

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: May 6, 2013****CASE NUMBER**

5828

APPLICANT NAME

Tom Myers

LOCATION4306 The Cedars
(North side of the Cedars, 315'± West of Dilston Lane).**VARIANCE REQUEST**

SIDE YARD AND COMBINED SIDE YARD SETBACK: Side Yard and Combined Side Yard Setback Variances to allow a car shelter at a single-family dwelling to be on one side property line with 4' of side yard on the other side of the dwelling, with a combined side yard total of 4' in an R-1, Single-Family Residential District.

REAR SETBACK: Rear Setback Variance to allow a proposed workshop/exercise building 3'-6" off a rear property line.

INCREASED SITE COVERAGE: Increased Site Coverage Variance to allow 37% total site coverage.

**ZONING ORDINANCE
REQUIREMENT**

SIDE YARD AND COMBINED SIDE YARDS: The Zoning Ordinance requires at least an 8' side yard setback and a combined side yard total of 20' in an R-1, Single-Family Residential District.

REAR SETBACK: The Zoning Ordinance requires an 8' rear setback.

INCREASED SITE COVERAGE: The Zoning Ordinance allows a maximum site coverage of 35%.

ZONING

R-1, Single-Family Residential

AREA OF PROPERTY

8,400 Square Feet / 0.2± Acre

**TRAFFIC ENGINEERING
COMMENTS**

No comments.

**ENGINEERING
COMMENTS:**

No comments.

**CITY COUNCIL
DISTRICT**

District 7

ANALYSIS

The applicant is requesting Side Yard and Combined Side Yard Setback and Rear Setback, and Increased Site Coverage Variances to allow a car shelter at a single-family dwelling to be on one side property line with 4' of side yard on the other side of the dwelling, with a combined side yard total of 4', a proposed workshop/exercise building 3'-6" off a rear property line, and 37% total site coverage in an R-1, Single-Family Residential District; the Zoning Ordinance requires at least an 8' side yard setback and a combined side yard total of 20', an 8' rear setback, and allows a maximum site coverage of 35% in an R-1, Single-Family Residential 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 car shelter on the East side of the property for which a zero setback is requested was built sometime after 2002 according to GIS aerial photographs, without a permit. Its allowance would leave only 4' of combined side yards since the existing West side yard is 4' wide. In other Side Yard Setback Variance requests within the immediate neighborhood where hardships have been shown to exist if the Zoning Ordinance were strictly enforced, the closest allowed setback was 2'-6", and that was for a second story addition above an existing permanent-type garage. Three of the primary concerns relating to side yard setbacks are the potential of the spread of fire from one property to another, water run-off onto adjacent properties, and the ability to properly maintain the proposed structure. Other concerns relate to privacy and adequate circulation of light and air. The Board has been sympathetic to granting variances in older urban areas of the city when the structure is within 5' of the side property, but a zero setback would be out of the ordinary and uncharacteristic of the neighborhood, especially when no hardship to allow such has been demonstrated. The request for a Combined Side Yard Setback Variance would be moot if the Side Yard Setback Variance is denied.

Regarding the Rear Yard Setback Variance request, the applicant states that the best utilization of the rear yard occurs when the proposed building is located as close to the rear of the property as possible. It is further stated that the neighbor to the rear is the MAWSS Spring Hill reservoir and there will probably never be a building constructed near the subject site's rear property line.

Again, the Board has been sympathetic to 5' rear setback variance requests in older urban areas of the city, and in 1991, the Board granted such for the property located 120' West of the subject property and adjoining the reservoir site. As no hardship has been illustrated which would justify the requested 3'-6" rear setback, and as a similar detached structure was granted a 5' rear setback within the immediate neighborhood, it would seem logical to grant a reduced Rear Yard Setback Variance modified to 5', with the condition that gutters and downspouts be provided along the rear of the structure. It should be noted that any setback of less than 5' will require a fire-rated wall per Building Code requirements.

