

CLINTON TOWNSHIP BOARD OF APPEALS

REPORT OF MEETING

DECEMBER 14, 2005

PRESENT: Francis Marella, Chairperson
Robert M. Campbell, Secretary
Dara Brooks
Peter M. Catalano
Michael Nickerson
Denise C. Trombley

ABSENT: None

STAFF: Irene F. Sheridan, Community Planner II
DEPARTMENT OF PLANNING AND
COMMUNITY DEVELOPMENT

The meeting was called to order at 6:30 p.m. Mr. Marella explained the parameters under which this Board can act and how the public hearing will be conducted. He further explained that, as stipulated in the Township Ordinances, all variances granted by the Board of Appeals are subject to several standard conditions as follows: 1) The petitioner must comply with all applicable requirements of Township ordinances; 2) The project work requiring the variance must be completed within two years of the date that the variance was granted; 3) The project work must be completed substantially in accordance with the plans submitted to the Board of Appeals; and 4) The variance is valid only for the useful life of any structure(s) on the property for which variance is granted.

APPROVAL OF AGENDA

Motion by Ms. Brooks, supported by Mr. Campbell, to approve tonight's agenda as submitted. Motion carried.

UNIT 24, BROOKSTONE CONDOMINIUMS (SECTION 30) (FRONTING THE EAST LINE OF BROOKSTONE, NORTH OF TIMERS EDGE)

-- **APPEAL: BROOKSTONE CONDOMINIUMS, UNIT 24**

FILE #6074: PETITIONED BY BRIAN HIERHOLZER & MEENA NAHALA

Pertinent correspondence was read and entered into the record. Mr. Campbell advised that notice of this public hearing was issued by regular mail to 90 owners and/or occupants of property

located within 300 feet of the land in question, with two of those returned as undeliverable. He added that there were no letters received in response to the mailing, although there was one telephone call received by the Planning Department from Shawn Mio, of 15525 Brookstone, who offered no objection to the variance request.

The petitioner was not present.

Mr. Marella stated that this item will be moved to the end of tonight's agenda to give the petitioner an opportunity to be present.

17.86 ACRES OF LAND LOCATED NORTH OF 15 MILE ROAD, SOUTH OF GLENWOOD (BETWEEN AUTOMATION & HEREFORD) (SECTION 26)

-- **APPEAL: WHISPERING WOODS CONDOMINIUMS**

FILE #6095: PETITIONED BY BENNY SORRENTINO, ICON BUILDING II

Pertinent correspondence was read and entered into the record. Mr. Campbell advised that notice of this public hearing was issued by regular mail to 81 owners and/or occupants of property located within 300 feet of the land in question, with none returned as undeliverable. He added that there was one letter received in response to the mailing. He read the letter from Steven Schulte, 22470 Glenwood, Clinton Township, Michigan 48035, enumerating his objections to the variance requests, mainly for safety reasons.

Bill Madden, 35520 Forton Court, Clinton Township, Michigan 48035, representative to the petitioner, addressed the variance requests. He informed that the Township Board approved the request to rezone this parcel to RMH Multiple-Family Residential (High-Density), but at that time, no one raised the issue that a multiple-family high-density development must be abutting a major thoroughfare. He stressed that they have three public roads and one private road from which they can access the property north of 15 Mile Road. Mr. Madden explained that the ordinance defines a "room" as being 80 square feet or more. He indicated that they recently revised their floor plan to eliminate a wall between the living room and the dining room, which creates a great room and reduces the number of rooms to two bedrooms and a great room. He felt that by revising the plan, they now meet the ordinance requirements and no longer need a variance for that item. Mr. Madden explained that they originally wanted to provide access off of Glenwood Avenue, but it was suggested by the Planning Department that they not provide access from that road. He stressed that they are trying to retain as many of the trees as possible in the wooded area, and if they do not receive variances for the distances between buildings and the width of the drives, they can eliminate trees and meet the ordinance requirements. He relayed that the Fire Marshall has no objection to the plan as submitted, and they are now seeking to provide access from Hengesbach, which would create three access points, and he anticipated that if they gain the access from Hengesbach, they will pave it and make it their main access point. Mr. Madden explained that when they rezoned the property, the abutting neighbor to the east was present and had just submitted site plans to develop his site. The neighbor expressed concern at that time that he would be required to provide a masonry wall if the property was rezoned for residential use, so Mr. Madden indicated that Mr. Sorrentino agreed to leave the easterly forty

feet of his property zoned industrial to eliminate the need for a masonry wall and so that the abutting property owner did not have to set his building further back on his property. He pointed out that they lost that 40 feet to help their neighbors. He added that Diamond Racing is being constructed to the east of the subject site.

Ms. Sheridan recalled that at the time the petitioner was seeking a rezoning to multi-family residential, the property owner to the east discovered this and submitted a site development plan to the Township. He received approval prior to the adjacent property being rezoned, so the burden of erecting the wall was not his.

Mr. Madden reiterated that they are seeking the variances to save as many trees as possible. He pointed out on the site plan that the buildings have been staggered, creating a nicer appearance; however, if the variance is denied, they will be required to arrange the buildings in a straight line and remove some of the trees.

Ms. Sheridan replied to inquiry that the buildings can be multi-story as long as they can provide a minimum setback from property lines a distance equal to the height of the building.

