

CITY OF DOVER
BOARD OF ADJUSTMENT
September 19, 2007

The Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, September 19, 2007 at 8:30 AM with Chairman Sheth presiding. Members present were Mr. Sheth, Mr. Senato, Colonel Ericson and Dr. Goate'. Mr. Hufnal was absent.

Staff members present were Mrs. Townshend, Ms. Cornwell, Mr. Albert and Mr. Rodriguez. Also present were Mr. Lloyd Leggitt, Mr. John Paradee, Mr. Robert Nichols, Ms. Dorothy Quinn, Ms. Melissa Chastity, Mr. Bennie Smith, and Mr. Fred Horn. Also speaking from the public was Mr. Guy Veach, and Mr. Bill Scotton.

APPROVAL OF AGENDA

Mr. Senato moved to approve the agenda as submitted, seconded by Dr. Goate' and the motion was unanimously carried.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF AUGUST 15, 2007

Mr. Senato moved to approve the regular Board of Adjustment meeting minutes of August 15, 2007, as submitted, seconded by Colonel Ericson and the motion was unanimously carried.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS

Mrs. Townshend presented to the audience the policies and procedures that would be followed during these hearings.

OLD BUSINESS

Due to a conflict of interest, Mr. Sheth removed himself as Chairman of the Board and appointed Dr. Goate' as Chairman for this case.

Applicant #V-07-21:

600 Jefferic Blvd., Residence Inn - Marriott: NDH, LLC has applied to the City of Dover Board of Adjustment requesting a variance from the requirements of Article 5 §4.7 of the *Zoning Ordinance* pertaining to sign size and location. A requested variance from Article 5 §4.7 pertaining to an additional wall sign that was omitted from the July 18, 2007 meeting.

Subject property is zoned C-4 (Highway Commercial Zone) and the Tax Parcel ID # is ED05-068.09-01-28.02-000. The owner of record is the NDH, LLC.

Representatives: Mr. Kamal Dattani, NDH, LLC; and Mr. Lloyd Leggitt.

Ms. Cornwell stated that this application was seen by this Board back in July of this year. At that time, they were asking for variances for several signs. The sign before you today was mentioned very briefly in the application and not mentioned anywhere else in the application and no diagram was submitted for this particular sign at that time. At that meeting, there was not a

motion to either recommend approval or deny this sign which is why it is being brought back before you today.

Ms. Cornwell further stated that what they are asking for is a sign saying Residence Inn to go over the main entrance of the building and is slightly over twenty-one (21) square feet. This would be their third wall sign request as there are two wall signs that already exist.

Mrs. Townshend stated that legal notice was not published in the Delaware State News as this is an item of old business that has already been considered before this board and does not require a public hearing.

Dr. Goate' questioned if there were any members of the Board that had any conflict of interest other than Mr. Sheth and there were none.

Mr. Leggitt stated that the position of the sign that they are asking for will not be a lit sign as the other two that are already up on the building. The other two signs are not only elevated but lighted. The sign in question will say Residence Inn Marriott above the entranceway. All of the signage requested is standard for a Marriott design for a Residence Inn and identifies the entrance for the check in process as there are three entrances.

Mr. Leggitt further stated that there are over six hundred (600) Residence Inns nationwide with three (3) on the Delmarva Peninsula.

Colonel Ericson stated that by the looks of the design of the building, it does not look like you need a sign. He has never gone to a hotel where he does not know where the entrance is without a sign. Which signs do you already have variances on? Responding to Colonel Ericson, Mr. Leggitt stated that the one that is located on the gable.

Colonel Ericson stated that now they are requesting three (3) signs in this area and he thought that the need for this sign would be considered overkill. Responding to Colonel Ericson, Mr. Leggitt stated that they have three entrances and knowing what the City's requirements are, they have already compromised by not asking Marriott for the other two gates as they are a company requirement on all three gates.

Colonel Ericson stated that he felt the City has already compromised by giving you larger signs that have already been approved.

