

ZONING BOARD OF APPEALS

FEBRUARY 7, 2005

MEMBERS PRESENT: John Lowe, Larry Fillinger, Dan Lowe, Linda Manson-Dempsey, and Dan Rossbach

MEMBERS ABSENT: None

OTHERS PRESENT: Annette McNamara, Zoning Administrator

CALL TO ORDER

John Lowe called the meeting to order at 7:30 p.m.

APPROVAL OF AGENDA

Linda Manson-Dempsey motioned to approve the agenda as presented. Dan Rossbach seconded. **Motion carried 5-0.**

MEMBERS PRESENT

The members of the Zoning Board of Appeals introduced themselves.

CALL TO THE PUBLIC

None.

APPROVAL OF MINUTES

Zoning Board of Appeals, December 6, 2004

Larry Fillinger motioned to approve the minutes as presented. Dan Rossbach seconded. **Motion carried 4-0 (Linda Manson-Dempsey abstained.)**

NEW BUSINESS

ZBA Case #1-05—Dennis Gottschalk (Spruce Run)

Jim Barnwell from Desine Engineering was present to represent Mr. Gottschalk. The site is on Mason Road, Section 4. Directly to the west is Maple Farms, and to the south and east is Turtle Creek. Mr. Barnwell pointed out topography, sight distance issues, etc., on the site plan. The Livingston County Road Commission has reviewed the proposal and made suggestions. For the health, safety and welfare of the residents, a boulevard entrance will provide dual access to the development. The proposed development will have 36 parcels, with two exceptions over to Painted Drive. Mr. Barnwell feels this proposal preserves the natural features and follows the intent of the township ordinances and master plan. Mr. Barnwell read from Section 5.03—regarding practical difficulty and unnecessary hardship. He feels this development is consistent with other developments in the township. Therefore, the applicant is requesting a variance to **Section 6.20 H**. John Lowe read the Variance Analysis provided by Carlisle/Wortman, which recommends approval of the variance request. Additional reviews were provided from the township attorney and the township engineer. John Lowe asked Jim Barnwell about connecting this development to Maple Farms, which has a stub road and was the intent of the Planning Commission. This would allow traffic between the developments without going out on the main roads. Mr. Barnwell said that was considered, but the ordinance calls for two public roads. He felt that wouldn't be consistent with the other developments in the township. The ZBA discussed different options, such as connecting to Maple Farms, Turtle Creek, or both. Dan Rossbach asked if the stub road is paved. John Lowe said he believes it's paved up to the greenbelt. Mr. Barnwell said it's approximately 130 feet away.

Mr. Barnwell showed the ZBA members an alternate plan he designed, which connects Spruce Run with Maple Farms. The alternate plan has 38 lots, but eliminates a lot of the wooded area. He feels this plan isn't economically feasible.

Call to the Public

Dan Gerhard, 3152 Painted Drive: Mr. Gerhard said he would not like a connection between the proposed development and Turtle Creek. It would increase traffic because it's going to be the only throughway between Norton and Mason. He feels the health and welfare of both subdivisions would be jeopardized. Mr. Gerhard also said he is one of the few people in Turtle Creek who was notified of this meeting.

Close Call to the Public

John Lowe asked Mr. Gerhard who plows the roads in Turtle Creek. Mr. Gerhard said he's not sure, but he believes Mitch Harris is doing it. After further discussion about which developments were designed with stub roads to interconnect, Larry Fillinger motioned to table ZBA Case #1-05 until the March ZBA meeting for additional information, including finding the original purpose and feasibility of connecting to the stub road in Maple Farms, having the attorney review the Master Deed and PUD agreement for Maple Farms, and the pros and cons of connecting to Turtle Creek. Linda Manson-Dempsey seconded. **Motion carried 5-0.**

ZBA Case #2-05—Fred Brown

Jim Barnwell from Desine Engineering, representing Mr. Brown, showed the ZBA members the proposed site plan. The applicant is requesting variances to Section 8.01 F 2 b and Section 6.18 B. An MDEQ permit will be required to cross the creek. Mr. Barnwell also showed alternate plans that would have a greater impact on the environment. Dan Lowe asked if lots 34 and 35 are on high ground. Mr. Barnwell said yes.

Call to the Public

The residents familiarized themselves with the proposed site plan and the alternate plan. **Bill Ormerod, 3435 Sesame Drive:** Mr. Ormerod said it appears that the alternative plan makes sense.

Larry Diedrick, 3371 Sesame Drive: Mr. Diedrick asked if there was a timetable in place. Mr. Barnwell said no. The project would be done in phases, and the earliest it would be started would be next spring.

Close Call to the Public

John Lowe summarized a review letter from the township attorney, and a Variance Analysis from the planner, which recommends denial. John Lowe asked Jim Barnwell his opinion on the suggestion to eliminate two lots. Mr. Barnwell said it is an option. However, he disagrees with Mr. Enos' statement that there are many parcels that contain many similar features as the subject site. Linda Manson-Dempsey said that Mr. Brown created it. Mr. Barnwell said it is a unique parcel. Many parcels have some of the same features, but not all of them. John Lowe asked about reconfiguring the lots from five on the cul-de-sac to four. This would eliminate one of the variance requests. Linda Manson-Dempsey motioned to table ZBA Case #2-05 for additional information. Jim Barnwell will discuss options with Fred Brown such as redesigning the lots around the cul-de-sac. Larry Fillinger seconded. **Motion carried 5-0.**

Mr. Diedrick suggested that lots 36 and 37 be combined.

ZBA Case #3-05—Fraternal Order of Eagles

Art Munsell and Jerry May were present on behalf of the Eagles. Mr. Munsell said this request is the same as the previous variance that was granted, but had expired. Mr.

Fillinger said the last variance was issued in November 2003. Ms. Manson-Dempsey asked if it would have lights. Mr. Munsell said yes—no moving lights. Ms. Manson-Dempsey asked who they would be sharing the sign with. Mr. Munsell said he's not sure. There are no intentions to, but they possibly would. Mr. Fillinger asked about the changes in the drawing for this new request. Mr. Munsell said it's just the artist's conception. Possibly, the bottom portion would be used for ongoing membership drives, etc. Dan Lowe said he wants the remnants of the old signs removed immediately. Mr. Munsell said he would remove it once weather permits, then restated he would remove it within one week. John Lowe said the other problem is not getting it done. Ms. Manson-Dempsey suggested the Eagles post a bond. Mr. Fillinger asked the approximate cost of the sign. Mr. May said about \$50,000. John Lowe asked Mr. Munsell if the Eagles will discuss the sign with the Crossroads Church. Mr. Munsell explained that the Eagles can have four public functions per year, per the Liquor Control Commission, and they have to obtain permission from the church for each function. Therefore, it behooves them to be good neighbors to the church. Larry Fillinger motioned that the ZBA will consider approval of the variance request in March once the site has been cleaned up. Linda Manson-Dempsey seconded.

Motion carried 5-0.

CALL TO THE PUBLIC

Sue Lingle, 3808 Brent Drive: Ms. Lingle said she supports the proposed sign for the Eagles, but does agree that the site needs to be cleaned up. She also suggested some landscaping around the sign. Ms. Lingle also suggested to Mr. Munsell that some kind of contract could be worked out with the church.

ADJOURNMENT

Linda Manson-Dempsey motioned to adjourn the meeting at 9:15 p.m. Larry Fillinger seconded. **Motion carried 5-0.**

ZONING BOARD OF APPEALS - MARCH 7, 2005

MEMBERS PRESENT: John Lowe, Larry Fillinger, Dan Lowe, Linda Manson-Dempsey, and Dan Rossbach

MEMBERS ABSENT: None

OTHERS PRESENT: Annette McNamara, Zoning Administrator

CALL TO ORDER

John Lowe called the meeting to order at 7:30 p.m.

APPROVAL OF AGENDA

Larry Fillinger motioned to approve the agenda as presented. Linda Manson-Dempsey seconded. **Motion carried 5-0.**

MEMBERS PRESENT

The members of the Zoning Board of Appeals introduced themselves.

APPROVAL OF MINUTES

Zoning Board of Appeals, February 7, 2005

Larry Fillinger motioned to approve the minutes as presented. Linda Manson-Dempsey seconded. **Motion carried 5-0.**

OLD BUSINESS

ZBA Case #1-05—Dennis Gottschalk (Spruce Run)

Call to the Public

George Kilpatrick, Mitch Harris Building Co.: Mr. Kilpatrick read the following letter signed by Mitch Harris, President of Turtle Creek Homeowner's Association: "As president of the homeowner's association for the Turtle Creek development, I would like to offer the association's position with regards to the proposed connection to our neighborhood. We are against any throughway connections to our development as it will increase the volume of traffic and create additional safety issues for our residents. The original proposal did not have the connection through Turtle Creek and it is our understanding that the Township had suggested creating this connection. We do understand the desires of the Township and are confident that you will explore all possible options during your deliberation. Thank you for your consideration in this matter."

(Close Call to the Public)

Debra Wiedman-Clawson was present from Desine Inc. on behalf of the applicant. Ms. Wiedman-Clawson is asking for a review of Private Roads Serving Single-family, Multiple-family and Commercial Developments, specifically paragraph 8 on the maximum number of principal residences. Based on the information they were given, the development is designed with a boulevard in the first intersection. It's their understanding that the township would like to see a connection into Turtle Creek. Ms. Wiedman-Clawson said that a boulevard was approved for Maple Farms; however, that is a Planned Unit Development (PUD.) She pointed out on the aerial drawing numerous trees that would be lost if a connection is made to Turtle Creek. The developer would prefer to leave the trees. In addition, because the township doesn't have a woodlands ordinance, the developer could go through and mine all of those trees and then build the homes. The township attorney's letter of January 25 indicated he saw no problem with the boulevard. A review by Orchard, Hiltz & McCliment's (OHM) traffic engineer indicated that the thoroughfare and interconnection of roads would be better. Ms. Wiedman-Clawson said that Spruce Run has private roads. If the two developments are connected, there will be 88 homes and that would also be in violation of the ordinance. If the entrance is redesigned, the safety onto Mason Road becomes a concern. Desine Inc.'s suggestion is to write easements for lot 13 as a walking trail. This would increase pedestrian traffic only. Children would be able to get between neighborhoods, which seems to be a concern of many parents. As far as public services are concerned, there is a public road, then a private road, and then a public road. The Livingston County Sheriff Department (LCSD) has already stated on numerous occasions that they will not patrol a private road and enforce the speed limit. Secondly, school busses will not drive on private roads, so children will be picked up at the entrance. Finally, the association maintains the private road—they are responsible for the maintenance of the road. The township does not have a standard road maintenance agreement. Developments have been approved on an individual basis. In the last development that was approved, which is Wolf Ridge, they specifically stated that the township could do a special assessment, which means the township would take over the private road if the association fails to maintain it. She understands the township doesn't want to be put in that position. There would be excess traffic coming from Turtle Creek through Spruce Run to Mason Road. The corner of Burkhart and Mason is going to become quite congested in the future. People will cut through the development to get to Mason Road and the expressway. Therefore, Desine, Inc. is requesting that the variance be granted for the boulevard. The Howell Area Fire Authority (HAFA) stated the International Fire Code (IFC);

