

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

6077

**APPLICANT NAME**

Epeval Taylor

**LOCATION**2535 Tanglewood Circle  
(West terminus of Tanglewood Circle)**VARIANCE REQUEST****REAR YARD SETBACK:** Rear Yard Setback Variance to allow a patio within 5' of a rear yard property line in an R-1, Single-Family Residential District.**ZONING ORDINANCE  
REQUIREMENT****SIDE & REAR YARD SETBACK:** The Zoning Ordinance requires all structures to be a minimum of 8' from the rear property line in an R-1, Single-Family Residential District.**ZONING**

R-1, Single-Family Residential

**AREA OF PROPERTY**

0.23± Acres

**TRAFFIC ENGINEERING  
COMMENTS**

This request was not reviewed by Traffic Engineering.

**ENGINEERING  
COMMENTS**

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.

**CITY COUNCIL  
DISTRICT**

District 7

**ANALYSIS**

The applicant is requesting a Rear Yard Setback Variance to allow a patio within 5' of a rear property line in an R-1, Single-Family Residential District; the Zoning Ordinance requires all structures to be a minimum of 8' from the rear property line in an R-1, Single-Family Residential District.

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 site plan illustrates a residence and patio which currently exist on the property, but does not adequately illustrate to what extent the existing patio infringes upon the minimum 8' rear yard setback or upon the drainage and utility easement illustrated in the rear of the property. However, Staff can speculate from the dimensions of the structure that it was built 2.5'± into the rear yard setback, and 2'± into the drainage and utility easement. It should be noted that patios and decks less than 3' tall can be constructed within a setback, but cannot be constructed in any easement. Photos submitted to Staff with the request at hand show that a wall more than 3' tall was constructed as part of the patio that extends into the easement. Staff was made aware of the violation on November 4, 2016 when the applicant attempted to obtain an "after-the-fact" building permit for the patio. The applicant wishes to keep the structure in its current location citing its completed construction and the finances required for its construction as justification for the request:

*"We contacted our A.R.C. for Magnolia Village to get a patio built and they approved it. Then we proceeded with the work only to find out a building permit was needed. After proceeding to get a permit the zoning department made me aware we were about 2.5 feet into our easement. We then proceeded to get assistance with how we could fix this matter because the structure was already built and a lot of money was put into the project. We need approval from the planning department to get permission granted to keep our patio and know if an emergency occurred and it had to be removed I would be responsible for the cost."*

With regards to the patio's completed construction, Staff received a letter from the Magnolia Village Home Owner's Association (HOA) in support of the applicant's request, iterating their initial approval of the construction of the patio; however, they failed to consider the requirements of the Zoning Ordinance with respect to rear yard setbacks and the drainage and utility easement illustrated on the recorded plat. Furthermore, the applicant failed to undertake due diligence in ensuring the guidelines of their HOA, which are not codified or recognized by the Zoning Ordinance, correlated *with* the Zoning Ordinance; instead, moving forward with construction. Additionally, the applicant failed to obtain the appropriate permit(s) prior to construction, thereby facilitating a self-imposed hardship.

With regards to the finances required for the construction of the patio, variance applications cannot be based on financial hardship; rather, they must be based on a hardship associated with the property.

As previously noted, the structure also infringes on a 7.5' drainage easement. As such, any portion of any structure encroaching upon an easement is required to be removed, with the exception of: approval of a vacation of an easement from the City Clerk's Office; public easements; or, a re-platting of the easement via a new subdivision application.

