

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A REGULAR MEETING
HELD MARCH 11, 2008

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

PRESENT: CHAIRMAN, BRIAN FLORENCE
MEMBERS: EDWARD GALLAGHER
NUNZIO PROVENZANO
DAWN SLOSSON
TERRY CAMPION

ABSENT: NONE

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 7:02 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 SLOSSON seconded by GALLAGHER to approve the meeting minutes of January 8, 2008 as presented.

MOTION carried.

PURPOSE OF HEARING:

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

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- | 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) Twin River Development
Permanent Parcel No. 08-33-376-016 | Section 10.0704(A)(3)(c) |
| (8) Macomb Marketplace
Permanent Parcel No. 08-19-100-011 | Section 10.1705(I)(4) |
| 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. | |

Chairman FLORENCE stated the agenda read Section 10.0402 for an AG zone, however, since the property had been rezoned in 1994 to R-1, the section would be adjusted to Section 10.0702.

On November 13, 2007 the Zoning Board of Appeals considered the matter and tabled action until March 11, 2008.

The petitioner is requesting a variance to allow a commercial limousine service to remain on an AG (agricultural) zoned parcel. According to the petitioner the business has been in existence since 1988. However, our Clerk's records do not indicate any approvals for such a limousine service or any other commercial uses on the property, as outlined in the Macomb Township Zoning Ordinance. Further, to our knowledge, no permits of any kind have ever been issued for the limousine service or any other commercial or personal use for this property.

Comments received from the Macomb Township's department heads indicate the following:

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- a) Fire Department. No records or permits were given to this business.
- b) Building Department. No permits were obtained for the site or accessory buildings.
- c) Assessor Department. The parent parcel number 08-04-400-003 was divided into a 1.148 acre parcel and subject parcel which is 56.506 acres which is being used as a limousine service.
- d) Water and Sewer Department. A permit for water service to the house on the property was issued. The house has no sewer and the department is not aware if water has been run to the barn.
- e) Township Engineer. They have no information regarding permits or approvals, engineering plans or site improvements with reference to this property.

On April 28, 2004, the Township Board denied a request by the petitioner to rezone the property from AG to C-4.

RECOMMENDATION:

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

1. Compliance with the strict letter of the zoning requirement would not unreasonably prevent the ownership from using the property as zoned. Other structures, in any zone, planned in Macomb Township will be required to comply with the zoning requirements which are evidence that the AG zone would not be unnecessarily burdensome for the development of uses allowed in AG zone.
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 developments in Macomb Township. The other owners are or will be required to comply with the zoning requirements. As a result the other property owners do not have the opportunity to make use of an AG zone for commercial purposes.

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 property being used for AG purposes. 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.

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Vincent Hoyumpa, attorney for petitioner, was in attendance, and wanted to point an important feature not indicated by the Planning Consultants, was that the business had been in operation since 1988 but, also had contracts with the Township as far back as 2000. Brentwood Limousine would provide several services on behalf of the Parks and Recreation Department, using senior center transport from 2000 through 2003 when the current issue had arisen. In addition, the invoices had always listed their current address being 20125 25 Mile Road and had always been paid to the listed address. This is a very pertinent point of information as it relates to this. It is our contention that the Township was well aware of our existence. Furthermore, there had been numerous off the record type of conversation with Township officials, that lead us to believe that the Township had acquiesced with our continued limousine service being located there. It is disheartening that the Township has brought this impasse wherein, we are in Macomb County Circuit Court trying to determine what our rights and the Township rights are as it relates to this property.

In addition, it is our contention that for the purpose of a use variance to allow us to continue for rely on the Townships action is the appropriate course. The Township was aware of our existence, continued to allow us to operate our business and it is a situation were no residence have complained against our continued operation. There is no additional traffic as a result of the operation. It is the use of a pole barn for primarily the parking of limousines, there are no alternatives spaces within the Township that could accommodate the number of limousines that Brentwood Limousine uses. With respect to the comments made by various departments, we acknowledge that there weren't any specific permits, but in discussions with various people from the Fire Department, Building Department, as well as the Clerk's Office it was our understanding that it wasn't needed. It has been property that has been owned by Simonne Grabow for over 50 years, it was agricultural and rezoned to R-1 unilaterally by the Township.

Lastly, he urged the Zoning Board of Appeals to consider a use variance would be limited in time as well as for use. It could be limited to just the current property owner which is Simonne Grabow and that would serve the public interest best.

Member SLOSSON questioned with the court proceedings that are taking place now, how this Boards action would affect the proceeding.

