

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A REGULAR MEETING
HELD TUESDAY, SEPTEMBER 11, 2007

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

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

ABSENT: NUNZIO PROVENZANO

ALSO PRESENT: COLLEEN O'CONNOR, 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 7:06 P.M.

1. Roll Call.

Secretary SLOSSON called the Roll Call. Member PROVENZANO absent.

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 SELVA seconded by GALLAGHER to approve the meeting minutes of July 24, 2007 as presented.

MOTION carried.

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) Domenico Passalaacqua	Section 10.0311(f)(2)

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- Permanent Parcel No. 08-19-402-052
- (6) Quadrate Condo Park No. 1, LLC
Permanent Parcel No. 08-18-401-409
08-18-401-410
08-18-401-411
08-18-401-412
5. **VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;**
Permission to vary Section 10.0311f(2)-Request to allow reduction of the rear yard setback from 35' to 25'
Located on North of 22 Mile, east of Hayes Road; Section 19; Dimenico Passalacqua, Petitioner. Permanent Parcel No. 08-19-402-052

Chairman FLORENCE read the findings and recommendations of September 5, 2007. They are as follows:

The petitioner is requesting allowance to reduce the rear yard setback of the above described parcel from 35' to 25'. The purpose of the request is to construct a raised patio. The proposed patio would measure 18' x 19.5'.

According to the Building Department, a stop work order has been placed on the patio construction. No permit was issued. The foundation and pillars have been installed without benefit of approval of inspection.

It is noted that the lot in question is No. 214 in the Westminster Subdivision No. 2. The lot exceeds the minimum required lot size of the zoning ordinance of 70' x 120', by providing an additional 13' of depth for the lot.

The floor plan submitted in connection with the petition for a variance noted a 2-car garage facing Kingsway Drive. The site plan approved in August of 2006 indicated a side entrance garage to provide for 3 cars instead of 2 which required approximately 14' of additional lot depth which in turn removed space in the rear yard to provide space for the patio.

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 rear yard setback requirement which is evidence that the required rear yard setback would not be unnecessarily burdensome.
2. The granting of a variance as requested would give to the applicant an advantage

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or benefit not received by any other property owners in similar residential developments in Macomb Township. The other owners are or will be required to comply with the setback requirement. As a result the other property owners do not have the opportunity to make use of an additional 10'.

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 lot in question from being developed for single family residential purposes in accordance with the requirements of the zoning ordinance. 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.

3. The variance would amount to reducing the required setback by approximately 33%.
4. The petitioner has designed the development of the lot without considering a patio as is now proposed. The larger lot would have provided for the use now needed by the petitioner had proper attention been given to the overall design of the property.

Dominic Passalacqua, petitioner was in attendance and stated the patio that has been created on the back side of his home was beautiful and that it also raises the value of all the homes surrounding his. He further went on to indicate that there were no homes located behind his and should he have followed the ordinance he would only have been provided with an eight (8') foot patio. Lastly, there were several other patios constructed within the subdivision similar to his.

Member SELVA stated the Board does not know whether or not the other patios were built with or without permits. If your neighbors have built something illegally it does not give this Board the authority to grant you the same privilege. This Board has been created to uphold the Zoning Ordinance. She indicated that you need to have a disadvantage such as a wetland or a swamp in order for consideration.

Jerome R. Schmeiser, Planning Consultant, stated the patios that were indicated in the petitioner's supporting letter, have been built with permits granted or were brick pavers. He further went on to explain if the concrete were poured on the ground or brick pavers used to create the patio, that would be acceptable. Lastly, he indicated that a permit had never been pulled and that there was a foundation, which is not allowed.

Chairman FLORENCE stated that by having a foundation it is not considered a removable structure. Furthermore, when there is a foundation it is then considered part of the structure.

Public Portion:

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Joe Allegro, 50154 Cavendish, stated the patio is beautiful and stated he understood both sides of the table. However, he indicated that he thought the patio should be allowed. Lastly, if a patio needs to be removed whether or not it has footings a backhoe will either dig forty two inches (42") or six inches (6") to remove the patio.

Rich Wilson, 16662 Kingsway, stated this was a nice patio, and that some rules should be bent. He asked if the setback requirements were the same for each lot within this subdivision.

