

APPLICATION NUMBER

**5538**

A REQUEST FOR

**REAR SETBACK VARIANCE TO ALLOW THE  
CONSTRUCTION OF STAIRS 0.1' FROM THE REAR  
PROPERTY LINE FOR ACCESS TO A LEGAL  
NONCONFORMING GARAGE APARTMENT IN AN R-1,  
SINGLE-FAMILY RESIDENTIAL DISTRICT; THE  
ZONING ORDINANCE REQUIRES A MINIMUM 8' REAR  
YARD SETBACK IN AN R-1, SINGLE-FAMILY  
RESIDENTIAL DISTRICT.**

LOCATED AT

**64 BIENVILLE AVENUE**

(Northwest corner of Bienville Avenue and Conti Street)

APPLICANT/OWNER

**JAMES DAVID BRISTER**

AGENT

**JAMES DAVID BRISTER**

**BOARD OF ZONING ADJUSTMENT**

JUNE 2009

The applicant is requesting a Rear Setback Variance to allow the construction of stairs 0.1' from the rear property line for access to a legal nonconforming garage apartment in an R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum 8' rear yard setback in an R-1, Single-Family Residential District.

The applicant purchased the subject property in 2007 containing a single-family dwelling and a garage apartment. As part of renovations to the garage apartment, the applicant proposes to add an alternate stairway to the upstairs apartment close to the rear property line. Construction of the stairway was begun, as were all renovation activities, without permits. A citizen complaint prompted a zoning investigation which revealed the rear setback encroachment. The applicant wishes to complete the stairway where located, hence this variance.

The garage apartment is a legal nonconforming structure located within 3.3' of the rear (West) property line at its closest point. There are two existing stairways to the apartment; one is located on the East side of the structure closer to the dwelling, and the other more commonly used is on the rear (North) side of the structure. The applicant states that in order to access the stairs on the North side, one must travel through the backyard and go around the corner of the structure. It is argued that for ease and safety of the tenant, as well as the applicant's privacy, the stairs are desired on the West side of the structure to afford the tenant a private, well-lit entry.

With regard to the rear setback encroachment, the applicant states that since the garage apartment was built encroaching within the current 8' rear setback, the stairs also have the same dilemma. Inasmuch as the structure was built within 3.3' of the property line prior to the adoption of the current Zoning Ordinance and required setbacks, any new construction must meet the required setbacks. Had the applicant's contractor attempted to obtain the proper building permits for the renovations and additions, a more suitable location for the stairs may have been found. In older parts of the city where reduced setbacks are not uncommon, the Board has been sympathetic in granting variances where hardships have been shown to be imposed by a property or where an addition is "in-line" with an existing structure and/or a minimum setback of 5' is provided. However, a 0.1' setback is an inordinate request. Three of the primary concerns relating to side and rear setbacks are the potential for the spread of fire from one property to another, water run-off onto adjacent properties, and the ability to properly maintain structures. In this instance, all three of those concerns would be applicable and genuine.

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.

Variations 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.

