

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A SPECIAL MEETING
HELD MAY 13, 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 7:03 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 CAMPION seconded by SLOSSON to approve the meeting minutes of April 14, 2008 as amended.

MOTION carried.

PURPOSE OF HEARING:

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

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
 MINUTES OF A SPECIAL MEETING
 HELD MAY 13, 2008

Agenda Number/Petitioner/ Permanent Parcel No.	Zoning Ordinance Section No.
(5) Quadrate Condo Park No. 1, LLC	
(6) WHP Holdings, LLC Permanent Parcel No. 08-19-300-012	Section 10.2107(D)(1) 10.2107(D)
(7) Rodney Eugene Jeziarski Permanent Parcel No. 08-21-205-001	Section 10.0331(5)(c)
(8) Joe Biondo Permanent Parcel No. 08-07-300-016	Section 10.0323(A)(10)(I)
(9) Chippewa Valley Permanent Parcel No. 08-30-200-015	Section 10.0335 10.0704(D)(2)(b)
(10) Ronald Kachman Permanent Parcel No. 08-31-300-025	Section 10.0323(10)(1)
(11) Hall Road Commons, LLC Permanent Parcel No. 08-35-476-042	Section 10.1603(B)(33)(a)

5. 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, approx. ½ mile North of 23 Mile Road; Section 18; Quadrate Condo Park No. 1, LLC, Petitioner. Permanent Parcel Nos. 08-18-401-009, -010, -011, -012

Colleen O'Connor, Township Attorney, stated the Zoning Board of Appeals has no legal authority to consider an appeal. The legal opinion would be to take no action. They are not asking for an interpretation of the ordinance, they are asking for an appeal from a Planning Commission decision. Her recommendation would be to receive and file correspondence and take no action.

MOTION by GALLAGHER seconded by SLOSSON to receive and file correspondence in connection with agenda item #5.

MOTION carried.

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A SPECIAL MEETING
HELD MAY 13, 2008

6. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Section 10.2107D-1– Request to reduce a front yard setback for a driveway/parking area from 60 feet to 51.8 feet.
Section 10.2107D-Request to reduce a side yard setback from 25 feet to 7 feet.
Located at 49620 Hayes Road, located on the east side of Hayes Road, approximately ¼ north of 22 Mile Road; Section 19; WHP Holdings, LLC, Petitioner. Permanent Parcel No. 08-19-300-012.

Chairman FLORENCE stated the petitioner had submitted the following letter dated April 29, 2008:

“We are requesting to set aside the Zoning Board of Appeals (ZBA) Variance application that has been submitted to the Township and should be tabled until further notice.”

MOTION by SLOSSON seconded by CAMPION to table the variance request of Section 10.2107D-1–Request to reduce a front yard setback for a driveway/parking area from 60 feet to 51.8 feet and Section 10.2107D-Request to reduce a side yard setback from 25 feet to 7 feet; Located at 49620 Hayes Road, located on the east side of Hayes Road, approximately ¼ north of 22 Mile Road; Section 19; WHP Holdings, LLC, Petitioner. Permanent Parcel No. 08-19-300-012. The variances are tabled until further notification.

MOTION carried.

7. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Section: 10.0331.5.c – Request is to construct a shed of 256 square feet. The Zoning Ordinance allows 150 square feet.
Located at 50604 Alden Drive, Lot 141 of Cambridge Commons Subdivision #2, Located on the south side of 23 Mile Road and ¼ mile east of Romeo Plank Road; Section 21; Rodney Eugene Jezierski, Petitioner. Permanent Parcel No. 08-21-205-001.

Chairman FLORENCE read the findings and recommendations of May 7, 2008. They are as follows:

The petitioner is requesting to be allowed to construct a shed in the rear yard of his property of 256 square feet as opposed to 150 square feet allowed by the Zoning Ordinance.

