

APPLICATION NUMBER

**5359**

A REQUEST FOR

**SIDE YARD SETBACK VARIANCE TO ALLOW THE  
CONSTRUCTION OF A 24' X 31.5' CARPORT 2.38' AND A  
16' X 30' ADDITION 1.65' FROM THE SIDE (EAST)  
PROPERTY LINE; A MINIMUM SIDE YARD SETBACK  
OF 7.1' IS REQUIRED FOR STRUCTURES ON A 50' WIDE  
LOT IN AN R-1, SINGLE-FAMILY RESIDENTIAL  
DISTRICT**

LOCATED AT

**4507 PARK ROAD**

(East side of Park Road, 125'± South of the East terminus of Canal Road)

APPLICANT/OWNER

**JAMES & DEBRA FOSTER**

**BOARD OF ZONING ADJUSTMENT**

JULY 2006

The applicant is requesting a Side Yard Setback Variance to allow the construction of a 24' x 31.5' carport 2.38' and a 16' x 30' addition 1.65' from the side (East) property line; a minimum side yard setback of 7.1' is required for structures on a 50' wide lot in an R-1, Single-Family Residential district.

The applicant states that the existing residence was damaged by Hurricane Katrina. An 8' x 30' sunroom (facing East toward Mobile Bay) has since been removed and the applicant wishes to replace it with a larger 16' x 30' sunroom, in line with the remaining residence. The proposed increase will result in an additional 8' length of structure being 1.65' off the East property line. Another addition to the East of this would meet all required setbacks. The applicant also wishes to add a second story to the East half of the residence which would include the proposed addition.

To the rear of and attached to the house, the applicant wishes to construct a new 24' x 31.5' open carport to within 2.38' of the East property line. The applicant states that the house was built in the 1930's, and that many of the neighboring houses were built to nonconforming setbacks.

With respect to the sunroom addition, the first 8' beyond the remaining house would simply be a replacement of a legal nonconforming portion which was removed due to hurricane damage and would be allowed under the Zoning Ordinance. The addition of a second story would also be allowed since it would be within the current and replaced building limits. The additional 8' beyond what was damaged and removed is the focus of part of the variance request.

Although the site is not within a historic district, it is located in an older neighborhood that predates the adoption of the Zoning Ordinance. The proposed front addition and carport would maintain the residential character of the neighborhood and the Board has been mindful of the unique character of older areas when considering site variance applications. Furthermore, the Board has been sympathetic in granting variances when the addition is "in-line" with the existing structure and/or a minimum setback of 5 feet is provided. In previous instances, the Board has allowed additions and garages to be constructed 5 feet from the side property line, with the condition that gutters and downspouts be placed on the side of the addition that abuts that side property line that is affected by the structure.

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.

