit of the chapter shall be observed and substantial justice done to the applicant and the surrounding neighborhood by granting the variance in that it will allow for site security which could not otherwise be obtained.

The approval is subject to the following conditions:

- 1) obtaining of the necessary permit(s) for the fence construction; and
- 2) full compliance with all municipal codes and ordinances.

LOCATOR MAP

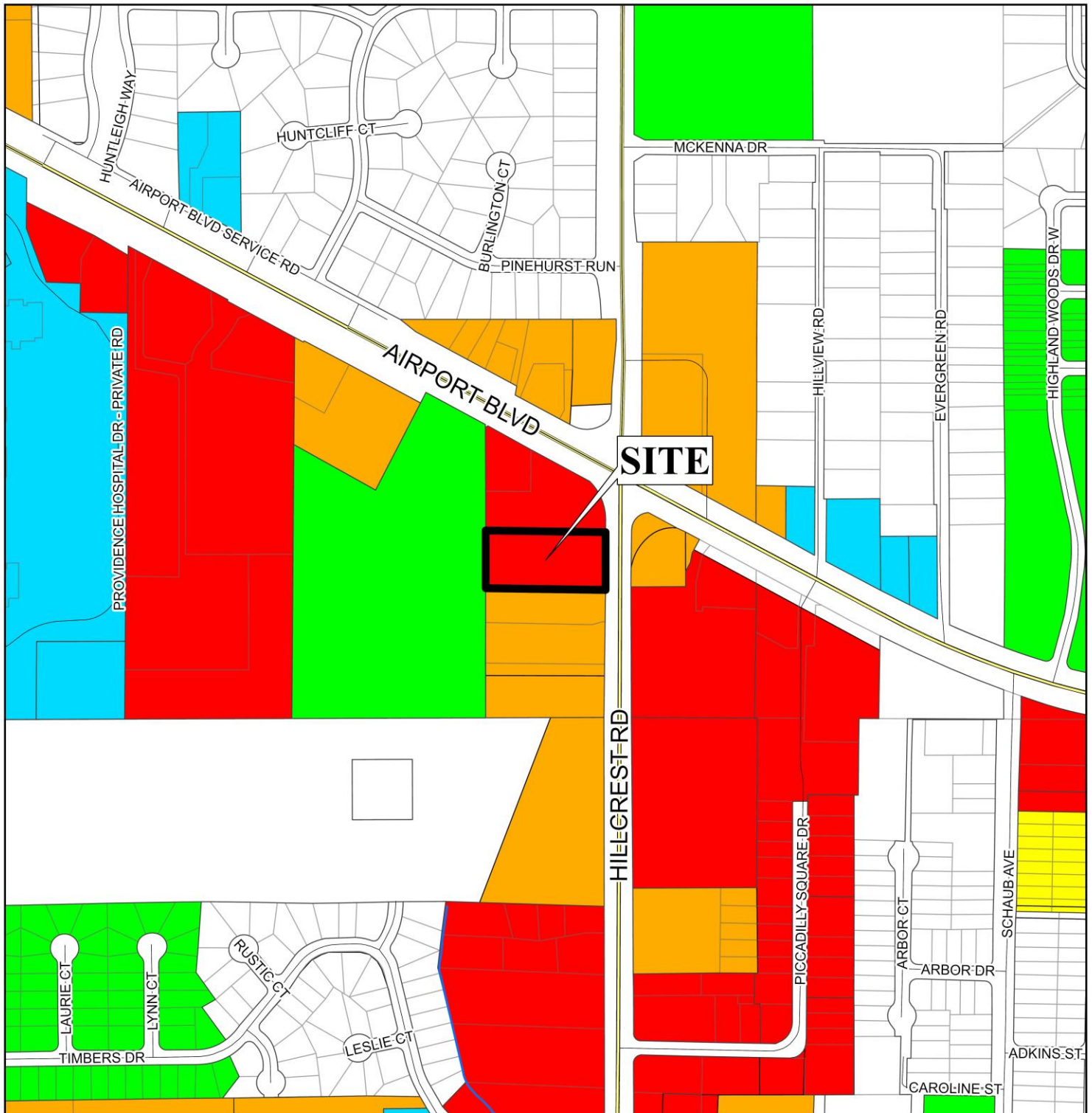


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REQUEST Fence Height Variance



