

**MARION TOWNSHIP
ZONING BOARD OF APPEALS**

**The Township Zoning Board of Appeals will meet in person
Monday, May 5, 2025 at 7:30 pm**

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

AGENDA

CALL TO ORDER

PLEDGE OF ALLEGIENCE

INTRODUCTION OF MEMBERS

APPROVAL OF AGENDA May 5, 2025 Regular Meeting

APPROVAL OF MINUTES FOR: February 3, 2025 Regular Meeting

CALL TO PUBLIC

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

UNFINISHED BUSINESS:

SPECIAL ORDERS:

CALL TO PUBLIC:

ADJOURNMENT:

Submitted by: S. Longstreet

Approved: _____

**MARION TOWNSHIP
ZONING BOARD OF APPEALS
REGULAR MEETING
FEBRUARY 3, 2025**

MEMBERS PRESENT: Larry Fillinger, Linda Manson-Dempsey, Jim Witkowski, Larry Grunn, and Ed Galubensky (alternate)

MEMBERS ABSENT: None

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 introduced themselves.

APPROVAL OF AGENDA

Linda Manson-Dempsey motioned to approve the agenda. Larry Grunn seconded. **Motion carried.**

APPROVAL OF MINUTES

December 2, 2024 Regular Meeting: Linda Manson-Dempsey motioned to approve the minutes as presented. Larry Fillinger seconded. **Motion carried.** (Galubensky abstained.)

CALL TO THE PUBLIC

No response.

NEW BUSINESS

ZBA Case #01-25 Randall Metz, 4124 Ulana Ct., Tax Code #4710-25-201-028, seeking variances to Section 6.04 E—pool in front yard and 6.07.3—accessory structure in front yard

The applicant, Randall Metz, was present to request a variance for an inground pool. He indicated that the proposed location is the only flat area on the property. The pool will not be visible to neighbors or from the lake. He said his family has concerns about the chemicals that are put in the lake.

Linda Manson-Dempsey asked when he purchased the property; he said 1998. She asked if it will be salt water; he said yes. She asked where the water would drain, if necessary; Mr. Metz said on his driveway to the road. She asked if he could provide details on how the drainage will be handled; he indicated he would send an email to the zoning administrator with the information.

Larry Fillinger asked about the location of the fence; Mr. Metz showed on the diagram where he intends to put the fence.

Jim Witkowski complimented Mr. Metz on his presentation.

Motion

Linda Manson-Dempsey motioned for ZBA Case #01-25 Randall Metz, 4124 Ulana Ct., Tax Code #4710-25-201-028, to relax *Section 6.04 E—pool in front yard* and *6.07.3—accessory structure in front yard*, to allow installation of an inground pool, 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 township restrictions would unreasonably prevent the owner from installing an inground pool, which is a permitted use.*
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.** *A lesser relaxation of the ordinance would not give substantial relief.*
3. **That the request is due to the unique circumstances of the property.** *The unique circumstance of the front yard being the water side justifies the variance; a pool would not be installed on the “street” side.*
4. **That the alleged hardship has not been created by a property owner.** *The hardship was not created by the owner.*
5. **That the difficulty shall not be deemed solely economic.** *There is no economic benefit to the owner.*

Larry Fillinger seconded. Roll call vote: Witkowski, Manson-Dempsey, Grunn, Fillinger, Root—all yes. **Motion carried 5-0.**

UNFINISHED BUSINESS

None.

SPECIAL ORDERS

None.

CALL TO THE PUBLIC

No response.

ADJOURNMENT

Larry Grunn motioned to adjourn at 7:56 pm. Larry Fillinger seconded. **Motion carried.**

APPLICATION TO ZONING BOARD OF APPEALS

ZBA Case # 02-25
Tax Code _____
Current Zoning _____
Fee Paid _____
Date Received 3/26/25
Received by _____

Applicant KATHRYN C. ACKER
Address 1149 PEAVY RD
Telephone 574-536-3844
(Home) (Work)

Applicant is (check one): ☐ Owner ☐ Purchaser ☒ Representative

Purchaser or Representative needs a letter of permission from owner

Nature of Request (check applicable one)

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

1. Zoning Ordinance Section

8.03 D12, 6.15B1, 6.15A, 6.17A1, 6.20A1, 6.05-A (1-11), 3.2 B5, 6.18,
6.16A2, 6.16B2, 4.02, 18.03D, 6.1B1 (Livingston Road Commission
+ Planning & Trustee Minutes. 4.02
Standards A&D

