

**MARION TOWNSHIP  
ZONING BOARD OF APPEALS**

**The Township Zoning Board of Appeals will meet in person  
August 8, 2022 at 7:00 pm**

However, there will be virtual access.

Instructions to participate in the meeting are posted on [www.mariontownship.com](http://www.mariontownship.com)

**AGENDA**

CALL TO ORDER

PLEDGE OF ALLEGIENCE

INTRODUCTION OF MEMBERS

APPROVAL OF AGENDA

August 8, 2022

APPROVAL OF MINUTES FOR:

July 11, 2022 Regular Meeting

CALL TO PUBLIC

NEW BUSINESS:

- 1) ZBA Case #02-22 Zlatko Blazevski c/o Penelope Roy of 223 Marion Meadows Drive Seeking Administrative Review & Interpretation of Section 8.02B, C, E; Section 15.06; & Section 3.02 Definition of 'Roadside Stand' & 'Farm Market' 4710-11-402-005.

UNFINISHED BUSINESS:

SPECIAL ORDERS:

Review and Discuss the Rules and Procedures

CALL TO PUBLIC:

ADJOURNMENT:

Submitted by: S. Longstreet

Approved: \_\_\_\_\_

**MARION TOWNSHIP  
ZONING BOARD OF APPEALS  
REGULAR MEETING  
JULY 11, 2022**

**MEMBERS PRESENT:** Larry Fillinger, Larry Grunn, Dan Lowe, and Diane Bockhausen

**MEMBERS ABSENT:** Linda Manson-Dempsey

**OTHERS PRESENT:** Dave Hamann, Zoning Administrator

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**CALL TO ORDER**

Larry Fillinger called the meeting to order at 7:30 p.m. The meeting is also available online.

**MEMBERS PRESENT**

The members of the Zoning Board of Appeals introduced themselves.

**APPROVAL OF AGENDA**

Diane Bockhausen motioned to approve the agenda as amended. Larry Grunn seconded. **Motion carried.**

**APPROVAL OF MINUTES**

**February 7, 2022 Regular Meeting:** Diane Bockhausen motioned to approve the minutes as presented. Larry Grunn seconded. **Motion carried.**

**CALL TO THE PUBLIC**

No response.

**NEW BUSINESS**

**ZBA Case #01-22 Stephen Bullinger, 245 Brighton Road, Tax Code #4710-25-300-033, seeking a variance for Section 8.01 F 3 a Front-yard Setback**

Stephen Bullinger was present to ask for a 43' front-yard variance for a shed. Mr. Bullinger said there are mature trees screening the property, the location of the drain field presents a hardship, and the property has unique topography. Dan Lowe said he didn't think it would be an issue due to all of the trees screening the property.

**Call to the Public**

Benjamin Dunklee, 285 Brighton Road, said he supports Mr. Bullinger's request.

## Motion

Diane Bockhausen motioned for ZBA Case #01-22 Stephen Bullinger, 245 Brighton Road, Tax Code #4710-25-300-033, to grant a 43' front-yard variance on the southwest corner of the property, considering the following criteria:

1. **That the restrictions of the township zoning ordinance would unreasonably prevent the owner from using the property for a permitted use.** *The current location is the most functional and is not visible.*
2. **That the variance would do substantial justice to the applicant and a lesser relaxation than that requested would not give a substantial relief to the owner of the property.** *Due to the width of the lot and constraints on where the shed could be located, the requested location is best suited for storage of landscape equipment.*
3. **That the request is due to the unique circumstances of the property.** *The drain field runs the full depth on the east side of the house.*
4. **That the alleged hardship has not been created by a property owner.** *The property has a high-voltage easement and a swampy area, neither created by the property owner.*
5. **That the difficulty shall not be deemed solely economic.** *This request is not solely economic.*

Dan Lowe seconded. Roll call vote: Bockhausen—yes; Grunn—yes; Fillinger—yes; Lowe—yes. **Motion carried 4-0.**

## SPECIAL ORDERS

Dan Lowe questioned the structure from ZBA Case #02-21; he wasn't aware that it was more than one story and there's an issue with the overhang. Dave Hamann said he would check the building plans and update the board.

Larry Fillinger asked the ZBA members to review the ZBA Rules of Procedure prior to the August meeting to discuss changing the time of the meetings back to 7:30 pm. A copy of the document will be emailed to the board members.

Larry Fillinger said he would like the township attorney to attend the August 8, 2022 ZBA meeting.

## CALL TO THE PUBLIC

No response.

## ADJOURNMENT

Diane Bockhausen motioned to adjourn at 7:24 pm. Larry Grunn seconded. **Motion carried.**

**APPLICATION TO ZONING BOARD OF APPEALS**

ZBA Case # 02-22.  
Tax Code 4710-11-402-005  
Current Zoning SR  
Fee Paid 400  
Date Received 7-5-2022  
Received by DA

Applicant Zlatko Blazevski c/o Penelope Roy,  
Address 223 Marlon Mandrus Drive, Howell, NJ 08824  
Telephone Attorney - Zachary B. Stewart (182982) (616) 227-3103 ext. 1165  
(Home) (Work)

Applicant is (check one):  Owner  Purchaser  Representative

Purchaser or Representative needs a letter of permission from owner

Nature of Request (check applicable one)

- Administrative Review (per Section 5.05 A)
- Interpretation of Ordinance (per Section 5.05 B 1, 2, 3 or 4)
- Variance Request (see below)

1. Zoning Ordinance Section

8.02 (B)(C)(E) ; Section 17.14 ; section 15.06  
Definitions of "Roadside stand" vs. "Farm Market"

2. Letter stating reason request should be granted (per Section 5.05 C)

3. Plot Plan—example and checklist attached (requirement per Section 4.03 D)

4. Required Livingston County Health Department evaluation

Refer to checklist on last page for additional instructions

By signing this application, permission is granted for official representative(s) of Marlon Township to do onsite inspections.

