

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

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

CALL TO ORDER

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

APPROVAL OF AGENDA

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

Motion carried 5-0.

MEMBERS PRESENT

The members of the Zoning Board of Appeals introduced themselves.

CALL TO THE PUBLIC

No response.

APPROVAL OF MINUTES

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

OLD BUSINESS

None.

NEW BUSINESS

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

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

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

Pat Keough said the zoning ordinance is arbitrary and the number of pumps is irrelevant.

Call to the Public

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

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

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

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

Motion

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

1. How the strict enforcement of the provisions of the township zoning ordinance would cause an unnecessary hardship and deprive the owner of rights enjoyed by all other property owners owning property within the same zoning district. *Meeting this requirement would deprive the applicant of the rights enjoyed by the recently established auto repair business, reupholstery shop and restaurant that are within the immediate vicinity of the applicant's parcel.*
2. The conditions and circumstances unique to the property, which are not similarly applicable to other properties in the same zoning district. *Pinckney Road was relocated to the west side of this parcel some years ago. The old Pinckney Road remained in place to continue access to the properties with frontage. The properties between Pinckney Road and Old Pinckney Road now have two front yard setbacks. The property is a triangle shape, unlike the surrounding properties. The two front yard setback requirements overlap one another, leaving no building envelope.*
3. The conditions and circumstances unique to the property were not self-created. *As stated in item #2, the unique conditions were created by the new Pinckney Road, a land division that was approved by Marion Township. The conditions were not created by the applicant.*
4. Why the requested variance will not confer special privileges that are denied other properties similarly situated and in the same zoning district. *The 103 foot right-of-way along Pinckney Road services as the 50 foot buffer. Other commercial uses along Old Pinckney Road do not have a 25 foot buffer.*
5. Why the requested variance will not be contrary to the spirit and intent of this zoning ordinance. *The intent of Section 6.13 is to protect and preserve the appearance and value of the community, minimize visual pollution, and provide buffering between incompatible land uses. Relaxing requirements of this section will not be contrary to the intent. The 103' right-of-way along Pinckney Road serves as the 50 foot buffer. Other commercial uses along Old Pinckney Road do not have a 25 foot buffer.*
6. The difficulty shall not be deemed solely economic. *The applicant is not asking for more than the zoning ordinance allows. The unique shape of the parcel dictates requesting relief.*

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

Motion

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

1. How the strict enforcement of the provisions of the township zoning ordinance would cause an unnecessary hardship and deprive the owner of rights enjoyed by all other property owners owning property within the same zoning district. *Meeting this requirement would deprive the applicant of the rights enjoyed by the recently established auto repair business, reupholstery shop and restaurant that are within the immediate vicinity of the applicant's parcel.*
2. The conditions and circumstances unique to the property, which are not similarly applicable to other properties in the same zoning district. *Pinckney Road was relocated to the west side of this parcel some years ago. The old Pinckney Road remained in place to continue access to the properties with frontage. The properties between Pinckney Road and Old Pinckney Road now have two front yard setbacks. The property is a triangle shape, unlike the surrounding properties. The two front yard setback requirements overlap one another, leaving no building envelope.*
3. The conditions and circumstances unique to the property were not self-created. *As stated in item #2, the unique conditions were created by the new Pinckney Road, a land division that was approved by Marion Township. The conditions were not created by the applicant.*

4. Why the requested variance will not confer special privileges that are denied other properties similarly situated and in the same zoning district. *The unique shape of the parcel makes the layout of any use challenging. The Zoning Board of Appeals doesn't consider the granting of this variance a special privilege.*
5. Why the requested variance will not be contrary to the spirit and intent of this zoning ordinance. *A three foot vertical screen would not provide screening for the residential use east of this parcel. The applicant's parcel sits approximately ten feet lower than the residential lot; a three foot screen would not achieve that goal.*
6. The difficulty shall not be deemed solely economic. *The applicant is not asking for more than the zoning ordinance allows. The unique shape of the parcel dictates requesting relief.*

Larry Grunn seconded. Roll call vote: Manson-Dempsey, Fillinger, Durbin, Grunn, Lowe—all yes.

Motion carried 5-0.

