

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A MEETING HELD
JANUARY 12, 2010

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: ALL PRESENT

ALSO PRESENT: JEROME R. SCHMEISER, PLANNING CONSULTANT
LARRY DLOSKI, TOWNSHIP ATTORNEY
(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 were 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 November 9, 2009 as presented.

MOTION carried.

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 |
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| | Section No. |
|---|-----------------|
| (5) Lombardo Homes – Gloede Park –Lot 50 Permanent Parcel No. 08-30-431-016 | 10.0314(Part C) |
| (6) James Albrecht - 22086 Sturgeon River Permanent Parcel No. 08-23-123-029 | 10.0704 D2b |

5. VARIANCE REQUEST FROM ZONING ORDINANCE

Section 10.0314(Part C) – Lot 50 – Gloede Park Subdivision -To allow the finished floor elevation of the ground floor to be 1.58 feet higher than allowable five foot difference between finished floor elevation and the lowest top of curb elevation on the adjacent roadway along the Gloede Road frontage.

Lot # 50 of Gloede Park Subdivision No. 1

Located at 47578 Gloede Road, Located on the northeast corner of Gloede Road and Peace Valley Court. Lombardo Homes, Petitioner; Permanent Parcel No. 08-30-431-016.

Jerome R. Schmeiser, Planning Consultant, presented the findings and recommendations of December 30, 2009. They are as follows:

The Petitioner is requesting a variance to allow that the finished floor elevation of the ground floor be 1.58 feet higher than the allowable five foot difference between the finished floor elevation and the lowest top of the curb elevation on the adjacent roadway.

RECOMMENDATIONS

It is recommended that the variance request be approved based upon the orientation of the lot and the street.

Chairman BUCCI read a letter dated January 6, 2010 from the Township Engineer, Spalding DeDecker & Associates as follows:

“We have reviewed the grading of the plot plan for this proposed house with regard to the variance request. The purpose of this section of the ordinance is to prevent the first floor of a house from being artificially raised to a point where it is detrimental to surrounding properties. However, in this case it appears that the slope of the adjacent road does not allow the house to be built in conformance with the current ordinance. This is due to the fact that this is a corner lot where the side street (Peace Valley Court) slopes down toward an existing drain. It is only along the eastern portion of this parcel’s frontage on Peace Valley Court that exceeds the 5’ Maximum difference allowed by ordinance. Based on the following, we have no objection to the variance as requested”.

The Petitioner submitted a letter dated December 14, 2009 in support of the request and was included into the record as follows:

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“Please accept this letter and accompanying information as a request to appear before the Macomb Township Zoning Board of Appeals (ZBA) on Tuesday, January 12, 2010, for consideration of a variance from the above reference township ordinance. Specifically, a request to allow a finished floor elevation to be approximately 1.58 feet higher than the allowable five foot difference between finished floor elevation and the lowest top of curb elevation on the adjacent roadway along the parcel’s frontage”.

Due to a variety of circumstances such as being a corner lot, an existing home on the adjacent parcel to the north and the slope of the existing abutting streets, a variance is necessary to avoid this lot being a non-buildable lot. To assist in your review, an excerpt of the applicable ordinance is attached as well as a copy of the plot plan proposed for this lot. Although a specific plot plan is proposed, it is important to note the ordinance non-compliance situation would result to any home, regardless of size, style (colonial or ranch) location on the lot or whether slab on grade or basement.