Zachary B. Stewart (182982)  
Signature

6/17/2022  
Date

Office Use Only	
Meeting Date <u>Aug 8, 2022</u>	Action Taken _____
Conditions (if applicable) _____	
Signed _____	

June 17, 2022

Marion Township  
Attn: Zoning Board of Appeals  
2877 W. Coon Lake Road  
Howell, MI 48843

*Sent via USPS*

Re: Application to Zoning Board of Appeals  
*Interpretation of Ordinance/ Administrative Review of Zoning Determination for  
2160 Pinckney Road, Howell, MI 48843*

Dear Marion Township Zoning Board of Appeals:

Enclosed with this letter please find an Application to the Marion Township Zoning Board of Appeals regarding the interpretation of the Marion township ordinances, and a request for administrative review of a zoning determination for 2160 Pinckney Road, Howell, MI 48843 (Parcel No. 4710-11-400-004). Parcel No. 4710-11-400-004 is currently owned under a land contract between Larry D. and Barbara Purvis as the sellers, and Clifford John Turner, Andrew Baron, and Heidi Baron as the buyers (collectively referred to as the "Owners"). (Henceforth, Parcel No. 4710-11-400-004 shall be referred to as "2160 Pinckney" or the "Property").

This is a request to review the determinations of a zoning ordinance from the owner of a neighboring parcel of land of 2160 Pinckney. Specifically, Zlatko Blazevski, represented by his daughter, and appointed guardian/conservator, Ms. Penelope Roy. Mr. Blazevski is the owner of two parcels of property that border 2160 Pinckney, Parcel No. 4710-11-402-005, and 4710-11-400-027. In accordance with Marion Township Zoning Ordinances, Section 5.05(c), please let this serve as the letter stating the reasons why the zoning appeal should be granted.

This Appeal is a request to interpret the provisions of the zoning ordinance determination made by representatives of Marion Township regarding the intended uses of 2160 Pinckney. Marion Township officials are allowing the new owners of 2160 Pinckney to begin the clear-cutting, development, and installation of a Farmer's Market on the Property which is in clear violation of the Ordinances. Specifically, the Property is being allowed to set up a Farmer's Market with no special use permit, no signage enforcement, and no parking lot standards in clear violation of the Ordinances of Marion Township. The new owners are availing themselves of the Ordinances because of an incorrect determination of the uses of 2160 Pinckney as a "roadside stand" not a farmers' market, even though there is clear evidence that the intended use of the Property is to be a Farmers Market. Even the new owners, Clifford Turner, Heidi Baron and Andrew Baron have marketed the use of 2160 Pinckney as a Farmers Market in their signage (see attached). They even have formed a new limited liability company, Bentley Lake Farm Market, LLC, in order to sell their produce and related farm goods at the Property.

I. The Zoning Use Determination:

The Property is zoned "Suburban Residential" by the Livingston County Zoning maps and code. The owners of the Property have determined and testified<sup>1</sup> to the fact that they are going to be clear cutting the entirety of the Property, which is approximately 8 acres, and begin farming operations on the Property. The issue that is more pressing than their intended use to clear cut and begin farming the Property is that the owners of the Property intend to operate a farm market, not simply a farm operation. The farm market, which is going to be controlled by an entity called "Bentley Lake Farm Market, LLC" will sell produce and other farm related goods including cut flowers, honey, and jams at the Property. The Owners have demolished one building to facilitate their goal of using the Property as a farm market, cleared trees, deposited tons of fill material, and graded to form a parking lot for the patrons of their farm market. The farm market is now operational, selling cut flowers, strawberries, and other produce once it becomes available. The products sold at the Farm Market are going to be almost entirely produced by another entity controlled solely by Clifford John Turner, Bentley Lake Farms, LLC, whose registered address with the State of Michigan is 4400 Bentley Lake Road, Howell, MI 48843. The sole member and owner of Bentley Lake Farms, LLC is Clifford John Turner, who is an Owner of the Property.

The Owners rely on a determination made by Dave Hamann, Marion Township Zoning Administrator, to facilitate their intended use of the Property as a farm market. Mr. Hamann has stated to representatives for the parties filing this appeal that the allowance of the farmers market comes down to a determination of whether the farm market is truly a "farm market" or a roadside stand. In Mr. Hamann's zoning determination, the farm market is stated as a roadside stand for the purposes of the code. Mr. Hamann's determination that the farm market is a roadside stand is shown in the Marion Township Zoning Codes by the definition of a roadside stand. According to the Marion Township Zoning codes, a roadside stand is:

**"Roadside Stand: a structure which is used seasonally for the display and sale of agricultural produce. The seasonal operation of a roadside stand shall not be considered a commercial use"**

#### **Marion Township Zoning Ordinances – Definitions**

Because of Mr. Hamann's determination that the farm market is a roadside stand, the Owners of the Property have not asked for a special use permit, complied with the rules outlining the parking lot standards for farm markets within the Township, and do not comply with the signage requirements. The Zoning Board should determine, however, for the purposes of this appeal that the Owners' intended use and operation of a commercial business on the Property is a farmer's market, and that a special use permit must be obtained in order to continue their intended use, along with fulfillment of the various other requirements that are defined within the code for a farm market.