however, the township hasn't adopted that yet. They are only a recommending body, not an approval body. Linda Manson-Dempsey asked how far it is from Mason Road to the back of the last house. Ms. Wiedman-Clawson said less than 1 mile. She also said that recently the township Planning Commission was given a drawing for Marion Pines, and they discussed an easement going through one of the lots to Turtle Creek for a walking path. Desine's proposal is that by having these walking paths added, there would be four neighborhoods connected. The survey done by the township shows that 36% of the residents want hiking trails, but nobody wants to pay for them. This is a way for the developers to contribute to the township, have the interconnecting trails for the walkways, and the township won't have to pay for them. Dan Lowe asked how a boulevard could be considered two entrances. Ms. Wiedman-Clawson said the same as the township has approved on other developments, and its two accesses. You could get an emergency vehicle down either one of those lanes. Ms. Wiedman-Clawson said it meets the intent of the ordinance. Larry Fillinger asked whether any plans were made to connect with Maple Farms. Ms. Wiedman-Clawson said it's been discussed. The problem is that the association is not completely formed in Maple Farms. John Lowe said in regards to Maple Farms that was a PUD that was negotiated with the Planning Commission. John Lowe read review letters (copies attached) from Les Rodwell, Fire Marshal, and from OHM's manager of traffic engineering. Dan Rossbach asked for clarification that Maple Farms has private roads. John Lowe said yes, and Turtle Creek has public roads.

Call to the Public

George Kilpatrick, Mitch Harris Building Co.: Mr. Kilpatrick asked to address a couple of points that he heard brought up tonight. He asked if there have been any significant traffic studies for this area with regard to the high school traffic. A lot of the students from the south end of the district, contrary to what the letter states, will use this as a cut-through. John Lowe asked why the students would go through the development. Most of them would use Mason Road. Mr. Kilpatrick asked if any information has been presented regarding emergency knockdown gates. John Lowe responded that the developer hasn't proposed by the developer to do an emergency connection. Ms. Wiedman-Clawson said it's something they could possibly look at as a solution between Maple Farms and Spruce Run, but she wouldn't necessarily agree with Turtle Creek.

Kelly Sitarek, 3045 Ridley Way: Ms. Sitarek said her Turtle Creek Homeowners association documents indicated that all of the co-owners of the units are responsible to pay for the cost of upkeep, maintenance and repair of the roads. If there is more traffic coming through, which they will, they have to pay for it. They bought their property because of the private roads with only one way in or out. The traffic on Norton Road is horrendous now. More people will cut through the development to get to Mason Road. The children have to walk to the bus stop, and she doesn't want anyone getting hit. Larry Fillinger asked her opinion on a bike path. She felt that was fine. John Lowe wanted to clarify whether the roads in Turtle Creek are public or private. Ms. Sitarek said her documents indicate they are private. John Lowe said it's his understanding that the roads are public. After much discussion, Linda Manson-Dempsey asked Mr. Kilpatrick from Mitch Harris whether the roads are public or private. Mr. Kilpatrick said the roads were developed as public roads and have been turned over to the county.

Jean Porter, 235 Slider: Ms. Porter said there is a safety issue because Turtle Creek has no sidewalks. The kids have to play in the street. If they are interconnected with not only one, but two other developments, that would create a lot of traffic on streets where kids are playing. Secondly, Ms. Porter said she has a problem with the discussion on the emergency vehicle access. In Turtle Creek, they have two entrances with a little island in the middle. Why can't this other development have the same thing? John Lowe said that it doesn't meet the spirit or intent of the ordinance. Potentially, if there were an accident right at the intersection, it could block the entire boulevard. Ms. Porter asked why it was approved for Turtle Creek. John Lowe said it was designed for future connections. Ms. Porter said it's hard for them to swallow. They buy in a development that's going to be quiet, with one entrance and 57 homes and that's it, and roads they thought would be private.

Dan Gerhardt, 3152 Painted Drive: Mr. Gerhardt said the parcel proposed for the connection is an irreplaceable asset. Putting a roadway through there is a detriment to Marion Township and the entire county. He also opposes a roadway through there because of safety issues. Turtle Creek has no sidewalks, no playgrounds, and they knew that when they bought there. But there was also a closed-loop system of roadways. Mr. Gerhardt said some kind of walkway or bike path is a tremendous idea. The residents of Turtle Creek care about this area, and he hopes the township will not put a roadway onto Painted Drive.

Mohammed Najafi, 3036 Ridley Way: Dr. Najafi said he has a Ph.D. in civil engineering and is a PE. He disagrees with the letter from OHM's traffic engineer and suggests that another engineer review the plan.

Steven Gordon, 3027 Painted Drive: Mr. Gordon says it seems like, if you look at the one proposal, there was a stub road provided in one these communities to go into another community. Mr. Gordon asked if that was proposed when Turtle Creek was built—is there is stub road in Turtle Creek? John Lowe said actually there are three. Mr. Gordon said the common sense approach would be if you go onto Painted Drive, there is a tree issue, the woods and everything's that natural. Putting a road in there would be quite costly. Emergency breakaway gates would be an option because of the fact that it wouldn't be a thoroughfare. The other option would be to go into a road that's already proposed.

Debra Findlay, 297 Tortoise: Ms. Findlay said she is concerned about the amount of traffic and noise. She said they chose this property for exactly what is there, and they haven't even moved in yet and there's already talk about tearing it apart, excavating, etc.

Jim Smith, 2952 Painted Drive: Mr. Smith said he has three children and he is concerned about safety. Mr. Smith said he moved from a development at Latson Road and Eager Road, which is interconnected with other developments, and he hit a child with his car. Is the main concern Turtle Creek or the new development? If there were a separate entrance from the boulevard for Spruce Run, would we have to have this meeting? Could the developer eliminate lot 28 and use it as an entrance? Ms. Wiedman-Clawson said the site distance wouldn't allow that. John Lowe said the Zoning Board of Appeals purpose tonight is more philosophical; in other words, should the developments be connected or not, what are the benefits and detractions, etc. The township has to look at the community as a whole. Mr. Smith asked which fire station these development will be served by. John Lowe told Mr. Smith where the fire stations are.

Darryl Paldan, 3077 Ridley Way: Mr. Paldan thanked George Kilpatrick and Mitch Harris for addressing the residents' concerns. Mr. Paldan said he's lived in many different communities. He said the residents of Turtle Creek moved here because of the surroundings. Mr. Paldan asked the ZBA to let residents know in the future when it's working with developers.

Gary Findlay, 297 Tortoise: Mr. Findlay said it seems that the main concern is safety and emergency access. Couldn't those issues be served by the crash-gate situation? Then children in all three communities would not be affected by cross-cut traffic. The streets would be much safer and emergency vehicles would still have access.

Ron McNeal, 2968 Painted Drive: Mr. McNeal has two small children. At this point, the children have to walk to the bus stops and there are no sidewalks. The development already has a steady parade of people shining for deer, squealing tires, etc. Mr. McNeal feels the interconnection will increase the nuisance.

Arthur Munsell, 645 N. Truhn: Mr. Munsell said he's lived here all of his life. He drove a delivery truck in the area for 30 years. You have to get from place to place. He defends the township 100%. This is a growing community. If people didn't want to be part of a growing community, why did they come here? Mr. Munsell said he's raised two girls; neither one of them played in the roads.

David Guarino, 3100 Ridley Way: Mr. Guarino said his was the first house built in Turtle Creek. He asked why the roads were private to begin with and now they're public. He has two small children and there are no sidewalks. He moved out here for privacy and a tight-knit community. Mr. Guarino said he had four cul-de-sacs he could look at when he moved out here and loved the idea of the wooded cul-de-sacs with one way in and one way out. He asked if a boulevard was approved for Mitch Harris, why couldn't it be approved for Spruce Run. Mr. Guarino also said he doesn't want the value of his home decreasing. John Lowe clarified that the boulevard entrance was approved and most of the development were approved, for the last several years, with the idea of future connections. That's what the cul-de-sacs are for. Mr. Guarino voiced concern about the Turtle Creek Homeowner's association documents stating they are private roads, and now he hears that the roads are public and the stub roads will connect all of the development. If they are indeed public roads, he said he has an issue with Mitch Harris. Mr. Guarino said he is trying to protect his own little world.

Rachel Gordon, 3027 Painted Drive: Ms. Gordon said part of the big picture of Howell is all of the nature. That's part of what attracts people to Howell, and the community is growing because of those areas. To eliminate those areas detracts from our community. She supports the idea of the bike trail that could be accessed by emergency vehicles. She is also concerned about the safety issues.

Dan Gerhardt, 3152 Painted Drive: Mr. Gerhardt asked if anyone is aware of where the students will be coming from to the new high school. Will there be open enrollment? Larry Fillingier said they're working on that right now. With all of the new developments that are being discussed at Mason and Burkhart, if there is a throughway from Spruce Run to Turtle Creek, the kids won't wait at Mason and Norton, they won't go out by the expressway, and they'll come through the development to get to the high school. It's the Zoning Board of Appeals job to look at the future.

Jean Porter, 235 Slider: Ms. Porter said if there was a survey amongst all three developments probably all of them would say they didn't want the developments to

interconnect. That's 145 taxpayers, and they want what they paid for, and what they paid for is a nice, quiet development. Ms. Porter also asked if there is any minimum price range in these two other developments. John Lowe said they are probably similar; the land values and lot sizes are essentially the same.

Debra Findlay, 297 Tortoise: Ms. Findlay said it was brought up earlier that the township doesn't have a woodland ordinance. A developer could come in and clear the property, and that would affect the value of Turtle Creek. John Lowe said the township is working on a woodland ordinance. It's a very difficult issue to deal with. There's been logging done on this particular site.

Jim Smith, 2952 Painted Drive: Mr. Smith asked John Lowe to clarify, using the drawing, exactly how the developments would be connected. John Lowe said that hasn't been proposed yet. He believes it would come at the mid-point. Ms. Wiedman-Clawson said there is research being done now. It wouldn't look anything like this drawing. Mr. Smith asked if Painted Drive would be a straight road. John Lowe said it would be a T-intersection.

Julie Newman, 385 Tortoise: Ms. Newman asked what happens with the public road and private road as far as maintenance. John Lowe said it would be a private road and that would have to be clarified with the attorney.

