

Variance Justification:

In order to justify approval of any variance, the Board of Zoning Adjustment considers the following criteria. Please answer all of the following items. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

Variance of Section 5.7.1 is requested to reduce the side yard from 5 ft to 0 ft

1. The variance will not adversely affect the public health, safety or welfare. The three properties to the northwest of the subject property, which share this side yard for which the variance is requested, are all zoned C1 and are in the same Form District. As it relates to the setback for two of the three properties to the northwest, the current building on this site already encroaches into the setback. To mitigate any negative effects by building a structure five feet closer than the setback requires, the applicant will be constructing a 6-foot high wooden privacy fence along the third property.
2. The variance will not alter the essential character of the general vicinity because this addition to the existing structure will serve as an infill and provide missing middle housing in an area that is already a mixture of residential and commercial uses. The properties to the northwest are zoned commercial and currently contain residential structures, and the property to the southeast is a commercial property with a commercial structure (funeral home). The proposed adaptive reuse of the structure on this site will serve to increase the commercial aspect of this site while also adding missing middle housing to this area.
3. The variance will not cause a hazard or a nuisance to the public because the pre-existing structure already is not in conformity with the setback, and the addition will be screened by the installation of a six-foot privacy fence. The variance will reduce hazards by permitting the existing structure to be built according to modern code requirements. Furthermore, the adaptive reuse of this structure will revitalize this aging structure, bringing to this area of Preston Highway a multi-purpose retail and residential complex.
4. The variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because the intent of the regulation does not serve any purpose due to the pre-existing structure. This variance will allow an adaptive reuse of the existing structure and encourage revitalization and reuse of other existing structures. Additionally, the applicant proposes to erect a six-foot high wood privacy fence to add additional screening.

Additional considerations:

1. The Variance arises from special circumstances, which do not generally apply to land in the general vicinity because the structure already existing on the property was built within the setback, which is a pre-existing condition that cannot be changed as the applicant seeks to adaptively reuse the structure.
2. Strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create unnecessary hardship because the location along this part of the side setback is an existing condition which the applicant cannot change, and it would unnecessarily limit the available building area in the site.
3. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation because this is an adaptive use of a property in a transition area.