Motion

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

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

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

Motion

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

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

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

Larry Grunn seconded. Roll call vote: Manson-Dempsey, Fillinger, Durbin, Grunn, Lowe—all yes.

Motion carried 5-0.

Motion

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

1. How the strict enforcement of the provisions of the township zoning ordinance would cause an unnecessary hardship and deprive the owner of rights enjoyed by all other property owners owning property within the same zoning district. *Meeting this requirement would deprive the applicant of the rights enjoyed by others in the Highway Service district. Minimum acreage for this district is one acre, this parcel is .97 acres, and is a lot of record created by Marion Township.*
2. The conditions and circumstances unique to the property, which are not similarly applicable to other properties in the same zoning district. *The property is a triangle shape, unlike the surrounding properties.*
3. The conditions and circumstances unique to the property were not self-created. *As stated in item #2, the unique conditions were created by the new Pinckney Road, a land division that was approved by Marion Township. The conditions were not created by the applicant.*
4. Why the requested variance will not confer special privileges that are denied other properties similarly situated and in the same zoning district. *The unique shape of the parcel makes the layout of any use challenging. The Zoning Board of Appeals doesn't consider the granting of this variance a special privilege.*
5. Why the requested variance will not be contrary to the spirit and intent of this zoning ordinance. *It is the intent of this district to provide for service establishments on a one-acre minimum; this parcel is only .03 acres less than the requirement. Relaxing requirements of this section of the ordinance will not be contrary to the intent.*
6. The difficulty shall not be deemed solely economic. *The difficulty is not economically driven.*

Larry Grunn seconded. Roll call vote: Manson-Dempsey, Fillinger, Durbin, Grunn, Lowe—all yes.

Motion carried 5-0.

Motion

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

feet to zero and the reduction of the setback from Pinckney Road from 100 feet to zero, considering the following criteria:

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

Larry Grunn seconded. Roll call vote: Manson-Dempsey, Fillinger, Durbin, Grunn, Lowe—all yes.

Motion carried 5-0.

Motion

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

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

Larry Grunn seconded. Roll call vote: Manson-Dempsey, Fillinger, Durbin, Grunn, Lowe—all yes.

Motion carried 5-0.

Motion

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

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

Larry Grunn seconded. Roll call vote: Manson-Dempsey, Fillinger, Durbin, Grunn, Lowe—all yes.

Motion carried 5-0.

Motion

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

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

Larry Grunn seconded. Roll call vote: Manson-Dempsey, Fillinger, Durbin, Grunn, Lowe—all yes.

Motion carried 5-0.

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

Motion

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

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

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

CALL TO THE PUBLIC

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

T.J. Lekander said they are excited about the project. This review has been a good exercise in what is and what is not necessary. A meeting on horizontal fracturing will be held at Fowlerville High School on February 6 at 6:30 pm. The county will host a brown bag lunch presentation on the same subject on February 12 from 12:00 noon-1:30 pm at Cleary University.

ADJOURNMENT

Linda Manson-Dempsey motioned to adjourn the meeting at 9:30 pm. Larry Grunn seconded.

Motion carried 5-0.

MINUTES - SEPTEMBER 8, 2014

MEMBERS PRESENT: Larry Fillinger, Linda Manson-Dempsey, Larry Grunn, Claire Stevens and Dan Lowe

MEMBERS ABSENT: None

CALL TO ORDER

Larry Fillinger called the meeting to order at 7:33 p.m.

APPROVAL OF AGENDA

Linda Manson-Dempsey motioned to approve the agenda as presented. Larry Grunn seconded.

Motion carried 5-0.

MEMBERS PRESENT

The members of the Zoning Board of Appeals introduced themselves, and Chairman Fillinger welcomed new member Claire Stevens.

CALL TO THE PUBLIC

No response.

APPROVAL OF MINUTES

January 2, 2014 Regular Meeting: Linda Manson-Dempsey motioned to approve the minutes as presented. Dan Lowe seconded. **Motion carried 4-0** (Claire Stevens abstained.)

OLD BUSINESS

None.