Mr. Senato questioned what the two signs on either end, what do they face? Responding to Mr. Senato, Mr. Dattani stated that there is one sign facing Route 13 and the other gable sign is facing Jefferic Boulevard. We had asked for a variance for a sign on the rear of the building that would have faced residential properties; however, we deleted that sign request.

Colonel Ericson questioned if this sign was not put up, what impact would it have on your property? Responding to Colonel Ericson, Mr. Dattani stated that it would be confusing for guests who may use the wrong gate to gain entrance to the building. We also had a compromise on a pylon sign that was required by Marriott and realized that it would have been too many signs so we eliminated it.

Dr. Goate' stated that a person is going to enter your lot from the large signage you already have. Once in the parking lot, there should be no question that they would know how to enter the building. The question would be why would you need another sign? Responding to Dr. Goate' Mr. Dattani stated that it would be no different then basically having your address on the building stating the address in numbers instead, this will read Residence Inn.

Mr. Leggitt stated that this sign is meant to add to the welcome experience of the guest and to be part of the elegant feature of the building. We do not see this as a sign that blares at you promoting a sale; however, as part of the aesthetic feature of the building.

Mrs. Townshend stated that there was no public hearing required for this application.

Dr. Goate' questioned if there was any correspondence received regarding this application and there was none.

Colonel Ericson stated in looking at the presentation this would set a precedent that they do not want to establish in that they have already approved two (2) larger signs and he does not see the need for this sign to help people get into the building.

Colonel Ericson moved to deny Application #V-07-21, 600 Jefferic Blvd, Residence Inn, seconded by Mr. Senato and the motion was unanimously carried.

Mr. Sheth came back as chairman.

Applicant #V-07-26:

302 Mockingbird Ave., Lands of Joseph & Dorothy Quinn: Joseph & Dorothy Quinn have applied to the City of Dover Board of Adjustment requesting variances from the requirements of Article 4 §4.1 of the *Zoning Ordinance* pertaining to the front yard set-back and Article 5 §1.12 concerning the location of accessory structures.

Subject property is zoned R-8 (One Family Residence Zone) and the Tax Parcel ID # is ED05-085.12-02-87.00. The owner of record is Joseph & Dorothy Quinn.

Representatives: Ms. Dorothy Quinn; and Ms. Melissa Chastity, New Property Owner.

Mrs. Townshend stated that this application was tabled at last months meeting because there was no applicant and no public hearing was held. A motion would have to be made to lift the application from the table.

Mr. Senato moved to lift Application V-07-26, 302 Mockingbird Avenue, Lands of Joseph & Dorothy Quinn, seconded by Dr. Goate' and the motion was unanimously carried.

Mrs. Townshend stated that legal notice was published in the Delaware State Newspaper on September 9, 2007 and the public was notified in accordance with the regulations.

Ms. Cornwell stated that the conditions of the property are legal non-conforming and the property changed ownership and they are seeking a variance to make the non-conforming issue legal.

Ms. Quinn stated that she did speak Ms. Cornwell with regards to last months meeting in which she was in Dover; however, the notification that they got to her correct address did not highlight the date or time of the meeting and did not realize that she needed to be here.

Ms. Quinn further stated that she bought the property in 2001 and 1986 is when the previous person bought the property. The addition that she is talking about that is setback from the street for the addition that was done before 1986. There was no variance problem at that time as far the setback from the street or sidewalk. She does know that in 2000 when she looked at the home with her husband, we were told that there was some type of variance problem; however, she was told that it had been taken care of. Somehow the sale went through, she had a really bad realtor, and her attorney pulled out two days before closing. She was the only one sitting at the table because the sellers failed to show up. She had no way of knowing that this was not done back in 2001. When they went to sell the house, she did say something to her realtor first thing before they even put it on the market. She checked and said that there was no variance problem.

Ms. Quinn stated that they proceeded to buy their newly constructed home in Townsend and at the same time got a buyer for this property. We were closing virtually two days apart. Their attorney found that there was a variance that was not approved and that the previous owners did not do what they were suppose to do. The shed is not in good shape so we know it has been here many years we just don't know how many years specifically. She does not know if the new owners plan on fixing the shed that is there or putting up a new one. There is a cement pad for the shed so it would not make a whole lot of sense for them to have to move the shed over and put another concrete pad in since there is already a concrete pad there.