II. The Property Should be Zoned as a Farmer's Market:

a. The Owners of 2160 Pinckney Road must apply for a special use permit:

<sup>1</sup> There is a lawsuit pending in the Livingston County Circuit Court under case nos. 21-31325-CH & 21-31352-CH involving the same or similar parties. This case remains pending.

The Property is zoned "SR" Suburban Residential District. *See attached Zoning Map.*  
Section 8.02 of the code defines Suburban Residential Districts:

**"Intent: It is the intent of the Suburban Residential District (SR) to provide opportunities for higher density residential development typically associated with a suburban land use pattern. This district includes areas of the Township, which are currently served by a higher level of public services as compared to most of the balance of the Township, and these additional services permit a higher intensity of residential development, while protecting the public health, safety, and welfare. This District is intended to implement the planned future land use pattern of the Marion Township Master Plan in the northern portion of the Township where a Suburban Residential Area is proposed and intended to accommodate residential developments of a density of one (1) dwelling unit per .75 acre or greater. The Suburban Residential District is intended to both permit the development of suitable vacant land for residential purposes while also preserving the residential character of existing area neighborhoods. The Suburban Residential District includes existing crop operations and recognizes this land use for its important contribution to the local economic base, to the provision for food and fiber for the state's citizens, and for the historical character and open spaces it provides without having a negative impact on neighboring residential uses.**

The Code allows for certain uses of SR property by Right:

**Section 8.02(B): Uses Permitted by Right**

1. **Single Family Dwellings.**
2. **Family Child Care homes.**
3. **Adult foster care family homes.**
4. **Accessory buildings.**
5. **Crop Operations.**
6. **Nursery operation of retail sales of nursery stock grown on the site.**

The Code defines Permitted Accessory Uses:

**Section 8.02(C): Permitted Accessory Uses:**

1. **Uses typically associated with single-family residences, including swimming pools and automobile parking.**

## **2. Home occupation class I.**

The Code defines uses permitted by right subject to special conditions, which includes private stables subject to the listed conditions, and hobby kennels, nothing is listed as to farmstands, or farming operations as uses permitted by right. In 8.02(E), the Code lists uses permitted by special use permit for Suburban Residential zoned properties:

**Section 8.02(E): Uses Permitted by Special Use Permit: (*in relevant part*)**

**18. Farm Market**

**19. Agricultural-based tourism/Entertainment Activities**

The Owners have not applied for a special use permit as required by the code for a farm market. A "farm market" is defined as:

**Farm Market:** a place or an area where transactions between a farm market operator and customers take place. It does not have to be a physical structure and is considered part of a farm operation. Fifty percent of the products must be produced and or by the affiliated farm. A farm market may operate *seasonally or year-round*. A farm market shall conform to Michigan Right to Farm Act, PA 93 of 1981, Farm Market GAAMPS, as amended. *Emphasis added.*

Furthermore, Farm Markets are specifically governed within the Code in Section 17.14:

### **Section 17.14 Farm Markets:**

- A. Locational Requirements:** Farm markets are permitted by special use permit on major thoroughfares in the Rural Residential and Suburban Residential Districts.
- B. Site Requirements:**

**1. The minimum area of a lot used for a farm market shall be at least ten thousand (10,000) square feet and not more than twenty thousand (20,000) square feet. A farm market may be placed on the same lot as a dwelling unit if both are under the same ownership and if the owner of the farm market occupies the dwelling unit.**

**2. No activity or structure shall be located within twenty-five (25) feet of the public road right.**

**3. A minimum of six (6) spaces for off-street parking (paving not required), outside of the public road right of way, shall be required for the exclusive use of the farm market with additional spaces provided at a rate of one (1) space for each one hundred (100) square feet of gross floor area.**



4. Suitable containers for rubbish shall be placed on the premises for public use.

5. A storage structure may be permitted provided it does not exceed two hundred (200) square feet in area.

6. Farm markets may be located no closer than one hundred (100) feet from any lot line that abuts a residential zone or dwelling unit.

7. There shall be one (1) access drive, which shall be wide enough to accommodate two (2) vehicles side-by-side.

C. **Buffering Requirements:** Shall comply with requirements of Section 6.13.

D. **Performance Standards:**

1. **Hours of Operation** shall be between the hours of 7:00 a.m. and 7:00 p.m.

2. Any structure used as a farm market shall not be more than one (1) story high unless it is an existing barn.

Mr. Turner, and Mr. and Mrs. Baron do not live at the Property. Mr. and Mrs. Purvis live at the Property. As previously stated, Mr. Turner is the sole member of Bentley Lake Farms, LLC – the entity that is growing over 90% of the produce to be sold at Bentley Lake Farm Market, LLC. Bentley Lake Farm Market, LLC is controlled by Mr. Turner, and Mr. and Mrs. Baron. This is in direct violation of Marion Township Ordinances regarding a dwelling located on the property with a Farmers Market.

