

Submitted by: S. Longstreet

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

**MARION TOWNSHIP  
ZONING BOARD OF APPEALS  
REGULAR MEETING  
MAY 5, 2025**

**MEMBERS PRESENT:** Larry Fillinger, Linda Manson-Dempsey, Jim Witkowski, Larry Grunn, and Diane Bockhausen

**MEMBERS ABSENT:** None

**OTHERS PRESENT:** Bob Hanvey, Zoning Administrator; Bill Fenton, Supervisor; John Gormley, Township Attorney

\*\*\*\*\*

**CALL TO ORDER**

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

**PLEDGE OF ALLEGIANCE**

**MEMBERS PRESENT**

The Zoning Board of Appeals members and other township representatives introduced themselves.

**APPROVAL OF AGENDA**

Larry Fillinger said he would like to amend the agenda to include a closed session to discuss the legal opinion from the attorney.

John Gormely asked for clarification on the agenda. First, the applicant will have an opportunity to present her case, then the opportunity for the board to ask the zoning administrator and supervisor questions, then a public hearing for residents to comment or ask questions, then the closed session.

Linda Manson-Dempsey motioned to amend the agenda to reflect the public hearing and closed session. Larry Fillinger seconded. **Motion carried.**

**APPROVAL OF MINUTES**

**February 3, 2025 Regular Meeting:** Linda Manson-Dempsey motioned to approve the minutes as presented. Larry Grunn seconded. **Motion carried.**

**CALL TO THE PUBLIC**

No response.

**NEW BUSINESS**

**ZBA Case #02-25—The applicant is seeking an Administrative Review & Interpretation of the following: Section 8.03 D 12; Section 6.15 B 1; Section 6.15 A; Section 6.17 A 1, Section 6.20 A 1-4; Section 16.05 A 1-11; Section 3.2 B 5; Section 6.18; Section 4.02 A & B; Section 6.16 A 2 & B 2; Section 18.03 D**

The applicant, Kathryn Acker, provided the board members with a correction to her Violation #4 statement regarding double boulevard entrance, which should have read 34' instead of 3'. The ZBA members all confirmed that they had read this material.

Ms. Acker read her submission to the ZBA members and meeting attendees.

### **Discussion:**

**Violation #1 Special Land Use Requirements:** Linda Manson-Dempsey asked whether the deceleration lane would be more than 33' from the center line of the road and said that the Livingston County Road Commission already has a 33' right-of-way. John Gormley said the LCRC can't go outside of their right-of-way without taking property, so he believes what's proposed is within the right-of-way. The LCRC has a 66' right-of-way (33' on each side) center of the road changes. To his knowledge, there is no proposal to take anyone's property. Jim Witkowski asked if the applicant is referring to the deceleration lane? Ms. Acker said she is referring to the fact that they are proposing an easement between two houses and there's not enough room, and same with the deceleration lane. She said it's a two-lane road and people's yards are going to be affected by this. Linda Manson-Dempsey said that even though people have planted trees, etc. in the right-of-way, it's still the right-of-way. Ms. Acker said this is detrimental and Special Land Use requirements specifically state they are not to be detrimental to the surrounding community.

**Violation #2 Traffic Impact Study:** Larry Fillinger said that at the November 26, 2024 Planning Commission meeting, Jim Anderson, Planning Commissioner, requested a traffic study; also, the traffic study would be a condition for final site plan approval, not preliminary approval. Ms. Acker said the Planning Commission approved the preliminary site plan without the traffic study; Mr. Fillinger said the Planning Commission hasn't approved anything, they are a recommending body only, and approval is granted by the Township Board. Ms. Acker asked where in the ordinance does it say it's required before final site plan approval, not preliminary. John Gormley said Section 18.03 C; the Planning Commission recommended preliminary site plan approval with conditions, one of which is the traffic study before final approval.

