

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A REGULAR MEETING HELD
JANUARY 13, 2009

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

PRESENT: CHAIRMAN, DINO BUCCI
MEMBERS: EDWARD GALLAGHER
CLIFFORD FREITAS
TERRY CAMPION
DAWN SLOSSON

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 BUCCI called the meeting to order at 7:00 P.M.

1. Roll Call.

Secretary SLOSSON called the Roll Call. All members present.

2. PLEDGE OF ALLEGIANCE.

Member BUCCI announced that there were two new members on the board. He stated Member FREITAS and himself were first time members. Also, there was a need for a nomination for a Chairperson.

MOTION by CAMPION seconded by GALLAGHER to appoint Member BUCCI as Chairman of the Zoning Board of Appeals.

MOTION carried.

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.

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4. Approval of the previous meeting minutes.

MOTION by GALLAGHER seconded by CAMPION to approve the meeting minutes of November 10, 2008 as presented.

MOTION carried.

Members BUCCI, FREITAS and SLOSSION abstained.

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) St. Isidore Catholic Church Permanent Parcel No. 08-17-451-026	10.0504(J)(I)(a)
(6) TTCH Development, LLC Permanent Parcel No. 08-24-101-012	10.0309(B)

5. **VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;**
Section 10.0504(J)(I)(a)–Request permission to increase height of sign from 60” to 82 ½”.
Located on the northwest corner of 23 Mile Road and Romeo Plank; Section 17.
Permanent Parcel No. 08-17-451-026; St. Isidore Catholic Church, Petitioner.

Jerome R. Schmeiser, Planning Consultant, read the findings and recommendations of January 7, 2009. They are as follows:

The petitioner is requesting permission to construct a sign for the St. Isidore Church with a height of 82 ½” rather than the 60” allowed by the Zoning Ordinance.

The site plan presented by the petitioner indicates that the sign orientation and location have yet to be determined. It is noted that any sign or decorative walls constructed on the site must be setback a minimum of 15 feet from both Romeo Plank and 23 Mile Road. A clear vision zone must be maintained at the intersection. These issues will be reviewed at the time a site plan application is submitted for sign installation.

It is also noted that the proposed sign will have an electronic message/reader board. The petitioner should be apprised of the fact that Section 10.0319 C-1 of the Zoning Ordinance does not permit flashing, animated or moving signs regardless of district.

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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 similar structures planned in Macomb Township will be required to comply with the same sign requirements, which is evidence that the proper standards 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 sign requirement. As a result the other property owners do not have the opportunity to make use of additional uses of signs.

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 December 15, 2008, in support of the request and was included into the recorded as follows:

“Our sign has been designed with the Macomb Township sign ordinance as our guide. We have limited the signage height to 60” and overall square footage to 30 square feet. As you all know, our property is large at 16.67 acres, our building is setback 325+ feet resulting in our huge front lawn. The design of our sign and color of brick we are using is all an attempt to building an attractive display enhancing our property and at the same time having enough present as to make a statement. Hopefully the brick column and peak will be viewed as décor elements much like the brick entrance walls at the entrance to many residential subdivisions. Your approval here this evening will be appreciated.”

Ed Phillips, representative, was in attendance and stated the hardship that is presented for his client was that they have a corner lot along with the size and configuration. He stated they were looking to place the sign up off the ground by 22 inches higher than permitted by the Zoning Ordinance in an effort to make the sign more legible. Furthermore, we need to have the sign to be quickly and safely identifiable. This variance would allow for a decorative sign and if the Board does not allow this request we will still build our sign but, without the decorative pillars.

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Chairman BUCCI asked Jerome R. Schmeiser, if any concessions like this request have been made throughout the Township.

Jerome R. Schmeiser stated that no such variance have been granted.

Chairman BUCCI asked Ed Phillips if he had anytime to discuss with Jerome R. Schmeiser, the 22 inches in which he could have made some recommendations regarding aesthetics and/or the hardship.

