

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: May 2, 2011****CASE NUMBER**

5670

APPLICANT NAME

Mr. Rooter Plumbing

LOCATION2409 Wolf Ridge Road
(Southwest corner of Wolf Ridge Road and Feed Mill Road
[private street])**VARIANCE REQUEST****USE:** Use Variance to allow a plumbing contractor in an R-1, Single-Family Residential District.**SETBACK:** Setback Variance to allow a building within 20' of the front property line.**PARKING:** Parking Variance to allow no designated parking spaces for a 2,250 square-foot office/workspace building.**MANEUVERING AND ACCESS:** Maneuvering and Access Variances to allow two-way maneuvering and accessways less than 24' wide.**SURFACE:** Surface Variance to allow dirt and aggregate surfacing.**BUFFER:** Buffer Variance to allow no buffering between commercial and residential properties.**FENCE HEIGHT:** Fence Height Variance to allow a 6' high privacy fence within the 25' front setback.**MULTIPLE BUILDINGS VARIANCE:** Multiple Buildings Variance to allow multiple buildings on a single building site without Planned Unit Development Approval.

(All for a commercial site in an existing R-1, Single-Family Residential District)

**ZONING ORDINANCE
REQUIREMENT****USE:** The Zoning Ordinance requires a minimum B-3, Community Business District, for a plumbing contractor.

SETBACK: The Zoning Ordinance requires all buildings be set back at least 25' from the front property line.

PARKING: The Zoning Ordinance requires 8 designated parking spaces for a 2,250 square-foot office/work space building.

MANEUVERING AND ACCESS: The Zoning Ordinance requires all two-way maneuvering and accessways to be 24' wide.

SURFACE: The Zoning Ordinance requires all surfaces to be paved with concrete or asphalt.

BUFFER: The Zoning Ordinance requires appropriate buffers between commercial and residential properties.

FENCE HEIGHT: The Zoning Ordinance requires that privacy fences be no higher than 3' within the 25' front setback.

MULTIPLE BUILDINGS: The Zoning Ordinance allows only one building on a single building site unless Planned Unit Development Approval has been obtained for multiple buildings.

(All for a commercial site in a B-3, Community Business District).

ZONING

R-1, Single-Family Residential

AREA OF PROPERTY

3.4± Acres

ENGINEERING COMMENTS

The storm water ordinance does not allow property to be denuded for more than sixty (60) days without having vegetation or suitable ground cover for the control of sedimentation to be established; therefore, dirt cannot be used for a parking surface. Aggregate surfacing (or asphalt or concrete) will have to be used as a parking surface or a variance of the storm water ordinance will have to be applied for to the Flood Plain Manager (the City Engineer) for the use of dirt as a parking surface. It is very unlikely that a variance will be granted for dirt as a parking surface due to the likelihood of sedimentation .

**TRAFFIC ENGINEERING
COMMENTS**

No comments.

**CITY COUNCIL
DISTRICT**

District 1

ANALYSIS

The applicant is requesting Use, Setback, Parking, Maneuvering, Access, Surfacing, Buffer, Fence Height, and Multiple Buildings Variances to allow a plumbing contractor with multiple buildings on a single building site without Planned Unit Development Approval, a building within 20 feet of the front property line, substandard accessways and maneuvering area, no designated parking, dirt and aggregate surfacing, no appropriate buffers, and a 6-foot high privacy fence within the front building setback in an R-1, Single-Family Residential District; the Zoning Ordinance requires all buildings to be set back at least 25 feet from the front property line, only one commercial building on a single building site unless approval of a Planned Unit Development has been obtained, all two-way accessways and maneuvering areas to be at least 24 feet in width, 8 parking spaces for 2,250 square feet of office/work space, all accessways, maneuvering area, and parking to be paved with concrete or asphalt, appropriate buffers between commercial and residential properties, for privacy fences to be no higher than 3 feet within the front yard setback, and a minimum of a B-3, Community Business District zoning.