Colonel Ericson stated that it looked like the shed has been here for a long time and is in disrepair and will probably be replaced sometime in the near future. Can we approve the variance but only for the life of this contract and then when it is replaced that it be relocated to fit within the zoning ordinance? Responding to Colonel Ericson, Mr. Rodriguez stated that if they altered it, they would have to comply with the setback requirements.

Mrs. Townshend stated that if they were to take the shed down and rebuild it within a year, it would qualify as a legal non-conforming building. It is only ten inches from what the requirement is now and not on the property line.

Ms. Quinn questioned if the shed would need to be moved forward or moved to the side? The reason she brings it up is because there are beautiful trees in the yard. Responding to Ms. Quinn, Mrs. Townshend stated that it would need to be moved to the side.

Mr. Sheth opened a public hearing and closed the public hearing after seeing no one wishing to speak.

Mr. Sheth asked if there was any correspondence received for this application and there was none.

Mr. Sheth questioned if there were any members of the Board that had any conflict of interest and there were none.

Mr. Senato moved to approve Application V-07-26, 302 Mockingbird Avenue, Lands of Joseph & Dorothy Quinn, seconded by Colonel Ericson and the motion was unanimously carried.

NEW BUSINESS

Applicant #V-07-28:

21 Bayard Ave., Lands of Robert and Ariane Nichols: Robert and Ariane Nichols have applied to the City of Dover Board of Adjustment requesting a variance from the requirements of Article 4 §4.1 of the *Zoning Ordinance* pertaining to the restrictions on lot coverage.

Subject property is zoned R-10 (One Family Residence Zone) and the Tax Parcel ID # is ED05-077.06-01-20.00. The owners of record are Robert and Ariane Nichols.

Representatives: Mr. John Paradee, Prickett, Jones & Elliott; and Mr. Robert Nichols, property owner.

Mrs. Townshend stated that legal notice was published in the Delaware State News on September 9, 2007 and the public was notified in accordance with regulations.

Mr. Sheth questioned if there were any members of the Board with a conflict of interest and there was none.

Mr. Paradee stated that he would give a brief background on this case and has brought some photographs that might be helpful for reference to see what was on this property originally, what is there now, and some properties in the neighborhood.

Mr. Paradee further stated that the first photo, Photo 1A through 1D are photographs of what had existed on the site before Mr. and Mrs. Nichols bought the property. This was a home that was owned by Mrs. Nichols grandparents and they lived there for some time and the home is typical of homes in the neighborhood. At that time it was built it was a relatively modest home and over the years it had not been kept up to the standard of some of the newer homes in the neighborhood. Mr. and Mrs. Nichols had an opportunity to buy this property at a very reasonable price from Mrs. Nichols grandparents. They are a young couple that just got married and this is their very first home so they demolished the home on site.

Mr. Paradee further stated that in the second set of photographs they began to construct what would be their first dream home. The rest of the packet is some homes located within the neighborhood. When they first approached the City with their project they were originally told that the property was zoned R-7 and in that zone the maximum lot coverage is forty (40) percent. They later found out that property is actually zoned R-10 and the lot coverage is only thirty (30) percent.

Mr. Paradee stated that they submitted their application for a building permit on March 16, 2007 and the drawing that was submitted with that application showed a garage at the rear of the

property; however, they were told by Mr. Grant Prichard, Chief Building Inspector, that the way that they should go through the process is to apply for a building permit for the house first and then come back and get a building permit for the garage later which is in fact what happened. They had always intended on making use of access to the property from the rear because there is an alley and all of the homes in the neighborhood gain access from the rear. This property also has a curb cut from the front along the sidewalk so they also intended to gain access from the front. It was only after the house had been constructed then they applied for the building permit for the garage that they became aware of this conflict for this dilemma poised by the maximum lot coverage limit. This is a combination of a couple of factors, one, City Code technically requires that all driveways be paved. There are examples where there are driveways, even in this neighborhood, in which some of them are not paved and are either grass or stone. The real problem is that the lot is so small, narrow, and irregularly shaped that it is virtually impossible to get any house of reasonable size on the property and put two driveways that would both be paved without violating the maximum lot coverage limit.

