

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A SPECIAL MEETING HELD ON
OCTOBER 4, 2006

LOCATION: MACOMB TOWNSHIP MEETING CHAMBERS
54111 BROUGHTON ROAD, MACOMB, MI 48042

PRESENT: CHAIRMAN, BRIAN FLORENCE
MEMBERS: EDWARD GALLAGHER
VICTORIA SELVA
DAWN SLOSSON
NUNZIO PROVENZANO

ABSENT: NONE

ALSO PRESENT: COLLEEN OCONNOR, TOWNSHIP ATTORNEY
JEROME R. SCHMEISER, PLANNING CONSULTANT
(Additional attendance record on file with Clerk)

Call Meeting to Order.

Chairman FLORENCE called the meeting to order at 7:02 P.M.

1. Roll Call.

Secretary SLOSSON called the Roll Call. All members present.

2. PLEDGE OF ALLEGIANCE.

3. Approval of Agenda Items. *(with any corrections)*
Note: All fees have been received and all property owners were notified by mail

MOTION by GALLAGHER seconded by SLOSSON to approve the agenda as presented.

MOTION carried.

4. Approval of the previous meeting minutes:

MOTION by GALLAGHER seconded by PROVENZANO to approve the meeting minutes of September 12, 2006 as presented.

MOTION carried.

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PURPOSE OF HEARING:

To consider the requests for variance(s) of Zoning Ordinance No. 10 for the following:

Agenda Number/Petitioner/ Permanent Parcel No.	Zoning Ordinance Section No.
(5) Mark Grabow Permanent Parcel No. 08-04-400-030	Section 10.0402
(6) Odesa Builders, Inc. Permanent Parcel No. 08-36-278-005	Section 10.0323(10)(1)
(7) LJL, Inc. Permanent Parcel No. 08-17-252-001	Section 10.0604(E)(1)
(8) Agree Limited Partnership Permanent Parcel No. 08-34-200-018	Section 10.1706(E)

5. VARIANCE REQUEST FROM ZONING ORDINANCE;
Section 10.0402–Request to allow the use of an AG zone for a limousine service.
Located on North side of 25 Mile Road, 1/4 mile west of Broughton Road;
Section 4; Mark Grabow, Petitioner. Permanent Parcel No. 08-04-400-030.
(Tabled from September 12, 2006)

Chairman FLORENCE read a letter dated October 2, 2006 from Attorney, Charles M. Penzien as follows:

“Please allow this correspondence to serve as our request to adjourn the ZBA hearing which is presently set for October 4, 2006. John Beeding, Jr. remains out of the office for the remainder of this week and accordingly will not be able to attend that hearing date. As such we are requesting that we be allowed to adjourn that hearing for one more month. Your courtesy in this regard is very much appreciated. Please contact me as soon as possible if there is any problem with this request.”

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MOTION by GALLAGHER seconded by PROVENZANO to table the variance request of Section 10.0402--Request to allow the use of an AG zone for a limousine service; Located on North side of 25 Mile Road, 1/4 mile west of Broughton Road; Section 4; Mark Grabow, Petitioner. Permanent Parcel No. 08-04-400-030. The item has been tabled to November 14, 2006 at the petitioner's request.

MOTION carried.

6. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Section 10.0323(10)1-Request to eliminate the 4' setback between the property line and the parking area.
Located on Northwest corner of 21 Mile Road and Gratiot Avenue; Section 36; Odessa Builders Inc., Petitioner. Permanent Parcel No. 08-36-278-005.

Chairman FLORENCE read the findings and recommendations of September 29, 2006. They are as follows:

The petitioner is requesting a variance to eliminate the required 4' setback between the parking area and the property line.

In this instance the property involves Lot 30 of the Erb Industrial Park and a portion of property within Chesterfield Township. The parking area will be split with portions of each of Macomb Township and Chesterfield Township and since a common boundary between the two Townships exist, the 4' space would be required.

