

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF REGULAR MEETING HELD  
SEPTEMBER 9, 2008  
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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 CAMPION to approve the agenda as presented.**

**MOTION carried.**

4. Approval of the previous meeting minutes.

**MOTION by GALLAGHER seconded by SLOSSON to approve the meeting minutes of July 8, 2008 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) David B. Adams and David C. Adams Permanent Parcel No. 08-06-200-079	10.0351 10.2402(B)(6) 17-162(14b) 10.0344 10.1705(G) 10.2402(B)(3)
(6) Dave Adams Permanent Parcel No. 08-06-200-049	10.0323(A)(4)(a) 10.0350(D)

5. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;  
Section 10.0351-Request revision to the landscape plan,  
Section 10.2402(B)(6)-Request revision to the landscape plan,  
Section 17-162(14b)-Code of Ordinances revision to the landscape plan,  
Section 10.0344-Request revision of the placement of the required screen wall,  
Section 10.1705(G)-Request revision of the placement of the required screen wall,  
Section 10.2402(B)(3)-Request revision of the placement of the required screen wall,  
Located on the southwest corner of 26 Mile Road and Romeo Plank Road; Section 6; David B. Adams and David C. Adams, Petitioner. Permanent Parcel No. 08-06-200-049

Chairman FLORENCE read the findings and recommendations of September 2, 2008. They are as follows:

It appears that the petitioner is requesting the Board of Appeals to grant a variance to eliminate a portion of the wall, adjacent to the residential parcel fronting on Romeo Plank Road, as approved by the Planning Commission and to revise the approved landscape plan, as approved by the Planning Commission, for the developing Kroger project. If the Board does not grant the variance then the petitioner is requesting that the wall be relocated to the south property line of the adjacent resident's parcel, with the support of the resident.

The entire Kroger project was recently approved by the Planning Commission and is now under construction.

It is noted that;

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the Township has no authority to agree or require an off site improvement such a wall as an option suggested by the petitioner.

that any revisions to the landscape plan rests with the Planning Commission and unless the petitioner is seeking to eliminate the landscape area the the matter is not an issue to be heard by the Zoning Board of Appeals.

any variances to the Code of Ordinances must be reviewed by the Macomb Township Board.

If however, the petitioner is opting to purchase the adjacent parcel it would be necessary to purchase and combine it with the Kroger parcel. This option would also require that the adjacent parcel be rezoned to C-3, site planned to be incorporated into the Kroger parcel, amend the condo documents and etc. The complexity of such an issue would probably involve a court action since the adjacent parcel is under 5 acres.

**RECOMMENDATION:**

If it is the intention of the petitioner to seek the variance regarding the elimination of the wall without incorporating the adjacent residential property into the Kroger parcel, and without following the steps outlined in the above paragraph, which are necessary for to meet the Macomb Township standards, 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 commercial structures planned in Macomb Township will be required to comply with the same wall requirements, which is evidence that the proper application of the wall requirement 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 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 develop a parcel without erecting the screen wall.

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 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.

If, however, the petitioner chooses to incorporate the adjacent parcel into the Kroger project it would be suggested that the petitioner request a deference of Zoning Board

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of Appeals action until such time as the above steps be taken so that a logical variance request may be reviewed.

The petitioner submitted a letter dated August 8, 2008, in support of the request and was included into the recorded as follows:

“The first element is a revision to the landscape plan as previously approved which has been designed to better meet the goals and intent of the township ordinances, and makes changes that will permit the installed landscaping to look better over time. It is now our opinion, and that of our two landscape architectural consultants, that the plan as previously submitted would have resulted in a significant loss of planting over a short time if implemented. To correct this, the new plan as presented with this application makes appropriate adjustments to the size and density of the plantings, principally along the south and west property lines, to achieve a healthier and more effective screen barrier, consistent with goals of the ordinance. For a more complete description of these proposed changes, please refer to the plans and the correspondence from our landscape architects, Calvin Hall and Associates dated July 25, 2008, to the Macomb Township Planning Dept, a copy of which is submitted with this application.

