

APPLICATION NUMBER

**5417**

A REQUEST FOR

**FRONT YARD SETBACK AND REAR SETBACK  
VARIANCES TO ALLOW THE CONSTRUCTION OF AN  
ARBOR WITHIN 4.7' OF A FRONT PROPERTY LINE AND  
A COVERED PORCH WITHIN 20' OF A FRONT  
PROPERTY LINE, AND TWO REAR PORCHES WITHIN  
2' AND 6" RESPECTIVELY OF A REAR PROPERTY LINE  
IN A B-2, NEIGHBORHOOD BUSINESS DISTRICT; THE  
ZONING ORDINANCE REQUIRES A 25' FRONT  
SETBACK AND A ZERO OR 5'+ REAR SETBACK IN A  
B-2, NEIGHBORHOOD BUSINESS DISTRICT.**

LOCATED AT

**51 KENNETH STREET**

(West side of Kenneth Street, 100'± South of Old Shell Road)

APPLICANT/OWNER/AGENT

**MELANIE L. FRIEND**

**BOARD OF ZONING ADJUSTMENT**

MAY 2007

The applicant is requesting Front Yard Setback and Rear Setback Variances to allow the construction of an arbor within 4.7' of a front property line and a covered porch within 20' of a front property line, and two rear porches within 2' and 6" respectively of a rear property line in a B-2, Neighborhood Business District; the Zoning Ordinance requires a 25' front setback and a zero or 5'+ rear setback in a B-2, Neighborhood Business District.

The applicant began repairs on the existing front porch with the supporting columns placed at an increased depth encroaching approximately 5' into the recorded 25' front setback. In addition, construction was begun on an open arbor placed approximately 4.7' off the front property line. Setbacks were never coordinated with UDD, and the contractor thought that the 25' front setback only applied to fences and structures which would block traffic visibility. The applicant contends that the Permitting Section advised the contractor that since the arbor was independent from the building, did not block traffic visibility, and was for aesthetic purposes only, there was no problem constructing it, and that the contractor interpreted that to also apply to the front porch extension. A Planning Staff member noticed the arbor construction being too close to the front property line, did a data base check, found no permit for such, and initiated a zoning investigation. The applicant was issued a warning and given ten days to apply for a front setback variance. In addition to the front setback requests, the applicant is also including rear setback requests for two small colonnaded rear porches with the faces of the columns constructed to within approximately 2' and 6" respectively of the rear property line.

The existing building on the subject site was constructed prior to the adoption of the current Zoning Ordinance and is considered a legal nonconforming structure in that it does not meet the required front and rear setbacks. Any new additions to the building would be required to meet such setbacks. The front setback is clearly shown on the recorded plat of the Old Shell & Kenneth Corner Subdivision which was created following the applicant's purchase of the property. Since the existing rear wall setback varies from 4.83' to 3.30', and the required rear setback is 0' or 5'+, any colonnaded additions within the setback require a variance.

With regard to the front setback issues, there is no record of the contractor having been given any permission or guidance to build within the required setback, and no building permit was obtained for such. The standard procedure in UDD for construction requires permitting with a zoning check for setbacks and proper zoning use. Any misunderstanding on the contractor's part does not relieve him from the responsibility to obtain proper permitting and meet required setbacks. As part of the variance application review, Traffic Engineering reviewed the site and found no line-of-sight problems. With regard to the rear setback requests, the contractor obtained a permit to build two new roofs with no mention of them actually being colonnaded porches. As a result of this description, the permit was not routed to the Planning Section for setback review. The eave overhang on the Northern porch extends to approximately the rear property line

while that on the Southern porch encroaches onto adjacent B-2 zoned property. Since that property is zoned B-2, the possibility exists that a new structure could be built on it to the common property line with the subject property creating a problem at the encroaching eave overhang and possible fire hazard. Three of the primary concerns relating to rear setbacks are the potential for the spread of fire from one property to another, water run-off onto adjacent properties, and the ability to properly maintain the proposed structure.

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's contention that a hardship was created by erroneous and/or unclear guidance cannot be confirmed relative to the front setbacks for the front porch and arbor. And since the rear porches were not clearly described in the building permit process and could have been denied by a Planning Section review, the applicant has failed to illustrate that a literal enforcement of the Ordinance would result in an unnecessary hardship.

**RECOMMENDATION 5417**

**Date: May 7, 2007**

Based on the preceding, this application is recommended for denial

# LOCATOR MAP



APPLICATION NUMBER 5417 DATE May 7, 2007  
APPLICANT Melanie L. Friend  
REQUEST Front Yard Setback, Rear Setback Variance



NTS

# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



Commercial sites are located to the east, west, and north of the site. The site is surrounded by residential land use.

