

FLUSHING TOWNSHIP ZONING BOARD OF APPEALS
DECISION ON VARIANCE REQUEST OF FIRST STOP PROPERTIES, LLC,
REGARDING SET BACKS TO PARCEL NO. 08-02-300-009

FACTS

First Stop Properties, the owner of the property at 8490 W. Mt. Morris Road, Flushing, Michigan, Parcel No. 08-02-300-009 (the "Property"), submitted a site plan (Exhibit 1) to the Zoning Administrator for authorization to construct a gasoline service station and convenience store at the Property. The Property is zoned C-2, Sec. 36-701 of the Flushing Township Zoning Ordinance. Exhibit 2. Construction and operation of the proposed gasoline service station and accompanying convenience store are permitted to properties zoned C-2, provided (1) the proposed use satisfies the setback requirements stated in Sec. 36-701, as amended October 4, 2005, and (2) is authorized by a Special Use Permit (SUP) granted by the Planning Commission, Sec. 36-1804 (H).

Sect. 36-701 generally requires a C-2 property have a minimum lot area of 22,500 ft.², a width and depth of 150 feet, and front, side and rear setbacks of 50 feet. Generally, setbacks are measured from the property (lot) lines, except when a property abuts a public road, in which case, the setback is measured from the road right-of-way (ROW) line. The Property at issue occupies the northeast corner of the intersection of Mt. Morris and McKinley Roads, with the front (south) of the Property abutting the Mt. Morris Road ROW and the west side abutting the McKinley Road ROW. In this case, the front setback is measured from the Mt. Morris Road ROW and the west side setback is measured from the McKinley Road ROW. Sec. 36-200, Page 36-11. (Exhibit 3). Initial review by the Zoning Administrator determined the 50 foot setbacks required by Sec. 36-701 precluded placement of the convenience store and pump canopy as proposed in the site plan.

On May 7, 2026, First Stop Properties submitted a Variance Request Form (Exhibit 4) to the Township. Authority to consider and grant variance requests is placed with the Zoning Board of Appeals under Article 22 of the Township Zoning ordinance, After required notice and publication, a public hearing on the request was held by the ZBA on June 23, 2026. After hearing comments from all persons present who wished to speak on the Request; accepting a letter of Alex Hansen with attached Exhibits A-F (collectively, Exhibit 5); and, accepting a list of court cases submitted by Attorney Roger Isaac (Exhibit 6), the hearing was closed to further comments and was adjourned to July 15, 2006, for the stated purpose of consideration and decision by the Board.

DISCUSSION

The continuation was due, in part, to enable research into the effect of Footnote (h) of Sec. 36-701, specifically, whether the ZBA had the authority to exercise the discretion provided the Planning Commission under that section or whether exercise of that authority was limited to the Planning Commission. The question arose, as the intended use, in addition to relief from

setbacks, relief generally sought by way of variance from the ZBA, also requires a SUP, which is solely the province of the Planning Commission. It was decided the authority granted the ZBA subsumes the discretionary authority afforded the Planning Commission by Footnote (h) and it would be a better use of time and resources for the ZBA to proceed with consideration and decision on the pending request.

Sec. 36-2208(A)(7) of the Ordinance provides, “The board may impose conditions upon the granting of the variance...” Under Sec. 36-2209(A), the ZBA is tasked with the authority to consider appeals from the Planning Commission including, “decisions on Special Land Use Permits and site plans.” Sect. 36-2209(B)(6) provides, “In making a determination on an appeal, the board shall have all the powers of the administrative official or body the appeal is taken from...” While the variance request does not involve the Board’s appellate jurisdiction, Sect. 36-2209(B)(6) provides guidance as to the Board regarding appropriate “conditions it may impose upon the granting of the variance.” Under the circumstances, the Board determined it would be more efficient for all concerned, if it proceeded to decision on the variance request. That being said, in reaching its decision, the Board was guided in large part by the substance of Footnote (h). and the revised site plan submitted by First Stop’s architect prior to the adjourned hearing. The revised site plan (Exhibit 7) is incorporated as part of this decision.

DECISION

For the reasons discussed at the adjourned hearing and summarized below, the Variance Request is granted on a 5-0 vote of the Zoning Board of Appeals, as follows:

1. The rear (north) setback shall be 22 feet from the north property line.
2. The east side setback shall be 50 feet from the east property line.
3. The front (south) setback shall be 30 feet from the North Mt. Morris Road right-of-way line.
4. The west side setback shall be 30 feet from the East McKinley Road right-of-way line, except for the northerly 60 feet of the set back line, which shall be 28 feet from the McKinley Road right-of-way line.

In reaching this decision, the Board determines applicant has demonstrated:

1. The strict enforcement of the 50 foot setbacks required by Sec. 36-701 unreasonably impairs use of the Property for a service station and convenience store, permitted uses for properties zoned C-2, provided the property is granted a special use permit, discussed below. The immediately adjoining properties to the north and east are zoned C-2 and are currently used for permitted C-2 purposes. The same is true for the property at the northwest corner of McKinley and Mt Morris Roads. The southwest corner of the intersection is a large parcel of vacant land zoned RSA and the southeast corner, also a large parcel zoned RSA, with a large barn approximately 200-250 feet from the Mt. Morris Road right-of-way (the structure

nearest Mt. Morris Road) with a residential structure located to the south of the barn. There is no evidence indicating operation of the proposed service station and convenience store will adversely affect the use, enjoyment or value of the surrounding properties.

