

APPLICATION NUMBER

5425

A REQUEST FOR

**SIDE STREET SETBACK VARIANCE TO ALLOW AN
11.6' X 8' ADDITION TO AN EXISTING COFFEE SHOP
TO WITHIN 10' OF A SIDE STREET PROPERTY LINE IN
A B-2, NEIGHBORHOOD BUSINESS DISTRICT; THE
ZONING ORDINANCE REQUIRES A 20' SIDE STREET
YARD SETBACK IN A B-2, NEIGHBORHOOD BUSINESS
DISTRICT.**

LOCATED AT

4072 OLD SHELL ROAD

(Northeast corner of Old Shell Road and Dilston Lane)

APPLICANT/AGENT

TOMI SUE RUSLING

OWNER

VAN & TOMI SUE RUSLING

BOARD OF ZONING ADJUSTMENT

AUGUST 2007

The applicant is requesting a Side Street Yard Setback Variance to allow an 11.6' x 8' addition to an existing coffee shop to within 10' of a side street property line in a B-2, Neighborhood Business District; the Zoning ordinance requires a 20' side street yard setback in a B-2, Neighborhood Business District.

The applicant states that the existing Victorian dwelling was on the site when it was rezoned to allow the present business (Carpe Diem Coffee and Tea Company). Along with the rezoning, a one-lot subdivision was required, which created a 20' building setback along Dilston Lane. Part of the existing building extended beyond this setback line. The applicant proposes an in-line addition to this portion of the building extending approximately 8' and states that the new building corner would be approximately the same distance from Dilston Lane as the existing corner (approximately 10'). The addition would be used for storage of bulk coffee beans prior to roasting. The applicant states that the existing work area in this part of the building is very cramped, and beans must be stored in the rear building on the site which is inconvenient during roasting. It is further stated that the proposed exterior would be constructed to match the architectural style of the existing building. Landscaping was approved and installed when the site was originally rezoned.

The site in question has been the subject of several variances granted, the one for its current use (when zoned R-1, Single-Family Residential) granted in 1995, with modifications granted in 1997. In March, 2002, the site was rezoned to its current B-2 status, and an associated Planned Unit Development for multiple buildings on the site and a one-lot subdivision were approved. The above-mentioned 20' side street yard setback was recorded on that subdivision plat.. In December, 2002, the rezoning and Planned Unit Development were amended to modify conditions of the previous approvals.

The addition would not cause the site coverage to exceed the maximum 50% allowable, and Traffic Engineering has conducted an on-site review and determined that the addition would not create a line-of-site problem along Dilston Lane. The addition would cause the loss of one parking space next to the Dumpster pad immediately North of the addition, and would increase the required parking by one space; however, the site has a parking agreement with the site directly across Dilston Lane.

With regard to the setback request, the site is located in an older neighborhood that predates the adoption of the current Zoning Ordinance, although not within a historic district. The proposed addition would be in keeping with the residential-style character of the neighborhood and the Board has been mindful of the unique character of older neighborhoods when considering similar site variance applications. Furthermore, the Board has been sympathetic in granting variances, when a reasonable hardship was illustrated, in urban areas of the city, especially when the addition is "in-line" with the existing structure and/or a minimum setback of five feet is provided. But in this instance,

the applicant has not illustrated that a hardship exists which would necessitate the addition being located within the recently-recorded side street yard setback.

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 Ordinance would result in an unnecessary hardship. It is simply the applicant's desire to construct an 11.6' x 8' addition to within 10' of a side street property line.

RECOMMENDATION 5425

Date: August 6, 2007

Based on the preceding, this application is recommended for denial.

LOCATOR MAP



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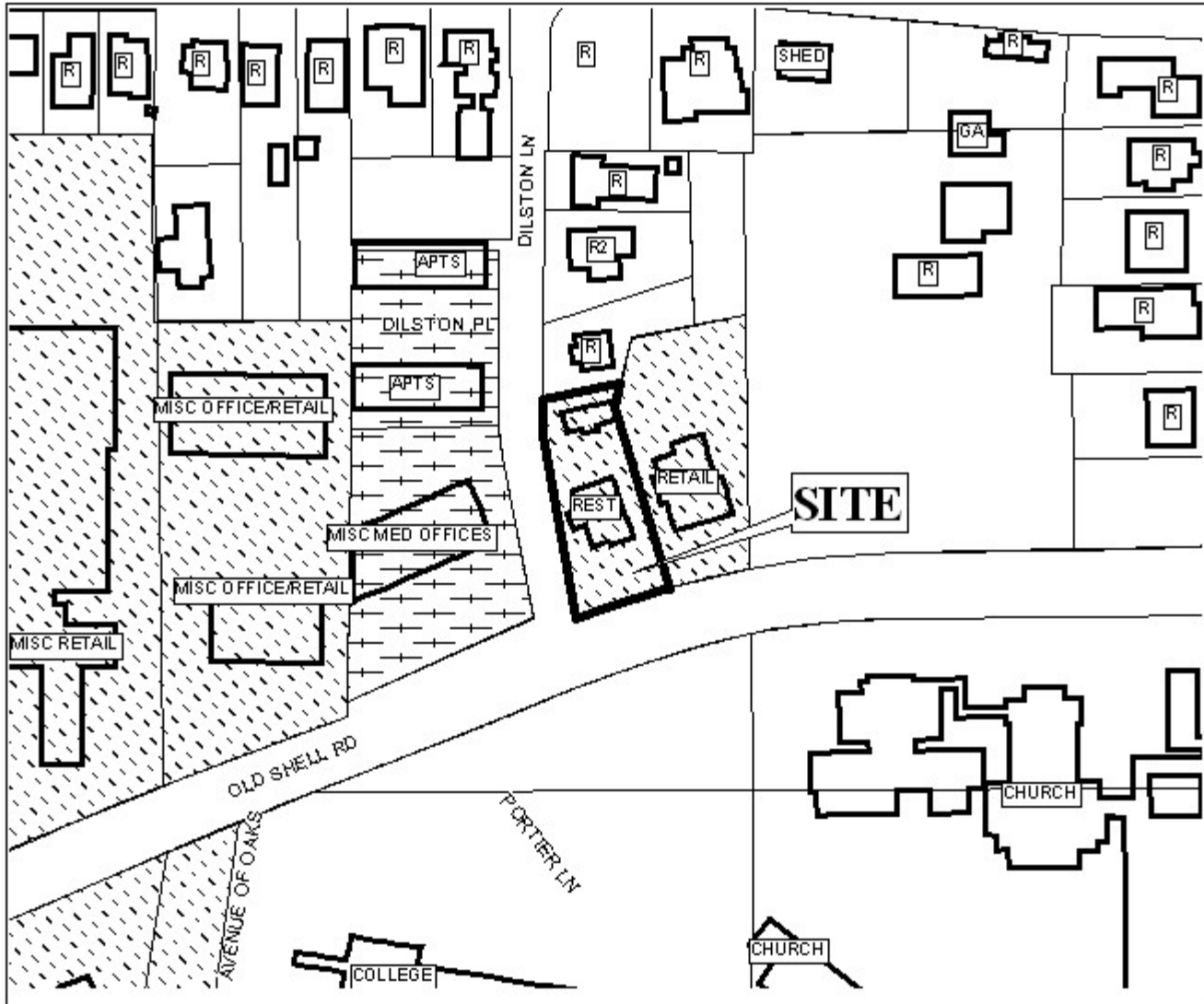
APPLICANT Tomi Sue Rusling