Mr. Paradee further stated that as a particular matter this is a young couple who hope to fortunately start a family soon and from their perspective it would be practical to have a driveway from the front that would allow access for the misses coming home with the groceries and they still have elderly grandparents that visit them on a regular basis. The question is do you pave the front and the rear driveway? The City's position is that they pave the rear driveway to the garage and that they should not have any driveway in the front. The condition of this property is not a condition caused by the applicants. The condition is the small size which is the smallest lot in the neighborhood. The property is elevated in the front and is exceptionally narrow and these are the conditions that cause these problems.

Mr. Paradee further stated that in the Staff report they make a good analysis of what the standard is under the Code; however, he would respectfully submit that they slightly misapplied the standard because the Staff report suggests that it is a condition caused by the applicants and the actual conditions is the condition of the lot. Staff agrees with us in their Staff report on Page 3 of 5 where they outline what the applicant responses are and on Page 4 where they give their analysis of the criteria. The first criterion is if there is some physical condition with regard to the property and the applicant states that there is. Where we disagree is if this condition was caused by the applicant.

Mr. Paradee further stated that analysis after that would include for the variance would there be any denial of all reasonable use of the property and would the granting of the variance alter the character of the neighborhood or be in disharmony. They would respectfully submit that all reasonable use of the property would be deprived if we could not have access with both the front and the rear with paved driveways.

Mr. Paradee further stated that if you look at the square footage of the driveways that would be required, it would reduce the size of home that could be built. The house would be under 1,392 square feet would put it out of character with the neighborhood. This would be smaller than the house that was there before and he does not feel that the City would encourage this. The effect of the requirement that the driveways be paved on this small size of a lot is that you would basically be building a shed with two nice driveways and not the garage they proposed.

Mr. Paradee further stated that if you looked at the character of the neighborhood a majority of the homes gain access from both the rear and the front of their properties and most of those are paved. Some of them do fall within their lot coverage limitations; however, there are some lots that do not which demonstrated through a series of pictures presented to the Board members. This would then be in keeping with the neighborhood.

Mr. Paradee further stated that because of snow, mud, and rain if he were to have to choose which one would get paved it would be the driveway in the front and have the back driveway stoned. They are willing to compromise and come up with a solution as they have all of their life savings in it. They have looked into pavers which are prohibitively expensive and they are not a realistic option for them. The least desirable would be both driveways stoned thereby not needing a variance at all; however, Code requires that driveways be paved.

Mrs. Townshend stated that she was unaware that the applicant was told that the property was zoned R-7; however, even with R-7 zoning there is a forty (40) percent lot coverage, the lot coverage proposed in this application is forty-seven (47) percent. You have also heard about the wedged shaped lot and how it creates a situation that would warrant a variance. The shape of the lot would probably warrant a variance on a setback; however, the reality is that there is a lot size requirement of 10,000 square feet and you have a lot size of 11,224 square feet so it is not truly a small lot. The R-10 zoning is one of the least dense zoning classifications and a 10,000 square foot lot is one of the larger lots permitted in the City and to say that a lot size of 11,224 square feet creates a hardship is probably not entirely the case. When you look at developments that are going in now their lots are much smaller than the 11,224 square feet.

Mrs. Townshend further stated that that another concern is that we are seeing a very common design on townhouses and homes with rear loaded garages where the access is from the alley and that there is no driveway access from the street. The important thing is that you do have access to the garage from the alleyway. Is it a hardship that you not have two access points to the garage?

Mrs. Townshend further stated that from Staff's standpoint when you are looking at a lot coverage variance it would be generally based on the fact that you have a legal non-conforming lot that does not meet the minimum lot area for the zoning district.

Mr. Paradee stated that Mrs. Townshend is correct in that the minimum lot size is met; however, the problem is the irregular shape drastically reduces the amount of useable space on this lot because it is tailored at the back. You cannot build a house on the back because the total lot size is greater than 10,000 square feet; however, the useable amount of square footage in terms of where you can place a house is drastically reduced. The shape makes the useable area dramatically less.

