

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: March 6, 2017**

<u>CASE NUMBER</u>	6088
<u>APPLICANT NAME</u>	Bonnie Fuchs & James Christopher Fuchs
<u>LOCATION</u>	309 Long Court (West side of Long Court, 88'± South of its North Terminus).
<u>VARIANCE REQUEST</u>	FENCE HEIGHT VARIANCE: Fence Height Variance to allow an existing 8'-6" high privacy fence along a residential property line to remain intact in an R-1, Single Family Residential District.
<u>ZONING ORDINANCE REQUIREMENT</u>	FENCE HEIGHT VARIANCE: The Zoning Ordinance limits privacy fences to an 8'-0" maximum height along property lines in an R-1, Single Family Residential District.
<u>ZONING</u>	R-1, Single Family Residential District
<u>AREA OF PROPERTY</u>	0.32± Acres
<u>ENGINEERING COMMENTS</u>	No comments.
<u>TRAFFIC ENGINEERING COMMENTS</u>	This request was not reviewed by Traffic Engineering.
<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>FIRE COMMENTS</u>	All projects within the City Limits of Mobile shall comply with the requirements of the City of Mobile Fire Code Ordinance (2012 International Fire Code). Projects outside the City Limits of Mobile, yet within the Planning Commission Jurisdiction fall under the State or County Fire Code (2012 IFC).
<u>CITY COUNCIL DISTRICT</u>	District 7

ANALYSIS

The applicant is requesting a Fence Height Variance to allow an existing 8'-6" high privacy fence along a residential property line to remain intact in an R-1, Single Family Residential District; the Zoning Ordinance limits privacy fences to an 8'-0" maximum height along property lines 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 applicants state:

We are requesting a variance for our fence at 309 Long Court. We had Cooper Fences install it after seeing their work on other homes in our neighborhood. Our yard naturally slopes in some areas and this leads to it being over 8 feet in some spots to keep a level top line.

This variance request stems from a *Notice of Violation* that the applicants received for the construction of the subject fence without proper permitting. A complaint was received by Mobile 311 stating that the subject fence was being erected without any signs of a permit. An after-the-fact building permit was then applied for by the applicants and approved for the erection of 317' of fencing at the rear property line with a height of 8'-0"; however, upon inspection of the subject site by the City's Zoning Officials, it was revealed that the fence extended 6" beyond the 8'-0" maximum height allowed by the Zoning Ordinance. As a result of the fence exceeding the maximum height allowed, the applicants were issued a *Notice of Violation* ticket by the City's Zoning Department on October 24, 2016 due to this infraction. The applicants are now seeking relief from the 8'-0" fence height limitation of the Zoning Ordinance in order to retain their recently erected 8'-6" high privacy fence.

Although it may appear that other neighboring properties in the vicinity have similar style/height fences, as stated by the applicants and a few neighbors, the fence was erected without the obtainment of a building fence permit. Neither the fence company, nor the applicants, submitted for a building permit prior to the construction of the fence. If the proper steps had initially been taken, the fence contractor and/or applicants would have been aware of the Zoning Ordinance requirements for fence heights in an R-1, Single Family Residential District.

The applicant submitted letters from neighboring residential home owners providing their support and approval of the new privacy fence. The statements provided by the neighboring

property owners mostly approved of the quality of construction and appearance of the fence, and indicated that it was an improvement to the home and neighborhood.

