

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT**

Date: September 9, 2019

<u>CASE NUMBER</u>	6278
<u>APPLICANT NAME</u>	The Look Boutique
<u>LOCATION</u>	3933 Moffett Road (Corner of Moffett Road and Jean Drive, extending to the Southeast corner of Moffett Road and Reynolds Drive [private street]).
<u>VARIANCE REQUEST</u>	USE: Use Variance to allow retail sales in a B-1, Buffer Business District.
<u>ZONING ORDINANCE REQUIREMENT</u>	USE: The Zoning Ordinance requires a minimum of a B-2, Neighborhood Business District for retail sales.
<u>ZONING</u>	B-1, Buffer Business District
<u>AREA OF PROPERTY</u>	0.38± acres
<u>ENGINEERING COMMENTS</u>	No Comments
<u>TRAFFIC ENGINEERING COMMENTS</u>	No traffic impacts anticipated by this variance request.
<u>CITY COUNCIL DISTRICT</u>	District 7

ANALYSIS The applicant is requesting a Use Variance to allow retail sales in a B-1, Buffer Business District; the Zoning Ordinance requires a minimum of a B-2, Neighborhood Business District for retail sales.

The site has been given a Low Density Residential (LDR) land use designation, per the 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 to existing residential neighborhoods found mostly west of the Beltline or immediately adjacent to the east side of the Beltline.

The primary land use in the LDR districts is residential and the predominant housing type is the single family housing unit, detached or semidetached, typically placed within a street grid or a network of meandering suburban streets. The density in these districts ranges between 0 and 6 dwelling units per acre (du/ac).

These neighborhoods may also contain small-scale, low-rise multi-unit structures at appropriate locations, as well as complementary retail, parks and civic institutions such as schools, community centers, neighborhood playgrounds, and churches or other religious uses if those uses are designed and sited in a manner compatible with and connected to the surrounding context. The presence of individual ancillary uses should contribute to the fabric of a complete neighborhood, developed at a walkable, bikeable human scale.

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 that substantial justice is 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:

“The owner purchased this property knowing it was zoned for business but was not aware of the many City Zoning Classifications. Her business is a ladies boutique selling clothing and accessories (hats, belts, purses, etc.) which is not allowed by right in a B-1 Zoning District. A clothing store “is allowed by right” in the following districts: R-B, T-B, H-B, , B-2, LB-2, B-3, B-4. It appears that B-1 was left out when boxes were being checked.

The store is open 11:00A.M. to 6:00P.M., Monday – Friday and 11:00A.M. to 7:00P.M. on Saturday and closed on Sunday. Currently the store’s owner is the only employee, which is sufficient for the minimal number of customers. Monday, Tuesday, and Wednesday has been averaging 1 customer per day and Thursday, Friday, Saturday

averages 5 customers per day. The property is developed with the required number of paved parking spaces to accommodate the customers.

Due to the quiet nature of this business and the low customer base, it should not have an adverse affect on the neighborhood.

(The business shown on the sign in the pictures in no longer open.)

To reiterate the hardship involved, the owner purchased property zoned for business but unfortunately, she now owns property not suitably zoned for her business.”

As stated, the applicant desires to seek relief from the requirements of the Zoning Ordinance to establish a clothing boutique in a B-1, Buffer Business District.

The Zoning Ordinance states the following in Section 64-3.E.1.: “*B-1 districts: Buffer business districts. These districts are composed of land and structures occupied by or suitable for such uses as offices, studios and automobile storage (commercial), including parking lots. Although usually located between residential areas and business areas, these districts are in some instances free-standing in residential areas or they may include hospital, college or other public or semipublic groups and related uses. The district regulations are designed to protect and encourage the buffer character of the districts by limiting the permitted uses to dwellings and uses of a semicommercial nature and to protect the abutting and surrounding residential areas by requiring certain minimum yard and area standards to be met, standards that are comparable to those called for in the residence districts.*”

The subject property is abutted by residentially zoned property to its East, West, and South. The Planning Commission approved a rezoning application at its June 11, 1996 meeting from R-1, Single Family Residential to B-1, Buffer Business District for the site. The amendment was later adopted by City Council.

According to the City of Mobile Revenue Department, the last known business license issued at this location was a real estate office in 2014. Therefore, if the retail business is in operation currently, it is doing so without an active business license.