NTS

LOCATOR ZONING MAP

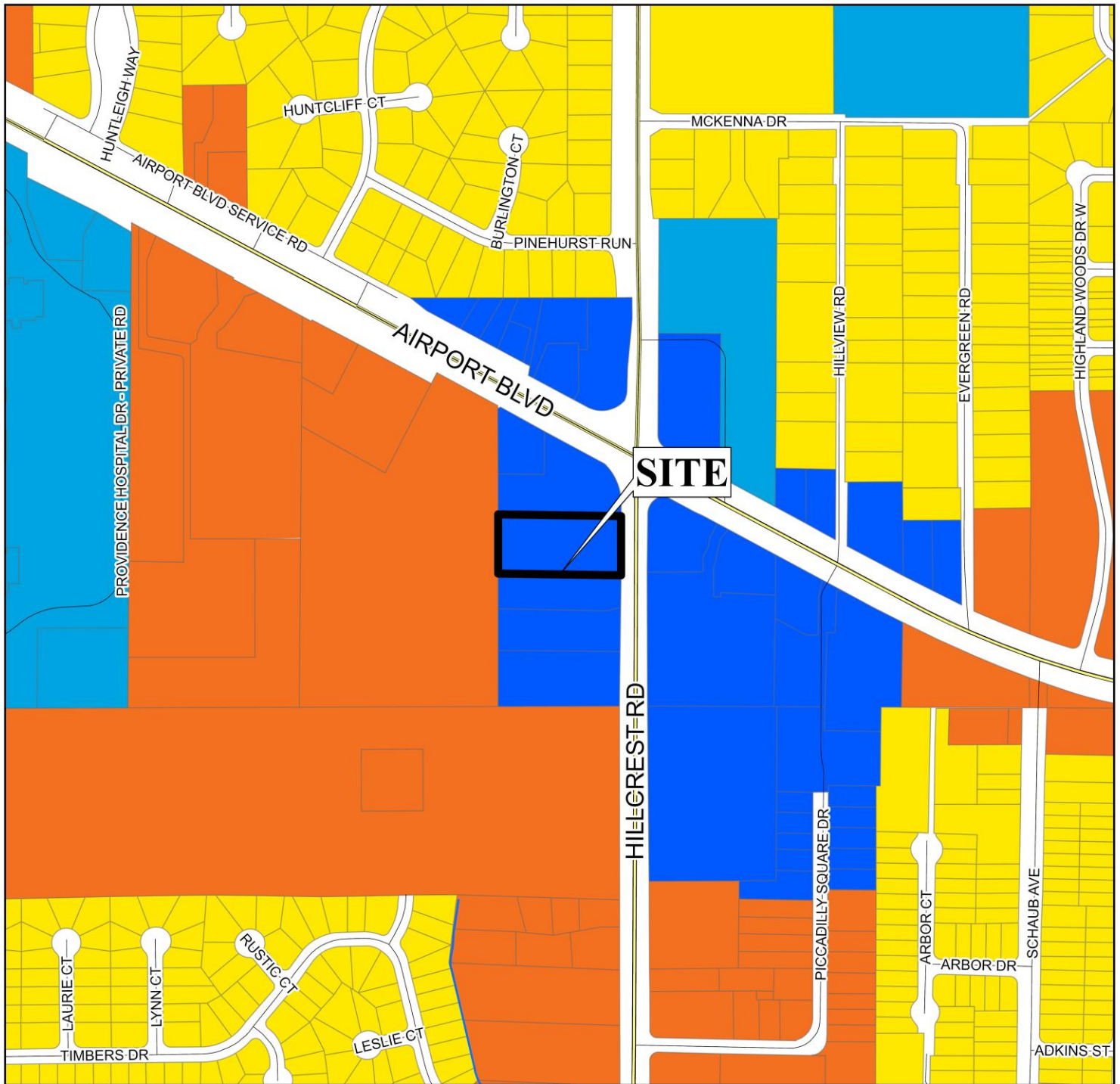


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FLUM LOCATOR MAP



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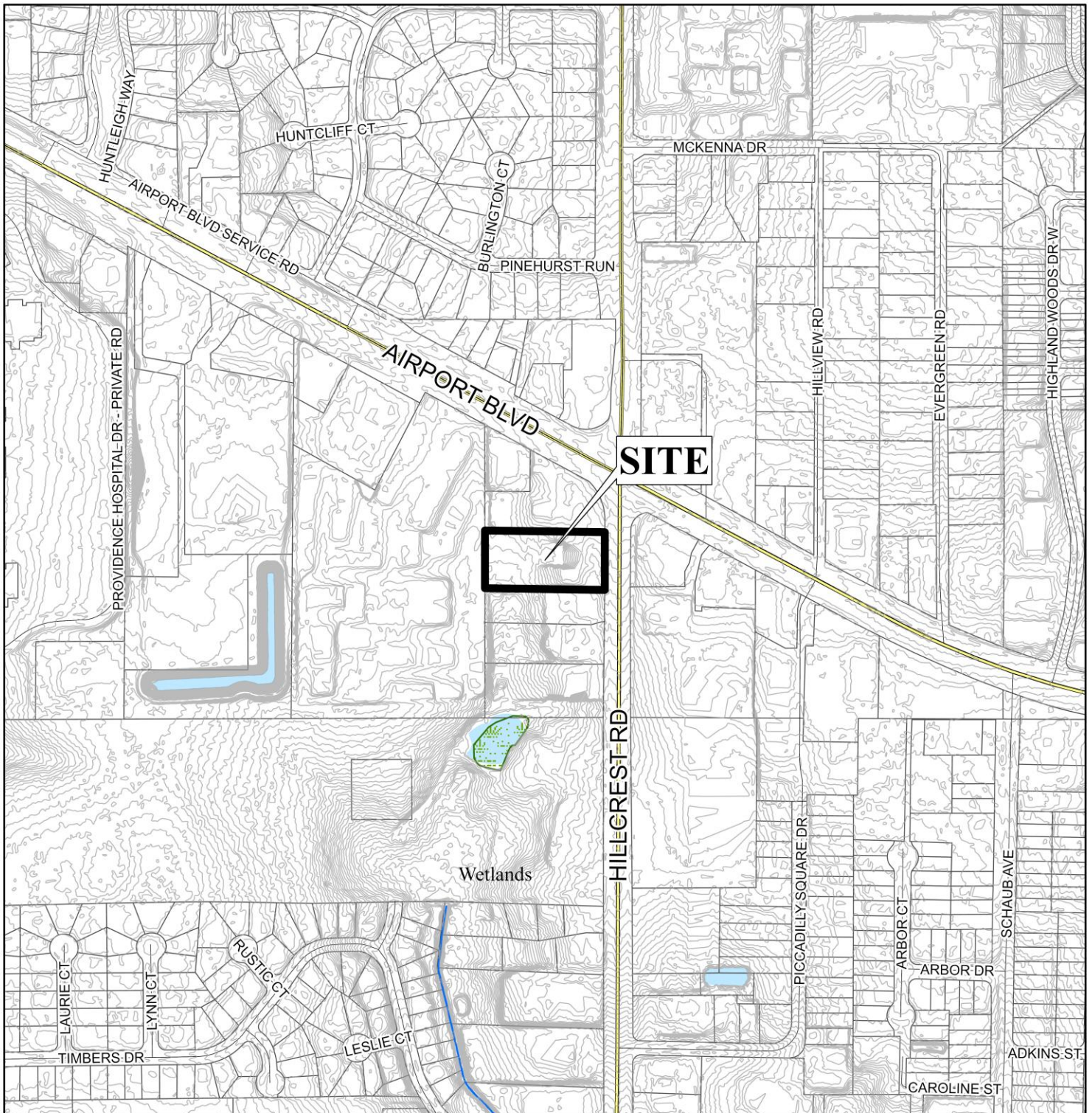
Layer2

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



NTS

ENVIRONMENTAL LOCATOR MAP



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BOARD OF ADJUSTMENT

VICINITY MAP - EXISTING ZONING



This site is surrounded by commercial units. Residential units lie to the west.

