

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A REGULAR MEETING
HELD TUESDAY, JANUARY 8, 2008

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

PRESENT: CHAIRMAN, BRIAN FLORENCE
MEMBERS: EDWARD GALLAGHER
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 7:01 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.

Chairman FLORENCE indicated that with a member of the Board being absent that the majority would need to be in favor of the proposal and if any of the petitioners' wished to have their item tabled till March 11, 2008 they may do so.

4. Approval of the previous meeting minutes:

MOTION by SLOSSON seconded by GALLAGHER to approve the meeting minutes of November 13, 2007 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) Quadrate Condo Park No. 1, LLC Permanent Parcel No. 08-18-401-409 08-18-401-010 08-18-401-011 08-18-401-012	
(7) Wallace Haley (T-Mobile USA) Permanent Parcel No. 08-19-300-012	Section 10.2603(J)(3)
(8) Frank Jonna Permanent Parcel No. 08-34-300-028	Section 10.0323A(10)b 10.1603(33)b 10.1605(D)1 10.1605(O)3
(9) Charles Tanner Permanent Parcel No. 08-32-400-019	Section 10.1603(B)33
(10) Twin River Development Permanent Parcel No. 08-33-376-016	Section 10.0704(A)(3)(c)

5. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
 Permission to vary Section 10.0402-Request to allow the use of an AG zone for limousine service.
 Located on the north side of 25 Mile Road, ¼ mile west of Broughton Road; Section 4; Mark Grabow, Petitioner. Permanent Parcel 08-04-400-030.

Vincent Hoyumpa, representative, was in attendance and stated the request was for a use variance. When the original application was filed the parcel was zoned AG and then rezoned by the Township in 2004 to Residential (R-1). We are requesting a use variance to allow Brentwood Limousine to operate at the current location. They have been operating for the past 13 ½ years since 1994. He then gave a brief history of the business, number of vehicles, drivers, etc and that there have been no complaints by neighbors nor have there been any improper business practices. In addition, there had been contracts with the Township to provide senior bus service and for other functions.

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Furthermore, the Master Plan notes that as the population grows there will be a need for commercial property in the north section. Currently, there is little residential development in the northern portion. The limousine service conducts all of its business within the pole barn and there is still 25% to 30 % of the barn being used for agricultural purposes. With respect to the customer traffic, most of the business is either done via telephone, computer or fax, so there would not be an increase in the traffic flow. So, not to allow the business to continue would force them to find an alternative location, which, after researching there is nothing available within the Township. It is my clients' contention that the property is unique since it has been operating since 1994 and that until 2003 the Township took no action to remove the business and the Township had been one of their largest clients. If the Board were inclined to allow a use variance, it could be limited in time and scope, specifically for a use of a limo business which is solely operated by the Grabows. If the Grabows were to either sell the property or the business the use variance could expire.

In addition, the Zoning Ordinance allows for home occupations under certain conditions. It is my clients' position that there is no adverse affect on the neighbors and that tax revenue is provided to the Township along with providing income to Township residents. Lastly, allowing the use would go hand in hand with the development of the Township. It is not deep within a subdivision, so allowing a use variance for this purpose would go with the Master Plan. The Master Plan is not set in stone and is meant to develop on how a township grows.

Chairman FLORENCE asked Jerome R. Schmeiser, Planning Consultant, about the zoning classification change that took place in 2004.

Jerome R. Schmesier, Planning Consultant, stated he had no details regarding the zoning change.

Colleen O'Connor, Township Attorney, stated that since there has been a change in the law specifically regarding use variances, we would like to have the Township Planner make a recommendation and comment and the Board will hear that presentation and legal comments from her regarding the use variance and the law that has changed from the Court of Appeals.

Vincent Hoyumpa, asked if there would be a written recommendation provided to the Board prior to the hearing.

Colleen O'Connor, Township Attorney, stated that comments would be available and that an opportunity would be had to review them prior to the meeting.

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MOTION by GALLAGHER seconded by SLOSSON to table the variance request of Section 10.0402-Request to allow the use of an AG zone for limousine service; Located on the north side of 25 Mile Road, ¼ mile west of Broughton Road; Section 4; Mark Grabow, Petitioner. Permanent Parcel 08-04-400-030. This item is tabled to March 11, 2008.

MOTION carried.

6. Request for an appeal from a Planning Commission decision denying a Special Land Use for a Gymnastics Facility.
Located on the north side of Leone Drive, at the intersection of Quadrate Drive, approximately ½ mile north of 23 Mile Road; Section 18; Quadrate Condo Park No. 1, LLC, Petitioner. Permanent Parcel No. 08-18-401-409, 08-18-401-010, 08-18-401-011 and 08-18-401-012.

Chairman FLORENCE read the tabling letter of request dated January 7, 2008 as follows:

“Please table agenda item 6 entitled, “Request for an appeal from a Planning Commission decision denying a Special Lane Use for Gymnastics Facility” for one month. Currently, we have a parallel proceeding in front of the Board of Trustees proposing a text amendment that will, in effect, accomplish the same goals as this pending appeal. We would like to hear back from the Board of Trustees regarding the proposed text amendment before we pursue this appeal any further. Please note that we are only asking for this appeal to be tabled, not withdrawn.”

