MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES APRIL13, 2004 (*Please Note: Agenda No. 7 was typed verbatim, we have interpreted the discussion to the best of our knowledge and understanding from our audio tapes)*

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

PRESENT: MARVIN DEBUCK, CHAIRPERSON
BRIAN FLORENCE, SECRETARY
MEMBERS: EDWARD GALLAGHER
TONY POPOVSKI

ABSENT: DAWN SLOSSON

ALSO PRESENT: COLLEEN O'CONNER, TOWNSHIP ATTORNEY
JEROME R. SCHMEISER, PLANNING CONSULTANT
(Additional attendance record on file with Clerk)

Call Meeting to Order.

Chairman DEBUCK called the meeting to order at 7:01 P.M.

1. Roll Call.

Secretary FLORENCE called the Roll Call. Member SLOSSON absent.

2. PLEDGE OF ALLEGIANCE.

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

MOTION by GALLAGHER seconded by FLORENCE to approve the revised agenda as discussed.

MOTION Carried.

4. Approval of the March 9, 2004 previous Meeting Minutes

Chairman DEBUCK reviewed the additional addendums to all motions pertaining to permanent parcel no. 08-23-100-026 for the meeting of September 9, 2003 and March 9, 2004 as follows: *Please note: the additional addendums appear underlined.*

MOTION by FLORENCE seconded by POPOVSKI to approve the previous meeting minutes of March 9, 2004 and the additional addendums to the Meeting Minutes of September 9, 2004 as follows:

The following resolution was offered by FLORENCE and seconded by POPOVSKI:

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 pursuant to the action of the Board that Section 10.0704(A)(3)(b)-Request to reduce width of interior lot from 70 feet to 60 feet; Located on the southeast corner of 23 Mile Road and Card Road; Section 23; GTR Builders, Petitioner. Permanent Parcel No. 08-23-100-026. The variance was granted conditioned upon a cross access agreement being obtained from the east and that there will be no construction traffic thru Parkview Commons Subdivision.
Furthermore, if construction access becomes unavailable through The Rivers Estates then access must be obtained via the construction of a temporary bridge, to be used primarily for construction traffic to the west to Card Road.

MOTION carried.

The following resolution was offered by GALLAGHER and seconded by SLOSSEN:

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 pursuant to the action of the Board that Section 10.0704(A)(3)(d)-Request to exceed 3 to 1 width to depth ratio; Located on the southeast corner of 23 Mile Road and Card Road; Section 23; GTR Builders, Petitioner. Permanent Parcel No. 08-23-100-026. The variance was granted conditioned upon a cross access agreement being obtained from the east and that there will be no construction traffic thru Parkview Commons Subdivision.
Furthermore, if construction access becomes unavailable through The Rivers Estates then access must be obtained via the construction of a temporary bridge, to be used primarily for construction traffic to the west to Card Road.

MOTION carried.

The following resolution was offered by FLORENCE and seconded by POPOVSKI:

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 pursuant to the action of the Board that Section 10.0335-Request to reduce public street frontage to 60 feet; Located on the southeast corner of 23 Mile Road and Card Road; Section 23; GTR Builders, Petitioner. Permanent Parcel No. 08-23-100-026. The variance was granted conditioned upon a cross access agreement being obtained from the east and that there will be no construction traffic thru Parkview Commons Subdivision. Furthermore, if construction access becomes unavailable through The Rivers Estates then access must be obtained via the construction of a temporary bridge, to be used primarily for construction traffic to the west to Card Road.

MOTION carried.

PURPOSE OF HEARING:

To consider the requests for variance(s) of Zoning Ordinance No. 10 for the following:

Agenda Number / Petitioner		Zoning Ordinance Section No.
5.	Marquee Investments, Petitioner; Permanent Parcel No. 08-15-200-014.	Section 10.0704.(D) (1)-
6.	Sal-Mar Macomb Corporate Center, Petitioner. Permanent Parcel No. 08-33-400-043.	Section 10.1405 (D) (1)-
	OLD BUSINESS:	
7.	Salvatore DiMercurio Permanent Parcel No. 08-08-101-003	Section 10.1505(D)(1)

AGENDA ITEMS:

5. VARIANCE REQUEST FROM ZONING ORDINANCE:
Section 10.0704 (D) (1)- Request to allow a 11.70 encroachment into the front yard ; Located on the southwest corner of 24 Mile Road and Card Road; Section 15; Marquee Investments, Petitioner; Permanent Parcel No. 08-15-200-014.

