

APPLICATION NUMBER

**5400**

A REQUEST FOR

**SIDE YARD SETBACK VARIANCE TO ALLOW THE  
CONSTRUCTION OF A 16.6' X 28' STORAGE BUILDING  
SETBACK 3.8' FROM A SIDE PROPERTY LINE; AN 8'  
SIDE YARD SETBACK IS REQUIRED FOR STRUCTURES  
IN AN R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT.**

LOCATED AT

**3055 YORKWOOD ROAD EAST**

(East side of Yorkwood Road East, 120'± South of Highcrest Drive)

APPLICANT/AGENT/OWNER

**BILL CHERRY**

**BOARD OF ZONING ADJUSTMENT**

JANUARY 2007

The applicant is requesting a Side Yard Setback Variance to allow the construction of a 16.6' x 28' storage building setback 3.8' from a side property line; an 8' side yard setback is required for structures in an R-1, Single-Family Residential District.

A citizen filed a complaint in March, 2006, concerning construction work being performed without a building permit at the applicant's home. An on-site investigation confirmed such and verified that the subject structure was being constructed in violation of the required side yard setback and a Stop Work Order was issued. The applicant attempted to obtain an after-the-fact building permit and claimed that he was rebuilding a nonconforming structure damaged by Hurricane Katrina in August, 2005. A Nonconforming Structure Affidavit was submitted to the Planning Section of the Urban Development Department stating the structure existed when the property was purchased in 1994. A standard review of such documentation through analysis of land use aerial photographs taken between 1994 and 2002 indicated no such structure existed; therefore, the affidavit was disclaimed and the building permit was denied. The applicant has had appearances in Environmental Court concerning this issue and a judge's order was given on September 19, 2006 to seek a variance, hence this application, which was not submitted until November 30, 2006.

A review of the site plan submitted with the application indicates that all accessory structures on the property, excluding the pump house, are in violation of either a side or rear yard setback, or both. The applicant states that the subject building will be used as a hurricane shelter and for storage. No justification for reduced setbacks was furnished, and with the property containing approximately 25,000 square feet (6/10 acre±), and no trees to impact location, sufficient space is afforded for compliant location of the subject structure, and all others. In setback variance cases where a hardship is illustrated, a side yard setback of less than 5' is discouraged.

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.

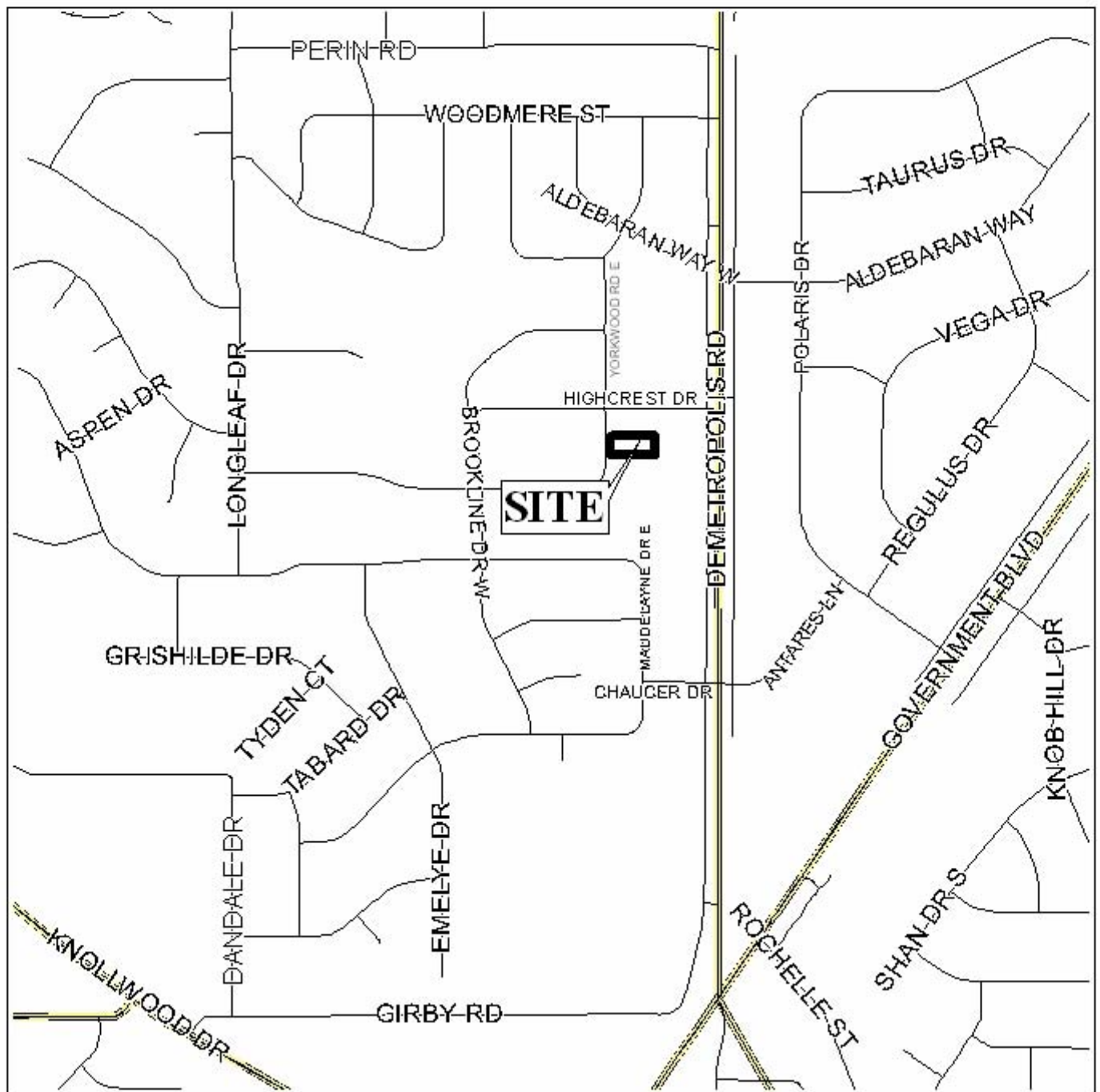
The applicant failed to illustrate that a literal enforcement of the Zoning Ordinance would result in an unnecessary hardship. It is simply the applicant's desire to construct a building setback 3.8' from a side property line.