RECOMMENDATION:

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

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A SPECIAL MEETING
HELD MAY 13, 2008

1. Compliance with the strict letter of the square foot requirement would not unreasonably prevent the ownership from using the property as zoned. Other residential properties planned in Macomb Township will be required to comply with the same shed area requirements, which is evidence that the proper application would not be unnecessarily burdensome.
2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in residential developments in Macomb Township. The other owners are or will be required to comply with the shed area requirements. As a result the other property owners do not have the opportunity to make use of an additional 106 square feet of shed area.

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 from being 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 square footage by approximately 60%.

The petitioner submitted a letter dated April 11, 2008 in support of the request and was included into the recorded as follows:

“We propose to build a 16’ x 16’ storage shed in addition to the existing attached garage. This size is required because the existing 2 car garage will barely accommodate my 2 cars. I am also practically disabled and cannot store my lawn equipment such as a riding lawn mower, power edger’s, large snow blower, gas generator, patio furniture, barbeque equipment stored in winter, and many miscellaneous yard tools.

Any help in this matter will be greatly appreciated.”

Rodney Jezierski, petitioner was in attendance and stated that when his house plan had been submitted it had omitted the three car garage. He stated he was partially handicapped from an accident that had occurred during the winter while scrapping snow and ice of the vehicles.

Member CAMPION asked about the height of the structure.

Rodney Jezierski stated he had gone through the paperwork which he believes it allows up to 11 feet. The request for the 11 feet was to be able to hang bicycles from hooks, but if the Board doesn’t approve the request he would be willing to lower the height.

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A SPECIAL MEETING
HELD MAY 13, 2008

Member CAMPION read the ordinance and stated that any detached accessory structure should not exceed 10 feet and it appears by your drawing that the shed would be several feet higher than that.

Chairman FLORENCE asked if this variance was needed, as opposed to keeping it to 150 square feet.

Rodney Jezierski stated when he visited the Building Department he was told that the size of the garage where he would not need to go to the Zoning Board of Appeals would be a 12' x 12' at 150 square feet and that he has papers indicating that.

Chairman FLORENCE stated that a 12' x 12' shed would be 144 square feet which would meet the requirements of the ordinance of 150 square feet.

Public Portion: None.

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

MOTION carried.

MOTION by CAMPION seconded by SLOSSON to deny the variance request of Section 10.0331.5.c–Request is to construct a shed of 256 square feet. The Zoning Ordinance allows 150 square feet; Located at 50604 Alden Drive, Lot 141 of Cambridge Commons Subdivision #2, Located on the south side of 23 Mile Road and ¼ mile east of Romeo Plank Road; Section 21; Rodney Eugene Jezierski, Petitioner. Permanent Parcel No. 08-21-205-001. The variance was denied since a 12' x 12' at 140 square feet should be sufficient for an accessory building. The granting of the variance of structures in various heights would cause issues with the welfare of other residents within the Township.

MOTION carried.

8. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Section 10.0323A-10-1–Request to eliminate the six inch raised concrete walkway required on the northeast corner of the building.
Located on the north side of 24 Mile Road, approximately 200 feet east of Hayes Road; Section 7; Joe Biondo, Petitioner. Permanent Parcel No. 08-07-300-016.

Chairman FLORENCE read the findings and recommendations of May 7, 2008. They are as follow:

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A SPECIAL MEETING
HELD MAY 13, 2008

The Zoning Ordinance requires that a six inch raised concrete walkway be installed along the building where a driveway or parking area abuts the building. The installation of a raised concrete walkway takes into account doorways, etc. The petitioner provide for no raised curb area with bollards substituted as a means of safety for pedestrians.

A communication from the Township Engineer indicates that the provision of the Zoning Ordinance requiring the raised curb area is the best method of protection.

RECOMMENDATION:

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

1. Compliance with the strict letter of the raised curb area 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 raised curb area requirements which are evidence that the proper application of the Zoning Ordinance requirements 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 raised curb area requirement. As a result the other property owners do not have the opportunity to make use of substituted devices for safety.