Furthermore, there is an issue with the size of the sign that Bentley Lake Farm Market has posted on the Property. The current sign, which can be seen in the exhibits to this Appeal, is approximately 8 feet by 4 feet, or 32 square feet. Section 15.06 of the Code lists the signs that applicable to residential districts:

**Section 15.06: Signs in Residential Districts:**

The following signs shall be allowed in the RR, SR, UR, ERS#1, and ERS#2 zoning districts, subject to permit approval in accordance with Section 4.03 and the following standards. Such signs shall only pertain to permitted or special land uses or legally nonconforming non-residential use, and shall be located upon the same property to which the sign relates, unless otherwise provided herein.

A. **Agricultural Product Signs:** In the RR district, one sign advertising agricultural and/or horticultural products grown on the premises shall be permitted in conjunction with a temporary roadside stand. The sign shall not exceed twenty (20) square feet in area, four (4) feet in height nor be located

closer than (15) feet to any property line. The sign shall be erected not more than two weeks prior to opening of sales and removed within one (1) week of the end of sales.

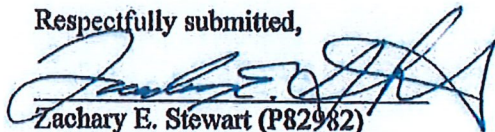
- III. Conclusion: The Owners' Uses of the Property should be a Regulated Farm Market, a Special Use Permit should be required, and the Zoning Ordinances for Marion Township Enforced.

As shown above, the Property has been used for the development and creation of a Farmers Market by the Property Owners, Larry Purvis, Barbara Purvis, Clifford Turner, Andrew Baron, and Heidi Baron. The Property owners have already clear cut a substantial number of trees, deposited fill material and leveled and graded the Property for a parking lot, demolished an existing structure on the Property, and begun operations of a Farmers Market. The Owners have done all of this without any permitting from the Township. The Township has regulated this Property as Suburban Residential and determined that the "Farm Market" which is marketed, sold, and advertised as a farm market, is not a regulated farm market within the Marion Township Code, but rather, a roadside stand.

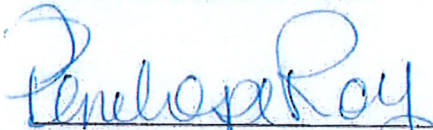
This Farm Market is not a roadside stand because of the size, nature, and scope of what has been sold on the property and what will continue to be done to the Property by the Owners. This Zoning Board of Appeals needs to determine that Dave Hammon's determination was incorrect, that a special use permit should be applied for, and the provisions of the ordinances for farm markets must be followed.