As required, a completed Application Packet for Zoning Board of Appeals (ZBA) Variance is enclosed including the appropriate fee. Additionally, the specific explanations required on page 1 of 6 of the application are addressed as follows:

- 1.) Very simply, a strict enforcement of the application of the provisions of this ordinance would deprive the owner rights enjoyed by all other owners of property within the same zoning district by making this lot un-buildable.
- 2.) The circumstances creating this challenge (significant grade transition of abutting streets, corner lot and existing adjacent home) are unique to this lot in that there is no practical way to address them without causing other challenges or ordinance violations. As examples, forcing the finished floor elevation low enough to comply with the 5-foot criteria, creates an extremely flat front yard area which would be problematic (if possible) to provide adequate surface drainage; and, would result in the finished grade elevation of this home being greater than one foot lower than the adjacent home to the north. It is also notable conditions of the ordinance ARE MET along Gloede Road, which the home will front. The area where the ordinance will not be met is the easterly 30+/- feet along Peace Valley Court, said area being as much as 70 feet from the proposed home.
- 3.) Conditions causing this situation were not created by the current owner, as this lot was purchased as part of an overall land purchase within Gloede Park involving several vacant lots and vacant future development area. It is uncertain whether the prior owner created this situation. However if so, it would have been totally inadvertent and something that was not foreseen by either the prior owner or township staff or consultants during various reviews

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of permitting actions.

- 4.) No special privileges will be conferred by granting this variance. The variance, if granted will only serve to make this a buildable lot. There will be no adverse impact on the adjacent home owner, homeowners within Gloede Park (current or future), or elsewhere in the Township.

Member CAMPION stated a review of the tax records show taxes from 2007 are delinquent for this property. The land owner must make current the property taxes.

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 FREITAS:

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 10.0314(Part C) – Lot 50 – Gloede Park Subdivision -To allow the finished floor elevation of the ground floor to be 1.58 feet higher than the allowable five foot difference between finished floor elevation and the lowest top of curb elevation on the adjacent roadway along the Gloede Road frontage. Lot # 50 of Gloede Park Subdivision No. 1 - Located at 47578 Gloede Road, Located on the northeast corner of Gloede Road and Peace Valley Court. Lombardo Homes, Petitioner; Permanent Parcel No. 08-30-431-016.

MOTION carried.

6. VARIANCE REQUEST FROM ZONING ORDINANCE

Section 10.0704D-2-b – 22086 Sturgeon River Drive - Request permission to allow the garage to be 6.03 feet from the side yard property line in lieu of the 7.5 feet as required.

Located at 22086 Sturgeon River Drive, located on the south side of 23 Mile Road, east of Card Road. James Albrecht, Petitioner. Permanent Parcel No. 08-23-123-029.

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Jerome R. Schmeiser, Planning Consultant, presented the findings and recommendations of December 30, 2009. They are as follows:

As indicated the petitioner is requesting a side yard setback variance to allow a structure to remain as built. The building was built with a setback of 6.03 feet from the side yard property line.

Approximately one year ago the Township approved a site plan for the construction of a residence on Lot #24 of the Parkview Estates Subdivision. The site plan reviewed and approved indicated complete compliance with the setback provisions of the zoning ordinance. The setback shown on the site plan was 7.5 feet as required by the Zoning Ordinance.

RECOMMENDATION:

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

- 1.) Compliance with the strict letter of the side yard requirement would not reasonably prevent the ownership from using the property as zoned. Other residential structures planned in Macomb Township will be required to comply with the same side yard setback requirement which is evidence that the proper side yard setback would not be unnecessary burdensome.
- 2.) The granting of a variance as requested would give to the applicant an advantage or benefit not received by other property owners in similar developments in Macomb Township. The other owners are or will be required to comply with the side yard setback requirements. As a result the other property owners do not have the opportunity to make use of an additional 1.5 feet of property.

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 setback requirement 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”.

The petitioner submitted a letter dated December 7, 2009 in support of the request and was included into the record as follows:

- 1.) “How the strict enforcement of the provisions of the Township Zoning Ordinance would cause a practical difficulty of unnecessary hardship and how such enforcement would deprive the owner of rights enjoyed by all other owners of property within the same Zoning District.

Owner is attempting to get final Certificate of Occupancy, final grade, and

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return of \$2,000 posted final grade bond. Improper side setback dimension is preventing this. Minimum 7.5' side setback was not held. East side is 6.03'. House is 100% complete and upon added sidewalk inspection, improper setback was discovered.

