MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A SPECIAL MEETING HELD
FEBRUARY 2, 2004

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

PRESENT: MARVIN DeBUCK, CHAIRPERSON
BRIAN FLORENCE, SECRETARY
MEMBERS: EDWARD GALLAGHER
TONY POPOVSKI
DAWN SLOSSON

ABSENT: NONE.

ALSO PRESENT: COLLEEN OCONNER, 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 7:00 P.M.

1. Roll Call.

Secretary FLORENCE called roll. All members present.

2. PLEDGE OF ALLEGIANCE.

3. Approval of Agenda Items.

MOTION by FLORENCE seconded by GALLAGHER to approve the agenda as amended.

MOTION carried.

4. Approval of Meeting Minutes

MOTION by GALLAGHER seconded by FLORENCE to approve the meeting minutes of January 13, 2004 as presented.

MOTION carried.

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

(5) Tammy Dodd and Geoff Loucks Section 10.0311(E)(F)(5)

Permanent Parcel No. 08-06-479-003

(6) Elro Corporation — Section 10.0704(D)(2)(b)
Permanent Parcel No. 08-06-300-033

(7) RPP Associates — Section 10.1706
Permanent Parcel No. 08-32-476-012

5. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Permission to vary section:
Section 10.0311(E)(F)(5)-Request allowance of a 6.84' distance between the house and pool instead of 10'.
Located west of Romeo Plank north of 25 Mile Road; Section 6; Tammy Dodd and Geoff Loucks, Petitioner. Permanent Parcel No. 08-06-479-003.

Chairman DeBUCK stated that a letter had been received dated January 20, 2004 asking to formally withdrawal the variance request.

MOTION by GALLAGHER seconded by SLOSSON to accept the letter of withdrawal dated January 20, 2004 for Permanent Parcel No. 08-06-479-003.

MOTION carried.

6. VARIANCE REQUEST FROM PROVISION OF THE ZONING ORDINANCE;
Permission to vary section:
Section 10.0704(D)(2)(b)-Request to allow a garage to remain 5.75' from the west property line rather than 7.5'.
Located on the north side of 25 Mile Road and 213' east of Hayes Road; Section 6; Elro Corporation, Petitioner. Permanent Parcel No. 08-06-300-033

Chairman DeBUCK read the findings and recommendations of January 29, 2004. They are as follows:

The petitioner is requesting a variance to allow a garage to remain in a required side yard setback. The plan is to provide a 5.75' setback rather than 7.5' feet as required by the Zoning Ordinance. The property in question as currently existing is a parcel which meets the dimension requirements of the Zoning Ordinance as approved by the Township. 25 Mile Road is a major road.

However, the petitioner plans to split the parcel to provide for a subdivision. The Land Division Regulations, Section 17-163. Procedures for dividing, partitioning, or splitting of land provides in paragraph g 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).

Obviously there is not compliance since the garage is 1.75' closer to the side property line than is allowed by the Zoning Ordinance.

All new parcels created as a result of the proposed plat or any other division of land will be required to meet the zoning setback as prescribed by the Zoning Ordinance of Macomb Township.

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 the garage. Other single family structures and uses have been developed in the area and garages 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 7.5' side yard setback. The fact that there are many single family structures built in the area is evidence that the 7.5' sideyard 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 required to comply with the 7.5' sideyard setback requirement. As a result the other property owners do not have the opportunity to make use of 1.75 additional feet to the side of the structure between the west elevation of the garage and the side property line.

   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 garage from being built 7.5' from the side 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 sideyard by approximately 20 %.

Daniel Spatafora, representative, was in attendance and stated that it was only the southwest corner of the garage that was in violation of the 7.5 foot setback requirement. He indicated that there would be no other alterations to the site or the garage since all of the other setbacks are complied with on the property. Therefore we respectfully request the granting of the proposed variance.
Member GALLAGHER asked if there was anything that would prevent the garage from

being moved to within the appropriate setback requirements.