NEW BUSINESS

ZBA Case #02-14—Timothy & Katherine Choroba, 2767 Buttercup Ct., Tax ID #4710-15-301-053

Timothy Choroba said they are applying for the variances for an accessory building because of difficulties with the corner lot, drainage, sloping yard, and the steep pitch the second driveway would require to access the building. Linda Manson-Dempsey asked about moving the building further up the hill. Mr. Choroba said that's where the septic is.

Call to the Public

Dave and Debbie Asquini, 2851 Wheat Valley Dr., were present and strongly object to the proposed accessory building, as stated in their August 27 letter to the ZBA. One of the objections is that Mr. Choroba runs a Matco Tool business out of his home. They are concerned about constant deliveries and commercial trucks coming into the neighborhood on a daily basis. Linda Manson-Dempsey asked Annette McNamara if they have a Special Use Permit for the business. Ms. McNamara said no, but that issue would be dealt with separately from the variance request. Dan Lowe asked the applicants if they would be able to landscape around the building to provide some screening. Mr. Choroba said that was their intention. Claire Stevens asked how often deliveries are made. Mr. Choroba said UPS daily, the larger truck usually once or twice a month. Scott Lloyd said he would like to see the accessory building pushed back further. Claire Stevens said she is secretary of the Blossom Farms homeowner's association, but did not vote on this item, and this would not be considered a conflict of interest.

Letters opposing this request were also received from Blanche Kline, 3029 Wheat Valley Drive, and Wallace & Kimberly Hill, 2800 Buttercup Ct.

Motion

Dan Lowe motioned for ZBA Case #02-14, Timothy & Katherine Choroba, 2767 Buttercup Ct., Tax ID #4710-15-301-053, to approve the request to relax **Section 6.19 #2** to allow a second driveway on a private road, considering the following criteria:

1. How the strict enforcement of the provisions of the township zoning ordinance would cause an unnecessary hardship and deprive the owner of rights enjoyed by all other property owners owning property within the same zoning district. *The homeowner's association has approved this request for a second driveway on a private road.*
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 unique as it's a corner lot.*
3. The conditions and circumstances unique to the property were not self-created. *The conditions and circumstances are not self-created.*
4. Why the requested variance will not confer special privileges that are denied other properties similarly situated and in the same zoning district. *There are other unique properties in the area that have two driveways.*
5. Why the requested variance will not be contrary to the spirit and intent of this zoning ordinance. *The intent of Section 6.19 #2 is to prevent driveways right next to each other; the request is for two driveways far apart on different streets.*
6. The difficulty shall not be deemed solely economic. *The request is not economically based.*

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

Motion

Dan Lowe motioned for ZBA Case #02-14, Timothy & Katherine Choroba, 2767 Buttercup Ct., Tax ID #4710-15-301-053, to approve the request to relax **Sections 8.01 F3 a and 6.07 #3 & #10** and grant a 25' front yard variance on the NE corner of the building and allow an accessory structure in front yard, considering the following criteria:

1. How the strict enforcement of the provisions of the township zoning ordinance would cause an unnecessary hardship and deprive the owner of rights enjoyed by all other property owners owning property within the same zoning district. *The request is necessary because of the location of the drain field and it's a corner lot.*
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 unique as it's a corner lot.*
3. The conditions and circumstances unique to the property were not self-created. *The conditions and circumstances are not self-created.*
4. Why the requested variance will not confer special privileges that are denied other properties similarly situated and in the same zoning district. *There are no special privileges; this request is granted because of the location of the drain field.*
5. Why the requested variance will not be contrary to the spirit and intent of this zoning ordinance. *The request is not contrary to the spirit and intent of the ordinance as the building will be located as far back as possible due to the configuration of the lot.*
6. The difficulty shall not be deemed solely economic. *The request is not economically based.*

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

ZBA Case #03-14—Matthew M. Hagerty, Esq. for Mr. & Mrs. Scappaticci, 4511 Cedar Lake Rd., Tax ID #4710-29-401-021

Matt Hagerty, Myers & Myers, was present along with the property owner, Mr. Scappaticci. The request is for a front yard setback reduction for a newly-construction deck. The applicant replaced an existing deck and the new construction is a few feet larger than the previous deck. The original deck did not meet the required 50' front yard setback. Letters of support were received from Ken Fackender, 4581 Cedar Lake Rd., Bob & Debbie Keier, 4561 Cedar Lake Rd., and Kim Halstead, 4512 Cedar Lake Rd.