**RECOMMENDATION 5400**

**Date: January 8, 2007**

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

# LOCATOR MAP

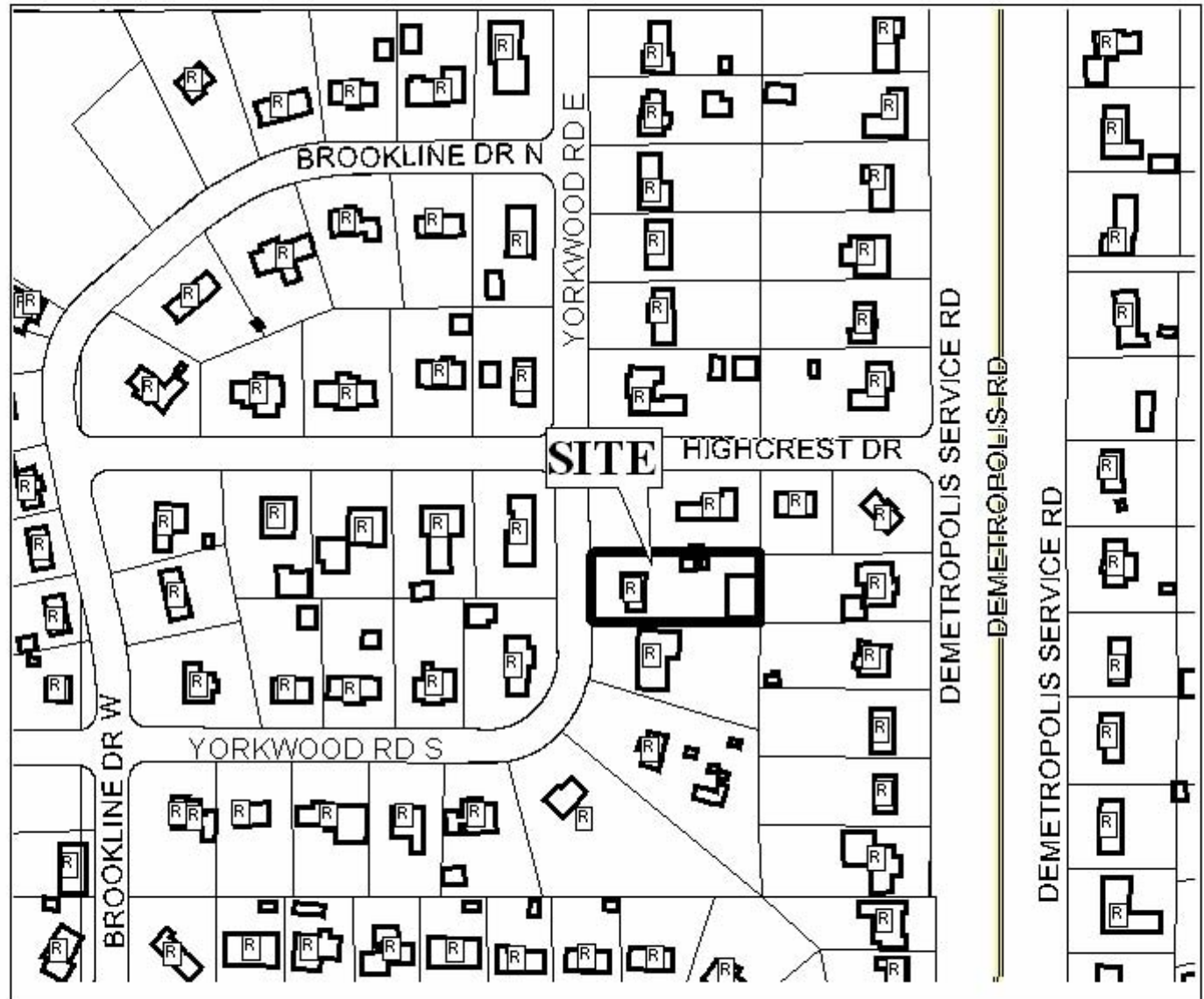


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# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by single family residential units.

