

**BOARD OF ZONING ADJUSTMENT  
STAFF REPORT****Date: April 7, 2014****CASE NUMBER**

5891

**APPLICANT NAME**

Robert Whigham (Don Williams, Agent)

**LOCATION**51 Oakland Avenue  
(Southwest corner of Oakland Avenue and Marston Lane)**VARIANCE REQUEST**

**SETBACK:** Side Street Yard Setback Variance to allow an 8' high wall setback 1' from the side street property line, and 8' high wooden gates within the side street yard setback in an R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum 20' side street yard setback for walls and gates over 3' high in an R-1, Single-Family Residential District.

**ZONING ORDINANCE  
REQUIREMENT**

**SETBACK:** The Zoning Ordinance requires a minimum 20' side street yard setback for walls and gates over 3' high in an R-1, Single-Family Residential District.

**ZONING**

R-1, Single Family Residential

**AREA OF PROPERTY**

0.5 ±Acres

**TRAFFIC ENGINEERING  
COMMENTS**

The construction of the proposed wall will not impact line of sight for the traveling public on either Oakland Avenue or Marston Lane. The location of the wall will not impact line of sight for the adjacent neighbor at 67 Marston Lane. The proposed thinning of the undergrowth will be an improvement upon the existing sight distance for the neighbor.

**CITY COUNCIL  
DISTRICT**

District 7

**ANALYSIS**

The applicant is requesting a Side Street Yard Setback Variance to allow construction of an 8' high stucco wall 1' from the front property line and 8' high wooden gates within the side street yard setback; a 20' side yard setback is required for walls and gates over 3' high in an R-1 Single-Family Residential District.

The applicant states the following:

*“We would like to construct an 8’ high concrete black (with stucco finish) free-standing wall along parts of our south and east property lines. The east property line wall would be 1’ outside the Marston Avenue right of way. We would also like to construct a new circular gravel driveway, with two new curb cuts, along Oakland Avenue. We would like to preserve our existing gravel driveway and curb cut further to the west along Oakland Avenue. We would like to construct City-standard concrete curb, gutter and three driveway entrances along our Oakland Avenue frontage. We would like to thin the undergrowth on our property and City right of way at the corner of Marston Avenue and Oakland Avenue, along with City right of way along Marston Avenue, to increase sight distance for cars.*

*We have a natural vegetative buffer along our Marston Avenue frontage. Placement of a free-standing wall along the property line would not create a sight distance problem. We have spoken with our southern neighbor, whose driveway would be most affected by the new wall. She is in verbal support of our proposal. Thinning of undergrowth on our and City property would “open up” the street and provide a complement to the Morrisette wall across the street. Oakland Avenue is barely adequate for two-way traffic, must less adequate for on-street parking. Our proposed circular driveway would allow room for guest cars, without compromising vehicular traffic along Oakland Avenue. The informal growth of the roadways and houses in this part of town have created a unique situation. We believe our proposed project will be compatible with the neighborhood.”*

Although the applicant has addressed several different proposed improvements to the property in the previous statement, the variance application is simply for the construction of an 8’ high concrete block free-standing wall 1’ from the side street property line and 8’ high wooden gates within the side street yard setback. The applicant mentioned a concrete block free-standing wall would complement the Morrisette wall across the street and although a side yard fence height variance was approved for the adjacent property by the Board in 1986. More recently, a request on Marston, north of Oakland, for a fence height variance to allow the construction of an 8’ high stucco wall 1’ from the front property line was denied by the Board in 2003. However, while there have been several setback variances in this area, only one has been of a similar request regarding a side street yard setback for a corner lot.

The applicant also mentions that they spoke with the southern neighbor whose driveway would be most affected by the new wall and that they were in verbal support. However, if the southern neighbor were to sell the property, a new owner may not be as equally supportive. Chapter 64-4.D.3 addresses side yards for corner building sites. Staff is concerned with the public safety and potential visibility issues that may occur, if approved.

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.

