

**MARION TOWNSHIP
ZONING BOARD OF APPEALS**

**The Township Zoning Board of Appeals will meet in person
August 29, 2022 at 7:00 pm**

However, there will be virtual access.

Instructions to participate in the meeting are posted on www.mariontownship.com

AGENDA

CALL TO ORDER

PLEDGE OF ALLEGIENCE

INTRODUCTION OF MEMBERS

APPROVAL OF AGENDA

August 29, 2022

APPROVAL OF MINUTES FOR:

August 8, 2022 Regular Meeting

August 8, 2022 Closed Session Meeting

CALL TO PUBLIC

NEW BUSINESS:

UNFINISHED BUSINESS:

Review and Discuss the Rules and Procedures

SPECIAL ORDERS:

CALL TO PUBLIC:

ADJOURNMENT:

10-10-2022 10:51 AM
MARION TOWNSHIP ZONING BOARD OF APPEALS

Submitted by: Tammy Beal

Approved: _____

DRAFT

**MARION TOWNSHIP
ZONING BOARD OF APPEALS
REGULAR MEETING
AUGUST 8, 2022**

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

MEMBERS ABSENT: None

OTHERS PRESENT: Dave Hamann, Zoning Administrator, Linda Manson-Dempsey, Ed Galubensky

CALL TO ORDER

Larry Fillinger called the meeting to order at 7:00 p.m. The meeting is also available online.

MEMBERS PRESENT

The members of the Zoning Board of Appeals introduced themselves.

APPROVAL OF AGENDA

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

APPROVAL OF MINUTES

Larry Fillinger noted that the start time in the minutes should read 7:00p.m. not 7:30 p.m. Diane Bockhausen motioned to approve the amended July 11, 2022 Regular Meeting minutes as amended, Larry Grunn seconded. Jean Root abstained; **Motion carried.**

CALL TO THE PUBLIC

No response.

NEW BUSINESS

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,

Attorney Scott Brock outlined the letter that he sent to the Board defining Roadside Stand vs Farmers Market. If it has a structure and sells seasonal fruits and vegetables, then it is a commercial business. The Special Land Use process was eliminated because the Zoning Administrator said that it is a seasonal operation. In the January 2010 GAMP they stopped using Roadside Stand and said that Farmer's Markets include Roadside Stands. The building department says qualifying Roadside Stands are exempt from electrical and other permits, but Farmer's Markets must go through the Land Use process, So the question is what is a Roadside Stand and what is a Farmer's Market.

Attorney John Gormley asked if Attorney Scott Brock had given any thought to whether the 2022 GAMP supersedes the zoning ordinance's special use permit requirements for Farmer's Markets. Attorney Scott Brock said that it has not been challenged yet.

Property Owner Clifford John Turner said that he has Roadside stands everywhere and has never had to get a permit. He has stands in Brighton, Howell, Hamburg and Brighton Township; all he has to do is ask permission, He asked Marion Township before he purchased the property at 2160 Pinckney Road, and he had no problem. The only thing that he overlooked was permission from the Drain Commission before he started moving dirt. Once he realized that he needed a permit he went and secured that permit and put up a silt fence. MDARD (Department of Agriculture and Rural Development) was notified and they came out to the sight, they said he met all criteria for the Right to Farm as long as 50% of the offered products are produced by the owner. He went on to say that he is not going to do a year-round stand. His main crop is sweet corn and secondary crop is pumpkins,

Attorney John Gormley asked how many acres it is, how big is the building, opening and closing dates, hours of operation, and the name of the business.

Mr. Turner said it is on 8 acres, the building is 24 x 30, they will be open around June 1st through the day after Halloween. They are open from 9am to 7 pm and have an honor system box after that. The name is Bentley Lake Farm Market or Bentley Lake Farms LLC.

Jean Root asked about restrooms, Mr. Turner replied that they have a porta potty for the employees.

Attorney John Gormley asked about the existing driveway and how many signs does he have and are the non-farm residents at least 165' away?

Mr. Turner said that they are using the driveways that were already there and the only permanent sign is on the building and there is a temporary sign out front. The non-farm residents are more than 165' away.

