

MELROSE TOWNSHIP ZONING BOARD OF APPEALS SEPTEMBER 25, 2019

CALL TO ORDER: The meeting was called to order at 7:00pm by Ch. Lee.

ROLL CALL: Members Present: Ch. Lee, Bart Wangeman, David Beier, Todd Reeves, Lyon Stevens, Zoning Administrator Randy Frykberg, and Recording Secretary Bunny Marquardt

APPROVAL OF MINUTES: David made the motion to approve the minutes as corrected, Bart seconded. ALL AYES. This was for both cases 1 and 2.

Ch. Lee opened the Public Hearing by giving the instructions for the Public Hearing and he then stated the following:

Case # ZBA 3-2019 Walloon Lake Holdings, LLC request for two 2.5' variances to a side yard setback so a parcel in the C-3 Village Commercial District can be split. The address is 04120 North M-75 (Property ID #15-010-009-089-15)

Randy stated that this Parcel houses 2 buildings: The Antique Shop and the Candy Store. When these two parcels were moved onto the lot, side yard setbacks were applicable only on the outside. Now the applicant wants to split the lot and would need 10' between each building on the inside but there is only 15'. Therefore, he is asking for 2 variances. He went on to read the following:

Walloon Lake Holdings, LLC has applied for a 7.5' side yard setback rather than a 10' side yard setback so that the C-3 Village Commercial lot can be split. This district permits multiple main structures and does not require a minimum floor space per structure or set a maximum percentage lot coverage per lot or parcel. Two structures, 15' apart, are on this lot and side yard setbacks are met for this single lot.

Ch. Lee stated this is C-3 District and questioned side yard setbacks. and Bart asked How can we grant a variance for not a legal lot? Jonathon Borisch, the applicant responded that he came here first and then the PC for the lot split. Aaron Nordman from Performance Engineering stated that the applicant wanted to create two lots so succession of ownership could occur and make these two legal lots.

Ch. Lee suggested that Mr. Borisch ask for only one variance and he responded, "I did not think of it." Aaron went on to say Jon encourages individual ownership and making it two lots would allow for future ownership. Randy explained that the variance is only where the buildings exist.

The REQUEST was amended to ask for one 5 ft. variance for a side yard setback on the south side of the north building.

Charlie Zimmer stated he had not heard a compelling reason not to accept this variance request. David responded that the ZBA is the court that decides when the zoning ordinance does not address existing conditions.

Ch. Lee closed the Public Hearing and then read the Findings of Fact as prepared by Randy.

1. The "L" shaped 1.52-acre (over 66,200 square feet) parcel at 04120 North M-75 in the Village of Walloon Lake, identified more accurately as Property ID #15-010-009-089-15, is in the C-3 Village Commercial District.
2. C-3 regulations do not include any minimum floor area requirements.
3. C-3 regulations require a lot area of a minimum of 6,600 square feet with a minimum width of 66' at the front line.
4. C-3 regulations require side yards of at least 10' if 2 buildings do not share a common wall
5. The two existing structures, which are used commercially, are 15' apart.
6. Present side yard setbacks on the single lot exceed the minimum regulations. These yards would not change if the request is granted.
7. The required 300' notices were mailed to owners of 38 properties on September 6, 2019.
8. The required Public Hearing Notice was published in the Saturday, September 7, 2019 edition of the Petoskey News Review.

Ch. Lee then read the Section 12.4 C Variance Criteria:

1. The variance will not be contrary to the public interest or to the spirit and intent of the Ordinance. The buildings already exist in this configuration. There is 15' between the two buildings on this lot. Multiple main uses are allowed in this district and there is no maximum percentage lot coverage stipulated. If the lot was allowed to be split so that each building is on its own lot, there would be 15' between buildings, or 5 ft. on the north building. the PC needs to address the lot split. ALL AGREED

2. The variance does not permit the establishment within the zoning district of any use that is not permitted by right within the district. Commercial uses are an allowed use in the C-3 District. ALL AGREED

3. The granting of the variance will not cause any adverse effect to property in the vicinity or in the Zoning District or the Township. The commercial buildings have been on the lot and in use for several years. Granting a 5 ft. side yard setback variance will not have a negative impact on property values and would maintain the general character and trend of Melrose Township development. ALL AGREED

4. Does the variance relate only to property under control of the applicant? Yes. ALL AGREED

5. Does the variance affect only property subject to exceptional or extraordinary circumstances or conditions that do not generally apply to other property or uses in the vicinity? The Board finds that two structures are presently on the lot and are separated by 15'. The structures were legally permitted and meet zoning regulations. It is unique that two main structures are on one lot. Therefore, granting the 5' variance for a side yard setback between two existing legal structures would affect only property subject to exceptional or extraordinary circumstances or conditions. 4 WOULD AND 1 WOULD NOT

6. The proposed project meets the above cited 5 criteria from Section 12.4 C for a variance. 4 MEEETS AND 1 DOES NOT MEET

7. Granting the variance would observe the Spirit of the Ordinance and provide for substantial justice. ALL AGREED

Due to the findings of fact as stated above, Todd Reeves made the motion to approve Walloon Lake Holdings, LLC August 22, 2019 Variance Application for a 5' side yard setback variance for the South Side of the North building so that lot 15-010-009 -089-15 can be divided between the existing structures at 04120 North M-75 (Property ID# 15-010-009-089-15). This approval is contingent on the PC approval of the lot split. Lyon seconded. ALL AYES, MOTION PASSED

**Ch. Lee opened the second Public Hearing and read the following:
SUBJECT: Case # ZBA 4-2019 Walloon Lake Holdings, LLC request for a 10' front yard setback variance on three vacant lots (ID #15-010-009-089-40, -009-093-10 & 009-093-20).**

Walloon Lake Holdings has applied for a 10' front yard setback variance from the 25' front yard setback regulation (certain exceptions, as indicated below) so a commercial building can be built on three vacant lots with parking and deliveries in the rear of vacant parcels #15-010-009-089-40, 15-010-009-093-10 and 15-010-009-093-20. These vacant parcels are on the east side of M-75, across from the intersection of M-75 and Winsor St, boarded on the north by the Launch Ramp Parking Lot and on the south by an ingress/egress paved driveway to the parking lot behind the lots.