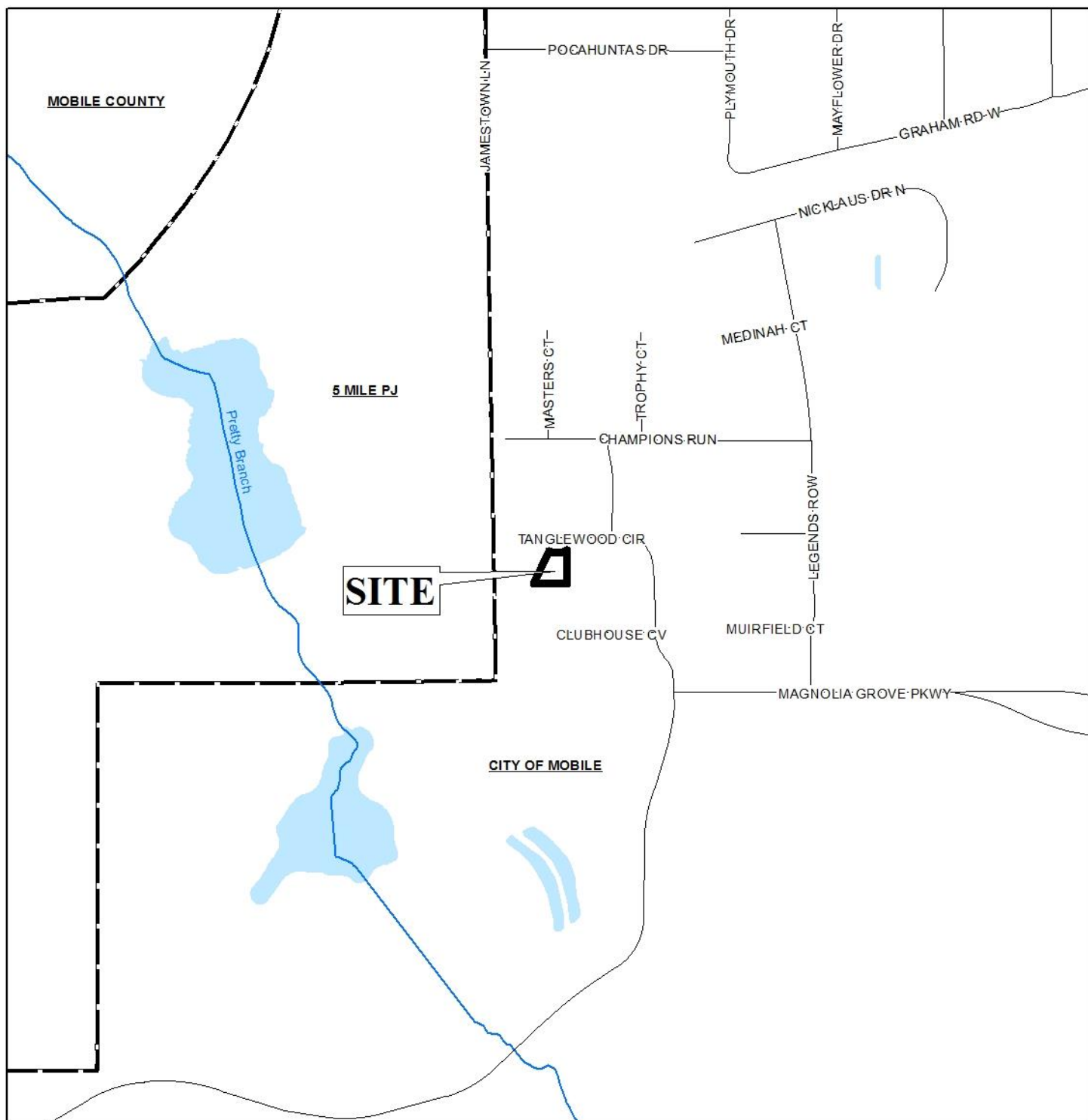
It should be noted that the residence on the property was completed in March, 2016, and is located within a developing subdivision.

Considering the preceding, along with the fact that no rear yard setback variances exist within the immediate neighborhood, and that a smaller patio could meet the rear yard setback requirements, the applicant has not presented sufficient evidence demonstrating a hardship as required in Section 64-8.B.6.f.(3).(d). of the Zoning Ordinance. Therefore, denial of the request may be appropriate.

**RECOMMENDATION:** Based on 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 will be contrary to Section 64-3.C.1.e. of the Zoning Ordinance regarding rear yard setbacks within an R-1, Single-Family Residential 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 the applicant could reduce the size of the patio to meet rear yard setback requirements; 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 for the patio since no rear yard setback variances exist within the vicinity of the subject site.

