

**ZONING BOARD OF APPEALS  
JANUARY 20, 2014**

**MEMBERS PRESENT:** Larry Fillinger, Linda Manson-Dempsey, Greg Durbin, Larry Grunn, and Dan Lowe  
**MEMBERS ABSENT:** None  
**OTHERS PRESENT:** Mike Kehoe, Township Attorney  
John Enos, Carlisle/Wortman Associates, Inc.

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**CALL TO ORDER**

Larry Fillinger called the meeting to order at 7:30 p.m.

**APPROVAL OF AGENDA**

Linda Manson-Dempsey motioned to approve the agenda as presented. Dan Lowe seconded.

**Motion carried 5-0.**

**MEMBERS PRESENT**

The members of the Zoning Board of Appeals introduced themselves.

**CALL TO THE PUBLIC**

No response.

**APPROVAL OF MINUTES**

**December 2, 2013 Regular Meeting:** Linda Manson-Dempsey motioned to approve the minutes as presented. Greg Durbin seconded. **Motion carried 5-0.**

**OLD BUSINESS**

None.

**NEW BUSINESS**

**ZBA Case #01-14—CD Okemos 10, 1442 Old Pinckney Rd., Tax ID #4710-02-400-005**

Pat Keough, ACE Civil Engineering, was present on behalf of this project, along with Todd Lekander and T.J. Lekander. The applicant was previously applied for and was granted the requested variances, but they expired. The applicant has received a recommendation from the Planning Commission on the preliminary site plan. Larry Grunn asked if any aspect of the project has changed since the last variance request. Mr. Keough said the site was reconfigured, one of the driveways off Old Pinckney Road was eliminated, and one of the pumps was eliminated. The location of the building has changed, and the building is slightly larger. Greg Durbin asked if the owner used some type of formula to determine the number of gas pumps. Mr. Lekander said the decision is based on peak demand and previous experience.

John Enos said this is an important and visible project. He would like to see landscaping on the east/west sides with additional screening, and he is not in favor of the additional pump. He feels four pumps should be enough. Pat Keough said the zoning ordinance is arbitrary and the number of pumps is irrelevant.

**Call to the Public**

Scott Lloyd, 5717 Pingree, asked where snow plows would put snow. Mr. Lekander said they plan on putting in a geothermal driveway, and switch grass along the front.

Larry Fillinger said he would like something to buffer headlights. Mr. Lekander said he is more concerned about shielding the canopy lights. Mr. Lekander also said he worked with SPARK to try to buy a portion of the land owned by the state, and the state was unwilling to sell.

John Enos confirmed with Mr. Lekander that if the Livingston County Road Commission required removal of the trees on Old Pinckney Road, Mr. Lekander would replace them. Lekander agreed that he would remove existing trees. He asked what type and number of trees would the ZBA want if the LCRC requires trees along the east property line be removed. The ZBA agreed to arborvitaes, not to exceed 14.

Cheryl Range, 4899 W. Coon Lake Rd., asked whether the township owns any property in the area near D-19 and I-96 to make a more aesthetically pleasing entrance to the township.

**Motion**

Greg Durbin motioned for ZBA Case #01-14, C.D. Okemos 10 LLC, tax id #4710-02-400-005, to approve the request to relax **Section 6.13 D** to waive the requirement for greenbelt buffering, considering the following criteria:

1. How the strict enforcement of the provisions of the township zoning ordinance would cause an unnecessary hardship and deprive the owner of rights enjoyed by all other property owners owning property within the same zoning district. *Meeting this requirement would deprive the applicant of the rights enjoyed by the recently established auto repair business, reupholstery shop and restaurant that are within the immediate vicinity of the applicant's parcel.*
2. The conditions and circumstances unique to the property, which are not similarly applicable to other properties in the same zoning district. *Pinckney Road was relocated to the west side of this parcel*

some years ago. The old Pinckney Road remained in place to continue access to the properties with frontage. The properties between Pinckney Road and Old Pinckney Road now have two front yard setbacks. The property is a triangle shape, unlike the surrounding properties. The two front yard setback requirements overlap one another, leaving no building envelope.