2. Letter stating reason request should be granted (per Section 5.05 C)
3. Plot Plan—example and checklist attached (requirement per Section 4.03 D)
4. Required Livingston County Health Department evaluation

Refer to checklist on last page for additional instructions

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

Kathryn C. Acker
Signature

3/25/25
Date

Office Use Only

Meeting Date 5/5/25

Action Taken _____

Conditions (if applicable) _____

Signed _____

First and foremost, the Meadows North Project and Mitch Harris have been granted rezoning from Highway Service to Urban Residential to the development property under the Special Land Use Agreement, as specified by Mitch's Marion Township Special Use Permit Application, submitted and signed on August 14, 2024. Special Use approval is REQUIRED for ALL multifamily homes in the Urban Residential district per section 8.03-D-12 of the Marion Township Zoning Ordinance.

The permit specifically states, and I quote, the undersigned agrees to comply with all of the Ordinance requirements for Marion Township.

Per Ace Civil Engineering LLC, on January 30, 2023, and addressed to the Marion Township Planning Commission, the project is to meet ALL requirements of section 16.05-A of the Zoning Ordinance.

Including, but not limited to, are some of the violations of the restrictions and regulations associated with this Special Land Use Agreement and Violations of the Marion Township Zoning Ordinances that Meadows North and Mitch Harris are in breach of.

These are as follows:

Violation #1: Special Land Use Requirements

By definition, the above cited application permit, a Special Land Use Agreement, and I quote, not be hazardous or disturbing to existing or future uses in the same general vicinity and will substantially improve property in the immediate vicinity and in the community as a whole. Not involve uses activities, processes, materials, and equipment or conditions of operation that will be detrimental to any person, property or general welfare by reason of excessive production of traffic and noise. As a result, there should not be any operations that will be detrimental to the surrounding area, and it should promote the safety, public health and general welfare of the community and landowners immediately adjacent to the proposed land use per Section 6.15 B1 of the Marion Township Zoning Ordinance.

Encroachment on existing properties on Peavy Road to create a deceleration lane and putting an entrance between two existing homes at 1163 and 1175 Peavy Road is the epitome of being a detriment to the existing property owners in those areas. It will not only increase noise and traffic congestion, impeding the health and wellbeing of the residents, but it will also decrease property values for these homeowners on Peavy Road who will lose portions of their existing property near the roadway and easement.

Violation #2: Traffic Impact Study

The fact that there has NOT been a Traffic Impact Study, which is a requirement for approval of any development is a direct violation of the Marion Township

Ordinance. According to Spicer Group letter dated September 3, 2024, and addressed to the acting Zoning Administrator, Dave Hamann, and I quote, a Traffic Study should be conducted to determine if the surrounding area can handle the influx of traffic this development would bring. The Traffic Study should include information from previously approved, but not yet constructed developments along Peavy Road (Tamarack).

Section 6.15A of the Marion Township Zoning Ordinance specifically states, and I quote, the Planning Commission, Zoning Board of Appeals, and Township Board may attach conditions to the approval of a site plan, special use plan, planned unit development, variance or other discretionary approval. Such conditions shall be based upon standards in this ordinance and may be imposed to:

Ensure that public services and facilities affected by a proposed land use or activity will be capable of accommodating, increased service and facility loads caused by the land use or activity.

Also, Section 6.17A states:

No new land uses except for unplanned single-family homes or development requiring site plan review under the ordinance shall be permitted, which will reduce the level of service on adjacent roadways below the level of service C as identified in the Marion Township Comprehensive Plan.

I realize that acting Zoning Administrator, Bob Hanvey, has expressed, in his opinion letter, dated March 13, 2025, that there was no evidence that the level of service at this location would fall below level C, be certain, that there is NO evidence that it will NOT fall below a level C either, as there has been NO Traffic Impact Study performed. I might also add, on September 24, 2024, at the Marion Township Planning Commission meeting, the Commissioners recommended inclusion of a Traffic Study confirmation, including Tamarack, be done and Pat Keough, Civil Engineer for Meadows North development, confirmed he WOULD complete these recommendations. However, to date he has NOT!

And again Section 6.20A, under Private roads serving single-family, multifamily, and commercial developments, which states:

Unobstructed safe and continuous vehicular access to parcels is necessary to promote the health, safety and welfare of the citizens of Marion Township by ensuring that police, fire, and emergency services can safely and quickly enter and exit private properties at all times. Marion Township requires that all new private roads meet the Livingston County Road commission standards.

