

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A REGULAR MEETING HELD
THURSDAY, NOVEMBER 5, 2020

LOCATION: VIRTUAL MEETING

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

ABSENT: NONE

ALSO PRESENT: JOSH BOCKS, PLANNING DIRECTOR
TOM ESORDI, TOWNSHIP ATTORNEY
(Additional attendance record on file with Clerk)

1. Call Meeting to Order.

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

2. PLEDGE OF ALLEGIANCE.

Chairman TUCKFIELD lead the Pledge of Allegiance.

3. Roll Call.

Chairman TUCKFIELD called the roll. All members were present.

Chairman TUCKFIELD had the township staff that were attending the meeting introduce themselves and what department they were with.

4. 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 PIEPER to approve the agenda as presented.

FOR THIS MOTION

AYES: SLOSSON, PIEPER, POZZI, DeCOSTER, TUCKFIELD.

NAYS: NONE.

ABSENT: NONE.

MOTION carried.

5. Approval of the previous meeting minutes.

MOTION by POZZI seconded by SLOSSON to approve the minutes of September 3, 2020 as presented.

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FOR THIS MOTION

AYES: POZZI, SLOSSON, TUCKFIELD, PIEPER, DeCOSTER.

NAYS: NONE.

ABSENT: NONE.

MOTION carried.

6. New Business:

A. VARIANCE REQUEST FROM ZONING ORDINANCE

Section 10.0354 – Requesting a variance to allow an air conditioning unit in the front yard when rear yard is required.

Located at 49400 Hayes Road, east of Hayes Road, north of 22 Mile Road; Section 219; BSS Macomb, LLC, Petitioner. Permanent Parcel 08-19-351-102.

Josh Bocks, Planning Director, gave a background on the variance being requested and noted that the units had not been shown on the original site plan submittal but were shown on the architectural drawings sometime after engineering approval had been granted. He indicated that the township has worked with the petitioner and should the variance be granted that vegetation be planed around the units to soften the look.

The petitioner submitted a letter of practical difficulty dated July 30, 2020 as follows:

“Requiring the Applicant to relocate the 5 building condenser units servicing the storage area and the, white office condenser units from the front of the building to the rear of the building pursuant to Section 10.0354 of the Township’s zoning ordinance would create a practical difficulty because the substantial distance between the rear of building and the area being serviced by such units is too great to adequately permit sufficient cooling.

The applicant submitted a site plan for consideration of a 3-story, self contained, climate controlled self-storage facility. The site plan submitted inadvertently omitted the condenser units that are the subject of this variance request. Such site plan was reviewed by the Township’s Planning Consultant and other reviewing departments in the ordinary site plan review process. None of these reviews noted that the condenser units should be shown on the site plan.

The Applicant then prepared and submitted construction drawings for the project, which included mechanical drawings showing the condenser units in their current location. The mechanical drawings were reviewed by the applicable Township consultants and/or departments and were approved for construction. Building permits, including a mechanical permit, were subsequently issued based upon the approved mechanical drawings. The condenser units were installed in the current locations, and were inspected and approved by the Township’s mechanical inspector. The Township issued a temporary certificate of occupancy to the Applicant allowing the Applicant to commence operation of the facility. It wasn’t until after the temporary certificate of occupancy was

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issued, and the Applicant had completed most of the remaining outstanding building issues and requested a release of its remaining bond that this noncompliance was discovered by the Township's Planning Consultant.

It was certainly not the Applicant's intent to fail to comply with the Township's zoning ordinance, as the Applicant would have designed the building to accommodate the applicable zoning ordinance requirements. The Applicant regrets that it must request this variance from the Zoning Board of Appeals. Never through the course of the planning or construction process did the Applicant realize that the location of the condenser units was out of compliance with Section 10.0354. There were several opportunities for this noncompliance to be discovered, but neither the Applicant or its consultants, nor the Township or its plan reviewers or inspectors were aware of the noncompliance issue. The applicant apologizes that this issue was not detected earlier in the planning process.

The practical difficulty that strict enforcement of Section 10.0354 would impose upon the Applicant would be to prevent the Applicant from adequately cooling the building. The building was configured based upon the condenser units being located in the front of the building. The office, located inside the front door, has to be serviced with a cooling system having condenser units in close proximity. Relocating these units to the rear of the building would prevent them from cooling the office area. Similarly, the other 5 condenser units service mechanical units located inside the building on all 3 floors. Relocating these units to the rear of the building would require runs that are too long to provide adequate cooling service by these units. In other words, much of the mechanical system located within the building would need to be reconfigured. The Applicant would have no choice but to substantially rebuild this system. Such redesign work would also adversely affect the Applicant's business, as certain areas of the facility would become inaccessible to its customers during such work.

