

**BOARD OF ZONING ADJUSTMENT  
STAFF REPORT****Date: December 6, 2010****CASE NUMBER**

5648

**APPLICANT NAME**

Clement C. Pope

**LOCATION**425 Dogwood Drive  
(East side of Dogwood Drive, 242'± South of Flame Court)**VARIANCE REQUEST****SIDE YARD SETBACK:** Side Yard Setback Variance to allow an accessory storage building (already constructed) within 4.5 feet of a side property line with a side yard sum of 16.9 feet in an R-1, Single-Family Residential District.**ZONING ORDINANCE  
REQUIREMENT****SIDE YARD SETBACK:** The Zoning Ordinance requires a minimum side yard of eight (8) feet and a side yard sum of 20 feet.**ZONING**

R-1, Single-Family Residential

**AREA OF PROPERTY**

0.3± Acre

**TRAFFIC ENGINEERING  
COMMENTS**

No comments.

**CITY COUNCIL  
DISTRICT**

District 5

**ANALYSIS**

The applicant is requesting a Side Yard Setback Variance to allow an accessory building (already constructed) within 4.5 feet of a side property line with a side yard sum of 16.9 feet in an R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum side yard setback of eight (8) feet and a sum of 20 feet.

On June 15, 2010, the applicant was issued a building permit to self-contract and construct a 12' by 16' storage shed on his property and the required 8' side and rear yard setbacks were clearly marked on the permit application. Upon the final building re-inspection the setback encroachment was noticed, a Zoning Technician was notified of the problem, and a Notice of Violation was issued; hence this application.

The applicant states that there were several inspections on the structure and the error was not caught until it was finished. There were other structural issues with the shed which were noticed

and corrected but he was not told that it was too close to the property line until the final inspection.

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.

In similar instances where applicants have requested side yard setback variances for accessory structures prior to construction, the Board has been sympathetic in granting relief to 5' off the property line, especially if other side yard setback variances have been granted within the vicinity or in older neighborhoods which pre-date the Zoning Ordinance and there are existing legal nonconforming setbacks. But such is not the case in this instance. The subject site is within Hearthstone Subdivision which was recorded in 1969, within the City limits, and subject to the current setback requirements. There are no residential setback variances which have been granted within the subdivision or adjacent ones. And the applicant signed a building permit application which clearly indicated both an 8' side and rear setback for the proposed structure.

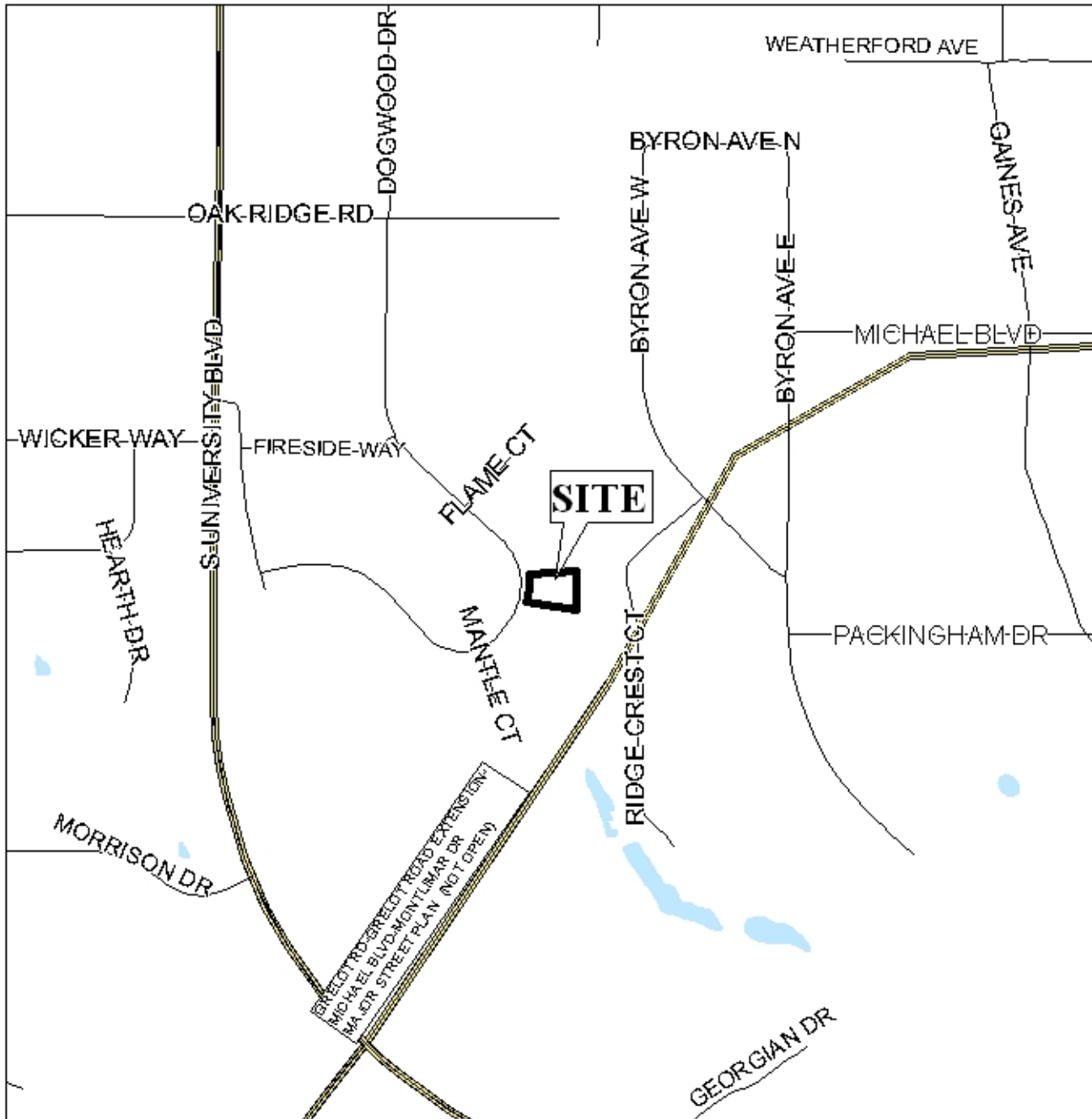
It should also be noted that a review of the site plan submitted with the application clearly indicates that an existing green house structure in the Northeast corner of the property not only does not meet the required 8' rear setback, but also encroaches into a 7.5' drainage and utility easement which runs along the rear of the property. Although this appears on a 1999 survey which pre-dates the applicant's purchase of the property, the applicant should be advised that this encroachment is a liability which he assumed with the conveyance of the property.

