

**PLANNING & ECONOMIC  
DEVELOPMENT DIVISION  
STAFF REPORT**

Tom King, AICP, CZO - Senior Planner  
Secretary to the Board of Adjustment



101 East Orange Street  
P.O. Box 429  
Hillsborough, NC 27278

**Report Date:** November 6, 2024

**BOARD OF ADJUSTMENT**

**Agenda Item #: 4**

<b>CASE NUMBER</b> BA-02-2024	<b>CASE NAME</b> Adron F. Thompson Addition/Renovation Project	<b>APPLICANT/PROPERTY OWNER</b> Marie Strandwitz, Utilities Director/ Town of Hillsborough, NC
<b>HEARING DATE</b> November 13, 2024	<b>PARCEL ID NUMBER</b> 9864-23-7369	<b>PROPERTY ADDRESS/LOCATION</b> 711, 715 & 719 Dimmocks Mill Road

**BRIEF SUMMARY OF REQUEST**

The applicant requests a maximum 80-foot variance from the 100-foot setback applicable to certain structures associated with public utilities land uses. The request specifically relates to the setback as applied to the property’s Dimmocks Mill Road frontage.

EXISTING ZONING	EXISTING LAND USE	SURROUNDING ZONING/LAND USE	FUTURE LAND USE CATEGORY	SIZE OF PROPERTY
OI (Property located in ETJ area)	Water treatment plant, offices, accessory buildings & outdoor equipment/material storage yard	<i>North:</i> R-10(town)/Public road & residential subdivision <i>South:</i> AR (county)/Eno River & agriculture <i>East:</i> AR (town) /Manufactured homes <i>West:</i> OI (town) & AR (county)/Woodland & agriculture	Light Industrial	13.5 acres

**BACKGROUND**

The town’s Utilities Department staff plan to make several improvements at the water treatment plant: an addition to an existing building & construction of a vehicle storage building. Planning & Economic Development Division staff reviewed the general proposal & advised of town regulations applicable to the proposal. The 100-foot setback applicable to certain structures associated with public utility uses was identified by Utilities staff as a requirement negatively impacting proposed construction plans.

- ATTACHMENTS:**
- 1. Application materials
  - 2. Town ordinance provisions relative to case
  - 3. Zoning history

**DESCRIPTION OF SUBJECT PROPERTY:**

**Physical Conditions:**

<b>Lot Size:</b>	13.5 acres	
<b>Lot Frontage:</b>	<b>North:</b>	Dimmocks Mill Road (State Secondary Road #1144) - approx. 965 feet
	<b>South:</b>	Eno River - approx. 1,512 feet
<b>Lot Shape:</b>	Irregular - narrow at northwest end widening substantially to east & southeast	
<b>Topography:</b>	Relatively level to sloping south - southwest toward Eno River. Steeper slopes along the south - central side of road & scattered developed areas of site.	
<b>Lot Coverage:</b>	Approx. 5.4-acres forested land along river, southeast, southwest & northwest area of lot. Approx. 8.1 acres are cleared & developed.	
<b>Sensitive Areas:</b>	Approx. 7 acres of south-southwest side of property within 1% annual chance of flooding area (formerly 100-year floodplain), including floodway of river.	
	70-foot-wide high tension electric line easement crossing central portion of lot in east - west direction.	
<i>Note:</i> Numerical data taken from Orange County Land Records/GIS data.		

**Built Conditions:** The property is currently developed for public utility uses. The eastern area of the lot contains buildings, structures and water impoundments associated with the town’s water treatment plant (711 and 715 Dimmocks Mill Road). The north - central and west - northwest areas of the lot contain the Adron F. Thompson building housing the Distributions and Collections Division of the town’s Utilities Department (719 Dimmocks Mill Road), multiple accessory buildings and structures, and a large, graveled area for vehicles, equipment and material storage used by the utilities and public works departments.



*Note:* Photograph does not show floodplain, topography, etc. Photo date 2021. Source: Orange County GIS

**DESCRIPTION OF PROPOSED DEVELOPMENT:**

The applicant’s request arises from plans for (i) future construction of an accessory vehicle storage building and (ii) a rear, east-side addition to the Adron F. Thompson building at 719 Dimmocks Mill Road.

**ORDINANCE PROVISIONS FROM WHICH VARIANCE IS SOUGHT:**

UDO (Unified Development Ordinance) Section 5 (Use Standards), Subsection 5.2 (Use-specific Standards), Paragraph 5.2.40 (Public Utilities), Sub-paragraph 5.2.40.1 (Standards of Evaluation):

“The following specific standards shall be used to evaluate an application for approval of these uses:

- 5.2.40.1.g All structures except public water storage facilities are set back at least one hundred (100) feet from the property line. Elevated public water storage facilities shall observe a setback equal to the greater of the height of the storage facility or the setback required in the district where the facility is located.”

**Maximum Requested Variance:** 80 feet applied to the setback from Dimmocks Mill Road right-of-way.

**Proposed Setbacks:**

Improvement (proposed)	Building Setback (feet) <sup>1</sup>
<b>Vehicle Storage Building</b>	20 <sup>2</sup>
<b>Building Addition</b>	62
<sup>1</sup> Setback measured from road right-of-way	
<sup>2</sup> Required front setback for OI zoning district	

**FINDINGS OF FACT ANALYSIS:**

*The board is required to make the following findings as required by NCGS (North Carolina General Statutes) Chapter 160D (Local Planning and Development Regulation), Article 7 (Zoning Regulation), Section 160D-705 (Quasi-judicial Zoning Decisions), Subsection (d) (Variances), and UDO Section 3 (Administrative Procedures), Subsection 3.10 (Variance), Paragraph 3.10.3 (General Standards/Findings of Fact), Sub-paragraph 3.10.3.1.*

**A Variance from all provisions of this Ordinance...shall be approved only upon a finding that all of the following standards are met:**

- a) **Unnecessary hardship would result from the strict application of the Ordinance. It shall not be necessary to demonstrate that, in the absence of the Variance, no reasonable use can be made of the property.**

Applicant Arguments:

- 1. The property is zoned OI (Office/Institutional). A 20-foot front setback from the road right-of-way is required. However, the UDO requires a 100-foot setback from all property lines for structures used for public utility purposes.

