

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A REGULAR MEETING HELD
TUESDAY, MAY 10, 2016

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

PRESENT: CHAIRMAN: EDWARD GALLAGHER
MEMBERS: DINO BUCCI
AARON TUCKFIELD
DAWN SLOSSON
KRISTI POZZI

ABSENT: NONE

ALSO PRESENT: TOM ESORDI, TOWNSHIP ATTORNEY
PATRICK MEAGHER, PLANNING CONSULTANT
(Additional attendance record on file with Clerk)

Call Meeting to Order.

Chairman GALLAGHER called the meeting to order at 5:00 P.M.

1. Roll Call.

Secretary SLOSSON called the roll. All members present.

2. PLEDGE OF ALLEGIANCE.

Chairman GALLAGHER asked all in attendance to join the 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 SLOSSON seconded by BUCCI to approve the agenda as presented.

MOTION carried.

4. Approval of the previous meeting minutes.

MOTION by BUCCI seconded by SLOSSON to approve the minutes of March 15, 2016 as presented.

MOTION carried.

PURPOSE OF HEARING:

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

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Agenda Number/Petitioner/ Permanent Parcel No.	Zoning Ordinance Section No.
(5) FunSpace Direct, LLC Permanent Parcel 08-29-407-012	Section 10.0331.3
(6) Deerfield Park North Permanent Parcel 08-22-329-007 08-22-328-017	Section 20-5A.2.a 20-5A.A.2
(7) William A. Malopolski Michal Malopolski Permanent Parcel 08-05-400-024 08-05-400-023	Section 10.0311.D.3
(8) Don McElhaney Permanent Parcel 08-10-300-017	Section 10.0331.5

5. VARIANCE REQUEST FROM ZONING ORDINANCE

Section 10.0331.3-Requesting a variance of 3' to the required 10' separation of an accessory building to a principal structure.

Located on the south side of Meadowbrook, approximately 200' east of Greenbriar; Section 29; FunSpace Direct LLC, Petitioner. Permanent Parcel 08-29-407-012.

Patrick S. Meagher, Planning Consultant, presented the findings and recommendations of April 27, 2016. They are as follows:

The property in question is located north of 21 Mile Road and west of Romeo Plank Road in the Greenbriar Estates Subdivision. The petitioner is requesting a variance to reduce the required setback of a pergola (roofed structure) from a principal structure from 10 feet to 7 feet (a 3 foot variance).

The following variance will be required to facilitate the request:

VARIANCE 1: Request to vary Section 10.0331.3 – Approve a variance of 3' to the required 10' separation of an accessory building to a principal structure.

The pergola is an open air structure with slat roof and four columns supporting the roof. By definition, the structure is a building which mandates the separation.

Planner's Recommendation: Based on the fact that this request is for an open air structure and provides very little visual or physical obstruction for the property, we find this meets the spirit of the ordinance and have no objections to approval.

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The petitioner submitted a letter dated March 11, 2016 in support of the request and was included into the record as follows:

“Owners wish to construct at 11’ x 16’ freestanding pergola on their existing concrete back patio. The property has a bay style doorwall to the rear which would not allow for proper installation if we attempted to attach. If we could attach there would be enough distance to comply with setbacks. Condition exist that if we placed the 11’ projection pergola it would extend 3’ past he edge of the exiting patio. The design of the bay style doorwall was not created by homeowner. It is our belief that a pergola was not considered when the ordinance e was drafted. We contend that an open air product such as a pergola which was intended for shade and has no walls, does not violate the intent of the ordinance. This type of open air structure really does fit the strict definition of a building. We feel that that the intention of this ordinance was for safety of the citizen not to allow structures close up to the residence that could be used for storage of materials that would be hazardous and be a potential fire hazard. Also, close up block structures could be a line of site issue and be unsightly which could detract from the value of the property and that of the neighbors.”

Jim Hall, representative, was in attendance. He indicated that they can’t attach the pergola to the house since there is a bay window and there is no structure to a bay so without reinforcing it doesn’t allow to attach so we need to allow for the space between the house.

