

APPLICATION NUMBER

5494

A REQUEST FOR

**SIDE YARD SETBACK VARIANCE TO ALLOW THE
CONSTRUCTION OF AN 18' x 18' GAZEBO WITHIN 3.1'
OF A SIDE YARD PROPERTY LINE IN AN R-1, SINGLE-
FAMILY RESIDENTIAL DISTRICT; THE ZONING
ORDINANCE REQUIRES AN 8' SIDE YARD SETBACK
FOR ALL STRUCTURES IN R-1, SINGLE-FAMILY
RESIDENTIAL DISTRICT.**

LOCATED AT

4705 SHERRY COURT

(South side of Sherry Court at its West terminus)

APPLICANT/OWNER

BOBBY & JULIE THRELKELD

AGENT

BOBBY & JULIE THRELKELD

BOARD OF ZONING ADJUSTMENT

SEPTEMBER 2008

The applicant is requesting a Side Yard Setback Variance to allow the construction of an 18' x 18' gazebo within 3.1' of a side yard property line in an R-1, Single-Family Residential District; the Zoning Ordinance requires an 8' side yard setback for all structures in an R-1, Single-Family Residential District.

The applicant recently began construction of a gazebo/pool house and a citizen complaint was received concerning the lack of a building permit and property line setback. Inspections by both the Building and Planning Sections confirmed the complaint, and a Stop Work Order and Notice of Violation were issued. The applicant wishes to continue construction at the current setback, hence this variance request.

The applicant states that this is the only location on the property where the structure can be built due to the fact that the back yard has many large oak trees and a swimming pool and the other side of the house is where the driveway is. Indeed, the site plan submitted does indicate three 36" diameter oak trees in the back yard, but they are of sufficient distance from the pool and deck area to allow the relocation of the structure. Also, there is ample area on the deck within the immediate vicinity of the structure to allow relocation to meet the required 8' property line setback and still retain the same size structure. The site plan also indicates an existing shed encroaching into the required side yard setback along the same property line further toward the rear of the property; however, the applicant has verbally stated that this structure can be relocated to meet the required 8' setback.

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.

The applicant failed to illustrate that a literal enforcement of the Ordinance would result in an unnecessary hardship. Any hardship imposed in this instance is self-imposed due to the fact that the site plan indicates ample area for the structure to meet the required setback. Had the applicant attempted to obtain the necessary Building Permit prior to commencing construction, the proper setbacks would have been established and alternative locations for the structure could have been sought. It is simply the applicant's desire to allow continued construction of the gazebo/pool house within 3.1' of a side property line.

RECOMMENDATION 5494**Date: September 8, 2008**

Based upon the preceding, this application is recommended for denial.

LOCATOR MAP



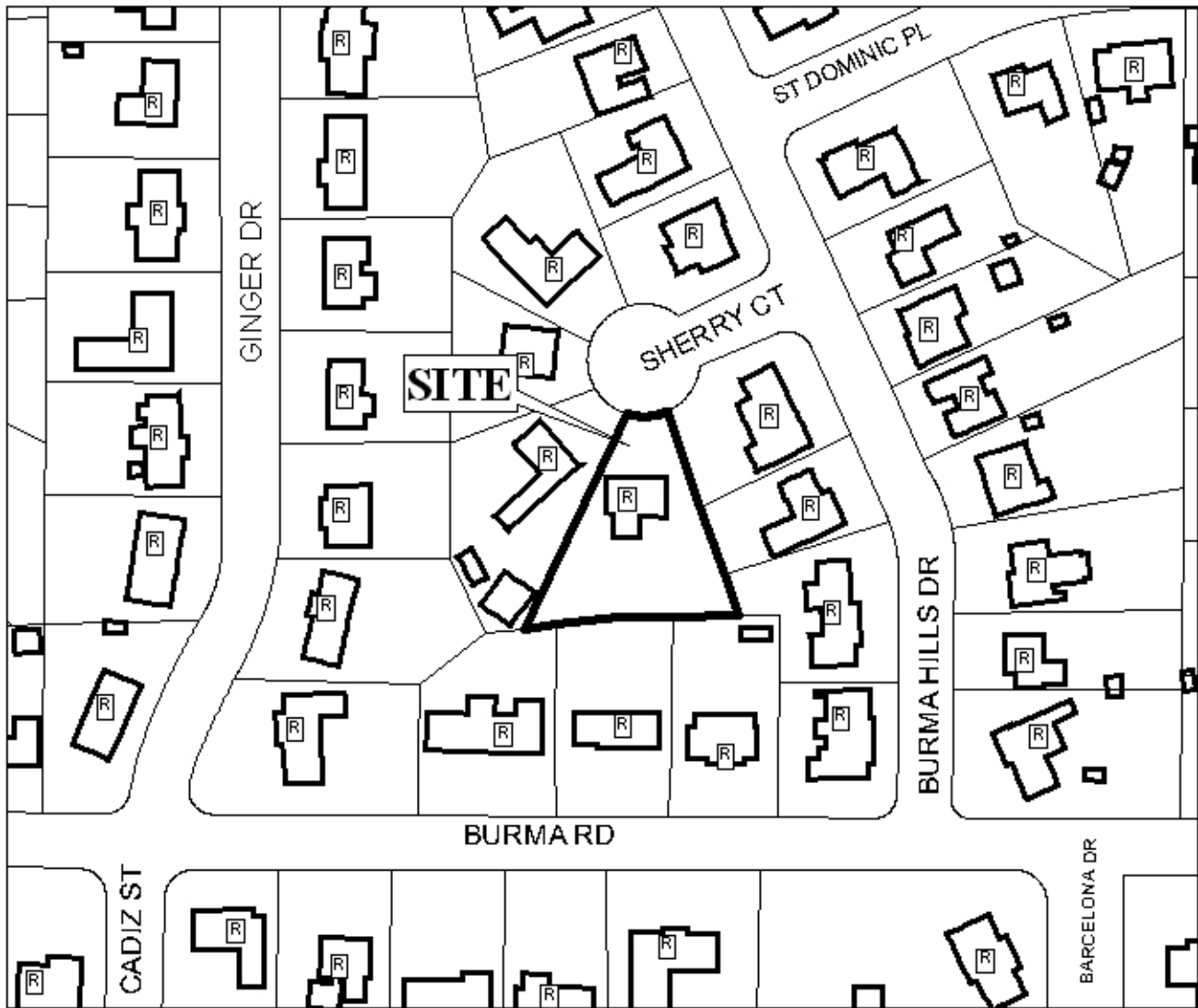
APPLICATION NUMBER 5494 DATE September 8, 2008

