

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: December 5, 2016**

<u>CASE NUMBER</u>	6071
<u>APPLICANT NAME</u>	Michael R. Delaney
<u>LOCATION</u>	69 Oakland Avenue (Southeast corner of Oakland Avenue and Ridgelawn Drive East)
<u>VARIANCE REQUEST</u>	SETBACK: Setback Variance to allow an outdoor kitchen 1' from the side property line in an R-1, Single-Family Residential District.
<u>ZONING ORDINANCE REQUIREMENT</u>	SETBACK: The Zoning Ordinance requires a minimum 8' side yard setback for all building structures in an R-1, Single-Family Residential District.
<u>ZONING</u>	R-1, Single-Family Residential District
<u>AREA OF PROPERTY</u>	0.28±Acres
<u>CITY COUNCIL DISTRICT</u>	District 7
<u>ENGINEERING COMMENTS</u>	If the proposed variance is approved for use the applicant will need to have the following conditions met: 1. Submit and receive a Land Disturbance Permit for the proposed site development through Central Permitting.
<u>TRAFFIC ENGINEERING COMMENTS</u>	No traffic impacts anticipated by this variance request.
<u>URBAN FORESTRY COMMENTS</u>	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).
<u>ANALYSIS</u>	The applicant is requesting a setback variance to allow an outdoor kitchen 1' from the side property line in an R-1, Single-Family Residential District.;

Zoning Ordinance requires a minimum 8' side yard setback for all building structures in an R-1, Single-Family Residential District.

The Zoning Ordinance further 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 the following regarding the variance requests:

Items 9 & 10: The owner/applicant is proposing to construct an outer kitchen in his very small rear yard. The architect has designed an aesthetically pleasing design that blends with the house and it will compliment the neighborhood. The kitchen will have a masonry wall on the East side and on the South side where it adjoins a neighboring property. This neighbor has verbally told the applicant that they have no problem with the proposed structure or the proposed location. The reason for this application is that one corner of the kitchen is 1.0 foot from the property line which is caused by the irregular shaped lot. The other three corners are 8.0 feet from the property lines.

Since the kitchen has masonry walls on two sides, the structure has the same visual effect as an 8.00 foot masonry wall constructed on the property lines.

We would appreciate a favorable recommendation for approval of this application.

It should be noted that the primary purpose for side and rear yard setbacks is to provide a sufficient distance between the structure and property lines in order to allow for proper maintenance of the structure, to allow access by emergency vehicles and personnel, and to allow for proper site drainage by keeping run-off from the structure from inhibiting adjacent properties.

On July 12, 1993, the Board of Zoning Adjustment denied a similar request for a property located adjacent to the subject site. The applicant desired to construct a 45' x 22' garage within 6' of the rear property line of an adjacent residence. The request was denied by the Board due to the applicant not providing sufficient evidence indicating an unnecessary hardship(s) caused by the Zoning Ordinance as the lot was 2.42 times the lot size on which minimum setbacks are based.

At its July 10, 2006 meeting, the Board of Zoning Adjustment approved the construction of a garage/playroom addition within 3' of the rear property line of a home located in close proximity (440'±) to the subject site on Marston Lane. It should be mentioned that the applicant originally

requested to construct the garage/playroom addition 2' from the rear yard property line; however, the Board approved a distance of 3' from the rear property line in order to accommodate the addition.

More recently, at the Board of Zoning Adjustment's November 2, 2015 meeting, the side yard setback variance was approved to allow a carport and covered walkway 2.8' from the side yard property line of a site located to the Northeast of the subject site.

It should be noted that none of the above properties received approval for setback distances less than 2' from the side/rear property lines.

The applicant states that the outdoor kitchen will be "aesthetically pleasing," but has not given any specific details on how the site or other extenuating conditions are affecting the placement of the proposed outdoor kitchen on the property other than the fact that the applicant has a small yard. The site plan does not indicate any unusual topographic and/or other site encumbrances, such as easements, that are relegating the outdoor kitchen structure to the proposed location. It appears, in fact, that the existing patio will be removed as part of a redesign of the rear yard, which includes a new pool, lawn terrace, and the proposed outdoor kitchen.