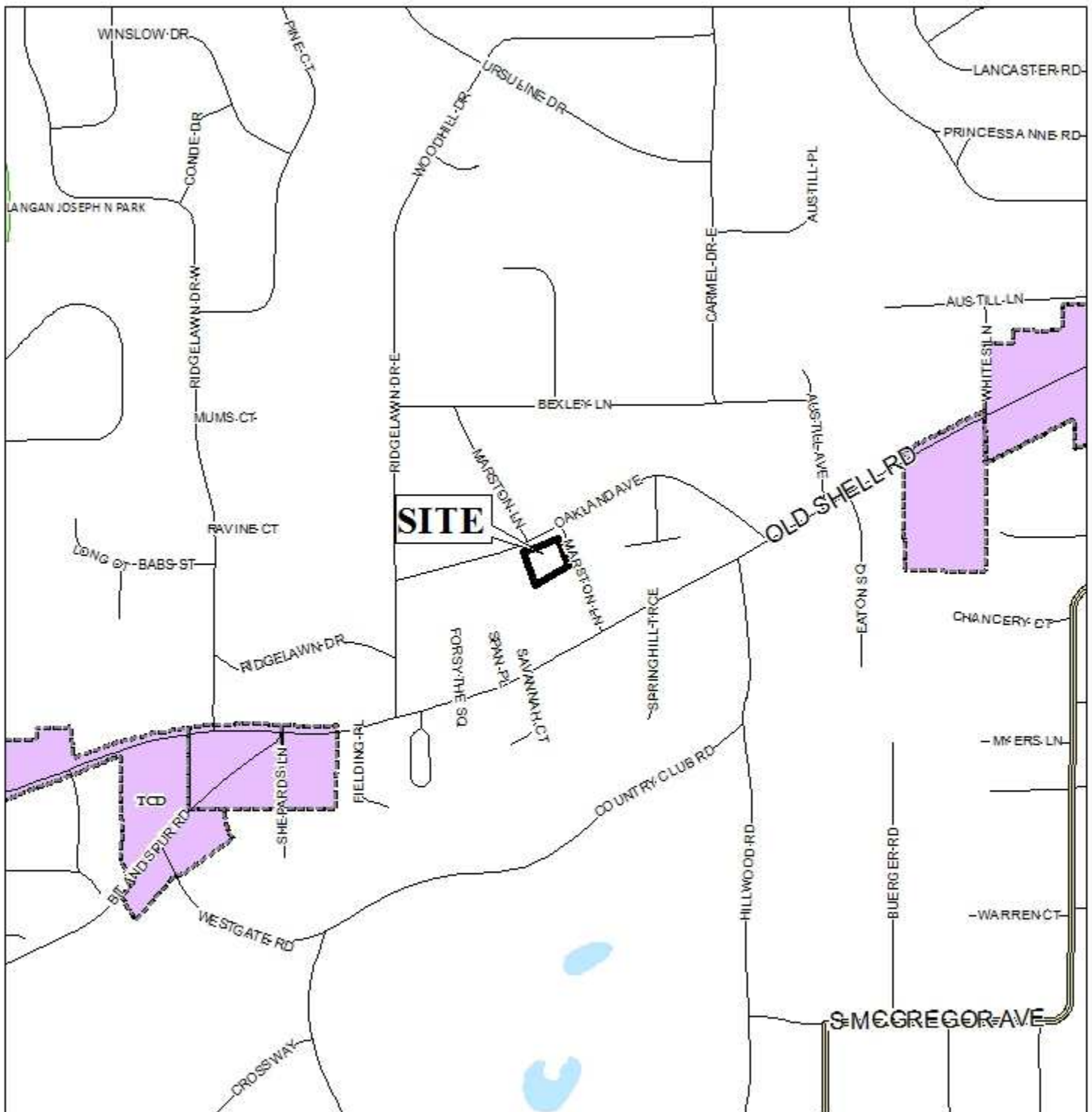
Variances are not intended to be granted frequently. The applicant must clearly show the Board that the request is due to very unusual characteristics of the property and that it satisfies the variance standards. What constitutes unnecessary hardship and substantial justice is a matter to be determined from the facts and circumstances of each application.

The applicant has failed to illustrate that a hardship exists. It is simply the applicant's desire to build an 8-foot wall within the required 20' side street yard setback.

**RECOMMENDATION:** Based upon the preceding, staff recommends to the Board the following findings of fact for denial:

- 1) Granting the variance will be contrary to the public interest in that it is contrary to Section 64-4.D.3 of the Zoning Ordinance regarding side street yard setbacks within an R-1, Single-Family Residential zoning district;
- 2) Special conditions, such as a hardship to the property, do not exist that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship; 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 most of the nearby residentially zoned lots in the immediate vicinity appear to have been developed in accordance with the Zoning Ordinance.