2. The town's FDPO (Flood Damage Prevention Ordinance), as interpreted by the town's Floodplain Administrator, precludes placement of the vehicle storage building in the floodplain area.
3. Meeting the 100-foot setback requires the vehicle storage building be placed in the regulated floodplain area. This would necessitate a variance from the Flood Damage Prevention Ordinance.
4. Placing the vehicle storage building in the floodplain area could create environmental impacts through potential increased downstream runoff and flooding. Damage from flood waters and floating debris could damage downstream buildings and infrastructure (e.g., water pipes, bridges, roads). Increased water volume in the floodway could adversely affect downstream properties.
5. Utilities staff must be fully operational to repair damage to utilities during flooding events. Placing the vehicle storage building in the floodplain increases potential for equipment damage and could create a situation where staff won't be able to access necessary equipment; thereby not being able to deploy to repair infrastructure during a public health crisis or other emergency.
6. Placing the vehicle storage building 100 feet or more from the street right-of-way could invite trespass and create security concerns. The proposed placement allows better visibility and security monitoring by town staff, passing law enforcement and the public. Additionally, the America's Water Infrastructure Act of 2018 requires local governments design water treatment facilities with focus on security of public drinking water supplies. Failure to meet the mandate could compromise the town's ability to obtain future grant funding for improvements.
7. There are existing occupied public utility buildings and structures, including the water treatment plant and Adron F. Thompson building, located in the required 100-foot setback.
8. Retention and use of the Adron F. Thompson building is more environmentally sustainable than tearing it down and rebuilding elsewhere on site or vacating it, which may cause it to fall into disrepair. Allowing the addition within the 100-foot setback allows it to be integrated into the existing building's floor plan, opening it up for expanded departmental operations.
9. Meeting the 100-foot setback results in a building addition that will share only four feet of the existing building's wall area, resulting in an inefficient building layout with no usable connection between the existing building and addition.

*Staff Analysis:* Staff agree with most of the arguments that unnecessary hardship is created by the strict application of the ordinance when applied to the property; especially that of the special setback applicable only to public utility uses (Applicant Argument #1) and competing ordinances: the UDO and FDPO (Applicant Argument #s 2 through 4).

Two points staff find less convincing are those of safety and trespass (Applicant Argument #6), and the presence of existing buildings within the required 100-foot setback (Applicant Argument #7), based on the following points:

- a. The entire frontage of the property is behind a chain link fence topped with barbed wire, gated at key access points to the property. It would seem this type of fence would act as a deterrent to trespass. Also, the applicant argues in their application that, if not for the floodplain, the vehicle

storage building could meet the 100-foot setback; seeming to make the safety/trespass argument somewhat peripheral.

- b. The board cannot use the fact that other buildings and structures on-site are located within the required 100-foot setback in deciding a variance. UDO Section 3, Subsection 3.10, Paragraph 3.10.4 (Insufficient Justification for Variance), states:

“The following do not constitute grounds for a variance: ...

- (a) The existence of other nonconforming or conforming uses of land or structures in the same or other districts;”

- b) The hardship results from conditions that are peculiar to the property such as location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.**

*Applicant Arguments:* The presence of mapped floodplain, as determined by FEMA, creates a hardship relative to the vehicle storage building. The 100-foot setback could be met if the floodplain was not present. The Adron F. Thompson building’s location within the required 100-foot setback presents operational challenges that can be overcome by allowing the alignment of the proposed addition with the existing building.

*Staff Analysis:* Many if not all properties adjoining the Eno River and some of its tributaries are impacted by floodplain and flooding to varying degrees. While the fact that roughly 50% of the property is within floodplain may be seen as being a condition unique to the property, there are other areas on site outside of floodplain where a building may possibly be constructed.

- c) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a Variance shall not be regarded as a self-created hardship.**

*Applicant Arguments:* The hardship results from the fact that 50% of the site is within floodplain, and the location of the existing Adron F. Thompson building being within the required 100-foot setback.

*Staff Analysis:* The hardship does not result from actions taken by the applicant or property owner. The requested variance is sought prior to the applicant proceeding with submitting plans for development and construction.

- d) The requested Variance is consistent with the spirit, purpose and intent of the Ordinance such that public safety is secured and substantial justice is achieved.**

*Applicant Arguments:*

1. The requested variance will not result in a new building being built closer to the road than the Adron F. Thompson building.
2. The intent of the 100-foot setback applicable to public utility structures (e.g., water and wastewater treatment plants, elevated water tanks, electric substations and other significant

installations) is to ensure such structures are not located close to roads and other properties. The form and shape of these types of structures can't be regulated by the UDO and aesthetics are usually not a concern. The 100-foot setback protects public views of such structures from adjacent roads and properties.

3. Neither the vehicle storage building nor building addition fall into the same category as public utility structures. Both are subject to regulation under the UDO, including those regarding aesthetics.
4. The existing conditions of the site will be improved if the variance is granted. The vehicle storage building will serve as a buffer between the road and outdoor material storage area, and the building addition will complement the existing, historic Adron F. Thompson building.

Staff Analysis:

1. The proposed vehicle storage building will be roughly 30 feet closer to the road than the Adron F. Thompson building, so Applicant Argument #1 appears to be false.
2. All non-residential buildings, including those associated with public utilities, are subject to regulation, including aesthetics, under the UDO. UDO Section 6 (Development Standards), Subsection 6.7 (Design Requirements for New Non-residential and Multi-family Buildings), Paragraph 6.7.2 (Applicability) states:

“The following principles will apply to all new non-residential buildings and multi-family buildings containing 5 or more dwelling units. Some of the standards dependent on the building gross square footage. When a numbered standard contains a phrase “On buildings with at least one tenant space 30,000 sf or larger,” only the language that follows this phrase applies to larger buildings for that numbered standard. If there is no language regarding building size, the numbered standard applies in all circumstances. Section 6.7.11, Parking and Circulation, Site Layout, applies only to buildings without a tenant space 30,000 sf or larger and multi-family buildings containing 5 or more dwelling units.

3. The vehicle storage building is considered by Planning and Economic Development Division staff as a structure accessory to the principal use of the property, whose predominant use has been determined to be public utility.

## **OTHER BOARD CONSIDERATIONS IN REVIEW OF VARIANCE REQUESTS:**

UDO Section 3, Subsection 3.10, Paragraph 3.10.4 (Insufficient Justification for Variance) states “The following do not constitute grounds for a variance:

- (a) The existence of other nonconforming or conforming uses of land or structures in the same or other districts;
- (b) The request for a particular use expressly, or by inference, prohibited in the district; or
- (c) Economic hardship or the fact that property may be utilized more profitably with a Variance; or
- (d) Hardships resulting from personal circumstances and/or conditions that are common to the neighborhood or the general public, may not be the basis for granting a Variance.”

## **VOTING REQUIREMENT:**

A four-fifths (4/5<sup>ths</sup>) supermajority vote is required to grant a variance. If granted, conditions may be attached to the variance provided they reasonably relate to the request.