Larry Grunn asked what material was used. Mr. Scappaticci said mostly cedar with Trex on top. Claire Stevens said she looked at the plat and the subdivision plat measurements are from the high water mark.

Linda Manson Dempsey motioned for ZBA Case #03-14, Matthew M. Hagerty, Esq. for Mr. & Mrs. Scappaticci, 4511 Cedar Lake Rd., Tax ID #4710-29-401-021, to approve a 20' variance from the high water mark on the NE corner and 21' variance from the high water mark on the SE corner, considering the following criteria:

1. How the strict enforcement of the provisions of the township zoning ordinance would cause an unnecessary hardship and deprive the owner of rights enjoyed by all other property owners owning property within the same zoning district. *The deck was already there and the homeowner has only made improvements.*
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 unique due to the water's edge.*
3. The conditions and circumstances unique to the property were not self-created. *The conditions and circumstances are not self-created, and letters of support were received from surrounding property owners.*
4. Why the requested variance will not confer special privileges that are denied other properties similarly situated and in the same zoning district. *The requested variance will not grant special privileges.*
5. Why the requested variance will not be contrary to the spirit and intent of this zoning ordinance. *The request is not contrary to the spirit and intent of the zoning ordinance.*
6. The difficulty shall not be deemed solely economic. *The request is not economically based.*

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

ZBA Case #04-14—Marion Township Interpretation, 5585 Cedar Lake Rd., Tax ID #4710-33-100-004

Annette McNamara is asking the ZBA members for an interpretation of the zoning ordinance with regard to land use permits that are issued for construction of a principal dwelling and accessory

structure. She would like the ZBA members to review Section 4.03 C #9—Certificate of Zoning Compliance and what is the earliest point that this can be issued. She is also asking them to review Section 6.07—Accessory Uses & Structures. The situation has arisen where a permit was issued for both structures, but only the accessory structure is being built.

Dan Lowe suggested asking the attorney if they can be prevented from using the structure until the home is built. Scott Lloyd said the buildings should go up simultaneously.

Ms. McNamara said she will discuss further with the attorney and provide input at the next meeting. Dan Lowe motioned that the construction of the principal structure and accessory structure must be done concurrently, and the township attorney should review and agree with the ZBA's motion. Larry Grunn seconded. Roll call vote: Stevens, Manson-Dempsey, Fillinger, Grunn, Lowe—all yes.

Motion carried 5-0.

CALL TO THE PUBLIC

No response.

ADJOURNMENT

Linda Manson-Dempsey motioned to adjourn the meeting at 9:05 pm. Claire Stevens seconded.

Motion carried 5-0.

OCTOBER 6, 2014

MEMBERS PRESENT: Linda Manson-Dempsey, Claire Stevens, Dan Lowe and Dan Rossbach (alternate)

MEMBERS ABSENT: Larry Fillinger, Larry Grunn

OTHERS PRESENT: Annette McNamara, Zoning Administrator

CALL TO ORDER

Linda Manson-Dempsey called the meeting to order at 7:34 p.m.

APPROVAL OF AGENDA

Claire Stevens motioned to approve the agenda as presented. Dan Lowe seconded. **Motion carried 3-0** (Dan Rossbach abstained.)

MEMBERS PRESENT

The members of the Zoning Board of Appeals introduced themselves.

CALL TO THE PUBLIC

No response.

APPROVAL OF MINUTES

September 8, 2014 Regular Meeting: Dan Lowe motioned to approve the minutes as presented. Claire Stevens seconded. **Motion carried 3-0** (Dan Rossbach abstained.)

OLD BUSINESS

None.

NEW BUSINESS

ZBA Case #05-14—R. Parr, Burly Oak Builders for Jeffery & Loretta Lesperance, 3606 Jesse Drive, Tax ID #4710-22-400-017

The builder, Richard Parr, and the property owners were present to request a variance for a second driveway. They purchased an adjacent lot that was originally intended for a house. Due to the location of the reserve septic field and the wetlands, the only way to access the accessory building is a second driveway.