On January 20, 2004, the Macomb Township Planning Commission reviewed the plan and took action to approve with among its standard conditions included a condition that the project would have cooperative approval from both Townships as well as any variances that may be necessary with respect to the 4' setback.

RECOMMENDATION:

It is recommended that the variance request be approved since it will enable a parking area to be developed in conjunction with land in Chesterfield Township without the need for a setback separation.

The petitioner submitted a letter dated July 28, 2006 in support of the request and was included into the record as follows:

"The purpose of this letter is to provide a written explanation of the hardship that would be faced by Trinity Territory, LLC should Macomb Township strictly

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enforce the Townships Zoning Ordinance. Section 10.0323, Item 10(1) of the ordinance states: "Where a parking lot abuts a side or rear lot line, the face of the curb shall be located four (4) feet from the property line."

What follows are the four items that must be addressed in the Zoning Board of Appeals Variance application along with our responses.

- 1. How the strict enforcement of the provisions of the Township Zoning Ordinance would cause a practical difficulty or unnecessary hardship and how such enforcement would deprive the owner of right enjoyed by all other owners of property within the same Zoning District.**

Typically businesses along Gratiot have their parking lots aligned parallel to the highway. In this case, the 4' setback required in the Macomb Township Zoning Ordinance would cut across the parking area at approximately a 22 degree angle, eliminating the full frontal exposure to Gratiot Avenue.

- 2. How conditions and circumstances unique to the property are not similarly applicable to other properties located within the same Zoning District.**

What distinguishes this property from other similar properties is that this property is split between the Townships of Chesterfield and Macomb. The Township line cuts across the property in such a way that a triangular piece remains between Lot #30 in Macomb Township and Gratiot Avenue at Erb Drive.

The owner of the property has also drafted an agreement when signed by both Macomb and Chesterfield Townships will promote the successful development of the properties in each Township while maintaining the authority of each municipality over its utilities as well s police and fire services.

Approval by Macomb Township will allow the building on Lot #30 to increase in size by ten percent (10%) generating additional property taxes with no increase in cost to Macomb Township.

- 3. How conditions and circumstances unique to the property were not created by the owner, or his predecessor in title, within the time following the effective date of the provision alleged to adversely affect such property.**

The location of the line separating the two Townships was determined by the municipalities.

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4. **Why the requested variance will not confer special privileges that are denied other properties that are similarly situated and which are located in the same Zoning District.**

What makes this site unique is it is split between two Townships fronting Gratiot Avenue. The applicant is not aware of any other location in Macomb Township where this occurs, thereby creating a precedent.”

Tom Kalas, representative, was in attendance and stated that he concurred with the Planning Consultants recommendations.

Public Portion: None.

MOTION by SLOSSON seconded by SELVA to close public portion.

MOTION carried.

The following resolution was offered by SLOSSON and seconded by SELVA:

Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied, and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

Now, therefore, be it resolved, that the action of the Board is to grant the requested variance of Section 10.0323(10)1-Request to eliminate the 4' setback between the property line and the parking area; Located on Northwest corner of 21 Mile Road and Gratiot Avenue; Section 36; Odessa Builders Inc., Petitioner. Permanent Parcel No. 08-36-278-005. The variance has been granted since it will enable a parking area to be developed in conjunction with land in Chesterfield Township without the need for a setback separation.

MOTION carried.

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7. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Section: 17.163G-of the Land Division Ordinance No. 17 .
Section 10.0604(E)1-Request to reduce the front yard from 90' to approx.
78'.
Located on South side of 24 Mile Road, 1/4 mile east of Romeo Plank Road;
Section 17; LRJ Inc., Petitioner. Permanent Parcel No. 08-17-252-001.

Chairman FLORENCE read the findings and recommendations of September 29, 2006. They are as follows:

The petitioner is requesting permission to reduce the front yard from 90' to approximately 78'. The purpose of this request is to allow for the incorporation of the parcel upon which the house is located into the proposed Bridgewater project.

