

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: August 6, 2012**

<u>CASE NUMBER</u>	5770
<u>APPLICANT NAME</u>	Buddy & Susan Roberts (M. Don Williams, Agent)
<u>LOCATION</u>	3000-D Bryant Road (Northern terminus of Bryant Road)
<u>VARIANCE REQUEST</u>	SETBACK: Side Yard Setback and Combined Side Yard Variances to allow HVAC units within 6.1' of a side property line with combined side yards of 16.4' in an R-1, Single Family Residential District.
<u>ZONING ORDINANCE REQUIREMENT</u>	SETBACK: Zoning Ordinance requires an 8' side yard setback with combined side yards of 20' in an R-1, Single-Family Residential District.
<u>ZONING</u>	R-1, Single Family Residential
<u>AREA OF PROPERTY</u>	0.85 ± Acres
<u>TRAFFIC ENGINEERING COMMENTS</u>	No Comments
<u>CITY COUNCIL DISTRICT</u>	District 3

ANALYSIS The applicant is requesting Side Yard Setback and Combined Side Yard Variances to allow HVAC units within 6.1' of a side property line with combined side yards of 16.4' in an R-1, Single Family Residential District; the Zoning Ordinance requires an 8' side yard setback with combined side yards of 20' in an R-1, Single-Family Residential District.

The applicant obtained a building permit for a new single-family residence, where the approved site plan illustrated two HVAC units, 36" high and 54" high, on the rear of the dwelling, and not encroaching into any required side yard setbacks. During inspections for the issuance of the Certificate of Occupancy, it was discovered that the units had been placed in the required side yard setback instead of where they were illustrated on the site plan approved prior to construction beginning.

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 applicant states that the location of the HVAC units in the right side yard setback was necessary because the location of the house on the property resulted in a sharp drop-off on the rear of the house where the units were initially proposed to be located, and thus would have been vulnerable to rear yard instability and erosion. The applicant goes on to say that placement of the units in the left yard setback would have resulted in undesirable noise on the screened porch. Furthermore, the front yard is stated to be an undesirable location because the units would block either the double garage entrance or front porch. However, it is also noted that a 36" emergency power generator was placed within the front yard.

No information was given regarding the severity of the drop-off which prevented the HVAC units from being placed at the rear of the dwelling as was initially proposed, however it is possible that if the slope were to steep to accommodate the units, a more level and sturdy platform could be erected for them to be placed on. The applicant mentions that placement next to the screened porch would have been undesirable; however steps could have been made to reduce the noise produced while being in compliance with the Zoning Ordinance. Also, while the mentioned generator is not illustrated on the submitted site plan, it seems possible that there may be room to locate the HVAC units there as well without blocking the porch or the garage. Multiple options that would have been in compliance with the Zoning Ordinance were available to the applicant, however they were disregarded because of design issues and not a hardship associated with the site.

When the contractor/developer first thought there might have been an issue with the previously approved location of the HVAC units, a design professional and staff should have been consulted prior to any changes. This would have given the applicant an opportunity to have options presented that would be in compliance with the Zoning Ordinance and allowed time for a revised site plan showing a new location for the units to be submitted to staff.