3. The conditions and circumstances unique to the property were not self-created. As stated in item #2, the unique conditions were created by the new Pinckney Road, a land division that was approved by Marion Township. The conditions were not created by the applicant.
4. Why the requested variance will not confer special privileges that are denied other properties similarly situated and in the same zoning district. The 103 foot right-of-way along Pinckney Road services as the 50 foot buffer. Other commercial uses along Old Pinckney Road do not have a 25 foot buffer.
5. Why the requested variance will not be contrary to the spirit and intent of this zoning ordinance. The intent of Section 6.13 is to protect and preserve the appearance and value of the community, minimize visual pollution, and provide buffering between incompatible land uses. Relaxing requirements of this section will not be contrary to the intent. The 103' right-of-way along Pinckney Road serves as the 50 foot buffer. Other commercial uses along Old Pinckney Road do not have a 25 foot buffer.
6. The difficulty shall not be deemed solely economic. The applicant is not asking for more than the zoning ordinance allows. The unique shape of the parcel dictates requesting relief.

Larry Grunn seconded. Roll call vote: Manson-Dempsey—yes; Fillinger—yes; Durbin—yes; Grunn—yes; Lowe—no. **Motion carried 4-1.**

#### **Motion**

Greg Durbin motioned for ZBA Case #01-14, C.D. Okemos 10 LLC, tax id #4710-02-400-005, to approve the request to relax **Sections 6.13 C and 17.12 C** to waive the requirement for separate landscaped areas within/around parking lots, one tree for every 10 parking spaces, and vertical screen three feet tall to screen from adjacent road right-of-way, considering the following criteria:

1. How the strict enforcement of the provisions of the township zoning ordinance would cause an unnecessary hardship and deprive the owner of rights enjoyed by all other property owners owning property within the same zoning district. Meeting this requirement would deprive the applicant of the rights enjoyed by the recently established auto repair business, reupholstery shop and restaurant that are within the immediate vicinity of the applicant's parcel.
2. The conditions and circumstances unique to the property, which are not similarly applicable to other properties in the same zoning district. Pinckney Road was relocated to the west side of this parcel some years ago. The old Pinckney Road remained in place to continue access to the properties with frontage. The properties between Pinckney Road and Old Pinckney Road now have two front yard setbacks. The property is a triangle shape, unlike the surrounding properties. The two front yard setback requirements overlap one another, leaving no building envelope.
3. The conditions and circumstances unique to the property were not self-created. As stated in item #2, the unique conditions were created by the new Pinckney Road, a land division that was approved by Marion Township. The conditions were not created by the applicant.
4. Why the requested variance will not confer special privileges that are denied other properties similarly situated and in the same zoning district. The unique shape of the parcel makes the layout of any use challenging. The Zoning Board of Appeals doesn't consider the granting of this variance a special privilege.
5. Why the requested variance will not be contrary to the spirit and intent of this zoning ordinance. A three foot vertical screen would not provide screening for the residential use east of this parcel. The applicant's parcel sits approximately ten feet lower than the residential lot; a three foot screen would not achieve that goal.
6. The difficulty shall not be deemed solely economic. The applicant is not asking for more than the zoning ordinance allows. The unique shape of the parcel dictates requesting relief.

Larry Grunn seconded. Roll call vote: Manson-Dempsey, Fillinger, Durbin, Grunn, Lowe—all yes. **Motion carried 5-0.**

#### **Motion**

Greg Durbin motioned for ZBA Case #01-14, C.D. Okemos 10 LLC, tax id #4710-02-400-005, to approve the request to relax **Section 6.13 E** to waive the requirement that 10% of the site is landscaped and to allow a 7% variance, considering the following criteria:

1. How the strict enforcement of the provisions of the township zoning ordinance would cause an unnecessary hardship and deprive the owner of rights enjoyed by all other property owners owning property within the same zoning district. Meeting this requirement would deprive the applicant of the rights enjoyed by the recently established auto repair business, reupholstery shop and restaurant that are within the immediate vicinity of the applicant's parcel.

2. The conditions and circumstances unique to the property, which are not similarly applicable to other properties in the same zoning district. *Pinckney Road was relocated to the west side of this parcel some years ago. The old Pinckney Road remained in place to continue access to the properties with frontage. The properties between Pinckney Road and Old Pinckney Road now have two front-yard setbacks. The property is a triangle shape, unlike the surrounding properties. The two front-yard setbacks requirements overlap one another, leaving no building envelope.*
3. The conditions and circumstances unique to the property were not self-created. *As stated in item #2, the unique conditions were created by the new Pinckney Road, a land division that was approved by Marion Township. The conditions were not created by the applicant.*
4. Why the requested variance will not confer special privileges that are denied other properties similarly situated and in the same zoning district. *The unique shape of the parcel makes the layout of any use challenging. The Zoning Board of Appeals doesn't consider the granting of this variance a special privilege.*
5. Why the requested variance will not be contrary to the spirit and intent of this zoning ordinance. *The intent of Section 6.13 is to protect and preserve the appearance and value of the community, minimize visual pollution, and provide buffering between incompatible land uses. Relaxing requirements of this section will not be contrary to the intent.*
6. The difficulty shall not be deemed solely economic. *The applicant is not asking for more than the zoning ordinance allows. The unique shape of the parcel dictates requesting relief.*

