

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A REGULAR MEETING HELD  
THURSDAY, OCTOBER 3, 2019

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

PRESENT: CHAIRMAN: AARON TUCKFIELD  
DAWN SLOSSON, SECRETARY  
MEMBERS: DAVID PIEPER  
KRISTI POZZI

ABSENT: MEMBER: DAVID DeCOSTER (excused)

ALSO PRESENT: PATRICK S. MEAGHER, ACTING PLANNING DIRECTOR  
(Additional attendance record on file with Clerk)

Call Meeting to Order.

Chairman TUCKFIELD called the meeting to order at 7:00 P.M.

1. Roll Call.

Secretary SLOSSON called the roll. Member DeCOSTER was absent and excused.

2. PLEDGE OF ALLEGIANCE.

Chairman TUCKFIELD asked all in attendance to join in 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 POZZI seconded by SLOSSON to approve the agenda as presented.**

**MOTION carried.**

4. Approval of the previous meeting minutes.

**MOTION by PIEPER seconded by SLOSSON to approve the minutes of September 5, 2019 as amended.**

**MOTION carried.**

5. New Business:

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.
(a) Fadi Askar Permanent Parcel 08-22-200-005 08-22-200-014 08-22-200-015	Section 10.1603.B.33.a. 10.1605.G.
(b) Amy and Wes Gideon Permanent Parcel 08-21-353-015	Section 10.0311.E.f.3.
a. VARIANCE REQUEST FROM ZONING ORDINANCE Section 10.1603.B.33.a.-Requires a 300 foot setback of a service window or call-box for a drive-thru. The applicant is requesting a setback of 150 feet and requests a variance for 150 feet; Section 10.1605.G.-The applicant is requesting to waive the requirement for a 6 foot concrete wall. Located on the southwest corner of 23 Mile Road and Card Road; Section 22; Fadi Askar, Petitioner. Permanent Parcel 20-08-22-200-005, 20-08-22-200-014 and 20-08-22-200-015.	

Patrick S. Meagher, Acting Planning Director, presented the findings and recommendations of August 27, 2019.

Bill Thompson, representative, was in attendance and gave a brief overview of the site via a Power Point and explained the necessity for the variances being sought.

### VARIANCE REQUEST

- A variance to Sec 10.1603.B.33.a. which requires a 300' setback of a service window or call-box for a drive-thru. The applicant proposes a setback of 150' and requests a variance for 150'.
- A variance to Sec 10.1605.G. to waive the requirement for a 6' concrete wall.

**Planner's Recommendation:** The proposed setback variance does provide a practical difficulty, it is a unique situation due to the existence of the drain area, the large separation from residential and meets the spirit and intent of the ordinance for the separation. The drain common area ranges from 250 feet to 390 feet.

With regard to the wall waiver request, it is difficult to substantiate the practical difficulty without the flood plain being shown on the exhibit.

If the wall variance is granted, he would recommend another means of controlling trash from blowing across the site into the drain (vinyl-coated chain link fence?).

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The petitioner submitted a letter of practical difficulty dated August 14, 2019 as follows:

“23 and Card Property LLC is proposing a site plan at the southwest corner of 23 Mile Road and Card Road that will consist of a gas station/convenience store with a connecting drive through restaurant service, a small retail center, a separate drive through restaurant and a separate office building. The site is bounded on the north by 23 Mile Road, the east by Card Road and the south and west by the McBride Drain and a substantial flood plain area. The zoning to the north and east is Commercial and the zoning to the south and west is residential. The residential lots in the nearby subdivision and the acreage to the west are, at a minimum, 245 feet from the 23 and Card site, separated by the flood plain associated with the McBride Drain.

23 and Card Properties LLC is requesting variances related to developing this site.

The first relates to Section 10.1603.B.33 of the zoning ordinance, which requires “drive-in or drive through service shall be permitted only if any drive-through service window or call box is located more than 300 hundred (300) feet of any property zoned AG, R-1-S, R-1-E, R-1, R-2-L, R-2-H, R-3...”. This property borders parts of Edinburgh Estates and Edinburgh Estates No. 2. Based on the ordinance requirements, if we maintain a 300 feet setback from the zoned property we would actually be providing at least 545 feet of separation from the residential lots. By reducing the setback to 150 feet, we would still be providing 445 (minimum) separation from the call box to the nearest residential lot.

The strict enforcement of this section of the ordinance would require the call boxes for any drive through service to be located at least 545 feet from the residentially zoned lots in the near-by subdivision and residences. The conditions creating the need for the variance are unique to the property (the flood plain for the McBride Drain) and were not created by the owner. Because of the unique situation, no special privilege will be created.

