

APPLICATION NUMBER

**5351**

A REQUEST FOR

**SIDE YARD SETBACK VARIANCE TO ALLOW THE  
CONSTRUCTION OF A 24' X 36' GARAGE, 3-FEET FROM  
THE SIDE (WEST) PROPERTY LINE; A MINIMUM SIDE  
YARD SETBACK OF 8-FEET IS REQUIRED FOR A LOT  
THAT IS 60-FEET WIDE OR WIDER AT THE MINIMUM  
FRONT BUILDING SETBACK LINE IN A R-1, SINGLE-  
FAMILY RESIDENTIAL DISTRICT**

LOCATED AT

**11 SOUTH HATHAWAY ROAD**

South side of Hathaway Road, 350'± West of North McGregor Avenue

APPLICANT/OWNER

**BARBARA SHEPHERD MALKOVE**

**BOARD OF ZONING ADJUSTMENT**

APRIL 2006

The applicant is requesting Side Yard Setback Variance to allow the construction of a 24' x 36' garage 3-feet from the side (West) property; a minimum side yard setback of 8' is required for a lot that is 60' wide or wider at the minimum front building setback line in an R-1, Single-Family Residential District.

The applicant states that the nature of the neighborhood when developed in the 1940's was to place the garage close to the side property line. The applicant states the placement of the garage 3-feet from the side property line would comply with the development of the neighborhood as it was intended in the 1940's. The applicant has submitted several photos depicting various garages within the neighborhood that are closer than the required 8-feet.

Although the site is not within a historic district it is located in an older neighborhood that predates the adoption of the current Zoning Ordinance. The proposed construction of the garage would maintain the residential character of the neighborhood and the Board has been mindful of the unique character of older areas when considering site variance applications. Furthermore, the Board has been sympathetic in granting variances in urban areas of the city, especially when the addition is "in-line" with the existing structure and/or a minimum setback of 5-feet is provided. However, this construction is not "in-line" with an existing structure. In previous instances, the Board has allowed additions and garages to be constructed 5-feet from the side property line, with the condition that gutters and downspouts be placed on the side of the addition that abuts that side property line that is affected by the structure.

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.

The applicant failed to illustrate that a literal enforcement of the Zoning Ordinance would result in an unnecessary hardship. It is simply the applicant's desire to construct a 24' x 36' garage within 3-feet from the West side property line. However, as illustrated by the photos of several garages within the immediate vicinity, the Board should consider approving a 5-foot side yard setback, which is more consistent with the board's policy and practice as it relates to side yard variance applications.

**RECOMMENDATION 5351****Date: April 3, 2006**

Based on the preceding, it is recommended that this application be denied. However, the Board could consider granting a 5-foot side yard variance subject to the following condition: 1) provision of gutters and downspouts along the side of the new structures that affects the adjacent property.

## LOCATOR MAP



APPLICATION NUMBER 5351 DATE April 3, 2006

APPLICANT Barbara Shepherd Malkove

REQUEST Side Yard Setback Variance

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NTS

# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by single-family residential dwellings.

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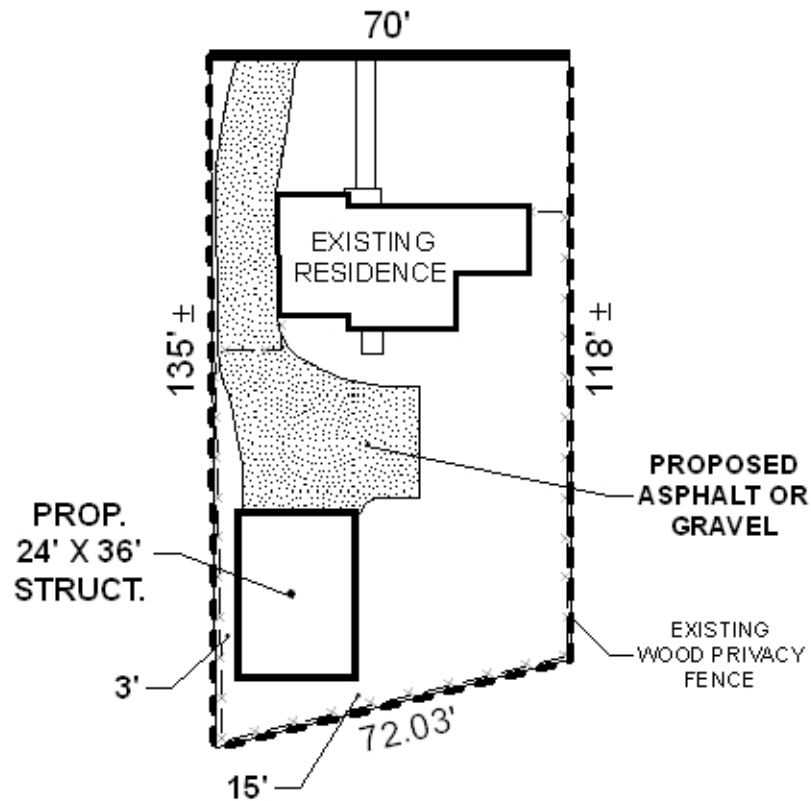
LEGEND

R-1	R-2	R-3	R-A	R-B	H-B	B-1	LB-2	B-2	B-3	B-4	B-5	I-1	I-2



# SITE PLAN

SOUTH HATHAWAY ROAD



The plan illustrates the proposed development.

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