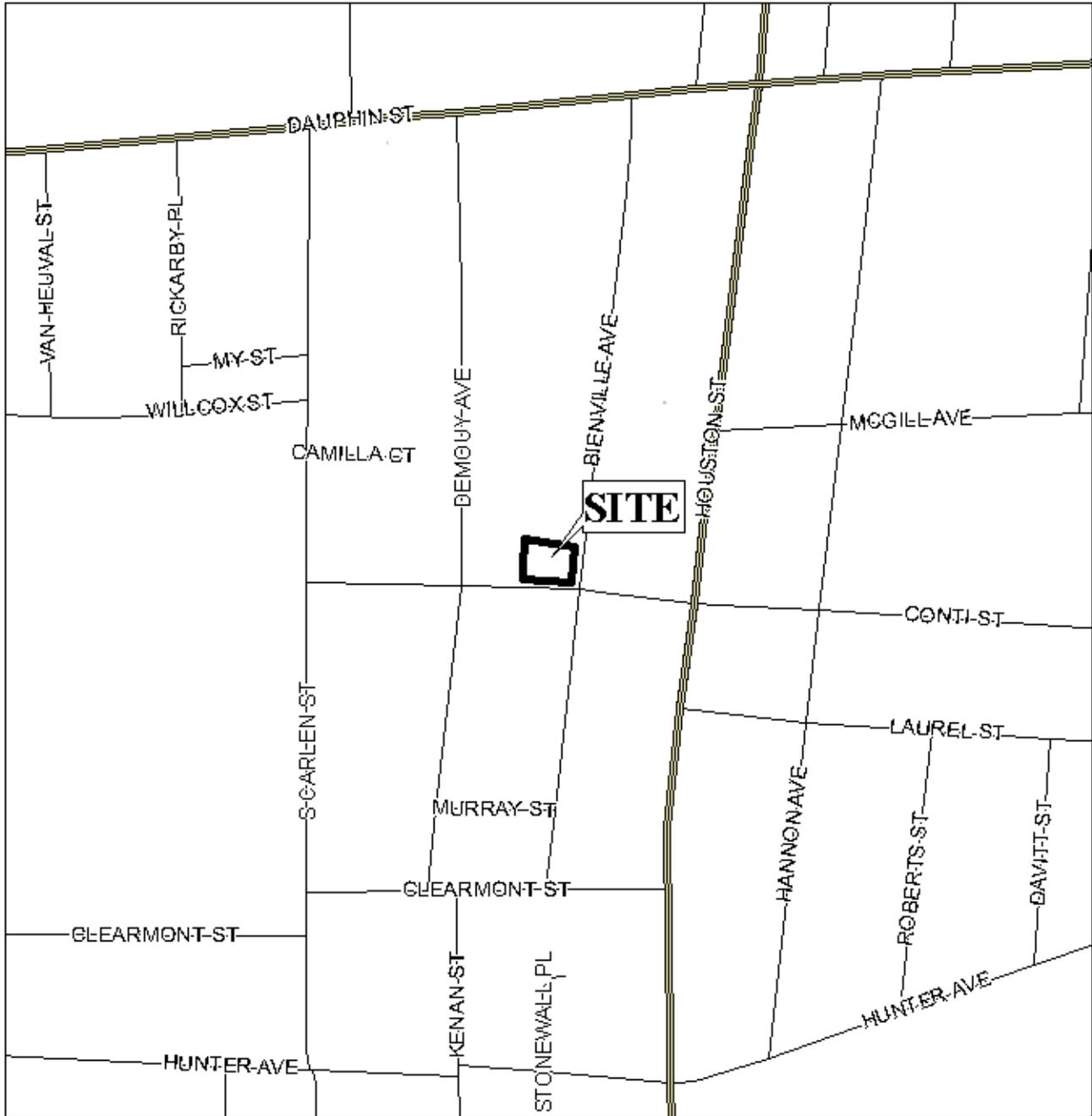
The applicant failed to illustrate that a literal enforcement of the Ordinance would result in an unnecessary hardship and any hardship imposed by the location of the stairs is self-imposed. It is simply the applicant's desire to allow the construction of stairs 0.1' from the rear property line. The applicant should also be mindful that there is no legal nonconforming use information on file with the Planning Section relating to the use of the garage apartment (a second dwelling unit) in an R-1, Single-Family Residential District. No matter what the Board's decision may be relating to the location of the stairs, unless a valid legal nonconforming use history is established, the garage apartment cannot be used as an additional dwelling unit.