*Attached is an amended landscape plan for your consideration to the previously approved landscape plan my MJH (see clouded in areas of revised landscape plan corresponding to changes below). We are proposing a revised landscape greenbelt in lieu of Section 10.0342 greenbelt requirements and enhancing the landscape specification for the overall site as well. Our goal is to enhance the impact of the greenbelt but not take away from the intent of the greenbelt requirement. The following landscape changes are proposed:*

- 1) *Larger evergreen trees planted in a more naturally staggered pattern at 10' spacing for better initial screening and visual interest as opposed to a stark row of 4' to 5' height evergreen trees.*
- 2) *Supplement greenbelt with large deciduous trees and flowering/ornamental trees for added variety, color, height and visual interest.*
- 3) *Deciduous trees and evergreen trees added around perimeter of detention basin to enhance the basin and for better visual interest.*
- 4) *Shrubs added along entry drives to enhance the approach into the development.*
- 5) *Revised select parking lot island landscape with hardier plant material and better visual interest.*
- 6) *Adjacent parcel screen wall and greenbelt addressed in ZBA Variance Package.*

*We hope that you will support this update and look forward to working with you on this.*

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The second element is a revision of the placement of the required screen wall, relative to the immediately adjacent residential property owner to the south of the development. As this request impacts only this resident, and is fully supported by the resident being affected, we are requesting a variance to exclude that portion of the screen wall (as previously approved) between the resident's property and the development. Further, in the event that the ZBA nonetheless finds that a screen wall must be provided, in order to protect the further south property owners in the manner for which the screen wall requirement was intended, then the petitioner is requesting that it be permitted to re-locate the screen wall to the south property line of the adjacent resident's parcel, again with the full support of the resident.

In fact, as presently approved by the township, the required wall would require the removal of the exterior deck of her residence, and would be placed within approximately ten (10) feet of the back wall of her home. While the planned placement of the screen wall is clearly not a hardship for the developer, it would be a great hardship on balance for the resident involved, and in the interest of the resident, and our relationship with her, we are making this request on her behalf as well as ours. Please also refer to the attached correspondence copy from the resident, dated July 15, 2008, to the Macomb Township Planning Commission.

*I, Barbara Kaminsky, am writing this letter on behalf of my mother, Ms. Alice Robertson who resides in the home referred to above. My mother has lived in her home since 1991. She is handicapped and pretty much confined to a wheelchair.*

*It has come to our attention from a developer, Dave Adams, that a screen wall is required by the Township to be constructed on the West and North common property lines of mother's property. My mother and I would respectfully request that that portion of the screen wall NOT be constructed. The wall would be within approximately ten (10) feet or less from the back wall of her home. We would not be opposed to the screen wall being installed along mother's South property line and we would execute a written agreement to that effect.*

The developer is respectfully requesting the above described variances and asserts that the hardships, circumstances and conditions necessitating the variances requested are unique to the development property, have not been created by the owner or its predecessor in title, and will not confer any special privileges on the development, relative to any supposedly similarly situated parcels."

Jerome R. Schmeiser, Planning Consultant, gave an overview of the of how the site had been approved with the location of the wall and the landscaping using the overhead screen and how the requested revision would change the site and the location of the wall to the residential house fronting on Romeo Plank Road. He further indicated that he would have no issues with the request; however, the proper steps need to be followed in order to achieve their goal, since off site improvements can't be required another persons property.

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Dave Adams, petitioner, was in attendance and stated he does not have an issue building the wall however, its location to the house and its attachments (deck with a wheelchair ramp) would go directly through it.

Chairman FLORENCE suggested instead of placing the wall on the property line why not move the wall a couple of feet in (to the west), in order to leave the deck untouched.

Barbara Kaminsky, daughter of Alice Robertson, stated her mother had originally owned the section on which Kroger's was being built. When she had sold the property, the buyer at that time took it upon himself for providing the new survey of the large parcel and the house parcel and were under the impression the house parcel would maintain the same depth of the gas station parcel on the southwest corner of 26 Mile Road and Romeo Plank. Now, with the erection of the wall it has come to light that the requested depth had not been maintained, so her house had not originally been built that close to the property line. Furthermore, she indicated that they do not have any objections to the berming of the west and north residential property lines as being suggested by Dave Adams.

Dennis Kaminsky, son-in-law to Alice Robertson, stated the location of the property line was a surprise.

Dave Adams stated he was not opposed to escrowing for the construction of the wall at any future date.

Discussion took place as to the location of the new proposed walls and landscaping berms.

Dave Adams asked if the Board had the authority to amend the site plan to the point where the wall could end, then berm and landscape the rest of the property.