Chairman DEBUCK read the Planning Consultants findings and recommendations dated April 8, 2004 as follows:

SUBJECT: VARIANCE REQUEST FROM PROVISION OF THE ZONING ORDINANCE;

Permission to vary Section 10.0704 D 1 - request to allow a 11.70' encroachment into the front yard.

Permanent Parcel No. 08-15-200-014

Located on the southwest corner of 24 Mile and Card Roads.

Address: 52711 Card Road

Petitioner: Marquee Investment LLC

Per your request, we are herewith submitting our comments and recommendation relative to the above-captioned matter.

The petitioner is requesting a variance to allow structure(s) to remain in the front yard with a 78.3' setback rather than 90' feet as required by the Zoning Ordinance. The property in question as currently existing is a parcel which is planned to be combined with the parcel to the south for the purpose of developing a subdivision. A combination application was not approved because the resulting parcel would not meet the setback requirements of the zoning ordinance.

The petitioner requesting permission for the structures to remain on the property unit it is ready for development. The timing of development has not been provided.

The Land Division Act, Section 17-163 g, indicates that "if there is compliance with this article and all other applicable township ordinances, codes, provisions, standards, rules and regulations, which regulate and control the division and/or development of land, the assessor shall approve the division, partition or split an forward to the County Land File Department for assessment of the new parcel identification number(s) and verification of the legal description(s).

RECOMMENDATION:

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

1. Compliance with the strict letter of the setback requirement would not unreasonably prevent the ownership from using the property for residential purposes. Other single family structures and uses have been developed in the area with proper setbacks and have been so constructed in conformance with the requirements. Each single family structure in the area that has received a building permit on new parcels has done so in compliance with the proper front yard setback. The fact that there are many single family structures built in the area is evidence that the proper front yard setback 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 the area or on streets planned in any new plats. The other owners are or will be required to comply

with the 90' front yard setback requirement. As a result the other property owners do not have the opportunity to make use of 11.7 additional feet to the front of the structure.

There is nothing unusual about the parcel in question that sets it apart from other parcels in area. There is nothing to prevent any part of the front yard from being maintained 90' from the front property line. 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.

3. The variance would amount to reducing the front yard setback by approximately 13 %.

   Respectfully submitted, Jack Daily and Jerome Schmeiser, Community Planning Consultants.

Petitioner Present: Larenzo Garrisi of Marquee Investments along with Ben Aloia, petitioners General Counsel.

The Petitioners discussed the variance request.

The Members of the Board, Township Attorney and Community Planning Consultant reviewed the variance request.

Mrs. Colleen O'Connor, Township Attorney, addressed her opinion from a legal stand point not in favor for approval.

The Members of the Board held further discussion.

MOTION by FLORENCE seconded by GALLAGHER to close the public portion at 7:30 P.M.

MOTION carried.

MOTION by FLORENCE seconded by POPOVSKI to deny this particular variance request Section 10.0704 (D) (1) - Request to allow a 11.70 encroachment into the front yard; Pertaining to Permanent Parcel No. 08-15-200-014. Specifically for the reasons specified in the Planning Consultants Recommendations as follows:

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

1. **Compliance with the strict letter of the setback requirement would not unreasonably prevent the ownership from using the property for residential purposes. Other single family structures and uses have been developed in the area with proper setbacks and have been so constructed in conformance with**

the requirements. Each single family structure in the area that has received a building permit on new parcels has done so in conformance with the proper front yard setback. The fact that there are many single family structures built in the area is evidence that the proper front yard setback 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 the area or on streets planned in any new plats. The other owners are or will be required to comply with the 90' front yard setback requirement. As a result the other property owners do not have the opportunity to make use of 11.7 additional feet to the front of the structure.

There is nothing unusual about the parcel in question that sets it apart from other parcels in area. There is nothing to prevent any part of the front yard from being maintained 90' from the front property line. 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.

3. The variance would amount to reducing the front yard setback by approximately 13 %.

MOTION carried.

6. VARIANCE REQUEST FROM ZONING ORDINANCE:
Section 10.1405 (D) (1)- Request to reduce the front yard setback from 75' to 20'; Located on the north side of Hall Road approximately ½ mile east of Romeo Plank Road; Sal-Mar Macomb Corporate Center, Petitioner. Permanent Parcel No. 08-33-400-043.

Chairman DEBUCK read the Planning Consultants findings and recommendations dated April 8, 2004 as follows:

SUBJECT: VARIANCE REQUEST FROM PROVISION OF THE ZONING ORDINANCE;
Permission to vary section:

Section 10.1405 D 1 - request to reduce the front yard setback from 75' to 20'.

