



## Agenda Item # 15

BOA-SE-002611-2023 & BOA-002613-2023

View additional details on this proposal and all application materials using the following links:

[Applicant Materials for Consideration – Special Exception](#)

[Applicant Materials for Consideration – Variances](#)

### DETAILS

**Location:**

5575 Commerce Boulevard East

**Applicant / Agent:**

Telecad Wireless, Inc. (Allen Rogers, Agent)

**Property Owner:**

Midam Properties LLC

**Current Zoning:**

B-5, Office Distribution District

**Future Land Use:**

Light Industry

**Case Number(s):**

6543

**Unified Development Code Requirement:**

- Special Exception to allow a 180-foot high telecommunications facility requiring a Class 4 Permit in a B-5, Office Distribution District
- All lots must be a compliant minimum size in a B-5, Office Distribution District
- Structure heights are limited to a maximum of 45-feet in a B-5, Office Distribution District

- Telecommunications towers must be setback from the property line a distance equal to the tower height in a B-5, Office Distribution District

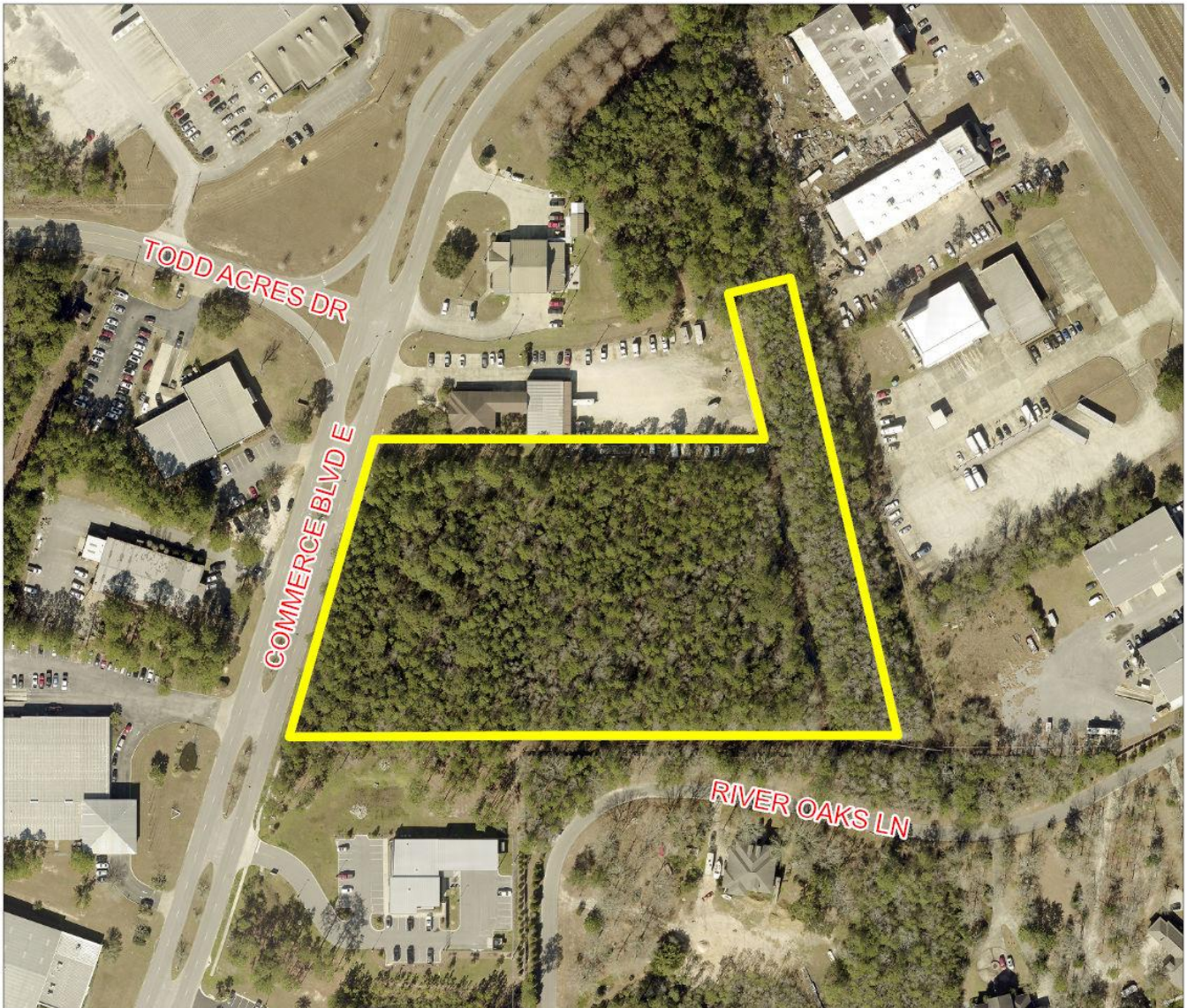
**Board Consideration:**

- Special Exception to allow a 180-foot high telecommunications facility requiring a Class 4 Permit
- To allow a sub-standard lot size in a B-5, Office Distribution District
- Height Variance to allow a 180-foot high structure in a B-5, Office Distribution District
- To allow a reduced setback for a 180-foot high telecommunications tower in a B-5, Office Distribution District

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# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING AERIAL



The site is surrounded by residential and commercial units.

APPLICATION NUMBER <u>6543</u> DATE <u>September 11, 2023</u>
APPLICANT <u>Telecad Wireless, Inc. (Allen Rogers, Agent)</u>
REQUEST <u>Special Exception Building Height Variance</u>



## SITE HISTORY

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The site has no history of variance applications before the Board of Adjustment.

## STAFF COMMENTS

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### Engineering Comments:

If the proposed variance is approved the applicant will need to have the following conditions met:

- A. The proposed improvements shown on the submitted plans will require a Land Disturbance Permit be submitted through Central Permitting.
- B. The existing drainage patterns and surface flow characteristics should not be altered so as to have a negative impact on any adjoining properties or any public rights-of-way.
- C. Any and all proposed land disturbing activity within the property will need to be in conformance with Mobile City Code, Chapter 17, Storm Water Management and Flood Control); the City of Mobile, Alabama Flood Plain Management Plan (1984); and, the Rules For Erosion and Sedimentation Control and Storm Water Runoff Control.
- D. Applicant agrees to install adequate BMPs during construction to protect from sediment/pollutants leaving the site.

### Traffic Engineering Comments:

No comments.