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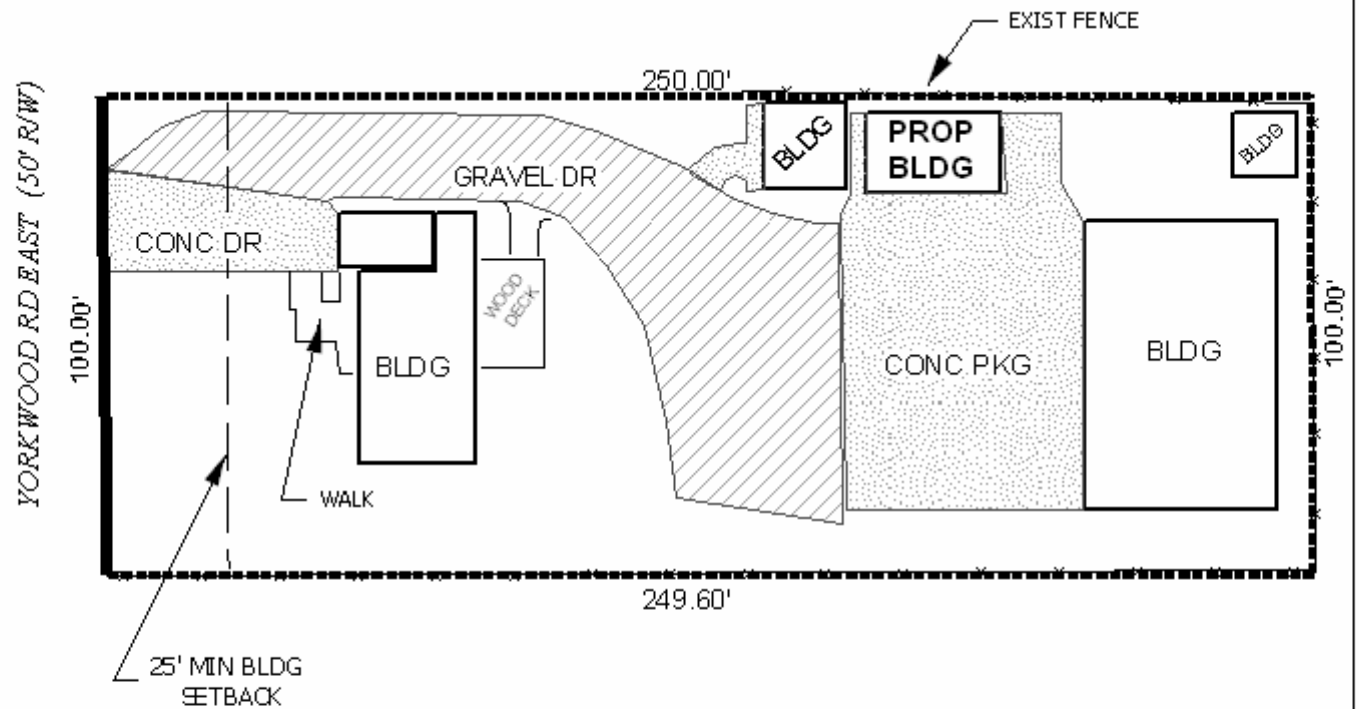
LEGEND

 R-1	 R-2	 R-3	 R-A	 R-B	 H-B	 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 existing buildings, parking, drives and building setback.

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