Motion

Dan Lowe motioned for ZBA Case #05-14, R. Parr, Burly Oak Builders for Jeffery & Loretta Lesperance, 3606 Jesse Drive, Tax ID #4710-22-400-017, to approve the request to relax **Section 6.19 #2** to allow a second driveway on a parcel, 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. *With the wetlands behind the building and the drain field in the front, the only way to access the accessory building is with a second driveway.*

2. That the variance would do substantial justice to the applicant and a lesser relaxation than that requested would not give substantial relief to the owner of the property. *There is no other place on the property to access the accessory building.*
3. That the request is due to the unique circumstances of the property. *The location of the drain field and the wetlands are unique to this property.*
4. That the alleged hardship has not been created by a property owner. *The location of the drain field was determined by the county, not the property owner.*
5. The difficulty shall not be deemed solely economic. *There is no financial gain by granting this variance.*

Discussion: This parcel was originally two separate parcels and was designed for two driveways. Dan Rossbach seconded. Roll call vote: Stevens—yes; Manson-Dempsey—yes; Rossbach—yes; Lowe--yes. **Motion carried 4-0.**

CALL TO THE PUBLIC

No response.

Annette McNamara said November is the annual organizational meeting to elect officers.

ADJOURNMENT

Claire Stevens motioned to adjourn the meeting at 7:54 pm. Dan Rossbach seconded. **Motion carried 4-0.**

MINUTES -NOVEMBER 10, 2014

MEMBERS PRESENT: Linda Manson-Dempsey, Claire Stevens, Dan Lowe, Larry Fillinger, and Larry Grunn

MEMBERS ABSENT: None

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

CALL TO ORDER

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

APPROVAL OF AGENDA

Linda Manson-Dempsey motioned to approve the agenda as presented. Larry Grunn seconded.

Motion carried 5-0.

MEMBERS PRESENT

The members of the Zoning Board of Appeals introduced themselves.

CALL TO THE PUBLIC

No response.

APPROVAL OF MINUTES

October 6, 2014 Regular Meeting: Linda Manson-Dempsey motioned to approve the minutes as presented. Claire Stevens seconded. **Motion carried 3-0** (Larry Fillinger and Larry Grunn abstained.)

OLD BUSINESS

None.

NEW BUSINESS

ZBA Case #06-14—Burchfield, Park & Pollesch, PC for Mark & Julie Clore, 3996 W. Coon Lake Road, Tax ID #4710-21-100-004

Amy Krieg from Burchfield, Park & Pollesch, PC, was present, along with the property owners, Mark & Julie Clore, to discuss the variance request. Ms. Kreig gave a short overview and said that Mark & Julie purchased the property from Mark's parents' estate. Their desire is to build a new home on the property (exhibit A), and they would like to position the house to overlook the pond and the evergreen trees planted by Mark's parents. The proposed new home is also positioned close to the existing pole barn due to Mark's medical issues, which make it difficult for him to walk. They eventually want to split the property so that their son can also build a home. The Clores have agreed to remove the old septic system and install a new one for the new home. They are requesting a variance to Section 6.07—Accessory Uses and Structures of the zoning ordinance to allow them to

convert the existing dwelling into an accessory building. The zoning administrator is also asking the Zoning Board of Appeals for an interpretation of the variance.

The property owners said they are willing to remove the septic system for the old house, and record a restriction that would prohibit anyone from using that structure as a dwelling. They want to use the structure for storage only, and the existing garage as a woodworking shop for their son.

Claire Stevens asked if they would consider taking out the interior walls in the house; the owners said they would remove the bath and kitchen, but keep the family room.

Dan Lowe asked the Clores why they couldn't split the property, and then build the new house. It's possible they could get two or three lots. He also said they have other options, such as building on top of the old house, or putting in a private road.

Mike Kehoe clarified with the ZBA members that they are looking at two different variances: the location of the new house, and the use of the old house, and suggested the board members discuss each one separately.