### Urban Forestry Comments:

Property to be developed in compliance with state and local laws that pertain to tree preservation and protection on both city and private properties [Act 929 of the 1961 Regular Session of the Alabama Legislature (Acts 1961, p. 1487), as amended, and City Code Chapters 57 and 65]. Private removal of trees in the right-of-way will require approval of the Mobile Tree Commission. Removal of heritage trees from undeveloped residential sites, developed residential sites in historic districts, and all commercial sites will require a tree removal permit.

### Fire Department Comments:

All projects within the City Limits of Mobile shall comply with the requirements of the City of Mobile Fire Code Ordinance (2021 International Fire Code). Fire apparatus access is required to be within 150' of all commercial and residential buildings. A fire hydrant is required to be within 400' of non-sprinkled commercial buildings and 600' of sprinkled commercial buildings.

### Planning Comments:

The applicant has requested a Special Exception as well as Lot Size, Height, and Setback Variances to allow a 180-foot high telecommunications facility requiring a Class 4 permit, on a sub-standard lot, with a reduced setback in a B-5, Office Distribution District. The Unified Development Code (UDC) requires a Special Exception to allow a telecommunications facility requiring a Class 4 permit, requires all lots to be a compliant minimum size, limits structure heights to 45-feet, and requires a property line setback equal to the tower height in a B-5, Office Distribution District.

The subject site has a two-lot Subdivision pending on the September 7, 2023 Planning Commission agenda to create a legal lot of record for the proposed lease parcel to accommodate the new 180-foot tall telecommunications tower.

The proposed lease parcel and the parent parcel are currently vacant, wooded properties. It should be noted that the majority of the surrounding properties are developed with offices and warehouses, with a dwelling in an R-1, Single-Family Residential District to the South. The subject site, and all immediately adjacent properties are zoned B-5, Office Distribution District, with the exception of the dwelling in an R-1, Single-Family Residential District to the South.

Table 64-2-24.1 of the Unified Development Code requires Special Exception for Class 4 Telecommunications Facilities in a B-5 Office Distribution District. The applicant has submitted the required information regarding the Special Exception request, and a link to those documents can be found on page 1 of this report.

Article 2, 64-2-16.E.1. of the UDC require new building sites within a B-5 Office Distribution District be a minimum of 7,200 square feet. It is not uncommon for lease parcels accommodating telecommunications facilities to only be large enough to accommodate the tower and associated equipment. A State of Alabama Law adopted in 2012 requires that lease parcels must also be legal lots of record, otherwise the existing legal lot of record would be sufficient to allow the development, notwithstanding the Special Exception and other Variance requests.

Article 2, 64-2-16.E.4. of the UDC limits structures to a maximum of 45-feet tall in a B-5 Office Distribution District. For typical structures, this is generally adequate; however, telecommunications facilities require a greater height so that they are able to overcome intervening objects, such as trees, other buildings, and topography. Section 64-4-9.G.7.(c) allows Class 4 towers up to a maximum of 180-feet by-right in I-1 and I-2 districts, but allows for towers in other districts to exceed the maximum allowable height of other zoning districts, if a variance is granted by the Board.

Article 4, 64-4-9.G.7.(f)(2) of the Unified Development Code (UDC) requires Class 4 towers to have a setback on all sides, a distance equal to the height of the tower; the applicant is proposing a 180-foot tall tower, with an approximate 35-foot setback from the proposed property lines of the lease parcel. Furthermore, Section 64-4-9.G.21.(b)(1) states that setback variances should only be granted for towers where the proposed location makes compliance impossible, and the only alternative is for the tower to be located at another site which poses a greater threat to the public health, safety or welfare or is closer in proximity to a residentially zoned land. The applicant does illustrate a radius from the tower showing 180-feet on the site plan, which is the setback the UDC requires for the proposed tower. As proposed, the 180-foot buffer does not include any other structures. It should be noted that the proposed tower could meet setback requirements, only if it were placed in the middle of the parent parcel, with no separate lease lot. This would severely impact any further development on the overall 6.7± acre site.

## SPECIAL EXCEPTION CONSIDERATIONS

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### Standards of Review:

Special Exceptions are those uses that may have some special impact which differs from the potential impacts of permitted uses, exceeds permitted uses in intensity, or have a uniqueness such that their effect on the surrounding environment cannot readily be determined in advance of the use being proposed in a particular location.

Article 5 Section 11-E.1. of the Unified Development Codes states the Board of Adjustment will not approve an Application for Special Exception unless:

- (a)** The proposed use is in harmony with the general purpose, goals, objectives and standards of this Chapter, or any other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice, by the City.
- (b)** The proposed use at the proposed location shall not result in a substantial or undue adverse effect on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, public sites or rights-of-way, or other matters affecting the public health, safety and general welfare either as they now exist or as they may in the future be developed as a result of the implementation of provisions and policies of this Chapter, or any other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice, by the City or other governmental agency having jurisdiction to guide growth and development.
- (c)** The proposed use will be adequately served by, and will not impose an undue burden on, any of the improvements, facilities, utilities, and services specified in this subsection. Where any such improvements, facilities, utilities or services are not available or adequate to service the proposed use in the proposed location, the Applicant shall, as part of the application and as a condition to approval of the proposed Special Exception permit, be responsible for establishing ability, willingness and commitment to provide such improvements, facilities, utilities and services in sufficient time and in a manner consistent with this Chapter, and other plans, programs, maps and ordinances adopted by the City to guide its growth and development. The approval of the Special Exception Permit shall be conditioned upon such improvements, facilities, utilities and services being provided and guaranteed by the Applicant.
- (d)** The proposed use is consistent with all applicable requirements of this Chapter, including:
  - (1)** Any applicable development standards in Article 3; and
  - (2)** Any applicable use regulations in Article 4.
- (e)** The proposed use is compatible with the character of the neighborhood within the same zoning district in which it is located;
- (f)** The proposed use will not impede the orderly development and improvement of surrounding property for uses permitted within the zoning district; and
- (g)** The proposed use will have no more adverse effects on health, safety or comfort of persons living or working in the neighborhood, or will be no more injurious to property or improvements in the neighborhood than would any other use generally permitted in the same district.
  - (1)** In making this determination, the Board of Adjustment shall consider:
    - a.** The location, type and height of buildings or structures;
    - b.** The type and extent of landscaping and screening;
    - c.** Lighting;
    - d.** Hours of operation; or
    - e.** Other conditions that might require mitigation of any adverse impacts of the proposed development.
- (h)** The site is designed to provide ingress and egress that minimize traffic hazards and traffic congestion on the public roads;
- (i)** The site is designed to minimize the impact on storm water facilities;
- (j)** The use will be adequately served by water and sanitary sewer services;
- (k)** The use is not noxious or offensive by reason of emissions, vibration, noise, odor, dust, smoke or gas; and
- (l)** The use will not be detrimental or endanger the public health, safety or general welfare.