Kelly Sitarek, 3045 Ridley Way: Ms. Sitarek said she's confused on what the issue is. If the residents of Turtle Creek and the developer of Spruce Run don't want the connection, what is the issue? John Lowe said the township will get information from the fire department on breakaway gates as an option, and if that meets the IFC. Ms. Wiedman-Clawson said the township just approved a development that doesn't meet the IFC, namely the Knolls of Grass Lake. Bob Hanvey said the Knolls of Grass Lake was approved before the township approved the IFC. Ms. Wiedman-Clawson asked when the township approved the IFC. Mr. Hanvey said three or four months ago.

Frank Lopez, 341 Tortoise: Mr. Lopez said he supports his neighbors, and these developments were set up as private roads. Mr. Hanvey said in general, when the condominium is first created, the developer owns the roads. They are private roads until the time the second coat of asphalt goes on, and then they become public.

Darryl Paldan, 3077 Ridley Way: Mr. Paldan asked if the decision is made to interconnect and the site plan changes, when would the decision be rendered? John Lowe said Desine, Inc. would have to provide another plan and they would determine the timeframe. He suggested the residents check the website or call the township.

Mohammed Najafi, 3036 Ridley Way: Dr. Najafi again suggested that another traffic engineer review the site plan.

Kurt Sitarek, 3045 Ridley Way: Mr. Sitarek asked how many homes would be in Spruce Run. John Lowe said 36. Mr. Sitarek asked where the gravel trucks will go, all of the lumber trucks, the streets will be a mess. Why does the township need to hook three developments together for fire trucks? John Lowe said it goes back to response time. He said the township is going to have the HAFA review this again with a breakaway gate. The township is very clear on the residents' concerns that there are no sidewalks, the interconnection and through traffic.

David Guarino, 3100 Ridley Way: Mr. Guarino pointed out that there are no streetlights in Turtle Creek.

Dan Gerhardt, 3152 Painted Drive: Mr. Gerhardt asked if there's any way to go back to the HAFA and ask some questions about the number of occurrences within the

past five or ten years where a fire truck was unable to get into an area because an intersection was closed. This is a quality of life issue, a safety issue for pedestrians.

(Close Call to the Public)

Larry Fillinger motioned to table ZBA Case #1-05 until the April 4, 2005 meeting.

Linda Manson-Dempsey seconded. **Motion carried 5-0.**

Dan Lowe said everyone moved out here because they wanted a quiet, peaceful neighborhood. John Lowe said he grew up just down the street from Turtle Creek. His mom used to walk up and down Norton Road. Now all of the new residents are driving up and down past her and she can't walk on the street, so he knows exactly what they're talking about. Now you're saying that "we're here now, we don't want anybody coming by our section." Maybe we didn't want all of the new residents coming by her section.

ZBA Case #2-05—Fred Brown

Larry Fillinger motioned to table ZBA Case #2-05 until the April 2005 meeting. Linda Manson-Dempsey seconded. Motion carried 5-0.

ZBA Case #3-05—Fraternal Order of Fraternal Order of Eagles

Art Munsell was present on behalf of the Fraternal Order of Eagles. The ZBA requested at its last meeting that the signage at the Fraternal Order of Eagles is cleaned up, and this has been done. John Lowe asked if the Fraternal Order of Eagles had discussed using the sign with the Crossroad Apostolic Church. Mr. Munsell still they are still working with them. Linda Manson-Dempsey said the ZBA needs to know what the sign will actually look like. Mr. Munsell said pretty much the same as the previous drawing. John Lowe said if the church won't be sharing the sign, is it necessary to have the three sections. Mr. Munsell said yes, they have a lot to advertise. Larry Fillinger said while he does believe the Fraternal Order of Eagles should have a sign; however, the ZBA needs to see an accurate drawing. Also, who will be building the sign? Mr. Munsell said they probably would be working with Brownie Sign Co. They do the signs for First National Bank. Mr. Fillinger asked if they've been given a price. Mr. Munsell said if they go with the digital sign, it will be \$50,000. If they go without digital, it will be about \$20,000. Mr. Munsell said the Fraternal Order of Eagles will be holding a meeting on Tuesday, March 8, and they will firm up how much money can be spent. Mr. Munsell said he would prefer the digital sign. Mr. Fillinger asked if Mr. Munsell could get an answer on which sign by next week. Mr. Munsell said probably not, because they also have to get approval from the national organization. He felt he could probably have more information by the ZBA's April 4 2005 meeting. Larry Fillinger motioned to table ZBA Case #3-05 until the April 4, 2005 meeting to allow the Fraternal Order of Eagles to bring in an accurate drawing of the proposed sign. Discussion: John Lowe said this is still a 20' high sign. If the church isn't also using the sign, he would have a concern about whether the Fraternal Order of Eagles needs all three sections. Mr. Munsell said they would like three sections because that's what they were previously approved for. Dan Rossbach seconded. **Motion carried 5-0**

CALL TO THE PUBLIC

None.

ADJOURNMENT

Linda Manson-Dempsey motioned to adjourn the meeting at 9:30 p.m. Dan Rossbach seconded. **Motion carried 5-0.**

ZONING BOARD OF APPEALS - APRIL 7, 2005

MEMBERS PRESENT: John Lowe, Larry Fillinger, Dan Lowe, Linda Manson-Dempsey, and Dan Rossbach

MEMBERS ABSENT: None

OTHERS PRESENT: Annette McNamara, Zoning Administrator

CALL TO ORDER

John Lowe called the meeting to order at 7:32 p.m.

APPROVAL OF AGENDA

Larry Fillinger motioned to approve the agenda as presented. Linda Manson-Dempsey seconded. **Motion carried 5-0.**

MEMBERS PRESENT

The members of the Zoning Board of Appeals introduced themselves.

CALL TO THE PUBLIC

None.

APPROVAL OF MINUTES

Zoning Board of Appeals, March 7, 2005

Larry Fillinger motioned to approve the minutes as presented. Linda Manson-Dempsey seconded. **Motion carried 5-0.**

OLD BUSINESS

ZBA Case #1-05—Dennis Gottschalk (Spruce Run)

Jim Barnwell from Desine, Inc. was present on behalf of the applicant. The applicant is proposing a site on Mason Road, with Turtle Creek to the southeast, and Maple Farms to the west. They are requesting a variance from the ordinance in regard to the number of units. The ordinance calls for no more than 25 units with a single access, and 75 units with more than one access. If the proposed development were to connect with Maple Farms, a variance would still be required because there would be 88 units. The fire department has mandated a second access. A review was submitted to the Livingston County Road Commission for connection through Turtle Creek and it was rejected. Mr. Barnwell is proposing an emergency access to Maple Farms and a variance for 88 units with dual access. John Lowe read the review letter from the Howell Area Fire Department. The HAFD found the site plan unsatisfactory; however, they would approve it with a connection between Turtle Creek and/or Maple Farms. Mr. Lowe received input from various emergency services agencies in Livingston County. The consensus is a full connection to Maple Farms and a walking path connection to Turtle Creek. Mr. Barnwell expressed concern with the legalities of connecting the road to Maple Farms. Mr. Lowe said that was always the intent with Maple Farms and it was made very clear to the developer.

Call to the Public

Dan Gerhardt, 3152 Painted Drive: Mr. Gerhardt asked if the stub road going through to Maple Farms is what's being proposed. John Lowe said yes. There would be a walking path to Turtle Creek.

Bob Monroe, 3107 Ridley Way: Mr. Monroe said if this type of thing is going to happen all the time in subdivisions, the builders should make buyers aware of it. John Lowe said he's not sure what the builder discloses, but when there's a cul-de-sac running to the edge of the property line and there's vacant property adjacent, it's pretty much a foregone conclusion what will take place.

(Close Call to the Public)

Dan Rossbach asked for a description of the walking path. John Lowe said normally about five feet wide. Jim Barnwell said that would be done through the site plan approval process. Mr. Rossbach asked if it would be wide enough for an emergency vehicle. Mr. Lowe said no. He also said that the fire department indicated that there wouldn't be any significant difference in response time.

Reopen Call to the Public

Rachel Gordon, 3027 Painted Drive: Mrs. Gordon asked what the walkway will be made of and who would maintain it. John Lowe said probably concrete and the homeowner's association would maintain it.

Darrell Powden, 3077 Ridley Way: Mr. Powden asked if there are any plans for the other property just north of Turtle Creek that the Planning Commission is aware of. John Lowe said there was a plan that was withdrawn for property to the immediate north (Marion Pines). They are redrawing the site plan. The property to the east is Mr. Lowe's property. He has no intention on doing anything for several years at this point.

Jean Porter, 235 Slider: Mrs. Porter asked if the Turtle Creek homeowners decided that they wanted streetlights, who would pay for it? Mr. Lowe said he isn't sure, but he could check with the township attorney. Bob Hanvey said it could be a special assessment. Mr. Lowe said the PC tried to stay away from streetlights within the subdivision and stayed with the entrance lights.

Steven Gordon, 3027 Painted Drive: Mr. Gordon said this has been a very enlightening experience. He also thanked the PC for its consideration during this process.

(Closed Call to the Public)

Linda Manson-Dempsey motioned to grant a variance for ZBA Case # 01-05 Spruce Run LLC. Section 6.20 H relaxed to allow 36 units, as addressed per Section 5.05 C:

1. *How the strict enforcement of the provisions of the township's 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 property has limited locations for placement of roads. The Livingston County Road Commission and the Howell Area Fire Authority has denied the original application and have indicated they will approve a connection to Maple Farms, which will provide two accesses to Mason Road more than 660 feet apart.
2. *The conditions and circumstances unique to the property, which are not similarly applicable to other properties in the same zoning district.* The unique characteristics on the site include the grade on Mason Road, which has significant drops in elevation to the east and west, and have a negative impact on placement of additional road approaches.
3. *The conditions and circumstances unique to the property were not self-created.* The property and the road were established many years ago.
4. *Why the requested variance would not confer special privileges that are denied other properties similarly situated in the same zoning district.* There aren't many parcels left that exhibit the physical features of this parcel. The applicant has provided access consistent with the ordinance by providing two access points to the public road by connecting to Maple Farms.
5. *Why the requested variance would not be contrary to the spirit and intent of this zoning ordinance.* The purpose of the ordinance is to promote public

health, safety, comfort, convenience and general welfare. By putting in a second access point, emergency vehicles can get in and out. A walkway path will also be put in to Turtle Creek to allow access between developments. The variance affects the 36 lots in Spruce Run, and will put a total of 88 parcels between Spruce Run and Maple Farms. Granting this variance also reduces the non-conformity in Maple Farms. Access between Maple Farms and Spruce Run will be a maintained road up to the property line.