**RECOMMENDATION 5538**

**Date: June 1, 2009**

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

# LOCATOR MAP



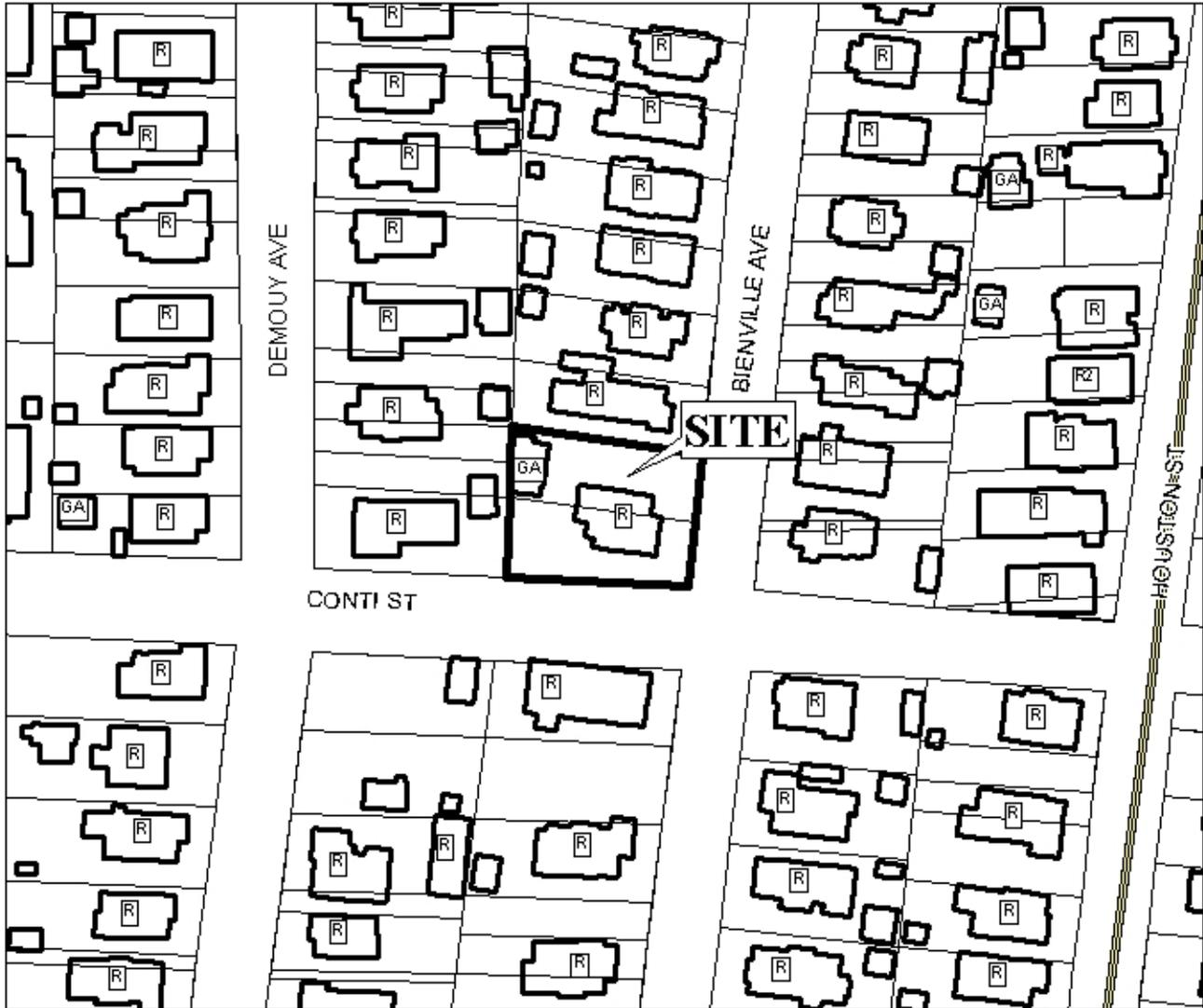
APPLICATION NUMBER 5538 DATE June 1, 2009

APPLICANT James David Brister

REQUEST Rear Setback Variance



# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



This site is surrounded by residential land use.