Mr. Madden assured they will be nice units and will all have front entrances. He pointed out that if these were single-family colonial-style homes, they could be situated sixteen (16) feet apart; however, these buildings will be thirty (30) feet apart. Mr. Madden also mentioned that they are seeking a waiver of the required internal sidewalks. He added that he currently lives in an area without sidewalks and residents use the streets. He could not see a good use for sidewalks in the proposed development.

Don Harp, 22618 Glenwood, Clinton Township, Michigan 48035, asked to see the plans. He felt sidewalks are necessary because he felt there may be children moving into the subject development and the sidewalks would be safer for them. He accused the petitioner of “trying to put ten pounds of cement into a five gallon bag”. He could not understand where they would possibly be able to fit all of these units. He challenged Mr. Madden’s comment about the “wooded area” and assured that there are no “woods”.

Robert Oddo, 22437 Glenwood, Clinton Township, Michigan 48035, inquired as to whether there will be any access to the proposed development from Glenwood, either now or in the future.

Ms. Sheridan replied that the approval of the rezoning was conditional upon no access from Glenwood.

Larry Flis, 23879 Glenwood, Clinton Township, Michigan 48035, commented that his mother resided in the Glenwood Condominiums and she and the residents in that complex frequently used the sidewalks. He felt they are important in such a development.

Mr. Marella admitted that if there were sidewalks in a complex, the residents would use them; however, if they are not available, the residents will walk in the street.

Mr. Flis also recalled that in his mother's complex, they had difficulty finding a place to push snow in the winter. He pointed out that with the 220 units proposed, the developer will need to provide parking for over 400 cars. He felt the developer is trying to overbuild the property. He inquired as to whether the 40-foot-wide buffer left as Light Industrial will stretch the entire length of the twelve acres.

Mr. Marella replied that the buffer extends the depth of the property.

Mr. Madden replied to inquiry that the condominiums will total 1,200 square feet in size for the one-level units and 1,300 square feet for the two-level units.

Mr. Flis complained about a drainage problem on Glenwood, and his yard becomes flooded every year. He questioned where the water from this property will go once it is development, and he felt it is a serious matter.

Calvin Chun, 35680 Willis Court, Clinton Township, Michigan 48035, explained when he moved to this location, it was very tranquil with its country-like setting; however, he felt that if the variances are granted, he will lose that peaceful setting. He was concerned that two-story units will be in such close proximity to his yard, the residents on the second floor will be able to peer into his rear yard and his house. He complained about the flooding problem on the street, the low pressure of the water during peak periods, the brown-outs in electrical service, and he questioned the effect of such a large development on these already aggravating problems. He asked what will happen to the animals who reside on the subject property once their environment is taken away from them. He noted that he posed this question to the Department of Environmental Quality, and they told him the animals will have to "fend for themselves". He stated he was unaware that this property was zoned to RMH Multiple-Family Residential (High-Density) because he recalled the public hearing when the property was proposed to be rezoned to RML Multiple-Family Residential (Low-Density).

Linda Chun, 35680 Willis Court, Clinton Township, Michigan 48035, stated she is concerned about the endangered species on the property, and she added that there is a large nest of falcons. She stressed that they do not want to live in a "cement jungle" and that is why they originally chose this location. She replied to inquiry that they have been in this house for six to eight years and everyone in the area enjoys the natural setting.

Mr. Marella reminded that a property owner has the right to develop his property.

Ms. Chun acknowledged that the property owner can develop his land, but he felt the neighbors should be given some consideration.

Steven Piwko, 35620 Willis Court, Clinton Township, Michigan 48035, understood progress but he felt the ordinances are in place for a reason. He added that if the site development plan meets all ordinance requirements, he has no objection; however, he

could not understand why the petitioners could not eliminate one building so they can meet the required setbacks. He also expressed his opinion that the sidewalks are very important and should not be waived.

Ron Zeckzer, 22600 Glenwood, Clinton Township, Michigan 48035, stated that if the petitioner cuts down the trees, he would like a barrier between his house and the subject property. He felt that the ordinances were written for the benefit of residents in Clinton Township and he could see no reason why they should be changed in this particular case. He was opposed to any type of access from Glenwood to the proposed development.

Todd Zacharias, 22601 Glenwood, Clinton Township, Michigan 48035, complained that he did not get notification of this public hearing nor the last one.

Discussion ensued as to who gets notified for the public hearing, and Ms. Sheridan confirmed that notification of the public hearing is mailed to owners and occupants of property located within 300 feet of the land in question.

Mr. Zacharias submitted numerous petitions signed by the residents in the area, indicating they are opposed to the variance request but could not attend tonight's meeting. He complained that the petitioners seem to be "holding a tree buffer hostage" to get the variances they want. He felt if they eliminate one of the buildings and possibly reduce the size of another building, they would be able to meet all ordinance requirements with the exception of the request to be located abutting a major thoroughfare. He further felt they can meet the ordinances and keep the tree buffer if they reduce the square footage of building space, and he understood the tree buffer to be part of the agreement of the rezoning. He compared the threat of removing the trees to "a temper tantrum".

Mr. Campbell reviewed the 300-foot list and stated that it appears those notified on Glenwood reside at even-number addresses, and those on the odd-numbered side of the street appear to be located more than 300 feet from the boundary of the property in question, which is why they did not receive notification.

