

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A MEETING HELD  
MAY 12, 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.

3. Approval of Agenda Items. *(with any corrections)*  
*Note: All fees have been received and all property owners were notified by mail.*

**MOTION by CAMPION seconded by SLOSSON to approve the agenda as presented.**

**MOTION carried.**

4. Approval of the previous meeting minutes.

**MOTION by GALLAGHER seconded by FREITAS to approve the meeting minutes of April 6, 2009 as presented.**

**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 MEETING HELD  
MAY 12, 2009

Agenda Number/Petitioner/ Permanent Parcel No.	Zoning Ordinance Section No.
(5) B-B Sign and Lighting Permanent Parcel No. 08-06-202-004	10.1605(I)(3)
(6) MJC Fairway Commons, LLC Permanent Parcel No. 08-34-227-050	10.0330
(7) Verizon Wireless Permanent Parcel No. 08-14-300-011	10.2603(J)(3)
5. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE; Permission to vary Section 10.1605(I)(3) – Request to increase the allowable size of 2nd sign from 1/3 of 64 square feet to 32 square feet. Located on the southwest corner of 26 Mile Road and Romeo Plank Road; Section 6. B-B Sign & Lighting, Petitioner. Permanent Parcel No. 08-06-202-004.	

Jerome R. Schmeiser, Planning Consultant, presented the findings and recommendations of May 6, 2009. They are as follows:

The petitioner is requesting that the approved second ground sign (12-16-08) for the project contained 17.2 square feet. The proposal is to add additional signage bringing the total to 32 square feet

**RECOMMENDATION:**

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

1. Compliance with the strict letter of the signage requirement would not unreasonably prevent the owner from using the property as zoned. Other C-3 structures planned in Macomb Township will be required to comply with the same signage requirements, which is evidence that the proper size 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 C-3 developments in Macomb Township. The other owners are or will be required to comply with the signage requirement. As a result the other property owners do not have the opportunity to make use of additional signage.  
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 signage requirements from being applied. 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

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A MEETING HELD  
MAY 12, 2009

The petitioner submitted a letter dated March 24, 2009, in support of the request and was included into the recorded as follows:

“In a letter dated January 16, 2009, the channel letter wall sign on the east elevation was approved.

There is no visible identification on a major thruway (Romeo Plank) at the main entrances for Chase Bank customers. With the position of the bank building on the property, it is difficult to see the bank traveling northbound on Romeo Plank until you are past the entrance of the plaza.”

Bob Bongiorno, representative, stated that Chase Bank was trying to obtain 11 square feet on the existing 21 square foot ground sign along Romeo Plank Road, which belongs to Krogers. He further stated the need for the additional 11 square feet to gain access from Romeo Plank Road without hindering the traffic flow.

Chairman BUCCI advised Mr. Bongiorno that the Township was currently amending the sign ordinance and wondered if his client would be willing to forego the variance until such time as the ordinance amendments were completed.

Bob Bongiorno stated he would like to table the item in order to review the sign ordinance amendments.

**MOTION by GALLAGHER seconded by CAMPION to table the variance request of Section 10.1605(I)(3)-Request to increase the allowable size of 2<sup>nd</sup> sign from 1/3 of 64 square feet to 32 square feet; Located on the southwest corner of 26 Mile Road and Romeo Plank Road; Section 6; B-B Sign and Lighting, Petitioner. Permanent Parcel 08-06-202-004. The variance request was tabled at the request of the petitioner to July 14, 2009.**

**MOTION carried.**

6. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;  
Permission to vary section:  
Section 10.0330 – Request to change one dwelling unit per parcel to eight dwelling units per parcel.  
Located on the southwest corner of 21 Mile Road and Card Road; Section 34;  
MJC Fairway Commons, LLC, Petitioner. Permanent Parcel No. 08-34-227-050.