Article 5, Section 11-E.2. states; that when considering a Special Exception application, the following should also be considered:

The City's and the larger community's best interests and the need, benefit, or public purpose of the proposed request.

Additionally, Article 5, Section 11-E.3. states:

The Board of Adjustment shall give careful consideration to the warrants and criteria set forth in this section in judging applications for Special Exceptions involving the following uses. In granting a Special Exception, the board may attach such reasonable conditions and safeguards in addition to those set forth in this section, as it may deem necessary to implement the purposes of this Chapter.

Lastly, Article 4, Section 9.G.21. states the Board of Adjustment may grant approval of a site plan development variance if the Applicant demonstrates with written evidence that:

1. The location, shape, appearance or nature of use of the proposed Tower will not substantially detract from the aesthetics of the area nor change the character of the neighborhood in which the Tower is proposed to be located; and
2. The site plan development modification will not create any threat to the public health, safety or welfare.

In addition, the applicant must demonstrate with written evidence, the following:

1. In the case of a requested modification to the Setback requirement, that the area of the parcel of land upon which the Tower is proposed to be located makes compliance with the Setback requirements impossible, and the only alternative for the Person is to locate the Tower at another site which poses a greater threat to the public health, safety or welfare or is closer in proximity to a residentially zoned land; and
2. In the case of a requested modification of the height limit, that the modification is necessary to (i) facilitate collocation of Telecommunications Facilities in order to avoid construction of a new Tower; or (ii) meet the coverage requirements of the Applicant's wireless communications system, which requirements must be documented with written, technical evidence from an electrical engineer(s).

## Considerations:

Based on the requested Special Exception application, if the Board considers approving the application, the following findings of fact must be present:

- 1) The proposed use **is** in harmony with the general purpose, goals, objectives and standards of this Chapter, or any other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice, by the City.
- 2) The proposed use at the proposed location **shall not** result in a substantial or undue adverse effect on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, public sites or rights-of-way, or other matters affecting the public health, safety and general welfare either as they now exist or as they may in the future be developed as a result of the implementation of provisions and policies of this Chapter, or any other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice, by the City or other governmental agency having jurisdiction to guide growth and development.
- 3) The proposed use **will** be adequately served by, and will not impose an undue burden on, any of the improvements, facilities, utilities, and services specified in this subsection.

- 4) The proposed use **is** consistent with all applicable requirements of this Chapter, including: any applicable development standards in Article 3; and any applicable use regulations in Article 4.
- 5) The proposed use **is** compatible with the character of the neighborhood within the same zoning district in which it is located.
- 6) The proposed use **will not** impede the orderly development and improvement of surrounding property for uses permitted within the zoning district.
- 7) The proposed use **will** have no more adverse effects on health, safety or comfort of persons living or working in the neighborhood, or will be no more injurious to property or improvements in the neighborhood than would any other use generally permitted in the same district.
- 8) The site **is** designed to provide ingress and egress that minimize traffic hazards and traffic congestion on the public roads.
- 9) The site **is / is not** designed to minimize the impact on storm water facilities.
- 10) The use **will** be adequately served by water and sanitary sewer services.
- 11) The use **is not** noxious or offensive by reason of emissions, vibration, noise, odor, dust, smoke or gas; and
- 12) The use **will not** be detrimental or endanger the public health, safety or general welfare.

## VARIANCE CONSIDERATIONS

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### Standards of Review:

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.

Article 5 Section 10-E. 1. of the Unified Development Codes states that the Board of Adjustment may grant a variance if:

- The Applicant demonstrates that the variance shall not be contrary to the public interest,
- Where, owing to special conditions a literal enforcement of the provision of this Chapter will result in unnecessary hardship; and
- The spirit of this Chapter will be observed and substantial justice done.

Article 5 Section 10-E.2. states no variance shall be granted:

- (a) In order to relieve an owner of restrictive covenants that are recorded in Mobile County Probate Court and applicable to the property;
- (b) Where economic loss is the sole basis for the required variance; or
- (c) Where the variance is otherwise unlawful.

### Considerations:

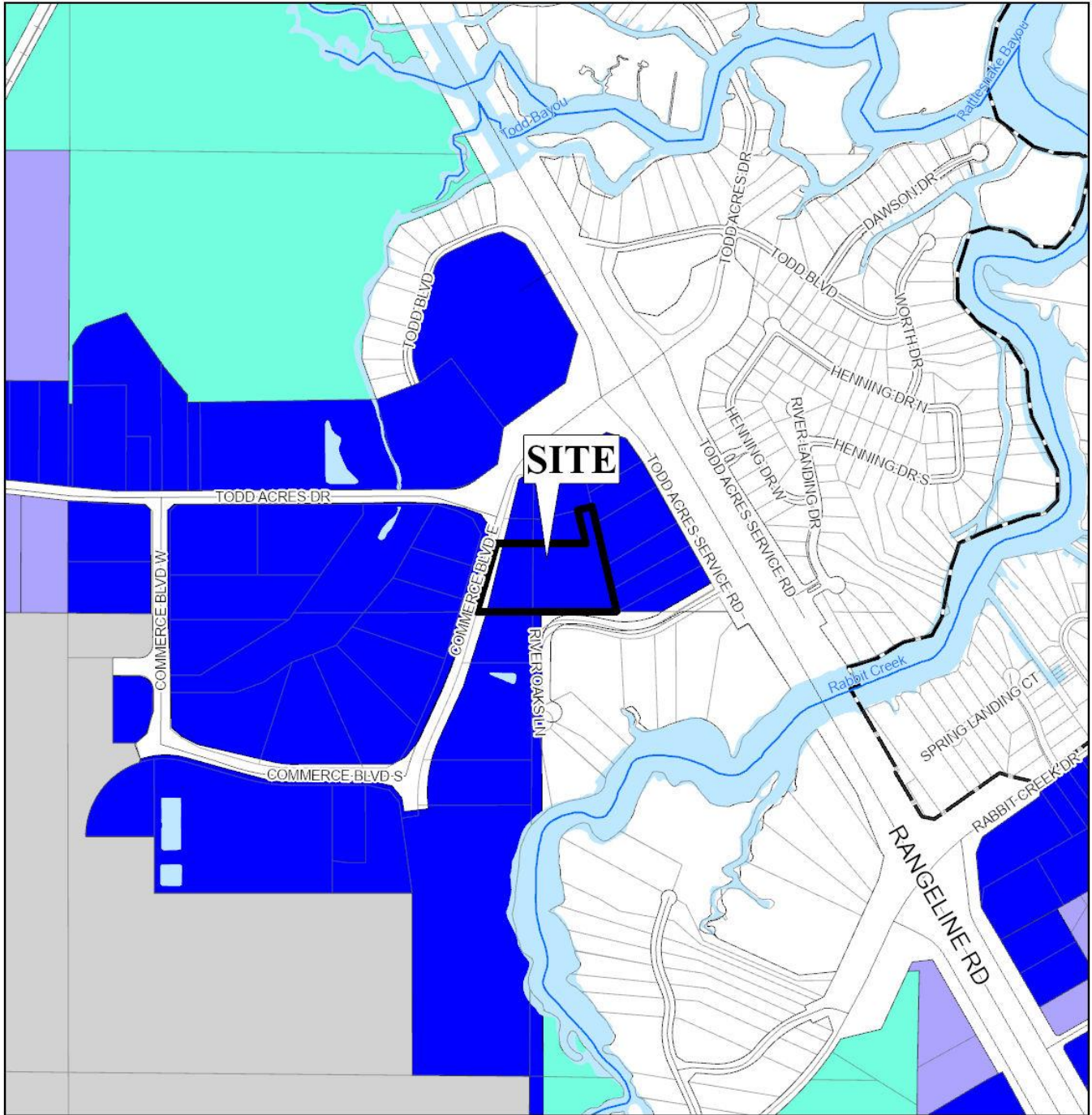
Based on the requested Variance application and documentation submitted, if the Board considers approval of the request, the following findings of fact must be present:

- 1) The variance **will not** be contrary to the public interest;
- 2) Special conditions **exist** such that a literal enforcement of the provisions of the chapter **will** result in unnecessary hardship; and

- 3) The spirit of the chapter **shall be** observed and substantial justice **done** to the applicant and the surrounding neighborhood by granting the variance.



# LOCATOR ZONING MAP



APPLICATION NUMBER 6543 DATE September 11, 2023

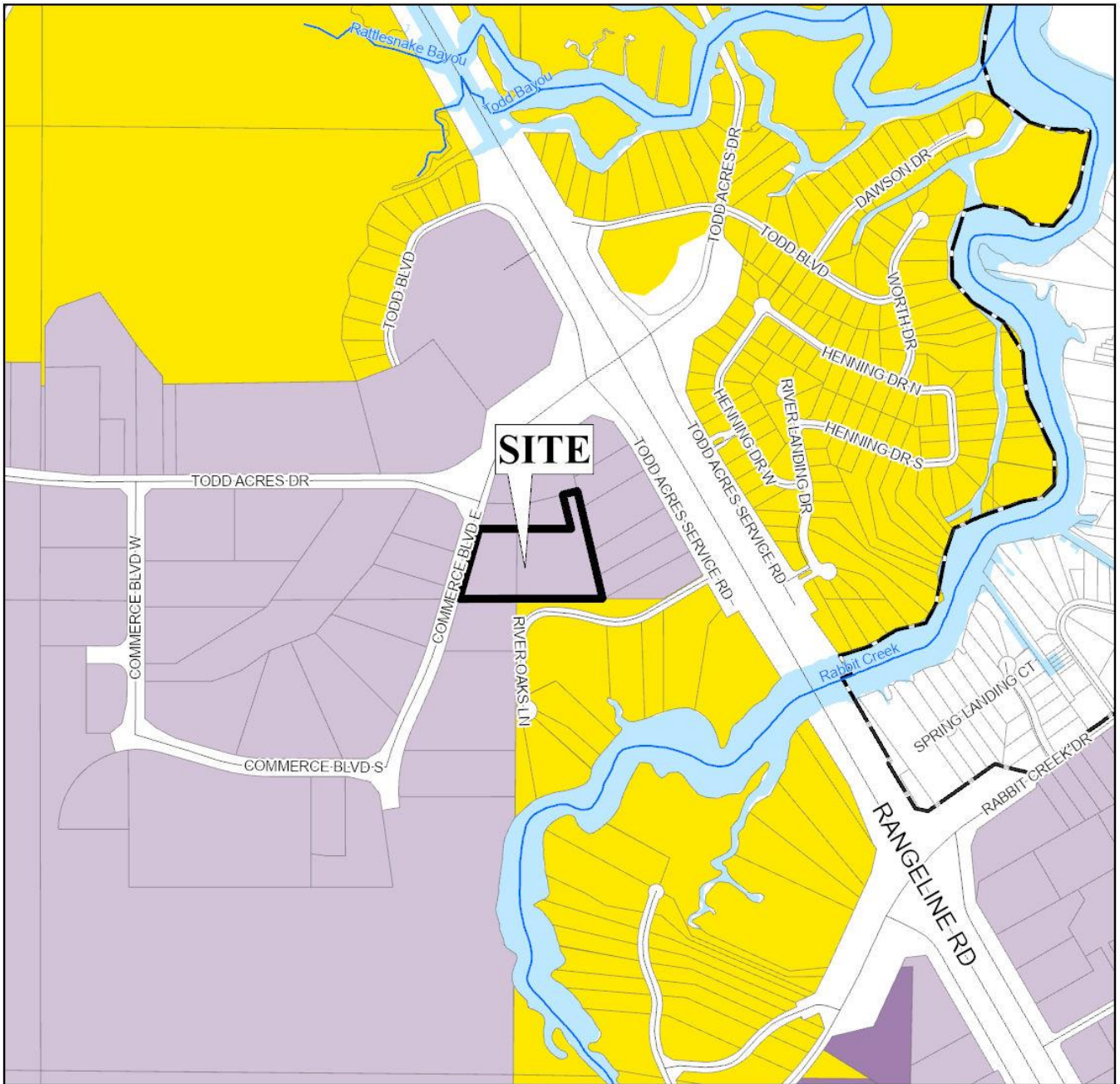
APPLICANT Telecad Wireless, Inc. (Allen Rogers, Agent)

REQUEST Special Exception Building Height Variance



NTS

# FLUM LOCATOR MAP



APPLICATION NUMBER 6543 DATE September 11, 2023

APPLICANT Telecad Wireless, Inc. (Allen Rogers, Agent)