Mr. Paradee further stated that if you look at the plan, to suggest that the applicant would access the house from the garage because the width of the lot at the rear is so narrow. You really could not get around the garage you would have to go through the garage to get to the house. This would not be appropriate for a young wife/mother to be coming in from the alley, walking through the garage, and then fifty (50) feet to the house. Is it a hardship yes, is it a hardship that justifies a variance, he would feel that this is within your authority to determine.

Mr. Paradee further stated that this property has a curb cut in the front so you cannot deny access to the front; however, they would need a paved driveway which would exceed their lot coverage requirements. What will happen is you will end up with a grass or mud driveway and no one in the neighborhood wants that. They would be willing to give up the driveway in the rear for a driveway in the front.

Mrs. Townshend stated with regards to the issue of ruts and a grass driveway, parking on the grass is not permitted in the City and is a Code Enforcement issue that is addressed City wide.

Colonel Ericson questioned if they put in the front driveway and not the rear, would that be in Code standards? Responding to Colonel Ericson, Mrs. Townshend stated that the issue is that the garage is located at the very rear of the lot so it would exceed the lot coverage because they would have to run the driveway all the way to the rear of the property.

Mr. Paradee stated that his client has told him, that if it is helpful, they would be willing to forego a paved driveway in the rear and have it be only grass or stone with a paved driveway in the front. This would be acceptable. All of the properties in the neighborhood that have a curb cut like this property all have paved driveways.

Colonel Ericson stated that he still does not see the absolute need for this driveway in the front. Could you please go back over your rationale for the need for this driveway in the front? The one in the back is all you need because you can still access the property. Responding to Colonel Ericson, Mr. Paradee stated that you can; however, the access would have to be gained by driving into the garage and then walk through the garage and into the back yard to get to the house. The point is that every other property in the neighborhood that has a curb cut in the front gains access from both the front and the rear yard.

Colonel Ericson questioned if any of the examples you have shown, have they requested a variance to put it in? Responding to Colonel Ericson, Mr. Paradee stated that he did not know. He can tell you what he thinks is relevant is that if you went out and measured the square footage of those homes and the lot coverage a number of them would exceed the maximum lot coverage.

Mrs. Townshend stated that some of these properties will predate the *Zoning Ordinance*. You are looking at an older established neighborhood where the lots and houses often predate the Zoning Code requirements.

Colonel Ericson questioned what the width of the driveway is? Responding to Colonel Ericson, Mr. Nichols stated that the front driveway is a twelve (12) foot wide driveway which is wide enough to accommodate one car to a parking pad with room enough for two cars to park. The one in the rear is simply the width of the garage to the alleyway which is approximately thirty (30) feet wide.

Mr. Sheth questioned if there was any correspondence received regarding this application and there was none.

Mr. Sheth opened a public hearing.

There was no one present to speak in favor of the application; however, there were two speakers who spoke in opposition of the application as follows:

Mr. Guy Veach – 30 Bayard Avenue – Stated that his property is diagonally across from 21 Bayard Avenue. He does not know Mr. Nichols; however, he received a phone call from him several months ago concerning a setback of forty (40) feet versus twenty-five (25) feet and discussed it very neighborly like and he subsequently responded to me that the issue was not going to be changed. He does have concerns regarding the requested variance as it would seem to him that the forty (40) percent lot coverage allowance would have been taken into consideration by the owner during the planning process. In his opinion a person would first site a house taking into consideration the lot coverage percentage and then take the remaining lot coverage percentage and then site the parking area and/or driveway. Then if there is any percentage remaining, one could utilize that for a garage. This is apparently what was not done. It would seem that the perspective of the planning process on the part of either party. He would object to exceeding the lot coverage allowance. These are his notes before he heard the discussion this morning.

Mr. Veach further stated with regards to some compromises that were proposed today, there is currently a garage or outbuilding under construction at the rear of his property and it seems to him that you could call a halt to the construction of this garage. You could move a portion of it and this would help reduce the lot coverage percentage and/or further expense incurred by this applicant. They could also move the curb cut.