**Violation #3 Road Designation and Use:** Jim Witkowski said the LCRC specifically calls out D-19 as a major thoroughfare and Peavy is designated as a local road. John Gormley said that is what preliminary site plan approval is for, so the developer can then go to the various agencies for permits. If Ms. Acker is correct in her interpretation, wouldn't the LCRC deny this request? Jim Witkowski said the LCRC doesn't have authority over the Marion Township ordinances, and that the township ordinance states no multi-family developments on local roads. Ms. Acker said the Special Land Use requirements require a major thoroughfare. John Gormley said the process according to the township's ordinance is the Planning Commission may make a recommendation regarding Special Use Permit, but the Township Board doesn't act on the Special Use Permit until after final approval. Jim Witkowski asked for clarification on why the Planning Commission recommended approval for the preliminary site plan and Special Use Permit, and what the Township Board was presented with was only for preliminary site plan approval—why were they split? John Gormley said that process is defined in the township's flow chart. Jim Witkowski said that Section 16.04 of the township ordinance requires that it be presented to the board at the next meeting; this conflicts with Section 16. B 2.

**Violation #4 Double Boulevard Entrance:** Larry Grunn said there is information from MDOT that states the development cannot access from D-19. Ms. Acker said there was a letter stating they could not access D-19 at a certain point, but they could access through an easement with the hotel. John Gormley asked Ms. Acker what section of the ordinance she is relying on that requires two entrances. Ms. Acker didn't remember, but said that the biggest thing is if they're only doing once entrance, then it has to be a double boulevard, which requires 100 feet, and they only have 66 feet. John Gormley asked what section of the ordinance she is referring to; Ms. Acker said it's a requirement of the Special Use Permit application that Mitch Harris signed on August 14, 2024. Jim Witkowski said he doesn't know of one. The township defers to the local fire authority.

**Violation #5 Fire Marshal Approval Letter:** John Gormley asked the applicant how the Township Board can reconcile her interpretation that they should apply the international fire code with the language in the ordinance that says state construction codes, state fire marshal and local fire codes. That would impose a greater duty upon the developer than what is in the zoning ordinance. Ms. Acker said she doesn't believe it does. Jim

Witkowski said the Howell Area Fire Authority adopted the international fire code in 2018. Ms. Acker says she has a letter dated September 14, 2024 from Dave Hamann with conditions regarding entrances and emergency access for multi-family projects. John Gormley said there is a letter from the local fire authority giving approval for the project with one entrance and emergency access.

**Violation #6 Cul-de-sac Length:** John Gormley said the ordinance references Livingston County road standards and the standards Ms. Acker cites refer to public roads, and these are private roads. John Gormley said that Article 6.20 A states that all new private roads shall meet the LCRC standards, it doesn't say public road standards. He said that the ordinance was adopted based on a 1991 set of standards that were subsequently amended in 2010; new standards were created in June 2024. Section 6.20 C defines private roads.

**Violation #7 County, State or Federal Permits:** John Gormley said he agrees that the township board can't give Special Use Permit approval until the developer comes up with all of the required permits; he also explained that Special Use Permits are not given preliminary and final approvals, there is only one approval, per Section 6.16 B 2.

Bob Hanvey said that during the Planning Commission rezoning, it was tabled to allow better access; the applicant decided to change from a rezoning request to conditional rezoning request. He included access through The Meadows for emergency access. He also pointed out that Peavy Road has 100' right-of-way and there won't be taking of anyone's property.

Ms. Acker read her conclusion. John Gormley asked Ms. Acker what her address is and does this project touch her property? Ms. Acker said her address is 1149 Peavy; she is next to one of the homes that will have the boulevard next to it, and she's not sure if the development touches the back of her lot.

### **Public Hearing**

Eric Schram, 1180 Peavy, asked what the Tamarack traffic study showed? Larry Fillingner said he doesn't have that information. Mr. Schram said they didn't realize how big the development is and nothing has been done regarding a traffic study.

Gerald Rutkowski, 1172 Peavy, said he lives west of the entrance, he has two driveways that will be impacted by the deceleration lane, and lights from traffic on the boulevard will shine right in his front window. He asked if there are any stipulations for driveways in the deceleration lane, because he believes there are five.

Dean Dupuis, 1163 Peavy, said his property is next to the entrance and he is concerned about 300+ cars and there should be safety concerns. He said he doesn't object to the development; he just feels the entrance should be on D-19.

Rogers Myers, attorney representing the Mitch Harris Development Company, provided the ZBA members with his response to Ms. Acker's request. He said we are here because the township board tabled preliminary site plan approval to get interpretation from the zoning administrator. The zoning administrator issued his interpretation regarding five issues. Mr. Myers feels that Ms. Acker has not demonstrated that she is an aggrieved party and does not have standing to seek this interpretation because she's not sufficiently aggrieved. She indicated on her application that she is the representative; however, she is not the representative for Mitch Harris. Mr. Myers said it is her burden to prove that the zoning administrator's interpretation is wrong, and she hasn't done that.