Based on the correspondence from the Livingston County Health Department, the board members would like clarification from that entity that the new house could use the old drain field. The Clores said that Aaron Aumock from the LCHD visited the property and checked the drain field and well. However, the ZBA members didn't feel that this information was clear in the correspondence and the permit application from the Health Department.

Dan Lowe said he feels the situation is self-created and given the fact that there are three or four other options, he doesn't feel that granting a variance would be appropriate.

Linda Manson-Dempsey said she feels the request is financially motivated.

Call to the Public

Greg Durbin, 4389 Sundance Crossing, questioned the applicant's motivation, and if there is so much sentimental value attached to the existing home, why wouldn't they renovate? He fails to see where converting the existing house into an accessory structure increases the value.

Mrs. Clore said she's lived in other people's homes her whole life and now she wants to build a log home.

Dan Lowe restated that there are several options available: renovate the old house, split the parcel and build a new home, or split the parcel into multiple lots and put in a private road.

Bob Hanvey said that although the existing accessory building would be in front of the neighbor's principal dwelling, it is a pre-existing non-conforming structure.

Motion

Linda Manson-Dempsey motioned for ZBA Case #06-14—Burchfield, Park & Pollesch, PC for Mark & Julie Clore, 3996 W. Coon Lake Road, Tax ID #4710-21-100-004, to deny the variance request for Section 6.07, #3—Accessory Uses and Structures, considering the following criteria:

1. How the strict enforcement of the provisions of the township zoning ordinance would cause an unnecessary hardship and deprive the owner of rights enjoyed by all other property owners owning property within the same zoning district. *The zoning ordinance allows for one principal structure per parcel. This is not an accessory structure, it is a principal structure. If it was considered an accessory structure, there would now be two accessory structures in the front yard. There is no hardship and the applicant is not being deprived rights enjoyed by others in the same district as they are not being prevented from building their home and they already have an existing accessory building.*
2. The conditions and circumstances unique to the property, which are not similarly applicable to other properties in the same zoning district. *The circumstances are not unique to their property or applicable to other properties as other properties have one principal structure and may have an accessory structure.*
3. The conditions and circumstances unique to the property were not self-created. *The situation is self-created in that the property owners are basically trying to alter the definition of accessory structure. The house that they want to turn into an accessory building was built by Mr. Clore's parents.*

4. Why the requested variance will not confer special privileges than are denied other properties similarly situated in the same zoning district. *This is a special privilege in that what the applicant is requesting is to allow two accessory structures in the front yard.*
5. Why the requested variance will not be contrary to the spirit and intent of this zoning ordinance. *The intent of the zoning ordinance is to allow flexibility in placement of accessory structures on larger parcels. The granting of the requested variance would allow two accessory structures in the front yard and that would be contrary to the spirit and intent of the ordinance.*
6. The difficulty shall not be deemed solely economic. *The applicant's request is based on economics, the cost to remove the principal structure/accessory structure.*

Discussion: There are no guarantees that the existing house on the property would not be used as a principal dwelling at some point in the future.

Dan Lowe seconded. Roll call vote: Stevens—yes; Manson-Dempsey—yes; Fillinger—yes; Grunn—yes; Lowe—yes. **Motion carried 5-0.**

Motion

Linda Manson-Dempsey motioned to support the zoning administrator's interpretation of the zoning ordinance in saying the existing home on the property, which currently is being assessed as a principal dwelling and has been since 1980, cannot be converted to an accessory structure, and by granting the variance, the parcel would then have accessory structures with no principal dwellings, which is not allowed by the ordinance. The decision of the zoning administrator was property and maintained the spirit and integrity of the ordinance. Larry Grunn seconded. Roll call vote: Lowe, Grunn, Fillinger, Manson-Dempsey, Stevens—all yes. **Motion carried 5-0.**

Motion

Linda Manson-Dempsey motioned to grant a variance to allow a land use permit to be approved with the existing pole barn in the front yard, as shown on exhibits A & B, provided the existing principal structure on the property is demolished or the property is divided so the existing principal structure is on its own parcel.