Permanent Parcel No. 08-33-400-043

Located on the north side of Hall Road and approximately 1/2 mile east of Romeo Plank Road.

Petitioner: Sal-Mar Macomb Corporate Center, LLC

Per your request, we are herewith submitting our comments and recommendation relative to the above-captioned matter.

The petitioner is requesting a variance to reduce the front yard setback from 75' to 20'. The petitioner indicates that the reason for the variance is to enable the connection of cross-access easements from the east and west adjacent properties.

It is noted that the cross-access easements can be accommodated in the required setbacks.

RECOMMENDATION:

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

1. Compliance with the strict letter of the setback requirement would not unreasonably prevent the ownership from using the property as zoned. Other office structures planned along Hall Road will be required to comply with the same setback requirements which is evidence that the proper front yard setback 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 the area along Hall Road. The other owners are or will be required to comply with the 75' front yard setback requirement. As a result the other property owners do not have the opportunity to make use of 55 additional feet to the front of the structure.

   There is nothing unusual about the parcel in question that sets it apart from other parcels in area. There is nothing to prevent any part of the front yard from being maintained 75' from the front property line. 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.

3. The variance would amount to reducing the front yard setback by approximately 74%.

Respectfully submitted, Jack Daily and Jerome Schmeiser, Community Planning Consultants.

Chairman DEBUCK read the letter submitted by Mr. Thomas Treppa dated April 7, 2004 reviewing the variance request, practical difficulties and unnecessary hardships.

Petitioner Present: Thomas Treppa representative on behalf Sal-Mar Macomb Corporate

Center, LLC.

Mr. Treppa further discussed the variance request with the Members of the Board.

Public Portion: None.

MOTION by FLORENCE seconded by GALLAGHER to close the public portion at 7:51 P.M.

MOTION carried.

MOTION by FLORENCE seconded by GALLAGHER to deny the Variance Request specifically agreeing with the three items identified by the Community Planning Consultant pertaining to Section 10.1405 (D) (1) - Request to reduce the front yard setback from 75' to 20'; Located on the north side of Hall Road approximately ½ mile east of Romeo Plank Road; Sal-Mar Macomb Corporate Center, Petitioner. Permanent Parcel No. 08-33-400-043. The Planning Consultants recommendations pertaining to the three items are identified as follows:

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

1. **Compliance with the strict letter of the setback requirement would not unreasonably prevent the ownership from using the property as zoned. Other office structures planned along Hall Road will be required to comply with the same setback requirements which is evidence that the proper front yard setback 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 the area along Hall Road. The other owners are or will be required to comply with the 75' front yard setback requirement. As a result the other property owners do not have the opportunity to make use of 55 additional feet to the front of the structure.**

   There is nothing unusual about the parcel in question that sets it apart from other parcels in area. There is nothing to prevent any part of the front yard from being maintained 75' from the front property line. 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.

3. **The variance would amount to reducing the front yard setback by approximately 74%.**

MOTION carried.

OLD BUSINESS:

7. VARIANCE REQUEST FROM ZONING ORDINANCE:
Section 10.1505(D) (1)-Request to reduce front yard setback from 75' to 62'; Located on the south side of 25 Mile Road approximately 212 feet east of Garfield Road; Section 8; Salvatore DiMercurio, Petitioner. Permanent Parcel No. 08-08-101-003. *(Tabled at the petitioners request at the March 9, 2004 Board of Appeals Meeting)*

Chairman DEBUCK read the Planning Consultants findings and recommendations dated April 8, 2004 as follows:

SUBJECT: VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Permission to vary section:
Section 10.1505 D 1 - request to reduce front yard from 75' to 62'
Located on the south side of 25 Mile Road east of Garfield.

Petitioner: Salvatore DeMercurio Permanent Parcel No. 08-08-101-003

Per your request, we are herewith submitting our comments and recommendation relative to the above-captioned variance request.

The matter was considered by the Zoning Board of Appeals at its meeting of March 9, 2004 but tabled in order for the Attorney to research the item.

The petitioner is requesting a setback variance to allow a residence to remain on a parcel with a 62' setback rather than the required 90' setback. It appears to be the intention of the petitioner to combine the parcel in question with the adjacent parcel to the west. It would appear that the two parcels would then be developed as zoned for C-1 purposes.

The two parcels are zoned C-1 with the corner parcel vacant.

The concern of the Planning Consultant is that should the variance be granted the Township may lose control over the development of the property in terms of the use or destruction of the house. If the property is not developed for commercial purpose it should then be determined if the house will remain or will it be removed.