The front yard setback regulation is 25', "provided that where established buildings on adjacent lots vary from this minimum, a new building shall be constructed with a front yard of no less depth than the average front yards of those buildings located on each side of the proposed building and provided that this provision shall not be interpreted to allow a front yard of less than fifteen (15) feet."

Randy stated the PC had reviewed the request for the same type building in this spot, but with no entrance to the commercial first floor businesses from the rear and the need for a height variance. The building as presented for the required pre-application meeting was denied and the applicant removed it from the requested PUD. The building as initially proposed would have required a height variance, but the building was redesigned so no height variance is needed and entrances and deliveries are now shown in the Rear. As shown, it would require a reduced front setback to the street. Randy went on to say that if the variance is granted it would have to go to PC for a site plan review. Aaron from Performance Engineering added that because of curve of the road it does not have same impact as all buildings with same setback. Visual impact is important and adding 12 parking spaces in the rear is important. Jon B. stated the building would have retail on first floor, office space on second floor and condos on top floor.

Leonard Meadows spoke that he is opposed to this variance because of traffic and needing a clear vision and added that the pole on corner has scars as blind spot exists where the cross walk is located. It is a real safety concern and he disagrees with the request. Tim Lagasse added that the PC will insist that there is adequate parking spaces and he is in support to granting this variance.

Errol Lee went on to add that 12 or more spaces could be added in rear of property where the dirt is located. Aaron stated that it is most beneficial to the land if we have these 12 additional spaces.

Ch. Lee closed the Public Hearing and proceeded with the reading of the Findings of Fact.

The ZBA Board finds that:

1. The three vacant parcels total approximately 0.95 acres.
2. C-3 Village Commercial allows various commercial uses and apartments above.

3. C-3 Village Commercial setback regulations are: Front, 25' (down to 15' under certain conditions); 25' Rear and 10' Side.
4. The two northerly parcels are irregularly shaped.
5. The three vacant lots are on the inside of a curve in M-75 at the northern edge of the Village.
6. Structures across the road are setback between 10' and 15' from the road right-of-way and the adjacent structures are 85' front yard setback/
7. The required 300' notices were mailed to owners of 38 properties on September 6, 2019.
8. The required Public Hearing Notice was published in the Saturday, September 7, 2019 edition of the Petoskey News Review.
9. Adjacent structures are compliant and meet the 25' setback:

Ch. Lee read the section 12.4 C Variance Criteria:

1. The variance will or will not be contrary to the public interest or to the spirit and intent of the intent of the Ordinance. 3 Will (Errol, Todd and David because 12 parking spaces can be at the rear of the building and 2 voted will not (Bart and Lyon).

2. The variance does not permit the establishment within the zoning district of any use that is not permitted by right within the district.
Meets. ALL AGREED

3. The granting of the variance will or will not cause any adverse effect to property in the vicinity or in the Zoning District or the Township.
2 voted will (David and Todd) and 3 voted will not Lyon, Bart and Errol).

4. Does the variance relate only to property under control of the applicant? YES. ALL AGREED.

5. Does the variance affect only property subject to exceptional or extraordinary circumstances or conditions that do not generally apply to other property or uses in the vicinity? The three parcels, even combined, are relatively small and the two northerly parcels are irregularly shaped. The area is on a curve of the highway and is the northerly entrance to the Village. Therefore, granting the variance would or would not affect only property subject to exceptional or extraordinary circumstances or conditions. 2 votes would (Lyon and Bart) and 3 voted would not (Errol, David and Todd).

6. The proposed project meets or does not meet the above cited 5 criteria from Section 12.4 C for a variance. 2 voted meets (Lyon and Bart) and 3 voted does not meet (Errol, David and Todd).

7. Granting the variance would or would not observe the Spirit of the Ordinance and provide for substantial justice. 2 voted would (Lyon and Bart) and 3 voted would not (Errol, David and Todd).

Due to the findings of fact as stated above, Todd moved to deny Walloon Lake Holdings, LLC August 22, 2019 Variance Application for a 10' front yard setback variance (leaving 15' between the proposed structure and the M-75 Right-of Way) for lots ID # 15-010-009-089-40, -009-093-10 and -009-093-20. Seconded by David. Todd, David and Errol voted Yes, and Bart and Lyon voted No. Motion Passed 3 to 2

OTHER MATTERS TO BE REVIEWED BY THE ZBA: The Zoning Ordinance books all need to be updated. A whole new book would be best with members phone numbers and emails. They will be handed out at the next meeting.

REPORT FROM THE PLANNING COMMISSION: Bart said they had 3 new members and had no meetings in July and August. They are going over procedures for the new members. The ZBA would like the PC to address the situation where 2 buildings are on the same lot.

NEXT MEETING SCHEDULED for Oct. 16 (tentative date at 7 pm)

MEETING ADJOURNED AT 9:50 PM

RECORDING SECRETARY: BUNNY MARQUARDT _____ DATE

ZBA SECRETARY: TODD REEVES _____ DATE