# Attachment #1



TOWN OF  
HILLSBOROUGH

## GENERAL APPLICATION Special Use Permit, Variance or Appeal Board of Adjustment Hearing

Planning and Economic Development Division  
101 E. Orange St., PO Box 429, Hillsborough, NC 27278  
919-296-9475 | Fax: 919-644-2390  
www.hillsboroughnc.gov

This application is for a special use permit (including modifications), variance or appeal.  
**Incomplete applications will not be accepted or processed.**

OFFICIAL USE ONLY		
Case Number: BA-02-2024	Fee: \$ 300.00	Receipt No.: FN#4WQM5GQ
FLUM Designation: Light Industrial	Zoning District: OI	Overlay Zone: Select One None

TK  
10/29/2024

Permit or Relief Requested: Variance

PROJECT LOCATION AND DESCRIPTION	
Project Name: Adron F. Thompson Addition/Renovation	Project Type: Business/Commercial
Property Address/Location: 715 Dimmocks Mill Road	
PIN(s): 9864237369	Size of Property (Acres/Sq. Ft.): 13.5 A
Current Use of Property: Public Utility	Proposed Use of Property: Public Utility Offices / Ma
Use Class (from UDO Sections 5.1.7 and 5.1.8): Public Utility	
Number Existing Buildings to Remain: Two Existing	Number Proposed Buildings: One additional
Gross Floor Area Existing Buildings:	Gross Floor Area Proposed Buildings: 5,
Number Lots Proposed: None - N/A	Number Dwelling Units Proposed: None - N/A
Brief Summary of Request (use separate sheet if necessary): Current OI Zoning 5.2.40.1g requires 100' buffer for Public Utility. Existing Adron F. Thompson Building, used as offices for Utilities Dept. is within the 100' Setback.	

CERTIFICATION AND SIGNATURES	
<b>Applications will not be accepted without signature of legal property owner or official agent.</b>	
I certify that the information presented by me in this application and all accompanying documents are true and accurate to the best of my knowledge, information, and belief; and I acknowledge that the processing of this application may require additional town, county and/or state permits, approvals and associated fees.	
<b>Applicant:</b> Marie Strandwitz, Utilities Director	<b>Legal Property Owner:</b> Town of Hillsborough, NC
Mailing Address: 105 E. Corbin St.	Mailing Address: 101 E. Orange St
City, State, ZIP Code: Hillsborough, NC 27278	City, State, ZIP Code: Hillsborough, NC 27278
Telephone: 919-296-9631	Telephone: 919-732-1270
Email: marie.strandwitz@hillsboroughnc.gov	Email: eric.peterson@hillsboroughnc.gov
<b>Signature:</b>	<b>Signature:</b>
Date: 10/25/2024	Date: 10/25/2024
<b>Legal Relationship of Applicant to Property Owner:</b> Utilities Director for Legal Property Owner	

TK = Tom King  
Senior Planner





TOWN OF  
HILLSBOROUGH

## SUPPLEMENTAL FORM Variance

Planning and Economic Development Division  
101 E. Orange St., PO Box 429, Hillsborough, NC 27278  
919-296-9475 | Fax: 919-644-2390  
www.hillsboroughnc.gov

To the Hillsborough Board of Adjustment:

I, Marie Strandwitz, Town of Hillsborough Utilities Director, hereby petition the Board of Adjustment for a variance from the literal provisions of the Hillsborough Unified Development Ordinance because I am prohibited, under the interpretation given to me by the Planning and Economic Development Division staff, from using the property described in the attached General Application in a manner shown by the Plot Plan submitted as part of this application. I request a variance from the following provisions of the ordinance:

*Cite section, subsection and paragraph numbers:*

Hillsborough UDO 5.2.40 PUBLIC UTILITIES, 5.2.40.1 Standards of Evaluation, 5.2.40.1.g

The variance is requested so the above-mentioned property can be used in a manner indicated by the Plot Plan submitted as part of this application or as more fully described herein:

*Cite planned use of the property with variance if the plot plan does not adequately reveal the nature of the variance. If a variance is requested for a limited time only, specify duration requested.*

"The project & property will be treated as a Public Utility for land use & permitting purposes." e-

### Factors Relevant to Issuance of Variance

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. Under North Carolina General Statute 160D-705(d) and the Hillsborough Unified Development Ordinance, the board is required to find that all four conditions below exist before it may issue a variance. Below or on a separate sheet, indicate the facts you intend to show and the arguments you intend to make to convince the Board of Adjustment that it can properly reach these four required findings.

**1. Unnecessary hardship would result from carrying out the strict letter of the regulation.**

*(Note: The property becoming less valuable due to failure to grant the variance is insufficient. It is unnecessary to demonstrate that no reasonable use can be made of the property in the absence of the variance.)*

See attached document.

**2. The hardship results from conditions that are peculiar to the property such as location, size or topography.**

*(Note: Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make reasonable accommodation under the Federal Fair Housing Act for a person with a disability.)*

See attached document.

**3. The hardship did not result from actions taken by the applicant or the property owner.**

*(Note: The act of purchasing property with knowledge that circumstances exist which may justify the granting of a variance is not a self-created hardship.)*

See attached document.

**4. The requested variance is consistent with the spirit, purpose and intent of the regulation such that public safety is secured and substantial justice is achieved.**

*State facts and arguments to show that the requested variance represents the least possible deviation from the letter of the ordinance that will allow the use of the property in the manner requested and that the use of the property will not substantially detract from the character of the neighborhood if the variance is granted:*

See attached document.

I certify that all the information presented by me in this application is accurate to the best of my knowledge, information, and belief.



Signature of Applicant

10/25/2024

Date






# Supplemental Form Variance 715 Dimmocks Mill 11.13.2024 BOA

Final Audit Report

2024-10-25

Created:	2024-10-25
By:	Bryant Green (bryant.green@hillsboroughnc.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAbz8pn-nXDK4XR8rPupDR37XKg8SGZOGx

## "Supplemental Form Variance 715 Dimmocks Mill 11.13.2024 BOA" History

-  Document created by Bryant Green (bryant.green@hillsboroughnc.gov)  
2024-10-25 - 2:44:54 PM GMT
-  Document emailed to Marie Strandwitz (marie.strandwitz@hillsboroughnc.gov) for signature  
2024-10-25 - 2:45:13 PM GMT
-  Email viewed by Marie Strandwitz (marie.strandwitz@hillsboroughnc.gov)  
2024-10-25 - 4:59:23 PM GMT
-  Document e-signed by Marie Strandwitz (marie.strandwitz@hillsboroughnc.gov)  
Signature Date: 2024-10-25 - 4:59:40 PM GMT - Time Source: server
-  Agreement completed.  
2024-10-25 - 4:59:40 PM GMT



TOWN OF  
HILLSBOROUGH

# AUTHORIZATION FORM

## Owner's Authorization for Agent

### Board of Adjustment Hearing

Planning and Economic Development Division  
101 E. Orange St., PO Box 429, Hillsborough, NC 27278  
919-296-9475 | Fax: 919-644-2390  
www.hillsboroughnc.gov

This form must accompany any application to go before the Board of Adjustment in which the application will not be represented by the legal property owner. Each owner shown on the property owner's deed must sign this authorization form.

