

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A MEETING HELD  
JULY 28, 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 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 14, 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  
JULY 28, 2009

Agenda Number/Petitioner/ Permanent Parcel No.	Zoning Ordinance Section No.
(5) A Auto Pointe Collision Permanent Parcel No. 08-18-400-019	10.2102

5. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;  
Permission to vary  
Section 10.2102 – Request to amend the language to allow a C-4 activity (auto repair garage) in an M-1 zone.  
Located on the north side of 23 Mile Road and 286 feet east of Milano Drive;  
Section 18; A Auto Pointe Collision, Petitioner. Permanent Parcel No. 08-18-400-019

Jerome R. Schmeiser, Planning Consultant, presented the findings and recommendations of July 22, 2009. They are as follows:

The petitioner is requesting allowance to occupy a building in an M-1 zone for an auto repair garage including bumping and painting. The property in question involves another building on the site plus several other buildings proposed. Access to the site is provided via one drive from 23 Mile Road and a proposed drive from Angelo Drive at the north end of the parcel.

**RECOMMENDATION:**

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

1. Compliance with the strict letter of the M-1 requirements would not unreasonably prevent the ownership from using the property as zoned. Other M-1 structures planned in Macomb Township will be required to comply with the same M-1 requirements, which is evidence that the proper development in accordance with the Zoning Ordinance would not be unnecessarily burdensome.
2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in M-1 developments in Macomb Township. The other owners are or will be required to comply with the M-1 requirement. As a result the other property owners do not have the opportunity to make use of commercial uses in an M-1 zone.

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 M-1 ordinance from being met. For example, there are no significant grade differences or natural features 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  
JULY 28, 2009

Chairman BUCCI asked Jerome R. Schmeiser if the Township Board was currently working on a mixed use classification.

Jerome R. Schmeiser, Planning Consultant, stated that he and his partner along with the planning staff have been directed to create a text amendment to permit a mixed use regulation.

Chairman BUCCI stated if in fact that had been done we would not be sitting here tonight. He then asked Legal Counsel what the dilemma was before this Board.

Colleen O'Connor, Township Attorney, stated the Zoning Board of Appeals only has the authority to grant a non use variance, not a use variance. Furthermore, the recent Planning Act does not allow the Zoning Board of Appeals to grant use variances. She stated the option to the petitioner, if the Board does not grant the variance, would be to file some sort of a lawsuit against the Township.

Chairman BUCCI questioned if the mixed use language was in effect, as proposed by the Township Board, would it eliminate the problem with the Planning Act.

Colleen O'Connor, Township Attorney, conferred with Jerome R. Schmeiser that it would depend on what the mixed use allowed in that zoning district.

Jerome R. Schmeiser, Planning Consultant, concurred with the Township Attorney's statement. He also stated that they have met with the applicant and are currently working on a proposed text amendment.

Chairman BUCCI asked Santo Landa, the proposed landlord, on a time frame he was looking at for his tenant to occupy the building/area in question.

Santo Landa stated he would like to have his proposed tenant in by September 1, 2009.

Gary Piontkowski, petitioner, stated that by asking him to wait for the mixed use text amendment to occur that he would be missing out on the prime season of auto repair. The Fall and Winter seasons are approaching and that is when most accidents occur and repairs are needed. Economically I can't wait, nor can the Landlord sit with an empty building.

Chairman BUCCI stated if the Zoning Board of Appeals were to grant this approval that they would be sued by the Township Board of Trustees. He went on to state that he would not have a problem granting the variance, however, knowing that the Zoning Board of Appeals could be sued he questioned the petitioner if he would entertain the thought of a Consent Judgment.

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A MEETING HELD  
JULY 28, 2009

Gary Piontkowski stated he was a common sense businessman and would take whatever action it was to open his business.

Member CAMPION asked if the item needed to be tabled while the text amendment took place.

Colleen O'Connor, Township Attorney, stated the petitioner needed to exhaust all of his administrative avenues.

Public Portion: None.

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

**MOTION carried.**

**MOTION by GALLAGHER seconded by FREITAS to deny the variance request of Section 10.2102–Request to amend the language to allow a C-4 activity (auto repair garage) in an M-1 zone; Located on the north side of 23 Mile Road and 286 feet east of Milano Drive; Section 18; A Auto Pointe Collision, Petitioner. Permanent Parcel No. 08-18-400-019. The variance request was denied based upon the Planning Consultants recommendation as follows and the Zoning Board of Appeals has no authority to grant a use variance.**

- 1. Compliance with the strict letter of the M-1 requirements would not unreasonably prevent the ownership from using the property as zoned. Other M-1 structures planned in Macomb Township will be required to comply with the same M-1 requirements, which is evidence that the proper development in accordance with the Zoning Ordinance would not be unnecessarily burdensome.**
- 2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in M-1 developments in Macomb Township. The other owners are or will be required to comply with the M-1 requirement. As a result the other property owners do not have the opportunity to make use of commercial uses in an M-1 zone.**

**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 M-1 ordinance from being met. For example, there are no significant grade differences or natural features 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  
JULY 28, 2009

**3. The Zoning Board of Appeals has no authority to grant a use variance.**

**OPPOSED-Campion  
MOTION carried.**

6. OLD BUSINESS

None.

7. NEW BUSINESS

None.

8. PLANNING CONSULTANTS COMMENTS

None.

ADJOURNMENT

**MOTION by CAMPION seconded by SLOSSON to adjourn the meeting at 7:17  
p.m.**

**MOTION carried.**

Respectfully,

---

Dino F. Bucci, Jr., Chairman

---

Dawn Slosson, Secretary

Beckie Kavanagh, Recording Secretary

BK