Member TUCKFIELD stated the representative indicated that there was no structure on this bay. This is not a true bay it’s an architectural bay on the house and asked if there was a header above the doorwall.

Jim Hall stated there is on above the doorwall. The problem is that these are basically designed to hold the weight of the bay and not designed to take any additional load. The bay window is attached to the house and it does have a header above it but it is only supported by the understructure protruding from the house. It is only designed to handle the weight of the bay, the doorwall and the roof on top. If anything more is attached then the structure will need to be supported somehow underneath.

Member TUCKFIELD stated he did not mean to debate however, he did not follow the logic since this is cantilevered off the base and that there is enough base there

Jim Hall stated he had been told that trying to attach to that bay its only designed to hold the weight of the doorwall, bay and roof.

Member BUCCI asked Member TUCKFIELD what the concern was with the structure, if it might fly away with it being a freestanding structure.

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Member TUCKFIELD stated no, the ordinance allow for accessory structures closed than 10 feet. If it was attached it would be conforming but since it's not it needs a variance.

Public Portion: None.

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

MOTION carried.

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

Whereas, it has been satisfactorily presented that special conditions prevail that would cause an practical difficulty 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 10.0331.3-Requesting a variance of 3' to the required 10' separation of an accessory building to a principal structure; Located on the south side of Meadowbrook, approximately 200' east of Greenbriar; Section 29; FunSpace Direct LLC, Petitioner. Permanent Parcel 08-29-407-012.

MOTION carried.

6. VARIANCE REQUEST FROM ZONING ORDINANCE

Section 20-5A.2.a and 20-5.A.2.-Requesting a 1 foot variance to the required 10 foot setback from the 22 Mile Road R-O-W for both signs and a 6'9" variance to the setback from the Shenandoah R-O-W.

Located on the northeast and northwest corner of 22 Mile Road and Shenandoah Drive; Section 22; Deerfield Park North, Petitioner. Permanent Parcel 08-22-329-007 and 08-22-328-017.

Patrick S. Meagher, Planning Consultant, presented the findings and recommendations of April 27, 2016. They are as follows:

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The properties in question are located on the northeast and northwest corners of 22 Mile Road and Shenandoah. A request for a Variance to Section 20-5.A.2.a. and 20-5.A.2.b. of the Macomb Township Sign Ordinance. The applicant is requesting two subdivision entry signs on either side of Shenandoah Drive at the intersection of 22 Mile Road. The applicant seeks a 1' variance to the required 10' setback from the 22 Mile Road ROW for both signs and a 6'9" variance to the setback from the Shenandoah Road ROW.

Planner's Recommendation: We are recommending approval of this variance request due to the fact that a practical difficulty does exist. These signs will be located within the landscape easement and will be located in roughly the same spot as the previous entrance signs.

The petitioner submitted a letter dated April 11, 2016 in support of the request and was included into the record as follows:

"We are requesting a variance of 6'9" from the right of way due to topography, existing landscaping and underground DTE line"

Steve Bretz, representative, was in attendance and stated his company was working with subdivision on this sign replacement.

Member BUCCI asked if documentation had been submitted indicating that the association wants the improvements.

Patrick S. Meagher, Planning Consultant, stated that documentation had been received and was on file.

Member TUCKFIELD asked if the signs were being put on the same foundations. He also asked out of curiosity if the ordinance had been changed or if the signs were in nonconformance when erected.

Patrick S. Meagher, Planning Consultant, stated he was not sure what occurred but that there was a variance granted and the signs were approved where they are located but they do not meet the variance that had been granted and that is why they are before this board.

Member TUCKFIELD stated the existing signs had a variance and they did not meet the variance that was in existence.

Patrick S. Meagher, Planning Consultant, stated that was correct.

Public Portion: None.

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

MOTION carried.

The following resolution was offered by BUCCI and seconded by POZZI:

Whereas, it has been satisfactorily presented that special conditions prevail that would cause a practical difficulty 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 20-5A.2.a and 20-5.A.2.-Requesting a 1 foot variance to the required 10 foot setback from the 22 Mile Road R-O-W for both signs and a 6'9" variance to the setback from the Shenandoah R-O-W; Located on the northeast and northwest corner of 22 Mile Road and Shenandoah Drive; Section 22; Deerfield Park North, Petitioner. Permanent Parcel 08-22-329-007 and 08-22-328-017.