Mr. Turner was asked if he owns the property and he said yes, he is purchasing it on a land contract and the Purvis' are renting the house from him.

One concerned citizen got up and spoke against the business, four residents got up and spoke in favor of it.

Chairman Larry Fillinger closed the public portion of the meeting at 7:35 p.m.

Diane Bockhausen made a motion at 7:36 p.m. to go into a closed session to discuss the written legal opinion of the attorney, seconded by Dan Lowe. Roll call vote: Lowe, Bockhausen, Grunn, Fillinger, and Root-all yes. **Motion carried.**

Diane Bockhausen made a motion to come out of closed session at 8:12 p.m. Larry Grunn seconded. **Motion carried.**

Chairman Larry Fillinger asked the Board for interpretation of Section 8.02 B, C, E; Section 15.06; Section 17.14.

Jean Root said that she believes that it is a use permitted by right, that a Roadside Stand includes nursery and crops, and the owner is well within his rights.

Larry Fillinger said that the current GAAMP's overrides the special use permit, and the owner has the right to be there.

Larry Grunn stated that a structure whether it is a permanent building or a tent fit in the Roadside Stand and the GAAMP's trump the Special Use.

Diane Bockhausen agreed that GAAMP's protects the private party, Department of Agriculture examined the business and found it to completely comply with the Right to Farm.

Dan Lowe agreed with everyone and stated that crop operations fall under and are protected by GAAMP.

Attorney John Gormley suggested the ZBA consider a motion:

The Marion Township Zoning Board of Appeals concludes that the Zoning Administrator's decision was correct, and this is a Roadside Stand under the Zoning Ordinance, which is permitted at this location. However, if it is not a Roadside Stand, then the ZBA concludes that use of the property conforms to the Right to Farm Act ("RTF Act") and GAAMPS as a Farmer's Market.

- 1) 8.02 (E) is superseded by RTF Act and GAAMPS and the Township cannot enforce the regulation for a Special Use Permit for a Farmer's Market.
- 2) 8.02 (B) the RTF Act and GAAMPS now makes Farmer's Markets a use of right in all zoning districts.
- 3) 8.02 (C) accessory uses are inapplicable to the analysis.
- 4) Section 17.14 is superseded by the RTF Act GAAMPS, Special Use Permits are not enforceable on Right to Farm Act and GAAMPS.
- 5) The applicant must comply with the sign section 15.06 beyond one sign, which he has authority to have under the RTF Act and GAAMPS.

Chairman Larry Fillinger moved to adopt the motion to interpret the Zoning Ordinance as stated by Attorney John Gormley, Diane Bockhausen seconded. Roll call vote: Lowe, Bockhausen, Grunn, Fillinger, Root-all yes.

Motion carried.

UNFINISHED BUSINESS:

Chairman Larry Fillinger asked if the Board wanted to put restrictions on the amount of time that members of the audience can speak, maybe limit it to 3, 4 or 5 minutes?

Jean Root said that we should be consistent, Diane Bockhausen said that it's not really significant as the Board only meets 2 to 3 times a year, Larry Grunn thinks they should be limited to 3 minutes.

Chairman Larry Fillinger asked if the Board wanted to leave the meeting start time at 7p.m. or change it to 7:30 p.m. Or even 6:30 p.m.? He would prefer to decide when the regular Board members are all there.

Zoning Administrator Dave Hamann asked the Attorney if the Board should meet soon to approve these minutes? Attorney John Gormley said yes, even if there is not a case scheduled the Board should meet to approve these minutes. It was decided to have the Zoning Board of Appeals next meeting be Monday, August 29, 2022 at 7:00 p.m.

Call to the Public

Les Andersen reported that the MTA has an article on how to run an efficient meeting by having a speaking time limit, which you can't give your time to someone else. Supervisor is in charge of the meeting and no debates between residents or Board members. He will be bringing a draft policy to the Regular Board meeting on Thursday night.

Diane Bockhausen made a motion at 8:45 p.m. to adjourn the meeting, seconded by Dan Lowe. **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 _____ 2022.

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