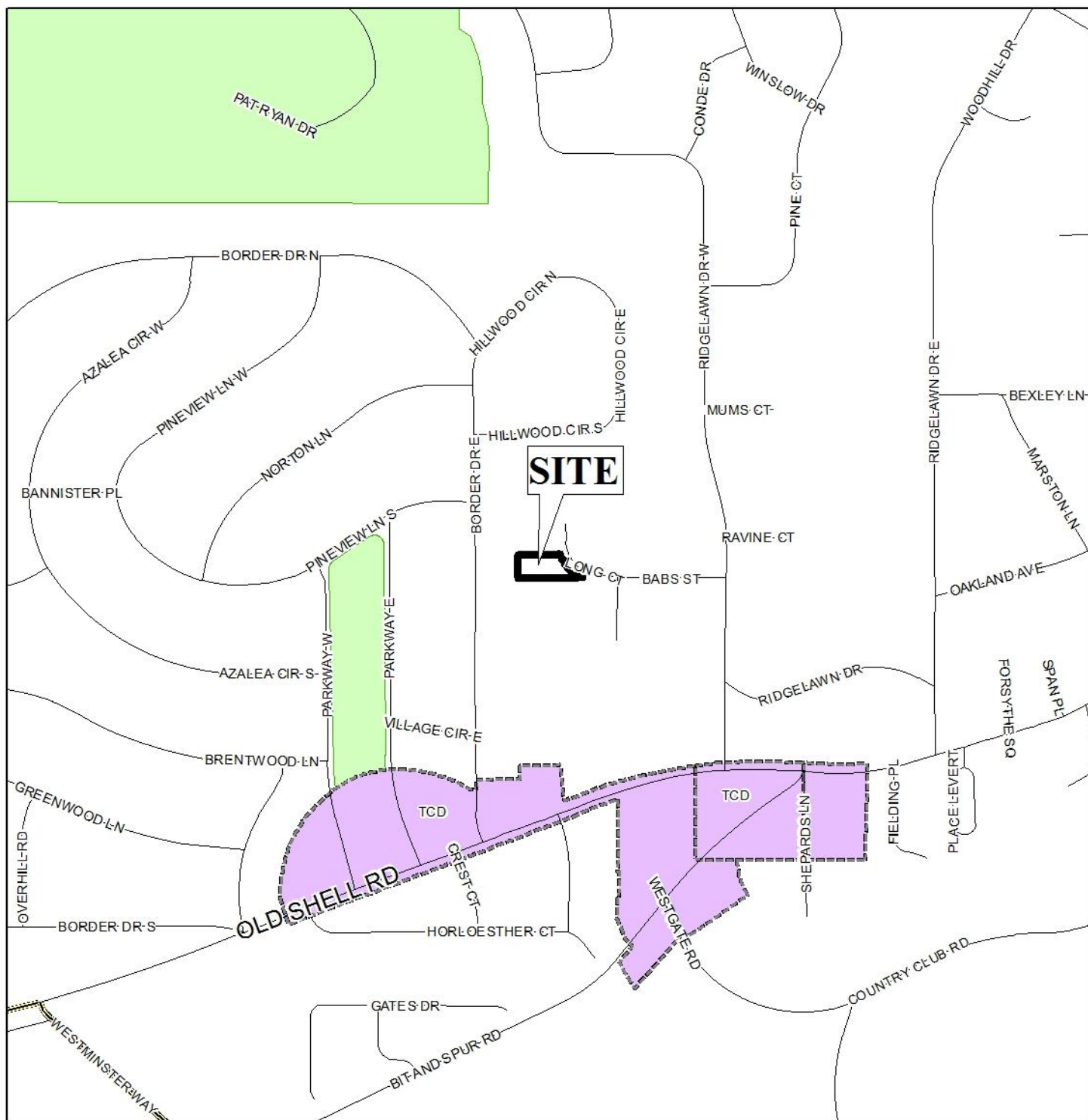
It should be noted that a residence located approximately 424'± Southwest of the subject property received approval at the Board of Zoning Adjustment's September 8, 2003 meeting to allow the construction of a 10' high fence along the front property line.

It appears that special conditions may exist such that a literal enforcement of the Ordinance will result in an unnecessary hardship as the applicant stated that the fence varies in height due to the sloping nature of the property; however, there were no typographical sections submitted with the application to substantiate the sloping characteristics of the applicants' property. The subject site appears to be *level* in the photographs that were submitted with the application, however, as stated, there was no additional information submitted to address the topography/unusual characteristics of the subject site and the need for the 8'-6" fence height.

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

- 1) Granting the variance will be contrary to the public interest because the Zoning Ordinance limits privacy fences to an 8'-0" maximum height along property lines in an R-1, Single Family Residential District;
- 2) Special conditions may appear to exist and there may be some justification of hardship which exist such that the literal enforcement of the provisions of the chapter will result in an unnecessary hardship, however, there were no typographical sections and/or additional documentation submitted with the application to substantiate the sloping characteristics of the applicants' property; 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 fence was erected prior to the obtainment of a building fence permit.

