

**BOARD OF ZONING ADJUSTMENT  
STAFF REPORT****Date: February 3, 2014****CASE NUMBER**

5878

**APPLICANT NAME**

Enrique Irizarry

**LOCATION**5 Springhill Trace  
(Southern terminus of Springhill Trace)**VARIANCE REQUEST****SETBACK:** Side and Rear Setback Variances to allow a gazebo in a drainage and utility easement within 4'± of the side property line and 6'± of the rear property line in an R-1, Single-Family Residential District**ZONING ORDINANCE  
REQUIREMENT****SETBACK:** The Zoning Ordinance requires minimum setbacks of 25' from the front property line, 8' from the side property line, and 8' from the rear property line in an R-1, Single-Family Residential District**ZONING**

R-1, Single Family Residential

**AREA OF PROPERTY**

11,478± square feet / 0.26± Acres

**CITY COUNCIL  
DISTRICT**

District 5

**ENGINEERING  
COMMENTS**

Typically, structures should not be built within drainage easements that contain underground drainage pipes to allow for access and maintenance; however, this drainage system, including the drainage easements, is PRIVATELY owned and maintained, and is not maintained by the City of Mobile.

**TRAFFIC ENGINEERING  
COMMENTS**

This variance request was not reviewed by Traffic Engineering.

**URBAN FORESTRY  
COMMENTS**

No comments.

**FIRE DEPARTMENT****COMMENTS**

All projects within the City of Mobile Fire Jurisdiction must comply with the requirements of the 2009 International Fire Code, as adopted by the City of Mobile.

**ANALYSIS**

The applicant is requesting Side and Rear Setback Variances to allow a gazebo in a drainage and utility easement within 4'± of the side property line and 6'± of the rear property line in an R-1, Single-Family Residential District; the Zoning Ordinance requires minimum setbacks of 25' from the front property line, 8' from the side property line, and 8' from the rear property line in an R-1, Single-Family Residential District.

The applicant proposes to renovate an existing house and an existing pool terrace, to include the replacement of an existing wood frame cabana with a new gazebo.

The applicant's explanation of the variance request is as follows:

*This property was developed in 1982 as a single-family private residence. The original property improvements included a swimming pool, a pool plaza, and a pool house or gazebo equipped with sanitary facilities such as a water closet and a sink.*

*The gazebo consists of wood frame construction and rests upon a wood deck, which was installed at ground level creating a pool plaza. Both the gazebo and the wood deck, through normal wear and tear, have deteriorated to a degree where safe use of the facilities can only be assured by replacing the decaying wood deck and gazebo structures. Along with the swimming pool, these structures take up 100% of the usable yard area. This area is the only usable yard area of the property.*

*The planned new improvements will replace the gazebo structure with a new one whose footprint will be almost half that of the original. The southern wall of the gazebo, which is currently 1.7 feet from the property line, will be moved to about 4 feet from the property line. The new gazebo structure will support the former pool and bath amenities and reutilize existing sewer and water supply lines and electrical service lines.*

*The estimated time schedule for the new improvements calls for completion by the end of 2014.*

As stated by the applicant, the new structure will be further away from the abutting property lines than the existing structure. The applicant goes on to state the following:

*The original gazebo constructed in 1982 and permitted by local authorities at the time, does not meet the current setback requirements. This property is the only property in the Springhill Trace subdivision that includes a swimming pool plaza. As a result, the space available for enjoyment of the outdoors is extremely limited.*

*Enforcing the setback requirements for the southern wall of the gazebo would require the whole structure be moved from the existing original and permitted location and towards the swimming pool.*

*This creates an unnecessary hardship by effectively narrowing the space between it and the swimming pool making it more difficult to place and enjoy furniture and to safely walk around the pool.*

*The movement of the pool bath structure closer to the pool perimeter also intensifies the vinyl liner structural framing used to support the sidewalls of the in-ground pool.*

*Excavations are indeed problematic when exposure of the pool edge is revealed.*

*There is also a need to make the swimming pool, the pool plaza, and the gazebo handicapped accessible with a sloped ramp and landings for maximum slope conditions.*

*These factors for gauging the differences in height from the pool to the residence are large in the planning process.*

*The ramped access from the residence to the far end of the south property line is fixed due to site height restrictions, property size, and existing construction. The considerable movement of the pool bath structure and utilities adversely affects the homeowner use relative to this handicapped path.*

*Pool bath movement would disrupt the access and departure point along the base of the ramp and require an awkward travel path for use of the pool amenities. The use of homeowner space becomes very inefficient with alternate positioning of the pool bath with the compounding rigid path of the handicapped ramp.*

*Movement of the pool bath closer to the pool edge would further require a change in height for the finished floor replacement structure due to the close proximity of the pool edge and the plan to provide positive drainage would require re-evaluation.*

*This results in an awkward physical location for the gazebo structure that would require additional changes relative to finish floor height for pool drainage around the pool perimeter due to the close proximity.*

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 will be making improvements to the existing residence, which includes the installation of an elevator and access ramps in the garage. The proposed changes to the existing pool terrace will, in fact, make the pool area accessible to an individual with mobility challenges.