Larry Fillinger seconded. Roll call vote: Dan Rossbach, Larry Fillinger, Linda Manson-Dempsey, John Lowe, Dan Lowe—all yes. **Motion carried 5-0.**

ZBA Case #2-05—Fred Brown

At the request of the applicant, Linda Manson-Dempsey motioned to table ZBA Case #2-05 until the May 2005 meeting. Larry Fillinger seconded. **Motion carried 5-0.**

ZBA Case #3-05—Fraternal Order of Eagles

Art Munsell was present on behalf of the Eagles. The Eagles want to proceed with the sign depicted in the drawing previously submitted, but with cultured stone on the bottom rather than brick. The church is interested in using the bottom portion of the sign. The sign will be prepped for digital to be added later. Mr. Munsell is asking for approval of the 11' x 15' (20' from ground level) sign as submitted. The Eagles will landscape around the sign. Linda Manson-Dempsey asked once the sign is started, how long will it take to finish? Mr. Munsell said they would comply with the ordinance. Larry Fillinger confirmed with Mr. Munsell that the FOE has the money to pay for the sign. Annette McNamara said the land use permit requires that construction start within six months. Dan Rossbach motioned for ZBA Case #3-05 to grant a variance to allow a sign to be constructed according to details on the Garlock-Smith survey dated 8/8/03. Crossroads Apostolic Church may have access to the bottom portion of the sign at its expense. There will be no moving text. Construction must be started within six months and completed within 90 days of the start date. The Eagles representative, Art Munsell, will initial the artwork depicting the sign. Linda Manson-Dempsey seconded. Roll call vote: Dan Rossbach, Larry Fillinger, Linda Manson-Dempsey, John Lowe, Dan Lowe—all yes. **Motion carried 5-0.**

Mr. Munsell asked if the Eagles could put up the temporary sign for the carnival. Annette McNamara said that would be considered a temporary use and can be handled through the zoning office. Mr. Munsell asked about permission to use searchlights. Ms. McNamara will discuss with the township attorney.

CALL TO THE PUBLIC

None.

ADJOURNMENT

Linda Manson-Dempsey motioned to adjourn the meeting at 8:29 p.m. Larry Fillinger seconded. **Motion carried 5-0.**

ZONING BOARD OF APPEALS - MAY 2, 2005

MEMBERS PRESENT: John Lowe, Larry Fillinger, Dan Lowe, Linda Manson-Dempsey, and Dan Rossbach

MEMBERS ABSENT: None

OTHERS PRESENT: Annette McNamara, Zoning Administrator

CALL TO ORDER

John Lowe called the meeting to order at 7:35 p.m.

APPROVAL OF AGENDA

Larry Fillinger motioned to approve the agenda as presented. Linda Manson-Dempsey seconded. **Motion carried 5-0.**

MEMBERS PRESENT

The members of the Zoning Board of Appeals introduced themselves.

CALL TO THE PUBLIC

None.

APPROVAL OF MINUTES

Zoning Board of Appeals, April 4, 2005

Linda Manson-Dempsey motioned to approve the minutes as amended. Larry Fillinger seconded. **Motion carried 5-0.**

OLD BUSINESS

ZBA Case #2-05—Fred Brown

Jim Barnwell from Desine, Inc. was present on behalf of the applicant. The applicant is requesting a variance to the frontage and number of parcels accessed on a cul-de-sac. The intent is to preserve woodlands, wetlands, and flood plains. It would put an unnecessary burden on the applicant if the variance weren't granted. Fred Brown said it took three years to obtain a permit from the DEQ. To put in a cul-de-sac per county requirements is going to take approximately one acre of wetlands. This variance request is a viable alternative. The ZBA members reviewed diagrams provided by Mr. Barnwell and discussed a number of alternatives.

Motion

Linda Manson-Dempsey motioned, for ZBA Case #2-05 for Fred Brown (Sundance Lake), per site plan CP-10 dated 1/12/05, to approve variances to Section 8.01 F 2 b, and Section 6.18 B. Ms. Manson-Dempsey addressed Section 5.05 C, items 1-6:

1. *How the strict enforcement of the provisions of the township's 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 strict enforcement would have a great impact on the natural features of the property, cutting of large mature trees, and would disrupt the wetlands.

The conditions and circumstances unique to the property, which are not similarly applicable to other properties in the same zoning district.

The river and wetlands isolate a portion of the property in the southwest corner.

2. *The conditions and circumstances unique to the property were not self-created.*
The applicant did not create the existing features (i.e., wetlands, matures trees, river.)
3. *Why the requested variance would not confer special privileges that are denied other properties similarly situated in the same zoning district.*
The variance will allow reasonable development of the property which has extremely unique characteristics. There are no similar properties in the area that the Red Cedar River cuts through.
4. *Why the requested variance would not be contrary to the spirit and intent of this zoning ordinance.*

The intent of the ordinance provides for the reasonable development and use of lands within the township, and this request is within reason.

5. *The difficulties shall not be deemed solely economic.*

The developer is trying to minimize the impact on the wetlands, woodlands and river. In addition, lots 32 and 38 must have the driveways located to the northeast portion of the property as initialed by the developer on the site plan. Lots 33-37 are the lots with reduced frontage that will have frontage on the cul-de-sac. Lots 34-36 will have a specific deed restrictions requiring township approval for tree removal. Dan Lowe seconded. Roll call vote: Dan Rossbach, Larry Fillinger, Linda Manson-Dempsey, John Lowe, Dan Lowe—all yes. **Motion carried 5-0.**

CALL TO THE PUBLIC

Annette McNamara asked the ZBA members to review ZBA Case #20-00—McCracken at the next meeting under new business. Ms. McNamara will provide documentation for the members to review.

ADJOURNMENT

Linda Manson-Dempsey motioned to adjourn the meeting at 9:15 p.m. Dan Rossbach seconded. **Motion carried 5-0.**

ZONING BOARD OF APPEALS - JULY 11, 2005

MEMBERS PRESENT: John Lowe, Larry Fillinger, Dan Lowe, Linda Manson-Dempsey, and Dan Rossbach
MEMBERS ABSENT: None
OTHERS PRESENT: Mike Kehoe, Township Attorney
Annette McNamara, Zoning Administrator

CALL TO ORDER

John Lowe called the meeting to order at 7:35 p.m.

APPROVAL OF AGENDA

Larry Fillinger motioned to approve the agenda as presented. Dan Rossbach seconded. **Motion carried 5-0.**

MEMBERS PRESENT

The members of the Zoning Board of Appeals introduced themselves.

CALL TO THE PUBLIC

None.

APPROVAL OF MINUTES

Zoning Board of Appeals, May 2, 2005

Larry Fillinger motioned to approve the minutes as presented. Linda Manson-Dempsey seconded. **Motion carried 5-0.**

OLD BUSINESS

None.

NEW BUSINESS

ZBA Case #04-05—Michael & Donna Chapman

Thomas Halm, attorney for the Chapmans, summarized the variance request. Mr. Halm provided photos for the ZBA members to review. The porch is five feet, seven inches beyond the building envelope. The Chapman’s purchased the existing home in 2004; this is a matter the Chapmans’ inherited and was discovered as a result of a mortgage survey. The building was approved and issued a final compliance by the township seven years ago.

Call to the Public

John Lowe opened the call to the public.

Kevin Hutchings, 5799 Carter Court: Mr. Hutchings is vice president of the homeowner's association. He indicated the association supports the variance request by the Chapmans. Call to the public closed.

Motion

Dan Rossbach motioned to grant a variance for ZBA Case #04-05, allowing five feet, seven inch front yard setback reduction from the required 70 feet, relaxing *Section 8.01 F 3 a* of the zoning ordinance, and addressed the following items:

1. *How the strict enforcement of the provisions of the township's 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.*
2. *The conditions and circumstances unique to the property, which are not similarly applicable to other properties in the same zoning district.*
3. *The conditions and circumstances unique to the property were not self-created.*
4. *Why the requested variance would not confer special privileges that are denied other properties similarly situated in the same zoning district.*
5. *Why the requested variance would not be contrary to the spirit and intent of this zoning ordinance.*
6. *The difficulties shall not be deemed solely economic.*

John Lowe said not granting the variance would be a detriment to the neighborhood, and the township had approved the permit for the porch in May 1997. Larry Fillinger seconded. Roll call vote: Dan Rossbach, Larry Fillinger, Linda Manson-Dempsey, John Lowe, Dan Lowe—all yes. **Motion carried 5-0.**

ZBA Case #05-05—James P. & Suzanne L. Radick

Suzanne Radick stated she has a recreational hobby kennel with sled dogs at the corner of Dutcher Road and Coon Lake Road, and she is requesting a variance on the number of dogs allowed. Mrs. Radick said her family has 15 dogs instead of 10. Many of the dogs are older and retired from racing. John Lowe asked the ZBA members if they had any questions. Dan Rossbach asked how many dogs Mrs. Radick trains. She said 8-10 dogs. Mrs. Radick said 8 of the dogs are between 9-13. She uses the older dogs to help train the younger dogs. Larry Fillinger asked what the average life expectancy is. Mrs. Radick said 14-15 years. Linda Manson-Dempsey asked Mrs. Radick if she owns all of the dogs. Mrs. Radick said yes. John Lowe asked how many dogs Mrs. Radick owns. She said a total of 16: 15 sled dogs and a German Shepard. Mr. Fillinger asked when the Radicks went over the 10-dog limit. Mrs. Radick said the previous fall. Mr. Fillinger asked what prompted the variance request. Mrs. Radick said a noise complaint. Mrs. Radick told the ZBA that she plans to have 12 of the dogs debarked to resolve the noise issue. Mr. Rossbach asked how that would affect the dogs. Mrs. Radick said it's not an uncommon practice.

Call to the Public

John Lowe opened the call to the public. Mr. Lowe wanted to clarify that the ZBA members are aware that the Radicks take excellent care of their dogs and that's not a point of issue. Mr. Lowe said the ZBA received 27 letters in support of the Radicks, which will be part of the public record.

Allison Bauer, 5757 Lange Road: Mrs. Bauer read a letter she wrote to the ZBA (copy attached).

Bert Schonberger, 6090 Munsell: Ms. Schonberger said she has shown purebred dogs for 30 years. Many dogs are debarked and it's quite a common practice.

Mike Collier, Ohio: Mr. Collier said he owns a debarked dog and it's not a problem. He said the Radicks are trying hard. They have one of the smallest kennels that races. They have borrowed dogs from Mr. Collier so they don't have to get more dogs.

