

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: August 4, 2014****CASE NUMBER** 5908/5515/5434**APPLICANT NAME** Al Chammout**LOCATION** 1248 Hillcrest Road
(Northwest corner of Hillcrest Road and Grelot Road).**VARIANCE REQUEST** **PARKING RATIO:** Parking Ratio Variance to allow 31 parking spaces for a 3,761 square foot restaurant in a B-3, Community Business District.**ZONING ORDINANCE REQUIREMENT** **PARKING RATIO:** The Zoning Ordinance requires 38 parking spaces for a 3,761 square foot restaurant in a B-3, Community Business District.**ZONING** B-3, Community Business District**AREA OF PROPERTY** 23, 199 ± Square Feet**ENGINEERING COMMENTS** No comments**TRAFFIC ENGINEERING COMMENTS** Although it appears there is excess parking on the adjacent lot 1234 Hillcrest Rd, there is no vehicular access to the adjacent lot from 1248 Hillcrest Rd. If someone pulls into the parking lot at 1248 Hillcrest Rd and determines it is full, there are two options to access this overflow parking 1) exit the site on Grelot Rd and turn into the storage facility at 6420 Grelot Rd, which does have shared vehicular access to 1234 Hillcrest Rd, or 2) exit the site on Hillcrest Rd and make two u-turns to access 1234 Hillcrest Rd. These movements could result in increased congestion on the adjacent roadways of Hillcrest Rd and Grelot Rd, as well as at the adjacent signalized intersection.**CITY COUNCIL DISTRICT** District 6**ANALYSIS** The applicant is requesting a Parking Ratio Variance to allow 31 parking spaces for a 3,761 square foot restaurant in a B-3, Community Business District; the Zoning Ordinance requires at least 38 parking spaces for a 3,761 square foot restaurant in a B-3, Community Business District.

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 subject site consists of a one-story indoor restaurant with two separate outdoor dining patios. The current restaurant began operating at this site in 2010. The site had adequate parking spaces that complied with the parking requirements of the Zoning Ordinance. The applicant has since added one unpermitted outdoor patio to the front, which has changed the required number of parking spaces; a complaint was received regarding the patio addition on October 1, 2012, and the first Municipal Offence Ticket (MOT) was issued on October 31, 2012. A second MOT was issued on June 26, 2013. The current MOT is in Environmental Court, and is the reason for this application.

The applicant states the following reasons to explain the need for the variance:

“The total floor area amounts to approximately 3,761 Sq. Ft. Per the Zoning Ordinance, the parking requirement for a restaurant amounts to one parking space per 100 Sq. Ft. of gross floor area of the building. This amounts to a parking requirement of 38 spaces. 31 spaces are currently provided on the parcel. This deficiency occurs due to the use of a front patio that requires an additional seven parking spaces.

This parcel was in compliance under the parking ordinance until the City adopted its non-smoking ordinance. The latter adversely affected the use of the property as a Mediterranean style restaurant because it prohibited smoking which had been conducted with hookah pipes inside the premises. To avoid loss of business, the owner created an outdoor patio area with table to move the hookah pipe use outdoors. This area created a loss of parking, which has been rendered compliant through the use of a lease of parking spaces on the adjoining property.”

The site requires 38 parking spaces; however only 31 spaces are provided. The applicant states that *“the deficiency occurred due to the use of a front patio that requires seven parking spaces”*. The applicant failed to mention that the front patio addition that requires 7 additional spaces was constructed without any permits. Building permits were obtained for the first patio constructed to the north of the building which proves that the applicant was aware of the permitting process.

The applicant also states that the *“parcel was in compliance under the parking ordinance until the City adopted its non-smoking ordinance”* when in actuality the site was in compliance until the owner added an unpermitted outside dinning patio area sometime after 2011. It should be noted, if building plans for an additional patio would have been submitted through permitting,

the permit would have been denied. Thus the hardship regarding a lack in parking spaces is entirely self-imposed. After the fact permits to ensure compliance with building code and electrical requirements will be required, if the variance request is approved.

In 2010, a permit for an **uncovered** patio addition to the North side of the building was approved and built. Sometime after 2010, the patio that was covered with a structure, without permits. After the fact building permits will be required, and proof of compliance with wind load requirements by an engineer will be required, regardless of the variance request at hand.

