



# ZONING BOARD OF APPEALS

June 9, 2014

# **CITY OF PORTAGE ZONING BOARD OF APPEALS**

**Monday, June 9, 2014**

**(7:00 pm)**

**Portage City Hall  
Council Chambers**

## **CALL TO ORDER**

## **PLEDGE OF ALLEGIANCE**

## **ROLL CALL**

## **APPROVAL OF MINUTES:**

- \* April 28, 2014 Special Meeting

## **OLD BUSINESS:**

## **NEW BUSINESS:**

- \* 1. ZBA #13-14 Mulder Glass Inc., on behalf of Tom & Lynn Hartman, 1127 Schuring Road :  
Requesting a variance to construct a 13-foot by 21.5-foot sunroom 4.5 feet from a swimming pool where a minimum 10-foot building separation is required.

## **OTHER BUSINESS:**

Election of Officers

## **STATEMENT OF CITIZENS:**

## **ADJOURNMENT:**

Star (\*) indicates printed material within the agenda packet

CITY OF PORTAGE ZONING BOARD OF APPEALS

**DRAFT**

Minutes of Special Meeting – April 28, 2014

The City of Portage Zoning Board of Appeals meeting was called to order by Lowell Seyburn at 7:00 p.m. in the Council Chambers. One person was in the audience.

**MEMBERS PRESENT:** Lowell Seyburn, Tim Bunch, Glenn Smith, Michael Robbe, Doug Rhodus, Jeffrey Bright, and Randall Schau.

**IN ATTENDANCE:** Jeff Mais, Zoning & Codes Administrator and Charlie Bear, Assistant City Attorney

**APPROVAL OF THE MINUTES:** Bunch moved and Smith seconded a motion to approve the December 9, 2013 minutes as submitted. Upon voice vote, motion was approved 7-0.

**OLD BUSINESS:**

**NEW BUSINESS:**

**ZBA #13-13, 7518 South Westnedge Avenue:** Mais summarized the request for a Temporary Use Permit to allow outdoor wood product and accessory building sales from April 29, 2014 through October 29, 2014. Roy Meyer stated he had been in the wood products business for over 30 years and operated similar sales at a number of communities in the area. Schau stated his concern was that because the Temporary Use would be unmanned the site's maintenance may be neglected. Mr. Meyer explained he would first have the site re-graded where the inventory would be located and weed control would be regularly conducted throughout the duration of the permitted time. He stated that if sales warranted he would likely have a salesperson on site during peak times, but in any event intended to regularly monitor the property. Bright inquired how the unmanned sales would work. Mr. Meyer stated he would have literature available with contact information and that customers could call and either arrange delivery of the item on site or place an order for something custom made. Smith inquired if the applicant was just selling accessory buildings. Mr. Meyer stated items like picnic tables, docks, and boat lifts would also be available. Bunch inquired if the buildings would be secured/anchored. Mr. Meyer stated they would not. Bunch inquired what he would do for signage. Mr. Meyer stated he intended to use panels on the existing freestanding sign and also have a temporary banner. Rhodus inquired if the site would be fenced. Mr. Meyer said no. Seyburn suggested it might be helpful for the applicant to advise Portage customers of the city's accessory building requirements.

A public hearing was opened. No one spoke for or against the request. The public hearing was closed.

A motion was made by Bright, seconded by Smith to find that the application met the requirements for Temporary Uses and that a Temporary Use Permit be approved to allow outdoor wood product and accessory building sales from April 29, 2014 through October 29, 2014, conditioned upon 1) the permit be eligible for administrative review and approval in 2015, 2) all inventory must meet minimum B-3 setbacks, and 3) the site must be regularly maintained and monitored. Upon roll call vote: Robbe-Yes, Rhodus-Yes, Schau-Yes, Bunch-Yes, Smith-Yes, Seyburn-Yes. Motion passed 7-0.