Mark Reizen, 3210 Dutcher Road: Mr. Reizen said he's one of the neighbors, he doesn't live in Ohio. He said the dogs were barking on July 9 and July 10. It wasn't for 53 seconds; it was over 22 minutes each time. Mr. Reizen said he's appalled the Radicks would even consider debarking the dogs. It's cruel, it's unusual, it's illegal in Michigan and in the surrounding states. Mr. Reizen said a variance cannot be granted when a party had prior knowledge of the ordinance and they self-created the hardship. There is no benefit to the community. It's already been determined that there is a nuisance. The ZBA has no authority to grant the variance, they can't meet any of the criteria, and he urges the ZBA to not grant the variance.

Frank Soerries, 5945 W. Coon Lake Road: Mr. Soerries said he's never heard the dogs howl for 22 minutes. He has heard them howl a couple of times. The Radicks are very responsible with their dogs. Mr. Soerries said he's lived there 3 years and he can count on one hand the number of times he's heard the dogs howling.

Todd Dickinson, 5956 W. Coon Lake Road: Mr. Dickenson said he's one of the Radicks closest neighbors. There's more noise from cars and gravel haulers and loud radios. He rarely hears the animals howl or bark.

Lee Fritz, 2882 Fisk: Mr. Fritz said he lives next to a former hobby kennel. He doesn't believe the ZBA should grant a variance to allow more dogs.

Joe Goers, 5920 W. Coon Lake Road: Mr. Goers said he still hears the dogs barking, although it's not as bad as it was.

David Lynch, 3300 Dutcher Road: Mr. Lynch read a statement to the ZBA. He feels the Radicks have shown a total lack of cooperation. The Board of Trustees has found that there is a nuisance, which hasn't been abated. Mr. Lynch asks the ZBA to deny the variance request.

Hugh Whiting, 6040 W. Coon Lake Road: Mr. Whiting said there's been many times that he's been in his house with the doors and windows closed and the television on, and he can still hear the dogs.

Kurt Scott, Brighton Township and Schoolcraft County resident: Mr. Scott said he has a neighbor with 45 sled dogs on 200-foot lots. Mr. Scott asked if the debarking works. Mr. Collier said if the debarking is done by a competent vet, and done on both sides, the dogs would only make a cough sound. John Lowe added that his experience with a neighbor's dog that was debarked is that it made a substantial amount of difference. Ms. Manson-Dempsey pointed out that a hobby kennel could be done on about 3 acres and the Radicks have approximately 13 acres. Bill Szobonya, attorney representing the Radicks, asked to address some of the issues. Mr. Szobonya said the tape that was done regarding the noise may never make it to court because it can't be authenticated. If it is admissible in court, all of the tapes the Radicks made would most likely be admissible, which would be substantially less noise than what is alleged in the tape by Mr. Lynch. There are allegations of noise, but there has been no determination that the alleged nuisance is actually in existence. The Radicks are going to great extremes and great cost to have the dogs debarked. Regarding some of the issues Mr. Reizen has mentioned, this is the same person who's complaint stated that the noise from the dogs had to exceed 55 decibels. That can't be known without

a test being done. Second, he also alleges in his complaint that there were other violations against the Radicks about their animals. Mr. Szobonya said there are no other violations. It is not illegal in Michigan to have a dog debarked. Mr. Reizen has made statements on other occasions that aren't really legally sound. The issue of the barking is over; that will be satisfied at the Board meeting. The dogs aren't going to be debarked until the fall, so the neighbors can complain all they want for the next 2-3 months. The Radicks aren't going to do it because it can't be done in the summer. As far as the number of dogs, these are older dogs that will probably die within the next year or two. Why is this not a benefit for the township? This is a great hobby. The whole idea of a variance is to allow an exception.

Mark Reizen, 3210 Dutcher Road: Mr. Reizen said that kind of attack is unwarranted and it's offensive, but what Mr. Szobonya just told the ZBA is screw the neighbors, they can listen to the howling throughout the summer. That alone should be reason enough to deny the variance.

David Lynch, 3300 Dutcher Road: Mr. Lynch said he also has a fairly noisy hobby that doesn't keep people up at 3:00 a.m. and he doesn't do it at his home. It's done in a controlled environment where it has been approved. Mr. Lynch said he likes dogs, but when the issue came up, it had to come to a written complaint because the Radicks would not admit there was an issue and do something about it.

Jim Radick: Mr. Radick said this hobby is a benefit to the community. They've taken cub scouts to the house for a demonstration, they take the dogs to the elementary school, they've had 4-H groups out, and they do share the hobby with the community.

Kim Chappel, 2406 Clivedon: Ms. Chappel is a friend of the Radicks' daughter. She said the dogs are wonderful and she doesn't see why five dogs would make a difference. John Lowe closed the call to the public.

Larry Fillinger asked if by chance the township requested that the dogs be brought back to the 10-dog limit, and those dogs were not debarked, what can the township ask them to do to eliminate the noise. Mike Kehoe said his recommendation to the township board would be to either start from scratch with the zoning violation process or simply go back to the previous findings that have been made by the township board depending on the time frame. He would probably recommend that the township take another look at the ordinance violation process. John Lowe said he doesn't see a way around the self-created aspect—it obviously was. The Radicks have made a substantial improvement toward the welfare of the neighbors through the potential elimination of the noise. Mr. Lowe said he doesn't believe it's acceptable to wait two months. Mr. Lowe suggested that with the dogs being debarked and a list of the current dogs, there is an agreement set up that no new dogs are taken in until the Radicks are below the limit of 10 dogs. Those dogs would be allowed to remain until they die. Mike Kehoe said he's heard conflicting statements from two different attorneys and is concerned with the ZBA taking action on the debarking issue. He requested the opportunity to check on the legality of debarking dogs.

Motion

Larry Fillinger motioned to table ZBA Case #5-05 until a special meeting is held on Tuesday, July 19 at 7:30 p.m., to allow the township attorney to collect additional information and allow time for the Radicks to obtain instruments to quiet the dogs. Linda Manson-Dempsey seconded. **Motion carried 5-0.**

CALL TO THE PUBLIC

None.

ADJOURNMENT

Dan Rossbach motioned to adjourn the meeting at 9:30 p.m. Linda Manson-Dempsey seconded. **Motion carried 5-0.**

ZONING BOARD OF APPEALS - JULY 19, 2005

MEMBERS PRESENT: John Lowe, Larry Fillinger, Dan Lowe, and Linda Manson-Dempsey

MEMBERS ABSENT: Dan Rossbach

OTHERS PRESENT: Mike Kehoe, Township Attorney
Annette McNamara, Zoning Administrator

CALL TO ORDER

John Lowe called the meeting to order at 7:35 p.m.

APPROVAL OF AGENDA

Larry Fillinger motioned to approve the agenda as presented. Linda Manson-Dempsey seconded. **Motion carried 4-0.**

MEMBERS PRESENT

The members of the Zoning Board of Appeals introduced themselves.

CALL TO THE PUBLIC

None.

OLD BUSINESS

ZBA Case #05-05—James P. & Suzanne L. Radick

John Lowe asked Mr. Radick to update the ZBA. Mr. Radick said he ordered "Super Bark Stop" and received them today, so he hasn't had the chance to install them. He hopes this will work for the interim until the dogs are debarked. Mike Kehoe said he found nothing that prohibits debarking. He spoke with the Michigan State University veterinary school, and was referred to three vets in the Lansing area who perform the procedure. They said the procedure is considered cosmetic and is not inhumane. John Lowe said his main concern is the two-month interim until the dogs can be debarked. Larry Fillinger said he felt the Radicks have made an effort to reduce the noise by 1) stockade fence, 2) shock collars, 3) sonic devices, and 4) debarking. Linda Manson-Dempsey asked Mr. Radick to confirm the number of dogs. Mr. Radick said there are 18, three dogs in the house and 15 sled dogs. Mike Kehoe said the total number of dogs on the property should be considered, not just the sled dogs.

Call to the Public

Joe Goers, 5920 W. Coon Lake Road: Mr. Goers said the number of dogs has now gone from 16 to 18. He asked what will happen if the dogs can't be debarked.

Bill Atkinson, 3219 Dutcher Road: Mr. Atkinson asked the chairman if the ZBA received a copy of Mr. Reizen's letter. Mr. Lowe said yes. John Lowe closed the Call to the Public. Larry Fillinger motioned for ZBA Case #05-05 to relax zoning ordinance Section 8.01 D 3 a, allowing eight (8) additional dogs, for a total of eighteen (18), over the maximum of ten (10) dogs allowed in the Hobby Kennel section of the ordinance.

Three conditions to which this variance is being issued include:

1. The barking/howling will be controlled. By October 17, Mr. and Mrs. Radick will take steps to reduce and/or eliminate the noise currently created by the dogs.

- a. immediate installation of bark-activated sonic devices (Super Bark Stop) to condition the dogs not to bark
 - b. debarking
 - c. building a sound-proof structure
 - d. shock-collar conditioning
2. As the dogs age and their numbers are reduced, the dogs cannot be replaced until the total number of dogs is less than ten (10).
 3. On an annual basis, a representative from the township will visit the kennel to view the conditions of the dogs and kennels to determine satisfactory or unsatisfactory and make sure the Radicks are complying with the conditions set forth in the variance request. The representative, upon request to the Radicks, will be granted the right to inspect the number of dogs and verify papers of each. In addition, the Radicks will provide the township with documentation (name, age, breed, license number) for each dog.

It has been determined that a practical difficulty or unnecessary hardship exists in Section 5.05 C as follows:

1. *How the strict enforcement of the provisions of the township's 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.*

Strict enforcement would cause an unnecessary hardship and deprive the owner of rights enjoyed by other property owners, this right being the ability to engage in a competitive hobby of their liking, specifically dog sled racing. This number of dogs is necessary for the pursuit of this hobby.

2. *The conditions and circumstances unique to the property, which are not similarly applicable to other properties in the same zoning district.*

With the total acreage of this parcel being 12.7 acres, if this parcel were split into two equal sections, more than 20 dogs could reside on these two parcels. Also, if a special use permit were issued for a commercial kennel, more than 20 dogs could reside on this site.

3. *The conditions and circumstances unique to the property were not self-created.*

This situation was self-created. However, two factors need to be taken into consideration:

- a. The Radicks have a hobby, dog sled racing. In order to improve and compete effectively, dogs need to be replaced with younger, stronger dogs.
- b. The Radicks have proven themselves to be humane. The older dogs are entitled to live their lives in full upon retirement. The township shouldn't force a family to get rid of dogs because they are too old to compete.

4. *Why the requested variance would not confer special privileges that are denied other properties similarly situated in the same zoning district.*

Dog sled racing is a unique sport. With 12.7 acres, in addition to the 10 acres leased behind the Radicks' home, the township is not out of line issuing this variance. Future cases will be dealt with on a case-by-case basis.