This is a very unique situation, with the design and configuration of an existing building necessitating the variance. Luckily this condition is not shared by other property owners within the same zoning district who can enjoy their property without being subjected to a substantial reconstruction of their mechanical systems.

For the foregoing reasons, the Applicant submits that strict compliance with Section 10.0354 of the Township's zoning ordinance would constitute a practical difficulty by requiring the Applicant to redesign its mechanical system in a facility that is now fully functional and operating.

Thank you for your consideration of this request."

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John Gaber, representative, was in attendance and stated the condensers had been inadvertently been omitted from the site plan but had been shown on the mechanical drawings that were reviewed and approved. He went on to indicate that if the units were required to be moved they would not be able to cool the areas that they are meant to cool and would be unnecessarily burdensome.

JJ Jenkins, representative, was in attendance.

Member POZZI indicated that while reading of the backup material submitted with the application the applicant makes it appear that the responsibility of this error falls on the Township, and believes that it is applicants' responsibility to ensure that all information is provided on the plans and from what is being presented that was not originally done. She asked that Josh Bocks outline the process of whose responsibility it is ensure the information is submitted when its suppose to be and even though permits were granted it doesn't mean that they are in complete compliance with the ordinance, it is still the applicants responsibility to comply with the ordinances.

Josh Bocks, Planning Director, reviewed the site plan submittal process and the internal review that takes place and once the final plan is approved they then work with all other applicable departments to receive the required permits to proceed forward.

Member POZZI questioned the representative(s) why the condenser units were not installed on the roof.

JJ Jenkins, representative, stated for their projects they do not place them on the roof, they place them in close proximity to the areas that they feed. He indicated that they would take responsibility for the error.

Chairman TUCKFIELD asked for more clarity for the need to have the condenser units located to serves specific locations of the building.

Michael Johnston, representative, explained how the units are best served with the condenser units in the location that they have been placed.

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

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;

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Now, therefore, be it resolved, that the action of the Board is to grant the requested variance of Section 10.0354 – Requesting a variance to allow an air conditioning unit in the front yard when rear yard is required. Located at 49400 Hayes Road, east of Hayes Road, north of 22 Mile Road; Section 219; BSS Macomb, LLC, Petitioner. Permanent Parcel 08-19-351-102. The approval is granted based upon the Planning recommendation that a practical difficulty exists condition on installation of landscape screening as described in the report.

FOR THIS MOTION

AYES: POZZI, SLOSSON, DeCOSTER, PIEPER, TUCKFIELD.

NAYS: NONE.

ABSENT: NONE.

MOTION carried.

B. VARIANCE REQUEST FROM ZONING ORDINANCE

Section 20-5(A)(2)(a)-Requesting a variance for signs to be placed 8.5 feet and 6.5 feet from right-of-way of major thoroughfare when 10 feet is required.

Located on Murray Drive, south of 23 Mile Road; Section 22; Edinburgh Estates, Petitioner. Permanent Parcel 08-22-252-013.

Josh Bocks, Planning Director, gave the background on the variance being requested and stated the Road Commission is no longer allowing the signage to be located in the median which many of the subdivision have done. In addition, there is landscaping that has been previously installed and are therefore requesting a closer location to the right-of-way.

Bryan DuCate, representative, was in attendance and stated that he was worked on this request very diligently and believes this is the best option.

Public Portion: None.

Member DeCOSTER asked if there was an ordinance that that requires subdivisions to have entrance signs.

Josh Bocks, Planning Director, stated that there is not an ordinance.

Public Portion:

Sarah Florka, 50867 Murry, stated that this was not a replacement sign but that it would be a new project.

The following resolution was offered by DeCOSTER and seconded by PIEPER:

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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 20-5(A)(2)(a)-Requesting a variance for signs to be placed 8.5 feet and 6.5 feet from right-of-way of major thoroughfare when 10 feet is required; Located on Murray Drive, south of 23 Mile Road; Section 22; Edinburgh Estates, Petitioner. Permanent Parcel 08-22-252-013. The variance is granted based on the Planning Department's exception standards as listed in the packet.

FOR THIS MOTION

AYES: DeCOSTER, PIEPER, SLOSSON, POZZI, TUCKFIELD.

NAYS: NONE.

ABSENT: NONE.

MOTION carried.