With regard to the Increased Site Coverage Variance request to 37%, while the proposed may not meet the test for hardship, the increase is marginal. In this instance, the 2% increase requested calculates to 126 square feet. In the past, the Board has been sympathetic to requests for increased site coverage within the area on same-sized and larger lots, especially when the requested increase was minimal. Therefore, this request would be in keeping with similar ones granted and should be considered for approval.

RECOMMENDATION: Based on the preceding, the Side Yard Setback Variance for the car shed is recommended for denial for the following reasons:

- 1) no hardship has been demonstrated to be imposed by the property; and
- 2) the requested zero setback would be out of character with the surrounding neighborhood.

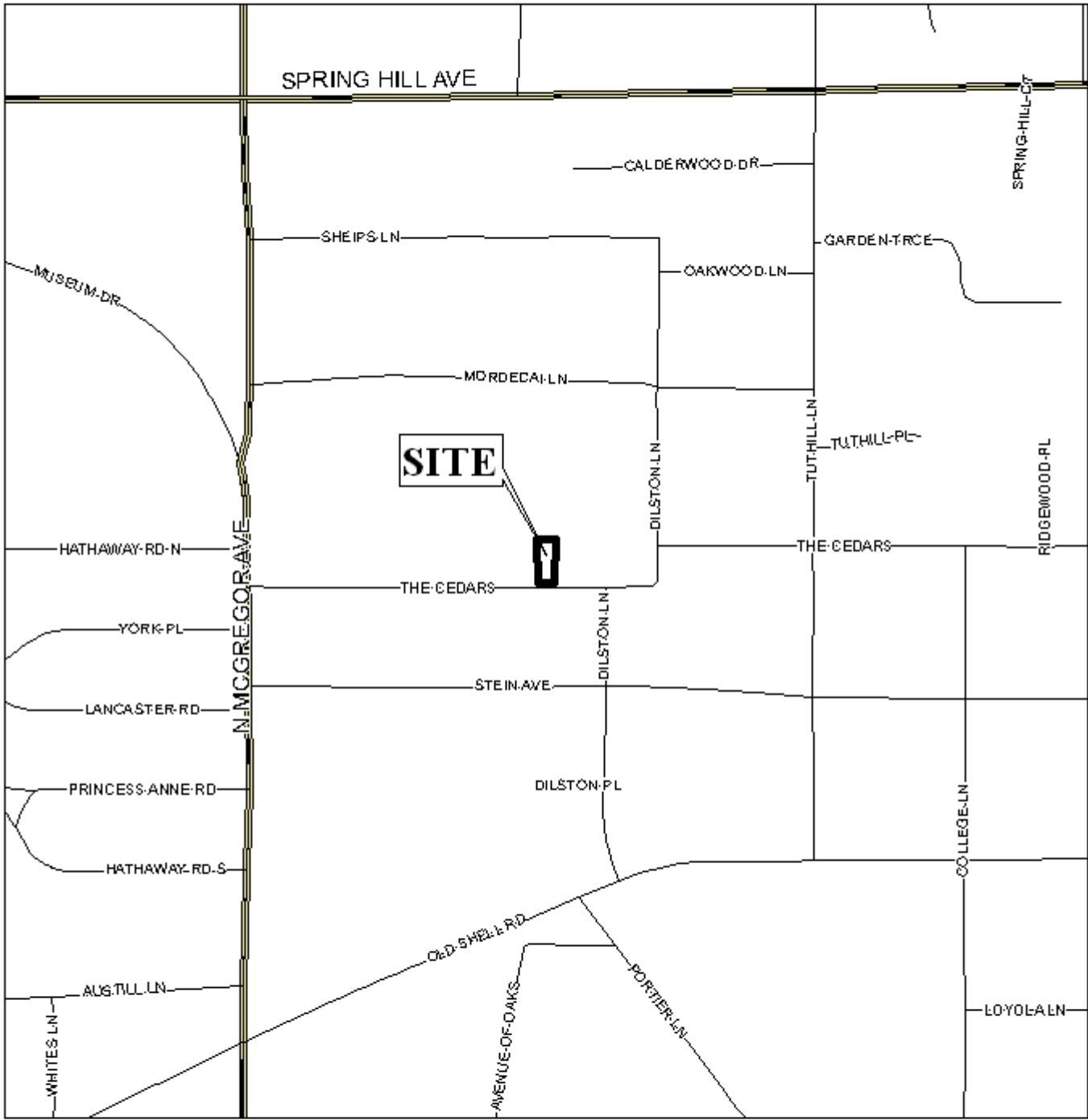
The applicant is advised that the car shed is to be removed as per this denial.