Tim Kusher, 22633 Glenwood, Clinton Township, Michigan 48035, stated he purchased his house from the Santilli's, and he selected this house because of the country-like setting of the area. He complained that tearing down the trees will remove more wildlife, and he could not see why the petitioner should be allowed to cut down more trees in order to build more residential dwellings. He felt approval of this request would be "a black eye" on Clinton Township, and he questioned how it could be called "Whispering Woods" when all of the trees are being removed. He questioned whether the petitioner will be required to erect a wall between the subject property and the abutting homes.

Ms. Sheridan clarified that the petitioner will be required to erect a 4-foot 8-inch masonry wall to meet ordinance requirements.

Mr. Kusher insinuated that this was a “private sale” and he complained that the residents on the south side of Glenwood were never given an opportunity to purchase this land to combine it with their lots.

Mr. Marella pointed out that the Township did not own the property and they had no control over the previous owner and how he chose to sell it.

Mr. Kusher felt there will be too many units for such a small parcel, resulting in an overcrowded appearance.

Mike Younce, 22746 Glenwood, Clinton Township, Michigan 48035, stated he purchased his property seven years ago, and he recalled that the previous owner of the subject parcel, Zenith Industries, removed a large portion of the woods five or six years ago. He complained that his property value decreased at that time and with the development of the condominiums being proposed, he expressed concern that his property value will decrease even more.

Chris Stuve, 22100 Glenwood, Clinton Township, Michigan 48035, felt that there is not a good market for condominiums right now and the area is over saturated with them. He also complained about the drainage in the area and felt development of the subject parcel will aggravate the situation.

Mr. Madden insisted that their intent is to save trees, not cut them down, and that is why they are here tonight requesting these variances. He disagreed with the insinuation that they are “holding the trees hostage”.

Ms. Brooks questioned whether the first variance being requested is no longer necessary because the property was rezoned.

Ms. Sheridan replied that the petitioner still needs the first variance requested because the property is not located on a major thoroughfare. She explained that density is defined in the ordinance by the number of rooms per acre. The original plan submitted showed the living room and dining room separated by a wall, therefore counting as two rooms. The petitioner has submitted a revised floor plan that slightly reduced the size of the kitchen and eliminated the wall between the living room and the dining area, thereby lowering the number of rooms in each unit. Ms. Sheridan stated the problem with the ordinance is that the number of rooms per acre determines density and by removing a wall you are not decreasing the size of the entire unit nor are you creating more units by moving the walls around.

Ms. Brooks inquired as to why the petitioner cannot consider reducing the number of units, because even though he has reduced the number of rooms, he has only removed walls; he has not reduced the total number of units, and the same number of people will live there.

Mr. Madden assured that they meet density requirements so they do not need to reduce the number of units.

Ms. Brooks pointed out that they are still requesting more variances that will affect pedestrian and vehicular traffic. She maintained that if he reduced each building by one unit, it may help him to meet the ordinance requirements with regard to distances between the buildings, between the buildings and parking areas, and the width of the service drive.

Mr. Madden stated these will have the appearance of colonial-style homes and they are trying to save the trees.

Ms. Brooks suggested the petitioner redesign the site so it is aesthetically balanced, at the same time reducing the total number of units.

Mr. Madden stressed that they are trying to be good neighbors by designing an attractive complex. He claimed their hardship is the fact that they lost 40 feet on the north side in order to accommodate the abutting property owner to the north. He emphasized that they tried to keep the design symmetrical and balanced, without having all of the buildings in a straight line.

Ms. Brooks appreciated the fact that the petitioner was trying to create an attractive appearance by staggering the buildings. She was concerned with the density with regard to the number of cars that will be involved, and where the visitors will park. She cautioned that some, possibly many, of the potential owners of these condominiums will have more than one vehicle per household. She also inquired as to what provisions are being made for visitor parking.

Mr. Madden replied that each unit will have a one-car garage with an apron long enough to accommodate another car. He noted that there are also two parking spaces provided between each building, noting that “#7” on the list of variances being requested addresses one of these visitor parking areas being closer to the building than allowed.

Ms. Brooks again inquired as to why the petitioner cannot reduce the total number of units by eliminating one unit per building.

Mr. Madden maintained that they are trying to save the trees. He do not feel they need to reduce the number of units because, according to the ordinance, they meet density requirements.

Mr. Campbell felt that the written list of variances being requested sounds “worse than it really is”. He commented that the petitioner has made some good “trade-offs” and is trying to save trees, of which he has no obligation to do, and Mr. Campbell indicated he appreciates that effort. He clarified, however, that he does not understand the practical difficulty for Item #3 in the purpose of request. While he sympathized with the petitioner leaving the easterly 40 feet zoned as industrial, he pointed out that it is all located east of Automation and he could not see how that should impact the distance between the buildings on the north side of the development. He suggested that the elimination of two units would solve the problem. Mr. Campbell further noted that in Item #4 in the purpose of request, the “distance between two buildings” refers only to Buildings #2 and #20. He felt the elimination of two units would also negate the need for that particular variance. For Item #6 in the purpose of request, he noted that the variance involves

only a small portion of the two-way drive, and he suggested the petitioner remove an additional three (3) feet of trees at this location to meet the ordinance because it is abutting industrially-zoned property and the tree buffer is not as critical at this point. Mr. Campbell noted that the petitioner is seeking a variance to allow one (1) parking space to be located closer to the building than permitted, and he felt that is an excellent trade-off for the staggering of the buildings. He noted that he has no strong feelings one way or the other with regard to interior sidewalks in a condominium development. He had always felt they were good to have, but in visiting condominium developments, he has observed that residents do not use them. He recalled a case that came before this Board where the condominium association was requesting permission to remove the sidewalks because of a maintenance issue. Mr. Campbell summarized that he would be opposed to Items #3 and #4 because he felt they are excessive and the elimination of units would also eliminate the need for those variances. He inquired as to the rationale for the one-way drives.

