

**MARION TOWNSHIP
ZONING BOARD OF APPEALS**

Monday, January 7, 2019
7:30 p.m.

AGENDA

CALL TO ORDER

PLEDGE OF ALLEGIENCE

INTRODUCTION OF MEMBERS

APPROVAL OF AGENDA FOR: *January 7, 2019*

APPROVAL OF MINUTES FOR: *December 3, 2018 Regular Meeting*

CALL TO THE PUBLIC:

OLD BUSINESS: None

NEW BUSINESS:

- 1) Annual Meeting and Election of Officers and review/revise By-Laws

CALL TO THE PUBLIC:

ADJOURNMENT:

Approved by: _____
Larry Fillinger, Chairperson

Date: _____

**MARION TOWNSHIP
2877 W. COON LAKE ROAD, HOWELL MI 48843
ZONING BOARD OF APPEALS
REGULAR MEETING MINUTES
December 3, 2018
7:30 P.M.**

MEMBERS PRESENT: LARRY FILLINGER
LARRY GRUNN
DANIEL ROSSBACH
LINDA MANSON-DEMPSEY
ED GALUBENSKY (Alternate for Dan Lowe)

MEMBERS ABSENT: DAN LOWE (Absent due to conflict of interest)

OTHERS PRESENT: DAVE HAMANN- ZONING ADMINISTRATOR
JOHN ENOS- CARLISLE WORTMAN PLANNER
MICHAEL KEHOE- MICHAEL J. KEHOE ATTORNEY

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

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA:
Regular Meeting Agenda for December 3, 2018
Linda Manson motioned to approve the agenda. Larry Grunn seconded. Motion carried

INTRODUCTION OF MEMBERS:
The members of the Zoning Board of Appeals introduced themselves. John Enos from Carlisle Wortman introduced himself. Michael Kehoe (Marion Township’s Attorney) introduced himself.

CALL TO THE PUBLIC:
NONE

APPROVAL OF MINUTES:
Regular Meeting Minutes for October 1, 2018
Linda Manson motioned to approve the agenda. Dan Rossbach seconded. Motion carried

NEW BUSINESS:

ZBA Case #05-18 AJR Group Inc. and Cornerstone Land LLC

The ZBA members received correspondence from Thomas R. Meagher, insurance counsel for the Township, regarding a lawsuit pending in Livingston County Circuit Court, Case No. 18-29880-CZ, against the Township filed by the applicants. Mr. Meagher advised that due to the nature of the lawsuit, the ZBA should not hear this matter while the litigation is pending.

Linda Manson motioned to table ZBA case #05-18 AJR Group and Cornerstone Land LLC while the litigation is pending based upon advice of Township insurance counsel. Dan Rossbach seconded.

ROLL CALL: Dan Rossback YES, Linda Manson YES, Larry Fillinger YES, Larry Grunn YES, Ed Galubensky YES. ***Motion carried***

NEW BUSINESS:

ZBA Case #06-18 Marion Township's Interpretation of "Howell Landscaping", 8.01B3 Landscape Nursery Operation as a Use by Right and 3.02 Definitions / Address 2961 Pinckney Road, Howell MI 48843; ID# 4710-13-300-044

John Enos explained that we are here today to interpret a land use as it relates to being permitted or not permitted in this specific rural residential area of the township. Howell Landscaping, formally known as Eddie's Landscaping, is located at 2961 Pinckney Road, Howell MI 48843. The owner of "Eddie's Landscape" sold his business to Rob Rochowiak who renamed the business, "Howell Landscaping". This landscaping operation has been in business for 20+ years. The land use and site plan were granted by the Township, when it was still Eddies Landscaping. The original use was approved by the Township. The current owner, Howell Landscaping, claimed it did everything that a business owner should do. He contacted the Township and chatted with the previous Zoning Administrator at that time. He did his due diligence regarding the use of his site. The objective this evening is to look at our zoning ordinance and the language regarding "permitted use" and determine whether or not this landscaping/contractors yard fits within our language.

Linda Manson asked what the original special use was for.

Dave Hamann stated that there was no special use or conditional use found for this site plan. All Dave could find was a site plan approval that was approved by the Planning Commission, along with a list of conditions for a landscape operation, attached to it.

John Enos stated that the Township approved this use 18-20 years ago as a landscape/nursery operation. Today's objective is to determine whether or not this business is still operating as a landscape/nursery operation. Are the activities/uses taking place on the property meeting the intended use? The ordinance allows landscape nursery operations as a permitted use but the ordinance does not have a definition for landscape nursery operation.

Linda Manson asked if a landscape/nursery operation is allowed to have a fleet of trucks.

John Enos said, that is what needs to be determine during tonight's meeting.

Larry Fillinger asked the public for any comments regarding this topic.