The Combined Side Yard Setback Variance request is moot based upon the recommendation for denial of the Side Yard Setback Variance request.

The Rear Setback Variance and Increased Site Coverage Variance requests are recommended for approval, with the rear setback modified to 5', subject to the following conditions:

- 1) the provision of gutters and downspouts on the rear of the proposed structure; and
- 2) full compliance with all other municipal coded and ordinances.

LOCATOR MAP



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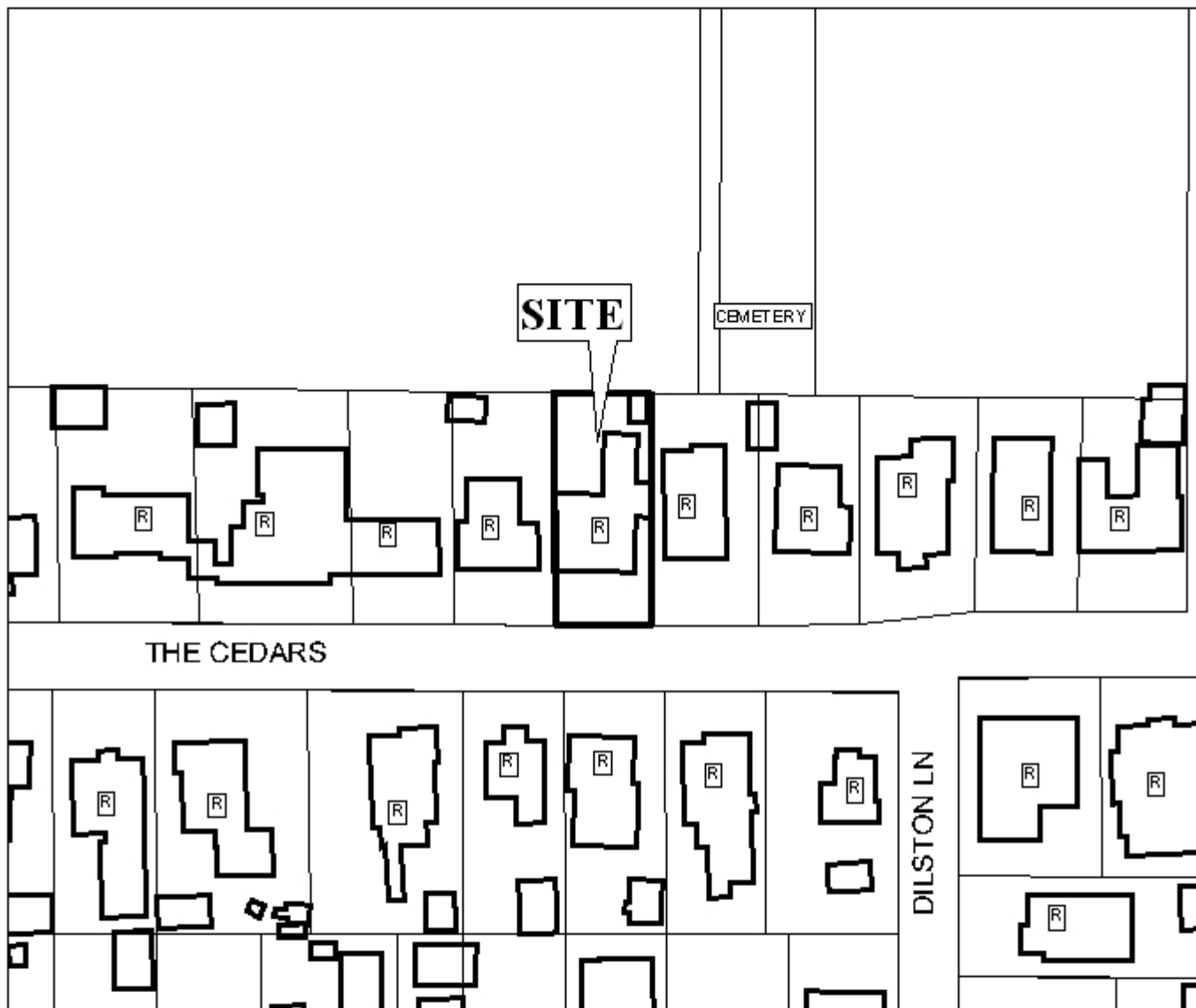
APPLICANT Tom Myers