Respectfully submitted,

Dated: June 17, 2022

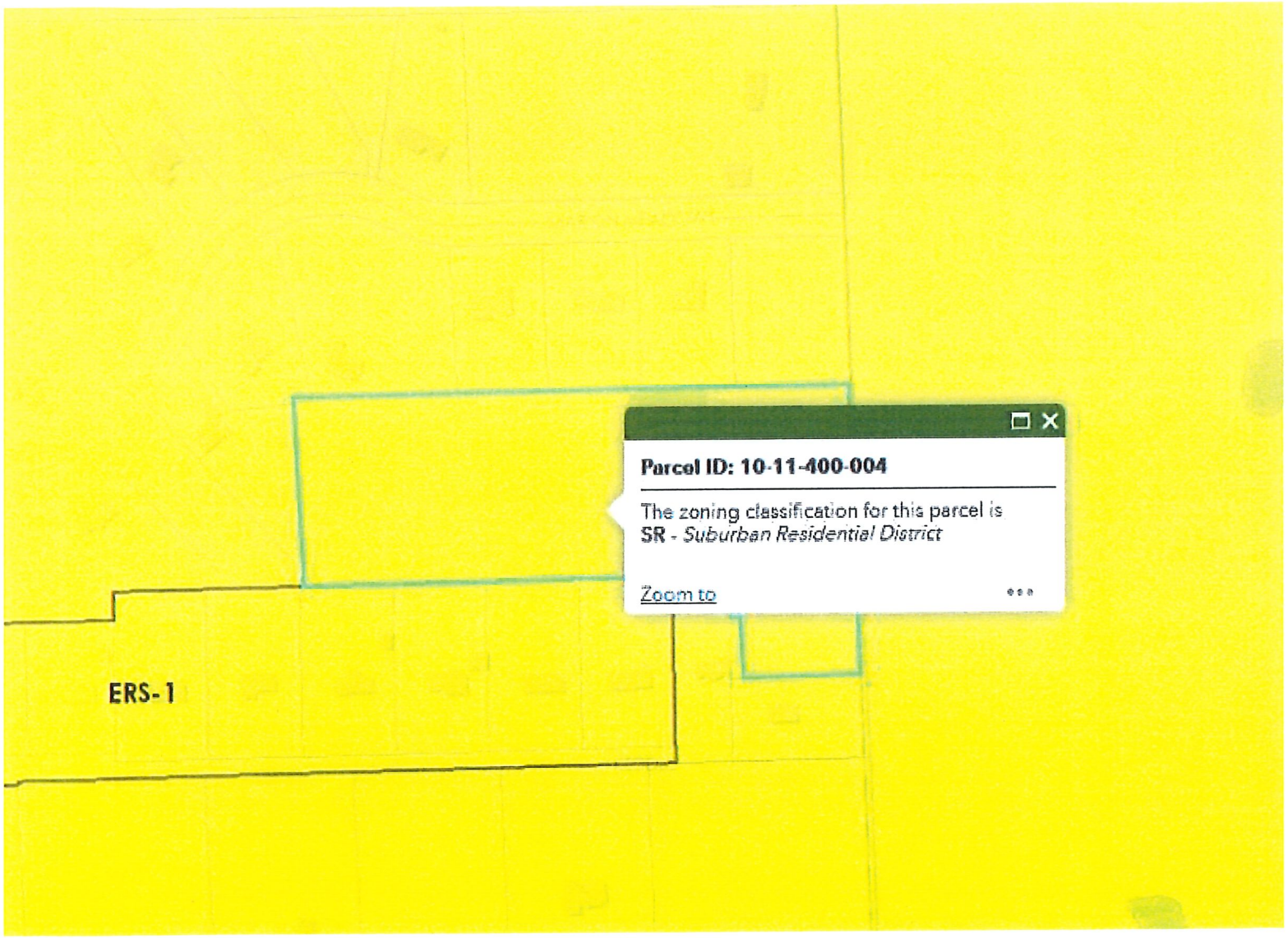
  
Zachary E. Stewart (P82982)  
Counsel for Aggrieved Parties

Dated: June 17, 2022

  
Penelope Roy, as Guardian and  
Conservator for Zlatko Blazevski



10-11-400-004



ERS-1

**Parcel ID: 10-11-400-004**

The zoning classification for this parcel is  
**SR - Suburban Residential District**

[Zoom to](#)

...

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR LIVINGSTON COUNTY

PENELOPE ROY ex rel. ZLATKO  
BLAZEVSKI,

Plaintiff,

v.

File No. 21-31352-CH  
Hon. L. Suzanne Geddis

BENTLEY LAKE FARMS, LLC, a  
Michigan Limited Liability Company,  
LARRY D. PURVIS, BARBARA J. PURVIS,  
CLIFFORD JOHN TURNER, ANDREW LEE  
BARON and HEIDI ELLEN BARON.

Defendant.

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Scott H. Brock (P81935)  
Eric E. Maul (P84847)  
COOPER & RIESTERER, PLC  
Attorneys for Plaintiff  
7900 Grand River Road  
Brighton, Michigan 48114  
(810) 227-3103  
[scott@erlaw.biz](mailto:scott@erlaw.biz)  
[eric@erlaw.biz](mailto:eric@erlaw.biz)

Dale F. Schaller (P59743)  
Nicole B. Sin (P77089)  
SCHALLER LAW FIRM, PLC  
Attorney for Defendants  
225 E Grand River Ave, Suite 203  
Brighton, Michigan 48116  
517-546-7777  
[dale@schallerfirm.com](mailto:dale@schallerfirm.com)  
[nicole@schallerfirm.com](mailto:nicole@schallerfirm.com)

Thomas A. Halm (P36748)  
HALM & PRINE, P.C.  
Co-Counsel for Plaintiff  
2130 W. Grand River Ave  
PO BOX 666  
Howell, Michigan 48844-0686  
[hcppc@sbcglobal.net](mailto:hcppc@sbcglobal.net)

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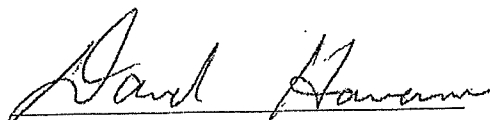
AFFIDAVIT OF DAVID HAMANN

STATE OF MICHIGAN            )  
  )ss  
COUNTY OF LIVINGSTON    )

NOW COMES David Hamann, the deponent herein, first being duly sworn and deposes  
and says as follows:

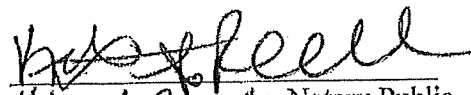
- 1) I am the current Zoning Administrator for Marion Township, which is located in the County of Livingston, State of Michigan.
- 2) I am competent to testify to the following facts and if called upon to testify before the Court, I will testify to the same facts stated herein.
- 3) Upon information and belief, Larry Purvis, Barbara Purvis, Clifford John Turner, Heidi E. Baron, and Andrew L. Baron have a real estate interest in the real property commonly known as 2160 Pinckney Road, Howell, Michigan 48843 with a tax identification number of 4714-11-400-004.
- 4) As of the date of this affidavit, Clifford John Turner, Heidi E. Baron Andrew L. Baron, Larry Purvis, and Barbara Purvis are not in violation of any Marion Township Zoning Ordinances regarding the property at 2160 Pinckney Road, Howell, Michigan 48843.

Deponent further sayeth not.

  
David Hamann

On this 1<sup>st</sup> day of February 2022, before me a Notary Public for Livingston County and appear in said County, personally appeared the above-named David Hamann, Deponent, and made oath that he has read the foregoing Affidavit of David Hamann, by he subscribed, knows the contents thereof and that the same is true to his own knowledge except as to those matters which are therein stated to be upon information and belief, and as to those matters, he believes them to be true.