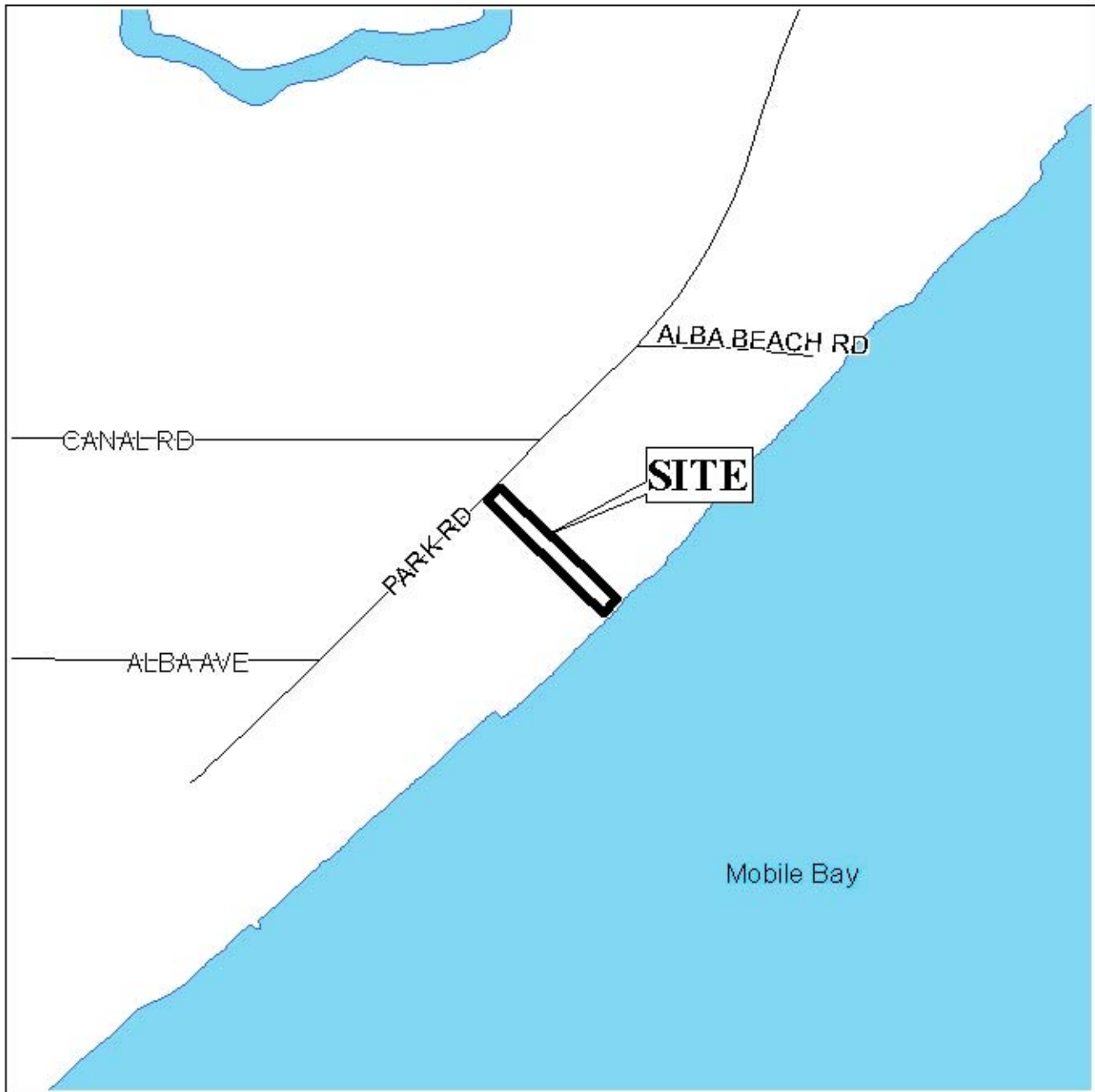
Variances are not intended to be granted frequently. The applicant must clearly show the Board that the request is due to very unusual characteristics of the property and that it satisfies the variance standards. What constitutes unnecessary hardship and substantial justice is a matter to be determined from the facts and circumstances of each application.

The applicant 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 24' x 31.5' carport 2.38' and an 8' 30' addition 1.65' from the side (East) property line. However, due to the character of the neighborhood, the Board should consider approving a 5-foot side yard setback, which is more consistent with the Board's policy and practice as it relates to side yard variance applications. This should apply to the 8' extension beyond the 8' legal nonconforming portion which was demolished, and to the carport. The 8' legal nonconforming portion which was demolished may be replaced on its original footprint without a variance.

**RECOMMENDATION 5359****Date: July 10, 2006**

Based on the preceding, it is recommended that this application not be approved as requested, but that the Board should consider granting a 5-foot side yard variance subject to the following condition: (1) provision of gutters and downspouts along the East side of the new structures that affect the adjacent property.