Chairman FLORENCE stated the setback requirement was the same for the entire Township.

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

MOTION carried.

MOTION by GALLAGHER seconded by SELVA to deny the variance request of Section 10.0311f(2)-Request to allow reduction of the rear yard setback from 35' to 25'; Located on North of 22 Mile, east of Hayes Road; Section 19; Dimenico Passalacqua, Petitioner. Permanent Parcel No. 08-19-402-052. The variance was denied since there has been no practical difficulty shown or displayed. The granting of the variance would give an advantage not received by any other property owners in the subdivision or Township. Once you place footings in the ground it becomes part the main structure, which may allow for an addition in the future.

MOTION carried.

6. For a determination whether a Gymnastics Training Center is a Special Land Use in and M-1 District.
Located on the north side of Leone Drive at Quadrate Drive, ½ mile north of 23 Mile Road; Section 18; Quadrate Condo Park No. 1, LLC, Petitioner. Permanent Parcel No's. 08-18-401-409, 08-18-401-410, 08-18-401-411 and 08-18-401-412.

Colleen O'Connor, Township Attorney, indicated for a point of clarification that this was not an appeal from the Planning Commission. This will be the Zoning Board of Appeals interpretation whether or not your use is permitted as a Special Land Use. For Special Land Use decision in order to be heard by the ZBA an appeal can only be made if the ordinance provides for it. The ordinance does not provide for an appeal of the Special Land Use from the Planning Commission. So, it was incorrectly called an appeal and this will be considered a *De Novo* hearing. You will hear this case for the first time and will make a decision not based on what the Planning Commission did, said or reviewed. It will simply be based upon your interpretation of the Zoning Ordinance. She indicated to the petitioner that when they applied for a variance or an appeal it was incorrectly dubbed that. It's simply going to be a interpretation by the ZBA of whether your gymnastics use is permitted as a Special Land Use under the M-1 ordinance. This hearing will be an interpretation of the

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Zoning Ordinance.

James D'Agostini, representative, stated they were going to put in the entire case as it was presented to the Planning Commission. *Colleen O'Conner, Township Attorney, stated that you could not do that. The Planning Commissions decision is not going to be part of this hearing.* Jim D'Agostini asked if this was a De Novo hearing then he has the right to present the entire case. *Colleen O'Connor, Township Attorney, stated he had the right to present whatever evidence he desired, but to remember that this Board will only make a decision based on the interpretation of the Ordinance.* Jim D'Agostini stated that he understood that but, the provision of the appeals indicates that an aggrieved party may appeal a decision by the Planning Commission or any other body. *Colleen O'Connor, Township Attorney, read for the petitioner and those in attendance Section 10.2403B.* Jim D'Agostini stated he was going to present his case lawfully, the way he thought he had a right to do and will make his same points.

James D'Agostini further went on to give his presentation of the proposed use including the location, hours of operation, number of employees and participants and noted that there was an existing PTC located at Quadrate and Angelo. He used various exhibits which the ZBA considered.

The Board originally thought this was an appeal but as indicated by the Township Attorney an appeal is inappropriate and she instructed them that they were to only consider this as an interpretation of the Zoning Ordinance. The ordinance does not allow for the ZBA to consider an appeal for a denial of a Special Land Use.

He noted that contrary to rumors that there would not be parties hosted at this facility. The site plan had shown a banquet room but, it will not be rented out for any outside parties.

Furthermore, the Planning Commission indicated that they had met 5 of the 8 requirements needed for a Special Land Use.

Colleen O'Connor, Township Attorney, stated this was not an appeal of the Planning Commission. Any indications being made to what the Planning Commission did or did not do is inappropriate.

Jim D'Agostini, stated he had the freedom to testify and would proceed forward. He then went on to read from a prepared document that highlighted parking issues, traffic pattern flow and safety considerations.

Jeffrey Miller, owner of the proposed gymnastics center, stated he had come into the Township and spoken with Mr. Koehs about the ordinance. When the petition was filed with the township Mr. Miller believed that his use fell under the Special Land Use section.

Michael D'Agostini, representative, gave a presentation of three (3) gymnastics facilities being the location, layout and size by using exhibits. He indicated that only a handful of the

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forty to fifty facilities researched were not located within an industrial complex.