Chairman FLORENCE clarified what he thought was being sought which, was to not put in the north wall or the back wall and leaving the south wall up to the point where the wall would take its left turn.

Dave Adams reiterated again that he would have no problem escrowing for the construction of the wall if they were concerned about the wall not being built at time in the future

Jerome R. Schmeiser, Planning Consultant, stated that would be a good comprise. The site plan will have to be amended by the Planning Commission with a revised site plan approval.

Member GALLAGHER stated the board has the authority to grant relief on the wall with certain stipulations. He stated his stipulation would be should the house in question ever be sold, changes hands or uses in any way the wall has to be built.

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Jerome R. Schmeiser, Planning Consultant, stated the first three items being requested for a variance pertain to the landscaping which rests with the Planning Commission, unless they were going to eliminate the landscaping. He stated the main request to address would be Section 10.1705(G), the action that would be taken would not be made final until all others items are addressed (i.e. posting of bond, Planning Commission meeting, creation of document, etc.).

Member PROVENZANO stated for clarification of the record there would be no other action taken on the other requests. The only request is Section 10.1705(G).

Chairman FLORENCE stated that would be correct.

Jerome R. Schmeiser, Planning Consultant stated that if any of the other issues wanted to bring back be brought back to the Board at no cost to the petitioner.

Public Portion: None.

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

**MOTION carried.**

**MOTION by GALLAGHER seconded by SLOSSON to grant the variance request of Section 10.1705(G)-Request revision of the placement of the required screen wall; Located on the southwest corner of 26 Mile Road and Romeo Plank Road; Section 6; David B. Adams and David C. Adams, Petitioners. Permanent Parcel 08-06-200-049. The action taken was to grant the petitioner permission to hold the wall along the west and north property lines in abeyance with the conditions as outlined below:**

According to the Township's Attorneys Office the Zoning Board of Appeals action **will not become final until after all of the conditions as outlined by the Zoning Board of Appeals and noted below have been met.**

- 1) **A Revised Site Plan application must be submitted to the Planning Commission for the site and landscaping review and that all condition of the Planning Commission be incorporated into the revised site plan approval including departmental review of the revised site and landscape plan**
- 2) **That the landscape plan be retained as previously approved by the Planning Commission**
- 3) **A change in ownership or use of the property will necessitate the construction of the masonry wall**

- 4) Monies be placed in escrow for the future erection of the masonry wall along the west and north property lines of the adjacent residential property. The amount to be determined by the Township Engineer**
- 5) Notice of Variance be completed and filed with the Register of Deeds Office and contain all above noted conditions and, to reiterate,**
- 6) The action of the Zoning Board of Appeals shall not become final until such time as all of the above items are accomplished.**

David Adams, Jr., stated the revised landscaping plan was brought to this Board since he already knew that when presented before the Planning Commission it would be rejected because it does not meet the ordinance. He stated they were asking for a ZBA accommodation to down scale from the ordinance, so the Planning Commission can then approve what you have allowed granted a variance for.

Member GALLAGHER stated if the landscape plan does not meet the ordinance, what where you proposing this for. He further stated this was not a practical difficulty, but that it was something that you want to do to try to save money.

Dave Adams, Jr., stated it was not to save money, but that it would create a better landscape berm and one that will survive. We want to present the new plan to the Planning Department but, in as much we know that it does not meet the ordinance, we were told to start here first.

Jerome R. Schmeiser, Planning Consultant, stated he had spoken to Cal Hall and had told him that it has to go to the Planning Commission no matter what action was taken by the Zoning Board of Appeals. There is no variance to be granted, because, the Planning Commission has complete authority over the landscape plans. There does not appear to be anything wrong with the plan, but, it is up to the Planning Commission to grant that approval.

Chairman FLORENCE stated that it appears that the direction Member GALLAGHER was proposing would provide the opportunity to go back to the Planning Commission with the appropriate authority to get the revisions made and, if at that point, should there be any other issues to be addressed by the Zoning Board, a stipulation has been provided to allow you to come back to the Board at no additional costs.

**MOTION carried.**

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7. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;  
Section 10.0323(A)(4)(a)–Request to reduce five stack up spaces per outdoor teller window to three spaces.  
Section 10.0350(D)–Request to eliminate the required by-pass (escape) lane for each teller window.  
Located on the southwest corner of 26 Mile Road and Romeo Plank; Section 6;  
Dave Adams, Petitioner. Permanent Parcel No. 08-06-200-049.