If the above conditions were met and a new principal structure was built further north of the existing metal pole barn (accessory structure) shown on exhibit B, it would create a situation where the existing metal pole barn location would be in violation of 6.07 #3, meaning the existing metal pole barn would be closer to the front property line than the house on the adjacent property to the east, but a variance will be granted to allow the metal pole barn to remain in its existing location based upon the following findings:

1. How the strict enforcement of the provisions of the township zoning ordinance would cause an unnecessary hardship and deprive the owner of rights enjoyed by all other property owners owning property within the same zoning district. *Construction of the log home with a walk-out overlooking the pond would allow the property owner to enjoy the natural beauty of the property. Parcels over five acres are allowed an accessory structure in the front yard provided the structure is not closer to the road than a house on an adjacent parcel. The existing pole barn was built prior to the house on the adjacent parcel.*
2. The conditions and circumstances unique to the property, which are not similarly applicable to other properties in the same zoning district. *The existing pole barn was built prior to Mark and Julie Clore owning the property and the existing pole barn was built prior to the house being built on the adjacent parcel.*
3. The conditions and circumstances unique to the property were not self-created. *The situation was not created by Mark and Julie Clore. It was created by the adjacent property owner when they built their home closer to the road than the pole barn.*
4. Why the requested variance will not confer special privileges than are denied other properties similarly situated in the same zoning district. *This is not a special privilege as parcels over five acres are allowed an accessory structure in the front yard provided the structure is not closer to the road than a house on an adjacent parcel.*

5. Why the requested variance will not be contrary to the spirit and intent of this zoning ordinance. *The intent of the zoning ordinance is to allow flexibility in placement of accessory structures on larger parcels.*
6. The difficulty shall not be deemed solely economic. *The applicant's request is not based on economics.*

Dan Lowe seconded. Roll call vote: Stevens—yes; Manson-Dempsey—yes; Fillinger—yes; Grunn—yes; Lowe—yes. **Motion carried 5-0.**

The zoning administrator informed the applicants that the land use permit can be granted in eight days.

Annual Organizational Meeting

Linda Manson-Dempsey motioned to nominate Larry Fillinger as Chairman of the Zoning Board of Appeals. Larry Grunn seconded. Roll call vote: Lowe, Grunn, Fillinger, Manson-Dempsey, Stevens—all yes. **Motion carried 5-0.**

Linda Manson-Dempsey motioned to nominate Claire Stevens as Vice Chairman of the Zoning Board of Appeals. Dan Lowe seconded. Roll call vote: Stevens, Manson-Dempsey, Fillinger, Grunn, Lowe—all yes. **Motion carried 5-0.**

Linda Manson-Dempsey motioned to nominate Dan Lowe as Secretary of the Zoning Board of Appeals. Claire Stevens seconded. Roll call vote: Lowe, Grunn, Fillinger, Manson-Dempsey, Stevens—all yes.

Motion carried 5-0

The zoning administrator said she will send a copy of the draft minutes to Mike Kehoe for review prior to posting.

CALL TO THE PUBLIC

No response.

ADJOURNMENT

Linda Manson-Dempsey motioned to adjourn the meeting at 9:22 pm. Dan Lowe seconded. **Motion carried 5-0.**

Minutes – December 1, 20104

MEMBERS PRESENT: Claire Stevens, Dan Lowe, Larry Fillinger, and Larry Grunn
(arrived at 7:40 pm)

MEMBERS ABSENT: Linda Manson-Dempsey

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

CALL TO ORDER

Larry Fillinger called the meeting to order at 7:31 p.m.

APPROVAL OF AGENDA

Claire Stevens motioned to approve the agenda as presented. Dan Lowe seconded.

Motion carried 3-0.

MEMBERS PRESENT

The members of the Zoning Board of Appeals introduced themselves.

CALL TO THE PUBLIC

No response.

APPROVAL OF MINUTES

November 10, 2014 Regular Meeting: Dan Lowe motioned to approve the minutes as presented.

Claire Stevens seconded. **Motion carried 3-0.**

OLD BUSINESS

None.