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 from being 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.

The petitioner submitted a letter dated April 11, 2008 in support of the request and was included into the record as follows:

“The Macomb Township Zoning Ordinance Section 10.03232, A, 10, I requires a minimum 5’ wide 6” high raised concrete sidewalk along the building where parking spaces or drives/maneuvering lanes are adjacent to the building. Based on review comments provided by Macomb Township, this condition applies to the exterior overhead and mandoor at the rear loading dock of the proposed Walgreen’s. Safety of the building occupants exiting the building into traffic was stated as the reason for this raised sidewalk requirement.

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A SPECIAL MEETING
HELD MAY 13, 2008

The area in question is utilized exclusively by Walgreen's employees as a loading and unloading area for their deliveries. No customer access is allowed in this area. All vendors either carry their products or wheel them on dollies into the building through these two openings. Walgreen's standard design for this loading area has a continuous sloped surface from the outside edge of their loading area to the interior finish floor elevation at these openings. This eliminates any issues with elevation changes for the wheeled dollies or a tripping hazard for vendors carrying products in and out of the building. Walgreen's feels that the raised sidewalk condition at the loading area is a liability for them. It not only affects the store's operations, but also puts their vendors and employees at risk while performing their tasks.

To address traffic safety issues regarding the building occupants entering and exiting the building, its Walgreen's standard to locate bollards in front of these openings in the loading area. Walgreen's feels these bollards are much more effective for protecting the building occupants in this loading area than a raised 6" curb. The majority of deliveries are made by trucks with higher bumpers and greater overhangs beyond the wheels that would be affected by the 6" curbs. Bollards would be tall enough to intercept the truck bumpers that would most likely do the most harm to the building occupants and the actual building. Walgreen's feels this bollard design far exceeds the protection provided by the raised sidewalk condition, yet doesn't interfere with the function of the building occupants.

There are several other Walgreen's in Macomb Township that are under construction or in operations that have this same layout. We are requesting the same consideration be extended to this Walgreen's project."

Mike Rein, architect, was in attendance and stated the ordinance was designed to protect customers and visitors to the store from having to walk along a maneuvering lane or against parking. Therefore, a 6 foot raised slab was required. However, the other Walgreen's within the Township do not have this, and had pictures to show this. The area that we are asking for consideration is on the rear of the building at the loading area, where there will not be any visitor or customer traffic. This area will simply be utilized by the vendor for Walgreen's or the employees of Walgreen's to facilitate the removal of garbage in the compactors or delivers by an overhead door or by a man door. Furthermore, Walgreen's concern with the raised curb is that someone could turn an ankle, trip over or run their storage cart into it. This is a cumbersome area to have a sidewalk that won't serve its real purpose of protecting people from pulling into a front parking space along a maneuvering lane with a 6" vertical.

Member GALLAGHER stated this was not a new ordinance.

Mike Rein stated he had not been involved in the other developments but, again he had pictures to show the project.

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A SPECIAL MEETING
HELD MAY 13, 2008

Member GALLAGHER stated it was just not for pedestrian safety but also for building safety. In addition, there has not yet been a practical hardship presented which prevents it from being built according to the ordinance.

Mike Rein stated the 5' wide 6" high sidewalk would be in the way of the trucks and the carts using the man door. If this requirement is truly designed to protect the customers, there are no customers in this area, which, is a servicing orientated area. The closest parking is over 50 feet away. Lastly, there is no need to create another layer of raised slab that someone could bump into or trip over.

Member PROVENZANO stated there was still a safety issue for trucks backing into the building.

Mike Rein stated there are no trucks backing, this was a front loading area.

Member CAMPION stated the proposed Walgreen's backs up to a residential area. The store would also be accessible to those within walking distance. Children have tendencies to go behind stores, and if there a truck coming they need to have a sidewalk to run up onto to provide them the necessary safety.