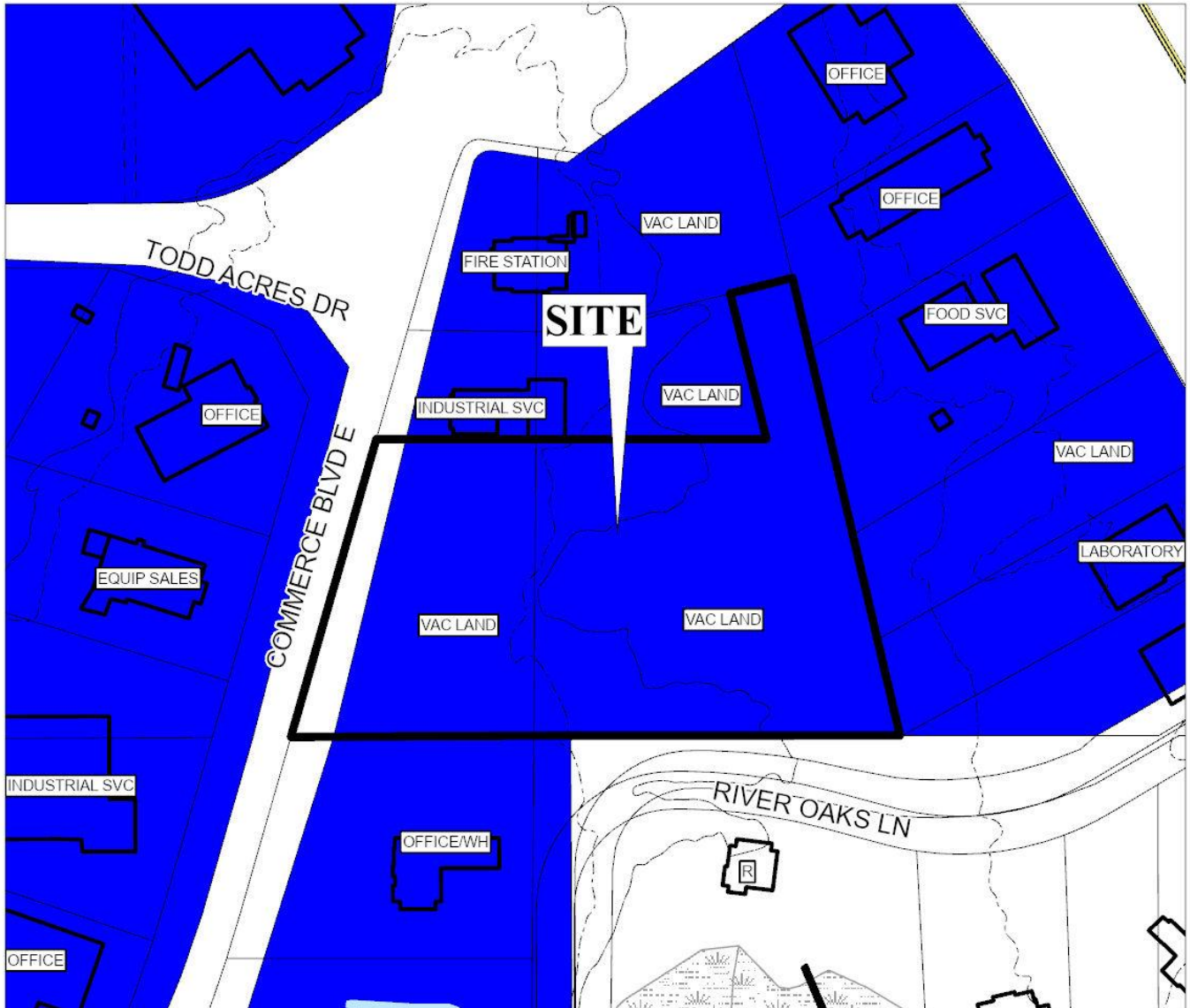
REQUEST Special Exception Building Height Variance

- |                           |                                   |                     |                    |
|---------------------------|-----------------------------------|---------------------|--------------------|
| 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       |                    |



NTS

# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by residential and commercial units.

APPLICATION NUMBER 6543 DATE September 11, 2023

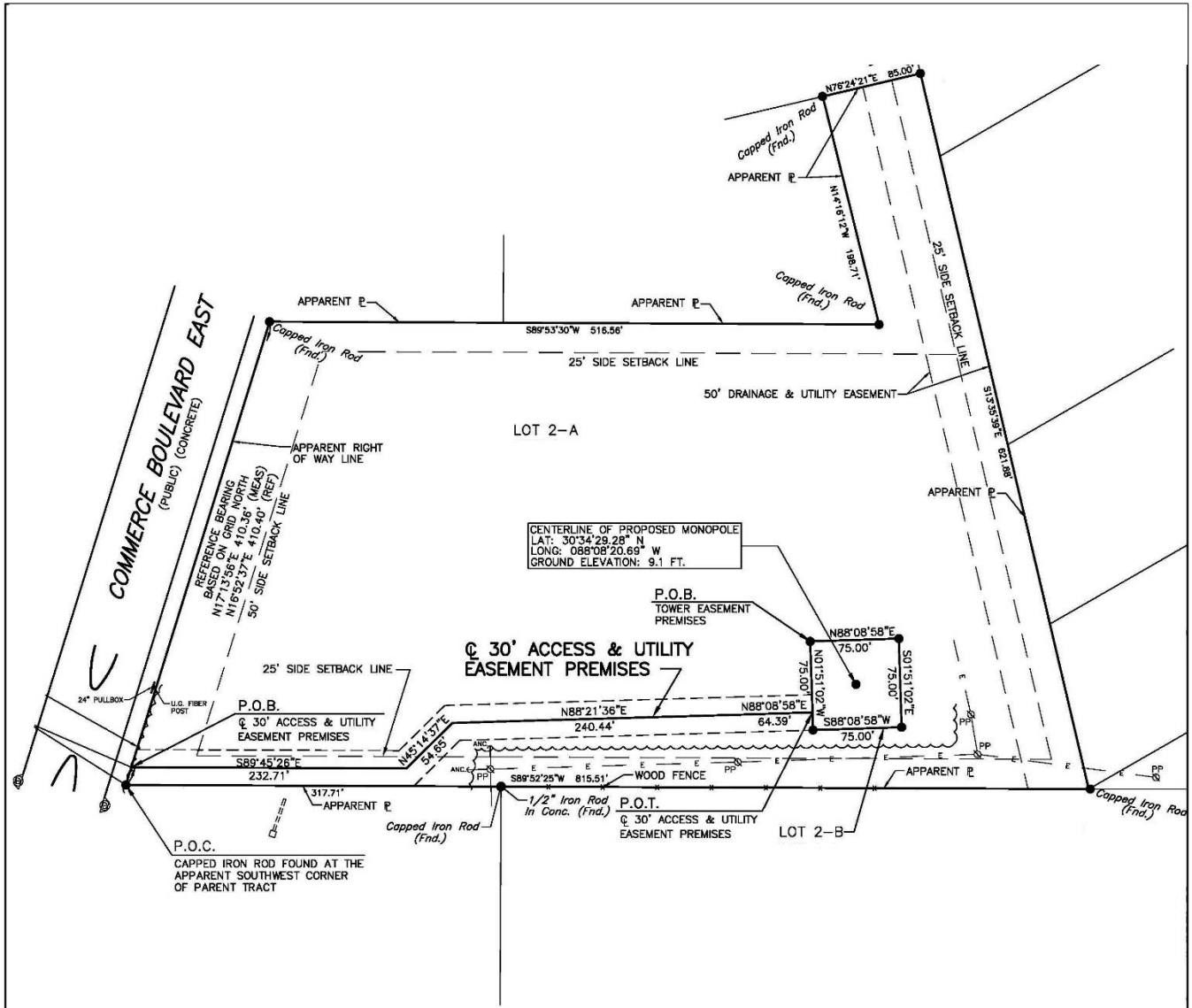
APPLICANT Telecad Wireless, Inc. (Allen Rogers, Agent)