The submitted survey illustrates an existing 1,200 square foot building with four parking spaces and an asphalt drive. There is also an existing garage on state. An existing monument sign is located in the front of the property. At this time, it is advertising the previous permitted business.

The applicant notes that because the property was previously used commercially, there is justification for the variance request. Though the current proposed use is commercial and the applicant may have purchased the property prior to the knowledge of compliant uses, a substantial hardship has not been presented that would necessitate the approval of a variance.

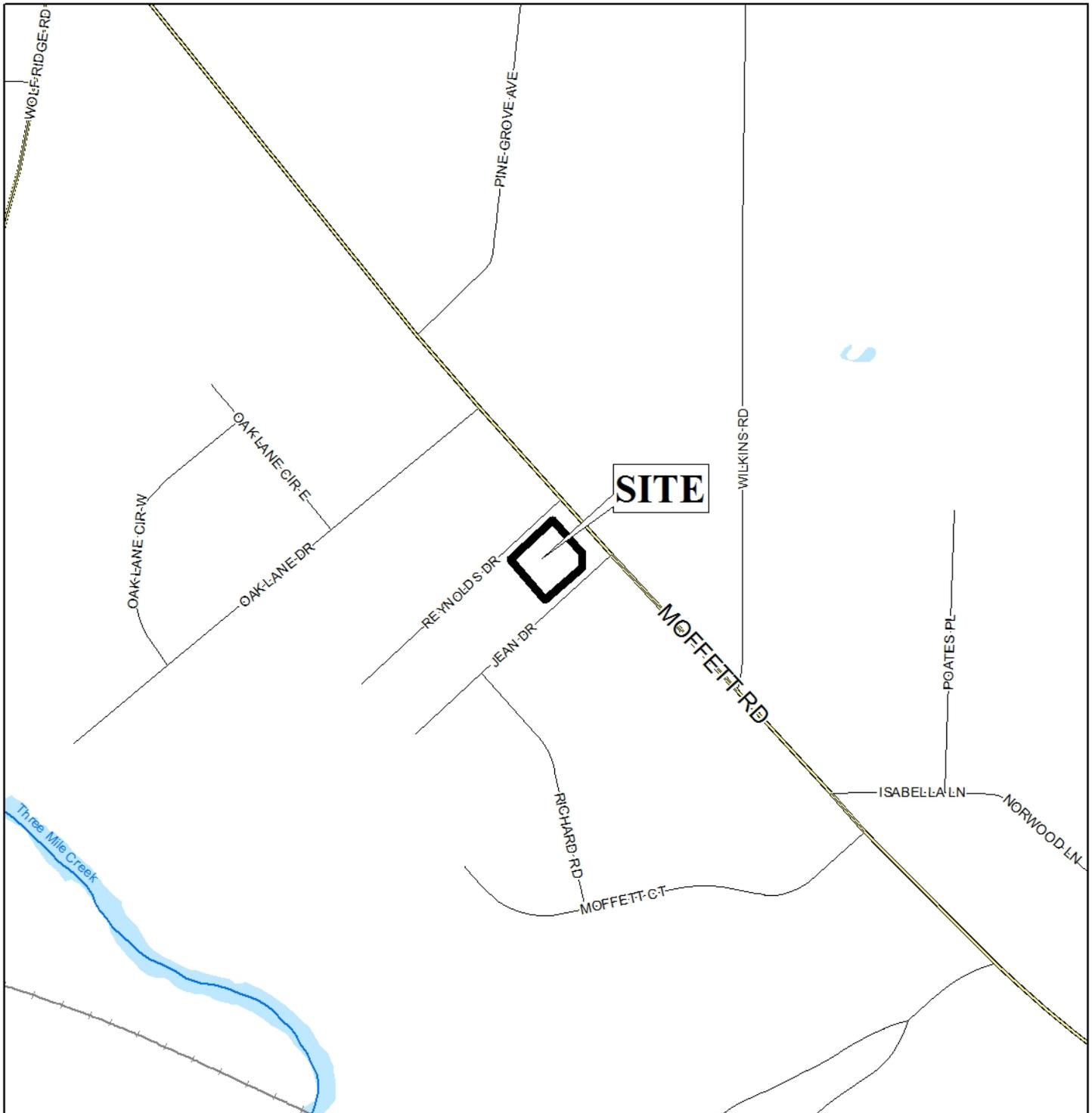
There are no conditions which exist at this site that require a use variance. The applicant has stated that customer traffic is minimal and currently there is only one employee on site. The applicant has the option to establish an online boutique and use the subject site as an office only,

and presented no evidence regarding a hardship associated with the actual property. Approval of this request could establish a precedent by which future, less desirable Use Variance requests could be approved if no special conditions or hardships to an individual property exist. Based on the preceding, the Board should consider this application for denial.