Mr. Veach further stated that he had received a call from his neighbor who lives directly across the street from this property, Mr. Larry Willard, who could not make the meeting this morning as he is at work. Mr. Willard voiced his concern that there would be additional water run-off from the 21 Bayard Avenue property with more impervious surface. Secondly, that the 21 Bayard Avenue property may be accessed by two methods, currently that is the alley and at the front of the property.

Mr. William Scotton – 9 Bayard Avenue – Stated that their property is located next door and he came with the purpose of just listening to what was being sought. His wife agrees with having an entrance from the front with regards to safety and small children. He does not like all of the intervention that sometimes occurs with ordinances; however, as he sat listening to Mr. Paradee speak he got very upset. He made several statements that to his knowledge are not true. He made a statement that the majority of the properties in this neighborhood have both front and rear entrances and this is not a correct statement. He had not counted the number of houses with both front and rear entrances because he did not come with that intention. Those statements are not true and may influence this Board. Most of these houses have been here sixty (60) years or more. As far as the two driveways or one driveway Mr. Nichols said to him in one of their discussions that his brother does pavers and would probably end up doing pavers like I did. You can do eco pavers and they are impervious. This would negate having to seek any variance; however, they are expensive. He is against seeking out these variances for the reasons that were stated because they are not accurate. This is information to the Board that is misleading.

Mr. Sheth closed the public hearing after seeing no one else wishing to speak.

Colonel Ericson stated that it would look to him that it is not the cutoff in the back that is causing the problem. This gentleman built a house that is larger and very nice and then a very large garage in the back and then added in the driveways. It is really his desire to add all of these extra things that has caused the problem and to go beyond and say that we would go fifty (50) percent over the standard would be setting a precedent that this Board cannot afford.

Colonel Ericson moved to deny Application V-07-28 21 Bayard Avenue, lands of Robert and Ariane Nichols, seconded by Mr. Senato and the motion was unanimously carried.

Applicant #V-07-29

717 W. Division St., Lands of Bennie Smith: Bennie Smith has applied to the City of Dover Board of Adjustment requesting a variance from the requirements of Article 4 §4.15 of the *Zoning Ordinance* pertaining to building setbacks.

Subject property is zoned C-3 (Service Commercial Zone) and M (Manufacturing Zone) and is subject to the COZ-1 (Corridor Overlay Zone). The Tax Parcel ID # is ED05-076.08-01-26.00-000. The owner of record is the Bennie Smith.

Representatives: Mr. Bennie Smith, Property Owner; and Mr. Fred Horn, W.F. Horn Architects.

Mrs. Townshend stated that legal notice was published in the Delaware State News on September 9, 2007 and the public was notified in accordance with regulations.

Ms. Cornwell stated that this application is for an existing legal non-conforming building. The applicant would like to slightly extend the building farther into the front yard setback.

Mr. Horn stated that they are requesting a variance as part of a façade renovation to construct an open canopy structure within the setback in order to provide cover for people waiting for transportation from funerals, especially people who are in wheelchairs, and the elderly. Normally, if this was new construction Mr. Smith would have designed a canopy as part of his building which would have been part of the original plan. In this case we are dealing with an existing building that is already in the setback and we need to ask for this variance to build it.

Mr. Horn further stated that the building itself is within the setback and we are looking to build an ADA handicap and ramp to change the front stairs so that they are accessible. The structure will be open with two columns by the sidewalk which would be the only obstructions on the sidewalk approximately a half a block from the corner of the property. There is no visual barrier being created by this as there are already trees and light posts in this general area.

Mr. Horn further stated that the design of the existing building does not allow them to relocate the canopy to another portion of the building to create the same entrance because this is where the lobby is and where people would come in to attend funerals.

Mr. Sheth stated that in the future this canopy could be fully enclosed with glass no longer classifying it as a canopy. Responding to Mr. Sheth, Mr. Horn stated that Mr. Smith has no intention of doing that. It would remain as an open structure just for the people who would be

waiting for pick-up.