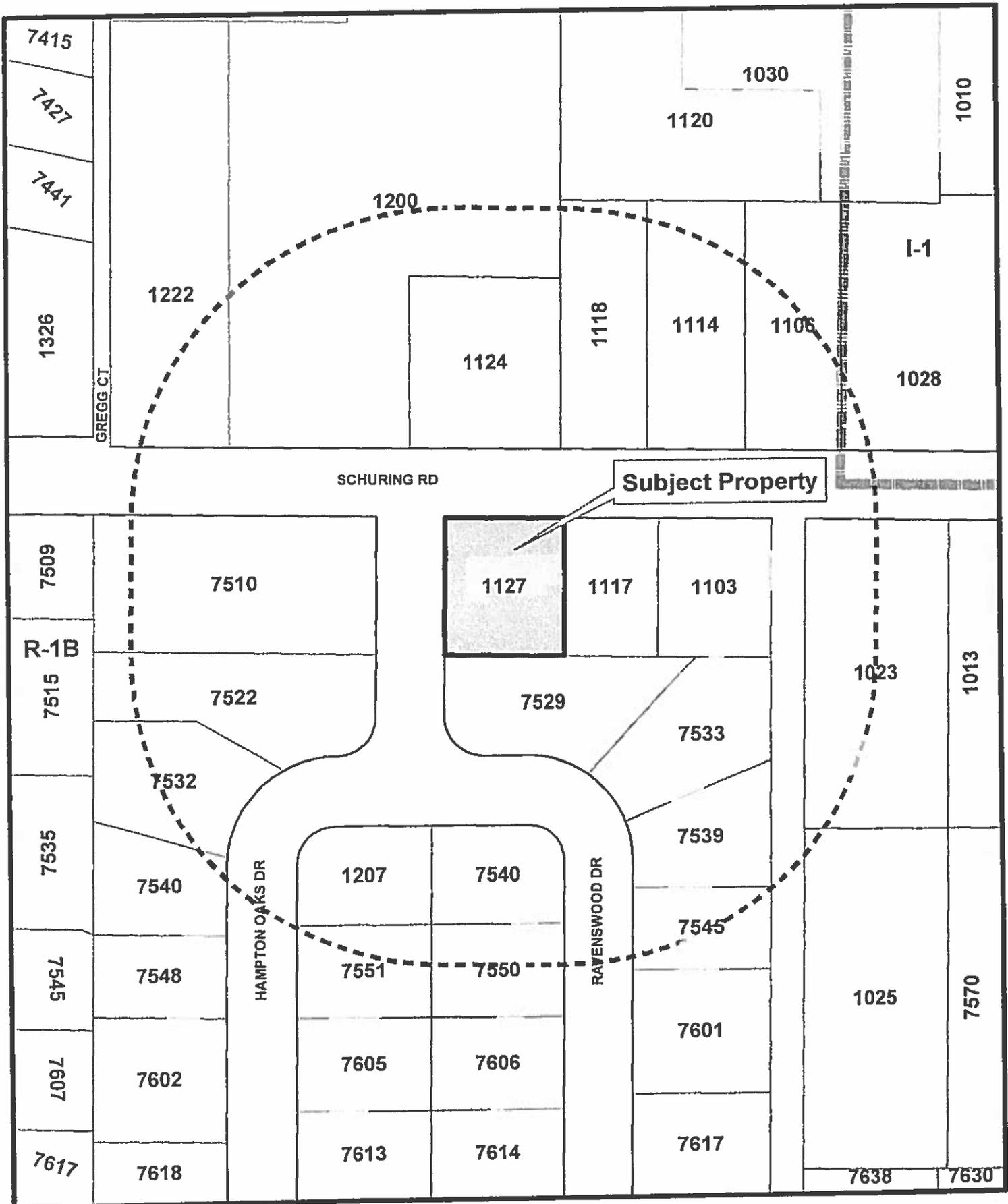
**OTHER BUSINESS:**

**STATEMENT OF CITIZENS:** Seyburn stated that due to schedule changes he does not seek re-election as chair during the next officer elections.

**ADJOURNMENT:** There being no further business, the meeting was adjourned at 7:24 p.m.

Respectfully submitted,

Jeff Mais  
Zoning & Codes Administrator



Subject Property

# ZBA 13-14

## 1127 Schuring Road

-  Zoning Boundary
-  Subject Properties
-  Notification Area



1 inch = 120 feet

13-1000025



RECEIVED

Department of Community Development

MAY 13 2014

COMMUNITY DEVELOPMENT

ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

Application Date 5-8-14

Name of Applicant MULDER GLASS, INC - SILAS MULDER [Signature]

Applicant's Address 4244 RAVINE RD, KALAMAZOO, MI 49006 Phone No. (269) 345-6796

Name of Property Owner (if different from Applicant) TOM + LYNN HARTMAN

Address 1127 SCHURTING RD. Phone No. (269) 327-2664

Address of the Property that is the subject of this Application: Street Address 1127 SCHURTING RD.