Ed Phillips mentioned the subdivisions which have an R-1 zoning and that St. Isidores also had an R-1 zoning and questioned the height of the entrance signs.

Jerome R. Schmeiser, Planning Consultant, stated the entrance signage walls were permitted up to a height of 9 ½'. He further stated that the special ordinance applied to residential development only and that all non-residential signs were no more than 5 feet high. He also noted that the CVS store on the immediate opposite corner is 5 feet high.

Chairman BUCCI stated the special ordinance does not apply to this request.

Ed Phillips stated that north of St. Isidore, is a sign that is "His Rock" which is 8 feet tall.

Chairman BUCCI stated that he had been advised by Legal Counsel, that the sign may be illegal. He offered that the item could be tabled in order to meet with Jerome R. Schmeiser to discuss other options.

Jerome R. Schmeiser stated a compliant could be made on the signage of "His Rock".

Ed Phillips stated he would like the item tabled to meet with Jerome R. Schmeiser for further discussion.

MOTION by CAMPION seconded by SLOSSON to table the variance request of Section 10.0504(J)(I)(a)–Request permission to increase height of sign from 60' to 82 ½'; Located on the northwest corner of 23 Mile Road and Romeo Plank; Section 17. Permanent Parcel No. 08-17-451-026; St. Isidore Catholic Church, Petitioner. The item has been tabled to allow the petitioner to meet with the Planning Consultants. Furthermore, this item is tabled indefinitely.

MOTION carried.

Father Mike Hrydziuszko, asked if the existing "His Rock" illegal sign would be a matter for the Township to pursue.

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Chairman BUCCI stated the Township would make sure the Building Department would be notified.

6. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Section 10.0309B–Request to change or alter a non-conforming structure.
Located on the east side of North Avenue, 166 feet south of 23 Mile Road; Section
24. Permanent Parcel No. 08-24-101-012

Jerome R. Schmeiser, Planning Consultant, read the findings and recommendations of January 7, 2009. They are as follows:

Although the application for a variance requests to change a “sit down restaurant to restaurant/tavern”, the Section number quoted in the application refers to Section 10.0309 B, which addresses non-conforming structures rather than a non-conforming use. It is our understanding that the ordinance allows a restaurant/tavern as a matter of right in a C-3 zone and in the case of the petitioner’s property it is the structure that is non-conforming.

It is also noted that the application submitted by the petitioner was not submitted with a site plan as prescribed by the Zoning Ordinance Section 10.2405B. A site plan is defined in Section 10.0202. A drawing entitled “ALTA/ACSM Land Title Survey” did accompany the application. However, the drawing was not submitted to a recognizable scale nor did it conform to a site plan details as prescribed in the Macomb Township Zoning Ordinance, Sections 10.0202 as noted above or 10.2402, Site Plan Requirements and Procedures.

Be that as it may and upon its face the Planning Consultant has no objection to the request to change or alter a non-conforming structure to use as a restaurant/tavern with conditions that will be outlined in the following recommendation.

It is further noted that the petitioner has an application for a Certificate of Zoning Compliance for the property in question. This application is also dependent upon a site plan submitted in accordance with the Zoning Ordinance.

RECOMMENDATION:

It is recommended that the variance request be approved with the following conditions;

1. That a site plan be submitted in accordance with the above noted Sections of the Zoning Ordinance, to the Planning Commission, and that said site plan be approved by the Planning Commission with the standard conditions of the Township.
2. That any bonds required as a result of the action of the Planning Commission be posted.

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3. That the petitioner apply for and obtain a Certificate of Zoning Compliance. (Certificate of Occupancy)
4. It is further recommended that the action of the Zoning Board of Appeals become final only after the above noted conditions have been met.
5. That this variance request does not involve the recently constructed deck or patio which is not permitted without a separate review via the site plan process. Any reviews of the deck or patio must also consider a variance to change or alter the existing structure to provide for the expansion via the patio or deck.

