

CHARTER TOWNSHIP OF MONITOR
ZONING BOARD OF APPEALS
November 18, 2021

The meeting was called to order by Chairman Horen at 7 p.m.

Members present: J. Horen, J. Kruger, A. Lyday, C. Schweitzer, G. Brandt,
D. Zube-Alternate
Members absent: None
Also present: R. Sheppard-Attorney

The Pledge of Allegiance was recited by those present.

Motion by Brandt, seconded by Schweitzer to adopt the agenda as presented.

Motion carried.

Motion by Schweitzer, seconded by Lyday to approve the minutes of November 2, 2021 Special Meeting as presented.

Motion carried.

Public Input

Chairman Horen opened and closed public comment at 7:02 pm, with no one wishing to speak.

Items for Consideration

09-100-036-400-052-00
5892 Two Mile Road
Setback Variances
Joseph Mulders

Horen read the letter sent to neighbors of Joseph Mulders, 5892 S. Two Mile requesting a variance for the north and south property line setback. Mulders is requesting a 5.3-foot variance on the North property line and a 10.3-foot variance on the south property line as these setbacks are governed by Ordinance 67 section 9.05(b).

Horen asked Sheppard if we should separate the two-variance requests.

Sheppard replied, "Mr. Mulders could request the variances to have separate motions."

Mulders agreed to separate motions.

Horen told the Zoning Boards of Appeals members, that he will be abstaining from voting due to a conflict of interest.

Brandt asked the question if the request belongs to Section 18.10 (a, b, c) or Section 16.05. (Expansion of nonconforming uses and/or nonconforming building parcel or structure)

Sheppard explained that 16.05 allows the planning commission to grant a special use permit to expand a non-conforming physical standard property, which is what Mulders has. As a special use permit, the rigors of 16.05 does not necessarily envision that the planning commission can grant side yard variances. To expand a non-conforming physical layout, you would need the special use permit, which is needed for mini storage or storage structures in the commercial zone. In order to place the additional buildings where he wants to place it, a variance is needed from the Zoning Board of Appeals.

Brandt replied, "So he has to do both"

Sheppard said, "Yes"

Mulders stated that he has a special use permit for this commercial property.

Mulders explained that the site has already been granted a special use permit and he does not need a special use permit or request what already exists. He told the members that the side setback is the only issue that is being discussed today. Mulders told the members, "As you well know, there are two types of variances. One, is use variance.....and the other is dimensional variance, and that is what we are here to talk about."

Sheppard told Mulders that he would have to review the minutes when special use was approved. Sheppard continued, "When a special use is approved, it generally does not include future construction. Ordinarily, when special use is approved, approval is for what is proposed, and any future construction would need additional approval."

Mulders said that he has a lot of requests for inside storage for motor homes. He is trying to make the storage facility user friendly because people have a great deal of problems backing large trailers into storage units.

The west lot line was discussed. The west lot was raised, to keep runoff water away from the adjoining parcel.

Discussion continued.

Lyday discussed current placement of existing buildings.

Mulders discussed vandalism to vehicles that are stored outside.

Schweitzer told Mulders that she understands what he is trying to do, but can't find the hardship, other than being able to build exactly what he wants to build.

Schweitzer asked what the hardship is.

Krueger agreed, and said, “We need to find the hardship”

Mulders said, “You are incorrect, you do not need to find the hardship, because hardship is to do with use” Mulders continued, “If you look at Michigan law, it’s practical difficulty, and that is a different standard than hardship”

Krueger and Schweitzer told Mulders that Ordinance 67 has both.

Sheppard clarified that the Unified Zoning Enabling Act, adopted in 2006 does differentiate, but the Township still has a variance ordinance, which gives you a variance for either hardship or practical difficulty as a dimensional variance. Use variances can only be done in a Township that had it in place when the amendment took effect in 2006.

Mulders said, “The Township can put whatever standards they want, on a variance, but they can’t make it more difficult than what the court system has already decided”

Discussion continued among the members of possibly reorganizing the building placement and size reduction.

Brandt asked Sheppard how these variances could be approved if 18.10 (a)(b) & (c) of Ordinance 67 are not satisfied?

Sheppard reviewed 18.10(b) where there is found practical difficulty *or* unnecessary hardship, (a) is already satisfied, because the size of the parcel and size of existing buildings, the location of the curb cut-which would prohibit any meaningful use of the western half of the property without the variance to let the snow being removed east to west, stacked in the west setback, and to allow the vehicular traffic inside.

Schweitzer said, that doesn’t mean he couldn’t accomplish that with smaller proposed buildings, and meeting the setbacks.

Sheppard agreed. Sheppard said Mulders would not have to get a variance at all, and either continue with outside storage or do some total reconfiguration that would be less economical or advantageous to him

Schweitzer said that the request was a self-created design.

Brandt and Krueger agreed.

Mulders stated that because of the existing buildings, his practical difficulty exists.

Mulders read the State law requirement for a variance.

Brandt, told Mulders that section (b) can be granted, but struggles with (a) and (c).

Krueger agreed with Brandt.

Schweitzer said it is not necessarily the shape of the property that is the issue, it is the size of the proposed buildings that he wants to build. He could put additional buildings on the parcel, just maybe not the size he wants to build.

Lyday disagreed and explained it was the existing buildings that are the problem.