Ms. Sheridan replied that the two drives are required for parking issues. She added that the Fire Marshall has no objection.

Mr. Campbell stated he would like to see the plans revised prior to approval by this Board so they can see exactly what they are approving, especially due to the fact that the petitioner has indicated the main entrance location may be changed to Hengesbach.

Mr. Madden stated they will eliminate units to meet the minimum distance required between buildings, which would eliminate the need for variances to Items #3 and #4. He added that they have already eliminated the need for variance to Item #2.

Benny Sorrentino, 35520 Forton Court, Clinton Township, Michigan 48035, felt the changes to the plan will be addressed by the Planning Department and forwarded to the Planning Commission for their review. He stated they will come in through Hengesbach but will have access through Automation. He added that they met with the Road Commission today to discuss the paving of Hengesbach. He agreed to rearrange the buildings to provide the minimum 35-foot distance between them. Mr. Sorrentino emphasized that they are trying to save the woods to provide as much buffer as possible for the residents. He disagreed with the neighbors who were concerned about their property values depreciating once this development is complete, and he felt their property values will increase as a result because the proposed condominiums will enhance their property. He informed that he recently had the property rezoned to multiple-family residential but, prior to that, the property was zoned Light Industrial, and he cautioned that the neighbors could have been looking at a stamping plant or other industrial use being developed on this property. He assured he is not here to create problems for the neighbors, and he eliminated the access to Glenwood because the neighbors did not want it. He felt the neighbors to the north will not be impacted because they are keeping the development to the south portion of the property.

Ms. Brooks agreed that a multiple-family residential zoning is better than an industrial zone for the abutting residential property. She believed that the petitioner has worked very hard to come up with a plan that would be a “win-win” situation for everyone, and there are a lot of good

things about this plan. She stated it is the responsibility of this Board to look at this with “fresh eyes” and consider whether this is a “win-win” for the community as well as the petitioner, or whether there is any aspect of it that will put the residents in jeopardy. She assured that suggestions or comments this Board makes are not meant to be a personal attack, but rather it is an attempt to get to the issues involved and resolve them as quickly as possible. Ms. Brooks clarified that her suggestion to eliminate units was not combative, but she saw it as a viable solution and wanted to get an answer from the petitioner as to whether or not it could be done. She felt that if there is a legitimate reason why something cannot be done, then this Board can work with that and move on.

Mr. Campbell suggested that this matter be tabled so that revised plans can be resubmitted and reviewed by the Planning Department. The ordinance specifies a condition placed upon an approval by this Board that the plans must be completed as submitted to the Board of Appeals. He assured that he trusted the plans would be revised according to the action taken by this Board, but it would then go on to the Planning Commission, and the Board of Appeals file will not contain plans that clearly indicate what is actually being developed.

Mr. Madden stressed that the postponement of this matter would be a hardship to the petitioner, because his option on the property expires on December 19th, 2005.

Mr. Marella felt that Mr. Sorrentino has never done anything to lessen the value of the surrounding property. He felt this Board can be confident that Mr. Sorrentino will do what he promises, because he builds quality developments. He stated he has no problem accepting Mr. Sorrentino’s word that he will make the necessary changes, as specified by this Board, on Items #3, #4 and #6.

Mr. Campbell noted that the petitioner will not have site development approval by next Monday, which is the date he indicated that his option on the property expires, so he questioned why the Board of Appeals approval is needed tonight.

Mr. Madden explained that if variances are granted, they can make the site plan “work”. He added that it is a stepping stone in obtaining the financing, and they would not be able to go forward without the approval from this Board.

Mr. Campbell cautioned that by changing the plans as requested, other issues may arise that will cause them to change their plans yet again.

Mr. Madden replied to inquiry that they are withdrawing their request for Item #2 because they now meet density.

Ms. Sheridan felt that the revised floor plan that reduces the number of rooms is not ideal. She pointed out that he is not increasing the number of units by adding a wall or reducing the number of units by taking a wall out. She felt Item #2 would be a variance that would make sense to grant, because prospective owners would have the option of how they want their living space divided. She stated she would prefer to have a living room area separate from the dining area;

however, she agreed that some residents may prefer the one large room. She noted, however, that by granting this variance, the purchasers would have that option, and it is not going to increase the number of units.

Mr. Madden clarified that they would like variances granted for Items #1, #2, #5, #7 and #8, and they will withdraw Items #3, #4 and #6. He clarified that they included #7 because it involves only one or two parking spaces.

Mr. Campbell felt there is a problem in the ordinance with the calculation of density and he felt Ms. Sheridan raised a good point.

Mr. Sorrentino explained they designed the kitchen in the rear because people enjoy having a grill on their patio, and it makes sense to have that in close proximity to the kitchen. He noted, however, that if a potential buyer wants something changed in the interior of the building and it does not affect the exterior in any way, they are agreeable to that.

Ms. Sheridan advised that it would be in the petitioner's best interest to get the variance for Item #2 so they have the option if the situation arises. She suggested that the grant of variance could specify that the petitioner cannot build to a density of more than four rooms per unit.