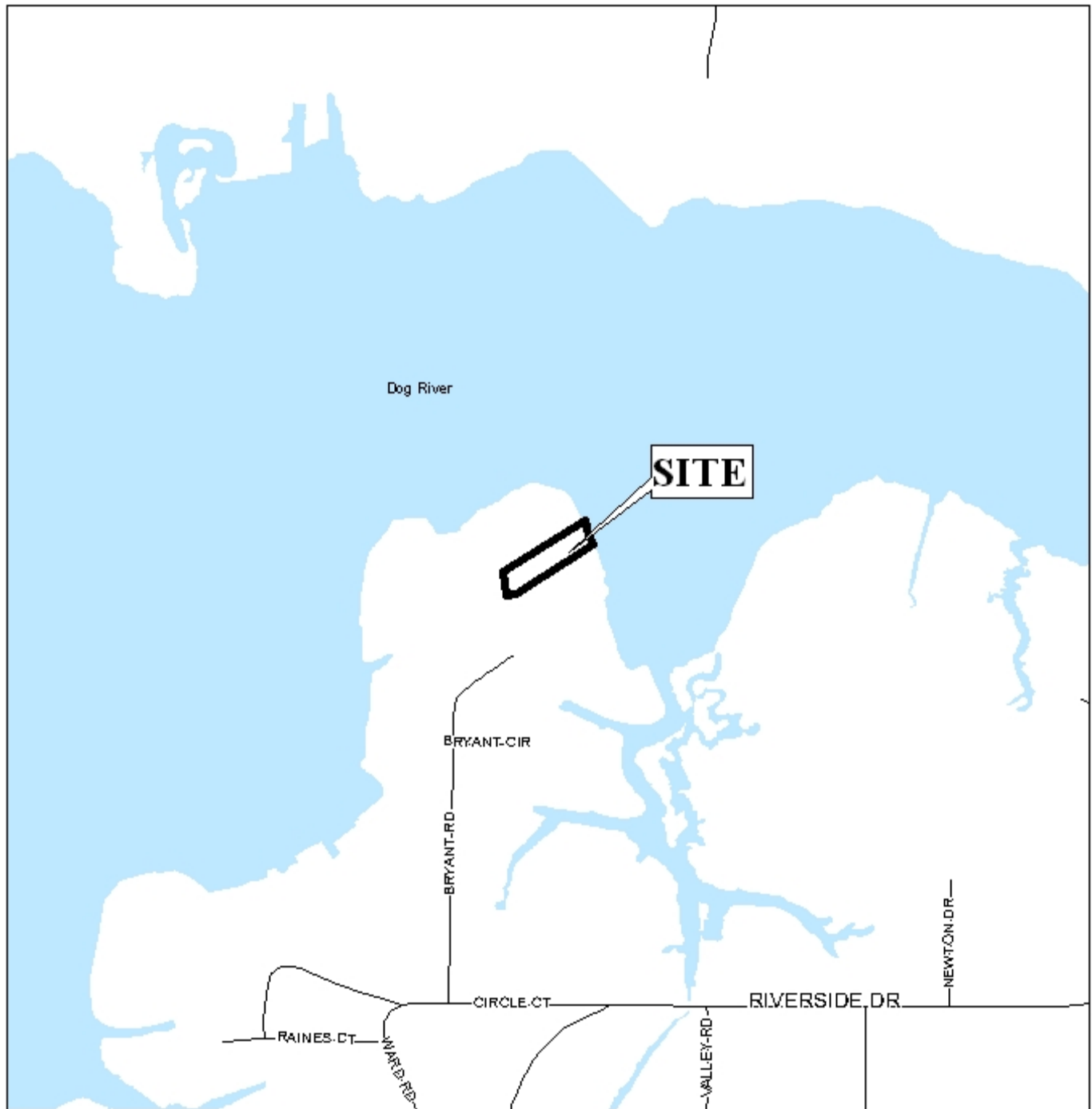
The applicant has failed to illustrate that a literal enforcement of the Zoning Ordinance would result in an unnecessary hardship. The applicant illustrated full compliance with all side yard and combined side yard requirements prior to obtaining a building permit, and decided not to follow that previously approved site plan. Because it is possible for the HVAC units to be relocated to fit all setbacks, it is a self-imposed hardship.

RECOMMENDATION:

Based on the preceding, this application is recommended

for denial.