Krueger discussed several options for building placement. She asked Mulders if he considered building only two large buildings or two large building and a smaller building in the same area?

Mulders said there isn't demand for 50 or 60 of those type of units.

Much discussion continued.

Mulders reviewed the Michigan State Law again.

Sheppard discussed reoccurring in nature and setting precedent regarding 18.10(c)

Schweitzer told Mulders, that Zoning Board of Appeals did not say he could not have additional buildings, but may have to reduce the number and/or size of buildings he desires.

Many options were discussed among the members with Mulders, as to size and placement of additional buildings.

Building options that were discussed:

- Two building as opposed to four buildings
- Leave the proposed building on the north to 20-foot width, change the 30-foot building to the south of the north building, to 20-foot building (assuming it had rental value) and change the middle building to the 40-foot storage building for motor homes.
- Three buildings as opposed to four buildings
- Eliminate the 40-foot building in the middle

Mulders told the members, that will not work, based on snow removal.

Mulders said, "Correct me if I'm wrong, the State law for this zoning ordinance differentiates between use and practical difficulties, and the law for this is practical difficulty, this is the criteria you need to meet. If I go court, this is what they will be looking at, not A, B and C. Is that correct, is that a fair statement?"

Sheppard replied, “No, they will take a look at A, B and C.”

Mulders asked, “How do we make it so that it can be granted, what do we need to do to make it happen?”

Lyday said, “You have to meet A, B and C, Section 18.10”

Mulders said, “We have met a and b, what is c”?

Discussion regarding 18.10(c) continued among the members.

Brandt, Krueger and Schweitzer discussed 18.10(c) “Where it is found that the condition or situation of the specific piece of property or the intended use of said property for which the variance is sought is not so general or recurrent in nature as to make reasonably, practicable the formulation of a general regulation for such condition or situation in the Ordinance”

Schweitzer and Brandt agreed that this variance would set precedence.

Krueger agreed.

Sheppard explained section (c) of the Ordinance. He told Mulders that “Menards was just turned down, for wanting to place their fence on the property line, where there is the same 10-foot setback you have.”

Horen reviewed the Menards variance request that was denied. He explained that Menards created their own hardship.

Schweitzer explained that Mulders has a choice of not building as he is proposing, to meet the setback requirements.

Brandt questioned the placement of the buildings.

Mulders told the members that the Dobson building already exists, and it is non-conforming. The existing front buildings, are non-conforming and this should meet all criteria.

Horen reclused himself from the vote and Vice-Chair Lyday continued with the meeting.

Motion by Zube, supported by Lyday to approve the 10.3-foot variance on the south property line. That the justification pursuant to 18.10(a) is that there is exceptional configuration of the previous buildings to the east of this property, and because of the location of the Dobson building to the south that this would otherwise be a practical difficulty to allow for the build out for the storage use which is really the only use left for this commercial piece of property. 18.10(b) that it is a practical difficulty otherwise to

have the different configuration, you would have building perpendicular to the existing travel lanes and so in order to maintain snow removal, vehicular access and the ability to back a 40 foot trailer into a 48 foot structure you need to have that separation to allow a 60 foot plus parking or turning area in order to accommodate the turning area to have the new building on the south property line up with the existing building on the south. And for section 18.10(c), this is not a situation that is likely to repeat itself or be recurrent in the Township making it necessary to amend the Ordinance because we do not anticipate that there will be so many circumstances where we have both non-conforming structures on two adjoining lots creating the hardship and making it difficult to build out the northernly piece of property without intrusion into the southernly piece of property, which is also non-conforming and 5 feet from the property line.

Roll call vote:

Yes: Lyday, Zube

No: **Brandt, Krueger, Schweitzer**

Absent: None

Motion denied

Motion by Zube, supported by Lyday to approve the 5.3-foot variance on the north property line. That the justification pursuant to 18.10(a) is that there is exceptional configuration of the previous buildings to the east of this property, and because of the location of the Dobson building to the south that this would otherwise be a practical difficulty to allow for the build out for the storage use which is really the only use left for this commercial piece of property. 18.10(b) that it is a practical difficulty otherwise to have the different configuration, you would have building perpendicular to the existing travel lanes and so in order to maintain snow removal, vehicular access and the ability to back a 40 foot trailer into a 48 foot structure you need to have that separation to allow a 60 foot plus parking or turning area in order to accommodate the turning area to have the new building on the south property line up with the existing building on the south. And for section 18.10(c), this is not a situation that is likely to repeat itself or be recurrent in the Township making it necessary to amend the Ordinance because we do not anticipate that there will be so many circumstances where we have both non-conforming structures on two adjoining lots creating the hardship and making it difficult to build out the northernly piece of property without intrusion into the southernly piece of property, which is also non-conforming and 4.7 feet from the property line.

Roll call vote:

Yes: Zube, Lyday

No: **Krueger, Schweitzer, Brandt**

Absent: None

Motion denied

Mulders told the members, “You will (see me again), in court, I think we can win this now, or Bangor Township gets it. I am so frustrated with trying to work with Monitor Township”

Motion by Horen, supported by Brandt to adjourn.

Motion carried.

The meeting was adjourned at 8:35 p.m.
Respectfully,

Joy Krueger
Secretary
Jk/djp