Motion by Mr. Campbell, supported by Ms. Trombley, with reference to File #6095 and application from Benny Sorrentino, Icon Building II, 35520 Forton Court, Clinton Township, Michigan 48035, for variance to Clinton Township Planning and Zoning Code, Chapter 1264.03-(a); RMH Multiple-Family Residential (High-Density) District: Required Conditions; Chapter 1264.03-(f); RMH Multiple-Family Residential (High-Density) District: Required Conditions; Chapter 1292.01-(i); Land Use Regulations; Schedule of Regulations Limiting Height, Bulk, Density and Area; Footnotes to Chart; Chapter 1296.02-(a)-(10); Off-Street Parking and Loading; Space Layout Standards, Construction and Maintenance; Chapter 1296.02-(a)-(11); Off-Street Parking and Loading: Space Layout Standards, Construction and Maintenance; and Chapter 1298.10-(c)-14; Supplementary Regulations; Site Plan Review (All Districts), concerning 17.86 acres of land located north of 15 Mile Road, south of Glenwood (between Automation & Hereford) (Section 26), that variance request to permit construction of a two-story, 200-unit condominium development (Whispering Woods Condominiums) in the RMH Multiple-Family Residential (High-Density) District with:

- 1) Distance between most buildings of thirty (30) feet being five (5) feet less than the required distance of thirty-five (35) feet;
- 2) Distance between two (2) buildings of twenty-two (22) feet being thirteen (13) feet less than the required distance of thirty-five (35) feet; and
- 3) Portion of a two-way service drive having width of twenty-four (24) feet being three feet less than the minimum required width of twenty-seven (27) feet;

be **denied** by reason that the petitioner has other options available to eliminate the need for these variances;

Further, that variance request to permit construction of a two-story condominium development (Whispering Woods Condominiums) in the RMH Multiple-Family Residential (High-Density) District with:

- 1) No property line abutting a major thoroughfare as required;
- 2) Density of forty-nine (49) rooms per acre being five (5) rooms per acre in excess of the maximum permitted forty-four (44) rooms per acre;
- 3) Portion of a service drive being a one-way drive which is not allowed;
- 4) Distance between parking areas and buildings of ten (10) feet being five (5) feet less than the minimum required distance of fifteen (15) feet; and
- 5) No sidewalks adjacent to the main service drives as required;

be **approved**; further, these grants of variances are based on claimed practical difficulty being the location of the property is not abutting a major thoroughfare and further based upon trade-offs by the petitioner to make a more attractive complex with offset facings and the effort to save the wooded area; further, these grants of variances are contingent upon compliance with all other requirements of Township ordinances. Roll Call Vote: Aye – Campbell, Trombley, Brooks, Catalano, Nickerson, Marella. Nay – None. Absent – None. Motion carried.

The meeting recessed at 7:50 p.m. and reconvened at 8:01 p.m.

UNIT 24, BROOKSTONE CONDOMINIUMS (SECTION 30) (FRONTING THE EAST LINE OF BROOKSTONE, NORTH OF TIMERS EDGE)

-- **APPEAL: BROOKSTONE CONDOMINIUMS, UNIT 24**

FILE #6074: PETITIONED BY BRIAN HIERHOLZER & MEENA NAHALA

Meena Nahala, 15550 Brookstone, Clinton Township, Michigan 48035, explained that they were given approval by the Township's Building Department to build a deck. She added that they constructed the deck and Mr. Gary Moscone, Building Inspector, approved it. Shortly thereafter, their neighbors sought approval for a similar deck and were denied, and it was at that time that she received a violation, indicating that their deck did not meet current ordinance requirements.

Mr. Campbell inquired as to whether Ms. Nahala discussed this variance request with her neighbor directly to the east of her property.

Ms. Nahala confirmed that she discussed the matter with her abutting neighbors to the east and they had no objection.

Mr. Campbell commented that the deck is only 12 feet in depth, which he felt is minimal for a deck. He felt the practical difficulty is that there was a change in the zoning code. He added that the Supreme Court has ruled on similar cases, however, noting that just because someone obtains approval from the local government for construction does not exempt them from meeting the local ordinance requirements.

Motion by Mr. Campbell, supported by Mr. Nickerson, with reference to File #6074 and application from Brian Hierholzer and Meena Nahala, 15550 Brookstone Drive, Clinton Township, Michigan 48035, for variance to Clinton Township Planning and Zoning Code, Chapter 1292.04-(c); Land Use Regulations; Single-Family Land Condominium Option, concerning Unit 24, Brookstone Condominiums, generally located fronting the east line of

Brookstone Drive, north of Timers Edge, addressed as 15550 Brookstone Drive, that variance be granted to permit continued existence of a deck attached to a home within a land condominium development (Site 24, Brookstone Condominiums) in the R-3 One-Family Residential District, extending twelve (12) feet beyond the building envelope being four (4) feet in excess of the maximum extension of eight (8) feet; further, this grant of variance is based on claimed practical difficulty being the 12-foot deck is a minimal size for a deck, and the approval from the Building Department appears to be a mistake in the interpretation of the ordinance; further, this grant of variance is contingent upon compliance with all other requirements of Township ordinance requirements. Roll Call Vote: Aye – Campbell, Nickerson, Trombley, Brooks, Catalano, Marella. Nay - None. Absent – None. Motion carried.