Daniel Spatafora stated that from the development aspect it was more of a financial burdensome to move the garage.

Colleen O'conner, Township Attorney, stated that a financial hardship does not validate a reason for granting a variance. She further indicated that prior requests for setback variances had been denied.

Public Portion: None.

MOTION by FLORENCE seconded by POPOVSKI to close the public portion.

MOTION carried.

MOTION by FLORENCE seconded by GALLAGHER to deny the variance request of Section 10.0704(D)(2)(b)-Request to allow a garage to remain 5.75' from the west property line rather than 7.5'; Located on the north side of 25 Mile Road and 213' east of Hayes Road; Section 6; Elro Corporation, Petitioner. Permanent Parcel No. 08-06-300-033. The variance request was denied based on the following reasons:

1. **Compliance with the strict letter of the setback requirement would not unreasonably prevent the ownership from using the property for the garage. Other single family structures and uses have been developed in the area and garages 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 7.5' side yard setback. The fact that there are many single family structures built in the area is evidence that the 7.5' sideyard 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 required to comply with the 7.5' sideyard setback requirement. As a result the other property owners do not have the opportunity to make use of 1.75 additional feet to the side of the structure between the west elevation of the garage and the side property line.**

   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 garage from being built 7.5' from the side 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 sideyard by approximately 20 %.

MOTION carried.

7. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Permission to vary section:
Section 10.1706(E)-Request to waive required greenbelt where a C-3 development abuts a residential zone.
Located on the north side of Hall Road and 1000' east of Romeo Plank Road; Section 32; RPP Associates, Petitioner. Permanent Parcel No. 08-32-476-012.

Chairman DeBUCK read the findings and recommendations of January 20, 2004. They are as follows:

The petitioner is requesting allowance to eliminate the required greenbelt between the proposed development planned for the C-3 shopping center as described above. The greenbelt area is required as part of the development of shopping facilities that abut residential areas. The purpose of the greenbelt area is to provide space between parking areas and home sites.

The property is zoned C-3 and contains a supermarket, commercial uses and an office building.

Although the property abutting the proposed commercial development is zoned residential it contains a retention basin which separates the commercial from any residential home sites.

The retention area therefore accomplishes the intent of the zoning ordinance by providing space between commercial and parking facilities from residential home sites.

RECOMMENDATION:

It is recommended that the variance request be approved. The retention basin will provide the open space necessary to protect the residential area from the parking areas of the shopping center.

Tom Kalas, representative, was in attendance.
Jerome R. Schmeiser, Planning Consultant, reviewed the development of the proposed site and the reasoning behind the necessity for a buffer zone. He lastly indicated that the detention basin that is within the subdivision to the north provides for the open space which would allow for the parking of vehicles at the north end of the development adjacent to the wall.

Public Portion: None.

MOTION by GALLAGHER seconded by FLORENCE to close the public portion.

MOTION carried.

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

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 10.1706(E)-Request to waive a required greenbelt where a C-3 development abuts a residential zone; Located on the northwest corner of Hall Road and Romeo Plank; Section 32; RPP Associates, Petitioner. Permanent Parcel No. 08-32-476-012. The variance was granted since the intent of the Zoning Ordinance was being met with the retention basin providing the open space necessary to protect the residential area from the parking areas of the shopping center.

MOTION carried.

8. OLD BUSINESS

Jerome R. Schmeiser, Planning Consultant, discussed the Land Division Act with the members of the Board.

9. NEW BUSINESS

None.

10. PLANNING CONSULTANTS COMMENTS

None.

ADJOURNMENT

MOTION by FLORNECE seconded by POPOVSKI to adjourn the meeting at 7:45 P.M.

MOTION carried.

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
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Respectfully submitted,

_____
Marvin DeBuck, Chairman

_____
Brian Florence, Secretary

Beckie Kavanagh, Recording Secretary