Also, Michigan Access Management Guidebook states, collecting pertinent traffic data is a very important step within the **planning process**. It can help to maintain or enhance the existing character of the community, decrease crashes, increase safety for vehicles and

pedestrians, prevent future access related congestion problems, and perhaps most costly future road widening or other improvements, maintain traffic flow and travel time, preserve public investment in roadway, maintain emergency response times and improve quality of life.

So, I ask.... Where **is** the Traffic Impact Study? Where **is** the evidence that shows Peavy Road and the newly renovated bridge on Peavy Road can handle projected traffic demand and influx from the proposed 167 multifamily project, including the 25% increase created from the Tamarack development being constructed as we speak? Also, is the internal road network adequate for safe and efficient vehicular movement?

Violation #3: Road Designation and Use

By using Peavy Road, that is a direct violation of the Livingston County Road Commission Standards Section 17.21D1:

And I quote, all developments for multifamily dwellings shall have direct access to major thoroughfare. Provisions shall be made for safe and efficient egress and ingress to public streets and highways serving any development, which shall be designed to minimize congestion and interference with normal traffic flow.

Peavy Road has been categorized as a **Local Road** by MDOT, **NOT** a major thoroughfare. A thoroughfare is needed in order for proper traffic flow without congestion and overall accessibility within the community. A Local Road is not considered a thoroughfare road. Thoroughfares are designed for high-volume, long distance traffic flow. Local Roads are designed for local access to properties and neighborhoods, not for through traffic. They are typically lower speed and less traveled. Also, the increased traffic can lead to more congested conditions and increase the risk of accidents, which in turn impacts emergency response times and delays for drivers. However, a thoroughfare is a major road which would have a minimum of 2 lanes in each direction, making it a multi-lane road. By definition, it is a main road that connects different areas and carries a significant amount of traffic. These road classifications are made in order to define different aspects of roadway design to determine County Road Commission Standards.

Not to mention, if a local road bridge experiences a 50% traffic increase due to new subdivisions (keep in mind, Tamarack at 144 units is already a 25% traffic increase according to their Traffic Impact Study and now Meadows North, which is larger than Tamarack at 167 units, we can assume that will be more than an additional 25% increase, creating over a 50% increase in traffic), the bridge could face several potential issues, primarily related to the increase stress on the bridge structure and potential for reduced safety and functionality. The increased traffic volume potentially will be exceeding its design capacity, leading to faster deterioration and potential failure. Repeated stress from

heavier traffic can lead to fatigue damage in bridge components, potentially causing cracks, weakening and eventually failure.

I also want to cite the Livingston County Road Commission standards 3.5 H, which states, proposed roads intersecting with existing roads, shall be designed and constructed in accordance with the current Livingston County Road Commissions procedures, and regulations for permitted activities.

As Peavy Road is designated as a Local Road and subdivisions require a thoroughfare, then access to the Meadows North development should seek an alternate route, specifically D19, which has been repeatedly brought to the attention of Pat Keough, civil engineer for the Meadow North development, in the Planning Commission Meetings and in the Township Trustees Board Meetings and Pat Keough has repeatedly disregarded such recommendations, even though he has said he would address such discrepancies.

Violation #4: Double Boulevard Entrance

The development's only entrance that Meadows North is planning is off Peavy Road, which is unfeasible. The easement private road approach at outlet C of the Peavy Road Estates #1 subdivision located between 1163 and 1175 Peavy Road has been surveyed and measured to be 66' wide by the Livingston County Road Commission per the letter dated February 1, 2023, from Kim Hiller, Engineer. This measurement is 3' shy of the width needed for a double Boulevard entrance, which is required for a development this large. This is a requirement by the Marion Township Planning Commission, and I cite #4 under Special Land Use Permit Application, dated January 30, 2023, the project will be accessed off of Peavy Road. In order to provide adequate access to the site, a Double Lane Boulevard type Road will be constructed up to the first intersection within the development. The Boulevard type entrance Road along with the loop internal road network within the development will then provide an adequate road network for the project. Not to mention, according to Michigan State law it does state, "that the ideal number of entrances into a subdivision depends on its size and layout, but generally more than one entrance is recommended, especially for larger subdivisions to ensure efficient traffic flow and emergency access. A single entrance can create bottlenecks, especially during peak hours leading to congestion and delays. Multiple entrances allow traffic to spread out and reduces congestion. Multiple entrances can also enhance safety by providing alternate routes for residents and visitors. Smaller subdivisions with fewer than 25 lots might get away with a single entrance, but larger subdivisions should aim for multiple entrances."