Colleen O'Connor, Township Attorney, stated there is a separate lawsuit filed by the Grabow's, which is a separate matter than this ZBA appeal. Depending on the action taken tonight, if it is denied, it will go to Circuit Court and will probably go before the same Circuit Court Judge hearing the current matter. The standards for this case will be much different than what they (Grabow's) are suing the Township for. It will be the same standards that is always used for ZBA cases. It will be whether or not there is a practical difficulty. When or if it goes to Circuit Court, the judge will look at the record of the ZBA and will decide if there was competent evidence on the record, whether or not

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there was a practical difficulty.

Member GALLAGHER asked if the Board had the authority to grant a use variance.

Colleen O'Connor, Township Attorney, stated the Court of Appeals took this issue up about 2 years ago, and made a decision that a use variance may not be granted unless a municipality had an ordinance in place allowing a use variance. However, Macomb Township never had an ordinance for it, so our legal opinion is that Macomb Township can not grant a use variance. The Court of Appeals stated that if certain Townships or municipalities had in their ordinances something that allowed use variance you could grant a use variance.

Chairman FLORENCE stated that he had taken note on the various departments comments and had concern that the petitioner having had knowledge on them had not addressed them or rectified the issue.

Vincent Hoyumpa stated that keeping in mind that the Grabow's have been residence of the Township for many years, and are well familiar with everybody in the Township. This had become a situation were they were having discussions at weddings, family functions, were they were numerously advised and put their minds at ease, that there were no problems with your business operating at the house. Whether those discussions amount to some type of representation by the Township itself, that well be something for the court to decide. It has never been brought to his client's attention, however, that there were any problems with any type of fire permits, whether or not they needed any type of specific building permits, whether or not they needed any specific water permits. Its no question, that numerous Township Officials were aware of the continued operation of Brentwood Limousine, and it was not until 2003 that the issue of Brentwood Limousine operating on an AG zone parcel ever became a problem. According to the Township Supervisor, there was a compliant by some other business which triggered this whole chain of events.

Member PROVENANZO asked about the various discussions and whether they had received some kind of reliance.

Vincent Hoyumpa stated that his clients would testify at a later hearing that they discussions with the previous Clerk, Norm Snay, with the current Township Supervisor, which had lead them to believe that there were no problems with the business operating at the property.

Member PROVENZANO asked if felt that could be determined by the court.

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Vincent Hoyumpa stated is was part of the lawsuit, but that it really didn't have a specific bearing as to whether or not to grant the use variance other than the fact from a hardship stand point, that my client has been entrenched at the property for a number of years and that it would a sufficient hardship to move the property.

Member PROVENZANO stated the Township Attorney had indicated that the granting of a use variance doesn't seem possible. For this Boards purpose we need to look at the request for compliance with the strict letter of the zoning, that it will not unreasonably prevent Grawbow's from using their property along with not giving them an unfair advantage over other neighbors.

Vincent Hoyumpa stated that he disagreed that the granting of a use variance would give them an unfair advantage. It would actually give them a level playing field. They have invested their money, time and hearts into this business at this property. Lastly, after having done all of the above and operating their business there, to tell them they can no longer operate, that is where the hardship is.

Member PROVENZANO indicated he was under the impression that the Board could not entertain the idea of granting a use variance.

Vincnet Hoyumpa stated that he would disagree that the Township does not have the authority to issue a use variance. However, he understands the Township Attorneys position, but respectively disagrees with the legal assessment.

Colleen O'Connor, Township Attorney, stated that a hardship is not the fact that they have used their property illegally for a number of years and now they won't be able to do so. When you look a variance and a practical difficulty or a hardship as Vincent Hoyumpa refers to it, it's not whether or not your client will be out money, it's whether or not your client could use the property as it is zoned. Lastly, she asked the Board to remember that a hardship is whether the Grabows could use their property as zoned, which is R-1. The question to ask is if they are able to use the property for its purpose which is a residential parcel of land. Lastly, she pointed out that the Grabow's have asked for variance on the entire parcel. If this variance were to be granted, it would not be for the small amount used for the pole barn. It would make it a commercial district on 56 acres.

Vincent Hoyumpa stated the petition had been filed several years ago, but, it was his clients belief that the petition was strictly for the pole barn area which is 1.148 acres. It is not the intent of the Grabow's to have the entire parcel which has been rezoned to R-1, only that parcel on which the pole barn rests.

Chairman FLORENCE held a discussion on the parcel number in question for the variance being sought.

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Jerome R. Schmeiser, stated he was not sure on the numbers. He stated the parent parcel was 58 acres. Then a parcel approximately 1 acre was split off. The balance of the parcel is where the pole barn sits.