Mike Rein stated this would not be an inviting location for children to hang out at.

Jerome R. Schmeiser, Planning Consultant, stated that after reviewing the site with the Township Engineers, it would be a safety issue for all persons whether customers or workers.

Chairman FLORENCE stated the drawings submitted do not show any dimensions, but thought that it would be possible to move building features 5 feet over to allow the sidewalk without infringing upon the 20 foot loading area.

Mike Rein stated the site plan has already gone the initial review and the site meets all other minimum requirements.

Public Portion:

Pete Schmid, 53003 Bayberry, asked for an description of the site.

Jerome R. Schmeiser, Planning Consultant, reviewed the site by using the overhead projection.

Kevin Bower, 45452 North Branch, asked where the drive-thru traffic would exit. He stated just by looking at the plan shown he would have a tendency to drive forward and then go off to the left which would take me through the loading area.

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A SPECIAL MEETING
HELD MAY 13, 2008

Mike Rein stated you would continue forward until you reach the east/west drive lane.

Jon Steenland, 53039 Bayberry, asked if this plan had been approved.

Jerome R. Schmeiser, Planning Consultant, stated the site had not been approved. There are still issues that need to be resolved around Walgreen's.

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

MOTION carried.

MOTION by GALLAGHER seconded by PROVENZANO to deny the variance request of Section 10.0323A-10-1-Request to eliminate the six inch raised concrete walkway required on the northeast corner of the building; Located on the north side of 24 Mile Road, approximately 200 feet east of Hayes Road; Section 7; Joe Biondo, Petitioner. Permanent Parcel No. 08-07-300-016. The variance had been denied since there has been no practical hardship displayed. The safety feature needs to be considered and any other construction will need to comply with the ordinance. Lastly, the raised curb area does not prevent the use of the property as zoned.

MOTION carried.

9. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Section 10.0335 – Permission to vary the street frontage from 70 feet to 60 feet.
Section 10.0704 D-2-b- Permission to vary a side yard setback from 7.5 feet to .7 feet.
Located on the west side of Garfield Road, ½ mile north of 21 Mile Road; Section 30; Chippewa Valley, Petitioner. Permanent Parcel No. 08-30-200-015.

Chairman FLORENCE read the findings and recommendations of May 7, 2008. They are as follows:

The petitioner is requesting permission to create a parcel with access to two stub streets from adjoining developments. It is the intention of the developer to tie the two stub streets together with a street to provide frontage for proposed houses. The apparent frontage on Garfield Road is separated from the property in question by a drain right-of-way owned by the County of Macomb.

An existing concrete pad and landscape timbers encroach .7 feet upon the west line of the property from lot 469 of the Jefferson Meadows Five Subdivision.

The Township has been advised that the platting process will begin to create a subdivision on the parcel in question if the variances are granted.

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A SPECIAL MEETING
HELD MAY 13, 2008

RECOMMENDATION:

It is recommended that the variance requests be granted for the following reasons:

1. The ultimate goal of the petitioner is to subdivide the property tying the two abutting stub streets together with a public street.
2. The concrete pad that encroaches onto the subject property was not placed there by the petitioner or previous owners of the property.

The petitioner submitted a letter dated April 18, 2008 in support of the request and was included into the recorded as follows:

“We would like to split 7 +/- acres of land south of the Gloede Drain off the 47 +/- acre parcel in order to develop an 11 lot subdivision. The lots in the subdivision may then be used by the school’s building program where students can learn valuable trades. The variance is required because until the plat is developed, the site does not have the required public road frontage. Strict enforcement of the ordinance would render this property undevelopable. Two stub roads have been provided to this site. We intend to connect these roads which would allow development in compliance with the frontage requirements. Therefore, when the plat is developed the need for the variance will be eliminated. This is essentially a temporary variance which will not confer special privileges on the property.”