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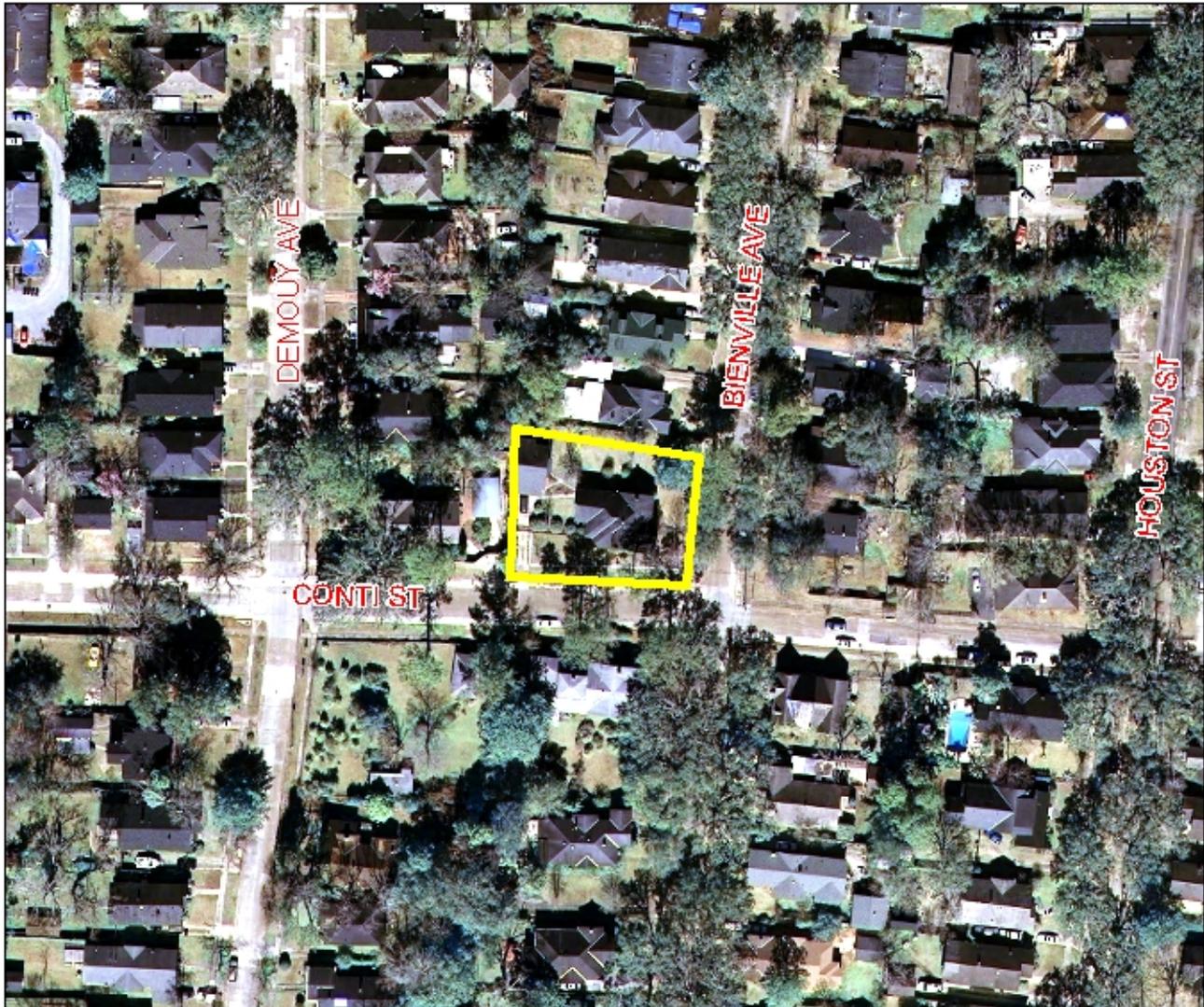
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LEGEND																NTS
	R-1	R-2	R-3	R-A	R-B	H-B	T-B	B-1	LB-2	B-2	B-3	B-4	B-5	I-1	I-2	



**BOARD OF ADJUSTMENT  
VICINITY MAP - EXISTING ZONING**



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