Regarding Violation #1, the interpretation that the zoning administrator gave has nothing to do with Special Use Permit. His responses are specific to preliminary or final site plan approval.

Violation #2 Traffic Impact Study, there isn't anything in the zoning administrator's interpretation, and he was never asked by the board, to render an interpretation on whether the ordinance requires a traffic impact study.

Violation #3 Road Designation and Use: There was a lot of discussion about D-19 versus Peavy Road. That was not something the board asked the zoning administrator to interpret. The applicant did not address his interpretation.

Violation #4 Double Boulevard Entrance: Again, not something the zoning administrator was asked to interpret. Even then, Ms. Acker did not provide any evidence even if the zoning administrator had been asked to interpret this. This has no bearing on this process.

Violation #5 Fire Marshal Letter: The local fire marshal has approved this. Her grievance would be against the local fire marshal because the zoning administrator was not asked to interpret this.

Violation #6 Cul-de-Sac Length: The reality is that Ms. Acker has not provided conclusive evidence that there was an erroneous interpretation by the zoning administrator. The dimensions on the cul-de-sac would have no impact on Ms. Acker.

Violation #7 County, State and Federal Permits: The zoning administrator was not asked to render an interpretation on this.

Nothing has been presented that would lead to the conclusion that the zoning administrator was wrong on the five issues he was asked to interpret.

John Gormley said the applicant checked the boxes for Section 5.05 A Administrative Review and 5.05 B Interpretation. Isn't some of this an error on the part of the Planning Commission by recommending preliminary site plan approval and Special Use Permit approve? The time limit applies to the zoning administrator's interpretation. He asked Roger Myers when does the developer believe the township decides on the SUP? Mr. Myers said there are some inconsistencies within the ordinance, but they are following the ordinance. He confirmed with Roger Myers that they are not complaining about the board not acting on the Special Use Permit.

Kathryn Acker asked if the SUP isn't even being considered at this point why are we even talking about this subdivision. This was zoned Highway Service, rezoned to Urban Residential, and in order for a multi-family development to be constructed in UR, it must be under a SUP. John Gormley said it's not that it's not going to be considered, it's just premature under Section 6.16 B 2. Ms. Acker said she is absolutely aggrieved by this project with the development at the back of the property and increased traffic in front. She said the December 10, 2024 Meadows North SUP review requires a traffic study. In addition, the Planning Commission's September 24, 2024 preliminary & SUP recommendation made by the Planning Commission includes requiring traffic study information considering Tamarack units as well.

Lori Dupuis, 1163 Peavy, said that the neighbors asked Ms. Acker to pursue this on their behalf. She doesn't understand why they are not pursuing access off D-19.

Mitch Harris said that MDOT has turned down access off of D-19 several times.

Mrs. Schram, 1180 Peavy, said that many people are impact and affected by this proposal and why can't the developer just make this work. They are asking the township to take care of the residents.

Larry Fillinger closed the public hearing at 9:33 pm.

Linda Manson-Dempsey motioned to go into a closed session to discuss the attorney's written opinion. Diane Bockhausen seconded. Roll call vote: Witkowski, Manson-Dempsey, Fillinger, Grunn, Bockhausen—all yes.  
**Motion carried 5-0.**

Larry Fillinger reopened the regular meeting at 11:07 pm.

Linda Manson-Dempsey motioned to release the attorney's opinion to the township board members for review. Diane Bockhausen seconded. Roll call vote: Witkowski, Manson-Dempsey, Fillinger, Grunn, Bockhausen—all yes. **Motion carried 5-0.**

Linda Manson-Dempsey motioned to extend the review period beyond 60 days, under Article 5.06 E, for additional information and review. No additional public hearing will be held. Larry Grunn seconded. Roll call vote: Bockhausen, Grunn, Fillinger, Manson-Dempsey, Witkowski—all yes. **Motion carried 5-0.**

#### **UNFINISHED BUSINESS**

None.

#### **SPECIAL ORDERS**

None.

#### **CALL TO THE PUBLIC**

No response.

#### **ADJOURNMENT**

Linda Manson-Dempsey motioned to adjourn at 11:10 pm. Larry Fillinger seconded. **Motion carried.**