Jerome R. Schmeiser, Planning Consultant, gave an overview of the site and stated the only public access to the site was via two stub streets that had been provided from the surrounding subdivisions. The ordinance requires 70 feet of public road frontage but the streets are only 60 feet wide.

Craig Duckwitz, petitioner, was in attendance and stated the variance was needed since the property was landlocked at this time. Chippewa Valley intends on connecting the two streets together. There is a draft permit from MDEQ subject to obtaining a variance and a preliminary plat being approved by the township. The impact to the wetlands will be minimal as approved by the MDEQ. Furthermore, the property is currently zoned R-1, and landlocked which, is why the variances are required for the road frontage and the sideyard variance setback. A resident in Jefferson Meadows Subdivision #5 (lot 469) poured a concrete slab that encroaches approximately 8 inches into the property in question which, when developed will be in a conservation easement dedicated to the MDEQ.

Member GALLAGHER questioned about the existing 60 foot lots within the abutting subdivisions.

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A SPECIAL MEETING
HELD MAY 13, 2008

Craig Duckwitz stated the lots are 70 feet wide as well as the lots within the proposed subdivision.

Member GALLAGHER stated the request was to create 60 foot wide lots.

Craig Duckwitz stated it was not. He stated the frontage was being requested to be reduced because the road frontage from the existing stub streets is at 60 feet wide.

Member CAMPION asked for a better description of the sideyard variance.

Jerome R. Schmeiser, Planning Consultant, stated a slab had been poured approximately 8 inches onto the property in question. However, the petitioner is not responsible for that except that it had been in error by the property owner of lot 469. A recommendation is being made to grant a variance so that area of the parcel can be put into a preservation easement.

Public Portion:

Grace Caporuscio, 48470 Lorenzo, stated she had spoken to the school board on May 5, 2008, and questioned them about this subdivision because she had a copy of the platted subdivision. She indicated she had sent a FOIA request to the township on December 27, 2007 regarding anything to do with this plan and had not been given anything. She asked if the members had the plan in front of them. The board members responded they did not. The school board president claims that no decisions have been made on this plat, but apparently something has been submitted.

Jerome R. Schmeiser, Planning Consultant, stated nothing has been submitted.

Grace Caporuscio asked if Chippewa Valley was planning on building homes at this location.

Craig Duckwitz stated the school was planning on developing the property whether they build homes or not was another question.

Grace Caporuscio stated in the request to the MDEQ they had mentioned it would be possible that students would be building homes as a building trades class. A member on the school board claims the economy is not good and its not likely they will be building houses there. She asked who was correct.

Chairman FLORENCE stated at this time it is only a proposal. There has been nothing laid out in concrete, no decisions have been made, this is simply a preliminary step in order to potentially put the proposal in place.

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A SPECIAL MEETING
HELD MAY 13, 2008

Grace Caporuscio asked what was being requested to be revised if there is not a plat plan.

Chairman FLORENCE stated the request was for preliminary actions that are preventing him from putting any plan out. These approvals are needed in order to put anything out at all.

Grace Caporuscio stated they must be sure because they have paid money to have it platted out.

Chairman FLORENCE stated at some point assuming the variance are granted he would be presenting that plan before the Planning Commission Board.

Chris Glugla, 48710 Lafayette, stated he had looked on the internet and it showed the parcel in question was the Agricultural portion of the Manthey's and wanted it clear for the record which piece was being considered.

Craig Duckwitz, stated the parcel in question in one parcel which has two zones with two legal descriptions.

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

MOTION carried.

Jerome R. Schmeiser, Planning Consultant, stated that no lots are being dealt with at this time. It is one parcel. There is no public road frontage. The only street frontage is from the two 60 foot stub streets and according to the Township Assessor a parcel can't be dealt with unless there is 70 feet of frontage.

Craig Duckwitz stated he would be willing to have conditions placed upon the variance to stipulate that all lots within the development must comply with the 70 foot frontage and that the .7 feet apply only to the proposed lot that would back to lot 469 of Jefferson Meadows #5.