Although it appears that the small, somewhat irregular-shaped rear yard may make it impossible to locate the proposed outdoor kitchen anywhere else on the site, the footprint of the outdoor kitchen structure could possibly be redesigned to fit within the parameters of the Zoning Ordinance. For instance, the outdoor kitchen can be reduced from 16.5' x 20' to 8.5' x 20' and/or relocated closer to the interior of the rear yard.

In reviewing the applicant's request for a variance as submitted, there does not appear to be any special conditions which exist such that a literal enforcement of the Ordinance will result in an unnecessary hardship, as the outdoor kitchen can be redesigned or relocated on the site to allow for the construction of the outdoor kitchen in the rear yard while fitting within the setback parameters of the Zoning Ordinance.

While there is some hardship regarding the size of the rear yard, the applicant has not sufficiently shown that there is a hardship with the property regarding the design and placement of the structure. Due to a lack of evidence to support the decrease in side yard setbacks, the denial of the request for variance may be considered appropriate.

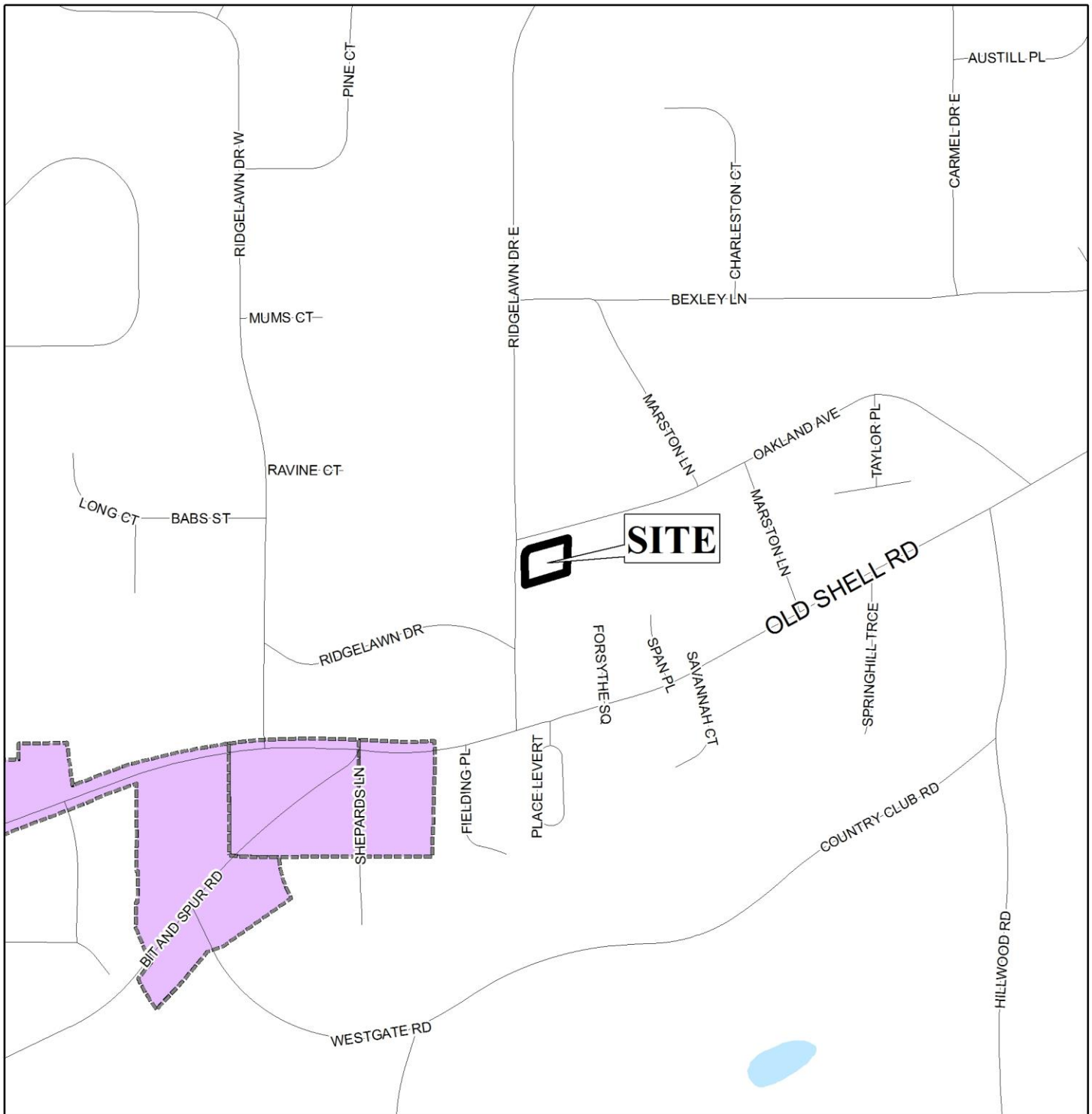
RECOMMENDATION: Staff recommends to the Board the following findings of fact for Denial:

- 1) The variance will be contrary to the public interest because the reduced setback will prohibit access around the proposed structure, and will reduce the available area for mitigating run-off from the proposed roof;
- 2) Special conditions do not appear to exist and there are no justifications of hardship which exist such that the literal enforcement of the provisions of the chapter will result in an

unnecessary hardship, as the outdoor kitchen can be constructed without the requirement for variances; 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 outdoor kitchen can be designed to fit within the parameters of the side yard setback requirements as defined by the Zoning Ordinance for an R-1, Single Family District development.

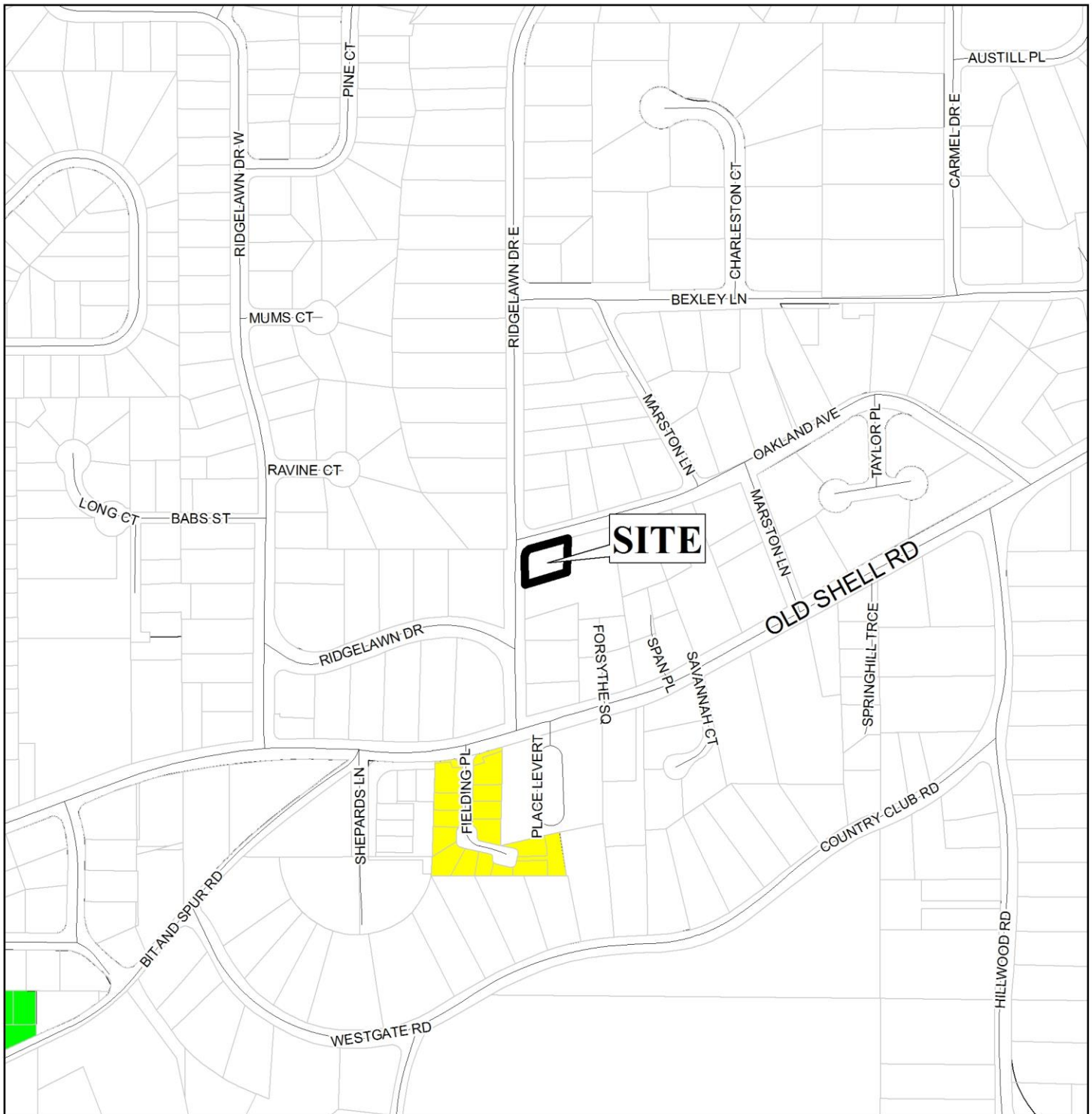
LOCATOR MAP



APPLICATION NUMBER 6071 DATE December 5, 2016
APPLICANT Michael R. Delaney
REQUEST Setback Variance



LOCATOR ZONING MAP



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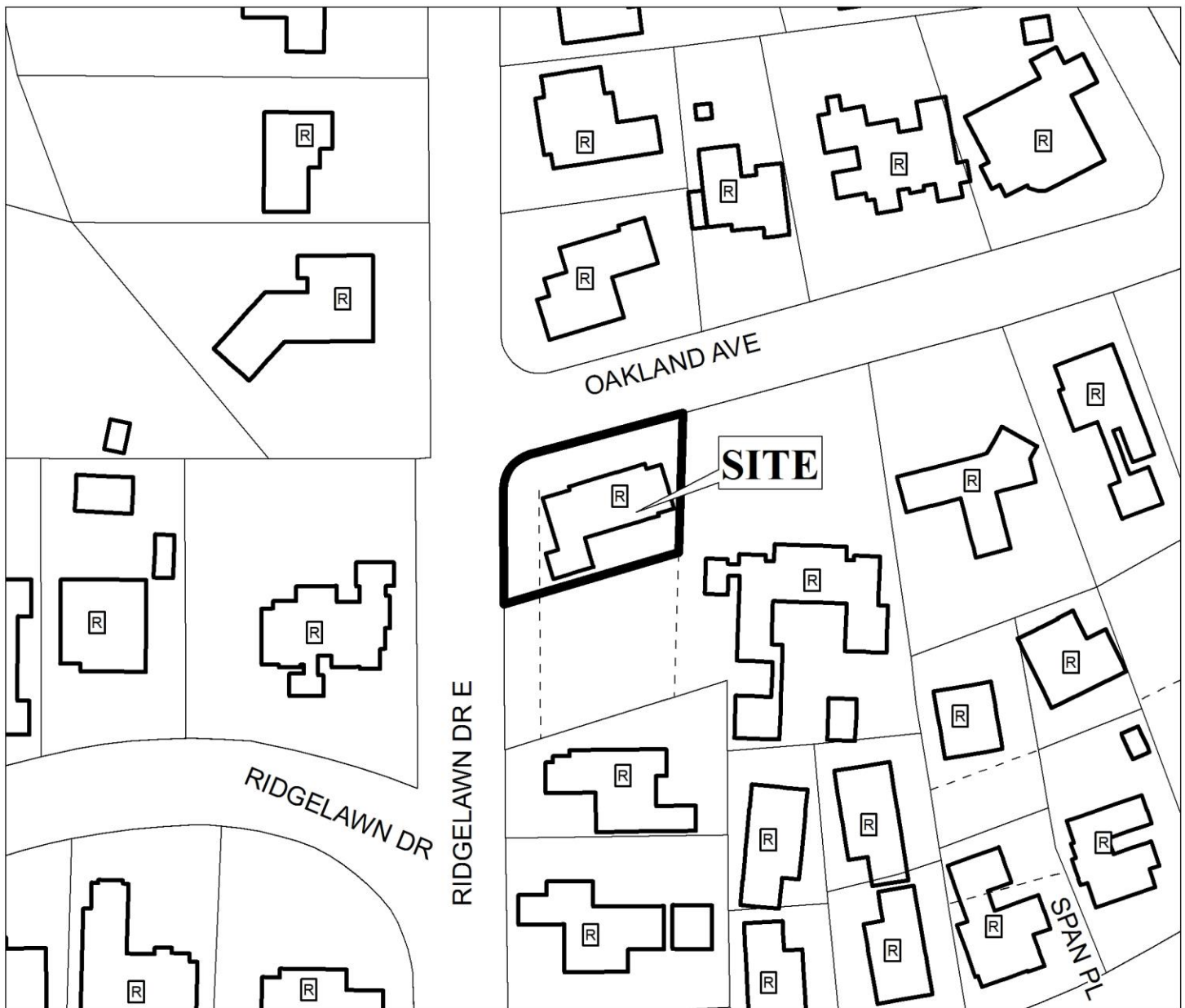
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REQUEST Setback Variance



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BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by single family residential units.