The applicant states that the existing gazebo was permitted by the city in 1982, however, staff cannot access records to verify this claim. The applicant is correct in stating that any excavation work that is required near the pool, if the new gazebo was to meet setbacks, would possibly compromise the existing stability of the pool walls.

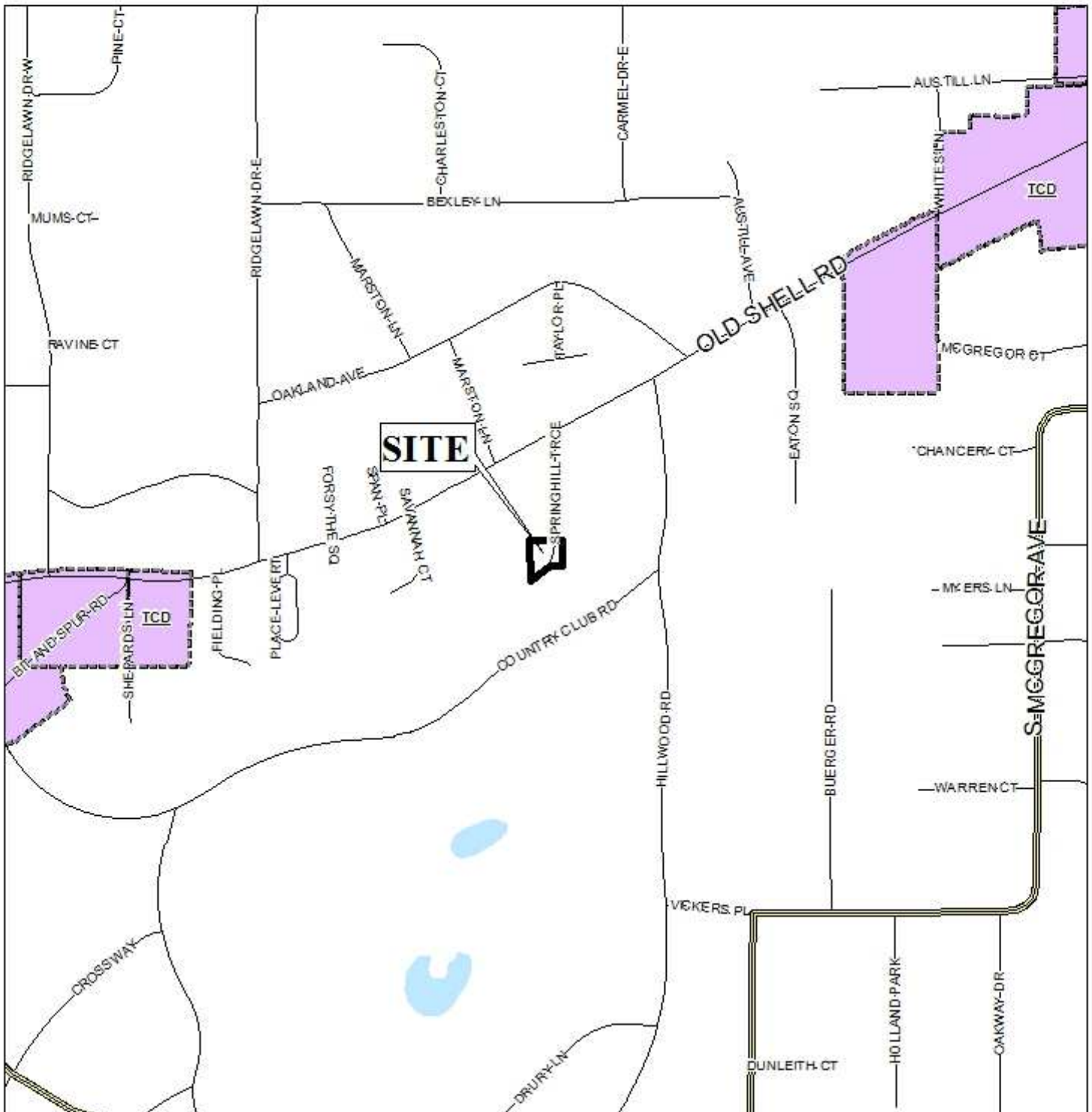
The existing gazebo and the proposed gazebo will be located within two drainage and utility easements. Through research of the original plat, on site inspections, consultation with the project's original engineer, and a meeting between the applicant and city engineer staff, it was determined that the easements are private, and do not convey public stormwater. As such, the applicant may build within the easements, subject to approvals by the subdivision's homeowners association, if such exists, and utility providers, as needed.