The Consultant was advised by the petitioner that the parcel upon which the house is located cannot be officially incorporated into the plan until such time as the owner of the house passes. At that time the petitioner would then incorporate the house and property into the project providing the streets and drain easements necessary for the project. There has been no indication of the documents that must be formulated for the accomplishment of the project development after the demise of the owner of the house.

RECOMMENDATION:

It is recommended that the variance request be approved with the condition that the property will be combined with the balance of the total Bridgewater Estates, but that Phase 2 cannot be constructed until such time as the house is removed from the property. Further, that all improvements to the site including the 8' path, the 20' landscape dedicated area, and the bridge be bonded for as part of the action of the Board of Appeals.

The petitioner submitted a letter dated September 7, 2006 in support of the request and was included into the record as follows:

“Variance pursuant to Section 17.163(g) Land Division Ordinance #17 – The existing structure is not in compliance with the 90 foot setback requirement from the centerline of the road. The home is in impeccable condition and the combination of this parcel to the Bridgewater Parcel is imperative to the health, safety and welfare of the residents of Future Bridgewater Estates. This parcel is our internal road connection from Romeo Plank to 24 Mile Road.”

Stacy Cergot, representative, was in attendance and stated they were seeking permission to attach the parcel to the Bridgewater Estates parcel for the purpose of

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constructing a sanitary pumpstation and an access road into Phase II of Bridgewater Estates.

Public Portion: None.

MOTION by SLOSSON seconded by SELVA to close public portion.

MOTION carried.

The following resolution was offered by SELVA and seconded by PROVENZANO:

Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied, and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

Now, therefore, be it resolved, that the action of the Board is to grant the requested variance of Section 17.163(G)-of the Land Division Ordinance No. 17; Located on the south side of 24 Mile Road, ¼ mile east of Romeo Plank Road; Section 17; LRJ, Inc., Petitioner. Permanent Parcel No. 08-17-252-001. The variance is conditioned that the property will be combined with the balance of the total Bridgewater Estates, but that phase 2 cannot be constructed until such time as the house is removed from the property. Further, that all improvements to the site including the 8' path, the 20' landscape dedicated area, and the bridge be bonded for as part of the action of the Board of Appeals.

MOTION carried.

The following resolution was offered by SELVA and seconded by PROVENZANO:

Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied, and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

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Now, therefore, be it resolved, that the action of the Board is to grant the requested variance of Section 10.0604(E)(1)-Request to reduce the front yard from 90 feet to approximately 78 feet; Located on the south side of 24 Mile Road, ¼ mile east of Romeo Plank Road; Section 17; LRJ, Inc., Petitioner. Permanent Parcel No. 08-17-252-001. The variance is conditioned that the property will be combined with the balance of the total Bridgewater Estates, but that phase 2 cannot be constructed until such time as the house is removed from the property. Further, that all improvements to the site including the 8' path, the 20' landscape dedicated area, and the bridge be bonded for as part of the action of the Board of Appeals.

MOTION carried.

8. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Section 10.1706(E)-Request to substitute a 6' screen wall with an 8' berm. with a 1:3 slope and tree landscaping (on the south and west property lines of the project).
Located on the southwest corner of 21 Mile and Card Roads; Section 34; Agree Limited Partnership, Petitioner. Permanent Parcel No. 08-34-200-018.

Chairman FLORENCE read the findings and recommendation of September 29, 2006. They are as follows:

The petitioner is requesting allowance to substitute a berm for a wall as required by the Zoning Ordinance. The project involves a proposed bank, a proposed drug store, and an unnamed unit on the 5 acre parcel zoned C-3.

The petitioner proposes to develop the 8' berm in an area measuring 67' of width along the west property line and 71' of width along the south property line. The Zoning Ordinance requires that 6' high wall and a 50' wide greenbelt be developed. The petitioner is given credit for 20' of the 50' which was developed as part of the condo project to the west and south.