MOTION by SLOSSON seconded by GALLAGHER to table the Request for an appeal from a Planning Commission decision denying a Special Land Use for a Gymnastics Facility; Located on the north side of Leone Drive, at the intersection of Quadrate Drive, approximately ½ mile north of 23 Mile Road; Section 18; Quadrate Condo Park No. 1, LLC, Petitioner. Permanent Parcel No. 08-18-401-409, 08-18-401-010, 08-18-401-011 and 08-18-401-012. This item is tabled to March 11, 2008 at the petitioner’s request.

MOTION carried.

7. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Section 10.2603(J)(3)-Request to eliminate the required masonry wall around an existing wireless facility.
Located on the east side of Hayes Road, north of 22 Mile Road; Section 19; Wallace Haley (T-Mobile USA), Petitioner. Permanent Parcel No. 08-19-300-012.

Chairman FLORENCE read the findings and recommendations of January 3, 2008. They are as follows:

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The petitioner is requesting a variance to allow the installation of a wireless facility on the above described property without installing the required masonry wall shielding the facility from abutting properties.

The petitioner's application indicates that the masonry wall will not match the existing ornamental fence.

RECOMMENDATION:

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

1. Compliance with the strict letter of the wall requirement would not unreasonably prevent the ownership from using the property as zoned. Other wireless facilities structures planned in Macomb Township will be required to comply with the same wall requirement which is evidence that the proper wall installation would not be unnecessarily burdensome.
2. The granting of a variance as requested would give the applicant an advantage or benefit not received by any other property owner in wireless facilities developments in Macomb Township. The other owners are or will be required to comply with the wall requirement. As a result the other property owners do not have the opportunity to make use of ornamental fence.

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 wall installation. 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 November 7, 2007 in support of the request and was included into the record as follows:

"T-Mobil is collocating on an existing Sprint Wireless facility. The current compound is 50 X 50 and is surrounded by a 5 foot white vinyl ornamental fence. See photograph attached hereto. In order to collocate on this site, T Mobil had to get additional ground space of 15 X 20 (300square feet) abutting the existing compound on the north side. (See site plans provided separately). Pursuant to the Township's wireless ordinance Section 2603(j)(3):

Any telecommunications facility existing at the time of the adoption of this ordinance that has an approval building that cannot accommodate additional users may provide equipment for co-location in more that one separate building provided that the building shall be screened from adjoining properties **by a masonry wall not to exceed nine(9) feet in height.** The wall must enclose the entire footprint for all existing buildings except for openings as required and approved by the Fire Department. The wall may utilize one or more walls of the existing telecommunications structure(s) on the site. The building

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materials for the wall shall be approved by the Planning Commission. The wall shall be aesthetically compatible with the brick commonly used as veneer on houses if adjoining a residential area. The enclosure must be designed to simulate a structure when viewed at grade from adjoining properties.

T-Mobil requests a variance from the above section to build the same 5 foot white vinyl ornamental fence around its additional 300 feet of ground space as exists on the other 2,500 square feet of compound space. Technically it is asking for a 4 foot variance in height from the nine foot requirement and from the "masonry" requirement outlined above. The reasons for granting the variance are as follows:

1. It is unnecessary hardship to require T Mobil to construct a 9 foot wall around the existing compound because:
 - a. The site is already fenced by a 5 foot ornament fence which adequately screens the site from surrounding properties. (see photos)
 - b. The site is zoned M-1 and is surrounded by other M-1 properties. See aerial photograph attached. Both the current and potentially future adjoining properties are more visually intrusive than the wireless facility with its existing 5 foot vinyl ornamental fence.
 - c. There is no residential housing abutting or near the site.
 - d. It is an unfair burden on the 5th collocator to require the replacement of the existing ornamental fence.
 - e. It is an economic waste to tear down a perfectly good fence which accomplishes its intended purpose to place a "conforming" brick wall which in this case provides little, if any, enhanced visual effect for the site.
2. The conditions of this parcel, ie an existing ornamental fence, an industrial use surrounded by other industrially zoned property are unique as compared to other cellular installations in the township abut residential properties and where an existing chain link fence provides no screening effect at all.
3. These unique situations were not created by the owner.
4. Conferring the variance grants no special privileges to T Mobil. Other similarly situated cell sites with existing ornamental fences in industrially zoned areas, should also not be forced to build 9 foot masonry walls."

Wallace Haley, petitioner, was in attendance and stated there was a difference between this existing site and other sites currently developing. This site is unique since there is a white vinyl ornamental fence currently around the site which shields the site and it is within an industrial area. The ordinance has been changed to eliminate sites where the traditional chain link fence was around a cellular compound where you could see inside and view the equipment. Lastly, to tear down and replace an existing ornamental fence is economically wasteful.

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Member GALLAGHER asked if the whole fence would need to be replaced or just a portion.

Jerome R. Schmeiser, Planning Consultant, stated the ordinance requires the entire fencing to be replaced.

Chairman FLORENCE asked about the history of the fence.

Jerome R. Schmeiser, Planning Consultant, stated the fence was installed at least two years ago if not longer and it attempts to shield the facilities within the co-location site from the surrounding properties. The intent of the ordinance is do exactly that, but with the brick walls.

Wallace Haley stated to look at it in a fairness point of view and to treat the 5th co-locator fairly. You are requesting them to tear down the ornamental fence and to replace it with a 200 foot by 9 foot high brick wall which is a substantial burden.

Chairman FLORENCE asked if there were any concerns as a co-locator on the site regarding access through a vinyl fence.