Larry Grunn seconded. Roll call vote: Manson-Dempsey—yes; Fillinger—yes; Durbin—yes; Grunn—yes; Lowe—no. **Motion carried 4-1.**

**Motion**

Greg Durbin motioned for ZBA Case #01-14, C.D. Okemos 10 LLC, tax id #4710-02-400-005, to approve the request to relax **Sections 9.01 E (6) f and 6.13 C** to waive the requirement for three foot tall screening to prevent headlight glare from shining onto adjacent residential property, considering the following criteria:

1. How the strict enforcement of the provisions of the township zoning ordinance would cause an unnecessary hardship and deprive the owner of rights enjoyed by all other property owners owning property within the same zoning district. *Meeting this requirement would deprive the applicant of the rights enjoyed by the recently established auto repair business, reupholstery shop and restaurant that are within the immediate vicinity of the applicant's parcel.*
2. The conditions and circumstances unique to the property, which are not similarly applicable to other properties in the same zoning district. *Pinckney Road was relocated to the west side of this parcel some years ago. The old Pinckney Road remained in place to continue access to the properties with frontage. The properties between Pinckney Road and Old Pinckney Road now have two front-yard setbacks. The property is a triangle shape, unlike the surrounding properties. The two front-yard setback requirements overlap one another, leaving no building envelope.*
3. The conditions and circumstances unique to the property were not self-created. *As stated in item #2, the unique conditions were created by the new Pinckney Road, a land division that was approved by Marion Township. The conditions were not created by the applicant.*
4. Why the requested variance will not confer special privileges that are denied other properties similarly situated and in the same zoning district. *The unique shape of the parcel makes the layout of any use challenging. The Zoning Board of Appeals doesn't consider the granting of this variance a special privilege.*
5. Why the requested variance will not be contrary to the spirit and intent of this zoning ordinance. *The intent of Section 6.13 is to protect and preserve the appearance and value of the community, minimize visual pollution, and provide buffering between incompatible land uses. Relaxing requirements of this section will not be contrary to the intent.*
6. The difficulty shall not be deemed solely economic. *The applicant is not asking for more than the zoning ordinance allows. The unique shape of the parcel dictates requesting relief.*

Larry Grunn seconded. Roll call vote: Manson-Dempsey, Fillinger, Durbin, Grunn, Lowe—all yes. **Motion carried 5-0.**

**Motion**

Greg Durbin motioned for ZBA Case #01-14, C.D. Okemos 10 LLC, tax id #4710-02-400-005, to approve the request to relax **Section 9.01 E 1** to allow a building or structure on a lot less than one acre in size, considering the following criteria:

1. How the strict enforcement of the provisions of the township zoning ordinance would cause an unnecessary hardship and deprive the owner of rights enjoyed by all other property owners owning property within the same zoning district. *Meeting this requirement would deprive the applicant of the*

*rights enjoyed by others in the Highway Service district. Minimum acreage for this district is one acre, this parcel is .97 acres, and is a lot of record created by Marion Township.*

2. The conditions and circumstances unique to the property, which are not similarly applicable to other properties in the same zoning district. *The property is a triangle shape, unlike the surrounding properties.*
3. The conditions and circumstances unique to the property were not self-created. *As stated in item #2, the unique conditions were created by the new Pinckney Road, a land division that was approved by Marion Township. The conditions were not created by the applicant.*
4. Why the requested variance will not confer special privileges that are denied other properties similarly situated and in the same zoning district. *The unique shape of the parcel makes the layout of any use challenging. The Zoning Board of Appeals doesn't consider the granting of this variance a special privilege.*
5. Why the requested variance will not be contrary to the spirit and intent of this zoning ordinance. *It is the intent of this district to provide for service establishments on a one-acre minimum; this parcel is only .03 acres less than the requirement. Relaxing requirements of this section of the ordinance will not be contrary to the intent.*
6. The difficulty shall not be deemed solely economic. *The difficulty is not economically driven.*

Larry Grunn seconded. Roll call vote: Manson-Dempsey, Fillingner, Durbin, Grunn, Lowe—all yes. **Motion carried 5-0.**