I/We Eric Peterson  
(print names of legal property owners)

hereby authorize Bryant Green  
(print name of agent)

to represent me/us in processing an application for Variance  
on my/our behalf. In authorizing the agent to represent me/us, I/we as owner/owners attest that:

- The application is made in good faith.
- All information contained in the application is accurate and complete.
- The agent is authorized to accept any and all conditions that may be placed on the approval.
- I/we as the property owner(s) am/are bound by any decision of the board, including any and all conditions attached to board approvals.

[Signature]  
Signature of Owner

\_\_\_\_\_  
Signature of Owner

Eric Peterson  
Print Name of Owner

~~Bryant Green~~  
Print Name of Owner

NORTH CAROLINA Orange COUNTY

Sworn to and subscribed before me on this 5 day of November 2024 by

Eric Peterson  
Print Name of Person Making Statement



[Signature]  
Signature of Notary Public

Lindsay A Rhow  
Print Commissioned Name of Notary Public

11-29-2025  
Commission Expiration Date

The individual(s) making the above statement is/are personally known  or identification was produced \_\_\_\_.

**Factors Relevant to Issuance of Variance – Continuation Sheet**

The following text shall be attached to the SUPPLEMENTAL FORM Variance for 715 Dimmocks Mill.

1. Unnecessary hardship would result from carrying out the strict letter of the regulation.

The Town of Hillsborough’s Utilities Department’s development project consists of two proposed structures that are impacted by the 100’ setback requirement required for the Public Utilities Use on the OI Zoned property. The first is a Vehicle Storage Building, a stand alone building to house vehicles and equipment to protect them from weathering and theft. The second is the office addition to the existing Adron F Thompson Building, which provides additional office space to the current historic structure built in 1936 that the Utilities Department staff have outgrown.

The Utilities Department, The Town of Hillsborough and the design team do not wish to locate any structure in the 100-year floodplain. Because of this, all the proposed development for this project is outside of the 100-year floodplain as shown in **Exhibit A**. The Town of Hillsborough,

Currently all the existing occupied structures on this parcel including the Water Treatment Plan, the Adron F. Thompson Building and the Maintenance Building as shown in **Exhibit B** is located within the 100’ setback for the Public Utilities use on the OI Zoned Property.

As designed, the front setback for the Vehicle Storage building is 20’ from the front property line and the front setback for the Office Addition to the Adron F Thompson Building is 62’ from the front property line as shown in **Exhibit C**.

The facts listed in support of the variance request below are separated as each of the two structures has different conditions that create the hardship.

**Vehicle Storage Building**

Given that the town has stated that their policy regarding development in the floodplain is as follows; *“with a few exceptions, we (Town of Hillsborough) do not allow development in the 100-year floodplain.”* The Vehicle Storage Building is currently proposed 20’ from the property line. Adherence to the 100-foot setback required by the UDO for a Public Utilities use would require the design team to move the new vehicle storage building back an additional 80’ so that the structure is entirely in the 100-year floodplain. See **Exhibit D**.

Due to the competing requirements as shown in **Exhibit E** The proposed vehicle storage building, which has the main purpose of housing and protecting the capital investments in the equipment used to perform the water distribution and collection maintenance for the town, would not be able to be built on this site.

If the requested variance of the 100’ setback was not granted, The Utilities Department’s other option to develop this property and continue to have the capability to serve the Town of Hillsborough is to request a Variance to allow new structures to be built in the floodplain on this site. This is not practical for three reasons, which both led to the Town’s stated position to not approve new development within the 100-year floodplain.

One, for environmental purposes as any new development inside the floodplain increases the downstream run off resulting in increased flooding. Structures in the floodplain may be damaged by flood water and debris from a damaged building can float downstream and cause further damage to infrastructure such as water pipes, bridges, other structures, or roads. Moving the building into the Floodplain would affect the floodway, increasing water volume which will adversely impact properties downstream. Recent catastrophic flooding in the Western NC Mountains has reiterated the importance of limiting development in flood plains. This site, if the 100' setback variance is not granted, can only be developed with a portion of the new structures and parking inside the 100 year floodplain.

Two, for practical purposes as often when flooding is present in the community, the Utilities Department must be fully operational and be able to access all their equipment and utilize this equipment to repair damage created by flooding. The Utilities Department prepares water for drinking and cleans used water for return to the environment. It also maintains pipes and infrastructure to deliver drinking water and transport wastewater for treatment. If the building that houses this vital equipment is located inside the floodplain, the risk that the equipment is damaged or inaccessible due to the flooding increases the possibility that the staff could not deploy to repair the infrastructure that provides drinking water and waste water collection for the town leading to worsening of a public health crisis in times of flooding or other emergency.

Three, for security reasons the property must be designed in such a way as to bolster the security of the site. America's Water Infrastructure Act (AWIA) that was passed in 2018 requires local utilities such as ours to conduct Risk and Resilience Assessments on water treatment plants. Given this site that we are developing also contains the Town of Hillsborough's water treatment plant, every decision that is made for building placement, setbacks and site arrangement must consider this act and those decisions should be guided by the mandate to maintain the security of the drinking water for the town. If we fail to comply with this statute by making new development decisions that compromise the security of the site, this could render the Town of Hillsborough potentially ineligible for grant funding opportunities.

Respecting the required 100' setback would create a condition where the building security could not be monitored by passing law enforcement or the public. The most effective security measure is to locate the buildings to allow constant monitoring as anything suspicious can be detected earlier and the proper authorities called to take action to remove any threat.

Additionally, the state of North Carolina recently amended General Statute § 14-159.12 to make trespass on a water treatment plant site a Class I felony. Locating the buildings near the property line on Dimmocks Mill Road affords law enforcement, town staff and the public the opportunity to identify anything suspicious. If the buildings were located 100' from the property line, this detection would be much more difficult. This is a long way of saying we do not want setbacks because they could invite trespassing and present a security risk that shows up in vulnerability assessment.

The Town of Hillsborough must as part of the AWIA conduct Risk and Resilience Assessments on their water treatment plant. Designing the site to comply with the 100' setback will result in a

security vulnerability that can be avoided if the proposed buildings are located close to the property line within a line of sight of the public.

### **Office Addition to Adron F Thompson Building**

The existing Adron F. Thompson Building is located within the 100' minimum front setback required of any structure in the OI zoned parcel designated as a Public Utilities Use.

Any addition to this existing historic building, other than extending the footprint of the rear, would violate the 100' setback.

The Town of Hillsborough desires to retain the historic buildings in the community and especially those in the stewardship of the Town as part of the community fabric. Renovating and adding to the Adron F. Thompson facility would ensure that the building is continually maintained and not allow it to fall into disrepair. Vacated or abandoned buildings are more likely to fall into disrepair as maintenance is not performed and problems like roof or window leaks or other deterioration of the building envelope are not identified until damage has been done.