REQUEST Side Street Yard Setback Variance



NTS

BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



This site is surrounded by miscellaneous landuse.

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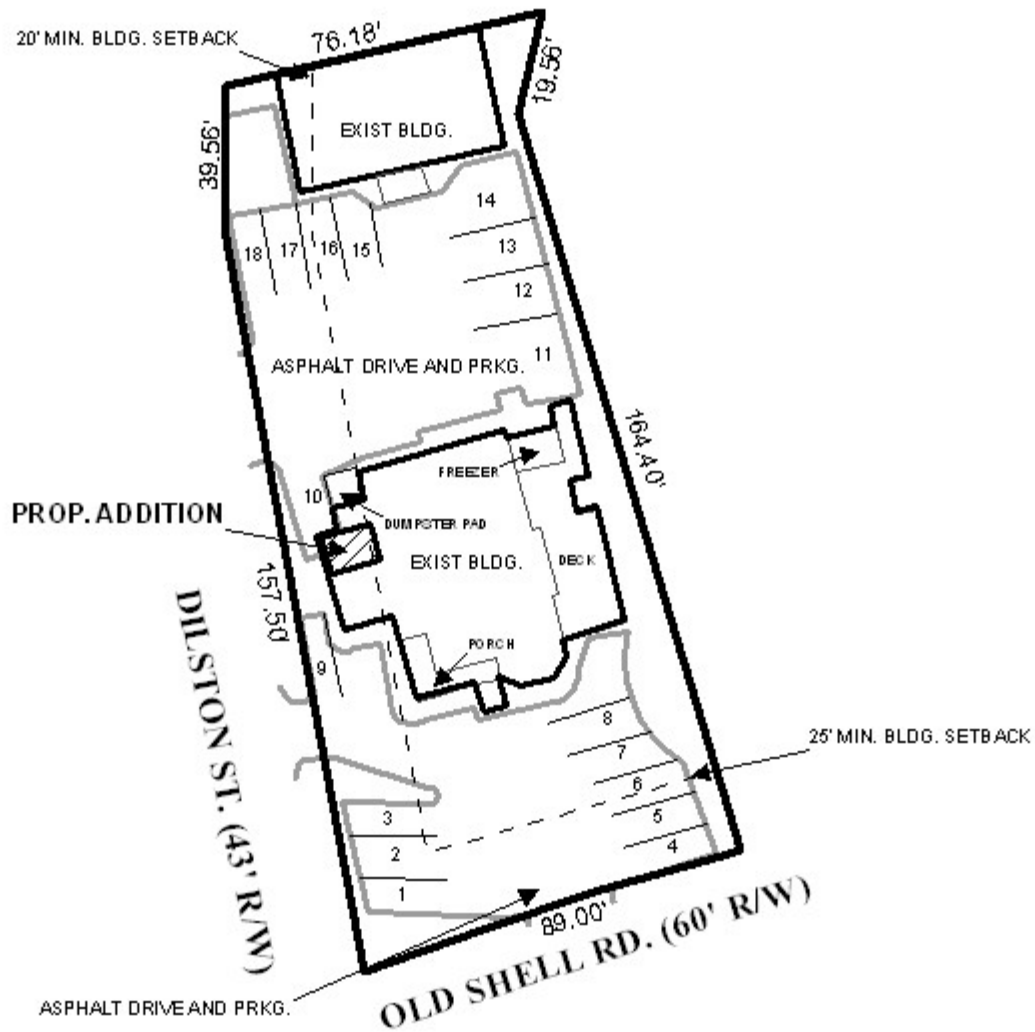
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LEGEND

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	NTS
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SITE PLAN



This site plan illustrates a proposed addition to an existing building.

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DETAIL SITE PLAN



ADDITION

WEST ELEVATION



NORTH ELEVATION

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