The applicant failed to illustrate that a literal enforcement of the Ordinance would result in an unnecessary hardship. Any hardship faced by the applicant would be self-imposed and the Board should consider this application for denial.

**RECOMMENDATION:**  
for denial.

Based on the preceding, this application is recommended

## LOCATOR MAP



APPLICATION NUMBER 5648 DATE December 6, 2010

APPLICANT Clement C. Pope

REQUEST Side Yard Setback Variance



# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by single family residential units.

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REQUEST Side Yard Setback Variance

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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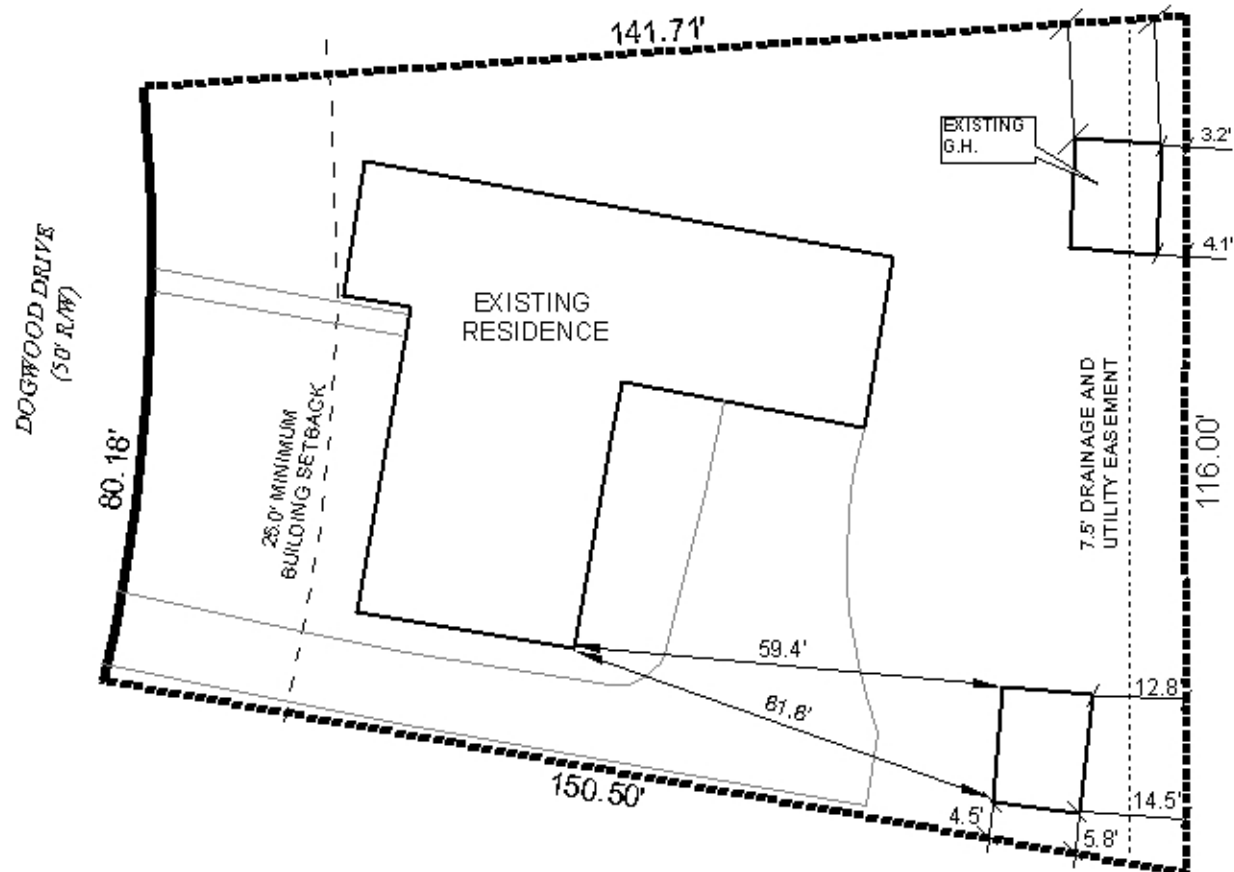
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# SITE PLAN



The site plan illustrates the location of buildings and distance from property lines.

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