Vincent Hoyumpa stated there was a situation that the Township Clerk refused an additional split to split off the pole barn area from the entire parcel which then necessitated this entire request. However, to be very specific we are only looking to rezone that portion of land on which the pole barn sits.

Jerome R. Schmeiser, Planning Consultant, stated the Township has a provision in the ordinance that you can't dual zone a parcel. You can't consider rezoning part of it unless you consider rezoning all of it. You can't consider a variance for part of it, unless your considering a variance for all it. It's one parcel and that is 08-040-400-030, and that is 56 acres and that is where the pole barn sits. So you have no authority through the Zoning Ordinance anyway to grant a variance for a portion of land.

Chairman FLORENCE made a point of clarification that when the Zoning Board of Appeals makes a determination on a piece of property, it does affect the entire parcel.

Mark Grabow, petitioner, stated that Mr. Schmeiser was incorrect on his position regarding this discussion. They had asked the Clerk and the Board to have the one acre in question rezoned and split. We were told we could not split the parcel off, so that is why we are asking for a land and use variance for the piece of property. We were told numerous time we could not split that section. Furthermore, we were willing to agree to whatever the Township asked for in taxation in temporary commercial. We would have been more than willing to work with the Township. He noted that they would be more than happy to close the business, but that the residents would not enjoy the commercial pig farm in its place. The property is AG zoned. The map as presented is incorrect and it is under court ruling.

Colleen O'Connor, Township Attorney, stated that pursuant to the Court of Appeals, the Township does not have the right to grant a use variance, because the Township does not have an ordinance allowing use variances. She then preceded to ask Jerome Schmeiser to discuss the Commercial Market Analysis. He then discussed the commercial study and the impact that it had on this property and concluded that the commercial property that's available for development in the township is adequate and that no other property needs to be rezoned for commercial purposes.

Public Portion:

Simonne Grabow, petitioner, stated she would not rest until they get their farm back. She stated she has worked hard all her life and wants the harassment stopped.

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

MOTION carried.

MOTION by FLORENCE seconded by SLOSSON to include into the findings the Commercial Study highlighted by Jerome Schmeiser.

MOTION carried.

MOTION by GALLAGHER seconded by SLOSSON to deny the variance request of Section 10.0702-Request to allow the use of an R-1 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 No. 08-04-400-030. The variance was being denied since he did not believe the Zoning Board of Appeals has the authority to grant a use variance. We did not have it in our ordinance and it is not in our ordinance now. We don't have a right to grant the variance.

Member PROVENZANO added that if the compliance with the strict letter of the zoning requirement would not unreasonably prevent the ownership from using the property as zoned. Granting the variance appears to give an unfair advantage that others would not be able to use their residential property for commercial purposes. Lastly, there is nothing unusual about the property that sets it apart from any other parcel in the area and therefore, they have not met the practical difficulty.

Member GALLAGHER stated this body does not have the authority to grant the variance. We have laws that we have to abide by as well. Until such time as we are given the authority we have to turn the request down.

Chairman FLORENCE added there is no authority to be able to provide for the variance was not there. The standard that has been set for a practical difficulty has not been met.

Member SLOSSON stated there was no authority to grant the variance as well as it does not prevent the ownership from using their property as zoned.

Member CAMPION stated the Board was not in a position to grant a use variance and there is no hardship in using the land. Also had concerns on the lack of the follow through for not obtaining the appropriate permits.

MOTION carried.

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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 Quadrante Drive, approximately ½ mile north of 23 Mile Road; Section 18; Quadrante 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 March 10, 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”. 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. We apologize for any inconvenience.”

MOTION by SLOSSON seconded by PROVENZANO 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 Quadrante Drive, approximately ½ mile north of 23 Mile Road; Section 18; Quadrante 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 May 13, 2008 at the petitioner’s request.

MOTION carried.

7. 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, ¼ 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 March 3, 2008. They are as follows:

This matter was considered by the Board of Appeals at its meeting of January 8, 2008 but tabled for further review.

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 at a depth of 109 feet instead of the 120 feet required by the zoning ordinances for lots in an R-1 zone. The lots will be created via the extension of a stub street connecting the balance of the subdivision with the earlier phase 1.

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RECOMMENDATION:

It is recommended that the variance request be approved 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.

Vincent DiLorenzo, petitioner, was in attendance, and made a presentation of his proposed subdivision using an exhibit. He further stated that this was an extension of the previously approved subdivision and the lots in question have been made wider to compensate for the depth.