MOTION carried,

7. VARIANCE REQUEST FROM ZONING ORDINANCE

Section 10.0311.D.3.-Requesting a 3.5 foot variance from the required 3.5 feet to allow the driveways to connect for shared access.

Located on the north side of 25 Mile Road, approximately $\frac{3}{4}$ mile east of Romeo Plank Road; Section 5; William A. Malopolski and Michael W. Malopolski, Petitioners. Permanent Parcel 08-05-400-024 and 08-05-400-023.

Patrick S. Meagher, Planning Consultant, presented the findings and recommendations of April 27, 2016. They are as follows:

The properties in question are located on the north side of 25 Mile Road, between Romeo Plank & Luchtman Roads. The two requests for a variance to Section 10.0311.D.3. of the Zoning Ordinance which requires a residential driveway to be located a minimum of 3.5' from a property line. The applicants (who are neighbors) are both requesting a variance of 3.5' from the required 3.5' to allow the driveways to connect for shared access.

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Planner's Recommendation: We are recommending denial of this variance request due to the fact that a practical difficulty does not exist. If approved, we would recommend that a condition of such approval contain a removal clause of both portions of concrete in the setback when either party demands such or either party sells his home.

In addition, it may make the two parcels function better with turn arounds on a major road. The only concern is if one of the two parties sell or if they no longer want the connection we want to make it clear that as a condition of the approval both sides will saw cut and remove the 3 1/2 ' concrete between each side.

The petitioner submitted a letter dated March 30, 2016 in support of the request and was included into the record as follows:

"This project was originally discussed in detail with Mr. Michael Badamo in the 4th quarter of 2015. At that meeting I was advised that given the special relationship between my son and I, if we entered into a recorded shared access agreement, the township would permit us to connect the two driveways provided Mr. James VanTiflin, Township Engineer, approved the proposed drainage plan.

To discuss the shared access agreement and to have my drainage plan approved, I contacted Mr. VanTilin by telephone on 2/18/2016, and arranged to meet with him in person at the township offices on the morning of 2/24/2016. At that meeting, Mr. VanTiflin advised that while he approved my drainage plan, the original direction regarding the shared access agreement was not correct and a variance would be required. He provided me the appropriate paperwork.

While reviewing the paperwork upon returning home, I wondered if two sets of paperwork were required since two properties were affected by the single project.

In a telephone conversation early that afternoon (2/18/2016), I asked Mr. VanTiflin if I needed to prepare a variance application for the project, or one for each property.

Mr. VanTiflin directed that a single package outlining the single project should be submitted to the board. The package should include individual completed packets for each parcel, and a total payment of \$500 for the package.

As directed by Mr. VanTiflin, I am submitting this single package which includes an application packet for 18121 25 Mile Rd., an application packet for 18161.25 and a check payable to Macomb Twp. Treasurer for \$500.00.

My son and I are very interested in successfully completing this project, If any of the information provided to me by the Macomb Township offices or by their officers is incorrect, please advise me in a timely fashion in writing so I may rectify anything prior to the May 10, 2016 meeting,

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Your cooperation in this matter is sincerely appreciated.”

A second letter was also submitted on behalf of parcel 08-05-400-023 dated March 30, 2016 in support of the request and was included into the record as follows:

“Strict enforcement of the ordinance will require Willaim Malopolski, father and next door neighbor of Michael Malopolski, to enter 25 Mile Road and immediately turn into the adjacent driveway in order to use the accessory building located on his son’s property as opposed to driving directly between the two properties. Such a maneuver, depending on the vehicle(s) involved, may require either the use of both travel lanes of 25 Mile road or backing-up. It is expected this will often be done on weekday summer evenings. Given 25 Mile Rd. traffic conditions, specifically westbound, at the time, this might expose Mr. Malopolski and those using 25 Mile Road to a potentially dangerous condition.