## 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

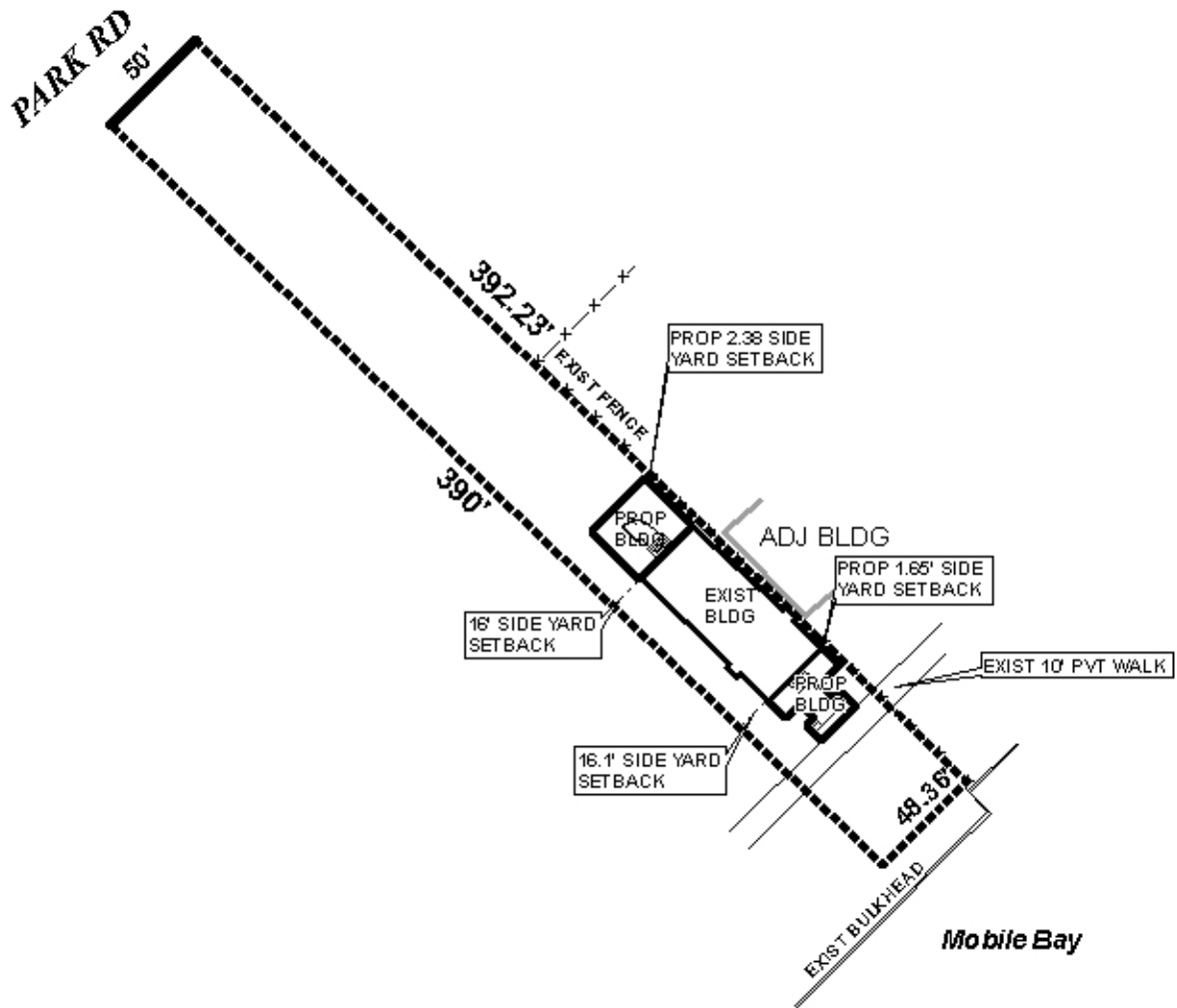
I-1

I-2

NTS



# SITE PLAN



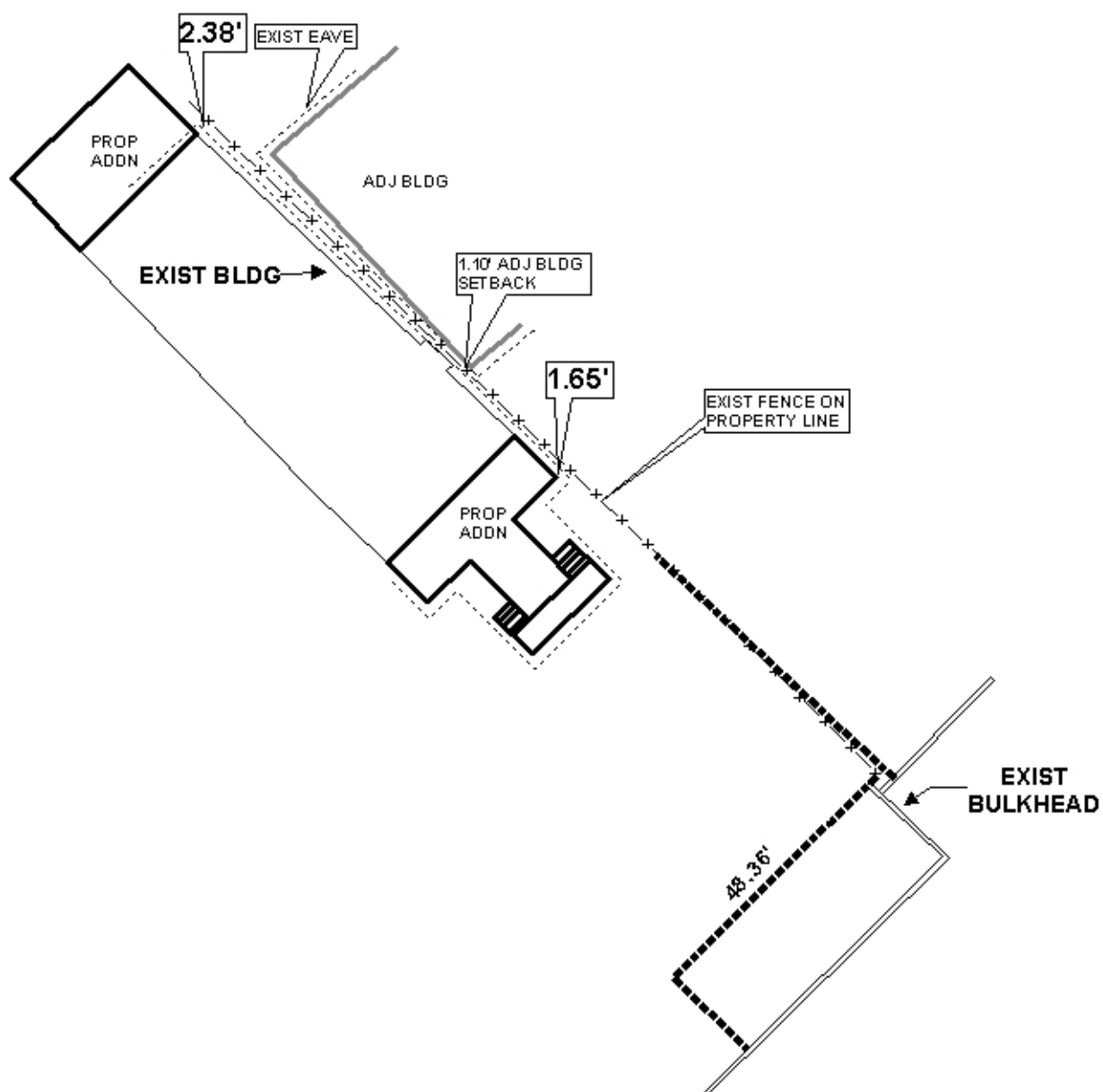
The site plan illustrates the existing buildings and setbacks along with the proposed building additions

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## DETAIL SITE PLAN



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