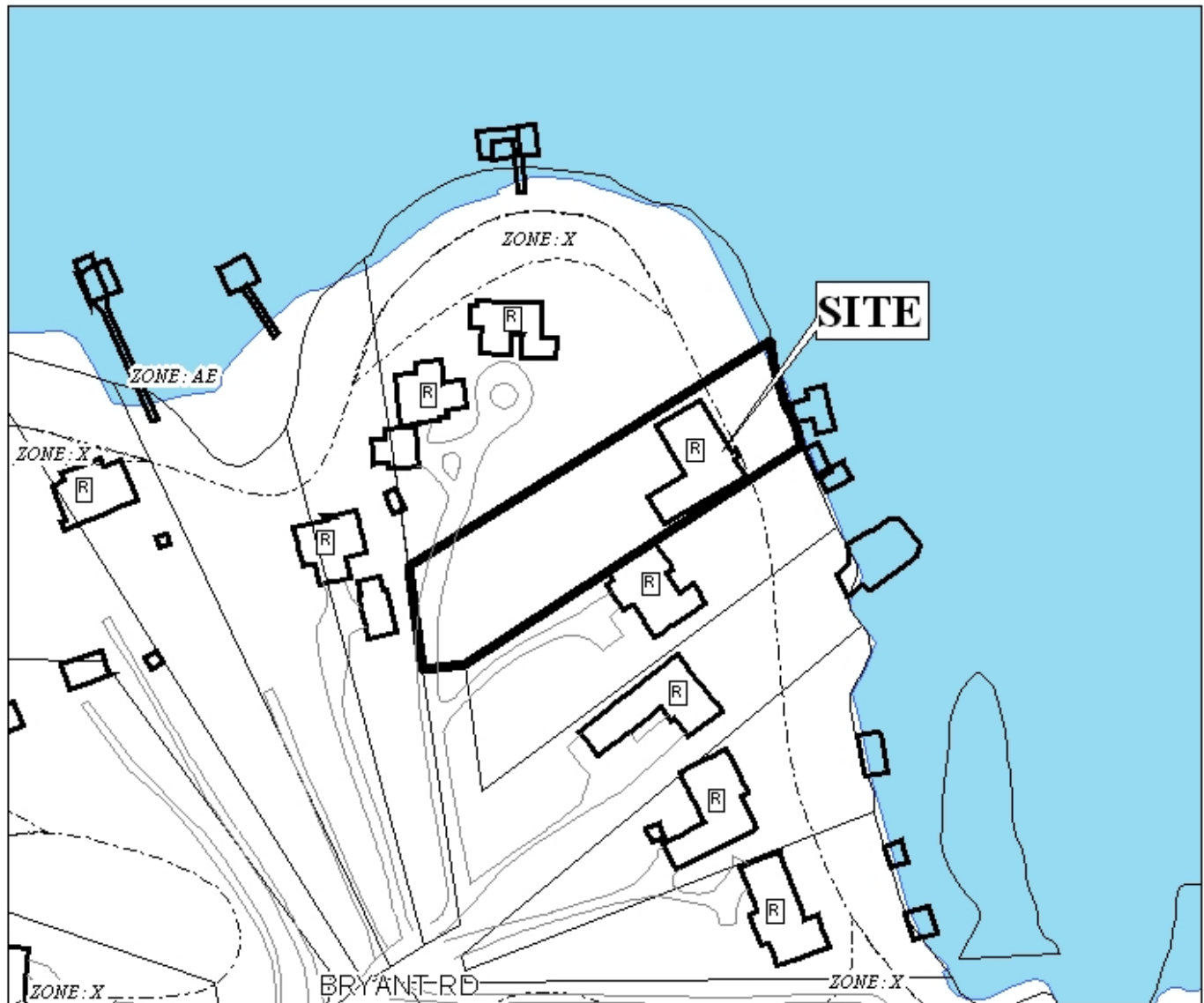
LOCATOR MAP



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BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by single-family residences.