Due to the fact that the proposed work will improve existing setback conditions, it does not appear that granting the variance would be contrary to the public interest. Furthermore, there are special conditions which exist with this site due to existing in ground structures and the need to make the pool terrace wheelchair accessible, thus full enforcement of the setback requirements would result in an unnecessary hardship. Finally, the improved setback condition will be in spirit with the requirements of the Zoning Ordinance, and will provide substantial justice to the applicant, while not impacting the surrounding neighborhood.

### **RECOMMENDATION:**

Based on the preceding, this application is recommended for approval, subject to the applicant obtaining all necessary permits.

# LOCATOR MAP



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REQUEST Side and Rear Setback Variances



# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by single family residential units.

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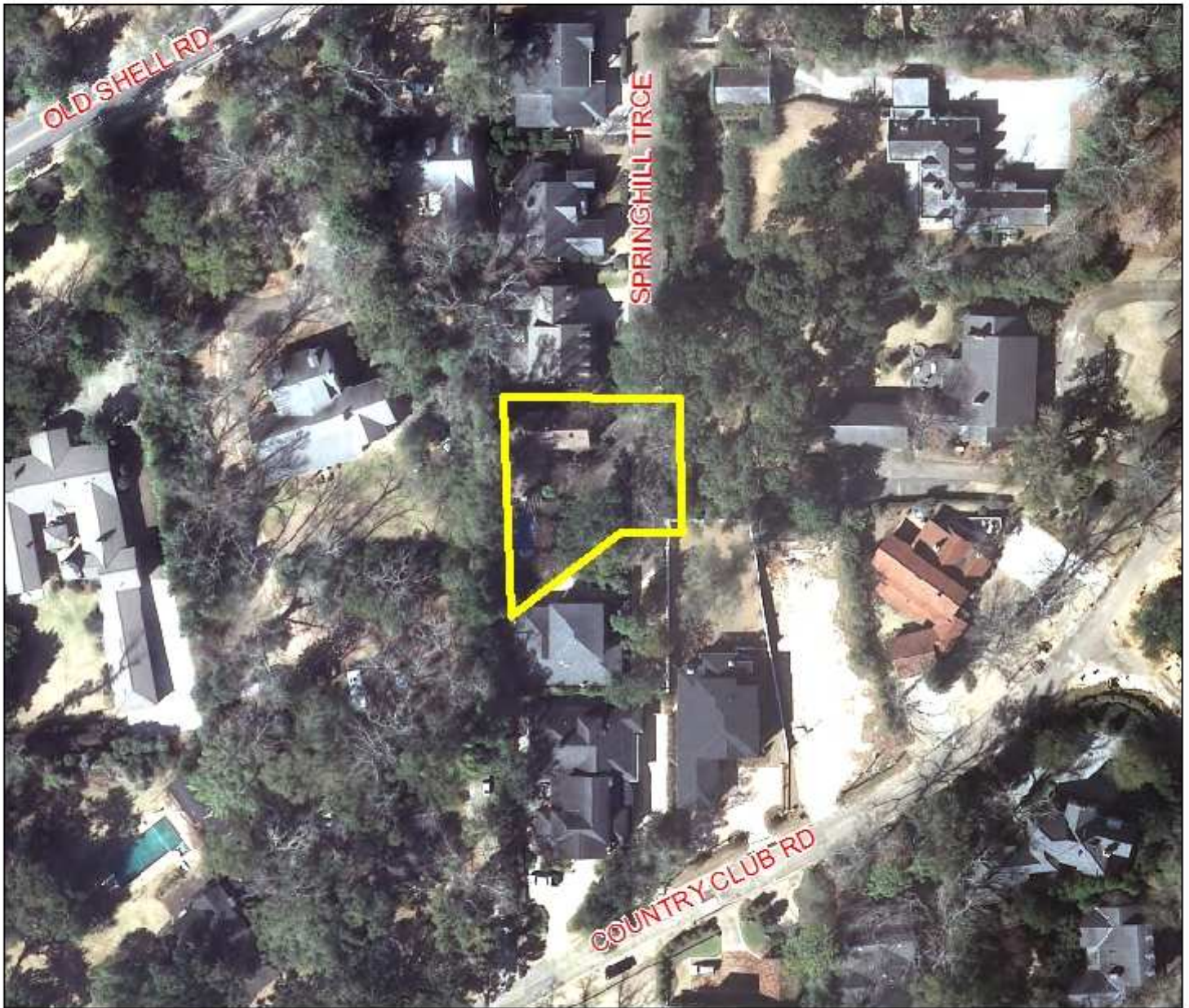
LEGEND