Jerome R. Schmeiser, Planning Consultant, presented the findings and recommendations of May 6, 2009. They are as follows:

The petitioner is completing a project started by a different builder. The construction of units in such a project depend upon demand by prospective buyers. The original building constructed as a model involved Building 25. Subsequent to that construction began on

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A MEETING HELD  
MAY 12, 2009

buildings 9, 10, 18, 19 and 20 with current partial occupancy in buildings 18 and 20. The request for the variance has been made to allow the existing four buildings 9, 10, 19 and 25 which contain eight units to remain on a parcel of land and be phased at a later date.

The original project was approved June 20, 2005 and considered 25 two unit buildings on 9.1 acres of land. The parcels would front on an "L" shaped drive connecting with 21 Mile Road and Card Road.

It is anticipated by the builder that at such time as each building is sold and proposed for construction that the Exhibit "B" documents will be amended. The site plan as originally approved is not proposed for change except for the timing for the construction of individual buildings.

On March 17, 2009 the Planning Commission approved the revisions to the site plan subject to the successful approval of the Zoning Board of Appeals action to allow the built units to remain.

The Phasing of the project will involve:

- a. Buildings 9, 10, 19 and 25 are proposed as four separate phases but since they already have been constructed are being considered for a variance because those four buildings involve eight units on an individual parcel.
- b. Buildings 18 and 20 plus all of the roadways are already designated as Phase "X".
- c. Each of the following buildings 1 through 17, 19 and 21 through 25 are each separate and considered future phases.
- d. A total of 24 Phases, including phase X are planned for the site.
- e. The site plan as approved by the Planning Commission will not change.

Because of the scheduling of construction and sales the petitioner is placed in a position of the necessity of requesting a variance to allow 8 units on an acreage parcel.

**RECOMMENDATION:**

It is recommended that the variance request be granted. This recommendation is made with the understanding that the petitioner will submit the proper Exhibit B documents as required by the Township Assessor and the Attorney.

The petitioner submitted a letter dated March 31, 2009, in support of the request and was included into the recorded as follows:

"We are requesting a variance from Section 10.0330 which indicates that only one dwelling

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A MEETING HELD  
MAY 12, 2009

is allowed on a single parcel of land. We are requesting a variance that will allow eight (8) units on a single parcel of land. MJC Fairway Commons, LLC purchased the property from the original developer in December of 2007. At that time, the model center was complete, occupying building 25, and basements were constructed on buildings 9, 10, 18, 19 and 20. Since taking ownership of the site, buildings 18 and 20 have been completed and 3 of 4 units have been sold. Due to the current economic downturn, the federal government and lending agencies have changed the requirements which must be met in order to obtain financing. (See attached letter). These new requirements prompted us to essentially create a separate phase for each building. The first phase is intended to only include buildings 18 and 20 so that the necessary occupancy percentages can be met. However, this then leaves building 9, 10, 19 and 25 remaining. Because the buildings contain 2 units each, we now have 8 units on the remaining property. MJC Fairway Commons, LLC did not create this situation. The original developer began construction on all of these buildings and the federal government changed the financing requirements. These two events created the need for this variance. If we are unable to obtain the required variance, the only people who will qualify to purchase units will be cash buyers which make up an extremely small percentage of sales. We are seeking the variance to increase the number of buyers who qualify to purchase units in the development.”

Chairman BUCCI asked if the recommendation was conditioned upon the Exhibit “B” documents being submitted each time a phase where approved.

Jerome R. Schmeiser, Planning Consultant stated that was correct.

Steve Neeper, representative, was in attendance and stated the variance request was being made due to the economic condition of residential sales. He reviewed the FHA regulations to obtain financing.

Public Portion:

Lois Evola, 21731 Sunset Drive, stated her backyard abuts the proposed development and that there is currently two buildings under construction and asked if those buildings would be completed first.

Steve Neeper stated that Buildings 9 and 10 would be completed first.

Rochelle Reeves, 21781 Sunset Drive, stated she was concerned with the continuity of the project and what style of condominiums would be built.

