

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A REGULAR MEETING HELD ON
SEPTEMBER 12, 2006

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

PRESENT: CHAIRMAN, BRIAN FLORENCE
MEMBERS: EDWARD GALLAGHER
VICTORIA SELVA (arrived 7:15 P.M.)
DAWN SLOSSON
NUNZIO PROVENZANO

ABSENT: NONE

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

Call Meeting to Order.

Chairman FLORENCE called the meeting to order at 7:05 P.M.

1. Roll Call.

Secretary SLOSSON called the Roll Call. Member SELVA arrived at 7:15 p.m.

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 July 11, 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) Mark W. Ellena Permanent Parcel No. 08-33-102-003	Section 10.1205(g)
(7) Robert and Clare Eatmon	Section 10.0704(d)(3)(B)

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 July 11, 2006)

Chairman FLORENCE read a letter dated September 11, 2006 from Attorney, Charles M. Penzien as follows:

“Please allow this correspondence to confirm our request that the ZBA matter regarding the above referenced clients be adjourned until the October 2006 meeting of the Macomb Township Zoning Board of Appeals. If this is inconsistent with your understanding of our conversation please contact me immediately.”

6. VARIANCE REQUEST FROM ZONING ORDINANCE;
Section 10.1205g–Request to eliminate wall or greenbelt in area encumbered by wetland.
Located on West side of Romeo Plank Road, 1000' south of 21 Mile Road; Section 33; Mark W. Ellena, Petitioner. Permanent Parcel No. 08-33-102-003.

Chairman FLORENCE read the findings and recommendations of September 7, 2006. They are as follows:

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The petitioner is requesting a variance to eliminate the required wall and or greenbelt around an existing wetland area. The petitioner is planning to develop a funeral home on the site. The east portion of the site contains the Middle Branch of the Clinton River as well as a designated wetland.

The petitioner plans to construct the required wall abutting residential development on that portion of the site which is not encumbered by a wetland.

RECOMMENDATION:

It is recommended that the variance request be approved for the following reasons.

1. Wetlands would restrict construction of the wall.
2. The wall would afford little protection to the adjacent residential property since the land to the south contains the same wetland and the property to the east is approximately 800' east of any developed portion of the site.

The petitioner submitted a letter dated July 31, 2006 in support of the request and was included into the record as follows:

"1. The strict enforcement of the provisions of this Township Zoning Ordinance will cause practical difficulty and unnecessary hardship. Creating a wall or a greenbelt around the entire site and it's depth of over 1,300 feet is impractical since the developed area is only of 350 feet and the rest of the site will be left naturally wooded. It would also create a tremendous expense which would not be proportionate to the total cost of this project.

"2. There are three main circumstances that are unique to the property which are not applicable to many of the properties located within the same zoning district. First of all, there is the fact that the river and floodway cuts through the property making a wall or greenbelt impossible to construct around the entire site. Second, the developed building and parking areas will occupy only 26% of the property area. Finally, the adjoining residential districts to the north and the to the east are far from this developed area and have their own screening buffers created by park areas that are recorded in the plats.

"3. The conditions and circumstances unique to the property were not created by the owner or predecessor in title but were existing and factual.

"4. This property and circumstances in relation to the required variance are extreme and obvious. Applying this part of the Zoning Ordinance to this property

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would be totally out of place and this would be recognized by all other property owners which are located in the same Zoning District.”

Pete Snyder, representative, was in attendance.

Member GALLAGHER asked if the wetland area would be maintained or if it would be left as weeds.

Pete Snyder, representative, stated the area was a regulated wetland area and is restricted by MDEQ, so the answer is not without a MDEQ permit being obtained.

Member SELVA arrived at 7:15 p.m.

Tom Christ, 46612 River Park East, indicated that the public notice may have been indicating the wrong sub-section of the ordinance. Further, that when the property in question was changed from Residential to CF there was an agreement that all lands east of the Middle Branch of the Clinton River would never be developed. The residents have a concern over the wetlands for the future and if it were to remain as is or possibly be mitigated.

Jerome R. Schmeiser, Planning Consultant, gave an overview of the parcel and showed how the river runs diagonally through the property. Further, they are asking for the same variance that had previously been granted to the office building to the north.

Tom Christ stated he was asking for a recommitment from this Board that no building would take place east of the Middle Branch of the Clinton River. Lastly, he did not want to see any action taken with this Board to weaken the agreement, which is to leave the land non developable.

Jerome R. Schmeiser, Planning Consultant, stated if the wetland area were ever declassified the current landowner/petitioner must receive permission from the Township and the MDEQ to construct or use the property.

Pete Snyder, representative, stated he did not note the subsection being requested, but that they were asking for the 6 foot wall or 8 foot greenbelt area to be eliminated from around the entire area to only the developable area.

Member GALLAGHER stated the purpose of the ordinance to build the walls were to protect the residents from the glare of headlights, trash, etc. If this site were a completely developable site, the developer would be required to comply by erecting a wall. But since there is already a vast distance created by the wetland area and the Middle Branch of the Clinton River, the intent of the Zoning Ordinance is being met.