APPLICATION NUMBER 5417 DATE May 7, 2007

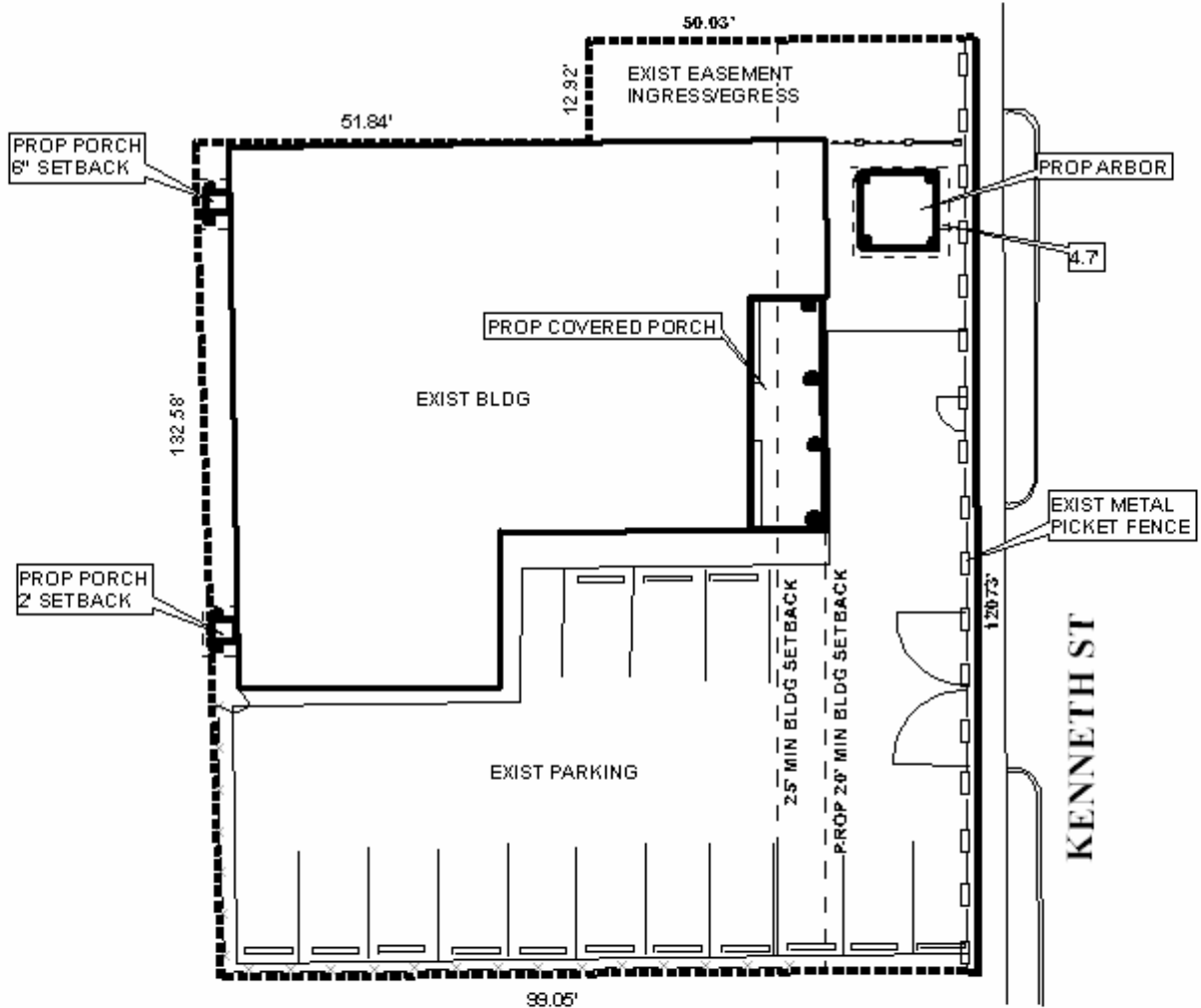
APPLICANT Melanie L. Friend

REQUEST Front Yard Setback, Rear Setback Variance

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 building, parking, proposed porches, arbor, and setbacks

APPLICATION NUMBER 5417 DATE May 7, 2007  
 APPLICANT Melanie L. Friend  
 REQUEST Front Yard Setback, Rear Setback Variance



NTS