Jerome R. Schmeiser, Planning Consultant, went on to highlight other issues that were germane to the site such as a sewer line being provided along the North Avenue frontage, walls, greenbelts, deceleration, sidewalks and the amount of parking since a valid site plan has not yet been submitted.

The petitioner submitted a letter dated December 16, 2008, in support of the request and was included into the recorded as follows:

“This is a request for a determination that my client’s remodeling of the former Mutt and Jeff’s restaurant is not an expansion of a non-conforming use. The remodel was of the interior of the building pursuant to plans that were submitted and approved by the Building Department. All work has been completed and approved. The occupancy of the building has been reduced from 123 people to 88 people. There was no expansion or additional space added to the existing building. The only addition to the pre-existing business is the sale of alcoholic beverages. This does not require a liquor license since an additional bar can be added to the existing license at the catering hall.

My clients did install a brick paver patio, upon the advice the building department head, Robert Beckeett, who indicated that no permits were required since this was considered landscaping. Additionally, they have executed an affidavit stating that they would not use the patio for service without Township approval.

Applicant’s request is based upon the following:

1. Compliance with 10.0309 B is unreasonably burdensome.

Applicant faces a hardship in that, the proposed building has been in existence for a number of years at the present location. Applicant has not expanded the size of the existing structure. In fact, applicant has reduced the occupancy of the structure. The applicant submitted plan for the remodel of the interior which clearly set forth the remodel was to be for a restaurant/tavern. The plans were approved, permits obtained, work commenced and completed. The applicant has expended nearly \$500,000.00 in remodeling and equipment.

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Preventing the applicant from operating this business would affect the marketable value of the property and be financially devastating to petitioner.

2. The granting of the variance or determination that the premises is not an expansion of a non-conforming use would do substantial justice to the Applicant as well to other property owners; the spirit and intent of the ordinance will be preserved, and substantial justice done.

Section 10.0309 B allows for the continuation of a lawful non-conforming use that does not constitute a nuisance, is not enlarged, altered, or changed in area, activity or content. Applicant maintains that none of the above has occurred. The use of the property is consistent with its current, C-3.

The property to the north is commercial, a drug store; the property to the east is a golf course; the property to the south is vacant; and the property to the west is minimally residential. Therefore, the use of the property as proposed by the applicant will allow them to use the property and business as planned without a detriment to others. The spirit and intent of the ordinance will be preserved and substantial justice will be done.

3. The granting of the variance as required would not give the applicant an advantage or a benefit not received by other property owners in the area.

As stated above, granting the requested variance would allow the applicant to utilize their property consistent with the current zoning and commercial nature of adjoining properties. The variance will not negatively impact the surrounding properties or residences. The variance will allow the applicant to continue a pre-existing use, in conformance with the existing zoning and add jobs, taxes and a beneficial proprietorship to the community.”

Chuck Busse, representative, was in attendance and stated the parcel was trying to take appropriate steps to move forward to all conformity with the Township and with the effort to utilize the structure in question. He stated that it was the absolute commitment of the applicant with this first step, acknowledging that the use is consistent with the zone, is the absolute commitment to submit a site plan document immediately that will layout all of the various elements of the ordinance.

We appreciate this opportunity tonight to be able to share some of these thoughts with you and certainly would welcome an approval if you saw fit but we do acknowledge that it be in limit to all of the conditions laid out and that those conditions be met at first before we enjoy the granting of the approval that we might get from you tonight.

Chairman BUCCI stated that he looked forward to working with legal counsel and to the comments made by legal counsel. He then asked Jerome R. Schmeiser if the Board were to grant approval tonight if it would be contingent upon the conditions as stated by the

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Planning Consultant and any others that might be recommended by a Board member and then the item would be brought back before us or if it was a conditional approval.