2. The need for the variance is due to the unique circumstances of the property. The property, measured by its legal description, is 200 feet deep, north to south and 218.25 feet wide, east to west, resulting in an area of 43,600 ft.² Taking into account the south and west setbacks are measured from the Mt. Morris and McKinley Road right-of-ways, not the property lines, the usable area of the Property is reduced by approximately 21,500 ft.² this significantly reduces the viability of the Property for many commercial uses.

The 50 foot setback requirements came into play with the amendment of Section 36–701 on October 4, 2005. The amendment generically applies the setbacks to all properties zoned C-2. Recognizing this “one size fits all” approach could unfairly restrict legitimate commercial uses of

C-2 properties, the amendment includes Footnote (h), which provides significant discretionary latitude to the Planning Commission to adjust setbacks on a property by property basis. This process should eliminate the need, in many cases, for the property owner to request relief from the ZBA. In cases where the relief requested is outside that provided for in the discretionary authority granted the Planning Commission, the property owner may seek relief from the ZBA, either directly or by appeal from the decision of the Planning Commission. The need for relief is unique to the Property at issue, as the Property is affected by two ROWs, which, with the imposition of 50 foot setback requirements, unfairly restricts a reasonable commercial use of the property. Further, the Board believes any issues that may result from the relief granted by this decision can be adequately addressed by the Planning Commission in the consideration of the necessary SUP.

3. The Board determines the conditions and circumstances unique to the Property were not created by the owner/applicant or its predecessor in title, within the time following the effective date of the provision alleged to adversely affect the Property. In this case, the effective date is October 4, 2005, amendment of Sec. 36-701 Clearly the owner/applicant did nothing, at any time, to create the problem resulting from the implementation of 50 foot setbacks to the Property. As far as can be determined, the Property was actively used as a gasoline service station from approximately 1964 to sometime in the late 1990s. Since prior to 2000, the Property has been unused for any purpose, with the remains of the service station growing more decrepit with each passing year.

4. The requested variance does not confer special privileges that are denied other properties similarly situated and in the same zoning district. The only advantage to the variance vis-à-vis other C-2 properties located in Flushing Township is the possibility of locating a business on a smaller property than is otherwise available to other C-2 properties. In this regard, it should be noted there are very few properties zoned C-2 in Flushing Township. All of these properties have available to them the option to request relief from the current 50 feet setbacks,,,

either through the ZBA or the Planning Commission. Consistent with the Master Plan, the majority of C-2 zoned properties are on Mt. Morris Road in proximity to the Property at issue. In the event additional property is zoned C-2, in all likelihood, it will be located on Mt. Morris Road in proximity to the McKinley Road intersection. These properties and any existing C-2 property seeking to renovate or expand may incur practical difficulties accommodating the Mt. Morris Road right-of-way. The same avenues of relief used by First Stop with respect to its Property are available to these properties.

5. Granting the variance insures “the spirit of the ordinance is observed, public safety secured and substantial justice done.”

In deciding appropriate relief, the Board gave careful consideration to the revised site plan and provisions of Footnote (h). In the revised site plan, the owner made modifications to the convenience store building, with the result no part of the building or any other structure is within 50 feet of the east property line. This adjustment satisfies the 50 foot setback from the east property line consistent with the requirement of Sec 36-701.

The footnote allows for a rear setback of not less than 20 feet and the Board determined a setback of 22 feet from the rear (north) property line would be appropriate. The setback enables supply trucks to pull out of the fueling area without the need to back up. Likewise, the footnote provides, within the discretion of the Planning Commission, buildings and other structures may be placed up to 30 feet of any road right-of-way. The variance establishes setbacks along the Mt. Morris Road ROW at 30 feet and along the McKinley Road ROW at 30 feet, except for the northerly 60 feet, which is established at 28 feet to accommodate the southwest corner of the building if necessary.

The Board attempted to structure relief in accordance with the discretionary authority granted the Planning Commission in Footnote (h). To the extent this results in the operation of a gasoline service station on a property smaller than might otherwise be required by the Zoning Ordinance, the Board notes the Ordinance provisions applicable to consideration of a Special Use Permit to operate a gasoline service station provide: “The minimum lot area for gasoline, filling and service stations shall be fifteen thousand (15,000) square feet, for stations having no more than... two (2) pump islands. There shall be an added... one thousand five hundred (1500) square feet for each additional pump island.” Sec. 36-1804(H). The site plan provides for three pump islands, in which case, the minimum lot size for the proposed gasoline service station would be 16,500 ft.². The usable lot space, measured from the right-of-way lines is approximately 22,000 ft.².

The Property is particularly suited as a location of a gasoline service station and convenience store. It is at the intersection of two major roads, including Mt. Morris Road, a main corridor of ingress and egress to the Township, providing direct access to I-75 and one of the two bridges in the Township crossing the Flint River. Additionally, First Stop, directly, or through related entities, owns and operates a number of service station/convenience stores in the area and has done so successfully for a number of years. Enabling a viable business to operate at a location that has been vacant for over 25 years is believed to be a benefit, not only to the owners, but the public at large, with no adverse consequences to the other property owners in the immediate vicinity.

Any person with standing may appeal this decision to the Genesee County Circuit Court in accordance with the procedures provided under Michigan law.