# LOCATOR MAP



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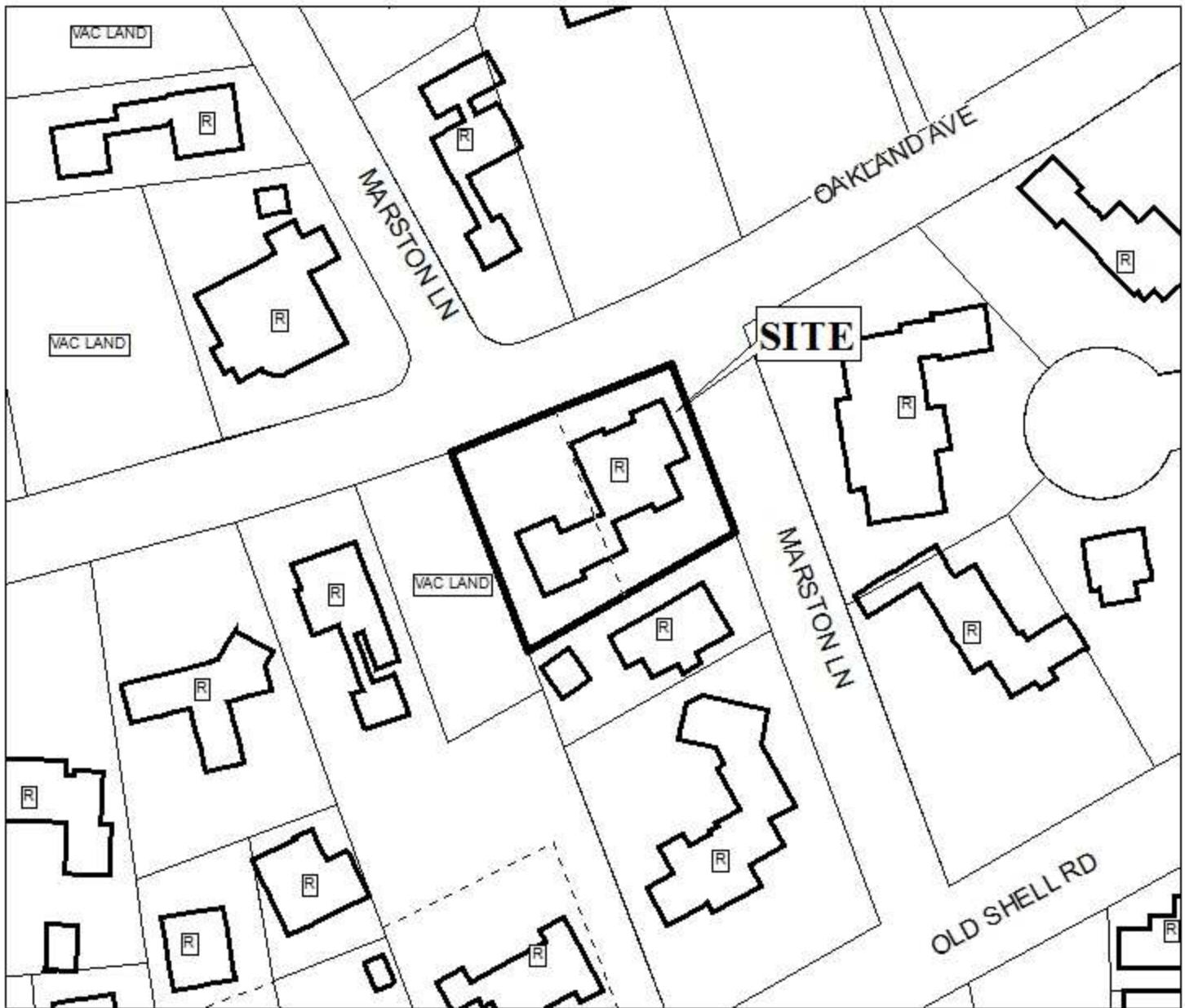
APPLICANT Robert Whigham (M. Don Williams, Agent)

REQUEST Side Street Yard Setback Variance



# BOARD OF ADJUSTMENT

## VICINITY MAP - EXISTING ZONING



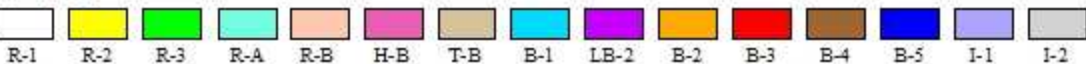
The site is surrounded by single family residences.

