

APPLICATION NUMBER

5523

A REQUEST FOR

**PROTECTION BUFFER VARIANCE TO ALLOW A 5'
PROTECTION BUFFER FROM ADJOINING
RESIDENTIALLY ZONED PROPERTY IN A B-1, BUFFER
BUSINESS DISTRICT (REZONING PENDING); THE
ZONING ORDINANCE REQUIRES A 10' PROTECTION
BUFFER STRIP FROM ADJOINING RESIDENTIALLY
ZONED PROPERTY IN A B-1, BUFFER BUSINESS
DISTRICT**

LOCATED AT

77 NORTH SAGE AVENUE

(West side of North Sage Avenue, 120'+ North of Heather Street)

APPLICANT/OWNER

DEREK MARKS

BOARD OF ZONING ADJUSTMENT

FEBRUARY 2009

The applicant is requesting a protection buffer variance to allow a 5' protection buffer from adjoining residentially zoned property in a B-1, Buffer Business District (rezoning pending); the Zoning Ordinance requires a 10' protection buffer strip from adjoining residentially zoned property in a B-1, Buffer Business District.

In December 2008, the Planning Commission recommended approval to the City Council for the applicant's rezoning request from R-1, Single-Family Residential to B-1, Buffer Business. A condition of that rezoning was for the applicant to submit for and receive approval for a reduced buffer variance because the existing structure on the site does not meet the required 10' buffer setback from the adjacent residentially zoned property to the South; hence this application.

The applicant states that the proposed business at the subject site will be in full compliance with all municipal codes and ordinances, including fencing, landscaping and tree planting. The fence will be 6' in height and privacy. The parking lot and business will be handicapped accessible. The applicant further states that the business will be an asset to the community, not a nuisance.

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.

With regard to the applicant's request, the buffer is the only regulation that is in need of relief. The existing structure on the site is currently a single-family residence with a 5' side yard setback from the South property line. It should be noted that the structure was erected in 1952, before the adoption of the Zoning Ordinance. Thus, its existing nonconformity may provide the Board some justification in allowing a reduced buffer only. However, there is also a shed in the rear of the property approximately 7.5' from the South property line. If approved, this should be moved to comply with the 10' buffer setback requirement.

Furthermore, the approval of the Planning Commission for the zoning change is simply a recommendation and, thus, still subject to a City Council hearing. If the City Council

denies the rezoning request, an approval here would, in essence, become null and void. Therefore, should the Board approve the applicant's request for the reduced buffer variance; it shall be subject to an approved zoning change by the City Council. Additionally, an approval should only be for the South side of the property, with the provision that any future development comply with Section 64-4.D. 1 of the Zoning Ordinance.

RECOMMENDATION 5523**Date: February 2, 2009**

Based on the preceding, this application is recommended for approval, subject to the following conditions:

- 1) Approval of a rezoning by the City Council;
- 2) Movement of the existing shed to meet the 10' buffer setback;
- 3) Future development shall comply with Section 64-4.D.1 of the Zoning Ordinance;
- 4) Submission of a revised site plan to the Planning Section of Urban Development prior to the issuance of any permits;
- 5) The site be brought into compliance with landscaping and tree planting, as required by Section 64-4.E.3 of the Zoning Ordinance; and
- 6) Full compliance with all other municipal codes and ordinances.

LOCATOR MAP



APPLICATION NUMBER 5523 DATE February 2, 2009

APPLICANT Derek Marks

REQUEST Protection Buffer Variance



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



This site is surrounded by miscellaneous land use.

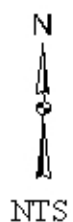
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LEGEND

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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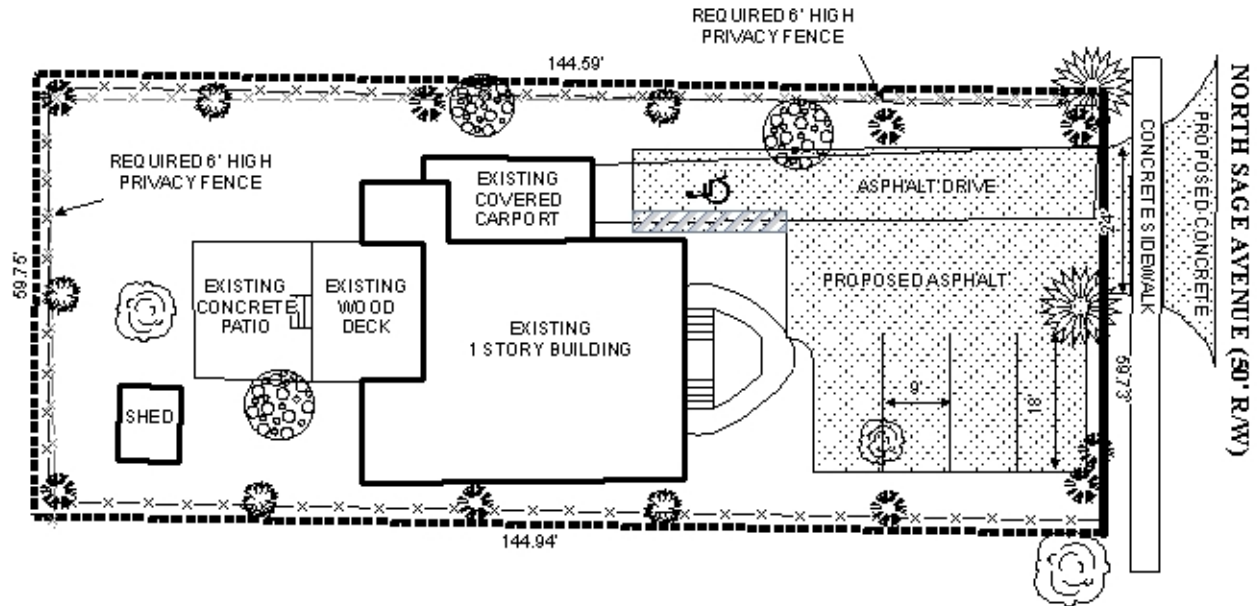
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APPLICANT Derek Marks

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NTS

SITE PLAN



This site plan illustrates proposed lot improvements.

APPLICATION NUMBER 5523 DATE February 2, 2009

APPLICANT Derrick Marks

REQUEST Protection Buffer Variance

N
NTS