REQUEST Special Exception Building Height Variance

<span style="color: cyan;">■</span> R-A	<span style="color: green;">■</span> R-3	<span style="color: cyan;">■</span> B-1	<span style="color: orange;">■</span> B-2	<span style="color: blue;">■</span> B-5	<span style="color: lightblue;">■</span> ML	<span style="color: gray;">■</span> I-2	<span style="color: lightgreen;">■</span> OPEN	<span style="color: pink;">■</span> T-3	<span style="color: purple;">■</span> T-5.2
<span style="color: white;">■</span> R-1	<span style="color: magenta;">■</span> R-B	<span style="color: brown;">■</span> T-B	<span style="color: red;">■</span> B-3	<span style="color: orange;">■</span> CW	<span style="color: teal;">■</span> MH	<span style="color: green;">■</span> PD	<span style="color: orange;">■</span> SD	<span style="color: purple;">■</span> T-4	<span style="color: darkpurple;">■</span> T-6
<span style="color: yellow;">■</span> R-2	<span style="color: peachpuff;">■</span> H-B	<span style="color: purple;">■</span> LB-2	<span style="color: brown;">■</span> B-4	<span style="color: lightblue;">■</span> MM	<span style="color: lightpurple;">■</span> I-1	<span style="color: yellow;">■</span> MUN	<span style="color: orange;">■</span> SD-WH	<span style="color: purple;">■</span> T-5.1	



# SITE PLAN

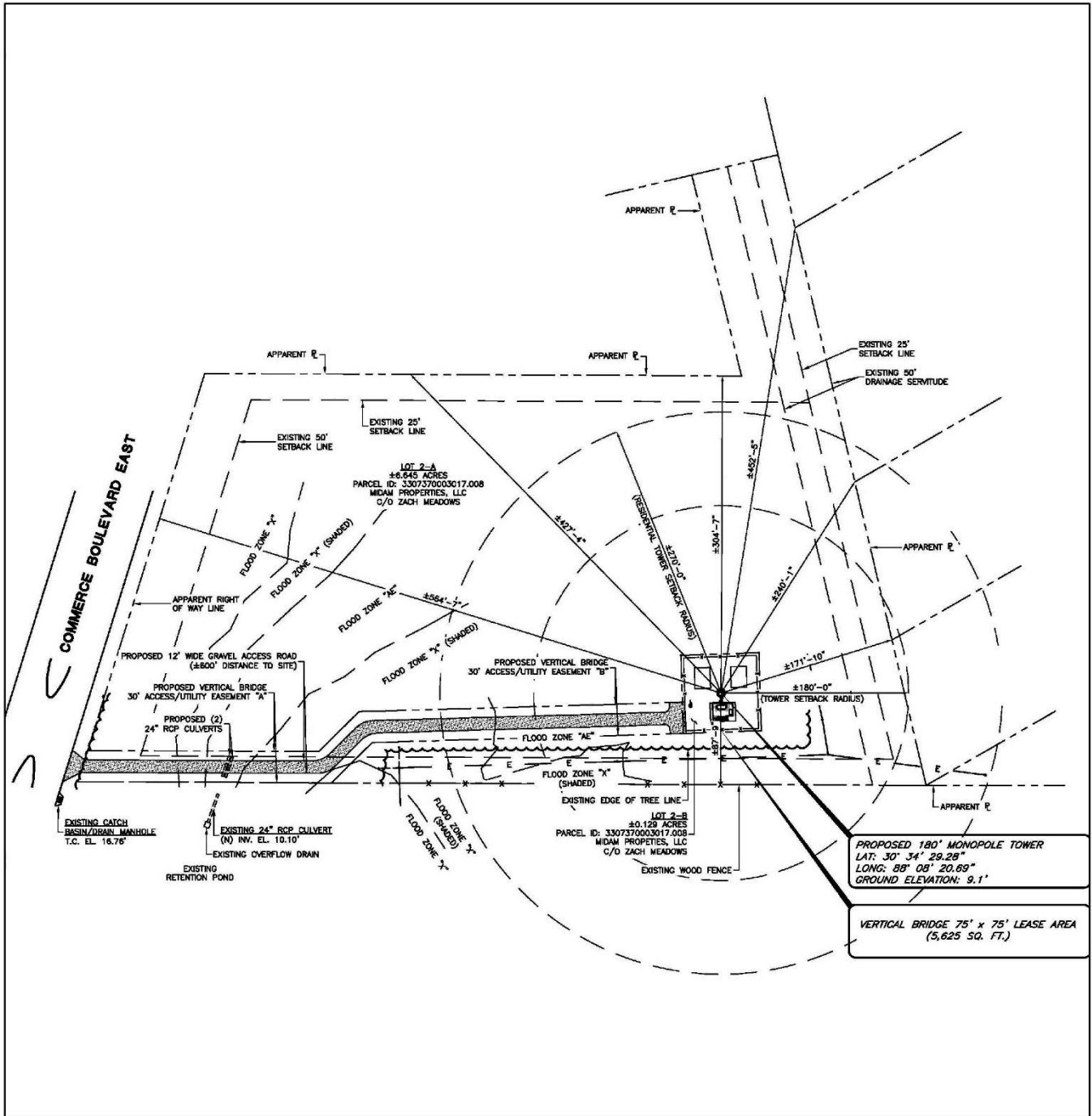


The site plan illustrates the property boundaries and setback.