- 2.) How conditions and circumstances unique to the property are not similarly applicable to other properties located within the same Zoning District.

Setback requirements were stated on approved plot plans, but lot surveying engineer's improperly staked lot.

- 3.) How conditions and circumstances unique to the property were not Created by the owner, or his predecessor in title, within the time following the effective date of the provision alleged to adversely affect such property.

The hired engineer (Metropolitan Land Consultants) improperly staked the vacant lot resulting in the house too close to East property line.

- 4.) Why the requested variance will not confer special privileges that are denied other properties that are similarly situated and which are located in the same Zoning District.

Building Department stated improperly placed houses on lots happens occasionally. All measures were taken to properly place house to approved plot plan, but circumstances beyond homeowners control occurred."

James Albrecht, petitioner was present. He stated it was actually this past fall during a sidewalk inspection that the building inspector noticed the house was too close to the property line. He further stated Spalding DeDecker had been out numerous times because the house backs up to a flood plain. Lot 24 is the last lot of Parkview Estates. The next lot on the same side is the first lot of The Rivers Estates. The two Subdivisions were developed at different times so the flood plain line across the back was not straight. A permit from the DEQ was granted to straighten the flood plain line out. The DEQ, Spalding DeDecker and their surveyor inspected the house and lot. Mr. Albrecht thought the previous plot plans were good, and was not aware there was a problem until the fall. A Temporary Certificate of Occupancy was granted at the end of April, and 2,000.00 bond was posted for his final grade due to inclement weather. We have occupied the home for nine months.

Mr. Albrecht stated that he was the Homeowner/Builder and his goal was to get his final grade, a final C of O, get his money back and move on. He has received every permit required. Mr. Albrecht's land surveying company was Metropolitan Land Consultants. This lot was staked wrong; it is an irregular shaped lot. All the adjoining lots are rectangular and ours is an odd shape lot. They staked the lot off the west

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side, and the house is parallel to the east side. Mr. Albrecht states it was not intentional, it wasn't his fault, it just wasn't noticed until everything was completed, and all he needs is to get a final grade.

Chairman BUCCI stated the Board wants to help, this is not a hardship that can be considered. There are other avenues to pursue to accomplish this goal. No hardship has been proven.

James Albrecht stated he can not move the house. The house has already been built, so that's a hardship right there. He further stated he needs the \$2,000.00 so he can continue on with his landscaping, and that could be a financial hardship. He further stated he spoke with Tom from the Building Department once it was discovered the house was too close to the property line. Spalding DeDecker finally signed off on the grade because of the work done by the DEQ in the back of lot 24. Now because has been was discovered the house is too close, there is an issue where we cannot get a final grade.

Chairman BUCCI stated as a body we don't necessarily approve these variances, but there is another avenue available.

Larry Dloski, Township Attorney, stated the issue is, if there was a practical difficulty. He went on to state that this is a dimensional variance. When a set back variance is at issue, the standard is a practical difficulty. Furthermore, the foundation of a practical difficulty is a problem cannot be self created and if the problem is self created, the Board cannot consider a variance to the zoning ordinance. Even though the petitioner did not directly cause the problem, it was caused by a third parties negligence and therefore was self created and because of that, the board does not have the legal authority to grant the variance.

Lastly, he discussed the issue of the Boards previous problem many years ago when the Township first started developing. The Board had a problem with this same issue. Houses were constructed everywhere on lots, because engineers were stamping the surveys with out measuring the lots. The Township adopted a certified grade ordinance, which required the engineers to actually stamp and certify stating the survey complied with the ordinances. The Board denied all of the variances. When a variance request was denied by the Zoning Board of Appeals, the petitioner would file a lawsuit at Circuit Court. If conditions were right the Township would enter into then a Consent Judgment which would allow the petitioner a variance. The Township Board can approve a Consent Judgment, however the Zoning Board cannot without jeopardizing the integrity of the Township Zoning Ordinance. If the problem is self created the Board can't legally grant the variance.

