

APPLICATION NUMBER

5385/3915

A REQUEST FOR

**SIDE (STREET) YARD SETBACK VARIANCE TO ALLOW
THE CONSTRUCTION OF AN 8' HIGH WOODEN
PRIVACY FENCE ALONG THE SIDE (NICHOLAS LANE)
STREET PROPERTY LINE; THE ZONING ORDINANCE
REQUIRES A 20' SIDE (STREET) YARD SETBACK IN AN
R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT.**

LOCATED AT

1800 DAUPHIN ISLAND PARKWAY

(West side of Dauphin Island Parkway, between Magnolia Lane and Nicholas Lane)

APPLICANT/OWNER

FULTON ROAD BAPTIST CHURCH

AGENT

EUGENE KERR

BOARD OF ZONING ADJUSTMENT

NOVEMBER 2006

The applicant is requesting a Side (Street) Yard Setback Variance to allow the construction of an 8' high wooden privacy fence along the side (Nicholas Lane) street property line; the Zoning Ordinance requires a 20' side (street) yard setback in an R-1, Single-Family Residential District.

The subject fence was recently built within the required side (street) yard setback, and actually extends approximately two feet into the right-of-way dedicated to the City of Mobile via the recording of the Fulton Road Baptist Church Subdivision in 2004. The purpose of this application is to allow the fence to remain, at least on the church property.

In 2004 Fulton Road Baptist Church proposed to build a multi-purpose building along Nicholas Lane to the rear of the existing sanctuary, and the church received Planning Approval, Planned Unit Development Approval, and Subdivision Approval from the Planning Commission. A condition of those approvals was the dedication of further right-of-way along Nicholas Lane to bring it into compliance with minor street standards of a 50'-wide right-of-way. Mechanical and electrical equipment for the constructed multi-purpose building are located within the Nicholas Avenue side yard and the applicant states that the fence was constructed at the request of neighbors to hide such equipment, and has submitted with this variance application sixteen individual, signed letters from neighbors in favor of the fence remaining. Traffic Engineering has visited the site and determined that the fence does not present a line-of-sight problem. It is also stated that the fence conforms to the other two fences which were required by the City for site compliance associated with the facilities expansion. The problem is that the subject fence was constructed entirely at an 8' height, not meeting the required 20' setback along the side street for such, and actually extending into the public right-of-way, as mentioned. In 1983 the church was granted a Side Yard Variance to allow the construction of a portico to within 10' of the Nicholas Avenue right-of-way, but with the dedication of the additional right-of-way required in 2004, such portico is also encroaching into the right-of-way.

The Zoning Ordinance states that no variance shall be granted where economics are the basis for the application. Furthermore, the applicant must present 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.

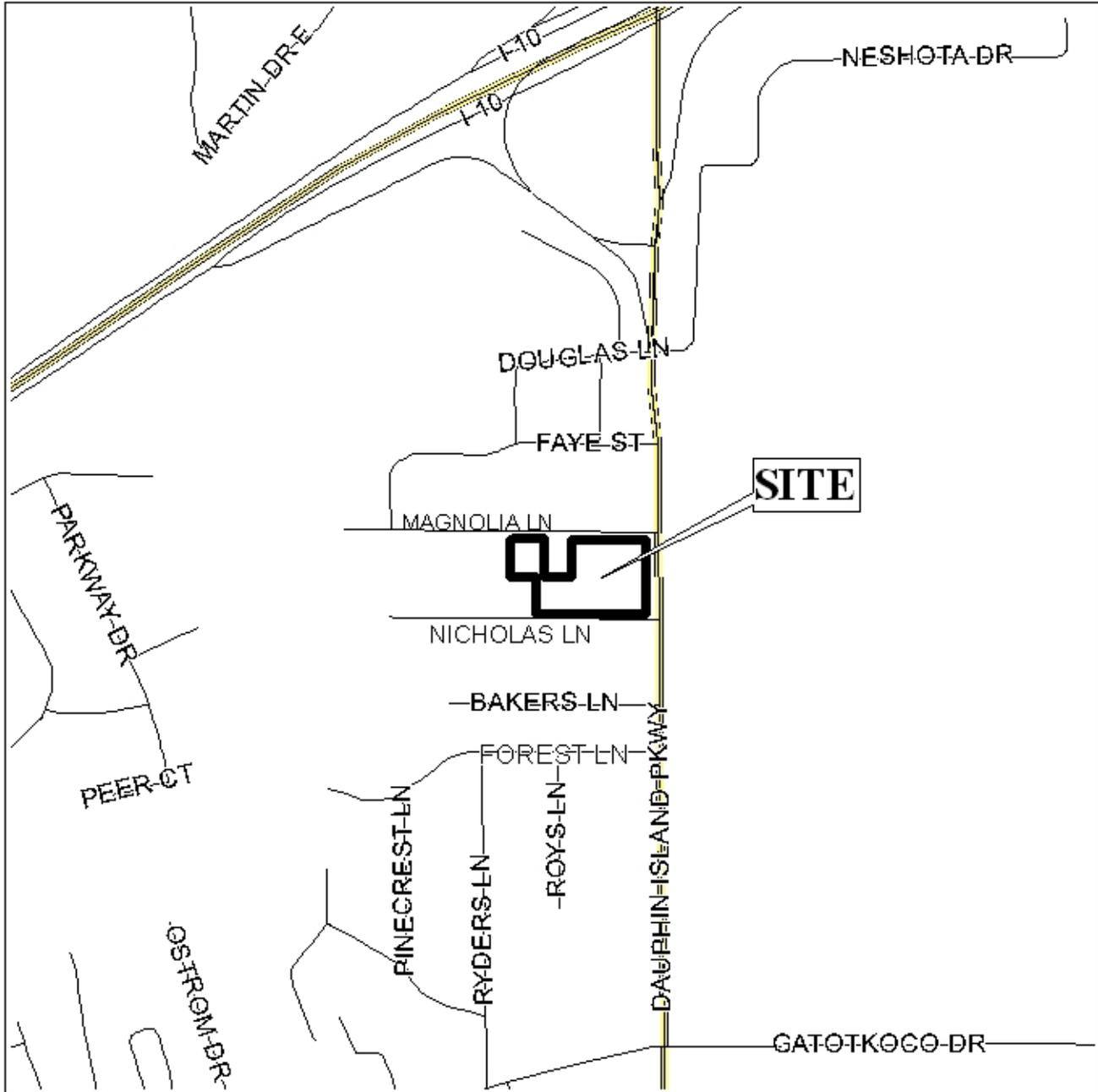
Variances are not intended to be granted frequently. The applicant must clearly show the Board that the request is due to very unusual characteristics of the property and that it satisfies the variance standards. What constitutes unnecessary hardship and substantial justice is a matter to be determined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