LOCATOR MAP



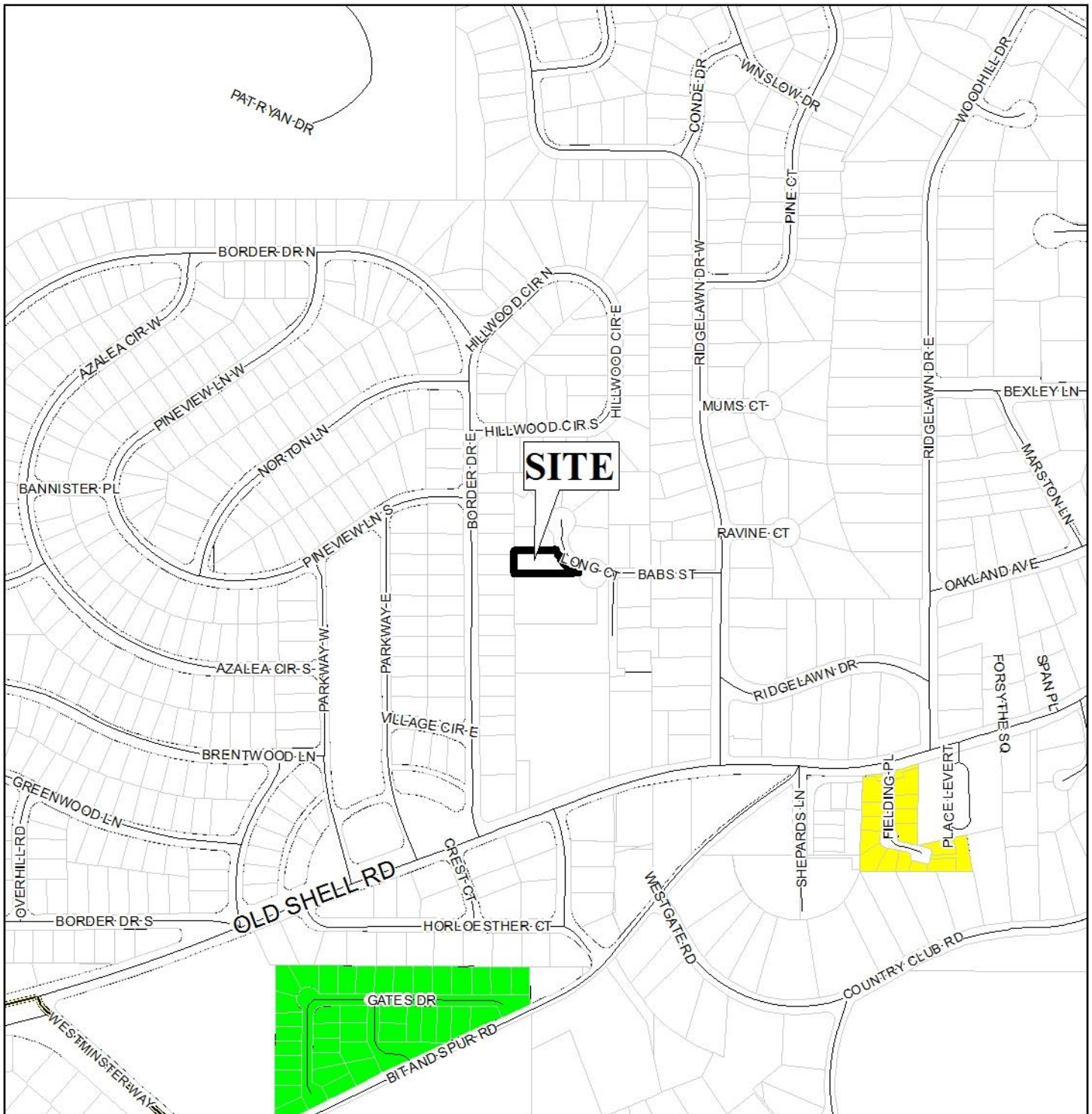
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REQUEST Fence Height Variance