For Platted Property: Lot of Plat

[If The Property Is Unplatted, the Legal Description is needed. Please attach on a separate sheet.] SEE ATTACHED

Applicant's interest in Property that is the subject of this Application: SUNROOM BUILDER

Application Fee (Residential Uses) (All Other Uses)

Type of Appeal (Please check one of the following bold choices and provide the requested information):

X Variance from Zoning Ordinance: Article 42 Section 121 Paragraph A

Regarding: Use Area Yards

Setbacks Parking Other

Reason for Request (Also complete page 2 of application): REQUEST ENCLOSING EXISTING DECK, LOCATED 4'-6" FROM POOL EDGE, WITH THREE SEASON ROOM.

Appeal of Administrative Decision: Article Section Paragraph

Reason for Request:

Interpretation of the Zoning Ordinance: Article Section Paragraph

Reason for Request:

A Temporary Permit for: Building Use Other Approval

Article Section Paragraph

Reason for Request:

FOR STAFF USE

Table with 3 columns: Application Number (13-14), Filing Date (5/13/14), Tentative Hearing Date (6/9/14), Previous Application Filed Regarding This Property (NO)

### Reason For Variance

1. Please explain how the property has characteristics such as narrowness, shallowness, irregular shape, topography, or natural features that prevent compliance with the Zoning Ordinance. (Attach additional sheets if needed.)

-SEE ATTACHED

2. Are the physical characteristics you explained above unique and not shared by neighboring properties? (Attach additional sheets if needed.)

-SEE ATTACHED

3. Can the property be reasonably used for the uses permitted in the zoning district without granting the variance? (Attach additional sheets if needed.)

-SEE ATTACHED

4. Is the variance the minimum necessary to permit reasonable use of the land and buildings, or would a lesser variance be fair and equitable to the applicant as well as logical and just to other property owners in the area? (Attach additional sheets if needed.)

-SEE ATTACHED

5. Explain how the variance would not result in adverse affects on adjacent properties or alter the character of the area. (Attach additional sheets if needed.)

-SEE ATTACHED

6. Explain how the variance would not result in increased traffic congestion, noise, or other potential concerns, or in dangers from fire, flood or other hazards, that would be detrimental to the property or to the area. (Attach additional sheets if needed.)

-SEE ATTACHED

7. Is the reason for the request, the practical difficulty or the hardship created, due to an act of the applicant or due to an act by the previous property owner? (Attach additional sheets if needed.)

-SEE ATTACHED

8. Explain how the variance would fulfill the spirit and intent of the Zoning Ordinance. (Attach additional sheets if needed.)

-SEE ATTACHED

  
Signature of Applicant

5-12-14  
Date



5/13/2014

### **Hartman Sunroom – Zoning Board of Appeals Explanation Letter**

To: Zoning Board of Appeals Members & Portage Zoning Officers

From: Silas Mulder, on behalf of Tom & Lynn Hartman (property owners)

Mr. & Mrs. Hartman have asked me to request a variance to enclose their existing deck with a three season room. The existing deck foundation posts are located 4'-6" from the water's edge of the existing in-ground pool. Part of the existing deck will remain unenclosed.

The proposed three season room will consist of aluminum wall framing, with safety glass windows. The roof is to be structural insulated aluminum panels, with shingles on the exterior. The existing deck posts, footings, and framing are to remain as is, subject to being brought up to code and checked for any deterioration.

The Hartmans purchased this home with the pool and deck existing as they currently are. They would like to enclose the existing deck with a three season room to enjoy the space and the backyard without bugs and wind, and also extend the seasons.

Section 42-1315 of the Portage Code of Ordinances states that "Swimming pools may be constructed immediately adjacent to a porch or covered deck/patio, as long as the water's edge is at least ten feet from the main building or any detached accessory building vertical wall enclosure (not including support columns with dimensions of less than 12 inches)." Portage Zoning Officials verified that the zoning code does allow a deck with a framed and shingled roof overhead to be freely constructed 4'-6" away from the water's edge of a swimming pool.

This project was submitted under consideration as a "covered deck". The Portage Zoning department was gracious in having two staff meetings to see if this could be considered a "covered deck", but determined that this is an "enclosed deck" because it has glass walls. Since section 42-1315 only mentions a covered deck, and not an enclosed deck, they are forced to consider this space as a "main structure" along with the house. The main house structure is required to sit back 10' from the water's edge of a pool.