Dan Artaev is an Attorney for a law firm called, "Fausone Bohn LLP" located at 41700 West Six Mile Road, Suite 101 in Northville MI 48168. He is representing, Howell Landscaping regarding this issue. Dan

wanted to highlight a few of the items that were in Carlisle Wortman's assessment letter. First he wanted to point out that, landscape/nursery operations are not defined anywhere in our ordinances. However, a commercial nursery is mentioned along with a definition. Dan also stated that the trucks being used at Howell Landscaping, are part of the operation. These trucks are used to deliver some of the plants and materials stored on site. This is not a storage yard or a freight terminal. This is a retail location. Linda Manson asked Dave Hamann if he was sure there is nothing listed on the previous paperwork regarding how many trucks were allowed on site.

Dave Hamann said that he spent significant hours searching for any documents involving this case. There were no documents or sign of communication any time after the first year since the site plan approval was given.

Susan Schooly resides at 459 E. Davis Road. Susan had previously provided the ZBA with a letter specifically addressing her concerns regarding Howell Landscaping. Susan discussed her concerns about the future consequences by allowing Howell Landscaping to continue their operation. If the Township allows them to have multiple semi-trucks, then does that mean anyone in Marion Township can start a trucking operation? A landscape/nursery operation is about what you grow on site and sell to a consumer. Howell Landscaping is a trucking company, not an Ag operation. They have five gravel trains coming and going each day, along with other commercial trucks.

Sally Witt is the mother of former owner Eddie Witt. Sally said that her son Eddie Witt started Eddie's Landscaping back in 1982. They never had any issues with anyone involving their landscaping business, until Mr. Timothy Ryan and his wife purchased their home back in 2013. They soon began harassing Eddie and have been criticizing their landscaping business ever since. Tim Ryan even started a petition to try and shut down their landscaping operation.

Dan Rossbach asked if the trucking portion has increased since becoming Howell Landscaping.

Timothy Ryan resides at 459 E. Davis Road. Tim wanted to start by complimenting Rob Rochawiak, the current owner of Howell Landscaping, on his new business. He can tell that Rob has worked hard to ensure that his business is successful. However, Eddie's operation was very quiet and much smaller than Rob's. Rob's semi-trucks are very loud throughout the day and he seems to be operating on a much bigger scale compared to Eddie's.

Linda Manson asked how many trucks does Rob Rochowiak (Current Owner of Howell Landscaping) own and have on site.

Rob Rochowiak resides at 113 E. Davis Road. Rob responded and said that he has four large trucks. Linda asked how many trucks did Eddie's had. Sally Witt responded with three to four trucks.

Rob continued explaining that his trucks leave around 7am and pick up material from another location that then gets delivered to various places throughout the day.

Linda stated that this is a rural residential area. If the trucks are delivering to other trucking yards, that is not the same as picking up material for your landscaping/nursery.

Larry Grunn stated that Eddie's landscaping also had various trucks that came in and out all day long.

Rob stated that he discussed the operation of his business with Annette McNamara and Charlie Decator in February of 2017. He eventually wants to have greenhouses, build another building and grow his own plants but has been waiting since April of 2018 for the Township to make a final decision before he moves forward with his plans.

Linda commented on the difference between Eddie's and Rob's landscaping/nurseries.

Kathy Ball resides at 2853 Pinckney Road. Kathy has lived at her house since 2000, which is right next to Eddie's Landscaping/Howell Landscaping, formally known as Eddie's Landscaping. Once Eddie's Landscaping became Howell Landscaping, Steve Ball (Kathy's husband) went next door to speak with Rob regarding his landscape operation. Kathy said her husband (Steve Ball) told her that Rob was very accommodating and pleasant to deal with. Rob gave Steve his personal cell phone number, so if there were ever any issues or concerns, they could reach out to Rob directly.

Jim Witkowski resides at 3111 Pinckney Road. Jim stated that his daughter lives across the street from Howell Landscaping and says that she doesn't have any complaints or concerns about the noise level or activity. Jim's daughter told him that she hardly hears anything from her house. Jim said that it is very concerning to him that Marion Township has the authority to run local businesses out of town.

Steve Ball resides at 2853 Pinckney Road. Steve mentioned that Eddie's had a sifting machine that ran all day long. Rob doesn't use a sifting machine and instead he purchases his own dirt. Rob may have a few more trucks than what Eddie had but Eddie's had more equipment. Rob has put in brush, berms and trees throughout the property to help with screening. He has also removed the alarms off the trucks so they do not beep when the trucks are in reverse. He is doing basically the same things that Eddie was doing.

John Enos reminded everyone that we need to discuss whether or not the intended use meets the description of a landscape/nursery operation. Although the issues and opinions being conveyed tonight by the neighbors are important, we need to focus on the current use of the site and determine if the intended use is still the same as it was when this was originally approved?

Rob wanted to clarify that he owns two super-trucks for larger driveways and delivering to other gravel pits and also two smaller trucks for smaller-average sized driveways.

Larry Grunn asked what name was on the side of his trucks. Rob said that the name on the side of his trucks, is the name from his previous business, which was a trucking company. He clarified that his landscaping/nursery business is his only business at this time. The trucking business was established prior to moving to Marion Township.

Larry Fillinger stated that he believes a greenhouse/landscaping/nursery is something that would sell shrubs, flats, plants, mulch, rock, etc. These materials would be available for pick-up or delivery.

Ed Galubensky agreed with Larry and stated that this would be ok in rural areas. Would like to see some of the items be grown on site.