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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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BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING

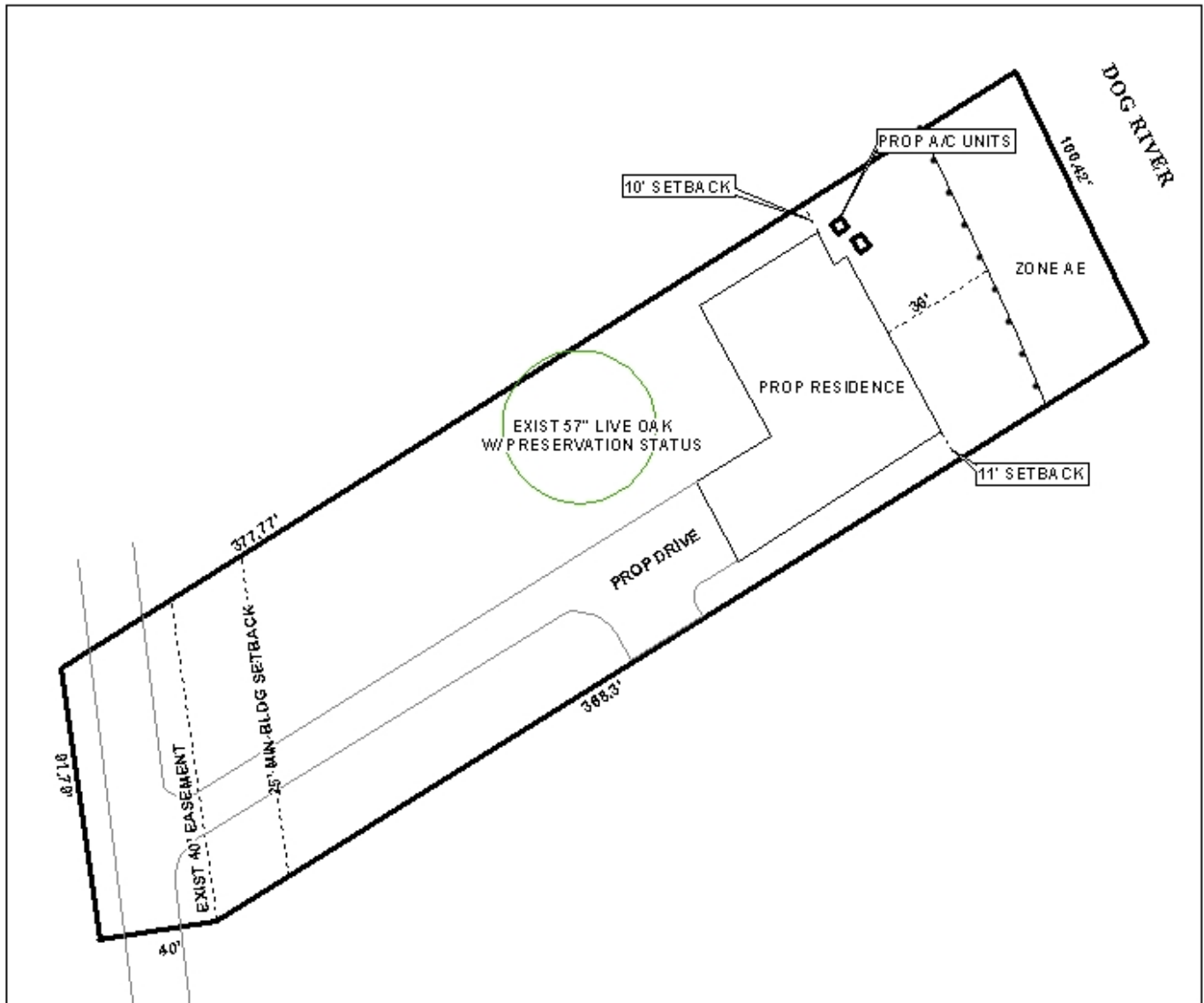


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APPROVED SITE PLAN