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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

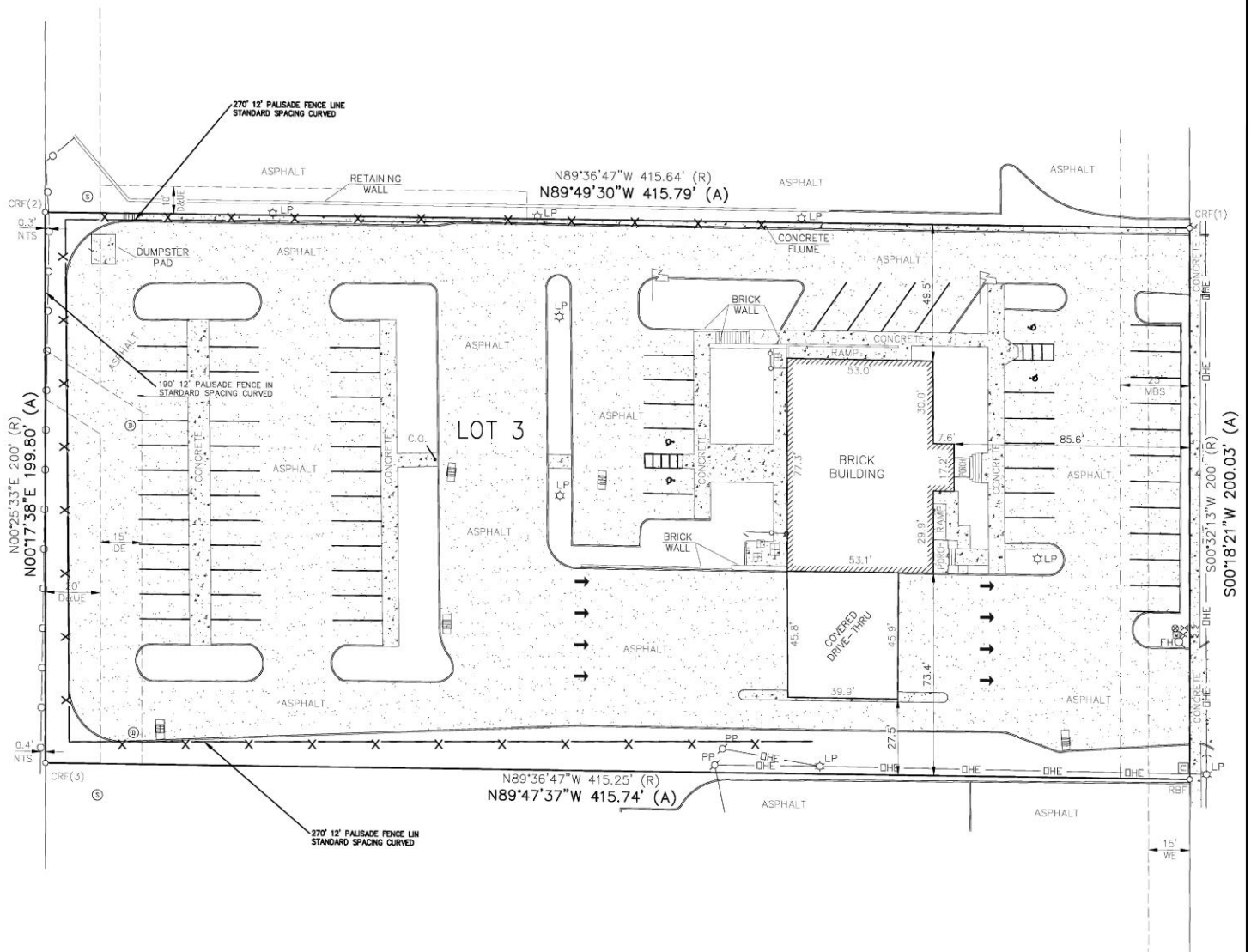


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SITE PLAN



This site plan illustrates the building and parking layout.

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