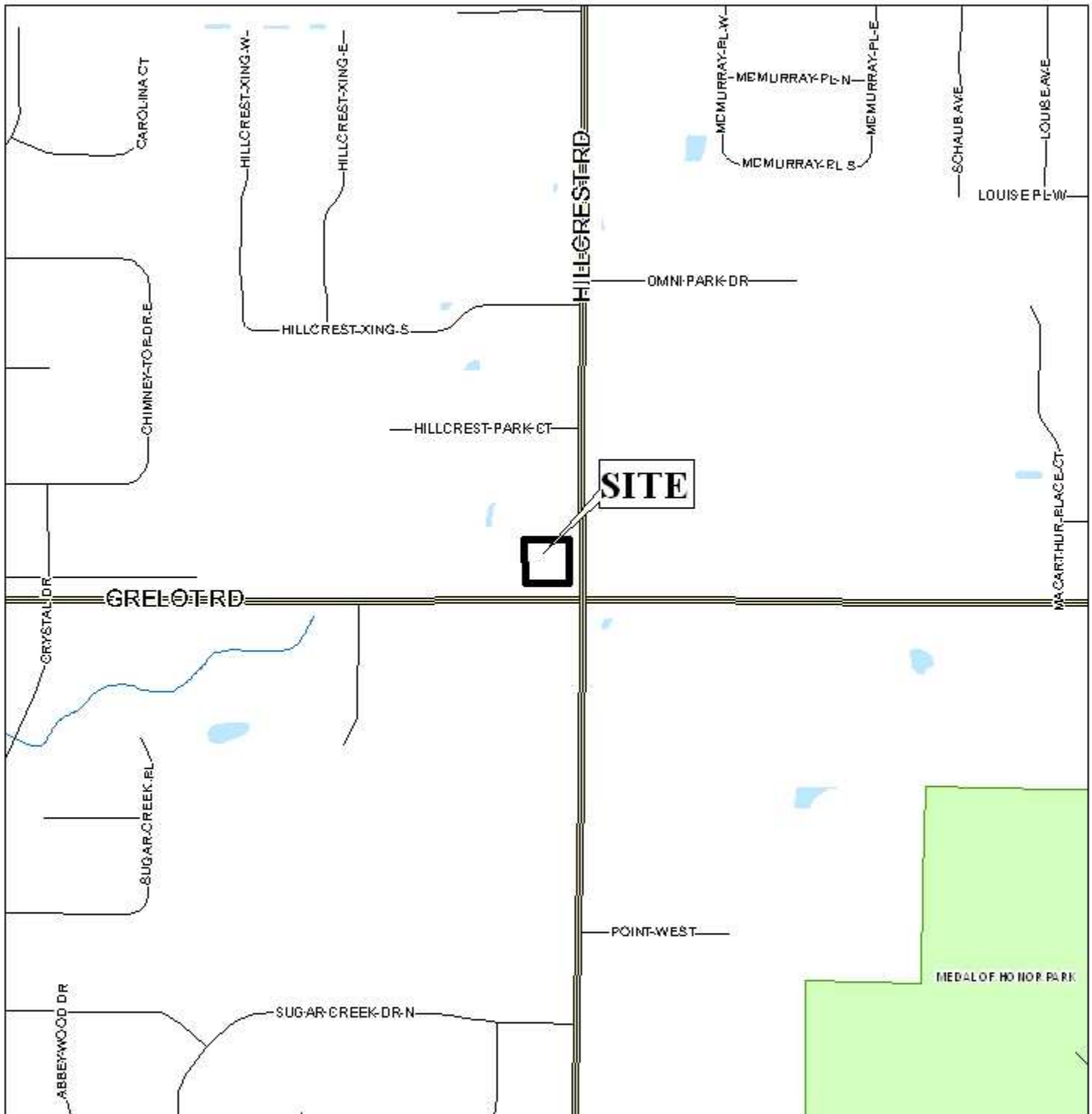
The applicant states that the loss of parking will be remedied through the use of a lease of parking spaces on the adjoining property. The applicant has submitted a letter addressing a parking agreement with the property owner to the north of the site located at 1234 Hillcrest Road. However, the adjacent property owner did not authorize the variance application, so off-site parking cannot be considered with the variance. Furthermore, the adjacent property to the north of the site is also apart of a Planned Unit Development (PUD) with the site located at 6420 Grelot Road. In order for the subject site to share parking with the adjacent property to the north the applicant must submit a PUD application to amend the previously approved 2006 PUD which includes both properties 1234 Hillcrest and 6420 Grelot Road. A PUD application for shared parking and access will be required, in order to allow adjacent sites to be legally considered for parking issues.

The applicant has not demonstrated adequate justification for the request in a reduction in parking from the required 38 spaces to 31. It is simply the applicant's desire to lease parking from the adjacent property in lieu of removing the unpermitted patio. As stated previously, the cause of a lack in parking was created by the applicant. The applicant can not legally lease property without amending the previously approved 2006 PUD, thus the application can not be considered as proposed. Shared access approval must be granted by the Planning Commission.