#### **Motion**

Greg Durbin motioned for ZBA Case #01-14, C.D. Okemos 10 LLC, tax id #4710-02-400-005, to approve the request to relax **Section 9.01 E 3 a** to allow the reduction of the front setback from 80 feet to zero and the reduction of the setback from Pinckney Road from 100 feet to zero, considering the following criteria:

1. How the strict enforcement of the provisions of the township zoning ordinance would cause an unnecessary hardship and deprive the owner of rights enjoyed by all other property owners owning property within the same zoning district. *Meeting this requirement would render this parcel unusable and deprive the applicant of the rights enjoyed by others in the Highway Service district. Setbacks overlap one another, leaving no building envelope. The 103 foot right-of-way along Pinckney Road meets the appearance gained by a front-yard setback.*
2. The conditions and circumstances unique to the property, which are not similarly applicable to other properties in the same zoning district. *The property is a triangle shape, unlike the surrounding properties.*
3. The conditions and circumstances unique to the property were not self-created. *As stated in item #2, the unique conditions were created by the new Pinckney Road, a land division that was approved by Marion Township. The conditions were not created by the applicant.*
4. Why the requested variance will not confer special privileges that are denied other properties similarly situated and in the same zoning district. *The unique shape of the parcel makes the layout of any use challenging. The Zoning Board of Appeals doesn't consider the granting of this variance a special privilege.*
5. Why the requested variance will not be contrary to the spirit and intent of this zoning ordinance. *Section 9.01 E 3 a calls out setbacks that render this parcel unusable. Relaxing requirements of this section will not be contrary to the intent.*
6. The difficulty shall not be deemed solely economic. *The difficulty is not economically driven.*

Larry Grunn seconded. Roll call vote: Manson-Dempsey, Fillingner, Durbin, Grunn, Lowe—all yes. **Motion carried 5-0.**

#### **Motion**

Greg Durbin motioned for ZBA Case #01-14, C.D. Okemos 10 LLC, tax id #4710-02-400-005, to approve the request to relax **Section 9.01 E 3 b** to reduce the side yard setback requirement from 25 foot to four feet, allowing a four (4) foot side yard setback, considering the following criteria:

1. How the strict enforcement of the provisions of the township zoning ordinance would cause an unnecessary hardship and deprive the owner of rights enjoyed by all other property owners owning property within the same zoning district. *Meeting this requirement would render this parcel unusable and deprive the applicant of the rights enjoyed by others in the Highway Service district. Setbacks overlap one another, leaving no building envelope. Side-yard setback significantly limits the reasonable use of this parcel; a variance to allow a four foot setback is reasonable.*
2. The conditions and circumstances unique to the property, which are not similarly applicable to other properties in the same zoning district. *The property is a triangle shape, unlike the surrounding properties.*

3. The conditions and circumstances unique to the property were not self-created. *As stated in item #2, the unique conditions were created by the new Pinckney Road, a land division that was approved by Marion Township. The conditions were not created by the applicant.*
4. Why the requested variance will not confer special privileges that are denied other properties similarly situated and in the same zoning district. *The unique shape of the parcel makes the layout of any use challenging. The Zoning Board of Appeals doesn't consider the granting of this variance a special privilege.*
5. Why the requested variance will not be contrary to the spirit and intent of this zoning ordinance. *Section 9.01 E 3 b calls out setbacks that render this parcel unusable. Relaxing requirements of this section of the ordinance will not be contrary to the intent.*
6. The difficulty shall not be deemed solely economic. *The difficulty is not economically driven.*

Larry Grunn seconded. Roll call vote: Manson-Dempsey, Fillinger, Durbin, Grunn, Lowe—all yes. **Motion carried 5-0.**

**Motion**

Greg Durbin motioned for ZBA Case #01-14, C.D. Okemos 10 LLC, tax id #4710-02-400-005, to approve the request to relax **Section 15.3 C** to allow signage within the right-of-way, a 10 foot variance for both the northwest and southeast corners of the property, considering the following criteria:

1. How the strict enforcement of the provisions of the township zoning ordinance would cause an unnecessary hardship and deprive the owner of rights enjoyed by all other property owners owning property within the same zoning district. *Meeting this requirement would deprive the applicant of the rights enjoyed by other property owners.*
2. The conditions and circumstances unique to the property, which are not similarly applicable to other properties in the same zoning district. *The triangle-shaped parcel is unlike the surrounding parcels.*
3. The conditions and circumstances unique to the property were not self-created. *The unique conditions were created by the new Pinckney Road, a land division that was approved by Marion Township. The conditions were not created by the applicant.*
4. Why the requested variance will not confer special privileges that are denied other properties similarly situated and in the same zoning district. *The unique shape of the parcel makes the layout of any use challenging. The Zoning Board of Appeals doesn't consider the granting of this variance a special privilege.*
5. Why the requested variance will not be contrary to the spirit and intent of this zoning ordinance. *Granting of this variance will allow the applicant to proceed with construction plans and signage layout.*
6. The difficulty shall not be deemed solely economic. *The request is not economically driven.*