It is sustainable to reuse existing buildings rather than tearing them down and rebuilding or abandoning them to build new. Reuse of any existing building protects our environment for generations to come. Old buildings and communities embody the energy and carbon that was originally devoted to produce them. Renovation takes less energy to complete than a new building of equal size. Reusing old buildings avoids the environmental impacts of the extraction, processing, manufacturing, and transportation of new materials to be incorporated into the building and the construction processes of erecting the building. Continuing to use existing buildings conserves land by avoiding or minimizing the removal of forests, farms, wildlife habitat, and open space for new construction.

Providing the variance for the 100' setback on this site, allows the proposed Office Addition to the Adron F. Thompson building to integrate with the existing floor plan and use the existing building's area for the expanded operations of the Utilities Department. The addition has been designed so it will not alter the existing form, shape, or materials of the existing historic structure, thereby respecting the town's desire to preserve its history, nor compete with the historic structure by covering or removing any portion of the existing building.

As currently designed, the Office Addition is sited with the front façade aligning with the rear corner of the historic building approximately 62' from the front property line as shown in **Exhibit C**. The location of the building within the required 100' setback for the Public Utilities use is required to maximize the efficiency of the existing historic building allowing it to remain useful as the home for the Utilities department. If the 100' setback were to be respected, the Office Addition would have to move back 38'. This would only leave a 4' portion of the existing exterior wall to join the existing to the proposed structure as shown in **Exhibit D**. This alignment prevents the existing building and new addition from being efficient for their use, and a function of this building is an office addition.

The minimum front setback requirement for an Office Use, a permitted use for this OI zoned parcel, would be 20'.

The 100' setback requirement is due to the site Use is designated as a Public Utilities Use.

2. The hardship results from conditions that are peculiar to the property such as location, size, or topography.

The hardship for the proposed Vehicle Storage building on this site results from Federal Emergency Management Agency (FEMA) designation of the 100-year floodplain. Without this designation, the required 100' front setback would be able to be respected.

The hardship for the Office Addition results from the fact that if the 100' setback is required, the proposed addition can only partially connect to or align with the existing Adron F. Thompson building that is within the 100' setback. This alignment creates operational challenges that can be overcome by allowing the proposed office building to align with the current facility.

3. The hardship did not result from actions taken by the applicant or the property owner.

The hardship for the Vehicle Storage Building was not created by the applicant. The 100-year flood designation that takes up close to 50% of this site creates this hardship. The floodplain designation is a result of FEMA's work to identify areas at risk for flooding and to control the development inside these areas to reduce the likelihood of impacts downstream created this hardship. To respect the 100 year floodplain we have to locate this building in the 100' setback.

The hardship for the Office Addition to the Adron F. Thompson Building is created by the existing location of the Adron F. Thompson Building. With most of the existing building located inside the 100' setback, the proposed building, if it were to respect the setback, would only connect to the original structure with 8' of shared walls. This creates a programmatic challenge to continue to use the historic structure to house the Utilities Staff in a continuous office area. To be sustainable and maximize the use of the existing building to prevent building an entire new facility, the new addition needs to be located directly adjacent to the existing building and therefore the variance to the 100' setback is required.

4. The requested variance is consistent with spirit, purpose, and intent of the regulation such that public safety is secured and substantial justice is achieved.

The variance request will not result in a new building that is closer to the road than the current Adron F. Thompson building.

The intent of the 100' setback for Public Utilities Uses is to insure those structures like water treatment plants, wastewater treatment plants, elevated water tanks, electric substations and other significant installations are not located close to roads or other properties. These structures are utilitarian so their form shape or materials cannot be regulated by the UDO as they must be designed to function, and aesthetics is usually not a concern. The 100' setback protects the public's views from roads and parcels across the road from having to see a



structure that is not regulated as to the aesthetics by the UDO. Neither the Vehicle Storage Building nor the Office Addition fall into the same category as the Public Utilities structures. Each of the two structures proposed to be within the 100' required front setback are buildings that are regulated by the UDO requirements Section 5.2.40 and Chapter 6 of the UDO and therefore the aesthetics are regulated.

The existing conditions of the site will be improved if the variance is granted as the current yard where vehicles, trailers and equipment are stored is not screened by a buffer as will be required for the new Vehicle Storage Building. The Office Addition materials and form is complimentary to the existing historic building and does not create an unregulated structure as if it were a water treatment plant, wastewater treatment plants, elevated water tanks, electric substations.

### **List of attached Exhibits**

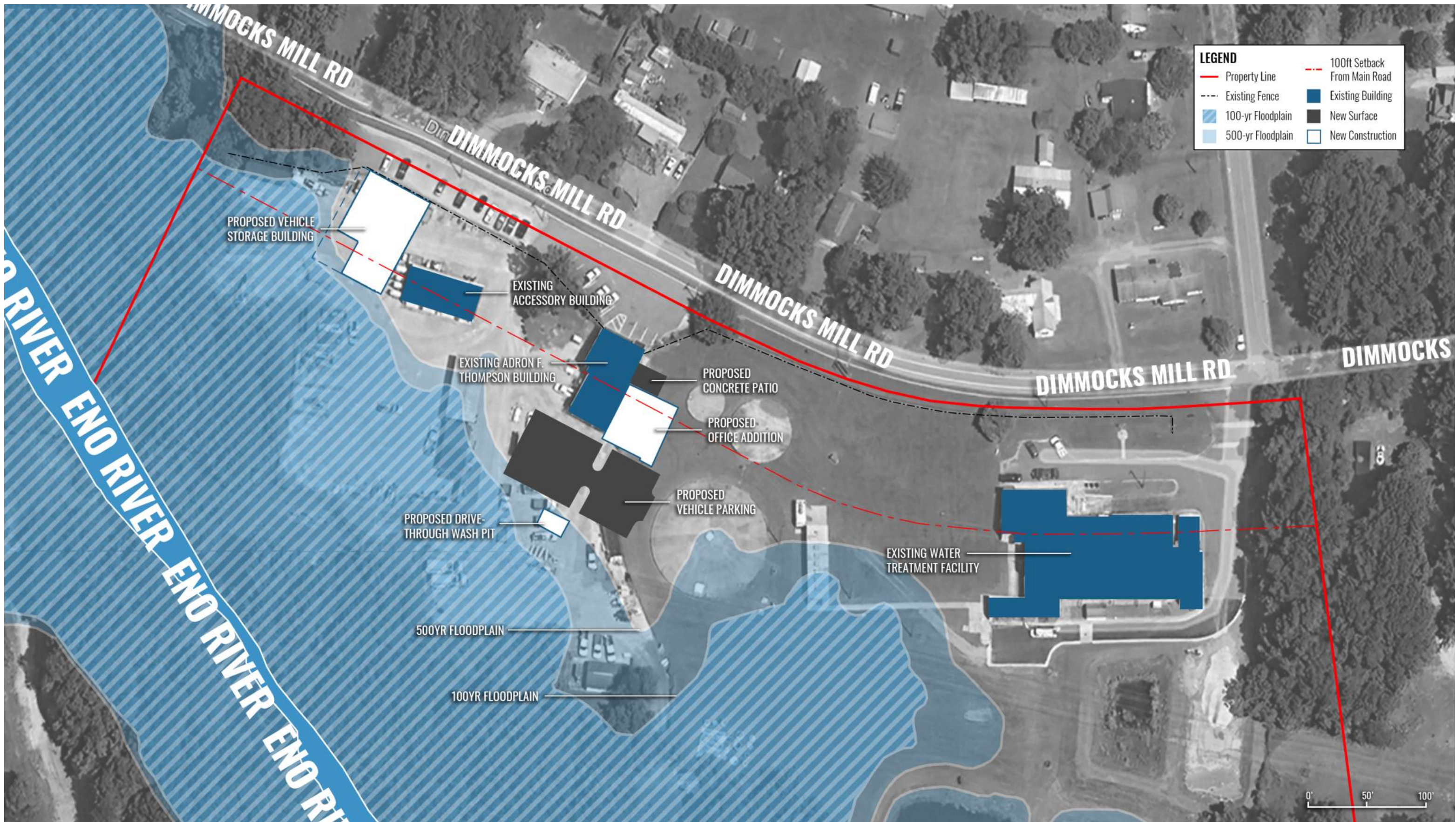
**Exhibit A.** Diagram of the Proposed Developed Site showing that all new improvements, including the Vehicle Storage building, Office Addition, parking lot, wash pit and the sewer pump station are outside the 100 yr. floodplain.