RECOMMENDATION: Staff recommends to the Board the following findings of fact for Denial:

- 1) Approving the variance will be contrary to public interest in is it contrary to the Zoning Ordinance requirements as it relates to the retail businesses in a B-1, Zoning District;
- 2) Special conditions do not exist in such a way that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship since there are other options such as online sales only that may be permitted; 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 the proposed use may establish a precedent by which future, less desirable Use Variances requests could be approved if no special conditions or hardships to an individual property exist.

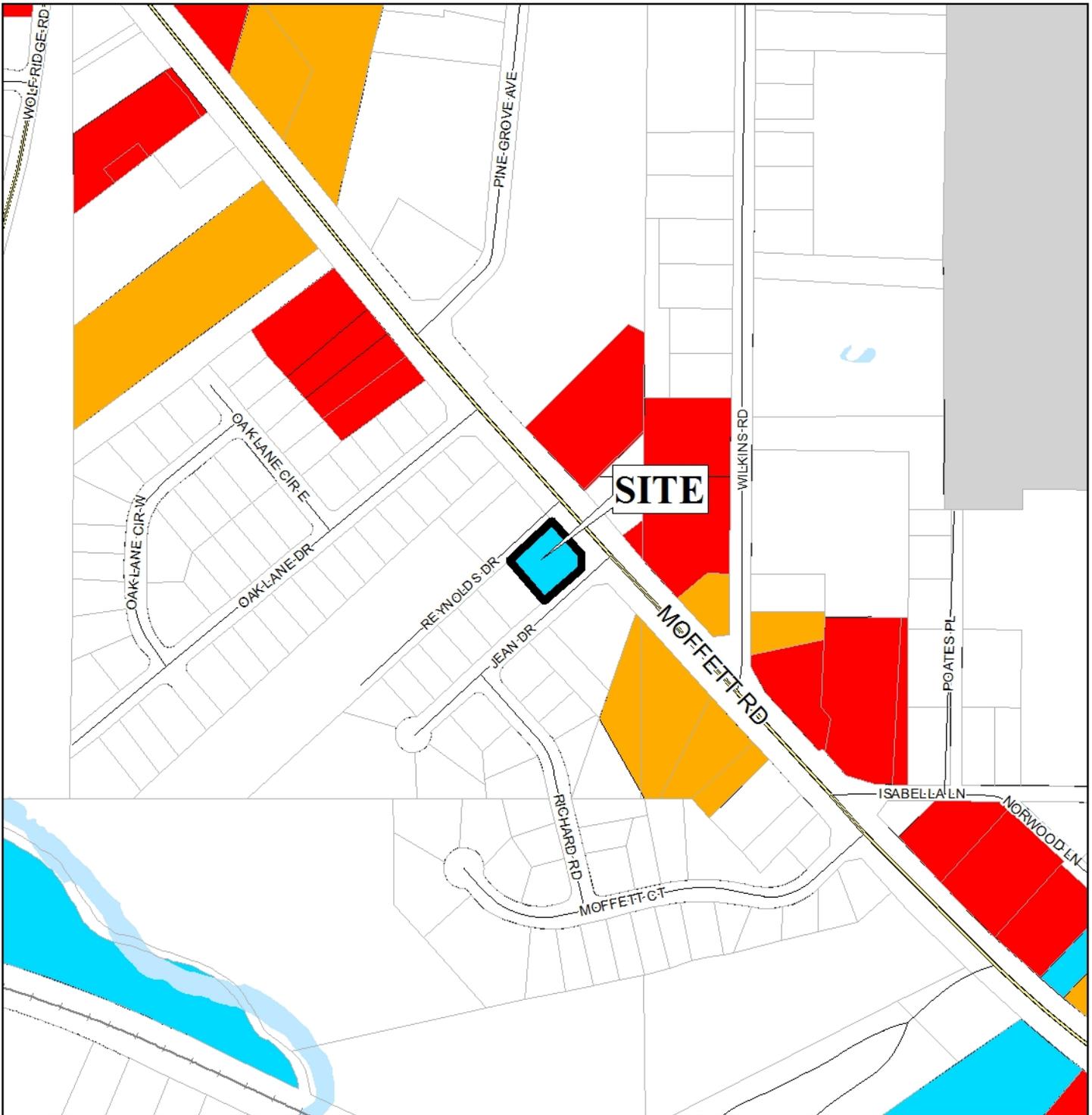
LOCATOR MAP



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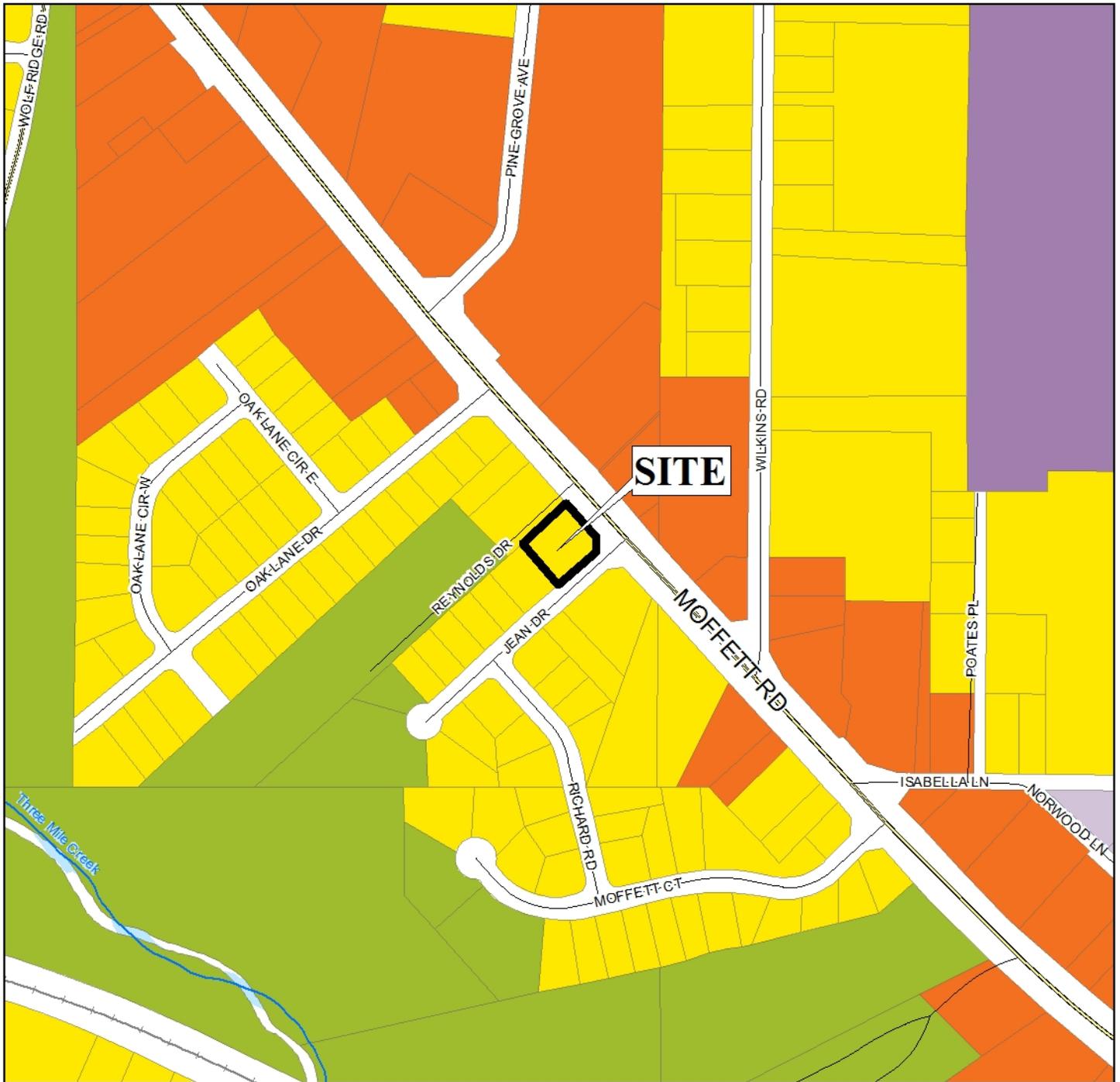
LOCATOR ZONING MAP