RECOMMENDATION 5385/3915

Date: November 6, 2006

Based on the preceding, this application is recommended for approval.

LOCATOR MAP

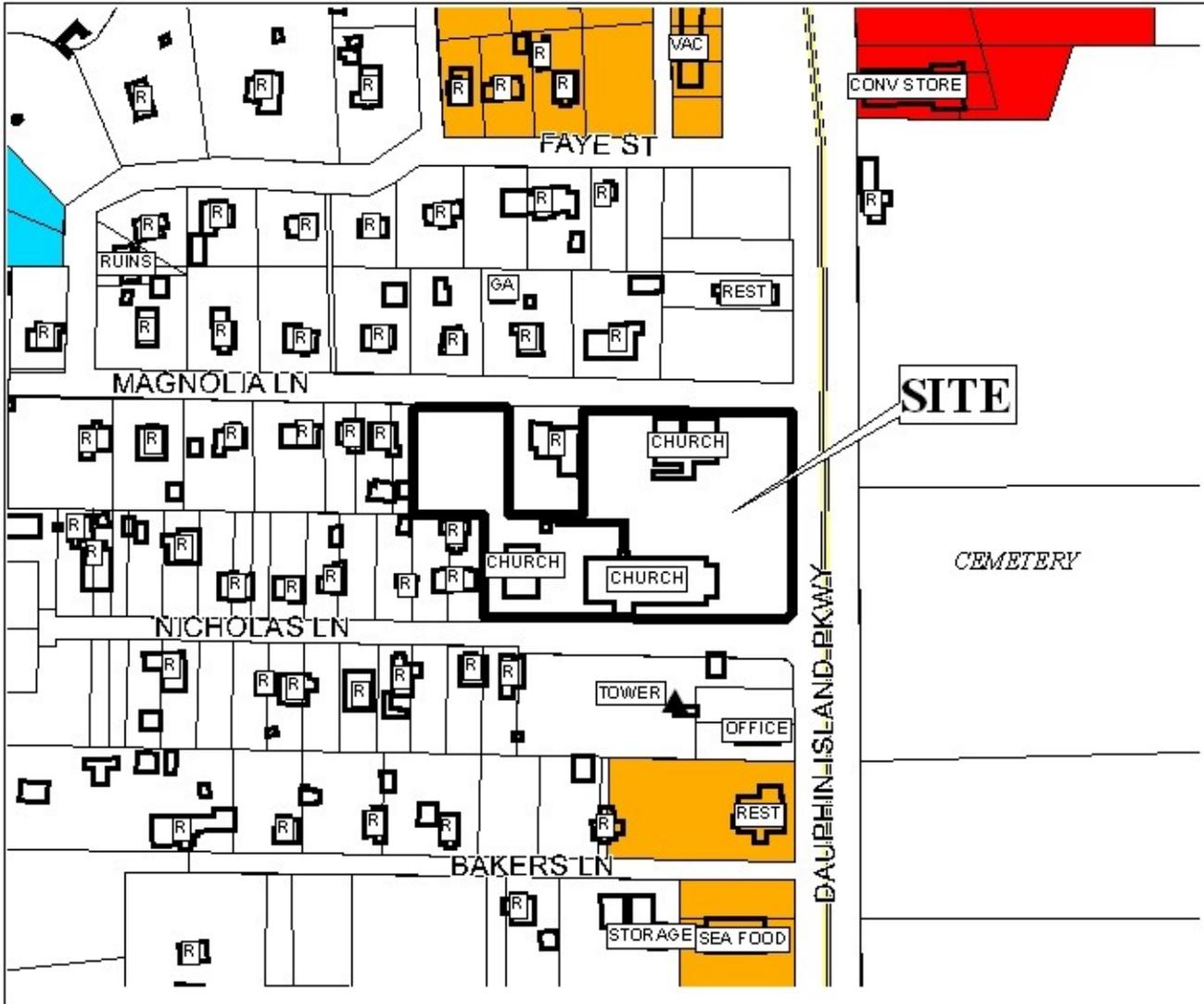


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APPLICANT Fulton Road Baptist Church
REQUEST Side (Street) Yard Setback Variance



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BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING

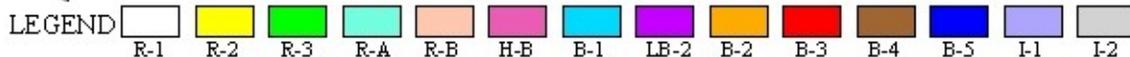


Single family residential units are located west, northwest, and southwest of the site. A restaurant, service station, and convenience store are located to the northeast of the site. And, an office, restaurant and seafood sales are to the south.

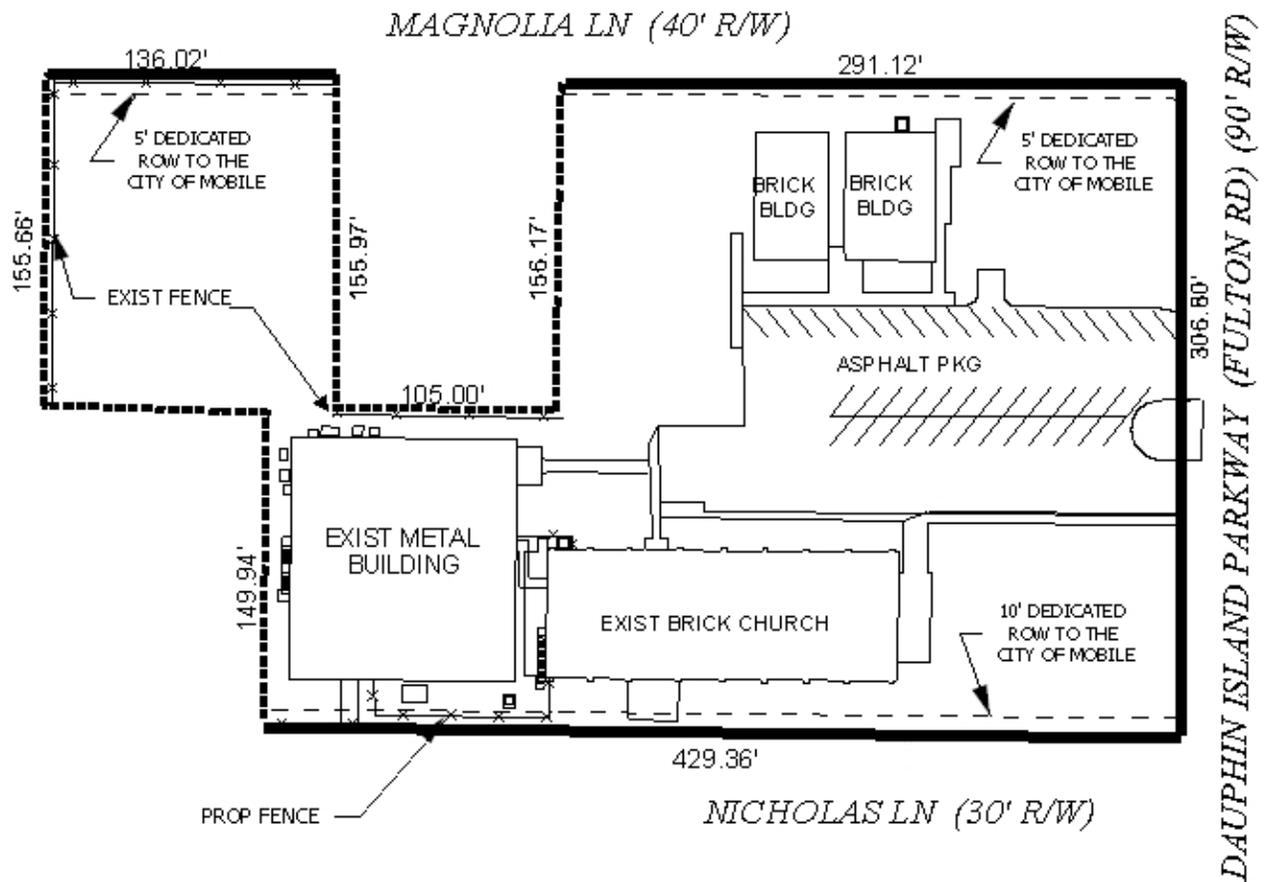
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DETAIL SITE PLAN



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