And I would like to cite that the 2 existing and 1 currently being built, Tamarack Subdivision on Peavy Road, have 2 entrances each and they are smaller than the Meadows North project.

Also, none of us, including **ALL** the Marion Township Boards, are even aware of the amount of traffic that will be imposed on Peavy Road with the Meadows North project, as again, there has **NOT** been a Traffic Impact Study done to date.

Also, Planning Commission Board minutes dated February 28, 2023, cites Bob Hanvey, your current Zoning Administrator, and I quote, made a motion to postpone action on RZN # 01-23 Mitch Harris rezoning until the next Planning Commission Meeting on March 28, 2023, so Mitch Harris can return with **alternate access options** to present.

On any given dated Township meeting, Mitch Harris has **NEVER** had alternate options presented for the proposed entrance, disregarding the Planning Commission's recommendation back in 2023 and disregarding the Marion Township Board of Trustee's recommendations on several occasions, including but not limited to, the Board of Trustees meeting notes dated February 13, 2025, where Pat Keough, Meadows North Civil Engineer, was specifically asked and answered **NO** to contacting the local hotel property owner regarding the easement to D19. Pat Keough has only stated, and I quote, there is a lot of Wetlands that will have to be mitigated and that is **too costly**. Well, cost is not a valid excuse for ignoring the 2 Boards' recommendations and above all the Marion Township Ordinances.

Violation #5: Fire Marshall Approval Letter

The Fire Department Fire Marshal division letter does not address D104-3, the International Fire Code Remoteness Clause. Without verification from the Fire Marshal that this clause has been met, we cannot assume that it is NOT a direct violation of the International Fire Code.

The Remoteness Clause of the International Fire Code states, and I quote, where 2 fire apparatus access roads are required, they shall be placed a distance apart equal to, not less than 1/2 of the length of the maximum overall diagonal dimension of the lot or area to be served, measured in a straight line between accesses.

Under section 6.16A2 of the Marion Township Ordinance it states, and I quote, all site plans special land uses and construction activities shall conform to the provisions of the ordinance and the regulations and standards of the following applicable fire, safety, and emergency vehicle access requirements of the State Construction Code, State Fire Marshal and Local Fire Code.

A letter from the Fire Marshall addressing the Remoteness Clause specifically needs to be addressed, as cited by the Zoning Ordinance and requested by the Board of Trustees on January 23, 2025, in order to be in compliance with Marion Township. Mitch Harris has ultimately disregarded these recommendations.

Violation # 6: Cul de sac length

The Meadows North development plans show the cul-de-sac measurement is double the permitted length and therefore, in violation of section 2.2.6 C of the Livingston County Road Commission Standards which states, cul-de-sac roads shall be designed in accordance with the specifications contained here in. A cul-de-sac road shall not be more than 750 feet nor be less than 300 feet in length as measured along the road center line from the point of intersection with the intersecting road to the center point of the circular turnabout.

Also 2.2.6A of the Livingston County Road Commission Standards specifically says stub roads shall have paved cul-de-sacs at their terminus to facilitate plowing and routine maintenance of the road system. Cul-de-sacs shall be located within dedicated road right of way. Proposed developments adjacent to existing developments with road stubs shall connect to all road stubs at their boundaries. A temporary cul-de-sac is required at all future connection road stubs.

I would request that the Cul De Sac issue be addressed and plans be revised to resolve the violation of the Livingston County Road Commission Standards cited above in regards to the Meadows North project.

Violation #7: County, State or Federal Permits

This addresses the wetland permits required by ANY development breaking ground in regulated properties. According to the Marion Township Zoning Ordinance section 6.16B2, the Township shall NOT approve any land use that requires a county, state or federal permit, until such permit has been obtained, and satisfactory evidence has been submitted verifying the acquisition of the necessary permits. In addition, I have an email from Nick Padula of EGLE stating and I quote, we have yet to receive any applications proposing work in this area. Also, any work involving impacts to the wetlands, the drain, and the floodplains will require a permit from EGLE.

Said permits have NOT been acquired and yet Meadows North and Mitch Harris are requesting approval from the township board, which is a direct violation of the Marion Township ordinance mentioned above.