NTS



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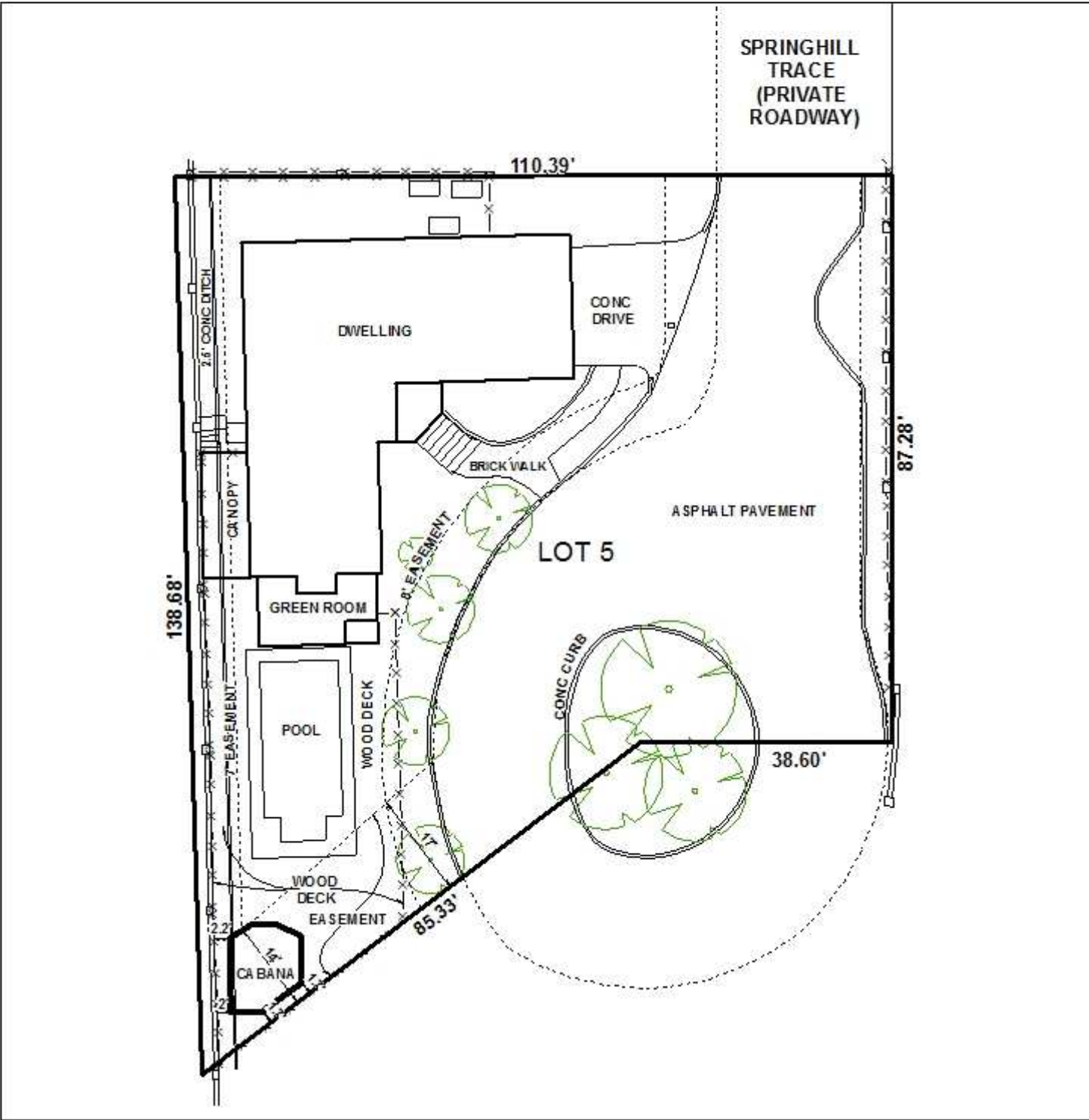
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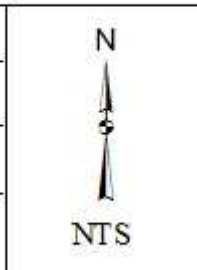