The Land Division Act, Section 17-163 g, indicates that "if there is compliance with this article and all other applicable township ordinances, codes, provisions, standards, rules and regulations, which regulate and control the division and/or development of land, the assessor shall approve the division, partition or split and forward to the County Land File Department for assignment of the new parcel identification number(s) and verification of the legal

description(s).

RECOMMENDATION:

It is recommended that the variance request be denied since the Township would have no control over the use or removal of the house.

Respectfully submitted, Jack Daily and Jerome Schmeiser, Community Planning Consultants.

Petitioner Present: Bill Thompson, 21333 25 Mile Road representative on behalf of Mr. DiMercurio.

Mr. Thompson stated, "At the meeting two months ago we were looking for direction from the Township Attorney, as to whether the use of the building could be restricted if the variance was granted. In other words, if there was a variance granted to allow the house to remain in the C-1 district as it is now, would the Township have any control over the use of that building? The owner is willing to enter into any agreement with the Attorney or the Township to see fit to make sure that house stays residential. If there was an attempt to change the residence to any other type of use, it would be torn down. They have no intent to do anything other than living in their residence. Right now it's a residence it stays it's current use as a residence. There are two parcels adjacent to each other, the owner wants to combine the parcels. By combining them, he has to get the variance otherwise he can't combine them. He can't submit a site plan or can't do anything else with the property until those two parcels are combined. He wants to submit a site plan for it, but in the mean time he needs to continue to have the house as it sits there until such time as he gets site plan approval. When he gets site plan approval, he'll tear the house down and develop the site. But in the mean time he needs to maintain the house on site. And for one thing it gives a use there, if you knock it down it becomes a vacant piece of property that turns into nothing, it turns into junk**.** So by keeping the residence there, the property will be maintained, while he goes through the process of a site plan approval and at that time when he gets the site plan approval and starts to develop then the house goes down. At no time does he intend to use that building for any type of commercial use, commercial or office. He is willing to enter into any agreement that the Township feels is appropriate. I guarantee that."

Chairman DEBUCK opened the Board for any questions for the petitioner.

Chairman DEBUCK stated, "I have one point, to recommend that if we approve a variance on this that it be conditioned."

Colleen O'Connor, Township Attorney, stated "No, I talked to Larry about it and it's just not a good idea to put these kind of conditions in a variance. There might be other avenues to pursue in getting what you need to get done, but variance procedures are not the way to do it." Mr. Thompson questioned "what other avenues do you have then, out

side of court?" Mrs. O'Connor replied court is a good idea, Member GALLAGHER stated a consent judgment? Mrs. O'Connor stated yes. Member GALLAGHER stated, "Why can't you do that same thing, make a motion subject to this variance be granted subject to the fact that they have to combine both pieces, and the one can't be used for nothing but residential and at anytime that there is any construction or fruit was done in that corner, that house has to come down. Nothing can be done in that corner until the house comes down. So if you submit a site plan and get it approved, and start construction, that house has to come down first." Mr. Thompson acknowledged agreed with the conditions specified by Member GALLAGHER.

Mrs. O'Connor stated, "Larry just left that putting in a consent judgment gives the Township a little bit more control over what actually happens, because it's a court order, the judge is telling you what you can do, whereas putting it condition to a variance the Township essentially, we may lose control over the property." Mrs. O'Connor mentioned that Larry didn't say it couldn't be done, it's possible to put a condition into a variance. *(Audio tape flips to other side may be missing some info.)*

Chairman DEBUCK opened the commission up for further questions. No comments.

Chairman DEBUCK opened the audience for questions.

Public Portion: None.

MOTION by GALLAGHER seconded by FLORENCE to close the public portion at 8:02 P.M.

MOTION carried.

GALLAGHER stated, "It seems to me we're doing the same thing, the variance runs with the property if you decide what you want to do and sell it, those same conditions apply to any new owners. As protection to the Township, I don't see where this, the only difference is that the Attorney has to get involved in the rest of it. This way we can have it here flipped."

Mr. Thompson stated, "It's a matter of time and money and it cost money on both sides."

Member GALLAGHER makes a motion to approve this variance subject to: the parcels have to be combined, the uses stay the same, and prior to any development, physical development of the property, this house has to be removed. You can have your plans approved but before you put a shovel in the ground the house has to come down.

Mr. Thompson stated, "The petitioner is willing to agree to that."

Member Gallagher stated," I don't see where that's a problem."

Member FLORENCE questioned the time frame anticipated for the property in question.

Mr. Thompson stated, "I really don't know you're looking at probably a couple of years."