C. VARIANCE REQUEST FROM ZONING ORDINANCE

Section 10.0352(G)(2)-To allow a 6 foot masonry wall when a greenbelt is required;

Section 10.0806(G)-To allow for a gap in masonry wall at utility pole when continuous wall is required.

Located on the east side of Card Road, ¼ mile north of Hall Road; Section 35; Unica Development, Petitioner. Permanent Parcel 08-35-300-042.

Josh Bocks, Planning Director, gave the background of the variance being requested.

The petitioner submitted a letter of practical difficulty dated September 17, 2020 as follows:

"We are submitting for Site Plan review for a senior apartment building which is 4 stories consisting of parking on the first floor and three floors of living units above. There will be a leasing office and an on sit maintenance crew. In order to give proper fire protection the site has been designed with a road a road around the entire building. The property is R-2-L with a Special Land Use of Housing for Older Persons. Housing for Older Persons requires a 50' greenbelt on the southern and eastern property lines however we are requesting a variance to follow the R-2-L screening requirement of a 6' tall wall along the south line and a greenbelt of 34.5' at the shortest point on the east line. This site is very constrictive due to the amount of floodplain on the property. Since there is no housing on the first floor there will be no interference from vehicles on the south property line and the

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east property line abut the bank of the Clinton River and will never be developed. These are apartments for active seniors who will have more than one car and the fire department access is essential. We have been working hard to create a project that would be beneficial to our company as well as the township and appreciate your consideration in this matter.

The 6' wall according to the ordinance requires a continuous foundation however we are proposing to have a 2' gap to accommodate for an existing Edison pole.”

Member PIEPER asked where the utility pole was located because he did not see it.

Chairman TUCKFIELD stated that it was located along the southerly boundary.

Bob Lindh, representative, was in attendance.

Chairman TUCKFIELD asked if this parcel was being governed under a Consent Judgment and if it was what did govern.

Marilyn Gilbert, representative, stated the Consent Judgment had been for the zoning of older person housing.

Public Portion: None.

Chairman TUCKFIELD stated he finds this property to be unusual and the petitioner was trying to comply by the ordinance and the barrier being sought is to separate residential from commercial and this is primarily residential and that it is the residential portion asking for the lessening of the restriction therefor find in favor of the request.

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

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;

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Now, therefore, be it resolved, that the action of the Board is to grant the requested variance of Section 10.0352(G)(2)-To allow a 6 foot masonry wall when a greenbelt is required; Located on the east side of Card Road, ¼ mile north of Hall Road; Section 35; Unica Development, Petitioner. Permanent Parcel 08-35-300-042. The variance is granted based upon the Planners recommendation and finds this property to be unusual and the petitioner was trying to comply by the ordinance and the barrier being sought is to separate residential from commercial and this is primarily residential and that it is the residential portion asking for the lessening of the restriction therefor find in favor of the request.

FOR THIS MOTION

AYES: PIEPER, SLOSSON, POZZI, DeCOSTER, TUCKFIELD.

NAYS: NONE.

ABSENT: NONE.

MOTION carried.

Member DeCOSTER asked if they had discussion with Detroit Edison to relocate the utility pole.

Marilyn Gilbert, representative, stated Detroit Edison does not have an issue with relocating the pole but that the utilities located on the pole do.

Discussion was held about the relocation and then whether it be overhead or underground wires to the medical abutting medical facility.

Chairman TUCKFIELD asked if there was anything that could be done to lessen the break in the wall with possibly providing arborvitae screening or if the pole was no longer required would they be willing to close the gap with the existing masonry stone.

Thomas Esordi, Township Attorney, stated you can recommend what you are in favor of and as long as the applicant amends their application to include those requests there would be no issue.

Chairman TUCKFIELD stated his recommendation to the applicant would be to plant arborvitae by the gap in the wall and a secondary request would be that at some point should the pole no longer becomes applicable they will close the hole in the wall with masonry so that it matches back up and does not leave a gap.

Bob Lindh, representative, stated they agreed with the recommendation.

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 10.0806(G)-To allow for a gap in masonry wall at utility pole when continuous wall is required. Located on the east side of Card Road, ¼ mile north of Hall Road; Section 35; Unica Development, Petitioner. Permanent Parcel 08-35-300-042. The variance is granted that it is a difficult parcel with water issues, petitioner is trying their best with regards to public safety and with that a wall is being required and with that there is a pole. This variance is to promote public safety on the lot and also taking into account the petitioner has agreed to place arborvitaes nearby to help with screening and to fill in the hold if at such time the pole no longer became necessary.