RECOMMENDATION: Based upon the preceding, staff recommends to the Board the following findings of fact for denial:

- 1) approving the variance request will be contrary to the public interest in that the adjacent property owner did not authorize the variance application to allow shared parking, and it would condone unpermitted construction;
- 2) special conditions with the property do not exist, and any apparent hardship appears to be self-imposed by making changes, additions and expansions without appropriate approvals or permits and doing so with no regard to Zoning Ordinance requirements; and
- 3) the spirit of the chapter shall not be observed and substantial justice shall not be done to the surrounding neighborhood by granting the variance because the parking deficit was created due to unpermitted expansion, and the adjacent property to the north that the applicant wishes to lease is apart of a Planned Unit Development (PUD) with another property; thus in order for the subject site to share parking with the adjacent property to the north the applicant must submit a PUD application to amend a previously approved 2006 PUD.

LOCATOR MAP



APPLICATION NUMBER 5908 DATE August 4, 2014

APPLICANT Al Chalmout

REQUEST Parking Ratio Variance



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



This site is surrounded by commercial land use.

APPLICATION NUMBER 5908 DATE August 4, 2014

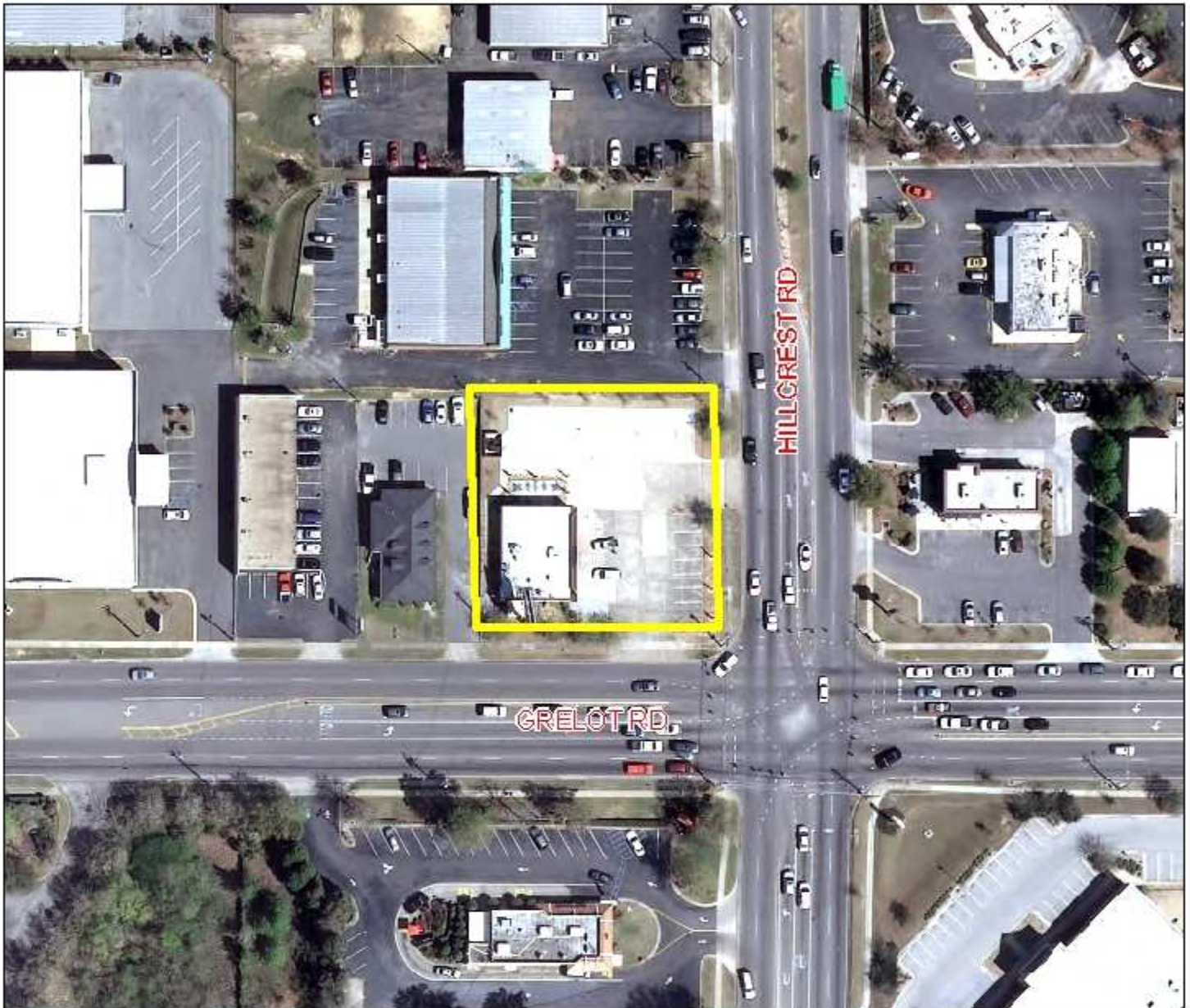
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R-A	R-3	T-B	B-2	B-5	MUN	SD-WH	T5.1
R-1	R-B	B-1	B-3	I-1	OPEN	T3	T5.2
R-2	H-B	LB-2	B-4	I-2	SD	T4	T6