5. *Why the requested variance would not be contrary to the spirit and intent of this zoning ordinance.*

The necessary acreage of land to house 10 dogs is 3 2/3 acres. The Radicks have 12.7 acres with an additional 10 acres adjoining the property.
6. *The difficulties shall not be deemed solely economic.*
Economics does not play a role in this request.

In addition, the Radicks will provide the township with documentation that the procedure was completed. Linda Manson-Dempsey seconded. Roll call vote: Larry Fillinger, Linda Manson-Dempsey, Jack Lowe, Dan Lowe—all yes. **Motion carried 4-0.**

ADJOURNMENT

Linda Manson-Dempsey motioned to adjourn the meeting at 8:35 p.m. Larry Fillinger seconded. **Motion carried 4-0.**

ZONING BOARD OF APPEALS- AUGUST 1, 2005

MEMBERS PRESENT: John Lowe, Larry Fillinger, Dan Lowe, Dan Rossbach, and Linda Manson-Dempsey

MEMBERS ABSENT: None

OTHERS PRESENT: Annette McNamara, Zoning Administrator

CALL TO ORDER

John Lowe called the meeting to order at 7:40 p.m.

APPROVAL OF AGENDA

Larry Fillinger motioned to approve the agenda as presented. Linda Manson-Dempsey seconded. **Motion carried 5-0.**

MEMBERS PRESENT

The members of the Zoning Board of Appeals introduced themselves.

CALL TO THE PUBLIC

None.

APPROVAL OF MINUTES

July 11, 2005: Larry Fillinger motioned to approve the minutes as presented. Linda Manson-Dempsey seconded. **Motion carried 5-0.**

July 19, 2005: Linda Manson-Dempsey confirmed that the zoning administrator will contact the Radicks for a list of dogs and establish an annual review schedule. Larry Fillinger motioned to approve the minutes as presented. Linda Manson-Dempsey seconded. **Motion carried 5-0.**

NEW BUSINESS

ZBA Case #06-05—Jeff Schiedegger

Mr. Schiedegger said he has a 14-15 year old house on Pleasant Lake. The septic system (tank, lift station, and septic line) carries the waste across the road to an adjacent lot. He would like to build a two-car garage. There are constraints on where he can put the garage without requiring a five-foot variance on the west side of the property line. John Lowe said he verified with the Livingston County Health Department that the garage can be within five feet of the tanks. Mr. Schiedegger said he was told the minimum was ten feet. He is concerned about the garage foundation being too close to the tank. John Lowe asked about possibly saving the large oak tree. Mr. Schiedegger said the tree is dead.

Call to the Public

Dave Hamann, 870 Hurley Drive: Mr. Hamann said he's been before the ZBA three times, and each time the paperwork required something from the LCHD showing

his well and septic systems, as well as his neighbors. If that were still a requirement, Mr. Schiedegger wouldn't have to appear today. He's paid for a ZBA case that he doesn't need. John Lowe agreed that the ZBA should require paperwork from the LCHD. John Lowe closed the Call to the Public.

Motion

Dan Lowe motioned to grant a variance for ZBA Case #06-05 to build a garage with a foundation that is within five feet of the west side of the existing tank, not to be less than five feet from the west property line, considering the following criteria:

1. *How the strict enforcement of the provisions of the township's 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.*
2. *The conditions and circumstances unique to the property, which are not similarly applicable to other properties in the same zoning district.*
3. *The conditions and circumstances unique to the property were not self-created.*
4. *Why the requested variance would not confer special privileges that are denied other properties similarly situated in the same zoning district.*
5. *Why the requested variance would not be contrary to the spirit and intent of this zoning ordinance.*
6. *The difficulties shall not be deemed solely economic.*

The zoning administrator will verify the position of the tanks in relation to the proposed garage and the property lines. Larry Fillinger seconded. Roll call vote: Dan Rossbach, Larry Fillinger, Linda Manson-Dempsey, John Lowe, Dan Lowe—all yes.

Motion carried 5-0.

ADJOURNMENT

Linda Manson-Dempsey motioned to adjourn the meeting at 8:20 p.m. Larry Fillinger seconded. **Motion carried 5-0.**

ZONING BOARD OF APPEALS - SEPTEMBER 12, 2005

MEMBERS PRESENT: John Lowe, Dan Lowe, Linda Manson-Dempsey, and Dan Rossbach

MEMBERS ABSENT: Larry Fillinger

OTHERS PRESENT: Annette McNamara, Zoning Administrator

CALL TO ORDER

John Lowe called the meeting to order at 7:32 p.m.

APPROVAL OF AGENDA

Linda Manson-Dempsey motioned to approve the agenda as presented. Dan Rossbach seconded. **Motion carried 4-0.**

MEMBERS PRESENT

The members of the Zoning Board of Appeals introduced themselves.

CALL TO THE PUBLIC

None.

APPROVAL OF MINUTES

August 1, 2005: Linda Manson-Dempsey confirmed that the zoning administrator has obtained a list of dogs owned by the Raddicks. Linda Manson-Dempsey motioned to approve the minutes as presented. Dan Rossbach seconded. **Motion carried 4-0.**

NEW BUSINESS

ZBA Case #07-05—William & Kristin Lucas

Mr. Lucas was present to request a variance on the front yard setback. The ZBA members reviewed the proposed site plan and determined that additional information is required. Mr. Lucas needs to submit a scale drawing showing the pond, drain field and proposed house. Mr. Lucas said he could get the information right away. Linda Manson-Dempsey motioned to table this item until 8:30 p.m. to allow the applicant time to obtain additional measurements. Dan Rossbach seconded. **Motion carried 4-0**

ZBA Case #08-05—John & Maria Hendricks

The applicants were present to request a variance to *Sections 6.11 C 1* and *8.01 F 1 a* of the zoning ordinance to allow them to split their parcel. The ordinance requires a 2-acre minimum and a minimum of 4 acres to create a flag lot. The Hendricks' parcel is approximately 3.52 acres and the Hendricks' are requesting a split of 1.17 acres with the current house, and a flag lot of 2.35 acres for a new house. Neighbors from the surrounding parcels support the proposed split. The ZBA discussed various options and reviewed aerial maps of the area. There are several parcels in the immediate area that are less than 2 acres, which were created prior to the 2-acre minimum.

Linda Manson-Dempsey motioned to grant a variance for ZBA Case #08-05, to relax *Sections 6.11 C 1* and *8.01 F 1 a* of the zoning ordinance, considering the following criteria:

1. *How the strict enforcement of the provisions of the township's 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 owners are only being deprived of is the ability to split the property and build on the lot in the back; other than that, they could use the property as it is.
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 surrounded by wetlands in the back, so purchasing property from a neighboring landowner wouldn't remedy the situation, because it would extend the wetlands area, which is well beyond where the house needs to be built and where the property perked.
3. *The conditions and circumstances unique to the property were not self-created.*
The Hendricks' have owned the property for 11 years. The variance they are requesting is very similar to the surrounding area. There are 6 surrounding parcels under 2 acres, which were split in the 1970s.
4. *Why the requested variance would not confer special privileges that are denied other properties similarly situated in the same zoning district.*
Many of the other properties have already been split and built on. There are 6 other parcels in the area that are similar to what's proposed.
5. *Why the requested variance would not be contrary to the spirit and intent of this zoning ordinance.*

The size of the proposed lot is larger than 6 surrounding parcels. The property owners are also limited due to wetlands and the surrounding properties that restrict the building site.

6. *The difficulties shall not be deemed solely economic.*

The property owners can't buy additional land. They could buy elsewhere, but they want to stay in the area. The difficulty is not solely economic because of the shape of the parcel and the fact that most of the adjoining property is wooded, wetlands, etc., and can't be built on.

Dan Lowe seconded. Roll call vote: Dan Rossbach, Linda Manson-Dempsey, John Lowe, Dan Lowe—all yes. **Motion carried 4-0.**

John Lowe called for a brief recess. The meeting was reconvened at 8:25 p.m. with ZBA Case #07-05.

ZBA Case #07-05—William & Kristin Lucas

Mr. Lucas provided the ZBA members with additional dimensions and a new drawing for his proposed house. The ZBA discussed various options with the applicant for locating the house. Mr. Lucas provided letters of support from surrounding property owners.

Linda Manson-Dempsey motioned, for ZBA Case #07-05, to relax *Section 8.01 F 3 a—front yard setback*, to allow a 10-foot variance. If the applicant demonstrates that a 10-foot variance won't work, the zoning administrator can grant an additional 5-foot variance. The following criteria was considered in granting the variance:

1. *How the strict enforcement of the provisions of the township's 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 property owner would like to build a nice house. There are some wetlands and some restrictions on septic and drain fields, and the lot is an irregular shape.

2. *The conditions and circumstances unique to the property, which are not similarly applicable to other properties in the same zoning district.*

This property is located on a cul-de-sac and is off the main road.

3. *The conditions and circumstances unique to the property were not self-created.*

The property is the same as it was when the applicant purchased it. He would now like to improve the property and build a home.

4. *Why the requested variance would not confer special privileges that are denied other properties similarly situated in the same zoning district.*

The request is due to the site conditions and location of perks, septic, drain field, etc.

5. *Why the requested variance would not be contrary to the spirit and intent of this zoning ordinance.*

The spirit and intent of the ordinance is that people are allowed to build a home on their property. The applicant is trying to build a home on an irregularly shaped lot.

6. *The difficulties shall not be deemed solely economic.*

The difficulty isn't solely economic because it doesn't really matter where the house is built, and the variance is necessary due to the site conditions and wetlands.

Dan Rossbach seconded. Roll call vote: Dan Rossbach, Linda Manson-Dempsey, John Lowe, Dan Lowe—all yes. **Motion carried 4-0.**

CALL TO THE PUBLIC

None heard. Linda Manson-Dempsey reminded the board members that a joint meeting will be held on Monday, September 26, 2005 at 7:15 p.m. Dan Rossbach asked for opinions on second and/or circular driveways. Annette McNamara will discuss the options with the township attorney.

ADJOURNMENT

Linda Manson-Dempsey motioned to adjourn the meeting at 8:53 p.m. Dan Rossbach seconded. **Motion carried 4-0.**

SPECIAL JOINT MEETING - SEPTEMBER 26, 2005

- MEMBERS PRESENT: JOHN LOWE, CHAIRPERSON
DAN LOWE, LARRY FILLINGER, DAN ROSSBACH
- ABSENT: LINDA MANSON-DEMPSEY
- OTHERS PRESENT: ANNETTE MCNAMARA, ZONING ADMINISTRATOR
PHIL WESTMORELAND, ORCHARD, HILTZ & MCCLIMENT
JOHN ENOS, CARLISLE/WORTMAN
MIKE KEHOE, MILLER KEHOE & ASSOCIATES

CALL TO ORDER

The meeting was called to order at 7:15 p.m.