Mr. Senato stated that according to the diagram and the plans that you submitted, the canopy will be removed and the proposed new addition of the front will extend over and out onto the sidewalk and curb area, which is basically where the old canopy is, is this correct? Responding to Mr. Senato, Mr. Horn stated that it would extend to the sidewalk and curb area with the pillars located towards the back area of the sidewalk.

Dr. Goate' stated that with what you are proposing to construct here, don't you think that you would be interfering to some degree with people passing by the funeral home? Responding to Dr. Goate', Mr. Horn stated that that no, it would not be out over the sidewalk.

Colonel Ericson stated that it would appear that it would block your vision as you come down the street if it is going to protrude onto Forrest Street. You would not be able to see down the street. Responding to Colonel Ericson, Mr. Horn stated that that it would not be anymore than the street lights, trees, and anything else on this section of the street.

Mr. Senato stated that the two pillars that he sees on your plan extending to the curbing have about four (4) feet distance between the two (2) steps and the two (2) pillars to the curbing is this correct? Responding to Mr. Senato, Mr. Horn stated that yes it would be about four (4) feet.

Mr. Senato further stated that with four (4) feet if anyone is walking down this sidewalk, and did not want to protrude out to the further end because of traffic, then they would walk underneath the canopy. If walking underneath the canopy, they would infringe upon the ramp which is coming up to the curb on the other end so this would also be a blockage that would extend from the building to the curb. Responding to Mr. Senato, Mr. Horn stated that yes, all of this is accurate however the blockage would extend to the rear of the sidewalk.

Mr. Smith stated that where this would be an obstruction of view we pulled this off of Ridgely Street to Division Street where there are two (2) posts that would be more of an obstruction than his canopy. We allowed the City to put the white post here and then there is a light post that would be more of an obstruction than the canopy would be by all means.

Colonel Ericson stated that it would seem that everything we use as criteria for a variance seems like it is being violated with this request. Are there any physical conditions of the property or building that would justify a variance. This building has always been here and the only problem is that you want to improve it and by doing that you have to violate the Code. Does it deprive applicable use of property? The property is being used now very satisfactorily. He does not see where you meet the criteria that has been given to us to look at when we grant a variance. You have seen the Board's recommendations do you have any comments regarding these points.

Responding to Colonel Ericson, Mr. Smith stated that he does not see the great difference between the canopy here and what we want to construct, it is all the same height and the two (2) posts are already there so he does not see the difference between what placing this here and what we currently have is.

Mr. Senato stated that there would be steps coming down out of the center of the building;

however, you do not have an ADA handicap ramp so the ramp will run parallel to the building and then take a ninety (90) degree turn coming out towards the sidewalk. You show the width of the sidewalk at four (4) feet and the width of an ADA walkway is approximately three (3) to three and half (3½) feet that is horizontal to the building which would be another three (3) feet protruding out from the building onto the sidewalk which leaves you ten (10) feet. The rest of the ADA walkway heading out towards the curb has to have some form of a rise at about approximately two (2) feet which would then go down to zero at a point on the sidewalk. What you are saying is that the part coming away from the building is going to be a part of the existing sidewalk itself without any angle. Responding to Mr. Senato, Mr. Horn stated that they are not touching the existing sidewalk. Everything is located between the building and the existing sidewalk. The ramp will start at floor level coming down parallel with the building to a landing and then turn out away from the building with another portion of the ramp. The angle decent of the ramp from the building will be about twenty-four (24) inches.

Colonel Ericson stated that it is his understanding that they can build the ADA ramp without requesting a variance.

Mr. Sheth opened a public hearing and after seeing no wishing to speak closed the public hearing.

Mr. Sheth questioned if there was any correspondence received regarding this application and there was none.

Mr. Senato moved to deny Application Applicant #V-07-29 - 717 W. Division St., Lands of Bennie Smith, seconded by Colonel Ericson and the motion was unanimously carried.

Mr. Senato moved to adjourn the meeting, seconded by Colonel Ericson and the motion was unanimously carried.

Meeting adjourned at 9:55 PM.

Sincerely,

Diane Metsch
Secretary