**LOTS 9, 10 AND PART OF LOT 13, MAPLEWOOD SUBDIVISION (SECTION 27)
(LOCATED AT THE SOUTHWEST CORNER OF HOLLY AND GRATIOT AVENUE
(M-3)**

**-- APPEAL: AGOSTINI RETAIL BUILDING ADDITION
FILE #6096: PETITIONED BY LOUIS AGOSTINI
REPRESENTED BY FENN & ASSOCIATES, INC.**

Pertinent correspondence was read and entered into the record. Mr. Campbell advised that notice of this public hearing was issued by regular mail to 34 owners and/or occupants of property located within 300 feet of the land in question, with none of those returned as undeliverable. He added that no letters were received in response to the mailing.

Eric Osling, Fenn & Associates, Inc., 13399 West Star Drive, Shelby Township, Michigan 48315, planner representing Mr. Agostini, explained that the ordinance requirement to provide a 25-foot front yard setback from Holly Street would hurt the layout of the site and the established traffic pattern. He noted that it would also reduce their ability to provide approximately six additional parking spaces.

Richard Houle, 21880 Holly, Clinton Township, Michigan 48035, adjacent property owner, has no objection to the requested variance. He added that he would like to address the issue of the required masonry wall between the two properties. He complained that it will limit his visibility from his driveway, and he claimed that he would be into Holly before he could see any traffic. He suggested that the wall be waived in the front portion of his property or that they erect some type of “see-through decorative fencing” that would enable him to safely back out of his driveway.

Mr. Campbell inquired as to whether the wall is currently in place.

Ms. Brooks observed that there is no wall at this time.

Mr. Campbell felt that Mr. Houle’s request makes a lot of sense.

Ms. Trombley noted that requests for wall waivers are generally directed to the Planning Commission and Township Board.

It was suggested that the petitioner submit to the Planning Department a request for the wall waiver, along with signatures from the abutting property owners that they have no objection to the requested waiver.

Motion by Mr. Campbell, supported by Mr. Nickerson, with reference to File #6096 and application from Louis Agostini, 11566 Timken Avenue, Warren, Michigan 48089, as represented by Eric Osling, Fenn & Associates, Inc., 13399 West Star Drive, Shelby Township, Michigan 48315, for variance to Clinton Township Planning and Zoning Code, Chapter 1284.04; P Parking District: Setbacks When Contiguous to Residential District and Chapter 1292.01-(m); Land Use Regulations: Schedule of Regulations Limiting Height, Bulk, Density and Area: Minimum Front Yard Setback Requirements in the R-3 One-Family Residential and B-3 General Business Districts, concerning Lots 9, 10 and Part of 13 (except the west 93.30 feet), Maplewood Subdivision (Section 27), generally located at the southwest corner of Holly Road and Gratiot Avenue (M-3), addressed as 35965 Gratiot Avenue, that variance be granted to permit construction of an addition to an existing retail building (Agostini Retail Building) in the B-3 General Business District and expansion of auxiliary off-street parking facilities in the P Parking District, contiguous to an R-3 One-Family Residential District, with front yard setback from Holly Street of twenty (20) feet being five (5) feet less than the minimum required setback of twenty-five (25) feet; further, this grant of variance is based on claimed practical difficulty being the variance will allow the petitioner to maintain the required distances of maneuvering lanes and parking distances; further, this grant of variance is contingent upon compliance with all other requirements of Township ordinances. Roll Call Vote: Aye – Campbell, Nickerson, Trombley, Brooks, Catalano, Marella. Nay – None. Absent – None. Motion carried.

0.79 ACRE OF LAND FRONTING THE WEST LINE OF GRATIOT AVENUE, SOUTH OF 15 MILE ROAD (SECTIONS 33/34)

-- **APPEAL: DEFALCO MOTORS**
FILE #6099: PETITIONED BY JOYCE DEFALCO
REPRESENTED BY JOEL DEFALCO

Pertinent correspondence was read and entered into the record. Mr. Campbell advised that notice of this public hearing was issued by regular mail to 21 owners and occupants of property located within 300 feet of the land in question, with 2 of those returned as undeliverable. He added that there were no letters received in response to the mailing.

Joel DeFalco, 45395 Ginko Drive, Shelby Township, Michigan 48315, explained that his family owns a car lot on Gratiot and he emphasized that this has been used as a car lot for many years. He noted that there is a required 25-foot setback in the front, but since the property is only 90 feet in depth, this eliminates a large portion of their usable property. Mr. DeFalco stated he had an architect try to design the site, and in order to meet the setback requirement, they would have only eleven parking spaces. Two of those spaces would be required for customer parking, and

they would also have to provide for handicapped parking. Mr. DeFalco stressed that it is extremely important for a car dealer to be able to display cars; otherwise, he will not have a successful business.

Ms. Brooks inquired as to whether this site was designed as a car lot.

Mr. DeFalco reiterated that it has always been a car lot. He explained that some time ago, a telephone pole fell and destroyed the back of the building. The tenant at that time moved out and it took some time to make the repairs. Since it was vacant for more than thirty (30) days, he was told that the site had to be brought up to meet the current ordinance requirements. He replied to inquiry that his family has owned this parcel since 1988.

Mr. Campbell commented that he observed the site and it appears as though there is a fence in the rear of the property by the woods. He estimated that if the fence were moved, the petitioner would have a depth of close to 150 feet from Gratiot. He noted that this site is located within the boundaries of the Township's established Downtown Development Authority (DDA), and he indicated that other businesses have come into this area and brought their property up to current standards in an attempt to revitalize South Gratiot. He felt the petitioner could move the fence, thereby meeting the required 25 foot setback, resulting in a much improved property.