LOCATOR ZONING MAP



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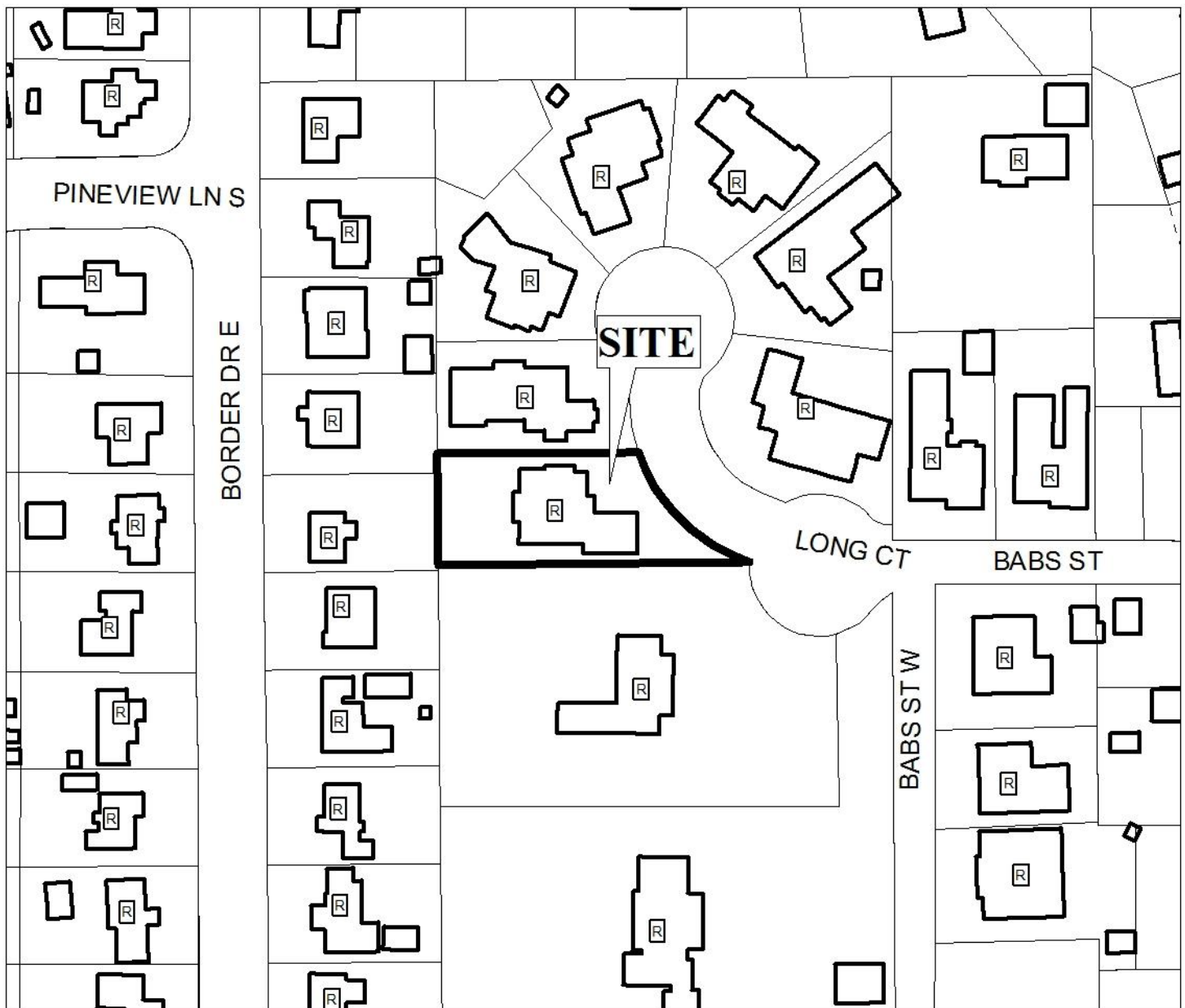
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VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units.

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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

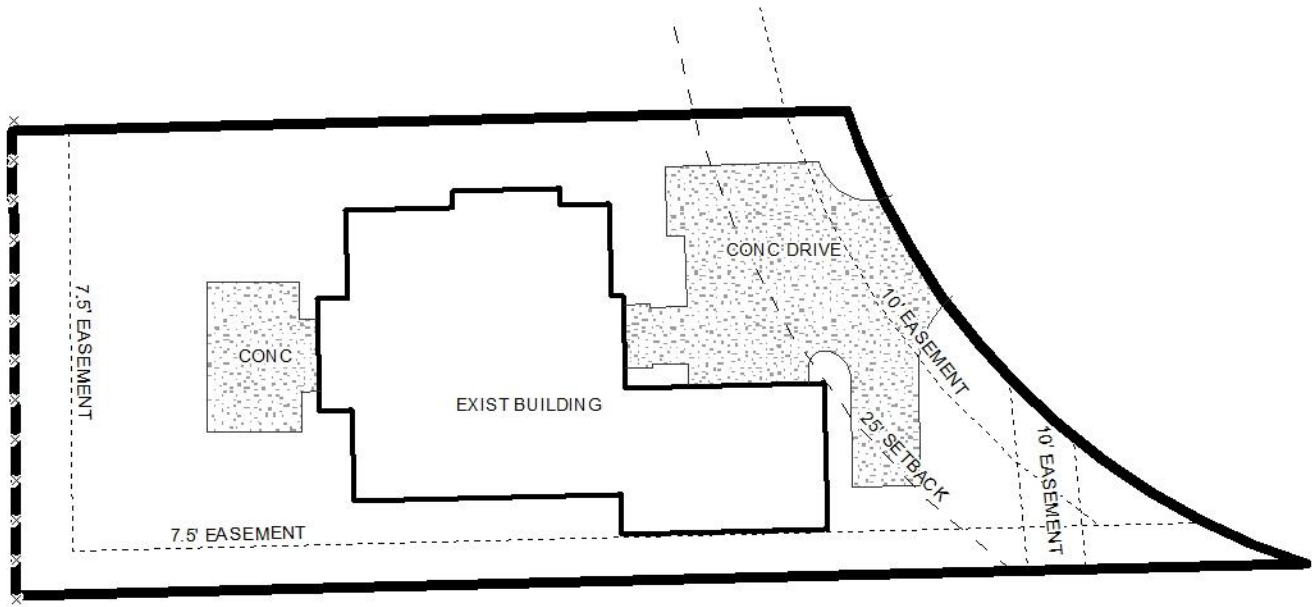


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SITE PLAN



The site plan illustrates

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