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MOTION by SLOSSON seconded by SELVA to close the public portion.

MOTION carried.

Colleen O'Connor, Township Attorney, stated that in her opinion it would be inappropriate to attach a commitment to a variance being granted. If a commitment had been made through another Board not to develop within the wetlands it has nothing to do with this variance. They have been given permission to build a funeral home through a CF zoning.

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 10.1205(g)-Request to eliminate wall or greenbelt in area encumbered by wetland; Located on the east side of Romeo Plank Road, 1,000 feet south of 21 Mile Road; Section 33; Mark W. Ellena, Petitioner. Permanent Parcel No. 08-33-102-003. The variance was granted based on the intent of the Zoning Ordinance being met.

MOTION carried.

7. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Section 10.0704 d3B – request to encroach 3' into a required 35' rear yard.
Located on East side of Maplewood Lane, between Canvasback and Nick Drives (north of 22 Mile Road); Section 20; Robert and Clare Eatmon, Petitioner. Permanent Parcel No. 08-20-377-013.

Chairman FLORENCE read the findings and recommendations of September 7, 2006. They are as follows:

The petitioner is requesting a variance to encroach 3' into a required rear yard setback. The purpose of the request is to construct a sun room onto the rear elevation of the existing residence.

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The lot in question was platted in accordance with the requirements of the zoning ordinance.

RECOMMENDATION:

It is recommended that the variance request be denied for the following reasons.

1. Compliance with the strict letter of the rear yard setback requirement would not unreasonably prevent the ownership from using the property as zoned. Other residential structures planned in Macomb Township will be required to comply with the same setback requirements which are evidence that the proper building setback would not be unnecessarily burdensome.
2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in residential developments in Macomb Township. The other owners are or will be required to comply with the required rear yard setback requirement. As a result the other property owners do not have the opportunity to make use of an additional 3' of property.

There is nothing unusual about the parcel in question that sets it apart from other parcels in area or in Macomb Township. There is nothing to prevent any part of the rear yard setback from being maintained 35' from the rear property line. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.

The petitioner submitted a letter dated August 10, 2006 in support of the request and was included into the record as follows:

"The proposed sunroom has a rear yard setback of 32 feet. The required rear yard setback is 35 feet. We are requesting a 3 foot rear yard setback variance."

Bob Eatmon, petitioner, was in attendance and stated that he would like to be able to add a sunroom to the back of his home which will encroach into the rear yard setback requirement.

A representative from All Season Sunrooms, stated the intent of the variance was to not block the vision of the back yard. He then reviewed the drawings that had been submitted with the application and noted that there were structures existing on other neighbors that were either located the same distance or further out then what they were asking. Lastly, the proposed structure will be all glass so you will be able to see through it. It won't be a permanent structure.

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Chairman FLORENCE asked Jerome R. Schmeiser, Planning Consultant, according to the Zoning Ordinance would this proposal be considered an addition to the house, and not an accessory structure to the house.

Jerome R. Schmeiser, Planning Consultant, stated it would be considered an addition.

Member SELVA stated that according to the pictures provided, it does appear one of the houses is sitting further back. That does not allow or give the petitioner the right to construct and be non-conforming as well.

Public Portion: None.

MOTION by SLOSSON seconded by PROVENANZO to close the public portion.

MOTION carried.

MOTION by SELVA seconded by GALLAGHER to deny the variance request of Section 10.0704(d)(3)(B)-Request to encroach 3 feet into a required 35 foot rear yard; Located on the east side of Maplewood Lane, between Canvasvack and Nick Drives (north of 22 Mile Road); Section 20; Robert and Clare Eatmon, Petitioner. Permanent Parcel No. 08-20-377-013. The variance was denied since a variance is granted because you have proven a special reason why a change needs to occur and your neighbors can't do the same thing. The purpose of the ordinance is to maintain the rules. There has been no reason demonstrated such as a wetland preventing you from obtaining your request.

Clare Eatmon, petitioner, stated their backyard is very wet and can be a very large breeding grounds for mosquitoes. We are requesting the sunroom so that we can go outside and enjoy our backyard without worrying about the mosquitoes.

Member SELVA stated that still does not change the shape of the lot or the fact that you could make the sunroom smaller.

MOTION carried.

8. OLD BUSINESS

None.

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9. NEW BUSINESS

Jerome R. Schmeiser, Planning Consultant, stated there was a special meeting scheduled for October 4, 2006.

10. PLANNING CONSULTANTS COMMENTS

None.

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

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

MOTION carried.

ADJOURNMENT

MOTION by SLOSSON seconded by PROVENZANO to adjourn the meeting at 7:43 P.M.

MOTION carried.

Respectfully submitted,

Brian Florence, Chairman

Dawn Slosson, Secretary

Beckie Kavanagh, Recording Secretary

BK