Mr. DeFalco disagreed with Mr. Campbell's estimates of the distance between the woods and the building and estimated that the woods is within ten feet of the building. He emphasized that the owner has no interest in doing an extensive redevelopment of the site.

Mr. Campbell challenged Mr. DeFalco's estimates and felt there is at least 25 to 30 feet between the fence and the first tree.

Mr. DeFalco stated that he cuts the grass between the fence and the woods and he is confident that there is not a 25 foot distance between the two.

Mr. Campbell maintained that the petitioner has an opportunity to bring this site up to code and he felt it can be accomplished without the variance.

Ms. Brooks pointed out that removing the fence would provide more space without having to cut down any of the trees.

Ms. Sheridan commented that the parking lot has to be redesigned regardless of whether or not this variance is granted.

Mr. DeFalco explained that this is an investment property for his mother and she is not interested in "sinking a lot of money" into it.

Motion by Mr. Campbell, supported by Ms. Brooks, with reference to File #6099 and application from Joyce DeFalco, 39335 Waldorf, Clinton Township, Michigan 48038, as represented by Joel DeFalco, same address, for variance to Clinton Township Planning and Zoning Code, Chapter

1292.02-(a)-(29)-C, Supplementary Regulations: Uses Requiring Special Approval; Procedure, concerning 0.79 acre of land fronting the west side of Gratiot Avenue (M-3), south of 15 Mile Road, addressed as 34335 Gratiot Avenue, that request for variance to permit an open-air display and sale of automobiles (DeFalco Auto Sales) in the B-3 General Business District with partial front yard setback from Gratiot Avenue of zero (0) feet being twenty-five (25) feet less than the minimum required twenty-five (25) feet, be denied by reason that the petitioner has space behind the current fenced-off area to allow him to meet the requirements of the Township ordinances. Roll Call Vote: Aye – Campbell, Brooks, Catalano, Nickerson, Trombley, Marella. Nay – None. Absent – None. Motion carried.

3.171 ACRES OF LAND FRONTING THE WEST LINE OF LITTLE ROAD, SOUTH OF DUNHAM ROAD (SECTION 3)

- **REF: TABLED FROM NOVEMBER 16, 2005 MEETING**
-- **APPEAL: SFR – LITTLE ROAD, 43385**
FILE #6090: PETITIONED BY MICHAEL HORTON

Pertinent correspondence was read and entered into the record. Mr. Campbell advised that notice of this public hearing was issued by regular mail to 128 owners and occupants of property located within 300 feet of the land in question, with 2 of those returned as undeliverable. He added that there were no letters received in response to the mailing.

Michael Horton, 39131 Shoreline Drive, Harrison Township, Michigan 48045, submitted five photographs of accessory buildings on Little Road that exceed the maximum height permitted by Township ordinance. He also included the addresses of these locations.

Mr. Marella stated they are aware there are some in the area which exceed the height requirement because this Board has granted a few that are set far back on the property.

Dave Pascoe, 21527 Bay Hills Drive, Macomb, Michigan 48044, owner of abutting property to the south of the subject parcel, stated that he has not seen the elevations or the site plans, but he indicated that the structure is proposed to be built close to his property line. He pointed out that the land slopes toward the river, and he was concerned as to how the water drainage will be affected if this structure is permitted to be constructed in the proposed location. He questioned whether the proposed height of 17.3 feet is measured from the front of the building or the back, because he estimated the slope of the land will result in a discrepancy of approximately two to three feet.

Mr. Campbell explained the procedure for calculating the height of a pitched roof is to take the average height between the eaves and the ridge, or to calculate halfway.

Ms. Sheridan informed that the petitioner is making a grade change and is in the process of obtaining site development approval. She stated he will have to deposit some “fill”.

Mr. Pascoe inquired as to whether it would be possible for the accessory structure to be located further away from his property line so that he would not have to “look at it”.

Ms. Sheridan explained that he must work around a storm drain that is located on his site. She clarified that the location and the size of the proposed structure meet ordinance requirements, and the petitioner is seeking a height variance only.

Mr. Pascoe stated he would prefer to see a one-story structure further from his property line.

Mr. Marella commented that the petitioner is very limited because much of his property is in the floodplain and is unbuildable.

Mr. Campbell inquired as to the width of Mr. Pascoe’s property.

Mr. Pascoe replied to inquiry that his property is approximately 120 feet wide at the road; however, it gradually increases in width and he estimated that at the point where the adjacent accessory structure is being proposed, his property is approximately 300 feet wide. He replied to further inquiry that although at one time he designed a house for this property, he never pursued it. He added that he does not have a time frame for development of his property.

Mr. Campbell inquired as to where Mr. Pascoe’s house would be situated on his property based on his design.

Mr. Pascoe replied that the location of his house would depend upon where it would be allowed, and the location of the water and sewer lines. He anticipated that it would have to remain closer to his north property line, because more than one-half of his property is situated in the flood plain.

Mr. Campbell inquired as to what the petitioner is proposing to store in the accessory structure.

Mr. Horton replied that they have two twenty-foot boats and, including trailers and motors, each boat measures approximately twenty-five feet. They also have a snowmobile trailer, a four-wheeler, lawn equipment and three vehicles, including a truck.

Leia Horn, 38131 Shoreline Drive, Harrison Township, Michigan 48045, added that they have household items they wish to store, including extra furniture and Christmas decorations. She noted that they will have limited storage available in their basement.

