

APPLICATION NUMBER

5251

A REQUEST FOR

**FRONT SETBACK VARIANCE TO ALLOW A 33.6' X 57.6'
CANOPY TO BE CONSTRUCTED 9.83' FROM THE
FRONT (NORTH) PROPERTY LINE IN A B-2,
NEIGHBORHOOD BUSINESS DISTRICT; A MINIMUM 25-
FOOT FRONT SETBACK IS REQUIRED IN B-2,
NEIGHBORHOOD BUSINESS DISTRICTS**

LOCATED AT

1363 GOVERNMENT STREET

(Southeast corner of Government Street and Everett Street)

APPLICANT/OWNER

MERRITT AND WALDING PROPERTIES

BOARD OF ZONING ADJUSTMENT

JULY 2004

The applicant is requesting a Front Yard Setback Variance to allow a 33.6' x 57.6' canopy to be constructed 9.83' from the front (North) property line in a B-2, Neighborhood Business District; a minimum 25-foot front setback is required in a B-2, Neighborhood Business district.

The application illustrates the removal of a non-conforming 22' x 57.6' canopy, 9.83' from the front property line, and the construction of a new 33.6' x 57.6' canopy, 9.83' from the front property line.

While the Ordinance allows for the reconstruction of a non-conforming structure, the Ordinance also requires that the replacement structure be in the same location and be of the same size and configuration as the previous structure. While the encroachment is the same, the proposed canopy is significantly larger; therefore, the proposed canopy does not meet these requirements thus requiring a variance.

The applicant proposes to replace four existing pump dispensers (MPDs) with four new MPDs. However, two of the MPDs would be installed two-feet closer to Government Street, approximately 18-feet from the front property line. As illustrated on the site plan, a distance of 21-feet separates the four MPDs which would allow two-way traffic; however, the plan illustrates 17-feet between the two MPDs and the building. From a Traffic Engineering standpoint these two MPDs could be moved significantly closer to the existing building to create one-way access to these pumps and prohibiting the possibility of customers stopping vehicles in front of the entrance, possibly creating safety issues. Additionally, the movement of the pump dispensers would allow an additional 6'-7' front setback from the proposed 9.83' front setback.

There have been numerous requests throughout the city for front yard variances to allow canopies to encroach into the 25-foot setback. However, the Board has typically looked favorably upon such requests when the proposed setback was 15'-20'.

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.

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 construct a 33.6' x 57.6' canopy within 9.83' from the front property line. In addition, the granting of this

variance would increase the exposure of a non-conforming structure along the Government Street corridor.

RECOMMENDATION 5251**Date: July 12, 2004**

Based on the preceding, it is recommended that this application be denied.

BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by commercial sites. Churches are located to the north and west of the site. Apartments are located to the south of the site.

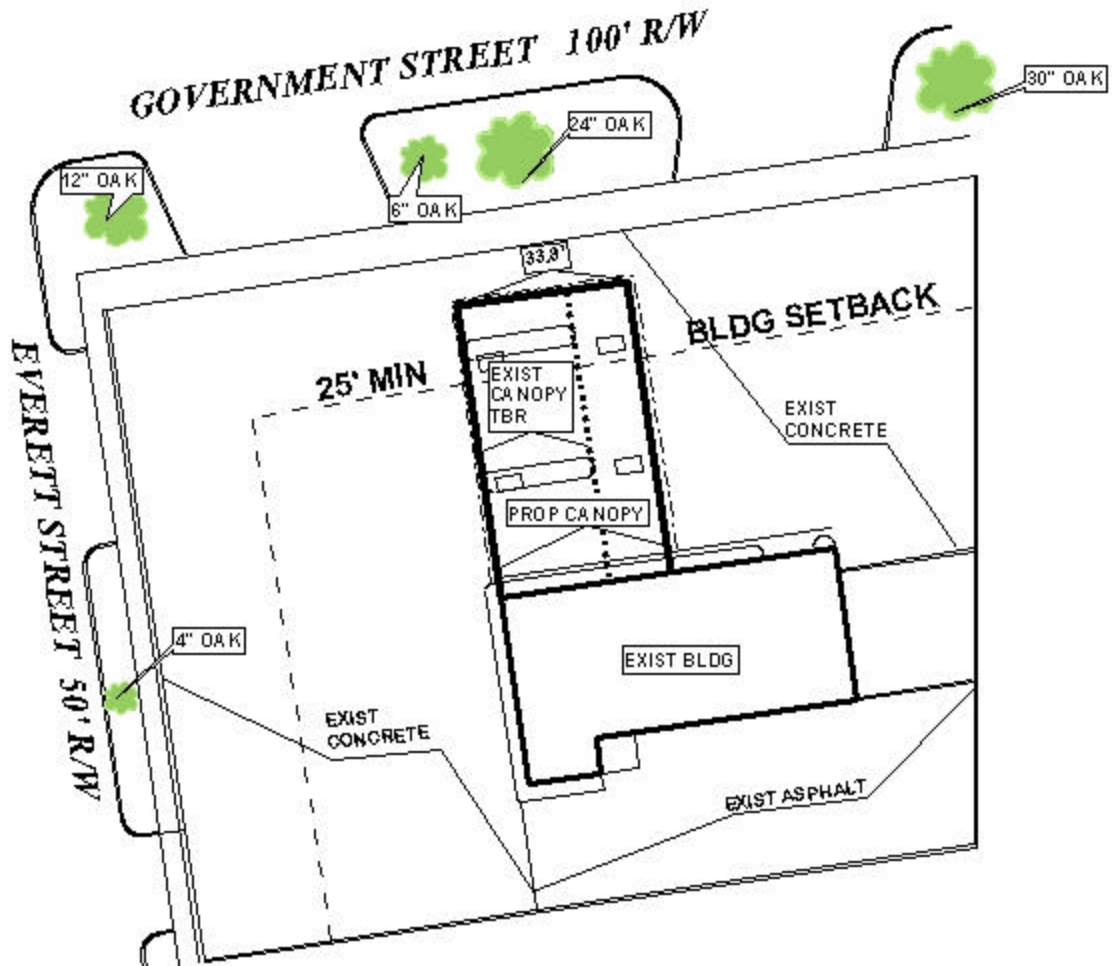
APPLICATION NUMBER 5251 DATE July 12, 2004

APPLICANT Merritt and Walding Properties

REQUEST Front Yard Variance

LEGEND NTS

SITE PLAN



The site plan illustrates the existing buildings and canopy to be removed, along with the proposed canopy and existing landscaping.

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APPLICANT Merritt and Walding Properties

REQUEST Front Yard Variance



NTS