

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF REGULAR MEETING HELD
SEPTEMBER 8, 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'CONNER, 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.

Chairman BUCCI stated that a letter of request had been received asking to tabled item #5.

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 SLOSSON to approve the meeting minutes of July 28, 2009 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) B-B Sign and Lighting Permanent Parcel No. 08-06-202-004	10.1605I)(3)
(6) 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:
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.

This item has been tabled at the request of the petitioner.

6. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Permission to vary:
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, presented the findings and recommendations of September 2, 2009. They are as follows:

The Township approved a site plan for a cell tower facility on March 7, 2006.

The Zoning Board of Appeals considered the above mentioned variance request on July 14, 2009 and tabled the matter at the request of the petitioner.

On May 12, 2009 the Zoning Board of Appeals considered the above mentioned variance request. After due consideration the Board tabled the variance request as requested by the petitioner.

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.

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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 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 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.

Rob LaBelle, Verizon Wireless Representative, stated he was looking for a non-use variance, which needs to show a practical difficulty. It does not need to show uniqueness, nor a showing that it could not be used for any other purpose. It simply is a non-use variance which needs to show a practical difficulty which in practice, we need to show it is unnecessarily burdensome and it will do substantial justice to the applicant and surrounding properties in order to obtain the variance. He reviewed the requirements needed to obtain a variance and used renderings to aid in his description. He went on to state that when viewing the site from Card Road the site was invisible, from the northeast the tower could be seen but not at ground level so the wall if erected would not provide any benefits. Lastly, he stated there was no feasible economic way to erect the wall and then be able to co-locate on the tower.

Colleen O'Connor, Township Attorney, stated that a practical difficulty as described by Mr. LaBelle was incorrect. She reminded the Board that a practical difficulty means that applicant can't use the property as zoned if not granted the requested variance. Unnecessarily burdensome is not the standard the court looks to. The court looks to whether or not the property could be used as zoned, and if the variance was not granted the property could not be used as zoned. Whereas uniqueness is not required, there is a requirement that there be something unusual about the property. Her final comment was whether or not it costs the applicant additional money or expenses is not allowed to be considered if a practical difficulty should be granted.

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Rob LaBelle reviewed a lawsuit that emphasized the requirements for granting a non-use variance or a use variance

Bonnie BellAir, American Tower Representative, stated she was here to seek a waiver not to build the masonry wall. She indicated that she felt the site had unique special circumstances with it being boarded by very mature trees and doubts that all of the trees would be torn down. The only visible site is by the access road to the cell tower site. This site is unlike any other developed cell tower site in the Township. She asked that they think about the intent of the ordinance, which she believed was to screen visual and esthetically the ground equipment at the cell tower site and believed that was already accomplished by a natural buffer at this site. Lastly, she suggested two alternatives using precast walls to the nine foot concrete wall. The first was the wall be built on the sides that abut the residential district or secondly to put it completely around the site.

Chairman BUCCI questioned if that was something the Board could entertain.

Jerome R. Schmeiser, Planning Consultant, stated the Township does not permit in its building code any precast hanging walls.

Rob LaBelle stated he believed the Township has the authority to do so if the Township feels the reduction would give relaxation to the applicant or others.

Bonnie BellAir read from the Zoning Ordinance Section 10.0344 which highlights the wall construction standard.

Jerome R. Schmeiser, Planning Consultant, stated the Building Department and Engineering Department have spent many years determining whether such a wall could be constructed and have found them not to be as competent as poured walls.

Chairman BUCCI asked what the cost difference would be.

Bonnie BellAir stated \$50,000.00. She went on to state that she had been told by the Township Supervisor and other representatives the place to seek a relief was at the Zoning Board of Appeals.

Jerome R. Schmeiser, Planning Consultant, stated that if this wall should be inferior to the regular concrete walls, we need to have our engineers look at this request.

Chairman BUCCI stated this matter has been tabled since July 14, 2009 and since that date there has been no indication of the newest request to erect a precast wall. He went onto state his concerns with someone wanting to save money and feels strongly about the precast wall would have contacted the Township earlier.

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Bonnie BellAir stated she had spoken to the Planning Consultant, Township Supervisor and everyone told her she needed to come before the Zoning Board of Appeals. As far as preparing the documents in advance, she noted she had just received the documents the end of last week. Prior to American Tower committing to a capital investment of this amount they had to go through the motions to determine if this was the only way to obtain their approval. She stated she also worked with the Township Supervisor trying to negotiate a resolution regarding the wall.

Public Portion: None.

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

MOTION carried.

Member GALLAGHER stated he had not heard of a practical difficulty as to why they could not use the property as zoned. To grant a variance because a company doesn't want to spend money is no excuse to grant a variance. Every petitioner needs to be treated equally.

Bonnie BellAir stated the site is different since it has mature trees and sites on municipal property.

Rob LaBelle stated that the nature of any variance is that you have to treat people differently, otherwise it wouldn't be varying if it wasn't a variance from doing something different from another party. The reason it makes since at this location is that there are natural barriers that exist and it has existed for 10 years. The wall accomplishes nothing and given that circumstance does not understand why this is not the classic situation to grant a variance since at ground level no one sees the building site.

Member CAMPION stated the Board could not approve the wall. Ms. BellAir is willing to erect a wall and you sir are not. The question comes now, as to what type of wall should be erected.

Bonnie BellAir stated her first choice would be to have the variance proceed forward. If that was not an option, she wanted to present a couple of alternative suggestions, should that not be palatable by your Board. Lastly, she stated she did feel the residents were concerned since there were none present.

Jerome R. Schmeiser, Planning Consultant, stated the residents had not yet come to that area. The property is planned for residential purposes so the homes have not yet been built.

Chairman BUCCI stated there was an issue with the construction of the wall at this site. He stated that with the three alternatives that had been presented, someone should have contacted the Township regarding the options available. He offered the suggestion to table

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the request or to move forward with the request as presented.

Member CAMPION read Article III of the Telecommunication Section of the Zoning Ordinance for all those in attendance to hear.

Rob LaBelle asked for a tabling of the variance request.

MOTION by SLOSSON seconded by FRIETAS to table the variance request of 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. The variance has been tabled to November 10, 2009.

MOTION carried

7. OLD BUSINESS

None.

8. NEW BUSINESS

None.

9. PLANNING CONSULTANTS COMMENTS

None.

ADJOURNMENT

MOTION by CAMPION seconded by SLOSSON to adjourn the meeting at 7:45 P.M.

MOTION carried.

Respectfully submitted,

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Dino F. Bucci, Chairman

Dawn Slosson, Secretary

Cynthia J. Berlin, Recording Secretary

CJB