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LEGEND



NTS



# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING

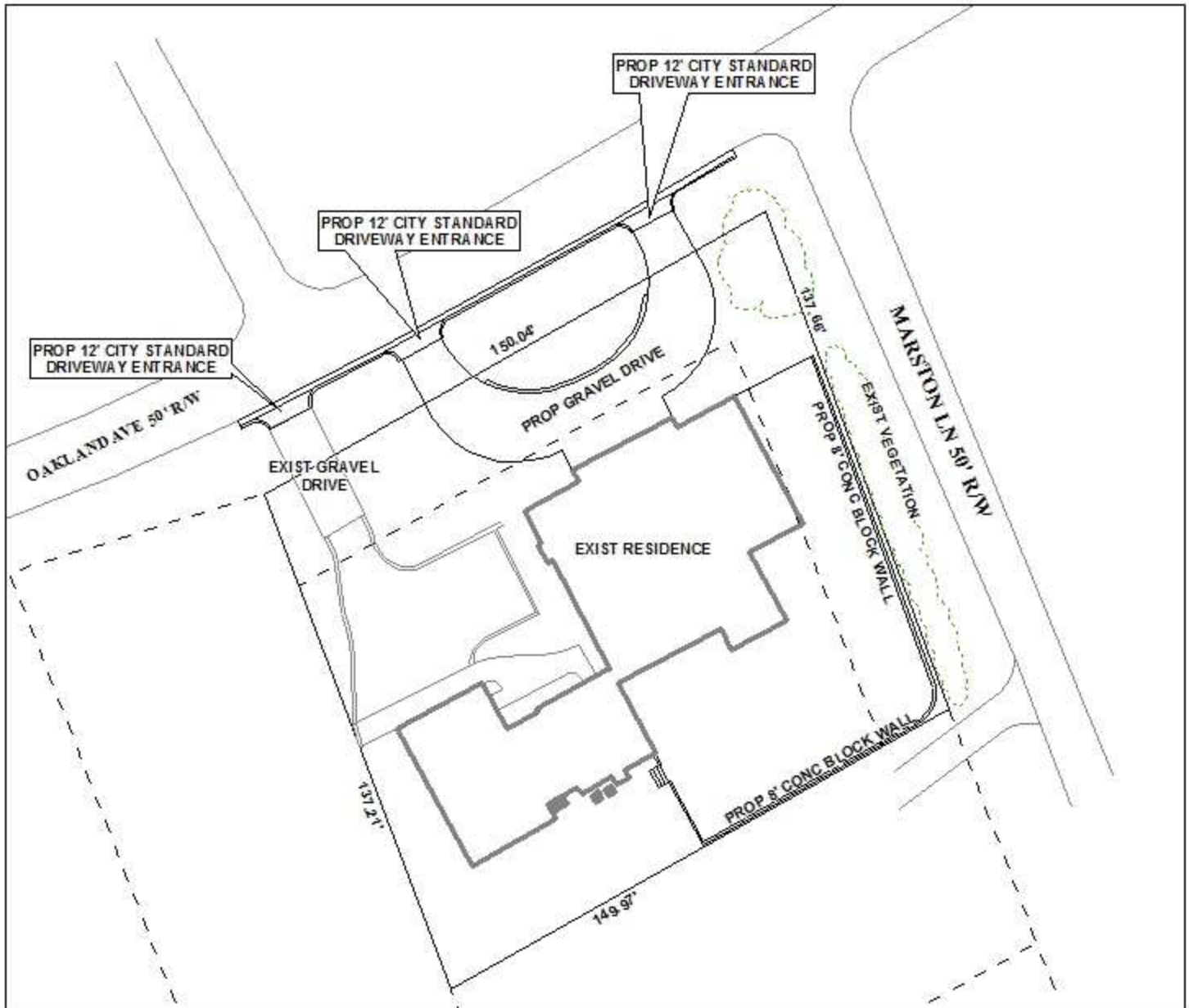


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# SITE PLAN



The site plan illustrates the proposed wall, proposed improvements to an existing driveway, and proposed driveways.

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