

APPLICATION NUMBER

5482

A REQUEST FOR

**USE VARIANCE TO ALLOW A SANDWICH SHOP IN AN
R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT: THE
ZONING ORDINANCE REQUIRES A MINIMUM B-2,
NEIGHBORHOOD BUSINESS FOR A SANDWICH SHOP.**

LOCATED AT

2905 FIRST AVENUE

(South side of First Avenue, 55'+ East of Roach Street)

APPLICANT/AGENT

TRACEY M. WILEY

OWNER

TRACEY M. WILEY

BOARD OF ZONING ADJUSTMENT

JULY/2008

The applicant is requesting Use Variance to allow a sandwich shop in an R-1, Single-Family Residential District: the Zoning Ordinance requires a minimum B-2, Neighborhood Business for a sandwich shop.

The applicant states that the building in question will be used to sale assorted sandwiches, hotdogs, fries, tots, chips, whole pickles, sodas, and other miscellaneous snacks. The only equipment or machinery which might generate excessive noise, odors or air pollution will be customers' cars coming and going. The hours of operation would be Monday through Thursday from 10:00am – 8:00pm, Friday and Saturday from 10:00am – 2:00am, and closed on Sunday. The applicant also claims ownership of the adjacent property, and thus, can provide enough parking for more than 30 customers at a time. Furthermore, the applicant promises to give back to the community and pay special attention to the outer appearance of the business, as it will enhance the beautiful neighborhood in which the site is located.

The applicant also claims that the subject property was once zoned commercially, until it was rezoned to residential some years ago. It should be noted that, from the time the Zoning Ordinance was adopted (1967), this property has been zoned Single-Family Residential. In addition, all areas expansively North, South, East and West are zoned residentially. It should also be noted that, if approved, all parking associated with the business shall be completely contained on the same site as the business itself. Thus, the applicant will not be allowed to use the adjacent property for additional parking.

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.

Four use variances have been applied for at locations near the subject property (within a couple blocks). In 1963, the property one block to the East received a use variance for a fruit stand, which has long since been abandoned (it is now residential). Then in 1992, the property located one block to the West received a use variance in order to re-open an old neighborhood grocery store. At that time, the Board ruled in favor of the applicant based on the building's existing commercial nature and the site's long history of

commercial use. The other two variances (day care and washerteria) were for **new** businesses in a residential neighborhood and were denied. Thus, the only commercial use in the area is the neighborhood grocery store.

As already mentioned, the subject site is surrounded by residentially zoned property. Therefore, as with the previously denied use variances, the proposed sandwich shop would not be a compatible use with the surrounding neighborhood, and to grant such a variance would invite other property owners in the area to seek use variances, thereby impairing the entire system of zoning.

Furthermore, there is no mention of required parking, surfacing, landscaping and tree planting, as required by the Zoning Ordinance. If approved, there should be one parking space for every 100 square feet of gross floor area of the business, paved and delineated with wheel stops. Trees are required every 30 feet of the perimeter of the site, and 12% of the property shall be landscaped (60% between the building and the street).

The applicant failed to illustrate that a literal enforcement of the Ordinance would result in an unnecessary hardship. The applicant simply wishes to operate a sandwich shop in an R-1, Single-Family Residential District.

RECOMMENDATION 5482**Date: July 7, 2008**

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

LOCATOR MAP



APPLICATION NUMBER 5482 DATE July 7, 2008

APPLICANT Tracey M. Wiley

REQUEST Use Variance



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



















This site is surrounded by residential land use
with a convenience store and junk yard to the southwest.

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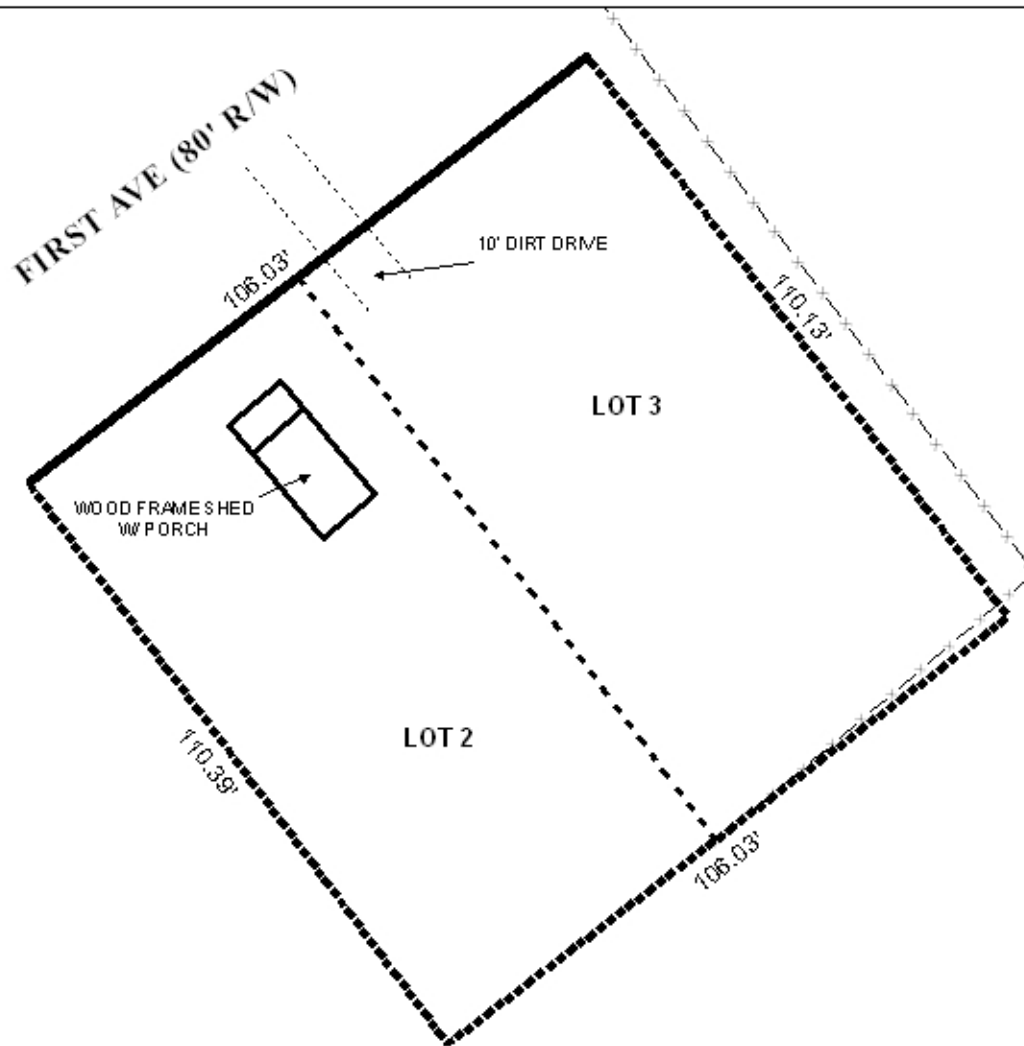
APPLICANT Tracey M. Wiley

REQUEST Use Variance

LEGEND

 R-1	 R-2	 R-3	 R-4	 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 illustrates existing lot configuration.

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BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



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APPLICANT Tracey McMillian Wiley
REQUEST Use Variance