KITSEY A. RENNELLS  
Notary Public, State of Michigan  
County Of Livingston  
My Commission Expires 07-02-2023  
Acting in the County of Livingston

  
Kitsey A. Rennells, Notary Public  
Livingston County, Michigan  
Acting in Livingston County  
My Commission Expires:



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF AGRICULTURE  
AND RURAL DEVELOPMENT

GARY MCDOWELL  
DIRECTOR

July 22, 2022

Clifford Turner  
Bentley Lake Farms  
2160 Pinckney Road  
Howell, MI 48843

Dear Mr. Turner:

On June 27, 2022, I met with you to review the farm market management practices followed at your facility in Livingston County. This review was conducted by the Michigan Department of Agriculture and Rural Development (MDARD), Right to Farm Program, in response to a complaint received by our office. The complaint concerned a farm market in a residential area.

At the time of review, there did not appear to be any non-farm residences within 165' of farm market retail spaces. This is in conformance with the portion of the Farm Market Generally Accepted Agricultural and Management Practices that refers to where farm markets should be located. Also, you submitted documentation indicating that during your peak production season more than 50 percent of the products offered are produced by you on affiliated farms.

Based on this review and the information provided, MDARD will classify this complaint as not verified. Therefore, the file will be closed.

This complaint response did not determine conformance with all the Generally Accepted Agricultural and Management Practices (GAAMPs) that may apply to your operation. Only the GAAMPs relevant to the complaint were reviewed at this time. For a full determination of your farm operation's conformance with GAAMPs, please contact the Right to Farm office at 877-632-1783.

As required by the Michigan Right to Farm Act, a copy of this letter is being sent to the township and county where the farm is located.

Thank you again for taking the time to meet with me to review your agricultural management practices, and for your efforts and commitment to maintain the positive image of Michigan agriculture. Please help us improve our service by taking a very brief survey at <https://www.surveymonkey.com/r/MDARDRTF-complaints> and contact me at 517-285-1918 if you have any questions on this matter.

Sincerely,

Jay Korson  
Right to Farm Program

JK:or

cc: Livingston County Clerk  
Marion Township Clerk

**MARION TOWNSHIP  
ZONING BOARD OF APPEALS  
RULES OF PROCEDURE**

**Section 1 Purpose**

The following rules of procedure are hereby adopted by the Marion Township Board of Appeals (hereinafter known as Appeals Board) on October 4, 2004, to facilitate the performance of its duties as outlined in Marion Township Zoning Ordinance.

**Section 2 Officers**

- 2.1 Selection.** At the regular meeting in November of each year, the Appeals Board shall select from its membership a Chairman, Vice Chairman, and Secretary. All officers are eligible for re-election.
- 2.2 Tenure.** The Chairman, Vice Chairman, and Secretary shall take office at the same meeting at which they are selected, and shall hold office for a term of one year or until their successors are selected and assume office.
- 2.3 Duties of Chairman.** The Chairman shall preside at all meetings, and perform other duties as may be ordered by the Appeals Board.
- 2.4 Duties of Vice Chairman.** The Vice Chairman shall act in the capacity of Chairman in his or her absence, and in the event that the office of the Chairman becomes vacant, the Vice Chairman shall succeed to this office for the unexpired term and the Appeals Board shall select a successor to the office of Vice Chairman for the unexpired term.
- 2.5 Duties of Secretary.** The Secretary shall execute documents in the name of the Appeals Board, perform the duties hereinafter listed and shall perform other duties as the Appeals Board may determine. The Secretary shall be responsible for the record and minutes of each meeting.

**Section 3 Notice of Appeal**

- 3.1 Filing.** Any aggrieved person, or the person's authorized agent, may appeal or seek a variance in writing on a form approved by the Zoning Board of Appeals, and upon payment of a fee as may be established from time to time by the governing body. Such Notice of Appeal shall be filed with the clerk within ten (10) days from the date of the decision being appealed. Such request for a variance shall be filed with the clerk at any time.
- 3.2 Notification.** Within 10 days from the date of the receipt of the request for a variance or Notice of Appeal, the Township Office Secretary shall contact the Chairman of the Appeals Board and set up a date(s) and time for the Appeals



Board to meet to hold a hearing and a meeting to consider and act on the case. Notice of such meeting(s) shall be made by the Secretary as specified in Section 5.06 C of the Marion Township Zoning Ordinance. The notice sent to members of the Appeals Board shall include copies of the Notice of Appeal or request for a variance form; the entire content of the zoning administrator's file and/or other file(s) on the case; other relevant correspondence, permits by other applicable enforcement agencies; and anything else that is relevant.

**3.3 Deadline for Action.** The above notwithstanding, the Appeals Board shall hear the case and render and file its decision with a statement of reasons for the decision with the zoning administrator not more than 60 days after receipt of the case, unless a longer period of time is mutually agreed upon by the petitioner and Appeals Board.

**3.4 Site Inspection.** The Appeals Board, if the chairman considers it necessary, may conduct a site inspection at the site at issue. In such instance, the site inspection shall be posted as part of the public meeting/hearing. A quorum of the Appeals Board shall not ride in the same vehicle to or from a site inspection or to or from a meeting. The site inspection, if posted as part of the meeting/hearing, shall always be held the same day and as part of the same meeting as the start of the public hearing on the case. Nothing in this paragraph shall prevent members of the Appeals Board from individually and separately visiting a site in question at his or her own expense and time. A quorum of the Appeals Board shall not make site inspections or otherwise discuss a Notice of Appeal except during posted open meetings of the Appeals Board.