# LOCATOR MAP



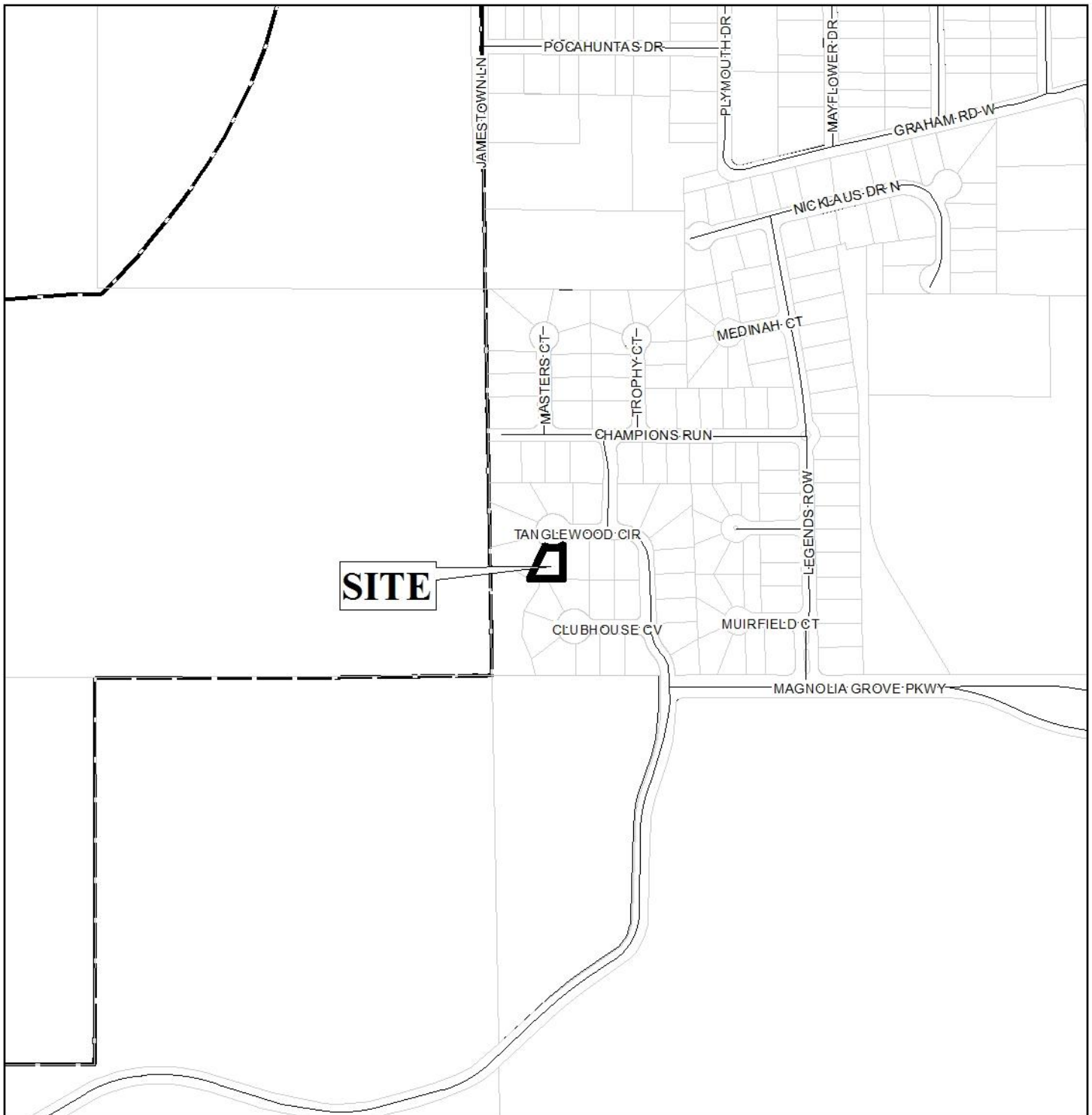
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REQUEST Setback Variance