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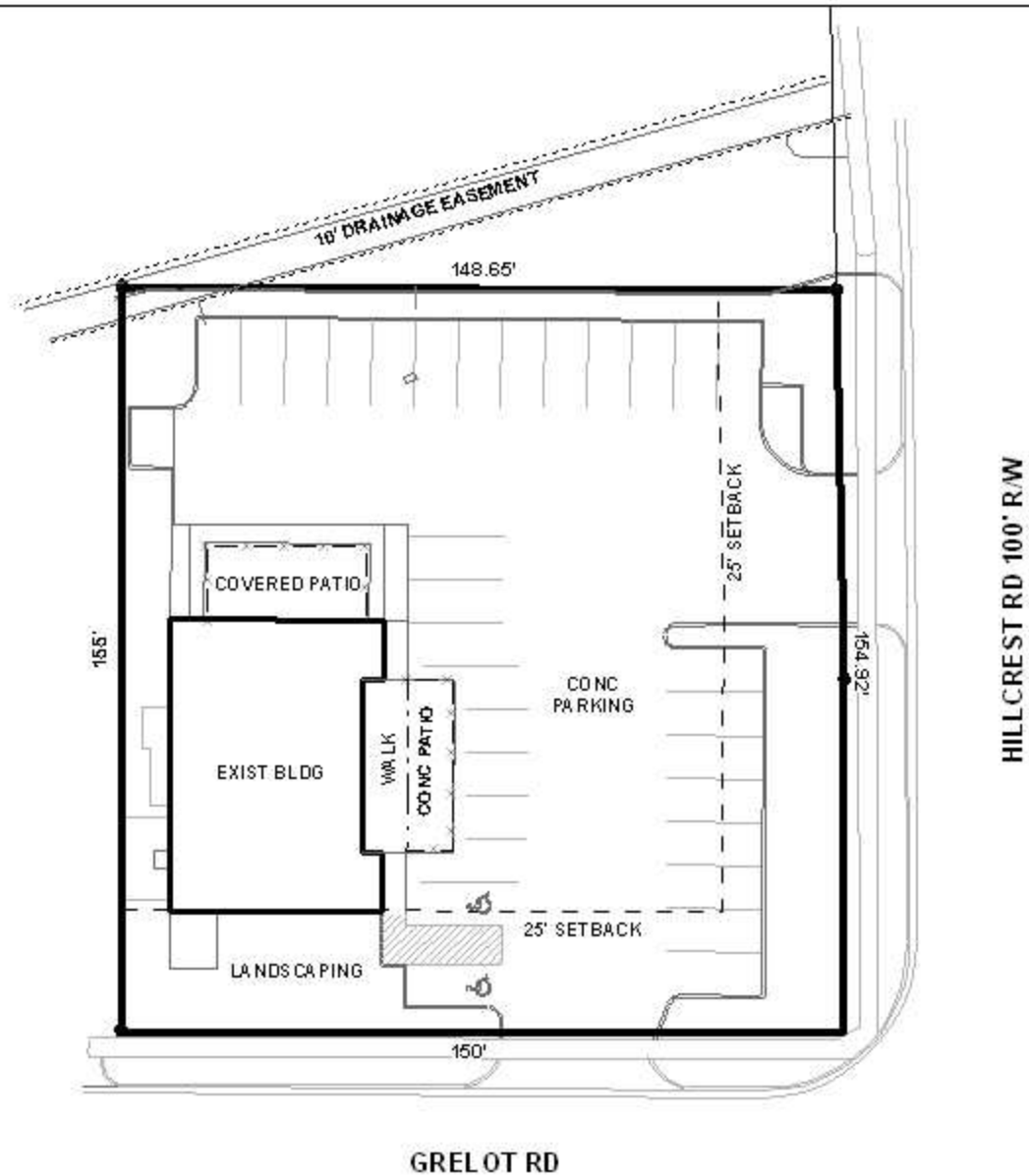
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SITE PLAN



The site plan illustrates existing building, patios and parking.

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