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FLUM LOCATOR MAP



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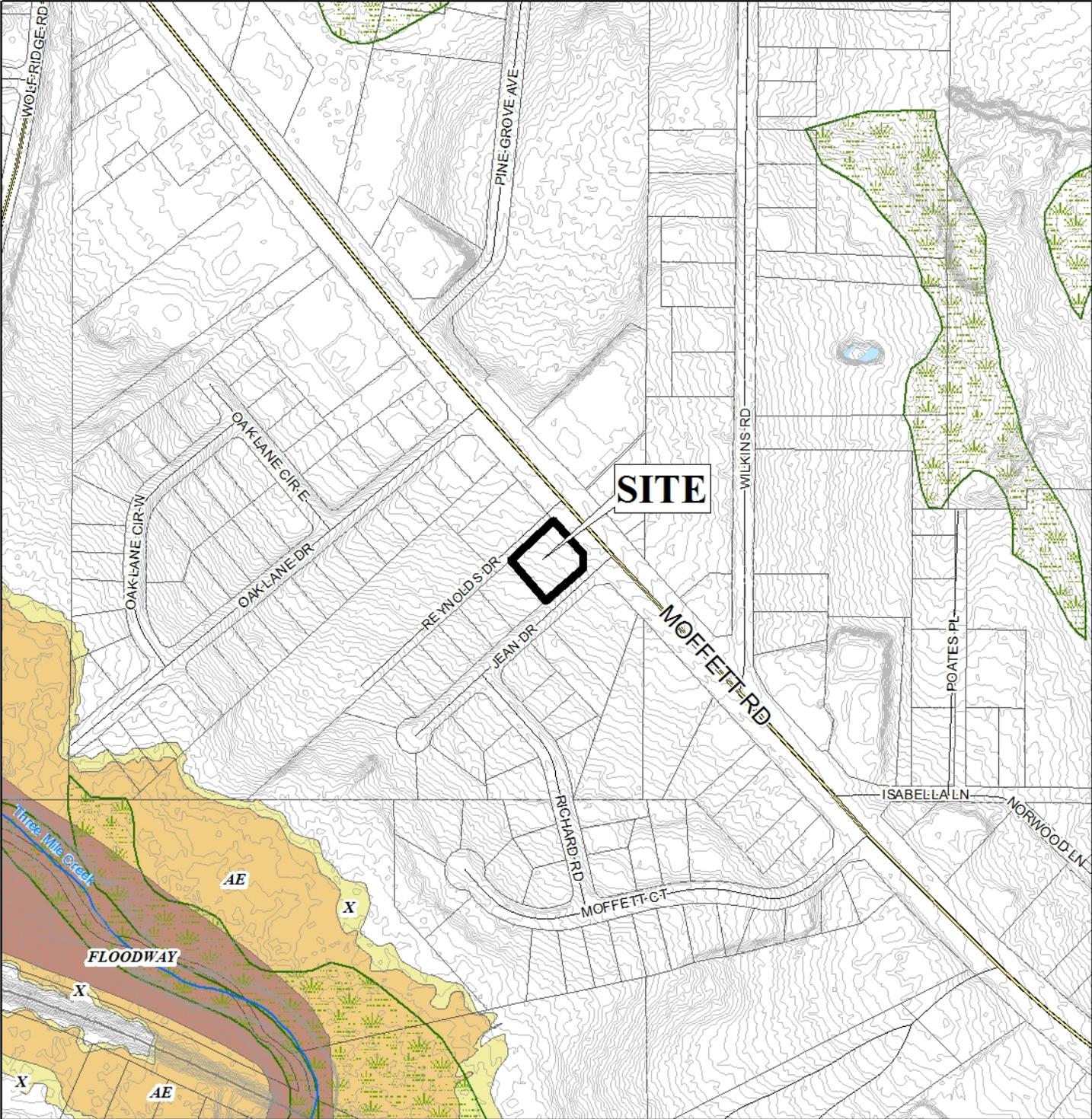
APPLICANT The Look Boutique