Wallace Haley stated most of the sites are chain link fences. Although, he did not disagree with the Township from a screening point of view, however, when you have an existing site with a fence and then you make the 5th carrier tear down the fence because it no longer sufficient and you spend the money to create the brick wall that becomes unfair.

Public Portion: None.

**MOTION by SLOSSON seconded by GALLAGHER to close the public portion.
MOTION carried.**

MOTION by GALLGHER seconded by SLOSSON to deny the variance request of Section 10.2603(J)3-Request to eliminate the required masonry wall around an existing wireless facility; Located on the east side of Hayes Road, north of 22 Mile Road; Section 19; Wallace Haley (T-Mobile USA), Petitioner. Permanent Parcel No. 08-19-300-012. The variance was denied since there is no practical difficulty and as times change so do the rules.

MOTION carried.

8. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Section 10.0323A(10)b-Request to decrease the width of a one way drive from 20 feet to 10 feet;
Section 10.1603(33)b-Request to allow a separate stand alone building to be connected to a 6-tenant building;
Section 10.1605(D)1-Requesting a setback variance from 15 feet to 11.5 feet;

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Section 10.1605(O)3-Request to reduce the rear yard setback from 75 feet' from 65 feet and 47 feet.

Located on the north side of Hall Road, 1/4 mile east of Heydenreich Road; Section 34; Frank Jonna, Petitioner. Permanent Parcel No. 08-34-300-028.

Chairman FLORENCE read the findings and recommendations of January 3, 2008. They are as follows:

The petitioner is requesting a series of variance to enable the development of a parcel in accordance with the plan submitted.

RECOMMENDATION:

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

1. Compliance with the strict letter of the location requirement would not unreasonably prevent the ownership from using the property as zoned. Other fast food restaurants planned in Macomb Township will be required to comply with the same location requirements which is evidence that the proper application of the ordinance 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 similar commercial developments in Macomb Township. The other owners are or will be required to comply with the location requirements. As a result the other property owners do not have the opportunity to make use of land that becomes available because of the reduction of the standards of the ordinance.

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 proposed building from meeting the requirements of the 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.

It is noted that the property, which was created by the petitioner, may be developed in compliance with all requirements of the Township. The reduction in the driveway width will create an already tight maneuvering of vehicles along the north side of the building. The driveway provides access to the rear façade of all the units in the building for employees, customers, loading and unloading areas as well as the trash collection. The location of the proposed buildings, if setback properly, would provide the space needed for the driveway.

Once again the proposed site plan may be designed to meet the requirements of the ordinance.

The petitioner submitted a letter dated December 7, 2007 in support of the request and was included into the record as follows:

General Overview of Property Subject to Variance Request

“The property which is the subject of the variance requests set forth in this Application located within an existing retail development (the “Retail Center”). Which includes an existing Home DePot Store to the north of the subject property (the “Subject Property”), a multi-tenant retail development, including a fast food drive-thru directly to the west of the Subject Property, and a site plan approved Target store in the process of development directly abutting the Subject Property. The Subject Property is subject to a certain Reciprocal Easement and Operation Agreement, which also governs the Home DePot store site, the Target store site, the multi-tenant retail development abutting the Subject property, and other properties within the Retail Center. A Reciprocal Easement Operation Agreement governs, among other matters, easements for access, certain use Subject Property is located. A discussion of the variance requests contained in this application is set forth directly below.

Variance From Section 10.1603B(33)(2) of the Macomb Township Zoning Ordinance (“Zoning Ordinance”) to Permit Fast Food Restaurant with Drive-Thru in a Multi-Tenant Building, Rather than in a Free Standing Building

General Nature of Request for Variance from Section 10.1603B(33)(2)

Applicant proposes to construct an approximately 8,608 square foot multi-tenant retail building, as depicted on the attached site plan in the area labeled as “Proposed Retail”. At the western end of the Proposed Retail building, Applicant proposes to construct a fast food restaurant (as defined in Section 10.0202 of the Zoning Ordinance) (in the area shaded in yellow on the attached site plan) which fast food restaurant would have drive-thru. Fast food restaurant use with drive-thru is the subject of a simultaneous application for special land use, in accordance with Section 10.1603B(33) of the Zoning Ordinance. Application seeks a variance from 10.1603B(33)(2) to permit a fast food restaurant with drive-thru in a multi-tenant building, rather than a free-standing building, as required in Section 10.1603B(33)(2), for the following reasons:

1. Practical Difficulty. A practical difficulty exists and the development of the Subject Property is consequently restricted, in part, due to the existence of the Miller Drain to the east of the Subject Property. The Miller Drain is part of a 100 year flood plain for the area. The location of the Miller Drain is due to development, engineering and reconstruction of M-59. The location of the Miller Drain impacted the size, shape and configuration of the Subject Property, resulting in an irregular shaped lot, which consequently presents difficulties in the location and size of prospective buildings on the Subject Property. It should also be noted that pursuant to Section 10.1605F of the Zoning Ordinance, the required distance between buildings is 25 feet. As such, requirements of 10.1605F, in conjunction with the strict enforcement of the free-standing building requirement for a fast food restaurant with drive-

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thru in accordance with Section 10.1603B(33)(B), and the impact of the existence of the Miller Drain, substantially restricts the buildable area on the Subject Property, As such, strict enforcement of Section 10.1603b(3)(2) would present Applicant substantial difficulty in developing the Subject Property, in part, as a fast food restaurant with Drive-thru.