**Exhibit B.** Diagram showing that all the existing occupied structures on this parcel including the Water Treatment Plan, the Adron F. Thompson Building and the Maintenance Building is located within the 100' setback for the Public Utilities use on the OI Zoned Property.

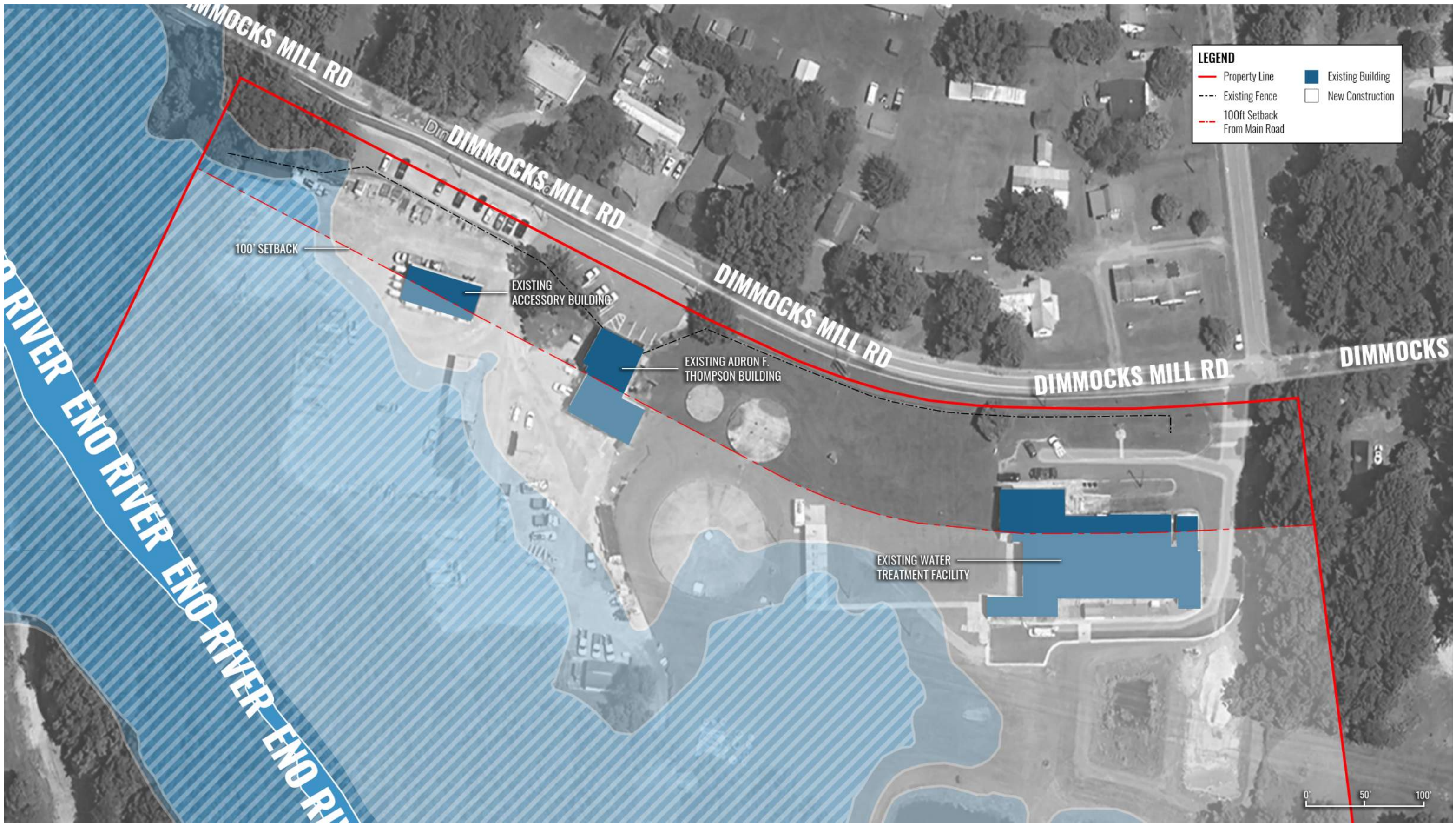
**Exhibit C.** Diagram showing the distance to the Vehicle Storage building is 20' from the property line and the Office Addition is 62' from the property line.

**Exhibit D.** Diagram showing the new vehicle storage building back an additional 80', respecting the 100' setback, so that the building is entirely in the 100-year floodplain.