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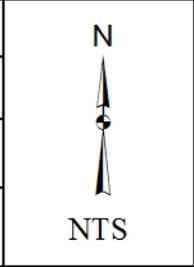
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|---------------------------|-----------------------------------|---------------------|--------------------|
| Low Density Residential | Neighborhood Center - Traditional | Downtown Waterfront | Parks & Open Space |
| Mixed Density Residential | Neighborhood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



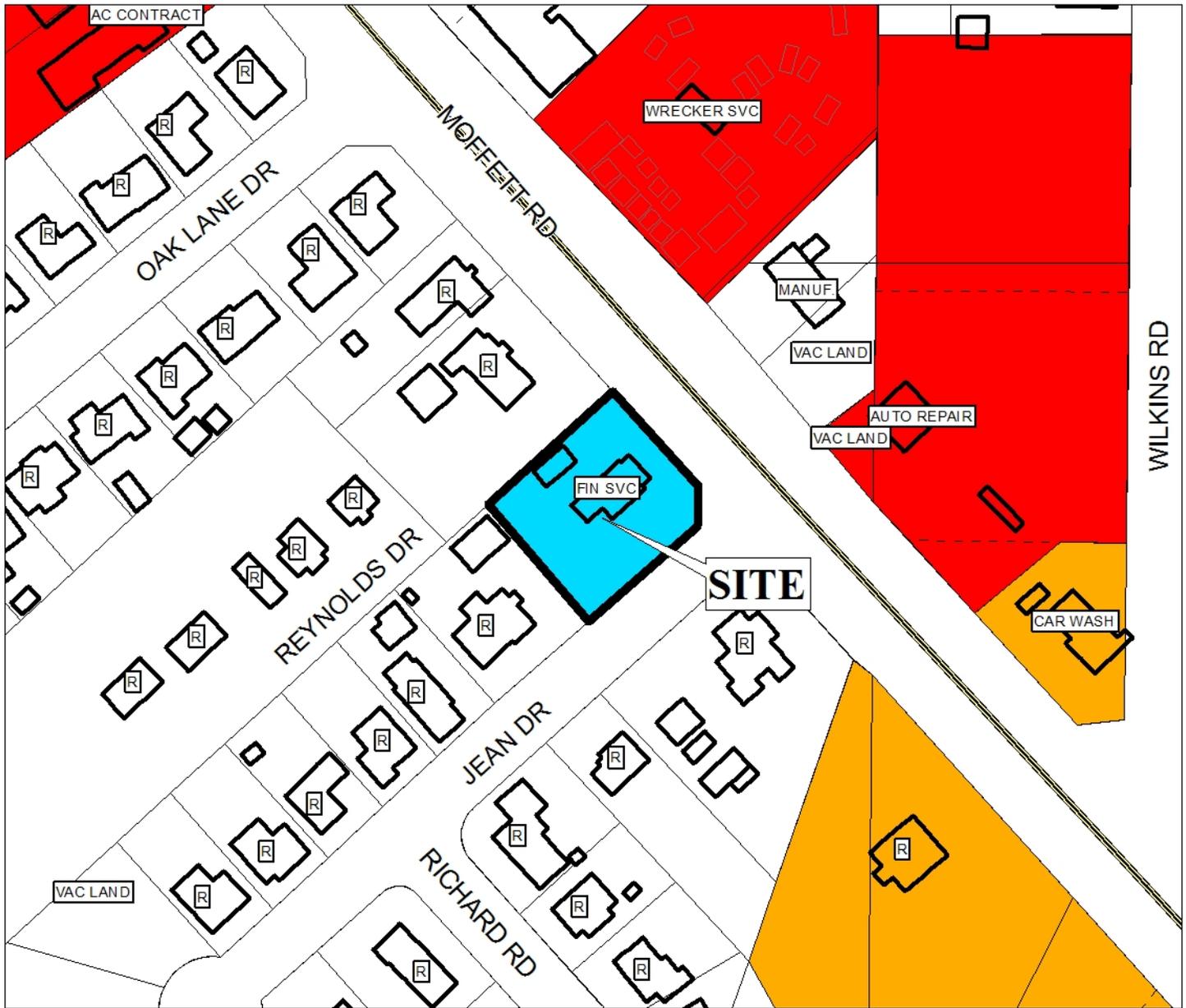
ENVIRONMENTAL LOCATOR MAP



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BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units with commercial units to the north and east.