Larry Grunn seconded. Roll call vote: Manson-Dempsey, Fillinger, Durbin, Grunn, Lowe—all yes. **Motion carried 5-0.**

**Motion**

Greg Durbin motioned for ZBA Case #01-14, C.D. Okemos 10 LLC, tax id #4710-02-400-005, to approve the request to relax **Section 17.04 A 2** to allow underground storage tanks within 300 feet of a residential well, considering the following criteria:

1. How the strict enforcement of the provisions of the township zoning ordinance would cause an unnecessary hardship and deprive the owner of rights enjoyed by all other property owners owning property within the same zoning district. *Meeting the requirement would deprive the applicant of the rights enjoyed by other property owners in the district.*
2. The conditions and circumstances unique to the property, which are not similarly applicable to other properties in the same zoning district. *The property is triangle-shaped unlike surrounding properties.*
3. The conditions and circumstances unique to the property were not self-created. *The conditions were created by the new Pinckney Road construction and were not created by the applicant.*
4. Why the requested variance will not confer special privileges that are denied other properties similarly situated and in the same zoning district. *The ZBA doesn't consider the granting of this variance to be a special privilege.*
5. Why the requested variance will not be contrary to the spirit and intent of this zoning ordinance. *The spirit and intent of the zoning ordinance are preserved. The variance is well within MDEQ requirements*
6. The difficulty shall not be deemed solely economic.

Larry Grunn seconded. Roll call vote: Manson-Dempsey, Fillinger, Durbin, Grunn, Lowe—all yes. **Motion carried 5-0.**

The ZBA members discussed the additional tank generating more traffic. Annette McNamara noted that adding five inches around the perimeter of the site would create 500 square feet, and asked the ZBA members to consider this. T.J. Lekander said the additional pump would alleviate traffic back-up.

**Motion**

Greg Durbin motioned for ZBA Case #01-14, C.D. Okemos 10 LLC, tax id #4710-02-400-005, to approve the request to relax **Section 17.04 B 1** that requires an additional 500 square feet of lot area for each pump over four, considering the following criteria:

1. How the strict enforcement of the provisions of the township zoning ordinance would cause an unnecessary hardship and deprive the owner of rights enjoyed by all other property owners owning property within the same zoning district. *The parcel has a unique configuration not created by the owner. Meeting the requirement would deny the applicant the opportunity to fully utilize the property.*
2. The conditions and circumstances unique to the property, which are not similarly applicable to other properties in the same zoning district. *The conditions and circumstances are unique because of the shape of the parcel and the setback requirements.*
3. The conditions and circumstances unique to the property were not self-created. *The applicant did not create the conditions; they were created by the relocation of Pinckney Road.*
4. Why the requested variance will not confer special privileges that are denied other properties similarly situated and in the same zoning district. *The unique shape of the parcel creates challenges. The Zoning Board of Appeals does not consider granting of this variance a special privilege.*
5. Why the requested variance will not be contrary to the spirit and intent of this zoning ordinance. *Strict enforcement of the zoning would prevent any structure from being built.*
6. The difficulty shall not be deemed solely economic. *The request is not economically driven.*

Larry Grunn seconded. Roll call vote: Lowe—yes; Grunn—yes; Fillinger—no; Durbin—yes; Manson-Dempsey—no. **Motion carried 3-2.**

#### **CALL TO THE PUBLIC**

Cheryl Range said the ZBA kept referring to the “gateway to Marion Township.” She never realized the area south of the I-96 ramps was the “gateway” or that she just entered Marion Township. She doesn’t feel the applicant has the responsibility to welcome people to the township.

T.J. Lekander said they are excited about the project. This review has been a good exercise in what is and what is not necessary.

A meeting on horizontal fracturing will be held at Fowlerville High School on February 6 at 6:30 pm. The county will host a brown bag lunch presentation on the same subject on February 12 from 12:00 noon-1:30 pm at Cleary University.

#### **ADJOURNMENT**

Linda Manson-Dempsey motioned to adjourn the meeting at 9:30 pm. Larry Grunn seconded. **Motion carried 5-0.**