FOR THIS MOTION

AYES: TUCKFIELD, SLOSSON, PIEPER, POZZI

NAYS: DeCOSTER.

MOTION carried.

D. VARIANCE REQUEST FROM ZONING ORDINANCE

Section 10.0345(3)(a)- To allow for signs to be located at 5 feet and 2 feet from right-of-way way when 10 feet is required in both locations.

Located on the south side of 23 Mile Road, east and west of Bredenbury Drive; Section 22; Signs and More, Petitioner. Permanent Parcel 08-22-101-001 and 08-22-130-005.

Josh Bocks, Planning Director, gave the background of the variance being requested. He noted that the previous sign was located in the boulevard which was taken down with the expansion of 23 Mile Road and can not be replaced in type and kind.

Molly Smith, petitioner, was in attendance.

The petitioner submitted a letter of practical difficulty dated September 25, 2020 as follows:

“Install a non-illuminated ground sign on both side of Bredenbury Drive and 23 Mile Road for Buckingham Village. Signs will be made of foam craft with breakaway base.

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We propose moving the sign forward by 5 feet due to current landscaping for better visibility.”

Public Portion: None.

The following resolution was offered by PIEPER and seconded by DeCOSTER:

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 10.0345(3)(a)- To allow for signs to be located at 5 feet and 2 feet from right-of-way way when 10 feet is required in both locations. Located on the south side of 23 Mile Road, east and west of Bredenburg Drive; Section 22; Signs and More, Petitioner. Permanent Parcel 08-22-101-001 and 08-22-130-005.

FOR THIS MOTION

AYES: PIEPER, DeCOSTER, SLOSSON, TUCKFIELD, POZZI.

NAYS: NONE.

ABSENT: NONE.

MOTION carried.

E. VARIANCE REQUEST FROM ZONING ORDINANCE

Section 10.0311(E)(f)(3) – Request to allow an enclosed swimming pool to be located 5 feet 0 inches from a principal structure where a minimum 10 feet 0 inches is required. This is a dimensional variance of 5 feet 0 inches.

Located on the north side of 25 Mile Road, west of Luchtman Road; Section 5; Carl and Ashley Poggiolo, Petitioner. Permanent Parcel 08-05-429-022.

Josh Bocks, Planning Director, gave the background of the variance being requested.

The petitioner submitted a letter of practical difficulty dated October 8, 2020 as follows:

“We are asking for a variance to be 5’ from the basement foundation due to the fact that the rear easement and the size of the rear lot is extremely small. Corner flowing side lot is a very strange unique shape and rare situation.”

Ashely Poggiolo, petitioner, was in attendance and stated the portion that will be within 5 feet of the home will be the tanning deck.

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Brian Winston, representative, was in attendance and outlined the layout of the pool design.

Public Portion: None.

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

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(E)(f)(3) – Request to allow an enclosed swimming pool to be located 5 feet 0 inches from a principal structure where a minimum 10 feet 0 inches is required. This is a dimensional variance of 5 feet 0 inches. Located on the north side of 25 Mile Road, west of Luchtman Road; Section 5; Carl and Ashley Poggiolo, Petitioner. Permanent Parcel 08-05-429-022. The approval is contingent upon the applicant providing adequate screening of the pool.

FOR THIS MOTION

AYES: POZZI, SLOSSON, DeCOSTER, TUCKFIELD, PIEPER.

NAYS: NONE.

ABSENT: NONE.

MOTION carried.

7. OLD BUSINESS:

None.

8. PUBLIC COMMENTS:

None.

9. ZBA Member Comments.

Chairman TUCKFIELD thanked Clerk POZZI for running a successful election on November 3, 2020 and congratulated the new members elected to the Township Board.

Member PIEPER also thanked Clerk POZZI for a job well done on running the election.

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Clerk POZZI thanked everyone for their nice comments.

10. PLANNING DIRECTOR COMMENTS

Josh Bocks, Planning Director, echoed the sentiments of the other Board members on the election process running so smoothly.

He noted that those members who have their term expiring the end of this year will be on the next Township Board agenda for reappointment.

11. ADJOURNMENT

MOTION by SLOSSON seconded by POZZI to adjourn the meeting at 8:26 p.m.

FOR THIS MOTION

AYES: SLOSSON, POZZI, TUCKFIELD, DeCOSTER, PIEPER.

NAYS: NONE.

ABSENT: NONE.

MOTION carried.

Respectfully submitted,

Aaron Tuckfield, Chairman

Dawn Slosson, Secretary

Beckie Kavanagh, Recording Secretary
Bk