Mr. Albrecht stated he was aware his request for a variance might be denied, and that he may have to file a lawsuit.

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Larry Dloski, Township Attorney, asked if on the side of conformance there were any other structures that jetted out from the side of the building, such as a bay window or anything that would further encroach into the side yard.

Mr. Albrecht stated no there was not, only the garage, which is a three car garage. The third car is the furthest to the side. He further stated the lots on both sides were vacant lots.

He further stated the Building Department stated the rear yard setback needed to be 35 feet, and when the house was built it was set up for 35 feet. The flood plain line used to contour between the two lots did not allow for a house to be built with the 35 foot setbacks. To allow for the 35 foot setback a permit was required to change the flood plain line to accommodate the setbacks requirement.

Jerry Schmeiser, Planning Consultant presented an overhead view of the plot plan for lot 24, and highlighted the dimensions of the plot in question to clarify any questions the Board may have.

Mr. Albrecht stated the house was staked on the right and rear property lines because they are the longest sides of the house, but the house is parallel to the left side. Metropolitan Land sent a crew to stake the lot and somehow missed the right side or missed the back corner during the staking process.

Mr. Gallagher stated it was evident what occurred, if they moved the house the other way it wouldn't meet the required setbacks. Apparently they built the house too far to the west and forgot about the side yard setbacks. If the house was moved a foot and a half to the east it would not have meet the rear yard setbacks.

Mr. Albrecht stated he designed the house and the design showed all setbacks were met. However the staking process was done wrong.

Member Campion asked Mr. Albrecht when he purchased the lot in Parkview Estates, and if there were any dwellings on either side of his home, and if so did he know who owned them.

Mr. Albrecht stated he purchased the lot in February of 2007 knowing this lot was larger for the 30% footprint verses the lot requirement of the city. The lots next to him are vacant. The lot to the east is owned by Sal-Mar, the lot to the west was owned by GTR Builders but was foreclosed on, and recently have been purchased by another builder who purchased 10 of the remaining 17 lots.

Public Portion: None.

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

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MOTION carried.

Member Campion stated it is a hardship to sit up here over a 1ft. 2in. variance knowing the recommendations of the Planning Consultants and Mr. Dloski (Township Attorney). It is a Hardship to the Homeowner who has to endure this, with properties owned by developers on both sides, not knowing when they will be built on due to the economic conditions. However, she knows they must follow the laws and ordinances.

MOTION by FREITAS seconded by GALLAGHER to deny the variance request of Section 10.0704 D2b - 22086 Sturgeon River Drive - Request permission to allow the garage to be 6.03 feet from the side yard property line in lieu of the 7.5 feet as required. Located at 22086 Sturgeon River, located on the south side of 23 Mile Road, east of Card Road. James Albrecht, Petitioner. Permanent Parcel No. 08-23-123-029. The variance request was denied based upon the following:

- 1.) Compliance with the strict letter of the side yard requirement would not reasonably prevent the ownership from using the property as zoned. Other residential structures planned in Macomb Township will be required to comply with the same side yard setback requirement which is evidence that the proper side yard setback would not be unnecessary 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 side yard requirements. As a result the other property owners do not have the opportunity to make use of an additional 1.5 feet of property.

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 setback requirement being met. For example, there are no significant grade differences or natural features as a stream or wetland to prevent full use of the parcel according to the ordinance as written.

Opposed - Member CAMPION.

MOTION carried.

7. Old Business.

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None

8. New Business.

None

9. Planning Consultants Comments.

None

ADJOURNMENT

Motion by CAMPION and seconded by SLOSSON to adjourn the meeting at 7:26 p.m.

Motion carried

Dino F. Bucci Jr., Chairman

Dawn Slosson, Secretary

Cynthia J. Berlin, Recording Secretary

CJB