Mr. Pascoe cautioned the petitioners with regard to excavating a basement. He stated that the water pressure in the area is “incredible” and he has heard of instances where the basement has actually been “pushed up” because of the water pressure.

Ms. Horn replied to inquiry that she and Mr. Horton both work for Chrysler Corporation and have no intent to use the accessory structure for any type of “side business”.

Mr. Campbell felt that Mr. Pascoe raised a valid concern to having a structure of this height right next to his property even though he has not yet developed his property; however, he felt the petitioner also has a valid argument. He noted, however, that the structure will be situated approximately 70 feet behind the house so he was not convinced that the pitch of the two structures would have to match.

Mr. Horton explained that the property is nearly 1,300 feet deep, so he felt that relatively speaking, the 70-foot distance between the two structures is not a lot. He stressed this is going to be their dream home and they want it aesthetically correct.

Ms. Horn felt that while Mr. Pascoe has a valid point, he has not yet developed or even surveyed his property. She added that according to him, he has no specific plans. She offered to plant trees or shrubbery along the side of the accessory structure at such time as Mr. Pascoe develops his property so that he will have a nicer view; however, she felt it is unfair that this variance would be denied based on concerns from a neighboring property owner who has not yet built his home nor has any specific plans.

Mr. Campbell reminded that Mr. Pascoe has the right to build in the future and can therefore look out after his interests at this time.

Ms. Horn pointed out that the width of Mr. Pascoe’s property is 300 feet at the point where he would build, and she felt he can situate his house far from the lot line if he so desires, and their accessory structure should have no impact on him.

Mr. Horton assured that he is willing to add landscaping and he pointed out that the structure will be of partial brick construction to match the house. He stressed that is why the aesthetic issue is so important to them and why they do not want a steel pole barn.

Mr. Campbell explained that the ordinance allows homes to be taller because they are set further back from the property line; however, accessory structures are permitted to be much closer to the lot line so there is a stricter limitation on height. He inquired as to whether the petitioners would be willing to relocate the structure so that there would be a distance of ten feet to the lot line.

Mr. Horton replied that if he were to relocate the garage, it would block the view of his home and would extend almost halfway into his property. He replied to further inquiry that he has obtained his Department of Environmental Quality (DEQ) permit for this exact location and he waited five to six months for that approval. If he relocates the garage, he would need to start all over submitting for DEQ approval. He was confident that with the five feet between the structure and the lot line, he would have sufficient room to plant a row of arborvitaes. He stressed this location is the only place he can build the garage due to limitations with the flood plain.

Discussion took place regarding the DEQ approval.

Ms. Sheridan replied that the ordinance permits that size garage to be constructed at that location. The only item in question that does not meet ordinance requirements is the height.

Mr. Campbell stated that for commercial developments, the Township Engineer becomes involved to assure that drainage will not be an issue. He questioned whether this also occurs in single-family residential development.

Ms. Sheridan assured that the Township Engineer will review and must approve the plan as well.

Mr. Pascoe complained that there have been many problems with engineered sites in Macomb Township. He was concerned that the same would happen here.

Ms. Sheridan clarified that development of property is not supposed to adversely affect the abutting property.

Mr. Campbell inquired as to whether the petitioner would be willing to commit to landscaping the side of the garage in accordance with the wishes of the neighbor.

Mr. Horton assured he would be willing to landscape. He informed that he has purchased nine (9) spruce trees up to this point and will invest in more. He agreed to put in downspouts in such a way as to direct the runoff back onto his own property.

Motion by Mr. Campbell, supported by Mr. Nickerson, with reference to File #6090 and application from Michael Horton, 39131 Shoreline Drive, Harrison Township, Michigan 48045, as represented by Leia Horn, same address, for variance to Clinton Township Planning and Zoning Code, Chapter 1298.01-(1) Supplementary Regulations; Accessory Buildings (Including Garages), concerning 3.171 acres of land located fronting the west line of Little Road, south of Dunham Road at 43385 Little Road, that variance be granted to permit construction of a detached accessory building (garage) for a single-family residence in the R-5 One-Family Residential District with: 1) Two (2) stories being one (1) story in excess of the maximum permitted one (1) story and; 2) Height of 17.3 +/- feet being 3.3 +/- feet in excess of the maximum permitted height of fourteen (14) feet; further, this variance is granted with the following stipulations: 1) the second floor shall not exceed 384 square feet; 2) the petitioner has agreed to install gutters and downspouts to assure there is no drainage problem to the neighboring property as a result of this structure; and 3) the petitioner has agreed to landscape the side of the garage abutting the adjacent property in accordance with what is agreed upon by that property owner; further, this grant of variance is based on claimed practical difficulty being the desire of the petitioner to maintain the same roof pitch for both the house and the accessory structure for aesthetic purposes, and to appropriate storage for household equipment; further, this grant of variance is contingent upon compliance with all other requirements of Township ordinances. Roll Call Vote: Aye – Campbell, Nickerson, Trombley, Brooks, Catalano, Marella. Nay – None. Absent – None. Motion carried.

ADJOURNMENT

Motion by Mr. Nickerson, supported by Ms. Trombley, to adjourn the meeting. Motion carried.
The meeting adjourned at 8:46 p.m.

Respectfully submitted,

Robert M. Campbell, Secretary
CLINTON TOWNSHIP BOARD OF APPEALS

ces:12/17/05
ces:01/06/05