Lastly, proposed in this document there are many Marion Township Zoning Ordinance violations by the Meadows North project and Mitch Harris, which was ultimately brought to the attention of Bob Hanvey, acting Marion Township Zoning Administrator, who in turn responded with an opinion letter, which led us to the ZBA hearing tonight. I might make

mention, that according to your Marion Township Zoning Ordinance 18.03D and I quote, the **Township Board of Trustees** shall review the preliminary site plan and approve, approve with conditions, or deny the preliminary site plan. The Zoning Administrator **DOES NOT** grant Final Approval on a Development, nor does he/she have the ability to force Final Approval on the Marion Township Trustee Board. According to section 4.02, Duties of the Zoning Administrator, it shall be the responsibility of the Zoning Administrator to enforce the provisions of this Ordinance, issue permits when all applicable provisions of this Ordinance have been met and Approval has been granted by the **proper body or official**. The Zoning Administrator shall maintain files of all permit applications. The Zoning Administrator shall be empowered to make inspections of buildings or premises in order to carry out the enforcement of this Ordinance. The Zoning Administrator shall keep a record of every complaint of a violation of any of the provisions of this Ordinance. The Zoning Administrator shall report to the Planning Commission and Township Board periodically, all land use permits issued, all complaints of violation and any action taken on each complaint. Under **NO** circumstances, is the Zoning Administrator permitted to make changes in this Ordinance, nor to vary the terms of the Ordinance while carrying out the duties prescribed here in.

The **sole Approval** of any Development lies with the **Marion Township Trustees Board**. So, if indeed there are Ordinance Violations that the developer, Mitch Harris and Meadows North, has failed to address, and I have meticulously pointed out here in, then it is the responsibility of the **Marion Township Trustees Board** to require the developer to correct **ANY and ALL** Violations of the Marion Township Ordinances, **before approval** may be granted. At which time, the Zoning Board would then be sought out for Appeal. I believe this Appeal was prematurely forced upon the Peavy Road residents and I hope that the Zoning Board reconsiders the fee that was paid.

In conclusion, I request that the Marion Township Zoning Board make the recommendation to the Township Trustees Board that **ALL** the above labeled #1-7 violations be addressed and corrected **before** final approval be granted to Mitch Harris's Meadows North Development.

Thank you

MEMO

To: Marion Township Board
From: Bob Hanvey, Zoning Administrator
Subject: Opinions on Meadows North Site Plan Issues
Job #22032 rev. 11/11/24
Date: March 13, 2025

This memo is in response to concerns of some Marion Township Board members about the site plan submitted by Mitch Harris Building Company for a condominium project called Meadows North.

Concerns:

1. Does not conform to the letter dated September 13, 2024 from Howell Fire Marshal suggesting that there should be two separate entrances served on opposite ends of the development for more than 100 dwelling units.

Opinion: The September letter is attached. Also attached is an email from the HAFD Fire Marshal that the "location and concept is acceptable as long as the following conditions are met." According to the Fire Marshal, those conditions apply only to the emergency access. All other design considerations are acceptable.

2. Violates Marion twp. development standards which prohibit more than 30 units on a single access and 75 with more than one point of access.

Private Road Requirements

6) Private roads shall be limited to serving no more than thirty (30) single-family dwelling units on a single access and seventy-five (75) with more than one point of access. Any dwelling unit whose only means of ingress or egress is via the private road shall be considered in the number of dwelling units allowed. If private roads are an extension of a dead-end public road, the number of dwelling units along the public road shall be considered in the number of dwelling units allowed. This limit shall apply to any type of roadway surface, gravel or pavement.

Opinion: The unit restriction applies to a single road within the development, not to the entire development.

3. Violates Livingston County road commission development standards and Article 4-1-h of our subdivision design standards in regard to cul-de-sac length which the proposed development is more than double the permitted length.

Opinion: The design is acceptable to the Fire Marshal. There are many developments in Marion Township with cul-de-sac lengths exceeding the specification, both private and public roads. This project is a condominium 4-1-h is part of the subdivision general ordinance. Subdivisions are controlled by the Subdivision control act not the condo act. Additionally, County Road Standards do not apply to condo developments.

4. Violates the purpose and intent of our private road ordinance 6.20 which requires that safe and continuous vehicular access to parcels is necessary to promote the health, safety and welfare of the citizens of Marion Township by ensuring that police, fire, and emergency services can safely and quickly enter and exit private property at all times.

Opinion: The reference in the condominium section to 6.20 is confusing because many of the requirements clearly do not apply to condominiums. The design is acceptable to the Fire Marshal.

5. No Confirmation of compliance under section 6.17 a-1 infrastructure standards that this development is compliant with the level of service C as identified in the Marion Township comprehensive plan.

Opinion: The level of service on adjacent roadways applies to Peavy road at the entrance to Meadows North. There is no evidence that the level of service at this location will fall below level C.

Based on the five issues above, the Meadows North should receive preliminary site plan approval.