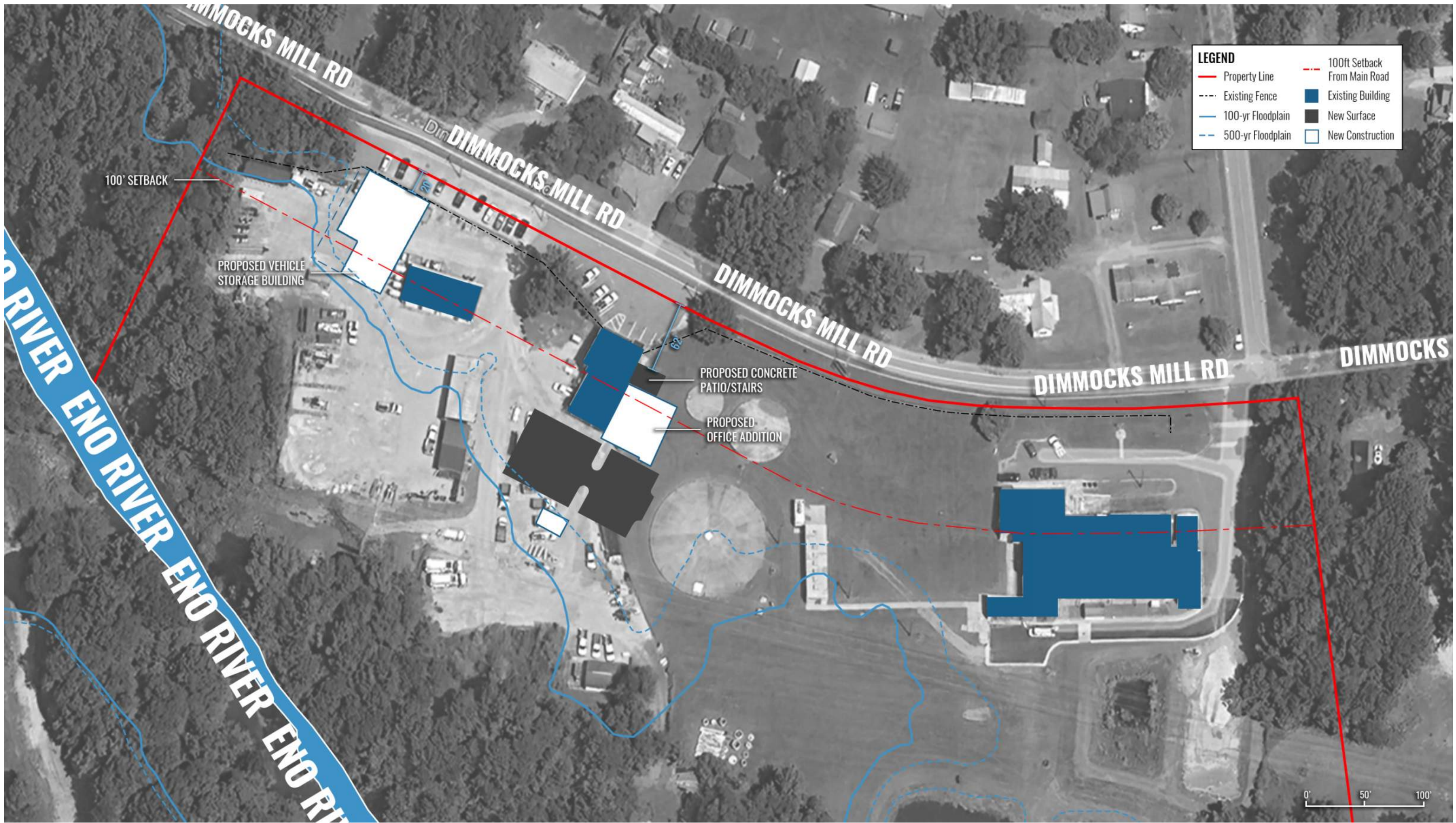
**Exhibit E.** Diagram showing the existing site and the 100' setback line over top of the 100-year floodplain line.



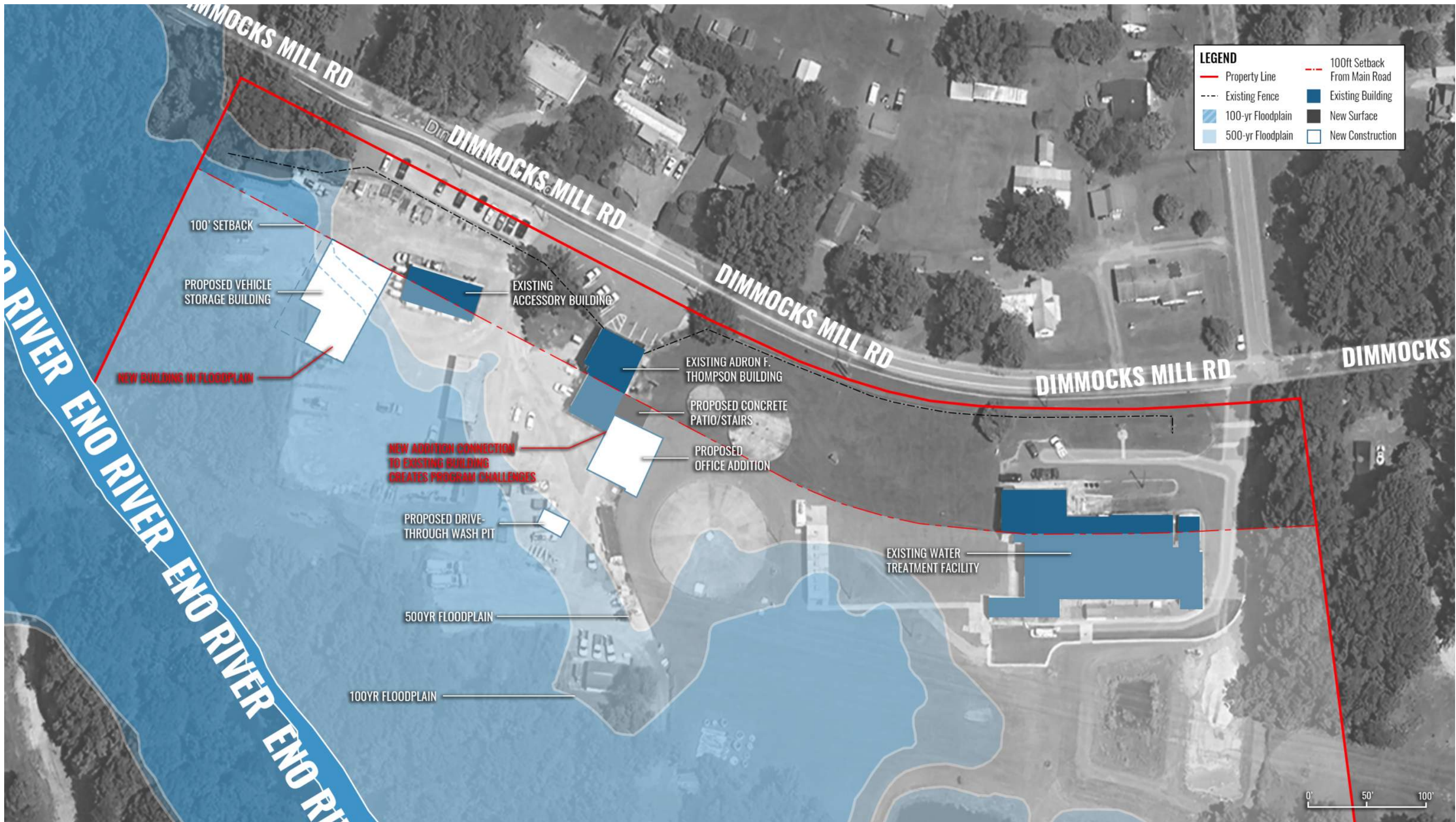
**EXHIBIT A - All Proposed Development Outside 100yr Floodplain**  
 Hillsborough Adron F. Thompson Facility - 2231.01