The following resolution was offered by GALLAGHER 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;

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A SPECIAL MEETING
HELD MAY 13, 2008

Now, therefore, be it resolved, that the action of the Board is to grant the requested variance of Section 10.0335–Permission to vary the street frontage from 70 feet to 60 feet; Located on the west side of Garfield Road, ½ mile north of 21 Mile Road; Section 30; Chippewa Valley, Petitioner. Permanent Parcel No. 08-30-200-015. The variance was granted conditioned that all lots created will meet the current Township Ordinance.

MOTION carried.

The following resolution was offered by GALLAGHER 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 10.0704 D-2-b-Permission to vary a side yard setback from 7.5 feet to .7 feet; Located on the west side of Garfield Road, ½ mile north of 21 Mile Road; Section 30; Chippewa Valley, Petitioner. Permanent Parcel No. 08-30-200-015. The variance was granted for the proposed lot that will back up to Lot 469 of Jefferson Meadows #5.

MOTION carried.

10. **VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;**
Section 10.0323-10(1)-Permission to reduce the required 6” raised slab to a 3” raised slab.
Located in Crosswind Corners Shopping Plaza, located on the north side of Hall Road, 500 feet east of Hayes Road; Section 31; Ronald Kachman, Petitioner.
Permanent Parcel No. 08-31-300-025.

Chairman FLORENCE read the findings and recommendations of May 7, 2008. They are as follows:

The petitioner is in the process of making improvements to the shopping center in question. The improvements involve expanding the pedestrian portion in front of the stores as well as the surface of the parking lot. The normal height difference between the parking surface and the pedestrian walk way is six inches. The six inches is normally provided to provide for a difference in elevation and as well as a barrier for traveling motor vehicles and pedestrians.

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A SPECIAL MEETING
HELD MAY 13, 2008

However the design of the parking area and the current drainage situation dictates the height necessary.

The Township Engineer has recommended the change as adequate to provide for the necessary improvements to the shopping center within the safety standards of the Township.

RECOMMENDATION:

It is recommended that the variance request be approved as recommended by the Township Engineer.

The petitioner submitted a letter dated April 18, 2008 in support of the request and was included into the recorded as follows:

“Widening existing condo walks by street. New curbed landscape areas, new light poles with light fixtures installed in new landscaped areas. New exterior elevation designs, new truckwell for ABC warehouse. Requesting a variance for the new 5 foot wide concrete walk addition from a 6” raised concrete bumper slab required by Section 10.0323 to a 3” raised concrete slab in order to match existing asphalt paving grades. Hardship would be the removal of existing asphalt paving to maintain a 6” raised concrete walk would not be feasible, in order to maintain a proper drainage flow in the existing parking lot.”

Ron Kachman, petitioner, was present and reviewed the improvements being made to the site and indicated they were trying to keep the curb at a uniform height at the suggestion of the Township Engineer.

Public Portion: None.

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

MOTION carried.

The following resolution was offered by GALLAGHER 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;

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A SPECIAL MEETING
HELD MAY 13, 2008

Now, therefore, be it resolved, that the action of the Board is to grant the requested variance of Section 10.0323-10(1)-Permission to reduce the required 6' raised slab to a 3' raised slab; Located in Crosswind Corners Shopping Plaza, located on the north side of Hall Road, 500 feet east of Hayes Road; Section 31; Ronald Kachman, Petitioner. Permanent Parcel No. 08-31-300-025. The variance was granted since the intent of the ordinance was still being met.

MOTION carried.

11. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Section 10.1603 (B)(33)(a)-Permission to vary the required setback from 300 feet for a drive thru call box to approximately 120 feet.
Located on the north side of Hall Road, between Deneweth and North Branch;
Section 35; Hall Road Commons, LLC, Petitioner. Permanent Parcel No. 08-35-476-042.

