

Burden of Proof for Area Variance NOT MET

Still a 3 prong test required for an area variance:

- 1. Exceptional situation with Building**
- 2. Practical Difficulty**
- 3. Substantial detriment to Public and Harm to Zoning Plan**

No Exceptional Situation with Property

- Applicant argues large shop windows/corner door opening
 - Already showed photographic evidence proving this is false
- Applicant ONLY argues about conversion to residence
 - Many other retail/services possible, no variance required
- *The use or prior use of a particular property is inapplicable to the first condition that the property itself be unique. (Palmer)*

No Practical Difficulties

- The Applicant claims that these exceptional conditions “would lead to a practical difficulty if the Zoning Regulations are strictly enforced.”
- There are numerous other potential uses of the space
- Burden of Proof on owner to show any difficulties. The record is manifestly devoid of evidence bearing on the difficulties of the owner, financial or otherwise.
- CYM has stated if not granted the variance they will operate as a matter of right -- This proves there is no exceptional condition leading to any practical difficulty
- Owner has a 10 year lease, CYM can operate as a matter of right = NO DIFFICULTIES or any hardships