APPLICATION NUMBER 6543 DATE September 11, 2023  
 APPLICANT Telecad Wireless, Inc. (Allen Rogers, Agent)  
 REQUEST Special Exception, Lot Size, Height, and Setback Variances



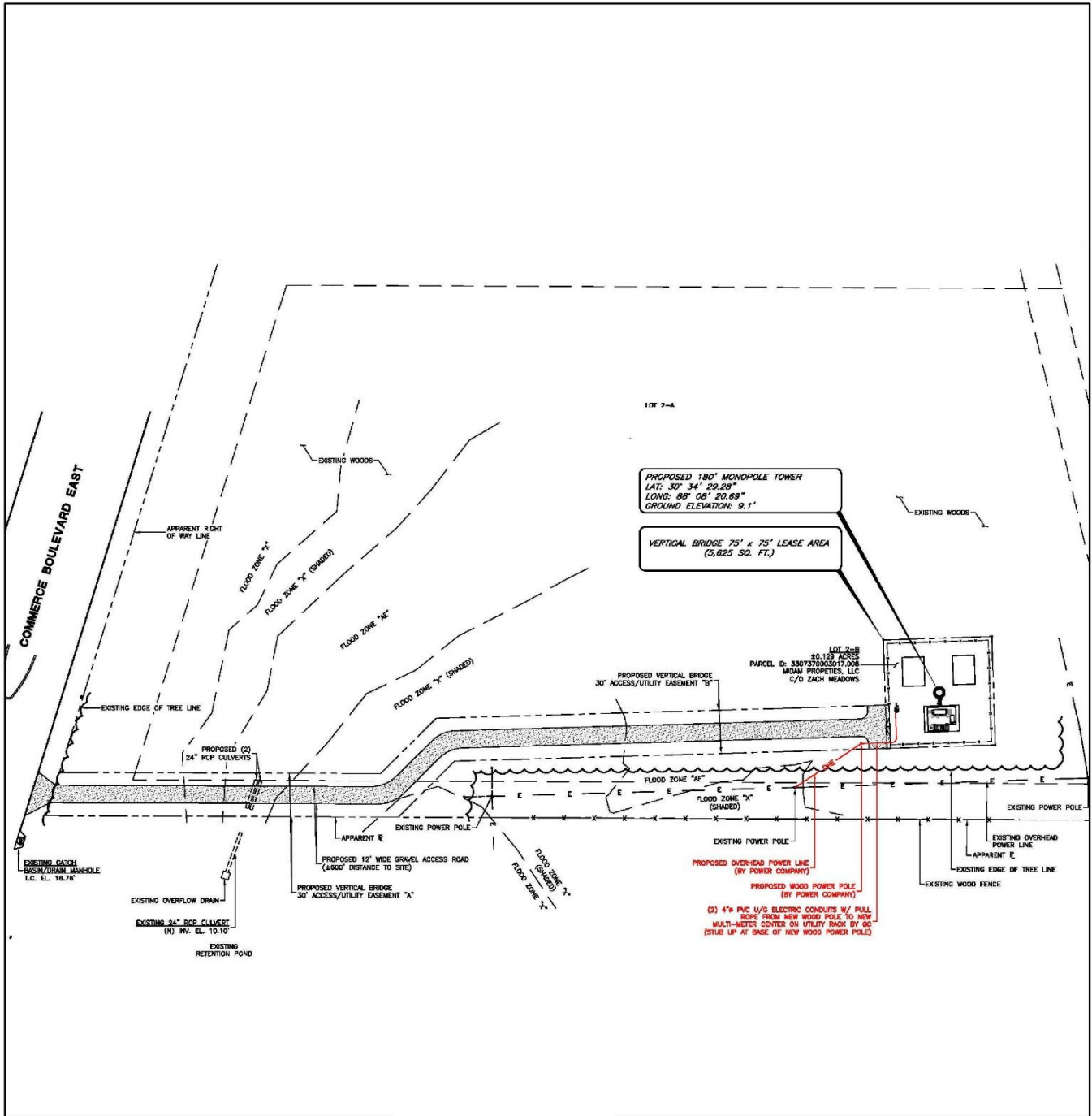
# DETAIL SITE PLAN



APPLICATION NUMBER 6543 DATE September 11, 2023  
 APPLICANT Telecad Wireless, Inc. (Allen Rogers, Agent)  
 REQUEST Special Exception, Lot Size, Height, and Setback Variances