Chairman FLORENCE read the findings and recommendations of May 7, 2008. They are as follows:

The petitioner is requesting to locate a drive thru restaurant window to be located within 120 feet of a residential area. The Zoning Ordinance requires a distance of 300 feet from a residential area. The petitioner proposes a small strip center with an end unit which would be a restaurant with a drive thru window service.

RECOMMENDATION:

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

1. Compliance with the strict letter of the setback requirement would not unreasonably prevent the ownership from using the property as zoned. Other drive thru/restaurant structures planned in Macomb Township will be required to comply with the same setback requirements which is evidence that the proper setback of a drive thru restaurant from a residential area 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 setback requirement. As a result the other property owners do not have the opportunity to make use of shallow parcels for similar 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 ordinance from not being met. For example, there are no significant grade

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A SPECIAL MEETING
HELD MAY 13, 2008

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 setback by approximately 60% from the Zoning Ordinance.

The petitioner submitted a letter dated April 22, 2008, in support of the request and was included into the recorded as follows:

“The property is currently zoned General Commercial District (“C-2”). Petitioner seeks to use the property in a manner consistent with existing development along M-59, and consistent with C-2 zoning. Proposed use of the property is planned as being a retail center including a restaurant establishment offering drive-thru service. The subject property abuts residential uses.

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

Section 10.1603(B)(33)(a) requires a setback of 300 ft. separating a call box or drive-thru window of a fast food restaurant or similar use from property zoned for residential or agricultural use. Because of the size, configuration and location of the subject parcel, Petitioner faces practical difficulties in developing the parcel in strict compliance with the requirements of a C-2 District, in that the proposed drive-thru/call-box would be within the required 300-foot setback.

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

Petitioner’s parcel has a depth of only 352.63 feet at its deepest point, creates a practical difficulty in strict compliance with requirements of Ordinance Sections 10.1603(B)33. The development planned is indeed a use for which the property is zoned, however, because of the size, configuration and location of this property, requiring strict compliance with the cited Ordinance Sections is unreasonable and will deprive Petitioner of full use of the site.

- 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.**

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A SPECIAL MEETING
HELD MAY 13, 2008

The conditions upon the subject property were created by the widening and the angle of M-59, not by Petitioner or predecessor. Expansion of M-59 has resulted in reduced parcel depth upon the subject property, creating a practical difficulty in development.

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 other sites within this district are not similarly situated for the reason that they do not share the same configuration or dimensions, and/or do not abut residential property. Conversely, several other sites in the area similarly situated, have, upon information and belief, been granted variances.”

Joe Dwyer, representative, was present and stated the reason they have requested a drive-thru for this property was they were trying to develop this site as a neighborhood shopping center. He indicated that Wendy’s/Tim Horton’s was the exact same depth property, abuts residential and they are very high impact drive-thrus. We are proposing a low impact, with basically morning drive-thru traffic, not opened all hours of the night. The type of tenants and the type of customers we would attract would be a residential strip center. Lastly, he stated they were only proposing a 25,000 square feet versus a 30,000 square foot of retail on 3 ½ acres.

Member GALLAGHER asked if there would be a menu board along with a speaker at this drive thru.

Joe Dwyer stated there would a menu board and a speaker.

Bob Kirk, representative, was present and stated the depth of the property was the hardship that has been created with MDOT widening Hall Road. He stated they are willing to have conditions imposed on the restaurant such as hours. Furthermore, they have no curb cuts proposed on either Deneweth or North Branch which will keep the traffic off the side streets.

Patrick Mannor, representative, was present and stated the site was designed with one way traffic between buildings would be the entrance to the drive thru and have provided a by pass-lane should someone decide to exit.

Public Portion:

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A SPECIAL MEETING
HELD MAY 13, 2008

Joe Hagan, 45391 North Branch, stated that he was upset over the request being made. He noted that he had been to a similar meeting approximately two years ago over another restaurant wanting to be built. Lastly, that this was a large request to place in our neighborhood and that there were safety issues with the location of bus stops at these intersections.