2. Conditions and Circumstances Unique to the Subject Property are not Similarly applicant to other Properties Located within the Same Zoning District. The features, including the irregular shape of the Subject Property as set forth in item 1 above, are circumstances unique to the Subject Property and are not similarly applicable to other properties located within the same zoning district. These unique circumstances support the need for a variance in accordance with item 1 above.
3. Conditions and Circumstances Unique to the Property were not Created by the applicant of the Owner of the Property. As previously stated, the irregular shape of the lot and other impacts caused, in part by the location of the Miller Drain, were created to accommodate the reconstruction of M-59 by the Michigan Department of Transportation. The circumstances and conditions were not created by applicant.
4. The requested Variance will not confer Special Privileges that are Denied other Properties that are Similarly Situated and which are Located in the Zoning District. The Requested variance will not confer special privileges on Applicant. In fact the retail development directly to the west of the Subject Property contains a fast food with drive-thru within a multi-tenant building and is not free-standing., in the manner requested in this variance request and, thus, approving the variance request would simply give Applicant the same rights as the abutting property owner.
5. Granting the Requested Variance will not be a Detriment to neighboring Properties and is Consistent with the spirit and Purpose of Zoning Ordinance. The Variance request, if granted, would permit development of the Proposed Retail building consistent with good planning practices, consistent with adjoining property, and consistent with the Retail Center as a whole. Rather than being a detriment to neighboring properties, the variance and use will enhance the Retail Center.

II.

Variance From Section 10.1605D(1) to permit Setback of 11.5 feet and Portion of Setback from M-59, Rather than a 15 Foot Setback as Provided for in Section 10.1605D(1)
General Nature of Request for Variance from Section 10.1605D(1)

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Applicant's proposed site plan would provide for the required 15 foot setback along the M-59 road frontage for approximately 295 feet of the 346 feet of M-59 road frontage (in the area coded in green on the attached site plan). Also to the remaining M-59 frontage, Applicant requests a variance from the requirements of Section 10.1601D(1) to permit a setback of 11.5 feet in the area shown on the attached depiction.

1. Practical Difficulty. A practical difficulty exists, necessitating variance from the 15 foot M-59 frontage setback, given that the location of the parking field for Subject Property and associated cement and greenbelt areas are intended to be in line with and otherwise consistent with the existing retail development directly to the west of the Subject Property. The resulting curvature of M-59 in the area shown on the attached site plan, results in the variance of the M-59 setback from 15 feet to 11.5 feet in particular areas along the M-59 frontage.
2. Conditions and Circumstances Unique to the Property are not Similarly Applicable to Other Properties Located within the Same Zoning District. The location of the parking field and associated improvements for the existing retail development directly to the west of the Subject Property and the curvature of M-59 along the frontage of the Subject Property, are unique conditions which do not affect other properties in the C-2 zoning district. Applicant seeks consistency in location and associated improvements with the existing retail development directly to the west. As such, the unique circumstances and features of the Subject Property require variance from the 15 foot M-59 frontage requirement as set forth in Section 10.1605D(1).
3. Conditions and Circumstances Unique to the Property were not Created by the applicant or the Owner of the Property. The features of the Subject Property, including the curvature of M-59 in the area of the Subject Property's M-59 frontage, as well as the location of the parking and other associated improvements for the existing retail development to the west, are circumstances not created by Applicant.
4. 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. Granting the variance would simply allow Applicant to develop the Subject Property consistent with the existing retail development directly to the west of the Subject Property, insofar as the location of the parking and related improvements. No special privilege would be conferred.

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5. Granting the Requested Variance will not be a Detriment to Neighboring Properties and is Consistent with the Spirit and Purpose of the Zoning Ordinance. Granting the requested variance will not be a detriment to surrounding properties and, in fact will permit development of the Subject Property consistent with adjacent properties as set forth above, particularly as relates to the exact location of the parking field and related improvements for the Subject Property, as set forth on the attached site plan.

III

Variance From Section 10.1605D(3) to Permit a Rear Yard Setback of 65 Feet in the Area as Shown on the Site Plan, and 47 Feet in the Area as Shown on the Site Plan, Rather than the 75 Foot Setback as Required by Section 10.1605D(3)

General Nature of Request for Variance from Section 10.1605D(3)

Applicant's proposed site plan would provide for a 65 foot rear yard setback for the Proposed Retail building and a 47 foot rear yard setback for the proposed bank (in the area coded in red on the attached site plan). Applicant requests a variance from the requirements of section 10.1605D(3) to permit the rear yard setbacks as shown on the proposed site plan, rather than the 75 foot rear yard setback as required by Section 10.1605D(3).

1. Practical Difficulty. Given the location of access drives and parking fields of the adjacent sites within the Retail Center and other impacts which affect the Subject Property as detailed, supra, compliance with the rear yard setback requirements of Section 10.1603D(3) presents a practical difficulty. This practical difficulty dictates placement of the proposed buildings in an area on the Subject Property which requires reduced rear yard setbacks. The Subject Property is located within an existing Retail Center consisting of an existing Home Depot store to the north of the Subject Property, a multi-tenant retail development, including a fast food restaurant with drive-thru directly to the west of the Subject Property, and site plan approved Target store in the process of development directly to the north and east of the Subject Property. The Subject property is subject to a certain Reciprocal Easement and Operation Agreement which governs the entire Retail Center. The Reciprocal Easement and Operation Agreement governs matters, including ingress and egress easements, parking, use restrictions and other matters. With regard to the Subject Property, as can be seen on the proposed site plan, the rear yard of the proposed buildings on the Subject Property abuts parking fields for the Home Depot store and the Target store. The rear yards and rear property lines contain certain curb cuts which accommodate ingress and egress easements to the Subject Properties on, to and through the access drives located on the Home Depot store site, the Target store site and the entire Retail Center. The

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rear yards of the proposed buildings on the Subject Property do not abut any residential areas, or any areas not a part of the existing Retail Center.