## SITE PLAN



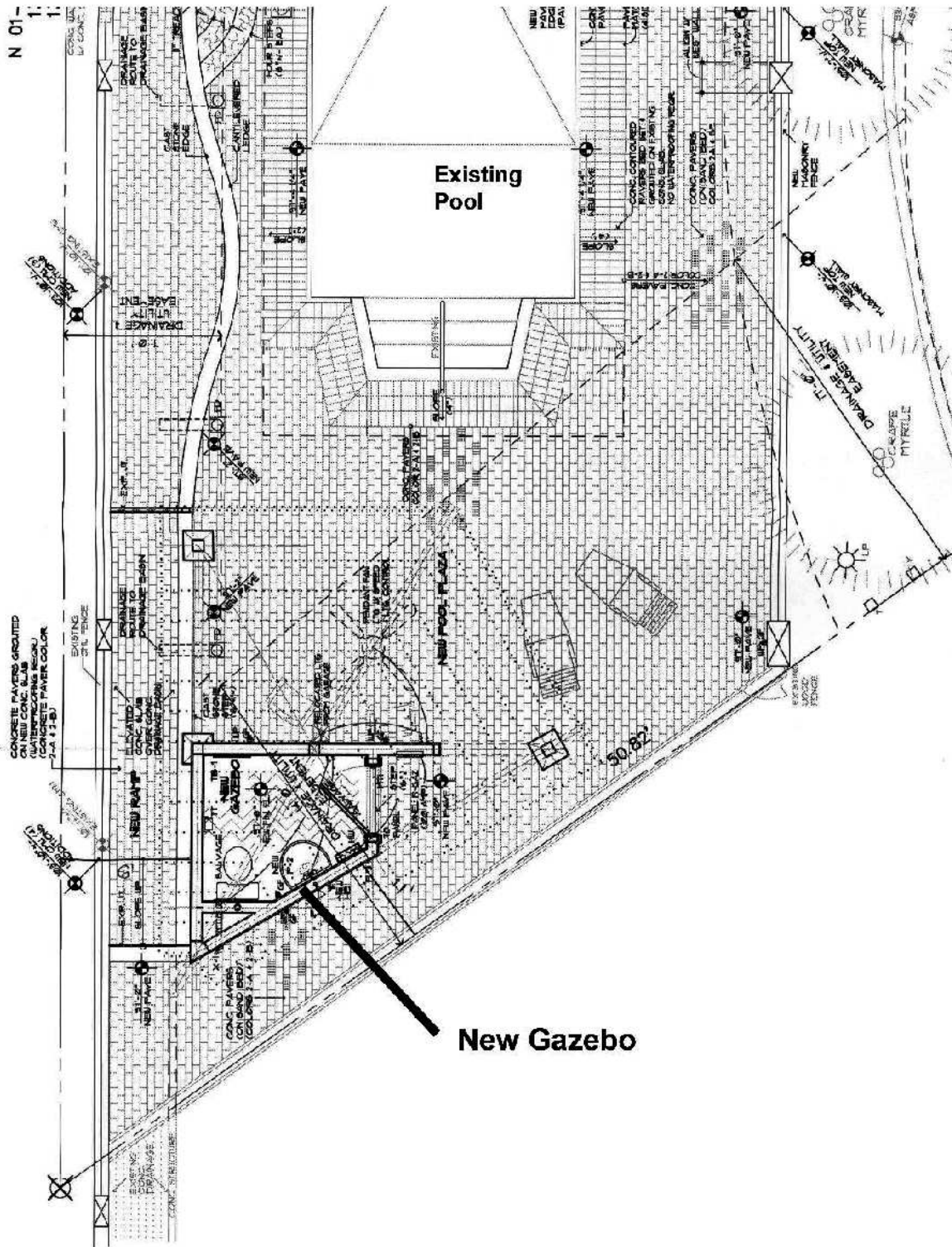
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# DETAIL SITE PLAN



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