Jerome R. Schmeiser, Planning Consultant, stated that decision would be up to the action of the Board. He stated that as he understands it the Board has the authority, duty and right if they chose to attach conditions to a variance action and those conditions would then be spelled out in a legal document which is recorded at the Register of Deeds Office in Mt. Clemens. Therefore, the actions don't become final until all of the items are completed.

Colleen O'Connor, Township Attorney, stated the item doesn't necessarily have to come back before the Board if conditions were attached to it. The variance doesn't become final or granted, until all the conditions were met.

Member CAMPION asked the petitioner's representative if he was with the firm that prepared the letter of explanation submitted with the application. She then went on to note the deficiencies between the statements in the letter and the actual site surroundings.

Chuck Busse indicated that as a result of some past court decisions that the petitioner realized that other issues needed to be addressed. There is a clear need for a site plan in order to depict the features of the plan for discussion. And we realize that without a site plan and our ability to meet the other conditions we really won't get the benefits of the variance.

Chairman BUCCI asked if the issues raised were items that could worked out with the conditions that would be attached.

Jerome R. Schmeiser, Planning Consultant, stated the items addressed by Member CAMPION were items that would be addressed by the site plan submittal. The C-3 zone requires a wall and a 50 foot wide greenbelt wherever it abuts land that is zoned residential. Those features will have to be on the site plan as well as the sewers, parking etc.

Member GALLAGHER stated the site plan submitted would have to show adequate ingress and egress. The Planning Commission most likely would not allow a driveway at the south portion of the property next to the residents. There may be two entrances required but felt that the Planning Commission would not require a driveway on the south portion of the property so close to a residence. It may be required closer to the north.

Chairman BUCCI summarized the meeting comments as follows, the site plan that will be submitted to the Planning Commission will detail the issues addressed this evening. He also indicated that very positive statements have been made and as has been stated by Mr. Busse, the petitioner wants to work in a positive way on something that has been an issue for sometime.

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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 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 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 10.0309B–Request to change or alter a non-conforming structure; Located on the east side of North Avenue, 166 feet south of 23 Mile Road; Section 24. Permanent Parcel No. 08-24-101-012. The variance was granted conditioned upon the following items be met:

- 1. That a site plan be submitted in accordance with the above noted Sections of the Zoning Ordinance, to the Planning Commission, and that said site plan be approved by the Planning Commission with the standard conditions of the Township.**
- 2. That any bonds required as a result of the action of the Planning Commission be posted.**
- 3. That the petitioner applies for and obtains a Certificate of Zoning Compliance.**
- 4. It is further recommended that the action of the Zoning Board of Appeals become final only after the above noted conditions have been met.**
- 5. That this variance request does not involve the recently constructed deck or patio which is not permitted without a separate review via the site plan process. Any reviews of the deck or patio must also consider a variance to change or alter the existing structure to provide for the expansion via the patio or deck.**
- 6. That a sewer line be installed along the frontage of North Avenue per the Township Engineering Ordinance.**

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Chairman BUCCI reiterated for clarification that site plan submitted to the Planning Commission intends to include all of the features of the site plan as required by the Macomb Township Zoning Ordinance, including but not limited to the structures, parking, any other paving areas, including the decks and patios, sidewalks, greenbelts, walls, acceleration/deceleration lanes, by-pass lanes, location of septic fields, signs and drainage.

MOTION carried.

Charles Busse thanked the Board and indicated that they would not let the Township down.

7. OLD BUSINESS

None.

8. NEW BUSINESS

Chairman BUCCI stated that a nomination was needed for the position of Secretary.

MOTION by GALLAGHER seconded by BUCCI to nominate Member SLOSSON as Secretary.

MOTION carried.

9. PLANNING CONSULTANTS COMMENTS

None.

ADJOURNMENT

MOTION by CAMPION seconded by SLOSSON to adjourn the meeting at 7:38 p.m.

MOTION carried.

Respectfully,

Dino F. Bucci, Jr., Chairman

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Dawn Slosson, Secretary

Beckie Kavanagh, Recording Secretary

BK