In April, 2009, the applicant obtained a Zoning Clearance for a home occupation as a plumber at the subject address subject to the standard home occupation conditions printed on the Zoning Clearance:

“THE APPLICANT MUST LIVE AT THE RESIDENCE, AND PERSONS NOT LIVING AT THE RESIDENCE CANNOT WORK AT THE LOCATION. The business activity shall be incidental to the residential use of the premises and shall not: (a) take place in the yard or in a detached building; (b) occupy more than 25% of the floor area of the dwelling; (c) employ anyone who does not live in the dwelling; (d) include selling or storage of items for sale from this address that are made elsewhere; and (e) include the storage of materials or heavy equipment such as bulldozers, dump trucks, etc”.

Following an on-site mishap resulting in a power pole being downed which serves an accessory trailer, an electrical permit was sought for a replacement power pole. The subsequent electrical inspection of the new pole revealed the total commercial use of the site and a zoning inspection revealed the noncompliant aspects of the site which are the basis of this application. Basically, the site was never used in a home occupation capacity and, instead, converted into a full commercial site without any of the required Zoning Ordinance change of occupancy reviews and approvals, and with no site compliance for first-time commercial use. Now that the misrepresentation and misuse have been discovered, the applicant proposes to continue to use the site with only one minor revision for some site compliance and variances to cover all other noncompliant use and site aspects. The only compliance revision proposed is the relocation of the 6' high wood privacy fence along Wolf Ridge Road to the 25' minimum setback line.

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 site had been in single-family residential use until at least the time the applicant purchased it in September, 2006. In 2008, Mr. Rooter Plumbing was located across the street at 2448 Wolf Ridge Road, but there is no business license or zoning clearance history for such at that address. At some point after that, a modular office and various accessory storage structures were placed on the subject site, gravel parking, accessways, and curb cut were added, noncompliant fencing was erected, and an existing dormant dirt pit on the site was begun to be filled, all without permits or any review procedures. Also, service trucks are being stored on the site, there are employees working on the site, and a sign has been installed without a permit.

The applicant states that the area is of mixed-use with both residential and commercial/light industrial uses and that the subject site's current use as a plumbing contractor is the 'softest' for the area. Indeed, there are other commercial/light industrial uses in the immediate area, but all enjoy a legal nonconforming "grandfathered" status. It is further stated that rezoning would create spot zoning and that a use variance would be the better way to approach the situation. Inasmuch as a use variance would be the appropriate approach due to the unlikelihood of rezoning, the applicant has not shown that a literal enforcement of the Ordinance would result in an unnecessary hardship since the property has had a history of single-family residential use. And the fact that the applicant began to use the property in a strictly commercial manner in violation of the Zoning Ordinance and the Zoning Certificate for a home occupation without any of the required first-time commercial use site compliance modifications does not justify the granting of the requested site compliance variances as any hardship imposed would be self-imposed.

The Board should consider all of the applicant's requested variances for denial as no hardship is shown to be imposed by the property which would prevent its single-family residential use. The applicant simply desires to continue to use the property in a commercial capacity while retaining almost all of the non-compliant aspects of the site, all of which were created by the applicant and with little or no regard to City Code.

RECOMMENDATION:

Based on the preceding, this application is recommended

for denial.

Revised for the May meeting:

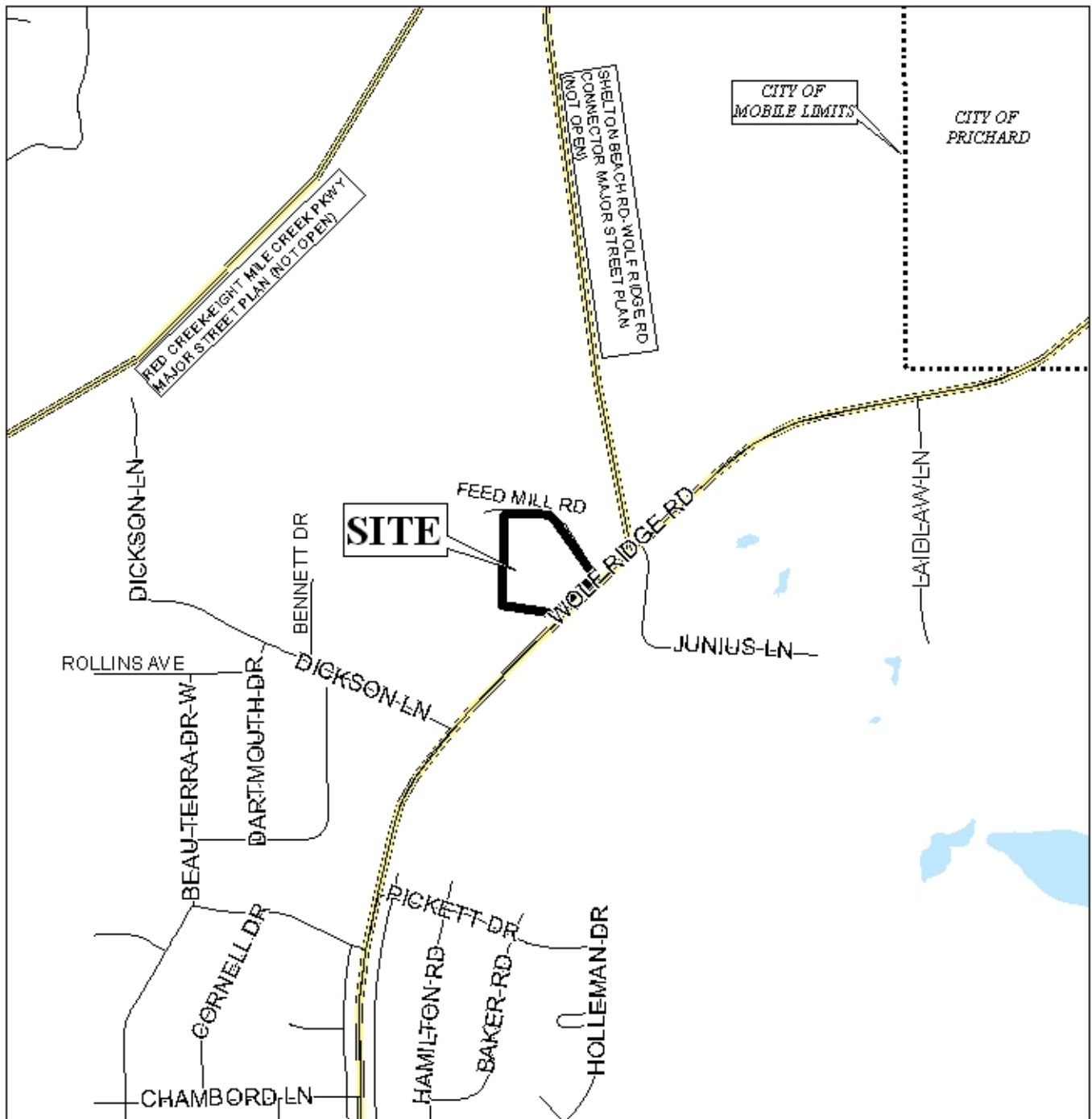
This application was heldover from the April meeting to allow the applicant to submit a revised site plan. As no revised site plan or any further information has been submitted, the original recommendation would stand.

RECOMMENDATION:

Based on the preceding, this application is recommended for denial for the same reasons as the original recommendation:

- 1) this is a total commercial use of a residential site that was falsely portrayed as a home occupation;*
- 2) the modular building and storage shed were placed on the site without permits or PUD Approval;*
- 3) the site was filled without any land disturbance or fill permits;*
- 4) the fence and sign were erected without permits;*
- 5) gravel paving was placed without approval or permits; and*
- 6) no hardship basis has been illustrated which would prevent the site from being used residentially as it is zoned.*