**3.5 Notice of Decision.** The Secretary, or a designate, shall cause to have notices of the Appeals Board decision delivered in person or by first-class mail to the zoning administrator and to anyone else requesting a copy in writing. Further, notice of the decision to the petitioner, or agent, filing the case shall be sent by first-class mail with proof of mailing.

## **Section 4 Meetings**

**4.1 Regular Meetings.** The Appeals Board shall meet at least once a month if there are appeals. Any other meetings of the Appeals Board shall be called as needed in response to a receipt of a Notice of Appeal, so long as the meeting is scheduled within 30 days of the Notice of Appeal. The meeting can be called by the Chairman of the Appeals Board, or in his or her absence, the Vice Chairman.

### **4.2 Attendance**

- A. If any member of the Appeals Board is absent without notice from more than three meetings in a row, that member shall be considered delinquent. Delinquency shall be grounds for the governing body to remove any member for nonperformance of duty or misconduct upon

public hearing from the Appeals Board. The elected Secretary shall keep attendance records and shall notify the governing body whenever any member of the Appeals Board is absent without notice from more than three meetings in a row, so the governing body can consider further action allowed under law. Members of the Zoning Board of Appeals may be removed by the township board for nonperformance of duty or misconduct in office upon written charges and after a public hearing.

- B. When a petitioner fails to appear at a properly scheduled meeting of the Board of Appeals, the Chairman may entertain a motion from the Board to dismiss the case for want of prosecution. In the absence of a motion by the Board, the chair shall rule. In cases that are dismissed for want of prosecution, the petitioner will be furnished written notice of the action by the Secretary of the Board. The applicant shall have fourteen (14) days from the date of notice of dismissal to apply for reinstatement of the case. In such cases, applicant must file a written request with the Secretary for reinstatement. Reinstatement shall be at the discretion of the Chairman for good cause shown, and upon payment of a fee set from time to time by the governing body. In all cases reinstated in the above described manner, the case will be docketed and readvertised in the usual manner prescribed for new cases.

**4.3 Other Meetings.** Meetings shall be called by delivering meeting notices by first-class mail, phone call, or by personal delivery to members of the Appeals Board at least seven (7) days prior to such meeting and shall state the purpose, time, location of the meeting and shall be posted at the township seven (7) days prior to such meeting.

**4.4 Public.** All meetings, hearings, records and accounts shall be open to the public, and posted in compliance with P.A. 267 of 1976, being the Michigan Open Meetings Act.

**4.5 Quorum.** A majority of the total membership of the Appeals Board shall constitute a quorum for the transaction of business and the taking of official action for all matters.

**4.6 Order of Business.** The Chairman or his or her designate shall prepare an agenda for each meeting and the order of business therein shall be as follows:

- A. Call to order and roll call.
- B. Site inspection, then recess (optional if the meeting is posted to include a site inspection.)
- C. Reconvene and roll call (if following a site inspection, when necessary.)
- D. Election of officers, if necessary.

- E. General Business
  - 1. Approval of minutes from previous meeting
  - 2. Approval of agenda
  - 3. Other
  
- F. Chairman reads Reason and Procedure of Appeals Hearing.
  
- G. Public Hearings. The Chairman will declare a public hearing open and state its purpose.
  - 1. The Chairman shall summarize, provide copies, or conspicuously post the procedure for public hearing as outlined in Sections 4.6, 4.7, 4.8, and 4.9 of these rules of procedure for any members of the public in attendance, or provide copies.
  
  - 2. ZBA Case Number (case number and parcel ID).
    - a. The petitioner, through him or herself, agent, or lawyer, may present the case, including presenting witnesses on his or her behalf. No time limit will be imposed on the petitioner.
    - b. Members of the Appeals Board shall report on the site inspection and any other relevant information they may have.
    - c. Members of the public who support the petitioner speak and correspondence is read.
  
  - 1. The Chairman may recess the meeting for a short time to allow those in support to caucus in order to have one speak on their behalf for an unlimited period of time if a large number of people are present on an issue.
  
  - 2. The Chairman may allow many to speak in favor of the petitioner and can impose a time limit for the speaker that is three (3) minutes per speaker.
    - d. Members of the public who oppose the petitioner speak and correspondence is read.
  
  - 1. The Chairman may recess the meeting for a short time to allow those in support to caucus in order to have one speak on their behalf for an unlimited period of time if a large number of people are present on an issue.
  
  - 2. The Chairman may allow many to speak in opposition of the petitioner and can impose a time limit for the speaker that is five (5) minutes or more per speaker.

- e. Rebuttal. Anyone may ask the Chairman questions on presentations or speeches given at this hearing. The Chairman will seek an answer to the question. Answers shall be given to the Chairman. No discussion, questioning or answering shall take place between any two or more people except between the Chairman and the individual who has the floor.
  - f. Close the Public Hearing (at this point, all public participation on the issue ends.)
- H. Recess to another night as provided in Section 4.8 of these rules of procedure (optional).
- I. Business Session
- 1. Action on pending case number (case number and parcel ID).
    - a. Discussion: Review of facts based on all information presented (from the application, written request for appeal, zoning ordinance, physical characteristics of the parcels, staff reports, hearing testimony.) Discussion continues until a member is confident enough to propose a motion that includes a "finding of fact" and/or "conclusions," and "rationale explaining any conclusions are reached" and "conditions", if any.
    - b. Motion is proposed on "finding of fact," based on "rationale, conclusions and conditions."
    - c. Discussion on the motion.
    - d. Action on the motion.
    - e. Discussion focusing on standards and requirements of the ordinance.
  - 2. Other business of the Appeals Board.
- J. Call to the Public.
- K. Adjournment.