Chairman FLORENCE read the findings and recommendations of September 2, 2008. They are as follows:

The petitioner is planning to construct a branch bank within the Kroger project on the property as noted above. The bank will be located on unit 4 of the Kroger condo development. The unit is zoned C-3 and measures approximately 190' x 230'. The bank building will contain 4214 sq. ft.

The issue involves the width of the drive connecting the teller window stack up lanes with the east/west interior drive of the center which connects all other units. The earlier proposal of the petitioner was to create a 50' wide drive from the teller window area to the drive. The Township has established that the maximum drive should not exceed 30'. The petitioner has provided a site plan that meets the standards of the Township with respect to the 30' driveway width. However, to meet this requirement a reduction of stack up spaces is necessary.

The petitioner has asked the Township to review the zoning ordinance requirement of the number of stack up spaces needed to best serve the users of the bank and the bank. Based upon direction from the Township officials the Consultant has conducted a survey of abutting communities and the banking business to determine if the 5 spaces required by the Macomb Township Zoning Ordinance is reasonable.

The Consultant has taken into account the Bank's position that the changing habits of drive-in bank users and the reasonable number of bank stack-up spaces necessary. The current requirement of 5 spaces per window was based upon the original one window of earlier development of bank branches. Although the number of windows has increased over the years, the mechanics of service has improved so that the window teller has the ability to provide much faster service which in return reduces the number of stack-up spaces. It is now found that most often no more than 10 stack up spaces are needed.

The Consultant is recommending that the number of stack-up spaces be reduced from 5 to 3, except in the case where only one teller is provided then 6 stack-up spaces are necessary.

The provision of an escape lane is necessary only where a single window of 6 spaces is provided. There appears to be no need for an escape lane for 3 stack up windows.

The Consultant will be making this recommendation to the Township Planning Commission and the Township Board in subsequent public hearings currently in the process of being scheduled. Although the Consultant cannot guarantee the passage of such an amendment we are in the position to recommend the approval of variances as requested by the petitioner.

**RECOMMENDATION:**

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

1. The variance will provide the petitioner with an application of the zoning ordinance that will essentially provide the stack-up spaces as necessary to serve the public.
2. The Consultant is recommending that the Zoning Ordinance amending the stack-up requirements of the ordinance be changed from 5 spaces to 3 spaces and that the escape lane be eliminated in certain instances.

Jerome R. Schmeiser, Planning Consultant, highlighted the development location and reviewed the interior road design of the center is which the bank was being constructed. He further stated the proposed plan had been reviewed by the Township department heads, and the driveway widths had been addressed at that time.

In addition, a lengthy review occurred reviewing the current banking standards and how they comply with the site plan conditions outlined in the zoning ordinance.

Craig Duckwitz, representative, was in attendance.

Member CAMPION stated her concern with the safety of not having an escape lane being provided.

Jerome R. Schmeiser, Planning Consultant, stated there was no need for an escape lane, they had been designed when there was only one teller window.

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 PROVENZANO:**

**Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied, and that conditions exist that are unique to the property and the granting of the request**

would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

Now, therefore, be it resolved, that the action of the Board is to grant the requested variance of Section 10.0323(A)(4)(a)-Request to reduce five stack up spaces per outdoor teller window to three spaces; Located on the southwest corner of 26 Mile Road and Romeo Plank Road; Section 6; Dave Adams, Petitioner. Permanent Parcel No. 08-06-200-049. The variance was granted since the means of banking has changed and there seems to be no need for the five spaces along with the understanding the Township is in the process of amending the ordinance.

**MOTION carried**

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

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 10.0350(D)-Request to eliminate the required by-pass (escape) lane for each teller window; Located on the southwest corner of 26 Mile Road and Romeo Plank; Section 6; Dave Adams, Petitioner. Permanent Parcel No. 08-06-200-049.

**MOTION carried.**

7. OLD BUSINESS

None.

8. NEW BUSINESS

None.

9. PLANNING CONSULTANTS COMMENTS

None.

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ADJOURNMENT

**MOTION by CAMPION seconded by SLOSSON to adjourn the meeting at 8:07 p.m.**

**MOTION carried.**

Respectfully submitted,

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Brian Florence, Chairman

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Dawn Slosson, Secretary

Beckie Kavanagh, Recording Secretary

BK