LOCATOR MAP



APPLICATION NUMBER 5670 DATE May 2, 2011

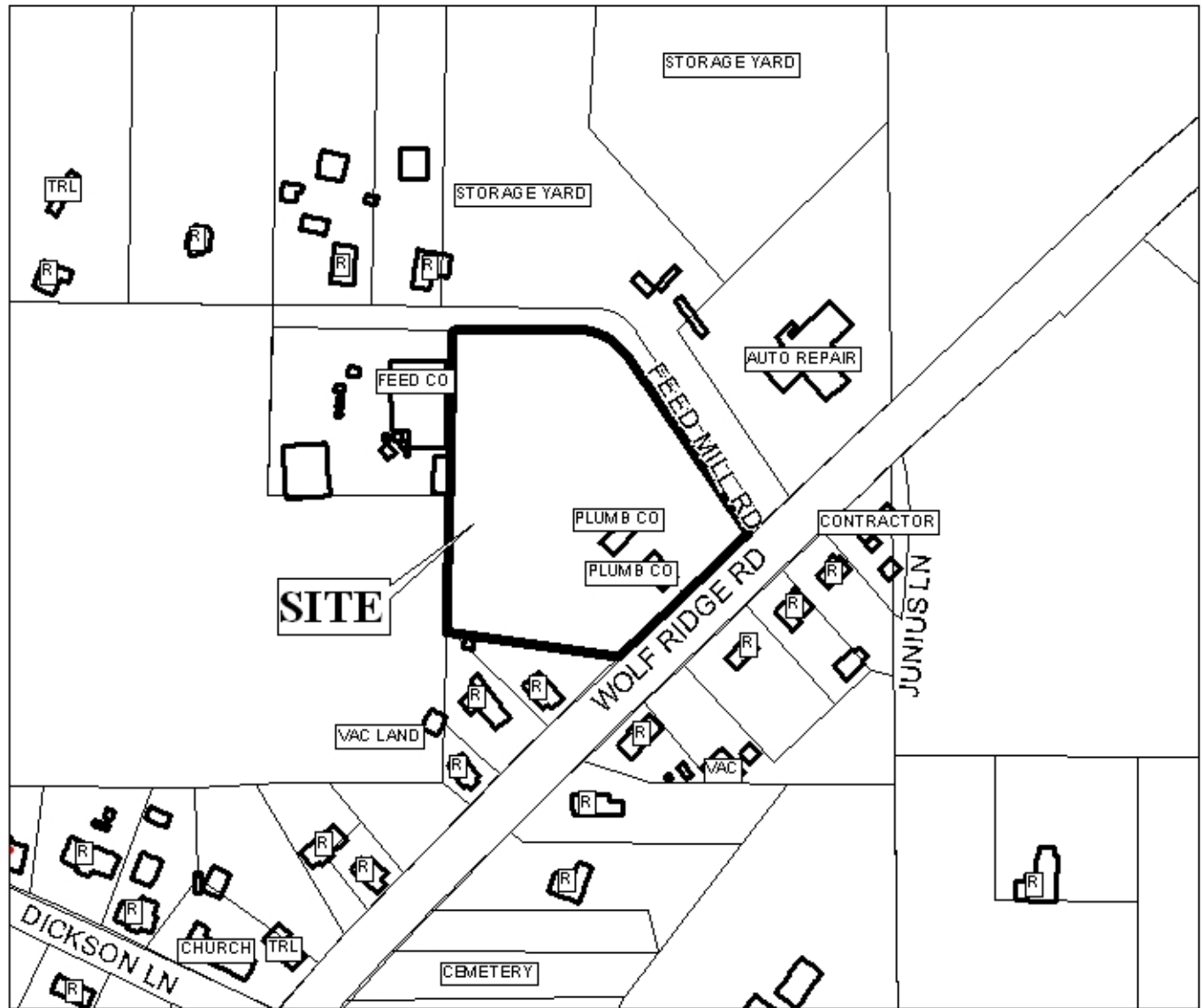
APPLICANT Mr. Rooter Plumbing

Use, Setback, Parking, Maneuvering, Access, Surfacing, Buffer,
REQUEST Fence Height, and Multiple Buildings Variances



NTS

BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



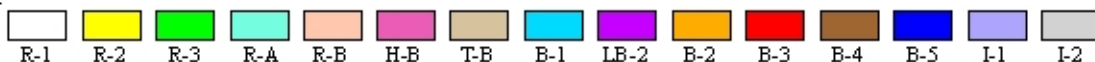
There is an auto repair business to the northeast of the site, single family residential units are to the south and southeast, and a storage yard is to the north.