**4.7 Comments Out of Order.** The Chairman shall rule out of order any irrelevant remarks that include, but are not limited to, remarks that are personal, about another's race, religion, sex, physical condition, ethnic background, beliefs, or similar topics; profanity; or any other remarks that are not about land use.

**4.8 Recesses.** The Chairman may recess a public hearing and/or meeting to another time if it is after 11:00 pm or if the meeting (not including site inspection) has been over three (3) hours upon a majority vote of the members. In order for a recess to be in order, the time, day, month, date, year and location to reconvene shall be stated as part of the action to recess. If a meeting and/or public hearing reconvenes over 36 hours after the action to recess, the

reconvened meeting shall be posted at least 18 hours before the time of the reconvened meeting, to comply with Section 4.4 of these rules of procedure. Upon reconvening, a roll call shall be taken as the first order of business.

**4.9 Parliamentary Procedure.** Meetings shall be conducted in a formal manner, and parliamentary procedure shall be governed by Robert's Rules of Order if not specifically dealt with in these rules of procedure.

**4.10 Motions.** Motions shall be reiterated by the Chairman before a vote is taken.

A. Motions dealing with an appeal or a variance concerning the Marion Township zoning ordinance shall be a review of the request in accordance with Section 5.05 C, items 1-6, of the township zoning ordinance and shall include:

1. The list of facts, which is the information pertinent to making a decision on the matter, structured as a "finding of fact" of "finding of facts" on the case.
2. The conclusion or decision.
3. Any conditions upon which a variance may be issued, if applicable. Conditions shall be listed in detail, and based on regulations or standards already in the Marion Township zoning ordinance.
4. Reasons why the conditions are imposed.

B. Motions dealing with an ordinance interpretation, or an appeal of an administrative decision, shall be stated in the affirmative and must contain reasons that support the offered motion.

C. Any other motion shall be stated in prose or in the form of a resolution.

**4.11 Voting.** Voting shall be by roll call vote, and shall be recorded by yeas and nays. Members must be present to cast a vote. The concurring vote of a majority of the members of the Appeals Board shall be necessary to reverse an order, requirement, decision, or determination of the administrative official or body, or to decide in favor of the applicant on any matter upon which they are required to pass under or to effect any variance in the zoning ordinance or any other motion properly before the Appeals Board.

## **Section 5 Records**

**5.1 Preparation.** A record of each meeting, including hearings and site inspections, shall be prepared by the Secretary, or his or her designee.

**5.2 Content.** The record of each meeting shall include the following items.

- A. A copy of the meeting posting as required in Section 4.4 of these rules of procedure.
- B. A signed statement indicating that notices, as required in Section 3.2 of these rules of procedure, were sent out, with list of to whom, and an indication of by whom, and a copy of a newspaper notice, if one was published.
- C. A copy of the request for a variance or notice of appeal, whichever is applicable, including any maps, drawings, site plans, etc.
- D. The original of the minutes of the meeting (including the hearing and site inspection), which shall include all action taken in chronological sequence of occurrence.
- E. The records of any action on a case by the zoning administrator.
- F. All past records regarding the property involved in a case (previous permits, special use permits, variances, appeals.)
- G. Any relevant maps, drawings, photographs, or other information presented as evidence at a hearing.
- H. Copies of any correspondence received or sent out in regard to a case.
- I. A copy of relevant sections, or a list of citations of sections of the zoning ordinance.
- J. A copy of any follow-up correspondence to or from the petitioner regarding the decision.

**5.3 Retention.** The record of each meeting shall be permanently kept on file and spread in suitable volumes, with a copy filed with the clerk of the municipality. All the pertinent documents and minutes for each case before the Board of Appeals shall be copied and filed with the zoning administrator's office. Unapproved copies of the minutes shall be made available to members of the Appeals Board and the public within eight (8) days of the meeting.

## **Section 6 Per Diem and Mileage**

Mileage and per diem may be paid to members of the Appeals Board at rates established by the governing body for attending Appeals Board meetings, and other authorized meetings and trips, if those members submit a bill for the same.

## **Section 7 Other Duties**

The Appeals Board may also formulate and provide advice and may advise policy to the planning commission or any committee thereof on issues dealing with the administration, text, map and enforcement of the zoning ordinance.

## **Section 8 Adoption and Repeal**

Upon adoption of these rules of procedure of the Marion Township Zoning Board of Appeals, they shall become effective and all previous rules of procedure, as amended, shall be repealed.

**Section 9 Amendments**

These rules may be amended at any regular or special meeting by a majority vote of the total members of the Appeals Board, so long as such amendment does not result in a conflict with state law, zoning ordinance, or court decision.

Adopted by the Marion Township Zoning Board of Appeals on the \_\_\_\_\_ day of \_\_\_\_\_ 2022.

Presiding Chair-person: \_\_\_\_\_ Secretary: \_\_\_\_\_  
Larry Fillinger, Chairperson Dan Lowe, Secretary