Kevin Green, 45473 North Branch, stated he had approached the Board in 2004 for a setback variance to make improvements to his house and had been denied. He noted that he accepted that decision and hoped that the Board would take into consideration the previous decision before you grant a variance.

Vito Meatte, 45440 North Branch, read a letter in opposition to the variance being requested.

Kevin Bower, 45452 North Branch, stated the petitioner knew what the property was when they made the purchase. The widening of Hall Road took place 10 years ago. He noted the petitioner could develop the lot within the limitations of the Zoning Ordinance. Dairy Queen was existing prior to the existing of the Hall Road, and the houses that are built behind it did so at their choice. Lastly, there is a bus stop with various pick up times at the intersection where the site wants to develop and would put our children at a higher safety risk.

Joe Hagan, 45391 North Branch, presented a petition that had been signed by the residents of North Branch and Deneweth in opposition of the variance request.

Kevin Bower, 45452 North Branch, stated that by just looking at the proposed layout presented, that there may be a need for additional variances.

Kevin Green, 45473 North Branch, asked if the call box would be attached to the building.

Joe Dwyer stated that was there plan.

Nancy Romero, 45562 North Branch, noted that no one cleans the area in question, but that she goes out with her children to try to keep her neighborhood clean. Lastly, she noted that with a bus stop being located in the area in question, any person could easily try to harm any of the children waiting at the bus stop.

Kevin Bower, 45452 North Branch, stated that North Branch and Deneweth were private roads.

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A SPECIAL MEETING
HELD MAY 13, 2008

Chairman FLORENCE stated he understood all the concerns and appreciated the comments, but reminded the audience of the specific variance being made which was for a call box.

Amy Harrington, 45300 North Branch, stated where she lives and that she currently hears the sounds from the call box from the Wendy's/Tim Horton site. Further, on Saturday mornings she can hear the back up warning signals of delivery trucks and does not like it and hoped that the request would be denied.

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

MOTION carried.

MOTION by GALLAGHER seconded by CAMPION to deny the variance request of Section 10.1603 (B)(33)(a)-Permission to vary the required setback from 300 feet for a drive thru call box to approximately 120 feet; Located on the north side of Hall Road, between Deneweth and North Branch; Section 35; Hall Road Commons, LLC, Petitioner. Permanent Parcel No. 08-35-476-042. The variance was denied since the zoning ordinance request of 300 feet is not an unreasonable distance to be required for a call box and the ordinance needs to be adhered to.

Member CAMPION agreed with Mr. Gallagher and stated the 300 foot distance was not unreasonable and noted the noise generated by the close proximity to residential property along with the safety of the school children at the nearby bus stop location. Lastly, the lane going between the two buildings, could be a possible blind spot along with a safety issue. There is a better way to develop the site to be a good neighbor.

Member PROVENZANO stated the property was bought knowing what the layout was and stated there was no practical difficulty because the property was too small to develop as proposed.

Member SLOSSON voted to deny the request since the property could be used as zoned and that there has been no practical difficulty shown.

Chairman FLORENCE also voted to deny the request specifically since there is a lot to do in a C-2 district. He stated the pull-up type of restaurant was a great idea, but with the concerns of the residents and with other options available, you could develop a site that would be less intrusive to the site.

MOTION carried.

6. OLD BUSINESS

None.

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A SPECIAL MEETING
HELD MAY 13, 2008

7. NEW BUSINESS

None.

8. PLANNING CONSULTANTS COMMENTS

None.

ADJOURNMENT

MOTION by CAMPION seconded by SLOSSON to adjourn the meeting at 8:57 p.m.

MOTION carried.

Respectfully submitted,

Brian Florence, Chairman

Dawn Slosson, Secretary

Beckie Kavanagh, Recording Secretary

BK