Steve Neeper indicated the project has not been altered. The site plan remains the same, but that phases were being added to the site. Lastly, the style of condominiums will be just like the existing duplex models.

**The following resolution was offered by CAMPION and seconded by FREITAS:**

**Whereas, it has been satisfactorily presented that special conditions prevail that**

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A MEETING HELD  
MAY 12, 2009

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 10.0330-Request to change one dwelling unit per parcel to eight dwelling units per parcel; Located on the southwest corner of 21 Mile Road and Card Road; Section 34; MJC Fairway Commons, LLC, Petitioner. Permanent Parcel No. 08-34-227-050. The variance was granted to allow the development to move forward following the guidelines/regulations of the FHA and that the petitioner will submit the proper Exhibit B documents as required by the Township Assessor and the Attorney.

**MOTION carried.**

7. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;  
Permission to vary section:  
Section 10.2603(J)(3) – Request to eliminate the masonry wall enclosure.  
Located on the east side of Card Road, ¼ mile north of 23 Mile Road; Section 14;  
Verizon Wireless, Petitioner. Permanent Parcel No. 08-14-300-011.

Jerome R. Schmeiser, Planning Consultant, reviewed the findings and recommendations of May 6, 2009. They are as follows:

The petitioner is requesting a variance to eliminate a required masonry wall around a cell tower. Section 10.2603(J) (3) that any telecommunication facility that will be adding equipment shall be screened from adjoining properties by a masonry wall not to exceed nine feet in height. The properties to the west and north of the facility in question are zoned for residential purposes.

**RECOMMENDATION:**

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

1. Compliance with the strict letter of the wireless communication ordinance requirement would not unreasonably prevent the ownership from using the property as zoned. Other cell tower structures planned in Macomb Township will be required to comply with the same screening requirements, which is evidence that the proper screening 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 cell tower developments

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A MEETING HELD  
MAY 12, 2009

in Macomb Township. The other owners are or will be required to comply with the screening requirement. As a result the other property owners do not have the opportunity to make use of to develop without screening provided.

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 wireless communication 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 13, 2009, in support of the request and was included into the recorded as follows:

“Verizon Wireless operates the broadest coverage in the cell phone industry, including significantly improved modern data transmission capabilities, including photography, internet, email and texting, each from a single point source phone. Due to a significant gap in coverage in the area and the demands of Macomb Twp residents for service, Verizon Wireless will install 12 antennas at the approximately 115’ height of an existing 181’ cellular transmission tower located at 51650 Card Road, in Macomb Township. The site is owned by Macomb Township and leased to American Town Company (ATC). Under its lease with ATC, the Township received a percentage of the rentals of co-locators at ATC’s tower. ATC will sublease space on the tower for our antennas and ground space for the shelter housing the equipment vital to providing the enhanced telecommunications services. Verizon Wireless will be the seventh carrier to locate on the tower.

This site has already been approved by the Township Planning Commission by applying the requirement from the Wireless Communications Ordinance Sec. 102603.J.3 of a 9’ high, 300’ brick and masonry wall enclosing not only our 12’ x 26’ ground space but the entire 75’ x 75’ ATC compound which includes the six other carriers and their equipment buildings. None of the prior six carriers at the site has been required to install this wall. Verizon Wireless requests that the Board approve a variance waiving the brick wall enclosure.

This wall will cost upwards of \$100,000 to construct and, if required, will almost certainly put the cost of the site beyond the point of commercial viability, either permanently fixing the coverage gap for Macomb Twp residents or requiring installing a new tower elsewhere in Macomb Township, thereby multiplying the number of towers needed in violation of the Township Ordinances’ stated goal of encouraging co-location on existing towers under Section 10.2601.J.