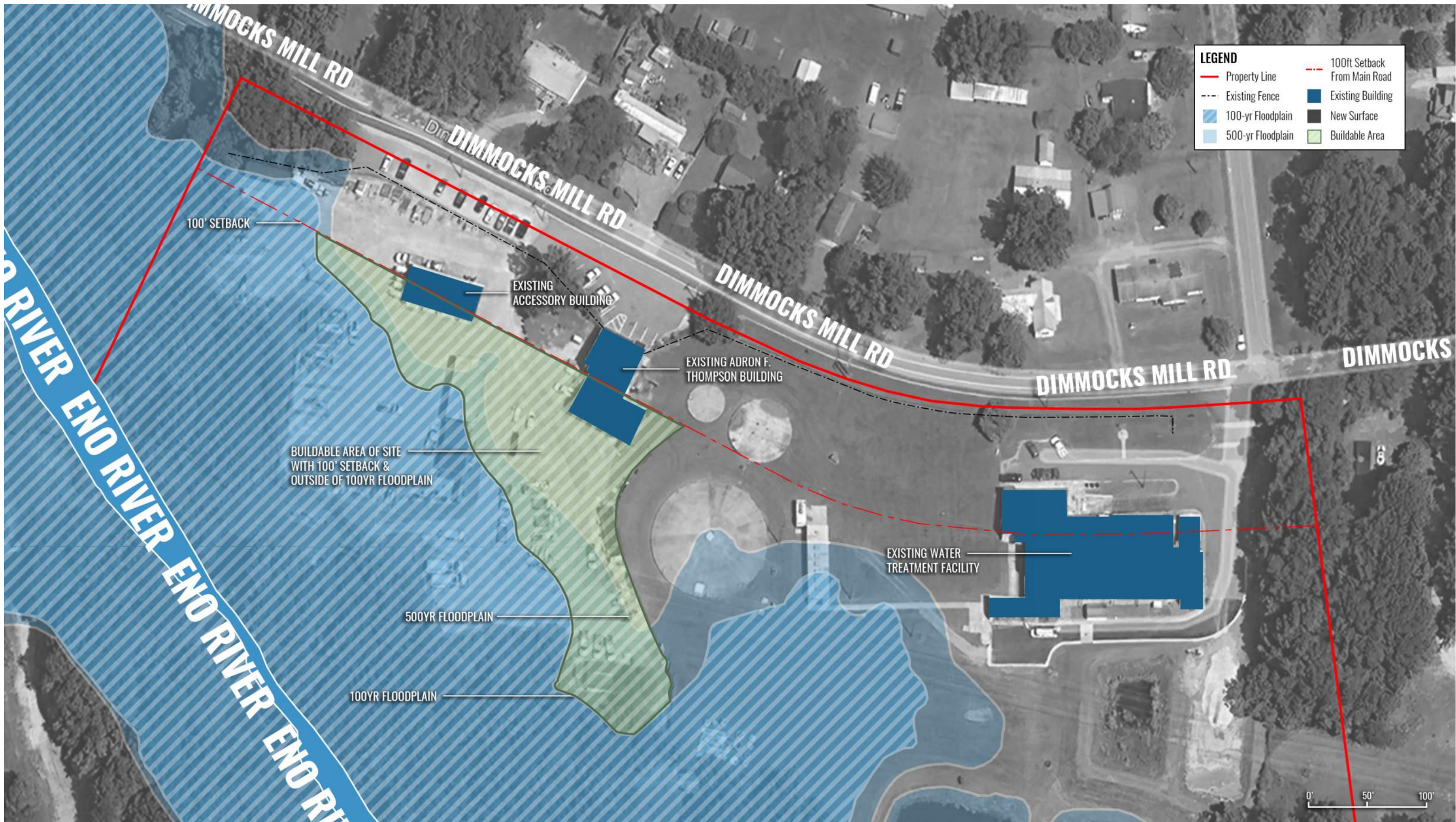
**EXHIBIT B - All Existing Structures Are Closer Than 100' Setback**  
 Hillsborough Adron F. Thompson Facility - 2231.01



**EXHIBIT C - As Proposed Setback Dimensions to New Structures**  
 Hillsborough Adron F. Thompson Facility - 2231.01



**EXHIBIT D - New Building Locations Respecting 100' Setback**  
 Hillsborough Adron F. Thompson Facility - 2231.01



**EXHIBIT E - Buildable Area of Site**  
 Hillsborough Adron F. Thompson Facility - 2231.01

# ATTACHMENT #2

## Town Ordinance Provisions Relative to the Case

### Unified Development Ordinance (last amended October 28, 2024)

#### Section 5 (Uses), Subsection 5.2 (Use-specific Standards), Paragraph 5.2.40 (Public Utilities), Sub-paragraph 5.2.40.1 (Standards of Evaluation):

“The following specific standards shall be used to evaluate an application for approval of these uses: ...

- 5.2.40.1.g *All structures except public water storage facilities are set back at least one hundred (100) feet from the property line.* Elevated public water storage facilities shall observe a setback equal to the greater of the height of the storage facility or the setback required in the district where the facility is located.”

#### Section 9 (Definitions), Subsection 9.2 (Definitions):

“Public Utilities Facilities and improvements for the provision of water, sewage, electricity, natural gas, cable television, or telephone service (excluding telecommunication towers) to or through an area. This category of uses includes but is not limited to, water treatment plants, wastewater treatment plants, elevated water tanks, electric substations, and other significant installations. This use does not include minor above ground items like transformers, telephone switches or exchanges, or pumping stations.”

### Flood Damage Prevention Ordinance (last amended August 26, 2024)

#### Article 3 (General Provisions), Section 3.C (Establishment of Floodplain Development Permit):

“In general, no development or development activity is allowed in Special Flood Hazard Areas. However, the following development activities may be permitted provided the activity and any related structures, including accessory/appurtenant structures and equipment, comply with all applicable provisions of this and other federal, state, and local ordinances; and receive a Floodplain Development Permit in accordance with the provisions of Article 4.B:

- 3.C.2 *Installation of public or private utilities and facilities such as wastewater, gas, electrical and water systems, including accessory service lines.*”

# ATTACHMENT #3

## Zoning History

November 15, 1994: Zoning Permit #002327 issued for construction of addition to “Street Building,” fencing and pavement of driveway.

May 28, 2002: Zoning Permit issued for (i) demolition, relocation & reconstruction of chemical building, (ii) construction of new pump station and one million-gallon clean well, and (iii) installation of outdoor generator.

February 23, 2009: Zoning Permit #4128 issued for storage building.

March 30, 2012: Zoning Compliance Permit #4590 issued for pole shed for equipment storage.

March 16, 2017: Zoning Compliance Permit #5937 issued for temporary office trailer to house public works staff.