INTRODUCTION OF MEMBERS

John Lowe, Dan Lowe, Larry Fillinger and Dan Rossbach were present. Linda Manson-Dempsey was absent

CALL TO THE PUBLIC

Robert Hanvey opened the call to the public. Ken Tyler, 3300 Richardson Road. Have there been any changes to the text since the last meeting? Robert Hanvey answered minimal changes have been made to the document. Robert Hanvey closed the call to the public.

APPROVAL OF MINUTES

None heard.

OLD BUSINESS

Proposed Text Amendment - 6.20 A Pre-Existing Non-Conforming Private Roads

Robert Hanvey noted the proposed text is to provide residents with a safe route to get home. He questioned the definitions in the text and said they can be interpreted in many ways. He asked Mike Kehoe if a private road does not have a maintenance agreement, is it pre-existing non-conforming. Mike Kehoe answered yes. Residents from Pheasant Run attended the meeting to clarify their current situations in relationship to the proposed text. Discussion on Public Act 188. PA 188 spells out a method for calculating homeowners cost for special assessment. The township uses a different method for calculating. Allocation of cost per PA 188 does not go along with proposed Section 6.20 A. Which takes precedence? Mike Kehoe answered PA 188. A homeowner could protest this and take it to the tribunal. Mike Kehoe agreed to look into PA 188. Phil Westmoreland explained the engineering standards. The criteria covers different situations, gives the township a starting point. There are too many variables, all the roads are different, and one set of standards will not cover each one. This gives the Planning Commission a starting point and provides flexibility.

Sue Lingle questioned page 1 of 9 the last sentence, fee in the amount of twenty-five percent of total costs. Isn't the township responsible for 8%? Mike Kehoe answered, this is a different situation. If they agree to 25%, then the township gets 25%. John Enos will make the following changes to the document and submit to the Planning Commission.

Page 8 of 9, the private road maintenance agreement template, item #12 remove this text and replace with the existing text in Section 6.20.

Page 2 of 9, subsection C d, make clear this is for newly created lots.

Page 4 of 9, subsection F, remove the word New Private Road in the second sentence.

Page 4 of 9, subsection G, delete "without evidence of an approved land division and at least twenty-one days prior to the meeting date for which the applicant requests consideration" and replace with "subject to approved land division."

Page 5 of 9, subsection J, change wording to read, anything pre-existing non-conforming, a lot of record does not apply. Dan Lowe does not agree with the proposed language that requires a property owner at the beginning of a private road to upgrade the entire road to get a land use permit. He does not think this is fair.

Timber Bluff Site Condominium Development

Marion Township has been receiving complaints about vehicles accessing the Timber Bluff development through the emergency access that connects to Pleasant Lake Rd. Marion Township approved shrubs along Pleasant Lake Rd. to keep non-emergency vehicles from using the access. The developer has not planted the shrubs yet. Robert Hanvey asked the group if there were any objections to a gate in place of the shrubs. Discussion ensued. All agreed on Robert Hanvey asking the Howell Area Fire Authority which they preferred. A representative of Marion Township will then meet with the developer to work out a solution.

Proposed Text Amendment - Section 8.01 F 6 & 7 - Rural Residential - Site Development Requirements

Proposed Text Amendment - Section 8.02 F 6 & 7 - Suburban Residential - Site Development Requirements

Proposed Text Amendment - Section 6.18 F 1 & G - Condominium Projects

Proposed Text Amendment - Section 6.19 B - Access Controls

Proposed Text Amendment - Section 3.02 - Definitions - Landscape Buffers

The above five proposed text amendments were discussed. Dave Hamann reiterated to the group the reason for using the 25' greenbelt buffer in area calculations. If a homeowner changes the character of the buffer in any way and the township wants to enforce the natural state it must be made a part of the Exhibit B drawings.

Debra Wiedman-Clawson stated if the area is cleared it is up to the homeowners association to pursue, not the township. Robert Hanvey would like to know how the State of Michigan defines noxious. All agreed to send the five text amendments to Mike Kehoe for his review and comment. The proposed amendments along with comments will then be sent to the Board of Trustees for their review & approval/denial.

NEW BUSINESS

None heard.

CALL TO THE PUBLIC

Ken Tyler, 3300 Richardson; Ken Tyler reiterated concerns previously discussed.

ADJOURNMENT

Sue Lingle motioned to adjourn the meeting at 10:08 p.m. Debra Wiedman-Clawson seconded. Motion Carried 4-0. The meeting was adjourned at 10:35 p.m.

ZONING BOARD OF APPEALS - OCTOBER 3, 2005

MEMBERS PRESENT: John Lowe, Dan Lowe, Linda Manson-Dempsey,
Larry Fillinger and Dan Rossbach

MEMBERS ABSENT: None

OTHERS PRESENT: Annette McNamara, Zoning Administrator

CALL TO ORDER

John Lowe called the meeting to order at 7:30 p.m.

APPROVAL OF AGENDA

Linda Manson-Dempsey motioned to approve the agenda as presented. Larry Fillinger seconded. **Motion carried 5-0.**

MEMBERS PRESENT

The members of the Zoning Board of Appeals introduced themselves.

CALL TO THE PUBLIC

None.

APPROVAL OF MINUTES

September 12, 2005: Linda Manson-Dempsey motioned to approve the minutes as presented. Dan Rossbach seconded. **Motion carried 5-0.**

NEW BUSINESS

ZBA Case #09-05—Marion Station LLC

Ron Jona, from Ron Jona & Associates in Southfield, was present to request three (3) dimensional variances for a proposed development at Pinckney Road and Schroeder Park Drive. The ordinance requires a 100-foot setback on Pinckney Road and an 80-foot setback on Schroeder Park Drive. The applicant is requesting a 20-foot greenbelt variance along Pinckney Road, a 69.3 foot greenbelt variance along Schroeder Park Drive, as well as a 21.1 foot front yard setback variance along Schroeder Park Drive. The nature of this size commercial development requires that it be visible from the road. The parcel is irregularly shaped, and there are restrictions due to wetlands and location of the sanitary sewer. John Lowe said the Livingston County Road Commission's most recent letter indicates the need for left-turn lanes. Mr. Jona said he was aware of that issue, which would be an item discussed during site plan review. Larry Fillinger asked how this would affect the recent road improvements at Francis Road. Discussion ensued about left-turn lanes and road improvements. Linda Manson-Dempsey asked if the 7-11 would sell gas. Mr. Jona said no, just a standard 3000 square foot store. Further discussion was held regarding detention ponds. John Lowe reviewed the letter from Carlisle/Wortman, the township planner. Linda Manson-Dempsey stated that Schroeder Park Drive is a private road and any improvements would be subject to approval by the property owners. Discussion was held regarding the number of parking space, and the 14 parking spaces in the front-yard setback of Pinckney Road.

Call to the Public

Jackie Lewis, 506 Newberry: Ms. Lewis asked if the 7-11 would be open 24 hours. Mr. Jona said yes. Ms. Lewis expressed concern with lighting. John Lowe said exterior lighting and screening requirements would be discussed during site plan review.

Tom Stachler, 375 Newberry: Mr. Stachler asked if the building in Phase 2 has a renter and would it have access to Francis Road? Mr. Jona said no.

Close Call to the Public

Dan Lowe said if the 14 parking spaces on the Pinckney Road side of the property were eliminated and added in the back, one of the variances wouldn't be necessary. After additional discussion, Ron Jona formally withdrew his request for the front yard setback on Pinckney Road.

Motion

Larry Fillinger motioned, for ZBA Case #09-05—Marion Station LLC, to relax *Section 9.01 E 3 a—Yard and Setback Requirements* of the zoning ordinance to allow a 21-foot variance off Schroeder Park Drive, considering the following criteria:

1. *How the strict enforcement of the provisions of the township's 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 strict enforcement would cause unnecessary hardship due to the curve of Schroeder Park Drive.
2. *The conditions and circumstances unique to the property, which are not similarly applicable to other properties in the same zoning district.*
In order for the developer to respect the spirit of the ordinance, the building has been moved back from D-19.
3. *The conditions and circumstances unique to the property were not self-created.*
Although it is somewhat self-created, the proposed development will benefit the township as a whole.
4. *Why the requested variance would not confer special privileges that are denied other properties similarly situated in the same zoning district.*
It won't confer special privileges because only this parcel is being considered.
5. *Why the requested variance would not be contrary to the spirit and intent of this zoning ordinance.*
The development could be constructed within the required setbacks, but it wouldn't be consistent with the spirit and intent of the ordinance.
6. *The difficulties shall not be deemed solely economic.*
The difficulty is not solely economic.

This is referenced in drawing #0504 by Landtech. This motion is only in regard to Schroeder Park Drive. Linda Manson-Dempsey seconded. Roll call vote: Dan Rossbach, Larry Fillinger, Linda Manson-Dempsey, John Lowe, Dan Lowe—all yes.

Motion carried 5-0.

Motion

Larry Fillinger motioned, for ZBA Case #09-05—Marion Station LLC, to relax *Section 6.13 D 1—Greenbelt Buffer*, allowing a maximum 69.3 foot variance reduction along Schroeder Park Drive as referenced in the drawing from Ron Jona & Associates #0504, dates 9/8/05, considering the following criteria:

1. *How the strict enforcement of the provisions of the township's 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 request is consistent with what's already on Schroeder Park Drive.
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 curve of the property, and the applicant is already proposing the development be moved

back an additional 100 feet to respect the spirit of the ordinance on Pinckney Road.

3. *The conditions and circumstances unique to the property were not self-created.*
This proposed project is a benefit to the township.

4. *Why the requested variance would not confer special privileges that are denied other properties similarly situated in the same zoning district.*

Each case is considered on an individual basis.

5. *Why the requested variance would not be contrary to the spirit and intent of this zoning ordinance.*

The proposed development is more appealing than what the ordinance requires, and more in the spirit of the ordinance.

6. *The difficulties shall not be deemed solely economic.*

It is not deemed solely economic.

Dan Rossbach seconded. Roll call vote: Dan Rossbach, Larry Fillinger, Linda Manson-Dempsey, John Lowe, Dan Lowe—all yes. **Motion carried 5-0.**

Motion

Larry Fillinger motioned, for ZBA Case #09-05—Marion Station LLC, to relax Section 7.05 C—Scope of Regulations, allowing parking on the north side of this project along Schroeder Park Drive within the 69.3 foot variance, referencing to Ron Jona & Associates drawings dated 9/8/05, job #0504, considering the following criteria:

1. *How the strict enforcement of the provisions of the township's 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.*

By allowing the parking space within that area, it would allow 12 more space off the north end of the 7-11 building.

2. The conditions and circumstances unique to the property, which are not similarly applicable to other properties in the same zoning district.