The second variance relates to Section 10.1604.G Screening Requirements: “Any parcel to be developed with a structure(s) for a permitted use or special land use pursuant to Section 10.1602 or Section 10.1603 of this Ordinance shall provide a six (6) foot high decorative masonry wall and a forty (40) foot setback.....”. The proposed development has its entire border with the residential zoning within the 100 year floodplain of the McBride Drain. When the project is developed, no paving or building will be within 50 feet of the residentially zoned property (the centerline of the McBride Drain). Placing a 6 foot high wall within the 100 year flood plain would not be allowed by EGLE (the Department of Environment, Great Lakes and Energy, the “old” MDEQ is included in this department). The proposed development will provide landscaping along the top of bank of the relocated flood plain, providing screening between the commercial and residential properties.

The strict enforcement of this ordinance would require the installation of a brick wall within the floodplain area of the McBride Drain (which would not be allowed by EGLE). The conditions creating the need for the variance are unique to the property (the flood plain for the McBride Drain) and were not created by the owner. Because of the unique situation, no

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special privilege will be created.”

Member POZZI asked if everything (vegetation) as shown in the photos was going to remain.

Bill Thompson, representative, indicated what would stay however, some of the trees would have to be removed in order to allow for drainage.

Discussion followed regarding the location of the proposed wall.

Member POZZI questioned Patrick S. Meagher, since the ordinance requires the concrete wall, if the variance is denied, and the wall is constructed, who is responsible in regards to stability.

Patrick S. Meagher, Acting Planning Director, stated that maintenance of the wall is always the owners responsibility. The question becomes is the wall beneficial if its continuously cracking. He noted that the wall may not be necessary for screening, but perhaps a vinyl coated chain link fence may better blend in with the environment and stop the debris from blowing onto other properties.

Member POZZI asked if the intent of the 6 foot concrete wall to separate commercial from residential was to provide a sound barrier.

Patrick S. Meagher, Acting Planning Director, stated that it is to prevent sound, pollution, and light from shining onto surrounding properties.

Member POZZI asked if sufficient landscaping between the two properties would provide as alternative to a concrete wall.

Patrick S. Meagher, Acting Planning Director, stated that he believed it would. Further, this could be listed as a condition to include at time of site plan.

Secretary SLOSSON asked if the concrete wall is constructed, would all of the trees and vegetation the petitioner plans to keep would then be removed and only a wall would be in its place.

Patrick S. Meagher, Acting Planning Director, stated that in some instances where walls have been built and there is unstable ground, more land needs to be excavated to construct the wall which could have a more significant impact on tree removal.

Public Portion:

Kevin Birch, 21585 Mackenzie, stated that he needed to understand the 150 foot variance being sought.

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Chairman TUCKFIELD stated the call box distance is measured from the box location to the nearest residential property line. He went on to note that the nearest residential property line is the edge of the drain. He indicated there is more than 300 feet to the nearest residential property due to the location of the drain.

Kevin Burch, 21585 Mackenzie, stated he can see the property under consideration and indicated not to be disillusioned by the shrubs being talked about. He also asked if he could have a presentation of where the excavation was going to take place.

Yvonne Burch, 21585 Mackenzie, stated they are here to try to understand what is going on and to make a comment about if the wall is not installed, how will they be affected by the noise and lights.

Patrick S. Meagher, Acting Planning Director, stated that there would be an additional public hearing scheduled when the site plan process is applied for.

Chairman TUCKFIELD stated the only item being considered this evening was the application for receiving a variance on the item being asked for.

Bill Thompson, representative, showed on the overhead projection where the drain would be located along with the area being excavated for the floodplain.

Chairman TUCKFIELD stated that when granting a variance, they must look for a practical difficulty.

Bill Thompson, stated the wall cannot be put on the property line which is required and the practical difficulty is that the wall would be in the middle of the ditch which is not feasible. Therefore, the petitioner is recommending replacing it with screening and a chain linked fence along the top of the floodplain area. Mr. Thompson stated there is always a question when you place a wall near a slope as to the stability, which is the reason for the practical difficulty.

Chairman TUCKFIELD stated that if the wall was built on a slope, it would just require additional earth work to make it stable.

He then asked Patrick S. Meagher, Acting Planning Director, if the wall is required to be built on the property line.

Patrick S. Meagher, Acting Planning Director, stated that it needs to be built on the property line.

Member PIEPER asked why the wall could not be built were the tree line is that the petitioner is proposing.

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Bill Thompson, representative, stated they are proposing replacing the wall with the landscaping. He then reviewed the materials being used to create the landscaping berm.

Member POZZI stated that with all of the activity being proposed at the corner she did feel that a wall was necessary.

Chairman TUCKFIELD stated that there had been a recent addendum to the Zoning Ordinance that allows for greenspace that is publicly owned to count as part of the buffer between residential and commercial/industrial.