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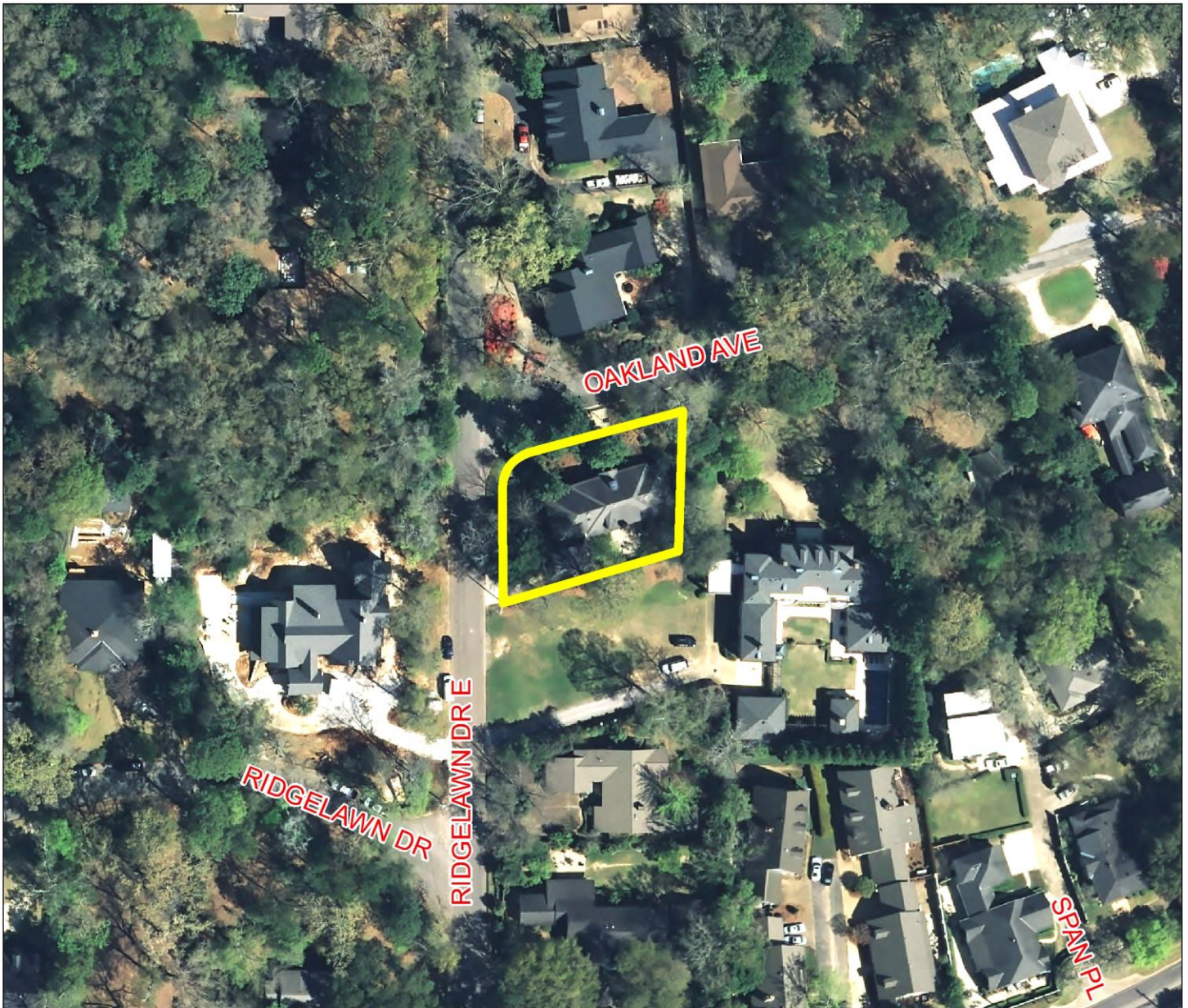
REQUEST Setback Variance

