

Request: To construct an enclosure on an existing building.

March 2, 2019

Application Received: August 16, 2017

Petition Number: 17-15

Property Address: [REDACTED]

Parcel ID: [REDACTED]

Zoning District: C3

Background:

The property owner is applying for a zoning variance to construct an enclosure on an existing building. The property is in the Town of _____, off County Highway Z. It is in a C3 (Commercial) zoning district. The owner says they are applying for the variance to improve the aesthetics of the building. This enclosure would close in the sides of an existing overhang, adding an additional 30 feet to the side walls of the building. The edge of the new enclosure would end 60 feet from the centerline of County Highway Z (Figure A). This property is subject to both C3 zoning and zoning for Class 2 highways.

The general purpose of the _____ County ordinance is to “promote the public health, safety and general welfare.” While the intent of the commercial district where the property is located is “to provide appropriate areas for medium-scale commercial uses, which serve a community wide area.” In the C3 zoning district, setback lines and yards must comply with the requirements specified under general provisions for _____ County. The property abuts a county or class two highway and therefore has a setback requirement of 75 feet from the highway centerline. The edge of the existing building meets this requirement as it is 90 feet from the centerline (Figure A). The proposed enclosure, however, would add an additional 30 feet onto the building reducing the setback to 60 feet from the highway. This would not be an entirely new structure as an overhang is already present. The applicable provisions on buildings in the ordinance state that structural alterations to buildings must comply with regulations and this includes the expansion of a non-conforming structure.

The town where the property is located approved the remodel request at the town board meeting in August 2017. They reasoned that the remodel would not increase the floor area of the building as it would enclose an existing awning. Likewise, the _____ County Highway Commissioner did not have any objections to the remodel, concurring with the Town of Sharon that it would not add to the building footprint.

Analysis:

To receive a variance, property owners need to provide evidence that they meet three legal standards:

1. Unnecessary Hardship- compliance with variance standards would unreasonably prevent the owner from use of the property for a permitted purpose, or would be unnecessarily burdensome.
2. Unique Property Features- this hardship is created because of unique qualities of the property, not the circumstances of the owner.
3. Public Interest- the variance would not harm the public interest, which is the purposes and intents of the ordinance.

In the case of standard one “Unnecessary Hardship” the applicant does not provide clear evidence that denial of the variance would unreasonably prevent him from using his property for a permitted purpose, or be unnecessarily burdensome. The building in question is used commercially as Fred’s Body Shop. The property is zoned for a commercial use. The applicant has not demonstrated that the zoning requirements unreasonably prevent him from using his property for commercial use. In addition, the applicant does not provide compelling evidence that not enclosing the structure would be unnecessarily burdensome, only that he wants it enclosed for increased storage space.

To meet standard two the hardship must be because of unique property features, rather than the circumstances of the owner. Examples of unique property features could include steep slopes or wetlands which prevent building in compliance with the ordinance. This property does not have unique characteristics which create a hardship. On the contrary, there is ample space for construction that would comply with setback lines in the rear yard to the lot.

Under standard three the variance cannot be contrary to public interest or the intent of the zoning district. This standard is not met by this application. By encroaching on the setback to a county road the enclosure could impede driver visibility and reduce public safety. Furthermore, uniform setbacks provide the space needed for future utility replacements.

Recommendation:

Staff recommend denying the variance because the application does not meet the three variance standards.