Public Portion:

Joe Sabatini, 37749 Santa Anna, stated he owns lots within Phase I and indicated that there was still no primary entrance into the phase that has already been established. He stated that he had been informed that there would be no other approvals given until such time as the main entrance had been established. At this time there is only a dirt road from Hall Road and questioned if there was any money in escrow to provide for an entrance should anything happen in the future should the developer walk away from the project to ensure the entrance be provided.

Maria Sabatini, 37749 Santa Anna, stated she had been informed that there was money in escrow for the road, and the Township was holding firm to the road going in on a timely fashion and that it was outrageous that there was only a dirt road at this point.

Chairman FLORENCE stated that the Board could not answer for the planning of the subdivision.

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

MOTION carried.

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

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

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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 10.0704(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; Permanent Parcel No. 08-33-376-016. Permanent Parcel No. 08-33-376-016. The petitioner has provided for an extension of the street in an earlier phase of the project into the phase in question and the petitioner has provided for wider lots to compensate the square footage as required by the ordinance.

**GALLAGHER-opposed.
MOTION carried.**

8. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Section 10.1705(I)(4)-Request to increase the size of each of two wall signs from a total of 64 square feet to 195 square feet per sign.
Located on the southeast corner of 23 Mile Road and Hayes Road; Section 19;
Macomb Marketplace, Petitioner. Permanent Parcel No. 08-19-100-011.

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

The petitioner is requesting allowance to install two wall signs on their proposed Kohl's department store located on the above-described property. Their proposed building faces Hayes Road and 23 Mile Road and as such they are allowed 64 square feet of signage or 32 square feet for each face of the building fronting on Hayes Road and 23 Mile Road.

The petitioner is requesting a sign on each face of the building of 195 square feet per sign approximately six times more square footage than allowed by 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 sign requirement would not unreasonably prevent the ownership from using the property as zoned. Other commercial structures planned in Macomb Township will be required to comply with the same sign 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 commercial developments in Macomb Township. The other owners are or will be required to comply with the same sign requirement. As a result the other property owners do not have the opportunity to make use of six times more signage square feet.

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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 ordinance to be met. 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 increasing the signage by approximately 600% from ordinance requirements.

The petitioner submitted a letter dated February 15, 2008 in support of the request and was included into the record as follows:

“The proposed Kohl’s has frontages on two (2) streets 23 Mile Road and Hayes Road. The proposed wall signs are to be located facing both roads, 23 Mile Road and Hayes Road. The sign on the west building elevation is located approximately 444’ from Hayes Road R.O.W. The sign on the north building elevation is located approximately 335’ from 23 Mile Road R.O.W. The smaller sign size will create a hazard for drivers if they need to strain to see the sign.”

Jacki Miller, representative, was in attendance, and indicated they were asking for variance for the typical signage used for Kohl’s. The ordinance does not take into consideration to size of business moving into the area. She then presented renderings to present the location of the site in question which showed there would be other outlots which may block the view of Kohl’s. There is an opportunity to approve this request which would give the business a fair chance to succeed.

Member GALLAGHER asked if they would be allowed a pylon sign.

Jerome R. Schmeiser, Planning Consultant, stated they would be allowed a pylon sign. There could not be 2 signs. The petitioner had not asked for nor did the Township consider this location as a shopping center. He indicated that he had been in contact with Chris Corden of Grand/Sakwa who would be asking for that designation, then they would be allowed two road signs.

Member SLOSSON stated the Township has been looking at changing the sign ordinance and asked about the status.

Jerome R. Schmeiser, Planning Consultant, stated that it been sent to the Township Board but has no knowledge of the status.

Member GALLGHER stated that signs are way over rated. He stated that when you leave home you know your destination.

Public Portion: None.

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

MOTION carried.

MOTION by GALLAGHER seconded by PROVENZANO to deny the variance request of Section 10.1705(I)(4)-Request to increase the size of each of two wiall signs from a total of 64 square feet to 195 square feet per sign; Located on the southeast corner of 23 Mile Road and Hayes Road; Section 19; Macomb Marketplace, Petitioner. Permanent Parcel No. 08-19-100-011. The variance request is denied since there is no significant grade differences or practical difficulties that would require this to be larger than our ordinance requires. Compliance with the strict letter of the sign requirements would not unreasonably prevent Kohl's from operating.

MOTION carried.

9. OLD BUSINESS

None.

10. NEW BUSINESS

None.

11. PLANNING CONSULTANTS COMMENTS

None.

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

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

MOTION carried.

ADJOURNMENT

MOTION by SLOSSON seconded by CAMPION to adjourn the meeting at 8:24 P.M.

MOTION carried.

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Respectfully submitted,

Brian Florence, Chairman

Dawn Slosson, Secretary

Beckie Kavanagh, Recording Secretary

BK