**The following resolution was offered by POZZI and seconded by PIEPER:**

**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 10.1603.B.33.a.-Requires a 300 foot setback of a service window or call-box for a drive-thru. The applicant is requesting a setback of 150 feet and requests a variance for 150 feet; Located on the southwest corner of 23 Mile Road and Card Road; Section 22; Fadi Askar, Petitioner. Permanent Parcel 20-08-22-200-005, 20-08-22-200-014 and 20-08-22-200-015.**

**MOTION carried.**

**MOTION by POZZI seconded by SLOSSON to deny the variance request of Section 10.1605.G.-The applicant is requesting to waive the requirement for a 6 foot concrete wall; Located on the southwest corner of 23 Mile Road and Card Road; Section 22; Fadi Askar, Petitioner. Permanent Parcel 20-08-22-200-005, 20-08-22-200-014 and 20-08-22-200-015.**

**MOTION carried.**

**b. VARIANCE REQUEST FROM ZONING ORDINANCE**

Section 10.0311.E.f.3.-Requires a pool to be setback 10 feet from a building. The applicant is requesting a 6 foot setback, resulting in a variance of 4 feet.

Located within Middlecreek Estates Subdivision, north of 22 Mile Road, east of Romeo Plank Road. A.K.A. 49169 Clinton Terrace Drive; Amy and Wes Gideon, Petitioner. Permanent Parcel 08-21-353-015.

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Patrick S. Meagher, Acting Planning Director, presented the findings and recommendations of October 1, 2019.

The subject property is on the north side of 22 Mile Road, just east of Romeo Plank Road in the Middlecreek Estates Subdivision. More specifically, the lot is located 5 homes west of Kilkenny Drive on the southwest side of Clinton Terrace Drive.

**VARIANCE REQUEST**

The petitioner requests:

1. A 4' pool setback variance from the principal structure (10' required, 6' provided), (§10.0311.E.f.3).

**PLANNER'S RECOMMENDATION:** This site has a rather large (25') conservation and utility easement along the rear of the lot. This limits the usable rear yard to 24.5'. With the 10' setback, the site is effectively limited to 14.5' for the pool and surrounding pavement. This provides a unique practical difficulty without supplying a privilege to the homeowner not available in other lots in the subdivision. The 16' wide pool seems to be consistent with other pools in the area.

Patrick S. Meagher, Acting Planning Director, stated that there is a 25 foot conservation easement at the rear of the their property and in order to get a pool of average size they are asking for a four foot setback variance from the principal structure. In addition, the easement limits the use of the rear yard to approximately 24.5 feet with a 10 foot setback that takes it to 14.5 feet.

The petitioner submitted a letter of practical difficulty dated August 29, 2019 as follows:

"Due to the limited space on our property we are asking for an inground pool to be installed 6 ft from our house instead of the zoning ordinance which is 10 ft. We feel we have unique circumstances to our case which is as follows:

When starting the process for a pool and getting our plot plan we discovered that we have a 25 ft easement in our backyard (Starting at the edge of the property) We have two storm drains at the end of the yard (we have wetlands directly behind us) Our plot plan states "Ex. 25' Private Easement for Storm Sewer, Maintenance of Surface Drainage and public utilities and including private conservation preservation easement to the State of Michigan Department of Environmental Quality" We contacted the township that said they were willing to work with us but the MDEQ came first-after speaking with them we were informed that absolutely no work would be allowed on the easement.

We have a neighbor 3 doors down that was able to get an inground pool-however with the way the easement lands even though we are on the same street we are unable to proceed with our pool. Due to this easement and partial ownership to the MDEQ we are unable to use over half of our yard and are left with 24.5 feet of workable space to install

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a pool. By staying the 10 feet from the house we are left with 14.5 feet with concrete still needed we would be left with only a 10-12 foot pool in width. We did attempt to ask the MDEQ if we were able to use 2 ft of the yard only for concrete-so we could stay within the 10 feet ordinance for the house and were also denied.

This issue is something that was there when we moved in but only recently discovered when we pulled up our plot plan and saw what our options were.

Due to our circumstances we are hoping you will see us as a unique case we have very limited options on what we can do in our backyard-which is why we are requesting this 4ft variance.”

Amy and Wes Gideon, petitioners, were in attendance.

Public Portion: None.

**The following resolution was offered by PIEPER and seconded by POZZI:**

**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 10.0311.E.f.3.-Requires a pool to be setback 10 feet from a building. The applicant is requesting a 6 foot setback, resulting in a variance of 4 feet; Located within Middlecreek Estates Subdivision, north of 22 Mile Road, east of Romeo Plank Road. A.K.A. 49169 Clinton Terrace Drive; Amy and Wes Gideon, Petitioner. Permanent Parcel 08-21-353-015.**

**MOTION carried.**

6. Old Business:

None.

7. Public Comments.

None.

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8. ZBA Member Comments.

None.

9. PLANNING DIRECTOR COMMENTS

Patrick S. Meagher, Acting Planning Director, apologized for being late to the meeting, due to a prior engagement.

**ADJOURNMENT**

**MOTION by POZZI seconded by SLOSSON to adjourn the meeting at 7:47 p.m.**

**MOTION carried.**

Respectfully submitted,

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Aaron Tuckfield, Chairman

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Dawn Slosson, Secretary

Beckie Kavanagh, Recording Secretary  
bk