APPLICANT Bobby & Julie Threlkeld

REQUEST Side Yard Setback Variance



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by single family residential units

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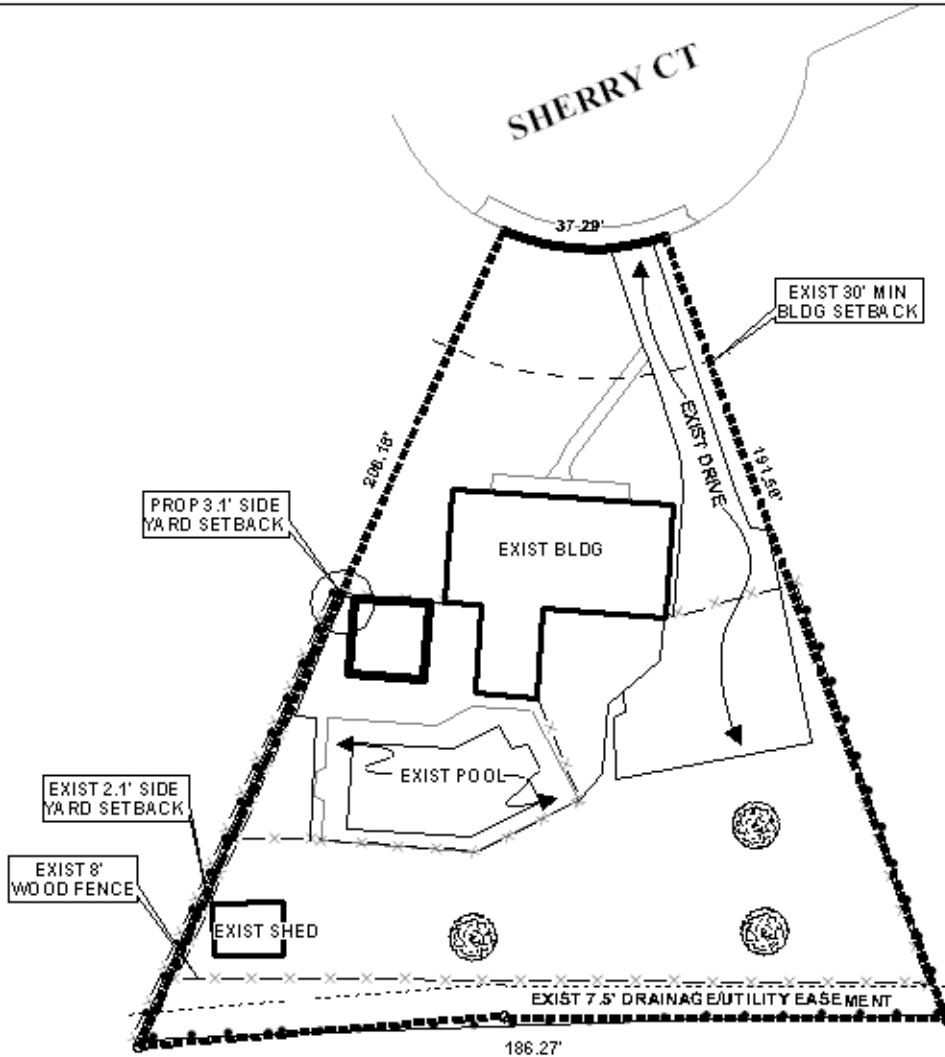
LEGEND

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

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SITE PLAN



The site plan illustrates the existing buildings, fencing, and proposed building

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