In addition, approval of this variance will significantly enhance the quality of life of the two families involved, particularly the two young children. It will also facilitate snow removal and provide easier visitor egress from either property.

Given the size of the properties, their location on a major thoroughfare, their contained existing structures, and the relationship between the owners, we believe the conditions and circumstances are unique and for the most part not shared with other properties within the zoning district. Consequently, approval of these applications confers no special privileges denied other properties.”

Member GALLAGHER stated there is no practical difficulty.

Patrick S. Meagher, Planning Consultant, stated that one could argue that but the spirit and intent is being meet.

Member BUCCI asked Mr. Esordi if this was something the board could do with the document with a condition being made.

Tom Esordi, Township Attorney, stated that there are two issues at hand. The first is you can place a condition on the current ownership and remove it if there is a change in the ownership and record that restriction so that there is no issues about any future purchases. But to be able to it from an individual who no longer wants to do it, typically what would be done is some sort of agreement between the two of them (written easement, document with all the terms and conditions) and would request to see a copy of said document. That is something that could be done, record that easement in agreement with the terms and conditions so that the township can enforce it and any subsequent property owners could enforce it.

Chairman GALLAGHER stated his only comment is that the Board is to act on practical difficulty and that there is none present.

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Member TUCKFIELD stated he would agree that there is no practical difficulty but that there is a some responsibility for health and welfare which to me greatly increases the safety of this site with the expected traffic to have a cross easement. Lastly, he asked Mr. Esordi if they could even act upon the item without an agreement being present.

Tom Esordi, Township Attorney, stated the item could be tabled, and ask for the agreement, or you grant it subject to the document being approved by either our office, the Township Planner or both which is what I would recommend if that is the option you choose.

Member TUCKFIELD asked if it would behoove us to ask for a bond for the removal of the cross access.

Tom Esordi, Township Attorney, stated if you are going to require a bond his recommendation on that would be unless there is an ultimate immediate need to have this put it place, he would table it and explore the opportunity to have the document in front of you and the bond requirements in front of you.

Member BUCCI asked the petitioner if this is something he would consider.

William Malopolski stated when he spoke with the Township Engineer he was under the impression that as long as he had a recorded shared access agreement that it would meet the requirements.

Member BUCCI asked about his feelings on the bond.

William Malopolski stated he was not clear on the bond and what it does.

Member BUCCI stated that it enforces the fact that if someone moves and no one chooses to remove the slab of concrete we utilize that bond to get the job done.

Chairman GALLAGHER stated that if a variance is granted that it be stipulated that they are related so that we don't have others coming in and asking for the same thing.

Public Portion: None.

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

MOTION carried.

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

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Whereas, it has been satisfactorily presented that special conditions prevail that would cause a practical difficulty 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 10.0311.D.3.-Requesting a 3.5 foot variance from the required 3.5 feet to allow the driveways to connect for shared access; Located on the north side of 25 Mile Road, approximately $\frac{3}{4}$ mile east of Romeo Plank Road; Section 5; William A. Malopolski and Michael W. Malopolski, Petitioners. Permanent Parcel 08-05-400-024 and 08-05-400-023. The variance was granted conditional on a joint access agreement agreed upon by the applicants, Township Building Official, Township Planner and Township Legal staff. Lastly, it was granted because of the health and safety effects and also the close nature of the applicants being family.

MOTION carried.

8. VARIANCE REQUEST FROM ZONING ORDINANCE

Section 10.0331.5-Requesting an addition to an existing accessory building. With the addition, the applicant will have two detached accessory buildings with a floor area totaling 3,457 square feet, which requires a variance of 457 feet. Located on the west side of Foss Road, $\frac{1}{4}$ mile north of 24 Mile Road; Section 10; Don McElhaney, Petitioner. Permanent Parcel 08-10-300-017.