The greenbelt/berm area will be further enhanced by the installation of 564 deciduous and evergreen trees and shrubs. The Township ordinance also requires that the landscape areas be sodded and irrigated.

It is noted, however, that the landscape plan has not been sealed by a landscape architect.

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The Consultant although willing to recommend in lieu of a 6' wall and a 30' greenbelt that an 8' berm and 67'/71' greenbelt be developed. It would be necessary, however to revise the plan to provide a more natural looking berm with undulations (minimum of 6' to 8') and the trees as shown on the submitted plan. Further, the plan must be prepared and sealed by a registered landscape architect to show the details of naturalizing the berm.

RECOMMENDATION:

It is recommended that the variance request be approved. The development of a berm affords a more naturalized screen to separate the commercial from the residential area. The proposal to substitute the wall for the berm should be approved with the following conditions:

1. The berm should be developed with undulations to provide for top of berm variations between six and eight feet.
2. That the plan be prepared by a registered landscape architect.

The petitioner submitted a letter dated September 18, 2006 in support of the request and was included into the record as follows:

"As required by the Zoning Ordinance, a 6' high screen wall is required between C-3 and any residentially zoned properties. In the case for the proposed development site on the southwest corner of 21 Mile Road and Card, we have residential properties on both the south and west.

It is our request that the ZBA approve of an 8 foot high berm constructed with 1:3 slopes and 6 foot tall Colorado Spruce trees in lieu of the 6 foot high screen wall. The 8 foot high berm with trees has been agreed upon as part of the Purchase Agreement. It is also our opinion that the berm with landscaping will provide more screening than the wall and also provide a more pleasing view from a resident's yard."

Bob Kirk, representative, was in attendance and stated that he had no problems with the stipulations and asked if administratively the undulations could be handled.

Public Portion:

Henry Boullard, 21584 Sunset Drive, asked how high the berm was proposed to be.

Jerome R. Schmeiser, Planning Consultant, gave an overview of the proposed landscape berm and how it would abut the west and south property lines.

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Henry Boullard stated his concerns over pedestrians that may trespass through the residential developments to access the commercial development if the 8' landscaping berm were approved in lieu of a 6' screen wall.

Jerome R. Schmeiser, Planning Consultant, stated the height of the berm (6'-8') plus the number of plantings that were proposed would make it a secure screening.

MOTION by SLOSSON seconded by PROVENZANO to close public portion.

MOTION carried.

The following resolution was offered by GALLAGHER and seconded by PROVENZANO:

Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied, and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

Now, therefore, be it resolved, that the action of the Board is to grant the requested variance of Section 10.1706(E)-Request to substitute a 6' screen wall with an 8' berm with a 1:3 slope and tree landscaping (on the south and west property lines of the project); Located on the southwest corner of 21 Mile and Card Roads; Section 34; Agree Limited Partnership, Petitioner. Permanent Parcel No. 08-34-200-018. The variance is approved since it affords a more naturalized screen to separate the commercial from the residential area. The approval of the berm is conditioned upon the following:

- 1. The berm should be developed with undulations to provide for top of berm variations between six and eight feet.**
- 2. That the plan be prepared by a registered landscape architect.**

MOTION carried.

9. OLD BUSINESS

None.

10. NEW BUSINESS

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Jerome R. Schmeiser, Planning Consultant, stated there was a special meeting scheduled for October 24, 2006.

11. PLANNING CONSULTANTS COMMENTS

None.

12. MOTION TO RECEIVE AND FILE ALL CORRESPONDENCE IN CONNECTION WITH THIS AGENDA

MOTION by GALLAGHER seconded by SLOSSON to receive and file all correspondence.

MOTION carried.

ADJOURNMENT

MOTION by SELVA seconded by PROVENZANO to adjourn the meeting at 7:35 P.M.

MOTION carried.

Respectfully submitted,

Brian Florence, Chairman

Dawn Slosson, Secretary

Beckie Kavanagh, Recording Secretary

BK