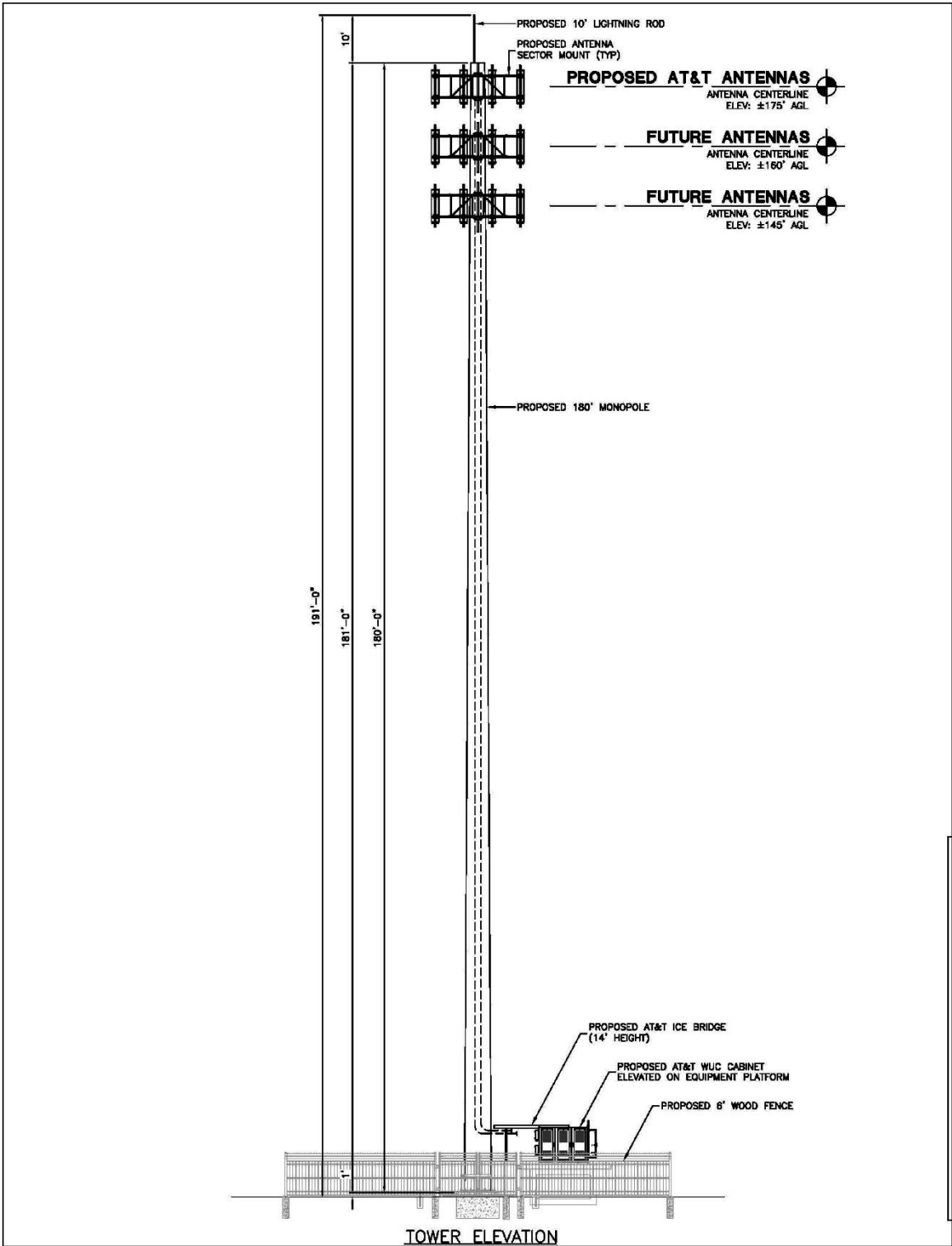


# DETAIL SITE PLAN



APPLICATION NUMBER <u>6543</u> DATE <u>September 11, 2023</u>	 NTS
APPLICANT <u>Telecad Wireless, Inc. (Allen Rogers, Agent)</u>	
REQUEST <u>Special Exception, Lot Size, Height, and Setback Variances</u>	

# DETAIL SITE PLAN



**TOWER ELEVATION**

APPLICATION NUMBER	6543	DATE	September 11, 2023
APPLICANT	Telecad Wireless, Inc. (Allen Rogers, Agent)		
REQUEST	Special Exception, Lot Size, Height, and Setback Variances		



ZONING DISTRICT CORRESPONDENCE MATRIX		LOW DENSITY RESIDENTIAL (LDR)	MIXED DENSITY RESIDENTIAL (MXDR)	DOWNTOWN (DT)	DISTRICT CENTER (DC)	NEIGHBORHOOD CENTER - TRADITIONAL (NC-T)	NEIGHBORHOOD CENTER - SUBURBAN (NC-S)	TRADITIONAL CORRIDOR (TC)	MIXED COMMERCIAL CORRIDOR (MCC)	LIGHT INDUSTRIAL (LI)	HEAVY INDUSTRY (HI)	INSTITUTIONAL LAND USE (INS)	PARKS & OPEN SPACE (POS)	DOWNTOWN WATERFRONT (DW)	WATER DEPENDENT USES (WDWRLU)
RESIDENTIAL - AG	R-A														
ONE-FAMILY RESIDENCE	R-1	■				■		■					□		
TWO-FAMILY RESIDENCE	R-2	■				■		■					□	○	
MULTIPLE-FAMILY	R-3	○	■			■	■						□	○	
RESIDENTIAL-BUSINESS	R-B		○			■		■					□	○	
TRANSITIONAL-BUSINESS	T-B		○		■	■	■	■					□		
HISTORIC BUSINESS	H-B			■		■		■					□		
VILLAGE CENTER	TCD					■	■						□		
NEIGH. CENTER	TCD					■	■						□		
NEIGH. GENERAL	TCD					■							□		
DOWNTOWN DEV. DDD	T-6			■									□		
DOWNTOWN DEV. DDD	T-5.1			■		■		□					□		
DOWNTOWN DEV. DDD	T-5.2			■		■							□		
DOWNTOWN DEV. DDD	T-4			■		■		□					□		
DOWNTOWN DEV. DDD	T-3			■		■							□		
DOWNTOWN DEV. DDD	SD-WH									○	○		□		
DOWNTOWN DEV. DD	SD	○	○	○	○	○	○	○		○	○		□		
BUFFER BUSINESS	B-1		□			□	■	■	■				□	○	
NEIGH. BUSINESS	B-2		○			□	■	■	■				□	○	
LIMITED BUSINESS	LB-2		○			□	■	■	■				□	○	
COMMUNITY BUSINESS	B-3				■				■			○	□	○	
GEN. BUSINESS	B-4			■					■			○	□	○	
OFFICE-DISTRIBUTION	B-5								■	■			□	□	
LIGHT INDUSTRY	I-1									■			□	□	□
HEAVY INDUSTRY	I-2										■		□	□	□

**Zoning District Correspondence Matrix**

- Directly Related
- Elements of the zoning category are related to the future LU category, but with qualifications (such as a development plan with conditions)
- Land use category is appropriate, but the district does not directly implement the category (e.g., open space in an industrial district)



## LIGHT INDUSTRY (LI)

This land use designation applies to an array of modern, low-impact industrial uses that include assembly and processing, warehousing, distribution and wholesaling facilities. The bulk of the light industrial use must be contained within a building or facility. If a light industrial use requires outside storage, the storage must be limited in area and appropriately screened from view in accordance to specific zoning requirements. This designation may also include uses such as complementary offices and retail.

LI also includes areas that may be regarded as "industrial business", where the land uses include business administration and logistics operations for industrial concerns, building trade contractors facilities and advanced research facilities, as well as stand-alone educational, scientific and industrial research facilities, or any combination of

those facilities located in light industrial and technology parks. Many parcels used for industrial business are smaller and scattered throughout Mobile. For this reason, these parcels are not singled out in the FLUM, but rather are addressed through zoning.

Light industrial uses are characterized by attractive, accessible and connected development, compatible with the character of surrounding neighborhoods. Development may take the form of planned campuses in park-like settings or unified design corridors, with consideration to factors such as site and building orientation, building design, landscaping and buffering, lighting, continuity of pedestrian networks, access and connectivity to transit and to freight transportation.

Heavy commercial and, in some cases, high-density residential land uses may serve as transitions between LI and other, lower-intensity land use designations. Protection buffers may also be required by zoning.