Patrick S. Meagher, Planning Consultant, presented the findings and recommendations of April 27, 2016. They are as follows:

The property in question is located on the west side of Foss Road, north of 24 Mile Road. The request is to vary Section 10.0331.5 which allows a maximum of two detached accessory buildings totaling 3,000 square feet in floor area for parcels with 5 acres or more land. The applicant is requesting an addition to an existing accessory building. With the addition, the applicant will have two detached accessory buildings with a floor area totaling 3,457 square feet, which requires a variance of 457 square feet.

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Planner's Recommendation: We are recommending denial of this variance request due to the fact that a practical difficulty does not exist. The applicant previously applied for an accessory structure variance under the prior ordinance. The Township amended the ordinance to reflect what was reasonable for such size lots/parcels. The applicant is now requesting to enlarge the structure. This would grant a special privilege not permissible to the surrounding properties and other properties within the same Zoning District.

The petitioner submitted a letter dated April 11, 2016 in support of the request and was included into the record as follows:

"Enclose part of existing overhang to provide room and storage of two new collectors cars. Note: Approval before Zoning Board had been done for 3,600 square feet we are asking for an additional 480 square feet."

Patrick S. Meagher, Planning Consultant, further noted that approximately 1 to 1 ½ year ago a variance request came in construct a detach accessory structure on this site and at the point in there was a garage at the rear of this site. The ZBA granted the variance which included an overhang on the structure and the applicant is now asking to enclose that overhang and make it part of the structure which will require an additional 457 square feet. When the first variance request was submitted by the petitioner the Zoning Ordinance was different. Mr. McElhaney was actually the impetus for the Planning Commission and Zoning Board of Appeals to reexamine the numbers and enlarge the allowance for each zoning district. We are now at a point where even with the two structures that are currently on the property, they currently exceed what the township has expanded the allowance to be. Therefore, we are recommending denial of the variance due to the fact that there is no practical difficulty. In fact the township has reassessed the entire accessory structure ordinance based on the previous application and this would grant a special privilege really not permissible to any of the surrounding properties or anyone in the same zoning district.

Don McElhaney, petitioner, was in attendance and stated that he needed the space. He retired from the automotive industry and keeps himself busy with old cars and I don't like to keep them outside. He indicated that he is going to be in the same footprint, and that it would be a 12 x 38 or 12 x 40 enclosure to store his cars in.

Member BUCCI stated that he was surprised that he was before the board. He noted that he could probably keep the two cars he was referring to in the garage that was allowed to remain from the initial Zoning Board of Appeals approval.

Don McElhaney stated that he does his own lawn work and the garage is full.

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Member BUCCI stated the ordinance had been rewritten based on the garage that you built and allowed you to keep the garage in the back. He noted that he had no indication of granting any variance request and that we had bent over backwards for the first request.

Don McElhaney stated he appreciated that but that had to admit that since the ordinance was changed someone admitted the ordinance wasn't fair. He stated the garage in the back is full of his lawn equipment and that there is no room for two cars. Furthermore, there are two trailers under the overhang and if the trailers are removed and it is enclosed it will be a better structure then what it is now.

Chairman GALLAGHER stated that he has done a good job with what you have, however, there is no practical difficulty.

Public Portion: None.

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

MOTION carried.

MOTION by BUCCI seconded by TUCKFIELD to deny the variance request of Section 10.0331.5-Requesting an addition to an existing accessory building. With the addition, the applicant will have two detached accessory buildings with a floor area totaling 3,457 square feet, which requires a variance of 457 feet; Located on the west side of Foss Road, ¼ mile north of 24 Mile Road; Section 10; Don McElhaney, Petitioner. Permanent Parcel 08-10-300-017. The variance was denied since there is no practical difficulty.

MOTION carried.

9. OLD BUSINESS

None.

10. NEW BUSINESS

None.

11. PLANNING CONSULTANTS COMMENTS

Patrick S. Meagher, Planning Consultant, stated that there are two applicants seeking a special meeting date.

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ADJOURNMENT

MOTION by BUCCI seconded by SLOSSON to adjourn the meeting at 5:30 p.m.

MOTION carried.

Respectfully submitted,

Edward Gallagher, Chairman

Dawn Slosson, Secretary

Beckie Kavanagh, Recording Secretary