2. Conditions and Circumstances Unique to the Property are not Similarly Applicable to Other Properties Located within the Same Zoning District. The Location of the Subject Property is within the existing Retail Center, and abuts only improvements, including common improvements such as access drives which are for the benefit of the Retail Center. No portion of the Subject Property or rear yards of the Subject Property abuts any property, other than properties within the Retail Center. As such, the circumstances of the Subject Property are unique to the Subject Property and are not similarly applicable to other properties located within the same zoning district.
3. Conditions and Circumstances Unique to the Property were not Created by the applicant or Owner of the Property. The design of all sites within the Retail Center, including the Home Depot site and the Target store site on which the Subject Property's rear yard abuts, were designed and approved to provide for the optimal functioning of the Retail Center as a whole and to serve the health, safety and welfare of the general public.
4. 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. The requested variance will not confer special privileges on Applicant. The variance requested would simply allow Applicant to develop the Subject Property for the proposed retail use within the existing Retail Center.
5. Granting the requested Variance will not be a Detriment to Neighboring Properties and is Consistent with the Spirit and Purpose of the Zoning Ordinance. Granting the requested rear yard setback variances will not in any manner be a detriment to surrounding properties. In fact, as discussed above, the abutting properties, including the Target store and the existing Home Depot store and their associated parking fields and access drives, are part of the existing Retail Center and are a Subject to a Reciprocal Easement and operation Agreement that governs the use of the abutting improvements. Development of the Subject Property in accordance with the site plan and in the area set forth on the proposed site plan, is consistent with the spirit and purpose of the Zoning Ordinance, and will permit the development of the Subject Property consistent with the development of the existing Retail Center as a whole.

IV

**Variance from Section 10.0323A(10)(b) of the Zoning Ordinance to Permit
One Way Maneuvering Lanes 17 Feet in Width, instead of the 20 Foot Width
Requires by Section 10.323A(10)(b)**

General Nature of Request for Variance from Section 10.323A(10)(b)

Applicant proposes to construct, in accordance with the attached site plan, multiple lanes within the Subject Property, to circulate traffic within the Retail Center in which the Subject Property is located. The Variances requested by Applicant from Section 10.0323A(10)(b) with regard to the width of maneuvering lanes, relates only to the maneuvering lanes as color-coded in blue on the attached proposed site plan. Applicant seeks a variance from Section 10.323A(10)(b) to permit one-way maneuvering lanes 17 feet in width in these areas, instead of the 20 foot width required by the Ordinance.

1. Practical Difficulty. As depicted on the attached proposed site plan, the Subjected Property is designed to have several lanes for ingress and egress. The two maneuvering lanes which are the Subject of the Variance requests have specific purposes which, where located, dictated one-way maneuvering lanes of slightly less width than as required by Zoning Ordinance. With regard to the one-way maneuvering lane depicted in the middle of the Subject Property between the Proposed Retail building and the proposed bank site, the one-way lane is designed primarily to serve the adjacent three parking stalls. General customer traffic is designed to flow through the other access points designed throughout the Subject Property, as depicted on the proposed site plan. With regard to the maneuvering lane depicted at the rear of the proposed Retail building the width is dictated by the intended placement of a proposed loading area and garbage area. The primary intent of this maneuvering lane is to serve primarily traffic relating to the loading area and the dumpster area, and is not primarily intended for use by customers in general. As depicted on the proposed site plan, substantial and numerous access points for ingress and egress are located otherwise throughout the Subject Property, to ensure the free and proper circulation of traffic within the subject property, and into and through the existing Retail Center within which the Subject Property is located. It is also intended that the slightly narrower widths of the maneuvering lanes which is the subject of this variance request will discourage attempts by motorist to utilize the intended one-way maneuvering lanes as two-way maneuvering lanes, particularly as relates to the maneuvering lane located behind the Proposed Retail building intended primarily for loading traffic and garbage dumpster traffic.

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2. Conditions and Circumstances Unique to the Property are not Similarly Applicable to Other Properties Located within the Same Zoning District. The Subject Property, as discussed above, is part of the existing Retail Center. Given the existence of a Reciprocal Easement and Operation Agreement, which includes easements to ensure the proper flow of traffic into and through the Subject Property and Retail Center as a whole, the design of the subject maneuvering lanes and their widths are intended to ensure one-way usage and to accommodate their primary intended purposes. Given that the Subject Property is within the existing Retail Center which provides multiple areas for ingress and egress, slightly narrower maneuvering lanes in the areas depicted to support their primary intended purposes suggests the reasonableness of granting the variances requested.
3. Conditions and Circumstances Unique to the Property were not Created by the applicable or the Owner of the Property. The conditions and circumstances of the Subject Property, including the Subject Property's location within the existing Retail Center where designed and plans were approved for the adjoining and abutting retail store to promote the health, safety and welfare of the general public.
4. 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. The requested variance for the one-way maneuvering lanes will not confer special privileges on Applicant and instead, are merely intended to allow Applicant to develop the Subject Property consistent with the existing Retail Center.
5. Granting the Requested Variance will not be a Detriment to Neighboring Properties and is Consistent with Spirit and Purpose of the Zoning Ordinance. As stated above, the Subject Property is located within the existing Retail Center, governed by a Reciprocal Easement and Operation Agreement. The Subject Property has substantial and adequate points of ingress and egress, as shown on the proposed site plan. The maneuvering lanes as depicted, will ensure the proper flow of traffic within the Subject Property and throughout the Retail Center as a whole, consistent with and for the benefit of the entire Retail Center, and consistent with prior approved site plans for adjoining and abutting retail uses within the entire Retail Center.”