We believe that this deck enclosure has unique characteristics that make it different than the main home structure, and that it warrants a review by the zoning board of appeals to see if it can be constructed. It makes sense to not place basement or crawlspace walls 2' or 3' away from an in-ground pool, in case of possible flooding or foundation wall issues. This may be the origin and intent of the 10' separation rule. This proposed deck enclosure would have post footings on concrete piers, and those footings would be the same size (or smaller) than what would be required for a 24' wide "covered deck" on post footings. The same footings would be used as those used on an allowed covered deck.

Since the deck is existing at 13' projection now, cutting back and reconfiguring the deck framing to reduce our setback has practical and aesthetic difficulties. The unenclosed deck portion would remain at 13'. The area underneath the deck includes an existing hot tub, and moving back the support posts would interfere with the use of this area. For the three season room, we believe that a 13' projection is a reasonable size in order to accommodate a table set, with chairs that pull out in both directions, and still allow room to walk by on either side.

It has been suggested that placing a roof within 10' of a pool makes it more enticing to jump into the pool. Since Portage Zoning Codes do allow for a covered roof 4'-6" from a pool, the placing of tempered safety glass walls under that roof would do nothing to encourage or discourage this. In this particular instance, there already exists a second story flat railing platform from which to easily jump into the pool, if one was inclined. We suggest that installing tempered glass sliding windows along the front wall would take away a convenient platform that exists now.

It is our hope that this deck enclosure can be built, and still preserve both the intent and integrity of the zoning code, and the general well-being of the citizens of Portage.

Respectfully Submitted,

*Silas Mulder*

Cell: (269) 217-9858



FILE COPY

# HARTMAN DECK COVER - SITE PLAN 4-22-14

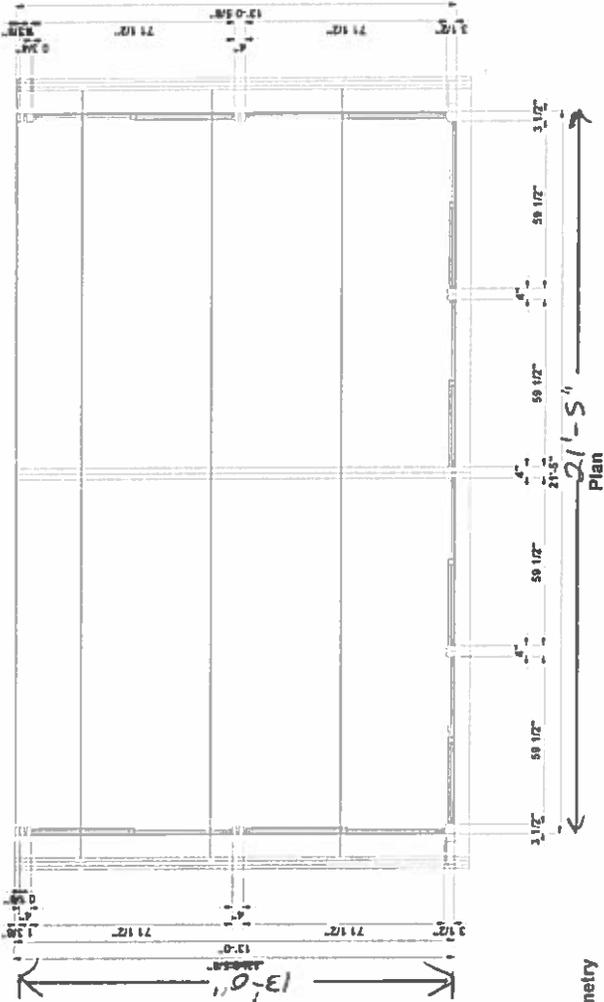


Hartman Cathedral Sunroom

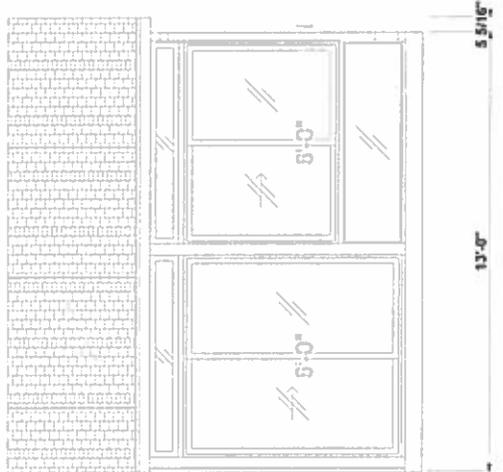
13' x 21'-5"

Mulder Glass, Inc.