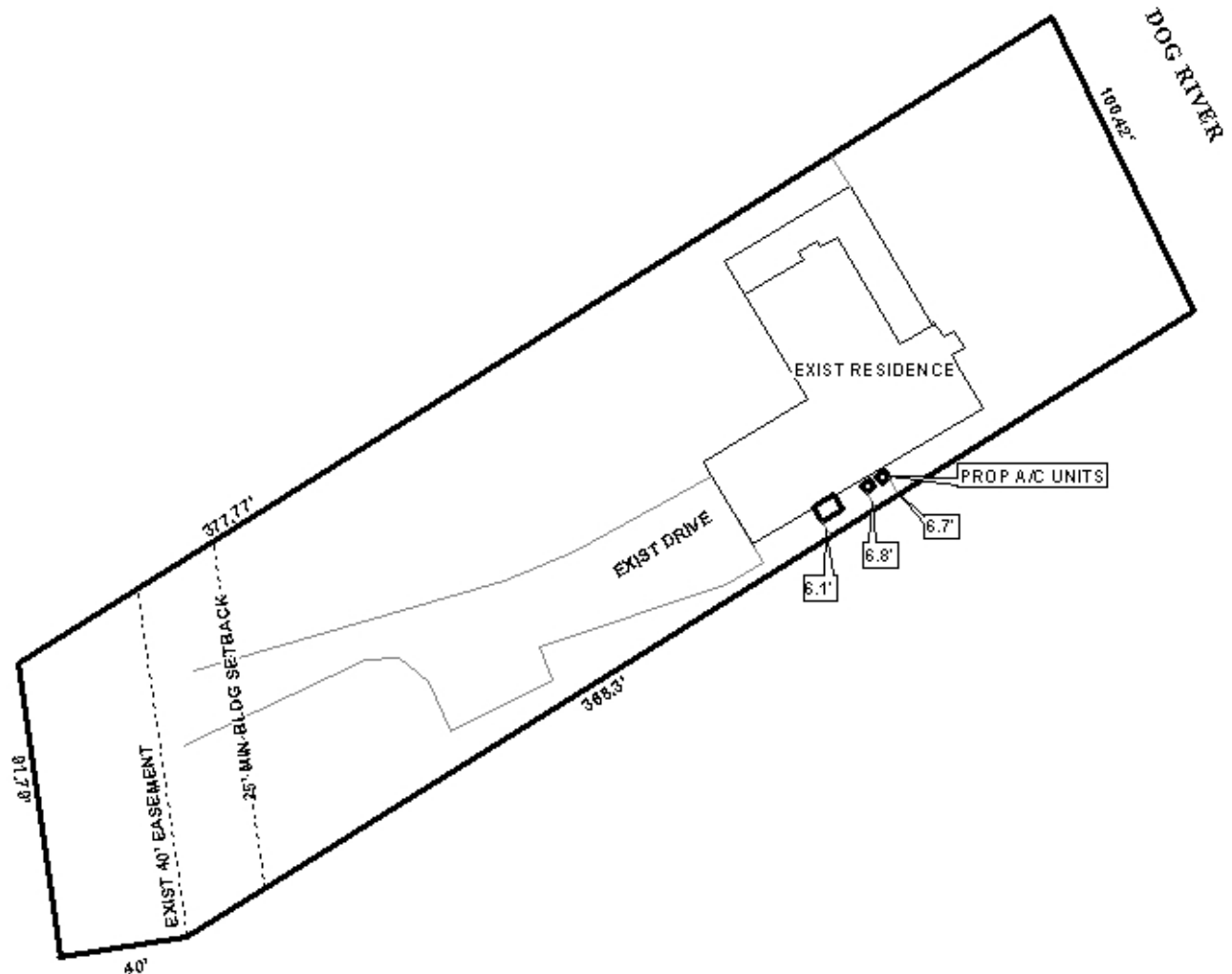
The site plan illustrates the approved plan for building permit BLD2011-01948

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PROPOSED SITE PLAN



The site plan illustrates the recently constructed residence and condenser units.

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