REQUEST Side and Combined Side Yard and Rear Setback, and Increased Site Coverage Variances



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BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



Single family residences are located to the west, east, and south of the site.
A cemetery is located to the north.

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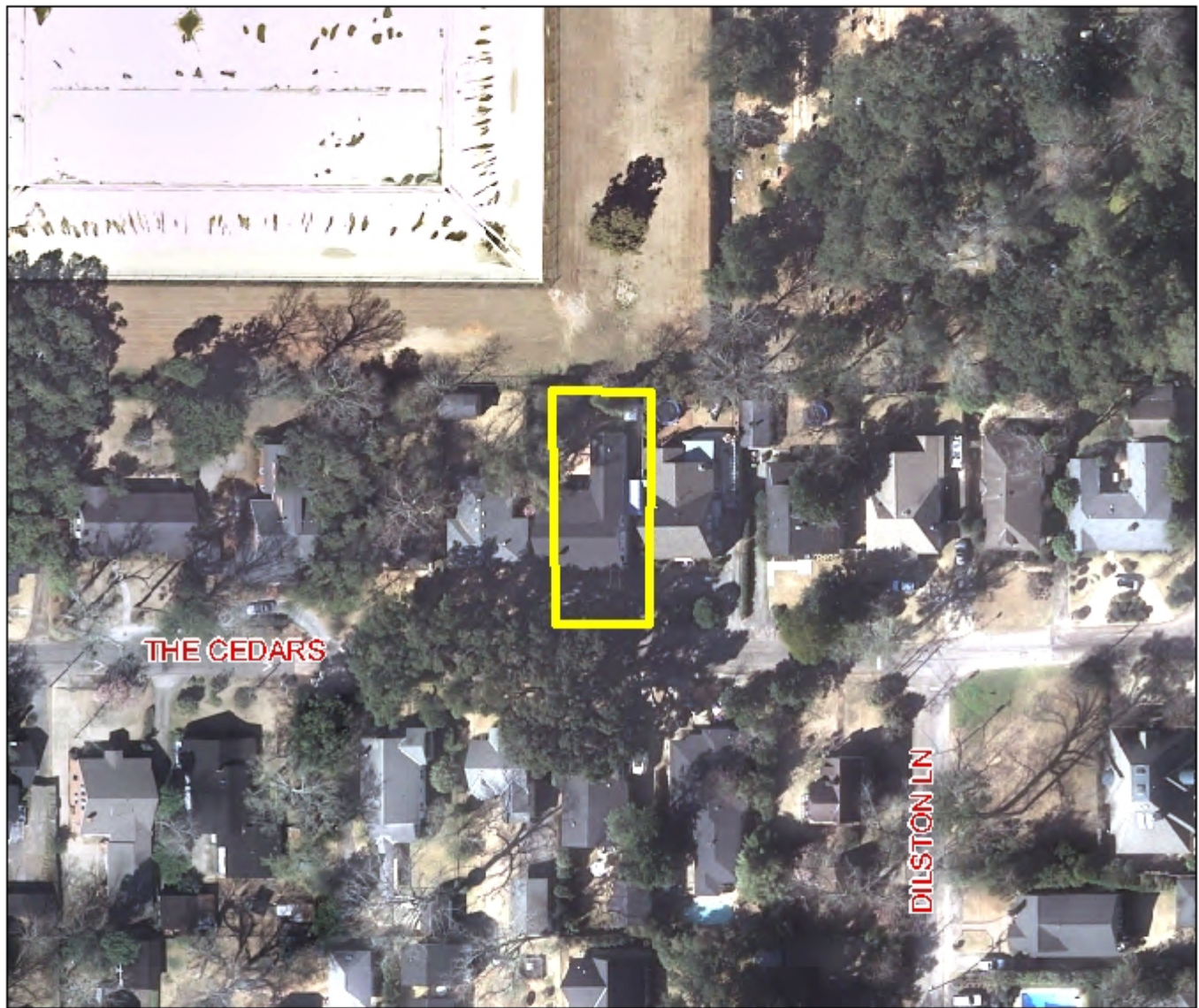
LEGEND