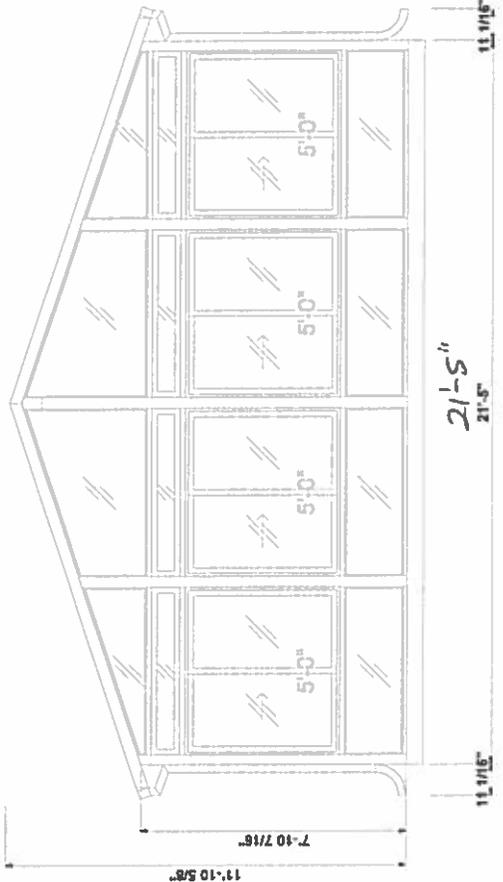
4-22-14



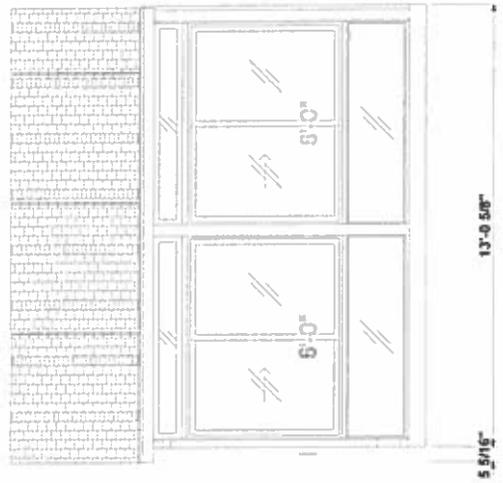
HARTMAN ENCLOSED DECK 5-12-14



Left Elevation



Front Elevation



Right Elevation



SIMILAR ENCLOSED DECK/3 SEASON ROOM

INSTALLED BY MULDER IN 2008.

4797 TIFFANY AVE. PORTAGE 49002

**Property Address**

1127 SCHURING RD  
PORTAGE, MI 49024

**Owner Address**

HARTMAN, THOMAS T & L K  
1127 SCHURING RD  
PORTAGE, MI 49024



**General Information for Current Tax Year**

**Parcel Number:** 000164800  
**Property Class Name:** Residential Improved  
**ECF Neighborhood:** 8000  
**School District:** Portage  
**State Equalized Value:** \$81600  
**Taxable Value:** \$81600  
**Exemption Percent:** 100%

**Land Information**  
**Acreage:** 0.352  
**Year Built:** 1965  
**Total Floor Area:** 1672 sq. ft  
**Lot Area (GIS):** 15516 sq. ft

**Legal Information**

316-42/18 SEC 16-3-11 BEG AT A PT 212.37 FT W OF NE COR W1/2 NE1/4 SW1/4 SEC 16 TH S PAR N&S1/4 LI SD SEC 165 FT TH W PAR E&W1/4 LI 116.0 FT TH N PAR E LI SD SEC 165 FT TO E&W1/4 LI SEC 16 TH E ALG E&W1/4 LI 116.0 FT TO PL OF BEG

**Disclaimer**

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**TO:** Zoning Board of Appeals **DATE:** May 30, 2014  
**FROM:** Vicki Georgeau, <sup>VA</sup> Director of Community Development  
**SUBJECT:** ZBA #13-14; Mulder Glass, Inc., on behalf of Tom & Lynn Hartman, 1127 Schuring Road; R-1B, One Family Residential  
**CODE SECTIONS:** 42-1315(A)(1); Swimming Pool Location, p. CD42:197  
**APPEAL:** Requesting a variance to construct a 13-foot by 21.5-foot sunroom 4.5 feet from a swimming pool where a minimum 10-foot building separation is required.