Larry Grunn said that a landscape/nursery would be allowed to purchase other material for resale/retail.

Larry Fillinger agrees and likes the idea of things being grown on site. However he is concerned that Howell Landscaping might be outgrowing its current location. Larry asked Mike Kehoe and John Enos if

they could use some of the language that they just discussed, as part of their definition for landscape/contractors operation.

Mike Kehoe states that once the definition is established then an interpretation needs to be made determining whether or not Howell Landscaping fits with our definition.

John Enos said that the Planning Commission just drafted a more clear definition of landscape/contractors operation.

Larry Fillingner read the current draft for the landscape/contractors operation along with the changes suggested by the members.

Mike Kehoe also recommended that they mention case #06-18 Howell Landscaping along with section 8.01 B 3.

PROPOSED DEFINITION:

***Landscape Nursery Operations:** A parcel, area, space, building or structure, or combination thereof, used chiefly for the storage, wholesale sale, or retail sale, of live trees, shrubs and plants primarily but not exclusively grown onsite. Incidental or secondary items directly related to a nursery or greenhouse may also be sold, including but not limited to pots, decorations, mulch, stone, rocks, pavers, edging materials, etc. The area and amount of such structures, equipment, vehicle storage and other areas dedicated to the use shall be consistent with the residential character of the area and shall not adversely impact neighboring properties.*

Using the term "operations" as part of the permitted use we would conclude are secondary and incidental uses associated with the nursery. This could include equipment used to dig up or plant trees and shrubs, mulch and soil to assist in planting and selling stones and mulch for larger landscape projects and other related uses associated with the primary use which is a nursery.

REFERENCING:

Pertaining to ZBA case #06-18 Howell Landscaping, materials do not have to be grown on site.

8.01 B 3

ARTICLE VIII: RESIDENTIAL DISTRICTS

Section 8.01

RR: Rural Residential District

- A. **Intent:** *It is the intent of the Rural Residential District (RR) to provide for a variety of comparatively low density residential lifestyles in a manner which preserves the important open spaces and natural resources of the Township and the Township's rural character. The expanses of open spaces and natural resources, including woodlands, wetlands, hillsides, and fields, comprise the fundamental rural character of the Township which residents of the Township wish to protect and enhance for future generations. Permitted land uses within this District are established based on the limited availability of public services. Where higher density is allowed, certain facilities are required to accommodate the increased public needs. The Rural Residential District includes a considerable number of existing farms and recognizes this land use for its important contribution to the local economic base, to the provision of food and fiber for the State's citizens, and for the historical character and open spaces it provides. It is not the intent of this District to encourage the conversion of agricultural lands to more intensive uses, but to provide opportunities for residential development in a manner compatible with the continuation of agricultural activities. However, neither is it the intent of this District to encourage the establishment of more intensive agricultural uses, such as confined livestock operations, which are incompatible with residential use of adjoining lands.*

B. Uses Permitted By Right:

1. *Single-family dwellings.*
2. *Agricultural buildings and agricultural operations involving no more than two hundred (200) animal units at a density not to exceed 1.4 animal units per acre.*
3. *Landscape nursery operations, including retail sales of nursery stock grown on the premises.*

John Enos said if the Board of Trustees likes this definition, then they may send it back to the ZBA for an interpretation on whether or not Howell Landscaping's operation fits this definition.

Tim Ryan asked if this new definition is adopted, does that apply to Howells Landscaping.

Mike Kehoe said that from a legal stand point, there would be a lot of facts involved.

Tim Ryan said that he is not trying to run a man out of business but these issues are important. He wants to come up with a good solution for everyone.

Kathy Ball stated that she does not like this definition. Other nurseries that she has been to, do not grow most of their own products. It takes many years to grow that much product. That's why most of them buy wholesale and resale/retail. She just doesn't like the words "primarily grown on site."

Susan Schooly said that we should not create language that would allow someone to open a Bordine's Nursery. A wholesale/resale operation should not be in a rural residential area.

Larry Fillinger asked Mike Kehoe if the definition had to be exact before sent to the Board.

Mike Kehoe said that we can fine-tune this down the line and compare it to the other ordinances.

Dan Rossback made a motion to use this definition for "landscaping/nursery operation" and send it to the Board of Trustees for modification and/or approval. Linda Manson seconded.

ROLL CALL: Dan Rossback YES, Linda Manson YES, Larry Fillinger YES, Larry Grunn YES, Ed Galubensky YES. **Motion carried**

John Enos said that everyone did a good job with the definition. He reminded everyone that this is a living document, so in six months, the language can be changed if need be. It is not written in stone. However, you can have language all day long but if you do not have the enforcement to back it up, then the language doesn't mean anything. Any future uses will still have to go through a review process.

Dan Artaev (Howell Landscaping's Attorney) thanked everyone for their time, thought process and consideration involved throughout this process.

CALL TO THE PUBLIC:

NONE

ADJOURNMENT:

Linda Manson motioned to adjourn the meeting at 9:15pm. Dan Rossbach seconded. Motion carried

**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 _____ 2019.

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