NEW BUSINESS

ZBA Case #07-14—Bradford L. Maynes, Law Office of Paul E. Burns, for Fabio Giski Revocable Living Trust, 777 Hurley Drive, Tax ID #4710-35-301-009

Bradford Maynes, attorney for the applicant, was present, along with Fabio & Staci Giski. Mr. Maynes said the Giski property has two unusual issues: the steep slope to the water and the angle of the water to the house. The masonry support for the deck is partially supporting the foundation of the house. There are also safety concerns regarding the existing (concrete) deck. The Giski's are requesting side yard and front yard variances for construction of a wood deck over the concrete.

Call to the Public

Roger Pashak, 825 Hurley Dr., asked about the east side of the property. The wood decking is coming down on that side.

Claire Stevens asked about the steep slope to the water's edge; Mr. Maynes said they intend to have landscape stairs leading to the water. Ms. Stevens asked about the stairs; Annette McNamara read the section of the zoning ordinance regarding allowed encroachments for stairs.

Daniel Strong, 771 Hurley Drive, asked what the distance is from the water to the deck. The closest is approximately 45'.

Arvin Johnson, 841 Hurley, asked if the concrete had been expanded since it was originally poured; no additions have been made to the concrete.

Frank Ladzinski, 741 Hurley Drive, said that only a patio without the wood would make the property look worse than allowing them to build a deck.

Janet Ladzinski, 741 Hurley Drive, said the concrete has been there for a long time, and what they are proposing would look much better.

The ZBA members discussed the stairs and the safety issues. Scott Lloyd, 5717 Pingree, said that anything over 30" requires a handrail. The stairs will lead off the east side.

Motion

Claire Stevens motioned for ZBA Case #07-14—Bradford L. Maynes, Law Office of Paul E. Burns, for Fabio Giski Revocable Living Trust, 777 Hurley Drive, Tax ID #4710-35-301-009, to approve a variance for the east side of the property as depicted in the yellow section of Exhibit D, Project No. 14-042 dated 11/2/14, 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 concrete has been in place since 1940 within the setback.*
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. *The concrete is not repairable and there are safety issues.*
3. That the request is due to the unique circumstances of the property. *The slope and topography of the property are unique. The masonry wall is supporting the house.*
4. That the alleged hardship has not been created by a property owner. *The concrete is pre-existing and the property owner did not create the steep slope to the water.*
5. That the difficulty shall not be deemed solely economic. *Granting this variance will allow the property owner's to enjoy their property in a similar way as other property owners.*

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

Motion

Claire Stevens motioned for ZBA Case #07-14—Bradford L. Maynes, Law Office of Paul E. Burns, for Fabio Giski Revocable Living Trust, 777 Hurley Drive, Tax ID #4710-35-301-009, to approve a variance for the west side of the property as depicted in the yellow section of Exhibit D, Project No. 14-042 dated 11/2/14, based on the same considerations as the variance for the east side of the property. Larry Grunn seconded. Roll call vote: Grunn—yes; Stevens—yes; Fillinger—yes; Lowe—yes. **Motion carried 4-0.**

Motion

Dan Lowe motioned for ZBA Case #07-14—Bradford L. Maynes, Law Office of Paul E. Burns, for Fabio Giski Revocable Living Trust, 777 Hurley Drive, Tax ID #4710-35-301-009, to approve a variance for the west side of the property as depicted in the green section of Exhibit D, Project No. 14-042 dated 11/2/14, based on the same considerations as the variance for the east side of the property. Larry Grunn seconded. Roll call vote: Lowe—yes; Fillinger—yes; Stevens—no; Grunn—yes.

Motion carried 3-1.

Motion

Dan Lowe motioned for ZBA Case #07-14—Bradford L. Maynes, Law Office of Paul E. Burns, for Fabio Giski Revocable Living Trust, 777 Hurley Drive, Tax ID #4710-35-301-009, to approve a front yard variance for the property as depicted in the blue section of Exhibit D, Project No. 14-042 dated 11/2/14, based on the same considerations as the previous granted variances. Larry Grunn seconded. Roll call vote: Grunn—yes; Stevens—no; Fillinger—yes; Lowe—yes. **Motion carried 3-1.**

CALL TO THE PUBLIC

No response.

ADJOURNMENT

Claire Stevens motioned to adjourn the meeting at 8:17 pm. Dan Lowe seconded.

Motion carried 4-0.