Mark Kadian, representative, was in attendance and presented an overview of his supplement for the variances requested and used exhibits to highlight those changes. The site is unique since it is an integrated development and also has physical limitations, (i.e. drain and Hall Road).

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Colleen O'Connor, Township Attorney, explained to the petitioner and those in attendance that a practical difficulty means that you can't use your property as zoned (commercially), if you did not receive a variance. Your presentation indicates that you can't use the property as you desire. That is not what practical difficulty means. Using the Miller Drain as an example does not suffice. If the Miller Drain was on your property and prevented you from using the property commercially, then a variance would be permitted. The Miller Drain is not preventing you from using your property commercially. It might mean that you have to make the store smaller, but it doesn't mean you can't use the property as zoned.

Mark Kadian stated that he felt a practical difficulty was being met. (There is 21,00 square feet of density and what is being requested is 12,900 square feet). If the argument is that you can't build anything, and if you can't build anything, than you have a practical difficulty. Look at the entire site and see what the developer is proposing to build on the site and see how it fits into the ordinance and why the relief is being sought.

Member GALLAGHER stated the building could be moved 10 feet forward.

Mark Kadian stated they were actually putting less on the site than allowed.

Member GALLAGHER stated if that were the case why are you seeking variances.

Mark Kadian stated that what was shown on the proposed renderings was the best planning for the site.

Member GALLAGHER asked who.

Mark Kadian stated for the community.

Chairman FLORENCE asked if the number of parking spaces defined on the plan were exceeding the requirement.

Jerome R. Schmeiser, Planning Consultant, stated it was the exact number required by the ordinance.

Chairman FLORENCE stated it appears that too much is trying to be built. The multi-tenant building has 6 units and asked what problem would be created if it were only 5 units. There would be less parking requirements, be able to rearrange the buildings to fit them within the setbacks. The bank is a standard style for Chase, which is done for recognition, however, for the sake of this site what difficulty would it be for design changes to fit this parcel?

Frank Jonna, petitioner, stated from the retail perspective and the building and the fact we want to attach a drive-thru to the building and to be consistent with the neighbor to the west the depth of the building and the parking fields to safety flow. The objective was to appear seamless. If we were to meet the rear yard setback, we could do that, however, we would relocate parking which is inconvenient for consumers having to cross over dumpster and

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drive-thru traffic. By granting us the requested variance it allows us to flow conveniently with the adjacent site and the drive-thru traffic. Lastly, he did not see a negative impact on the community.

Member SLOSSON asked if the development to the west was developed without any variances.

Jerome R. Schmeiser, Planning Consultant, stated the restaurant is connected to the building and can't answer for that. However, this site has proven to be very tight in the areas that these variances are being sought if developed as desired.

Public Portion: None.

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

MOTION carried.

MOTION by GALLAGHER seconded by SLOSSON to deny the variance request of Section 10.0323A(10)b-Request to decrease the width of a one way drive from 20 feet to 17 feet; Located on the north side of Hall Road, 1/4 mile east of Heydenreich Road; Section 34; Frank Jonna, Petitioner. Permanent Parcel No. 08-34-300-028. The variance was denied since there is room to create a 20 foot drive and its the Fire Departments policy to have the 20 foot drives.

Member FLORENCE added that the 3 feet for the driveway could be maintained by a relocation of the bins for garabage pick up.

MOTION carried.

MOTION by GALLAGHER seconded by SLOSSON to deny the variance request of Section 10.1603(33)b-Request to allow a separate stand alone building to be connected to a 6-tenant building; Located on the north side of Hall Road, 1/4 mile east of Heydenreich Road; Section 34; Frank Jonna, Petitioner. Permanent Parcel No. 08-34-300-028. The varinace was denied since the intent of the Zoning Ordinance was to have stand alone buildings since many people will be serviced by a drive-thru window.

Chairman FLORENCE stated the supplement indicates there would be problems with strict enforcement of the section and would present applicant substantial difficulty in developing the property as part of a fast food restaurant with a drive-thru.

MOTION carried.

Chairman FLORENCE stated that he understood the petitioner wants to maintain conformity of the look and feel fo the property, but that it could be done without the 3 ½

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variance.

MOTION by GALLAGHER seconded by SLOSSON to deny the variance request of Section 10.1605(D)1-Requesting a setback variance from 15 feet to 11.5 feet; Located on the north side of Hall Road, 1/4 mile east of Heydenreich Road; Section 34; Frank Jonna, Petitioner. Permanent Parcel No. 08-34-300-028. The variance was denied since the development of the road was there prior to the design layout of the property.

Member SLOSSON indicated there was no practical difficulty even though the proposed development is a nice layout, however, the property can still be used as zoned.

Chairman FLORENCE stated the conformity could still be maintained without obtaining a variance.

MOTION carried.