**STAFF RECOMMENDATION:**

The applicant requests the above variance per the enclosed application, site sketch, letter of explanation and related materials. The subject property is improved with a 1,672 square-foot walk-out dwelling constructed in 1961, an 836 square-foot attached garage constructed in 1967, a 612 square-foot in-ground swimming pool constructed in 1961, and a 13' x 40' uncovered deck that extends off the first floor level of the dwelling. No record of a building permit for the deck has been found, but based on aerial photographs and Assessor's records, the deck was constructed by a previous owner around 1984.

The applicant proposes to construct a 13-foot by 21.5-foot sunroom over the existing uncovered deck, which is 4.5 feet from the water's edge of the existing in-ground swimming pool. As information for the Board, when the deck was constructed, no accessory structures, including uncovered decks, were permitted within 10 feet of a swimming pool. However, the swimming pool regulations were amended in 1999 to permit more flexibility to incorporate pools into backyard deck designs, and to clarify setback standards. In particular, 42-1315(A)(1) specifies swimming pools may be constructed immediately adjacent to a porch as defined herein, or covered deck/patio as long as the water's edge is at least ten feet from the main building or any detached accessory building vertical wall enclosure (not including support columns with dimensions of less than 12 inches).

Per the language in the code, a "covered deck/patio" and porch are regulated as the same type of building/structure, and the ordinance language is intended to allow pools in close proximity to covered, yet unenclosed structures with narrow (less than 12 inches) support columns and associated footings/foundations. The code specifies a minimum 10 foot separation between the water's edge of a pool and the main building, enclosed porches and covered porches/decks with larger support columns to prevent footing/foundation damage to the main building and to maintain an adequate separation from the house for safety, emergency access, light and ventilation purposes.

The applicant proposes to build the enclosed sunroom on top of the existing deck, and would tie the roofline into the existing dwelling roofline. As noted above, there is no permit on record for the existing deck, and deck does not meet the Building Code with regard to the existing railings. Further, the existing support columns for the deck are not sufficient to support the proposed sunroom and no information has been provided in regard to the adequacy of the footings for the existing deck. Based on preliminary observations, the existing deck may likely have to be removed and reconstructed to accommodate the proposed sunroom.

The desire to have amenities such as swimming pools or sunrooms is understandable, but does not in itself constitute a practical difficulty, nor is the requested variance the minimum necessary to permit reasonable use of the land and buildings. Conforming or more conforming alternatives are available to the applicant. For example, a roof could be constructed to cover the existing deck (provided the deck is brought into compliance with the code) without the need for a variance. Alternatively, the applicant has been encouraged to consider constructing an enclosed sunroom of 10 feet in depth, which would result in a lesser variance, and a 7.5 foot separation from the water's edge of the pool. For the reasons noted above, the requested variance is not recommended.

**PRACTICAL  
DIFFICULTY:**

None noted by staff. See Suggested Motion form.

**SUGGESTED NON-USE VARIANCE MOTION FORM**

Mr. Chairman:

I move, in regard to ZBA # \_\_\_\_\_, the application by \_\_\_\_\_  
for a variance from \_\_\_\_\_

**be:**

**a. granted** for all of the following reasons:

- 1a. There are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district, which include \_\_\_\_\_;
- 2a. The variance is necessary for the preservation and enjoyment of a substantial property right, the right to \_\_\_\_\_, which is similar to that possessed by other properties in the same zoning district and in the vicinity;
- 3a. The immediate practical difficulty causing the need for the variance request was not created by the applicant;
- 4a. The variance will not be detrimental to adjacent property and the surrounding neighborhood, and;
- 5a. The variance will not materially impair the intent and purpose of the zoning ordinance.

**-Or-**

**b. denied** for one of more of the following reasons:

- 1b. There are no exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district;
- 2b. The variance is not necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district in the vicinity because there are conforming alternatives available such as \_\_\_\_\_.
- 3b. The immediate practical difficulty causing the need for the variance request was created by the applicant;
- 4b. The variance would be detrimental to adjacent property and the surrounding neighborhood, and;
- 5b. The variance would materially impair the intent and purpose of the zoning ordinance.

**c. In addition, the application and supporting materials, staff report, and all comments, discussion and materials presented at this hearing be incorporated in the record of this hearing and the findings of the Board, and that action of the Board be final and effective immediately.**