It all comes back to the curve of Schroeder Park Drive and moving the entire building back off D-19 as far as they have.

3. *The conditions and circumstances unique to the property were not self-created.*

The circumstances are to the township's benefit.

4. *Why the requested variance would not confer special privileges that are denied other properties similarly situated in the same zoning district.*

Each case is considered individually.

5. *Why the requested variance would not be contrary to the spirit and intent of this zoning ordinance.*

It is actually more in line with the spirit and intent of the ordinance.

6. *The difficulties shall not be deemed solely economic.*

There is nothing economic about the request.

Linda Manson-Dempsey seconded. Roll call vote: Dan Rossbach, Larry Fillinger, Linda Manson-Dempsey, John Lowe, Dan Lowe—all yes. **Motion carried 5-0.**

CALL TO THE PUBLIC

None heard.

ADJOURNMENT

Linda Manson-Dempsey motioned to adjourn the meeting at 9:02 p.m. Dan Rossbach seconded. **Motion carried 5-0.**

ZONING BOARD OF APPEALS - NOVEMBER 7, 2005

MEMBERS PRESENT: John Lowe, Dan Lowe, Linda Manson-Dempsey, Larry Fillinger and Dan Rossbach

MEMBERS ABSENT: None

OTHERS PRESENT: Annette McNamara, Zoning Administrator

CALL TO ORDER

John Lowe called the meeting to order at 7:32 p.m.

APPROVAL OF AGENDA

Linda Manson-Dempsey motioned to approve the agenda as presented. Larry Fillinger seconded. **Motion carried 5-0.**

MEMBERS PRESENT

The members of the Zoning Board of Appeals introduced themselves.

CALL TO THE PUBLIC

None.

APPROVAL OF MINUTES

September 26, 2005 Joint Meeting: Larry Fillinger motioned to approve the minutes as presented. Dan Rossbach seconded. **Motion carried 5-0.**

October 3, 2005 Regular Meeting: Larry Fillinger motioned to approve the minutes as presented. Linda Manson-Dempsey seconded. **Motion carried 5-0.**

NEW BUSINESS

ZBA Case #10-05—James & Tracey Hare

Mr. Hare said he is requesting the variance due to the location of the septic field. The Livingston County Health Department (LCHD) has denied moving it. Jack Lowe said he went to the LCHD and talked with the specialist on engineered drain fields and was told they require a larger buffer. The plan presented to the ZBA is the only plan the LCHD will accept because of the ground conditions. Jack Lowe said he discussed the options with the LCHD, and they feel this is the only solution. There are several houses in the area similarly located. Mr. Lowe said the lot was created in 1994, which was prior to the 1996 ordinance requiring a 100-foot setback on the D-19 corridor. Linda Manson-Dempsey asked if the lot was changed in 2002. Mr. Lowe said that was a boundary line change. Annette McNamara said the lot was increased to two acres to accommodate the septic system. Mr. Lowe said he talked with the attorney on this issue, and because of the LCHD’s restrictions, if they can’t have the setback changed, the lot becomes unusable. Ms. Manson-Dempsey said the applicant purchased the property in May 2005 and was under the impression that the septic field was installed and on file with the LCHD. Mr. Hare said yes, he was told the field was installed. After he bought the property, he found out there were no permits pulled for the septic field. Mr. Hare said his paperwork says it’s partially installed. Mr. Lowe said the LCHD would accept the installation of the field with two additional lines. Ms. Manson-Dempsey asked if a permit is required to start installation. Mr. Hare said it’s not on file.

Larry Fillinger asked for setback measurements on other houses in the vicinity. Annette McNamara said the house to the north is approximately 90 feet, and the house to the south is approximately 78 feet. Mr. Fillinger said his concern is issuing front yard variances on D-19 and what the impact will be if D-19 is ever widened. Jack Lowe said four lanes would fit within the 66-foot easement. The Hare's builder said it's been prepped for a sand filtration system, which has the same trenches used in the Advantix system. The plan that the ZBA has is set for sand filtration. Theoretically, everything's the same except the tanks are switched. The trench lines on the plan are already installed. The only place the LCHD will approve the trenches is where they are. Linda Manson-Dempsey asked when they were installed. The builder said he believes they were installed in 2002. Boss Engineering has assured them that they would certify all the trenches that are there because they oversaw the installation. The builder said the previous owner was supposed to get a permit and he started the process; however, he didn't pay the \$180 to finalize everything.

Motion

Dan Lowe motioned, for ZBA Case #10-05—James and Tracey Hare, Tax Code #4710-26-200-051, to relax *Section 8.01 F 3 a—Yard and Setback Requirements* of the zoning ordinance, to allow a 30-foot front yard variance for construction of a new house, considering the following criteria:

1. *How the strict enforcement of the provisions of the township's 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 strict enforcement of the ordinance would make the lot unbuildable due to the Livingston County Health Department's requirements.

2. *The conditions and circumstances unique to the property, which are not similarly applicable to other properties in the same zoning district.*

The conditions are unique to the property because of the soils that are there and the wetlands. It's the only location for the drain field.

3. *The conditions and circumstances unique to the property were not self-created.*

The lot was enlarged in 2002 to accommodate the new drain field system, which also made the lot more conforming.

Why the requested variance would not confer special privileges that are denied other properties similarly situated in the same zoning district.

The setbacks to the south are less than the required 100 feet, and the lot to the north is only 90 feet.

4. *Why the requested variance would not be contrary to the spirit and intent of this zoning ordinance.*

This lot was created in 1994 and the setback at that time was 70 feet.

5. *The difficulties shall not be deemed solely economic.*

Without the setback variance, the lot is unbuildable and the property unusable and would be a taking of the land.

Discussion: Linda Manson-Dempsey asked if it should be referenced as an existing lot prior to the ordinance if it was changed in 2002. Annette McNamara said when issuing a land use permit, they don't have 150 feet of frontage, which is the requirement for the rural residential district. She would overlook that because the

township created the lot, and she would look at it as the lot of record. Larry Fillinger asked to have the following included as part of the motion: "subject to all permits being pulled and existing and future work being certified by an acceptable engineering firm." Larry Fillinger seconded. Roll call vote: Dan Rossbach—yes, Larry Fillinger—yes, Linda Manson-Dempsey—no, John Lowe—yes, Dan Lowe—yes. **Motion carried 4-1.**

CALL TO THE PUBLIC

Larry Fillinger asked if the Radicks' dogs have been debarked. Annette McNamara said the Radicks have not been responsive to her phone calls. She will take the township supervisor with her on a site visit. If the Radick's won't provide the zoning administrator with the requested information, she will send a letter asking them to come to the next ZBA meeting.

ADJOURNMENT

Linda Manson-Dempsey motioned to adjourn the meeting at 8:05 p.m. Larry Fillinger seconded. **Motion carried 5-0.**

ZONING BOARD OF APPEALS - DECEMBER 5, 2005

MEMBERS PRESENT: John Lowe, Dan Lowe, Linda Manson-Dempsey,
Larry Fillinger and Dan Rossbach
MEMBERS ABSENT: None
OTHERS PRESENT: Mike Kehoe, Township Attorney
Annette McNamara, Zoning Administrator

CALL TO ORDER

John Lowe called the meeting to order at 7:32 p.m.

APPROVAL OF AGENDA

Larry Fillinger asked to have the order of the agenda changed, and motioned to approve the agenda as amended. Dan Rossbach seconded. **Motion carried 5-0.**

MEMBERS PRESENT

The members of the Zoning Board of Appeals introduced themselves.

CALL TO THE PUBLIC

None.

APPROVAL OF MINUTES

November 7, 2005 Regular Meeting: Dan Lowe asked to have item 3 of his motion also include his statement that when the lot was enlarged in 2002, it was also made more conforming. Linda Manson-Dempsey motioned to table the minutes until the change is made and submitted at the next meeting. Larry Fillinger seconded.

Motion carried 5-0.

NEW BUSINESS

ZBA Case #11-05—Mitch Harris/Szymanski

Jim Barnwell from Desine, Inc. and Mindy Northrup from Mitch Harris Building Co. were present to discuss this case. Mr. Barnwell said the address of the property is 601 Hewitt St. in the Sunridge PUD. He is requesting a variance to the side yard setback. Mr. Barnwell showed the ZBA members a photo of the property. There is a 20' foot sewer easement on either side of the property. To the south and west is open space. The house was built a little further away from the sewer easement than it needed to be, which forced the building into the setback. In addition, the Szymanski's are asking for an additional four- foot variance to build a walkway along the west side to a deck

on the south side. It won't impact adjoining properties or neighboring sites. The variance would allow this property to be developed in a consistent manner with the rest of the neighborhood and the intent of the development. John Lowe asked if there had been an error when staking the property; Mr. Barnwell said yes. In the future, the township has asked builders to provide a registered survey in place of the foundation inspection. John Lowe asked Mike Kehoe for his opinion on reconfiguring the lot to include a portion of the open space. Mr. Kehoe said reconfiguring the lot presents a problem because all of the units have rights to the open space.

Call to the Public None.

Motions

Dan Rossbach motioned, for ZBA Case #11-05—Mitch Harris and Szymanski, Tax Code #4710-02-102-046, to relax *Section 13.03 B and J*, granting a three-foot variance for construction of the house on unit 46. The house was constructed before the error in placement was discovered and it would be a hardship to move it. The variance is also being granted due to the mitigating circumstance of the open space. Linda Manson-Dempsey seconded. Roll call vote: Dan Rossbach, Larry Fillinger, Linda Manson-Dempsey, John Lowe, Dan Lowe—all yes. **Motion carried 5-0.**

Dan Rossbach motioned to grant a seven-foot variance on the west side of unit 46 for a deck due to the existing location of the house that was built within the setback, and the fact that moving the west property line is not an option due to the PUD agreement. A four-foot sidewalk is the minimum encroachment that allows the deck to be usable, based on information provided by Desine, Inc. Based on the information the applicant provided, the variance meets the requirements of Section 5.05 C, items 1-6. Larry Fillinger seconded. Roll call vote: Dan Rossbach, Linda Manson-Dempsey, Larry Fillinger, Dan Lowe, John Lowe—all yes. **Motion carried 5-0.**

OLD BUSINESS

ZBA Case #05-05—Radick (update)

Annette McNamara updated the ZBA on this case. Linda Manson-Dempsey said the Radicks need to provide documentation from the vet. John Lowe asked Mike Kehoe if the zoning administrator could contact the complainants. Mr. Kehoe said yes, the Radicks have to show that they've complied. If the Radicks don't comply, the zoning administrator can pursue the violation.

CALL TO THE PUBLIC

None.

ADJOURNMENT

Larry Fillinger motioned to adjourn the meeting at 8:22 p.m. Linda Manson-Dempsey seconded. **Motion carried 5-0.**