This hardship is also unnecessary at this particular site because of its existing long term use and its location. While the parcel is technically in a residential zone, it is used by Macomb Township for a maintenance facility, including a large garage and plant building behind which the existing tower sits. The adjacent residential zone is separated from this

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A MEETING HELD  
MAY 12, 2009

parcel by a large forested area and contains no residential development of any kind. Moreover, the remainder of the area is commercial or industrial. This tower compound itself is located almost 700 feet from Card Road and behind the Township's own garage building. Moreover, this tower and compound have been existing at this site for more than a decade without any obscuring wall. The goal of the wall ordinance – to obscure from view the tower compound from residential areas – simply is unnecessary here. The area is in actuality more properly characterized as industrial or rural and is not used or developed as residential, the tower compound is already obscured on all sides by natural features, a 700' distance from the road and the Township's own garage, and the site has already operated for 11 years without a wall. The visual appeal of the site is certainly not improved by a massive masonry wall on all sides from whose center an already existing tower would rise. If necessary, in lieu of the brick wall, Verizon Wireless could plant a more attractive row of natural trees around the compound.

Under the Federal Telecommunications Act ("TCA"), Verizon Wireless is mandated to respond to failures in cellular coverage. Moreover, the TCA prohibits a municipality from making decisions under its ordinance that would have the effect of prohibiting the provision of personal wireless services. (47 U.S.C. §332(c)(7)(B)(II)) If required to expend \$100,000 to build a wall of very limited utility, Verizon Wireless will be effectively prohibited from closing a gap in coverage already identified by the residents of Macomb Township, especially where our competitors were previously allowed to address coverage needs at the same site.

It is also the case here that, absent the unique size and configuration of the existing area leased and fenced by ATC from the Township, the wall ordinance would not even be applicable. If the Township had leased greater area to the ATC or had configured it differently, the Verizon Wireless shelter could have been attached to the existing equipment building. Under Section of the Township ordinance, the wall is required only if a second building is built within the tower compound. Here, because of the unique characteristic of the size of this site and the existing six other carriers, the Verizon Wireless equipment building must be built separate from the existing building. The fact that Verizon Wireless desires to locate on a tower with six carriers already there is only in keeping with the Township's stated goal of encouraging co-location to reduce the number of towers within the Township.

As noted, the TCA prohibits a municipality from effectively prohibiting cellular coverage which the placing upon a single carrier among seven – Verizon Wireless – of the high cost of an unnecessary brick wall will cause. Moreover, Section 332(c)(B)(I) of the TCA prohibits unreasonable discrimination between carriers. In this case, none of the other six carriers was required to erect a wall in order to commence operations. Verizon Wireless will thus be required to incur a substantial cost to operate that was not imposed on our competitors at this site that is even owned by the Township. It will not matter that the wall ordinance came after these other carriers began operations. As federal law pre-empts local law, the prohibition of TCA Section 332(c)(7)(B)(I) will preclude application of the wall requirement on Verizon Wireless, when it was not applied to the carriers at this

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A MEETING HELD  
MAY 12, 2009

same site. Seeking the variance will exhaust our administrative remedies before seeking other redress under the TCA. As a result, far from granting Verizon Wireless special privileges, the granting of the variance would only treat Verizon Wireless in the same manner as the Township has treated prior carriers, which is in keeping with the TCA.

Verizon Wireless thus asks that the Macomb Township Board of Zoning Appeals grant a variance for the undue and unnecessary hardship imposed by the wall requirement at this site and assure the citizens of Macomb Township the same broad range of cellular and wireless benefits enjoyed by other Verizon Wireless' customers."

Rob LaBelle, Verizon Wireless representative, was in attendance and presented handouts of the site showing the natural features from the North, South, East and West that were on Township property. He stated the site was unique since it has been in existence for 12 years and that there are already 6 other carriers co-located on the tower. Further, they are the only other carrier able to co-locate on the tower.

He went on to state that there was a severe gap serving Macomb Township in this area and if they were unable to co-locate at this site they would then violate the ordinance which tries to eliminate the number of monopoles. Given the existing natural effects of the area he stated he did not see the need to erect the required 9 foot masonry wall. Further, he stated that should the trees be removed that exist on the Township property, Verizon would be willing to erect the required 9 foot masonry wall.