Jim D'Agostini indicated the issue that was raised by the Township Attorney by way of letter to the township was whether a gymnastics training center can be allowed within an M-1 district. He submitted his comments that a gymnastics facility can be allowed under the ordinance and should be allowed at the proposed location with a Special Land Use. Furthermore, he went on to quote from the Zoning Ordinance Section 10.1903 which he felt was the issue before the Board and no where in the ordinance does it state that these activities were to be performed outdoors only, which was the determination of the Township Attorney.

Chairman FLORENCE read for the Board and those in attendance Section 10.2103 and Section 19.1903 to understand the difference and where they stand as a Board.

Member SELVA asked if we are not judging on whether we are appealing the Planning Boards appeals decision and if we were to find that his arguments fit the Special Use permit what does that actually mean. It does not change the parking necessities, because it would still have to receive Planning Commission approval.

Colleen O'Connor, Township Attorney, you are not judging their facility, you are judging whether or not a gymnastics facility is appropriate under the Special Land Use. That is all you are making a decision on. All other consideration is not for consideration tonight.

Member SELVA questioned if we were to say that it did, would that further their movement to place a gymnastics center in that facility.

Colleen O'Connor, Township Attorney, stated that it would not.

Member GALLAGHER suggested the item be tabled since there was nothing clearly presented tonight and to let the experts work on the issues.

Chairman FLORENCE also suggested that it be tabled in order for it to come back to make a clearer direction as to how this should proceed forward.

MOTION by GALLAGHER seconded by SELVA to table indefinitely the determination whether a gymnastics training center is a Special Land Use in and M-1 District. The tabling is to permit time for a review of determination and to answer questions presented.

Jerome R. Schmeiser, Planning Consultant suggested that no time be placed on the tabling to sift through what may and may not be considered according to the Township Attorney.

Jim D'Agostini stated that they would like to press on with the issue and if a Board could make a decision, they asked that they would.

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Chairman FLORENCE asked Jerome R. Schmeiser, Planning Consultant, if it would be reasonable to table to next regular meeting in November.

Jerome R. Schmeiser, Planning Consultant, stated the minutes need to be transcribed in order to find answers to those questions brought up by Jim D'Agostini. Further, he intends to have an answer for those questions.

Chairman FLORENCE asked if it would be more reasonable in January 2008.

Jerome R. Schmeiser, Planning Consultant, suggested that it be tabled indefinitely and they would get it back when they can.

Jeffrey Miller, owner of gymnastics facility, stated he has gone through the Special Land Use procedure in other municipalities, and that the municipalities worked with him to incorporate the proposed facility into their community. Lastly, if this was something that was not going to be done in a timely manner, then he indicated that he needed to start looking elsewhere (Shelby Twp, Clinton Twp or some other township that is ready to accept his business that allows recreational activities without Special Land Uses.)

Member SELVA stated the issue is what this Board is allowed to do. If we don't have that authority, and it's not moving your process any further, then this is not where you belong. Jeffrey Miller questioned if when the ordinance was written if the time was given to write down each and every use.

Member GALLAGHER stated that an indefinite tabling was something that he could not support at this time and suggested a four (4) month tabling. If the issues before us can't be resolved then there are serious issues. He further went on to explain that there were eight (8) criteria that needed to be met completely, and he felt that those could not be met.

Chairman FLORENCE stated the motion had been amended to table the item to January 2008 and if issues were resolved earlier then a meeting would be scheduled.

MOTION carried.

Jeffrey Miller asked when the issue comes back in January if the only issue being resolved was whether it is a permitted use under the Special Land Use, or if we would need to go back to the Planning Commission for approval.

Jerome R. Schmeiser, Planning Consultant, stated you will still need Planning Commission approval.

Chairman FLORENCE stated that all of the due diligence will be completed as soon as possible and will be brought as soon as possible.

7. OLD BUSINESS

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None.

8. NEW BUSINESS

None.

9. PLANNING CONSULTANTS COMMENTS

None.

10. 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 SLOSSON seconded by SELVA to adjourn the meeting at 8:47 P.M.

MOTION carried.

Respectfully submitted,

Brain Florence, Chairman

Dawn Slosson, Secretary

BK