 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

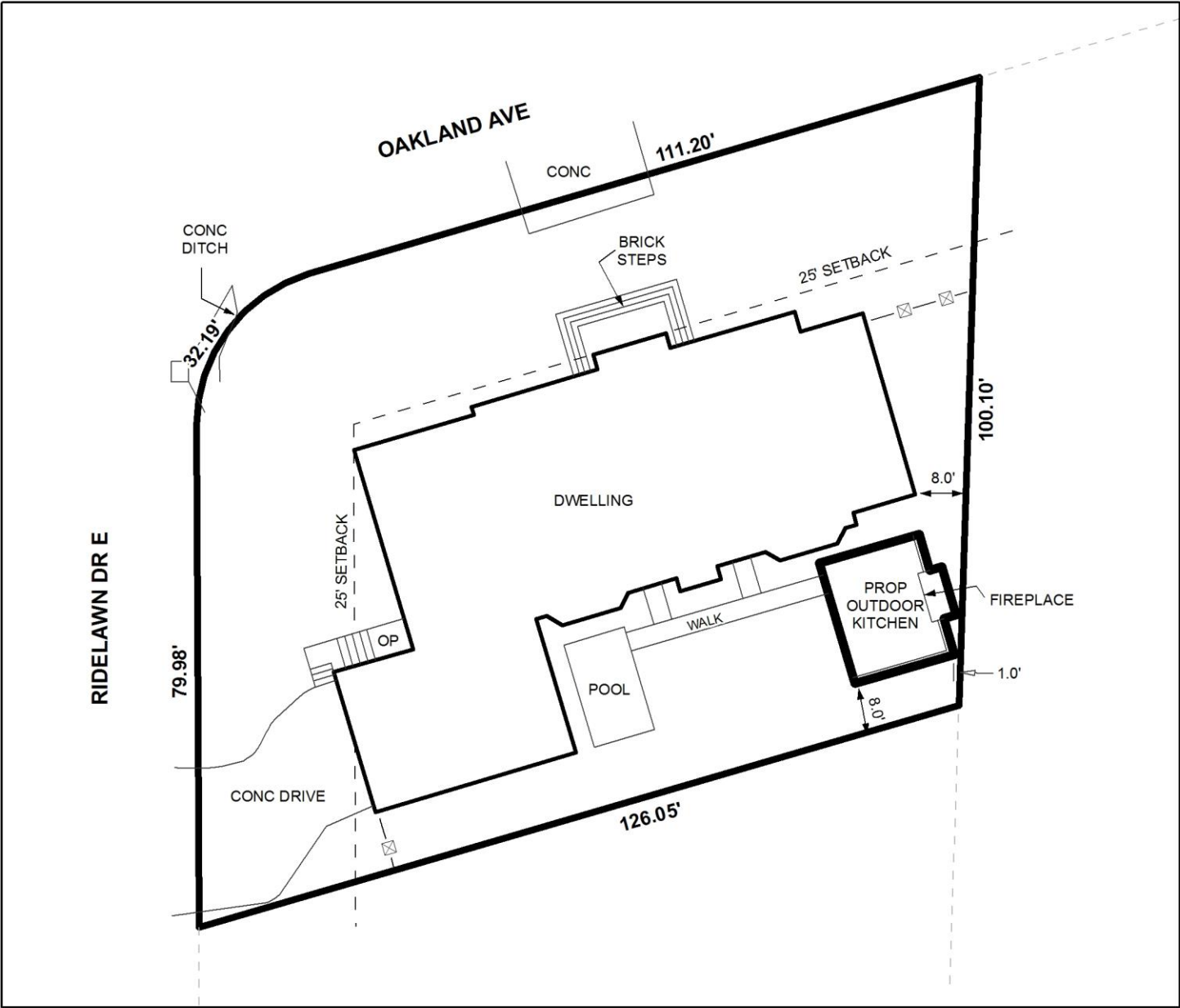


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SITE PLAN



The site plan illustrates the existing dwelling, setback, and proposed outdoor kitchen.

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