Lastly, he noted again the site has existed for 12 years, adding the wall would not add to the site since no one can see it. Should we be required to construct the wall we most likely would seek another site which would violate another section of the ordinance which seeks to reduce the number of monopoles.

Member SLOSSON inquired about the statement made of constructing the 9 foot masonry wall should Verizon decide to co-locate on the tower and the trees be removed. She also asked if when a lease is entered into if they have the option to pull out and relocate, or should the trees be removed and the wall need to be erected if they decide the site is no longer sufficient.

Rob LaBelle stated they are not legally required to stay at any one site. The company enters into a lease for a 5 year period. Again, he reiterated that Verizon would commit to constructing the 9 foot wall around the site should the Township ever remove the trees from the perimeter of the property.

Chairman BUCCI stated there were some concerns with the Verizon Wireless being in a sub-lease with American Tower, and could not see how the Township could enforce the issue of the wall.

Rob LaBelle stated under the lease of American Tower they are required to comply with all pertinent codes and regulations.

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A MEETING HELD  
MAY 12, 2009

Chairman BUCCI stated the lease that is entered into is only for five years and if after the five years you decide to leave the Township still has no wall and questioned what the Township would tell its residents since the site is still in existence.

Rob LaBelle stated he would further commit to remove the shelter building if they left the site in question.

Colleen O'Conner, Township Attorney, stated that legally she did not think the Township could require Verizon to remove the shelter building and or construct the 9 foot wall should you decide to vacate the site after the 5 year lease is completed.

Jerome R. Schmeiser, Planning Consultant, stated the property to the north of this site is zoned residential. The Township has already required two other sites to comply with such requirement as under consideration tonight.

Rob LaBelle stated there currently exists a 100 foot and a 30 foot natural treed greenbelt around the site which has existed for 12 years. Further he could not see the rational of spending \$100,000.00 on the construction of a wall since they are the seventh co-locator on the site with no other being able to apply and no way to recoup the expenditure of the funds.

Member GALLAGHER stated that when ordinances are established in the Township they are established for all business/projects. Because the site is not visible from the road, it does not mandate that the site not comply with the ordinance. Further it is the responsibility of the business owner to perform due diligence prior to committing to a site.

Rob LaBelle stated the variance is justified since there is limited visibility to the site and that Verizon was offering to commit to the construction of a nine foot wall should the trees be removed from the Township property.

Chairman BUCCI stated he did not believe that after being advised by legal counsel that such an agreement could be drafted and entered into since Verizon would be a sub-lessee. Secondly, Verizon will agree to construct a nine foot wall should the trees be removed, however, you knowingly admit that the trees won't be removed. In addition, when a businessman does his due diligence he is aware of all aspects that will be required to make his site successful.

Lastly, he suggested meeting with legal counsel to see if such an agreement could be entered into, otherwise the item will be brought back to the Board for consideration.

Rob LaBelle asked for a tabling of the variance request.

**MOTION by SLOSSON seconded by FREITAS to table the variance request for Section 10.2603(J)(3) – Request to eliminate the masonry wall enclosure; Located on**

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A MEETING HELD  
MAY 12, 2009

**the east side of Card Road, ¼ mile north of 23 Mile Road; Section 14; Verizon Wireless, Petitioner. Permanent Parcel No. 08-14-300-011. The item is tabled to a special meeting date pending the payment of the additional \$600.00.**

**MOTION carried.**

8. OLD BUSINESS

None.

9. NEW BUSINESS

None.

10. PLANNING CONSULTANTS COMMENTS

None.

ADJOURNMENT

**MOTION by GALLAGHER seconded by CAMPION to adjourn the meeting at 8:00 p.m.**

**MOTION carried.**

Respectfully,

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Dino F. Bucci, Jr., Chairman

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Dawn Slosson, Secretary

Beckie Kavanagh, Recording Secretary

BK