Mr. Schmeiser stated "Like Mrs. O'Connor was saying I don't care either way. But I think if we're going to do that, you're going to be doing it at least three or four of five or a dozen times a year. We better get our legal document in order because if…. now I trust Mr. Thompson and I trust Mr. Gallagher but if somehow one of those words gets mixed and we write it down wrong, now your leaving this up to non-professional attorneys to write this. That if something oh I didn't mean it was going to be a drug store, oh I didn't think it was going to be video giant, I don't know and I think we better get that legal terminology down because we've got, like I say, three or four or five of them on the May 11, 2004 Meeting."

Chairman DEBUCK interrupted and stated, "How do you feel about in this situation where were strictly talking about this house, this house will be torn down so it's pretty clear."

Mr. Schmeiser stated, "Ok but there's a lot of… what if they split it off? You know that house could be split off."

Chairman DEBUCK stated, "They can't split it off."

Mr. Schmeiser stated, "It sure can be split it off."

Member GALLAGHER stated, "No they can't, it has to be combined with this piece right now."

Mr. Schmeiser stated "Well… but well…. yes it can be combined but it can be pre-split. I'm saying if Mr. DiMercurio sells it to somebody or dies or his estate says ya know what we can split that house off have it as an income and still build a shopping center around it. I'm just recommending that you before we act on that because we're going to be doing this at least a dozen times a year and I'm sure all those people that we've denied in the past two years are all going to come in here and want to do the same thing. I can assure you that the Luedke's are going to be back."

Mrs. O'Connor stated, "Well yes that's the other comment that I should have said before is that you're creating a precedent in doing this. With a consent judgment you're not making any kind of precedent."

Member GALLAGHER stated, "No well we have all kinds of ah…. I don't agree with you. I sit in that audience and I see and hear these developers say let them go ahead and vote us down we'll go get a consent judgment. This Township is noted for granting consent judgments and it don't mean dittley, because they get exactly what they want anyway. They go to the *(in audible)* and get a hell of a lot more than we'll ever give

them, because there sittin' around here at every damn meeting saying oh just let them turns us down we'll got get a consent judgment, okay well will let them that is a farce, that is a farce, when they go for a consent judgment their going to get exactly what they want and the Township gets nothing, the Township gets absolutely nothing, and I don't agree with that. I hear it too many times, I bet I hear it, hell I've herd it fifty times a year. And when this consent judgment comes down they get exactly what they petitioned for. The township gets squat."

Thompson stated, "I believe a variance very similar to this was granted about two years ago on the corner of 26 Mile and Hayes area DiMercurio's property."

Mr. Schmeiser stated, "And that was the last one granted. I'm just nervous about …what if he decides to split it off or rezone it to C-2 or do something. There's a hundred things that could happen that we don't even know about yet because that parcel is large enough to split off, even though it's combined. It could be re-split…(*inaudible)*…denied the right to a legal document…(*inaudible)*."

Member GALLAGER stated, "There's nothing to prevent them from doing the same thing if it's a consent judgement. Look at the Hendersons, look at that thing over there, Debuck Sod Farm…they got exactly what they wanted when they come in here. What did the Township get? 1800 more residents that's coming into an area that can't take care of it. We got drainage problems; we got people coming in here holler in' about drainage problems. Now there's a motion on the floor …if you don't want to support it that's fine."

Member GALLAGER repeats his motion to approve the variance request subject to the parcels have to be combined and the uses stay the same and prior to any development, physical development, this house must be removed. Before any shovel goes into the ground the house comes down. Permanent Parcel No. 08-08-101-003.

MOTION by GALLAGHER seconded by FLORENCE to approve the Variance Request Section 10.1505(D) (1)-Request to reduce front yard setback from 75' to 62'; Subject to the parcels have to be combined and the uses stay the same and prior to any development, physical development, this house must be removed. Before any shovel goes into the ground the house comes down. Permanent Parcel No. 08-08-101-003.

MOTION carried.

PLANNING CONSULTANT COMMENTS: None.

The Board discussed the future Special Meeting scheduled for April 21, 2004.

Chairman DEBUCK reminded the Board of his resignation date as of June 1, 2004 due to the change in residence. Mr. DEBUCK will be moving to Ray Township.

ADJOURNMENT:

MOTION by FLORENCE seconded by POPOVSKI to adjourn this meeting at 8:13 P.M.

MOTION carried.

Respectfully submitted,

_____
Marvin DeBuck, Chairman

_____
Brian Florence, Secretary
Gabrielle M. Baker, Recording Secretary