MOTION by SLOSSON seconded by GALLAGHER to deny the variance request of Section 10.1605(O)3-Request to reduce the rear yard setback from 75 feet' from 65 feet and 47 feet; Located on the north side of Hall Road, 1/4 mile east of Heydenreich Road; Section 34; Frank Jonna, Petitioner. Permanent Parcel No. 08-34-300-028. The variance was denied since there is no practical difficulty shown and the property can be used as zoned and there can be alternative ways to work the buidings and setbacks as zoned.

Member GALLAGHER stated there has been no evidence shown that the property can't be used as zoned.

Chairman FLORENCE stated the practical difficulty presented in the supplement can be handled within the Zoning Ordinance.

MOTION carried.

9. **VARIANCE REQUEST FROM ZONING ORDINANCE**
Section 10.1603(B)(33)-Request to allow a fast food restaurant within 300 feet of a residentially zoned property.
Located on the north side of Hall Road, ½ mile west of Romeo Plank Road; Section 32; Charles Tanner, Petitioner. Permanent Parcel No. 08-32-400-019.

Chairman FLORENCE read the findings and recommendations of January 3, 2008. They are as follows:

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The petitioner is requesting a variance to allow a fast food restaurant to be developed in the strip center (Retail Works) located on the north side of Hall Road, adjacent to a residentially developed property.

RECOMMENDATION:

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

1. Compliance with the strict letter of the location requirement would not unreasonably prevent the ownership from using the property as zoned. Other fast food restaurants planned in Macomb Township will be required to comply with the same location requirements which is evidence that the proper application of the ordinance 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 similar fast food developments in Macomb Township. The other owners are or will be required to comply with the location requirements. As a result the other property owners do not have the opportunity to make use of expanded choices in their developments.

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 proposed building from meeting the requirements of the 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.

The petitioner submitted a letter dated December 7, 2007 in support of the request and was included into the record as follows:

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

PSW falls between the two designated classifications (Restaurant & Restaurant-fast food) the hardship is the latter, where we than require a variance to the DLP to allow the use. There are numerous similar uses along Hall Road (including Jimmy John’s immediately east) in similar properties and it does not appear that this restriction was truly intended to keep uses such as Potbelly from occupying commercial space along Hall Road.

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

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This property is one of very few where the 300' proximity to residential zoning is even a consideration, especially where the residential zoning is along two sides of the property.

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.

Again, the residential zoning to the west & north of the site was in place prior to the dramatic spread of retail growth along Hall Road. The addition of Partridge Creek and other retail has certainly created a conflict with single family residential zoning along Hall Road, but the scope of this development is fairly small with exceptional finish scheduled for a retail building and will not be as intrusive as other potential uses.

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.

Many similar uses exist along Hall Road (Panera Bread, Jimmy John's, Chipotle to name a few) and there are very few instances where the conflict will arise between the our restaurant use and conflicting zoning, therefore, no special privileges will have been given. Moreover, if we were to be classified as a restaurant, as we feel would be appropriate (we do not have throw away dishes of pre-packaged individual servings, and our guests do dine in the restaurant) we would not require the variance in the same locations.

Brian Townsley, owner of Retailworks, was in attendance and stated that he did not feel that Potbelly's was not a fast food restaurant and therefore did not need to obtain a variance for their operation.

Edgar Seperitis, representative of Potbelly's, gave a description of their business and that they are a made to order fresh food restaurant. He indicated that the Zoning Ordinance has two classifications being either restaurant or restaurant/drive thru fast food and the boundaries between the two descriptions cross over. Everything we provide is made to order and then you may either consume within or either take it to go. He highlighted similar business such as Chipotle, Panera Bread and Kozy. Lastly, the proposed restaurant does not omit any order nor is it intrusive and that it should not be classified as a fast food restaurant.

Chairman FLORENCE read the two definitions directly from the Zoning Ordinance so that everyone had a common ground to start from.

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Edgar Seperitis stated that he felt they satisfied the first requirement as read.

Jerome R. Schmeiser, Planning Consultant, stated that the customers are queuing and can either choose to dine in or take out and that is what the definition of a restaurant drive-in fast food states.

Edgar Seperitis stated the definitions could be intertwined. He asked if the matter could be pushed back which could possibly give them the outlook they were looking for. Chairman FLORENCE asked about the setbacks on the west end of the property and how it ties into the residential property.

Jerome R. Schmeiser, Planning Consultant, stated the requirements of the Zoning Ordinance were being met other than the variance trying to be obtained.

Chairman FLORENCE stated that he felt that they had characteristics that fit either category.

Edgar Seperitis agreed that there were gray areas within the definitions.

Member GALLAGHER asked if there were waitresses or waiters that came to the table to take orders.

Edgar Seperitis stated under certain circumstances but not in every case. The main purpose of the wait staff was to ensure the cleanliness of the establishment.

Chairman FLORENCE asked about the hours of operation.

Edgar Seperitis stated the hours of operation were normally 10:30 a.m. to 8:00 p.m. However, the hours of operation were dependent upon the market. Our businesses are independently owned and as such our owners are given the flexibility to service the community.

Public Portion:

Joseph Berak, 45274 Ronnen, stated he would be two houses from where the brick wall would be. He stated his concern as a resident, which was he did not want a drive-thru service with hours of operation spanning from 3:00 a.m. or 4:00 a.m. Lastly, as long as the business was not intrusive and they had responsible hours he would not have a problem with the request.

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

MOTION carried.