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LEGEND



NTS

BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING

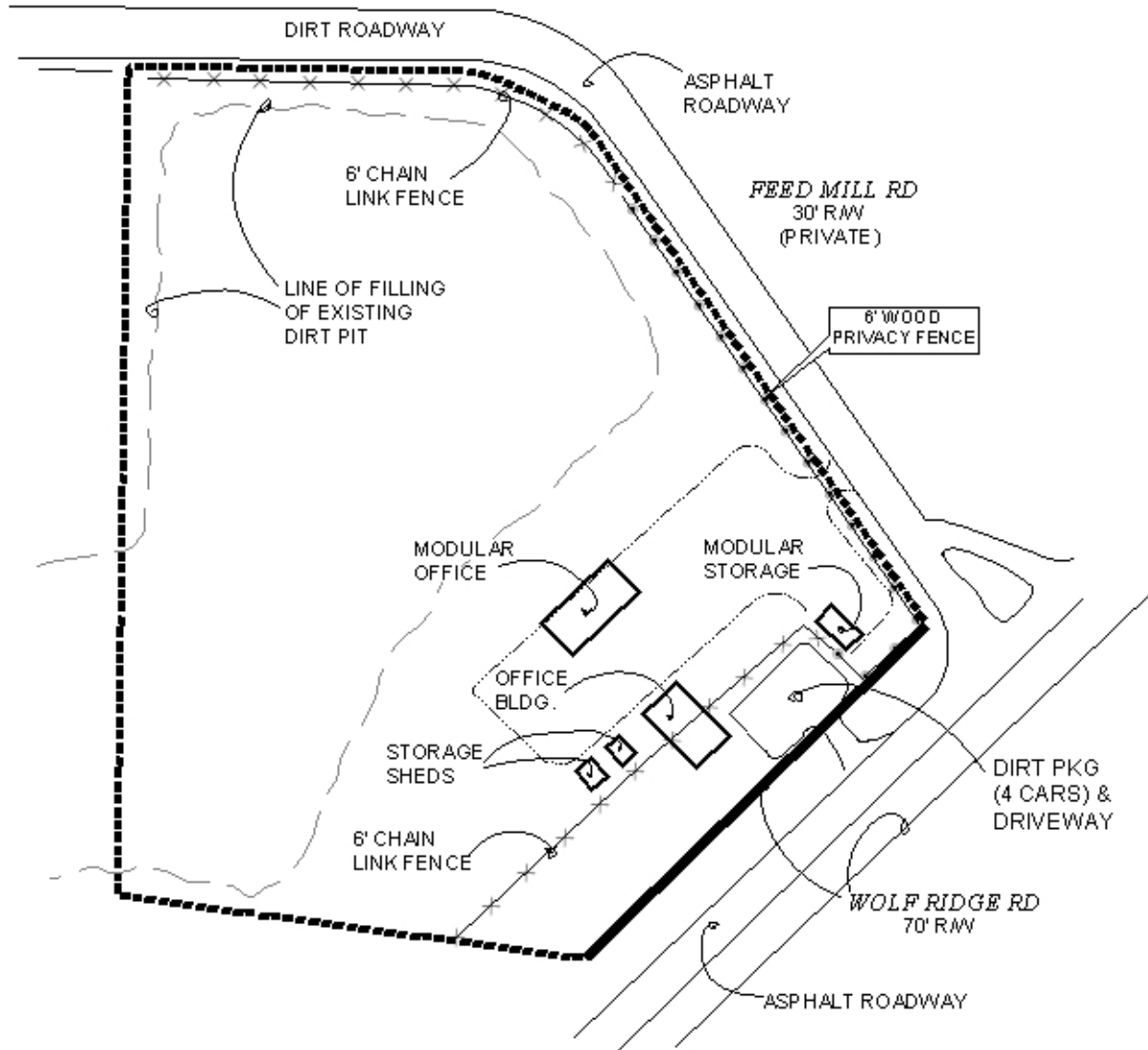


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SITE PLAN



Buildings, parking, drives, and fences are illustrated in the site plan.

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