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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



City of Mobile GIS Department

The site is surrounded by residential units with commercial units to the north and east.

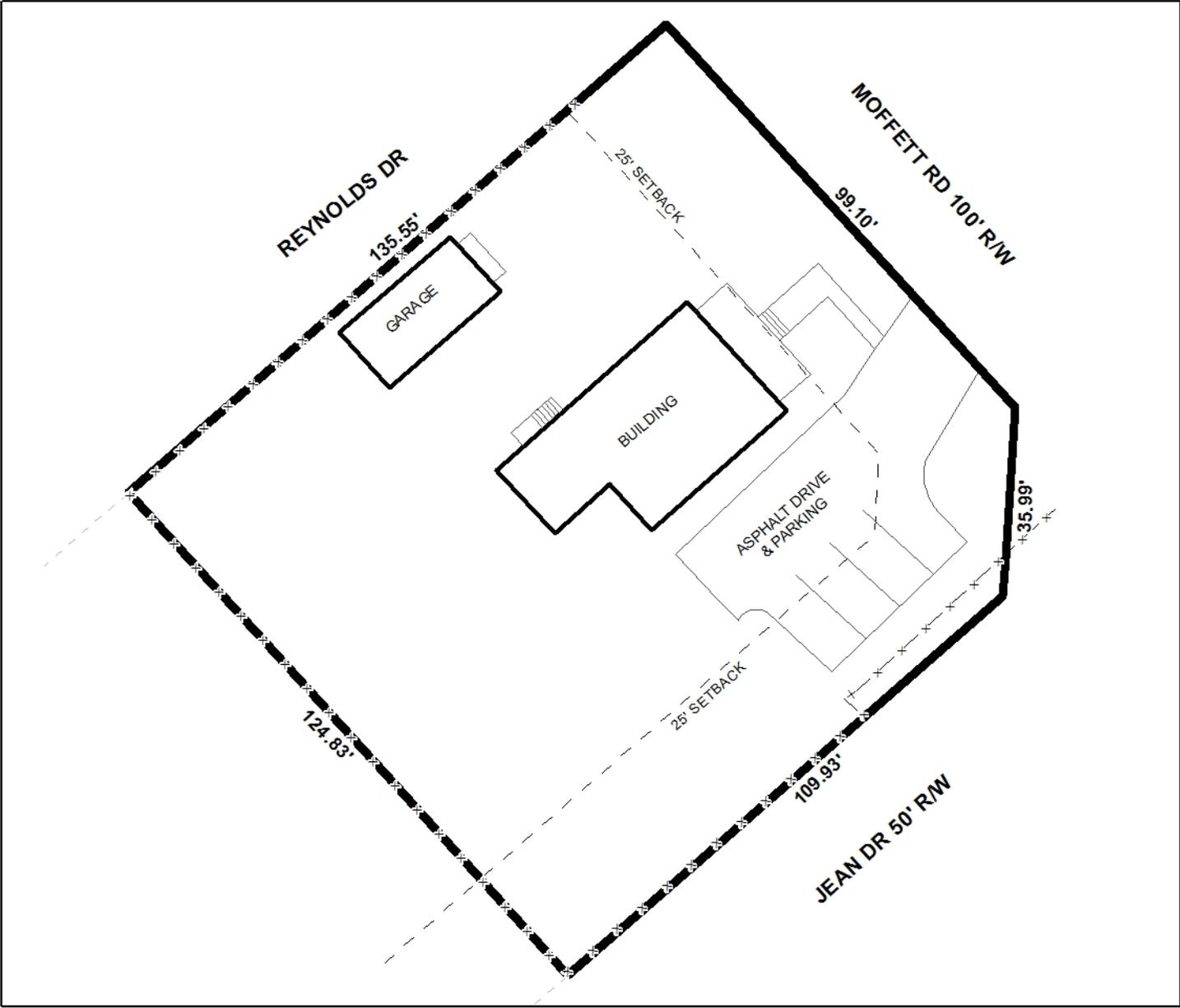
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SITE PLAN



The site plan illustrates the existing building, existing parking and easements.

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