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

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 10.1603(B)(33)-Request to allow a fast food restaurant within 300 feet of a residentially zoned property; Located on the north side of Hall Road, 1/2 mile west of Romeo Plank Road; Section 32; Charles Tanner, Petitioner. Permanent Parcel No. 08-32-400-019. The variance was granted since the gray areas lean toward your favor more than against you and would be a good fit for the community.

Jerome R. Schmeiser, Planning Consultant, asked if the item should be studied and further stated if the variance was granted it would set a precedence.

Colleen O'Connor, Township Attorney, stated in her opinion the proposed restaurant could fall under either definition. Furthermore, the definitions need to be made more specific, because the reality of Hall Road is that there are a number of restaurants that could fall in between. A lot of restaurants cater to the lunch crowd and have a carry out along with sit down options.

Jerome R. Schmeiser, Planning Consultant, stated it will set a precedence and later we will have some neighborhoods that fit into it and we will not be able to stop them.

Member GALLAGHER stated he agreed with the attorney to work on the definitions within the Zoning Ordinance.

MOTION carried.

10. **VARIANCE REQUEST FROM ZONING ORDINANCE**
Section 10.0704(A)(3)(c)-Request to vary the depth of 3 lots from 120 feet to 109.5 feet.
Located on the north side of Hall Road, 1/4 mile east of Romeo Plank Road; Section 33; Twin River Development, Petitioner. Permanent Parcel No. 08-33-376-016.

Chairman FLORENCE read the findings and recommendations of January 3, 2008. They are as follows:

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The petitioner is requesting a variance to allow the creation of lots 185, 186 and 187 in the proposed phase 3 of the Twin River Subdivision. The lots will be created via the extension of a stub street connecting the balance of the subdivision with the earlier phase 1.

RECOMMENDATION:

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

1. The petitioner has provided for an extension of the street in an earlier phase of the project into the phase in question.
2. The petitioner has provided for wider lots to compensate the square footage as required by the ordinance.

The petitioner submitted a letter dated December 13, 2007 in support of the request and was included into the record as follows:

“The variance is in Phase 3 of the purposed revisions to the Twin Rivers Subdivision. See the attached plan. Phase 2 includes 2 lots and a road connecting the subdivision to Hall Road. Phase 3 includes 32 lots. Phase 4 is a future phase with 28 lots.

We are requesting a variance for lots 185 through 187. I feel this is a reasonable request because:

1. The stub road in Phase 1 where we are connecting have been built. Phase 1 has been platted and recorded. The lots and roads in Phase 3 must line up with Phase 1.
2. The lots are wider than the standard width so that we meet the square footage requirements despite the lack of depth.
3. Phase 1 was approved with lots of similar depth. Previous site plans and preliminary plats were approved for lots of similar depth for Phases 1 and 3.”

Vincent DiLorenzo, petitioner, was in attendance and stated the lots were approved in the original approval of the subdivision including all phases. Furthermore, this was a continuation of lots on an exiting street within Phase I.

Member GALLAGHER asked why the development couldn't have been developed according to the Zoning Ordinance.

Vincent DiLorenzo stated the plat has been developed as it was designed and approved. He also indicated that he had been under the impression that all the lots were in conformance since the plat had received approvals. Lastly, any variation in the layout of the street would not give a perpendicular relationship to the other street.

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Public Portion:

Joe Sabatini, 37749 Santa Anna, stated he owned 9 lots in Phase I and hopes that the same mistake would not be made again by approving the requested variance.

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

MOTION carried.

MOTION by GALLAGHER to approve the variance request of Section 10.0704(A)(3)(c)-Request to vary the depth of 3 lots from 120 feet to 109.5 feet; Located on the north side of Hall Road, ¼ mile east of Romeo Plank Road; Section 33; Twin River Development, Petitioner. Permanent Parcel No. 08-33-376-016. The variance be conditioned upon a document being drawn up stating the 3 non-conforming lots are acknowledged by the purchaser.

Discussion was held regarding taxing.

Motion failed due to lack of a second.

MOTION by GALLAGHER to deny the variance request of Section 10. 0704(A)(3)(c)-Request to vary the depth of 3 lots from 120 feet to 109.5 feet; Located on the north side of Hall Road, ¼ mile east of Romeo Plank Road; Section 33; Twin River Development, Petitioner. Permanent Parcel No. 08-33-376-016. The variance was denied since the variance was created by the developer. He knew the ordinance for a lot was 70' x 120'.

Vincent DiLorenzo stated he was not trying to create any additional lots and if it was going to be a problem he would have corrected the problem. He stated if the Board wanted to table the item until the next meeting of March he would be okay with that decision.

Motion failed due to lack of a second.

MOTION by FLORENCE seconded by SLOSSON to table the variance request of Section 10. 0704(A)(3)(c)-Request to vary the depth of 3 lots from 120 feet to 109.5 feet; Located on the north side of Hall Road, ¼ mile east of Romeo Plank Road; Section 33; Twin River Development, Petitioner. Permanent Parcel No. 08-33-376-016. The item has been tabled to March 11, 2008 at the Board's request.

MOTION carried.

8. OLD BUSINESS

None.

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9. NEW BUSINESS

None.

10. PLANNING CONSULTANTS COMMENTS

None.

11. 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 GALLAGHER to adjourn the meeting at 9:11
P.M.**

MOTION carried.

Respectfully submitted,

Brian Florence, Chairman

Dawn Slosson, Secretary

BK