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

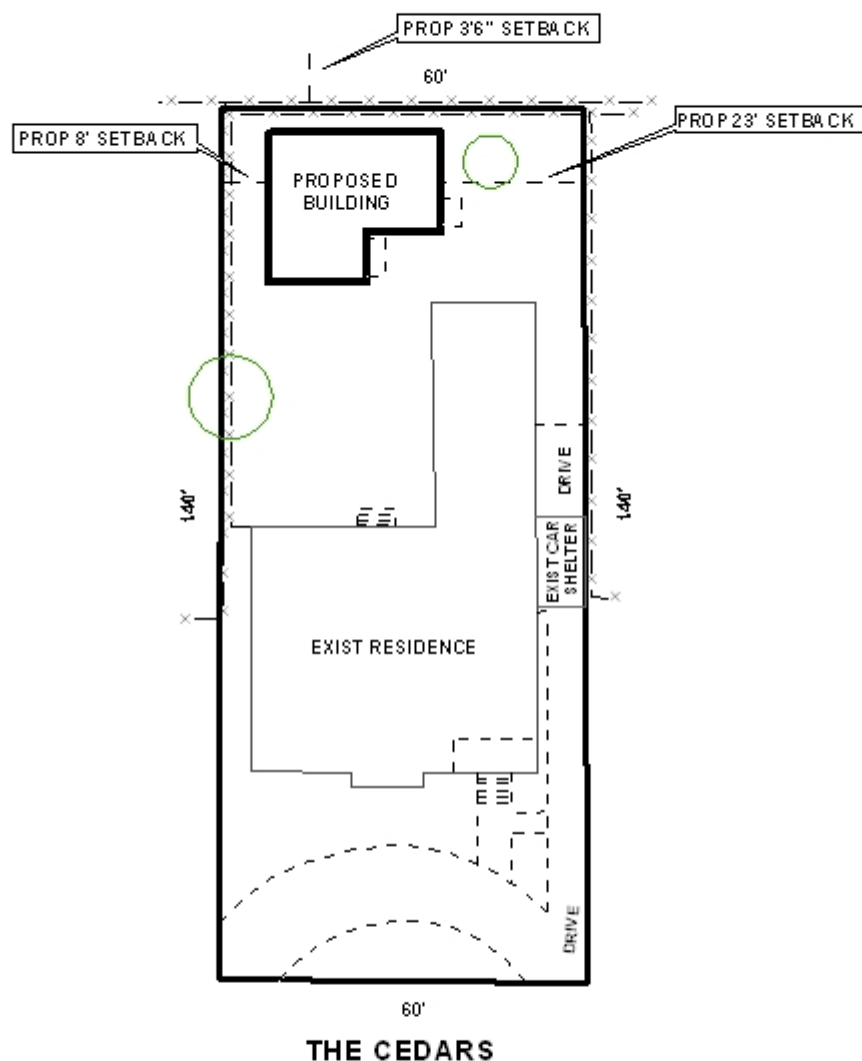


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SITE PLAN



The site plan illustrates the proposed building and setbacks.

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