# LOCATOR ZONING MAP



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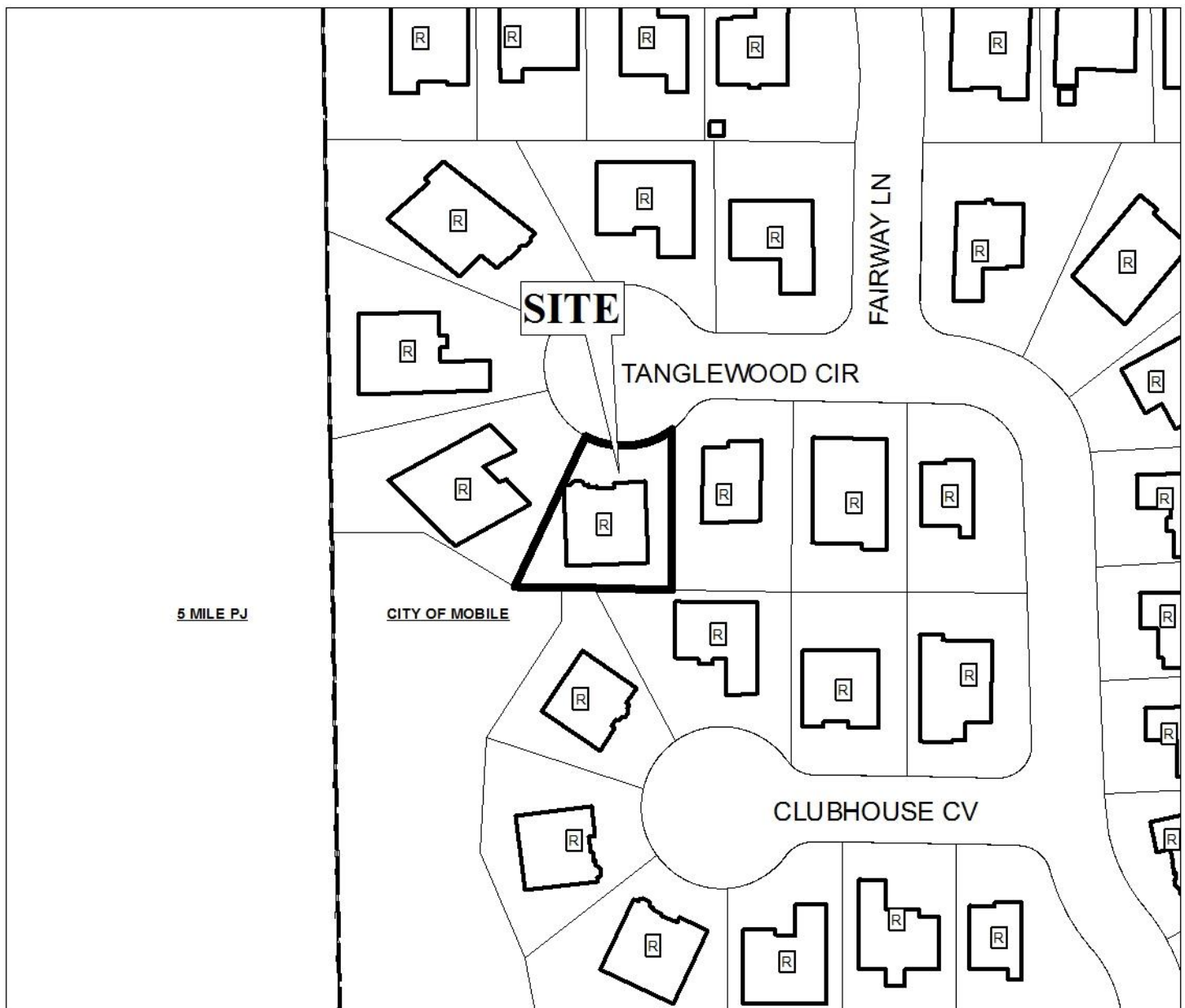
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# BOARD OF ADJUSTMENT

## VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units.

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<span style="display: inline-block; width: 15px; height: 15px; background-color: cyan; border: 1px solid black;"></span> R-A	<span style="display: inline-block; width: 15px; height: 15px; background-color: green; border: 1px solid black;"></span> R-3	<span style="display: inline-block; width: 15px; height: 15px; background-color: brown; border: 1px solid black;"></span> T-B	<span style="display: inline-block; width: 15px; height: 15px; background-color: orange; border: 1px solid black;"></span> B-2	<span style="display: inline-block; width: 15px; height: 15px; background-color: blue; border: 1px solid black;"></span> B-5	<span style="display: inline-block; width: 15px; height: 15px; background-color: yellow; border: 1px solid black;"></span> MUN	<span style="display: inline-block; width: 15px; height: 15px; background-color: orange; border: 1px solid black;"></span> SD-WH	<span style="display: inline-block; width: 15px; height: 15px; background-color: purple; border: 1px solid black;"></span> T5.1
<span style="display: inline-block; width: 15px; height: 15px; background-color: white; border: 1px solid black;"></span> R-1	<span style="display: inline-block; width: 15px; height: 15px; background-color: pink; border: 1px solid black;"></span> R-B	<span style="display: inline-block; width: 15px; height: 15px; background-color: cyan; border: 1px solid black;"></span> B-1	<span style="display: inline-block; width: 15px; height: 15px; background-color: red; border: 1px solid black;"></span> B-3	<span style="display: inline-block; width: 15px; height: 15px; background-color: lightblue; border: 1px solid black;"></span> I-1	<span style="display: inline-block; width: 15px; height: 15px; background-color: lightgreen; border: 1px solid black;"></span> OPEN	<span style="display: inline-block; width: 15px; height: 15px; background-color: pink; border: 1px solid black;"></span> T3	<span style="display: inline-block; width: 15px; height: 15px; background-color: darkpurple; border: 1px solid black;"></span> T5.2
<span style="display: inline-block; width: 15px; height: 15px; background-color: yellow; border: 1px solid black;"></span> R-2	<span style="display: inline-block; width: 15px; height: 15px; background-color: peachpuff; border: 1px solid black;"></span> H-B	<span style="display: inline-block; width: 15px; height: 15px; background-color: purple; border: 1px solid black;"></span> LB-2	<span style="display: inline-block; width: 15px; height: 15px; background-color: brown; border: 1px solid black;"></span> B-4	<span style="display: inline-block; width: 15px; height: 15px; background-color: gray; border: 1px solid black;"></span> I-2	<span style="display: inline-block; width: 15px; height: 15px; background-color: orange; border: 1px solid black;"></span> SD	<span style="display: inline-block; width: 15px; height: 15px; background-color: lightpurple; border: 1px solid black;"></span> T4	<span style="display: inline-block; width: 15px; height: 15px; background-color: darkblue; border: 1px solid black;"></span> T6





# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING AERIAL

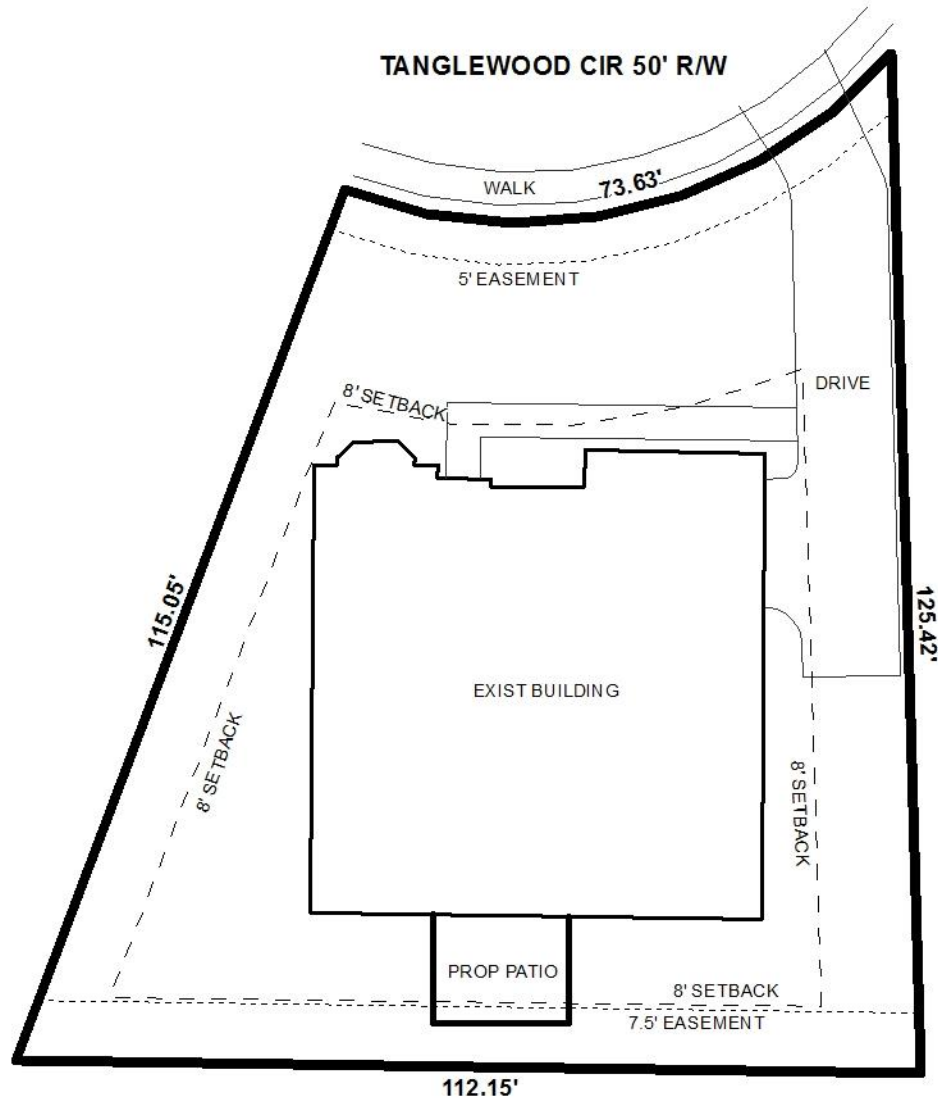


The site is surrounded by residential units.

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# SITE PLAN



The site plan illustrates the existing building, drive, setbacks, easements, and proposed patio.

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